START

Title: FEDERAL REGISTER.

Volume: 65 Issues: 191 - 202
PAGES: 58635-62576

Date: OCTOBER 2 - 18, 2000

UMI Number: 2575.00

Notes: REEL NO: 6 OF 12

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# Federal Register

10–2–00 Monday
Vol. 65 No. 191 Oct. 2, 2000

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Government
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# Federal Register

10–2–00 Monday
Vol. 65 No. 191 Oct. 2, 2000
Pages 58635–58900

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**DEPARTMENT OF AGRICULTURE**

**5 CFR Part 8301**

**RIN 3209–AA15**

## Supplemental Standards of Ethical Conduct for Employees of the Department of Agriculture

**AGENCY:** Department of Agriculture (Department or USDA).

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (Department or USDA), with the concurrence of the Office of Government Ethics (OGE), is issuing final regulations for Department employees that supplement the Standards of Ethical Conduct for Employees of the Executive Branch (Standards), as issued by OGE. The final rule, effective upon publication, sets forth as final both a general requirement for certain Department employees to obtain prior approval before engaging in outside employment and separate, more-extensive prior approval requirements for employees of the USDA Farm Service Agency (FSA), Food Safety and Inspection Service (FSIS), Office of the General Counsel (OGC), and Office of Inspector General (OIG). The final rule also contains certain restrictions on financial interests applicable to FSA employees.

**EFFECTIVE DATE:** These regulations are effective October 2, 2000.

**FOR FURTHER INFORMATION CONTACT:** John C. Surina, Director, Office of Ethics, U.S. Department of Agriculture, Room 348–W—Stop 0122, 1400 Independence Avenue, S.W., Washington, D.C. 20250–0122, telephone (202) 720–2251.

**SUPPLEMENTARY INFORMATION:**

### I. Background

On March 24, 2000, with the concurrence and co-signature of OGE, USDA published for comment an interim final rule, with a request for comments, establishing supplemental standards of ethical conduct for employees of USDA (65 FR 15825–15830). The interim rule was issued to supplement the Standards of Ethical Conduct for Employees of the Executive branch published by OGE on August 7, 1992, and effective on February 3, 1993 (57 FR 35006–35067, as corrected at 57 FR 48557 and 57 FR 52583). The Standards, as corrected and amended, are codified at 5 CFR part 2635. On October 3, 1997, the Department's Employee Conduct and Responsibilities regulations were removed. *See* 62 FR 51759–51760.

The interim rule was issued pursuant to 5 CFR 2635.105, which authorizes agencies, with the concurrence of OGE, to publish agency-specific supplemental regulations that are necessary to implement their respective ethics programs. The Department, with OGE concurrence, determined that the supplemental rules for codification in new chapter LXXII of 5 CFR, consisting of part 8301, were necessary to the success of its ethics program.

The interim rule prescribed a 30-day comment period and invited comments from all interested parties. USDA received ten timely comments and one late comment and, after careful consideration of each comment, has made appropriate modifications to the rule. The Department, with OGE's concurrence, is now publishing as a final rule the Supplemental Standards of Ethical Conduct for Employees of the Department of Agriculture, for codification in part 8301 title 5 of the Code of Federal Regulations.

### II. Summary of the Comments

As noted, the Department received a total of eleven comments (ten were timely; one was late), all by electronic mail. Seven comments were received from employees of the Office of the General Counsel (OGC), USDA; one from an employee of Departmental Administration, USDA; one from an employee of the Farm Service Agency (FSA), USDA; one from a non-employee farmer; and one from a person whose affiliation, if any, could not be determined. Except for the comments of the farmer and the FSA employee, all comments concerned either the general requirement for prior approval for outside employment or the additional requirement for prior approval by OGC of outside practice of law by OGC attorneys not already covered under the general requirement. The FSA employee was complimentary in assessing the interim rule and wanted to expand the coverage of prohibited transactions with regard to FSA employees. The non-employee farmer inquired as to the rationale for limiting the prohibited transactions provisions only to FSA Federal employees, rather than also including FSA county employees.

### III. Analysis of the Comments

*Section 8301.102 General prior approval requirement for outside employment*

All but one of the comments concerning the requirement to obtain approval before engaging in outside employment came from OGC attorneys and most of those comments addressed, concurrently, both the general requirement applicable to financial disclosure report filers and the special requirement for non filing attorneys within OGC found in § 8301.105. Accordingly, to the extent that these comments relate to both sections, they will be addressed in connection with the general requirement.

Four comments were received which asserted that the requirement for seeking prior approval for outside employment was unnecessary. Three commenters believed themselves capable of independently judging whether an outside activity would be in conflict with their official responsibilities. Two other commenters were inclined in that direction, adding that the presupposed ethical dangers that justify the requirement could be addressed more effectively through law enforcement and more ethics training to help employees identify conflicts. Two other commenters pointed to the fact that the interim language does not attempt to identify the potential conflicts that are of concern and went on to state that since the conflicts of concern were already prohibited, there was no need for the prior approval requirement. One commenter criticized the requirement on the basis that it presumes that USDA employees are engaged in unethical behavior. Finally, one commenter noted that the same goal already was achieved by way of confidential financial disclosure.

Notwithstanding the concerns of the commenters, the Department still sees a

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clear need for requiring prior approval for outside employment by persons occupying sensitive positions. The Department has therefore determined that such prior approval of outside employment for persons covered by § 8301.102, and the additional prior approval requirements articulated in §§ 8301.103 through 8301.106, are essential to the missions of the Department and its agencies. The most obvious purpose for having a prior approval requirement is to help Federal officers and employees avoid entering into actual or apparent conflict situations, rather than limiting agencies to reliance upon after-the-fact responses, such as through prosecution or disciplinary action. Accordingly, the Department believes that requiring prior approval for outside employment by persons occupying sensitive positions is necessary and that the benefits accruing from this requirement, in terms of protecting not only its officers and employees but also the integrity of its programs and operations, outweigh the limited imposition and burden posed to individual officers and employees.

The Department believes that the general prior approval requirement is not overly burdensome or unnecessarily intrusive. First, persons not obliged to file financial disclosure reports are exempt from this requirement. Moreover, paragraph (e) of § 8301.102 provides agencies and components with the authority, through internal agency procedures, to specify broad categories of outside employment that presumptively present no conflict of interest concerns. Leaving the determination of exempt categories of employment to the individual agencies and components accords those entities greater flexibility in developing and modifying lists of exempted occupational categories since they are not subject to a cumbersome rulemaking process.

Three comments viewed the regulation as possibly constituting a prior restraint on First Amendment rights. One commenter expressed this point in terms of the outside practice of law; a second commenter in terms of uncompensated teaching, speaking, or writing that relates to one's official duties. The Department is not insensitive to the intrusiveness of any conflict of interest regulations as they necessarily cover personal financial holdings and activities away from one's job. On the other hand, the courts have acknowledged the justification for narrowly tailored prophylactic measures to protect the public interest from the reality and appearance of the corrosive impact of conflicting private interests. In this respect, it must be pointed out that the prior approval requirement does not prohibit any form of expression or association. In *Williams* v. *Internal Revenue Service*, 919 F.2d 745 (D.C. Cir. 1990), the court held that an agency regulation that required employees to obtain permission from the agency before engaging in outside employment, and that was tailored to the Government's interest in efficiency and avoiding the appearance of impropriety, did not violate employees' First Amendment rights. Therefore, the Department does not agree with the commenter's argument that the requirement for obtaining prior approval for outside employment generally violates First Amendment rights.

At the same time, one commenter pointed to the recent ruling in *Sanjour* v. *EPA*, 56 F.3d 85 (D.C. Cir. 1995), *on remand*, 7 F. Supp. 2d 14 (D.D.C. 1998), as a basis for attacking the regulation on First Amendment grounds. The Department disagrees with the commenter in terms of the legal impact of *Sanjour* on this regulation. Nonetheless, the Department amends this section by: (1) deleting the requirement in paragraph (b)(2) to obtain prior approval for *uncompensated* teaching, speaking, writing, and editing; and (2) redesignating paragraph (b)(3) as paragraph (b)(2).

One commenter asserted that the definition of "employment," in paragraph (b), is overly broad in that it would include providing uncompensated personal services in managing an educational trust for one's children, or in serving as a trustee or agent for a family estate, or serving as executor of a will. Conversely, the commenter points out that, under paragraph (b)(3)(i), an employee could manage a religious endowment fund, social investment club, fraternal organization, or the assets of a recreational group.

The Department finds the comment to be valid in cases where the fiduciary duties (guardian, executor, administrator, trustee, or personal fiduciary) relate solely to services provided to, or in conjunction with, individuals. From a practical standpoint, requiring prior approval to perform these family tasks on behalf of individuals is an unnecessary burden. On the other hand, the Department does not concur in the comment to the extent that such services are provided to, or in conjunction with, a for-profit entity. In the estimation of USDA, there is a significantly greater likelihood that outside employment with for-profit entities may raise conflict of interest and ethical concerns than in the case of fiduciary services provided to individuals. Accordingly, the Department sees justification for requiring prior approval for such services. Therefore, the Department amends redesignated paragraph (b)(2) of the interim rule by inserting prior to the word "entity", comma following by "for-profit."

One commenter questioned both the necessity of requiring the employee to provide the estimated total time to be devoted to outside employment [paragraph (c)(5)] and a statement as to whether the work can be performed entirely outside of the employee's regular duty hours [paragraph (c)(6)]. The Department has amended the interim rule by: (1) Deleting paragraphs (c)(5) and (c)(6); and (2) redesignating paragraphs (c)(7) through (c)(10) as paragraphs (c)(5) through (c)(8).

Several comments sought greater clarification and specificity on both the standards to be employed in evaluating outside employment requests and on the procedures to be employed. Specifically, three commenters expressed a wish to see a set time from by which management must act on a request, so that failure to act on the request within the required time frame would constitute de facto approval of the request. Three commenters suggested that the regulation contain some avenue of appeal from a negative determination. Two commenters wanted specificity as to how often their approved requests needed to be updated. Two other commenters wanted greater specificity as to the specific standards employed by USDA to gauge whether a given outside activity presents an unacceptable conflict. One commenter wanted greater clarification of what was meant by the term "reasonable time" in paragraph (c). Finally, another commenter wanted a requirement for the agency to provide written notification of its determination.

While the Department sees that such process considerations are valid, the regulations accord each specific USDA agency and component broad authority to fashion a prior approval policy that best fits its particular needs. Thus, the Department does not adopt these comments; rather they are left to be addressed through the implementing procedures within each agency and component. As to the standards employed to gauge whether a given outside activity presents an unacceptable conflict, the Department believes that sufficient specificity is provided in this regulation through reference to the relevant part of the Code of Federal Regulations. Greater specificity may be provided through implementing procedures within each agency and component.



The Department, in conforming to its intent to provide broad authority to its separate agencies and components to fashion prior approval requirement procedures specifically tailored to their needs, is amending the interim rule by: (1) Deleting the words "[T]he DAEO or, with the concurrence of the DAEO," in paragraph (e), and replacing those words with "The agency designee for;" and (2) deleting from paragraph (d) the words "(or the DAEO, when there is not an agency designee)."

*Section 8301.103 Additional rules for employees of the Farm Service Agency*

As stated, the Department received two comments related to the provision prohibiting certain financial transactions involving Farm Service Agency (FSA) employees. The FSA employee wanted the Department to apply the prohibitions to "members of the employees [sic] household," rather than to "employee, spouse, or minor child," as was used in the regulation. The commenter questioned the justification in the interim rule for acting to address abuses and conflicts involving the financial interests of employees, spouses, and minor children, while leaving unaddressed the similar abuses and conflicts involving the financial interests of cohabitation partners and children who have reached majority. While the commenters' concerns are appreciated, the provisions of subpart D of the branchwide Standards do not extend beyond the limitations contained in the basic financial conflict of interest statute, 18 U.S.C. 208. That statute prohibits a Federal officer or employee from participating officially in any particular matter in which the officer or employee has a financial interest. For purposes of that statute, financial interests owned by the employee's spouse or minor child are deemed to be the financial interests of the employee. Accordingly, the Department did not have the authority to extend this prohibition beyond the bounds of that statute.

The non-employee commenter questioned why the interim rule did not apply to FSA county employees and why employees were still eligible to obtain guaranteed loans. The conflict of interest statutes and the Standards are limited in their application to Federal employees. FSA County committee personnel and county office employees are not Federal employees for purposes of these statutes. *See* 65 FR 15826. As a result, this supplement must be limited to Federal employees. However, the Department may publish under different authority similar rules concerning FSA county employees. Farm Service Agency guaranteed loans were not included in this prohibition because those loans involve commercial monies, rather than the very limited pot of Federal monies available through FSA direct loans. Moreover, FSA direct loans are the vehicle by which USDA serves as the "lender of last resort" to farmers on the financial brink; those loan monies must be reserved for those persons.

*Section 8301.105 Additional rules for employees of the Office of the General Counsel*

Two of the comments contended that both the general promulgation of the rules, as well as imposition of the additional prior approval requirement under § 8301.105, were subject to negotiations under the collective bargaining process. The Department disagrees with the notion that the promulgation and enforcement of regulations are subject to collective bargaining negotiations under the Federal Service Labor-Management Relations Act. The promulgation of regulations is fully within the broad authorities accorded to Federal agencies. More specifically, however, not only does this regulation implement a Govermentwide regulation (5 CFR part 2635), but the Department also has established a compelling need for its agency-specific rules and has made a determination that they are essential to the missions of the USDA agencies for which they have been adopted.

Two commenters addressed the fact that almost all State bars have rules proscribing conflicts of interest by attorneys. This, they contended, made the prior approval requirement redundant in terms of limiting outside practice or law. One of the two asserted that, generally, standards imposed by the bars were more stringent and more easily enforced than the regime set out in the supplement. The other commenter proposed that, should a dispute arise between an attorney and his or her supervisor over whether an outside activity conflicted with his or her official duties, the issue could be presented for resolution to the bar to which the attorney belongs. If the bar sided with the Government, but the employee proceeded with the outside activity nonetheless, then the Government could file a bar complaint. (Presumably, if the bar sided with the employee, the Government would be powerless to take action against the employee.)

The subject matter at issue is not proper for determination or interpretation by State bar associations. The Federal Government cannot abdicate a core management function, such as staff supervision, to an outside party. At the same time, the suggestion misses the entire point of requiring prior approval for certain types of outside employment, which is to prevent an employee from violating a Federal criminal statute or ethical conduct rule, rather than having to take disciplinary action after the fact.

*Sections 8301.103(f), and 8301.104 Through 8301.106 Additional Prior Approval Requirements*

One commenter noted, in reference to § 8301.105, that the additional requirements for requesting prior approval for outside employment provide that requests are processed in accordance with the procedures in paragraph (c) of § 8301.102, but do not specify whether such requests will be determined on the standard for approval set forth in paragraph (d) of § 8301.102. The Department agrees with this comment. Accordingly, the Department will specify in all additional prior approval requirements, that the request shall be determined based on the standard for approval set forth in paragraph (d) of § 8301.102.

## IV. Matters of Regulatory Procedure

*Congressional Review*

The Department has found that this rulemaking is not a rule as defined in 5 U.S.C. 804, and, thus, does not require review by Congress. This rulemaking is related to Department personnel.

*Executive Orders Nos. 12866 and 12988*

Since this rule relates to Department personnel, it is exempt from the provisions of Executive Orders Nos. 12866 and 12988.

*Regulatory Flexibility Act*

The Department has determined under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only Department employees.

*Paperwork Reduction Act*

The Department has determined that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this regulation does not contain any information collection requirements that require the approval of the Office of Management and Budget.

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*Environmental Impact*

This decision will not have a significant impact upon the quality of the human environment or the conservation of energy resources.

**List of Subjects in 5 CFR Part 8301**

Conflict of interests, Executive branch standards of conduct, Government employees.

Dated: September 25, 2000.

**Dan Glickman,**

*Secretary of Agriculture.*

Approved: September 26, 2000.

**F. Gary Davis,**

*Acting Director, Office of Government Ethics.*

For the reasons set forth in the preamble, the Department of Agriculture, with the concurrence of the Office of Government Ethics, is revising 5 CFR part 8301 to read as follows:

## PART 8301—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE DEPARTMENT OF AGRICULTURE

Sec.

8301.101 General.
8301.102 Prior approval for outside employment.
8301.103 Additional rules for employees of the Farm Service Agency.
8301.104 Additional rules for employees of the Food Safety and Inspection Service.
8301.105 Additional rules for employees of the Office of the General Counsel.
8301.106 Additional rules for employees of the Office of Inspector General.

**Authority:** 5 U.S.C. 301, 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.403(a), 2635.803.

### § 8301.101 General.

(a) In accordance with 5 CFR 2635.105, the regulations in this part apply to employees of the Department of Agriculture (Department or USDA) and supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635.

(b) In addition to 5 CFR part 2635 and this part, employees also are required to comply with the executive branch financial disclosure regulations at 5 CFR part 2634, the regulations on responsibilities and conduct contained in 5 CFR part 735, and Department guidance and procedures established pursuant to paragraph (c) of this section.

(c) With the concurrence of the Designated Agency Ethics Official (DAEO), agencies and components of the Department may, in accordance with 5 CFR 2635.105(c), issue explanatory guidance for their employees and establish procedures necessary to implement this part and part 2635 of this title. The Deputy Ethics Official for each agency or component shall retain copies of all such guidance issued by that agency or component.

### § 8301.102 Prior approval for outside employment.

(a) *Prior approval requirement.* An employee, other than a special Government employee, who is required to file either a public or confidential financial disclosure report (SF 278 or OGE Form 450), or an alternative form of reporting approved by the Office of Government Ethics, shall, before engaging in outside employment, obtain written approval in accordance with the procedures set forth in paragraph (c) of this section.

(b) *Definition of employment.* For purposes of this section, "employment" means any form of non-Federal employment or business relationship or activity involving the provision of personal services by the employee for direct, indirect, or deferred compensation other than reimbursement of actual and necessary expenses. It also includes, irrespective of compensation, the following outside activities.

(1) Providing personal services as a consultant or professional, including service as an expert witness or as an attorney; and

(2) Providing personal services to a for-profit entity as an officer, director, employee, agent, attorney, consultant, contractor, general partner, or trustee, which involves decision-making or policymaking for the non-Federal entity, or the provision of advice or counsel.

(c) *Submission of requests for approval.* An employee seeking to engage in employment for which advance approval is required shall submit a written request for approval to the employee's supervisor a reasonable time before the employee proposes to begin the employment. Upon a significant change in the nature of the outside employment or in the employee's official position, the employee shall submit a revised request for approval. The supervisor will forward written requests for approval to the agency designee, through normal supervisory channels. All requests for prior approval shall include the following information:

(1) The employee's name, organizational location, occupational title, grade, and salary;

(2) The nature of the proposed outside employment, including a full description of the specific duties or services to be performed;

(3) A description of the employee's official duties that relate in any way to the proposed employment;

(4) The name and address of the person or organization for whom or with which the employee is to be employed, including the location where the services will be performed;

(5) The method or basis of any compensation (e.g., fee, per diem, honorarium, royalties, stock options, travel and expenses, or other);

(6) A statement as to whether the compensation is derived from a USDA grant, contract, cooperative agreement, or other source of USDA funding;

(7) For employment involving the provision of consultative or professional services, a statement indicating whether the client, employer, or other person on whose behalf the services are performed is receiving, or intends to seek, a USDA grant, contract, cooperative agreement, or other funding relationship; and

(8) For employment involving teaching, speaking, writing or editing, the proposed text of any disclaimer required by 5 CFR 2635.807(b).

(d) *Standard for approval.* Approval shall be granted by the agency designee unless it is determined that the outside employment is expected to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635.

(e) *Responsibilities of the component agencies.* (1) The agency designee for each separate agency or component of USDA may issue an instruction or manual issuance exempting categories of employment from a requirement of prior written approval based on a determination that employment within those categories would generally be approved and is not likely to involve conduct prohibited by Federal statutes or regulations, including 5 CFR part 2635 and this part.

(2) Department components may specify internal procedures governing the submission of prior approval requests, including but not limited to: timely submission requirements; determination deadlines; appeals or reviews; and requirements for updating requests. Internal procedures also should designate appropriate officials to act on such requests. The instructions or manual issuances may include examples of outside employment that are permissible or impermissible consistent with 5 CFR part 2635 and this part. With respect to employment involving teaching, speaking or writing, the instructions or manual issuances may specify pre-clearance procedures and/or require disclaimers indicating that the views expressed do not necessarily represent the views of the agency, USDA or the United States.



(3) The officials within the respective USDA agencies or components responsible for the administrative aspects of these regulations and the maintenance of records shall make provisions for the filing and retention of requests for approval of outside employment and copies of the notification of approval or disapproval.

### § 8301.103 Additional rules for employees of the Farm Service Agency.

(a) *Application.* This section applies only to Farm Service Agency (FSA) personnel who are Federal employees within the meaning of 5 U.S.C. 2105. This section does not apply to FSA community committee members, county committee members, and county office personnel, who are either elected to their positions or are employees of community or county committees established under 16 U.S.C. 590h. For rules applicable to FSA community committee members, county committee members, and county office personnel, see 7 CFR part 7.

(b) *Definition of FSA program participant.* For purposes of this section, the phrase "FSA program participant," includes any person who is, or is an applicant to become, an FSA borrower, FSA grantee, or recipient of any other form of FSA financial assistance available under any farm credit, payment or other program administered by FSA.

(c) *Prohibited borrowing.* (1) No FSA employee, or spouse or minor child of an FSA employee, may directly or indirectly seek or obtain a "direct loan" under paragraph (a)(9) of section 343 of the Consolidated Farm and Rural Development Act, 7 U.S.C. 1991(a)(9).

(2) Nothing in this section bars an FSA employee, or spouse or minor child of an FSA employee, from retaining a direct loan secured prior to March 24, 2000, or, if subsequent to March 24, 2000, such direct loan is secured prior to the FSA employee being appointed to, or nominated for, appointment to an FSA position. Any FSA employee who either personally has such a pre-existing loan, or whose spouse or minor child has such a pre-existing loan, must submit a written disqualification from taking any official action on any such loan. Other than through the application of normal FSA loan servicing options set forth under FSA regulations, the terms of any such pre-existing loans shall remain fixed and shall not be subject to renegotiation or renewal unless pursuant to policy decision(s) made by the USDA Secretary or the FSA Administrator.

(3) *Waiver for FSA State Committee members.* A request for an exception to the general prohibition of paragraph (c)(1) of this section may be submitted by an FSA State Committee member (whether on his or her own behalf, or on behalf of the FSA State Committee member's spouse or minor child), to the FSA Deputy Administrator for Farm Loans. The Deputy Administrator for Farm Loans may grant a written waiver from this prohibition based on a determination made with the concurrence of the DAEO and the FSA headquarters ethics adviser that:

(i) The applicant is a current FSA State Committee member or the spouse or minor child of a current FSA State Committee member;

(ii) The applicant meets the statutory qualification requirements for obtaining direct loan; and

(iii) A waiver is not inconsistent with part 2635 of this title nor 7 U.S.C. 1986 nor otherwise prohibited by law, and that, under the particular circumstances, application of the prohibition is not necessary to avoid the appearance of misuse of position, including the appearance of misuse of non public information, or loss of impartiality, or otherwise to ensure confidence in the impartiality and objectivity with which agency programs are administered.

(d) *Prohibited real estate purchases.* (1) No FSA employee, or spouse or minor child of an FSA employee, may directly or indirectly purchase real estate held in the FSA inventory, for sale under forfeiture to FSA, or from an FSA program participant.

(2) *Waiver.* A request for an exception to the prohibition found in paragraph (d)(1) of this section may be submitted jointly by the FSA program participant and FSA employee (whether on his or her own behalf, or on behalf the employee's spouse or minor child), to the FSA State Executive Director. The FSA State Executive Director may grant a written waiver from this prohibition based on a determination made with the advice and clearance of the DAEO and the FSA headquarters ethics advisor that the waiver is not inconsistent with part 2635 of this title nor 7 U.S.C. 1986 nor otherwise prohibited by law and that, under the particular circumstances, application of the prohibition is not necessary to avoid the appearance of misuse of position or loss of impartiality or otherwise to ensure confidence in the impartiality and objectivity with which agency programs are administered. A waiver under this paragraph may impose appropriate conditions, such as requiring execution of a written disqualification.

(e) *Prohibited transactions with FSA program participants.* (1) Except as provided in paragraph (e)(2) of this section, no FSA employee or spouse or minor child of an FSA employee may directly or indirectly: sell real property to; lease real property to or from; sell to, lease to or from, or purchase personal property from; or employ for compensation a person whom the FSA employee knows or reasonably should know is an FSA program participant directly affected by decisions of the particular FSA office in which the FSA employee serves.

(2) *Exceptions.* Paragraph (e)(1) of this section does not apply to:

(i) A sale, lease, or purchase of personal property, if it involves:

(A) Goods available to the general public at posted prices that are customary and usual within the community; or

(B) Property obtained pursuant to public auction; or

(ii) Transactions listed in (e)(1) of this section determined in advance by the appropriate FSA State Executive Director, after consulting with the FSA Headquarters ethics advisor, to be consistent with part 2635 of this title and otherwise not prohibited by law.

(f) *Additional prior approval requirements for outside employment.* Any FSA employee not otherwise required to obtain approval for outside employment under § 8301.102 shall obtain written approval in accordance with the procedures and standards set forth in paragraphs (c) and (d) of § 8301.102 before engaging in outside employment, as that term is defined by paragraph (b) of § 8301.102, with or for a person:

(1) Whom the FSA employee knows, or reasonably should know, is an FSA program participant; and

(2) Who is directly affected by decisions made by the particular FSA office in which the FSA employee serves.

### § 8301.104 Additional rules for employees of the Food Safety and Inspection Service.

Any employee of the Food Safety and Inspection Service not otherwise required to obtain approval for outside employment under § 8301.102, shall, before engaging in any form of outside employment, obtain written approval in accordance with the procedures and standards set forth in paragraphs (c) and (d) of § 8301.102

### § 8301.105 Additional rules for employees of the Office of the General Counsel.

Any attorney serving within the Office of the General Counsel, not otherwise required to obtain approval for outside employment under § 8301.102, shall obtain written approval, in accordance with the

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procedures and standards set forth in paragraphs (c) and (d) of § 8301.102, before engaging in the outside practice of law, whether compensated or not.

**§ 8301.106 Additional rules for employees of the Office of Inspector General.**

Any employee of the Office of Inspector General, not otherwise required to obtain approval for outside employment under § 8301.102, shall obtain written approval, in accordance with the procedures and standards set forth in paragraphs (c) and (d) of § 8301.102, before engaging in any form of outside employment that involves the following:

(a) Law enforcement, investigation, security, firearms training, defensive tactics training, and protective services;

(b) Auditing, accounting, bookkeeping, tax preparation, and other services involving the analysis, use, or interpretation of financial records;

(c) The practice of law, whether compensated or not; or

(d) Employment involving personnel, procurement, budget, computer, or equal employment opportunity services.

[FR Doc. 00–25136 Filed 9–29–00; 8:45 am]

BILLING CODE 3410–01–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 2000–NE–11–AD; Amendment 39–11912; AD 2000–20–01]**

**RIN 2120–AA64**

## Airworthiness Directives; Turbomeca Arriel 1 Series Turboshaft Engines

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that is applicable to certain Turbomeca Arriel 1 series turboshaft engines. This action requires the installation of a chip detector with electronic warning on the rear bearing oil return system. This amendment is prompted by reports of gas generator rear bearing failures. The actions specified in this AD are intended to prevent gas generator rear bearing failure, which could lead to an uncommanded engine shutdown.

**DATES:** Effective October 17, 2000. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of October 17, 2000.

Comments for inclusion in the Rules Docket must be received on or before December 1, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–NE–11–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: "9-ane-adcomment@faa.gov." Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from Turbomeca, 64511 Bordes Cedex, France; telephone: 33 59 12 50 00; fax: 33 59 53 15 12. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** James Rosa, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone: (781) 238–7152; fax: (781) 238–7199.

**SUPPLEMENTARY INFORMATION:** The Direction Generale de L'Aviation Civile (DGAC), the airworthiness authority for France, recently notified the Federal Aviation Administration (FAA) that an unsafe condition may exist on certain Turbomeca Arriel 1 series turboshaft engines. The DGAC advises that it has received reports of gas generator rear bearing failure. There were 38 incidents of uncommanded in-flight engine shutdowns before August 1999; no fatalities were reported. This condition, if not corrected, could result in an uncommanded engine shutdown.

### Manufacturer's Service Information

Turbomeca has issued Service Bulletin (SB) No. 292 72 0163, Revision 1, dated April 3, 1996, that specifies procedures for the installation of a chip detector with electronic warning on the rear bearing oil return system. The DGAC classified this service bulletin as mandatory and issued AD 98–394(A) in order to ensure the airworthiness of these engines in France.

### Bilateral Airworthiness Agreement

This engine model is manufactured in France and is type certificated for operation in the United States under the provisions of 21.29 of Title 14 of the Code of Federal Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

### Requirements of this AD

Since an unsafe condition has been identified that is likely to exist or develop on engines of the same type design in the United States, this AD requires the installation of a chip detector with electronic warning on the rear bearing oil return system. The actions are required to be accomplished in accordance with the service bulletin described previously.

### Immediate Adoption

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

### Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.



Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000- NE–11-AD." The postcard will be date-stamped and returned to the commenter.

### Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposed rule.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of Title 14 of the Code of Federal Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**2000—20—01 Turbomeca:** Amendment 39–11912. Docket 2000–NE–11–AD.

*Applicability:* This AD is applicable to Turbomeca Arriel 1 A, –1 A1, –1 A2, –1 B, –1 C, –1 C1, –1 C2, –1 D, –1 D1, –1 K, –1 K1, –1 S, and –1 S1 turboshaft engines.These engines are installed on, but not limited to, the following helicopters:

| | | |
|---|---|---|
| Eurocopter AS 356 C. | Eurocopter AS 365 C1. | Eurocopter AS 350 BA |
| Eurocopter AS 356 N2. | Eurocopter AS 350 B. | Eurocopter AS 350 B2N |
| Eurocopter AS 350 D. | Eurocopter As 550 U2. | Augusta A109K2 |
| Sikorsky S76A. | Sikorsky 76A+. | Sikorsky 76A++ |
| Sikorsky S76C. | | |

**Note 1:** This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

**Compliance**

Required as indicated, unless accomplished previously.

To prevent gas generator rear bearing failure, which could result in an uncommanded engine shutdown, do the following:

**Required Action**

(a) Within 30 days from the effective date of this AD, install a chip detector with electronic warning on the rear bearing oil return system in accordance with Turbomeca Service Bulletin (SB) No. 292 72 0163, Revision 1, dated April 3, 1996, paragraph 2, Instructions for incorporation.

**Alternative Methods of Compliance**

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Manager, ECO.

**Special Flight Permits**

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

**Incorporation by Reference**

(d) The actions required by this AD shall be performed in accordance with Turbomeca Service Bulletin No. 292 72 0163, Revision 1, dated April 3, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Turbomeca, 64511 Bordes Cedex, France; telephone 33 59 12 50 00; fax 33 59 53 15 12. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, DC.

**Effective Date**

(e) This amendment becomes effective on October 17, 2000.

Issued in Burlington, Massachusetts, on September 21, 2000.

**Mark C. Fulmer,**

*Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 00–24900 Filed 8–29–00; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 2000–NM–140–AD; Amendment 39–11910; AD 2000–19–09]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 767 Series Airplanes Powered by Rolls-Royce RB211 Series Engines

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 767 series airplanes powered by Rolls-Royce RB211 series engines. This action requires modification of the nacelle strut and wing structure. This action is necessary to prevent fatigue cracking in primary strut structure and consequent reduced structural integrity of the strut. This action is intended to address the identified unsafe condition.

**DATES:** Effective October 17, 2000.

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The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 17, 2000.

The incorporation by reference of Boeing Service Bulletin 767–57–0053, Revision 2, dated September 23, 1999, as listed in the regulations, was approved previously by the Director of the Federal Register as of July 24, 2000 (65 FR 37843, June 19, 2000).

Comments for inclusion in the Rules Docket must be received on or before December 1, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–140–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-iarcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–140–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** James Rehrl, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2783; fax (425) 227–1181.

**SUPPLEMENTARY INFORMATION:** The FAA has received reports indicating that the airplane manufacturer has accomplished a structural reassessment of the damage tolerance capabilities of the Boeing Model 767 series airplanes powered by Rolls-Royce RB211 series engines. This reassessment indicates that the actual operational loads applied to the nacelle strut and wing structure are higher than the analytical loads that were used during the initial design. Subsequent analysis and service history, which includes numerous reports of fatigue cracking on certain strut and wing structure, indicate that fatigue cracking can occur on the primary strut structure before an airplane reaches its design service objective of 20 years or 50,000 flight cycles. Analysis also indicates that such cracking, if it were to occur, would grow at a much greater rate than originally expected. Fatigue cracking in primary strut structure would result in reduced structural integrity of the strut.

**Explanation of Relevant Service Information**

Boeing recently developed a modification of the strut-to-wing attachment structure installed on Boeing Model 767 series airplanes powered by Rolls-Royce RB211 series engines. This modification significantly improves the load-carrying capability and durability of the strut-to-wing attachments. Such improvement also will substantially reduce the possibility of fatigue cracking and corrosion developing in the attachments.

The FAA has reviewed and approved Boeing Service Bulletin 767–54–0082, dated October 28, 1999, which describes procedures for modification of the nacelle strut and wing structure. The modification consists of the following actions:

- Detailed visual inspections for migration of the midspar, upper spar, and lower spar fitting bushings and the strut side link fitting bearings of the strut.
- Installation of new tension bolts in the aft pitch load fitting and a new side link fitting of the wing.
- Inspection and rework of the side load fittings of the wing and rework of the forward pitch load fitting of the wing.
- Replacement of many of the significant load-bearing components of the strut-to-wing attachment (*e.g.*, midspar fuse pins, side links, side link fuse pins, diagonal brace, and diagonal brace fuse pins) with improved components.

The service bulletin contains a formula for calculating an optional compliance threshold for the specified modification. This formula is intended to be used as an alternative to the 20-year calendar threshold specified in the service bulletin.

In addition, Table 2 of the service bulletin identifies six related service bulletin modifications that must be accomplished before or at the same time as the modification in Boeing Service Bulletin 767–54–0082:

- *Boeing Service Bulletin 767–29–0057:* The FAA has reviewed and approved Boeing Service Bulletin 767–29–0057, dated December 16, 1993, which describes procedures for modification of the electrical wiring support of the alternating current motor pump of the main hydraulic power system. The modification involves installing new band clamps and index-straps, and on certain airplanes, new wire support brackets on the strut bulkhead.
- *Boeing Service Bulletin 767–54–0059:* The FAA has reviewed and approved Boeing Service Bulletin 767–54–0059, dated July 28, 1994, which describes procedures for removing the midspar fuse pins, performing repetitive detailed visual inspections for cracked or broken sealant or migration or rotation of the midspar attachment fitting bushings, and accomplishing follow-on corrective actions (including replacing the bushings), if necessary.
- *Boeing Service Bulletin 767–54–0069:* The FAA has reviewed and approved Boeing Service Bulletin 767–54–0069, Revision 1, dated January 29, 1998, which describes procedures for rework of the side load fitting and tension fasteners, as applicable, and replacement of midspar fuse pins with new, higher-strength midspar fuse pins. The rework involves increasing the size of the tension bolts of the inboard and outboard side load fittings. The replacement also involves installing new, higher-strength bolts and radius fillers in the side load fittings and backup support structure, and installing higher-strength fasteners common to the front spar and rib number 8 rib post.
- *Boeing Service Bulletin 767–54–0083:* The FAA has reviewed and approved Boeing Service Bulletin 767–54–0083, dated September 17, 1998, which describes procedures for replacement of the upper link assembly with a new, improved assembly that will increase the strength and durability of the upper link installation. That service bulletin also describes procedures for modification of the wire support brackets attached to the upper link.
- *Boeing Service Bulletin 767–54–0088:* The FAA has reviewed and approved Boeing Service Bulletin 767–54–0088, Revision 1, dated July 29, 1999, which describes procedures for replacement of the upper link fuse pin and aft pin with new, improved pins that will increase the strength and durability of the upper link installation.
- *Boeing Service Bulletin 767–57–0053, Revision 1, dated October 31, 1996:* The FAA has previously issued AD 2000–12–17, amendment 39–11795 (65 FR 37843, June 19, 2000), which requires repetitive inspections to detect fatigue cracking of the pitch load fitting lugs of the wing front spar, and rework, if necessary, in accordance with Boeing Service Bulletin 767–57–0053, Revision 2, dated September 23, 1999. "NOTE 2" of that AD states that inspections and rework accomplished prior to July 24, 2000 (the effective date of AD 2000–12–17) under Boeing Service Bulletin 767–57–0053, dated June 27, 1996, or Revision 1, dated October 31, 1996, are acceptable for compliance with that AD.



**Explanation of Requirements of the Rule**

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to prevent fatigue cracking in primary strut structure and consequent reduced structural integrity of the strut. This AD requires accomplishment of the actions specified in the service bulletins described previously, except as discussed below.

**Differences Between Service Bulletin and This AD**

Boeing Service Bulletin 767–54–0082 recommends accomplishment of the actions in Boeing Service Bulletin 767–57–0053, Revision 1, prior to or concurrently with the actions in Boeing Service Bulletin 767–54–0082. However, as discussed above, the FAA has previously issued AD 2000–12–17 to require Boeing Service Bulletin 767–57–0053, Revision 2. Therefore, paragraph (b) of this AD requires accomplishment of Boeing Service Bulletin 767–57–0053, Revision 2, instead of Revision 1. However, as specified in "Note 2" of this AD, Revision 1 is acceptable for compliance with this requirement.

**Cost Impact**

None of the airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

The following are costs associated with this AD that would apply if an affected airplane is imported and placed on the U.S. Register in the future:

- It would require approximately 314 work hours to accomplish the actions described in Boeing Service Bulletin 767–54–0082, at an average labor rate of $60 per work hour. The manufacturer has committed previously to its customers that it will bear the cost of replacement parts. As a result, the cost of those parts is not attributable to this AD. Based on these figures, the cost impact of this action would be $18,840 per airplane.
- It would take approximately 16 work hours per airplane to accomplish the actions described in Boeing Service Bulletin 767–29–0057, at an average labor rate of $60 per work hour. Required parts would be provided at no cost by the airplane manufacturer. Based on these figures, the cost impact of this action would be $960 per airplane.
- It would take approximately 6 work hours per airplane to accomplish the actions described in Boeing Service Bulletin 767–54–0059, at an average labor rate of $60 per work hour. Required parts would be provided at no cost by the airplane manufacturer. Based on these figures, the cost impact of this action would be $360 per airplane.
- It would take approximately 212 work hours per airplane to accomplish the actions described in Boeing Service Bulletin 767–53–0069, Revision 1, at an average labor rate of $60 per work hour. Required parts would be provided at no cost by the airplane manufacturer. Based on these figures, the cost impact of this action would be $12,720 per airplane.
- It would take approximately 1 work hour per airplane to accomplish the actions described in Boeing Service Bulletin 767–54–0083, at an average labor rate of $60 per work hour. Required parts would be provided at no cost by the airplane manufacturer. Based on these figures, the cost impact of this action would be $60 per airplane.
- It would take approximately 4 work hours per airplane to accomplish the actions described in Boeing Service Bulletin 767–54–0088, Revision 1, at an average labor rate of $60 per work hour. Required parts would be provided at no cost by the airplane manufacturer. Based on these figures, the cost impact of this action would be $240 per airplane.
- It would take approximately 5 work hours per airplane to accomplish the actions described in Boeing Service Bulletin 767–57–0053, Revision 2, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of these actions would be $300 per airplane. Because the actions described in this service bulletin are already required by another AD action, this requirement adds no new costs for affected operators.

**Determination of Rule's Effective Date**

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, prior notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register.**

**Comments Invited**

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–140–AD." The postcard will be date stamped and returned to the commenter.

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**Regulatory Impact**

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**2000–19–09 Boeing:** Amendment 39–11910. Docket 2000–NM–140–AD.

*Applicability:* Model 767 series airplanes powered by Rolls-Royce RB211 series engines, line numbers 1 through 663 inclusive, certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent fatigue cracking in primary strut structure and consequent reduced structural integrity of the strut, accomplish the following:

**Modifications**

(a) At the later of the times specified in paragraph (a)(1) or (a)(2) of this AD, modify the nacelle strut and wing structure on both the left and right sides of the airplane, in accordance with Boeing Service Bulletin 767–54–0082, dated October 28, 1999:

(1) Prior to the accumulation of 37,500 total flight cycles, or within 20 years since the date of manufacture, whichever occurs first. Use of the optional threshold formula described in Figure 1 of the service bulletin is an acceptable alternative to the 20-year threshold, provided that the additional criteria specified in the service bulletin are met; or

(2) Within 3,000 flight cycles after the effective date of this AD.

(b) Prior to or concurrently with the accomplishment of the modification of the nacelle strut and wing structure required by paragraph (a) of this AD, as specified in paragraph 1.D., Table 2, "Prior or Concurrent Service Bulletins," on page 3 of Boeing Service Bulletin 767–54–0082, dated October 28, 1999, accomplish the actions specified in the following service bulletins: Boeing Service Bulletin 767–29–0057, dated December 16, 1993; Boeing Service Bulletin 767–54–0059, dated July 28, 1994; Boeing Service Bulletin 767–54–0069, Revision 1, dated January 29, 1998; Boeing Service Bulletin 767–54–0083, dated September 17, 1998; Boeing Service Bulletin 767–54–0088, Revision 1, dated July 29, 1999; and Boeing Service Bulletin 767–57–0053, Revision 2, dated September 23, 1999.

**Note 2:** AD 2000–12–17, amendment 39–11795, requires accomplishment of Boeing Service Bulletin 767–57–0053, Revision 2, dated September 23, 1999. However, inspections and rework accomplished in accordance with Boeing Service Bulletin 767–57–0053, dated June 27, 1996, or Revision 1, dated October 31, 1996, are acceptable for compliance with the applicable action required by paragraph (b) of this AD.

**Repair**

(c) If any damage to airplane structure is found during the accomplishment of any modification required by paragraph (a) or (b) of this AD, and the applicable service bulletin specifies to contact Boeing for appropriate action, then prior to further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

**Alternative Methods of Compliance**

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

**Special Flight Permits**

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

**Incorporation by Reference**

(f) Except as provided by paragraph (c) of this AD, the actions shall be done in accordance with Boeing Service Bulletin 767–54–0082, dated October 28, 1999; Boeing Service Bulletin 767–29–0057, dated December 16, 1993; Boeing Service Bulletin 767–54–0059, dated July 28, 1994; Boeing Service Bulletin 767–54–0069, Revision 1, dated January 29, 1998; Boeing Service Bulletin 767–54–0083, dated September 17, 1998; Boeing Service Bulletin 767–54–0088, Revision 1, dated July 29, 1999; and Boeing Service Bulletin 767–57–0053, Revision 2, dated September 23, 1999; as applicable.

(1) The incorporation by reference of Boeing Service Bulletin 767–54–0082, dated October 28, 1999; Boeing Service Bulletin 767–29–0057, dated December 16, 1993; Boeing Service Bulletin 767–54–0059, dated July 28, 1994; Boeing Service Bulletin 767–54–0069, Revision 1, dated January 29, 1998; Boeing Service Bulletin 767–54–0083, dated September 17, 1998; Boeing Service Bulletin 767–54–0088, Revision 1, dated July 29, 1999; is approved by the Director of the Federal Register, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Boeing Service Bulletin 767–57–0053, Revision 2, dated September 23, 1999, was approved previously by the Director of the Federal Register as of July 24, 2000 (65 FR 37843, June 19, 2000).

(3) Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Effective Date**

(g) This amendment becomes effective on October 17, 2000.



Issued in Renton, Washington, on September 21, 2000.

**Donald L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–24751 Filed 9–29–00; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2000–NE–38–AD; Amendment 39–11913; AD 2000–20–02]**

**RIN 2120–AA64**

## Airworthiness Directives; General Electric Company CF6–50 Series Turbofan Engines

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that is applicable to General Electric Company (GE) CF6–50 series turbofan engines. This action requires inspection of the low pressure turbine nozzle lock assemblies, and replacement of the borescope plug with a new design plug. This amendment is prompted by three uncontained engine failures. The actions specified in this AD are intended to detect loose or missing LPT nozzle lock assembly studs that could lead to failure of the locks and subsequent uncontained failure of the engine.

**DATES:** Effective October 17, 2000. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of October 17, 2000.

Comments for inclusion in the Rules Docket must be received on or before December 1, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–NE–38–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: "9-ane-adcomment@faa.gov." Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from General Electric Company via Lockheed Martin Technology Services, 10525 Chester Road, Suite C, Cincinnati, Ohio 45215, telephone (513) 672–8400, fax (513) 672–8422. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Karen Curtis, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone: (781) 238–7192, fax: (781) 238–7199.

**SUPPLEMENTARY INFORMATION:** On April 25, 2000, a DC10–30 experienced an uncontained engine failure during takeoff. Ground inspection found uncontainment of the low pressure turbine (LPT) case, airplane damage, and ingestion damage to the other two engines. An investigation revealed that the failure of stage 2 LPT nozzle lock assemblies made of Waspalloy material resulted in the uncontained failure of all stage 2 nozzle segments.

Since that time, there have been two more uncontained engine failures, on September 5, 2000, and September 7, 2000, that have been attributed to the failure of Waspalloy stage 2 LPT nozzle lock assembly studs.

Before these three events, there had been two uncontained failures of stage 2 LPT nozzle lock assemblies made of Rene 41 material. One failure was in April 1991 which was contained within the cowl with no damage to the airplane, and one in 1996 that also penetrated the cowl and resulted in minor damage to the airplane. There was also one unscheduled engine removal (UER) for broken Rene 41 nozzle lock assembly studs in 1997 and two UER's for broken Waspalloy assemblies; one in January 1999, and one in December 1999.

Loose or missing LPT nozzle lock assembly studs could lead to failure of the locks and subsequent uncontained failure of the engine.

**Manufacturer's Service Information**

The FAA has reviewed and approved the technical contents of GE Alert Service Bulletin (ASB) CF6–50 72–A1196, dated September 15, 2000, that describes procedures for replacing the existing stage 2 LPT nozzle borescope plug, part number (P/N) 9022M63G13, with borescope plug P/N 2083M99P01. This new plug provides an additional antirotation feature for the nozzle segments in the event of failure of the nozzle locks.

**Interim Action Requirements of This AD**

Since an unsafe condition has been identified that is likely to exist or develop on other GE CF6–50 series turbofan engines of the same type design, this AD is being issued as an interim action to detect loose or missing LPT nozzle lock assembly studs that could lead to failure of the lock assemblies, and subsequent uncontained failure of the engine. This AD requires:

- Initial and repetitive inspections of the lock assemblies for loose or missing studs.
- Replacement of all of the stage 2 LPT lock assemblies with new assemblies before further flight if a loose or missing stud is found.
- Installation of borescope plug P/N 2083M99P01. This new borescope plug is designed to prevent rotation of the stage 2 LPT nozzle if the nozzle lock assemblies fail.
- Inspection of the area surrounding the borescope plug for evidence of buckling or cracks whenever the nozzle lock studs are inspected.
- Replacement of the LPT stator case assembly with a serviceable part before further flight if any buckling or cracks are found.

The borescope plug must be replaced as specified in ASB CF6–50 72–A1196.

**Immediate Adoption of This AD**

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

**Comments Invited**

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether

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additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA–public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NE–38–AD." The postcard will be date stamped and returned to the commenter.

**Regulatory Impact**

This proposed rule does not have federalism implications, as defined in Executive Order No. 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposed rule.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of Title 14 of the Code of Federal Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**2000–20–02 General Electric** Company: Amendment 39–11913. Docket 2000–NE–38–AD.

*Applicability:* This airworthiness directive (AD) is applicable to General Electric Company (GE) CF6–50 series turbofan engines. These engines are installed on, but not limited to, Airbus Industries A300, Boeing Airplane Company 747, and McDonnell Douglas Corporation DC10 airplanes.

**Note 1:** This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (h) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

**Compliance**

Compliance with this AD is required as indicated, unless already done.

To detect loose or missing LPT nozzle lock assembly studs that could lead to failure of the locks and subsequent uncontained failure of the engine, do the following:

**Initial Inspection of Stage 2 LPT Nozzle Lock Assemblies**

(a) Visually inspect the stage 2 LPT nozzle lock assemblies for loose or missing studs within the following times after the effective date of this AD information about on-wing visual inspections may be found in the appropriate aircraft maintenance manual (AMM):

| Time on lock assembly | Inspect within the earlier of |
|---|---|
| (1) 5,500 or fewer hours time-since-new (TSN) on the effective date of this AD. | 500 hours time-in-service (TIS) or 60 days after the effective date of this AD. |
| (2) Greater than 5,500 hours TSN on the effective date of this AD, or if TSN is not known. | 250 hours TIS or 30 days after the effective date of this AD. |

(b) If any stage 2 LPT nozzle lock assembly stud is loose or missing, replace all of the stage 2 LPT nozzle lock assemblies with new nozzle lock assemblies before the further flight.

**Repetitive Inspection of Stage 2 LPT Nozzle Lock Assemblies**

(c) Thereafter, visually inspect the stage 2 LPT nozzle lock assemblies for loose or missing studs within the following times-since-last-inspection (TSLI) information about on-wing visual inspections may be found in the appropriate AMM:

| Time on lock assembly | Repetitive inspection |
|---|---|
| (1) 5,500 or fewer hours TSN. | 500 hours TSLI. |
| (2) Greater than 5,500 hours TSN or if TSN is not known. | 250 hours TSLI. |

(d) If any stage 2 LPT nozzle lock assembly stud is loose or missing, place all of the stage 2 LPT nozzle lock assemblies with new nozzle lock assemblies before further flight.

**Replacement of Borescope Plug**

(e) On engines with lock assemblies that have the following times on the effective date of this AD, remove the existing stage 2 LPT nozzle borescope plug, part number P/N 9022M63G13, and install borescope plug P/N 2083M99P01, or a plug with the alternate P/N's 305–381–303–0 or 2110M79P01, in accordance with the Accomplishment Instructions 3.A through 3.B.(7) of GE alert service bulletin (ASB) CF6–50 72–A1196, dated September 15, 2000:

| Time on lock assembly | Install borescope plug within the earlier of |
|---|---|
| (1) 5,500 or fewer hours TSN on the effective date of this AD. | 500 hours TIS or 60 days after the effective date of this AD. |
| (2) Greater than 5,500 hours TSN on the effective date of this AD. | 250 hours TIS or 30 days after the effective date of this AD. |

(f) Do not install borescope plug P/N 9022M63G13 in the borescope inspection port for the stage 2 LPT nozzle after the plug has been replaced in accordance with paragraph (e) of this AD.

**Inspection for Buckling and Cracks**

(g) For engines on which the borescope plug has been replaced in accordance with paragraph (e) of this AD, visually inspect the LPT stator case assembly around the stage 2 LPT borescope inspection port boss each time the lock assemblies are inspected, as specified in paragraph (c) of this AD, for evidence of buckling or cracks. If buckling or cracks are found, replace the LPT stator case assembly before further flight with a serviceable case.

**Alternative Methods of Inspection**

(h) An alternative method of compliance of adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

**Special Flight Permits**

(i) Special flights permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

**Documents That Have Been Incorporated by Reference**

(j) The borescope plug replacement must be done in accordance with GE ASB CF6–50 72C–A1196, dated September 15, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from General Electric Company via Lockheed Martin Technology Services, 10525 Chester Road, Suite C, Cincinnati, Ohio 45215, telephone (513) 672–8400, fax (513) 672–8422. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

**Effective Date**

(k) This amendment becomes effective on October 17, 2000.

Issued in Burlington, Massachusetts, on September 21, 2000.

**Mark C. Fulmer,**

*Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 00–24901 Filed 9–29–00; 8:45 am]

**BILLING CODE 4910–13–P**



## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2000–SW–21–AD; Amendment 39–11917; AD 2000–20–06]**

**RIN 2120–AA64**

## Airworthiness Directives; Agusta S.p.A. Model A109K2 and A109E Helicopters

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) for Agusta S.p.A. (Agusta) Model A109K2 and A109E helicopters. This AD requires replacing a certain main transmission aft support fitting (aft support fitting) with an airworthy aft support fitting within specified time intervals and establishes a retirement life for certain aft support fittings. This AD is prompted by three failures of the engine to main gearbox drive shaft due to fatigue cracks on the aft support fittings. This condition, if not corrected, could result in excessive displacement of the main gearbox, failure of an engine to main gearbox drive shaft, loss of power to the main rotor, and a subsequent forced landing.

**DATES:** Effective October 17, 2000.

Comments for inclusion in the Rules Docket must be received on or before December 1, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2000–SW–21–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: 9-asw-adcomments@faa.gov.

**FOR FURTHER INFORMATION CONTACT:** Uday Garadi, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5123, fax (817) 222–5961.

**SUPPLEMENTARY INFORMATION:** The Ente Nazionale per l'Aviazione Civile (ENAC), which is the airworthiness authority for Italy, notified the FAA that an unsafe condition may exist on Agusta Model A109K2 and A109E helicopters. The ENAC advises replacing certain support fittings.

Agusta has issued Alert Bollettino Tecnico (Technical Bulletin) No. 109K–25 and No. 109EP–7, both dated March 3, 2000, which specify replacing the left and right aft aluminum support fittings with improved steel support fittings and establishes a new retirement life for the aluminum support fittings installed on the aft end of the main transmission. The ENAC classified those technical bulletins as mandatory and issued AD No. 2000–128, dated March 6, 2000, to assure the continued airworthiness of these helicopters in Italy.

These helicopter models are manufactured in Italy and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the ENAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the ENAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

The FAA has identified an unsafe condition that is likely to exist or develop on other Agusta Model A109K2 and A109E helicopters of the same type designs registered in the United States. This AD is being issued to prevent cracks on the aft support fittings that could result in excessive displacement of the main gearbox, failure of an engine to main gearbox drive shaft, loss of power to the main rotor, and a subsequent forced landing. This AD requires replacing any aft support fitting, P/N 109–0325–08–01, with an airworthy support fitting, P/N 109–0325–08–109, within specified time intervals and establishes a retirement life of 150 hours TIS for support fittings, P/N 109–0325–08–01, installed on the aft end of the main transmission. Installing the support fittings, P/N 109–0325–08–109, constitutes terminating action for the requirements of this AD. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the structural integrity of the helicopter. Therefore, replacing certain support fittings with 140 hours TIS or more is required within 10 hours TIS, and this AD must be issued immediately.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

The FAA estimates that 4 helicopters will be affected by this AD, that it will take approximately 9 work hours per Agusta Model A109E helicopter and 6 work hours per Agusta Model A109K2 helicopter to replace the support fittings, and that the average labor rate is $60 per work hour. The manufacturer has stated in the technical bulletins that labor will be reimbursed up to $40 per work hour for the Agusta Model A109E, and all required parts for both model helicopters will be provided under warranty. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,440.

**Comments Invited**

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by

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submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2000–SW–21–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

**2000–20–06 Agusta S.p.A.:** Amendment 39–11917. Docket No. 2000–SW–21–AD.

*Applicability:* Model A109K2 with serial number (S/N) up to and including 10036 and Model A109E with S/N up to and including 11069, excluding A109E helicopters with serial number 11049, 11055, 11056, or 11067, certificated in any category.

**Note 1:** This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent a crack in a main transmission aft support fitting (aft support fitting) that could result in excessive displacement of the main gearbox, failure of an engine to main gearbox drive shaft, loss of power to the main rotor, and a subsequent forced landing, accomplish the following:

(a) Remove each main transmission aft support fitting, part number (P/N) 109–0325–08–01 and replace it with an airworthy support fitting, P/N 109–0325–08–109, as follows:

(1) For an aft support fitting, P/N 109–0325–08–01, with less than 140 hours time-in-service (TIS), replace it at or before 150 hours TIS.

(2) For an aft support fitting, P/N 109–0325–08–01, with 140 or more hours TIS, replace it within 10 hours TIS.

**Note 2:** Agusta Alert Bollettino Tecnico (Technical Bulletin) No. 109K–25 and No. 109EP–7, both dated March 3, 2000, pertain to the subject of this AD.

(b) This AD revises the Airworthiness Limitations Section of the applicable maintenance manual by establishing a life limit of 150 hours TIS for the aft support fitting, F/N 109–0325–08–01.

(c) Replacing all aft support fittings, P/N 109–0325–08–01, with support fittings, P/N 109–0325–08–109, constitutes terminating action for the requirements of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(f) This amendment becomes effective on October 17, 2000.

**Note 4:** The subject of this AD is addressed in Ente Nazionale per l'Aviazione Civile (Italy) AD No. 2000–128, dated March 6, 2000.

Issued in Fort Worth, Texas, on September 25, 2000.

**Eric Bries,**

*Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 00–25151 Filed 9–29–00; 8:45 am]

**BILLING CODE 4910–13–P**

## COMMODITY FUTURES TRADING COMMISSION

**17 CFR Part 4**

**RIN 3038–AB60**

### Profile Documents for Commodity Pools

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Final rules.

**SUMMARY:** The Commodity Futures Trading Commission ("CFTC" or "Commission") is adopting amendments to its rules to permit commodity pool operators ("CPOs") to provide a summary profile document to prospective commodity pool participants prior to giving them the pool's complete disclosure document. Certain technical changes to rules relating to CPOs and commodity trading advisors ("CTAs") are also being adopted.

**EFFECTIVE DATE:** November 1, 2000.



**FOR FURTHER INFORMATION CONTACT:** Eileen R. Chotiner, Futures Trading Specialist, (202) 418–5467, electronic mail: "echotiner@cftc.gov," Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581.

**SUPPLEMENTARY INFORMATION:** On July 27, 2000, the Commission proposed to amend its rules to allow CPOs to use a profile document to solicit prospective commodity pool participants prior to providing them with the pool's Disclosure Document.[1] The Commission also proposed amendments to Commission Rule 4.26 to establish procedures for the use, amendment and filing of profile documents that are parallel to those applicable to disclosure documents. The proposed rule changes are intended to accommodate National Futures Association's ("NFA") proposed Compliance Rule 2–35(d). In addition, certain technical amendments related to filings by CPOs and commodity trading advisors ("CTAs") were proposed.

The 30-day comment period expired on August 28, 2000. The Commission received one comment letter, from NFA, which supported the proposed rule changes. Accordingly, the Commission has determined to adopt the changes to Rules 4.2, 4.21, 4.26 and 4.36, essentially as proposed.

**Related Matters**

*A. Regulatory Flexibility Act*

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601–611 (1994), requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The Commission has previously established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its rules on such entities in accordance with the RFA.[2] The Commission previously has determined that registered CPOs are not small entities for the purpose of the RFA.[3] With respect to CTAs, the Commission has stated that it would evaluate within the context of a particular rule proposal which all or some affected CTAs would be considered to be small entities and, if so, the economic impact on them of any rule.[4] In this regard, the Commission notes that the sole effect on CTAs of the rule revisions adopted herein is to reduce the filing requirement for disclosure documents. The Commission has previously determined that the disclosure requirements governing this category of registrant will not have a significant economic impact on a substantial number of small entities.[5] Therefore, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that these regulations will not have a significant economic impact on a substantial number of small entities.

*B. Paperwork Reduction Act*

This rule (Sections 4.31 and 4.33) contains information collection requirements. As required by the Paperwork Reduction Act of 1995,[6] the Commission has submitted a copy of this rule to the Office of Management and Budget (OMB) for its review.[7] In response to the Commission's invitation in the proposed rulemaking to comment on any potential paperwork burden associated with this regulation, no comments were received.

**List of Subjects in 17 CFR Part 4**

Brokers, Commodity futures, Commodity pool operators, Commodity trading advisors.

For the reasons stated in the preamble, the Commission amends 17 CFR Part 4 as follows:

## PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

1. The authority citation for Part 4 continues to read as follows: Authority: 7 U.S.C. 1a, 2, 4, 6b, 6c, 6l, 6m, 6n, 6o, 12a and 23.

2. Section 4.2 is amended by revising paragraph (a) to read as follows:

**§ 4.2 Requirements as to filing.**

(a) All material filed with the Commission under this part 4 must be filed with the Commission at its Washington, DC office (Att: Managed Funds Branch, Division of Trading and Markets, CFTC, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581); Provided, however, that Disclosure Documents, profile documents, and amendments thereto may be filed at the following electronic mail address: *ddoc-efile@cftc.gov.*

* * * * *

3. Section 4.21 is amended by revising paragraph (a) to read as follows:

**§ 4.21 Required delivery of pool Disclosure Document.**

(a)(1) No commodity pool operator registered or required to be registered under the Act may, directly or indirectly, solicit, accept or receive funds, securities or other property from a prospective participant in a pool that it operates or intends to operate unless, on or before the date it engages in that activity, the commodity pool operator delivers or causes to be delivered to the prospective participant a Disclosure Document for the pool containing the information set forth in § 4.24.

(2) Notwithstanding the requirements regarding solicitation specified in paragraph (a)(1) of this section, a commodity pool operator may provide to a prospective participant either of the following documents prior to delivery of a Disclosure Document, subject to compliance with rules promulgated by a registered futures association pursuant to section 17(j) of the Act:

(i) A profile document;

(ii) Where the prospective participant is an accredited investor, as defined in 17 CFR 230.501(a), a notice of intended offering and statement of the terms of the intended offering.

* * * * *

4. Section 4.26 is amended by revising paragraphs (a), (b) and (d) to read as follows:

**§ 4.26 Use, amendment and filing of Disclosure Document.**

(a)(1) Subject to paragraph (c) of this section, all information contained in the Disclosure Document and, where used, profile document, must be current as of the date of the Document; Provided, however, that performance information may be current as of a date not more than three months prior to the date of the Document.

(2) No commodity pool operator may use a Disclosure Document or profile document dated more than nine months prior to the date of its use.

(b)(1) If the commodity pool operator knows or should know that the Disclosure Document or profile document is materially inaccurate or incomplete in any respect, it must correct that defect and must distribute the correction to:

(i) All existing pool participants within 21 calendar days of the date upon which the pool operator first knows or has reason to know of the defect; and

(ii) Each previously solicited prospective pool participant prior to accepting or receiving funds, securities or other property from any such prospective participant.

(2) The pool operator may furnish the correction by any of the following means:

(i) An amended Disclosure Document or profile document;

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[1] 65 FR 46122 (July 27, 2000).

[2] 47 FR 18618–18621 (April 30, 1982).

[3] 47 FR 18619–18620.

[4] 47 FR 18618–18620.

[5] *See* 60 FR 38146, 38181 (July 25, 1995) and 48 FR 35248 (August 3, 1983).

[6] Pub. L. 104–13 (May 13, 1995).

[7] 44 U.S.C. 3504(h).

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(ii) With respect to a hard copy of the Disclosure Document, a sticker affixed to the Disclosure Document; or

(iii) Other similar means.

(3) The pool operator may not use the Disclosure Document or profile document until such correction has been made.

* * * * *

(d) Except as provided by § 4.8:

(1) The commodity pool operator must file with the Commission one copy of the Disclosure Document and, where used, profile document for each pool that it operates or that it intends to operate not less than 21 calendar days prior to the date the pool operator first intends to deliver such Document or documents to a prospective participant in the pool; and

(2) The commodity pool operator must file with the Commission one copy of the subsequent amendments to the Disclosure Document and, where used, profile document for each pool that it operates or that it intends to operate within 21 calendar days of the date upon which the pool operator first knows or has reason to know of the defect requiring the amendment.

5. Section 4.36 is amended by revising paragraph (d) to read as follows:

**§ 4.36 Use, amendment and filing of Disclosure Document.**

* * * * *

(d)(1) The commodity trading advisor must file with the Commission one copy of the Disclosure Document for trading program that it offers or that it intends to offer not less than 21 calendar days prior to the date the trading advisor first intends to deliver the Document to a prospective client in the trading program; and

(2) The commodity trading advisor must file with the Commission one copy of the subsequent amendments to the Disclosure Document for each trading program that it offers or that it intends to offer within 21 calendar days of the date upon which the trading advisor first knows or has reason to know of the defect requiring the amendment.

Issued in Washington, DC, on September 25, 2000 by the Commission.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 00–24984 Filed 9–29–00; 8:45 am]

BILLING CODE 6351–01–M

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 1

[TD 8904]

RIN 1545–AX38

## Treatment of Nonqualified Preferred Stock and Other Preferred Stock in Certain Exchanges and Distributions

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations relating to nonqualified preferred stock. The regulations address the effective date of the definition of nonqualified preferred stock and the treatment of nonqualified preferred stock and similar preferred stock received by shareholders in certain corporate reorganizations and distributions. The regulations are necessary to reflect changes to the law concerning these types of preferred stock that were made by the Taxpayer Relief Act of 1997.

**EFFECTIVE DATE:** These regulations are effective October 2, 2000.

**FOR FURTHER INFORMATION CONTACT:** Richard E. Coss, (202) 622–7790 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### Background and Explanation of Provisions

On January 26, 2000, the IRS and Treasury published in the **Federal Register** a notice of proposed rulemaking (REG–105089–99, 2000–6 I.R.B. 580 [65 FR 4203]) relating to nonqualified preferred stock (as defined in section 351(g)(2) of the Internal Revenue Code) (NQPS). The proposed regulations address the effective date of the definition of NQPS, and provide rules exempting from treatment as NQPS certain preferred stock received by shareholders in corporate reorganizations and distributions subject to sections 354, 355, and 356.

No comments responding to the notice of proposed rulemaking were submitted, and no public hearing was requested or held. However, one commentator suggested that the rule in the proposed regulations interpreting section 351(g)(2)(C)(i)(II) (relating to preferred stock transferred in connection with the performance of services) should be expanded to include transactions subject to section 351.

The IRS and Treasury agree with this suggestion. Accordingly, these final regulations extend the exemption from treatment as NQPS in § 1.356–7(c) to preferred stock received by shareholders in certain stock exchanges under section 351. The proposed regulations are adopted as revised by this Treasury decision.

### Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

### Drafting Information

The principal author of these regulations is Richard E. Coss of the Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and Treasury participated in their development.

### List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

### Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

## PART 1—INCOME TAXES

**Paragraph 1.** The authority citation for part 1 is amended by adding the following entries in numerical order to read in part as follows:

**Authority:** 26 U.S.C. 7805 * * *

Section 1.351–2 also issued under 26 U.S.C. 351(g)(4).

Section 1.354–1 also issued under 26 U.S.C. 351(g)(4).

Section 1.355–1 also issued under 26 U.S.C. 351(g)(4).

Section 1.356–7 also issued under 26 U.S.C. 351(g)(4). * * *

Section 1.1036–1 also issued under 26 U.S.C. 351(g)(4). * * *

**Par. 2.** Section 1.351–2 is amended by adding paragraph (e) to read as follows:

**§ 1.351–2 Receipt of property.**

* * * * *

(e) See § 1.356–7(a) for the applicability of the definition of nonqualified preferred stock in section 351(g)(2) for stock issued prior to June 9, 1997, and for stock issued in transactions occurring after June 8, 1997, that are described in section 1014(f)(2) of the Taxpayer Relief Act of 1997, Public Law 105–34 (111 Stat. 788, 921). See § 1.356–7(c) for the treatment of preferred stock received in certain exchanges for common or preferred stock described in section 351(g)(2)(C)(i)(II).



**Par. 3.** Section 1.354–1 is amended by adding paragraph (f) to read as follows:

**§ 1.354–1 Exchanges of stock and securities in certain reorganizations.**

* * * * *

(f) See § 1.356–7(a) and (b) for the treatment of nonqualified preferred stock (as defined in section 351(g)(2)) received in certain exchanges for nonqualified preferred stock or preferred stock. See § 1.356–7(c) for the treatment of preferred stock received in certain exchanges for common or preferred stock described in section 351(g)(2)(C)(i)(II).

**Par. 4.** Section 1.355–1 is amended by adding paragraph (d) to read as follows:

**§ 1.355–1 Distribution of stock and securities of a controlled corporation.**

* * * * *

(d) *Nonqualified preferred stock.* See § 1.356–7(a) and (b) for the treatment of nonqualified preferred stock (as defined in section 351(g)(2)) received in certain exchanges for (or in certain distributions with respect to) nonqualified preferred stock or preferred stock. See § 1.356–7(c) for the treatment of the receipt of preferred stock in certain exchanges for (or in certain distributions with respect to) common or preferred stock described in section 351(g)(2)(C)(i)(II).

**Par. 5.** Section 1.356–7 is added to read as follows:

**§ 1.356–7 Rules for treatment of nonqualified preferred stock and other preferred stock received in certain transactions.**

(a) *Stock issued prior to effective date.* Stock described in section 351(g)(2) is nonqualified preferred stock (NQPS) regardless of the date on which the stock is issued. However, sections 351(g), 354(a)(2)(C), 355(a)(3)(D), 356(e), and 1036(b) do not apply to any transaction occurring prior to June 9, 1997, or to any transaction occurring after June 8, 1997, that is described in section 1014(f)(2) of the Taxpayer Relief Act of 1997, Public Law 105–34 (111 Stat. 788, 921). For purposes of this section, preferred stock that is not NQPS is referred to as Qualified Preferred Stock (QPS).

(b) *Receipt of preferred stock in exchange for (or distribution on) substantially identical preferred stock*—(1) *General rule.* For purposes of sections 354(a)(2)(C)(i), 355(a)(3)(D), and 356(e)(2), preferred stock is QPS, even though it is described in section 351(g)(2), if it is received in exchange for (or in a distribution with respect to) preferred stock (the original preferred stock) that is QPS, provided—

(i) The original preferred stock is QPS solely because, on its issue date, either a right or obligation described in clause (i), (ii), or (iii) of section 351(g)(2)(A) was not exercisable until after a 20-year period beginning on the issue date, or the right or obligation was exercisable within the 20-year period beginning on the issue date but was subject to a contingency which made remote the likelihood of the redemption or purchase, or the issuer's (or a related party's) right to redeem or purchase the stock was not more likely than not to be exercised within a 20-year period beginning on the issue date, or because of any combination of these reasons; and

(ii) The stock received is substantially identical to the original preferred stock.

(2) *Substantially identical.* The stock received is substantially identical to the original preferred stock if—

(i) The stock received does not contain any term or terms that, in relation to any term or terms of the original preferred stock, either decrease the period in which a right or obligation described in clause (i), (ii), or (iii) of section 351(g)(2)(A) can be exercised, or increase the likelihood that such a right or obligation will be exercised, or accelerate the timing of the returns from the stock instrument, including the timing of actual or deemed dividends or other distributions received on the stock; and

(ii) As a result of the exchange or distribution, exercise of the right or obligation does not become more likely than not to occur within a 20-year period beginning on the issue date of the original preferred stock.

(3) *Treatment of stock received.* The stock received will continue to be treated as QPS in subsequent transactions involving such stock, and the principles of this paragraph (b) apply to such transactions as though the stock received is the original preferred stock issued on the same date as the original preferred stock.

(c) *Stock transferred for services.* For purposes of sections 351(g)(1), 354(a)(2)(C)(i), 355(a)(3)(D), and 356(e)(2), preferred stock containing a right or obligation described in clause (i), (ii) or (iii) of section 351(g)(2)(A) that is exercisable only upon the holder's separation from service from the issuer or a related person (as described in section 351(g)(3)(B)) will be treated as transferred in connection with the performance of services (and representing reasonable compensation) within the meaning of section 351(g)(2)(C)(i)(II), if such preferred stock is received in exchange for (or in a distribution with respect to) existing stock containing a similar right or obligation (exercisable only upon separation from service) and the existing stock was transferred in connection with the performance of services for the issuer or a related person (and represented reasonable compensation when transferred). In applying the rules relating to NQPS, the preferred stock received will continue to be treated as transferred in connection with the performance of services (and representing reasonable compensation) in subsequent transactions involving such stock, and the principles of this paragraph (c) apply to such transactions.

(d) *Rights to acquire stock.* For purposes of § 1.356–6, the principles of paragraphs (a), (b), and (c) of this section apply.

(e) *Examples.* In the examples in this paragraph (e), T and P are corporations, A is a shareholder of T, and A surrenders and receives (in addition to the stock exchanged in the examples) common stock in the reorganizations described. The following examples illustrate paragraphs (a), (b), and (c) of this section:

*Example 1.* In 1995, A transfers property to T and receives T preferred stock that is described in section 351(g)(2) in a transaction under section 351. In 2002, pursuant to a reorganization under section 368(a)(1)(B), A surrenders the T preferred stock in exchange for P NQPS. Under paragraph (a) of this section, the T preferred stock issued to A in 1995 is NQPS. However, because section 351(g) does not apply to transactions occurring before June 9, 1997, the T NQPS was not "other property" within the meaning of section 351(b) when issued in 1995. Under sections 354(a)(2)(C) and 356(e)(2), the P NQPS received by A in 2002 is not "other property" within the meaning of section 356(a)(1)(B) because it is received in exchange for NQPS.

*Example 2.* T issues QPS to A on January 1, 2000 that is not NQPS solely because the holder cannot require T to redeem the stock until January 1, 2022. In 2007, pursuant to a reorganization under section 368(a)(1)(A) in which T merges into P, A surrenders the T preferred stock in exchange for P preferred stock with terms that are identical to the terms of the T preferred stock, including the term that the holder cannot require the redemption of the stock until January 1, 2022. Because the P stock and the T stock have identical terms, and because the

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redemption did not become more likely than not to occur within the 20-year period that begins on January 1, 2000 (which is the issue date of the T preferred stock) as a result of the exchange, under paragraph (b) of this section, the P preferred stock received by A is treated as QPS. Thus, the P preferred stock received is not "other property" within the meaning of section 356(a)(1)(B).

*Example 3.* The facts are the same as in *Example 2*, except that, in addition, in 2010, pursuant to a recapitalization of P under section 368(a)(1)(E), A exchanges the P preferred stock above for P NQPS that permits the holder to require P to redeem the stock in 2020. Under paragraph (b) of this section, the P preferred stock surrendered by A is treated as QPS. Because the P preferred stock received by A in the recapitalization is not substantially identical to the P preferred stock surrendered, the P preferred stock received by A is not treated as QPS. Thus, the P preferred stock received is "other property" within the meaning of section 356(a)(1)(B).

*Example 4.* T issues preferred stock to A on January 1, 2000 that permits the holder to require T to redeem the stock on January 1, 2018, or at any time thereafter, but which is not NQPS solely because, as of the issue date, the holder's right to redeem is subject to a contingency that makes remote the likelihood of redemption on or before January 1, 2020. In 2007, pursuant to a reorganization under section 368(a)(1)(A) in which T merges into P, A surrenders the T preferred stock in exchange for P preferred stock with terms that are identical to the terms of the T preferred stock. Immediately before the exchange, the contingency to which the holder's right to cause redemption of the T stock is subject makes remote the likelihood of redemption before January 1, 2020, but the P stock, although subject to the same contingency, is more likely than not to be redeemed before January 1, 2020. Because, as a result of the exchange of T stock for P stock, the exercise of the redemption right became more likely than not to occur within the 20-year period beginning on the issue date of the T preferred stock, the P preferred stock received by A is not substantially identical to the T stock surrendered, and is not treated as QPS. Thus, the P preferred stock received is "other property" within the meaning of section 356(a)(1)(B).

*Example 5.* The facts are the same as in *Example 4*, except that, immediately before the merger of T into P in 2007, the contingency to which the holder's right to cause redemption of the T stock is subject makes it more likely than not that the T stock will be redeemed before January 1, 2020. Because exercise of the redemption right did not become more likely than not to occur within the 20-year period beginning on the issue date of the T preferred stock as a result of the exchange, the P preferred stock received by A is substantially identical to the T stock surrendered, and is treated as QPS. Thus, the P preferred stock received is not "other property" within the meaning of section 356(a)(1)(B).

*Example 6.* A is an employee of T. In connection with A's performance of services for T, T transfers to A in 2000 an amount of T common stock that represents reasonable compensation. The T common stock contains a term granting A the right to require T to redeem the common stock, but only upon A's separation from service from T. In 2005, pursuant to a reorganization under section 368(a)(1)(A) in which T merges into P, A receives, in exchange for A's T common stock, P preferred stock granting a similar redemption right upon A's separation from P's service. Under paragraph (c) of this section, the P preferred stock received by A is treated as transferred in connection with the performance of services (and representing reasonable compensation) within the meaning of section 351(g)(2)(C)(i)(II). Thus, the P preferred stock received by A is QPS.

(f) *Effective dates.* This section applies to transactions occurring on or after October 2, 2000.

**Par. 6.** Section 1.1036–1 is amended by adding paragraph (d) to read as follows:

**§ 1.1036–1 Stock for stock of the same corporation.**

* * * * *

(d) *Nonqualified preferred stock.* See § 1.356–7(a) for the applicability of the definition of nonqualified preferred stock in section 351(g)(2) for stock issued prior to June 9, 1997, and for stock issued in transactions occurring after June 8, 1997, that are described in section 1014(f)(2) of the Taxpayer Relief Act of 1997, Public Law 105–34 (111 Stat. 788, 921).

**Robert E. Wenzel,**

*Deputy Commissioner of Internal Revenue.*

Approved: September 25, 2000.

**Jonathan Talisman,**

*Acting Assistant Secretary of the Treasury.*

[FR Doc. 00–25258 Filed 9–29–00; 8:45 am]

BILLING CODE 4830–01–U

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## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 100

**[CGD 05–00–043]**

**RIN 2115–AE46**

## Special Local Regulations for Marine Events; Fountain Power Boats Offshore Race, Pamlico River, Washington, North Carolina

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is adopting temporary special local regulations during the Fountain Power Boats Offshore Race, to be held October 13, 14 and 15, 2000, on the waters of the Pamlico River, Washington, North Carolina. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in portions of the Pamlico River during the event.

**DATES:** This rule is effective from 6 a.m. on October 13, 2000, to 5 p.m. on October 15, 2000.

**ADDRESSES:** Comments and materials received from the public as well as documents indicated in this preamble as being available in the docket, are part of docket CGD05–00–043 and are available for inspection or copying at Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** S. L. Phillips, Marine Events Coordinator, Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, telephone number (757) 398–6204.

**SUPPLEMENTARY INFORMATION:**

### Regulatory Information

A notice of proposed rulemaking (NPRM) was not published for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM and for making the rule effective less than 30 days after publication in the **Federal Register**. The Coast Guard received confirmation of the request for special local regulations on August 24, 2000. We were notified of the event with insufficient time to publish a NPRM, allow for comments, and publish a final rule prior to the event.

### Background and Purpose

On October 13, 14, and 15, 2000, Fountain Power Boats will sponsor the Fountain Power Boats Offshore Race, on the Pamlico River, Washington, North Carolina. The event will consist of approximately 50 high speed power boats racing in heats along a 5 mile oval course. A fleet of spectator vessels is anticipated. Due to the need for vessel control during the event, vessel traffic will be temporarily restricted to provide for the safety of participants, spectators and transiting vessels.

### Discussion of Regulations

The Coast Guard is establishing temporary special local regulations on specified waters of the Pamlico River. The temporary special local regulations will be enforced from 6 a.m. to 5 p.m. on October 13, 14 and 15, 2000. The effect will be to restrict general navigation in the regulated area during the event. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area. The Patrol Commander will allow non-participating vessels to transit the regulated area between races. These regulations are needed to control vessel traffic during the event to enhance the safety of participants, spectators and transiting vessels.

### Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

We expect the economic impact of this temporary final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Although this regulation prevents traffic from transiting a portion of the Pamlico River during the event, the effect of this regulation will not be significant due to the limited duration of the regulation and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly.

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in the effected portions of the Pamlico River during the event.

Although this regulation prevents traffic from transiting or anchoring in a portion of the Pamlico River during the event, the effect of this regulation will not be significant because of its limited duration and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly.

### Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

### Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule will not impose an unfunded mandate.

### Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

### Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

### Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

### Environment

We prepared an "Environmental Assessment" in accordance with Commandant Instruction M16475.1C and determined that this rule will not significantly affect the quality of the human environment. The "Environmental Assessment" and "Finding of No Significant Impact" is available in the docket where indicated under **ADDRESSES**.

### List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

### Regulation

For the reasons discussed in the preamble, the Coast Guard amends Part 100 of Title 33, Code of Federal Regulations as follows:

## PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233 through 1236; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35–T05–043 is added to read as follows:

**§ 100.35–T05–043 Fountain Power Boats Offshore Race, Pamlico River, Washington, North Carolina**

(a) *Definitions—(1) Regulated Area.* The waters of the Pamlico River from shoreline to shoreline, bounded on the south by a line running northeasterly from Hills Point at latitude 35°28′30″ North, longitude 076°59′20″ West, to Broad Creek Point at latitude 33°29′05″ North, longitude 076°58′50″ West, and bounded on the north by the Norfolk Southern Railroad Bridge. All coordinates reference Datum NAD 1983.

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Group Fort Macon.

(3) *Official Patrol.* The Official Patrol is any vessel assigned or approved by Commander, Coast Guard Group Fort Macon with a commissioned, warrant, or petty officer of the Coast Guard on board and displaying a Coast Guard ensign.

(b) *Special Local Regulations.* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in these areas shall:

(i) Stop the vessel immediately when directed to do so by any official patrol.

(ii) Proceed as directed by any official patrol.

(c) *Effective Dates.* This section will be effective from 6 a.m. on October 13, 2000 to 5 p.m. on October 15, 2000.

(d) *Enforcement Times.* This section will be enforced from 6 a.m. to 5 p.m. on October 13, 14 and 15, 2000.

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Dated: September 15, 2000.

T.C. Paar,

*Captain, U.S. Coast Guard, Acting Commander, Fifth Coast Guard District.*

[FR Doc. 00–25269 Filed 9–29–00; 8:45 am]

BILLING CODE 4910–15–U

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 165

**[CGD01–00–218]**

**RIN 2115–AA97**

## Safety Zone: 2nd Annual Head to the New River Front Regatta, Hartford, Connecticut

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a safety zone for the 2nd Annual Head to the New River Front Regatta in the Connecticut River, Hartford, CT, on October 15, 2000. This action is needed to protect the vessels of the regatta, recreational and commercial vessels and their passengers and crews during the regatta. Entry into this safety zone is prohibited unless authorized by the Captain of the Port.

**DATES:** This rule is effective from 9 a.m. October 15, 2000 until 3 p.m., October 15, 2000.

**ADDRESSES:** Documents relating to this temporary final rule are available for inspection or copying at U.S. Coast Guard Group/Marine Safety Office Long Island Sound, 120 Woodward Avenue, New Haven, CT 06512 between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** MSTC Chris Stubblefield, Command Center, Long Island Sound at (203) 468–4428.

**SUPPLEMENTARY INFORMATION:**

### Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM. The Coast Guard also finds good cause to make this rule effective less than 30 days after publication in the **Federal Register**. The sponsor of the event did not provide the Coast Guard with the final details for the event in sufficient time to publish a NPRM or a final rule 30 days in advance. The delay encountered if normal rulemaking procedures were followed would effectively cancel the event.

### Background and Purpose

The River Front Recapture, Inc. is sponsoring a regatta from Connecticut River marker #138 to 1 nautical mile north of the Founders Bridge on October 15, 2000.

### Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Although this regulation prevents traffic from transiting portions of the Connecticut River, the effect of this regulation will not be significant for several reasons: the duration of the safety zone is limited and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners and marine information broadcasts. Mariners will be able to adjust their plans accordingly based on the extensive advance information. Additionally, this safety zone has been narrowly tailored to impose the least impact on maritime interests yet provide the level of safety deemed necessary.

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

### Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

### Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

### Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

### Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

### Protection of Children

We have analyzed this rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

### Environment

The Coast Guard considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lC, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

### PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46. Section 165.100 is also issued under authority of Sec. 311, Pub. L. 105–383.

2. Add temporary § 165.T01–CGD1–218 to read as follows:

### § 165.T01–CGD1–218 2nd Annual Head to the New River Front Regatta, Hartford, CT.

(a) *Location.* The safety zone includes all waters of the Connecticut River within the marked boundaries of the race course from Connecticut River marker #138 to 1 nautical mile north of the Founders Bridge.

(b) *Effective date.* This section is effective on October 15, 2000 from 9 a.m. until 3 p.m., October 15, 2000.

(c) (1) *Regulations.* The general regulations covering safety zones contained in § 165.23 of this part apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U. S. Coast Guard Vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: September 20, 2000.

**David P. Pekoske,**

*Captain, U.S. Coast Guard, Captain of the Port, Long Island Sound.*

[FR Doc. 00–25268 Filed 9–29–00; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 165

**[CGD01–00–217]**

**RIN 2115–AA97**

## Safety Zone: Weekly Fireworks, Dockside Restaurant, Port Jefferson Harbor, NY

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a safety zone for the Weekly Fireworks, Dockside Restaurant, to be held in Port Jefferson Harbor, Port Jefferson, NY on the following dates: September 16, 23, 30, October 7, 14, 21, 28 and December 31, 2000. This action is needed to protect persons, facilities, vessels and others in the maritime community from the safety hazards associated with this fireworks display. Entry into this safety zone is prohibited unless authorized by the Captain of the Port.

**DATES:** This rule is effective from 9 p.m., September 16, 2000 until 10 p.m., December 31, 2000.

**ADDRESSES:** Documents relating to this temporary final rule are available for inspection and copying at U.S. Coast Guard Group/Marine Safety Office Long Island Sound, 120 Woodward Avenue, New Haven, CT 06512. Normal office hours are between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Chief Chris Stubblefield, Command Center, Group/Marine Safety Office Long Island Sound, New Haven, CT (203) 468–4428.

**SUPPLEMENTARY INFORMATION:**

### Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM. The Coast Guard also finds good cause to make this rule effective less than 30 days after publication in the **Federal Register**. The sponsor of the event did not provide the Coast Guard with the final details for the event in sufficient time to publish a NPRM or a final rule 30 days in advance. The delay encountered if normal rulemaking procedures were followed would effectively cancel the event. Cancellation of this event is contrary to the public interest since the fireworks display is for the benefit of the public.

### Background and Purpose

The Dockside Restaurant, Port Jefferson, NY is sponsoring a fireworks display in Port Jefferson Harbor, Port Jefferson, NY. The fireworks display will occur on the following dates: September 16, 23, 30, October 7, 14, 21, 28 and December 31, 2000. The safety zone covers all waters of Port Jefferson Harbor within a 600 foot radius of the fireworks launching area which will be located in approximate position: 40° – 57′38″N, 073° – 04′47″W, (NAD 1983). This zone is required to protect the maritime community from the safety dangers associated with this fireworks display. Entry into or movement within this zone will be prohibited unless authorized by the Captain of the Port or his on-scene representative.

### Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This safety zone involves only a portion of Port Jefferson Harbor and entry into this zone will be restricted for only 60 minutes on September 16, 23, 30, October 7, 14, 21, 28 and December 31, 2000. Although this regulation prevents traffic from transiting this section of Port Jefferson Harbor, the effect of this regulation will not be significant for several reasons: the duration of the event is limited; the event is at a late hour; all vessel traffic may safely pass around this safety zone; and extensive, advance maritime advisories will be made.

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses not-for-profit organizations that are independently owned and operated are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

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The Coast Guard certifies under 5 U.S.C. 605 (b) that this rule will not have a significant impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of Port Jefferson Harbor from 9 p.m. until 10 p.m. on September 16, 23, 30, October 7, 14, 21, 28, and December 31, 2000. This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: The duration of the event is limited; the event is at a late hour; all vessel traffic may safely pass around this safety zone; and extensive, advance maritime advisories will be made.

**Assistance for Small Entities**

Under subsection 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard wants to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If your small business or organization would be affected by this rule and you have any questions concerning its provisions or options for compliance, please call Chief Chris Stubblefield at (203) 468–4428. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

**Collection of Information**

This rule calls for no collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

**Federalism**

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

**Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

**Taking of Private Property**

This rule will not effect a taking of private property or otherwise have taking implications under E.O. 12630, Government Actions and Interference with Constitutionally Protected Property Rights.

**Civil Justice Reform**

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

**Protection of Children**

We have analyzed this proposed rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

**Environment**

The Coast Guard has considered the environmental impact of this rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction, M 16475.C, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under Addresses.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reports and recordkeeping requirements, Security measures, Waterways.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

**PART 165—[AMENDED]**

1. The authority citation for Part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. Add temporary § 165.T01–CGD1–217 to read as follows:

**§ 165.T01–CGD1–217 Weekly Fireworks, Dockside Restaurant, Port Jefferson Harbor, Port Jefferson, NY.**

(a) *Location.* The safety zone includes all waters of Port Jefferson Harbor within a 600 foot radius of the launch site located in Port Jefferson Harbor, Port Jefferson, NY in approximate position 40°57′38″N, 73°04′47″W (NAD 1983).

(b) *Enforcement period.* This section will be enforced from 9 p.m. until 10 p.m. on the following dates: September 16, 23, 30, October 7, 14, 21, 28 and until 9 p.m., December 31, 2000.

(c) (1) *Regulations.* The general regulations covering safety zones contained in § 165.23 of this part apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. U. S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U. S. Coast Guard Vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(d) *Effective date.* This section is effective from 9 p.m., September 16, 2000 until 10 p.m., December 31, 2000.

Dated: September 15, 2000.

**David P. Pekoske,**

*Captain, U.S. Coast Guard, Captain of the Port, Long Island Sound.*

[FR Doc. 00–25267 Filed 9–29–00; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Part 300**

**[FRL–6873–3]**

**National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of deletion of the Kassauf-Kimerling Battery Disposal Superfund Site from the National Priorities List (NPL).

**SUMMARY:** The Environmental Protection Agency (EPA) Region 4 announces the deletion of the Kassauf-Kimerling Battery Disposal Superfund Site from the National Priorities List (NPL). The NPL constitutes appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. EPA and the Florida Department of Environmental Protection (FDEP) have determined that the Site poses no significant threat to public health or the environment and therefore, further response measures pursuant to CERCLA are not appropriate.

**EFFECTIVE DATE:** October 2, 2000.

**ADDRESSES:** Comprehensive information on this site is available through the EPA Region 4 public docket, which is available for viewing at the information repositories at two locations. Locations, contacts, phone numbers and viewing hours are: Record Center, U.S. EPA Region 4, 61 Forsyth Street, Atlanta, Georgia 30303–8909, (404) 562–9530, hours: 8 a.m. to 4 p.m., Monday through Friday by appointment only; Tampa/Hillsborough County Public Library/Special Collections, 900 North Ashley, Tampa, Florida 33602, (813) 273–3652, hours: 9 a.m. to 9 p.m., Monday through Thursday, 9 a.m. to 5 p.m., Friday through Saturday.

**FOR FURTHER INFORMATION CONTACT:** Mindy Gardner, U.S. EPA Region 4, Waste Management Division, 61 Forsyth Street, Atlanta, Georgia 30303–8909, (404) 562–8907 or by electronic mail at *gardner.mindy@epa.gov.*

**SUPPLEMENTARY INFORMATION:** EPA announces the deletion of the Kassauf-Kimerling Battery Disposal Superfund Site in Tampa, Hillsborough County, Florida from the NPL, which constitutes appendix B of 40 CFR part 300. EPA published a Notice of Intent to Delete the Kassauf-Kimerling Battery Disposal Superfund Site from the NPL on August 5, 1999 in the **Federal Register** (64 FR 42630). EPA received no comments on the proposed deletion; therefore, no responsiveness summary is necessary for this Notice of Deletion.

EPA identifies sites on the NPL that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substances Superfund Response Trust Fund (Fund). Pursuant to 40 CFR 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed Remedial Actions if conditions at the site warrant such action. Deletion of a site from the NPL does not affect the responsible party liability or impede agency efforts to recover costs associated with response efforts.

**List of Subjects in 40 CFR Part 300**

Air pollution control, Chemicals, Environmental protection, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: October 5, 1999.

**A. Stanley Meiburg,**

*Deputy Regional Administrator, Region 4.*

**Note:** The Office of the Federal Register received this document on September 18, 2000.

For reasons set out in the preamble, 40 CFR part 300 is amended as follows:

**PART 300—[AMENDED]**

1. The authority citation for part 300 continues to read as follows:

**Authority:** 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp.; p. 351: E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp.; p.193.

**Appendix B—[Amended]**

2. Table 1 of appendix B to part 300 is amended by removing the site "Kassauf-Kimerling Battery Disposal," Tampa, Florida.

[FR Doc. 00–24307 Filed 9–29–00; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL COMMUNICATIONS COMMISSION

**47 CFR Part 20**

**[CC Docket No. 94–102; FCC 00–326]**

**Wireless Radio Services; Compatibility with Enhanced 911 Emergency Calling Systems**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; petitions for reconsideration.

**SUMMARY:** The Commission, in this document makes adjustments to the deployment schedule that must be followed by wireless carriers that choose to implement enhanced 911 Phase II service using a handset-based technology. This document also defers the date for initial distribution of Automatic Location Identification (ALI)-capable handsets by seven months, adjusts the timetable for carriers to meet certain interim benchmarks for activating new ALI-capable handsets, defers the date by which a carrier must achieve full penetration of ALI-capable handsets by one year, modifies the manner in which the Commission defines full penetration, eliminates the separate handset phase-in schedule triggered by a request from a Public Safety Answering Point, and addresses several other issues regarding implementation of enhanced 911 Phase II. These actions are taken in response to petitions for reconsideration of the Third Report and Order in this proceeding.

**DATES:** Effective November 1, 2000.

**ADDRESSES:** A copy of any comments on the information collection contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to jboley@fcc.gov.

**FOR FURTHER INFORMATION CONTACT:** Dan Grosh, 202–418–1310. For further information concerning the information collection contained in this Fourth Memorandum Opinion and Order, contact Judy Boley, Federal Communications Commission, 202–418–0214, or via the Internet at jboley@fcc.gov.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Fourth Memorandum Opinion and Order (MO&O) in CC Docket No. 94–102; FCC 00–326, adopted August 24, 2000, and released September 8, 2000. The complete text of the MO&O and the Supplemental Final Regulatory Flexibility Analysis is available on the Commission's Internet site, at *www.fcc.gov.*, and is also available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, SW., Washington, DC. The text may also be purchased from the Commission's copy contractor, International Transcription Services (ITS, Inc.), CY–B400, 445 12th Street, SW., Washington, DC.

The procedures regarding submission of waivers of the Phase II requirements contain information collection requirements that are not effective until approved by the Office of Management and Budget. Public comment on the information collections in the waiver requirements are due December 1, 2000, and comments by the Office of Management and Budget are due January 30, 2001. The Commission will publish a document in the **Federal Register** announcing OMB approval of these burdens.

**Synopsis of the Fourth Memorandum Opinion and Order**

1. In this MO&O, in response to petitions for reconsideration of the Third Report and Order in this proceeding (64 FR 60126, November 4, 1999), the Commission makes certain changes to its wireless enhanced 911 (E911) rules aimed at facilitating full compliance with those rules on a nationwide basis. This MO&O is

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particularly concerned with implementation of Phase II of the Commission's E911 program.

2. Specifically, the MO&O first makes adjustments to the deployment schedule that must be followed by wireless carriers that choose to implement E911 Phase II service using a handset-based technology. While the Commission retains October 1, 2001, as the implementation date for E911 Phase II, it defers the date for initial distribution of Automatic Location Identification (ALI)-capable handsets by seven months, and adjusts the timetable for carriers to meet certain interim benchmarks for activating new ALI-capable handsets. In this regard, the MO&O extends from March 1, 2001, to October 1, 2001, the date for carriers to begin selling and activating ALI-capable handsets.

3. In taking these actions, the Commission disagrees with those petitioners who seek substantial delays in the handset deployment schedule, instead finding that the public interest and the public safety do not support a substantial delay in the current handset deployment schedule. Even if some major handset manufacturers prove unable or unwilling to produce ALI-capable handsets in the near future, the Commission believes that the public safety will be better served if carriers area required to deploy other available ALI solutions, including GPS handsets that may be available from other manufacturers, according to the timetable set in the MO&O. To allow the lengthy delay requested by some parties, the Commission finds, would jeopardize the progress made to date in the development of ALI solutions. These issues are discussed in more detail in paragraphs 24 through 30 of the full text of the MO&O.

4. While the Commission concludes that substantial changes in the current schedule are not justified, it does find good cause to make some changes in the handset schedule to allow a more realistic opportunity for deployment of handset-based solutions. Thus, the MO&O eliminates the separate phase-in schedule that is triggered by a Public Safety Answering Point (PSAP) request.

5. The MO&O next extends by seven months the date for initial distribution of ALI-capable handsets. The Commission believes that the current March 1, 2001, date may be difficult to meet and, as discussed in paragraph 33 of the full text of the MO&O, and revises the schedule to require that carriers employing a handset-based solution begin making ALI-capable handsets available for sale no later than October 1, 2001. Further, these initial handsets need not be the same types or brands as those that carriers plan to offer later in the year, or in future years.

6. Next the Commission adopts the following revised phase-in schedule:

- December 31, 2001: At least 25 percent of all new handsets activated are to be ALI-capable;
- June 30, 2002: 50 percent of all new handsets activated are to be ALI-capable;
- December 31, 2002, and thereafter: 100 percent of all new digital handsets activated are to be ALI-capable.

As is the case currently, this requirement applies only to the activation of newly-purchased handsets, not to handsets already in use. Consumers will continue to be able to use their existing phones, and to switch service to other carriers or to other operating areas.

7. Next, the Commission concludes that the final step in the current schedule for handset solutions should be modified in two respects. First, the MO&O extends the timeframe for carriers to reach full penetration of ALI-capable handsets by an additional year, by moving the deadline from December 31, 2004, to December 31, 2005. Second, the MO&O adopts a requirement that carriers achieve 95 percent penetration of ALI-capable handsets by the December 31, 2005, date, rather than that they employ "reasonable efforts" to achieve 100 percent penetration.

8. The MO&O, in paragraphs 42 through 45, considers the Commission's policy on waiver requests. Generally, the Commission's rule may be waived for good cause shown. Waiver is only appropriate, however, if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest. In those particular cases where waivers may be justified, broad, generalized waivers should not be necessary and will not be granted. The Commission expects waiver requests to be specific, focused and limited in scope, and with a clear path to full compliance. Further, carriers should undertake concrete steps necessary to come as close as possible to full compliance, and should document their efforts aimed at compliance in support of any waiver requests. Carriers seeking a waiver will be expected to specify the solutions they considered and explain why none could be employed in a way that complied with the Phase II rules. If deployment is scheduled, but for some reason must be delayed, the carrier should specify the reason for the delay and provide a revised schedule. It is not sufficient for a carrier to undertake a minimalist approach, in which the carrier conducts certain tests, decides that the tests do not definitively demonstrate that the technologies tested will satisfy the Commission's requirements in all situations, and as a result, declines to implement any ALI solution. In view of the importance of the Commission's E911 rules to public safety, the Commission expects to take any steps necessary to ensure that carriers take their obligations seriously, including assessing appropriate penalties on carriers that fail to comply.

9. The MO&O considers a request for waiver from Sprint Spectrum, L.P. to permit implementation of a handset-based location technology. (Paragraphs 46 and 47.) Based on the present record, the Commission denies Sprint's petition for reconsideration and renewed request for a waiver to implement a hybrid solution, finding that Sprint has not adequately demonstrated that special circumstances exist that warrant a deviation from our rules, nor that grant of such a waiver would be in the public interest.

10. Paragraphs 51 through 68 of the MO&O discuss VoiceStream's request for waiver to permit implementation of a handset-based location technology. The Commission grants a waiver to VoiceStream to permit to employ an ALI solution that requires changes to both its network and handsets, subject to the following conditions and requirements. First, VoiceStream must implement a network safety solution that provides baseline location information for all wireless 911 calls no later than December 31, 2001. The accuracy requirement for this baseline location information is 1000 meters for 67 percent of calls. Second, by October 2, 2001, VoiceStream must ensure that 50 percent of all new handsets activated are Enhanced Observed Time Difference of Arrival (E–OTD)–capable. Third, effective October 1, 2001, VoiceStream must ensure that all E–OTD–capable handsets comply with an accuracy requirement of 100 meters for 67 percent of calls, 300 meters for 95 percent of calls. Fourth, VoiceStream must ensure that all new E–OTD–capable handsets activated on or after October 1, 2003, comply with an accuracy requirement of 50 meters for 67 percent of calls, 150 meters for 95 percent of calls. Fifth, within six months after a PSAP request, or October 1, 2001, whichever is later, VoiceStream must implement any network or infrastructure upgrades necessary to provide Phase II service, and begin providing Phase II location information. Sixth, VoiceStream must comply with the requirement to achieve 95 percent penetration of location-capable headsets among its subscribers no later than December 31, 2005. Seventh, VoiceStream must report the results of all trials and tests of its ALI technology and results semi-annually beginning October 1, 2000, and continuing through October 1, 2003. To the extent that VoiceStream cannot comply with any of these conditions, it will be expected to use another ALI methodology that comports with our requirements.

11. The MO&O, at paragraphs 69 through 74, denies a request for waiver seeking an extension of all Phase II deadlines for rural wireless carriers, filed by United States Cellular Corporation (USCC), finding that the request is insufficiently substantiated.

12. Paragraphs 75 through 81 of the MO&O grant a slight extension of the date upon which carriers must file their implementation plan reports from October 1, 2000, to November 9, 2000. Carriers may make good faith changes in their plans even after the report is filed, including changes in ALI technologies. These changes must be filed within thirty days of the adoption of any such change.

### Paperwork Reduction Act of 1995 Analysis

13. The actions contained in this MO&O have been analyzed with respect to the Paperwork Reduction Act of 1995, and found to impose new reporting and recordkeeping requirements or burdens on the public. Implementation of these new reporting and recordkeeping requirements will be subject to approval by the Office of Management and Budget, as prescribed by the Act. The new paperwork requirement contained in the waiver section of this decision will go into effect January 30, 2001.

14. The deadline for carriers to file their implementation plans (OMB 3060–0910) is extended from October 1, 2000, to November 9, 2000.

### Supplemental Final Regulatory Flexibility Analysis (SFRFA)

15. As required by the Regulatory Flexibility Act (RFA),[1] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in Appendix B II of the Further Notice of Proposed Rulemaking in this proceeding (FNPRM). A Final Regulatory Flexibility Analysis (FRFA) was incorporated in Appendix C of the Third Report and Order (Third R&O). Additionally, the Commission sought written public comment on the proposals in FNPRM, including comment on the IRFA. These comments were discussed in the FRFA. This Supplemental Final Regulatory Flexibility Act Analysis (SFRFA) considers the current Fourth Memorandum Opinion and Order (MO&O) and updates information contained in the FRFA. The present SFRFA, contained in Appendix C of the full text of the MO&O, conforms to the RFA.

[1] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601 *et seq.*, has been amended by the Contract with America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

### Need for, and Objectives of, the MO&O

16. The MO&O is intended to provide wireless carriers, manufacturers, and the public safety community with additional clarity so that Phase II of the Commission's 911 effort can be deployed and operational on schedule, so far as possible. The MO&O supports the efforts of many entrepreneurs, public safety answering points, and companies who are working toward the technical and operational improvements needed to optimize 911 service and thus save lives.

### Summary of Significant Issues Raised by Public Comments in Response to the FRFA

17. No comments were directed at the FRFA, and no comments were received from small entities that are not part of a larger organization. However, one reconsideration petition, filed jointly by handset manufacturers Nokia, Inc. and Motorola, Inc. contends that the rules adopted in the Third R&O set an overly aggressive deployment schedule for the introduction of handset-based Automatic Location Identification (ALI) technologies for which there is inadequate support in the record. Nokia, Motorola, and Ericsson ask that the Commission relax the handset deployment schedule substantially by only requiring carriers to begin selling and activating ALI-capable handsets 18 months after the date on which they have made their technology choices known to the FCC. (The discussion concerning these petitions and comments supporting Nokia, Motorola and Ericsson's arguments favoring a relaxed schedule may be found at paragraphs 12–14 of the MO&O.) Other parties raised concerns about the separate schedule for ALI-capable handset deployment triggered by a public service answering point (PSAP) request, noting the impracticality of such a schedule. (This contention is discussed in paragraph 15 of the MO&O.) Finally, in paragraph 16 of the MO&O, other parties maintain that the requirement in the current 911 rules that carriers employing handset-based solutions undertake reasonable efforts to achieve 100 percent usage of ALI-capable handsets by their customers by December 31, 2004, or two years after a PSAP request, is both overly demanding and vague.

### Description and Estimate of the Number of Small Entities To Which Rules Will Apply

18. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (i) is independently owned and operated; (ii) is not dominant in its field of operation; and (iii) satisfies any additional criteria established by the Small Business Administration (SBA). A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 1992, there were approximately 275,801 small organizations. The Commission updates the figures reflected in the FRFA in the Third Report and MO&O.

19. *Broadband Personal Communications Service (PCS).* The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. As stated in paragraph 11 of the FRFA, there is a total of 183 small entity PCS providers as defined the SBA and the Commission's auction's rules.

20. *Narrowband PCS.* The Commission has auctioned nationwide and regional licenses for narrowband PCS. There are 11 nationwide and 30 regional licensees for narrowband PCS. The Commission does not have sufficient information to determine whether any of these licensees are small businesses within the SBA-approved definition for radiotelephone companies. At present, there have been no auctions held for the major trading area (MTA) and basic trading area (BTA) narrowband PCS licenses. The Commission assume, for purposes of this SFRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA, so, there may be as many as 3,519 small entities affected.

21. *Specialized Mobile Radio (SMR).* The Commission awards bidding credits in auctions for geographic area 800 MHz

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and 900 MHz SMR licenses to firms that had revenues of no more than $15 million in each of the three previous calendar years. In the context of 900 MHz SMR, this regulation defining "small entity" has been approved by the SBA; as has this regulation concerning 800 MHz SMR.

22. The rules in the MO&O apply to SMR providers in the 800 MHz and 900 MHz bands that hold CMRS licenses. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service as CMRS operators, nor how many of these providers have annual revenues of no more than $15 million. The Commission assumes, for purposes of this SFRFA, that all of the remaining existing SMR authorizations are held by small entities, as that term is defined by the SBA. In the 900 MHz SMR band, there are 60 small or very small entities and there are 38 such entities in the 800 MHz band.

**Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements**

23. In paragraphs 42 through 45, the MO&O discusses what should be included in successful waiver requests. All of the other changes adopted in this MO&O, are changes in the existing schedule rather than adding new burdens. The critical nature of improving nationwide wireless E911 services does not allow the Commission much flexibility to differentiate between large and small entities because a lapse in the provision of dependable, responsive 911 service by a small business can lead to the same catastrophic result as a lapse by a large entity. However, the Commission, in adopting the E911 improvement program, has tried wherever possible to consider the individual needs and situation of all involved parties. In this decision, the actual cost of the amendments to all entities is nominal.

**Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered**

24. The RFA requires an agency to describe any significant alternative that it has considered in reaching its proposed approach, which may include the following four alternatives: (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (ii) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (iii) the use of performance, rather than design standards; and (iv) exemption from coverage.

25. First, the Commission declines to extend the implementation date for E911 Phase II beyond October 1, 2001, partially to avoid placing the burden for obtaining location information on PSAPs, already acting under constrained emergency conditions. This discussion is at paragraphs 24 through 30 of the MO&O. However, we do extend the date for initial distribution of ALI-capable handsets by seven months and we also adjust the timetable for carriers to meet certain interim benchmarks for activating new ALI-capable handsets. The alternative, to leave the schedules as is would be unfair to carriers, large and small. (Paragraph 33 of the MO&O contains this discussion.) At paragraphs 36–37 of the MO&O, we defer the date by which a carrier must achieve full penetration of ALI-capable handsets by one year, and modify the manner in which we define full penetration. Further, at paragraphs 31–32 of the MO&O, the Commission eliminates the separate handset deployment schedule for areas where PSAPs have requested deployment of Phase II. These actions should provide flexibility to all entities to comply with 911 requirements utilizing the most current and efficient technology, thus also ensuring the most responsive and dependable 911 system possible. Thus the Commission again chose not to stay with the current schedule. The alternatives in each case would have resulted in additional burden on all affected parties.

26. One alternative that the Commission considered and rejected concerned the petition by USCC that requests a six-month extension of all Phase II deadlines for rural wireless carriers. As discussed in paragraphs 69 through 74 of the MO&O, USCC contends that without such an extension, rural wireless carriers (often small entities) like USCC will be forced to begin spending millions of dollars to implement a network-based Phase II solution, because equipment manufacturers are unable at present to guarantee that they will provide a handset-based solution that satisfies the requirements and timetable. The Commission denies this request finding that even if some manufacturers cannot meet even the deadlines as revised in this MO&O, others may very well be able to provide ALI-capable handsets within the new timeframe. Also, the MO&O maintains that the expenses involved will come over a period of time and not all come due at once and that USCC's request is overly broad. Further, the MO&O finds that there are certain ALI solutions that are being offered on terms that do not require up-front investment by carriers. Further, the MO&O stresses that the Commission's denial of USCC's request does not foreclose future waiver requests from USCC or other carriers, including rural carriers.

27. Finally, it should be noted that the Commission's requirement that wireless carriers provide the location of wireless 911 callers has created a business opportunity for companies that are to develop and provide the technology to meet this obligation. It is expected that many location technology providers will qualify as small businesses.

28. *Report to Corigress:* The Commission will send a copy of the MO&O, including this SFRFA, in a report to be sent to Congress pursuant to Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the MO&O on Reconsideration and this SFRFA to the Chief Counsel for Advocacy of the Small Business Administration.

**Ordering Clauses**

29. Part 20 of the Commission's Rules is amended.

30. The rule amendments made by the MO&O shall become effective November 1, 2000, except for the new information collection regarding waivers, which will become effective January 30, 2001, pending OMB approval.

31. The Commission's Consumer Information Bureau, Reference Operations Division, shall send a copy of this MO&O, including the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

32. The petition for reconsideration filed by Nokia and Motorola is denied.

33. The petition for reconsideration filed by Sprint PCS is denied.

34. The petition for reconsideration filed by Aerial Communications, Inc., is denied.

35. VoiceStream Communications is granted a waiver of the E911 Phase II requirements, subject to conditions, to the extent indicated in the full text of the MO&O.

36. The request for extension of the E911 Phase II deadlines for rural carriers filed by United States Cellular Corp. is denied.

**Paperwork Reduction Act**

37. This MO&O contains a new information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collections contained in this MO&O as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due December 1, 2000. Comments should address: (a) Whether the new collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition to the burdens included in this submission, this decision also slightly modifies the PRA submission contained in OMB No. 3060–0910 by extending the date by which carriers must submit to the Commission, their plans for implementing Phase II from October 1, 2000, to November 9, 2000.

*OMB Approval Number:*

*Title:* Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Fourth MO&O.

*Form No.* N.A.

*Type of Review:* New information collection.

*Respondents:* Business or other for profit.

*Number of Respondents:* 2,500.

*Estimated Time Per Response:* 3 hours.

*Total Annual Burden:* 7,500 hours.

*Cost to Respondents:* .0.

*Needs and Uses:* The information required to be included in a successful request for waiver of the E911 Phase II requirements will be used to assist the Commission in judging whether the request has merit.

**List of Subjects in 47 CFR Part 20**

Communications common carrier, Communications equipment, Radio.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

**Rule Changes**

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 20 as follows:

**PART 20—COMMERCIAL MOBILE RADIO SERVICES**

1. The authority citation for part 20 continues to read as follows:



**Authority:** 47 U.S.C. 154, 160, 251–254, 303, and 332 unless otherwise noted.

2. Section 20.18 is amended by revising paragraphs (g)(1), (g)(2), and (i) to read as follows:

**§ 20.18 911 Service.**

* * * * *

(g) *Phase-in for Handset-based Location Technologies.* Licensees subject to this section who employ a handset-based location technology may phase in deployment of Phase II enhanced 911 service, subject to the following requirements:

(1) Without respect to any PSAP request for deployment of Phase II 911 enhanced service, the licensee shall:

(i) Begin selling and activating location-capable handsets no later than October 1, 2001;

(ii) Ensure that at least 25 percent of all new handsets activated are location-capable no later than December 31, 2001;

(iii) Ensure that at least 50 percent of all new handsets activated are location-capable no later than June 30, 2002; and

(iv) Ensure that 100 percent of all new digital handsets activated are location-capable no later than December 31, 2002, and thereafter.

(v) By December 31, 2005, achieve 95 percent penetration of location-capable handsets among its subscribers.

(2) Once a PSAP request is received, the licensee shall, in the area served by the PSAP, within six months or by October 1, 2001, whichever is later:

(i) Install any hardware and/or software in the CMRS network and/or other fixed infrastructure, as needed, to enable the provision of Phase II enhanced 911 service; and

(ii) Begin delivering Phase II enhanced 911 service to the PSAP.

* * * * *

(i) *Reports on Phase II plans.* Licensees subject to this section shall report to the Commission their plans for implementing Phase II enhanced 911 service, including the location-determination technology they plan to employ and the procedure they intend to use to verify conformance with the Phase II accuracy requirements by November 9, 2000. Licensees are required to update these plans within thirty days of the adoption of any change. These reports and updates may be filed electronically in a manner to be designated by the Commission.

* * * * *

[FR Doc. 00–25219 Filed 9–29–00; 8:45 am]

BILLING CODE 6712–01–U

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Parts 32 and 64**

**[CC Docket No. 99–253; FCC 00–78]**

**Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carrier: Phase 1**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; announcement of effective date.

**SUMMARY:** This document announces the effective date of the rules and information collections of the Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carrier: Phase 1 Report and Order adopted March 2, 2000.

**DATES:** Effective September 28, 2000.

**FOR FURTHER INFORMATION CONTACT:** JoAnn Lucanik, Accounting Safeguards Division, Common Carrier Bureau, at (202) 418–0873 or Mika Savir, Accounting Safeguards Division, Common Carrier Bureau, at (202) 418–0384.

**SUPPLEMENTARY INFORMATION:** On March 2, 2000, the Commission adopted the *Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carrier: Phase 1 Report and Order,* 65 FR 16328 (March 28, 2000) in this Report and Order the Commission eliminates the expense matrix filing requirement; provides large ILECs the option to obtain a biennial attestation engagement to satisfy their CAM audit obligation; establishes a $500,000 *de minimis* exception to the affiliate transactions fair market value estimate requirement; eliminates the 15-day pre-filing requirement for cost pool and time reporting procedures changes; eliminates the notification requirement for temporary or experimental accounts; eliminates the notification requirement for extraordinary items, contingent liabilities, and material prior period adjustments; eliminates the reclassification requirements for property in Account 2002; and eliminates the reclassification requirements for property in Account 2003. The Commission substantially streamlines the ARMIS 43–02 USOA Report and significantly reduced the reporting requirements for carriers. In 65 FR 16328 (March 28, 2000) The Commission stated that the Report and Order contained information collections that had not been approved by the

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Office of Management and Budget (OMB). OMB approved the information collections (see OMB numbers 3060–0470 approved May 31, 2000; 3060–0370, 3060–0395, and 3060–0734 approved June 19, 2000; and 3060–0384 approved September 1, 2000). In 65 FR 16328 (March 28, 2000) we also stated that the Commission would publish a document in the **Federal Register** announcing the effective date of the rules. This publication satisfies our statement that the Commission would publish a document in the **Federal Register** announcing the effective date of the information collections and the new and/or modified sections of Parts 32 and 64 rules.

**List of Subjects**

*47 CFR Part 32*

Communications common carriers, Reporting and recordkeeping requirements, Telephone, Uniform System of Accounts.

*47 CFR Part 64*

Communications common carriers, Federal Communications Commission, Radio, Reporting and recordkeeping requirements, Telegraph, Telephone.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 00–25014 Filed 9–29–00; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

**47 CFR Part 54**

**[CC Docket No. 96–45; FCC 00–332]**

### Federal-State Joint Board on Universal Service: Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Commission stays, on its own motion, the implementation of recently adopted federal Lifeline and Link Up assistance rule amendments only to the extent that they apply to qualifying low-income consumers living near reservations.

**DATES:** Effective September 5, 2000.

**FOR FURTHER INFORMATION CONTACT:** Paul Garnett, Attorney, Common Carrier Bureau, Accounting Policy Division, (202) 418–7400.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Order and Further Notice of Proposed Rulemaking in CC Docket No. 96–45 released on August 31, 2000. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, S.W., Washington, D.C. 20554.

**I. Introduction**

1. In this Order, we stay, on our own motion, the implementation of recently adopted federal Lifeline and Link Up assistance rule amendments only to the extent that they apply to qualifying low-income consumers living near reservations. We emphasize that this Order does not affect the implementation of the enhanced Lifeline and Link Up support for qualifying low-income consumers living on reservations. Those rules are unaffected and became effective on schedule on September 5, 2000, as directed by the Commission. Finally, as described in greater detail below, we extend until September 22, 2000, the date by which carriers may file data in order to receive support during the calendar year 2000 for enhanced Lifeline and Link Up services provided during the fourth quarter 2000.

**II. Discussion**

2. Following the adoption of the definition of "tribal lands" in the *Twelfth Report and Order*, 65 FR 47941 (August 4, 2000), we became aware that the term "near reservation," as it is currently defined by the BIA, may include wide geographic areas that do not possess the characteristics that warranted the targeting of enhanced Lifeline and Link Up support to reservations, such as geographic isolation, high rates of poverty, and low telephone subscribership. Such an outcome may not further our goal, as described in the *Twelfth Report and Order*, of increasing telecommunications deployment and subscribership in the most historically isolated and underserved regions of our Nation. Therefore, on our own motion we stay the implementation of the above-described Lifeline and Link Up assistance rule amendments to the extent that they apply to qualifying low-income consumers located "near reservations," as that phrase is defined in section 20.1(r) of the BIA regulations. A notation is added to § 54.400(e) of the Commission's rules stating that we have stayed the implementation of enhanced Lifeline and Link Up support for eligible residents of tribal lands to the extent that such support applies to qualifying low-income consumers living "near" reservations. We do not stay the application of enhanced Lifeline and Link Up programs to low-income individuals located on "reservations," including on lands conveyed pursuant to the Alaska Native Claims Settlement Act.

3. In the *Twelfth Report and Order*, we directed eligible carriers, interested in receiving enhanced Lifeline and Link Up support in the calendar year 2000 for services provided in the fourth quarter 2000, to submit to the Universal Service Administrative Company (USAC) by September 1, 2000, a letter from a corporate officer of the carrier containing detailed information and certifications regarding their provision of services to qualifying low-income consumers. In this Order, we extend until September 22, 2000, the date by which carriers may file data regarding their provision of eligible services to qualifying low-income consumers living on reservations, as defined by the BIA.

**III. Ordering Clauses**

4. Pursuant to the authority contained in sections 1–4, 201–205, 254, 303(r), and 403 of the Communications Act of 1934, as amended, and § 1.3 and § 1.429(k) of the Commission's rules, this Order is adopted.

5. Pursuant to sections 1 and 4(i) of the Communications Act, and § 1.3 and § 1.429(k) of the Commission's rules, the application of enhanced Lifeline and Link Up programs to qualified low-income consumers living near reservations is stayed pending further Commission action.

6. This order is effective upon release September 5, 2000.

7. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this Order, to the Chief Counsel for Advocacy of the Small Business Administration.

**List of Subjects in 47 CFR Part 54**

Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

**Rule Changes**

For the reasons set forth in the preamble, 47 CFR part 54 is amended as follows:

1. The authority citation for part 54 continues to read as follows:

**Authority:** 47 U.S.C. 1, 4(i), 201, 205, 214, and 254 unless otherwise noted.

2. A note is added to 47 CFR 54.400(e) to read as follows:



**§ 54.400 Terms and Definitions.**

* * * * *

(e) * * *

**Note to paragraph (e):** This paragraph (e) is stayed to the extent that it applies to qualifying low-income consumers living "near reservations" as that phrase is defined in 25 CFR 20.1(r).

[FR Doc. 00–25220 Filed 9–29–00; 8:45 am]

BILLING CODE 6712–01–U

## DEPARTMENT OF TRANSPORTATION

**Federal Motor Carrier Safety Administration**

**49 CFR Parts 375 and 386**

**RIN 2126–AA56**

### Transportation of Household Goods in Interstate or Foreign Commerce; Rules of Practice for Motor Carrier Safety and Hazardous Materials Proceedings

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Final rule; technical amendments.

**SUMMARY:** This document implements sections 208 and 209 of the Motor Carrier Safety Improvement Act (MCSIA) of 1999 by amending 49 CFR parts 386 and 375, respectively. Section 208 revised the definition of an imminent hazard in 49 U.S.C. 521(b)(5)(B), and section 209 amended the definition of household goods in 49 U.S.C. 13102(10). Other technical changes are also being made to part 386, as explained below.

**EFFECTIVE DATE:** November 1, 2000.

**FOR FURTHER INFORMATION CONTACT:** Mr. William C. Hill, Regulatory Development Division, Office of Policy and Program Development, FMCSA, (202) 366–4009, or Mr. Charles E. Medalen, Office of the Chief Counsel, (202) 366–1354, Federal Highway Administration (FHWA), 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

**Electronic Access**

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara*.

**Background**

The MCSIA of 1999 [Pub. L. 106–159, 113 Stat. 1748, December 9, 1999] made a number of changes to title 49, United States Code. This document implements the amendments made by sections 208 and 209, and makes minor technical changes to 49 CFR 386.72(a).

Section 208 revised the definition of an imminent hazard in 49 U.S.C. 521(b)(5)(B) to cover "any condition of vehicle, employee, or commercial motor vehicle operations which substantially increases the likelihood of serious injury or death if not discontinued immediately." The previous definition was "any condition of vehicle, employee, or commercial motor vehicle operations which is likely to result in serious injury or death if not discontinued immediately." In order to implement the new standard, 49 CFR 386.72(b)(1) is being amended. In addition, references to Federal Highway Administration (FHWA) personnel in that paragraph are being changed to list the appropriate officials of the FMCSA.

Section 209 amended the definition of household goods by revising paragraph (A) of 49 U.S.C. 13102(10). The new version provides that "(10) Household goods.—The term 'household goods,' as used in connection with transportation, means personal effects and property used or to be used in a dwelling, when a part of the equipment or supply of such dwelling, and similar property if the transportation of such effects or property is—(A) arranged and paid for by the householder, except such term does not include property moving from a factory or store, other than property that the householder has purchased with the intent to use in his or her dwelling and is transported at the request of, and the transportation charges are paid to the carrier by, the householder." The previous text of paragraph (A) read: "(A) arranged and paid for by the householder, including transportation of property from a factory or store when the property is purchased by the householder with intent to use in his or her dwelling." To make the new definition applicable, 49 CFR 375.1(b)(1) is being amended.

Finally, 49 CFR 386.72(a) is being amended to substitute references to the appropriate FMCSA officials for the FHWA officials previously listed there, and to conform the language of the paragraph more closely to the applicable definition of imminent hazard [49 U.S.C. 5102(5)]. This definition is not identical to the imminent hazard definition applicable to § 386.72(b) [*i.e.*, 49 U.S.C. 521(b)(5)(B)].

**Rulemaking Analyses and Notices**

These amendments make regulatory changes to implement two amendments enacted by Congress; to update references to FHWA functions now exercised by the FMCSA; and to conform the language of § 386.72(a) more closely to the underlying statute. Public comments are unnecessary and could not change the substance of these amendments, since all of the changes being made today are required by statute. The FMCSA therefore finds good cause pursuant to 5 U.S.C. 553(b) to promulgate these amendments without prior notice and opportunity for comment.

**Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures**

The FMCSA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866. The agency has also determined that this action is not a significant regulatory action under the DOT's regulatory policies and procedures. These technical amendments are ministerial in nature.

**Regulatory Flexibility Act**

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FMCSA has evaluated the effects of this rule on small entities and has determined that it will not have a significant economic impact on a substantial number of small entities.

**Unfunded Mandates Reform Act of 1995**

This rule does not impose a Federal mandate resulting in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (2 U.S.C. 1531 *et seq.*).

**Executive Order 12988 (Civil Justice Reform)**

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

**Executive Order 13045 (Protection of Children)**

We have analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk

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to health or safety that may disproportionately affect children.

**Executive Order 12630 (Taking of Private Property)**

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

**Executive Order 13132 (Federalism)**

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 dated August 4, 1999, and it has been determined this action does not have a substantial direct effect or sufficient federalism implications on States that would limit the policymaking discretion of the States. Nothing in this document directly preempts any State law or regulation.

**Executive Order 12372 (Intergovernmental Review)**

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this regulation.

**Paperwork Reduction Act**

This action does not contain a collection of information requirement for the purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

**National Environmental Policy Act**

The agency has analyzed this rulemaking for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347), and has determined that this action would not have any effect on the quality of the environment.

**Regulation Identification Number**

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

**List of Subjects**

*49 CFR Part 375*

Advertising, Arbitration, Consumer protection, Freight, Insurance, Motor carriers, Moving of household goods, Reporting and recordkeeping requirements.

*49 CFR Part 386*

Administrative procedures, Commercial motor vehicle safety, Highway safety, Motor carriers.

Issued on: September 27, 2000.

**Clyde J. Hart, Jr.,**

*Acting Deputy Administrator.*

In consideration of the foregoing, the FMCSA amends Title 49, Code of Federal Regulations, Chapter III, parts 375 and 386 as set forth below:

## PART 375—TRANSPORTATION OF HOUSEHOLD GOODS IN INTERSTATE OR FOREIGN COMMERCE

1. Revise the authority citation for part 375 to read as follows:

**Authority:** 5 U.S.C. 553; 49 U.S.C. 13301 and 14104; and 49 CFR 1.73.

2. Revise § 375.1(b) to read as follows:

**§ 375.1 Applicability and definitions.**

* * * * *

(b) * * *

(1) *Household goods.* The term "household goods" means personal effects and property used or to be used in a dwelling when a part of the equipment or supply of such dwelling and such other similar property as the FMCSA may provide by regulation; except that this definition shall not include property moving from a factory or store, other than property that the householder has purchased with the intent to use in his or her dwelling and is transported at the request of, and the transportation charges are paid to the carrier by the householder.

* * * * *

## PART 386—RULES OF PRACTICE FOR MOTOR CARRIER SAFETY AND HAZARDOUS MATERIALS PROCEEDINGS

3. The authority citation for part 386 is revised to read as follows:

**Authority:** 49 U.S.C. 113, Chapters 5, 51, 131–141, 145–149, 311 (Subchapter III), 313, and 315, Pub. L. 104–134, title III, chapter 10, Sec. 31001, par. (s), 110 Stat. 1321–373, and 49 CFR 1.45 and 1.73.

4. In § 386.72 revise paragraphs (a) and (b)(1) to read as follows:

**§ 386.72 Imminent hazard.**

(a) Whenever it is determined that an imminent hazard exists as a result of the transportation by motor vehicle of a particular hazardous material, the Chief Counsel or Deputy Chief Counsel of the FMCSA may bring, or request the United States Attorney General to bring, an action in the appropriate United States District Court for an order suspending or restricting the transportation by motor vehicle of the hazardous material or for such other order as is necessary to eliminate or ameliorate the imminent hazard, as provided by 49 U.S.C. 5122. In this paragraph, "imminent hazard" means the existence of a condition that presents a substantial likelihood that death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment may occur before a notice of investigation proceeding, or other administrative hearing or formal proceeding, to abate the risk of harm can be completed.

(b)(1) Whenever it is determined that a violation of 49 U.S.C. 31502 or the Motor Carrier Safety Act of 1984, as amended, or the Commercial Motor Vehicle Safety Act of 1986, as amended, or a regulation issued under such section or Acts, or a combination of such violations, poses an imminent hazard to safety, the Director of the Office of Enforcement and Compliance or a State Director, or his or her delegate, shall order a vehicle or employee operating such vehicle out of service, or order an employer to cease all or part of the employer's commercial motor vehicle operations, as provided by 49 U.S.C. 521(b)(5). In making any such order, no restrictions shall be imposed on any employee or employer beyond that required to abate the hazard. In this paragraph, "imminent hazard" means any condition of vehicle, employee, or commercial motor vehicle operations which substantially increases the likelihood of serious injury or death if not discontinued immediately.

* * * * *

[FR Doc. 00–25260 Filed 9–29–00; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 20

**RIN 1018–AG08**

## Migratory Bird Hunting; Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 2000–01 Late Season

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.



**SUMMARY:** This rule prescribes special late season migratory bird hunting regulations for certain tribes on Federal Indian reservations, off-reservation trust lands and ceded lands. This responds to tribal requests for U.S. Fish and Wildlife Service (hereinafter Service or we) recognition of their authority to regulate hunting under established guidelines. This rule allows the establishment of season bag limits and, thus, harvest at levels compatible with populations and habitat conditions.

**DATES:** This rule takes effect on September 29, 2000.

**ADDRESSES:** You may inspect comments on the special hunting regulations and tribal proposals during normal business hours in Room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

**FOR FURTHER INFORMATION CONTACT:** Ron W. Kokel, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, (703/358–1714).

**SUPPLEMENTARY INFORMATION:** The Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703 *et seq.*), authorizes and directs the Secretary of the Department of the Interior, having due regard for the zones of temperature and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory game birds, to determine when, to what extent, and by what means such birds or any part, nest or egg thereof may be taken, hunted, captured, killed, possessed, sold, purchased, shipped, carried, exported or transported.

In the August 18, 2000, **Federal Register** (65 FR 50483), we proposed special migratory bird hunting regulations for the 2000–01 hunting season for certain Indian tribes, under the guidelines described in the June 4, 1985, **Federal Register** (50 FR 23467). The guidelines respond to tribal requests for Service recognition of their reserved hunting rights, and for some tribes, recognition of their authority to regulate hunting by both tribal members and nonmembers on their reservations. The guidelines include possibilities for:

(1) On-reservation hunting by both tribal members and nonmembers, with hunting by non-tribal members on some reservations to take place within Federal frameworks but on dates different from those selected by the surrounding State(s);

(2) On-reservation hunting by tribal members only, outside of usual Federal frameworks for season dates and length, and for daily bag and possession limits; and

(3) Off-reservation hunting by tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in daily bag and possession limits.

In all cases, the regulations established under the guidelines must be consistent with the March 10–September 1 closed season mandated by the 1916 Migratory Bird Treaty with Canada.

In the April 25, 2000, **Federal Register** (65 FR 24260), we requested that tribes desiring special hunting regulations in the 2000–01 hunting season submit a proposal including details on:

(a) Harvest anticipated under the requested regulations;

(b) Methods that would be employed to measure or monitor harvest (such as bag checks, mail questionnaires, *etc.*);

(c) Steps that would be taken to limit level of harvest, where it could be shown that failure to limit the harvest would adversely impact the migratory bird resource; and

(d) Tribal capabilities to establish and enforce migratory bird hunting regulations.

No action is required if a tribe wishes to observe the hunting regulations established by the State(s) in which an Indian reservation is located. We have successfully used the guidelines since the 1985–86 hunting season. We finalized the guidelines beginning with the 1988–89 hunting season (August 18, 1988, **Federal Register** [53 FR 31612]).

Although the proposed rule included generalized regulations for both early- and late-season hunting, this rulemaking addresses only the late-season proposals. Early-season proposals were was addressed in the September 1 **Federal Register** (65 FR 53190). As a general rule, early seasons begin during September each year and have a primary emphasis on such species as mourning and white-winged dove. Late seasons begin about October 1 or later each year and have a primary emphasis on waterfowl.

**Status of Populations**

In the August 18 **Federal Register**, we reviewed the status for various populations for which seasons were proposed. This information included brief summaries of the May Breeding Waterfowl and Habitat Survey and population status reports for blue-wing teal, Canada goose populations hunted in September seasons, sea ducks, sandhill cranes, woodcock, mourning doves, white-winged doves, white-tipped doves, and band-tailed pigeons. As a result of these status, we have responded by proposing Flyway frameworks that are essentially the same as those of last season for the 2000–01 waterfowl hunting season (August 22, 2000, **Federal Register**, 65 FR 51174). The tribal seasons established below are commensurate with the population status.

**Comments and Issues Concerning Tribal Proposals**

For the 2000–01 migratory bird hunting season, we proposed regulations for 25 tribes and/or Indian groups that followed the 1985 guidelines and were considered appropriate for final rulemaking. Some of the proposals submitted by the tribes had both early- and late-season elements. However, as noted earlier, only those with late-season proposals are included in this final rulemaking; 15 tribes have proposals with late seasons. Comments and proposals are addressed in the following section. The comment period for the proposed rule, published on August 18, 2000, closed on August 28, 2000.

We received one comment regarding the notice of intent published on April 25, 2000, which announced rulemaking on regulations for migratory bird hunting by American Indian tribal members. We responded to this comment in the September 1 **Federal Register**.

**NEPA Consideration**

Under the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)), the "Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES–75–74)" was filed with the Council on Environmental Quality on June 6, 1975, and notice of availability was published in the **Federal Register** on June 13, 1975 (40 FR 25241). A supplement to the final environmental statement, the "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (SEIS 88–14)" was filed on June 9, 1988, and notice of availability was published in the **Federal Register** on June 16, 1988 (53 FR 22582), and June 17, 1988 (53 FR 22727). Copies of these documents are available from us at the address indicated under the caption **ADDRESSES**. In addition, an August 1985 Environmental Assessment titled "Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands" is available from the same address.

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**Endangered Species Act Considerations**

Section 7 of the Endangered Species Act, as amended (16 U.S.C. 1531–1543; 87 Stat. 884), provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act" (and) shall "insure that any action authorized, funded or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat * * *" Consequently, we conducted consultations to ensure that actions resulting from these regulations would not likely jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat. Findings from these consultations are included in a biological opinion and may have caused modification of some regulatory measures previously proposed. The final frameworks reflect any modifications. Our biological opinions resulting from our Section 7 consultation are public documents available for public inspection in the Service's Division of Endangered Species and DMBM, at the address indicated under the caption **ADDRESSES**.

**Regulatory Flexibility Act**

These regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail and issued a Small Entity Flexibility Analysis (Analysis) in 1998. The Analysis documented the significant beneficial economic effect on a substantial number of small entities. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The Analysis was based on the 1996 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns from which it was estimated that migratory bird hunters would spend between $429 million and $1,084 million at small businesses in 1998. Copies of the Analysis are available upon request.

**Executive Order (E.O.) 12866**

Collectively, the rules covering the overall frameworks for migratory bird hunting are economically significant and have been reviewed by the Office of Management and Budget (OMB) under E.O. 12866. This rule is a small portion of the overall migratory bird hunting frameworks and was not individually submitted and reviewed by OMB under E.O. 12866.

**Small Business Regulatory Enforcement Fairness Act**

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule has an annual effect on the economy of $100 million or more. However, because this rule establishes hunting seasons, we do not plan to defer the effective date under the exemption contained in 5 U.S.C. 808 (1) and this rule will be effective immediately.

**Paperwork Reduction Act**

We examined these regulations under the Paperwork Reduction Act of 1995. We utilize the various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part 20, Subpart K, in the formulation of migratory game bird hunting regulations. Specifically, OMB has approved the information collection requirements of the Migratory Bird Harvest Information Program and assigned clearance number 1018–0015 (expires 9/30/2001). This information is used to provide a sampling frame for voluntary national surveys to improve our harvest estimates for all migratory game birds in order to better manage these populations. OMB has also approved the information collection requirements of the Sandhill Crane Harvest Questionnaire and assigned clearance number 1018–0023 (expires 7/31/2003). The information from this survey is used to estimate the magnitude, the geographical and temporal distribution of harvest, and the portion it constitutes of the total population. A Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

**Unfunded Mandates Reform Act**

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not "significantly or uniquely" affect small governments, and will not produce a Federal mandate of $100 million or more in any given year on local or State government or private entities. Therefore, this rule is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

**Civil Justice Reform—Executive Order 12988**

The Department, in promulgating this rule, has determined that this rule will not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of E.O. 12988.

**Takings Implication Assessment**

Under E.O. 12630, these rules, authorized by the Migratory Bird Treaty Act, do not have significant takings implications and do not affect any constitutionally protected property rights. These rules will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, these rules allow hunters to exercise privileges that would be otherwise unavailable; and, therefore, reduce restrictions on the use of private and public property.

**Federalism Effects**

Due to the migratory nature of certain species of birds, the Federal government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections and employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and Tribes to determine which seasons meet their individual needs. Any State or Tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, under E.O. 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

**Government-to-Government Relationship With Tribes**

Due to the migratory nature of certain species of birds, the Federal government has been given responsibility over these species by the Migratory Bird Treaty Act. Thus, under the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects on Indian trust resources. However, by virtue of the tribal proposals received in response to the April 25, 2000, request for proposals and the August 18, 2000, proposed rule, we have consulted with all the tribes affected by this rule.



**Regulations Promulgation**

The rulemaking process for migratory game bird hunting must, by its nature, operate under severe time constraints. However, we intend that the public be given the greatest possible opportunity to comment on the regulations. Thus, when the preliminary proposed rulemaking was published, we established what we believed were the longest periods possible for public comment. In doing this, we recognized that when the comment period closed, time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, the tribes would have insufficient time to communicate these seasons to their member and non-tribal hunters and to establish and publicize the necessary regulations and procedures to implement their decisions.

We therefore find that "good cause" exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and these regulations will, therefore, take effect immediately upon publication.

Therefore, under the authority of the Migratory Bird Treaty Act of July 3, 1918, as amended (40 Stat. 755; 16 U.S.C. 703 *et seq.*), we prescribe final hunting regulations for certain tribes on Federal Indian reservations (including off-reservation trust lands), and ceded lands. The regulations specify the species to be hunted and establish season dates, bag and possession limits, season length, and shooting hours for migratory game birds.

**List of Subjects in 50 CFR Part 20**

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Accordingly, part 20, subchapter B, chapter I of Title 50 of the Code of Federal Regulations is amended as follows:

**PART 20—[AMENDED]**

1. The authority citation for part 20 continues to read as follows:

**Authority:** 16 U.S.C. 703–712 and 16 U.S.C. 742 a–j.

(**Note:** The following hunting regulations provided for by 50 CFR 20.110 will not appear in the Code of Federal Regulations because of their seasonal nature).

2. Section 20.110 is amended by revising paragraphs (a), (b), (f), (g), (j), (o), (p) and (r), and by adding paragraphs (s) through (y) to read as set forth below. (Current § 20.110 was published at 65 FR 53193, September 1, 2000.)

**§ 20.110 Seasons, limits and other regulations for certain Federal Indian reservations, Indian Territory, and ceded lands.**

**(a) Colorado River Indian Tribes, Parker, Arizona (Tribal Members and Non-Tribal Hunters)**

*Doves*

Season Dates: Open September 1, close September 15, 2000; then open November 17, 2000, close January 7, 2001.

Daily Bag and Possession Limits: For the early season, daily bag limit is 10 mourning or 10 white-winged doves, singly, or in the aggregate. For the late season, the daily bag limit is 10 mourning doves. Possession limits are twice the daily bag limits.

*Ducks (Including Mergansers)*

Season Dates: Begin October 7, 2000, close January 21, 2001.

Daily Bag and Possession Limits: Seven ducks, including no more than one pintail, two redheads, two hen mallards, four scaup, two goldeneyes, two cinnamon teal, and one canvasback. The possession limit is twice the daily bag limit.

*Coots and Common Moorhens*

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 25 coots and common moorhens, singly or in the aggregate.

*Geese*

Season Dates: Begin November 18, 2000, end January 14, 2001.

Daily Bag and Possession Limits: Four geese, including no more than two dark (Canada) geese and three white (snow, blue, Ross's) geese. The possession limit is eight.

General Conditions: A valid Colorado River Indian Reservation hunting permit is required for all persons 14 years and older and must be in possession before taking any wildlife on tribal lands. Any person transporting game birds off the Colorado River Indian Reservation must have a valid transport declaration form. Other tribal regulations apply, and may be obtained at the Fish and Game Office in Parker, Arizona.

**(b) Crow Creek Sioux Tribe, Crow Creek Indian Reservation, Fort Thompson, South Dakota (Tribal Members and Non-Tribal Hunters)**

*Sandhill Cranes*

Season Dates: Open September 16, close October 22, 2000.

Daily Bag Limit: Three sandhill cranes.

Permits: Each person participating in the sandhill crane season must have a valid Federal sandhill crane hunting permit in their possession while hunting.

*Ducks*

Season Dates: Begin October 7, end December 19, 2000.

Daily Bag and Possession Limits: Six ducks, including no more than five mallards (including no more than two female mallards), one mottled duck, one canvasback, two redheads, one pintail, two scaup, and two wood ducks. The possession limit is twice the daily bag limit.

*Mergansers*

Season Dates: Same as ducks.

Daily Bag and Possession Limits: Five mergansers, including no more than one hooded merganser. The possession limit is twice the daily bag limit.

*Canada Geese*

Season Dates: Begin October 21, 2000, end January 23, 2001.

Daily Bag and Possession Limits: Three and six, respectively.

*White-Fronted Geese*

Season Dates: Begin September 30, end December 24, 2000.

Daily Bag and Possession Limits: Two and four, respectively.

*Light Geese*

Season Dates: Begin September 30, close December 24, 2000, then open February 19, close March 10, 2000.

Daily Bag and Possession Limits: 20 geese daily, no possession limit.

General Conditions: The waterfowl hunting regulations established by this final rule apply only to tribal and trust lands within the external boundaries of the reservation. Tribal and non-tribal hunters must comply with basic Federal migratory bird hunting regulations in 50 CFR part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the stamp face. Special regulations established by the

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Crow Creek Sioux Tribe also apply on the reservation.

* * * * *

**(f) Kalispel Tribe, Kalispel Reservation, Usk, Washington (Tribal Members and Non-Tribal Hunters)**

*Tribal Members*

*Ducks*

Season Dates: Open September 15, 2000, close January 31, 2001.

Daily Bag and Possession Limits: Seven ducks, including no more than one pintail, two hen mallards, four scaup, and one canvasback.

*Geese*

Season Dates: Open September 1, 2000, close January 31, 2001.

Daily Bag and Possession Limits: Four geese, including four dark geese but not more than three light geese. The possession limit is twice the daily bag limit.

General: Tribal members must possess a validated Migratory Bird Hunting and Conservation Stamp and a tribal ceded lands permit.

*Non-Tribal Hunters*

*Ducks*

Season Dates: Open September 30, 2000, close January 21, 2001. During this period, days to be hunted are specified by the Kalispel Tribe as weekends, holidays and for a continuous period in the months of December and January. Non-tribal hunters should contact the tribe for more detail on hunting days.

Daily Bag and Possession Limits: Seven ducks, including no more than one pintail, two hen mallards, two redheads, four scaup, and one canvasback.

*Geese*

Season Dates: Begin September 30, 2000, close January 21, 2001. During this period, days to be hunted are specified by the Kalispel Tribe as weekends, holidays and for a continuous period in the months of December and January. Non-tribal hunters should contact the tribe for more detail on hunting days.

Daily Bag and Possession Limits: Four geese, including four dark geese but not more than three light geese. The possession limit is twice the daily bag limit.

General: Hunters must observe all State and Federal regulations, such as those contained in 50 CFR part 20 and including the possession of a validated Migratory Bird Hunting and Conservation Stamp.

**(g) Little River Band of Ottawa Indians, Manistee, Michigan (Tribal Members Only)**

*Ducks*

Season Dates: Begin September 30, end November 28, 2000.

Daily Bag Limits: Six ducks, including no more than four mallards (only one of which may be a hen), three scaup, one black duck, two redheads, two wood ducks, one pintail, and one canvasback.

*Mergansers*

Season Dates: Same as ducks.

Daily Bag and Possession Limits: Five mergansers, including no more than one hooded merganser. The possession limit is twice the daily bag limit.

*Coots and Common Moorhens (Common Gallinules)*

Season Dates: Begin September 30, end November 28, 2000.

Daily Bag Limit: 15 coots and common moorhens (common gallinules), singly or in the aggregate.

*Canada Geese*

Season Dates: Open September 1, close September 15, then open September 17, close October 4, 2000.

Daily Bag Limits: Five geese in the first portion and two geese thereafter.

*Other Geese*

Season Dates: Same as for ducks.

Daily Bag Limits: Ten geese, including no more than two whitefronts or two brant.

*Rails, Snipe, and Woodcock*

Season Dates: Open September 15, close November 14, 2000.

Daily Bag Limit: 25 rails, 8 snipe, and 3 woodcock.

General: Possession limits are twice the daily bag limit, except for rails, which are equal to the daily bag limit.

* * * * *

**(j) Navajo Indian Reservation, Window Rock, Arizona (Tribal Members and Nonmembers)**

*Band-Tailed Pigeons*

Season Dates: Open September 1, close September 30, 2000.

Daily Bag and Possession Limits: 5 and 10 pigeons, respectively.

*Mourning Doves*

Season Dates: Open September 1, close September 30, 2000.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

*Ducks (Including Mergansers)*

Season Dates: Begin September 30, 2000, close January 14, 2001.

Daily Bag and Possession Limits: Seven ducks, including no more than two hen mallards, one pintail, one canvasback, four scaup, and two redheads. The possession limit is twice the daily bag limit.

*Dark Geese*

Season Dates: Begin September 30, 2000, end January 7, 2001.

Daily Bag and Possession Limits: Three and six geese, respectively.

*Coots and Common Moorhens*

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 25 coots and moorhens, singly or in the aggregate.

General Conditions: Tribal and non-tribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20, regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the stamp face. Special regulations established by the Navajo Nation also apply on the reservation.

* * * * *

**(o) Tulalip Tribes of Washington, Tulalip Indian Reservation, Marysville, Washington (Tribal Members and Non-Tribal Hunters)**

*Tribal Members*

*Ducks/Coot*

Season Dates: Open September 15, 2000, and close February 1, 2001.

Daily Bag and Possession Limits: 6 and 12 birds, respectively; except that bag and possession limits are restricted for blue-winged teal, canvasback, harlequin, pintail, and wood duck to those established for the Pacific Flyway by final Federal frameworks, to be announced.

*Geese*

Season Dates: Open September 15, 2000, and close February 1, 2001.

Daily Bag and Possession Limits: 6 and 12 geese, respectively; except that the bag limits for brant and cackling and dusky Canada geese are those established for the Pacific Flyway under final Federal frameworks, to be announced. The tribes also set a maximum annual bag limit on ducks and geese for those tribal members who engage in subsistence hunting.

*Non-Tribal Hunters*

*Ducks*

Season Dates: Begin October 7, 2000, end January 21, 2001.



Daily Bag and Possession Limits: Seven ducks, including no more than two hen mallards, one pintail, one canvasback, four scaup, and two redheads. The possession limit is twice the daily bag limit.

*Coots*

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 25 coots.

*Geese*

Season Dates: Begin October 14, 2000, end January 21, 2001.

Daily Bag and Possession Limits: Four geese, including four dark geese but no more than three light geese. The possession limit is twice the daily bag limit.

*Brant*

Season Dates: Begin January 6, end January 21, 2001.

Daily Bag and Possession Limits: Two and four brant, respectively.

General Conditions: All waterfowl hunters, members and non-members, must obtain and possess while hunting a valid hunting permit from the Tulalip tribes. Also, non-tribal members sixteen years of age and older, hunting under Tulalip Tribes' Ordinance No. 67, must possess a validated Federal Migratory Bird Hunting and Conservation Stamp and a validated State of Washington Migratory Waterfowl Stamp. All Tulalip tribal members must have in their possession while hunting, or accompanying another, their valid tribal identification card. All hunters are required to adhere to a number of other special regulations enforced by the tribes and available at the tribal office.

**(p) Wampanoag Tribe of Gay Head, Aquinnah, Massachusetts (Tribal Members Only)**

*Ducks*

Season Dates: Open October 10, 2000, and close January 20, 2001.

Daily Bag and Possession Limits: Six ducks, including no more than two hen mallards, two black ducks (one black duck from December 2 to December 9, 2000), two mottled ducks, one fulvous whistling duck, four mergansers, three scaup, one hooded merganser, two wood ducks, one canvasback, two redheads, one pintail, and one hen eider. The season is closed for harlequin ducks. In addition to the daily duck bag limit, a daily bag limit of six teal is allowed.

*Sea Ducks*

Season Dates: Open October 14, 2000, and close January 6, 2001.

Daily Bag and Possession Limits: Seven ducks including no more than four of any one species.

*Geese*

Season Dates: Open September 19, 2000, and close January 20, 2001.

Daily Bag and Possession Limits: 4 Canada geese and 15 snow geese.

*Woodcock*

Season Dates: Open October 14, and close November 15, 2000.

Daily Bag and Possession Limits: Three woodcock.

General Conditions: Shooting hours are one-half hour before sunrise to sunset. Non-toxic shot is required. Tribal members will observe all basic Federal migratory bird hunting regulations contained in 50 CFR part 20.

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**(r) White Mountain Apache Tribe, Fort Apache Indian Reservation, Whiteriver, Arizona (Tribal Members and Non-Tribal Hunters)**

*Band-Tailed Pigeons*

Season Dates: Open September 6, close September 20, 2000.

Daily Bag and Possession Limits: Three and six pigeons, respectively.

*Mourning Doves*

Season Dates: Open September 6, close September 20, 2000.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

*Ducks (Including Mergansers)*

Season Dates: Begin October 21, 2000, end January 21, 2001.

Daily Bag and Possession Limits: Four ducks, including no more than three mallards (including no more than one hen mallard), two redheads or one canvasback and one redhead, and one pintail. The possession limit is twice the daily bag limit.

*Coots, Moorhens and Gallinules*

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 25 coots, moorhens, and gallinules, singly or in the aggregate. The possession limit is twice the daily bag limit.

*Canada Geese*

Season Dates: Begin October 21, 2000, end January 12, 2001.

Bag and Possession Limits: Three and six, respectively.

General Conditions: All non-tribal hunters hunting band-tailed pigeons and mourning doves on Reservation lands shall have in their possession a valid White Mountain Apache Daily or Yearly Small Game Permit. In addition to a small game permit, all non-tribal hunters hunting band-tailed pigeons must have in their possession a White Mountain Special Band-tailed Pigeon Permit. Other special regulations established by the White Mountain Apache Tribe apply on the reservation. Tribal and non-tribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR Part 20 regarding shooting hours and manner of taking. In addition:

(1) The area open to waterfowl hunting in the above seasons consists of: the entire length of the Black River west of the Bonito Creek and Black River confluence and the entire length of the Salt River forming the southern boundary of the reservation; the White River, extending from the Canyon Day Stockman Station to the Salt River; and all stock ponds located within Wildlife Management Units 4, 5, 6, and 7. Tanks located below the Mogollon Rim, within Wildlife Management Units 2 and 3 will be open to waterfowl hunting during the 2000–01 season. All other waters of the reservation will be closed to waterfowl hunting for the 2000–01 season.

(2) Tribal and non-tribal hunters must comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 regarding shooting hours and manner of taking.

(3) See other special regulations established by the White Mountain Apache Tribe that apply on the reservation, available from the reservation Game and Fish Department.

**(s) Confederated Salish and Kootenai Tribes, Flathead Indian Reservation, Pablo, Montana (Non-Tribal Hunters)**

*Ducks (Including Mergansers)*

Season Dates: Begin September 30, 2000, end January 14, 2001.

Daily Bag and Possession Limits: Seven ducks, including no more than two hen mallards, one pintail, one canvasback, four scaup, and two redheads. The possession limit is twice the daily bag limit.

*Coots*

Season Dates: Same as ducks.

Daily Bag and Possession Limits: The daily bag and possession limit is 25.

*Geese*

*Dark Geese*

Season Dates: Begin September 30, 2000, end January 7, 2001.

Daily Bag and Possession Limits: Four and eight geese, respectively.

*Light Geese*

Season Dates: Begin September 30, 2000, end January 7, 2001.

Daily Bag and Possession Limits: Three and six geese, respectively.

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General Conditions: Non-tribal hunters must comply with all basic Federal migratory bird hunting regulations contained in 50 CFR part 20 regarding manner of taking. In addition, shooting hours are sunrise to sunset and each waterfowl hunter 16 years of age or older must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the stamp face. Special regulations established by the Confederated Salish and Kootenai Tribes also apply on the reservation.

**(t) Jicarilla Apache Tribe, Jicarilla Indian Reservation, Dulce, New Mexico (Tribal Members and Non-Tribal Hunters)**

*Ducks (Including Mergansers)*

Season Dates: Begin October 7, end November 30, 2000.

Daily Bag and Possession Limits: The daily bag limit is seven, including no more than two hen mallards, one pintail, two redheads, four scaup, and one canvasback. The possession limit is twice the daily bag limit.

*Canada Geese*

Season Dates: Begin October 7, end November 30, 2000.

Daily Bag and Possession Limits: Two and four, respectively.

General Conditions: Tribal and non-tribal hunters must comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or older must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the stamp face. Special regulations established by the Jicarilla Tribe also apply on the reservation.

**(u) Klamath Tribe, Chiloquin, Oregon (Tribal Members Only)**

*Ducks*

Season Dates: Begin October 1, 2000, end January 28, 2001.

Daily Bag and Possession Limits: 9 and 18 ducks, respectively.

*Coots*

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 25 coots.

*Geese*

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 6 and 12 geese, respectively.

General: The Klamath Tribe provides its game management officers, biologists and wildlife technicians with regulations enforcement authority, and has a court system with judges that hear cases and set fines.

**(v) Lower Brule Sioux Tribe, Lower Brule Reservation, Lower Brule, South Dakota (Tribal Members and Non-Tribal Hunters)**

*Ducks (Including Mergansers)*

Season Dates: Begin October 7, 2000, end January 11, 2001.

Daily Bag and Possession Limits: Six ducks, including no more than five mallards (only one of which may be a hen), one pintail, three scaup, one mottled duck, two redheads, one canvasback, two wood ducks, and one hooded merganser. The possession limit is twice the daily bag limit.

*Canada Geese*

Season Dates: Begin October 14, 2000, end January 16, 2001.

Daily Bag and Possession Limits: Three geese. The possession limit is twice the daily bag limit.

*White-Fronted Geese*

Season Dates: Begin October 14, 2000, end January 7, 2001.

Daily Bag and Possession Limits: Two geese. The possession limit is twice the daily bag limit.

*Light Geese*

Season Dates: Begin October 14, 2000, end January 14, 2001, then begin February 24, end March 9, 2001.

Daily Bag Limit: 20 geese.

General Conditions: All hunters must comply with the basic Federal migratory bird hunting regulations in 50 CFR part 20, including the use of steel shot. Non-tribal hunters must possess a validated Migratory Bird Hunting and Conservation Stamp. The Lower Brule Sioux Tribe has an official Conservation Code that hunters must adhere to when hunting in areas subject to control by the tribe.

**(w) Shoshone-Bannock Tribes, Fort Hall Indian Reservation, Fort Hall, Idaho (Non-Tribal Hunters)**

*Ducks (Including Mergansers)*

Season Dates: Begin October 7, 2000, end January 19, 2001.

Daily Bag and Possession Limits: Seven ducks, including no more than two hen mallards, one pintail, one canvasback, one scaup, and two redheads. The possession limit is twice the daily bag limit.

*Mergansers*

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 5 and 10 mergansers, respectively.

*Coots*

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 10 and 20 coots, respectively.

*Geese*

Season Dates: Begin October 14, 2000, end January 19, 2001.

Daily Bag and Possession Limits: Four geese, including not more than three light geese or two white-fronted geese. The possession limit is twice the daily bag limit.

*Common Snipe*

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 8 and 16 snipe, respectively.

General Conditions: Non-tribal hunters must comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or older must possess a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the stamp face. Other regulations established by the Shoshone-Bannock Tribes also apply on the reservation.

**(x) Swinomish Indian Tribal Community, LaConner, Washington (Tribal Members Only)**

*Ducks (Including Mergansers)*

Season Dates: Begin September 30, 2000, end February 21, 2001.

Daily Bag and Possession Limits: 10 ducks, including no more than 2 hen mallards, 1 pintail, 1 canvasback, 4 scaup, and 2 redheads. The possession limit is twice the daily bag limit.

*Coots*

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 25 coots.

*Geese*

Season Dates: Same as ducks.

Daily Bag and Possession Limits: Seven geese, including seven dark geese but no more than six light geese. The possession limit is twice the daily bag limit.

*Brant*

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 5 and 10 brant, respectively.

General Conditions: The Swinomish Tribal Community has established additional special regulations for on-reservation hunting. Tribal hunters should consult the tribal office for additional information.



**(y) Yankton Sioux Tribe, Marty, South Dakota (Tribal Members and Non-Tribal Hunters)**

*Ducks (Including Mergansers)*

Season Dates: Begin October 14, end December 26, 2000.

Daily Bag and Possession Limits: Six ducks, including no more than five mallards (no more than two hen mallards), two redheads, one pintail, one hooded merganser, one canvasback, three scaup, and two wood ducks. The possession limit is twice the daily bag limit.

*Coots*

Season Dates: Same as ducks.

Daily Bag and Possession Limits: 15 and 30 coots, respectively.

*Dark Geese*

Season Dates: Begin October 28, 2000, end January 30, 2001.

Daily Bag and Possession Limits: Three geese, including no more than one white-fronted goose (or brant). The possession limit is twice the daily bag limit.

*Light Geese*

Season Dates: Begin October 28, 2000, end February 11, 2001.

Daily Bag and Possession Limits: 20 geese, no possession limit.

General Conditions:

(1) The waterfowl hunting regulations established by this final rule apply to tribal and trust lands within the external boundaries of the reservation.

(2) Tribal and non-tribal hunters must comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or older must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the stamp face. Special regulations established by the Yankton Sioux Tribe also apply on the reservation.

Dated: September 27, 2000.

**Stephen C. Saunders,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 00–25177 Filed 9–27–00; 3:38 pm]

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# Proposed Rules

Federal Register
Vol. 65, No. 191
Monday, October 2, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Parts 905 and 944**

**[Docket No. FV00–905–2 PR]**

## Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida and Imported Grapefruit; Relaxation of the Minimum Size Requirements for Red Seedless Grapefruit

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This rule would relax minimum size requirements for red seedless grapefruit grown in Florida and for red seedless grapefruit imported into the United States from size 48 (3$^{9}/_{16}$ inches diameter) to size 56 (3$^{5}/_{16}$ inches diameter). The Citrus Administrative Committee (Committee), the agency that locally administers the marketing order for oranges, grapefruit, tangerines, and tangelos grown in Florida, recommended this change for Florida red seedless grapefruit. The change in the import regulation is required under section 8e of the Agricultural Marketing Agreement Act of 1937. This change would allow handlers and importers to ship size 56 red seedless grapefruit, and is expected to maximize grapefruit shipments to fresh market channels.

**DATES:** Comments must be received by October 17, 2000.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698, or E-mail: moab.docketclerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: http://www.ams.usda.gov/fv/moab/html.

**FOR FURTHER INFORMATION CONTACT:** Doris Jamieson, Marketing Specialist, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883; telephone: (863) 299–4770, Fax: (863) 299–5169; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

**SUPPLEMENTARY INFORMATION:** This proposed rule is issued under Marketing Agreement No. 84 and Marketing Order No. 905, both as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

This proposed rule also is issued under section 8e of the Act, which provides that whenever certain specified commodities, including grapefruit, are regulated under a Federal Marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodities.

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This proposal will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

The order for Florida citrus provides for the establishment of minimum grade and size requirements with the concurrence of the Secretary. The minimum grade and size requirements are designed to provide fresh markets with fruit of acceptable quality and size, thereby maintaining consumer confidence for fresh Florida citrus. This contributes to stable marketing conditions in the interest of growers, handlers, and consumers, and helps increase returns to Florida citrus growers. The current minimum grade standard for red seedless grapefruit is U.S. No. 1. The current minimum size requirement for domestic shipments is size 56 (at least 3$^{5}/_{16}$ inches in diameter) through November 12, 2000, and size 48 (3$^{9}/_{16}$ inches in diameter), thereafter. The current minimum size for export shipments is size 56 throughout the year.

This proposed rule invites comments on a change to the order's rules and regulations that would relax the minimum size requirement for domestic shipments of red seedless grapefruit. This rule would relax the minimum size from size 48 (3$^{9}/_{16}$ inches in diameter) to size 56 (3$^{5}/_{16}$ inches in diameter).



Absent this change, the minimum size would revert to size 48 (3$^{9}/_{16}$ inches in diameter) on November 13, 2000. This change would allow handlers and importers to continue to ship size 56 red seedless grapefruit, and it is expected to maximize grapefruit shipments to fresh market channels. The Committee met on May 26, 2000, and unanimously recommended this action.

Section 905.52 of the order, in part, authorizes the Committee to recommend minimum grade and size regulations to the Secretary. Section 905.306 (7 CFR part 905.306) specifies minimum grade and size requirements for different varieties of fresh Florida grapefruit. Such requirements for domestic shipments are specified in § 905.306 in Table I of paragraph (a), and for export shipments in Table II of paragraph (b). This rule adjusts Table I to establish a minimum size of 56 (3$^{5}/_{16}$ inches diameter). Minimum grade and size requirements for grapefruit imported into the United States are currently in effect under § 944.106 (7 CFR part 944.106). This rule also adjusts § 944.106 to establish a minimum size of 56. Export requirements for Florida red seedless grapefruit are not changed by this rule.

In the past, the Committee recommended relaxing the minimum size for red seedless grapefruit to size 56 in one year intervals. Rather than continuing to make this recommendation each year, the Committee recommended relaxing the minimum size for red seedless grapefruit from size 48 (3$^{9}/_{16}$ inches in diameter) to size 56 (3$^{5}/_{16}$ inches in diameter) on a continuous basis. In making this recommendation, the Committee recognized that the reasoning behind past recommendations to relax the minimum size to size 56 would most probably continue to exist at least into the foreseeable future.

As in the past, the Committee considered supply and demand in making its recommendation. Since the 1994–95 season, the production of red seedless grapefruit has been somewhere between 28.1 and 31.4 million 1$^{3}/_{5}$ bushel boxes each year. Future production is expected to be near or below this range.

The Committee expects fresh market demand to continue to be sufficient to permit the shipment of size 56 red seedless grapefruit. The Committee believes that domestic markets have been developed for size 56 fruit and that the industry should continue to supply those markets. This size relaxation would enable Florida grapefruit shippers to continue shipping size 56 red seedless grapefruit to the domestic market. This rule would have a beneficial impact on producers and handlers because it would permit Florida grapefruit handlers to make available the sizes of fruit needed to meet consumer needs. Matching the sizes with consumer needs is consistent with current and anticipated demand, and would maximize shipments to fresh market channels.

For the grapefruit industry, it is important to maximize shipments to the fresh market. This is especially true for red seedless grapefruit because the returns for processing are negligible. On-tree returns for processed red seedless grapefruit averaged $.17 per 1$^{3}/_{5}$ bushel box from 1994 through 1999. In many cases, this is below the cost of production. Comparatively, the average on-tree return is $3.32 for fresh shipments during the same period.

For the years 1994 through 1999, fresh domestic shipments of red seedless grapefruit averaged 16.7 million $^{4}/_{5}$ bushel cartons per season. Of these shipments, approximately 2.9 percent were size 56. The average f.o.b. price for size 56 red seedless grapefruit was $5.22 during the 1998–99 season. Combining this price with the average volume of size 56 calculates an approximate market value of $2.5 million for size 56 red seedless grapefruit.

During the first 11 weeks of the season, beginning with the third week in September, the Committee has been using a volume regulation to limit the volume of small red seedless grapefruit that can enter the fresh market. The Committee has used this regulation for the past three seasons, and has recommended using it again for the upcoming season. The Committee believes the percentage size regulation has been helpful in reducing the negative effects of having size 56 red seedless grapefruit available on the domestic market, and that no other restrictions on size 56 are needed.

Therefore, based on available information, the Committee unanimously recommended that the minimum size for shipping red seedless grapefruit to the domestic market should be size 56. This minimum size change would pertain to the domestic market, and would not change the minimum size for export shipments, which will remain at size 56. The largest market for size 56 red seedless grapefruit is for export. Additionally, importers would be favorably affected by this change since the relaxation of the minimum size regulation would also apply to imported grapefruit.

Section 8e of the Act provides that when certain domestically produced commodities, including grapefruit, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements. Since this rule would relax the minimum size requirement under the domestic handling regulations, a corresponding change to the import regulations must also be considered.

Minimum grade and size requirements for grapefruit imported into the United States are currently in effect under § 944.106 (7 CFR 944.106). This rule would relax the minimum size requirement for imported red seedless grapefruit to 3$^{5}/_{16}$ inches in diameter (size 56), to reflect the relaxation being made under the order for red seedless grapefruit grown in Florida.

Handlers in Florida shipped approximately 33,650,000 $^{4}/_{5}$ bushel cartons of grapefruit to the fresh market during the 1999–2000 season. Of these cartons, about 18,463,000 were exported. In the past three seasons, domestic shipments of Florida grapefruit averaged about 16,172,000 cartons. Imports totaled about 456,470 cartons in 1999. Imports account for less than five percent of domestic grapefruit shipments.

During the period January 1, 1999, through December 31, 1999, imports of grapefruit totaled 19,400,000 pounds (approximately 456,470 cartons). Recent yearly data indicate that imports from May through November are typically negligible. Future imports should not vary significantly from the 19,400,000 pounds. The Bahamas were the principal source of imported grapefruit, accounting for 93 percent of the total. Israel, Mexico and Turkey supplied remaining imports. Most imported grapefruit enters the United States from November through May.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 75 grapefruit handlers who are subject to regulation under the order, and approximately 11,000 growers of citrus in the regulated

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area, and about 25 grapefruit importers. Small agricultural service firms, which include grapefruit handlers and importers, are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000.

Based on the industry and Committee data for the 1999–2000 season, the average annual f.o.b. price for fresh Florida red seedless grapefruit was around $7.52 per ⅘ bushel carton, and total fresh shipments for the 1999–2000 season are estimated at 25.6 million cartons of red seedless grapefruit. Approximately 25 percent of all handlers handled 70 percent of Florida grapefruit shipments. In addition, many of these handlers ship other citrus fruit and products which are not included in Committee data but would contribute further to handler receipts. Using the average f.o.b. price, about 69 percent of grapefruit handlers could be considered small businesses under SBA's definition. The majority of handlers, importers, and growers may be classified as small entities.

During the period January 1, 1999, through December 31, 1999, imports of grapefruit totaled 19,400,000 pounds (approximately 456,470 cartons). Recent yearly data indicate that imports from May through November are typically negligible. Future imports should not vary significantly from the 19,400,000 pounds. The Bahamas were the principal source of imported grapefruit, accounting for 93 percent of the total. Israel, Mexico, and Turkey supplied remaining imports. Most imported grapefruit enters the United States from November through May.

This proposed rule would relax the minimum size requirement for domestic shipments of red seedless grapefruit from size 48 (3–9/16 inches in diameter) to size 56 (3–5/16 inches in diameter). Absent this rule, the minimum size requirement for domestic shipments would revert to size 48 on November 13, 2000. The Committee believes that domestic markets have been developed for size 56 red seedless grapefruit and that the industry should continue to supply those markets. This change would allow handlers and importers to continue to ship size 56 red seedless grapefruit, and it is expected to maximize shipments to fresh market channels. The Committee unanimously recommended this action. Section 905.306 specifies the minimum grade and size requirements for different varieties of fresh Florida grapefruit. Authority for this action is provided in § 905.52 of the order.

This action would provide for the continued shipment of size 56 red seedless grapefruit. This change is not expected to increase costs associated with the order requirements, or the grapefruit import regulation. This rule would have a positive impact on affected entities. This rule would benefit producers and handlers by making available those sizes of fruit needed to meet consumer needs. This is consistent with current and anticipated demand, and would provide for the maximization of shipments to fresh market channels. The opportunities and benefits of this rule are expected to be equally available to all grapefruit handlers, growers, and importers regardless of their size of operation.

Section 8e of the Act provides that when certain domestically produced commodities, including grapefruit, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements. Because this rule would change the minimum size for domestic red seedless grapefruit shipments, a similar change would also be applicable to imported grapefruit. Therefore, this rule would also relax the minimum size for imported red seedless grapefruit to size 56. This regulation would benefit importers to the same extent that it would benefit Florida grapefruit producers and handlers because it would continue to allow shipments of size 56 red seedless grapefruit into U.S. markets.

The Committee considered one alternative to this action. The Committee discussed relaxing the minimum size to size 56 for one year, as in the past, rather than on a continuous basis. Members said that, rather than discussing the issue each year and recommending a change, they would prefer to make the change effective on a continuous basis. They also stated that should they ever want to increase the minimum size, they could meet and recommend the change to the Secretary. Therefore, the option of relaxing the minimum size for one year was rejected.

This proposed rule would relax size requirements under the marketing order for Florida citrus. Accordingly, this action would not impose any additional reporting or recordkeeping requirements on either small or large red seedless grapefruit handlers and importers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule. However, red seedless grapefruit must meet the requirements as specified in the U.S. Standards for Grades of Florida Grapefruit (7 CFR 51.750 through 51.784) issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 through 1627).

In addition, the Committee's meeting was widely publicized throughout the Florida citrus industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the May 26, 2000, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: http://www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this proposed rule.

A 15-day comment period is provided to allow interested persons to respond to this proposal. Fifteen days is deemed appropriate because this rule would need to be in place on November 13, 2000. This action is similar to those recommended in previous seasons, and it was unanimously recommended by the Committee. All written comments timely received will be considered before a final determination is made on this matter.

**List of Subjects**

*7 CFR Part 905*

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

*7 CFR Part 944*

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, Oranges.

For the reasons set forth above, 7 CFR Parts 905 and 944 are proposed to be amended as follows:

1. The authority citation for 7 CFR part 905 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.



**PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA**

2. In § 905.306, the table in paragraph (a) is amended by revising the entry for "Seedless, red" to read as follows:

**§ 905.306 Orange, Grapefruit, Tangerine, and Tangelo Regulation.**

(a) * * *

TABLE I

| Variety | Regulation period | Minimum grade | Minimum Diameter (Inches) |
|---|---|---|---|
| (1) | (2) | (3) | (4) |
| GRAPEFRUIT | | | |
| . . | . . | . . | . . |
| Seedless, Red | On and after 11/13/00 | U.S. No. 1 | 3–5/16 |
| . . | . . | . . | . . |

**PART 944—FRUITS; IMPORT REGULATIONS**

3. In § 944.106, the table in paragraphs (a) is amended by revising the entry for "Seedless, red" to read as follows:

**§ 944.106 Grapefruit import regulation.**

(a) * * *

| Grapefruit classification | Regulation period | Minimum grade | Minimum diameter (inches) |
|---|---|---|---|
| (1) | (2) | (3) | (4) |
| . . | . . | . . | . . |
| Seedless, red | On and after 11/13/00 | U.S. No. 1 | 3–5/16 |
| . . | . . | . . | . . |

Dated: September 27, 2000.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 00–25188 Filed 9–27–00; 4:21pm]

**BILLING CODE 3410–02–P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. 2000–CE–55–AD]**

**RIN 2120–AA64**

**Airworthiness Directives; Pilatus Aircraft Ltd. Models PC–12 and PC–12/45 Airplanes**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Pilatus Aircraft Ltd. (Pilatus) Models PC–12 and PC–12/45 airplanes that are equipped with a certain windshield configuration. The proposed AD would require you to incorporate pilot's operating handbook (POH) information that would prohibit the operation of the windshield heating system in the "LIGHT" mode, and would require you to modify the windshield deicing system wiring and circuit breakers. You could remove the POH information after accomplishing the modification. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. The actions specified by the proposed AD are intended to prevent loss of electrical power to the windshield deicing system due to operation in the "LIGHT" mode, which could result in icing of the windshield and loss of control of the airplane.

**DATES:** The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before November 7, 2000.

**ADDRESSES:** Submit comments in triplicate to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–55–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 63 19; facsimile: +41 41 619 6224; or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021; telephone: (303) 465–9099; facsimile: (303) 465–6040. This information also may be examined at the Rules Docket at the address above.

**FOR FURTHER INFORMATION CONTACT:** Roman T. Gabrys, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4141; facsimile: (816) 329–4090.

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**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

*How do I comment on the proposed AD?* The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments in triplicate to the address specified under the caption **ADDRESSES**. The FAA will consider all comments received on or before the closing date. We may amend the proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of the proposed AD action and determining whether we need to take additional rulemaking action.

*Are there any specific portions of the proposed AD I should pay attention to?* The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of the proposed rule that might suggest a need to modify the rule. You may examine all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each FAA contact with the public that concerns the substantive parts of the proposed AD.

We are re-examining the writing style we currently use in regulatory documents, in response to the Presidential memorandum of June 1, 1998. That memorandum requires federal agencies to communicate more clearly with the public. We are interested in your comments on whether the style of this document is clearer, and any other suggestions you might have to improve the clarity of FAA communications that affect you. You can get more information about the Presidential memorandum and the plain language initiative at *http://www.plainlanguage.gov*.

*How can I be sure FAA receives my comment?* If you want us to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2000–CE–55–AD." We will date stamp and mail the postcard back to you.

**Discussion**

*What events have caused this proposed AD?* The Federal Office for Civil Aviation (FOCA), which is the airworthiness authority for Switzerland, recently notified the FAA that an unsafe condition may exist on certain Pilatus Models PC–12 and PC–12/45 airplanes. The FOCA reports that the electrical load of the left hand (LH) and right hand (RH) windshields can become too high during flight at cruise altitudes when the "LIGHT" mode is selected on the windshield deicing system. The FOCA references eight instances where prolonged operation of the windshield deicing system in the "LIGHT" mode caused this system to temporarily shut down.

The airplanes involved in the above instances were equipped with part number (P/N) 959.81.10.107 LH and P/N/ 959.81.10.108 RH windshields.

*What are the consequences if the condition is not corrected?* Operation of the existing design windshield deicing system in the "LIGHT" position can overload the electrical capacity of the wiring and circuit breakers. This could result in complete electrical power loss to the windshield and icing of the windshield.

*Is there service information that applies to this subject?* Pilatus has issued the following:

—Temporary Revision No. 21 to PC–12 Pilot's Operating Handbook, Report No. 01973–001, Section 2, Windshield Heater Operation 101–320, Issued: May 19, 2000: This document specifies operating procedures and limitations for airplanes with the affected windshield configurations; and

—Service Bulletin No. 30–006, dated May 22, 2000: This document includes procedures for modifying the windshield deicing system wiring and circuit breakers.

*What action did FOCA take?* The FOCA classified Pilatus Service Bulletin No. 30–006, dated May 22, 2000, as mandatory and issued Swiss AD HB 2000–393, dated September 6, 2000, in order to assure the continued airworthiness of these airplanes in Switzerland.

*Was this in accordance with the bilateral airworthiness agreement?* These airplane models are manufactured in Switzerland and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the FOCA has kept FAA informed of the situation described above.

**The FAA's Determination and an Explanation of the Provisions of the Proposed AD**

*What has FAA decided?* The FAA has examined the findings of the FOCA; reviewed all available information, including the service information referenced above; and determined that:

—The unsafe condition referenced in this document exists or could develop on other Pilatus PC–12 and PC-12/45 airplanes of the same type design that incorporate this windshield configuration;

—The actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and

—AD action should be taken in order to correct this unsafe condition.

*What does the proposed AD require?* This proposed AD would require you to incorporate POH information that would prohibit the operation of the windshield heating system in the "LIGHT" mode, and would require you to modify the windshield deicing system wiring and circuit breakers. You could remove the POH information after accomplishing the modification.

**Cost Impact**

*How many airplanes does the proposed AD impact?* We estimate that the proposed AD affects 108 airplanes in the U.S. registry.

*What is the cost impact of the proposed AD on owners/operators of the affected airplanes?* We estimate the following costs to accomplish the proposed modification:

| Labor cost | Parts cost | Total cost per airplane | Total cost on U.S. airplane operators |
|---|---|---|---|
| 18 workhours × $60 per hour = $1,080 .. | Pilatus will provide free-of-charge ..... | $1,080 per airplane. ..... | $116,640. |



**Compliance Time of the Proposed AD**

*What is the compliance time of the proposed AD?* The compliance time of the proposed AD is as follows:

—Incorporation of the POH temporary revision: "Within the next 30 days after the effective date of this AD;" and

—Modification: "Within the next 12 months after the effective date of this AD."

*Why is the compliance of the proposed AD in calendar time instead of hours time-in-service (TIS)?* Although loss of electrical power to the windshield deicing system due to operation in the "LIGHT" mode is unsafe during flight, the condition is not a direct result of airplane operation. The chance of this situation occurring is the same for an airplane with 10 hours TIS as it would be for an airplane with 500 hours TIS. A calendar time for compliance will assure that the unsafe condition is addressed on all airplanes in a reasonable time period.

**Regulatory Impact**

*Does this proposed AD impact various entities?* The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

*Does this proposed AD involve a significant rule or regulatory action?* For the reasons discussed above, I certify that this proposed action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

**PART 39—AIRWORTHINESS DIRECTIVES**

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

**Pilatus Aircraft Ltd.:** Docket No. 2000–CE–55–AD.

(a) *What airplanes are affected by this AD?* This AD affects Models PC–12 and PC–12/45 airplanes, manufacturer serial number (MSN) 101 through MSN 320, that are:

(1) certificated in any category; and

(2) equipped with part number (P/N) 959.81.10.107 LH and P/N 959.81.10.108 RH windshields (or FAA-approved equivalent part numbers).

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes on the U.S. Register must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent loss of electrical power to the windshield deicing system due to operation in the "LIGHT" mode, which could result in icing of the windshield and loss of control of the airplane.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

| Action | Compliance time | Procedures |
|---|---|---|
| (1) Insert Temporary Revision No. 21 to PC–12 Pilot's Operating Handbook, Report No. 01973–001, Section 2, Windshield Heater Operation 101–320, Issued May 19, 2000. | Within the next 30 days after the effective date of this AD, unless already accomplished. | Anyone who holds at least a private pilot certificate, as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), may incorporate the pilot's operating handbook (POH) revision required by this AD. You must make an entry into the aircraft records that shows compliance with this AD, in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9). |
| (2) Modify the windshield deicing system wires and circuit breakers. You may remove the POH temporary revision referenced in paragraph (d)(1) of this AD after accomplishing this modification. | Within the next 12 months after the effective date of this AD, unless already accomplished. | In accordance with the modification procedures in the Accomplishment Instructions section of Pilatus Service Bulletin No. 30–006, dated May 22, 2000. |
| (3) Do not install, on any affected airplane, P/N 959.81.10.107 LH and P/N 959.81.10.108 RH windshields (or FAA-approved equivalent part numbers), without incorporating the modification required in paragraph (d)(2) of this AD. | As of the effective date of this AD ..... | Not applicable. |

**Note 1:** Temporary Revision No. 21 to PC–12 Pilot's Operating Handbook, Report No. 01973–001, Section 2, Windshield Heater Operation 101–320, Issued: May 19, 2000, eliminates the need for Temporary Revision No. 14 in the POH.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Small Airplane Directorate, approves your alternative. Submit your request through a FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

**Note 2:** This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so

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that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Roman T. Gabrys, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 329–4141; facsimile: (816) 329–4090.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may obtain copies of the documents referenced in this AD from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021. You may examine these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

**Note 3:** The subject of this AD is addressed in Swiss AD HB 2000–393, dated September 6, 2000.

Issued in Kansas City, Missouri, on September 26, 2000.

**Michael K. Dahl,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–25152 Filed 9–29–00; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2000–CE–14–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Rockwell Collins, Inc. ADC–85, ADC–85A, ADC–850C, and ADC–850F Air Data Computers

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Rockwell Collins, Inc. (Rockwell) ADC–85, ADC–85A, ADC–850C, and ADC–850F air data computers that are installed on airplanes. The proposed AD would require you to replace any air data computer (ADC) with one that has reprogrammed and tested central processing unit (CPU) circuit card and circuit card assemblies. The proposed AD is the result of a flight test that showed that these ADC's could display an unwarranted ADC flag in response to the airplane's "Normal/Alternate Air" static source selection capability. The actions specified by the proposed AD are intended to prevent the ADC from displaying an unwarranted ADC flag when switching static air sources. This could cause the flight crew to deselect a valid alternate static air source during the time the unwarranted ADC flag is displayed and possibly result in the display of misleading information during critical operating situations.

**DATES:** The Federal Aviation Administration (FAA) must receive any comments on this proposed rule by November 6, 2000.

**ADDRESSES:** Send comments in triplicate to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–14–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may inspect comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except holidays.

You may get the service information referenced in the proposed AD from Rockwell Collins, Business and Regional Systems, 400 Collins Road Northeast, Cedar Rapids, Iowa 52498. You may read this information at the Rules Docket at the address above.

**FOR FURTHER INFORMATION CONTACT:** Roger A. Souter, FAA, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Rm 100, Wichita, Kansas 67209; telephone: (316) 946–4134; facsimile: (316) 946–4407. E-mail address: *Roger.Souter@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

*How do I comment on this AD?* We invite your comments on the proposed rule. You may send whatever written data, views, or arguments you choose. You need to include the rule's docket number and send your comments in triplicate to the address specified under the caption **ADDRESSES.** We will consider all comments received by the closing date specified above, before acting on the proposed rule. We may change the proposals contained in this notice because of the comments received.

*Are there any specific portions of the AD I should pay attention to?* The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of the proposed rule that might call for a need to change the proposed rule. You may read all comments we receive. We will file a report in the Rules Docket that summarizes each FAA contact with the public that concerns the substantive parts of this proposal.

The FAA is reviewing the writing style we currently use in regulatory documents, in response to the Presidential memorandum of June 1, 1998. That memorandum requires federal agencies to communicate more clearly with the public. We are interested in your comments on the ease of understanding this document, and any other suggestions you might have to improve the clarity of FAA communications that affect you. You can get more information about the Presidential memorandum and the plain language initiative at http://www.faa.gov/language/.

*How can I be sure FAA receives my comment?* If you want us to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2000–CE–14–AD." We will date stamp and mail the postcard back to you.

### Discussion

*What events have caused this proposed AD?* The air data computer (ADC), as part of its monitoring process, tests for errant sensor behavior, such as unreasonable jumps in altitude and unreasonably high vertical speed. When the ADC detects an errant sensor behavior, the ADC displays a flag for 5.5 seconds plus the time it takes for the sensor to settle within the limits for another 5.5-second period. This results in a minimum ADC flag display of 11 seconds.

Testing of certain Rockwell Collins ADC's reveals the ADC could display unwarranted flags on aircraft where you can select the "Normal/Alternate Air" static source. When there is a significant difference between normal and alternate/revisionary static air sources, you can exceed the ADC monitor thresholds and the ADC would display flags.



If the flight crew used the undesirable ADC flag displays to deselect the alternate static air source before the initial 11-second display period, a valid air source may have been deselected. Confusion could result when the previously unflagged normal static air source is reselected. This may also result in the ADC displaying a flag for the first 11 seconds. The affected ADC's include:

| Unit | Part No. | Applicable to serial No. | Production installed serial No. |
|---|---|---|---|
| ADC–85 | 622–8051–002, 622–8051–003 | All units | None. |
| ADC–85A | 822–0370–113, 822–0370–123, 822–0370–139, 822–0370–404, 822–0370–408 | All units | None. |
| ADC–850C | 822–0374–121, 822–0374–135, 822–0374–407, 822–0374–410 | 1FWH and below, except 1B16 through 1P6C | 1B16 through 1P6C, 1LT6 and above. |
| ADC–850F | 822–1036–406, 822–1036–418 | All Units | None. |

*What are the consequences if the condition is not corrected?* If these situations were to occur while the flight crew were making critical flight decisions, this unwarranted ADC flag could distract the crew and the lack of attention to the critical actions could result in an unsafe operating condition.

### Relevant Service Information

*What service information applies to this subject?* Rockwell has issued Service Bulletin No. 62 (ADC–85/85A/850C/850F–34–62), dated October 25, 1999.

*What are the provisions of this service bulletin?* The service bulletin contains procedures for replacing or reprogramming applicable parts or Circuit Card Assemblies on CPU Circuit Cards in the ADC and testing the modified ADC.

### The FAA's Determination and an Explanation of the Provisions of the Proposed AD

*What has FAA decided?* After examining the circumstances and reviewing all available information related to the incidents described above, we have determined that:

—The unsafe condition referenced in this document exists or could develop on airplanes equipped with either a Rockwell ADC–85, ADC–85A, ADC–850C, or ADC–850F ADC's;

—Any airplane with one of these ADC units should have the actions specified in the above service bulletin incorporated; and

—The FAA should take AD action to correct this unsafe condition.

*What does this proposed AD require?* This proposed AD would require you to:

—Remove the ADC from the airplane,

—Replace or reprogram applicable parts or Circuit Card Assemblies on the CPU Circuit Card,

—Test the modified ADC, and

—Install the modified ADC in the airplane.

### Cost Impact

*How many airplanes does this proposed AD impact?* We estimate the proposed AD would affect 245 airplanes in the U.S. registry.

*What is the cost impact of the proposed action for the affected airplanes on the U.S. Register?* We estimate that it would take about 1 workhour per airplane to remove the ADC. We estimate that it would take about 1 workhour to install the ADC in the airplane.

We estimate that it would take about 1 workhour per airplane to do the proposed installation and reprogramming and about 3 workhours per airplane to do the proposed testing at an average labor rate of $60 an hour. Parts to do this action cost up to $680. Based on the figures presented above, we estimate the total cost impact of the proposed action on U.S. operators is $254,800, or $1,040 per airplane.

For units that are still under warranty, Rockwell will provide the parts and labor at no charge.

### Regulatory Impact

*Does this proposed AD impact relations between Federal and State governments?* The proposed regulations would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. It is determined that this proposed rule would not have federalism implications under Executive Order 13132.

*Does this proposed AD involve a significant rule or regulatory action?* For the reasons discussed above, I certify that this proposed action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if put into effect will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. We have placed a copy of the draft regulatory evaluation prepared for this action in the Rules Docket. You may get a copy of it by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. FAA amends Section 39.13 by adding a new airworthiness directive (AD) to read as follows:

**Rockwell Collins, Inc.:** Docket No. 2000–CE–14–AD.

(a) *What airplanes are affected by this AD?* The following Rockwell Collins air data computers (ADC) that are installed in, but not limited to the airplanes that are listed below:

(1) Affected ADC's:

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| Unit | Part No. | Applicable to serial No. | Production installed serial No. |
|---|---|---|---|
| ADC–85 | 622–8051–002, 622–8051–003 | All Units | None. |
| ADC–85A | 822–0370–113, 822–0370–123, 822–0370–139, 822–0370–404, 822–0370–408 | All Units | None. |
| ADC–850C | 822–0374–121, 822–0374–135, 822–0374–407, 822–0374–410 | 1FWH and below, except 1B16 through 1P6C | 1B16 through 1P6C, 1LT6 and above. |
| ADC–850F | 822–1036–406, 822–1036–418 | All Units | None. |

(2) List of airplanes where the affected ADC could be installed. This is not a comprehensive list and airplanes not on this list that have the ADC installed through field approval or other methods are still affected by this AD:

| Unit | Airplane model |
|---|---|
| ADC–85/ADC–85A. | Astra AIA, Chinese Y7 and Y8, Czech LET–610, DC–8, Falcon 20F, Piaggio P–180, Raytheon King 250, 350, and 1900, Saab 340. |
| ADC–850D | Lear 60. |
| ADC–850F | Falcon 20, 50, and 50EX. |

(b) *Who must comply with this AD?* Anyone who wishes to operate any airplane on the U.S. Register that uses one of the above referenced Rockwell air data computers must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent an unwarranted display of the ADC flag when switching static air sources. This could cause the flight crew to react to this incorrect flight information and possibly result in an unsafe operating condition.

(d) *What must I do to address this problem?* To address this problem, you must accomplish the following actions:

| Actions | Compliance times | Procedures |
|---|---|---|
| (1) Remove any affected ADC from the airplane. | Within 1 year after the effective date of this AD. | Do these actions in accordance with Rockwell Collins Service Bulletin No. 62 (ADC–85/85A/850C/850F–34–62), dated October 25, 1999, the applicable Collins Computer Component Maintenance Manual, and Collins Avionics Standard Shop Practices Instruction Manual. |
| (2) As applicable, replace or reprogram parts or Circuit Card assemblies on Central Processing Unit Circuit Cards.<br>(3) Test the ADC.<br>(4) Install the modified ADC in the airplane.<br>(5) Do not install on any airplane one of the affected ADC's unless the modification and test required by paragraphs (d)(2) and (d)(3) of this AD are accomplished. | As of the effective date of this AD | Use the procedures in the referenced service information. |

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Rm 100, Wichita, Kansas 67209, approves your alternative. Send your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

**Note:** This AD applies to each airplane with a Rockwell air data computer identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. You should include in the request an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* You can contact Roger A. Souter, FAA, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Rm 100, Wichita, Kansas 67209; telephone: (316) 946–4134; facsimile: (316) 946–4407, E-mail: Roger.Souter@faa.gov.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may obtain copies of the documents referenced in this AD from Rockwell Collins, Business and Regional Systems, 400 Collins Road Northeast, Cedar Rapids, Iowa 52498; or may read this document at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on September 26, 2000.

**Michael K. Dahl,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–25153 Filed 9–29–00; 8:45 am]

BILLING CODE 4910–13–P



**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. 2000–SW–16–AD**

**RIN 2120–AA64**

## Airworthiness Directives; Bell Helicopter Textron, Inc. Model 204B Helicopters

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes adopting a new airworthiness directive (AD) for Bell Helicopter Textron, Inc. (BHTI) Model 204B helicopters. The AD would require replacing any main rotor mast assembly (mast), part number (P/N) 204–011–450–001, within 25 hours time-in-service (TIS). This proposal is prompted by the crash of a restricted category Model UH–1B helicopter due to failure of a mast, P/N 204–011–450–001. The same mast P/N is used on the Model 204B helicopters. The actions specified by the proposed AD are intended to prevent failure of the mast and subsequent loss of control of the helicopter.

**DATES:** Comments must be received on or before December 1, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2000–SW–16–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: 9-asw-adcomments@faa.gov. Comments may be inspected at the Office of the Regional Counsel between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Michael Kohner, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Certification Office, Fort Worth, Texas 76193–0170, telephone (817) 222–5447, fax (817) 222–5783.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2000–SW–16–AD." The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2000–SW–16–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

### Discussion

This document proposes adopting a new AD for BHTI Model 204B helicopters. The AD would require replacing any mast, P/N 204–011–450–001, within 25 hours time-in-service (TIS). This proposal is prompted by the crash of a restricted category Model UH–1B helicopter due to failure of a mast, P/N 204–011–450–001, as a result of an undetected fatigue crack in the stabilizer bar damper spline. Metallurgical examination of the failed part by the National Transportation Safety Board (NTSB) Materials Laboratory revealed fatigue cracking adjacent to the upper groove on the stabilizer bar damper spline. Several other cracks were noted in the same area during visual examination. The mast was reported to have accumulated 4006 hours TIS. The accident investigation also revealed that the U. S. Army removed the masts, P/N 204–011–450–001 and –005, from service in July 1984.

The FAA issued AD 2000–15–21 on August 1, 2000 (65 FR 48605, August 9, 2000), requiring removal of the mast, P/N 204–011–450–001 and –005, from service on former U.S. military restricted category helicopters. Because the same P/N mast is used on the Bell Model 204B helicopters, this AD proposes to remove the mast, P/N 204–011–450–001, from service on these model helicopters as well. The actions specified by the proposed AD are intended to prevent failure of the mast. This condition, if not corrected, could result in loss of control of the helicopter.

We have identified an unsafe condition that is likely to exist or develop on other BHTI Model helicopters of the same type design. The proposed AD would require replacing any mast, P/N 204–011–450–001, which would no longer be eligible for installation on any helicopter.

We estimate that 15 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 10 work hours per helicopter to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $8,862 per helicopter. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $141,930.

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

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## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

**Bell Helicopter Textron, Inc.:** Docket No. 2000–SW–16–AD.

*Applicability:* Model 204B helicopters with main rotor mast assembly, part number (P/N) 204–011–450–001, installed, certificated in any category.

**Note 1:** This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required within 25 hours time-in-service, unless accomplished previously.

To prevent failure of the main rotor mast assembly (mast) and subsequent loss of control of the helicopter, accomplish the following:

(a) Remove any mast, P/N 204–011–450–001, from service and replace it with an airworthy mast. Accomplishing the requirement of this paragraph constitutes terminating action for the requirements of this AD. P/N 204–011–450–001 is not eligible for installation on any helicopter.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Certification Office, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Certification Office.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

Issued in Fort Worth, Texas, on September 25, 2000.

**Eric Bries,**

*Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 00–25154 Filed 9–29–00; 8:45 am]

**BILLING CODE 4910–13–P**

## POSTAL SERVICE

### 39 CFR Parts 111 and 502

### Production, Distribution, and Use of Postal Security Devices and Information-Based Indicia

**AGENCY:** Postal Service.

**ACTION:** Proposed rule.

**SUMMARY:** The Postal Service is proposing to add new sections to the Domestic Mail Manual (DMM) and to title 39, Code of Federal Regulations (CFR), to reflect policies and regulations pertaining to all postage evidencing systems that generate information-based indicia (IBI). We originally published policies and regulations for public review and comment in the March 28, 1997, **Federal Register** (62 FR 14833). In the September 2, 1998, **Federal Register** (63 FR 46719) we published a revision of those proposed policies and regulations which included changes made in response to the comments received from the public.

This publication of proposed policies and regulations includes extensive changes. We based the changes since the 1998 publication on public comments and on the experience we gained by testing and implementing the first postage evidencing systems to generate information-based indicia (IBI). One significant proposed change is the establishment by the Postal Service of the Electronic Funds Resetting System (EFRS) to process resetting data for these systems. We will continue to process data for traditional postage meters under the Computerized Meter Resetting System (CMRS). Other proposed changes include modifying the forms of payment the Postal Service will accept, and changing the policy for refunds for unused IBI postage and for the balance remaining on a postal security device (PSD) that is withdrawn from service.

We are reissuing the policies and regulations in this proposal for public comment because we made extensive changes. We will revise the proposed IBI policies and regulations, if required, and publish them as a final rule after we review the comments.

**DATES:** Comments must be received on or before December 1, 2000.

**ADDRESSES:** Written comments should be mailed or delivered to the Manager, Postage Technology Management, USPS Headquarters, 475 L'Enfant Plaza SW, Room 8430, Washington, DC 20260–2444. Copies of all written comments will be available at this address for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Nicholas S. Stankosky, 202–268–5311.

**SUPPLEMENTARY INFORMATION:** Postage evidencing systems covered by these regulations include all those systems that generate information-based indicia (IBI) and use a postal security device (PSD). The characteristics of these systems enable the Postal Service to scan indicia to detect fraud. Core security functions, such as digital signature generation, digital signature verification, and the management of postage registers are performed by the PSD. The IBI contains a two-dimensional barcode that incorporates a cryptographic digital signature. The component of these postage evidencing systems that controls the registered user infrastructure for system authorization, system audits, remote postage resetting, and production of the indicia is called the client system.

Authorized postage evidencing systems are available from authorized, commercial product service providers. The provider's infrastructure supports user registration (formerly "licensing"), PSD management and life cycle support, and an interface between the client system and the Postal Service infrastructure. The Postal Service infrastructure supports the issuance of user registrations, updating user registration information, PSD inventory and tracking, resetting, account reconciliation, lost and stolen/irregularity monitoring, and the assignment of digital certificates.

### The Following is a Summary of the Postal Service's Position on Some General Interest Policy Issues for Postage Evidencing Systems That Generate IBI

1. Any proposed postage evidencing system that generates IBI must be submitted to the Postal Service for approval under the then current version of the postage evidencing product submission procedures. These procedures include specifics on letters of intent, nondisclosure agreements, the product service provider's concept of operations and infrastructure, documentation requirements, product submissions, and testing activities. Information pertaining to these procedures may be accessed through the USPS Web site.

2. The user must register with the Postal Service before using a postage evidencing system that generates IBI.

3. PSDs remain the property of the USPS-authorized product service provider and are available only through a lease agreement with the provider. The software component of these postage evidencing systems is licensed to the registered user by the provider.

4. Until the Postal Service has recorded sufficient data on reliability and security, the total amount of postage in a descending register, which shows the amount of postage available, will be limited to an amount established by the Postal Service.

5. Authorized providers must keep records of the distribution, maintenance, replacement, and disposal of all PSDs throughout the complete life cycle of the PSD. All PSDs must be tracked, including newly produced PSDs; active leased PSDs; and inactive unleased PSDs; and lost, stolen, and scrapped PSDs.

6. Indicia produced by these postage evidencing systems may be used to indicate postage for single-piece rate First-Class Mail (including Priority Mail), single-piece rate International Mail, Standard Mail (B); and Express Mail, Express Mail International Service; Global Priority Mail, and Priority Mail Global Guaranteed. Mail bearing the indicia is entitled to all privileges and subject to all conditions applying to these classes of mail.

7. Providers are responsible for audit functions. The Postal Service will not take over this function, but may at times participate in or review the audit process. PSDs must be audited at least once every 3 months.

8. To ensure the quality and readability of the indicia, providers must perform an analysis of the mailpieces that registered users submit every 6 months for the provider's mailpiece quality assurance program. The provider must notify the registered user and the Postal Service of any deficiencies and provide guidance to the user to correct any deficiencies that are discovered.

9. All postage downloads or settings will be made under the provisions of the Electronic Funds Resetting System (EFRS). The Postal Service will conduct periodic audits of the provider's resetting system to ensure that the system is operating correctly and that postal revenues are protected.

10. The Postal Service may physically inspect a PSD if it has a reason to suspect a security problem.

11. The Postal Service will provide refunds through the product service providers, in accordance with Postal Service procedures, for printed but unused postage and for the full postage value balance remaining on a PSD that is withdrawn from service.

12. The provider must supply registered users with modifications reflecting rate changes and must implement new rates as of the effective date for the new rates established by the Postal Service.

13. There are provisions in the regulations for the correction of postage and dates. For date correction, the facing identification mark (FIM) and two-dimensional barcode will be suppressed; for postage correction, the FIM will be suppressed.

14. The provider will make the registered user aware of the applicable Postal Service regulations pertaining to use of the information-based indicia and of the postage evidencing system that generates them through cautionary statements in the system software, system documentation, and product labeling, as appropriate.

### List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comments on the following proposed amendments to the Domestic Mail Manual, incorporated by reference in the Code of Federal Regulations. See 39 CFR part 111.

## PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

**Authority:** 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Add the following sections to the Domestic Mail Manual as set forth below:

*P050 Information-Based Indicia (IBI)*

1.0 BASIC INFORMATION

**1.1 Description of Postage Evidencing Systems that Generate Information-Based Indicia (IBI)**

Postage evidencing systems that generate information-based indicia (IBI) are secure systems that print USPS-authorized, digitally signed indicia to show payment of postage. These systems include as a primary component a postal security device (PSD) that performs core security functions such as digital signature generation and verification, as well as the management of postage registers. The component of these postage evidencing systems that controls the registered user infrastructure for system authorization, system audits, remote postage resetting, and production of the indicia is called the client system. The PSD and the client system interact to generate the indicia. Indicia consist of a USPS-approved two-dimensional barcode and certain human-readable information. Authorized postage evidencing systems are available from authorized, commercial product service providers. Avoiding the payment of postage by misusing a postage evidencing system is punishable by law.

**1.2 Product Service Provider Responsibilities**

Postal security devices (PSDs) remain the property of the USPS-authorized product service provider and are available only through a lease agreement with the provider. The software component of these postage evidencing systems is licensed to the registered user by the provider. The Postal Service holds providers responsible for the control, operation, distribution, maintenance, and replacement of the PSD throughout the entire life cycle of the PSD. The provider is also responsible for the secure disposal or destruction of the PSD at the end of its useful life.

**1.3 Product Service Providers**

Postage evidencing systems that generate IBI are available from authorized providers. The following providers have been approved as of September 2000:

E-Stamp Corporation, 2051 Stierlin Court, Mountain View, CA 94043–4655, www.estamp.com

Neopost Online, 3400 Bridge Parkway, Suite 201, Redwood City, CA 94065–1168, www.neopostonline.com

Pitney Bowes, Inc., 40 Lindeman Drive, Trumbull, CT 06611–4785, www.pitneybowes.com/soho/

Stamps.com, 3420 Ocean Park Boulevard, Suite 1040, Santa Monica, CA 90405–3035, www.stamps.com

**1.4 Possession**

No one other than an authorized product service provider may possess or use a PSD without a valid USPS-issued postage evidencing system user registration and a valid lease agreement with the provider. Any person in possession of a PSD without meeting these conditions must immediately surrender it to the provider or to the USPS.

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### 1.5 Classes of Mail

Information-based indicia (IBI) produced by an authorized postage evidencing system may be used to indicate postage for single-piece rate First-Class Mail (including Priority Mail), single-piece rate International Mail, and single-piece rate Standard Mail (B); also Express Mail, Express Mail Military Service, Express Mail International Service, Global Priority Mail, and Priority Mail Global Guaranteed. The indicia can be used to pay for special services. Mail prepared using such a system is entitled to all privileges and subject to all conditions that apply to the various mail classes and services.

### 1.6 Amount of Postage

The value of the indicia affixed to each mailpiece must equal or exceed the exact amount due for the piece when mailed. Refunds for overpayment must meet the standards in P014.

### 1.7 Reply Postage

A postage evidencing system that generates IBI may be used to prepare prepaid reply postage for the following domestic mail classes: All single-piece rate First-Class Mail (including Priority Mail), Standard Mail (B), and Express Mail. The prepaid reply mail must meet the following conditions:

a. The postage amount in the indicium must be enough to prepay the postage in full.

b. Indicium showing postage evidencing may be printed directly on the mailpiece or on a label and must be applied to a mailpiece in accordance with the directions in 4.4. An applied label must adhere well enough that it cannot be removed in one piece.

c. The mailpiece must be pre-addressed for return to the registered user.

d. If the postage evidencing system used to prepare the return postage indicium has the capability to print destination addresses for the given size and class of mailpiece, the address for returning the mailpiece to the registered user must be prepared using that system.

e. For those postage evidencing systems without the capability to print an address for the given class or size of mailpiece, the address side of reply mail may be prepared by any photographic, mechanical, or electronic process or combination of such processes (other than handwriting, typewriting, or hand stamping).

f. The address side of the mailpiece must follow the style and content of the example below. Nothing may be added except a return address and facing identification mark (FIM).

g. If the reply mailpiece is letter-sized First-Class Mail, a FIM D is required when the indicium for reply postage is printed directly on the mailpiece.

h. Prepaid reply mail is delivered only to the address of the registered user. If the address is altered, the mail is held for postage.

i. IBI used to prepay reply postage must show the date the indicium was printed by the registered user, and must include the words "REPLY POSTAGE".

IBI placed here
with date postage was printed
and the words "REPLY POSTAGE"

NO POSTAGE STAMP NECESSARY
POSTAGE HAS BEEN PAID BY

Name of the Registered IBI User
Street Address for Registered User
City, State, 5 Digit ZIP Code of Registered User 12345

## 2.0 USER REGISTRATION

### 2.1 Procedures

The user must register with the Postal Service before using a postage evidencing system that generates IBI. An applicant must apply for a user registration through the provider and submit to the provider all data required for a registration to lease and use postage evidencing systems. The application must show the post office where the applicant intends to deposit the mail. This is called the registration post office. An application for a user registration is processed through the Centralized Registration System (CRS), formerly the Centralized Meter Licensing System. The provider electronically transmits the required information to CRS in the USPS-specified format. There is no fee for the application or user registration. After approving an application, the Postal Service issues a postage evidencing system user registration, and notifies the appropriate provider. A single user registration covers all postage evidencing systems for the same applicant for the same post office, but a separate application must be submitted for each post office where the applicant intends to deposit mail. A single PSD can be registered to only one post office at any one time; it must be reauthorized by the provider for use at a different post office.

### 2.2 Registered User's Agreement

By submitting an application for a user registration, the applicant agrees that the registration may be revoked immediately and that the postage evidencing system may be withdrawn from service by the provider or the USPS for the following reasons:

a. The postage evidencing system is used in any fraudulent or unlawful scheme or enterprise.

b. The postage evidencing system is not used for 12 consecutive months.

c. The registered user fails to exercise sufficient control of the postage evidencing system or fails to comply with the standards for system care or use.

d. The postage evidencing system is used outside the United States, its territories or its possessions, except as specifically authorized by these regulations or by the manager of Postage Technology Management, USPS Headquarters.

e. IBI mail is deposited at other than the registration post office (except as permitted under 5.0 or D072).

f. The registered user fails to forward mailpieces to the provider for quality assurance as required in 2.6.h.



### 2.3 Refusal to Register a User

The Postal Service notifies both the applicant and the provider when an application for user registration is refused. The notification is in writing and is sent certified mail, return receipt requested. Any applicant refused a user registration may appeal the decision under 2.5. The Postal Service may refuse to register a user for the following reasons:

a. The applicant submitted false information on the user registration application.

b. The applicant violated any standard for the care or use of a PSD, postage evidencing system, information-based indicia, or postage meter that resulted in the revocation of that applicant's user registration or postage meter license within 5 years preceding submission of the application.

c. There is sufficient reason to believe that the postage evidencing system is to be used in violation of Postal Service regulations.

### 2.4 Revocation of a User Registration

The Postal Service notifies the registered user of any revocation. The Postal Service also notifies the registered user's provider of the revocation so that the provider can cancel the lease agreement and withdraw the postage evidencing system from service. The notification is in writing and is sent certified mail, return receipt requested. Revocation takes effect 10 calendar days after the registered user receives or refuses to receive the revocation notice unless, within that time, the registered user appeals the decision under 2.5. A user registration is subject to revocation for any of the following reasons:

a. The postage evidencing system is used for any illegal scheme or enterprise or there is probable cause to believe that the system is to be used in violation of the applicable standards.

b. The user registration does not have a postage evidencing system applied against it or the registered user's postage evidencing system has not been reset within the last 12 months.

c. Sufficient control of the postage evidencing system is not exercised or the standards for its care or use are not followed.

d. The postage evidencing system is kept or used outside the customs territory of the United States or those U.S. territories and possessions where the Postal Service operates, except as specified in 2.11 or 2.12.

e. IBI mail is deposited at other than the registration post office (except as permitted under 5.0 or D072).

f. The registered user fails to forward mailpieces to the provider for quality assurance as required in 2.6.h.

### 2.5 Appeal Process

An applicant who is refused a user registration, or a registered user whose registration is revoked, may file a written appeal with the manager of Postage Technology Management, USPS Headquarters, within 10 calendar days after receiving or refusing to receive notification of the decision.

### 2.6 Registered User's Responsibilities

The registered user's responsibilities for the care and use of a postage evidencing system that generates IBI include the following:

a. A PSD that is delivered to a registered user must remain in the registered user's custody until it is returned to the authorized provider, or to the Postal Service, or is removed by the U.S. Postal Inspection Service.

b. Some postage evidencing systems maintain a log file that automatically records all transactions relating to indicia creation, funds transfer (including postage value download), and postal security device audits which is transmitted automatically to the provider by the system with each connection. The registered user may not manipulate these log files to reflect an inaccurate record of transactions or prevent the transmission of these log files to the provider.

c. The registered user must, upon request, make immediately available for review and audit by the provider or by the Postal Service any PSD in the user's custody and the corresponding transaction records.

d. The registered user must reset the PSD at least once every 3 months to meet provider audit and examination requirements. A zero value reset will meet this requirement.

e. The registered user must update information with the provider whenever there is any change in the user's name, address, telephone number, location of the PSD, registration post office, or any other required user registration information. The Postal Service will issue a revised user registration based on the transmission of updated information from the provider.

f. The registered user must report a misregistering or otherwise defective PSD to the provider under 2.8, and must ensure that the defective PSD is not used. Anyone in possession of a misregistering or otherwise defective PSD must return it to the provider within 3 business days.

g. For postage evidencing systems that generate IBI and access the USPS Address Management System (AMS) CD–ROM, the registered user must maintain address quality by ensuring the CD–ROM is updated at least once every 6 months.

h. The registered user must forward a mailpiece with an indicium produced by the postage evidencing system to the provider for quality assurance when the system is installed and at least once every 6 months thereafter, in accordance with provider directions.

i. The registered user must enter into a signed lease agreement with the provider that includes a financial agreement for resetting the PSD with postage and the Postage Payment Agreement. The Postal Service is not a party to the lease agreement, except to the extent that it may enforce the Postage Payment Agreement.

j. The registered user must ensure that the cautionary information placed by the provider in system documentation, on the opening screens at system start-up, or on labels attached to the PSD or its housing, is not removed or destroyed while the postage evidencing system is in the registered user's possession. The cautionary information contains basic reminders on ownership and use of the PSD, warnings against system tampering or misuse resulting in non-payment of postage owed, and the penalties for such system misuse. Postage evidencing systems without this cautionary information shall not be authorized for use.

### 2.7 Custody of Suspect PSDs

The Postal Service may conduct unannounced, on-site examinations of PSDs reasonably suspected of being manipulated or otherwise defective. A

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postal inspector also may immediately withdraw a suspect PSD from service for physical and/or laboratory examination. The inspector withdrawing a suspect PSD issues the registered user a receipt for the PSD; forwards a copy to the provider; and, if necessary, assists in obtaining a replacement PSD. Where possible, the Inspection Service gives advance notice to the provider that a PSD is to be inspected. Unless there is reason to believe that the PSD is fraudulently set with postage, existing postage in the PSD is refunded to the registered user, in accordance with established refund procedures, when it is withdrawn from service.

**2.8 Defective PSD**

The registered user must immediately report any defective PSD to the provider. The provider must retrieve any defective PSD in a user's possession within 3 business days of notification by the registered user, and must notify the manager of Postage Technology Management, USPS Headquarters, immediately. A faulty PSD may not be used under any circumstance. The provider supplies the registered user with a replacement PSD only if the faulty PSD is in the provider's possession.

**2.9 Missing PSD**

The registered user must immediately report to the provider the loss or theft of any PSD or the recovery of any missing PSD. Reports must include the postal security device identification number of the PSD; the date, location, and details of the loss, theft, or recovery; and a copy of any police report. The provider will report all details of the incident to the manager of Postage Technology Management, USPS Headquarters.

**2.10 Returning a PSD**

A registered user in possession of a faulty or misregistering PSD, or who no longer wants to keep a PSD, must return the PSD to the provider to be withdrawn from service. PSDs must be shipped by Priority Mail unless the manager of Postage Technology Management, USPS Headquarters, gives written permission to ship at another rate or special service.

**2.11 Approval for Use of Postage Evidencing Systems at Military Post Offices**

A person authorized by the Department of Defense to use the services of an overseas military post office, such as an APO or FPO, is allowed to use a USPS-approved postage evidencing system that generates IBI in accordance with the same regulations that apply to domestic users. For such users, the APO or FPO will be designated as the registration post office on their user registration. These users must deposit the mail prepared with their system at the registration post office.

**2.12 Approval for Use of Postage Evidencing Systems Outside the Country**

Under certain conditions, with specific approval from the manager of Postage Technology Management, USPS Headquarters, registered users (other than those with access to an overseas military post office) may use postage evidencing systems that generate IBI outside the customs territory of the United States to print evidence of U.S. postage. The procedures and conditions are as follows:

a. The potential users must maintain a permanent, established business address in the United States. Any exceptions must be specifically approved in writing by the manager of Postage Technology Management, USPS Headquarters (see G043).

b. All registered users who use a USPS-approved postage evidencing system outside the customs territory of the United States are subject to all Postal Service regulations and U.S. statutes pertaining to mail, mail fraud, and misuse of postage evidencing systems.

c. All postage evidencing systems authorized by the USPS for use in foreign locations must have enhanced security features. Only those systems specifically approved in writing by the manager of Postage Technology Management, USPS Headquarters, may be used outside the customs territory of the U.S.

d. Potential users must submit all data required for the application for a registration to lease and use postage evidencing systems to the provider. The provider will annotate the application to state that it is for the foreign use of a U.S. postage evidencing system and show where the system is to be located. The provider must submit the application to the manager of Postage Technology Management, USPS Headquarters, for review and approval. Once an application is approved, Postage Technology Management will designate the registration post office and notify the provider and the registered user. Multiple foreign postage evidencing systems for the same registered user at the same registration post office may be covered by one foreign user registration. Mailers who currently have a user registration must apply for a separate foreign user registration to participate in this program.

e. The provider selected by the registered user must agree in writing to all terms and conditions established by the Postal Service pertaining to the distribution of U.S. postage evidencing systems outside of the United States.

Once the postage evidencing system is installed, the provider must provide the information required for Form 3601–C, Postage Evidencing System Activity Report, and submit it directly to the manager of Postage Technology Management, USPS Headquarters (see G043).

f. Mail to which an IBI is applied as postage evidencing must use domestic U.S. postage and must be entered at the registration post office.

3.0 SETTING

**3.1 Initialization and Authorization of the PSD**

Before the registered user can print evidence of postage, the PSD must be initialized and authorized by the provider. The initialization process installs PSD-specific information that does not change over the life cycle of the PSD. The authorization process is the setting of user-specific information. The PSD is reauthorized by the provider when certain user-specific information changes. Settings are made in accordance with the provisions of the USPS Electronic Funds Resetting System (EFRS).

**3.2 Relocation of Registered User**

If a registered user changes the post office at which IBI mail is to be deposited, the provider must reauthorize the PSD for the new registration post office. The user must notify the provider and must be registered at the new registration post office before the provider can reauthorize the PSD.

**3.3 Payment for Postage**

The Postal Service will accept payment only in the following forms: Automated Clearinghouse (ACH) debit and credit card.

**3.4 Resetting**

To reset a PSD the following conditions must be met:

a. The registered user shall initiate payment to the Postal Service sufficient to cover the desired postage increment before requesting a postage value download to reset the PSD.

b. As part of the resetting procedure, the registered user must provide identifying information and PSD audit data as required by the Postal Service and in accordance with the provider's resetting specifications. Before completing the PSD resetting, the provider must verify the identifying data, authenticate the registered user, conduct the postage evidencing system audit, and ascertain whether payment to the Postal Service sufficient to cover the requested postage value download was initiated by the registered user.

c. The provider will supply the registered user with documentation of the reset transaction and the balance on the PSD.

**3.5 Postage Refunds**

The Postal Service provides refunds for the entire postage value balance remaining on a PSD that is withdrawn from service and is in the possession of the provider. Refunds are requested and paid through the provider. Refunds for postage already printed onto an envelope or label are made in accordance with P014. Postage losses due to malfunctions are the responsibility of the provider.

**3.6 Postage Adjustment for Faulty or Misregistering PSD**

If the registered user requests a postage adjustment for a faulty or misregistering PSD, then the PSD must be withdrawn from service and must be in the possession of the provider for examination. The provider will examine the PSD in comparison with the data from the registered user's log files. After examining a PSD withdrawn from service for apparent faulty operation affecting the ascending or descending registers, the provider must report the malfunction to the manager of Postage Technology Management, USPS Headquarters. The report must contain all applicable documentation (including a copy of the registered user's log files) and a recommendation for the appropriate postage adjustment. At the same time the report is made to the Postal Service, the provider must notify the registered user of the proposed postage adjustment. A registered user may appeal a postage adjustment to the manager of Postage Technology Management, USPS Headquarters, within 60 calendar days of the date that the provider submitted the postage adjustment recommendation to the Postal Service.

**3.7 Periodic Examinations**

The registered user must reset the PSD at least once every 3 months. A zero-value reset meets this requirement. The Postal Service reserves the right to examine PSDs by remote access or otherwise.



**3.8 Amount of Postage Available**

The descending register of the PSD, which shows the amount of postage remaining, is programmed not to exceed a specified amount established by the Postal Service, for a given registered user at any time.

4.0 INDICIA

**4.1 Designs**

The indicia designs (types, sizes, and styles) must be those that the provider specified when the postage evidencing system was approved by the Postal Service for production and distribution (see Exhibit 4.1).

[Exhibit 4.1, which shows all approved indicia designs, will be included when these regulations are published in final form in the Domestic Mail Manual.]

* * * * *

**4.2 Legibility**

The indicia must be legible. Illegible indicia are not acceptable for the payment of postage. Should there be a need to place multiple indicia on an envelope (*e.g.*, for redate and/or postage correction) the indicia must not overlap each other. The address and POSTNET barcode must meet the specifications listed in C840. Reflectance measurements of the indicia and the background material must meet the standards in C840.5.

**4.3 On an Adhesive Label**

A label used to apply information-based indicia to a mailpiece for postage evidencing must be approved by the manager of Postage Technology Management, USPS Headquarters. Failure to use a USPS-approved label may result in revocation of the user registration for the postage evidencing system. The label must meet the following requirements:

a. The label must be a pressure-sensitive, permanent label. The label is subject to the corresponding standards in C810.6.2 for minimum peel adhesion. The applied label must adhere well enough that it cannot be removed in one piece. A face stock/liner, or "sandwich," label must not be used for printing information-based indicia.

b. The label must meet the reflectance requirements in C840.5.0.

c. The label must be large enough to contain the entire information-based indicia.

d. Information-based indicia printed on a label must be the same as the indicia approved by the manager of Postage Technology Management for printing directly on an envelope. The label must not include any image or text other than that required by the IBI performance criteria or as required or recommended by Postal Service regulation.

e. For labels applied to standard letter-sized envelopes and postcards sent as First-Class Mail, the label must have fluorescent striping that meets the following requirements:

(1) A stripe along the right side (leading edge) of the label that is ¼ inch wide and extends a minimum of ½ inch and a maximum of 1½ inches from the top of the label.

(2) A stripe along the top edge of the label that is ¼ inch wide and extends a minimum of ½ inch and a maximum of 1½ inches from the right edge of the label.

(3) All stripes must have a minimum fluorescent emission intensity of at least 20 phosphor meter units (PMU), with a maximum of 70 PMU. The visible color of the fluorescent tagging may be any color that meets the fluorescence requirements.

(4) The fluorescent tagging shall exhibit no noticeable change (*i.e.*, no more than 10 percent) in its emission when exposed to elevated temperature and/or high humidity conditions.

f. The label must be placed on the envelope such that the position of the indicia meets the requirements in 4.4.

g. If the label is applied to an envelope that already has a FIM, then the existing FIM cannot be covered by the label.

**4.4 Position**

The indicia must be printed or applied in the upper right corner of the envelope. The indicia must be at least ¼ inch from the right edge of the mailpiece and ¼ inch from the top edge of the mailpiece. The barcode in the indicia must be horizontally oriented. If a FIM is printed with the indicia, the position of the FIM must meet the requirements in C100.5.0. The indicia must not infringe on the areas reserved for the FIM, POSTNET barcode, or optical character reader (OCR) clear zone.

**4.5 Content and Format**

The boundaries of the indicium are defined by the right-hand edge of the envelope, the top edge of the envelope, the bottom edge of the two-dimensional barcode or any indicium element below the barcode, and the left-most edge of the two-dimensional barcode or any indicium element to the left of the barcode. A ½ inch clear zone, within which nothing shall be printed by the postage evidencing system, must surround the indicium boundaries to

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the left of and below all elements of the indicium.

The manager of Postage Technology Management, USPS Headquarters, must approve the contents and format of all indicia that will be produced by a postage evidencing system. This approval shall include all elements in the indicium required by the IBI performance criteria and/or Postal Service regulations and applies to the entire area within the indicium boundaries. The USPS-approved indicia supplied by the provider consist of human-readable information and two-dimensional barcoded information. For the contents of indicia used for prepaid reply mail, see 1.7; for the contents of redate indicia, see 4.8; and for the contents of postage correction indicia, see 4.9. The contents of other indicia is as follows:

a. Unless otherwise approved by the manager of Postage Technology Management, USPS Headquarters, the required human-readable information must show, at a minimum, the city, state, and 5-digit ZIP Code of the registration post office; the postal security device ID; date of mailing; endorsement or mail class; the words "US Postage"; and the postage amount. The Arial font must be used for this information. The postage amount must use at least 10-point type size. For all other required information, the type size must be at least 8 points. The mail class or endorsement, the postage amount, and the words "US Postage" must be in bold type and all letters must be capital letters. The remaining required information (city, state and 5-digit ZIP Code, the date, and the postal security device ID) need not be capitalized or bold. The type size used for all other information printed in the indicia must be no greater than 8 points and must not be in bold type.

b. As an alternative to the city, state, and 5-digit ZIP Code of the registration post office, the indicia may show the ZIP Code rather than the city and state designation. In this case, the words "Mailed From ZIP Code" and the ZIP Code of the registration post office may appear in place of the city and state, respectively.

c. When it is necessary to print multiple indicia on a given mailpiece, the human-readable information showing the registration post office must be included in each.

d. The requirements for the data elements of the two-dimensional barcode are found in the performance criteria for the given postage evidencing system.

**4.6 Complete Date**

The month, day, and year must be shown in human-readable form in the indicia. The year must be represented by four digits.

**4.7 Date Accuracy**

The date of mailing in the indicium must be the actual date of deposit, except that mail deposited in a collection box after the day's last scheduled collection may bear the actual date of deposit or the date of the next scheduled collection.

If the registered user knows the mail will not be tendered to the Postal Service on the date of mailing shown in the indicium, the user should use a date correction indicium (see 4.8) or have the postage evidencing system advance the date and print the intended date of deposit in the indicium.

**4.8 Date Correction**

If date correction is required, indicia showing only the actual date of mailing and the word "REDATE" instead of the postage amount shall be used. On letter-sized mail, date correction indicia must be placed on the nonaddress side at least ¾ inch from the bottom edge of the mailpiece and not on an envelope flap. On flats or parcels, it must be placed next to the original indicium. Date correction indicia must not include the FIM or the two-dimensional barcode. The redate indicium may be printed on a USPS-approved label instead of directly on the mailpiece.

**4.9 Postage Correction**

Indicia for additional postage may be placed on a shortpaid mailpiece to correct postage. On letter-size mail, correction indicia must be printed on the nonaddress side at least ¾ inch from the bottom edge of the mailpiece and not on an envelope flap. On flats or parcels, it must be placed next to the original indicium. The postage correction indicium must contain all of the elements required for the indicium in 4.5 except for the destination delivery point. The word "CORRECTION" must be added to the human readable information. Postage correction indicia must not include the FIM. To meet two-dimensional barcode readability requirements, postage correction indicia may be printed on a USPS-approved label instead of directly on the mailpiece.

**4.10 Use of Indicia**

Valid information-based indicia produced by postage evidencing systems shall be used only to show evidence of payment for postage or postal services. In any illustration of information-based indicia, or for any other non-postal use, the two-dimensional barcode shall be rendered unreadable, for example by printing "VOID" or similar text across the barcode.

**4.11 Other Printed Matter**

An approved indicium shall include within its boundaries only postal markings and text required or recommended by Postal Service regulation, except that the indicium may identify the product service provider. Other printed matter may be printed only outside the boundaries of the clear zone (see 4.5) surrounding the indicium. Such printed matter may not be obscene, defamatory of any person or group, or deceptive, and it must not advocate any unlawful action.

**4.12 Postal Markings**

Postal markings related to the mail class, subclass, or category of mail are required in the indicia.

**4.13 Facing Identification Mark (FIM)**

The facing identification mark (FIM) serves to orient and separate certain types of First-Class Mail during the facing and canceling process. Letter-sized First-Class Mail with the IBI printed directly on the envelope must bear a USPS-approved FIM D unless it is courtesy reply mail. The FIM must meet the dimensions, print quality, and placement specified in the C100.5.

5.0 MAILINGS

**5.1 Preparation of IBI Mail**

Mail is subject to the preparation standards that apply to the class of mail and rate claimed.

**5.2 Where to Deposit**

Single-piece rate First-Class Mail (including Priority Mail), Standard Mail (B), and expedited mail may be deposited in any street collection box or other place where mail is accepted and that is served by the registration post office. International mail weighing less than 16 ounces may be deposited in any street collection box in accordance with the regulations for domestic mail. Limited quantities (*i.e.*, a handful) of single-piece rate First-Class Mail including Priority Mail, expedited mail, and international mail may be deposited at offices other than the registration post office to expedite dispatch, with the following exceptions:

a. Certain Special Postal Services require that the mail be presented directly to a Postal Service employee (see S900).

b. A registered user authorized to use an APO or FPO as the registration post office shall deposit mail only at the registration APO or FPO.

c. All other registered users who have Postal Service approval to use a postage evidencing system that generates IBI outside the country shall deposit mail only at their domestic registration post office.

d. International mail that requires a customs declaration, or that weighs 16 ounces or over, must be given directly to a Postal Service employee at the registration post office or other location designated by the postmaster. Otherwise, the mail will be returned to the sender for proper entry and acceptance. See the International Mail Manual for additional information.



6.0 AUTHORIZATION TO PRODUCE AND DISTRIBUTE POSTAGE EVIDENCING SYSTEMS THAT GENERATE INFORMATION-BASED INDICIA (IBI)

Title 39, Code of Federal Regulations, part 502, contains information concerning authorization to produce and distribute postage evidencing systems that generate information-based indicia (IBI), the suspension and revocation of such authorization; performance standards, test plans, testing, and approval; required production security measures; and standards for distribution and maintenance. Further information may be obtained from the manager of Postage Technology Management, USPS Headquarters.

**List of Subjects in 39 CFR Part 502**

Administrative practice and procedure, Postal Service.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comments on the following proposed amendments to the Code of Federal Regulations. For the reasons set out in this document, the Postal Service proposes to add 39 CFR part 502 as follows:

## PART 502—AUTHORITY TO PRODUCE AND DISTRIBUTE POSTAGE EVIDENCING SYSTEMS THAT GENERATE INFORMATION—BASED INDICIA (IBI)

Sec.

502.1 Applicability of regulations.
502.2 Description of postage evidencing systems that generate information-based indicia (IBI).
502.3 Definition and use of PC Postage trademark.
502.4 Product service provider qualifications.
502.5 Provider authorization.
502.6 Changes in ownership or control.
502.7 Burden of proof standard.
502.8 Suspension and revocation of authorization.
502.9 Information-based indicia program (IBIP) performance criteria.
502.10 Product submission procedures and testing.
502.11 Security testing.
502.12 Postage evidencing system approval.
502.13 Conditions for approval.
502.14 Suspension and revocation of approval.
502.15 Reporting.
502.16 Administrative sanction on reporting.
502.17 Materials and workmanship.
502.18 Destruction of information-based indicia.
502.19 Inspection of new postage evidencing systems.
502.20 Distribution facilities.
502.21 Distribution controls.
502.22 Administrative sanction.
502.23 Postage evidencing system maintenance.
502.24 Access or changes to secure components.
502.25 Inspection of postal security devices (PSDs) in use.
502.26 PSDs not located.
502.27 Electronic Funds Resetting System (EFRS).
502.28 Indicia quality assurance.
502.29 Refunds for postage evidencing systems that generate information-based indicia.
502.30 Registered user information.
502.31 Intellectual Property.

**Authority:** 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 410, 2601, 2605; Inspector General Act of 1978, as amended (Pub. L. 95–452, as amended), 5 U.S.C. App 3.

**§ 502.1 Applicability of regulations.**

The regulations in this section apply to all postage evidencing systems that print information-based indicia (IBI) to show payment of postage.

**§ 502.2 Description of postage evidencing systems that generate information-based indicia (IBI).**

(a) Postage evidencing systems that generate IBI are secure systems that print USPS-authorized, digitally-signed indicia as evidence of payment of postage. Indicia consist of a USPS-approved two-dimensional barcode and certain human-readable information. Authorized postage evidencing systems are available from authorized, commercial product service providers.

(b) These postage evidencing systems include as a primary component a postal security device (PSD) that performs core security functions such as digital signature generation and verification, as well as the management of postage registers. The component of these postage evidencing systems that controls the registered user infrastructure for system authorization, system audits, remote postage resetting, and production of the indicia is called the client system. The PSD and the client system interact to generate the indicia. The PSD is remotely set with postage value and requires the user to initiate payment to the Postal Service sufficient to cover the desired postage increment before initial setting or resetting.

**§ 502.3 Definition and use of PC Postage trademark.**

(a) "PC Postage" is the Postal Service trademark for Postal Service-approved, secure, postage evidencing systems that generate information-based indicia and allow registered users to purchase and print postage using their personal computers and the Internet.

(b) Use of the PC Postage trademark on USPS-approved postage evidencing systems and other products must be specifically approved by the manager of Postage Technology Management (PTM), USPS Headquarters. The provider must sign a trademark licensing agreement with the Postal Service for each product the Postal Service authorizes to use the PC Postage trademark.

**§ 502.4 Product service provider qualifications.**

For authorization from the Postal Service to produce and/or lease PSDs and postage evidencing systems that generate information-based indicia (IBI) for use by registered users under Domestic Mail Manual P050, a potential provider must:

(a) Satisfy the Postal Service of its integrity and fiscal responsibility.

(b) Obtain approval of at least one postage evidencing system incorporating all the features and safeguards specified in § 502.9, in accordance with the procedures outlined in § 502.10.

(c) Have, or establish, and keep under its supervision and control adequate production facilities suitable to carry out the provisions of §§ 502.17 through 502.19, to the satisfaction of the Postal Service. The production facilities must be subject to unannounced inspection by representatives of the Postal Service. If the production facilities are established by the provider outside the customs territory of the United States, the provider shall be responsible for all costs incurred by the Postal Service to conduct the inspections.

(d) Have, or establish, and keep under its supervision and control adequate facilities for the control, distribution, and maintenance of postage evidencing systems that generate IBI, and their

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replacement or secure disposal or destruction when necessary.

**§ 502.5 Provider authorization.**

An applicant meeting the qualifications in § 502.4 may be authorized in writing by the manager of Postage Technology Management, USPS Headquarters, as a provider of postage evidencing systems that generate IBI and will be allowed to lease authorized PSDs and systems to users registered by the Postal Service. The written authorization defines the conditions under which the postage evidencing system may be marketed and distributed.

**§ 502.6 Changes in ownership or control.**

Any person, entity, or concern wanting to acquire ownership or control of a provider of an authorized postage evidencing system must provide the Postal Service with satisfactory evidence of that person's, entity's, or concern's integrity and financial responsibility.

**§ 502.7 Burden of proof standard.**

The burden of proof is on the Postal Service in adjudications of suspensions and revocations under § 502.8 and § 502.14 and administrative sanctions under § 502.16 and § 502.22. Except as otherwise indicated in those sections, the standard of proof shall be the preponderance-of-evidence standard.

**§ 502.8 Suspension and revocation of authorization.**

(a) The Postal Service may suspend and/or revoke authorization to provide and/or distribute any or all of a provider's postage evidencing systems if the provider engages in any unlawful scheme or enterprise, fails to comply with any provision in this part 502, or fails to implement instructions issued in accordance with any final decision issued by the Postal Service within its authority over the IBI program.

(b) The decision to suspend or revoke a provider's authorization shall be based on the nature and circumstances of the violation (*e.g.*, whether the violation was willful, whether the provider voluntarily admitted to the violation, whether the provider cooperated with the Postal Service, or whether the provider implemented successful remedial measures) and on the provider's performance history. Before determining whether a provider's authorization to produce and/or distribute postage evidencing systems should be revoked, the procedures in paragraph (c) of this section shall be followed.

(c) Suspension in all cases shall be as follows:

(1) Upon determination by the Postal Service that a provider is in violation of the provisions in this part 502, the Postal Service shall issue a written notice of proposed suspension citing deficiencies for which suspension of authorization to produce and/or distribute a specific postage evidencing system, or a family of system models, may be imposed under paragraph (c)(2) of this section. The notification is in writing and is sent certified mail, return receipt requested. Except in cases of willful violation, the provider shall be given an opportunity to correct deficiencies and achieve compliance with all requirements within a time limit, determined by the Postal Service, corresponding to the potential risk to postal revenue.

(2) In cases of willful violation, or if the Postal Service determines that the provider has failed to correct cited deficiencies within the specified time limit, the Postal Service shall issue a written notice setting forth the facts and reasons for the decision to suspend and the effective date if a written defense is not presented as provided in paragraph (d) of this section. The notification is in writing and is sent certified mail, return receipt requested.

(3) If, upon consideration of the defense as provided in paragraph (e) of this section, the Postal Service deems that the suspension is warranted, the suspension shall remain in effect for up to 90 days unless withdrawn by the Postal Service, as provided in paragraph (c)(4)(iii) of this section.

(4) At the end of the 90-day suspension, the Postal Service may:

(i) Extend the suspension to allow more time for investigation or to allow the provider to correct the problem;

(ii) Make a determination to revoke authorization to provide and/or distribute the provider's postage evidencing systems that generate IBI in part or in whole; or

(iii) Withdraw the suspension based on identification and implementation of a satisfactory solution to the problem. Provider suspensions may be withdrawn before the end of the 90-day period if the Postal Service determines that the provider's solution and implementation are satisfactory.

(d) The provider may present the Postal Service with a written defense to any suspension or revocation determination within 30 calendar days after receiving or refusing to receive the written notice, unless a shorter period is deemed necessary. The defense must include all supporting evidence and specify the reasons for which the order should not be imposed.

(e) After receipt and consideration of the defense, the Postal Service shall advise the provider of the decision and the facts and reasons for it. The decision shall be effective on receipt unless it provides otherwise. The decision shall also advise the provider that it may appeal that determination within 30 calendar days after the provider receives or refuses to receive written notification of the decision, unless a shorter period is deemed necessary, as specified therein. The appeal must include all supporting evidence and specify the reasons the provider believes that the decision is erroneous.

(f) An order or final decision under this section does not preclude any other criminal or civil statutory, common law, or administrative remedy that is available by law to the Postal Service, the United States, or any other person or concern.

**§ 502.9 Information-based indicia program (IBIP) performance criteria.**

(a) The performance criteria applicable to the given postage evidencing system relate to the data contents and format of the indicia, the PSD (which implements digital signature technology for the creation and verification of digital signatures), the client system (which supports the creation of the indicia and the interface with the PSD and the provider), and cryptographic key management.

(b) The information-based indicia program (IBIP) performance criteria describe required system elements that include the provider infrastructure and the registered user infrastructure, and their interface to the Postal Service infrastructure. The Postal Service infrastructure supports user registration, postage evidencing system audit, postage resetting, total population management, key management support, financial reconciliation, PSD life cycle tracking, lost and stolen/irregularity management functions and other reporting. The provider infrastructure will support all IBIP functions. The registered user infrastructure will consist of the PSD and a client system. The Postal Service will evaluate and test postage evidencing systems for compliance with this infrastructure. Contact the manager of Postage Technology Management, USPS Headquarters for these criteria.

**§ 502.10 Product submission procedures and testing.**

(a) Each postage evidencing system that generates IBI is submitted for Postal Service approval and will be tested and evaluated in accordance with the requirements and provisions of the most current postage evidencing product submission procedures. Particular attention must be given to the requirement to submit identical postage evidencing systems simultaneously to the Postal Service and to a laboratory accredited under the National Voluntary Laboratory Accreditation Program (NVLAP) for FIPS 140–1 certification. Contact the manager of Postage Technology Management, USPS Headquarters for these requirements. Information pertaining to these procedures may be accessed through the USPS website.

(b) The indicia design must be approved by the manager of Postage Technology Management, USPS Headquarters, and must comply with the requirements in the Domestic Mail Manual and the applicable IBI performance criteria.

(c) Any change to an approved postage evidencing system must be submitted to the Postal Service for evaluation in accordance with the most current postage evidencing product submission procedures.

(d) Where complete evaluation of all security-related components of a postage evidencing system requires USPS review of data located outside the customs territory of the United States, the provider shall be responsible for all costs incurred by the USPS in conducting that review.

**§ 502.11 Security testing.**

The Postal Service reserves the right to require or conduct additional examination and testing at any time, without cause, of any postage evidencing system submitted to the Postal Service for approval or previously approved by the Postal Service for production and distribution.

**§ 502.12 Postage evidencing system approval.**

As provided in § 502.15, the provider has a duty to report security weaknesses to the Postal Service to ensure that every postage evidencing system in service protects the Postal Service against loss of revenue at all times. An approval of a system does not constitute an irrevocable determination that the Postal Service is satisfied with its revenue-protection capabilities and all other features of the system. After approval is granted to produce and distribute a postage evidencing system, no change affecting the features or safeguards may be made except as authorized or required by the Postal Service in writing.

**§ 502.13 Conditions for approval.**

(a) The Postal Service may require, and reserves future rights to require, that production models of approved postage evidencing systems, as well as the current design documentation, user manuals, and specifications applicable to such systems and any revisions thereof, be submitted to the manager of Postage Technology Management, USPS Headquarters.

(b) Upon request by the Postal Service, additional postage evidencing systems must be submitted to the Postal Service for testing, at the expense of the provider.

**§ 502.14 Suspension and revocation of approval.**

(a) The Postal Service may suspend approval of a postage evidencing system under § 502.12 if the Postal Service has probable cause to believe that the postage evidencing system or the family of system models poses an unacceptable risk to postal revenue. Suspension of approval to produce or distribute a postage evidencing system or a family of system models, in whole or in part, shall be based on the potential risk to postal revenue. Before determining whether approval of a postage evidencing system or a family of system models, should be revoked, the procedures in paragraph (b) of this section shall be followed.

(b) Suspension procedures:

(1) Upon determination by the Postal Service that a postage evidencing system poses an unacceptable risk to postal revenue, the Postal Service shall issue a written notice of proposed suspension citing deficiencies for which suspension may be imposed under paragraph (b)(2) of this section. The notification is in writing and is sent certified mail, return receipt requested. The provider shall be given an opportunity to correct deficiencies and achieve compliance with all requirements within a time limit determined by the Postal Service, corresponding to the potential risk to postal revenue.

(2) If the Postal Service determines that the provider has failed to correct cited deficiencies within the USPS-specified time limit, the Postal Service shall issue a written notice setting forth the facts and reasons for the decision to suspend and the effective date if a written defense is not presented as provided in paragraph (c) of this section. The notification is in writing and is sent certified mail, return receipt requested.

(3) If, upon consideration of the defense as provided in paragraph (d) of this section, the Postal Service deems that the suspension is warranted, the suspension shall remain in effect for up to 90 days unless withdrawn by the Postal Service, as provided in paragraph (b)(4)(iii) of this section.

(4) At the end of the 90-day suspension, the Postal Service may:

(i) Extend the suspension to allow more time for investigation or to allow the provider to correct the problem;

(ii) Make a determination to revoke the approval of the provider's postage evidencing system or family of system models, or

(iii) Withdraw the suspension based on identification and implementation of a satisfactory solution to the problem. Provider suspensions may be withdrawn before the end of the 90-day period if the Postal Service determines that the provider's solution and implementation are satisfactory.

(c) The provider may present the Postal Service with a written defense to any suspension or revocation determination within 30 calendar days after receiving or refusing to receive notice, unless a shorter period is deemed necessary. The defense must include all supporting evidence and specify the reasons for which the order should not be imposed.

(d) After receipt and consideration of the written defense, the Postal Service shall advise the provider of the decision and the facts and reasons for it. The decision shall be effective on receipt unless it states otherwise. The decision shall also advise the provider that it may appeal that determination within 30 calendar days after the provider receives or refuses to receive written notice, unless a shorter period is deemed necessary, as specified therein. The appeal must include all supporting evidence and specify the reasons that the provider believes that the decision is erroneous.

(e) An order or final decision under this section does not preclude any other criminal or civil statutory, common law, or administrative remedy that is available by law to the Postal Service, the United States, or any other person or concern.

**§ 502.15 Reporting.**

(a) For purposes of this section, "provider" refers to an entity authorized under § 502.5 and its foreign or domestic affiliates, subsidiaries, assigns, dealers, independent dealers, employees, and parent corporations.

(b) Each provider authorized under § 502.5 must submit a preliminary report to notify the Postal Service promptly (in no event more than 21 calendar days of discovery) of the following:

(1) All findings or results of any testing known to the provider concerning the security or revenue

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protection features, capabilities, or failings of any postage evidencing system or PSD sold, leased, or distributed by the provider that has been approved for sale, lease, or distribution by the Postal Service or by any foreign postal administration; or have been submitted for approval by the provider to the Postal Service or to a foreign postal administration.

(2) All potential security weaknesses or methods of system tampering of the postage evidencing systems that the provider distributes, of which the provider knows or should know, and the system or model subject to each weakness or method. These potential security weaknesses include, but are not limited to suspected equipment defects, suspected abuse by a registered user or provider employee, suspected security breaches of the Electronic Funds Resetting System, cryptographic key compromises, occurrences outside normal performance, or any repeatable deviation from normal postage evidencing system performance (within the same model family and/or by the same registered user).

(c) Within 45 calendar days of the preliminary notification to the Postal Service under § 502.15(b), the provider must submit a written report to the Postal Service. The report must include the circumstances, proposed investigative procedure, and the anticipated completion date of the investigation. The provider must also provide periodic status reports to the Postal Service during subsequent investigation and, on completion, must submit a summary of the investigative findings.

(d) The provider must establish and adhere to timely and efficient procedures for internal reporting of potential security weaknesses. The provider is required to submit a copy of internal reporting procedures and instructions to the Postal Service for review.

**§ 502.16 Administrative sanction on reporting.**

(a) Notwithstanding any act, admission, or omission by the Postal Service, an authorized provider may be subject to an administrative sanction for failing to comply with § 502.15.

(b) The Postal Service shall determine all costs and revenue losses measured from the date that the provider knew, or should have known, of a potential security weakness, including, but not limited to, administrative and investigative costs and documented revenue losses that result from any postage evidencing system for which the provider failed to comply with any provision in § 502.15. The provider shall be responsible to the Postal Service for all such costs and losses (net of any amount collected by the Postal Service from the registered users) with interest when the Postal service issues a written notice to the provider setting forth the facts and reasons on which the determination to impose the sanction is based. The notification is in writing and is sent certified mail, return receipt requested. The notice shall advise the provider of the date that the action takes effect if a written defense is not presented within 30 calendar days of receipt of the notice.

(c) The provider may present the Postal Service with a written defense to the proposed action within 30 calendar days after receiving or refusing to receive notification. The defense must include all supporting evidence and specify the reasons for which the sanction should not be imposed.

(d) After receipt and consideration of the defense, the Postal Service shall advise the provider of the decision and the facts and reasons for it; the decision shall be effective on receipt unless it states otherwise. The notification of the decision is in writing and is sent certified mail, return receipt requested. The decision shall also advise the provider that it may, within 30 calendar days of receiving the decision, appeal that determination as specified therein.

(e) The provider may submit a written appeal to the Postal Service within 30 calendar days of receiving or refusing to receive notification of the decision. The appeal must include all supporting evidence and specify the reasons that the provider believes that the administrative sanction was erroneously imposed. The submission of an appeal stays the effectiveness of the sanction.

(f) The imposition of an administrative sanction under this section does not preclude any other criminal or civil statutory, common law, or administrative remedy that is available by law to the Postal Service, the United States, or any other person or concern.

**§ 502.17 Materials and workmanship.**

All postage evidencing systems that generate IBI must continuously maintain the quality in materials and workmanship of the production model approved by the Postal Service.

**§ 502.18 Destruction of information-based indicia.**

All indicia created in the process of testing the postage evidencing system by the provider, or its agent, must be collected and securely controlled or destroyed by the provider to prevent unauthorized use.

**§ 502.19 Inspection of new postage evidencing systems.**

The provider shall inspect all new postage evidencing systems that generate IBI to ensure proper functioning of all operational capabilities of each system before distribution.

**§ 502.20 Distribution facilities.**

(a) An authorized provider must keep adequate facilities for and records of the distribution, control, maintenance, replacement, and disposal or destruction of all PSDs throughout their entire life cycle. Recordkeeping is required for all PSDs, including newly produced PSDs, active leased PSDs and inactive, unleased PSDs, as well as lost and stolen PSDs. All such facilities and records are subject to inspection by Postal Service representatives.

(b) If the provider uses a third party to control, distribute, maintain, replace, repair, or dispose of PSDs or postage evidencing systems, all aspects of the arrangement between the parties must be specifically authorized in writing by the manager of Postage Technology Management, USPS Headquarters.

(1) The third party relationship shall not compromise any security element of the postage evidencing system. The functions of the third party with respect to these systems are subject to the same scrutiny as the functions of the provider.

(2) Any authorized third party must keep adequate facilities for and records of PSDs and postage evidencing systems in accordance with the USPS-authorized arrangement with the provider. All such facilities and records are subject to inspection by Postal Service representatives, in so far as they are used to control, distribute, store, maintain, replace, repair, or dispose of PSDs or postage evidencing systems.

(3) The Postal Service holds the provider fully responsible for any deficiencies found in third party facilities, records, or procedures and can require termination of the third party arrangement if deficiencies are found.

**§ 502.21 Distribution controls.**

Each authorized provider must do the following:

(a) Hold title permanently to all PSDs that print U.S. postage, except those purchased by the Postal Service.

(b) On behalf of applicants, electronically transmit information required to apply for a user registration to the designated Postal Service central registration processing facility.



(c) On behalf of users registered to use their postage evidencing systems, forward to the Postal Service any changes to user registration information when the user submits such changes to the provider. The provider must follow authorized USPS procedures for moving the system when a registered user changes the registration post office. The provider must also notify the Postal Service following any event that indicates the need to update registered user information, such as the return of an invoice or the inability to communicate with the user.

(d) Lease PSDs only to parties that have valid user registrations issued by the Postal Service to use a postage evidencing system.

(e) Unless otherwise authorized by the Postal Service, immediatcly withdraw from service any PSD that the registered user no longer wants, or that is to be removed from service for any other reason. The provider shall retrieve any withdrawn PSD that is in the possession of the registered user. All resetting requests for a withdrawn PSD must be denied. The provider must keep in its possession for at least 1 year from the date of withdrawal a copy of the information on the registered user's PS Form 3601–C, Postage Evidencing System Activity Report.

(f) Retrieve any misregistering, faulty, or defective PSD and withdraw it from service within 3 business days of being notified by the registered user of the defect. The provider must examine each PSD withdrawn from service for apparent faulty operation affecting the ascending or the descending register, or for other failure to record its operations correctly and accurately. After examining the withdrawn PSD, the provider must compile a written report explaining the malfunction to the manager of Postage Technology Management, USPS Headquarters. The report must include an explanation of the malfunction that resulted in the faulty operation or other failure to record operations correctly and accurately, all applicable system documentation, including log files, and a recommendation for the appropriate postage adjustment, if applicable. At the same time the report is made to the Postal Service, the provider must notify the registered user of the proposed postage adjustment. The provider may supply the registered user with a replacement PSD only if the faulty PSD is in the provider's possession.

(g) Report promptly the loss or theft of any PSD, the recovery of any PSD previously reported as lost or stolen, or the scrapping of any PSD by the provider. The provider must notify the Postal Service by completing a standardized Lost and Stolen Postage Evidencing System Incident Report and filing it with the Postal Service by the tenth day of the month following when a PSD is scrapped or the provider determines the loss, theft, or recovery of a PSD. For lost or stolen PSDs, the provider must complete all preliminary location activities specified in § 502.26 before including a given incident on this report.

(h) Provide to the Postal Service upon request an electronic file or database of all postage evidencing systems in service, including the PSD identification number, the registered user's name and address, the date that the system was placed in service, and the ZIP Code of the registration post office. This information is to be provided to the Postal Service in USPS-specified format, at times to be determined by the Postal Service.

(i) Keep accurate records and reconcile differences between their records and Postal Service databases.

(j) Keep at provider's headquarters an electronic file or database with a complete record of all PSDs produced, showing all movements of each from the time that the PSD is produced until it is scrapped. The records shall be organized by PSD identification number and shall include the reading on the ascending register each time the PSD is authorized for a new registered user or is withdrawn from service. These records must be available for inspection by Postal Service officials at any time during normal business hours. The record for each PSD must be maintained for 3 years after the PSD is scrapped.

(k) Submit other reports as required by the Postal Service.

(l) Cancel a lease agreement with any lessee whose registration to use a postage evidencing system is revoked by the Postal Service.

(m) Promptly withdraw from service any PSD that the Postal Service indicates should be withdrawn from service for revocation of user registration or for any other reason, and retrieve the PSD if it is in the possession of the registered user. When a user registration is revoked, the provider must retrieve all PSDs in the possession of the registered user and must withdraw from service all PSDs employed by the registered user.

(n) Take reasonable precautions in the transportation and storage of PSDs to prevent use by unauthorized individuals. Providers must ship all PSDs by Postal Service Priority Mail unless given written permission by the Postal Service to use another method.

(o) Communicate to all registered users of a postage evidencing system the required cautionary statements that provide the registered user with basic reminders that the postal security device is leased, the actions needed on relocation of the postage evidencing system, and warnings against system misuse.

(1) The cautionary statements must be visually presented to the registered user upon each start-up of the postage evidencing system. The user must actively acknowledge the statements before proceeding with system use. In addition, the statements shall be included prominently in the user documentation provided with each system. PSDs that are in the possession of a user shall include the cautionary statements on a label attached to the PSD, to the housing of the PSD, or to the postage evidencing system containing the PSD, if the physical dimensions of the equipment will accommodate them. Postage evidencing systems provided to registered users without this cautionary information shall not be authorized for use.

(2) In every presentation of the cautionary statements to the registered user, the words shown below in capital letters should be emphasized. If the cautionary statement can be placed on the PSD or other equipment, it shall be placed in a conspicuous and highly visible location. The minimum width of the text block containing the statement should be 3.25 inches, and the minimum height should be 1.75 inches. The statement shall read as follows:

POSTAL SERVICE NOTICE

LEASED POSTAGE EVIDENCING SYSTEM—NOT FOR SALE

PROPERTY OF [NAME OF PROVIDER]

Use of this system is permissible only under a U.S. Postal Service postage evidencing system user registration.

Call [NAME OF PROVIDER] at phone number ### ###–#### to relocate or return this Postage Evidencing System.

WARNING! POSTAGE EVIDENCING SYSTEM TAMPERING OR MISUSE IS A FEDERAL OFFENSE.

IF YOU SUSPECT POSTAGE EVIDENCING SYSTEM TAMPERING, CALL INSPECTOR GENERAL'S HOTLINE AT 1–800–654–8896 OR YOUR LOCAL POSTAL INSPECTOR.

REWARD UP TO $50,000 for information leading to the conviction of any person who misuses a postage evidencing system resulting in the Postal Service not receiving correct postage payments.

(3) Exceptions to the formatting of required cautionary labeling are determined on a case-by-case basis. The manager of Postage Technology Management, USPS Headquarters, must

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approve, in writing, any deviation from the standard labeling requirements.

**§ 502.22 Administrative sanction.**

The Postal Service holds providers responsible for the entire life cycle of their postage evidencing systems, including control, distribution, operation, maintenance, replacement, and secure disposal.

(a) "Postage evidencing system," for purposes of this section, means any system that is produced by a provider authorized under § 502.5 that is not owned or leased by the Postal Service.

(b) An authorized provider that, without just cause, fails to conduct or perform adequately any of the controls required by § 502.21, to follow standardized lost and stolen incident reporting in § 502.26, or to conduct the inspections required by § 502.25 in a timely fashion is subject to an administrative sanction based on the investigative and administrative costs and documented revenue losses (net of any amount collected by the Postal Service from the registered user), with interest per occurrence measured from the date on which the cost and/or loss occurred, as determined by the Postal Service. Sanctions shall be based on the costs and revenue losses that result from the provider's failure to comply with these requirements.

(c) The Postal Service may impose an administrative sanction under this section by issuing a written notice to the provider setting forth the facts and reasons on which the determination to impose the sanction is based. The notification is in writing and is sent certified mail, return receipt requested. The Postal Service shall determine all costs and losses. The notice shall advise the provider of the date that the action shall take effect if a written defense is not presented within 30 calendar days of receipt of the notice.

(d) The provider may present to the Postal Service a written defense to the proposed action within 30 calendar days of receiving or refusing to receive the notice. The defense must include all supporting evidence and specify the reasons for which the sanction should not be imposed.

(e) After receipt and consideration of the written defense, the Postal Service shall advise the provider of the decision and the facts and reasons for it. The decision shall be effective on receipt unless it states otherwise.

(f) The provider may submit a written appeal of the decision within 30 calendar days of receiving or refusing to receive the decision, addressed to the manager of Postage Technology Management, USPS Headquarters. The appeal must include all supporting evidence and specify the reasons that the provider believes that the administrative sanction was erroneously imposed. The submission of an appeal stays the effectiveness of the sanction.

(g) The imposition of an administrative sanction under this section does not preclude any other criminal or civil statutory, common law, or administrative remedy that is available by law to the Postal Service, the United States, or any other person or concern.

**§ 502.23 Postage evidencing system maintenance.**

(a) The provider must keep its postage evidencing systems that generate IBI in proper operating condition by maintaining or replacing them when necessary or desirable to prevent electronic failure, malfunction, expiration of the life of the battery for the clock or timer, or mechanical breakdown.

(b) The provider must provide the registered users with modifications reflecting rate changes and must implement new rates as of the effective date for the new rates established by the Postal Service.

**§ 502.24 Access or changes to secure components.**

Postage evidencing system maintenance involving access or changes to secure components must be done only within a secure facility under the provider's direct control and supervision. PSDs must be withdrawn from service before any such maintenance is performed.

**§ 502.25 Inspection of postal security devices (PSDs) in use.**

(a) The provider must conduct an audit of each PSD at least once every 3 months in conjunction with the postage value resetting requirements in § 502.27. A zero-value reset will satisfy this requirement. The PSD must have a lock-out feature that prevents use of the system if an audit is not completed in accordance with this regulation.

(b) Postage evidencing systems that generate IBI, other than PC Postage, shall be inspected by the provider every 2 years. Registered user mail-in of indicia may substitute for the provider inspection, with Postal Service approval. The provider shall inspect or sample PC Postage products under special circumstances, as directed by the Postal Service. The Postal Service examines postage evidencing systems when warranted by special circumstances.

**§ 502.26 PSDs not located.**

Upon learning that one or more of its PSDs in service cannot be located, the provider must undertake reasonable and timely efforts to locate the PSD by following a series of Postal Service-specified actions designed to locate the PSDs. If these efforts are unsuccessful and a PSD is determined to be lost or stolen, the provider must notify the Postal Service in accordance with § 502.21.

(a) If a user registered to use a postage evidencing system cannot be located, the provider must, at a minimum, complete the following actions:

(1) Call the registered user's last known telephone number.

(2) Call directory assistance for the user's new telephone number.

(3) Contact the registered user's local post office for current change of address information.

(4) Contact Postage Technology Management to verify the location of the PSD and the registered user as currently maintained in Postal Service records.

(5) Contact the rental agency responsible for the property where the registered user was located, if applicable.

(6) Visit the registered user's last known address to see whether the building superintendent or a neighbor knows the user's new address.

(7) Mail a certified letter with return receipt to the registered user at the last known address with the endorsement "Forwarding and Address Correction Requested".

(8) If new address information is obtained during these steps, any missed or delinquent scheduled PSD audit must be completed immediately.

(b) If a PSD is reported to be lost or stolen by the registered user, the provider must, at a minimum, complete the following actions:

(1) Discontinue postage value downloads to the lost or stolen PSD.

(2) Ensure that the registered user has filed a police report for a stolen PSD and that copies have been provided to the appropriate Inspection Service Contraband Postage Identification Program (CPIP) specialist.

(3) Withhold issuance of a replacement PSD until the missing PSD has been properly reported to the police and to the appropriate Inspection Service CPIP specialist.

(c) If the provider later learns that the PSD has been located and/or recovered, the provider must take the following actions before returning the PSD to service or allowing a postage value download:

(1) Submit a new Lost and Stolen Postage Evidencing System Incident Report that references the initial report and outlines the details of how the PSD was recovered, in accordance with § 502.21. The provider is responsible for keeping records of these reports as submitted to the Postal Service for a minimum of 3 years after submission.

(2) Retrieve the recovered PSD from the registered user and examine it for apparent faulty operation that could affect its ability to record its operations correctly and result in a questionable accurate registration.

(3) Recommend a postage adjustment or refund, if appropriate.

(4) Withdraw the PSD from service if a replacement PSD has been supplied to the registered user or if there is an issue of questionable accurate registration.

(d) Any authorized provider that fails to comply with standardized lost and stolen reporting procedures and instructions is subject to an administrative sanction under § 502.22, as determined by the Postal Service.



**§ 502.27 Electronic Funds Resetting System (EFRS).**

(a) *Description.* A remote resetting system permits registered users to reset their PSDs at places of business and/or homes via modem or network interface. The Electronic Funds Resetting System (EFRS) is the Postal Service system that processes system resetting data for postage value downloads submitted by providers of postage evidencing systems that generate IBI. The Postal Service processes the data separately from data processed under the Computerized Meter Resetting System (CMRS), which is used for traditional postage meters.

(b) *Resetting a PSD.* To reset a PSD, the registered user connects to the provider and provides specified identifying data and PSD audit data for the postage value download. Before proceeding with the transaction, the provider must verify all the data, conduct the system audit, and ascertain whether payment to the Postal Service sufficient to cover the desired postage value download was initiated by the registered user. If payment was initiated and the system audit was successful, the provider may complete the postage value download.

(c) *Payment to the Postal Service.*

(1) The only acceptable methods used for postage payments for postage evidencing systems that generate IBI are credit cards and Automated Clearinghouse (ACH) debit. The providers must publicize these payment options to all registered IBI users. When publicizing these options, the provider must provide a clear and concise description of each.

(i) *Credit Cards.* The provider must offer the registered user the option to use all of the credit cards approved for use by the Postal Service for payment for postage. Each provider must receive authorization from the Postal Service to offer credit card options to registered users and must sign a vendor credit card pilot test agreement, a legal agreement with the Postal Service on credit card payment, which addresses security requirements, payment of transaction costs, reconciliation requirements, and retrieval and chargeback requests. The provider must use a certified credit card payment process approved for use by the Postal Service's designated card processor. All credit card transactions must be sent through the designated Postal Service card processor, with each provider working as an agent with the Postal Service as the merchant of record.

(ii) *ACH Debit.* All ACH debit payments for postage must be electronically transferred directly from the registered user's account resident in a financial institution that is neither owned, nor controlled, nor contracted, nor arranged for by a product service provider or its affiliate. The funds must be transferred directly into an account at a financial institution designated by the Postal Service.

(2) A registered user is required to initiate payment to the Postal Service sufficient to cover the desired postage value download contemporaneously with a download being made. The details of this payment requirement are covered in the Postage Payment Agreement.

(3) Each provider is required to incorporate the Postage Payment Agreement into its postage evidencing system lease agreement with each registered user, as follows:

**POSTAGE PAYMENT AGREEMENT**

By signing this postage evidencing system lease agreement you agree to initiate payment for postage using either a USPS-approved credit card or ACH debit. If you use ACH debit, you agree to transfer funds directly to the Postal Service through a financial institution, as specified by the Postal Service, for the purpose of prepayment of postage. If you use a credit card, you agree to use only those credit cards approved for use for payment for postage by the Postal Service.

You understand that the provider and its affiliates shall not hold, or contract with or otherwise arrange for any third party to hold, your funds intended for the purchase of postage. You will be bound by all terms and conditions of this Postage Payment Agreement as it may be amended periodically by the Postal Service.

(4) The provider must require each registered user who requests a postage value download to provide the PSD identification number, the registered user account number, and the ascending and descending register readings on the PSD at the time of the request. The provider must verify that the information entered by the registered user is accurate and matches the provider's records. Providers must also verify that the registered user has initiated payment to the Postal Service sufficient to cover the postage value download requested before proceeding with the resetting transaction. Immediately following the completion of each transaction, the provider must give the user a statement documenting the transaction.

(d) *Revenue protection.* The Postal Service shall conduct periodic audits and reviews of the EFRS revenue protection safeguards employed by each provider and shall reserve the right to revoke a provider's authorization if they do not meet all EFRS requirements set forth by the Postal Service. In addition, the Postal Service shall reserve the right to suspend the operation of the provider, as provided in § 502.14, for any serious operational deficiency that may result in the loss of funds to the Postal Service.

(e) *Financial operation.* The Postal Service shall establish a separate account at its designated financial institution to handle the funds for payment for postage received from registered users. The provider may not establish an account to handle the funds of registered users intended for the purchase of postage. Payment Technologies, Office of the Treasurer, USPS, will coordinate the implementation of the ACH debit process with the provider.

(f) *Reports.* The provider must submit a daily financial transaction for each postage value download or postage refill according to established EFRS procedures. The provider must provide other reports as required by the Postal Service.

(g) *Inspection of records and facilities.* The provider must make its facilities that handle the operation of the EFRS and all records about the operation of the system available for inspection by representatives of the Postal Service at all reasonable times.

**§ 502.28 Indicia quality assurance.**

The provider shall implement a mailpiece quality assurance program to ensure the quality and readability of the indicia and shall instruct the registered user on the submission of the required mailpieces. The registered user is required to forward a mailpiece to the provider for evaluation when the system is installed and at least once every 6

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months thereafter. If the user fails to comply with this requirement, the provider must notify the user that all future postage value resettings will be denied. The provider must analyze these mailpieces for quality and readability and is required to provide guidance to the registered user to correct any deficiencies that are discovered. The provider must notify the Postal Service of all noncompliant registered users, so that the Postal Service can initiate revocation of the user's registration.

**§ 502.29 Refunds for postage evidencing systems that generate information-based indicia (IBI).**

The Postal Service provides refunds for readable, valid, unused postage on an unmailed envelope or label, and for any balance remaining on a PSD withdrawn from service and in the possession of the provider, in accordance with established refund procedures. Postage losses to the registered user due to system malfunctions and the refund of any non-postal fees are the responsibility of the provider. Registered users submit refund requests to the provider in accordance with Domestic Mail Manual (DMM) P014. The following procedures apply, depending on the type of refund requested:

(a) *Refund for unused postage*

(1) The provider shall acknowledge the refund request and confirm that the appropriate supporting materials have been received, including Postal Service Form 3533–PCP–X, Refund Request for Unused IBI Postage, in accordance with the requirements in DMM P014.

(2) The provider shall scan the two-dimensional barcode in the submitted indicium, analyze the data to ensure the indicium is valid, and verify the following:

(i) The PSD used in producing the indicium is the expected PSD.

(ii) The unused postage is presented by the user to whom the PSD that produced the indicium is registered.

(iii) The date of mailing shown in the indicium is not more than 10 days before the date on which the registered user mailed the indicium for refund. The date is checked by postmark.

(iv) The human-readable data matches the corresponding data in the two-dimensional barcode.

(v) The PSD certificate has not been revoked.

(vi) The indicium has not been submitted before.

(3) The provider shall submit the indicium data electronically to the Certificate Authority for verification of the digital signature.

(4) The provider shall ensure there is no evidence that the mailpiece has been processed by the Postal Service.

(5) The provider shall annotate Postal Service Form 3533–PCP–X, Refund Request for Unused IBI Postage, and notify both the registered user and the manager of Postage Technology Management, USPS Headquarters, of any instances where the refund request for a given, unused indicium will be denied.

(6) Upon successful signature verification and completion of all other required checks listed above, the provider shall either:

(i) Issue an immediate refund to the registered user from the provider's own funds, or

(ii) Issue the refund to the registered user within 5 business days of receiving reimbursement from the Postal Service.

(7) No more frequently than once per week, the provider shall submit to the Postal Service a refund request for unused postage, using the format in Postal Service Form PCP–X, Provider Refund Request for Information-Based Indicia.

(8) The Postal Service shall remit a check made payable to the provider for the total amount of the refund request for unused postage.

(9) The Postal Service reserves the right to audit the provider's refund processing and the unused mailpieces submitted for refund. Providers are required to maintain the following records:

(i) The unused envelopes and labels submitted for refund, and any other correspondence related to the refund request, attached to a copy of the associated Form 3533 PCP–X, Refund Request for Unused IBI Postage, and organized by the date of the provider's refund request. The Postal Service will destroy the unused mailpieces after the completion of the audit.

(ii) Electronic copies of the scanned indicia organized by date submitted for refund. These are maintained until the Postal Service completes its audit.

(iii) Postal Service Form 3533–PCP–X (printed copy) submitted by the registered user to the provider. The printed copy shall be kept for 1 year. An electronic, scanned version with the registered user's signature shall be kept for 3 years after the destruction of the printed copy.

(iv) A copy of each Postal Service Form PCP–X, Provider Refund Request for Information-Based Indicia, submitted by the provider to the Postal Service. This form shall be maintained by the provider until completion of the Postal Service audit.

(v) A refund count (by number of pieces and postage amount) for each PSD. This information shall be maintained until completion of the first Postal Service audit following the withdrawal of the PSD from service.

(b) *Refund for postage balance remaining on a PSD that is withdrawn from service and is in the possession of the provider.*

(1) The registered user informs the provider of the intention to withdraw the PSD from service and has the postage evidencing system generate a refund request indicium for transmittal to the provider. The means by which this is accomplished is at the provider's discretion. The transmittal of the refund request indicium is the last activity that is permitted for the PSD. If the registered user has physical possession of the PSD, the registered user returns the withdrawn PSD to the provider, in accordance with regulations for returning PSDs.

(2) Upon receipt of the refund request indicium and the PSD (where applicable), the provider shall scan the two-dimensional barcode in the submitted indicium, analyze the data to ensure the indicium is valid, and verify the following:

(i) The descending register value in the refund request indicium is $0.00.

(ii) The PSD used in producing the indicia is the expected PSD.

(iii) The refund request indicium is presented by the registered user of the PSD.

(iv) The PSD certificate has not been revoked.

(v) There is no evidence of tampering with the PSD.

(3) The provider shall submit the refund request indicium data electronically to the Certificate Authority for digital signature verification.

(4) Under no circumstances may a provider issue a refund for a withdrawn PSD unless the PSD is in the provider's possession.

(5) The provider shall not issue a refund if there is any question as to the remaining postage value on the PSD without first consulting with the manager of Postage Technology Management, USPS Headquarters. The provider shall notify both the registered user and the manager of Postage Technology Management of any instances where the refund request will be denied.

(6) The provider shall generate a form equivalent to Postal Service Form 3601–C, Postage Evidencing System Activity Report, for withdrawal of the PSD. The form will include the refund request indicium.



(7) Upon successful signature verification and completion of all other required checks listed above, the provider shall initiate a PSD withdrawal as specified by Postal Service procedures and shall revoke the PSD certificate. Then the provider shall either:

(i) Issue an immediate refund to the registered user from the provider's own funds; or

(ii) Issue the refund to the registered user within 5 business days of receiving reimbursement from the Postal Service.

(8) No more frequently than once per week, the provider shall submit to the Postal Service a refund request for withdrawn PSDs, including a listing of the refund requested by each registered user, using the format in Postal Service Form PCP–X, Provider Refund Request for Information-Based Indicia.

(9) The Postal Service shall remit a check made payable to the provider for the total amount of the refund request for postage value remaining on withdrawn PSDs.

(10) The Postal Service reserves the right to audit the provider's refund processing and the refund request indicia. Providers are required to maintain the following records:

(i) An electronic copy of a form equivalent to Postal Service Form 3601–C, Postage Evidencing System Activity Report, which includes the refund request indicia, organized by the date of the provider's refund request, shall be kept for 2 years, or until the completion of the Postal Service audit, whichever is longer.

(ii) Any other correspondence that is related to the refund request must be retained by the provider until the Postal Service completes its audit.

(iii) A copy of each Postal Service Form PCP–X, Provider Refund Request for Information-Based Indicia, submitted by the provider to the Postal Service shall be maintained by the provider until completion of the Postal Service audit.

**§ 502.30 Registered user information.**

(a) Providers are required to collect registration information and transaction records from registered users on behalf of the Postal Service and to transmit the data to the Postal Service as part of the registration process, the postage payment process; and, for IBI open systems, the mailpiece generation process. Although the Postal Service does not require the provider to retain registered user information, the provider may choose to do so for its own purposes, subject to the following limitations:

(1) A provider that retains personal information regarding a registered user must issue a privacy policy that informs the registered user of the information to be retained and its intended uses.

(2) The provider is strictly prohibited from disclosing any list of applicants or registered users, or any identifying information about any given applicant or registered user, to any other entity, for any purpose, without prior notification to the customer.

(3) The provider must offer the applicant or registered user the option to not have their personal information disclosed to any other entity.

(b) As stated in § 502.21, providers are required to electronically transmit information required to apply for a user registration to the designated Postal Service central registration processing facility, on behalf of applicants.

(c) The Postal Service shall use the registered user information in accordance with the purposes and routine uses published in the Privacy Act system of records USPS 140.020, Postage-Postage Evidencing System Records. The Postal Service may use applicant information in the administration of postage evidencing systems and mailing activities, and to communicate with customers who may no longer be visiting a traditional USPS retail outlet. The Postal Service will also use applicant information to communicate with USPS customers through any new retail channels, and for the following purposes:

(1) To issue (including reregistration, renewal, transfer, revocation, or refusal, as applicable) a user registration to a customer and to communicate with respect to the status of such registration.

(2) To disclose to a provider the identity of any PSD and any related user registration data for any PSDs required to be removed from service by that provider as the result of revocation of a user registration, questioned accurate registration or other failure of the PSD to record its operations correctly and accurately, or decertification by the Postal Service of any particular postage evidencing system that generates IBI or family of such models.

(3) To track the movement of postage evidencing systems between a provider and registered users and to communicate to a provider (but not to any third party other than the applicant/registered user) concerning such movement. The term "provider" includes a provider's dealers and agents.

(4) To transmit general information to all registered users concerning rate and rate category changes implemented or proposed for implementation by the Postal Service.

(5) To advertise Postal Service services relating to the acceptance, processing and delivery of or postage payment for mail using information-based indicia.

(6) To allow the Postal Service to communicate with USPS customers on products, services, and other information otherwise available to USPS customers through traditional retail outlets.

(7) To support any internal use by Postal Service personnel, including identification and monitoring activities relating to postage evidencing systems, provided that such use by the Postal Service does not result in the disclosure of applicant information to any third party and will not enable any third party to use applicant information for its own purposes; except that the applicant information may be disclosed to other governmental agencies for law enforcement purposes as provided by law.

(8) To identify authorized product service providers or announce de-authorization of an authorized product service provider, or provide currently available public information, where an authorized provider is identified.

(9) To promote and encourage the use of information-based indicia as a form of postage evidencing, provided that the same information is provided to all registered users, and no particular provider will be recommended by the Postal Service.

(10) To contact registered users in cases of revenue fraud or revenue security, except that any registered user suspected of fraud shall not be identified to other users.

(11) To disclose to a provider applicant information pertaining to that provider's customers that the Postal Service views as necessary to enable the Postal Service to carry out its duties and purposes.

(12) To transmit to a provider all applicant and system information pertaining to that provider's customers and systems that may be necessary to permit such provider to synchronize its registered user and PSD database with information contained in the computer files of the Postal Service, including but not limited to computerized data that reside in Postal Service postage evidencing system management databases.

(13) Subject to the conditions stated herein, to communicate in oral or written form with any or all applicants and registered users any information that the Postal Service views as necessary or desirable to enable the Postal Service to carry out its duties and purposes under this part 502.

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**§ 502.31 Intellectual Property**

(a) None of the following shall constitute a grant of authorization or consent by the Postal Service or the United States to a provider or any other person to manufacture or use any patented invention or to infringe any copyright, under 28 U.S.C. 1498 or otherwise:

(1) The publication of performance criteria, or

(2) The granting of authorization to a provider under part 501 or this part 502, or

(3) The granting of approval to a provider to market or distribute a postage evidencing system.

(b) A provider must reimburse the Postal Service for any compensation or other costs or damages (other than the Postal Services' own attorneys' fees and other costs of defense) that the Postal Service or the U.S. Government is required, by final order of a court of competent jurisdiction which is either not subject to appeal or as to which the time to appeal has already passed, to pay on a claim of infringement or unauthorized use of a U.S. patent or U.S. copyright, under any legal theory, based on either:

(1) The manufacture, use, sale or importation of provider's postage evidencing system, whether or not such manufacture, use, sale or importation is alleged to be pursuant to authorization or consent provided under 28 U.S.C. 1498;

(2) The use of provider's postage evidencing system by mailers in a manner specified or intended by Provider to create postage indicia, apply such indicia to mail, and/or deposit such mail with the USPS; or

(3) The granting by the Postal Service to provider of government authorization or consent, under 28 U.S.C. 1498 or otherwise, to make or use a patented invention or infringe a copyright in connection with the manufacture, use or sale of provider's postage evidencing system, or the activities of provider pursuant to such grant of authorization and consent.

(c) The Postal Service may suspend approval of a postage evidencing system on 60 days' notice to provider if a court of competent jurisdiction determines that the manufacture or use of the postage evidencing system, or the creation or validation of the indicia produced thereby, infringes, induces or contributes to the infringement of, or otherwise violates any person's or entity's rights under a U.S. patent or U.S. copyright. The Postal Service shall reinstate approval of such postage evidencing system if and so long as:

(1) Such judicial determination is vacated or reversed; or

(2) The provider duly licenses or otherwise procures and maintains in effect (for the benefit of itself, users and the Postal Service as may be necessary) the right to conduct, with respect to provider's postage evidencing device and the indicia created thereby, the activities that the court has determined to be infringing.

(d) A determination that the validating of an indicia by the Postal Service infringes a patent or copyright shall not be a basis for suspending provider's approval if the provider can establish that alternative, non-infringing means of performing such validation are available to the Postal Service with respect to the indicia created by provider's postage evidencing device so long as such means fully comply with the performance criteria under which the postage evidencing device and indicia have been approved.

(e) The Postal Service may provide additional requirements relating to intellectual property in the product submission procedure, performance criteria or both ("IP Requirements") and may condition the granting or maintenance of approval of a postage evidencing system on provider's compliance with those IP Requirements. When IP Requirements are imposed on a provider, they shall control over any conflicting provision in this § 502.31.

(f) The requirements of this § 502.31 shall apply to all aspects of a provider's postage evidencing device and the indicia created thereby, including those aspects required or specified under applicable performance criteria.

(g) Notwithstanding § 502.1 to the contrary, this § 502.31 shall apply to any postage evidencing system approved by the Postal Service under part 501, part 502 or otherwise and to any performance criteria whether directed to IBI or other forms of postage evidence.

Appropriate amendments to 39 CFR parts 111 and 502 to reflect these changes will be published if the proposal is adopted.

**Stanley F. Mires,**

*Chief Counsel, Legislative.*

[FR Doc. 00–25090 Filed 9–29–00; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

[Region II Docket No. NY39–208, FRL–6879–8]

## Approval and Promulgation of Implementation Plans; New York; Motor Vehicle Inspection and Maintenance Program

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by New York. This revision consists of a demonstration of the effectiveness of New York's enhanced motor vehicle inspection and maintenance (I/M) program decentralized testing network, to satisfy the requirements of section 348 of the National Highway Systems Designation Act (NHSDA). This revision also consists of the corrections to six de minimus deficiencies related to the Clean Air Act (CAA) requirements for enhanced I/M. Therefore, EPA is also proposing to remove all of the de minimus conditions related to EPA's approval of New York's I/M program under the NHSDA. In addition, EPA is proposing to approve New York's test method, NYTEST, as being 95 percent as effective as IM240 in reducing hydrocarbon emissions, 99 percent as effective as IM240 in reducing carbon monoxide emissions and 99 percent as effective as IM240 in reducing nitrogen oxide emissions. The effect is to propose full approval of New York's enhanced I/M program.

**DATES:** Comments must be received on or before November 1, 2000. Public comments on this action are requested and will be considered before taking final action.

**ADDRESSES:** All comments should be addressed to Raymond Werner, Branch Chief, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations: Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866 and New York State Department of Environmental Conservation, 50 Wolf Road, Albany, New York 12233.

**FOR FURTHER INFORMATION CONTACT:** Judy-Ann Mitchell, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4249.

**SUPPLEMENTARY INFORMATION:**

### I. Background

On November 27, 1996, (61 FR 60242) EPA proposed conditional interim approval of New York's enhanced I/M program. New York submitted revisions to the existing program on March 27, 1996 to satisfy applicable requirements of the CAA and the NHSDA. In this submittal, the State included a "good faith estimate" to support its claim for 81 percent of the credit for its decentralized, test-and-repair network, when compared to a centralized, test-only network. In the State's September 4, 1997 15 Percent and Rate of Progress Plans submittal, New York claimed additional credit for its test-and-repair network as follows:

- 88 percent as effective for HC emission reductions
- 84 percent as effective for CO emission reductions
- 86 percent as effective for $NO_X$ emission reductions

New York's "good faith estimate" was based upon data collected on the State's previous I/M program. However, the State has made many program enhancements which support higher emission reduction credit claims.

There remained six de minimus deficiencies related to the CAA requirements for enhanced I/M in the State's submittal. In order to address these de minimus deficiencies, New York needed to:

(1) Submit quality control measures in accordance with the requirements set forth in 40 CFR 51.359.

(2) Complete the development of the inspector training and certification program.

(3) Finalize plans for its data collection system.

(4) Complete the public information program, including the repair station report card.

(5) Commit to perform on-road testing in accordance with the requirements set forth in section 51.371 of the federal I/M regulation.

(6) Complete the development of the quality assurance program.

The NHSDA directs EPA to grant interim approval for a period of 18 months to approvable I/M submittals. The de minimus deficiencies did not affect the interim approval status of the State's I/M program. On October 24, 1997, (64 FR 32411) EPA published a final interim approval of New York's enhanced I/M program with an effective date of November 24, 1997. Therefore, the interim approval lapsed on May 24, 1999. The NHSDA directs EPA and the states to review the interim program results at the end of the 18-month period and to make a determination as to the effectiveness of the decentralized program. The State must also submit corrections to the de minimus deficiencies at the end of the interim period.

In addition, on March 6, 1996, the State of New York proposed to amend existing regulations 6NYCRR Part 217, "Motor Vehicle Emissions," and 15NYCRR part 79, "Motor Vehicle Inspection Regulations." EPA required the State to submit final revised and adopted regulations by the end of the 18-month interim period.

### II. Summary of New York's Submittal

New York began phasing in the implementation of the enhanced I/M program in January 1998. In November 1998 the enhanced I/M testing started. By April 1999, approximately 3500 inspection stations were brought into the enhanced I/M program. New York submitted its enhanced I/M program evaluation report to EPA on May 24, 1999 including data collected from November 1998 through to April 1999 from the State's decentralized I/M program network. This submittal also contains information addressing the de minimus deficiencies identified by EPA in the final interim approval rulemaking. Due to issues raised in litigation against the State during this time, New York was prevented from removing those inspection stations from the I/M program who did not have all of the required equipment. Therefore, the data collected during this time was predominantly idle test data which was insufficient for a complete analysis of the effectiveness of the program. Additional data was required to further evaluate the I/M program's effectiveness.

On October 7, 1999, New York made a supplemental submittal to EPA which included enhanced I/M program data from approximately 4,000 inspection stations. EPA needed clarification of some aspects of this data and the State addressed these issues in a letter to EPA dated October 29, 1999.

### III. EPA Review of the SIP Revision

*A. NHSDA Demonstration*

New York chose three elements of the enhanced I/M program to evaluate the effectiveness of the decentralized network.

(1) Comparison of Network Design

Table 3 in New York's October 7, 1999 submittal shows the failure rate observed during the Instrumentation/Protocol Assessment (IPA) Pilot Study in comparison to test-and-repair enhanced I/M failure rates. The IPA Study data can be used as a surrogate for test-only in this analysis. The failure rate for the IPA was 8.42 percent. The failure rate for the test-and-repair network was 6.44 percent. The test-and-repair failure rate indicates that the State's test-and-repair network may not be failing as many vehicles as that in a test-only network but the failure rate is comparable and consistent with the amount of credit that was claimed by New York. The State has substantially demonstrated their claim.

(2) Comparison of Pre- and Post-Repair Data

Table 2 in New York's October 7, 1999 submittal shows the enhanced I/M test data recorded from a percentage of the fleet before and after repair. The data does show that emission reductions were obtained as a result of the repairs. The data obtained from the IPA Study could not be used here because no repair data was collected.

(3) Site Audits

The State's enforcement program covers four areas; desk and computer audits, overt audits, covert/surveillance audits, and investigation of complaints. New York evaluated the data from the enforcement program during the period beginning January 1, 1999 through September 1, 1999.

There were 358 desk audits and 2,176 computer audits performed. This process involves auditors performing computer searches for enhanced I/M testing abnormalities. Of the desk and computer audits performed, 2,176 resulted in administrative stops where stations were stopped from doing inspections until further evaluation was performed or the problem was corrected.

There were 1,697 overt audits performed. This process involves the auditors visiting inspection stations and reviewing their inspection data and history. Of the overt audits performed, 198 received notices of violations and five resulted in hearings.

There were 135 covert audits performed. As a result of the covert audits, 40 notices of violation were issued and 55 hearings resulted.

As a result of complaints about certain inspection facilities received from motorists and New York State employees, the State chose to perform surveillance of those inspection stations. There were 202 complaints made which resulted in 58 notices of violation and 25 hearings.

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As of September 1, 1999, there were still a number of hearings pending. Of those completed, four inspection stations had their licenses suspended and two had their licenses revoked. These factors taken together show that New York is aggressively overseeing the enhanced I/M program. This enforcement system will continue to identify and address I/M program issues.

*B. Comparison of the NYTEST to Other Test Types*

In 1996, the State approached EPA with a proposal to use a new technical method to measure transient, mass-based tailpipe emissions using less expensive analytical equipment than a traditional IM240 test required. The State's desire to do this was based on their analysis of steady-state, concentration-based Acceleration Simulation Mode (ASM) emissions test correlation data that indicated the ASM test was not adequate to meet New York's air quality objectives. However, the cost of IM240 equipment was prohibitive since the New York program was a decentralized network design. Therefore, the State began work to develop a low cost, mass-based emission measurement system that used the IM240 speed vs. time profile as its drive trace. The test was named the New York Transient Emissions Short Test (NYTEST). The performance goal New York sought to achieve with NYTEST was above a 90 percent excess emission identification rate while maintaining false failures below 4 percent.

The preliminary proof-of-concept data provided by the state to EPA consisted of 34 emissions tests on 14 vehicles.[1] Simultaneous emissions were measured using a Vehicle Mass Analysis System (VMAS) prototype unit and an IM240 analytical bench. Analysis of hydrocarbons (HC) and carbon monoxide (CO) from these tests yielded regression coefficients of 0.94 and 0.98 respectively. Both the State and EPA viewed these results as very encouraging and additional studies were planned on larger data sets to confirm these results and gain information on the nitrogen oxide (NO) correlation.

A 99-vehicle study was undertaken by New York that provided further support of the VMAS technology with respect to NYTEST program objectives.[2] The VMAS unit used was still a prototype unit. Regression coefficients for HC, CO and NO were 0.95, 0.99, and 0.99 respectively.

At the 9th Annual Coordinating Research Council On-Road Vehicle Emission Workshop, New York presented preliminary data from their IPA Study. Correlation data on 299 vehicles that were part of the IPA Study indicated very good correlation between NYTEST and the IM240. This data was collected by parallel sampling of vehicle exhaust using both the VMAS analytical system and an IM240. Correlation coefficients were 0.90 for HC, 0.98 for CO, and 0.97 for NO. The VMAS units used in this study were not prototype instruments but actual field units from each of the three vendors supplying emissions inspection equipment to New York.

Originally, the IPA Study was to involve over 15,000 tests on 5100 vehicles using actual production model VMAS units; however, a number of QA/QC issues arose during the data collection process that have reduced this number. As a result, the IPA Study provides 2,312 simultaneous NYTEST/IM240 emission tests. This data provides further evidence supporting NYTEST as a suitable alternative to the IM240.

On June 7, 2000, New York State proposed an effectiveness for the NYTEST of 98 percent of IM240 credit. As result of the IPA study and data analysis, EPA determined that the NYTEST will receive emissions test credit as follows:

- 95 percent of IM240 credit for HC
- 99 percent of IM240 credit for CO
- 99 percent of IM240 credit for $NO_x$

EPA will continue to evaluate the data on the NYTEST as it becomes available.

*C. Correction of the De minimus Deficiencies*

New York's May 24, 1999 submittal contains a new appendix 11 to the March 1996 SIP submittal that addresses the six de minimus deficiencies. The State has completed the development of its quality assurance and quality control measures. Plans for the data collection system and the public information program have been finalized. New York has committed to performing on-road testing as per 40 CFR 51.371. And, New York has included inspector training and certification into the State's Automotive Technician Training Program.

*D. Final Program Regulations*

Prior to the State's May 24, 1999 submittal, New York submitted the final revised and adopted regulations for the enhanced I/M program consisting of 6NYCRR part 217, subparts 217–1, 217–2, and 217–4, and 15NYCRR part 79, sections 79.1 through 79.3, 79.6 through 79.9, 79.11 through 79.15, 79.17, 79.20, 79.21, 79.24, and 79.25. These revisions were previously reviewed by EPA as part of the March 27, 1996 submittal, at which time, the State had not completed their adoption. EPA's review at that time, indicated that they would satisfy the requirements of the Clean Air Act once these revised regulations were finalized. There are no significant changes to the final regulations. The revised subparts of 6NYCRR part 217 and sections of 15NYCRR part 79 became effective on April 22, 1997 and June 4, 1997 respectively.

**IV. Proposed Action**

Today's action proposes the following:

(1) On the basis of the data collected from the operation of the State's enhanced I/M program and the fact that the State has implemented the program enhancements described in their good faith estimate, EPA is proposing to find that New York has substantially demonstrated that its decentralized I/M program network is as effective as a centralized program network in achieving emission reductions according to the following:

- 88 percent as effective for HC emission reductions
- 84 percent as effective for CO emission reductions
- 86 percent as effective for $NO_x$ emission reductions

By proposing to approve New York's NHSDA demonstration, EPA has not reduced or eliminated the State's obligation to conduct ongoing enhanced I/M program evaluations under 40 CFR 51.351.

(2) EPA is proposing to afford emissions test credit to the NYTEST as follows:

- 95 percent of IM240 credit for HC
- 99 percent of IM240 credit for CO
- 99 percent of IM240 credit for $NO_x$

(3) EPA is proposing to find that New York's SIP revision submittal adequately remedies the six de minimus deficiencies previously identified.

(4) EPA is proposing to approve the latest revisions to the enhanced I/M program regulations. Specifically, these are found at 6NYCRR part 217, subparts 217–1, 217–2, and 217–4 and portions of 15NYCRR part 79 that became effective on April 22, 1997 and June 4, 1997 respectively.

(5) EPA is proposing to replace the interim designation to the EPA approval of the State's enhanced I/M program and find that the State has an approved enhanced I/M program satisfying the requirements of the Clean Air Act.

[1] Evaluation of NYTEST–Sensors HC & CO Composite GPM Data vs IM240 Compliant Composite HC & CO GPM Data; July 9, 1997.

[2] Evaluation of Real-Time and Composite Mass Emissions Data from a VMAS Concept Unit: Comparison to IM240 Data and VMAS Feasibility in the NY Enhanced IM Program; Whitby & Mo; NY DEC; September 11, 1998.



**V. Administrative Requirements**

*A. Executive Order 12866*

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

*B. Executive Order 13045*

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

*C. Executive Order 13084*

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

*D. Executive Order 13132*

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

*E. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This proposed rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because this rule does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

*F. Unfunded Mandates*

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental

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relations, Ozone, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: September 1, 2000.

**William J. Muszynski,**

*Acting Regional Administrator, Region 2.*

[FR Doc. 00–25228 Filed 9–29–00; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 63

[FRL–6877–6]

RIN 2060–AH17

## National Emission Standards for Hazardous Air Pollutants for Leather Finishing Operations

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** This action proposes national emission standards for hazardous air pollutants (NESHAP) for leather finishing operations. The EPA has identified these facilities as major sources of hazardous air pollutant (HAP) emissions such as glycol ethers, toluene, and xylene. These HAP are associated with a variety of adverse health effects. These adverse health effects include chronic health disorders (*e.g.*, effects on the central nervous system, blood, and heart) and acute health disorders (*e.g.*, irritation of eyes, throat, and mucous membranes and damage to the liver and kidneys). These proposed NESHAP will implement section 112(d) of the Clean Air Act (CAA) by requiring all leather finishing facilities that are major sources to meet HAP emission standards reflecting the application of the maximum achievable control technology (MACT). The EPA estimates that these proposed NESHAP will reduce nationwide emissions of HAP from leather finishing operations by approximately 375 tons per year (tpy). In addition, the proposed NESHAP would reduce non-HAP emissions of volatile organic compounds (VOC) by 750 tpy. The emissions reductions achieved by these proposed NESHAP, when combined with the emission reductions achieved by other similar standards, will provide protection to the public and achieve a primary goal of the CAA.

**DATES:** *Comments.* Submit comments on or before December 1, 2000.

*Public Hearing.* If anyone contacts the EPA requesting to speak at a public hearing by October 23, 2000, a public hearing will be held on November 1, 2000.

**ADDRESSES:** *Comments.* Submit written comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–99–38, Room M–1500, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. The EPA requests a separate copy also be sent to the contact person listed in **FOR FURTHER INFORMATION CONTACT.**

*Public Hearing.* If a public hearing is held, it will be held at 10:00 a.m. in the EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina, or at an alternate site nearby.

*Docket.* Docket No. A–99–38 contains supporting information used in developing the standards. The docket is located at the U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460 in room M–1500, Waterside Mall (ground floor), and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** For information about the proposed NESHAP, contact Mr. William Schrock, Organic Chemicals Group, Emission Standards Division, (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number (919) 541–5032; facsimile number (919) 541–3470; electronic mail address "schrock.bill@epa.gov."

**SUPPLEMENTARY INFORMATION:**

*Comments.* Comments and data may be submitted by electronic mail (e-mail) to: a-and-r-docket@epa.gov. Comments submitted by e-mail must be submitted as an ASCII file to avoid the use of special characters and encryption problems. Comments will also be accepted on disks in WordPerfect$_{(R)}$ version 5.1, 6.1, or 8 file format. All comments and data submitted in electronic form must note the docket number: A–99–38. No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Attention: Mr. William Schrock, c/o OAQPS Document Control Officer (Room 740B), U.S. Environmental Protection Agency, 411 W. Chapel Hill Street, Durham, NC 27701. The EPA will disclose information identified as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by the EPA, the information may be made available to the public without further notice to the commenter.

*Public Hearing.* A request for a public hearing must be made by the date specified under the **DATES** section. Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact: Ms. Maria Noell, Organic Chemicals Group, Emission Standards Division, (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number (919) 541–5607 at least 2 days in advance of the public hearing. Persons interested in attending the public hearing must also call Ms. Maria Noell to verify the time, date, and location of the hearing. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning these proposed emission standards.

*Docket.* The docket is an organized and complete file of all the information considered in the development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the CAA.) The regulatory text and other materials related to this rulemaking are available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

*World Wide Web (WWW).* In addition to being available in the docket, an electronic copy of today's proposed rule will also be available on the WWW through the Technology Transfer Network (TTN). Following the Administrator's signature, a copy of the rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules http://www.epa.gov/ttn/oarpg. The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.



*Regulated Entities.* Categories and entities potentially regulated by this action include those listed in Table 1 of this preamble.

TABLE 1.—REGULATED CATEGORIES AND ENTITIES

| Category | SIC | NAICS | Examples of regulated entities |
|---|---|---|---|
| Industry | 3111 | 3161 | Leather finishing operations. |
| Federal government | | | Not affected. |
| State/local/tribal government | | | Not affected. |

This table is not intended to be exhaustive, but rather a guide regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in section § 63.5285 of the proposed NESHAP. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

*Outline.* The information presented in this preamble is organized as follows:

I. Background
A. What is the source of authority for development of NESHAP?
B. What criteria are used in the development of NESHAP?
C. What are the health effects associated with the pollutants emitted from leather finishing operations?
D. How were the proposed NESHAP developed?
II. Summary of the Proposed NESHAP
A. What source categories and subcategories are affected by these proposed NESHAP?
B. What are the primary sources of emissions and what are the baseline emissions?
C. What is the affected source?
D. What are the emission limits, operating limits and other standards?
E. When must I comply with these proposed NESHAP?
F. What are the continuous compliance provisions?
G. What are the notification, recordkeeping and reporting requirements?
III. Rationale for Selecting the Proposed Standards
A. How did we select the source category?
B. How did we select any subcategories?
C. How did we select the affected source?
D. How did we determine the basis and level of the proposed standards for existing and new sources?
E. Did we consider control options more stringent than the MACT floor?
F. How did we select the form of the standards?
G. How did we select the test methods for determining compliance with these proposed NESHAP?
H. How did we select the notification, recordkeeping and reporting requirements?
I. What is the relationship of these proposed NESHAP to other rules?
IV. Summary of Environmental, Energy and Economic Impacts
A. What are the secondary and energy impacts associated with these standards?
B. What are the cost impacts?
C. What are the economic impacts?
V. Administrative Requirements
A. Executive Order 12866, Regulatory Planning and Review
B. Executive Order 13132, Federalism
C. Executive Order 13084, Consultation and Coordination with Indian Tribal Governments
D. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks
E. Unfunded Mandates Reform Act of 1995
F. Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*
G. Paperwork Reduction Act
H. National Technology Transfer and Advancement Act of 1995

## I. Background

### *A. What Is the Source of Authority for Development of NESHAP?*

Section 112 of the CAA requires us to list categories and subcategories of major sources and area sources of HAP and to establish NESHAP for the listed source categories and subcategories. As specified in section 112(a) of the CAA, major sources of HAP are those that have the potential to emit greater than 10 tpy of any one HAP or 25 tpy of any combination of HAP. On July 16, 1992, we published an initial list of source categories to be regulated (57 FR 31576). The Leather Tanning and Finishing Operations source category was not included on the initial list but was added by an update to the list on June 4, 1996 (61 FR 28207). Today's proposed rule modifies the listing of this source category by deleting tanning facilities from the definition and renaming the source category Leather Finishing Operations. We propose this change because our data indicate there are no stand-alone tanning facilities that are major sources of HAP, and that tanneries collocated at finishing facilities do not constitute a significant emission point for HAP that requires control. This proposal to delete tanning facilities does not preclude us from relisting tanning facilities in the future should a situation arise that tanning facilities become a major source of HAP emissions.

### *B. What Criteria Are Used in the Development of NESHAP?*

Section 112 of the CAA requires that we establish NESHAP for the control of HAP from both new and existing major sources. The CAA requires the NESHAP to reflect the maximum degree of reduction in emissions of HAP that is achievable, taking into consideration the cost of achieving the emissions reductions, any nonair quality health and environmental impacts, and energy requirements. This level of control is commonly referred to as the MACT.

The MACT floor is the minimum control level allowed for NESHAP and is defined under section 112(d)(3) of the CAA. The MACT floor is established at a level to assure that all major sources achieve a level of control at least as stringent as that already achieved by the better-controlled and lower-emitting sources in each source category or subcategory. For new sources, the MACT floor cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source. The MACT standards for existing sources can be less stringent than standards for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources in the category or subcategory (or the best-performing 5 sources for categories or subcategories with fewer than 30 sources).

In developing MACT, we also consider control options that are more stringent than the floor. We may establish standards more stringent than the floor based on the consideration of cost, nonair quality health and environmental impacts, and energy requirements.

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*C. What Are the Health Effects Associated With the Pollutants Emitted From Leather Finishing Operations?*

These proposed NESHAP protect air quality and promote the public health by reducing emissions of HAP listed in section 112(b)(1) of the CAA. The predominate HAP emitted by leather finishing operations include glycol ethers, toluene, and xylene. Exposure to these compounds has been demonstrated to cause a variety of adverse health effects. Acute (short-term) exposure in humans to high levels of glycol ethers results in narcosis, pulmonary edema, and severe liver and kidney damage. Chronic (long-term) exposure to glycol ethers may result in neurological and blood effects, including fatigue, nausea, tremor, and anemia. No information is available on the reproductive, developmental, or carcinogenic effects of glycol ethers in humans. Animal studies have reported reproductive and developmental effects, including testicular damage, reduced fertility, maternal toxicity, early embryonic death, birth defects, and delayed development.

Acute inhalation of toluene by humans may cause effects to the central nervous system (CNS), such as fatigue, sleepiness, headache, and nausea, as well as irregular heartbeat. Humans that are chronic inhalation abusers of toluene have reported adverse CNS effects after exposure to high levels of toluene. Symptoms include tremors, decreased brain size, involuntary eye movements, and impaired speech, hearing, and vision. Chronic inhalation exposure of humans to lower levels of toluene also causes irritation of the upper respiratory tract, eye irritation, sore throat, nausea, dizziness, headaches, and difficulty with sleep. Studies of children exposed to toluene or to mixed solvents inhalation during their mother's pregnancy have reported CNS problems, facial and limb abnormalities, and delayed development. However, these effects may not be attributable to toluene alone.

Acute inhalation of mixed xylenes (a mixture of three closely-related compounds) in humans may cause irritation of the nose and throat, nausea, vomiting, gastric irritation, mild transient eye irritation, and neurological effects. Chronic inhalation of xylenes in humans may result in nervous system effects such as headache, dizziness, fatigue, tremors, and incoordination. Other reported effects include labored breathing, heart palpitation, severe chest pain, abnormal electrocardiograms, and possible effects on the blood and kidneys.

The EPA does not have the type of current detailed data on each leather finishing operation covered by the proposed rule, and the people living around the facilities, that would be necessary to conduct an analysis to determine the actual population exposures to the HAP emitted from these facilities and the potential for resultant health effects. Therefore, the EPA does not know the extent to which the adverse health effects described above occur in the populations surrounding these facilities. However, to the extent the adverse effects do occur, the proposed rule will reduce emissions and subsequent exposures.

*D. How Were the Proposed NESHAP Developed?*

We consulted many representatives of the leather finishing industry, State and Federal representatives, and coating suppliers in developing the proposed NESHAP. We held a series of stakeholder meetings over a period of nearly 3 years. These meetings were held to keep stakeholders informed and to solicit data and information on issues relevant to the NESHAP development. Stakeholders helped in data gathering, arranged site visits, and reviewed questionnaires. Stakeholders also shared data, identified issues, and provided information to help resolve issues in the rulemaking process.

We identified the MACT floor control level with information obtained through questionnaire responses from 18 sources, of which 16 will be affected by this proposed subpart. We also conducted site visits, made telephone contacts, and reviewed operating permits.

## II. Summary of the Proposed NESHAP

*A. What Source Categories and Subcategories Are Affected by These Proposed NESHAP?*

Today's proposed NESHAP apply only to the Leather Finishing Operations source category. Operations that finish leather through a solvent degreasing process, such as in the manufacture of leather chamois, are already subject to the Halogenated Solvent Cleaning NESHAP (40 CFR part 63, subpart T). Those degreasing operations are not subject to today's proposed NESHAP. There are no subcategories for the Leather Finishing Operations source category.

*B. What Are the Primary Sources of Emissions and What Are the Baseline Emissions?*

The primary sources of HAP emissions at leather finishing operations are process vents associated with spray booth operations and the drying of the leather following coating. Total baseline HAP emissions from all 16 affected sources are 731 tons/yr.

*C. What Is the Affected Source?*

The affected source for leather finishing operations is the collection of all equipment and activities used for the application of film-forming materials to a leather substrate to provide desired material properties. The affected source includes, but is not limited to, all equipment that emits HAP, such as process vents, storage vessels, wastewater, and fugitive sources. The affected source also includes other auxiliary equipment that is necessary to make the operation run but may not emit HAP.

*D. What Are the Emission Limits, Operating Limits and Other Standards?*

As provided under the authority of CAA section 112(d), we are proposing the requirements in this rule in the form of a mass emission limit standard. For this proposed rule, the MACT performance level is an emission limit for finishing operations expressed in terms of HAP emissions per quantity of leather processed over a rolling 12-month compliance period. All facilities currently involved in leather finishing operations limit their HAP emissions through the use of low-HAP content coatings. Depending upon the intended use of the final leather product, different coatings with different HAP contents must be used. Therefore, a different emission limit has been established for the four primary products produced: (1) Upholstery with finish add-on greater than or equal to 4 grams per square foot, (2) upholstery with finish add-on less than 4 grams per square foot, (3) water-resistant leather, and (4) nonwater-resistant leather.

*E. When Must I Comply With These Proposed NESHAP?*

Leather finishing operations categorized as an existing affected source must comply with the emission standards for existing sources no later than 3 years from the effective date of the promulgated subpart. New or reconstructed affected sources that startup before the effective date of the promulgated subpart must comply with the emission standards for new and reconstructed sources no later than the effective date of the promulgated subpart. New or reconstructed affected sources that startup after the effective date of the promulgated subpart must comply with the emission standards for new and reconstructed sources upon startup of your affected source.



*F. What Are the Continuous Compliance Provisions?*

To demonstrate compliance, you must perform the following: (1) Develop a plan for demonstrating compliance; (2) maintain monthly records of finish usage, HAP content of all finishes, and quantity of leather finished; (3) comply with the HAP emission limits, expressed as pounds of HAP emissions per 1,000 square feet of leather processed for each leather product process operation; (4) submit the necessary notifications; and (5) submit the necessary reports.

*G. What Are the Notification, Recordkeeping and Reporting Requirements?*

1. What Notifications Must I Submit?

If you are an existing major source, you must submit an "initial notification" no later than 120 calendar days after the effective date of the promulgated subpart. You must provide a brief description of your source including the types of leather product process operations that are performed and the nominal operating capacity of your source. This initial submission notifies the Administrator that you have an affected source and must comply with the rule as promulgated. These NESHAP do not apply to area sources. If you are a new or reconstructed source, you must make several notifications during the process of construction and startup according to § 63.9 of the General Provisions.

You must also submit a notification of compliance status no later than 60 calendar days after determining your initial 12-month compliance ratio. The notification of compliance status identifies your affected source, lists the types of leather product process operations processed, and certifies the compliance status of your affected source.

You must submit a notification of intent to conduct an applicable performance test at least 60 calendar days before the performance test is scheduled to begin.

2. What Is a Plan for Demonstrating Compliance?

Most leather finishing sources currently use reliable methods in determining the quantity of HAP emissions lost to the atmosphere and the quantity of leather processed. For example, the quantity of HAP emissions from an affected source may be based on direct volumetric or mass measurements of the amounts of each solvent type applied to leather substrates and the HAP content of each solvent type provided on material safety data sheets (MSDS). Therefore, today's proposed NESHAP do not require you to change the method of measurement, but do require you to document each method of measurement and to consistently follow each documented method. You must develop a plan for demonstrating compliance which describes in detail how you will determine your finish usage, HAP content of each finish, and the quantity of leather processed in each product process operation. The plan for demonstrating compliance must be developed by the compliance date and must be kept on site and available for inspection.

3. What Data Must I Record?

You must record all of the data necessary to determine your compliance ratio on a monthly basis. This includes all records used to determine the monthly and 12-month rolling sum of finish usage, HAP content of each finish applied, and quantity of leather processed. If you use an emission control device to comply with these proposed NESHAP, then you must also record all necessary data from monitoring the emission control device as specified at 40 CFR part 63, subpart SS. The frequency in which you measure and record necessary information must be specified in your plan for demonstrating compliance.

The proposed NESHAP require you to keep records in a form suitable and readily available for review. You must keep each record for 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record. Records must remain on site for at least 2 years and then can be maintained offsite for the remaining 3 years.

4. What Reports Must I Submit?

The proposed NESHAP require you to submit an annual report certifying the compliance status of your affected source. The first annual compliance status certification is due 1 year after the submittal of your notification of compliance status.

If your compliance ratio exceeds one, you must submit a deviation report by the fifteenth of the following month in which you determined the deviation.

## III. Rationale for Selecting the Proposed Standards

*A. How Did We Select the Source Category?*

As noted in section I.B, today's proposed NESHAP revise the definition of the source category. Leather tanning operations have been deleted from the definition of the source category. We took this action after reviewing the data from the facilities engaged in leather tanning operations.

*B. How Did We Select Any Subcategories?*

We reviewed the available information on the leather finishing operations industry and determined that the industry did not warrant subcategorization. We found that, in general, the raw materials, emissions, and process steps are similar.

However, we observed differences in achievable emission levels between the types of leather products produced. Four product process operations were established for these NESHAP because of differences in finish properties and coating formulations which affect the achievable level of HAP emissions. The four leather product process operations established for the leather finishing source category are described in the following paragraphs.

1. Upholstery leather with finish add-on greater than or equal to 4 grams per square foot. The coatings used in this product process operation are typically aqueous-based acrylic resins with surfactants and aqueous-based polyurethane dispersions. These coatings produce a leather that exhibits good abrasion resistance, thermal stability, and ultraviolet light stability, as well as excellent adhesion properties.

2. Upholstery leather with finish add-on less than 4 grams per square foot. The typical coatings used to produce leather in this product process operation are nitrocellulose or cellulose acetate butyrate. The desired properties of this type of leather are primarily aesthetic, and only these types of coatings produce the desired effect.

3. Water-resistant leather (able to pass 5,000 or more American Society for Testing and Materials (ASTM) Maeser Flexes). Leather in this product process operation requires the use of solvent-based finishes to achieve the required water resistance. Due to the nature of this product being water resistant, substitution of a water-based coating is not an option.

4. Nonwater-resistant leather (unable to pass 5,000 ASTM Maeser Flexes). Finishes used in this product process operation can either be solvent-based or aqueous-based depending on the use of the leather. Most leather producers make a variety of products that require the use of both types of finishes.

For the prior mentioned reasons, we have not established subcategories, but rather we have established four different

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performance standards for the various leather products produced. Thus, an affected source may consist of any combination of the four product process operations located at a major source site.

*C. How Did We Select the Affected Source?*

In selecting the affected source for the Leather Finishing Operations source category, we included all equipment that emits HAP, such as process vents, storage vessels, wastewater, and fugitive sources. In addition, because "reconstruction," as defined in § 63.2 of the General Provisions, is calculated based on the affected source, we also included other auxiliary equipment that is necessary to make the operation run, but which may not emit HAP. Thus, we are defining the affected source broadly to include the sum of all operations engaged in the finishing of the leather product.

A broadly-defined affected source provides owners and operators with more flexibility to comply using emissions averaging. In addition, we defined the affected source broadly because emissions from the sum of all operations are better documented than emissions from individual process lines or emission points.

*D. How Did We Determine the Basis and Level of the Proposed Standards for Existing and New Sources?*

For these proposed NESHAP, the MACT performance level is an emission limit for finishing operations expressed in terms of pounds of HAP emission per 1,000 square feet of leather processed over a rolling, 12-month compliance period. For each of the four product process operations, we determined an overall finishing operation performance level based on 1 year of monthly data relating HAP emissions to leather processing rates.

We used statistical procedures to address variability observed in monthly data used in the MACT floor determinations. Customer and consumer preferences for different types of leather finishing products vary from month-to-month, thus affecting finishing operations and HAP emissions. One year of emission and process information is not sufficient to characterize the long-term impacts of customer and consumer finishing preferences. The never-to-be-exceeded format of these proposed NESHAP required us to statistically examine variability and make adjustments to the HAP loss performance level of each product process operation in order to establish numerical limits that are achievable across the source category.

For existing sources, we determined the MACT floor for each product process operation based on the performance levels corresponding to the five top-performing operations since there are fewer than 30 sources in each product process operation. For new sources, we determined the MACT floor for each product process operation based on the performance level corresponding to the top ranking product process operation of each type. The new source MACT floor for each product process operation is more stringent than the corresponding existing source MACT floor.

*E. Did We Consider Control Options More Stringent Than the MACT Floor?*

We considered a regulatory alternative more stringent than the MACT floor, but rejected it because of a significantly higher cost per ton of emissions reductions. The more stringent option would require the installation of a thermal oxidizer to control HAP emissions in the combined exhaust streams from spray stations and finish dryers. At present, no leather finishing facility has installed such emission controls on spray station exhausts or finish dryers.

*F. How Did We Select the Form of the Standards?*

We evaluated two predominant possibilities for the form of the standards. In our data collection efforts, we requested State rules that apply to the types of leather finishing activities we are regulating by this proposal. The State standards are expressed either in the form of a limit on the HAP content in the coatings used or a HAP emissions limit per unit area of leather coated. One State uses a combination of the two forms. Most States limit the HAP content in the coatings. However, there is nearly an equal number of facilities covered by each form of the standards.

We decided to express the standards as a HAP emissions limit per unit area of leather finished for the following reasons: (1) This form of the standard simplified the data collection efforts necessary to determine the MACT floor, (2) facilities within the source category are already tracking HAP usage and amount of leathered processed, and (3) this form of the standard provides facilities more compliance flexibility.

*G. How Did We Select the Test Methods for Determining Compliance With These Proposed NESHAP?*

The reference test method for measuring the HAP content of leather surface coatings and wipe-down solvents subject to the proposed NESHAP is EPA Method 311 (Analysis of Hazardous Air Pollutant Compounds in Paints and Coatings by Direct Injection Into a Gas Chromatograph). This is an established method that is appropriate for measuring the types of HAP used in these materials. You may use alternative methods for measuring HAP content that we approve.

The proposed NESHAP do not require a compliance test for HAP content, nor do they require you to test every shipment of materials that you receive. You are responsible for ensuring, by any means that you choose such as periodic testing, or manufacturers' certification, that the HAP content of your materials complies with the requirements of the proposed NESHAP. We may require you to conduct a test at any time using EPA Method 311 (or any approved alternative method) to confirm the HAP content in the compliance reports that you submit. If there is any inconsistency between the results of the EPA Method 311 test and any other means of determining HAP content, the Method 311 results will govern.

*H. How Did We Select the Notification, Recordkeeping and Reporting Requirements?*

The selection of notification requirements was based on the notification requirements listed in the General Provisions (40 CFR part 63, subpart A). These notification requirements provide the minimum necessary information to inform the EPA that a facility will be subject to the promulgated rule during normal operations and assure EPA that a facility will be subject to the promulgated rule during site-specific testing conditions and during construction/reconstruction conditions.

Recordkeeping is limited to information required for determining finish usage and resulting HAP emissions. An inventory log of finish applications is required to satisfy monitoring requirements of the proposed rule. The required information is as follows: finish usage, HAP content of the finish, date, time, operator, and leather product process operation. Additional information may be required depending on the nature of the facility. For example, density and volume determinations may have to be recorded so that an actual finish weight may be calculated.

After submitting initial notifications and developing a plan for demonstrating compliance, the source will be required to file an annual statement certifying compliance status. The annual compliance status certificate is due 12 months from the anniversary of the last compliance status certificate.



*I. What Is the Relationship of These Proposed NESHAP to Other Rules?*

1. NESHAP for Halogenated Solvent Cleaning (40 CFR part 63, subpart T)

Operations that finish leather through a solvent degreasing process, such as the manufacture of leather chamois, are already subject to the provisions in 40 CFR part 63, subpart T. Since leather finishing operations involving a degreasing process are already subject to the NESHAP for Halogenated Solvent Cleaning, those operations involving leather degreasing are, therefore, not subject to today's proposed NESHAP. At least one facility that is involved in the finishing of leather into chamois is subject to subpart T, which covers the same types of operations as this proposed rule.

2. Relationship Between Operating Permit Program and the Proposed Standards

Under the operating permit program codified at 40 CFR parts 70 and 71, a major source subject to standards under section 111 or 112 of the CAA must obtain an operating permit (§ 70.3(a)(1) and §71.3(a)(1)). Therefore, every major source subject to these proposed NESHAP must obtain an operating permit. Area sources in this industry are not regulated by these proposed NESHAP, and, therefore, would not be required to obtain an operating permit because of these proposed NESHAP.

Some leather finishing facilities may be major sources based solely on their potential to emit, even though their actual emissions are below the major source level. These leather finishing facilities may choose to obtain a federally enforceable limit on their potential to emit so that they are no longer considered major sources and not subject to the proposed NESHAP. Sources that opt to limit their potential to emit by placing limits on operating hours or amount of material used are referred to by the EPA as "synthetic" area sources. To become a synthetic area source, you must contact your local permitting authority to obtain an operating permit with the appropriate operating limits prior to the compliance date of the promulgated rule. These operating limits will then be federally enforceable under 40 CFR 70.6(b).

## IV. Summary of Environmental, Energy and Economic Impacts

*A. What Are the Secondary and Energy Impacts Associated With These Standards?*

We do not expect any significant secondary air emission, wastewater, solid waste, or energy impacts resulting from the proposed rule. The emissions reduction techniques that will be used to comply with the NESHAP are pollution-prevention techniques such as greater efficiency with finish transfer technologies and chemistry changes from solvent-based finishes to aqueous-based finishes. More details on the secondary and energy impacts can be found in the memorandum entitled "Environmental and Energy Impacts for Leather Tanning and Finishing MACT Floor Regulatory Option" (Docket A–99–38).

*B. What Are the Cost Impacts?*

We determined the total capital cost associated with the MACT floor level of control to be approximately $5.6 million which corresponds to a total annualized cost of approximately $440,000 per year. The total annualized costs also include the costs associated with compliance monitoring, recordkeeping, and reporting.

We determined the overall cost effectiveness associated with the MACT floor level of control to be $1,300 per ton of HAP reduced. This level of control will reduce HAP emissions from existing sources by approximately 375 tpy, a reduction of approximately 51 percent.

*C. What Are the Economic Impacts?*

The total annualized costs associated with these proposed NESHAP are approximately $440,000 in 1997 dollars. This cost represents only 0.014 percent of total industry revenues based on 1996 value of shipments. Because the total annualized costs associated with complying with the proposed NESHAP are such a small percentage of total market revenues (value of shipments), it is unlikely market prices or production will change as a result of these proposed NESHAP. As an alternative to performing a market analysis, we evaluated the cost impacts on facility and firm revenues. The calculation of cost-to-sales ratios shows that only one firm (owning one facility) shows an impact that is greater than 1 percent of revenues (1.52 percent). All other firms have impacts well below 1/10th of 1 percent and range from 0.00 percent to 0.09 percent of firm revenues. Given that overall costs represent a small fraction of industry revenues, and individual firm revenues experience minimal impacts, we conclude that economic impacts associated with this proposed rule will be negligible.

## V. Administrative Requirements

*A. Executive Order 12866, Regulatory Planning and Review*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), we must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB). The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is not a "significant regulatory action" because none of the listed criteria apply to this action. Consequently, this action was not submitted to OMB for review under Executive Order 12866.

*B. Executive Order 13132, Federalism*

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds

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necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed rule. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed rule.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's prior consultation with State and local officials, a summary of the nature of their concerns and the Agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, EPA must include a certification from the Agency's Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This is because the proposed rule applies to affected sources in the leather finishing industry, not to States or local governments. Nor will State law be preempted, or any mandates be imposed on States or local governments. Thus, the requirements of section 6 of the Executive Order do not apply to this proposed rule. The EPA notes, however, that although not required to do so by this Executive Order (or otherwise), it did consult with State governments during development of this proposed rule.

*C. Executive Order 13084, Consultation and Coordination With Indian Tribal Governments*

Under Executive Order 13084, we may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or we consult with those governments. If we comply by consulting, we are required by Executive Order 13084 to provide to the OMB in a separately identified section of the preamble to the rule, a description of the extent of our prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires us to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this proposed rule.

*D. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks*

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it is based solely on technology performance. No children's risk analysis was performed because no alternative technologies exist that would provide greater stringency at a reasonable cost. Additionally, this proposed rule is not "economically significant" as defined under Executive Order 12866.

*E. Unfunded Mandates Reform Act of 1995*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, we must generally prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least-costly, most cost-effective, or least-burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative other than the least-costly, most cost-effective, or least-burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before we establish any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of our regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

We have determined that this proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. The total annual cost of this proposed rule for any 1 year has been estimated at $440,000 per year. Thus, today's proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, we have determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them. Therefore, today's proposed rule is not subject to the requirements of section 203 of the UMRA.



*F. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.*

The RFA generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business whose parent company has fewer than 500 employees; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, we certify that this action will not have a significant economic impact on a substantial number of small entities. There are currently a total of 16 facilities that are major sources of HAP emissions and affected by this proposed rule. The industry is characterized as having some finishing operations that are relatively small, often specializing in the manufacture of leather with unique attributes, while others employ several hundred people and produce a wide variety of leathers. However, many of the smaller leather finishing operations are owned by ultimate parent firms that are classified as large corporations. Also, this industry typically operates with more than 300 establishments, so only a small fraction of the firms in the industry are impacted by the proposed rule. We determined that the 16 affected facilities are owned by 14 parent firms, and only 3 of these firms are classified as small by the previously mentioned definition. Nearly all of the firms (small and large) have very minimal impacts which range from 0.00 percent to 0.09 percent of firm revenues. Only one firm of the 14 will experience compliance costs that exceed 1 percent of firm revenues (1.52 percent), and this firm is a small business. This impact, however, is not considered significant for this industry. Typical profit margins for the leather industry average 3.5 percent.

Although this proposed rule will not have a significant economic impact on a substantial number of small entities, we nonetheless have tried to reduce the impact of this proposed rule on small entities. We have worked closely with the Leather Industry of America in determining the form of the standard and establishing methods for minimizing the compliance burden. This outreach included a series of meetings over a 2-year period and our attendance at the industries annual regulatory meeting of the Leather Industry of America. These meetings and outreach provided updates to the industry on the progress of the proposed rule and also forecasting the timeline for compliance with the proposed rule. In addition, these meetings provided us with useful information that we used in developing the proposed rule. For instance, currently no facilities use add-on control devices and we anticipate that no facilities will need to install a device to achieve compliance with the proposed rule. This will minimize costs to achieve compliance as well as simplify demonstrating compliance since already maintained purchase and usage records are all that will be needed to demonstrate compliance. We are also proposing that compliance demonstrations be conducted monthly, rather than on a daily basis which we believe will reduce the amount of records necessary to demonstrate compliance with the proposed rule. Furthermore, we are proposing the minimum monitoring, recordkeeping, and reporting requirements specified in the General Provisions. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

*G. Paperwork Reduction Act*

The information collection requirements in this proposed rule will be submitted for approval to the OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The EPA has prepared an Information Collection Request (ICR) document 1985.01, and you may obtain a copy from Sandy Farmer by mail at the U.S. Environmental Protection Agency, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania Avenue NW, Washington, DC 20460, by email at farmer.sandy@epa.gov, or by calling (202) 260–2740. A copy may also be downloaded off the internet at http://www.epa.gov/icr. The information requirements are not effective until OMB approves them.

The information requirements are based on notification, recordkeeping, and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to national emission standards. These recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to the EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to EPA policies set forth in 40 CFR part 2, subpart B.

The annual monitoring, reporting, and recordkeeping burden for this collection, as averaged over the first 3 years after the effective date of the rule, is estimated to be 485 labor hours per year at a total annual cost of $21,600. This estimate includes a one-time plan for demonstrating compliance, annual compliance certificate reports, notifications, and recordkeeping. Total labor burden associated with the monitoring requirements over the 3-year period of the ICR are estimated at $64,700.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, Collection Strategies Division, U.S. Environmental Protection Agency (2822), 1200 Pennsylvania Ave., NW, Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW, Washington, DC 20503,

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marked "Attention: Desk Officer for EPA." Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after October 2, 2000, a comment to OMB is best assured of having its full effect if OMB receives it by November 1, 2000. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

*H. National Technology Transfer and Advancement Act of 1995*

Under section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Public L. No. 104–113), all Federal agencies are required to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards such as, materials specifications, test methods, sampling procedures, business practices, developed or adopted by one or more voluntary consensus bodies. The NTTAA requires Federal agencies to provide Congress, through annual reports to the OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

Consistent with the NTTAA, the EPA conducted a search for EPA's Method 311 (Analysis of Hazardous Air Pollutant Compounds in Paints and Coatings by Direct Injection into a Gas Chromatograph) and found no candidate voluntary consensus standards for use in identifying glycol ethers, toluene, and xylene. This proposal references the National Emission Standards for Closed Vent Systems, Control Devices, Recovery Devices, and Routing to a Fuel Gas System or a Process (40 CFR part 63, subpart SS). Since there are no new technical standard requirements resulting from specifying subpart SS in this proposed rule, and no candidate consensus standards were identified for EPA Method 311 (glycol ethers, toluene, and xylene) in this proposal, EPA is not proposing/adopting any voluntary consensus standards in this rulemaking.

The EPA takes comment on proposed compliance demonstration requirements proposed in this rulemaking and specifically invites the public to identify potentially-applicable voluntary consensus standards. Commenters should also explain why this regulation should adopt them in lieu of EPA's standards. Emission test methods and performance specifications submitted for evaluation should be accompanied with a basis for the recommendation, including method validation data and the procedure used to validate the candidate method (if method other than Method 301, 40 CFR part 63, appendix A, was used).

Section 63.2854 (b)(1) of the proposed standards list EPA Method 311, which has been used by States and industry for approximately 5 years. Nevertheless, under § 63.7(f), the proposal allows any State or source to apply to EPA for permission to use an alternative method in lieu of EPA Method 311 listed in § 63.2854(b)(1).

**List of Subjects in 40 CFR Part 63**

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: September 20, 2000.

**Carol M. Browner,**

*Administrator.*

For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of the Federal Regulations is proposed to be amended as follows:

**PART 63—[AMENDED]**

1. The authority citation for part 63 continues to read as follows:

**Authority:** 42 U.S.C. 7401, *et seq.*

2. Part 63 is amended by adding subpart TTTT to read as follows:

**Subpart TTTT—National Emission Standards for Hazardous Air Pollutants for Leather Finishing Operations**

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63.5280 What is the purpose of this subpart?
63.5285 Am I subject to this subpart?
63.5290 What parts of my facility does this subpart cover?
63.5295 When do I have to comply with this subpart?

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## Subpart TTTT—National Emission Standards for Hazardous Air Pollutants for Leather Finishing Operations

### What This Subpart Covers

#### § 63.5280 What is the purpose of this subpart?

This subpart establishes national emission standards for hazardous air pollutants (NESHAP) for leather finishing operations. These standards limit HAP emissions from specified leather finishing operations. This subpart also establishes requirements to demonstrate initial and continuous compliance with the emission standards.



#### § 63.5285 Am I subject to this subpart?

(a) You are subject to this subpart if you own or operate a leather finishing operation that is a major source of hazardous air pollutants (HAP) emissions or that is located at, or is part of, a major source of HAP emissions. A leather finishing operation is defined in § 63.5460. In general, it is a single process or group of processes used for the application of film-forming materials to a leather substrate to provide desired properties.

(b) You are a major source of HAP emissions if you own or operate a plant site that emits or has the potential to emit any single HAP at a rate of 10 tons (9.07 megagrams) or more per year or any combination of HAP at a rate of 25 tons (22.68 megagrams) or more per year.

#### § 63.5290 What parts of my facility does this subpart cover?

(a) This subpart applies to each new, reconstructed, or existing affected source at leather finishing operations.

(b) The affected source subject to this subpart is the collection of all equipment and activities used for the application of film-forming materials to a leather substrate to provide desired material properties. This subpart applies to the leather finishing operations listed in paragraphs (b)(1) through (4) of this section and as defined in § 63.5460, whether or not the operations are collocated with leather tanning operations:

(1) Upholstery leather with greater than or equal to 4 grams finish add-on per square foot of leather;

(2) Upholstery leather with less than 4 grams finish add-on per square foot of leather;

(3) Water-resistant leather; and

(4) Nonwater-resistant leather.

(c) An affected source does not include portions of your leather finishing operation that are listed in paragraphs (c)(1) and (2) of this section:

(1) A leather finishing operation affected source does not include equipment used solely with leather tanning operations.

(2) A leather finishing operation affected source does not include that portion of your leather finishing operation using a solvent degreasing process, such as in the manufacture of leather chamois, that is already subject to the Halogenated Solvent Cleaning NESHAP (40 CFR part 63, subpart T).

(d) An affected source is a new affected source if you commenced construction of the affected source after October 2, 2000, and you meet the applicability criteria at the time you commenced construction.

(e) An affected source is reconstructed if you meet the criteria as defined in § 63.2.

(f) An affected source is existing if it is not new or reconstructed.

#### § 63.5295 When do I have to comply with this subpart?

(a) If you have a new or reconstructed affected source, you must comply with this subpart according to paragraphs (a)(1) and (2) of this section:

(1) If you startup your affected source before the effective date of the subpart, then you must comply with the emission standards for new and reconstructed sources in this subpart no later than the effective date of the subpart.

(2) If you startup your affected source after the effective date of the subpart, then you must comply with the emission standards for new and reconstructed sources in this subpart upon startup of your affected source.

(b) If you have an existing affected source, you must comply with the emission standards for existing sources no later than 3 years from the effective date of this subpart.

(c) If you have an area source that increases its emissions or its potential to emit such that it becomes a major source of HAP and an affected source subject to this subpart, paragraphs (c)(1) and (2) of this section apply.

(1) An area source that meets the criteria of a new affected source as specified at § 63.5290(d) or a reconstructed affected source as specified at § 63.5290(e) must be in compliance with this subpart upon becoming a major source.

(2) An area source that meets the criteria of an existing affected source as specified at § 63.5290(f) must be in compliance with this subpart no later than 3 years after it becomes a major source.

(d) You must meet the notification requirements in § 63.5415 and in subpart A of this part. Some of the notifications must be submitted before you are required to comply with the emission standards in this subpart.

### Standards

#### § 63.5305 What emission standards must I meet?

The emission standards limit the number of pounds of HAP lost per square foot of leather processed. You must meet each emission limit in Table 1 of this subpart that applies to you.

### Compliance Requirements

#### § 63.5320 How does my affected major source comply with the HAP emission standards?

(a) All affected sources must be in compliance with the requirements of this subpart at all times, including periods of startup, shutdown and malfunction.

(b) You must always operate and maintain your affected source, including air pollution control and monitoring equipment, according to the provisions in § 63.6(e)(1)(i).

(c) You must perform all of the items listed in paragraphs (c)(1) through (10) of this section:

(1) Submit the necessary notifications in accordance with § 63.5415.

(2) Develop and implement a plan for demonstrating compliance in accordance with § 63.5325.

(3) Submit the necessary reports in accordance with § 63.5420.

(4) Keep a finish inventory log to record monthly the pounds of each type of finish applied for each leather product process operation and the mass fraction of HAP in each applied finish as specified at § 63.5335(b). You may be required to start recordkeeping prior to the compliance dates specified at § 63.5295.

(5) Keep a leather processed inventory log to record monthly the surface area of leather processed in 1,000's of square feet for each product process operation as specified at § 63.5430(f). You may be required to start recordkeeping prior to the compliance dates specified at § 63.5295.

(6) Determine the actual HAP loss from your affected source in accordance with § 63.5335.

(7) Determine the allowable HAP loss for your affected source in accordance with § 63.5340.

(8) Determine the compliance ratio for your affected source each month as specified at § 63.5330. The compliance ratio compares your actual HAP loss to your allowable HAP loss for the previous 12 months.

(9) Maintain the compliance ratio for your affected source at or below 1.00 in accordance with § 63.5330.

(10) Maintain all the necessary records you have used to demonstrate compliance with this subpart in accordance with § 63.5430.

#### § 63.5325 What is a plan for demonstrating compliance and when must I have one in place?

(a) You must develop and implement a written plan for demonstrating compliance that provides the detailed procedures you will follow to monitor

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and record data necessary for demonstrating compliance with this subpart. Procedures followed for quantifying HAP loss from the source and amount of leather processed vary from source to source because of site-specific factors such as equipment design characteristics and operating conditions. Typical procedures include one or more accurate measurement methods such as weigh scales and volumetric displacement. Because the industry does not have a uniform set of procedures, you must develop and implement your own site-specific plan for demonstrating compliance not later than the compliance date for your source. You must also incorporate the plan for demonstrating compliance by reference in the source's title V permit. The plan for demonstrating compliance must include the items listed in paragraphs (a)(1) through (7) of this section:

(1) The name and address of the owner or operator.

(2) The physical address of the leather finishing operation.

(3) Provide a detailed description of all methods of measurement your source will use to determine your finish usage, HAP content of each finish, quantity of leather processed, and leather product process operation type.

(4) Specify when each measurement will be made.

(5) Provide examples of each calculation you will use to determine your compliance status. Include examples of how you will convert data measured with one parameter to other terms for use in compliance determination.

(6) Provide example logs of how data will be recorded.

(7) Provide a quality assurance/quality control plan to ensure that the data continue to meet compliance demonstration needs.

(b) You may be required to revise your plan for demonstrating compliance. We may require reasonable revisions if the procedures lack detail, are inconsistent, or do not accurately determine finish usage, HAP content of each finish, quantity of leather processed, or leather product process operation type.

**§ 63.5330 How do I determine the compliance ratio?**

(a) When your source has processed leather for 12 months, you must determine the compliance ratio for your affected source by the fifteenth of each month for the previous 12 months.

(b) You must determine the compliance ratio using equation 1 of this section as follows:

$$\text{Compliance Ratio} = \frac{\text{Actual HAP Loss}}{\text{Allowable HAP Loss}} \quad \text{(Eq. 1)}$$

Where:

Actual HAP Loss = Pounds of actual HAP loss for the previous 12 months, as determined in § 63.5335.

Allowable HAP Loss = Pounds of allowable HAP loss for the previous 12 months, as determined in § 63.5340.

(1) If the value of the compliance ratio is less than or equal to 1.00, your affected source was in compliance with the applicable HAP emission limits of this subpart for the previous month.

(2) If the value of the compliance ratio is greater than 1.00, your affected source was deviating from compliance with the applicable HAP emission limits of this subpart for the previous month.

**§ 63.5335 How do I determine the actual HAP loss?**

(a) This section describes the information and procedures you must use to determine the actual HAP loss from your leather finishing operation. By the fifteenth of each month, you must determine the actual HAP loss in pounds from your leather finishing operation for the previous month.

(b) Use a finish inventory log to record the pounds of each type of finish applied for each leather product process operation and the mass fraction of HAP in each applied finish. Figure 1 of this subpart shows an example log for recording the minimum information necessary to determine your finish usage and HAP loss. The finish inventory log must contain, at a minimum, the information for each type of finish applied listed in paragraphs (b)(1) through (7) of this section:

(1) Finish type.

(2) Pounds (or density and volume) of each finish applied to the leather.

(3) Mass fraction of HAP in each applied finish.

(4) Date of the recorded entry.

(5) Time of the recorded entry.

(6) Name of the person recording the entry.

(7) Product process operation type.

(c) To determine the pounds of HAP loss for the previous month, you must first determine the pounds of HAP loss from each finish application.

(1) For facilities not using add-on emission control devices, the entire HAP content of the finishes are assumed to be released to the environment. Using the finish inventory log, multiply the pounds of each recorded finish usage by the corresponding mass fraction of HAP in the finish. The result is the HAP loss in pounds from each finish application. Sum the pounds of HAP loss from all finish applications recorded during the previous month to determine the total monthly HAP loss in pounds from your finishing operation.

(2) For facilities using add-on emission control devices, the finish inventory log and the emission reduction efficiency of the add-on control device can be used to determine the net HAP loss in pounds. The emission reduction efficiency for a control device must be determined from a performance test conducted in accordance with §§ 63.5375 and 63.5380. Using the finish inventory log, multiply the pounds of each recorded finish usage by the corresponding mass fraction of HAP in the finish. The result is the gross HAP loss in pounds from each finish application prior to the add-on control device. Multiply the gross HAP loss by the percent emission reduction achieved by the add-on control device and then subtract this amount from the gross HAP loss. The result is the net HAP loss in pounds from each finish application. Sum the pounds of net HAP loss from all finish applications recorded during the previous month to determine the total monthly net HAP loss in pounds from your finishing operation.

(d) After collecting HAP loss data for 12 months, you must also determine by the fifteenth of each month the annual HAP loss in pounds by summing the monthly HAP losses for the previous 12 months. The annual HAP loss is the "actual HAP loss," which is used in Equation 1 of § 63.5330 to calculate your compliance ratio, as described in § 63.5330.

**§ 62.5340 How do I determine the allowable HAP loss?**

(a) By the fifteenth of each month, you must determine the allowable HAP loss in pounds from your leather finishing operation for the previous month.

(b) To determine the allowable HAP loss for your leather finishing operation, you must select the appropriate HAP emission limit, expressed in pounds of HAP loss per 1,000 square feet of leather processed, from Table 1 of this subpart, for each type of leather product process operation performed during the previous 12 months. Under the appropriate existing or new source column, select the HAP emission limit that corresponds to each type of product process operation performed during the previous 12 months. Next, determine the annual total of leather processed in 1,000's of square feet for each product process operation in accordance with § 63.5400. Then, multiply the annual total of leather processed in each product process operation by the corresponding HAP emission limit to determine the allowable HAP loss in pounds for the corresponding leather product process operation. Finally, sum the pounds of HAP loss from all leather product process operations performed in the previous 12 months. Equation 1 of this section illustrates the calculation of allowable HAP loss as follows:

$$\text{Allowable HAP Loss} = \sum_{i=1}^{n} \left( \begin{array}{c} \text{Annual Total of Leather Processed}_i \end{array} * \begin{array}{c} \text{HAP Emission Limit}_i \end{array} \right) \quad \text{(Eq. 1)}$$

Where:

Annual Total of Leather Processed = 1,000's of square feet of leather processed in the previous 12 months in product process operation "i".

HAP Emission Limit = From Table 1 of this subpart, the HAP emission limit in pounds of HAP loss per 1,000 square feet of leather processed for product process operation "i".

n = Number of leather product process operation types performed during the previous 12 months.

(c) The resulting "allowable HAP loss" is used in Equation 1 of § 63.5330 to calculate your compliance ratio, as described in § 63.5330.

**§ 62.5345 How do I distinguish between the two upholstery product process operations?**

(a) Product process operations that finish leather for use in automobile and furniture seat coverings are categorized as an upholstery product process operation. There are two upholstery product process operations subject to the requirements of this subpart—operations with less than 4 grams of finish add-on per square foot, and operations with 4 grams or more of finish add-on per square foot. You must distinguish between the two upholstery product process operations so that you can determine which HAP emission limit in Table 1 of this subpart applies to your affected source.

(b) You must determine finish add-on by calculating the difference in mass before and after the finishing process. You may use an empirical method to determine the amount of finish add-on applied during the finishing process, as described in paragraphs (b)(1) through (4) of this section:

(1) Weigh a one square foot representative section of polyester film or equivalent material substrate to be finished. This will provide a baseline mass and surface area prior to starting the finishing process.

(2) Use a scale with an accuracy of at least 5 percent of the mass in grams of the representative section of polyester film.

(3) Upon completion of these measurements, process the polyester film on the finishing line as you would for a typical section of leather.

(4) After the finishing and drying process, weigh the representative section of polyester film to determine the final mass. Divide the net mass in grams gained by the representative section of polyester film by its surface area in square feet to determine grams per square foot of finish add-on. Equation 1 of this section illustrates this calculation, as follows:

$$\text{Finish Add-On} = \frac{\left(\text{Final Mass} - \text{Initial Mass}\right)}{\left(\text{Surface Area}\right)} \quad \text{(Eq. 1)}$$

Where:

Finish Add-On = Grams per square foot of finish add-on applied to a representative section of polyester film.

Final Mass = Final mass in grams of representative section of polyester film, after finishing and drying.

Initial Mass = Initial mass in grams of representative section of polyester film, prior to finishing.

Surface Area = Surface area in square feet of a representative section of polyester film.

(c) Any appropriate engineering units may be used for determining the finish add-on. However, finish add-on results must be converted to the units of grams of finish add-on per square foot of leather processed. If multiple representative leather sections are analyzed, then use the average of these measurements for selecting the appropriate product process operation.

**§ 63.5350 How do I distinguish between the water-resistant and nonwater-resistant leather product process operations?**

(a) Product process operations that finish leather for nonupholstery use are categorized as either water-resistant or nonwater-resistant product process operations. You must distinguish between the water-resistant and nonwater-resistant product process operations so that you can determine which HAP emission limit in Table 1 of this subpart applies to your affected source.

(b) To determine whether your product process operation produces water-resistant or nonwater-resistant leather, you must conduct the Maeser Flexes test method according to American Society for Testing and Materials (ASTM) Designation D2099–98 or a method approved by the Administrator.

(c) Statistical analysis of initial water penetration data performed to support ASTM Designation D2099–98 indicates that poor quantitative precision is associated with this testing method. Therefore, three sections of leather substrate from at least 12 sides of leather must be tested for a minimum of three times to determine the water-resistant characteristics of the leather. You must average the results of these tests to determine the final number of Maeser Flexes prior to initial water penetration.

(d) Results from leather samples indicating an average of 5,000 Maeser Flexes or more is considered a water-resistant product process operation, and results indicating less than 5,000 Maeser Flexes is considered nonwater-resistant product process operation.

**§ 63.5355 How do I monitor and collect data to demonstrate continuous compliance?**

(a) You must monitor and collect data according to this section.

(b) You must collect data at all required intervals as specified in your plan for demonstrating compliance as specified at § 63.5325.

(c) For emission control devices, except for monitor malfunctions, associated repairs, and required quality assurance or control activities (including, as applicable, calibration checks and required zero and span

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adjustments), you must monitor continuously (or collect data at all required intervals) at all times that the affected source is operating.

(d) You may not use data recorded during monitoring malfunctions, associated repairs, and required quality assurance or control activities in data averages and calculations used to report emission or operating levels, nor may such data be used in fulfilling a minimum data availability requirement, if applicable. You must use all the data collected during all other periods in assessing the compliance ratio, and, if an emission control device is used, in assessing the operation of the control device.

**§ 63.5360 How do I demonstrate continuous compliance with the emission standards?**

(a) You must demonstrate continuous compliance with the emission standards in § 63.5305 by following the requirements in paragraphs (a)(1) and (2) of this section:

(1) You must collect and monitor data according to the procedures in your plan for demonstrating compliance as specified in § 63.5325.

(2) If you use an emission control device, you must collect the monitoring data according to 40 CFR part 63, subpart SS.

(3) You must maintain your compliance ratio less than or equal to 1.00, as specified at § 63.5330.

(b) You must report each instance in which you did not meet the emission standards in § 63.5305. This includes periods of startup, shutdown, and malfunction. These deviations must be reported according to the requirements in § 63.5420(b).

(c) You must conduct the initial compliance demonstration before the compliance date that is specified for your source in § 63.5295.

**Testing and Initial Compliance Requirements**

**§ 63.5375 When must I conduct a performance test or initial compliance demonstration?**

You must conduct performance tests after the installation of any emission control device that reduces HAP emissions and can be used to comply with the HAP emission requirements of this subpart. You must complete your performance tests not later than 60 calendar days before the end of the 12-month period used in the initial compliance determination.

**§ 63.5380 How do I conduct performance test methods?**

(a) Each performance test must be conducted according to the requirements in § 63.7(e) and the procedures of § 63.997(e)(1) and (2).

(b) You may not conduct performance tests during periods of startup, shutdown, or malfunction, as specified in § 63.7(e)(1).

(c) You must conduct three separate test runs for each performance test required in this section, as specified in § 63.7(e)(3). Each test run must last at least 1 hour.

**§ 63.5385 How do I measure the quantity of finish applied to the leather?**

(a) To determine the amount of finish applied to the leather, you must measure the mass, or density, and volume of each applied finish.

(b) Determine the mass of each applied finish with a scale calibrated to an accuracy of at least 5 percent of the amount measured. The quantity of all finishes used for finishing operations must be weighed or have a predetermined weight.

(c) Determine the density and volume of each applied finish according to the criteria listed in paragraphs (c)(1) through (3) of this section:

(1) Determine the density of each applied finish in pounds per gallon in accordance with § 63.5395. The finish density will be used to convert applied finish volumes from gallons into mass units of pounds.

(2) Volume measurements of each applied finish can be obtained with a flow measurement device. For each flow measurement device, you must perform the items listed in paragraphs (c)(2)(i) through (v) of this section:

(i) Locate the flow sensor and other necessary equipment such as straightening vanes in or as close to a position that provides a representative flow.

(ii) Use a flow sensor with a minimum tolerance of 2 percent of the flow rate.

(iii) Reduce swirling flow or abnormal velocity distributions due to upstream and downstream disturbances.

(iv) Conduct a flow sensor calibration check at least semiannually.

(v) At least monthly, inspect all components for integrity, all electrical connections for continuity, and all mechanical connections for leakage.

(3) Volume measurements of each applied finish can be obtained with a calibrated volumetric container with an accuracy of at least 5 percent of the amount measured.

**§ 63.5390 How do I measure the HAP content of a finish?**

(a) To determine the HAP content of a finish, the reference method is EPA Method 311 of appendix A of 40 CFR part 63. You may use EPA Method 311, an alternative method approved by the Administrator, or any other reasonable means for determining the HAP content. Other reasonable means of determining HAP content include, but are not limited to, a material safety data sheet (MSDS) or a manufacturer's hazardous air pollutant data sheet. If the HAP content is provided on a MSDS or a manufacturer's data sheet as a range of values, then the highest HAP value of the range must be used for the determination of compliance to this standard. This value must be entered on the finish log for each type of finish applied. You are not required to test the materials that you use, but the Administrator may require a test using EPA Method 311 (or another approved method) to confirm the reported HAP content. However, if the results of an analysis by EPA Method 311 are different from the HAP content determined by another means, the EPA Method 311 results will govern compliance determinations.

(b) You may use the weighted average of the HAP content analysis as determined in § 63.5390(a) for each finish when you perform one of the actions listed in paragraphs (b)(1) and (2) of this section:

(1) Mix your own finishes on site.

(2) Mix new quantities of finish with previous quantities of finish that may have a different HAP content.

**§ 63.5395 How do I measure the density of a finish?**

(a) To determine the density of a finish, the reference method is EPA Method 24 of appendix A of 40 CFR part 60. You may use EPA Method 24, an alternative method approved by the Administrator, or any other reasonable means for determining the density of a finish. Other reasonable means of determining density include, but are not limited to, an MSDS or a manufacturer's hazardous air pollutant data sheet. If the density is provided on a MSDS or a manufacturer's data sheet as a range of values, then the highest density value of the range must be used for the determination of compliance to this standard. This value must be entered on the finish log for each type of finish applied. You are not required to test the materials that you use, but the Administrator may require a test using EPA Method 24 (or another approved method) to confirm the reported density. However, if the results of an analysis by EPA Method 24 are different from the density determined by another means, the EPA Method 24 results will govern compliance determinations.

(b) You may use the weighted average of finish densities as determined in



§ 63.5395(a) for each finish when you perform one of the actions listed in paragraphs (b)(1) and (2) of this section:

(1) Mix your own finishes on site.

(2) Mix new quantities of finish with previous quantities of finish that may have different densities.

(c) Equation 1 of this section may be used to determine the weighted average of finish densities. Equation 1 of this section follows:

$$\text{Average Weighted Density} = \frac{\sum_{i=1}^{n}(\text{Mass}_i * \text{Density}_i)}{\sum_{i=1}^{n}(\text{Mass}_i)} \quad \text{(Eq. 1)}$$

Where:

Average Weighted Density = The average weighted density of applied finishes in pounds per gallon.

Mass = Pounds of finish "i" applied.

Density = The density of finish "i" in pounds per gallon.

n = Number of finish types applied.

**§ 63.5400 How do I measure the quantity of leather processed?**

(a) This section describes the information and procedures you must use to determine the quantity of leather processed at your affected source. By the fifteenth of each month, you must determine the quantity of leather processed in 1,000's of square feet for each product process operation during the previous month. After collecting data on the amount of leather processed for 12 months, you must also determine by the fifteenth of each month the annual total of leather processed in 1,000's of square feet for each product process operation by summing the monthly quantities of leather processed in each product process operation for the previous 12 months. The "annual total of leather processed" in each product process operation is used in Equation 1 of § 63.5340 to calculate your allowable HAP loss as described in § 63.5340. Your allowable HAP loss is then subsequently used to calculate your compliance ratio as described in § 63.5330.

(b) To determine the surface area of leather processed at your source for each product process operation, you must use one of the methods listed in paragraphs (b)(1) and (2) of this section:

(1) Premeasured leather substrate sections being supplied by another manufacturer as an input to your finishing process.

(2) Measure the surface area of each piece of processed leather with a computer scanning system accurate to 0.1 square feet. The computer scanning system must be initially calibrated for minimum accuracy to the manufacturer's specifications. For similar leather production runs, use an average based on a minimum of 500 pieces of leather in lieu of individual measurements.

**Notifications, Reports, And Records**

**§ 63.5415 What notifications must I submit and when?**

(a) In accordance with §§ 63.7(b) and (c) and 63.9(b) and (h) of the General Provisions, you must submit the one-time notifications listed in paragraphs (b) through (g) of this section.

(b) As specified in § 63.9(b)(2), if you startup your affected source before the effective date of this subpart, you must submit an Initial Notification not later than 120 calendar days after the effective date of this subpart.

(c) In the Initial Notification, include the items in paragraphs (c)(1) through (4) of this section:

(1) The name and address of the owner or operator.

(2) The physical address of the leather finishing operation.

(3) Identification of the relevant standard, such as the Leather Finishing Operations NESHAP, and compliance date.

(4) A brief description of the source including the types of leather product process operations and nominal operating capacity.

(d) As specified in § 63.9(b)(1) and (2), if you start up your new or reconstructed affected source on or after the effective date of this subpart, you must submit an Initial Notification not later than 120 calendar days after you become subject to this subpart.

(e) If you are required to conduct a performance test, you must submit a Notification of Intent to Conduct a Performance Test at least 60 calendar days before the performance test is scheduled to begin as required in § 63.7(b)(1).

(f) You must submit a Notification of Compliance Status report not later than 60 calendar days after determining your initial 12-month compliance ratio. The notification of compliance status must contain the items in paragraphs (f)(1) through (5) of this section:

(1) The name and address of the owner or operator.

(2) The physical address of the leather finishing operation.

(3) Each type of leather product process operation performed during the previous 12 months.

(4) Each HAP identified under § 63.5390 in finishes applied during the 12-month period used for the initial compliance determination.

(5) A compliance status certification indicating whether the source complied with all of the requirements of this subpart throughout the 12-month period used for the initial source compliance determination. This certification must include a certification of the items in paragraphs (f)(5)(i) through (iii) of this section:

(i) The plan for demonstrating compliance, as described in § 63.5325, is complete and available on site for inspection.

(ii) You are following the procedures described in the plan for demonstrating compliance.

(iii) The compliance ratio value was determined to be less than or equal to 1.00, or the value was determined to be greater than 1.00.

(g) If your source becomes a major source on or after the effective date of this subpart, you must submit an initial notification not later than 120 days after you become subject to this subpart.

**§ 63.5420 What reports must I submit and when?**

(a) You must submit the first annual compliance status certification 12 months after you submit the Notification of Compliance Status. Each subsequent annual compliance status certification is due 12 months after the previous annual compliance status certification. The annual compliance status certification provides the compliance status for each month during the 12-month period ending 60 days prior to the date on which the report is due. Include the information in paragraphs (a)(1) through (5) of this section in the annual certification:

(1) The name and address of the owner or operator.

(2) The physical address of the leather finishing operation.

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(3) Each type of leather product process operation performed during the 12-month period covered by the report.

(4) Each HAP identified under § 63.5390 in finishes applied during the 12-month period covered by the report.

(5) A compliance status certification indicating whether the source complied with all of the requirements of this subpart throughout the 12-month period covered by the report. This certification must include a certification of the items in paragraphs (a)(5)(i) and (ii) of section:

(i) You are following the procedures described in the plan for demonstrating compliance.

(ii) The compliance ratio value was determined to be less than or equal to 1.00, or the value was determined to be greater than 1.00.

(b) You must submit a Deviation Notification Report for each compliance determination you make in which the compliance ratio exceeds 1.00, as determined under § 63.5330. Submit the deviation report by the fifteenth of the following month in which you determined the deviation from the compliance ratio. The Deviation Notification Report must include the items in paragraphs (b)(1) through (4) of this section:

(1) The name and address of the owner or operator.

(2) The physical address of the leather finishing operation.

(3) Each type of leather product process operation performed during the 12-month period covered by the report.

(4) The compliance ratio comprising the deviation. You may reduce the frequency of submittal of the Deviation Notification Report if the responsible agency of these NESHAP does not object, as provided in § 63.10(e)(3)(iii).

**§ 63.5425 When must I start recordkeeping to determine my compliance ratio?**

(a) If you have a new or reconstructed affected source, you must start recordkeeping to determine your compliance ratio according to one of the schedules listed in paragraphs (a)(1) and (2) of this section:

(1) If the startup of your new or reconstructed affected source is before the effective date of this subpart, then you must start recordkeeping to determine your compliance ratio no later than the effective date of this subpart.

(2) If the startup of your new or reconstructed affected source is after the effective date of this subpart, then you must start recordkeeping to determine your compliance ratio upon startup of your affected source.

(b) If you have an existing affected source, you must start recordkeeping to determine your compliance ratio no later than 2 years after the effective date of this subpart.

(c) If you have a source that becomes a major source of HAP emissions after the effective date of the subpart, then you must start recordkeeping to determine your compliance ratio immediately upon submitting your Initial Notification as required at § 63.5415(g).

**§ 63.5430 What records must I keep?**

(a) You must keep the plan for demonstrating compliance as required at § 63.5325 on-site and readily available as long as the source is operational. If you make any changes to the plan for demonstrating compliance, then you must keep all previous versions of the plan and make them readily available for inspection for at least 5 years after each revision.

(b) You must keep a copy of each notification and report that you are required to submit in accordance with this subpart.

(c) You must keep records of performance tests in accordance with this subpart.

(d) You must record and maintain a continuous log of finish usage as specified at § 63.5335(b).

(e) You must maintain all necessary records to document the methods you used and the results of all HAP content measurements of each applied finish.

(f) For each leather product process operation, you must maintain a monthly log of the items listed in paragraphs (f)(1) and (2) of this section:

(1) Dates for each leather product process operation.

(2) Total surface area of leather processed for each leather product process operation.

(g) If you use an emission control device, you must keep records of monitoring data as specified at 40 CFR part 63, subpart SS.

**§ 63.5435 In what form and how long must I keep my records?**

(a) Your records must be in a form suitable and readily available for expeditious review according to § 63.10(b)(1).

(b) As specified in § 63.10(b)(1), you must keep each record for 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record.

(c) You must keep each record on site for at least 2 years after the date of each occurrence, measurement, maintenance, corrective action, report, or record according to § 63.10(b)(1). You can keep the records offsite for the remaining 3 years.

## Other Requirements and Information

**§ 63.5450 What parts of the General Provisions apply to me?**

Table 2 of this subpart shows which parts of the General Provisions in §§ 63.1 through 63.13 apply to you.

**§ 63.5455 Who administers this subpart?**

(a) This subpart can be administered by us, the U.S. EPA, or a delegated authority such as your State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to your State, local, or tribal agency, then that agency has the primary authority to administer and enforce this subpart. You should contact your U.S. EPA Regional Office to find out if the authority to implement and enforce this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and are not transferred to the State, local, or tribal agency.

(c) The authorities that will not be delegated to State, local, or tribal agencies are listed in paragraphs (c)(1) through (4) of this section:

(1) Approval of alternatives to the emission standards in § 63.5305 under § 63.6(g).

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(3) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

**§ 63.5460 What definitions apply to this subpart?**

Terms used in this subpart are defined in:

(a) Clean Air Act; and

(b) 40 CFR 63.2, the NESHAP General Provisions; and

(c) This section as follows:

*Area source* means any stationary source of hazardous air pollutants that is not a major source as defined in this part.

*Compliance ratio* means the ratio of the actual HAP loss from the previous 12 months to the allowable HAP loss from the previous 12 months. Equation 1 in § 63.5330 is used to calculate this value. If the value is less than or equal to 1.00, the source is in compliance. If the value is greater than 1.00, the source is deviating from compliance.



*Deviation* means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart, including but not limited to any emission limits or work practice standards.

(2) Fails to meet any emission limits, operating limits, or work practice standards in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart.

*Drying* means the process of removing all but equilibrium moisture from the leather. Drying methods currently in use include: toggling, hanging, pasting, and vacuum drying.

*Finish add-on* means the amount of solid material deposited on the leather substrate due to finishing operations. Typically, the solid deposition is a dye or other chemical used to enhance the color and performance of the leather. Finish add-on is quantified as mass per surface area of substrate, such as grams of finish add-on per square foot of leather substrate.

*Finishing* means the application of film-forming materials to a leather substrate to provide abrasion resistance, stain resistance, enhanced color, and other desirable quality.

*Hazardous air pollutants (HAP)* means any substance or mixture of substances listed as a hazardous air pollutant under section 112(b) of the Clean Air Act.

*Leather* means the pelt or hide of an animal which has been transformed by a tanning process into a nonputrescible and useful material.

*Leather substrate* means a nonputrescible leather surface intended for the application of finishing chemicals and materials. The leather substrate may be a continuous piece of material such as side leather or may be a combination of smaller leather pieces and leather fibers, which when joined together, form a integral composite leather material.

*Month* means that all references to a month in this subpart refer to a calendar month.

*Nonwater-resistant leather* means nonupholstery leather that is not treated with any type of waterproof finish and, thus, cannot withstand 5,000 Maeser Flexes with a Maeser Flex Testing Machine or a method approved by the Administrator prior to initial water penetration. This leather is typically used for dress shoes, handbags, and garments.

*Product process operation* means any one of the four leather production classifications developed for ease of compliance with this subpart. The four leather product process operations are as follows: upholstery leather with greater than or equal to 4 grams finish add-on per square foot, upholstery leather with less than 4 grams finish add-on per square foot, water-resistant leather, and nonwater-resistant leather.

*Upholstery leather (greater than or equal to 4 grams finish add-on per square foot)* means an upholstery leather with a final finish add-on to leather ratio of 4 or more grams of finish per square foot of leather. These types of finishes are used primarily for automobile seating covers. These finishes tend to be aqueous-based.

*Upholstery leather (less than 4 grams finish add-on per square foot)* means an upholstery leather with a final finish add-on to leather ratio of less than 4 grams of finish per square foot of leather. These types of finishes are typically used for furniture seating covers. The finishes tend to be solvent-based and leave a thinner, softer, and more natural leather texture.

*Water-resistant leather* means nonupholstery leather that has been treated with one or more waterproof finishes such that the leather can withstand 5,000 or more Maeser Flexes with a Maeser Flex Testing Machine or a method approved by the Administrator prior to initial water penetration. This leather is used for outerwear, boots and outdoor applications.

Figure 1 to Subpart TTTT—Example Logs for Recording Leather Finish Use and HAP Content

Month: _____

Year: _____

FINISH INVENTORY LOG

| Finish type | Finish usage (pounds) | HAP content (mass fraction) | Date and time | Operator's name | Product process operation |
|---|---|---|---|---|---|
| | | | | | |

MONTHLY SUMMARY OF FINISH USAGE

| | Upholstery leather (≥4 grams) | Upholstery leather (<4 grams) | Water resistant leather | Nonwater-resistant leather |
|---|---|---|---|---|
| Number of Entries | | | | |
| Total Finish Usage (pounds) | | | | |
| Total HAP Usage (pounds) | | | | |

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TABLE 1 TO SUBPART TTTT—LEATHER FINISHING HAP EMISSION LIMITS FOR DETERMINING THE ALLOWABLE HAP LOSS

| Type of leather product process operation | HAP emission limit (lb/1,000 square feet) | |
|---|---|---|
| | Existing sources | New sources |
| 1. Upholstery Leather (≥4 grams add-on/square feet) | 2.6 | 0.5 |
| 2. Upholstery Leather (<4 grams add-on/square feet) | 7.1 | 2.9 |
| 3. Water-resistant Leather (≥5,000 Maeser Flexes) | 5.9 | 4.9 |
| 4. Nonwater-resistant Leather (<5,000 Maeser Flexes) | 3.4 | 2.1 |

TABLE 2 OF SUBPART TTTT—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART TTTT

| General provisions citation | Subject of citation | Brief description of requirement | Applies to subpart | Explanation |
|---|---|---|---|---|
| § 63.1 | Applicability | Initial Applicability Determination; Applicability After Standard Established; Permit Requirements; Extensions, Notifications. | Yes. | |
| § 63.2 | Definitions | Definitions for part 63 standards | Yes | Except as specifically provided in this subpart. |
| § 63.3 | Units and Abbreviations. | Units and abbreviations for part 63 standards. | Yes. | |
| § 63.4 | Prohibited Activities and Circumvention. | Prohibited Activities; Compliance Date; Circumvention, Severability. | Yes. | |
| § 63.5 | Construction/Reconstruction. | Applicability; Applications; Approvals. | Yes | Except for subsections of § 63.5 as listed below. |
| § 63.5(c) | [Reserved]. | | | |
| § 63.5(d) (1)(ii) (H) | Application for Approval. | Type and Quantity of HAP, Operating Parameters. | No | All sources emit HAP. Subpart TTTT does not require control from specific emission points. |
| § 63.5(d) (1)(i) | [Reserved]. | | | |
| § 63.5(d) (1)(iii), (d)(2), (d)(3)(ii). | | Application for Approval | No | The requirements of the application for approval for new and reconstructed sources are described in § 63.5320(b) of subpart TTTT. General provision requirements for identification of HAP emission points or estimates of actual emissions are not required. Descriptions of control and methods, and the estimated and actual control efficiency of such do not apply. Requirements for describing control equipment and the estimated and actual control efficiency of such equipment apply only to control equipment to which the subpart TTTT requirements for quantifying solvent destroyed by an add-on control device would be applicable. |
| § 63.6 | Applicability of GP | Applicability of GP | Yes | Except for subsections of § 63.6 as listed below. |
| § 63.6(b)(1)–(3) | Compliance dates, new and reconstructed sources. | | No | Section § 63.5283 of subpart TTTT specifies the compliance dates for new and reconstructed sources. |
| § 63.6(b)(6) | [Reserved]. | | | |
| § 63.6(c)(3)–(4) | [Reserved]. | | | |
| § 63.6(d) | [Reserved]. | | | |
| § 63.6(e) | Operations and Maintenance Requirements. | | Yes | Except for subsections of § 63.6(e) as listed below. |
| § 63.6(e)(3) | Operation and Maintenance Requirements. | Startup, Shutdown, and Malfunction Plan Requirements. | No | Subpart TTTT does not have any startup, shutdown, and malfunction plan requirements. |



TABLE 2 OF SUBPART TTTT—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART TTTT—Continued

| General provisions citation | Subject of citation | Brief description of requirement | Applies to subpart | Explanation |
|---|---|---|---|---|
| § 63.6(f)–(g) | Compliance with Non-opacity Emission Standards Except During SSM. | Comply with Emission Standards at All Time Except During SSM. | No | Subpart TTTT does not have nonopacity requirements. |
| § 63.6(h) | Opacity/Visible Emission (VE) Standards. | | No | Subpart TTTT has no opacity or visual emission standards. |
| § 63.6(i) | Compliance Extension | Procedures and Criteria for Responsible Agency to Grant Compliance Extension. | Yes | |
| § 63.6(j) | Presidential Compliance Exemption. | President may Exempt Source Category from Requirement to Comply with Subpart.. | Yes | |
| § 63.7 | Performance Testing Requirements. | Schedule, Conditions, Notifications and Procedures.. | Yes | Except for subsection of § 63.7 as listed below. Subpart TTTT requires performance testing only if the source applies additional control that destroys solvent. Section § 63.5311 requires sources to follow the performance testing guidelines of the General Provisions if a control is added. |
| § 63.7(a)(2) (i) and (iii). | Performance Testing Requirements. | Applicability and Performance Dates. | No | Section § 63.5310(a) of subpart TTTT specifies the requirements of performance testing dates for new and existing sources. |
| § 63.8 | Monitoring Requirements. | | No | Subpart TTTT does not require monitoring other than as specified therein. |
| § 63.9 | Notification Requirements. | Applicability and State Delegation | Yes | Except for subsections of $63.9 as listed below. |
| § 63.9(e) | Notification of Performance Test. | Notify Responsible Agency 60 Days Ahead. | Yes | Applies only if performance testing is performed. |
| § 63.9(f) | Notification of VE/Opacity Observations. | Notify Responsible Agency 30 Days Ahead. | No | Subpart TTTT has no opacity or visual emission standards. |
| § 63.9(g) | Additional Notifications When Using a Continuous Monitoring System (CMS). | Notification of Performance Evaluation; Notification using COMS Data; Notification that Exceeded Criterion for Relative Accuracy. | No | Subpart TTTT has no CMS requirements. |
| § 63.9(h) | Notification of Compliance Status. | Contents | No | Section § 63.5320(d) of subpart TTTT specifies requirements for the notification of compliance status. |
| § 63.10 | Recordkeeping/Reporting. | Schedule for Reporting, Record Storage. | Yes | Except for subsections of § 63.10 as listed below. |
| § 63.10(b)(2) | Recordkeeping | Record Startup, Shutdown, and Malfunction Events. | No | Subpart TTTT has no recordkeeping requirements for startup, shutdown, and malfunction events. |
| § 63.10(c) | Recordkeeping | Additional CMS Recordkeeping | No | Subpart TTTT does not require CMS. |
| § 63.10(d)(2) | Reporting | Reporting Performance Test Results. | Yes | Applies only if performance testing is performed. |
| § 63.10(d)(3) | Reporting | Reporting Opacity or VE Observations. | No | Subpart TTTT has no opacity or visible emission standards. |
| § 63.10(d)(4) | Reporting | Progress Reports | Yes | Applies if a condition of compliance extension. |
| § 63.10(d)(5) | Reporting | Startup, Shutdown, and Malfunction Reporting. | No | Subpart TTTT has no startup, shutdown, and malfunction reporting requirements. |
| § 63.10(e) | Reporting | Additional CMS Reports | No | Subpart TTTT does not require CMS. |
| § 63.11 | Control Device Requirements. | Requirements for Flares | Yes | Applies only if your source uses a flare to control solvent emissions. Subpart TTTT does not require flares. |
| § 63.12 | State Authority and Delegations. | State Authority to Enforce Standards. | Yes. | |
| § 63.13 | State/Regional Addresses. | Addresses Where Reports, Notifications, and Requests are Sent. | Yes. | |
| § 63.14 | Incorporation by Reference. | Test Methods Incorporated by Reference. | Yes. | |
| § 63.15 | Availability of Information and Confidentiality. | Public and Confidential Information. | Yes. | |

[FR Doc. 00–24671 Filed 9–29–00; 8:45 am]
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**FEDERAL EMERGENCY MANAGEMENT AGENCY**

**44 CFR Part 206**

**Disaster Assistance; Insurance Requirements for the Public Assistance Program**

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice of findings for the advance notice of proposed rulemaking.

**SUMMARY:** We (FEMA) published an Advance Notice of Proposed Rulemaking (ANPR) on February 23, 2000 on insurance requirements, procedures and eligibility criteria with respect to buildings under the Public Assistance Program. The ANPR described a range of problems with the insurance element of the Public Assistance Program, listed possible options to address them, and finally, included several specific questions about how the Program could be improved. The overwhelming majority of comments responded to an aspect of insurance coverage for which our preferred option (referenced in the ANPR as Option 3) would condition Public Assistance grants for buildings on adequate property insurance being in place at the time of the disaster. Comments on other approaches to the insurance issues were received as well.

The deadline for comments was April 10, 2000. We received nearly 300 responses to the ANPR. The purpose of this notice is to provide a summary of these responses and an update on our process of developing a proposed rule on insurance requirements for the Public Assistance Program.

**FOR FURTHER INFORMATION CONTACT:** Curtis Carleton, (202) 646–4535.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (Stafford Act), authorizes the President to pay at least 75 percent of the costs to repair public and certain eligible private non-profit infrastructure and buildings damaged by a presidentially declared major disaster. The Public Assistance Program provides grants to applicants—including State and local governments, Native Americans or authorized tribal organizations, Alaskan Native villages and organizations, as well as certain eligible private non-profit organizations—for emergency protective measures, for debris removal, and for disaster-damaged infrastructure and buildings.

We published the ANPR in the **Federal Register** at 65 FR 8927, February 23, 2000. As discussed in the ANPR, we believe that our current program regulations, 44 Code of Federal Regulations (CFR), Part 206, Subpart I—Public Assistance Insurance Requirements, are inadequate in meeting the insurance considerations of the Stafford Act, in particular, with respect to buildings. The ANPR was intended to surface what we consider to be the important issues, and to seek commentary and advice for program improvements. The issues address two major considerations. First, there is the matter of how best to encourage proactive risk management: this is where we discuss property insurance against major natural hazards for public buildings as a pre-disaster program eligibility requirement. And second, there is the failure of our current program regulation to adequately address:

- Guidance for State insurance commissioners' waivers of the post-disaster insurance purchase requirement;
- Whether the Public Assistance Program will fund insurance deductibles for buildings, and if so, how much do we fund; and
- How we define insurance (or what qualifies as insurance), among other issues.

The ANPR was entirely successful in meeting its objectives, and we are very grateful to the many respondents who provided needed information and thoughtful perspectives on the issues.

The substance and quantity of the ANPR comments were remarkable, and are cause for a full and deliberative analysis before continuing to the next stage of developing a proposed rule. Therefore, we wanted to give you an idea as to the nature of the ANPR responses, and advise you of where we stand in the analytical process.

## II. ANPR Findings

We received 291 comments representing 32 States (including Guam and Puerto Rico). The distribution of responses is: 63 percent from California; 7 percent from Washington; 4 percent from Florida; and 26 percent representing the remaining 29 states that submitted comments.

The respondents offered a variety of perspectives, but many of them prefaced their comments with a statement to the effect that they agreed with the Public Assistance program's objective of seeking aggressive risk management on the part of public and private non-profit building owners.

While the comments address many issues, most are captured in the following topics.

*Adequate Insurance*

This area deals with the reasonableness of our schedule of eligibility criteria with respect to insurance.

The majority of comments focus on earthquake coverage. Many of these contend that the private insurance market does not have the capacity to provide adequate coverage, and that, because of the unpredictable and potentially catastrophic nature of earthquakes, insurance companies tend to exact high prices for their coverage. The result is that some entities can only get very limited coverage, and some find that the coverage that they can get makes little economic sense given the high premiums and deductibles required.

Earthquake coverage is separate and apart from all other property coverage. The insurance industry has trouble offering coverage for perils such as earthquakes that have no known probable frequencies; therefore, the insurance industry has limited its exposure in this area. The public entities tend to have little confidence that insurance companies will be willing or able to provide service at an acceptable price and shared concerns that the market will have the capacity to provide coverage to the levels outlined in the ANPR.

Over half of the comments were from California, and virtually all of these tell us that an eligibility requirement involving earthquake insurance is unreasonable. Some contend that money spent on earthquake premiums would reduce money available for seismic retrofits, and that the net effect would be counterproductive. Several writers suggest that our schedule of eligibility criteria in earthquake insurance coverage is biased against small entities, because those with less valuable buildings would need to have a higher percentage of them insured. (Note that this concern is expressed by the larger entities on behalf of the smaller entities; we received a very low number of responses from smaller entities.) Several also suggest that the $125 million cap is too high: it is hard to get that much coverage even in today's soft market for all but a few of the largest entities and pools.

We hear that, based on past experience, few insurers will be able to fully indemnify earthquake policyholders after a major quake.

There was a suggestion that a requirement for an eligibility criterion on earthquake insurance would be viable only if FEMA were to promote a nationwide pool for earthquake coverage for public entities. This suggestion rests on the presumption that the commercial insurance market does not have the capacity to deal with the scope of the coverage needed. Along these lines, other writers suggest that we establish a National Earthquake Program, similar to the National Flood Insurance Program.

Other than the comments on earthquake insurance, there were questions about the meaning of "highest-valued single location." There was also the suggestion that we provide for a cap on all risk insurance, just as we do for wind and earthquake in our insurance schedule.

*Premium Thresholds*

There was broad agreement with the need for a safety net provision in the form of a premium threshold. While some find it to be reasonable, most writers tell us that the $.30 per $100 is far too high, based on what they currently pay. For example, some entities are telling us that they pay just a few pennies per $100 for their hazard insurance. Many writers also point out that by using an absolute dollar threshold, insurance companies will quickly price their products to meet that threshold.

Quite a few writers suggest that a threshold based on a percentage of an entity's operating budget would be a better way of offering a safety net. No writer suggested an actual percentage to be used in this regard.

*Self-Insurance*

There is a lot of interest in this area. All comments support the idea that self-insurance be an option for all entities. Several writers suggest that there should be specific, stringent requirements for self-insurance—for example, the retention of a dedicated fund—but, most simply state that the self-insurance should be an option to commercial insurance. In many cases, writers felt that self-insurance is a more sensible risk management technique than commercial insurance.

In this context, quite a few writers speak to the "all or nothing" provision of Option 3. They refer to the notion that a failure to have adequate insurance in force would result in zero aid for a damaged building—the "all or nothing" provision. They suggest that this would be unreasonable, particularly for a very low probability hazard. The remedy put forth is to treat an uninsured building as self-insured, which would disqualify it for Public Assistance below our schedule of eligibility criteria coverage, but would allow it to remain qualified for Public Assistance above that amount.

*Deductibles*

This is one area where we received opposing viewpoints.

Some writers tell us that deductibles are, by their very nature, the responsibility of the insured, and should not be funded by FEMA. They point out that the size of the deductible is a major factor for the premium amount, and is a calculated business decision on the part of the building owner. It is their expression of risk tolerance or risk aversion, and should be their issue, not FEMA's. Other, more numerous writers are not only comfortable with the concept of deductibles being funded under the program, but offered suggestions for increasing the amounts. One person suggests increasing the deductible for blanket flood coverage from $25,000 to $100,000 if the loss limits exceed 150 percent of the NFIP maximum coverage. The suggestion is that this would encourage building owners to carry higher limit flood policies, and that it would better correspond to the actual deductibles associated with most blanket flood policies. Another person suggests that we eliminate the deductible cap of $100,000 for wind coverage, but reduce the amount that we would fund from 5 percent to 2 percent, which, the commenter tells us, is the industry standard.

The writers express concerns that if they had a higher deductible than the amount we would fund they would not be eligible for FEMA assistance. This misconception caused concerns similar to the concerns related to the "all or nothing" provision.

*Incentives*

There is strong support for some form of incentive regarding a provision to condition future Public Assistance on insurance being in place at the time of the disaster. Fifty-two respondents favor incentives for purchasing insurance. However, the vast majority limit their comments to broad statements in support of the concept, rather than spell out specific ways of implementing an incentive arrangement.

*Administrative Burdens*

Many respondents are concerned that an eligibility criterion for pre-disaster insurance will result in added delays and problems in obtaining Public Assistance grants. The thought is that FEMA would have to determine whether adequate property insurance is in effect on an applicant's buildings at the time of the disaster. This would require insurance experts, and would slow and complicate the process of awarding grants. Further, some respondents suggested that smaller Public Assistance applicants may not presently have property insurance on their buildings. A pre-disaster insurance eligibility criterion would necessitate them buying property insurance for the first time, and that, in so doing, they would encounter significant administrative burdens.

## III. Next Steps

While we have received many valuable comments on this subject, we are still seeking information on the feasibility of encouraging new or expanded property insurance coverage as a means to improving risk management analysis and decisions about public and certain private non-profit buildings. For this reason, and in order to assist us in the evaluation of options, as well as to establish a benchmark for whatever criteria are eventually implemented, we plan to perform a study of public entity building insurance coverage.

Dated: September 20, 2000.

**James L. Witt,**

*Director.*

[FR Doc. 00–25017 Filed 9–29–00; 8:45 am]

BILLING CODE 6718–02–P



**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 54**

**[CC Docket No. 96–45; FCC 00–332]**

**Federal-State Joint Board on Universal Service: Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas**

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of proposed rules.

**SUMMARY:** In this document, the Commission seeks additional comment on how to extend the enhanced Lifeline and Link Up measures to qualifying low-income consumers living in areas or communities that are "near reservations." Specifically, the Commission seeks comment on how to define geographic areas that are adjacent to the reservations, consistent with our

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goal of targeting enhanced Lifeline and Link Up support to the most underserved areas of our Nation.

**DATES:** Comments are due on or before October 12, 2000 and reply comments are due on or before October 27, 2000.

**FOR FURTHER INFORMATION CONTACT:** Paul Garnett, Attorney, Common Carrier Bureau, Accounting Policy Division, (202) 418–7400.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Further Notice of Proposed Rulemaking in CC Docket No. 96–45 released on August 31, 2000. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY-A257, 445 Twelfth Street, S.W., Washington, D.C., 20554.

**I. Introduction**

1. We stay the implementation of enhanced Lifeline and Link Up support for low-income consumers living near reservations pending resolution of the issues discussed in the attached Further Notice of Proposed Rulemaking (FNPRM). In this document, we seek additional comment on how to extend the enhanced Lifeline and Link Up measures to qualifying low-income consumers living in areas or communities that are "near reservations." Specifically, we seek comment on how to define geographic areas that are adjacent to the reservations, consistent with our goal of targeting enhanced Lifeline and Link Up support to the most underserved areas of our Nation. Finally, as described in greater detail, we extend until September 22, 2000, the date by which carriers may file data in order to receive support during the calendar year 2000 for enhanced Lifeline and Link Up services provided during the fourth quarter 2000.

**II. Further Notice of Proposed Rulemaking**

2. In this document, we seek additional comment on how to extend the enhanced Lifeline and Link Up measures to qualifying low-income consumers living in areas or communities that are near reservations. Specifically, we seek comment on how to define geographic areas that are adjacent to the reservations or are otherwise a part of the reservation's community of interest, in a manner that is consistent with our goal of targeting enhanced Lifeline and Link Up support to the most underserved segments of the Nation. We ask commenters to address whether the targeting of enhanced Lifeline and Link Up support to areas or communities that are "near reservations," as that term is defined in section 20.1(r) of the BIA regulations, is an effective way to target support to the most isolated, impoverished, and underserved regions of the country. We also invite comment on alternative ways of defining the geographic areas that are near reservations to ensure that enhanced Lifeline and Link Up support is targeted to qualifying low-income consumers living in areas adjacent to, or near, reservations that share many of the same characteristics as the reservations. In addition, to the extent that using the BIA definition of "near reservations" to target support as intended in the *Twelfth Report and Order*, 65 FR 47941 (August 14, 2000), is not effective, we seek comment generally on how we might achieve our goal of serving geographically isolated, impoverished areas that are characterized by low subscribership.

3. Commenters are encouraged to provide detailed information to assist us in determining how enhanced Lifeline and Link Up support should be targeted. Such information should include the population of the geographical area, the number of income-eligible subscribers, the distance of each area from the nearest reservation, whether there is any legal recognition of that area by the BIA, whether the area includes or is part of a Metropolitan Statistical Area, and the level of telephone subscribership in the area. We especially seek input on these issues from the state members of the Federal-State Joint Board on Universal Service, and encourage the participation of tribal authorities and state commissions.

**III. Procedural Matters**

*A. Paperwork Reduction Act*

4. The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1995 (PRA) and does not impose modified reporting and/or recordkeeping requirements or burdens on the public.

*B. Initial Regulatory Flexibility Analysis*

5. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this document. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the FNPRM. The Commission will send a copy of the FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the FNPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

1. Need for, and Objectives of, the Proposed Rules

6. This document is being issued in order to ensure that enhanced Lifeline and Link Up support is targeted to the most underserved segments of our Nation. The Commission issues the Further Notice of Proposed Rulemaking contained herein as a part of its implementation of the Act's mandate that "[c]onsumers in all regions of the Nation . . . have access to telecommunications and information services . . .." The FNPRM seeks comment on how to define geographic areas that are adjacent to the reservations or are otherwise a part of the reservation's community of interest, in a manner that is consistent with our goal of targeting enhanced Lifeline and Link Up support to the most underserved segments of the Nation. The FNPRM also seeks comment on whether the targeting of enhanced Lifeline and Link Up support to areas or communities that are "near reservations," as that term is defined in section 20.1(r) of the BIA regulations, is an effective way to target support to the most isolated, impoverished, and underserved regions of the country. In addition, the FNPRM seeks comment on alternative ways of defining the geographic areas that are near reservations to ensure that enhanced Lifeline and Link Up support is targeted to qualifying low-income consumers living in areas adjacent to, or near, reservations that share many of the same characteristics as the reservations. Our objective is to fulfill section 254's mandate that "all regions of the Nation . . . have access to telecommunications."

2. Legal Basis

7. The legal basis for this FNPRM is contained in sections 1–4, 201–205, 254, 303(r), and 403 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 U.S.C. 1–4, 201–205, 254, 303(r), and 403.

3. Description and Estimate of the Number of Small Entities To Which Rules Will Apply

8. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules. The RFA generally defines the term "small entity" as having the same meaning as the terms



"small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 1992, there were approximately 275,801 small organizations. "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000." As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 percent) are small entities. The new rules proposed in this FNPRM may affect all providers of interstate telecommunications and interstate telecommunications services. We further describe and estimate the number of small business concerns that may be affected by the rules proposed in this FNPRM.

9. The SBA has defined a small business for Standard Industrial Classification (SIC) categories 4812 (Radiotelephone Communications) and 4813 (Telephone Communications, Except Radiotelephone) to be small entities when they have no more than 1,500 employees. We first discuss the number of small telephone companies falling within these SIC categories, then attempt to refine further those estimates to correspond with the categories of telecommunications companies that are commonly used under our rules.

10. The most reliable source of information regarding the total numbers of common carrier and related providers nationwide, including the numbers of commercial wireless entities, appears to be data the Commission publishes annually in its *Trends in Telephone Service* report. According to data in the most recent report, there are 4,144 interstate carriers. These carriers include, *inter alia*, incumbent local exchange carriers, competitive local exchange carriers, competitive access providers, interexchange carriers, other wireline carriers and service providers (including shared-tenant service providers and private carriers), operator service providers, pay telephone operators, providers of telephone toll service, wireless carriers and services providers, and resellers.

11. We have included small incumbent LECs in this present RFA analysis. As noted, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation." The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

12. *Total Number of Telephone Companies Affected.* The United States Bureau of the Census ("the Census Bureau") reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year. This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not "independently owned and operated." For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude, therefore, that fewer than 3,497 telephone service firms are small entity telephone service firms or small incumbent LECs that may be affected by the rules proposed in this FNPRM.

13. *Wireline Carriers and Service Providers.* SBA has developed a definition of small entities for telephone communications companies other than radiotelephone companies. The Census Bureau reports that there were 2,321 such telephone companies in operation for at least one year at the end of 1992. According to SBA's definition, a small business telephone company other than a radiotelephone company is one employing no more than 1,500 persons. All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small incumbent LECs. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 2,295 small entity telephone communications companies other than radiotelephone companies that may be affected by the rules proposed in this FNPRM.

14. *Local Exchange Carriers, Interexchange Carriers, Competitive Access Providers, Operator Service Providers, and Resellers.* Neither the Commission nor SBA has developed a definition particular to small local exchange carriers (LECs), interexchange carriers (IXCs), competitive access providers (CAPs), operator service providers (OSPs), or resellers. The closest applicable definition for these carrier-types under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of these carriers nationwide of which we are aware appears to be the data that we collect annually in connection with the Telecommunications Relay Service (TRS). According to our most recent data, there are 1,348 incumbent LECs, 212 CAPs and competitive LECs, 171 IXCs, 24 OSPs, 388 toll resellers, and 54 local resellers. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of these carriers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,348 incumbent LECs, 212 CAPs and competitive LECs, 171 IXCs, 24 OSPs, 388 toll resellers, and 54 local resellers that may be affected by the rules proposed in this FNPRM.

15. *Wireless (Radiotelephone) Carriers.* SBA has developed a definition of small entities for radiotelephone (wireless) companies. The Census Bureau reports that there were 1,176 such companies in operation for at least one year at the end of 1992. According to SBA's definition, a small

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business radiotelephone company is one employing no more than 1,500 persons. The Census Bureau also reported that 1,164 of those radiotelephone companies had fewer than 1,000 employees. Thus, even if all of the remaining 12 companies had more than 1,500 employees, there would still be 1,164 radiotelephone companies that might qualify as small entities if they are independently owned and operated. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of radiotelephone carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,164 small entity radiotelephone companies that may be affected by the rules proposed in this FNPRM.

16. *Cellular, PCS, SMR and Other Mobile Service Providers.* In an effort to further refine our calculation of the number of radiotelephone companies that may be affected by the rules proposed herein, we consider the data that we collect annually in connection with the TRS for the subcategories Wireless Telephony (which includes Cellular, PCS, and SMR) and Other Mobile Service Providers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to these broad subcategories, so we will utilize the closest applicable definition under SBA rules—which, for both categories, is for telephone companies other than radiotelephone (wireless) companies. To the extent that the Commission has adopted definitions for small entities providing PCS and SMR services, we discuss those definitions. According to our most recent TRS data, 808 companies reported that they are engaged in the provision of Wireless Telephony services and 23 companies reported that they are engaged in the provision of Other Mobile Services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of Wireless Telephony Providers and Other Mobile Service Providers, except as described, that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 808 small entity Wireless Telephony Providers and fewer than 23 small entity Other Mobile Service Providers that might be affected by the rules proposed in this FNPRM.

17. *Broadband PCS Licensees.* The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years. For Block F, an additional classification for "very small business" was added, and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These regulations defining "small entity" in the context of broadband PCS auctions have been approved by SBA. No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. However, licenses for Blocks C through F have not been awarded fully, therefore there are few, if any, small businesses currently providing PCS services. Based on this information, we estimate that the number of small broadband PCS licenses will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, for a total of 183 small PCS providers as defined by SBA and the Commissioner's auction rules.

18. *SMR Licensees.* Pursuant to § 90.814(b)(1) of the Commission's rules, the Commission has defined "small entity" in auctions for geographic area 800 MHz and 900 MHz SMR licenses as a firm that had average annual gross revenues of less than $15 million in the three previous calendar years. The definition of a "small entity" in the context of both 800 MHz and 900 MHz SMR has been approved by the SBA. Any rules proposed in this proceeding may apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of less than $15 million. We assume, for purposes of this IRFA, that all of the extended implementation authorizations may be held by small entities, that may be affected by the decisions and rule changes adopted in this proceeding.

19. The Commission recently held auctions for geographic area licenses in the 900 MHz SMR band. There were 60 winning bidders who qualified as small entities in the 900 MHz auction. Based on this information, we estimate that the number of geographic area SMR licensees that may be affected by the decisions and rules in the order and order on reconsideration includes these 60 small entities. No auctions have been held for 800 MHz geographic area SMR licenses. Therefore, no small entities currently hold these licenses. A total of 525 licenses will be awarded for the upper 200 channels in the 800 MHz geographic area SMR auction. The Commission, however, has not yet determined how many licenses will be awarded for the lower 230 channels in the 800 MHz geographic area SMR auction. There is no basis, moreover, on which to estimate how many small entities will win these licenses. Given that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of prospective 800 MHz licensees can be made, we estimate, for purposes of this IRFA, that all of the licenses may be awarded to small entities, some of which may be affected by the rules proposed in this FNPRM.

20. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the definition under the SBA rules applicable to Radiotelephone Communications companies. According to the Bureau of the Census, only 12 radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees. Therefore, if this general ratio continues to 1999 in the context of Phase I 220 MHz licensees, we estimate that nearly all such licensees are small businesses under the SBA's definition.

21. *220 MHz Radio Service—Phase II Licensees.* The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the 220 MHz *Third Report and Order*, 62 FR 16004 (April 3, 1997), we adopted criteria for defining small businesses and very small businesses for purposes of determining their eligibility for special



provisions such as bidding credits and installment payments. We have defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. An auction of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. 908 licenses were auctioned in 3 different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Companies claiming small business status won: One of the Nationwide licenses, 67 percent of the Regional licenses, and 54 percent of the EA licenses. As of January 22, 1999, the Commission announced that it was prepared to grant 654 of the Phase II licenses won at auction. A reauction of the remaining, unsold licenses was completed on June 30, 1999, with 16 bidders winning 222 of the Phase II licenses. As a result, we estimate that 16 or fewer of these final winning bidders are small or very small businesses.

22. *Narrowband PCS.* The Commission has auctioned nationwide and regional licenses for narrowband PCS. There are 11 nationwide and 30 regional licensees for narrowband PCS. The Commission does not have sufficient information to determine whether any of these licensees are small businesses within the SBA-approved definition for radiotelephone companies. At present, there have been no auctions held for the major trading area (MTA) and basic trading area (BTA) narrowband PCS licenses. The Commission anticipates a total of 561 MTA licenses and 2,958 BTA licenses will be awarded by auction. Such auctions have not yet been scheduled, however. Given that nearly all radiotelephone companies have no more than 1,500 employees and that no reliable estimate of the number of prospective MTA and BTA narrowband licensees can be made, we assume, for purposes of this IRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

23. *Rural Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS). We will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA's definition.

24. *Air-Ground Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Air-Ground Radiotelephone Service. Accordingly, we will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA definition.

25. *Fixed Microwave Services.* Microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not yet defined a small business with respect to microwave services. For purposes of this IRFA, we will utilize the SBA's definition applicable to radiotelephone companies—*i.e.*, an entity with no more than 1,500 persons. We estimate, for this purpose, that all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition for radiotelephone companies.

26. *Wireless Communications Services.* This service can be used for fixed, mobile, radio location and digital audio broadcasting satellite uses. The Commission defined "small business" for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a "very small business" as an entity with average gross revenues of $15 million for each of the three preceding years. The Commission auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as very small business entities, and one that qualified as a small business entity. We conclude that the number of geographic area WCS licensees that may be affected by the rules proposed in this FNPRM includes these eight entities.

27. *Multipoint Distribution Systems (MDS).* The Commission has defined "small entity" for the auction of MDS as an entity that, together with its affiliates, has average gross annual revenues that are not more than $40 million for the preceding three calendar years. This definition of a small entity in the context of MDS auctions has been approved by the SBA. The Commission completed its MDS auction in March 1996 for authorizations in 493 basic trading areas (BTAs). Of 67 winning bidders, 61 qualified as small entities.

28. MDS is also heavily encumbered with licensees of stations authorized prior to the auction. The SBA has developed a definition of small entities for pay television services, which includes all such companies generating $11 million or less in annual receipts. This definition includes multipoint distribution systems, and thus applies to MDS licensees and wireless cable operators which did not participate in the MDS auction. Information available to us indicates that there are 832 of these licensees and operators that do not generate revenue in excess of $11 million annually. Therefore, for purposes of this IRFA, we find there are approximately 892 small MDS providers as defined by the SBA and the Commission's auction rules, some which may be affected by the rules proposed in this FNPRM.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

29. The measures under consideration in this FNPRM may, if adopted, result in additional reporting or other compliance requirements. For example, changes to the geographic area within which enhanced Lifeline and Link Up support is directed may, if adopted, result in increased federal universal service support obligations for telecommunications carriers required to contribute to federal universal service support mechanisms. A modified definition of "near reservation" also may impact reporting requirements for carriers eligible to receive enhanced Lifeline and Link Up support. If, for example, the definition of "near reservation" is expanded to include a larger geographic area, eligible carriers may be required to submit data regarding an increased number of qualifying low-income consumers. Such increased reporting requirements would be offset by increased opportunities for receipt of enhanced Lifeline and Link Up support.

5. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

30. The RFA requires an agency to describe any significant alternatives that

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it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance and reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or part thereof, for small entities.

31. With respect to the possibility of increased universal service contribution requirements, the primary alternative to the proposals contained in the FNPRM, which would minimize the economic impact on small entities, would be to determine not to increase universal service support obligations. We observe that section 254(d) of the Act requires that all telecommunications carriers contribute to the federal universal service support mechanisms on "an equitable and nondiscriminatory basis." As a result, the Commission may not propose alternatives specifically designed to minimize the economic impact on small entities. We note, however, that the Commission has established a *de minimis* exception from universal service contribution obligations for carriers whose interstate end-user telecommunications revenues in a given year are less than $10,000. This exception should lessen the burden on certain telecommunications carriers that meet the definition of small entities.

32. With respect to the additional reporting and compliance requirements for carriers that are eligible to receive enhanced Lifeline and Link Up support, the Commission does not seek comment on whether an exception for carriers meeting the definition of small entities is appropriate. In setting the standard for what services carriers designated as eligible telecommunications carriers must provide, the Commission has established a uniform, nationwide standard for the services to which all Americans should have access. The Commission's rules relating to the receipt of enhanced Lifeline and Link Up support apply equally to all eligible telecommunications carriers providing services to qualifying low-income consumers. The FNPRM is consistent with these standards. Individual carriers, however, may obtain a waiver of the Commission's rules if good cause is shown therefor.

6. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

33. None.

*C. Comment Dates and Filing Procedures*

34. We invite comment on the issues and questions set forth in the Further Notice of Proposed Rulemaking and Initial Regulatory Flexibility Analysis contained herein. Pursuant to applicable procedures set forth in § 1.415 and § 1.419 of the Commission's rules, interested parties may comment on or before October 12, 2000, and reply comment on or before October 27, 2000. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24,121 (1998).

35. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit electronic comments by Internet e-mail. To receive filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

36. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554. Parties also should send three paper copies of their filing to Sheryl Todd, Accounting Policy Division, Common Carrier Bureau, Federal Communications Commission, 445 Twelfth Street, S.W., Room 5–B540, Washington, D.C. 20554.

37. Parties who choose to file by paper should also submit their comments on diskette to Sheryl Todd, Accounting Policy Division, Common Carrier Bureau, Federal Communications Commission, 445 Twelfth Street, S.W., Room 5–B540, Washington, D.C. 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM-compatible format using Microsoft Word 97 for Windows or a compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read-only" mode. The diskette should be clearly labeled with the commenter's name, proceeding, including the lead docket number in the proceeding (CC Docket No. 96–45), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase ("Disk Copy Not an Original.") Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20037.

**IV. Ordering Clauses**

38. Pursuant to the authority contained in sections 1–4, 201–205, 254, 303(r), and 403 of the Communications Act of 1934, as amended, and §§ 1.3 and 1.429(k) of the Commission's rules, this Further Notice of Proposed Rulemaking is adopted.

39. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 00–24636 Filed 9–29–00; 8:45 am]

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 679**

**[Docket No. 000211040-0040-01; I.D. 092100C]**

## Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod in the Bering Sea and Aleutian Islands Management Area

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed reallocation, request for comments.

**SUMMARY:** Based on currently available information, NMFS has determined that the trawl catcher/processor sector will not be able to harvest its entire share of the Pacific cod total allowable catch (TAC) in the Bering Sea and Aleutian Islands management area (BSAI). NMFS proposes to make the projected unused amount of the trawl catcher/processor sector share of the Pacific cod TAC available to the trawl catcher vessel sector. NMFS also is proposing to reallocate the projected unused amount of Pacific cod from the trawl catcher/processor sector to vessels using hook-and-line or pot gear in the BSAI. NMFS invites public comments, particularly from the trawl catcher vessel sector, on NMFS's proposal to reallocate the unused amount of Pacific cod from the trawl catcher/processor sector to vessels using hook-and-line and pot gear. The proposed action is necessary to allow the 2000 TAC of Pacific cod to be harvested.

**DATES:** Comments must be received at the following address no later than 4:30 p.m., Alaska local time, October 12, 2000.

**ADDRESSES:** Comments may be sent to Sue Salveson, Assistant Regional Administrator for Sustainable Fisheries, Alaska Region, NMFS, 709 West 9th, room 453, Juneau, AK 99801 or P.O. Box 21668, Juneau, AK 99802, Attention: Lori Gravel.

**FOR FURTHER INFORMATION CONTACT:** Andrew N. Smoker, 907-586-7210.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.20(c)(3)(iii), the Final 2000 Harvest Specifications of Groundfish for the BSAI (65 FR 8282, February 18, 2000) established the amount of the 2000 Pacific cod TAC as 193,000 metric tons (mt). Pursuant to § 679.20(a)(7)(i)(A), 3,571 mt was allocated to vessels using jig gear, 91,048 mt to vessels using hook-and-line or pot gear, and 83,905 mt to vessels using trawl gear. The share of the Pacific cod TAC allocated to trawl gear was further allocated 50 percent to catcher vessels and 50 percent to catcher/processor vessels (§ 679.20 (a)(7)(i)(B)).

As of September 2, 2000, the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that 14,150 mt remain in the trawl catcher/processor sector share and projects that the trawl catcher/processor sector will not harvest 9,000 mt of that share during the remainder of 2000. The Regional Administrator has also determined that 864 mt remain in the trawl catcher sector share.

Pursuant to § 679.20 (a)(7)(ii)(A), NMFS is required to make the projected unused amount of the trawl catcher/processor sector share of Pacific cod available to the trawl catcher vessel sector before making it available to other gear types. From the years 1997 through 1999 after September 1, the trawl catcher vessel sector of the fishery has taken about 200 mt or less per year in the Pacific cod target and averaged about 800 mt of catch of Pacific cod in all targets. Current inseason data supports a projection of 800 mt for the catcher vessel sector. At the time of this proposal no evidence exists that trawl catcher vessel effort in the Pacific cod fishery will increase beyond what has occurred on the average during the last 3 years.

In accordance with § 679.20 (a)(7)(ii)(C), NMFS proposes to reallocate the projected unused amount (9,000 mt) of Pacific cod from the trawl catcher/processor sector to vessels using hook-and-line or pot gear.

NMFS invites public comments, particularly from the trawl catcher vessel sector, on (1) NMFS' determination that the trawl catcher/processor sector will not be able to harvest its share of the Pacific cod TAC, on (2) whether the catcher vessel sector would be able to harvest the projected unused catcher/processor sector share, and (3) NMFS' proposal to reallocate the unused amount of Pacific cod from the trawl catcher/processor sector to hook-and-line and pot gear sectors.

**Classification**

This action is taken under 50 CFR 679.20 and is exempt from Office of Management and Budget review under Executive Order 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: September 26, 2000.

**Bruce C. Morehead,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 00–25170 Filed 9–27–00; 3:47 pm]

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 679**

**[Docket No. 000627195-0195-01; I.D. 060500C]**

**RIN 0648-AN94**

## Fisheries of the Exclusive Economic Zone Off Alaska; Seasonal Adjustment of Closure Areas to Trawl Gear in the Central Regulatory Area of the Gulf of Alaska; Withdrawal of Proposed Rule

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; withdrawal.

**SUMMARY:** NMFS withdraws the July 3, 2000, proposed regulatory amendment that would implement a seasonal closure of a portion of the Central Regulatory Area of the Gulf of Alaska (GOA) to vessels using trawl gear and that would implement an inseason action to open directed fishing for pollock within 10 nautical miles of the Steller sea lion haulouts located at Gull Point and Cape Barnabas for research purposes. The proposed rule is withdrawn because of current litigation on the existing Steller sea lion protection measures.

**DATES:** This proposed rule is withdrawn on October 2, 2000.

**FOR FURTHER INFORMATION CONTACT:** Thomas Pearson (907) 481-1780, fax (907) 481-1781.

**SUPPLEMENTARY INFORMATION:** A proposed rule was published on July 3, 2000 (65 FR 41044), that would impose a ban on all trawl fishing in the Chiniak Gully region on the east side of Kodiak Island and would authorize a temporary reopening of the 10-nm zones around Gull Point and Cape Barnabas to

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directed fishing for pollock. These management measures would have been in effect annually during the period of August 1st to no later than September 20 in the years 2000-2003. Rationale for the proposed actions was provided in the preamble to the proposed rule and is not repeated here.

On July 19, 2000, the United States District Court for the Western District of Washington issued an order that granted a motion for a partial injunction of the North Pacific groundfish fisheries. *Greenpeace* v. *NMFS*, No. C98-4922. This motion, filed by Greenpeace, American Oceans Campaign, and the Sierra Club requested injunctive relief until NMFS issues a legally adequate biological opinion addressing the combined, overall effects of the North Pacific groundfish fisheries on Steller sea lions and their critical habitat pursuant to the Endangered Species Act (ESA). The comprehensive biological opinion on the impacts of the groundfish fisheries of the Bering Sea and Aleutian Islands and the Gulf of Alaska on listed species (including the western population of Steller sea lions) under the ESA will not be released until October 31, 2000. Therefore, NMFS is hereby withdrawing the proposed rule to allow time for a thorough review of the new biological opinion, when it becomes available, before reinitiating rulemaking for the pollock fishery in order to protect Steller sea lions and their habitat.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: September 26, 2000.

**William T. Hogarth,**

*Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.*

[FR Doc. 00–25222 Filed 9–29–00; 8:45 am]

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# Notices

Federal Register

Vol. 65, No. 191

Monday, October 2, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

**[Docket No. TB–00–21]**

### Notice of Request for Extension and Revision of a Currently Approved Information Collection

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension for and revision to a currently approved information collection in support of the Dairy and Tobacco Adjustment Act of 1983 and the Tobacco Inspection Act and the Regulations Governing the Tobacco Standards.

**DATES:** Comments on this notice must be received by December 1, 2000 to be assured of consideration.

**ADDITIONAL INFORMATION OR COMMENTS:** Contact John W. Foster, Chief, Standardization and Review Branch, Tobacco Programs, Agricultural Marketing Service, U.S. Department of Agriculture, Room 511 Annex Building, P. O. Box 96456, Washington, DC 20090–6456, Telephone (202) 205–0744 and Fax (202) 205–1191.

**SUPPLEMENTARY INFORMATION:**

*Title:* Reporting and Recordkeeping Requirements for 7 CFR Part 29.

*OMB Number:* 0581–0056.

*Expiration Date of Approval:* July 31, 2001.

*Type of Request:* Extension and revision of a currently approved information collection.

*Abstract:* The Tobacco Inspection Act (7 U.S.C. 511 *et seq.*) requires that all tobacco sold at designated auction markets in the U.S. be inspected and graded. Provision is also made for interested parties to request inspection and grading services on an as needed basis. Also, the Dairy and Tobacco Adjustment Act of 1983 (7 U.S.C. 511r) requires the Secretary to inspect all tobacco offered for importation into the United States for grade and quality except cigar and oriental tobacco which must be certified by the importer as to kind and type, and in the case of cigar tobacco, that such tobacco will be used solely in the manufacture of cigars.

The information collection requirements authorized for the programs under the Tobacco Inspection Act and the Dairy and Tobacco Adjustment Act of 1983 include: application for inspection of tobacco, applications and other information used in the approval of new auction markets or the extension of services to designated tobacco markets, and information required to be provided in connection with auction sales.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 0.40 hours per response.

*Respondents:* Primarily tobacco companies, tobacco manufacturers, import inspectors, and small businesses or organizations.

*Estimated Number of Respondents:* 645.

*Estimated Number of Responses per Respondent:* 21.

*Estimated Total Annual Burden on Respondents:* 5,569.

Comments are invited on: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to John W. Foster, Chief, Standardization and Review Branch, Tobacco Programs, Agricultural Marketing Service, U.S. Department of Agriculture, Rm. 511 Annex Building, P.O. Box 96456, Washington, DC 20090–6456 and will be available for public inspection in Room 511 Annex Building, 300 12th Street, S.W., Washington, D.C. 20250. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: September 26, 2000.

**William O. Coats,**

*Acting Deputy Administrator, Tobacco Programs.*

[FR Doc. 00–25137 Filed 9–29–00; 8:45 am]

BILLING CODE 3410–02–P

## DEPARTMENT OF AGRICULTURE

### Food Safety and Inspection Service

**[Docket No. 00–041N]**

### Codex Alimentarius Commission: Meeting of the Codex Committees on Natural Mineral Waters and Cocoa Products and Chocolate

**AGENCY:** Office of the Under Secretary for Food Safety, USDA.

**ACTION:** Notice of public meeting and request for comments.

**SUMMARY:** The Office of the Under Secretary for Food Safety, U.S. Department of Agriculture (USDA), and the Food and Drug Administration (FDA), U.S. Department of Health and Human Services (HHS), are sponsoring a public meeting on October 17, 2000. The objective of the public meeting is to provide information and receive public comments on agenda items and draft United States positions that will be discussed at the following upcoming committee meetings.

- Seventh Session of the Codex Committee on Natural Mineral Waters (CCNMW) to be held in Fribourg, Switzerland, October 30–November 1, 2000
- Eighteenth Session of the Codex Committee on Cocoa Products and Chocolate (CCCPC) to be held in Fribourg, Switzerland, November 2–4, 2000.

The Under Secretary and FDA recognize the importance of providing

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interested parties the opportunity to obtain background information on the Sessions of CCNMW and CCCPC and to address items on the agendas.

**DATES:** The public meeting is scheduled for Tuesday, October 17, 2000, from 9:00 a.m. to 12:00 Noon.

**ADDRESSES:** The public meeting will be held in Conference Room 1409, Federal Office Building 8, Food and Drug Administration, 200 C Street, SW., Washington, DC 20204. To receive copies of the documents referenced in this notice, contact the FSIS Docket Room, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102 Cotton Annex, 300 12th Street, SW., Washington, DC 20250–3700. The documents will also be accessible via the World Wide Web at the following address: *http://www.fao.org/waicent/faoinfo/economic/esn/codex*. Submit one original and two copies of written comments to the FSIS Docket Room (address above) and include Docket t00–041N and the Codex document number on the written submission. All comments received in response to this notice will be considered part of the public record and will be available for viewing in the FSIS Docket Room between 8:30 a.m. and 4:30 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Patrick J. Clerkin, Associate U.S. Manager for Codex, U.S. Codex Office, FSIS, Room 4861, South Building, 1400 Independence Avenue, SW., Washington, DC 20250–3700, Telephone (202) 205–7760; Fax (202) 720–3157. Persons requiring a sign language interpreter or other special accommodations should notify Mr. Clerkin at the above number.

**SUPPLEMENTARY INFORMATION:**

**Background**

Codex was established in 1962 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Codex is the major international organization for protecting the health and economic interests of consumers and encouraging fair international trade in food. Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to ensure that the world's food supply is sound, wholesome, free from adulteration, and correctly labeled.

The Codex Committee on Natural Mineral Waters was established as a Regional (European) Codex Committee, but has been allocated the task of elaborating worldwide standards for natural mineral waters and other bottled/packaged waters. The Codex Committee on Cocoa Products and Chocolate was established to elaborate worldwide standards for cocoa products and chocolate. The Government of Switzerland hosts these Committees and will chair the Committee meetings.

**Issues To Be Discussed at the Public Meeting**

The U.S. Delegate for the Codex Committee on Natural Mineral Waters will discuss the following subjects at the public meeting from 9:00 a.m. to 10:30 a.m.

1. Matters Referred to the Committee, Document *CX/NMW 00/2*
2. Consideration of Proposed Draft General Standard for Bottled/Packaged Waters Other Than Natural Mineral Waters at Step 4, Document *ALINORM 99/20 Appendix II*
3. Codex Standard for Natural Mineral Waters: Limits for Health Related Substances, Document *CX/NMW 00/4*

The U.S. Delegate for the Codex Committee on Cocoa Products and Chocolate will discuss the following subjects at the public meeting from 10:30 a.m. to 12:00 Noon.

1. Matters Referred to the Committee, Document *CX/CCP 00/2*
2. Draft Revised Standards at Step 7 For
   (a) Cocoa Butters, Document *ALINORM 99/14 Appendix II*
   (b) Cocoa (cacao) Mass, Cocoa (Cacao/Chocolate Liquor) Cocoa Cake for Use in the Manufacture of Cocoa and Chocolate Products, Document *ALINORM 99/14 Appendix III*
   (c) Cocoa Powders (Cocoas) and Dry Cocoa-Sugar Mixtures, Document *ALINORM 99/14 Appendix IV*
3. Proposed Draft Standard for Chocolate and Chocolate products at Step 4, Document *ALINORM 99/14 Appendix V*

**Additional Public Notification**

Public Awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it and provide copies of this **Federal Register** publication in the FSIS Constituent Update. FSIS provides a weekly FSIS Constituent Update, which is communicated via fax to over 300 organizations and individuals. In addition, the update is available on-line through the FSIS web page located at http://www.fsis.usda.gov. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could effect or would be of interest to our constituents/stakeholders. The constituent fax list consists of industry, trade, farm, and consumer interest groups, allied health professionals and scientific professionals, and other individuals that have requested to be included. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience. For more information and to be added to the constituent fax list, fax your request to the FSIS Congressional and Public Affairs Office, at (202) 720–5704.

Done at Washington, DC on: September 27, 2000.

**F. Edward Scarbrough,**

*U.S. Manager for Codex.*

[FR Doc. 00–25223 Filed 9–29–00; 8:45 am]

**BILLING CODE 3410–DM–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### National Urban and Community Forestry Advisory Council

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The National Urban and Community Forestry Advisory Council will meet in Lexington, Kentucky, October 12–14, 2000. The purpose of the meeting is to discuss emerging issues in urban and community forestry.

**DATES:** The meeting will be held October 12–14, 2000. A tour of local projects will be held on October 12, from 8:30 a.m. to 5 p.m.

**ADDRESSES:** The meeting will be held at the Holiday Inn Lexington North, 1950 Newtown Pike, Lexington, Kentucky.

Individuals who wish to speak at the meeting or to propose agenda items must send their names and proposals to Suzanne M. del Villar, Executive Assistant, National Urban and Community Forestry Advisory Council, 20628 Diane Drive, Sonora, CA 95370. Individuals also may fax their names and proposed agenda items to (209) 536–9089.

**FOR FURTHER INFORMATION CONTACT:** Suzanne M. del Villar, Cooperative Forestry Staff, at (209) 536–9201.

**SUPPLEMENTARY INFORMATION:** The meeting is open to the public. Council discussion is limited to Forest Service staff and Council members. However, persons who wish to bring urban and community forestry matters to the attention of the Council may file written statements with the Council staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by October 6 will have the opportunity to address the Council at those sessions.

Dated: September 25, 2000.

**Robin L. Thompson,**

*Associate Deputy Chief, State and Private Forestry.*

[FR Doc. 00–25185 Filed 9–29–00; 8:45 am]

**BILLING CODE 3410–11–M**



## DEPARTMENT OF AGRICULTURE

### Forest Service

### Opal Creek Scenic Recreation Area (SRA) Advisory Council

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** An Opal Creek Scenic Recreation Area Advisory Council meeting will convene in Stayton, Oregon on Monday, October 17, 2000. The meeting is scheduled to begin at 6:00 p.m., and will conclude at approximately 8:30 p.m. The meeting will be held in the South Room of the Stayton Community Center; 400 West Virginia Street; Stayton, Oregon.

The Opal Creek Wilderness and Opal Creek Scenic Recreation Area Act of 1996 (Opal Creek Act) (P.L. 104–208) directed the Secretary of Agriculture to establish the Opal Creek Scenic Recreation Area Advisory Council. The Advisory Council is comprised of thirteen members representing state, county and city governments, and representatives of various organizations, which include mining industry, environmental organizations, inholders in Opal Creek Scenic Recreation Area, economic development, Indian tribes, adjacent landowners and recreation interests. The council provides advice to the Secretary of Agriculture on preparation of a comprehensive Opal Creek Management Plan for the SRA, and consults on a periodic and regular basis on the management of the area. The tentative agenda includes:

(1) Continuing issue development and describing the desired future condition of the SRA, and (3) discussing the City of Salem's proposal for a water quality monitoring gauging station.

The public comment period is tentatively scheduled to begin at 8:00 p.m. Time allotted for individual presentations will be limited to 3 minutes. Written comments are encouraged, particularly if the material cannot be presented within the time limits of the comment period. Written comments may be submitted prior to the October 17 meeting by sending them to Designated Federal Official Stephanie Phillips at the address given below.

**FOR FURTHER INFORMATION CONTACT:** For more information regarding this meeting, contact Designated Federal Official Stephanie Phillips; Willamette National Forest, Detroit Ranger District, HC 73 Box 320, Mill City, OR 97360; (503) 854–3366.

Dated: September 26, 2000.

**Randy Dunbar,**

*Acting Forest Supervisor.*

[FR Doc. 00–25142 Filed 9–29–00; 8:45 am]

**BILLING CODE 3410–11–M**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Willamette Provincial Advisory Committee (PAC)

**AGENCY:** Forest Service, USDA.

**ACTION:** Action of meeting.

**SUMMARY:** The Willamette Province Advisory Committee (PAC) will meet on Thursday, October 19, 2000. The meeting is scheduled to begin at 9 a.m., and will conclude at approximately 3 p.m. The meeting will be held at the Salem Office of the Bureau of Land Management; 1717 Fabry Road SE; Salem, Oregon; (503) 375–5646. The tentative agenda includes:

(1) Presentation of Integrated Natural Fuels Assessment, (2) Overview of President's Wildfire Action Plan, (3) County receipts legislation, (4) REO update, (5) Update on PAC rechartering and membership, (6) Roundtable information sharing.

The Public Forum is tentatively scheduled to begin at 10:30 a.m. Time allotted for individual presentations will be limited to 3–4 minutes. Written comments are encouraged, particularly if the material cannot be presented within the time limits for the Public Forum. Written comments may be submitted prior to the October 19 meeting by sending them to Designated Federal Official Neal Forrester at the address given below.

**FOR FURTHER INFORMATION CONTACT:** For more information regarding this meeting, contact Designated Federal Official Neal Forrester; Williamette National Forest; 211 East Seventh Avenue; Eugene, Oregon 97401; (541) 465–6924.

Dated: September 25, 2000.

**Darrel L. Kenops,**

*Forest Supervisor.*

[FR Doc. 00–25141 Filed 9–29–00; 8:45 am]

**BILLING CODE 3410–11–M**

## DEPARTMENT OF COMMERCE

### Bureau of Export Administration

### National Defense Stockpile Market Impact Committee Request for Public Comments

**AGENCY:** Office of Strategic Industries and Economic Security, Bureau of Export Administration, U.S. Department of Commerce.

**ACTION:** Notice of request for public comment on the potential market impact of proposed disposals of excess commodities currently held in the National Defense Stockpile under the Fiscal Year 2002 Annual Materials Plan (AMP) and revisions to commodity disposals approved under the FY 2001 AMP.

**SUMMARY:** This notice is to advise the public that the National Defense Stockpile Market Impact Committee (co-chaired by the Departments of Commerce and State) is seeking public comment on the potential market impact of proposed disposals of excess materials from the National Defense Stockpile as set forth in Attachment 1 to this notice.

**DATES:** Comments must be received by November 1, 2000.

**ADDRESSES:** Written comments should be sent to Richard V. Meyers, Co-Chair, Stockpile Market Impact Committee, Office of Strategic Industries and Economic Security, Room 3876, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; FAX (202) 482–5650.

**FOR FURTHER INFORMATION CONTACT:** Richard V. Meyers, Office of Strategic Industries and Economic Security, U.S. Department of Commerce, (202) 482–3634; or Terri L. Robl, Office of International Energy and Commodity Policy, U.S. Department of State, (202) 647–3423; co-chairs of the National Defense Stockpile Market Impact Committee.

**SUPPLEMENTARY INFORMATION:** Under the authority of the Strategic and Critical Materials Stock Piling Act of 1979, as amended, (50 U.S.C. 98 *et seq.*), the Department of Defense (DOD), as National Defense Stockpile Manager, maintains a stockpile of strategic and critical materials to supply the military,

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industrial, and essential civilian needs of the United States for national defense. Section 3314 of the Fiscal Year (FY) 1993 National Defense Authorization Act (NDAA) (50 U.S.C. 98h-1) formally established a Market Impact Committee (the Committee) to "advise the National Defense Stockpile Manager on the projected domestic and foreign economic effects of all acquisitions and disposals of materials from the stockpile * * *." The Committee must also balance market impact concerns with the statutory requirement to protect the Government against avoidable loss.

The Committee is comprised of representatives from the Departments of Commerce, State, Agriculture, Defense, Energy, Interior, Treasury, and the Federal Emergency Management Agency, and is co-chaired by the Departments of Commerce and State. The FY 1993 NDAA directs the Committee to "consult from time to time with representatives of producers, processors and consumers of the types of materials stored in the stockpile."

Attachment 1 lists the current FY 2001 AMP quantities (previously approved by the Committee), proposed revisions to the FY 2001 AMP quantities for 5 materials, and the proposed FY 2002 AMP. The Committee is seeking public comment on the potential market impact of the sale of these materials as proposed in the revised FY 2001 AMP and FY 2002 AMP.

The quantities listed in Attachment 1 are not sales target disposal quantities. They are only a statement of the proposed maximum disposal quantity of each listed material that may be sold in a particular fiscal year. The quantity of each material that will actually be offered for sale will depend on the market for the material at the time as well as on the quantity of each material approved for disposal by Congress.

The Committee requests that interested parties provide written comments, supporting data and documentation, and any other relevant information on the potential market impact of the sale of these commodities. Although comments in response to this Notice must be received by November 1, 2000, to ensure full consideration by the Committee, interested parties are encouraged to submit additional comments and supporting information at any time thereafter to keep the Committee informed as to the market impact of the sale of these commodities. Public comment is an important element of the Committee's market impact review process.

Public comments received will be made available at the Department of Commerce for public inspection and copying. Material that is national security classified or business confidential will be exempted from public disclosure. Anyone submitting business confidential information should clearly identify the business confidential portion of the submission and also provide a non-confidential submission that can be placed in the public file. Communications from agencies of the United States Government will not be made available for public inspection.

The public record concerning this notice will be maintained in the Bureau of Export Administration's Records Inspection Facility, Room 4525, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone (202) 482–5653. The records in this facility may be inspected and copied in accordance with the regulations published in Part 4 of Title 15 of the Code of Federal Regulations (15 CFR 4.1 *et seq.*).

Information about the inspection and copying of records at the facility may be obtained from Ms. Margaret Cornejo, the Bureau of Export Administration's Freedom of Information Officer, at the above address and telephone number.

Dated: September 27, 2000.

**Daniel Hill,**

*Director, Office of Strategic Industries and Economic Security.*

ATTACHMENT 1.—PROPOSED ANNUAL MATERIAL PLANS FOR FY 2001 REVISED AND FY 2002

| Material | Units | Currently FY 2001 quantity | Revised FY 2001 quantity | Proposed FY 2002 quantity |
|---|---|---|---|---|
| Aluminum Oxide, Abrasive | ST | 6,000 | ..... | 6,000 |
| Antimony | ST | 5,000 | ..... | 5,000 |
| Bauxite, Metallurgical (Jamaican) | LDT | 2,000,000 | ..... | 2,000,000 |
| Bauxite, Metallurgical (Surinam) | LDT | [1] 1,000,000 | ..... | [1] 1,000,000 |
| Beryl Ore | ST | 4,000 | ..... | 4,000 |
| Beryllium Metal | ST | 40 | ..... | 40 |
| Beryllium Copper Master Alloy | ST | 2,200 | ..... | 2,200 |
| Cadmium | LB | 1,200,000 | ..... | 1,200,000 |
| Celestite | SDT | 3,600 | ..... | 3,600 |
| Chromite, Chemical | SDT | [1] 100,000 | ..... | [1] 100,000 |
| Chromite, Metallurgical | SDT | 250,000 | ..... | [1] 100,000 |
| Chromite, Refractory | SDT | 100,000 | ..... | 100,000 |
| Chromium, Ferro | ST | 150,000 | ..... | 150,000 |
| Chromium, Metal | ST | 500 | ..... | 500 |
| Cobalt | LB Co | 6,000,000 | ..... | 6,000,000 |
| Columbium, Carbide Powder | LB Cb | 21,5001 | ..... | 21,5001 |
| Columbium Concentrates (Minerals) | LB Cb | 375,000 | 450,000 | 450,000 |
| Columbium Metal Ingots | LB Cb | 20,000 | ..... | 20,000 |
| Diamond Stone | ct | 1,000,000 | ..... | [1] 510,000 |
| Fluorspar, Acid Grade | SDT | 0 | [1] 12,000 | [1] 12,000 |
| Fluorspar, Metallurgical | SDT | 60,000 | ..... | 60,000 |
| Germanium | KG | 8,000 | ..... | 8,000 |
| Graphite | ST | 3,760 | ..... | 3,760 |
| Iodine | LB | 1,000,000 | ..... | 1,000,000 |
| Jewel Bearings | PC | [1] 52,000,000 | ..... | [1] 52,000,000 |
| Lead | ST | 60,000 | ..... | 60,000 |
| Manganese, Battery Grade Natural | SDT | 30,000 | ..... | 30,000 |
| Manganese, Battery Grade Synthetic | SDT | [1] 3,011 | ..... | 0 |
| Manganese, Chemical Grade | SDT | 40,000 | ..... | 40,000 |
| Manganese, Ferro | ST | 50,000 | 100,000 | 100,000 |
| Manganese, Metal Electrolytic | ST | 2,000 | ..... | 2,000 |



ATTACHMENT 1.—PROPOSED ANNUAL MATERIAL PLANS FOR FY 2001 REVISED AND FY 2002—Continued

| Material | Units | Currently FY 2001 quantity | Revised FY 2001 quantity | Proposed FY 2002 quantity |
|---|---|---|---|---|
| Manganese, Metallurgical Grade | SDT | 250,000 | ..... | 250,000 |
| Mica (All Types) | LB | 4,000,000 | ..... | 4,000,000 |
| Palladium | Tr Oz | 300,000 | ..... | 300,000 |
| Platinum | Tr Oz | 125,000 | ..... | 95,000 |
| Quinidine | Oz | 750,000 | ..... | 750,000 |
| Quinine | Oz | 1,000,000 | ..... | [1] 200,000 |
| Rubber | LT | 0 | [1] 70,000 | [1] 70,000 |
| Sebacic Acid | LB | 600,000 | ..... | 600,000 |
| Silver (for coinage) | Tr Oz | 10,000,000 | 13,000,000 | 5,000,000 |
| Talc | ST | [1] 1,000 | ..... | [1] 1,000 |
| Tantalum Carbide Powder | LB Ta | 4,000 | ..... | 4,000 |
| Tantalum Metal Ingots | LB Ta | 40,000 | ..... | 40,000 |
| Tantalum Metal Powder | LB Ta | 50,000 | ..... | 50,000 |
| Tantalum Minerals | LB Ta | 300,000 | 400,000 | 400,000 |
| Tantalum Oxide | LB Ta | 20,000 | ..... | 20,000 |
| Thorium Nitrate [2] | LB | [1] 7,093,464 | ..... | [1] 7,093,464 |
| Tin | MT | 12,000 | ..... | 12,000 |
| Titanium Sponge | ST | 5,000 | ..... | 5,000 |
| Tungsten, Carbide Powder | LB W | 1,000,000 | ..... | 1,000,000 |
| Tungsten, Ferro | LB W | 300,000 | ..... | 300,000 |
| Tungsten, Metal Powder | LB W | 150,000 | ..... | 150,000 |
| Tungsten Ores & Concentrates | LB W | 4,000,000 | ..... | 4,000,000 |
| Vegetable Tannin Extract, Chestnut | LT | [1] 1,100 | ..... | 0 |
| Vegetable Tannin Extract, Quebrac | LT | 10,000 | ..... | 10,000 |
| Vegetable Tannin Extract, Wattle | LT | [1] 6,500 | ..... | [1] 6,500 |
| Zinc | ST | 50,000 | ..... | 50,000 |
| Zirconium (Baddeleyite) | SDT | [1] 17,383 | ..... | 0 |

**Notes**

[1] FY 2001 entries (current or proposed revision) are an adjustment to available inventory. For FY 2002 entries, actual quantity will be limited to remaining sales authority or inventory.

[2] The radioactive nature of this material may restrict sales or disposal options.

[FR Doc. 00–25233 Filed 9–29–00; 8:45 am]

BILLING CODE 3510–33–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of initiation of Antidumping and Countervailing Duty Administrative Reviews and requests for revocation in part.

**SUMMARY:** The Department of Commerce (the Department) has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with August anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews. The Department also received requests to revoke two antidumping duty orders in part.

**EFFECTIVE DATE:** October 2, 2000.

**FOR FURTHER INFORMATION CONTACT:** Holly A. Kuga, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4737.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Department has received timely requests, in accordance with 19 CFR 351.213(b)(2000), for administrative reviews of various antidumping and countervailing duty orders and findings with August anniversary dates. The Department also received timely requests to revoke in part the antidumping duty orders for Cut-to-Length Carbon Steel Plate from Canada and Oil Country Tubular Goods from Mexico.

*Initiation of Reviews*

In accordance with sections 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than August 31, 2001.

| | Period to be reviewed |
|---|---|
| **Antidumping Duty Proceedings** | |
| CANADA: | |
| Corrosion-Resistant Carbon Steel Flat Products, A–122–822 | 8/1/199–7/31/00 |
| Stelco, Inc. | |
| Continuous Colour Coat, Ltd. | |
| Dofasco, Inc. | |
| Sorevco, Inc. | |
| National Steel Corporation. | |

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| | Period to be reviewed |
|---|---|
| Cut-to-Length Carbon Steel Plate, A–122–823 | 8/1/99–7/31/00 |
| Stelco, Inc. | |
| Clayson Steel Inc. | |
| Gerdau MRM Steel | |
| FRANCE: Industrial Nitrocellulose, A–427–009 | 8/1/99–7/31/00 |
| Bergerac N.C. | |
| GERMANY: | |
| Cut-to-Length Carbon Steel Plate, A–428–816 | 8/1/99–7/31/00 |
| Reiner Brach GmbH & Co. | |
| ITALY: | |
| Grain-Oriented Electrical Steel, A–475–811 | 8/1/99–7/31/00 |
| Acciai Speciali Terni S.p.A. | |
| Granular Polytetrafluoroethylene (PTFE) Resin, A–475–703 | 8/1/99–7/31/00 |
| Ausimont | |
| Stainless Steel Sheet and Strip in Coils,[1] A–475–824 | 7/1/99–6/30/00 |
| Acciai Special Terni S.p.A. | |
| JAPAN: | |
| Corrosion-Resistant Carbon Steel Flat Products, A–588–824 | 8/1/99–7/31/00 |
| Nippon Steel Corporation | |
| Kawasaki Steel Corporation | |
| Daido Metal Corp. | |
| Oil Country Tubular Goods, A–588–835 | 8/1/99–7/31/00 |
| Sumitomo Metal Industries, Ltd. | |
| MEXICO: | |
| Cut-to-Length Carbon Steel Plate, A–201–809 | 8/1/99–7/31/00 |
| Altos Hornos de Mexico S.A. de C.V. | |
| Gray Portland Cement and Clinker, A–201–802 | 8/1/99–7/31/00 |
| GCC Cementos, S.A. de C.V. | |
| CEMEX, S.A. de C.V. | |
| Apasco, S.A. de C.V. | |
| Oil Country Tubular Goods, A–201–817 | 8/1/99–7/31/00 |
| Hylsa, S.A. de C.V. | |
| Tubos de Acero de Mexico S.A. | |
| REPUBLIC OF KOREA: | |
| Cold-Rolled Carbon Steel Flat Products, A–580–815 | 8/1/99–7/31/00 |
| Dongbu Steel Co., Ltd. | |
| Pohang Iron and Steel Co., Ltd. | |
| Union Steel Manufacturing Co., Ltd. | |
| Corrosion-Resistant Carbon Steel Flat Products, A–580–816 | 8/1/99–7/31/00 |
| Dongbu Steel Co., Ltd. | |
| Pohang Iron and Steel Co., Ltd. | |
| Union Steel Manufacturing Co., Ltd. | |
| SeAH Steel Corporation | |
| Oil Country Tubular Goods, Other than Drill Pipe, A–580–825 | 8/1/99–7/31/00 |
| SeAH Steel Corporation | |
| ROMANIA: | |
| Cut-to-Length Carbon Steel Plate, A–485–803 | 8/1/99–7/31/00 |
| Sidex, S.A./Metalexportimport, S.A. | |
| Windmill International PTE, Ltd. | |
| THE PEOPLE'S REPUBLIC OF CHINA: | |
| Petroleum Wax Candles,[2] A–570–504 | 8/1/99–7/31/00 |
| Universal Candle Company, Ltd. | |
| Sulfanilic Acid,[3] A–570–815 | 8/1/99–7/31/00 |
| Boading Mancheng Zhenxing Chemical Plant | |
| Xinyu Chemical Plant | |
| Yude Chemical Industry, Co. | |
| Zhenxing Chemical Industry, Co., | |

**Countervailing Duty Proceedings**

| | |
|---|---|
| BELGIUM: | |
| Stainless Steel Plate in Coils, C–423–809 | [4]9/4/98–12/31/99 |
| Acciai Speciali Terni S.p.A. | |
| CANADA: | |
| Alloy Magnesium, C–122–815 | 1/1/99–12/31/99 |
| Norsk Hydro Canada Inc. | |
| Pure Magnesium, C–122–815 | 1/1/99–12/31/99 |
| Norsk Hydro Canada Inc. | |
| ISRAEL: | |
| Industrial Phosphoric Acid, C–508–605 | 1/1/99–12/31/99 |
| Rotem Amfert Negev Ltd. | |
| ITALY: | |
| Stainless Steel Sheet and Strip in Coils, C–475–825 | 11/17/98–12/31/99 |
| Acciai Speciali Terni S.p.A. | |
| Acciai Speciali Temi USA, Inc. | |



| | Period to be reviewed |
|---|---|
| REPUBLIC OF KOREA: | |
| Stainless Steel Sheet and Strip in Coils, C–580–835 | 11/17/98–12/31/99 |
| Inchon Iron and Steel Co., Ltd. | |
| Sammi Steel Co. | |

**Suspension Agreements**

None.

[1] Inadvertently omitted from previous initiation notice.
[2] If one of the above named companies does not qualify for a separate rate, all other exporters of petroleum wax candles from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.
[3] If one of the above named companies does not qualify for a separate rate, all other exporters of sulfanilic acid from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.
[4] In the initiation notice published on July 7, 2000, (65 FR 41942), the review period for Acciai was incorrect. The period listed above is the correct period of review for that firm.

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under section 351.211 or a determination under section 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 USC 1675(a)) and 19 CFR 351.221(c)(1)(i).

Dated: September 26, 2000.

**Holly A. Kuga,**

*Acting Deputy Assistant Secretary for Import Administration, Group II.*

[FR Doc. 00–25275 Filed 9–29–00; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–851]**

### Certain Preserved Mushrooms From the People's Republic of China: Initiation of New Shipper Antidumping Duty Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce has received a request to conduct a new shipper review of the antidumping duty order on certain preserved mushrooms from the People's Republic of China. In accordance with 19 CFR 351.214(d), we are initiating this review.

**EFFECTIVE DATE:** October 2, 2000.

**FOR FURTHER INFORMATION CONTACT:** David J. Goldberger or Kate Johnson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4136 or (202) 482–4929, respectively.

*The Applicable Statute*

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce (the Department's) regulations are to 19 CFR part 351 (2000).

**SUPPLEMENTARY INFORMATION:**

**Background**

The Department has received a timely request from Green Fresh Foods (Zhangzhou) Co., Ltd. (Green Fresh Foods), in accordance with 19 CFR 351.214(c), for a new shipper review of the antidumping duty order on certain preserved mushrooms from the People's Republic of China (PRC), which has an August semiannual anniversary date. *See Notice of Amendment of Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Preserved Mushrooms from the People's Republic of China*, 64 FR 8308 (February 19, 1999). As required by 19 CFR 351.214(b)(2)(i) and (iii)(A), Green Fresh Foods (the respondent) has certified that it did not export certain preserved mushrooms to the United States during the period of investigation (POI), and that it has never been affiliated with any exporter or producer which exported certain preserved mushrooms during the POI. Green Fresh Foods further certified that its export activities are not controlled by the central government of the PRC, pursuant to 19 CFR 351.214(b)(2)(iii)(B). Pursuant to the Department's regulations at 19 CFR 351.214(b)(2)(iv), Green Fresh Foods submitted documentation establishing the date on which it first shipped the subject merchandise to the United States, the volume of that first shipment, and the date of its first sale to an unaffiliated customer in the United States.

In accordance with section 751(a)(2)(B) of the Act, as amended, and 19 CFR 351.214(b), and based on information on the record, we are initiating the new shipper review as requested.

It is the Department's usual practice in cases involving non-market economies to require that a company seeking to establish eligibility for an antidumping duty rate separate from the country-wide rate provide *de jure* and *de facto* evidence of an absence of government control over the company's export activities. *See Certain Preserved Mushrooms from the People's Republic of China: Initiation of New Shipper Antidumping Duty Review*, 65 FR 17257

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(March 31, 2000). Accordingly, we will issue a separate rates questionnaire to the above-named respondent. If respondent Green Fresh Foods provides sufficient evidence that it is not subject to either *de jure* or *de facto* government control with respect to its exports of certain preserved mushrooms, this review will proceed. If, on the other hand, Green Fresh Foods does not meet its burden to demonstrate its eligibility for a separate rate, then Green Fresh Foods will be deemed to be affiliated with other companies that exported during the POI and that did not establish entitlement to a separate rate. This review will then be terminated due to failure of the exporter or producer to meet the requirements of section 751(a)(2)(B)(i)(II) of the Act and 19 CFR 351.214(iii)(B).

**Scope of the Review**

The products covered by this review are certain preserved mushrooms whether imported whole, sliced, diced, or as stems and pieces. The preserved mushrooms covered under this review are the species *Agaricus bisporus* and *Agaricus bitorquis*. "Preserved mushrooms" refer to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers including but not limited to cans or glass jars in a suitable liquid medium, including but not limited to water, brine, butter or butter sauce. Preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces. Included within the scope of this review are "brined" mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing.

Excluded from the scope of this review are the following: (1) All other species of mushroom, including straw mushrooms; (2) all fresh and chilled mushrooms, including "refrigerated" or "quick blanched mushrooms"; (3) dried mushrooms; (4) frozen mushrooms; and (5) "marinated," "acidified" or "pickled" mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives.[1]

The merchandise subject to this review is classifiable under subheadings 2003.1000.27, 2003.1000.31, 2003.1000.37, 2003.1000.43, 2003.1000.47, 2003.1000.53, and 0711.90.4000 of the Harmonized Tariff Schedule of the United States ("HTS"). Although the HTS subheadings are provided for convenience and Customs purposes, our written description of the scope of this review is dispositive.

**Initiation of Review**

In accordance with section 751(a)(2)(B)(ii) of the Act and 19 CFR 351.214(d)(1), we are initiating a new shipper review of the antidumping duty order on certain preserved mushrooms from the PRC. We intend to issue the preliminary results of this review within 180 days after initiation.

| Antidumping duty proceeding | Period to be reviewed |
|---|---|
| PRC: Certain Preserved Mushrooms, A–570–851: Green Fresh Foods (Zhangzhou) Co., Ltd. | 02/01/2000–07/31/2000 |

Subject to receipt of an adequate separate rates questionnaire response from the respondent, we will instruct the U.S. Customs Service to allow, at the option of the importer, the posting of a bond or security in lieu of a cash deposit for each entry of the merchandise exported by the above-listed company until the completion of the review. This action is in accordance with 19 CFR 351.214(e) and (j)(3).

Interested parties that need access to the proprietary information in this new shipper review should submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305 and 351.306.

This initiation and this notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.214(d).

Dated: September 22, 2000.

**Richard W. Moreland,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. 00–25270 Filed 9–29–00; 8:45 am]

BILLING CODE 3510–DS–P

[1] On June 19, 2000, the Department affirmed that "marinated," "acidified," or "pickled" mushrooms containing less than 0.5 percent acetic acid are within the scope of the antidumping duty order.

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[(A–533–819), (A–557–810), (A–570–859)]**

### Notice of Preliminary Determinations of Sales at Less Than Fair Value: Steel Wire Rope From India and the People's Republic of China; Notice of Preliminary Determination of Sales at Not Less Than Fair Value: Steel Wire Rope From Malaysia

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** October 2, 2000.

**FOR FURTHER INFORMATION CONTACT:** Jim Kemp or Keir Whitson at (202) 482–1276 or (202) 482–1777, respectively; AD/CVD Enforcement, Office 5, Group II, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

**The Applicable Statute and Regulations**

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to Department of Commerce (the Department) regulations refer to the regulations codified at 19 CFR part 351 (April 1999).

**Preliminary Determinations**

We preliminarily determine that steel wire rope from India and the People's Republic of China (the PRC) is being sold in the United States at less than fair value (LTFV), as provided in section 733 of the Act. We also preliminarily determine that steel wire rope from Malaysia is not being sold in the United States at LTFV. The estimated margins of sales at LTFV are shown in the Suspension of Liquidation section of this notice.

**Case History**

These investigations were initiated on March 17, 2000.[1] See Initiation of Antidumping Duty Investigations: Steel Wire Rope from India, Malaysia, the People's Republic of China and Thailand, 65 FR 16173 (March 27, 2000) (Initiation Notice). Since the initiation of these investigations, the following events have occurred.

[1] The petitioner in this investigation is the Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers.



On April 26, 2000, the United States International Trade Commission (the ITC) preliminarily determined that there is a reasonable indication that imports of wire rope from India, Malaysia and the PRC are materially injuring the United States industry. With regard to Thailand, the ITC determined that either there is no reasonable indication that an industry in the United States is threatened with material injury by reason of imports of steel wire rope from Thailand or that such imports are negligible. See Steel Wire Rope from China, India, Malaysia, and Thailand, 65 FR 24505 (April 26, 2000). As a result, the investigation on Thailand was terminated.

The Department issued antidumping questionnaires to the respondents in India and Malaysia on May 9, 2000.[2] For the PRC investigation, on April 28, 2000, we sent a letter to the Ministry of Foreign Trade & Economic Cooperation (MOFTEC) requesting information on exporters of steel wire rope from the PRC and the volume of merchandise that those exporters had shipped to the United States during the period of investigation (POI). On May 17, 2000, we sent the antidumping questionnaire to MOFTEC with a letter requesting that it forward the questionnaire to all exporters of steel wire rope who had shipments during the POI. In addition, on May 17, 2000, we sent the questionnaire to all Chinese exporters who had contacted us through counsel, with instructions to complete and return the questionnaire by the given deadline. We received responses from eight companies from the PRC, one from an Indian company and one from a Malaysian company. We issued supplemental questionnaires to our selected respondents, where appropriate.

On July 13, 2000, the Department postponed the preliminary determinations in these cases 50 days in accordance with section 733(c)(1) of the Act and 19 CFR 351.205(b)(2). See Notice of Postponement of Preliminary Antidumping Duty Determinations: Steel Wire Rope from India, Malaysia, and the People's Republic of China, 65 FR 45037 (July 20, 2000).

**Postponement of the Final Determination for India**

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioners. The Department's regulations, at 19 CFR 351.210(e)(2), require that requests by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four-month period to not more than six months.

On September 8, 2000, Usha Martin Industries, Ltd (Usha), the respondent in the Indian case, requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until 135 days after the publication of the preliminary determination. Usha also included a request to extend the provisional measures to not more than six months. Accordingly, since we have made an affirmative preliminary determination, we have postponed the final determination for India until not later than 135 days after the date of the publication of the preliminary determination.

**Periods of Investigation**

The POI for the Indian and Malaysian cases is January 1, 1999, through December 31, 1999. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, March 2000). The POI for the China case is July 1, 1999, through December 31, 1999, the two most recent fiscal quarters prior to the month of filing the petition.

**Scope of Investigations**

For purposes of these investigations, the product covered is steel wire rope. Steel wire rope encompasses ropes, cables, and cordage of iron or carbon or stainless steel, other than stranded wire, not fitted with fittings or made up into articles, and not made up of brass-plated wire. Imports of these products are currently classifiable under subheadings: 7312.10.6030, 7312.10.6060, 7312.10.9030, 7312.10.9060, and 7312.10.9090 of the Harmonized Tariff Schedule of the United States (HTSUS). Although HTSUS subheadings are provided for convenience and Customs Service purposes, the written description of the scope of these investigations is dispositive.

**Facts Available**

In its home market sales database, Usha, the respondent in the Indian case, reported a code designated "other" for certain sales observations in response to the requested product characteristic category for "class of wire rope" (class). The Department issued a supplemental questionnaire requesting that Usha re-code these observations with the correct class designation. Usha complied in part and provided the class for the majority of sales in question. However, for the remaining sales, Usha stated that it produced certain products that were outside the specifications that it uses to determine the class for the merchandise. Therefore, Usha could only provide the "other" designation for certain sales. In order to avoid introducing any distortions from product misclassification in the fair value comparison of Usha's home market sales to its U.S. sales, we have determined that we cannot use the product characteristic with a code designated as "other" for certain home market sales and, therefore, the use of facts otherwise available is necessary in this situation, pursuant to section 776(a) of the Act.

Section 776(a) of the Act provides that "if an interested party or any other person—(A) withholds information that has been requested by the administering authority, (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782, (C) significantly impedes a proceeding under this title, or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority and the Commission shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title." The statute requires that certain conditions be met before the Department may resort to the facts otherwise available. Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to

[2] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country market (This section is not applicable to respondents in non-market economy (NME) cases). Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production (COP) of the foreign like product and the constructed value (CV) of the merchandise under investigation. Section E requests information on further manufacturing.

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remedy the deficiency within the applicable time limits, the Department may, subject to section 782(e), disregard all or part of the original and subsequent responses, as appropriate. Briefly, section 782(e) provides that the Department "shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority" if the information is timely, can be verified, is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, and the Department can use the information without undue difficulties, the statute requires it to do so.

As noted above, we determined that we cannot rely on home market sales for which the class product characteristic was designated as "other." Therefore, we did not use such sales in matching to reported U.S. sales.

**Critical Circumstances**

In letters filed on August 25, 2000, the petitioner alleged that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of steel wire rope from India and the PRC. Under section 733(e)(1) of the Act, when critical circumstances allegations are submitted more than 20 days before the scheduled date of the preliminary determinations, the Department shall determine on the basis of information available to it at the time whether there is a reasonable basis to believe or suspect that critical circumstances exist. If critical circumstances are found to exist, then a preliminary finding will be issued. For the reasons discussed below, we are issuing preliminary critical circumstances determinations at this time in the investigations of imports of steel wire rope from India and the PRC.

Section 733(e)(1) of the Act provides that the Department will preliminarily determine that critical circumstances exist if there is a reasonable basis to believe or suspect that: (A)(i) There is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period. Section 351.206(h)(1) of the Department's regulations provides that, in determining whether imports of the subject merchandise have been "massive," the Department normally will examine: (i) The volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. In addition, section 351.206(h)(2) of the Department's regulations provides that an increase in imports of 15 percent during the "relatively short period" of time may be considered "massive."

Section 351.206(i) of the Department's regulations defines "relatively short period" as normally being the period beginning on the date the proceeding begins (*i.e.*, the date the petition is filed) and ending at least three months later. The regulations also provide, however, that if the Department finds that importers, exporters, or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, the Department may consider a period of not less than three months from that earlier time.

In determining whether the above criteria have been satisfied, we examined: (1) The evidence presented in the petition; (2) recent import statistics released by the Census Bureau after the initiation of the LTFV investigations; and (3) the ITC preliminary injury determinations.

*A. History of Dumping and Importer Knowledge*

The petitioner has provided evidence on the record of at least one affirmative European Union antidumping and injury determination, announced in August 1999, on steel wire rope from India and the PRC. On this basis, we find a history of dumping and material injury from India and the PRC pursuant to section 733(e)(1)(A)(i) of the Act.

*B. Massive Imports*

In determining whether there are "massive imports" over a "relatively short period," pursuant to section 733(e)(1)(B) of the Act, as stated above, the Department normally compares the import volume of the subject merchandise for at least three months immediately preceding the filing of the petition (*i.e.*, the "base period"), and at least three months following the filing of the petition (*i.e.*, the "comparison period"), *see* 19 CFR 351.206(i). Imports normally will be considered massive when imports during the comparison period have increased by 15 percent or more compared to imports during the base period.

Based on the most recent U.S. Census import data, we examined the increase in import volumes from November 1999 through February 2000, as compared to the import volume during March 2000 through June 2000. We found that imports of steel wire rope from India increased by 77.20 percent, and that imports from the PRC increased by 15.53 percent, over the periods in question.[3] *See* Memorandum to the File, Critical Circumstances Analysis Regarding Massive Imports (September 25, 2000) (Memorandum to the File). Therefore, pursuant to section 733(e) of the Act and section 351.206(h) of the Department's regulations, we preliminarily determine that there have been massive imports of steel wire rope from India and the PRC over a relatively short time.

*C. Conclusion*

For the above-referenced reasons, we preliminarily determine that there is a reasonable basis to believe or suspect that critical circumstances exist for imports of steel wire rope from India and the PRC.

*D. Final Critical Circumstances Determinations*

We will make final determinations concerning critical circumstances for India and the PRC concurrently with our final determinations regarding sales at LTFV in those investigations. Our final determination in the PRC case will be issued no later than 75 days (unless extended) after the preliminary LTFV determination. The final determination for the Indian case, which has already been extended, will be issued 135 days after the publication of the preliminary determination.

**Selection of Respondents**

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. Where it is not practicable to examine all known producers/exporters of subject merchandise, section 777A(c)(2) of the Act permits us to investigate either 1) a sample of exporters, producers, or types of products that is statistically valid based on the information available at the time of selection, or 2) exporters and producers accounting for the largest volume of the subject merchandise that can reasonably be examined. Usha and Kiswire SDN.BHD (Kiswire) are the only known significant producers in India and Malaysia, respectively. With regard to the PRC, on June 12, 2000, we received Section A questionnaire responses from eight Chinese exporters. However, due to limited resources we determined that we could investigate only the two largest producers. *See* Memorandum from Jim Kemp, dated June 16, 2000. Therefore, we chose Fasten Import-Export Company (Fasten) and Nantong Zhongde (Nantong) as mandatory respondents in this case.

[3] We received company-specific shipment data from the two respondents in the PRC case, Fasten Group Import and Export, Co., Ltd. (Fasten) and Nantong Zhongde. Fasten's shipment figures support our finding of massive imports of steel wire rope into the United States, in that they demonstrate an increase of greater than 30 percent. *See* Memorandum to the File. Nantong Zhongde filed shipment figures on September 11, 2000. However, because the figures were not reported on a monthly basis, the shipment data could not be used in this preliminary determination. Nantong filed a subsequent submission containing monthly shipment data. This submission was filed too late to be used in this determination. Usha, the Indian respondent, filed shipment figures on September 11, 2000. The submission, however, was not properly filed and the data contained therein could not be used in this preliminary determination.



**Product Comparisons (India and Malaysia)**

In accordance with section 771(16) of the Act, all products produced by the respondents covered by the description in the Scope of Investigation section, above, and sold in India or Malaysia during the POI are considered to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We have relied on eight criteria to match U.S. sales of subject merchandise to comparison-market sales of the foreign like product or CV: type of steel wire, diameter, type of core, class of wire rope, grade of steel, number of wires per strand, design of strands and lay of rope. These characteristics have been weighted by the Department where appropriate. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics listed above.

**Product Comparisons (the People's Republic of China)**

As described below, we relied upon CV, based on a NME analysis, for our comparisons to U.S. sales.

**Fair Value Comparisons**

To determine whether sales of steel wire rope from India and Malaysia were made in the United States at less than fair value, we compared the export price (EP) and the constructed export price (CEP) to the NV, as described in the Export Price and Constructed Export Price and Normal Value sections of this notice. To determine whether sales of steel wire rope from the PRC were made in the United States at less than fair value, we compared EP and CEP to a NV based on an NME analysis, as described below. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs and CEPs. We compared these to weighted-average home market prices or CVs, as appropriate, in the market economy cases and to CV in the NME case.

**Export Price and Constructed Export Price**

For the price to the United States, we used, as appropriate, EP or CEP as defined in sections 772(a) and 772(b) of the Act, respectively. Section 772(a) of the Act defines EP as the price at which the subject merchandise is first sold by the exporter or producer outside the United States to an unaffiliated purchaser for exportation to the United States, before the date of importation, or to an unaffiliated purchaser for exportation to the United States.

Section 772(b) of the Act defines CEP as the price at which the subject merchandise is first sold inside the United States before or after the date of importation, by or for the account of the producer or exporter of the merchandise, or by a seller affiliated with the producer or exporter, to an unaffiliated purchaser, as adjusted under subsections 772(c) and (d) of the Act.

For all respondents, we calculated EP and CEP, as appropriate, based on the packed prices charged to the first unaffiliated customer in the United States.

In accordance with section 772(c)(2) of the Act, we reduced the EP and CEP by movement expenses and export taxes and duties, where appropriate. For the PRC, where the respondent incurred NME movement expenses, including inland freight, insurance, brokerage and handling, marine insurance, and international ocean freight, we applied the appropriate surrogate value. *See* Memorandum from Salim Moiz Bhabhrawala to the File, dated September 25, 2000 (Surrogate Value Memorandum). Where the respondent incurred movement expenses through a market-economy provider, we utilized the per-unit expenses as reported in its section C questionnaire response.

Section 772(d)(1) of the Act provides for additional adjustments to CEP. Accordingly, where appropriate, we deducted direct and indirect selling expenses related to commercial activity in the United States. Pursuant to section 772(d)(3) of the Act, where applicable, we made an adjustment for CEP profit.

We determined the EP or CEP for each company as follows:

*India*

Usha

We calculated a CEP for all of Usha's sales because the merchandise was sold through Usha's affiliated reseller (Usha Martin Americas, Inc.) in the United States. CEP sales were based on packed pick up, FOB and delivered prices. We made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These include foreign movement expense (inland freight), international freight, U.S. inland freight, U.S. brokerage, insurance and U.S. duties. We also deducted the amount for discounts from the starting price, and added the amount for duty drawback in accordance with section 772(c)(1)(B) of the Act. In addition, in accordance with section 772(d)(1) of the Act, we deducted from the starting price those selling expenses that were incurred in selling the subject merchandise in the United States, including indirect selling expenses, credit expense and warranty. Finally, we made a deduction for CEP profit.

*Malaysia*

Kiswire

During the POR, Kiswire made both EP and CEP transactions. We calculated an EP for sales where the merchandise was sold directly by Kiswire to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise warranted based on the facts of record. We calculated a CEP for sales made by Kiswire's affiliated reseller (Kiswire Trading Inc.) in the United States. EP and CEP sales were based on the packed delivered, ex-factory, CIF, CNF (cost, insurance and freight) and CIF (duty paid) prices. We made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These include foreign movement expense (inland freight), international freight, U.S. inland freight, U.S. brokerage, insurance and U.S. duties.

In accordance with section 772(d)(1) of the Act, for CEP sales, we deducted from the starting price those selling expenses that were incurred in selling the subject merchandise in the United States, including indirect selling expenses and other direct selling expenses (credit, warranty and royalties). Finally, we made a deduction for CEP profit.

*The People's Republic of China*

Fasten

During the POR, Fasten made both EP and CEP transactions. We calculated an

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EP for sales where the merchandise was sold directly by Fasten to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise warranted based on the facts of record. We calculated a CEP for sales made by Fasten's affiliated reseller (Fasten U.S.A. Inc.) in the United States. EP and CEP sales were based on the packed "delivered duty paid" (DDP) U.S. port and C&F U.S. port prices. We made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These include foreign movement expense (inland freight), international freight, U.S. brokerage, insurance, U.S. duties and U.S. inland freight.

In accordance with section 772(d)(1) of the Act, for CEP sales, we deducted from the starting price indirect selling expenses. Finally, we made a deduction for CEP profit.

Nantong

We calculated an EP for all of Nantong's sales because the merchandise was sold directly by Nantong to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise warranted based on the facts of record. We made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These include foreign movement expenses (inland freight and insurance), international freight, and brokerage and handling.

**Normal Value for Market Economy Analysis**

*A. Selection of Comparison Markets for Market Economy Countries*

Section 773(a)(1) of the Act directs that NV be based on the price at which the foreign like product is sold in the home market, provided that the merchandise is sold in sufficient quantities (or value, if quantity is inappropriate) and that there is no particular market situation that prevents a proper comparison with the EP or CEP. The statute contemplates that quantities (or value) will normally be considered insufficient if they are less than five percent of the aggregate quantity (or value) of sales of the subject merchandise to the United States.

For the Indian and Malaysian cases, we found that Usha and Kiswire have viable home markets of steel wire rope. The respondents submitted home market sales data for purposes of the calculation of NV.

In deriving NV, we made adjustments as detailed in the Calculation of Normal Value Based on Home Market Prices and Calculation of Normal Value Based on Constructed Value, sections below.

*B. Cost of Production Analysis*

On July 19, and August 8, 2000, petitioners made sales below cost allegations against Kiswire and Usha, respectively. Based on these allegations and in accordance with section 773(b)(2)(A)(i) of the Act, we found reasonable grounds to believe or suspect that sales of steel wire rope manufactured in India and Malaysia were made at prices below the COP. As a result, the Department has conducted an investigation to determine whether Usha and Kiswire made sales in their respective home markets at prices below their respective COPs during the POI within the meaning of section 773(b) of the Act. We conducted the COP analysis described below.

1. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated a weighted-average COP based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for the home market general and administrative (G&A) expenses, selling expenses, commissions, packing expenses and interest expenses.

We relied on the COP data submitted by Usha and Kiswire in their cost questionnaire responses, except, as noted below, in specific instances where the submitted costs were not appropriately quantified or valued:

*Usha.* We made adjustments to Usha's direct materials costs and interest expense ratio. See Memorandum from Heidi Norris, dated September 25, 2000.

*Kiswire.* We adjusted Kiswire's interest expense ratio. *See* Memorandum from Laurens van Houten, dated September 25, 2000.

2. Test of Home Market Sales Prices

We compared the adjusted weighted-average COP to the home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP within an extended period of time (*i.e.*, a period of one year) in substantial quantities [4] and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time.

On a model-specific basis, we compared the revised COP to the home market prices, less any applicable movement charges, discounts and rebates.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product during the POI were at prices less than the COP, we determined such sales to have been made in "substantial quantities" within an extended period of time in accordance with section 773(b)(2)(B) or the Act. In such cases, because we compared prices to POI average costs, we also determined that such sales were not made at prices that would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, we disregarded the below-cost sales.

We found that, for certain models of steel wire rope, more than 20 percent of the home market sales by Usha and Kiswire were made within an extended period of time at prices less than the COP. Further, the prices did not provide for the recovery of costs within a reasonable period of time. We therefore disregarded these below-cost sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

*C. Calculation of Normal Value Based on Home Market Prices*

We determined price-based NVs for respondent companies as follows. For both respondents, we made adjustments for any differences in packing, and we deducted movement expenses pursuant to section 773(a)(6)(B)(ii) of the Act. In addition, where applicable, we made adjustments for differences in circumstances of sale (COS) pursuant to section 773(a)(6)(C)(iii) of the Act. We also made adjustments, pursuant to 19 CFR 351.410(e), for indirect selling expenses incurred on comparison-market or U.S. sales where commissions were granted on sales in one market but not in the other (the commission offset).

Company-specific adjustments are described below.

*Usha.* We based home market prices on the packed prices to unaffiliated purchasers in India. We adjusted the starting price for foreign inland freight, warehousing and insurance. We made COS adjustments by deducting direct selling expenses incurred for home market sales (credit expense, commissions, technical services and other directs selling expenses). No other adjustments to NV were claimed or allowed.

*Kiswire.* We based home market prices on the packed prices to unaffiliated purchasers in Malaysia. We adjusted the starting price for foreign inland freight, ocean freight, insurance, discounts, sales tax and billing adjustments. For comparisons made to EP sales, we made COS adjustments by deducting direct selling expenses incurred for home market sales (credit expense, commissions, warranty and bank charges) and adding U.S. direct selling expenses (*e.g.*, credit, warranty and royalties ). For comparisons made to CEP sales, we did not add U.S. direct selling expenses. No other adjustments to NV were claimed or allowed.

*D. Calculation of Normal Value Based on Constructed Value*

Section 773(a)(4) of the Act provides that, where NV cannot be based on comparison-market sales, NV may be based on CV. Accordingly, for those models of steel wire rope for which we could not determine the NV based on comparison-market sales, either because there were no sales of a comparable product or all sales of the comparison products failed the COP test, we based NV on CV.

Section 773(e)(1) of the Act provides that CV shall be based on the sum of the cost of materials and fabrication for the imported merchandise plus amounts for selling, general, and administrative expenses (SG&A), profit, and U.S. packing costs. We calculated the cost of materials and fabrication based on the methodology described in the Calculation of Cost of Production section of this notice, above. We based SG&A and profit on the actual amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the comparison market, in accordance with section 773(e)(2)(A) of the Act.

In addition, we used U.S. packing costs as described in the Export Price section of this notice, above.

We made adjustments to CV for differences in COS in accordance with section 773(a)(8) of the Act and 19 CFR 351.410. These involved the deduction of direct selling expenses incurred on home market sales from, and the addition of U.S. direct selling expenses to, CV.

*E. Level of Trade/Constructed Export Price Offset*

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade as the EP or CEP transaction. The NV level of trade is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive SG&A expenses and profit. For EP sales, the U.S. level of trade is also the level of the starting-price sale, which is usually from exporter to importer. For CEP transactions, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different level of trade than EP or CEP transactions, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different level of trade and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the level of trade of the export transaction, we make a level-of-trade adjustment under section 773(a)(7)(A) of the Act. For CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP-offset provision). See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa, 62 FR 61731 (November 19, 1997).

In implementing these principles in this investigation, we obtained information from each respondent about the marketing stages involved in the reported U.S. and home market sales, including a description of the selling activities performed by the respondents for each channel of distribution. In identifying levels of trade for EP and home market sales we considered the selling functions reflected in the starting price before any adjustments. For CEP sales, we considered only the selling activities reflected in the price after the deduction of expenses pursuant to section 772(d) of the Act.

In the Malaysian and Indian investigations, Kiswire made both EP and CEP sales and Usha made only CEP sales. With respect to Kiswire's EP sales, we found a single level of trade in the United States, and a single, identical level of trade in the home market. Kiswire's EP sales and comparison market sales were made to distributors and end-users. In either case, the selling functions performed by Kiswire for the different customer types and channels of distribution were very limited, and almost identical in both markets. Other than warehousing, which was only provided in the home market, in both markets Kiswire provided the following services: price negotiation, order processing, freight and delivery arrangements and sales support. Therefore, it was thus unnecessary to make any level-of-trade adjustment for comparison of EP and home market prices.

Regarding Kiswire's and Usha's CEP sales, we found that both companies make CEP sales to the United States through their affiliates, Kiswire Trading Inc. (KTI) and Usha Martin Americas, Inc (UMA), respectively. KTI sells to unrelated distributors in the U.S. market. UMA sells to original equipment manufacturers (OEMs), distributors and end-users in the United States while Usha sells to OEMs, distributors, end-users and government buyers in the India. For Kiswire's CEP sales, KTI provides virtually all the sales functions, such as price negotiation, order processing, freight and delivery arrangements and sales support. Likewise, for Usha's CEP sales, UMA provides all the selling functions, such as warehousing, freight arrangements, advertising and product liability insurance. Since in our LOT analysis for CEP sales we only consider the selling activities reflected in the price after the deduction of the expenses incurred by the U.S. affiliate, the record indicates that for Kiswire's and Usha's CEP sales there are fewer services performed than for the sales in their home markets. Based on this analysis, we found that the level of trade of Kiswire's and Usha's home market sales involves substantially more selling functions than the level of trade of the CEP sales. Therefore, we have determined that Kiswire's and Usha's home market sales are made at a different, and more advanced, stage of marketing than the level of trade of the CEP sales.

Accordingly, for both respondents, we determined that a level-of-trade adjustment may be appropriate for CEP sales. However, Kiswire and Usha do not sell wire rope in their respective home markets at the same level of trade as that of their U.S. sales. Therefore, because the data available do not permit a determination that there is a pattern of consistent price differences between sales at different levels of trade in the

[4] In accordance with section 773(b)(2)(C)(i) of the Act, we determined that sales made below the COP were made in substantial quantities if the volume of such sales represented 20 percent or more of the volume of sales under consideration for the determination of NV.

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comparison markets and because the respondents' home market sales are made at a different, and more advanced, stage of marketing than the level of trade of the CEP sales, we have made a CEP offset to NV for both companies in accordance with section 773(a)(7)(B) of the Act. This offset is equal to the amount of indirect expenses incurred in the comparison market not exceeding the amount of the deductions made from the U.S. price in accordance with 772(d)(1)(D) of the Act.

**Normal Value for Non-Market Economy Analysis**

*A. Non-Market Economy Status for the People's Republic of China*

The Department has treated the PRC as a NME country in all past antidumping investigations (see, *e.g.*, Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products from the People's Republic of China, 65 FR 1121 (January 7, 2000) (Cold-Rolled Steel from the PRC). A designation as a NME remains in effect until it is revoked by the Department (see section 771(18)(C) of the Act).

The respondents in this investigation have not requested a revocation of the PRC's NME status. We have, therefore, preliminarily determined to continue to treat the PRC as a NME.

When the Department is investigating imports from a NME, section 773(c)(1) of the Act directs us to base NV on the NME producer's factors of production, valued in a comparable market economy that is a significant producer of comparable merchandise. The sources of individual factor prices are discussed under the Normal Valuc section, below.

*B. Separate Rates*

With regard to the PRC case, it is the Department's policy to assign all exporters of merchandise subject to investigation in a NME country a single rate, unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. The eight companies that have submitted section A responses have provided the requested company-specific separate rates information and have stated that for each company, there is no element of government ownership or control. All eight companies have requested a separate company-specific rate, including Fasten and Nantong, the two companies selected as mandatory respondents.

In its questionnaire response, Fasten states that it is an independent company "owned by all the people" and controlled by the general assembly of workers and employees. Fasten further claims that it does not maintain any corporate relationship with the central, provincial, and local government in terms of production, management, and operations. Nantong is owned by Nantong Municipal Light Industry Bureau (an agency of the local government of Nantong City), the Municipal Collective Industrial Association, and by the employees of the company. Aside from this tie to the local government, Nantong does not maintain any corporate relationship with the central or provincial government.

As stated in Final Determination of Sales at Less-Than-Fair-Value: Silicon Carbide from the People's Republic of China, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*), and Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol 60 FR 22545 (May 8, 1995) (*Furfuryl Alcohol*), ownership of a company by "all the people" does not require the application of a single rate.

The Department's separate rate test is not concerned, in general, with macroeconomic/border-type controls (*e.g.*, export licenses, quotas, and minimum export prices), particularly if these controls are imposed to prevent dumping. Rather, the test focuses on controls over the investment, pricing, and output decision-making process at the individual firm level. See Certain Cut-to-Length Carbon Steel Plate from Ukraine: Final Determination of Sales at Less than Fair Value, 62 FR 61754, 61757 (November 19, 1997); Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 62 FR 61276, 61279 (November 17, 1997); and Honey from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, 60 FR 14725, 14726 (March 20, 1995) (Honey).

To establish whether a firm is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in the Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China, 56 FR 20588 (May 6, 1991), and amplified in Silicon Carbide. Under this test, the Department assigns separate rates in NME cases only if an exporter can affirmatively demonstrate the absence of both (1) de jure and (2) de facto governmental control over export activities. See Silicon Carbide and Furfuryl Alcohol.

Fasten and Nantong have placed on the record a number of documents to demonstrate absence of de jure control, including the "Foreign Trade Law of the People's Republic of China" and the "Law of the People's Republic of China on Industrial Enterprises Owned By the Whole People." In prior cases, the Department has analyzed these laws and found that they establish an absence of de jure control. (See, *e.g.*, Notice of Final Determination of Sales at Less Than Fair Value: Certain Partial-Extension Steel Drawer Slides with Rollers from the People's Republic of China, 60 FR 54472 (October 24, 1995)). We have no new information in this proceeding which would cause us to reconsider this determination.

The Department typically considers four factors in evaluating whether each respondent is subject to de facto governmental control of its export functions: (1) Whether the export prices are set by or are subject to the approval of a governmental agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. See, *e.g.*, Silicon Carbide and Furfuryl Alcohol.

Fasten and Nantong asserted the following: (1) they established their own export prices independently of the government and without the approval of a government authority; (2) they negotiate contracts, without guidance from any governmental entities or organizations; (3) they make their own personnel decisions including the selection of management; and (4) they retain the proceeds of their export sales, and utilize profits according to their business needs.

We have preliminarily determined that Fasten and Nantong have met the criteria for the application of separate rates. We will examine this matter further at verification. Each of the other six companies that submitted separate rates information, but were not selected as respondents in this investigation, have asserted the following: (1) It establishes its own export prices; (2) it negotiates contracts without guidance from any governmental entities or organizations; (3) it makes its own personnel decisions; and (4) it retains the proceeds from export sales and uses profits according to its business needs without any restrictions. Additionally, these six companies have stated that they do not coordinate or consult with other exporters regarding their pricing. This information supports a preliminary finding that there is an absence of de facto governmental control of the export functions of these companies. Consequently, we preliminarily determine that all responding exporters have met the criteria for the application of separate rates. For non-responsive producers/exporters, we preliminarily determine, as facts available, that they have not met the criteria for application of separate rates.



*C. Surrogate Country*

With regard to the Chinese case, section 773(c)(4) of the Act requires the Department to value the NME producer's factors of production, to the extent possible, in one or more market economy countries that: (1) Are at a level of economic development comparable to that of the NME country; and (2) are significant producers of comparable merchandise. The Department initially determined that India, Indonesia, Pakistan, Philippines and Sri Lanka were the countries most comparable to the PRC in terms of overall economic development (see the May 30, 2000, memorandum, Antidumping Duty Investigation of Steel Wire Rope (SWR) from the People's Republic of China (PRC): Nonmarket Economy Status and Surrogate Country Selection).

Because of a lack of the necessary factor price information from the other potential surrogate countries that are significant producers of comparable products to the subject merchandise, we have relied, where possible, on information from India, the source of the most complete information from among the potential surrogate countries. Accordingly, we have calculated normal value (NV) by applying Indian values to the PRC's producers' factors of production for virtually all factors. See Surrogate Value Memorandum.

*D. Factors of Production*

In accordance with section 773(c) of the Act, we calculated NV based on factors of production reported by the companies in the PRC which produced steel wire rope for the exporters that sold steel wire rope to the United States during the POI. To calculate NV, the reported unit factor quantities were multiplied by publicly available Indian values.

In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices to make them delivered prices. We added to Indian surrogate values a surrogate freight cost using the reported distance from the domestic supplier to the factory where this distance was shorter than the distance from the nearest seaport to the factory. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp.* v. *United States*, 117 F. 3d 1401 (Fed. Cir. 1997). Where a producer did not report the distance between the material supplier and the factory, we used as facts available the longest distance reported, *i.e.*, the distance between the PRC seaport and the producer's location. For those values not contemporaneous with the POI, we adjusted for inflation using wholesale price indices published in the International Monetary Fund's International Financial Statistics.

We valued material inputs and packing materials (*i.e.*, where applicable, steel wire rod, acid, zinc, zinc sulfate, paper, wooden pallets, and wooden reels) by Harmonized Tariff Schedule (HTS) number, using imports statistics from the Monthly Statistics of the Foreign Trade of India. Where a material input was purchased in a market-economy currency from a market-economy supplier, we valued such a material input at the actual purchase price in accordance with section 351.408 (c)(1) of the Department's regulations. For a complete analysis of surrogate values, see Surrogate Value Memorandum, dated September 25, 2000.

*E. Antidumping Deposit Rate for Those Producers/Exporters That Responded Only to the Separate Rates Questionnaire*

For those PRC producers/exporters that responded to our separate rates questionnaire but did not respond to the full antidumping questionnaire (because they were not selected to respond or because they did not submit a voluntary response), we have calculated a weighted-average margin based on the rates calculated for those producers/exporters that were selected to respond. (See, *e.g.*, Notice of Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China, 61 FR 19026 (April 30, 1996) ("Bicycles from the PRC")).

*F. The People's Republic of China-Wide Rate*

Information on the record of this investigation indicates that there are numerous producers/exporters of the subject merchandise in the PRC. All exporters were given the opportunity to respond to the separate rates questionnaire. We received timely responses from Fasten, Haicheng Greatx Industry Co. Ltd., Liaoning Metals & Minerals Import & Export Corp., Jiangsu COFCO, Jiangsu Guo Tai, Henan Baoi Wire Rope Factory, Nantong and Nantong Wire Rope Company. As explained above, we selected Fasten and Nantong as our respondents and have calculated a company-specific rate for them. However, based upon our knowledge of PRC exporters and the fact that U.S. import statistics show that responding companies did not account for all imports into the United States from the PRC, we have preliminarily determined that some PRC exporters of steel wire rope failed to respond to our questionnaire.

Section 776(a)(2) of the Act provides that "if an interested party or any other person—(A) withholds information that has been requested by the administering authority or the Commission under this title, (B) fails to provide such information by the deadlines for submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782, (C) significantly impedes a proceeding under this title, or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority and the Commission shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title."

Section 776(b) of the Act further provides that adverse inferences may be used when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. The producers/exporters that decided not to respond to the separate rates questionnaire failed to act to the best of their ability in this investigation. Therefore, the Department has determined that, in selecting from among the facts otherwise available, an adverse inference is warranted.

In accordance with our standard practice, as adverse facts available, we are assigning to those companies that did not respond to the Department's separate rates questionnaire the higher of: (1) The highest margin stated in the notice of initiation; or (2) the highest margin calculated for any respondent in this investigation (see, *e.g.*, Cold Rolled Steel from the PRC, 65 FR 1125). In this case, the adverse facts available margin is 118.78 percent, which is the highest margin calculated for a respondent in this investigation. The margin for those companies that did respond to the Department's section A questionnaire, but were not selected as respondents in this proceeding is 56.54 percent, which is the weighted average of the dumping

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margins for the two mandatory respondents.

**Currency Conversions**

We made currency conversions into U.S. dollars in accordance with section 773A of the Act based on exchange rates in effect on the dates of the U.S. sales, as obtained from the Federal Reserve Bank (the Department's preferred source for exchange rates).

**Verification**

In accordance with section 782(i) of the Act, we intend to verify all information relied upon in making our final determinations.

**Suspension of Liquidation**

Because of our preliminary affirmative critical circumstances findings in the cases involving India and the PRC, we are directing the Customs Service to suspend liquidation of any unliquidated entries of steel wire rope from India and the PRC entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days prior to the date on which this notice is published in the **Federal Register**. We are instructing the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP or CEP, as indicated in the chart below for imports from India and the PRC. These instructions suspending liquidation will remain in effect until further notice.

Because we preliminarily determined that steel wire rope from Malaysia is not being sold at LTFV, we are not suspending liquidation of such merchandise at this time.

The weighted-average dumping margins are provided below:

| Manufacturer/exporter | Margin (percent) |
|---|---|
| India: | |
| Usha Martin Industries, Ltd | 21.14 |
| All Others | 21.14 |
| Malaysia: | |
| Kiswire SDN.BHD | 0.18 (de minimis) |
| All Others | 0.18 |
| People's Republic of China: | |
| Fasten Group Import and Export Co., Ltd | 24.22 |
| Haicheng Greatx Industry Co. Ltd.* | 56.54 |
| Henan Baoi Wire Rope Factory* | 56.54 |
| Jiangsu COFCO* | 56.54 |
| Jiangsu Guo Tai* | 56.54 |
| Liaoning Metals & Minerals Import & Export Corp.* | 56.54 |
| Nantong Wire Rope Company* | 56.54 |
| Nantong Zhongde | 118.78 |
| PRC-Wide Rate | 118.78 |

*All Others

The PRC-wide rate applies to all entries of the subject merchandise except for entries from exporters/factories that are identified individually above.

**Disclosure**

The Department will disclose calculations performed within five days of the date of publication of this notice to the parties of the proceedings in these investigations in accordance with 19 CFR 351.224(b).

**International Trade Commission Notification**

In accordance with section 733(f) of the Act, we have notified the ITC of our sales at less than fair value and critical circumstances preliminary determinations. If any of our final antidumping determinations is affirmative, the ITC will determine whether the imports covered by that (those) determination(s) are materially injuring, or threaten material injury to, the U.S. industry. The deadline for that ITC determination would be the later of 120 days after the date of these preliminary determinations or 45 days after the date of our final determinations.

**Public Comment**

Case briefs for this investigation must be submitted no later than one week after the issuance of the verification reports. Rebuttal briefs must be filed within five days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Further, we would appreciate it if parties submitting written comments would provide the Department with an additional copy of the public version of any such comments on diskette.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by any interested party. If a request for a hearing is made in an investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. In the event that the Department receives requests for hearings from parties to more than one steel wire rope case, the Department may schedule a single hearing to encompass all those cases. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request within 30 days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

If this investigation proceeds normally for the Malaysian and PRC cases, we will make our final determinations no later than 75 days after the date of the preliminary determinations. As noted above, the final determination for the Indian case will be issued 135 days after the date of the publication of the preliminary determination.

These determinations are issued and published pursuant to sections 733(f) and 777(i)(1) of the Act.

Dated: September 25, 2000.

**Troy H. Cribb,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 00–25271 Filed 9–29–00; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

### The Art Institute of Chicago; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

*Docket Number:* 00–025. *Applicant:* The Art Institute of Chicago, Chicago, IL 60603–6110. *Instrument:* Low Pressure Conservation Table with Accessories. *Manufacturer:* Willard Fine Art Conservation Equipment, United Kingdom. *Intended Use:* See notice at 65 FR 51797, August 25, 2000.

*Comments:* None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides heating, precise control of relative humidity, dehumidification, vacuum, circulation and a transparent dome for "clean room" conditions for preservation and restoration of paintings and fabrics. The Smithsonian Institution advised on September 19, 2000 that (1) these capabilities are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

**Gerald A. Zerdy,**

*Program Manager, Statutory Import Programs Staff.*

[FR Doc. 00–25273 Filed 9–29–00; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

### University of Washington; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

*Docket Number:* 00–024. *Applicant:* University of Washington, Seattle, WA 98195–6100. *Instrument:* Laser Microdissection System. *Manufacturer:* P.A.L.M. Mikrolaser Technologie, Germany. *Intended Use:* See notice at 65 FR 51797, August 25, 2000.

*Comments:* None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides: (1) Dissection and catapulting of live cells directly into microcentrifuge tubes for analysis without contamination, (2) high quality microscope optics, (3) selective destruction of unwanted cellular material and (4) microdissection of any shape cell or tissue area. The National Institutes of Health advises in its memorandum of August 10, 2000 that (1) these capabilities are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

**Gerald A. Zerdy,**

*Program Manager, Statutory Import Programs Staff.*

[FR Doc. 00–25272 Filed 9–29–00; 8:45 am]

BILLING CODE 3510–DS–P



## DEPARTMENT OF COMMERCE

### National Institute of Standards, and Technology

### Advanced Technology Program Advisory Committee; Notice of Partially Closed Meeting

**AGENCY:** National Institute of Standards and Technology, Department of Commerce.

**ACTION:** Notice of partially closed meeting.

**SUMMARY:** Pursuant to the Federal Advisory Committee act, 5 U.S.C. app. 2, notice is hereby given that the Advanced Technology Program Advisory Committee, National Institute of Standards and Technology (NIST), will meet Tuesday, October 17, 2000, from 8:30 a.m. to 4:30 p.m. The Advanced Technology Program Advisory Committee is composed of eight members appointed by the Director of NIST, who are eminent in such fields as business, research, new product development, engineering, education, and management consulting. The purpose of this meeting is to review and make recommendations regarding general policy for the Advanced Technology Program (ATP), its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. The agenda will include an Update on ATP, Discussion of the Streamlined/Revamped Proposal Process; ATP 2000 Awardee Demographics; Economic Assessment Office Update; Discussion of Outreach Efforts; Leveraging States and Future ATP Strategic Initiatives; and an open discussion. Discussions scheduled to begin at 8:30 a.m. and to end at 9:30 a.m. and to begin at 3:00 p.m. and to end at 4:30 p.m. on October 17, 2000, on the ATP budget issues and staffing of positions will be closed.

**DATES:** The meeting will convene October 17, 2000, at 8:30 a.m. and will adjourn at 4:30 p.m. on October 17, 2000.

**ADDRESSES:** The meeting will be held at the National Institute of Standards and Technology, Employees Lounge, Gaithersburg, Maryland 20899.

**FOR FURTHER INFORMATION CONTACT:** Janet R. Russell, National Institute of Standards and Technology, Gaithersburg, MD 20899–1004, telephone number (301) 975–2107.

**SUPPLEMENTARY INFORMATION:** The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on March 30, 2000, that portions of the meeting of the Advanced Technology Program Advisory Committee which involve discussion of proposed funding of the Advanced Technology Program may be closed in accordance with 5 U.S.C. 552b(c)(9)(B), because those portions of the meetings will divulge matters the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency actions; and that portions of meetings which involve discussion of staffing of positions in ATP may be closed in accordance with 5 U.S.C. 552b(c)(6), because divulging information discussed in those portions of the meetings is likely to reveal information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Dated: September 26, 2000.

**Karen H. Brown,**

*Deputy Director.*

[FR Doc. 00–25259 Filed 9–29–00; 8:45 am]

BILLING CODE 3510–CN–M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 092500B]**

### Coral, Golden Crab, Shrimp, Spiny Lobster, Red Drum, Coastal Migratory Pelagic Resources, and Snapper-Grouper Fisheries of the South Atlantic

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of receipt of an application for an exempted fishing permit; request for comments.

**SUMMARY:** NMFS announces the receipt of an application for an exempted fishing permit (EFP) from Mr. Chris Ivers, Project Manager, on behalf of the

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North Carolina Aquariums (applicant), Raleigh, North Carolina. If granted, the EFP would authorize the applicant, with certain conditions, to collect up to 60 red porgy and up to 500 lb (227 kg) of coral/live rock each year for 2 years in Federal waters off North Carolina for public display. The three North Carolina Aquariums are located at Roanoke Island, Pine Knoll Shores, and Kure Beach, North Carolina.

**DATES:** Comments must be received no later than 5 p.m., eastern standard time, on November 1, 2000.

**ADDRESSES:** Comments on the application must be mailed to Peter Eldridge, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Comments also may be sent via fax to 727-570-5583. Comments will not be accepted if submitted via e-mail or Internet. The application and related documents are available for review upon written request to the same address.

**FOR FURTHER INFORMATION CONTACT:** Peter Eldridge, 727-570-5305; fax 727-570-5583; e-mail: peter.eldridge@noaa.gov.

**SUPPLEMENTARY INFORMATION:** The EFP is requested under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), and regulations at 50 CFR 600.745(b) concerning exempted fishing.

According to the applicant, the North Carolina Aquariums (NCA), located at Roanoke Island, Pine Knoll Shores, and Kure Beach, are public, non-profit, self-supporting institutions established to promote an awareness, understanding, and appreciation of the diverse natural and cultural resources associated with North Carolina's ocean, estuaries, rivers, streams and other aquatic environments. The aquariums are major educational and conservation institutions with free admission to school children in groups and extensive field study and outreach programs. The specimens will be maintained in the NCA for public display.

The applicant intends to collect for public display up to 60 red porgy during a 2-year period and up to 500 lb (227 kg) of coral/live rock annually during a 2-year period.

The proposed collection for public display involves activities otherwise prohibited by regulations implementing the Fishery Management Plan (FMP) for Coral, Coral Reefs, and Live/Hard Bottom Habitats, and the FMP for the Snapper-Grouper Fisheries of the South Atlantic Region. The applicant requires authorization to harvest and possess corals, live rock, and red porgy taken from Federal waters off North Carolina.

Based on a preliminary review, NMFS finds that this application warrants further consideration and intends to issue an EFP. A final decision on issuance of the EFP will depend on a NMFS review of public comments received on the application, conclusions of environmental analyses conducted pursuant to the National Environmental Policy Act, and consultations with North Carolina, the South Atlantic Fishery Management Council, and the U.S. Coast Guard. The applicant requests a 24-month effective period for the EFP.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: September 26, 2000.

**Bruce C. Morehead,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 00–25221 Filed 9–29–00; 8:45 am]

**Billing Code: 3510–22–S**

## DEPARTMENT OF COMMERCE

### National Telecommunications and Information Administration

### Performance Review Board; Membership

The following individuals are eligible to serve on the Performance Review Board in accordance with the Senior Executive Service Performance Appraisal System of the National Telecommunications and Information Administration.

Bernadette McGuire-Rivera
William Hatch
Neil Seitz
Frederick Wentland
Ronald Hack

**Vicki G. Brooks,**

*Executive Secretary, Economic Development Administration, Performance Review Board.*

[FR Doc. 00–25224 Filed 9–29–00; 8:45 am]

**BILLING CODE 3510–BS–M**

## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

**[Docket No. 000718211–0211–01]**

**RIN 0651–AB24**

### Study of Alternative Fee Structures

**AGENCY:** United States Patent and Trademark Office, Commerce.

**SUMMARY:** The United States Patent and Trademark Office (USPTO), in response to certain provisions of the "American Inventors Protection Act of 1999," is proposing to study alternative patent fee structures to determine how best to encourage maximum participation of the U.S. inventor community in the patent system. In examining the evolution of the current fee structure, the USPTO has identified several fee structure issues which it considers important. These issues in several cases involve fee structures unconstrained by current statutory requirements, in keeping with the perceived intent of the Act. The agency will prepare a report to Congress identifying critical fee structure issues and will continue to evaluate these alternatives to determine the effects of implementation. The USPTO asks for comments on the issues raised and questions posed in this document.

**DATES:** To be ensured of consideration, written comments must be received on or before October 31, 2000. No public hearing will be held.

**ADDRESSES:** Comments should be sent by electronic mail message via the Internet addressed to barry.riordan@uspto.gov. Comments may also be submitted by mail addressed to: Office of Corporate Planning, Crystal Park One, Suite 807, Washington, D.C. 20231, or by facsimile to (703) 305–8138, marked to the attention of Barrett J. Riordan. If comments are submitted by mail, the Office would prefer that the comments be submitted on a DOS formatted 3½ inch disk accompanied by a paper copy.

**FOR FURTHER INFORMATION CONTACT:** Barrett J. Riordan by telephone at (703) 305–8475, by e-mail at barry.riordan@uspto.gov, by facsimile at (703) 305–8138, or by mail marked to his attention and addressed to Office of Corporate Planning, Crystal Park 1, Suite 807, Washington, D.C. 20231.

**SUPPLEMENTARY INFORMATION:** The American Inventors Protection Act of 1999, Pub. L. 106–113, 113 Stat. 1501 (1999), Section 4204 (enacted November 29, 1999), instructs the Director of the United States Patent and Trademark Office to "conduct a study of alternative fee structures that could be adopted * * * to encourage maximum participation by the inventor community in the United States." Such study is to be submitted to Congress no later than one year after enactment.

To assist in the preparation of this study, the USPTO requests comments on the range of topics which could potentially be considered therein. The USPTO is interested in comments that the public has regarding these and other related fee issues that the respondent believes to be appropriate. The USPTO encourages interested persons to



respond to this notice by submitting written data, views, or arguments regarding specific topics to be incorporated into this study. In particular, the USPTO is interested in any comments directed toward the questions posed below. Comments received will be relied upon heavily in the study submitted in response to the legislative requirement stated above, and also in assessments expected to be carried out subsequently.

**1. Background and Purpose**

The current patent fee structure of the United States Patent and Trademark Office is based on three major categories: (1) Patent statutory fees; (2) patent non-statutory fees; and (3) Patent Cooperation Treaty (PCT) fees.

*Patent statutory fees* consist of the patent processing fees (*i.e.*, filing, issue, and maintenance fees) and PCT national stage application fees that were set by statute in Public Law 97–247 and Public Law 102–204 (35 U.S.C. 41(a) and (b)). Public Law 97–247 also provided for a 50 percent reduction of these fees for small entities—individual inventors, small businesses and non-profit organizations (35 U.S.C. 41(h)). This reduction remains in force today.

*Patent non-statutory fees* consist of all other patent processing fees, as well as fees for products and services related to patents. The Director must establish these fees to recover the average cost to the Office of providing the products and services (35 U.S.C. 41(d)). However, the following three patent service fees are set by statute: the fee for assigning a patent, the fee for a copy of a patent, and the fee for making photocopies of patent-related material.

*Patent Cooperation Treaty fees* (except for those fee amounts set by the World Intellectual Property Organization in accordance with the Treaty) are set by the Director to recover the average cost to the Office for processing applications under the Treaty (35 U.S.C. 41(d) and 376(a)).

The current fee structure has evolved from a growing recognition beginning in the late 1970s that the USPTO should be self-financing. Public Law 96–517, 94 Stat. 3018, Section 3, 35 U.S.C. 42, enacted on December 12, 1980, entirely revised the patent fee system by giving the Director the power to establish fees. As introduced, the bill provided that the fee recovery level would be revised yearly to generate 60 percent of the revenue needed to operate the Office. However, in response to criticism from small businesses and individual inventors that the fees would place too great a burden on them, the Congress reduced the cost recovery level for small entities to 50 percent of the revenue needed.

In order to further soften the impact on inventors, Public Law 96–517 stated that patent fees were to be paid in installments over the life of a patent. This system, known as maintenance fees, is used by the European Patent Office and most European member countries, and Japan, as well as many developing countries and has the advantage of deferring payment until the invention begins to return revenue to the inventor. Should the invention prove to have no commercial value, the inventor has the option of permitting the patent to expire, thus avoiding all further fees.

Public Law 97–247, enacted on August 27, 1982, further reduced fee burdens on small entities (individual inventors, small businesses and non-profit organizations) by reducing patent statutory fees by 50 percent for them. Later, in November 1990, with the enactment of the Omnibus Budget Reconciliation Act, Public Law 101–508, 104 Stat. 1388–391, 35 U.S.C. 41, the USPTO became fully fee-funded, but retained the 50 percent fee reduction for small entities.

**Fee Issues**

In accordance with the intent of Congress, the USPTO wishes to determine what, if any, changes should be made to the USPTO's fees to encourage maximum participation in the patent system by the inventor community and still meet the legislative requirement to fund patent operations fully out of user fees. In so doing, the USPTO seeks comments on the following issues as well as any others that might be deemed relevant.

*A. Cost Recovery*

OMB Circular A–25 establishes agency guidelines for assessing user charges to the general public and requires full cost recovery through accurate fees consistent with statute. A May 1997 GAO Report on Intellectual Property focused on USPTO's inability to match costs with fee revenues and thereby satisfy A–25 requirements. Since that time, the USPTO has developed an activity-based costing system that is used to prepare financial statements, make decisions regarding fee amounts, formulate budgets, and for other financial management purposes. For instance, today it is possible to consider fee differentiation by degree of examination complexity or other patent characteristics affecting the average costs of different aggregate classes of applications. To what extent should the USPTO rely upon actual average costs in designing fees and fee structures? Should some existing fees be subdivided; *e.g.*, should search and examination fees be charged separately from application fees? Should the examination fee be scaled based on the cost of prosecuting the application? At what point(s) during the application process and/or during an issued patent term (through maintenance fees, for example), should fees be charged?

*B. Maintenance Fees*

Although required by statute since 1982, maintenance fees continue to be criticized by some inventors. They view these fees as a tax on their right to control their inventions over the entire patent term and want them totally eliminated. Others favor almost a converse approach to maintenance fees. They point out that the maintenance fee concept was originally adopted to provide patent holders flexibility in the face of uncertainty before the fact as to whether or not the patent would be commercially viable. Instead of requiring the entire investment up front, owners were given the option to pay out gradually and relinquish their patent rights when that made economic sense. They further point out that the current structure requiring payment of maintenance fees at 3.5, 7.5, and 11.5 years after issue is not tied to specific milestones in the patent life cycle and, thus, the USPTO should provide additional flexibility by making maintenance fees payable annually over the entire term of the patent. What is the proper role of maintenance fees in the patent fee structure?

*C. Small Entity Fees*

Small entities have paid reduced fees since 1982. Major small entity fees are half of those charged to large entities, as determined legislatively. This fee reduction represents an advantage to certain inventors, and elimination of these reductions would appear to be a possible alternative fee structure adjustment. Should preferential treatment for small entities be eliminated? On the other hand, it can be argued that the current 50 percent reduction does not go far enough. The current fee structure provides a 50 percent reduction to the major patent fees (*e.g.*, filing, issue, maintenance) paid by all small entities equally: small businesses; non-profits; and independent inventors. However, some believe that independent inventors are more innovative than the other small entities and, at the same time, are more sensitive to cost factors. Lower costs associated with innovation would permit independent inventors to

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exercise their innovativeness more fully, to the overall benefit of the economy. This argument implies that this group should be paying fee amounts that are reduced to an even greater extent than is currently done for small entities; that is, a new fee category should be created for independent inventors and extremely small (micro) entities. How should the patent fee structure define and treat small entities?

*D. Electronic Filing*

The USPTO has the achievement of a totally electronic system for receiving applications as one of its major goals. In order to create incentives for customers to file electronically, it has been suggested that the fee structure charge more for paper applications, which are more costly to process. Should the patent and trademark fee structures differentiate between electronic and paper filings? If such a differentiation is determined to be an effective means of encouraging electronic filing, should it be imposed immediately or phased in over a period of years?

*E. Unity of Invention*

The European Patent Office, Japanese Patent Office, and USPTO reached a Trilateral agreement on harmonizing unity of invention practice at the Sixth Annual Trilateral Conference held in Tokyo in 1988. The Trilateral agreement allows a patent application to include a group of inventions so linked as to form a single general inventive concept, termed unity of invention. This agreement, adopted for PCT practice, differs substantially from current U.S. restriction practice. While this is not primarily a fee structure issue, full adoption of unity of invention would mean that more inventions are contained in fewer applications, with a resultant increase in average examination costs per application. Under the current fee structure, this would significantly reduce revenue from application, issue, and maintenance fees and thereby necessitate an increase in these or other fee amounts. If unity of invention were adopted, how should the resulting excess of costs over revenue be recovered through the fee structure? For example, it is believed that within certain technology areas, the number of patent applications and issues and their associated fee revenue would decline substantially, although the examination workload would not change. Should such technologies bear the burden of resulting fee increases or should the excess cost increment be apportioned uniformly?

In light of the substantial fee level adjustments that unity of invention would require, what are its precise benefits to the inventor community?

Dated: September 26, 2000.

**Q. Todd Dickinson,**

*Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.*

[FR Doc. 00–25225 Filed 9–29–00; 8:45 am]

BILLING CODE 3510–16–P

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Transmittal No. 00–16]**

### 36(b)(1) Arms Sales Notification

**AGENCY:** Department of Defense, Defense Security Cooperation Agency.

**ACTION:** Notice.

**SUMMARY:** The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of P.L. 104–164 dated 21 July 1996.

**FOR FURTHER INFORMATION CONTACT:** Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 00–16 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: September 26, 2000.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*



DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

20 SEP 2000

In reply refer to:
I-99/009903

**Honorable J. Dennis Hastert**
**Speaker of the House of Representatives**
**Washington, D.C. 20515-6501**

**Dear Mr. Speaker:**

**Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 00-16, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to Bahrain for defense articles and services estimated to cost $51 million. Soon after this letter is delivered to your office, we plan to notify the news media.**

**Sincerely,**

G.R. Keltz

**A.R. KELTZ**
**ACTING DIRECTOR**

**Attachments**

**Same ltr to: House Committee on International Relations**
**Senate Committee on Appropriations**
**Senate Committee on Foreign Relations**
**House Committee on National Security**
**Senate Committee on Armed Services**
**House Committee on Appropriations**

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**Transmittal No. 00-16**

**Notice of Proposed Issuance of Letter of Offer**
**Pursuant to Section 36(b)(1)**
**of the Arms Export Control Act**

(i) Prospective Purchaser: Bahrain

(ii) Total Estimated Value:

| | |
|---|---|
| Major Defense Equipment* | $ 41 million |
| Other | $ 10 million |
| TOTAL | $ 51 million |

(iii) Description of Articles or Services Offered: Thirty Guided Missile and Launching Assemblies M39 Army Tactical Missile System, spare and repair parts, personnel training and training equipment, software upgrade to the Multiple Launched Rocket System, U.S. Government and contractor engineering and logistics services and technical assistance, U.S. Government Quality Assurance Team, publications and technical data, Cooperative Logistics Supply Support Arrangement, special test sets and support equipment, maintenance support repairable material and other related elements of logistics support.

(iv) Military Department: Army (UHM)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached

(vii) Date Report Delivered to Congress: 20 SEP 2000

* as defined in Section 47(6) of the Arms Export Control Act.



**POLICY JUSTIFICATION**

**Bahrain - Army Tactical Missile and Launch Assemblies**

The Government of Bahrain has requested a possible sale of 30 Guided Missile and Launching Assemblies M39 Army Tactical Missile System (ATACMS), spare and repair parts, personnel training and training equipment, software upgrade to the Multiple Launched Rocket System, U.S. Government and contractor engineering and logistics services and technical assistance, U.S. Government Quality Assurance Team (QAT), publications and technical data, Cooperative Logistics Supply Support Arrangement, special test sets and support equipment, maintenance support repairable material and other related elements of logistics support. The estimated cost is $51 million.

This proposed sale is consistent with the stated U.S. policy of assisting friendly nations to provide for their own defense by allowing the transfer of reasonable amounts of defense articles and services.

Bahrain will use these ATACMS to enhance their area fire system capability against hostile artillery, air defense and maneuver elements thereby strengthening their self-defense capability and interoperability with U.S. forces. ATACMS mounts on the multiple launch rocket system launcher which Bahrain previously purchased and, therefore, will have no difficulty absorbing these additional systems capabilities.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Lockheed Martin Aeronautics Company of Fort Worth, Texas. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment in-country of an U.S. Government QAT and one contractor representative for a week to accomplish the initial deployment.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

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**Transmittal No. 00-16**

**Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act**

**Annex Item No. vi**

(vi) Sensitivity of Technology:

**1. The highest level of classified information required to be released for training, operation and maintenance of the Army Tactical Missile System (ATACMS) is Secret. The highest level of classified information which could be revealed through reverse engineering or testing of the missile system is Secret. The hardware for the ATACMS is Unclassified while ATACMS software is Confidential.**

**2. Specific areas of ATACMS which are not classified but considered sensitive and contain critical technology include the application of low-radar-cross-section material to enhance system survivability, the armored and camouflaged ATACMS container which provides additional protection and reduces vulnerability, the Improved Stabilized Reference Package/Position Determining System (ISRP/PDS), the Payload Interface Module, the Improved Electronics Unit in the launcher and the missile's guidance, payload, propulsion, and control sections.**

**3. If a technologically advanced adversary were to obtain knowledge of the specific hardware in this proposed sale, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advance capabilities.**

**4. This proposed sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification. Moreover, the benefits to be derived from this proposed sale, as outlined in the Policy Justification, outweigh the potential damage that could result if the sensitive technology were revealed to unauthorized persons.**

[FR Doc. 00–25102 Filed 9–29–00; 8:45 am]
BILLING CODE 5001–10–C



## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Defense Intelligence Agency, Science and Technology Advisory Board Closed Panel Meeting

**AGENCY:** Department of Defense, Defense Intelligence Agency.

**ACTION:** Notice.

**SUMMARY:** Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92–463, as amended by Section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Science and Technology Advisory Board has been scheduled as follows:

**DATES:** 10 October 2000 (0800 a.m. to 1700 p.m.).

**ADDRESSES:** The Defense Intelligence Agency, 3100 Clarendon Blvd, Arlington, VA 22201–5300.

**FOR FURTHER INFORMATION CONTACT:** Victoria J. Prescott, Executive Secretary, DIA Science and Technology Advisory Board, Washington, DC 20340–1328 (202) 231–4930.

**SUPPLEMENTARY INFORMATION:** The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(l), Title 5 of the U.S. Code, and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, on related scientific and technical matters.

Dated: September 26, 2000.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 00–25101 Filed 9–29–00; 8:45 am]

BILLING CODE 5001–10–M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Meeting of the DoD Healthcare Quality Initiative Review Panel

**AGENCY:** Department of Defense.

**ACTION:** An executive/administration meeting for DoD Healthcare Quality Initiatives Review Panel has been scheduled for October 12 & 13, 2000.

**SUMMARY:** This notice set forth the meeting of the DoD Healthcare Quality Initiatives Review Panel. Notice of meeting is required under the Federal Advisory Committee Act.

**DATES:** October 12 & 13, 2000.

**ADDRESSES:** Sheraton Crystal City, 1800 Jefferson Davis Hwy, Arlington, VA 22202.

**TIME:** October 12th, 8:00 am to 5:30 pm; October 13th, 8:00 am to 5:30 pm.

**FOR FURTHER INFORMATION:** Contact Gia Edmonds at (703) 933–8325.

Dated: September 25, 2000.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 00–25099 Filed 9–29–00; 8:45 am]

BILLING CODE 5001–10–M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Defense Science Board

**ACTION:** Notice of Advisory Committee Meetings.

**SUMMARY:** The Defense Science Board (DSB) Task Force on High Energy Laser Weapon Systems Applications will meet in closed session on October 19–20, 2000, at Strategic Analysis Inc., 3601 Wilson Boulevard, Arlington, VA 22201.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting, the Task Force will review on-going or proposed programs in high energy laser (HEL) applications; examine recent supporting technology advancements and their applications with respect to supporting military HEL weapon system developments; develop potential military and strategic HEL system applications and identify processes required to implement these potentials; determine what needs to be done to "weaponize" these systems; and assess HEL operational concepts, impacts and limitations, considering legal, treaty and policy issues concerning HEL employment.

In accordance with Section 10(d) of the Federal Advisory Committee Act, P.L. No. 92–463, as amended (5 U.S.C. App. II, (1994)), it has been determined that these Defense Science Board meetings, concern matters listed in 5 U.S.C. § 552b(c)(1) (1994), and that accordingly these meetings will be closed to the public.

Dated: September 25, 2000.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 00–25100 Filed 9–29–00; 8:45 am]

BILLING CODE 5001–10–M

## DEPARTMENT OF DEFENSE

### Department of the Air Force

### Privacy Act of 1974; System of Records

**AGENCY:** Department of the Air Force, DOD.

**ACTION:** Notice to Add a System of Records.

**SUMMARY:** The Department of the Air Force proposes to add a system of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

**DATES:** This action will be effective without further notice on November 1, 2000 unless comments are received that would result in a contrary determination.

**ADDRESSES:** Send comments to the Air Force Access Programs Manager, Headquarters, Air Force Communications and Information Center/ITC, 1250 Air Force Pentagon, Washington, DC 20330–1250.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Anne Rollins at (703) 588–6187.

**SUPPLEMENTARY INFORMATION:** The Department of the Air Force notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 522a(r) of the Privacy Act of 1974, as amended, was submitted on September 19, 2000, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: September 26, 2000.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**F033 AFCA B**

**SYSTEM NAME:**

Air Force Computer Based Training (CBT) System.

**SYSTEM LOCATION:**

Defense Information Systems Agency, Regional Support Activity (DISA, RSA–DE/WE 65D), 6760 E. Irvington Place, Denver, CO 80279–8000.

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**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Air Force active duty, Air National Guard, Air Force Reserve, civilians and contractors.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Air Force communications and information Computer Based Training (CBT) system course completion, testing results and registration data.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C. 8013, Secretary of the Air Force and Air Force Instruction 33–115 V2, Licensing Network Users and Certifying Network Professionals.

**PURPOSE(S):**

Used as a record of Air Force communications and information Computer Based Training system training completion.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of record system notices apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Maintained on computer and computer output products.

**RETRIEVABILITY:**

Retrieved by name, student ID, course ID, MAJCOM, and base.

**SAFEGUARDS:**

Records are accessed by a registered student using student ID and password or by person(s) responsible for servicing the record system in performance of their official duties.

**RETENTION AND DISPOSAL:**

Disposition pending (until NARA disposition is approved, treat as permanent).

**SYSTEM MANAGER(S) AND ADDRESS:**

Chief, Training Management Branch, Communications and Information Management Training Branch, Air Force Communications Agency (HQ AFCA/XPFT), 203 W. Losey Street, Scott Air Force Base, IL 62225–5222.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether information about themselves is contained in this system should access the Air Force Computer Based Training System central repository at https://afcbt.den.disa.mil/usafcbt. The Air Force Computer Based Training System only maintains records on registered students.

**RECORD ACCESS PROCEDURES:**

Individuals seeking to access records about themselves contained in this record system may review their records by accessing the Air Force Computer Based Training System central repository at https://afcbt.den.disa.mil/usafcbt. The Air Force Computer Based Training System only maintains records on registered students.

**CONTESTING RECORD PROCEDURES:**

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 33–332; 32 CFR part 806b; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

Information obtained from registered students.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. 00–25103 Filed 9–29–00; 8:45 am]

**BILLING CODE 5001–10–M**

## DEPARTMENT OF DEFENSE

### Department of the Army

### Final Environmental Assessment (EA) for BRAC 95 Disposal and Reuse of Fort Hunter Liggett, California

**AGENCY:** Department of the Army, DoD.

**ACTION:** Notice of Availability.

**SUMMARY:** Fort Hunter Liggett will be realigned in accordance with the recommendations of the Base Closure and Realignment Commission, mandated by Defense Base Closure and Realignment Act of 1990, Public Law 101–510, as amended (the "BRAC law").

Under the BRAC law, the Secretary of the Army has the authority to dispose of excess real property and facilities located at a military installation recommended for closure or realignment. The Army prepared an EA pursuant to the National Environmental Policy Act of 1969 to assess the environmental effects of disposal and reuse of the entire installation and reasonable alternatives.

The EA analyzed two alternative courses of action with respect to the surplus property at Fort Hunter Liggett: The no action alternative, under which the property would be placed in indefinite caretaker status, and the encumbered disposal alternative, under which the Army would transfer the property with encumbrances. Additionally, this EA analyzed the potential environmental and socioeconomic consequences of proposed reutilization of excess lands and facilities at Fort Hunter Liggett. The proposed reuses are similar to those for which the property is currently utilized.

The EA concluded that the no action alternative is not reasonable since BRAC law mandates the realignment of Fort Hunter Liggett and retention of only minimum essential facilities and land to support Reserve Component training. The EA also concluded that the encumbered disposal alternative is the only feasible alternative,

The Army's preferred alternative course of action is the encumbered disposal of excess property at Fort Hunter Liggett. Potential encumbrances that could be expected to apply at the time of property transfer include: Continued Army utility easements and rights-of-way, Army access to conduct remedial activities, and notifications concerning properties that possess asbestos-containing materials and lead-based paints.

**DATES:** Comments must be submitted on or before November 1, 2000.

**ADDRESSES:** A copy of the Final EA may be obtained by writing to Dr. Neil Robison, U.S. Army Corps of Engineers, U.S. Army Engineer District, Mobile (CESAM–PD), 109 St. Joseph Street, Mobile, AL 36602.

**FOR FURTHER INFORMATION CONTACT:** Dr. Neil Robison, U.S. Army Corps of Engineers, Mobile District, phone (334) 690–3018 and telefax (334) 690–2605.

**SUPPLEMENTARY INFORMATION:** The Army analyzed the reuse of Fort Hunter Liggett property in the EA by two federal agencies, the Department of the Navy and the National Park Service.

The Notice of Intent to prepare an EA for the Fort Hunter Liggett BRAC realignment was published in the **Federal Register** on January 28, 1999 (64 FR 4399). Based upon the analysis of the environmental effects of the proposed realignment of Fort Hunter Liggett found in the EA, it has been determined that the implementation of this realignment action would have no significant impacts on the quality of the natural or human environment. Because no significant environmental impacts would result from implementation of the proposed action, an Environmental Impact Statement is not required.



Implementation of the proposed action will result in a Finding of No Signficiant Impact (FNSI).

Prior to initiating the above action, the Army will consider the comments received on this EA.

A copy of the final EA is available for review at the Monterey County Library, King City Branch, King City, CA.

Dated: September 26, 2000.

**Richard E. Newsome,**

*Acting Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) OASA (I&E).*

[FR Doc. 00–25105 Filed 9–29–00; 8:45 am]

**BILLING CODE 3710–08–M**

## DEPARTMENT OF EDUCATION

### Office of Postsecondary Education

### Notice Seeking Bonding Authority for the Historically Black College and University Capital Financing Program

**SUMMARY:** The U.S. Department of Education is seeking proposals from businesses interested in applying to be selected by the Secretary to serve as the "designated bonding authority" (DBA) under the Historically Black College and University Capital Financing Program. This notice describes the duties of the DBA, the selection criteria, and the application process.

**DATES:** Notice of intent to submit proposals must be received by October 16, 2000. Proposals must be received by November 1, 2000.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jesse Carter, U.S. Department of Education, Institutional Development and Undergraduate Education Service, Institutional Receivables Team, L'Enfant Plaza Station, P.O. Box 23471, Washington, DC 20026–3471, (202) 502–7777. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person in the preceding paragraph.

**SUPPLEMENTARY INFORMATION:** The Historically Black College and University (HBCU) Capital Financing Program, authorized under title III, part D of the Higher Education Act of 1965, as amended (HEA) (20 U.S.C. 1066 *et seq.*) facilitates low-cost capital financing for HBCUs to enable them to continue and expand their educational mission and enhance their significant role in American higher education. Under this program, the U.S. Department of Education provides financial insurance to guarantee up to $375,000,000 in loans and interest to qualifying HBCUs for specified kinds of capital projects. To date, all bonds issued have been purchased by the Federal Financing Bank of the U.S. Treasury.

The Office of the Assistant Secretary for Postsecondary Education is now seeking proposals from any private for-profit organization or entity wishing to serve as the DBA for this program. The DBA issues taxable construction bonds, and plays a central role in administering and executing the program. The DBA works with prospective borrowers to develop loan applications. With the approval of the Secretary, the DBA makes loans after determining, based on a credit review, that there is a reasonable expectation the loans will be repaid according to their terms. The DBA charges a rate of interest adequate to service the bond interest rate, as well as pay various items including fees for services of the DBA, a Trustee, and other parties. Costs of issuance, however, are not to exceed 2 percent of the principal amount of the proceeds of the bonds. The DBA monitors and enforces the loan agreements, including covenants and default provisions.

The DBA also has construction oversight responsibilities (including approval of construction plans, oversight of construction progress, and compliance with Federal and State building codes), and generally is the focal point of information for the HBCU Capital Financing Program. The DBA and other participants in the program are paid only by the operation of the program, and the Federal Government is not responsible for any of their fees.

Security for the bonds issued by the DBA includes investments, program loans, an escrow account funded with 5 percent of loan proceeds, and an insurance agreement executed by the Secretary of Education or his delegate which will, subject to section 343(c)(1) of the HEA, 20 U.S.C. 1066b(c)(1), provide the full faith and credit of the United States to insure the payment of interest and principal on the bonds.

Eligible borrowers under the program are limited to historically black colleges and universities as defined in section 322(2) of the HEA (20 U.S.C. 1061(2)).

The DBA selected by the Department will generally take on the responsibilities of the incumbent designated bonding authority under the Agreement to Insure executed by the Department on November 29, 1994, although the new agreement will be amended to conform with statutory changes made in 1998. Copies of the Agreement to Insure, as well as of the master trust indenture, program financing agreement, and bond purchase agreements currently used in the program, will be provided to all who timely submit a written notice of intent to submit a proposal in accordance with this notice. Also provided will be forms for the loan application, credit criteria, construction loan agreement, and promotional literature as developed by the incumbent DBA.

Specific duties imposed on the DBA by statute generally include, but are not limited to, the following:

- Use the proceeds of the qualified bonds, less costs of issuance not to exceed 2 percent of the principal amount thereof, to make loans to eligible institutions or for deposit into an escrow account for repayment of the bonds;
- Provide in each loan agreement that not less than 95 percent of the loan proceeds will be used to finance the repair, renovation, construction or acquisition of a capital project, or to refinance an obligation the proceeds of which were used for such a capital project;
- Charge such interest on loans, and provide for such a repayment schedule, as will, upon the timely repayment of the loans, provide adequate and timely funds for the payment of principal and interest on the bonds; and require that any payment on a loan expected to be necessary to make a payment of principal and interest on the bonds be due not less than 60 days prior to the date of the payment on the bonds;
- Provide for a prior credit review of the institution receiving the loan and assure the Department that, on the basis of such credit review, it is reasonable to anticipate that the institution will be able to repay the loan in a timely manner;
- Provide in each loan agreement that, if a delinquency results in a funding under the insurance agreement, the institution shall repay the Department, upon terms determined by the Secretary for such funding;
- Assign any loans to the Department, upon demand of the Secretary, if a delinquency has required a funding under the insurance agreement;
- In the event of a delinquency, engage in such collection efforts as the Secretary shall require for a period of not less than 45 days prior to requesting a funding under the insurance agreement;
- Establish an escrow account into which each institution shall deposit 5 percent of the proceeds of any loan made, with each institution required to

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maintain in escrow an amount equal to 5 percent of the outstanding principal of all loans made to that institution under the program. The escrow's balance shall be available first to the Secretary for the payment of principal and interest on the bonds in the case of a delinquency in loan repayment. Following scheduled repayment of an institution's loan, the balance shall be used to return to the institution an amount equal to any remaining portion of that institution's 5 percent deposit of loan proceeds; and

• Provide in each loan agreement that if a delinquency results in a withdrawal from the escrow account to pay principal and interest on bonds, subsequent payments on such loan shall be available to replenish the escrow account.

**Criteria for Selection**

The Secretary will select the DBA upon consideration of the following criteria:

1. *Support of Minority Participation.* In accordance with section 348 of the HEA (20 U.S.C. 1066g), the extent to which the proposer, in its employment, subcontracting and partnering activities, encourages applications from members of groups that have been traditionally underrepresented based on race, color, national origin, gender, age, or disability, will be a positive factor.

2. *Existence of trained staff to perform the various duties of the DBA.* It will be a positive factor if the proposer will use existing trained resources, as opposed to having to hire and train new personnel and obtain new systems. Staff knowledge in the areas of bond financing, higher education credit, evaluation of security and collateral, program management, construction oversight (including knowledge of State and Federal building codes and standards), and loan servicing will be positive factors.

3. *Capacity to manage the issuance of a large offering of debt securities* to the Federal Financing Bank pursuant to a direct placement. It will be a positive factor if the proposer is a regular participant in the capital markets, using similar financing structures as described in the Agreement to Insure between the Department and the existing DBA.

4. *Financial position and stability relative to industry norms.* It will be a positive factor if the proposer is a mature, stable corporation with favorable trends in key financial strength indicators like net worth and stable earnings.

5. *Approach in performing the requirements of the program.* It will be a positive factor if the proposer presents a well thought out approach to the program, and thorough familiarity with the documentation used in the program. Suggestions for change in program documentation and administration will be entertained. Extra credit will be applied where positive innovation is displayed over and above the proposal requirements.

6. *Experience and resources available and commitment to providing business development services.* It will be a positive factor if the proposer currently undertakes similar business development functions as those required under the DBA agreement. Ideas for business development which are included in the proposal will be positive factors.

7. *Past performance on previous Federal Government contracts.* Good prior performance on Federal Government contracts, and familiarity with the particular requirements of the Federal Government, will be a positive factor.

8. *Demonstrated history and ability in addressing the special needs of HBCUs.* It will be a positive factor if the proposer can demonstrate that it has extensive experience working closely and successfully with HBCUs. Particularly helpful will be activities related to the HBCUs' educational mission; or to improvement of HBCUs' facilities; or to HBCUs' financial planning.

9. *Detailed cost proposal, including the approach of the cost proposal.* Separation of fees, including separate pricing for promotion, financing, loan review, construction oversight, ongoing servicing, program monitoring and program administration, will connote an understanding of the various tasks, and will be a positive factor. Statements indicating the proposer's willingness to promote the program, realizing that payment of fees is contingent on making the loans to HBCUs, will be a positive factor.

10. *Corporate authority and ability to comply with for-profit requirement.* The proposer must have full corporate authority to perform the functions of the DBA. If the proposer will be a special, for-profit subsidiary of a not-for-profit entity and proposes to enter into a long-term contract with the not-for-profit, under which the not-for-profit will perform all or some of the actual tasks, we will assess the relationship proposed to make sure it is workable over the long-term. Agreements that are unconditional will be positive, and agreements with extensive conditions will be negative.

11. *Cohesiveness with any subcontractors.* It is possible that a proposer may seek to use subcontractors in performing the duties under the DBA agreement. Such arrangements will be reviewed in light of how extensive the subcontractor's role would be, and the ability of the contractor to replace a subcontractor for cause. An arrangement in which a subcontractor performs a discrete function, and receives specific identifiable compensation, will receive a more positive rating than an arrangement with a subcontractor in which tasks and compensation are shared between the contractor and the sub-contractor.

12. *No conflict of interest.* We will not consider any proposal that indicates an actual or apparent conflict of interest.

13. *Senior management stability:* It will be a positive factor if the senior management of the proposer is experienced and stable.

**Selection Process**

Firms interested in submitting proposals must send a written notice of their intent, postmarked on or before October 16, 2000, to Mr. Jesse Carter, U.S. Department of Education, Institutional Development and Undergraduate Education Service, Institutional Receivables Team, L'Enfant Plaza Station, P.O. Box 23471, Washington, D.C. 20026–3471, or the notice of intent may be faxed on or before 3:00 p.m. on October 16, 2000 to Mr. Carter at (202) 502–7861. Telephone requests are not acceptable. All requests must include the company name, address, telephone number, e-mail address, fax number, and point of contact. The Department will then supply the firm with copies of the current DBA agreements, forms and documentation described above.

The proposer must deliver, by mail postmarked on or before November 1, 2000, eight (8) copies of its written proposal to Mr. Carter at the above address.

Consideration of all proposals submitted will be based on the 13 criteria listed. Department staff will rank the proposers quantitatively after giving each criterion a score of 1 to 10, with 1 being generally unfavorable and 10 being generally favorable. Highest ranking proposers will be contacted for an oral interview, currently scheduled for the third week after the closing date for submission of written proposals.

Final selection will be made by the Secretary, upon consideration of the highest ranking proposals in light of the 13 criteria and of staff recommendations. Selection is expected to be completed within approximately ten weeks of the date of this notice.



**Proposal Content**

The proposal must state that the proposer has the legal corporate authority to perform all of the services covered by the DBA agreement.

The proposal must contain assurances that no conflicts of interest or apparent conflicts of interest exist. The proposal must describe the review and analysis that led the proposer to this conclusion. The proposer must include in its proposal resumes of owners and proposed program managers.

The proposal must describe the proposer's experience with respect to each of the DBA's tasks as described in this notice, including in particular any current relevant experience the proposer may have. The proposal must discuss existing resources available to perform these duties, and the need (if any) to hire and train additional staff. Since the DBA is expected to perform these duties for an extended period, the proposal must discuss similar programs and tasks which the proposer currently expects to perform for an extended period.

The proposal must include the proposer's approach to performing each of the DBA's tasks, and must reflect the proposer's review and understanding of the current program documents and processes. Innovative presentations will convey the proposer's understanding of the proposed duties and will be favorably received.

The proposal must also include information with respect to the proposer's financial strength and copies of the proposer's last five annual audited financial statements. The proposal must contain factors that assure the proposer's existence for an extended period, including, for example, issuance of other long-term non-callable debt, or other long-term ventures which will require the long-term existence of the company.

The proposal must discuss the proposer's history in working with HBCUs, particularly with respect to experience relating to HBCU physical facilities, financial planning, and the HBCUs' educational mission. It must also describe actions the proposer has taken and plans the proposer has made for recruiting and outreach programs to insure a diverse applicant pool in the proposer's employment, subcontracting, and partnering activities, as well as the success the proposer has achieved in attracting diverse applicants.

Since the Department desires that the HBCU Capital Financing Program not experience any lapse in its outreach efforts, the proposer's demonstrated ability to become fully operational as the DBA immediately upon appointment will be important. The appointment will become effective as of the date of expiration of the incumbent DBA's appointment, which will occur in mid-December, 2000.

**Electronic Access to This Document**

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use PDF you must have the Adobe Acrobat Reader, which is available free at either of the previous sites. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, D.C., area at (202) 512–1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at:

http://www.access.gpo.gov/nara/index.html

Dated: September 27, 2000.

**Claudio R. Prieto,**

*Acting Assistant Secretary, Office of Postsecondary Education.*

[FR Doc. 00–25280 Filed 9–28–00; 11:57 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF EDUCATION

**[CFDA No.: 84.316A]**

### Office of Postsecondary Education, Native Hawaiian Higher Education Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2001

*Purpose of Program:* To provide grants for programs of baccalaureate and post-baccalaureate fellowship assistance to Native Hawaiian students.

*Eligible Applicants:* Eligible applicants are Native Hawaiian educational organizations or educational entities with experience in developing or operating Native Hawaiian programs or programs of instruction conducted in the Native Hawaiian language, as defined in section 9212 of the Elementary and Secondary Education Act.

*Deadline for Transmittal of Applications:* December 15, 2000.

*Deadline for Intergovernmental Review:* February 13, 2001.

*Applications Available:* November 1, 2000.

*Available Funds:* $2,700,000. The estimated amount of funds available for new awards under this competition is based on the Administration's request for this program for FY 2001. The actual level of funding, if any, is contingent on final congressional action.

*Estimated Range of Awards:* $700,000–$1,400,000.

*Estimated Average Size of Awards:* $900,000 per year.

*Estimated Number of Awards:* 3.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 48 months.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86, and 99; and (b) Because there are no program-specific regulations, applicants are encouraged to read the authorizing statute for the Native Hawaiian Higher Education Program in sections 9206 and 9212 of the Elementary and Secondary Education Act.

*For Applications or Information Contact:* Susanna Easton or Gale Holdren, Native Hawaiian Higher Education Program, U.S. Department of Education, International Education and Graduate Programs Service, 1990 K Street NW, Suite 600, Washington, DC 20006–8521. Ms. Easton's telephone number is (202) 502–7628. Ms. Holdren's telephone number is (202) 502–7691. Ms. Easton and Ms. Holdren may be reached by email at:

susanna_easton@ed.gov
gale_holdren@ed.gov

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the appropriate contact persons listed in the preceding paragraph. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

**Electronic Access to This Document**

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

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http://www.acess.gpo.gov/nara/index.html

**Program Authority:** 20 U.S.C. 7906.

Dated: September 26, 2000.

**A. Lee Fritschler,**

*Assistant Secretary, Office of Postsecondary Education.*

[FR Doc. 00–25187 Filed 9–29–00; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Paducah

**AGENCY:** Department of Energy (DOE).

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Environmental Management Site-Specific Advisory Board, Paducah. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register.**

**DATES:** Thursday, October 19, 2000: 5:30 p.m.–9:00 p.m.

**ADDRESSES:** Paducah Information Age Park Resource Center, 2000 McCracken Boulevard, Paducah, Kentucky.

**FOR FURTHER INFORMATION CONTACT:** John D. Sheppard, Deputy Designated Federal Officer, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (270) 441–6804.

**SUPPLEMENTARY INFORMATION:** *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration and waste management activities.

Tentative Agenda:

5:30 p.m.—Informal Discussion
6:00 p.m.—Call to Order
6:10 p.m.—Approve Minutes
6:20 p.m.—Presentations, Board Response, Public Comments
8:00 p.m.—Subcommittee Reports, Board Response, Public Comments
8:30 p.m.—Administrative Issues
9:00 p.m.—Adjourn

Copies of the final agenda will be available at the meeting.

*Public Participation:* The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact John D. Sheppard at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments as the first item of the meeting agenda.

*Minutes:* The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Environmental Information Center and Reading Room at 175 Freedom Boulevard, Highway 60, Kevil, Kentucky between 8:00 a.m. and 5:00 p.m. on Monday thru Friday or by writing to John D. Sheppard, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001 or by calling him at (270) 441–6804.

Issued at Washington, DC on September 27, 2000.

**Rachel M. Samuel,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 00–25257 Filed 9–29–00; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Bonneville Power Administration

### Bonneville Power Administration's Proposed Adjustment to the 1996 Unauthorized Increase Charge, Public Hearing, and Opportunity for Public Review and Comment

**AGENCY:** Bonneville Power Administration, DOE.

**ACTION:** Notice of proposed adjustment to the 1996 unauthorized increase charge. BPA File No: UAI–96R.

**SUMMARY:** The Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act) provides that Bonneville Power Administration (BPA) must establish and periodically review its rates so that they are adequate to recover, in accordance with sound business principles, the costs associated with the acquisition, conservation, and transmission of electric power, and to recover the Federal investment in the Federal Columbia River Power System (FCRPS) and other costs incurred by BPA.

By this notice, BPA announces its proposed adjustment to the 1996 Unauthorized Increase Charge. The Unauthorized Increase Charge is a penalty charge that applies to any purchaser taking demand and/or energy in excess of its contractual entitlement. The 1996 Unauthorized Increase Charge was set at a level intended to deter customers who had their own generation or a contract obligation to supply power to their load from exceeding their BPA contractual entitlements to Federal power. However, since 1996 a robust wholesale market for power has developed which has recently produced high and volatile prices. These market changes render the current level of the 1996 Unauthorized Increase Charge for energy and demand inadequate to deter customers from taking demand and energy in excess of the amount of Federal power to which they are contractually entitled. This action is to adjust the 1996 Unauthorized Increase Charge so that it will operate as intended—as a penalty charge, rather than as an attractive alternative to purchasing power at existing wholesale power market prices.

**DATES:** Proposed hearing dates are supplied in Supplementary Information, Section I.C. Close of public comments is November 15, 2000.

**ADDRESSES:** Written comments should be submitted to: Mr. Michael Hansen, Public Involvement and Information Specialist; Bonneville Power Administration; P.O. Box 12999; Portland, Oregon 97212.

**FOR FURTHER INFORMATION CONTACT:** Interested persons may also call (503) 230–4328 or call toll-free 1–800–622–4519. Documents will be available for public viewing after October 6, 2000, at BPA's Public Information Center, BPA Headquarters Building, 1st Floor; 905 NE. 11th, Portland, Oregon, and will be provided to parties at the prehearing conference to be held on October 6, 2000, from 9 a.m. to 12 p.m., Room 223, 911 NE. 11th, Portland, Oregon. The documents will also be available on BPA's website at www.bpa.gov/power/ratecase. Ms. Diane Cherry, Power Rates Process Manager, is the official responsible for the development of BPA's rates. Ms Cherry may be contacted as indicated above.

**SUPPLEMENTARY INFORMATION:**



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## PART I—INTRODUCTION AND PROCEDURAL BACKGROUND

### *A. Relevant Statutory Provisions Governing This Rate Proceeding*

Section 7 of the Northwest Power Act, 16 U.S.C. 839e, contains a number of general directives that the BPA Administrator must consider in establishing rates for the sale of electric energy and capacity. In particular, section 7(a)(1), 16 U.S.C. 839e(a)(1), provides in part that:

> [S]uch rates shall be established and, as appropriate, revised to recover, in accordance with sound business principles, the costs associated with the acquisition, conservation, and transmission of electric power, including the amortization of the Federal investment in the Federal Columbia River Power System (including irrigation costs required to be repaid out of power revenues) over a reasonable period of years and the other costs and expenses incurred by the Administrator pursuant to this Act and other provisions of law.

Rates established by BPA are effective on an interim or final basis when approved by FERC. 16 U.S.C. 839e(a)(2). In addition to the Northwest Power Act, BPA ratemaking is governed by the Bonneville Project Act, 16 U.S.C. 832 *et seq.*, the Federal Columbia River Transmission System Act, 16 U.S.C. 838 *et seq.*, and the Flood Control Act of 1944, 16 U.S.C. 825 *et seq.*

Section 7(i) of the Northwest Power Act, 16 U.S.C. 839e(i), requires that BPA's rates be set according to certain procedures. These procedures include issuance of a **Federal Register** notice announcing the proposed rates; one or more hearings; the opportunity to submit written views, supporting information, questions, or arguments; and a decision by the Administrator based on the record developed during the hearing process. This proceeding will be governed by BPA's "Procedures Governing Bonneville Power Administration Rate Hearings," 51 FR 7611 (March 5, 1986), which implement and, in most instances, expand these statutory requirements. Pursuant to Rule 1010.3(c) of the Procedures Governing Bonneville Power Administration Rate Hearings (BPA Procedures), this hearing will be conducted under Rule 1010.10, which governs Expedited Rate Proceedings. The expedited procedures will be used rather than the procedures for General Rate Proceedings conducted under Rule 1010.9. The procedures for General Rate Proceedings are intended for use when the Administrator proposes to revise all, or substantially all, of BPA's wholesale power and transmission rates.

The proposed adjustment of the 1996 Unauthorized Increase Charge (UAI) is a change in the level of the penalty charge which is added to other rates. The adjustment includes a change in the applicability of the UAI to existing 1996 rate schedules. It will be applicable to any customer providing nonfederal power to serve any portion of its consumer's load, but in the very limited circumstance of the customer's failure to supply or exceedence of its right to take power under its BPA contracts. Therefore, the issues in this rate proceeding will be fewer and of more limited scope than the issues in a proceeding to adjust all BPA rates. BPA believes that the 90-day Expedited Rate Proceeding will be adequate to develop a full and complete record and to receive public comment and argument related to the proposed adjustment. If more time is required, the Hearing Officer may request under Rule 1010.10(b) of the BPA Procedures that the BPA Administrator grant an extension.

### *B. Procedure/Background*

On July 17, 1995, BPA filed a notice in the **Federal Register** proposing new wholesale power and transmission rates to be effective on October 1, 1996, including the UAI. BPA's initial rate proposal was filed on July 10, 1995, and was supported by written testimony and studies. Parties to the proceeding filed their rebuttal to BPA's direct case and their own direct testimony on September 8, 1995. On December 8, 1995, litigants filed rebuttal to the Parties' direct cases. BPA also filed a supplemental rate proposal on December 8, 1995, which consisted of written testimony and studies.

Parties filed their direct cases in response to BPA's supplemental rate proposal on January 26, 1996. Testimony responding to the Parties' supplemental cases was filed on February 12, 1996. Surrebuttal testimony was filed by all Parties on February 14, 1996. The Parties filed their prehearing briefs on February 12, 1996. Cross-examination began on February 20, 1996. Parties submitted initial briefs on April 22, 1996. Oral argument before the BPA Administrator and Deputy Administrator was held on April 30, 1996.

A Draft Record of Decision (ROD) was published and distributed to parties on May 14, 1996. Parties filed briefs on exceptions on May 30, 1996. BPA published its Final ROD on June 17, 1996.

BPA filed its proposed rates, including the UAI, with the Federal Energy Regulatory Commission (FERC) on July 26, 1996. On September 25, 1996, FERC granted interim approval of the proposed rates effective October 1, 1996. On July 30, 1996, FERC issued an order granting final confirmation and approval of BPA's rates.

### *C. Proposed Schedule Concerning This Rate Proceeding*

BPA will release its proposed 1996 Revisions on October 6, 2000, and expects to publish a final Record of Decision on December 29, 2000. The following proposed schedule is provided for informational purposes. A final schedule will be established by the Hearing Officer at the prehearing conference.

| Date | Action |
|---|---|
| October 4 | Deadline for Petitions to Intervene. |
| October 6 | Prehearing Conference. |
| October 12 | Data Requests on BPA's Direct Case. |
| October 19 | Data Responses Due. |
| October 27 | Parties' Direct Cases and Rebuttal to BPA's Direct Case. |
| November 3 | Data Requests on Parties' Direct Cases. |
| November 10 | Data Responses Due. |
| November 17 | Parties' Rebuttal. |
| November 24 | Cross-Examination. |
| December 1 | Initial Briefs. |
| December 15 | Draft Record of Decision. |
| December 22 | Briefs on Exceptions. |
| December 29 | Final Record of Decision. |

The procedural schedule established for Docket No. UAI–96R will provide an opportunity for interested persons to review BPA's proposed rates, to participate in the rate hearing, and to submit oral and written comments. During the development of the final rate proposal, BPA will evaluate all written and oral comments received in the rate proceeding. Consideration of comments and more current data may result in the final rate proposal differing from the rates proposed in this Notice.

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**Part II—Purpose and Scope of Hearing**

The purpose and scope of the hearing is to correct the 1996 UAI. BPA proposes to adjust upward the level of the charge to reflect wholesale power market price volatility. Such an adjustment will ensure that it operates as intended as a penalty that deters BPA customers from taking more Federal power than allowed under the terms of their BPA power purchase contracts. Therefore, BPA proposes the use of a market price index that will cause adjustments to the 1996 UAI for energy and demand to account for market price volatility.

*A. The Circumstances Necessitating Adjustment*

Since 1996, a robust wholesale power market has developed in which the 1996 UAI simply does not perform as intended. Recent experience in the Northwest power market clearly indicates that the 1996 UAI of 100 mills for energy is no longer an effective deterrent. For example, average daily prices for firm Heavy Load Hours (HLH) energy at Mid-Columbia exceeded 100 mills on 59 days from May 1, 2000 to August 31, 2000. During this 4-month period average daily HLH energy prices exceeded 300 mills on 8 days. And the highest daily HLH price recorded during this period was 628 mills on June 27, 2000. This market price level has the result of making the UAI charge an attractive price rather than a deterrence, contrary to its designed purpose. BPA's proposed adjustment to these charges would give BPA the ability to assess charges that reflect the volatility of the market in periods in which the market price for power exceeds the minimum UAI for energy and demand. This penalty rate would then continue to be effective as a deterrence. Without this modification, the UAI charge may be an attractive alternative price to the market price for some BPA customers. If this happens, BPA may face power demands far in excess of its planned system capability. This could result in a significant erosion of BPA's financial position and an inability to recover its costs and repay the U.S. Treasury.

*B. Scope*

Pursuant to Rule 1010.3(f) of BPA's Procedures, the Administrator limits the scope of this hearing to issues respecting the 1996 UAI as described in Section II hereof.

*C. NEPA Evaluation*

BPA has assessed the potential environmental effects of its rate proposal, as required by the National Environmental Policy Act (NEPA), as part of BPA's Business Plan Environmental Impact Statement (EIS). The analysis includes an evaluation of the environmental impacts of a range of rate design alternatives for BPA's power services and an analysis of the environmental impacts of the rate levels resulting from the rates for such services under the business structure alternatives. BPA's proposal to revise the 1996 UAI falls within the range of alternatives evaluated in the Final Business Plan EIS. Comments on the Business Plan EIS were received outside the formal rate hearing process, but will be included in the rate case record and considered by the Administrator in making a final decision establishing BPA's revisions to the 1996 rate schedules. The Business Plan EIS was completed in June 1995.

**Part III—Public Participation**

*A. Distinguishing Between "Participants" and "Parties"*

BPA distinguishes between "participants in" and "parties to" the hearings. Apart from the formal hearing process, BPA will receive comments, views, opinions, and information from "participants," who are defined in the BPA Procedures as persons who may submit comments without being subject to the duties of, or having the privileges of, parties. Participants' written and oral comments will be made part of the official record and considered by the Administrator. Participants are not entitled to participate in the prehearing conference; may not cross examine parties' witnesses, seek discovery, or serve or be served with documents; and are not subject to the same procedural requirements as parties.

Written comments by participants will be included in the record if they are submitted on or before November 15, 2000. Participants' written views, supporting information, questions, and arguments should be submitted to the address noted above. The second category of interest is that of a "party" as defined in Rules 1010.2 and 1010.4 of the BPA Procedures. 51 FR 7611 (1986). Parties may participate in any aspect of the hearing process.

*B. Petitions for Intervention*

Persons wishing to become a party to BPA's rate proceeding must notify BPA in writing of their interest. Petitioners may designate no more than two representatives upon whom service of documents will be made. Petitions to intervene shall state the name and address of the person requesting party status and the person's interest in the hearing.

Petitions to intervene as parties in the rate proceeding are due to the Hearing Officer by October 4, 2000. The petitions should be directed to: Kimberly J. Maki, Hearing Clerk—LP–7, Bonneville Power Administration, 905 NE. 11th Ave., P.O. Box 12999 Portland, Oregon 97232.

Petitioners must explain their interests in sufficient detail to permit the Hearing Officer to determine whether they have a relevant interest in the hearing. Pursuant to Rule 1010.1(d) of BPA's Procedures, BPA waives the requirement in Rule 1010.4(d) that an opposition to an intervention petition be filed and served 24 hours before the prehearing conference. Any opposition to an intervention petition may instead be made at the prehearing conference. Any party, including BPA, may oppose a petition for intervention. Persons who have been denied party status in any past BPA rate proceeding shall continue to be denied party status unless they establish a significant change of circumstances. All timely applications will be ruled on by the Hearing Officer. Late interventions are strongly disfavored. Opposition to an untimely petition to intervene shall be filed and received by BPA within two days after service of the petition.

*C. Developing the Record*

Cross-examination will be scheduled by the Hearing Officer as necessary following completion of the filing of all parties' and BPA's direct cases, rebuttal testimony, and discovery. Parties will have the opportunity to file initial briefs at the close of any cross-examination. After the close of the hearings, and following submission of initial briefs, BPA will issue a Draft ROD that states the Administrator's tentative decision(s). Parties may file briefs on exceptions, or when all parties have previously agreed, oral argument may be substituted for briefs on exceptions. When oral argument has been scheduled in lieu of briefs on exceptions, the argument will be transcribed and made part of the record. The record will include, among other things, the transcripts of any hearings, written material submitted by the participants, and evidence accepted into the record by the Hearing Officer. The Hearing Officer then will review the record, supplement it if necessary, and certify the record to the Administrator for decision.

The Administrator will develop the final adjusted 1996 UAI based on the entire record. The basis for the final adjustment will be expressed in the Administrator's Final ROD. The Administrator will serve copies of the ROD on all parties and will file the final proposed rate adjustment, together with the record, with FERC for confirmation and approval. See generally, 18 CFR Part 300.

**Part IV—Summary of the Proposal**

BPA proposes to adjust the 1996 UAI to reflect changes in the market rate for power by adoption of a market-index basis for the charge. The UAI is intended as a penalty rate to deter a customer from taking more Federal power than it is entitled to purchase from BPA under its contracts. The charge will apply to all customers supplying power from generation resources or power purchases from the market. The modification will prevent the charge, now a fixed charge, from becoming an attractive price alternative when the market price is higher.

Below is the revised 1996 Unauthorized Increase Charge.

Delete Section II.R of the GRSPs in the 1996 Wholesale Power and Transmission Rate Schedules, and replace with the following:

1. Charge for Unauthorized Increase in Demand

The amount of Measured Demand during a billing hour that exceeds the amount of demand the purchaser is contractually entitled to take during that hour shall be billed at the greater of:

a. Three (3) times the applicable monthly demand charge;

b. The sum of hourly California ISO Spinning Reserve Capacity prices for all HLHs in the month, at path NW1 (COB); or

c. The sum of hourly California ISO Spinning Reserve Capacity prices for all HLHs in the month, at path NW3 Nevada-Oregon Border (NOB).

2. Charge for Unauthorized Increase in Energy

The amount of Measured Energy during a diurnal period of a billing month, day, or hour that exceeds the amount of energy the purchaser is contractually entitled to take during that period shall be billed the greater of:

a. One hundred (100) mills/kWh; or

b. For the month in question, the greater of:

(1) The highest diurnal DJ Mid-C Index price for firm power; or

(2) The highest hourly ISO California Supplemental Energy price (NP15).

The DJ Mid-C Index definitions for HLH's (or peak) and LLH's (or off-peak) will be adjusted, as necessary, to be consistent with (comport with) BPA's definitions for HLH and LLH periods.

In the event that either the ISO California Supplemental Energy price index or the DJ Mid-C Index expires, the index will be replaced for purposes of the Unauthorized Increase Charge for energy by:

(1) The highest price experienced for the month at the CalPX, NW1 (COB);

(2) The highest price experienced for the month at the CalPX, NW3 (NOB).

Add the following to Section II.A.6.1, Section II.B.6.1, Section II.C.3.1, and Section II.E.7.1 of the 1996 Priority Firm Rate Schedule; Section II.A.5.1, Section II.B.6.1, and Section II.D.7.1 of the 1996 New Resource Firm Power Rate Schedule; and Section II.C.7.1 of the 1996 Industrial Firm Power Rate Schedule:

| Rate adjustment | Section |
|---|---|
| Unauthorized Increase Charge ..... | II.R |

Issued in Portland, Oregon, on September 19, 2000.

**Judith A. Johansen,**

*Administrator and Chief Executive Officer.*

[FR Doc. 00–25256 Filed 9–29–00; 8:45 am]

BILLING CODE 6450–01–U



## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP00–468–000]**

### El Paso Natural Gas Company; Notice of Application

September 26, 2000.

Take notice that on September 21, 2000, El Paso Natural Gas Company (El Paso), whose mailing address is Post Office Box 1492, El Paso, Texas 79978, filed an application at Docket No. CP00–468–000, pursuant to Section 7(b) of the Natural Gas Act (NGA), for permission and approval to abandon by removal or in place, existing pipeline facilities and for a certificate of public convenience and necessity to relocate pipeline facilities, all in Maricopa County, Arizona, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at *http://www.ferc.us/online/rims.htm* (call 202–208–2222).

El Paso states that its existing 10¾-inch Tucson-Phoenix Line (Line 1007) and Tucson-Phoenix Loop Line (Line 1008) traverse land that is currently under development by Tait Development, Inc. (Tait). It is indicated that Tait has advised El Paso that this development will involve, among other things, the construction of multi-story office buildings, roads, and parking lot facilities, all of which will encroach upon El Paso's easement and/or pipeline. It is then stated that, in recognition of the concerns present with an active natural gas pipeline in operation in the immediate construction area, the developer has requested El Paso to relocate the segment of pipe away from the construction area, and will grant El Paso a new easement adjacent to a road being constructed around the subdivision. El Paso states it has agreed to the developer's proposal, and proposes authorization to relocate its pipeline.

El Paso states that, normally, this project could easily be accomplished under its Part 157 blanket certificate as a miscellaneous rearrangement under Section 157.208 of the Commission's Regulations. However, it is stated that Line 1007 was recently determined by the Arizona State Historical Preservation Office (SHPO) to be eligible for historic designation under Section 106 of the National Historic Preservation Act, and consequently, El Paso cannot obtain the necessary "no-effect" determination required from the SHPO to permit this activity to be performed under the Commission's Part 157, Subpart F regulations.

El Paso now seeks case specific authorization for the project because the historical designation given Line No. 1007 also requires that, as part of the Commission's processing of the application, that a Programmatic Agreement (PA) be developed. El Paso indicates that the PA is the environmental document designed to specifically address the protocol for any project disturbing this facility, together with agreed upon documentation, photographs, and studies to record the historical aspects of the facility. El Paso also indicates that, based on the circumstances surrounding the project, it seeks expedited processing of the application, with the use of a memorandum of agreement (MOA) rather than a PA and for the issuance of an order approving the project prior to October 15, 2000. El Paso estimates total project costs of $175,122, to be reimbursed 50 percent by the developer.

Any questions regarding this application should be directed to Mr. A.W. Clark at (915) 496–2600.

Any person desiring to be heard or to make protest with reference to said application should on or before October 6, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214) and the regulations under the Natural

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Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or parties directly involved. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for El Paso to appear or be represented at the hearing.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–25112 Filed 9–29–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP00–466–000]**

### Dominion Transmission, Inc., Notice of Application

September 26, 2000.

Take notice that on September 20, 2000, Dominion Transmission, Inc. (Dominion), formerly CNG Transmission Corporation, 445 West Main Street, Clarksburg, WV 26301, filed in Docket No. CP00–466–000, an application pursuant to Section 7(b) of the Natural Gas Act (NGA) and Part 157 of the Federal Energy Regulatory Commission's (Commission) Regulations for permission and approval to abandon its storage well AW–9476, which is located in the Fink-Kennedy/Lost Creek storage complex in Lewis County, West Virginia, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm*. Call (202) 208–2222 for assistance.

Dominion states that, on September 18, 2000, the storage was discovered to be venting gas and efforts were begun to plug the well. Dominion also states that remediation of the well, which has been operational since 1950, is not feasible, or prudent for safety reasons, and would not be economically efficient. Finally, Dominion states that abandonment of well AW–9476 will not result in any change in the operation or design capacity of its system and that service to its customers will not be affected.

If there are any further questions regarding this project, the following individual may be contacted: Sean R. Sleigh, Certificates manager, Dominion Transmission, Inc., 445 West Main Street, Clarksburg, WV 26301, at (304) 623–8462.

Any person desiring to be heard or to make any protest with reference to said application should, on or before October 17, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC., 20426, a protest or motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure 918 CFR 385.211 or 385.214) and the Regulations Under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rule.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this document if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval of the proposed abandonment is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Dominion to appear or be represented at the hearing.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–25111 Filed 9–29–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–555–000]**

### Dominion Transmission, Inc.; Notice of Tariff Filing

September 26, 2000.

Take notice that on September 22, 2000, Dominion Transmission, Inc. (DTI) (formerly CNG Transmission Corporation) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1 and Second Revised Volume No. 1A, revised tariff volumes to reflect the corporate name change effective April 11, 2000.

DTI states that copies of the filing have been served on DTI's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–25117 Filed 9–29–00; 8:45 am]

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–556–000]**

### East Tennessee Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

September 26, 2000.

Take notice that on September 22, 2000, East Tennessee Natural Gas Company (East Tennessee) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets listed in Appendix A to the filing, to be effective October 15, 2000.

East Tennessee states that, on March 14, 2000, East Tennessee was acquired from El Paso Energy (El Paso) and became a wholly-owned subsidiary of Duke Energy Corporation (Duke). East Tennessee states that, pursuant to the Stock Purchase Agreement, El Paso entered into a Transition Agreement to ensure the smooth operation of the East Tennessee pipeline system for a period of up to nine months from the closing date (transition period). East Tennessee states that, during the transition period, East Tennessee's customers continued to use El Paso's electronic interface system (PASSKEY) to conduct their daily business activities while Duke made the necessary changes to implement the LINKr Customer Interface System for East Tennessee.

East Tennessee states that this filing: (1) reflects the implementation of the LINKr System for East Tennessee effective on October 15, 2000, (2) updates East Tennessee's mailing addresses and contact information, and (3) corrects certain tariff provisions to reflect appropriate cross references to other tariff provisions.

East Tennessee states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties in the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–25118 Filed 9–29–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. EG00–238–000]**

### Celerity Energy of New Mexico, LLC; Notice of Amendment to Application for Commission Determination of Exempt Wholesale Generators Status

September 26, 2000.

Take notice that on September 14, 2000, Celerity Energy of New Mexico, LLC, having its principal place of business at 500 Fourth Street, NW, Suite 1000, Alburquerque, New Mexico 87102, filed with the Federal Energy Regulatory Commission (Commission) an amendment to its application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

The Applicant, a New Mexico limited liability company, seeks exempt wholesale generator status for its Networked Distributed Resource (NDR) facilities. NDR facilities aggregate commercial and industrial standby generators to provide electric energy for sale at wholesale.

Any person desiring to be heard concerning the amended application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the amended application. All such motions and comments should be filed on or before October 3, 2000, and must be served on the applicant. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection or on the Internet at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–25113 Filed 9–29–00; 8:45 am]

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–2–004]**

### Overthrust Pipeline Company; Notice of Tariff Filing

September 26, 2000.

Take notice that on September 22, 2000, Overthrust Pipeline Company (Overthrust) tendered for filing, as part of its FERC Gas Tariff, First Revised Volume No. 1–A, following tariff sheets, with an effective date of April 1, 2000:

Sixth Revised Sheet No. 4

On July 28, 2000, Overthrust filed tariff sheets pursuant to Section 4 of the Natural Gas Act, Part 154 of the Commission's Regulations, as part of Overthrust's settlement, to be effective April 1, 2000, (the July 28 filing). Substitute Third Revised Sheet No. 4, which was included in the July 28 filing, is being refiled as Sixth Revised Sheet No. 4 for the purpose of re-pagination and to include revisions resulting from an interim tariff filing approved August 1, 2000, under a separate proceeding in Docket No. RP00–384–000.

Overthrust states that a copy of this filing has been served upon Overthrust's customers, the Wyoming Public Service Commission and the Utah Division of Public Utilities.

Any person desiring to protest filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may also be viewed on the web at http://

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www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–25115 Filed 9–29–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–558–000]**

### Overthrust Pipeline Company; Notice of Tariff Filing

September 26, 2000.

Take notice that on September 22, 2000, Overthrust Pipeline Company (Overthrust) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to be effective October 23, 2000.

First Revised Volume No. 1–A
Third Revised Sheet No. 2
Fourth Revised Sheet No. 76

By this filing, Overthrust proposes to modify its tariff for clarification purposes as described below.

On March 24, 2000, Questar Pipeline Company bought Enron Overthrust Pipeline Company's interest in the Overthrust partnership resulting in Enron's removal from the general partnership, effective January 1, 2000. This filing reflects that removal.

In addition, Overthrust is proposing to clarify and simplify its language on affiliate relationships in order to reflect compliance with Section 161.3(h)(2) of the Commission's Regulations as they have been revised by Order No. 637 to require pipeline companies to post on its Internet Web Site, operating personnel and facilities shared by the company and any marketing affiliate, and update the information within three business days of any change.

Overthrust states that a copy of this filing has been served upon its customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–25120 Filed 9–29–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–560–000]**

### Questar Pipeline Company; Notice of Tariff Filing

September 26, 2000.

Take notice that on September 22, 2000, Questar Pipeline Company (Questar) tendered for filing as part of its FERC Gas Tariff, the following sheets, with an effective date of October 1, 2000:

*First Revised Volume No. 1*

Seventeenth Revised Sheet No. 5

*Original Volume No. 3*

Twenty-Sixth Revised Sheet No. 8

Questar states that the filing is being made to reduce its Fuel Gas Reimbursement Percentage (FGRP) effective October 1, 2000. Questar has requested waiver of its Fuel Gas Reimbursement and Tracking provision (Section 12.14) to the General Terms and Conditions of Part 1 of its FERC Gas Tariff and 18 CFR 154.403 to revise its FGRP outside the normal filing schedule. The proposed tariff sheets reflect a revised FGRP of 1.4 percent, replacing the currently effective 2.1 percent.

Questar states that a copy of this filing has been served upon Questar's customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–25122 Filed 9–29–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–559–000]**

### Reliant Energy Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

September 26, 2000.

Take notice that on September 22, 2000, Reliant Energy Gas Transmission Company (REGT) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets to be effective November 1, 2000:

First Revised Sheet No. 71
First Revised Sheet No. 72
First Revised Sheet No. 74
First Revised Sheet No. 75
First Revised Sheet No. 76
Original Sheet No. 77
Original Sheet No. 78
Second Revised Sheet No. 311
First Revised Sheet No. 317

REGT states that the purpose of this filing is to implement an in-kind option for Shippers electing service under REGT's Rate Schedule ANS.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–25121 Filed 9–29–00; 8:45 am]

BILLING CODE 6717–01–M



## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP95–168–004]**

### Sea Robin Pipeline Company; Notice of Compliance Filing

September 26, 2000.

Take notice that on August 25, 2000, Sea Robin Pipeline Company (Sea Robin) tendered for filing, as part of its FERC Gas Tariff, First Revised Volume No. 1, pro forma tariff sheets to comply with Ordering Paragraph (C) of the Federal Energy Regulatory Commission's June 30, 1999, order in the referenced docket. The pro forma tariff sheets modify Sea Robin's General Terms and Conditions and Rate Schedule's FTS, FTS–2, and ITS to separately state gathering and transmission costs, since it was determined that facilities upstream of the compressor station on the Vermillion 149 platform performed a gathering function.

Sea Robin states that a copy of this filing is available for public inspection during regular business hours at Sea Robin's office at 5444 Westheimer Road, Houston, Texas 77056–5306. In addition, copies of this filing are being served on parties to the proceeding and appropriate state regulatory agencies.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before October 6, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Applicant's designated contact person is Anna Cochrane at 202–293–5794.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–25123 Filed 9–29–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–557–000]**

### Texas Eastern Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

September 26, 2000.

Take notice that on September 22, 2000, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets, to be effective on October 15, 2000.

Sixth Revised Volume No. 1
First Revised Sheet No. 926
First Revised Sheet No. 930

Texas Eastern states that the purpose of this filing is to modify the LINKr System Agreement contained in Sheet Nos. 926 through 930 of the Tariff to add East Tennessee Natural Gas Company to the list of companies utilizing this agreement, as East Tennessee is now an affiliate of Texas Eastern, and to remove Panhandle Eastern Pipe Line Company (Panhandle) and Trunkline Gas Company (Trunkline) from that list, as Panhandle and Trunkline are no longer affiliates of Texas Eastern.

Texas Eastern states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 of 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm. (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–25119 Filed 9–29–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–496–002]**

### Total Peaking Services, L.L.C.; Notice of Compliance Filing

September 26, 2000.

Take notice that on September 21, 2000, Total Peaking Services, L.L.C. (Total Peaking) tendered for filing various revised tariff sheets to delete several references to a Telephonic Bulletin Board, which were inadvertently not deleted after the company established a new Internet Web Site, to be effective August 15, 2000.

Total Peaking notes that the filing is being made to comply with the directions of the Director's letter dated September 12, 2000.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–25116 Filed 9–29–00; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–3674–000]

**Virginia Electric and Power Company; Notice of Filing**

Take notice that on September 14, 2000, Virginia Electric and Power Company (Virginia Power or the Company) tendered for filing the following:

1. Service Agreement for Firm Point-to-Point Transmission Service by Virginia Electric and Power Company to Virginia Electric Marketing LLC designated as Service Agreement No. 297 under the Company's FERC Electric Tariff, Second Revised Volume No. 5;

2. Service Agreement for Non-Firm Point-to-Point Transmission Service by Virginia Electric and Power Company to Virginia Electric Marketing LLC designated as Service Agreement No. 298 under the Company's FERC Electric Tariff, Second Revised Volume No. 5.

The foregoing Service Agreements are tendered for filing under the Open Access Transmission Tariff to Eligible Purchasers effective June 7, 2000. Under the tendered Service Agreements, Virginia Power will provide point-to-point service to Virginia Electric Marketing LLC under the rates, terms and conditions of the Open Access Transmission Tariff.

Virginia Power requests an effective date of September 14, 2000, the date of filing of the Service Agreements.

Copies of the filing were served upon Virginia Electric Marketing LLC, the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commissions's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before October 5, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.red.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–25114 Filed 9–29–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

**Notice of New Docket Prefix**

September 26, 2000.

Notice is hereby given that a new docket prefix has been established to accommodate compliance with the Commission's regulations at 18 CFR 35.34(c) and (h), which were implemented by Order No. 2000. Those regulations require that all public utilities that own, operate, or control electric transmission facilities in interstate commerce, must file either a proposal to participate in a Regional Transmission Organization (RTO) or an explanation of why they are not proposing to participate in an RTO. These filings must be made no later than October 16, 2000 or January 16, 2001, depending on which category the utility is in.

In order to properly docket and manage this type of case and assess Commission resources applicable to this type of work, it is necessary to establish a new docket prefix for this filing requirement. The new docket prefix will be RTFY–NNNN–000, where the FY stands for fiscal year in which the filing is made and the NNNN is a sequential number. For example, the first filing of a utility (or group of utilities) to comply with Order No. 2000, made in fiscal year 2001, will be assigned RT01–1–000, the second will be RT01–2–000, etc.

Public utilities making Order No. 2000 compliance filings are requested to put the "RT" docket prefix in the docket area of their filings.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–25181 Filed 9–29–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC00–141–000, et al.]

**Potomac Electric Power Company, et al.; Electric Rate and Corporate Regulation Filings**

September 25, 2000.

Take notice that the following filings have been made with the Commission:

**1. Potomac Electric Power Company, Southern Energy Chalk Point, LLC, Southern Energy Mid-Atlantic, LLC, Southern Energy Peaker, LLC, Southern Energy Potomac River, LLC, Allegheny Energy Supply Company, LLC, PPL Montour, LLC and Potomac Power Resources, Inc.**

[Docket Nos. EC00–141–000 and ER00–3727–000]

Take notice that on September 20, 2000, Potomac Electric Power Company (Pepco), Southern Energy Chalk Point, LLC (SE Chalk Point), Southern Energy Mid-Atlantic, LLC (SE Mid-Atlantic), Southern Energy Peaker, LLC (SE Peaker), Southern Energy Potomac River, LLC (SE Potomac River), Allegheny Energy Supply Company, LLC (Allegheny), PPL Montour, LLC (PPLM) and Potomac Power Resources, Inc. (PPR) (collectively the Applicants) tendered for filing an application under Section 203 of the Federal Power Act for approval to transfer certain jurisdictional facilities associated with the transfer by Pepco of certain generation assets to certain of the Applicants. Pepco and SE Potomac River, respectively, also tendered for filing pursuant to Section 205 of the Federal Power Act certain agreements related to the transferred facilities. The Applicants have served a copy of this filing on the District of Columbia Public Service Commission, the Maryland Public Service Commission, the Virginia State Corporate Commission and the Pennsylvania Public Utility Commission.

*Comment date:* October 20, 2000, in accordance with Standard Paragraph E at the end of this notice.



**2. Entergy Power Inc., Entergy Arkansas, Inc., Entergy New Orleans, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., Entergy Gulf States, Inc., Entergy Power Marketing Corp., Entergy Nuclear Generation Co., Entergy Nuclear Fitzpatrick LLC. and Entergy Nuclear Indian Point 3, LLC.**

[Docket Nos. ER91–569–011, ER91–569–011, ER91–569–011, ER91–569–011, ER91–569–011, ER91–569–011, ER95–1615–022, ER99–1004–003, ER00–2738–002 and ER00–2740–002]

Take notice that on September 15, 2000, Entergy Services Inc., on behalf of the above noted Entergy Affiliates, filed a notice of change in status, informing the Commission that Entergy Corp. had entered into a merger agreement with FPL Group Inc., the parent company of Florida Power and Light Co. (FPLCo). In accordance with Commission policy, the Entergy Affiliates intend to treat FPLCo as an "affiliate" under the provisions of their respective FERC market rate tariffs.

*Comment date:* October 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

**3. Ameren Services Company**

[Docket No. ER00–3016–001]

Take notice that on September 20, 2000, Ameren Services Company (Ameren Services) tendered for filing a Network Operating Agreement and a Service Agreement for Network Integration Transmission Service between Ameren Services and Illinois Municipal Electric Agency (IMEA). Ameren Services asserts that the purpose of the Agreements is to permit Ameren Services to provide transmission service to IMEA pursuant to Ameren's Open Access Tariff.

*Comment date:* October 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

**4. Florida Power & Light Company, FPL Energy Power Marketing, Inc., FPL Energy Services, Inc., ESI Vansycle Partners, L.P., FPL Energy AVEC LLC, FPL Energy Maine Hydro LLC, FPL Energy Mason LLC, FPL Energy MH50, L.P., FPL Energy Wisconsin Wind LLC, FPL Energy Wyman LLC, FPL Energy Wyman IV LLC, Doswell Limited Partnership and Hawkeye Power Partners, LLC**

[Docket Nos. ER97–3359–002, ER98–3566–006, ER99–2337–004, ER98–2494–002, ER98–3565–003, ER98–3511–003, ER98–3562–003, ER99–2917–001, ER00–56–001, ER98–3563–003, ER98–3564–003, ER00–2391–001 and ER98–2076–003]

Take notice that on September 15, 2000, FPL Group Inc. on behalf of the above noted FPL Affiliates, filed a notice of change in status, informing the Commission that FPL Group Inc. had entered into a merger agreement with Entergy Corp., the parent company of Entergy Arkansas, Entergy Louisiana, Entergy Mississippi and Entergy Texas (collectively, Entergy Operating Companies). In accordance with Commission policy, the FPL Affiliates intend to treat the Entergy Operating Companies as an "affiliate" under the provisions of their respective FERC market rate tariffs.

*Comment date:* October 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

**5. New England Power Pool**

[Docket No. ER00–3507–001]

Take notice that on September 18, 2000, the New England Power Pool Participants Committee filed notification that the effective date of membership in the New England Power Pool (NEPOOL) of Edison Mission Marketing & Trading, Inc. and termination of Citizens Power Sales, LLC was September 1, 2000.

*Comment date:* October 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

**6. Virginia Electric and Power Company**

[Docket No. ER00–3719–000]

Take notice that on September 20, 2000, Virginia Electric and Power Company (Virginia Power or the Company) tendered for filing a Network Integration Transmission Service and Network Operating Agreement (Service Agreement) by Virginia Electric and Power Company to CNG Power Services Corporation designated as Service Agreement No. 301 under the Company's Retail Access Pilot Program, pursuant to Attachment L of the Company's Open Access Transmission Tariff, FERC Electric Tariff, Second Revised Volume No. 5, to Eligible Purchasers effective June 7, 2000.

Virginia Power requests an effective date of September 20, 2000, the date of filing of the Service Agreements.

Copies of the filing were served upon CNG Power Services Corporation, the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

*Comment date:* October 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

**7. PSEG Fossil LLC**

[Docket No. ER00–3721–000]

Take notice that on September 20, 2000, PSEG Fossil LLC (PSEG Fossil) tendered for filing a rate schedule whereby Public Service Electric and Gas Company ("PSE&G") assigned its rights and obligations under the Energy Service Agreement among the Keystone Generation Station owners and Reliant Energy Services, Inc.

This rate schedule will become effective on August 21, 2000.

*Comment date:* October 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

**8. PSEG Fossil LLC**

[Docket No. ER00–3722–000]

Take notice that on September 20, 2000, PSEG Fossil LLC (PSEG Fossil) tendered for filing a rate schedule whereby Public Service Electric and Gas Company (PSE&G) assigned its rights and obligations under the Energy Service Agreement among the Conemaugh Generation Station owners and Reliant Energy Services, Inc.

This rate schedule will become effective on August 21, 2000.

*Comment date:* October 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

**9. Allegheny Energy Service Corporation, on Behalf of Allegheny Energy Supply Company LLC**

[Docket No. ER00–3731–000]

Take notice that on September 20, 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply Company) filed First Revised Service Agreement No. 52 to complete the filing requirement for one (1) new Customer of the Market Rate Tariff under which Allegheny Energy Supply offers generation services.

The Service Agreement portion of First Revised Service Agreement No. 52 will maintain the effective date of February 10, 2000 in accordance with the Commission's Order at Docket No. ER00–1987–000 and ER00–1987–001.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

*Comment date:* October 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

**10. Allegheny Energy Service Corporation, on Behalf of Allegheny Energy Supply Company LLC**

[Docket No. ER00–3732–000]

Take notice that on September 20, 2000, Allegheny Energy Service

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Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply Company) filed First Revised Service Agreement No. 76 to complete the filing requirement for one (1) new Customer of the Market Rate Tariff under which Allegheny Energy Supply offers generation services.

Allegheny Energy Supply maintains the effective date of Service Agreement No. 76 of May 17, 2000 for service to East Kentucky Power Cooperative, Inc.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

*Comment date:* October 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

**11. New York Independent System Operator, Inc.**

[Docket No. ER00–3736–000]

Take notice that on September 20, 2000, the New York Independent System Operator, Inc. (NYISO) filed revisions to Schedule 1 of its Open Access Transmission Tariff.

The NYISO requests an effective date of October 1, 2000 and waiver of the Commission's notice requirements.

A copy of this filing was served upon all persons who have signed Service Agreements under the NYISO Open Access Transmission Tariff and on the electric utility regulatory agencies in New York, New Jersey and Pennsylvania.

*Comment date:* October 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraphs**

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–25180 Filed 9–29–00; 8:45 am]

BILLING CODE 6717–01–U

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6879–4]**

### Notice of Availability of Persistent Toxic Substance Reports Published in Response to the United States' Commitments in "The Great Lakes Binational Toxics Strategy"

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of availability and opportunity to comment.

**SUMMARY:** "The Great Lakes Binational Toxics Strategy; Canada-United States Strategy for the Virtual Elimination of Persistent Toxic Substances in the Great Lakes" (the Strategy), was signed on April 7, 1997. The Strategy set forth a number of challenges to be met on the path toward virtual elimination of the Level I Strategy substances.

In addition, the Strategy identifies a four-step analytical process that Environment Canada and the United States Environmental Protection Agency, in cooperation with their partners, will use in working toward virtual elimination of the Level I Strategy substances. The four-step process addresses technical and source-related information about the substances (step 1); the analysis of current regulations, initiatives, and programs which manage or control the substances (step 2); the identification of cost-effective options to achieve further reductions (step 3); and the implementation of actions toward the goal of virtual elimination (step 4).

The reports referred to in the title of this notification are in accordance with step 3 of the analytical process, and pertain to Mercury, Polychlorinated Biphenyls, Dioxins/Furans, and Benzo(a)Pyrene and Hexachlorobenzene.

In addition, all step 1 and 2 reports for the substances subject to this notification, including Dioxins/Furans, are available on the Binational Toxics Strategy website.

The intended effect of this notification is to make the step 3 reports available to the public and to allow for discussion of these reports. Comments can be submitted to the Binational Toxics Strategy website, creating a forum that will explore the implementation opportunities for actions leading to the goal of virtual elimination of the aforementioned substances.

**DATES:** The reports will be made available to the public by September 29, 2000. There will be no closing date for comments, as these reports are intended to initiate an on-going discussion of implementation actions to be taken.

**ADDRESSES:** The reports, along with electronic comment submission instructions, can be found on the Internet at the following address: http://www.epa.gov/glnpo/bns/. In addition, written comments may be sent to the appropriate contact person for each report (see table below) at the following address: U.S. EPA, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

**FOR FURTHER INFORMATION CONTACT:** Additional information on the reports may be obtained by contacting the following people by telephone or e-mail:

| Report | Contact | Telephone | E-mail |
|---|---|---|---|
| Mercury | Alexis Cain | 312–886–7018 | cain.alexis@ epa.gov |
| Polychlorinated Biphenyls | Anton Martig | 312–353–2291 | martig.anton@epa.gov |
| Dioxins/Furans | Nanjunda Gowda | 312–353–9236 | gowda.nanjunda@epa.gov |
| Benzo(a)Pyrene, Hexachlorobenzene | Steve Rosenthal | 312–886–6052 | rosenthal.steve@epa.gov |



Dated: September 15, 2000.

**Gary Gulezian,**

*Acting Regional Administrator, Region 5.*

[FR Doc. 00–25171 Filed 9–29–00; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6879–5]**

### Notice of Availability of Draft Report on Dioxins/Furans Published in Response to the United States' Commitments in "The Great Lakes Binational Toxics Strategy"

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of availability and opportunity to comment.

**SUMMARY:** The Great Lakes Binational Toxics Strategy; Canada-United States Strategy for the Virtual Elimination of Persistent Toxic Substances in the Great Lakes (the Strategy), was signed on April 7, 1997. The Strategy set forth a number of challenges to be met on the path toward virtual elimination of the Level I Strategy substances.

In addition, the Strategy identifies a four-step analytical process that Environment Canada and the United States Environmental Protection Agency, in cooperation with their partners, will use in working toward virtual elimination of the Level I Strategy substances. The four step process addresses technical and source-related information about the substances (step 1); the analysis of current regulations, initiatives and programs which manage or control the substances (step 2); the identification of cost-effective options to achieve further reductions (step 3); and the implementation of actions toward the goal of virtual elimination (step 4).

The draft report on Dioxins/Furans being made available for public comment relates to steps 1 and 2 of the analytical process.

**DATES:** The preliminary draft report will be made available to the public by September 29, 2000.

**COMMENT PERIOD:** Comments on the report must be submitted no later than November 30, 2000.

**ADDRESSES:** This report can be found on the Internet at the following address: http://www.epa.gov/glnpo/bns/. Commenters may transmit their comments electronically by following the directions provided on the website, or may send written comments to Nanjunda Gowda at the following address: U.S. EPA, Superfund Division, 77 West Jackson Boulevard, SRF–5J, Chicago, Illinois 60604.

**FOR FURTHER CONTACT INFORMATION:** Additional information on the draft report may be obtained by contacting Nanjunda Gowda by telephone (312) 353–9236 or by e-mail gowda.nanjunda@epa.gov.

Dated: September 15, 2000.

**Gary Gulezian,**

*Acting Regional Administrator, Region 5.*

[FR Doc. 00–25172 Filed 9–29–00; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

September 26, 2000.

**SUMMARY:** The Federal Communications, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Written comments should be submitted on or before November 1, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th St., S.W., Washington, DC 20554 or via internet to jboley@fcc.gov.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via internet at jboley@fcc.gov.

**SUPPLEMENTARY INFORMATION:** OMB Control Number: 3060–0270.

*Title:* Section 90.443, Content of Station Records.

*Form Number:* N/A.

*Type of Review:* Extension of currently approved collection.

*Respondents:* Businesses or other for-profit entities, individual or households, not-for-profit institutions, and state, local or tribal government.

*Number of Respondents:* 57,410.

*Estimated Time Per Response:* .083 hours.

*Frequency of Response:* Recordkeeping requirement.

*Total Annual Burden:* 4,765 hours.

*Total Annual Cost:* N/A.

*Needs and Uses:* The rule specifies the records required to be maintained by station licensees. These records indicate maintenance performed on the licensee's equipment, and instances of tower light checks and failures, if any, and corrective action taken. The maintenance records could be used by the licensee or Commission field personnel to note any recurring equipment problems or conditions that may lead to degraded equipment performance and/or interference generation. The records regarding tower lighting are required to ensure that the licensee is aware of tower light condition and proper operation, in order to prevent and/or correct any hazards to air navigation.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 00–25278 Filed 9–29–00; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISISON

### National Advisory Committee

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this is a notice that the Charter for the National Advisory Committee (NAC) for the Emergency Alert System (EAS) was renewed with a new charter termination date of July 25, 2002.

**FOR FURTHER INFORMATION CONTACT:** Bonnie Gay, 445 12th Street, SW,

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Washington, DC 20554; telephone (202) 418–1228.

**SUPPLEMENTARY INFORMATION:** The Committee advises the FCC on all matters concerning the EAS, including, but not limited to, emergency alerting policies, technologies, plans, regulations, and procedures at the national, state and local levels. The NAC also recommends and develops training and education regarding the EAS and coordinates with state and local officials to assist in establishing and maintaining effective emergency alerting programs.

The Committee consists of volunteer government and industry personnel selected by the FCC. Members include representatives from broadcasting, cable, satellite, MMDS, other technologies, government agencies involved in emergency communications, State Emergency Communications Committees and special audiences such as hearing impaired.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary,*

[FR Doc. 00–25277 Filed 9–29–00; 8:45 am]

BILLING CODE 6712–01–U

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–1342–DR]**

### California; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of California (FEMA–1342–DR), dated September 14, 2000, and related determinations.

**EFFECTIVE DATE:** September 14, 2000.

**FOR FURTHER INFORMATION CONTACT:** Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated September 14, 2000, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of California, resulting from an earthquake on September 3, 2000, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121 *et seq.* (the Stafford Act). I, therefore, declare that such a major disaster exists in the State of California.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Public Assistance is later warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible cost.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Mark Ghilarducci of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of California to have been affected adversely by this declared major disaster:

Napa County for Individual Assistance.

All counties within the State of California are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

**James L. Witt,**

*Director.*

[FR Doc. 00–25242 Filed 9–29–00; 8:45 am]

BILLING CODE 6718–02–P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–1341–DR]**

### Idaho; Amendment No. 1 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Idaho, (FEMA–1341–DR), dated September 1, 2000, and related determinations.

**EFFECTIVE DATE:** September 20, 2000.

**FOR FURTHER INFORMATION CONTACT:** Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster for the State of Idaho is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 1, 2000:

Ada, Bingham, Blaine, Custer, Lincoln, and Valley Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

**Robert J. Adamcik,**

*Deputy Associate Director, Response and Recovery Directorate.*

[FR Doc. 00–25241 Filed 9–29–00; 8:45 am]

BILLING CODE 6718–02–P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### Notice of Adjustment of Disaster Grant Amounts

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** FEMA gives notice that we are increasing the maximum amounts for Individual and Family Grants and Small Project Grants to State and local governments and private nonprofit facilities for disasters declared on or after October 1, 2000.

**EFFECTIVE DATE:** October 1, 2000.



**FOR FURTHER INFORMATION CONTACT:** Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

**SUPPLEMENTARY INFORMATION:** The Robert T. Stafford Disaster Relief and Emergency Assistance Act (Act), 42 U.S.C. 5121 *et seq.*, prescribes that we (FEMA) must adjust annually grants made under section 411, Individual and Family grant Program, and Small Project Grants made under section 422, Simplified Procedure, relating to the Public Assistance program, to reflect changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor.

We give notice that we are increasing the maximum amount of any grant made to an individual or family for disaster-related serious needs and necessary expenses under section 411 of the Act, with respect to any single disaster, to $14,400 for all disasters declared on or after October 1, 2000.

We also give notice that we are increasing the amounts of any Small Project Grant made to the State, local government, or to the owner or operator of an eligible private nonprofit facility, under section 422 of the Act, to $50,600 for all disasters declared on or after October 1, 2000.

We base the adjustments on an increase in the Consumer Price Index for All Urban Consumers of 3.4 percent for the 12-month period ended in August 2000. The Bureau of Labor Statistics of the U.S. Department of Labor released the information on September 15, 2000.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Dated: September 22, 2000.

**James L. Witt,**

*Director.*

[FR Doc. 00–25243 Filed 9–29–00; 8:45 am]

BILLING CODE 6718–02–P

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 26, 2000.

**A. Federal Reserve Bank of Philadelphia** (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521:

*1. National Penn Bancshares, Inc.*, Boyertown, Pennsylvania; to acquire 100 percent of the voting shares of Community Independent Bank, Inc., Bernville, Pennsylvania, and thereby indirectly acquire voting shares of Bernville Bank, NA, Hackettstown, New Jersey.

**B. Federal Reserve Bank of Richmond** (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

*1. BB&T Corporation*, Winston-Salem, North Carolina; to merge with BankFirst Corporation, Knoxville, Tennessee, and thereby indirectly acquire voting shares of BankFirst, Knoxville, Tennessee, and First National Bank and Trust Company, Athens, Tennessee.

In connection with this application, Applicant also has applied to acquire BankFirst Trust Company, Knoxville, Tennessee, and thereby engage in trust company activities, pursuant to § 225.28(b)(5) of Regulation Y.

In addition, Applicant also has requested permission to exercise an option to acquire up to 19.9 percent of the voting securities of BankFirst Corporation under certain circumstances.

**C. Federal Reserve Bank of Chicago** (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

*1. ULLICO, Inc.*, Washington, D.C.; to become a bank holding company by acquiring 100 percent of the voting shares of Amalgamated Investments Company, Chicago, Illinois, and thereby indirectly acquire voting shares of Amalgamated Bank of Chicago, Chicago, Illinois.

**D. Federal Reserve Bank of Minneapolis** (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

*1. Inter-Mountain Bancorp, Inc.*, Bozeman, Montana; to acquire 100 percent of the voting shares of Chouteau County Bancshares, Inc., Fort Benton, Montana, and thereby indirectly acquire voting shares of First State Bank, Fort Benton, Montana.

*2. Stockman Financial Corporation*, Miles City, Montana; to acquire 100 percent of the voting shares of Marquette Bank Montana, National Association, Conrad, Montana.

**E. Federal Reserve Bank of Kansas City** (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

*1. Sturm Financial Group, Inc.*, Denver, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of Sturm Banks of Colorado, Inc., Denver, Colorado, and thereby indirectly acquire Bank of Cherry Creek N.A., Boulder, Colorado, Bank of Cherry Creek N.A., Denver, Colorado, Mesa National Bank, Grand Junction, Colorado, Western National Bank of Colorado, Colorado Springs, Colorado; Sturm Banks of Wyoming, Inc., Denver, Colorado, and thereby indirectly acquire American National Bank of Cheyenne, Cheyenne, Wyoming, Wyoming Bank & Trust Company N.A., Buffalo, Wyoming, Stockgrowers State Bank N.A., Worland, Wyoming, Bank of Laramie N.A., Laramie, Wyoming; and Sturm Banks of Kansas City, Inc., Denver, Colorado, and thereby indirectly acquire Premier Bank, Lenexa, Kansas.

In connection with this application, Applicant also has applied to acquire Community First Data Services, Inc., Cheyenne, Wyoming, and thereby engage in data processing activities, pursuant to § 225.28(b)(14) of Regulation Y.

Board of Governors of the Federal Reserve System, September 26, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00–25132 Filed 9–29–00; 8:45 am]

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## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 27, 2000.

**A. Federal Reserve Bank of Richmond** (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

*1. Peterstown Bancorp, Inc.*, Peterstown, West Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of Peterstown, Peterstown, West Virginia.

**B. Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

*1. Quad Bancshares, Inc.*, Oakwood, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Missouri Quad Bancshares, Inc., Viburnum, Missouri, and thereby indirectly acquire voting shares of Quad County State Bank, Viburnum, Missouri.

Board of Governors of the Federal Reserve System, September 27, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00–25238 Filed 9–29–00; 8:45 am]

BILLING CODE 6210–01–P

## FEDERAL RESERVE SYSTEM

### Notice of Proposals to Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissable Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulations Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffec.gov/nic/.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 26, 2000.

**A. Federal Reserve Bank of Cleveland** (Paul Kaboth, Banking Supervision) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

*1. Fifth Third Bancorp, Cincinnati, Ohio;* to acquire Ottawa Financial Corporation, Holland, Michigan and AmeriBank, Holland, Michigan, and thereby engage in operating a savings association, pursuant to § 225.28(b)(4) of Regulation Y; AmeriBank Mortgage Company, and thereby engage in mortgage loan activities, pursuant to § 225.28(b)(1) of Regulation Y; AmeriPlan Financial Services, Inc., and thereby engage in discount brokerage activities, pursuant to § 225.28(b)(7); and OS Services, Inc., and thereby engage in community development activities, pursuant to § 225.28(b)(12) of Regulation Y.

Board of Governors of the Federal Reserve System, September 26, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00–25131 Filed 9–29–00; 8:45 am]

BILLING CODE 6210–01–P

## FEDERAL RESERVE SYSTEM

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Board of Governors of the Federal Reserve System.

**TIME AND DATE:** 10 a.m., Thursday, October 5, 2000.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Lynn S. Fox, Assistant to the Board; 202–452–3204.

**SUPPLEMENTARY INFORMATION:** You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: September 28, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00–25318 Filed 9–28–00; 10:36 am]

BILLING CODE 6210–01–P

## GOVERNMENT PRINTING OFFICE

### Depository Library Council to the Public Printer; Meeting

The Depository Library Council to the Public Printer (DLC) will meet on Sunday, October 22, 2000, through Wednesday, October 25, 2000, in Arlington, Virginia. The sessions will take place from 7:30 p.m. until 10 p.m. on Sunday, 8:30 a.m. until 5 p.m. on Monday and Tuesday and from 8:30 a.m. until 3:30 p.m. on Wednesday. The meeting will be held at the Holiday Inn Rosslyn (Westpark) at Key Bridge, 1900 North Fort Myer Drive, Arlington, Virginia. The purpose of this meeting is to discuss the Federal Depository Library Program. All sessions are open to the public.

Sleeping rooms at our host hotel are completely booked. If you need accommodations, contact the Virginian Suites, 1500 Arlington Boulevard, Arlington, Virginia 22209. Telephone 800–275–2866 or the hotel directly at 703–522–9600. Please ask for the Government rate and tell them you are with the Government Printing Office group. Room cost per night is $119, plus tax.

**Michael F. DiMario,**

*Public Printer.*

[FR Doc. 00–25140 Filed 9–29–00; 8:45 am]

BILLING CODE 1520–01–P



## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Healthcare Research and Quality

### Notice of Meetings

### Change in the Notice of Meetings

The subcommittee meeting "Health Care Technology and Decision Sciences" will only be held on October 6 (and not on October 5–6 as published in the **Federal Register** of September 6, 2000, vol. 65, no. 173, page 54035). The place and time of this meeting will remain the same. The rest of the meetings mentioned in the September 6 **Federal Register** will meet as scheduled.

Dated: September 28, 2000.

**John M. Eisenberg,**

*Director.*

[FR Doc. 00–25340 Filed 9–29–00; 8:45 am]

BILLING CODE 4160–90–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[30DAY–70–00]**

### Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

**Proposed Project**

Workplace Exacerbation of Asthma—NEW—The National Institute of Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention. Work-related asthma is the most common lung disease seen in occupational health clinics in the United States based on data from the Association of Occupational and Environmental Clinics for 1991–1996.

Work-related asthma includes both new onset asthma initiated by workplace exposures and pre-existing asthma exacerbated by workplace environments, because in both types of cases repeated exposure to asthmatic agents can lead to chronic pulmonary impairment. Also, the 1985 American Thoracic Society statement "What Constitutes an Adverse Health Effect of Air Pollution," identified exacerbation of asthma as one of the serious effects of environmental air pollution. While anecdotal evidence suggests that as many as one-half of work-related asthma patients treated in occupational medicine clinics had pre-existing asthma that was exacerbated by workplace conditions, there is little data from studies in the United States to support this claim.

This study will investigate the frequency, causes, and consequences of workplace exacerbation of asthma (WEA). Given the diversity of workplace agents and processes associated with asthma, a population-based, rather than industry-based, study is needed to ascertain the full extent of the problem. This will be achieved by surveying adults with asthma. The Specific Aims are: (1) To determine the frequency of workplace exacerbation of asthma. (2) To determine the circumstances at work associated with exacerbation of asthma. (3) To determine the social and economic costs associated with workplace exacerbation of asthma. (4) To determine the sensitivity and specificity of self-reported workplace exacerbation of asthma. (5) To determine whether workplace exacerbation of asthma contributes to progression of disease. The design is a prospective cohort study with a nested validation study. A questionnaire will be completed in the baseline study to address Specific Aims 1–3. Also, patient care records will be used to ascertain cost of asthma care for each participant (Specific Aim 3). A subset of employed subjects with and without workplace exacerbation will be requested to conduct serial spirometry, and the findings will serve as the "gold standard" to determine the sensitivity and specificity of a self-report of workplace exacerbation of asthma (Specific Aim 4). All subjects from the baseline study will be asked to complete a follow-up questionnaire approximately two years later to investigate whether workplace exacerbation at baseline predicts an increase in asthma severity (Specific Aim 5).

The data collected in this study will be used to further current understanding of the frequency of workplace-exacerbated asthma, the social and economic impacts of this problem, and the implication of a report of WEA for subsequent asthma severity. This information can be used to prioritize resources for addressing this problem. The data collected in this study will also identify which jobs and exposures are likely to exacerbate existing asthma, thus providing guidance on where to focus preventive efforts. The data collected in this study on the validity of a self-report of WEA will be useful to both clinicians and researchers who attempt to treat or study individuals with this problem. The estimated annualized burden is 844 hours.

| Form name | No. of respondents | No. responses per respondent | Average burden per response (in hrs.) |
|---|---|---|---|
| Phase 1: attempts to get an interview | 1,100 | 1 | 5/60 |
| Phase 1: Completed Baseline Study Interviews | 800 | 1 | 30/60 |

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| Form name | No. of respondents | No. responses per respondent | Average burden per response (in hrs.) |
|---|---|---|---|
| Phase 3: attempt to get an interview | 800 | 1 | 5/60 |
| Phase 3: Completed Follow-up Study Interviews | 600 | 1 | 300 |

Dated: September 26, 2000.

**Nancy Cheal,**

*Acting Associate Director for Policy, Planning and Evaluation Centers for Disease Control and Prevention (CDC).*

[FR Doc. 00–25143 Filed 9–29–00; 8:45 am]

**BILLING CODE 4163–18–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[30DAY–71–00]**

### Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

**Proposed Project**

A Message-Based Intervention for Technology Transfer—New—National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention. The mission of the National Institute for Occupational Safety and Health (NIOSH) is to promote safety and health at work for all people through research and prevention. Over 6 million American workers are at risk for inhalation exposure of potentially harmful metals. Workers in mining, construction, and related industries are potentially exposed to airborne contaminants such as silver, lead, nickel, manganese, chromium and zinc which can cause health problems ranging from metal fume fever and asthma to cancer and parkinsonism. NIOSH has developed analytical methods for portable field exposure assessment that would help reduce metals exposure. The goal of this project is to increase the self-reported use of NIOSH developed analytical methods for field portable exposure assessment by American industrial hygienists across the five-year period from 2000 to 2004. To achieve this technology transfer goal, NIOSH proposes three aims: (1) to create, (2) implement, and (3) evaluate a message-based intervention targeted toward American industrial hygienists. If this project is successful then NIOSH will also have developed and validated a communication strategy that could be adapted to other technology transfer problems.

First, NIOSH will develop a message-based intervention targeted toward American industrial hygienists. To do this, NIOSH will create and pretest the message, channel, and receiver variables that will compose the intervention. Pretesting of the intervention will occur via mailout surveys and on-site pretesting with industrial hygienists attending conferences sponsored by AIHA (the American Industrial Hygiene Association), ABIH (the American Board of Industrial Hygiene), and ACGIH. Pretesting will occur during the first two years of the project (2000–1), with a total of 1,000 industrial hygienists.

Second, NIOSH will implement the multi-channel, multi-exposure, message-based intervention that was created through pretesting. NIOSH intends to employ the following four channels of: (1) Trade print sources (journal and magazine), (2) web site, (3) direct personalized mailings, and (4) face-to-face interaction through trade show demonstrations. The entire population of American industrial hygienists (approximately 13,000) will be targeted by this intervention. The intervention will occur across four years, applying modifications as needed during the time period.

Finally, NIOSH will conduct annual surveys of randomly selected samples of American industrial hygienists on their self reported use of NIOSH developed analytical methods for field portable exposure assessment through mail-in surveys based on standard HCRB communication and outcome protocols. During Year 1 (2000), a survey of 700 randomly selected industrial hygienists will be conducted to assess baseline levels of attitudes, knowledge and behaviors with regard to the use of the NIOSH developed analytical methods prior to receiving the intervention. During the next three years (2001–2003), an annual survey of 700 randomly selected industrial hygienists will be conducted to evaluate the impact of the message-based intervention on the use of NIOSH analytical methods.

The estimated annualized burden is 1905 hours.

| Respondents | Number of respondents | Number of responses | Average hour burden per response |
|---|---|---|---|
| Industrial Hygienist | 1000 pretesting | 1 | .33 |
| | 700 Baseline Survey | 1 | .25 |
| | 2100 Annual Survey | 1 | 5 |



Dated: September 26, 2000.

**Nancy Cheal,**

*Acting Associate Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 00–25144 Filed 9–29–00; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 65 FR 41079, dated July 3, 2000) is amended to reflect the retitling of the Division of Public Health Systems and the Division of Media and Training Services, Public Health Practice Program Office, to the Division of Public Health Systems Development and Research and the Division of Professional Development and Evaluation respectively.

Section C–B, Organization and Functions, is hereby amended as follows:

Delete the title *Division of Public Health Systems (CH5)* and insert the title *Division of Public Health Systems Development and Research (CH5).*

Delete the title *Division of Media and Training Services (CH7)* and insert the title *Division of Professional Development and Evaluation (CH7).*

Dated: September 20, 2000.

**Martha Katz,**

*Acting Director.*

[FR Doc. 00–25261 Filed 9–29–00; 8:45 am]

**BILLING CODE 4160–18–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 00N–1516]**

### Apothecon, Inc., et al.; Withdrawal of Approval of 76 Abbreviated New Drug Applications

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is withdrawing approval of 76 abbreviated new drug applications (ANDA's). The holders of the applications notified the agency in writing that the drug products were no longer marketed and requested that the approval of the applications be withdrawn.

**EFFECTIVE DATE:** October 10, 2000.

**FOR FURTHER INFORMATION CONTACT:** Olivia A. Pritzlaff, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

**SUPPLEMENTARY INFORMATION:** The holders of the applications listed in the table in this document have informed FDA that these drug products are no longer marketed and have requested that FDA withdraw approval of the applications. The applicants have also, by their request, waived their opportunity for a hearing.

| ANDA No. | Drug | Applicant |
|---|---|---|
| 60–100 | Crysticillin (Penicillin G Procaine Suspension USP). | Apothecon, Inc., P.O. Box 4500, Princeton, NJ 08543. |
| 60–618 | Grifulvin V (Griseofluvin Microsize) Tablets, 125 milligrams (mg), 250 mg, and 500 mg. | Johnson & Johnson Consumer Co, Inc., 199 Grandview Rd., Skillman, NJ 08858. |
| 61–220 | Opthochlor (Chloramphenicol Ophthalmic Solution USP) 5 mg/milliliter (mL). | Parkedale Pharmaceuticals, Inc., 501 Fifth St., Bristol, TN 37620. |
| 61–334 | Bactocill (Oxacillin Sodium for Injection). | SmithKline Beecham Pharmaceuticals, One Franklin Plaza, P.O. Box 7929, Philadelphia, PA 19101. |
| 61–449 | Staphcillin (Methicillin Sodium). | Apothecon, Inc. |
| 61–452 | Cloxacillin Sodium Capsules USP, 250 mg and 500 mg. | Do. |
| 61–739 | Garamycin Pediatric Injection (Gentamicin Sulfate Injection USP). | Schering Corp., 2000 Galloping Hill Rd., Kenilworth, NJ 07033. |
| 62–328 | Erythromycin Topical Solution USP, 1.5%. | Alpharma, 333 Cassell Dr., suite 3500, Baltimore, MD 21224. |
| 62–727 | Totacillin-N (Ampicillin Sodium) for Injection. | Smithkline Beecham Pharmaceuticals. |
| 62–755 | Nallpen (Nafcillin Sodium Powder for Injection USP). | Do. |
| 70–356 | Diazepam Tablets USP, 2 mg. | Roxane Laboratories, Inc., P.O. Box 16532, Columbus, OH 43216. |
| 70–357 | Diazepam Tablets USP, 5 mg. | Do. |
| 70–358 | Diazepam Tablets USP, 10 mg. | Do. |
| 71–010 | Acetominophen Suppositories, 120 mg. | Do. |
| 71–011 | Acetominophen Suppositories, 650 mg. | Do. |
| 71–018 | Metaproterenol Sulfate Inhalation Solution USP, 0.6%. | AstraZeneca, L.P. |
| 71–275 | Metaproterenol Sulfate Inhalation Solution USP, 0.4%. | Do. |
| 72–018 | Droperidol Injection USP, 2.5 mg/mL. | Do. |
| 72–019 | Droperidol Injection USP, 2.5 mg/mL. | Do. |
| 72–021 | Droperidol Injection USP, 2.5 mg/mL. | Do. |
| 72–648 | Timolol Maleate Tablets USP, 5 mg. | Novopharm Limited, c/o Novopharm NC, Inc., 4700 Novopharm Blvd., Wilson, NC 27893. |
| 72–649 | Timolol Maleate Tablets USP, 10 mg. | Do. |
| 72–650 | Timolol Maleate Tablets USP, 20 mg. | Do. |

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| ANDA No. | Drug | Applicant |
|---|---|---|
| 73–187 | Loperamide Hydrochloride Oral Solution, 1 mg/5 mL. | Alpharma. |
| 73–340 | Prometa Inhalation Solution (Metaproternol Sulfate Inhalation Solution USP), 5%. | Muro Pharmaceutical, Inc., 890 East St., Tewksbury, MA 01876. |
| 74–361 | Cimetidine Tablets USP, 300 mg, 400 mg, and 800 mg. | Roxane Laboratories, Inc. |
| 74–371 | Cimetidine Tablets USP, 800 mg. | Do. |
| 74–790 | Ketorolac Tromethamine Tablets USP. | Do. |
| 74–832 | Captopril and Hydrochlorothiazide Tablets USP, 50 mg/25 mg. | Danbury Pharmacal, Inc., 131 West St., Danbury, CT 06810. |
| 80–001 | Calcium Gluceptate Injection USP. | Abbott Laboratories. |
| 80–327 | Prednisolone Tablets USP, 5 mg. | Roxane Laboratories, Inc. |
| 80–474 | Hytone (Hydrocortisone) Ointment 0.25%, 0.5%, 1%, and 2.5%. | Dermik Laboratories, Inc., 500 Arcola Rd., P.O. Box 1200, Collegeville, PA 19426–0107. |
| 83–682 | Phendimetrazine Tartrate Tablets USP, 35 mg. | Zenith Goldline Pharmaceuticals, Inc., 140 Legerand Ave., Northvale, NJ 07647. |
| 84–655 | Prednicen-M (Prednisone Tablets USP), 5 mg. | Schwarz Pharma, Inc., P.O. Box 2038, Milwaukee, WI 53201. |
| 84–659 | Acetominophen and Codeine Phosphate Tablets USP, 300 mg/15 mg. | Roxane Laboratories, Inc. |
| 84–667 | Acetominophen and Codeine Phosphate Tablets USP, 300 mg/60 mg. | Do. |
| 84–811 | Apresazide (Hydralazine Hydrochloride and Hydrochlorothiazide USP) Capsules, 100/50 mg. | Novartis Pharmaceuticals Corp. |
| 84–990 | Dexone (Dexamethasone Tablets, USP), 1.5 mg. | Solvay Pharmaceuticals, Inc., 901 Sawyer Rd., Marietta, GA 30062. |
| 85–539 | Flutex (Triamcinolone Acetonide Cream USP), 0.1%, 0.5%, and 0.025%. | Zenith Goldline Pharmaceuticals, Inc. |
| 85–686 | Curretab (Medroxyprogesterone Acetate Tablets, USP) 10 mg. | Solvay Pharmaceuticals, Inc. |
| 85–733 | Hydrocortisone Cream USP, 1%. | Zenith Goldline Pharmaceuticals, Inc. |
| 85–777 | Selenium Sulfide Lotion USP, 2.5%. | Do. |
| 85–873 | Butabarbital Sodium Elixir, 30 mg/5 mL. | Alpharma. |
| 85–944 | Amitriptyline Hydrochloride Tablets USP, 25 mg. | Roxane Laboratories, Inc. |
| 85–945 | Amitriptyline Hydrochloride Tablets USP, 50 mg. | Do. |
| 86–002 | Amitriptyline Hydrochloride Tablets USP, 10 mg. | Do. |
| 86–003 | Amitriptyline Hydrochloride Tablets USP, 100 mg. | Do. |
| 86–004 | Amitriptyline Hydrochloride Tablets USP, 75 mg. | Do. |
| 86–065 | Procan SR (Procainamide Hydrochloride Extended-Release Tablets, USP), 500 mg. | Parkedale Pharmaceuticals, Inc. |
| 86–090 | Amitriptyline Hydrochloride Tablets USP, 150 mg. | Roxane Laboratories, Inc. |
| 87–025 | Isoetharine Inhalation Solution USP, 0.125%. | Roxane Laboratories, Inc. |
| 87–203 | Flurandrenolide Lotion USP. | Alpharma. |
| 87–328 | Trifluoperazine Hydrocholride Tablets USP, 5 mg. | Zenith Goldline Pharmaceuticals, Inc. |
| 87–375 | Flutex (Triamcinolone Acetonide Ointment USP). | Do. |
| 87–376 | Flutex (Triamcinolone Acetonide Ointment USP). | Do. |
| 87–377 | Flutex (Triamcinolone Acetonide Ointment USP). | Do. |
| 87–396 | Isoetharine Inhalation Solution USP, 0.1%. | Roxane Laboratories, Inc. |
| 87–427 | Nogenic HC (Hydrocortisone Cream USP), 1%. | Zenith Goldline Pharmaceuticals, Inc. |
| 87–428 | Triatex (Triamcinolone Acetonide Cream USP), 0.5%. | Do. |
| 87–429 | Triatex (Triamcinolone Acetonide Cream USP), 0.1%. | Do. |
| 87–430 | Triatex (Triamcinolone Acetonide Cream USP), 0.025%. | Do. |
| 87–510 | Procan SR (Procainamide Hydrochloride Extended-Release Tablets, USP), 750 mg. | Parkedale Pharmaceuticals, Inc. |
| 87–611 | Liquid Pred (Prednisone Syrup USP), 5 mg/5 mL. | Muro Pharmaceutical, Inc. |
| 87–612 | Trifluoperazine Hydrochloride Tablets USP, 1 mg. | Zenith Goldline Pharmaceuticals, Inc. |
| 87–613 | Trifluoperazine Hydrochloride Tablets USP, 2 mg. | Do. |
| 87–614 | Trifluoperazine Hydrochloride Tablets USP, 10 mg. | Do. |
| 87–742 | Oxycodone Hydrochloride 2.25 mg, Oxycodone Terephthalate 0.19 mg, and Aspirin 325 mg Tablets. | Roxane Laboratories, Inc. |
| 88–275 | Isoetharine Inhalation Solution USP, 0.25%. | Do. |
| 88–489 | Procan SR (Procainamide Hydrochloride Extended-Release Tablets, USP). 1 gram. | Parkedale Pharmaceuticals, Inc. |
| 89–193 | Methocarbamol and Aspirin Coated Tablets, 400 mg/325 mg. | McNeil Consumer Healthcare, 7050 Camp Hill Rd., Fort Washington, PA 19034–2299. |
| 89–427 | Dipyridamole Tablets USP, 75 mg. | Purepac Pharmaceutical Co., 200 Elmora Ave., Elizabeth, NJ 07207. |
| 89–614 | Isoetharine Inhalation Solution USP, 0.062%. | AstraZeneca, L.P. |
| 89–615 | Isoetharine Inhalation Solution USP, 0.125%. | Do. |



| ANDA No. | Drug | Applicant |
|---|---|---|
| 89–616 | Isoetharine Inhalation Solution USP, 0.167%. | Do. |
| 89–617 | Isoetharine Inhalation Solution USP, 0.2%. | Do. |
| 89–618 | Isoetharine Inhalation Solution USP, 0.25%. | Do. |

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) and under authority delegated to the Director, Center for Drug Evaluation and Research (21 CFR 5.82), approval of the applications listed in the table in this document, and all amendments and supplements thereto, is hereby withdrawn, effective October 10, 2000.

Dated: September 12, 2000.

**Janet Woodcock,**

*Director, Center for Drug Evaluation and Research.*

[FR Doc. 00–24844 Filed 9–29–00; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Government-Owned Inventions; Availability for Licensing

**AGENCY:** National Institutes of Health, Public Health Service, DHHS.

**ACTION:** Notice.

**SUMMARY:** The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

**ADDRESSES:** Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

**Method and Device for Analysis of Biological Specimens**

M. Emmert-Buck (NCI), C. Englert (NCI), R. Bonner (NICHD), and L. Liotta (NCI)

DHHS Reference No. E–197–00/0 filed 26 Jul 2000

Licensing Contact: Uri Reichman; 301/496–7736 ext. 240; e-mail: reichmau@od.nih.gov

The invention discloses methods for selective analysis of cellular samples, and more particularly it provides methods for selective analysis of tissue samples, such as tumors. The methods include placing the tissue on a surface such as membrane for example, and activating the surface at selected sites adjacent to the cells of interest. The activated sites become permeable and thus transferable to fluids. The cells adjacent to the permeable sites can than be selectively extracted and their content analyzed by standard biochemical procedures or by applying the extract to microarray devices, such as cDNA arrays, for analysis of gene expression etc. The technique presents a convenient alternative to existing methods of tissue microdissection. For further convenience, the technique can be readily combined with a variety of analytical devices such as microarrays biochips or other devices which include multiple regions carrying multiple capture molecules.

**Hepatitis A Virus Clones Adapted for Growth in African Green Monkey Kidney (AGMK) Cells and Vaccines Comprising said Clones**

Robert H. Purcell *et al.* (NIAID)

DHHS Reference No. E–008–95/0 filed 06 Aug 1999

Licensing Specialist: Carol Salata; 301/496–7735 ext. 232; e-mail: salatac@od.nih.gov

The present invention relates to hepatitis A virus clones adapted to growth in African Green Monkey Kidney Cells intended to be used as a live attenuated vaccine. Several cell culture-adapted strains of hepatitis A virus (HAV) are currently being used as inactivated vaccines. However, the inactivated vaccines have the limitation that multiple doses are required for effective immunization. Thus, a live vaccine could have the advantage of inducing life-long immunity following administration of only a single dose.

Preclinical studies have been done using virus isolates of this invention. Preliminary observations suggest that some of the HM–175 P39 virus isolates analyzed may be promising candidates for use as a live attenuated vaccine. HM–175 P39 clone 15 appears to have the growth and attenuation properties that are desirable in a live vaccine for HAV as it is partially attenuated for tamarins and fully attenuated for chimpanzees. HM–175 P39 clone 13 may also be a potential vaccine candidate as it replicates efficiently in tamarins, resulting in moderate increases in serum liver enzyme and early seroconversion to anti-HAV positivity but is still fully attenuated for chimpanzees.

**Method of Predicting Susceptibility to HIV Infection or Progression of HIV Disease**

Michael W. Smith, Hyoung Doo Shin, Stephen J. O'Brien (NCI)

DHHS Reference No. E–066–99/0 filed 09 Apr 1999 and DHHS Reference No. E–066–99/1 filed 06 Apr 2000

Licensing Contact: J. P. Kim; 301/496–7056 ext. 264; e-mail: kimj@od.nih.gov

This invention identifies the importance of a variant in the IL 10 gene (–592–5′A) that is commonly found in the population with HIV–1/AIDS. Individuals that inherit one or two copies of this form of IL 10 are at a greater risk for progression from HIV–1 infection to the development of clinical AIDS or death. The effects of IL 10–592 are particularly evident 5 years after infection. The gene variant and its product may be of diagnostic value in testing to determine treatment regimens for patients and mimicking the effect of the IL 10–5′A gene variant may be useful in developing therapies for HIV infection. The polymorphism of the present invention can be used in association with other alleles, such as CCR5–D32, CCR2–64I, CCR5– +.P1.+, HLA–B35 and HLA homozygosity, to determine an individual's susceptibility to HIV infection, and provide a prognosis for disease progression in those who have been infected. The potential therapies derived from the IL 10–592 genetic variant may be particularly applicable to patients on triple drug therapy since these patients have generally been infected for a number of years prior to treatment.

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**Isolation of Cellular Material Under Microscopic Visualization**

Liotta *et al.* (NCI)
Serial No. 08/203,780 filed 01 Mar 1994, issued as U.S. Patent No. 5,843,644; Serial No. 08/544,388 filed 10 Oct 1995, issued as U.S. Patent No. 5,843,657; Serial No. 08/882,699 filed 25 Jun 1997; Serial No. 08/925,894 filed 08 Sep 1997, issued as U.S. Patent No. 6,010,888; Serial No. 09/388,805 filed 02 Sep 1999
Licensing Contact: J. P. Kim; 301/496–7056 ext. 264; e-mail: kimj@od.nih.gov

The present technology provides methods and devices for the isolation and analysis of cellular samples on a molecular or genetic level. More particularly, the invention relates to methods and devices for the microdissection, for example, utilizing laser capture microdissection (LCM), and the diagnosis and analysis of cellular samples which may be used in combination with a number of different technologies that allow for analysis of enzymes, antigens, mRNA, DNA, and the like from pure populations or subpopulations of particular cell types.

**Nucleic Acid Constructs Containing HIV Genes with Mutated Inhibitory/Instability Regions and Methods of Using Same**

George N. Pavlakis, Barbara K. Felber (NCI)
Serial No. 07/858,747 filed 27 Mar 1992; U.S. Patent 5,972,596 issued 26 Oct 1999; U.S. Patent 5,965,726 issued 12 Oct 1999; Serial No. 09/414,117 filed 08 Oct 1999; PCT/US93/02908
Licensing Contact: Carol Salata; 301/496–7735 ext. 232; e-mail: salatac@od.nih.gov

This invention describes methodology for modifying the inhibitory/instability sequences (INS) of mRNA by making multiple nucleotide substitutions without altering the coding capacity of the mRNA of interest. Mutating INS allows for or increases the expression of genes that would otherwise have not been expressed or would have been poorly expressed because of the INS normally present on the mRNA transcript. This novel approach also improves the stability of the mRNA. These methods can be used to increase the production of protein from many genes producing, for example, growth hormone, interferons, interleukins, and HIV Gag and env. DNA constructs are described which encode Gag protein which is highly expressed and does not require HIV rev for production. Thus it is a potentially useful HIV DNA vaccine. Assays have also been developed to facilitate detection of the boundaries of INS sequences of any mRNA.

Dated: September 20, 2000.

**Jack Spiegel,**

*Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.*

[FR Doc. 00–25175 Filed 9–29–00; 8:45 am]

BILLING CODE 4140–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Government-Owned Inventions; Availability for Licensing

**AGENCY:** National Institutes of Health, Public Health Service, DHHS.

**ACTION:** Notice.

**SUMMARY:** The invention listed below is owned by an agency of the U.S. Government and is available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

**ADDRESS:** Licensing information and copies of the U.S. patent application listed below may be obtained by contacting Susan S. Rucker, J.D., at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7056 ext. 245; fax: 301/402–0220; e-mail: ruckers@od.nih.gov. A signed Confidential Disclosure Agreement will be required to receive a copy of the patent application.

**HGF–SF Monoclonal Antibody Combinations**

B Cao, S Koochekpou, M Oskarsson, D Bjurickovic, M Fivash, R Fisher and GR Vande Woude (NCI)
Serial No. 60/164,173 filed 09 Nov 1999

The invention described and claimed in this application relates to a composition which comprises a combination of two or more antibodies which specifically bind one or more epitopes of the growth factor known as hepatocyte growth factor/scatter factor (HGF/SF) which is able to inhibit HGF/SF signaling. In particular, the antibodies which specifically bind to HGF/SF are monoclonal antibodies. Hepatocyte Growth Factor (HGF) activates migration and proliferation of endothelial cells and is angiogenic, acting through the tyrosine kinase receptor encoded by the Met protooncogene. In addition, HGF/SF displays a unique feature in inducing "branching morphogenesis", a complex program of proliferation and motogenesis in a number of different cell types. Moreover, HGF is involved in the invasive behavior of several tumor cells both in vivo and in vitro. This combination of antibodies may be useful in drug screening assays, detection of HGF/SF expression or activity or in treating HGF/SF related diseases such as cancer.

Dated: September 21, 2000.

**Jack Spiegel,**

*Director, Division of Technology Development and Transfer Office of Technology Transfer National Institutes of Health.*

[FR Doc. 00–25176 Filed 9–29–00; 8:45 am]

BILLING CODE 4140–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Notice of Meeting: Chronic Fatigue Syndrome Coordinating Committee

In accordance with section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C., Appendix 2), notice is hereby given of a meeting of the Chronic Fatigue Syndrome Coordinating Committee.

*Name:* Chronic Fatigue Syndrome Coordinating Committee

*Time and Date:* Wednesday, October 25, 2000, from 9 a.m. to 4:30 p.m.

*Place:* Hubert H. Humphrey Building, Room 800, 200 Independence Avenue, SW., Washington, DC 20201.

*Status:* Open to the public, limited only by the space available. The meeting room will accommodate approximately 100 people. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

*Notice:* In the interest of security, the Department has instituted stringent procedures for entrance to the Hubert H. Humphrey Building by non-government employees. Thus, persons without a government identification card will need to provide a photo ID and must know the subject and room number of the meeting in order to be admitted into the building. Visitors must use the Independence Avenue entrance.

*Purpose:* The Committee is charged with providing advice to the Secretary, the Assistant Secretary for Health, and the Commissioner, Social Security Administration (SSA), to assure interagency coordination and communication regarding chronic fatigue syndrome (CFS) research and other related issues; facilitating increased DHHS and agency awareness of CFS research and educational needs; developing complementary research programs that minimize overlap; identifying opportunities for collaborative and/or coordinated efforts in research and education; and developing informed responses to constituency groups regarding DHHS and SSA efforts and progress.

*Matters To Be Discussed:* The meeting will include a discussion of the CFS State of the Science Conference held October 23–24, 2000; progress report from the Name Change Working Group; update on current Federal activities; and identification of areas for future focus for the CFSCC. Public comments will be received at the meeting on two topics of interest to the Committee: (1) Lack of access to social services and (2) insensitive medical care. Persons wishing to make oral comments on these topics either in person or via video should notify the contact person listed below no later than COB on October 17, 2000. Five minutes will be allotted for each statement; both printed and electronic copies are requested for the record.

*Contact Person for More Information:* Janice C. Ramsden, Executive Secretary, CFSCC, Office of the Principal Deputy Director, NIH, Building 1, Room 333, 1 Center Drive, MSC 0159, Bethesda, Maryland 20892–0159, e-mail *jr52h@nih.gov* or telephone 301–496–0959.

Dated: September 22, 2000.

**LaVerne Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–25163 Filed 9–29–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel.

*Dates:* October 30, 2000.

*Time:* 8:30 AM to 4:00 PM.

*Agenda:* To review and evaluate contract proposals.

*Place:* Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

*Contact Person:* Edward W. Schroder, PHD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2156, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, 301–496–2550.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: September 21, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–25156 Filed 9–29–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Diseases; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given on the following meeting.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Microbiology and Infectious Diseases Research Committee.

*Dates:* October 4–5, 2000.

*Open:* October 4, 2000, 9:00 AM to 10:00 AM.

*Agenda:* Reports from various Institute staff.

*Place:* One Washington Circle Hotel, Conference Center, One Washington Circle, DC 20037.

*Closed:* October 4, 2000, 9:00 AM to adjournment on October 5, 2000.

*Agenda:* To review and evaluate grant applications.

*Place:* One Washington Circle Hotel, Conference Center, One Washington Circle, DC 20037.

*Contact Person:* Gary S. Madonna, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2217, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, 301–496–2550.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: September 21, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–25157 Filed 9–29–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Deafness and Other Communications Disorders Special Emphasis Panel.

*Dates:* November 14–15, 2000.

*Time:* 8 AM to 12 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* The Virginian Suites, 1500 Arlington Blvd., Arlington, VA 22209.

*Contact Person:* Stanley C. Oaks, Jr., PhD, Scientific Review Branch, Division of Extramural Research, Executive Plaza South, Room 400C, 6120 Executive Blvd., Bethesda, MD 20892–7180, 301–496–8683.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research

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Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: September 20, 2000.

**LaVerene Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–25158 Filed 9–29–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning the individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel.

*Dates:* October 25, 2000.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* 6700–B Rockledge Drive, Room 1205, Bethesda, MD 20892–7612.

*Contact Person:* Paula S. Strickland, PHD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Solar Building, Room 4C02, 6003 Executive Boulevard MSC 7610, Bethesda, MD 20892–7610, 301–402–0643.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: September 20, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–25159 Filed 9–29–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Diseases; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C Appendix 2), notice is hereby given of the following meeting.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property. such as patentable materials, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Allergy, Immunology, and Transplantation Research Committee.

*Dates:* October 4–5, 2000.

*Open:* October 4, 2000, 8:15 AM to 9:15 AM.

*Agenda:* Discussion of administrative details relating to committee business and program review.

*Place:* Holiday Inn Georgetown, Kaleidoscope Room, 2101 Wisconsin Ave., NW., Washington, DC 20007.

*Closed:* October 4, 2000, 9:15 AM to 5:15 PM.

*Agendo:* To review and evaluate grant applications.

*Place:* Holiday Inn Georgetown, Kaleidoscope Room, 2101 Wisconsin Ave., NW., Washington, DC 20007.

*Closed:* October 5, 2000, 8:30 AM to adjournment.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Georgetown, Kaleidoscope Room, 2101 Wisconsin Ave., NW., Washington, DC 20007.

*Contact Person:* Ken Wasserman, Ph.D, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2217, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD, 301 496–2550, kw159p@nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: September 22, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–25160 Filed 9–29–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel.

*Dates:* October 24–25, 2000.

*Time:* October 24, 2000, 1:30 PM to 6:00 PM.

*Agenda:* To review and evaluate contract proposals.

*Place:* Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

*Time:* October 25, 2000, 8:30 AM to 6:00 PM.

*Agenda:* To review and evaluate contract proposals.

*Place:* Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

*Contact Person:* Priti Mehrotra, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2217, 6700–B Rockledge Drive, MSC, 7610, Bethesda, MD 20892–7610, 301–496–2550.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplation Research, 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)



Dated: September 22, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–25161 Filed 9–29–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institute of Health

### National Institutes of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel.

*Date:* October 3, 2000.

*Time:* 9:30 am to 4 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn, Chevy Chase, 5520 Wisconsin Avenue, Terrace Room, Chevy Chase, MD 20815.

*Contact Person:* Hagit S. David, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2217, 6700–B Rockledge Drive, MSC, 7610, Bethesda, MD 20892–7610, 301–496–2550.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: September 22, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–25162 Filed 9–29–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institutes of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

*Date:* October 2, 2000.

*Time:* 1:30 pm to 3:30 pm.

*Agenda:* To review and evaluate grant applications and/or proposals.

*Place:* Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Phillip F. Wiethorn, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neuroscience, National Institutes of Health, HHS)

Dated: September 22, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–25164 Filed 9–29–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICE

### National Institutes of Health

### National Institute of Neurological Disorders and Stroke; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Neurological Sciences and Disorders B, October 19, 2000, 8 am to October 20, 2000, 6 pm, Hotel Washington, 15th St. & Pennsylvania Ave, NW., Washington, DC 20005 which was published in the **Federal Register** on August 11, 2000, 65 FR 49252.

The meeting will be held on October 19, 2000, 8 am to 6 pm. The meeting is closed to the public.

Dated: September 22, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–25165 Filed 9–29–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be close to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Communication Disorders Review Committee.

*Date:* October 11–12, 2000.

*Time:* 8 am to 5 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* The Governor's House Hotel, 1615 Rhode Island Avenue, NW., Washington, DC 20036.

*Contact Person:* Melissa Stick, PhD, MPH, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NIDCD/NIH, 6120 Executive Blvd., Bethesda, MD 20892, 301–496–8683.

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(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: September 25, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–25167 Filed 9–29–00; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel.

*Date:* October 16, 2000.

*Time:* 1 p.m. to 4 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* 6700–B Rockledge Drive, Room 2208, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Edward W. Schroder, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2156, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, 301–496–2550.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: September 25, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–25168 Filed 9–29–00; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Deafness and Other Communications Disorders Special Emphasis Panel.

*Date:* October 18, 2000.

*Time:* 1 pm to 2 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* 6120 Executive Blvd., Suite 400C, Rockville, MD 20852.

*Contact Person:* Stanley C. Oaks, Jr., Phd, Scientific Review Branch, Division of Extramural Research, Executive Plaza South, Room 400C, 6120 Executive Blvd., Bethesda, MD 20892–7180, 301–496–8683.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: September 25, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–25169 Filed 9–29–00; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Dates:* September 22, 2000.

*Time:* 11:00 AM to 12:00 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Stephen M. Nigida, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4112, MSC 7812, Bethesda, MD 20892, (301) 435–3565.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 21, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–25155 Filed 9–29–00; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* October 6, 2000.

*Time:* 2 p.m. to 4 p.m.



*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Paul K. Strudler, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4100, MSC 7804, Bethesda, MD 20892, (301) 435–1716.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Cell Development and Function Integrated Review Group, Cell Development and Function 2.

*Date:* October 10–11, 2000.

*Time:* 8 a.m. to 1:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

*Contact Person:* Ramesh K. Nayak, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5146, MSC 7840, Bethesda, MD 20892, (301) 435–1026.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* October 10, 2000.

*Time:* 8 a.m. to 10 a.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Georgetown Holiday Inn, 2101 Wisconsin Avenue, NW, Washington, DC 20007

*Contact Person:* Dharam S. Dhindsa, DVM, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5126, MSC 7854, Bethesda, MD 20892, (301) 435–1174, dhindsad@csr.nih.gov

*Name of Committee:* Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Interactive, Functional and Cognitive Neuroscience 5.

*Date:* October 10–11, 2000.

*Time:* 8:30 a.m. to 5:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Governor's House Hotel, Washington, DC 20036.

*Contact Person:* John Bishop, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250.

*Name of Committee:* Social Sciences, Nursing, Epidemiology and Methods Integrated Review Group, Epidemiology and Disease Control Subcommittee 1.

*Date:* October 11–13, 2000.

*Time:* 8:30 am to 4 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn—Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* J. Scott Osborne, PhD, MPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4114, MSC 7816, Bethesda, MD 20892, (301) 435–1782.

*Name of Committee:* Cell Development and Function Integrated Review Group, Cell Development and Function 3.

*Date:* October 11–12, 2000.

*Time:* 8:30 am to 4 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn—5520 Wisconsin Avenue, Chevy Chase, MD 20815.

*Contact Person:* Gerhard Ehrenspeck, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5138, MSC 7840, Bethesda, MD 20892, (301) 435–1022, ehrenspeckg@nih.csr.gov.

*Name of Committee:* Biochemical Sciences Integrated Review Group, Pathobiochemistry Study Section.

*Date:* October 11–12, 2000.

*Time:* 8:30 am to 12 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Chase Park Plaza, 212–232 N. Kingshighway Blvd., St. Louis, MO 63108.

*Contact Person:* Zakir Bengali,, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5150, MSC 7842, Bethesda, MD 20892, (301) 435–1742.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* October 11, 2000.

*Time:* 8:30 am to 5 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Ramada Inn, 1775 Rockville Pike, Rockville, MD 20852.

*Contact Person:* Joe Marwah, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5188, MSC 7846, Bethesda, MD 20892, (301) 435–1253.

*Name of Committee:* Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Visual Sciences B Study Section.

*Date:* October 11–12, 2000.

*Time:* 8:30 am to 4 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* One Washington Circle Hotel, Conference Center, One Washington Circle, Washington, DC 20037.

*Contact Person:* Leonard Jakubczak, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5172, MSC 7844, Bethesda, MD 20892, (301) 435–1247.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* October 11, 2000.

*Time:* 9 am to 5 pm.

*Agenda:* To provide concept review of proposed grant applications.

*Place:* Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

*Contact Person:* Richard Marcus, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5168, MSC 7844, Bethesda, MD 20892, 301–435–1245, richard.marcus@nih.gov

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* October 11, 2000.

*Time:* 9 am to 5 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Governor's House Hotel, 17th & Rhode Island Avenue, NW, Washington, DC 20036.

*Contact Person:* Anita Miller Sostek, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892, (301) 435–1260.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* October 11, 2000.

*Time:* 10:30 am to 12 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Michael Oxman, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr., Room 4112, Bethesda, MD 20892, 301–435–3565, oxmanm@csr.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 22, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–25166 Filed 9–29–00; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

### National Invasive Species Council; Draft of the National Invasive Species Management Plan, "Meeting the Challenge"

**AGENCY:** Office of the Secretary, Interior.

**ACTION:** Notice of Availability—Draft of the National Invasive Species Management Plan; "Meeting the Challenge".

**SUMMARY:** Pursuant to Executive Order 13112, the National Invasive Species Council is announcing the availability of the draft of the National Invasive Species Management Plan, "Meeting the Challenge" for public review and comment for a period of 45 days. The Executive Order set up an inter-agency council to prevent and control invasive species to minimize their economic, ecological and human health impacts. The Council is co-chaired by the Secretaries of Agriculture, Commerce and the Interior; and includes the

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Departments of State, Transportation, the Treasury and the Environmental Protection Agency. The Plan seeks to address invasive species in the areas of prevention, coordination, control, rapid response, monitoring, and information sharing.

**DATES:** All Comments must be received by close of business (6:00 p.m.—eastern time) on November 16, 2000.

**ADDRESSES:** National Invasive Species Council, 1951 Constitution Avenue, N.W., Suite 320, Washington, D.C. 20240.

**FOR FURTHER INFORMATION CONTACT:** Kelsey Passe, National Invasive Species Council Program Analyst; E-mail: Kelsey_Passe@ios.doi.gov; Phone: (202) 208–6336; Fax: (202) 208–1526.

**SUPPLEMENTARY INFORMATION:** Copies of the draft Plan can be obtained via the Council's website: *www.invasivespecies.gov;* by contacting the Council Staff at 202–208–6336 (phone); 202–208–1526 (Fax); or by e-mail at invasivespecies@ios.doi.gov. Comments can be submitted to the Council Staff at the fax, e-mail, or mailing address given above.

Dated: September 28, 2000.

**Lori Williams,**

*Executive Director, National Invasive Species Council.*

[FR Doc. 00–25338 Filed 9–29–00; 8:45 am]

**BILLING CODE 4310–RK–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Notice of Availability of a Draft Recovery Plan for the Virginia Sneezeweed for Review and Comment

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of document availability.

**SUMMARY:** The U.S. Fish and Wildlife Service announces the availability for public review of a draft Recovery Plan for the Virginia sneezeweed (*Helenium virginicum*).

The Virginia sneezeweed is a rare herb in the Asteraceae family found in the Shenandoah Valley of western Virginia, with a single possible disjunct population in southern Missouri. The species was listed as threatened in December 1998 due to its restricted range, small number of occurrences, and growing threats from loss and degradation of its sinkhole pond habitat. The objective of the proposed Recovery Plan is to protect *Heleniuim virginicum* populations and their habitat, thereby enabling the species' removal from the Federal list of endangered and threatened wildlife and plants. To accomplish this, the draft Plan recommends protection and management of extant populations, definitively establishing the distribution of the plant, and strategies for maintaining the genetic diversity of the species. If the Recovery Plan is successfully implemented, full recovery may be possible by 2020. The Service solicits review and comment from the public on this draft Plan.

**DATES:** Comments on the draft Recovery Plan must be received by November 16, 2000, to receive consideration by the Service.

**ADDRESSES:** Persons wishing to review the draft Recovery Plan can obtain a copy from the U.S. Fish and Wildlife Service, Chesapeake Bay Field Office, 177 Admiral Cochrane Drive, Annapolis, Maryland 21401, telephone 410/573–4537 and fax 410/269–0832. Comments should be sent to the same address, to the attention of G. Andrew Moser.

**FOR FURTHER INFORMATION CONTACT:** G. Andrew Moser at 410/573–4537 (see **ADDRESSES**).

**SUPPLEMENTARY INFORMATION:**

#### Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare Recovery Plans for most of the listed species native to the United States. Recovery Plans describe actions considered necessary for conservation of the species, establish criteria for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of Recovery Plans for listed species unless such a Plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during Recovery Plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised Recovery Plan. The Service and other Federal agencies will also take these comments into account in the course of implementing Recovery Plans.

The document submitted for review is the draft Virginia Sneezeweed (*Helenium virginicum*) Recovery Plan. The Virginia sneezeweed, a rare herb in the Asteraceae family, has been found in 30 sites in the Shenandoah Valley of western Virginia, although plants have not been seen at 4 of these sites for several years. Recent studies of a *Helenium* sp. from a sinkhole pond in southern Missouri suggest that it may represent a disjunct population of *H. virginicum*, but further research is needed to resolve this. The Virginia sneezeweed is limited to seasonally flooded sinkhole ponds, a restricted and threatened habitat type that is in some cases closely associated with agricultural and residential land uses. In addition, there is some indication that the species may have a self-incompatible breeding system, which could increase the threat of local extinctions in small populations. For these reasons, *H. virginicum* was listed as a threatened species in December 1998.

The objective of the draft Recovery Plan is to protect *Helenium virginicum* populations and their habitat, thereby enabling the species' removal from the Federal list of endangered and threatened wildlife and plants. Delisting of *H. virginicum* may be considered when: (1) 20 self-sustaining populations and their habitats have received permanent protection across the species' Virginia range; (2) monitoring over 15 years indicates that populations in the 20 sites are viable; (3) life history and ecological requirements are understood sufficiently to allow for effective protection monitoring, and, as needed, management; (4) seeds representing the range of genetic diversity in *H. virginicum* are placed in long-term storage to provide a source of genetic material in the event of in situ extinction; and (5) if determined to be *H. virginicum*, the Missouri population and its habitat are permanently protected and seeds placed in long-term storage.

Recovery activities designed to achieve these objectives include protection, management, and monitoring of extant populations and their habitat; definitive identification of the range and distribution of the species; continuing investigations into the life history and ecology of *H. virginicum*; maintenance of seed sources for the species; and development of informational materials to create more awareness of *H. virginicum* and its status. Contingent on successful implementation of all recovery tasks, full recovery is anticipated by the year 2020.



The draft Recovery Plan is being submitted for technical and agency review. After consideration of comments received during the review period, the Plan will be submitted for final approval.

#### Public Comments Solicited

The Service solicits written comments on the Recovery Plan described. All comments received by the date specified above will be considered prior to approval of the Plan.

**Authority:** The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: September 21, 2000.

**J. Mitch King,**

*Acting Regional Director.*

[FR Doc. 00–25107 Filed 9–29–00; 8:45 am]

**BILLING CODE 4310–55–M**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Receipt of an Application for an Incidental Take Permit for Construction of a Single-family Home in the Town of Venice, Sarasota County, Florida

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice.

Mr. Jack Grimes (Applicant) requests an incidental take permit (ITP) pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973 (U.S.C. 1531 *et seq.*), as amended (Act). The Applicant anticipates taking about one-half acre of Florida scrub-jay (*Aphelocoma coerulescens*) habitat, incidental to land clearing in preparation for the construction of a single-family home and supporting infrastruture. Land clearing will take place within section 33, Township 39 South, Range 19 East, Venice, Sarasota County, Florida. The Applicant proposes to mitigate the taking of scrub-jays through contribution of $1,000 to the Florida Scrub-jay Conservation Fund.

Land clearing and infrastructure installation will destroy about one-half acre of habitat known to be occupied by one family of scrub-jays. A more detailed description of the mitigation and minimization measures to address the effects of the Project to the scrub-jay are outlined in the Applicant's Habitat Conservation Plan (HCP) and in the **SUPPLEMENTARY INFORMATION** section below. The Service has determined that the Applicant's proposal, including the proposed mitigation and minimization measures, will individually and cumulatively have a minor or negligible effect on the species covered in the HCP. Therefore, the ITP is a "low effect" project and would qualify as a categorical exclusion under the National Environmental Policy Act (NEPA), as provided by the Department of Interior Manual (516 DM2, Appendix 1 and 516 DM 6, Appendix 1).

The Service announces the availability of the HCP for the incidental take application. Copies of the HCP may be obtained by making a request to the Regional Office (see **ADDRESSES**). Requests must be in writing to be processed. This notice is provided pursuant to Section 10 of the Endangered Species Act and NEPA regulations (40 CFR 1506.6).

The Service specifically requests information, views, and opinions from the public via this Notice on the Federal action. Further, the Service specifically solicits information regarding the adequacy of the HCP as measured against the Service's Permit issuance criteria found in 50 CFR Parts 13 and 17.

If you wish to comment, you may submit comments by any one of several methods. Please reference permit number TE033098–0 in such comments. You may mail comments to the Service's Regional Office (see **ADDRESSES**). You may also comment via the internet to "david_dell@fws.gov". Please submit comments over the internet as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your internet message. If you do not receive a confirmation from the Service that we have received your internet message, contact us directly at either telephone number listed below (see **FURTHER INFORMATION**). Finally, you may hand deliver comments to either Service office listed below (see **ADDRESSES**). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the administrative record. We will honor such requests to the extent allowable by law. There may also be other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. We will not; however, consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

**DATES:** Written comments on the ITP application and HCP should be sent to the Service's Regional Office (see **ADDRESSES**) and should be received on or before November 1, 2000.

**ADDRESSES:** Persons wishing to review the application, supporting documentation, and HCP may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits), or Field Supervisor, U.S. Fish and Wildlife Service, Post Office Box 2676, Vero Beach, Florida 32961–2676. Written data or comments concerning the application, or HCP should be submitted to the Regional Office. Please reference permit number TE033098–0 in requests for the documents discussed herein.

**FOR FURTHER INFORMATION CONTACT:** Mr. David Dell, Regional HCP Coordinator, (see **ADDRESSES** above), telephone: 404/679–7313, facsimile: 404/679–7081; or Mr. Mike Jennings, Fish and Wildlife Biologist, South Florida Ecosystem Office, Vero Beach, Florida (see **ADDRESSES** above), telephone: 561/562–3909.

**SUPPLEMENTARY INFORMATION:** The Florida scrub-jay (scrub-jay) is geographically isolated from other subspecies of scrub-jays found in Mexico and the western United States. The scrub-jay is found exclusively in peninsular Florida and is restricted to xeric uplands (predominately in oak-dominated scrub). Increasing urban and agricultural development have resulted in habitat loss and fragmentation which has adversely affected the distribution and numbers of scrub-jays. The total estimated population is between 7,000 and 11,000 individuals.

The decline in the number and distribution of scrub-jays in southwestern Florida has been exacerbated by tremendous urban growth in the past 50 years. Much of the historic commercial and residential development has occurred on the dry soils which previously supported scrub-jay habitat. Based on existing soils data, much of the historic and current scrub-jay habitat of coastal southwest Florida occurs proximal to the current shoreline and larger river basins. Much of this area of Florida was settled early because few wetlands restricted urban and agricultural development. Due to the

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effects of urban and agricultural development over the past 100 years, much of the remaining scrub-jay habitat is now relatively small and isolated. What remains is largely degraded due to the exclusion of fire which is needed to maintain xeric uplands in conditions suitable for scrub-jays.

Recent scrub-jay surveys in urban areas of southwest Florida documented that the subject residential parcel is part of the territory of one family of birds that is composed of seven individuals. A one-day survey undertaken by the Applicant supported these findings when two juvenile birds were documented within the subject residential parcel. The extent of the territory and its relative importance to the resident family of scrub-jays has not been determined. However, the residential parcel is composed of native xeric vegetation of sufficient quality to provide food resources and nesting and sheltering habitat for scrub-jays.

Scrub-jays using the subject residential lot and adjacent properties are part of a larger complex of scrub-jays located in urban settings in coastal areas of southern Sarasota County and western Charlotte County. Thirteen scrub-jay families are known to occupy urban areas within about three miles of the subject residential parcel. More than 100 scrub-jay families may still exist within the metapopulation of birds found in the matrix of urban and natural areas of coastal Sarasota and Charlotte counties. However, scrub-jays in urban areas are particularly vulnerable and typically do not successfully produce young that survive to adulthood. Persistent urban growth in this area will likely result in further reductions in the amount of suitable habitat for scrub-jays. Increasing urban pressures are also likely to result in the continued degradation of scrub-jay habitat as fire exclusion due to safety concerns slowly results in vegetative overgrowth. The continued survival of a large scrub-jay population in southwest Florida will be dependent on the protection and management of large preserves.

Construction of the Project's infrastructure and facilities will result in harm to scrub-jays, incidental to the carrying out of these otherwise lawful activities. Habitat alteration associated with the proposed residential construction will reduce the availability of feeding, nesting, and sheltering habitat of resident scrub-jays.

The Applicant proposes to minimize take of scrub-jays by reducing disturbance to occupied habitat. Approximately 25 percent (or 0.13 acres) of occupied habitat on the residential lot will not be disturbed during land clearing and construction activities. In addition, the Applicant proposes to remove up to four pine trees on the residential lot. Removal of these trees will eliminate perch sites for predatory birds and may reduce the risk that raptors will kill scrub-jays.

As earlier stated, the Service has determined that the HCP qualifies as a Categorically-Excluded, "low-effect" HCP as defined by Service's Habitat Conservation Planning Handbook (November 1996). Low-effect HCPs are those involving: (1) minor or negligible effects on federally listed and candidate species and their habitats, and (2) minor or negligible effects on other environmental values or resources. The Applicant's HCP qualifies for the following reasons:

1. Approval of the HCP would result in minor or negligible effects on the Florida scrub-jay. The Service does not anticipate significant direct or cumulative effects on this species resulting from the construction of the Project.

2. Approval of the HCP would not have adverse effect on known geographic, historic or cultural sites, or involve unique or unknown environmental risks.

3. Approval of the HCP would not result in any significant adverse effects on public health or safety.

4. The project does not require compliance with Executive Order 11988 (Floodplain Management), Executive Order 11990 (Protection of Wetlands), or the Fish and Wildlife Coordination Act, nor does it threaten to violate a Federal, State, local or tribal law or requirement imposed for the protection of the environment.

5. Approval of the HCP would not establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.

The Service has therefore determined that approval of the HCP qualifies as a categorical exclusion under NEPA, as provided by the Department of the Interior Manual (516 DM 2, Appendix 1 and 516 DM 6, Appendix 1). No further NEPA determination will therefore be prepared.

The Service will evaluate the HCP and comments submitted thereon to determine whether the application meets the requirements of Section 10(a) of the Act. If it is determined that those requirements are met, an ITP will be issued for the incidental take of one family of Florida scrub-jay. The Service will also evaluate whether the issuance of a Section 10(a)(1)(B) ITP complies with Section 7 of the Act by conducting an intra-Service Section 7 consultation. The results of the consultation, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the ITP.

Dated: September 25, 2000.

**H. Dale Hall,**

*Acting Regional Director.*

[FR Doc. 00–25145 Filed 9–29–00; 8:45 am]

BILLING CODE 4310–55–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Receipt of an Application for an Incidental Take Permit for Road Improvement in Perry County, Mississippi

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The Perry County Board of Supervisors (Applicant) has made an application for an incidental take permit (ITP) from the Fish and Wildlife Service (Service) pursuant to Section 10(a)(1)(B) of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), as amended. The proposed permit would allow take of the gopher tortoise (Gopherus polyphemus), a federally listed threatened species, incidental to surfacing a 0.25-mile section of dirt road with gravel. The permit would authorize take of up to two gopher tortoises. As described in the Applicant's habitat conservation plan (HCP), impacts will be minimized and mitigated by relocating the tortoises from their burrows along the edge of the road to adjacent burrows within the tortoise colony. The habitat conservation plan is further described in the **SUPPLEMENTARY INFORMATION** section below. The Service has determined that the Applicant's proposal, including the proposed mitigation and minimization measures, will individually and cumulatively have a minor or negligible effect on the species covered in the HCP. Therefore, the ITP is a "low effect" project and would qualify as a categorical exclusion under the National Environmental Policy Act (NEPA), as provided by the Department of Interior Manual (516 DM2, Appendix 1 and 516 DM 6, Appendix 1).

The Service announces the availability of the HCP for the incidental take application. Copies of the HCP may be obtained by making a request to the Regional Office (see **ADDRESSES**). Requests must be in writing to be processed. This notice is provided pursuant to Section 10 of the Endangered Species Act and NEPA regulations (40 CFR 1506.6).

The Service specifically requests information, views, and opinions from the public via this Notice on the Federal action. Further, the Service specifically solicits information regarding the adequacy of the HCP as measured against the Service's Permit issuance criteria found in 50 CFR Parts 13 and 17.

We specifically request information, views, and opinions from the public via this Notice on the Federal action. Further, we specifically solicit information regarding the adequacy of the Plan as measured against the Service's Permit issuance criteria found in 50 CFR Parts 13 and 17.

If you wish to comment, you may submit comments by any one of several methods. Please reference permit number TE026748–0 in such comments. You may mail comments to the Service's Regional Office (see **ADDRESSES**). You may also comment via the internet to "david_dell@fws.gov". Please submit comments over the internet as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your internet message. If you do not receive a confirmation from the Service that we have received your internet message, contact us directly at either telephone number listed below (see **FURTHER INFORMATION**). Finally, you may hand deliver comments to either Service office listed below (see **ADDRESSES**). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the administrative record. We will honor such requests to the extent allowable by law. There may also be other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. We will not; however, consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

**DATES:** Written comments on the permit application and HCP should be sent to the Service's Regional Office (see **ADDRESSES**) and should be received on or before November 1, 2000



**ADDRESSES:** Persons wishing to review the application, HCP, and supporting documentation may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits), or Jackson Field Office, 6578 Dogwood View Parkway, Jackson, Mississippi, 39213 (Attn: Will McDearman). Written data or comments concerning the application, HCP, or supporting documents should be submitted to the Regional Office. Requests for the documentation must be in writing to be processed. Please reference permit number TE026748–0 in requests for the documents discussed herein.

**FOR FURTHER INFORMATION CONTACT:** Mr. David Dell, Regional Permit Coordinator, (see **ADDRESSES** above), telephone: 404/679–7313; or Mr. Will McDearman, Fish and Wildlife Biologist, Jackson Field Office, (see **ADDRESSES** above), telephone 601/321–1124.

**SUPPLEMENTARY INFORMATION:** The gopher tortoise was listed in 1987 as a threatened species in the western part of its geographic range, west of the Tombigbee and Mobile Rivers in Alabama, Mississippi and Louisiana. The gopher tortoise is a burrowing animal that historically inhabited fire-maintained longleaf pine communities on moderately well drained to xeric soils in the Coastal Plain. These longleaf pine communities consisted of relatively open forests, without a closed overstory, with a well developed herbaceous plant layer of grasses and forbs. About 80% of the original habitat for gopher tortoises was lost at the time the species was listed due to the conversion to urban and agricultural land use. On remaining forests, management practices converting longleaf pine to densely planted pine stands for pulpwood production, fire exclusion, and infrequently prescribed fire further reduced the open forest with grasses and forbs tortoises need for burrowing, nesting, and feeding. Over 22,000 gopher tortoises have been estimated to occur in the listed range. The tortoise, however, is a long-lived animal with low reproductive rates. Remaining populations, though relatively widespread, are individually small, fragmented, and usually in poor habitat without adequate reproduction for a self-sustaining viable population.

Under section 9 of the Act and its implementing regulations, "taking" of endangered and threatened wildlife is prohibited. However, the Service, under limited circumstances, may issue permits to take such wildlife if the taking is incidental to and not the purpose of otherwise lawful activities. The Applicant has prepared an HCP as required for the incidental take permit application. The Applicant intends to open a dead-end road by extending it about 0.25 mile to another intersection. The extension is over an existing dirt road that will be surfaced with gravel. Two gopher tortoise burrows are located on the edge of the dirt road. Surveys by the Applicant and Service found that one of these burrows was inhabited by a tortoise. The operation of heavy equipment for surfacing the road can collapse these burrows, entombing and killing or injuring tortoises. The biological goal of the plan is to avoid such harm or injury to these tortoises and to retaining them within the existing the gopher tortoise colony. To avoid, minimize and mitigate impacts, the Applicant will capture and relocate up to two tortoises in these two burrows to adjacent unoccupied but suitable burrows located about 200 feet from the road. The tortoises at the edge of the road are part of a small colony of five tortoises inhabiting privately owned property adjoining the west side of the road. Thus, tortoises will be moved to other burrows within their existing colony and population. The permit will authorize incidental take associated with the capture and relocation of two tortoises. Upon relocation, the burrows on the road edge will be collapsed or blocked to prevent habitation from any tortoises. To monitor the biological effect of the HCP, the Applicant will track relocated tortoises using radio-telemetry until the over-wintering period of 2000.

As earlier stated, the Service has determined that the HCP qualifies as a Categorically-Excluded, "low-effect" HCP as defined by the Service's Habitat Conservation Planning Handbook. Low-effect HCPs are those involving: (1) Minor or negligible effects on federally listed and candidate species and their habitats, and (2) minor or negligible effects on other environmental values or resources. The Applicant's HCP qualifies for the following reasons:

1. Approval of the HCP would result in minor or negligible effects on the gopher tortoise and its habitat. We do not anticipate significant direct or cumulative effects on this species as a result of this project.

2. Approval of the HCP would not have adverse effects on known geographic, historic or cultural sites, or

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involve unique or unknown environmental risks.

3. Approval of the HCP would not result in any significant adverse effects on public health or safety.

4. The project does not require compliance with Executive Order 11988 (Floodplain Management), Executive Order 11990 (Protection of Wetlands), or the Fish and Wildlife Coordination Act, nor does it threaten to violate a Federal, State, local, or tribal law or requirement imposed for protection of the environment.

5. Approval of the HCP would not establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.

The Service has therefore determined that approval of the HCP qualifies as a categorical exclusion under NEPA, as provided by the Department of the Interior Manual (516 DM 2, Appendix 1 and 516 DM 6, Appendix 1). No further NEPA determination will therefore be prepared.

The Service will evaluate the HCP and comments submitted thereon to determine whether the application meets the requirements of Section 10(a) of the Act. If it is determined that those requirements are met, an ITP will be issued for the incidental take of one family of Florida scrub-jay. The Service will also evaluate whether the issuance of a Section 10(a)(1)(B) ITP complies with Section 7 of the Act by conducting an intra-Service Section 7 consultation. The results of the consultation, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the ITP.

Dated: September 25, 2000.

**H. Dale Hall,**

*Acting Regional Director.*

[FR Doc. 00–25146 Filed 9–29–00; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Notice of Meeting

**AGENCY:** Fish and Wildlife Service, Interior

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Klamath Fishery Management Council, established under the authority of the Klamath River Basin Fishery Resources Restoration Act (16 U.S.C. 460ss *et seq.*). The Klamath Fishery Management Council makes recommendations to agencies that regulate harvest of anadromous fish in the Klamath River Basin. The objective of this meeting is to review the progress of the 2000 Klamath chinook salmon fishing season and plan for fishery management in 2001. The meeting is open to the public.

**DATES:** The Klamath Fishery Management Council will meet from 1:00 p.m. to 5:00 p.m. on Wednesday, October 25, 2000; from 8:00 a.m. to 5:00 p.m. on Thursday, October 26, 2000; and from 8:00 a.m. to 12:00 p.m. on Friday, October 27, 2000.

*Place:* The meeting will be held at the Yreka Fish and Wildlife Office, 1829 South Oregon Street, Yreka, California.

**FOR FURTHER INFORMATION CONTACT:** Dr. Ronald A. Iverson, Project Leader, U.S. Fish and Wildlife Service, 1829 South Oregon Street, Yreka, California 96097, telephone (530) 842–5763.

**SUPPLEMENTARY INFORMATION:** For background information on the Klamath Council, please refer to the notice of their initial meeting that appeared in the **Federal Register** on July 8, 1987 (52 FR 25639).

Dated: September 25, 2000.

**Elizabeth H. Stevens.**

*California/Nevada Operations Manager, California/Nevada Office, U.S. Fish and Wildlife Service.*

[FR Doc. 00–25147 Filed 9–29–00; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

### Geological Survey

### Request for Public Comments on Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

A request extending the information collection described has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). Copies of the proposed collection instrument may be obtained by contacting the USGS clearance officer at the phone number listed below. OMB has up to 60 days to approve or disapprove the information collection, but may respond after 30 days; therefore, public comments should be submitted to OMB within 30 days in order to assure their maximum consideration. Comments and suggestions on the proposal should be made directly to the Desk Officer for the Interior Department, Office of Regulatory Affairs, OMB, Washington, DC 20503 and to the USGS Clearance Officer, U.S. Geological Survey, 807 National Center, 12201 Sunrise Valley Drive, Reston, Virginia, 20192. Telephone 703–648–7313.

Specific public comments are requested as to:

1. Whether the collection of information is necessary for the proper performance of the functions on the USGS, including whether the information will have practical utility;

2. The accuracy of the USGS estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

3. The quality, utility, and clarity of the information to be collected; and

4. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

*Title:* National Atlas of the United States of America.

*Current OMB approval number:* 1028–0057.

*Abstract:* Potential customers of electronic national atlas products will be asked questions that provide (1) potential uses of these products; (2) type of personal computer used; (3) current method of acquiring atlas-type information; (4) demographic information; and (5) personal expectations from the products. Survey questionnaires will be distributed by mail in a return postage-paid format and via the World Wide Web. Focus groups will be held at various locations across the United States and could include prototype product testing. Software usability studies will be conducted at various locations and will result in the development of products that are easier to use. Customer information gathered from the questionnaires, focus groups, and usability studies will be used to evaluate the National Atlas of the United States products and to make development adjustments based on customer responses. The proposed collection is limited in scope to the National Atlas products and the capability of the products to meet customer needs. The USGS intends to develop a cooperative research and development agreement with private industry to assist in product development and to provide an additional avenue for product distribution.

*Bureau form number:* None.

*Frequency:* An estimated 2–3 surveys, and 2–5 focus groups studies per year to evaluate potential customer segments and reactions.



*Description of respondents:* Owners of powerful home personal computers, some with Internet access—potentially the general public, libraries, and schools.

*Estimated completion time:* Varies depending on the mechanism used: Approximately 0.15 minutes per survey and 1 hour per focus group session.

*Annual responses:* Approximately 1,000 survey and 100 focus group responses.

*Annual burden hours:* 350.

*Bureau clearance officer:* John Cordyack, 703–648–7313.

Dated: September 26, 2000.

**Richard E. Witmer,**

*Chief Geographer.*

[FR Doc. 00–25096 Filed 9–29–00; 8:45 am]

**BILLING CODE 4310–Y7–M**

## DEPARTMENT OF THE INTERIOR

### Geological Survey

### Application Notice Describing an Opportunity of Federal Funding of Proposals Submitted Under the State Partnership Program (SPP) for Fiscal Year 2001

**AGENCY:** Department of the Interior, U.S. Geological Survey.

**ACTION:** Notice.

**SUMMARY:** Pre-proposal Applications are invited for projects dealing with invasive species issues under the FY2001 State Partnership Program (SPP).

The purpose of the FY 2001 SSP is provide support through grants and cooperative agreements to states and tribal agencies in the eastern United States whose primary focus is on gathering, analyzing, and distributing biological science information needed for natural resource management decision-making relating to invasive species. This program requires complementary study participation and interaction between State/Tribal institutions, including public universities, museums, and natural resource agencies, and Science Centers or Cooperative Research Units of the USGS, Eastern Region. For contact information relating to potential study cooperation and participation by scientists from the USGS Biological Resources Division, Eastern Region, Science Centers (6 Centers) and Cooperative Research Units (16 Units) access the following web sites: For Science Centers: http//biology.usgs.gov/pub_aff/centers.html and for Cooperative Units: http://biology.usgs.gov/coop/

Proposals involving the support and cooperation of multiple State parties as well as multiple Federal, private, or other entities are strongly favored. Respondents are encouraged to show linkages to other resource agencies, in addition to USGS, that have jurisdiction over public lands or public trust biotic resources and to the science information needs of other Department of the Interior bureaus and other Federal agencies. Proposals must demonstrate a commitment to information exchange and technology transfer.

**Eligibility Requirements**

*Applicant Eligibility:* State, Tribal, and/or U.S. Territories and Possessions that conduct natural resource studies and associated information management. No Federal or private agencies may apply.

**Application and Award Process**

*Pre-proposal Submission:* Eligible institutions may request a Pre-proposal Solicitation Package, including instructions on the SPP and how to submit an application, from the USGS, Eastern Regional Office (see address below). Pre-proposals must be submitted to USGS by State/Tribe institutions only, but must include information on participating USGS Science Center or Cooperative Research Unit.

*Full-proposal Evaluation and Award:* Full proposals will be requested in writing by the USGS from institutions that have submitted pre-proposals of high merit and who have met all of the pre-proposal requirements as detailed in the Pre-proposal Solicitation Package. Detailed specifications will be provided when the request for full proposals is made. After meeting all submission requirements, full proposals will be reviewed and evaluated by a technical review team. Projects will be individually scored and prioritized, and award recommendations forwarded to the USGS contracting office for award.

**DATES:** Completed pre-proposals must be submitted to the USGS, Eastern Regional Office and be postmarked no later than November 1, 2000. Full proposals will be required by January 15, 2001. Notification of awards will be made by February 1, 2001.

**APPLICATION INFORMATION:** A Pre-Proposal Solicitation Package, including a SPP Factsheet that gives examples of projects that have received funding in the past, may be requested from the USGS, Eastern Regional Office at the following address:

Dr. Gary D. Brewer, State Partnership Program Coordinator, USGS Biological Resources Division, Eastern Regional Office, 1700 Leetown Road, Kearneysville, WV 25430, Telephone: 304–724–4507, Fax: 304–724–4505, E-mail: gary_brewer@usgs.gov

**Authority:** Fish and Wildlife Act of 1956, 70 Stat. 1119, as amended, 16 U.S.C. 742a–742j; Fish and Wildlife Coordination Act of 1958, 16 U.S.C. 661–667e.

The Office of Management and Budget Catalog of Federal Domestic Assistance Number is 15.808.

Dated: September 8, 2000.

**David P. Bornholdt,**

*Acting Regional Chief Biologist.*

[FR Doc. 00–25178 Filed 9–29–00; 8:45 am]

**BILLING CODE 4310–Y7–M**

## DEPARTMENT OF THE INTERIOR

### Geological Survey

### National Cooperative Geologic Mapping Program (NCGMP) Advisory Committee

**AGENCY:** United States Geological Survey, Interior.

**ACTION:** Notice of Meeting.

**SUMMARY:** Pursuant to Public Law 108–148, The NCGMP Advisory Committee will meet in the Rachel Carson/John Muir Rooms of the Main Interior Building 1849 C. Street NW., Washington, DC. The Advisory Committee, comprised of scientists from Federal agencies, State agencies, academic institutions, and private companies, will advise the Director on planning and implementation of the geologic mapping program.

Topics to be reviewed and discussed by the Advisory Committee include:

- Progress of the NCGMP towards fulfilling the purposes of the National Geologic Mapping Act of 1992
- Updates on the Federal, State, and educational components of the NCGMP
- Strategic Goals

**DATES:** October 31–November 2, 2000, commencing at 9:00 a.m. on October 31st and adjourning by 1:00 p.m. on November 1st.

**FOR FURTHER INFORMATION CONTACT:** Martha N. Garcia, U.S. Geological Survey, Mail Stop 908, National Center Reston, Virginia, 20192, (703) 648–6978.

**SUPPLEMENTARY INFORMATION:** Meetings of the National Cooperative Geologic Mapping Program Advisory Committee are open to the public.

Dated: September 22, 2000.

**P. Patrick Leahy,**

*Associate Director for Geology, U.S. Geological Survey.*

[FR Doc. 00–25179 Filed 9–29–00; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

### Indian Gaming

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of Approved Tribal-State Compact.

**SUMMARY:** Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Off-Track Wagering Compact between the Chickasaw Nation and the State of Oklahoma, which was executed on July 26, 2000.

**DATES:** This action is effective October 2, 2000.

**FOR FURTHER INFORMATION CONTACT:** George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: September 20, 2000.

**Kevin Gover,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 00–25124 Filed 9–29–00; 8:45 am]

BILLING CODE 4310–02–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

### Indian Gaming

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of Approved Tribal-State Compact.

**SUMMARY:** Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Modification Compact for Off-Track Wagering between the Choctaw Nation and the State of Oklahoma, which was executed on July 27, 2000.

**DATES:** This action is effective October 2, 2000.

**FOR FURTHER INFORMATION CONTACT:** George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: September 20, 2000.

**Kevin Gover,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 00–25125 Filed 9–29–00; 8:45 am]

BILLING CODE 4310–02–P

## DEPARTMENT OF INTERIOR

### Bureau of Land Management

**[MT–099–1020–PG–003E]**

### Notice of Meeting

**AGENCY:** Bureau of Land Management, Lewistown Field Office, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** The Central Montana Resource Advisory Council will meet October 17–18, 2000 at the Holiday Inn, In Great Falls, Montana.

The October 17 portion of the meeting will begin at 7:45 am with a field trip to the Greenfields Irrigation District. The council will then have lunch and return to the Holiday Inn. At 1 p.m. there will be a 30-minute public comment period; followed by a welcome and orientation session for new RAC members; field manager updates; a review of funding requests for fiscal year 2001 and CARA legislation; a review of Lewis & Clark Bicentennial plans; and an open discussion among council members. This session will adjourn at 5 p.m.

The October 18 session will begin at 7:45 am with updates concerning sage grouse and sagebrush, prairie dogs, plovers, black-footed ferrets, noxious weeds, cottonwood regeneration and a cooperative ecosystem river study. The council will break for lunch from 12–1 p.m. After lunch the RAC will participate in discussions concerning the Missouri River subgroup, subdivisions, cottonwood regeneration, and river ferry crossing funding projects. These updates will conclude by 3:30 pm. The council will then address administrative details and adjourn by 5 p.m.

**DATES:** October 17 and 18, 2000.

**LOCATION:** Holiday Inn, Great Falls, Montana.

**FOR FURTHER INFORMATION CONTACT:** David L. Mari, Lewistown Field Manager, Lewistown Field Office, Bureau of land Management, Box 1160, Airport Road, Lewistown, MT.

**SUPPLEMENTARY INFORMATION:** The meeting is open to the public and there will be a public comment period as described above 59457.

Dated: September 21, 2000.

**B. Gene Miller,**

*Associate Field Office Manager.*

[FR Doc. 00–25108 Filed 9–29–00; 8:45 am]

BILLING CODE 4310–84–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[CO–100–1430–AF]**

### Temporary Travel Restrictions

**AGENCY:** Bureau of Land Management, Department of the Interior.

**ACTION:** Establishment of Temporary Travel Restrictions on Public Lands in Townships 7 and 8 North, Range 87 West, Routt County, Colorado.

**SUMMARY:** This order closes certain public lands managed by the Little Snake Field Office in Routt County, Colorado, to motorized vehicle use on a year round basis, and is effective immediately. This order modifies the existing use "open" to "designated roads and trails only" on approximately 722.42 acres. The restrictions will now include a limitation that prohibits the use of any motorized wheeled or tracked vehicles off designated roads and trails. This order is issued under the authority of 43 CFR 8341.2 and 43 CFR 8364.1(a) as a temporary measure while the off highway vehicle (OHV) portion of the Little Snake Resource Management Plan is reviewed and modified as needed to address public issues, concerns, and needs as well as resource uses, development, impacts, and protection.

**EFFECTIVE DATE:** October 2, 2000.

**FOR FURTHER INFORMATION CONTACT:** John E. Husband, Field Manager, Little Snake Field Office, 455 Emerson Street, Craig, Colorado 81625–1129, Telephone (970) 826–5000.

**SUPPLEMENTARY INFORMATION:** This order affects public lands in Routt County, Colorado thus described:

Public Lands within:
T. 7N., R. 87W., section 3, lots 3 and 4,
T. 7N., R. 87W., section 4, lots 1 and 2,
T. 8N., R. 87W., section 28, E½ SE¼,
T. 8N., R. 87W., section 33, SE¼ and,
T. 8N., R. 87W., section 34, N½.

This restriction shall be effective October 2, 2000, and shall remain in effect until rescinded or modified by the Authorized Officer.

Previously this area was designated "open" to OHV use on public lands in the Little Snake Resource Management Plan, 1989. These Public Lands are being closed on a year-round basis,



effective immediately, except on designated roads and trails, to protect vegetation, soils, watershed, wildlife values, and to minimize conflicts among various uses of the Public Lands. This order is issued under the authority of 43 CFR 8341.2 and 43 CFR 8364.1(a) as a temporary measure while the off highway vehicle (OHV) portion of the Little Snake Resource Management Plan is reviewed and modified. Designated roads and trails affected by this order will be posted with appropriate regulatory signs. Maps will be available at the Little Snake Field Office, 455 Emerson Street, Craig, CO 81625–1129.

Exemptions from this order include:

1. Any Federal , State, or local officers or agencies engaged in fire suppression, emergency, or official law enforcement activities.

2. Bureau of Land Management employees engaged in official duties.

3. Persons or agencies holding a special use permit or right-of-way which specifically allows for access to the area for maintenance and operation of said authorized facilities, provided such motorized use is limited to the routes specifically identified in the special use permit or right-of-way.

4. Designated county roads, or rights-of-way associated with designated county roads.

5. Grazing permittee(s) during the permitted grazing season on existing roads and trails, where such use is necessary to the conduct of grazing operations, with the exception described below. Grazing permittee in emergency situations, such as sick or injured animals, to recover the animal(s) throughout the public lands described in this designation, with as little disturbance to the area as possible. The grazing permittee must notify the Authorized Officer by telephone and in writing within 5 days of such actions describing the location and reason for such action. *Exception to Use by Permittee:* No use of motorized vehicles, except on public and designated roads, will be allowed for patrolling of the area as related to hunting use before, during, or after hunting seasons, or for conduct of hunting or outfitting by the permittee, whether such use is in conjunction with livestock grazing operations or not.

*Penalties:* Violations of this designation order are punishable by fines not to exceed $1,000 and/or imprisonment not to exceed 12 months.

Dated: September 15, 2000.

**John E. Husband,**

*Field Manager.*

[FR Doc. 00–24251 Filed 9–29–00; 8:45 am]

BILLING CODE 4310–JB–P

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Missouri National Recreational River; Availability of Final Boundary Map

**AGENCY:** National Park Service

**SUMMARY:** In accordance with section 3(b) of the Wild and Scenic Rivers Act (62 Stat. 906 as amended; 16 U.S.C. 1274), notice is hereby given that the official, detailed boundary maps, drawing number 651–80000, dated March 6, 2000, for the Missouri National Recreational River are completed and available.

**FOR FURTHER INFORMATION CONTACT:** Superintendent Missouri National Recreational River, P.O. Box 591, O'Neill, Nebraska 68763–0591, telephone 402–336–3970.

**SUPPLEMENTARY INFORMATION:** On November 10, 1978, the 59-mile segment of the Missouri River from Gavins Point Dam, South Dakota to Ponca State Park, Nebraska, was designated a recreational river by Public Law 95–625, an amendment to the Wild and Scenic Rivers Act. In accordance with section 3 (c) of the Wild and Scenic Rivers Act, notice is hereby given that the above said maps are now available for inspection at the following locations: The Department of the Interior, National Park Service, Land Resources Division, 1849 C Street NW, Room 2444, Washington, D.C.; National Park Service, Midwest Regional Office, Office of Planning, 1709 Jackson St., Omaha, Nebraska; Missouri National Recreational River Headquarters, 114 N. 6th St., O'Neill, Nebraska; Cedar County Courthouse, County Clerk's Office, 101 S. Broadway Hartington, Nebraska; Clay County Courthouse, County Clerk's Office, 211 W. Main St., Vermillion, South Dakota; Dixon County Courthouse, County Clerk's Office, 302 3rd St., Ponca, Nebraska; Union County Courthouse, County Clerk's Office, 209 E. Main, Elk Point, South Dakota; Yankton County Courthouse, County Clerk's Office, 321 W. 3rd St., Yankton, South Dakota. Copies of the maps are also available in public libraries in Hartington and Ponca, Nebraska, and Yankton, Vermillion, and Elk Point, South Dakota. Please address any questions or requests to the Superintendent at the address given above.

Dated: September 22, 2000.

**Catherine A. Damon,**

*Acting Regional Director.*

[FR Doc. 00–25252 Filed 9–29–00; 8:45 am]

BILLING CODE 4310–70–P

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Notice of Extension of Public Comment Period for the Draft General Management Plan/Visitor Use and Facilities Plan and the Draft Environmental Impact Statement for Voyageurs National Park, Minnesota

**SUMMARY:** Pursuant to section 102(2) of the National Environmental Policy Act of 1969, the National Park Service has prepared a Draft General Management Plan/Visitor Use and Facilities Plan and a Draft Environmental Impact Statement (DGMP/DEIS) for Voyageurs National Park. Because of strong public interest in the project, the comment period for this document has been extended an additional 30-days.

**DATES:** The comment period will now end on October 23, 2000. All written comments should be postmarked by this date.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Przybylski, Voyageurs National Park, 3131 Highway 53, International Falls, MN 56649, telephone: 218–283–9821. E-mail: Kathleen_Przybylski@nps.gov.

**SUPPLEMENTARY INFORMATION:** You may mail comments on the DMGP/DEIS to: General Management Plan, Voyageurs National Park, 3131 Highway 53, International Falls, MN 56649. You also may comment via e-mail to Kathleen_Przybylski@nps.gov.

The purpose of the General Management Plan/Visitor Use and Facilities Plan is to set forth the basic management philosophy for the Park and to provide the strategies for addressing issues and achieving identified management objectives. The DGMP/DEIS describes and analyzes the environmental impacts of a proposed action and two action alternatives for the future management direction of the Park. A no action alternative is also evaluated.

The initial Environmental Protection Agency (EPA) notice of availability for this document appeared in the **Federal Register** on June 23, 2000 (65 FR 39146). An amended EPA notice reflecting the first 30-day extension for public comment was published in the **Federal Register** on August 11, 2000 (65 FR 49237).

September 22, 2000.

**Catherine A. Damon,**

*Acting Regional Director, Midwest Region.*

[FR Doc. 00–25255 Filed 9–29–00; 8:45 am]

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**DEPARTMENT OF THE INTERIOR**

**National Park Service**

**Record of Decision; Final General Management Plan/Environmental Impact Statement; Whitman Mission National Historic Site, Washington**

**ACTION:** Notice of approval of record of decision.

**SUMMARY:** Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, and the regulations promulgated by the Council on Environmental Quality (40 CFR 1505.2), the Department of the Interior, National Park Service, has prepared a Record of Decision on the Final General Management Plan/Environmental Impact Statement for Whitman Mission National Historic Site in Washington.

**DATES:** The Record of Decision was recommended by the Superintendent of Whitman Mission National Historic Site, concurred by the Deputy Regional Director, Pacific West Region, and approved by the Acting Regional Director, Pacific West Region, on August 25, 2000.

**ADDRESSES:** Inquiries regarding the Record of Decision or the Environmental Impact Statement should be submitted to the Superintendent, Whitman Mission National Historic Site, Route 2, Box 247, Walla Walla, WA 99362; telephone: (509) 522–6360.

**SUPPLEMENTARY INFORMATION:** The text of the Record of Decision follows: The Department of the Interior, National Park Service (NPS), has prepared this Record of Decision (ROD) on the final Environmental Impact Statement (EIS) for the General Management Plan (GMP) for Whitman Mission National Historic Site, Washington. This ROD is a statement of the decision made, other alternatives considered, public involvement in the decision making process, the basis for the decision, the environmentally preferable alternative, and measures to minimize environmental harm.

**Decision (Selected Action)**

Whitman Mission National Historic Site (NHS) will implement Alternative C, identified as the action that best satisfies the Site and NPS missions, as well as the Site's long-term management objectives. Some actions remain consistent with those presented in the draft EIS. Others were modified in the final EIS to respond to public comments and concerns. The selected action recognizes both the need to protect natural and cultural resources and to provide appropriate opportunities for visitors and area residents.

Specific actions to be implemented under the selected action are summarized below:

The foundations of the original structures on the Mission Grounds will be delineated three-dimensionally to enhance visitor experience and education. Also on the Mission Grounds, the existing lawn will be removed and substituted with native grasses. The overall setting for the visitor experience of Memorial Hill and the Great Grave will be preserved as memorial and contemplative. Reconstructed wagon ruts and the placement of the pioneer wagon on the Oregon Trail will be maintained. In addition, NPS will take measures to formally sign the trail within the NHS with the official Oregon National Historic Trail logo, and will encourage congressional action to designate the Whitman Mission Route as an officially recognized branch of the Oregon Trail.

Native vegetation will be planted and sustained along Doan Creek, the oxbow of the Walla Walla River, and irrigation ditch. An integrated pest management plan will be prepared and implemented to address the plant, animal and insect pests within the NHS. The asphalt riprap lining along the bank at Mill Creek within the NHS will be removed and the bank will be revegetated.

The overall interpretation of the Mission Grounds will be enhanced, including the connection between the Mission Grounds and the former location of the Walla Walla River (river oxbow area). Existing audio sound box exhibits located on the Mission Grounds, Memorial Hill, and the Great Grave will be removed to address problems of noise distractions to visitors and will be replaced with other interpretive media. A new interpretive audio-visual program will be developed for use in the auditorium to replace both the 1976 movie and the 1978 slide program. Public access will be provided to the research library and archives for research work, projects, and inquiry about the Whitmans, mission life, the Cayuse people, and other topics related to Whitman Mission.

A new unpaved nature loop trail will be developed south of the Mission Grounds. This unpaved pedestrian trail will provide opportunities for self-guided nature walks with corresponding interpretive wayside exhibits and educational materials about the flora and fauna of this riparian area and the natural forces of the changing Walla Walla River.

A range of general improvements will be made to the visitor center building. The visitor center and museum will be named and signed "Waiilatpu Visitor Center" to reflect its Cayuse name. Various remodeling projects will provide needed space for the public. Additional restroom space will be constructed adjacent to the existing public restroom. Additional exhibit and administrative space will be constructed. The selected action also includes a development concept plan that includes reconfiguring the main parking lot, adding a group shelter to the picnic area, adding several improvements to the visitor center entry, and construction of additional administrative space on the existing administrative wing. Reconfiguring the pedestrian access to the Oregon Trail and the Mission Grounds is also included.

Acquisition of conservation easements on properties adjacent to the national historic site will be encouraged on a voluntary basis by a non-profit land trust or other entity.

**Other Alternatives Considered**

Alternative A—The no-action alternative represents the continuation of existing conditions, including addressing any effects of activities impacting cultural resources through the Section 106 compliance process, in accordance with federal law. The overall scene of the NHS for the visitor would continue to be preserved as contemplative and reflective, in part due to the "park-like" treatment of the Mission Grounds. The NHS would be managed to promote the historic scene and to continue to allow natural processes to occur on land and river environs as long as they do not adversely affect the cultural resources and existing public facilities. No change to current administrative facilities would be forthcoming.

Alternative B—This alternative represents a minimum level of improvements regarding visitor facilities and interpretation in order to make the visitor experience more rewarding and informative. Included in Alternative B would be the establishment of native grasses within the Mission Grounds to be more historically accurate and to help delineate the outline of the original building foundations, removing audio sound boxes and enhancing overall interpretation, moving two building walls within the visitor center to maximize exhibit space, enlarging restrooms, reconfiguring existing administrative space, improving access to Memorial Hill for the mobility impaired, expanding multi-lingual opportunities, reconfiguring parking space, and encouraging protection of the surrounding historic scene by Walla Walla County.

Alternative D—This alternative has many of the same general actions as Alternative C. In addition, at the Mission Grounds dirt paths would be established, the historic fence alignment would be re-established, and the orchard would be enlarged to be closer to its historic size. Archeological research would be conducted to try to determine the exact location of the Whitman sawmill site. Cattle would again be grazed in the pasture and oxbow area to approximate the historic scene. A replicated Cayuse village would be located on the Walla Walla River floodplain.

Adjacent to the maintenance area, a new administrative building would be constructed and administrative functions moved out of the visitor center creating additional space for interpretive functions, association sales area and exhibit space. Finally, to protect the foreground viewshed and enable the NPS to acquire and hold conservation easements, a boundary adjustment of approximately 450 acres would be recommended for congressional authorization.

Actions common to all alternatives include keeping the required occupancy in the existing park residence, providing a photographic panoramic of the view from Memorial Hill for mobility-impaired visitors, coordinating with the staff of other Oregon Trail sites, completing a baseline inventory for the NHS, developing a Whitman Mission NHS Friends group, re-establishing Doan Creek, and planting native plants at the NHS when non-historic ornamental trees and shrubs die.

**Basis for Decision**

After careful consideration of public comments throughout the planning process, including comments on the draft EIS, the selected action best accomplishes the legislated purpose of the Monument and balances the statutory mission of the NPS to provide long-term protection of the Monument's resources and significance, while allowing for appropriate levels of visitor use and appropriate means of visitor enjoyment. The selected action also best accomplishes identified management goals and desired future conditions, with the fewest environmental impacts.

**Environmentally Preferable Alternative**

The alternative which causes the least damage to the cultural and natural environment, and that best protects, preserves, and enhances resources is Alternative C.

**Measures To Minimize Environmental Harm**

All practicable measures to avoid or minimize environmental impacts that could result from implementation of the selected action have been identified and incorporated into the selected action. Implementation of the selected action would avoid any adverse impacts on wetlands and any endangered or threatened species, or that would result in the destruction or adverse modification of critical habitat of such species.

**Public Involvement**

Public comment has been requested, considered, and incorporated throughout the planning process in numerous ways. A Notice of Intent to prepare an EIS was published in the **Federal Register** on September 20, 1996 (vol. 61, no. 184, page 49481). In early August 1996, NPS produced a one-page newsletter that was made available to visitors at the NHS. The purpose of the letter was to inform visitors about the upcoming planning process and to provide an opportunity for the visitors to get on the NHS's mailing list. In October a comprehensive four-page newsletter was produced and distributed to 510 individuals on the NHS's mailing list. Additional copies were distributed throughout Walla Walla at public buildings including colleges, universities, clubs, libraries, and civic buildings. The purpose of that newsletter was to explain the planning process and encourage public participation in the process.

In addition, advertisements were published on October 20 and October 22 in both the daily Walla Walla Union Bulletin newspaper and the weekly Buyline newspaper, informing readers about the planning process including the dates, times, and location of the public meetings.

Two public scoping meetings were held in October 1996 in Walla Walla, WA, to assist in identifying issues to be addressed in the GMP/EIS. A total of 9 people attended the two meetings. In December 1996, a third meeting was held in Mission, OR. This meeting was with members of the Cultural Resources Committee of the Confederated Tribes of the Umatilla Indian Reservation (CTUIR). Another meeting with the CTUIR was held in April 1998, in Mission, OR, for the purpose of briefing the committee on a preliminary range of alternatives. The NPS received 6 written comments during the scoping period.

More than 250 copies of the draft GMP/EIS were mailed to government agencies, organizations and interested individuals in August 1999. In addition, the document was posted on the Internet and mailed to local libraries in the Walla Walla area. The EPA Notice of Availability was published in the **Federal Register** on September 3, 1999 (vol. 64, no. 171, pg. 48394). A Notice of Availability was also published by NPS on September 3 (vol. 64, no. 171, pg. 48419). In addition, advertisements in the Buyline and Union Bulletin in Walla Walla, and in the Confederated Umatilla Journal in Mission, OR, announced the release of the draft GMP/EIS stating times, location, and dates of the September 1999 public workshops. A total of 3,000 newsletters were printed that included a summary of the draft plan and information on the scheduled public workshops. Each newsletter included a postage-paid response form for people to use in submitting comments concerning the plan. Newsletters were also made available at the NHS visitor center and the Chamber of Commerce in Walla Walla.

Two public workshops were held in Walla Walla, WA, on September 29, and in Mission, OR, on September 30, 1999. In addition, a meeting with adjacent landowners was held on September 28, in Walla Walla. The purpose of the workshops was to offer the public an opportunity to meet with the NPS planning staff and discuss the draft GMP/EIS. More than 70 people attended the workshops.

The final GMP/EIS was released to the public on May 30, 2000. The EPA Notice of Availability of the final GMP/EIS was published in the **Federal Register** on June 16, 2000 (vol. 65, no. 117, pg. 37780); the NPS also published a Notice of Availability in the **Federal Register** on June 20, 2000 (vol. 65, no. 119, pg. 38300) and placed the document on the park website.

Consultation with the U.S. Fish and Wildlife Service, National Marine Fisheries Service, Washington State Historic Preservation Office, and the Advisory Council for Historic Preservation was conducted as part of the planning process.

The public comment period closed on November 12, 1999, but any comments received at the park by November 26 were included. A total of 28 pieces of written correspondence were received from government agencies, businesses, special interest groups and individuals. Of these, 16 were letters from individuals and agencies, 7 e-mail responses through the Internet, and 5 response forms from the newsletter. The final GMP/EIS included a summary of the comments received at the public workshops and a summary of the

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comments received from written responses. All 28 pieces of written correspondence were included in the final document.

Dated: September 21, 2000.

**Rory D. Westberg,**

*Superintendent, Columbia Cascades Support Office, Pacific West Region.*

[FR Doc. 00–25253 Filed 9–29–00; 8:45 am]

BILLING CODE 4310–70–P

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Kaloko-Honokohau National Historical Park Advisory Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Na Hoapili o Kaloko Honokohau, Kaloko-Honokohau National Historical Park Advisory Commission will be held at 9 a.m., October 27, 2000 at the King Kamehameha's Kona Beach Hotel, Kulana Huli Honua Room, Kailua-Kona, Hawaii.

The agenda will include the following: FY2000 budget status, replacement of Commission vacancies, scheduling of future meetings, progress of GMP, status of MOA, long range goals of Na Hoapili Advisory Commission, status of halau at Kaloko pond, kuapa repairs and funding, cultural festival for 2000, and the plans for the Cultural Learning Center.

This meeting is open to the public. It will be recorded for documentation and transcribed for dissemination. Minutes of the meeting will be available to the public after approval of the full Advisory Commission. A transcript will be available after November 27, 2000. For copies of the minutes, contact Kaloko-Honokohau National Historical Park at (808) 329–6881.

Dated: September 20, 2000.

**Geraldine K. Bell,**

*Superintendent, Kaloko-Honokohau National Historical Park.*

[FR Doc. 00–25251 Filed 9–29–00; 8:45 am]

BILLING CODE 4310–70–M

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Notice of Intent To Repatriate Cultural Items in the Possession of the Haffenreffer Museum of Anthropology, Brown University, Bristol, RI

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10 (a)(3), of the intent to repatriate cultural items in the possession of the Haffenreffer Museum of Anthropology, Brown University, Bristol, RI that meet the definition of "unassociated funerary object" under Section 2 of the Act.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these cultural items. The National Park Service is not responsible for the determinations within this notice.

The 180 cultural items consist of beads, lithic arrowheads, bottles, spoons, other metal objects and fragments, mat and blanket fragments, a pipe, and pipe fragments.

Around 1918, Rudolf Haffenreffer began collecting Burr's Hill human remains and objects by purchase from local collectors and by exchange with the Museum of the American Indian (Heye Foundation).

Burr's Hill is believed to be located on the southern border of Sowams, a Wampanoag village. Sowams is identified in historic documents of the 17th and 18th centuries as a Wampanoag village, and was ceded to the English in 1653 by Massasoit and his eldest son Wamsutta (Alexander). Based the presence of European trade goods and types of cultural items, these cultural items have been dated to between A.D. 1600–1710. Based on accession records and condition of the cultural items, these cultural items have been determined to be grave goods.

Based on the above-mentioned information, officials of the Haffenreffer Museum of Anthropology have determined that, pursuant to 43 CFR 10.2 (d)(2)(ii), these 180 cultural items are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual. Officials of the Haffenreffer Museum of Anthropology also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these items and the Wampanoag Repatriation Confederation, representing the Wampanoag Tribe of Gay Head (Aquinnah), the Mashpee Wampanoag (a non-Federally recognized Indian group), and the Assonet Band of the Wampanoag Nation (a non-Federally recognized Indian group). This notice has been sent to officials of the Wampanoag Repatriation Confederation, representing the Wampanoag Tribe of Gay Head, the Mashpee Wampanoag (a non-Federally recognized Indian group), and the Assonet Band of the Wampanoag Nation (a non-Federally recognized Indian group). The Narragansett Indian Tribe of Rhode Island, and the Council of Seven/Royal House of Pokanoket/Pokanoket Tribe/Wampanoag Nation (a non-Federally recognized Indian group). Representatives of any other Indian tribe that believes itself to be culturally affiliated with these unassociated funerary objects should contact Thierry Gentis, NAGPRA Coordinator, Haffenreffer Museum of Anthropology, Mount Hope Grant, Bristol, RI 02805, telephone (401) 253–8388, facsimile (401) 253–1198, before November 1, 2000. Repatriation of these unassociated funerary objects to the Wampanoag Repatriation Confederation, representing the Wampanoag Tribe of Gay Head, the Mashpee Wampanoag (a non-Federally recognized Indian group), and the Assonet Band of the Wampanoag Nation (a non-Federally recognized Indian group) may begin after that date if no additional claimants come forward.

Dated: September 21, 2000.

**John Robbins,**

*Assistant Director, Cultural Resources Stewardship and Partnerships.*

[FR Doc. 00–25128 Filed 9–29–00; 8:45 am]

BILLING CODE 4310–70–F

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Notice of Intent To Repatriate Cultural Items in the Possession of the Rhode Island Historical Society, Providence, RI

**AGENCY:** National Park Service.

**ACTION:** Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10 (a)(3), of the intent to repatriate cultural items in the possession of the Rhode Island Historical Society, Providence, RI that meet the definition of "unassociated funerary object" under Section 2 of the Act.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency



that has control of these cultural items. The National Park Service is not responsible for the determinations within this notice.

The four cultural items are two latten spoons and two small copper bells.

In 1800, these four cultural items were recovered from burials during excavations conducted by person(s) unknown at the Burr's Hill site, Warren, RI. In 1835, these cultural items were purchased by the Rhode Island Historical Society from "Chesebrough." Museum documentation identifies these spoons as having come from an Indian interment. No further documentation is present.

Burr's Hill is believed to be located on the southern border of Sowams, a Wampanoag village. Sowams is identified in historical documents of the 16th and 17th centuries as a Wampanoag village, and was ceded to the English in 1653 by Massasoit and his eldest son Wamsutta (Alexander). Sporadic finds and excavations have been made at this site since the middle of the 19th century through the early 20th century. Based the presence of European trade goods and types of cultural items, these cultural items have been dated to between A.D. 1600–1710. Based on accession records and condition of the cultural items, these cultural items have been determined to be grave goods.

Based on the above-mentioned information, officials of the Rhode Island Historical Society have determined that, pursuant to 43 CFR 10.2 (d)(2)(ii), these four cultural items are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of an Native American individual. Officials of the Rhode Island Historical Society also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these items and the Wampanoag Repatriation Confederation, representing the Wampanoag Tribe of Gay Head (Aquinnah), the Mashpee Wampanoag (a non-Federally recognized Indian group), and the Assonet Band of the Wampanoag Nation (a non-Federally recognized Indian group). This notice has been sent to officials of the Wampanoag Repatriation Confederation, the Wampanoag Tribe of Gay Head (Aquinnah), the Mashpee Wampanoag (a non-Federally recognized Indian group), the Assonet Band of the Wampanoag Nation (a non-Federally recognized Indian group), the Narragansett Indian Tribe of Rhode Island, and the Council of Seven/Royal House of Pokanoket/Pokanoket Tribe/Wampanoag Nation (a non-Federally recognized Indian group). Representatives of any other Indian tribe that believes itself to be culturally affiliated with these unassociated funerary objects should contact Linda Eppich, Chief Curator, The Rhode Island Historical Society, 110 Benevolent Street, Providence, RI 02906, telephone (401) 331–8575, before November 1, 2000. Repatriation of these unassociated funerary objects to the Wampanoag Repatriation Confederation, representing the Wampanoag Tribe of Gay Head (Aquinnah), the Mashpee Wampanoag (a non-Federally recognized Indian group), and the Assonet Band of the Wampanoag Nation (a non-Federally recognized Indian group) may begin after that date if no additional claimants come forward.

Dated: September 21, 2000.

**John Robbins,**

*Assistant Director, Cultural Resources Stewardship and Partnerships.*

[FR Doc. 00–25129 Filed 9–29–00; 8:45 am]

BILLING CODE 4310–70–F

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects from Iowa in the Possession of the State Historical Society of Iowa, Des Moines, IA

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.2 (d)(1), of the completion of an inventory of human remains and associated funerary objects in the possession of the State Historical Society of Iowa, Keyes Collection, Des Moines, IA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by the Office of the State Archaeologist of Iowa professional staff in consultation with representatives of the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.

In 1934 and 1939, human remains representing 10 Mill Creek individuals were excavated from site 13PM1, Broken Kettle, Plymouth County, northwestern Iowa, by Ellison Orr, under the direction of Charles R. Keyes. No known individuals were identified. The 89 associated funerary objects include clamshells, pottery fragments, a chert flake, and a fire-cracked rock.

In 1939, human remains representing nine individuals were excavated from the Kimball site, 13PM4, Plymouth County, northwestern Iowa, by Ellison Orr, under the direction of Charles R. Keyes. No known individuals were identified. No associated funerary objects are present.

In 1934, human remains representing six individuals were excavated from site 13PM127, Ossuary 2, Plymouth County, northwestern Iowa, by Ellison Orr, under the direction of Charles R. Keyes. No known individuals were identified. No associated funerary objects are present.

The human remains and associated funerary objects included in this notice were recovered from excavations undertaken by Charles R. Keyes and Ellison Orr in northwestern Iowa between 1934 and 1939. They now form part of the Charles R. Keyes Archaeological Collection. Based on archeological and biological evidence, and similarities in material culture, these sites and remains have been identified as belonging, or probably belonging, to the Mill Creek cultural group that occupied this area in the 12th and 13th centuries. The Mandan and Hidatsa peoples are believed to be possibly culturally affiliated with the Mill Creek based on tenuous continuities of material culture and historical documents.

Based on the above-mentioned information, officials of the State Historical Society of Iowa have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of 25 individuals of Native American ancestry. Officials of the State Historical Society of Iowa also have determined that, pursuant to 43 CFR 10.2 (d)(2), the 89 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the State Historical Society of Iowa have

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determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Mandan and Hidatsa tribes, members of the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.

This notice has been sent to officials of the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Jerome Thompson, State Historical Society of Iowa, New Historical Building, 600 East Locust, Des Moines, IA 50319–0290, telephone (515) 281–4221, before November 1, 2000. Repatriation of these human remains and associated funerary objects to the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota may begin after that date if no additional claimants come forward.

Dated: September 19, 2000.

**John Robbins,**

*Assistant Director, Cultural Resources Stewardship and Partnerships.*

[FR Doc. 00–25254 Filed 9–29–00; 8:45 am]

BILLING CODE 4310–70–F

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the University of Nebraska-Lincoln, Lincoln, NE

**AGENCY:** National Park Service.

**ACTION:** Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the University of Nebraska-Lincoln, Lincoln, NE.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains and associated funerary objects was made by University of Nebraska-Lincoln professional staff in consultation with representatives of the Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; the Iowa Tribe of Oklahoma; the Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas; the Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; the Omaha Tribe of Nebraska; the Pawnee Nation of Oklahoma; the Ponca Tribe of Nebraska; the Ponca Tribe of Indians of Oklahoma; the Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; the Santee Sioux Tribe of the Santee Reservation of Nebraska; the Winnebago Tribe of Nebraska; the Yankton Sioux Tribe of South Dakota; and the North Dakota Intertribal Reinterment Committee representing the Standing Rock Sioux Tribe of North and South Dakota; the Spirit Lake Tribe, North Dakota; the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; and the Turtle Mountain Band of Chippewa Indians of North Dakota.

In 1955, human remains representing one individual were recovered from the Sheep Mountain site (25BN1), Banner County, NE during a University of Nebraska field school directed by E.M. Davis. No known individual was identified. No associated funerary objects are present.

Based on archeological evidence, this individual has been identified as Native American from the Archaic period.

In 1977, human remains representing one individual from site 25BO8, Boone County, NE was acquired under unknown circumstances from person(s) unknown. No known individual was identified. The one associated funerary object is a soil sample with red ochre.

Based on dental morphology and wear, the condition of the human remains, and the presence of red ochre, this individual has been identified as Native American from the Archaic period.

In 1973, human remains representing nine individuals were excavated from an ossuary (probably 25BO12) located north of Cedar Rapids, Boone County, NE by Steve Holen and John O'Shea. In 1976, these human remains were transferred to the University of Nebraska State Museum from the University of Nebraska Department of Anthropology. No known individuals were identified. No associated funerary objects are present.

The condition of these human remains resembles those from known Archaic, Woodland, or Central Plains Tradition sites, however, these human remains are too fragmentary to assign temporal or cultural affiliation.

In 1937, human remains representing one individual were recovered from a sand pit at the Hemmingford fossil quarries in Box Butte County, NE by a Works Progress Administration worker. No known individual was identified. No associated funerary objects are present.

Based on the recovery location and copper staining of the human remains, this individual has been determined to be Native American from the historic period.

During the 1970's, human remains representing one individual were recovered from site 25BF179, Buffalo County, NE by members of the University of Nebraska Department of Anthropology. No known individual was identified. The one associated funerary object present is an antler fragment.

In the 1960's, this individual was originally disturbed by county residents and re-interred in a metal can. The original burial was said to have been in a sitting position. An additional associated funerary object, a bannerstone believed to be mid-Archaic, was retained by πBus' Curd of Amherst, NE.

Based on the reported manner of interment, associated funerary objects, and highly mineralized condition of the human remains, this individual has been identified as Native American from the Archaic period.

In 1958, human remains representing seven individuals were excavated from site 25BF229, 2.5–3 miles southeast of Gibbon, Buffalo County, NE by T. Witty and P. Holder. No known individuals were identified. No associated funerary objects are present.

Based on the condition of the human remains, these individuals have been identified as Native American, dating to the Woodland period.

In 1913, human remains representing one individual were lent to the University of Nebraska State Museum by A.A. McReynolds of Nehawka, NE. These remains are presumed to have been recovered from the vicinity of Nehawka, Cass County, NE. These human remains now are considered part of the permanent collection. No known individual was identified. No associated funerary objects are present.

Based on dental morphology and the condition of the human remains, this individual has been identified as Native American dating to the Woodland or Central Plains Tradition period.

In 1965, human remains representing one individual were catalogued into the collections of the University of Nebraska State Museum. The associated



designation is 25CC0 "A15965," indicating derivation from Cass County, NE. No known individual was identified. No associated funerary objects are present.

No documentation exists for these human remains, but they are presumed to have been recovered from Cass County, NE. Based on dental morphology and the condition of the human remains, this individual has been identified as Native American dating to the Archaic to Woodland period.

At an unknown date, human remains representing two individuals were removed from the Sterns site (25CC28) in Cass County, NE by person(s) unknown. Remains of one of the individuals are highly mineralized and probably date from an earlier period than the other individual. No known individuals were identified. No associated funerary objects are present.

Between 1914–1968, the Sterns site (also known as the Walker-Gilmore site) was investigated numerous times. Based on material culture and the preservation of the human remains, these individuals have been identified as Native American from a multiple site with Late Woodland (Sterns Creek) and Nebraska Phase components.

At an unknown date, human remains representing three individuals were recovered from the Swallow Hill site (25CC47), Cass County, NE by R. Cuming. No known individuals were identified. The one associated funerary object is a split-rib awl.

Based on dental wear, the associated funerary object, and red ochre staining on the human remains, these individuals have been identified as Native American, dating to the Woodland period or earlier.

In 1951 and 1959, human remains representing eight individuals were recovered from the Ashland Burial Mound (Ossuary) site, Cass County, NE by R. Wood or Dr. Hathaway of the Anthropology Lab at the University of Nebraska-Lincoln. No known individuals were identified. A minimum of 124 associated funerary objects includes a minimum of 15 shell bead fragments, 1 fragmented shell pendant, a minimum of 8 pieces of unmodified shell, and a minimum of 100 wood fragments.

Based on the condition of the human remains, the manner of interment (bundle burials), and the east-west burial orientation, these individuals have been identified as Native American from the pre-contact period, probably Woodland.

In 1941, human remains representing five individuals were recovered from the Ferber site (25CD10), Cedar County, NE during Works Progress Administration excavations conducted by A.C. Spaulding under the direction of J. Champe. No known individuals were identified. No associated funerary objects are present.

Based on the condition of the human remains, these individuals have been identified as Native American dating to the Great Oasis/Late Woodland period.

In 1941, human remains representing two individuals were recovered from the Fort site, 25CD11, in Cedar County, NE during excavations conducted under the supervision of A. C. Spaulding and John Champe of the University of Nebraska. No known individuals were identified. A minimum of 152 associated funerary objects includes a minimum of 149 glass beads, 1 shell bead, and 1 cup and 1 mirror broken into a minimum of 12 fragments.

Based on the associated funerary objects and red staining on the human remains, these individuals have been identified as Native American from the historic period.

At an unknown date, human remains representing one individual were recovered from site 25CD12, Cedar County, NE by members of the Department of Anthropology at the University of Nebraska-Lincoln. No known individual was identified. No associated funerary objects are present.

Based on the condition of the human remains and material culture at site 25CD12, this individual has been identified as Native American dating to the Great Oasis/Late Woodland period.

In 1958, human remains representing seven individuals were excavated from the Burney site (25CD21), Cedar County, NE during a University of Nebraska field school under the direction of Franklin Fenenga. No known individuals were identified. The 27 associated funerary objects are beads made from bone and shell, and pieces of worked and unworked shell.

Based on ceramics, the Burney site has been identified as a multi-component site with both Woodland and Central Plains Tradition occupations. Based on archeological evidence, including ceramics and the condition of the human remains, these individuals have been identified as Native American dating to the Loeske Creek or Sterns Creek foci of the Woodland period and the Central Plains Tradition period.

In 1958, human remains representing one individual were recovered from the Elliot site (25CD22), Cedar County, NE by the University of Nebraska-Lincoln Field School. No known individual was identified. No associated funerary objects are present.

Based on the condition of the human remains, this individual has been identified as Native American, most likely dating to the Woodland period.

At an unknown date, human remains representing one individual from Chase County, NE were sent to the University of Nebraska State Museum by Sheriff Clifton Morrison of Imperial, NE. No known individual was identified. No associated funerary objects are present.

Based on dental wear and morphology, this individual has been identified as Native American.

In 1973, human remains representing one individual were donated to the University of Nebraska by James Lutter of Valentine, NE. These human remains are believed to have come from Cherry County, NE. No known individual was identified. No associated funerary objects are present.

Based on osteological features and the condition of the human remains, this individual has been identified as Native American.

In 1949, human remains representing one individual were excavated by Morris Skinner and his father from a "blowout" on a ranch belonging to Henry Voss in southern Cherry County, NE. No known individual was identified. The three associated funerary objects include one leather knife sheath with associated metal and leather fragments, a piece of glass, and a red paint stone.

Based on the associated funerary objects, this individual has been determined to be Native American from the historic period.

In 1962, human remains representing one individual were collected from a wet gravel pit near West Point, Cuming County, NE by the Central Gravel Company and donated to the University of Nebraska. No known individual was identified. No associated funerary objects are present.

At the time of acquisition, this individual was identified as Native American by museum staff. Based on osteololgical evidence and the wet gravel pit location of these human remains, this individual has been identified as Native American from an unknown period.

At an unknown date, human remains representing one individual were found in a box with material from the gravel pits in Cuming County, NE. No known individual was identified. No associated funerary objects are present.

Based on the condition of the human remains, this individual has been identified as Native American. The remains are highly mineralized,

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indicating either great antiquity or possibly the effects of burial in gravel. The remains are from an unknown period.

At an unknown date, human remains representing one individual were collected from the Wisner sand pit, Cuming County, NE by unknown person(s) and donated to the University of Nebraska. No known individual was identified. No associated funerary objects are present.

Based on osteological evidence and the sand pit settling location where these human remains were recovered, this individual has been identified as Native American from an unknown period.

During the 1940's, human remains representing two individuals were recovered from the Schmidt gravel pit, west of West Point, Cuming County, NE by unknown person(s) and donated to the University of Nebraska. No known individual was identified. No associated funerary objects are present.

Based on osteological evidence and the condition of the human remains, these individuals have been determined to be Native American from an unknown period.

At an unknown date, human remains representing four individuals were collected from a wet gravel pit (25CM2) near West Point, Cuming County, NE by unknown person(s) and donated to the University of Nebraska. No known individuals were identified. No associated funerary objects are present.

Based on osteological evidence, these individuals have been identified as Native American from an unknown period. One individual has been suggested to date to the Paleoindian or Early Archaic periods.

At an unknown date, human remains representing two individuals were dug out of a hilltop near Cornstock, Custer County, NE by unknown parties and donated to the University of Nebraska. No known individuals were identified. No associated funerary objects are present.

Based on osteological evidence, these individuals have been identified as Native American from an unknown period.

At an unknown date, human remains representing one individual were found behind a schoolhouse in Dakota County, NE by person(s) unknown. No known individual was identified. No associated funerary objects are present.

Based on geographic location and the condition of the human remains, this individual has been identified as Native American dating to the Archaic or Woodland period.

In 1926, human remains representing four individuals from the vicinity of Homer, Dakota County, NE were donated to the University of Nebraska State Museum by H. Green. No known individuals were identified. No associated funerary objects are present.

Based on the condition of the human remains and skeletal evidence, these individuals have been identified as Native Americans from the pre-contact period.

In 1939, human remains representing 35 individuals were recovered from the Ryan site (25DK2A), Dakota County, NE during Works Progress Administration excavations. No known individuals were identified. No associated funerary objects are present.

Based on material culture and the condition of the human remains, site 25DK2A has been identified as a Woodland burial mound. Based on material culture, skeletal morphology and the condition of the human remains, these individuals have been identified as Native American from the Woodland period.

In 1939, human remains representing one individual were excavated from a mound at the Ryan site (25DK2B), Dakota County, NE during a Works Project Administration project. No known individual was identified. No associated funerary objects are present.

The Ryan site consists of a series of three mounds with multi-component features. Based on the good condition of these human remains, this individual has been identified as Native American from the late pre-contact or historic periods.

In 1941, human remains representing one individual were collected by S. Bartos, Jr. following their disturbance by the Nebraska State Highway Department in Dakota County, NE from site 25DK16. No known individual was identified. No associated funerary objects are present.

Based on skeletal morphology, this individual has been identified as Native American from an unknown period.

At an unknown date, human remains representing one individual from site 25DK17 were acquired by the University of Nebraska State Museum under unknown circumstances. No known individual was identified. No associated funerary objects are present.

This individual has been identified as Native American from an unknown period.

In 1938 and 1959, human remains representing 35 individuals were recovered from the Brewer site (25DX3), Dixon County, NE. The 1938 excavations were by S. Bartos, Jr. and S. Wimberley during Works Progress Administration Project #4842 under the direction of Earl H. Bell; the 1959 excavations were conducted by Messrs. Champe and Kenagy. No known individuals were identified. No associated funerary objects are present.

Based on material culture and the condition of the human remains, these individuals have been identified as Native American dating to the Woodland period.

In 1938, human remains representing 105 individuals were excavated by S. Bartos, Jr. from the farm of A. E. Enders (25DX4), Dixon County, NE during Works Progress Administration Project #4148 conducted under the direction of Earl H. Bell. No known individuals were identified. The three associated funerary objects are bone beads.

Based on the associated funerary objects and reported manner of interments, these individuals have been identified as Native American dating to the Woodland period.

In 1950, human remains representing one individual were collected from a gravel pit (25DD101) in Dodge County, NE by members of the Division of Vertebrate Paleontology, University of Nebraska State Museum. No known individual was identified. No associated funerary objects are present.

Based on the circumstances of discovery of the human remains during paleontological excavations and the geologic location from which the human remains were recovered, this individual has been identified as Native American from an unknown period.

At an unknown date, human remains representing one individual were recovered from Scribner Air Base in Dodge County, NE. The remains were donated to the University of Nebraska State Museum by Robert E. Lucas. No known individual was identified. The one associated funerary object is a copper ring.

Based on the associated funerary object, this individual has been determined to be Native American from the historic period.

In 1895, human remains representing one individual from Omaha, Douglas County, NE were donated to the University of Nebraska State Museum by the City of Omaha, NE. No known individual was identified. No associated funerary objects are present.

These human remains were boxed together in the museum collection with remains collected from the "Loess Man" site 25DO26 excavated by R.F. Gilder in 1906. This individual is likely to be from an earlier collection by Mr. Gilder. This individual has been identified as Native American from an unknown period.



In 1906, human remains representing 15 individuals were excavated from Long's Hill, north of Florence, Douglas County, NE by R.F. Gilder, who described the site as a burial mound. No known individuals were identified. No associated funerary objects are present.

Based on archeological evidence and the condition of the human remains, these individuals have been identified as Native American from the Woodland period.

In 1908, human remains representing one individual were donated to the University of Nebraska State Museum by person(s) unknown following the discovery of these human remains under a porch at 1318 Colonial Avenue, Omaha, Douglas County, NE. No known individual was identified. No associated funerary objects are present.

Given the circumstances of discovery in 1908 and the condition of the remains, this individual has been identified as Native American from the historic period.

In 1917, human remains representing four individuals were removed from site 25DO8, known as the "Indian burial ground" at Cabannes Trading Post in Douglas County, NE during excavations by R.F. Gilder. No known individuals were identified. The one associated funerary object is a tin cup.

Based on the associated funerary object, copper staining, and the preservation of the human remains, these individuals have been identified as Native American from the historic period.

In 1905, human remains representing eight individuals were excavated at the Fort Lisa site (25DO9001), Douglas County, NE by R.F. Gilder. No known individuals were identified. No associated funerary objects are present.

Based on the skeletal morphology and the condition of the human remains, these individuals have been identified as Native American possibly from the Woodland or Central Plains Tradition periods.

In 1930, human remains representing one individual were recovered southeast of Ohiowa, Fillmore County, NE by Harry Theobald and Miles Hurley who donated these human remains to the University of Nebraska State Museum. The remains were transferred to the University of Nebraska State Museum by J.C. Steele and Dr. Hartford of Ohiowa. No known individual was identified. No associated funerary objects are present.

Based on the condition of the human remains, the individual has been identified as Native American possibly from the Woodland period.

At an unknown date, human remains representing one individual were recovered from the Dill site (25FR10), near Oak Grove, Franklin County, NE by person(s) unknown. No known individual was identified. No associated funerary objects are present.

Based on the condition of the human remains and reported presence of Woodland ceramics at the Dill site, this individual has been identified as Native American dating to the Woodland period.

At an unknown date, human remains representing one individual were recovered from Frontier County, NE from "25FT Burial 1" by person(s) unknown under unknown circumstances. No known individual was identified. No associated funerary objects are present.

Based on the condition of the human remains, this individual has been identified as Native American from the historic period.

In 1942, human remains representing one individual were recovered from the Dunn Ossuary (25FT2) in Frontier County, NE by A.T. Hill in an excavation for the Nebraska State Historical Society. No known individual was identified. The seven associated funerary objects are three shell beads and four shell fragments.

Based on material culture, the Nebraska State Historical Society attributes this site to the Woodland period. This individual has been identified as Native American from the Woodland period.

In 1955, human remains representing 16 individuals were recovered from the Flodine site (25FN11), Furnas County, NE during excavations conducted under the supervision of E. Mott Davis and F. Fenenga of the University of Nebraska Department of Anthropology. No known individuals were identified. A minimum of 1,942 associated funerary objects includes a minimum of 169 disc-shaped beads, 4 worked fragments from freshwater clam shells, a minimum of 1,768 beads made from cut sections of mammal bones and rodent incisors, and a triangular shell pendant broken into 3 fragments.

Based on associated funerary objects and the condition of the human remains, these individuals have been identified as Native American dating to the Woodland period.

Prior to 1960, human remains representing five individuals were turned over to the University of Nebraska from the County Attorney's Office in Grand Island, Hall County, NE. No known individuals were identified. No associated funerary objects are present.

The individuals have been identified as Native American from an unknown period.

At an unknown date, human remains representing one individual were recovered under unknown circumstances by person(s) unknown from Harlan County, NE. No known individual was identified. No associated funerary objects are present.

Based on the condition of the human remains, the individual has been identified as Native American from the pre-contact period.

In 1930, human remains representing two individuals were recovered from Marshall Ossuary (25HN1) west of the Graham Site (25HN5) in Harlan County, NE by W. Wedel in an excavation under the direction of W. D. Strong for the Nebraska State Archaeological Survey. No known individuals were identified. The 41 associated funerary objects include 39 freshwater shell beads, shell fragments, 1 piece of burnt antler, and 1 stone tool.

Based on material culture and the condition of the human remains, these individuals have been identified as Native American from the Woodland period.

In 1950, human remains representing three individuals were recovered from the Sappa Creek Site (25HN17) in Harlan County, NE by J. and D. Gunnerson and J. Champe. No known individuals were identified. No associated funerary objects are present.

Based on the derivation of the human remains from a known Native American archeological site and the condition of the human remains, these individuals have been identified as Native American from an unknown period.

At an unknown date, human remains representing one individual were recovered from the north shore of Harlan County Reservoir (25HN46) near Republican City, Harlan County, NE by Sandy Frazier. No known individual was identified. No associated funerary objects are present.

Based on the condition of the human remains, this individual has been determined to be Native American from an unknown period. In 1978, archeological investigations described site 25HN46 as a pit burial, including evidence of bark lining, charcoal, and yellow ochre fragments, that is not present in University of Nebraska-Lincoln collections. No known individual was identified. No associated funerary objects are present.

Based on the condition of the human remains and on the manner of interment (pit burial), this individual has been determined to be Native American from an unknown period.

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In 1936, human remains representing one individual were pumped out of a gravel pit at McCook, Hitchcock County, NE and donated to the University of Nebraska State Museum by W.B. Hall, Stratton, NE. No known individual was identified. No associated funerary objects are present.

Based on osteological evidence and on circumstances of the recovery, this individual has been identified as Native American from an unknown period.

In 1950, human remains representing five individuals were collected from the Massacre Canyon site (25HK13), Hitchcock County, NE by M. Kivett. No known individuals were identified. No associated funerary objects are present.

Based on Nebraska State Historical Society records and the condition of the human remains, these individuals have been identified as Native American dating to the Middle Woodland period.

In 1938, human remains representing 22 individuals were excavated by P. Newell and S. Bartos from the Eagle Creek site (25HT1), Holt County, NE during Works Project Administration Project #4841. No known individuals were identified. The six associated funerary objects are chipped and ground stone tools.

Based on material culture at the Eagle Creek site and manner of interments, these individuals have been identified as Native American dating to the Woodland period.

At an unknown date, human remains representing one individual were recovered from the Mallory Dam site (25HT9), Holt County, NE by F. Hood. No known individual was identified. No associated funerary objects are present.

Based on a ceramic sherd at the site and the condition of the human remains, this individual has been identified as Native American dating to the Woodland period

In 1947, human remains representing two individuals were recovered near Mullen, Hooker County, NE and donated to the University of Nebraska State Museum by Ioa Campbell. No known individuals were identified. No associated funerary objects are present.

Based on the condition of the human remains, these individuals have been identified as Native American. One individual may be from the historic period; the other individual is from an unknown period.

In 1962, human remains representing one individual believed to be from either Omaha Beach at Lake McConaughy or the "Foundation" site (location unknown) were excavated by "McEvoy," a student in the University of Nebraska Department of Anthropology. No known individual was identified. No associated funerary objects are present.

Based on the circumstances of recovery, this individual has been identified as Native American from an unknown period.

In 1931, human remains representing one individual from a site southeast of Verdigre, Knox County, NE were donated to the University of Nebraska State Museum by Vac Randa following the disturbance of this burial during plowing by Frank Haylick. No known individual was identified. No associated funerary objects are present.

Based on skeletal morphology and dental wear patterns, this individual has been identified as a mixed-blood Native American/Caucasian from the historic period. According to the documentation for this individual, the remains were found enclosed in a box in a sitting position. It is not known whether the burial dates from the post-reservation period.

In 1937, human remains representing 31 individuals were excavated from the Davis site (35KX6), Knox County, NE during Works Project Administration Work Project #3140 conducted under the direction of P. Newell of the Nebraska Archaeological Survey. No known individuals were identified. The minimum of 54 associated funerary objects are shell beads, bead fragments, and worked shell fragments.

Based on reported material culture, manner of interments, and the condition of the human remains, these individuals have been identified as Native American dating to the Woodland period.

In 1937, human remains representing two individuals were excavated from the Larson Mounds site (25KX8), Knox County, NE during Works Project Administration Project #165–81–8095, Work Project #3140, conducted under the direction of P. Newell of the Nebraska Archaeological Survey. No known individuals were identified. No associated funerary objects are present.

Based on the condition of the human remains and heavy dental wear patterns, these individuals have been identified as Native American dating to the Woodland period.

In 1937, human remains representing 15 individuals were excavated from the Niobara School site (25KX12), Knox County, NE by E. Bell for the Nebraska State Archaeological Survey. No known individuals were identified. The 58 associated funerary objects include 44 bone beads, 13 shell beads, and 1 bone artifact.

Based on associated funerary objects and the condition of the human remains, these individuals have been determined to be Native American from the Woodland or Central Plains Tradition periods.

In 1910, human remains representing one individual were donated to the University of Nebraska State Museum by "Guthrie." No known individual was identified. No associated funerary objects are present.

Donor information states these human remains were recovered "2–1/2 hours north of Havelock." Havelock since has been incorporated by the City of Lincoln, NE. The recovery location was probably in northern Lancaster County or southern Saunders County, NE. Based on the condition of the remains, this individual has been identified as Native American from an unknown period.

In 1907, human remains representing two individuals were donated to the University of Nebraska State Museum by J.R.C. Miller of Lincoln, NE. No known individuals were identified. No associated funerary objects are present.

Donor information states these human remains were recovered "from near the B&M [railroad] cut through hill, and at the point of the divide, in Denton precinct in SE 1/4, Sec.T.9, R.5E" in Lancaster County, NE. Based on the condition of the human remains, these individuals have been identified as Native American from the pre-contact period.

In 1935, human remains representing two individuals were sent to the University of Nebraska State Museum by H.E. Weakly, agronomist at the University of Nebraska. Documentation for these remains suggests that they were recovered from a gravel pit near North Platte, Lincoln County, NE. No known individuals were identified. No associated funerary objects are present.

Based on good preservation, copper staining, and osteological evidence of horseback riding, these individuals have been determined to be Native American from the historic period.

In 1935, human remains representing six individuals were donated to the University of Nebraska State Museum by H.E. Weakly, agronomist, University of Nebraska. The remains are believed to have been found in a gravel pit, probably near North Platte, Lincoln County, NE. No known individuals were identified. No associated funerary objects are present.

Based on osteological evidence and circumstances of recovery, these individuals have been determined to be Native American from an unknown period.

At an unknown date, human remains representing one individual were recovered from the Brady site (25LN0), Lincoln County, NE by Robert Parsons of Brady, NE. No known individual was identified. No associated funerary objects are present.

Based on the geological strata of the burial and the condition of the human remains, this individual has been identified as Native American from the Paleo-Indian period.

At an unknown date, human remains representing one individual were recovered from the Norfolk Gravel Pit in Madison County, NE and donated to the University of Nebraska State Museum by Frank Medelman. No known individual was identified. No associated funerary objects are present.

Based on skeletal morphology, this individual has been identified as Native American from an unknown period.

In 1983, human remains representing one individual were recovered from the Medelman gravel pit (25MD101), Norfolk County, NE and donated to the University of Nebraska State Museum by S. Holen. No known individual was identified. No associated funerary objects are present.

Based on skeletal morphology, this individual has been identified as Native American from an unknown period.

At an unknown date, human remains representing two individuals were recovered during road grading from an undesignated site 100 feet from 25MO62, a surface site south of Alliance, Morrill County, NE by T.C. Middleswart. In 1994, these human remains were donated to the University of Nebraska-Lincoln by Mrs. Gwen Rusch, daughter of Mr. Middleswart. No known individuals were identified. The 20 associated funerary objects are 15 dentalia shells, 1 bone gaming piece, and 4 fragments of copper bracelets.

Based on dental morphology, associated funerary objects, and good preservation, these individuals have been identified as Native American from the historic period.

At an unknown date, human remains representing one individual were donated to the University of Nebraska State Museum by person(s) unknown. The tag with the remains has the designation "MO10" which may indicate derivation from Morrill County, NE. No known individuals were identified. No associated funerary objects are present.

Based on osteological evidence and skeletal morphology, this individual has been identified as Native American from an unknown period.

In 1926, human remains representing one individual were donated to the University of Nebraska State Museum by A.T. Lobdell of McCook, NE. No known individual was identified. No associated funerary objects are present.

These human remains are believed to have come from Red Willow County, NE. Based on osteological evidence, this individual has been identified as Native American from an unknown period.

At an unknown date, human remains representing one individual were recovered from a wet gravel pit (25Rw102) in Red Willow County, NE during excavations conducted by the University of Nebraska State Museum Vertebrate Paleontology Division. No known individual was identified. No associated funerary objects are present.

Based on location and the condition of the human remains, this individual has been identified as Native American from an unknown period.

At an unknown date, human remains representing one individual were recovered from a wet gravel pit (25Rw108) in Red Willow County, NE during excavations conducted by the University of Nebraska State Museum Vertebrate Paleontology Division. No known individual was identified. No associated funerary objects are present.

Based on location and the condition of the human remains, this individual has been identified as Native American.

At an unknown date, human remains representing one individual were recovered from a wet gravel pit (25Rw109) in Red Willow County, NE during excavations conducted by the University of Nebraska State Museum Vertebrate Paleontology Division. No known individual was identified. No associated funerary objects are present.

Based on location and the condition of the human remains, this individual has been identified as Native American from an unknown period.

At an unknown date, human remains representing two individuals were found 1.5 miles north of Rulo, NE and secured by the University of Nebraska State Museum from C. Edwards through Robert F. Gilder. Remains of six other individuals and a 15th century gold coin are known to have been found 7.5 feet below the surface of this site at a later date, but none of these are in the University collection. No known individuals were identified. No associated funerary objects are present.

Based on material culture reported from the same site, these individuals have been identified as Native American from an unknown period.

In 1960, human remains representing two individuals were recovered from the Leary site (25RH1), Richardson County, NE during excavations conducted by the University of Nebraska-Lincoln. No known individuals were identified. No associated funerary objects are present.

Based on archeological evidence, the Leary site has been identified as a primary Oneota occupation with a later Central Plains Tradition component. Based on the condition of the human remains, these individuals have been identified as Native American.

At an unknown date, human remains representing one individual were recovered from site 25RH20, Richardson County, NE by person(s) unknown under unknown circumstances. No known individual was identified. No associated funerary objects are present.

Based on material culture and the condition of the human remains, this individual has been identified as Native American from an unknown period.

At an unknown date, human remains representing one individual were removed during excavation for a courthouse from the Wahoo Creek burial ground on lots 1 and 2 during the original survey of the City of Wahoo, Saunders County, NE. In 1917, these human remains were donated to the University of Nebraska State Museum by Judge Newman through C. Petrus Peterson. No known individual was identified. No associated funerary objects are present.

While the Wahoo Creek burial ground has been identified as an historic Omaha cemetery, it cannot be determined whether the individual dates from the historic period. The individual has been identified as Native American from an unknown period.

During the late 1950's, human remains representing one individual from a cemetery west of Morse Bluffs, Saunders County, NE were donated to the University of Nebraska Museum by Adolph Havelka and Victor Pabien, who recovered these human remains while preparing a grave at the site. No known individual was identified. No associated funerary objects are present.

Based on skeletal and dental morphology and the preservation of the human remains, this individual has been identified as a mixed-blood Native American/Caucasian from the historic period.

In 1936, human remains representing four individuals were excavated from site 25SD10, Saunders County, NE by W. Wedel. No known individuals were identified. No associated funerary objects are present.

Based on the condition of these human remains, these individuals have been identified as Native American, possibly of great antiquity.

During 1931–1932, human remains representing three individuals were recovered from the Signal Butte site (25SF1), southeast of Scottsbluff in Scotts Bluff County, NE, possibly by C.

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B. Schultz, who collected at the site following excavations conducted by the Smithsonian Institution. No known individuals were identified. No associated funerary objects have been identified in University of Nebraska State Museum collections.

Based on archeological evidence, the Signal Butte site has been identified as a multi-component occupation from the Archaic, Woodland, and Central Plains Tradition periods. Based on the condition of these human remains, these individuals have been identified as Native American, possibly from the Central Plains Tradition component.

In 1946, human remains representing 46 individuals were recovered from the Gering site (25SF10), Scotts Bluff County, NE during excavations conducted by M.F. Kivett for the Nebraska State Archaeological Survey. No known individuals were identified. A minimum of 134 associated funerary objects includes 102 bone beads, 17 chipped stone tools, 6 pieces of worked bone, 9 boatstones and groundstone artifacts.

Based on the associated funerary objects, manner of interments, and the condition of the human remains, these individuals have been identified as Native American dating to the Woodland period, approximately A.D. 600–800.

In 1936 and 1938, human remains representing two individuals were recovered from Stanton or Indian Creek Village site 25ST1 in Stanton County, NE. The recovery of one individual was by person(s) unknown. The other individual was recovered in 1938 was during an excavation under the direction of H. Angelino for the Works Project Administration. No known individuals were identified. No associated funerary objects are present.

Based on material culture, this is a mixed site that included Central Plains Tradition, Oneota, and Omaha cultural traditions. These individuals have been identified as Native American from an unknown period.

In 1938, human remains representing two individuals were recovered during construction of a basement in Stanton County, NE. No known individuals were identified. No associated funerary objects are present.

Based on the preservation of the human remains that suggests great antiquity, and the absence of any indication of a marked grave, these individuals have been identified as Native American from an unknown period.

In 1907, human remains representing 11 individuals were recovered from a hilltop site on the Hovendick farm, 2 miles south of Blair, Washington County, NE during excavations conducted by R.F. Gilder. No known individuals were identified. No associated funerary objects are present.

Based on the condition of the human remains, these individuals have been identified as Native American. Based on dental evidence, the individuals are possibly from the pre-contact period.

At an unknown date, human remains representing one individual were recovered in western Washington County, NE (25WN31) by Alan Wite. No known individual was identified. No associated funerary objects are present.

Based on the condition of the human remains, this individual is identified as Native American possibly from the pre-contact period.

In 1947, human remains representing one individual were found "on the banks of the Republican River near Guide Rock, Webster County," NE and were donated to the University of Nebraska State Museum by the Webster County Attorney. No known individual was identified. No associated funerary objects are present.

Based on the condition of the human remains, this individual is identified as Native American possibly from the historic period.

Based on the above-mentioned information, officials of the University of Nebraska have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of 491 individuals of Native American ancestry. Officials of the University of Nebraska also have determined that, pursuant to 43 CFR 10.2 (d)(2), the minimum of 2,896 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the University of Nebraska have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity on the basis of oral history and aboriginal homelands that can be reasonably traced between these Native American human remains and associated funerary objects from Nebraska and the Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; the Iowa Tribe of Oklahoma; the Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas; the Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; the Omaha Tribe of Nebraska; the Pawnee Nation of Oklahoma; the Ponca Tribe of Nebraska; the Ponca Tribe of Indians of Oklahoma; the Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; the Santee Sioux Tribe of the Santee Reservation of Nebraska; the Winnebago Tribe of Nebraska; the Yankton Sioux Tribe of South Dakota; and the North Dakota Intertribal Reinterment Committee representing the Standing Rock Sioux Tribe of North and South Dakota; the Spirit Lake Tribe, North Dakota; the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; and the Turtle Mountain Band of Chippewa Indians of North Dakota. This notice has been sent to officials of the Cheyenne River Sioux Tribe of the Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; the Iowa Tribe of Oklahoma; the Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas; the Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; the Omaha Tribe of Nebraska; the Pawnee Nation of Oklahoma; the Ponca Tribe of Nebraska; the Ponca Tribe of Indians of Oklahoma; the Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; the Santee Sioux Tribe of the Santee Reservation of Nebraska; the Winnebago Tribe of Nebraska; the Yankton Sioux Tribe of South Dakota; the North Dakota Intertribal Reinterment Committee; the Standing Rock Sioux Tribe of North and South Dakota; the Spirit Lake Tribe, North Dakota; the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; and the Turtle Mountain Band of Chippewa Indians of North Dakota. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Dr. Priscilla Grew, NAGPRA Coordinator, University of Nebraska-Lincoln, 301 Bessey Hall, Lincoln, NE 68588–0381, telephone (402) 472–7854, before November 1, 2000. Repatriation of the human remains and associated funerary objects to the Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; the Iowa Tribe of Oklahoma; the Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas; the Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; the Omaha Tribe of Nebraska; the Pawnee Nation of Oklahoma; the Ponca Tribe of Nebraska; the Ponca Tribe of Indians of Oklahoma; the Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; the Santee Sioux Tribe of the Santee Reservation of Nebraska; the Winnebago Tribe of Nebraska; the Yankton Sioux Tribe of South Dakota; and the North Dakota Intertribal Reinterment Committee representing the Standing Rock Sioux Tribe of North and South Dakota; the Spirit Lake Tribe, North Dakota; the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; and the Turtle Mountain Band of Chippewa Indians of North Dakota may begin after that date if no additional claimants come forward.

Dated: September 19, 2000.

**John Robbins,**

*Assistant Director, Cultural Resources Stewardship and Partnerships.*

[FR Doc. 00–25126 Filed 9–29–00; 8:45 am]

BILLING CODE 4310–70–F



## DEPARTMENT OF THE INTERIOR

### National Park Service

### Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the University of Nebraska-Lincoln, Lincoln, NE

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the University of Nebraska-Lincoln, Lincoln, NE.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by University of Nebraska-Lincoln professional staff in consultation with representatives of the Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; the Iowa Tribe of Oklahoma; the Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas; the Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; the Omaha Tribe of Nebraska; the Pawnee Nation of Oklahoma; the Ponca Tribe of Nebraska; the Ponca Tribe of Indians of Oklahoma; the Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; the Santee Sioux Tribe of the Santee Reservation of Nebraska; the Winnebago Tribe of Nebraska; the Yankton Sioux Tribe of South Dakota; and the North Dakota Intertribal Reinterment Committee representing the Standing Rock Sioux Tribe of North and South Dakota; the Spirit Lake Tribe, North Dakota; the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; and the Turtle Mountain Band of Chippewa Indians of North Dakota.

At an unknown date, human remains representing one individual were recovered from an unknown location by person(s) unknown under unknown circumstances. They were acquired by the University of Nebraska State Museum at an unknown date under unknown circumstances. No known individual was identified. No associated funerary objects are present.

The collection number "1–20–6–34" has no known documentation. It resembles the "Barbour numbers" used by the Museum during the first half of the 20th century. Based on the condition of the human remains, this individual has been identified as Native American of an unknown period.

At an unknown date, human remains representing one individual were recovered from an unknown location by person(s) unknown under unknown circumstances. They were acquired by the University of Nebraska State Museum at an unknown date under unknown circumstances. No known individual was identified. No associated funerary objects are present.

The collection number "11–0–13" has no known documentation. It resembles the "Barbour numbers" used by the Museum during the first half of the 20th century. Based on dental morphology and the condition of the human remains, this individual has been identified as Native American, possibly from the pre-contact period.

At an unknown date, human remains representing one individual were recovered from an unknown location by person(s) unknown under unknown circumstances. They were acquired by the University of Nebraska State Museum at an unknown date under unknown circumstances. No known individual was identified. No associated funerary objects are present.

The collection number "11–13–07" has no known documentation. It resembles the "Barbour numbers" used by the Museum during the first half of the 20th century. This individual has been identified as Native American of an unknown period.

At an unknown date, human remains representing one individual were recovered from an unknown location by person(s) unknown under unknown circumstances. They were acquired by the University of Nebraska State Museum at an unknown date under unknown circumstances. No known individual was identified. No associated funerary objects are present.

The collection number "2–23–11–03" has no known documentation. It resembles the "Barbour numbers" used by the Museum during the first half of the 20th century. Based on the condition of the human remains, this individual has been identified as Native American possibly from the pre-contact period.

At an unknown date, human remains representing seven individuals were recovered from an unknown location by person(s) unknown under unknown circumstances. They were acquired by the University of Nebraska State Museum in 1895 as part of the "Moody Collection." No known individuals were identified. No associated funerary objects are present.

The collection number "28–22–4–95" has no known documentation. Much of the "Moody Collection" is known to have been derived from Illinois or Ohio, but the source of these human remains is unknown. These individuals have been identified as Native American of an unknown period.

At an unknown date, human remains representing one individual were recovered from an unknown location by person(s) unknown under unknown circumstances. The human remains with collection number "4–28–3–31" were donated in 1931 to the University of Nebraska State Museum by Mrs. Charles Fritch of Pawnee County, Nebraska. No known individual was identified. No associated funerary objects are present.

This individual has been identified as Native American of an unknown period.

At an unknown date, human remains representing two individuals were recovered from an unknown location by person(s) unknown under unknown circumstances. They were acquired by the University of Nebraska State Museum at an unknown date under unknown circumstances. No known individuals were identified. No associated funerary objects are present.

The assigned number "1229" has no known documentation. Based on the condition of the human remains, these individuals have been identified as Native American possibly from the pre-contact period.

At an unknown date, human remains representing four individuals were recovered from an unknown location by person(s) unknown under unknown circumstances. They were acquired by the University of Nebraska State Museum at an unknown date under unknown circumstances. No known individuals were identified. No associated funerary objects are present.

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The assigned number "1230" has no known documentation. Based on dental morphology and the condition of the human remains, these individuals have been identified as Native American possibly of the pre-contact period.

At an unknown date, human remains representing one individual were recovered from an unknown location by person(s) unknown under unknown circumstances. They were acquired by the University of Nebraska State Museum at an unknown date under unknown circumstances. No known individual was identified. No associated funerary objects are present.

The assigned number "33StH Burial 1" has no known documentation. This individual has been identified as Native American of an unknown period.

At an unknown date, human remains representing one individual were recovered from an unknown location by person(s) unknown under unknown circumstances. They were acquired by the University of Nebraska State Museum at an unknown date under unknown circumstances. No known individual was identified. No associated funerary objects are present.

The assigned number "68/1929" has no known documentation. Based on the condition of the human remains, this individual has been identified as Native American of an unknown period.

At an unknown date, human remains representing one individual were recovered from an unknown location by person(s) unknown under unknown circumstances. They were acquired by the University of Nebraska State Museum at an unknown date under unknown circumstances. No known individual was identified. No associated funerary objects are present.

The assigned collection number "8–1–07" has no known documentation. It resembles the "Barbour numbers" used by the Museum during the first half of the 20th century. Based on the condition of the human remains, this individual has been identified as Native American of an unknown period.

At an unknown date, human remains representing two individuals (collection number 977/1949) were recovered by Robert T. Gilder of Omaha, NE from an unknown location under unknown circumstances. In 1974, these human remains were transferred from the Joslyn Art Museum, Omaha, NE, to the University of Nebraska State Museum. These human remains had been transferred earlier to the Joslyn Museum on permanent loan from the Omaha Public Library, Omaha, NE. No known individuals were identified. No associated funerary objects are present.

Based on the condition of the human remains, these individuals have been identified as Native American, possibly of the Archaic or Woodland periods.

At an unknown date, human remains representing one individual were recovered from an unknown location by person(s) unknown under unknown circumstances. They were acquired by the University of Nebraska State Museum at an unknown date under unknown circumstances. No known individual was identified. No associated funerary objects are present.

The assigned collection number "A30.11.07" has no known documentation. Based on osteological evidence and dental morphology, this individual has been identified as Native American of an unknown period.

At an unknown date, human remains representing one individual were recovered from an unknown location by person(s) unknown under unknown circumstances. They were acquired by the University of Nebraska State Museum at an unknown date under unknown circumstances. No known individual was identified. No associated funerary objects are present.

The assigned number "CK–39 B–35 (Mc008)" has no known documentation. Based on the condition of the human remains, this individual has been identified as Native American of an unknown period.

At an unknown date, human remains representing one individual were recovered from an unknown location by person(s) unknown under unknown circumstances. They were acquired by the University of Nebraska State Museum at an unknown date under unknown circumstances. No known individual was identified. No associated funerary objects are present.

The assigned number "GV2(Mc008)" has no known documentation. This individual has been identified as Native American of an unknown period.

At an unknown date, human remains representing two individuals were recovered from an unknown location by person(s) unknown under unknown circumstances. They were acquired by the University of Nebraska State Museum at an unknown date under unknown circumstances. No known individuals were identified. No associated funerary objects are present.

The assigned number "LF27" has no known documentation. These individuals have been identified as Native American of an unknown period.

At an unknown date, human remains representing three individuals were recovered from an unknown location by person(s) unknown under unknown circumstances. They were acquired by the University of Nebraska State Museum at an unknown date under unknown circumstances. No known individuals were identified. No associated funerary objects are present.

The assigned number "LF28" has no known documentation. These individuals have been identified as Native American from an unknown period.

At an unknown date, human remains representing two individuals were recovered from an unknown location by person(s) unknown under unknown circumstances. They were acquired by the University of Nebraska State Museum at an unknown date under unknown circumstances. No known individuals were identified. No associated funerary objects are present.

The assigned number "Lb.AK.1 (Mc008)" has no known documentation. These individuals have been identified as Native American of an unknown period.

At an unknown date, human remains representing one individual were recovered from an unknown location by person(s) unknown under unknown circumstances. They were acquired by the University of Nebraska State Museum at an unknown date under unknown circumstances. No known individual was identified. No associated funerary objects are present.

The assigned number "Lf Be 1–26 (Mc008)" has no known documentation. These individual has been identified as Native American of an unknown period.

At an unknown date, human remains representing one individual were recovered from an unknown location by person(s) unknown under unknown circumstances. They were acquired by the University of Nebraska State Museum at an unknown date under unknown circumstances. No known individual was identified. No associated funerary objects are present.

The assigned number "Lf Cpl (Mc008)" has no known documentation. This individual has been identified as Native American of an unknown period.

At an unknown date, human remains representing two individuals were recovered from an unknown location by person(s) unknown under unknown circumstances. They were acquired by the University of Nebraska State Museum at an unknown date under unknown circumstances. No known individual was identified. No associated funerary objects are present.

The assigned number "MLvl (Mc008)" has no known documentation. These individuals have been identified as Native American of an unknown period.



At an unknown date, human remains representing three individuals were recovered from an unknown location by person(s) unknown under unknown circumstances. They were acquired by the University of Nebraska State Museum at an unknown date under unknown circumstances. No known individuals were identified. No associated funerary objects are present.

The assigned number "Mc008" has no known documentation. These individuals have been identified as Native American of an unknown period

At an unknown date, human remains representing one individual were recovered from an unknown location by person(s) unknown under unknown circumstances. They were acquired by the University of Nebraska State Museum at an unknown date under unknown circumstances. No known individual was identified. No associated funerary objects are present.

The assigned number "Mc009" has no known documentation. This individual has been identified as Native American of an unknown period.

At an unknown date, human remains representing one individual were recovered from an unknown location by person(s) unknown under unknown circumstances. They were acquired by the University of Nebraska State Museum at an unknown date under unknown circumstances. No known individual was identified. No associated funerary objects are present.

The assigned number "N–4–1–7" has no known documentation. Based on osteological evidence and the condition of the human remains, this individual has been identified as Native American of an unknown period.

At an unknown date, human remains representing two individuals were recovered from an unknown location by person(s) unknown under unknown circumstances. They were acquired by the University of Nebraska State Museum at an unknown date under unknown circumstances as part of the "Hugo T. Rice Collection." No known individuals were identified. No associated funerary objects are present.

The assigned number "Nelson Site (Mc008)" has no known documentation. The location of the "Nelson Site" is unknown. Based on the condition of the human remains, this individual have been identified as Native American possibly of the historic period.

At an unknown date, human remains representing two individuals were recovered from an unknown location by person(s) unknown under unknown circumstances. In 1981, they were transferred from the Zoology Division of the University of Nebraska State Museum to the Anthropology Division of the Museum. No known individuals were identified. No associated funerary objects are present.

The assigned collection number "A81–4" has no associated documentation. Based on osteological evidence and the condition of the human remains, these individuals have been identified as Native American of an unknown period.

At an unknown date, human remains representing one individual were recovered from an unknown location by person(s) unknown under unknown circumstances. They were acquired by the University of Nebraska State Museum at an unknown date under unknown circumstances. No known individual was identified. No associated funerary objects are present.

The assigned number "Wa–5 B15 (Mc008)" has no known documentation. This individual has been identified as Native American of an unknown period.

At an unknown date, human remains representing two individuals were recovered from an unknown location by person(s) unknown under unknown circumstances. At an unknown date, they were acquired by the University of Nebraska Department of Anthropology under unknown circumstances. No known individuals were identified. No associated funerary objects are present.

Based on copper staining and the condition of the human remains, these individuals have been identified as Native American from the historic period.

At an unknown date, human remains representing 43 individuals were recovered from an unknown location by person(s) unknown under unknown circumstances. At an unknown date, they were acquired by the University of Nebraska Department of Anthropology under unknown circumstances. No known individuals were identified. No associated funerary objects are present.

These individuals have been identified as Native American of an unknown period.

At an unknown date, human remains representing eleven individuals were recovered from an unknown location by person(s) unknown under unknown circumstances. At an unknown date, they were acquired by the University of Nebraska Department of Anthropology under unknown circumstances. No known individuals were identified. No associated funerary objects are present.

The designation "Bass, 1960, unprovenienced" has no known documentation. These individuals have been identified as Native American of an unknown period.

At an unknown date, human remains representing one individual were recovered from an unknown location by person(s) unknown under unknown circumstances. At an unknown date, they were acquired by the University of Nebraska Department of Anthropology under unknown circumstances. No known individual was identified. No associated funerary objects are present.

The designation "Bass, 1960, unprovenienced" has no known documentation. Based on osteological evidence and the condition of the human remains, this individual has been determined to be mixed-blood Native American/Negroid or possibly Negroid from the historic period.

At unknown date(s), human remains representing a minimum of 185 individuals were recovered from unknown location(s) by person(s) unknown under unknown circumstances. At unknown date(s), they were acquired by the University of Nebraska Department of Anthropology under unknown circumstances. No known individuals were identified. No associated funerary objects are present.

The human remains were sorted by bone elements at unknown date(s) and were part of the former teaching collection of the Department of Anthropology, University of Nebraska. No documentation is available for any of the human remains. These individuals have been identified as Native American of unknown periods.

At unknown dates, human remains representing a minimum of 41 individuals were recovered from unknown locations by persons unknown under unknown circumstances. They were acquired by the University of Nebraska at unknown dates under unknown circumstances. No known individuals were identified. No associated funerary objects are present.

The human remains were inventoried by Peer Moore-Jansen in 1998 and 1999. Four of the individuals have designations of unknown significance: "M002 G," "7," "8–875," and "14–2." No documentation is available for any of these human remains. Based on osteological evidence and the condition of the human remains, these individuals have been identified as Native American of unknown periods.

The majority of documented Native American human remains in the possession of the University of Nebraska-Lincoln are derived from Nebraska, making it likely that many of the human remains listed above in this notice also were derived from the area of the present State of Nebraska.

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Based on the above-mentioned information, officials of the University of Nebraska have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of a minimum of 330 individuals of Native American ancestry. In accordance with the recommendations of the NAGPRA Review Committee, officials of the University of Nebraska have determined that, pursuant to 43 CFR 10.2 (e), there is no relationship of shared group identity that can reasonably be traced between these Native American human remains and any present-day Indian tribe or group, and the disposition of these Native American human remains will be to the following tribes with historic or aboriginal cultural ties to the area of the present State of Nebraska: Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; the Iowa Tribe of Oklahoma; the Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas; the Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; the Omaha Tribe of Nebraska; the Pawnee Nation of Oklahoma; the Ponca Tribe of Nebraska; the Ponca Tribe of Indians of Oklahoma; the Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; the Santee Sioux Tribe of the Santee Reservation of Nebraska; the Winnebago Tribe of Nebraska; the Yankton Sioux Tribe of South Dakota; and the North Dakota Intertribal Reinterment Committee representing the Standing Rock Sioux Tribe of North and South Dakota; the Spirit Lake Tribe, North Dakota; the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; and the Turtle Mountain Band of Chippewa Indians of North Dakota. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Dr. Priscilla Grew, NAGPRA Coordinator, University of Nebraska-Lincoln, 301 Bessey Hall, Lincoln, NE 68588–0381, telephone (402) 472–7854, before November 1, 2000. Repatriation of the human remains to the Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; the Iowa Tribe of Oklahoma; the Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas; the Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; the Omaha Tribe of Nebraska; the Pawnee Nation of Oklahoma; the Ponca Tribe of Nebraska; the Ponca Tribe of Indians of Oklahoma; the Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; the Santee Sioux Tribe of the Santee Reservation of Nebraska; the Winnebago Tribe of Nebraska; the Yankton Sioux Tribe of South Dakota; and the North Dakota Intertribal Reinterment Committee representing the Standing Rock Sioux Tribe of North and South Dakota; the Spirit Lake Tribe, North Dakota; the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; and the Turtle Mountain Band of Chippewa Indians of North Dakota may begin after that date if no additional claimants come forward.

Dated: September 20, 2000.

**John Robbins,**

*Assistant Director, Cultural Resources Stewardship and Partnerships.*

[FR Doc. 00–25127 Filed 9–29–00; 8:45 am]

**BILLING CODE 4310–70–F**

## INTERNATIONAL TRADE COMMISSION

**[Investigations Nos. 731–TA–540 and 541 (Review)]**

### Certain Welded Stainless Steel Pipes From Korea and Taiwan

**Determinations**

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)) (the Act), that revocation of the antidumping duty orders on certain welded stainless steel pipes from Korea and Taiwan would be likely to lead to continuation of recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[2]

**Background**

The Commission instituted these reviews on July 1, 1999 (64 FR 35694) and determined on October 1, 1999, that it would conduct full reviews (64 FR 55961, October 15, 1999). Notice of the scheduling of the Commission's reviews and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in **Federal Register** on March 31, 2000 (64 FR 17308). The hearing was held in Washington, DC, on August 1, 2000, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on September 22, 2000. The views of the Commission are contained in USITC Publication 3351 (September 2000), entitled Certain Stainless Steel Pipe from Korea and Taiwan: Investigations Nos. 731–TA–540 and 541 (Review).

Issued: September 25, 2000.

By order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 00–25232 Filed 9–29–00; 8:45 am]

**BILLING CODE 7020–02–M**

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] Commissioner Thelma J. Askey dissenting with respect to Korea.

## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

**[INS No. 2087–00; AG Order No. 2327–2000]**

**RIN 1115–AE26**

### Extension of Designation of Montserrat Under Temporary Protected Status Program

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Notice.

**SUMMARY:** This notice extends the Attorney General's designation of Montserrat under the Temporary Protected Status (TPS) program until August 27, 2001. Eligible nationals of Montserrat (or aliens having no nationality who last habitually resided in Montserrat) may re-register for TPS and an extension of employment authorization. Re-registration is limited to persons who registered during the initial registration period, which ended on August 27, 1998, or who registered after that date under the late initial registration provision. Persons who are elilgible for late initial registration may register for TPS during this extension.

**EFFECTIVE DATES:** The extension of the TPS designation for Montserrat is effective August 28, 2000, and will remain in effect until August 27, 2001. The 30-day re-registration period begins October 2, 2000 and will remain in effect until November 1, 2000.

**FOR FURTHER INFORMATION CONTACT:** Michael Valverde, Residence and Status Services Branch, Adjudications, Immigration and Naturalization Service (INS), Room 3214, 425 I Street, NW., Washington, DC 20536, telephone (202) 514–4754.

**SUPPLEMENTARY INFORMATION:**

**What Authority Does the Attorney General Have To Extend the Designation of Montserrat Under the TPS Program?**

Section 244(b)(3)(A) of the Immigration and Nationality Act (Act) states that at least 60 days before the end of an extension or a designation, the Attorney General must review conditions in the designated foreign state. 8 U.S.C. 1254a(b)(3)(A). If the Attorney General determines that the foreign state continues to meet the conditions for designation, the period of designation is extended, pursuant to section 244(b)(3)(C) of the Act. 8 U.S.C. 1254a(b)(3)(C). With respect to Montserrat, such an extension makes TPS available only to persons who have been continuously physically present since August 28, 1997, and have continuously resided in the United States from August 22, 1997.

**Why Did the Attorney General Decide To Extend the TPS Designation for Montserrat?**

On August 28, 1997, the Attorney General initially designated Montserrat for TPS for a period of 12 months. 62 FR 45685 (Aug. 28, 1997). Based on conditions since then, the Attorney General twice has extended the TPS designation, which ran through August 27, 2000. See 64 FR 48190 (Sept. 2, 1999); 63 FR 45864 (Aug. 27, 1998).

The Departments of State and Justice have recently reviewed conditions within Montserrat. The review resulted in a consensus that a further 12-month extension is warranted. The reasons for the extension are explained in a State Department memorandum that states: "Since the eruptions of the Soufriere Hills volcano began in the southern part of Montserrat in 1997, the island has remained in a state of crisis. Most recently, in March 2000, the volcano turned deadly again." The memorandum also states that "[t]he most recent reports from the center that monitors the volcano's activity indicate that another such event may occur very soon."

Based on these reviews, the Attorney General finds the situation in Montserrat meets the conditions for extension under section 244(b)(3)(C) of the Act. 8 U.S.C. 1254a(b)(3)(C). There continues to be a substantial, but temporary, disruption of living conditions in Montserrat as a result of environmental disaster, and Montserrat continues to be unable, temporarily, to handle adequately the return of its nationals. 8 U.S.C. 1254a(b)(1)(B)(i)–(ii). The review failed to show that country conditions have improved to a degree that supports termination. Since the Attorney General did not determine that the conditions in Montserrat no longer warrant TPS, the designation was automatically extended by operation of statute on August 28, 2000. 8 U.S.C. 1254(a)(b)(3)(C).

On the basis of these findings, the Attorney General finds that the TPS designation for Montserrat should be extended for an additional 12-month period, rather than the six month period automatic extension provided for in the statute. 8 U.S.C. 1254a(b)(3)(C).

**If I Currently Have TPS, How Do I Register for an Extension?**

Only persons previously granted TPS under the initial Montserrat designation may apply for an extension by filing a Form I–821, Application for Temporary Protected Status, without the fee, during the re-registration period that begins October 2, 2000 and ends November 1, 2000. Additionally, you must file a Form I–765, Application for Employment Authorization. To determine whether you must submit the one-hundred dollar ($100) filing fee with the Form I–765, see the chart below.

CHART 1

| If | Then |
|---|---|
| You are applying for employment authorization through August 27, 2001. | You must complete and file the Form I–765, Application for Employment Authorization, with the one-hundred dollar ($100) fee. |
| You already have employment authorization or do not require employment authorization. | You must complete and file the Form I–765 with no fee. |
| You are applying for employment authorization and are requesting a fee waiver. | You must complete and file the Form I–765, the requisite fee waiver request, and affidavit (and any other information), in accordance with 8 CFR 244.20. |

To re-register for TPS, you also must include two identification photographs (1½″ x 1½″).

**Where Should I File for an Extension of TPS?**

Persons seeking to register for an extension of TPS must submit an application and accompanying materials to the INS district office that has jurisdiction over the applicant's place of residence.

**When Can I Register for an Extension of TPS?**

The 30-day re-registration period begins October 2, 2000 and will remain in effect until November 1, 2000.

**How Does an Application for TPS Affect My Application for Asylum or Other Immigration Benefits?**

An application for TPS does not preclude or affect an application for asylum or any other immigration benefit. A national of Montserrat (or alien having no nationality who last habitually resided in Montserrat) who is otherwise eligible for TPS and has applied for or plans to apply for asylum, but who has not yet been granted asylum or withholding of removal, may also apply for TPS. Denial of an application for asylum or any other immigration benefit does not affect an applicant's ability to register for TPS, although the grounds of denail may also be grounds of denail for TPS. For example, a person who has been convicted of a particularly serious crime is not eligible for asylum or TPS. 8

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U.S.C. 1158(b)(2)(A); 8 U.S.C. 1254a(c)(2)(B).

**Is Late Initial Registration Possible?**

In addition to timely re-registration, late initial registration is possible for some persons from Montserrat under 8 CFR 244.2(f)(2). Late initial registration applicants must meet the following requirements:

- Be a national of Montserrat (or an alien having no nationality who last habitually resided in Montserrat);
- Have been continuously physically present in the United States since August 28, 1997;
- Have continuously resided in the United States since August 22, 1997; and
- Be admissible as an immigrant, except as provided under section 244(c)(2)(A) of the Act, and not ineligible under section 244(c)(2)(B) of the Act.

Additionally, the applicant must be able to demonstrate that, during the initial registration period from August 28, 1997, through August 27, 1998, he or she:

- Was in valid nonimmigrant status, or had been granted voluntary departure status or any relief from removal;
- Had an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal pending or subject to further review or appeal; or
- Was a parolee or has a pending request for reparole; or was the spouse or child of an alien currently eligible to be a TPS registrant.

8 CFR 244.2(f)(2).

An applicant for late initial registration must register no later than sixty (60) days from the expiration or termination of the qualifying status listed above. 8 CFR 244.2(g).

**Does This Extension Allow Nationals of Montserrat (or Aliens Having No Nationality Who Last Habitually Resided in Montserrat) Who Entered the United States After August 28, 1997, To File for TPS?**

No, this is a notice of an extension of the existing TPS designation for Montserrat, not a notice of redesignation of Montserrat under the TPS program. An extension of TPS does not change the required dates of continuous physical presence and residence in the United States, and it does not expand the TPS program to include nationals of Montserrat (or aliens having no nationality who last habitually resided in Montserrat) who arrived in the United States after the date of the initial designation (in this case, August 28, 1997) or the date designated for continuous residence (in this case, August 22, 1997).

**Notice of Extension of Designation of Montserrat Under the TPS Program**

By the authority vested in me as Attorney General under sections 244(b)(3)(A) and (C), and (b)(1) of the Act, I have consulted with the appropriate agencies of the government concerning whether the conditions under which Montserrat was initially designated for TPS continue to exist. As a result, I determine that the conditions for the initial designation of TPS for Montserrat continue to be met. 8 U.S.C. 1254a(b)(3)(A), (C), and (b)(1). Accordingly, I order as follows:

(1) The designation of Montserrat under section 244(b) of the Act is extended for an additional 12-month period from August 28, 2000, until August 27, 2001. 8 U.S.C. 1254a(b)(3)(C).

(2) I estimate that there are approximately 300 nationals of Montserrat (or aliens having no nationality who last habitually resided in Montserrat) who have been granted TPS and who are eligible for re-registration.

(3) In order to be eligible for TPS during the period from August 28, 2000, through August 27, 2001, a national of Montserrat (for alien having no nationality who last habitually resided in Montserrat) who received a grant of TPS (or has an application pending) during the initial period of designation from August 28, 1997, until August 27, 1998, must re-register for TPS by filing a new Application for Temporary Protected Status, Form I–821, along with an Application for Employment Authorization, Form I–765, within the 30-day period beginning October 2, 2000 and ending on November 1, 2000. Late re-registration will be allowed only for good cause pursuant to 8 CFR 244.17(c).

(4) Pursuant to section 244(b)(3)(A) of the Act, the Attorney General will review, at least 60 days before August 27, 2001, the designation of Montserrat under the TPS program to determine whether the conditions for designation continue to be met. 8 U.S.C. 1254a(b)(3)(A). Notice of that determination, including the reasons underlying it, will be published in the **Federal Register**.

(5) Information concerning the TPS program for nationals of Montserrat (or aliens having no nationality who last habitually resided in Montserrat) will be available at local INS offices upon publication of this notice and on the INS website at http://www.ins.usdoj.gov.

Dated: September 25, 2000.

**Janet Reno,**

*Attorney General.*

[FR Doc. 00–25250 Filed 9–29–00; 8:45 am]

BILLING CODE 4410–10–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Solicitation for Technical Assistance and Training Grants Employment and Training Administration, U.S. Department of Labor

**ACTION:** Notice of Solicitation for Grant Applications (SGA) for training and capacity building of case management system staff of grantees for the National Farmworkers Jobs Program (NFJP); Capacity Building of Service Delivery Staff.

**SUMMARY:** The U.S. Department of Labor (DOL), Employment and Training Administration (ETA) announces a Solicitation for Grant Applications (SGA) to create staff development opportunities for National Farmworkers Jobs Program grantees.

This notice contains all of the necessary information and forms needed to apply for grant funding.

**DATES:** The closing date for receipt of applications for grant awards shall be October 31, 2000 by 4 p.m. eastern standard time. No exceptions to the mailing and hand-delivery conditions will be granted. Applications that do not meet the conditions set forth in this notice will not be considered. Tele facsimile (FAX) applications will not be honored.

**ADDRESSES:** Applications shall be mailed or hand-delivered to: U.S. Department of Labor, Employment and Training Administration, Division of Federal Assistance, Attention: Lorraine Saunders, 200 Constitution Avenue, NW, Room S–4203; Washington, DC 20210. Reference: SGA/DFA–00–112.

**FOR FURTHER INFORMATION CONTACT:** Fax questions to Lorraine Saunders, Division of Federal Assistance at (202) 219–8698, ext. 145. This is not a toll-free number. All inquiries sent via fax should include the SGA number (DFA–00–112) and a contact name, fax and phone number. This solicitation will also be published on the Internet on the Employment and Training Administration's Home Page at http://doleta.gov. Award notifications will also be published on this Homepage.



**Part I. Introduction**

The purpose of these funds is for training and staff development activities, of the service delivery system staff, that would not otherwise be performed by the NFJP grantee. Emphasis should be placed on the training needs of staff who work directly with WIA § 167 migrant and seasonal farm workers (MSFW), such as case management, outreach, intake, and other staff who interact directly with WIA § 167 clients. This SGA encourages strategies to utilize grantee focused staff training approaches and discourages large conference type approaches. To the extent possible, training options are local focused and will use local resources.

The proposal must consist of four (4) Sections covering the applicants understanding of the requirement: Proposed Training Module(s) and Strategy (Section 1), Expected outcomes (Section 2), Consortium Arrangement (Section 3), and Proposed Budget (Section 4). Any pertinent Attachments may be included in (Section 5), which is optional.

For rating purposes, each of the first four sections is assigned a number of possible points, and the sum of the maximum possible points for the four sections total 100. The most heavily weighted criteria is Section 2, which covers the expected outcome.

*Authority*

Section 167 (§ 669.110) of WIA authorizes the Department to provide funds for capacity enhancement as part of technical assistance activities provided to grantees. The MSFW program has an established record of support for grantee staff development and training funded from the discretionary budget allocated to the MSFW program.

*Eligible Applicants*

DSFP has long supported a peer-to-peer approach in the delivery of training within the NFJP community. This SGA thus seeks to use grantee supported consortiums to ensure a grantee focused training strategy. The following organizations are eligible to apply:

(1) Non-profit (501C–3) associations/organizations of NFJP grantees;

(2) Consortiums of cooperating NFJP grantees serving a specific regional geographic area.

*Funding*

The Department has reserved up to $500,000 nationally for this purpose. The final awards will attempt to include every NFJP service delivery area and it will promote capacity building of case management system through staff development.

*Grant Duration and Period of Performance*

The Department anticipates that grants will be funded for one year with an option to extend for one additional year, as necessary. The period of performance is expected to commence during December, 2000.

**Part II. Application Process and Guidelines**

*Submission of the Grant Application Package*

In accordance with the requirements above, applicants must also submit an original and three (3) copies of their proposal, with original signatures.

Applications must be mailed no later than five (5) days prior to the closing date for the receipt of applications. However if applications are hand-delivered, they must be received at the designated place by 4:00 p.m., Eastern Time on October 31, 2000, the closing date for receipt of applications. All overnight mail will be considered to be hand-delivered and must be received at the designated place by the specified time and closing date. Telegraphed and/or faxed proposals will not be honored. Applications that fail to adhere to the above instructions will not be honored.

*Late Applications*

Any application received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it

(a) Was sent by U.S. Postal Service registered or certified mail not later than the fifth calendar day before the closing date specified for receipt of applications (*e.g.* an offer submitted in response to a solicitation requiring a receipt of application by the 30th of January must have been mailed by the 25th): or

(b) Was sent by U.S. Postal Service Express Mail Next Day Service—Post Office to Addressee, not later than 5 p.m. at the place of mailing two working days prior to the date specified for receipt of application. The term "working days" excludes weekends and U.S. Federal holidays.

The only acceptable evidence to establish the date of a late application sent by U.S. Postal Service registered or certified mail is the U.S. postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. Both postmarks must show a legible date or the proposal will be processed as if it had been mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been applied or affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore, applicants should request the postal clerk to place a legible hand cancellation "bulls eye" postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the date of mailing of a late application sent by "Express Mail Next Day Service—Post Office to Addressee" is the date entered by the post office receiving clerk on the Express Mail Next Day—Post Office to Addressee label and the postmarks on both the envelope and the wrapper and the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined above. Therefore, an applicant should request the postal clerk to place a legible hand cancellation "bulls eye" postmark on both the receipt and the envelope or wrapper.

*Withdrawal of Applications*

Applications may be withdrawn by written notice or telegram (including mailgram) received at any time before award. Applications may be withdrawn in person by the applicant or by an authorized representative thereof, if the representative's identity is made known and the representative signs a receipt for the proposal.

*Grant Application Package*

The grant application package must consist of:

(1) The proposal shall contain the Standard Form (SF) 424, "Application for Federal Assistance" (Appendix A). All copies of the (SF) 424 must have original signatures of the legal entity applying for grant funding. Applicants shall indicate on the (SF) 424 the organization's IRS status, if applicable. According to the Lobbying Disclosure Act of 1995, Section 18, an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 which engages in lobbying activities is not eligible for the receipt of federal funds constituting an award, grant, or loan.

(2) A certification prepared within the last six months, attesting to the adequacy of the entity's fiscal management and accounting systems to account for and safeguard Federal funds properly. The Certification should be obtained as follows:

(a) For incorporated organizations, a certification from a Certified Public Accountant; or

(b) for a public agency, a certification by its Chief Financial Officer;

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(3) A statement indicating the entity's legally constituted authority under which the organization functions. A nonprofit organization should submit a copy of its Charter or Articles of Incorporation, including proof of the organization's nonprofit status;

(4) The applicant's employer identification number (EIN) issued by the Internal Revenue Service;

(5) Applications from a Consortium of organizations must include a copy of the Consortium agreement and must identify the consortium which will act as the administrative entity for the project. The agreement must include stated arrangements for administrative and financial responsibility that are acceptable to the Grant Officer.

(6) Budget Information Sheet with a narrative description of each line item. (Attached)

(7) Copy of most current Indirect Cost Rate Agreement issued by the cognizant federal agency, if applicable.

(8) the entity's application for grant funding as described below:

*Format of the Grant Application Package*

The grant proposal text is limited to 30 double-spaced, single-side, numbered 8½″ × 11″ pages, in 12-point type and having margins measuring at least one inch (Page numbers may be placed within the margin space.) This includes attachments.

To ensure full consideration, the application must follow the numerical sequence of the Sections 1 through 4 as listed below, and must include a table of contents. All attachments are to be included in Section 5. Credit may not be afforded in instances where items are not addressed in the proper section.

*Contents of the Grant Application*

All grant proposals accepted for consideration must be prepared in accordance with the requirements set forth below.

Section 1. Proposed Training Module(s) and Strategy

The applicant must describe the proposed area of service and the training strategy/approach in response to the staff training needs within the identified area. The design proposed must be one that will bring a local focus on training NFJP case management system staff.

Address identified needs: The proposal must identify specific challenges and staff training needs to be addressed.

Incorporate a Design Characteristics: Training strategies/approaches must respond to the identified needs and should be designed to incorporate at least one of the following characteristics for purposes of regional application.

- Ease of portability.
- Ease of replicability.
- Flexibility (use of optional learning styles).
- Credentialing development through an accredited institution.

Rating basis for Part II, Section 1: 25 points. Scoring will be based on the strength of the design and strategies proposed to:

- Respond to the identified training needs;
- Incorporate at least one design characteristic
- Meet the training needs of the identified geographic area; and, sbull The capacity of its delivery approach/design to successfully implement the training.

Section 2. Expected Outcomes

This section should describe the expected outcomes and benefits to be gained by the participating program staff and how the proposal is designed to deliver those outcomes. The proposed training strategy and design must include at least two knowledge and skills area. Training may include, but is not limited to, any of the following and other areas as identified by the proposer and relevant to the delivery of the NFJP.

- Developing staff knowledge and skills for managing of clients' Individual Service Strategies (e.g. developing interviewing skills, building trust, making objective assessments through evaluation and testing, etc.);
- The case management process and needed associated skills. (e.g. developing and monitoring appropriate training activities, determining appropriate referrals and other intervention point);
- WIA One-Stop System Partnerships (including cross training, client advocacy skills, building community support for the NFJP program and farmworkers);
- Building resources for NFJP grantee case management systems.
- Other identified training needs such as credentialed training (relevant to NFJP), use of technology.

Rating basis for Part II, Section 2: 60 points. This section will be scored based on how capacity of participating staff would be enhanced via the proposed training and training method, and capacity of the training modules to be a replicable, potable, comprehensive and consistent approach to capacity enhancement of skills for staff in the identified service area.

Section 3. Consortium Arrangement

For purposes of this proposal, an acceptable consortium arrangement shall consist of three or more signatory eligible applicants, supported by a Consortium Working Agreement between all the cooperating parties under the proposed design. The agreement must designate one of the consortium's members as the responsible administrative entity under the grant. Please:

- Identify each state service area and the respective NFJP grantee included in the composition of the regional area proposed to be served under this proposal (a state area may be included in only one proposed regional service area/consortium agreement);
- Identify by number and job title (*e.g.:* 3 case managers), the estimated staff which will participate in the proposed training (cumulative for the regional area included in this proposal);

Rating basis for Part II, Section 3: 10 points. The scoring will be based on the demonstrated capacity of the agreements to sustain the training strategy.

Section 4. Budget

Please submit a proposed budget for costs associated with the proposed training strategy. Administrative costs for purposes of the project are limited to 10% of total costs. Include a narrative explanation for how proposed costs are determined.

Rating basis for Part II, Section 4: 5 points. The scoring will be based on the demonstrated reasonableness of the budget request relative to the proposed training and area to be served.

Section 5: Attachments

All attachments referenced in the proposal are to be included in this section of the proposal. The first page in this section should itemize the included attachments.

**Part III. Review Process of Grant Application**

*Panel Review*

The Grant Officer will select potential grantees utilizing all information available to him/her. A technical review panel will rate each proposal using the specified criteria cited above. Panel results are advisory in nature and are not binding on the Grant Officer.

The Grant Officer may, at his or her discretion, request an applicant to submit additional or clarifying information if deemed necessary to make a selection. However, selections may be made without further contact with the applicants.



*Responsibility Review*

Prior to awarding a grant to any applicant, the Department will conduct a responsibility review. The responsibility review is an analysis of available information and records to determine if an applicant has established a satisfactory history of accounting for Federal funds and property. The responsibility review is independent of the competitive process. Applicants failing to meet the requirements of this action may be disqualified for designation as a grantee without respect to their standing in the competitive process. An applicant that is not selected as a result of the Grant Officer's responsibility review will be advised of its appeal rights.

*Notification of Non Selection*

Any applicant that is not selected as a potential grantee, or that has its grant application denied in whole or in part by the Department for receipt of funds, will be notified in writing by the Grant Officer and will be advised of all appeal rights.

*Notification of Selection*

Applicants that are selected will be notified in writing by the Grant Officer. Formal designation as a grantee will be contingent on the successful negotiation of a grant agreement for the first year of operation

**Part IV. Reporting Requirements**

*Activity Reporting*

Grantees must provide a quarterly narrative statement describing the staff training and technical assistance activities obtained under the grant. Copies of all training modules and actual training curriculum delivered are to accompany each quarterly report.

*Financial Reporting*

Standard Form 269 or financial report is due to be reported 45 days following close of the grant activity.

*Cost Flexibility and Limitations*

(a) These grant funds are discretionary WIA § 167 funds earmarked for staff training and technical assistance and serving as a supplement to the grantee's on-going staff training activities. The administrative cost limitation applicable to the WIA § 167 employment and training grants also apply to these grants.

(b) Grant funds may be used for per diem and lodging costs as otherwise appropriate. Transportation will not be covered under these grants.

Signed at Washington, DC, on this 25th day of September 2000.

**Lorraine H. Saunders,**

*Grant/Contracting Officer/DOL/ETA.*

BILLING CODE 4510-30-P

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**APPLICATION FOR FEDERAL ASSISTANCE**

OMB Approval No. 0348-0043

| | | |
|---|---|---|
| 1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction / Preapplication ☐ Construction ☐ Non-Construction | 2. DATE SUBMITTED | Applicant Identifier |
| | 3. DATE RECEIVED BY STATE | State Application Identifier |
| | 4. DATE RECEIVED BY FEDERAL AGENCY | Federal Identifier |

5. APPLICANT INFORMATION

| | |
|---|---|
| Legal Name: | Organizational Unit: |
| Address (give city, county, State and zip code): | Name and telephone number of the person to be contacted on matters involving this application (give area code): |

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐-☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State H. Independent School Dist.
B. County I. State Controlled Institution of Higher Learning
C. Municipal J. Private University
D. Township K. Indian Tribe
E. Interstate L. Individual
F. Intermunicipal M. Profit Organization
G. Special District N. Other (Specify): _____

8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify): _____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐-☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, States, etc.):

| 13. PROPOSED PROJECT: Start Date | Ending Date | 14. CONGRESSIONAL DISTRICTS OF: a. Applicant | b. Project |
|---|---|---|---|
| | | | |

| 15. ESTIMATED FUNDING: | | 16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS? |
|---|---|---|
| a. Federal | $ .00 | a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON DATE _____ |
| b. Applicant | $ .00 | b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372 |
| c. State | $ .00 | ☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW |
| d. Local | $ .00 | |
| e. Other | $ .00 | |
| f. Program Income | $ .00 | 17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT? |
| g. TOTAL | $ .00 | ☐ Yes If "Yes," attach an explanation. ☐ No |

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

| a. Typed Name of Authorized Representative | b. Title | c. Telephone number |
|---|---|---|
| | | |

| d. Signature of Authorized Representative | e. Date Signed |
|---|---|
| | |

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

**Authorized for Local Reproduction**



INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which ave established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).

3. State use only (if applicable)

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake this assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided.

   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is required.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of the project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities.

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

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**BUDGET INFORMATION - Non-Construction Programs** OMB Approval No. 0348-0044

**SECTION A - BUDGET SUMMARY**

| Grant Program Function or Activity (a) | Catalog of Federal Domestic Assistance Number (b) | Estimated Unobligated Funds | | New or Revised Budget | | |
|---|---|---|---|---|---|---|
| | | Federal (c) | Non-Federal (d) | Federal (e) | Non-Federal (f) | Total (g) |
| 1. | | $ | $ | $ | $ | $ |
| 2. | | | | | | |
| 3. | | | | | | |
| 4. | | | | | | |
| 5. Totals | | $ | $ | $ | $ | $ |

**SECTION B - BUDGET CATEGORIES**

| 6. Object Class Categories | GRANT PROGRAM, FUNCTION OR ACTIVITY (1) | (2) | (3) | (4) | Total (5) |
|---|---|---|---|---|---|
| a. Personnel | $ | $ | $ | $ | $ |
| b. Fringe Benefits | | | | | |
| c. Travel | | | | | |
| d. Equipment | | | | | |
| e. Supplies | | | | | |
| f. Contractual | | | | | |
| g. Construction | | | | | |
| h. Other | | | | | |
| i. Total Direct Charges *(sum of 6a-6h)* | | | | | |
| j. Indirect Charges | | | | | |
| k. TOTALS *(sum of 6i and 6j)* | $ | $ | $ | $ | $ |
| 7. Program Income | $ | $ | $ | $ | $ |

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**SECTION C - NON-FEDERAL RESOURCES**

| (a) Grant Program | (b) Applicant | (c) State | (d) Other Sources | (e) TOTALS |
|---|---|---|---|---|
| 8. | $ | $ | $ | $ |
| 9. | | | | |
| 10. | | | | |
| 11. | | | | |
| 12. TOTAL *(sum of lines 8-11)* | $ | $ | $ | $ |

**SECTION D - FORECASTED CASH NEEDS**

| | Total for 1st Year | 1st Quarter | 2nd Quarter | 3rd Quarter | 4th Quarter |
|---|---|---|---|---|---|
| 13. Federal | $ | $ | $ | $ | $ |
| 14. Non-Federal | | | | | |
| 15. TOTAL *(sum of lines 13 and 14)* | $ | $ | $ | $ | $ |

**SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT**

| (a) Grant Program | FUTURE FUNDING PERIODS (Years) (b) First | (c) Second | (d) Third | (e) Fourth |
|---|---|---|---|---|
| 16. | $ | $ | $ | $ |
| 17. | | | | |
| 18. | | | | |
| 19. | | | | |
| 20. TOTAL *(sum of lines 16-19)* | $ | $ | $ | $ |

**SECTION F - OTHER BUDGET INFORMATION**

| 21. Direct Charges: | 22. Indirect Charges: |
|---|---|
| 23. Remarks: | |

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## INSTRUCTIONS FOR THE SF-424A

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0044), Washington, DC 20503.

**PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.**

**General Instructions**

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

**Section A. Budget Summary Lines 1-4 Columns (a) and (b)**

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the Catalog program title and the Catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the Catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the Catalog program title on each line in *Column* (a) and the respective Catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

**Lines 1-4, Columns (c) through (g)**

*For new applications*, leave Column (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

*For continuing grant program applications*, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

*For supplemental grants and changes* to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

**Line 5** - Show the totals for all columns used.

**Section B Budget Categories**

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

**Line 6a-i** - Show the totals of Lines 6a to 6h in each column.

**Line 6j** - Show the amount of indirect cost.

**Line 6k** - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

**Line 7** - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program





## INSTRUCTIONS FOR THE SF-424A (continued)

narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

**Section C. Non-Federal Resources**

**Lines 8-11** Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

**Column (a)** - Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

**Column (b)** - Enter the contribution to be made by the applicant.

**Column (c)** - Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

**Column (d)** - Enter the amount of cash and in-kind contributions to be made from all other sources.

**Column (e)** - Enter totals of Columns (b), (c), and (d).

**Line 12** - Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

**Section D. Forecasted Cash Needs**

**Line 13** - Enter the amount of cash needed by quarter from the grantor agency during the first year.

**Line 14** - Enter the amount of cash from all other sources needed by quarter during the first year.

**Line 15** - Enter the totals of amounts on Lines 13 and 14.

**Section E. Budget Estimates of Federal Funds Needed for Balance of the Project**

**Lines 16-19** - Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

**Line 20** - Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

**Section F. Other Budget Information**

**Line 21** - Use this space to explain amounts for individual direct object class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

**Line 22** - Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

**Line 23** - Provide any other explanations or comments deemed necessary.

[FR Doc. 00–25060 Filed 9–29–00; 8:45 am]
BILLING CODE 4510–30–C

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## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

### Petitions for Modification

The following parties have filed petitions to modify the application of existing safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

**1. Blue Mountain Energy, Inc.**

[Docket No. M–2000–095–C]

Blue Mountain Energy, Inc., 3607 County Road, #65, Rangely, Colorado 81648 has filed a petition to modify the application of 30 CFR 75.1902(c)(2)(i), (ii), and (iii)(underground diesel fuel storage-general requirements) to its Deserado Mine (I.D. No. 05–03505) located in Rio Blanco County, Colorado. The petitioner requests a modification of the existing standard as it pertains to temporary underground diesel fuel storage area location. The petitioner proposes to: (i) Store the temporary diesel transportation unit no more than 5 cross-cuts from the loading point and/or protected loading point during equipment installation, and the last loading point during equipment removal; (ii) equip the diesel fuel transportation unit with an automatic fire suppression device according to 30 CFR 75.1911; and (iii) physically examine the diesel fuel transportation unit twice each shift when work is being performed inby the diesel storage area. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

**2. Plateau Mining Corporation**

[Docket No. M–2000–096–C]

Plateau Mining Corporation, One Oxford Centre, 301 Grant Street, 20th Floor, Pittsburgh, Pennsylvania 15219 has filed a petition to modify the application of 30 CFR 75.1909(a)(1) (nonpermissible diesel-powered equipment; design and performance requirements) to its Willow Creek Mine (I.D. No. 42–02113) located in Carbon County, Utah. The petitioner requests a modification of the existing standard to permit the use of 3304 PCT diesel engines at its mine and affiliated mine to haul equipment and supplies and for travel through the mines. The petitioner states that the 3304 PCT diesel engines have been tested according to the requirements of 30 CFR Part 7 and the testing has indicated that the use of these engines meet the requirements of MSHA's testing protocol. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

**3. Twentymile Coal Company**

[Docket No. M–2000–097–C]

Twentymile Coal Company, One Oxford Centre, 301 Grant Street, 20th Floor, Pittsburgh, Pennsylvania 15219 has filed a petition to modify the application of 30 CFR 75.1909(a)(1) (nonpermissible diesel-powered equipment; design and performance requirements) to its Foidel Creek Mine (I.D. No. 05–03836) located in Routt County, Colorado. The petitioner requests a modification of the existing standard to permit the use of 3304 PCT diesel engines at its mine and affiliated mine to haul equipment and supplies and for travel through the mines. The petitioner states that the 3304 PCT diesel engines have been tested according to the requirements of 30 CFR Part 7 and the testing has indicated that the use of these engines meet the requirements of MSHA's testing protocol. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

**4. Black Beauty Coal Company**

[Docket No. M–2000–098–C]

Black Beauty Coal Company, P.O. Box 312, Evansville, Indiana 47702–0312 has filed a petition to modify the application of 30 CFR 75.350 (air courses and belt haulage entries) to its Air Quality #1 Mine (I.D. No. 12–02010) located in Knox County, Indiana. The petitioner proposes to use the intake air off the belt and neutral entries to ventilate working sections. The petitioner states that a carbon monoxide monitoring system already in place is maintained along the belt haulage entries. The petitioner asserts that mine personnel working at the sections would not be adversely affected, that intake air from the belt haulage entries would improve ventilation at the working sections, and that the ability to meet the regulatory volume and control requirements at each working section would be enhanced by the approval of this modification.

**5. San Juan Coal Company**

[Docket No. M–2000–099–C]

San Juan Coal Company, P.O. Box 561, Waterflow, New Mexico 87421 has filed a petition to modify the application of 30 CFR 75.500(d) (permissible electric equipment) to its San Juan South Mine (I.D. No. 29–02170) and San Juan Deep Mine (I.D. No. 29–02201) located in San Juan County, New Mexico. The petitioner proposes to use the following nonpermissible low-voltage or battery powered electronic testing and diagnostic equipment inby the last open crosscut: lap top computers, oscilloscopes, vibration analysis machines, cable fault detectors, point temperature probes, infrared temperature devices, insulation testers (meggers), voltage, current, and power measurements devices, signal analyzer devices, ultrasonic thickness gauges, electronic component testers, electronic tachometers, and may use other testing and diagnostic equipment if approved by the District Office. The petitioner states that all other test and diagnostic equipment use in or inby the last open crosscut will be permissible. The petitioner has listed in this petition for modification specific procedures that would be followed when using this equipment. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

**6. Black Beauty Coal Company**

[Docket No. M–2000–100–C]

Black Beauty Coal Company, 6641 State Road 46, Terre Haute, Indiana 47802 has filed a petition to modify the application of 30 CFR 75.350 (air courses and belt haulage entries) to its Vermilion Grove Mine (I.D. No. 11–03060) located in Vermilion County, Illinois. The petitioner proposes to use the intake air off the belt and neutral entries to ventilate working sections. The petitioner states that a carbon monoxide monitoring system already in place is maintained along the belt haulage entries. The petitioner asserts that mine personnel working at the sections would not be adversely affected, that the use of intake air from the belt haulage entries would improve ventilation at the workings sections, and that the ability to meet the regulatory volume and control requirements at each working section would be enhanced by the approval of this modification.

**7. Genwal Resources, Inc.**

[Docket No. M–2000–101–C]

Genwal Resources, Inc., P.O. Box 1420, Huntington, Utah 84528 has filed a petition to modify the application of 30 CFR 75.701 (grounding metallic frames, casings, and other enclosures of electric equipment) to its Crandall Canyon Mine (I.D. No. 42–01715) located in Emery County, Utah. The petitioner requests a modification of the existing standard to permit an alternative method for grounding of a diesel generator. The petitioner



proposes to use a 480 volt, wye connected, 320 KW portable diesel powered generator for utility power and to move electrically powered mining equipment in and around the mine. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

**8. Genwal Resources, Inc.**

[Docket No. M–2000–102–C]

Genwal Resources, Inc., P.O. Box 1420, Huntington, Utah 84528 has filed a petition to modify the application of 30 CFR 75.901 (protection of low-and medium-voltage three-phase circuits used underground) to its Crandall Canyon Mine (I.D. No. 42–01715) located in Emery County, Utah. The petitioner requests a modification of the existing standard to permit an alternative method for grounding of a diesel generator. The petitioner proposes to use a 480 volt, wye connected, 320 KW portable diesel powered generator for utility power and to move electrically powered mining equipment in and around the mine. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

**9. West Ridge Resources, Inc.**

[Docket No. M–2000–103–C]

West Ridge Resources, Inc., P.O. Box 1420, Huntington, Utah 84528 has filed a petition to modify the application of 30 CFR 75.701 (grounding metallic frames, casings, and other enclosures of electric equipment) to its West Ridge Mine (I.D. No. 42–02233) located in Carbon County, Utah. The petitioner requests a modification of the existing standard to permit an alternative method for grounding of a diesel generator. The petitioner proposes to use a 480 volt, wye connected, 320 KW portable diesel powered generator for utility power and to move electrically powered mining equipment in and around the mine. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

**10. West Ridge Resources, Inc.**

[Docket No. M–2000–104–C]

West Ridge Resources, Inc., P.O. Box 1420, Huntington, Utah 84528 has filed a petition to modify the application of 30 CFR 75.901 (protection of low-and medium-voltage three-phase circuits used underground) to its West Ridge Mine (I.D. No. 42–02233) located in Carbon County, Utah. The petitioner requests a modification of the existing standard to permit an alternative method for grounding of a diesel generator. The petitioner proposes to use a 480 volt, wye connected, 320 KW portable diesel powered generator for utility power and to move electrically powered mining equipment in and around the mine. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

**11. Gibson County Coal, LLC**

[Docket No. M–2000–105–C]

Gibson County Coal, LLC, P.O. Box 1269, Princeton, Indiana 47670 has filed a petition to modify the application of 30 CFR 75.1700 (oil and gas wells) to its Gibson Mine (I.D. No. 12–02215) located in Gibson County, Indiana. The petitioner proposes to plug and mine through oil and gas wells using the specific procedures outlined in this petition for modification. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

**12. San Juan Coal Company**

[Docket No. M–2000–106–C]

San Juan Coal Company, P.O. Box 561, Waterflow, New Mexico 87421 has filed a petition to modify the application of 30 CFR 75.1700 (oil and gas wells) to its San Juan South Mine (I.D. No. 29–02170) and its San Juan Deep Mine (I.D. No. 29–02201) located in San Juan County, New Mexico. The petitioner requests a modification of the existing standard to permit mining within a 300 foot diameter of abandoned oil and gas wells. The petitioner proposes to plug and mine through oil and gas wells using the specific procedures outlined in this petition for modification. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

**13. Sidney Coal Company, Inc.**

[Docket No. M–2000–107–C]

Sidney Coal Company, Inc., P.O. Box 299, Sidney, Kentucky 41564 has filed a petition to modify the application of 30 CFR 75.1700 (oil and gas wells) to its Rockhouse Energy Mining Company Mine No. 1 (I.D. No. 15–17651) located in Pike County, Kentucky. The petitioner proposes to plug and mine through oil and gas wells using the specific procedures outlined in this petition for modification. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

**14. San Juan Coal Company**

[Docket No. M–2000–108–C]

San Juan Coal Company, P.O. Box 561, Waterflow, New Mexico 87421 has filed a petition to modify the application of 30 CFR 75.1002–1(a) (location of other electric equipment; requirements for permissibility) to its San Juan South Mine (I.D. No. 29–02170) and its San Juan Deep Mine (I.D. No. 29–02201) located in San Juan County, New Mexico. The petitioner proposes to use the following nonpermissible low-voltage or battery powered electronic testing and diagnostic equipment inby the last open crosscut: lap top computers, oscilloscopes, vibration analysis machines, cable fault detectors, point temperature probes, infrared temperature devices, insulation testers (meggers), voltage, current, and power measurements devices, signal analyzer devices, ultrasonic thickness gauges, electronic component testers, electronic tachometers, and may use other testing and diagnostic equipment if approved by the District Office. The petitioner states that all other test and diagnostic equipment used in or inby the last open crosscut will be permissible. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

**15. The American Coal Company**

[Docket No. M–2000–109–C]

The American Coal Company, P.O. Box 727, Harrisburg, Illinois 62946 has filed a petition to modify the application of 30 CFR 75.900 (low- and medium-voltage circuits serving three-phase alternating current equipment; circuit breakers) to its Galatia Mine (I.D. No. 11–02752) located in Saline County, Illinois. The petitioner requests a modification of the existing standard to allow the use of a combination of suitable sized fuses or non-undervoltage release circuit breaker contactor, ground fault device, and three phase undervoltage relay, serving a three-phase low- or medium-voltage alternating current circuit. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

**16. Gibson County Coal, LLC**

[Docket No. M–2000–110–C]

Gibson County Coal, LLC, P.O. Box 1269, Princeton, Indiana 47670 has filed a petition to modify the application of

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30 CFR 75.350 (air courses and belt haulage entries) to its Gibson Mine (I.D. No. 12–02215) located in Gibson County, Indiana. The petitioner proposes to use belt haulage entries as intake air courses to ventilate active working places. The petitioner proposes to use a low-level carbon monoxide detection system to monitor all belt haulage entries and have a visual or audible alarm signal in place to detect any emergency conditions, and if an emergency condition exists, a qualified person would be dispatched immediately to the affected area to determine the reason for the alarm and appropriate action would be taken to safeguard the persons underground. Petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the existing standard.

**17. Plateau Mining Corporation**

[Docket No. M–2000–111–C]

Plateau Mining Corporation, One Oxford Centre, 301 Grant Street, 20th Floor, Pittsburgh, Pennsylvania 15219–1410 has filed a petition to modify the application of 30 CFR 75.901(a) (protection of low- and medium-voltage three-phase circuits used underground) to its Willow Creek Mine (I.D. No. 42–02113) located in Carbon County, Utah. The petitioner proposes to use an alternative method of compliance to ground the portable diesel generator to a low ground field. The petitioner proposes to incorporate a ground fault system for the power circuits that would de-energize mining equipment such as continuous miners, roof bolters, and longwall equipment when being transported throughout the mine, if a phase to frame fault occurs. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

**18. Plateau Mining Corporation**

[Docket No. M–2000–112–C]

Plateau Mining Corporation, One Oxford Centre, 301 Grant Street, 20th Floor, Pittsburgh, Pennsylvania 15219–1410 has filed a petition to modify the application of 30 CFR 75.701 (grounding metallic frames, casings, and other enclosures of electric equipment) to its Willow Creek Mine (I.D. No. 42–02113) located in Carbon County, Utah. The petitioner proposes to use an alternative method of compliance to ground the portable diesel generator to a low ground field. The petitioner proposes to incorporate a ground fault system for the power circuits that would de-energize mining equipment such as continuous miners, roof bolters, and longwall equipment when being transported throughout the mine, if a phase to frame fault occurs. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

**19. Blue Mountain Energy, Inc.**

[Docket No. M–2000–113–C]

Blue Mountain Energy, Inc., 3607 Co. Rd. 65, Rangely, Colorado 81648 has filed a petition to modify the application of 30 CFR 75.350 (air courses and belt haulage entries) to its Deserado Mine (I.D. No. 05–03505) located in Rio Blanco County, Colorado. The petitioner proposes to use air coursed through conveyor belt entries to ventilate working places. The petitioner proposes to install a carbon monoxide monitoring system as an early warning fire detection system in all belt entries used as intake air to a working place. The petitioner asserts that application of the existing standard would result in a diminution of safety to the miners and that the proposed alternative method would provide at least the same measure of protection as the existing standard.

**20. San Juan Coal Company**

[Docket No. M–2000–114–C]

San Juan Coal Company, San Juan Coal Company, P.O. Box 561, Waterflow, New Mexico 87421 has filed a petition to modify the application of 30 CFR 75.701 (grounding metallic frames, casings, and other enclosures of electric) to its San Juan South Mine (I.D. No. 29–02170) and San Juan Deep Mine (I.D. No. 29–02201) located in San Juan County, New Mexico. The petitioner proposes to use a portable diesel generator to move and operate electrically powered mobile equipment and pumps throughout the mine and to provide temporary power to mobile equipment and pumps when power centers are not readily available and where power centers cannot easily be installed without major construction work. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

**21. San Juan Coal Company**

[Docket No. M–2000–115–C]

San Juan Coal Company, San Juan Coal Company, P.O. Box 561, Waterflow, New Mexico 87421 has filed a petition to modify the application of 30 CFR 75.901 (protection of low- and medium-voltage three-phase circuits used underground) to its San Juan South Mine (I.D. No. 29–02170) and San Juan Deep Mine (I.D. No. 29–02201) located in San Juan County, New Mexico. The petitioner proposes to use a portable diesel generator to move and operate electrically powered mobile equipment and pumps throughout the mine and to provide temporary power to mobile equipment and pumps when power centers are not readily available and where power centers cannot easily be installed without major construction work. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

**22. San Juan Coal Company**

[Docket No. M–2000–116–C]

San Juan Coal Company, San Juan Coal Company, P.O. Box 561, Waterflow, New Mexico 87421 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its San Juan South Mine (I.D. No. 29–02170) and San Juan Deep Mine (I.D. No. 29–02201) located in San Juan County, New Mexico. The petitioner proposes to use high-voltage (4,160 volt) cables in/by the last open crosscut and within 150 feet of pillar workings. The petitioner proposes a number of safeguards and asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

**23. Genwal Resources, Inc.**

[Docket No. M–2000–117–C]

Genwal Resources, Inc., P.O. Box 1420, Huntington, Utah 84528 has filed a petition to modify the application of 30 CFR 75.1002–1(a) (location of other electric equipment; requirements for permissibility) to its Crandall Canyon Mine (I.D. No. 42–01715) located in Emery County, Utah. The petitioner proposes to use the following nonpermissible low-voltage or battery powered electronic testing and diagnostic equipment inby the last open crosscut: lap top computers, oscilloscopes, vibration analysis machines, cable fault detectors, point temperature probes, infrared temperature devices and recorders, pressures and flow measurement devices, signal analyzer devices, ultrasonic thickness gauges, electronic component testers, electronic tachometers, and may use other testing and diagnostic equipment if approved by the District Office. The petitioner states that all other test and diagnostic equipment use in or inby the last open crosscut will be permissible. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.



**24. West Ridge Resources, Inc.**

[Docket No. M–2000–118–C]

West Ridge Resources, Inc., P.O. Box 1420, Huntington, Utah 84528 has filed a petition to modify the application of 30 CFR 75.1002–1(a) (location of other electric equipment; requirements for permissibility) to its West Ridge Mine (I.D. No. 42–02233) located in Carbon County, Utah. The petitioner proposes to use the following nonpermissible low-voltage or battery powered electronic testing and diagnostic equipment inby the last open crosscut: lap top computers, oscilloscopes, vibration analysis machines, cable fault detectors, point temperature probes, infrared temperature devices and recorders, pressures and flow measurement devices, signal analyzer devices, ultrasonic thickness gauges, electronic component testers, electronic tachometers, and may use other testing and diagnostic equipment if approved by the District Office. The petitioner states that all other test and diagnostic equipment use in or inby the last open crosscut will be permissible. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

**25. Plateau Mining Corporation**

[Docket No. M–2000–119–C]

Plateau Mining Corporation, One Oxford Centre, 301 Grant Street, 20th Floor, Pittsburgh, Pennsylvania 15219–1410 has filed a petition to modify the application of 30 CFR 75.500(d) (permissible electric equipment) to its Willow Creek Mine (I.D. No. 42–02113) located in Carbon County, Utah. The petitioner proposes to use the following nonpermissible low-voltage or battery powered electronic testing and diagnostic equipment in its continuous miner development sections: lap top computers, oscilloscopes, vibration analysis machines, cable fault detectors, point temperature probes, infrared temperature devices, voltage, current and power measurement recorders, pressure and flow measurement devices, signal analyzer devices, ultrasonic thickness gauges, and electronic tachometers, and may use other testing and diagnostic equipment if approved by the District Office. The petitioner states that all other test and diagnostic equipment used inby the last open crosscut will be permissible. The petitioner asserts that application of the existing standard would result in a diminution of safety to the miners and that the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

**26. Plateau Mining Corporation**

[Docket No. M–2000–120–C]

Plateau Mining Corporation, One Oxford Centre, 301 Grant Street, 20th Floor, Pittsburgh, Pennsylvania 15219–1410 has filed a petition to modify the application of 30 CFR 75.1002–1(a) (location of other electric equipment; requirements for permissibility) to its Willow Creek Mine (I.D. No. 42–02113) located in Carbon County, Utah. The petitioner proposes to use the following nonpermissible low-voltage or battery powered testing and diagnostic equipment in its longwall section: lap top computers, oscilloscopes, vibration analysis machines, cable fault detectors, point temperature probes, infrared temperature devices, voltage, current and power measurement recorders, pressure and flow measurement devices, signal analyzer devices, ultrasonic thickness gauges, and electronic tachometers, and may use other testing and diagnostic equipment if approved by the District Office. The petitioner states that all other test and diagnostic equipment used within 150 feet of pillar workings will be permissible. The petitioner asserts that application of the existing standard would result in a diminution of safety to the miners and that the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

**27. Marfork Coal Company, Inc.**

[Docket No. M–2000–121–C]

Marfork Coal Company, Inc., P.O. Box 457, Whitesville, West Virginia 25209 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its Coon Cedar Grove Mine (I.D. No. 46–08837) located in Raleigh County, West Virginia. The petitioner proposes to use high-voltage (2,400 volt) cables to power longwall mining equipment. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

**28. Sierra Minerals Corporation**

[Docket No. M–2000–007–M]

Sierra Minerals Corporation, 6164 S. Newport St., Suite 2000, Englewood, Colorado 80111 has filed a petition to modify the application of 30 CFR 57.17010 (electric lamps) to its Colorado Yule Marble, Yule Quarry Operation (I.D. No. 05–04438) located in Gunnison County, Colorado. The petitioner requests a modification of the existing standard to eliminate the use of cap lamps during daylight hours at its quarry operation. The petitioner states that: (i) There is natural lighting in all working areas of the quarry that provides illumination under all operating conditions; (ii) supplemental light stands are used in some areas and if power is lost to those lights there is more than sufficient natural light available for safe exit from the working areas; (iii) all escapeways are well lit with natural light during daylight hours; (iv) work in the quarry is done only during daylight hours and if work is extended into hours of darkness, at that time, all persons would use cap lamps. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

**29. Sierra Minerals Corporation**

[Docket No. M–2000–008–M]

Sierra Minerals Corporation, 6164 S. Newport St., Suite 2000, Englewood, Colorado 80111 has filed a petition to modify the application of 30 CFR 57.15031 (location of self-rescue devices) to its Colorado Yule Marble, Yule Quarry Operation (I.D. No. 05–04438) located in Gunnison County, Colorado. The petitioner requests a modification of the existing standard to permit its quarry to be operated without the use of self-rescue devices by persons underground. The petitioner asserts that application of the existing standard would result in a diminution of safety to the miners and that an alternative method of achieving the result of the existing standard exists that would provide at least the same measure of protection as the existing standard.

**Request for Comments**

Persons interested in these petitions are encouraged to submit comments via e-mail to "comments@msha.gov," or on a computer disk along with an original hard copy to the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Room 627, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 1, 2000. Copies of these petitions are available for inspection at that address.

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Dated: September 25, 2000.

**Carol J. Jones,**

*Director, Office of Standards,, Regulations, and Variances.*

[FR Doc. 00–25110 Filed 9–29–00; 8:45 am]

BILLING CODE 4510–43–P

## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

### Agency Information Collection Activities; Announcement of OMB Approval

**AGENCY:** Pension and Welfare Benefits Administration, Department of Labor.

**ACTION:** Notice.

**SUMMARY:** The Pension and Welfare Benefits Administration (PWBA) is announcing that a collection of information has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA 95) and 5 CFR 1320 for the Application for EFAST Electronic Signature and Codes for EFAST Transmitters and Software Developers (Form EFAST–1). This notice announces the OMB approval number and expiration date.

**FOR FURTHER INFORMATION CONTACT:** Address requests for copies of the information collection request (ICR) or additional comments on the ICR to Gerald R. Lindrew, U.S. Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW., Room N–5647, Washington, DC 20210. Telephone: (202) 219–4782. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** On March 9, 2000, PWBA published a notice in the **Federal Register** (65 FR 12577) announcing its intent to request renewal under the PRA of the Application for EFAST Electronic Signature and Codes for EFAST Transmitters and Software Developers. On September 25, 2000, OMB renewed its approval of the information request under OMB control number 1210–0117. The approval expires on March 3, 2002.

Under 5 CFR 1320.5(b), an Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Dated: September 27, 2000.

**Gerald B. Lindrew,**

*Deputy Director, Office of Policy and Research, Pension and Welfare Benefits Administration.*

[FR Doc. 00–25231 Filed 9–29–00; 8:45 am]

BILLING CODE 4510–29–M

## NATIONAL COUNCIL ON DISABILITY

### Renewal of Advisory Committees

**AGENCY:** National Council on Disability (NCD).

**SUMMARY:** This notice announces the renewal of NCD's advisory committees—International Watch and Technology Watch.

**FOR FURTHER INFORMATION CONTACT:** Mark S. Quigley, Public Affairs Specialist, National Council on Disability, 1331 F Street NW., Suite 1050, Washington, DC 20004–1107; 202–272–2004 (voice), 202–272–2074 (TTY), 202–272–2022 (fax), mquigley@ncd.gov (e-mail).

**AGENCY MISSION:** The National Council on Disability is an independent federal agency composed of 15 members appointed by the President of the United States and confirmed by the U.S. Senate. Its overall purpose is to promote policies, programs, practices, and procedures that guarantee equal opportunity for all people with disabilities, regardless of the nature of severity of the disability; and to empower people with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

**International Watch**

The purpose of NCD's International Watch is to share information on international disability issues and to advise NCD's Foreign Policy Team on developing policy proposals that will advocate for a foreign policy that is consistent with the values and goals of the Americans with Disabilities Act.

**Technology Watch**

NCD's Technology Watch (Tech Watch) is a community-based, cross-disability consumer task force on technology. Tech Watch provides information to NCD on issues relating to emerging legislation on technology and helps monitor compliance with civil rights legislation, such as Section 508 of the Rehabilitation Act of 1973, as amended.

These committees are necessary to provide advice and recommendations to NCD on international disability issues and technology accessibility for people with disabilities.

We currently have balanced membership representing a variety of disabling conditions from across the United States.

Signed in Washington, DC, on September 26, 2000.

**Ethel D. Briggs,**

*Executive Director.*

[FR Doc. 00–25104 Filed 9–29–00; 8:45 am]

BILLING CODE 6820–MA–M

## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Advanced Computational Infrastructure & Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meetings of the Special Emphasis Panel in Advanced Computational Infrastructure & Research (#1185):

*Date and Time:* October 11, 2000, 8:30 a.m.–5 p.m. and October 12, 2000 8:30 a.m.–12 p.m.

*Place:* National Science Foundation, 4201 Wilson Boulevard, Suite 1120, Arlington, VA.

*Type of Meeting:* Closed.

*Contact Person:* Charles H. Koelbel, Program Director, Advanced Computational Research Program, Suite 1122, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. (703) 306–1962.

*Purpose of Meeting:* To provide recommendations and advice concerning Software Proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate Proposals in the Advanced Computational Research Program as part of the selection process for awards.

*Date and Time:* October 13, 2000, 8:30 a.m.–5 p.m.

*Place:* National Science Foundation, 4201 Wilson Boulevard, Suite 1120, Arlington, VA.

*Type of Meeting:* Closed.

*Contact Person:* Charles H. Koelbel, Program Director, Advanced Computational Research Program Suite 1122, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. (703) 306–1962.

*Purpose of Meeting:* To provide recommendations and advice concerning CAREER proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate Proposals in the Advanced Computational Research Program as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.



Dated: September 27, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–25209 Filed 9–29–00; 8:45 am]

BILLING CODE 7555–01–M

## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Astronomical Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Special Emphasis Panel in Astronomical Sciences (1186).

*Date and Time:* October 23, 2000, 10 a.m.–5 p.m., October 24, 2000, 8:30 a.m.–5 p.m.; October 25, 2000, 8:30 a.m.–2 p.m.

*Place:* Room 920, National Science Foundation, 4201 Wilson Blvd, Arlington, VA 22230.

*Type of Meeting:* Closed.

*Contact Person:* Daniel Weedman, Program Manager, Division of Astronomical Sciences, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: 703/292–4909.

*Purpose of Meeting:* Reserve site visit for National Optical Astronomy Observatory (NOAO) and National Solar Observatory (NSO) for providing advice regarding management of NOAO and NSO by Association of Universities for Research in Astronomy (AURA).

*Agenda:* To evaluate presentations by NOAO and NSO Directors and AURA President.

*Reason for Closing:* The presentations being reviewed include information of a proprietary or confidential nature, including financial data such as salaries and personal information concerning individuals associated with NOAO, NSO, and AURA. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: September 27, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–25208 Filed 9–29–00; 8:45 am]

BILLING CODE 7555–01–M

## NATIONAL SCIENCE FOUNDATION

### Advisory Panel for Biomolecular Processes; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Advisory Panel for Biomolecular Processes—(5138) (Panel A).

*Date and Time:* Wednesday, Thursday and Friday, October 25–27, 2000, 9 a.m.–6 p.m.

*Place:* National Science Foundation, 4201 Wilson Blvd., Room 320, Arlington, VA 22230.

*Type of Meeting:* Closed.

*Contact Persons:* Dr. Hector Flores, Program Director, and Dr. Susan Porter Ridley, Program Officer, for Metabolic Biochemistry, Room 655, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230. (703) 292–8441.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate research proposals submitted to the Metabolic Biochemistry Program as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: September 27, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–25216 Filed 9–29–00; 8:45 am]

BILLING CODE 7555–01–M

## NATIONAL SCIENCE FOUNDATION

### Advisory Panel for Biomolecular Structure and Function; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Advisory Panel for Biomolecular Structure and Function—(1134) (Panel B).

*Date and Time:* October 23–25, 2000, 8:30 a.m. to 6 p.m.

*Place:* National Science Foundation, Room 340, 4201 Wilson Boulevard, Arlington, VA.

*Type of Meeting:* Closed.

*Contact Person:* Dr. Kamal Shukla and Dr. Dagmar Ringe, Program Directors, Molecular Biophysics, National Science Foundation, Room 655, 4201 Wilson Boulevard, Arlington, VA 22230. (703) 292–8444.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate research proposals submitted to the Molecular Biophysics Program as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c),(4) and (6) of the Government in the Sunshine Act.

Dated: September 27, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–25212 Filed 9–29–00; 8:45 am]

BILLING CODE 7555–01–M

## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Chemical and Transport Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Special Emphasis Panel in Chemical and Transport Systems (1190).

*Date and Time:* November 7, 2000; 8:30 a.m. to 5 p.m.

*Place:* National Science Foundation, 4201 Wilson Boulevard, Room 530, Arlington, VA 22230, (703) 292–8371.

*Type of Meeting:* Closed.

*Contact Person:* Dr. Thomas Chapman, Program Director, Separation and Purification Processes, National Science foundation, 4201 Wilson Boulevard, Room 525, Arlington, VA 22230. (703) 292–7036.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate nominations for the FY 2000 Career Panel of proposals as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: September 27, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–25201 Filed 9–29–00; 8:45 am]

BILLING CODE 7555–01–M

## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Chemical and Transport Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Special Emphasis Panel in Chemical and Transport Systems (1190).

*Date and Time:* November 3, 2000, 8 a.m. to 5 p.m.

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*Place:* National Science Foundation, 4201 Wilson Boulevard, 365 Arlington, VA.

*Type of Meeting:* Closed.

*Contact Person:* Dr. Geoffrey Prentice, Program Director, Division of Chemical and Transport Systems (CTS), Room 525, (703) 292–8371.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate for FY 2000 Career Panel of proposals as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: September 27, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–25202 Filed 9–29–00; 8:45 am]

BILLING CODE 7555–01–M

## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Chemical and Transport Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Special Emphasis Panel in Chemical and Transport Systems (1190).

*Date and Time:* November 6, 2000; 8:30 a.m. to 5 p.m.

*Place:* National Science Foundation, 4201 Wilson Boulevard, Room 530, Arlington, VA 22230. (703) 292–8371.

*Type of Meeting:* Closed.

*Contact Person:* Dr. Farley Fisher, Program Director, Division of Chemical and Transport Systems (CTS), National Science Foundation, 4201 Wilson Boulevard, Room 525, Arlington, VA 22230. (703) 292–8371.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate nominations for the FY 2000 Career Panel of proposals as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: September 27, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–25203 Filed 9–29–00; 8:45 am]

BILLING CODE 7555–01–M

## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Chemical and Transport Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Special Emphasis Panel in Chemical and Transport Systems (1190).

*Date and Time:* November 8, 2000; 8:30 a.m. to 5 p.m.

*Place:* National Science Foundation, 4201 Wilson Boulevard, Room 530, Arlington, VA.

*Type of Meeting:* Closed.

*Contact Person:* Maria Burka, Program Director, Division of Chemical and Transport Systems (CTS), National Science Foundation, 4201 Wilson Boulevard, Room 525, Arlington, VA 22230. (703) 292–8371.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate nominations for the FY 2000 Career Panel of proposals as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: September 27, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–25204 Filed 9–29–00; 8:45 am]

BILLING CODE 7555–01–M

## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Chemistry; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Special Emphasis Panel in Chemistry (#1191).

*Date and Time:* October 23–24, 2000, 8 a.m.–5 p.m.

*Place:* Orgonne National Lab, Chicago, IL.

*Type of Meeting:* Closed.

*Contact Person:* Dr. Joan M. Frye, National Science Foundation contact person, Telephone (703) 292–4953 and Dr. P. James Viccaro, University of Chicago contact person, Telephone (773) 702–1598.

*Purpose of Meeting:* To provide advice and recommendations concerning a proposal for renewed support of the Institute for Chemistry.

*Agenda:* Listen to presentations and discuss merits of proposal.

*Reason for Closing:* The proposal being reviewed includes information of a proprietary or confidential nature, including technical information; and information on personnel. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: September 27, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–25199 Filed 9–29–00; 8:45 am]

BILLING CODE 7555–01–M

## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Chemistry; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Special Emphasis Panel in Chemistry (#1191).

*Dote and Time:* November 6–7, 2000; 8 a.m.–5:30 p.m.

*Place:* Rooms 1020, 1060, and 920, NSF, 4201 Wilson Boulevard, Arlington, VA 22230.

*Type of Meeting:* Closed.

*Contact Person:* Dr. John Stevens, Program Officer, Special Projects Office, Chemistry Division, Room 1055, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 292–8840.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate proposals for Sites for Research Experiences for Undergraduates in Chemistry as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C.552b(c), (4) and (6) of the Government in the Sunshine Act.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–25200 Filed 9–29–00; 8:45 am]

BILLING CODE 7555–01–M



## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Civil and Mechanical Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Special Emphasis Panel in Civil and Mechanical Systems (1205).

*Date and Time:* November 6, 2000, 8 a.m. to 5 p.m.

*Place:* NSF, 4201 Wilson Boulevard, Room 360, Arlington, Virginia 22230.

*Type of Meeting:* Closed.

*Contact Person:* Dr. Richard J. Fragaszy, Program Director, Geomechanics and Geotechnical Systems, Division of Civil and Mechanical Systems, National Science Foundation, 4201 Wilson Boulevard, Room 545, Arlington, VA 22230. (703) 292–8360.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate nominations for the FY'01 CAREER Geotech Review Panel as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: September 27, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–25194 Filed 9–29–00; 8:45 am]

BILLING CODE 7555–01–M

## NATIONAL SCIENCE FOUNDATION

### Advisory Panel for Ecological Studies; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meetings for the Advisory Panel for Ecological Studies (1751):

*Date and Time:* October 12, 2000, 8 a.m.–5 p.m.; and October 13, 2000, 8 a.m.–Adjourn.

*Place:* National Science Foundation, 4201 Wilson Boulevard, Room 375, Arlington, VA 22230.

*Type of Meeting:* Closed.

*Contact Person:* Penelope Firth, Program Officer or Dr. Carol Johnston, Program Officer, Ecological Studies, Room 640N, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230. Telephone: (703) 292–8481.

*Minutes:* May be obtained from the contact person listed above.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals to the National Science Foundation (NSF) for financial support.

*Agenda:* To review and evaluate proposals submitted in response to the Ecological Studies Ecosystem Studies Program Solicitation (99–2).

*Date and Time:* October 11, 2000, 8 a.m.–5 p.m.; and October 13, 2000, 8 a.m.–Adjourn.

*Place:* National Science Foundation, 4201 Wilson Boulevard, Room 375, Arlington, VA 22230.

*Type of Meeting:* Closed.

*Contact Person:* Scott L. Collins, Program Officer or Mr. Aaron Kinchen, Program and Technology Analyst, Ecological Studies, Room 640N, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230. Telephone: (703) 292–8481.

*Minutes:* May be obtained from the contact person listed above.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals to the National Science Foundation (NSF) for financial support.

*Agenda:* To review and evaluate proposals submitted in response to the Ecological Studies Ecosystem Studies Program Solicitation (99–2).

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: September 27, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–25205 Filed 9–29–00; 8:45 am]

BILLING CODE 7555–01–M

## NATIONAL SCIENCE FOUNDATION

### Advisory Panel for Economics, Decision and Management Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub L. 92–463, as amended), the National Science Foundation (NSF) announces the following meetings of the Advisory Panel for Economics, Decision, Risk and Management Sciences and Innovation and Organization Change (#1759):

*Date & Time:* November 10–11, 2000; 9 a.m. to 5 p.m.

*Room:* 920–970.

*Place:* National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

*Contact Person:* Dan Newlon, Program Director for Economics, National Science Foundation, 4201 Wilson Boulevard, Suite 995, Arlington, VA 22230. Telephone: (703) 292–7276.

*Agenda:* To review and evaluate Economics proposals as part of the selection process for awards.

*Date & Time:* October 30–31, 2000; 9 a.m. to 5 p.m.

*Room:* 970.

*Place:* National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

*Contact Person:* Ann Bostrom, Program Director for Decision, Risk & Management Sciences (DRMS), National Science Foundation, 4201 Wilson Boulevard, Suite 995, Arlington, VA 22230. Telephone: (703) 292–7263.

*Agenda:* To review and evaluate DRMS proposals as part of the selection process for awards.

*Type of Meetings:* Closed.

*Purpose of Meetings:* To provide advice and recommendations concerning support for research proposals submitted to the NSF for financial support.

*Reason for Closings:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: September 27, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–25207 Filed 9–29–00; 8:45 am]

BILLING CODE 7555–01–M

## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Electrical and Communications Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Special Emphasis panel in Electrical and Communications Systems (1196).

*Date and Time:* November 20–21, 2000—8:30 a.m. to 5 p.m.

*Place:* National Science Foundation, Room 680, 4201 Wilson Boulevard, Arlington, VA 22230.

*Type of Meeting:* Closed.

*Contact Person:* Dr. Usha Varshney, Program Director, Electronic, Photonics and Device Technologies (EPDT), Division of Electrical and Communications Systems, National Science Foundations, 4201 Wilson Boulevard, Room 675, Arlington, VA 22230. Telephone: (703) 292–8339.

*Purpose:* To provide advice and recommendations concerning CAREER proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate research proposals in the Electronics, Photonics and Device Technologies program as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as

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salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of 5 U.S.C. 552b(c), (4) and (6) the Government in the Sunshine Act.

Dated: September 27, 2000.

**Karen Y. York,**

*Committee Management Officer.*

[FR Doc. 00–25198 Filed 9–29–00; 8:45 am]

BILLING CODE 7555–01–M

## NATIONAL SCIENCE FOUNDATION

### Advisory Committee for Engineering; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended) the National Science Foundation announces the following meeting:

*Name:* Advisory Committee for Engineering (#1170).

*Date and Time:* November 1, 2000; 8:30 a.m.–5 p.m.; November 2, 2000; 8:30 a.m.–12 p.m.

*Place:* Hilton Arlington & Towers (adjacent to the NSF), 950 North Stafford Street, Arlington, Virginia 22203.

*Type of Meeting:* Open.

*Contact Person:* Elbert L. Marsh, Deputy Assistant Director for Engineering, National Science Foundation, Suite 505, 4201 Wilson Boulevard, Arlington, VA 22203; Telephone: (703) 292–4609. If you are attending the meeting and need access to the NSF building, please contact Maxine Byrd at 703–292–4601 or at *mbyrd@nsf.gov* so that your name can be added to the building access list.

*Minutes:* May be obtained from the contact person listed above.

*Purpose of Meeting:* To provide advice, recommendations and counsel on major goals and policies pertaining to Engineering programs and activities.

*Agenda:* The principal focus of the forthcoming meeting will he on strategic issues, both for the Directorate and the Foundation as a whole.

Dated: September 27, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–25210 Filed 9–29–00; 8:45 am]

BILLING CODE 7555–01–M

## NATIONAL SCIENCE FOUNDATION

### Committee on Equal Opportunity in Science and Engineering; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Committee on Equal Opportunities in Science and Engineering (1173).

*Date/Time:* October 12, 2000 (8 a.m.–5 p.m.) and October 13, 2000 (8:30 a.m.–3:30 p.m.).

*Place:* Room 1295, National Science Foundation, 4201 Wilson Blvd., Arlington, VA

*Type of Meeting:* Open.

*Contact Person:* Bernice Anderson, Executive Secretary, CEOSE, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Phone (703) 292–5151.

*Minutes:* May be obtained from the Executive Secretary at the above address.

*Purpose of Meeting:* To advise NSF on policies and activities of the Foundation to encourage full participation of women, minorities, and persons with disabilities currently underrepresented in scientific, engineering, professional, and technical fields and to advise NSF concerning implementation of the provisions of the Science and Engineering Equal Opportunities Act.

*Agenda*

Thursday Octoher 12, 2000 8:00 a.m.–5:00 p.m.
- 8:00 a.m.—Breakfast with NSF Staff
- 8:30 a.m.—Welcome; Approval of June 2000 Minutes
- 8:45 a.m.—Report of Executive Council Liaison
- 9:00 a.m.—NSF Workforce Initiative
- 10:15 a.m.—Directorate for Engineering Dialogue
- 11:15 a.m.—Glenn Commission, Status Report
- 1:15 p.m.—Directorate for Social, Behavioral, and Economic Sciences Dialogue
- 2:15 p.m.—CEOSE 2000 Biennial Report—working session
- 5:00 p.m.—Adjourn

Friday, October 13, 2000 8:30 a.m.—3:30 p.m.
- 9:00 a.m.—AAAS Report on Research Needs Related to SME Student and Faculty Diversity in Higher Education
- 10:00 a.m.—CEOSE 2000 Biennial Report—working session
- 11:00 a.m.—NSF Deputy Director
- 1:30 p.m.—CEOSE 2000 Biennial Report—working session

Dated: September 27, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–25217 Filed 9–29–00; 8:45 am]

BILLING CODE 7555–01–M

## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Human Resource Development; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Special Emphasis Panel in Human Resource Development (#1199).

*Date and Time:* October 19th and 20th, 2000; 9 a.m. to 5 p.m.

*Place:* National Science Foundation, 4201 Wilson Blvd., Room 814, Arlington, VA.

*Type of Meeting:* Closed.

*Contact Person:* Dr. Larry S. Scadden, Program Director, Human Resource Development Division, Room 815, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 292–8636.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate formal proposals submitted to the Program for Persons with Disabilities.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: September 27, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–25197 Filed 9–29–00; 8:45 am]

BILLING CODE 7555–01–M

## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Information and Intelligent Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting.

*Name:* Special Emphasis Panel in Information and Intelligent System (1200).

*Date and Time:* October 24, 2000, 8:30 a.m.–5:00 p.m.

*Place:* National Science Foundation, Room 1120, 4201 Wilson Blvd., Arlington, VA.

*Type of Meeting:* Closed.

*Contact Person:* Ephraim Glinert, Deputy Division Director, Division of Information and Intelligent Systems, Room 1115, National Science Foundation, 4201 Wilson Boulevard, Arlington, Va 22230, Telephone: (703) 292–8930.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate Human and Computer Interaction Career proposals as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.



Dated: September 27, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–25189 Filed 9–29–00; 8:45 am]

BILLING CODE 7555–01–M

## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Information and Intelligent Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting.

*Name:* Special Emphasis Panel in Information and Intelligent Systems (1200).

*Date and Time:* November 13, 2000, 8:30 a.m.–5 p.m.

*Place:* National Science Foundation, Room 1150, 4201 Wilson Blvd., Arlington, VA.

*Type of Meeting:* Closed.

*Contact Persons:* Ephraim Glinert, Deputy Division Director, Division of Information and Intelligent Systems, Room 1115, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 292–8930.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate Computer and Social Systems Career proposals as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempted under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: September 27, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–25190 Filed 9–29–00; 8:45 am]

BILLING CODE 7555–01–M

## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Information and Intelligent Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting.

*Name:* Special Emphasis Panel in Information and Intelligent Systems (1200).

*Date and Time:* October 23–24, 2000, 8:30 a.m.–5 p.m.

*Place:* National Science Foundation, Room 1150, 4201 Wilson Blvd., Arlington, VA.

*Type of Meeting:* Closed.

*Contact Persons:* Ephraim Glinert, Deputy Division Director, Division of Information and Intelligent Systems, Room 1115, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 292–8930.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate Robotics and Human Augmentation Computer Vision Career proposals as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempted under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: September 27, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–25191 Filed 9–29–00; 8:45 am]

BILLING CODE 7555–01–M

## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Information and Intelligent Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting.

*Name:* Special Emphasis Panel in Information and Intelligent Systems (1200).

*Date and Time:* October 16–17, 2000, 8:30 a.m.–5:00 p.m.

*Place:* National Science Foundation, Room 390, 4201 Wilson Blvd., Arlington, VA.

*Type of Meeting:* Closed.

*Contact Persons:* Ephraim Glinert, Deputy division Director, Division of Information and Intelligent Systems, Room 1115, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 292–8930.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate Robotics and Human Augmentation Career proposals as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: September 27, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–25192 Filed 9–29–00; 8:45 am]

BILLING CODE 7555–01–M

## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Information and Intelligent Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting.

*Name:* Special Emphasis Panel in Information and Intelligent Systems (1200).

*Date and Time:* October 24–26, 2000, 8:30 a.m.–5 p.m.

*Place:* One Washington Circle Hotel, Deluxe Board Room 203, 1 Washington Circle NW, Washington, DC 20037.

*Type of Meeting:* Closed.

*Contact Person:* Ephraim Glinert, Deputy Division Director, Division of Information and Intelligent Systems, Room 1115, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 292–8930.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate Information and Data Management Career proposals as part of the selection process for awards.

*Date and Time:* October 31, 2000, 8:30 a.m.–5 p.m.

*Place:* National Science Foundation, 4201 Wilson Blvd, Room 1120, Arlington, VA.

*Type of Meeting:* Closed.

*Contact Person:* Ephraim Glinert, Deputy Division Director, Division of Information and Intelligent Systems, Room 1115, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 292–8930.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate Knowledge and Cognitive Systems Career proposals as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: September 27, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–25193 Filed 9–29–00; 8:45 am]

BILLING CODE 7555–01–M

## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Integrative Activities; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub L. 92–

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463, as amended), the National Science Foundation announces the following meeting:

*Name:* Special Emphasis Panel in Integrative Activities (1373).

*Date and Time:* November 15, 2000, 7 p.m.–9 p.m., November 16–17, 2000, 8:30 a.m.– 5:30 p.m.

*Place:* Rooms 130, 220, 340, 360, 365, 370, 380, 470, 530, 580, and 730, National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

*Type of Meeting:* Closed.

*Contact Person:* Dr. Nathaniel G. Pitts, Director, Office of Integative Activities, Room 1270, 4201 Wilson Blvd, Arlington, VA 22230; Telephone: (703) 292–8040.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate preproposals submitted to the Science and Technology Centers: Integrative Partnerships Program.

*Reason for Closing:* The meeting is closed to the public because the Panel is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they were disclosed. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government Sunshine Act.

Dated: September 27, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–25218 Filed 9–29–00; 8:45 am]

BILLING CODE 7555–01–M

## NATIONAL SCIENCE FOUNDATION

### Oversight Council for the International Arctic Research Center; Notice of Meeting

In accordance with Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Oversight Council for the International Arctic Research Center (9535).

*Date and Time:* October 25, 2000, 1 p.m. to 2 p.m.

*Place:* National Science Foundation, Room 755, 4201 Wilson Boulevard, Arlington, VA 22230.

*Type of Meeting:* Closed (Meeting via Telephone Conference Call).

*Contact Person:* Charles Myers, National Science Foundation, 4201 Wilson Blvd., Suite 755. Telephone: (703) 292–7434.

*Purpose of Meeting:* To provide advice and recommendations concerning further support for the International Arctic Research Center (IARC).

*Agenda:* To review and evaluate the current and proposed activities of the IARC.

*Reason for Closing:* The information being reviewed includes information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the IARC. These matters are exempt under 5 U.S.C. 552b(c), (4), and (6) of the Government in the Sunshine Act.

Dated: September 27, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–25215 Filed 9–29–00; 8:45 am]

BILLING CODE 7555–01–M

## NATIONAL SCIENCE FOUNDATION

### Advisory Committee for Mathematical and Physical Sciences; Notice of Meeting

In accordance with Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Advisory Committee for Mathematical and Physical Sciences (66).

*Date and Time:* November 2, 2000, 8:30 a.m.–6 p.m.; November 3, 2000, 8:30 a.m.–3 p.m.

*Place:* 4201 Wilson Boulevard, Room 1235 Arlington, VA 22230.

*Type of Meeting:* Open.

*Contact Person:* Dr. Morris L. Aizenman, Senior Science Associate, Directorate for Mathematical and Physical Sciences, Room 1005, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. (703) 292–8807.

*Purpose of Meeting:* To provide advice and recommendations concerning NSF science and education activities within the Directorate for Mathematical and Physical Sciences.

*Agenda:* Current status of Directorate; Review by MPSAC of Directorate GPRA performance; Science Presentations.

*Summary Minutes:* May be obtained from the contact person listed above.

Dated: September 27, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–25214 Filed 9–29–00; 8:45 am]

BILLING CODE 7555–01–M

## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Mathematical Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Special Emphasis Panel in Mathematical Sciences (1204).

*Date and Time:* November 29–December 1, 2000; 8:30 a.m.–5 p.m.

*Place:* National Science Foundation, 4201 Wilson Blvd., Rooms 320, 330, and 365, Arlington, VA.

*Type of Meeting:* Closed.

*Contact Person:* Dr. Lockhart, Program Director, Room 1025 National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 292–8870.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate proposals concerning the Focused Research Group Program as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: September 27, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–25196 Filed 9–29–00; 8:45 am]

BILLING CODE 7555–01–M

## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Physics; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Special Emphasis Panel in Physics (1208).

*Date and Time:* Wednesday, Nov. 8, 2000; 6 p.m.–9 p.m.; Thursday, Nov. 9, 2000; 8:30 a.m.–6 p.m.; Friday, Nov. 10, 2000; 8:30 a.m.–3 p.m.

*Place:* Room 1020, NSF, 4201 Wilson Blvd., Arlington, VA 22230.

*Type of Meeting:* Closed.

*Contact Person:* Dr. Terrence W. Rettig, Program Director for the Physics REU Site proposals, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 292–7381.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate the Research Experiences for Undergraduates (REU) Sites proposals, as part of the selection process.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) and (6) of the Government in Sunshine Act.

Dated: September 27, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–25195 Filed 9–29–00; 8:45 am]

BILLING CODE 7555–01–M



## NATIONAL SCIENCE FOUNDATION

### Advisory Panel for Physiology and Ethology; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

*Name:* Advisory Panel for Physiology and Ethology (1160).

*Date and Time:* October 18, 19 and 20, 2000, 8:30 a.m.–6 p.m.

*Place:* NSF, Room 365, 4201 Wilson Blvd., Arlington, Virginia.

*Type of Meeting:* Part-Open.

*Contact Person:* Stephen H. Vessey, Program Director, Animal Behavior Program of Integrative Biology and Neuroscience, Room 685N, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 292–8421.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Minutes:* May be obtained from the contact person listed above.

*Agenda:* Open Session: October 19, 2000, 12:30 p.m. to 1:30 p.m.—discussion on research trends, opportunities and assessment procedures in Animal Behavior.

*Closed Session:* October 18, 2000, 8:30 a.m.–6 p.m.; October 19, 2000, 8:30 a.m. to 4 p.m. and 5 p.m. to 6 p.m.; and October 20, 2000, 8:30 a.m. to 6 p.m. To review and evaluate Animal Behavior proposals as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: September 27, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–25211 Filed 9–29–00; 8:45 am]

BILLING CODE 7555–01–M

## NATIONAL SCIENCE FOUNDATION

### Advisory Panel for Systematic and Population Biology; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meetings of the Advisory Panel for Systematic and Population Biology (1753):

*Date and Time:* October 17–20, 2000.

*Place:* National Science Foundation, 4201 Wilson Blvd., Rooms 310 and 390 Arlington, VA.

*Contact Person:* Mark Courtney, Division of Environmental Biology, Room 635, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 292–8481.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate Population Biology proposals as part of the selection process for awards.

*Date and Time:* October 24–27, 2000; 8:30 a.m.–5 p.m.

*Place:* National Science Foundation, 4201 Wilson Blvd., Room 375, Arlington, VA.

*Contact Person:* Matthew Kane, Division of Environmental Biology, Room 635, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 292–8481.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate Systematic Biology proposals as part of the selection process for awards.

*Type of Meetings:* Closed.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c),(4) and (6) of the Government in the Sunshine Act.

Dated: September 27, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–25206 Filed 9–29–00; 8:45 am]

BILLING CODE 7555–01–M

## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Undergraduate Education; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Special Emphasis Panel in Undergraduate Education (1214).

*Date and Time:* November 30–December 2, 2000; 8 a.m. to 5 p.m.

*Place:* Radison Hotel, 901 N. Fairfax Street, Alexandria, VA 22314.

*Type of Meeting:* Closed.

*Contact Person:* Drs. Elizabeth J. Teles and Gerhard L. Salinger, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 292–4643/5116.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate Advanced Technological Education proposals as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: September 27, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–25213 Filed 9–29–00; 8:45 am]

BILLING CODE 7555–01–M

## NUCLEAR REGULATORY COMMISSION

### Amergen Energy Company, LLC;

**[Docket No. 50–461]**

### Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–62 issued to AmerGen Energy Company, LLC (the licensee), for operation of the Clinton Power Station (CPS) located in DeWitt County, Illinois.

The proposed amendment would allow placing a static VAR compensator into service with just one of the two protective subsystems operable.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant

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hazards by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

The accident analyses assume that the offsite AC electrical power sources have sufficient capacity, capability, redundancy and reliability to ensure the availability of necessary power to safety-related systems so that the fuel, reactor coolant system, and containment design limits are not exceeded and that the postulated transients and accidents are effectively mitigated such that offsite radiation exposure criteria are not exceeded. The SVCs [static VAR compensators] provide voltage support, when required, for the associated offsite AC power circuits to the safety-related buses and equipment supplied by those circuits. The SVC protection systems described in LCO [Technical Specification limiting condition for operation] 3.8.11 protect safety-related equipment from potential SVC failure modes that could damage or degrade Class 1E electrical equipment.

The proposed request to add an LCO 3.0.4 exception to TS [Technical Specification] 3.8.11 Required Action A.1 would result in the ability to place an SVC back into service with only one protection subsystem Operable for up to 30 days. This request would allow an SVC to provide voltage support for onsite loads, as necessary, and thus assist in ensuring an adequate power source to safety-related electrical equipment. Restoring an SVC to service provides automatic voltage support, when required, rather than relying on manual means to monitor offsite grid conditions to ensure adequate onsite power voltage. This request continues to limit the duration of inoperability of the SVC protective subsystem to 30 days as required by LCO 3.8.11 Required Action A.1.

SVC failure, with or without an Operable protective subsystem, is a plausible initiator for those accidents evaluated in the Updated Safety Analysis Report (USAR) Chapters 6 and 15 that result from an interruption of an offsite power source; for example, a loss of RHR [residual heat removal system] during shutdown conditions when supplied by an offsite power circuit. However, no facility design changes are associated with the SVCs or their associated offsite circuits that would cause a change in component failure probability; hence reliability of the SVCs is maintained at their previous levels. Therefore, no change in plausible initiation mechanisms or frequencies has occurred. In addition, following approval of this request, the remaining protective subsystem would continue to be required Operable. When combined with the proposed 30-day limitation on the proposed request, the assumed conditions and failure probabilities used to derive the basis for the Required action and associated Completion Times for Conditions B and C of TS 3.8.11 are preserved. Thus, no significant increase in the probability of any accident previously evaluated results from this change.

For those accidents that rely on the availability of the offsite power circuit for successful mitigation, no change has been introduced to alter the assumed failure modes or effects. One SVC protective subsystem will continue to provide a level of protection consistent with the analyses provided for the basis for the Required Actions and associated Completion Times for Conditions B and C of TS 3.8.11. Thus, the assumed failure of the SVC would not alter the assumptions of the accident analyses nor consequences resulting from the accident analyses. Therefore, no significant increase in consequences of any accident evaluated previously results from this change.

Based on the above, the proposed amendment does not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. The proposed change would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change to the SVC protection subsystem minimum requirements will not introduce any new or different accident. No changes have been introduced into the design or operation of the SVC or the associated offsite circuit that would result in a new or different failure mode or effect. No failures previously considered incredible would be made credible as a result of allowing an LCO 3.0.4 exception to place an SVC into service with only one protective subsystem Operable. Therefore, sufficient protection against SVC malfunctions will continue to exist for the duration of this change and, thus, the proposed change does not create the possibility of a new or different kind of accident than previously evaluated.

3. The proposed change will not involve a significant reduction in the margin of safety.

Although the minimum requirements for an SVC Protection Subsystem are proposed to be changed, the SVCs will continue to be protected from all of its postulated failures. Because of the reliable design of the protective subsystems and the demonstrated reliability and predictable behavior of the SVC during its previous service, the redundant protective subsystem provides a negligible increase in the margin of safety associated with the overall protection system. Thus, the request to allow an LCO 3.0.4 exception to place an SVC into service with only one protective subsystem Operable does not involve a significant reduction in the margin of safety. Further, the benefit of having the SVC in service to support offsite circuit Operability, as needed, provides a greater margin of safety than the margin lost due to the reduction in protective system redundancy.

Based on the above, it is concluded that the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By Wednesday November 1, 2000, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Kevin P. Gallen, Morgan, Lewis & Bockius LLP, 1800 M Street, NW, Washington, DC 20036–5869, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated September 20, 2000, which is available for public inspection at the Commission's Public Document Room, One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 26th day of September, 2000.

For the Nuclear Regulatory Commission.

**Jon B. Hopkins,**

*Senior Project Manager, Section 2, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 00–25237 Filed 9–29–00; 8:45 am]

BILLING CODE 7590–01–P



## NUCLEAR REGULATORY COMMISSION

### Reactor Oversight Process Initial Implementation Evaluation Panel

**AGENCY:** U.S. Nuclear Regulatory Commission.

**ACTION:** Notice of establishment of the Reactor Oversight Process Initial Implementation Evaluation Panel.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act of October 6, 1972 (Pub. L., 94–463, Stat. 770–776) the U.S. Nuclear Regulatory Commission (NRC) announces the Establishment of the Reactor Oversight Process Initial Implementation Evaluation Panel (IIEP). The Nuclear Regulatory Commission has determined that establishment of the Panel is necessary and is in the public interest in order to obtain advice and recommendations on the revised reactor oversight process (ROP). This action is being taken in accordance with the Federal Advisory Committee Act after consultation with the Committee Management Secretariat, General Services Administration (GSA).

*Background:* The ROP for commercial reactors is described in NRC Inspection Manual Chapter 2515. Information on the development of the ROP is contained in Commission papers SECY–99–007, "Recommendations For Reactor Oversight Process Improvements," dated January 8, 1999, SECY–99–007A, "Recommendations For Reactor Oversight Process Improvements (Follow-up to SECY–99–007)," dated March 22, 1999, and SECY–00–049, "Results of the Revised Reactor Oversight Process Pilot Program," dated February 24, 2000.

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These Commission papers describe the scope and content of performance indicator reporting, a new risk-informed baseline inspection program, a new assessment process, and revisions to the enforcement policy. Commission paper SECY–00–049 also describes the results from the Pilot Program Evaluation Panel (a previous Federal Advisory Committees Act (FACA) panel), including a recommendation from the panel to proceed with initial implementation of the ROP at all power reactor facilities. On March 28, 2000, the Commission approved initial implementation of the ROP, and on May 17, 2000, the Commission directed the NRC staff to convene another evaluation panel under FACA to evaluate the first year of implementation of the ROP. The staff has established this IIEP in response to the Commission's directions.

The IIEP will function as a cross-disciplinary oversight group to independently monitor and evaluate the results of the first year of implementation of the ROP and provide advice and recommendations to the Director of the Office of Nuclear Reactor Regulation on reforming and revising the ROP. The IIEP will provide a written report containing an overall evaluation of the ROP to the Director of the Office of Nuclear Reactor Regulation. Meetings of the Panel will be publically announced in advance, open to the public, and all material reviewed placed in the public document room. A meeting summary will be prepared following each meeting to document the results of the meeting.

The Panel membership will include participants from NRC headquarters and regional offices, a representative from the Nuclear Energy Institute, reactor licensee management representatives, a representative from the Union of Concerned Scientists (a public interest group), and representatives from State Governments.

The establishment of the Panel will be effective with the filing of its charter with the standing committees of Congress having legislative jurisdiction over the NRC, the Library of Congress, and GSA.

**FOR FURTHER INFORMATION CONTACT:** Andrew L. Bates, Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555: Telephone 301–415–1963.

Dated: September 26, 2000.

**Andrew L. Bates,**

*Advisory Committee Management Officer.*

[FR Doc. 00–25235 Filed 9–29–00; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Reactor Safeguards Subcommittee Meeting on Fire Protection; Notice of Meeting

The ACRS Subcommittee on Fire Protection will hold a meeting on October 16 (Room T–2B3) and 17 (Room T–2B1), 2000, 11545 Rockville Pike, Rockville, Maryland.

The agenda for the subject meeting shall be as follows:

*Monday, October 16, 2000—8:30 a.m. until the conclusion of business*

*Tuesday, October 17, 2000—8:30 a.m. until the conclusion of business*

The Subcommittee will review the revised draft NFPA 805 Performance Standard for Fire Protection for Light water Reactor Electric Generating Plants, Draft Regulatory Guide on Fire Protection for Operating Nuclear Power Plants, post-fire safe shutdown circuit analysis, and other fire protection related issues. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, and other interested persons regarding this review.

Further information regarding the Chairman's ruling on requests for the opportunity to present oral statements and the time for topics to be discussed, whether the meeting has been canceled or rescheduled, and allotted therefor, can be obtained by contacting the cognizant ACRS staff engineer, Mr. Amarjit Singh (telephone 301/415–6899) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: September 26, 2000.

**James E. Lyons,**

*Associate Director for Technical Support, ACRS/ACNW.*

[FR Doc. 00–25234 Filed 9–29–00; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 40–8027]**

### Decommissioning of Sequoyah Fuels Corporation Uranium Conversion Facility In Gore, Oklahoma: Notice of Intent To Conduct a Public Outreach Meeting for Sequoyah Fuels Uranium Conversion Facility

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of Intent To Conduct a Public Outreach Meeting.

**SUMMARY:** The NRC will conduct a meeting to discuss the status of the environmental review of decommissioning activities at the SFC facility near Gore, Oklahoma, and to obtain public comments on the environmental impacts that need to be addressed. Ample time will be provided for public comment at the meeting, although comments and questions will generally be limited to the remediation of the SFC facility. This meeting is part of the continuing process to keep affected stakeholders and the public informed of plans, schedules and important issues related to the remediation of the SFC facility.

**DATES:** The NRC will meet with the public on Tuesday, October 17, 2000, from 7:00 to 10:00 p.m.

**ADDRESSES:** Gore Junior High School cafeteria, 1200 Highway 10N, Gore, Oklahoma.

**SUPPLEMENTARY INFORMATION:** The NRC is preparing an Environmental Impact Statement (EIS) for the decommissioning of the Sequoyah Fuels Corporation's (SFC) uranium conversion facility located in Gore, Oklahoma. From 1970 until 1993, SFC operated a uranium conversion facility at a site located in Gore, Oklahoma, under the authority of an NRC license issued pursuant to 10 CFR part 40. The main process was the conversion of uranium oxide (yellowcake) to uranium hexafluoride. A second process, begun in 1987, consisted of the conversion of depleted uranium hexafluoride to uranium tetrafluoride.

SFC supplied formal notice of its intent to seek license termination in accordance with 10 CFR 40.42(e) in a letter dated February 16, 1993. Based on available information, at least some of the identified waste and contamination at the site is known to exceed NRC's existing radiological criteria for decommissioning. Therefore, SFC is required to remediate the SFC facility to meet the NRC's radiological criteria for license termination, as described 10 CFR Part 20.

In 1998 Sequoyah Fuels submitted to NRC a site characterization report, which is a technical analysis and description of the site's radiological contamination. A study of remediation alternatives was submitted, also in 1998, followed by a decommissioning plan in 1999. The alternatives study is the principal basis for the environmental review. The remediation alternative proposed by Sequoyah Fuels is an on-site disposal cell.

The NRC is conducting an environmental review of the decommissioning and will develop an EIS to determine whether the alternative proposed by SFC for remediation of the facility is acceptable. The EIS will evaluate the potential impacts of the licensee's proposal, including the effects on water resources, air quality, ecological resources, socioeconomic and community resources, human health, noise and environmental justice. The EIS will consider the licensee's proposed approach for onsite disposal, along with alternatives such as disposing of the contaminated material off-site in a licensed disposal facility. NRC will consider the EIS in reaching a decision on the acceptability of the licensee's proposed approach.

For the preparation of an EIS for the decommissioning of the SFC facility, a public scoping meeting was held on October 15, 1995, in Gore, Oklahoma. In February 1997, NRC issued a summary report of the scoping process. Since so much time has elapsed since the 1995 scoping meeting, NRC will hold a meeting to discuss the environmental impacts which will be addressed in the EIS and to give the public another chance to identify any additional environmental impacts that need to be addressed before we complete the draft EIS.

Other agencies and organizations cooperating in the environmental review are the Environmental Protection Agency; the Army Corps of Engineers; the U.S. Geological Survey; the Oklahoma Department of Environmental Quality; and the Cherokee Nation. All these agencies and organizations will be represented at the 7 p.m. meeting.

In addition to the Tuesday evening meeting, two other meetings are planned for that day. In the morning, from 9 a.m. to noon, NRC staff and its consultants will tour the SFC site. In the afternoon, from 2 to 4 p.m., NRC and SFC will hold a technical exchange related to environmental issues at the site. This meeting will be held at the SFC facility warehouse located at Interstate-40 and Highway 10.

The technical exchange will afford the NRC and its consultants an opportunity to discuss environmental issues prior to anticipated NRC requests for additional information from SFC. The meeting is open for public observation, but participation is limited to NRC and SFC personnel. The opportunity for full public participation will occur in the evening during the 7 p.m. meeting.

**FOR FURTHER INFORMATION CONTACT:** Phyllis Sobel, Office of Nuclear Material Safety and Safeguards, Washington, DC 20555, Telephone: 301–415–6714; fax 301–415–5397; or e-mail PAS@NRC.GOV.

Dated at Rockville, Maryland, this 19th day of September 2000.

For the Nuclear Regulatory Commission.

**Thomas Essig,**

*Chief, Environmental and Performance Assessment Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 00–25236 Filed 9–29–00; 8:45 am]

**BILLING CODE 7590–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43329: File No. SR–NYSE–00–38]**

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. To Extend the Pilot Regarding Shareholder Approval of Stock Option Plans

September 22, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 21, 2000, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in items, I, II, III below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange is proposing to extend, until November 30, 2000, the effectiveness of the amendments to Sections 312.01, 312.03 and 312.04 of the Exchange's Listed Company Manual with respect to the definition of a "broadly-based" stock option plan, which were approved by the Commission on a pilot basis ("Pilot") on June 4, 1999.[3]

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below and is set forth in Sections A, B, and C below.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

On July 13, 2000, the NYSE submitted a proposed rule change to extend the effectiveness of the Pilot until September 30, 2003.[4] On August 15, 2000, the Commission, in response to a commenter's request, extended the comment period for the 3-Year Extension Proposal until September 20, 2000.[5] The original comment period was to expire on August 31, 2000.[6] The Pilot is scheduled to expire on September 30, 2000. Therefore, to accommodate the extended comment period on the 3-Year Extension Proposal, the Exchange proposes to extend the effectiveness of the Pilot until November 30, 2000.

2. Basis

The Exchange believes that the proposed rule change is consistent with

[3] Securities Exchange Act Release No. 41479, 64 FR 31667 (June 11, 1999).

[4] Securities Exchange Act Release No. 43111 (August 2, 2000), 65 FR 49046 (August 10, 2000) ("3-year Extension Proposal").

[5] Securities Exchange Act Release No. 43155 (August 15, 2000), 65 FR 51382 (August 23, 2000).

[6] *See* 3-Year Extension Proposal, note 4 *supra*.

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the requirements of Section 6(b)(5)[7] of the Act because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has neither solicited nor received written comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)[8] of the Act and Rule 19b–4(f)(6)[9] thereunder.[10]

A proposed rule change filed under rule 19b–4(f)(6)[11] normally does not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii)[12] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and public interest. The Exchange seeks to have the proposed rule change become operative on or before September 30, 2000, in order to allow the Pilot to continue in effect on an uninterrupted basis.

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date.

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

The Commission, consistent with the protection of investors and the public interest, has determined to make the proposed rule change operative immediately through November 30, 2000. The extension of the Pilot will provide the Commission with additional time to review and evaluate the 3-Year Extension Proposal.

The Commission notes that unless the Pilot is extended, the Pilot will expire and the provisions in Sections 312.01, 312.03 and 312.04 of the Exchange's Listed Company Manual that were amended in the Pilot will revert to that which were effective prior to June 4, 1999. The Commission believes that such a result could lead to confusion.

Based on these reasons, the Commission believes that it is consistent with the protection of investors and the public interest that the proposed rule change become operative immediately through November 30, 2000. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–00–38 and should be submitted by October 23, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–25134 Filed 9–29–00; 8:45 am]

BILLING CODE 8010–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43328; File No. SR–PCX–00–13]**

## Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the Pacific Exchange, Inc. Relating to the Entry of Computer-Generated Orders

September 22, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 16, 2000, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. On August 16, 2000, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice of filing and order granting accelerated approval to the proposed rule change.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to adopt Rule 6.88 ("Rule") to restrict the entry of certain electronically created option orders on the Exchange via the Exchange's Member Firm Interface ("MFI"). The text of the Rule is set forth below.

**POETS**

**Pacific Options Exchange Trading System**

**Rule 6.88**

(a) POETS is the Exchange's automated trading system comprised of the options order routing system, the automated execution system (Auto-Ex), the on-line limit order book system (Auto-Book), and the automatic market quote update system (Auto-Quote). Orders may be sent to POETS via the Exchange's Member Firm Interface (MFI).

(b) Except as provided in subsection (b)(1), Member firms may not enter orders via the MFI or permit the entry of orders via the MFI if those orders are created and communicated electronically without manual input ("computer generated orders"). Except as provided in subsection (b)(1), order entry by public customers or associated persons of Member Firms must involve manual input such as entering the terms of an order into an order-entry screen or manually selecting a displayed order so that the order will be sent. Nothing in this Rule prohibits Member Firms from electronically sending to the Exchange orders manually entered by customers into front-end communications systems (*e.g.*, Internet gateways, online networks, etc).

(1) Computer generated orders may be sent to the Exchange via the MFI only if they are properly designed with a "CG" in the "additional instruction" field. Orders so designated will be re-routed for representation by a Floor Broker. Computer generated orders are not eligible for automatic execution via the Auto-Ex System.

**¶5232 Exchange Sponsored Hand Held Terminals for Floor Brokers**

Rule *6.89*[6.88]—No change.

**¶5233 Proprietary Brokerage Order Priority Terminals**

Rule *6.90*[6.89]—No change.

* * * * *

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item V below. The Exchange has prepared summaries, set forth in Sections A, B and below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change*

1. Purpose

The purpose of the proposed rule change is to restrict the direct entry of certain option orders that are created and communicated electronically, *i.e.*, without manual imput, into the Exchange's POETS system.[4] The Exchange represents that the text of the Rule is similar to the text of Rule 717(f) of the International Securities Exchange ("ISE").[5]

Subsection (a) of the Rule briefly describes the POETS system. Specifically, Subsection (a) states that POETS is the Exchange's automated trading system comprised of the options order routing system, the automatic execution system ("Auto-Ex"), the on-line limit order book system ("Auto-Book"), and the automatic market quote update system ("Auto-Quote"). Subsection (a) further states that orders may be sent to POETS via the Exchange's MFI. This subsection is intended to provide background for the provision on computer-generated orders, which is contained in Subsection (b).

Subsection (b) states that except as provided in subsection (b)(1), member firms may not enter orders via the MFI or permit the entry of orders via the MFI if those orders are created and communicated electronically without manual input. Subsection (b) defines such orders as "computer-generated orders." It further states that, except as provided in subsection (b)(1), order entry by public customers or associated persons of member firms must involve manual input such as entering the terms of an order into an order-entry screen or manually selecting a displayed order so that the order will be sent. It further states that nothing in the Rule prohibits member firms from electronically sending orders that are manually entered by customers into front-end communications system (*e.g.*, Internet gateways, online networks, etc.) to the Exchange.

Subsection (b)(1) of the Rule states that computer-generated orders may be sent to the Exchange via the MFI only if they are properly designated with a "CG" in the "additional instruction" field. Orders so designated will be re-routed for representation by a floor broker. Finally, Subsection (b)(1) states that computer-generated orders are not eligible for automatic execution via the Auto-Ex system.

The Exchange represents that its business model depends upon market makers for competition and liquidity. Public customer orders on the PCS receive priority over market maker bids and offers.[6] The Exchange believes that allowing electronic entry directly into the Exchange's POETS system could give customers with order-generating systems a significant advantage over market makers. In its view, this could undercut the Exchange's business model. The Exchange notes that under the proposed rule change, computer-generated orders can still be sent for execution on the Exchange; however, they may not be sent for execution directly via POETS. The Exchange also notes that the Rule is similar to ISE Rule 717(f); however, the ISE Rule permits computer-generated orders to be entered on the ISE only if they are "nonmarketable limit orders to buy (sell) that are priced higher (lower) than the best bid (offer) on the Exchange." By contrast, the PCX proposal allows *all* computer-generated orders to be entered on the PCX.

Currently, PCX member firms that are located off the trading floor may send option orders to the trading floor in three different ways. First, a member firm representative may call a PCX member firm representative on the trading floor on the telephone and place an order. The member firm representative, while present in a member firm booth on the trading floor, would then either have the order taken manually to a floor broker in the trading crowd for representation of the order, or have the order sent electronically to a floor broker (via a hand-held terminal) in the trading crowd who would then represent it. Second, a member firm

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange revised the proposed rule to allow computer-generated orders to be sent to the Exchange via the Member Firm Interface ("MFI") if they are properly designated as such. *See* Letter from Michael Pierson, Vice President, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated August 15, 2000 ("Amendment No. 1").

[4] *See* Securities Exchange Act Release No. 27633 (January 18, 1990), 55 FR 2466 (January 24, 1990) (approving implementation of POETS). POETS is the Exchange's automated trading system. It is more fully described *infra*.

[5] ISE Rule 717(f) states:

"Members may not enter, nor permit the entry of, orders created and communicated electronically without manual input (*i.e.*, order entry by Public Customers or associated persons of Members must involve manual input such as entering the terms of the order into an order-entry screen or manually selecting a displayed order against which an off-setting order should be sent), unless such orders are non-marketable limit order to buy (sell) that are priced higher (lower) than the best bid (offer) on the Exchange (*i.e.*, limit orders that improve the best price available on the Exchange). Nothing in this paragraph, however, prohibits Electronic Access Members from electronically communicating to the Exchange orders manually entered by customers into front-end communications systems (*i.e.*, Internet gateways, online networks, etc.)." *See* Securities Exchange Act Release No. 42455 (February 24, 2000), 65 FR 11388 (March 2, 2000) (approving application of ISE for registration as a national securities exchange).

[6] See PCX Rules 6.52(a) (types of orders permitted to be maintained in the limit order book), 6.75(a)–(b) (priority of bids and offers), 6.86 (guaranteed markets for public customers) and 6.87(a) (eligibility of public customers for use of Auto-Ex System).

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representative may send an order to a member firm representative in a booth on the trading floor via an electronic transmitter. (This transmitter would be proprietary equipment of a member firm). The member firm representative in the booth would then have the order represented in the trading crowd in one of the two ways described above. Third, a member firm representative may send an order electronically through the MFI, which links member firms with the Exchange's electronic trading system, POETS. Eligible orders sent through the MFI to POETS may be: (1) Automatically executed against orders in the limit order book; (2) placed in the limit order book (if they are not marketable); (3) automatically executed via Auto-Ex; or (4) routed to a floor broker hand-held terminal in the trading crowd.

Accordingly, under the rule change, computer-generated orders may be sent to the Exchange in any of the three ways described above. However, if they are submitted electronically to the Exchange via the MFI, they must be properly identified with a "CG" indicator. All properly identified computer-generated orders that are sent via the MFI will be re-routed for representation by a floor broker. When an order is re-routed, it is transmitted either: (1) To a member firm booth on the trading floor; or (2) to a floor broker in the trading crowd via the floor broker hand-held terminal,[7] depending upon the instructions of the member firm that is responsible for the order. As noted above, orders transmitted to a member firm booth may be subsequently transmitted to a floor broker in the trading crowd either by placing the order telephonically[8] or by manually taking the order to the floor broker in the crowd. An order that is transmitted to a floor broker may be placed in the limit order book for representation by the Order Book Official as long as that order is a "non-broker/dealer customer order."

The Exchange notes that under the rule change, properly marked computer-generated orders that are sent via the MFI will be-routed in the same manner in which broker-dealer orders that are sent via the MFI are currently re-routed. When a broker-dealer order is routed to a floor broker in the trading crowd, the order is vocalized and, if the order represents the best bid or offering price on the PCX, the Market Quote Terminal Operator ("MQTP") will cause the order to be displayed. Computer-generated orders for the accounts of broker-dealers will be handled in the same manner under the proposed rule change. However, if a computer-generated order is for the account of a public customer, it may be represented by a floor broker in the trading crowd, in which case the MQTO will cause it to be displayed, or the floor broker may place the order in the limit order book, in which case the Order Book Official at that trading post will cause it to be displayed and will continue to represent it.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with with Section 6(b)[9] of the Act, in general, and furthers the objectives of Section 6(b)(5),[10] in particular, in that it facilitates transactions in securities, removes impediments to and perfects the mechanism of a free and open market and a national market system, and promotes just and equitable principles of trade.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Other*

Written comments on the proposed rule change were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The PCX has requested that the proposed rule change be given expedited review and accelerated effectiveness pursuant to Section 19(b)(2) of the Act.

**IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change**

After careful review, the Commission finds that the proposed rule change is consistent with the provisions of the Act applicable to a national securities exchange, particularly Section 6(b)(5)[11] and Section 6(b)(8)[12] of the Act, and the rules and regulations thereunder.[13]

The Commission has carefully considered whether the Rule inhibits competition between the PXC's automated customers and those who do not employ automated means of order entry. The Commission notes that in the equity markets, for example, limit orders from public customers have been a valuable source of quote competition. Nonetheless, the Commission recognizes that the PCX's business model depends on market makers for competition and liquidity. Allowing electronic order entry into Auto-Ex could give automated customers a significant advantage over market makers. This could undercut the PCX's business model. Moreover, the Rule would allow electronically generated orders to be sent o the Exchange via the MFI if they are properly designated with a "CG" in the instruction field. Properly designated orders are then routed to the trading crowd for representation by a floor broker. However, the order is not eligible for execution through Auto-Ex.

The Commission approved a similar rule for the fully automated options exchange, the ISE. In approving the application of the ISE for registration as a national securities exchange, the Commission explicitly recognized that the ISE's business model "depends on market makers for competition and liquidity."[14] Recognizing that allowing electronic order entry into the ISE could "give automated customers a significant advantage over [the ISE's] market makers," the Commission stated that it was unable to conclude that the limitation violated the statutory requirements.[15]

ISE Rule 717(f) regarding computer-generated orders specifically permits the entry of non-marketable limited orders that improve the best price available on the ISE. This provision is designed to accommodate non-marketable limit orders because these orders serve to increase competition and improve quotes. Similarly, non-marketable electronically generated limit orders that improve the best price on the PCX will be permitted to enter the Exchange through the MFI, if they are properly designated with a "CG" in the "additional instruction" field. These orders will be routed from the MFI to the trading crowd for representation by a floor broker.

Although the ISE and PCX rules are not identical, both ISE Rule 717(f) and PCX Rule 6.88 permit non-marketable limit orders that improve the price to be sent to the exchange and routed to the relevant trading mechanism for execution. It is the Commission's view that the Exchange's approach strikes a reasonable balance. It provides protection to PCX market makers; at the same time, it permits properly designated electronically generated orders to be represented by a floor broker in the trading crowd. As it stated with respect to its approval of ISE Rule 717(f), the Commission is unable to conclude that the new PCX Rule violates any statutory requirements.

The Commission further notes that the Rule does not prohibit electronically generated orders from being sent to the PCX; rather, merely prevents them from being entered into Auto-Ex. Thus, properly designated electronically generated orders will be routed through the MFI to the trading crowd for representation by a floor broker. PCX rules require that all customer orders be executed at the PCX's displayed bid or offer at the time the order is represented in the crowd.[16] Depending upon the circumstances, the order may be filled at a price better than the PCX's displayed bid or offer. Therefore, although, electronically generated customer orders will not be eligible for automatic execution through Auto-Ex under the Rule, they will still be entitled to receive an execution price that is as good as or better than the PCX's displayed bid or offer.

The Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after publication of notice thereof in the **Federal Register** pursuant to Section 19(b)(2) of the Act. Specifically, the Commission has approved similar proposals filed by the ISE[17] and the Chicago Board Options Exchange, Inc. ("CBOE").[18] Approval of this proposal on an accelerated basis will enable the PCX to compete on an equal basis with these other exchanges and thus is consistent with Section 6(b)(8) of the Act.

**V. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–00–13 and should be submitted by October 23, 2000.

**VI. Conclusion**

For the reasons discussed above, the Commission finds that the proposal is consistent with the Act and the rules and regulations thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–PCX–00–13), as amended, adopting Rule 6.88, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–25133 Filed 9–29–00; 8:45 am]

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[7] See PCX Rule 6.88.

[8] See PCX Rule 6.2(b)(4)(C).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78f(b)(5). Section 6(b)(5) requires that the rules of a national securities exchange be designed to, among other things, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest. It also requires that those rules not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

[12] 15 U.S.C. 78f(b)(8). Section 6(b)(8) requires that the rules of the exchange do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

[13] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] *See supra* note 4.

[15] *Id.*

[16] *See* PCX Rule 6.86(a).

[17] *See supra* note 5.

[18] Securities Exchange Act Release No. 43285 (September 12, 2000), 65 FR 56972 (September 20, 2000) (approving SR–CBOE–00–01).

[19] 17 CFR 200.30–3a(a)(12).



## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### 2000–2001 Allocation of the Raw Cane Sugar, Refined Sugar, and Sugar Containing Products Tariff-rate Quotas

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice.

**SUMMARY:** The Office of the United States Trade Representative (USTR) is providing notice of the country-by-country allocation of the in-quota quantity of the raw cane sugar, refined sugar, and sugar-containing products tariff-rate quotas for the period that begins October 1, 2000 and ends September 30, 2001.

**EFFECTIVE DATE:** October 1, 2000.

**ADDRESSES:** Inquiries may be mailed or delivered to Karen Ackerman, Agricultural Economist, Office of Agricultural Affairs (Room 421), Office of the United States Trade Representatives, 600 17th Street, NW., Washington, DC 20508.

**FOR FURTHER INFORMATION CONTACT:** Karen Ackerman, Office of Agricultural Affairs, 202–395–6127.

**SUPPLEMENTARY INFORMATION:** Pursuant to Additional U.S. Note 5 to chapter 17 of the Harmonized Tariff Schedule of the United States (HTS), the United States maintains tariff-rate quotas for imports of raw cane and refined sugar. The Secretary of Agriculture establishes the in-quota quantity the raw cane sugar and refined sugar tariff-rate quotas.

Section 404(d)(3) of the Uruguay Round Agreements Act (19 U.S.C. 3601(d)(3)) authorizes the President to allocate the in-quota quantity of a tariff-rate quota for any agricultural product among supplying countries or customers areas. The President delegated this authority to the United States Trade Representative under paragraph (3) of Presidential Proclamation No. 6763 (60 FR 1007).

Accordingly, a tariff-rate quota quantity for raw cane sugar of 1,117,195 metric tons raw value, the minimum level to which the United States is committed under the Uruguay Round Agreement, is being allocated to the following countries:

## SMALL BUSINESS ADMINISTRATION

### Region IX District Advisory Council Public Meeting

The U.S. Small Business Administration Hawaii District Advisory Council, will hold a public meeting at 10 a.m. on Wednesday October 11, 2000 located at the Business Information and Counseling Center, 1111 Bishop Street, Suite 204, Training Center, Honolulu, HI to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present. For further information write or call Andrew K. Poepoe, District Director U.S. Small Business Administration, 300 Ala Moana Boulevard, Room 2–235, Honolulu, Hawaii (808) 541–2965.

**Bettie Baca,**

*Counselor to the Administrator/Public Liaison.*

[FR Doc. 00–25186 Filed 9–29–00; 8:45 am]

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| Country | FY2001 allocation |
|---|---|
| Argentina | 45,283 |
| Australia | 87,408 |
| Barbados | 7,372 |
| Belize | 11,584 |
| Bolivia | 8,425 |
| Brazil | 52,700 |
| Colombia | 25,274 |
| Congo | 7,258 |
| Cote d'Ivoire | 7,258 |
| Costa Rica | 15,797 |
| Dominican Republic | 185,346 |
| Ecuador | 11,584 |
| El Salvador | 27,381 |
| Fiji | 9,478 |
| Gabon | 7,258 |
| Guatemala | 50,549 |
| Guyana | 12,637 |
| Haiti | 7,258 |
| Honduras | 10,531 |
| India | 8,425 |
| Jamaica | 11,584 |
| Madagascar | 7,258 |
| Malawi | 10,531 |
| Mauritius | 12,637 |
| Mexico | 7,258 |
| Mozambique | 13,690 |
| Nicaragua | 22,115 |
| Panama | 30,540 |
| Papua New Guinea | 7,258 |
| Paraguay | 7,258 |
| Peru | 43,177 |
| Philippines | 142,169 |
| South Africa | 24,221 |
| St. Kitts & Nevis | 7,258 |
| Swaziland | 16,850 |
| Taiwan | 12,637 |
| Thailand | 14,743 |
| Trinidad-Tobago | 7,372 |
| Uruguay | 7,258 |
| Zimbabwe | 12,637 |
| Total | 1,117,195 |

These allocations are based on the countries' historical trade to the United States. The allocations of the raw sugar tariff-rate quota to countries that are net importers of sugar are conditioned on receipt of the appropriate verifications.

A tariff-rate quota quantity for refined sugar of 10,300 metric tons raw value (11,354 short tons raw value) is allocated to Canada as a result of an agreement reached with that country. In addition, 2,954 metric tons raw value (3,256 short tons raw value) of refined sugar will be allocated to Mexico. The remainder of the refined sugar tariff-rate quota quantity of 38,000 metric tons raw value will be available on a first-come, first-served basis, including the 17,656 metric tons raw value (19,462 short tons raw value) reserved for specialty sugars.

A quantity of sugar-containing products of 59,250 metric tons (65,312 short tons) of the tariff-rate quota for certain sugar-containing products maintained under "Additional U.S. Note 8 to chapter 17 to the Harmonized Tariff Schedule of the United States" is allocated to Canada as a result of an agreement with Canada. The remainder of the sugar-containing products tariff-rate quota will be available for other countries. Conversion factor: 1 metric ton = 1.10231125 short tons.

USTR is allocating an additional quantity of 105,788 metric tons raw value (116,611 short tons raw value), the quantity which the United States committed to provide to Mexico under the North American Free Trade Agreement (NAFTA), to Mexico.

**Charlene Barshefsky,**

*United States Trade Representatives.*

[FR Doc. 00–25106 Filed 9–29–00; 8:45 am]

BILLING CODE 3190–01–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Intent To Request Renewal From the Office of Management and Budget (OMB) of Three Current Public Collections of Information

**AGENCY:** Federal Aviation Administration (FAA) (DOT)

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the FAA invites public comment on 3 current public information collections which will be submitted to OMB for renewal.

**DATES:** Comments must be submitted on or before December 1, 2000.

**ADDRESSES:** Comments may be mailed or delivered to FAA, at the following address: Ms. Judy Street, Room 612, Federal Aviation Administration, Standards and Information Division, APF–100, 800 Independence Avenue, S.W., Washington, DC 20591.

**FOR FURTHER INFORMATION CONTACT:** Ms. Judy Street, at the above address or on (202) 267–9895.

**SUPPLEMENTARY INFORMATION:** The FAA solicits comments on any of the current collections of information in order to evaluate the necessity of the collection, the accuracy of the agency's estimate of burden, the quality, utility, and clarity of the information to be collected, and possible ways to minimize the burden of collection. Also note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Following are short synopses of the 3 information collection activities which will be submitted to OMB for requests for renewal:

*1. 2120–0021, Certification: Pilots and Flight Instructors.* The FAA is empowered to issue airmen certificates to properly qualified persons. This clearance request covers the burden imposed on airmen directly responsible for the control of aircraft. 14 CFR part 61 prescribes requirements for pilot and flight instructor certificates. Information collected is used to determined compliance and applicant eligibility. The number of respondents is estimated to be 770,000. The current burden for this collection is estimated to be 252,000 hours for reporting and recordkeeping.

*2. 2120–0036, Notice of Landing Area Proposal.* 14 CFR part 157 requires that each person who intends to construct, activate, deactivate, or changes the status of an airport, runway, or taxiway shall notify the FAA. FAA Form 7480–1, Notice of Landing Area Proposal, is used to collect the required information on an as needed basis. The current burden is estimated to be 2,500 hours, and the estimated number of respondents is estimated to be 3,400.

*3. 2120–0620, Special Federal Aviation Regulation No. 71.* SFAR No. 71 applies to air tour operators in Hawaii. SFAR 71 requires air tour operators to verbally brief the passengers on safety particularly related to overwater operations before each air tour flight.

Issued in Washington, DC on September 26, 2000.

**Steve Hopkins,**

*Manager, Standards and Information Division, APF–100.*

[FR Doc. 00–25263 Filed 9–29–00; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Approval of Noise Compatibility Program Cleveland Hopkins Airport Cleveland, OH

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the city of Cleveland, Cleveland, Ohio, under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96–193) and 14 CFR Part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96–52 (1980). On February 25, 2000, the FAA determined that the noise exposure maps submitted by the city of Cleveland under Part 150 were in compliance with applicable requirements. On August 23, 2000, the FAA approved the Cleveland Hopkins International Airport noise compatibility program.

A total of fourteen (14) measures were included in the city of Cleveland's Noise Compatibility Plan, which continue or expand the intent of the approved 1987 NCP. Of the fourteen (14) measures included, seven (7) are listed as "Noise Abatement Plan Measures", four (4) are listed as "Land Use Management Measures", and three (3) are listed as "Program Management Measures." All of the recommendations of the program were approved.

**EFFECTIVE DATE:** The effective date of the FAA's approval of the Cleveland Hopkins International Airport noise compatibility program is August 23, 2000.

**FOR FURTHER INFORMATION CONTACT:** Ernest Gubry, Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111, 734–487–7280. Documents reflecting this FAA action may be reviewed at this same location.

**SUPPLEMENTARY INFORMATION:** This notice announces that the FAA has given its overall approval to the noise compatibility program for Cleveland Hopkins International Airport, effective August 23, 2000.

Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act, and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals or reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to the FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where federal funding is sought, requests for project grants must be submitted to the FAA Detroit Airports District Office in Belleville, Michigan.

The City of Cleveland submitted to the FAA on February 23, 2000, noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from January, 1998 through May, 1999. The Cleveland Hopkins International Airport noise exposure maps were determined by the FAA to be in compliance with applicable requirements on February 25, 2000. Notice of this determination was published in the **Federal Register** on March 7, 2000.

The Cleveland Hopkins International Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to the year 2006. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on February 25, 2000, and was required by a provision of the Act to approve and disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period would have been deemed to be an approval of such program.

The submitted program contained 14 proposed actions for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program, therefore, was approved by the Assistant Administrator for Airports effective August 23, 2000.

Outright approval was granted for all of the specific program elements. Seven (7) of the fourteen (14) measures submitted are listed as "Noise Abatement Measures". Of the seven (7) measures, one (1) deals with ground run-ups, five (5) deal with departure flight tracks, and one (1) deals with approach flight tracks. Four (4) of the fourteen (14) measures submitted are listed as "Land Use Measures". These four (4) measures include encouraging local jurisdictions to adopt land use development controls and construction standards and real estate disclosure policies regarding airport noise, sound insulating residences within the higher levels of the noise exposure, 65+ DNL, and Sound insulating residences within or contiguous to the 60 DNL band of the NCP noise contours. Three (3) of the fourteen (14) measures submitted are listed as "Program Management Measures". These three (3) measures include providing system enhancements to the aircraft/airport noise monitoring system, implementing a "Fly Quiet" communication program, and continue periodic updates of the NCP and reviews of the NEMs.

These fourteen (14) determinations are set forth in detail in a Record of Approval endorsed by the Assistant Administrator for Airports on August 23, 2000. The Record of Approval, as well as other evaluation materials and documents which comprised the

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submittal to the FAA, are available for review at the following locations:
Federal Aviation Administration, 800 Independence Avenue, S.W., Room 617, Washington, D.C. 20591;
Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111;
City of Cleveland, Department of Port Control, 5300 Riverside Drive, Cleveland, Ohio 44315–3193.
Questions may be directed to the individual named above under the hearing, **FOR FURTHER INFORMATION CONTACT.**

Issued in Belleville, Michigan, August 30, 2000.

**James M. Opatrny,**

*Acting Manager, Detroit Airports District Office, Great Lakes Region.*

[FR Doc. 00–25264 Filed 9–29–00; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Summary Notice No. PE–2000–53]**

### Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of petitions for exemption received and of dispositions of prior petitions.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**DATES:** Comments on petitions received must identify the petition docket number involved and must be received on or before October 23, 2000.

**ADDRESSES:** Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, D.C. 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

**FOR FURTHER INFORMATION CONTACT:** Forest Rawls (202) 267–8033, or Vanessa Wilkins (202) 267–8029 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to § 11.85 and 11.91 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on September 27, 2000.

**Donald P. Byrne,**

*Assistant Chief Counsel for Regulations.*

**Petitions for Exemption**

*Docket No.:* 27001.
*Petitioner:* British Aerospace Regional Aircraft.
*Section of the FAR Affected:* 14 CFR § 25.62(c)(5) and 25.785(a).
*Description of Relief Sought:* To permit an extension of Exemption 5887F regarding the Head Injury Criteria (HIC) for front row passenger seats on Jetstream Model 4100 airplanes.

**Petition for Exemption**

*Docket No.:* 27001.
*Petitioner:* British Aerospace Regional Aircraft.
*Regulations Affected:* 14 CFR § 25.562(c)(5), 25.785(a).
*Description of Petition:* To allow an extension of Exemption 5887F regarding the Head Injury Criteria (HIC) for front row passenger seats on the Jetstream Model 4100 airplanes.

[FR Doc. 00–25265 Filed 9–29–00; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF THE TREASURY

### Customs Service

### Announcement of a National Customs Automation Program Test Regarding Submission to Customs of Electronic Air Cargo Manifest Information

**AGENCY:** U.S. Customs Service, Department of the Treasury.

**ACTION:** General notice.

**SUMMARY:** This notice announces Customs plan to conduct a prototype test program under the National Customs Automation Program that will permit qualified air carriers to submit electronic air cargo manifest information to Customs prior to arrival of the aircraft in the United States, and will eliminate the requirement that a Customs Form 7509 (Air Cargo Manifest) be submitted upon arrival. Electronic filing of air cargo manifest information will permit Customs to electronically review the data prior to arrival of the carrier in the U.S, facilitate cargo control and processing, and provide for the electronic release of cargo. This notice solicits public participation in the test program in accordance with the eligibility and procedural requirements set forth in this document, and invites comments concerning any aspect of the planned test.

**EFFECTIVE DATES:** The test will commence no sooner than January 2, 2001. Comments concerning the eligibility standards, selection criteria, procedural requirements, or information submission requirements must be received on or before November 1, 2000.

**ADDRESSES:** Written comments (preferably in triplicate) may be submitted to and inspected at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, DC 20229.

**FOR FURTHER INFORMATION CONTACT:** For operational or policy matters: Sandra Hasegawa, Program Officer, (202) 927–0983; John Considine, Chief, Manifest & Conveyance, (202) 927–0042. For systems or automation matters: Assigned Client Representative or Michael Mohr, Client Representative, (703) 921–7072. For legal matters: Larry L. Burton, Attorney Advisor (202) 927–1287.

**SUPPLEMENTARY INFORMATION:**

**Background**

Title VI of the North American Free Trade Agreement Implementation Act (the Act), Public Law 103–182, 107 Stat. 2057 (December 8, 1993), contains provisions pertaining to Customs Modernization (107 Stat. 2170). Subtitle B of 3 title VI establishes the National Customs Automation Program (NCAP), an automated and electronic system for the processing of commercial importations. Section 631 of the Act creates sections 411 through 414 of the Tariff Act of 1930 (19 USC 1411 through 1414), which define and list the existing and planned components of the NCAP (section 411), establish program goals (section 412), provide for the implementation and evaluation of the program (section 413), and provide for the remote location filing of entries (section 414). Requirements for conducting an approved test program or procedure designed to evaluate planned components of the NCAP are set forth in § 101.9 of the Customs Regulations (19 CFR 101.9).



**I. Description of Test Program**

*Air Cargo Manifest*

Section 122.42(c) of the Customs Regulations (19 CFR 122.42(c)), requires that the aircraft commander of an aircraft arriving in the United States from a foreign area, or his agent, must deliver upon arrival any required forms to the Customs officer at the place of entry. Section 122.48 of the Customs Regulations (19 CFR 122.48) provides that an air cargo manifest is required for all cargo on board a flight arriving in the United States from a foreign area, except for cargo arriving from and departing for a foreign country on the same through flight. Section 122.48(c) provides that the air cargo manifest must be on the Customs Form (CF) 7509.

*Electronic Submission of Air Cargo Manifest Information*

In an attempt to facilitate cargo processing and release, for the past several years Customs has accepted electronic air cargo manifest information from importing carriers. In such circumstances, however, submission of the paper CF 7509 was still required upon the carrier's arrival in the United States, even though an electronic submission of manifest data had already been submitted to Customs.

In a more comprehensive attempt to facilitate the control, processing and release of air cargo, Customs will permit, via this test program, participating Air Automated Manifest System (AAMS) air carriers who meet the electronic and procedural requirements set forth in this document to electronically file air cargo manifest information with Customs prior to the aircraft's arrival in the United States and will eliminate the requirement that a CF 7509 be submitted. For the duration of this test period, § 122.48(c) will be suspended for test program participants.

It is anticipated that the test program will run for approximately one year. In the event, however, that Customs determines that a longer test program period is required, the test program will continue to run, uninterrupted, until it is concluded by notice in the **Federal Register**.

*Customs Objectives*

Customs objectives in conducting this test program are:

1. To work with the trade community, government agencies, and other parties impacted by this program in the implementation and evaluation of the test program; and,
2. To gain experience from the test program relating to the design of automated systems, the development of operational procedures that facilitate cargo release (*i.e.*, communication, cargo movement), and whether participants can meet the test program requirements of transmitting timely, complete and accurate manifest data.

*Regulatory Provision Suspended*

As noted above, § 122.48(c), pertaining to the presentation of an air cargo manifest on the CF 7509, will be suspended during this test. Participants generally will not be required to submit a CF 7509 to Customs or have a copy on board the aircraft, but must be able to provide Customs with required information electronically or otherwise on demand. Participation in this test program does not preclude compliance with the applicable requirements of other government agencies as they relate to cargo manifest information. A CF 7507 General Declaration is still required and must be presented to Customs upon arrival at the port of entry. The CF 7507 is also required for flights proceeding in-land on a permit-to-proceed.

**II. Test Program Eligibility Criteria**

To be eligible for participation in the test program, an air carrier must demonstrate the following:

1. A carrier must be a qualified AAMS carrier. A qualified AAMS carrier has been tested and certified by Customs to possess the technical capability to transmit and receive all types of AAMS data. Technical requirements for AAMS carriers are set forth in the Customs publication entitled "Customs Automated Manifest Interface Requirements—"Air" (CAMIR). Those carriers that are not currently AAMS qualified, and wish to be, should submit a written request to become an AAMS participant to the Customs Client Representative Branch closest to the applicant's operational location. A list of Customs Client Representative offices may be obtained from United States Customs Service, Office of Information and Technology, Client Representative Branch, 7501 Boston Boulevard, Springfield, VA 22153, (703) 921–7500;
2. A qualified AAMS carrier must have completed a period of dual mode testing at a designated AAMS-automated Customs port. Dual mode testing requires that a carrier submit both a CF 7509 and an electronic transmission of air cargo manifest data to the designated AAMS-automated Customs port for a specified period of time. A carrier is required to participate in dual-mode testing at a designated AAMS-automated Customs port for a period generally not to exceed 45 days, although the time may be extended at the discretion of the port director; and
3. A carrier must possess the ability to electronically transmit to Customs complete air cargo manifest information, and any other required information, for all their flights arriving at the designated AAMS-automated Customs port, including in-bond cargo imported by a non-automated air carrier.

**III. Test Program Application and Selection Process**

*Application Process*

An air carrier that satisfies the eligibility criteria set forth in this document may apply to be a participant in this test program. Customs will accept applications from eligible air carriers for the duration of the test program. A written request to be considered for participation in the test program should be sent to the air carrier's designated Customs Client Representative (see above). The request must designate the AAMS-automated Customs port(s) to which the electronic air cargo manifest information will be transmitted, indicate the means by which the electronic transmissions will be sent (*i.e.* direct line, Service Center, etc.), designate a point of contact and telephone number within the applicant's organization, and be signed by an authorized official. Upon review of the application, Customs will notify the applicant in writing as to whether the request to be a test program participant has been approved or denied. If denied, Customs will issue written notice to the applicant that sets forth the basis for the denial and informs the applicant of the right to reapply after any deficiencies identified in the notice of denial have been corrected.

*Participant Selection*

Any importing air carrier that applies for permission to participate in the test program, and meets the eligibility requirements described above, will be given due consideration by Customs. Selection will be based on the extent of an applicant's electronic interface capabilities and the ability to meet the technical user requirements identified in the CAMIR as well as the requirements set forth in this notice.

Participation in this test program will not be considered confidential

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information, and the identity of participants will be made available to the public upon written request.

**IV. Test Program Procedures**

Program procedures will be closely coordinated with all participating and affected parties. The following procedures apply to all participant air carriers and will be in effect for the duration of the test program:

1. All carriers must transmit full air cargo manifest data to AAMS at least one (1) hour prior to aircraft arrival. If this condition cannot be met, a paper manifest must be made available before cargo may be moved.

2. Copies of air waybills must be presented to Customs, on demand, for enforcement purposes.

3. All carriers must transmit specified quantities for cargo at the lowest deliverable level.

4. Full manifest data must be submitted to Customs by all air carriers and is to include all house air waybill information, including shipper/consignee information, and complete address data as shown on the paper air waybill.

5. Consolidations with only one house air waybill must be transmitted as a master air waybill along with a house air waybill. The carrier may not elect to send this information in as a simple air waybill for expediency purposes.

6. House air waybill numbers must be accurate. If an alpha prefix appears on the house air waybill as part of the air waybill number, this information must be included in the electronic transmission. The carrier may not elect to eliminate the alpha prefix from house air waybills when sending the electronic information.

7. If cargo is being transferred to an automated deconsolidator, the carrier may nominate the deconsolidator to complete the manifest information. If the cargo is being transferred to a non-automated deconsolidator, the carrier will be held responsible for the transmission of full house air waybill information.

8. Carriers must have electronic authorization from Customs to release cargo. If systemic problems preclude an electronic authorization for release, a paper request for release is required. A signed Customs Form 3461 alone will not be an authorization for release for the purposes of this test program.

9. Cargo may not be transferred without an authorization for transfer from Customs via the electronic system. Blanket permits to transfer will not be allowed during the test period for test participants.

10. If for any reason the electronic system becomes inoperative or Customs is unable to receive electronic manifest information, parties will be required to submit a paper air cargo manifest on Customs Form 7509 or any other Headquarters pre-approved document. If for any reason the Air Automated Manifest System, Cargo Selectivity, or other entry related automated system is inoperative and electronic cargo release and selectivity is not possible, a Customs port director, after a 2 hour waiting period, will implement procedures to allow for the non-electronic release of cargo until such time as electronic systems are again operative. The port director will ensure that any of the appropriate information on entries released under these manual procedures is properly entered into the electronic system as soon as possible.

**V. Suspension From the Test Program and Administrative Review**

*Suspension, Penalties and Liquidated Damages*

A test program participant's failure to comply with any of the procedural requirements or operational standards set forth in this document, or failure to adhere to all applicable laws and regulations, may result in the temporary or permanent suspension of the air carrier from the test program, and may subject the air carrier to penalties, liquidated damages, or other administrative sanctions.

*Written Notice*

Except in instances of willfulness on the part of the test program participant, or where public health, interest or safety is at issue, the port director at the designated AAMS-automated Customs port will issue a written notice of proposed suspension to the test program participant. The notice will inform the air carrier of the following:

The basis for the proposed action and all applicable terms and conditions;

2. The right to seek administrative review of the action, pursuant to the terms set forth in this document;

3. That any action will be held in abeyance for a period of 10 calendar days from the date of the notice or, if the test program participant timely seeks administrative review of the matter pursuant to the terms set forth in this document, pending conclusion of Customs review of the matter at the port level; and

4. That failure to seek administrative review of this matter pursuant to the terms set forth in this document will constitute acceptance of the terms and conditions set forth in the notice, will preclude any further administrative review of the matter, and the proposed suspension will automatically go into effect at midnight of the 10th calendar day from the date of the notice.

Where there is willfulness on the part of the test program participant, or where public health, interest or safety is concerned, suspension from the test program may go into effect immediately upon the issuance, by the port director to the test program participant, of an electronic notice setting forth the basis for the immediate suspension and any other related information. Within 5 calendar days from the date the electronic notice was issued, Customs will issue a written notice of immediate suspension to the test program participant. A notice of immediate action, whether in an electronic or paper format, will provide the same type of information as contained in a notice of proposed suspension. An immediate suspension will remain in effect pending conclusion of any administrative review of the action by Customs.

*Administrative Review*

To seek administrative review of a suspension from the test program, the air carrier must submit documentation to the port director of the Customs port that issued the suspension notice within 10 calendar days from the date the notice of proposed suspension or the electronic notice of immediate suspension was issued. The documentation must establish, to the satisfaction of Customs, that the alleged deficiencies which led to the action did not occur or have been corrected.

The port director will review the documentation and issue a written final notice to the test program participant within 30 calendar days from the date the documentation was received by Customs, unless this time period is extended upon due notice. The final notice will either impose a suspension, effective upon the date of the final notice, or provide notice that no suspension will be imposed.

In the case of an air carrier seeking administrative review of an immediate suspension, the same documentation requirements set forth above apply. The port director will review the documentation and issue a written final notice to the test program participant within 30 calendar days from the date the documentation was received by Customs, unless this time period is extended upon due notice. The final notice will inform the test program participant that either the suspension has been affirmed, or modified in its terms and conditions, or the suspension has been revoked, effective upon the date of the final notice.

If a suspension is imposed, the suspended test program participant may seek a second level of administrative review and appeal the final notice of suspension by submitting documentation to the Assistant Commissioner, Office of Field Operations, within 10 calendar days from the date of the final notice.

The Assistant Commissioner, Office of Field Operations, or his designee, will issue to the suspended test program participant a written decision within 30 calendar days from the date the documentation was received, unless this time period is extended upon due notice. The decision will affirm, modify, or revoke the final notice of suspension and will set forth the basis for the determination, as well as all other applicable terms and conditions.

**VI. Test Evaluation Criteria**

Once participants are selected, Customs and the participants will meet publicly or in an electronic forum to review the comments received concerning the methodology of the test program or procedures, complete procedures in light of those comments, form problem-solving teams, and establish baseline measures and evaluation methods and criteria. Evaluations of the test program will be conducted and the final results will be published in the **Federal Register** and Customs Bulletin, as required by section 101.9(b), Customs Regulations.

The following evaluation methods and criteria have been suggested:

1. Establish baseline measurements through questionnaires to the trade and Customs personnel; and

2. Analyze statistical data obtained through the AAMS.

Preliminary evaluation criteria for Customs and other government agencies include workload impact (workload shifts, cycle time, etc.), policy and procedural accommodation, and trade compliance impact. Possible criteria for the trade participants include cost benefits and operational efficiency.

Dated: September 27, 2000.

**Bonni G. Tischler,**

*Assistant Commissioner, Office of Field Operations.*

[FR Doc. 00–25182 Filed 9–29–00; 8:45 am]

BILLING CODE 4820–02–P



## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 8869

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8869, Qualified Subchapter S Subsidiary Election.

**DATES:** Written comments should be received on or before December 1, 2000 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Qualified Subchapter S Subsidiary Election.

*OMB Number:* 1545–1700.

*Form Number:* 8869.

*Abstract:* Effective for tax years beginning after December 31, 1996, Internal Revenue Code section 1361(b)(3) allows an S corporation to own a corporate subsidiary, but only if it is wholly owned. To do so, the parent S corporation must elect to treat the wholly owned subsidiary as a qualified subchapter S subsidiary (QSub). Form 8869 is used to make this election.

*Current Actions:* There are no changes being made to the form at this time.

*Affected Public:* Businesses or other for-profit organizations.

*Estimated Number of Respondents:* 5,000.

*Estimated Time Per Respondent:* 8 hrs., 9 mins.

*Estimated Total Annual Burden Hours:* 40,750.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 20, 2000.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 00–25097 Filed 9–29–00; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Revenue Procedure 2000–37

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning

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Revenue Procedure 2000–37, Reverse Like-Kind Exchanges.

**DATES:** Written comments should be received on or before December 1, 2000 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the revenue procedure should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Reverse Like-Kind Exchanges.

*OMB Number:* 1545–1701.

*Revenue Procedure Number:* Revenue Procedure 2000–37.

*Abstract:* Revenue Procedure 2000–37 provides a safe harbor for reverse like-kind exchanges in which a transaction using a "qualified exchange accommodation arrangement" will qualify for non-recognition treatment under section 1031 of the Internal Revenue Code.

*Current Actions:* There are no changes being made to this revenue procedure at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals or households, business or other for-profit organizations, and farms.

*Estimated Number of Respondents:* 1,600.

*Estimated Time Per Respondent:* 2 hours.

*Estimated Total Annual Burden Hours:* 3,200.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 19, 2000.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 00–25098 Filed 9–29–00; 8:45 am]

**BILLING CODE 4830–01–P**



# Corrections

Federal Register
Vol. 65, No. 191
Monday, October 2, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

**DEPARTMENT OF AGRICULTURE**

**Rural Housing Service**

**Notice of Availability of Funding and Requests for Proposals for Guaranteed Loans Under the Section 538 Guaranteed Rural Rental Housing Program**

*Correction*

In notice document 00–23504 beginning on page 55217 in the issue of Wednesday, September 13, 2000, make the following correction:

On page 55219, the table at the top of the page should appear as shown below:

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Sample NOFA Response:

| | |
|---|---|
| Lender Name | Lender organization name. |
| Lender Tax Id Number | Insert number |
| Lender Contact Name | Name of the lender contact for loan. |
| Mailing Address | Complete mailing address for lender. |
| Phone Number | Phone number for lender contact. |
| Fax Number | Insert number. |
| E-mail Address | Insert E-mail address. |
| Borrower Name And Type Of Ownership Entity. | Show official name, list any trade name as " d/b/a." |
| Borrower Tax Id Number | Insert number. |
| Principle Or Key Member | Insert name and title. |
| Borrower Information And Statement Of Housing Development Experience | Attach relevant information. |
| New Construction Or Repair/Rehab. Of At Least $15,000/Unit. | State whether the project is new construction or repair/rehab. |
| Project Location Town | Town in which the project is located. |
| Project County | County in which the project is located. |
| Project State | State in which the project is located. |
| Project Zip Code | Insert Number. |
| Project Congressional District | Congressional District for project location. |
| Project Name | Insert project name |
| Project Type | Family, Senior or Mixed |
| Property Description And Proposed Development Schedule | See Attached. |
| Total Project Development Cost | Enter amount for total project |
| Number Of Units | What is the total number of units in the project. |
| Cost Per Unit | Total development cost divided by number of units. |
| Bedroom Mix | Number of units by number of bedrooms. |
| Rent | What is the proposed rent structure? |
| Median Income For Community | Provide median income for the project community. |
| Evidence Of Site Control | Attach relevant information. |
| Description Of Any Environmental Issues | Attach relevant information. |
| Loan Amount | Insert the loan amount. |
| Borrower's Proposed Equity | Insert Amount |
| Other Sources Of Funds | List all funding sources |
| Loan To Value | Guarantee loan divided by value. |
| Debt Coverage Ratio | Net Operating Income divided by debt payments. |
| Percentage Of Guarantee | Percentage guarantee requested. |
| Collateral | Attach relevant information. |
| Approved by GRRHP, HUD, Fannie Mae or Freddie Mac to make multifamily housing loans? | Yes or No, If no, attach evidence of eligibility as described in paragraph VII(D) of this NOFA. |
| Lender Certification | Attach relevant information. |
| EZ/EC | Yes or No Is the project in EZ/EC community? |
| Colonia Or Tribal Lands | Yes or No Is the project in a Colonia or on an Indian Reservation? |
| Population | Must be within the 20,000 population limit set for the program. |
| Is A Guarantee For Construction Advances Being Requested? | Yes or No (The Agency will guarantee construction advances, only as part of a combination construction and permanent loan). |
| Loan Term | Fixed rate, up to a 40 year term, must be fully amortizing, i.e., balloon mortgages are not eligible. |
| Basis Points Over 30 Year Treasury | Insert relevant number. |



[FR Doc. C0–23504 Filed 9–29–00; 8:45 am]
BILLING CODE 1505–01–D

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Federal Register

Monday,
October 2, 2000

Part II

# Environmental Protection Agency

40 CFR Part 35
Technical Assistance Grant Program; Final Rule

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 35**

**[FRL–6872–1]**

**RIN 2050–AE33**

## Technical Assistance Grant Program

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA or the Agency) is publishing today the final rule for the Technical Assistance Grant (TAG) Program under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). The Agency has developed a final rule designed to further streamline the TAG program by simplifying application and management procedures, and allowing advance payments up to $5,000 to new recipients. The intent of this final rule is to make grants for technical assistance more readily available to local community groups and to promote effective public participation in the Superfund cleanup process.

**DATES:** This final rule is effective October 2, 2000.

**ADDRESSES:** The official record for this rulemaking is maintained at the Superfund Docket and Document Center, located in Crystal Gateway #1, 1st Floor at the U.S. Environmental Protection Agency, 1235 Jefferson Davis Highway, Arlington, VA, 22202, telephone number 1–703–603–9232. The record is available for inspection. by appointment only, between the hours of 9:00 a.m. to 4:00 p.m. EST, Monday through Friday, excluding legal holidays. As provided in 40 CFR part 2, a reasonable fee may be charged for copying services.

**FOR FURTHER INFORMATION CONTACT:** Lois Gartner, Office of Emergency and Remedial Response, 5204–G, U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, D.C. 20460 (703) 603–8889 or the RCRA/Superfund Hotline from 9:00 a.m. to 6:00 p.m., Monday through Friday, toll free at 1–800–553–7672 or in the Washington area, 703–412–3323 or TTD 703–412–3323.

**SUPPLEMENTARY INFORMATION:** The contents of today's preamble are listed in the following outline:

I. Introduction
A. Authority
B. Background of Rulemaking
II. Explanation of Changes to the Proposed Rule
A. General Changes
B. What is a Technical Assistance Grant? (§ 35.4005)
C. Is my community group eligible for a TAG? (§ 35.4020)
D. Is there any way my group can get a TAG if it is currently ineligible? (§ 35.4025)
E. Can I be a part of a TAG group if I belong to an ineligible entity? (§ 35.4030)
F. How many groups can receive a TAG at one Superfund site? (§ 35.4040)
G. What requirements must my group meet as a TAG recipient? (§ 35.4045)
H. Must my group contribute toward the cost of a TAG? (§ 35.4050)
I. How can my group get more than $50,000? (§ 35.4065)
J. How can my group spend TAG money? (§ 35.4070)
K. Are there things my group can't spend TAG money for? (§ 35.4075)
L. Can my group get an "advance payment" to help us get started? (§ 35.4085)
M. How much time do my group or other interested groups have to submit a TAG application to EPA? (§ 35.4120)
N. How does my group identify a qualified technical advisor? (§ 35.4190)
O. Are there certain people my group cannot select to be our technical advisor, grant administrator, or other contractor under the grant? (§ 35.4195)
P. What restrictions apply to contractors my group procures for our TAG? (§ 35.4200)
Q. How does my group procure a technical advisor or any other contractor? (§ 35.4205)
R. How does my group ensure a prospective contractor does not have a conflict of interest? (§ 35.4220)
S. Definitions (§ 35.4270)
T. Existing grants
U. State administration
III. Regulatory Analysis
A. Regulatory Flexibility Act (RFA as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq)
B. Unfunded Mandates Reform Act
C. National Technology Transfer and Advancement Act
D. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
E. Paperwork Reduction Act
F. Executive Order 12866
G. Executive Order 13132
H. Executive Order 13084
I. Executive Order 12898
J. Congressional Review Act

## I. Introduction

### *A. Authority*

EPA issues this final rule under the authority of section 117(e) of the Comprehensive Environmental, Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. 9617(e)). Section 117(e) authorizes the President to make available Technical Assistance Grants to groups of individuals which may be affected by a release or threatened release at Superfund sites to obtain assistance in interpreting and disseminating information related to site activities. Section 117(e) requires the President to promulgate rules for issuing these grants before processing any grant applications. Executive Order 12580 subsequently delegated to EPA the authority to implement section 117(e).

### *B. Background of Rulemaking*

In 1992, EPA promulgated a final rule to govern the award and administration of TAGs (57 FR 45311 (Oct. 1, 1992)). The Agency based the requirements codified in the final regulation on its early experience with the TAG program and comments generated by the Agency's interim final rule (IFR) (53 FR 9736 (Mar. 24, 1988)), and amendments to the interim final rule (54 FR 49848 (Dec. 1, 1989)). The IFR detailed the specific requirements for obtaining TAGs and enabled EPA to issue grants while it received comments for consideration in development of the final rule. Those comments and practical experience led the Agency to develop a final rule that streamlined the program's application and management procedures reflected in the IFR.

The Agency's experience with the TAG program in the years since it published the 1992 final rule has led the Agency to recognize the need to further streamline TAG application and management procedures. In addition, the Agency also recognized the need to rewrite the TAG regulations in a more readable format to increase accessibility to the program. In August 1999, the Agency published a notice of proposed rulemaking (NPRM) (64 FR 46234 (Aug. 24, 1999)) which set forth the Agency's proposal on how to reduce barriers to TAG participation. The Agency carefully reviewed and gave serious consideration to the comments it received in response to the NPRM. As a result of that review and consideration, the final rule published here today reflects, to the greatest extent possible, the accommodation of many of the comments offered.

## II. Explanation of Changes to the Proposed Rule

### *A. General Changes*

One commenter suggested that EPA include in the final TAG rule a more detailed explanation of the requirements at 40 CFR part 30, in particular how those requirements relate to the TAG rule at 40 CFR part 35, subpart M. The regulations in both 40 CFR part 30 and part 35, subpart M apply to TAGs. Part 30 establishes uniform administrative requirements for Federal grants and cooperative agreements awarded to institutions of higher education, hospitals, and other nonprofit organizations. Because TAGs are awarded to nonprofit organizations, 40 CFR part 30 applies to all TAGs. Subpart M of 40 CFR part 35 (i.e., the TAG rule) establishes administrative and substantive requirements that apply only to TAGs. EPA included references to and summaries of several of the 40 CFR part 30 requirements in the proposed TAG rule to give recipients a general idea about those regulations.

For example, in § 35.4020, "Is my community group eligible for a TAG?", we have provided a general description of the management structure 40 CFR part 30 requires for groups to be eligible for a TAG. However, the summaries in the TAG rule of 40 CFR part 30 provisions are not intended to be substitutes for 40 CFR part 30. While EPA has established some of the administrative requirements in 40 CFR part 30, the specific sections of 40 CFR part 30 that do not apply to TAGs are listed in § 35.4012. Except for those provisions listed in § 35.4012, the 40 CFR part 30 provisions govern all TAG grants. If there is a conflict between a 40 CFR part 30 provision and a summary of that same provision in the TAG rule, the 40 CFR part 30 provision applies. In order to clarify the relationship between 40 CFR part 30 and part 35, EPA has revised §§ 35.4010 and 35.4011 as follows:

*Section 35.4010 What Does This Subpart Do?*

This subpart establishes the program-specific regulations for TAGs awarded by EPA.

*Section 35.4011 Do the General Grant Regulations for Nonprofit Organizations Apply to TAGs?*

Yes, the regulations at 40 CFR part 30 also apply to TAGs. 40 CFR part 30 establishes uniform administrative requirements for Federal grants and agreements to institutions of higher education, hospitals, and other nonprofit organizations. Because EPA awards TAGs to nonprofit organizations, 40 CFR part 30 applies to all TAGs.

### *B. What Is a Technical Assistance Grant? (§ 35.4005)*

One commenter suggested we replace the word "procure" with "hire" when describing the process for communities securing the services of a contractor. The final rule continues to use "procure" because EPA wants to ensure readers understand there is a competitive procurement process that must be followed when TAG recipients seek a contractor. Moreover, the word "hire" implies that recipients hire a technical advisor as an employee rather than procuring the services of a technical advisor as a contractor.

Another commenter expressed concern that this section does not include any language about using TAG funds for redevelopment purposes. The exclusion of redevelopment as an example of how a technical advisor can assist a group was not intended to imply that technical advisors cannot interpret information regarding redevelopment of the site. Section 35.4005 ("What is a Technical Assistance Grant") provides in part:

A TAG allows your group to procure independent technical advisors to help you interpret and comment on site-related information and decisions. Examples of how a technical advisor can help your group include, but are not limited to:

(a) Reviewing preliminary site assessment/site investigation data;

(b) Participating in public meetings to help interpret information about site conditions, proposed remedies, and the implementation of a remedy; and

(c) Visiting the site vicinity periodically during cleanup, if possible, to observe progress and provide technical updates to your group.

EPA does not believe any change is needed to § 35.4005 to clarify that a technical advisor may assist a group by interpreting information related to redevelopment. Section 35.4005 expressly states that the list of examples of how a Technical Advisor can assist a group is not exhaustive. Furthermore, § 35.4070 provides that technical advisors may help a TAG group understand "the various stages of health and environmental investigations and activities" at a site—a phrase which clearly encompasses redevelopment issues.

### *C. Is My Community Group Eligible for a TAG? (§ 35.4020)*

Several commenters expressed concern about deeming ineligible those groups that receive money or services from a PRP. These commenters suggested communities can benefit from such assistance and that it also is a way to hold PRPs "accountable." While we do not doubt that some forms of PRP assistance can be beneficial to TAG recipients, the final rule continues to consider organizations that receive assistance (services, supplies or money) from PRPs to be ineligible for TAG funding. Our continued prohibition on PRP assistance exists because we do not believe it is possible to determine when such assistance is given conditionally and, therefore, a group which accepts such assistance may appear to have a conflict of interest undermining its purpose of providing independent technical advice to the affected community.

### *D. Is There Any Aoy My Group Can Get a TAG if It Is Currently Ineligible? (§ 35.4025)*

Some commenters expressed support for banning a relationship between a TAG group and national organizations while others argued national organizations offer important benefits to local groups. EPA found the arguments in favor of allowing some kind of relationship between prospective TAG recipients and organizations focused on national issues to be compelling. A central theme to those arguments was that national organizations provide a valuable mentoring benefit to local grassroots organizations like TAG groups.

While we support the concept of some relationship between TAG recipients and national organizations, we also believe the regulatory language in the proposed rule allows for such a relationship. Rather than alter the relevant language in the proposed rule, we believe we need to better clarify what the term "affiliated" means. In the context of this regulation, prospective TAG groups that are "affiliated" with a national organization are not eligible for a TAG. The regulation specifically defines "affiliated" to mean "a relationship between persons or groups where one group, directly or indirectly, controls or has the power to control the other, or, a third group controls or has the power to control both." Thus, for example, a prospective TAG organization that shares any kind of decisionmaking authority about its organizational affairs with any other organization would not be eligible for a TAG. This independence extends to all aspects of the TAG organization including fiduciary decisions—all financial decisions must rest entirely with the prospective TAG organization. Therefore, relationships can exist between TAG organizations and national organizations as long as those relationships do not in anyway impinge on the TAG group's independent decisionmaking authority.

To ensure further clarification of the meaning of "affiliated" as it appears in § 35.4270, "Definitions," we added a parenthetical statement, "(*e.g.*, centralized decisionmaking and

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control)," after "interlocking management or ownership."

*E. Can I Be Part of a TAG Group If I Belong to an Ineligible Entity? (§ 35.4030)*

A comment related to the eligibility criteria asked for clarification on what this section means when it says EPA may not allow an individual to participate in a TAG organization if EPA determines an individual has a "significant financial involvement in a PRP." The commenter specifically cited a scenario in which individuals wishing to participate in a TAG organization are employees of the potentially responsible party (PRP) at a site and are homeowners in the town in which the site is located.

The intent of this provision, which is not new to the TAG regulations, is not to exclude employees of a PRP from participating in a TAG group. Rather, the intent is to give EPA the potential right to exclude any individual who EPA finds to own a significant or controlling interest in a PRP. Thus, an employee of a PRP could participate in a TAG organization as long as that individual participated as an affected individual and did not have an interest in a PRP deemed significant or controlling by EPA. The key to this provision is understanding that EPA's intention is to preclude those individuals who have a significant financial stake or other significant interest in a PRP. While it could easily be argued that employment is, for the individual, financially significant, it is not, in most cases, financially significant to the employer.

*F. How Many Groups Can Receive a TAG at One Superfund Site? (§ 35.4040)*

Two themes emerged from the comments offered relative to this section. Both comments spoke to EPA's interpretation of CERCLA section 117. One comment addressed concerns about how EPA has interpreted the word "facility." A second commenter registered disagreement with EPA's interpretation of CERCLA to allow for a new recipient to receive TAG funding at a facility after EPA terminates a previous TAG recipient's agreement at the same facility.

Since the inception of the TAG program, EPA has interpreted the term "facility" in CERCLA section 117 to mean site. The commenter who dissented from this interpretation asserted that "facility" in CERCLA refers to what has evolved into operable units (OUs) and does not mean the entire site. Furthermore, this commenter believes EPA's interpretation of "facility" undermines program goals because it does not allow communities affected by specific operable units to have access to TAGs for individual OUs at those sites where the (OUs) are great distances apart and found in separate communities. This commenter wants EPA to allow separate grants for each OU or allow separate grants for communities or municipalities where the OUs of a site are located.

EPA does not agree with the commenter's interpretation of the term "facility" as used in section 117 of CERCLA. Section 117(e)(1) authorizes EPA to award TAGs "at any facility which is listed on the National Priorities List (NPL) under the National Contingency Plan." As this language implies, EPA does not list individual operable units on the NPL but facilities which are often referred to as sites: Typically, a site includes more than one operable unit. If EPA were to adopt the interpretation of "facility" as operable unit for purposes of the TAG program and allow every operable unit (e.g., every lagoon, pit, or impoundment at a site) to be eligible for a $50,000 TAG, then EPA would quickly run out of funding. This interpretation could result in one site with multiple OUs receiving TAG funding for each OU while another site could end up with no TAG funding at all. Furthermore, EPA often does not determine a site's operable units until long after EPA lists a site on the NPL. If we waited until all operable units were known, communities could be deprived of technical assistance in the early stages of the cleanup action.

EPA is sympathetic to the difficulties that can exist for TAG groups at large Superfund sites where there are several different communities separated by large distances. As explained above, we cannot make multiple grants available for one site. We can, however, provide as much assistance as possible to help disparate communities find ways to work together including the provision of neutral facilitation services when funding for such services exist. (Readers interested in facilitation support should contact their EPA regional TAG contact about the availability of such facilitation services.) Examples exist in the TAG program where several communities affected by large Superfund sites have found ways to work together and address their individual concerns under one grant. We are eager to support other communities in finding the same success.

The second area of comment offered relative to this section took issue with EPA's interpretation of CERCLA to allow a new group to receive TAG funding at a site after a previous TAG recipient at the same site ends its participation in the TAG program. This commenter stated that such an interpretation exceeds the statutory limits because section 117(e)(2) of CERCLA provides that "the amount of any grant under this subsection may not exceed $50,000 for a single grant recipient" and "[n]ot more than one grant may be made under this subsection with respect to a single facility, but the grant may be renewed to facilitate public participation at all stages of remedial action." Furthermore, according to the commenter, if EPA awards a grant to more than one recipient per site, then EPA would also exceed the statutory limitation in section117(e)(2) on the total amount of funding available to a TAG recipient. Thus, according to the commenter, EPA may renew a TAG, but only to the same recipient and the total sum the recipient can receive (regardless of the number of recipients) is $50,000, unless EPA waives the funding limit upon a determination that additional funding is necessary to carry out the purposes of section 117.

EPA disagrees. EPA explained its interpretation in the preamble to the proposed TAG rule: "In the administration of this program, EPA has interpreted this provision to mean that there can be only one TAG recipient at a site at any one time during the Superfund process. This interpretation means that if a TAG to one recipient is terminated, EPA can make a new grant to a new recipient. Accordingly, while there can be only one TAG at a time there can be more than one recipient of a TAG at a single facility." Furthermore, while section 117(e) limits the number of "grants" to one per facility, it does not limit the number of consecutive grant recipients to one per facility. It would be unreasonable for EPA to read such a limitation into the statute, particularly if the result could be that affected communities would have no access to a TAG throughout all stages of the response action. Indeed, such a narrow interpretation would threaten the very purpose of section 117 of CERCLA: to facilitate public participation at Superfund sites. Therefore, the final rule continues to allow for multiple nonconcurrent recipients of TAGs at eligible Superfund sites.

*G. What Requirements Must My Group Meet as a TAG Recipient? (§ 35.4045)*

EPA received one comment that expressed disagreement with the requirement that groups incorporate as nonprofit organizations, a requirement not new to the proposed rule. The commenter registered the disagreement on the grounds that "requiring an existing organization to set up a separate 'shell' corporation to receive the grant is unfair to the contractor. If the contractor is not paid, he has no legal recourse against the government, and if the grant recipient is a 'shell' corporation there is no use suing it because it has no assets."

This comment fails to consider that the intent of the TAG program generally and the incorporation requirement in particular, is not to secure or advance the legal position of a contractor. Rather, the requirement exists because it benefits both EPA and TAG recipients. As EPA explained in the preamble to the 1988 interim final rule:

". . . incorporation offers advantages to both recipients and EPA, and does so at relatively little cost to both. Incorporation protects individual group members from potentially serious personal liability problems that may result if the technical assistance grant is awarded to a group or organization that is not incorporated. It also reduces or eliminates problems that might otherwise arise from the departure of any individual from the recipient group, if it lacked the structure created by incorporation. EPA also benefits from awarding every grant to a group with the same legal status: a corporation with bylaws, officers and official purposes."

EPA believes the benefits outlined in the 1988 rule continue to exist, and therefore, the final rule continues to require groups to incorporate as nonprofit organizations.

The provisions in this section prohibiting TAG groups from restricting access by requiring membership dues or other means garnered both supporting and dissenting comments. Specifically, some commenters supported the idea of prohibiting TAG groups from restricting access by requiring membership dues or other means. Others expressed concern that such a prohibition could undermine the financial abilities of an organization.

EPA considered ways to accommodate both viewpoints expressed by commenters. We concluded, however, that we should not involve EPA in this level of TAG group operation. We determined that our regulation in this area should focus on making certain that groups are and remain eligible under § 35.4020 and that they administer their grant according to the provisions of their grant agreement. Therefore, we have removed § 35.4045(c) which stated groups could not restrict access by charging membership fees or by using other means to limit participation. TAG groups, however, are still obligated pursuant to § 35.4140 to disseminate information to the affected community.

*H. Must My Group Contribute Toward the Cost of a TAG? (§ 35.4050)*

Many commenters expressed satisfaction with EPA's decision to eliminate the "good faith" requirement for those communities seeking a waiver of the 20 percent cost share requirement. One commenter expressed support for EPA giving TAG groups the option to not provide a cost share altogether. Other commenters suggested that calculating the cost share as a part of the reimbursement process is onerous and confusing.

The cost share requirement is a statutory one and, therefore, is not a requirement EPA can eliminate through the TAG regulation. We can, and believe that this regulation does, make it easier for those groups who are financially disadvantaged to receive a waiver to the matching share requirement. We are also concerned about the burden associated with the cost share calculation tied to the reimbursement process. However, we do not believe the TAG rule is the appropriate place to address those concerns. Rather, we intend to provide guidance to recipients on how to calculate and account for the cost share throughout the life of the grant in the forthcoming revised TAG guidance. EPA is currently developing new guidance for both the regions and recipients, and anticipates having the guidance ready for distribution in early 2001.

*I. How Can My Group Get More Than $50,000? (§ 35.4065)*

This section elicited several comments about expanding the grounds for giving TAG recipients additional funding after they have expended the original award amount. Specifically, one commenter suggested that EPA should automatically grant a recipient a renewal of $50,000 after the first year without restriction if the recipient properly expended the first award amount. Another commenter suggested EPA add, as a reason why a site merits additional funding, the issuance of an "Explanation of Significant Differences" (ESD) by the agency leading the cleanup. Two other comments were also offered relative to this section. One commenter asked for clarification on what the ultimate cap is on the amount a recipient may receive, while the other registered disagreement about the fact that existing recipients can receive additional funding without having to compete with other community groups that are interested in obtaining a TAG.

Because of the underlying sentiment present in several of the comments tied to this section—that EPA should make additional funding easier—EPA has made changes to "How can my group get more than $50,000?" One change is that an ESD will now be another site condition factor that may merit additional funding for a site. This change means an ESD will be one of ten possible factors to be considered when groups want funding above the $50,000 level. Recipients will still have to demonstrate the presence of at least three of these ten factors and will also have to demonstrate effective management of previous awards.

A second change to ease funding is that the final rule contains no specific limit on how much money can be awarded to a TAG recipient. This change makes the regulation consistent with CERCLA, which contains no cap on the amount a TAG recipient can receive. The change also means EPA regional offices will have complete authority over the decision to fund TAGs above $50,000 and therefore, the waiver process will be accomplished more quickly. While the final rule contains no pre-determined limit on funding amounts, requests for waivers to the $50,000 limit will still have to meet the conditions found in § 35.4065. Also, such requests will be subject to the availability of funds.

EPA cannot automatically award grantees an additional $50,000 after the first year if the group managed its first funding amount effectively. Under section 117(e)(2) of CERCLA, the $50,000 limit may be waived "where such waiver is necessary to carry out the purposes of this subsection." Thus, CERCLA requires EPA to make a determination that the waiver is necessary to carry out the purposes of section 117(e). Since a waiver may not in all instances be necessary after the first year, it would not be reasonable to provide an automatic waiver after one year. A waiver after one year is possible under the final rule if three of the ten site condition factors exist and the recipient has effectively managed previously awarded funds, but most TAG groups will not need a waiver at that time since they will still have unexpended funds under the initial grant. (Even though funding periods may be negotiated, EPA believes most recipients will want funding periods that are longer than one year).

The last subject touched upon by comments on this section was offered by a commenter who believes allowing a TAG recipient to seek additional funding without starting the competitive award process over again is unfair. This commenter also took issue with the Agency's assertion in the preamble to the proposed rule that there is usually

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only one applicant per site. In the case of the Superfund site affecting the commenter, there are three groups active at the site. One group is a TAG recipient that has received funding above $50,000. The commenter feels the other two groups have been "shut out" because EPA does not allow competition when a site is eligible for additional funding.

This comment speaks to a scenario that has occurred in the TAG program over the past several years in which groups that did not apply for a grant when one was available take issue with the Agency's selection of a recipient. The Agency has decided not to change the rule to require another competition. Empirical evidence shows that the majority of TAGs awarded have involved sites where only one group submitted an application. Nonetheless, EPA recognized, when structuring the program, that there may be situations where there is more than one eligible candidate for a TAG. This recognition led the Agency to adopt an award procedure which includes advertising TAG availability to the broad community, encouraging the formation of coalitions where there are multiple interested parties and, when coalitions are unable to form, allowing for a competitive process to select one recipient. While the Agency can advertise TAGs, encourage potential applicants to apply, and facilitate the formation of coalitions, ultimately, the decision to apply for a grant must be made by organizations themselves.

Because we are anxious to see, to the greatest extent possible, multiple groups coalesce, EPA regional offices may, in some instances, provide neutral facilitation and dispute resolution services. These services could be used to build a consensus among groups unable to form coalitions on their own. Readers interested in this possible resource should contact their EPA regional office.

*J. How Can My Group Spend TAG Money? (§ 35.4070)*

As with the similar comment offered with respect to § 35.4005, "What is a TAG?", a commenter expressed concern that this section does not contain a specific reference to redevelopment as an acceptable focus of a TAG recipient. EPA believes the use of TAG funds for technical assistance in interpreting information regarding redevelopment at the site falls under the description of general activities found in this section. We have not modified this section of the final rule to explicitly include this activity, but § 35.4190, "How does my group identify a qualified technical advisor?" contemplates the use of TAG funds for technical assistance in interpreting information regarding redevelopment at the site by including the types of qualifications a redevelopment technical advisor must and should possess. Also, § 35.4005 contains an example of how a technical advisor might assist a community in interpreting information regarding redevelopment at a site.

*K. Are There Things My Group Can't Spend TAG Money for? (§ 35.4075)*

The Agency received several comments suggesting that TAG funds be available for various kinds of TAG recipient training. For example, one commenter suggested that TAGs should be able to fund health and safety training using TAG monies. When drafting the proposed rule, EPA considered this issue and concluded that since section 117(e) of CERCLA only authorizes grants "to obtain technical assistance in interpreting information" regarding the site, and since health and safety training for the members of the group is not necessary in order for the group to procure technical assistance, such training is not an eligible TAG expenditure. Furthermore, even if the statute could be interpreted broadly enough to permit training of TAG members, EPA does not believe it would be a wise use of limited TAG funds. Allowing community members to receive training so that they could, in essence, act as their own advisors would be costly. Furthermore, it is improbable that such training by itself would provide members with the level of expertise that a technical advisor must have under § 35.4190. EPA also believes allowing community training would be fraught with administrative problems such as: Which community members could take training? What kind of training would be allowable? Given the statutory limitation and the administrative difficulties, EPA is maintaining the prohibition that communities cannot use TAG funds for training.

However, EPA supports providing community members with educational opportunities through other avenues. One avenue that EPA has been pursuing is the development of a series of short educational workshops on topics such as an overview of CERCLA and risk assessments. EPA hopes efforts such as these workshops will enable community members to maximize their participation in decisionmaking at their site without using TAG funds.

Another commenter suggested that EPA allow group members to be reimbursed for fuel and other travel expenses (*e.g.*, meals and incidentals) per diem when traveling great distances to attend meetings (for example, when a trip is more than 60 miles round trip). EPA has explicitly prohibited the use of TAG funds for recipient group members' travel since publication of the first rule governing TAGs (§ 35.4055(a)(5) of the Interim Final Rule, 53 FR 9736, 9750 (March 24, 1988) and the Final Rule, 57 FR 45311, 45318–19 (October 1, 1992). EPA continues in this final rule to prohibit fuel and per diem expenses as allowable expenses. Our rationale for this prohibition is that such expenses are inconsistent with the cost principles stated in the Office of Management and Budget (OMB) Circular A–122, and, as EPA stated in the 1988 interim final rule,

> "EPA believes that the primary purpose of the technical assistance grant is to assist citizens' groups in obtaining technical assistance and not to fund ancillary activities of the grant recipient such as travel and training, which, by reducing available funds, would detract from or limit the recipient's ability to obtain technical advice regarding remedial actions."

Finally, one commenter on this section stated that the flat prohibition on primary data gathering is wasteful and serves no useful purpose. EPA disagrees and points readers to the explanation as to why generation of new primary data is not allowable found in the preamble to the Interim Final Rule, 53 FR 9736, 9750 (March 24, 1988):

> "Costs associated with the generation of new primary data are not allowable because this would be inconsistent with Congressional intent of "interpreting information." In addition, developing new primary data, such as sampling data, would be so costly as to diminish the recipient's ability to obtain technical assistance throughout the entire cleanup process."

*L. Can My Group Get an "Advance Payment" To Help Us Get Started? (§ 35.4085)*

Comments offered on the provision for limited advance payments were all positive about the inclusion of the payment provision. However, one commenter opined that $2000, rather than $5000, was sufficient for covering start-up costs. Despite the concerns of this one commenter, the final rule maintains the $5000 amount. EPA has changed, however, the requirement that only new groups lacking sufficient resources will be eligible for advance funding: the final rule allows any new recipient to request advance payment up to $5000. This change does not alter the requirement that recipients need to request such funding in writing and identify what activities, goods or services they need. It also does not alter the limitations on what items can be purchased: in particular the final rule continues to prohibit the use of advance funding to pay for any kind of contractual services and for the costs of incorporation.



*M. How Much Time Do My Group or Other Interested Groups Have To Submit a TAG Application to EPA? (§ 35.4120)*

One commenter asked that the deadline for submitting an application (within 60 days from the time the first LOI is submitted) be extended for groups lacking human resources. Another commenter expressed confusion about the deadlines for different parts of the application process. Both of these comments suggest to EPA that the proposed rule's explanation of the time frame for the application process was confusing.

Based on the comments we received, we made substantive and editorial changes to this section. We changed the final rule by explaining that the first important time period for community groups is 30 days from the date EPA publishes a public notice informing the broader community that it has received an LOI. During this first 30 days, other groups interested in obtaining a TAG will either have to form a coalition with other interested groups or submit their own individual LOIs. The next important time period is the 30-day period in which all groups must submit their applications to EPA; it begins on the first day after the first 30-day period ends. Therefore, EPA must receive all applications within the 60 days after the public notice appears in paper. Only those groups that submitted LOIs in the first 30-day period will be eligible to submit applications. The time period for preparing applications can be extended if any group that submitted an LOI writes EPA requesting an extension. If an extension is granted, all groups that submitted an LOI will be able to take advantage of the extension.

We have also further clarified the application process in the final rule by providing a time frame in which the entire application process must end. We have added this additional information because we have found over the years that many groups will submit an application within the necessary time frame but the applications will be deficient in some way. EPA typically works with such applicants by providing extensive written comments about what changes need to be made to the application to make it complete. However, many groups will take months to finalize their applications by incorporating EPA's comments. While EPA does not want to penalize those groups who have made a good faith effort at completing the application on their first try, we also believe allowing the time in which groups finalize their applications to drag on indefinitely is unfair to the broader community. Therefore, we have added to the final rule a provision allowing groups 90 days to correct any deficiencies in their application that EPA has identified to them in writing. This 90-day period begins from the date of the letter in which EPA explains what changes an application requires. Thus, EPA will be able to begin its award decision process no later than the end of the 90-day period, or, if EPA does not receive a complete application in that 90-day period, then EPA will readvertise TAG availability and the award process will begin again.

*N. How Does My Group Identify a Qualified Technical Advisor? (§ 35.4190)*

EPA received mixed opinions about the level of specificity in the provision regarding the technical advisor qualifications. One commenter suggested the criteria for technical advisors should be very specific while others suggested the criteria needed to be very broad and flexible. EPA believes the qualifications laid out in the proposed rule are satisfactory in that they establish a minimum of necessary qualifications without being so restrictive that recipients have no flexibility in identifying what they perceive to be their community's unique technical advisor needs. Therefore, the final rule maintains the technical advisor qualifications found in the proposed rule except for a change to the public health technical advisor requirements, a description of which follows.

The change to the public health technical advisor qualifications concerns the requirement that such advisors must be associated with accredited schools of medicine, public health or accredited academic institutions of other allied disciplines. A commenter expressed concern that this requirement might exclude well-qualified public health experts. EPA agrees, and we removed the requirement. We do continue to require, however, that public health technical advisors must have received their training at such institutions. Despite the removal of the current association with accredited institutions requirement, we would like to suggest to TAG recipients seeking assistance in public health issues to consider accredited schools of medicine, public health or accredited academic institutions of other allied disciplines to be potentially good resources for public health technical advisors.

*O. Are There Certain People My Group Cannot Select To Be Our Technical Advisor, Grant Administrator or Other Contractor Under the Grant? (§ 35.4195)*

A commenter recommended that if the word "person" in § 35.4195 refers only to individuals (i.e., not entities that might be considered juridical persons, such as corporations), then it should be explicitly stated in the rule. Section 35.4195(a) specifies the "people" who cannot be hired as a TAG group's technical advisor, grant administrator, or other contractor under the grant. It excludes "persons" who wrote the specifications for the contract; in the case of a technical advisor, it excludes "anyone" doing work for the Federal or state government or any other entity at the site; and "anyone" who is on the List of Parties Excluded from federal Procurement or NonProcurement Programs. EPA believes that the purposes of this provision would not be served if the organization employing the individuals excluded as contractors by this provision were not also excluded. Therefore, we have revised § 35.4195 to make it clearly applicable to persons, businesses, nonprofit organizations, and any other entity.

*P. What Restrictions Apply to Contractors My Group Procures for Our TAG? (§ 35.4200)*

The provision in this section that limits the use of relocation technical advisors to those situations where EPA is seriously considering relocation drew criticism from commenters to the proposed rule. Several organizations who commented on EPA's "National Superfund Permanent Relocation Interim Policy" (64 FR 37012 (July 8, 1999)), which references the TAG rule's "seriously considering" provision, also expressed concern about it. Both sets of commenters took issue with what they perceived to be the rule's lack of consideration about whether a community wants to be relocated.

We agree with commenters that the proposed rule's "seriously considering" provision limits the ability of a community to consider permanent relocation with TAG funds. In reconsidering the provision and the comments we received on it, we have determined that relocation should not be treated differently than any of the other matters for which TAG groups may obtain technical assistance. Accordingly, in the final rule we have

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eliminated the requirement that EPA must be seriously considering relocation in order for TAG groups to look at permanent relocation. EPA's preference, however, continues to be to address the risks posed by contamination by using well-designed methods of cleanup which allow people to remain safely in their homes and businesses. This preference is consistent with the mandates of CERCLA and the implementing requirements of the NCP, which emphasize selecting remedies that protect human health and the environment, maintain protection over time, and minimize untreated waste. Therefore, although the final rule does not restrict the circumstances in which TAGs may be used to obtain technical assistance regarding relocation, EPA expects that TAG groups will choose not to spend their limited TAG funds obtaining technical assistance on relocation unless there is a reasonable possibility that relocation will be selected as a remedy.

*Q. How Does My Group Procure a Technical Advisor or Any Other Contractor? (§ 35.4205)*

EPA received a comment suggesting a time limit on the amount of time EPA could spend reviewing contracts. The commenter said that limit should be 15 days. Section 35.4205 requires TAG groups to provide EPA the opportunity to review a contract before the group awards or amends it. The purpose of this provision is to help recipients—many of whom do not have experience awarding a contract under a grant. While EPA is not a party to the contract, EPA wants to help recipients award contracts that are consistent with the TAG statute and regulations. This assistance is particularly important for TAG grantees, which are often small organizations. If the TAG group awards a contract for activities that are not eligible under the regulations, for example, the TAG group may not use TAG funds to pay the contractor for that activity and the TAG group may not have another available source of funding for the contract. On the other hand, EPA recognizes that contract review by EPA may sometimes delay the award of a contract.

EPA does not believe, however, that the regulation should specify a time limit on EPA's review. EPA does not want to suggest that the contract is "approved" by EPA as a result either of EPA review or a lapse of time during which EPA had the opportunity to review it. The regulation does not require EPA review or approval of the TAG group's contract; it only requires the recipient to give EPA an opportunity to review the contract. If the recipient provides EPA the opportunity to review the contract, then the recipient will have complied with the regulation (as long as the amount of time given to EPA is reasonable under the circumstances) even if EPA has not actually reviewed it or provided the recipient with any comments on it. EPA, however, strongly encourages TAG groups to work with their project officer to come up with an appropriate time frame for reviewing contracts in order for groups to avoid becoming liable for all or portions of a contract that EPA cannot reimburse under the grant. EPA expects to provide suggestions for how TAG groups and regional offices can coordinate and streamline this review process in forthcoming TAG program guidance.

*R. How Does My Group Ensure a Prospective Contractor Does Not Have a Conflict of Interest? (§ 35.4220)*

A commenter suggested that the phrase "pending litigation, with such parties" should be clarified to exclude participation in unrelated litigation on the opposite side of a PRP because there is no conflict of interest in such a situation. Section 35.4220(a) provides that in order to ensure that a contractor does not have a conflict of interest, your group must require any prospective contractor to provide, with its bid or proposal information on its financial and business relationships with all PRPs at the site, including "services related to any proposed or pending litigation, with such parties." EPA agrees that it is unlikely that a contractor involved in unrelated litigation on the opposite side of a PRP would have a conflict of interest. Therefore, EPA is revising this section to apply (in part) to "financial and business relationships with such parties, and services provided to or on behalf of such parties in connection with any proposed or pending litigation."

*S. Definitions (§ 35.4270)*

In our efforts to clarify the meaning of "affiliated," especially as it pertains to the relationship between TAG groups and large national organizations, we modified the definition of "affiliated" by inserting a parenthetical statement, "(*i.e.*, centralized decisionmaking and control)," after "interlocking management or ownership."

We have also added definitions for the terms "Explanation of Significant Differences" (ESD) and "National Contingency Plan" (NCP). We added ESD because it is now one of ten site factors that can be the basis for funding a TAG above $50,000. We included the term NCP in the "Definitions" because it is part of the definition for ESD.

*T. Existing Grants*

One commenter expressed an opinion that EPA should require all current TAGs to be administered under the new regulations in order to allow communities to benefit from the changes in the revised rule. Generally, for substantive requirements applicable to grants, EPA and the grantee must follow the regulations that were in effect at the time of the grant award. For ease of administration for current TAG recipients, EPA will continue to apply all provisions of the TAG regulations that were in effect at the time of award. Recipients of TAGs under previous regulations may request that their grants be administered under this regulation once it is final. Groups wishing to be administered under the new regulations must write EPA and request that their grant agreements be amended by the Award Official. However, any funds spent prior to the finalization of this rule are subject to the previous regulation. Amendments to current grants will apply only to future work.

*U. State Administration*

EPA proposed to move State administration of the TAG program to another regulation, 40 CFR part 35, subpart O, which is the regulation governing the award of cooperative agreements to States and Indian tribes under section 104(d) of CERCLA. However, EPA has decided to eliminate altogether the ability of States to administer the TAG Program. We base this decision on several factors. One factor is that several commenters strongly opposed giving States the ability to administer the program. Another factor is that, since 1988, States have had the option of administering the program yet none have. This lack of implementation suggests to EPA that States are not interested in administering the TAG program. Also, while we specifically solicited the input of several State organizations on our proposal, none of them responded. Furthermore, at sites where the State is a potentially responsible party, there is the potential for the community to perceive that the State is not administering the TAG grant in a disinterested manner. Therefore, this final rule does not contain provisions for the States to administer the TAG Program and EPA does not intend to include such provisions in other regulatory actions.



## III. Regulatory Analysis

*A. Regulatory Flexibility Act (RFA as Amended by the Small Business Regulatory Enforcement and Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.)*

Today's final rule is not subject to the RFA, which generally requires an agency to prepare a regulatory flexibility analysis of any rule that will have a significant economic impact on a substantial number of small entities. The RFA only applies to rules subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act (APA) or any other statute. This rule pertains to grants which the APA expressly exempts from notice-and-comment rulemaking requirements. 5 U.S.C. 553(a)(2). Moreover, section 117 of CERCLA does not require EPA to issue a notice of proposed rulemaking.

Although not subject to the RFA, EPA, nonetheless, considered the potential of this final rule to adversely impact small entities subject to the rule. EPA concluded that this rule does not adversely impact small entities because it includes requirements that are imposed only on those entities that voluntarily apply for a grant and are the minimum necessary to ensure that grants are awarded and used only for authorized purposes. In addition, EPA solicited input and comment on the proposed rule from small entities by sending it to current grant recipients and their technical advisors, and by publishing a notice of proposed rulemaking even though grant related rules are not required to undergo notice-and-comment rulemaking.

*B. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This regulation contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. The UMRA excludes from the definition of "Federal intergovernmental mandate" duties that arise from conditions of federal assistance.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments because this rule does not impose any requirements on any governments.

*C. National Technology Transfer and Advancement Act*

As noted in the proposed rule, section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impracticable. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

EPA believes that this final rule does not involve any technical standards subject to NTTAA. In the proposed rule, EPA requested anyone who disagreed with this conclusion to indicate why the rule is subject to the Act and to identify any potentially applicable and voluntary consensus standards. EPA received no comments on this matter.

*D. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks*

Executive Order 13045 applies to any rule that is determined to be: (1) "Economically significant" as defined under Executive Order 12866; and (2) Concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This final rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

*E. Paperwork Reduction Act*

In keeping with the requirements of the Paperwork Reduction Act (PRA) as amended, 44 U.S.C. 3501 *et seq.*, the information collection requirements contained in this rule have been approved by the Office of Management and Budget under information request number 2030–0020. This rule does not contain any collection of information requirements beyond those already approved. Since this action imposes no new or additional information collection, reporting or record keeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, no information request will be submitted to the Office of Management and Budget for review.

*F. Executive Order 12866*

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)), the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy,

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productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

*G. Executive Order 13132*

Executive Order 13132, entitled "Federalism" (64 FR 43255 (August 10, 1999)), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, Executive Order 13132 does not apply to this rule. Further, because this rule regulates the use of federal financial assistance, it will not impose substantial direct compliance costs on the States.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and States, EPA sent the proposed regulation with a request for comments to several organizations that represent states, including the National Governors Association and the National Conference of State Legislatures.

*H. Executive Order 13084*

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input" in the development of regulatory policies on matters that significantly or uniquely affect their communities.

This final rule does not significantly or uniquely affect the communities of Indian Tribal governments. This rule does not apply to tribes; rather, it governs the award of technical assistance grants to non-profit corporations. Accordingly, the requirements of section 3 (b) of Executive Order 13084 do not apply.

*I. Executive Order 12898*

Under Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," as well as through EPA's April 1995, "Environmental Justice Strategy, OSWER Environmental Justice Task Force Action Agenda Report," and National Environmental Justice Advisory Council, EPA has undertaken to incorporate environmental justice into its policies and programs. EPA is committed to addressing environmental justice concerns, and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income, bears disproportionately high and adverse human health and environmental effects as a result of EPA's policies, programs, and activities, and all people live in clean and sustainable communities.

No action from the final rule will have a disproportionately high and adverse human health and environmental effects on any segment of the population. In addition, the final rule does not impose substantial direct compliance costs on those communities. Accordingly, the requirements of the Executive Order do not apply.

*J. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by U.S.C. 804(2). This action will be effective October 2, 2000.

**List of Subjects in 40 CFR Part 35**

Environmental protection, Air pollution control, Coastal zone, Grant programs—environmental protection, Grant programs—Indians, Hazardous waste, Indians, Intergovernmental relations, Pesticides and pests, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

Dated: September 13, 2000.

**Carol M. Browner,**

*Administrator.*

Accordingly, as set forth in the preamble, the Environmental Protection Agency amends 40 CFR part 35 as follows:

## PART 35—STATE AND LOCAL ASSISTANCE

1. The authority citation for part 35 is revised to read as follows:

**Authority:** 42 U.S.C. 4368b, unless otherwise noted.

2. Subpart M is revised to read as follows:

**Subpart M—Grants for Technical Assistance**

**General**

Sec.
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35.4012 If there appears to be a difference between the requirements in 40 CFR part 30 and this subpart, which regulations should my group follow?
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Grant Disputes, Termination, and Enforcement

35.4245 How does my group resolve a disagreement with EPA regarding our TAG?
35.4250 Under what circumstances would EPA terminate my group's TAG?
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35.4265 How does my group close out our TAG?

Other Things You Need to Know

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**Subpart M—Grants for Technical Assistance**

**Authority:** 42 U.S.C. 9617(e); sec. 9(g), E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

**General**

**§ 35.4000 Authority.**

The Environmental Protection Agency ("EPA") issues this subpart under section 117(e) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, 42 U.S.C. 9617(e).

**§ 35.4005 What is a Technical Assistance Grant?**

A Technical Assistance Grant (TAG) provides money for your group to obtain technical assistance in interpreting information with regard to a Superfund site. EPA awards TAGs to promote public participation in decision making at eligible sites. A TAG allows your group to procure independent technical advisors to help you interpret and comment on site-related information and decisions. Examples of how a technical advisor can help your group include, but are not limited to:

(a) Reviewing preliminary site assessment/site investigation data;

(b) Participating in public meetings to help interpret information about site conditions, proposed remedies, and the implementation of a remedy;

(c) Visiting the site vicinity periodically during cleanup, if possible, to observe progress and provide technical updates to your group; and

(d) Evaluate future land use options based on land use assumptions found in the "remedial investigation/feasibility study."

**§ 35.4010 What does this subpart do?**

This subpart establishes the program-specific regulations for TAGs awarded by EPA.

**§ 35.4011 Do the general grant regulations for nonprofit organizations apply to TAGs?**

Yes, the regulations at 40 CFR part 30 also apply to TAGs. 40 CFR part 30 establishes uniform administrative requirements for Federal grants and agreements to institutions of higher education, hospitals, and other nonprofit organizations. Because EPA awards TAGs to nonprofit organizations, 40 CFR part 30 applies to all TAGs.

**§ 35.4012 If there appears to be a difference between the requirements in 40 CFR part 30 and this subpart, which regulations should my group follow?**

You should follow the regulations in 40 CFR part 30, except for the following

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provisions from which this subpart deviates:
(a) 40 CFR 30.11, Pre-Award Policies;
(b) 40 CFR 30.22 (b) and (c), Payment;
(c) 40 CFR 30.44 (e) (2), Procurement Procedures;
(d) 40 CFR 30.53 (b), Retention and Access Requirements for Records; and
(e) 40 CFR 31.70 (c) and 31.70 (i) as referenced by 40 CFR 30.63, Disputes.

**§ 35.4015 Do certain words in this subpart have specific meaning?**

Yes, some words in this subpart have specific meanings that are described in§ 35.4270, Definitions. The first time these words are used they are marked with quotation marks, for example, "EPA."

## Who Is Eligible?

**§ 35.4020 Is my community group eligible for a TAG?**

(a) Yes, your community group is eligible for a TAG if:
(1) You are a group of people who may be "affected" by a release or a threatened release at any facility listed on the National Priorities List ("NPL") or proposed for listing under the National Contingency Plan (NCP) where a "response action" under CERCLA has begun;
(2) Your group meets the minimum administrative and management capability requirements found in 40 CFR 30.21 by demonstrating you have or will have reliable procedures for record keeping and financial accountability related to managing your TAG (you must have these procedures in place before your group incurs any expenses); and
(3) Your group is not ineligible according to paragraph (b) of this section.
(b) No, your community group is not eligible for a TAG if your group is:
(1) A "potentially responsible party" (PRP), receives money or services from a PRP, or represents a PRP;
(2) Not incorporated as a nonprofit organization for the specific purpose of representing affected people except as provided in § 35.4045;
(3) "Affiliated" with a national organization;
(4) An academic institution;
(5) A political subdivision (for example, township or municipality); or
(6) Established or presently sustained by ineligible entities that paragraphs (b) (1) through (5) of this section describe, or if any of these ineligible entities are represented in your group.

**§ 35.4025 Is there any way my group can get a TAG if it is currently ineligible?**

You can make your group eligible by establishing an identity separate from that of the PRP or other ineligible entity by making a reasonable demonstration of independence from the ineligible entity. Such a demonstration requires, at a minimum, a showing that your group has a separate and distinct:
(a) Formal legal identity (for example, your group has different officers); and
(b) Substantive existence (meaning, is not affiliated with an ineligible entity), including its own finances.
(1) In determining whether your group has a different substantive existence from the ineligible entity, you must establish for us that your group:
(i) Is not controlled either directly or indirectly, by the ineligible entity; and
(ii) Does not control, either directly or indirectly, an ineligible entity.
(2) You must also establish for EPA that a third group does not have the power to control both your group and an ineligible entity.

**§ 35.4030 Can I be part of a TAG group if I belong to an ineligible group?**

You may participate in your capacity as an individual in a group receiving a TAG, but you may not represent the interests of an ineligible entity. However, we may prohibit you from participating in a TAG group if the "award official" determines you have a significant financial involvement in a PRP.

**§ 35.4035 Does EPA use the same eligibility criteria for TAGs at "Federal facility" sites?**

Yes, EPA uses the same criteria found in § 35.4020 in evaluating the eligibility of your group or any group of individuals who may be affected by a release or a threatened release at a Federal facility for a TAG under this subpart.

**§ 30.4040 How many groups can receive a TAG at one Superfund site?**

(a) Only one TAG may be awarded for a site at any one time. However, the recipient of the grant can be changed when:
(1) EPA and the recipient mutually agree to terminate the current TAG or the recipient or EPA unilaterally terminates the TAG; or
(2) The recipient elects not to renew its grant even though it is eligible for additional funding.
(b) In each of the situations described in paragraph (a) of this section the following information applies:
(1) If you are a subsequent recipient of a TAG, you are not responsible for actions taken by the first recipient, nor are you responsible for how the first recipient expended the funds received from EPA; and
(2) The process for changing recipients begins when an interested applicant submits a Letter of Intent ("LOI") to the Agency expressing interest in a TAG as described in § 35.4105. We will then follow the application procedure set forth at §§ 35.4105 through 35.4165.

## Your Responsibilities as a TAG Recipient

**§ 35.4045 What requirements must my group meet as a TAG recipient?**

Your group, including those groups which form out of a coalition agreement, must incorporate as a nonprofit corporation for the purpose of participating in decision making at the Superfund site for which we provide a TAG. However, a group that was previously incorporated as a nonprofit organization and includes all individuals and groups who joined in applying for the TAG is not required to reincorporate for the specific purpose of representing affected individuals at the site, if in EPA's discretionary judgment, the group has a history of involvement at the site. You must also:
(a) At the time of award, demonstrate that your group has incorporated as a nonprofit organization or filed the necessary documents for incorporation with the appropriate State agency; and
(b) At the time of your first request for reimbursement or advance payment, submit proof that the State has incorporated your group as a nonprofit organization.

**§ 35.4050 Must my group contribute toward the cost of a TAG?**

(a) Yes, your group must contribute 20 percent of the total cost of the TAG project unless EPA waives the match under § 35.4055.
(b) Under 40 CFR 30.23, your group may use "cash" and/or "in-kind contributions" (for example, your board members can count their time toward your matching share) to meet the matching funds requirement. Without specific statutory authority, you may not use Federal funds to meet the required match.

**§ 35.4055 What if my group can't come up with the "matching funds?'**

(a) EPA may waive all or part of your matching funds requirement if we:
(1) Have not issued the "Record of Decision" ("ROD") at the last "operable unit" for the site (in other words, if EPA has not already made decisions on the final cleanup actions at the site); and
(2) Determine, based on evidence in the form of documentation provided by your group, that:
(i) Your group needs a waiver because providing the match would be a financial hardship to your group (for example, your local economy is depressed and coming up with in-kind contributions would be difficult); and
(ii) The waiver is necessary to help your community participate in selecting a remedial action at the site.
(b) If your group receives a waiver of the matching funds after your initial award, your grant agreement must be amended.



## How Much Money TAGs Provide

**§ 35.4060 How much money can my group receive through a TAG?**

The following table shows how much money your group can receive through a TAG:

| If your group is . . . | Then your initial award will . . . |
|---|---|
| (a) the first recipient of a TAG at a site or a subsequent recipient at a site where the initial recipient spent the entire award amount. | not exceed $50,000 per site. |
| (b) a subsequent recipient at a site with remaining funds from an initial $50,000 award. | be the unspent amount remaining from an initial from the initial award (for example, if the Agency awarded the first recipient $50,000 but that recipient only spent $27,000, then your group's initial award would be $23,000). |

**§ 35.4065 How can my group get more than $50,000?**

(a) The EPA regional office award official for your grant may waive your group's $50,000 limit if your group demonstrates that:
(1) If it received previous TAG funds, you managed those funds effectively; and
(2) Site(s) characteristics indicate additional funds are necessary due to the nature or volume of site-related information. In this case, three of the ten factors below must occur:
(i) A Remedial Investigation/ Feasibility Study ("RI/FS") costing more than $2 million is performed;
(ii) Treatability studies or evaluation of new and innovative technologies are required as specified in the Record of Decision;
(iii) EPA reopens the Record of Decision;
(iv) The site public health assessment (or related activities) indicates the need for further health investigations and/or health promotion activities;
(v) EPA designates one or more additional operable units after awarding the TAG;
(vi) The agency leading the cleanup issues an "Explanation of Significant Differences" (ESD);
(vii) A legislative or regulatory change results in new site information after EPA awards the TAG;
(viii) EPA expects a cleanup lasting more than eight years from the beginning of the RI/FS through construction completion;
(ix) Significant public concern exists, where large groups of people in the community require many meetings, copies, etc.; and
(x) Any other factor that, in EPA's judgment, indicates that the site is unusually complex.
(b) Your group can also receive more than $50,000 if you are geographically close to more than one eligible site (for example, two or more sites × $50,000 = grant of $100,000) and your group wishes to receive funding for technical assistance to address multiple eligible sites.

## What TAGs Can Pay For

**§ 35.4070 How can my group spend TAG money?**

(a) Your group must use all or most of your funds to procure a technical advisor(s) to help you understand the nature of the environmental and public health hazards at the site, the various stages of health and environmental investigations and activities, cleanup, and "operation and maintenance" of a site, including exposure investigation, health study, surveillance program, health promotion activities (for example, medical monitoring and pediatric health units), remedial investigation, and feasibility study, record of decision, remedial design, selection and construction of remedial action, operation and maintenance, and removal action. This technical assistance should contribute to the public's ability to participate in the decision making process by improving the public's understanding of overall conditions and activities at the site.
(b) Your group may use a portion of your funds to:
(1) Undertake activities that communicate site information to the public through newsletters, public meetings or other similar activities;
(2) Procure a grant administrator to manage your group's grant; and/or
(3) Provide one-time health and safety training for your technical advisor to gain site access to your local Superfund site. To provide this training, you must:
(i) Obtain written approval from the EPA regional office; and
(ii) Not spend more than $1,000.00 for this training, including travel, lodging and other related costs.

**§ 35.4075 Are there things my group can't spend TAG money for?**

Your TAG funds cannot be used for the following activities:
(a) Lawsuits or other legal actions;
(b) Attorney fees for services:
(1) Connected to any kind of legal action; or
(2) That could, if such a relationship were allowable, be interpreted as resulting in an attorney/client relationship to which the attorney/client privilege would apply;
(c) The time of your technical advisor to assist an attorney in preparing a legal action or preparing and serving as an expert witness at any legal proceeding;
(d) Political activity and lobbying that is unallowable under Office of Management and Budget (OMB) Circular A–122, Cost Principles for Non-Profit Organizations (this restriction includes activities such as attempting to influence the outcomes of any Federal, State or local election, referendum, initiative, or similar procedure through in-kind or cash contributions, endorsements, or publicity, or attempting to influence the introduction or passage of Federal or state legislation; your EPA regional office can supply you with a copy of this circular);
(e) Other activities that are unallowable under the cost principles stated in OMB Circular A–122 (such as costs of amusement, diversion, social activities, fund raising and ceremonials);
(f) Tuition or other training expenses for your group's members or your technical advisor except as § 35.4070(b)(3) allows;
(g) Any activities or expenditures for your group's members' travel;

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(h) Generation of new primary data such as well drilling and testing, including split sampling;

(i) Reopening or challenging final EPA decisions such as:

(1) Records of Decision; and/or

(2) Disputes with EPA under its dispute resolution procedures set forth in 40 CFR 30.63 (see § 35.4245); and

(j) Generation of new health data through biomedical testing (for example, blood or urine testing), clinical evaluations, health studies, surveillance, registries, and/or public health interventions.

## How You Get the Money

### § 35.4080 Does my group get a lump sum up front, or does EPA reimburse us for costs we incur?

(a) EPA pays your group by reimbursing you for "allowable" costs, which are costs that are:

(1) Grant related;

(2) "Allocable";

(3) "Reasonable"; and

(4) Necessary for the operation of the organization or the performance of the award.

(b) You will be reimbursed for the allowable costs up to the amount of the TAG if your group incurred the costs during the approved "project period" of the grant (except for allowable costs of incorporation which may be incurred prior to the project period), and your group is legally required to pay those costs.

### § 35.4085 Can my group get an "advance payment" to help us get started?

Yes, a maximum of $5,000.00 in the form of an advance payment is available to new recipients.

### § 35.4090 If my group is eligible for an advance payment, how do we get our funds?

(a) Your group must submit in writing a request for an advance payment and identify what activities, goods or services your group requires.

(b) Your EPA regional office project officer identified in your award document must approve the items for which your group seeks advance funding.

(c) Upon approval of your request, EPA will advance cash (in the form of a check or electronic funds transfer) to your group, up to $5,000, to cover its estimated need to spend funds for an initial period generally geared to your group's cycle of spending funds.

(d) After the initial advance, EPA reimburses your group for its actual cash disbursements.

### § 35.4095 What can my group pay for with an advance payment?

(a) Advance payments may be used only for the purchase of supplies, postage, the payment of the first deposit to open a bank account, the rental of equipment, the first month's rent of office space, advertisements for technical advisors and other items associated with the start up of your organization specifically requested in your advance payment request and approved by your EPA project officer.

(b) Advance payments must not be used for contracts for technical advisors or other contractors.

(c) Advance payments are not available for the costs of incorporation.

### § 35.4100 Can my group incur any costs prior to the award of our grant?

(a) The only costs you may incur prior to the award of a grant from EPA are costs associated with incorporation but you do so at your own risk.

(b) If you are awarded a TAG, EPA may reimburse you for preaward incorporation costs or allow you to count the costs toward your matching funds requirement if the costs are:

(1) Necessary and reasonable for incorporation; and

(2) Incurred for the sole purpose of complying with this subpart's requirement that your group be incorporated as a nonprofit corporation.

## How to Apply for a TAG

### § 35.4105 What is the first step for getting a TAG?

To let EPA know of your group's interest in obtaining a TAG, your group should first submit to its EPA regional office a Letter of Intent. (The addresses of EPA's regional offices' TAG Coordinators are listed in § 35.4275.)

### § 35.4106 What information should an LOI include?

The LOI should clearly state that your group intends to apply for a TAG, and should identify:

(a) The name of your group;

(b) The Superfund site(s) for which your group intends to submit an application; and

(c) Provide the name of a contact person in the group and his or her mailing address and telephone number.

### § 35.4110 What does EPA do once it receives the first LOI from a group?

The following table shows what EPA does when it receives the first LOI from a group:

| If your site . . . | Then EPA . . . |
|---|---|
| (a) is not proposed for listing on the NPL or is proposed but no response is underway or scheduled to begin. | will advise you in writing that we are not yet accepting TAG "applications" for your site. EPA may informally notify other interested groups that it has received an LOI. |
| (b) Is listed on the NPL or is proposed for listing on the NPL and a response action is underway. | will publish a notice in your local newspaper to formally notify other interested parties that they may contact the first group that sent the LOI to form a coalition or they may submit a separate LOI. |

### § 35.4115 After the public notice that EPA has received an LOI, how much time does my group have to form a coalition or submit a separate LOI?

Your group has 30 days (from the date the public notice appears in your local newspaper) to submit documentation that you have formed a coalition with the first group and any other groups, or to submit a separate LOI. This 30-day period is the first 30 days with which your group must be concerned.

### § 35.4120 What does my group do next?

(a) After you submit an LOI, one of the first steps in applying for your TAG is determining whether your state requires review of your grant application. This review allows your governor to stay informed about the variety of grants awarded within your state. This process is called intergovernmental review. Your EPA regional office can provide you with the contact for your state's intergovernmental review process.

(b) You should call that state contact as early as possible in the application process so that you can allow time for this review process which may take up to 60 days.

(c) EPA cannot process your application package without evidence that you have submitted it to the state for review, if your state requires it.

(d) EPA cannot award a TAG until the state has completed its intergovernmental review.



### § 35.4125 What else does my group need to do?

Once you've determined your state's intergovernmental review requirements, you must prepare a TAG application on EPA SF–424, Application for Federal Assistance, or those forms and instructions provided by EPA that include:

(a) A "budget";

(b) A scope of work;

(c) Assurances, certifications and other preaward paperwork as 40 CFR part 30 requires. Your EPA regional office will provide you with the required forms.

### § 35.4130 What must be included in my group's budget?

Your budget must clearly show how:

(a) You will spend the money and how the spending meets the objectives of the TAG project;

(b) Your group will provide the required cash and/or in-kind contributions; and

(c) Your group derived the figures included in the budget.

### § 35.4135 What period of time should my group's budget cover?

The period of time your group's budget covers (the "funding period" of your grant) will be:

(a) One which best accommodates your needs;

(b) Negotiated between your group and EPA; and

(c) Stated in the "award document."

### § 35.4140 What must be included in my group's work plan?

(a) Your scope of work must clearly explain how your group:

(1) Will organize;

(2) Intends to use personnel you will procure for management/coordination and technical advice; and

(3) Will share and disseminate information to the rest of the affected community.

(b) Your scope of work must also clearly explain your project's milestones and the schedule for meeting those milestones.

(c) Finally, your scope of work must explain how your board of directors, technical advisor(s) and "project manager" will interact with each other.

### § 35.4145 How much time do my group or other interested groups have to submit a TAG application to EPA?

(a) Your group must file your application with your EPA regional office within the second 30 days after the date the public notice appears in your local newspaper announcing that EPA has received an LOI. This second 30-day period begins on the day after the first 30-day period § 35.4115 describes ends. EPA will only accept applications from groups that submitted an LOI within 30 days from the date of that public notice.

(b) If your group requires more time to file a TAG application, you may submit a written request asking for an extension. If EPA decides to extend the time period for applications in response to your request, it will notify, in writing, all groups that submitted an LOI of the new deadline for submitting TAG applications.

(c) EPA will not accept other applications or requests for extensions after the final application deadline has passed.

### § 35.4150 What happens after my group submits its application to EPA?

(a) EPA will review your application and send you a letter containing written comments telling you what changes need to be made to the application to make it complete.

(b) Your group has 90 days from the date on the EPA letter to make the changes to your application and resubmit it to EPA.

(c) Once the 90-day period ends, EPA will begin the process to select a TAG recipient, or, in the case of a single applicant, if, EPA does not receive a complete application (meaning, an application that does not have the changes provided in the letter described in paragraph (b) of this section), then EPA will readvertise the fact that a TAG is available and the award process will begin again.

### § 35.4155 How does EPA decide whether to award a TAG to our group?

Once EPA determines your group meets the eligibility requirements in § 35.4020 the Agency considers whether and how successfully your group meets these criteria, each of which are of equal weight:

(a) Representation of groups and individuals affected by the site;

(b) Your group's plans to use the services of a technical advisor throughout the Superfund response action; and

(c) Your group's ability and plan to inform others in the community of the information provided by the technical advisor.

### § 35.4160 What does EPA do if more than one group applies for a TAG at the same site?

When multiple groups apply, EPA will rank each applicant relative to other applicants using the criteria in § 35.4155.

### § 35.4161 Does the TAG application process affect the schedule for work at my site?

No, the schedule for response activities at your site is not affected by the TAG process.

### § 35.4165 When does EPA award a TAG?

(a) EPA may award TAGs throughout the Superfund process, including during operation and maintenance, but we will not award a TAG before the start of your site's response action if the site is proposed for listing on the NPL.

(b) Based on the availability of funds, EPA may delay awards of grants to qualified applicants.

## Managing Your TAG

### § 35.4170 What kinds of reporting does EPA require?

There are several types of reports you need to complete at various points during the life of your group's grant; the number varies based on whether you receive an advance payment:

| Type of report | Required information | Timing and frequency |
|---|---|---|
| (a) Federal Cash Transactions Report ..... | The amount of funds advanced to you or electronically transferred to your bank account and how you spent those funds. | Semiannually within 15 working days following the end of the semiannual period which ends June 30 and December 31 of each year. |

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| Type of report | Required information | Timing and frequency |
|---|---|---|
| (b) Minority-Owned Business Enterprise/Women-Owned Business Enterprise (MBE/WBE) Utilization. | Whether your group contracted with a MBE/WBE in the past Federal fiscal year, the value of the contract, if any, and the percentage of total project dollars on MBE/WBEs. | Annually, even if no contracts have been signed. |
| (c) Progress Report | Full description in chart or narrative format of the progress your group made in relation to your approved schedule, budget and the TAG project milestones, including an explanation of special problems your group encountered. | Quarterly, within 45 days after the end of each calendar quarter. |
| (d) Financial Status Report | Status of project's funds through identification of project transactions and within 90 days after the end of your TAG's funding period. | Annually, within 90 days after the anniversary date of the start of your TAG project. |
| (e) Final Report | Description of project goals and objectives, activities undertaken to achieve goals and objectives, difficulties encountered, technical advisors' work products and funds spent. | Within 90 days after the end of your project. |

**§ 35.4175 What other reporting and record keeping requirements are there?**

In addition to the report requirements § 35.4170 describes, EPA requires your group to:

(a) Comply with any reporting requirements in the terms and conditions of the "grant agreement";

(b) Keep complete financial records accurately showing how you used the Federal funds and the match, whether it is in the form of cash or in-kind assistance; and

(c) Comply with any reporting and record keeping requirements in OMB Circular A–122 and 40 CFR part 30.

**§ 35.4180 Must my group keep financial records after we finish our TAG?**

(a) You must keep TAG financial records for ten years from the date of the final Financial Status Report, or until any audit, litigation, cost recovery, and/or disputes initiated before the end of the ten-year retention period are settled, whichever, is longer.

(b) At the ten-year mark, you may dispose of your TAG financial records if you first get written approval from EPA.

(c) If you prefer, you may submit the financial records to EPA for safekeeping when you give us the final Financial Status Report.

**§ 35.4185 What does my group do with reports our technical advisor prepares for us?**

You must send to EPA a copy of each final written product your advisor prepares for you as part of your TAG. We will send them to the local Superfund site information repository(ies) where all site-related documents are available to the public.

### Procuring a Technical Advisor or Other Contractor With TAG Funds

**§ 35.4190 How does my group identify a qualified technical advisor?**

(a) Your group must select a technical advisor who possesses the following credentials:

(1) Demonstrated knowledge of hazardous or toxic waste issues, relocation issues, redevelopment issues or public health issues as those issues relate to hazardous substance/toxic waste issues, as appropriate;

(2) Academic training in a relevant discipline (for example, biochemistry, toxicology, public health, environmental sciences, engineering, environmental law and planning); and

(3) Ability to translate technical information into terms your community can understand.

(b) Your technical advisor for public health issues must have received his or her public health or related training at accredited schools of medicine, public health or accredited academic institutions of other allied disciplines (for example, toxicology).

(c) Your group should select a technical advisor who has experience working on hazardous or toxic waste problems, relocation, redevelopment or public health issues, and communicating those problems and issues to the public.

**§ 35.4195 Are there certain people my group cannot select to be our technical advisor, grant administrator, or other contractor under the grant?**

Your group may not hire the following:

(a) The person(s) who wrote the specifications for the "contract" and/or who helped screen or select the contractor;

(b) In the case of a technical advisor, a person or entity doing work for the Federal or State government or any other entity at the same NPL site for which your group is seeking a technical advisor; and

(c) Any person who is on the List of Parties Excluded from Federal Procurement or NonProcurement Programs.

**§ 35.4200 What restrictions apply to contractors my group procures for our TAG?**

When procuring contractors your group:

(a) Cannot award cost-plus-percentage-of-cost contracts; and

(b) Must award only to responsible contractors that possess the ability to perform successfully under the terms and conditions of a proposed contract.

**§ 35.4205 How does my group procure a technical advisor or any other contractor?**

When procuring contractors your group must also:

(a) Provide opportunity for all qualified contractors to compete for your work (see § 35.4210);



(b) Keep written records of the reasons for all your contracting decisions;

(c) Make sure that all costs are reasonable in a proposed contract;

(d) Inform EPA of any proposed contract over $1,000.00;

(e) Provide EPA the opportunity to review a contract before your group awards or amends it;

(f) Perform a "cost analysis" to evaluate each element of a contractor's cost to determine if it is reasonable, allocable and allowable for all contracts over $25,000; and

(g) Comply with the small business enterprises (SBE), minority-owned business enterprises, women-owned business enterprise requirements in 40 CFR 30.44(b) which outlines steps your group must take to make positive efforts to use small businesses, minority-owned firms and women's business enterprises. These steps generally say:

(1) Make sure to use small businesses, minority-owned firms, and women's businesses as often as possible.

(2) Make information on upcoming opportunities available and plan time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.

(3) When procuring firms for larger contracts, consider whether those firms intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.

(4) Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of those to handle on its own.

(5) Use the services and help, as appropriate, of such organizations as the Small Business Administration and the Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.

(6) If your contractor awards a contract, require the contractor to take the steps in 40 CFR 30.44(b) as summarized in paragraphs (g)(1) through (5) of this section.

**§ 35.4210 Must my group solicit and document bids for our procurements?**

(a) The steps needed to be taken to procure goods and/or services depends on the amount of the proposed procurement:

| If the aggregate amount of the | Then your group |
|---|---|
| (1) purchase is $1,000 or less | may make the purchase as long as you make sure the price is reasonable; no oral or written bids are necessary. |
| (2) proposed contract is over $1,000 but less than $25,000 | must obtain and document oral or written bids from two or more qualified sources. |
| (3) proposed contract is $25,000 to $100,000 | must:<br>(i) Solicit written bids from three or more sources who are willing and able to do the work;<br>(ii) Provide potential sources in the scope of work to be performed and the criteria your group will use to evaluate the bids;<br>(iii) Objectively evaluate all bids; and<br>(iv) Notify all unsuccessful bidders. |
| (4) proposed contract is greater than $100,000 | must follow the procurement regulations in 40 CFR part 30 (these regulations outline the standards for your group to use when contracting for services with Federal funds; they also contain provisions on: codes of conduct for the award and administration of contracts; competition; procurement procedures; cost and price analysis; procurement records; contract administration; and contracts generally). |

(b) Your group must not divide any procurements into smaller parts to get under any of the dollar limits in paragraph (a) of this section.

**§ 35.4215 What if my group can't find an adequate number of potential sources for a technical advisor or other contractor?**

In situations where only one adequate bidder can be found, your group may request written authority from the EPA award official to contract with the sole bidder.

**§ 35.4220 How does my group ensure a prospective contractor does not have a conflict of interest?**

Your group must require any prospective contractor on any contract to provide, with its bid or proposal:

(a) Information on its financial and business relationship with all PRPs at the site, with PRP parent companies, subsidiaries, affiliates, subcontractors, contractors, and current clients or attorneys and agents. This disclosure requirement includes past and anticipated financial and business relationships, and services provided to or on behalf of such parties in connection with any proposed or pending litigation;

(b) Certification that, to the best of its knowledge and belief, it has disclosed such information or no such information exists; and

(c) A statement that it will disclose to you immediately any such information discovered after submission of its bid or after award.

**§ 35.4225 What if my group decides a prospective contractor has a conflict of interest?**

If, after evaluating the information in § 35.4220, your group decides a prospective contractor has a significant

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conflict of interest that cannot be avoided or otherwise resolved, you must exclude him or her from consideration.

**§ 35.4230 What are my group's contractual responsibilities once we procure a contractor?**

For contractual responsibilities, your group, not EPA:

(a) Is responsible for resolving all contractual and administrative issues arising out of contracts you enter into under a TAG; you must establish a procedure for resolving such issues with your contractor which complies with the provisions of 40 CFR 30.41. These provisions say your group, not EPA, is responsible for settling all issues related to decisions you make in procuring advisors or other contractors with TAG funds; and

(b) Must ensure your contractor(s) perform(s) in accordance with the terms and conditions of the contract.

**§ 35.4235 Are there specific provisions my group's contract(s) must contain?**

Your group must include the following provisions in each of its contracts:

(a) Statement of work;

(b) Schedule for performance;

(c) Due dates for deliverables;

(d) Total cost of the contract;

(e) Payment provisions;

(f) The following clauses from 40 CFR part 30, appendix A, which your EPA regional office can provide to you:

(1) Equal Employment Opportunity; and

(2) Suspension and Debarment;

(g) The following clauses from 40 CFR 30.48:

(1) Remedies for breaches of contract (40 CFR 30.48(a));

(2) Termination by the recipient (40 CFR 30.48(b)); and

(3) Access to records (40 CFR 30.48(d)); and

(h) Provisions that require your contractor(s) to keep the following detailed records as § 35.4180 requires for ten years after the end of the contract:

(1) Acquisitions;

(2) Work progress reports;

(3) Expenditures; and

(4) Commitments indicating their relationship to established costs and schedules.

**Requirements for TAG Contractors**

**§ 35.4240 What provisions must my group's TAG contractor comply with if it subcontracts?**

A TAG contractor must comply with the following provisions when awarding subcontracts:

(a) Section 35.4205 (b) pertaining to documentation;

(b) Section 35.4205 (c) and (f) pertaining to cost;

(c) Section 35.4195 (c) pertaining to suspension and debarment;

(d) Section 35.4200 (b) pertaining to responsible contractors;

(e) Section 35.4205 (g) pertaining to disadvantaged business enterprises;

(f) Section 35.4200 (a) pertaining to unallowable contracts;

(g) Section 35.4235 pertaining to contract provisions; and

(h) Cost principles in 48 CFR part 31, the Federal Acquisition Regulation, if the contractor and subcontractors are profit-making organizations.

**Grant Disputes, Termination, and Enforcement**

**§ 35.4245 How does my group resolve a disagreement with EPA regarding our TAG?**

The regulations at 40 CFR 30.63 and 31.70 will govern disputes except that, before you may obtain judicial review of the dispute, you must have requested the Regional Administrator to review the dispute decision official's determination under 40 CFR 31.70(c), and, if you still have a dispute, you must have requested the Assistant Administrator for the Office of Solid Waste and Emergency Response to review the Regional Administrator's decision under 40 CFR 31.70(h).

**§ 35.4250 Under what circumstances would EPA terminate my group's TAG?**

(a) EPA may terminate your grant if your group materially fails to comply with the terms and conditions of the TAG and the requirements of this subpart.

(b) EPA may also terminate your grant with your group's consent in which case you and EPA must agree upon the termination conditions, including the effective date as 40 CFR 30.61 describes.

**§ 35.4255 Can my group terminate our TAG?**

Yes, your group may terminate your TAG by sending EPA written notification explaining the reasons for the termination and the effective date.

**§ 35.4260 What other steps might EPA take if my group fails to comply with the terms and conditions of our award?**

EPA may take one or more of the following actions, under 40 CFR 30.62, depending on the circumstances:

(a) Temporarily withhold advance payments until you correct the deficiency;

(b) Not allow your group to receive reimbursement for all or part of the activity or action not in compliance;

(c) Wholly or partly "suspend" your group's award;

(d) Withhold further awards (meaning, funding) for the project or program;

(e) Take enforcement action;

(f) Place special conditions in your grant agreement; and

(g) Take other remedies that may be legally available.

**Closing Out a TAG**

**§ 35.4265 How does my group close out our TAG?**

(a) Within 90 calendar days after the end of the approved project period of the TAG, your group must submit all financial, performance and other reports as required by § 35.4180. Upon request from your group, EPA may approve an extension of this time period.

(b) Unless EPA authorizes an extension, your group must pay all your bills related to the TAG by no later than 90 calendar days after the end of the funding period.

(c) Your group must promptly return any unused cash that EPA advanced or paid; OMB Circular A–129, Policies for Federal Credit Programs and Non-Tax Receivables, governs unreturned amounts that become delinquent debts.

**Other Things You Need To Know**

**§ 35.4270 Definitions.**

The following definitions apply to this subpart:

*Advance payment* means a payment made to a recipient before "outlays" are made by the recipient.

*Affected* means subject to an actual or potential health, economic or environmental threat. Examples of affected parties include people:

(1) Who live in areas near NPL facilities, whose health may be endangered by releases of hazardous substances at the facility; or

(2) Whose economic interests are threatened or harmed.

*Affiliated* means a relationship between persons or groups where one group, directly or indirectly, controls or has the power to control the other, or, a third group controls or has the power to control both. Factors indicating control include, but are not limited to:

(1) Interlocking management or ownership (*e.g.*, centralized decisionmaking and control);

(2) Shared facilities and equipment; and

(3) Common use of employees.

*Allocable cost* means a cost which is attributable to a particular cost objective, such as a grant, project, service, or other activity, in accordance with the relative benefits received. A cost is allocable to a Government award if it is treated consistently with other



costs incurred for the same purpose in like circumstances and if it:

(1) Is incurred specifically for the award;

(2) Benefits both the award and other work and can be distributed in reasonable proportion to the benefits received; or

(3) Is necessary to the overall operation of the organization, although a direct relationship to any particular cost objective cannot be shown.

*Allowable cost* means those project costs that are: eligible, reasonable, allocable to the project, and necessary to the operation of the organization or the performance of the award as provided in the appropriate Federal cost principles, in most cases OMB Circular A–122 (see 40 CFR 30.27), and approved by EPA in the assistance agreement.

*Applicant* means any group of people that files an application for a TAG.

*Application* means a completed formal written request for a TAG that you submit to a State or the EPA on EPA form SF–424, Application for Federal Assistance (Non-construction Programs).

*Award document* or grant agreement is the legal document that transfers money or anything of value to your group to accomplish the purpose of the TAG project. It specifies funding and project periods, EPA's and your group's budget share of "eligible costs," a description of the work to be accomplished, and any additional terms and conditions that may apply to the grant.

*Award Official* means the EPA official who has the authority to sign grant agreements.

*Budget* means the financial plan for spending all Federal funds and your group's matching share funds (including in-kind contributions) for a TAG project that your group proposes and EPA approves.

*Cash contribution* means actual non-Federal dollars, or Federal dollars if expressly authorized by Federal statute, that your group spends for goods, services, or personal property (such as office supplies or professional services) used to satisfy the matching funds requirement.

*Contract* means a written agreement between your group and another party (other than a public agency) for services or supplies necessary to complete the TAG project. Contracts include contracts and subcontracts for personal and professional services or supplies necessary to complete the TAG project.

*Contractor* means any party (for example, a technical advisor) to whom your group awards a contract.

*Cost analysis* is the evaluation of each element of cost to determine whether it is reasonable, allocable, and allowable.

*Eligible cost* is a cost permitted by statute, program guidance or regulations.

*EPA* means the Environmental Protection Agency.

*Explanation of Significant Differences* (ESD) means the document issued by the agency leading a cleanup that describes to the public significant changes made to a Record of Decision after the ROD has been signed. The ESD must also summarize the information that led to the changes and affirm that the revised remedy complies with the "National Contingency Plan" (NCP) and the statutory requirements of CERCLA.

*Federal facility* means a facility that is owned or operated by a department, agency, or instrumentality of the United States.

*Funding period* (previously called a "budget period") means the length of time specified in a grant agreement during which your group may spend Federal funds. A TAG project period may be comprised of several funding periods.

*Grant agreement* or award document is the legal document that transfers money or anything of value to your group to accomplish the purpose of the TAG project. It specifies funding and project periods, EPA's and your group's budget share of eligible costs, a description of the work to be accomplished, and any additional terms and conditions that may apply to the grant.

*In-kind contribution* means the value of a non-cash contribution used to meet your group's matching funds requirement in accordance with 40 CFR 30.23. An in-kind contribution may consist of charges for equipment or the value of goods and services necessary to the EPA-funded project.

*Letter of intent* (LOI) means a letter addressed to your EPA regional office which clearly states your group's intention to apply for a TAG. The letter tells EPA the name of your group, the Superfund site(s) for which your group intends to submit an application, and the name of a contact person in the group including a mailing address and telephone number.

*Matching funds* means the portion of allowable project cost contributed toward completing the TAG project using non-Federal funds or Federal funds if expressly authorized by Federal statutes. The match may include in-kind as well as cash contributions.

*National Contingency Plan* (NCP) means the federal government's blueprint for responding to both oil spills and hazardous substance releases. It lays out the country's national response capability and promotes overall coordination among the hierarchy of responders and contingency plans.

*National Priorities List* (NPL) means the Federal list of priority hazardous substance sites, nationwide. Sites on the NPL are eligible for long-term cleanup actions financed through the Superfund program.

*Operable unit* means a discrete action defined by EPA that comprises an incremental step toward completing site cleanup.

*Operation and maintenance* means the steps taken after site actions are complete to make certain that all actions are effective and working properly.

*Outlay* means a charge made to the project or program that is an allowable cost in terms of costs incurred or in-kind contributions used.

*Potentially responsible party* (PRP) means any individual(s) or company(ies) (such as owners, operators, transporters or generators) potentially responsible under sections 106 or 107 of CERCLA (42 U.S.C. 9606 or 42 U.S.C. 9607) for the contamination problems at a Superfund site.

*Project manager* means the person legally authorized to obligate your group to the terms and conditions of EPA's regulations and the grant agreement, and designated by your group to serve as its principal contact with EPA.

*Project period* means the period established in the TAG award document during which TAG money may be used. The project period may be comprised of more than one funding period.

*Reasonable cost* means a cost that, in its nature or amount, does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the costs.

*Recipient* means any group that has been awarded a TAG.

*Record of decision* (ROD) means a public document that explains the cleanup method that will be used at a Superfund site; it is based on technical data gathered and analyses performed during the remedial investigation and feasibility study, as well as public comments and community concerns.

*Remedial investigation/feasibility study* (RI/FS) means the phase during which EPA conducts risk assessments and numerous studies into the nature and extent of the contamination on site, and analyzes alternative methods for cleaning up a site.

*Response action* means all activities undertaken by EPA, other Federal agencies, States, or PRPs to address the

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problems created by hazardous substances at an NPL site.

*Start of response action* means the point in time when funding is set-aside by either EPA, other Federal agencies, States, or PRPs to begin response activities at a site.

*Suspend* means an action by EPA that temporarily withdraws Federal sponsorship under an award, pending corrective action by the recipient or pending a decision to terminate the award by the Federal awarding agency. Suspension of an award is a separate action from suspension under Federal agency regulations implementing Executive Orders 12549 (3 CFR, 1986 Comp., p. 189) and 12689 (3 CFR, 1989 Comp., p. 235), Debarment and Suspension.

**§ 35.4275 Where can my group get the documents this subpart references (for example, OMB circulars, other subparts, forms)?**

EPA Headquarters and the regional offices that follow have the documents this subpart references available if you need them:

(a) TAG Coordinator or Grants Office, U.S. EPA Region I, John F. Kennedy Federal Building, Boston, MA 02203.

(b) TAG Coordinator or Grants Office, U.S. EPA Region II, 290 Broadway, New York, NY 10007–1866.

(c) TAG Coordinator or Grants Office, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19106.

(d) TAG Coordinator or Grants Office, U.S. EPA Region IV, Atlanta Federal Center, 61 Forsyth Street, Atlanta, GA 30303.

(e) TAG Coordinator or Grants Office, U.S. EPA Region V, Metcalfe Federal Building, 77 W. Jackson Blvd., Chicago, IL 60604.

(f) TAG Coordinator or Grants Office, U.S. EPA Region VI, Wells Fargo Bank, Tower at Fountain Place, 1445 Ross Avenue, Suite 1200, Dallas, TX 752020–2733.

(g) TAG Coordinator or Grants Office, U.S. EPA Region VII, 901 N. 5th Street, Kansas City, KS 66101.

(h) TAG Coordinator or Grants Office, U.S. EPA Region VIII, 999 18th Street, Suite #500, Denver, CO 80202–2466.

(i) TAG Coordinator or Grants Office, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

(j) TAG Coordinator or Grants Office, U.S. EPA Region X, 1200 6th Avenue, Seattle, WA 98101.

(k) National TAG Coordinator, U.S. EPA Mail Code: 5204–G, Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20460.

[FR Doc. 00–24047 Filed 9–29–00; 8:45 am]
BILLING CODE 6560–50–U




Federal Register

Monday,
October 2, 2000

Part III

# Department of Housing and Urban Development

24 CFR Parts 888, 982, and 895
Fair Market Rents: Increased Fair Market Rents and Higher Payment Standards for Certain Areas; Interim Rule

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 888, 982, 985

[Docket No. FR 4606–I–01]

RIN 2501–AC75

## Fair Market Rents: Increased Fair Market Rents and Higher Payment Standards for Certain Areas

**AGENCY:** Office of the Secretary, HUD.

**ACTION:** Interim rule.

**SUMMARY:** This interim rule implements HUD's new fair market rent (FMR) policy. The new FMR policy targets relief to areas where higher FMRs are needed to help families, assisted under HUD's Housing Choice Voucher Program as well as other HUD programs, find and lease decent and affordable housing. With respect to the Housing Choice Voucher Program, the policy provides that where necessary to ensure the effective operation of this program, PHAs will be allowed to set their payment standards based on the 50th percentile rent rather than the published 40th percentile FMR. This aspect of the policy is designed to ensure that families with housing vouchers have access to at least half of all available units in those areas. In addition, the new FMR policy increases FMRs to the 50th percentile in those metropolitan areas where an FMR increase is most needed to promote residential choice, help families move closer to areas of job growth, and deconcentrate poverty. Where it is determined that an FMR increase is needed in a metropolitan area, the increased FMR applies to all the HUD programs that use FMRs in that metropolitan area.

**DATES:** *Effective Date:* December 1, 2000. *Comment Due Date:* November 16, 2000.

**ADDRESSES:** Interested persons are invited to submit written comments regarding this interim rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Comments should refer to the above docket number and title. A copy of each comment submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address. Facsimile (FAX) comments will not be accepted.

**FOR FURTHER INFORMATION CONTACT:** Gerald J. Benoit, Director, Real Estate and Housing Performance Division, Office of Public and Assisted Housing Delivery, Office of Public and Indian Housing, Department of Housing and Urban Development, Room 4210, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone number (202) 708–0477; or Lynn A. Rodgers, Economic and Market Analysis Division, Office of Economic Affairs, Office of Policy Development and Research, Department of Housing and Urban Development, Room 8224, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone number (202) 708–0590. Persons with hearing or speech impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339. (Other than the "800" TTY number, telephone numbers are not toll free.)

**SUPPLEMENTARY INFORMATION:**

### I. HUD's New FMR Policy

HUD's new FMR policy, being implemented through this interim rule, is designed to achieve two fundamental program objectives: (1) Ensuring that low-income families are successful in finding and leasing decent and affordable housing; and (2) ensuring that low-income families have access to a broad range of housing opportunities throughout a metropolitan area. To achieve the first objective, the policy provides that for the Housing Choice Voucher program, PHAs will be allowed to set their payment standards based on the 50th percentile rent rather than the published 40th percentile FMR in areas where families are having difficulty using housing vouchers to find and lease decent and affordable housing. To achieve the second objective, FMRs will be increased to the 50th percentile in those metropolitan areas where a FMR increase is most needed to promote residential choice, help families move closer to areas of job growth, and deconcentrate poverty. Where it is determined that a FMR increase is needed in a metropolitan area, the increased FMR applies to all the HUD programs that use FMRs in that area.

Section II of this preamble which immediately follows further discusses how HUD intends to achieve these two objectives through its new FMR policy.

### II. Increasing the Proportion of Voucher-Holders That Find Housing and Expanding Housing Opportunities Throughout the Metropolitan Area

*Ensuring that voucher-holders are successful in finding decent affordable housing.* In many areas, HUD's current FMRs based on the 40th percentile rent are adequate to allow low-income families with housing vouchers to find and lease decent and affordable housing. In some areas, however, these FMRs are inadequate to enable these families to lease decent and affordable units. HUD's new FMR policy authorizes PHAs to use voucher payment standards based on a 50th percentile rent (rather than the published 40th percentile FMR) where fewer than three-fourths of the families issued vouchers succeed in using them to find and lease housing.

Unlike HUD's former certificate program, in which maximum subsidy levels were governed by the FMR, maximum subsidies under the new Housing Choice Voucher program are governed by a "payment standard." Rather than being required to set subsidy levels at the FMR that applies to the entire FMR area—which may be too low or too high for the particular communities they serve—PHAs have discretion, without requesting HUD approval, to set voucher payment standard amounts anywhere between 90 and 110 percent of the published FMR for each unit size. PHAs also may set different payment standard amounts within this range for designated parts of the FMR area. This gives PHAs substantial flexibility to adapt the voucher program to local market conditions.

Most PHAs can run a successful voucher program within this normal 90 to 110 percent range of the current published 40th percentile FMR. In some cases, however, even the maximum 110 percent of the FMR is too low to enable families to find suitable housing with a voucher. The new policy addresses this problem by providing that where a PHA has increased its voucher payment standard to 110 percent of the FMR, but still finds that fewer than 75 percent of all families issued rental vouchers over the course of six months have become participants in the voucher program, the PHA will be eligible to set its payment standard based on a 50th percentile rent (rather than the published 40th percentile FMR).

PHAs that qualify for the higher payment standard amounts will still retain the flexibility to vary their payment standard amounts. The range of payment standards available to them will simply be 90 to 110 percent of a 50th percentile rent (rather than 90 to 110 percent of a published 40th percentile FMR).

This policy which is directed to achieving higher success rates among voucher-holders in finding decent and affordable housing is implemented in § 982.503(e).

*Ensuring that low-income families have access to a broad range of housing opportunities throughout the metropolitan area.* Another objective of the new policy is to ensure that low-income families are free to move to



neighborhoods of their choice throughout the metropolitan area—to have access to a broad range of housing opportunities. Families should not be restricted by low subsidy levels to a narrow range of neighborhoods, and in particular should not be restricted to areas of high poverty concentration. Moreover, to promote welfare-to-work objectives, families with tenant-based rental assistance should have access to housing in areas of job growth or with good transportation access to job centers.

To advance this objective, the new policy provides that HUD will increase FMRs to the 50th percentile in metropolitan areas where there is both: concentration among voucher-holders and evidence suggesting that this problem may be due to the distribution of affordable rental units in the area. This two-part test ensures that scarce resources are properly targeted on the areas most in need of assistance. As a first step in identifying the areas in need of assistance, there obviously needs to be evidence of concentration among low-income families. Because this concentration may be due to low FMRs or to other factors that are unrelated to FMRs, such as family choice, HUD has added a second test to identify those areas where affordable rental housing is not well-distributed throughout the metropolitan area.

Specifically, HUD will increase FMRs to the 50th percentile for metropolitan areas that HUD determines meet the following criteria at the time of annual publication of the FMRs:

- The FMR area contains at least 100 census tracts;
- 70 percent or fewer of the census tracts with at least 10 two bedroom rental units are census tracts in which at least 30 percent of the two bedroom rental units have gross rents at or below the two bedroom FMR set at the 40th percentile rent; and
- 25 percent or more of the tenant-based rental program participants in the FMR area reside in the five percent of the census tracts within the FMR area that have the largest number of program participants.

For the purposes of this analysis, census tracts have been identified as "accessible" to voucher-holders where at least 30 percent of the two-bedroom rental units in the tract fell below the 40th percentile FMR in the last decennial census.

Because mobility is an issue primarily for large metropolitan areas, this aspect of the new FMR policy provides for FMR increases only in metropolitan areas with more than 100 census tracts.

A PHA with jurisdiction in an area with a published FMR at the 50th percentile rent to provide a broad range of housing opportunities may choose to establish its payment standards between 90 and 110 percent of the 50th percentile FMR in accordance with § 982.503(b)(1)(i). However, in the event a PHA determines that its jurisdiction does not require higher payment standards based on the 50th percentile the PHA may request HUD approval to keep or establish payment standards below 90 percent of the 50th percentile FMR in accordance with § 982.503(b)(2).

This aspect of the new FMR policy which is directed at ensuring a broad range of housing opportunities for section 8 voucher holders is being implemented in § 888.113(c).

As provided in this rule, there may be circumstances in which PHAs that had been authorized to use FMRs set at the 50th percentile rent may be required to use FMRs set at the 40th percentile rent. This would occur if the FMR were set at the 50th percentile rent to provide a broad range of housing opportunities throughout a metropolitan area for three years, but the concentration of voucher holders in the metropolitan area did not lessen and the PHA issuing the voucher did not meet minimum deconcentration objectives. HUD's existing regulations in 24 CFR part 982 provide that a family is not subject to a subsidy reduction because of a reduction in the payment standard until the second regular reexamination of family income and composition following such a payment standard reduction. After this protection period of 13 to 24 months, depending on the timing of recertifications for a family, the family would no longer be protected from the reduction in federal subsidy and thus would have to pay a greater share of rent or move. This rule would provide the same level of protection for families who live in an area where PHAs are no longer authorized to use the 50th percentile FMR.

### III. PHA Performance Measurement

HUD is committed to ensuring that its funding to PHAs is spent in an efficient manner that achieves the desired programmatic outcomes. HUD believes that PHAs that adopt payment standard amounts based on the 50th percentile rent to increase success rates of families leasing housing must be held accountable for results through the use of new performance measurements. Accordingly, the interim rule amends HUD's Section 8 Management Assessment Program (SEMAP) regulations in 24 CFR 985.3(p) to provide how the PHA's actions to increase success rates may be measured.

To similar effect, PHAs that choose to utilize the higher FMRs awarded to promote mobility and deconcentration (as indicated by the adoption of payment standards in excess of the new 50th percentile FMR) will be measured under SEMAP to determine their progress in achieving deconcentration.

To allow time for the full effects of the higher FMRs or payment standards to be felt, the new SEMAP measures will not apply during the first year in which the 50th percentile rent is utilized.

### IV. This Interim Rule and Related Initiatives

HUD believes that implementation of the new FMR policy through this interim rule (as described above and reflected in the regulatory text that follows) will increase the effectiveness of HUD's programs in assisting families find and lease decent and affordable housing, and increase the pool of housing units available for rent by voucher holders. HUD recognizes, however, that increasing FMRs and allowing PHAs to adopt a higher payment standard may not be sufficient to achieve the results HUD is seeking through this new policy. HUD recognizes that PHAs must also promote and assist the families they serve by providing better housing search assistance. HUD will promote PHA efforts and initiatives to enhance the level and scope of housing search assistance provided and increase the availability of information that explains how the voucher program works.

### V. Specific Issues for Comment

HUD seeks comments on its new FMR policy and the implementation of this policy as provided in this interim rule. HUD specifically seeks comment on the following issues:

1. HUD solicits comment on whether the higher FMRs adopted to ensure that low-income families have access to a broad range of housing opportunities throughout the metropolitan area should apply to all HUD programs that use FMRs or just to the Housing Choice Voucher program. Currently, HUD publishes a single FMR for each bedroom size in each FMR area. If the higher FMRs were applied only to the Housing Choice Voucher program, and the current FMRs were applied to other HUD programs, HUD would be required to publish two different sets of FMRs for the same FMR area which could cause confusion. On the other hand, utilizing the higher FMRs in connection with other HUD programs would have cost and policy implications.

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Among other purposes, the FMRs published by HUD are used (1) to establish payment standards for the Housing Choice Voucher program; (2) to determine initial contract rents in new commitments for Section 8 project-based assistance (e.g., the project-based voucher program); (3) to determine whether comparability applies to adjustment of contract rents during the term of an existing Housing Assistance Payments contract in the Section 8 new construction, substantial rehabilitation and moderate rehabilitation programs; (4) as a limit on renewal rents for certain Section 8 projects; and (5) to determine eligibility for mark-up-to-market and the maximum rent that may be granted for that program. FMRs are also used to determine subsidy levels in the HOME tenant-based rental assistance program and maximum rent levels in multifamily rental housing developed with HOME funds. HUD welcomes comments that assess the costs and benefits of utilizing the higher FMRs in connection with HUD programs other than the Section 8 Housing Choice Voucher Program.

2. HUD invites proposals on how best to allow State, regional, and multi-jurisdictional PHAs to justify and implement the success-rate payment standard, including whether multi-jurisdictional PHAs should be able to request success rate payment standards for only one or more jurisdictions, and if so, what data should be required to justify such a request and measure performance.

3. HUD also solicits comments on the SEMAP requirements that will apply to PHAs that take advantage of the 50th percentile rent under the terms of this rule. Although the SEMAP rule changes will take effect on the published effective date, the new SEMAP standards will not be implemented for rating purposes until the second PHA fiscal year following implementation of higher payment standards based on the 50th percentile FMR. The final rule, responding to any comments received on the rule, will be published for effect before any ratings are assigned for the new SEMAP standards.

**VI. Publication of FMRs**

Section 8(c) of the U.S. Housing Act of 1937 (1937 Act) requires the Secretary of HUD to publish FMRs periodically, but not less frequently than annually. HUD's regulations reflect this statutorily required process. Section 888.115 provides that HUD will publish FMRs at least annually. Both section 8(c) of the 1937 Act and § 888.115 also provide that HUD first publish proposed FMRs and provide a comment period for the proposed FMRs of at least 30 days. For the areas that meet the three criteria described earlier in this preamble, HUD will be publishing at a later date the proposed FMRs at the 50th percentile for comment.

**VII. Justification for Interim Rulemaking**

In general, HUD publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking at 24 CFR part 10. Part 10, however, provides for exceptions from that general rule where HUD finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when the prior public procedure is "impracticable, unnecessary, or contrary to the public interest" (24 CFR 10.1). HUD finds that good cause exists to publish this rule for effect without a delay in effectiveness that would result from first soliciting public comment, in that such a delay in the implementation of this rule would be contrary to the public interest.

With the recent merger of HUD's tenant-based certificate and voucher programs into a new Housing Choice Voucher program, HUD has made significant strides in increasing housing choice for voucher holder families. However, even with HUD's own investment in expanding the supply of affordable housing and a booming economy, there are a record number of families with worst case housing needs. The nation's strong economy is actually pushing up rents, and as the economy has grown stronger, it has become more difficult in some markets for voucher holders to find affordable housing. In many communities, Housing Choice vouchers holders are literally being priced out of the market, and some recipients are being forced to return their vouchers because they cannot find suitable housing that qualifies under HUD's existing FMR policy. Families have a minimum of 60 days in which to locate suitable housing; PHAs have the discretion to extend this search time.

Over the last several months, PHAs, low-income families, and State and local officials have contacted HUD about the increasing shortage of available affordable housing in certain metropolitan areas and their increasing concern about the growing number of voucher holders who are unsuccessful in finding and leasing affordable housing. Those involved in and affected by this housing issue acknowledge that HUD has done much to increase housing choice, but have requested that HUD take action to increase the pool of rental housing options affordable to families with vouchers, and thereby make housing choice a real opportunity for all voucher holders. These constituents advise that HUD's Fair Market Rents are unrealistically low in certain rental markets, and that HUD's FMRs must be raised to reflect the changing market conditions and assist voucher holder.

Issuance and implementation of this rule, which puts in place the new FMR policy described in this preamble, responds to these concerns. The new FMR policy will significantly increase the pool of housing affordable to voucher holders in difficult rental markets. While HUD's new FMR policy does not adopt all measures requested by HUD constituents to address housing availability problems and concentration of poverty, the rule is a significant step forward in resolving these concerns. The new FMR policy, when implemented, will offer relief to those areas where market conditions are contributing to difficulties that voucher holders experience in successfully using Housing Choice vouchers.

Delaying the effectiveness of this rule to first solicit prior public comment would only contribute to the significant housing problems already documented and experienced in these areas. As noted, HUD has heard from the public on this issue and their comments have been that FMRs need to be raised as soon as possible to a level that will provide relief in tight markets.

For the reasons stated above, HUD believes that good cause exists to publish this rule for effect without prior public comment. HUD also recognizes, however, the value of public comment in the development of its regulations. HUD has, therefore, issued this rule on an interim basis and has provided the public with a 45-day comment period. HUD welcomes comment on the regulatory amendments made by this interim rule. The public comments will be addressed in the final rule.

**VIII. Findings and Certifications**

*Environmental Impact*

A Finding of No Significant Impact with respect to the environment as required by the National Environmental Policy Act (42 U.S.C. 4321–4374) is unnecessary, since the Housing Choice Voucher Program is categorically excluded from the Department's National Environmental Policy Act procedures under 24 CFR 50.19(c)(d).

*Regulatory Planning and Review*

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, *Regulatory Planning and Review*. OMB determined that this rule is an "economically significant regulatory action" under section 3(f) of the Order because this rule when fully implemented will have an annual effect on the economy of $100 million or more. In accordance with the Executive Order and OMB's determination, HUD has prepared an economic analysis for this rule.

HUD's economic analysis estimates the increased level of transfers that would result from implementation of the interim rule. The economic analysis measures transfers because in economic terms, HUD's tenant-based program provide transfers from the general population to program participants, transfers that enable the program participants to enjoy better housing and have more income left over after rent for other needs. Changes in the regulations governing these transfers do not generate costs or benefits in economic terms and, therefore, the economic analysis does not involve a comparison of costs and benefits. The actual increase in transfers in the year with highest increase (year 5 of the five years studied) is $174 million. This is 1.8 percent of total program transfers that year. The economic analysis assumes the new FMR policy provided by this rule would be implemented in Fiscal Year 2001. The economic analysis for this rule, which presents HUD's detailed analysis, is available for public inspection in the office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh Street, SW, Washington, DG 20410–0500.

Additionally, any changes made to this rule as a result of review under Executive Order 12866 are identified in the docket file for this rule, which is also available for public inspection in the Office of the Rules Docket Clerk.

*Congressional Review of Major Final Rules*

This rule is a "major rule" as defined in Chapter 8 of 5 U.S.C. The rule will be submitted for Congressional review in accordance with this chapter at the final rule stage.

*Regulatory Flexibility Act*

The Secretary has reviewed this rule before publication and by approving it certifies, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this rule would not have a significant economic impact on a substantial number of small entities because FMRs do not change the rent from that which would be charged if the unit were not in the program. While HUD has determined that this rule would not have a significant economic impact on a substantial number of small entities, HUD welcomes any comments regarding alternatives to this rule that would meet HUD's objectives, as described in this preamble, and would be less burdensome to small entities.

*Federalism Impact*

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule would not have federalism implications and would not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

*Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), establishes requirements for Federal agencies to assess the effects of regulatory actions on State, local, and tribal governments, and the private sector. This rule does not impose any Federal mandates on any State, local, or tribal governments or the private sector within the meaning of Unfunded Mandates Reform Act of 1995.

*Catalog of Federal Domestic Assistance*

The Catalog of Federal Domestic Assistance program number if 14.156, Lower-Income Housing Assistance Program (Section 8).

**List of Subjects**

*24 CFR Part 888*

Grant programs—housing and community development, Rent subsidies.

*24 CFR Part 982*

Grant program—housing and community development, Rent subsidies.

*24 CFR Part 985*

Grant programs—housing and community development, Rent subsidies.

Accordingly, title 24 of the Code of Federal Regulations is amended as follows:



**PART 888—SECTION 8 HOUSING ASSISTANCE PAYMENT PROGRAM—FAIR MARKET RENTS AND CONTRACT RENT ANNUAL ADJUSTMENT FACTORS**

1. The authority citation for part 888 continues to read as follows:

**Authority:** 42 U.S.C. 1437c, 1437f, and 3535(d).

2. In § 888.113, paragraph (a) is revised, paragraphs (b) through (e) are redesignated as paragraphs (d) through (g), the heading of newly redesignated paragraph (f) is revised, newly redesignated paragraph (g) is revised, and new paragraphs (b) and (c) are added to read follows:

**§ 888.113 Fair market rents for existing housing: Methodology.**

(a) *Basis for setting fair market rents.* Fair Market Rents (FMRs) are estimates of rent plus the cost of utilities, except telephone. FMRs are housing market-wide estimates of rents that provide opportunities to rent standard quality housing throughout the geographic area in which rental housing units are in competition. The level at which FMRs are set is expressed as a percentile point within the rent distribution of standard quality rental housing units in the FMR area. FMRs are set at either the 40th or 50th percentile rent—the dollar amount below which the rent for 40 or 50 percent of standard quality rental housing units falls. The 40th or 50th percentile rent is drawn from the distribution of rents of all units that are occupied by recent movers. Adjustments are made to exclude public housing units, newly built units and substandard units.

(b) *Setting FMRs at the 40th or 50th percentile rent.* Generally HUD will set the FMRs at the 40th percentile rent. HUD will set FMRs at the 50th percentile only in accordance with paragraph (c) of this section.

(c) *Setting FMRs at the 50th percentile rent to provide a broad range of housing opportunities throughout a metropolitan area.* (1) HUD will set the FMRs at the 50th percentile rent for all unit sizes in each metropolitan FMR area that meets all of the following criteria at the time of annual publication of the FMRs:

(i) The FMR area contains at least 100 census tracts;

(ii) 70 percent or fewer of the census tracts with at least 10 two bedroom rental units are census tracts in which at least 30 percent of the two bedroom rental units have gross rents at or below the two bedroom FMR set at the 40th percentile rent; and

(iii) 25 percent or more of the tenant-based rental program participants in the

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FMR area reside in the 5 percent of the census tracts within the FMR area that have the largest number of program participants.

(2) If the FMRs are set at the 50th percentile rent in accordance with paragraph (c)(1) of this section, HUD will set the FMRs at the 50th percentile rent for a total of three years.

(i) At the end of the three-year period, HUD will continue to set the FMRs at the 50th percentile rent only so long as the concentration measure for the current year is less than the concentration measure at the time the FMR area first received an FMR set at the 50th percentile rent. HUD will publish FMRs based on the 40th percentile rent for FMR areas that do not qualify for continued use of the 50th percentile rent.

(ii) For purposes of this section, the term "concentration measure" means the percentage of tenant-based rental program participants in the FMR area who reside in the 5 percent of the census tracts within the FMR area that have the largest number of program participants.

(iii) FMR areas that do not meet the test for continued use of FMRs set at the 50th percentile will be ineligible to use FMRs set at the 50th percentile for a period of three years.

(iv) A PHA whose jurisdiction includes one or more FMR areas that are no longer eligible to use FMRs set at the 50th percentile may be eligible for a higher payment standard under § 982.503(f).

* * * * *

(f) *Unit size adjustments.* * * *

(g) *Manufactured home space rental.* The FMR for a manufactured home space rental (for the voucher program under part 982 of this title) is:

(1) 40 percent of the FMR for a two bedroom unit; or

(2) When approved by HUD on the basis of survey data submitted in public comments, either the 40th or 50th percentile as applicable of the rental distribution of manufactured home spaces for the FMR area. HUD accepts public comments requesting revision of the proposed manufactured home spaces FMRs for areas where space rentals are thought to differ from 40 percent of the FMR for a two-bedroom unit. To be considered for approval, the comments must contain statistically valid survey data that show either the 40th or 50th percentile manufactured home space rent (including the cost of utilities for the manufactured home) for the FMR area. Once approved, the revised manufactured home space FMRs establish new base-year estimates that will be updated annually using the same data used to update the FMRs.

## PART 982—SECTION 8 TENANT BASED ASSISTANCE: HOUSING CHOICE VOUCHER PROGRAM

3. The authority citation for part 982 continues to read as follows:

**Authority:** 42 U.S.C. 1437f and 3535(d).

4. In § 982.503, paragraphs (b)(2), (c)(2) and the introductory paragraph of (c)(3)(i) are revised, paragraph (e) is redesignated as paragraph (g), and new paragraphs (e) and (f) are added to read as follows:

**§ 982.503 Voucher tenancy: Payment standard amount and schedule.**

* * * * *

(b) * * *

(2) The PHA must request HUD approval to establish a payment standard amount that is higher or lower than the basic range. HUD has sole discretion to grant or deny approval of a higher or lower payment standard amount. Paragraphs (c) and (e) of this section describe the requirements for approval of a higher payment standard amount ("exception payment standard amount").

(c) *HUD approval of exception payment standard amount.* * * *

(2) *Above 110 percent of FMR to 120 percent of published FMR.* (i) The HUD Field Office may approve an exception payment standard amount from above 110 percent of the published FMR to 120 percent of the published FMR (upper range) if the HUD Field Office determines that approval is justified by either the median rent method or the 40th or 50th percentile rent method as described in paragraph (c)(2)(i)(B) of this section (and that such approval is also supported by an appropriate program justification in accordance with paragraph (c)(4) of this section).

(A) *Median rent method.* In the median rent method, HUD determines the exception payment standard amount by multiplying the FMR times a fraction of which the numerator is the median gross rent of the exception area and the denominator is the median gross rent of the entire FMR area. In this method, HUD uses median gross rent data from the most recent decennial United States census, and the exception area may be any geographic entity within the FMR area (or any combination of such entities) for which median gross rent data is provided in decennial census products.

(B) *40th or 50th percentile rent method.* In this method, HUD determines that the area exception payment standard amount equals either the 40th or 50th percentile of rents for standard quality rental housing in the exception area. HUD determines whether the 40th or 50th percentile rent applies in accordance with the methodology described in § 888.113 of this title for determining FMRs. A PHA must present statistically representative rental housing survey data to justify HUD approval.

(ii) The HUD Field Office may approve an exception payment standard amount within the upper range if required as a reasonable accommodation for a family that includes a person with disabilities.

(3) *Above 120 percent of published FMR.* (i) At the request of a PHA, the Assistant Secretary for Public and Indian Housing may approve an exception payment standard amount for the total area of a county, PHA jurisdiction, or place if the Assistant Secretary determines that:

* * * * *

(e) *HUD approval of success rate payment standard amounts.* In order to increase the number of voucher holders who become participants, HUD may approve requests from PHAs whose FMRs are computed at the 40th percentile rent to establish higher, success rate payment standard amounts. A success rate payment standard amount is defined as any amount between 90 percent and 110 percent of the 50th percentile rent, calculated in accordance with the methodology described in § 888.113 of this title.

(1) A PHA may obtain HUD Field Office approval of success rate payment standard amounts provided the PHA demonstrates to HUD that it meets the following criteria:

(i) Fewer than 75 percent of the families to whom the PHA issued rental vouchers during the most recent 6 month period for which there is success rate data available have become participants in the voucher program;

(ii) The PHA has established payment standard amounts for all unit sizes in the entire PHA jurisdiction within the FMR area at 110 percent of the published FMR for at least the 6 month period referenced in paragraph (e)(1)(i) of this section and up to the time the request is made to HUD; and

(iii) The PHA has a policy of granting automatic extensions of voucher terms to at least 90 days to provide a family who has made sustained efforts to locate suitable housing with additional search time.

(2) In determining whether to approve the PHA request to establish success rate payment standard amounts, HUD will consider whether the PHA has a SEMAP overall performance rating of "troubled". If a PHA does not yet have a SEMAP rating, HUD will consider the PHA's SEMAP certification.

(3) HUD approval of success rate payment standard amounts shall be for all unit sizes in the FMR area. A PHA may opt to establish a success rate payment standard amount for one or more unit sizes in all or a designated part of the PHA jurisdiction within the FMR area.

(f) *Payment standard protection for PHAs that meet deconcentration objectives.* Paragraph (f) of this section applies only to a PHA with jurisdiction in an FMR area where the FMR had previously been set at the 50th percentile rent to provide a broad range of housing opportunities throughout a metropolitan area, pursuant to § 888.113(c), but is now set at the 40th percentile rent.

(1) Such a PHA may obtain HUD Field Office approval of a payment standard amount based on the 50th percentile rent if the PHA scored the maximum number of points on the deconcentration bonus indicator in § 985.3(h) in the prior year, or in two of the last three years.

(2) HUD approval of payment standard amounts based on the 50th percentile rent shall be for all unit sizes in the FMR area that had previously been set at the 50th percentile rent pursuant to § 888.113(c). A PHA may opt to establish a payment standard amount based on the 50th percentile rent for one or more unit sizes in all or a designated part of the PHA jurisdiction within the FMR area.

* * * * *

## PART 985—SECTION 8 MANAGEMENT ASSESSMENT PROGRAM (SEMAP)

5. The authority citation for part 985 continues to read as follows:

**Authority:** 42 U.S.C. 1437a, 1437c, 1437f and 3535(d).

6. Section 985.3 is amended by amending paragraph (h)(1) introductory text to add two new sentences to the beginning of the paragraph and adding a new paragraph (p) to read as follows:

**§ 985.3 Indicators, HUD verification methods and ratings.**

* * * * *

(h) *Deconcentration bonus.* (1) Submission of deconcentration data in the HUD-prescribed format for this indicator is mandatory for a PHA using one or more payment standard amount(s) that exceed(s) 100 percent of the published FMR set at the 50th percentile rent to provide access to a broad range of housing opportunities throughout a metropolitan area in accordance with § 888.113(c) of this title, starting with the second full PHA fiscal year following initial use of payment standard amounts based on the FMR set at the 50th percentile rent. Submission of deconcentration data for this indicator is optional for all other PHAs. * * *

* * * * *

(p) *Success rate of voucher holders.* (1) This indicator shows whether voucher holders were successful in leasing units with voucher assistance. This indicator applies only to PHAs that have received approval to establish success rate payment standard amounts in accordance with § 982.503(e). This indicator becomes initially effective for the second full PHA fiscal year following the date of HUD approval of success rate payment standard amounts.

(2) HUD verification method: MTCS Report.

(3) *Rating (5 points):* (i) The proportion of families issued rental vouchers during the last PHA fiscal year that have become participants in the voucher program is more than the higher of:

(A) 75 percent; or

(B) The proportion of families issued rental vouchers that became participants in the program during the six month period utilized to determine eligibility for success rate payment standards under § 982.503(e)(1) plus 5 percentage points; and

(ii) The percent of units leased during the last PHA fiscal year was 95 percent or more, or the percent of allocated budget authority expended during the last PHA fiscal year was 95 percent or more following the methodology of § 985.3(n).

Dated: September 12, 2000.

**Andrew Cuomo,**

*Secretary.*

[FR Doc. 00–24922 Filed 9–29–00; 8:45 am]

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ISS
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Federal Register

Monday,
October 2, 2000

Part IV

# Department of Transportation

Federal Aviation Administration

14 CFR Parts 43 and 45
Safe Disposition of Life-Limited Aircraft Parts; Proposed Rule

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Parts 43 and 45**

**[Docket No. FAA–2000–8017; Notice No. 00–11]**

**RIN 2120–AH11**

## Safe Disposition of Life-Limited Aircraft Parts

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This action responds to the Wendall H. Ford Investment and Reform Act for the 21st Century by proposing that all persons who remove any life-limited aircraft part be required to have a method to prevent the installation of that part after it has reached its life limit. This action would reduce the risk of life-limited parts being used beyond their life limits. This proposal would also require that manufacturers of life-limited parts provide instructions on how to mark a part showing its life limit, when someone removing such a part requests it.

**DATES:** Comments must be received on or before January 30, 2001. Comments on the information collection requirements must be submitted on or before December 1, 2000.

**ADDRESSES:** Address your comments to the Docket Management System (DMS), U.S. Department of Transportation, Room Plaza Level 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number "FAA–2000–8017" at the beginning of your comments, and you should submit two copies of your comments.

You may also submit comments through the Internet to http://dms.dot.gov. You may review the public docket containing comments to these proposed regulations in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at http://dms.dot.gov.

**FOR FURTHER INFORMATION CONTACT:** Al Michaels, Flight Standards Service, AFS–300, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–7501, facsimile (202) 267–5115, or e-mail: albert.michaels@faa.gov.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed action by submitting such written data, views, or arguments, as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this document also are invited. Substantive comments should be accompanied by cost estimates. Comments must identify the regulatory docket or notice number and be submitted in duplicate to the Docket Management System address specified above.

All comments received, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking, will be filed in the docket.

The Administrator will consider all comments received on or before the closing date before taking action on this proposed rulemaking. Comments filed late will be considered as far as possible without incurring expense or delay. The proposals in this document may be changed in light of the comments received.

### Availability of Rulemaking Documents

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) web page (http://dms.dot.gov/search).

(2) On the search page type in the last four digits of the Docket number shown at the beginning of this notice. Click on "search."

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the document number for the item you wish to view.

You can also get an electronic copy using the Internet through FAA's web page at http://www.faa.gov/avr/arm/nprm/nprm.htm or the **Federal Register**'s web page at http://www.access.gpo.gov/su_docs/aces/aces140.html.

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number and notice number of this rulemaking.

### Background

The FAA has found life-limited parts that exceeded their life-limits installed on type-certificated products during accident investigations and routine surveillance. Although such installation of life-limited parts violates existing FAA regulations, concerns have arisen regarding the disposition of these life-limited parts when they have reached their life limits.

Concerns over the use of life-limited aircraft parts led Congress to pass a law requiring the safe disposition of these parts when they have reached their life limits. The Wendall H. Ford Investment and Reform Act for the 21st Century (Public Law 106–181), added section 44725 to Title 49, United States Code, as follows:

Sec. 44725. Life-Limited Aircraft Parts

(a) IN GENERAL—The Administrator of the Federal Aviation Administration shall conduct a rulemaking proceeding to require the safe disposition of life-limited parts removed from an aircraft. The rulemaking proceeding shall ensure that the disposition deter installation on an aircraft of a life-limited part that has reached or exceeded its life limits.

(b) SAFE DISPOSITION—For the purposes of this section, safe disposition includes any of the following methods:

(1) The part may be segregated under circumstances that preclude its installation on an aircraft.

(2) The part may be permanently marked to indicate its used life status.

(3) The part may be destroyed in any manner calculated to prevent reinstallation in an aircraft.

(4) The part may be marked, if practicable, to include the recordation of hours, cycles, or other airworthiness information. If the parts are marked with cycles or hours of usage, that information must be updated every time the part is removed from service or when the part is retired from service.

(5) Any other method approved by the Administrator.

(c) * * *

(d) PRIOR-REMOVED LIFE-LIMITED PARTS—No rule issued under subsection (a) shall require the marking of parts removed from aircraft before the effective date of the rules issued under subsection (a), nor shall any such rule forbid the installation of an otherwise airworthy life-limited part.

Existing regulations are not as specific as the legislation governing the safe disposition of life-limited parts. There are no requirements for persons to safely disposition life-limited parts that have reached their life limits. This proposal would require all life-limited parts to be controlled in a manner to prevent installation on a type-certificated product (See sec 21.1(b)) after they have reached their life limit. However, the regulations require that each registered owner or operator under



§ 91.417(a)(2)(ii) and each certificate holder under § 121.380(a)(2)(iii) or § 135.439(a)(2)(ii), maintain records showing "the current status of life-limited parts of each airframe, engine, propeller, rotor, and appliance." This proposal would provide additional controls for life-limited parts that would reduce the risk of parts being installed in type-certificated products after reaching their life limits.

This statute requires the FAA to issue a rule ensuring the safe disposition of life-limited aircraft parts. Congress also provided civil penalties for violations of this statute.

### Current Requirements

Existing regulations require specific markings be placed on all life-limited parts at the time of manufacture. This includes permanently marking the part with a part number (or equivalent) and a serial number (or equivalent). See 14 CFR 45.14.

The type design of an aircraft, aircraft engine, or propeller includes the Airworthiness Limitations section that describes life limits for parts installed on the product. See 14 CFR 21.31(c) and 14 CFR 25 appendix H 25.4.

In order for an aviation product to comply with its type design, the life-limited parts installed on it must fall within the acceptable ranges described in the Airworthiness Limitations section. For this reason, installation of a life-limited part after the mandatory replacement time has been reached would be a violation of the maintenance regulations. Section 43.13(b) requires that maintenance work be completed so that the product worked on "will be at least equal to its original or properly altered condition.* * *".

Persons who install parts do not always have adequate information to determine a part's current life status. In particular, documentation problems may mislead an installer concerning the actual useful life remaining for a life-limited part.

The purpose of this proposed rule is to provide for the data needs of a subsequent installer to prevent the installation of a previously removed life-limited part that has reached its life limit. This proposal would reduce the risk of life-limited parts being used beyond their life-limits.

### Section-by-Section Discussion of the Proposals

*Section 43.1 Applicability*

The removal, storage, and disposal of parts is closely related to the maintenance of aircraft. We propose to amend the applicability of part 43.

*Section 43.10 Disposition of Life-Limited Aircraft Parts*

Part 43 would be amended by adding a new section to incorporate the new legislation. Paragraph (a) proposes definitions for "life-limited part" and "life status."

"Life-limited part" would be defined to mean any part for which a mandatory replacement time is specified in the Airworthiness Limitations section of a type certificate holder's maintenance manual or Instructions for Continued Airworthiness.

"Life status" would be defined to mean the accumulated cycles, hours, or any other mandatory replacement time of a life-limited part.

Paragraph (b) proposes requirements for the safe disposition of any life-limited part that is removed from a type-certificated product (see § 21.1(b)) and has reached its life limit. Generally, a type-certificated product incorporates life-limited parts. The method used must prevent the part from being installed after it has reached its life limit. Generally, this is accomplished by ensuring that the life status of the part is readily available.

In accordance with the statute, this proposal would apply only to life-limited aircraft parts removed after the effective date of the final rule. Existing recordkeeping and storage regulations will continue to apply to the control of life-limited parts removed before the effective date of this rule.

This paragraph provides that each person removing a life-limited part from a type-certificated product must ensure that the part is controlled using one of the methods in paragraphs (b)(1) through (6) of this section. The person who removes the part need not be the same person who implements the requirements of paragraphs (b)(1) through (6). For example, an air carrier mechanic removing a part might not personally control the part in accordance with one of the methods described in paragraph (b) (1) through (6) of this section, but may give the part to the air carrier's material control department to disposition in accordance with its procedures manual. The air carrier's procedures must ensure the part can not be installed in a type-certificated product after it has reached its life limit.

The first method for controlling a life-limited part, in paragraph (b)(1), is to segregate it under circumstances that preclude its installation on a type-certificated product. These circumstances must include, at least, keeping a record of the serial number and current life status of the part, and ensuring the part is segregated from serviceable parts. In this way the parts retrieved from inventory would be new, or records would be available to indicate the life status of the part.

Paragraph (b)(2) provides that the part may be permanently and legibly marked, when practical, to indicate its life status. The life status must be updated each time the part is removed from service. We expect that permanent marking will be used mostly for parts that are permanently removed from service. If they are not permanently removed from service, this marking must be accomplished in accordance with the manufacturer's marking instructions, as required under proposed § 45.14. This will ensure the integrity of the part is maintained.

Paragraph (b)(3) provides that the part may be destroyed in any manner that prevents installation in a type-certificated product. Advisory Circular (AC) No. 21–38, Disposition of Unsalvageable Aircraft Parts and Materials, provides guidance for destruction of parts.

Paragraph (b)(4) proposes that the part may be marked, if practical, to include the life status. This marking must be accomplished in accordance with the manufacturer's marking instructions, as required under proposed § 45.14, to maintain the integrity of the part. When a part is marked with its life status and installed in a type-certificated product, the life status must be updated each time the part is removed from service. When the part is retired from service, it may be marked to indicate current life status, or it may be destroyed, permanently marked, segregated from serviceable parts, or treated in any other manner approved by the Administrator.

The statute does not provide for tagging any life-limited parts, but does provide that FAA may approve methods other then those prescribed in proposed paragraph (b)(1) through (4). The FAA recognizes that there are cases when marking is impractical. Size, material, or geometry might make it impractical to mark the part. Proposed paragraph (b)(5) provides that if it is impractical to mark the life-limited part, a tag may be attached to the part to record the life status. The tag with current life status must be updated each time the part is removed from service. Marking is preferred over tagging because marking is integral with the part and more likely to remain on the part, therefore, tagging would only be permitted when marking is impractical. The manufacturer may provide assistance in determining whether a part may be marked or tagged. Life status information must be updated

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each time the part is removed from service.

Paragraph (b)(6) provides that any other method approved by the Administrator may be used. For instance, if an air carrier or repair station currently has an approved method for handling life-limited parts that provides at least the same level of safety as (b)(1) through (b)(5), that method could be acceptable under this proposed rule.

Paragraph (c) stipulates that each person removing a life-limited part from segregation, other than for immediate installation, must ensure that the part is controlled using one of the methods in paragraphs (b)(2) through (6).

*Section 45.14 Identification and disposition of critical components*

Section 45.14 would be amended by adding language requiring each person producing life-limited parts to provide detailed marking instructions, when requested. For example, the producer would state what materials or methods may be used to mark the parts, and where the mark should be located on the part, to avoid adversely affecting the part. The producer would also state whether the part cannot practically be marked without compromising its integrity.

**Paperwork Reduction Act**

This proposal contains the following new information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Transportation has submitted the information requirements associated with this proposal to the Office of Management and Budget for its review.

*Title:* Safe Disposition of Life-Limited Aircraft Parts.

*Summary:* This proposal requires the disposition of life-limited parts. This may include marking or tagging the parts with their life status. This information must be updated each time the part is removed from service or when the part has reached its life-limit and is retired from service. Each person removing a life-limited part from a type-certificated product must ensure that the disposition of the part is controlled as required. The person removing the part need not be the same person implementing the requirements of the proposal.

*Use of:* This rule would support the information needs of a subsequent installer in preventing the installation into a type-certificated product of a part that has reached its life limit.

*Respondents (including number of):* The likely respondents to this proposed information requirement are persons responsible for removing and disposing of life-limited parts. Of about 5,000 FAA certificated repair stations, the FAA believes about 1,500 would perform most of these procedures. Although some of these procedures may be carried out on behalf of air carriers and owner/operators in general aviation, the FAA believes that most of the procedures will be performed by a certificated repair station.

*Frequency:* The FAA estimates each of the 1,500 certified repair stations would perform 300 such procedures as an annual average. Each of the remaining 3,500 would average 50 procedures annually. Thus, the annual frequency of information requirements is 625,000 procedures.

*Annual Burden Estimate:* This proposal would result in an annual recordkeeping and reporting burden as follows:

(1) there would be 625,000 removal and disposal procedures annually;

(2) the recordkeeping and recording part of each procedure would take 5 minutes; and

(3) the average fully burdened labor cost of the individuals performing the procedures is about $50 per hour.

Thus, the total annual estimated burden of Public Law 106–181, which directs this rulemaking, would be about $2,600,000, borne by a total of 5,000 respondents.

The agency is soliciting comments to—

(1) evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) evaluate the accuracy of the agency's estimate of the burden;

(3) enhance the quality, utility, and clarity of the information to be collected; and

(4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

According to the regulations implementing the Paperwork Reduction Act of 1995, (5 CFR 1320.8(b)(2)(vi)), an agency may not conduct or sponsor, a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control number for this information collection will be published in the **Federal Register**, after the Office of Management and Budget approves it.

**International Compatibility**

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA determined that there are no ICAO Standards and Recommended Practices that correspond to these proposed regulations.

**Economic Evaluation**

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. section 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. And fourth, the Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of $100 million or more, in any one year (adjusted for inflation).

However, for regulations with an expected minimal impact the above-specified analyses are not required. If it is determined that the expected impact is so minimal that the proposal does not warrant a full evaluation, a statement to that effect and the basis for it is included in the evaluation.

Consistent with Department of Transportation policies and procedures for simplification, analysis, and review of regulations, this proposal is deemed to have a minimal impact, and does not warrant a full evaluation. The FAA requests comments with supporting justification regarding the FAA determination of minimal impact.

*Expected Benefits*

This proposed rule would decrease the possibility of installation into a type-certificated product of life-limited parts that have reached their life-limits.



In general current industry good practices already deter such installation. These practices generally reflect the direction and advice of current FAA regulatory and advisory material. See 14 CFR parts 43, 45, 91, 121 and 135, and FAA Advisory Circulars Nos. 43–9C and 20–62D. Thus, the additional benefits expected to result from the broadening and strengthening of good business practices directed by this legislation are small.

*Expected Costs*

It is the FAA's intent that this rulemaking would specify only the requirements necessary to bring industry into compliance with Public Law 106–181. Thus, the FAA expects that additional compliance costs would be attributable to the legislation and not to the rule.

While no existing FAA rule is as specific as this proposed rule, its requirements generally reflect industry good practices. The implementation of the legislation directing this proposed rule would add to existing requirements, and consequently to costs, by requiring that each person removing a life-limited part from a type-certificated product must control the disposition of that part by marking, tagging, segregating, destroying, or any other approved method that ensures that no life-limited part that has reached its life limit will be installed into a type-certificated product.

The FAA believes that the 5,000 FAA certificated repair stations will conduct almost all these procedures. Additional costs are estimated to average about $1,250 annually for each of the 1,500 FAA certificated repair stations most involved with the disposition of life-limited parts. The FAA assumes these repair stations annually perform an average of 300 procedures involving the safe disposition of life-limited parts. The FAA assumes the remaining 3,500 repair stations average 50 such procedures annually. Additional annual costs for these repair stations is expected to be about $200.

**Regulatory Flexibility Act**

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, § 605(b) of the 1980 act provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

Because this proposed rule imposes no economic effects, the FAA certifies that it would not have a significant impact on a substantial number of small entities.

**Trade Impact Assessment**

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. In addition, consistent with the Administration's belief in the general superiority and desirability of free trade, it is the policy of the Administration to remove or diminish to the extent feasible, barriers to international trade, including both barriers affecting the export of American goods and services to foreign countries and barriers affecting the import of foreign goods and services into the United States.

In accordance with the above statute and policy, the FAA has assessed the potential effect of this proposed document and has determined that it would impose the same costs on domestic and international entities and thus has a neutral trade impact.

**Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995, enacted as Public Law 104–4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action."

This proposal does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

**Regulations Affecting Interstate Aviation in Alaska**

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the Administrator, when modifying regulations in title 14 of the CFR in a manner affecting interstate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish such regulatory distinctions as he or she considers appropriate. Because this proposed rule, if adopted, would only apply to the subsequent use of these life-limited aircraft parts, it would not affect interstate aviation in Alaska. The FAA, therefore, specifically requests comments on whether there is justification for applying the proposed rule differently in interstate operations in Alaska.

**Executive Order 13132, Federalism**

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we determined that this notice of proposed rulemaking would not have federalism implications.

**Environmental Analysis**

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this proposed rulemaking action qualifies for a categorical exclusion.

**Energy Impact**

The energy impact of the notice has been assessed in accordance with the Energy Policy and Conservation Act

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(EPCA) Public Law 94–163, as amended (42 U.S.C. 6362) and FAA Order 1053.1. It has been determined that the notice is not a major regulatory action under the provisions of the EPCA.

**List of Subjects**

*14 CFR Part 43*

Aircraft, Aviation safety, Life-limited parts, Reporting and recordkeeping requirements.

*14 CFR Part 45*

Aircraft, Exports, Signs and symbols.

**The Proposed Amendments**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Chapter I of Title 14, Code of Federal Regulations, as follows:

## PART 43—MAINTENANCE, PREVENTIVE MAINTENANCE, REBUILDING, AND ALTERATION

1. Amend the authority citation for part 43 to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701, 44703, 44705, 44707, 44711, 44713, 44717, 44725.

2. Add § 43.1(c) to read as follows:

**§ 43.1 Applicability.**

* * * * *

(c) This part applies to each person who removes, segregates, or dispositions a life-limited part from a type-certificated product as provided in § 43.10.

3. Add § 43.10 to read as follows:

**§ 43.10 Disposition of life-limited aircraft parts.**

(a) For the purposes of this section the following definitions apply.

*Life-limited part* means any part for which a mandatory replacement time is specified in the Airworthiness Limitations section of a type certificate holder's maintenance manual or Instructions for Continued Airworthiness.

*Life status* means the accumulated cycles, hours, or any other mandatory replacement time of a life-limited part.

(b) After [the effective date of the final rule], each person who removes a life-limited part from a type-certificated product must ensure that the part is controlled using one of the methods in paragraphs (b)(1) through (6) of this section. The method must prevent the part from being installed after it has reached its life limit. Approved methods include:

(1) The part may be segregated under circumstances that preclude its installation on a type-certificated product. These circumstances must include, at least—

(i) Keeping a record of the serial number and current life status of the part, and

(ii) Ensuring the part is stored separately from serviceable parts.

(2) The part may be permanently and legibly marked, if practical, to indicate its life status. The life status must be updated each time the part is removed from service. Unless the part is permanently removed from service, this marking must be accomplished in accordance with the manufacturer's marking instructions, in order to maintain the integrity of the part, as required under § 45.14 of this chapter.

(3) The part may be destroyed in any manner that prevents installation in a type-certificated product.

(4) The part may be marked, if practical, to include the life status. The life status must be updated each time the part is removed from service. This marking must be accomplished in accordance with the pertinent manufacturer's marking instructions, in order to maintain the integrity of the part, as required under § 45.14 of this chapter.

(5) If it is impractical to mark the part, a tag may be attached to the part to include the life status. The tag must be updated to reflect life status each time the part is removed from service.

(6) Any other method approved by the Administrator.

(c) Each person who removes a life-limited part from segregation as identified in paragraph (b)(1) of this section, other than for immediate installation on a type-certificated product, must ensure that the part is controlled using one of the methods in paragraphs (b)(2) through (6).

## PART 45—IDENTIFICATION AND REGISTRATION MARKING

4. The authority citation for part 45 is amended to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 44109, 40113–40114, 44101–44105, 44107–44108, 44110–44111, 44504, 44701, 44708–44709, 44711–44713, 44725, 45302–45303, 46104, 46304, 46306, 47122.

5. Revise § 45.14 to read as follows:

**§ 45.14 Identification and disposition of critical components**

Each person who produces a part for which a replacement time, inspection interval, or related procedure is specified in the Airworthiness Limitations section of a manufacturer's maintenance manual or Instructions for Continued Airworthiness must permanently and legibly mark that component with a part number (or equivalent) and a serial number (or equivalent). When requested by a person required to comply with § 43.10 of this chapter, each person who produces a life-limited part must provide detailed marking instructions, or must state that the part cannot practicably be marked without compromising its integrity.

Issued in Washington, DC, on September 26, 2000.

**L. Nicholas Lacey,**

*Director, Flight Standards Service.*

[FR Doc. 00–25045 Filed 9–29–00; 8:45 am]

BILLING CODE 4910–13–P

Federal Register

**Monday,**
**October 2, 2000**

**Part V**

# Department of Justice

**Office of Juvenile and Delinquency Prevention**

**Program Announcement for the Girls Study Group; Notice**

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**DEPARTMENT OF JUSTICE**

**Office of Juvenile Justice and Delinquency Prevention**

**[OJP (OJJDP)–1299]**

## Program Announcement for the Girls Study Group

**AGENCY:** Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, Justice.

**ACTION:** Notice of solicitation.

**SUMMARY:** The Office of Juvenile Justice and Delinquency Prevention (OJJDP) is issuing a solicitation for applications from public or private agencies or organizations to assemble and convene a Girls Study Group to develop a sound theoretical and empirical foundation to guide future development, testing, and dissemination of strategies to effectively prevent and reduce girls' involvement in delinquency and violence and consequences of such involvement. It is anticipated that the Girls Study Group, in collaboration with OJJDP's new National Girls Institute, will provide State and local policymakers and practitioners with theoretically sound, culturally and developmentally appropriate, and empirically grounded strategies (program elements, principles, and policies) to prevent and reduce female delinquency and its consequences.

**DATES:** Applications must be received no later than 5:00 p.m. ET on December 1, 2000.

**ADDRESSES:** All application packages should be mailed or delivered to the Office of Juvenile Justice and Delinquency Prevention, c/o Juvenile Justice Resource Center, 2277 Research Boulevard, Mail Stop 2K, Rockville, MD 20850; 301–519–5535. Faxed or e-mailed applications will not be accepted. Interested applicants can obtain the *OJJDP Application Kit* from the Juvenile Justice Clearinghouse at 800–638–8736. The *Application Kit* is also available at OJJDP's Web site at www.ojjdp.ncjrs.org/grants/about.html#kit. (See "Format" later in this announcement for instructions on application standards.)

**FOR FURTHER INFORMATION CONTACT:** Barbara Allen-Hagen, Social Science Analyst, Research and Program Development Division, Office of Juvenile Justice and Delinquency Prevention, at 202–307–1308 or Anne Bergan, Program Manager, Research and Program Development Division, Office of Juvenile Justice and Delinquency Prevention, at 202–514–5533.

**SUPPLEMENTARY INFORMATION:**

### Purpose

One purpose of this project is to assist the Office of Juvenile Justice and Delinquency Prevention (OJJDP) in furthering its understanding of the risk and protective factors associated with female juvenile offending and of the consequences of such offending. Another is to identify effective strategies for communities to use in their efforts to prevent and reduce female involvement in delinquency and violence.

The successful applicant will convene a study panel, called the Girls Study Group, to review the research literature on the epidemiology and etiology of female juvenile offending and its consequences; develop a female-focused conceptual framework for the project; conduct secondary data analyses; identify effective prevention and intervention programs, policies, and strategies that promise, either through initial empirical evidence or sound theory, to be effective in preventing female delinquency and violence; identify gaps in existing research and programs; and recommend new research and program development. The Girls Study Group will collaborate with OJJDP's new National Girls Institute [1] on program development, evaluation issues, and dissemination of the Girls Study Group findings to policymakers, practitioners, and the research community.

### Overview

The ultimate goal of this project is to develop the research foundation that communities need to make sound decisions on how best to prevent and reduce delinquency and violence by girls. The Girls Study Group will establish the theoretical and empirical basis for disseminating or testing prevention and intervention strategies (*i.e.,* policies, practices, and programs) for girls—effective and promising strategies that are developmentally and culturally appropriate.

This Study Group will consist of 12 to 15 individuals, such as criminologists, sociologists, statisticians, developmental psychologists, mental health professionals, juvenile justice researchers and practitioners, adolescent health specialists, domestic violence experts, and youth workers, reflecting the necessary collective expertise (both practical and theoretical) in female development and juvenile justice system involvement to undertake a comprehensive study of this kind.

The Study Group's major tasks will be to:

- Systematically review the research literature on juvenile female antisocial, delinquent, and violent behavior; child abuse and neglect; and criminal victimization.
- Develop a comprehensive theoretical framework for the project based on an examination of both the applicability of gender-neutral risk and protective factors related to girls' involvement in delinquency and the evidence for female-specific risk and protective factors.
- Explore what is known about the developmental pathways that lead to female delinquent and criminal behavior.
- Conduct secondary analyses of data sets that may shed new light on risk and protective factors, female pathways to delinquency, or effective prevention and intervention strategies for girls.
- Examine the research literature on program evaluation to identify programs, program elements, and implementation principles that are particularly effective or promising in preventing or reducing female delinquency. Also, examine child welfare, mental health, and juvenile justice public policies and practices that achieve the same. Special attention should be paid to identifying key juvenile justice system processing decisions that may have disproportionately negative consequences on female offenders and to exploring remedial policies.

In addition, the successful applicant must possess the necessary leadership, organizational, and analytical capabilities essential for the Group's success. The tasks require the ability to organize and convene a group of researchers and practitioners with recognized expertise in diverse area(s) of female juvenile delinquency, prevention research, child development, child victimization, domestic violence, treatment, and program evaluation. The successful applicant must also demonstrate the ability to lead and interact with group members in order to coordinate a comprehensive literature review, synthesize information from diverse sources, recommend future research topics, and produce interim and final reports and related publications that effectively communicate the results to a broad audience of policymakers, practitioners, and researchers.

[1] For information on the National Girls Institute, consult the OJJDP Web site at www.ojjdp.ncjrs.org/grants/current.html for a description of the program.



### Background

According to the Federal Bureau of Investigation Uniform Crime Reporting (UCR) Program (1999), between 1994 and 1998, the number of arrests of juvenile females increased more (or decreased less) than male arrests in most offense categories (Snyder, 1999). In 1980, females represented 11 percent of all juvenile arrests for violent offenses. By 1998, that proportion increased to 17 percent. Although the majority of juvenile crime arrests in 1998 were of males, females represented more than one-quarter of juvenile arrests. There has been growing concern that while most juvenile arrests have been decreasing, the number of female juvenile arrests in some key offense categories such as drug and alcohol violations continues to rise.

Between 1994 and 1998, arrests of juvenile females for robbery, weapons violations, and vandalism decreased less than arrests of juvenile males in the same offense categories. In contrast, arrests of juvenile females for aggravated assault and simple assault increased (up 7 percent and 29 percent, respectively), while assault arrests for juvenile males either dropped or rose more slowly during the same period (down 18 percent and up only 4 percent, respectively). Other offenses, such as drug abuse, liquor law, curfew, and loitering violations, continued to increase for girls at a rate considerably higher than for boys. These arrest patterns are also reflected in status offenses, such as running away. Females represented more than half (58 percent) of all juveniles arrested for running away in 1998.

Additional data demonstrate the increased involvement of females in the juvenile justice system. For example, an examination of trends in juvenile court statistics shows an increase in the number of delinquency cases involving females. Between 1988 and 1997, the number of delinquency cases involving males increased 39 percent, while the number of cases involving females increased 83 percent. Over this period, the relative change in delinquency case rates was greater for females than for males in all major offense categories (Stahl, March 2000). Among females, the largest increases were in the number of person offense and drug offense cases (155 percent and 132 percent increases, respectively).

Characteristics of female juvenile offenders in the juvenile court have also changed over time (Snyder *et al.,* 1999). The majority (62 percent) of females charged with delinquent acts in 1997 were under age 16. Between 1988 and 1997, the number of delinquency cases involving females under age 16 increased 89 percent, while the number of cases involving females age 16 or over increased 74 percent. In 1997, white females accounted for 67 percent of all female juvenile delinquency cases, while black females accounted for 30 percent and females of other races accounted for 4 percent. Between 1988 and 1997, the number of cases involving females increased in all racial groups: whites, 74 percent; blacks, 106 percent; and other races, 102 percent.

Property offense cases (42 percent) accounted for the largest share of formally processed female cases in 1997. Just over one-fourth (27 percent) were person offenses, slightly less than one-fourth (24 percent) were public order offenses, and 7 percent were drug offenses. Female juvenile offenders were securely detained in 15 percent of the delinquency cases processed in 1997. This is an increase of 65 percent in the number of detention cases involving female juveniles since 1988. The number of detained cases grew more for black females (123 percent) than for white females (41 percent) during this period. Detention was used in 21 percent of public order offenses, 18 percent of person offenses, 16 percent of drug law violations, and 10 percent of property offense cases.

More than half (53 percent) of the cases involving females that were formally processed in 1997 resulted in a delinquency adjudication. Once adjudicated delinquent, female offenders received probation in the majority (60 percent) of cases. In 22 percent of the cases, female offenders were placed out of the home in a residential facility. Between 1988 and 1997, the number of cases in which the court ordered delinquent females to be placed in a residential facility increased 105 percent, while the number of formal probation cases increased 129 percent. In 1997, females represented 14 percent of juvenile offenders in residential custody facilities (Sickmund and Wan, 1999).

These increases in arrests, juvenile court cases, and formal handling of female juvenile offenders have clearly affected the composition of offenders who are involved in the juvenile justice system. Although female juvenile arrest rates are growing faster than the rates for males, the proportion of females in the juvenile justice population remains a relatively small minority. Little research has been conducted to explain why females are increasingly coming into the juvenile justice system or to examine strategic responses. Although States and local jurisdictions have traditionally designed programs and interventions primarily for males, they are now faced with a growing number of female juvenile offenders. Little is known about how juvenile females respond to these interventions, and many communities are unprepared to address the specific needs of girls who are involved or at risk of becoming involved in the juvenile justice system.

Not only are there a limited number of studies that focus specifically on female offending, many important studies either do not include females in their samples or do not analyze the female data separately (Kruttschnitt, 1994; Loeber and Farrington, 1998; West, Houser, and Scanlan, 1998). While the literature is incomplete and warrants further development, even for what currently exists, there could be more theoretical integration and practical application to guide prevention and intervention efforts at critical life/developmental stages (Guerra, 1998).

Explanations of female delinquency and criminal careers flow from vastly different disciplinary perspectives, creating a patchwork of understanding. Studies of female delinquency and crime have examined biological, psychological, and developmental factors (Pollack, 1950; Caspi *et al.,* **Federal Register** 1993; Wasserman, 1995; Broidy and Agnew, 1997; Gilligan, 1982; Hoyt and Scherer, 1998; Girls Inc., 1996); the residual effects of victimization, maltreatment, and neglect (Widom, 1989; Broidy and Agnew, 1997; Accoca and Austin, 1996; Girls Inc., 1996; Giordano *et al.,* 1999); involvement in high-risk behaviors and gangs (Weiher *et al.,* 1991; Accoca, 1999; Thornberry, 1998; Fagan, 1990; Moore and Hagedorn, 1996); gender dynamics of socialization (Steffensmeier and Broidy, forthcoming; Chesney-Lind, 1997; Fagan and Wexler, 1987); macro-level changes in the social, cultural, economic, and political status of women and their roles in society (Adler, 1975; Hartnagel, 1982); and differential processing in the juvenile justice and criminal justice systems (Ensminger, 1987; Kempf-Leonard and Sample, 2000). Some of these studies explain female delinquency and crime through contrasts with male delinquency/crime levels, patterns, and trends—with varying attention to developmental aspects of girls lives and only limited use of nonquantitative methods (Kruttschnitt, 1994). Almost none deal with the life consequence of offending, other than the criminal justice consequences, and few address the combined role of gender and race (Visher and Roth, 1986). In addition,

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while there are many promising programs for girls, there is little literature on the effectiveness of various approaches (Greene, Peters, & Associates and Northwest Regional Educational Laboratory, 1998; Muller and Mihalic, 1999; Morash, Bynum, and Koons, 1998; Owen and Bloom, 2000).

Clearly, more information is needed regarding female development, the nature of female-specific risk and protective factors, and the effectiveness of intervention and prevention programs, so that those with responsibility for intervening with delinquent girls can make the most appropriate decisions and provide the best services and treatment to juvenile females.

OJJDP has had considerable involvement in issues related to girls in the juvenile justice system. The lack of gender-specific programming for females was noted in the 1992 amendments to the Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974, as amended. Specifically, States are required to provide an analysis of gender bias in the juvenile justice system and of gender-specific service needs and set forth a plan for providing services to this population. This analysis must be completed in order for a State to be eligible to receive funds under OJJDP's Part B Formula Grants program. The 1992 amendments also established the State Challenge Activities Program under Title II, Part E of the JJDP Act, under which States participating in OJJDP's Formula Grants program are offered additional grant funds to support a wide range of gender-specific policies and programs (Hsia and Beyer, 2000). "Though States have made progress in serving the female juvenile population, much more needs to be done to fill continuing gaps in services" (Office of Juvenile Justice and Delinquency Prevention, 1998, p. 6).

In 1996, the Office of Juvenile Justice and Delinquency Prevention funded Girls Inc. for the purpose of convening a national conference on girls' issues. The report from the conference, *Prevention and Parity: Girls in the Juvenile Justice System,* identified key issues that need to be examined if the juvenile justice system is to meet the needs of girls and young women. The report relied on available research on female juvenile delinquency and at-risk behavior and highlighted promising prevention and intervention programs identified by practitioners in the field. In 1996, OJJDP funded the development of a statistical summary by the National Center for Juvenile Justice, *Girls in the Juvenile Justice System,* which examined trends in female involvement in different stages of the juvenile justice system (Poe-Yamagata and Butts, 1996). Information from these two publications, along with an Accoca article (1999) and other reports, leads to the conclusion that there is still much that is not known regarding the pathways to female delinquency and effective prevention and intervention strategies with this population and that there is a critical need in the field for sound, defensible solutions for dealing with this emerging problem.

To systematically address these concerns in FY 2000, OJJDP is-funding two related programs: the National Girls Institute, designed to provide training and technical assistance to the field on girls' delinquency issues, and the Girls Study Group, the subject of this solicitation for applications. It is anticipated that there will be close collaboration between the two projects in providing critical information to the field. In addition, the Study Group will coordinate its activities with other Office of Justice Programs bureaus and other Federal agencies with an interest in this project.

**Goals**

The immediate goal of the Girls Study Group is to develop a sound theoretical and empirical foundation to guide future development, testing, and dissemination of strategies to effectively prevent and reduce girls' involvement in delinquency and violence and reduce the consequences of such involvement. Ultimately, it is intended that the Girls Study Group, in collaboration with the National Girls Institute, will provide State and local policymakers and practitioners with theoretically sound, culturally and developmentally appropriate, and empirically grounded strategies (program elements, principles, and policies) to prevent and reduce female delinquency and its consequences.

Although traditional, gender-neutral theories of crime causation provide reasonable explanations for less serious forms of female criminality and for gender differences in specific crime categories (*e.g.,* prostitution, status offenses, and shoplifting), existing theories do not adequately explain gender differences in the commission of serious offenses, contextual differences in criminal behavior (Steffensmeier and Broidy, forthcoming), or the recent divergence of juvenile female arrest trends from male trends. Other theoretical constructs that describe the specific role that being female plays in girls' vulnerability or invulnerability to delinquency and violence should also be explored. It will be important for the Study Group to distinguish between markers and malleable conditions, attitudes, behaviors, and relationships that are amenable to intervention strategies.

The Study Group should examine not only the epidemiology and etiology of female delinquency, but also the life consequences of adolescent girls' involvement in crime and the juvenile justice system. The results of this new research synthesis will be used to inform the dissemination and development of effective gender-appropriate prevention and intervention strategies that address gender-neutral and gender-specific risk and protective factors and causes and correlates of female delinquency. The use of a developmental context for recommending new research, program development, and programming should be considered.

**Objectives**

The objectives of the Girls Study Group are:

- To develop a better understanding of the trends, developmental patterns, causes, and correlates of female delinquency and violence and the social and justice system consequences of their involvement in delinquency by:
  - —Increasing empirical knowledge about the risk and protective factors related to female delinquency.
  - —Charting the developmental pathways to female offending for which girls face serious legal and/or social consequences.
  - —Determining the patterns and consequences of juvenile justice decisionmaking on female offenders and their lives, both short and long term.
- To develop a comprehensive, integrated theory of female delinquency (initiation, persistence, and desistance) that is derived from:
  - —Examination of the applicability of gender-neutral theories of delinquency and of theories derived from primarily male samples to pathways to and patterns of serious female offending.
  - —Exploration of gender-specific theories and processes for their utility in developing and testing new prevention and intervention strategies.
- To evaluate the literature on the efficacy of existing prevention and intervention programs and policies through the lens of a female-focused theory or theories of delinquency (described in the preceding objective) in order to determine which programs, program components, or program principles have demonstrated effectiveness in preventing and reducing juvenile delinquency in females. The results of this review may support the need for further investigation and testing of programs or strategies having theoretical or demonstrated promise.
- To identify the characteristics (racial, ethnic, and cultural) and needs (developmental, psychosocial, behavioral, educational, spiritual, physical and mental health) of female juvenile offenders in the juvenile justice system for the purpose of incorporating that information into developmentally sensitive program development.
- To identify where critical information is lacking about the nature and development of female delinquency and effective prevention and intervention strategies and to recommend future research, programming, and testing to address these gaps in knowledge.

**Program Strategy**

A 2-year cooperative agreement will be competitively awarded to carry out the program strategy described below.

It will be the responsibility of the grantee to assemble, convene, and chair a multidisciplinary study group representing a cross section of disciplines. The group will conduct an indepth review of existing literature that accomplishes the following: (1) Reviews and synthesizes empirical and theoretical literature related to the development and characteristics of female juvenile delinquency; (2) explores the nature and role of risk and protective factors specifically related to female juvenile delinquency across the domains of individual characteristics and development, family, peer relationships, school, and community; (3) conducts secondary analyses of existing data; (4) identifies promising and effective programs for prevention and intervention; and (5) recommends future research, program development, and evaluation to address gaps in current knowledge about this population. The applicant will produce an indepth final report on the findings and recommendations of the Girls Study Group and various interim and subsequent practitioner-oriented products.

An applicant seeking funding under this initiative must address and be willing to undertake, at a minimum, the tasks described below. Specific tasks may be contracted by the applicant to other groups or individuals. An applicant that plans to use consultants in this manner should (1) clearly spell out the terms of the contract in the application and (2) address the qualifications of the contractor/consultant(s) selected to perform each task.

In developing the Program Narrative section of the application, applicants must provide a comprehensive proposal describing how they plan to achieve the goals, objectives, and tasks of the Girls Study Group as outlined in this program announcement. Greater specificity is required for the first year of the project in terms of detailed objectives, timelines, products, and budget narratives.

*Task I: Assemble and Convene the Girls Study Group*

The successful applicant should assemble the Girls Study Group and convene at least two meetings within the first year of the grant. The successful applicant will have the organizational capacity to organize and facilitate these meetings. The applicant must demonstrate its ability to bring together individuals with proven expertise and excellence in fields including, but not limited to, criminology, sociology, statistics, developmental psychology, mental health, adolescent health, juvenile justice research and practice, domestic violence, and youth work. Together the membership of the Girls Study Group and assigned project personnel must possess knowledge of and experience with issues of female development and familiarity with at-risk and delinquent girls. The Study Group will provide substantive and technical advice over the course of the study and perform selected tasks as determined by the applicant. For purposes of the application submission, the applicant must identify and obtain letters of agreement and résumés from at least six individuals (of a proposed 12- to 15-member group) to serve on the Study Group, describing how their background and skills meet the requirements of this project. Such commitments by prospective Study Group members are not required to be exclusive agreements with that applicant; that is, consultants may agree to participate with other applicants for the project. The applicant must briefly discuss the qualifications of each Study Group member and articulate how each member's knowledge and expertise will contribute to the overall mission of the Study Group. For the remaining positions needed to complete the Study Group, the applicant must identify only the types of disciplines, skills, and experience that are needed, not the names.

In addition to the 12 to 15 project-funded members of the Study Group, it is anticipated that representatives from the National Girls Institute will serve as ex officio members of the Girls Study Group. Designated staff from OJJDP, the Violence Against Women Office, the National Institute of Justice, and the Bureau of Justice Statistics will be invited to serve as Federal agency coordinating representatives to the Girls Study Group along with others, as OJJDP deems appropriate.

*Task II: Review the Literature Review*

The Study Group should review both the theoretical and empirical literature from relevant fields, including, but not limited to, criminology, sociology, developmental psychology, mental health, adolescent health, substance abuse, juvenile justice, and domestic violence, as they pertain to female delinquency. In particular, the literature review should address the objectives of the Girls Study Group, as stated above. Applicants must succinctly describe their approach to the literature in relation to the objectives listed above.

*Task III: Conduct Secondary Analyses*

In the course of the Study Group's work, is expected that the successful applicant will be responsible for conducting secondary analyses of data sets that are likely to contribute to the goals and objectives of the Study Group. Applicants must describe their plans for identifying potential data sets that may be proposed for analysis, determining both the scope and priority of the analysis, and conducting such analyses.

*Task IV: Provide Deliverables*

The applicant should describe several distinct reports and other products that it envisions being derived from the work of the Study Group. It is expected that the publications and products developed by the successful applicant will provide information relevant to the Study Group's goals and objectives. While the reports must be of a quality that would merit publication in a refereed journal, the authors must also address the needs of various practitioner audiences in the field. The authors will be expected to work closely with the National Girls Institute in facilitating the dissemination of various Study Group reports and products to relevant practitioner and policymaker audiences in the juvenile justice, child welfare, education, pediatric and adolescent health, mental health, and youth work fields.

At a minimum, the Girls Study Group should produce a number of interim, final, and summary reports on the results of its work. Three reports will be published as OJJDP Bulletins: (1) A

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summary based on national studies and statistical series on the trends in female juvenile delinquency; antisocial, high-risk behavior; and victimization; and the systems' response; (2) a summary of the results of the literature review with respect to new perspectives on risk and protective factors for delinquent behavior having serious consequences for female offenders; and (3) a report on effective and promising prevention and intervention programs related to female-specific risk and protective factors. It is expected that the third report, a final report, and an executive summary will be produced during the second phase of the project. The final report will present the results of the Study Group's work and provide well-substantiated support and recommendations for further research and programming in this area.

Applicants should discuss their plans for developing reports and products in the Project Design section of the Program Narrative.

**Eligibility Requirements**

OJJDP invites applications from public or private agencies, organizations, institutions, or individuals. Private, for-profit organizations must agree to waive any profit or fee. Applicants must demonstrate that they have experience in coordinating and convening meetings of subject matter experts, conducting extensive literature reviews, carrying out secondary analyses, and writing reports.

In the case of joint applications, one applicant must be clearly indicated as the primary applicant (for correspondence and award purposes) and the other(s) listed as coapplicants. If contractors will be used for specific project tasks, evidence of their qualifications and willingness to undertake the specified task(s) should be provided.

To be eligible for consideration, applicants must strictly adhere to the guidelines for preparing and submitting applications regarding page length, layout, and submission deadlines.

**Selection Criteria**

Applicants will be evaluated and rated by a peer review panel according to the selection criteria outlined below. In addition, the extent to which the project narrative makes clear and logical connections among the components listed below will be considered in assessing a project's merits. It is further recommended that applications be organized and presented in a way that enables application reviewers to evaluate the proposal in terms of the selection criteria outlined below.

*Issues To Be Addressed (25 points)*

The applicant must include a clear and concise discussion of the issues related to understanding, preventing, and responding to female juvenile delinquency and its consequences for girls. The applicant must identify the most important research questions for the Girls Study Group to address. This discussion should reflect the applicant's understanding of the need for undertaking this initiative now; the anticipated challenges that face the Girls Study Group in successfully accomplishing the stated goals and objectives and ways to address those issues; and the potential utility of this project and its products for those who are dealing with or studying troubled girls, dangerous girls, and girls in the juvenile justice system.

*Goals and Objectives (10 points)*

The applicant must describe how it will address the stated goals and each of the objectives outlined in the solicitation. The goals and objectives must relate to the identified research questions and issues to be addressed. Any significant modification of the stated goals and objectives should be clearly justified and the implications of any variation carried through in the rest of the proposal. Objectives should specify clearly defined, measurable tasks that will enable the applicant to achieve the goals of the project.

*Project Design (35 points)*

Applicants should present a well developed project design that clearly delineates the specific activities, the people and other resources involved, and the time lines for accomplishing the tasks outlined in the Program Strategy, and for developing the Deliverables described above. The narrative must discuss how and when major activities for each task will be accomplished and how these tasks will build on each other to reach the project's goal and objectives. A time task chart should be included in appendix A of the application.

*Management and Organizational Capability (20 points)*

The applicant should include a discussion of how it will assemble, coordinate, and manage the Girls Study Group in a way that promises to achieve the stated goals and objectives. The applicant must clearly define the roles and responsibilities of key project staff, members of the Girls Study Group, and its chair(s). An organizational chart must be included in appendix B. Applicants should also discuss how they will ensure the quality and utility of the products generated from the Girls Study Group and propose how they will coordinate their activities with the National Girls Institute. The applicant must describe knowledge and experience of key staff relevant to this initiative and any organizational experience demonstrating its ability to accomplish the project objectives and to work with experts from diverse disciplines and perspectives to accomplish a common goal. The applicant must describe the process of facilitating Study Group meetings and tasks and describe in detail the panel of experts the applicant would convene for the project. Together the key project staff and the membership of the Girls Study Group must collectively possess knowledge of and experience with issues of female development and familiarity with difficult and troubled girls and girls already in the juvenile justice system, as described in the discussion of Task 1. *Each proposed Study Group member must submit a letter of agreement stating his/her commitment to participate in and contribute to the goals and objectives of the Girls Study Group.* Such commitments by prospective Study Group members are not required to be exclusive agreements. Group members' statement-of-participation letters and résumés must be attached in appendix B, along with all staff résumés. The Study Group panel should number 12 to 15 participants.

*Budget (10 points)*

Applicants must provide a proposed budget that is complete, detailed, reasonable, allowable, and cost effective in relation to the activities to be undertaken during the first 12-month budget period. A detailed budget narrative should be included in appendix C and conform to the guidelines in the *OJJDP Application Kit*. For the second 12-month budget period, the applicant should present a preliminary budget in appendix C without a detailed budget narrative. Applications must also conform to Federal requirements with respect to travel, equipment, and procurement policies.

**Format**

A program narrative, not to exceed 40 pages (excluding forms, table of contents, project abstract, certificates of confidentiality, coordination of Federal efforts, assurances, and appendix) must be submitted on 8½- by 11-inch paper, double spaced on one side of the paper in a standard 12-point font. The narrative should be preceded by a one-page project abstract, which must also be submitted on 8½- by 11-inch paper, double-spaced on one side of the paper in a standard 12-point font. The abstract should not exceed a maximum length of 400 words. A table of contents is also required. Appendix A should contain the project's timeline with dates for initiation and completion of critical project tasks and products. Appendix B should contain an organizational chart, résumés, and letters of support from each of the proposed Study Group members and résumés for any key project staff who are not considered members of the Study Group. Appendix C should contain the detailed budge narrative. These standards are necessary to maintain fair and uniform standards among all applicants. If the application does not conform to these standards, OJJDP will deem the application ineligible for consideration.



**Award Period**

This project will be funded for 2 years in two 1-year budget periods. Applicants should submit a 2-year project plan. Funding after the first budget period depends on performance of the grantee, availability of funds, and other criteria established at the time of the award.

**Award Amount**

Up to $300,000 is available for the initial 12-month budget period. It is anticipated that year two will be funded at a similar level of support.

**Privacy Certificate**

U.S. Department of Justice (DOJ) regulations require that a Privacy Certificate be submitted as part of any application for a project in which information identifiable to a private person will be collected for research or statistical purposes. The purpose of the Privacy Certificate is to ensure that the applicant will comply with the confidentiality requirements of 42 U.S.C. 3789g and 28 CFR part 22, which essentially require that private information collected in the course of research activities be used only for research purposes.

**Catalog of Federal Domestic Assistance (CFDA) Number**

For this program, the CFDA number, which is required on the Application for Federal Assistance, Standard Form 424, is 16.542. Form 424 can be found in the *OJJDP Application Kit*, which can be obtained by contacting the Juvenile Justice Clearinghouse at 800–638–8736 or sending an e-mail request to puborder@ncjrs.org The *Application Kit* is also available online at www.ojjdp.ncjrs.org/grants/about.html#kit.

**Coordination of Federal Efforts**

To encourage better coordination among Federal agencies in addressing State and local needs, DOJ is requesting applicants to provide information on the following: (1) Active Federal grant award(s) supporting this or related efforts, including awards from DOJ; (2) any pending application(s) for Federal funds for this or related efforts; and (3) plans for coordinating any funds described in items (1) or (2) with the funding sought by this application. For each Federal award, applicants must include the program or project title, the Federal grantor agency, the amount of the award, and a brief description of its purpose. This statement of coordination of Federal efforts should be placed in appendix E. Include in appendix E a list of authors (by section) of this proposal and indicate whether this proposal, or portions of it, have been submitted to other Federal agencies for funding.

The term "related efforts" is defined for these purposes as one of the following:

- Efforts for the same purpose (*i.e.*, the proposed award would supplement, expand, complement, or continue activities funded with other Federal grants).
- Another phase or component of the same program or project (*e.g.*, to implement a planning effort funded by other Federal funds or to provide a substance abuse treatment or education component within a criminal justice project).
- Services of some kind (*e.g.*, technical assistance, research, or evaluation) to the program or project described in the application.

**Delivery Instructions**

All application packages should be mailed or delivered to the Office of Juvenile Justice and Delinquency Prevention, c/o Juvenile Justice Resource Center, 2277 Research Boulevard, Mail Stop 2K, Rockville, Maryland 20850; 301–519–5535. Faxed or e-mailed applications will not be accepted. **Note:** *In the lower left-hand corner of the envelope, the applicant must clearly write "Girls Study Group."*

**Due Date**

Applicants are responsible for ensuring that the original and five copies of the application package are received by 5:00 p.m. ET on December 1, 2000.

**Contact**

For further information, contact Barbara Allen-Hagen, Social Science Analyst, Research and Program Development Division, OJJDP, at 202–307–1308, or send an e-mail inquiry to barbara@ojp.usdoj.gov; or contact Anne Bergan, Program Manager, Research and Program Development Division, OJJDP, at 202–514–5533, or send an e-mail inquiry to bergana@ojp.usdoj.gov.

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Dated: September 27, 2000.

**John J. Wilson,**

*Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.*

[FR Doc. 00–25239 Filed 9–29–00; 8:45 am]

BILLING CODE 4410–18–P

Federal Register

Monday,
October 2, 2000

Part VI

# Department of Justice

Office of Juvenile Justice and Delinquency Prevention

Program Announcement for the National Girls Institute; Notice

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**DEPARTMENT OF JUSTICE**

**Office of Juvenile Justice and Delinquency Prevention**

**[OJP (OJJDP)–1298]**

## Program Announcement for the National Girls Institute

**AGENCY:** Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, Justice.

**ACTION:** Notice of solicitation.

**SUMMARY:** The Office of Juvenile Justice and Delinquency Prevention (OJJDP) is requesting applications to establish a national-scope institute to raise public awareness of the underlying factors that place girls at risk of involvement in the juvenile justice system and to advance promising prevention, intervention, treatment, education, detention, and aftercare programs and services within the context of an integrated continuum of care for delinquent and at-risk girls and their families. Multilevel and multidisciplinary training based on OJJDP's girl-focused curriculums is expected to improve the skills, knowledge, and performance of decisionmakers, administrators, and direct care professionals who work with or are concerned about girls' issues. Technical assistance support is expected to facilitate improved cross-agency programming and systemic responses to girls at risk and young female offenders in the juvenile justice system. It is also expected that a working group of advisors and collaborators will be formed to plan and convene a symposium on girls in 2001.

**DATES:** Applications must be received by 5:00 p.m. ET on December 1, 2000.

**ADDRESSES:** All application packages should be mailed or delivered to the Office of Juvenile Justice and Delinquency Prevention, c/o Juvenile Justice Resource Center, 2277 Research Boulevard, Mail Stop 2K, Rockville, MD 20850; 301–519–5535. Faxed or e-mailed applications will not be accepted. Interested applicants can obtain the *OJJDP Application Kit* from the Juvenile Justice Clearinghouse at 800–638–8736. The *Application Kit* is also available at OJJDP's Web site at www.ojjdp.ncjrs.org/grants/about.html#kit. (See "Format" later in this program announcement for instructions on application standards.)

**FOR FURTHER INFORMATION CONTACT:** Gwendolyn Dilworth, Program Manager, Office of Juvenile Justice and Delinquency Prevention, 202–514–4822. [This is not a toll-free number.]

**SUPPLEMENTARY INFORMATION:**

### Purpose

The purpose of this project is to establish a National Girls Institute (NGI) to advance the understanding and application of promising prevention, intervention, treatment, education, detention, and aftercare programs and services for delinquent and at-risk girls. NGI will promote integrated and innovative programs that employ a comprehensive service delivery system appropriate to the unique developmental and culturally specific needs of girls and their families. The Institute will accomplish its mission through a broad range of activities, including program development and enhancement, research activities, training and technical assistance, information dissemination, collaboration with Federal and private agencies, and policy development.

### Background

For nearly a decade, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) has had considerable involvement in issues related to girls in the juvenile justice system. The Office recognizes the importance of increasing understanding of the factors that contribute to female juvenile offending and those that protect at-risk girls from becoming offenders.

In the 1992 reauthorization of the Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974, as amended (42 U.S.C. 5601 *et seq.*), Congress added language in Section 223 (8)(B) (i–ii) that specifically requires all States applying for Part B Formula Grants program funds to include in their plans: "(i) An analysis of gender-specific services for the prevention and treatment of juvenile delinquency, including the types of such services available and the need for such services for females; and (ii) a plan for providing needed gender-specific services for the prevention and treatment of juvenile delinquency."

Congress also enacted the State Challenge Activities program under Title II, Part E, in the 1992 amendments. The Challenge Activities program provides incentives for States participating in the Title II, Part B, Formula Grants program to improve their juvenile justice systems by developing, adopting, or improving policies and programs in 1 or more of 10 specified Challenge areas. Congress has provided $10 million annually to States since fiscal year (FY) 1995 to address one or more of 10 statutorily identified Challenge areas.

Several States have sought to meet the treatment needs of young females through the following State Challenge Activities:

(A) developing and adopting policies and programs to provide basic health, mental health, and appropriate education services, including special education, for youth in the juvenile justice system; (B) developing and adopting policies and programs to provide access to counsel for all juveniles; (C) increasing community-based alternatives to incarceration by establishing programs (such as expanded use of probation, mediation, restitution, community service, treatment, home detention, intensive supervision, and electronic monitoring) and developing and adopting a set of objective criteria for the appropriate placement of juveniles in detention and secure confinement; * * * (E) developing and adopting policies to prohibit gender bias in placement and treatment and establishing programs to ensure female youth access to the full range of health and mental health services, including treatment for physical or sexual assault or abuse, self-defense instruction, parenting education, general education, and training and vocational services; * * * (G) developing and adopting policies and programs designed to remove status offenders from the jurisdiction of the juvenile court, when appropriate; (H) developing and adopting policies and programs designed to serve as alternatives to suspension and expulsion; and (I) increasing aftercare services for juveniles in the justice system by establishing programs and developing and adopting policies to provide comprehensive health, mental health, education, family, and vocational services to youth upon release from the juvenile justice system.

Twenty-four States and the District of Columbia have used Challenge Grant funds to develop specific approaches that address the needs of female offenders in their juvenile justice systems; create public awareness and professional competence through staff training conferences, publications, and technical assistance; develop curriculums on gender specific topics; and produce program regulations, policies, and/or procedures.

OJJDP has initiated a unique collaborative effort between Connecticut and Illinois. OJJDP is using the lessons learned from the Girls Link Juvenile Female Offender Project in Cook County, IL, to develop specialized delinquency prevention and detention programs for Connecticut girls. Needs and risk assessment instruments developed as part of the Girls Link Project have been incorporated into the



Connecticut project. A focus of the project involves systemic reforms at the State level to improve the way female juvenile offenders are treated. Creating a hierarchy of sanctions, with specific provisions for pregnant girls and teen mothers, and making effective use of Medicaid/Medicare reimbursements are two strategies being employed.

Also, OJJDP's Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders (Wilson and Howell, 1993) assists communities in developing a working blueprint for measurably reducing juvenile offending (Howell, 1995). The Comprehensive Strategy pilot sites (Fort Myers and Jacksonville, FL, and San Diego, CA) and local jurisdictions in eight Comprehensive Strategy States (Florida, Iowa, Maryland, Ohio, Oregon, Rhode Island, Texas, and Wisconsin) have completed an extensive strategic planning process that included identifying the service needs of girls at risk or involved with the juvenile justice system. In a unique partnership, PACE (Practical, Academic, Cultural Education Center for Girls, Inc.) and the National Council on Crime and Delinquency are assisting the pilot sites in the design and development of a comprehensive continuum of services for girls, their families, and—where applicable—their children.

In addition to State-level support, OJJDP has provided guidance directly to the field to support promising or effective gender-specific strategies. For example, in October 1999, OJJDP's *Juvenile Justice* journal published "Investing in Girls: A 21st Century Strategy," which examined the troubling effects of the factors and life circumstances that are often precursors for girls in or on the edge of the juvenile justice system (Acoca, 1999). Also included in that issue of *Juvenile Justice* were two articles about exemplary efforts: "The Female Intervention Team," which discussed a gender-specific program for girls adjudicated delinquent by the Maryland State court system (Daniel, 1999), and "National Girls' Caucus," which spotlighted an advocacy group that focuses national attention on the specific needs of girls involved with the juvenile justice system (Ravoira, 1999).

Similarly, OJJDP, in collaboration with Greene, Peters, & Associates (GPA), published *Guiding Principles for Promising Female Programming: An Inventory of Best Practices* (1998). This inventory highlights exemplary and effective gender-specific program practices for use by State and local jurisdictions. GPA has contracted with the Northwest Regional Educational Laboratory in Oregon to produce three gender-focused curriculums designed to build professional understanding and capacity in addressing girls needs.

OJJDP also supports the Juvenile Mentoring Program (JUMP), which focuses on providing mentors for youth at risk of delinquency, gang involvement, educational failure, or dropping out of school. JUMP sites in California, Colorado, Georgia, Michigan, Pennsylvania, and South Carolina provide gender-specific programming for girls. Despite these efforts by OJJDP and the States, statistics demonstrate that more needs to be done to meet the critical needs of girls.

### *Juvenile Female Arrests and Involvement in At-risk and Delinquent Behavior Continue To Rise at an Alarming Rate*

A review of recent statistical trends provides data on the rising number of girls entering the juvenile justice system. In 1998, females accounted for 27 percent or 697,000 of the 2,603,300 juvenile arrests (Snyder, 1999). The Juvenile Violent Crime Index arrest rate for females more than doubled between 1987 and 1994, then fell in each of the next 3 years. Nonetheless, the growth in juvenile violent crime arrest rates between 1994 and 1998 was far greater for females than for males in most offense categories. According to the Federal Bureau of Investigation (FBI) Uniform Crime Reporting Program, the most serious increase in offenses for young females included aggravated assault (up 7 percent), simple assault (up 29 percent), and drug abuse violations (up 43 percent) (Snyder, 1999). Even with the recent decline, the female violent crime arrest rate for 1997 was 103 percent above the 1981 rate, while the male arrest rate was 27 percent above its 1981 level. In 1998, females accounted for 22 percent of juvenile arrests for aggravated assault and running away from home. According to an analysis of juvenile arrest patterns and trends, female arrests for weapons law violations nearly tripled between 1981 and 1997, while male rates nearly doubled (Snyder, 1999). Further, delinquency cases involving females rose 76 percent between 1987 and 1996, compared with 42 percent for males. The disparate growth in cases involving females outpaced the growth for males for all but drug offense cases. These statistics seem to indicate broad increases in the proportion and seriousness of delinquent acts committed by girls. However, the reasons for the leap in the number of cases involving girls are vigorously disputed by researchers, policymakers, and direct service personnel (Chesney-Lind and Shelden, 1997). For example, there is concern about "bootstrapping," which refers to relabeling a status offense (*e.g.*, running away, curfew violation, truancy) as a delinquent offense. The debate over bootstrapping centers on the belief that it fosters the incarceration of a disproportionate number of girls in detention facilities far out of proportion to the seriousness of their offenses (Girls Inc., 1996; Chesney-Lind, 1999).

Even more disturbing, leading academics who have examined the various elements of life circumstances prevalent among adult and juvenile female offenders have unveiled a distinct route into the justice system. Over 70 percent of the girls who enter the justice system report a history of physical, sexual, or emotional victimization and drug abuse. These childhood victimizations are now being correlated with lifelong health, learning, and behavioral disorders, including adolescent delinquency (Acoca, 1998). Moreover, leading researchers and academicians postulate that the abusive histories/backgrounds typically shared by adult and juvenile female offenders are a significant factor in the victim-to-offender pathway of female juvenile delinquency (Belknap and Holsinger, 1998). There is no single factor that puts girls at risk of delinquency. However, indicators of the underlying causes of female juvenile delinquency point to early victimization as a first step along a pathway into the juvenile justice system.

The increasing numbers of girls involved in the juvenile justice system and the scarcity of information about gender and culturally specific programs and services that meet their changing and unique needs have prompted juvenile justice, public health, mental health, education, labor, corrections, and youth service professionals to reexamine the developmental and societal factors that place girls at risk for delinquent behavior.

Although female and male juvenile offenders may experience similar educational, familial, and economic problems, several gender-specific factors can exacerbate the problems girls face. These include higher rates of sexual abuse, physical abuse, substance abuse, mental health needs, teen pregnancy, adolescent motherhood, alternative lifestyles, and problems associated with the early onset of puberty (Chesney-Lind and Freitas, 1999; Greene, Peters, & Associates, 1998). Although any one of these factors may contribute to girls' increased risk of delinquency, they seldom occur in isolation.

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Ethnic minorities are disproportionately represented in the female offender population (Bergsmann, 1989; Campbell, 1995; Community Research Associates, 1998). African American girls make up nearly half of all those in secure detention and Latinas constitute 13 percent (Bergsmann, 1994). Although Caucasians constitute 65 percent of the population at risk, they account for only 34 percent of girls in secure detention (Greene, Peters, & Associates, 1998). A census of private facilities in the early 1990's showed that well over half (53 percent) were Caucasian (Moone, 1997). Finally, 7 of every 10 cases involving Caucasian girls are dismissed, compared with 3 of every 10 cases for African American girls (Greene, Peters, & Associates, 1998).

The emerging protile of women offenders parallels that of female delinquents, with similar risk factors impacting women's and girls' lives. More than 4 in 10 female adult inmates report a history of physical or sexual abuse. Nearly 6 in 10 grew up in a household with at least 1 parent absent. Women of color are similarly disproportionately represented among the adult female offender population. Women prisoners are likely to be poor, undereducated, and single parents. About 20 percent of convicted adult female offenders were also adjudicated delinquent as juveniles (Snell, 1994; Belknap, 1996).

*Efforts Are Under Way To Review the Circumstances Behind the Increases in Female Juvenile Delinquency Activities*

OJJDP and the National Institute of Mental Health are cosponsoring the research of Dr. Rolf Loeber at the University of Pittsburgh on the Development of Conduct Disorder in Girls project. The project, a 5-year longitudinal study, is designed to examine the development of conduct disorder in a sample of 2,500 inner-city girls between the ages of 6 and 8 and will provide information on the etiology, comorbidity, and prognosis of conduct disorder in girls.

In addition, OJJDP currently supports two field-initiated research projects that will specifically address the needs and issues of young women at risk of involvement or involved in the juvenile justice system. The first is an evaluation that is being conducted by researchers at the University of Michigan. The project, A Comparative Evaluation of Three Programs for Adolescent Female Offenders, is evaluating three Wayne County, MI, programs for adolescent female offenders. The second field-initiated research project, GIRLS (Gaining Insight Into Relationships for Lifelong Success), is being conducted by researchers at the University of Georgia Research Foundation to study ways to address female delinquency through a relational approach.

*Awareness of the Essential Components of Promising or Effective Integrated and Innovative Programs for Girls Needs To Be Heightened*

Supported by training, technical assistance, and direct funding from OJJDP, States and local jurisdictions have planned and implemented various initiatives involving data analysis, needs assessment, intervention, treatment and education programs, and reform efforts that have brought modest awareness to the importance of integrated service delivery in the provision of gender-specific services and programming for at-risk and delinquent girls.

*Understanding the Distinctions Between Gender-Specific Programming and Gender-Specific Services Is Key to Ensuring Effective Cross-Agency Programs for Girls*

Gender-specific programs for girls employ comprehensive and integrated methods that address and support the psychological development process of female adolescents while fostering connections within relationships in the context of a safe and nurturing environment (Lindgren, 1996). Conversely, the term "gender-specific services" refers to the provision of assistance (*e.g.*, pregnancy testing, prenatal care, counseling, day care) that is not provided within the framework of a comprehensive service delivery system. Therefore, for the purpose of this initiative, gender-specific programs for girls are those designed to meet the unique needs of females, that value the female perspective, celebrate and honor the female experience, respect and take into account female development, and empower young women to reach their full potential (Girls Inc., 1996).

In spite of accomplishments in girls' programming, eliminating gender bias and ensuring that young females have access to a full range of services remain a challenge. OJJDP will address this challenge by expanding knowledge of effective prevention and treatment approaches and assisting States and local communities to develop the necessary policies, practices, and services that ensure a comprehensive, responsive, and seamless continuum of care for girls involved in the juvenile justice system.

To accomplish this mission, OJJDP is funding two related programs: the National Girls Institute and the Girls Study Group project. The latter will be a 2-year effort that will review the research literature on the epidemiology and etiology of female juvenile offending and its consequences, using a female-focused conceptual framework; synthesize information from diverse sources; and produce reports and publications that communicate the results. It is anticipated that there will be close collaboration between the two projects in providing critical information to the field and with other Federal agencies and private corporations with an interest in this project.

**Goals**

The goals of the National Girls Institute initiative are to raise national awareness of the underlying factors that place girls at risk of involvement in the juvenile justice system, advance effective gender-specific programming for girls, promote policies and practices that protect girls from delinquent and abusive behavior, improve staff job performance through training and technical assistance, and promote an integrated continuum of care for at-risk and delinquent girls and their families.

**Objectives**

- Systematically examine and report on effective assessment and reassessment tools used in detention and residential facilities to assess girls' programming needs and standards of practice that ensure continuity in programming between institutions and communities.
- Provide multilevel training and technical assistance based on OJJDP's girl-focused training curriculums and the findings of appropriate diagnostic assessment instruments to improve the job performance of staff who work with girls, service delivery systems of detention or residential facilities, and other organizations that serve girls.
- Identify information, resources, current practices, or regulations that do not adequately support the needs of delinquent or at-risk girls and prepare recommendations to address these gaps.
- Collaborate with OJJDP's Girls Study Group on related research activities.
- Facilitate communication and collaboration with other Federal, State, national, and community-based organizations that serve or are concerned about girls.
- Plan and convene a national symposium on girls in 2001.

**Program Strategy**

OJJDP will competitively award a single cooperative agreement of up to $1,200,000 for a 12-month budget period within a 5-year project period to administer centralized, national-scope educational activities and to develop products that will improve services and support the formulation of practical and just policies pertaining to at-risk and delinquent girls. Tasks will be achieved through a combination of needs assessments, training and technical assistance, research activities, and policy formulation.

NGI is expected to become fully staffed in its first year. The applicant should describe how this will be accomplished and attach key staff résumés and/or job descriptions. In general, the implementation plan should foster innovation and clearly identify the work to be accomplished in both phases of the project. Requisites for the NGI grantee are a demonstrated ability to develop and direct a national-scope training and technical assistance, research, and advocacy effort with multiple dimensions within a short timeframe.

The successful applicant will have substantial experience in producing, modifying, and/or updating a wide range of practical resource materials and curriculums. Experience in assessing personnel or organizational training needs and providing onsite assistance to address issues described in this solicitation will also be a requisite.

The expertise and skills of consultants who will provide training and technical assistance and the plan for recruiting, selecting, orienting, and managing them must be discussed in the application. The applicant must demonstrate its ability to bring together individuals who can display proven expertise and excellence in areas including, but not limited to, developmental psychology, juvenile corrections and detention, education, medicine, mental health, culture and ethnicity, vocational and life skills, mediation and negotiation, and policy and organizational development. Consultant abilities must illustrate a range of skills and expertise with issues of female development and staff challenges in working effectively with difficult and troubled girls and girls already in the juvenile justice system.

It is also expected that the grantee will establish a 9-member advisory group to support the development and implementation of NGI activities and collaborate with a broad base of Federal and private organizations to ensure long-term financial support for NGI. Representatives from NGI will serve as ex-officio members of OJJDP's Girls Study Group to ensure coordination of research activities and related products.



**Scope of Work**

The following delineates the two phases of work to be conducted under the cooperative agreement for purposes of planning and managing the NGI. The grantee is responsible for developing a plan, based on the elements below, that specifies how the NGI will become operational.

*Phase I—Establish NGI and Build Organizational Capacity (Months 1 Through 4)*

*Tasks*

- Develop a managerial structure for NGI with the staff competencies and organizational capabilities required for successful implementation of the initiative. At a minimum include the following key elements in the operation of NGI:

1. Clearly stated operational goals and objectives that are based on the overall mission of NGI.
2. A program strategy for performing the major activities of the initiative, *i.e.*, the overall approach for managing this multifaceted initiative.
3. A plan detailing when activities will be started and completed, *e.g.*, tasks, timelines, and milestones; hiring schedule; résumés of key staff; staff duties; and a budget itemizing the expenditures required to achieve or exceed objectives. (Modifications to the budget may be proposed regarding the deliverables as assessments reveal a new or different area of skill deficiencies or if any deliverables are determined not to meet the objectives, previously outlined, as effectively and efficiently as an alternative approach would. Sufficient explanation must be provided to determine the merits of the proposed change. The project budget must realistically reflect costs associated with operating NGI.
4. A general guide for setting policy or decisionmaking within the organization.

- Maintain and expand online access to reference and referral resources. Install and maintain toll-free telephone access to NGI.
- Form, support, and meet biannually with a nine-member advisory group composed of representatives of State and local juvenile justice, detention, health and mental health, education, advocacy, research, community agencies, institutions, and organizations that serve at-risk and delinquent girls. Facilitate the work of subcommittees to advise NGI's plans and activities.

*Deliverables*

- A comprehensive strategic plan that details the following:

1. Implementation plan for addressing the NGI goals.
2. Operational management manual that at a minimum addresses the key elements described in the "Tasks" section.

- Interactive information and technical assistance Web site to facilitate communication, information dissemination, and announcement of scheduled events and updates.
- Review of advisory recommendations in areas including the changing needs of girls, updated research findings, program strategies, and policy development.

*Phase II—Survey Existing Practices, Document Trends and Resource Gaps, and Implement Program Elements (Months 5 Through 12)*

*Tasks*

- Conduct a periodic survey and review of specific program efforts, with emphasis on operational costs and service delivery components, to track the participation and performance levels of girls in detention as shown in large-scale assessments.
- Collaborate with OJJDP's Federal Working Group on Gender Issues and other related efforts to update research and evaluation information on changes in girls' social, medical, and psychological needs; delinquency trends; educational models; risk and resiliency factors; and community-based prevention, intervention, and treatment strategies to identify and promote promising, comprehensive, multimodal approaches that focus on the multifaceted concerns of girls.
- Collect and review State and local policies and practices to assess the factors affecting how girls are treated by the juvenile justice system and to determine the best approaches for promoting a comprehensive continuum of care for girls.
- Prepare and disseminate detailed reports/bulletins on survey findings to inform OJJDP and formulate policy and resource allocation recommendations in services and programming for girls.
- Develop and implement a plan to conduct and manage multifaceted training and technical assistance support for agencies and organizations seeking to initiate services for girls at risk of delinquency or to improve the provision of services to incarcerated girls.
- Prepare and submit a strategic marketing plan that positions NGI to reach and provide services to those who would best benefit from them. Specify proposed marketing methods and timelines for implementing the marketing plan.

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• Conduct training needs assessments to determine the specific skills, knowledge, information, and experiential levels of potential training and technical assistance recipients. Analysis of assessment data will inform the training content and the elements of skill that are essential to satisfactory performance improvement.

• Develop a process for collecting and cataloging literature and research-based information such as assessment and reassessment tools, curriculums, reference materials and manuals, planning and problem-solving instruments, and technology-based resources.

• Outline the approach for recruiting and maintaining a pool of experienced trainers and subject matter experts (See "Program Strategy" section above).

• Provide trainings, using *Beyond Gender Barriers: Programming Specifically for Girls* (Greene, Peters, & Associates and Northwest Regional Educational Laboratory, forthcoming), a set of two curriculums (currently being revised under an OJJDP cooperative agreement) for decisionmakers and newly assigned direct care professionals, and adapt the curriculums, as appropriate, to ensure the accuracy and timeliness of the instructional material. (A third curriculum, a training of trainers, is being developed under the same grant to provide instruction for those with training responsibilities in this area.) Additionally, design and pilot topical workshops that meet the specific needs of experienced professionals who work with girls. Work in this area will use uniform protocols for needs assessment, delivery of training and technical assistance, evaluation tracking, and followup. Curriculum development must be based on adult learning theory and provided in the context of an interactive learning environment. The successful applicant will be responsible for providing 6 training workshops for up to 80 participants in each session. This will include responsibility for arranging workshop locations, facilities, training aids, marketing, and evaluations to assess the relevancy and learning transferability of the lessons provided.

• Provide up to 10 onsite technical assistance interventions, preferably as a followup to training conducted by NGI. Develop technical assistance assessment and evaluation protocols and submit reports describing the purpose and outcomes of onsite technical assistance. Provide program administrators with tools to identify future professional development needs of direct care professionals.

• Produce participant manuals, guides, and other written and visual products to facilitate information exchange on gender programming and systems-improvement strategies.

• Collaborate with researchers and evaluators in the girls gender field. Serve as ex-officio member of OJJDP's Girls Study Group, which plans to review and synthesize empirical research on female juvenile delinquency and report on risk and protective factors through varying stages of female adolescent development as it relates to peer, family, school, community, and individual domains.

• Form and maintain regular communication through ongoing committee assignments and biannual meetings with an advisory group to review and advise on NGI's activities and plans. The advisory group should be composed of representatives of State and local agencies, juvenile justice, education, advocacy groups, research organizations, and health, labor, faith-based, and other organizations that serve girls. The advisory group membership should reflect ethnic and cultural diversity in addition to the subject matter expertise described in the "Program Strategy" section.

• Participate in appropriate meetings and national conferences convened by OJJDP, other Federal and State agencies, educational institutions, and national organizations to promote a wide exchange of information and other collaborative efforts to ensure that girls have equal access to a full range of services.

• Work closely with advisors, collaborators, and OJJDP to form a working group to plan and convene a national symposium on girls. In 1996, OJJDP funded Girls Inc. to assemble a national conference on girls. As an outcome of the conference, Girls Inc. produced a report, *Prevention and Parity: Girls in Juvenile Justice* (1996). The report identified several key points for further investigation. Since that time, many States have changed the way they view girls at risk and female offenders. Consequently, OJJDP believes that a need exists for professionals to come together to scrutinize and deliberate on various responses to those changes and other challenges facing those who work with girls. Therefore, the NGI grantee will convene a national symposium as the forum for conducting this exchange and for learning about effective programming for girls.

*Deliverables*

• Reports, Bulletins, and Fact Sheets on survey findings and promising, multimodal approaches that include the social, educational, vocational, developmental, cultural, and treatment issues of girls in programming and service delivery.

• Policy recommendations to support resource allocation in services and programming for girls, improve the treatment of girls adjudicated delinquent, and foster their successful reintegration to the community.

• Monograph on program and policy advances in public correctional institutions.

• A report suitable for national distribution that details the findings and recommendations from the National Symposium on Girls.

• Modifications, as appropriate, to OJJDP's gender-specific curriculums specifically designed for three distinct audiences: (1) decisionmakers and administrators, (2) newly hired direct care personnel assigned to work with girls, and (3) experienced trainers selected to deliver gender-specific training for girls. Curriculums will be reviewed prior to delivery by the OJJDP program manager to ensure that the instructional materials are accurate, relevant, and up to date.

• A written plan detailing the marketing approach for NGI.

• Protocol(s) for assessing the information, resource, and professional development needs of decisionmakers who determine policy and staff who work directly with girls or are interested in working with girls.

• Database of consultants and subject matter experts such as those described in the "Program Strategy" section.

• Training and technical assistance delivery schedule that includes the location, description of the audience or attendees, the training/technical assistance need being addressed, dates, and the number of days required onsite.

• Procedures and forms for arranging consultant travel, payment of services, and timely reimbursement of expenses.

**Task Guidelines**

The NGI grantee is expected to facilitate the efficient and professional operation of NGI and to perform tasks as specified in the "Program Strategy" section. Additionally, the grantee is expected to use uniform protocols for needs assessment, delivery of training and technical assistance, evaluation tracking, and followup. Curriculum development and/or modifications will be based on adult learning theory and will be delivered within an interactive learning context. Close interaction is required among NGI, OJJDP, the NGI advisory group, the Girls Study Group, and other Federal agency representatives, as OJJDP deems appropriate. The NGI grantee must understand and apply the following principles to ensure effective implementation of the project and advance programming that meets the diverse needs of at-risk and delinquent girls:



• Effective programming for girls requires skilled and knowledgeable administrators, direct care personnel, and others who are concerned about girls. OJJDP's strategic training and technical assistance will advance the understanding and application of promising and innovative practices to prevent and reduce delinquency and violence by girls.

• Jurisdictions are requesting training and technical assistance to improve the effectiveness of staff who work with girls. To measure the progress in meeting the learning needs of participants, workshops and forums will proceed with a preassessment survey and end with feedback. Feedback will include a measurement of the posttraining behavior change of participating agencies, organizations, and jurisdictions.

• NGI staff and consultants must reflect the diversity of cultures and ethnic groups represented among the population of at-risk and delinquent girls. OJJDP intends to encourage representation along the full ethnic, cultural, and racial spectrum of the United States and an awareness of the socioeconomic conditions often associated with at-risk or delinquent girls.

**Eligibility Requirements**

OJJDP invites applications from public and private agencies, organizations, or institutions. Private, for-profit organizations must agree to waive any profit or fee. Applicants must have strong, demonstrated experience in planning, managing, and administering a national-scope organization with multiple components. In particular, applicants must have strong experience in designing and overseeing training and technical assistance support in gender-specific programming and services that are grounded in fostering the positive developmental needs of girls.

**Selection Criteria**

The applications will be rated by a peer review panel according to the criteria outlined below. A site visit may be conducted to confirm information provided in the application.

*Conceptualization of Need (10 points)*

The application must convey a clear understanding of the purpose, work requirements, specific gender issues relevant to girls, and related concerns addressed in this program announcement. The applicant should discuss the issues and problems related to at-risk and delinquent girls in juvenile justice practice in recent years. Moreover, the applicant should demonstrate knowledge of the developmental, social, cultural, and noncriminal risk factors that impeded girl-centered responses to the needs of girls at risk and those involved with the juvenile justice system. Further, the applicant must demonstrate knowledge of gender programming for girls, best practices, and promising strategies. Finally, the applicant must convey an understanding of the expected results of this effort, possible obstacles to be overcome in order to meet or exceed program objectives, and ways in which collaboration will enhance the achievement of the performance objectives. Concerns and obstacles associated with delivery of training and technical assistance to decisionmakers, administrators, and direct care personnel should also be addressed in the application.

*Goals and Objectives (10 points)*

Applicants must outline a vision for designing and operating NGI in relation to the stated goals and objectives of the initiative. Applicants should also provide justification for the development and delivery of training and onsite technical assistance support and explain the proposed effort. Key issues and potential obstacles related to achieving the goals and objectives of this initiative should be outlined and prioritized.

*Project Design (30 points)*

Applicants must provide an implementation plan that is specific and constitutes an effective approach to meet the goals and objectives of the project. The plan must include specific tasks, procedures, timelines, milestones, and products. The plan should also include a chart that specifies each milestone, related tasks, lead staff responsible, incremental benchmarks, and dates for task completion. At a minimum, the plan must provide protocols for assessment of technical assistance and training needs and protocols that will be used in the actual delivery of technical assistance. The plan must also describe the process and structure that will be used for curriculum development and modification and discuss how adult learning theory will be employed in its design and delivery. Other tasks, such as designing evaluative and feedback tools and methods for monitoring and refining the plan as the initiative progresses, should be described. The program design should correspond with the project's goals and objectives, the conceptualization of need, and product development identified in this program announcement. Project design elements should directly link to the achievement of specific objectives. Obstacles for achieving expected results should be identified, and alternative plans for overcoming obstacles and rationales for their use should be included.

OJJDP will consider recommendations for modification and enhancement of the products to be delivered to accommodate cost considerations. Where such recommendations are made, justification and alternatives should be proposed. The competitiveness of applications will be enhanced when such modifications and/or enhancements reflect the concept in a compelling and innovative form.

*Management (25 points)*

Applicants must describe an organizational framework, managerial structure, and staffing approach with the capacity to effectively execute the NGI initiative. Applicants should discuss their history of involvement in gender-specific efforts to support girls, including related policy development, research and evaluation activities, and organizational and/or systems reform. Additionally, applicants must describe their experience in planning and managing national-scope trainings and technical assistance support for decisionmakers, administrators, staff supervisors, and direct care personnel. Further, applicants should discuss their conference planning capabilities and ability to work with a diverse group of agencies and community stakeholders as they relate to achieving the goals and objectives of this initiative. The processes for conducting training and technical assistance needs assessments, monitoring multiple project tasks, and managing a consultant pool of experienced trainers and subject matter experts should also be described. Peer reviewers will carefully examine the applicant's description of organizational, management, and training capabilities to support the cooperative agreement.

In addition to expertise in the subject area of girls' development, treatment needs, and resiliency factors, key project staff must also demonstrate substantive experience in program administration, training and technical assistance delivery and management, curriculum development, and knowledge of the cultural, ethnic, and social conditions

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that characterize those State, local, and tribal communities where disproportionately high levels of girls of color are adjudicated delinquent.

Résumés of known staff and consultants must be included in the appendix. For proposed staff, applicants must include résumés and letters of commitment in the appendix. For positions that are not designated for identified staff, job descriptions and staff qualifications must be included.

*Organizational Capability (15 points)*

The ability to administer the initiative effectively should be clearly demonstrated in the application. The documentation should include organizational experience in managing programs in the subject areas listed under "Program Strategy" and with projects of the type and scope described. Additionally, applicants must have experience in managing Federal funds and present a financial management structure that supports the deployment and payment of consultants in a timely manner.

Applicants must also describe and demonstrate an organizational infrastructure that would support the technological and resource requirements of this initiative. Applicants may find it more cost effective to establish contractual relationships for technical or specialized functions required under the cooperative agreement.

*Budget (10 points)*

Applicants must provide a proposed budget and budget narrative that are complete, detailed, reasonable, allowable, and cost effective in relation to the activities to be undertaken. For budget purposes, applicants should allocate up to $250,000 for the national symposium on girls, travel and per diem for the advisory group meetings, up to 10 training workshops and 12 onsite technical assistance interventions, and presentations at national and State events over a 12-month period.

**Format**

The narrative must not exceed 50 pages in length (excluding forms, assurances, and appendixes) and must be submitted on 8½-by 11-inch paper, double spaced on one side of the paper in a standard 12-point font. This is necessary to maintain fair and uniform standards among all applicants. If the narrative does not conform to these standards, OJJDP will deem the application ineligible for consideration.

**Award Period**

This project will be funded for 5 years in five 12-month budget periods. Funding after the first budget period depends on grantee performance, availability of funds, and other criteria established at the time of award.

**Award Amount**

Up to $1,200,000 is available for the initial 12-month budget period.

**Catalog of Federal Domestic Assistance (CFDA) Number**

For this program, the CFDA number, which is required on Standard Form 424, Application for Federal Assistance, is 16.542. This form is included in the *OJJDP Application Kit*, which can be obtained by calling the Juvenile Justice Clearinghouse at 800–638–8736 or sending an e-mail inquiry to puborder@ncjrs.org. The *Application Kit* is also available online at www.ojjdp.ncjrs.org/grants/about.html#kit.

**Coordination of Federal Efforts**

To encourage better coordination among Federal agencies in addressing State and local needs, the U.S. Department of Justice (DOJ) is requesting applicants to provide information on the following: (1) Active Federal grant award(s) supporting this or related efforts, including awards from DOJ; (2) any pending application(s) for Federal funds for this or related efforts; and (3) plans for coordinating any funds described in items (1) or (2) with the funding sought by this application. For each Federal award, applicants must include the program or project title, the Federal grantor agency, the amount of the award, and a brief description of its purpose.

The term "related efforts" is defined for these purposes as one of the following:

1. Efforts for the same purpose (*i.e.*, the proposed award would supplement, expand, complement, or continue activities funded with other Federal grants).

2. Another phase or component of the same program or project (*e.g.*, to implement a planning effort funded by other Federal funds or to provide a substance treatment or education component within a criminal justice project).

3. Services of some kind (*e.g.*, technical assistance, research, or evaluation) to the program or project described in the application.

**Delivery Instructions**

All application packages must be mailed or delivered to the Office of Juvenile Justice and Delinquency Prevention, c/o Juvenile Justice Resource Center, 2277 Research Boulevard, Mail Stop 2K, Rockville, MD 20950; 301–519–5535. Faxed or e-mailed applications will not be accepted. **Note:** *In the lower left-hand corner of the envelope, you must clearly write "National Girls Institute."*

**Due Date**

Applicants are responsible for ensuring that the original and five copies of the application package are received by 5 p.m. ET on December 1, 2000.

**Contact**

For further information, contact Gwendolyn Dilworth, Program Manager, Training and Technical Assistance Division, at 202–514–4822, or send an e-mail inquiry to dilwortg@ojp.usdoj.gov.

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Dated: September 27, 2000.

**John J. Wilson,**

*Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.*

[FR Doc. 00–25240 Filed 9–29–00; 8:45 am]

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# Reader Aids

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## CFR PARTS AFFECTED DURING OCTOBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

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**REMINDERS**
The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

## RULES GOING INTO EFFECT OCTOBER 2, 2000

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## LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

**H.R. 1729/P.L. 106–266**
To designate the Federal facility located at 1301 Emmet Street in Charlottesville, Virginia, as the "Pamela B. Gwin Hall". (Sept. 22, 2000; 114 Stat. 787)

**H.R. 1901/P.L. 106–267**
To designate the United States border station located in Pharr, Texas, as the "Kika de la Garza United States Border Station". (Sept. 22, 2000; 114 Stat. 788)

**H.R. 1959/P.L. 106–268**
To designate the Federal building located at 643 East Durango Boulevard in San Antonio, Texas, as the "Adrian A. Spears Judicial Training Center". (Sept. 22, 2000; 114 Stat. 789)

**H.R. 4608/P.L. 106–269**
To designate the United States courthouse located at 220 West Depot Street in Greeneville, Tennessee, as the "James H. Quillen United States Courthouse". (Sept. 22, 2000; 114 Stat. 790)

**S. 1027/P.L. 106–270**
Deschutes Resources Conservancy Reauthorization Act of 2000 (Sept. 22, 2000; 114 Stat. 791)

**S. 1117/P.L. 106–271**
Corinth Battlefield Preservation Act of 2000 (Sept. 22, 2000; 114 Stat. 792)

**S. 1374/P.L. 106–272**
Jackson Multi-Agency Campus Act of 2000 (Sept. 22, 2000; 114 Stat. 797)

**S. 1937/P.L. 106–273**
To amend the Pacific Northwest Electric Power Planning and Conservation Act to provide for sales of electricity by the Bonneville Power Administration to joint operating entities. (Sept. 22, 2000; 114 Stat. 802)

**S. 2869/P.L. 106–274**
Religious Land Use and Institutionalized Persons Act of 2000 (Sept. 22, 2000; 114 Stat. 803)

**Last List September 21, 2000**

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## CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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| **3 (1997 Compilation and Parts 100 and 101)** | (869–042–00002–1) | 22.00 | [1] Jan. 1, 2000 |
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 1999, through January 1, 2000. The CFR volume issued as of January 1, 1999 should be retained.

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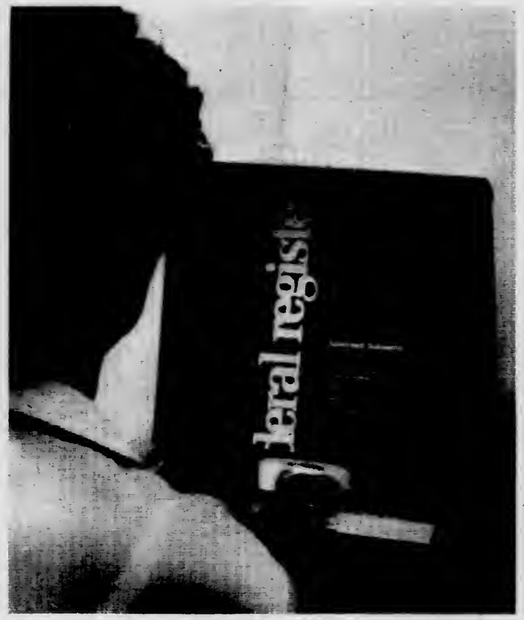
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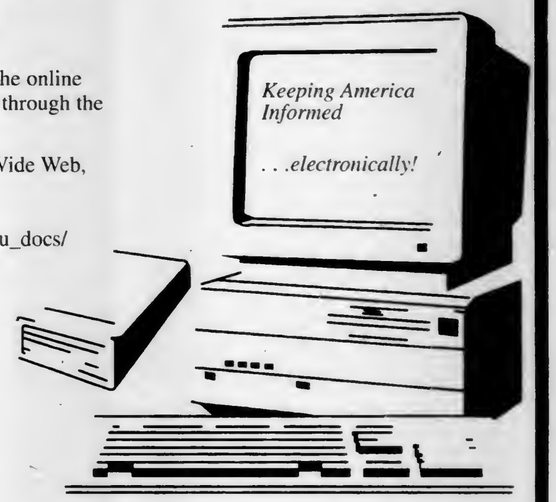
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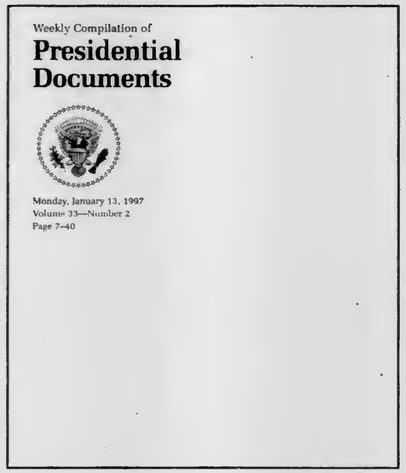
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**WASHINGTON, DC**

**WHEN:** October 17, 2000, at 9:00 a.m.
**WHERE:** Office of the Federal Register
Conference Room
800 North Capitol Street, NW.
Washington, DC
(3 blocks north of Union Station Metro)
**RESERVATIONS:** 202–523–4538





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# Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 591

**RIN 3206–AJ26**

### Cost-of-Living Allowances (Nonforeign Areas); Hawaii County, Kauai County, Guam (Commissary/Exchange), Maui County, Puerto Rico, and the U.S. Virgin Islands

**AGENCY:** Office of Personnel Management.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Office of Personnel Management is publishing an interim regulation to increase the cost-of-living allowance (COLA) rates paid to certain Federal employees in Hawaii, Guam, Puerto Rico, and the U.S. Virgin Islands. This regulation increases the COLA rate for Hawaii County, HI, from 15 percent to 16.5 percent; Kauai County, HI, from 22.5 percent to 23.25 percent; Maui County, HI, from 22.5 percent to 23.75 percent; Guam (Commissary/Exchange) from 20 percent to 22.5 percent; Puerto Rico from 10 percent to 11.5 percent; and the U.S. Virgin Islands from 20 percent to 22.5 percent. All other COLA rates remain unchanged. The new rates are the result of the settlement of *Caraballo et al.* v. *United States,* Civil No. 1997/27 (D.V.I.).

**DATES:** *Effective Date:* October 1, 2000. *Implementation date:* First day of the first pay period beginning on or after October 1, 2000. *Comment date:* Submit comments by December 4, 2000.

**ADDRESSES:** Send or deliver comments to Donald J. Winstead, Assistant Director for Compensation Administration, Workforce Compensation and Performance Service, Office of Personnel Management, Room 7H31, 1900 E Street NW., Washington, DC 20415–8200; FAX: (202) 606–4264; or email: COLA@opm.gov.

**FOR FURTHER INFORMATION CONTACT:** Donald L. Paquin, (202) 606–2838; FAX: (202) 606–4264; or email at COLA@opm.gov.

**SUPPLEMENTARY INFORMATION:** The Office of Personnel Management (OPM) is increasing the cost-of-living allowance (COLA) rates paid to certain Federal employees in Hawaii, Guam, Puerto Rico, and the U.S. Virgin Islands. The table below shows the new allowance rates and the places where they apply. The COLA rates in all other allowance areas remain the same.

| Allowance area | Old COLA rate[1] | New COLA rate[1] |
|---|---|---|
| Hawaii County | 15.00 | 16.50 |
| Kauai County | 22.50 | 23.25 |
| Maui County | 22.50 | 23.75 |
| Guam (Commissary/ Exchange) | 20.00 | 22.50 |
| Puerto Rico | 10.00 | 11.50 |
| U.S. Virgin Islands | 20.00 | 22.50 |

[1] In percent.

OPM is making these changes pursuant to section 9 and Exhibit C of the stipulation for settlement of *Caraballo et al.* v. *United States,* Civil No. 1997/27 (D.V.I.). The court approved the settlement on August 17, 2000. The settlement prescribes the new COLA rates and requires that they be made effective on the first day of the first applicable pay period beginning on or after October 1, 2000. OPM is using an interim rule to implement these increases so that agencies can apply the new rates in a timely fashion.

### Rulemaking waivers

Under 5 U.S.C. 553(b)(3)(B) and (d)(3), OPM finds that good cause exists to waive the publication of proposed rulemaking and the 30-day delay in the effective date of this regulation. Consistent with the terms of the court-approved settlement agreement, we believe it is in the public interest to implement the interim COLA rate increases immediately. In the future, as we have done in the past, we plan to announce COLA rate adjustments in a proposed rule for public notice and comment.

### Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will affect only Federal agencies and employees.

### Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

### List of Subjects in 5 CFR Part 591

Government employees, Travel and transporation expenses, Wages.

Office of Personnel Management.

**Janice R. Lachance,**

*Director.*

Accordingly, the Office of Personnel Management amends 5 CFR part 591 as follows:

## PART 591—ALLOWANCES AND DIFFERENTIALS

### Subpart B—Cost-of-living Allowance and Post Differential—Nonforeign Areas

1. The authority citation for subpart B of part 591 continues to read as follows:

**Authority:** 5 U.S.C. 5941; E.O. 10000, 3 CFR, 1943–1948 Comp., p. 792; and E.O. 12510, 3 CFR, 1985 Comp., p. 338.

2. Appendix A of subpart B is amended by revising the table to read as follows:

### Appendix A of Subpart B—Places and Rates at Which Allowances Shall Be Paid

* * * * *

| Geographic coverage/ allowance category | Authorized allowance rate (percent) |
|---|---|
| **State of Alaska** | |
| City of Anchorage and 80-kilometer (50-mile) radius by road: | |
| All employees | 25.00 |
| City of Fairbanks and 80-kilometer (50-mile) radius by road: | |
| All employees | 25.00 |
| City of Juneau and 80-kilometer (50-mile) radius by road: | |
| All employees | 25.00 |
| Rest of the state: | |
| All employees | 25.00 |
| **State of Hawaii** | |
| City and County of Honolulu: | |
| All employees | 25.00 |
| County of Hawaii: | |
| All employees | 16.50 |
| County of Kauai: | |

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| Geographic coverage/ allowance category | Authorized allowance rate (percent) |
|---|---|
| All employees | 23.25 |
| County of Maui and County of Kalawao: | |
| All employees | 23.75 |
| **Territory of Guam and Commonwealth of the Northern Mariana Islands** | |
| Local Retail | 25.00 |
| Commissary/Exchange | 22.50 |
| **Commonwealth of Puerto Rico** | |
| All Employees | 11.50 |
| **U.S. Virgin Islands** | |
| All Employees | 22.50 |

* * * * *

[FR Doc. 00–25288 Filed 10–2–00; 8:45 am]

BILLING CODE 6325–01–U

## MERIT SYSTEMS PROTECTION BOARD

### 5 CFR Part 1201

### Practices and Procedures

**AGENCY:** Merit Systems Protection Board.

**ACTION:** Final rule.

**SUMMARY:** The Merit Systems Protection Board (MSPB or the Board) is amending its rules of practice and procedure in this part to reflect the relocation of its Washington Regional Office. On September 11, 2000, the Board relocated its Washington Regional Office from 5203 Leesburg Pike, Falls Church, Virginia, to 1800 Diagonal Road, Alexandria, Virginia. Appendix II of this part is amended to show the new address. The facsimile number and the geographical areas served by the Washington Regional Office are unchanged.

**EFFECTIVE DATE:** October 3, 2000.

**FOR FURTHER INFORMATION CONTACT:** Robert E. Taylor, Clerk of the Board, (202) 653–7200.

The Board is publishing this rule as a final rule pursuant to 5 U.S.C. 1204(h).

**List of Subjects in 5 CFR Part 1201.**

Administrative practice and procedure, Civil rights, Government employees.

Accordingly, the Board amends 5 CFR part 1201 as follows:

## PART 1201—PRACTICES AND PROCEDURES

1. The authority citation for part 1201 continues to read as follows:

**Authority:** 5 U.S.C. 1204 and 7701, unless otherwise noted.

2. Amend Appendix II to 5 CFR part 1201 in item 4. by removing "5203 Leesburg Pike, Suite 1109, Falls Church, Virginia 22041–3473" and adding, in its place "1800 Diagonal Road, Alexandria, Virginia 22314".

Dated: September 27, 2000.

**Robert E. Taylor,**

*Clerk of the Board.*

[FR Doc. 00–25282 Filed 10–2–00; 8:45 am]

BILLING CODE 7400–01–P

## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

### 8 CFR Part 234

**[INS No. 2045–00]**

**RIN 1115–AF72**

### Landing Requirements for Passengers Arriving From Cuba

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Final rule.

**SUMMARY:** This rule amends the Immigration and Naturalization Service (Service) regulations by providing that aircraft and passengers arriving in the United States from Cuba must enter the United States at either the John F. Kennedy International Airport, Jamaica, New York, Los Angeles International Airport, Los Angeles, California or the Miami International Airport, Miami, Florida unless advance permission to land elsewhere has been obtained from the Office of Field Operations at Headquarters.

This rule is necessary to facilitate licensed travel to and from Cuba, including family reunification for Cuban resident aliens and United States citizens of Cuban heritage living in U.S. cities other than in South Florida.

**DATES:** This rule is effective October 3, 2000.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth A. Tisdale, Assistant Chief Inspector, Immigration and Naturalization Service, 425 I Street, NW., Room 4064, Washington, DC 20536, telephone number (202) 514–0912.

**SUPPLEMENTARY INFORMATION:**

### What Are the Present Requirements Regarding the Location and Inspection of Flights From Cuba?

Section 234.2(a) provides that:

- Aircraft carrying passengers or crew who are required to be inspected under section 235 of the Immigration and Nationality Act (Act) on flights originating in Cuba shall land only at Fort Lauderdale-Hollywood Airport, Fort Lauderdale, Florida, unless
- Advance permission to land elsewhere has been obtained from the District Director of the Immigration and Naturalization Service at Miami, Florida.

### Why Are Flights From Cuba Being Allowed To Land at Other Airports?

In a statement issued on January 5, 1999, the President announced a series of humanitarian measures designed to reach out to and ease the plight of the Cuban people and to help them prepare for a democratic future. As one of these measures, the President authorized the restoration of flights between Cuba and some cities in the United States in addition to South Florida. The purpose of this measure is to facilitate licensed travel to and from Cuba, including family reunification for Cuban resident aliens and U.S. citizens of Cuban heritage living in the United States cities other than in the Miami/Fort Lauderdale area.

### What Airports Are Being Designated Under This Rule?

Section 235.2(a) is being amended to allow direct flights from Cuba to land at:

- John F. Kennedy International Airport, Jamaica, New York,
- Los Angeles International Airport, Los Angeles California, or
- Miami International Airport, Miami, Florida.

### Will Flights From Cuba Be Allowed To Land at Any Other Airports in the United States, Particularly Fort Lauderdale?

No, direct flights will not be allowed to land at any other airport in the United States, including Fort Lauderdale, unless advance permission to land elsewhere has been obtained from the Office of Field Operations at Headquarters.

### Have Other Agencies Acted on the President's Announcement?

The Department of State and the National Security Council have specifically directed that direct charter passenger flights by persons who possess a valid Office of Foreign Assets Control Carrier Service Provider authorization may operate between Cuba and John F. Kennedy International Airport, Jamaica, New York, Los Angeles International Airport, Los Angeles, California, or Miami International Airport, Miami, Florida.



The United States Customs Service amended its regulations at 19 CFR 122.153 and 122.154 to permit travel to the same three designated airports in a final rule published in the **Federal Register** on October 4, 1999, at 64 FR 53627.

### Good Cause Exception

Pursuant to the provisions of 5 U.S.C. 553(a)(1), public notice and comment procedure is not applicable to this rule because this rule falls within the foreign affairs function of the United States. As previously noted, the rule implements a January 5, 1999, announcement by the President that direct passenger flights would be authorized to and from Cuba and other U.S. cities as part of a humanitarian effort designed to reach out and ease the plight of the Cuban people. Because this document is not subject to the requirements of 5 U.S.C. 553, delayed effective date requirements are not applicable.

### Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule affects individuals and families and is intended to facilitate licensed travel to and from Cuba.

### Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

### Executive Order 13132

This regulation will not have substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

### Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

### Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

### Executive Order 12988, Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

### List of Subjects in 8 CFR Part 234

Administrative practice and procedure, Aliens Passports and visas.

Accordingly, part 234 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

## PART 234—DESIGNATION OF PORTS OF ENTRY FOR ALIENS ARRIVING BY CIVIL AIRCRAFT

1. The authority citation for part 234 continues to read as follows;

**Authority:** 8 U.S.C. 1103, 1221, 1229; 8 CFR part 2.

2. In § 234.2, paragraph (a) is amended by revising the last sentence to read as follows:

### § 234.2 Landing requirements.

(a) * * * Notwithstanding the foregoing, aircraft carrying passengers and crew required to be inspected under the act on flights originating in Cuba shall land only at John F. Kennedy International Airport, Jamaica, New York; the Los Angeles International Airport, Los Angeles, California; or the Miami International Airport, Miami, Florida, unless advance permission to land elsewhere has been obtained from the Office of Field Operations at Headquarters.

* * * * *

Dated: March 28, 2000.

**Doris Meissner,**

*Commissioner, Immigration and Naturalization Service.*

[FR Doc. 00–25319 Filed 10–2–00; 8:45 am]

BILLING CODE 4410–10–M

## FEDERAL RESERVE SYSTEM

### 12 CFR Part 226

**[Regulation Z; Docket No. R–1070]**

### Truth in Lending

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Final rule.

**SUMMARY:** The Board is adopting a final rule amending Regulation Z, which implements the Truth in Lending Act, to revise the disclosure requirements for credit and charge card solicitations and applications. The act requires disclosure of the annual percentage rate (APR) and other cost information in direct mail and other applications and solicitations to open card accounts. The amendments to Regulation Z are intended to enhance consumers' ability to notice and understand this cost information that generally must be provided in the form of a table. Under the final rule, disclosures must be in a readily understandable form and readily noticeable to consumers. The APR disclosed for purchase transactions must be in 18-point type. Cash advance and balance transfer APRs must be included in the table and any balance transfer fee must be disclosed either in or outside of the table. Additional guidance is provided on the requirement that the card solicitation and application disclosures be prominently located, and on the level of detail about cost information required or permitted in the table.

**DATES:** The rule is effective September 27, 2000; compliance is mandatory as of October 1, 2001.

**FOR FURTHER INFORMATION CONTACT:** Deborah Stipick, Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667 or 452–2412; for users of Telecommunications Device for the Deaf (TDD) only, contact Janice Simms at (202) 872–4984.

**SUPPLEMENTARY INFORMATION:**

### I. Background

The purpose of the Truth in Lending Act (TILA), 15 U.S.C. 1601 *et seq.*, is to promote the informed use of consumer credit by requiring disclosures about its

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terms and cost. The Board's Regulation Z (12 CFR part 226) implements the act. The act requires creditors to disclose the cost of credit as a dollar amount (the finance charge) and as an annual percentage rate (the APR). Uniformity in creditors' disclosures is intended to assist consumers in comparison-shopping.

The Fair Credit and Charge Card Disclosure Act of 1988 (1988 Act) amended TILA generally to require that the APR and certain other terms (primarily applicable to purchase transactions) be disclosed in direct mail and certain other solicitations and applications to open credit and charge card accounts. The purpose of the 1988 Act was to ensure that consumers receive key cost information about credit and charge cards early enough to have the opportunity to comparison shop for such cards. The 1988 Act generally requires that card application and solicitation disclosures be provided in the form of a table (commonly referred to as the "Schumer box" after the law's chief sponsor) with headings for each item of information. The terms required to be in the table include: the name of the method used for calculating finance charges on an outstanding balance, any minimum finance charge per billing cycle, transaction fee, annual fee, grace period, and the APR for purchase transactions. The card issuer also must disclose any cash advance fee, late payment fee, or fee for exceeding a credit limit. These items may be either in the required table or clearly and conspicuously elsewhere. The applicable disclosures must also be provided for charge cards, which do not have a periodic rate that is used to compute a finance charge.

As with all TILA disclosures, the table is subject to the "clear and conspicuous" standard. Currently, the table meets the "clear and conspicuous" standard if the disclosures are in a "readily understandable form." There are no type-size requirements associated with this standard. The table is also required to be in a "prominent location" on or with the application or solicitation. Under the existing rules, this requirement is met if the table is "readily noticeable to the consumer" but the table need not be in any particular location to satisfy the requirement.

Over the years, the pricing of credit card programs has changed, and the cost disclosures accompanying card issuers' solicitations and applications have become more complex. Multiple APRs may apply to a single program. There may be a temporary introductory rate, a fixed or variable rate for all purchases after the introductory period expires, and one or more "penalty rates" that apply if, for example, the consumer makes late payments. There may also be separate rates that apply to cash advances and balance transfers.

As interest rates and other account features have become more complex, and disclosures longer, some card issuers have compensated by using reduced type sizes for the table instead of allocating additional space for the disclosures. In such cases, consumers may have difficulty in using the table to readily identify key costs and terms. In contrast, the promotional materials that accompany the credit card application or solicitation may highlight a low introductory APR in a large, easy to read type size; oftentimes without the expiration date in close proximity. The APR in effect after the introductory rate expires typically is disclosed much less prominently—in a smaller type size—and it may only appear in the disclosure table and not at all in the promotional materials. The table may be in a location that is less likely to capture the consumer's attention, for example, on the reverse side of an application or on the last page of a multi-page solicitation.

Even with the format requirements, the current regulatory framework allows substantial flexibility in how and where disclosures are presented. While some card issuers' disclosures are fairly straightforward, other card issuers have created disclosures that are difficult for consumers to use. Accordingly, changes to the current regulatory scheme appear necessary to ensure that consumers receive meaningful disclosures on a more consistent basis, for comparison-shopping.

## II. The Proposed Revisions

On May 24, 2000, the Board published proposed revisions to Regulation Z and the accompanying commentary to revise the disclosure requirements for credit and charge card solicitations and applications (65 FR 33499). The proposal was issued pursuant to the Board's authority under the 1988 Act to require disclosure of additional information or to modify disclosures required by the statute if the Board determines that such action is necessary to carry out the purposes of, or prevent evasions of the 1988 Act. See 15 U.S.C. 1637(c)(5). The proposed revisions were also issued under the Board's authority under section 105(a) of TILA to prescribe regulations to effectuate the purposes of TILA, to prevent circumvention or evasion, or to facilitate compliance. See 15 U.S.C. 1604(a).

Under the proposal, the APR applicable to purchase transactions would be subject to a type-size requirement, to highlight this information. It would be in 18-point type and would appear with any introductory rate under a separate heading from other APRs, such as the penalty rate. The proposal also more strictly construes the requirement that disclosures be clear and conspicuous by requiring that information in the table be "readily noticeable," in addition to being reasonably understandable. As to type size, disclosures in at least 12-point type were deemed readily noticeable.

The proposal gave additional guidance on satisfying the current requirements that disclosures be prominently located. Under the proposal, disclosures would be prominently located if, for example, they are on the same page as an application or solicitation reply form, or on a separate insert with a reference to the insert on the application or reply form.

To avoid clutter, guidance was proposed to reduce the level of detail required or permitted in the table, and to promote the use of more concise language. For example, card issuers must disclose the penalty rate APR and the conditions under which a rate may be imposed such as when payments are late. Under the proposal, only the rate could be included in the table; all explanatory information must be located elsewhere. The Board also solicited comment on whether additional rates and fees should be disclosed in the table.

The Board received more than 250 comment letters. More than half of the comment letters were from consumers that addressed issues outside of the scope of the proposal. More than 80 comment letters were received regarding the proposed revisions. Most of these comments were from financial institutions and their representatives; about one-fourth were from individual consumers.

In general, most commenters supported the Board's effort to improve disclosures for credit and charge card applications and solicitations. Most industry commenters, however, objected to specific aspects of the proposal or requested clarification of the rules. In particular, industry commenters objected to the use of type-size requirements and stated that the use of italics, bolding, or similar means of making disclosures clear and conspicuous is preferable. They raised concerns about the prominent location standard and requested more flexibility in locating the table within an application or solicitation. Most industry commenters were supportive of efforts to decrease clutter and use more concise language, and these commenters supported the removal of the penalty rate explanation from the table. They also opposed the inclusion of additional rates and fees in the table. A few industry commenters objected to the Board's proposal to remove the penalty rate explanation from the table and suggested that the disclosure might be overlooked if it were outside the table.

Consumers were generally supportive of the proposal including the stricter clear and conspicuous standard. Consumers that commented generally favored including in one location all rates and fees along with any explanation of how the rates and fees are charged. In particular, they favored including in the table the rate and fee for balance transfers and the cash advance APR.



## III. Summary of Final Rule

As discussed below, the Board is adopting the revisions substantially as proposed in order to effectuate the purposes of the 1988 Act and promote more effective disclosure of the costs and terms in credit and charge card applications and solicitations. Some revisions have been made for clarity or in response to commenters' requests for guidance.

Under the final rules, the APR for purchases must be in at least 18-point type and must appear under a separate heading from other APRs, such as the penalty rates. The disclosures must be "readily noticeable," as well as in a "reasonably understandable form." As to type size, disclosures in at least 12-point type would be deemed readily noticeable. Additional guidance is provided for electronic communications to clarify that card issuers comply with the rules if disclosures are provided in the required form even though the consumer may view the disclosures in a different form.

The final rule provides additional guidance on the current requirement that disclosures be prominently located but has been modified from the proposal to provide additional flexibility. Disclosures are sufficiently prominent, for example, if they are on the same page as an application or solicitation reply form. If located elsewhere, the disclosures still would be considered prominently located if the application or solicitation reply form contains a clear and conspicuous reference to the location of the disclosures.

As proposed, guidance is provided on the level of detail required or permitted in the table. Under existing rules, the table must include any increased penalty APR that will apply upon the occurrence of one or more specific events, such as a late payment or an extension of credit exceeding the credit limit. Card issuers must also provide a description of the specific events that can trigger an increase. To simplify the table, the existing commentary is revised so that only the penalty rates can appear inside the table; the explanatory information must appear outside the table.

Currently the regulation only requires disclosure of the APR for purchase transactions in the table. The final rule also requires disclosure of the APRs for cash advances and balance transfers in the table and the disclosure of balance transfer fees either in or outside the table, as is currently the case for cash advance, late payment, and over-the-limit fees.

Generally, updates to the Board's staff commentary are effective within 30 days of publication. Consistent with the requirements of section 105(d) of TILA, however, the Board typically provides an implementation period of six months or longer. During that period, compliance with the published update is optional so that creditors may adjust documents to accommodate TILA's disclosure requirements. Accordingly, compliance with the revised credit card provisions is mandatory as of October 1, 2001.

## IV. Section-by-Section Analysis of the Final Rule

### Subpart B—Open-End Credit

### Section 226.5—General Disclosure Requirements

*5(a) Form of Disclosures*

Section 226.5(a)(1) states the general rule that TILA disclosures for open-end credit plans must be made clearly and conspicuously. Existing comment 5(a)(1)–1 interprets this standard to require disclosures to be in a "reasonably understandable form." Under the final rule, as proposed, this standard is more strictly construed for purposes of the disclosures required under § 226.5a for credit and charge card applications and solicitations. Accordingly, comment 5(a)(1)–1 is revised to reflect this fact, by including a cross-reference to the special rules for § 226.5a disclosures. See comments 5a(a)(2)–1 and –2.

Section 226.5(a)(2) n.9 provides that the APRs under § 226.5a need not be more conspicuous than other disclosures. Footnote 9 is revised by adding a cross-reference to reflect the special type-size rule under § 226.5a for purchases APRs. Comment 5(a)(2)–1 is also revised to make a technical correction.

### Section 226.5a—Credit and Charge Card Applications and Solicitations

*5a(a) General Rules*

*5a(a)(2) Form of Disclosures*

Disclosures that are required by § 226.5a must be clear and conspicuous and prominently located on or with an application or solicitation or other applicable document. Certain of these disclosures also are required to be in a table format. As proposed, comment 5a(a)(2)–1 is added to establish a stricter standard for satisfying the "clear and conspicuous" standard with respect to credit or charge card application or solicitation disclosures. Comment 5a(a)(2)–2 provides additional interpretative guidance on the requirement that certain disclosures be prominently located. Because the interpretations differ somewhat from those currently provided, they are intended to apply prospectively.

Currently, disclosures meet the "clear and conspicuous" requirement if they are reasonably understandable. To ensure that consumers receive meaningful disclosures on a consistent basis, comment 5a(a)(2)–1 provides that disclosures are clear and conspicuous if they are both reasonably understandable and readily noticeable.

Industry commenters that opposed the revision cited a variety of reasons including the belief that a court might apply the stricter construction of the clear and conspicuous standard under § 226.5a to other sections of Regulation Z. Consumers and their representatives generally favored the stricter construction and thought the revisions would assist consumers in comparison-shopping for credit and charge cards by making disclosures more noticeable.

Many commenters representing financial institutions expressed a belief that the stricter construction of the "clear and conspicuous" standard is unnecessary and the same result could be achieved through more rigorous enforcement of the existing standard. These commenters generally objected to the proposal's use of particular type-size examples. Under the final rule, comment 5a(a)(2)–1 provides, as proposed, that as to type size, disclosures are deemed to be readily noticeable if they are in at least 12-point type. A number of commenters stated that using the example of 12-point type to satisfy the standard would have the effect of establishing a minimum type-size requirement. Accordingly, some commenters suggested that the final rule

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use 10-point type as the example of a conspicuous type size, or that the final rule includes additional language clarifying that some disclosures smaller than 12-point may also satisfy the rule. To address commenters concerns, the comment states that disclosures printed in less than 12-point type do not automatically violate the standard. Disclosures in less than 8-point type, however, would likely be too small to satisfy the standard.

Some commenters requested further guidance on whether the new "clear and conspicuous standard" would apply only to information required to be disclosed in a tabular format, or to all disclosures required under § 226.5a. In response to the comment received, comment 226.5a(a)(2)–1 provides that the stricter clear and conspicuous standard applies to all § 226.5a disclosures.

Comment 5a(a)(2)–2 addresses the requirement that certain disclosures be prominently located. Currently, the standard does not require disclosures to be located in any particular location. For example, card issuers may locate disclosures that are required to be in a tabular format on the reverse side of an application or on the last page of a multi-page solicitation. Consumers may see the promotional materials and fill out the application without being aware that there is additional cost information elsewhere following the application.

Under the proposal, the table would have been deemed to be prominently located, for example, if it appeared on the same page as the application or solicitation reply form, or on a separate insert with a reference to the insert on the application or reply form. Many commenters, including both consumers and some financial institution representatives suggested that card issuers might favor the use of inserts instead of locating the table on the application or reply form. These commenters were concerned that inserts might be overlooked by consumers and they urged that the Board grant flexibility to card issuers that cannot fit their disclosures on the same page as the application. Commenters also requested additional guidance. For example, some suggested that disclosures on the reverse side of a one-page application might be considered to be on the same page as the application. (They would not; each side would be considered a separate page.)

In response to commenters' concerns, comment 5(a)(2)–2 provides additional flexibility. Disclosures that do not appear on the same page as the application or solicitation reply form will also be considered prominently located if a clear and conspicuous reference to the location of the disclosures is on the application or solicitation reply form indicating that they contain additional information about rates, fees, and other costs, as applicable.

The revised comment clarifies that the tabular disclosures required under § 226.5a(b) must all appear on the same page. Disclosures required under § 226.5a(b)(8)–(11) that appear outside the table must start on the same page as the table but may continue on subsequent pages.

*Electronic Disclosures*—In September 1999, the Board published a proposal that would amend Regulation Z to authorize creditors to use electronic communication to deliver required disclosures. 64 FR 49722 (September 14, 1999). On June 30, 2000, the Electronic Signatures in Global and National Commerce Act was signed into law, which authorizes the use of electronic records to provide written disclosures to consumers. Pub. L. 106–229, 114 Stat. 464. That law is effective October 1, 2000.

The Board's proposal specifically requested comment on any guidance that may be needed when credit and charge card applications and solicitations are provided by electronic communication. The majority of commenters requested that the Board provide guidance in the final rule on the use of electronic disclosures for credit and charge card applications and solicitations. Some commenters requested clarification that electronically transmitting or posting the APR disclosures in the required type size is sufficient in light of the consumer's ability to alter the appearance of information received electronically. In response to commenters' concerns, comment 5a(a)(2)–1 indicates that if disclosures required by § 226.5a(b) are provided by electronic communication, they are judged for purposes of the clear and conspicuous standard based on the form in which they are provided even though they may be viewed by consumers in a different format.

Commenters also requested guidance on complying with the requirement that certain disclosures be "prominently located" when electronic media are used. This guidance has been provided in comment 5a(a)(2)–2. Electronic disclosures are deemed to be prominently located if they are posted on a web site and the application or solicitation reply form is linked to the disclosures in a manner that prevents the consumer from by-passing the disclosures before submitting the application or reply form, or they are located on the same page as an application or solicitation reply form that contains a clear and conspicuous reference to the location of the disclosures and indicates that they contain rate, fee, and other cost information as applicable.

*5a(b) Required Disclosures*

*Disclosure of Additional Rates and Fees*—The table required under § 226.5a provides consumers with key cost information, grouped together in one place to facilitate consumers' use of the information for comparison-shopping. These disclosures are not intended to be as detailed as disclosures provided to consumers at account opening. At the time the 1988 Act was adopted, the primary focus was on cost disclosures for purchase transactions. Thus, under the current rules the APR and transaction fees for purchases must be disclosed in the table, but not the APR for cash advances.

Because the services and features offered with credit and charge cards have evolved in recent years, the disclosures required by the 1988 Act do not capture costs that are commonly assessed on such cards, such as the APR assessed on a balance transfer (which the card issuer may characterize as a cash advance). Accordingly, the Board solicited comment on whether consumers would be aided in comparison-shopping by having additional rates and fees disclosed in the table. In particular, commenters were asked to address whether the APR and transaction fee for balance transfers and the APR for cash advances should be included in the table.

Many of the consumers and consumer advocates supported the inclusion of additional rate and fee information. These commenters generally favored including the APR and transaction fee for balance transfers and the APR for cash advances. They noted that these card features are common and that disclosure of these terms aids consumers in more effective comparison-shopping. Industry commenters generally opposed the inclusion of new fees and rates. They believe that the application and solicitation disclosures are more likely to be effective if they are simpler. They are also concerned that adding new disclosures based on card issuer's current program features is likely to lead to further expansion of the disclosures in response to new trends in future industry card programs.

On balance, the Board believes that consumers seeking to comparison-shop would benefit from having the APR and transaction fee for balance transfers and the APR for cash advances provided in a consistent and uniform manner along with other key cost information. Balance transfer features have become common and cash advance features are an integral part of many card programs. Frequently, these features are prominently listed by card issuers in their promotional materials, sometimes as part of an introductory offer that expires after several months. Consumers' ability to understand the offered terms is likely to be enhanced by more uniform disclosure of these terms, particularly as consumers become familiar with the new format. Accordingly, § 226.5a(b)(1) has been revised to include the APR for cash advances and balance transfers in the tabular disclosures. Under the final rule, § 226.5a(b)(11) has also been added to provide that a balance transfer fee must also be disclosed, either in the table, or clearly or conspicuously elsewhere.

*APR for Purchase Transactions*—Section 226.5a(b)(1) requires card issuers to disclose in the table each periodic rate that may be used to compute the finance charge on an outstanding balance for purchases, expressed as an APR. The final rule is being adopted, as proposed, to require the APR for purchases to be disclosed in the table in at least 18-point type. This type-size requirement does not apply to temporary initial rates, that are lower than the APR that will apply after the temporary rate expires (to the extent such programs exist), or to penalty rates that result upon the occurrence of one or more specific events (such as a late payment or an extension of credit that exceeds the credit limit). See comment 5a(b)(1)–6. The APR for purchases must also appear with any introductory rate under a separate heading from other APRs, such as penalty rates, or rates for cash advances.

The Board proposed the use of this larger type size to highlight the significance of this information, particularly in light of the larger type sizes typically used by card issuers to promote introductory rates. Under existing rules, the APR information is often obscured due to the amount of other information provided in the table and the small type size used by some card issuers.

Consumers and consumer advocates generally believed that the type-size requirement is appropriate to ensure that the APR for purchases is clear and conspicuous. Industry commenters generally opposed the type-size requirement. Many of these commenters stated that the larger type size would place too much emphasis on the APR for purchases even though consumers may have differing opinions regarding which disclosures are most important. Many industry commenters suggested that highlighting the APR for purchases in this manner would diminish the effectiveness of other disclosures in the table.

Some financial institutions contend that an increase in type size will increase paper and production costs, although few institutions attempted to quantify the cost. One financial institution estimated that under the new rule its paper costs would increase 7% annually. Some credit unions expressed concern regarding increased costs; however, many indicated that the increased costs could be avoided if the final rule does not become effective for at least six months thereby, permitting them to use their existing stock of disclosures.

Overall, the benefits of requiring 18-point type in disclosing the APR for purchases seem to outweigh any potential adverse effects. Even though some consumers comparison-shop for credit and charge cards based on a variety of features, the APR for purchases remains one of the key features that consumers consider. Moreover, many card issuers use larger than 18-point type to promote introductory APRs and other features in their credit and charge card promotional materials. Also, to aid consumers in better understanding the rates being imposed on a card account, card issuers are encouraged to disclose, in close proximity with any introductory rate being promoted, the period of time that the rate is in effect, and the post-introductory APR for purchases.

*Rules to Simplify the Table*—Card issuers are required to disclose "penalty rates" in the table, along with a description of the specific events that can trigger a rate increase and any index or margin used to determine the penalty rate. Under existing comment 5a(b)(1)–7, card issuers have the option of including this information inside the table or elsewhere. To simplify the table, the comment has been revised to provide that only the penalty rate should appear inside the table; the explanatory information must appear outside the table. Card issuers must use an asterisk or other means to direct the consumer to the additional information.

Most commenters believed that removing the explanatory information from the table would decrease clutter and promote the use of concise language in the table. A few consumers, however, stated that the significant impact of penalty rates justifies leaving the explanation in the table to prevent it from being overlooked. The Board has determined that consumers are more likely to notice the penalty APRs if the table is uncluttered by removing the explanatory information. Moreover, the stricter interpretation of the "clear and conspicuous" standard should ensure that the explanatory information appears outside in a readily noticeable form.

**Appendices G and H to Part 226—Open-end and Closed-End Model Forms and Clauses**

Revisions to comment App. G and H–1 are adopted, as proposed, to clarify that there are special rules for disclosures required under § 226.5a for applications and solicitations for credit and charge cards.

*Appendix G to Part 226—Open-end Model Forms and Clauses*

The Board provides model forms to aid compliance with the disclosure requirements of § 226.5a(b). See Appendix G–10(A)–(C). Model form G–10(A) is revised and model form G–10(B) has been removed as unnecessary. A new sample form G–10(B) is added to illustrate an account with an introductory rate and a penalty rate. The forms also reflect the inclusion of the cash advance APR, balance transfer APR, and the balance transfer fee. Also comment G–5 is revised to clarify that there are format and sequence requirements for certain § 226.5a disclosures.

**V. Regulatory Flexibility Analysis**

In accordance with section 3(a) of the Regulatory Flexibility Act, the Board has reviewed the amendments to Regulation Z. The amendments require creditors to use a specific type size for the APR for purchases, to add the APR and fee for balance transfers and the APR for cash advances; to provide supplemental information about penalty rates outside the table; and to locate the table on the same page as the application or solicitation reply form, or elsewhere with a reference in the application or reply form to the location and content of the disclosures.

Some smaller financial institutions, particularly credit unions, expressed concerns that the need to revise disclosures to comply would increase costs; however, costs could be minimized by delaying the mandatory compliance date for at least six months thereby permitting them to utilize existing stocks of disclosures. Since the mandatory compliance date is October 1, 2001, the amendments do not have any significant impact on small entities beyond these initial revisions.

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**VI. Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the rule under the authority delegated to the Board by the Office of Management and Budget. The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB control number. The OMB control number is 7100–0199.

The collection of information that is revised by this rulemaking is found in 12 CFR part 226 and in Appendices F, G, H, J, K, and L. This information is mandatory (15 U.S.C. 1601 *et seq.*) to evidence compliance with the requirements of Regulation Z and the Truth in Lending Act (TILA). The respondents/recordkeepers are for-profit financial institutions, including small businesses. Institutions are required to retain records for twenty-four months. This regulation applies to all types of creditors, not just state member banks; however, under Paperwork Reduction Act regulations, the Federal Reserve accounts for the burden of the paperwork associated with the regulation only for state member banks. Other agencies account for the paperwork burden on their respective constituencies under this regulation.

The revisions require creditors to revise disclosures for credit card solicitations and applications by: (1) Requiring an 18-point type-size for the APR for purchase transactions, (2) requiring creditors to provide supplemental information about penalty rates outside the table, (3) requiring disclosure of the APR and fee for balance transfers and cash advance APR, and (4) requiring that such table be located on the same page as the application or solicitation reply form or elsewhere with a reference to the location on the application or reply form. Although the final rule adds these requirements, it is expected that these revisions would not significantly increase the paperwork burden of creditors. With respect to state member banks, it is estimated that there are 988 respondent/recordkeepers and an average frequency of 136,294 responses per respondent each year. Therefore, the current amount of annual burden is estimated to be 1,863,754 hours. Because these revisions modify preexisting tables, there is estimated to be no additional annual cost burden and no capital or start-up cost.

Because the records would be maintained at state member banks and the notices are not provided to the Federal Reserve, no issue of confidentiality under the Freedom of Information Act arises; however, any information obtained by the Federal Reserve may be protected from disclosure under exemptions (b)(4), (6), and (8) of the Freedom of Information Act (5 U.S.C. 522 (b)(4), (6) and (8)). The disclosures and information about error allegations are confidential between creditors and the customer.

The Federal Reserve has a continuing interest in the public's opinion of our collections of information. At any time, comments regarding the burden estimates, or any other aspect of this collection of information, including suggestions for reducing the burden estimate, may be sent to: Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, DC 20551; and to the Office of Management and Budget, Paperwork Reduction Project (7100–0199), Washington, DC 20503.

**List of Subjects in 12 CFR Part 226**

Advertising, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Truth in lending.

For the reasons set forth in the preamble, the Board amends Regulation Z, 12 CFR part 226, as set forth below:

## PART 226—TRUTH IN LENDING (REGULATION Z)

1. The authority citation for part 226 continues to read as follows:

**Authority:** 12 U.S.C. 3806; 15 U.S.C. 1604 and 1637(c)(5).

### Subpart B—Open-End Credit

2. Section 226.5 is amended by revising footnote 9 to read as follows:

**Section 226.5 General disclosure requirements.**

* * * * *

[9]The terms need not be more conspicuous when used under § 226.5a generally for credit and charge card applications and solicitations under § 226.7(d) on periodic statements, under § 226.9(e) in credit and charge card renewal disclosures, and under § 226.16 in advertisements. (But see special rule for annual percentage rate for purchases, § 226.5a(b)(1).)

3. Section 226.5a is amended by:

a. Revising paragraphs (a)(2)(ii), (a)(5), (b) introductory text and (b)(1) introductory text; and

b. Adding a new paragraph (b)(11).

**§ 226.5a Credit and charge card applications and solicitations.**

* * * * *

(a) * * *

(a)(2) *Form of disclosures.* * * *

(ii) The disclosures in paragraphs (b)(8) through (11) of this section shall be provided either in the table containing the disclosures in paragraphs (b)(1) through (7), or clearly and conspicuously elsewhere on or with the application or solicitation.

* * * * *

(a)(5) *Certain fees that vary by state.* If the amount of any fee referred to in paragraphs (b)(8) through (11) of this section varies from state to state, the card issuer may disclose the range of the fees instead of the amount for each state, if the disclosure includes a statement that the amount of the fee varies from state to state.

(b) *Required disclosures.* The card issuer shall disclose the items in this paragraph on or with an application or a solicitation in accordance with the requirements of paragraphs (c), (d), or (e) of this section. A credit card issuer shall disclose all applicable items in this paragraph except for paragraph (b)(7) of this section. A charge card issuer shall disclose the applicable items in paragraphs (b)(2), (4), and (7) through (11) of this section.

(1) *Annual percentage rate.* Each periodic rate that may be used to compute the finance charge on an outstanding balance for purchases, a cash advance, or a balance transfer, expressed as an annual percentage rate (as determined by § 226.14(b)). When more than one rate applies for a category of transactions, the range of balances to which each rate is applicable shall also be disclosed. The annual percentage rate for purchases disclosed pursuant to this paragraph shall be in at least 18-point type, except for the following: a temporary initial rate that is lower than the rate that will apply after the temporary rate expires, and a penalty rate that will apply upon the occurrence of one or more specific events.

* * * * *

(11) *Balance transfer fee.* Any fee imposed to transfer an outstanding balance.

* * * * *

4. Appendix G to Part 226 is amended by:

a. Revising the table of contents at the beginning of the appendix;

b. Revising Model G–10(A); and

c. Removing Model G–10(B) and adding a new Sample G–10(B) in its place.

**Appendix G To Part 226—Open-End Model Forms and Clauses**

G–1 Balance-Computation Methods Model Clauses (§§ 226.6 and 226.7)
G–2 Liability for Unauthorized Use Model Clause (§ 226.12)
G–3 Long-Form Billing-Error Rights Model Form (§§ 226.6 and 226.9)
G–4 Alternative Billing-Error Rights Model Form (§ 226.9)
G–5 Rescission Model Form (When Opening an Account) (§ 226.15)
G–6 Rescission Model Form (For Each Transaction) (§ 226.15)
G–7 Rescission Model Form (When Increasing the Credit Limit) (§ 226.15)
G–8 Rescission Model Form (When Adding a Security Interest) (§ 226.15)
G–9 Rescission Model Form (When Increasing the Security) (§ 226.15)
G–10(A) Applications and Solicitations Model Forms (Credit Cards) (§ 226.5a(b))
G–10(B) Applications and Solicitations Sample (Credit Card) (§ 226.5a(b))
G–10(C) Applications and Solicitations Model Form (Charge Cards) (§ 226.5a(b))
G–11 Applications and Solicitations Made Available to General Public Model Clauses (§ 226.5a(e))
G–12 Charge Card Model Clause (When Access to Plan Offered by Another) (§ 226.5a(f))
G–13(A) Change in Insurance Provider Model Form (Combined Notice) (§ 226.9(f))
G–13(B) Change in Insurance Provider Model Form (§ 226.9(f)(2))
G–14A Home Equity Sample
G–14B Home Equity Sample
G–15 Home Equity Model Clauses

* * * * *

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G–10(A)—Applications and Solicitations Model Form (Credit Cards)

| | |
|---|---|
| **Annual percentage rate (APR) for purchases** | _____% until (expiration date), after that, _____% |
| **Other APRs** | Balance transfer APR: _____%<br>Cash advance APR: _____%<br>Penalty APR: _____% See explanation below* |
| **Variable-rate information** | Your APR may vary.<br>The rate for [purchases] [cash advances][balance transfers] is determined by (explanation). See explanation below** |
| **Grace period for repayment of balances for purchases** | [ __ days] [until ____ ] [not less than __ days] [between __ and __days] [ __ days on average]<br><br>[You have no grace period in which to repay your balance for purchases before a finance charge will be imposed.] |
| **Method of computing the balance for purchases** | |
| **Annual fees** | [Annual] [Membership] fee: $ _____ per year]<br><br>[(type of fee): $ _____ per year]<br>[(type of fee): $ _____ ] |
| **Minimum finance charge** | $ _____ |
| **Transaction fee for purchases** | [$ _____ ] [ _____ % of _____ ] |
| **Transaction fee for cash advances**: [$ ____ ] [ __ % of ____ ]<br>**Balance transfer fee:** [ $____ ] [ ___% of ____ ]<br>**Late-payment fee**: [$ ____ ] [ ___ % of ____ ]<br>**Over-the-credit-limit fee**: $ ___ | |

* Explanation of penalty.

**Explanation of variable rate.

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G–10(B)—Applications and Solicitations Sample (Credit Cards)

| | |
|---|---|
| **Annual percentage rate (APR) for purchases** | 2.9% until 11/1/00,<br>after that, 14.9% |
| **Other APRs** | Cash advance APR: 15.9%<br>Balance transfer APR: 15.9%<br>Penalty rate: 23.9%. See explanation below.* |
| **Variable-rate information** | Your APR for purchase transactions may vary. The rate is determined monthly by adding 5.9% to the Prime Rate** |
| **Grace period for repayment of balances for purchases** | 25 days on average |
| **Method of computing the balance for purchases** | Average daily balance (excluding new purchases) |
| **Annual fees** | None |
| **Minimum finance charge** | $ .50 |
| **Transaction fee for cash advances**: 3% of the amount advanced<br>**Balance transfer fee:** 3% of the amount transferred<br>**Late-payment fee**: $ 25<br>**Over-the-credit-limit fee**: $ 25 | |

* Explanation of penalty.

** The Prime Rate used to determine your APR is the rate published in _____ on the ___ day of the prior month.

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* * * * *

5. In Supplement I to Part 226, MAKE the following amendments:

a. Under *Section 226.5—General Disclosure Requirements*, under *Paragraph 5(a)(1)*, paragraph 1. introductory text is revised;

b. Under *Section 226.5—General Disclosure Requirements*, under *Paragraph 5(a)(2)*, the first sentence in paragraph 1 is revised;

c. Under *Section 226.5a—Credit and Charge Card Applications and Solicitations*, under *5a(a)(2) Form of Disclosures*, paragraph 1 through paragraph 6 are redesignated as paragraph 2 through paragraph 7 respectively, a new paragraph 1 is added, and newly designated paragraph 2 is revised.

d. Under *Section 226.5a—Credit and Charge Card Applications and Solicitations*, under *5a(b)(1) Annual Percentage Rate*, paragraphs 6 and 7 are revised.

e. Under *Appendices G and H—Open-End and Closed-End Model Forms and Clauses*, a new sentence is added after the second sentence in paragraph 1.

f. Under *Appendix G—Open-end Model Forms and Clauses*, paragraph 5 is revised.

**SUPPLEMENT I TO PART 226—OFFICIAL STAFF INTERPRETATIONS**

* * * * *

**Subpart B—End Credit**

*§ 226.5—General Disclosure Requirements*

*5(a) Form of disclosures.*

*Paragraph 5(a)(1).*

1. *Clear and conspicuous.* The *clear and conspicuous* standard requires that disclosures be in a reasonably understandable form. Except where otherwise provided, the standard does not require that disclosures be segregated from other material or located in any particular place on the disclosure statement, or that numerical amounts or percentages be in any particular type size. (But see comments 5a(a)(2)–1 and –2 for special rules concerning § 226.5a disclosures for credit card applications and solicitations.) The standard does not prohibit:

* * * * *

*Paragraph 5(a)(2).*

1. *When disclosures must be more conspicuous.* The term *finance charge* and *annual percentage rate*, when required to be used with a number, must be disclosed more conspicuously than other required disclosures, except in the cases provided in footnote 9. * * *

* * * * *

*Section 226.5a—Credit and Charge Card Applications and Solicitations*

* * * * *

*5a(a) General Rules*

*5a(a)(2) Form of Disclosures*

1. *Clear and conspicuous standard.* For purposes of § 226.5a disclosures, *clear and conspicuous* means in a reasonably understandable form and readily noticeable to the consumer. As to type size, disclosures in 12-point type are deemed to be readily noticeable for purposes of § 226.5a. Disclosures printed in less than 12-point type do not automatically violate the standard; however, disclosures in less than 8-point type would likely be too small to satisfy the standard. Disclosures that are transmitted by electronic communication are judged for purposes of the clear and conspicuous standard based on the form in which they are provided even though they may be viewed by the consumer in a different form.

2. *Prominent location.* i. *Generally.* Certain of the required disclosures provided on or with an application or solicitation must be prominently located. Disclosures are deemed to be prominently located, for example, if the disclosures are on the same page as an application or solicitation reply form. If the disclosures appear elsewhere, they are deemed to be prominently located if the application or solicitation reply form contains a clear and conspicuous reference to the location of the disclosures and indicates that they contain rate, fee, and other cost information, as applicable. Disclosures required by § 226.5a(b) that are placed outside the table must begin on the same page as the table but need not end on the same page.

ii. *Electronic disclosures.* Electronic disclosures are deemed to be prominently located if:

A. They are posted on a web site and the application or solicitation reply form is linked to the disclosures in a manner that prevents the consumer from by-passing the disclosures before submitting the application or reply form; or

B. They are located on the same page as an application or solicitation reply form, that contains a clear and conspicuous reference to the location of the disclosures and indicates that they contain rate, fee, and other cost information, as applicable.

* * * * *

*5a(b) Required Disclosures*

*5a(b)(1) Annual Percentage Rate*

* * * * *

6. *Introductory rates—premium rates.* If the initial rate is temporary and is higher than the permanently applicable rate, the card issuer must disclose the initial rate in the table. The initial rate must be in at least 18-point type unless the issuer also discloses in the table the permanently applicable rate. The issuer may disclose in the table the permanently applicable rate that would otherwise apply if the issuer also discloses the time period during which the initial rate will remain in effect. In that case, the permanently applicable rate must be in at least 18-point type.

7. *Increased penalty rates.* If the initial rate may increase upon the occurrence of one or more specific events, such as a late payment or an extension of credit that exceeds the credit limit, the card issuer must disclose in the table the initial rate and the increased penalty rate that may apply. If the penalty rate is based on an index and an increased margin, the issuer must also disclose in the table the index and the margin as well as the specific event or events that may result in the increased rate, such as "applies to accounts 60 days late." If the penalty rate cannot be determined at the time disclosures are given, the issuer must provide an explanation of the specific event or events that may result in imposing an increased rate. In describing the specific event or events that may result in an increased rate, issuers need not be as detailed as for the disclosures required under § 226.6(a)(2). For issuers using a tabular format, the specific event or events must be placed outside the table and an asterisk or other means shall be used to direct the consumer to the additional information. At its option, the issuer may include in the explanation of the penalty rate the period for which the increased rate will remain in effect, such as "until you make three timely payments." The issuer need not disclose an increased rate that is imposed when credit privileges are permanently terminated.

* * * * *

**Appendices G and H—Open-End and Closed-End Model Forms and Clauses**

1. *Permissible changes.* * * * (But see Appendix G comment 5 for special rules concerning certain disclosures required under § 226.5a for credit and charge card applications and solicitations). * * *

* * * * *

**APPENDIX G—OPEN-END MODEL FORMS AND CLAUSES**

* * * * *

5. Model G–10(A), Sample G–10(B) and Model G–10(C). i. Model G–10(A) and Sample G–10(B) illustrate, in the tabular format, all of the disclosures required under § 226.5a for applications and solicitations for credit cards other than charge cards. Model G–10(B) is a sample disclosure illustrating an account with a lower introductory rate and penalty rate. Model G–10(C) illustrates the tabular format disclosure for charge card applications and solicitations and reflects all of the disclosures in the table.

ii. Except as otherwise permitted, disclosures must be substantially similar in sequence and format to model forms G–10(A) and (C). The disclosures may, however, be arranged vertically or horizontally and need not be highlighted aside from being included in the table. While proper use of the model forms will be deemed in compliance with the regulation, card issuers are permitted to use headings and disclosures other than those in the forms (with an exception relating to the use of "grace period") if they are clear and concise and are substantially similar to the headings and disclosures contained in model forms. For further discussion of requirements relating to form, see the commentary to § 226.5a(a)(2).

* * * * *

By order of the Board of Governors of the Federal Reserve System, September 27, 2000.

**Jennifer J. Johnson,**

*Secretary of the Boord.*

[FR Doc. 00–25316 Filed 10–2–00; 8:45 am]

BILLING CODE 6210–01–P.



**DEPARTMENT OF COMMERCE**

**Bureau of Export Administration**

**15 CFR Parts 742 and 774**

**[Docket No. 000920265–0265–01]**

**RIN 0694–AC13**

## Revisions and Clarifications to the Commerce Control List; Chemical and Biological Weapons Controls; Australia Group

**AGENCY:** Bureau of Export Administration, Commerce.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the Commerce Control List (CCL) of the Export Administration Regulations to implement an October 1999 Australia Group agreement to clarify the scope of controls on saxitoxin, toxic gas monitoring systems, and cross-flow filtration equipment, as well as clarifying the application of the rule for mixtures containing Australia Group (AG) chemicals that are also identified as Schedule 1 chemicals under the Chemical Weapons Convention. The final rule also amends the CCL to authorize, without a license, exports of certain medical products containing botulinum toxin, and certain diagnostic and food testing kits that contain AG-controlled toxins. Finally, this final rule amends the CCL to add titanium carbide and silicon carbide to the list of construction materials for heat exchangers. Restrictions on chemicals and toxins that are also controlled for CW (Chemical Weapons Convention) purposes continue to apply. This rule will result in an overall decreased licensing burden on U.S. industry.

**EFFECTIVE DATE:** This rule is effective: October 3, 2000.

**FOR FURTHER INFORMATION CONTACT:** James Seevaratnam, Director, Chemical and Biological Controls Division, Bureau of Export Administration, (202) 501–7900.

**SUPPLEMENTARY INFORMATION:**

### Background

On October 7, 1999, the Bureau of Export Administration (BXA) published a final rule amending the Export Administration Regulations (EAR) to implement the October 1998 Australia Group agreement to amend controls on toxic gas monitoring systems and to amend the CCL to authorize, without a license, exports of medical products containing controlled biological toxins that are developed, packaged and sold for medical treatment.

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The Australia Group (AG), a multilateral forum that coordinates export controls to curtail the proliferation of chemical and biological weapons, held its annual consultations in Paris, October 4–8, 1999. The 30 AG participating countries agreed to maintain export controls on a list of chemicals, biological agents, relevant equipment and technology that could be used in the production of chemical or biological weapons. The AG reviews items on its control list periodically to enhance the effectiveness and achieve greater harmonization of participating governments' national controls.

At the October 1999 Australia Group consultations, participants agreed to further revise the control list entry for toxic gas monitoring systems to clarify the scope of controls. To implement this agreement, this final rule amends the Commerce Control List (CCL) of the Export Administration Regulations (EAR) by revising Export Control Classification Number (ECCN) 2B351. Specifically, this rule clarifies that the control of toxic gas monitoring systems under ECCN 2B351 applies only to such systems that operate on line without any requirement for human intervention. The AG agreed that the intent of this control is to control systems capable of detecting toxic gases in environments such as a chemical plant rather than batch-mode operation equipment that is normally used in a laboratory. While not changing the scope of the control in any way, this rule also clarifies the description of cross-flow filtration equipment in ECCN 2B352 by describing it as cross (tangential) flow filtration equipment. In an expansion of controls, the Australia Group agreed to add titanium carbide and silicon carbide to the list of materials describing heat exchangers subject to control in ECCN 2B350.

The Department of Commerce also maintains controls on exports of biological agents that could be used in the production of biological weapons. These materials require a license under ECCN 1C351 for export and reexport for CB (chemical and biological weapons) reasons to all destinations, except Canada. These controls are implemented in accordance with the export control provisions of the Australia Group. Note that two biological agents, ricin and saxitoxin, classified as ECCN 1C351.d.5 and .d.6, respectively, are Schedule 1 chemicals under the Chemical Weapons Convention and are also controlled for CW reasons to all destinations, including Canada.

As agreed by the AG, medical products that contain the AG-controlled botulinum toxin that are pharmaceutical formulations designed for human administration in the treatment of medical conditions have broad medical applications while posing no significant proliferation concerns. Such products are controlled under ECCN 1C991 and may be exported and reexported without a license to all destinations and entities, except terrorist supporting countries (Cuba, Iran, Iraq, Libya, North Korea, Sudan, Syria) and Serbia, and except as provided in Parts 736 and 744 of the EAR. This further liberalization of licensing requirements for the botulinum toxin does not apply if the botulinum toxin is to be exported in any other configuration, including bulk shipments, or for any other end-uses, in which case it is still controlled under ECCN 1C351.

In addition, this final rule further amends ECCN 1C991 to clarify the criteria for defining an item containing botulinum toxin as a medical product when approved by the Food and Drug Administration (FDA) for distribution in interstate commerce as a medical product. Specifically, the medical product must be: (1) Pharmaceutical formulations designed for human administration in the treatment of medical conditions; (2) prepackaged for distribution as medical products; and, (3) approved by the Food and Drug Administration to be marketed as medical products.

Further, this rule removes controls on certain diagnostic and food testing kits that contain toxins controlled by the AG. Specifically, this final rule amends ECCN 1C991 to include diagnostic and food testing kits containing AG-controlled toxins controlled under ECCN 1C351. Such testing kits may be exported and reexported without a license to all destinations and entities, except to terrorist supporting countries and Serbia, and except as provided in Parts 736 and 744 of the EAR, when the kits are specifically developed, packaged, and marketed for diagnostic or public health purposes. Diagnostic and food testing kits containing CW-controlled toxins continue to be controlled under ECCN 1C351 to all destinations, including Canada.

This rule clarifies that the scope of AG-controls on saxitoxin under 1C351.d.6 applies only to saxitoxin and not the entire family of paralytic shellfish poisons (*e.g.*, neosaxitoxin) which, other than saxitoxin, are classified under EAR99. This rule also clarifies the forms of saxitoxin and ricin that are controlled for CW reasons under ECCN 1C351.

Finally, the AG agreed to the development of a rounding rule for mixtures that contain trace and unintended quantities of AG-controlled chemicals that are also on CWC Schedule 1 listed in ECCN 1C350. The United States is providing a "round to zero" rule for Schedule 1 chemicals similar to that agreed by the AG. This rule, currently set forth in section 712.1 of the Chemical Weapons Convention Regulations, is now added to the note under 1C350 on mixtures. The licensing requirements do not apply to mixtures containing less than 0.5% aggregate quantities of Schedule 1 chemicals as unavoidable by-products or impurities, and the Schedule 1 chemicals are not intentionally produced or added.

Exporters are reminded that although license requirements have been removed for shipments of the medical products and test kits for CB reasons as described above, these items continue to require a license under 1C991 for export or reexport to terrorist supporting and embargoed destinations and entities. Exporters may also need to consult with the Department of the Treasury's Office of Foreign Assets Control, which administers economic sanctions against certain countries and entities, including the Taliban controlled areas of Afghanistan.

Although the EAA expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and continued in effect the Export Administration Regulations and, to the extent permitted by law, the provisions of the EAA in Executive Order 12924 of August 19, 1994, as extended by the President's notices of August 15, 1995 (60 FR 42767), August 14, 1996 (61 FR 42527), August 13, 1997 (62 FR 43629), August 13, 1998 (63 FR 44121), August 10, 1999 (64 FR 44101) and August 8, 2000 (65 FR 48347).

**Rulemaking Requirements**

1. This final rule has been determined to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid Office of Management and Budget Control Number. This rule involves a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control numbers 0694–0088, "Multi-Purpose Application," which carries a burden hour estimate of 45 minutes for a manual submission and 40 minutes for an electronic submission.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Kirsten Mortimer, Office of Exporter Services, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

**List of Subjects in 15 CFR Parts 742 and 774**

Exports, foreign trade.

Accordingly, 15 CFR Chapter 7, Subchapter C, is amended as follows:

1. The authority citation for 15 CFR part 742 is revised to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of November 12, 1998, 63 FR 63589, 3 CFR, 1998 Comp., p. 305; Notice of August 3, 2000 (65 FR 48347, August 8, 2000).

2. The authority citation for 15 CFR part 774 is revised to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*, 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of August 3, 2000 (65 FR 48347, August 8, 2000).



**PART 742—[AMENDED]**

3. Section 742.18 is amended by revising paragraph (a)(1) as follows:

**§ 742.18 Chemical Weapons Convention (CWC or Convention)**

* * * * *

(a) * * *

(1) Schedule 1 chemicals identified in ECCNs 1C350 and 1C351. A license is required for CW reasons for exports and reexports of Schedule 1 chemicals identified under ECCN 1C350.a.20, a.24, and a.31 and ECCN 1C351.d.5 and d.6 to all destinations *including* Canada. CW applies to 1C351.d.5 for ricin in the form of Ricinus Communis Agglutinin $_{II}$ (RCA $_{II}$), also known as ricin D or Ricinus Communis Lectin $_{III}$ (RCL $_{III}$); and Ricinus Communis Lectin $_{IV}$ (RCL $_{IV}$), also known as ricin E. CW applies to 1C351.d.6 for saxitoxin identified by C.A.S. #35523–89–8. Also see the advance notification procedures and annual reporting requirements described in § 745.1 of the EAR.

* * * * *

**PART 774—[AMENDED]**

4. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Materials, Chemicals, "Microorganisms," and "Toxins", Export Control Classification Numbers (ECCNs) are amended:

a. By revising the License Requirements section for ECCN 1C350;

b. By revising ECCN 1C351; and

c. By revising ECCN 1C991, as follows:

**1C350 Chemicals, that may be used as precursors for toxic chemical agents.**

**License Requirements**

*Reason for Control:* CB, CW, AT

| Control(s) | Country chart |
|---|---|
| CB applies to entire entry .. | CB Column 2 |

CW applies to 1C350.a.2, a.3, a.5, a.6, a.7, a.8, a.10, a.11, a.12, a.13, a.15, a.16, a.17, a.20, a.21, a.22, a.23, a.24, a.28, a.29, a.30, a.31, a.32, a.33, a.35, a.37, a.41, a.47, a.48, a.49, a.50, a.51, a.53, or a.54. For 1C350.a.20, a.24 and a.31, a license is required for CW reasons for all destinations, including Canada. For all other chemicals controlled for CW reasons, a license is a required for export to countries not listed in Supplement No. 2 to part 745, except for Schedule 3 chemicals which do not require a license for CW reasons if an End-Use Certificate has been obtained from the government of the importing country. See § 742.18 of the EAR. Also, see § 745.2 of the EAR for End-Use Certificate requirements. The Commerce Country Chart is not designed to determine licensing requirements for items controlled for CW reasons.

| AT applies to entire entry ..... | AT Column 1 |
|---|---|

*License Requirement Notes:*

1. *SAMPLE SHIPMENTS:* Certain sample shipments of chemicals controlled under ECCN 1C350 may be made without a license, as provided by the following:

a. *Chemicals Not Eligible:* No CWC Schedule 1 chemical is eligible for sample shipment without a license. Therefore, the following chemicals are *not* eligible for sample shipments: 0-Ethyl-2-diisopropylaminoethyl methylphosphonite (QL) (C.A.S. #57856–11–8), Ethylphosphonyl difluoride (C.A.S. #753–98–0), and Methylphosphonyl difluoride (C.A.S. #676–99–3).

b. *Countries Not Eligible:* The following countries are not eligible to receive any sample shipments: Cuba, Iran, Iraq, Libya, North Korea, Sudan, Syria.

c. *Sample Shipments:* A license is not required for sample shipments when the cumulative total of these shipments does not exceed a 55-gallon container or 200 kg of each chemical to any one consignee per calendar year. Multiple sample shipments, in any quantity, not exceeding the totals indicated in this paragraph may be exported without a license, in accordance with the provisions of this Note 1. A consignee that receives a sample shipment under this exclusion may not resell, transfer, or reexport the sample shipment, but may use the sample shipment for any other legal purpose unrelated to chemical weapons. However, a sample shipment exported and received under this exclusion remains subject to all General Prohibitions including the end-use restriction described in § 744.4 of the EAR. Sample shipments of chemicals included in CWC Schedule 2 and controlled for CW reasons to non-CWC States Parties (destinations not listed in Supplement No. 2 to part 745 of the EAR) may not be made without a license. Sample shipments of chemicals listed in Schedule 3 and controlled for CW reasons to non-States Parties may not be made without first obtaining an End-Use Certificate, as described in § 745.2 of the EAR. If no End-Use Certificate is obtained pursuant to § 745.2 of the EAR, a license is required for sample shipments to non-

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CWC States Parties of Schedule 3 chemicals controlled under ECCN 1C350 for CW reasons.

d. The exporter is required to submit a quarterly written report for shipments of samples made under this Note 1. The report must be on company letterhead stationery (titled "Report of Sample Shipments of Chemical Precursors" at the top of the first page) and identify the chemical(s), Chemical Abstract Service Registry (C.A.S.) number(s), quantity(ies), the ultimate consignee's name and address, and the date exported. The report must be sent to the U.S. Department of Commerce, Bureau of Export Administration, P.O. Box 273, Washington, DC 20044, Attn: "Report of Sample Shipments of Chemical Precursors".

2. *MIXTURES:* Mixtures controlled by this entry that contain certain concentrations of precursor and intermediate chemicals are subject to the following licensing requirements:

a. A license is required, regardless of the concentrations in the mixture, for the following chemicals: 0-Ethyl-2-diisopropylaminoethyl methylphosphonite (QL) (C.A.S.#57856–11–8), Ethylphosphonyl difluoride (C.A.S.#753–98–0) and Methylphosphonyl difluoride (C.A.S.#676–99–3), unless the mixture contains less than 0.5% aggregate quantities of Schedule 1 chemicals as unavoidable by-products or impurities, and the Schedule 1 chemicals are not intentionally produced or added.

b. A license is required when at least one of the following chemicals constitutes more than 10 percent of the weight of the mixture: Arsenic trichloride (C.A.S.#7784–34–1), Benzilic acid (C.A.S.#76–93–7), Diethyl ethylphosphonate (C.A.S.#78–38–6), Diethyl methylphosphonite (C.A.S.#15715–41–0),Diethyl-N,N-dimethylphosphoroamidate (C.A.S.#2404–03–7), N,N-Diisopropyl-beta-aminoethane thiol (C.A.S.#5842–07–9), N,N-Diisopropyl-2-aminoethyl chloride hydrochloride (C.A.S.#4261–68–1), N,N-Diisopropyl-beta-aminoethanol (C.A.S.#96–80–0), N,N-Diisopropyl-beta-aminoethyl chloride (C.A.S.#96–79–7), Dimethyl ethylphosphonate (C.A.S.#6163–75–3), Dimethyl methylphosphonate (C.A.S.#756–79–6), Ethylphosphonous dichloride [Ethylphosphinyl dichloride] (C.A.S.#1498–40–4), Ethylphosphonus difluoride [Ethylphosphinyl difluoride] (C.A.S.#430–78–4), Ethylphosphonyl dichloride (C.A.S.#1066–50–8), Methylphosphonous dichloride [Methylphosphinyl dichloride] (C.A.S.#676–83–5), Methylphosphonous difluoride [Methylphosphinyl difluoride] (C.A.S.#753–59–3), Methylphosphonyl dichloride (C.A.S.#676–97–1), Pinacolyl alcohol (C.A.S.#464–07–3), 3-Quinuclidinol (C.A.S.#1619–34–7), and Thiodiglycol (C.A.S.#111–48–8) (Related ECCN: 1C995);

c. A license is required when at least one of all other chemicals in the List of Items Controlled under ECCN 1C350 constitutes more than 25 percent of the weight of the mixture (related ECCN: 1C995); *and*

d. A license is not required under this entry for mixtures when the controlled chemical is a normal ingredient in consumer goods packaged for retail sale for personal use. Such consumer goods are classified as EAR99.

**Note to Mixtures:** Calculation of concentrations of AG-controlled chemicals:

a. *Exclusion.* No chemical may be added to the mixture (solution) for the sole purpose of circumventing the Export Administration Regulations;

b. *Absolute Weight Calculation.* When calculating the percentage, by weight, of components in a chemical mixture, include all components of the mixture, including those that act as solvents;

c. *Example.*

11% chemical listed in paragraph b. of Note 2.
39% chemical not listed in Note 2
*50%* Solvent
100% Mixture
11/100=11% chemical listed in paragraph b. of Note 2.

In this example, a license is required because a chemical listed in paragraph b. of Note 2 constitutes more than 10 percent of the weight of the mixture.

3. *COMPOUNDS.* A license is not required under this entry for chemical compounds created with any chemicals identified in this entry, unless those compounds are also identified in this entry.

**Technical Notes:** 1. For purposes of this entry, a "mixture" is defined as a solid, liquid or gaseous product made up of two or more components that do not react together under normal storage conditions.

2. The scope of this control applicable to Hydrogen Fluoride (Item 25 in List of Items Controlled) includes its liquid, gaseous, and aqueous phases, and hydrates.

**LIST OF ITEMS CONTROLLED**

* * * * *

**1C351 Human pathogens, zoonoses, and "toxins", as follows (see List of Items Controlled).**

**License Requirements**

*Reason for Control:* CB, CW, AT

| Control(s) | Country chart |
|---|---|
| CB applies to entire entry .. | CB Column 1 |

CW applies to 1C351.d.5 and d.6 and a license is required for CW reasons for all destinations, including Canada, as follows: CW applies to 1C351.d.5 for ricin in the form of (1) Ricinus Communis Agglutinin$_{II}$ (RCA$_{II}$), also known as ricin D or Ricinus Communis Lectin$_{III}$ (RCL$_{III}$); and (2) Ricinus Communis Lectin$_{IV}$ (RCL$_{IV}$), also known as ricin E. CW applies to 1C351d.6 for saxitoxin identified by C.A.S. #35523–89–8. See § 742.18 of the EAR for licensing information pertaining to chemicals subject to restriction pursuant to the Chemical Weapons Convention (CWC). The Commerce Country Chart is not designed to determine licensing requirements for items controlled for CW reasons.

| | |
|---|---|
| AT applies to entire entry. | AT Column 1 |

**License Exceptions**

LVS: N/A
GBS: N/A
CIV: N/A

**List of Items Controlled**

*Unit:* $ value.

*Related Controls:* Certain forms of ricin and saxitoxin in 1C351.d.5. and d.6 are CWC Schedule 1 chemicals (see § 742.18 of the EAR). The U.S. Government must provide advance notification and annual reports to the OPCW of all exports of Schedule 1 chemicals. See § 745.1 of the EAR for notification procedures. See 22 CFR part 121, Category XIV and § 121.7 for additional CWC Schedule 1 chemicals controlled by the Department of State. All vaccines and "immunotoxins" are excluded from the scope of this entry. Certain medical products and diagnostic and food testing kits that contain biological toxins controlled under paragraph (d) of this entry, with the exception of toxins controlled for CW reasons under d.5 and d.6, are excluded from the scope of this entry. Vaccines, "immunotoxins", certain medical products, and diagnostic and food testing kits excluded from the scope of this entry are controlled under ECCN 1C991. For the purposes of this entry, only saxitoxin is controlled under paragraph d.6; other members of the paralytic shellfish poison family (*e.g.* neosaxitoxin) are classified as EAR99.

*Related Definitions:* (1) For the purposes of this entry "immunotoxin" is defined as an antibody-toxin conjugate intended to destroy specific target cells (*e.g.*, tumor cells) that bear antigens homologous to the antibody. (2) For the purposes of this entry "subunit" is defined as a portion of the "toxin".

*Items:*

a. Viruses, as follows:
a.1. Chikungunya virus;
a.2. Congo-Crimean haemorrhagic fever virus;
a.3. Dengue fever virus;
a.4. Eastern equine encephalitis virus;
a.5. Ebola virus;
a.6. Hantaan virus;
a.7. Japanese encephalitis virus;
a.8. Junin virus;
a.9. Lassa fever virus
a.10. Lymphocytic choriomeningitis virus;
a.11. Machupo virus;
a.12. Marburg virus;
a.13. Monkey pox virus;
a.14. Rift Valley fever virus;
a.15. Tick-borne encephalitis virus (Russian Spring-Summer encephalitis virus);
a.16. Variola virus;
a.17. Venezuelan equine encephalitis virus;
a.18. Western equine encephalitis virus;
a.19. White pox; *or*
a.20. Yellow fever virus.
b. Rickettsiae, as follows:
b.1. Bartonella quintana (Rochalimea quintana, Rickettsia quintana);
b.2. Coxiella burnetii;
b.3. Rickettsia prowasecki; *or*
b.4. Rickettsia rickettsii.
c. Bacteria, as follows:
c.1. Bacillus anthracis;
c.2. Brucella abortus;
c.3. Brucella melitensis;
c.4. Brucella suis;
c.5. Burkholderia mallei (Pseudomonas mallei);
c.6. Burkholderia pseudomallei (Pseudomonas pseudomallei);
c.7. Chlamydia psittaci;
c.8. Clostridium botulinum;
c.9. Francisella tularensis;
c.10. Salmonella typhi;
c.11. Shigella dysenteriae;
c.12. Vibrio cholerae;
c.13. Yersinia pestis.
d. "Toxins", as follows: and "subunits" thereof:
d.1. Botulinum toxins;
d.2. Clostridium perfringens toxins;
d.3. Conotoxin;
d.4. Microcystin (cyanginosin);
d.5. Ricin;
d.6. Saxitoxin;
d.7. Shiga toxin;
d.8. Staphylococcus aureus toxins;
d.9. Tetrodotoxin;
d.10. Verotoxin; *or*
d.11. Aflatoxins.

**1C991 Vaccines, immunotoxins, medical products, diagnostic and food testing kits, as follows (see List of Items controlled).**

**License Requirements**

*Reason for Control:* CB, AT.

| Control(s) | Country Chart |
|---|---|
| CB applies to 1C991.d ..... | CB Column 3 |
| AT applies to entire entry .. | AT Column 1 |

**License Exceptions**

LVS: N/A
GBS: N/A
CIV: N/A

**List of Items Controlled**

*Unit:* $ value.

*Related Controls:* Medical products containing ricin in the form of (1) Ricinus Communis Agglutinin$_{II}$ (RCA$_{II}$), also known as ricin D or Ricinus Communis Lectin$_{III}$ (RCL$_{III}$); and (2) Ricinus Communis Lectin$_{IV}$ (RCL$_{IV}$), also known as ricin E; and saxitoxin identified by C.A.S. #35523–89–8, are controlled for CW reasons under 1C351.

*Related Definitions:* For the purpose of this entry "immunotoxin" is defined as an antibody-toxin conjugate intended to destroy specific target cells (*e.g.*, tumor cells) that bear antigens homologous to the antibody. For the purpose of this entry "medical products" are: (1) Pharmaceutical formulations designed for human administration in the treatment of medical conditions; (2) prepackaged for distribution as medical products; and, (3) approved by the Food and Drug Administration to be marketed as medical products. For the purpose of this entry, "diagnostic and food testing kits" are specifically developed, packaged and marketed for diagnostic or public health purposes. Biological toxins in any other configuration, including bulk shipments, or for any other end-uses are controlled by ECCN 1C351.

*Items:*

a. Vaccines containing items controlled by ECCNs 1C351, 1C352, 1C353 and 1C354;
b. Immunotoxins;
c. Medical products containing botulinum toxins controlled by ECCN 1C351.d.1;
d. Medical products containing biological toxins controlled by ECCN 1C351.d.2 through d.11, except biological toxins controlled for CW reasons under 1C351.d.5 and d.6; *and*
e. Diagnostic and food testing kits containing biological toxins controlled by ECCN 1C351.d, except biological toxins controlled for CW reasons under ECCN 1C351.d.5 and d.6.

5. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, Export Control Classification Numbers (ECCNs) are amended:

a. By revising the List of Items Controlled section for 2B350;

b. By revising the entry heading and List of Items Controlled section for ECCN 2B351; and

c. By revising the List of Items Controlled section for ECCN 2B352, as follows:

**2B350 Chemical manufacturing facilities and equipment, as follows (see List of Items Controlled).**

* * * * *

**List of Items Controlled**

*Unit:* Equipment in number.

*Related Controls:* The controls in this entry do not apply to equipment that is: (a) specially designed for use in civil applications (*e.g.*, food processing, pulp and paper processing, or water purification); AND (b) inappropriate, by the nature of its design, for use in storing, processing, producing or conducting and controlling the flow of chemical weapons precursors controlled by 1C350.

*Related Definitions:* For purposes of this entry the term "chemical warfare agents" are those agents subject to the export licensing authority of the U.S. Department of State, Office of Defense Trade Controls. (See 22 CFR part 121)

*Items:*

a. Reaction vessels or reactors, with or without agitators, with total internal (geometric) volume greater than 0.1 m$^3$ (100 liters) and less than 20 m$^3$ (20,000 liters), where all surfaces that come in direct contact with the chemical(s) being processed or contained are made from any of the following materials:
a.1. Alloys with more than 25% nickel and 20% chromium by weight;
a.2. Fluoropolymers;
a.3. Glass (including vitrified or enamelled coating or glass lining);
a.4. Nickel or alloys with more than 40% nickel by weight;
a.5. Tantalum or tantalum alloys;
a.6. Titanium or titanium alloys; or
a.7. Zirconium or zirconium alloys;

b. Agitators for use in reaction vessels or reactors where all surfaces of the agitator that come in direct contact with the chemical(s) being processed or contained are made from any of the following materials:

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b.1. Alloys with more than 25% nickel and 20% chromium by weight;
b.2. Fluoropolymers;
b.3. Glass (including vitrified or enamelled coatings or glass lining);
b.4. Nickel or alloys with more than 40% nickel by weight;
b.5. Tantalum or tantalum alloys;
b.6. Titanium or titanium alloys; *or*
b.7. Zirconium or zirconium alloys;
c. Storage tanks, containers or receivers with a total internal (geometric) volume greater than 0.1 $m^3$ (100 liters) where all surfaces that come in direct contact with the chemical(s) being processed or contained are made from any of the following materials:
c.1. Alloys with more than 25% nickel and 20% chromium by weight;
c.2. Fluoropolymers;
c.3. Glass (including vitrified or enamelled coatings or glass lining);
c.4. Nickel or alloys with more than 40% nickel by weight;
c.5. Tantalum or tantalum alloys;
c.6. Titanium or titanium alloys; or
c.7. Zirconium or zirconium alloys;
d. Heat exchangers or condensers with a heat transfer surface area of less than 20 $m^2$, where all surfaces that come in direct contact with the chemical(s) being processed are made from any of the following materials:
d.1. Alloys with more than 25% nickel and 20% chromium by weight;
d.2. Fluoropolymers;
d.3. Glass (including vitrified or enamelled coatings or glass lining);
d.4. Graphite;
d.5. Nickel or alloys with more than 40% nickel by weight;
d.6. Silicon carbide;
d.7. Tantalum or tantalum alloys;
d.8. Titanium or titanium alloys;
d.9. Titanium carbide; or
d.10. Zirconium or zirconium alloys
e. Distillation or absorption columns of internal diameter greater than 0.1 m, where all surfaces that come in direct contact with the chemical(s) being processed are made from any of the following materials:
e.1. Alloys with more than 25% nickel and 20% chromium by weight;
e.2. Fluoropolymers;
e.3. Glass (including vitrified or enamelled coatings or glass lining);
e.4. Graphite;
e.5. Nickel or alloys with more than 40% nickel by weight;
e.6. Tantalum or tantalum alloys;
e.7. Titanium or titanium alloys; or
e.8. Zirconium or zirconium alloys;
f. Remotely operated filling equipment in which all surfaces that come in direct contact with the chemical(s) being processed are made from any of the following materials:
f.1. Alloys with more than 25% nickel and 20% chromium by weight; or
f.2. Nickel or alloys with more than 40% nickel by weight;
g. Multiple seal valves incorporating a leak detection port, bellows-seal valves, non-return (check) valves or diaphragm valves, in which all surfaces that come into direct contact with the chemical(s) being processed or contained are made from any of the following materials:
g.1. Alloys with more than 25% nickel and 20% chromium by weight;
g.2. Fluoropolymers;
g.3. Glass (including vitrified or enamelled coatings or glass lining);
g.4. Nickel or alloys with more than 40% nickel by weight;
g.5. Tantalum or tantalum alloys;
g.6. Titanium or titanium alloys; or
g.7. Zirconium or zirconium alloys;
h. Multi-walled piping incorporating a leak detection port, in which all surfaces that come in direct contact with the chemical(s) being processed or contained are made from any of the following materials:
h.1. Alloys with more than 25% nickel and 20% chromium by weight;
h.2. Fluoropolymers;
h.3. Glass (including vitrified or enamelled coatings or glass lining);
h.4. Graphite;
h.5. Nickel or alloys with more than 40% nickel by weight;
h.6. Tantalum or tantalum alloys;
h.7. Titanium or titanium alloys; *or*
h.8. Zirconium or zirconium alloys;
i. Multiple-seal, canned drive, magnetic drive, bellows or diaphragm pumps, with manufacturer's specified maximum flow-rate greater than 0.6 $m^3$/hour, or vacuum pumps with manufacturer's specified maximum flow-rate greater than 5 $m^3$/hour (under standard temperature (273 K (0° C)) and pressure (101.3 kPa) conditions), in which all surfaces that come into direct contact with the chemical(s) being processed are made from any of the of the following materials:
i.1. Alloys with more than 25% nickel and 20% chromium by weight;
i.2. Ceramics;
i.3. Ferrosilicon;
i.4. Fluoropolymers;
i.5. Glass (including vitrified or enamelled coatings or glass lining);
i.6. Graphite;
i.7. Nickel or alloys with more than 40% nickel by weight;
i.8. Tantalum or tantalum alloys;
i.9. Titanium or titanium alloys, *or*
i.10. Zirconium or zirconium alloys;
j. Incinerators designed to destroy chemical warfare agents, or chemical weapons precursors controlled by 1C350, having specially designed waste supply systems, special handling facilities and an average combustion chamber temperature greater than 1000° C in which all surfaces in the waste supply system that come into direct contact with the waste products are made from or lined with any of the following materials:
j.1. Alloys with more than 25% nickel and 20% chromium by weight;
j.2. Ceramics; *or*
j.3. Nickel or alloys with more than 40% nickel by weight.

**2B351 Toxic gas monitoring systems that operate on-line and dedicated detectors therefor.**

* * * * *

**List of Items Controlled**

*Unit:* Equipment in number.
*Related Controls:* N/A.
*Related Definitions:* For the purposes of this entry, the term "continuous operation" describes the capability of the equipment to operate on line without human intervention. The intent of this entry is to control toxic gas monitoring systems capable of collection and detection of samples in environments such as chemical plants, rather than those used for batch-mode operation in laboratories.
*Items:*
a. Designed for continuous operation and usable for the detection of chemical warfare agents or chemicals controlled by 1C350 at concentrations of less than 0.3mg/$m^3$ (see technical note below); *or*
b. Designed for the detection of cholinesterase-inhibiting activity.

**Technical Note:** Toxic Gas Monitoring Systems, controlled under 2B351.a., include those with detection capability for chemicals containing phosphorus, sulfur, fluorine or chlorine, other than those specified in 1C350.

**2B352 Equipment capable of use in handling biological materials, as follows (see List of Items Controlled).**

* * * * *

**List of Items Controlled**

*Unit:* Equipment in number.
*Related Controls:* N/A.
*Related Definitions:* For purposes of this entry, isolators include flexible isolators, dry boxes, anaerobic chambers and glove boxes.
*Items:*
a. Complete containment facilities at P3 or P4 containment level;

**Technical Note:** P3 or P4 (BL3, BL4, L3, L4) containment levels are as specified in the WHO Laboratory Biosafety Manual (Geneva, 1983).

b. Fermenters capable of cultivation of pathogenic microorganisms, viruses, or for toxin production, without the propagation of aerosols, having a capacity equal to or greater than 100 liters.

**Technical Note:** Fermenters include bioreactors, chemostats, and continuous-flow systems.

c. Centrifugal separators capable of the continuous separation of pathogenic microorganisms, without the propagation of aerosols, and having all of the following characteristics:
c.1. A flow rate greater than 100 liters per hour;
c.2. Components of polished stainless steel or titanium;
c.3. Double or multiple sealing joints within the steam containment area; *and*
c.4. Capable of *in situ* steam sterilization in a closed state.

**Technical Note:** Centrifugal separators include decanters.

d. Cross (tangential) flow filtration equipment capable of continuous separation of pathogenic microorganisms, viruses, toxins, and cell cultures without the propagation of aerosols, having all of the following characteristics:
d.1. Equal to or greater than 5 square meters;
d.2. Capable of *in situ* sterilization.

e. Steam sterilizable freeze-drying equipment with a condenser capacity greater than 50 kgs of ice in 24 hours but less than 1,000 kgs;

f. Equipment that incorporates or is contained in P3 or P4 containment housing, as follows:
f.1. Independently ventilated protective full or half suits;
f.2. Class III biological safety cabinets or isolators with similar performance standards;

g. Chambers designed for aerosol challenge testing with microorganisms, viruses, or toxins and having a capacity of 1 $m^3$ or greater.

Dated: September 22, 2000.

**R. Roger Majak,**

*Assistant Secretary for Export Administration.*

[FR Doc. 00–25068 Filed 10–2–00; 8:45 am]

**BILLING CODE 3510–33–P**



**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**21 CFR Part 101**

**[Docket Nos. 91N–0101, 91N–0098, 91N–0103, and 91N–100H]**

**RIN 0910–AA19**

# Food Labeling: Health Claims and Labeling Statements; Dietary Fiber and Cancer; Antioxidant Vitamins and Cancer; Omega-3 Fatty Acids and Coronary Heart Disease; Folate and Neural Tube Defects; Revocation

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is revoking its regulations codifying the agency's decision not to authorize the use of health claims for four substance-disease relationships in the labeling of foods, including dietary supplements: Dietary fiber and cancer, antioxidant vitamins and cancer, omega-3 fatty acids and coronary heart disease, and the claim that 0.8 milligram (mg) of folate in dietary supplement form is more effective in reducing the risk of neural tube defects than a lower amount in conventional food. This action is being taken in response to a decision of the U.S. Court of Appeals for the D.C. Circuit invalidating these regulations and directing FDA to reconsider whether to authorize the four health claims. This action will result in the removal of the regulations but does not constitute FDA authorization of the four claims. FDA is completing its reconsideration of the claims and expects to issue decisions on all four claims by October 10, 2000.

**DATES:** This rule is effective October 3, 2000.

**FOR FURTHER INFORMATION CONTACT:** James E. Hoadley, Center for Food Safety and Applied Nutrition (HFS–832), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5429.

**SUPPLEMENTARY INFORMATION:**

## I. Background

In the **Federal Register** of January 6, 1993, FDA issued final rules announcing its decision not to authorize the use of health claims for four substance-disease relationships in the labeling of conventional foods. (See 58 FR 2537 (dietary fiber and cancer); 58 FR 2622 (antioxidant vitamins and cancer); 58 FR 2682 (omega-3 fatty acids and coronary heart disease); and 58 FR 2606 (folic acid [1] and neural tube defects[2])). Soon after, FDA proposed in the **Federal Register** of October 14, 1993 (58 FR 53296), not to authorize use of three of the four claims in the labeling of dietary supplements. In October 1993, after further review of evidence on the relationship between folate and reduced risk of neural tube defects, FDA proposed to authorize a health claim for this relationship (58 FR 53254, October 14, 1993); however, the agency proposed not to allow such claims to include a statement that folate from one source is more effective in reducing the risk of neural tube defects than folate from another source. Both proposals became final by operation of law on December 31, 1993. (See 59 FR 395, January 4, 1994 (dietary fiber and cancer, antioxidant vitamins and cancer, and omega-3 fatty acids and coronary heart disease); 59 FR 433, January 4, 1994 (folate and neural tube defects).) FDA's decisions not to authorize these four claims are codified in § 101.71(a) (21 CFR 101.71(a)) (dietary fiber and cancer); § 101.71(c) (antioxidant vitamins and cancer); § 101.71(e) (omega-3 fatty acids and coronary heart disease); and § 101.79(c)(2)(i)(G) (21 CFR 101.79(c)(2)(i)(G)) (claims comparing effectiveness of folate from different sources).

Several dietary supplement marketers and nonprofit organizations that had submitted comments during FDA's health claims rulemakings filed suit in Federal district court on constitutional and statutory grounds seeking, among other things, authorization to make the following health claims for use in the labeling of dietary supplements: "Consumption of fiber may reduce the risk of colorectal cancer," "Consumption of antioxidant vitamins may reduce the risk of certain kinds of cancer," "Consumption of omega-3 fatty acids may reduce the risk of coronary heart disease," and "0.8 mg of folic acid in a dietary supplement is more effective in reducing the risk of neural tube defects than a lower amount in foods in common form." The district court ruled for FDA in all respects

[1] In its original health claim evaluation, FDA used the term "folic acid" to describe this B vitamin. Later, the agency decided that the broader term "folate" was more scientifically accurate because that term encompasses both synthetic and naturally occurring forms of the vitamin, whereas folic acid refers only to the synthetic form (see 58 FR 53254 at 53257 through 53258 and 53280, October 14, 1993). Accordingly, this rule uses the term "folate." The two terms may be used interchangeably in food labeling.

[2] Neural tube defects are birth defects of the brain or spinal cord. Spina bifida and anencephaly are the most common types of neural tube defects.

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(*Pearson* v. *Shalala*, 14 F. Supp. 2d 10 (D.D.C. 1998)); however, the U.S. Court of Appeals for the D.C. Circuit reversed the district court's decision. The court of appeals held the regulations codifying FDA's decision not to authorize the four health claims invalid and instructed FDA to reconsider the four health claims (*Pearson* v. *Shalala*, 164 F.3d 650 (D.C. Cir. 1999)).

In the Nutrition Labeling and Education Act of 1990, Congress made health claims for dietary supplements subject to a procedure and standard to be established by FDA (see section 403(r)(5)(D) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 343(r)(5)(D)). FDA adopted the same procedure for health claims in dietary supplement labeling that Congress had prescribed for health claims in the labeling of conventional foods (see section 403(r)(3) and (r)(4) of the act). This procedure requires the evidence supporting a health claim to be presented to FDA for review before the claim may appear in labeling. Unless and until FDA adopts a regulation authorizing the claim, a dietary supplement bearing the claim is subject to regulatory action as a misbranded food (see section 403(r)(1)(B) of the act, a misbranded drug (see section 502(f)(1) of the act (21 U.S.C. 352(f)(1)), and as an unapproved new drug (see section 505(a) of the act (21 U.S.C. 355(a)).

Recently, the U.S. District Court for the District of Columbia denied the *Pearson* plaintiffs' motion for a preliminary injunction granting them immediate permission to make the four health claims that FDA is reconsidering. In their motion, the plaintiffs argued that because the court of appeals had invalidated the regulations codifying FDA's decision not to authorize the four claims, the claims should be permitted in dietary supplement labeling if accompanied by disclaimers suggested by the court of appeals. The district court rejected this argument. The court's decision said in part that a preliminary injunction was not in order because the plaintiffs may not bypass FDA's pre-clearance process for health claims. "Plaintiffs' fatal assumption is that the Court of Appeals' invalidation of the regulations allows them to now make their health claims with disclaimers, without any further pre-clearance by FDA. It does not. Invalidation of the regulations merely puts plaintiffs back at square one, which means they must again go through the pre-clearance process * * *." (*Pearson* v. *Shalala*, No. Civ. A. 95–1865, 2000 WL 767584, at *2 (D.D.C. May 24, 2000)).

Thus, while FDA is revoking the regulations codifying its original decision not to authorize the four health claims that were challenged in *Pearson*, such claims still may not be used in labeling pending reconsideration of these claims by FDA. FDA expects to complete its reconsideration of the four claims and issue a decision on each claim by October 10, 2000.

## II. Effective Date

The Administrative Procedure Act and FDA regulations provide that an agency may dispense with notice-and-comment rulemaking procedures when the agency for good cause finds that such procedures are impracticable, unnecessary, or contrary to the public interest (5 U.S.C. 553(b)(3)(B); § 10.40(e)(1) (21 CFR 10.40(e)(1))). Because this final rule is being issued in response to a court order, FDA finds that notice and comment are unnecessary. In addition, the Commissioner of Food and Drugs finds good cause under 5 U.S.C. 553(d)(3) and § 10.40(c)(4)(ii) to make this final rule effective upon publication.

### List of Subjects in 21 CFR Part 101

Food labeling, Nutrition, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 101 is amended as follows:

## PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

**Authority:** 15 U.S.C. 1453, 1454, 1455; 21 U.S.C. 321, 331, 342, 343, 348, 371.

### § 101.71 [Amended]

2. Section 101.71 *Health claims: claims not authorized* is amended by removing paragraphs (a), (c), and (e); and by redesignating paragraph (b) as paragraph (a), and paragraph (d) as paragraph (b).

### § 101.79 [Amended]

3. Section 101.79 *Health claims: Folate and neural tube defects* is amended by removing paragraph (c)(2)(i)(G), and by redesignating paragraph (c)(2)(i)(H) as (c)(2)(i)(G).

Dated: September 25, 2000.

**William K. Hubbard,**

*Senior Associate Commissioner for Policy, Planning, and Legislation.*

[FR Doc. 00–25352 Filed 10–2–00; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### 42 CFR Part 36

### Contracts Under the Indian Self-Determination Act; Removal of Regulations

**AGENCY:** Indian Health Service, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Indian Health Service (IHS) is eliminating regulations on contracts under the Indian Self-Determination Act as mandated by Executive Order 12866 to streamline the regulatory process and enhance the planning and coordination of new and existing regulations.

**EFFECTIVE DATE:** October 3, 2000.

**FOR FURTHER INFORMATION CONTACT:** Leslie M. Morris, Director, Division of Regulatory and Legal Affairs, Indian Health Service, Suite 450, 12300 Twinbrook Parkway, Rockville, MD 20852; telephone (301) 443–1116. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** On June 24, 1996, The Department of Health and Human Services (HHS) and the Department of the Interior (DOI) issued joint regulations authorized by section 107 of the Indian Self-Determination and Education Assistance Act (ISDA), Public Law 93–638, as amended, 25 U.S.C. 450k. These joint regulations, published in the **Federal Register** on June 24, 1996, and codified at 25 CFR part 900, replaced Department regulations codified at 42 CFR part 36, subpart I, "Contracts under the ISDA"; 48 CFR section 352.280–4, "Contracts awarded under the ISDA"; 48 CFR section 352.380–4, "Contracts awarded under the ISDA"; and 48 CFR subpart 380.4, "Contracts awarded under the ISDA"; because they are no longer necessary for the Administration of the IHS Program.

Section 107(b) of the ISDA provides in pertinent part that "the secretary is authorized to repeal any regulation inconsistent with the provisions of this act." The HHS has proposed at 64 FR 1344 to revise 48 CFR, Chapter 3, to streamline and simplify its acquisition regulations (HHSRA) in accordance with the directions of the National Performance Review. In so doing, the sections of 48 CFR liminated by the joint rule (25 CFR part 900) issued by the HHS and the DOI would be removed. Therefore, the IHS proposed at 65 FR 4797 the elimination of only Subpart I of 42 CFR part 36. No comments were received in response to the proposed rule. The proposed rule is converted to a final rule without change.



### Executive Order 12866

This rule is not a significant regulatory action under Executive Order 12866 and has not been reviewed by the Office of Management and Budget. It removes obsolete regulations.

### Regulatory Flexibility Act

The HHS certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act since it only removes obsolete regulations.

### Executive Order 12612

The Department has determined that this rule does not have significant Federalism effects because it pertains solely to Federal-Tribal relations and will not interfere with the roles, rights, and responsibilities of States.

### Paperwork Reduction Act of 1995

This regulation contains no information collection requirement that would require notification of the Office of Management and Budget.

The authority to eliminate these regulations is 42 U.S.C. 2003 and 25 U.S.C. 13.

### List of Subjects in 42 CFR Part 36

American Indians, Alaska Natives, Government health care, Indians—business and finance, property.

Dated: September 12, 2000.

**Michel E. Lincoln,**

*Deputy Director, Indian Health Service.*

Approved: September 26, 2000.

**Donna E. Shalala,**

*Secretary of Health and Human Services.*

For the reasons set out in the preamble, and under the authority of 42 U.S.C. 2003 and 25 U.S.C. 13, subpart I of 42 CFR part 36 is removed and reserved.

[FR Doc. 00–25292 Filed 10–2–00; 8:45 am]

BILLING CODE 4160–16–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

### 42 CFR Parts 413, 489, and 498

**[HCFA–1005–CN4]**

**RIN 0938–AI56**

### Medicare Program; Prospective Payment System for Hospital Outpatient Services: Provider-Based Criteria; Delay of Effective Date and Correction

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

**ACTION:** Notice of delay of effective date and correction.

**SUMMARY:** In the April 7, 2000 **Federal Register** (65 FR 18434), we published a final rule with comment period entitled, "Prospective Payment System for Hospital Outpatient Services." New §§ 413.24(d)(6) and 413.65 and revisions to §§ 489.24, 498.2, and 498.3 established requirements for facilities or organizations seeking provider-based status. This document delays the effective date of these provider-based regulations from October 10, 2000 to January 10, 2001, applicable for provider cost reporting periods beginning on or after January 10, 2001. In this document, we are also making a conforming change in the regulations text at § 413.65(i) concerning enforcement.

**DATES:** *Effective date:* The effective date of new §§ 413.24(d)(6) and 413.65 and revised §§ 489.24, 498.2, and 498.3 is delayed until January 10, 2001.

*Applicability date:* New §§ 413.24(d)(6) and 413.65 and revised §§ 489.24, 498.2, and 498.3 are applicable for provider cost reporting periods beginning on or after January 10, 2001.

**FOR FURTHER INFORMATION CONTACT:** George Morey, (410) 786–4653.

**SUPPLEMENTARY INFORMATION:**

## I. Background

On April 7, 2000, we published in the **Federal Register** (65 FR 18434), a final rule with comment period entitled "Prospective Payment System for Hospital Outpatient Services." Among the regulatory provisions included were new §§ 413.24(d)(6) and 413.65 and revisions to §§ 489.24, 498.2, and 498.3. These regulations established requirements for facilities or organizations that seek provider-based status (departments, provider-based entities, satellite facilities, and remote locations of hospitals). The effective date of the provider-based regulations, as stated in the April 2000 rule, is October 10, 2000.

New § 413.65(i) states that we will recover any overpayments resulting from inappropriate treatment of a facility or organization as provided-based. However, this provision states that no recovery will be made for any period prior to October 10, 2000, if the management of the facility or organization made a "good faith" effort to operate it as provided-based (as described in § 413.65(i)(3)). The reference to October 10, 2000 was included to limit the "good faith" exception to periods before the effective date of the new requirements.

## II. Provisions of This Notice

Based on the following concerns, we have decided to delay the effective date of the provider-based portions of the April 2000 final rule until January 10, 2001, applicable for provider cost reporting periods beginning on or after January 10, 2001. For example, a provider whose cost reporting periods begins on April 1 will not be affected by these provider-based regulations until its cost reporting period beginning on April 1, 2001.

To provide for smooth implementation of the provider-based regulations, we must clarify a number of administrative, procedural, and technical issues and provide our regional offices, which are charged with responsibility for making provider-based determinations, and hospitals with further training and guidance. We have completed a variety of training and informational activities, developed responses to "Frequently Asked Questions," and held numerous meetings with individual providers and provider associations in order to communicate our policies and plans for implementing the new regulations. In the course of these activities, the need for additional guidance interpreting the regulations and addressing procedural and administrative concerns has become apparent. Given the time needed to complete and disseminate this material, we have concluded that implementation of the new provider-based regulations on October 10, 2000 would be imprudent.

A delay in the effective date of the provider-based regulations will allow for dissemination of the additional material described above, and will give hospitals and other providers additional time to fully assess the potential impact of both the new hospital outpatient prospective payment system and the new provider-based regulations on their facilities and organizations. A delay in

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the effective date will also allow the industry more time to prepare to comply with the new regulations, and that in turn will help reduce the number of errors or other problems that might occur as a result of transition to the new rules. The phase-in of implementation over 12-months, rather than a single date, will allow for a more manageable distribution of work for the regional offices, fiscal intermediaries, and hospitals. (As noted earlier, implementation by cost reporting periods means that a provider with a cost reporting period starting after January 10, 2001, would not be affected by the new regulations until the start of its next cost reporting period. Thus, a provider with an April 1 cost period would not be affected until April 1, 20001, a provider with a July 1 cost period would not be affected until July 1, 20001, and so on.) We expect to issue further clarification of administrative, procedural, and technical issues as soon as possible.

To provide for uniform and consistent application of the "good faith" exception to periods before the revised date, we are revising § 413.65(i)(2) to state that the exception will be available only for main provider cost reporting periods beginning on or after January 10, 2001 or, in the case of a facility or organization paid as a provider-based entity, for that entity's cost reporting periods beginning on or after January 10, 2001.

In October 2000, we plan to host a town hall meeting to discuss specific aspects of the provider-based regulations at our headquarters in Baltimore, Maryland. The subjects of this meeting will be the ways in which a facility or organization can demonstrate that it serves the same patient population as the main provider (§ 413.65(d)(7)(i)), and the applicability of provisions on management contracts (§ 413.65(f)) to certain on-campus hospital departments. We will make further details regarding the town hall meeting available on our website, *www.hcfa.gov*.

### III. Impact Statement

In the April 2000 final rule, we discussed the impact of the provider-based regulations on providers and beneficiaries. Because we are delaying the implementation of the final rule, the current provider-based criteria, as stated in HCFA program manuals, will remain in effect for an additional period of time. We believe that any impact on small entities would be positive because the delay in effective date will allow more time for them to come into compliance with the new regulations, and also permit the new regulations to be implemented in a more clear and consistent manner.

### Correction of Errors

In FR Doc. 00–8215 of April 7, 2000 (65 FR 18434), make the following correction:

### Regulations Text

**§ 413.65 [Corrected]**

On page 18540, in column 3, § 413.65 (i)(2) is corrected to read as follows:

**§ 413.65 Requirements for a determination that a facility or an organization has provider-based status.**

* * * * *

(i) * * *

(2) *Recovery of overpayments.* If HCFA finds that payments for services at the facility or organization have been made as if the facility or organization were provider-based, even though HCFA had not previously determined that the facility or organization qualified for provider-based status, HCFA will recover the difference between the amount of payments that actually were made and the amount of payments that HCFA estimates should have been made in the absence of a determination of provider-based status. Recovery will not be made for any main provider cost reporting periods beginning before January 10, 2001 or, in the case of a facility organization paid as a provider-based entity, for that entity's cost reporting periods beginning before January 10, 2001 if, during all of those periods, the management of the facility or organization made a good faith effort to operate it as a provider-based facility or organization, as described in paragraph (h)(3) of this section.

* * * * *

(Authority: Section 1888(t) of the Social Security Act (42 U.S.C. 1395yy(t))

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: September 19, 2000.

**Nancy-Ann Min DeParle,**

*Administrator, Health Care Financing Administration.*

Dated: September 22, 2000.

**Donna E. Shalala,**

*Secretary.*

[FR Doc. 00–25373 Filed 9–29–00; 12:41 pm]

BILLING CODE 4120–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[DA 00–2207, MM Docket No. 00–103; RM–9878]**

### Digital Television Broadcast Services; Killeen, TX

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of White Knight Broadcasting of Killeen License Corporation, licensee of TV station KAKW(TV), substitutes DTV Channel 13 for DTV Channel 23 at Killeen, Texas. *See* 65 FR 37752, June 16, 2000. DTV Channel 13 can be allotted to Killeen at coordinates (30–43–33 N. and 97–59–24 W.) with a power of 39.4, HAAT of 553 meters, and with a DTV service population of 1307 thousand.

With this action, this proceeding is terminated.

**DATES:** Effective November 16, 2000.

**FOR FURTHER INFORMATION CONTACT:** Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 00–103, adopted September 29, 2000, and released October 2, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

### List of Subjects in 47 CFR Part 73

Television, Digital television broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

### PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334. 336.

**§ 73.622 [Amended]**

2. Section 73.622(b), the Table of Digital Television Allotments under Texas, is amended by removing DTV Channel 23 and adding DTV Channel 13 at Killeen.



Federal Communications Commission.

**Barbara A. Kreisman,**

*Chief, Video Services Division, Mass Media Bureau.*

[FR Doc. 00–25358 Filed 10–2–00; 8:45 am]

BILLING CODE 6712–01–U

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[DA 00–2206, MM Docket No. 00–98; RM–9811]**

### Digital Television Broadcast Services; Thomasville, GA

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of WCTV Licensee Corporation, licensee of TV Station WCTV–TV, substitutes DTV Channel 46 for DTV Channel 52 at Thomasville, Georgia. See 65FR 36808, June 12, 2000. DTV Channel 46 can be allotted to Thomasville at coordinates (30–40–13 N. and 83–56–26 W.) with a power of 1000, HAAT of 619 meters, and with a DTV service population of 832 thousand.

With this action, this proceeding is terminated.

**DATES:** Effective November 16, 2000.

**FOR FURTHER INFORMATION CONTACT:** Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 00–98, adopted September 29, 2000, and released October 2, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, S.W., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

### List of Subjects in 47 CFR Part 73

Television, Digital television broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

### 47 CFR PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334. 336.

**§ 73.622 [Amended]**

2. Section 73.622(b), the Table of Digital Television Allotments under Georgia, is amended by removing DTV Channel 52 and adding DTV Channel 46 at Thomasville.

Federal Communications Commission.

**Barbara A. Kreisman,**

*Chief, Video Services Division, Mass Media Bureau.*

[FR Doc. 00–25360 Filed 10–2–00; 8:45 am]

BILLING CODE 6712–01–U

## ENVIRONMENTAL PROTECTION AGENCY

### 48 CFR Parts 1511, 1515, 1517, 1519, 1523, 1528, 1535, 1542, 1545 and 1552

**[FRL–6878–9]**

### Acquisition Regulation; Administrative Amendments

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Interim rule with request for comments.

**SUMMARY:** EPA is issuing this interim rule amending the EPA Acquisition Regulation (EPAAR) to add clauses to the EPAAR which have been repeatedly used in EPA procurements but which have not formally been incorporated into the EPAAR, make other administrative changes, and remove from the EPAAR unnecessary coverage that duplicates existing Federal Acquisition Regulation (FAR) coverage.

**DATES:** Effective Date: October 3, 2000.

Comment Date: Interested parties should submit written comments to the address shown below on or before December 4, 2000 to be considered in the formulation of a final rule.

**ADDRESSES:** Submit written comments to: U.S. Environmental Protection Agency, Office of Acquisition Management, 1200 Pennsylvania Avenue, NW., Attention: Paul Schaffer, Mail Code (3802R), Washington, DC 20460. Comments and data may also be submitted electronically by sending electronic mail (E-mail) to: Schaffer.Paul@epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in Corel WordPerfect format or ASCII file format. No confidential business information (CBI) should be submitted through e-mail. Electronic comments on this rule may be filed on-line at many Federal Depository Libraries.

**FOR FURTHER INFORMATION CONTACT:** Paul Schaffer, U.S. EPA, Office of Acquisition Management, Mail Code (3802R), 1200 Pennsylvania Avenue, NW, Washington, DC 20460, Telephone: (202) 564–4366.

**SUPPLEMENTARY INFORMATION:**

### A. Background

This interim rule amends the EPA Acquisition Regulation (EPAAR) (48 CFR Chapter 15) to publish for public comment EPA contract clauses which have not previously undergone formal Agency rulemaking subject to public review and comment because of the necessity of complying with FAR policies and procedures on a timely basis. As a result of recent procurement reform and streamlining initiatives, EPA has undertaken an extensive review of its procurement regulations. As part of this effort, EPA identified a number of clauses it has regularly used in its solicitations and contracts which had not previously undergone formal Agency rulemaking subject to public review and comment and which had not been incorporated into the EPAAR. This rulemaking action is to incorporate these existing EPA clauses into the EPAAR. EPA does not anticipate any adverse comments because, as stated above, these clauses have been regularly used in EPA solicitations and contracts for some time now without any objections or questions raised by entities responding to EPA procurements and/or contracting with the Agency.

### B. Executive Order 12866

This interim rule is not a significant regulatory action for the purposes of Executive Order 12866; therefore, no review is required by the Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB).

### C. Paperwork Reduction Act

The information collection requirement in 1552.245–73, Government Property, is covered by OMB clearance number 9000–0075. The Paperwork Reduction Act does not apply to any other clause herein because this interim rule does not contain any new information collection requirements that require the approval of OMB under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

### D. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice

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and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impact of today's rule on small entities, small entity is defined as: (1) A small business that meets the definition of a small business found in the Small Business Act and codified at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's interim rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the proposed rule on small entities." 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. This interim rule merely incorporates existing EPA solicitation and contract provisions into the EPAAR and will have no adverse impact on small entities. The requirements under this interim rule impose no additional reporting, record-keeping, or compliance costs on small entities.

**E. Unfunded Mandates**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess their regulatory actions on State, local, and Tribal governments, and the private sector. This interim rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in one year. Any private sector costs for this action relate to paperwork requirements and associated expenditures that are far below the level established for UMRA applicability. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

**F. Executive Order 13045**

Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be economically significant as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because it does not involve decisions on environmental health or safety risks.

**G. Executive Order 13132**

Executive Order 13132 entitled, "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This interim rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This interim rule merely incorporates existing EPA solicitation and contract provisions into the EPAAR. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

**H. Executive Order 13084**

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian Tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by Tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected Tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian Tribal government "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian Tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

**I. National Technology Transfer and Advancement Act of 1995**

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures phaphaand business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This rule does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.



**J. Submission to Congress and the General Accounting Office**

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rules report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

**List of Subjects in 48 CFR Parts 1511, 1515, 1517, 1519, 1523, 1528, 1535, 1542, 1545, and 1552**

Government procurement.

**Authority:** The provisions of this regulation are issued under 5 U.S.C. 301; Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c); and 41 U.S.C. 418b. 48 CFR Chapter 15 is amended as follows:

1. The authority citations for 48 CFR parts 1511, 1515, 1517, 1519, 1523, 1528, 1535, 1542, 1545, and for part 1552 continue to read as follows:

**Authority:** 5 U.S.C. 301; Sec. 205(c), 63 Stat. 390, as amended; 40 U.S.C. 486(c); and 41 U.S.C. 418b.

2. Section 1511.011–80 is added to read as follows:

**1511.011–80 Data Standards for the transmission of laboratory measurement results.**

The contracting officer shall insert the clause at 1552.211–80 in all solicitations and contracts when the contract requires the electronic transmission of environmental measurements from laboratories to the Environmental Protection Agency (EPA).

3. Section 1515.209 is amended by adding paragraph (c) to read as follows:

**1515.209 Solicitation provisions and contract clauses.**

* * * * *

(c) The contracting officer shall insert the clause at 1552.215–75, Past Performance Information, or a clause substantially the same as 1552.215–75, in all competitively negotiated acquisitions with an estimated value in excess of $100,000.

4. Section 1517.208 is amended by removing paragraph (a) and redesignating paragraphs (b) through (g) as (a) through (f) respectively and adding paragraph (g) to read as follows:

**§ 1517.208 Solicitation provisions and contract clauses.**

* * * * *

(g) The Contracting officer shall insert the clause at 1552.217–77, Option to Extend the Term of the Contract—Fixed Price, when applicable.

5. Subpart 1519.2 is amended by adding section 1519.203 to read as follows:

**§ 1519.203 Mentor protege.**

(a) The Contracting officer shall insert the clause at 1552.219–70, Mentor-Protege Program, in all contracts under which the Contractor has been approved to participate in the EPA Mentor-Protege Program.

(b) The Contracting officer shall insert the provision at 1552.219–71, Procedures for Participation in the EPA Mentor-Protege Program, in all solicitations valued at $500,000 or more which will be cost-plus-award-fee or cost-plus fixed-fee contracts.

6. Subpart 1519.2 is amended by adding section 1519.204 to read as follows:

**§ 1519.204 Small disadvantaged business participation.**

(a) The Contracting officer shall insert the provision at 1552.219–72, Small Disadvantaged Business Participation Program, or a provision substantially the same as 1552.219–72, in solicitations for acquisitions subject to FAR 19.12 that will evaluate the extent of the participation of Small Disadvantaged Business (SDB) concerns in the performance of a resulting contract.

(b) The Contracting officer shall insert the clause at 1552.219–73, Small Disadvantaged Business Targets, or one substantially the same as 1552.219–73, in solicitations and contracts for acquisitions subject to FAR 19.12 that evaluate the extent of participation of SDB concerns in the performance of the contract and which included solicitation provision 1552.219–72.

(c) The Contracting officer shall insert the evaluation provision at 1552.219–74, Small Disadvantaged Business Participation Evaluation Factor, (and assign a value to it), or one substantially the same as 1552.219–74, in solicitations for acquisitions subject to FAR 19.12 that include the provision at 1552.219–72 and will evaluate the extent of participation of SDB concerns in the performance of the contract.

7. section 1523.303–72 is added to read as follows:

**§ 1523.303–72 Care of Laboratory Animals.**

Contracting officers shall insert the clause at 1552.223–72, Care of Laboratory Animals, in all contracts involving the use of experimental animals.

8. Section 1523.7003 is amended by designating the existing text as paragraph (b) and adding a new paragraph (a) to read as follows:

**§ 1523.7003 Contract clause.**

(a) Rehabilitation Act Notice.

Contracting officers shall insert the clause at 1552.239–70, Rehabilitation Act Notice, or one substantially the same as this clause, in all solicitations and contracts where the contractor may be required to provide any type of support to EPA in connection with EPA programs and activities, including conferences, symposia, workgroups, meetings, etc.

(b) * * *

9. Part 1528 is added to read as follows:

**PART 1528—INSURANCE**

**Subpart 1528.1—Insurance**

**1528.101 Insurance Liability to Third Persons.**

Contracting officers shall insert the clause at 1552,228–70, Insurance Liability to Third Persons, in cost-reimbursement solicitations and contracts, except those for construction and architect-engineer services. **Note:** This clause may be used in contracts awarded utilizing architect-engineer services such as requirements for Superfund cleanups (*e.g.*, response action contracts). The clause does not apply to Superfund indemnification for third party pollution liability or coverage for commercial pollution liability insurance as prescribed by section 119 of CERCLA as amended by SARA.

10. Section 1535.007–070 is amended by adding paragraph (g) to read as follows:

**1535.007–070 Contract clauses.**

* * * * *

(g) Contracting officers shall insert the clause at 1552.235–80, Access to Confidential Business Information (CBI), in all types of contracts when it is possible that it will be necessary for the contractor to have access to CBI during

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the performance of tasks required under the contract.

11. Section 1542.705 is amended by designating the existing paragraph as (a) and adding paragraph (b) as follows:

**1542.705 Final indirect cost rates.**

(a) * * *

(b) Contracting officers shall insert the clause at 1552.242–72, Financial Administrative Contracting officers (FACO), in cost-reimbursement contracts when the Environmental Protection Agency (EPA) is the cognizant federal agency and a FACO will be assigned.

12. Section 1545.106 is amended by adding a new paragraph (d) to read as follows:

**1545.106 Government property clauses.**

* * * * *

(d) Contracting officers shall insert the clause at 1552.245–73, Government Property, in all cost-type solicitations and contracts regardless of whether Government Property is initially provided, and in all fixed-price solicitations and contracts whenever Government furnished property is provided.

* * * * *

13. Section 1552.208–70, Printing, is revised to read as follows:

**1552.208–70 Printing.**

As prescribed in 1508.870, insert the following clause:

**Printing**

*October 2000*

(a) *Definitions.*

"Printing" is the process of composition, plate making, presswork, binding and microform; or the end items produced by such processes and equipment. Printing services include newsletter production and periodicals which are prohibited under EPA contracts.

"Composition" applies to the setting of type by hot-metal casting, photo typesetting, or electronic character generating devices for the purpose of producing camera copy, negatives, a plate or image to be used in the production of printing or microform.

"Camera copy" (or "camera-ready copy") is a final document suitable for printing/duplication.

"Desktop Publishing" is a method of composition using computers with the final output or generation of camera copy done by a color inkjet or color laser printer. This is not considered "printing." However, if the output from desktop publishing is being sent to a typesetting device (*i.e.*, Linotronic) with camera copy being produced in either paper or negative format, these services are considered "printing".

"Microform" is any product produced in a miniaturized image format, for mass or general distribution and as a substitute for conventionally printed material. Microform services are classified as printing services and includes microfiche and microfilm. The contractor may make up to two sets of microform files for archival purposes at the end of the contract period of performance.

"Duplication" means the making of copies on photocopy machines employing electrostatic, thermal, or other processes without using an intermediary such as a negative or plate.

"Requirement" means an individual photocopying task. (There may be multiple requirements under a Work Assignment or Delivery Order. Each requirement would be subject to the photocopying limitation of 5,000 copies of one page or 25,000 copies of multiple pages in the aggregate per requirement).

(b) *Prohibition.*

The contractor shall not engage in, nor subcontract for, any printing in connection with the performance of work under this contract. Duplication of more than 5,000 copies of one page or more than 25,000 copies of multiple pages in the aggregate per requirement constitutes printing. The intent of the limitation is not to allow the duplication of final documents for use by the Agency. In compliance with EPA Order 2200.4a, EPA Publication Review Procedure, the Office of Communications, Education, and Media Relations is responsible for the review of materials generated under a contract published or issued by the Agency under a contract intended for release to the public.

(c) *Affirmative Requirements.*

(1) Unless otherwise directed by the contracting officer, the contractor shall use double-sided copying to produce any progress report, draft report or final report.

(2) Unless otherwise directed by the contracting officer, the contractor shall use recycled paper for reports delivered to the Agency which meet the minimum content standards for paper and paper products as set forth in EPA's Web site for the Comprehensive Procurement Guidelines at: http://www.epa.gov/cpg/.

(d) *Permitted Contractor Activities.*

(1) The prohibitions contained in paragraph (b) do not preclude writing, editing, or preparing manuscript copy, or preparing related illustrative material to a final document (camera-ready copy) using desktop publishing.

(2) The contractor may perform a requirement involving the duplication of less than 5,000 copies of only one page, or less than 25,000 copies of multiple pages in the aggregate, using one color (black), so long as such pages do not exceed the maximum image size of 10¾ by 14¼ inches, or 11 by 17 paper stock. Duplication services below these thresholds are not considered printing. If performance of the contract will require duplication in excess of these limits, contractors must immediately notify the contracting officer in writing. EPA may then seek a waiver from the Joint Committee on Printing, U. S. Congress. The intent of the limitation is to allow "incidental" duplication (drafts, proofs) under a contract. The intent of the limitation is not to allow the duplication of copies of final documents for use by the Agency or as distributed as instructed by the Agency.

(3) The contractor may perform a requirement involving the multi-color duplication of no more than 100 pages in the aggregate using color copier technology, so long as such pages do not exceed the maximum image size of 10¾ by 14¼ inches, or 11 by 17 paper stock. Duplication services below these thresholds are not considered printing. If performance of the contract will require duplication in excess of these limits, contractors must immediately notify the contracting officer in writing. EPA may then seek a waiver from the Joint Committee on Printing, U. S. Congress.

(4) The contractor may perform the duplication of no more than a total of 100 diskettes or CD-ROM's. Duplication services below these thresholds are not considered printing. If performance of the contract will require duplication in excess of these limits, contractors must immediately notify the contracting officer in writing. EPA may then seek a waiver from the Joint Committee on Printing, U. S. Congress.

(e) *Violations.*

The contractor may not engage in, nor subcontract for, any printing in connection with the performance of work under the contract. The cost of any printing services in violation of this clause will be disallowed, or not accepted by the Government.

(f) *Flowdown Provision.*

The contractor shall include in each subcontract which may involve a requirement for any printing/duplicating/copying a provision substantially the same as this clause.

(End of clause )

14. In Section 1552.211–70, in the clause "Reports of Work" and in alternate I revise the OMB clearance expiration date of "January 31, 2000" to read "February 28, 2003."

15. Section 1552.211–79, is amended by removing paragraph (a)(5), revising the last sentence in paragraph (b)(3), and revising paragraph (d) to read as follows:

**1552.211–79 Compliance with EPA policies for information resources management.**

* * * * *

(b)(3) * * * (This document may be found at: http:www.epa.gov/docs/etsdop/.)

(c) * * *

(d) Electronic access. A complete listing, including full text, of documents included in the 2100 Series of the Agency's Directive System is maintained on the EPA Public Access Server on the Internet at http://epa.gov/docs/irmpoli8/.

(End of clause)

16. Section 1552 .211–80, Data Standards for the Transmission of Laboratory Measurement Results, is added to read as follows:



**1552.211–80 Data standards for the transmission of laboratory measurement results.**

As prescribed in 1511.011–80, insert the following clause:

**Data Standards for the Transmission of Laboratory Measurement Results**

*October 2000*

This contract requires the transmission of environmental measurements to EPA. The transmission of environmental measurements shall be in accordance with the provisions of EPA Order 2180.2, dated December 10, 1987, which is incorporated by reference in this contract. Copies of the Order may be obtained by written request to: Office of Information Resources Management, Information Management and Systems Division, Mail Code (3404), Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20460.

(End of clause)

17. Section 1552 .215–75, Past Performance Information, is added to read as follows:

**1552.215–75 Past Performance Information.**

As prescribed in 1515.209(c), insert the following clause:

**Past Performance Information**

*October 2000*

(a) Offerors shall submit the information requested below as part of their proposal for both the offeror and any proposed subcontractors for subcontracts expected to exceed $ * . The information may be submitted prior to other parts of the proposal in order to assist the Government in reducing the evaluation period.

(b) Offerors shall submit a list of all or at least * contracts and subcontracts completed in the last * years, and all contracts and subcontracts currently in process, which are similar in nature to this requirement.

(1) The contracts and subcontracts listed may include those entered into with Federal, State and local governments, and commercial businesses, which are of similar scope, magnitude, relevance, and complexity to the requirement which is described in the RFP. Include the following information for each contract and subcontract listed:

(a) Name of contracting activity.

(b) Contract number.

(c) Contract title.

(d) Contract type.

(e) Brief description of contract or subcontract and relevance to this requirement.

(f) Total contract value.

(g) Period of performance.

(h) Contracting officer, telephone number, and E-mail address (if available).

(i) Program manager/project officer, telephone number, and E-mail address (if available).

(j) Administrative Contracting officer, if different from (h) above, telephone number, and E-mail address (if available).

(k) List of subcontractors (if applicable).

(l) Compliance with subcontracting plan goals for small disadvantaged business concerns, monetary targets for small disadvantaged business participation, and the notifications submitted under FAR 19.1202–4 (b), if applicable.

(c) Offerors should not provide general information on their performance on the identified contracts and subcontracts. General performance information will be obtained from the references.

(1) Offerors may provide information on problems encountered and corrective actions taken on the identified contracts and subcontracts.

(2) References that may be contacted by the Government include the contracting officer, program manager/project officer, or the administrative contracting officer identified above.

(3) If no response is received from a reference, the Government will make an attempt to contact another reference identified by the offeror, to contact a reference not identified by the offeror, or to complete the evaluation with those references who responded. The Government shall consider the information provided by the references, and may also consider information obtained from other sources, when evaluating an offeror's past performance.

(4) Attempts to obtain responses from references will generally not go beyond two telephonic messages and/or written requests from the Government, unless otherwise stated in the solicitation. The Government is not obligated to contact all of the references identified by the offeror.

(d) If negative feedback is received from an offeror's reference, the Government will compare the negative response to the responses from the offeror's other references to note differences. A score will be assigned appropriately to the offeror based on the information. The offeror will be given the opportunity to address adverse past performance information obtained from references on which the offeror has not had a previous opportunity to comment, if that information makes a difference in the Government's decision to include the offeror in or exclude the offeror from the competitive range. Any past performance deficiency or significant weakness will be discussed with offerors in the competitive range during discussions.

(e) Offerors must send Client Authorization Letters (see Section J of the solicitation) to each reference listed in their proposal to assist in the timely processing of the past performance evaluation. Offerors are encouraged to consolidate requests whenever possible (i.e., if the same reference has several contracts, send that reference a single notice citing all applicable contracts). Offerors may send Client Authorization Letters electronically to references with copies forwarded to the contracting officer.

(1) If an offeror has no relevant past performance history, an offeror must affirmatively state that it possesses no relevant past performance history.

(2) Client Authorization Letters should be mailed or E-mailed to individual references no later than five (5) working days after proposal submission. The offeror should forward a copy of the Client Authorization Letter to the contracting officer simultaneously with mailing to references.

(f) Each offeror may describe any quality awards or certifications that indicate the offeror possesses a high-quality process for developing and producing the product or service required. Such awards or certifications include, for example, the Malcolm Baldrige Quality Award, other Government quality awards, and private sector awards or certifications.

(1) Identify the segment of the company (one division or the entire company) which received the award or certification.

(2) Describe when the award or certification was bestowed. If the award or certification is over three years old, present evidence that the qualifications still apply.

(g) Past performance information will be used for both responsibility determinations and as an evaluation factor for award. The Past Performance Questionnaire identified in section J will be used to collect information on an offeror's performance under existing and prior contracts/subcontracts for products or services similar in scope, magnitude, relevance, and complexity to this requirement in order to evaluate offerors consistent with the past performance evaluation factor set forth in section M. References other than those identified by the offeror may be contacted by the Government and used in the evaluation of the offeror's past performance.

(h) Any information collected concerning an offeror's past performance will be maintained in the official contract file.

(i) In accordance with FAR 15.305 (a) (2) (iv), offerors with no relevant past performance history, or for whom information on past performance is not available, will be evaluated neither favorably nor unfavorably on past performance.

* Indicates that the contracting officer inserts applicable dollar figure and number.

(End of clause)

18. Section1552.217–77 is added to read as follows:

**1552.217–77 [Added]**

As prescribed in 1517.208(g), insert the following clause:

**Option to Extend the Term of the Contract Fixed Price**

*October 2000*

The Government has the option to extend the term of this contract for_____additional period(s). If more than_____days remain in the contract period of performance, the Government, without prior written notification, may exercise this option by issuing a contract modification. To exercise this option within the last_____days of the period of performance, the Government must provide to the Contractor written notification prior to that last _____-day period. This preliminary notification does not commit the Government to exercising the option. Use of an option will result in the following contract modifications:

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(a) The "Period of Performance" clause will be amended as follows to cover the Base and Option Periods:

| Period | Start date | End date |
|---|---|---|
| | | |
| | | |
| | | |
| | | |

(b) During the option period(s) the Contractor shall provide the services described below:

| Period | Attachment |
|---|---|
| | |
| | |
| | |
| | |

(c) The "Consideration and Payment" clause will be amended to reflect increased fixed prices for each option period as follows:

| Fixed price | Option period |
|---|---|
| | |
| | |
| | |
| | |

(End of clause)

19. Section 1552.219–70 Mentor-Protege Program is added to read as follows:

**1552.219–70 Mentor-Protege Program.**

As prescribed in 1519.203, insert the following clause:

**Mentor-Protege Program**

*October 2000*

(a) The Contractor has been approved to participate in the EPA Mentor-Protege program. The purpose of the Program is to increase the participation of small disadvantaged businesses (SDBs) as subcontractors, suppliers, and ultimately as prime contractors; to establish a mutually beneficial relationship with SDB's and EPA's large business prime contractors (although small businesses may participate as Mentors); to develop the technical and corporate administrative expertise of SDBs which will ultimately lead to greater success in competition for contract opportunities; to promote the economic stability of SDBs; and to aid in the achievement of goals for the use of SDBs in subcontracting activities under EPA contracts.

(b) The Contractor shall submit an executed Mentor-Protege agreement to the Contracting officer, with a copy to the Office of Small and Disadvantaged Business Utilization or the Small Business Specialist, within thirty (30) calendar days after the effective date of the contract. The Contracting officer will notify the Contractor within thirty (30) calendar days from its submission if the agreement is not accepted.

(c) The Contractor as a Mentor under the Program agrees to fulfill the terms of its agreement(s) with the Protege firm(s).

(d) If the Contractor or Protege firm is suspended or debarred while performing under an approved Mentor-Protege agreement, the Contractor shall promptly give notice of the suspension or debarment to the Office of Small and Disadvantaged Business Utilization and the Contracting officer.

(e) Costs incurred by the Contractor in fulfilling their agreement(s) with the Protege firm(s) are not reimbursable on a direct basis under this contract.

(f) In an attachment to Standard Form 294, Subcontracts Report for Individual Contracts, the Contractor shall report on the progress made under their Mentor-Protege agreement(s), providing:

(1) The number of agreements in effect; and

(2) The progress in achieving the developmental assistance objectives under each agreement, including whether the objectives of the agreement have been met, problem areas encountered, and any other appropriate information.

(End of clause)

20. Section 1552.219–71, Procedures for Participation in the EPA Mentor-Protege Program, is added to read as follows:

**1552.219–71 Procedures for Participation in the EPA Mentor-Protege Program.**

As prescribed in 1519.203, insert the following provision:

**Procedures for Participation in the EPA Mentor-Protege Program**

*October 2000*

(a) This provision sets forth the procedures for participation in the EPA Mentor-Protege Program (hereafter referred to as the Program). The purpose of the Program is to increase the participation of small disadvantaged businesses (SDBs) as subcontractors, suppliers, and ultimately as prime contractors; to establish a mutually beneficial relationship with SDBs and EPA's large business prime contractors (although small businesses may participate as Mentors); to develop the technical and corporate administrative expertise of the SDBs which will ultimately lead to greater success in competition for contract opportunities; to promote the economic stability of SDBs; and to aid in the achievement of goals for the use of SDBs in subcontracting activities under EPA contracts. If the successful offeror is accepted into the Program they shall serve as a Mentor to a Protege (SDB) firm(s), providing developmental assistance in accordance with an agreement with the Protege firm(s).

(b) To participate as a Mentor, the offeror must receive approval in accordance with paragraph (h).

(c) A Protege must be a small disadvantaged business (SDB) as defined under Federal Acquisition Regulation (FAR) 19.001, and a small business for the purpose of the Small Business Administration (SBA) size standard applicable to the North American Industry Classification System (NAICS) code applicable to the contemplated supplies or services to be provided by the Protege firm to the Mentor firm. Further, consistent with EPA's 1993 Appropriation Act, socially disadvantaged individuals shall be deemed to include women.

(d) Where there may be a concern regarding the Protege firm's eligibility to participate in the program, the protege's eligibility will be determined by the contracting officer after the SBA has completed any formal determinations.

(e) The offeror shall submit an application in accordance with paragraph (k) as part of its proposal which shall include as a minimum the following information.

(1) A statement and supporting documentation that the offeror is currently performing under at least one active Federal contract with an approved subcontracting plan and is eligible for the award of Federal contracts;

(2) A summary of the offeror's historical and recent activities and accomplishments under their SDB program. The offeror is encouraged to include any initiatives or outreach information believed pertinent to approval as a Mentor firm;

(3) The total dollar amount (including the value of all option periods or quantities) of EPA contracts and subcontracts received by the offeror during its two preceding fiscal years. (Show prime contracts and subcontracts separately per year);

(4) The total dollar amount and percentage of subcontract awards made to all SDB firms under EPA contracts during its two preceding fiscal years. If recently required to submit a SF 295, provide copies of the two preceding year's reports;

(5) The number and total dollar amount of subcontract awards made to the identified Protege firm(s) during the two preceding fiscal years (if any).

(f) In addition to the information required by (e) above, the offeror shall submit as a part of the application the following information for each proposed Mentor-Protege relationship.

(1) Information on the offeror's ability to provide developmental assistance to the identified Protege firm and how the assistance will potentially increase contracting and subcontracting opportunities for the Protege firm, including subcontract opportunities in industry categories where SDBs are not dominant in the offeror's vendor base.

(2) A letter of intent indicating that both the Mentor firm and the Protege firm intend to enter into a contractual relationship under which the Protege will perform as a subcontractor under the contract resulting from this solicitation and that the firms will negotiate a Mentor-Protege agreement. Costs incurred by the offeror in fulfilling the agreement(s) with the Protege firm(s) are not reimbursable as a direct cost under the contract. The letter of intent must be signed by both parties and contain the following information:

(i) The name, address and phone number of both parties;

(ii) The Protege firm's business classification, based upon the NAICS code(s) which represents the contemplated supplies or services to be provided by the Protege firm to the Mentor firm;

(iii) A statement that the Protege firm meets the eligibility criteria;

(iv) A preliminary assessment of the developmental needs of the Protege firm and the proposed developmental assistance the Mentor firm envisions providing the Protege. The offeror shall address those needs and how their assistance will enhance the Protege. The offeror shall develop a schedule to assess the needs of the Protege and establish criteria to evaluate the success in the Program.

(v) A statement that if the offeror or Protege firm is suspended or debarred while performing under an approval Mentor-Protege agreement the offeror shall promptly give notice of the suspension or debarment to the EPA Office of Small Disadvantaged Business Utilization (OSDBU) and the contracting officer. The statement shall require the Protege firm to notify the Contractor if it is suspended or debarred.

(g) The application will be evaluated on the extent to which the offeror's proposal addresses the items listed in (e) and (f). To the maximum extent possible, the application should be limited to not more than 10 single pages, double spaced. The offeror may identify more than one Protege in its application.

(h) If the offeror is determined to be in the competitive range, the offeror will be advised by the Contracting officer whether their application is approved or rejected. The Contracting officer, if necessary, may request additional information in connection with the offeror's submission of its revised or best and final offer. If the successful offeror has submitted an approved application, they shall comply with the clause titled "Mentor-Protege Program."

(i) Subcontracts of $1,000,000 or less awarded to firms approved as Proteges under the Program are exempt from the requirements for competition set forth in FAR 44.202–2(a)(5), 52.244–2(b)(2)(iii) and 52.244–5. However, price reasonableness must still be determined and the requirements in FAR 44.202–2(a)(8) and 52.244–2(b)(2)(iv) for cost or price analysis continue to apply.

(j) Costs incurred by the offeror in fulfilling their agreement(s) with a Protege firm(s) are not reimbursable as a direct cost under the contract. Unless EPA is the responsible audit agency under FAR 42.703–1, offerors are encouraged to enter into an advance agreement with their responsible audit agency on the treatment of such costs when determining indirect cost rates. Where EPA is the responsible audit agency, these costs will be considered in determining indirect cost rates.

(k) Submission of Application and Questions Concerning the Program.



The application for the Program shall be submitted to the contracting officer, and to the EPA OSDBU, at the following addresses for headquarters procurements: Socioeconomic Business Program Officer, Office of Small and Disadvantaged Business Utilization, U. S. Environmental Protection Agency, Ariel Rios Building (3801R), 1200 Pennsylvania Avenue, NW, Washington, DC 20460, Telephone: (202) 564–4322, Fax: (202) 565–2473.

The application for the Program shall be submitted to the Contracting officer, and to the Small Business Specialist, at the following address for RTP procurements: Small Business Program Officer, Contracts Management Division (MD–33), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, Telephone: (919) 541–2249, Fax: (919) 541–5539.

The application for the Program shall be submitted to the Contracting officer, and to the Small Business Specialist, at the following address for Cincinnati procurements: Small and Disadvantaged Business Utilization Officer, Contracts Management Division, 26 West Martin Luther King Drive, Cincinnati, OH 45268, Telephone: (513) 487–2004, Fax: (513) 487–2342.

(End of provision)

21. Section 1552.219–72, Small Disadvantaged Business Participation Program, is added to read as follows:

**1552.219–72 Small disadvantaged business participation program.**

As prescribed in 1519.204(a), insert the following clause:

**Small Disadvantaged Business Participation Program**

*October 2000*

(a) Section M of this solicitation contains a source selection factor or subfactor related to the participation of small disadvantaged business (SDB) concerns in the performance of the contract. The nature of the evaluation of an SDB offeror under this evaluation factor or subfactor is dependent upon whether the SDB concern qualifies for the price evaluation adjustment under the clause at FAR 52.219–23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns and whether the SDB concern specifically waives this price evaluation adjustment.

(b) In order to be evaluated under the source selection factor or subfactor, an offeror must provide, with its offer, the following information:

(1) The extent of participation of SDB concerns in the performance of the contract in terms of the value of the total acquisition. Specifically, offerors must provide targets, expressed as dollars and percentages of the total contract value, for SDB participation in any of the Standard Industrial Classification (SIC) Major Groups as determined by the Department of Commerce. Total dollar and percentage targets must be provided for SDB participation by the prime contractor, including team members and joint venture partners. In addition, total dollar and percentage targets for SDB participation by subcontractors must be provided and listed separately;

(2) The specific identification of SDB concerns to be involved in the performance of the contract;

(3) The extent of commitment to use SDB concerns in the performance of the contract:

(4) The complexity and variety of the work the SDB concerns are to perform; and

(5) The realism of the proposal to use SDB concerns in the performance of the contract.

(c) An SDB offeror who waives the price evaluation adjustment provided in FAR 52.219–23 shall provide, with their offer, targets, expressed as dollars and percentages of the total contract value, for the work that it intends to perform as the prime contractor in the applicable and authorized North American Industry Classification System (NAICS) Industry Subsectors as determined by the Department of Commerce. All of the offeror's identified targets described in paragraphs (b) and (c) of this clause will be incorporated into and made part of any resulting contract.

(End of provision)

22. Section 1552.219–73, Small Disadvantaged Business Targets, is added to read as follows:

**1552.219–73 Small Disadvantaged Business Targets.**

As prescribed in 1519.204(b), insert the following clause:

**Small Disadvantaged Business Targets**

*October 2000*

(a) In accordance with FAR 19.1202–4(a) and EP 52.219–145, the following small disadvantaged business (SDB) participation targets proposed by the contractor are hereby incorporated into and made part of the contract:

| Contractor targets | SIC/NAICS major group | Dollars | Percentage of total contract value |
|---|---|---|---|
| Total Prime Contractor Targets (including joint venture members and team members) | | | |
| Total Subcontractor Targets | | | |

(b) The following specifically identified SDB(s) was (were) considered under the Section M SDB participation evaluation factor or subfactor (continue on separate sheet if more space is needed):

(1) _____
(2) _____
(3) _____
(4) _____
(5) _____

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The contractor shall promptly notify the contracting officer of any substitution of firms if the new firms are not SDB concerns.

(c) In accordance with FAR 52.219–25, Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting, the contractor shall report on the participation of SDB concerns in the performance of the contract no less than thirty (30) calendar days prior to each annual contractor performance evaluation [contracting officer may insert the dates for each performance evaluation (i.e., every 12 months after the effective date of contract)] or as otherwise directed by the contracting officer.

(End of provision)

23. Section 1552.219–74, Small Disadvantaged Business Participation Evaluation Factor, is added to read as follows:

**1552.219–74 Small disadvantaged business participation evaluation factor.**

As prescribed in 1519.204(c), insert the following clause:

**Small Disadvantaged Business Participation Evaluation Factor**

*October 2000*

Under this factor [or subfactor, if appropriate], offerors will be evaluated based on the demonstrated extent of participation of small disadvantaged business (SDB) concerns in the performance of the contract in each of the authorized and applicable North American Industry Classification System (NAICS) Industry Subsectors as determined by the Department of Commerce. As part of this evaluation, offerors will be evaluated based on:

(1) The extent to which SDB concerns are specifically identified to participate in the performance of the contract;

(2) The extent of the commitment to use SDB concerns in the performance of the contract (enforceable commitments will be weighed more heavily than nonenforceable commitments);

(3) The complexity and variety of the work the SDB concerns are to perform under the contract;

(4) The realism of the proposal to use SDB concerns in the performance of the contract; and

(5) The extent of participation of SDB concerns, at the prime contractor and subcontractor level, in the performance of the contract (in the authorized and applicable NAICS Industry Subsectors in terms of dollars and percentages of the total contract value.

(End of provision)

24. Section 1552.223–72, Care of Laboratory Animals, is added to read as follows:

**1552.223–72 Care of Laboratory Animals.**

As prescribed in 1523.303–72, insert the following clause:

**Care of Laboratory Animals**

*October 2000*

(a) Before undertaking performance of any contract involving the use of laboratory animals, the Contractor shall register with the Secretary of Agriculture of the United States in accordance with section 6, Public Law 89–544, Laboratory Animal Welfare Act, August 24, 1966, as amended by Public Law 91–579, Animal Welfare Act of 1970, December 24, 1970. The Contractor shall furnish evidence of such registration to the contracting officer.

(b) The Contractor shall acquire animals used in research and development programs from a dealer licensed by the Secretary of Agriculture, or from exempted sources in accordance with the Public Laws enumerated in (a), above, of this provision.

(c) In the care of any live animals used or intended for use in the performance of this contract, the Contractor shall adhere to the principles enunciated in the Guide for Care and Use of Laboratory Animals prepared by the Institute of Laboratory Animal Resources, National Academy of Sciences (NAS)—National Research Council (NRC), and the United States Department of Agriculture's (USDA) regulations and standards issued under Public Laws enumerated in (a) above. In case of conflict between standards, the higher standard shall be used. The Contractor's reports on portions of the contract in which animals were used shall contain a certificate stating that the animals were cared for in accordance with the principles enunciated in the Guide for Care and Use of Laboratory Animals prepared by the Institute of Laboratory Animals Resources (NAS–NRC), and/or in the regulations and standards as promulgated by the Agricultural Research Service, USDA, pursuant to the Laboratory Animal Welfare Act of August 24, 1966 as amended (Public Law 89–544 and Public Law 91–579). NOTE: The Contractor may request registration of his facility and a current listing of licensed dealers from the Regional Office of the Animal and Plant Health Inspection Service (APHIS), USDA, for the region in which his research facility is located. The location of the appropriate APHIS Regional Office as well as information concerning this program may be obtained by contacting the Senior Veterinary, Animal Care Staff, USDA/APHIS, Federal Center Building, Hyattsville, MD 20782.

(End of clause)

25. Section 1552.232–73 is amended by revising paragraph (b) (2), to read as follows:

**1552.232–73 Payments—Fixed-Rate Services Contract.**

* * * * *

(b) Materials, other direct costs, and subcontracts.

* * * * *

(2) Subcontracted effort may be included in the fixed hourly rates discussed in paragraph (a)(1) of this clause and will be reimbursed as discussed in that paragraph. Otherwise, the cost of subcontracts that are authorized under the subcontracts clause of this contract shall be reimbursable costs under this clause provided that the costs are consistent with subparagraph (3) of this clause. Reimbursable costs in connection with subcontracts shall be payable to subcontractors consistent with FAR 32.504 in the same manner as for items and services purchased directly for the contract under paragraph (a)(1) of this clause. Reimbursable costs shall not include any costs arising from the letting, administration, or supervision of performance of the subcontract, if the costs are included in the hourly rates payable under paragraph (a)(1) of this clause.

* * * * *

26. Section 1552.228–70, Insurance Liability to Third Persons, is added to read as follows:

**1552.228–70 Insurance Liability to Third Persons.**

As prescribed in 1528.101, insert the following clause:

**Insurance—Liability to Third Persons**

*October 2000*

(a)(1) Except as provided in subparagraph (2) below, the Contractor shall provide and maintain workers' compensation, employer's liability, comprehensive general liability (bodily injury), and comprehensive automobile liability (bodily injury and property damage) insurance, and such other insurance as the Contracting officer may require under this contract.

(2) The Contractor may, with the approval of the Contracting officer, maintain a self-insurance program; provided that, with respect to workers' compensation, the Contractor is qualified pursuant to statutory authority.

(3) All insurance required by this paragraph shall be in a form and amount and for those periods as the Contracting officer may require or approve and with insurers approved by the Contracting officer.

(b) The Contractor agrees to submit for the Contracting officer's approval, to the extent and in the manner required by the Contracting officer, any other insurance that is maintained by the Contractor in connection with the performance of this contract and for which the Contractor seeks reimbursement.

(c) The Contractor shall be reimbursed for that portion of the reasonable cost of insurance allocable to this contract, and required or approved under this clause, in accordance with its established cost accounting practices.

(End of clause)

27. Section 1552.235–80, Access to Confidential Business Information (CBI), is added to read as follows:

**1552.235–80 Access to confidential business information.**

As prescribed in 1535.007–70(g), insert the following clause.

**Access to Confidential Business Information**

*October 2000*

It is not anticipated that it will be necessary for the contractor to have access to confidential business information (CBI) during the performance of tasks required under this contract. However, the following applies to any and all tasks under which the contractor will or may have access to CBI:

The contractor shall not have access to CBI submitted to EPA under any authority until the contractor obtains from the Project Officer a certification that the EPA has followed all necessary procedures under 40 CFR part 2, subpart B (and any other applicable procedures), including providing, where necessary, prior notice to the submitters of disclosure to the contractor.

(End of clause)

28. Section 1552.239–70, Rehabilitation Act Notice, is added to read as follows:

**1552.239–70 Rehabilitation act notice.**

As prescribed in 1523.7003(a), insert the following clause.

**Rehabilitation Act Notice**

*October 2000*

(a) EPA has a legal obligation under the Rehabilitation Act of 1973, 29 U.S.C. 791, to provide reasonable accommodation to persons with disabilities who wish to attend EPA programs and activities. Under this contract, the contractor may be required to provide support in connection with EPA programs and activities, including conferences, symposia, workshops, meetings, etc. In such cases, the contractor shall, as applicable, include in its draft and final meeting announcements (or similar documents) the following notice:

It is EPA's policy to make reasonable accommodation to persons with disabilities wishing to participate in the agency's programs and activities, pursuant to the Rehabilitation Act of 1973, 29 U.S.C. 791. Any request for accommodation should be made to the specified registration contact for a particular program or activity, preferably one month in advance of the registration deadline, so that EPA will have sufficient time to process the request.

(b) Upon receipt of such a request for accommodation, the contractor shall immediately forward the request to the EPA contracting officer, and provide a copy to the appropriate EPA program office. The contractor may be required to provide any accommodation that EPA may approve. However, in no instance shall the contractor proceed to provide an accommodation prior to receiving written authorization from the contracting officer.

(c) The contractor shall insert in each subcontract or consultant agreement placed hereunder provisions that shall conform substantially to the language of this clause, including this paragraph, unless otherwise authorized by the contracting officer.

(End of clause)

29. Section 1552.242–72, Financial administrative contracting officer, is added to read as follows:

**1552.242–72 Financial administrative contracting officer.**

As prescribed in 1542.705 (b), insert the following clause:



**Financial Administrative Contracting Officer**

*October 2000*

(a) A Financial Administrative Contracting Officer (FACO) is responsible for performing certain post-award functions related to the financial aspects of this contract when the EPA is the cognizant federal agency. These functions include the following duties:

(1) Review the contractor's compensation structure and insurance plan.

(2) Negotiate advance agreements applicable to treatment of costs and to Independent Research & Development/Bid and Proposal costs.

(3) Negotiate changes to interim billing rates and establish final indirect cost rates and billing rates.

(4) Prepare findings of fact and issue decisions related to financial matters under the Disputes clause, if appropriate.

(5) In connection with Cost Accounting Standards:

(A) Determine the adequacy of the contractor's disclosure statements;

(B) Determine whether the disclosure statements are in compliance with Cost Accounting Standards and FAR Part 31;

(C) Determine the contractor's compliance with Cost Accounting Standards and disclosure statements, if applicable; and

(D) Negotiate price adjustments and execute supplemental agreements under the Cost Accounting Standards clauses at FAR 52.230–3, 52.230–4, and 52.230–5.

(6) Review, approve or disapprove, and maintain surveillance of the contractor's purchasing system.

(7) Perform surveillance, resolve issues, and establish any necessary agreements related to the contractor's cost/schedule control system, including travel policies/procedures, allocation and cost charging methodology, timekeeping and labor distribution policies and procedures, subcontract payment practices, matters concerning relationships between the contractor and its affiliates and subsidiaries, and consistency between bid and accounting classifications.

(8) Review, resolve issues, and establish any necessary agreements related to the contractor's estimating system.

(b) The FACO shall consult with the contracting officer whenever necessary or appropriate and shall forward a copy of all agreements/decisions to the contracting officer upon execution.

(c) The FACO for this contract is:

_____

_____

_____

(End of clause)

30. Section 1552.245–73, Government Property, is added to read as follows:

**1552.245–73 Government property.**

As prescribed in 1545.106(d), insert the following clause:

**Government Property**

*October 2000*

(a) The contractor shall not fabricate or acquire, on behalf of the Government, either directly or indirectly through a subcontract, any item of property without written approval from the Contracting officer.

(b) In accordance with paragraph (a) above, the contractor is authorized to acquire and/or fabricate the equipment listed below for use in the performance of this contract. The equipment is subject to the provisions of the "Government Property" clause.

(c) The Government will provide the following item(s) of Government property to the contractor for use in the performance of this contract. This property shall be used and maintained by the contractor in accordance with the provisions of the "Government Property" clause.

(d) The "EPA Contract Property Administration Requirements" provided below apply to this contract.

**U.S. Environmental Protection Agency**

**Property Administration Requirements (PAR)**

*1. Purpose.* This document sets forth the requirements for Environmental Protection Agency (EPA) contractors in the performance of their Government property management responsibilities under contracts with EPA. These requirements supplement those contained in the Government property clause(s) in this contract, and part 45 of the Federal Acquisition Regulation (FAR).

*2. Delegation of Contract Property Administration.* EPA has delegated much of its contract property management oversight to the Defense Contract Management Command (DCMC). Shortly after award of a contract, the EPA contracting officer (CO) delegates the functions of property administration and plant clearance (disposal) for the contract to DCMC. Upon acceptance of that delegation, DCMC will provide notification to the contractor, identifying the assigned property administrator (PA) and plant clearance officer (PLCO). If the contract is not delegated to DCMC for administration, any reference to PA and PLCO throughout this document shall be construed to mean CO. The DCMC PA is available to the contractor for assistance in all matters of property administration. Notwithstanding the delegation, as necessary, the contractor may contact their EPA CO. In the event of disagreement between the contractor and the DCMC PA, the contractor should seek resolution from the CO. Unless otherwise directed in the contract, or this document, all originals of written information or reports, except direct correspondence between the contractor and the DCMC PA, relative to Government property, should be forwarded to the administrative CO assigned to this contract.

*3. Requests for Government Property.*

a. In accordance with FAR 45.102, the contractor shall furnish all property required for performing Government contracts. If a contractor believes that Government facilities are required for performance of the contract, the contractor shall submit a written request to the CO. At a minimum, the request shall contain the following elements:

1. Contract number for which the facilities are required.

2. An item(s) description, quantity and estimated cost.

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3. Certification that no like contractor facilities exist which could be utilized.

4. A detailed description of the task-related purpose of the facilities.

5. Explanation of negative impact if facilities are not provided by the Government.

6. If applicable, recommend the exception under FAR 45.302–1(a) or any applicable EPA class deviation (available upon request), and provide any other information which would support the furnishing of facilities, including contractor-acquired property (CAP).

7. Except when the request is for material, a lease versus purchase analysis shall be furnished with the request to acquire property on behalf of the Government. The contractor may not proceed with acquisition of facilities on behalf of the Government until receipt of written authorization from the EPA CO.

*4. Transfer of Government Property.* When the contractor receives Government-furnished property (GFP), the contractor should receive, from the transferor, (either EPA or another contractor) all of the applicable data elements (Attachment 1 of this clause) needed to maintain the required records. If this information is not provided at the time of receipt of the property, the contractor shall request it from the EPA CO. The CO will attempt to obtain the data from the previous property holder, or, if data does not exist, will assist the current property holder in estimating the elements. Prior to signing an acceptance document for the property, the receiving contractor should perform a complete inventory of the property. Responsibility, as well as accountability, passes with the signed acceptance. When, at the written direction of the EPA CO, the contractor transfers GFP to another contractor, or another Agency, the contractor shall provide the applicable data elements (Attachment 1 of this clause). Upon return of the property to EPA, the same data must be provided by the contractor to the EPA CO.

*5. Records of Government Property.*

a. In accordance with FAR 45.505 and 45.505–1, the contractor shall establish and maintain adequate property records for all Government property, regardless of value, including property provided to and in the possession of a subcontractor. Material (supplies) provided by the Government or acquired by the contractor and billed as a direct charge to the Government is Government property and records must be established as such.

b. The contractor shall establish and maintain the official Government property record. (If the contract contains the FAR Clause 52.245–1, the Government will maintain the official Government property records.) Such records shall contain the applicable data elements (Attachment 1 of this clause) for *all items of Government property regardless of cost.*

c. The Contractor shall identify all Superfund property and designate it as such both on the item and on the official Government property record. If it is not practicable to tag the item, the contractor shall write the ID number on a tag, card or other entity that may be kept with the item or in a file.

d. Support documentation used for posting entries to the property record shall provide complete, current and auditable data. Entries shall be posted to the record in a timely manner following an action.

e. For Government vehicles, in addition to the data elements required by EPA, the contractor shall also comply with the General Services Administration (GSA) and Department of Energy (DOE) record and report requirements supplied with all EPA provided motor vehicles. If the above requirements were not provided with the vehicle, the contractor shall notify the EPA CO.

f. When Government property is disclosed to be in the possession or control of the contractor but not provided under any contract, the contractor shall record and report the property in accordance with FAR 45.502(f) and (h).

*6. Inventories of Government Property.* The contractor shall conduct a complete physical inventory of EPA property at least once per year, unless otherwise directed by the PA. Reconciliation shall be completed within 30 calendar days of inventory completion. The contractor shall report the results of the inventory, including any discrepancies, to the DCMC PA upon completion of the reconciliation. The contractor's records shall indicate the completion date of the inventory. See section 9 herein, Contract Closeout, for information on final inventories.

*7. Reports of Government Property.* In accordance with FAR 45.505–14, EPA requires an annual summary report, for each contract, by contract number, of Government property in the contractor's possession as of September 30 each year.

a. For each classification listed in FAR 45.505–14(a), except material, the contractor shall provide the total acquisition cost and total quantity. If there are zero items in a classification, or if there is an ending balance of zero, the classification must be listed with zeros in the quantity and acquisition cost columns.

b. For material, the contractor shall provide the total acquisition cost only.

c. Property classified as facilities, special tooling, special test equipment, and agency peculiar must be reported on two separate lines. The first line shall include the total acquisition cost and quantity of all items or systems with a unit acquisition cost of $25,000 or more. The second line shall include the total acquisition cost and quantity of all items with a unit acquisition cost of less than $25,000.

d. For items comprising a system, which is defined as "a group of interacting items functioning as a complex whole," the contractor may maintain the record as a system noting all components of the system under the main component or maintain individual records for each item. However, for the annual report of Government property the components must be reported as a system with one total dollar amount for the system, if that system total is $25,000 or more.

e. The reports are to be received at EPA and DCMC no later than October 31 of each year.

f. Distribution shall be as follows:

Original to: EPA CO
1 copy: DCMC PA

g. EPA Contractors are required to comply with GSA's and DOE's special reporting requirements for motor vehicles. A statement of these requirements will be provided by the EPA Facility Management and Services Division (FMSD) concurrent with receipt of each vehicle.

h. The contractor shall provide detailed reports on an as-needed basis, as may be requested by the CO or the PA.

*8. Disposition of Government Property.* The disposition process is composed of three distinct phases: identification of excess property, reporting of excess property, and final disposition.

a. *Identification of Excess Property.* The disposition process begins with the contractor identifying Government property that is excess to its contract. Effective contractor property control systems provide for disclosing excesses as they occur. Once inactive Government property has been determined to be excess to the contract to which it is accountable, it must be screened against the contractor's other EPA contracts for further use. If the property may be reutilized, the contractor shall notify the CO in writing. Government property will be transferred to other contracts only when the COs on both the current contract and the receiving contract authorize such a transfer in writing.

b. *Reporting Excess Government Property.* Excess Government property shall be reported in accordance with FAR Subpart 45.6. Inventory schedules A–E (SF Forms 1426–1434) provide the format for reporting of excess Government property. Instructions for completing the forms are located at FAR 45.606–5 and samples may be found in FAR 53.301–1426 thru 1434. Inventory schedules shall be forwarded to the DCMC PLCO with a copy to the EPA CO. The cover letter, which accompanies the inventory schedules, must include the EPA CO's name, address and telephone number. Inventory schedules must also contain a notification if the property is Superfund property. If the property is Superfund property, the contractor must also prominently include the following language on the inventory schedule: "Note to PLCO: Reimbursement to the EPA Superfund is required." When requested, by the PLCO or the CO, the contractor will provide the fair market value for those items requested.

c. *Disposition Instructions.*

1. If directed in writing by the EPA CO, the contractor will retain all or part of the excess Government property under the current contract for possible future requirements. The contractor shall request, from the PLCO, withdrawal from the inventory schedule of those items to be retained.

2. If directed in writing by the EPA CO, the contractor shall transfer the property to another EPA contractor. The contractor will transfer the property by shipping it in accordance with the instructions provided by the CO. The contractor shall request, from the PLCO, withdrawal from the inventory schedule of those items to be transferred. Further, the contractor shall notify the CO when the transfer is complete.



3. If directed in writing by the EPA CO, the contractor shall transfer the property to EPA. The contractor shall ship/deliver the property in accordance with the instructions provided by the CO. The contractor will request, from the PLCO, withdrawal from the inventory schedule of those items to be transferred to EPA. Further, the contractor shall notify the CO when the transfer is complete.

4. The contractor will ship the property elsewhere if directed, in writing, by the PLCO.

5. The PLCO will either conduct the sale or instruct the contractor to conduct a sale of surplus property. The contractor will allow prospective bidders access to property offered for sale.

6. Property abandoned by the PLCO on the contractor's site must be disposed of in a manner that does not endanger the health and safety of the public.

7. To effect transfer of accountability, the contractor shall provide the recipient of the property with the applicable data elements set forth in Attachment 1 of this clause. The contractor shall also obtain either a signed receipt from the recipient, or proof of shipment. The contractor shall update the official Government property record to indicate the disposition of the item and to close the record.

9. *Contract Closeout.* The contractor shall complete a physical inventory of all Government property at contract completion and the results, including any discrepancies, shall be reported to the DCMC PA. In the case of a terminated contract, the contractor shall comply with the inventory requirements set forth in the applicable termination clause. The results of the inventory, as well as a detailed inventory listing, must be forwarded to the CO. For terminated contracts, the contractor will conduct and report the inventory results as directed by the CO. However, in order to expedite the disposal process, contractors may be required to, or may elect to submit to the CO, an inventory schedule for disposal purposes up to six (6) months prior to contract completion. If such an inventory schedule is prepared, the contractor must indicate the earliest date that each item may be disposed. The contractor shall update all property records to show disposal action. The contractor shall notify the DCMC PA, in writing, when all work has been completed under the contract and all Government property accountable to the contract has been disposed.

Attachment 1

*Required Data Elements.* Where applicable (all elements are not applicable to material) the contractor is required to maintain, at a minimum, the information related to the following data elements for EPA Government property: Contractor Identification/Tag Number; Description; Manufacturer; Model; Serial Number; Acquisition Date; Date received; Acquisition Cost*; Acquisition Document Number; Location; Contract Number; Account Number (if supplied); Superfund (Yes/No); Inventory Performance Date; Disposition Date.

* Acquisition cost shall include the price of the item plus all taxes, transportation and installation charges allocable to that item.

**Note:** For items comprising a system which is defined as, "a group of interacting items functioning as a complex whole," the contractor may maintain the record as a system noting all components of the system under the main component or maintain individual records for each item. However, for the Annual Report of Government Property, the components must be reported as a system with one total dollar amount for the system, if that system total is $25,000 or more.

(End of clause)

Dated: September 21, 2000.

**John C. Gherardini,**

*Acting Director, Office of Acquisition Management.*

[FR Doc. 00–25046 Filed 10–2–00; 8:45 am]

BILLING CODE 6560–50–P

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

## 48 CFR Parts 1807, 1811, 1815, 1816, 1817, 1819, 1834, 1843, 1845, and 1852

## North American Industry Classification System (NAICS)

**AGENCY:** National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** This is a final rule amending the NASA Federal Acquisition Regulation Supplement (NFS) to conform to changes made in the Federal Acquisition Regulation (FAR) by Federal Acquisition Circular (FAC) 97–19 and make editorial corrections and miscellaneous changes dealing with NASA internal and administrative matters.

**EFFECTIVE DATE:** October 3, 2000.

**FOR FURTHER INFORMATION CONTACT:** Celeste Dalton, Code HK, (202) 358–1645, e-mail: celeste.dalton@hq.nasa.gov.

**SUPPLEMENTARY INFORMATION:**

### A. Background

Federal Acquisition Circular (FAC) 97–19 replaced the Standard Industrial Classification (SIC) system with the North American Industry Classification System (NAICS). Additionally, FAC 97–19 amended the title to section 7.107, revised subpart 11.5, and amended section 43.205. This final rule amends the NASA FAR Supplement (NFS) to conform to these changes. Changes unrelated to FAC 97–19 are made to: update references to internal documents; revise the dollar threshold for use of Government bills of lading at 1852.247–73; revise the instructions for amending the clause at 1852.242–70 when its Alternate II is used; and make a technical correction at 1819.202.

### B. Regulatory Flexibility Act

NASA certifies that this final rule does not have a significant economic impact on a substantial number of small business entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), because it does not impose new requirements on offerors or contractors.

### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the NFS do not impose any recordkeeping or information collection requirements, or collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

### List of Subjects in 48 CFR Parts 1807, 1811, 1815, 1816, 1817, 1819, 1834, 1843, 1845, and 1852

Government procurement.

**Thomas S. Luedtke,**

*Associate Administrator for Procurement.*

Accordingly, 48 CFR Parts 1807, 1811, 1815, 1816, 1817, 1819, 1834, 1843, 1845, and 1852 are amended as follows:

1. The authority citation for 48 CFR Parts 1807, 1811, 1815, 1816, 1817, 1819, 1834, 1843, 1845, and 1852 continues to read as follows:

**Authority:** 42 U.S.C. 2473(c)(1).

## PART 1807—ACQUISITION PLANNING

2. Revise the section heading at 1807.107 to read as follows:

**1807.107 Additional requirements for acquisitions involving bundling.**

## PART 1811—DESCRIBING AGENCY NEEDS

3. Revise subpart 1811.5 to read as follows:

### Subpart 1811.5—Liquidated Damages

**1811.501 Policy.**

(d) The procurement officer must forward recommendations concerning remission of liquidated damages to the Headquarters Office of Procurement (Code HS).

## PART 1815—CONTRACTING BY NEGOTIATION

**1815.7001 [Amended]**

4. Amend section 1815.7001 by removing the words "Procurement Guidance" and adding the words

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"Procurement Advocacy Programs" in its place.

## PART 1816—TYPES OF CONTRACTS

**1816.405—274 [Amended]**

5. Amend paragraphs (g)(2) and (g)(4) of section 1816.405–274, by removing the acronym "SIC" and adding "NAICS" in its place.

## PART 1817—SPECIAL CONTRACTING METHODS

**1817.7101 [Amended]**

6. In section 1817.7101, amend paragraph (b) by removing the acronym "NHB" and adding "NPG" in its place.

## PART 1819—SMALL BUSINESS PROGRAMS

**1819.202–1 [Removed]**

7. Remove section 1819.202–1.

**1819.201 [Amended]**

8. Amend paragraph (f)(1) of section 1819.201 by removing the acronym "SIC" and adding "NAICS" in its place.

9. Revise section 1819.1005 to read as follows:

**1819.1005 Applicability.**

(b) The targeted industry categories for NASA and their North American Industry Classification System (NAICS) codes are:

| NAICS code | Industry category |
|---|---|
| 334111 | Electronic Computer Manufacturing. |
| 334418 | Printed Circuit Assembly (Electronic Assembly) Manufacturing. |
| 334613 | Magnetic and Optical Recording Media Manufacturing. |
| 334119 | Other Computer Peripheral Equipment Manufacturing. |
| 33422 | Radio and Television Broadcasting and Wireless Communication Equipment Manufacturing. |
| 336415 | Guided Missile and Space Vehicle Propulsion Unit and Propulsion Unit Parts Manufacturing. |
| 54171 | Research and Development in the Physical Engineering and Life Sciences. |
| 336419 | Other Guided Missile and Space Vehicle Parts and Auxiliary Equipment Manufacturing. |
| 334511 | Search, Detection, Navigation, Guidance, Aeronautical, and Nautical Systems and Instrument Manufacturing. |
| 333314 | Optical Instrument and Lens Manufacturing. |
| 541511 | Custom Computer Programming Services. |
| 541512 | Computer Systems Design Services. |
| 51421 | Data Processing Services. |
| 541519 | Other Computer Related Services. |

**1819.7208 [Amended]**

10. Amend paragraph (b)(1) of section 1819.7208 by removing the acronym "SIC" and adding "NAICS" in its place.

**1819.7209 [Amended]**

11. Amend paragraphs (a)(1) and (a)(2) of section 1819.7209 by removing the acronym "SIC" and adding "NAICS" in its place.

## PART 1834—MAJOR SYSTEM ACQUISITIONS

12. Revise section 1834.003 to read as follows:

**1834.003 Responsibilities.**

(a) NASA's implementation of OMB Circular No. A–109, Major System Acquisition, and FAR Part 34 is contained in this part and in NASA Policy Directive (NPD) 7120.4, "Program/Project Management," and NASA Procedures and Guidelines (NPG) 7120.5, " NASA Program and Project Management Processes and Requirements".

## PART 1843—CONTRACT MODIFICATIONS

13. Revise section 1843.205 to read as follows:

**1843.205 Contract clauses.**

As authorized in the prefaces of clauses FAR 52.243–1, Changes—Fixed Price; FAR 52.243–2, Changes—Cost Reimbursement; and FAR 52.243–4, Changes; and in the prescription at 43.205(c) for FAR 52.243–3, Changes—Time-and-Material or Labor-Hours, the period within which a contractor must assert its right to an equitable adjustment may be varied not to exceed 60 calendar days.

## PART 1845—GOVERNMENT PROPERTY

**1845.608–1 [Amended]**

14. In section 1845.608–1, amend paragraph (a) by removing the acronym "NHB" and adding "NPG" in its place.

**1845.610–4 [Amended]**

15. Amend section 1845.610–4 by removing the acronym "NHB" and adding "NPG" in its place.

**1845.613 [Amended]**

16. Amend section 1845.613 by removing the acronym "NHB" and adding "NPG" in its place.

## PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

17. In ALTERNATE II to the clause at section 1852.242–72, revise the introductory text to read as follows:

**1852.242–72 Observance of legal holidays.**

* * * * *

**Alternate II**

*October 2000*

As prescribed in 1842.7001(c), add the following as paragraphs (e) and (f) if Alternate I is used, or as paragraphs (c) and (d) if Alternate I is not used. If added as paragraphs (c) and (d), amend the first sentence of paragraph (d) by deleting "(e)" and adding "(c)" in its place.

* * * * *

**1852.247–73 [Amended]**

18. In section 1852.247–73, amend paragraphs (a) and (b) by removing "$100" and adding "$1,000" in its place.

[FR Doc. 00–25248 Filed 10–2–00; 8:45 am]

BILLING CODE 7510–01–P

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**48 CFR Part 1837**

**Acquisition of Training Services**

**AGENCY:** National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the NASA FAR Supplement (NFS) by removing regulations on Acquisition of Training to conform the acquisition of training with FAR regulations.

**EFFECTIVE DATE:** October 1, 2000.

**FOR FURTHER INFORMATION CONTACT:** James H. Dolvin, NASA Headquarters, Office of Procurement, Contract Management Division (Code HK), Washington, DC 20546. (202) 358–1279, email: jdolvin1@mail.hq.nasa.gov.

**SUPPLEMENTARY INFORMATION:**

### A. Background

In 1991, Subpart 1837.70, Acquisition of Training, was added to the NFS. Section 1837.7000, Acquisition of off-the-shelf training courses, provided that the Government Employees Training Act of 1958, 5 U.S.C. 4101 *et seq.*, could be used as the authority for acquisition of "non-Governmental off-the-shelf training courses which are available to the public." Subpart 1837.7001, Acquisition of new training courses, provided that acquisition of new training courses "developed to fill a specific NASA need" must be conducted in accordance with the FAR. This subpart is being removed because it has caused confusion within NASA about the relevance of the FAR to training service procurement.

A proposed rule was published in the **Federal Register** at 65 FR 43730, dated July 14, 2000. No comments were received, and this final rule adopts the proposed rule without change.

### *B. Regulatory Flexibility Act*

NASA certifies that this rule will not have a significant economic impact on a substantial number of small business entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because the deletion of this subpart will not alter the manner in which NASA is required to acquire training.

### *C. Paperwork Reduction Act*

The Paperwork Reduction Act does not apply because the changes to the NFS do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, et seq.

**List of Subjects in 48 CFR Part 1837**

Government Procurement

**Anne Guenther,**

*Acting Associate Administrator for Procurement.*

Accordingly, 48 CFR Part 1837 is proposed to be amended as follows:

1. The authority citation for 48 CFR Part 1837 continues to read as follows:

**Authority:** 42 U.S.C. 2473(c)(1)

## PART 1837—SERVICE CONTRACTING

2. Subpart 1837.70 is removed.

[FR Doc. 00–25249 Filed 10–2–00; 8:45 am]

BILLING CODE 7510–01–M

## DEPARTMENT OF THE INTERIOR

**Fish and Wildlife Service**

**50 CFR Part 17**

**RIN 1018–AF98**

## Endangered and Threatened Wildlife and Plants; Final Determination of Critical Habitat for the Alameda Whipsnake (Masticophis lateralis euryxanthus)

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), designate critical habitat under the Endangered Species Act of 1973, as amended (Act), for the Alameda whipsnake (*Masticophis lateralis euryxanthus*). A total of approximately 164,150 hectares (406,598 acres) of land fall within the boundaries of designated critical habitat. Critical habitat for the Alameda whipsnake is located in Contra Costa, Alameda, San Joaquin, and Santa Clara counties, California. Section 7 of the Act requires Federal agencies to ensure that actions they authorize, fund, or carry out are not likely to destroy or adversely modify designated critical habitat. As required by section 4 of the Act, we considered economic and other relevant impacts prior to making a final decision on the size and configuration of critical habitat.

**EFFECTIVE DATE:** This final rule is effective November 2, 2000.

**ADDRESSES:** The complete administrative record for this rule is on file at the U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, Suite W–2605, Sacramento, California 95825. The complete file for this rule is available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Jason Davis or Heather Bell, at the above address (telephone 916/414–6600, facsimile 916/414–6713).

**SUPPLEMENTARY INFORMATION:**

### Background

The Alameda whipsnake is a slender, fast-moving, diurnal snake with a broad head, large eyes, and slender neck. Alameda whipsnakes range from 91 to 122 centimeters (3 to 4 feet) in length. The dorsal surface is sooty black in color with a distinct yellow-orange stripe down each side. The forward portion of the bottom surface is orange-rufous colored, the midsection is cream colored, and the rear portion and tail are pinkish. The adult Alameda whipsnake virtually lacks black spotting on the bottom surface of the head and neck. Juveniles may show very sparse or weak black spots. Another common name for the Alameda whipsnake is the "Alameda striped racer" (Riemer 1954, Jennings 1983, Stebbins 1985).

The Alameda whipsnake is one of two subspecies of the California whipsnake (*Masticophis lateralis*). The chaparral whipsnake (*Masticophis lateralis lateralis*) is distributed from northern California, west of the Sierran crest and desert, to central Baja California. The Alameda whipsnake is restricted to a small portion of this range, primarily the inner Coast Range in western and central Contra Costa and Alameda Counties.

The distribution in California, of both subspecies, coincides closely with chaparral (Jennings 1983, Stebbins 1985). Recent telemetry data indicate that, although home ranges of Alameda whipsnakes are centered on shrub communities, whipsnakes frequently venture into adjacent habitats, including grassland, oak savanna, and occasionally oak-bay woodland. Most telemetry locations are within 50 meters (m) (170 feet (ft)) of scrub habitat, but distances of greater than 150 m (500 ft) occur (Swaim 1994). Initial data indicate that adjacent habitats may play a crucial role in certain life history and physiological needs of the Alameda whipsnake, but the full extent has yet to be determined. Telemetry data indicate that whipsnakes remain in grasslands for periods ranging from a few hours to several weeks at a time. Grassland habitats are used by male whipsnakes most extensively during the mating season in spring. Female whipsnakes use grassland areas most extensively after mating, possibly in their search for suitable egg-laying sites (Swaim 1994).

Rock outcrops can be an important feature of Alameda whipsnake habitat because they provide retreat opportunities for whipsnakes and support lizard populations. Lizards, especially the western fence lizard (*Sceloporus occidentalis*), appear to be the most important prey item of whipsnakes (Stebbins 1985; Swaim 1994; Harry Green, Museum of Vertebrate Zoology, U.C. Berkeley, pers. comm. 1998), although other prey items are taken, including skinks, frogs,

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snakes, and birds (Stebbins 1985, Swaim 1994). Most radio telemetry locations for whipsnakes were within the distribution of major rock outcroppings and talus (a sloping mass of rock debris at the base of a cliff) (Swaim 1994).

Alameda whipsnakes have been found in association with a variety of shrub communities including diablan sage scrub, coyote bush scrub, and chamise chaparral (Swaim 1994), also classified as coastal scrub, mixed chaparral, and chamise-redshank chaparral (Mayer and Laudenslayer 1988). However, the type of vegetation may have less to do with preference by the whipsnake than the extent of the canopy, slope exposure, the availability of retreats such as rock outcrops and rodent burrows, and prey species composition and abundance (Swaim 1994; K. Swaim, Swaim Biological Consulting, pers. comm. 1999). Alameda whipsnakes have been sighted or found dead a significant distance from the nearest shrub community (K. Swaim, pers. comm. 1999). The reasons for such movements are unknown.

Initial studies indicated that Alameda whipsnakes occurred where the canopy was open (less than 75 percent of the total area within the scrub or chaparral community was covered by shrub crown) or partially open (between 75 and 90 percent of the total area was covered with shrub crown), and only seldom did whipsnakes occur in closed canopy (greater than 90 percent of the area was covered by shrub crown). However, trapping efforts may have been biased due to the difficulty of setting traps in dense scrub (Swaim 1994; K. Swaim, pers. comm. 1999).

Core areas (areas of concentrated use) of the Alameda whipsnake most commonly occur on east, south, southeast, and southwest facing slopes (Swaim 1994). However, recent information indicates that whipsnakes do make use of north facing slopes in more open stands of scrub habitat (K. Swaim, pers. comm. 1999).

Adult snakes appear to have a bimodal (two times of the year) seasonal activity pattern with peaks during the spring mating season and a smaller peak during late summer and early fall. Although short above-ground movements may occur during the winter, Alameda whipsnakes generally retreat in November into a hibernaculum (shelter used during the snake's dormancy period) and emerge in March. Courtship and mating occur from late-March through mid-June. During this time, males move around throughout their home ranges, while females appear to remain at or near their hibernaculum, where mating occurs. Suspected egg-laying sites for two females were located in grassland with scattered shrub habitat. Male home ranges of 1.9 to 8.7 hectares (ha) (4.7 to 21.5 acres (ac)) (mean of 5.5 ha or 13.6 ac) were recorded, and showed a high degree of spatial overlap. Several individual snakes monitored for nearly an entire activity season appeared to maintain a stable home range. Movements of these individuals were multi-directional, and individual snakes returned to specific areas and retreat sites after long intervals of non-use. Snakes had one or more core areas within their home range, while large areas of the home range received little use (Swaim 1994).

**Previous Federal Action**

The September 18, 1985, Notice of Review (50 FR 37958) included the Alameda whipsnake as a category 2 candidate species for possible future listing as endangered or threatened. Category 2 candidates were those taxa for which listing as threatened or endangered might be warranted, but for which adequate data on biological vulnerability and threats were not available to support issuance of listing proposals. The January 6, 1989, Notice of Review (54 FR 554) solicited information on its status as a category 2 candidate species. The Alameda whipsnake was moved to category 1 in the November 21, 1991, Notice of Review (56 FR 58804) on the basis of significant increases in habitat loss and threats occurring throughout its range. Category 1 candidates were defined as taxa for which we had on file substantial information on biological vulnerability and threats to support preparation of listing proposals. On February 4, 1994, we published a proposed rule in the **Federal Register** (59 FR 5377) to list the Alameda whipsnake as an endangered species. On December 5, 1997, we published a final rule listing the Alameda whipsnake as threatened (62 FR 64306).

On March 4, 1999, the Southwest Center for Biological Diversity, the Center for Biological Diversity, and Christians Caring for Creation filed a lawsuit in the Northern District of California against the U.S. Fish and Wildlife Service and Bruce Babbitt, Secretary of the Department of the Interior (Secretary), for failure to designate critical habitat for seven species: The Alameda whipsnake (*Masticophis lateralis euryxanthus*), the Zayante band-winged grasshopper (*Trimerotropis infantilis*), the Morro shoulderband snail (*Helminthoglypta walkeriana*), the Arroyo southwestern toad (*Bufo microscaphus californicus*), the San Bernardino kangaroo rat (*Dipodomys merriami parvus*), the spectacled eider (*Somateria fischeri*), and the Steller's eider (*Polysticta stelleri*) (*Southwest Center for Biological Diversity* v. *U.S. Fish and Wildlife*, CIV 99–1003 MMC).

On November 5, 1999, William Alsup, U.S. District Judge, dismissed the plaintiffs' lawsuit under a settlement agreement entered into by the parties. On March 8, 2000, (65 FR 12155) we proposed the designation of 7 areas within Alameda, Contra Costa, San Joaquin, and Santa Clara Counties as critical habitat for the Alameda whipsnake.

**Critical Habitat**

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed under the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management consideration or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon determination that these areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures that are necessary to bring an endangered species or a threatened species to the point at which listing under the Act is no longer necessary.

Section 4(b)(2) of the Act requires that we base critical habitat proposals upon the best scientific and commercial data available, after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude areas from critical habitat designation when the benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in extinction of the species (section 4(b)(2) of the Act).

Designation of critical habitat can help focus conservation activities for a listed species by identifying areas that contain the physical and biological features that are essential for conservation of that species. Designation of critical habitat alerts the public as well as land-managing agencies to the importance of these areas.

Critical habitat also identifies areas that may require special management considerations or protection, and may provide protection to areas where significant threats to the species have been identified. Critical habitat receives protection from destruction or adverse modification through required consultation under section 7 of the Act with regard to actions carried out, funded, or authorized by a Federal agency. Aside from the protection that may be provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat.



Section 7(a)(2) of the Act requires Federal agencies to consult with us to ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a threatened or endangered species, or result in the destruction or adverse modification of critical habitat. "Jeopardize the continued existence" (of a species) is defined as an appreciable reduction in the likelihood of survival and recovery of a listed species.

"Destruction or adverse modification" (of critical habitat) is defined as a direct or indirect alteration that appreciably diminishes the value of critical habitat for the survival and recovery of the listed species for which critical habitat was designated. Thus, the definitions of "jeopardy" to the species and "adverse modification" of critical habitat are nearly identical (50 CFR 402.02). When multiple units of critical habitat are designated, each unit may serve as the basis of an adverse modification analysis if protection of different facets of the species' life cycle or its distribution are essential to the species as a whole for both its survival and recovery.

Designating critical habitat does not, in itself, lead to recovery of a listed species. Designation does not create or mandate a management plan, establish numerical population goals, prescribe specific management actions (inside or outside of critical habitat), or directly affect areas not designated as critical habitat. Specific management recommendations for critical habitat are most appropriately addressed in recovery plans and management plans, and through section 7 consultation.

We did not propose to designate critical habitat for the Alameda whipsnake within the proposed or final listing rulemaking because, at the time of listing, we knew of no Federal lands within the five whipsnake populations. We also believed that the possibility of Federal agency involvement on private and public, non-Federal lands was remote. Based on information available at the time of listing, we believed that only 20 percent of known whipsnake habitat occurred on private lands, and anticipated that urban development on private lands would occur only along the periphery of whipsnake populations. In addition, we believed that the need for active fire management programs at this urban-wildland interface would preclude those private lands from being considered habitat essential to the conservation of the species. We found that critical habitat designation was not prudent due to lack of any significant benefit beyond that conferred by listing.

Since the Alameda whipsnake was listed, we have found that there are a greater number of Federal actions that could trigger the need for an interagency consultation than was believed at the time the Alameda whipsnake was listed. We are now aware of federally owned lands that occur within the range of the Alameda whipsnake, including Bureau of Land Management parcels in the Mount Diablo-Black Hills population area. In addition, an Alameda whipsnake was recently captured on land owned by the U.S. Department of Energy at their Site 300 facility, a Federal site not previously known to be inhabited by Alameda whipsnakes. We are also aware of a number of activities with a Federal connection on private lands within the range of the whipsnake, including activities associated with the issuance of Clean Water Act section 404 permits and Federal Emergency Management Agency fire protection projects.

We now believe that private lands play a more important role in whipsnake conservation than we originally believed. An increasing amount of private land has been found to be occupied by the Alameda whipsnake, comprising more than 20 percent of land within the five whipsnake populations. High-value Alameda whipsnake habitat occurs on private lands that are evenly distributed throughout all five whipsnake population areas. We now believe that private lands are essential to the conservation of the species.

**Relationship to Recovery**

The ultimate purpose of listing a species as threatened or endangered under the Act is to recover the species to the point at which it no longer needs the protections provided to the listed species. The Act mandates the conservation of listed species through different mechanisms. Section 4(f) of the Act authorizes the Service to develop recovery plans for listed species. A recovery plan includes (i) a description of such site-specific management actions as may be necessary to achieve the plan's goal for the conservation and survival of the species, (ii) objective, measurable criteria which, when met, would result in a determination that the species be removed from the list, and (iii) estimates of the time required and cost to carry out those measures needed to achieve the plan's goal.

We are currently drafting a recovery plan for the Alameda whipsnake. This draft recovery plan will include a more thorough analysis of recovery needs of the Alameda whipsnake. Therefore, we may amend critical habitat at a later date based on information gained through the recovery planning process.

**Primary Constituent Elements**

Under section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, we are required to base critical habitat determinations on the best scientific and commercial data available and to consider those physical and biological features that are essential to conservation of the species and that may require special management considerations or protection. Such requirements include, but are not limited to, space for individual and population growth, and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing of offspring, germination, or seed dispersal; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

The primary constituent elements for the Alameda whipsnake are those habitat components that are essential for the primary biological needs of foraging, sheltering, breeding, maturation, and dispersal. The primary constituent elements are in areas that support scrub communities, including mixed chaparral, chamise-redshank chaparral, coastal scrub, and annual grassland and oak woodlands that lie adjacent to scrub habitats. In addition, the primary constituent elements for the Alameda whipsnake may be found in grasslands and various oak woodlands that are linked to scrub habitats by substantial rock outcrops or river corridors. Other habitat features that provide a source of cover for the whipsnake during dispersal or are near scrub habitats and contain habitat features (e.g., rock outcrops) that support adequate prey populations may also contain primary constituent elements for the Alameda whipsnake. Within these communities, Alameda whipsnakes require plant canopy covers that supply a suitable range of temperatures for the species' normal behavioral and physiological requirements (including but not limited to foraging, breeding, and maturation).

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Openings in the plant canopy or scrub/grassland edge provide sunning and foraging areas. Corridors of plant cover and retreats (including rock outcrops) sufficient to provide for dispersal between areas of habitat, and plant community patches of sufficient size to prevent the deleterious effects of isolation (such as inbreeding or the loss of a subpopulation due to a catastrophic event) are also essential. Within these plant communities, specific habitat features needed by whipsnakes include, but are not limited to, small mammal burrows, rock outcrops, talus, and other forms of cover to provide temperature regulation, shelter from predators, egg laying sites, and winter hibernaculum. Many of these same elements are important in maintaining prey species. Adequate insect populations are necessary to sustain prey populations.

**Criteria Used To Identify Critical Habitat**

We considered several qualitative criteria in the selection and proposal of specific areas or units for Alameda whipsnake critical habitat. These criteria focused on designating units (1) throughout the geographic and elevation range of the species; (2) within various occupied plant communities, such as diablan sage scrub, coyote bush scrub, and chamise chaparral; (3) in areas of large, contiguous blocks of geographical areas occupied by the species; and (4) in areas that link contiguous blocks of geographical areas occupied by the species (i.e., linkage areas).

**Methods**

In developing critical habitat for the Alameda whipsnake, we used data on known Alameda whipsnake locations to initially identify important areas. Through the use of 1998 and 1999 aerial photos (1:12,000 scale) and 1994 digital orthophotos, we examined the extent of suitable habitat that was in the vicinity of known whipsnake locations. Critical habitat includes both suitable habitat and areas that link suitable habitat, as these links or corridors facilitate movement of individuals between habitat areas and are important for dispersal and gene flow (Beier and Noss 1998). We have determined seven separate units of critical habitat, five of which represent primary breeding, feeding, and sheltering areas, while the other two represent corridors (See attached figures). The range of these critical habitat units extends in the south from Wauhab Ridge in the Del Valle area to Cedar Mountain Ridge, in Santa Clara County; north to the northernmost extent of suitable habitat in Contra Costa County; west to the westernmost extent of the inner Coastal Range; and in the east, to the easternmost extent of suitable habitat. We could not depend solely on federally owned lands for critical habitat designation as they are limited in geographic location, size, and habitat quality. In addition to federally owned lands, we propose to designate critical habitat on non-Federal public lands and privately owned lands, including California Department of Parks and Recreation lands, regional and local park lands, and water district lands.

Areas designated as critical habitat meet the definition of critical habitat under section 3 of the Act in that they are within the geographical areas occupied by the species, contain the physical and biological features that are essential to conservation of the species, and are in need of special management considerations or protection.

In determining areas that are essential for the survival and recovery of the species, we used the best scientific information available. This information included habitat suitability and species site-specific information. To date, only initial research has been done to identify and define specific habitat needs of Alameda whipsnakes, and no comprehensive surveys have been conducted to quantify their distribution or abundance. Limited and preliminary habitat assessment and whipsnake presence work has been conducted on the Department of Energy's Lawrence Livermore National Laboratory Site 300, East Bay Regional Park District's Tilden Park, San Francisco Public Utilities Commission's San Antonio Reservoir, Contra Costa Water District's Los Vaqueros Reservoir, East Bay Municipal Utility District's San Leandro Watershed and Siesta Valley, Pleasanton Ridge Conservation Bank, and Signature Properties' Bailey Ranch. Some small parcels have also been surveyed; however, these surveys were in conjunction with development and, in most cases, that habitat has been destroyed.

We emphasized areas containing most of the verified Alameda whipsnake occurrences, especially recently identified locations. To maintain genetic and demographic interchange that will help maintain the viability of a regional metapopulation, we included corridor areas that allow movement between areas supporting Alameda whipsnakes. These corridors or connecting areas, while supporting some habitat suitable for foraging, shelter, breeding, and maturation, were primarily included to facilitate dispersal.

In identifying areas of critical habitat, we attempted to avoid developed areas such as towns, intensive agricultural areas such as vineyards, and other lands unlikely to contribute to Alameda whipsnake conservation. Given the short period of time in which we were required to complete this rule and the lack of fine-scale mapping data, we were unable to map critical habitat in sufficient detail to exclude all such areas. Existing features and structures within the critical habitat boundary, such as buildings, roads, canals, railroads, large water bodies, and other features not currently containing or likely to develop these habitat components, will not contain one or more of the primary constituent elements. Federal actions limited to these areas, therefore, would not trigger a section 7 consultation, unless they affect the species and/or primary constituent elements in adjacent critical habitat. Two areas, the north and south corridors (unit 6 connecting units 1 and 2; and unit 7 connecting units 3 and 5), contain some urban development. These two corridors are extremely narrow, and, therefore, maintaining as much area within these corridors as possible to ensure the long-term connectivity between whipsnake populations is important. These two units may not provide sufficient habitat necessary to allow for breeding, and offer limited opportunities for foraging and sheltering. However, these areas provide for the vital function of dispersal among other critical habitat units.

We considered the existing status of lands in designating areas as critical habitat. Section 10(a) of the Act authorizes us to issue permits for the taking of listed species incidental to otherwise lawful activities. Incidental take permit applications must be supported by a habitat conservation plan (HCP) that identifies conservation measures that the permittee agrees to implement for the species to minimize and mitigate the impacts of the requested incidental take. Currently, no approved HCPs cover the Alameda whipsnake or its habitat. However, we expect critical habitat may be used as a tool to help identify areas within the range of the Alameda whipsnake that are most critical for the conservation of the species. Development of HCPs for such areas on non-Federal lands should not be precluded, as we consider HCPs to be one of the most important methods through which non-Federal landowners can resolve endangered species conflicts. We provide technical assistance and work closely with applicants throughout development of HCPs to help identify special management considerations for the Alameda whipsnake. We intend for HCPs to provide a package of protection and management measures sufficient to address the conservation needs of the species.



**Critical Habitat Designation**

The approximate area of critical habitat by county and land ownership is shown in Table 1. Critical habitat includes Alameda whipsnake habitat throughout the species' range in the United States (*i.e.*, Contra Costa, Alameda, San Joaquin, and Santa Clara Counties, California). Lands designated as critical habitat are under private, State, and Federal ownership, with Federal lands including lands managed by the Bureau of Land Management and the U.S. Department of Energy. Lands designated as critical habitat have been divided into seven critical habitat units.

TABLE 1. APPROXIMATE AREA ENCOMPASSING DESIGNATED CRITICAL HABITAT IN HECTARES (HA) (ACRES (AC)) BY COUNTY AND LAND OWNERSHIP

| County | Federal land * | Local/State land | Private land | Total |
|---|---|---|---|---|
| Alameda | 310 ha (767 ac) | 26,440 ha (65,492 ac) | 56,045 ha (138,824 ac) | 82,795 ha (205,083 ac) |
| Contra Costa | 32 ha (80 ac) | 31,970 ha (79,189 ac) | 35,245 ha (87,301 ac) | 67,247 ha (166,570 ac) |
| San Joaquin | 606 ha (1,500 ac) | 525 ha (1,300 ac) | 4,834 ha (11,975 ac) | 5,965 ha (14,775 ac) |
| Santa Clara | NA | 4,037 ha (10,000 ac) | 4,106 ha (10,170 ac) | 8,143 ha (20,170 ac) |
| Total | 948 ha (2,347 ac) | 62,972 ha (155,981 ac) | 100,230 ha (248,270 ac) | 164,150 ha (406,598 ac) |

* Includes the Bureau of Land Management and Department of Energy land.

A brief description of each critical habitat unit and our reasons designating those areas as critical habitat for the Alameda whipsnake are given below:

*Unit 1 Tilden-Briones Unit*

Unit 1 encompasses approximately 16,074 ha (39,815 ac) within the Tilden-Briones unit and is the most northwestern unit of the five Alameda whipsnake metapopulations, and provides primary breeding, feeding, and sheltering habitat for the whipsnake. This entire unit occurs in Contra Costa County. This unit is bordered to the north by State Highway 4 and the cities of Pinole, Hercules, and Martinez; to the south by State Highway 24 and the City of Orinda Village; to the west by Interstate 80 and the cities of Berkeley, El Cerrito, and Richmond; and to the east by Interstate 680 and the City of Pleasant Hill. A substantial amount of public land exists within this unit, including East Bay Regional Park District's Tilden, Wildcat, and Briones Regional Parks and East Bay Municipal Utilities District watershed lands.

*Unit 2 Oakland-Las Trampas Unit*

Unit 2 encompasses approximately 21,869 ha (54,170 ac) south of the Tilden-Briones unit and north of the Hayward-Pleasanton Ridge unit, and provides primary breeding, feeding, and sheltering habitat for the Alameda whipsnake. This unit is split evenly between Alameda and Contra Costa Counties. This unit is surrounded to the north by State Highway 24 and the cities of Orinda, Moraga, and Lafayette; to the south by Interstate Highway 580 and the City of Castro Valley; to the West by State Highway 13 and Interstate Highway 580 and the cities of Oakland and San Leandro; and to the east by Interstate Highway 680 and the cities of Danville, San Ramon, and Dublin. The Oakland-Las Trampas unit also contains substantial amounts of public land including East Bay Regional Park District's Redwood and Anthony Chabot Regional Parks, Las Trampas Regional Wilderness, and additional East Bay Municipal Utilities District watershed lands.

*Unit 3 Hayward-Pleasanton Ridge Unit*

Unit 3 encompasses approximately 12,923 ha (32,011 ac) south of the Oakland-Las Trampas unit and northwest of the Sunol-Cedar Mountain unit, and provides primary breeding, feeding, and sheltering habitat for the Alameda whipsnake. This unit occurs solely in Alameda County and is surrounded by Interstate Highway 580 to the north; Niles Canyon Road (State Highway 84) to the south; the cities of Hayward and Union City to the west, and Interstate Highway 680 and the City of Pleasanton to the east. This unit is bisected by Palomares Canyon Road, which runs from Interstate Highway 580 to Niles Canyon Road. Greater than 30 percent of this unit is in public ownership, including Garin, Dry Creek, and Pleasanton Ridge Regional Parks and other East Bay Regional Park District holdings. The privately owned Pleasanton Ridge Conservation Bank also occurs in the northeastern section of this unit.

*Unit 4 Mount Diablo-Black Hills Unit*

Unit 4 encompasses approximately 40,257 ha (99,717 ac) and completely encompasses Mount Diablo State Park and surrounding lands. The Mount Diablo-Black Hills Unit provides primary Alameda whipsnake breeding, feeding, and sheltering habitat. A majority of this unit is in Contra Costa County; however, the southern tip of this unit is in Alameda County. This unit is surrounded by State Highway 4 and the cities of Clayton, Pittsburgh and Antioch to the north; open grassland within Tassajara Valley just below the Alameda/Contra Costa County line to the south; the cities of Concord, Walnut Creek, and Danville to the west; and, to the east, by large expanses of grassland occurring west of State Highway 4, near the cities of Oakley and Brentwood. This unit contains large expanses of public lands, including two small Bureau of Land Management parcels; Mount Diablo State Park; Contra Costa Water District's Los Vaqueros Reservoir watershed; and Contra Loma, Black Diamond Mines, Morgan Territory, and Round Valley Regional Parks, and other East Bay Regional Park District holdings. Other public lands include lands owned by the City of Walnut Creek. Two large, privately owned gravel quarries occur within this unit.

*Unit 5 Sunol-Cedar Mountain Unit*

Unit 5 encompasses approximately 69,168 ha (171,328 ac) and is the largest and the southernmost of the seven critical habitat units. It provides primary breeding, feeding, and

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sheltering habitat for the Alameda whipsnake. A majority of this unit is in Alameda County; however, it does also extend into western San Joaquin and northern Santa Clara Counties. The northern boundary of this unit runs parallel to State Highway 84 and Corral Hollow Road, south of the cities of Pleasanton and Livermore and Tesla Road. The southern boundary lies below Calaveras Reservoir and captures all of Wauhab and Cedar Ridges in Santa Clara County and stretches to the east, north of the Alameda-San Joaquin-Santa Clara-Stanislaus County intersection. The western boundary lies east of Interstate Highway 680 and the greater San Jose urban areas. The eastern boundary lies within San Joaquin County a few miles east of the Alameda County line. This unit includes East Bay Regional Park District's Sunol, Mission Peak, Ohlone, Camp Ohlone, and Del Valle complex, and State Water Project's Del Valle Reservoir watershed. In addition, the Department of Energy's Site 300 and California Department of Parks and Recreation's Carnegie Recreation Area occur within the unit.

*Unit 6 Caldecott Tunnel Unit*

Unit 6 encompasses approximately 2,185 ha (5,412 ac) and occurs between units 1 and 2 where State Highway 24 tunnels under the Berkeley Hills for approximately 1.2 kilometers (4,000 feet). It provides a connector between units 1 and 2. This unit is in Alameda and Contra Costa Counties. This unit encompasses lands owned by East Bay Municipal Utilities District, East Bay Regional Park District, Lawrence Berkeley Laboratory, the Cities of Berkeley and Oakland, and some private holdings.

*Unit 7 Niles Canyon/Sunol Unit*

Unit 7 encompasses approximately 1,673 ha (4,145 ac) and occurs between units 3 and 5 and lies south of State Highway 84 (Niles Canyon Road); north and west of Interstate 680; and east of the City of Fremont. It provides a connector between units 3 and 5. This unit is solely in Alameda County. This unit includes East Bay Regional Park District's Vargas Plateau and San Francisco Public Utilities watershed lands. Impediments to whipsnake movement between units 3 and 7 include Alameda Creek, a 0.3–0.6-meter (12–24-inch) high concrete barrier that lies south of Niles Canyon Road and north of Alameda Creek, railroad tracks that run along both sides of Alameda Creek, and heavy vehicular traffic along Niles Canyon Road.

**Effects of Critical Habitat Designation**

*Section 7 Consultation*

Section 7(a) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out do not destroy or adversely modify critical habitat to the extent that the action appreciably diminishes the value of the critical habitat for the survival and recovery of the species. Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a) of the Act requires Federal agencies, to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. If a species is listed or critical habitat is designated, section 7(a)(2) requires Federal agencies to ensure that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation, Federal agencies ensure that their actions do not destroy or adversely modify critical habitat.

When we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation with us on actions for which formal consultation has been completed if those actions may affect designated critical habitat.

Activities on Federal lands that may affect the Alameda whipsnake or its critical habitat will require section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers (Army Corps) under section 404 of the Clean Water Act, or some other Federal action, including funding (*e.g.*, Federal Highway Administration, Federal Aviation Administration, or Federal Emergency Management Agency) will also continue to be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat and actions on non-Federal lands that are not federally funded or regulated do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may destroy or adversely modify such habitat or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat include those that alter the primary constituent elements to the extent that the value of critical habitat for both the survival and recovery of the Alameda whipsnake is appreciably diminished. We note that such activities may also jeopardize the continued existence of the species. Where they appreciably reduce the value of critical habitat, such activities may include, but are not limited to:

(1) Removing, thinning, or destroying vegetation, whether by burning or mechanical, chemical, or other means (*e.g.*, fuels management, bulldozing, herbicide application, overgrazing, etc.) that have not been approved by the Service, exclusive of routine clearing of fuel breaks around urban boundaries that were constructed before the listing of the whipsnake on December 5, 1997;

(2) Water transfers, diversion, or impoundment, groundwater pumping, irrigation, or other activity that causes barriers or deterrents to dispersal, inundates habitat, or significantly converts habitat (*e.g.*, conversion to urban development, vineyards, landscaping);

(3) Recreational activities that significantly deter the use of suitable habitat areas by Alameda whipsnakes or alter habitat through associated maintenance activities (*e.g.*, off-road vehicle parks, golf courses, and hiking, mountain biking, and horseback riding trails);

(4) Sale, exchange, or lease of Federal land containing suitable habitat that is likely to result in the habitat being destroyed or appreciably degraded; and

(5) Construction activities that destroy or appreciably degrade suitable habitat (*e.g.*, urban development, building of recreational facilities such as off-road vehicle parks and golf courses, road building, drilling, mining, quarrying, and associated reclamation activities).

To properly portray the effects of critical habitat designation, we must first compare the section 7 requirements for actions that may affect critical habitat with the requirements for actions that may affect a listed species. Section 7 prohibits actions funded, authorized, or carried out by Federal agencies from jeopardizing the continued existence of a listed species or destroying or adversely modifying the listed species' critical habitat. Actions likely to "jeopardize the continued existence" of a species are those that would appreciably reduce the likelihood of the species' survival and recovery. Actions likely to "destroy or adversely modify" critical habitat are those that would appreciably reduce the value of critical habitat for the survival and recovery of the listed species.

Common to both definitions is an appreciable detrimental effect on both survival and recovery of a listed species. Given the similarity of these definitions, actions likely to destroy or adversely modify critical habitat would almost always result in jeopardy to the species concerned, particularly when the area of the proposed action is in the geographical areas occupied by the species concerned. In those cases, critical habitat provides little additional protection to a species, and the ramifications of its designation are few. However, if an area now occupied by the species were to become unoccupied in the future, critical habitat designation may provide additional protection than is available through a jeopardy analysis.

If you have questions regarding whether specific activities will constitute destruction or adverse modification of critical habitat, contact the Field Supervisor, Sacramento Fish and Wildlife Office (see **ADDRESSES** section).

Designation of critical habitat could affect Federal agency activities where they appreciably reduce the value of critical habitat. Some of these activities include, but are not limited to:

(1) Sale, exchange, or lease of lands owned by the Bureau of Land Management or the Department of Energy;

(2) Regulation of activities affecting waters of the United States by the Army Corps of Engineers under section 404 of the Clean Water Act;

(3) Regulation of water flows, water delivery, damming, diversion, and channelization by the Bureau of Reclamation and the Army Corps of Engineers;

(4) Regulation of grazing, recreation, or mining by the Bureau of Land Management;

(5) Funding and implementation of disaster relief projects by the Federal Emergency Management Agency;

(6) Funding and regulation of new road construction by the Federal Highways Administration;

(7) Clearing of vegetation by the Department of Energy;

(8) The cleanup of toxic waste and superfund sites under the Resource Conservation and Recovery Act (RCRA) and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) by the U.S. Environmental Protection Agency; and

*Relationship to Incidental Take Permits Issued Under Section 10*

There are no approved HCPs within the designated critical habitat area. However, future HCPs are probable.

We anticipate that future HCPs will include the Alameda whipsnake as a covered species and provide for its long-term conservation. We expect that HCPs undertaken by local jurisdictions (e.g., counties and cities) and other parties will identify, protect, and provide appropriate management for those specific lands within the boundaries of the plans that are essential for the long-term conservation of the species. Section 10(a)(1)(B) of the Act states that HCPs must meet issuance criteria, including minimizing and mitigating any take of the listed species covered by the permit to the maximum extent practicable, and that the taking must not appreciably reduce the likelihood of the survival and recovery of the species in the wild. We fully expect that our future analysis of HCPs and Section 10(a)(1)(B) permits under section 7 will show that covered activities carried out in accordance with the provisions of the HCPs and Section 10(a)(1)(B) permits will not result in the destruction or adverse modification of critical habitat designated for the Alameda whipsnake.

In the event that future HCPs covering the Alameda whipsnake are developed within the boundaries of designated critical habitat, we will work with applicants to ensure that the HCPs provide for protection and management of habitat areas essential for the conservation of the Alameda whipsnake by either directing development and habitat modification to nonessential areas or appropriately modifying activities within essential habitat areas so that such activities will not adversely modify the primary constituent elements. The HCP development process provides an opportunity for more intensive data collection and analysis regarding the use of particular habitat areas by the Alameda whipsnake. The process also enables us to conduct detailed evaluations of the importance of such lands to the long-term survival of the species in the context of constructing a biologically configured system of interlinked habitat blocks.

We will provide technical assistance and work closely with applicants throughout the development of future HCPs to identify lands essential for the long-term conservation of the Alameda whipsnake and appropriate management for those lands. The take minimization and mitigation measures provided under these HCPs are expected to protect the essential habitat lands designated as critical habitat in this rule.

**Summary of Comments and Recommendations**

In the March 8, 2000, proposed rule, all interested parties were requested to submit comments and suggestions relative to the proposed designation of critical habitat for the Alameda whipsnake, including our economic analysis and the relationship of the designation to future HCP's (65 FR 12155). On May 15, 2000, we published a notice in the **Federal Register** (65 FR 30951) to reopen the comment period and announce a public hearing on the proposed determination. We published a notice of availability and request for comments on the draft economic analysis on June 23, 2000 (65 FR 39117), and subsequently, extended the comment periods for the proposed designation of critical habitat and the draft economic analysis to July 24, 2000. Comments received from March 8 through July 24, 2000, were entered into the administrative record.

All appropriate State and Federal agencies, county governments, scientific organizations, and other interested

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parties were contacted and invited to comment. Legal notices inviting public comment were published in the Oakland Tribune. In addition, the following news releases were issued: (1) a March 8, 2000, news release announcing the proposed designation of critical habitat and soliciting public review and comment; (2) a May 15, 2000, news release announcing public hearings; and (3) a June 23, 2000, news release announcing the availability of the draft economic analysis to the public for review and comment and the extension of the comment period.

We held one public hearing on the proposed rule at San Ramon, Contra Costa County, California, on June 1, 2000. A notice of the hearing and its location was published in the **Federal Register** on May 15, 2000 (65 FR 30951). A total of 45 people provided verbal comments at the public hearing. Transcripts of this hearings are available for inspection at the Sacramento Fish and Wildlife Office (see **ADDRESSES** section).

We received a total of 45 oral and 551 written comments during the comment period. Of those oral comments, 14 supported critical habitat designation, 23 were opposed to designation, and 7 provided additional information but did not support or oppose the proposal. Of the written comments, 456 supported designation, 72 were opposed to it, and 23 provided additional information only, or were nonsubstantive or not relevant to the proposed designation. In total, oral and written comments were received from 5 Federal agencies, 5 State agencies, 11 local governments, and 532 private organizations, companies, or individuals.

All comments received were reviewed for substantive issues and new data regarding critical habitat and the Alameda whipsnake. Comments of a similar nature are grouped into 6 issues relating specifically to critical habitat. These are addressed in the following summary.

*Issue 1: Biological and Physical Concerns*

(1a) *Comment:* One commenter stated that not enough information is known about the total habitat requirements of the species to define critical habitat. One additional commenter stated that Unit 5 was far too large and not based on the best available scientific evidence. Several commenters questioned the scientific basis for designating specific areas as critical habitat and recommended excluding areas that did not provide all of the primary constituent elements for whipsnake habitat and areas that reported negative Alameda whipsnake survey results.

*Response:* Section 4(b)(2) of the Act states "The Secretary shall designate critical habitat, and make revisions thereto, under subsection (a)(3) on the basis of the best scientific data available." Our recommendation is based on the available body of information on the biology and status of this subspecies, as well as the effects of land-use practices on its continued existence. We also utilized information on related species, including the chaparral whipsnake, if information on the Alameda whipsnake was lacking. No new information on the life history of the whipsnake was provided during the public comment periods. We agree that much remains to be learned about this species, and should credible, new information become available that contradicts the basis for this designation, we shall reevaluate our analysis and, if appropriate, propose to modify this critical habitat designation. We have considered the best scientific information available at this time, as required by the Act.

In selecting areas to be included in the designation, we identified the historic range of the whipsnake, as well as important components related to survival and recovery, including areas that provide sufficient breeding, feeding, and sheltering, as well as providing adequate movement corridors to maintain genetic connectivity and adequate space for population fluctuations. Because of the nature of the whipsnake (fast, secretive, mobile, burrow dwelling, with periods of hibernation) negative whipsnake survey results may not provide sufficient evidence that the site is not used by Alameda whipsnakes during some point in their life cycle. In addition, whipsnake surveys do not characterize whether the site provides one or all of the primary constituent elements needed by the whipsnake for survival and recovery. Because the primary constituent elements are linked to various stages of the whipsnake's life history (breeding, dispersal) or to certain physiological requirements (temperature regulation for foraging), and the whipsnake would not necessarily be engaged in all these activities concurrently, not all elements need be present for the site to be considered for designation.

(1b) *Comment:* A few commenters stated that the Service neglected to include species information and habitat data that was developed by the Alameda-Contra Costa Biodiversity Working Group.

*Service Response:* The Service reviewed the information prepared by the Alameda-Contra Costa Biodiversity Working Group. The working group used the Alameda whipsnake as an umbrella species for chaparral and coastal scrub habitats. The working group did not define any other habitats, including grasslands, woodlands, or riparian areas, as potential whipsnake habitat. These habitat types were mapped using false-color infrared color aerial photographs and subsequently mapped on 7.5-minute orthophotographs. As explained under the "Methods" section above, the Service used a similar approach for mapping critical habitat for the Alameda whipsnake. However, in addition to chaparral and coastal scrub habitats, the Service defined whipsnake habitat to include grassland, oak woodland, and riparian habitats that lie adjacent to and provide corridors between areas of scrub and chaparral habitat. Native grassland, oak woodland, and riparian habitats that lie adjacent to chaparral and scrub habitats provide important feeding, breeding, and sheltering sites. In addition, these habitat types facilitate movement of whipsnakes between scrub and chaparral habitat areas to ensure adequate dispersal and gene flow between subpopulations.

(1c) *Comment:* Many local fire prevention agencies commented that ongoing fuel reduction and modification that occurred before the Alameda whipsnake was formally listed on December 5, 1997, should be exempt from this rulemaking, including the Lafayette Reservoir watershed. In addition, these agencies requested that fire prevention techniques such as prescribed burning and ongoing vegetative clearing should be permitted when there is a threat to human health and property. Mount Diablo State Park specifically requested that the designation of critical habitat not preclude the use of prescribed fire to improve the biological health of the vegetative community and reduce the risk of a catastrophic wildfire.

*Service Response:* As stated in the "Section 7 Consultation" section above, routine clearing of fuel breaks around urban boundaries that were constructed before the listing of the whipsnake on December 5, 1997, including the Layette Reservoir Watershed, would not be affected by this designation. In addition, the designation of critical habitat for the Alameda whipsnake will have no effect on activities that occur on private property unless the activity is federally funded or requires a Federal permit. For projects that receive Federal (i.e. Federal Emergency Management Agency (FEMA)) funding, the Service is actively working with the Federal agency and the local representative to ensure that untimely delays in project implementation do not occur. The Service agrees that Mount Diablo State Park's concerns regarding their prescribed burn program are significant. The designation of critical habitat will not require any additional restrictions for carrying out prescribed burn projects above and beyond the restrictions currently in effect due to the listing of the Alameda whipsnake as a threatened species. Furthermore, the Service will assist Mount Diablo State Park staff with the development of a Habitat Conservation Plan, or any other measures required so the Park can continue vegetation enhancement measures such as prescribed burn projects.



(1d) *Comment:* Several commenters stated that the maps supplied with the proposed rule designating critical habitat did not exclude existing infrastructure including housing developments, reservoirs, and other manmade features that are not suitable habitat for the Alameda whipsnake.

*Service Response:* As stated in the 'Methods' section above, given the short period of time in which we were required to complete this rule, and the lack of fine-scale mapping data, we were unable to map critical habitat in sufficient detail to exclude all such areas. Existing features and structures within the critical habitat boundary, such as buildings, roads, canals, railroads, large water bodies, and other features not currently containing or likely to develop these habitat components, will not contain one or more of the primary constituent elements.

(1e) *Comment:* Several commenters stated that activities such as recreational biking, hiking, horseback riding, and off-road highway vehicle use were unfairly placed in the same category of impacts with more significant threats to the species including urban development and golf course construction and use.

*Service Response:* In the proposed rule and here in the final rule, we list activities that could adversely modify critical habitat without placing specific emphasis on the relative contribution of any one activity. The use of existing trails for recreational hiking, biking, and horseback riding do not pose the same level of threats to the species as the construction and use of new trails that modify critical habitat for the whipsnake. The specific threats that result from the construction and use of new trails are likely unique to each critical habitat unit and are best addressed in recovery plans, management plans, and section 7 consultations.

(1f) *Comment:* Many commenters were concerned about how designation of critical habitat would affect grazing and recreation activities including biking, hiking, and horseback riding.

*Service Response:* Designation of critical habitat does not prescribe specific management actions, but does identify areas that are in need of special management considerations. In regards to grazing, the Service does not foresee any change in the ability of private landowners to graze their property. In addition, we anticipate that many activities, including grazing and recreational trail use, presently occurring on critical habitat areas can be managed so as to be compatible with the whipsnake's needs.

(1g) *Comment:* One commenter asked whether existing utility features and the maintenance of these features are covered under the definition of critical habitat for the Alameda whipsnake.

*Service Response:* Yes, however, the designation of critical habitat will not require any additional restrictions for carrying out maintenance projects above and beyond the restrictions currently in effect due to the listing of the Alameda whipsnake as a threatened species. Furthermore, the Service will assist utility companies with the development of a Habitat Conservation Plan or any other measures required so that maintenance projects can continue.

(1h) *Comment:* One commenter was concerned that, given the extensive amount of land designated as critical habitat, the Service might not require surveys for whipsnake presence, eliminating a source for locality information.

*Service Response:* The Service does not foresee a decrease in the number of future Alameda whipsnake surveys. Future Alameda whipsnake surveys may be conducted to determine the relative abundance of Alameda whipsnakes at specific sites and to determine appropriate minimization measures. In addition, the draft recovery plan will identify the need to conduct surveys in association with a variety of recovery tasks.

(1i) *Comment:* A few commenters stated that the Service incorrectly proposed critical habitat in the eastern section of unit 5 because there are no verified Alameda whipsnake records in the area. Additional commenters stated there are no known Alameda whipsnake occurrences throughout unit 5. Also, one commenter stated the Service should not designate critical habitat in the western section of unit 5 because of the lack of information regarding the zones of intergradation between federally-listed Alameda whipsnake and the non-listed chaparral whipsnake.

*Service Response:* A live-trapping survey for the Alameda whipsnake was conducted within the eastern section of unit 5 on the Department of Energy's Lawrence Livermore Lab's Site 300 in 1998. During that survey, 14 individual California whipsnakes were captured, one of which had more taxonomic characteristics of the Alameda whipsnake than the chaparral whipsnake. The Service also has records of pure Alameda whipsnake occurrences that occur throughout unit 5, including two occurrences that lie just north of Calavaras Reservoir, within 10 miles of the western boundary of unit 5.

(1j) *Comment:* One of the peer review commenters stated that zone of intergradation between the Alameda whipsnake and the chaparral whipsnake occurs in the Del Puerto Canyon and San Antonio Valley areas of San Joaquin, Santa Clara, and Stanislaus Counties. He suggested that critical habitat be extended south and southeast of Unit 5 to encompasses additional areas within western San Joaquin and Stanislaus Counties and northern Santa Clara County to capture this zone of intergradation.

*Service Response:* The Service will investigate these areas of intergradation to determine their extent and their relationship to the Alameda whipsnake population that occurs in Unit 5. Based on this investigation, we will decide whether critical habitat in unit 5 should be extended further south and southeast to include the Del Puerto Canyon and San Antonia Valley areas.

(1k) *Comment:* One commenter claimed that the proposed rule is internally inconsistent as it states that critical habitat was proposed on land that is occupied by the Alameda whipsnake, while it appears that unoccupied habitat has been proposed for designation.

*Service Response:* A range-wide survey has not been conducted for this species. As described in 'Methods' above, we used data on known Alameda whipsnake locations to initially identify important areas. We have also made the reasonable assumption that areas adjacent to these locations are also within the geographical area occupied by the species based on the suitability of the habitat. In addition, knowledge of the species biology and the need for genetic connectivity to assure species persistence directs the inclusion of movement corridors where possible.

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The Service, therefore, maintains that all seven critical habitat units are geographical areas occupied by the Alameda whipsnake.

*Issue 2: General Selection of Designated Critical Habitat Areas*

(2a) *Comment:* Several commenters stated that private lands should be excluded from critical habitat designation. These commenters stated that the publication of maps with threatened or endangered species locations overlaid upon private land could subject private property owners to increased exposure to litigation, liability, trespass, or other activities that could interfere with privacy, and with the lawful beneficial uses of the property.

*Service Response:* Section 4(b)(2) of the Act states "The Secretary shall designate critical habitat, and make revisions thereto, under subsection (a)(3) on the basis of the best scientific data available and after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat." The Act does not require nor suggest that private lands should be excluded from designation, unless we find that the economic or other relevant impacts outweigh the benefit of critical habitat designation.

(2b) *Comment:* Several commenters recommended excluding from designation as critical habitat areas where there were plans being formulated to construct urban improvements within or in proximity to the areas proposed as critical habitat.

*Service Response:* We did not exclude any areas because of speculative or proposed developments. We are available to work with project proponents to develop project alternatives that will avoid and minimize adverse effects to whipsnakes, and not result in destruction or adverse modification of critical habitat.

(2c) *Comment:* One commenter stated that, given the fact that 60 percent of the known range of the Alameda whipsnake occurs in public ownership, the loss of the 40 percent that is held in private ownership would not lead to the demise of the snake. Therefore, private lands should not be included as critical habitat.

*Service Response:* The range of the Alameda whipsnake has been fragmented by urban development and associated roadway construction. What remains are five distinct populations that continue to suffer significant habitat loss due to urban encroachment and related activities. Public and private lands are randomly distributed throughout the current range of the species. The loss of all remaining private lands that provide suitable habitat for the whipsnake would further fragment the five whipsnake populations and result in significant losses of breeding, feeding, and sheltering habitats, as well as the connectivity corridors. The Service believes that both public and private lands are essential to the survival and recovery of the species. The critical habitat designation, therefore, includes both private and public lands.

*Issue 3: Comments on Selection of Specific Sites*

(3a) *Comment:* Several commenters expressed concern with the lack of connectivity between individual units, especially between units 2 and 3.

*Service Response:* The Service agrees that there is currently limited potential for movement between these two units. However, through recovery efforts, the Service proposes to research ways to promote connectivity and to determine the level of connectivity needed to prevent genetic bottlenecking. The Alameda whipsnake populations that occupy units 2 and 3 are the most threatened with extinction due to their small sizes and the continued encroachment of urban development that is further fragmenting these populations and directly removing suitable whipsnake habitat. The Service agrees with the commenters that all future opportunities for reconnecting these two populations with each other and with other whipsnake populations should be explored to ensure recovery of the species. For example, there may be opportunities for reestablishing connectivity between units 2 and 3 associated with any alterations of Interstate 580.

(3b) *Comment:* A few commenters wanted clarification as to whether their properties were included in the proposed critical habitat designation.

*Service Response:* Service staff discussed with the landowners their properties' relationship to the critical habitat designation.

(3c) *Comment:* One commenter was concerned that the designation of critical habitat would prevent the extraction and processing of aggregate materials at four separate facilities that occur within the critical habitat boundaries.

*Service Response:* The designation of critical habitat has no effect on non-Federal actions taken on private land, even if the private land is within the mapped boundary of designated critical habitat. The listing of the Alameda whipsnake as threatened, however, does provide the whipsnake the protection afforded by the Act on both public and private lands. Critical habitat has possible effects on activities by private landowners only if the activity involves Federal funding, a Federal permit, or other Federal action. If such a Federal nexus exists, we will work with the landowner and the appropriate Federal agency to develop a project that can be completed without jeopardizing the species or destroying or adversely modifying critical habitat. In this case, reclamation activities upon facilities closure may require Federal funding, a Federal permit, or other Federal action.

(3d) Several commenters pointed out errors in locations or descriptions in the proposed rule.

*Service Response:* Corrections have been made in the final rule to reflect these comments, where appropriate.

*Issue 4: Legal and Procedural Comments*

(4a) *Comment:* Several commenters stated that the proposed critical habitat designation is based on insufficient data and the Service should withdraw its proposal given the limited amount of time it had to adequately map whipsnake critical habitat.

*Service Response:* As explained in 1(a) above, Section 4(b)(2) of the Act states "The Secretary shall designate critical habitat, and make revisions thereto, under subsection (a)(3) on the basis of the best scientific data available . . .". At this time, the Service has used the best available data to formulate the designation.

(4b) *Comment:* Several commenters stated the designation of critical habitat constitutes a major Federal action significantly affecting the quality of the human environment. An Environmental Impact Statement (EIS) should be prepared.

*Service Response:* We have determined that Environmental Assessments (EAs) and EISs, as defined under the authority of the National Environmental Policy Act of 1969 (NEPA), need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** in October 1983 (48 FR 49244).

(4c) *Comment:* Several commenters stated the maps and descriptions provided were vague and violate the Act.

*Service Response:* This final rule contains the required legal descriptions of areas designated as critical habitat. If additional clarification is necessary, contact the Sacramento Fish and Wildlife Office (see **ADDRESSES** section). As described under the "Critical Habitat Designation" section above, we identified specific areas referenced by specific legal description, roads, waterways, and other landmarks, which are found on standard topographic maps.



(4d) *Comment:* The critical habitat proposal represents virtually all suitable or potentially suitable habitat within the species' historic range. The Act prohibits such broad designation.

*Service Response:* Section 3(5)(C) of the Act states that, except in those circumstances determined by the Secretary, critical habitat shall not include the entire geographical areas which can be occupied by an endangered or threatened species. The Alameda whipsnake population has been fragmented into five distinct populations from urban development and associated highway construction. The loss of any one of these five populations could lead to the extinction of the entire species. Therefore, we have determined that the areas designated are essential to conserve this species.

(4e) *Comment:* Several commenters asked whether projects that have obtained a biological opinion pursuant to section 7 of the Act would be required to reinitiate consultation to address the designation of critical habitat.

*Service Response:* For all projects that have completed section 7 consultation where that consultation did not address potential destruction or adverse modification of critical habitat for the Alameda whipsnake, and have not been constructed, section 7 consultation must be reinitiated. We expect that projects that do not jeopardize the continued existence of the Alameda whipsnake are not likely to destroy or adversely modify its critical habitat.

(4f) *Comment:* Several commenters have asked what specifically constitutes a federal nexus on private land.

*Service response:* A Federal nexus is invoked when a Federal agency is funding, permitting, or in some way authorizing a project. For the purposes of this rulemaking, a Federal nexus that was invoked prior to the rulemaking for a project that has been constructed or completed, would not require a section 7 consultation under the Act. If the project has not to date received Federal funding, a Federal permit, or Federal authorization, but will require such in the future, and the project might destroy or adversely modify critical habitat, the action would require a section 7 consultation. In addition, projects that have been federally funded, permitted, or authorized, but have not been fully constructed would require a section 7 consultation if the project may destroy or adversely modify critical habitat.

(4g) *Comment:* Several commenters asked whether it is prudent to designate private land as critical habitat when there is no Federal nexus.

*Service Response:* As stated under the "Critical Habitat" section above, designation of critical habitat can help focus conservation activities for a listed species by identifying areas that contain the physical and biological features that are essential for conservation of that species. Designation of critical habitat alerts the public as well as land-management agencies to the importance of these areas.

(4h) *Comment:* One commenter stated that the Service lacks the authority under the Commerce Clause of the Constitution to designate critical habitat on State and private land for a species that has no commercial utility.

*Service Response:* The Service maintains that it does have the authority to designate critical habitat for the Alameda whipsnake on private and State lands pursuant to the Act. Several court cases have confirmed this authority (*e.g., Nat. Ass'n of Home Builders of the U.S.* v. *Babbitt*, 130 F.3d 1041 (D.C. Cir. 1997).

(4i) *Comment:* Several commenters stated that critical habitat should not be designated until a recovery plan is completed.

*Service Response:* Although having a recovery plan in place is extremely helpful in identifying areas as critical habitat, the Act does not require a recovery plan to be prepared prior to such designation of critical habitat. Section 4(a)(3) of the Act specifically requires that critical habitat be designated at the time a species is listed, or within 1 year if not determinable at listing. Once a recovery plan is finalized, we may revise the critical habitat described in this final rule, if appropriate, to reflect the goals and recovery strategies of the recovery plan.

*Issue 5: The incorporation of Habitat Conservation Plans (HCPs) Into the Critical Habitat Designation*

*Comment:* In response to the Service's request that the public comment on critical habitat designation relative to future HCP's, 2 commenters support the approach that critical habitat be removed entirely from within the boundaries of HCP's automatically upon the issuance of the incidental take permit. One commenter stated that critical habitat should be retained within the boundaries of approved HCP's.

*Service Response:* The Service has considered several different approaches regarding the issuance of HCP's within the critical habitat boundary. Although there are no authorized or completed HCP's that occur within the boundary of Alameda whipsnake critical habitat designation, future HCPs are probable. If, consistent with available funding and program priorities, we elect to revise this designation to reflect future HCPs, our Solicitors have advised that modifying the designation will require a subsequent rulemaking.

*Issue 6: Economic Issues*

(6a) *Comment:* Many commenters expressed concern that the draft economic analysis failed to quantify the effects of proposed critical habitat designation.

*Service Response:* Given the circumstances surrounding the preparation of the draft economic analysis, we were only able to identify the types of impacts likely to occur regarding proposed critical habitat designation. Impacts we identified that could result from critical habitat designation include new section 7 consultations, re-initiation of consultations, and perhaps some prolongment of ongoing consultations to address critical habitat concerns, as required under section 7 of the Act. In some of these cases, it is possible that we might suggest reasonable and prudent alternatives to the proposed activity that triggered the consultation, which would also be an impact. Also associated with consultations is the length of time required to carry out consultations, which may result in opportunity costs associated with project delays.

In the case of proposed critical habitat for the Alameda whipsnake, however, we have only designated habitat that is within the geographical areas occupied by the whipsnake. As a result, few of these impacts are likely to occur because Federal agencies are already required to consult with us on activities taking place on these lands that have the potential to may adversely affect the whipsnake. We believe that the only impacts to landowners whose property lies within critical habitat boundaries are due to reinitiation of completed consultations for projects not yet completed, and the designations temporary affect on real estate values. While the Act requires agencies to consult with us on activities that adversely modify critical habitat, we do not believe that within proposed critical habitat for the Alameda whipsnake there are likely to be any actions of concern that adversely modify critical habitat without also jeopardizing the whipsnake.

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We also recognize that, in some instances, the designation of critical habitat could affect real estate market value, because participants may incorrectly perceive that land within critical habitat designation to be subject to additional constraints. However, we believe that this affect will be temporary.

(6b) *Comment:* Some commenters were concerned that, while we discussed impacts that are more appropriately attributable to the listing of the Alameda whipsnake than to the proposed designation of critical habitat, we did not provide quantified estimates associated with the listing (62 FR 64306).

*Service Response:* We are prohibited from considering economic impacts when determining whether or not a species should be added to the list of Federally protected species. As a result, we have not estimated these impacts in the past, nor were we able to do so for the draft economic analysis on proposed critical habitat.

(6c) *Comment:* Several commenters voiced concern that they were not directly contacted for their opinions on the economic impacts of critical habitat designation.

*Service Response:* It was not feasible to contact every potential stakeholder in order for us to develop a draft economic analysis. We believe that we were able to understand the issues of concern to the local community based on public comments submitted on the proposed rule, on transcripts from public hearings, and from detailed discussions with Service representatives. To clarify issues, we did contact representatives from other Federal, State, and local government agencies, as well as some landowners.

In regard to consultations, the Act and its implementing regulations only requires Federal agencies to consult with us on activities that they fund, authorize, or carry out that may affect a listed species or adversely modify critical habitat. As a result, only Federal agency representatives are in a position to characterize whether or not any additional or re-initiated consultations might occur as a result of critical habitat designation. The Act prohibits anyone, including private landowners, from take of a listed species without Service authorization; however, the impacts associated with this requirement are attributable to the listing of the species.

Based on what we have learned and because critical habitat was designated only in areas occupied by the whipsnake, we believe that the only impacts to landowners whose property lies within critical habitat boundaries are due to reinitiation of completed consultations for projects not yet completed, and the designations temporary affect on real estate values.

(6d) *Comment:* Several commenters voiced concern that, while their property was within proposed critical habitat boundaries, they have never found any whipsnakes on their property, and that in many cases their property did not contain the physical elements described in the proposed rule that are required by the whipsnake.

*Service Response:* We recognize that not all parcels within proposed critical habitat designation will contain the primary constituent elements needed by the whipsnake. Given the short period of time in which we were required to complete this proposed rule, and the lack of fine scale mapping data, we were unable to map critical habitat in sufficient detail to exclude all such areas. Within the proposed critical habitat boundaries, only areas that contain or are likely to develop those habitat components essential for the primary biological needs of the Alameda whipsnake may be subject to section 7 consultation should a Federal nexus exist in those areas. Activities that do not involve a Federal nexus would not require section 7 consultation, even if primary constituent elements are present.

(6e) *Comment:* Some commenters felt that the economic analysis is flawed because it is based on the premise that the Service has proposed designating only occupied habitat as critical habitat.

*Service Response:* The determination of whether or not proposed critical habitat is occupied by the whipsnake lies beyond the scope of an economic analysis. See also our response to issue 1(k), above.

(6f) *Comment:* Critical habitat designation is so broad that some landowners will be forced to survey for whipsnake presence under Federal and State environmental laws when undertaking a project, even though some sites within designated critical habitat do not contain whipsnakes or the primary constituent elements needed by whipsnakes to occupy an area. In effect, the Service has shifted the economic burden of determining what lands are occupied by the Alameda whipsnake within the designated units to landowners within these units, irrespective of whether the lands in question have ever been occupied by the snake.

*Service Response:* We have determined that the geographical areas that have been identified as critical habitat are occupied by the Alameda whipsnake. We have attempted to exclude developed lands from proposed critical habitat designation when possible. In selecting areas of proposed critical habitat, we attempted to avoid developed areas such as towns, intensive agricultural areas such as vineyards, and other lands unlikely to contribute to the Alameda whipsnake conservation. While we have been unable to avoid all such areas, actions limited to these areas will not require consultations.

(6g) *Comment:* Many landowners expressed concern about how critical habitat designation may affect their particular properties and what they would and would not be allowed to do in the future because of the designation. Some of these landowners expressed concerns that they would need to seek incidental take authorization from the Service for every type of action taken on their property.

*Service Response:* While the Service is sensitive to the concerns of individuals concerning their property rights, we believe that the designation of critical habitat, for the Alameda whipsnake does not impose any additional conditions on property owners within those areas designated as critical habitat, beyond those imposed due to the Alameda whipsnake being a Federally protected species. All landowners are responsible to ensure that their actions do not result in the unauthorized take of a listed species, and all Federal agencies are responsible to ensure that the actions they fund, permit, or carry out do not result in jeopardizing the continued existence of a listed species, regardless of where the activity takes place. We will work with any covered landowners to identify actions that would or would not likely result in take of Alameda whipsnakes, to identify measures to conserve the whipsnake, and, where appropriate, to develop HCPs and associated permits under section 10 of the Act to authorize incidental take of the Alameda whipsnake.

(6h) *Comment:* The draft economic analysis failed to adequately estimate the potential economic impacts to agricultural lands and how these effects would ripple through the local economy.

*Service Response:* In conducting our economic analysis, we acknowledged that we had received incomplete information from the agricultural industry and awaited their comments. We received several comments that suggested that we failed to adequately consider effects to the agricultural community of designating critical habitat. We have read through these comments but have concluded that the commenters have failed to adequately explain the rationale for why they believe critical habitat designation impacts their industry.

In designated critical habitat, landowners, if subject to a Federal nexus, will have to consult with us, through the representative Federal action agency, concerning any actions that may adversely affect the Alameda whipsnake or adversely modify its critical habitat. However, because we have only designated geographical areas that are occupied by the snake, landowners and associated action agencies would still be required to consult with us on such activities regardless of critical habitat designation.

As a result, contrary to one commenter's suggestion, we chose not to consider agriculture multiplier effects in performing our economic analysis because our primary interest is in determining whether or not critical habitat designation could affect landowner activities. Because of how critical habitat was defined and the current restrictions on jeopardizing an endangered or threatened species, we have determined that we are not adding any additional burden to the industry and as a result we do not find it necessary to fully explore the importance of the agriculture industry, to the local economy in the economic analysis concerning proposed critical habitat for the Alameda whipsnake.

(6i) *Comment:* The draft economic analysis failed to adequately estimate the potential economic impacts to landowners regarding fire management practices.

*Service Response:* The economic analysis does address fire/fuel management concerns that were voiced by some of the stakeholders. It raises the concern that these programs are subject to a clear Federal nexus because the practice relies in part on funding from the Federal Emergency Management Agency (FEMA). However, because we have only designated geographical areas by the species as critical habitat for the whipsnake, this activity is subject to no further scrutiny by us than it normally would be because the whipsnake is a federally protected species and is protected both from any actions resulting in an unlawful take and from Federal actions that could result in jeopardizing the species.

(6j) *Comment:* Some landowners expressed concern that, because their property was located within critical habitat boundaries, they would be subject to additional constraints under the California Environmental Quality Act (CEQA).

*Service Response:* To the extent that the CEQA places additional constraints on property owners within designated critical habitat such constraints would be a direct effect of CEQA and not a direct result of the designation of critical habitat for the Alameda whipsnake.

(6k) *Comment:* Some commenters agreed with the statement in the economic analysis that the designation of critical habitat could have some effect on property values.

*Service Response:* We acknowledged in our economic analysis that the designation of critical habitat could have some effect on property values. Most of this effect, we believe, is short-term and occurs as a result of the market's uncertainty as to what critical habitat designation requires.

(6l) *Comment:* A commenter questioned whether habitat designation would provide the following benefits: (1) Preservation of a resource; (2) existence value; (3) enhancement of scenic beauty; and (4) bequest value.

*Service Response:* In some instances the designation of critical habitat may result in additional benefits associated with the preservation of the species and its associated habitat. Economists have traditionally recognized that such benefits can be broken down into the above categories. However, in the particular case of the designation of critical habitat for the Alameda whipsnake, these additional benefits are unlikely to occur because the designation of critical habitat does not provide any additional protection to the species beyond that provided by the listing of the whipsnake as a Federally protected species.

(6m) *Comment:* The San Francisco Public Utilities Commission believes that designation of critical habitat will lead to additional costs as they will need to determine presence/absence on new project areas.

*Service Response:* The Service does not anticipate any additional requirements beyond those required upon listing the Alameda whipsnake as threatened.

### Summary of Changes From the Proposed Rule

Based on comments we received on the proposed rule, we made minor modifications to the critical habitat boundary to more adequately reflect the existence of urban development occurring along the periphery of the critical habitat boundary. Specifically, we made minor changes to the southern boundary of unit 4 to exclude two existing ranchettes that occur in the northern section of Tassajara Valley. In addition, we made minor adjustments to the critical habitat boundary in the northwestern section of unit 6 to exclude existing facilities that are owned by Lawrence Berkeley National Laboratory.

### Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial data available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species.

The economic effects already caused by the listing of the Alameda whipsnake as threatened is the baseline upon which we analyze the economic effects of critical habitat. The critical habitat economic analysis examined the incremental economic and conservation effects of designating a particular area. The economic effects of a designation were evaluated by measuring changes in national, regional, or local indicators in the area considered for designation. We prepared an analysis of the economic effects of the proposed Alameda whipsnake critical habitat designation in draft form and made the draft available for public review (June 23, 2000; 65 FR 39117). We concluded in the final analysis, which included review and incorporation of public comments, that no economic impacts are expected from critical habitat designation above and beyond that already imposed by listing the Alameda whipsnake. Potential economic effects of critical habitat designation are limited to impacts on activities funded, authorized, or carried out by a Federal agency. These activities would be subject to section 7 consultation if they may affect critical habitat. However, activities that may affect an area considered for critical habitat usually affect listed species, and would thus already be subject to section 7 consultation. Also, changes or minimizing measures that might increase the cost of the project would be imposed only as a result of critical habitat if the project would adversely modify or destroy that critical habitat. In most cases, a project that would adversely modify or destroy critical habitat would also likely jeopardize the continued existence of the species. In such a case, reasonable and prudent alternatives to avoid jeopardizing the

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species should also avoid adverse modification of critical habitat. The areas designated as critical habitat are considered occupied by the Alameda whipsnake. Since the habitat is in geographical areas occupied by the species, Federal agencies are already required to consult with us due to the listing of the species. Thus, regulatory burdens or additional cost due to the critical habitat designation for the whipsnake are not likely to exceed those already resulting from the species' listing.

A copy of the economic analysis is included in our administrative record and may be obtained by contacting the Sacramento Fish and Wildlife Office (see **ADDRESSES** section).

**Required Determinations**

*Regulatory Planning and Review*

Under Executive Order 12866, this document is a significant rule and has been reviewed by the Office of Management and Budget (OMB), under Executive Order 12866.

(a) This rule will not have an annual economic effect of $100 million or more or adversely affect an economic sector, productivity, jobs, the environment, or other units of government.

The areas designated as critical habitat are currently occupied by the Alameda whipsnake. Under the Endangered Species Act, critical habitat may not be destroyed or adversely modified by a Federal agency action; the Act does not impose any restrictions on non-Federal persons unless they are conducting activities funded or otherwise sponsored or permitted by a Federal agency (see Table 2 below). Section 7 requires Federal agencies to ensure that they do not jeopardize the continued existence of the species. Based upon our experience with the species and its needs, we conclude that any Federal action or authorized action that could potentially cause an adverse modification of critical habitat would currently be considered as "jeopardy" under the Act. Accordingly, the designation of currently occupied areas as critical habitat does not have any incremental impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons that receive Federal authorization or funding. Non-Federal persons that do not have a Federal "sponsorship" of their actions are not restricted by the designation of critical habitat (however, they continue to be bound by the provisions of the Act concerning "take" of the species).

(b) This rule will not create inconsistencies with other agencies' actions. As discussed above, Federal agencies have been required to ensure that their actions do not jeopardize the continued existence of the Alameda whipsnake since the listing in 1997. The prohibition against adverse modification of critical habitat is not expected to impose any additional restrictions to those that currently exist because all designated critical habitat is occupied. Because of the potential for impacts on other Federal agencies activities, we will continue to review this action for any inconsistencies with other Federal agency actions.

(c) This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Federal agencies are currently required to ensure that their activities do not jeopardize the continued existence of the species and, as discussed above, we do not anticipate that the adverse modification prohibition (from critical habitat designation) will have any incremental effects.

(d) This rule will not raise novel legal or policy issues. The rule follows the requirements for determining critical habitat contained in the Endangered Species Act.

TABLE 2.—IMPACTS OF ALAMEDA WHIPSNAKE LISTING AND CRITICAL HABITAT DESIGNATION

| Categories of activities | Activities potentially affected by Species Listing Only [1] | Additional Activities potentially affected by critical habitat designation [2] |
|---|---|---|
| Federal Activities Potential Affected [3]. | Activities such as removing, thinning, or destroying Alameda whipsnake habitat (as defined in the primary constituent elements discussion), whether by burning or mechanical, chemical, or other means (*e.g.* fuels management, bulldozing, herbicide application, grazing, etc.); water transfers, diversion, or impoundment, groundwater pumping, irrigation, or other activity that causes barriers or deterrents to dispersal, inundates habitat, or significantly converts habitat (*e.g.*, conversion to urban development, vineyards, landscaping); recreational activities that significantly deter the use of suitable habitat areas by Alameda whipsnakes or alter habitat through associated maintenance activities (*e.g.*, off-road vehicle parks, golf courses, and hiking, mountain biking, and horseback riding trails); sale, exchange, or lease of Federal land that contains suitable habitat that is likely to result in the habitat being destroyed or appreciably degraded; and construction activities that destroy or appreciably degrade suitable habitat (*e.g.*, urban development, building of recreational facilities such as off-road vehicle parks and golf courses, road building, drilling, mining, quarrying and associated reclamation activities) that the Federal Government carries out. | None |



TABLE 2.—IMPACTS OF ALAMEDA WHIPSNAKE LISTING AND CRITICAL HABITAT DESIGNATION—Continued

| Categories of activities | Activities potentially affected by Species Listing Only [1] | Additional Activities potentially affected by critical habitat designation [2] |
|---|---|---|
| Private and other non-Federal Activities Potentially Affected [4]. | Activities such as removing, thinning, or destroying Alameda whipsnake habitat (as defined in the primary constituent elements discussion), whether by burning or mechanical, chemical, or other means (*e.g.*, fuels management, bulldozing, herbicide application, grazing, etc.); water transfers, diversion, or impoundment, groundwater pumping, irrigation, or other activity that causes barriers or deterrents to dispersal, inundates habitat, or significantly converts habitat (*e.g.*, conversion to urban development, vineyards, landscaping, etc.); recreational activities that significantly deter the use of suitable habitat areas by Alameda whipsnakes or alter habitat through associated maintenance activities (*e.g.*, off-road vehicle parks, golf courses, and hiking, mountain biking, and horseback riding trails); and construction activities that destroy or appreciably degrade suitable habitat (*e.g.*, urban development, building of recreational facilities such as off-road vehicle parks and golf courses, road building, drilling, mining, quarrying and associated reclamation activities) that require a Federal action (permit, authorization, or funding). | None. |

[1] This column represents the activities potentially affected by listing the Alameda whipsnake as a threatened species (December 5, 1997; 62 FR 64306) under the Endangered Species Act.
[2] This column represents the activities potentially affected by the critical habitat designation in addition to those activities potentially affected by listing the species.
[3] Activities initiated by a Federal agency.
[4] Activities initiated by a private or other non-Federal entity that may need Federal authorization or funding.

*Regulatory Flexibility Act (5 U.S.C. 601 et seq.)*

In the economic analysis (under section 4 of the Act), we determined that designation of critical habitat will not have a significant effect on a substantial number of small entities. As discussed under Regulatory Planning and Review above, this rule is not expected to result in any restrictions in addition to those currently in existence. As indicated on Table 1 (see Critical Habitat section), we designated property owned by Federal, State, and local governments, and private property.

Within these areas, the types of Federal actions or authorized activities that we have identified as potential concerns are:

(1) Sale, exchange, or lease of lands owned by the Bureau of Land Management or the Department of Energy;

(2) Regulation of activities affecting waters of the United States by the Army Corps of Engineers under section 404 of the Clean Water Act;

(3) Regulation of water flows, water delivery, damming, diversion, and channelization by the Bureau of Reclamation and the Army Corps of Engineers;

(4) Regulation of grazing, recreation, or mining by the Bureau of Land Management;

(5) Funding and implementation of disaster relief projects by FEMA;

(6) Funding and regulation of road construction by the Federal Highways Administration;

(7) Clearing of vegetation by the Department of Energy; and

(8) The cleanup of toxic waste and superfund sites under the Resource Conservation and Recovery Act (RCRA) and the Comprehensive Environmental Response, Compensation, and Liability Act by the U.S. Environmental Protection Agency.

Many of these activities sponsored by Federal agencies within designated critical habitat areas are carried out by small entities (as defined by the Regulatory Flexibility Act) through contract, grant, permit, or other Federal authorization. As discussed above, these actions are currently required to comply with the listing protections of the Act, and the designation of critical habitat is not anticipated to have any additional effects on these activities.

For actions on non-Federal property that do not have a Federal connection (such as funding or authorization), the current restrictions concerning take of the species remain in effect, and this rule will have no additional restrictions.

*Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))*

In the economic analysis, we determined that designation of critical habitat will not cause (a) any effect on the economy of $100 million or more, (b) any increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

*Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)*

Under the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(a) This rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. Small governments will be affected only to the extent that any of their actions involving Federal funding or authorization must not destroy or adversely modify the critical habitat. However, as discussed above, these actions are currently subject to equivalent restrictions through the listing protections of the species, and no further restrictions are anticipated to result from critical habitat designation.

(b) This rule will not produce a Federal mandate of $100 million or greater in any year, i.e., it is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

*Takings*

Under Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required. As discussed above, the designation of critical habitat affects only Federal agency actions. The rule will not increase or decrease the current restrictions on private property concerning take of the Alameda whipsnake. Due to current public knowledge of the species' protection, the prohibition against take of the species both within and outside of the

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designated areas, and the fact that critical habitat provides no incremental restrictions, we do not anticipate that long-term property values will be affected by the critical habitat designation.

*Federalism*

Under Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, the Service requested information from and coordinated development of this critical habitat proposal with appropriate State resource agencies in California, as well as during the listing process. We will continue to coordinate any future designation of critical habitat for the Alameda whipsnake with the appropriate State agencies. The designation of critical habitat for the Alameda whipsnake imposes no additional restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are specifically identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, doing so may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

*Civil Justice Reform*

Under Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have made every effort to ensure that this final determination contains no drafting errors, provides clear standards, simplifies procedures, reduces burden, and is clearly written so that litigation risk is minimized.

*Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)*

This rule does not contain any information collection requirements for which Office of Management and Budget approval under the Paperwork Reduction Act is required.

*National Environmental Policy Act*

We have determined that we do not need to prepare an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 in connection with regulations adopted under section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

*Government-to-Government Relationship With Tribes*

Under the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) and the Department of the Interior's requirement at 512 DM 2 we understand that recognized Federal Tribes must be related to on a Government-to-Government basis. The designation of critical habitat for the Alameda whipsnake does not contain any Tribal lands or lands that we have identified as impacting Tribal trust resources.

**References Cited**

A complete list of all references cited in this rule is available upon request from the Sacramento Fish and Wildlife Office (see **ADDRESSES** section).

**Authors**

The primary authors of this notice are Jason Davis and Heather Bell, Sacramento Fish and Wildlife Office (see **ADDRESSES** section).

**List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

For the reasons given in the preamble, we amend 50 CFR part 17 as set forth below:

**PART 17—[AMENDED]**

1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.11(h) revise the entry for "Whipsnake, Alameda" under "REPTILES" to read as follows:

**§ 17.11 Endangered and threatened wildlife.**

* * * * *

(h) * * *



| Species | | Historic range | Vertebrate population where endangered or threatened | Status | When listed | Critical habitat | Special rules |
|---|---|---|---|---|---|---|---|
| Common name | Scientific name | | | | | | |
| REPTILES | | | | | | | |
| Whipsnake, Alameda (=striped racer). | *Masticophis lateralis euryxanthus.* | U.S.A. (CA) | Entire | T | 628 | 17.95(c) | NA |

3. Amend § 17.95(c) by adding critical habitat for the Alameda whipsnake (*Masticophis lateralis euryxanthus*) in the same alphabetical order as this species occurs in § 17.11(h).

**§ 17.95 Critical habitat—fish and wildlife.**

* * * * *

(c) *Reptiles.*

* * * * *

ALAMEDA WHIPSNAKE (*Masticophis lateralis euryxanthus*)

1. Critical habitat units are depicted for Alameda, Contra Costa, San Joaquin, and Santa Clara Counties, California, on the maps below.

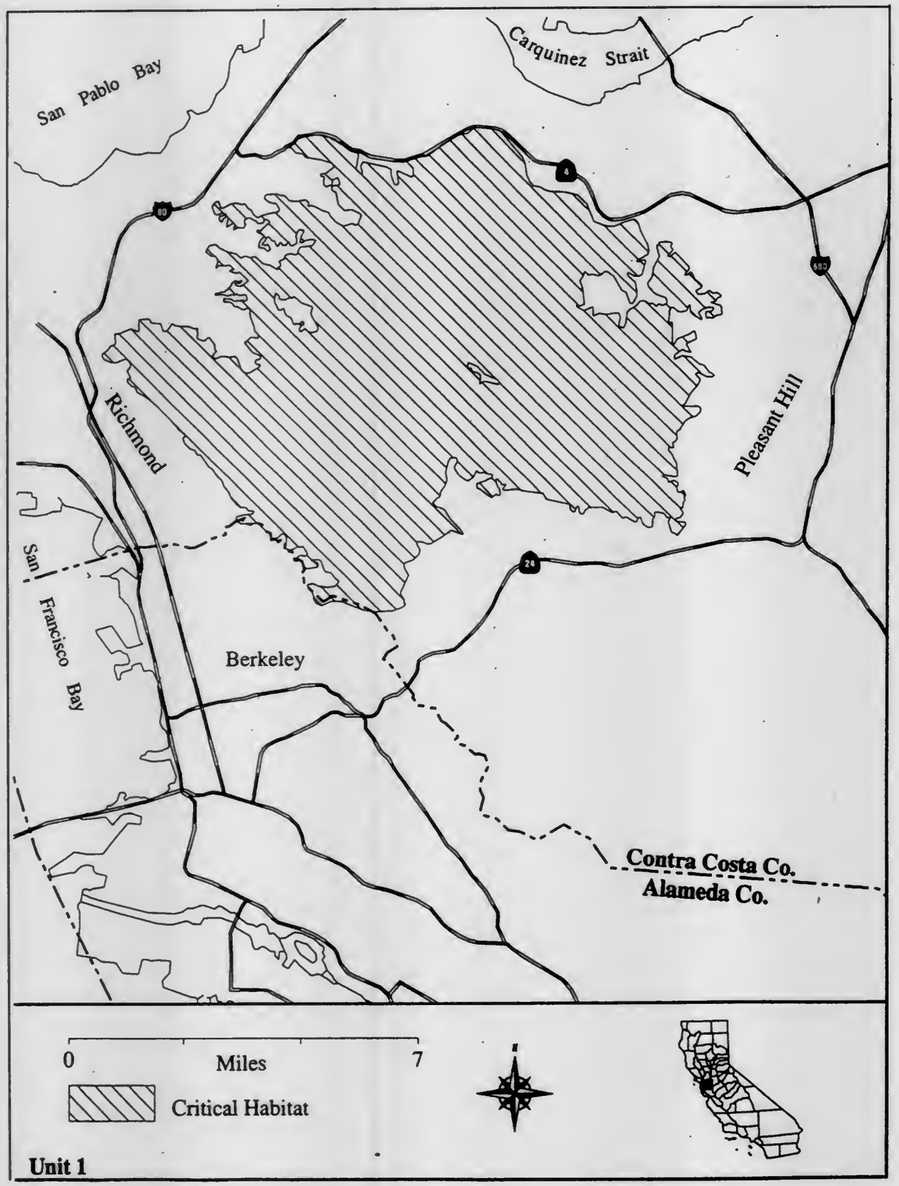
2. Within these areas, the primary constituent elements are those habitat components that are essential for the primary biological needs of foraging, sheltering, breeding, maturation, and dispersal. The primary constituent elements are in areas that support scrub communities including mixed chaparral, chamise-redshank chaparral, and coastal scrub and annual grassland and various oak woodlands that lie adjacent to scrub habitats. In addition, the primary constituent elements for the Alameda whipsnake may be found in grasslands and various oak woodlands that are linked to scrub habitats by substantial rock outcrops or riparian corridors. Other habitat features that provide a source of cover for the whipsnake during dispersal or lie in reasonable proximity to scrub habitats and contain habitat features (*e.g.*, rock outcrops) that support adequate prey populations may also contain primary constituent elements for the Alameda whipsnake.

3. Critical habitat does not include existing features and structures, such as buildings, roads, railroads, large water bodies, and similar features and structures not containing one or more of the primary constituent elements.

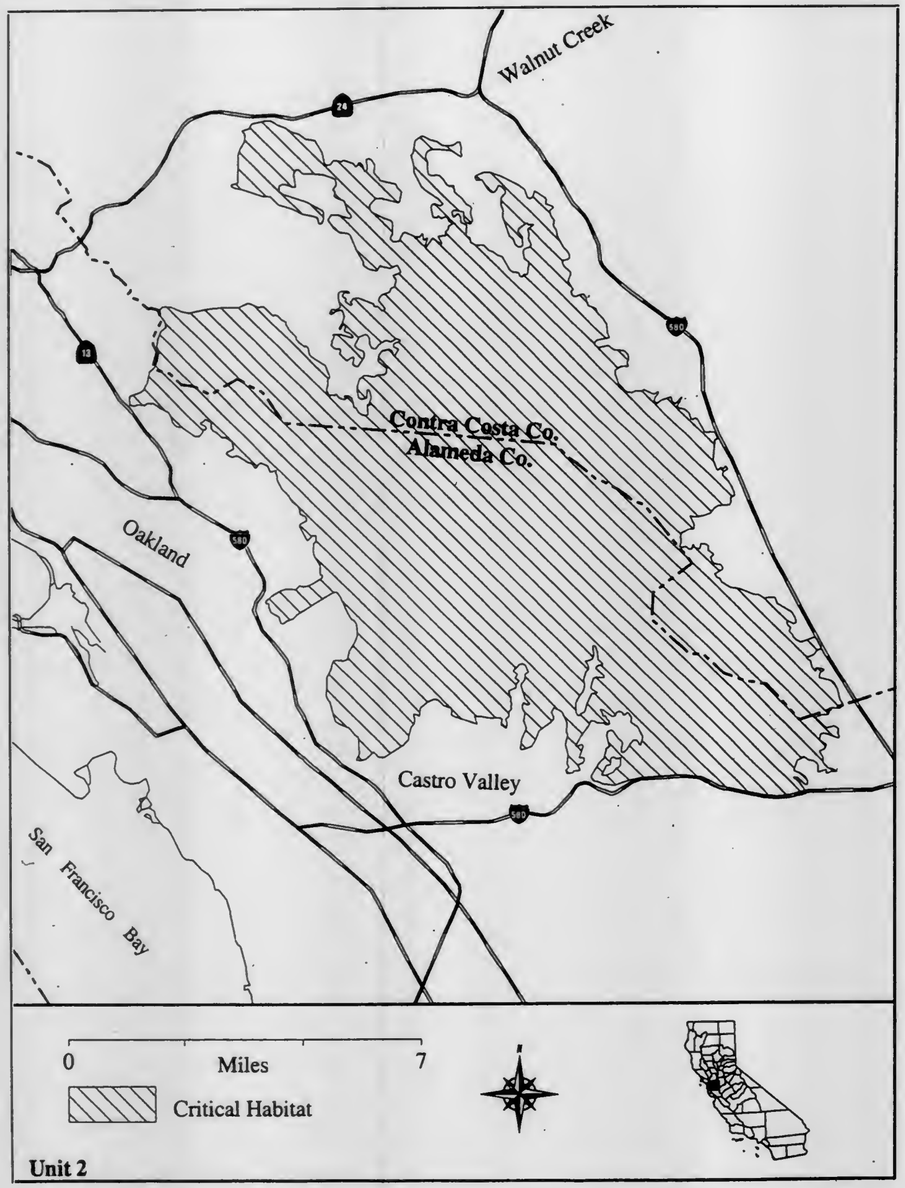
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Map Unit 1: Contra Costa County, California. From 1992 Orthophoto quads, Mount Diablo Base Meridian, California: T. 2 N., R. 4 W., S½ sec. 13, SE¼ sec. 23, N½ SE¼ sec. 24, sec. 25, N½ SE¼ sec. 26, E½ sec. 27, E½ sec. 34 secs. 35–36; T. 2 N., R. 3 W., S½ sec. 15, S½ sec. 16, SW¼ sec. 18, secs. 19–22, S½ NW¼ sec., 23, SW¼ sec. 24, secs. 25–36; T. 2 N., R. 2 W., S½ sec. 30, sec. 31, SW¼ sec. 32; T. 1 N., R. 4 W., secs. 1–2, S½ sec. 3, sec. 4, SE¼ sec. 5, N½ SE¼ sec. 8, secs. 9–15, N½ sec. 16, N½ SE¼ sec. 21, secs. 22–26, NE¼ sec. 27, N½ SE¼ sec. 36; T. 1 N., R. 3 W., secs. 1–24, N½ sec. 25, N½ sec. 26, N½ sec. 27, S½ NW¼ sec. 28, secs. 29–32; T. 1. N., R. 2 W., secs. 5–7, S½ NW¼ sec. 8, W½ sec. 17, secs. 18–19, W½ sec. 29; sec. 30; T. 1. S., R. 3 W., N½ sec. 5, N½ sec. 6.



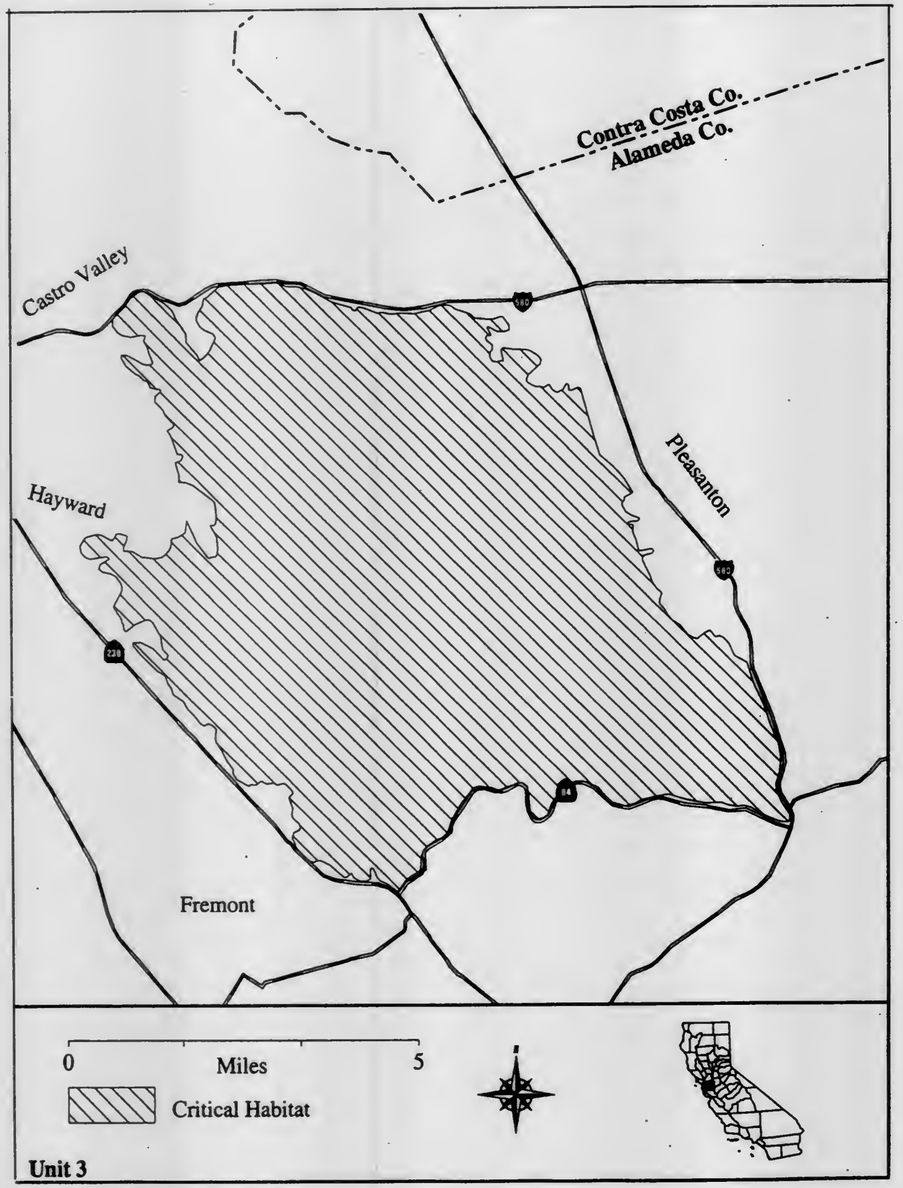

Map Unit 2: Alameda and Contra Costa Counties, California. From 1992 Orthophoto quads, Mount Diablo Base Meridian, California: T. 1 N., R. 3 W., SE¼ sec. 35, S½ NW¼ sec. 36; T. 1. N., R. 2 W., SW¼ sec. 31, S½ sec. 33, SW¼ sec. 34; T. 1 S., R. 3 W., sec. 1, E½ sec. 2, NE¼ sec. 12, SW½ sec. 13, S½ sec. 14, S½ sec. 15, secs. 22–27, SE¼ sec. 28, NE¼ sec. 34, N½ SE¼ sec. 35, sec. 36; T. 1 S., R. 2 W., S½ sec. 2, secs. 3–6, N½ SE¼ sec. 7, secs. 8–11, SW¼ sec. 12, S½ NW sec. 13, secs. 14–17, SE¼ sec. 18, S½ NE¼ sec. 19, secs, 20–36; T.1 S., R. 1 W., SW¼ sec. 19, SW¼ sec. 29, S½ NW¾ sec. 30, secs. 31–32; T. 2 S., R. 3 W., N½ SE¼ sec. 1, NE¼ sec. 12, S½ sec. 13, N½ sec. 24; T. 2 S., R. 2 .W., secs. 1–18, E½ sec. 19, secs. 20–30, N½ SE ¼ sec. 31, sec. 32, N½ sec. 33, N½ sec. 34, N½ SW¼ sec. 35, sec. 36; T. 2 S., R. 1 W., W¼ sec. 4, secs. 5–6, S½ sec. 16, secs. 17–21, S½ NW¼ sec. 22, W½ sec. 26, secs. 27–34, W½ sec. 35; T. 3 S., R. 1 W., NW¼ sec. 2, secs. 3–4, N½ SE¼ sec. 5, N½ sec. 6; T. 3 S., R. 2 W., N½ sec. 1.



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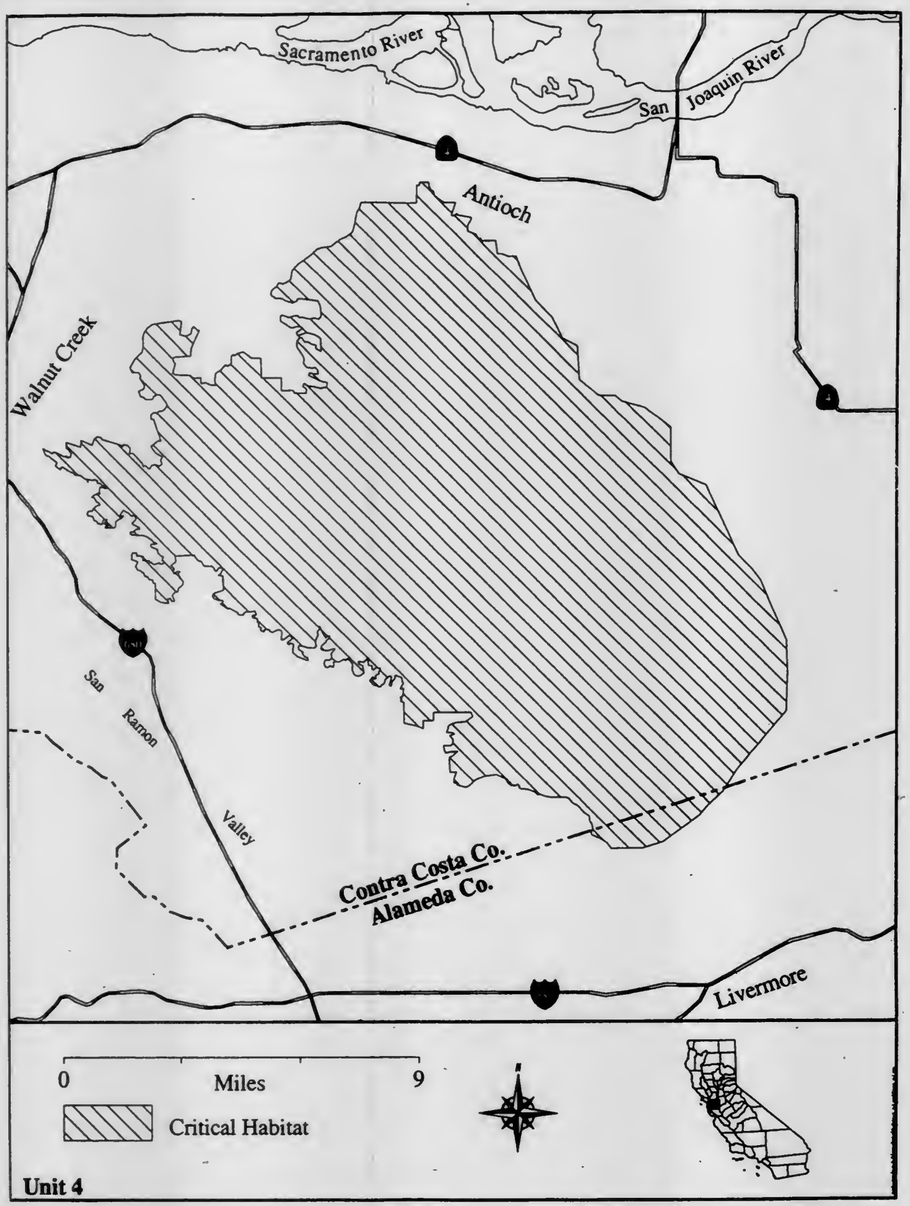





Map Unit 3: Alameda County, California. From 1992 Orthophoto quads, Mount Diablo Base Meridian, California: T. 3 S., R. 2 W., sec. 1, sec. 12, E½ sec. 13, SW¼ sec. 24, sec. 25, NE¼ sec. 26, secs. 35–36; T. 3 S., R. 1 W., SW¼ sec. 2, S½ sec. 3, S½ sec. 4, S½ NW¼ sec. 5, S½ NE¼ sec. 6, secs. 7–11, SW¼ sec. 12, secs. 13–36; T. 3 S., R. 1 E., W½ sec. 19, S½ NW¼ sec. 30, sec. 31, S½ sec. 32; T. 4 S., R. 2 W., NE¼ sec. 1; T. 4 S., R. 1 W., secs. 1–6, NE¼ sec. 7, secs. 8–12, NE¼ sec. 14, N½ SW¼ sec. 15, sec. 16, N½ SE¼ sec. 17, NE¼ sec. 21; T. 4 S., R. 1 E., W½ sec. 4, secs. 5–8, W½ sec. 9, NW¼ sec. 16.

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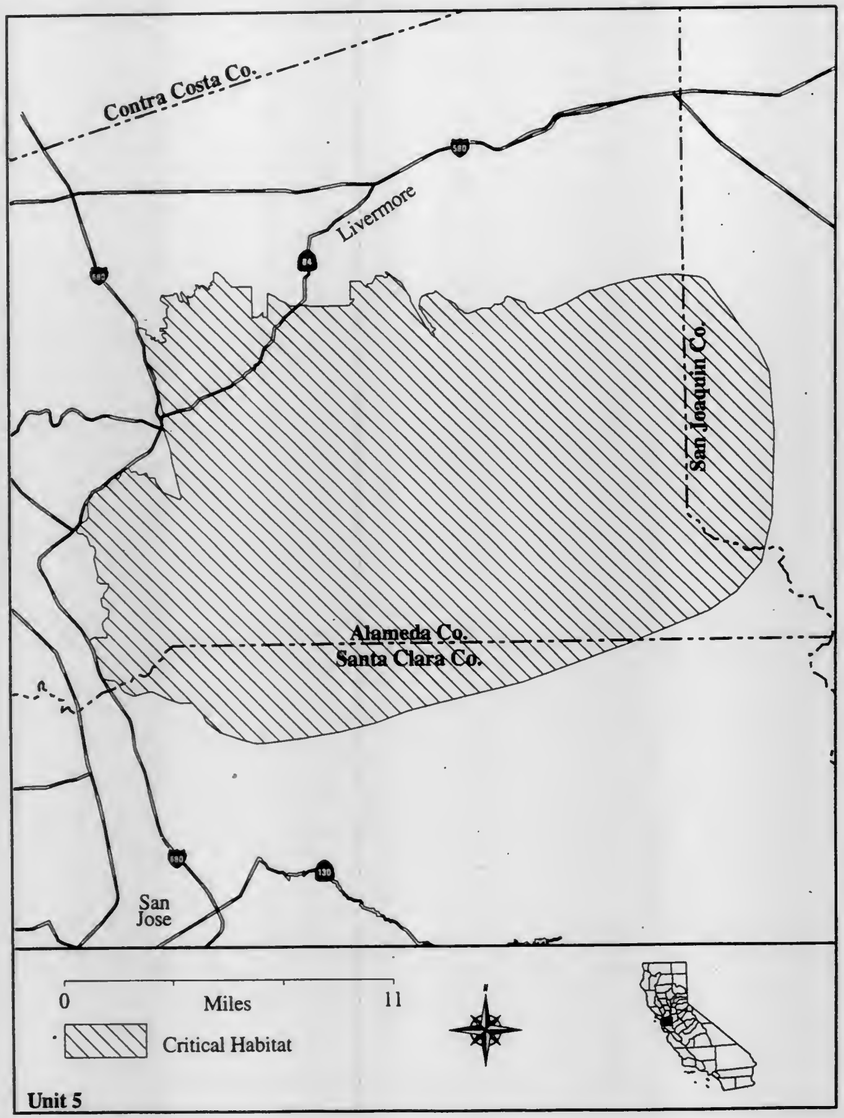

Map Unit 4: Alameda and Contra Costa Counties, California. From 1992 Orthophoto quads, Mount Diablo Base Meridian, California: T. 2 N., R. 1 W., SE¼ sec. 36; T. 2 N., R. 1 E., S½ NW¼ sec. 27, S½ NE¼ sec. 28, S½ sec. 29, SE¼ sec. 30, S½ NE¼ sec. 31, secs. 32–34, S½ sec. 35; T. 1 N., R 2 W., S½ sec. 25, SE¾ sec. 26, N½ sec. 36; T. 1 N., R. 1 W., sec. 1, SE¼ sec. 2, SE¼ sec. 8, S½ sec. 9, sec. 12, N½ SE¼ sec.13, W½ sec. 14, S½ NE¼ sec. 15, sec. 17, N/12 SE¼ sec. 20, secs. 21–28, E½ SW¼ sec. 29, S½ sec. 30, sec. 31, secs. 32–36; T. 1 N., R. 1.



E., W½ sec. 1, secs. 2–11, sec. 12, secs. 13–36; T. 1 N., R. 2 E., SW¼ sec. 7, W½ sec. 18, sec. 19, S½ sec. 20, SW¼ sec. 21, secs. 28–33, S½ sec. 34; T.1 S., R. 1 W., secs. 1–5, N½ SE¼ sec. 6, sec. 8, N½ SW¼ sec. 9, secs. 10–15, NW¼ sec. 16, NE¼ sec. 17, N½ SE¼ sec. 23, sec. 24, N½ sec. 25; T. 1 S., R. 1 E., secs. 1–29, N½ sec. 30, NE¼ sec. 32, sec. 33–36; T. 1 S., R. 2 E., SW¼ sec. 2, secs. 3–10, S½ NW¼ sec. 11, W½ sec. 13, secs. 14–36; T. 2 S., R. 1 E., secs. 1–3, N½ sec. 10, N½ sec. 11, sec. 12; T. 2 S., R. 2 E., NW¼ sec. 1, secs. 2–10, W½ sec. 11, N½ sec. 15, sec. 16–17, E½ sec. 18.

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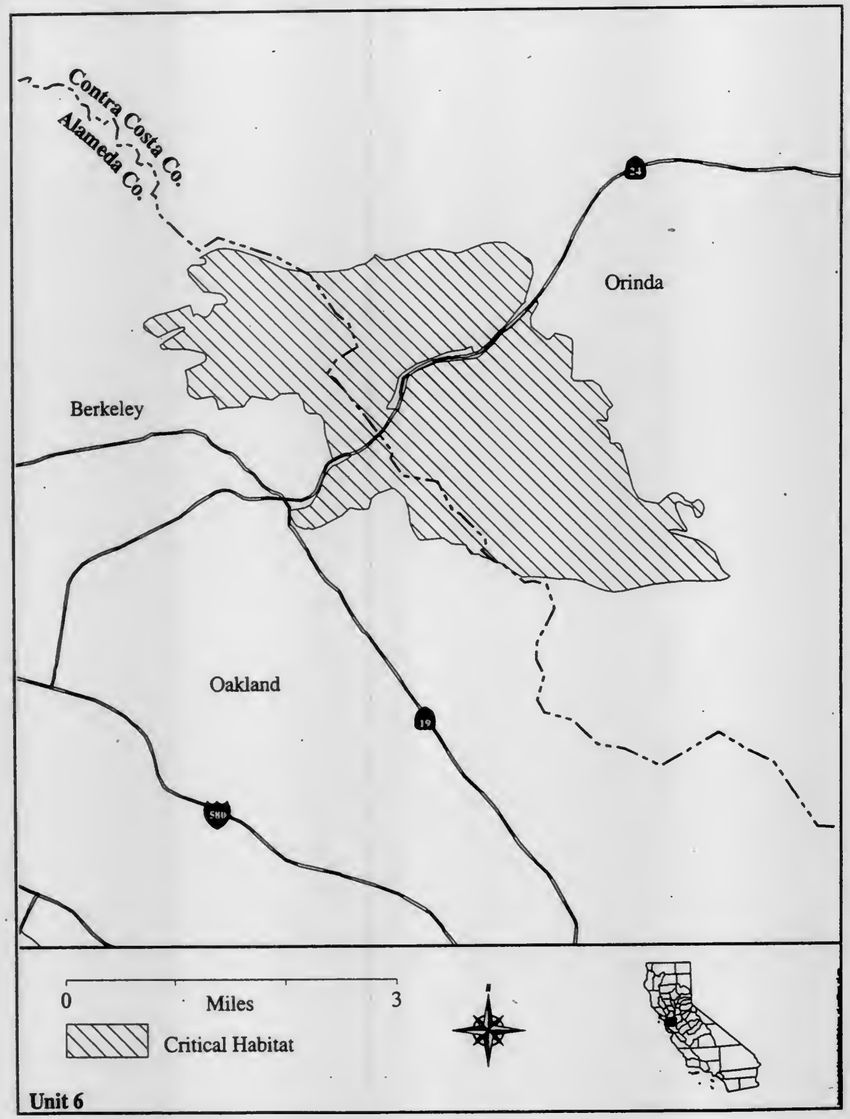





Map Unit 5: Alameda, Contra Costa, San Joaquin, and Santa Clara Counties, California. From 1992 Orthophoto quads, Mount Diablo Base Meridian, California: T. 3 N., R. 1 E., SE¼ sec. 21, S½ sec. 22, S½ NW¼ sec. 23, SW¼ sec. 24, S½ NW¼ sec. 25, secs. 26–27, E½ sec. 28, SE¼ sec. 29, NE¼ sec. 32, secs. 33–36; T. 3 S., R. 2 E., SW¼ sec. 19, SE¼ sec. 21, S½ NE¼ sec. 22, S½ NW¼ sec. 23, SE¼ sec. 24, secs. 25–36; T. 3 S., R. 3 E., S½ sec. 24, secs. 25–26, S½ NE¼ sec. 27, S½ NW¼ sec. 28, S½ NE¼ sec. 29, S½ NW¼ sec. 30, secs. 31–36; T. 3 S., R. 4 E., S½ sec. 19, S½ sec. 20, S½ sec. 21, SW¼ sec. 27, secs. 28–33, S½ NW¼ sec. 34; T. 4 S., R. 1 W., E½ sec. 25, E½ sec. 36; T. 4 S, R. 1 E., secs. 1–4, E½ sec. 9, secs. 10–15, E½ sec. 16, SE¼ sec. 19, S½ sec. 20, S½ NE¼ sec. 21, secs. 22–36; T. 4 S., R. 2 E., secs. 1–36; T. 4 S., R. 3 E., secs. 1–36; T. 4 S., R. 4 E., W½ sec. 2, secs. 3–10, W½ sec. 11, W½ sec. 11, W½ sec. 14, secs. 15–22,W½ sec. 23, W½ sec. 26, secs. 27–34, W½ sec. 35; T. 5 S., R. 1 E., secs. 1–29, N½ SE¼ sec. 30, N½ sec. 33, N½ SE¼ sec. 34, secs. 35–36; T. 5 S., R. 2 E., secs. 1–35, N½ SW¼ sec. 36; T. 5 S., R. 3 E., secs. 1–24, N½ sec. 26, N½ SW¼ sec. 27, secs. 28–30, N½ sec. 31, N½ sec. 32; T. 5. S., R. 4 E., W½ sec. 2, secs. 3–9, N½ SW¼ sec. 10, N½ SW¼ sec. 16, secs. 17–18, N½ sec. 19; T. 6 S., R. 1 E., sec. 1, N½ sec. 2; T. 6 S., R. 2 E., N½ sec. 3, N½ sec. 4, N½ sec. 5, N½ sec.6.

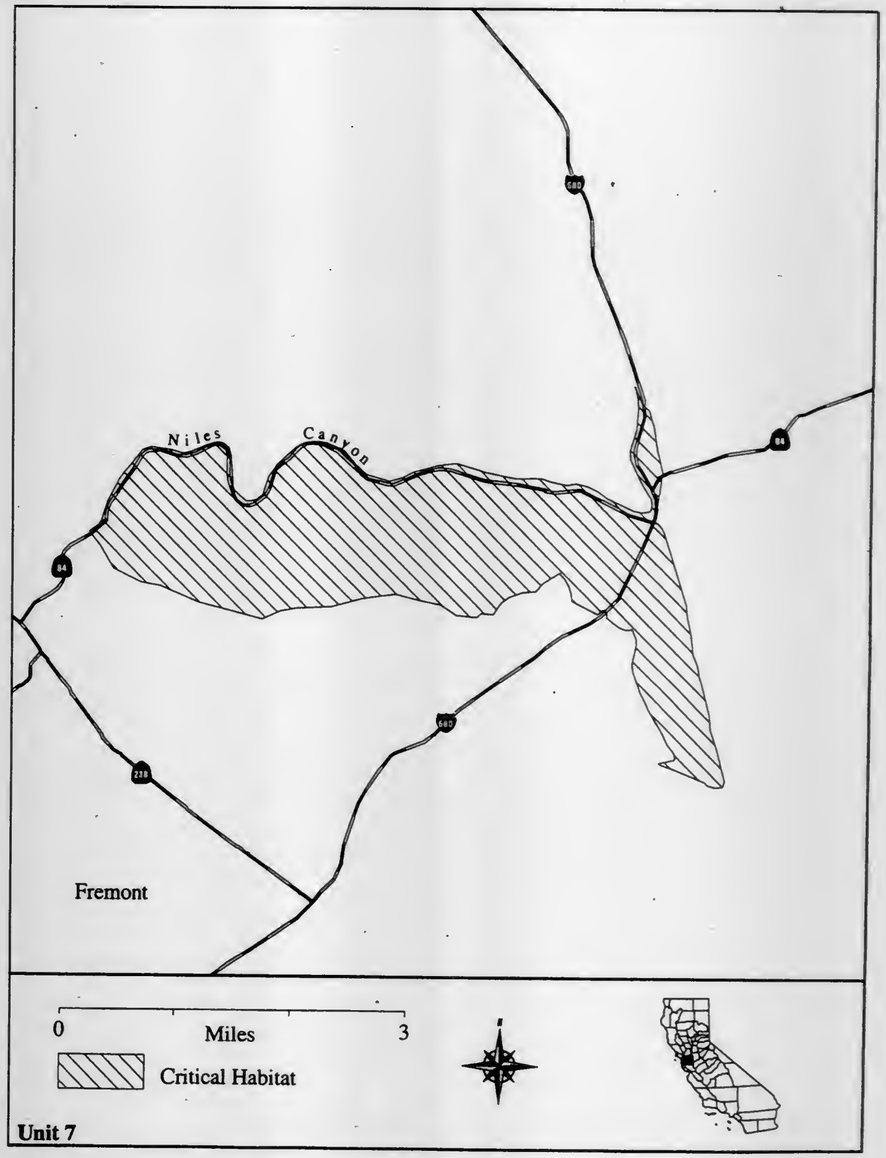
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Map Unit 6: Alameda and Contra Costa Counties, California. From 1992 Orthophoto quads, Mount Diablo Base Meridian, California: T. 1 N., R. 4 W., SE¼ sec. 36; T. 1 N., R. 3 W., SW¼ sec. 31, S½ sec. 33; T. 1 S., R. 4 W., S½ NE ¼ sec. 1, NE¼ sec. 12; T. 1 S., R. 3 W., W½ sec. 3, secs. 4–6, N½ SE¼ sec. 7, secs. 8-10, secs. 14–15, N½ SE¼ sec. 16, N½ sec. 17, NE¾ sec. 18.






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Map Unit 7: Alameda County, California. From 1992 Orthophoto quads, Mount Diablo Base Meridian, California: T. 4 S., R. 1 W., SE¼ sec. 10, S½ sec. 11, S½ sec. 12, secs. 13–14, E½ sec. 15, NE¼ sec. 23, NW¼ sec. 24; T. 4 S., R. 1 E., S½ sec. 7, S½ sec. 8, sec. 9, secs. 16–18, NE¼ sec. 19, NE¼ sec. 20, sec. 21; W½ sec. 27, N½ sec. 28.

Dated: September 21, 2000.

**Stephen C. Saunders,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 00–24763 Filed 10–2–00; 8:45 am]

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# Proposed Rules

Federal Register
Vol. 65, No. 192
Tuesday, October 3, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## SMALL BUSINESS ADMINISTRATION

### 13 CFR Part 126

### HUBZone Program

**AGENCY:** Small Business Administration.

**ACTION:** Proposed rule.

**SUMMARY:** The Small Business Administration (SBA) proposes to amend its regulations governing the HUBZone Empowerment Contracting Program (HUBZone program). Now that SBA has officially launched the program, has received over two thousand applications for HUBZone certification, and has certified concerns into the program, SBA believes that it should make the following four regulatory amendments and clarifications to improve the administration and operation of the HUBZone program. First, SBA proposes to amend the provisions governing the application of the HUBZone program to various government departments and agencies. It proposes to add three federal agencies to the current list of agencies that are affected directly by the HUBZone program and to clarify that the HUBZone program does not apply to contracts awarded by state and local governments. Second, SBA proposes to amend the definition of the term "principal office" to accommodate those concerns whose industries require employees to perform their work at various job sites. Third, SBA proposes to eliminate the existing program eligibility restrictions on allowable affiliations of HUBZone small business concerns, since those requirements have proven to be unduly burdensome on otherwise eligible concerns. Finally, SBA proposes to ease the program eligibility requirements and procurement restrictions concerning qualified HUBZone small business concerns that operate as non-manufacturers because those requirements are unnecessary and overly restrictive.

**DATES:** Submit comments on or before November 2, 2000.

**ADDRESSES:** Send your comments to Michael McHale, Associate Administrator for the HUBZone Program, 409 Third Street, SW, Washington, DC 20416.

**FOR FURTHER INFORMATION CONTACT:** Michael McHale, Associate Administrator for the HUBZone Program, (202) 205–6731 or hubzone@sba.gov.

**SUPPLEMENTARY INFORMATION:** The HUBZone program was established pursuant to the HUBZone Act of 1997 (HUBZone Act), Title VI of the Small Business Reauthorization Act of 1997, Pub. L. No. 105–135, enacted December 2, 1997. The purpose of the HUBZone program is "to provide for Federal contracting assistance to qualified HUBZone small business concerns." 15 U.S.C. 657a(a). The HUBZone Act authorizes the SBA Administrator to publish regulations implementing the program. Pub. L. No. 105–135, § 605. On April 2, 1998, SBA published its proposed rules for the HUBZone program. 63 FR 16148. After the close of the public comment period and review of the comments, SBA published its final regulations, which became effective on September 9, 1998. 63 FR 31896 (June 11, 1998). The final HUBZone regulations, among other things, set forth the definition of key terms used in the regulations, the criteria for qualification as a HUBZone small business concern (SBC) and the Federal contracting assistance available to qualified HUBZone SBCs.

Based upon the operation of the program since the effective date of the final HUBZone regulations, SBA has become aware of certain amendments that it believes should be made to the program's regulations. SBA proposes these amendments to clarify existing regulations, streamline the operation of the HUBZone program and ease program eligibility requirements perceived to be burdensome on concerns.

SBA proposes to amend § 126.101, concerning the application of the HUBZone program to various government departments and agencies. Specifically, paragraph (a) of that section lists the ten federal agencies to which the HUBZone Act originally applied and provides in paragraph (b) that after September 30, 2000, the HUBZone program will apply to all federal departments and agencies which employ one or more contracting officers as defined by 41 U.S.C. 423(f)(5). On November 29, 1999, Congress enacted Pub. L. 106–113. Section 212 of that statute requires that the HUBZone Act also apply to three additional agencies: the Department of Commerce, the Department of Justice, and the Department of State. This proposed rule would add these three federal agencies to the list in paragraph (a).

This proposed rule would also add a new paragraph (c) to § 126.101, to make clear that the HUBZone program does not apply to contracts awarded by state and local governments, since the HUBZone Act only applies to the federal government. The proposed paragraph (c) would also indicate that state and local governments that have programs similar to the HUBZone program are free to use SBA's List of qualified HUBZone SBCs to identify such concerns.

SBA proposes to amend the definition of "principal office." Currently, § 126.103 defines "principal office" to mean the location where the greatest number of the concern's employees at any one location perform their work. SBA proposes to amend that definition to accommodate those concerns whose primary industry requires employees to perform their work at various job sites. SBA received several comments on this definition of "principal office" when it originally proposed the current rule, but believed that the definition would not prevent those concerns from participating in the HUBZone program. See 63 FR 31898. SBA has re-evaluated this definition in light of experience and has found that maintaining compliance with the current definition of "principal office" is difficult for those concerns engaged in the service and construction industries because under this definition, their principal office is subject to change from contract to contract. As a result, SBA proposes that for concerns whose primary industry is services or construction (*i.e.*, other than manufacturing), the principal office would be the location where the greatest number of the concern's employees perform their work, but excluding those employees who perform their work at job-site locations to fulfill specific contract obligations. For example, a construction concern might have an office in a HUBZone where 10 employees perform their work. This

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same firm might have a construction contract at a local government facility not located in a HUBZone, where 50 of the concern's employees work to fulfill the obligations of the construction contract. According to the proposed definition, the concern's principal office would be in the HUBZone.

SBA requests public comment regarding our proposal to restrict this change only to the construction and service industries. We chose not to include manufacturing concerns in this change because such firms tend to operate with fixed plant, equipment and personnel tied to one location. Further, we believe that the exclusion of manufacturing firms from this revised definition is consistent with the purpose of the HUBZone Act of 1997, to both encourage employment opportunities and increase the level of investment in HUBZones.

Next, SBA proposes to amend § 126.204, which provides certain restrictions on the allowable affiliations of a qualified HUBZone SBC. Currently, § 126.204 permits a qualified HUBZone SBC to have affiliates only if those affiliates are qualified HUBZone SBCs, participants in the 8(a) Business Development (8(a) BD) program, or woman-owned businesses (WOBs). Although that restriction is not required by statute, SBA included it in both the proposed and final HUBZone regulations to ensure that the HUBZone program was implemented in a manner that supported rather than undermined existing programs designed to assist small businesses. 63 FR 16150. As a means of support to the 8(a) BD program, SBA explained in the preamble to the proposed HUBZone regulation that minimizing the restrictions on the participation of 8(a) BD participants in the HUBZone program would provide an additional source of government contract assistance for 8(a) BD participants and would therefore enhance the business development objectives of that program. 63 FR 16151. SBA also explained in the preamble that allowing WOBs the maximum opportunity to qualify as HUBZone SBCs would provide the type of assistance that Congress determined in the Small Business Act was necessary to remove the discriminatory barriers to the development of WOBs. Id. SBA adopted this approach in its final regulations. 63 FR 31899.

Since the effective date of the final HUBZone regulations, SBA has received over two thousand applications for certification under the HUBZone program. As a result of the limitation on allowable affiliations with only the three types of SBCs specified in the current § 126.204, SBA has had to decline a number of otherwise eligible applicants for HUBZone certification. The restrictions likewise have operated to limit HUBZone certification of 8(a) BD participants and WOBs that have affiliates that are not themselves qualified HUBZone SBCs, 8(a) BD participants or WOBs. As a result 8(a) BD participants, WOBs, as well as other otherwise eligible SBCs alike, have been declined HUBZone certification by reason of the restriction in § 126.204. SBA now believes that the current affiliation requirement is unnecessarily restrictive and should be removed. In addition, the removal of this restriction will allow SBCs in non-HUBZone areas to establish new business ventures in HUBZones. This is especially critical due to the historical lack of investment capital in HUBZones and the need for such capital to establish new businesses that will promote economic development and create jobs.

Accordingly, SBA proposes to eliminate the existing restrictions on affiliation under § 126.204. The proposed § 126.204 would allow a qualified HUBZone SBC to have affiliates as long as it, when combined with its affiliates, is still small pursuant to SBA's size regulations contained in part 121 of this title.

Finally, SBA proposes to amend two separate, but related, provisions concerning non-manufacturers. The first proposed amendment would delete the eligibility requirement for non-manufacturers contained in § 126.206. Under this proposed rule, non-manufacturer HUBZone concerns would no longer be required to demonstrate that they can provide product or products manufactured by qualified HUBZone SBCs.

The second proposed amendment would revise § 126.601. Currently, that section provides that a qualified HUBZone SBC that operates as a non-manufacturer may submit an offer on a HUBZone contract for supplies only if the concern's small manufacturer is also a qualified HUBZone SBC. This proposed rule would amend that provision to allow qualified HUBZone SBCs that are non-manufacturers the opportunity to supply the product of any business for HUBZone contracts at or below $25,000 in total value. The reason for this proposed change is that SBA believes that for many products purchased in small dollar quantities (at or below $25,000), there are often too few or no small business manufacturers participating in the federal market. Thus, SBA proposes to allow a qualified HUBZone SBC to use any manufacturer, including a large business, for HUBZone contracts at or below $25,000 in total value. This provision will encourage the participation of small business non-manufacturers that are located in HUBZones.

SBA believes that an exemption for contracts greater than $25,000 would harm qualified HUBZone SBCs that are manufacturers and possibly impact the program's goal of attracting capital investment and jobs in HUBZones. SBA further believes that this proposed exemption for contracts under $25,000 and the requirement in § 126.601 that a qualified HUBZone SBC that is a non-manufacturer may bid on HUBZone contracts for supplies only if the concern's small manufacturer is also a qualified HUBZone SBC, also support SBA's proposal to eliminate the eligibility requirement in § 126.206, that non-manufacturers demonstrate at the time of application that they can provide the product or products manufactured by a qualified HUBZone SBC. With respect to the proposed $25,000 exemption, if the HUBZone contract is valued at or below the $25,000 threshold, the SBC would not be required to use the products of a qualified HUBZone SBC and so should not be required to demonstrate that they would do so as a precondition to HUBZone certification. With respect to contracts above the $25,000 threshold, § 126.601(d) requires qualified HUBZone SBCs to use a qualified HUBZone SBC manufacturer. It is therefore unnecessary to have a separate eligibility requirement that the concern demonstrate at the time of application that it can provide the product or products manufactured by a qualified HUBZone SBC.

SBA solicits comments from the public addressing the issues raised in this proposed rule, including more effective ways to address these issues and whether we have solved adequately the problems identified.

**Compliance With Executive Orders 12866, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–602)**

The Office of Management and Budget (OMB) reviewed this rule as a "significant" regulatory action under Executive Order 12866.

For purposes of Executive Order 12988, SBA has drafted this proposed rule, to the extent practicable, in accordance with the standards set forth in section 3 of that Order.

For purposes of Executive Order 13132, SBA has determined that this proposed rule has no federalism implications warranting the preparation of a Federalism Assessment.

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA has determined that this proposed rule does not impose new reporting or recordkeeping requirements.

SBA has determined that this proposed rule may have a significant beneficial economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601, *et seq.* The amendments proposed in this rule involve revising the definition of "principal office" and eliminating certain requirements governing the allowable affiliations of qualified HUBZone SBCs and SBCs that operate as non-manufacturers. These amendments will affect a large percentage of the over 30,000 SBCs that SBA believes are now eligible or will become eligible for certification as qualified HUBZone SBCs over the life of the program. Thus, SBA has prepared an Initial Regulatory Flexibility Analysis (IRFA) and has submitted a complete copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. For a complete copy of the IRFA, please contact Michael McHale at (202) 205–6731.

The IRFA explains that this proposed rule will affect primarily those SBCs that participate in Federal procurements, that have affiliates, or that are non-manufacturers. The proposed rule will make it easier for qualified SBCs to participate in the program because it provides a definition of "principal office" that accommodates the fluid nature of the construction and service industries and it allows qualified HUBZone SBCs to have any affiliates provided that they, together with their affiliates, do not exceed their applicable size standard under part 121 of title 13 of the Code of Federal Regulations. This proposed rule will also facilitate the certification of qualified HUBZone SBCs and open the door to more HUBZone contracts by eliminating the eligibility requirement that non-manufacturers must demonstrate that they can supply the goods of a qualified SBC as a prerequisite for program certification, and by exempting non-manufacturers from making that showing when submitting offers to supply goods for HUBZone contracts with a total value of $25,000 or less.

The IRFA further explains that these proposed amendments do not duplicate, overlap or conflict with relevant Federal regulations. It also indicates that SBA has reviewed several alternatives to the proposed amendments and that it believes that the amendments proposed are in the best interest of SBCs and the HUBZone Program.

(Catalog of Federal Domestic Assistance Programs, No. 59,009)

**List of Subjects in 13 CFR Part 126**

Administrative practice and procedure, Government procurement, Reporting and recordkeeping requirements, Small businesses.

Accordingly, for the reasons set forth above, SBA proposes to amend 13 CFR part 126, as follows:

**PART 126—HUBZONE PROGRAM [AMENDED]**

1. Amend the authority citation for 13 CFR part 126 to read as follows:

**Authority:** 15 U.S.C. 632(a); Pub. L. 106–113 sec. 212, 113 Stat. 1537–289; Pub. L. 105–135 sec. 601 *et seq.*, 111 Stat. 2592.

2. Amend § 126.101 by removing paragraphs (a)(1) through (a)(10), by adding new paragraphs (a)(1) through (a)(13), and by adding a new paragraph (c) to read as follows:

**§ 126.101 Which government departments or agencies are affected directly by the HUBZone program?**

(a) * * *

(1) Department of Agriculture;
(2) Department of Commerce;
(3) Department of Defense;
(4) Department of Energy;
(5) Department of Health and Human Services;
(6) Department of Housing and Urban Development;
(7) Department of Justice;
(8) Department of State;
(9) Department of Transportation;
(10) Department of Veterans Affairs;
(11) Environmental Protection Agency;
(12) General Services Administration; and
(13)National Aeronautics and Space Administration.

* * * * *

(c) The HUBZone program does not apply to contracts awarded by state and local governments. However, state and local governments may use the List of qualified HUBZone SBCs to identify qualified HUBZone SBCs for similar programs authorized under state or local law.

3. Amend § 126.103 to revise the definition of "principal office" to read as follows:

**§ 126.103 What definitions are important in the HUBZone program?**

* * * * *

*Principal office* means the location where the greatest number of the concern's employees at any one location perform their work. However, for those concerns whose "primary industry" (see 13 CFR 121.107) is service or construction (see 13 CFR 121.201), the determination of principal office excludes the concern's employees who perform the majority of their work at job-site locations to fulfill specific contract obligations.

* * * * *

4. Revise § 126.204 to read as follows:

**§ 126.204 May a qualified HUBZone SBC have affiliates?**

A concern may have affiliates provided that the aggregate size of the concern and all its affiliates is small as defined in part 121 of this title.

5. Revise § 126.205 to read as follows:

**§ 126.205 May non-manufacturers be certified as qualified HUBZone SBCs?**

Non-manufacturers (referred to in the HUBZone Act of 1997 as "regular dealers") may be certified as qualified HUBZone SBCs if they meet all of the requirements set forth in § 126.200. "Non-manufacturer" is defined in § 121.406(b)(1) of this title.

6. Amend § 126.601 by revising paragraph (d) to read as follows:

**§ 126.601 What additional requirements must a qualified HUBZone SBC meet to bid on a contract?**

* * * * *

(d) A qualified HUBZone SBC which is a non-manufacturer may submit an offer on a HUBZone contract for supplies if it meets the requirements under the non-manufacturer rule as defined in § 121.406(b) of this title, and if the small manufacturer providing the end item for the contract is also a qualified HUBZone SBC. However, for HUBZone contracts at or below $25,000 in total value, a qualified HUBZone SBC may supply the end item of any manufacturer, including a large business.

Dated: September 26, 2000.

**Aida Alvarez,**

*Administrator.*

[FR Doc. 00–25291 Filed 10–2–00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–313–AD]

RIN 2120–AA64

## Airworthiness Directives; Boeing Model 737–300, –400, and –500 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Boeing Model 737–300, –400, and –500 series airplanes. This proposal would require, among other actions, a one-time detailed visual inspection of the fuel quantity indicating system (FQIS) wiring and fuel tubing on the inboard side of the right wing rib wing buttock line (WBL) 227 and on the aft side of stringer No. 13 to determine if clearance exists between the FQIS wire harness and the refuel tube and tube coupling, and to detect any loose or broken refuel tube clamp or bracket or chafing of the FQIS wire harness; and corrective actions, if necessary. This action is necessary to detect and correct chafing and to prevent electrical contact between the FQIS wiring and the surrounding structure, which, in conjunction with another wiring failure outside the fuel tank, could result in fire or explosion of the fuel tank. This action is intended to address the identified unsafe condition.

**DATES:** Comments must be received by November 2, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–313–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–313–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Sherry Vevea, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1360; fax (425) 227–1181.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–313–AD." The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–313–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

### Discussion

The FAA has received two reports of chafing of the wire harness of the fuel quantity indicating system (FQIS) in the right main fuel tank inboard of right wing station wing buttock line (WBL) 227. Both of these reports indicated that wires were chafed down to the conductor. Investigation of one of those events revealed that the refuel tube clamp broke due to a preload on the clamp. The refuel tube shifted position, and the refuel tube coupling chafed against the FQIS wire harness. The tube coupling has a knurled surface and a lockwire that, if not located correctly, can chafe the FQIS wiring. A chafed or bare FQIS wire normally operates at five volts and does not constitute an in-tank ignition source without an additional failure condition such as wire bundle shorts outside the fuel tank.

Chafing and arcing between the FQIS wiring and the surrounding structure, in conjunction with another wiring failure outside the fuel tank, could result in fire or explosion of the fuel tank.

### Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 737–28A1168, dated September 26, 2000. The service bulletin describes procedures for a one-time detailed visual inspection of the FQIS wiring and fuel tubing on the inboard side of the right wing rib WBL 227 and on the aft side of stringer No. 13 to determine if a 3/8-inch clearance exists between the FQIS wire harness and the refuel tube and tube coupling, and to detect any loose or broken refuel tube clamp or bracket or chafing of the FQIS wire harness; and corrective actions, if necessary. The corrective actions, if necessary, involve the following:

- Readjusting the refuel tube;
- Relocating the bonding jumper away from the FQIS wiring;
- Replacing the broken clamp with a new clamp;
- Repairing the broken bracket or replacing the broken bracket with a new bracket;
- Securing the loose clamp or bracket;
- Replacing the wire harness with a new wire harness;
- Repairing the wire harness;
- Splicing the wires; and
- Installing a teflon sleeve.



### Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below. The proposed AD also would require that operators submit a plan to the FAA that identifies a schedule for compliance with the requirements of the proposed AD and report results of inspection findings to the manufacturer.

### Difference Between This Proposed AD and the Service Bulletin

The FAA recognizes that this proposed AD would require entry into the fuel tank, which would require taking the airplane out of service for as much as two days. This lengthy shop visit, as well as the relatively short compliance time (six months) required to accomplish this proposed AD, make it necessary for operators to engage in compliance planning to ensure that, when the deadline for compliance arrives, all of the required actions have been completed on all affected airplanes. Therefore, paragraph (a) of this proposed AD would require that operators submit to the FAA a compliance plan within 15 days after the effective date. This will enable the FAA to verify that all operators will be able to meet the deadlines imposed by this proposed AD.

### Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

### Cost Impact

There are approximately 1,974 airplanes of the affected design in the worldwide fleet. The FAA estimates that 796 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 1 work hour per airplane to accomplish the proposed inspection, at an average labor rate of $60 per work hour. Based on the figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $47,760, or $60 per airplane.

It would take approximately 16 work hours to accomplish the proposed compliance plan, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the compliance plan proposed by this AD on U.S. operators is estimated to be $960.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

### Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Boeing:** Docket 2000–NM–313–AD.

*Applicability:* All Model 737–300, –400, and –500 series airplanes, certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To detect and correct chafing and to prevent electrical contact between the fuel quantity indicating system (FQIS) wiring and the surrounding structure, which, in conjunction with another wiring failure outside the fuel tank, could result in fire or explosion of the fuel tank, accomplish the following:

### Compliance Plan

(a) Within 15 days after the effective date of this AD, submit a plan to the FAA that identifies a schedule for compliance with paragraph (b) of this AD. This schedule must include, for each of the operator's affected airplanes, the dates and maintenance events (e.g., letter checks) when the required actions will be accomplished. For purposes of this paragraph, "FAA" means the Principal Maintenance Inspector (PMI) for operators that are assigned a PMI, or the cognizant Flight Standards District Office for other operators. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

### Inspection and Corrective Actions

(b) Within 6 months after the effective date of this AD, perform a one-time detailed visual inspection of the FQIS wiring and fuel tubing on the inboard side of the right wing rib wing buttock line (WBL) 227 and on the aft side of stringer No. 13 to determine if a 3/8-inch clearance exists between the FQIS wire harness and the refuel tube and tube coupling, and to detect any loose or broken refuel tube clamp or bracket or chafing of the FQIS wire harness, in accordance with Boeing Alert Service Bulletin 737–28A1168, dated September 26, 2000.

**Note 2:** For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror,

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magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(1) If the clearance between the FQIS wire harness and the refuel tube is less than 3/8-inch, prior to further flight, readjust the refuel tube, and relocate the bonding jumper away from the wiring, if necessary, in accordance with the service bulletin.

(2) If any loose or broken refuel tube clamp or bracket is found, prior to further flight, replace the broken clamp with a new clamp; repair the broken bracket or replace the broken bracket with a new bracket; and secure the loose clamp or bracket; as applicable; in accordance with the service bulletin.

(3) If any chafing of the FQIS wiring harness is found, prior to further flight, replace the wire harness with a new wire harness or accomplish the applicable action(s) specified in paragraph (b)(3)(i), (b)(3)(ii), or (b)(3)(iii) of this AD, in accordance with the service bulletin.

(i) For jacket damage only that is less than 1-inch in length with no sign of abrasion to the wire insulation: Install a teflon sleeve over the wiring. At the next scheduled "C" Check, but no later than 15 months after the effective of this AD, repair the wire harness or replace the wire harness with a new wire harness.

(ii) For jacket damage or a harness with an exposed shield or conductor and the insulation of the other wire is not damaged (there can be no broken shield strands if the shield wire is damaged or no broken wire strands if the unshielded wire is damaged): Install a teflon sleeve over the wiring terminal and along the wire to the damaged area.

(iii) For wire harness damage to the wire shield of the shielded wire or to the conductor of the unshielded wire: Splice the wires and install a teflon sleeve over the splice.

**Reporting Requirement**

(c) Submit a report of inspection findings to Service Bulletin Engineering, Boeing Commercial Airplane Group, P.O. Box 3707, Mail Stop 2H–37, Seattle, Washington 98124–2207; at the applicable time specified in paragraph (c)(1) or (c)(2) of this AD. The report must include all the information specified in paragraph K. of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–28A1168, dated September 26, 2000. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) For airplanes on which the inspection required by paragraph (b) of this AD is accomplished after the effective date of this AD: Submit the report within 10 days after performing the inspection.

(2) For airplanes on which the inspection required by paragraph (b) of this AD has been accomplished prior to the effective date of this AD: Submit the report within 10 days after the effective date of this AD.

**Alternative Methods of Compliance**

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA PMI, who may add comments and then send it to the Manager, Seattle ACO.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

**Special Flight Permits**

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on September 26, 2000.

**John J. Hickey,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–25327 Filed 10–2–00; 8:45 am]

BILLING CODE 4910–13–P

## CONSUMER PRODUCT SAFETY COMMISSION

### 16 CFR Chapter II

### Portable Bed Rails; Advance Notice of Proposed Rulemaking; Request for Comments and Information

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** The Commission has reason to believe that certain portable bed rails may present an unreasonable risk of injury. A portable bed rail is a device intended to be installed on an adult bed to prevent a child from falling out of the bed. At least some bed rails are constructed in a manner that children can become entrapped between the portable bed rail and the bed. This entrapment can result in serious injury or death.

This advance notice of proposed rulemaking (ANPR) initiates a rulemaking proceeding that could result in a rule banning portable bed rails that present an unreasonable risk of injury. This proceeding is commenced under the Federal Hazardous Substances Act.

The Commission solicits written comments concerning the risks of injury associated with portable bed rails, the regulatory alternatives discussed in this notice, other possible ways to address these risks, and the economic impacts of the various regulatory alternatives. The Commission also invites interested persons to submit an existing standard, or a statement of intent to modify or develop a voluntary standard, to address the risk of injury described in this notice.

**DATES:** Written comments and submissions in response to this notice must be received by December 4, 2000.

**ADDRESSES:** Comments should be mailed, preferably in five copies, to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207–0001, or delivered to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, Maryland; telephone (301) 504–0800. Comments also may be filed by telefacsimile to (301)504–0127 or by email to cpsc-os@cpsc.gov. Comments should be captioned "ANPR for Portable Bed Rails."

**FOR FURTHER INFORMATION CONTACT:** Patricia L. Hackett, Directorate for Engineering Sciences, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504–0494, ext. 1309.

**SUPPLEMENTARY INFORMATION:**

### A. The Product

A portable bed rail (PBR) is a device intended to be installed on an adult bed to prevent a child from falling out of the bed. PBRs are intended for use by children who can get in and out of bed unassisted. (Manufacturers generally recommend them for use with children from two to five years old.) However, many of the reported incidents of injuries/death involved children younger than two years.

A typical PBR generally includes a vertical rail about fifteen inches in height and four feet in length with two or more horizontal arms at right angles to the plane of the rail that are intended to be slipped between the mattress support or box springs and the mattress. The PBR is held under the mattress by a variety of slip-resistant knobs, pads or other means intended to provide frictional resistance. However, this ANPR extends to any other designs that may present an entrapment hazard to young children.

The Commission has information which indicates that PBRs with the following characteristics have resulted in injuries and deaths from entrapment between the PBR and the mattress:

1. A vertical rail or rails intended to prevent a child from falling out of an adult bed.

2. Two or more horizontal arms, slats, or other surfaces at right angles to the vertical plane of the rail that are intended to be slipped between the mattress support and the mattress.

3. Frictional resistance between the horizontal arms, slats or other surfaces of the PBR and the underside of the mattress provided by slip-resistant knobs, pads, or otherwise as the intended means to prevent outward movement of the PBR.



### B. The Risk of Death or Injury

*1. Description of Typical Incident*

When a PBR is not installed snugly against the mattress or when the rods/bars that go under the mattress slip outward, a child can be entrapped in the resulting space between the PBR and the mattress or between the rods/bars themselves. The result can be an injury or death by asphyxia or strangulation.

*2. Death/Injury Data*

The Commission has learned of fourteen instances in which a PBR was associated with the death of a child. The cause of death in these incidents was asphyxia or strangulation. In ten of these incidents, death resulted from entrapment between the PBR and mattress. In one case the child slipped between the rails of the PBR and in another the child was found hanging from a protrusion on a PBR. Lastly, two children were found entrapped in the space between the portable bed rail and the headboard/bedpost of the bed. Eleven of the fourteen fatalities associated with PBRs were children under two years of age.

In addition to the fatalities, the Commission is aware of 40 non-fatal incidents. Nine of these resulted in injuries. The age range for the non-fatal incidents is from 4 months to 5 years old.

The incidents that resulted in death are as follows:

a. March 6, 1990—A 7-month old male suffocated when his body slipped feet first through horizontal bars in a PBR and he was pinned head first into the mattress of a single size bed.

b. August 2, 1991—A 3-month old male died of asphyxia when his head became entrapped between the bottom of a PBR and the mattress resulting in his hanging. One of the L-shaped rods had pulled out from under the mattress of the full size bed.

c. October 31, 1991—A 15-month old female died of mechanical asphyxia when her neck and upper body were pinned between a PBR and the mattress. The PBR was installed on the lower bunk of a bunk bed.

d. November 10, 1991—A 14-month old male died of ligature strangulation. He was found hanging by his shirt collar which caught on a metal clip with a small metal tab on the exterior of a PBR installed on a single size bed.

e. June 23, 1993—A 2-year old female died of positional asphyxia. The child, who had brain deformities, was found with her face inside a 2–3 inch gap between the mattress and the attached side rail of her toddler bed. The PBR was designed with a tubular extension to fit under the mattress to hold it in place. The PBR was secured below the mattress to the bottom slats of the bed with string.

f. October 14, 1994—A 7-month old male died of restrictive asphyxia when his neck became entrapped in a 2–3 inch gap between the end of a retractable bed rail and the bed post of a small twin bed.

g. December 8, 1995—A 2.5-year old female suffering from cerebral palsy died of positional asphyxia. She was found lying on her stomach between the mattress of her "youth size" bed and a PBR. The left side of her face was against the mattress and a plastic sheet that covered the mattress was covering much of the child's face.

h. March 7, 1996—A 5-month old male died of asphyxia when he became entrapped between a PBR and the mattress on an adult bed. The child was found face down with his face toward the mattress.

i. January 15, 1997—A 19-month old male died of pneumonia due to a cervical injury sustained by hanging when he became entrapped between a PBR and the upper bunk mattress on the wall side of a bunk bed. The victim was found hanging/suspended with the back of his head on the guard rail and his mouth pressed into the mattress.

j. March 18, 1998—A 4-year old mentally retarded male died of asphyxia due to hanging when he became entrapped between a wooden PBR with vertical slats and the mattress of a toddler bed. The victim's head/neck area was caught at the bottom of the bed rail with his head against the mattress and his torso and feet under the bed.

k. August 17, 1998—A 7-month old male died of asphyxia when his head became entrapped between the headboard of a toddler bed and a youth PBR.

l. November 7, 1998—A 5-month old female died of asphyxiation when she became entrapped between the mattress of a king size bed and a PBR. She was found with her chin on the mattress. The medical examiner in this case believed the child's neck was resting on the PBR causing strangulation.

m. April 29, 1999—A 4-month old female died of positional asphyxia on a toddler bed when she apparently rolled between the mattress and the bed rail.

n. May 21, 2000—A 6-month old female died of positional asphyxia on an adult bed. She was found on her side wedged between the mattress and the bed rail.

### C. Relevant Statutory Provisions

This proceeding is conducted pursuant to the Federal Hazardous Substances Act (FHSA), 15 U.S.C. 1261 *et seq.* Section 2(f)(1)(D) of the FHSA defines "hazardous substance" to include any toy or other article intended for use by children that the Commission determines, by regulation, presents an electrical, mechanical, or thermal hazard. 15 U.S.C. 1261(f)(1)(D). An article may present a mechanical hazard if its design or manufacture presents an unreasonable risk of personal injury or illness during normal use or when subjected to reasonably foreseeable damage or abuse. Among other things, a mechanical hazard could include a risk of injury or illness "(3) from points or other protrusions, surfaces, edges, openings, or closures, * * * or (9) because of any other aspect of the article's design or manufacture." 15 U.S.C. 1261(s).

Under section 2(q)(1)(A) of the FHSA, a toy, or other article intended for use by children, which is or contains a hazardous substance accessible by a child is a "banned hazardous substance." 15 U.S.C. 1261(q)(1)(A).

Sections 3(f) through 3(i) of the FHSA, 15 U.S.C. 1262(f)–(i), govern a proceeding to promulgate a regulation determining that a toy or other children's article presents an electrical, mechanical, or thermal hazard. As provided in section 3(f), this proceeding is commenced by issuance of this ANPR. After considering any comments submitted in response to this ANPR, the Commission will decide whether to issue a proposed rule and a preliminary regulatory analysis in accordance with section 3(h) of the FHSA. If a proposed rule is issued, the Commission would then consider the comments received in response to the proposed rule in deciding whether to issue a final rule and a final regulatory analysis. 15 U.S.C. 1262(i).

### D. Regulatory Alternatives

One or more of the following alternatives could be used to reduce the identified risks associated with PBRs.

1. *Mandatory rule.* The Commission could issue a rule declaring certain PBRs to be banned hazardous substances. This rule could define the banned products in terms of physical or performance characteristics, or both.

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2. *Labeling rule.* The Commission could issue a rule banning PBRs that did not contain specified warnings and instructions.

3. *Voluntary standard.* If the industry developed, adopted, and substantially conformed to an adequate voluntary standard, the Commission could defer to the voluntary standard in lieu of issuing a mandatory rule.

**E. Existing Standards**

The Commission is not aware of any promulgated state, voluntary, foreign, international, or other standard dealing with the described risk of injury or death. In February 1998, the CPSC staff requested that ASTM develop a provisional standard for PBRs to address the hazard of entrapment-related deaths. In May 1999, CPSC staff drafted proposed performance requirements and submitted them to ASTM for consideration. As of May 2000, the ASTM Portable Bed Rail Subcommittee had not balloted a proposed performance standard for these products.

**F. Economic Considerations**

*1. PBR Sales and Numbers Available for Use*

Based on information gathered by the CPSC Office of Compliance, eleven firms produced a total of approximately 7.7 million PBRs during the period from January 1988 to July 14, 1998. Subsequent sales (1998 and 1999) were reportedly stable. Thus, based on available information, approximately 733,000 units are sold per year. The retail cost of a PBR is in the range of $15–$30.

No information is available on the average product life of a PBR. CPSC staff estimate that for the period of first use an expected life of two years would be appropriate. However, some units could see use with subsequent children so four years is estimated as a reasonable upper bound on the expected useful life of a PBR. Assuming an expected useful life of four years and stable sales, there may be as many as approximately 3 million PBRs in use at any one given time (733,000 PBRs sold per year x 4 years).

*2. Suppliers*

CPSC staff has identified eleven firms that marketed PBRs in the United States during the period 1980–1998. There may be other manufacturers or importers that the staff has not identified.

*3. Substitutes*

Substitutes for PBRs include beds equipped with fixed side rails that are designed for children in the two to five year old age range or differently designed PBRs that do not pose an entrapment hazard.

*4. Cost Effectiveness Considerations*

The CPSC is aware of 14 deaths since 1990 that are directly attributable to PBRs, for an average of 1.34 deaths per year over that period. At a statistical value of life of $5 million, the aggregate cost to society from PBR-attributable deaths is approximately $6.7 million annually. This estimate does not account for the costs associated with non-fatal PBR-related injuries.

Using the death rate and annual sales estimates noted above, CPSC staff calculate that the expected societal cost of those deaths over the life of a PBR is approximately $9 per PBR. Thus, if product improvements were 100% effective in preventing the predicted deaths, a cost per bed rail for the improvements of $9 would be economically justified. (The $9 per bed rail societal cost represents between 30% and 60% of the retail price of a PBR.)

**G. Solicitation of Information and Comments**

This ANPR is the first step of a proceeding that could result in a mandatory rule for PBRs to address the described risk of injury or death. All interested persons are invited to submit to the Commission their comments on any aspect of the alternatives discussed above. In particular, CPSC solicits the following additional information:

1. The models and numbers of PBRs produced for sale in the U.S. each year from 1990 to the present;
2. The names and addresses of manufacturers and distributors of PBRs;
3. The expected useful life of PBRs;
4. Comparisons of the utility obtained from PBRs versus any available substitute products;
5. The number of persons injured or killed by the hazards associated with PBRs;
6. The circumstances under which these injuries and deaths occur, including the ages of the victims;
7. An explanation of designs that could be adapted to PBRs to reduce the described risk of injury;
8. Physical or performance characteristics of the product that could or should not be used to define which products might be subject to a rule;
9. The costs to manufacturers involved in either redesigning PBRs to remove the risk or removing PBRs from the market;
10. Other information on the potential costs and benefits of potential rules;
11. Steps that have been taken by industry or others to reduce the risk of injury from the product;
12. The likelihood and nature of any significant economic impact of a rule on small entities;
13. The costs and benefits of mandating a banning, labeling, or instructions requirement.

Also, in accordance with section 3(f) of the FHSA, the Commission solicits:

1. Written comments with respect to the risk of injury identified by the Commission, the regulatory alternatives being considered, and other possible alternatives for addressing the risk.
2. Any existing standard or portion of a standard which could be issued as a proposed regulation.
3. A statement of intention to modify or develop a voluntary standard to address the risk of injury discussed in this notice, along with a description of a plan (including a schedule) to do so.

Comments should be mailed, preferably in five copies, to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207–0001, or delivered to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, Maryland 20814; telephone (301) 504–0800. Comments also may be filed by telefacsimile to (301) 504–0127 or by email to cpsc-os@cpsc.gov. Comments should be captioned "ANPR for Portable Bed Rails." All comments and submissions should be received no later than December 4, 2000.

Dated: September 27, 2000.

**Todd A. Stevenson,**

*Deputy Secretary, Consumer Product Safety Commission.*

[FR Doc. 00–25279 Filed 10–2–00; 8:45 am]

BILLING CODE 6355–01–P

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**SOCIAL SECURITY ADMINISTRATION**

**20 CFR Parts 404 and 416**

**RIN 0960–AF13**

## Collection of Supplemental Security Income (SSI) Overpayments From Social Security Benefits

**AGENCY:** Social Security Administration.

**ACTION:** Proposed rules.

**SUMMARY:** We propose to revise our regulations dealing with the recovery of overpayments under the Supplemental Security Income (SSI) program under title XVI of the Social Security Act (the Act). Under the proposed revisions, we would modify our regulations to permit SSA to recover SSI overpayments by adjusting the amount of social security benefits payable to the individual under title II of the Act. This collection practice would be limited to individuals who are not currently eligible to receive any cash payments under any provision of title XVI or State supplementary cash payments that we administer. Also, the amount of the title II benefits withheld in a month to recover the title XVI overpayment would not exceed 10 percent of the amount payable under title II unless the overpaid person requests us to withhold a higher amount or the overpaid person (or his or her spouse) willfully misrepresented or concealed material information in connection with the overpayment. In a case involving willful misrepresentation or concealment, the entire title II benefit amount will be withheld to recover the overpayment. These revisions would permit SSA to recover SSI overpayments from title II benefits payable to the overpaid individual when SSI cash benefits are not payable. These revisions are necessary to implement section 1147 of the Act.

**DATES:** To be sure your comments are considered, we must receive them no later than December 4, 2000.

**ADDRESSES:** Comments should be submitted in writing to the Commissioner of Social Security, P.O. Box 1585, Baltimore, Maryland 21235–1585, sent by telefax to (410) 966–2830, sent by e-mail to *regulations@ssa.gov* or delivered to the Office of Process and Innovation Management, Social Security Administration, 2109 West Low Rise Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401.

**FOR FURTHER INFORMATION CONTACT:** Robert Augustine, Social Insurance Specialist, Office of Process and Innovation Management, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, (410) 966–5121 or TTY (410) 966–5609 for information about these rules. For information on eligibility or claiming benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778.

**SUPPLEMENTARY INFORMATION:** Under the law in effect prior to the enactment of Pub. L. 105–306 on October 28, 1998, if an individual received an SSI overpayment and failed to refund the full overpayment amount, SSA was authorized to recover the overpayment by adjusting future SSI payments due the recipient or his or her eligible spouse. If the overpaid person was not receiving SSI payments but was entitled to benefits under title II of the Act, he or she generally could elect voluntarily to have the overpayment recovered by adjusting the title II benefits. If an overpaid individual was no longer entitled to SSI payments, we could refer the overpayment to the Department of the Treasury for offset against any Federal tax refund due that individual.

Section 8 of Pub. L. 105–306 added new section 1147 to the Act, permitting SSA to use an additional collection tool to recover SSI overpayments. Under section 1147, SSA may recover SSI overpayments by adjusting the amount of any benefits payable to the overpaid individual under title II of the Act, without the consent of the individual. Throughout the remainder of this preamble, this type of overpayment recovery is referred to as "cross-program recovery."

Section 1147 limits the use of cross-program recovery to SSI overpayments made to individuals who are not currently eligible to receive cash payments, including State supplementary payments, under title XVI or under section 212(b) of Pub. L. 93–66. Also, section 1147 limits the amount of the SSI overpayment that may be recovered in any month through cross-program recovery to 10 percent of the benefit amount payable under title II in any month, unless the overpaid person requests that SSA withhold a higher amount or unless the overpaid person or his or her spouse willfully misrepresented or concealed material information in connection with the overpayment. If there is willful misrepresentation or concealment, section 1147 permits SSA to recover the overpayment by withholding 100 percent of the title II benefit payable.

**Explanation of Proposed Changes**

We propose to add to our regulations new § 416.572 setting forth our rules on cross-program recovery. This new section would:

- Define certain terms;
- Explain the conditions for imposing cross-program recovery;
- Explain the rights of the overpaid individual to request review of our determination that he or she still owes us the overpayment balance; and
- Explain the rules for determining the amount to be withheld from the individual's title II benefits.

Specifically, in paragraph (a) of proposed § 416.572, we would define the following terms:

- "Cross-program recovery" would be defined as the process we will use to collect SSI overpayments by adjusting title II benefits payable in a month.
- "Benefits payable in a month" would be defined as the amount of title II benefits a person would actually receive in a given month. Under our proposed definition, "benefits payable in a month" would include any past due benefits a person would receive, but would not include any amounts withheld from the person's benefits under the deductions or reductions listed in § 404.401(a) or (b) of our regulations. The proposed definition also includes an example of how we determine the "benefits payable in a month."
- "Not currently eligible for SSI cash benefits" would mean that a person is receiving no cash payments, including State supplementary payments, under title XVI of the Act or under section 212(b) of Pub. L. 93–66.

In paragraph (b) of proposed § 416.572, we would explain that we may use cross-program recovery to collect SSI overpayments if the overpaid person is not currently receiving SSI cash benefits and is receiving benefits under title II of the Act. Thus, if a person whose title II benefits are being adjusted to recover an SSI overpayment again becomes eligible for SSI benefits, cross-program recovery would end with the month in which SSI cash benefits resume. When SSI benefits become payable to the overpaid person, we would resume the monthly adjustment of SSI payments to collect the overpayment. We would not start cross-program recovery if the overpaid person is refunding the title XVI overpayment by regular monthly installments or we are recovering a title II overpayment by withholding that person's title II benefits.

Paragraph (c) of proposed § 416.572 would list the information that we would include in the notice we would send to a person whose title II benefits would be subject to cross-program recovery. The notice would inform the person that he or she owes a specific SSI overpayment balance, that we will be using cross-program recovery to collect that balance and that we will withhold a specific amount from the title II benefits. The notice would state that the person may ask us to review our determination that he or she still owes the overpayment balance. Unless the overpaid person or that person's spouse willfully misrepresented or concealed material information in connection with the overpayment, the notice would also state that the person may request that we withhold from the title II benefits a different amount than the amount stated in the notice.

Paragraph (d) of proposed § 416.572 would explain that we will begin to withhold no sooner than 30 days after the date of the notice. If the individual pays the entire overpayment balance within that 30-day period, we will not

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impose cross-program recovery. If within the 30-day period the person asks us to review the determination that he or she still owes us the overpayment balance, we will not begin cross-program recovery until we review the matter and notify the person of our decision. If within the 30-day period, the person requests that we withhold a different amount, we will not begin cross-program recovery until we determine the amount we will withhold.

Paragraph (e) of proposed § 416.572 would explain that we will generally collect the overpayment at the rate of 10 percent of the title II benefits payable in any month. However, we would collect at a different rate if the person requests, and we approve, a different rate of withholding or if the overpaid person (or his or her spouse) willfully misrepresented or concealed material information in connection with the overpayment. If there has been willful misrepresentation or concealment of material information in connection with the overpayment, we would recover the overpayment by withholding at the rate of 100 percent of the title II benefits payable. We would not collect at a lesser rate.

**Other Revisions**

We propose to revise § 404.401(c) to explain that we may adjust a person's title II benefits to recover an SSI overpayment using cross-program recovery.

We propose to revise § 416.570 to eliminate the reference to voluntary withholding of an SSI overpayment from title II benefits. Under section 1147 of the Act, we now have authority to use cross-program recovery to recover title XVI overpayments without the consent of the overpaid person.

**Clarity of This Regulation**

Executive Order (E.O.) 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. In addition to your substantive comments on these proposed rules, we invite your comments on how to make these proposed rules easier to understand.

For example:

- Have we organized the material to suit your needs?
- Are the requirements in the rules clearly stated?
- Do the rules contain technical language or jargon that is unclear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rules easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rules easier to understand?

**Electronic Version**

The electronic file of this document is available on the date of publication in the **Federal Register** on the Internet site for the Government Printing Office: http://www.access.gpo.gov/su_docs/aces/aces140.html. It is also available on the Internet site for SSA (i.e., SSA Online): http://www.ssa.gov/.

**Regulatory Procedures**

*Executive Order 12866*

We have consulted with the Office of Management and Budget (OMB) and determined that these proposed regulations meet the criteria for a significant regulatory action under Executive Order 12866. Thus, they are subject to OMB review. However, the amounts of the savings or costs involved do not cross the threshold for an economically significant regulation as defined in E.O. 12866. The program savings from increased collections as a result of implementation of section 8 of Pub. L. 105–306 are $15 million in each of fiscal years (FY) 2001 through 2003; $40 million in FY 2004; and $30 million in FY 2005 for a total increase of $115 million over 5 years. The administrative savings estimate for FYs 2001 through 2005 is less than $5 million.

*Regulatory Flexibility Act*

We certify that these proposed rules will not have a significant economic impact on a substantial number of small entities because they affect only individuals. Thus, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

*Paperwork Reduction Act*

These proposed regulations would impose no new reporting or recordkeeping requirements requiring OMB clearance. In fact, these proposed rules would decrease the paperwork burden on the public by 833 burden hours per year. This is because, under the proposed rules, the public would no longer complete Form SSA–730–U2 (Request To Have Supplemental Security Income Overpayment Withheld From My Social Security Benefits) which provides SSA with the overpaid person's request that SSA collect a title XVI overpayment from the person's title II benefits.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.006, Supplemental Security Income)

**List of Subjects**

*20 CFR Part 404*

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

*20 CFR Part 416*

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated: June 9, 2000.

**Kenneth S. Apfel,**

*Commissioner of Social Security.*

For the reasons set forth in the preamble, we propose to amend subpart E of part 404 and subpart E of part 416 of Chapter III of Title 20, Code of Federal Regulations as follows:

## PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950– )

1. The authority citation for subpart E of part 404 is revised to read as follows:

**Authority:** Secs. 202, 203, 204(a) and (e), 205(a) and (c), 222(b), 223(e), 224, 225, 702(a)(5) and 1147 of the Social Security Act (42 U.S.C. 402, 403, 404(a) and (e), 405(a) and (c), 422(b), 423(e), 424a, 425, 902(a)(5) and 1320b–17).

2. Section 404.401 is amended by revising paragraph (c) to read as follows:

**§ 404.401 Deduction, reduction, and nonpayment of monthly benefits or lump-sum death payments.**

* * * * *

(c) *Adjustments.* We may adjust your benefits if you receive more or less than the correct amount due under title II of the Act. We may also adjust your benefits if you received more than the correct amount due under title XVI of the Act. For the title II rules on adjustments to your benefits, see subpart F of this part. For the rules on adjusting your benefits to recover title XVI overpayments, see § 416.572 of this chapter.

* * * * *

## PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

3. The authority citation for subpart E of part 416 is revised to read as follows:

**Authority:** Secs. 702(a)(5), 1147, 1601, 1602, 1611(c) and (e), and 1631(a)–(d) and (g) of the Social Security Act (42 U.S.C. 902(a)(5), 1320b–17, 1381, 1381a, 1382(c) and (e), and 1383(a)–(d) and (g)); 31 U.S.C. 3720A.



4. Section 416.570 is amended by revising the third sentence to read as follows:

**§ 416.570 Adjustment-general rule.**

* * * Absent a specific request from the person from whom recovery is sought, no overpayment made under title II or XVIII of the Act will be recovered by adjusting SSI benefits. * * *

5. Section 416.572 is added to read as follows:

**§ 416.572 Are title II benefits subject to adjustment to recover title XVI overpayments?**

(a) *Definitions*—(1) *Cross-program recovery.* Cross-program recovery is the process that we will use to collect title XVI overpayments from benefits payable to you in a month under title II of the Social Security Act.

(2) *Benefits payable in a month.* For purposes of this section, benefits payable in a month means the amount of title II benefits you would actually receive in that month. It includes your monthly benefit and any past due benefits after any reductions or deductions listed in § 404.401(a) and (b) of this chapter.

*Example:* A person is entitled to monthly title II benefits of $1000. The first benefit payment the person would receive includes past-due benefits of $1000. The amount of benefits payable in that month for purposes of cross-program recovery is $2000. The monthly benefit payable for subsequent months is $1000. If $200 would be deducted from the person's title II benefits in a later month because of excess earnings as described in §§ 404.415 and 404.416 of this chapter, the benefit payable in that month for purposes of cross-program recovery would be $800.

(3) *Not currently eligible for SSI cash benefits.* This means that a person is not receiving any cash payment, including State supplementary payments, under any provision of title XVI of the Act or under section 212(b) of Pub. L. 93–66 (42 U.S.C. 1382 note).

(b) *When we may collect title XVI overpayments using cross-program recovery.* (1) We may use cross-program recovery to collect a title XVI overpayment you owe if:

(i) You are not currently eligible for SSI cash benefits, and

(ii) You are receiving title II benefits.

(2) We will not start cross-program recovery if:

(i) You are refunding your title XVI overpayment by regular monthly installments, or

(ii) We are recovering a title II overpayment by adjusting your title II benefits under § 404.502 of this chapter.

(c) *Notice you will receive.* Before we collect an overpayment from you using cross-program recovery, we will send you a written notice that tells you the following information:

(1) We have determined that you owe a specific overpayment balance that can be collected by cross-program recovery;

(2) We will withhold a specific amount from the title II benefits payable to you in a month (see paragraph (e) of this section);

(3) You may ask us to review this determination that you still owe this overpayment balance; and

(4) You may request that we withhold a different amount (the notice will not include this information if paragraph (e)(2) of this section applies).

(d) *When we will begin cross-program recovery.* We will begin collecting the overpayment balance by cross-program recovery no sooner than 30 calendar days after the date of the notice described in paragraph (c) of this section.

(1) If within that 30-day period you pay us the full overpayment balance stated in the notice, we will not begin cross-program recovery.

(2) If within that 30-day period you ask us to review our determination that you still owe us this overpayment balance, we will not begin cross-program recovery before we review the matter and notify you of our decision in writing.

(3) If within that 30-day period you ask us to withhold a different amount than the amount stated in the notice, we will not begin cross-program recovery until we determine the amount we will withhold. This paragraph does not apply when paragraph (e)(2) of this section applies.

(e) *Rate of withholding.* (1) We will collect the overpayment at the rate of 10 percent of the title II benefits payable to you in any month, unless:

(i) You request and we approve a different rate of withholding, or

(ii) You or your spouse willfully misrepresented or concealed material information in connection with the overpayment.

(2) If you or your spouse willfully misrepresented or concealed material information in connection with the overpayment, we will collect the overpayment at the rate of 100 percent of the title II benefits payable in any month. We will not collect at a lesser rate. (See § 416.571 for what we mean by concealment of material information.)

[FR Doc. 00–25184 Filed 10–2–00; 8:45 am]

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**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 1**

**[REG–108522–00]**

**RIN 1545–AY25**

## Recognition of Gain on Certain Transfers to Certain Foreign Trusts and Estates; Correction

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correction to notice of proposed rulemaking.

**SUMMARY:** This document contains a correction to a notice of proposed rulemaking that was published in the **Federal Register** on Monday, August 7, 2000 (65 FR 48198) relating to the recognition of gain on certain transfers to certain foreign trusts and estates.

**FOR FURTHER INFORMATION CONTACT:** Karen A. Rennie Quarrie at (202) 622–3880 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**Background**

The notice of proposed rulemaking that is the subject of this correction is under section 684 of the Internal Revenue Code.

**Need for Correction**

As published, the notice of proposed rulemaking contains errors that may prove to be misleading and are in need of clarification.

**Correction of Publication**

Accordingly, the publication of the notice of proposed rulemaking (REG–108522–00), that was the subject of FR Doc. 00–19896, is corrected as follows:

**§ 1.684–3 [Corrected]**

On page 48202, column 1, § 1.684–3(f), the first line of *Example 1*, the language "Example 1. Transfer to owner trust. In" is corrected to read "Example 1. Transfer to grantor trust. In".

**Cynthia E. Grigsby,**

*Chief, Regulations Unit, Office of Special Counsel (Modernization and Strategic Planning).*

[FR Doc. 00–25290 Filed 10–2–00; 8:45 am]

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**ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD**

**36 CFR Parts 1190 and 1191**

**RIN 3014–AA20**

**Americans With Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities; Architectural Barriers Act (ABA) Accessibility Guidelines**

**AGENCY:** Architectural and Transportation Barriers Compliance Board.

**ACTION:** Proposed rule; meetings.

**SUMMARY:** The Architectural and Transportation Barriers Compliance Board (Access Board) will hold two informational meetings to provide the public with additional opportunities to discuss proposed requirements relating to automated teller machines, reach ranges, and captioning equipment included in its Notice of Proposed Rulemaking to amend the accessibility guidelines for buildings and facilities covered by the Americans with Disabilities Act (ADA) of 1990 and the Architectural Barriers Act (ABA) of 1968. The meetings will be held on the dates and at the locations noted below.

**DATES:** The Access Board will hold an informational meeting on access to automated teller machines on October 24, 2000 from 8:30 a.m. to 5:30 p.m. and an informational meeting on captioning equipment on October 25, 2000 from 8:30 a.m. to 10:30 a.m. and reach ranges on October 25, 2000 from 10:30 a.m. to 5:30 p.m.

**ADDRESSES:** The meetings will be held at the Hilton Garden Inn, 815 14th Street, NW., in Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Marsha Mazz, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC 20004–1111. Telephone number (202) 272–5434 extension 121 (Voice); (202) 272–5449 (TTY). These are not toll-free numbers. Electronic mail address: mazz@access-board.gov. This document is available in alternate formats (cassette tape, Braille, large print, or computer disk) upon request.

**SUPPLEMENTARY INFORMATION:** On November 16, 1999 the Architectural and Transportation Barriers Compliance Board (Access Board) published a Notice of Proposed Rulemaking to amend the accessibility guidelines for the Americans with Disabilities Act (ADA) of 1990 and the Architectural Barriers Act (ABA) of 1968. 64 FR 62248 (November 16, 1999). Proposed section 707 includes several provisions that may affect access to automated teller machines (ATMs), point of sale machines, and interactive transaction machines by people who are blind or have vision impairments. Proposed section 308 includes provisions for maximum high unobstructed reach. While section 707 is based on the American National Standard for Accessible and Usable Buildings and Facilities, ICC/ANSI A117.1–1998, the Board departed from this consensus standard with regard to reach ranges. In the proposed rule, the Board sought information on different means of providing captioning for movie theaters (Question 36). The Board is interested in receiving more information about various types of captioning as it relates to the built environment.

The Board wishes to provide affected parties the opportunity to share their views and expertise directly with the Board on these issues. Specific areas of inquiry are:

**ATMs**

- What are the performance expectations of people who are blind or have a vision impairment?
- What functions are currently accessible in audible format and on what types of devices?
- What functions cannot be made accessible in audible format and why?
- What are the hardware and software costs associated with audible output?
- What does the industry hope to gain from a "performance standard"?
- What effect would a 48 inch maximum reach have on ATMs, point of sale machines, and interactive transaction machines?

**Reach Ranges**

- What manufactured equipment cannot provide a 48 inch high side reach and why?
- Are there newly constructed building elements that would be substantially affected in terms of usability by lowering the high side reach from 54 inches to 48 inches?
- What is the experience in those States where the ICC/ANSI A117.1–1998 standard requiring the side reach to be no higher than 48 inches is used?

**Captioning for Movie Theaters**

- What technical provisions are necessary to facilitate or augment the use of auxiliary aids such as captioning and videotext displays?
- What are the various options for providing captioning that would best facilitate effective communication?
- If provisions for conduit, electrical service, screen anchoring devices at seats, or other requirements that make providing accessible communication possible in the built environment are required in the final rule, how specific should those provisions be?

Members of the public are encouraged to share their views on these subjects with the Board. Following the informational meetings, the Board will determine the provisions to be included in the final rule. The informational meetings will be informal and open to the public.

Members of the public are encouraged to contact Marsha Mazz at (202) 272–5434 extension 121 (Voice), (202) 272–5449 (TTY), or electronic mail mazz@access-board.gov to preregister to attend the informational meetings.

All meetings are accessible to persons with disabilities. Sign language interpreters and an assistive listening system will be available at the meetings. Persons attending the informational meetings are requested to refrain from using perfume, cologne, and other fragrances for the comfort of other participants.

**Lawrence W. Roffee,**

*Executive Director.*

[FR Doc. 00–25382 Filed 10–2–00; 8:45 am]

**BILLING CODE 8150–01–P**

**DEPARTMENT OF TRANSPORTATION**

**Surface Transportation Board**

**49 CFR Part 1180**

**[STB Ex Parte No. 582 (Sub-No. 1)]**

**Major Rail Consolidation Procedures**

**AGENCY:** Surface Transportation Board, DOT.

**ACTION:** Notice of proposed rulemaking

**SUMMARY:** The Surface Transportation Board (Board) seeks public comment on proposed modifications to its regulations governing proposals for major rail consolidations. These proposed new rules would substantially increase the burden on applicants to demonstrate that a proposed transaction is in the public interest, requiring them, among other things, to demonstrate that the transaction would enhance competition as an offset to negative impacts resulting from service disruptions and competitive harms likely to be caused by the merger.

**DATES:** Comments are due on November 17, 2000. Replies are due on December 18, 2000. Rebuttal submissions are due on January 11, 2001.

**ADDRESSES:** An original and 25 copies of all paper documents filed in this proceeding must refer to STB Ex Parte No. 582 (Sub-No. 1) and must be sent to: Surface Transportation Board, Office of the Secretary, Case Control Unit, Attn: STB Ex Parte No. 582 (Sub-No. 1), 1925 K Street, NW., Washington, DC 20423–0001.

In addition to submitting an original and 25 copies of all paper documents, parties must submit to the Board, on 3.5-inch IBM-compatible floppy diskettes (in, or convertible by and into, WordPerfect 9.0 format), an electronic copy of each such paper document. Any party may seek a waiver from the electronic submission requirement. Documents transmitted by facsimile (FAX) or electronic mail (e-mail) will not be accepted.

**FOR FURTHER INFORMATION CONTACT:** Julia M. Farr, (202) 565–1613. [TDD for the hearing impaired: 1–800–877–8339.]

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Board's decision. A printed copy of the Board's decision is available for a fee by contacting: Dā-To-Dā Office Solutions, Room 405, 1925 K Street, NW., Washington, DC 20006, telephone (202) 466–5530. The Board's decision is also available for viewing and downloading on the Board's website at "www.stb.dot.gov."

*Initial Regulatory Flexibility Analysis:* The Board preliminarily concludes that the proposed revisions to its regulations, if adopted, will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). These rules will create additional filing requirements only for Class I applicants, which are very large rail carriers. At the same time the Board has given increased weight to issues and concerns of smaller railroads and shippers, a change that should benefit these small entities.

The Board nevertheless seeks public input on whether the proposed revisions to its regulations would have significant economic impacts on a substantial number of small entities. If submissions made by the parties to this proceeding provide information that there would be significant economic impacts on a substantial number of small entities, the Board will prepare a regulatory flexibility analysis at the final rule stage.

*Environmental and Energy Considerations:* The Board preliminarily concludes that the proposed action will not significantly affect either the quality of the human environment or the conservation of energy resources.

*Request for Comments, Replies, and Rebuttal:* The Board invites comments, replies, and/or rebuttal on all aspects of the proposed regulations, including impacts on small entities and effects on either the quality of the human environment or the conservation of energy resources.

*Final Stage of This Proceeding:* After considering the comments due on November 17, 2000, the replies due on December 18, 2000, and the rebuttal due on January 11, 2001, the Board will issue final rules by June 11, 2001.

**Authority:** 49 U.S.C. 721 and 11323–11325.

**List of Subjects in 49 CFR Part 1180**

Administrative practice and procedure, Bankruptcy, Railroads, Reporting and recordkeeping requirements.

Decided: September 25, 2000.

By the Board, Chairman Morgan, Vice Chairman Burkes, and Commissioner Clyburn. Vice Chairman Burkes and Commissioner Clyburn commented with separate expressions.

**Vernon A. Williams,**

*Secretary.*

For the reasons set forth in the preamble, Title 49, Subtitle B, Chapter X, Part 1180 of the Code of Federal Regulations is proposed to be amended as follows:

**PART 1180—RAILROAD ACQUISITION, CONTROL, MERGER, CONSOLIDATION PROJECT, TRACKAGE RIGHTS, AND LEASE PROCEDURES**

1. The authority citation for part 1180 continues to read as follows:

**Authority:** 5 U.S.C. 553 and 559; 11 U.S.C. 1172; 49 U.S.C. 721, 10502, 11323–11325.

2. Section 1180.0 is proposed to be revised to read as follows:

**§ 1180.0 Scope and purpose.**

The regulations in this subpart set out the information to be filed and the procedures to be followed in control, merger, acquisition, lease, trackage rights, and any other consolidation transaction involving more than one railroad that is initiated under 49 U.S.C. 11323.

Section 1180.2 separates these transactions into four types: *Major, significant, minor,* and *exempt.* The informational requirements for these types of transactions differ. Before an application is filed, the designation of type of transaction may be clarified or certain of the information required may be waived upon petition to the Board. This procedure is explained in § 1180.4. The required contents of an application are set out in §§ 1180.6 (general information supporting the transaction), 1180.7 (competitive and market information), 1180.8 (operational information), 1180.9 (financial data), 1180.10 (service assurance plans), and 1180.11 (additional information needs for transnational mergers). A *major* application must contain the information required in §§ 1180.6(a), 1180.6(b), 1180.7(a), 1180.7(b), 1180.8(a), 1180.8(b), 1180.9, 1180.10, and 1180.11. A *significant* application must contain the information required in §§ 1180.6(a), 1180.6(c), 1180.7(a), 1180.7(c), and 1180.8(b). A *minor* application must contain the information required in §§ 1180.6(a) and 1180.8(c).

Procedures (including time limits, filing requirements, participation requirements, and other matters) are contained in § 1180.4. All applications must comply with the Board's Rules of General Applicability, 49 CFR parts 1100 through 1129, unless otherwise specified. These regulations may be cited as the Railroad Consolidation Procedures.

3. Section 1180.1 is proposed to be revised to read as follows:

**§ 1180.1 General policy statement for merger or control of at least two Class I railroads.**

(a) *General.* To meet the needs of the public and the national defense, the Surface Transportation Board seeks to ensure balanced and sustainable competition in the railroad industry. The Board recognizes that the railroad industry (including Class II and III carriers) is a network of competing and complementary components, which in turn is part of a broader transportation infrastructure that also embraces the nation's highways, waterways, ports, and airports. The Board welcomes private sector initiatives that enhance the capabilities and the competitiveness of this transportation infrastructure. Although mergers of Class I railroads may advance our nation's economic growth and competitiveness through the provision of more efficient and responsive transportation, the Board does not favor consolidations that reduce the railroad and other transportation alternatives available to shippers unless there are substantial and demonstrable public benefits to the transaction that cannot otherwise be achieved. Such public benefits include improved service, enhanced competition, and greater economic efficiency. The Board also will look with disfavor on consolidations under which the controlling entity does not assume full responsibility for carrying out the controlled carrier's common

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carrier obligation to provide adequate service upon reasonable demand.

(b) *Consolidation criteria.* The Board's consideration of the merger or control of at least two Class I railroads is governed by the public interest criteria prescribed in 49 U.S.C. 11324 and the rail transportation policy set forth in 49 U.S.C. 10101. In determining the public interest, the Board must consider the various goals of effective competition, carrier safety and efficiency, adequate service for shippers, environmental safeguards, and fair working conditions for employees. The Board must ensure that any approved transaction will promote a competitive, efficient, and reliable national rail system.

(c) *Public interest considerations.* The Board believes that mergers serve the public interest only when substantial and demonstrable gains in important public benefits—such as improved service, enhanced competition, and greater economic efficiency—outweigh any anticompetitive effects, potential service disruptions, or other merger-related harms. Although the Board cannot rule out the possibility that further consolidation of the few remaining Class I carriers could result in efficiency gains and improved service, the Board believes additional consolidation in the industry is also likely to result in a number of anticompetitive effects, such as loss of geographic competition, that are increasingly difficult to remedy directly or proportionately. Additional consolidations could also result in service disruptions during the system integration period. To maintain a balance in favor of the public interest, merger applications must include provisions for enhanced competition. Unless merger applications are so framed, approval of proposed combinations where both carriers are financially sound will likely cause the Board to make broad use of the powers available to it in 49 U.S.C. 11324(c) to condition its approval to preserve and enhance competition. When evaluating the public interest, the Board will also consider whether the benefits claimed by applicants could be realized by means other than the proposed consolidation. The Board believes that other private sector initiatives, such as joint marketing agreements and interline partnerships, can produce many of the efficiencies of a merger while risking less potential harm to the public.

(1) *Potential benefits.* By eliminating transaction cost barriers between firms, increasing the productivity of investment, and enabling carriers to lower costs through economies of scale, scope, and density, mergers can generate important public benefits such as improved service, enhanced competition, and greater economic efficiency. A merger can strengthen a carrier's finances and operations. To the extent that a merged carrier continues to operate in a competitive environment, its new efficiencies will be shared with shippers and consumers. Both the public and the consolidated carrier can benefit if the carrier is able to increase its marketing opportunities and provide better service. A merger transaction can also improve existing competition or provide new competitive opportunities, and such enhanced competition will be given substantial weight in our analysis. Applicants shall make a good faith effort to calculate the net public benefits their merger will generate, and the Board will carefully evaluate such evidence. To ensure that applicants have no incentive to exaggerate these projected benefits to the public, the Board expects applicants to propose additional measures that the Board might take if the anticipated public benefits fail to materialize in a timely manner.

(2) *Potential harm.* The Board recognizes that consolidation can impose costs as well as benefits. It can reduce competition both directly and indirectly in particular markets, including product markets and geographic markets. Consolidation can also threaten essential services and the reliability of the rail network. In analyzing these impacts we must consider, but are not limited by, the policies embodied in the antitrust laws.

(i) *Reduction of competition.* Although in specific markets railroads operate in a highly competitive environment with vigorous intermodal competition from motor and water carriers, mergers can deprive shippers of effective options. Intramodal competition is reduced when two carriers serving the same origins and destinations merge. Competition in product and geographic markets can also be eliminated or reduced by end-to-end mergers. Any railroad combination entails a risk that the merged carrier will acquire and exploit increased market power. Applicants shall propose remedies to mitigate and offset competitive harms. Applicants shall also explain how they would at a minimum preserve competitive options such as those involving the use of major existing gateways, build-outs or build-ins, and the opportunity to enter into contracts for one segment of a movement as a means of gaining the right separately to pursue rate relief for the remainder of the movement.

(ii) *Harm to essential services.* The Board must ensure that essential freight, passenger, and commuter rail services are preserved. An existing service is essential if there is sufficient public need for the service and adequate alternative transportation is not available. The Board's focus is on the ability of the nation's transportation infrastructure to continue to provide and support essential services. Mergers should strengthen, not undermine, the ability of the rail network to advance the nation's economic growth and competitiveness, both domestically and internationally. The Board will consider whether projected shifts in traffic patterns could undermine the ability of the various network links (including Class II and Class III rail carriers and ports) to sustain essential services.

(iii) *Transitional service problems.* Experience shows that significant service problems can arise during the transitional period when merging firms integrate their operations, even after applicants take extraordinary steps to avoid such disruptions. Because service disruptions harm the public, the Board, in its determination of the public interest, will weigh the likelihood of transitional service problems. In addition, under paragraph (h) of this section, the Board will require applicants to provide a detailed service assurance plan. Applicants also should explain how they will cooperate with other carriers in overcoming natural disasters or other serious service problems during the transitional period and afterwards.

(iv) *Enhanced competition.* To offset harms that would not otherwise be mitigated, applicants shall explain how the transaction and conditions they propose will enhance competition.

(d) *Conditions.* The Board has broad authority under 49 U.S.C. 11324(c) to impose conditions on consolidations, including divestiture of parallel tracks or requiring the granting of trackage rights and access to other facilities. The Board will condition the approval of Class I combinations to mitigate or offset harm to the public interest, and will carefully consider conditions proposed by applicants in this regard. The Board will impose conditions that are operationally feasible and produce net public benefits so as not to undermine or defeat beneficial transactions by creating unreasonable operating, financial, or other problems for the combined carrier. Conditions are generally not appropriate to compensate parties who may be disadvantaged by increased competition. In this regard, the Board expects that any merger of Class I carriers will create some anticompetitive effects that are difficult to mitigate through appropriate conditions, and that transitional service disruptions may temporarily negate any shipper benefits. Therefore, to offset these harms, applicants will be required to propose conditions that will not simply preserve but also enhance competition. The Board seeks to enhance competition in ways that strengthen and sustain the rail network as a whole (including that portion of the network operated by Class II and III carriers).



(e) *Labor protection.* The Board is required to provide adequate protection to the rail employees of applicants who are affected by a consolidation. The Board supports early notice and consultation between management and the various unions, leading to negotiated implementing agreements, which the Board strongly favors. Otherwise, the Board respects the sanctity of collective bargaining agreements and will look with extreme disfavor on overrides of collective bargaining agreements except to the very limited extent necessary to carry out an approved transaction. The Board will review negotiated agreements to assure fair and equitable treatment of all affected employees. Absent a negotiated agreement, the Board will provide for protection at the level mandated by law (49 U.S.C. 11326(a)), and if unusual circumstances are shown, more stringent protection will be provided to ensure that employees have a fair and equitable arrangement.

(f) *Environment and safety.* (1) We encourage negotiated agreements between railroad-applicants and affected communities, including groups of neighborhood communities and other entities such as state and local agencies. Agreements of this nature can be extremely helpful and effective in addressing local and regional environmental and safety concerns, including the sharing of costs associated with mitigating merger-related environmental impacts.

(2) Applicants will be required to work with the Federal Railroad Administration, on a case-by-case basis, to formulate Safety Integration Plans to ensure that safe operations are maintained throughout the merger implementation process. Applicants will also be required to submit evidence about potentially blocked grade crossings as a result of merger-related traffic increases.

(g) *Oversight.* As a condition to its approval of any major transaction, the Board will establish a formal oversight process. For at least the first 5 years following approval, applicants will be required to present evidence to the Board, on no less than an annual basis, to show that the merger conditions imposed by the Board are working as intended, that the applicants are adhering to the various representations they made on the record during the course of their merger proceeding, that no unforeseen harms have arisen that would require the Board to alter existing merger conditions or impose new ones, and that the merger benefit projections accepted by the Board are being realized in a timely fashion. Parties will be given the opportunity to comment on applicants' submissions, and applicants will be given the opportunity to reply to the parties' comments. During the oversight period, the Board will retain jurisdiction to impose any additional conditions it determines are necessary to remedy or offset unforeseen adverse consequences of the underlying transaction.

(h) *Service assurance and operational monitoring.* (1) Good service is of vital importance to shippers. Accordingly, applicants must file, with the initial application and operating plan, a service assurance plan, identifying the precise steps to be taken to ensure continuation of adequate service and to provide for improved service. This plan must include the specific information set forth at § 1180.10 on how shippers and connecting railroads (including Class II and III carriers) across the new system will be affected and benefitted by the proposed consolidation. As part of this plan, the Board will require applicants to establish contingency plans that would be available to address the negative impacts if projected service levels do not materialize in a timely fashion.

(2) The Board will conduct extensive post-approval operational monitoring to help ensure that service levels after a merger are reasonable and adequate.

(3) We will require applicants to establish problem resolution teams and specific procedures for problem resolution to ensure that post-merger service problems, related claims issues, and other matters are promptly addressed. Also, we would envision the establishment of a Service Council made up of shippers, railroads, and other interested parties to provide an ongoing forum for the discussion of implementation issues.

(i) *Cumulative impacts and crossover effects.* Because there are so few remaining Class I carriers and the railroad industry constitutes a network of competing and complementary components, the Board cannot evaluate the merits of a major transaction in isolation—the Board must also consider the cumulative impacts and crossover effects likely to occur as rival carriers react to the proposed combination. The Board expects applicants to anticipate with as much certainty as possible what additional Class I merger applications are likely to be filed in response to their own application and explain how these applications, taken together, could affect the eventual structure of the industry and the public interest. When calculating the likely public benefits that their merger will generate, applicants are to measure these benefits in light of the anticipated downstream mergers. Applicants will be expected to discuss whether and how the type or extent of any conditions imposed on their proposed merger would have to be altered, or any new conditions imposed, following approval by us of any future consolidation(s).

(j) *Inclusion of other carriers.* The Board will consider requiring inclusion of another carrier as a condition to approval only where there is no other reasonable alternative for providing essential services, the facilities fit operationally into the new system, and inclusion can be accomplished without endangering the operational or financial success of the new company.

(k) *Transnational issues.* (1) Future merger applications may present novel and significant transnational issues. In cases involving major Canadian and Mexican railroads, applicants must submit "full system" competitive analyses and operating plans—incorporating their operations in Canada or Mexico—from which we can determine the competitive, service, employee, safety, and environmental impacts of the prospective operations within the United States. With respect to rail safety in the United States, applicants must explain how cooperation with the Federal Railroad Administration will be maintained without regard to the national origins of merger applicants. When an application would result in foreign control of a Class I railroad, applicants must assess the likelihood that commercial decisions made by foreign railroads could be based on national or provincial rather than broader economic considerations and be detrimental to the interests of the United States rail network, and applicants must address how any ownership restrictions imposed by foreign governments should affect our public interest assessment.

(2) The Board will consult with relevant officials as appropriate to ensure that any conditions it imposes on a transaction are consistent with the North American Free Trade Agreement and other pertinent international agreements to which the United States is a party. In addition, the Board will

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cooperate with those Canadian and Mexican agencies charged with approval and oversight of a proposed transnational railroad combination.

(l) *National defense.* Rail mergers must not detract from the ability of the United States military to rely on rail transportation to meet the nation's defense needs. Applicants must discuss and assess the national defense ramifications of their proposed merger.

(m) *Public participation.* To ensure a fully developed record on the effects of a proposed railroad consolidation, the Board encourages public participation from federal, state, and local government departments and agencies; affected shippers, carriers, and rail labor; and other interested parties.

4. Section 1180.3 is proposed to be amended by revising paragraphs (a) and (b) to read as follows:

**§ 1180.3 Definitions.**

(a) *Applicant.* The term *applicant* means the parties initiating a transaction, but does not include a wholly owned direct or indirect subsidiary of an applicant if that subsidiary is not a rail carrier. Parties who are considered applicants, but for whom the information normally required of an applicant need *not* be submitted, are:

(1) In *minor* trackage rights applications, the transferor; and

(2) In responsive applications, a primary applicant.

(b) *Applicant carriers.* The term *applicant carriers* means: any applicant that is a rail carrier; any rail carrier operating in the United States, Canada, and/or Mexico in which an applicant holds a controlling interest; and all other rail carriers involved in the transaction. This does not include carriers who are involved only by virtue of an existing trackage rights agreement with applicants.

* * * * *

5. Section 1180.4 is proposed to be amended by revising paragraph (a)(1) to read as follows, by removing paragraph (a)(4), by adding new paragraphs (b)(4) and (c)(6)(vi) to read as follows, and by revising paragraphs (d), (e)(2), (e)(3), and (f)(2) to read as follows:

**§ 1180.4 Procedures.**

(a) * * * (1) The original and 25 copies of all documents shall be filed in *major* proceedings. The original and 10 copies shall be filed in *significant* and *minor* proceedings.

* * * * *

(b) * * *

(4) When filing the notice of intent required by paragraph (b)(1) of this section, applicants also must file:

(i) *A proposed procedural schedule.* In any proceeding involving either a major transaction or a significant transaction, the Board will publish a **Federal Register** notice soliciting comments on the proposed procedural schedule, and will, after review of any comments filed in response, issue a procedural schedule governing the course of the proceeding.

(ii) *A proposed draft protective order.* The Board will issue, in each proceeding in which such an order is requested, an appropriate protective order.

(iii) *A statement of waybill availability for major transactions.* Applicants must indicate, as soon as practicable after the issuance of a protective order, that they will make their 100% traffic tapes available (subject to the terms of the protective order) to any interested party on written request. The applicants may require that, if the requesting party is itself a railroad, applicants will make their 100% traffic tapes available to that party only if it agrees, in its written request, to make its own 100% traffic tapes available to applicants (subject to the terms of the protective order) when it receives access to applicants' tapes.

(iv) *A proposed voting trust.* In each proceeding involving a major transaction, applicants contemplating the use of a voting trust must inform the Board as to how the trust would insulate them from an unlawful control violation and as to why their proposed use of the trust, in the context of their impending control application, would be consistent with the public interest. Following a brief period of public comment and replies by applicants, the Board will issue a decision determining whether applicants may establish and use the trust.

(c) * * *

(6) * * *

(vi) The information and data required of any applicant may be consolidated with the information and data required of the affiliated applicant carriers.

(d) *Responsive applications.* (1) No responsive applications shall be permitted to minor transactions.

(2) An inconsistent application will be classified as a major, significant, or minor transaction as provided for in § 1180.2(a) through (c). The fee for an inconsistent application will be the fee for the type of transaction involved. See 49 CFR 1002.2(f)(38) through (41). The fee for any other type of responsive application is the fee for the particular type of proceeding set forth in 49 CFR 1002.2(f).

(3) Each responsive application filed and accepted for consideration will automatically be consolidated with the primary application for consideration.

(e) * * *

(2) The evidentiary proceeding will be completed:

(i) Within 1 year (after the primary application is accepted) for a *major* transaction;

(ii) Within 180 days for a *significant* transaction; and

(iii) Within 105 days for a *minor* transaction.

(3) A final decision on the primary application and on all consolidated cases will be issued:

(i) Within 90 days (after the conclusion of the evidentiary proceeding) for a *major* transaction;

(ii) Within 90 days for a *significant* transaction; and

(iii) Within 45 days for a *minor* transaction.

* * * * * *

(f) * * *

(2) Except as otherwise provided in the procedural schedule adopted by the Board in any particular proceeding, petitions for waiver or clarification must be filed at least 45 days before the application is filed.

* * * * * *

6. Section 1180.6 is proposed to be amended by revising paragraphs (b)(1), (b)(2), (b)(3), (b)(4), (b)(6), and (b)(8) to read as follows, and by adding new paragraphs (b)(9), (b)(10), (b)(11), (b)(12), and (b)(13) to read as follows:

**§ 1180.6 Supporting information.**

* * * * * *

(b) * * *

(1) *Form 10–K (exhibit 6).* Submit: the most recent filing with the Securities and Exchange Commission (SEC) under 17 CFR 249.310 if made within the year prior to the filing of the application by each applicant or by any entity that is in control of an applicant. These shall not be incorporated by reference, and shall be updated with any Form 10–K subsequently filed with the SEC over the duration of the proceeding.

(2) *Form S–4 (exhibit 7).* Submit: the most recent filing with the SEC under 17 CFR 239.25 if made within the year prior to the filing of the application by each applicant or by any entity that is in control of an applicant. These shall not be incorporated by reference, and shall be updated with any Form S–4 subsequently filed with the SEC over the duration of the proceeding.

(3) *Change in control (exhibit 8).* If an applicant carrier submits an annual report Form R–1, indicate any change in ownership or control of that applicant



carrier not indicated in its most recent Form R–1, and provide a list of the principal six officers of that applicant carrier and of any related applicant, and also of their majority-owned rail carrier subsidiaries. If any applicant carrier does not submit an annual report Form R–1, list all officers of that applicant carrier, and identify the person(s) or entity/entities in control of that applicant carrier and all owners of 10% or more of the equity of that applicant carrier.

(4) *Annual reports (exhibit 9).* Submit: the two most recent annual reports to stockholders by each applicant, or by any entity that is in control of an applicant, made within 2 years of the date of filing of the application. These shall not be incorporated by reference, and shall be updated with any annual or quarterly report to stockholders issued over the duration of the proceeding.

* * * * * *

(6) *Corporate chart (exhibit 11).* Submit a corporate chart indicating all relationships between applicant carriers and all affiliates and subsidiaries and also companies controlling applicant carriers directly, indirectly or through another entity (with each chart indicating the percentage ownership of every company on the chart by any other company on the chart). For each company: include a statement indicating whether that company is a noncarrier or a carrier; and identify every officer and/or director of that company who is also an officer and/or director of any other company that is part of a different corporate family, which includes a rail carrier. Such information may be referenced through notes to the chart.

* * * * * *

(8) *Intercorporate or financial relationships.* Indicate whether there are any direct or indirect intercorporate or financial relationships at the time the application is filed, not disclosed elsewhere in the application, through holding companies, ownership of securities, or otherwise, in which applicants or their affiliates own or control more than 5% of the stock of a non-affiliated carrier, including those relationships in which a group affiliated with applicants owns more than 5% of the stock of such a carrier. Indicate the nature and extent of such relationships, if they exist, and, if an applicant owns securities of a carrier subject to 49 U.S.C. Subtitle IV, provide the carrier's name, a description of securities, the par value of each class of securities held, and the applicant's percentage of total ownership. For purposes of this paragraph (b)(8), "affiliates" has the same meaning as "affiliated companies" in Definition 5 of the Uniform System of Accounts (49 CFR part 1201, subpart A).

(9) *Employee impact exhibit.* The effect of the proposed transaction upon applicant carriers' employees (by class or craft), the geographic points where the impacts will occur, the time frame of the impacts (for at least 3 years after consolidation), and whether any employee protection agreements have been reached. This information (except with respect to employee protection agreements) may be set forth in the following format:

EFFECTS ON APPLICANT CARRIERS' EMPLOYEES

| Current location | Classification | Jobs transferred to | Jobs abolished | Jobs created | Year |
|---|---|---|---|---|---|
| | | | | | |

(10) *Conditions to mitigate and offset merger harms.* Applicants are expected to propose measures to mitigate and offset merger harms. These conditions should not simply preserve, but also enhance, competition.

(i) Applicants must explain how they will preserve competitive options for shippers and for Class II and III rail carriers. At a minimum, applicants must explain how they will preserve the use of major gateways, the potential for build-outs or build-ins, and the opportunity to enter into contracts for one segment of a movement as a means of gaining the right separately to pursue rate relief for the remainder of the movement.

(ii) Applicants must explain how the transaction and conditions they propose will enhance competition and improve service.

(11) *Calculating public benefits.* Applicants must enumerate and, where possible, quantify the net public benefits their merger will generate (if approved). In making this estimate, applicants should identify the benefits arising from service improvements, enhanced competition, cost savings, and other merger-related public interest benefits. Applicants must also identify, discuss, and, where possible, quantify the likely negative effects approval will entail, such as losses of competition, potential for service disruption, and other merger-related harms. In addition, applicants must suggest additional measures that the Board might take if the anticipated public benefits identified by applicants fail to materialize in a timely manner.

(12) *Downstream merger applications.* (i) Applicants should anticipate what additional Class I merger applications are likely to be filed in response to their own application and explain how, taken together, these applications could affect the eventual structure of the industry and the public interest.

(ii) Applicants are expected to discuss whether and how the type or extent of any conditions imposed on their proposed merger would have to be altered, or any new conditions imposed, should the Board approve additional future rail mergers.

(iii) In calculating the public benefits arising from their merger, applicants should measure them in light of the anticipated downstream merger applications.

(13) *Purpose of the proposed transaction.* The purpose sought to be accomplished by the proposed transaction, *e.g.*, improving service, enhancing competition, strengthening the nation's transportation infrastructure, creating operating economies, and ensuring financial viability.

* * * * * *

7. Section 1180.7 is proposed to be revised to read as follows:

**§ 1180.7 Market analyses.**

(a) For *major* and *significant* transactions, applicants shall submit impact analyses (exhibit 12) that describe the impacts of the proposed transaction—both adverse and

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beneficial—on inter- and intramodal competition with respect to freight surface transportation in the regions affected by the transaction and on the provision of essential services by applicants and other carriers. An impact analysis should include underlying data, a study on the implications of those data, and a description of the resulting likely effects of the transaction on transportation alternatives available to the shipping public. Each aspect of the analysis should specifically address significant impacts as they relate to the applicable statutory criteria (49 U.S.C. 11324(b) or (d)), essential services, and competition. Applicants must identify and address relevant markets and issues, and provide additional information as requested by the Board on markets and issues that warrant further study. Applicants (and any other party submitting analyses) must demonstrate both the relevance of the markets and issues analyzed and the validity of the methodology. All underlying assumptions must be clearly stated. Analyses should reflect the consolidated company's marketing plan and existing and potential competitive alternatives (inter- as well as intramodal). They can address: city pairs, interregional movements, movements through a point, or other factors; a particular commodity, group of commodities, or other commodity factor that will be significantly affected by the transaction; or other effects of the transaction (such as on a particular type of service offered).

(b) For *major* transactions, applicants shall submit "full system" impact analyses (incorporating any operations in Canada or Mexico) from which they must demonstrate the impacts of the transaction—both adverse and beneficial—on competition within regions of the United States and this nation as a whole (including inter- and intramodal competition, product competition, and geographic competition) and the provision of essential services (including freight, passenger, and commuter) by applicants and other network links (including Class II and Class III rail carriers and ports). Applicants' impact analyses must at least provide the following types of information:

(1) The anticipated effects of the transaction on traffic patterns, market concentrations, and/or transportation alternatives available to the shipping public. Consistent with § 1180.6(b)(10), these must incorporate a detailed examination of the ways in which the transaction would enhance competition and of the specific measures proposed by applicants to preserve existing levels of competition and essential services;

(2) Actual and projected market shares of originated and terminated traffic by railroad for each major point on the combined system before and after the proposed transaction. Applicants may define points as individual stations or as larger areas (such as Bureau of Economic Analysis statistical areas or U.S. Department of Agriculture Crop Reporting Districts) as relevant and indicate the extent of switching access and availability of terminal belt railroads. Applicants should list points where the number of serving railroads would drop from two to one and from three to two, respectively, as a result of the proposed transaction (both before and after applying proposed remedies for competitive harm);

(3) Actual and projected market shares of revenues and traffic volumes before and after the proposed transaction for major interregional or corridor flows by major commodity group. Origin/destination areas should be defined at relevant levels of aggregation for the commodity group in question. The data should be broken down by mode and (for the railroad portion) by single-line and interline routings (showing gateways used). Applicants should explain relevant differences in the effectiveness of competing routings (with respect, *e.g.*, to transit time, terrain, track conditions, and capacity);

(4) For each major commodity group, an analysis of traffic flows indicating patterns of geographic competition or product competition across different railroad systems, showing actual and projected revenues and traffic volumes before and after the proposed transaction;

(5) Maps and other graphic displays where helpful in illustrating the analyses in this section;

(6) An explicit delineation of the projected impacts of the transaction on the ability of various network links (including Class II and Class III rail carriers and ports) to participate in the competitive process and to sustain essential services; and

(7) Supporting data for the analyses in this section, such as the basis for projections of changes in traffic patterns, including shipper surveys and econometric or other statistical analyses. If not made part of the application, applicants shall make these data available in a repository for inspection by other parties or otherwise supply these data on request, for example, electronically. Access to confidential information will be subject to protective order. For information drawn from publicly available published sources, detailed citations will suffice.

(c) For *significant* transactions, specific regulations on impact analyses are not provided so that the parties will have the greatest leeway to develop the best evidence on the impacts of each individual transaction. As a general guideline, applicants shall provide supporting data that may (but need not) include: current and projected traffic flows; data underlying sales forecasts or marketing goals; interchange data; market share analysis; and/or shipper surveys. *It is important to note that these types of studies are neither limiting nor all inclusive.* The parties must provide supporting data, but are free to choose the type(s) and format. If not made part of the application, applicants shall make these data available in a repository for inspection by other parties or otherwise supply these data on request, for example, electronically. Access to confidential information will be subject to protective order. For information drawn from publicly available published sources, detailed citations will suffice.

8. Section 1180.8 is proposed to be amended by redesignating paragraphs (a) and (b) as paragraphs (b) and (c), respectively, and by adding a new paragraph (a) to read as follows:

**§ 1180.8 Operational data.**

(a) For *major* transactions applicants must submit a "full system" operating plan—incorporating any prospective operations in Canada and Mexico—from which they must demonstrate how the proposed transaction will affect operations within regions of the United States and this nation as a whole.

(1) *Safety integration plan.* Applicants must submit a safety integration plan.

(2) *Blocked crossings.* Applicants must indicate what measures they plan to take to address potentially blocked grade crossings as a result of merger-related changes in operations or increases in rail traffic.

* * * * *

9. A new § 1180.10 is proposed to be added to read as follows:

**§ 1180.10 Service assurance plans.**

For *major* transactions: *service assurance plan.* Applicants shall submit a service assurance plan, which, in concert with the operating plan requirements, will identify the precise steps to be taken by applicants to ensure that projected service levels are attainable and that key elements of the operating plan will improve service. The plan shall describe with reasonable precision how operating plan efficiencies will translate into present and future benefits for the shipping public. The plan must also describe any potential area of service degradation that might result due to operational changes. The plan must encompass:

(a) *Integration of operations.* Based on the operating plan, and using benchmarks for the year immediately preceding the filing date of the application, applicants must describe how the transaction will result in improved service levels and must identify potential instances where service may be degraded. While precise in nature, this description is expected to be a route level review rather than a shipper-by-shipper review. Nonetheless, the plan should be sufficient for individual shippers to evaluate the projected improvements and respond to the potential areas of service degradation for their customary traffic routings. The plan should inform Class II and III railroads and other connecting railroads of the operational changes that may have an impact on their operations, including operations involving major gateways.

(b) *Coordination of freight and passenger operations.* If Amtrak or commuter services are operated over the lines of the applicant carriers, applicants must describe definitively how they will continue to operate these lines to fulfill existing performance agreements for those services. Whether or not the passenger services operated are over lines of the applicants, applicants must establish operating protocols that ensure effective communications with Amtrak and/or regional rail passenger operators in order to minimize any potential transaction-related negative impacts.

(c) *Yard and terminal operations.* The operational fluidity of yards and terminals is key to the successful implementation of a transaction and effective service to shippers. Applicants must describe how the operations of principal classification yards and major terminals will be changed or revised and how these revisions will affect service to customers. As part of this analysis, applicants must furnish dwell time information for one year prior to the transaction for each facility described above, and estimate what the expected dwell time will be after the revised operations are implemented. Also required will be a discussion of on-time performance for the principal yards and terminals in the same terms as required for dwell time.

(d) *Infrastructure improvements.* Applicants must identify potential infrastructure impediments (using volume/capacity line and terminal forecasts), formulate solutions to those impediments, and develop timeframes for resolution. Applicants must also develop a capital improvement plan (to support the operating plan) for timely funding and completing the improvements critical to transition of operations. They should also describe improvements related to future growth, and indicate the relationship of the improvements to service delivery.

(e) *Information technology systems.* Because the accurate and timely integration of applicants' information systems are vitally important to service delivery, applicants must identify the process to be used for systems integration and training of involved personnel. This must include identification of the principal operations-related systems, operating areas affected, implementation schedules, the realtime operations data used to test the systems, and pre-implementation training requirements needed to achieve completion dates. If such systems will not be integrated and on line prior to implementation of the transaction, applicants must describe the interim systems to be used and how those systems will assure service delivery.

(f) *Customer service.* To achieve and maintain customer confidence in the transaction and to ensure the successful integration and consolidation of existing customer service functions, applicants must identify their plans for the staffing and training of personnel within or supporting the customer service centers. This discussion must include specific information on the planned steps to familiarize customers with any new processes and procedures that they may encounter in using the consolidated systems and/or changes in contact locations or telephone numbers.

(g) *Labor.* Applicants must furnish a plan for reaching necessary labor implementing agreements. Applicants must also provide evidence that sufficient qualified employees to effect implementation will be available at the proper locations prior to the transaction.

(h) *Training.* Applicants must establish a plan to provide necessary training to employees involved with operations, train and engine service, operating rules, dispatching, payroll and timekeeping, field data entry, safety and hazardous material compliance, and contractor support functions (i.e., crew van service), as well as to other employees in functions that will be affected by the transaction.

(i) *Contingency plans for merger-related service disruptions.* In order to address potential disruptions of service that may occur, applicants must establish contingency plans. Those plans, based upon available resources and traffic flows and density, must identify potential areas of disruption and the risk of occurrence. Applicants must provide evidence that contingency plans are in place to minimize negative service impacts and promptly restore service.

(j) *Timetable.* Applicants must identify all major functional or system changes/consolidations that will occur and the time line for successful completion.

10. A new § 1180.11 is proposed to be added to read as follows:

**§ 1180.11 Additional information needs for transnational mergers.**

(a) Applicants must explain how cooperation with the Federal Railroad Administration will be maintained without regard to the national origins of merger applicants.

(b) Applicants must assess the likelihood that commercial decisions made by foreign railroads could be based on national or provincial rather than broader economic considerations, and be detrimental to the interests of the United States, and discuss any ownership restrictions imposed on them by foreign governments.

(c) Applicants must discuss and assess the national defense ramifications of the proposed merger.

[FR Doc. 00–25043 Filed 10–2–00; 8:45 am]

BILLING CODE 4915–00–P



## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 17

**RIN 1018–AG12**

## Endangered and Threatened Wildlife and Plants; Reopening of Public Comment Period and Notice of Availability of Draft Economic Analysis for Proposed Critical Habitat Determination for the Zapata Bladderpod.

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed Rule; Extension of public comment period and notice of availability of draft economic analysis.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, announce the availability of the draft economic analysis for the proposed designation of critical habitat for the Zapata bladderpod (*Lesquerella thamnophila*).

We also provide notice that the public comment period for the proposal is reopened to allow all interested parties

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to submit written comments on the proposal and the draft economic analysis. Comments submitted during the previous comment period need not be resubmitted as they will be incorporated into the public record and will be fully considered in the final determination on the proposal.

**DATES:** The original comment period closed on September 18, 2000. The comment period is hereby reopened and now closes on November 2, 2000. Comments from all interested parties must be received by the closing date. Any comments that are received after the closing date may not be considered in the final decision on this proposal.

**ADDRESSES:** Copies of the draft economic analysis are available on the Internet at *http://ifw2es.fws.gov/library/* or by writing to the Field Supervisor, Ecological Services Field Office, c/o TAMUCC, Box 338, 6300 Ocean Drive, Corpus Christi, Texas 78412, or facsimile 1–361–994–8262. All written comments should be submitted to the Field Supervisor at the above address. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Loretta Pressly, Fish and Wildlife Biologist, at the above address (telephone 1–361–994–9005).

**SUPPLEMENTARY INFORMATION:**

**Background**

The Zapata bladderpod was listed as an endangered species on December 22, 1999. The Zapata bladderpod is a perennial plant that grows opportunistically; that is, the density of Zapata bladderpod plants and the sizes of populations fluctuate in response to rainfall. They are cryptic plants, which show little vegetative growth during drought conditions, hampering survey efforts for additional populations. All known populations of the Zapata bladderpod occur on graveled to sandy-loam upland terraces above the Rio Grande floodplain in South Texas.

Critical habitat was proposed on July 19, 2000. Of the ten populations of Zapata bladderpod that have been located, only three populations are still known to display live plants. The introduction of non-native species such as pasture grass, overgrazing, urban development, and oil and gas production activities have all contributed to the decline of the plant.

Ten areas of critical habitat are being proposed for the Zapata bladderpod. Seven Lower Rio Grande Valley National Wildlife Refuge tracts in Starr County are proposed, as well as one private land site also in Starr County. Two sites along the Texas Department of Transportation's Highway 83 right-of-way in Zapata County are being proposed as critical habitat. Altogether 5,330 acres of land are being proposed for critical habitat.

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific and commercial data available and after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such exclusion will not result in the extinction of the species. Consequently, we have prepared a draft economic analysis concerning the proposed critical habitat designation, which is available for review and comment at the above Internet and mailing addresses.

**Public Comments Solicited**

We solicit comments on the draft economic analysis described in this notice, as well as any other aspect of the proposed designation of critical habitat for the Zapata bladderpod. Our final determination on the proposed critical habitat will take into consideration comments and any additional information received by the date specified above. All previous comments and information submitted during the comment period need not be resubmitted. The comment period is extended to November 2, 2000. Written comments may be submitted to the Field Supervisor at the above address.

**Author**

The primary author of this notice is Loretta Pressly, U.S. Fish and Wildlife Service (see **ADDRESSES**).

**Authority:** The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

**Renne Lohoefener,**

*Acting Regional Director, Region 2, Fish and Wildlife Service.*

[FR Doc. 00–25323 Filed 10–2–00; 8:45 am]

**BILLING CODE 4310–55–P**



# Notices

Federal Register
Vol. 65, No. 192
Tuesday, October 3, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

**[Docket No. CN–00–008]**

### Notice of Request for Extension and Revision of a Currently Approved Information Collection

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension for and revision to a currently approved information collection for Cotton Classification and Market News Service.

**DATES:** Comments on this notice must be received by December 4, 2000 to be assured of consideration.

**ADDITIONAL INFORMATION OR COMMENTS:** Contact Mack Bennett, U.S. Department of Agriculture, Agricultural Marketing Service, Cotton Programs, Market News Branch, 3275 Appling Road, Memphis, Tennessee 38133; (901) 384–3016 telephone and (901) 384–3036 fax.

**SUPPLEMENTARY INFORMATION:**

*Title:* Cotton Classification and Market News Service.

*OMB Number:* 0581–0009.

*Expiration Date of Approval:* July 31, 2001.

*Type of Request:* Extension and revision of a currently approved information collection.

*Abstract:* The Cotton Classification and Market News Service program provides market information on Cotton prices, quality, stocks, demand and supply to growers, ginners, merchandisers, textile mills and the public for their use in making sound business decisions. The Cotton Statistics and Estimates Act, 7 U.S.C. 471–476, authorizes and directs the Secretary of Agriculture to: (a) Collect and publish annually, statistics or estimates concerning the grades and staple lengths of stocks of cotton, known as the carryover, on hand on the 1st of August each year in warehouses and other establishments of every character in the continental U.S., and following such publication each year, to publish at intervals, in his/her discretion, his/her estimate of the grades and staple length of cotton of the then current crop (7 U.S.C. 471); (b) Collect, authenticate, publish and distribute by telegraph, radio, mail, or otherwise, timely information of the market supply, demand, location, and market prices of cotton (7 U.S.C. 473b). The Agricultural Marketing Act of 1946, 7 U.S.C. 1621–1627, authorizes and directs the Secretary of Agriculture to collect and disseminate marketing information, including adequate outlook information on a market-area basis, for the purpose of anticipating and meeting consumer requirements, aiding in the maintenance of farm income, and bringing about a balance between production and utilization of agricultural products.

The information collection requirements in this request are essential to carry out the intent of the Acts and to provide the cotton industry the type of information they need to make sound business decisions. The information collected is the minimum required. Information is requested from growers, cooperatives, merchants, manufacturers, and other government agencies. This includes information on cotton, cottonseed and cotton linters.

The information collected is used only by authorized employees of the USDA, AMS. The Cotton Industry is the primary user of the compiled information and AMS and other government agencies are secondary users.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 0.0968 (234/2417) hours per response.

*Respondents:* Cotton Merchandisers, Textile Mills, Ginners.

*Estimated Number of Respondents:* 495.

*Estimated Number of Responses per Respondent:* 4.883 (2,417/495).

*Estimated Total Annual Burden on Respondents:* 234 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Darryl Earnest, Assistant Associate Deputy Administrator, Cotton Programs, AMS, USDA, 1400 Independence Avenue, SW, Stop 0224, Room 2641–S, Washington, DC 20250. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: September 21, 2000.

**Norma McDill,**

*Acting Deputy Administrator, Cotton Programs.*

[FR Doc. 00–24775 Filed 10–2–00; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF AGRICULTURE

### Commodity Credit Corporation

### Sunshine Act Meeting

**TIME AND DATE:** 2 p.m., October 10, 2000.

**PLACE:** Room 104–A, Jamie L. Whitten Building, U.S. Department of Agriculture, Washington, D.C.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:**

1. Approval of the Minutes of the Open Meeting of May 17, 1999.
2. Memorandum re: Update of Commodity Credit Corporation (CCC)-Owned Inventory.
3. Memorandum re: Settlement Actions Report.
4. Memorandum re: CCC Stocks Available for Donation Overseas Under Section 416(b) of the Agricultural Act of 1949, as Amended, for Fiscal Years 1998, 1999, and 2000.

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5. Docket A–POL–98–007, Rev. 1, re: Commodity Credit Corporation Claims Policy.

**CONTACT PERSON FOR MORE INFORMATION:** Juanita B. Daniels, Acting Secretary, Commodity Credit Corporation, Stop 0571, U.S. Department of Agriculture, 1400 Independence Avenue SW, Washington, D.C. 20250–0571.

Dated: September 28, 2000.

**Juanita B. Daniels,**

*Acting Secretary, Commodity Credit Corporation.*

[FR Doc. 00–25420 Filed 9–28–00; 4:49 pm]

BILLING CODE 3410–05–U

## DEPARTMENT OF AGRICULTURE

### Office of the Secretary

### Notice of the National Agricultural Research, Extension, Education, and Economics Advisory Board Meeting

**AGENCY:** Research, Education, and Economics, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, 5 U.S.C. App., the United States Department of Agriculture announces a meeting of the National Agricultural Research, Extension, Education, and Economics Advisory Board.

**SUPPLEMENTARY INFORMATION:** The National Agricultural Research, Extension, Education, and Economics Advisory Board, which represents 30 constituent categories, as specified in section 802 of the Federal Agriculture Improvement and Reform Act of 1996 (Pub. L. No. 104–127), has scheduled a National Agricultural Research, Extension, Education, and Economics Advisory Board Meeting, October 16–18, 2000.

On Monday, October 16 through Wednesday, October 18, 2000, the Advisory Board will hold a fall General Meeting which will include Orientation for new members, on Monday morning and a General Business Session in the afternoon. The Business Session will include reports from several Working Groups of the Advisory Board, two of which will be reporting on the ARS Peer Review process recommendations and follow-up to the "Cutting-Edge Science and Technology" meeting held in July 2000. A Focus Session with the theme, "Improving Advocacy and Funding for Research, Education, and Economics in USDA," will be held on Tuesday, October 17, 2000, which will include (1) statement of the problem, (2) the present USDA budget process, (3) advocacy strategy, and (4) successful and new approaches for budget support. Speakers from the White House Office of Science and Technology Policy, USDA, AESOP Enterprises, Ltd., other groups supporting the National Institutes of Health and the National Science Foundation, and a variety of other interests will be invited to present policy and funding strategies for research and education. The objective of this meeting will be to provide the Advisory Board an opportunity to understand USDA and Federal Government approaches to budget formation and successful funding strategies. On Wednesday, October 18, 2000, the Advisory Board will hold the election of their new Chair, Vice Chair, and Executive Committee, and focus on future efforts of the Board in addressing the transition in the Administration. They will be articulating their findings from the "Cutting-Edge Science and Technology" meeting and the previous day's focus sessions into formal recommendations for the Secretary of Agriculture. They will also begin setting their agenda for the coming year, which will include establishment of a rapport with the new Administration on communicating high priority USDA research and education opportunities. Limited time will be provided for comments from the public as noted in a forthcoming agenda. Also written comments will be accepted for public record up to 2 weeks following the Board meeting. Final agenda will be available to the public prior to the meeting.

*Dates:*

October 16—9:00 a.m. to Noon—Orientation of New Members
October 16—1:00 p.m. to 5:00 p.m.—General Meeting
October 16—6:00 p.m. to 8:00 p.m.—Working Reception
October 17—9:00 a.m. to 5:00 p.m.—Focus Session
October 18—9:00 a.m. to Noon—Focus Session Wrap-up and Discussion

*Place:* Loew's L'Enfant Plaza Hotel, 480 L'Enfant Plaza, SW., Washington, DC (Rooms to be announced)

*Type of Meeting:* Open to the public.

*Comments:* The public may file written comments before or after the meeting with the contact person. All statements will become a part of the official records of the National Agricultural Research, Extension, Education, and Economics Advisory Board and will be kept on file for public review in the Office of the Advisory Board; Research, Education, and Economics; U.S. Department of Agriculture; Washington, DC 20250–2255.

**FOR FURTHER INFORMATION CONTACT:** Deborah Hanfman, Executive Director, National Agricultural Research, Extension, Education, and Economics Advisory Board, Research, Education, and Economics Advisory Board Office, Room 344A Jamie L. Whitten Building, U.S. Department of Agriculture, STOP: 2255, 1400 Independence Avenue, SW, Washington, DC 20250–2255. Telephone: 202–720–3684, Fax: 202–720–6199, or e-mail: lshea@reeusda.gov.

Done at Washington, DC this 27th day of September 2000.

**I. Miley Gonzalez,**

*Under Secretary, Research, Education, and Economics.*

[FR Doc. 00–25296 Filed 10–2–00; 8:45 am]

BILLING CODE 3410–22–P

## DEPARTMENT OF AGRICULTURE

### Deschutes Provincial Interagency Executive Committee (PIEC), Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Deschutes PIEC Advisory Committee will meet on October 17, 2000 in the Chinook Conference Room at the Kah-Nee-Ta resort located approximately 14 miles east of Warm Springs, Oregon on 100 Main Street. Agenda items will include an Open Space Planning session starting at 0900 to assess where the committee would like to focus their future attention in the province, Info Sharing and a Public Forum from 4 pm till 4:30 pm. All Deschutes Province Advisory Committee Meetings are open to the public.

**FOR FURTHER INFORMATION CONTACT:** Mollie Chaudet, Province Liaison, USDA, Bend-Ft. Rock Ranger District, 1230 N.E. 3rd, Bend, OR 97701, Phone (541) 383–4769.

**Leslie A.C. Weldon,**

*Forest Supervisor.*

[FR Doc. 00–25320 Filed 10–2–00; 8:45 am]

BILLING CODE 3410–11–M

## ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

### Public Rights-of-Way Access Advisory Committee; Meeting

**AGENCY:** Architectural and Transportation Barriers Compliance Board.

**ACTION:** Notice of meeting.



**SUMMARY:** The Architectural and Transportation Barriers Compliance Board (Access Board) established a Public Rights-of-Way Access Advisory Committee (committee) to assist the Board in developing a proposed rule on accessibility guidelines for newly constructed and altered public rights-of-way covered by the Americans with Disabilities Act of 1990 and the Architectural Barriers Act of 1968. This document announces the next meeting of the committee, which will be open to the public.

**DATES:** The fifth meeting of the committee is scheduled for October 18, through 20, 2000, beginning at 8:30 a.m. and ending at 5:30 p.m. each day.

**ADDRESSES:** The meeting will be held at the Tysons Corner Marriott, 8028 Leesburg Pike, Vienna, Virginia 22182.

**FOR FURTHER INFORMATION CONTACT:** Scott Windley, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC, 20004–1111. Telephone number (202) 272–5434 extension 125 (Voice); (202) 272–5449 (TTY). E-mail windley@access-board.gov. This document is available in alternate formats (cassette tape, Braille, large print, or ASCII disk) upon request. This document is also available on the Board's Internet Site (http://www.access-board.gov/news/prowmtg.htm).

**SUPPLEMENTARY INFORMATION:** On October 20, 1999, the Architectural and Transportation Barriers Compliance Board (Access Board) published a notice appointing members to a Pubic Rights-of-Way Access Advisory Committee (committee) to provide recommendations for developing a proposed rule addressing accessibility guidelines for newly constructed and altered public rights-of-way covered by the Americans with Disabilities Act of 1990 and the Architectural Barriers Act of 1968. 64 FR 56482 (October 20, 1999).

Committee meetings will be open to the public and interested persons can attend the meetings and communicate their views. Members of the public will have an opportunity to address the committee on issues of interest to them and the committee during the public comment period at the end of each meeting day. Members of groups or individuals who are not members of the committee may also have the opportunity to participate with subcommittees of the committee. Additionally, all interested persons will have the opportunity to comment when the proposed accessibility guidelines for public rights-of-way are issued in the **Federal Register** by the Access Board.

Individuals who require sign language interpreters or real-time captioning systems should contact Scott Windley by October 10, 2000. Notice of the future meetings will be published in the **Federal Register.**

**Lawrence W. Roffee,**

*Executive Director.*

[FR Doc. 00–25330 Filed 10–2–00; 8:45 am]

BILLING CODE 8150–01–M

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Quarterly Update to Annual Listing of Foreign Government Subsidies on Articles of Cheese Subject to an In-Quota Rate of Duty

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Publication of quarterly update to annual listing of foreign government subsidies on articles of cheese subject to an in-quota rate of duty.

**SUMMARY:** The Department of Commerce, in consultation with the Secretary of Agriculture, has prepared its quarterly update to the annual list of foreign government subsidies on articles of cheese subject to an in-quota rate of duty during the period April 1, 2000 through June 30, 2000. We are publishing the current listing of those subsidies that we have determined exist.

**EFFECTIVE DATE:** October 3, 2000.

**FOR FURTHER INFORMATION CONTACT:** Tipten Troidl or Russell Morris, AD/CVD Enforcement, Office VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230, telephone: (202) 482–2786.

**SUPPLEMENTARY INFORMATION:** Section 702(a) of the Trade Agreements Act of 1979 (as amended) ("the Act") requires the Department of Commerce ("the Department") to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of cheese subject to an in-quota rate of duty, as defined in section 702(g)(b)(4) of the Act, and to publish an annual list and quarterly updates of the type and amount of those subsidies. We hereby provide the Department's quarterly update of subsidies on cheeses that were imported during the period April 1, 2000 through June 30, 2000.

The Department has developed, in consultation with the Secretary of Agriculture, information on subsidies (as defined in section 702(g)(b)(2) of the Act) being provided either directly or indirectly by foreign governments on articles of cheese subject to an in-quota rate of duty. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amounts of each subsidy for which information is currently available.

The Department will incorporate additional programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of cheese subject to an in-quota rate of duty to submit such information in writing to the Assistant Secretary for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

This determination and notice are in accordance with section 702(a) of the Act.

Dated: September 27, 2000.

**Troy H. Cribb,**

*Acting Assistant Secretary for Import Administration.*

**Appendix**

SUBSIDY PROGRAMS ON CHEESE SUBJECT TO AN IN-QUOTA RATE OF DUTY

| Country | Program(s) | Gross [1] subsidy ($/lb) | Net [2] subsidy ($/lb) |
|---|---|---|---|
| Austria | European Union Restitution Payments | $0.12 | $0.12 |
| Belgium | EU Restitution Payments | 0.00 | 0.00 |
| Canada | Export Assistance on Certain Types of Cheese | 0.24 | 0.24 |
| Denmark | EU Restitution Payments | 0.06 | 0.06 |
| Finland | EU Restitution Payments | 0.18 | 0.18 |

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SUBSIDY PROGRAMS ON CHEESE SUBJECT TO AN IN-QUOTA RATE OF DUTY—Continued

| Country | Program(s) | Gross [1] subsidy ($/lb) | Net [2] subsidy ($/lb) |
|---|---|---|---|
| France | EU Restitution Payments | 0.11 | 0.11 |
| Germany | EU Restitution Payments | 0.10 | 0.10 |
| Greece | EU Restitution Payments | 0.00 | 0.00 |
| Ireland | EU Restitution Payments | 0.05 | 0.05 |
| Italy | EU Restitution Payments | 0.11 | 0.11 |
| Luxembourg | EU Restitution Payments | 0.07 | 0.07 |
| Netherlands | EU Restitution Payments | 0.06 | 0.06 |
| Norway | Indirect (Milk) Subsidy | 0.31 | 0.31 |
| | Consumer Subsidy | 0.14 | 0.14 |
| Total | | 0.45 | 0.45 |
| Portugal | EU Restitution Payments | 0.05 | 0.05 |
| Spain | EU Restitution Payments | 0.03 | 0.03 |
| Switzerland | Deficiency Payments | 0.07 | 0.07 |
| U.K. | EU Restitution Payments | 0.08 | 0.08 |

[1] Defined in 19 U.S.C. 1677(5).
[2] Defined in 19 U.S.C. 1677(6).

[FR Doc. 00–25378 Filed 10–2–00; 8:45 am]
BILLING CODE 3510–DS–P

## CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

### Information Collection; Submission for OMB Review; Comment Request

**AGENCY:** Corporation for National and Community Service.
**ACTION:** Notice.

**SUMMARY:** The Corporation for National and Community Service (hereinafter the "Corporation"), has submitted two public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paper Reduction Act of 1995, Pub.L. 104–13, (44 U.S.C. Chapter 35). Copies of these individual ICRs, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Levon Buller, at (202) 606–5000, extension 383. Individuals who use a telecommunications device for the deaf (TTY–TDD) may call (800) 833–3722 between the hours of 9:00 a.m. and 5:00 p.m. Eastern Standard Time, Monday through Friday.

Comments should be sent to the Office of Information and Regulatory Affairs, Attn: Ms. Brenda Aguilar, OMB Desk Officer for the Corporation for National and Community Service, Office of Management and Budget, Room 10235, Washington, DC, 20503, (202) 395–7316, within 30 days from the date of publication in this **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

Two ICR documents have been submitted to OMB for consideration. The first, the *Enrollment Form*, is a proposed revision of a form currently in use (OMB Number 3045–0006). The Corporation is proposing to make a minor change in the format and to add a self-certification statement that will address a statutory requirement for individuals earning AmeriCorps education awards.

The second document, the *Exit Form*, is another form currently in use (OMB Number 3045–0015) for which some changes are being proposed. Those proposed changes would delete ten evaluative questions that are asked on the current version, delete a secondary address, and change an eleventh question regarding whether a former member desires to be contacted by organizations for reasons related to their national service.

The two documents were published in the **Federal Register** on April 7, 2000, for a 60-day pre-clearance public comment period. The Corporation did not receive any requests for copies of the form from any organizations or individuals.

The 60-day notice contained an error in reporting on the Total Respondents and the Estimated Total Burden Hours. It indicated 5,000 respondents and 584 burden hours for each of the forms. The corrected figures should be 48,000 respondents annually and 5,600 burden hours annually for each form. It is estimated that it will average 3 minutes for an AmeriCorps member to complete the member section of the Exit form and it will take the program staff 4 minutes. The 60-day notice had these numbers reversed. The correct figures are contained in this notice.

**Enrollment Form**

*Type of Review:* Renewal/Revision
*Agency:* Corporation for National and Community Service.
*Title:* Enrollment Form.
*OMB Number:* OMB #3045–0006.
*Agency Number:* None.
*Affected Public:* AmeriCorps participants and their host programs.
*Total Respondents:* 48,000 annually.
*Frequency:* Average of once per year. (one form for each term of service).
*Average Time Per Response:* 7 minutes total—4 minutes for the AmeriCorps member to complete his or her section, and 3 minutes for the program staff to complete the Certifying Official portion.
*Estimated Total Burden Hours:* 5,600 hours.
*Total Burden Cost (capital/startup):* N/A.
*Total Burden Cost (operating/maintenance):* N/A.



*Description*

The Enrollment Form is the official document used to document that an AmeriCorps member is enrolled in an approved national service position and has begun to earn an education award. The form also provides the Corporation with demographic information for evaluative purposes, and allows the Corporation to project future liabilities for the National Service Trust.

The Enrollment form serves two purposes essential to the function of the AmeriCorps programs. First, it is the means by which AmeriCorps programs certify that a member is eligible to serve in AmeriCorps and has begun his or her term of service. Second, it provides the Corporation, grantees, and program managers with valuable demographic information with which the Corporation can assess and report on member placement.

The change proposed for this form is:

Three multiple-choice statements are being added above the AmeriCorps member's signature line. The statements pertain to high school graduation-related requirements in 42 U.S.C. 12501 *et seq*. Adding this item to the form will require member self-certification.

**Exit Form**

*Type of Review:* Renewal/Revision.
*Agency:* Corporation for National and Community Service.
*Title:* Exit Form (formerly called "End of Term/Exit Form")
*OMB Number:* 3045–0015.
*Agency Number:* None.
*Affected Public:* AmeriCorps members and their host programs.
*Total Respondents:* 48,000 annually.
*Frequency:* Average of once per year. (One time for each term of service).
*Average Time Per Response:* 7 minutes total—3 minutes for the member to complete his or her portion and 4 for the program staff to complete the Certifying Official portion.
*Estimated Total Burden Hours:* 5,600 hours.
*Total Burden Cost (capital/startup):* N/A.
*Total Burden Cost (operating/maintenance):* N/A.

*Description*

The Corporation's Exit Form is the means by which AmeriCorps programs certify that a member has, or has not, successfully satisfied conditions which must be met in order to receive an education award. When an AmeriCorps member successfully completes a term of national service, a designated program official certifies that the service was completed and the individual is eligible for an education award.

Submission of the Exit Form provides legal certification for the disbursement of an education award to an AmeriCorps member. It is the document by which an authorized program official at an AmeriCorps program site indicates whether an AmeriCorps member is eligible for an education award.

Additional information requested on the form includes the member's service completion date, the current address where the education award documentation should be mailed, and two questions regarding the member's desire for post service information.

The Corporation proposes the following changes to the form:

- Eliminate the ten evaluation questions that are on the form currently being used. The Corporation's Evaluation Division has decided that relevant evaluation data will be collected through surveys.
- Revise question 11 on the current form to incorporate two other post-service opportunities for former AmeriCorps members. Reorganize the question/response options to make the item clearer and to eliminate repetitive language.
- Eliminate the Permanent Address. A Permanent Address is collected from the Enrollment form. It does not change nearly as frequently as does the member's Current Mailing Address, which is the address where the member's education award is mailed. The Permanent Address is used if mail is returned to the Corporation because of an incorrect Current Address. By not asking for an update of the Permanent Address, the entire Exit Form can be included on two sides of one page, a definite advantage.

**Future Data Collection for Americorps Programs**

In 1999, the Corporation began using an electronic system to both enroll and exit AmeriCorps members. Many local programs can enter into a database information about their members' enrollment and completion of service. They can use the two forms to obtain the information from their participants and enter it into their databases. This data is periodically transferred to the Corporation's database where it becomes the official record. This transfer is currently being done on a weekly basis.

As of the time of this submission, more than fifty percent of the nation's AmeriCorps programs use this system. The Corporation would like to have all programs use it, since it ultimately speeds up both collecting information and issuing education awards to members who have successfully completed their terms of service. However, many AmeriCorps programs, especially smaller ones, do not have the technological resources to afford the computer hardware and software.

The Corporation does not want to exclude any competent, otherwise qualified organizations from participating as a sponsor, so it is possible that there may always be a small number of organizations that will use forms.

Dated: September 27, 2000.

**Charlene Dunn,**
*Director, National Service Trust.*

[FR Doc. 00–25366 Filed 10–2–00; 8:45 am]
BILLING CODE 6050–28–P

## DEPARTMENT OF DEFENSE

### Department of the Navy

### Meeting of the Board of Visitors of Marine Corps University

**AGENCY:** Department of the Navy, DOD.
**ACTION:** Notice.

**SUMMARY:** The Board of Visitors of the Marine Corps University (BOV MCU) will meet to review, develop and provide recommendations on all aspects of the academic and administrative policies of the University; examine all aspects of professional military education operations; and provide such oversight and advice as is necessary to facilitate high educational standards and cost effective operations. The Board will be reviewing the fiscal plan for next year, the University's Facilities Master Plan, Board presiding officer restrictions contained in the regional accrediting guidelines, and the status of the review and update of the Board By-laws. All sessions of the meeting will be open to the public.

**DATES:** The meeting will be held on Monday and Tuesday November 13–14, 2000 from 9 a.m. to 4 p.m.

**ADDRESSES:** The meeting will be held at the Marine Corps University Research Center, 2040 Broadway Street, Room 164, Quantico, VA 22134.

**FOR FURTHER INFORMATION CONTACT:** Garry Smith, Executive Secretary, Marine Corps University Board of Visitors, 2076 South Street, Quantico, VA 22134, (703) 784–4037.

Dated: September 22, 2000.

**J.L. Roth,**
*Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. 00–25361 Filed 10–2–00; 8:45 am]
BILLING CODE 3810–FF–P

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## DEPARTMENT OF EDUCATION

### Notice Establishing Deadlines for the Submission of Requests for Waivers That Would Directly Affect School-Level Activities

**SUMMARY:** In this notice, the Assistant Secretary for Elementary and Secondary Education establishes deadlines for the submission of waiver requests under section 14401 and 1113(a)(7) of the Elementary and Secondary Education Act of 1965 (ESEA), section 311(a) of the Goals 2000: Educate America Act, and section 502 of the School-to-Work Opportunities Act of 1994.

**DATES:** *Deadlines:* Except in extraordinary circumstances, the following deadlines apply to requests for waivers affecting school-level activities:

Requests for waivers that would be implemented in the semester immediately following January 1, 2001 must be submitted no later than October 30, 2000.

Requests for waivers that would be implemented in the beginning of the 2001–2002 school year must be submitted no later than April 1, 2001.

**SUPPLEMENTARY INFORMATION:** These deadlines apply only to waivers that would directly affect school-level activities. For example, the deadlines would apply to requests for waivers of the Title I targeting provisions or of the minimum poverty threshold required for implementation of a schoolwide program. However, the deadlines would not apply to waivers of requirements relating to the consolidation of administrative funds.

Waiver applicants are encouraged to submit their requests as early as possible and not wait until the deadlines to seek waivers. The requests will be reviewed upon receipt. For purposes of this notice, the submission date is the date that the waiver request is received by the U.S. Department of Education (Department) in substantially approvable form. A waiver request is considered to be in substantially approvable form when it has adequately addressed the applicable statutory criteria governing waivers.

During the period of a waiver request is under review by the Department, a waiver applicant must continue to comply with the requirement that is the subject of the waiver request.

*Address for Submission of Requests:* All requests for waivers should be submitted to the following address: Assistant Secretary for Elementary and Secondary Education, Attention: Waiver Staff, 400 Maryland Avenue, S.W., Washington, D.C. 20202.

**FOR FURTHER INFORMATION CONTACT:** Information on waivers may be obtained from the Department's Waiver Assistance Line at (202) 401–7801. Copies of the Department's updated waiver guidance, which provide a examples of waivers and describes how to apply for a waiver, are available at this number. The guidance, along with other information on flexibility, is also available at the Department's World Wide Web site at *http://www.ed.gov/flexibility.*

If you use a telecommunication device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–888–877–8339.

Individuals with disabilities may obtain this document in an alternative format, (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to William Wooten at (202) 260–1922.

**Electronic Access to This Document**

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

*http://ocfo.ed.gov//fedreg.htm*
*http://www.ed.gov/news.html*

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**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations in available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Dated: September 28, 2000.

**Michael Cohen,**

*Assistant Secretary for Elementary and Secondary Education.*

[FR Doc. 00–25383 Filed 10–2–00; 8:45 am]

BILLING CODE 4000–01–M

## DEPARTMENT OF EDUCATION

## DEPARTMENT OF LABOR

### Office of School-to-Work Opportunities; Advisory Council for School-to-Work Opportunities; Notice of Open Meeting

**SUMMARY:** The Advisory Council for School-to-Work Opportunities was established by the Departments of Education and Labor to advise the Department on implementation of the School-to-Work Opportunities Act. The Council shall assess the progress of School-to-Work (STW) Opportunities systems development and program implementation; make recommendations regarding progress and implementation of the School-to-Work Opportunities initiative; advise on the effectiveness of the Federal role in providing venture capital to States and localities to develop STW system and act as advocates for implementing the STW on behalf of their stakeholders.

*Time and Place:* The Advisory Council for School-to-Work Opportunities will have an open meeting on Thursday, October 12, 2000 from 3:30 pm to 7:00 pm and on Friday, October 13, 2000, from 8:30 am to 12:00 noon. The meeting will be held at the Hotel George, Leaders Room, 15 E Street, NW., Washington, DC 20001.

*Agenda:* The agenda for the meeting on Thursday, October 12 opens with remarks by the Co-Chairs of the Advisory Council Jacquelyn Belcher, President, Perimeter College of Decatur, Georgia and John McKernan, Vice-President of the Education Management Corporation, Portland, Maine. Following the opening, the Council will meet with representatives of the National School-to-Work to discuss issues related to the national leadership and sustainability of the STW initiative and to hear presentations from Council members on this topic. Friday, October 13 the Advisory Council will meet in small group working sessions from 8:30 a.m. to 11:00 a.m. These will be followed by a report-out to representatives of the Department of Education and Labor.

*Public Participation:* The meetings on Thursday, October 12 and Friday, October 13 will be open to the public. Seats will be reserved for the media. Individuals with disabilities in need of special accommodations should contact the Designated Federal Official (DFO), listed below, at least 7 days prior to the meeting.

**FOR ADDITIONAL INFORMATION CONTACT:** Stephanie J. Powers, Designated Federal Official (DFO), Advisory Council for School-to-Work Opportunities, Office of School-to-Work Opportunities, 400 Virginia Avenue, SW., Room 210, Washington, DC, 202–401–6222. (This is not free number.)

Due to the schedules of the participants, we are unable to provide the full 15 days of advance notice of this meeting.



Signed at Washington, D.C., this 27th day of September, 2000.

**Raymond L. Bramucci,**

*Assistant Secretary for Employment and Training.*

**Patricia W. McNeil,**

*Assistant Secretary for Vocational and Adult Education.*

[FR Doc. 00–25355 Filed 10–2–00; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–561–000]**

### Algonquin Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

September 27, 2000.

Take notice that on September 22, 2000, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheets, to be effective on October 15, 2000:

First Revised Sheet No. 93
First Revised Sheet No. 935

Algonquin states that the purpose of this filing is to modify the LINKr System Agreement contained in Sheet Nos. 930 through 935 of the Tariff to add East Tennessee Natural Gas Company to the list of companies utilizing this agreement, as East Tennessee is now an affiliate of Algonquin, and to remove Panhandle Eastern Pipe Line Company (Panhandle) and Trunkline Gas Company (Trunkline) from that list, as Panhandle and Trunkline are no longer affiliates of Algonquin.

Algonquin states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–25313 Filed 10–2–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. EC00–133–000]**

### American National Power, Inc.; Notice of Filing

September 27, 2000.

Take notice that on September 20, 2000, American National Power, Inc. (ANP) filed additional information with the Federal Energy Regulatory Commission (Commission) to supplement its filing of September 1, 2000, in this proceeding. The additional information provided in the supplement is in fulfillment of the Exhibit H filing requirement set forth in Section 33.3 of the Commission's Rules and Regulations (18 CFR 33.3). ANP also requests that the supplemental material be given confidential treatment and withheld from public disclosure pursuant to 18 CFR 388.112.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before October 5, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–25310 Filed 10–2–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–563–000]**

### Chandeleur Pipe Line Company; Notice of Compliance Filing

September 27, 2000.

Take notice that on September 25, 2000, Chandeleur Pipe Line Company tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to become effective November 1, 2000.

Third Revised Sheet No. 43
First Revised Sheet No. 43A

Chandeleur Pipe Line Company asserts that the purpose of this filing is to comply with the Commission's orders issued February 9, 2000, May 19, 2000 and July 26, 2000 in Docket Nos. RM98–10–005 and RM98–12–005, *et al.* (Orders 637, 637–A and 637–B).

Proposed tariff changes are to conform Chandeleur's tariff language addressing Right of First Refusal and the terms of the Temporary Waiver of Maximum Rate Ceiling in compliance with Commission's Regulations in Sec. 284.221 and Sec. 284.8, respectively. A minor housekeeping change is made due to the Reorganization of Part 284 Regulations in Order 637.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–25314 Filed 10–2–00; 8:45 am]

BILLING CODE 6717–01–M

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–450–001]

## Natural Gas Pipeline Company of America; Notice of Compliance Filing

September 27, 2000.

Take notice that on September 22, 2000, Natural Gas Pipeline Company of America (Natural) tendered for filing to be part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Substitute Second Revised Sheet No. 62, to be effective September 11, 2000.

Natural states that the tariff sheet was filed in compliance with the Commission's "Order Accepting Tariff Sheets Subject to Conditions" issued September 8, 2000, in Docket NO. RP00–450–000 (Order) related to revisions to its General Terms and Conditions, Rate Schedules FRSS, FTS, IBS and DSS and the pro forma service agreement.

Natural requests any waivers of the Commission's Regulations to the extent necessary to permit the tariff sheet submitted herein to become effective September 11, 2000, consistent with the Order.

Natural states that copies of the filing have been mailed to all parties set out on the Commission's official service list in Docket No. RP00–450.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–25312 Filed 10–2–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2232–381, 2331–014, 2332–021, 2503–048, 2740–041 North and South Carolina]

## Duke Energy Corporation; Notice of Availability of Environmental Assessment

September 27, 2000.

An environmental assessment (EA) is available for public review. The EA analyzes the environmental impacts of approving Duke Energy Corporation's (Duke) excavation programmatic agreement (PA) for the above five projects located in North and South Carolina. These projects include the following 16 reservoirs: Lake James, Rodhiss, Hickory, Lookout Shoals, Norman, Mountain Island, Wylie, Fishing Creek, Great Falls, Rocky Creek, Wateree, Ninety-Nine Islands, Gaston Shoals, Jocassee, Keowee and Bad Creek.

In its PA, Duke requests authority to grant permits to excavate up to 2,000 cubic yards (cy) of lakebottom sediments without obtaining prior Commission approval. Duke also asks for authority to grant permits for maintenance excavations involving any amount of sediment. Maintenance excavations are defined in the PA. Applicants would still have to obtain all other necessary local, state and federal permits and many other restrictions apply.

The EA was written by staff in the Office of Energy Projects, Federal Energy Regulatory Commission. In the EA, Commission staff conclude that approving the PA and granting Duke the requested authority would not constitute a major federal action significantly affecting the quality of the human environment. Copies of the EA can be viewed on the web at *www.ferc.fed.us/online/rims.htm*. Call (202) 208–2222 for assistance. Copies are also available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–25331 Filed 10–2–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–394–000]

## William Gas Pipelines Central, Inc.; Notice of Intent To Prepare an Environmental Assessment for the Proposed Pampa Pipeline (Line G) Abandonment Project, and Request for Comments on Environmental Issues

September 27, 2000.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the abandonment of facilities proposed in the Williams Gas Pipelines Central, Inc. (Williams) Pampa Pipeline (Line G), also known as the Wichita-Ottawa line, Abandonment Project in Butler, Chase, and Lyon Counties, Kansas.[1] These facilities consist of about 64.3 miles of 16- and 20-inch-diameter pipeline. The EA will be used by the Commission in its decision-making process to determine whether the project in the public convenience and necessity.

If you are a landowner on Williams' existing Line G pipeline and receive this notice, you may be contacted by a pipeline company representative about the proposed abandonment of facilities. The pipeline company would seek to negotiate a mutually acceptable agreement in regards to additional work space for pipe staging areas needed for the proposed abandonment of facilities. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" was attached to the project notice Williams provided to landowners along the Line G route. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet website (www.ferc.fed.us).

This Notice of Intent (NOI) is being sent to landowners of property crossed by Williams' Line G; Federal, state, and local agencies; elected officials; environmental and public interest groups; Indian tribes that might attach religious and cultural significance to historic properties in the area of potential effects; local libraries and newspapers; and the Commission's list of parties to the proceeding. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

Additionally, with this NOI we[2] are asking those Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the EA. These agencies may choose to participate once they have evaluated Williams' proposal relative to their agencies' responsibilities. Agencies who would like to request cooperating status should follow the instructions for filing comments described below.

[1] Williams' application was filed with the Commission on June 21, 2000, under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.



### Summary of the Proposed Project

In an ongoing effort to eliminate old, high maintenance pipelines on its system, Williams is proposing to abandon by sale for reclaim another portion of the Pampa 20-inch pipeline extending from El Dorado, Kansas to Neosho Rapids, Kansas (Line G). Over the years, the Pampa line has been the source of thousands of leaks and high maintenance costs, primarily at the couplings. In view of the age of the line and the construction techniques used, it is anticipated that Williams would have ongoing problem with this pipeline. Accordingly, Williams has determined that the best course of action is to continue to abandon the Pampa line when opportunity arises.

Williams proposes to abandon by sale about 64.3 miles of its Line G, consisting of 59.4 miles of 20-inch-diameter pipeline and 4.9 miles of 16-inch-diameter pipeline. The purchaser would, in turn, reclaim about 57.1 miles of pipeline (4.5 miles of 16-inch-diameter pipeline and 52.6 miles of 20-inch-diameter pipeline) for salvage and would abandon in place about 7.2 miles of pipeline (0.4 mile of 16-inch-diameter pipeline and 6.8 miles of 20-inch-diameter pipeline).

The pipeline would be abandoned in place at road and railroad crossings, all waterbody and wetland crossings, and any other environmentally sensitive locations (*e.g.*, residences), unless the pipe is exposed and is causing a safety hazard.

Due to a few landowners requesting that the pipeline be abandoned in place on their property, Williams is now in the process of evaluating the amount of pipe that might be reclaimed versus what might be abandoned in place and contacting a possible purchaser to estimate a market value. Should the results indicate that the benefits of reclaiming the pipeline are negligible or outweighed by abandoning the pipe in place, then Williams shall reconsider the current application.

The general location of Williams' proposed facilities is shown on the map attached as appendix 2.[3]

### Land Requirements for Abandonment by Removal

The current permanent right-of-way width is 66 feet. Removal of the proposed facilities would require about 462 acres of land, of which 5.2 acres would be used for additional work space needed for temporary storage of the reclaimed pipe until it can be loaded onto trucks and removed from the area. Upon completion of the removal project the current permanent right-of-way and additional work space no longer be required and the land would be restored and would revert back to the landowner and its former use.

### The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping." The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this NOI, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, elected officials, affected landowners, regional public interest groups, Indian tribes, local newspapers and libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

### Currently Identified Environmental Issues

The EA will discuss impacts that could occur as a result of abandonment of the proposed project. Landowners requesting that the pipeline on their property be abandoned in place has been identified as an issue that we think deserves attention based on a preliminary review of the proposed facilities and the environmental information provided by Williams.

### Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal, and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send original and two copies of your letter to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of Environmental Gas Group 1, PJ–11.1;
- Reference Docket No. CP00–394–000; and
- Mail yor comments so that they will be received in Washington, DC on or before October 30, 2000.

[If you do not want to send comments at this time but still want to remain on our mailing list, please return the Information Request (appendix 3). If you do not return the Information Request, you will be removed from the environmental mailing list.]

### Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an "intervenor." Intervenors play a more formal role in

[2] "We," "us," and "our" refer to the environment staff of the Office of Energy Projects, part of the Commission staff.

[3] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's website at the "RIMS" link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE, Room 2A, Washington, DC 20426, or call (202) 208–1371. For instructions on connecting to RIMS to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

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the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2). Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Additional information about the proposed project is available from the Commission's Office of External Affairs at (202) 208–0004 or on the FERC website (www.ferc.fed.us) using the "RIMS" link to information in this docket number. Click on the "RIMS" link, select "Docket #" from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the "CIPS" link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the "CIPS" link, select "Docket #" from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–25309 Filed 10–2–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Application for Land and Shoreline Management Plan

September 27, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Land and Shoreline Management Plan.

b. *Project No.:* 1417–080.

c. *Date Filed:* July 28, 2000; supplemented August 14, 2000.

d. *Applicant:* Central Nebraska Public Power and Irrigation District.

e. *Name of Project:* Kingsley Dam Hydroelectric Project.

f. *Location:* The Kingsley Dam Project is located on the North Platte and Platte Rivers in Keith, Lincoln, Dawson and Gosper Counties, Nebraska.

g. *Applicant Contact:* Mr. Jeremiah (Jay) L. Maher, Central Nebraska Public Power and Irrigation District, P.O. Box 740, 415 Lincoln Street, Holdrege, NE 68949.

h. *FERC Contact:* Questions about this notice can be answered by Steve Hocking at (202) 219–2656 or e-mail address: *steve.hocking@ferc.fed.us.* Please note the Commission cannot accept comments, recommendations, motions to intervene or protests sent by e-mail; these documents must be filed as described below.

i. Deadline for filing comments, recommendations, motions to intervene and protests: October 30, 2000.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. Description of the Application: Central Nebraska Public Power and Irrigation District (Central), licensee for the Kingsley Dam Hydroelectric Project, filed a Land and Shoreline Management Plan (LSMP) for Commission approval. Central filed the plan to satisfy the requirements of article 421 of its license issued July 29, 1998. The LSMP addresses: (1) those project lands and shorelines that are and will be reserved for present and future wildlife, public recreation, residential, agricultural and other uses; (2) proposed changes in land use; (3) the protection of least tern and piping plover nesting sites at Lake McConaughy; (4) the need to protect bald eagle perch and roost sites on project lands; (5) the need to control aquatic vegetation and sedimentation in project reservoirs; (6) the use of project lands and shorelines designated for public recreation and; (7) Central must update the LSMP every 5 years.

k. Locations of the application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room at 888 First Street NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm.* Call (202) 208–2222 for assistance.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS," "RECOMMENDATIONS FOR TERMS AND CONDITIONS," "PROTEST," or "MOTION TO INTERVENE," as applicable, and the Project Number (P–1417–080) of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–25311 Filed 10–2–00; 8:45 am]

BILLING CODE 6717–01–M



## ENVIRONMENTAL PROTECTION AGENCY

[FRL–6880–1]

### Agency Information Collection Activities: Submission for OMB Review; Comment Request, National Emission Standards for Hazardous Air Pollutants (NESHAP)/Maximum Achievable Control Technology (MACT) for Source Categories Mineral Wool Production

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: NESHAP/MACT Subpart DDD, National Emission Standards for Hazardous Air Pollutants/Maximum Achievable Control Technology (MACT) for Wool Manufacturing, OMB Control Number 2060–0362, expiration date 10/31/00. This ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before November 2, 2000.

**ADDRESSES:** Send comments, referencing EPA ICR No. 1799.02 and OMB Control No. 2060–0362, to the following addresses: Sandy Farmer, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822), 1200 Pennsylvania Avenue, N.W., Washington, DC 20460; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** For a copy of the ICR contact Sandy Farmer at EPA by phone at (202) 260–2740, by E-Mail at Farmer.Sandy@epamail.epa.gov or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 1799.02. For technical questions about the ICR contact Gregory Fried at EPA by phone at (202) 564–7016 or by email at *fried.gregory@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* ICR for NESHAP/MACT Subpart DDD, National Emission Standards for Hazardous Air Pollutants—Mineral Wool Production, OMB Control Number 2060–0362, EPA ICR No. 1799.02. This is a request for extension of a currently approved collection.

*Abstract:* The Administrator has judged that Particulate Matter (PM) and Hazardous Air Pollutants (HAP) emissions from mineral wool production plants cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Owners/operators of mineral wool production plants subject to NESHAP/MACT Subpart DDD must provide notifications to EPA of construction, modification, startups, shut downs, date and results of initial performance tests and provide semiannual reports of excess emissions. Owners/operators of mineral wool production plants are required to install fabric filter bag leak detection systems and then initiate corrective action procedures in the event of an operating problem. Owners/operators of mineral wool production plants subject to NESHAP/MACT Subpart DDD must also continuously monitor and record, (1) The operating temperature of each thermal incinerator, (2) cupola production (melt) rate, and (3) for each curing oven, the formaldehyde content of each binder formulation used to manufacture bonded products. In order to ensure compliance with the standards promulgated to protect public health, adequate reporting and recordkeeping is necessary. In the absence of such information enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published 3/31/00 (65 FR 17258); no comments were received.

*Burden Statement:* The annual public reporting and recordkeeping burden for this collection of information is estimated to average 222 hours per response. The initial burden regarding notifications (40 CFR 63.9) and performance testing (40 CFR 63.7) for a new source subject to this subpart is estimated to average 615 hours. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

*Respondents/Affected Entities:* Wool Fiberglass Manufacturing Plants.

*Estimated Number of Respondents:* 13.

*Frequency of Response:* Initial and semiannual.

*Estimated Total Annual Hour Burden:* 5,779 hours.

*Estimated Total Annualized Capital and Operating & Maintenance Cost Burden:* $100,226.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No.1799.02 and OMB Control No. 2060–0362 in any correspondence.

Dated: September 28, 2000.

**Oscar Morales,**

*Director, Collection Strategies Division.*

[FR Doc. 00–25348 Filed 10–2–00; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

[FRL–6879–9]

### Agency Information Collection Activities: Submission for OMB Review; Comment Request, Registration of Fuels and Fuel Additives: Requirements for Manufacturers

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Registration of Fuels and Fuel Additives: Requirements for Manufacturers (40 CFR 79), OMB Control Number 2060–0150 expiration

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date 12/31/2000. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before November 2, 2000.

**ADDRESSES:** Send comments, referencing EPA ICR No. 0309.10 and OMB Control No. 2060–0150, to the following addresses: Sandy Farmer, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822), 1200 Pennsylvania Avenue, N.W., Washington, DC 20460; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, N.W., Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** For a copy of the ICR contact Sandy Farmer at EPA by phone at (202) 260–2740, by E-mail at Farmer.sandy@epamail.epa.gov, or download off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 0309.10. For technical questions about the ICR contact James W. Caldwell, (202) 564–9303, fax (202) 565–2085, caldwell.jim@epa.gov.

**SUPPLEMENTARY INFORMATION:**

*Title:* Registration of Fuels and Fuel Additives: Requirements for Manufacturers (40 CFR 79), OMB Control Number 2060–0150, EPA ICR Number 0309.10, expiring 12/31/2000. This is a request for an extension of a currently approved collection.

*Abstract:* Motor vehicles are the major source of air pollution in most urban areas. The Clean Air Act provides the authority to monitor and regulate motor vehicle fuels, additives, and emissions in order to protect public health. Pursuant to the regulations at 40 CFR 79, manufacturers of gasolines, diesel fuels, and additives for those fuels, are required to have their products registered by the EPA prior to their introduction into commerce. This mandatory collection involves providing certain compositional, emissions, and health-related information. A manufacturer may not sell its fuel or additive until it has been registered. The EPA uses this information to identify fuels and additives whose emissions may pose a health risk and as a basis for regulatory action. Most of the compositional information is confidential due to the competitive nature of the fuel and additive industries.

Registration involves providing (1) a chemical description of the fuel or additive, (2) certain technical and marketing information, and (3) any health-effects information in company files. (The portion of this registration regulation requiring the development of health-effects data is covered by a separate information collection; OMB Control Number 2060–0297, EPA ICR Number 1696.03) Manufacturers are also required to submit periodic reports on production and related information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 7–11–00, 65 FR 42689. No comments were received.

*Burden Statement:* The annual public reporting and record keeping burden for this collection of information is estimated to average 2 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

*Respondents/Affected Entities:* Manufacturers of gasolines, diesel fuels, and fuel additives.

*Estimated Number of Respondents:* 780.

*Frequency of Response:* On occasion, quarterly, annually.

*Estimated Total Annual Hour Burden:* 18,500 hours.

*Estimated Total Annualized Capital, O&M Cost Burden:* $27,600.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR No. 0309.10 and OMB Control No. 2060–0150 in any correspondence.

Dated: September 28, 2000.

**Oscar Morales,**

*Director, Collection Strategies Division.*

[FR Doc. 00–25349 Filed 10–2–00; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6880–2]**

### Notice of Proposed Administrative Settlement Pursuant To The Comprehensive Environmental Response, Compensation, and Liability Act

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice; request for public comment.

**SUMMARY:** In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement concerning the Eagle Picher Henryetta Superfund Site, ("Site") with the Oklahoma Department of Environmental Quality, ("ODEQ") the City of Henryetta, Oklahoma, ("ACity"), and the United States Environmental Protection Agency ("EPA").

The settlement requires the City to assume future operation and maintenance of the remedy at the Site, record a Notice of Deed Restriction in the property records, and preserve EPA's and ODEQ's right of access.

As soon as reasonably practicable after the effective date of this Agreement, and consistent with Paragraph 26 of the Settlement Agreement, the City shall file in the land records of Okmulgee County a Notice of Deed Restriction notifying subsequent purchasers of the smelter facility portion of the Site that hazardous substances were disposed and will continue to remain in the soils at the former smelter facility.

The settlement includes a covenant not to sue under Section 107 of CERCLA, 42 U.S.C. 9607.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may withdraw or withhold its consent to the proposed settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at 1445 Ross Avenue, Dallas, Texas 75202–2733.

**DATES:** Comments must be submitted on or before November 2, 2000.

**ADDRESSES:** The proposed settlement and additional background information relating to the settlement are available for public inspection at 1445 Ross Avenue, Dallas, Texas 75202–2733. A copy of the proposed settlement may be obtained from Barbara J. Aldridge (6SF–AC), U.S. Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733 at (214) 665–2712. Comments should reference the Eagle Picher Henryetta Superfund Site, Henryetta, Oklahoma, and EPA Docket Number 6–05–2000, and should be addressed to Tracy Sheppard at the address listed below.

**FOR FURTHER INFORMATION CONTACT:** Tracy Sheppard (6RC–S), U.S. Environmental Protection Agency 1445 Ross Avenue, Dallas, Texas 75202–2733 at (214) 665–8018.

Dated: September 20, 2000.

**Pamela Phillips,**

*Acting Regional Administrator.*

[FR Doc. 00–25350 Filed 10–2–00; 8:45 am]

**BILLING CODE 6560–50–P**



## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6880–3]**

### Proposed CERCLA Administrative Cost Recovery Settlement; In Re: The Former Three-C Electrical Company; Inc. Superfund Site, Ashland, Massachusetts

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice; request for public comment.

**SUMMARY:** In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of past response costs concerning the Former Three-C Electrical Company, Inc. Superfund site in Ashland, Massachusetts, with the following settling party: Three-C Electrical Company, Inc. The settlement requires the settling parties to pay $45,000 to the Hazardous Substance Superfund. The settlement includes a covenant not to sue the settling parties pursuant to Section 107(a) of CERCLA, 42 U.S.C. 9607(a). For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection with the Regional Docket Clerk, U.S. Environmental Protection Agency, Region I, One Congress Street, Suite 1100, Mailcode RCG, Boston, Massachusetts (U.S. EPA Docket No. CERCLA 1–2000–0019).

**DATES:** Comments must be submitted on or before November 2, 2000.

**ADDRESSES:** The proposed settlement is available for public inspection with the Regional Docket Clerk, One Congress Street, Boston, Massachusetts. A copy of the proposed settlement may be obtained from RuthAnn Sherman, U.S. Environmental Protection Agency, Region I, One Congress Street, Suite 1100, Mailcode SES, Boston, Massachusetts 02214, (617) 918–1886. Comments should reference the Former Three-C Electrical Company, Inc. Superfund Site, Ashland, Massachusetts and EPA Docket No. 1–2000–0019 and should be addressed to the Docket Clerk, U.S. Environmental Protection Agency, Region I, One Congress Street, Suite 1100, Mailcode RCG, Boston, Massachusetts 02214.

**FOR FURTHER INFORMATION CONTACT:** RuthAnn Sherman, U.S. Environmental Protection Agency, Region I, One Congress Street, Suite 1100, Mailcode SES, Boston, Massachusetts 02214, (617) 918–1886.

Dated: September 18, 2000.

**Patricia L. Meaney,**

*Director, Office of Site Remediation and Restoration.*

[FR Doc. 00–25347 Filed 10–2–00; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

September 25, 2000.

**SUMMARY:** The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Written comments should be submitted on or before November 2, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, S.W., Washington, DC 20554 or via the Internet to *lesmith@fcc.gov*.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at *lesmith@fcc.gov*.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060–0780.

*Title:* Uniform Rate-Setting Methodology.

*Form Number:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit entities; and State, local, or tribal government.

*Number of Respondents:* 160.

*Estimate Time Per Response:* 20 to 50 hours.

*Frequency of Response:* On occasion reporting requirements.

*Total Annual Burden:* 3,500 hours.

*Total Annual Costs:* None.

*Needs and Uses:* The uniform rates proposals will be filed with the Commission and served on all affected local franchise areas (LFAs). The Commission will review the rate proposals, comments received from the LFAs, and replies received from cable operators in considering whether the interests of subscribers will be protected under the new rate proposal.

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Federal Communications Commission.
**Magalie Roman Salas,**
*Secretary.*
[FR Doc. 00–25356 Filed 10–2–00; 8:45 am]
BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

September 26, 2000.

**SUMMARY:** The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Written comments should be submitted on or before November 2, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, S.W., Washington, DC 20554 or via the Internet to *lesmith@fcc.gov*.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at *lesmith@fcc.gov*.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060–0093.

*Title:* Application for Renewal of Radio Station License in Specified Services.

*Form Number:* FCC 405.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit entities.

*Number of Respondents:* 2,500.

*Estimate Time Per Response:* 2.25 hours.

*Frequency of Response:* On occasion reporting requirements.

*Total Annual Burden:* 5,625.

*Total Annual Costs:* None.

*Needs and Uses:* As required by 47 CFR Parts 5, 21, 23, and 25 of the Commission's Rules, FCC Form 405 is used by common carriers and Multipoint Distribution Service (MDS) non-common carriers to apply for renewal of radio station licenses. Section 307(c) of the Communications Act limits the term of common carrier radio licenses to ten years and requires that written applications be submitted for renewal.

Federal Communications Commission.
**Magalie Roman Salas,**
*Secretary.*
[FR Doc. 00–25357 Filed 10–2–00; 8:45 am]
BILLING CODE 6712–01–P

## FEDERAL RESERVE SYSTEM

### Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

#### Background

**SUMMARY:** Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–Is and supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

**FOR FURTHER INFORMATION CONTACT:** Federal Reserve Board Clearance Officer—Mary M. West—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829); OMB Desk Officer—Alexander T. Hunt—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202–395–7860).

*Final Approval Under OMB Delegated Authority of the Extension for Three Years, Without Revision, of the Following Reports*

*1. Report title:* The HMDA Loan/Application Register.

*Agency form number:* FR HMDA–LAR.

*OMB Control number:* 7100–0247.

*Frequency:* Annual.

*Reporters:* State member banks, subsidiaries of state member banks, subsidiaries of bank holding companies, U.S. branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations under section 25 or 25A of the Federal Reserve Act.

*Annual reporting hours:* 121,714 hours.

*Estimated average hours per response:* Banks, 202 hours; mortgage subsidiaries, 160 hours.

*Number of respondents:* Banks, 517; mortgage subsidiaries, 108 hours.

*Small businesses are not affected.*

*General description of report:* This information collection is mandatory (12 U.S.C. 2801 *et seq.*). The data are not given confidential treatment, however, information that might identify individual borrowers or applicants is given confidential treatment under exemption 6 of the Freedom of Information Act (5 U.S.C. 552(b)(6)).

*Abstract:* The Federal Reserve's Regulation C, including the information collection, applies both to depository and to for-profit non-depository institutions. The information reported and disclosed pursuant to this collection is used to further the purposes of HMDA. These include: (1) to help determine whether financial institutions are serving the housing needs of their communities; (2) to assist public officials in distributing public-sector investments so as to attract private investment to areas where it is needed; and (3) to assist in identifying possible discriminatory lending patterns and enforcing anti-discrimination statues.

*2. Report title:* International Applications and Prior Notifications Under Subpart B of Regulation K.

*Agency form number:* FR K–2.



*OMB Control number:* 7100–0284.

*Frequency:* Event-generated.

*Reporters:* Foreign banks.

*Annual reporting hours:* 600 hours.

*Estimated average hours per response:* 40 hours.

*Number of respondents:* 15.

*Small businesses are not affected.*

*General description of report:* This information collection is required to obtain or retain a benefit sections 7 and 10 of the International Banking Act (12 U.S.C. 3105 and 3107). The applying organization has the opportunity to request confidentiality for information that it believes will qualify for a Freedom of Information Act exemption.

*Abstract:* Foreign banks are required to obtain the prior approval of the Federal Reserve to establish a branch, agency, or representative office or to acquire ownership or control of a commercial lending company in the United States or to change the status of any existing office in the United States. The Federal Reserve needs the information to fulfill its statutory obligation to supervise foreign banking organizations with offices in the United States.

Board of Governors of the Federal Reserve System, September 27, 2000.
**Jennifer J. Johnson,**
*Secretary of the Board.*
[FR Doc. 00–25317 Filed 10–2–00; 8:45 am]
BILLING CODE 6210–01–P

## FEDERAL RESERVE SYSTEM

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Board of Governors of the Federal Reserve System.

**TIME AND DATE:** 11 am, Tuesday, October 10, 2000.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Lynn S. Fox, Assistant to the Board; 202–452–3204.

**SUPPLEMENTARY INFORMATION:** You may call 202–452–3206 beginning at approximately 5 pm two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: September 29, 2000.
**Robert deV. Frierson,**
*Associate Secretary of the Board.*
[FR Doc. 00–25491 Filed 9–29–00; 3:26 pm]
BILLING CODE 6210–01–P

## FEDERAL TRADE COMMISSION

### Agency Information Collection Activities; Proposed Collection; Comment Requests Extension

**AGENCY:** Federal Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The information collection requirements described below will be submitted to the office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act (PRA). The Federal Trade Commission (FTC) is soliciting public comments on its proposal to extend through January 31, 2004 the current PRA clearance for information collection requirements contained in its Mail or Telephone Order Merchandise Trade Regulation Rule, 16 CFR Part 435 (MTOR or "Rule"). That clearance expires on January 31, 2001.

**DATES:** Comments must be filed by December 4, 2000.

**ADDRESSES:** Send comments to Secretary, Federal Trade Commission, Room H–159, 600 Pennsylvania Ave., NW., Washington, DC 20580. All comments should be captioned "Mail or Telephone Order Merchandise Trade Regulation Rule: Paperwork comment."

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be addressed to Joel N. Brewer, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Room S–4632, 601 Pennsylvania Ave., NW., Washington, DC 20580.

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. "Collection of information" means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3), 5 CFR 1320.3(c). As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the existing paperwork clearance for the MTOR.

The FTC invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

The Mail Order Merchandise Rule (MOR) was promulgated in 1975 in response to consumer complaints that many merchants were failing to ship mail order merchandise on time, failing to ship at all, or failing to provide prompt refunds for unshipped merchandise. The MOR took effect on February 2, 1976. A second rulemaking proceeding in 1993 demonstrated that the delayed shipment and refund problems of the mail order industry were also being experienced by consumers who ordered merchandise over the telephone. The Commission amended the MOR, effective on March 1, 1994, to include merchandise ordered by telephone, including by telefax or by computer through the use of a modem, and renamed the Rule to cover "Mail or Telephone Order Merchandise." The Rule therefore includes orders placed through the Internet.

Generally, the MTOR requires a merchant to: (1) Have a reasonable basis for any express or implied shipment representation made in soliciting the sale; (2) ship within the time period promised and, if no time period is promised, within 30 days; (3) notify the consumer and obtain the consumer's consent to any delay in shipment; and (4) make prompt and full refunds when the consumer exercises a cancellation option or the merchant is unable to meet the Rule's other requirements.

The notice provisions in the Rule require a merchant who is unable to ship within the promised shipment time or 30 days to notify the consumer of a revised date and his or her right to cancel the order and obtain a prompt refund. Delays beyond the revised shipment date also trigger a notification requirement to consumers. When the

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Rule requires the merchant to make a refund and the consumer has paid by credit card, the Rule also requires the merchant to notify the consumer either that any charge to the consumer's charge account will be reversed or that the merchant will take no action that will result in a charge.

**Burden Statement**

*Estimated total annual hours burden:* 2,753,000 hours (rounded up to the nearest thousand).

In its 1997 PRA notice and submission to OMB regarding the Rule, FTC staff estimated that 71,560 established companies each spend an average of 50 hours per year on compliance with the Rule, and that approximately 1,000 new industry entrants spend an average of 230 hours (an industry estimate) for compliance measures associated with start-up.[1] 62 FR 63717 (December 2, 1997). Thus, the total estimated hours burden was 3,808,000 hours [(71,560 × 50 hours) + (1,000 × 230 hours)].

No provisions in the Rule have been amended or changed in any manner since staff's 1997 PRA submission to OMB. Thus, all of the requirements relating to disclosure and notification remain the same. However, while staff's estimate of average time required by companies to comply with the Rule is unchanged, staff has reduced its estimate of total industry hours based on more current data revealing a smaller industry population than it previously accounted for. Based on 1999 Statistical Abstract data (the most current industry data available),[2] there are approximately 45,919 existing establishments subject to the Rule.

Staff, however, has increased its estimate of the number of new companies that enter the market each year from 1,000 to 1,985. This, too, is based on 1999 Statistical Abstract data. Thus, the current total of affected firms consists of approximately 47,904 established and new companies.

Accordingly, staff estimates total industry hours to comply with the MTOR is [(45,919 × 50 hours) + (1,985 × 230 hours)].

This is a conservative estimate. Arguably much of the estimated time burden for disclosure-related compliance would be incurred even absent the Rule. Industry trade associations and individual witnesses have consistently taken the position that compliance with the Rule is widely regarded by direct marketers as being good business practice. The Rule's notification requirements would be followed in any event by most merchants to meet consumer expectations regarding timely shipment, notification of delay, and prompt and full refunds. Providing consumers with notice about the status of their orders fosters consumer loyalty and encourages repeat purchases, which are important to direct marketers' success. Thus, it appears that much of the time and expense associated with Rule compliance may not constitute "burden" under the PRA[3] although the above estimates account for it as such.

In estimating PRA burden, staff considered "the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency." 5 CFR 1320.3(b)(1). This includes "developing, acquiring, installing, and utilizing technology and systems for the purpose of disclosing and providing information." 5 CFR 1320.3(b)(1)(iv). Although not expressly stated in the OMB regulation implementing the PRA, the definition of burden arguably includes upgrading and maintaining computer and other systems used to comply with a rule's requirements. Conversely, to the extent that these systems are used in the ordinary course of business independent of the Rule, their associated upkeep would fall outside the realm of PRA "burden."

The mail order industry has been subject to the basic provisions of the Rule since 1976 and the telephone order industry since 1994. Thus, businesses have had several years (and some have had decades) to integrate compliance systems into their business procedures. Since 1997 many businesses have upgraded the information management systems they need, in part, to comply with the Rule, and to more effectively track orders. These upgrades, however, mostly were needed to deal with growing consumer demand for merchandise resulting, in part, from increased public acceptance of making purchases over the telephone and, more recently, the Internet.

Accordingly, most companies now maintain records and provide updated order information of the kind required by the Rule in their ordinary course of business. Nevertheless, staff conservatively assumes that the time devoted to compliance with the Rule by existing and new companies remains the same as in 1997.

*Estimated labor costs:* $31,136,000, rounded to the nearest thousand.

Labor costs are derived by applying appropriate hourly cost figures to the burden hours described above. According to the 1999 Statistical Abstract, average payroll for "non-store catalogue and mail order houses" and "non-store direct selling establishments" rose $0.322 per hour per year between 1991 and 1996. In 1996, average payroll was $10.34 per hour. Assuming average payroll continued to increase $0.322 per hour per year, in 1999 average payroll would have reached $11.31 per hour. Because the bulk of the burden of complying with the MTOR is borne by clerical personnel, staff believes that the average hourly payroll figure for non-store catalogue and mail order houses and non-store direct selling establishments is an appropriate measure of a direct marketer's average labor cost to comply with the Rule. Thus, the total annual labor cost to new and established businesses in 1999 for Rule compliance is approximately $31,136,000 (2,753,000 hours × $11.31/hr.). Relative to direct industry sales, this total is negligible.[4]

*Estimated annual non-labor cost burden:* $0 or minimal.

The applicable requirements impose minimal start-up costs, as businesses subject to the Rule generally have or obtain necessary equipment for other business purposes, *i.e.*, inventory and order management, customer relations. For the same reason, staff anticipates printing and copying costs to be minimal, especially given that telephone order merchants have increasingly turned to electronic communications to notify consumers of delay and to provide cancellation options. Staff believes that the above requirements necessitate ongoing, regular training so that covered entities stay current and have a clear understanding of federal mandates, but that this would be a small portion of and subsumed within the ordinary training that employees receive apart from that associated with the information collected under the Rule.

[1] Most of the estimated start-up time relates to the development and installation of computer systems geared to more efficiently handle customer orders.

[2] Statistical Abstract of the United States, 119th edition, 1999, U.S. Department of Commerce, Economics and Statistics Administration.

[3] Under the OMB regulation implementing the PRA, burden is defined to exclude any effort that would be expended regardless of any regulatory requirement. 5 CFR 1320.3(b)(2).

[4] Projecting sales for "non-store catalogue and mail order houses" and "non-store direct selling establishments" (according to the 1999 Statistical Abstract) to all merchants subject to the MTOR, staff estimates that direct sales to consumers in 1999 would have been $109.45 billion. Thus, the labor cost of compliance by existing and new businesses in 1999 would have amounted to .07% of sales.

**Debra A. Valentine,**
*General Counsel.*
[FR Doc. 00–25299 Filed 10–2–00; 8:45 am]
BILLING CODE 6750–01–M



## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Statement of Organization, Functions and Delegations of Authority; Program Support Center

Part P (Program Support Center) of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (60 FR 51480, October 2, 1995 as amended most recently at 64 FR 55731, October 14, 1999) is amended to reflect changes in Chapter PB within Part P, Program Support Center, Department of Health and Human Services. The Program Support Center is reorganizing and realigning the division level structure of the *Human Resources Service*, specifically those divisions performing information technology (IT) activities. The realignment will include the abolishment of three existing Divisions and the establishment of three new Offices: the *Office of Systems Management*, the *Office of Legacy Systems Oversight*, and the *Office of Enterprise Human Resource and Payroll Systems*.

**Program Support Center**

Under Part P, Section P–20, Functions, change the following:

Under *Chapter PB, Human Resources Service (PB)* delete the titles and functional statements for the *Systems Design and Analysis Division (PBB); Systems Engineering and Maintenance Division (PBC);* and *Systems Networking Division (PBH)* in their entirety. The functions of these divisions will be realigned within the *Office of Legacy Systems Oversight (PBW).*

Establish the *Office of Systems Management (PBU)* and enter the functional statement as follows:

*Office of Systems Management (PBU)*

(1) Provides leadership in the development and management of the technology environment which supports the HRS human resource information and payroll systems; (2) Develops short- and long-range information technology plans, identifying HRS' goals and objectives, budget requirements, acquisition plans and anticipated future needs; (3) Provides leadership and overall direction for configuration management services including systems designed to reduce errors and support parallel and concurrent development of system; (4) Oversees software acceptance testing, quality assurance and quality control functions for all new systems/subsystems, major enhancements and systems changes for human resource information systems; (5) Provides HRS-wide systems security support including contingency planning, system and network safeguards, and employee awareness; and (6) Provides administrative support to the HRS systems and payroll divisions and offices.

Establish the *Office of Enterprise Human Resource and Payroll Systems (PBV)* and enter the functional statement as follows:

*Office of Enterprise Human Resource and Payroll Systems (PBV)*

(1) Provides overall program leadership and direction to enterprise human resource and payroll systems for the Department; (2) Provides oversight in developing and implementing new human resources and payroll systems; (3) Plans, organizes and directs high-priority projects or initiatives which cross-cut HRS business lines; and (4) Represents the Department on Interagency Groups.

Establish the *Office of Legacy Systems Oversight (PBW)* and enter the functional statement as follows:

*Office of Legacy Systems Oversight (PBW)*

(1) Provides overall program leadership and direction to the operation of the current legacy personnel and payroll system; (2) Conducts analysis and design of systems changes, enhancements and new requirements; (3) Provides the full range of automated data processing support activities associated with the development and maintenance of the civilian personnel/payroll processing and reporting systems; (4) Provides automation services for the HHS automated personnel and payroll systems and subsystems; (5) Manages the operation of production for the civilian personnel and payroll processing systems; and (6) Provides human resource and human resource systems customer liaison services to resolve issues and improve customer services.

Under the heading *Personnel and Pay Systems Division (PBG)* rename the *Personnel and Pay Systems Division (PBG)* the *Division of Payroll (PBG);* delete "and the Social Security Administration's" under item (1); delete item (2) in its entirety and renumber the remaining items in sequence.

Dated: September 21, 2000.

**Lynnda M. Regan,**
*Director, Program Support Center.*
[FR Doc. 00–25285 Filed 10–2–00; 8:45 am]
BILLING CODE 4168–17–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

### Privacy Act of 1974; New System of Records

**AGENCY:** Workplace Violence Prevention Team, Office of Human Resources, Office of the Assistant Secretary for Management and Budget, Office of the Secretary, HHS.

**ACTION:** Notification of a new system of records.

**SUMMARY:** In accordance with the requirements of the Privacy Act, HHS is giving notice that it is publishing a notice of a new system of records, 09–90–1200, "Workplace Violence Prevention Team Records." We are also proposing routine uses for this new system.

**DATES:** OHR invites interested parties to submit comments on the proposed internal and routine uses on or before November 13, 2000. OHR sent a Report of a New System to the Congress and to the Office of Management and Budget (OMB) on September 20, 2000. The new system of records will be effective 40 days from the date submitted to OMB unless OHR receives comments that would result in a contrary determination.

**ADDRESSES:** Address comments to the Privacy Act Officer, Office of the Secretary, 200 Independence Avenue, SW, Room 645F, Washington, DC 20201. Comments received will be made available for public inspection at the above address during normal business hours, 8:30 a.m.–5 p.m.

**FOR FURTHER INFORMATION CONTACT:** Workplace Violence Prevention Team Leader, Work and Family Program, 330 C Street, SW, Room 1250, Washington, DC 20201. Telephone number is 202–690–1441 or 202–690–8229. These are not toll-free numbers.

**SUPPLEMENTARY INFORMATION:** The Office of Human Resources (OHR) proposes to establish a new system of records: 09–90–1200, "Workplace Violence Prevention Team Records." This system of records will be used by members of the HHS Workplace Violence Prevention Teams (WVPT) to assist

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employees who contact them for assistance with an actual or potential workplace violence situation. The records of the system will be used to: (1) Administer health programs related to workplace violence prevention activities; (2) administer and support safety programs that help reduce accidents and injuries among employees; (3) monitor or follow up on violent or potentially violent situations in HHS: (4) help WVPT members make assessments of violent or potentially violent situations and then make recommendations regarding interventions to those persons involved with the situations; (5) prepare administrative reports, conduct evaluations, or audit the activities of the team; and (6) inform management, medical personnel and security staff in HHS of potential and actual dangerous situations that require their actions to assure the safety and health of employees.

The system will contain records on each person who contacts the teams for assistance. It will also contain records on individuals who are being interviewed and investigated by the teams. The records will typically contain demographic data such as the individual's name, pay plan, grade level, employing organization, office location, duty hours, telephone number and name of supervisor. Information will also be maintained about the workplace violence situations concerning those who contact the teams. This will include descriptions of events related to the workplace violence situations, others involved, as well as dates and locations of events. Each record will also contain an assessment of the situation by the WVPT, information regarding any interviews that were conducted, and the recommended interventions. If an individual is being interviewed because of another person's report, the record may also contain information that was obtained through interviews with the supervisor, Federal or local law enforcement personnel, HHS security staff, co-workers, and any others involved in the situation.

**AUTHORITIES FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 7901 (Health Services Programs);

5 U.S.C. 7902 (Safety Programs).

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

The routine uses proposed for this system are compatible with the stated purposes of the system, i.e., administer health programs related to workplace violence; administer and support safety programs that help reduce accidents and injuries; monitor or follow up on violent or potentially violent situations in HHS; make assessments of violent or potentially violent situations and recommendations regarding interventions; prepare administrative reports, evaluations and audit activities; and inform management, medical personnel and security staff in HHS of potential or actual dangerous situations that require action to assure the safety and health of employees.

The WVPT will disclose relevant information to third parties outside the Department as follows: Routine Use 1: To a congressional office when it has received a written inquiry from an individual about whom a record is maintained in this system. This request will be verified before disclosure from the individual's record will be made to the congressional office. Routine Use 2: When a person or property is harmed, or when threats of harm to a person or property are reported, disclosure will be made, as appropriate, to law enforcement authorities, medical treatment authorities, and those persons being threatened or harmed. Routine Use 3: To the Department of Justice, a court or other tribunal, when: (a) HHS, or any component, thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case HHS determines that such disclosure is compatible with the purpose for which the records are collected. The local System Manager will approve any disclosure made under this routine use. Routine Use 4: To student volunteers, interns, individuals working under a personal services contact, organizations working under contract, and other individuals performing functions for the Department but technically not having the status of agency employees, if they need access to the records to perform their assigned duties. This includes those performing threat or risk assessments. The contractor will be required to maintain Privacy Act safeguards with respect to such records. These safeguards are explained in the section entitled "Safeguards." Routine Use 5: To qualified personnel for research, audit, or evaluation purposes.

**SAFEGUARDS:**

The OHR has instituted extensive safeguards to protect both the automated and non-automated records. The Systems Security Officer has certified that the safeguards for the system are commensurate with the sensitivity and criticality of the records. The system notice describes: (1) The safeguards that are in effect to ensure that only authorized users have access to the records; (2) the physical security measures used to protect the records; (3) the procedural safeguards to ensure data integrity and prevent unauthorized access and disclosure; and (4) security guidelines for contractors, as applicable.

The system notice is written in the present rather than future tense to avoid the unnecessary expenditure of public funds to republish the notice after the new system becomes effective.

Dated: September 27, 2000.

**Evelyn White,**

*Deputy Assistant Secretary for Human Resources, ASMB.*

**09–90–1200**

**SYSTEM NAME:**

Workplace Violence Prevention Team (WVPT) Records, HSS/OS/ASMB/OHR.

**SECURITY CLASSIFICATION:**

None.

**SYSTEM LOCATION:**

Records are located throughout HHS in offices designated to provide workplace violence prevention services. Since there are numerous sites around the country available for these services, contact the appropriate system manager in Appendix A for more details about specific locations.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Individuals covered by this system include: persons who report potential or actual workplace violence; persons accused of threatening to commit, or committing workplace violence; and persons interviewed or investigated in connection with reports or allegations of potential or actual workplace violence.

**CATEGORIES OR RECORDS IN THE SYSTEM:**

This system contains written and electronic records on each person who contacts the WVPT for assistance. It also contains records on individuals who are



being interviewed and investigated by the WVPT. The records typically contain demographic data such as the individual's name, pay plan, grade level, employing organization, office location, duty hours, telephone number, and name of supervisor.

Information is also maintained about the workplace violence situation that is concerning the person who contacts the WVPT. This includes descriptions of events related to the workplace violence situation, others involved, as well as dates and locations of events. Each record will also contain an assessment of the situation by the WVPT, information regarding any interviews that were conducted, and the recommended interventions.

If the WVPT is interviewing a person because of someone else's report, the record of the person being interviewed may also contain information that was obtained through interviews with the supervisor, Federal or local law enforcement personnel, HHS security staff, co-workers, and any others involved in the situation.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 7901 (Health Services Programs);

5 U.S.C. 7902 (Safety Programs)

**PURPOSE(S): THE AGENCY MAINTAINS THIS SYSTEM OF RECORDS TO:**

1. Administer health programs related to workplace violence prevention activities;

2. Administer and support safety programs that help reduce accidents and injuries among employees;

3. Monitor or follow up on violent or potentially violent situations in HHS;

4. Help WVPT members make assessments of violent or potentially violent situations and then make recommendations regarding interventions to those persons involved with the situations;

5. Prepare administrative reports, conduct evaluations, or audit the activities of the teams; and

6. Inform management, medical personnel and security staff in HHS of potential and actual dangerous situations that require action to assure the safety and health of employees.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

These records or information from these records may be released:

1. To a congressional office when it has received a written inquiry from an individual about whom a record is maintained in this system. This request will be verified before disclosure from the individual's record will be made to the congressional office.

2. When a person or property is harmed, or when threats of harm to a person or property are reported, disclosure will be made, as appropriate, to law enforcement authorities, medical treatment authorities, and those persons being threatened or harmed.

3. To the Department of Justice, a court or other tribunal, when: (a) HHS, or any component, thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case HHS determines that such disclosure is compatible with the purpose for which the records are collected. The local System Manager will approve any disclosure made under this routine use.

4. To student volunteers, interns, individuals working under a personal services contract, organizations working under contract, and other individuals performing functions for the Department but technically not having the status of agency employees, if they need access to the records to perform their assigned duties. This includes those performing threat or risk assessments. Contractors will be required to maintain Privacy Act safeguards with respect to such records. These safeguards are explained in the section entitled "Safegiards."

5. To qualified personnel for research, audit, or evaluation purposes.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

These records are maintained in file folders and on password-protected computers, and computer disks. Folders and computer disks, when not in use, are stored in a secured area accessible only to members of the WVPT.

**RETRIEVABILITY:**

These records are retrieved by employee name (those who reported a violent or potentially violent event and those who were reported), event date, and event location.

**SAFEGUARDS:**

1. *Authorized Users:* Access to these records is limited to members of the WVPT. Others working with the WVPT, such as outside consultants, when approved by the team, may have access for the purpose of investigating a situation, preparing reports, or conducting evaluations and audits.

2. *Physical Safeguards:* All paper records are stored in metal filing cabinets equipped with locks, preferably combination. The file cabinets are stored in secure areas with access limited to the WVPT members. Computer records are stored on disks or computers that are password protected or are systems discreet from other computer systems. Disks are stored in the same manner as paper records.

3. *Procedural Safeguards:* Information will only be released from this system of records in accordance with the routine uses described above or as provided by the Privacy Act's disclosure provisions. Those who are serviced by the WVPT will be informed in writing about the WVPT's confidentiality procedures when they begin the process. Consultants must not disclose records. Secondary disclosure of information is prohibited unless permitted by a routine use or other of the Privacy Act's disclosure provisions.

4. *Contractor Guidelines:* Contractors who are given records under routine use #3 must maintain the records in a secured area, allow only those individuals immediately involved in the processing of the records to have access to them, prevent unauthorized persons from gaining access to the records, and return records to the System Managers immediately upon completion of the work specified in their contracts. Contractor compliance is assured through inclusion of Privacy Act requirements in contract clauses, and through monitoring by contract and project officers. Contractors who maintain records are instructed to make no disclosure of the records except as authorized by the System Managers and as stated in the contracts.

**RETENTION AND DISPOSAL:**

Records are destroyed two years after the incident/situation has been closed by the WVPT or until any litigation/third party action about it has been resolved. Files will be destroyed only by a WVPT team member and with a witness present. Paper records will be destroyed by shredding or burning. Information stored on computers will be destroyed by deleting all appropriate portions of floppy disks, hard drives, tapes, and other electronic media that may contain the record. Consultant and

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contractor records will be transferred to the local WVPT for destruction.

SYSTEM MANAGER(S) AND ADDRESS:

The records of individuals served by the WVPT are managed by local System Managers in the various HHS sites listed in Appendix A.

NOTIFICATION PROCEDURES:

For purposes of notification, the subject individual, and/or the individual's legal representative should write to the local System Manager who will require the system name, requestor name, address, and Social Security Number to ascertain whether the individual's record is in the system.

RECORD ACCESS PROCEDURES:

For purposes of access, use the same procedures outlined in Notification Procedures above. Requestors must also reasonably specify the record contents being sought. (These procedures are in accordance with Department regulation 45 CFR 5b.5(a)(2).)

CONTESTING RECORD PROCEDURES:

The subject individual shall contact the System Manager and reasonably identify the record and specify the information being contested. State the corrective action sought (addition to, deletion of, or substitution of) and the reasons for the correction with supporting justification. (These procedures are in accordance with Department regulation 45 CFR 5b.7.)

RECORD SOURCE CATEGORIES:

Information in this system of records is supplied by the individual contacting the WVPT, this individual's coworkers (including the supervisor), a member of the individual's family, sources to/from whom the individual has been referred for assistance, Departmental officials involved in the situation (such as security staff), or other sources involved with the situation and its resolution.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE PRIVACY ACT:

None.

**Appendix A**

1. For employees in the Southwest DC area, contact: Workplace Violence Prevention Team Leader, PSC Work/Life Center, 330 C Street, SW, Room 1250, Washington, DC 20201.

2. For employees on the MIH Campus in Bethesda, MD, contact: Critical Incidents Violence Intervention League (CIVIL) Team Leader, OHRM/OD, 31 Center Drive, Room 1C39, Bethesda, MD 20892.

3. For employees at HCFA headquarters in Baltimore, MD, contact: Crisis Management Team Leader, 7500 Security Boulevard, Room S1–23–27, Baltimore, MD 21244.

4. For employees at CDC headquarters in Atlanta, GA, contact: Crisis Management Team Chair, Associate Director for Management and Operations, 1600 Clifton Road, NE, MS–D15, Atlanta, GA 30333, or, Crisis Management Team Co-Chair, Employee Relations Specialist, 4770 Buford Highway, MS–K17, Atlanta, GA 30341–3274.

5. For employees in SAMHSA, contact: SAMHSA Crisis Intervention Team Leader, SAMHSA, Division of Human Resources Management, 5600 Fishers Lane, Room 14C17, Rockville, Maryland 20857, 301–443–4006.

[FR Doc. 00–25293 Filed 10–2–00; 8:45 am]

BILLING CODE 4150–04–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Healthcare Research and Quality

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Agency for Healthcare Research and Quality, HHS.

**ACTION:** Notice.

**SUMMARY:** This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request the Office of Management and Budget (OMB) to allow a proposed information collection project: "Medical Expenditure Panel Survey.Household Component (MEPS–HC)—2001 through 2004". In accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)), AHRQ invites the public to comment on this proposed information collection.

**DATES:** Comments on this notice must be received by December 4, 2000.

**ADDRESSES:** Written comments should be submitted to: Cynthia McMichael, Reports Clearance Officer, AHRQ, 2101 East Jefferson Street, Suite 500, Rockville, MD 20852–4908.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of the proposed information collection. All comments will become a matter of public record.

In accordance with the above-cited legislation, comments on the AHRQ information collection proposal are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden (including hours and costs) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the sue of automated collection techniques or other forms of information technology.

SUPPLEMENTARY INFORMATION:

**Proposed Project**

"Medical Expenditure Panel Survey Household Component (MEPS–HC)—2001 through 2004".

The AHRQ intends to conduct an annual panel survey of U.S. households to collect information on a variety of measures related to health status, health insurance coverage, health care use and expenditures, and sources of payment for health services. Each panel consists of a nationally representative sample of U.S. households who remain in MEPS for two consecutive years of data collection. The first panel of MEPS began in 1996 and has continued annually thereafter. The MEPS–HC is jointly sponsored by the AHRQ and the National Center for Health Statistics (NCHS).

It will be conducted using a sample of households selected from households which responded to the National Health Interview Survey (NHIS) sponsored by NCHS. The NHIS is a household survey which collects health related data from approximately 50,000 households and 110,000 people. The NHIS is used as the sampling frame for the MEPS and several other surveys as part of efforts by the Department of Health and Human Services (HHS) to integrate survey data collection activities.

Data to be collected from each household include detailed information on demographics, health conditions, current health status, utilization of health care providers, charges and payments for health care services, quality of care received, medications, employment and health insurance.

Subject to AHRQ and NCHS confidentiality statutes, data will be made available through publications, articles in major journals as well as public use data files. The data are intended to be used for purposes such as:

• Generating national estimates of individual and family health care use and expenditures, private and public health insurance coverage, and the availability, costs and scope of private health insurance benefits among Americans;

• Examining the effects of changes in how chronic care and disability are managed and financed;

• Evaluating the growing impact of managed care and of enrollment in different types of managed care plans; and

• Examining access to and costs of health care for common diseases and conditions, health care quality, prescription drug use, and other health issues.

Statisticians and researchers will use these data to make important generalizations on the civilian non-institutionalized population of the United States, as well as to conduct research in which the family is the unit of analysis.

**Method of Collection**

The data will be collected using a combination of modes. For example, the AHRQ intends to introduce study participants to the survey through advance mailings. The first contact will provide the household with information regarding the importance and uses of the information obtained. The AHRQ will then conduct five (in-person) interviews with each household to obtain health care use and expense data. Data will be collected using a computer-assisted personal interviewing method (CAPI). In certain cases, AHRQ will conduct interviews over the telephone, if necessary. Burden estimates follow:

**Estimated Annual Respondent Burden Per Year**

Each MEPS participant is asked to complete 5 interviews over two and one half years. Each interview averages 1.8 hours in length. Total burden is estimated in the following chart.



| Survey period | Number of completes | Burden per complete (hours) | Total burden (hours) |
|---|---|---|---|
| Feb–July 2001 | 19,380 | 1.8 | 34,884 |
| August–Dec 2001 | 13,280 | 1.8 | 23,904 |
| Feb–July 2002 | 21,248 | 1.8 | 34,246 |
| Aug–Dec 2002 | 16,239 | 1.8 | 29,230 |
| Feb–July 2003 | 24,187 | 1.8 | 43,537 |
| | | | 148,291 |

Dated: September 27, 2000.

**John M. Eisenberg,**

*Director.*

[FR Doc. 00–25339 Filed 10–2–00; 8:45 am]

BILLING CODE 4160–90–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[60Day–00–52]**

### Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) is providing an opportunity for public comment on proposed data collection projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Assistant Reports Clearance Officer at 404–639–7090.

Comments are invited on: (i) Whether the proposed collection of information is necessary for the proper performance of the functions of the CDC, including whether the information shall have a practical utility; (ii) the accuracy of the agency's estimate of the burden of the proposed collection of information; (iii) ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, Georgia 30333. Written comments should be received within 60 days of this notice.

**Proposed Project**

Survey to Determine the National Capacity to Provide Colorectal Cancer Screening and Follow-up Examinations—New—The National Center for Chronic Disease Prevention and Health Promotion, Division of Cancer Prevention and Control, proposes to conduct a study to provide a national assessment of the current capacity to conduct colorectal cancer (CRC) screening and follow-up examinations for average risk persons aged 50 and older. Colorectal cancer is the second leading cause of cancer-related deaths in the United States. While there is strong scientific evidence that screening for CRC reduces incidence and mortality from this disease, rates of use of screening tests are currently low. Efforts to promote widespread screening for CRC are intensifying among local, state, and federal health agencies and professional organizations nationwide. However, limited information is available regarding the number of health care personnel currently trained and available to perform screening and follow-up examinations.

The proposed study will be conducted through the implementation of a survey which will be mailed to a random sample of 1,800 providers known to possess flexible sigmoidoscopes and colonoscopes, based upon lists provided by major endoscopic equipment manufacturers. The sampling frame will be designed to include providers from all regions of the country and all physician specialists who may be screening for CRC. The survey will provide information on the types of health care providers who are performing CRC screening and follow-up examinations, the equipment currently being used for screening and follow-up examinations, and current reimbursement rates for these tests. The results of the analysis will be used to (1) identify deficits in the medical infrastructure, (2) guide the development of training initiatives and educational programs for health care providers, and (3) provide critical baseline information for local, state and federal policy makers for the planning of national initiatives to increase colorectal cancer screening. There is no cost to respondents.

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| Respondents | Number of respondents | Number of responses/ respondent | Average burden of response (in hrs.) | Total burden (in hrs.) |
|---|---|---|---|---|
| Health Care Providers | 1800 | 1 D20/60 | 600 | |
| Office Managers | 1800 | 1 | 20/60 | 600 |
| Totals | | | | 1200 |

Dated: September 27, 2000.

**Nancy Cheal,**

*Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 00–25321 Filed 10–2–00; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Availability of Government-Owned Trademark for Licensing

**AGENCY:** National Institute of Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (DHHS).

**TITLE:** Availability of a Government-owned Trademark for Licensing: The Registry of Toxic Effects of Chemical Substances (RTECS®).

**ACTION:** Notice and request for proposals. NIOSH is requesting proposals for the purpose of establishing a licensing agreement for the continuation of a trademarked product: RTECS®. (The NIOSH Trademark named in this notice is owned by the United States Government and is available or licensing in the United States (U.S.), in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development.)

**SUMMARY:** From the 1971 initial release of the mandated *Toxic Substances List,* the National Institute for Occupational Safety and Health (NIOSH) has been systematically building and updating the Registry of Toxic Effects of Chemical Substances (RTECS®). RTECS® was originally published in book format, later a microfiche version was developed. Currently, RTECS® is available in a digital format for electronic delivery. RTECS® is recognized as the world's most extensive collection of numerical toxicological data. Because RTECS® identifies specific toxicological endpoints, it has a unique status among databases that provide toxicology information. RTECS® is used not only by the occupational safety and health community; it serves as a standard reference for life-science scientists and regulatory groups from all parts of the world. Both its content and design have contributed to its wild spread use, thus making RTECS® a commercially viable product. NIOSH is now soliciting proposals from organizations interested in assuming the responsibility for the continued operation and funding of RTECS®. This include the ongoing review of toxicological documents, extraction and updating of appropriate information as well as the marketing and distribution of the RTECS® database through a trademark licensing agreement.

**DATES:** Written licensing proposals can be sent to Thomas E. O'Toole, M.P.H., Deputy Director, Technology Transfer Office, Centers for Disease Control and Prevention (CDC), Mailstop E–67, 1600 Clifton Road, Atlanta, Georgia 30333 on or before December 4, 2000.

**FOR FURTHER INFORMATION CONTACT:** Doris Sweet, Education and Information Division, Information Resources Branch, NIOSH, CDC 4676 Columbia Parkway, Mailstop C–18, Cincinnati, Ohio 45226, telephone 513–533–8359, e-mail address: *dvs1@cdc.gov.*

**SUPPLEMENTARY INFORMATION:**

### RTECS® Trademark License Proposal

1. Exclusive use of the RTECS® name for the production and marketing of the database. The Licensee will have unlimited right to the use of the RTECS® name for product identification and promotion as related to selling and marketing the production of the Database.

2. Control of the current RTECS® Master File. The Licensee will provided with a copy of the last NIOSH-produced RTECS® Master File and the CODEN File. The Licensee may reformat the data, provided the six toxicity fields remain intact. New fields may be added for the enhancement of the Database (*e.g.* physical and chemical properties, structural formulas, author names). Selected fields may be deleted if the worth or power of the Database is not diminished (*e.g.*, Wiswesser Line Notation).

3. Authority and responsibility for vendor agreements. Upon execution of this agreement, the National Technical Information Service (NTIS), currently serving as broker for NIOSH, will notify all current vendors that existing vendor agreements will terminate after ninety (90) days. Thereafter, vendor agreements become the responsibility of the Licensee, who may decide to extend existing agreements until the expiration date, or to negotiate new agreements with all vendors. The Licensee will not be bound by any previous agreements with NTIS, unless they chose to negotiate with that organization.

4. Access to comprehensive documentation. NIOSH will provide access to the collection of all source references cited in RTECS®. These are an essential tool in accessing the original documentation cited in the Database. In order to assure full historical information, NIOSH will also provide access to a complete collection of printed editions of RTECS®, from 1971 to 1985–86, and annual microfiche editions beyond 1987.

5. NIOSH consultation services. NIOSH will provide support to the Licensee through participation on any established Board/Committee empowered to modify the Database.

### NIOSH Requirements To Be Addressed in the Proposal

1. Maintenance of RTECS® as a viable toxicological database. The Licensee must maintain the quality of the Database, making only such changes that will enhance its value and power, and those mandated by changing technologies. The adoption of alternate test methods will require an altered approach. The proposal should address plans for coverage of current toxicological literature on an international scale.

2. Preservation of international literature coverage. The proposal shall address the manner in which the continued coverage of international literature will be accomplished. Because much of the current data now originates from outside the United States, especially in the Orient and Eastern Europe, access to linguistic skills is vital.



3. Continued accessibility of RTECS® to the international scientific community. The Licensee must make RTECS® continuously available worldwide and market the Database in a variety of formats including, but not limited to on-line, CD–ROM, and the Internet.

4. Multiple point and free access to NIOSH of all RTECS® products. The Licensee will provide NIOSH research and information staff with multiple point and free access to RTECS® to accommodate NIOSH users at six NIOSH sites, maximum usage not to exceed 25 users.

5. NIOSH representation on editorial or policy board or committee. A NIOSH representative will be designated to serve on any editorial or policy board established for the Database to ensure that the interests of the Institute are considered. This representative will serve in a consultative capacity without decision-making authority.

### General Terms

1. Ownership of the RTECS® trademark will be retained by NIOSH.

2. The licensing agreement can be terminated by either party.

3. Ownership of data files, microfiche, and other files. NIOSH will retain ownership of the last RTECS® Master File produced with NIOSH funds. The Licensee will retain ownership of all new data generated and indexed under this agreement. NIOSH will also retain ownership of the microfiche collection of the bibliographical references. The full hard copy collection of the same references will be delivered to the Licensee, along with the annual microfiche editions produced after 1987. In the event of a termination of the Licensing Agreement, the hard copy collection and annual microfiche additions will be returned to NIOSH.

4. Duration of agreement will be negotiated in the license.

5. In submitted proposals, each requirement shall be addressed individually.

**Linda Rosenstock,**

*Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.*

[FR Doc. 00–25429 Filed 10–02–00; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Advisory Council for the Elimination of Tuberculosis: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following council meeting.

*Name:* Advisory Council for the Elimination of Tuberculosis (ACET).

*Times and Dates:* 8:30 a.m.–5 p.m., October 18, 2000; 8:30 a.m.–12 p.m., October 19, 2000.

*Place:* Corporate Square, Building 8, 1st Floor Conference Room, Atlanta, Georgia 30333.

*Status:* Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

*Purpose:* This council advises and makes recommendations to the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the elimination of tuberculosis. Specifically, the Council makes recommendations regarding policies, strategies, objectives, and priorities; addresses the development and application of new technologies; and reviews the extent to which progress has been made toward eliminating tuberculosis.

*Matters To Be Discussed:* Agenda items include issues pertaining to the IOM Report on TB Elimination in the U.S. and other TB related topics.

*Contact Person for More Information:* Paulette Ford, National Center for HIV, STD, and TB Prevention, 1600 Clifton Road, NE, M/S E–07, Atlanta, Georgia 30333, telephone 404/639–8008.

The Director, Management Analysis and Services Office, has been delegated the authority to sign Federal Register Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: September 27, 2000.

**Carolyn J. Russell,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 00–25322 Filed 10–2–00; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 00N–1224]**

### Agency Information Collection Activities; Announcement of OMB Approval; Submitting and Reviewing Complete Responses to Clinical Holds; Guidance for Industry

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Submitting and Reviewing Complete Responses to Clinical Holds; Guidance for Industry" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

**FOR FURTHER INFORMATION CONTACT:** Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of April, 13, 2000 (65 FR 19910), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0445. The approval expires on September 12, 2003. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: September 26, 2000.

**William K. Hubbard,**

*Senior Associate Commissioner for Policy, Planning, and Legislation.*

[FR Doc. 00–25283 Filed 10–2–00; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Cardiovascular and Renal Drugs Advisory Committee; Notice of Meeting

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

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This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed.

*Name of Committee:* Cardiovascular and Renal Drugs Advisory Committee.

*General Function of the Committee:* To provide advice and recommendations to the agency on FDA's regulatory issues.

*Date and Time:* The meeting will be held on October 19, 2000, from 9 a.m. to 5 p.m., and on October 20, 2000, from 8:30 a.m. to 4 p.m.

*Location:* National Institutes of Health, 9000 Rockville Pike, Bldg. 10, Clinical Center, Jack Masur Auditorium, Bethesda, MD.

*Contact Person:* Joan C. Standaert, Center for Drug Evaluation and Research (HFD–110), Food and Drug Administration, Woodmont II Bldg., 1451 Rockville Pike, Rockville, MD 20752, 419–259–6211, or John M. Treacy, 301–827–7001, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12533. Please call the Information Line for up-to-date information on this meeting.

*Agenda:* On October 19, 2000, the committee will meet in closed session. On October 20, 2000, the committee will discuss dose response using data from approved antihypertensive drugs.

*Procedure:* On October 20, 2000, from 8:30 a.m. to 4 p.m., the meeting will be open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by October 12, 2000. Oral presentations from the public will be scheduled between approximately 8:30 a.m. to 9:30 a.m. on October 20, 2000. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before October 12, 2000, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

*Closed Committee Deliberations:* On October 19, 2000, from 9 a.m. to 5 p.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential information regarding pending investigational new drug applications and new drug applications (5 U.S.C. 552b(c)(4)).

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: September 22, 2000.

**Bernard A. Schwetz,**

*Acting Deputy Commissioner.*

[FR Doc. 00–25284 Filed 10–2–00; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 00D–1492]**

### Mutual Recognition Agreement, Medical Device Annex; Confidence Building Activities: Availability of Draft Guidances

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of two draft guidance documents entitled "Implementation Plan for the Mutual Recognition Agreement Between the European Union and the United States of America: Confidence Building Programme: Overview" and "Implementation Plan for the Mutual Recognition Agreement Between the European Union and the United States of America: Procedures for Joint Confidence Building." These draft guidance documents have been prepared jointly by FDA and the Commission for the European Communities (CEC's) and are intended to serve as guidance for all interested parties participating in confidence building activities under the medical device annex to the Mutual Recognition Agreement (MRA). While these draft guidance documents reflect the latest European Union (EU) edits, they have not been accepted by FDA. FDA is requesting comments on these documents. FDA plans to provide its comments on these documents and any stakeholder comments the agency receives to the CEC's.

**DATES:** Submit written comments on these draft guidance documents to ensure their adequate consideration in preparation of the final document by November 2, 2000.

**ADDRESSES:** Submit written comments concerning these draft guidance documents to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments should be identified with the docket number found in brackets in the heading of this document. To expedite the review process, if possible, FDA requests that you send a copy of your comments to the contact person, Christine Nelson (address below) or by e-mail to mcn@cdrh.fda.gov. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to these documents. If you do not have access to the Internet, submit written requests for single copies on a 3.5" diskette of the draft guidance documents listed above to the Division of Small Manufacturers Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your requests, or fax your request to 301–443–8818.

**FOR FURTHER INFORMATION CONTACT:** Christine Nelson, Office of Health and Industry Programs (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–443–6597, ext. 128, FAX 301–443–8818, or e-mail mcn@cdrh.fda.gov.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

On June 27, 1997, the United States and the EU signed an MRA that covers a variety of product sectors including telecommunication, electrical safety, recreational crafts, pharmaceuticals, and medical devices. The Medical Device Annex to the MRA became effective December 7, 1998, and initiated a 3-year transition period during which both sides will engage in confidence building activities. Article 7 of the Medical Device Annex provides that FDA and the CEC's will establish a joint confidence building program to provide sufficient evidence of the capabilities of the nominated Conformity Assessment Bodies (CAB's) to perform quality system or product evaluations to the specifications of the parties. After the 3-year period, the Medical Device Annex would become operational if the confidence building activities are successfully completed.

The Medical Devices Annex covers the exchange of quality systems evaluation/inspection reports for all medical devices and premarket evaluations for selected low to medium risk devices. A European CAB can conduct inspections for all classes of devices and 510(k) evaluations for selected devices based on FDA requirements for European device manufacturers who wish to market their devices in the United States. Similarly, a U.S. CAB can conduct quality system or type-testing evaluations based on EU requirements for U.S. device manufacturers who wish to market their devices in the EU. In addition, an alert system would be set up during the transition period and maintained thereafter, by which the parties will notify each other when there is an immediate danger to public health. As part of that system, each party will notify the other party of any confirmed problem reports, corrective actions, or recalls.

These two draft guidance documents entitled "Implementation Plan for the Mutual Recognition Agreement Between the European Union and the United States of America: Confidence Building Programme: Overview" and "Implementation Plan for the Mutual Recognition Agreement Between the European Union and the United States of America: Procedures for Joint Confidence Building" provide guidance on how to implement confidence building activities under the Medical Device Annex of the MRA for quality system evaluations and product evaluations. Guidance on implementing an alert system will be issued separately at another time.

#### II. Significance of Guidance

These draft guidance documents are intended to provide guidance. The draft guidance documents were developed by FDA and the European Commission (EC) to further implementation of the MRA. This current draft represents the EC's latest edits. FDA will be providing comments to the EC and proposing certain changes that are described in the "FDA Concerns" section of the guidance document. These draft guidance documents do not create or confer any rights for or on any person and do not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

The agency has adopted good guidance practices (GGP's) which set forth the agency's policies and procedures for the development, issuance, and use of guidance documents (62 FR 8961, February 27, 1997). These guidance documents are issued as a draft Level 1 guidance consistent with GGP's.

#### III. Electronic Access

Persons interested in obtaining copies of these draft guidance documents may do so through the Internet at www.fda.gov/cdrh/mra.

#### IV. Comments

Interested persons may submit to the Dockets Management Branch (address above) written comments regarding these draft guidance documents by November 2, 2000. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments should be identified with the docket number found in brackets in the heading of this document. A copy of the draft guidance documents and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. To expedite receipt and review, FDA requests, if possible, that a copy of your comments be sent to the contact person (address above) or by e-mail to mcn@cdrh.fda.gov.

Dated: September 22, 2000.

**William K. Hubbard,**

*Senior Associate, Commissioner for Policy, Planning, and Legislation.*

[FR Doc. 00–25351 Filed 10–2–00; 8:45 am]

BILLING CODE 4160–01–F



## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4563–N–16]**

### Notice of Proposed Information Collection for Public Comment; Contract and Subcontract Activity

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Notice

**SUMMARY:** The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** *Comments Due Date:* December 4, 2000.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4238, Washington, DC 20410–5000.

**FOR FURTHER INFORMATION CONTACT:** Mildred M. Hamman, (202) 708–3642, extension 4128, for copies of the proposed forms and other available documents. (This is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

*Title of Proposal:* Contract and Subcontract Activity.

*OMB Control Number:* 2577–0088.

*Description of the need for the information and proposed use:* The information provided to HUD by Housing Agencies/Grantees will be used to prepare an annual report on Minority Business Enterprise (MBE) participation in Public and Indian Housing Programs. The report will be submitted to the Department of Commerce pursuant to Executive Order 12432. HUD will also use the information to monitor and evaluate Housing Agency performance. HUD plans to collect this information electronically over the Internet.

*Agency form number:* HUD–2516.

*Members of affected public:* State, Local or Tribal Government, Small Businesses or Organizations.

*Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:* 3,400 respondents annually, one hour per response, 3,400 total burden hours.

*Status of the proposed information collection:* Extension, without change.

**Authority:** Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: September 27, 2000.

**Milan Ozdinec,**

*General Deputy Assistant, Secretary for Public and Indian Housing.*

BILLING CODE 4210–33–M

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## Contract and Subcontract Activity

**U.S. Department of Housing and Urban Development**

OMB Approval No.: 2577-0088 (exp.10/31/2000)

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and a person is not required to respond to, a collection information unless that collection displays a valid OMB control number.

Executive Orders 12432 and 11625 requires Federal agencies to promote Minority Business Enterprise (MBE) participation in their programs and prescribes additional arrangements for developing and coordinating a National Program for MBE. Pursuant to Executive Order 12432, the Department of Commerce requires an annual report on MBE achievements. The information provided on Public and Indian Housing Programs will be used to monitor and evaluate HA performance and to develop and submit the Annual Report to the President. Responses to the collection of information are voluntary. The information requested does not lend itself to confidentiality

| 1. Grantee/Project Owner/Developer/Sponsor/Builder/Agency | Check if: PHA ☐ IHA ☐ | 2. Location (City, State, ZIP Code) |
|---|---|---|
| 3a. Name of Contact Person | 3b. Phone Number (including Area Code) | 4. Reporting Period ☐ Oct. 1 - Sept. 30 (Annual-FY) |
| 5. Program Code (Not applicable for CPD programs.) See explanation of codes at bottom of page. Use a separate sheet for each program code. | | 6. Date Submitted to Field Office |

| Grant/Project Number or HUD Case Number or other identification of property, subdivision, dwelling unit, etc. 7a. | Amount of Contract or Subcontract 7b. | Type of Trade Code (See below) 7c. | Contractor or Subcontractor Business Racial/Ethnic Code (See below) 7d. | Woman Owned Business (Yes or No) 7e. | Prime Contractor Identification (ID) Number 7f. | Sec. 3 7g. | Subcontractor Identification (ID) Number 7h. | Sec. 3 7i. | Contractor/Subcontractor Name and Address 7j. Name | Street | City | State | Zip Code |
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**CPD:**
1 = New Construction
2 = Education/Training
3 = Other

**7c: Type of Trade Codes:**

**Housing/Public Housing:**
1 = New Construction
2 = Substantial Rehab.
3 = Repair
4 = Service
5 = Project Mangt.
6 = Professional
7 = Tenant Services
8 = Education/Training
9 = Arch./Engrg. Appraisal
0 = Other

**7d: Racial/Ethnic Codes:**
1 = White Americans
2 = Black Americans
3 = Native Americans
4 = Hispanic Americans
5 = Asian/Pacific Americans
6 = Hasidic Jews

**5: Program Codes** (Complete for Housing and Public and Indian Housing programs only):
1 = All Insured, including Section 8
2 = Flexible Subsidy
3 = Section 8 Noninsured, Non-HFDA
4 = Insured (Management
5 = Section 202
6 = HUD-Held (Management)
7 = Public/Indian Housing

Previous editions are obsolete.

form HUD-2516 (8/98)

[FR Doc. 00-25289 Filed 10-2-00; 8:45 am]
BILLING CODE 4210-33-C

This report is to be completed by grantees, developers, sponsors, builders, agencies, and/or project owners for reporting contract and subcontract activities of $10,000 or more under the following programs: Community Development Block Grants (entitlement and small cities); Urban Development Action Grants; Housing Development Grants; Multi-family Insured and Noninsured; Public and Indian Housing Authorities; and contracts entered into by recipients of CDBG rehabilitation assistance.

Contracts/subcontracts of less than $10,000 need be reported only if such contracts represent a significant portion of your total contracting activity. Include only contracts executed during this reporting period.

This form has been modified to capture Section 3 contract data in columns 7g and 7i. Section 3 requires that the employment and other economic opportunities generated by HUD financial assistance for housing and community development programs shall, to the greatest extent feasible, be directed toward low- and very low-income persons, particularly those who are recipients of government assistance for housing. Recipients using this form to report Section 3 contract data must also use Part I of form HUD-60002 to report employment and training opportunities data. Form HUD-2516 is to be completed for public and Indian housing and most community development programs. Form HUD-60002 is to be completed by all other HUD programs including State administered community development programs covered under Section 3.

A Section 3 contractor/subcontractor is a business concern that provides economic opportunities to low- and very low-income residents of the metropolitan area (or nonmetropolitan county), including a business concern that is 51 percent or more owned by low- or very low-income residents; employs a substantial number of low- or very low-income residents; or provides subcontracting or business development opportunities to businesses owned by low- or very low-income residents. Low- and very low-income residents include participants in Youthbuild programs established under Subtitle D of Title IV of the Cranston-Gonzalez National Affordable Housing Act.

The terms "low-income persons" and "very low-income persons" have the same meanings given the terms in section 3(b)(2) of the United States Housing Act of 1937. Low-income persons mean families (including single persons) whose incomes do not exceed 80 per centum of the median income for the area, as determined by the Secretary, with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 80 per centum of the median for the area on the basis of the Secretary's findings that such variations are necessary because of prevailing levels of construction costs or unusually high or low-income families. Very low-income persons means low-income families (including single persons) whose incomes do not exceed 50 per centum of the median family income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 50 per centum of the median for the area on the basis of the Secretary's findings that such variations are necessary because of unusually high or low family incomes.

Submit two (2) copies of this report to your local HUD Office within ten (10) days after the end of the reporting period you checked in item 4 on the front.

Complete item 7h. only once for each contractor/subcontractor on each semi-annual report.

Enter the prime contractor's ID in item 7f. for all contracts and subcontracts. Include only contracts executed during this reporting period. PHAs/IHAs are to report all contracts/subcontracts.

### Community Development Programs

1. **Grantee:** Enter the name of the unit of government submitting this report.
3. **Contact Person:** Enter name and phone of person responsible for maintaining and submitting contract/subcontract data.
7a. **Grant Number:** Enter the HUD Community Development Block Grant Identification Number (with dashes). For example: B-32-MC-25-0034. For Entitlement Programs and Small City multi-year comprehensive programs, enter the latest approved grant number.
7b. **Amount of Contract/Subcontract:** Enter the dollar amount rounded to the nearest dollar. If subcontractor ID number is provided in 7f, the dollar figure would be for the subcontract only and not for the prime contract.
7c. **Type of Trade:** Enter the numeric codes which best indicates the contractor's/subcontractor's service. If subcontractor ID number is provided in 7f., the type of trade code would be for the subcontractor only and not for the prime contractor. The "other" category includes supply, professional services and all other activities except construction and education/training activities.
7d. **Business Racial/Ethnic/Gender Code:** Enter the numeric code which indicates the racial/ethnic /gender character of the owner(s) and controller(s) of 51% of the business. When 51% or more is not owned and controlled by any single racial/ethnic/gender category, enter the code which seems most appropriate. If the subcontractor ID number is provided, the code would apply to the subcontractor and not to the prime contractor.
7e. **Woman Owned Business:** Enter Yes or No.
7f. **Contractor Identification (ID) Number:** Enter the Employer (IRS) Number of the Prime Contractor as the unique identifier for prime recipient of HUD funds. Note that the Employer (IRS) Number must be provided for each contract/subcontract awarded.
7g. **Section 3 Contractor:** Enter Yes or No.
7h. **Subcontractor Identification (ID) Number:** Enter the Employer (IRS) Number of the subcontractor as the unique identifier for each subcontract awarded from HUD funds. When the subcontractor ID Number is provided, the respective Prime Contractor ID Number must also be provided.
7i. **Section 3 Contractor:** Enter Yes or No.
7j. **Contractor/Subcontractor Name and Address:** Enter this information for each firm receiving contract/subcontract activity only one time on each report for each firm.

### Multifamily Housing Programs

1. **Grantee/Project Owner:** Enter the name of the unit of government, agency or mortgagor entity submitting this report.
3. **Contact Person:** Same as item 3 under CPD Programs.
4. **Reporting Period:** Check only one period.
5. **Program Code:** Enter the appropriate program code.
7a. **Grant/Project Number:** Enter the HUD Project Number or Housing Development Grant or number assigned.
7b. **Amount of Contract/Subcontract:** Same as item 7b. under CPD Programs.
7c. **Type of Trade:** Same as item 7c. under CPD Programs.
7d. **Business Racial/Ethnic/Gender Code:** Same as item 7d. under CPD Programs.
7e. **Woman Owned Business:** Enter Yes or No.
7f. **Contractor Identification (ID) Number:** Same as item 7f. under CPD Programs.
7g. **Section 3 Contractor:** Enter Yes or No.
7h. **Subcontractor Identification (ID) Number:** Same as item 7h. under CPD Programs.
7i. **Section 3 Contractor:** Enter Yes or No.
7j. **Contractor/Subcontractor Name and Address:** Same as item 7j. under CPD Programs.

### Public Housing and Indian Housing Programs

PHAs/IHAs are to report all contracts/subcontracts. Include only contracts executed during this reporting period.

1. **Project Owner:** Enter the name of the unit of government, agency or mortgagor entity submitting this report. Check box as appropriate.
3. **Contact Person:** Same as item 3 under CPD Programs.
4. **Reporting Period:** Check only one period.
5. **Program Code:** Enter the appropriate program code.
7a. **Grant/Project Number:** Enter the HUD Project Number or Housing Development Grant or number assigned.
7b. **Amount of Contract/Subcontract:** Same as item 7b. under CPD Programs.
7c. **Type of Trade:** Same as item 7c. under CPD Programs.
7d. **Business Racial/Ethnic/Gender Code:** Same as item 7d. under CPD Programs.
7e. **Woman Owned Business:** Enter Yes or No.
7f. **Contractor Identification (ID) Number:** Same as item 7f. under CPD Programs.
7g. **Section 3 Contractor:** Enter Yes or No.
7h. **Subcontractor Identification (ID) Number:** Same as item 7h. under CPD Programs.
7i. **Section 3 Contractor:** Enter Yes or No.
7j. **Contractor/Subcontractor Name and Address:** Same as item 7j. under CPD Programs.

Previous editions are obsolete.

form HUD-2516 (8/98)

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Notice of Availability of an Environmental Assessment/Habitat Conservation Plan and Receipt of an Application for a Permit for the Incidental Take of the Houston Toad (*Bufo houstonensis*) During Construction of One Single Family Residence on 0.5 Acres of the 3.354-Acre Lot 36, Unit 11, Block 2, in the Pine Forest Subdivision, Phase III, Bastrop County, Texas (Stahl)

**SUMMARY:** Judson Stahl (Applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a) of the Endangered Species Act (Act). The Applicant has been assigned permit number TE–032117–0. The requested permit, which is for a period of 10 years, would authorize the incidental take of the endangered Houston toad (*Bufo houstonensis*). The proposed take would occur as a result of the construction and occupation of one single family residence on 0.5 acres of the 3.354-Acre Lot 36, Unit 11, Block 2, in the Pine Forest Subdivision, Phase III, Bastrop County, Texas.

The Service has prepared the Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take application. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made until at least 30 days from the date of publication of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

**DATES:** Written comments on the application should be received on or before November 2, 2000.

**ADDRESSES:** Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Room 4102, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by contacting Tannika Engelhard, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0057). Documents will be available for public inspection by written request, by appointment only, during normal business hours (8:00 to 4:30) at the U.S. Fish and Wildlife Service, Austin, Texas. Written data or comments concerning the application and EA/HCP should be submitted to the Supervisor, U.S. Fish and Wildlife Service, Austin, Texas, at the above address. Please refer to permit number TE–032117–0 when submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Tannika Engelhard at the above U.S. Fish and Wildlife Service, Austin Office.

**SUPPLEMENTARY INFORMATION:** Section 9 of the Act prohibits the "taking" of endangered species such as the Houston toad. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

#### Applicant

Judson Stahl plans to construct a single family residence on 0.5 acres of the 3.354-Acre Lot 36, Unit 11, Block 2, in the Pine Forest Subdivision, Phase III, Bastrop County, Texas. This action will eliminate 0.5 acres or less of Houston toad habitat and result in indirect impacts within the lot. The applicant proposes to compensate for this incidental take of the Houston toad by providing $1,500.00 to the National Fish and Wildlife Foundation for the specific purpose of land acquisition and management within Houston toad habitat, as identified by the Service.

**Geoffrey L. Haskett,**

*Regional Director, Region 2, Albuquerque, New Mexico.*

[FR Doc. 00–25324 Filed 10–2–00; 8:45 am]

BILLING CODE 4510–55–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Notice of Receipt of an Application and Availability of an Environmental Assessment/Habitat Conservation Plan for Issuance of an Endangered Species Act Section 10(a)(a)(B) Permit for a Permit for the Incidental Take of the Houston Toad (*Bufo houstonensis*) During Construction of One Permanent Single Family Residence and a Pond on Approximately 4.5 Acres of the 89-Acre Tract of Land Located Off of Cottletown Road, Bastrop County, Texas

**SUMMARY:** Robert Gilfillan (Applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a) of the Endangered Species Act (Act). The Applicant has been assigned permit number TE–033887–0. The requested permit, which is for a period of 5 years, would authorize the incidental take of the endangered Houston toad (*Bufo houstonensis*). The proposed take would occur as a result of the construction and occupation of one permanent single family residence, one temporary home, and one pond on 4.5 acres of the 89-acre tract of land located off of Cottletown Road, Bastrop County, Texas.

The Service has prepared the Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take application. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made until at least 30 days from the date of publication of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

**DATES:** Written comments on the application should be received on or before December 4, 2000.

**ADDRESSES:** Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by contacting Scott Rowin, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0057). Documents will be available for public inspection by written request, by appointment only, during normal business hours (8:00 to 4:30) at the U.S. Fish and Wildlife Service, Austin, Texas. Written data or comments concerning the application and EA/HCP should be submitted to the Supervisor, U.S. Fish and Wildlife Service, Austin, Texas, at the above address. Please refer to permit number TE–033887–0 when submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Scott Rowin at the above U.S. Fish and Wildlife Service, Austin Office.

**SUPPLEMENTARY INFORMATION:** Section 9 of the Act prohibits the "taking" of endangered species such as the Houston toad. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

#### Applicant

Robert Gilfillan plans to construct a permanent single family residence, a temporary home (trailer/mobile home) and a pond on 4.5 acres of the 893-acre tract of land located off of Cottletown Road, Bastrop County, Texas. The temporary home will occupy approximately 0.5 acres and will be used during construction of the permanent residence and pond. Once completed it is anticipated the temporary home will be removed. This action will eliminate 4.5 acres or less of Houston toad habitat and result in indirect impacts within the property. The applicant proposes to compensate for this incidental take of the Houston toad by providing $6,000.00 to the National Fish and Wildlife Foundation for the specific purpose of land acquisition and management within Houston toad habitat, as identified by the Service.

**Renne Lohoefener,**

*Regional Director, Region 2, Albuquerque, New Mexico.*

[FR Doc. 00–25325 Filed 10–2–00; 8:45 am]

BILLING CODE 4510–55–U



## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Aquatic Nuisance Species Task Force Ruffe Control Committee Meeting

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice announces a meeting of the Aquatic Nuisance Species (ANS) Task Force Ruffe Control Committee. The meeting topics are identified in the **SUPPLEMENTARY INFORMATION.**

**DATES:** The Ruffe Control Committee will meet from 1 p.m. to 5 p.m., Wednesday, October 25, 2000 and 10 a.m. to 3 p.m., Thursday, October 26, 2000.

**ADDRESSES:** The Ruffe Control Committee meeting will be held in the Comfort Inn, 4404 I–75 Business Spur, Sault Ste Marie, Michigan.

**FOR FURTHER INFORMATION CONTACT:** Sharon Gross, Executive Secretary, Aquatic Nuisance Species Task Force at 703–358–2308 or by e-mail at: *sharon_gross@fws.gov* or Thomas Busiahn, Ruffe Control Committee Chair, at 703–358–1718.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Aquatic Nuisance Species Task Force Ruffe Control Committee. The ANS Task Force was established by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990.

Topics to be covered during the Ruffe Control Committee meeting include: the status of existing ruffe populations, a review of the eight components of the ruffe control plan, an evaluation of the bait harvest prohibitions currently in place on Lake Superior, and other topics.

Minutes of the meeting will be maintained by the Executive Secretary, Aquatic Nuisance Species Task Force, Suite 851, 4401 North Fairfax Drive, Arlington, Virginia 22203–1622, and will be available for public inspection during regular business hours, Monday through Friday.

Dated: September 27, 2000.

**Cathleen I. Short,**

*Co-Chair, Aquatic Nuisance Species Tosk Force, Assistant Director—Fisheries and Habitat Conservation.*

[FR Doc. 00–25315 Filed 10–2–00; 8:45 am]

BILLING CODE 4310–55–M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[MT–924–1430–HN–003E; MTM 84984, MTM 86124]**

### Public Notice—Jurisdiction Transfer as Required by the Crow Boundary Settlement Act of 1994; Montana

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** This document provides notification to the public and state and local governmental officials of the transfer of exclusive jurisdiction and administration of the surface estate of 12,465.32 acres of public lands from the Bureau of Land Management to the United States of America, Bureau of Indian Affairs in trust for the Crow Indian Tribe and shall be recognized as part of the Crow Indian Reservation.

**EFFECTIVE DATES:** December 2, 1999, December 8, 1999, December 16, 1999, January 12, 2000, February 24, 2000, and March 27, 2000.

**FOR FURTHER INFORMATION CONTACT:** Russell Sorensen, BLM Dillon Field Office, 1005 Selway Drive, Dillon, Montana 59725–9431, 406–683–8036.

By virtue of the authority vested in the Secretary of the Interior pursuant to Section 5(d)(G) of the Crow Boundary Settlement Act of November 2, 1994, P.L. 103–444, it is ordered as follows:

1. Subject to valid existing rights, jurisdiction of the surface estate for the following described lands was transferred to the Bureau of Indian Affairs in trust for the Crow Indian Tribe on the dates listed below:

(a) December 2, 1999:

**Principal Meridian**

T. 3 S., R. 29 E.,
Sec. 10, all.

(b) December 8, 1999:

T. 6 S., R. 33 E.,
Sec. 12, NE¼.
T. 1 S., R. 35 E.,
Sec. 16, all.
T. 3 S., R. 35 E.,
Sec. 16, all.
T. 2 S., R. 36 E.,
Sec. 16, all.

(c) December 16, 1999:

T. 3 S., R. 28 E.,
Sec. 36, NE¼SE¼.

(d) January 12, 2000:

T. 3 S., R. 33 E.,
Sec. 16, S½S½.
T. 3 S., R. 34 E.,
Sec. 36, lot 4, NW¼SW¼.
T. 4 S., R. 37 E.,
Sec. 21, all.
T. 4 S., R. 38 E.,
Sec. 16: NE¼NW¼, S½NW¼, N½SW¼, and SW¼SW¼.
T. 5 S., R. 36 E.,
Sec. 2, SE¼;
Sec. 11, E½.

(e) February 24, 2000:

T. 3 S., R. 29 E.,
Sec. 11, all.

(f) March 27, 2000:

T. 1 S., R. 35 E.,
Sec. 36, all.
T. 1 S., R. 36 E.,
Sec. 16, N½NW¼, SE¼NW¼, NE¼, and N½SE¼;
Sec. 36, all.
T. 2 S., R. 35 E.,
Sec. 16, all.
T. 2 S., R. 36 E.,
Sec. 36, all.
T. 3 S., R. 35 E.,
Sec. 36, all.
T. 3 S., R 36 E.,
Sec. 16, all.
T. 4 S., R. 37 E.,
Sec. 1, S½N½, and S½.
T. 5 S., R. 26 E.,
Sec. 16, SE¼NE¼, and SE¼.
T. 5 S., R. 30 E.,
Sec. 3, lots 1 to 4, inclusive, S½N½, and S½.
T. 5 S., R. 33 E.,
Sec. 36, all.
T. 6 S., R. 30 E.,
Sec. 1, lots 1 to 7, inclusive, SW¼NE¼, S½NW¼, SW¼, and W½SE¼;
Sec. 2, lots 1 to 4, inclusive, S½N½, and S½.

The areas described aggregate 12,465.32 acres in Big Horn and Yellowstone Counties, Montana.

2. The transfer of the above described surface estate for such lands and all activities conducted thereon vests custody and accountability unto the United States of America, on behalf of the Bureau of Indian Affairs, in trust for the Crow Indian Tribe.

Dated: September 20, 2000.

**Thomas P. Lonnie,**

*Deputy State Director, Division of Resources.*

[FR Doc. 00–25301 Filed 10–2–00; 8:45 am]

BILLING CODE 4310–$$–P

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## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[AZ–050–00–1220–PA; 8322]**

### Arizona: Closure to Camping and Motor Vehicle Access, Yuma County, Arizona, and Imperial County, CA

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of closure to motor vehicle traffic and limitation of public access to day use only on public lands. The lands are located on the east side of the Lower Colorado River adjacent to Laguna Dam.

**SUMMARY:** Notice is hereby given that all motor vehicle access is prohibited and public use is limited to daylight hours only in the area identified as the Protection and Security Zone of Laguna Dam. The closure area is located within T.7 S., R.22 W., Sec. 14, NW¼.

**SUPPLEMENTARY INFORMATION:** Public lands adjacent to Laguna Dam, which are located within the Protection and Security Zone Area, are closed to motor vehicles, and public access is limited to day use only. This area is being closed to protect public health and safety, to prevent further resource and environmental degradation and for the protection and security of Laguna Dam. The closure will also directly benefit the public by reducing health and safety problems presently occurring. This closure will reduce problems associated with trespass, dust, illegal tree cutting, soil compaction, illegal trash and sewage disposal, unauthorized use of adjacent fee facilities and human-caused fires.

These conditions are occurring and have intensified with increasing numbers of campers and other users located within this confined area. Authority for this action is contained in 43 CFR 8364.1. This closure to motor vehicle traffic use and limitation on public use shall apply to all persons and shall remain in effect until further notice.

Exemptions to this order are granted to law enforcement, emergency vehicles, and agency personnel in the course of official duties. All other exemptions to this order are by written authorization of the Yuma Field Office Manager only.

Maps of this area are available at the Yuma Field Office, 2555 Gila Ridge Road, Yuma, Arizona. Violation of this regulation is punishable by a fine not to exceed $100,000 and/or imprisonment not to exceed 12 months. Vehicles found in violation of this closure notice are subject to being towed at the owners expense.

**EFFECTIVE DATE:** October 15, 2000.

**FOR FURTHER INFORMATION CONTACT:** Mark Lowans, Yuma Field Office, 2555 Gila Ridge Road, Yuma, Arizona 85365 (520) 317–3210.

Dated: September 20, 2000.

**Maureen A. Merrell,**

*Assistant Field Manager/Acting Field Manager.*

[FR Doc. 00–25363 Filed 10–2–00; 8:45 am]

**BILLING CODE 4310–32–U**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[MT–929–00–1910–HE–4677–UT940]**

### Montana: Filing of Amended Protraction Diagram Plats

**AGENCY:** Bureau of Land Management, Montana State Office, Interior.

**ACTION:** Notice.

**SUMMARY:** The plats of the amended protraction diagrams accepted September 15, 2000, of the following described lands are scheduled to be officially filed in the Montana State Office, Billings, Montana, thirty (30) days from the date of this publication.

**Tps. 11, 12, 13, and 14 N., Rs. 24, 25, and 26 W.**

The plat, representing the Amended Protraction Diagram 21 Index of unsurveyed Townships 11, 12, 13, and 14 North, Ranges 24, 25, and 26 West, Principal Meridian, Montana, was accepted September 15, 2000.

**T. 11 N., R. 25 W.**

The plat, representing Amended Protraction Diagram 21 of unsurveyed Township 11 North, Range 25 West, Principal Meridian, Montana, was accepted September 15, 2000.

**T. 12 N., R. 25 W.**

The plat, representing Amended Protraction Diagram 21 of unsurveyed Township 12 North, Range 25 West, Principal Meridian, Montana, was accepted September 15, 2000.

**T. 12 N., R. 26 W.**

The plat, representing Amended Protraction Diagram 21 of unsurveyed Township 12 North, Range 26 West, Principal Meridian, Montana, was accepted September 15, 2000.

**T. 13 N., R. 24 W.**

The plat, representing Amended Protraction Diagram 21 of unsurveyed Township 13 North, Range 24 West, Principal Meridian, Montana, was accepted September 15, 2000.

**T. 13 N., R. 26 W.**

The plat, representing Amended Protraction Diagram 21 of unsurveyed Township 13 North, Range 26 West, Principal Meridian, Montana, was accepted September 15, 2000.

**T. 14 N., R. 24 W.**

The plat, representing Amended Protraction Diagram 21 of unsurveyed Township 14 North, Range 24 West, Principal Meridian, Montana, was accepted September 15, 2000.

**T. 14 N., R. 25 W.**

The plat, representing Amended Protraction Diagram 21 of unsurveyed Township 14 North, Range 25 West, Principal Meridian, Montana, was accepted September 15, 2000.

**T. 14 N., R. 26 W.**

The plat, representing Amended Protraction Diagram 21 of unsurveyed Township 14 North, Range 26 West, Principal Meridian, Montana, was accepted September 15, 2000.

**Tps. 17, 18, 19, and 20 N., Rs. 30, 31, 32, and 33 W.**

The plat, representing the Amended Protraction Diagram 30 Index of unsurveyed Townships 17, 18, 19, and 20 North, Ranges 30, 31, 32, and 33 West, Principal Meridian, Montana, was accepted September 15, 2000.

**T. 17 N., R. 30 W.**

The plat, representing Amended Protraction Diagram 30 of unsurveyed Township 17 North, Range 30 West, Principal Meridian, Montana, was accepted September 15, 2000.

**T. 18 N., R. 30 W.**

The plat, representing Amended Protraction Diagram 30 of unsurveyed Township 18 North, Range 30 West, Principal Meridian, Montana, was accepted September 15, 2000.

**T. 18 N., R. 31 W.**

The plat, representing Amended Protraction Diagram 30 of unsurveyed Township 18 North, Range 31 West, Principal Meridian, Montana, was accepted September 15, 2000.

**T. 19 N., R. 31 W.**

The plat, representing Amended Protraction Diagram 30 of unsurveyed Township 19 North, Range 31 West, Principal Meridian, Montana, was accepted September 15, 2000.

**T. 20 N., R. 30 W.**

The plat, representing Amended Protraction Diagram 30 of unsurveyed Township 20 North, Range 30 West, Principal Meridian, Montana, was accepted September 15, 2000.

**T. 20 N., R. 31 W.**

The plat, representing Amended Protraction Diagram 30 of unsurveyed Township 20 North, Range 31 West, Principal Meridian, Montana, was accepted September 15, 2000.

**T. 20 N., R. 32 W.**

The plat, representing Amended Protraction Diagram 30 of unsurveyed Township 20 North, Range 32 West, Principal Meridian, Montana, was accepted September 15, 2000.

**T. 20 N., R. 33 W.**

The plat, representing Amended Protraction Diagram 30 of unsurveyed Township 20 North, Range 33 West, Principal Meridian, Montana, was accepted September 15, 2000.

The amended protraction diagrams were prepared at the request of the U.S. Forest Service to accommodate Revision of Primary Base Quadrangle Maps for the Geometronics Service Center.

A copy of the preceding described plats of the amended protraction diagrams accepted September 15, 2000, will be immediately placed in the open files and will be available to the public as a matter of information.

If a protest against these amended protraction diagrams, accepted September 15, 2000, as shown on these plats, is received prior to the date of the official filings, the filings will be stayed pending consideration of the protests.

These particular plats of the amended protraction diagrams will not be officially filed until the day after all protests have been accepted or dismissed and become final or appeals from the dismissal affirmed.

**FOR FURTHER INFORMATION CONTACT:** Bureau of Land Management, 5001 Southgate Drive, P.O. Box 36800, Billings, Montana 59107–6800.

Dated: September 19, 2000.

**Steven G. Schey,**

*Chief Cadastral Surveyor, Division of Resources.*

[FR Doc. 00–25362 Filed 10–02–00; 8:45 am]

**BILLING CODE 4310–DN–P**



## DEPARTMENT OF THE INTERIOR

### National Park Service

### Finding of No Significant Impact and Notice of Decision for the Placement of Wireless Telecommunication Facility for Bell Atlantic Mobile (Verizon Wireless) at the Ridge Trail Site in Great Falls Park, Virginia

**AGENCY:** National Park Service, Interior.

**ACTION:** Availability of the Finding of No Significant Impact (FONSI) And Notice of Decision for the Placement of Wireless Telecommunication Facility for Bell Atlantic Mobile (Verizon Wireless) at the Ridge Trail Site in Great Falls Park, Virginia.

**SUMMARY:** Pursuant to the Council on Environmental Quality Regulations and National Park Service Policy, the National Park Service (NPS) announces the availability of a Finding of No Significant Impact (FONSI) And Notice of Decision for the placement of a wireless telecommunication facility for Verizon Wireless at the Ridge Trail site in Great Falls Park, Virginia. Great Falls Park is a unit of the George Washington Memorial Parkway (GWMP). The Final Environmental Assessment includes several alternatives showing a monopole at different heights, different building sizes and an alternative technology. The alternative of a facility no higher than 126 feet disguised as a "tree" with limited ground level support structures was chosen after review of public comments from two public hearings and from written comments. This alternative provides increased service for the applicant to meet the needs of its customers while minimizing the visual impacts from various locations along the Potomac River near Great Falls in both Virginia and Maryland including the Chesapeake and Ohio Canal National Historical Park and the GWMP. It also mitigates any impact to historic resources at the site of the facility. This action will lead to the issuance of a Right-of-Way permit to Verizon Wireless. Along with the tower and the support buildings, the permit will provide for improvements to a portion of the Ridge Trail, for the purposes of construction and maintenance activities associated with the wireless communications facility. If certain lights are required for aircraft navigation, Verizon Wireless will be required to develop and install a mechanism that will allow the USPP and other law enforcement agencies to activate the light when needed for rescue operations. If it is not possible, or regulatory agencies do not allow this mechanism for the light to be controlled, the height of the tower will be lowered to tree canopy height (approximately 100 feet) where it will not be as visible and will not interfere with aircraft flights. If technological advances result in the capability of the applicant to provide this service to customers without the dedication and use of public lands, all facilities will be removed and the lands restored to the satisfaction of the NPS. This action is effective on the date of signature; however, there are reviews by various agencies, either required or recommended, that may alter the final design appearance of the facility. Regardless of those reviews and revisions, the height will not be greater than 126 feet, the support buildings will not rise higher than 20 feet above grade, and the land taken by the perimeter fence and all structures will not exceed 2,000 square feet.

**DATES:** The FONSI and Notice of Decision was signed by the National Capital Regional Director on August 30, 2000.

**ADDRESSES:** Copies of the FONSI, Notice of Decision and the Final Environmental Assessment will be available for public inspection at GWMP Headquarters, Turkey Run Park, McLean, VA, Monday through Friday, 8:00 a.m. to 4:00 p.m.; and at Great Falls Park Visitor Center on weekdays from 10 a.m. to 5 p.m. and on weekends from 10 a.m. to 6pm. An electronic copy will be available on the Great Falls Park website: *http://www.nps.gov/gwmp/GRFA EA/grfa ea title.htm*. A limited number of copies are also available upon request by contacting George Washington Memorial Parkway at (703) 289–2500.

**SUPPLEMENTARY INFORMATION:** Bell Atlantic Mobile (Verizon Wireless) proposed to construct a telecommunications facility.

**FOR FURTHER INFORMATION CONTACT:** Ron Blain at (703) 289–2516.

**Wandafa B. Hollingsworth,**

*Acting Superintendent, George Washington Memorial Parkway.*

[FR Doc. 00–25286 Filed 10–2–00; 8:45 am]

**BILLING CODE 4310–70–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Reclamation

**[DES–00–417]**

### East Bay Municipal Utility District Supplemental Water Supply Project

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice of availability of draft recirculated environmental impact report/supplemental environmental impact statement (REIR/SEIS).

**SUMMARY:** Pursuant to the National Environmental Policy Act (NEPA) and the California Environmental Quality Act, the Bureau of Reclamation (Reclamation) and the East Bay Municipal Utility District (EBMUD) have prepared a joint REIR/SEIS for the East Bay Municipal Utility District Supplemental Water Supply Project. Reclamation and EBMUD originally prepared a draft environmental impact report/draft environmental impact statement (DEIR/DEIS) for the proposed project in November 1997.

The proposed action is for EBMUD to obtain a supplemental water supply to help reduce customer deficiencies during droughts, and provide system reliability and to allow EBMUD to use its existing contract with Reclamation for delivery of water from the American River.

**DATES:** The REIR/SEIS will be available for a 45-day public review period.

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Comments are due on November 20, 2000. Public hearings on the REIR/SEIS will be held on October 17, 2000 from 7 p.m. to 9 p.m. in Sacramento and on October 19, 2000 from 7 p.m. to 9 p.m. in Oakland.

**ADDRESSES:** The public hearings will be held at the Sacramento Red Lion Inn, Yosemite Room, 1401 Arden Way, Sacramento, CA and at the EBMUD Office, 375 11th Street, Oakland CA 94623.

Copies of the REIR/SEIS may be requested from Mr. Kurt Ladensack, Water Supply Improvements Division, EBMUD, P.O. Box 24055, MS #305, Oakland, CA 94623, telephone (510) 287–1197.

See **SUPPLEMENTARY INFORMATION** section for locations where copies of the REIR/SEIS are available for inspection.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Schroeder, Environmental Specialist, U.S. Bureau of Reclamation, Central California Area Office, 7794 Folsom Dam Road, Folsom, CA 95630, telephone (916) 988–1707, or Mr. Kurt Ladensack, Water Supply Improvements Division, EBMUD, P.O. Box 24055, MS #305, Oakland, CA 94623, telephone (510) 287–1197.

**SUPPLEMENTARY INFORMATION:** The U.S. Bureau of Reclamation (Reclamation) and the East Bay Municipal Utility District (EBMUD) have prepared an REIR/SEIS for the East Bay Municipal Utility District Supplemental Water Supply Project. Reclamation and EBMUD originally prepared a draft environmental impact report/draft environmental impact statement (DEIR/DEIS) for the proposed project in November 1997.

EBMUD currently holds a contract with Reclamation, signed in 1970, for delivery of up to 150,000 acre-feet per year from the existing Folsom South Canal (FSC). The existing contract specifies a delivery location at an existing turnout structure near Grant Line Road in Sacramento County. The proposed action is for EBMUD to obtain a supplemental water supply to help in reducing customer deficiencies during droughts, and providing system reliability and to allow EBMUD to use its existing contract with Reclamation for delivery of water from the American River. Two primary alternatives were considered in the 1997 DEIR/DEIS, and alternate project configurations of one of these primary alternatives were also considered.

The first alternative considered in the 1997 DEIR/DEIS was an EBMUD-only project that involves deliveries from the American River via FSC to a new pipeline connection between FSC in south Sacramento County and EBMUD's Mokelumne Aqueducts in San Joaquin County. Alternate project alternatives considered would involve pipeline connections from the turnout location described above, which would not require an amendment of the existing water service contract, and from the terminus of FSC, which would require an amendment of the water service contract.

The second alternative considered in the 1997 DEIR/DEIS involves a joint project between EBMUD, the City of Sacramento (City), and the County of Sacramento (County). Under this project alternative, water for EBMUD and the County would be delivered through a new intake location on the American River near its confluence with the Sacramento River, which would require an amendment of the water service contract. The City and County have subsequently indicated that they are not interested in pursuing such a joint project.

During public review of the 1997 DEIR/DEIS, EBMUD and Reclamation received a number of comments. In particular, some commenters focused on the range of alternatives considered in detail in the 1997 DEIR/DEIS, and on certain impact assessment methodologies related to water temperatures and fishery resources. After reviewing these comments, EBMUD and Reclamation have decided to prepare this REIR/SEIS to address these specific comments.

This REIR/SEIS describes the environmental effects of taking delivery of water under EBMUD's contract from the lower American River near its confluence with the Sacramento River, two locations on the Sacramento River between its confluence with the American River and Freeport, California, and the Bixler location in the Sacramento-San Joaquin River Delta. Emphasis is directed toward potential effects related to American River fisheries, endangered species, CVP water users, pipeline construction, and biological resources in the EBMUD service area.

Reclamation and EBMUD are releasing the REIR/SEIS for a 45-day public review period, after which the Final EIR/EIS will be prepared and released to the public. After the required 30-day waiting period, Reclamation will be preparing a Record of Decision (ROD) and EBMUD will be preparing a Notice of Determination, both of which will state the action that will be implemented and will discuss all factors leading to the respective decision of each agency. When an alternative is selected and the ROD is signed, Reclamation and EBMUD will resume negotiations on the amendatory contract to develop contract terms that more accurately reflect the selected alternative.

Copies of the REIR/SEIS are available for inspection at the following locations:

- East Bay Municipal Utility District at 375 Eleventh Street in Oakland CA 94607–4240.
- Sacramento County Water Agency at 827 Seventh Street, Room 301 in Sacramento CA 95814.
- City of Sacramento Utilities Department at 5770 Freeport Boulevard, Suite 100 in Sacramento CA 95822.
- Sacramento County Clerk-Recorder's Office at 600 Eighth Street in Sacramento CA 95814.
- Bureau of Reclamation, Office of Public Affairs at 2800 Cottage Way in Sacramento CA 95825.
- Bureau of Reclamation, Folsom Area Office at 7794 Folsom Dam Road in Folsom CA 95630.
- Library, Bureau of Reclamation at 6th Avenue and Kipling, Room 167, Building 67, Denver Federal Center in Denver CO 80225–0007.
- Natural Resources Library, U.S. Department of the Interior at 1849 C Street NW, Main Interior Building in Washington DC 20240–0001.
- Sacramento Central Library at 828 I Street in Sacramento CA.
- Lodi Public Library at 201 W. Locust Street in Lodi CA 95240
- Caesar Chavez Central Library at 605 N. El Dorado Street in Stockton CA 95202.
- Science, Social Science & Government Documents Department, Oakland Public Library at 125 14th Street in Oakland CA 94612.
- Contra Costa County Clerk's Office at 730 Las Juntas in Martinez CA 94553.
- Alameda County Clerk's Office at 1225 Fallen Street in Oakland CA 94612.
- San Joaquin County Clerk's Office at 24 S. Hunter, Room 304 in Stockton CA 95202.
- Elk Grove Branch Library at 8962 Elk Grove Boulevard in Elk Grove CA 95624.
- Rancho Cordova Community Library at 9845 Folsom Boulevard in Rancho Cordova CA 95827.
- Herald Fire Station at 12746 Ivie Road in Herald CA 95638.
- Galt Branch Library at 1000 Caroline Avenue in Galt CA 95632.
- Tracy Public Library at 20 E. Eaton Avenue in Tracy CA 95376.
- Amador Public Library at 25 East Main in Ione CA 95640.
- Calaveras County Central Library at 891 Mountain Ranch Road in San Andreas CA 95249.
- Community Development Department at 104 Oak Street in Brentwood CA 94513.
- City Hall at 708 3rd Street in Brentwood CA 94513.
- Brentwood Library at 751 3rd Street in Brentwood CA 94513.
- Antioch Library in 501 West 18th Street in Antioch CA 95409.
- Antioch Planning Department at Third and H Street in Antioch CA 94531.
- City Clerk/Records Department at 65 Civic Avenue in Pittsburg CA 94565.
- Pittsburg Library at 80 Power Avenue in Pittsburg CA 94565.
- Contra Costa County Public Library at 1664. N. Broadway in Walnut Creek CA 94596.

Dated: September 27, 2000.

**Lester A. Snow,**

*Regional Director.*

[FR Doc. 00–25341 Filed 10–2–00; 8:45 am]

**BILLING CODE 4310–MN–P**



## DEPARTMENT OF JUSTICE

### Justice Management Division; Agency Information Collection Activities: Proposed Collection; Comments Requested

**ACTION:** Notice of Information Collection Under Review; Extension of a currently approved collection; Certification of Identity.

The Department of Justice, Justice Management Division, has submitted the following information collection request to the Office of Management and Budget for review and clearance in accordance with the Paperwork Reduction Act of 1995. This proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until December 4, 2000.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Patricia D. Harris, at 301–436–1018 or write to FOIA/PA Coordinator, Mail Management Services, Facilities and Administrative Services Staff, Justice Management Division, United States Department of Justice, 10th and Pennsylvania Ave., NW., Washington, DC 20530.

**Overview of This Collection**

(1) *The type of information collection:* Extension of a currently approved collection.

(2) *The title of the form/collection:* Certification of Identity.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form: DOJ–361. Facilities and Administrative Services Staff, Justice Management Division, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals. The information collection will be used by the Department to identify individuals requesting certain records under the Privacy Act. Without this form an individual cannot obtain the information requested.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 21,000 respondents at 15 minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 5,250 annual burden hours.

If additional information is required contact Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1220, 1331 Pennsylvania Ave, NW, Washington, DC 20530.

Dated: September 27, 2000.

**Robert B. Briggs,**

*Department Clearance Officer, Department of Justice.*

[FR Doc. 00–25342 Filed 10–2–00; 8:45 am]

**BILLING CODE 4410–26–M**

## DEPARTMENT OF JUSTICE

### Justice Management Division; Agency Information Collection Activities Proposed Collection: Comments Requested

**ACTION:** Notice of Information Collection Under Review: Extension of Previously Approved Collection, Department of Justice Procurement Blanket Clearance.

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until December 4, 2000. Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points;

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time should be directed to Mr. Larry Silvis. If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Mr. Larry Silvis, (202) 616–3754, U.S. Department of Justice, Justice Management Division, Management and Planning Staff, Suite 1400, National Place Building, 1331 Pennsylvania Avenue, NW, Washington, D.C. 20530.

**Overview of this Information Collection**

(1) *Type of information collection:* Extension of Current Collection.

(2) *The title of the form/collection:* Department of Justice Procurement blanket Clearance.

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(3) *The agency form number, if any, and applicable component of the Department sponsoring the collection:* Procurement Solicitation Documents, Justice Management Division, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Commercial organizations and individuals who voluntarily submit offers and bids to compete for contract awards to provide supplies and services required by the Government. All work statements and pricing data are required to evaluate the contractors bid or proposal.

(5) *An estimate of the total number of respondents and the amount of time for an average respondent to respond:* 7,462 respondents, 20 hours average response time..

(6) *An estimate of the total public burden (in hours) associated with this collection:* 149,240 hours annually..

If additional information is required contact: Mr. Robert B. Briggs, Department Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1220, National Place Building, 1331 Pennsylvania Avenue, NW, Washington, DC 20530.

Dated: September 27, 2000.

**Robert B. Briggs,**

*Department Clearance Officer, Department of Justice.*

[FR Doc. 00–25343 Filed 10–2–00; 8:45 am]

BILLING CODE 4410–26–M

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under the Clean Air Act

In accordance with 28 CFR 50.7, notice is hereby given that on September 12, 2000, a proposed Consent Decree ("Decree") in *United States* v. *Northwestern Steel and Wire Company,* Civil Action No. 00 C 3700 was lodged with the United States District Court for the Northern District of Illinois.

In this action the United States sought injunctive relief and civil penalties for alleged violations of the Clean Air Act, 42 U.S.C. § 741 *et seq.*, and applicable regulations thereunder, including provisions of the Illinois State Implementation Plan ("SIP") and New Source Performance Standards applicable to Northwestern Steel and Wire Company's ("NWSW's") electric arc furnaces ("EAFs") in Sterling, Illinois. The proposed Decree requires NWSW to achieve, demonstrate and maintain compliance with the Clean Air Act and applicable regulations. The Decree prohibits NWSW from operating its EAF No. after August 15, 2000 unless NWSW installs pollution capture and control equipment meeting requirements for a new source and obtains applicable construction or operating permits from the Illinois Environmental Protection Agency. In addition, the Decree requires NWSW to complete emissions testing of EAF No. 8, where NWSW has substantially upgraded the EAF and associated air pollution controls, and to submit the results of this testing to U.S. EPA by January 1, 2001. The Decree also requires NWSW to comply at all times with SIP particulate and opacity requirements at EAF No. 7, except as authorized in applicable permits for the facility. Finally, the proposed Decree provides for payment of a civil penalty in the amount of $434,460 and for implementation of three Supplemental Environmental Projects ("SEPs"), including a road paving project, installation of a new baghouse dust transfer system and installation of a new electrolytic macroetching machine intended to reduce emissions of particulate matter and hydrochloric acid vapors at the facility.

The Department of Justice will receive for a period of thirty (30) days from the date of the publication comments relating to the proposed Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, D.C. 20044–7611, and should refer to *United States* v. *Northwestern Steel and Wire Company,* Civil Action No. 00 C 3700, D.J. Ref. No. 90–5–2–1–2173.

The proposed Decree may be examined at the Office of the United States Attorney, 219 South Dearborn Street, Chicago, IL 60604, and at U.S. EPA Region 5, Office of Regional Counsel, 77 West Jackson Boulevard, Chicago, IL 60604. A copy of the proposed Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. In requesting a copy, please enclose a check in the amount of $7.00 (25 cents per page reproduction costs) payable to the Consent Decree Library.

**Bruce S. Gelber,**

*Principal Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 00–25302 Filed 10–25–00; 8:45 am]

BILLING CODE 4410–15–M

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response Compensation and Liability Act

Notice is hereby given that on August 4, 2000 a proposed partial consent decree in the action entitled *United States* v. *Woodward Metal Processing, Corp. et al.,* Civil Action No. 98–2736 (JWB/GDH), was lodged with the United States District Court for the District of New Jersey.

In this action, the United States sought the recovery of response costs incurred in connection with a removal action at the Woodard Metal Processing Corporation Site, located at 125 Woodward Street, Jersey City, New Jersey ("Site"), pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9607. The proposed consent decree, if entered by the Court, would resolve the claims of the United States against Defendant Muriel Rosenberg Fierman ("Settling Defendant"). Under the proposed consent decree, Settling Defendant would pay the United States $100,000 in five annual installments of $20,000 each, plus interest. That amount, together with the response costs already recovered by the United States in settlements with other parties, equals approximately $1,957.400 of approximately $2,364,500 in total response costs incurred by the United States in connection with the Site.

The U.S. Department of Justice will receive, for a period of thirty (30) days from the date of publication of this Notice, comments relating to the proposed consent decree. Any comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Washington, D.C. 20044–7611, and should reference the following case name and number: *United States* v. *Woodward Metal Processing Corp., et al.,* DJ # 90–11–2–1299/1.

The proposed consent decree may be examined at the offices of EPA Region II, located at 290 Broadway, New York, New York. A copy of the proposed consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, D.C. 20044–7611. In requesting a copy, please enclose a check in the amount of $7.25 (25 cents per page reproduction cost) payable to the Consent Decree Library.

**Bruce S. Gelber,**

*Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 00–25303 Filed 10–2–00; 8:45 am]

BILLING CODE 4410–15–M



## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Auto Body Consortium, INC.—"Hot Metal Gas Forming" ("HMGF")

Notice is hereby given that, on July 31, 2000, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301, *et seq.* ("the Act"), Auto Body Consortium, Inc.—"Hot Metal Gas Forming" ("HMGF") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Boeing Commercial aircraft, Seattle, WA has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Auto Body Consortium, Inc.—"Hot Metal Gas Forming" ("HMGF") intends to file additional written notification disclosing all changes in membership.

On December 21, 1998, Auto Body Consortium, Inc.—"Hot Metal Gas Forming" ("HMGF") filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 18, 1999 (64 FR 8124).

The last notification was filed with the Department of March 5, 1999. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 26, 1999 (964 FR 28516).

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 00–25305 Filed 10–2–00; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Biotechnology Research and Development Corporation ("BRDC")

Notice is hereby given that, on August 18, 2000, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Biology Research and Development Corporation ("BRDC") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, BASF Corporation, Triangle Park, NC, owned by BASF AG, Limburgerhof, Germany has been added as a party to this venture. Also, American Home Products Corporation, Parsippany, NJ has been dropped as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and BRDC intends to file additional written notification disclosing all changes in membership.

On April 13, 1988, BRDC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on May 12, 1988 (53 FR 16919).

The last notification was filed with the Department on February 11, 2000. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on August 9, 2000 (65 FR 48735).

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 00–25304 Filed 10–2–00; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Enterprise Computer Telephony Forum

Notice is hereby given that, on June 12, 2000, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Enterprise Computer Telephony Forum ("ECTF") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Dialogic, an Intel company, Parsippany, NJ; Locus Dialogue, Montreal, Quebec, Canada; Comsys International by, Zeist, The Netherlands; Eicon Technology Corporation, Montreal, Quebec, Canada; Group 2000 Nederland BV, Almelo, The Netherlands; ipGen, Inc., Dallas, TX; Lasat Networks, Bagsvaerd, Denmark; Necsy SPS, Padova, Italy; NetPhone, Marlborough, MA; NovaVox AG, Zuerich, Switzerland; and Temic, Stuttgart, Germany, have been added as parties to this venture. Also, Amteva Technologies, Glen Allen, VA; CSS TrexCom, Inc., Norcross, GA; Cisco Systems, Manchester, NH; Dialogic Corporation, Parsippany, NJ; Excel Switching Corporation, Hyannis, MA; Microsoft Corporation, Redmond, WA; Nokia Networks, Helsinki, Finland; Nortel Networks, Verdun, Quebec, Canada; SI Logic Limited, Aldermaston, England, United Kingdom; Analogic Corporation, Peabody, MA; Ariel Corporation, Carnbury, NJ; Artesyn Communications Products, Inc., Madison, WI; Bell Actimedia, Scarborough, Ontario, Canada; BST Communication Technology, Ltd., Guan Zhou, Peoples Republic of China; Comverse Network Systems, Andover, MA; Daimler-Benz Aerospace, Stuttgart, Germany; De Te We Kommunications, Berlin, Germany; ERNI Components, Inc., Chester, VA; E.T.R.I, Taejon, Republic of Korea; Executone, Milford, CT; Force Computers, San Jose, CA; Frequentis Nachrichtentechnik Ges.m.b.H, Vienna, Austria; Global Communications Systems Research, Alexandria, VA; Hewlett Packard Company, Cupertino, CA; Intervoice, Dallas, TX; Marconi Communications, Coventry, England, United Kingdom; Mitsubishi Electronic Corporation, Kanagawa, Japan; Periphonics Corporation, Bohemia, NY; Sonetech, Inc., Sterling, VA; Syntellect, Inc., Phoenix, AZ; Teloquent Communications, Billerica, MA; and Xerox Coporation, Palo Alto, CA, have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and ECTF intends

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to file additional written notifications disclosing all changes in membership.

On February 20, 1996, ECTF filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on May 13, 1996 (61 FR 22074).

The last notification was filed with the Department on January 6, 2000. A notice was published in the **Federal Register** on July 11, 2000 (65 FR 42725).

**Constance K. Robinson,**

*Director of Operations Antitrust Division.*

[FR Doc. 00–25307 Filed 10–2–00; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to The National Cooperative Research and Production Act of 1993—Southwest Research Institute ("SwRI"): Joint Industry Program—Development of an Instrument for Corrosion Detection in Insulated Pipes Using a Magnetostrictive Sensor

Notice is hereby given that, on July 12, 2000, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301, *et seq.* ("the Act"), Southwest Research Institute ("SwRI"): Joint Industry Program—Development of an Instrument for Corrosion Detection in Insulated Pipes Using a Magnetostrictive Sensor has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership/project status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Ishikawajima-Harima Heavy Industries Co., Ltd., Yokohama, Japan has been added as a party to this venture; Southwest Research Institute, San Antonio, TX has been dropped as a party to this venture; and the period of peformance has been extended to September 30, 2000. In addition, Chinese Petroleum Corporation, Taipei, Taiwan, Japan Energy Corporation, Niizo-Minami, Japan and TOA nondestructive Inspection Co., Ltd., Kitakyuushu, Japan have been participants in this group research project since December 11, 1998, December 1, 1997 and April 28, 1998 respectively, but due to an administrative oversight were inadvertently not noted as such in previous notices to the Federal Trade Commission and the Department of Justice.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and southwest Research Institute ("SwRI"): Joint Industry Program—Development of an Instrument for Corrosion Detection in Insulated pipes Using a Magnetostrictive Sensor intends to file additional written notification disclosing all changes in membership.

On October 25, 1995, Southwest Research Institute ("SwRI"): Joint Industry Program—Development of an Instrument for Corrosion Detection in Insulated Pipes Using a Magnetostrictive Sensor filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 23, 1996 (61 FR 7020).

The last notification was filed with the Department on March 6, 2000. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on July 11, 2000 (65 FR 42727).

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 00–25308 Filed 10–2–00; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—VSI Alliance

Notice is hereby given that, on July 13, 2000, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* ("the Act"), VSI Alliance has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plantiffs to actual damages under specified circumstances. Specifically, Alcatel Internetworking (PE), Inc., Spokane, WA; Artec Design Group, Tallinn, Estonia; Ben Cheese Electronic Design, Royston, United Kingdom; Chip Implementation Center, Hsin-Chu, Taiwan; Johan Cockx (individual member), Leuven, Belgium; Dr. Peter Green (individual member), Manchester, United Kingdom; Innoveda Ltd., Herzliyya, Israel; Lavetate Design Systems, Inc., Beaverton, OR; Malardalen University, Vasteras, Sweden; Pixelfusion Ltd., Bristol, Avon, United Kingdom; Siroyan Limited, Reading, England, United Kingdom; Socip Group of Korea, Seoul, Republic of Korea; Thomson Multimedia, Villingen-Schwennigen, Germany; and TriMedia Technologies, Sunnyvale, CA have been added as parties to this venture. Also, Actel Corporation, Sunnyvale, CA; Escalade, Santa Plano, TX; NetLogic Microsystems, Inc., Mountain View, CA; SandCraft, Inc., Santa Clara, CA; Scottish Enterprise, Livingston, Scotland, United Kingdom; and VAutomation, Inc., Nashua, NH have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and VSI Alliance intends to file additional written notification disclosing all changes in membership.

On November 29, 1996, VSI Alliance filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 4, 1997 (62 FR 9812).

The last notification was filed with the Department on April 18, 2000. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on June 30, 2000 (65 FR 40694).

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 00–25306 Filed 10–2–00; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Manufacturer of Controlled Substances; Notice of Application

Pursuant to section 1301.33(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on July 27, 2000, Chattem Chemicals, Inc., 3801 St. Elmo Avenue, Building 18, Chattanooga, Tennessee 37409, made application by letter to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

| Drug | Schedule |
|---|---|
| N-Ethylamphetamine (1475) | I |
| 4-Methoxyamphetamine (7411) | I |
| 2,5-Dimethoxyamphetamine (7396). | I |
| Difenoxin (9168) | I |



| Drug | Schedule |
|---|---|
| Methylphenidate (1724) | II |
| Pentobarbital (2270) | II |
| Secodbarbital (2315) | II |
| Diphenoxylate (9170) | II |
| Hydrocodone (9193) | II |

The firm plans to bulk manufacture the listed controlled substances to produce products for distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than December 4, 2000.

Dated: September 25, 2000.

**John H. King,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 00–25370 Filed 10–2–00; 8:45 am]

BILLING CODE 4410–09–M

## DEPARTMENT OF JUSTICE

### Office of Justice Programs

**[OJP (OJP)–1303]**

### Meeting of the Global Justice Information Network Advisory Committee

**AGENCY:** Office of Justice Programs, Office of the Assistant Attorney General, Justice.

**ACTION:** Notice of meeting.

**SUMMARY:** Announcement of a meeting of the Global Justice Information Network Advisory Committee to discuss the Global Initiative, as described in Initiative A07 "Access America: Re-Engineering Through Information Technology."

**DATES:** The meeting will take place on Wednesday, October 18, 2000, from 9:00 a.m. to 5:00 p.m. ET.

**ADDRESSES:** The meeting will take place at the Hotel Washington, Ballroom, 515 15th Street, NW., Washington, DC 20004; Phone: (202) 638–5900.

**FOR FURTHER INFORMATION CONTACT:** To register to attend the meeting, please contact Karen Sublett, Global Network Coordinator, Office of the Assistant Attorney General, Office of Justice Programs, 810 7th Street NW., Suite 6400, Washington, DC 20531; Phone: (202) 616–3463. [This is not a toll-free number]. Anyone requiring special accommodations should contact Ms. Sublett at least seven (7) days in advance of the meeting.

**SUPPLEMENTARY INFORMATION:**

**Authority**

The Global Justice Information Network Advisory Committee was established pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended.

**Purpose**

The Global Justice Information Network Advisory Committee (GAC) will act as the focal point for justice information systems integration activities in order to facilitate the coordination of technical, funding, and legislative strategies in support of the Administration's justice priorities.

The GAC will guide and monitor the development of the Global concept. It will advise the Attorney General, the President (through the Attorney General), and local, state, tribal, and federal policymakers in the executive, legislative, and judicial branches and advocate for strategies for accomplishing a Global Network capability.

The Committee will meet to address the Global Initiative, as described in Initiative A07 "Access America: Re-Engineering Through Information Technology". This meeting will be open to the public, and registrations will then be accepted on a space available basis. Interested persons whose registrations have been accepted may be permitted to participation in discussions at the discretion of the meeting chairman and with the approval of the Designated Federal Employee (DFE). Further Information about this meeting can be obtained from Karen Sublett, DFE, at (202) 616–3463.

Dated: September 27, 2000.

**Karen Sublett,**

*Global Network Coordinator, Office of the Assistant Attorney General, Office of Justice Programs.*

[FR Doc. 00–25281 Filed 10–2–00; 8:45 am]

BILLING CODE 4410–18–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Workforce Investment Act: Migrant and Seasonal Farmworker Programs Under Section 167

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Notice of proposed data collection.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation process to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This process helps to ensure that requested data can be provided in the desired format, reporting burdens are minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration (ETA), in consultation with the Migrant and Seasonal Farmworker Employment and Training Advisory Committee, is soliciting comments concerning the proposed institution of a "reporting and performance standards system for National Farmworker Jobs Programs under title I, section 167 of the Workforce Investment Act (WIA)". A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the address section of this notice.

**DATES:** Written comments must be submitted to the office listed in the addressee section below on or before December 4, 2000.

**ADDRESSES:** Alicia Fernandez-Mott, Chief, Division of Seasonal Farmworker Programs, Employment and Training Administration, U.S. Department of Labor, Room N–4641, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 219–8502 ext 121 (VOICE) or (202) 219–6338 (FAX) (these are not toll-free numbers) or INTERNET: afernandezmott@doleta.gov.

**FOR FURTHER INFORMATION CONTACT:** Copies of the information collection request are available for inspection in the Division of Seasonal Farmworker Programs at the above address, and will be mailed to persons who request copies in writing from Alicia Fernandez-Mott at the above address.

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**SUPPLEMENTARY INFORMATION:**

**I. Background.**

The Employment and Training Administration of the Department of Labor, in consultation with the Migrant and Seasonal Farmworker Employment and Training Advisory Committee, is requesting approval of a new reporting and performance standards system for Workforce Investment Act (WIA) title I, section 167, National Farmworker Jobs Program grantees for three program years (July 1, 2000 to June 30, 2003). In evaluating the last several years' reporting experience of the grantees who received funding under JTPA section 402, and in light of the statutory requirements of WIA applicable to section 167 grantees, the Department has developed the following recommended planning and reporting requirements which it believes supports the statutory requirements under WIA as they relate to the National Farmworker Jobs Program.

**II. Desired Focus of Comments**

The Department of Labor is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's burden estimate for the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

**III. Current Action**

This proposed ICR will be used by approximately 53 Workforce Investment Act (WIA) section 167 grantees as the primary reporting and performance measurement vehicle for enrolled individuals, their characteristics, training and services provided, outcomes, including job placement and employability enhancements, as well as detailed financial data on program expenditures.

*Type of Review:* New.

*Agency:* Employment and Training Administration.

*Title:* Planning, reporting, and performance system for WIA title I, section 167, National Farmworker Jobs Program grantees.

*OMB Number:* 1205–0NEW.

*Catalog of Federal Domestic Assistance Number:* 17.255 (this would replace similar Migrant and Seasonal Farmworker employment and training activities conducted under section 402 of the Job Training Partnership Act).

*Record Keeping:* Grantees shall retain supporting and other documents necessary for the compilation and submission of the subject reports for three years after submission of the final financial report for the grant in question [29 CFR 97.42 and/or 29 CFR 95.53]

*Affected Public:* State agencies; private, non-profit corporations; and consortia of any of the above.

*Cite/Reference/Form/etc.:* The collection instrument is the National Farmworker Jobs Program Planning, Reporting, and Performance System and related instructions. OMB-approved forms will be provided for use in gathering information at the grantee field office level.

*Total Respondents:* 53.

*Frequency:* Annually for planning information; quarterly for both financial information and participation and characteristics information.

*Total Annual Responses:* 42,833.

Planning—53 (53 times 1).

Reporting—424 (53 times 4, times 2).

Recordkeeping (NFJP SPIR)—42,250 records.

There are four statutorily-required quarterly financial status reports per grantee per year, by year of appropriation. For participation and characteristics information, there are four quarterly submissions per year, regardless of the year(s) of funding expended during the program year. There is only one format for the participation and characteristics report.

*Average Time per Response:*

Annual Service Plan (Narrative)—20 hours.

Budget Information Summary (BIS)—15 hours; (ETA).

Program Planning Summary (PPS)—16 hours; (ETA).

Financial Status Report (FSR)—7 hours; (ETA).

Program Status Summary (PSS)—7 hours; (ETA).

Recordkeeping (SPIR)—3 hours (per participant record) The individual time per response varies widely depending on the degree of automation attained by individual grantees. Grantees also vary according to the numbers of individuals served in each program year. If the grantee has a fully-developed and automated MIS, the response time is limited to one-time programming plus processing time for each response. It is the Department's desire to see as many WIA section 167 grantees as possible become computerized, so that response time for reporting will eventually sift down to an irreducible minimum with an absolute minimum of human intervention.

*Estimated Total Burden Hours:*

132,601 (NFJP—minimum)—42,833 total responses.

Planning Narrative (NFJP)—53 responses times 20 hours per response equals 1,060 burden hours.

BIS (NFJP)—53 responses times 15 hours per response equals 795 burden hours.

PPS (NFJP)—53 responses times 16 hours per response equals 848 burden hours.

FSR (NFJP)—212 (53 X 4) responses times 7 hours per response equals 1,484 burden hours.

PSS (NFJP)—212 (53 X 4) responses times 7 hours per response equals 1,484 burden hours.

Participant Records—42,250 response. (SPIR records) times 3 hours per response equals 126,750 burden hours.

The use of the term "minimum" refers to the fact that an individual grantee must continue to report on expenditures by year of appropriation until those funds are completely expended, or "zeroed out". Thus, if more that one year's appropriation is expended in a given quarter, two (or more) FSRs must be submitted for that period, corresponding to the fund source(s) utilized.

*Total Burden Cost (capital/startup):* $–0–.

*Total Burden Cost (operating/maintaining):* $1,989,015. (132,601 total hours per annual response cycle times an estimated average wage of $15.00 per grantee staff hour). As noted, these costs will vary widely among grantees, from nearly no additional cost to some higher figure, depending on the state of automation attained by each grantee and the wages paid to the staff actually completing the various forms. All costs associated with the submission of these forms are allowable grant expenses.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 27th day of September, 2000.

**James C. DeLuca,**

*Acting Director, Office of National Programs.*

[FR Doc. 00–25353 Filed 10–2–00; 8:45 am]

**BILLING CODE 4510–30–U**



**DEPARTMENT OF LABOR**

**Employment and Training Administration**

## Unemployment Compensation Denied Claims Accuracy: Proposed Information Collection and Request for Public Comment

**AGENCY:** Employment and Training Administration (ETA), Labor.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that the requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

ETA is soliciting comments concerning the proposed new collection of information on the accuracy of decisions to deny claims for unemployment compensation (UC). ETA is seeking Office of Management and Budget (OMB) approval under the PRA95 to establish Denied Claims Accuracy (DCA) as a component of the quality control (QC) program in the Federal-State unemployment insurance system (20 CFR Part 602). A copy of the proposed data collection instrument is available on the ETA Office of Workforce Security (OWS) Web site, *http://workforcesecurity.doleta.gov/*, or can be can be obtained by contacting the office listed in the Addresses section below.

**DATES:** Written comments must be submitted to the office listed in the Addresses section below on or before December 4, 2000.

**ADDRESSES:** All comments about this proposed collection of information should be addressed to: Andrew W. Spisak, Office of Workforce Security, Employment and Training Administration, U.S. Department of Labor, Room S–4231, 200 Constitution Avenue, NW., Washington, DC 20210.

**FOR FURTHER INFORMATION CONTACT:** Andrew W. Spisak, telephone: 202–219–5223, ext. 157 (this is not a toll-free number); fax: 202–219–8506; e-mail: aspisak@doleta.gov.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Since 1987, all State Employment Security Agencies (SESA's), except the Virgin Islands, have been required by regulation at 20 CFR Part 602 to operate a quality control program to assess the accuracy of benefit payments in three programs: State Unemployment Insurance (UI), Unemployment Compensation for Federal Employees (UCFE), and Unemployment Compensation for Ex-Servicemembers (UCX). This program, implemented under the Department's authority at Sections 303(a)(1) and 303(b)(1) of the Social Security Act, was initially called Benefits Quality Control but was renamed Benefit Accuracy Measurement (BAM) in 1996.

The BAM methodology requires each State to draw weekly samples of UC payments. Minimum annual samples are set at 360 cases in the ten States with the smallest volume of UC claims and 480 cases in all other States. A specially trained staff of investigators reviews agency records and contacts the claimant, employer(s) and third parties to verify all the information in agency records and obtain additional information pertinent to the benefit amount for the sampled week. States have the flexibility to verify the UC payment information by telephone, mail, e-mail or fax, as they deem appropriate.

Using the new and verified information, the investigators determine what the benefit payment should have been to accord fully with State law. Differences between the actual and reconstructed payments are coded as underpayment or overpayment errors, and data on payment error type (for example, fraud, nonfraud, technically proper), cause, and responsible party are recorded in electronic databases in each State and in the Department of Labor National Office in Washington, D.C. The SESA's and the Department use this information to estimate payment accuracy rates, monitor program quality, guide possible future program improvements, inform system stakeholders, and perform various analyses. The program is operated under OMB approval, OMB number 1205–0245; approval expires October 31, 2002.

During the public consultation process which preceded the establishment of the QC/BAM program, several public interest groups representing employers, employees, and State government agencies proposed underlying principles to govern the program. The Department adopted these consensus principles in Unemployment Insurance Program Letter (UIPL) No. 4–86 (December 20, 1985).

In the final rule establishing the QC program for UC, published in the **Federal Register** (FR) at 52 FR 33520 (September 3, 1987), one of the consensus principles states that QC would be expanded to include the review/investigation of claims that had been denied [52 FR 33522].

In addition, 20 CFR 602.2 states that:

> Other elements of the QC program (*e.g.*, interstate, extended benefits programs, benefit denials, and revenue collections) will be phased in under a schedule determined by the Department in consultation with State agencies.

States determine claimant eligibility for UC in three broad areas: monetary determinations, separation determinations, and nonseparation determinations. Monetary determinations are made when a claim is initially filed (or when a claim is made to establish a new benefit year) to verify that the claimant has sufficient wage credits in the base period and has satisfied other monetary requirements to demonstrate attachment to the labor force.

Separation determinations are made when the claim is initially filed or when an additional claim is filed in the claimant's benefit year after a period of intervening employment. Separation determinations evaluate whether the claimant's unemployment is involuntary and through no fault of the claimant.

Nonseparation determinations verify that the claimant is meeting the eligibility requirements of State law for a specific week of unemployment.

In 1986–87, five States conducted a one-year pilot to measure the accuracy of decisions to deny UC eligibility for monetary, separation, and nonseparation reasons. These States tested three sampling designs and used the BAM case investigation methodology. Although the pilot identified significant rates of error in the denial decisions that were investigated, national implementation of a program to measure the accuracy of denied claims was deferred because of resource constraints and other program priorities, such as the implementation of Benefit Timeliness and Quality and the Tax Performance System. Since the 1986–87 denied claims pilot, several groups, including organized labor, employee rights legal support groups, the Department of Labor's Office of

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Inspector General, and the Vice President's National Performance Review have urged the Department to measure the accuracy of decisions that deny UC benefit claims.

In 1995 the Performance Enhancement Work Group (PEWG), which consisted of senior SESA managers and Federal staff, recommended several changes in the way UC operational performance was measured and improved. The Department accepted most of the recommendations and has implemented them as UI PERFORMS. UIPL No. 41–95 (August 24, 1995) describes in detail the UI PERFORMS performance management system. Among the PEWG recommendations with respect to BAM were: (1) The implementation of a system to measure the accuracy of decisions to deny UC claims; (2) reductions in the BAM paid claims sample allocations; and (3) a modification of data collection methods to provide the States more flexibility in using program resources, which would be redirected to support UI PERFORMS continuous improvement activities, including investigating the accuracy of denied claims.

UIPL No. 15–96 (April 2, 1996) described the proposed changes and solicited comments from the SESA's. According to the Attachment to the UIPL, "Measuring UI Benefit Payment Accuracy Under UI PERFORMS: Proposed Changes to Benefits QC":

> Under the proposal, staff freed up because of sample reductions or changes in how verifications are conducted will be available for investigating denied claims and other UI Performs [sic] activities, including taking other performance measurements.

The implementation of the changes and the reallocation of BAM resources were reported in UIPL No. 3–97 (November 20, 1996).

Because significant time had elapsed since the initial denied claims pilot, the Department conducted a new pilot to guide implementation of DCA. The principal objectives of the pilot were:

- To test the operational feasibility of applying the BAM paid claims investigation methodology to denied UC claims, including both intrastate and interstate claims; and
- To evaluate whether the accuracy of decisions to deny UC claims for separation or nonseparation eligibility reasons is adequately addressed through the quarterly reviews of nonmonetary determination quality (ET Handbook 301) or whether the accuracy of these nonmonetary determinations can be measured only through the more comprehensive BAM fact-finding process.

Five States (Nebraska, New Jersey, South Carolina, West Virginia, and Wisconsin) participated in this new pilot. Sampling and investigation of denied UC claims were conducted from September 1997 through September 1998. A final pilot evaluation report was issued in May 1999 and is available on the OWS Web site at: *http://workforcesecurity.doleta.gov.*

The five States that participated in the new pilot demonstrated that the BAM case investigation methodology was easy to implement for both intrastate and interstate claims, was successful in detecting erroneously denied claims, and identified valuable information on the cause, responsible party, point of detection, and prior agency action for improperly denied claims that SESA's could use to improve UC operations. The new pilot also demonstrated that the results of the quarterly evaluations of nonmonetary determination quality are not a reliable predictor of the accuracy of decisions to deny claims for UC. Because of the fundamental differences in the methodologies used in BAM and the nonmonetary quality review, both programs contribute important but distinct information within UI PERFORMS.

In general, the new pilot confirmed the results of the initial pilot that significant percentages of UC claims in all three eligibility areas (monetary, separation, and nonseparation) were incorrectly denied, although accuracy rates varied both among States and among the three eligibility areas. These results are summarized in Table 1.

TABLE 1.—PERCENTAGE OF CLAIMS ERRONEOUSLY DENIED BY TYPE OF DETERMINATION—1997–98 DENIALS PILOT

| State | Monetary (pct.) | Separation (pct.) | Nonseparation (pct.) |
|---|---|---|---|
| Nebraska | 10.1 ( 9.6) | 4.0 ( 3.5) | 14.0 (13.5) |
| New Jersey | 12.6 ( 8.2) | 11.3 ( 6.2) | 14.4 (11.8) |
| South Carolina | 23.4 (16.2) | 5.0 ( 3.0) | 18.5 (17.0) |
| West Virginia | 15.1 (13.5) | 3.4 ( 2.9) | 6.8 ( 5.8) |
| Wisconsin | 18.2 ( 9.4) | 19.7 (16.3) | 21.7 (16.3) |
| 1997–98 Pilot Average | 16.0 (11.2) | 8.7 ( 6.4) | 15.0 (12.9) |
| 1986–87 Pilot Average | 23 | 15 | 14 |

**Note:** The first percentage in each column is the unadjusted percentage of erroneous denials. The second percentage, in parentheses, is adjusted for appeals, redeterminations, and cases which the agency was in the process of resolving.

## II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

## III. Current Actions

The Department of Labor proposes the following methodology and operational characteristics of DCA:

*Sample Design and Sample Sizes:* Each week, States will select systematic random samples from three separate sampling frames constructed from the universes of claims for UC for which eligibility was denied for monetary, separation, or nonseparation reasons. States will use the BAM population edit and sample selection software program, which was distributed to all SESA's in January 1998, to select the weekly samples. This software uses a systematic random sampling algorithm. The Department will distribute a table of random start numbers to use with the BAM/DCA sample selection program.

States will sample a minimum of 150 cases of each type of denial in each calendar year. Unlike BAM paid claims accuracy, in which the ten States with the smallest workloads sample paid claims at the reduced level of 360 cases per year, all States are allocated the same number of DCA cases. The Department considers the annual sample allocation of 150 cases for each of the three types of denials to be the minimum sample size required to produce DCA rate estimates with acceptable precision and to yield a sufficient number of error cases to produce program improvement information. The proposed DCA sample allocations also take into account the likelihood of DCA claimant response rates less than 100 percent. This will result in fewer sample cases than the allocated levels that will be available to estimate accuracy rates and to provide information on error causes, responsibility, and other information that can be used for program improvement.

Table 2 shows the precision, as measured by 95 percent confidence intervals, and the number of sample cases expected to be in error by various error rates for the proposed DCA sample size and the current BAM paid claims sample allocations.

TABLE 2.—95 PERCENT CONFIDENCE INTERVALS AND EXPECTED NUMBER OF ERROR CASES BY ANNUAL SAMPLE SIZE

| Error rate (%) | Denied claims accuracy | | Benefit accuracy measurement | | | |
|---|---|---|---|---|---|---|
| | Sample=150 | | Sample=360 | | Sample=480 | |
| | 95 pct. C.I. (+/−) | Expected error cases * | 95 pct. C.I. (+/−) | Expected error cases * | 95 pct. C.I. (+/−) | Expected error cases * |
| 5 | 3.5 | 8 | 2.3 | 18 | 2.0 | 24 |
| 10 | 4.8 | 15 | 3.1 | 36 | 2.7 | 48 |
| 15 | 5.7 | 23 | 3.7 | 54 | 3.2 | 72 |
| 20 | 6.4 | 30 | 4.1 | 72 | 3.6 | 96 |
| 25 | 6.9 | 38 | 4.5 | 90 | 3.9 | 120 |
| 30 | 7.3 | 45 | 4.7 | 108 | 4.1 | 144 |
| 35 | 7.6 | 53 | 4.9 | 126 | 4.3 | 168 |
| 40 | 7.8 | 60 | 5.1 | 144 | 4.4 | 192 |
| 45 | 8.0 | 68 | 5.1 | 162 | 4.5 | 216 |
| 50 | 8.0 | 75 | 5.2 | 180 | 4.5 | 240 |

* Rounded to the nearest integer.

**Note:** Confidence intervals are expressed as the number of percentage points +/- for the estimated error rate. Example: For an estimated error rate of 20% and an annual sample size of 150, the 95 percent confidence interval is 20.0% + 6.4 (13.6%-26.4%).

The sampling errors in States with relatively small populations of denied claims will be slightly lower, due to the higher percentage of the population that is sampled.

Table 3 shows the 95 percent confidence intervals for several error rates and sampling fractions, for a sample size of 150 cases. Based on CY 1999 data, a sample of 150 denials exceeds 10 percent of the population of monetary denials in eight States; and exceeds 10 percent of the population of separation denials in one State. Sampling fractions for populations of nonseparation denials are less than 10 percent in all States.

TABLE 3.—95 PERCENT CONFIDENCE INTERVALS BY ERROR RATE AND PERCENTAGE OF POPULATION SAMPLED

[Sample size=150 cases]

| Percent of population sampled | Error rate (percent) | | | | |
|---|---|---|---|---|---|
| | 5 | 10 | 15 | 20 | 25 |
| 1 | 3.5 | 4.8 | 5.7 | 6.4 | 6.9 |
| 2 | 3.5 | 4.8 | 5.7 | 6.3 | 6.9 |
| 3 | 3.4 | 4.7 | 5.6 | 6.3 | 6.8 |
| 4 | 3.4 | 4.7 | 5.6 | 6.3 | 6.8 |
| 5 | 3.4 | 4.7 | 5.6 | 6.2 | 6.8 |
| 10 | 3.3 | 4.6 | 5.4 | 6.1 | 6.6 |
| 15 | 3.2 | 4.4 | 5.3 | 5.9 | 6.4 |
| 20 | 3.1 | 4.3 | 5.1 | 5.7 | 6.2 |
| 25 | 3.0 | 4.2 | 4.9 | 5.5 | 6.0 |

*Scope:* Denied intrastate and interstate claims in the State UI, UCFE, and UCX programs will be included in DCA. In addition, interstate claims in the UI, UCFE, and UCX programs will be included in the BAM paid claims sampling frames, effective with the implementation of DCA. Paid and denied interstate claims will be included in the sampling frames of the interstate liable State.

*Operational Definitions of Sampling Frames:* Unless otherwise stated, definitions refer to those used in ET Handbook 401, 3rd edition. ETA report cell references are those used in ET Handbook 402, 4th edition.

(1) Monetary Denials

*Include* all initial claims that meet the definition for inclusion in the ETA 5159 Claims and Activities report on lines 101 (State UI), 102 (UCFE, No UI), and 103 (UCX only), for item 2 (new intrastate, excluding transitional), item 6 (transitional), and item 7 (interstate

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received as liable State) and for which eligibility was denied because of:

- Insufficient wages,
- Insufficient hours/weeks/days,
- Failure of high quarter wage test,
- Transitional wage requirement, or
- Other State monetary eligibility requirement.

*Exclude* denied claims made under the Short Time Compensation (STC) (Workshare), Extended Benefits (EB), Trade Readjustment Allowance (TRA), Disaster Unemployment Assistance (DUA), or any temporary Federal-State supplemental compensation programs.

(2) Separation Denials

*Include* all separation determinations that meet the definition for inclusion in the ETA 9052 Nonmonetary Determinations Time Lapse (Detection Date) report in cells c1 (intrastate), c5 (interstate), and c193 (multi-claimant) *and* for which eligibility was denied based on any of the following issues:

- Lack of work (for example, reduction in force, temporary lay off),
- Voluntary quit,
- Discharge,
- Labor dispute,
- Military, or
- Job attachment (claimant not separated, including leave of absence).

*Exclude* denied claims made under the STC, EB, TRA, DUA, or any temporary Federal-State supplemental compensation programs.

(3) Nonmonetary-Nonseparation Denials

*Include* all nonmonetary-nonseparation determinations that meet the definition for inclusion in the ETA 9052 Nonmonetary Determinations Time Lapse (Detection Date) report in cells c97 (intrastate), c101 (interstate), and c193 (multiclaimant) *and* for which eligibility was denied based on any of the following issues:

- Able and/or available to work,
- Actively seeking work,
- Disqualifying/unreported income,
- Refusal of suitable work,
- Failure to apply for or accept referral,
- Failure to report,
- Failure to register with the employment service, or
- Other nonseparation eligibility issue (for example, alienstatus, athlete, school employee, seasonality, determination of UI status, removal of disqualification).

*Exclude* denied claims made under the STC, EB, TRA, DUA, or any temporary Federal-State supplemental compensation programs.

*Frequency and Timing:* State agencies will create a sampling frame file each week. The sampling frame includes all decisions to deny UC claims issued during the period 12:00 a.m. Sunday to 11:59 p.m. Saturday. The date of the determination is the date that the notice of denial is mailed to the claimant, presented to the claimant in-person, or otherwise transmitted to the claimant by the State agency. If no notice is required, it is the date that the denial action was entered into the agency's record system, that a stop payment order was issued, or that an offset was applied.

In the 1997–98 DCA pilot, several claims for UC were sampled which were initially denied for insufficient wages but were subsequently determined to be monetarily eligible upon the addition of wages from out-of-State employers (combined wage claims) or Federal wages (UCFE and/or UCX programs). The exchange of information on UCFE and UCX wages is in the process of being automated and expedited. However, in order to allow time for States to request and receive Federal and combined wage credits, the sampling frame for monetary denials will be constructed two weeks after the week ending date of the initial claim. For example, for all new and transitional initial claims filed during the week ending June 10, 2000, the sampling frame will consist of claims for which the most recent determination as of June 24 denies monetary eligibility.

*Case Investigation:* All denied claims sample cases will be investigated using the BAM methodology, which is documented in ET Handbook 395. Investigators will review agency records and contact the claimant, employer(s), and all other relevant parties to verify information in agency records or obtain additional information pertinent to the decision to deny eligibility. Unlike the investigation of paid claims, in which all decisions affecting claimant eligibility that precede the compensated week selected for the sample are evaluated, the investigation of denied claims will be limited to the issue, or issues, upon which the denial decision was based. For example, if a continued week claim is denied because the agency determined the claimant was not available for work, then only the availability issue will be investigated; the monetary, separation and any prior nonmonetary determinations will not be investigated. Like the investigation of paid claims, States have the flexibility to conduct the investigation of denied claims for UC by in-person interview, telephone, mail or fax, as they deem appropriate.

*Resources:* When BAM paid claims sample sizes were reduced in accordance with PEWG recommendations to the 480/360 levels in 1996 in preparation for DCA, State staff allocations were adjusted to provide sufficient resources to conduct BAM paid and denied claims accuracy, Benefit Timeliness and Quality, Tax Performance System, and UI PERFORMS continuous improvement activities. Two full-time equivalent (FTE) staff positions allocated to continuous improvement activities will support DCA. States will decide how to allocate/apportion among staff BAM paid and denied claims sample cases.

*ADP Support:* UIPL No. 1–98 (October 20, 1997) included the documentation for the revised BAM population edit and sample selection program, which was distributed to all SESA's in January 1998, and the specifications for programming required to construct the DCA sampling frame files, for which the SESA's are responsible. DCA applications software, which was developed for the DCA pilot, are installed on the State Sun Ultra 10 computers provided by the Department. Although this software is functional and can be used to conduct DCA, several modifications of and additions to this software have been identified and will be released to the States in advance of the national implementation of DCA. In addition, the BAM sample selection program will be modified to include paid interstate claims in the BAM samples and to reflect revisions that were identified in the DCA pilot, such as the two-week lag in sampling monetary denials. States will have to recompile the revised COBOL program on their ADP system.

*Data Recording and Reports:* States will record the results of their investigations using a standard data collection instrument and suite of software supplied by the Department. The Department will collect this information from the State databases, store the data in a database in the National Office in Washington, D.C., and produce annual statistics on the accuracy rates for each of the three types of denied claims by State.

*Training:* The Department will conduct DCA training for State staff during the calendar quarter preceding national implementation. The Department will issue a directive containing details on the times, locations, and content of the training in advance of the sessions.

*Type of Review:* New.

*Agency:* Employment and Training Administration.

*Title:* Unemployment Compensation Denied Claims Accuracy.

*Record keeping:* States are required to follow their State laws regarding public record retention in retaining BAM paid and denied claims records.

*Affected Public:* Individuals; Businesses; Other for-profit/not-for-profit organizations; Farms; Federal, State, Local, and Tribal Governmental entities.

*Frequency:* Weekly.

*Total Respondents:* 1,395 per week (includes claimants, employers, third parties, and SESA BAM/DCA staff).

*Total Responses:* 72,540 per year (52 State Agencies/1,395 per State; includes claimants, employers, third parties, and SESA DCA staff).

*Estimated Time Per Response:* Claimant—0.5 hours; Employers and Third Parties—0.5 hours; SESA BAM/DCA staff—6.67 hours.

*Total Burden Hours:* 180,375 hours.

*Total Burden Cost (capital/startup):* $1,014,000 (52 State Agencies/$19,500 per State).

*Total Burden Cost (operating/maintaining):* $4,264,000 (annual) (approximately $82,000 per State).

Comments submitted in response to this request will be summarized and/or included in the request for OMB approval of the information collection request; they will also become a matter of public record.

Signed in Washington, D.C., on September 26, 2000.

**Grace A. Kilbane,**

*Administrator, Office of Workforce Security.*

[FR Doc. 00–25354 Filed 10–2–00; 8:45 am]

BILLING CODE 4510–30–U

## NATIONAL SCIENCE FOUNDATION

### Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (P.L. 95–541)

**AGENCY:** National Science Foundation.

**ACTION:** Notice of Permit Modification Received under the Antarctic Conservation Act of 1978, P.L. 95–541.

**SUMMARY:** The National Science foundation (NSF) is required to publish a notice of requests to modify permits issued to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of a requested permit modification.

**DATES:** Interested parties are invited to submit written data, comments, or views with respect to this permit application on or before November 2, 200. Permit applications may be inspected by interested parties at the Permit Office, address below.

**ADDRESSES:** Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

**FOR FURTHER INFORMATION CONTACT:** Nadene G. Kennedy at the above address or (703) 292–7405.

**SUPPLEMENTARY INFORMATION:** The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Public Law 95–541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest.

**DESCRIPTION OF PERMIT MODIFICATION REQUESTED:** The Foundation issued a permit (2000–004) to Dr. Paul J. Ponganis on September 21, 1999. The issued permit allows the applicant to capture up to 60 Emperor adults and 55 Emperor chicks for collection of samples and application of various depth recorders, physiological recorders or video cameras to study the thermoregulation and underwater behavior of Emporer penguins.

The applicant proposes to access the Cape Crozier Antarctic Specially Protected Area #124 to census Emperor penguin chicks.

**LOCATION:** ASPA 124—Cape Crozier, Ross Island.

Dates: November 15, 2000 to February 28, 2002.

**Nadene G. Kennedy,**

*Permit Officer, Office of Polar Programs.*

[FR Doc. 00–25380 Filed 10–2–00; 8:45 am]

BILLING CODE 7555–01–P

## NATIONAL SCIENCE FOUNDATION

### Notice of Permit Application Received Under the Antarctic Conservation Act of 1978

**AGENCY:** National Science Foundation.

**ACTION:** Notice of Permit Applications Received Under the Antarctic Conservation Act.

**SUMMARY:** Notice is hereby given that the National Science Foundation (NSF) has received a waste management permit application for operation of a remote field support and emergency provisions for the Expedition Vessel, Kapitan Dranitsyn for the 2000–2001 season and four following austral summers. The application is submitted to NSF pursuant to regulations issued under the Antarctic Conservation Act of 1978.

**DATES:** Interested parties are invited to submit written data, comments, or views with respect to this permit application on or before November 2, 2000. Permit applications may be inspected by interested parties at the Permit Office, address below.

**ADDRESSES:** Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

**FOR FURTHER INFORMATION CONTACT:** Joyce A. Jatko or Nadene Kennedy at the above address or (703) 292–8030.

**SUPPLEMENTARY INFORMATION:** NSF's Antarctic Waste Regulation, 45 CFR Part 671, requires all U.S. citizens and entities to obtain a permit for the use or release of a designated pollutant in Antarctica, and for the release of waste in Antarctica. NSF has received a permit application under this Regulation for operation of up to nine expeditions per year to Antarctica. During each trip, passengers are taken ashore at selected sites by Zodiac (rubber raft) or helicopter for approximately two to four hours at a time. On each helicopters landing, emergency gear would be taken ashore in case weather deteriorates and passengers are required to camp on shore. Anything taken ashore will be removed from Antarctica and disposed of in Ushuaia, Argentina, Port Stanley, Falkland Islands, or a substitute port of disembarkation. No hazardous domestic products or wastes (aerosol cans, paints, solvents, etc.) will be brought ashore. Cooking stoves/fuel will be used only in an emergency were passengers are forced to spend night on shore. Conditions of the permit would include requirements to report on the removal of materials and any accidental releases, and management of all waste, including human waste, in accordance with Antarctic waste regulations.

Applications for the permit is made by: Lars Winkander, Quark Expeditions, Inc., 980 Post Road, Darien, CT 06820.

**LOCATION:** Antarctic Peninsula Area.

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Dated: November 23, 2000 to March 31, 2005.

**Nadene G. Kennedy,**

*Permit Officer.*

[FR Doc. 00–25381 Filed 10–2–00; 8:45 am]

BILLING CODE 7555–01–P

## NATIONAL SCIENCE FOUNDATION

### Notice of Permit Application Received Under the Antarctic Conservation Act of 1978

**AGENCY:** National Science Foundation.

**ACTION:** Notice of Permit Applications Received Under the Antarctic Conservation Act.

**SUMMARY:** Notice is hereby given that the National Science Foundation (NSF) has received a waste management permit application for a two-person team to traverse the Antarctic continent on skis. The application is submitted to NSF pursuant to regulations issued under the Antarctic Conservation Act of 1978.

**DATES:** Interested parties are invited to submit written data, comments, or views with respect to this permit application by October 24, 2000. Permit applications may be inspected by interested parties at the Permit Office, address below.

**ADDRESSES:** Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

**FOR FURTHER INFORMATION CONTACT:** Joyce A. Jatko or Nadene Kennedy at the above address or (703) 292–8030.

**SUPPLEMENTARY INFORMATION:** NSF's Antarctic Waste Regulation, 45 CFR Part 671, requires all U.S. citizens and entities to obtain a permit for the use or release of a designated pollutant in Antarctica, and for the release of waste in Antarctica. NSF has received a permit application under this Regulation for the operation of a two-woman private expedition to traverse the antarctic continent on skis, using parasails, where possible. The permit applicant is: The Bancroft Arnesen Expedition, c/o Base Camp Promotions, LLC, 119 North Fourth Street, Suite 406, Minneapolis, MN 55104. The proposed duration of the permit is from October 25, 2000 through March 15, 2001.

**Activity for Which a Permit Is Requested**

The two-female expedition team plans to fly from Cape Town, South Africa to Blue One Runway in the Patriot Hills. From there they will be flown to by twin otter to the Fimbul Ice Shelf, from whence they commence their skiing expedition to the South Pole and across the continent to McMurdo Sound. They plan to ski across the continent hauling a sledge each that contains equipment, food and fuel. The fuel will be used to cook food on a one-burner Primas stove, burning white gas. Any spills will be contained and cleaned up. The team's computers and communication devices are battery powered and recharged by solar collectors carried on the sledge. Any solid waste generated will be removed from Antarctica at the conclusion of the expedition. Conditions of the permit would include requirements to report on the removal of materials and any accidental releases, and management of all waste, including human waste, in accordance with Antarctic waste regulations.

**Nadene G. Kennedy,**

*Permit Officer.*

[FR Doc. 00–25379 Filed 10–2–00; 8:45 am]

BILLING CODE 7555–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 72–3]**

### Carolina Power & Light Company, H.B. Robinson Independent Spent Fuel Storage Installation; Notice of Docketing of Materials License SNM–2502 Amendment Application

By letter dated August 28, 2000, Carolina Power and Light Company (CP&L) submitted an application to the Nuclear Regulatory Commission (NRC or the Commission), in accordance with 10 CFR part 72, requesting the amendment of the H. B. Robinson (HBR) independent spent fuel storage installation (ISFSI) license (SNM–2502) and the Technical Specifications for the ISFSI located at Darlington County, South Carolina. CP&L is seeking Commission approval to amend the materials license and the ISFSI Technical Specifications to revise the safeguards license condition and the Technical Specifications to reflect that the Industrial Security Plan and Safeguards Contingency Plan are combined into the Physical Security and Safeguards Contingency Plan. The revision would also clarify the text to indicate that the Training and Qualification Plan no longer contains safeguards information. Such an action would only change the reference to and the location of the Industrial Security Plan and the Safeguards Contingency Plan. The requested change does not affect the design, operation, maintenance, or surveillance of the ISFSI.

This application was docketed under 10 CFR part 72; the ISFSI Docket No. is 72–3 and will remain the same for this action. The amendment of an ISFSI license is subject to the Commission's approval.

The Director, Office of Nuclear Material Safety and Safeguards, or his designee, will determine if the amendment presents a genuine issue as to whether public health and safety will be significantly affected and may issue either a notice of hearing or a notice of proposed action and opportunity for hearing in accordance with 10 CFR 72.46(b)(1) or take immediate action on the amendment in accordance with 10 CFR 72.46(b)(2).

For further details with respect to this application, see the application dated August 28, 2000, which is available for public inspection at the Commission's Public Document Room, One White Flint North Building, 11555 Rockville Pike, Rockville, MD or from the publicly available records component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at *Http://www.nrc.gov/NRC/ADAMS/indes.html* (the Public Electronic Reading Room).

Dated at Rockville, Maryland, this 27th day of September 2000.

For the Nuclear Regulatory Commission.

**Susan F. Shankman,**

*Acting Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 00–25376 Filed 10–2–00; 8:45 am]

BILLING CODE 7590–01–P

## OFFICE OF MANAGEMENT AND BUDGET

### Public Availability of Year 2000 Agency Inventories Under the Federal Activities Inventory Reform Act of 1998 (Public Law 105–270) ("FAIR Act")

**AGENCY:** Office of Management and Budget, Executive Office of the President.

**ACTION:** Notice of Public Availability of Commercial Activities Inventories.

**SUMMARY:** Year 2000 FAIR Act Commercial Activities Inventories are now available to the public from the agencies listed below. The Office of Federal Procurement Policy has prepared and is making available a summary FAIR Act User's Guide through its Internet site: *http://www.whitehouse.gov/OMB/procurement/index.html*. This User's Guide will help interested parties review Year 2000 FAIR Act inventories, and will also include the web-site addresses to access agency inventories.

The "Federal Activities Inventory Reform Act of 1998" (Public Law 105–270) ("FAIR Act") requires that OMB publish an announcement of public availability of agency Commercial Activities Inventories upon completion of OMB's review and consultation process concerning the content of the agencies' inventory submissions. OMB has completed this process for the agencies listed below. Further announcements will be published as OMB and the agencies complete their review and consultation process.

The attached Commercial Activities Inventories are now available.

**Jacob J. Lew,**

*Director.*

Attachment



| Agency | Contact |
|---|---|
| Advisory Council on Historic Preservation | Carol McLain, 202–606–8511, Website: *www.Achp.gov.* More information contact: Sharon Conway, 202–606–8648, For challenges and appeals contact: Carol McLain. |
| Broadcasting Board of Governors | Dennis Sokol, 202–619–3988, Website: *www.ibb.gov/fairact*, Can provide hard copy if needed. |
| Chemical Safety Board | Phylliis Thompson, 202–261–7600, Website: *www.csb.gov.* More information contact: Faye Gibbons 202–261–7600. |
| Environmental Protection Agency | George Ames, 202–564–4998, Website: *www.epa.gov/efinpage* (Whats News). |
| Environmental Protection Agency | John Jones, 202–260–3137, Website: *www.epa.gov/oigearth.* |
| Equal Employment Opportunity Commission | Allan fisher, 202–663–4200 More information contact: George Betters, 202–663–4266, For Challenges and Appeals contact: George Betters and legal counsel. |
| Federal Labor Relations Authority | Harold D. Kessler, 202–482–6690 ext. 440, Website: *www.flra.gov.* |
| Federal Medication and Conciliation Service | George Buckingham 202–606–8100, Website: *www.fmcs.gov.* |
| Federal Mine Safety and Health Review Commission | Richard Baker, 202–653–5625, Website: *www.fmshrc.gov.* |
| Holocaust Memorial Council and Museum | Jay Gaglione, 202–314–0336, Website: *Ushmm.org.* |
| Merit Systems Protection Board | Douglas Wade, 202–653–6772, Website: *www.mspb.gov.* |
| National Aeronautics and Space Administration | Timothy Sullivan, 202–358–2215, Website: *www.HQ.NASA.gov/fair/.* |
| National Gallery of Art | Bill Roache, 202–842–6329, Website: *www.nga.gov.* |
| National Labor Relations Board | Harding Darden, 202–273–3970, Website: *www.nlrb.gov.* |
| National Mediation Board | June King, 202–692–5010, Website: *www.nmb.gov.* |
| National Science Foundation | Gary Scavongelli, 703–292–8102, Website: *www.nsf.gov/cgi-bin/getpub?od001.* |
| Occupational Safety & Health Review Commission | Ledia Bemal, 202–606–5390, Website: *www.oshrc.gov.* |
| Office of Federal Housing Enterprise Oversight | Linda Gwinn, 202–414–3789, Website: *www.ofago.gov.* |
| Office of Government Ethics | Sean Donohue, 202–208–8000, ext. 1217, Website: *www.usoge.gov.* |
| Office of Management and Budget | Brian Gillis, 202–395–7250, Website: *www.whitehouse.gov/OMB/procrement.* |
| Office of National Drug Control Policy | Tilman Dean, 202–395–6722, Website: *www.whitehousedrugpolicy.org.* More information contact: Tilman Dean and General Counsel. |
| Office of Personnel Management | Kenneth McMahill, 202–606–2494, Website: *www.opm.gov/procure.* |
| Office of Science & Technology Policy | Barbara Ferguson, 202–456–6001, Website: *www.ostp.gov* (Inside OSTP). |
| Office of the Special Counsel | Jane McFarland, 202–653–9001, Website: *www.ics.si.edu.* |
| Department of Veterans Affairs | John O'Hara, 202–273–5068, Website: *www.va.gov* e-mail: *fairact@mail.va.gov*, fax: 202–273–5991. |
| Woodrow Wilson Center | Ms. Ronnie Dempsey, 202–691–4216. |

[FR Doc. 00–25344 Filed 10–2–00; 8:45 am]

BILLING CODE 3110–01–P

## SECURITIES AND EXCHANGE COMMISSION

### Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (AMRESCO, INC., 10% Senior Subordinated Notes Due 2003 and 10% Senior Subordinated Notes Due 2004) File No. 1–11599

September 26, 2000.

AMRESCO, INC., a Delaware corporation ("Company"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its 10% Senior Subordinated Notes due 2003 and its 10% Senior Subordinated Notes due 2004 (collectively, the "Securities") from listing and registration on the New York Stock Exchange, Inc. ("NYSE")[3]

In making the decision to withdraw the Securities from listing and registration at this time, the Company has cited the limited number of registered holders of the Securities. The Company also notes that it is not obligated under the indenture under which the Securities were issued or under any other documents to maintain the Securities' listing on the NYSE or any other exchange. The Company believes that the delisting of the Securities should not have a material impact on the holders of the Securities. The Company has stated that it will use reasonable efforts to obtain market makers for the Securities.

Additionally, the Company notes that its Common Stock, $.05 par value, is currently and shall remain registered pursuant to section 12(g) of the Act.[4] Accordingly, the company's obligation to file reports with the commission pursuant to section 13 of the Act[5] will remain after the proposed withdrawal of

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] Notice of this application was previously issued by the Commission as Securities Exchange Act Release No. 43267 on September 8, 2000. Such notice, however, failed to appear in the **Federal Register**, as required, and so is being reissued.

[4] 15 U.S.C. 78*l*(g).

[5] 15 U.S.C. 78m.

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the Securities from listing and registration on the NYSE.

The Company has stated in its application to the Commission that it has complied with the requirements of NYSE Rule 500, which governs an issuer's voluntary withdrawal of securities from listing on the NYSE.

Any interested person may, on or before October 18, 2000, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 00–25334 Filed 10–2–00; 8:45 am]

BILLING CODE 8010–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 35–27236]**

## Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

September 26, 2000.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by October 20, 2000, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant application(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After October 20, 2000, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

[6] 17 CFR 200.30–3(a)(1).

**NiSource Inc., et al. (70–9681)**

NiSource Inc. ("NiSource"), an Indiana corporation, and New NiSource, Inc. ("New NiSource"), a Delaware corporation, both located at 801 East 86th Avenue, Merrillville, Indiana 46410–6272, NiSource's wholly-owned public utility subsidiaries ("NiSource Utility Subsidiaries"), Northern Indiana Public Service Company ("Northern Indiana"), Kokomo Gas and Fuel Company ("Kokomo") and Northern Indiana Fuel and Light Company ("NIFL"), all located at 801 East 86th Avenue, Merrillville, Indiana 46410–6272, Bay State Gas Company ("Bay State") and Northern Utilities, Inc., both located at 300 Friberg Parkway, Westborough, Massachusetts 01581–5039, and Columbia Energy Group ("Columbia"), a registered holding company, located at 13880 Dulles Corner Lane, Herndon, Virginia 20171–4600, its five wholly-owned gas utility subsidiaries, Columbia Gas of Kentucky, Inc., Columbia Gas of Maryland, Inc., Columbia Gas of Ohio, Inc., Columbia Gas of Pennsylvania, Inc. and Columbia Gas of Virginia, Inc. (collectively, "Columbia Utility Subsidiaries" and together with NiSource Utility Subsidiaries, "Utility Subsidiaries"), all located at 200 Civic Center Drive, Columbus, Ohio 43215, and NiSource and Columbia's nonutility subsidiaries, EnergyUSA, Inc. ("Energy USA"), Primary Energy, Inc., NiSource Capital Markets, Inc., NiSource Finance Corp. ("NiSource Finance"), NiSource Pipeline Group, Inc., IWC Resources Corporation, NiSource Development Company, Inc., NI Energy Services, Inc., Hamilton Harbour Insurance Services, Ltd., and NiSource Corporate Services Company, all located at 801 East 86th Avenue, Merrillville, Indiana 46410–6272, Columbia Energy Group Service Corporation, Columbia LNG Corporation, Columbia Atlantic Trading Corporation, Columbia Energy Services Corporation, Columbia Energy Group Capital Corporation, Columbia Pipeline Corporation, Columbia Finance Corporation, and Columbia Electric Corporation, all located at 13880 Dulles Corner Lane, Herndon, Virginia 20171–4600, Columbia Energy Resources, Inc., c/o 900 Pennsylvania Avenue, Charleston, West Virginia 25302, Columbia Gas Transmission Corporation and Columbia Transmission Communications Corporation, both located at 12801 Fair Lakes Parkway, Fairfax, Virginia 22030–0146, Columbia Gulf Transmission Company, located at 2603 Augusta, Suite 125, Houston, Texas 77057, Columbia Network Services Corporation, located at 1600 Dublin Road, Columbus, Ohio 43215–1082, Columbia Propane Corporation, located at 9200 Arboretum Parkway, Suite 140, Richmond, Virginia 23236, and Columbia Insurance Corporation, Ltd., located at 20 Parliament Street, P.O. Box HM 649, Hamilton HM CX, Bermuda ("Nonutility Subsidiaries" and together with NiSource Utility Subsidiaries and Columbia Utility Subsidiaries, "Subsidiaries") (collectively, "Applicants") have filed an application declaration under sections 6(a) 7, 9(a), 10, 12(b), 12(c), 13(b), 32 and 33 of the Act and rules 45, 46, 53, 54, 87, 90, 91, and 92 under the Act.

*I. Background and Summary*

NiSource and New NiSource have previously filed an application ("Merger Application")[1] seeking approvals required to complete the proposed acquisition by New NiSource of all of the issued and outstanding common stock ("Common Stock") of NiSource and Columbia. This would occur through mergers of separate subsidiaries of New NiSource with and into each of NiSource and Columbia, followed by the merger of NiSource into New NiSource. Upon consummation of these transactions, New NiSource would immediately be renamed "NiSource Inc." and would register as a holding company under section 5 of the Act. After the Merger, NiSource would own, directly or indirectly, all of the issued and outstanding Common Stock of the NiSource Utility Subsidiaries and the Columbia Utility Subsidiaries.

Upon completion of the Merger, NiSource would also hold, directly or indirectly, all of the Nonutility Subsidiaries and investments owned by NiSource, as well as those currently owned by Columbia. NiSource has proposed that it would maintain Columbia as a direct wholly-owned subsidiary after the Merger. The merger application contemplates that Columbia will remain a registered holding company, will in turn hold all of the voting securities of the Columbia Utility Subsidiaries and its investments in other direct and indirect nonutility subsidiaries. Applicants expect that Columbia will continue to supply substantially all of the capital required by its subsidiaries.

[1] The Commission issued a notice of the Merger Application in S.E.C. File No. 70–9551, Holding Co. Act Release No. 27226 (September 1, 2000).



Applicants now request authority with respect to the financing arrangements, ongoing financings and other matters pertaining to NiSource and its Subsidiaries after giving effect to the Merger.

In summary, Applicants request authority for the period through December 31, 2003 ("Authorization Period"), unless otherwise noted, for: (1) Maintenance of the facility under which the debt incurred to effect the acquisition ("Acquisition Debt") is issued, including any extensions, renewals or replacements, and the associated guarantees, during the Authorization Period; (2) issuance and sale of Common Stock and preferred stock ("Preferred Stock"), unsecured long-term indebtedness ("Long-Term Debt") and other forms of preferred or equity-linked securities having maturities of up to fifty years and not to exceed $12 billion, with certain exceptions; (3) issuance and sale of short-term debt ("Short-Term Debt") in specified aggregate amounts for the NiSource Utility Subsidiaries not to exceed $2 billion, with certain exceptions; (4) the Nonutility Subsidaries to issue and sell debt and equity securities in order to finance their operations and future nonutility investments, provided that these future investments are exempt under the Act or rules under the Act or have been authorized in a separate proceeding; (5) the guarantee of indebtedness or contractual obligations or to provide other forms of credit support on behalf or for the benefit of the Subsidiaries in an aggregate principal or nominal amount not to exceed $5 billion in addition to the amounts of guarantees and other forms of credit support that Columbia is currently authorized to issue; (6) guarantees of indebtedness or contractual obligations or provide other forms of credit support by Nonutility Subsidiaries (other than Columbia) for the benefit of other Nonutility Subsidiaries in an amount not to exceed $2 billion; (7) entrance into hedging transactions ("Interest Rate Hedges") with respect to the indebtedness of NiSource and its subsidiaries, and entrance into hedging transactions ("Anticipatory Hedges") with respect to anticipatory debt issuances; (8) changing the terms of the authorized capitalization of any Subsidiary, provided that, if a Subsidiary is not wholly-owned, all other required shareholder consents have been obtained for the change; (9) acquisition of the equity securities of one or more special-purpose financing subsidiaries ("Financing Subsidiaries"); (10) acquisition, directly or indirectly, of the equity securities of one or more intermediate subsidiaries ("Intermediate Subsidiaries") organized exclusively for the purpose of acquiring, financing, and holding the securities of one or more existing or future nonutility subsidiaries, including but not limited to "exempt wholesale generators" ("EWGs"), "foreign utility companies" ("FUCOs"), companies engaged or formed to engage in activities permitted by rule 58 ("Rule 58 Subsidiaries") or "exempt telecommunications companies" ("ETCs") as defined in sections 32, 33 and 34 of the Act, respectively; (11) exemption from the at-cost requirements of section 13(b) with respect to certain existing arrangements between certain NiSource utility and nonutility subsidiaries for a period of not more than one year after the merger; (12) for Nonutility Subsidiaries to sell goods and services to each other at other than cost, to the extent not exempt under rule 90(d), subject to certain exemptions; (13) engaging in certain categories of activities permitted outside the United States, subject to certain limitations; (14) Columbia to transfer proceeds of non-core assets sales to NiSource; (15) Nonutility Subsidiaries to pay dividends out of capital and unearned surplus to the extent permitted under applicable law and the terms of any credit arrangements to which they may be parties; Subsidiaries also seek to acquire, retire, or redeem the securities that they have issued to any associate company, any affiliate, or any affiliate of an associate company; and (16) a reservation of jurisdiction on the allocation of consolidated income tax liabilities among NiSource and its subsidiaries by agreement.

The proceeds from the financing would be used for general corporate purposes, including: (1) Refinancing of the Acquisition Debt; (2) financing, in part, investments by and capital expenditures of NiSource and its Subsidiaries (including equity contributions, advances and loans to Columbia); (3) funding of future investments in EWGs, FUCOs, and Rule 58 Subsidiaries; (4) the repayment, redemption, refunding or purchase by NiSource or any Subsidiary of any of its own securities; and (5) financing working capital requirements of NiSource and its Subsidiaries.

*II. General Terms and Conditions of Financing*

Applicants state that assuming that the holders of the maximum number of Columbia's shares elect to exchange their stock for NiSource Common Stock, and that certain non-core assets of NiSource and/or Columbia are sold before or shortly after the Merger, common equity as a percentage of NiSource's *pro forma* consolidated capitalization will be no less than 28.5%. In addition, NiSource commits that within two years after the date of the Commission's order approving the Merger, and for the remainder of the Authorization Period, the combined consolidated capitalization of the new holding company system would include no less than 30% common equity. NiSource also commits to maintain common equity of Columbia as a percentage of Columbia's consolidated capitalization at 30% or above throughout the Authorization Period, and also to maintain common equity as a percentage of capitalization of each of the NiSource Utility Subsidiaries at 30% or above throughout the Authorization Period.

The aggregate principal amount of all indebtedness issued by NiSource or any Financing Subsidiary of NiSource at any time outstanding (including, specifically, Acquisition Debt, Long-Term Debt and Short-Term Debt) would not exceed $10 billion ("NiSource Debt Limitation"). The interest rate on Long-Term Debt, Preferred Stock or other preferred or income-linked securities would not exceed 500 basis points over the appropriate Treasury rate, and the interest rate on Short-Term Debt would not exceed 300 basis points over the London Interbank Offered Rate ("LIBOR"). Underwriting fees and all other fees and expenses incurred in consummating specific financing transactions would not exceed 5% of the proceeds.

*III. Current Columbia and NiSource Financing Authority*

A. Columbia

Columbia currently has financing authority derived from three orders (collectively, the "Columbia Financing Orders"). By order dated June 8, 1999,[2] Columbia has authority to issue and sell equity and Long-Term Debt securities in an amount not to exceed $6 billion at any one time outstanding through December 31, 2003. In addition, Columbia is authorized to "enter into guarantee arrangements, obtain letters of

[2] S.E.C. File No. 70–9359, Holding Co. Act Release No. 27035 (June 8, 1999).

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credit, and otherwise provide credit support" for its subsidiary companies in an amount not to exceed $5 billion at any one time outstanding through December 31, 2003. By order dated December 22, 1997,[3] Columbia has the authority to issue and sell Short-Term Debt securities in an amount not to exceed $2 billion at any one time outstanding through December 31, 2003. Short-Term Debt may include borrowings under a revolving credit facility, the issuance of commercial paper, and bid notes to individual banks participating in the revolving credit facility. The order also authorizes four of the Columbia Utility Subsidiaries to make direct borrowings from Columbia.[4] Columbia's Utility Subsidiaries and certain nonutility subsidiaries also may make short-term borrowings through the Columbia system money pool. Various restrictions on Columbia's current financing authority are set forth in an order dated December 23, 1996.[5]

Under the Columbia Financing Orders, the effective cost of money on debt may not exceed 300 basis points over comparable term U.S. treasury securities; and the effective cost of money on Preferred Stock and other Fix incomes securities may not exceed 500 basis points over 30-year term U.S. treasury securities. Bid notes must bear interest rates comparable to, or lower than, those available through other proposed forms of short-term borrowing with similar terms and have maturities not exceeding 270 days. The underwriting fees, commissions or other similar remuneration paid in connection with the non-competitive bid issue, sale or distribution of any securities may not exceed 5% of the principal or total amount of the financing.

Columbia is authorized under the Columbia Financing Orders to utilize the proceeds of authorized financing for general and corporate purposes including: (1) Financing, in part, of the capital expenditures of Columbia and its subsidiaries; (2) in the case of Short-Term Debt, financing gas storage inventories, other working capital requirements and capital spending of the Columbia system; (3) acquisition interests in EWGs and FUCOs; (4) the acquisition, retirement, or redemption of securities of which Columbia is an issuer without the need for prior Commission approval pursuant to rule 42 or a successor rule; and/or (5) the acquisition of the securities of nonutility companies as permitted under any rule of the Commission permitting these acquisitions.

Applicants are not requesting any changes to the amounts or types of securities and guarantees that Columbia and the Columbia Utility Subsidiaries are authorized to issue under the terms of the Columbia Financing Orders. Applicants request that any securities or guarantees issued by Columbia and the Columbia Utility Subsidiaries would not count against the proposed limits on financing contained in this application declaration. Columbia's Nonutility Subsidiaries request authority to pay dividends out of capital and unearned surplus to the extent permitted under applicable law and the terms of any credit arrangements to which they may be parties. Columbia Utility Subsidiaries also request the authority to acquire, retire, or redeem the securities that they have issued to any associate company, any affiliate, or any affiliate of an associate company.

Following the Merger Columbia would continue to provide capital required by its subsidiaries by issuing short-term and Long-Term Debt securities. NiSource proposes to make open account advances or cash capital contributions to Columbia, purchase additional shares of Columbia Common Stock and/or make loans, directly or through a Financing Subsidiary, evidenced by Columbia's promissory notes. The interest rate and maturity on any borrowings by Columbia from NiSource, or its Financing Subsidiary, would parallel the effective cost and maturity of a comparable debt security issued by the lender.

B. NiSource

In the Merger, New NiSource would issue approximately 124.2 million shares of Common Stock in exchange for the outstanding Common Stock of NiSource, based on the number of those shares outstanding on June 30, 2000, and assuming 30% of the outstanding Columbia shares are exchanged for Common Stock, approximately 96.9 million shares of Common Stock in exchange for the outstanding Common Stock of Columbia.[6] The authorized capital stock of New NiSource consists of 420,000,000 shares, $0.01 par value, of which 400,000,000 are common shares, and 20,000,000 are preferred shares,[7] of which, 4,000,000 have been designated as Series A Junior Participating preferred Shares and reserved for issuance under New NiSource's Shareholder Rights Agreement ("Rights Plan").

In addition, New NiSource will issue Stock Appreciation Income Linked Securities SM ("SAILS") as part of the Merger, which will result in the issuance of between 6.4 million and 9.0 million shares of Common Stock on the fourth anniversary of the transaction, assuming 30% of the outstanding Columbia shares are exchanged for the stock consideration in the merger.

The cash portion of the consideration paid to Columbia shareholders in the Merger would range from approximately $4 billion, assuming 30% of the outstanding Columbia shares are exchanged for the NiSource stock consideration, to approximately $6 billion, if all of the Columbia shares are exchanged for the cash and SAILS consideration. NiSource has organized NiSource Finance to facilitate financing the cash portion of the Merger consideration and other costs associated with the Merger. NiSource Finance will make unsecured short-term borrowings under a 364-day revolving credit facility, with the option to convert outstanding loans at the expiration of the period to term loans maturing 364 days afterwards (the "Acquisition Debt"). Alternatively, NiSource Service would issue commercial paper back-stopped by the credit facilities. NiSource will guarantee the Acquisition Debt.

C. Other Outstanding Securities and Obligations of NiSource

In February 1999, NiSource issued 6,000,000 Premium Income Equity Securities SM ("PIES") in conjunction with the acquisition of Bay State. Each PIES is a unit consisting of a stock purchase contract issued by NiSource and a preferred security issued by NIPSCO Capital Trust I ("Capital Trust"), a special purpose financing subsidiary of Capital Markets. The stock purchase contracts obligate the holders to purchase from NiSource, no later than February 19, 2003, for a price of $50, a number of shares of NiSource Common Stock based on the closing price for NiSource Common Stock over a twenty day period prior to this date. Based on NiSource's trading price as of June 30, 2000, the aggregate number of shares of Common Stock that NiSource would issue as part of the PIES is approximately 13.1 million. Each preferred security has a stated liquidation amount of $50 and represents an undivided ownership interest in the assets of Capital Trust and is guaranteed by Capital Markets. The assets of Capital Trust consist solely of the debentures of Capital markets maturing on February 19, 2005 that Capital Trust purchased with the net proceeds of the offering plus equity invested by Capital Markets.

NiSource also currently maintains certain credit arrangements for the benefit of its Subsidiaries that will remain outstanding following the Merger. Specifically, under the terms of a Support Agreement dated April 4, 1989, as amended, between NiSource and Capital Markets, NiSource is obligated to make payments of interest and principal on Capital Markets' obligations in the event of a failure to pay by Capital Markets. Restrictions in the Support Agreement prohibit recourse on the part of Capital Markets' creditors against the stock and assets of Northern Indiana, which are owned by NiSource. Capital Markets has entered into revolving credit agreements for $200 million which may be used to support the issuance of commercial paper. As of June 30, 2000, Capital markets had issued $186 million in commercial paper but there were no borrowing outstanding under the revolving credit agreements. Capital markets also has $178 million available in money market lines of credit with $141.5 million of borrowings outstanding as of June 30, 2000. Capital Markets also had outstanding $300 million of medium-term notes having various maturities between April 2004 and May 2027.

In addition, the Support Agreement backs various guarantees and other forms of credit support that have been provided by Capital markets for the benefit of the NiSource Nonutility Subsidiaries. These include guarantees of securities issued by other subsidiaries, lease payment obligations, obligations under energy marketing contracts, obligations of cogeneration affiliates under operations and maintenance agreements, surety bonds and indemnification obligations. The maximum potential financial exposure of Capital Markets under all of these guarantees was approximately $1 billion on June 30, 2000.

*IV. Requested NiSource External Financing*

A. Introduction

NiSource requests authority to issue and sell from time to time shares of its authorized Common Stock and preferred Stock and, directly or indirectly through one or more Financing Subsidiaries, Long-Term Debt and other forms of preferred or equity-linked securities having maturities of us to 50 years. The aggregate amount of all the Common Stock, Preferred Stock, Long-Term Debt and other forms of preferred to equity-linked securities at any time outstanding during the Authorization Period would not exceed $12 billion, provided that shares of NiSource Common Stock that are issued with respect to the SAILS and certain other currently outstanding equity-linked securities and shares of Preferred Stock that may be issued under the NiSource Shareholder Rights Agreement will not count against this limit. In addition, NiSource requests authority to issue and sell, directly or indirectly through one or more Financing Subsidiaries, Short-Term Debt in an aggregate principal amount at any time outstanding not to exceed $2 billion. The aggregate principal amount of all indebtedness issued by NiSource or any Financing Subsidiary of NiSource at any time outstanding (including, specifically, Acquisition Debt, Long-Term Debt and Short-Term Debt) would not exceed the NiSource Debt Limitation. The amounts of securities that NiSource is requesting authority to issue and the dollar limitations here are in addition to the amounts of securities Columbia is currently authorized to issue and the dollar limitations imposed on Columbia under the Columbia Financing Orders.

NiSource contemplates that the Common Stock, Preferred Stock, Long-Term Debt and other preferred or equity-linked securities would be issued and sold directly to one or more purchasers in privately-negotiated transactions or to one or more investment banking or underwriting firms or other entities who would resell these securities without registration under the Securities Act of 1933 in reliance upon one or more applicable exemptions from registration, or to the public either (1) through underwriters selected by negotiation or competitive bidding or (2) through selling agents acting either as agent or as principal for resale to the public either directly or through dealers.

B. Continuation, Extension or Renewal of Acquisition Debt

As indicated, the cash portion of the consideration to be paid in the Merger and other associated costs (estimated at approximately $4.0 billion to $6.0 billion) would be financed through borrowings by NiSource Finance under a bank facility. After the Merger, NiSource intends to refinance some or all of the Acquisition Debt from the proceeds of issuances of equity securities and Long-Term debt securities, as described below, and/or cash proceeds from sales of assets. Pending this refinancing, NiSource requests authorization to maintain or replace the facility under which the Acquisition Debt is issued and renew or extend the maturities of borrowings, and to renew or extend the associated guaranty.

C. Other Debt

1. *Long-Term Debt.* Long-Term Debt (1) may be convertible into any other securities of NiSource; (2) will have maturities ranging from one to fifty years; (3) may be subject to optional and/or mandatory redemption, in whole or in part, at par or at various premiums above the principal amount; (4) may be entitled to mandatory or optional sinking fund provisions; (5) may provide for reset of the coupon under a remarketing arrangement; and (6) may be called from existing investors by a third party. The maturity dates, interest rates, redemption and sinking fund provisions and conversion features, if any, with respect to the Long-Term Debt of a particular series, as well as any associated placement, underwriting or selling agent fees, commissions and discounts, if any, will be established by negotiation or competitive bidding. Assuming that 30% of the Columbia shares are exchanged for NiSource Common stock in the Merger and that certain non-core assets of NiSource and/or Columbia are sold before or shortly after the Merger, NiSource states that it will be able to maintain a rating for all Long-Term Debt that is at the investment grade level as established by a nationally recognized statistical rating organization.

2. *Short-Term Debt.* Subject to the NiSource Debt Limitation, NiSource proposes to issue and sell from time to time, directly or indirectly through one or more Financing Subsidiaries, Short-Term Debt in an aggregate principal amount at any time outstanding not to exceed $2 billion. The effective cost of money on Short-Term Debt authorized in this proceeding would not exceed at the time of issuance 300 basis points over the LIBOR for maturities of one year or less.

Commercial paper would be sold, directly or indirectly through one or more Financing Subsidiaries, in established domestic or European commercial paper markets. NiSource also proposes to establish, directly or indirectly through one or more

[3] S.E.C. File No. 70–9129, Holding Co. Act Release No. 26798 (Dec. 22, 1997).

[4] Columbia Energy Group Service Corporation and Columbia nonutility subsidiaries reply upon rule 52 for borrowing from Columbia.

[5] S.E.C. File No. 70–8925, Holding Co. Act Release No. 26634 (Dec. 23, 1996).

[6] The actual number of shares of Common Stock issued in the Merger will depend upon, among other things, the number of NiSource and Columbia common shares outstanding on the date on which the Merger is consummated and the elections made by Columbia's shareholders.

[7] NiSource has the same number of authorized shares of common and Preferred Stock as New NiSource, but without par value.

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Financing Subsidiaries, credit lines with banks or other institutional lenders in an aggregate principal amount not to exceed the proposed Short-Term Debt limitation. Loans under these lines will have maturities of less than one year from the date of each borrowing. NiSource also proposes to engage in other types of short-term financing generally available to borrowers with comparable credit ratings as it may deem appropriate in light of its needs and market conditions at the time of issuance.

D. Common Stock, Equity Linked Securities and Stock Based Plans

NiSource seeks authority to issue and sell Common Stock or options, warrants or other stock purchase rights exercisable for Common Stock, under underwriting agreements of a type generally standard in the industry. Public distributions would be under private negotiation with underwriters, dealers or agents or effected through competitive bidding among underwriters. In addition, sales would be made through private placements or other non-public offerings to one or more persons. All Common Stock sales would be at rates or prices and under conditions negotiated or based upon, or otherwise determined by, competitive capital markets.

NiSource would issue and sell Common Stock through underwriters or dealers, through agents, or directly to a limited number of purchasers or a single purchaser. If underwriters are used in the sale of Common Stock, these securities would be acquired by the underwriters for their own account and would be resold from time to time in one or more transactions, including negotiated transactions, at a fixed public offering price or at varying prices determined at the time of sale.

NiSource may also issue Common Stock or options, warrants or other stock purchase rights exercisable for Common Stock in public or privately-negotiated transactions as consideration for the equity securities or assets of other companies, provided that the acquisition of any of these equity securities or assets have been authorized in a separate proceeding or is exempt under the Act or the rules under the Act (specifically rule 58).

NiSource also proposes to issue Common Stock and/or purchase shares of its Common Stock (either currently or under forward contracts) in the open market for purposes of reissuing the shares at a later date under the SAILS SM and PIES SM or other equity-linked securities.

In addition, NiSource proposes to issue shares of its Common Stock to satisfy its obligations under its stock-based plans, the 1994 Long-Term Incentive Plan, the Nonemployee Director Stock Incentive Plan and the Employee Stock Purchase Plan. Shares of Common Stock issued under these plans may either be newly issued shares, treasury shares or shares purchased in the open market. NiSource would make open-market purchases of Common Stock in accordance with the terms of or in connection with the operation of the plans under rule 42. NiSource also proposes to issue and/or purchase shares of Common Stock under these existing stock plans, as they may be amended or extended, and similar plans or plan funding arrangements later adopted without any additional prior Commission order. Stock transactions of this variety would thus be treated the same as other stock transactions.

E. Preferred Stock

NiSource would not issue any shares of its authorized Preferred Stock in the Merger and would not have any shares of Preferred Stock outstanding at the time that it registers as a holding company. However, after it registers, NiSource seeks to have the flexibility to issue its authorized Preferred Stock or, directly or indirectly through one of more Financing Subsidiaries, to issue Long-Term Debt and other types of preferred or equity-linked securities (including specifically, trust preferred securities). The proceeds of Preferred Stock, Long-Term Debt or other preferred or equity-linked securities would enable NiSource to reduce the Acquisition Debt and Short-Term Debt or other debt issued or guaranteed by NiSource with more permanent capital, and provide a source of future financing for the operations of and investments in nonutility businesses which are exempt under the Act.

Preferred Stock or other types of preferred or equity-linked securities would be issued in one or more series with the rights, preferences, and priorities as may be designated in the instrument creating each of the series, as determined by NiSource's board of directors. All of these securities will be redeemed no later than fifty years after the issuance. The dividend rate on any series of Preferred Stock or other preferred or equity-linked securities will not exceed at the time of issuance 500 basis points over the yield to maturity of a U.S. Treasury security having a remaining term equal to the term of these securities. Dividends or distributions on Preferred Stock or other preferred or equity-linked will be made periodically and to the extent funds are legally available for this purpose, but may be made subject to terms which allow the issuer to defer individual payments for specified periods. Preferred Stock or other preferred or equity-linked securities may be convertible or exchangeable into shares of Common Stock.

F. NiSource Utility Subsidiaries' Short-Term Debt

The NiSource Utility Subsidiaries request authority to issue and sell from time to time Short-Term Debt in an aggregate amount at any one time outstanding not to exceed the following amounts: (1) Northern Indiana—$1 billion; (2) Kokomo—$50 million; (3) NIFL—$50 million; (4) Bay State—$250 million; and (5) Northern—$50 million. Subject to the limitations, the NiSource Utility Subsidiaries may engage in short-term financing as they may deem appropriate in light of their needs and market conditions at the time of issuance. These short-term financing could include, without limitation, commercial paper sold in established domestic or European commercial paper markets in a manner similar to NiSource, bank lines and debt securities issued under its indentures and note programs. The effective cost of money on Short-Term Debt authorized in this proceeding will not exceed 300 basis points over the LIBOR for maturities of one year or less.

G. NiSource Nonutility Subsidiary Financing

In order to finance investments in energy-related or otherwise functionally-related, nonutility businesses, it will be necessary for the Nonutility Subsidiaries to have the ability to engage in financing transactions that are commonly accepted for these types of investments. NiSource states that, in almost all cases, these financings will be exempt from prior Commission authorization under rule 52(b).[8]

However, in the limited circumstances where the Nonutility Subsidiary making the borrowings is now wholly-owned by NiSource, directly or indirectly, authority is requested under the Act for NiSource or a Nonutility Subsidiary, as the case may be, to make those loans to these subsidiaries at interest rates and maturities designed to provide a return to the lending company of not less than its effective cost of capital. If these loans are made to a Nonutility Subsidiary, the company would not sell any services to any associate Nonutility Subsidiary unless the company falls within one of the categories of companies to which goods and services may be sold on a basis other than "at cost," as described below. Furthermore, in the event those loans are made, NiSource would include in the next certificate filed under 24 in this proceeding substantially the same information as that required on Form U–6B–2 with respect to the transition.

[8] Financings by Columbia will be carried out under the terms of the Columbia Financing Orders and not under rule 52.



H. Guarantees

1. *NiSource Guarantees.* NiSource requests authority, directly or through one or more Financing Subsidiaries, to guarantee indebtedness or contractual obligations or provide other forms of credit support on behalf or for the benefit of its Subsidiaries in an aggregate amount not to exceed $5 billion at any one time outstanding ("NiSource Guarantees"), provided however, that the amount of any NiSource Guarantees in respect of obligations of any Subsidiaries shall also be subject to the limitations of rule 53(a)(1) or rule 58(a)(1), as applicable.

Any securities issued by Financing Subsidiaries of NiSource that are guaranteed or supported by other forms of credit enhancement provided by NiSource would not count against this limitation, but instead would count against the limitation on the same types of securities that NiSource is authorized to issue. The proposed limitation on NiSource Guarantees would not include the amount of any guarantees or other forms of credit support outstanding at the time of the Merger or guarantees or other forms of credit support provided with respect to securities issued by any Financing Subsidiary (the amounts of which would count only against the proposed limitations on the amounts of debt and equity securities that NiSource may issue).

NiSource proposes to charge each Subsidiary a fee for each guarantee provided on its behalf that is not greater than the cost, if any, of obtaining the liquidity necessary to perform the guarantee (for example, bank line commitment fees or letter of credit fees, plus other transactional expenses) for the period of time the guarantee remains outstanding.

2. *Nonutility Subsidiary Guarantees.* Nonutility Subsidiaries (including Financing Subsidiaries without credit support from NiSource but excluding Columbia) request authority to provide guarantees of indebtedness or contractual obligations or provide other forms of credit support on behalf or for the benefit of other Nonutility Subsidiaries in an aggregate principal or nominal amount not to exceed $2 billion at any one time outstanding ("Nonutility Subsidiary Guaranties"). This authorization is in addition to any guarantees that are exempt under rules 45(b) and 52, provided that the amount of any Nonutility Subsidiary Guaranties in respect of obligations of any Rule 58 Subsidiary shall also be subject to the limitations of rule 58(a)(1). The Nonutility Subsidiary providing any of the credit support may charge its associate company a fee for each guarantee provided on its behalf determined in the same manner as specified above.

I. Interest Rate Management Devices

1. *Interest Rate Hedges.* NiSource and, to the extent not exempt under rule 52, its Subsidiaries request authority to enter into Interest Rate Hedges in order to manage and minimize interest rate costs. Applicants assert that Interest Rate Hedges would only be entered into with counterparties whose senior debt ratings, or the senior debt ratings of the parent companies of the counterparties, as published by Standard and Poor's Ratings Group, are equal to or greater than BBB, or an equivalent rating from Moody's Investors Service, Fitch Investor Service or Duff and Phelps.

Applicants state that Interest Rate Hedges would involve the use of financial instruments commonly used in today's capital markets, such as interest rate swaps, caps, collars, floors, and structured notes (*i.e.*, a debt instrument in which the principal and/or interest payments are indirectly linked to the value of an underlying asset or index), or transactions involving the purchase or sale, including short sales, of U.S. Treasury securities.

2. *Anticipatory Hedges.* In addition, Applicants request authority to enter into interest rate hedging transactions with respect to Anticipatory Hedges, subject to certain limitations and restrictions. Anticipatory Hedges would be used to fix and/or limit the interest rate risk associated with any new issuance through (1) a forward sale of exchange-traded U.S. Treasury futures contracts, U.S. Treasury obligations and/or a forward swap (each a "Forward Sale"); (2) the purchase of put options on U.S. Treasury obligations (a "Put Options Purchase"); (3) a Put Options Purchase in combination with the sale of call options on U.S. treasury obligations ("Zero Cost Collar"); (4) transactions involving the purchase or sale, including short sales, of U.S. Treasury obligations; or (5) some combination of a Forward Sale, Put Options Purchase, Zero Cost Collar and/or other derivative or cash transactions, including, but not limited to structured notes, caps and collars, appropriate for the Anticipatory Hedges.

Anticipatory Hedges might be executed on-exchange ("On-Exchange Trade") with brokers through the opening of futures and/or options positions traded on the Chicago Board of Trade, the opening of over-the-counter positions traded on the Chicago Board of Trade, the opening of over-the-counter positions with one or more counter parties ("Off-Exchange Trades"), or a combination of On-Exchange Trades and Off-Exchange Trades. NiSource or a subsidiary will determine the optimal structure of each Anticipatory Hedge transaction at the time of execution.

Applicants state that they will comply with the then existing financial disclosure requirements of the Financial Accounting Standards Board associated with hedging transactions.

J. Changes in Capital Stock of Subsidiaries

NiSource and its Subsidiaries request authorization to change the terms of the authorized capital stock capitalization of any wholly-owned Subsidiary or intermediate holding company by an amount deemed appropriate by NiSource or other intermediate parent company.[9] If that authority were granted, a Subsidiary would be able to change the par value or change between par and no-par stock, without additional Commission approval and subject to any necessary state approvals.

K. Financing Subsidiaries

NiSource and its Subsidiaries request authorization to acquire, directly or indirectly, the equity securities of one or more corporations, trusts, partnerships, or other entities ("Financing Subsidiaries") created specifically for the purpose of facilitating the financing of the authorized and exempt activities of NiSource and its Subsidiaries. This authorization would be in addition to arrangements with NiSource Finance, a wholly-owned special purpose financing subsidiary, and two other special entities owned directly or indirectly by NiSource.[10] The Financing Subsidiaries would issue Long-Term Debt or equity securities but not limited to monthly income preferred securities,

[9] If a subsidiary is not wholly-owned, all other required shareholders consent for the change would be obtained.

[10] NiSource Capital Markets, Inc. ("Capital Markets") and Capital Trust I, a special purpose financing subsidiary of Capital Markets.

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to third parties and would dividend, loan or otherwise transfer the proceeds of these financings or as directed by the Financing Subsidiary's parent company.

NiSource would, if required, guarantee, provide support for or enter into expense agreements in respect of the obligations of any Financing Subsidiary that it organizes. The Subsidiaries may also provide guarantees and enter into expense agreements, if required, on behalf of any Financing Subsidiaries that they organize under rules 45(b)(7) and 52, as applicable. The amount of any Long-Term Debt or preferred securities issued by any Financing Subsidiary would be counted against any limitation on the amounts of similar types of securities that would be issued directly by the parent company of a Financing Subsidiary. In those cases, however, the guaranty by the parent company would not also be counted against the limitations on NiSource Guarantees of Subsidiary Guarantees.

L. Intermediate Subsidiaries

NiSource requests authority to acquire, directly or indirectly, the securities of one or more intermediate subsidiaries ("Intermediate Subsidiaries") organized exclusively for the purpose of acquiring, financing, and holding the securities of one or more existing or future Nonutility Subsidiaries, including but not limited to EWGs, FUCOs, Rule 58 Subsidiaries or ETCs. Intermediate Subsidiaries may expand up to $250 million on preliminary development activities. To the extent these transactions are not exempt from the Act or otherwise authorized or permitted by rule, regulation or order of the Commission, NiSource requests authority for Intermediate Subsidiaries to provide management, administrative, project development and operating services to these entities as fair market prices under rule 90(d), subject to the limitations set forth in section IV.M.2 of this notice below.

M. Sales of Services and Goods Among Subsidiaries

NiSource seeks exemptions in two areas from the at-cost standards of section 13(b) of the Act and rules 90 and 91 under the Act for the sales of services and goods among Subsidiaries.

1. *Continuation of Certain Existing Arrangements between NiSource Subsidiaries.* NiSource requests an exemption under section 13(b) of the Act in order that certain agreements [11] would remain in place for a period of not more than one year after the Merger. During that period, NiSource would assess the need to maintain these arrangements in place and would either discontinue them or address, in a separate application, the justification for continuing them on a permanent basis.

2. *Sales and Service Contracts Among Nonutility Subsidiaries.* NiSource's Nonutility Subsidiaries (other than Columbia) request authorization to provide services and sell goods to each other at fair market prices determined without regard to cost, and therefore request an exemption (to the extent that Rule 90(d) does not apply) under section 13(b) from the cost standards of rules 90 and 91 as applicable to these transactions, in any case in which the Nonutility Subsidiary purchasing the goods or services is:

(1) A FUCO or foreign EWG that derives no part of its income, directly or indirectly, from the generation, transmission, or distribution of electric energy for sale within the United States;

(2) An EWG that sells electricity at market-based rates that have been approved by the Federal Energy Regulatory Commission ("FERC"), provided that the purchaser is not Northern Indiana;

(3) A "qualifying facility"("QF") within the meaning of the Public Utility Regulatory Policies Act of 1978, as amended ("PURPA") that sells electricity exclusively (a) at rates negotiated at arms-length to one or more industrial or commercial customers purchasing the electricity for their own use and not for resale, and/or (b) to an electric utility company (other than Northern Indiana) at the purchaser's "avoided cost" as determined in accordance with the regulations under PURPA;

(4) A domestic EWG or QF that sells electricity at rates based upon its cost of service, as approved by FERC or any state public utility commission having jurisdiction, provided that the purchaser thereof is not Northern Indiana; or

(5) A Rule 48 Subsidiary or any other Nonutility Subsidiary that (a) is partially owned by NiSource, provided that the ultimate purchaser of the goods or services is not a Utility Subsidiary, NiSource Services (or any other entity within the NiSource system whose activities and operations are primarily related to the provision of goods and services to the Utility Subsidiaries), (b) is engaged solely in the business of developing, owning, operating and/or providing services or goods to Nonutility Subsidiaries described in clauses (1) through (4) immediately above, or (c) does not derive, or indirectly, any material part of its income from sources within the United States and is not a public-utility company operating within the United States.

N. Activities of Rule 58 Subsidiaries Outside the U.S.

NiSource, on behalf of any current or future Rule 58 Subsidiaries, requests authority to engage in certain "energy-related" activities permitted by rule 58 outside the United States. These activities would include: (1) The brokering and marketing of electricity, natural gas and other energy commodities ("Energy Marketing"); (2) energy management services ("Energy Management Services"), including the marketing, sale, installation, operation and maintenance of various products and services related to energy management and demand-side management; and (3) engineering, consulting and other technical support services ("Consulting Services") with respect to energy-related businesses and for individuals.

NiSource requests that the Commission authorize Rule 58 Subsidiaries to (1) engage in Energy Marketing activities in Canada and reserve jurisdiction over Energy Marketing activities outside of Canada pending completion of the record in this proceeding; and (2) provide Energy Management Services and Consulting Services anywhere outside the United States. In addition, NiSource requests that the Commission reserve jurisdiction over other activities of Rule 58 Subsidiaries outside the United States, pending completion of the record.

In addition, NiSource requests authorization for Rule 58 Subsidiaries to engage in gas-related activities outside the United States, subject to certain proposed limitations and a requests for reservation of jurisdiction. Specifically, NiSource requests approval for Rule 58 Subsidiaries to engage in the development, exploration and production of natural gas and oil in Canada and to invest up to $300 million in the equity securities or assets of new or existing companies that derive substantially all of their income from these activities.

In addition, NiSource requests approval for Rule 58 Subsidiaries to invest, directly or indirectly through other subsidiaries, in natural gas pipelines or storage facilities located outside the United States. Investments in these entities would also count against the $300 million investment limitation. NiSource requests that the Commission reserve jurisdiction over (1) the proposed exploration and production activities in foreign countries other than Canada pending completion of the record; and (2) investments in pipeline and storage facilities outside the United States pending completion of the record.

O. Payment of Dividends

1. *NiSource, Columbia and the Utility Subsidiaries.* Applicants state that before or shortly after the Merger, certain non-core assets or businesses of Columbia would be sold. In that event, the Applicants request authority for Columbia to transfer the net proceeds of the sale or sales to NiSource, either by paying a dividend or by repurchasing shares of its Common Stock that are held by NiSource. NiSource intends to use some or all of the proceeds of these non-core asset sales to repay Acquisition Debt.

2. *Nonutility Subsidiaries.* Applicants state that there may be situations in which one or more Nonutility Subsidiaries would have unrestricted cash available for distribution in excess of current and retained earnings. Accordingly, Applicants propose that the Nonutility Subsidiaries be permitted to pay dividends from time to time through the Authorization Period, out of capital and unearned surplus (including any revaluation reserve), to the extent permitted under applicable corporate law.

P. Tax Allocation Agreement

NiSource requests that the Commission approve the tax allocation agreement ("Tax Allocation Agreement") among NiSource and its Subsidiaries to allocate consolidate income tax liabilities in a manner other than permitted by rule 45(c). Applicants state that approval is necessary because the proposed Tax Allocation Agreement provides for the retention by NiSource of certain payments from the Subsidiaries for tax losses that NiSource will incur due to interest expense it would pay on the Acquisition Debt, rather than the allocation of those losses to Subsidiaries without payment, as rule 45(c)(5) would otherwise require. Applicants requests that the Commission reserve jurisdiction over the Tax Allocation Agreement pending completion of the record.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–25332 Filed 10–2–00; 8:45 am]

BILLING CODE 8010–01–M

[11] SM&P Utility Resources and Miller Pipeline Corp., two NiSource Nonutility Subsidiaries, provide services to certain NiSource Utility Subsidiaries at market rates. In addition, Bay State provides repair and installation services to EnergyUSA, a NiSource holding company which has management responsibility for many of NiSource's nonutility subsidiaries and investments. The services are rendered for propane equipment sold by EnergyUSA under an agreement entered into in December 1999. Bay State also supplies or procures necessary materials. Under the agreement, Bay State charges a flat response fee and standard hourly labor rates. There may be other similar kinds of arrangements in place between NiSource Subsidiaries for the sale of services, some of which may not be cost-based.



## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43347; File No. SR–OPRA–00–08]**

## Options Price Reporting Authority; Notice of Filing of a Proposal To Amend the Options Price Reporting Authority Plan To Establish Standards for Determining a Participation Fee

September 26, 2000.

Pursuant to Rule 11Aa3–2 under the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on September 12, 2000, the Options Price Reporting Authority ("OPRA") [2] submitted to the Securities and Exchange Commission ("SEC" or "Commission") an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information ("Plan"). The proposed Plan amendment would incorporate in the Plan factors to be considered by OPRA in determining the amount of the participating fee described in the current Plan as payable by each new party to the Plan.

### I. Description and Purpose of the Amendment

The Plan currently provides that any national securities exchange or registered securities association whose rules governing the trading of standardized options have been approved by the Commission may become a party to the Plan, provided it agrees to conform to the terms and conditions of the Plan and pays a participation fee to OPRA. The Plan does not establish the amount of the participation fee, but instead, states that the amount of the fee will be determined by OPRA in connection with each new application for participation, based upon standards incorporated in the Plan.[3] This approach provides sufficient flexibility to permit the determination of the fee to take into account the unique circumstances of each new application while, at the same time, assuring that the amount of the fee is based upon a set of established standards, thus enabling the fee to be administered in a fair and consistent manner. Under this structure, the amount of the participation fee will be determined in discussions with each applicant in light of the standards embodied in the Plan, under the general oversight of the Commission. This is the same general approach that is reflected in the Plans of other registered securities information processors, such as the Consolidated Tape Association and the Consolidated Quotation System.[4]

Although the Plan currently provides for a participation fee to be determined in the manner described above, it does not reflect the specific standards to be applied in determining the amount of the fee. Instead, the Plan contemplates that these standards will be incorporated in the Plan by means of a Plan amendment to be filed with and approved by the Commission prior to the determination of the participation fee to be paid by the International Securities Exchange, LLC ("ISE"), which at present is the only party to the Plan to which a fee based upon these standards will apply. This filing proposes to amend the Plan for the purpose of incorporating these standards in the Plan. As the Plan provides, ISE, as the only party subject to a participation fee to be determined on the basis of the standards now proposed, did not vote on the adoption of these standards, but it did participate in the discussion of the proposed standards.don

The purpose of the participation fee is to require each new party to the Plan to pay a fair share of the costs previously paid by the other parties for the development, expansion, and maintenance of the OPRA system. Consistent with this purpose, the standards now proposed to be embodied in the Plan for the determination of the participation fee are for the most part

[1] 17 CFR 240.11Aa3–2.

[2] OPRA is a National Market System Plan approved by the Commission pursuant to Section 11A of the Act and Rule 11Aa3–2 thereunder. *See* Securities Exchange Act Release No. 17638 (March 18, 1981).

The Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the member exchanges. The six exchanges that are participants to the Plan are the American Stock Exchange, the Chicago Board Options Exchange, the International Securities Exchange, the New York Stock Exchange, the Pacific Exchange, and the Philadelphia Stock Exchange.

[3] *See* Securities Exchange Act Release No. 42817 (May 24, 2000), 65 FR 35149 (June 1, 2000) (SR–OPRA–99–01).

[4] *See* Section III(c) of the Second Restatement of the CTA Plan as restated December 1995, and Section III(c) of the Restatement of the CQ Plan as restated December 1995.

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concerned with these categories of costs. Because OPRA, as an administrative committee of exchanges, does not account for any assets of its own, it does not capitalize any of its costs but instead, simply passes them on to the exchanges. However, OPRA believes that the concept of capitalized costs is an appropriate factor to be taken into account in determining what should be a proper participation fee. Accordingly, the first factor proposed to be included in the Plan for this purpose is to consider what would have been amortized as OPRA's capital expenditures over the past five years if OPRA were subject to generally accepted accounting principles. OPRA believes that five years is an appropriate time frame for this purpose not only because it represents a reasonable life for the kinds of computer hardware and software assets that make up the OPRA system, but also because it is a short enough period to provide a reasonable basis for determining how much of OPRA's past expenses should be shared by a new party.

The next factor proposed to be considered is an assessment of costs incurred and to be incurred by OPRA in connection with any modifications to the OPRA system necessary to accommodate the new party, unless these costs have otherwise been paid or reimbursed by the new party. This, too, is a cost-based factor, and reflects that it is appropriate for a new party to pay the costs uniquely associated with its becoming a party.

Finally, OPRA proposes that the determination of the participation fee would also take into account previous fees paid by other new parties. Of course, the closer in time any such prior fees were paid and the greater the similarity of the circumstances between the participation of the other parties and the party that is to pay the participation fee under consideration, the greater will be the weight given to this factor, in the interest of fairness and consistency.

Although the participation fee to be paid by ISE will not be payable unless and until specific standards for determining the fee have been approved by the Commission, ISE and the other parties have had discussions concerning what would be the amount of the fee if the standards proposed in this amendment were approved, and they have reached agreement on both the amount of the fee and the terms of payment.

**II. Implementation of the Plan Amendment**

OPRA intends to make the proposed amendment to the Plan reflected in this filing effective immediately upon the approval of the amendment by the Commission pursuant to Rule 11Aa3–2 under the Act.[5]

**III. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed Plan amendment is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, and all written statements with respect to the proposed Plan amendment that are filed with the Commission, and all written communications relating to the proposed Plan amendment between the Commission and any person, other than those withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available at the principal offices of OPRA. All submissions should refer to File No. SR–OPRA–00–08 and should be submitted by October 24, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–25294 Filed 10–2–00; 8:45 am]

BILLING CODE 8010–01–M

[5] 17 CFR 240.11Aa3–2.

[6] 17 CFR 200.30–3(a)(29).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43346; File No. SR–NASD–00–33]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by the National Association of Securities Dealers, Inc. to Amend NASD Rule 3340 to Prohibit Publication of Quotations or Indications of Interest in a Security During a Trading Halt

September 26, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 7, 2000, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary, NASD Regulation, Inc. ("NASD Regulation"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. On August 2, 2000, NASD Regulation amended the proposal.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

NASD Regulation proposes to amend NASD Rule 3340 to prohibit the publication by members of quotations or indications of interest for a security during a trading halt. The text of the proposed rule change is below. Proposed new language is in italics. Proposed deletions are in brackets.

3340. Prohibition on Transactions, Publication of Quotations, or Publication of Indications of Interest During Trading Halts

No member or person associated with a member shall, directly or indirectly, effect any transaction *or publish a quotation, a priced bid and/or offer, an unpriced indication of interest (including "bid wanted" and "offer wanted" and name only indications), or a bid or offer, accompanied by a modifier to reflect unsolicited customer interest,* in [a] *any* security as to which a trading halt is currently in effect.

* * * * *

*II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

In its filing with the Commission, NASD Regulation included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Regulation has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* August 2, 2000 letter from Kathleen A. O'Mara, Assistant General Counsel, NASD Regulation to Katherine A. England, Assistant Director, Division of Market Regulation, SEC ("Amendment No. 1"). Amendment No. 1 broadened the scope of the proposed rule change.



*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposed rule change is to expressly prohibit members from publishing quotations or indications of interest in a security during a trading halt. Currently, NASD Rule 3340 prohibits members from effecting a transaction in a security during a trading halt, but does not expressly state that members are prohibited from publishing quotations or indications of interest.[4] However, NASD Rules 3310[5] and 3320,[6] respectively, state that members are required to enter only bona fide quotations and honor such quotations if presented with an order. Thus, if during a trading halt, a member that is publishing a quotation for a security is presented with a liability order for such security, the member would be faced with the choice of either honoring its quote and violating the rule prohibiting transactions in a security during a trading halt, or complying with the trading halt rule but violating the Firm Quote Rule. In addition, the entry of quotations or indications of interest while there is a trading halt in a security could be potentially misleading. To prevent this from happening, NASD Regulation is proposing that NASD Rule 3340 be amended to expressly state that members are prohibited from publishing quotations or indications of interest during a trading halt.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[7] which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The NASD believes that, under the proposed rule change, preventing the publication of quotations or indications of interest during a trading halt will prevent members from seeking to trade at a time when they cannot execute a trade. Thus, the proposal is designed to protect investors and to insure the integrity of quotations by preventing fictitious or misleading quotations.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–00–33 and should be submitted by October 24, 2000.

[4] The Commission may impose trading suspensions in the United States securities markets under Section 12(k) of the Act. *See* 15 U.S.C. 781(k).

NASD Rule 4120 provides that Nasdaq may halt trading: (1) in the over-the-counter market of a security listed on Nasdaq to permit the dissemination of material news; or (2) in the over-the-counter market of a security listed on a national securities exchange during a trading halt imposed by such exchange to permit the dissemination of material news; or (3) by (i) Consolidated Quotation System ("CQS") market makers in a CQS security because of an order imbalance or influx ("operational trade halt"); or (ii) Nasdaq market makers in a security listed on Nasdaq, when the security is a derivative or component of a CQS security and a national securities exchange imposes an operational trading halt in that CQS security; or (4) in an American Depository Receipt ("ADR") or other security listed on Nasdaq, when the Nasdaq-listed security or the security underlying the ADR is listed on or registered with a national or foreign securities exchange or market, and the national or foreign securities exchange or market, or regulatory authority overseeing such exchange or market, halts trading in such security for regulatory reasons; or (5) in a security listed on Nasdaq when Nasdaq requests from the issuer information relating to: (i) material news; (ii) the issuer's ability to meet Nasdaq listing qualification requirements, as set forth in NASD Rule 4300 and 4400 Series; or (iii) any other information which is necessary to protect investors and the public interest. *See also* Securities Exchange Act Release No. 42806 (May 22, 2000), 65 FR 34518 (May 30, 2000) (SR–NASD–99–33), which establishes Nasdaq's trade and quote halt authority in certain specific circumstances in securities included in the OTC Bulletin Board Service ("OTCBB"), and *Notice to Members 99–69* soliciting comments on whether NASD Regulation should have authority to halt trading in non-Nasdaq, non-OTCBB, over-the-counter securities under certain circumstances.

[5] NASD Rule 3310 states that: [n]o member shall publish or circulate, or cause to be published or circulated, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind which purports . . . to quote the bid price or asked price for any security, unless such member believes that such quotation represents a bona fide bid for, or offer of, such security * * *.

NASD Rule IM–3310 states, among other things, that: [i]t would be inconsistent with the above provisions for a member, for itself or for any other person, to publish or circulate or to cause to be published or circulated, by any means whatsoever, any quotation for any security without having reasonable cause to believe that such quotation is a bona fide quotation, is not fictitious and is not published or circulated or caused to be published or circulated for any fraudulent, deceptive or manipulative purpose. IM–3310 also provides: "[f]or the purposes of this interpretation, the term 'quotation' shall include any bid or offer or any formula, such as 'bid wanted' or 'offer wanted,' designed to induce any person to make or submit any bid or offer."

[6] NASD Rule 3320 ("Firm Quote Rule") states that: [n]o member shall make an offer to buy from or sell to any person any security at a stated price unless such member is prepared to purchase or sell, as the case may be, at such price and under such conditions as are stated at the time of such offer to buy or sell.

[7] 15 U.S.C. 78o–3(b)(6).

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For the Commission by the Division of Market Regulation, pursuant to delegated authority. [6]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–25295 Filed 10–2–00; 8:45 am]

BILLING CODE 8010–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43344; File No. SR–NASD–00–23]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by the National Association of Securities Dealers, Inc. Relating to Amendments to Order Audit Trail System Rules

September 26, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 19, 2000, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly-owned subsidiary, NASD Regulation, Inc. ("NASD Regulation"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by NASD Regulation. On September 5, 2000, NASD Regulation amended its proposal.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation is proposing to amend NASD Rules 6951, 6954, 6955 and 9610. The proposed rule change would: (1) provide that the time of order origination and receipt for an electronic order is the time the order is captured by a member's electronic order-routing or execution system; for a manual order that is fewer than 10,000 shares, the time of order origination and receipt is the time the order is received by the member's trading desk or trading department for execution or routing purposes; and for a manual order that is 10,000 shares or greater, the time of order origination and receipt is the time the order is received by the member from the customer; (2) exclude certain members from the definition of "Reporting Member" for those orders that meet specified conditions and are recorded and reported to the Order Audit Trail System ("OATS") by another member; (3) require any receiving reporting member, including electronic communications networks ("ECNs"), that receive routed orders, electronically or manually, to capture and report a routed order identifier; and (4) permit NASD Regulation to grant exemptive relief from the OATS reporting requirements to members that meet specified criteria.

The text of the proposed rule change follows. Proposed new rule language is in italics; proposed deletions are in brackets.

**NASD Systems and Programs**

**6950. Order Audit Trail System**

**6951. Definitions**

For purposes of Rules 6950 through 6957:

(a) through (m) No Change.

(n) "Reporting Member" shall mean a member that receives or originates an order and has an obligation to record and report information under Rules 6954 and 6955. *A member shall not be considered a Reporting Member in connection with an order, if the following conditions are met:*

*(1) the member engages in non-discretionary order routing process, pursuant to which it immediately routes, by electronic or other means, all of its orders to receiving Reporting Member;*

* * * * *

*(2) the members does not direct and does not maintain control over subsequent routing or execution by the receiving Reporting Member;*

*(3) the receiving Reporting Member records and reports all information required under Rules 6954 and 6955 with respect to the orders; and*

*(4) the member has a written agreement with the receiving Reporting Members specifying the respective functions and responsibilities of each part to affect full compliance with the requirements of Rules 6954 and 6955.*

* * * * *

**6954. Recording of Order Information**

(a) No Change.

(b) Order Origination and Receipt.

Unless otherwise indicated, the following order information must be recorded under this Rule when an order is received or originated. *For purpose of this Rule, the order origination and receipt time for an electronic order is the time the order is captured by a member's electronic order-routing or execution system; for a monuol order that is fewer than 10,000 shares, the order origination and receipt time is the time the order is received by the member's trading desk or trading department for execution or further routing purposes; and for a monual order that is 10,000 shares or greater, the order origination and receipt time is the time the order is received by the member from the customer.*

(1) through (18) No Change.

(c) Order Transmittal.

Order information required to be recorded under this Rule when an order is transmitted includes the following.

(1) and (2) No Change.

(3) When a member electronically transmits an order for execution on an Electronic Communications Network:

(A) the transmitting Reporting Member and shall record:

(i) the fact that the order was transmitted to an Electronic Communications Network.

(ii) the order identifier assigned to the order by the Reporting Member.

(iii) the maker participant symbol assigned by the Association to the Reporting Member.

(iv) the market participant symbol assigned by the Association to the member to which the order is transmitted,

(v) the date the order was first originated or received by the Reporting Member,

(vi) the date and time the order is transmitted, and

(vii) the number of shares to which the transmission applies; and

(B) the receiving Reporting Member operating the Electronic Communications Network shall record:

(i) the fact that the order was received by an Electronic Communications Network,

*(ii) the order identifier assigned to the order by the member that transmits the order,*

*(iii)* [(ii)] the market participant symbol assigned by the Association to the transmitting Reporting Member, and

*(iv)* [(iii)] other information items in Rule 6954(b) that apply with respect to such order, which must include information items (1), (2), (3), (6), (7), (8), (10), (11), (12), (13), (15), and (16).

(4) When a member manually transmits an order to another member, other than to an Electronic Communications Network:

(A) the transmitting Reporting Member shall record:

(i) the fact that the order was transmitted manually,

(ii) the order identifier assigned to the order by the Reporting Member,

(iii) the market participant symbol assigned by the Association to the Reporting Member,

(iv) the market participant symbol assigned by the Association to the member to which the order is transmitted,

(v) the date the order was first originated or received by the Reporting Member,

(vi) the date and time the order is transmitted,

(vii) the number of shares to which the transmission applies, and

(viii) for each order to be included in a bunched order, the bunched order route indicator assigned to the bunched order by the Reporting Member; and

(B) the receiving Reporting Member shall record, in addition to all other information items in Rule 6954(b) that apply with respect to such order:

(i) the fact that the order was received manually, [and]

*(ii) the order identifier assigned to the order by the member that transmits the order, and*

*(iii)* [(ii)] the market participant symbol assigned by the Association to the member that transmits the order.

(5) When a member manually transmits an order to an Electronic Communications Network:

(A) the transmitting Reporting Member shall record:

(i) the fact that the order was transmitted manually,

(ii) the order identifier assigned to the order by the Reporting Member,

(iii) the market participant symbol assigned by the Association to the Reporting Member,

(iv) the market participant symbol assigned by the Association to the member to which the order is transmitted,

(v) the date the order was first originated or received by the Reporting Member,

(vi) the date and time the order is transmitted,

(vii) the number of shares to which the transmission applies, and

(viii) for each order to be included in a bunched order, the bunched order route indicator assigned to the bunched order by the Reporting Member; and

(B) the receiving Reporting Member shall record:

(i) the fact that the order was received manually,

*(ii) the order identifier assigned to the order by the member that transmits the order,*

*(iii)* [ii] the market participant symbol assigned by the Association to the transmitting Reporting Member, and

*(iv)* [(iii)] other information items in Rule 6954(b) that apply with respect to such order, which must include information items (1), (2), (3), (6), (7), (8), (10), (11), (12), (13), (15), and 16).

(6) No Change.

(d) No Change.

**6955. Order Data Transmission Requirements**

(a) through (c) No Change

*(d) Exemptions*

*(1) Pursuant to the Rule 9600 Series, the staff, for good cause shown after taking into consideration all relevant factors, may exempt, subject to specified terms and conditions, a member from the order data transmission requirements of this Rule for manual orders, if such exemption is consistent with the protection of investors and the public interest, and the member meets the following criteria:*

*(A) the member and current control affiliates and associated persons of the member have not been subject within the last five years to any disciplinary action, and within the last ten years to any disciplinary action involving fraud;*

*(B) the member has annual revenues of less than $2 million;*

*(C) the member does not conduct any market making activities in Nasdaq Stock Market equity securities;*

*(D) the member does not execute principal transactions with its customers (with limited exception for principal transactions executed pursuant to error corrections); and*

*(E) the member does not conduct clearing or carrying activities for other firms.*

*(2) An exemption provided pursuant to this paragraph (d) shall not exceed a period of two years. At or prior to the expiration of a grant of exemptive relief under this paragraph (d), a member meeting the criteria set forth in paragraph (d)(1) may request, pursuant to the Rule 9600 Series, a subsequent exemption, which will be considered at the time of the request, consistent with the protection of investors and the public interest.*

*(3) This paragraph shall be in effect until [five years from the effective date of the proposed rule change].*

* * * * *

**9600. Procedures for Exemptions**

**9610. Application**

(a) Where to File

A member seeking an exemption from Rule 1021, 1022, 1070, 2210, 2320, 2340, 2520, 2710, 2720, 2810, 2850, 2851, 2860, Interpretive Material 2860–1, 3010(b)(2), 3020, 3210, 3230, 3350, *6955*, 8211, 8212, 8213, 11870, or 11900, Interpretive Material 2110–1, or Municipal Securities Rulemaking Board Rule G–37 shall file a written application with the appropriate department or staff of the Association and provide a copy of the application to the Office of General Counsel of NASD Regulation.

(b) and (c) No Change.

* * * * *

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Regulation has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

(a) Background

On March 6, 1998, the SEC approved NASD Order Audit Trail System ("OATS") Rules 6950 through 6957.[4] OATS provides a substantially enhanced body of information regarding orders and transactions that improves NASD Regulation's ability to conduct surveillance and investigations of member firms for violations of federal securities laws and Association rules. In addition, OATS is intended to fulfill one of the undertakings contained in the order issued by the SEC relating to the settlement of an enforcement action against the NASD for failure to adequately enforce its rules.[5] Pursuant to the SEC Order, OATS is required, at a minimum, to: (1) Provide an accurate, time-sequenced record of orders and transactions, beginning with the receipt of an order at the first point of contact between the broker/dealer and the customer or counterparty and further documenting the life of the order through the process of execution; and (2) provide for market-wide synchronization of clocks used in connection with the recording of market events.[6]

In general, OATS imposes obligations on member firms to record in electronic form and to report to NASD Regulation on a daily basis certain information with respect to orders originated, received, transmitted, modified, canceled, or executed ("reportable events") by NASD members relating to Nasdaq Stock Market, Inc. ("Nasdaq") equity securities. OATS also requires member firms to synchronize their business clocks and to keep them continually synchronized with a specific time designated by the Association. OATS captures this order information reported by NASD members and integrates it with quote information and transaction information reported to the Automated Confirmation Transaction Service ("ACT")[7] to provide the Association with an accurate, time-sequenced record of orders, quotes, and transactions.

In addition to NASD Rules 6950 through 6957, NASD Rule 3110 imposes recordkeeping requirements on NASD members that are obligated to record and report information to the NASD under the OATS rules. With respect to an order that is received or executed at the member's trading department, the member is required to record the identification of the registered person who received the order directly from a customer and the identification of the person who executed the order at a market maker's trading desk. In

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[6] 17 CFR 2000.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated September 5, 2000 ("Amendment No. 1"). Amendment No. 1 proposed substantive changes to the proposed rule language, including the definition of the time of receipt for manual block orders of 10,000 shares or greater, and the provisions for exemptive relief.

[4] *See* Securities Exchange Act Release No. 39729 (March 6, 1998), 63 FR 12559 (March 13, 1998) ("OATS Approval Order").

[5] *See* In the Matter of National Association of Securities Dealers, Inc., Exchange Act Release No. 37538 (August 8, 1996); Administrative Proceeding File No. 3–9056 ("SEC Order").

[6] *Id.*

[7] ACT is an automated system owned and operated by Nasdaq that captures transaction information in real-time.

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addition, NASD Rule 3110 requires a member to record the identification of the department of the member that originated an order that is transmitted manually to another department within a member.

The effective date for OATS requirements are set forth in NASD Rule 6957, which provides for different phases of implementation. All members were required to synchronize their computer system clocks and all mechanical clocks that record times for regulatory purposes by August 7, 1998, and July 1, 1999, respectively. In addition, the implementation schedule required that electronic orders received at the trading department of a member that is a market maker in the subject securities and those received by electronic communications networks ("ECNs") be entered into OATS as of March 1, 1999 ("Phase One"). Not all information relating to electronic orders received by market makers was required to be reported to OATS during Phase One. Information items relating to all electronic orders, however, was required to be reported to OATS by August 1, 1999 ("Phase Two").

As of December 15, 2000, the OATS rules will apply to all manual orders ("Phase Three").[8] With respect to manual orders and all orders received by ECNs, however, the data required to be electronically recorded and transmitted to the OATS is limited to information that is expected to be readily available at the trading desk.[9]

The books and records requirements, set forth in NASD Rule 3110(h)(1)(A) and (B), pertaining to the identification of the registered representative who receives an order directly from a customer and the identification of each registered person who executes the order, became effective on March 1, 1999. The recordkeeping requirements, set forth in NASD Rule 3110(h)(1)(C), applicable to orders originated by a member and manually transmitted to another department within the member firm, will become effective on December 15, 2000.

Since the implementation of the OSTS requirements, NASD Regulation staff has been closely reviewing OATS activities with the goal of identifying ways in which to enhance the effectiveness of OATS as a regulatory tool. In this regard, NASD Regulation has identified certain changes to OATS that its believes will enhance NASD Regulation's automated surveillance for compliance with trading and market making rules such as the NASD's Limit Order Protection Interpretation, the SEC's Order Handling Rules, and a member firm's best execution obligations. These rule changes will, at the same time, eliminate the reporting of duplicative information and reduce the regulatory burdens on member firms, particularly certain smaller member firms.

(b) Current Proposal

(1) Change to Time of Receipt of Order

NASD Rule 6954 requires certain identifying information to be recorded at various critical points during the life of an order. In addition to uniquely identifying the order, this information assists NASD Regulation in carrying out its regulatory responsibilities with respect to that order. In general, the required information items relate to: (1) the origin of an order (*i.e.*, in-house, customer, or another member); (2) whether the member relies upon a Reporting Agent to fulfill its reporting obligations; (3) how the order was received (*i.e.* manually or electronically); (4) the items of the order; (5) whether the order was transmitted for execution to another department within the member (other than to the trading department), to another member, or to an ECN, and how it was transmitted (*i.e.*, manually or electronically); and (6) whether the order was modified, canceled, or executed.

NASD Rule 6954(b) requires certain information to be recorded when an order is received or originated. For electronic orders, the proposed rule change would codify the staff's current position that the order origination and receipt time is the time the order is captured by a member's electronic order-routing or execution system. NASD Regulation believes that this definition of time of receipt is a close substitute for the time an order is received by the trading desk because routing through the electronic system to the trading desk is nearly instantaneous.

Once the OATS rules are fully phased in on December 15, 2000, manual orders, whether recorded at a market maker trading desk or at another location, will be subject to all the recording and reporting requirements. Currently, the time of receipt recorded and reported to OATS is the time the firm receives the order from a customer.[10] Although the actual time a manual order is received by a firm is useful for certain regulatory purposes, it is of little value to NASD Regulation's Market Regulation Department's automated surveillance for identifying potential violations of NASD IM 2110–2 (the limit order protection rule), Rule 11Ac1–4 under the Exchange Act (limit order display rule), and NASD Rule 2320 (best execution obligations). In many instances, the more useful time for these purposes is the time the order is received by the trading desk or trading department. Accordingly, NASD Regulation is proposing to amend Rule 6954(b) to require the time of receipt to be recorded and reported by a member firm to OATS for a manual order that is fewer than 10,000 shares to be the time the order is received by the member's trading desk or trading department for execution or routing purposes. For a manual order that is 10,000 shares or greater, the time of receipt required to be recorded and reported would continue to be the time the order is received by the member from the customer.[11]

[8] *See* Securities Exchange Act Release No. 43263 (September 8, 2000), 65 FR 55661 (September 14, 2000). On March 9, 2000, NASD Regulation filed a proposed amendment with the SEC for immediate effectiveness to extend the implementation date of Phase Three from July 31, 2000 to October 31, 2000. *See* Exchange Act Release No. 42515 (March 10, 2000), 65 FR 14638 (March 17, 2000). The purpose of these extensions is to provide NASD Regulation adequate time to analyze and consider the proposed changes described in the current proposal, and, in particular, those affecting Phase Three recording and reporting requirements.

[9] *See* OATS Approval Order, pp. 22–23, *supra* note 4. Specifically, with respect to manual orders, information item (18) (type of account for which the order is submitted) of NASD Rule 6954(b) would be required to be reported only to the extent that such information item is available. Information items (4) (identification of any department or the identification number of any terminal where an order is received) and (5) (identification of the department of the member originating an order) or Rule 6954(b) and information items under (1) (recordkeeping requirements for orders transmitted to another department within the member) specified in Rule 6954(c) would not be required to be recorded and reported with respect to manual orders. In addition, information items (4) (identification of any department or identification number of any terminal where an order is received), (5) (the identification of the department of the member that originates the order), (9) (the designation of the order as a short sale), (14) (any request by a customer that an order not be displayed or that a block size order be displayed, pursuant to Rule 11Ac1–4(c) under the Exchange Act), (17) (the identification of the order as related to a Program Trade or an Index Arbitrage Trade), and (18) (the type of account for which the order is submitted) specified in Rule 6954(b) would not be required to be recorded and reported by ECNs receiving orders either electronically or manually.

[10] If an order is received and then immediately entered into an electronic system, the time the order is captured by such system has been interpreted to be the time of receipt. *See* OATS Reporting Technical Specifications, Section 4.1.3.

[11] Because certain order handling rules may apply different to block orders of 10,000 shares or greater, the proposed rule change defines the time of receipt differently depending on the size of the order. For example, members may attach terms and conditions to certain block orders of 10,000 shares or greater for purposes of the limit order protection rule, such orders excepted from the limit order display rule unless a customer expressly requests otherwise.



NASD Regulation believes that, for electronic orders and manual orders for fewer than 10,000 shares, the time the order is received at the trading desk or trading department is the most relevant time and will provide the best indicator for NASD Regulation's automated surveillance systems to review for compliance with applicable rules. In addition, NASD Regulations believes the proposed rule change will reduce the burden of reprogramming reporting systems for Phase Three requirements, as well as the cost of manually inputting these times for orders not directly inputted into an electronic order handling system, while still substantially fulfilling the undertakings contained in the SEC Order.

Notwithstanding this proposed rule change to the OATS rules, NASD Regulation recognizes the importance of capturing the time the order was actually received from the customer to determine if there are any inordinate delays in transmitting the order to the trading desk. In this regard, all firms must continue to capture and retain the time an order was received from a customer (if different than the time the order was entered into an electronic system) under Rule 17a–3(a)(6) of the Exchange Act.[12] This information is available to NASD Regulation staff as part of its investigatory process and is used during field examinations of member firms to determine, among other things, how promptly the firm transmits its orders for execution.

(2) Exclusion from OATS Reporting for Certain Members

Certain members engage in a non-discretionary order routing process whereby, immediately after receipt of a customer order, the member routes the order, by electronic or other means, to another member ("receiving member") for further routing or execution at the receiving member's discretion. Currently, the OATS rules require both the member with whom the order originated and the receiving member to create and report new order reports and possibly route reports. This results in the receipt of duplicative information by OATS. In such instances, therefore, NASD Regulation is proposing that the OATS rules be amended to require, in such instances, that only the receiving member report OATS data. Under the proposed rule change to NASD Rule 6951(n), a member would not be required to report OATS data regarding an order, if the following conditions are met:

(1) the member engages in a non-discretionary order routing process, pursuant to which it immediately rouges, by electronic or other means, all of its orders to a receiving Reporting Member;[13]

(2) the member does not direct or maintain control over subsequent routing or execution by the receiving Reporting Member;

(3) the receiving Reporting Member records and reports all information required under NASD Rules 6954 and 6955 with respect to the order; and

(4) the member has a written agreement with the receiving Reporting Member specifying the respective functions and responsibilities of each party to effect full compliance with the requirements of NASD Rules 6954 and 6955.

In addition to eliminating the reporting of duplicative information to OATS, NASD Regulation believes the proposed rule change will reduce the regulatory burdens on members, particularly smaller members, that route all their orders to another Reporting Member by means of a non-discretionary order routing process, for execution or further routing purposes.[14]

(3) Capturing Routed Order Information

OATS has the capability of tracking the history of an order by linking it across firms through the use of a routed order identifier. If the order does not contain a routed order identifier, the order cannot be linked to subsequent actions, such as further routing or execution by other firms or Nasdaq systems. In this regard, the complete history of a significant percentage of orders are not tracked because the OATS rules do not require any receiving Reporting Member to capture and report a routed order identifier if the order is routed to it manually. OATS rules also do not currently require ECNs to capture and report a routed order identifier for orders routed to the ECN manually or electronically. Given the current level of participation of ECNs, the linking of these orders is essential if OATs is to capture the life cycle of orders for Nasdaq securities. Therefore, NASD Regulation is proposing new provisions to Rule 6954(c) that will require firms and ECNs to capture and report the transmitting Reporting Member's unique identifier for all routed orders. NASD Regulation anticipates a "phase-in" period for implementation of this proposed rule change to provide adequate time for necessary systems and procedures changes.

(4) Exemptive Relief

Finally, NASD Regulation is proposing new paragraph (d) of Rule 6955 and an amendment to Rule 9610(a) to permit NASD Regulation to grant exemptive relief to certain members from the reporting requirements of the OATS rules under the procedures set forth in the Rule 9600 series. Specifically, members that meet the following criteria would be eligible to request an exemption from the OATS reporting requirements for manual orders:

(1) the member and current control affiliates and associated persons of the member have not been subject within the last five years to any disciplinary action, and within the last ten years to any disciplinary action involving fraud;

(2) the member has annual revenues of less than $2 million;

(3) the member does not conduct any market making activities in Nasdaq Stock Market equity securities;

(4) the member does not execute principal transactions with its customers (with limited exceptions for error corrections); and

(5) the member does not conduct clearing or carrying activities for other firms.

Under the proposed rule change, any exemptive relief granted would expire no later than two years from the date the member receives the exemptive relief. At or prior to the expiration of a grant of exemptive relief, members meeting the specified criteria may request a subsequent exemption, In addition, under the proposed rule change, NASD Regulation's exemptive authority shall be in effect for five years from the effective date of the proposed rule change.

The proposed exemptive authority will provide NASD Regulation the ability to grant relief to members meeting the specified criteria in situations where, for example, reporting of this information would be unduly burdensome for the member or where temporary relief from the rules (in the form of additional time to achieve compliance would permit the member to avoid unnecessary expense or hardship.

2. Statutory Basis

The Association believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of

[12] 17 CFR 240.17a–3(a)(6).

[13] If any delay results in the routing of an order due to systems problems or other reasons, the member with whom the order originated would be required to report OATS data.

[14] This exclusion would not change a member's requirement to capture and retain the time an order was received from a customer under Rule 17a–3(a)(6) or the Exchange Act. 17 CFR 240.17a–3(a)(6).

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the Exchange Act,[15] which require that the rules of an association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and, in general, to protect investors and the public interest. NASD Regulation believes that, under the proposed rule change, OATS will continue to provide a substantially enhanced body of information regarding orders and transactions and will improve NASD Regulation's ability to conduct surveillance and investigations of member firms for violations of the Association's and other applicable rules.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

NASD Regulation does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

NASD Regulation neither solicited nor received written comments.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Exchange Act. In particular, the Commission solicits comments on the propriety of the proposed time of receipt to be recorded and reported to OATS for manual orders. Currently, the time of receipt recorded and reported to OATS is the time the firm receives the order from a customer. Under the proposed rule change, this would continue to be the time of receipt for manual orders that are 10,000 shares or greater. For manual orders of fewer than 10,000 shares, however, the NASD has proposed that the time of receipt to be recorded and reported pursuant to the OATS rules be the time the order is received by the member's trading desk or trading department for execution or routing purposes. The distinction is due to the types of problems the NASD and the Commission have encountered with manual orders of various sizes. Manual orders of greater than 10,000 shares are more likely to be subject to potential manipulation through delays in transferring the orders to a firm's trading desk or trading department. Manual orders of fewer than 10,000 shares, however, may need to be more closely examined for violations of the Commission's order handling rules. The Commission seeks comment on whether the proposed distinction between manual orders of different sizes for purposes of the proposed time of receipt is reasonable.

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–00–23 and should be submitted by October 24, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–25333 Filed 10–2–00; 8:45 am]

BILLING CODE 8010–01–M

[15] 15 U.S.C. 78o–3(b)(6).

[16] 17 CFR 200.30–3(a)(12).

## SMALL BUSINESS ADMINISTRATION (SBA)

### Federal Assistance to Provide Financial, Counseling, Technical Assistance and Long-Term Training to Small Business Owners and Those Interested in Starting a Small Business

**AGENCY:** Small Business Administration.

**ACTION:** SBDC 2000 Program Announcement for FY 2001 and CY 2001.

**SUMMARY:** The Small Business Administration plans to issue an SBDC program announcement. SBA plans to issue an SBDC 2000 Program Announcement for FY 2001 and CY 2001 to invite applicants from Institutions of Higher Education and Women's Business Centers to establish, manage, and oversee a Small Business Development Center (SBDC) Network in the State of Michigan.

The authorizing legislation is section 21 of the Small Business Act, (15 U.S.C. 648), *as amended* by section 6 of Pub. L.101–515.

SBA's Detroit District Office will hold a bidders conference on November 6, 2000.

SBA's Detroit District Office must receive applications/proposals by November 20, 2000.

SBA will select the applicants competitively. The successful applicant will receive an award to provide long term training, counseling and technical assistance to businesses/persons who want to start or expand a small business.

The applicant must submit a one year plan that describes the network, proposed fund raising, training and technical assistance activities. Award recipients must provide non-Federal matching funds, *i.e.*, one-non Federal dollar for each Federal dollar for the project-year. At least half of the matching requirement must be in cash. The remainder may be in in-kind or in waived indirect cost.

**DATES:** SBA will mail program announcements to interested parties, immediately, upon request. The Opening date will be October 3, 2000 and the closing date will be November 3, 2000.

**FOR FURTHER INFORMATION CONTACT:** Eugene Cornelius, (313) 226–7240.

**Johnnie L. Albertson,**

*Associate Administrator for Small Business Development Centers.*

[FR Doc. 00–25368 Filed 10–2–00; 8:45 am]

BILLING CODE 8025–01–P



## SMALL BUSINESS ADMINISTRATION

### Region IV District Advisory Council; Public Meeting

The U.S. Small Business Administration, North Florida District Office, Jacksonville, Florida, Advisory Council will hold a public meeting from 12:00 p.m. to 2:00 p.m., October 26, 2000, located at the University Center, 12000 Alumni Drive, University of North Florida, Jacksonville, Florida, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present. For further information write or call Claudia D. Taylor, U.S. Small Business Administration, 7825 Baymeadows Way, Suite 100–B, Jacksonville, Florida 32256 (904) 443–1933.

**Bettie Baca,**

*Counselor to the Administrator/Public Liaison.*

[FR Doc. 00–25369 Filed 10–2–00; 8:45 am]

BILLING CODE 8025–01–P

## SMALL BUSINESS ADMINISTRATION

### Small Business Investment Company; Computation of Alternative Maximum Annual Cost of Money to Small Businesses

13 CFR 107.855 limits the maximum annual Cost of Money (as defined in 13 CFR 107.50) that may be imposed upon a Small Business in connection with Financing by means of Loans or through the purchase of Debt Securities. The cited regulation incorporates the term "Debenture Rate", which is defined in 13 CFR 107.50 as the interest rate, as published from time to time in the **Federal Register** by SBA, for ten year debentures issued by Licensees and funded through public sales of certificates bearing SBA's guarantee.

Accordingly, Licensees are hereby notified that effective the date of publication of this Notice, and until further notice, the Debenture Rate, plus the 1 percent annual fee which is added to this Rate to determine a base rate for computation of maximum Cost of Money, is 8.452 percent per annum.

13 CFR 107.855 does not supersede or preempt any applicable law imposing an interest ceiling lower than the ceiling imposed by its own terms. Attention is directed to section 308(i) of the Small Business Investment Act of 1958, as amended, regarding that law's Federal override of State usury ceilings, and to its forfeiture and penalty provisions.

(Catalog of Federal Domestic Assistance Program No. 59.011, small business investment companies)

Dated: September 27, 2000.

**Don A. Christensen,**

*Associate Administrator for Investment.*

[FR Doc. 00–25367 Filed 10–2–00; 8:45 am]

BILLING CODE 8025–01–P

## DEPARTMENT OF STATE

**[Public Notice 3426]**

### Culturally Significant Objects Imported for Exhibition Determinations: "European Masterpieces: Six Centuries of Paintings From the National Gallery of Victoria, Australia"

**AGENCY:** Department of State.

**ACTION:** Notice

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition "European Masterpieces: Six Centuries of Paintings from the National Gallery of Victoria, Australia," imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign lender. I also determine that the exhibition or display of the exhibit objects at the Cincinnati Art Museum, in Cincinnati, Ohio from on or about October 27, 2000 to on or about January 14, 2001, the Kimbell Art Museum in Fort Worth, Texas, from on or about March 18, 2001 to on or about May 26, 2001, the Denver Art Museum in Denver, Colorado from on or about June 23, 2001 to on or about September 9, 2001 and the Portland Art Museum in Portland, Oregon to on or about October 6, 2001 to on or about January 6, 2002 is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of the exhibit objects, contact Carol Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/619–6981). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: September 27, 2000.

**William B. Bader,**

*Assistant Secretary for Educational and Cultural Affairs, Department of State.*

[FR Doc. 00–25371 Filed 10–2–00; 8:45 am]

BILLING CODE 4710–08–U

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Environmental Impact Statement: Kootenai County, Idaho

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of Intent.

**SUMMARY:** Pursuant to the National Environmental Policy Act (NEPA), 42 U.S.C. 4321; 40 CFR 1508.22; 23 CFR 771.123(a), the FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Kootenai County, Idaho near the city of Coeur d'Alene.

**FOR FURTHER INFORMATION CONTACT:** Victoria Peters, Design Operations Engineer or Christy Darden, Project Manager, Federal Highway Administration, 610 East Fifth Street, Vancouver, Washington 98661, telephone 360–696–7700.

**SUPPLEMENTARY INFORMATION:** The FHWA, in partnership with the U.S. Forest Service, East Side Highway District, and Idaho Department of Transportation, will prepare an environmental impact statement (EIS) on a proposal to improve Fernan Lake Road also known as Idaho Forest Highway 80. The section proposed for improvement begins at Fernan Village, outside of Coeur d'Alene, and ends at Fernan Saddle for a distance of approximately 17.2 kilometers (10.7 miles).

Fernan Lake Road provides access to Idaho Panhandle National Forest (IPNF). Because it is located close to the population in Coeur d'Alene and has direct access to I–90, Fernan Lake Road has a high vehicle usage. The recreational usage creates a dangerous mix of users including bicyclists, pedestrians, cars, recreational vehicles, timber haulers, trucks and school buses along this substandard paved road.

The existing Fernan Lake Road is narrow, has numerous sharp curves, a failing subgrade, a deteriorating road surface, and a substandard horizontal alignment which limits sight distance ("blind curves"). There are no developed recreational parking areas and very few turnouts along Fernan Lake, so users park along the road,

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creating a safety hazard. Safety hazards are created by a narrow road with sharp curves and a surface that is in poor condition. The reported accidents over a period of approximately five years (January 1994 to December 1998) are two to three times higher than typical for this type of road. Solutions are needed to reduce the rate and severity of accidents and to provide for the current and projected traffic demand.

The overall purpose of the project is to cost effectively improve the physical conditions and safety features of Fernan Lake Road, while minimizing adverse impacts to sensitive environmental resources. Project objectives will be based on the needs developed during the scoping process. All improvements must be consistent with the applicable guidelines from the IPNF Forest Plan, Kootenai County plans and ordinances, Idaho state regulations, and federal regulations.

Alternatives under consideration include (1) taking no action; (2) improving the existing road to meet the appropriate Idaho state design criteria; (3) improving the existing road to meet the appropriate American Association of State Highway and Transportation Officials (AASHTO) design criteria; (4) other alternatives that may be developed during the NEPA process.

Notices describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed interest in this proposal. Two public scoping meetings were held during 2000 in Coeur d'Alene, Idaho. Based in part on data collected and comments received, FHWA has determined that it will prepare an EIS on the project. Comments previously received will be utilized during the EIS. Additional interagency and public scoping activities will be conducted. The time and place of the public scoping activities will be provided in the local news media and by notice to individuals and agencies that have expressed interest in the proposal. The draft EIS will be available for public and agency review and comment. Schedules for these activities will be distributed when available this winter.

To ensure that the full range of issues related to this proposed action are addresses and all significant issues identified, comments and suggestions are invited from all interested parties. Previous comments received by FHWA have identified a number of issues such as impacts to private landowners, water quality, wetlands, and wildlife, as well as, hillside stability, placement of fill in the lake, tree removal, and parking along the roadway. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: September 27, 2000.

**Ronald W. Carmichael,**

*Division Engineer, Federal Highway Administration.*

[FR Doc. 00–25328 Filed 10–2–00; 8:45 am]

BILLING CODE 4910–22–M

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

September 25, 2000.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

**DATES:** Written comments should be received on or before November 2, 2000 to be assured of consideration.

**Internal Revenue Service (IRS)**

*OMB Number:* 1545–0212.
*Form Number:* IRS Form 5558.
*Type of Review:* Extension.
*Title:* Application for Extension of Time to File Certain Employee Plan Returns.
*Description:* This form is used by employers to request an extension of time to file the employee plan annual information return/report (Form 5500 series) or employee plan excise tax return (Form 5330). The data supplied is used to determine if such extension of time is warranted.
*Respondents:* Business or other for-profit, Not-for-profit institutions.
*Estimated Number of Respondents:* 335,000.
*Estimated Burden Hours Per Respondents:* 33 minutes.
*Frequency of Response:* On occasion.
*Estimated Total Reporting Burden:* 185,724 hours.
*OMB Number:* 1545–1276.
*Regulation Project Number:* FI–88–86 Final (TD 8458).
*Type of Review:* Extension.
*Title:* Real Estate Mortgage Investment Conduits.
*Description:* Section 860E(e) imposes an excise tax on the transfer of a residual interest in a REMIC to a disqualified party. The tax must be paid by the transferor of a pass-thru entity of which the disqualified party is an interest holder.
*Respondents:* Business or other for-profit.
*Estimated Number of Respondents:* 1,600.
*Estimated Burden Hours Per Respondents:* 20 minutes.
*Frequency of Response:* Annually.
*Estimated Total Reporting Burden:* 525 hours.
Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports Management Officer.*

[FR Doc. 00–25297 Filed 10–2–00; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

September 26, 2000.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220 to be assured of consideration.

**DATES:** Written comments should be received on or before November 2, 2000 to be assured of consideration.

**Internal Revenue Service (IRS)**

*OMB Number:* 1545–1696.
*Form Number:* IRS Form 8872.



*Type of Review:* Extension.
*Title:* Political Organization Report of Contributions and Expenditures.
*Description:* Internal Revenue Code section 527(j) requires certain political organizations to report certain contributions received and expenditures made after July 1, 2000. Every section 527 political organization that accepts a contribution or makes an expenditure for an exempt function during the calendar year must file Form 8872, except for: A political organization that is not required to file Form 8871 or a state or local committee of a political party or political committee of a state or local candidate.
*Respondents:* Not-for-profit institutions.
*Estimated Number of Respondents/Recordkeepers:* 10,000.
*Estimated Burden Hours Per Respondent/Recordkeeper:*
Recordkeeping—19 hr., 7 min.
Learning about the law or the form—18 min.
Preparing and sending the form to the IRS—37 min.
*Frequency of Response:* On occasion.
*Estimated Total Reporting/Recordkeeping Burden:* 802,000 hours.
*Clearance Officer:* Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224.
*OMB Reviewer:* Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports Management Officer.*

[FR Doc. 00–25298 Filed 10–2–00; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Federal Law Enforcement Training Center

### Meeting

**AGENCY:** Federal Law Enforcement Training Center, Treasury.

**ACTION:** Notice of meeting.

**SUMMARY:** The Advisory Committee to the National Center for State and Local Law Enforcement Training at the Federal Law Enforcement Training Center will meet on October 25, 2000. The agenda for this meeting includes remarks by the Committee Co-Chairs, Karen Wehner, Deputy Assistant Secretary (LE), Department of the Treasury, and Mary Lou Leary, Acting Assistant Attorney General, Office of Justice Programs, Department of Justice; progress reports on initiatives and training programs; and presentations on collaborative programs presented by the National Center.

**ADDRESSES:** FLTEC Artesia Facility, 1300 W. Richey Avenue, Artesia, New Mexico.

**FOR FURTHER INFORMATION CONTACT:** Bruce P. Brown, Director, National Center for State and Local Law Enforcement Training, Federal Law Enforcement Training Center, Glynco, GA 31524, 912–267–2322.

**Authority:** The Federal Advisory Committee Act, as amended (41 CFR Part 101–6.1015(b)).

Dated: September 26, 2000.

**Denise Franklin,**

*Acting Director, National Center for State and Local Law Enforcement Training.*

[FR Doc. 00–25329 Filed 10–2–00; 8:45 am]

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# Corrections

Federal Register
Vol. 65, No. 192
Tuesday, October 3, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF COMMERCE

### International Trade Administration

### National Institute of Standards and Technology; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

*Correction*

In notice document 00–24187 appearing on page 56869 in the issue of Wednesday, September 20, 2000, make the following correction:

On page 56869, in the third column, in the seventh line, "$8\times10^{11}$" should read "$8\times10^{-11}$".

[FR Doc. C0–24187 Filed X–XX–00; 8:45 am]

BILLING CODE 1505–01–D

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket Nos. ER00–213–002 and EL00–22–002]

### The Cincinnati Gas & Electric Company; Notice of Filing

*Correction*

In notice document 00–24513 appearing on page 57596 in the issue of Monday, September 25, 2000, the docket line should read as set forth above.

[FR Doc. C0–24513 Filed 10–2–00; 8:45 am]

BILLING CODE 1505–01–D

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. ER00–1–003, et al.]

### TransEnergie U.S., et al.; Electric Rate and Corporate Regulation Filings

*Correction*

In notice document 00–23065 beginning on page 54514 in the issue of Friday, September 8, 2000, make the following correction:

On page 54515, in the first column, under the heading **9. PPL Montour, LLC**, "[Docket No. ER00–3032–000]" should read "[Docket No. ER00–3032–001]".

[FR Doc. C0–23065 Filed 10–2–00; 8:45 am]

BILLING CODE 1505–01–D

## ENVIRONMENTAL PROTECTION AGENCY

[FRL–6871–7]

### Draft Guidance Document for Nutrient Trading in the Chesapeake Bay

*Correction*

In notice document 00–24044 beginning on page 56576 in the issue of Tuesday, September 19, 2000, make the following correction:

On page 56576, in the third column, twelve lines from the bottom, the web address was misspelled and is corrected below:

*http://www.chesapeakebay.net*

[FR Doc. C0–24044 Filed 10–2–00; 8:45 am]

BILLING CODE 1505–01–D

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43229; File No. SR–Amex–00–51]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change by the American Stock Exchange LLC To Extend for an Additional 90 Days Its Pilot Program Relating to Facilitation Cross Transactions

August 30, 2000.

*Correction*

In notice document 00–23028 beginning on page 54572 in the issue of Friday, September 8, 2000, the date is added as set forth above.

[FR Doc. C0–23028 Filed 10–2–00; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Tuesday,
October 3, 2000

Part II

# Department of Labor

## Mine Safety and Health Administration

30 CFR Parts 42, 47, 56, 57 and 77
Hazard Communication (HazCom); Interim Final Rule

VOL 65 ISS 192 OCT 3 2000 UMI



**DEPARTMENT OF LABOR**

**Mine Safety and Health Administration**

**30 CFR Parts 42, 47, 56, 57, and 77**

**RIN 1219–AA47**

## Hazard Communication (HazCom)

**AGENCY:** Mine Safety and Health Administration (MSHA), Labor.

**ACTION:** Interim final rule; request for comments.

**SUMMARY:** We (MSHA) are establishing this interim final rule entitled "Hazard Communication (HazCom)" (30 CFR Part 47) to reduce injuries and illnesses related to chemicals in the mining industry. The standard requires mine operators to assess the hazards of chemicals they produce or use and provide information to miners concerning chemical hazards by means of a written chemical hazard communication program; labeling containers of hazardous chemicals; providing access to material safety data sheets (MSDSs); and training miners. In response to the National Performance Review and President Clinton's subsequent Executive Memorandum on Plain Language in Government Writing, dated June 1, 1998, we wrote this interim final rule in a different style than the one used in the proposal. Most of the requirements in this interim final rule, however, are substantially the same as the proposed rule.

This interim final rule reflects comments received on the Notice of Proposed Rulemaking, public hearings, and the notice published in the **Federal Register** on March 30, 1999 (64 FR 15144), requesting comments on the impact of certain regulatory mandates and related Executive Orders on the proposed rule. In response to the most recent re-opening of the record, commenters requested an opportunity to address the provisions of the whole rule.

Although not legally required, we think the additional opportunity to comment on the interim final rule is appropriate given the new "plain English" format and the passage of time since the close of the original comment period. For these reasons, we are allowing the public an additional opportunity to comment. All comments received will become part of the rulemaking record. We will publish our response to the comments received during this additional comment period in the **Federal Register**.

**DATES:** *Effective date:* This interim final rule is effective October 3, 2001.

*Comment period:* Comments on this interim final rule must be received by November 17, 2000 to ensure consideration.

**ADDRESSES:** Comments may be transmitted by electronic mail, fax, or mail, or dropped off in person at any MSHA office. Comments by electronic mail must be clearly identified as such and sent to this e-mail address: *comments@MSHA.gov*. Comments by fax must be clearly identified as such and sent to: MSHA, Office of Standards, Regulations, and Variances, 703–235–5551. Send mail comments to: MSHA, Office of Standards, Regulations, and Variances, 4015 Wilson Boulevard, Room 631, Arlington, VA 22203–1984, or to any MSHA district or field office. Interested persons are encouraged to supplement written comments with computer files or disks; please contact the Agency with any questions about format.

**FOR FURTHER INFORMATION CONTACT:** Carol J. Jones, Director; MSHA Office of Standards, Regulations, and Variances; 703–235–1910.

**SUPPLEMENTARY INFORMATION:**

## I. Introduction

We identify our hazard communication standard as "HazCom" to abbreviate the term and to help readers distinguish it from the Occupational Safety and Health Administration's (OSHA) Hazard Communication Standard (HCS). In this interim final rule, "you" refers to production-operators and independent contractors, who have the primary responsibility for complying with our standards. Where needed, we use the terms "operator" or "independent contractor" to avoid confusion.

HazCom's appearance is different from the 1990 proposed rule, which we modeled after OSHA's HCS. We have made a few substantive changes in the interim final rule where comments and information submitted to the record justified a change. Changes from the proposal are also meant to clarify intent, reduce burden, and eliminate unnecessary language and needless repetition. We have tailored provisions to better fit the mining industry. Despite the change of style, the substance of the requirements for most provisions remains the same as in the proposal. We tried to organize the standard in a way that optimized clarity, logic, and accessibility to the requirements.

When HazCom was originally proposed as part 46 in 1990, a Congressional budget rider prohibited us from expending appropriated funds to enforce training requirements at surface nonmetal mines. The 1999 training rider, however, authorized us to expend funds to propose and promulgate a final training standard for surface nonmetal mines. We, therefore, promulgated new training standards on September 30, 1999, which address the exempted mining operations. We chose part 46 as the proper place in the Code of Federal Regulations for publication of this training rule so that it would be near our other training standards promulgated under section 115 of the Federal Mine Safety and Health Act of 1977. After publication of part 46, we determined that the proper place to publish the HazCom rule would be as a new part 47. This required us to move the existing part 47, National Mine Health and Safety Academy, to part 42 with other administrative provisions.

The following is an outline of this HazCom preamble to help you find information more quickly.

I. Introduction.
- A. Overview of Rulemaking.
- B. Regulatory History.

II. Paperwork Reduction Act.

III. Discussion of the Interim Final Rule.
- A. Subpart A—Purpose and Scope of HazCom.
- B. Subpart B—Hazard Determination.
- C. Subpart C—HazCom Program.
- D. Subpart D—Container Labels and Other Forms of Warning.
- E. Subpart E—Material Safety Data Sheet (MSDS).
- F. Subpart F—HazCom Training.
- G. Subpart G—Making HazCom Information Available.
- H. Subpart H—Trade Secrets.
- I. Subpart I—Exemptions.
- J. Subpart J—Definitions.
- K. Appendices.

IV. Legal Authority and Feasibility.
- A. Statutory Requirements.
- B. Finding of Significant Risk.
- C. Finding of Feasibility.
- D. Petitions for Modification.

V. The Regulatory Flexibility Act, the Small Business Regulatory Enforcement Fairness Act, and Executive Order 12866.
- A. Alternatives Considered.
- B. Consultation with SBA.
- C. Compliance Costs.
- D. Regulatory Flexibility Certification and Factual Basis.
- E. Benefits.

VI. Other Regulatory Considerations.
- A. Unfunded Mandates Reform Act of 1995.
- B. The National Environmental Policy Act of 1969.
- C. Executive Order 12630: Government Actions and Interference with Constitutionally Protected Property Rights.
- D. Executive Order 12988: Civil Justice Reform.
- E. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks.
- F. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments.
- G. Executive Order 13132: Federalism.



### A. Overview of Rulemaking

MSHA's HazCom standard expresses two safety and health principles: miners have a right to know about the chemical hazards where they work and you have a responsibility to know about the chemical hazards at your mine. HazCom requires you to inform miners about chemical hazards. Chemically-related injuries and illnesses in the mining industry indicate that many operators and miners are not as aware of the presence and nature of hazardous chemicals as they should be. Injury and illness reports sent to us describe instances where miners—

- Were using inadequate or improper personal protective equipment,
- Did not know what they had been exposed to that caused their symptoms,
- Failed to follow instructions because they misunderstood or were unaware of the consequences, and
- Inadvertently misused a chemical from an unlabeled container.

We expect the HazCom program—by increasing both knowledge and awareness—to bolster good work procedures, foster safer behavior, and reduce injuries and illnesses related to chemicals. When put into effect at a mine, HazCom should encourage better hazard identification and assessment; more consistent use of personal protective equipment; more informed process decisions; and greater awareness and care when working near hazardous chemicals.

HazCom is an information and training standard about chemical hazards. To be successful in reducing accidents and injuries, your HazCom program must give miners an understanding of chemical hazards by informing them about mine processes and job procedures that can lead to chemical exposures. This can be a difficult technical subject using unfamiliar terms, scientific symbols, and complex physical laws. For the training to be credible, it must balance scientific accuracy against the miner's need to understand.

#### 1. The Need for HazCom

Our existing standards already require you to train miners in occupational health, hazard recognition, and the safety and health aspects of tasks, among other subjects. Except at underground coal mines, you must also label hazardous materials. Other HazCom provisions, however, are not currently required for mines. For example, currently you are not required to collect material safety data sheets (MSDSs), give copies of hazard information to miners, or keep a list of the hazardous chemicals at your mine. This rule is intended to ensure that your mine has a program that emphasizes chemical hazards.

OSHA's HCS has evolved to apply to all industries in OSHA jurisdiction since it was originally promulgated in 1983 and, consequently, it already impacts some mines. Because of the HCS, manufacturers began sending labeled chemicals and providing MSDSs with product shipments to mines. Some mine operators began labeling their products and sending MSDSs with their products to help customers meet OSHA's HCS requirements. Many operators have segments of their business in OSHA jurisdiction and have created company-wide programs that brought their MSHA properties, as well as their OSHA properties, into compliance with the HCS. Some operators began complying with OSHA requirements in anticipation of a similar MSHA standard, using the unregulated interval as a time to assimilate the requirements into their mine's standard operating procedures. Although some operators on their own initiative have established programs that meet HazCom's provisions and goals, and have integrated OSHA's HCS requirements into the cultures of their mines, most have not made that effort or fully met those objectives.

*Coal mine example.* In a 1997 case investigated by MSHA, an eastern Kentucky coal miner was periodically assigned to seal permanent brattices using a highly alkaline mortar. The miner had noticed after these assignments that his hands felt as if they were burning. He thought this resulted from the mortar.

Although the operator assigned the miner other jobs for a while, the burning sensation did not go away and the miner was eventually returned to brattice work. On the Friday night after the reassignment, the miner's hands were burning painfully, and the raw, irritated skin eventually erupted in angry, oozing sores. On Sunday, the miner was hospitalized and placed on an intravenous antibiotic. He spent 6 days in the hospital and missed 2 weeks of work.

During his recuperation, his physician referred the miner to a dermatologist, who asked the miner to get a copy of the mortar's MSDS in order to evaluate the problem and provide the proper treatment. When the miner asked the company for a copy of the MSDS, the safety director at first said he would have to arrange for it and then later refused to give it to him, saying that the miner had no right to the information.

*Metal and nonmetal mine example.* In another recent case at a large Arizona copper mine, a tailings pond was so acidic it was damaging the system's pumps. The company hired a contractor to place lime in the pond to neutralize the acid and assigned a miner to the project, a job he had never done, and one presenting hazards the miner had never been trained for.

About 4:00 p.m., the miner, trying to get the work done, walked down the slope of the pond and stepped onto an area of lime that appeared solid. His right leg sank into the lime up to his hips and he had to put his other leg into the material before he could get out. No emergency showers were available at the pond site for washing. Covered in wet lime, the miner drove himself 2 miles to the front gate while calling for help into a two-way radio.

Through a series of unfortunate circumstances, the victim was not admitted to a hospital until 5:25 p.m. After stabilizing him, the hospital staff moved him the next day to the burn center, where he spent over a month with second- and third-degree burns over the lower half of both legs and the upper part of his right leg. He missed more than 2 months of work at the mine, returning to restricted duty while receiving a series of skin grafts.

*Chemical hazards in mining.* Between 1984 and 1989, the National Institute for Occupational Safety and Health (NIOSH) surveyed almost 500 individual mines covering 70 commodities and about 60,000 miners for the National Occupational Health Survey of Mining (NOHSM). NOHSM documented over 10,000 individual hazardous chemicals and mixtures of hazardous chemicals to which miners could be exposed.

Chemicals in the mining industry pose a range of hazards, from mild health effects to death. Some chemicals cause or contribute to chronic health problems, such as heart or kidney disease or cancer. The relationship between these injuries and illnesses and exposure to a chemical can be obscured by years of latency between the exposure and the onset of symptoms. Other chemicals cause acute injuries or illnesses such as dermatitis, burns, and poisonings. Some chemicals pose hazards by contributing to fires and explosions.

In considering a HazCom standard, we reviewed reports of chemically-related injuries and illnesses reported to MSHA. From January 1990 through December 1999, the mining industry

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reported over 2500 chemical burns. More than 1,200 of these burns were lost work time cases, involving over 50 commodities, more than 60 job classifications, and exposures to chemicals at all sizes and types of mines. Bituminous coal mines reported the most chemical burns, and crushed and broken limestone mines reported the most in the metal and nonmetal industry. This same accident and injury data indicated more than 400 poisonings. This data takes into account only some of the acute effects reported as a result of chemical exposures and does not include the chronic effects that we know also occur.

Some operators have a comprehensive HazCom program in place; others have some elements of a HazCom program; and some have none. We intend the HazCom standard to ensure that all operators give all miners the information, training, and access needed to protect themselves from chemically-related injuries and illnesses. HazCom unifies, focuses, and clarifies existing requirements and fills voids in miner protection.

2. The Major Provisions of HazCom

*Hazard determination.* You must identify the chemicals at your mine and determine if they can present a physical or health hazard to miners. If you produce a chemical, such as gold, molybdenum sulfide, calcium oxide (lime), sand, and phosphates, among others, you must review available scientific evidence to determine if the material is hazardous. Some of the chemicals you produce that result from a chemical reaction, such as nitrogen oxides from blasting, may already be addressed on the MSDS for the original chemical. In this example, the original chemical is the explosive. For a chemical or mixture brought to your mine, such as diesel fuel, lubricants, solvents, and paints, you can rely on the evaluation performed by the chemical's manufacturer or supplier.

*HazCom program.* You must develop, implement, and maintain a written comprehensive plan to formalize a HazCom program. The program must include provisions for container labeling, collection and availability of MSDSs, and training of miners. It also must contain a list of the hazardous chemicals known to be present at the mine; how you will inform miners of the hazards of non-routine tasks and of chemicals in unlabeled pipes. If your mine has more than one operator or has an independent contractor onsite, it must also describe how you will inform them about the chemical hazards and protective measures needed.

*Container labeling.* A label is an immediate warning about a chemical's most serious hazards. You must ensure that containers of hazardous chemicals are marked, tagged, or labeled with the identity of the hazardous chemical and appropriate hazard warnings. The label must be in English and prominently displayed. We are not requiring you to label mine products that go off mine property though you must provide the information if a customer asks for it.

*Material safety data sheet (MSDS).* A chemical's MSDS provides comprehensive technical and emergency information. It serves as a reference document for operators, exposed miners, health professionals providing services to those miners, and firefighters or other public safety workers. You must have an MSDS for each hazardous chemical at your mine. The MSDS must be accessible in the work area where the chemical is present or in a central location readily accessible to miners in an emergency.

*HazCom training.* You must establish a training program to ensure that miners understand the hazards of each chemical in their work area, the information on MSDSs and labels, how to access this information when needed, and what measures they can take to protect themselves from harmful exposure. You may already cover some of this information in your current training program. If so, you do not have to re-train miners in topics they have already been trained in.

*Making HazCom information available.* You must provide miners, their designated representatives, MSHA, and NIOSH with access to the materials that are part of the HazCom program. These include the HazCom program, the list of hazardous chemicals, labeling information, MSDSs, training materials, and any other material associated with the HazCom program. You do not have to disclose the identity of a trade secret chemical except when there is a compelling medical need.

3. The Basis for the HazCom Interim Final Rule

In addition to the requirements in the Federal Mine Safety and Health Act of 1977 (Mine Act) and other applicable legislation, we based our interim final rule primarily on comments received in response to the Advance Notice of Proposed Rulemaking (ANPRM), the Notice of Proposed Rulemaking, and the public hearings. We also considered—

- The comments received in response to our recent Notice in the **Federal Register**;
- Our experience in the mining industry; and
- The related standards of other Federal agencies.

To the extent practical, the substance of our HazCom requirements is the same as that in OSHA's HCS. We developed some provisions to be consistent with other MSHA standards, such as the retention period for training records. Two areas where our standard significantly differs from OSHA's are in the inclusion of hazardous waste among the chemicals of concern and the omission of a requirement to label products going off mine property. OSHA's HCS exempts certain hazardous wastes because there are employee protections in other rules which address these hazards, such as 29 CFR 1910.120, Hazardous Waste Operations and Emergency Response (Hazwoper) and EPA's regulations under the Resource Conservation and Recovery Act of 1976 (RCRA). Because we do not have standards that address miners' exposure to hazardous waste, we needed supplemental requirements to ensure that miners working with hazardous waste understand the associated hazards and take precautions.

HazCom does not require you to label products that go off mine property. When the product leaves mine property, however, you must comply with the OSHA HCS which requires hazardous chemicals to be labeled.

With few exceptions, if your HazCom program complies with OSHA's HCS, it also will comply with this interim final rule. We will publish a Compliance Guide to help you understand the application of this rule. It will contain numerous examples, suggestions, and explanations of how we interpret the interim final rule.

*B. Regulatory History*

*Petition for Rulemaking.* On November 2, 1987, the United Mine Workers of America (UMWA) and the United Steelworkers of America (USWA) jointly petitioned us to adapt OSHA's HCS in both coal and metal and nonmetal mines and to propose it for the mining industry. They based their petition on the need for miners to be better informed about chemical hazards.

In their petition, the UMWA and USWA argued that miners deserve protection equal to that of other workers. To support their position, the petition cited an incident in which miners at an iron ore mine were experiencing adverse health effects. These miners asked the operator for MSDSs for the flotation chemicals used at the mine to determine the identity of the chemical causing the symptoms. Although the State in which the mine was located had a right-to-know law, this law did not cover mines. Because we did not have a standard to require the operator to provide MSDSs to miners, the operator refused several times to provide the requested MSDSs. The operator finally provided the MSDSs after lengthy negotiations. The local union used the information provided in the MSDSs to discuss safeguards with the company.

The petition also specifically noted that work at both surface and underground coal and metal and nonmetal mines exposes miners to a variety of hazardous chemicals. For example, the petition stated that explosives contain organic nitrates that produce nitrogen oxides and ammonia when detonated; roof bolting systems contain plastic resins and reactants; solvents used in equipment maintenance are both toxic and flammable; and mill reagents can release hydrogen sulfide, cyanide, or other dangerous chemicals.

*Preliminary rulemaking.* In response to this petition, we issued an advance notice of proposed rulemaking (ANPRM) on hazard communication on March 30, 1988 (53 FR 10256). In the ANPRM, we indicated that we would use the OSHA HCS as a basis for our standard and requested specific comments on a number of related issues. We published a notice of proposed rulemaking on hazard communication for the mining industry on November 2, 1990 (55 FR 46400). We also held three public hearings in October 1991—one each in Washington, DC; Atlanta, GA; and Denver, CO. The record closed on January 31, 1992.

*Public response.* We received a wide variety of comments on our ANPRM and proposed rule. Commenters included both small and large mining companies; a variety of trade associations, including those representing specific minerals; State mining associations; chemical and equipment manufacturers; national and local labor unions; a member of Congress; and two Federal Agencies. There were a combined total of 121 written comments submitted in response to the ANPRM (50), the proposed rule (63), and the re-opening of the record (8), as well as oral testimony presented at public hearings.

*Limited reopening of the record.* While we were working to finalize this rulemaking, Congress passed several laws which affected our rulemaking procedures. These statutory mandates and related Executive Orders require us to evaluate the impact of a regulatory action on small mines;[1] State, local, and tribal governments;[2] and the health and safety of children.[3]

In addition, we requested comments on the information collection and paperwork requirements of certain provisions of the proposal, now considered as an information collection burden under the expanded definition of "information" under the Paperwork Reduction Act of 1995.[4]

Most MSHA regulations do not require an evaluation of their impact on the environment. Health standards do, however. This was brought to our attention and we took this opportunity to remedy the oversight. We requested comments on the effect of the proposed rule on the environment because the proposal had not.[5]

We reopened the rulemaking record on March 30, 1999 (64 FR 15144) to receive comments on the impact of the proposed rule in accordance with these regulatory mandates and Executive Orders. The record closed on June 1, 1999.

*Public response to limited reopening.* We received seven comments, mostly from trade associations and labor organizations, on this limited reopening of the rulemaking record. The National Mining Association (NMA) urged us to reopen the rulemaking record in its entirety because the information in the record is outdated since the proposal was published on November 2, 1990. The NMA indicated this action would improve the effectiveness and quality of the HazCom standard because sectors of the mining industry that have incorporated OSHA's HCS can provide us with their experience under such program. Consol, Inc., a large mining company, stated that we need to address in the HazCom standard recent changes in the OSHA HCS regarding electronic access to MSDSs and microfiche maintenance of these documents. The National Stone Association (NSA) commented on the need to promulgate a HazCom standard in light of our new miner training regulations applicable to surface aggregate mines. Finally, the United Mine Workers of America (UMWA), and Jim Weeks, a consultant to the UMWA, objected to the delay in promulgating a final standard.

We disagreed with commenters on the need to reopen the rulemaking record in its entirety. Unlike general industry, the mining industry is narrowly composed of two sectors, coal and metal and nonmetal. Because of our frequent presence on mine properties, we have determined that there are no substantial changes in the mining industry which would require changes in the provisions of this final standard. Changes experienced by the mining industry since the publication of the HazCom proposal in 1990 do not rise to a level of change in "core" circumstances so material in nature as to entail a modification of the final standard. Substantive rulemaking issues and regulatory alternatives have not changed since the record closed in 1992 and, consequently, the evidence in the rulemaking record is current.

We understand commenter's desire to provide more information regarding their experience under the OSHA HCS standard. Our rulemaking record, however, contains numerous comments concerning the mining industry's experience with OSHA's HCS. We have considered all these comments, and the final standard reflects the public's recommendations where they do not undermine the ultimate issue of protecting the safety and health of miners. For example, some commenters indicated their experience regarding OSHA's MSDS requirements and suggested that we include a provision on electronic access to MSDSs; simplify the proposal regarding the content of MSDSs; use terms that are consistent with the Mine Act instead of the OSH Act; simplify the requirements regarding inclusion of MSDSs with initial shipment of product; and require retention of MSDSs for a period of less than 30 years.

In response to these comments, the HazCom final standard provides for electronic access to MSDSs; uses terms such as "miner" and "mine operator" instead of "employee" and "employer" to be more consistent with the language of the Mine Act; streamlines and clarifies the provisions on the format and content of MSDSs; and requires the operator to keep the MSDS at the mine for as long as the chemical is known to be present at the mine, instead of 30 years as OSHA requires. While MSHA's HazCom standard is generally consistent

[1] The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) Amendments to the Regulatory Flexibility Act of 1980, Pub. L. No. 96–354, 94 Stat. 864 (1980) (codified as amended at 5 U.S.C. 601–612).

[2] The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*); and Executive Order 13084, Consultation and Coordination with Tribal Governments.

[3] Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks.

[4] Pub. L. No. 104–13, 109 Stat. 163 (1995) (codified as amended at 4 U.S.C. 3501–3520). When we published the HazCom proposal, the information collection and paperwork requirements were not an information collection burden under the 1980 Paperwork Reduction Act because they were third-party disclosures. Under the Paperwork Reduction Act of 1995, agency rules that require businesses or individuals to maintain information for the benefit of a third-party or the public, rather than the government, are covered by the Act under the definition of "information."

[5] The National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*).

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with OSHA's HCS, we made changes to the final standard from the proposal in recognition of comments received from the mining industry concerning their experience under OSHA's HCS. These changes also recognize that the affected regulated community is smaller and more homogeneous than the industries regulated by OSHA.

On the applicability of the new part 46 training standard, we concluded that hazard communication can best be accomplished by establishing miner training requirements separate from part 46. The new part 46 training regulations are broad, covering many different training needs. Part 46 does not cover all of the specific aspects of training required under this final standard. For example, part 46 does not require training about how to read an MSDS. We developed the training aspects of HazCom to be fully compatible with existing standards.

HazCom does not require you to revise your part 46 training program or plan in order for it to be credited toward complying with the more specific hazard communication training requirements in this interim final rule. The training required under HazCom is directly applicable to the training in 30 CFR part 46 that involves hazard recognition and avoidance, mandatory health and safety standards, and warning labels. Hours spent on HazCom training can be credited to part 46, as well as part 48, training as appropriate.

**II. Paperwork Reduction Act**

When we published the HazCom proposal in 1990, its information collection and paperwork requirements were not an information collection burden under the 1980 Paperwork Reduction Act because they were third-party disclosures. In August 1995, the Office of Management and Budget (OMB) published its final rule (60 FR 44978) implementing the new Paperwork Reduction Act of 1995 (PRA 95). These OMB rules expanded the definition of "information" to clarify that PRA 95 also covered Agency rules that required businesses or individuals to maintain information for the benefit of a third-party or the public, rather than the government. The requirements for information collection and dissemination in HazCom are now an information collection burden because of this expanded definition. Almost all HazCom provisions fit this definition: §§ 47.11, 47.21, 47.22, 47.31, 47.32, 47.33, 47.41, 47.42, 47.43, 47.44, 47.45, 47.51, 47.52, 47.53, 47.61, 47.62, 47.63, 47.71, 47.72, 47.73, 47.74, 47.75, 47.76, and 47.77. The interim final rule also removes the labeling requirements from existing §§ 56.16004, 57.16004, and 77.208. We have submitted the interim final rule to OMB for its review and approval under § 3507 of PRA 95.

*Request for public comments.* Send your comments on the information collection requirements in this interim final rule to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for MSHA, 725 17th Street NW., Room 10235, Washington, DC 20503 by December 4, 2000.

*Description of requirements.* HazCom is primarily an information collection and dissemination rule. The annual information collection burden includes the time to inventory chemicals, determine the hazards of chemicals present, develop a HazCom program, develop or obtain labels or MSDS's as necessary, prepare training materials and train miners, and provide copies of HazCom materials. The information collection and paperwork burden encompasses each section of this part, as summarized in Table 1.

TABLE 1.—DESCRIPTION OF INFORMATION COLLECTION PROVISIONS

| Provision | Information collection burden |
|---|---|
| Written HazCom Program | Prepare, administer, and review annually; determine hazards of chemicals; list hazardous chemicals at the mine. |
| Labels or other warnings | Prepare for hazardous chemicals produced; maintain legibility and accuracy. |
| Material Safety Data Sheets | Develop for hazardous chemicals produced; obtain for other hazardous chemicals; maintain availability and accuracy. |
| Training Program | Develop or obtain training courses and materials; conduct initial training for miners; train miners about changing hazards; administer program. |
| Copies of HazCom information | Distribute written HazCom program information to miners, miners' representatives, and customers when requested; distribute to other operators. |

All written information can be either paper or electronic format provided that you meet access requirements.

*Description of respondents.* The respondents are operators, including independent contractors. The interim final HazCom rule will be applicable to all 21,166 operations under MSHA jurisdiction: 2,459 surface and underground coal mines; 3,801 coal contracting firms; 11,337 surface and underground metal and nonmetal (M/NM) mines; and 3,569 M/NM contracting firms.

We estimate that 33% of small mines and 43% of large mines (15% of coal and 19% of M/NM mines employing <20 miners, 17% of coal and 33% of M/NM mines employing 20 to 500 miners, and 100% of coal and M/NM mines employing >500 miners) have an existing hazard communication program that complies with all or part of the provisions of HazCom. The percentage of mines complying with a specific HazCom requirement varies depending on the type of mine and the specific provision. For example, some mines label containers and keep MSDSs, but do not have a written program or provide HazCom information to miners. As a matter of corporate policy or to comply with State hazard communication or right-to-know laws, most existing HazCom programs are modeled on OSHA's HCS. For these reasons, we believe that you can adjust your existing program to comply fully with HazCom with little effort and few resources.

We assumed that most independent contractors conduct some work at locations under OSHA jurisdiction and would have an existing hazard communication program. The contractor's program, however, may need modification for a particular mine. The magnitude of the burden for any individual mine operator or independent contractor, therefore, will vary greatly by the size, type, and location of the operation. For the purpose of estimating burden, we assumed that there are existing hazard communication programs at 65% of small (<20 miners) coal contractors, 75% of large (≥20 miners) coal contractors, 70% of small (<20 miners) M/NM contractors, 74% of large (20–500 miners) M/NM contractors, and 100% of M/NM contractors employing >500 miners.



*Information Collection Burden.* The greater portion of HazCom's burden accrues when you are developing and implementing the program. We annualized this initial burden. We summarize the total first-year, start-up information collection burden for HazCom in Table 2. We summarize the total annually recurring information collection burden in Table 3.

TABLE 2.—FIRST-YEAR INFORMATION COLLECTION BURDEN*

| Provision | Number of respondents | Number of responses | Responses/ respondent | Hours/ response | Total hours | Associated costs** |
|---|---|---|---|---|---|---|
| Develop Program | 14,239 | 14,239 | 1 | 12.2 | 173,366 | $446,826 |
| Review Existing Program | 7,620 | 7,620 | 1 | 6.3 | 48,144 | 125,416 |
| Develop MSDS | 3,544 | 3,894 | 1.1 | 2.9 | 10,222 | 26,074 |
| Develop Training Program | 13,007 | 13,007 | 1 | 6.9 | 89,196 | 229,257 |
| Prepare Initial Training | 13,007 | 13,007 | 1 | 2.0 | 26,014 | 83,632 |
| Total | | 51,767 | | 6.7 | 346,942 | 911,205 |

*Discrepancies due to rounding.
**Adjusted first-year costs annualized (See Regulatory Economic Analysis, Chapter VII.)

TABLE 3.—ANNUAL INFORMATION COLLECTION BURDEN*

| Provision | Number of respondents | Number of responses | Responses/ respondent | Hours/ response | Total hours | Associated costs** |
|---|---|---|---|---|---|---|
| Update Program | 14,239 | 14,239 | 1 | 1.7 | 24,767 | $911,890 |
| New Operators Develop Program | 889 | 889 | 1 | 13.2 | 11,772 | 437,982 |
| Label Containers | 1,717 | 6,712 | 3.9 | 0.20 | 1,343 | 62,309 |
| Update MSDS | 3,544 | 974 | 0.27 | 1.5 | 1,460 | 53,211 |
| Maintain MSDS | 14,239 | 637,720 | 44.8 | 0.05 | 31,886 | 568,744 |
| New Operators Develop MSDS | 889 | 1,019 | 1.1 | 3 | 3,057 | 113,578 |
| Manage Training Program | 13,007 | 13,007 | 1 | 1.7 | 22,299 | 818,776 |
| New Operators Prepare Training | 889 | 889 | 1 | 8.6 | 7,664 | 301,063 |
| Training Records | 13,007 | 187,149 | 14.4 | 0.05 | 9,365 | 167,518 |
| Provide Info to Miners | 14,239 | 21,961 | 1.5 | 0.20 | 4,395 | 78,817 |
| Providing Info to Customers | 14,239 | 233,860 | 16.4 | 0.20 | 46,772 | 832,582 |
| Total | | 1,118,419 | | 0.15 | 164,780 | 4,346,470 |

*Discrepancies due to rounding.
**Adjusted first-year costs annualized (See Regulatory Economic Analysis, Chapter VII.)

**III. Discussion of the Interim Final Rule**

In preparing this interim final rule, we attempted to address the concerns of all commenters, while ensuring that miners and operators have the information necessary to work in a safe and healthful environment.

Commenters supported widely different ideas about a HazCom rule for the mining industry. Some said we do not need one because existing standards require hazard training and labeling; others said it is vital to allow miners to exercise their right-to-know. Some said the rule would be a great burden; others said that they already have such a program. Some said they want a rule just like OSHA's; others said we should resist the temptation to duplicate OSHA's HCS. Some wanted a separate standard for the coal mining industry; others recommended that we establish separate standards for mine operators and independent contractors; others wanted a single Federal standard. Some urged us to include specific language to ensure that individual States do not promulgate or enforce any requirements related to hazard communication that conflict with the Federal standard. Commenters recommended that the final rule be practical, strike a balance between providing too much information and too little, and allow for global harmonization with international standards.

In response to the different needs for hazard communication in the mining industry, and the broad range of comments, the provisions of the interim final rule are performance-oriented and flexible enough that operators, including contractors, can comply using a single program to meet OSHA's HCS and our HazCom standard. We considered adopting the OSHA HCS in its entirety, but some requirements of OSHA's HCS are not relevant to mining. OSHA's HCS is supplemented by other OSHA standards for which we have no parallel. OSHA, for example, has comprehensive standards specifically covering hazardous waste operations, laboratories, and medical records. To the extent practical, the substance of our interim final rule is the same as that in OSHA's HCS. We added provisions where needed, however, to give miners the same protection as employees in general industry.

*A. Subpart A—Purpose and Scope of HazCom*

The proposed rule included a "scope and application" section stating where HazCom applied and listing exemptions from coverage. In the interim final rule, we renamed this section "operators and chemicals covered." We moved the exemptions, which were a part of the scope in the proposal, to the end of the HazCom interim final rule so that the substantive requirements would be up front where they are more accessible. (See § 47.81 and § 47.82, Exemptions.) We will discuss exemptions later in the preamble, consistent with their placement in the interim final rule.

1. § 47.1 Purpose of a HazCom Standard

A few commenters suggested that we include a "purpose and intent" section in our HazCom interim final rule, in addition to the "scope and application" section. In response, the interim final rule adds language to clarify our intent. The purpose of HazCom is to reduce chemically-related injuries and illnesses by ensuring that you—

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- Know what chemicals are at your mine;
- Determine which are hazardous and the nature of their hazards;
- Establish a HazCom program; and
- Inform each miner who can be exposed, and other on-site operators whose miners can be affected, about those hazards and appropriate protective measures.

2. § 47.2 Operators and Chemicals Covered

The proposal would have applied "to all operators who produce or use hazardous chemicals in their workplaces" and to "any chemical which is known to be present in the workplace in such a manner that employees are exposed * * *." The interim final rule applies "to any operator producing or using a hazardous chemical to which a miner can be exposed * * *." By modifying the language in the interim final rule, we clarify our intent that you must find out what hazardous chemicals are present at your mine and evaluate whether it is possible for miners to be exposed under normal conditions of use or in a foreseeable emergency. You do not have to determine that miners are exposed or the level of their exposure. The interim final rule is consistent with the purpose of HazCom and OSHA's HCS. Although the proposed rule seemed to apply only where there was an actual exposure, the proposal defined "exposed" as "subjected, or potentially subjected, to a hazardous chemical * * *." The preamble to the proposal further explained that this definition included "current and potential (accidental and possible) exposures."

The potential for exposure to a hazardous chemical, such as diesel fuel, motor or hydraulic oils, lubricants, paints, and solvents, occurs at virtually every mining operation although exceptions do exist. While considering HazCom, we reviewed data and documents from inspections and investigations, chemical inventories, technical reports, accident and injury data, and sampling data confirming that exposure to chemicals occurs in all types and sizes of mines.

If you have already implemented a HazCom program at the mine, and that program complies with the requirements of OSHA's HCS, it should also comply with our HazCom interim final rule. You will still have to check your existing HazCom program to make sure it complies with the interim final rule.

*Potential exposure.* The interim final rule retains the proposal's intention concerning the potential for exposure. Although we interpret the term "foreseeable" broadly in the context of this rule, we also intend HazCom to be practical.

NIOSH commented on our HazCom proposal and stated that the scope should not limit coverage of HazCom only to hazardous chemicals "under normal conditions of use or in a foreseeable emergency." NIOSH stated that HazCom should cover all hazardous chemicals present on mine property, regardless of intended or expected exposures. Specifically, NIOSH stated that:

> All workers should be informed about the nature of the risks associated with the hazardous materials found in their workplace. "When working in the presence of a hazardous material, hazards are always present even under work situations most carefully designed to eliminate risk" (NIOSH 1974a). The informed worker is prepared to minimize the impact of a hazardous materials incident. The uninformed worker is at risk of causing a hazardous materials incident or contributing to adverse health effects.

We partly agree with NIOSH's comment. But we also agree with those commenters who expressed concern that by addressing remote or trivial hazards, the purpose of HazCom would be defeated and its effectiveness diluted. If miners are flooded with warnings about all chemical hazards, including those they perceive as remotely possible, they may be more likely to ignore warnings for the more probable hazards. We also believe that it would be unnecessarily burdensome to require you to address every conceivable chemical hazard, regardless of how unlikely that hazard is to materialize.

For example, suppose a chemical liquor, or caustic, is only present in a certain area of your bauxite mill and you have miners in this area working near pipes carrying the caustic. You have other miners who work in the farthest area of your operation who never go near the mill or the caustic. Although you could conceive of circumstances where the miner who does not work near the pipes can be exposed, it would not be reasonably foreseeable. On the other hand, you can conceive of circumstances where the miner who works daily near the pipes can be exposed. The caustic can eat through a pipe; a truck can back into a pipe; pressure can cause joints to leak. Exposure is foreseeable under these circumstances: strong caustics can eat through pipes; trucks have run into pipes before; and pressure often causes leaks.

Almost all miners are exposed to crystalline silica, but the potential for illness is related to their exposure to the respirable fraction of dust. For example, your miners work on a concrete floor and there is silica in the concrete. If no cutting, grinding, or other activities happen to the floor that would release the respirable fraction, the potential for exposure to respirable crystalline silica is remote, and the miners are not potentially exposed to a hazard. If you must remove the floor through grinding, cutting, or crushing, the potential for exposure is foreseeable and the concrete would become a hazardous chemical subject to HazCom. Base your decision to include a chemical in your HazCom program on its hazards and the potential for miner exposure, not the risk. A chemical's hazard is in its inherent characteristics. Risk is the likelihood of expression of that hazard in a given situation.

The interim final rule sets boundaries on the chemicals and operators covered by HazCom. It is our judgment that these boundaries provide miners the protections intended by the Mine Act without causing you to expend resources on remote possibilities.

*Significance of exposures.* One of the most frequent suggestions received on the HazCom proposal was that it should apply only where significant exposure to a chemical occurs. These commenters asserted that a significant exposure involved a likelihood of material impairment of health to a miner, such as when a miner was overexposed to a hazardous chemical. HazCom's most misunderstood concept was its relationship to risk and significant exposure. Miners are frequently and seriously harmed by chemicals in their work area, but HazCom is not a risk-based health standard for measuring exposures, requiring controls, or providing personal protective equipment. Other standards address the problems of significant risk and the methods of controlling it. HazCom is an information and training standard intended to diminish risk by ensuring that operators provide miners with a level of knowledge that allows them to reduce their exposures by recognizing potential hazards and by following safe work practices.

HazCom is based on the premise that chemicals can have inherent characteristics that pose hazards and miners have a right to know what those hazards are and what their employer is doing to protect them. Many chemicals are considered to be hazardous because evidence indicates that they can threaten a miner's physical well-being or harm the miner. Determining that a chemical is hazardous is not the same as determining that there is a significant risk of any specific physical or health effect occurring from its use under a particular set of circumstances at the mine.



HazCom is being promulgated to *anticipate* the possibility of harm or loss from chemical exposures and provide information on ways to avoid them. It is not to regulate chemical use. It does not prohibit or limit the use of chemicals in the mining industry or prescribe controls to reduce exposures. HazCom's effectiveness is dependent on the operator's and miner's knowledge and awareness of hazards. Like any training or information standard, it is through hazard identification and awareness that HazCom addresses hazardous chemical exposure and prevents injuries and illnesses.

*B. Subpart B—Hazard Determination*

A hazardous chemical is any chemical whose properties can pose a physical or health hazard. It can be a pure substance (an element or chemical compound), a mixture, or an ingredient in a mixture. A hazardous chemical can be in any physical form: Solid, liquid, or gas. The likelihood of harm may be greater under some circumstances than others, but the potential to do harm is inherent in the chemical's properties. We discussed exposure and its significance under "purpose and scope" in this preamble.

HazCom's definition of hazardous chemical is consistent with the proposal and OSHA's HCS. We arranged the criteria for determining whether a chemical is hazardous in Table 47.11 and re-stated the proposal's language in a simpler way.

1. § 47.11 Identifying Hazardous Chemicals

HazCom is most effective when the criteria for determining the hazards of a chemical are applied consistently. Most physical hazards of elements and compounds are well-known and can be verified in a laboratory through testing. Physical hazards of mixtures can be determined the same way. Health hazards, however, are generally more complex, requiring studies of living systems, and can take much longer. Most health hazards of chemicals are determined through animal studies by extrapolating data from the effects on animals to predict the effects on humans.

We consider a chemical to be a physical hazard when there is scientifically valid evidence that it is combustible; a compressed gas or liquid; an explosive; a flammable aerosol, gas, liquid, or solid; an organic peroxide; an oxidizer; a pyrophoric (capable of spontaneously igniting); unstable and reactive; or water-reactive. Scientifically valid evidence means that a study was conducted or data obtained in a highly reliable manner that takes into consideration the margin of accuracy and consistency.

We consider a chemical to be a health hazard when there is statistically significant evidence that it can cause acute or chronic health effects. Statistically significant evidence supports a conclusion with a high level of confidence, typically 90% to 95%. This means that there is only a 5% to 10% probability that the observed results are due to chance. Health hazards include chemicals that cause cancer; irritate or corrode tissues; or cause a sensitization reaction. It also includes chemicals that damage the reproductive system, the liver, the kidneys, the nervous system (including psychological or behavioral problems), the blood or lymphatic systems, the digestive system, or the lungs, skin, eyes, or mucous membranes.

*Hazard determination methods.* The final HazCom rule, like the proposal, includes two basic ways for determining whether or not a chemical is hazardous: One for chemicals brought to the mine and the other for chemicals produced at the mine. In every instance we reviewed, operators producing chemicals also brought chemicals to their mines. We intend that the hazard determination provisions of HazCom apply to all hazardous chemicals produced at the mine or brought onto mine property, even if they are not covered under other MSHA standards.

A number of commenters wanted the hazard determination requirement in the proposal changed to read: "Operators who ship chemicals shall determine the chemicals' hazards under conditions of intended use based on our standards in 30 CFR parts 56, 57, 71, and 75." A number of commenters wanted operators who received chemicals to determine their hazards based solely on whether the chemical is regulated by us and whether it presents a physical or health hazard under conditions of intended use.

The interim final rule does not use the word "ship" instead of "produce"; does not add the phrase "under conditions of intended use"; and does not limit the chemicals covered to those listed in our existing standards. We enforce exposure limits for chemicals listed by the American Conference of Governmental Industrial Hygienists (ACGIH) in their list of Threshold Limit Values (TLV). This list does not address all chemicals known to be present on mine property. These suggestions would have significantly changed the intent and scope of HazCom. It would emphasize the hazards associated with the manner or process in which chemicals are used by persons off mine property, instead of emphasizing the hazards to miners.

2. Chemicals Brought to the Mine

The interim final rule is substantively the same as the proposal in its requirements for a chemical brought to a mine. Under the interim final rule, you must review the chemical's label for any hazard warning and its MSDS for more detailed information. If the label or MSDS indicates a hazard, consider it hazardous. You must then include the chemical on the list of hazardous chemicals at the mine; keep a copy of the MSDS accessible to miners; and train miners about the hazards, what you are doing to control these hazards, how to prevent or reduce the exposure, and how to protect themselves from injury or illness. If you do not want to rely on the chemical manufacturer or supplier, you may evaluate the chemical yourself. If you do, we will require you to demonstrate that you have conducted a thorough evaluation of the available evidence.

The number and types of different hazardous chemicals brought to the mine depends on the size and type of the operation. These chemicals can range from bulk raw materials, such as ammonium nitrate for use in blasting agents, to small quantities of highly hazardous chemicals used in quality control laboratories. Diesel fuel, antifreeze, motor or hydraulic oil, brake fluid, lubricants, adhesives, paints, and solvents are a few of the materials commonly brought to mining operations that would require you to ask the question: Is this a hazardous chemical?

The interim final rule requires you to make a hazard determination for each chemical at your mine to which miners can be exposed regardless of how the chemical is used. Based on your experience, we expect you to anticipate any likely misuse of the chemical, as well as accidents. This intention is further emphasized in the written HazCom program, which requires you to document how you determined the hazards of the chemicals at your mine and to make a list of those found to be hazardous. For a chemical brought to the mine, you need to review its label and MSDS. If, however, you intend to use the chemical in a manner not intended by the manufacturer or supplier, you must determine if your conditions of use create any different hazards.

3. Hazardous Waste

Hazardous waste can be either brought to the mine or produced at the

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mine. Hazardous waste regulated by the Environmental Protection Agency (EPA) under the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, was exempt from the labeling and MSDS requirements under the proposal. If a hazardous waste is brought to the mine without an MSDS, however, and you could not obtain one, the proposal would have required you to determine its hazards using the same methods as if it had been produced at the mine: You would either have had to test it or have had to use any valid, available, scientific information. We expect that, in most cases, the shipping manifest or EPA permit accompanying the waste will say what it is. Even if the ingredients are listed generically, you should request that the supplier provide you with hazard information. We did not propose to exempt EPA-regulated hazardous waste from the training and other requirements of HazCom.

Because the proposal would have required you to have information on the hazards of this waste, and because there is no specific format for the MSDS, it follows that a compilation of such information could be considered an MSDS. You can use this information to develop a label. For this reason, we did not specifically exempt EPA-regulated hazardous waste from the labeling and MSDS requirements in the interim final rule. Rather, we address such waste separately in § 47.43, MSDS for hazardous waste. You must make sure that miners have the best information you can find about the waste's chemical hazards. We suggest for the sake of consistency that you put the hazard information in the same MSDS format as you use for other chemicals.

4. Chemicals Produced at the Mine

The interim final rule, as in the proposal, defines a chemical as any element, chemical compound, or mixture of these and requires you to identify what chemicals you produce at your mine. Chemicals produced at your mine include—

- Those that you mine or process to sell, such as coal or crushed stone;
- The mixtures you create, such as flotation reagents or blasting agents;
- The by-products of mining and milling, such as diesel exhaust, hydrogen sulfide, or gases from combustion or blasting; and
- The materials discarded from mining operations, such as tailings.

Every mine product is a chemical, but not all are hazardous for the purposes of HazCom. You must determine if the chemical has any harmful properties that could pose a physical or health hazard. You must determine what the hazards and protective measures are so that you can prepare an appropriate label and MSDS. Again, HazCom does not require you to take additional protective action, as might be required by a risk-based rule. HazCom requires you to inform miners about scientifically valid evidence concerning a chemical's hazards, from either your own testing or the published results of other testing or studies.

For example, if your product is sand and gravel or crushed limestone, crystalline silica is likely to be the only hazardous component, and you are already training your miners about its hazards. Because respirable silica is so prevalent in mine products, we will be producing a generic MSDS for you to use if you do not want to prepare one yourself. You will have to ensure that your label identifies the product as containing crystalline silica, which is a human carcinogen. It is only respirable crystalline silica, however, that is a human carcinogen.

*Sources for identifying hazardous chemicals.* The interim final rule requires that, if you produce a chemical, you must determine its physical hazards based on available evidence or testing. You must determine its health hazards based at least on the findings of the following four recognized authorities or sources:

- Title 30 Code of Federal Regulations (30 CFR) chapter 1.
- American Conference of Governmental Industrial Hygienists (ACGIH) Threshold Limit Values (TLV's) and Biological Exposure Indices (latest edition).
- National Toxicology Program (NTP) Annual Report On Carcinogens (latest edition).
- International Agency for Research on Cancer (IARC) Monographs or Supplements.

These sources are basically identical to those listed in the proposal and the OSHA HCS, with the exception that MSHA standards regulating exposure to and use of hazardous substances are referenced instead of OSHA standards. The proposed rule intended that you would not have to look beyond these sources to determine if a chemical was a health hazard. In addition, you must consider a chemical a suspected or confirmed carcinogen if it has been evaluated and listed as such by ACGIH, NTP, or IARC. HazCom does not require you to determine whether the concentration of the chemical in the mine environment exceeds a limit recommended by one or more of these four sources. If there is a potential for harm and a potential for exposure, the chemical is hazardous for the purposes of HazCom. You must tell your miners about the hazards that are known and give them information relevant to the safe performance of their tasks.

Some commenters recommended that we rewrite this provision to require that "operators who produce chemicals must determine the chemicals' hazards" and not specify the basis for the determination. These commenters felt that this language would make the requirement more performance oriented, would avoid incorporation by reference, and would allow operators to choose the best methods for this assessment based on the best available sources at the time of the assessment. Although the hazard determination criteria rely on the findings of respected and authoritative scientific organizations, these are minimal requirements. The interim final rule allows and encourages you to use the best methods and sources available.

*Using ACGIH, NTP, and IARC to determine if a chemical is hazardous.* Many commenters strongly opposed including ACGIH, NTP, or IARC in the hazard determination section of the interim final rule. These commenters also objected to our use of IARC and NTP publications as authoritative sources for identifying certain chemicals as carcinogens. Some of these commenters felt that these organizations may identify a substance as a possible human carcinogen based upon the results of a single animal study and that animal studies alone should not be relied on to identify human carcinogens. Others felt that these organizations only considered positive studies (those showing an adverse health effect) and not negative studies (those that were inconclusive or did not show a health effect) when determining that a chemical is a carcinogen or a suspected carcinogen.

Commenters opposed our reliance on an automatic trigger, such as a hazard determination made by one of these organizations, to deem a chemical as hazardous without considering the risk posed in a given situation. One commenter stated that any reference to ACGIH, NTP, or IARC in the rule is inappropriate because these institutions make determinations based on "strength of evidence analysis" and defer "weight of evidence determinations" to regulatory authorities. This commenter felt that, as in our proposed air quality rule, we should adhere to the guidelines of the Office of Science and Technology Policy (OSTP) because HazCom ultimately would reference our final air quality standard. OSTP guidelines address the use of "strength of evidence" and "weight of evidence" analysis in quantitative risk assessment.



Most commenters on our use of these publications opposed such use, stating that including references to these would be an incorporation-by-reference without following the proper rulemaking procedures. They stated that ACGIH's, NTP's, and IARC's decision-making processes are deficient because they restrict public or peer input. They further stated that the absence of public comment and external peer review raises significant questions regarding the quality of any science-based decision-making process. These commenters added that our rulemaking, because it goes through an established process, provides the only basis for establishing valid references for hazard determination purposes.

Some commenters also strongly objected to referencing either the latest edition or subsequent monographs or supplements of these sources because such references fail to advise the regulated community of the standard of conduct to which they are expected to conform. They commented further that we may only incorporate-by-reference materials in existence at the time we promulgate a final rule.

In response to these comments, we wish to re-emphasize that HazCom is not a risk-based rule. A risk-based rule requires us to limit a miner's exposure to a toxic substance or harmful physical agent. This is an information-providing standard to ensure that operators are aware of potential hazards so that they can take appropriate actions to train miners and provide them with information about ways the operator, miners, and others can protect themselves from these hazards. We believe that miners have a fundamental right to know about the hazards in their work area and that operators have a fundamental duty to provide this information. For example, warnings concerning the presence of a radiation source or high-voltage electricity are commonplace, whether or not a person is likely to be exposed or injured. We address risk assessment and risk management in other standards.

Referring to IARC, ACGIH, and NTP documents, in one sense, does incorporate them by reference. We refer to these sources because they contain lists of known hazardous chemicals. Using these lists as a screening tool reduces the resources you would otherwise have to devote to determining if a chemical is hazardous and poses no increased compliance obligations on you.

The use of these references was supported by some commenters because the sources are renowned scientific authorities. Using the latest editions of the referenced sources of information to establish that a chemical is hazardous is appropriate because it contains the most recent information. We also believe it will be easier for you than requiring a continual, exhaustive literature search, conducting your own chemical testing, or trying to locate a document that is outdated or out-of-print.

If the commenters objecting to the use of these references meant to address whether or not the chemicals are known to be hazardous, the chemicals are listed in the four sources because scientific studies have indicated that they are hazardous. We expect most hazardous chemicals produced at mines to be listed. Other sources not cited in the proposal or interim final rule also can provide valuable information. You can check other reputable sources of scientific information, such as the NIOSH "Registry of Toxic Effects of Chemical Substances," the NIOSH "Pocket Guide to Chemical Hazards," OSHA standards, or chemical databases on the internet.

The alternative to using these four sources as a screening tool would be for you to conduct a thorough search of available literature to determine if the chemical is hazardous in addition to finding any statistically significant, scientifically valid studies that report the chemical's hazards. By using these sources as a screening tool, we intend to minimize the number of literature searches and, thus, the burden.

*Using ACGIH, NTP, and IARC to determine a chemical's hazards.* If the commenters objecting to the use of the references meant to address the nature of the harm, the circumstances under which the chemical can cause harm, or the level of exposure at which harm becomes likely, we recognize that there may be conflicting information in the scientific literature. We agree that relying solely on the information from these four sources may not be sufficient to determine the health hazards of a chemical. Except for identifying certain chemicals as either carcinogens or suspected carcinogens, these sources contain little specific information on the types of health hazards posed.

Some commenters stated that it would be a great burden on the mining community to find out if recent scientific studies show their product to be a carcinogen or other type of chemical hazard. Although determining the hazards of a chemical you produce could be more time consuming, we do not believe that it is overly burdensome, infeasible, or impractical. An entire segment of the publishing industry exists to inform the mining industry about new production equipment, legislative and regulatory affairs, commodity pricing, changes in construction specifications, bid proposals, and scientific studies that can affect the commercial value of mining products. We expect that the media, trade associations, or unions will also provide the mining industry with any significant new information concerning the hazards of their products.

*Proposed Table 1.* To simplify your access to the information from these sources, we compiled a table of all the chemicals listed in them and included this table in the proposal. The table indicated which of the four sources would give you more information about a chemical's health hazards and carcinogenicity. Operators could use the proposed table to determine quickly if the chemical they produced was a health hazard rather than having to refer to the four sources. We thought this would save resources if the chemical was not hazardous. We intended to spare operators from the need to look beyond this table to determine whether a chemical posed a health hazard. We had intended to update this table as needed.

Several commenters agreed that we should allow operators to use proposed Table 1 to determine if the chemicals they produce are hazardous. One of these commenters felt that we should publish this table as an appendix to the rule and that it should state explicitly that operators may use this table to determine whether a chemical is a health hazard rather than having to refer to the four sources. Another of these commenters suggested that we include Chemical Abstract Service (CAS) registry numbers in the table to help operators identify the chemical.

Some commenters asked that we not include the table in the final rule. One commenter felt that the average person would find this list of hazardous chemicals difficult and impractical to use. Others expressed concern that the list may not indicate all the potentially hazardous materials produced or used at the mine and favored the OSHA HCS's one-study approach.

One commenter objected to the proposal's reference to a table in the proposed air quality standard before we published the air quality standards as a final rule. Some commenters supported our intention to reference the final air quality standards in the hazard determination provision. That support, however, was contingent upon our establishing permissible exposure limits (PELs) at levels that prevent material impairment of health or functional

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capacity. These commenters further stated:

> PEL's and carcinogens validated through the rulemaking process will enable operators who ship chemicals to evaluate whether those chemicals present a health hazard under conditions of intended use. When proposed 30 CFR Parts 58 and 72 are validly promulgated, MSHA should amend proposed 30 CFR Part 46.3(a) to incorporate those provisions.

Although the interim final rule continues to reference NTP, IARC, and ACGIH, it does not include a table of hazardous chemicals. Upon further consideration, we concluded that the list will quickly become outdated as new hazardous chemicals come on the market or new information becomes available, and we could not readily update it. The constant need to update the table would reduce the effectiveness of HazCom because the update would require rulemaking. Instead, we will put a list of chemicals known to be hazardous in the Toolbox that supplements the Compliance Guide for this interim final rule. We intend to place both of these references on our website and provide links to other websites, such as university collections of MSDSs. Access to internet news services, libraries, and databases will allow you to obtain the most recent and reliable information soon after it becomes available.

5. Mixtures Produced at the Mine

The best way to determine the hazards of a mixture is to test the mixture as a whole. You would then use the results of that testing to make a determination as to whether or not the mixture poses a hazard and the nature of the hazard. We recognize that most operators do not have the facilities and equipment to conduct this testing.

For mixtures not tested as a whole, the interim final rule establishes the same criteria as the OSHA HCS (and as proposed) for determining the hazards of the mixture based on its ingredients. You must use available scientifically valid evidence to determine the mixture's physical hazards and rely on available health hazard information for the mixture's ingredients to determine its health hazards.

- You must conclude that the mixture is a health hazard if at least 1% of the mixture is a chemical that is a health hazard.
- You must conclude that the mixture is a carcinogenic hazard if at least 0.1% of the mixture is a chemical that is a known or suspected carcinogenic hazard.

*Determining the hazards of mixtures.* A number of commenters wanted the final rule to allow you to determine the hazards of mixtures of chemicals in the same way you would determine the hazards of individual chemical compounds or elements, *i.e.*, under conditions of intended use. They believed that mixtures should not be treated differently from other chemicals, although they may present additional health or physical hazards. These commenters stated that you should—

(1) test the mixture as a whole;

(2) if not tested as a whole, determine whether a component of the mixture presents a health hazard under conditions of intended use and if it constitutes a physical hazard; or

(3) assume that a component presents a health hazard under conditions of intended use and that the mixture presents the same hazard, and use whatever scientifically valid evidence is available on the components of the mixture to determine the mixture's physical hazards.

Several commenters objected to the requirement that if a mixture has not been tested as a whole, you must assume that it will pose the same health hazards and carcinogenic hazards as each of its components. Other commenters recommended that the health hazards of mixtures be based on either experimental evidence or weight of experience and, if known, dosage and exposure. Others argued that the concentration levels of 1.0% for hazardous components of a mixture, and 0.1% for carcinogenic components, had been chosen arbitrarily and that there are no studies showing relevance to these levels with regard to health hazards.

Although we did not choose these levels arbitrarily, we agree that they are not based on specific scientific studies. The interim final rule sets concentration levels of 1.0% for hazardous components of a mixture and 0.1% for carcinogenic components, to be consistent with OSHA's HCS. By being consistent, HazCom reduces your burden by allowing you to use the label and MSDS for hazardous chemicals brought to the mine.

*Trace ingredients.* The proposal stated that, if you have evidence indicating that a component of the mixture could be released in concentrations that would exceed an established MSHA PEL or ACGIH TLV, or could present a health risk to miners, you must assume that the mixture presents the same hazard. A number of commenters opposed the proposal's reference to the ACGIH TLVs and suggested that the final rule reference only MSHA health standards. Commenters expressed concern that the resources spent on determining the potential release of a hazardous trace component of a mixture dilutes the resources available to address real hazards. We contend, however, that if a trace ingredient can be released from the mixture at concentrations that can pose a health risk to miners, such as concentrations exceeding its PEL or TLV, this trace component is considered a hazard.

Another commenter recommended that the final rule be more performance oriented and suggested that we reword this section to state:

> If the operator has reason to believe that lesser amounts than listed in item (2) could reasonably present a health risk they will be assumed to present the same hazard.

In response to comments, we used more performance-oriented language in the interim final rule. It requires you to assume that a mixture presents the same hazard as a component if you have evidence that the component could be released from the mixture in a concentration that could present a health risk to miners.

For example, the MSDS may indicate that a particular trace component reacts with other components, diffuses into the packaging, or evaporates over time. In this example, if the trace component is hazardous, you must inform miners about this information and its implications for them, and comply with the applicable HazCom provisions.

We do not intend that you conduct research for chemicals brought to the mine; however, you must obtain an MSDS for them to determine whether or not a trace component can be released from the mixture in a hazardous concentration. Our intent is that, if you determine the trace ingredient to present a hazard, then you must include this information in your HazCom training. However, you must determine potential hazards from trace ingredients in hazardous chemicals you produce, including mixtures and by-products of mining activities. This is consistent with MSHA's HazCom proposal and OSHA's HCS.

The interim final rule eliminates unnecessary language but retains generally the same requirement as the proposal. This provision recognizes that even trace components of a mixture could cause harm if a sufficient quantity is released from the mixture.

*Crystalline silica.* A number of commenters expressed concern that IARC has designated respirable crystalline silica as a probable human carcinogen. Several commenters were concerned that the requirements for determining the hazards of mixtures that had not been tested as a whole did not take into account that a chemical is hazardous only when it is encountered in a specific physical state or form. Specifically, they felt that the proposed rule would have required you to determine that any untested mixture that contains 0.1% or greater of crystalline silica is carcinogenic, even when the concentration of respirable crystalline silica in the mixture is less than 0.1%. They pointed out that IARC's Monograph No. 42 and Supplement 7 and NTP's proposal to add this substance to its list in its 6th Edition address only the respirable crystalline form of silica as a human carcinogen and not other forms of crystalline silica.

We agree that it is the respirable form of crystalline silica that is designated as a human carcinogen in the sources listed in the interim final rule. Therefore, if the mixture contains 0.1% or greater of crystalline silica, you must determine the percentage that is respirable or capable of being liberated. Any required label and MSDS for products containing concentrations of 0.1% or more of respirable crystalline silica must indicate this potential health hazard. This is consistent with OSHA's HCS. HazCom also requires you to inform miners about the carcinogenic hazard from exposure to respirable crystalline silica.

*Physical hazards.* Comments on the proposal indicated that you may find it difficult to categorize the physical hazards of some mixtures because of the stratification or deterioration that may occur in these mixtures during storage and handling. To ensure that all hazards of a mixture are properly addressed, this commenter felt that we should require you to use persons who are qualified by education, experience, and training to determine the hazards of a mixture with respect to its use in mines. We expect that most of the information necessary to determine the hazards of a mixture are available in MSDSs or other publications. Because you are the person responsible for making this determination, and often the most qualified, we expect that you will make the determination yourself or select a competent person to do it.

The proposed rule stated that if a chemical is not tested as a whole, you must use "whatever" scientifically valid evidence is available to determine the mixture's physical hazard. The word "whatever" was removed from the interim final rule at the request of commenters.

6. Hazardous Chemical

One commenter felt that "chemical" may be interpreted restrictively to mean that only the chemicals you produce require a hazard determination. This commenter felt that we should state clearly that all mining products, including minerals, ore, and miscellaneous materials, require a hazard determination. Another commenter recommended that we use the term "hazardous material" rather than "hazardous chemical" because operators and miners are more likely to associate that term with minerals, ores, and other materials that occur naturally.

We use the term "hazardous chemical" in HazCom to be consistent with its use in OSHA's HCS. It is used by a wide variety of industries and has been the subject of much clarification in the 15 years since OSHA promulgated its HCS. We believe that the definition of "chemical" in the proposed and interim final rules is more widely applicable and less open to misinterpretation than the alternatives suggested.

*C. Subpart C—HazCom Program*

All mines must have a written HazCom program, even if it only documents that you looked at each chemical at the mine, made a hazard determination, and found none to be hazardous. The written program does not have to be lengthy or complicated, and some operators may be able to rely on existing HazCom programs to comply with the requirements of the interim final rule. As mining processes change and as new chemicals are brought onto mine property, you must update your written program to reflect these changes.

1. § 47.21 Requirement for a HazCom Program

This section of the interim final HazCom rule is substantively the same as the proposal and consistent with OSHA's HCS. It requires you to develop, establish, and maintain a written HazCom program. You must ensure that you have an effective method to communicate hazards to miners and other operators at the mine if their miners can be exposed to your hazardous chemicals. You must also retain the written program for as long as a hazardous chemical is known to be at the mine and exposure is possible.

The scope of HazCom, § 47.2, clearly states that the interim final rule applies to all operators with miners who can be exposed to a hazardous chemical "under normal conditions of use or in a foreseeable emergency." The scope applies to all sections of HazCom and all operators at a mine, including contractors. Therefore, we did not need to repeat the language of the scope in the requirements for the contents of the written program.

You must make the written program available to miners, their designated representatives, and MSHA and Department of Health and Human Services (HHS) personnel. In the interim final rule, the provisions on access and copies are in a new, separate subpart on making HazCom information available.

*Generic programs.* Some commenters stated that development of the written HazCom program was beyond the capabilities of most operators and would impose a technological and financial burden. Other commenters suggested that we develop a generic written HazCom program for use as an example.

You are responsible for developing a HazCom program for the chemicals that you produce or bring to the mine. Your written program must include all the information that you need—

- To implement the HazCom program;
- To provide hazard information to miners so that they will know what is expected and can participate in supporting the protective measures in place; and
- To ensure that other operators at the mine receive the HazCom information they need.

Although the development and implementation of a HazCom program may pose a technological and financial burden on some small operators, we determined that the interim final rule is feasible. We discuss the issue of technological and economic feasibility in the Regulatory Economic Analysis (REA) for this rule. This preamble includes a summary of the REA as Section IV. Of this preamble. The REA is posted on our website (*www.msha.gov*). You can download it or request a hard copy from the MSHA Office of Standards, Regulations, and Variances at the address in the front of this preamble.

To relieve the burden for small operators, we have planned an extensive outreach effort, developed a wide variety of compliance aids, and delayed the effective date of the rule for 1 year. As part of these efforts, we will provide several examples of a written HazCom program in the HazCom Toolbox for this rule. You can adapt the programs developed to meet OSHA's HCS because the two standards are similar. You also may obtain assistance from organizations that have developed generic guides to meet OSHA's HCS. The availability of generic programs reduces your technical and financial burden.

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2. § 47.22 HazCom Program Contents

Under the interim final rule, like the proposal, your HazCom program has to describe how you meet the HazCom standard for hazard determination, labels and other forms of warning, MSDSs, and training. It also must include a list of the hazardous chemicals that you produce or bring to the mine and use the same identity for the chemical on this list, the label, and the MSDS.

*Exchanging HazCom information.* Where more than one operator works at a mine, your HazCom program also has to describe—

- How you inform these other operators about the chemical's hazards and any protective measures for both normal work and foreseeable emergencies;
- How you provide other operators with access to your written HazCom materials, especially MSDSs; and
- How you identify hazards on labels and other warnings (the system or symbols you use).

Several commenters expressed concern about how information would be exchanged between operators. One commenter wanted the final rule to give the primary operator at the mine the latitude to determine how to exchange information. Another commenter wanted us to prescribe how operators exchange information.

The interim final rule deliberately uses performance-oriented language to give you the flexibility to establish how to exchange information with other operators and tailor your written program. At many mines, contractors, service personnel, and production miners are exposed to hazards of chemicals from many sources. For example, when independent contractors bring hazardous chemicals onto mine property, it is their responsibility to provide the primary operator and other operators (such as other independent contractors at the same site) with a written plan containing information about those chemicals. Likewise, it is the responsibility of the primary operator to inform these independent contractors about the chemical hazards at the mine. A systematic and orderly transfer of information ensures that all miners are informed. Specific, detailed requirements could reduce flexibility and become unnecessarily burdensome.

*Hazard determination procedures.* One commenter wanted the final rule to require you to describe, in writing, the procedures you use to determine the hazards of the chemicals you evaluate and to maintain these written procedures. This commenter stated that these detailed written procedures would be a valuable source of information for workers, their representatives, and the government. This commenter also stated that such a record is the means to determine if you are following procedures to assess the hazards associated with a chemical's inherent properties and not how you use it. Another commenter said that we do not need to know the basis of your hazard determination.

The interim final rule requires that your HazCom program include how you are putting the provision for hazard determination into practice at your mine. This requirement is performance oriented; it does not specify format or criteria. Although we agree with commenters that detailed procedures are valuable, HazCom does not require them. We expect your description of your hazard determination procedures to be sufficient to allow others to understand how you made the determination.

*Hazardous chemical list.* The interim final rule requires you to compile a list of hazardous chemicals and maintain it for as long as a hazardous chemical is at the mine. You are responsible for listing only the hazardous chemicals that you produce or bring to your work areas. The list, or inventory, of hazardous chemicals is a quick reference so that you, miners, other operators working at your mine, and MSHA and HHS personnel can see what hazardous chemicals are present. It also must use a chemical identity that permits cross-referencing between the list, a chemical's label, and its MSDS. For example, if a chemical is identified by a trade name on the MSDS or the label, the list must be indexed and the chemical identified using the same trade name.

You can compile the list for the mine as a whole or you can compile lists for individual work areas. For example, if few chemicals are used in one work area, such as a mine's quarry, and many are used in another work area, such as its shop, lists for the individual work areas would avoid confusing the miners in the quarry who would have no exposure to most of the chemicals that would be on a comprehensive list. You are in the best position to judge the most effective and efficient way to maintain this list. In maintaining this list, you must keep it up-to-date, whether for the whole mine or a specific work area.

*D. Subpart D—Container Labels and Other Forms of Warning*

Labeling containers of hazardous chemicals is a major provision of HazCom. A label is an immediate source of information about a hazardous chemical in the work area, providing the identity of the chemical and a brief summary of the chemical's most serious hazards. The labeling requirements in the interim final rule are substantively the same as in the proposal and consistent with OSHA's HCS. Labels that comply with OSHA's HCS will meet HazCom's requirements.

The proposed rule contained the labeling exemptions under the "Scope and Application" and again under "Labels and Other Forms Of Warning." In response to comments, we eliminated this repetition. We also put the labeling exemptions in a table, so that they are visually more accessible, and restated the proposal's provisions using clearer language. We moved the table to a separate Exemptions subpart near the end of the rule rather than placing them in the "Scope" section at the front of the rule. Except for "raw materials being mined or processed while on mine property," the chemicals listed are exempt from labeling under HazCom because they are covered by the labeling requirements of other Federal agencies. These exempt chemicals, therefore, are already labeled when you receive them at the mine. We will discuss these exemptions in detail later in the section called "Exemptions from Labeling" (§ 47.82).

The proposal contained provisions addressing a miner's and designated representative's right to examine the labeling information and have a copy without cost. In response to comments, we consolidated HazCom's provisions on access and cost for copies in a new, separate subpart, Making HazCom Information Available (§ 47.61 through § 47.63).

The interim final rule does not include proposed § 46.5(d), which would have required you to ensure that the label for a hazardous chemical complies with the labeling requirements in an MSHA substance-specific standard, rather than the labeling requirements in HazCom. We do not currently have a substance-specific standard that requires labeling. Upon consideration of the comments, we determined that this provision was premature. If we promulgate such a standard, we will reconcile any differences from those in HazCom.

1. Labeling Requirement in General

Among those commenters supporting a HazCom labeling requirement, many urged us to be consistent with OSHA's HCS. Several of these commenters, especially those with operations in both mining and general industry, said that it would be extremely burdensome if they had to comply with two significantly different requirements. For example, they said that it would be a great burden if you had to re-label incoming containers of hazardous chemicals to meet unique MSHA requirements. The interim final rule is consistent with the proposal, as well as OSHA's HCS. Labels that comply with OSHA's HCS will meet our labeling requirements because HazCom requires the same information on a label as OSHA's HCS. Likewise, we expect that labels meeting MSHA's HazCom criteria will meet OSHA's requirements for labels under its HCS.



Among those commenters generally opposed to labeling requirements under HazCom, many stated that our existing labeling standards are adequate and HazCom is redundant. Other commenters stated that they already are providing labeling information and MSDSs consistent with OSHA's standard because their customers are asking for them. By unifying labeling requirements for hazardous chemicals in HazCom, we intend to clarify requirements for all mines and to help you understand your compliance responsibilities.

2. § 47.31 Requirement for Container Labels

The interim final rule, consistent with the proposal, requires that each container of a hazardous chemical be labeled, tagged, or marked with the identity of the hazardous chemical and appropriate hazard warnings. You should only have to deal with three categories of labels: labels on containers of hazardous chemicals brought to the mine; labels on mixing, storage, or transport containers on mine property; and labels on the containers that you use to ship a hazardous chemical that you produce.

*Existing container labels.* MSHA believes that hazardous chemicals brought to the mine will arrive with labels or labeling information. We expect that the label on the original container of a hazardous chemical provides adequate information about its hazards. The Environmental Protection Agency (EPA), the Consumer Product Safety Commission (CPSC), OSHA, and other Federal agencies have rules addressing the labeling of hazardous chemicals. For this reason products or chemicals subject to their standards are exempt from labeling under HazCom.

Commenters' suggestions about label content and format indicated that they perceived the proposed rule as requiring much more operator labeling than we intended. Some seemed to think that we required operators to evaluate and label containers of hazardous chemicals brought to the mine. One commenter pointed out that manufacturers may not identify new information on the label and MSDS they provide and stressed that operators should not have to update existing labels.

The interim final rule also contains exemptions from labeling. The interim final rule does not require you to re-label containers of hazardous materials that are labeled in accordance with other Federal standards or are otherwise marked or tagged with the required information. You are not responsible for inaccurate information on a label prepared by the chemical's manufacturer or supplier, which you accept in good faith. We do not expect, and HazCom does not require, you to update the hazard warnings on labels you did not prepare. We do expect, however, that as you replace your inventory, you will do so with containers already labeled by the manufacturer with the new information. If the manufacturer sends you a new label with instructions to replace the existing label, you must do so.

*Labels on mine products.* Commenters expressed concern that some operators might be unable to prepare the label for their mine's products because they lack the technical knowledge to do so. You should already know the hazard information for the chemicals produced at your mine because our existing standards require you to label hazardous materials and train miners about the safety and health aspects of their job. While underground coal mines are not required to label hazardous materials, they do conduct miner training. In the HazCom Toolbox, we will provide language that you can copy for labels for hazardous chemicals commonly produced at mines, such as respirable crystalline silica and ammonium nitrate-fuel oil (ANFO) mixed on mine property.

A commenter asked that we clarify whether the requirement to update the label with significant new hazard information within 3 months applied to small quantities of hazardous chemicals in transfer containers. The availability of significant new hazard information on a hazardous chemical is a relatively infrequent occurrence. Most new information confirms, clarifies, or expands knowledge about the hazards already known. If you have to label the container of a hazardous material, it is our intent that you ensure that the label is accurate and update the label when you become aware of significant new hazard information.

*Maintenance.* Some commenters stated that labels would be difficult to maintain in a mining environment or that they would be difficult for miners to read and understand. Although it may be difficult to maintain labels in some areas of the mining environment, these labeling requirements are realistic and achievable. OSHA's HCS provisions are successfully met at heavy and highway construction sites as well as at tunneling operations, situations that are comparable to mining sites. Many of the containers coming onto mine property will have permanent labels affixed, suitable for use in the mining environment, and effective training will help miners to understand the labeling information.

HazCom requires you to check the label on a chemical brought to the mine to determine if it is hazardous so you will know whether you need to obtain and keep an MSDS, list the chemical on the list of hazardous chemicals, and train miners about the chemical. You also must ensure that the labels and other forms of hazard warning are legible. You do not have to re-label these containers unless there is no label or it is unreadable. Likewise, you must not remove or deface the labels on hazardous chemicals brought to the mine unless you immediately mark the container with the chemical's identity and its hazards. You must also ensure that the container remains labeled as long as you use it to contain a hazardous chemical.

3. § 47.32 Label Contents

HazCom requires that you label containers of the hazardous chemicals you produce. Although the hazard warnings on the labels should be concise and easy to see, they also must convey the chemical's identity and its physical and health hazards. The label, tag, or other marking that you prepare must communicate enough information to users of your product and other employers so that they can recognize the hazards and make correct decisions about safe procedures and protective equipment. We do not intend the label to be the only or most complete source of information on the hazardous chemical.

We recognize that it may not be feasible to include every hazard on the chemical's label that is listed in the MSDS. We expect, however, that you will address all hazards in the training program. The selection of hazards to be highlighted on the label will involve some assessment of the weight of the evidence regarding each hazard. This does not mean, however, that only acute hazards are to be covered on the label or that well-substantiated hazards can be omitted from the label because they

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appear on the MSDS. As one commenter stated:

> We urge you to consider the possible effects of a world in which every conceivable threat is labeled, stickered, highlighted until the senses are saturated and the desired effect of the entire message is lost. We are rapidly creating such a world, and we caution you against needlessly furthering this unnerving trend.

For those chemicals posing multiple hazards, we expect you to prioritize the hazards and use that as the basis for the warnings. At a minimum, you must specify all serious hazards on the label. For example, if chromium (VI) in a welding fume is carcinogenic, causes liver and kidney damage, and blood abnormalities, as well as respiratory irritation, perforation of the nasal septum, damage to the eyes, sensitization dermatitis, and skin ulcers, the label could say: "Causes cancer, liver and kidney damage, blood abnormalities, and irritation of the skin, eyes, and mucous membranes." The warning about it causing sensitization dermatitis, respiratory irritation, skin ulcers, perforation of the nasal septum, or conjunctivitis could be covered by the less specific phrase, "irritation of the skin, eyes, and mucous membranes."

You may have to reconcile inconsistent information in different sources by evaluating the evidence used in making the hazard classification. For example, if the chemical causes severe burns upon contact with skin, eyes, or mucous membranes, you would not also have to say that some evidence reported it to be a skin irritant. You also may need to distinguish between acute and chronic hazards. For example, some chemicals present a hazard only from prolonged exposure to high concentrations. When you determine what hazard information to include on a label, you should make an assessment of the information you report on the MSDS and coordinate the two documents.

*Hazard warning.* The definition of "hazard warning" states that the warning must convey the specific hazard of the chemical. Consistent with the proposal, the hazard warning can be any type of message, words, picture, or symbol that provides at least general information regarding the hazards of the chemical in the container such as "flammable" or "suspected human carcinogen". If applicable, the warning must include the organs affected. For example, if the chemical causes lung damage when inhaled, then "causes lung damage" is the appropriate warning. "Lung damage" would be the hazard and "do not inhale" would be the protective measure. Phrases such as "caution," "danger," or "harmful if inhaled" are precautionary statements.

Some commenters suggested that the labels would need to state the container's contents and provide a general hazard warning, using words like "combustible," "flammable," or "poison." A general statement, however, would not convey enough information to enable miners to adequately protect themselves. Other commenters believed that only a precautionary statement, such as "Danger!" would be needed. Some suggested that we require operators to include precautionary statements on the label, in addition to the other information. A few commenters stated that warning labels should summarize acute and chronic health effects and safety hazards and should provide advice and a phone number in case of emergency. Others recommended that labels include the target organ(s) affected by the chemical.

We intend that the label include the target organ effects, if such information is available. There are some situations where the specific target organ effect is not known. When this is the case, you can use a more general warning statement. For example, if the only information available is an $LC_{50}$ test result, "harmful if inhaled" is appropriate. (An $LC_{50}$, or the lethal concentration by inhalation for 50% of the animals tested, is the exposure concentration at which half of the animal test subjects died.)

Our existing standards (§§ 56/57.16004; §§ 56/57.20012; § 77.208) require you to label hazardous materials appropriately. In addition to the required information, we encourage you to include other helpful information on the label. For example, the symbols on the label representing precautionary measures or safe work practices, such as "chemical goggles," "respiratory protection," or "use only in a well-ventilated area," serve as reminders about the hazard and increase the likelihood that miners will use these measures.

*Label format.* Many commenters suggested various format criteria and coding schemes for labels, affirming the benefits of uniformity. Consistent with the proposal, we recognize that there are a variety of different labeling systems to warn persons of chemicals and their hazards. Some systems rely on numeric codes and specific colors to convey the hazards of chemicals. These systems, however, usually convey the degree of risk that a chemical poses and not specific hazard information. You can use these types of systems for labels used at the mine if you communicate the specific physical and health hazards of the chemicals through other parts of the HazCom program, such as MSDSs and training. These systems are appropriate for labels to downstream users if you also provide them the other labeling information and the way to understand your labeling system.

Recognizing that a specific system is not necessary to communicate the chemical's identity and its hazards, and that some mine operators already have a labeling system, HazCom's labeling requirements are performance oriented. The interim final rule is deliberately flexible to allow for the adoption of an international system for classifying and displaying hazard information, when it becomes available. Although the interim final rule does not require a specific labeling system, we encourage you to adopt a label format that is in accordance with an established standard. In its comments on the proposal, the Chemical Manufacturers Association (CMA) suggested that operators use the "American National Standard for Industrial Chemicals—Precautionary Labeling" (ANSI Z129.1–1988) for their labeling system. Uniformity in the format, content, and terminology of MSDSs and labels aids understanding and simplifies their development. It also allows miners and others to find critical information quickly. Consistent domestic labeling requirements between MSHA and OSHA will make communication among industries more effective and will make it easier for them to adopt global hazard communication standards.

*Other languages.* The interim final rule, consistent with OSHA's HCS and the proposal, requires that the label be in English. If a significant number of your miners do not read English, or if their English is poor, you should provide the labeling information in another language in addition to English or add symbols to communicate the chemical's hazards. For example, if your workforce speaks Spanish, you should add a label in Spanish that gives the chemical's identity and hazard information or provide a translation of the labeling information to the affected miners. If your workforce speaks several different languages, or there are other literacy issues, you should add symbols to the label to communicate the chemical's hazards. You must ensure that the workforce understands the meaning of the symbols.

*Carcinogen labeling.* As discussed under "Identifying Hazardous Chemicals," the HazCom proposal, interim final rule, and OSHA's HCS all require that the employer consider a chemical to be hazardous if it is listed in the specified ACGIH, NTP, or IARC publications or regulated under agency standards. You must include a carcinogenic warning on the label if one of these sources classifies the hazardous chemical as a potential or confirmed carcinogen.



Many commenters suggested that we allow operators to determine what should be listed on the label based on an assessment of the weight of the evidence. Several pointed out that both IARC and NTP acknowledge that their classification evaluations are not complete hazard assessments. IARC and NTP use a strength-of-evidence approach that does not take into consideration negative studies for evaluating a chemical's carcinogenic hazard. In regard to the use of ACGIH, one commenter stated:

> ACGIH lists chemicals identified as carcinogens from "other sources" without identifying these sources. The ACGIH documentation of TLV's and BEI's lists five sources of information on carcinogens (IARC, MAK, NTP, NIOSH, and TLV). Since these sources often use each other as their reference point rather than come to independent conclusions, we believe that the "carcinogen" tag can be inappropriate unless there is conclusive evidence of carcinogenicity. While fuller explanations may be given on an MSDS, we believe that automatic triggers should not be used to determine warnings on labels.

Although some commenters specifically objected to using IARC, NTP, or ACGIH as a trigger for cancer labeling, others supported carcinogen labeling based on the judgment of these organizations, but only for those chemicals identified as known human carcinogens. Another commenter objected to carcinogen labeling for those chemicals listed in IARC Group 2A. Group 2A carcinogens (probably carcinogenic) are known to induce cancer in animals, but the evidence of human carcinogenicity is limited. These commenters believed that requiring carcinogen labeling for potential or probable carcinogens would result in "over-labeling" and detract from the focus that should be given to more serious hazards. In addition, one pointed out that "over-labeling" could have the adverse marketplace consequence of encouraging shifts to unlabeled products, typically without an assessment of whether the unlabeled product is, or is not, safer than the labeled product. Several commenters supported including IARC, NTP, and ACGIH's carcinogenicity findings on the MSDS, but not on the label. A few commenters, however, recommended that we require labeling for all carcinogens, including those listed as potential or probable.

In considering the comments, we find that IARC, NTP, and ACGIH base their cancer classifications on valid scientific evidence. This evidence warrants informing miners of the cancer hazard associated with any chemical on these lists. Miners have a right to know about this hazard information. If one or more of these organizations has associated a potential, probable, or confirmed carcinogenic hazard with a chemical at the mine, you must inform the miners who can be exposed. A fuller discussion about the use of these organizations as sources is in the Hazard Determination section of this preamble.

*Silica labeling.* IARC is one of the authoritative sources listed in HazCom for establishing whether a chemical is a carcinogen. In 1997, IARC classified inhaled (respirable) crystalline silica as Group 1, a confirmed human carcinogen.

A number of commenters expressed concern that the proposal would have required the labeling of silica as a carcinogen. Several argued that labeling silica as a carcinogen was both impractical and unnecessary. One of these commenters stated:

> Silica is, as MSHA recognizes, a natural substance occurring in the great majority of the earth's crust and labeling over one billion tons annually of naturally occurring stone produced by American quarries would clearly be impractical and unnecessary by the standards of good science.

Some commenters stressed that the labeling requirement should apply to respirable silica because the size of the silica particle determines whether or not it is a health hazard. One commenter stated:

> OSHA has taken the position in interpreting its HCS that it applies only to crystalline silica available for respiration. * * * Mr. Gerald F. Scannel, Assistant Secretary of Labor for OSHA, stated that kaolin dust products containing less than 0.1% respirable crystalline silica would be exempt from coverage under the provision of paragraph (d) of the [OSHA's] HCS, "Hazard Determination."

In addition, this commenter cited a statement by Dr. David Rall of the NTP that, "Only crystalline silica in respirable form will be added to the list of substances in the [NTP] 6th annual report."

The interim final rule does not address the labeling of containers of hazardous chemicals off mine property. You will have to label containers of any product containing 0.1% or more of respirable crystalline silica as a carcinogen to meet OSHA's HCS labeling requirements for your customers. The HazCom interim final rule exempts the raw material being mined or processed from labeling while on mine property. For example, if you operate a silica flour mill, you do not have to label containers of the raw material, such as crushers, bins, or hoppers.

Under HazCom's hazard determination criteria, you must consider crystalline silica to be a human carcinogen when it is in respirable form and capable of being released in the work area or when an activity, such as crushing, would create respirable dust. Although you do not have to label it for purposes of HazCom, you must train miners about silica's carcinogenicity.

*Providing copies.* The proposal would have required you to provide a copy of the labeling information with the initial shipment of a hazardous chemical to an employer. You could include this labeling information with the chemical's shipping papers rather than attach it to each container. If you became aware of any significant new information concerning the hazards of the chemical, you had to incorporate this new information, as appropriate, into a new label within 3 months and provide it with the next shipment of the chemical to the employer. In addition to the identity of the hazardous chemical and appropriate hazard warnings, the proposal also would have required you to provide the employer with your name and address or the name and address of a responsible party who could provide additional information about the hazardous chemical. The proposal did not specifically address customers who were not employers.

Some commenters said that HazCom should require this labeling information on all containers shipped from the mine. They stated that it would be easier to label each shipment to avoid the extra recordkeeping associated with tracking which shipments to employers must contain labeling information. Several commenters stated that 3 months is too long and that you should inform miners immediately of significant new hazard information. These commenters suggested 5 days, 30 days, and 45 days as adequate time for you to incorporate the new information into a new label.

Several commenters wanted us to cover hazardous chemicals shipped from a mine in a way that was consistent with the OSHA HCS. Some questioned our authority to require you to provide labels on products leaving mine property.

The interim final rule requires you to make label information available upon request. Our experience indicates that

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mine products are already labeled and MSDSs are sent in a manner consistent with OSHA's HCS. We believe that market forces and the requirements of other agencies will serve to ensure that you label your product appropriately for downstream users. Although you are responsible for the accuracy of the information on any label you prepare, you are not responsible for the accuracy of labels a manufacturer prepared for a hazardous chemical brought to your mine. We agree with those commenters who felt that you should inform miners immediately of any significant new information about the hazards of the chemicals in their work area, whether or not you have to update the label.

4. § 47.33 Label Alternatives

HazCom requires that the hazardous chemical's label warn miners about the presence, chemical identity, and specific health and physical hazards of the chemical. Neither the proposal nor the interim final rule includes specific criteria for the format of the label. The interim final rule requires that the label be prominently displayed, legible, accurate, and in English; display appropriate hazard warnings; and use a chemical identity that permits cross-referencing between the list of hazardous chemicals, a chemical's label, and its MSDS. In the case of a trade secret, you must comply with the requirements of §§ 47.71 through 47.77 (trade secrets).

Commenters supplied a wide variety of suggestions for a label format. Several recommended that we require a standardized label format. Some commenters suggested that a coding or rating system might be helpful. Some requested that we permit flexibility in our labeling requirements and allow batch labeling, color coding, standardized containers, or stenciling a generic name on the container. Others did not support the use of a coding or rating system on labels because they thought that miners would find such a system confusing. Some commenters suggested that we require labels to have large bold print with pictorial or color warnings. Another suggested that operators could label containers using markers or paint.

The label requirements in the interim final rule are performance-oriented, flexible, and consistent with the proposal and OSHA's HCS. Labels made with markers or paint are acceptable as long as they identify the hazardous chemical and its hazards and are maintained in legible condition. Any name may be used to identify the chemical contents of a container as long as it can be cross-referenced with the MSDS and the hazardous chemical list. You may substitute various types of standard operating procedures, process sheets, batch tickets, blend tickets, and similar written materials for container labels on stationary process equipment. The alternative, however, must identify the container to which it applies, communicate the same information as required on the label, and be readily accessible throughout each work shift to miners in the work area. You can post signs or placards that convey the hazard information if there are a number of stationary containers within a work area that have similar contents and hazards.

5. § 47.34 Temporary, Portable Containers

The interim final rule, consistent with the proposal and OSHA's HCS, does not require you to label a portable container into which a hazardous chemical is transferred from a labeled container, if the portable container is for the immediate use of the miner who performs the transfer. To clarify compliance responsibilities, we replaced the word "immediately" with the phrase "during the same work shift" in the interim final rule.

Most commenters supported the proposed portable container exemption, but some claimed that it was too restrictive. These commenters recommended that we not require labeling of portable containers if they are subject to operating procedures that provide a means of alerting miners to their contents. Other commenters recommended that we expand this exemption to include any designee of the miner who performs the transfer. One of these commenters stated that adding the word designee would allow those individuals working with the miner who transferred the hazardous chemical, also to use that chemical. Otherwise, each miner working on the job would need his or her own portable container, perhaps creating a bigger hazard. Another commenter opposed expanding the portable container exemption to include the miner's designee because of concern that the miners would not communicate the hazard information to each other.

Other commenters opposed our proposal to exempt portable containers, believing that it was too lenient and could create a serious hazard. Commenters expressed concern—

- That unattended, misplaced, or forgotten unlabeled portable containers could present a high risk of exposure to hazardous materials due to inappropriate handling or disposal by other workers;
- That unlabeled portable containers could be potentially dangerous because of the residues left in them;
- That if the chemical in the portable container was not completely used by the end of the shift, we should require that the unused portion be returned to a labeled container;
- That all containers of hazardous chemicals be labeled under this law or other applicable laws; and
- That this section should be clarified because it seems to imply that you have no responsibility to maintain labeling information if a product is repackaged or transferred to another container at the mine site.

After considering the comments and observing the use of portable containers in mining, we determined that allowing the miner who performs the transfer to use a hazardous chemical from an unlabeled container will not reduce that miner's protection. One common use of temporary, portable containers is when a miner transfers a lubricant from a 55-gallon drum into a small plastic or galvanized container in order to safely access and properly service machinery. We recognize that it would be impractical, or at least inconvenient in some instances, to access many pieces of equipment without the use of these containers.

In response to commenters concerns and contrary to the proposal and OSHA's HCS, we expanded this exemption in the interim final rule. Under HazCom, you can allow other miners to use a hazardous chemical from an unlabeled, temporary, portable container provided you ensure that they know the chemical's identity, its hazards, and the protective measures needed; and that the container is left empty at the end of the shift. You can leave the chemical in the portable container for the next shift if you label the container. For example, if a container is emptied by one miner and refilled by another miner, you do not have to label the container before the second miner uses it. On the other hand, if you leave the hazardous chemical in the temporary, portable container, expecting to use it the next day, the container would have to be labeled.

We expect that you already have labeled many of your portable containers because our existing standards require you to label containers of hazardous materials. Such labeling also is a safe work procedure to keep miners from placing a chemical in a container you had previously used for an incompatible chemical.



*E. Subpart E—Material Safety Data Sheet (MSDS)*

The MSDS is a detailed information bulletin that serves as the principal source of important information about hazardous chemicals used or produced at the mine. This interim final rule requires you to have an MSDS for each hazardous chemical to which a miner can be exposed under normal conditions of use or in a foreseeable emergency. Although we revised the format and language of HazCom's MSDS requirements to reduce redundancy and use plain language, the interim final rule is substantively the same as the proposal and OSHA's HCS. An MSDS that complies with OSHA's HCS will meet our MSDS requirements because HazCom requires the same information on the MSDS as OSHA's HCS. Likewise, we expect that MSDSs meeting MSHA's criteria will meet OSHA's criteria for MSDSs under its HCS.

In the proposed rule, provisions for determining hazards of single substances and mixtures were repeated under both "hazard determination" and "MSDS." To eliminate this duplication, the interim final rule includes these provisions in the hazard determination section only. Also, in response to comments, we consolidated HazCom's provisions on access and cost for copies of MSDSs in a new, separate section on "Making HazCom Information Available" (§§ 47.61 through 47.63).

1. § 47.41 Requirement for an MSDS

The interim final rule requires you to have an MSDS for each hazardous chemical at the mine. If you do not have an MSDS for a chemical brought to the mine and its label indicates that it is hazardous, the interim final rule requires that you obtain one from the manufacturer or supplier before using the chemical. You must prepare an MSDS for any hazardous chemical produced at the mine.

*Chemicals brought to the mine.* The proposed rule would have allowed you to request, but not require you to obtain, an MSDS prior to using a hazardous chemical. Several commenters stated that requesting an MSDS was not sufficient and that you should have to obtain the MSDS before using the chemical on mine property. As indicated in the proposal, commenters on the ANPRM urged us to adopt MSDS requirements identical to OSHA's, Consequently, MSHA's provisions [in the proposal] on MSDS's are substantially similar to those in OSHA's standard. In response to comments and to make HazCom consistent with OSHA's HCS, we changed the word "request" to "obtain" in the interim final rule. You must have an MSDS available to miners in their work area for each hazardous chemical to which they may be exposed.

Another commenter suggested that we allow you the flexibility to have either an MSDS or appropriate information about the chemical's hazards, safe work procedures, means of control, and first aid and emergency procedures immediately available. Substituting the information suggested by the commenter for the MSDS would not be sufficient because the MSDS contains much more information. OSHA requires MSDSs for hazardous chemicals produced at non-mining operations. For this reason, we expect that most, if not all, MSDSs prepared by chemical manufacturers or suppliers are readily available by fax or from the internet. If you have a document available to miners that contains all the information required in § 47.42 (MSDS contents), we would consider that to be an MSDS. HazCom does not require a specific MSDS format, but the MSDS must contain all the information required to the extent that it is available.

Several commenters stated that we should require MSDSs to be accurate. You are responsible for the accuracy of MSDSs that you prepare for a hazardous chemical produced at your mine. HazCom does not require you to be responsible for the accuracy of an MSDS that you receive with a shipment of a hazardous chemical and accept in good faith. Because OSHA requires that information contained in MSDSs accurately reflect the scientific evidence that formed the basis for determining that the chemical is hazardous, we believe that chemical manufacturers and suppliers develop MSDSs correctly. On the other hand, considering that you are responsible for communicating accurate health and safety information about the mine and the job to the miner, the MSDS that you maintain must include any new information the manufacturer sends you.

Commenters stated that manufacturers do not indicate what information is new on the MSDS and it is impractical and overly burdensome to require operators to update MSDSs they do not prepare. We do not see this as a problem. The MSDS will show the date it was prepared or last changed. If you receive an MSDS that has a later date than the one you have on file, you should keep the one with the most recent date and discard the older. If you receive an MSDS that is obviously inaccurate or which you suspect is inaccurate, or if a category of information is missing, you should bring this to the attention of the party responsible for preparing the MSDS. There should be an address and telephone number on the MSDS.

Some commenters stated that requiring MSDSs as part of HazCom would be burdensome to operators and of no real value to miners because of the complexity of information required to be provided on the MSDS. Another commenter stated that to keep track of which materials may or may not require MSDSs places an overwhelming burden on operators.

MSDSs are essential in supplying information to the miner, as well as to the mine operator and independent contractor. Information, such as the chemical's properties, for example, may not be found on labels. The MSDS contains the information that we require you to communicate to miners about the hazardous chemicals to which they may be exposed. Although it may be an administrative burden to keep track of MSDSs, obtaining the MSDS from the manufacturer or supplier of the hazardous chemical relieves you of conducting independent searches for the required information. We expect that MSDSs will be an important resource for you in writing the HazCom program and modifying or developing training courses.

As a result of the OSHA HCS, MSDSs have become widespread in general industry and many operators voluntarily obtain and use them. We suggest that you check the list of all the hazardous chemicals at your mine against the MSDSs that you have collected to discover if there are any MSDSs missing. If the list indicates that you use a hazardous chemical at the mine, but do not have an MSDS for it, you must contact the manufacturer or supplier to obtain the missing MSDS.

*Chemicals produced at the mine.* The interim final rule requires you to prepare an MSDS for each hazardous chemical produced at the mine and update this MSDS with significant new information within 3 months of becoming aware of it. This provision is the same as the proposal and OSHA's HCS. A few commenters requested that the final rule remove the reference to "significant" and "new" information and add the phrase "scientifically valid" to prevent the incorporation of questionable information into the MSDS. We intend that the MSDSs you prepare accurately reflect the available scientific evidence that formed the basis for your determination that the chemical is hazardous (§ 47.11 contains criteria for determining a chemical's hazards). If the chemical presents more than one

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hazard, you have to address each of them on the MSDS.

One commenter indicated that his operation updates the MSDS every 3 months. This time period is consistent with provisions in the interim final rule, the proposal, and OSHA's HCS for including significant new information on the MSDS and label and in the miner's training. In addition, some States have HazCom programs that are identical to OSHA's and require the use and distribution of MSDSs. Many mine operators are supplying MSDSs with their product as a good business practice, in response to requests from their customers, or to comply with State or local laws. We encourage you to check regularly for new information on the hazardous chemicals you produce.

*MSDSs for common minerals.* In the proposal, we requested comments on the usefulness of requiring operators to develop or provide MSDSs for common minerals such as sand and gravel, crushed stone, or coal. These minerals are the hazardous chemicals produced by over 90% of the mines. We also requested comments on whether we should develop MSDSs for common minerals and provide them upon request to all interested parties. A few commenters agreed that we should develop MSDSs for common minerals. Two commenters said that we should not develop them. One of these stated that generic MSDSs would not be useful and that we should not require MSDSs for these common minerals.

If you determine that a common mineral is hazardous using the criteria in § 47.11, hazard determination, you must comply with the provisions of HazCom to the extent applicable.

2. § 47.42 MSDS Contents

In the interim final rule, as in the proposal, we require that MSDSs be in English, but do not otherwise include a requirement for the format. Although the proposal did not specifically require that the MSDS be legible and accurate, we added these terms in the interim final rule to clarify your compliance responsibilities.

Some commenters suggested that we require MSDSs to be made available in alternative languages. Although the MSDS must be in English, you also may provide it in other languages. Just as you have to communicate job duties and work procedures to those miners who may not read or understand English, you must communicate the required information about a hazardous chemical to them. MSDSs for hazardous chemicals brought to the mine are probably available in Spanish or other languages from the manufacturer or supplier or other sources, such as trade associations and websites. If available, you must provide the MSDS in a language the miner can understand. If you employ miners who do not read English but read another language, having an MSDS in the language the miner can read makes it easier for you to communicate the chemical's hazards. At those mines where multiple languages are spoken, we suggest you use symbols to help communicate the nature of the hazard and protective measures, and reinforce the miner's understanding of this information.

Similarly, some commenters claimed that miners would be unable to understand the MSDS because the language is too technical. As stated earlier, you must balance technical accuracy against miner understanding. For example, you can use simple, clear language when preparing the MSDS: you could use "lungs" as a route of entry rather than "inhalation" or "causes nerve damage" rather than "neurotoxin."

*Information required in MSDS.* HazCom requires that each MSDS include the following information about the chemical:

1. *Identity.* The chemical and common names of the hazardous chemical if it is a single substance and of the hazardous ingredients if it is a mixture. The identity used must permit cross-referencing between the list of hazardous chemicals at the mine (§ 47.22), a chemical's label (§ 47.32), and its MSDS.

2. *Properties.* The chemical's physical and chemical properties as appropriate, such as boiling point, melting point, vapor pressure, evaporation rate, solubility in water, appearance and odor, flash point, and flammability limits.

3. *Physical hazards.* The hazardous chemical's potential for fire, explosion, and reactivity.

4. *Health hazards.* The hazardous chemical's potential to cause an illness or injury, such as its acute and chronic health effects, signs and symptoms of exposure, any medical conditions that are generally recognized as being aggravated by exposure to the chemical, the primary routes of entry (for example, the lungs, the stomach, the skin or eyes).

5. *Carcinogenicity.* The hazardous chemical's carcinogenic classification, if any, such as whether the chemical is listed as a potential, probable, or human carcinogen in the sources specified in § 47.11 (identifying hazardous chemicals).

6. *Exposure limits.* The MSHA limit and any other exposure limit used or recommended by the preparer of the MSDS, where available, such as its ACGIH TLV, OSHA PEL, or NIOSH recommended exposure limit.

7. *Safe use.* Any generally applicable precautions for safe handling and use that are known to you or the responsible party preparing the MSDS, such as appropriate hygienic practices, protective measures during repair and maintenance of contaminated equipment, procedures for clean-up of spills and leaks, and special disposal requirements.

8. *Control measures.* Generally applicable control measures, such as ventilation, process controls, restricted access, protective clothing, respirators, and goggles.

9. *Emergency information.* Emergency procedures, such as special instructions for firefighters; first-aid procedures; and your name, address, and telephone number, or that of a responsible party who can provide additional information about the hazardous chemical and appropriate emergency procedures.

10. *Date prepared.* The date of preparation of the MSDS or the last change to it.

This information is substantively the same as the proposal and OSHA's HCS. One difference is that HazCom requires you to list the MSHA exposure limit for the chemical, if there is one.

Numerous commenters asked that additional information be required on the MSDS, such as Department of Transportation (DOT) requirements, IARC and NTP conclusions, CAS numbers, NIOSH Recommended Exposure Limits, Hazardous Material Information System (HMIS) hazard code information, upper and lower explosive levels, and how products are covered by other agencies' programs, such as EPA requirements under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), Resource Conservation and Recovery Act of 1976 (RCRA), and Superfund Amendments and Reauthorization Act of 1986 (SARA).

We did not include additional requirements for the content of the MSDS in the interim final rule. The interim final rule requires MSDS contents that are consistent with the proposal and OSHA's HCS. The requirements are well-known, and adding to the contents could obscure crucial information needed for miner protection. To aid understanding, we included additional important examples (solubility in water, appearance and odor, flammability limits, and explosive limits). We encourage you to include additional helpful information, such as the DOT labeling requirements, the HMIS hazard codes, special instructions for firefighters, or special disposal requirements.



*Standardized format.* Neither the interim final rule nor the proposal prescribe a specific format for the MSDS. Both HazCom and OSHA's HCS allow the preparer to determine the format, provided that it addresses all the required categories.

Numerous commenters requested that we require a standardized format for MSDSs. Several of these commenters stated that they wanted us to adopt OSHA's MSDS form (OSHA–174), and others recommended ANSI Z400–1 "Guide for Preparing Material Safety Data Sheets." Another commenter recommended that we require operators who prepare MSDSs to present the same information in the same manner for the same hazardous chemical. One commenter was concerned that you would have to prepare duplicate MSDSs: one for OSHA and one for us.

There are numerous sources for MSDSs in addition to the manufacturer or supplier: university databases, chemical information services, trade association or union collections. We established minimum requirements for information that must be on the MSDS. Each MSDS must contain the same minimum categories of information.

If you cannot find the appropriate information to complete a specified category or if the category is not applicable to the chemical involved, you must indicate on the MSDS that no applicable information was found. For example, if the chemical does not have an exposure limit or is not classified as a carcinogen, mark these spaces "not applicable." The MSDS must not contain blanks, even if you choose to use a form with categories beyond those required, because blanks may be interpreted. This requirement is the same as in the proposal and OSHA's HCS. HazCom allows you the flexibility to develop an MSDS in any format you wish, as long as it contains all required information. We encourage you to use a standardized format and suggest OSHA's non-mandatory MSDS form (OSHA–174) as a guide.

*Alternatives.* In HazCom, as in the proposal, we allow you to use a single MSDS for a class or family of mixtures with similar hazards and contents, such as one in which the ingredients are the same, but their percentages vary from mixture to mixture, for example, organic solvents or lubricants. The few commenters on this provision agreed with the proposal.

Also, as in the proposal, HazCom allows you to use a single MSDS to address the hazards of a process rather than individual hazardous chemicals when it is more appropriate. For example, the chemical composition of a flotation reagent changes as it evolves through the processing of a mineral. A few commenters objected to this option, but we decided to allow it for several reasons:

- We saw this option as relating to format, not scope.
- It is an option, not a requirement, intended to maximize flexibility and to acknowledge the practical limitations of dealing with chemicals.
- For the purposes of HazCom, "hazards of a process" refer to the physical and health hazards of chemicals in the process. If you choose to prepare an MSDS for a process, you have to include all the chemical hazards created during the process and any likely to be created if there is a malfunction or accident, even if the hazardous chemical is a short-lived intermediate.

3. § 47.43 MSDS for Hazardous Waste

A number of mine operators have EPA permits to burn hazardous waste in their kilns or to dispose of hazardous waste in tailings. If you have hazardous waste at your mine, the interim final rule requires you to provide exposed miners and designated representatives with ready access to any materials you have that can help them know about the hazardous waste. Suppliers typically send a manifest and MSDS with hazardous waste. If no MSDS is available, however, you must give the miner access to any information about hazardous waste which—

- Indicates its identity or that of its components;
- Describes its physical and health hazards; or
- Specifies the appropriate protective measures.

Our proposal would have exempted EPA-regulated hazardous waste from HazCom's labeling and MSDS requirements. It still would have required you to determine the nature of the waste's hazards and instruct miners about them. Proposed § 46.3 (hazard determination) stated:

> (b) Operators who receive chemicals shall determine their hazards based on the chemicals' material safety data sheets and container labels, except that the procedures in paragraph (a) of this section shall be followed for hazardous waste received by operators when a material safety data sheet cannot be obtained.

Paragraph (a) contained the criteria for determining the hazards of chemicals produced at the mine.

OSHA's HCS includes an exemption for hazardous waste regulated by EPA under the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended (42 U.S.C. 6901 *et seq.*). Although OSHA's HCS excludes coverage of hazardous waste regulated by EPA, OSHA has other specific standards directed to hazardous waste operations (29 CFR 1910.120). OSHA was required to issue these standards by § 162, Title 1 of the Superfund Amendments and Reauthorization Act of 1986 (SARA), as amended (29 U.S.C. 655 note). We do not have similar statutory requirements or standards regarding hazardous waste operations.

EPA standards require training of personnel at a hazardous waste facility, but this training appears to be directed primarily at limiting environmental impact. EPA standards also require an analysis of the hazardous waste as part of the process for obtaining a permit to burn or dispose of it. EPA does not require that this analysis specify the chemicals' hazards to workers or that the employer make this analysis available to employees.

Some commenters expressed concern that exempting EPA-regulated hazardous waste from HazCom would omit a segment of the mining population that is exposed to hazardous waste on a routine basis. These commenters believed that MSDSs should be available to miners exposed to hazardous waste, including miners working at facilities where hazardous waste is processed or used as a fuel.

As with other hazards exempt from HazCom, such as radiation, you have the responsibility to provide adequate hazard information and training to miners potentially exposed to EPA regulated hazardous waste in their work area. Our existing training standards require health and safety training and hazard training. To clarify that you must inform miners about the hazards associated with hazardous waste, even when the waste is exempt from labeling and MSDSs, we included a requirement to that effect in the interim final rule.

Operations disposing of hazardous wastes receive a manifest with each shipment. This manifest contains much of the information found on an MSDS, often in greater detail. Similarly, if you collect waste chemicals from your mining operation, you should know what these wastes contain and the hazards of the ingredients. The interim final rule requires that, if you are unable to obtain or prepare an MSDS for hazardous waste, you must ensure that you provide each potentially exposed miner with any information you have that—

1. Indicates the identity of the waste or its components,

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2. Describes its physical or health hazards, or

3. Specifies the appropriate protective measures.

4. § 47.44 Ready Access to an MSDS

The interim final rule requires that you provide miners with access to MSDSs while they are in their work area. You can keep MSDSs at a central location if you ensure that they are readily accessible to miners in an emergency. The proposal had allowed you to keep MSDSs at a central location when it was not practical to maintain the MSDSs in the work area, if the miners had access to them at some time during their work shift, and if you ensured that miners could obtain the required information in an emergency.

Numerous commenters requested that the MSDSs be kept in a central location when mining conditions were not favorable for keeping these documents in the work area. A few commenters said that we should not specify how MSDSs are to be made available to miners, only that they should be available. Several commenters asked that access to MSDSs be available through electronic means, such as computers.

The purpose of requiring MSDSs in the work area where the chemical is stored, handled, or used is so that miners have quick access to critical information in emergency situations. The interim final rule provides flexibility for you to determine the best way to meet this requirement. We recognize that independent contractors especially need this flexibility because they work at different types of mines, typically multiple employer sites. Independent contractors, therefore, must coordinate the accessibility of MSDSs to other operators and miners, as well as their own.

The interim final rule allows you to maintain paper copies of the MSDSs, keep copies on a computer or on microfiche, use fax or other data transmission means, or any other method for providing access. You may keep MSDSs wherever you think appropriate and accessible as long as any miners who can be exposed can readily obtain a copy in an emergency. If you keep MSDSs in the mine office, you must tell the miners where they are and how to access them. Access means that the office must remain open while miners are working or you must make provisions for them to immediately unlock the office if needed. If the MSDS information is kept on a computer, it may be necessary to train the miner to access the information from the computer or make provision for backup electrical power in the event of an emergency.

5. § 47.45 Retaining an MSDS

The interim final rule requires that you keep the MSDS for as long as the chemical is at the mine. The proposal would have required that you notify miners at least 3 months prior to disposing of the MSDS. The proposal did not specify how you were to notify the miner about the intent to dispose of these MSDSs. You would have had the flexibility to use any method that notified each miner who may have been exposed.

Several commenters suggested that the proposed 3-month retention period was not sufficient because the chronic effect of a hazardous chemical may take years to manifest itself. Some commenters recommended that we be consistent with OSHA and require a 30-year retention period. One commenter suggested a retention period of 20 years. A few commenters agreed with the proposed 3-month retention period and others felt that there should be no retention requirement at all. One commenter suggested that these notices be posted.

The intent of the proposal's requirement to notify miners prior to disposing of an MSDS was to ensure a miner had the opportunity to request a copy. The miner could then retain this information for future reference and you would not have had to maintain the MSDS for an extended period of time.

We considered a 30-year retention period to be consistent with OSHA requirements. The OSHA retention period for MSDSs derives from that agency's generic rule on recordkeeping, (29 CFR 1904), which was not developed specifically for hazard communication purposes. As an alternative to retaining the MSDS for 30 years, OSHA's recordkeeping rule allowed employers to keep a record of the identity of the chemical, where it was used, and when it was used.

Because of the nature of the mining industry, mines open and close frequently and there is a large turnover in miners each year. The records from closed mines would be impractical, if not impossible, to retain if the mine operator does not continue in business and there is no succeeding operator. Also, it would be impractical, if not impossible, to find the miners who may have been exposed to the chemical if the miner were no longer employed at the mine.

A requirement to retain MSDSs for a lengthy period of time could result in the accumulation of a great number of MSDSs. Manufacturers may change the formulation of some chemicals as processes or new technologies improve, requiring a revision to their MSDS. We expect operators to keep the current MSDS for the chemicals they use. Maintaining many MSDSs for a single brand name that has changed composition a number of times could lead to confusion and potentially cause greater harm than not having the old MSDSs available in case a miner develops a disease 10, 20, or 30 years after exposure. Some mines use a large number and variety of chemicals briefly, depending on which product is cheapest or which the distributor is carrying at a specific time.

For the above reasons, we believe the 30-year retention period would be excessively burdensome for the mining industry. We also believe, however, that it would not be a great burden for you to notify miners 3 months before disposing of an MSDS.

The interim final rule requires that you maintain the MSDS at the work area or a central location as long as the hazardous chemical is at the mine, and notify miners at least 3 months before you dispose of an MSDS. We require you to provide copies of MSDSs to miners because they have a right to specific information about their chemical exposures. We determined that this access provision is adequate to ensure that a miner could obtain a copy of the MSDS if the miner wanted one.

We believe miners request copies of MSDSs because they are concerned about a chemical's effect on their health. If a miner has a health concern, he or she usually requests a copy immediately rather than later. The effects of some chemicals, however, have a long latency period between the exposure and the onset of a disease. Miners can get a copy at any time the chemical is at the mine, but may not think to get a copy until you notify them that you intend to dispose of it. You may use any effective method to notify the miners, such as a verbal announcement in a safety meeting, a personal written notice, an all-employee newsletter, or a notice posted on the mine bulletin board.

*F. Subpart F–HazCom Training*

Training is the foundation of the HazCom standard, the principal means of conveying HazCom information to the miners. A premise of this interim final rule is that miners will make safer and more healthful decisions about their work when they know more about the chemicals in their work area. When you provide effective training, miners will know how to read and understand labels and MSDSs, how to get chemical information, and how to use it. They will understand the risks of exposure to chemicals in their work areas, as well as the means of prevention and protection. You must develop and administer a training program that ensures that miners receive and understand this vital information about chemical hazards.



1. General Comments and Responses

The principal training standards that apply at your mine are found in parts 46 or 48, depending on the commodity you produce and the type of mine that you have. We proposed HazCom in 1990 as part 46. Subsequently, we promulgated training standards for some segments of surface mining as part 46. The fundamental goals and the statutory basis for our training standards in parts 46 and 48 are the same. Although commenters could not have anticipated this new part 46, we considered their comments on part 48 as applicable to part 46.

*The burden of HazCom training.* Under parts 46 or 48, you must provide miners initial training, annual refresher training and, whenever a new task is assigned, task and hazard training. The existing training standards provide an outline of subjects to be addressed for a successful safety and health training program: occupational health, hazard recognition, the safety and health aspects of the task, and safety and health standards, among others.

Several commenters felt that the proposal would be a heavy burden given the existence of these other training requirements. Some anticipated difficult administrative problems both in conducting and documenting the training. Some suggested that we not promulgate training requirements under HazCom, asking us to amend part 48 (and 46) to specify HazCom contents instead. Some suggested that language be included that "operators are permitted to satisfy the training provisions of [HazCom] by incorporating those requirements into provisions of Part 48—Training and Retraining of Miners." One commenter explained that by permitting—

> * * * operators to choose incorporation of the training aspects of [HazCom] into Part 48, each operator can retain the flexibility to evaluate the practicality and appropriateness of using the Part 48 training scheme as the training administrative vehicle. Some elements which may be important to this evaluation are: the volume and variety of hazardous chemicals requiring hazard communication; the extent to which training required by [HazCom] is currently accomplished through Part 48; and the need to establish a separate training scheme with accompanying recordkeeping systems.

We intend HazCom to emphasize chemical hazards and to dovetail with parts 46 and 48. You are in the best position to know the training needs of your miners and we have tried to grant you as much discretion as possible under HazCom to tailor your training program to fit these requirements. We expect this flexibility to improve training and, as a result, the ability of your miners to protect themselves. Although we expect most operators to integrate HazCom training into parts 46 or 48, you have the flexibility to conduct HazCom training independent of those requirements. We urge you to combine HazCom training requirements with existing requirements to unify your program, equipping better focused and informed miners to work safely with chemical hazards.

We disagree with the recommendation that all HazCom training requirements should be incorporated under parts 46 and 48 and that the training should not be addressed independently. The number of chemically-related injuries and illnesses indicates to us that, industry-wide, training on chemical hazards may be inadequate. HazCom provides a new emphasis in miner training—hazardous chemicals—that can be incorporated into your existing program, but can stand alone as well. Training is one of several interdependent aspects of a HazCom program. If we were to promulgate HazCom without training provisions, it would lose an integral part of the program and reduce its overall effectiveness. In response to comments, however, we added language specifically to clarify that you could credit relevant training conducted to comply with parts 46 and 48 and OSHA's HCS to meet HazCom requirements.

Your training and your approved training plan may have to be modified to add this new focus. The new HazCom training requirements are not automatically interchangeable with parts 46 and 48. In most instances, however, you should not have to revise your training plan to conduct HazCom training. We developed the training aspects of HazCom to be fully compatible with existing standards. If you train miners to recognize a chemical hazard, this is Hazard Recognition training. If you train miners about the HazCom standard, this is Mandatory Health and Safety Standards training. You must consider the hazardous chemicals at your mine, the conditions under which they are used, and what your approved plan says. We expect, however, that this interim final rule will have minimal impact on the mining industry with regard to increased training and administrative burdens.

*Instructor qualifications.* Some commenters recommended that we require you to conduct HazCom training using only qualified or certified trainers. One of these commenters stated that we should require OSHA qualification for HazCom instructors in mining and that we should require you to have hazard coordinators who maintain their qualifications by attending formal education or training courses. A commenter expressed concern that unqualified mine supervisors may be conducting HazCom training. Another commenter objected to the burden created by having to hire trainers and personnel to perform chemical identifications.

Under existing standards, we require every mine to have an MSHA-approved instructor for part 48 and a competent person designated by the operator for part 46. These trainers teach diverse and complex mine-specific courses. Although HazCom does not specifically require you to use qualified instructors, we expect that you will use the trainers on your staff to train miners about chemical hazards. MSDSs and labels are supposed to come with every container of a hazardous chemical brought to your mine. They will provide information for hazard identification and you should not have to hire or train additional persons. If you produce chemicals at your mine, we expect you to know which are hazardous and to train your miners on them. We recognize that training in chemical hazards will present challenges and you may have to obtain special HazCom training for your trainer.

*Simplified HazCom training.* In the proposal, we specifically asked for comments on additional ways to simplify HazCom training, especially for small operators and independent contractors, while retaining or improving the effectiveness of it. Several commenters recommended that we develop training materials, including sample MSDSs, plans, videos, and modules on chemicals. Some of these commenters suggested that we produce generic written HazCom and training programs for you to adapt to your needs. Another commenter suggested that we expand and use the State Grants Program to assist you in developing HazCom programs.

In response to these comments, we intend to develop a number of aids for the mining industry to use in implementing a successful HazCom program. Many of these aids are available now and the remainder will be available soon. You can contact the National Mine Health and Safety Academy at 304–256–3257 or visit our

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website at *www.msha.gov* to find out what is available. Also, OSHA has developed training materials for its industries. Some are available from OSHA's website at *www.osha.gov* and can be adapted for use at mining operations.

*Hazardous waste.* The interim final rule does not exempt hazardous waste from training. Miners handling this type of hazardous material need all the information available to protect themselves from chemical hazards and from inadvertent exposure.

There are a number of sites under MSHA jurisdiction, particularly cement operations, which EPA licenses to burn hazardous waste. These operations typically use the waste as a supplemental fuel for their kilns. We specifically requested comments on the appropriateness of requiring HazCom training for miners who are exposed to EPA-regulated hazardous wastes.

One commenter supported our proposed hazardous waste training requirements. Another stated that we should use RCRA information for training purposes and copy OSHA's HCS. One commenter recommended that we not require HazCom training unless a miner is exposed to the hazardous waste. Another commenter stated that HazCom training in addition to EPA training may be redundant.

*Uniformity in training.* Some commenters recommended that we administer training for you because it would result in a higher level of consistency and quality in the training. Other commenters recommended the adoption of uniform training to help you and to provide consistency.

Over the past 15 years, various organizations have developed informational materials, training aids, and model training programs to assist industry in complying with OSHA's HCS. Due to the similarity between the OSHA HCS and HazCom, you should be able to use much of this material to assist you in developing and conducting miner training. Also, our State Grants Program may be a source of miner training and informational materials. Although we do not intend to conduct this training for you, we will provide information and assistance to trainers through our Mine Health and Safety Academy, Educational Field Services, the MSHA district offices, and State grantees.

2. § 47.51 Requirement for HazCom Training

The interim final rule requires you to instruct each miner about the hazardous chemicals in his or her work area; we proposed that you provide exposed employees with training on hazardous chemicals in their work area. As with numerous other parts of the interim final rule, we believe that the scope and purpose clarifies how and to whom the provisions of HazCom apply and that the resulting change in language is not a change in meaning. Except for clear expression, we intend no difference between a requirement to "instruct," for example, and a requirement to "provide training." You must train a miner about the hazards of those chemicals to which he or she can be exposed.

*Before first assignment to an area.* The interim final rule requires you to provide HazCom training to miners before you assign them to work in an area that has a hazardous chemical. A number of commenters interpreted the proposal to mean that a miner had to complete HazCom training before an initial assignment to an area. Commenters expressed the view that the best way to impart knowledge and understanding is on-site while the miner is learning and doing the work.

The compatibility of HazCom with our principal training requirements includes the three forms of instruction to address different training needs: initial, refresher, and task. You must conduct initial training before a person is assigned to work; you must conduct refresher training within a year after the initial training. You must conduct task training both on-site before work is started and continue after a miner begins the assignment. We agree with commenters that valuable training can occur at the site at the time of assignment or after assignment. The requirement that you train miners before their first assignment to an area refers to general training appropriate to HazCom and may in fact supplement fuller on-site training. What comprises on-site training and how you allocate the time for each subject depends on the chemical hazards, the workforce, the processes at your mine, and the problems you foresee. It will vary depending on the mine.

We want to stress again, however, that HazCom is meant to work through the anticipation of risk. To reduce chemically-related injuries and illnesses, a miner must know about the hazards of the job and how to safely perform it before being left to work alone. The safety and health purpose of HazCom cannot be met if you delay the proper training until after an exposure has occurred.

*New chemical hazards.* The interim final rule requires you to train miners whenever you introduce a new chemically-related hazard into their work area. Introducing a new hazard, however, is not the same as introducing a new hazardous chemical. For example, you have trained your mechanics in the hazards of a solvent they use at the mine. If you replace the solvent with a new solvent that presents the same hazards as the old and is going to be used in the same way and at the same locations, you are not required to conduct new training. You must, however, put the new solvent on your list of hazardous chemicals and keep a copy of the MSDS available. HazCom specifically states that you do not have to repeat training previously provided. If the new solvent poses a new hazard, you must train your mechanics about the new hazard. If you use the new solvent in a different way from the way you used your old solvent, you must train miners about any hazards that different use implies. If you will use the new solvent in a different location or process within their work area, you must inform them about this change and any hazards this new use implies.

*HazCom training and exposure.* Some commenters suggested that miners should have the information and training only for exposures that are planned or that would result from a foreseeable emergency or a mine disaster. Others recommended that HazCom training focus on chemicals known to be hazardous when miners are handling them, and where exposures are likely. Some commenters suggested that we base training on hazard recognition and avoidance at the work site where there is a potential for injury. Another commenter recommended that we base training on a risk assessment method applied to the hazards at the mine.

The interim final rule requires training for miners who work where there is a potential for exposure to a hazardous chemical. We are promulgating HazCom to anticipate the possibility of harm or loss from chemical exposures, not to regulate the risk of chemical use. Like any training or information standard, it is through this anticipation of risk that we mean for HazCom to address hazardous chemical exposure and prevent injuries and illnesses. We discuss the issue of potential exposure more fully under "§ 47.2 operators and chemicals covered" in this preamble.

*Significant new information.* Some commenters stated that the proposal was not clear in requiring operators to train miners about significant new information. In response to comments, we added language to the interim final rule to clarify that you must train your miners about significant new information about a chemical's hazards whenever you become aware of the new information. You can give examples of this information at formal classroom training, informal safety meetings, or by a supervisor on the job. It can be written or verbal. We had intended in the proposal that you would update this information. The interim final rule, however, gave us an opportunity to make our intention clearer to you.



Significant new information about a chemical is rare. The physical properties of chemicals have been known for a long time and they almost never change. Most acute health effects are also known. Latent effects are more difficult to attribute to a chemical because of the time, environment, and other factors that obscure the relationship between the exposure and the disease. When new effects are found, they are generally significant. A recent example is IARC's reclassification of respirable crystalline silica as a probable human carcinogen. When these latent or other effects become scientifically accepted, you have a duty to tell your miners about them.

*Credit for other training.* To allow for the effective use of resources, as discussed above, the interim final rule includes language to clarify that you can credit relevant training conducted for compliance with OSHA's HCS or other parts of this chapter to meet HazCom's training requirements.

3. § 47.52 HazCom Training Contents

The interim final rule's requirements for the contents of HazCom training is the same as the proposal, but was restated in clearer language. One commenter suggested that groupings of substances by types of health effects would aid you in developing a training program. Another commenter requested that you be allowed to train miners on chemical groups or on individual chemicals. This commenter stated that product substitution does not necessarily mean that a new hazard has been introduced.

We intend HazCom to allow you to determine the best way to instruct your miners on how to identify and protect themselves from hazards associated with chemicals in their work area. If miners are exposed to a small number of hazardous chemicals, you could conduct their training specifically on each chemical. If miners are exposed to a large number of hazardous chemicals, you could conduct the training by categories of hazards and by referring miners to the substance-specific information on the labels and MSDSs and the locations or operations within their work areas where such chemicals are used. HazCom does not restrict training to the hazards of a specific chemical or the hazards of a group of chemicals.

Several commenters supported the requirement that you train miners on the location and availability of the written HazCom program, written labeling information, and MSDSs. A commenter recommended that you periodically review the written program with all miners. Another stated that you should conduct HazCom training annually. The interim final rule requires HazCom training to address the HazCom standard, how you apply it at the mine, and how you make HazCom materials available.

Several commenters supported the required use of MSDSs in miner training and several objected to requiring the use of MSDSs in connection with miner training. A commenter recommended that we require hands-on practice with MSDSs. The interim final rule does not require you to include the actual MSDS when conducting the training. MSDSs are designed to be an excellent, concise source of information about a chemical and its hazards. We believe that MSDSs will often provide the most specific and reliable information about a hazardous chemical and you will find them a particular help when developing your training program. The interim final rule requires HazCom training to contain an explanation of the MSDS and its location and availability, but does not require hands-on practice. The interim final rule gives you the flexibility to provide additional training, including hands-on practice.

Some commenters suggested that miner training include the right to access MSDSs and that miners be advised of the retention time for MSDSs. As in the proposal, the final HazCom standard requires you to train miners about the requirements of HazCom, including the provisions addressing the miner's right to access the written HazCom program, written labeling information, and MSDSs.

Another commenter stated that you should keep MSDSs with training records to help prove that the chemical was present at the time of training. The interim final rule does not include this requirement because MSDSs may be kept in the work area where the hazardous chemical is present. Also, requiring you to maintain duplicate MSDSs with the training record could prove burdensome.

4. § 47.53 HazCom Training Records

MSHA and many commenters have a common concern about paperwork requirements and the recordkeeping burden this places on them. Congress requires us to reduce the amount of paperwork you must keep or submit to us. That requirement is balanced against our need to function effectively in meeting the goals of the Agency. Aside from that, however, we wanted all MSHA training requirements, including records, to be as consistent and interchangeable as possible to keep the rule simple, reduce the burden, and eliminate any potential confusion for you. In view of those factors, we made a substantive change to the requirements for making and retaining training records. The proposal would have required the person responsible for conducting the training to certify the date and type of training given to each miner. You then had to keep this record for as long as the miner was exposed to a hazardous chemical.

The interim final rule is more performance-based in its recordkeeping requirements than the proposal in that it does not specify any format or require specific data for these records. We also reduced the record retention time significantly. Under the interim final rule, you must keep a copy of the HazCom training record for 2 years which makes this requirement the same as those in 30 CFR parts 46 and 48. We believe this considerable relief from your paperwork burden is justified because we verify records during mine inspections, twice or four times per year. Besides fitting in with the retention period for parts 46 and 48, we determined that 2 years was a reasonable amount of time for miners to access their training records.

*MSHA Form 5000–23.* For part 48 training, you must use our training certificate, MSHA Form 5000–23, or an approved equivalent, as a record of your training. Part 46 also requires documentation of training, but does not prescribe a specific form. If you incorporate HazCom training into parts 46 or 48 training, you can use Form 5000–23 or an approved equivalent to document the training. For purposes of HazCom, however, you may use any documentation that will convey adequate information for an inspector, miner, or miner's representative about who was trained, when, and what was covered. A copy of Form 5000–23 is available from our website.

*Availability of records.* The proposal also would have required you to make the certified training record available to miners, designated representatives, and MSHA. A commenter stated that the maintenance of certified training records should conform to the OSHA rule. We recognize that training and certification of training may be of particular concern to independent

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contractors working at locations regulated by MSHA, as well as other locations regulated by OSHA. To alleviate their concern, if a miner is exposed to the same chemical hazards at both an OSHA and MSHA site, we will credit relevant training given the employee at the OSHA site as meeting our requirements. The employee's training record, however, must be clear that the subject of the training was relevant to both HazCom's requirements and the circumstances on mine property. We modified the proposal's provision for maintaining the certified record to indicate that a record, not a certification, must be available, and we moved this provision to subpart G, Making HazCom Information Available.

We intend that HazCom training cast light on chemical hazards. You should anticipate, therefore, that this training focus may cause miners to voice new concerns. You should prepare to respond to these questions with the best information you can gather: MSDSs, health sampling results for your mine, and data from whatever reliable sources are available to you.

*G. Subpart G—Making HazCom Information Available*

The proposal defined "access" as the right to examine and copy records. The interim final rule uses this same language. In providing access, the proposal required you to make written HazCom information available, but the requirements were repeated under each major provision. In response to comments, we consolidated these requirements in a single place in the interim final rule. We included language in the labeling and MSDS sections to emphasize the need to have this critical information readily available.

Hazard determination and awareness, labels and MSDSs, and training provide miners with essential information about hazardous chemicals. Each of these components of the HazCom program complements the others. They, along with the requirements for a written program and access to the HazCom materials, are necessary for the effective communication of chemical hazard information to miners and operators.

Chemical information can be complex and lead to confusion. When you give miners access to your written HazCom materials, you will have taken an important step toward eliminating the mystery, clarifying any misinformation and erroneous concepts, and defusing worker concerns about these chemicals. If miners are not given access to the information, they can grow suspicious about what you tell them and may disregard the information entirely, thus reducing the effectiveness of the HazCom program. If you give miners access—to examine the material, copy it, and review it when they have time—they are more likely to share in the goals of the program, follow safe and healthful work procedures, and seek early medical help in case of exposure.

1. § 47.61 Access to HazCom Materials

The proposal required you to give miners and their designated representatives access to written HazCom materials: the written HazCom program, the list of hazardous chemicals, labeling information, MSDSs, and training records. The proposal also explicitly required that you give representatives of the Secretaries of Labor and Health and Human Services access to HazCom materials.

Some commenters asked that we not require operators to copy records for miners, citing an administrative burden. Others suggested miners put their requests for access in writing to "verify and effectively communicate actual requests for copies." Commenters also pointed out that § 103(a) of the Mine Act already gives representatives of the Secretaries of Labor and Health and Human Services access to HazCom materials.

This provision in the interim final rule is the same as the comparable provisions in the proposal, and is consistent with OSHA's HCS. Providing access means that if the miner requests a copy of any of the material associated with the HazCom program, you must give the miner a copy, as well as a copy of all updates. If you prefer, you can give the miner the records and the use of a copy machine so that he or she can make a copy. If you have an internet website, you could put the MSDSs on the website for access by your miners and customers, thus reducing the number of requests for paper copies.

As in the proposed standard, the final access provisions require operators to provide a copy of the records, in a relatively short period of time, for the miner to examine or to retain a copy. In the interest of flexibility, the interim final rule does not specify the time period in which you have to provide copies. Because you are required to keep all these HazCom materials available at the mine, including those available by computer, you should be able to provide them to miners, designated representatives, and Federal officials on the same day or, at most, within 24 hours of receiving the request.

While we agree that a written request would "verify" and "effectively communicate * * * an actual request", there are numerous ways to achieve this goal other than having the miner put the request in writing. Requiring a written request is unnecessary because better alternatives are available. For example, you can have miners sign a receipt for the copies or initial a log. Requiring written requests could delay miners' access to essential HazCom materials. Therefore, the interim final rule does not require requests for copies of HazCom materials to be in writing.

Although it is not stated, you must provide access to representatives of the Secretaries of Labor (*e.g.*, MSHA inspectors) and Health and Human Services (*e.g.*, NIOSH investigators). In response to comments, the interim final rule does not explicitly include this provision because it is mandated under the Mine Act.

2. § 47.62 Cost for Copies

The interim final rule, as in the proposal, requires you to provide one copy of any written HazCom material without cost to the miner. This includes a single copy of any revisions or updates. Some commenters were concerned that operators would have to provide copies at no cost to the miner. They stated that this was not reasonable and recommended that we require you to provide one copy, but not additional copies of the same document, at no cost. For this reason, if the miner or designated representative requests another copy of material you have already given them, the interim final rule allows you to charge for subsequent copies of the same material. These administrative fees must be reasonable and they must be the same for everyone. You may not refuse to provide these additional copies. These provisions will ensure that miners have access to information about hazardous chemicals without placing an undue burden on you.

3. § 47.63 Providing Labels and MSDSs to Customers

If you produce a hazardous chemical, HazCom requires you to provide the labeling information and the MSDS to customers when they request them. If you have an internet website, you could put the labeling information and MSDSs on the website for access by your miners and customers, thus reducing the number of requests for paper copies. You also have the option of sending copies by e-mail or facsimile (fax).

We had proposed that you send labeling information with the first shipment of the product to a downstream user and updated information with the next shipment. The proposal would have required you to send an MSDS upon request.

After further consideration of the comments, we concluded that a requirement to automatically send labeling information to customers is unnecessary. Our experience indicates that many operators currently include hazard information on their product's label in response to market forces generated by the labeling requirements of other Federal agencies, primarily OSHA's HCS.

*H. Subpart H—Trade Secrets*

The Trade Secrets subpart balances two important interests: the miner's interest in obtaining information on hazardous chemicals to prevent or treat adverse effects, and your proprietary interest in protecting your business. In general, we believe miner safety and health is best served by full disclosure of a chemical's identity. We recognize, however, the need to protect trade secrets. Once a trade secret is disclosed, its value may be lost. Under the Trade Secrets subpart:

- You may always protect information about trade secret processes and percentages of mixture.
- You may protect trade secret chemical identities except in emergency and specified non-emergency situations.
- You must always disclose the properties, the safe use, and the safety and health effects of trade secret chemicals.

Our proposal was, in essence, a restatement of the existing OSHA trade secret provision. The OSHA rule has worked for other industries for years, has withstood the test of experience, and can ensure that legitimate trade secrets will not be disclosed beyond what is necessary to protect miners. The comments we received on this subpart were generally supportive. The interim final rule, while revised stylistically, retains the substance of the proposal and the OSHA rule.

We understand that most operators are probably not concerned with trade secrets. One commenter said that the Trade Secrets subpart had limited utility for the coal industry. Another commenter said the provision was unnecessary for crushed stone. Both of these commenters wanted us to delete the trade secret provisions.

We disagree with those commenters. To the operators who create unique processing compounds, trade secret protection may be vitally important. One commenter thought that we were downplaying that importance by anticipating limited interest in the provision. On the contrary, we recognize the value of trade secrets where they exist. Although the subpart may appear elaborate, it provides a proven framework to accommodate both the interests of protecting trade secrets and miners' health and safety. We have considered all comments submitted and determined that the Trade Secrets subpart will effectively provide for the investigation and settlement of disputes.

1. § 47.71 Provisions for Withholding Trade Secrets

Once a particular chemical has been classified as a trade secret, HazCom allows you to withhold the chemical name and other specific identification of the hazardous chemical from the written HazCom program, label, and MSDS, provided that—

- You identify the trade secret chemical in a way that it can be referenced without disclosing the secret;
- You disclose the properties and effects of the chemical in the MSDS;
- You indicate in the MSDS that the chemical's identity is being withheld as a trade secret; and
- You make the chemical's identity available to MSHA, health professionals, miners, and designated representatives following other provisions in this subpart.

HazCom does not require you to disclose process or percentage of mixture information. The interim final rule incorporates the language of the proposal with a few editorial changes.

2. § 47.72 Disclosure of Trade Secret Information to MSHA

This section requires you to disclose to us any information required by this subpart. If you are going to make a trade secret claim, it must be made no later than when you provide the information to us so that we can determine the validity of the claim and provide the necessary protection. We moved this provision for disclosing information to MSHA in order to keep all the disclosure sections together in the interim final rule. There were no comments on giving trade secret information to MSHA.

3. § 47.73 Disclosure in a Medical Emergency

You must immediately disclose the identity of a trade secret chemical to a health professional in a medical emergency. You are required to make this disclosure when the professional is treating the miner and determines that—

- A medical emergency exists, and
- The specific chemical identity is necessary to provide adequate treatment.

The proposal required you to identify the trade secret chemical to a treating "physician or nurse" in the event of an emergency. One commenter suggested that we revise the provision to read "physicians" assistants and other health-care professionals who provide treatment" instead of "physician or nurse" so that HazCom includes other health-care professionals involved in treatment and patient care. This subject is also addressed in the Definitions subpart of this preamble under *health professional.*

You must provide the chemical's identity to the treating health professional immediately in an emergency. After the emergency, however, HazCom allows you to require that the health professional provide you with a written statement of need, as well as enter into a confidentiality agreement to protect against the unauthorized disclosure of trade secret information. In general, the statement of need verifies that the health professional will be using the trade secret information only for the needs permitted by HazCom. The confidentiality agreement ensures that the health professional will not make any unauthorized disclosures of the trade secret.

Under § 47.74, non-emergency disclosure, we state that you may be subject to a citation. One commenter recommended that similar language be added for unwarrantable failures if disclosure is denied in an emergency. We did not adopt this recommendation in the interim final rule. The § 47.74 citation provision is part of a procedure for reviewing denials of disclosures and balancing interests, which applies only to non-emergency situations. In any event, a violation of the emergency disclosure standard would, like other violations of mandatory standards, be subject to Mine Act enforcement.

4. § 47.74 Non-emergency Disclosure

Commenters agreed with the proposed provisions for non-emergency disclosure of trade secret chemical identity and we included these provisions in the interim final rule. In a non-emergency situation, you must disclose the trade secret information to a health professional providing medical or other occupational health services to a miner if they give you a written statement of need requesting the information. Under this section, miners and designated representatives also have the same access. The statement of need must address the reasons specified in the rule, and explain why other available information will not suffice. In addition, the requester has to enter into a confidentiality agreement.

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5. § 47.75 Confidentiality Agreement and Remedies

The confidentiality agreement may restrict the use of the trade secret chemical identity to the health purposes indicated in the statement of need, and may provide for legal remedies in the event of a breach of confidentiality. You may not require a penalty bond in the confidentiality agreement; however, you may pursue other non-contractual remedies to the extent permitted by law.

You must allow the health professional, miner, or designated representative to disclose the trade secret chemical identity to MSHA if they decide there is a need. You may also provide in the agreement, however, that they must let you know before or at the time they make the disclosure. We proposed this last item as a mandatory requirement. It is not mandatory in the interim final rule because we determined that we could not enforce it. Accordingly, we are leaving it to the parties entering the confidentiality agreement to determine if it is needed. This provision only applies to disclosure of the trade secret chemical identity. In any event, miners and miners' representatives have the right under the Mine Act to confidentially report an imminent danger or health and safety violation to MSHA and explain how a trade secret chemical may be involved.

6. § 47.76 Denial of a Written Request for Disclosure

You may deny a written request for disclosure of trade secret information in non-emergency situations. Your denial must—

- Be in writing, which includes e-mail and facsimile (fax) communication;
- Be given to the person requesting the information within 30 days of the request;
- Include evidence that the chemical's identity is a trade secret;
- State why the request is being denied; and
- Explain how alternative information will satisfy the medical or occupational health need identified in the request.

Commenters agreed with the proposed provisions for denying a request for non-emergency disclosure of trade secret information and we included these provisions in the interim final rule.

7. § 47.77 Review of Denial

If you deny a request for trade secret information, the person or organization making the request can refer the denial to us for review. In order for the request to be reviewed, it must include a copy of the request for disclosure, the confidentiality agreement, and your written denial. We will consider the appropriateness of the denial based on the evidence you submit to support your claim that the chemical's identity is a trade secret, the medical or occupational health need for the information, and the proposed means to protect confidentiality.

If we determine that you wrongfully denied the request for disclosure, you will be subject to a citation. If you can demonstrate to us that the execution of a confidentiality agreement would not protect you against the potential harm of an unauthorized disclosure of the trade secret information, we may set conditions to ensure that medical services are provided without undue risk of harm to you.

Finally, if you contest a citation for failure to disclose trade secret information, the Mine Safety and Health Review Commission will review the citation.

Commenters agreed with the proposed provisions for reviewing a denial and we included these provisions in the interim final rule.

*I. Subpart I—Exemptions*

The proposal included both the exemptions from the rule and the exemptions from labeling in the section on "scope." It then repeated the labeling exemptions under "labeling." Commenters remarked that this repetition was unnecessary. In the interim final rule, we placed each set of exemptions in a table in a separate Exemptions subpart near the end of the rule. This change in format brings the compliance requirements closer together at the beginning of the rule while, at the same time, eliminating repetition and making the exemptions more noticeable.

1. § 47.81 Exemptions from the HazCom Standard

The interim final rule exempts the following materials from the full scope of the standard. These exemptions are substantively the same as proposed.

*Articles.* We proposed to exempt articles from the full scope of HazCom. This proposed exemption, however, merely listed "articles" and contained no description or criteria under the "scope and application" section of the rule. The definition for "article" contained both the description and criteria for exempting an article, the same as in OSHA's HCS. The proposed definition described "article" as a manufactured item, other than a fluid or particle, that is formed to a specific shape or design during manufacture and has end-use functions dependent upon its shape or design. For example, even though polyaromatic hydrocarbons are hazardous chemicals, their presence in a plastic bucket or seat cushions or ventilation curtains is exempt from HazCom because the bucket, seat cushions, and ventilation curtains are articles. Polyaromatic hydrocarbons in diesel exhaust or adhesives, however, are covered by HazCom. Even though chromium is a hazardous chemical capable of causing poisoning, chromium in a steel bar or chisel would be exempt from HazCom, regardless of its percent composition, because the bar and the tool are articles.

The definition also included paragraph (c), which stated that an article is exempt if, under normal conditions of use, it releases no more than trace amounts of a hazardous chemical and presents no physical or health hazard. For example, chromium in a welding rod is not exempt. Even though the welding rod is formed to a specific shape or design during manufacture and has end-use functions dependent upon its shape or design, the rod releases more than trace amounts of the hazardous chemical under normal conditions of use.

Commenters generally agreed with the exemption of "articles" and with its definition in the HazCom proposal. Some commenters suggested that we eliminate the criteria in paragraph (c) of the definition because they are unnecessary and contrary to the thrust of the exemption for articles. Other commenters suggested, however, that the definition must address risk for this exemption to be effective. To determine when an article is a hazardous chemical, some commenters suggested that the definition include a *de minimis* provision establishing a low threshold concentration below which the rule would not apply. Other commenters wanted a significant risk provision. Several commenters recommended that we link this provision to the Mine Act by stating that an article is exempt if it "does not release a quantity of a hazardous chemical that poses a risk of material impairment of health or functional capacity to miners." Another commenter suggested that HazCom clearly state our intent to exempt trivial risks. This commenter cited a court decision on OSHA's HCS which interpreted this exemption to mean that "any amount of release that could conceivably cause damage eliminates exemption as an 'article'."

Commenters also questioned what we meant by the terms "minute" or "trace" as applied to releases of chemicals from an article and by the phrase "normal conditions of use."

These commenters stated that we must clarify this provision for the HazCom interim final rule to be effective. One commenter stated that—

> * * * If exposures are negligible, labeling products as hazardous causes needless concern to workers. If warnings are provided for all measurable releases of chemicals, regardless of risk, workers will be unable to distinguish between meaningful/significant and trivial risks and the standard will be severely diluted.

We agree with commenters' concerns that paragraph (c) of the proposed definition of article is unclear about how much of a hazardous chemical released from a manufactured item under normal conditions of use would constitute either very small, minute, trace, or *de minimis* quantities. In many cases, it may be both time consuming and difficult to accurately determine whether an item is an article or a hazardous chemical. For example, one commenter stated that "[u]sing present day analytical chemical technology, extremely low levels of chemicals can be detected everywhere."

To clarify our intent, we separated the criteria for exemption from the definition for article. We also used the term "insignificant amount" instead of "very small quantity" and "minute or trace amounts." By using these terms, we intend to shift the emphasis from the quantity of a hazardous chemical release to the significance of the release as it relates to risk. We believe that these language changes do not change the substantive intent of this exemption. Although we do not intend to regulate trivial risks, we recognize that the meaning of "trivial" is subjective.

*Biological hazards.* We proposed to exclude biological hazards from the HazCom standard, consistent with OSHA's HCS. We received a few comments supporting this exemption. Some commenters objected to our exemption of biological hazards because there are dangers at the mine associated with these substances, and information concerning their hazards should be communicated to miners.

Although fungus, molds, and poison ivy have caused problems, there is little evidence to indicate that biological substances on mine property present any significant physical or health hazards. These biological hazards are not occupationally-related so much as they are ubiquitous. If there is a hazardous chemical present in addition to the biological hazard, it would be subject to the requirements of HazCom. For example, a bottle containing a biological sample in a hazardous solvent would have to be labeled for the hazardous solvent. This specific exemption is included in the final HazCom. This is consistent with our proposal and OSHA's HCS.

*Consumer products.* We proposed to exempt consumer products and hazardous substances from the full scope of HazCom when operators or miners use them at the mine in the same manner as an ordinary consumer (normal consumer use). The proposal would have exempted consumer products as defined in the Consumer Product Safety Act (15 U.S.C. 2051) and hazardous substances as defined in the Federal Hazardous Substance Act (15 U.S.C. 1261), when they are subject to consumer product safety standards or labeling requirements issued under these Acts. The Federal Hazardous Substances Act (FHSA), administered by the Consumer Products Safety Commission (CPSC), regulates hazardous substances in interstate commerce. The CPSC specifically exempts pesticides subject to the Federal Insecticide, Fungicide, and Rodenticide Act, and foods, drugs, and cosmetics subject to the Federal Food, Drug, and Cosmetic Act, from the term "hazardous substance" under FHSA. In the proposal, we also specifically requested comments on the need to exclude from coverage any consumer product excluded by Congress from the definition of hazardous chemical under § 311(e)(3) of the Superfund Amendments and Reauthorization Act (SARA) of 1986, Pub. L. 99–499.

Commenters suggested that we define the term "consumer product" using a working definition for exempt materials rather that referencing statutes that mean nothing to most operators. One commenter stated that the EPA's consumer product exemption under SARA represents a more reasonable approach than that in the proposal and urged us to incorporate SARA's definition of consumer products. SARA defines a consumer product as—

> * * * any substance to the extent it is used for personal, family or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public.

This commenter reasoned that keying the consumer product exemption to consumer packaging and concentration would achieve the same result as the proposed exemption, but without requiring you to demonstrate that your miners use the consumer product as an ordinary consumer.

Another commenter indicated that many mining uses of consumer products may result in exposure that was not contemplated by the manufacturer packaging the product for consumer use. Some commenters questioned how individuals using consumer products in an unintended manner would affect our exemption of consumer products from HazCom. Another recommended that we delete the requirement that you must demonstrate that the consumer product is being used in the same manner as in normal consumer use. The commenter further stated that there is no evidence to demonstrate that significant risks are present where such materials are used in a manner or amount not consistent with normal consumer use.

Commenters objected to the term "normal consumer use" in the proposal and recommended that we delete it from the interim final rule. Another commenter stated that requiring an additional determination, as to whether the product is used at the mine in the same manner as in normal consumer use, places an exceptional burden on you and recommended that we exempt all consumer products from HazCom. One commenter stated that consumer products should be included in the final rule because workplaces use the materials more frequently and in larger quantities than do private homes. Another stated that comparing the use of a consumer product by a miner with its use by a normal consumer is neither practical nor possible, because the duration and frequency of use are highly variable.

There appears to be a misconception that by virtue of being marketable to consumers, consumer products are inherently safe and their use does not require you to provide additional information to miners using them at the mine. Consumer products, however, are not inherently safe. We recognize that there are situations where a miner's exposure is significantly greater than that of an ordinary consumer and that, under these circumstances, consumer products or hazardous substances which are safe for contemplated consumer use may pose unique hazards at the mine. For this reason, we limit the exemption in such cases to labeling. You must comply with the other requirements of HazCom, such as those concerning an MSDS and training, to inform miners about the hazardous chemical. This is consistent with OSHA's HCS.

The interim final rule exempts consumer products from HazCom when you use them as an ordinary consumer. If you use the consumer product longer or in greater quantities or concentrations than an ordinary consumer, it is still exempt from labeling when it is already labeled under CPSC. If you want to

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apply this exemption to a consumer product used at your mine, you must be able to show that miners use it in their work areas in the same manner as in normal consumer use and that the use results in a duration and frequency of exposure which is not greater than exposures experienced by ordinary consumers.

Many mines buy consumer products to use in their daily operations. The consumer products exemption is not dependent on whether you purchase it wholesale or retail. For example, a 5-gallon container of paint from a retailer may not have an MSDS. If you purchased this paint from an industrial supplier, it would be labeled to comply with HazCom and the supplier would probably provide an MSDS.

If you use a consumer product the way the manufacturer intended and the miner is not exposed to the chemical more often or for longer than an ordinary consumer, it is exempt from HazCom. The hazardous nature of a chemical and the potential for exposure are the factors that determine whether a chemical is covered. If the chemical is not hazardous, or if there is no potential for exposure, HazCom does not include it. For example, if you assign a miner to paint a hazard warning on an explosives magazine using a can of spray paint, that use would be one time and of short duration, just as it would be if an ordinary consumer used the product. If the miner's job is painting, requiring the use of spray paint frequently throughout the work shift or daily, this use does not qualify as "normal consumer use" and the hazardous chemicals in the paint would be included in the rule.

We expect you to know whether the use of a consumer product on mine property is unusual, of longer duration, or more frequent than home use. Although a complete exemption may be easier to comply with and enforce than a partial one, the issue of concern to us is whether miners have sufficient information to use the hazardous chemical safely.

In response to comments that we define "consumer products," we decided to incorporate CPSC's definition, rather than SARA's, because both HazCom and OSHA's HCS reference CPSC's definition. The CPSC's definition clarifies the exemption, is compatible with HazCom and OSHA's use of the term, and provides the necessary protections for miners.

*Items for personal consumption.* We proposed to exempt foods, drinks, drugs, cosmetics, and tobacco or tobacco products from HazCom when they were intended for personal consumption or use by miners while on mine property. Commenters generally supported these exemptions. One commenter recommended that HazCom exempt distilled spirits, consistent with OSHA's exemption. Other commenters recommended that this exemption also include the condition that the product be packaged for retail sale and for use by the general public. A few commenters recommended that we not exempt any hazardous chemical.

The proposal did not specifically exempt alcoholic beverages sold, used, or prepared in a retail establishment, because we thought these exemptions did not apply to mining. Our existing standards for metal and nonmetal mines (§§ 56.20001 and 57.20001) prohibit intoxicating beverages in and around mines. Because we do not have standards for coal mines which specifically address intoxicating beverages, we have included an exemption for alcoholic beverages in the interim final rule to be consistent in both mining sectors and to avoid confusion.

The interim final rule exempts foods, drinks, including alcoholic beverages, drugs, cosmetics, tobacco, and tobacco products intended for personal consumption or use by miners while on mine property. For example, HazCom does not cover items such as aspirin in a first aid kit or food served at a mine cafeteria or vending machine.

*Nuisance particulates.* We proposed to exempt nuisance particulates that do not pose a covered health or physical hazard from the full scope of HazCom. Many commenters supported the exemption of nuisance particulates and nonspecific mine dust. Commenters stated that nuisance particulates do not present any known irreversible health effects and that there are no standards in existence to use as a baseline. Several commenters stated that inclusion of nuisance particulates in HazCom could reduce the effectiveness of a HazCom program by transmitting too much information to employees and diluting the focus on more serious or less recognized chemical hazards.

A number of commenters objected to the exclusion of nuisance particulates and nonspecific mine dust from HazCom. These commenters stated that many particles thought to be nuisances are found later to be important health problems and that if the hazard exists at the mine, regardless of the amount, it should be subject to the provisions of HazCom. One commenter stated that nuisance particulates are not excluded by OSHA and we should not exclude them. This commenter stated further that it would be useful to have MSDSs for nuisance particulates to provide miners with reliable information. Another commenter recommended that we omit the nuisance particulate exemption from the standard because there is no proper classification of these substances.

We did not include an exemption for nuisance particulates from the provisions of HazCom because they can pose a covered health or physical hazard when the dose is high enough. For this reason, the proposal was misleading. Operators who produce low hazard chemicals, such as limestone or salt, could have wrongly concluded that their product was not covered by HazCom. There is evidence that exposure to an excessive amount of respirable dust, even dust that does not cause health effects at lower exposure concentrations, can produce reversible health effects. Also, in a mine environment, nuisance particulates are often contaminated with other hazardous chemicals.

ACGIH considers the term "nuisance particulates" as obsolete. In the past, the ACGIH defined and listed examples of nuisance particulates to provide guidance to industry for the purpose of controlling inhalation exposures to those dusts. Based on the 1973 ACGIH Threshold Limit Values, we currently enforce an exposure limit for nuisance dusts of 10 milligrams per cubic meter ($mg/m^3$) as a time-weighted average (TWA). The current edition of the ACGIH TLV's does not list substances as nuisance particulates. In addition, our proposed air quality standard (54 FR 35760), published August 29, 1989, would have established a 5 $mg/m^3$ respirable mine dust limit applicable to all nonspecific dusts, including those currently regulated as nuisance particulates. These current and proposed rules demonstrate that MSHA has considered nuisance particulates as a health hazard for at least 20 years. Because the HazCom proposal would have covered dusts that posed a covered safety or health hazard, even if the dust had previously been categorized as a nuisance particulate, we consider the HazCom interim final rule to be consistent with our proposal and OSHA's HCS.

*Radiation hazards.* We proposed to exclude ionizing or non-ionizing radiation hazards from HazCom, consistent with OSHA's HCS. We have also incorporated this exemption in the interim final rule.

Some commenters suggested that we not exempt radiation from HazCom because, if radiation is a potential hazard in the work area, this should be communicated to miners. Another commenter suggested an exemption for



non-product-specific physical hazards, such as noise, vibration, and hot environments, associated with the mining environment.

Radiation hazards are covered under other Federal requirements and we have standards for metal and nonmetal mines that require hazard notification for radiation hazards, including the posting of hazard warning signs. A chemical with radioactive properties that also presents other types of health and physical hazards is not exempt from HazCom. We do not consider non-chemical-specific physical hazards (such as heat stress, ergonomic hazards, or hearing loss) relevant to this rulemaking because HazCom is meant to address chemical hazards.

*Wood and wood products.* We proposed to exempt from HazCom wood or wood products which do not release or otherwise result in exposure to a hazardous chemical under normal conditions of use. We did not receive comments regarding this exemption.

Wood products, such as lumber, plywood, and paper, are easily recognizable in the work area and pose a risk of fire that is obvious and well known to the miners working with them. Wood dust is not generally a wood "product" but is created as a byproduct during sawing, sanding, and shaping of wood. We believe that it is necessary for you to inform miners about the hazards of wood dust and chemically-treated wood and precautionary measures to minimize or prevent exposure.

The interim final rule contains specific language clarifying that wood dust and wood treated with a hazardous chemical, such as wood preservatives or pesticides, are not exempt from HazCom. This exemption is consistent with OSHA's HCS on the coverage of wood and wood products. In response to comments, we exempted wood and wood products from the labeling requirements.

*2. Hazardous Waste*

We had proposed an exemption for hazardous waste from both the labeling and MSDS requirements when the waste is covered by the Environmental Protection Agency (EPA) under the Solid Waste Disposal Act, as amended by RCRA. Under EPA standards, a waste analysis is required as part of the permit to burn or dispose of hazardous waste. However, EPA does not require the waste analysis to specify the chemicals' hazards or provide that it be made available to employees. MSHA indicated in the preamble to the proposal, that OSHA also excluded hazardous waste regulated by EPA from coverage under its rule. MSHA requested comments on the appropriateness of exempting other hazardous waste not regulated by EPA from the labeling and MSDS requirements of the proposal. A number of mine operators have EPA permits to burn hazardous waste in their kilns as a supplemental fuel source or dispose of hazardous waste in their tailings.

We received numerous comments on this exemption. Some commenters supported the proposed hazardous waste exemption in general, agreeing with our rationale. Commenters suggested the following specific revisions to our proposed hazardous waste exemption:

- That we exempt wastes not regulated by EPA, particularly those reused on-site or sent off-site for recycling, such as waste oil, antifreeze, and solvents.
- That we exempt process-related waste, such as tailings, mine waste, and other hazardous waste generated by the mine, because they are already regulated by us and EPA and the inclusion of these materials in HazCom labeling and training requirements could lead to serious conflicts with other standards.
- That we define hazardous waste to include garbage, refuse, sludge, and other discarded materials including solid, liquid, semisolid, or contained gaseous material resulting from mining because you should inform potentially exposed miners about the hazards associated with scrap and discarded material at the mine.
- That we extend our exemption to include hazardous waste regulated under State programs pursuant to the requirements of RCRA.

Several commenters suggested that we treat hazardous waste exposures as OSHA does, by not requiring HazCom training for those miners who are exposed to EPA regulated hazardous waste. One commenter specifically suggested that we follow OSHA's requirements for hazardous waste operations in 29 CFR 1910.120(e) by requiring training only for specific hazardous waste operations and not for all types of hazardous waste handling.

Since our proposal was published, an increasing number of mining operations have obtained permits to burn hazardous wastes in their kilns. Some bury waste in a landfill or dispose of their own wastes from the mining process. There are 55 mining operations burning hazardous waste and waste products with an average of 16 miners per site. Wastes burned include biological wastes, pesticides, herbicides, waste oil, heavy metals, and tires. Some, but not all, of these hazardous wastes are regulated by EPA. A few operations have EPA issued permits that allow them to burn hundreds of kinds of hazardous wastes, up to 260 different kinds. Many are burning thousands of gallons of waste products a year in their kilns. Two operations handle more than 15 million gallons per year and 12 operations handle more than 1 million gallons per year. Most handle either liquid or solid wastes; some can accommodate both. Some of these wastes would meet HazCom's definition of a health or physical hazard or both.

NIOSH stated that hazardous waste not regulated by the EPA or other existing statutes should not be exempt from HazCom because to do so would be contrary to the intent of HazCom. The rulemaking record indicates the need for miners working with hazardous waste to be informed of its hazards either as a mixture or its individual components. We have determined that, for HazCom to be effective, it must include all hazardous chemicals to which miners may be exposed and, therefore, the interim final rule does not exempt hazardous waste regulated by the EPA. Other waste chemicals are subject to the same requirements as every hazardous chemical on site.

After a careful review of all comments received on this issue, we have determined that it is necessary to cover hazardous waste under our standard. Although OSHA excludes coverage of hazardous waste regulated by EPA, OSHA has other specific standards directed to hazardous waste operations. (29 CFR 1910.120). OSHA was required to issue these standards by § 162, title 1 of the Superfund Amendments and Reauthorization Act of 1986 (SARA). We do not have similar statutory requirements or standards regarding hazardous waste operations and believe that we would be denying protection to miners handling hazardous waste if we were to exempt it from coverage. Labels are an important component of an effective hazard communication system. Requiring all hazardous waste to be labeled will eliminate any confusion as to whether the waste is covered by the EPA. Accordingly, the interim final rule does not exempt hazardous waste from coverage.

Under the interim final rule, you must provide each potentially exposed miner with MSDS information about the hazardous waste to the extent that it is available. You must make any information available to the miner or designated representative which identifies its hazardous chemical components, describes its physical or health hazards, or specifies appropriate protective measures. If the chemical is

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a hazardous waste and an MSDS is unavailable, the chemical is hazardous if any of the sources in the Identifying Hazardous Chemicals, Table 47.11, indicates it is a physical or health hazard. We believe that this change in the interim final rule does not impose an additional burden on you because existing labels on containers of hazardous waste brought onto mine property that meet the comparable requirements of other Federal or State regulations will fulfill the labeling requirements of this interim final rule.

HazCom requires you to provide the information needed for labels and MSDSs, through any available information and training, to miners who work with hazardous waste. Some of this information is available from the EPA permit, your analysis of the waste, or the supplier of the waste material. If the supplier of the hazardous waste prepares any document for compliance with EPA or OSHA standards that contains the same types of information as required for the label and MSDS, we expect you to obtain a copy of these documents and to provide miners with access to them.

3. § 47.82 Exemptions From Labeling

We proposed to exempt from HazCom's labeling requirements those hazardous substances regulated and labeled under the authority and standards of other Federal agencies. Commenters objected to the proposal's referencing the laws and standards of other organizations and agencies, considering their inclusion to amount to "incorporation-by-reference." They stated that the rule does not include these documents, that they are not useful in understanding HazCom, and that our rules will become dependent on out-of-date material or require rulemaking to keep them current. The proposal had referenced the Consumer Product Safety Act; the Federal Hazardous Substances Act; the Federal Food, Drug, and Cosmetic Act; the Federal Insecticide, Fungicide, and Rodenticide Act; the Solid Waste Disposal Act; and the Resource Conservation and Recovery Act. Commenters suggested that we replace these references with simple operational definitions that would be understood by the miner.

The interim final rule includes these references to clarify which toxic materials, hazardous substances, and consumer products are exempt from HazCom labeling. We consider these references as informational because they inform you of the limits of your responsibility rather than imposing an obligation. To the extent practical, the interim final rule simplifies the references by not including legal citations. Use of these references to specify exemptions from HazCom means that another Federal agency requires labeling of the hazardous chemical. A simple operational definition would be that you do not have to further label a hazardous chemical brought onto mine property if it already has a label indicating its identity and appropriate hazard warnings.

We expect that most hazardous chemicals regulated by another Federal agency are labeled by the manufacturer with information about their identity, hazards, precautions for normal use and emergencies, and phone numbers for additional information. To avoid duplicate Federal standards, we will accept pre-existing hazard labels that comply with the labeling requirements of another Federal statute or standard for compliance with HazCom. For example, if a hazardous substance or waste is produced at the mine, and it is covered by the standards of another Federal agency, you must label it first in accordance with those standards. Consistent with the purpose of HazCom, if the hazardous chemical is not labeled in accordance with another Federal statute or standard, you must label it in accordance with the requirements in § 47.32 (label contents) of HazCom.

*Raw material.* We proposed to exempt the raw material mined or milled from the labeling requirements of HazCom while on mine property. Many commenters strongly supported the proposed raw material exemption. Some of these commenters recognized the impracticality of affixing and maintaining labels on every ore car or on each bin or hopper containing the mined material and believed that such labels would be of little benefit. One commenter stated that they currently labeled bins of their raw material but found that the labels were difficult to read due to the dust covering them. Other commenters believed that, generally, operators inform miners about the hazards of the raw material being mined and this information could be considered common knowledge. Another commenter stated that while they did not disagree with a labeling exemption for the raw material mined—

> * * * the final rule should re-state the operator's duty to train and inform miners about the hazards inherent in the mineral being mined and by-products of the mining process such as crystalline silica, radon progeny, etc.

This commenter stated further that you should at least make an MSDS on these substances available and warn miners in a variety of ways. Among those commenters supporting the raw material exemption, one recommended that we clarify that a container of a raw material that has undergone a chemical reaction with other constituents, and thus is not a mixture, would not have to be labeled even if a hazardous chemical may have been added to it during processing at the mine. This commenter further stated that—

> [w]hile the process container where the hazardous chemical is added may need to be labeled (at least where the process does not result in an instantaneous chemical reaction), the container subsequently holding the commodity produced for sale by the operator would not constitute a "mixture" and should not be labeled.

A few commenters disagreed with our proposed raw material exemption and requested that HazCom require labeling of all containers of hazardous raw material. One of these commenters expressed concern about the legibility and adhesion of labels, yet was confident that you could develop workable solutions. Other commenters stated that unlabeled containers of hazardous chemicals must be labeled under our existing labeling standards.

The interim final rule exempts containers of raw materials from labeling while they are on mine property. For any raw material that is determined to be a hazardous chemical, you must supply labeling information when requested to downstream users, to maintain MSDSs, and to train miners about its physical and health hazards. We expect that miners are familiar with the hazards of the material being mined because they must receive training on the health and safety hazards of their job under 30 CFR parts 46 or 48. If you add a hazardous chemical to a container of raw material, however, you must label the container for the hazardous chemical added if the mixture or the newly created compound meets the criteria in the hazard determination section of HazCom (§ 47.11).

*Pesticides, food, and consumer products.* The proposal included exemptions from labeling for pesticides; food, food additives, and color additives; and consumer products which are required to be labeled under standards issued by other Federal agencies. The interim final rule is generally consistent with the proposal and with OSHA's HCS. The applicable definitions of the substances addressed in these exemptions are those provided by the governing statutes and standards.



Although there were some commenters who addressed these exemptions, few had specific comments. Among those who did comment, many supported our exemption of consumer products. Several suggested that we not require coal mine operators to include consumer products in HazCom programs because this would result in meaningless storage of countless MSDSs. Another believed that we should clarify that you have a responsibility to maintain the labels that come on these hazardous materials.

Commenters agreed with our intent to have a similar provision with OSHA's HCS, stating that separate rules for consumer products would be redundant and serve no purpose. Another commenter suggested that we also exempt, as per OSHA's standard, drugs, cosmetics, medical or veterinary devices, and materials intended for use as ingredients in such products (*e.g.*, flavors and fragrances). In regard to our proposed consumer product exemption, one commenter stated:

> * * * consumer products already possess adequate labels with hazard identification and safe use instructions. Since no one knows the hazards of a product better than its manufacturer, the safest possible use of the product is in accordance with the manufacturer's recommendations * * *. Using products according to manufacturer's recommendations would result in exposures that are very small (this is minute or trace amounts) and would not pose a physical or health risk to miners.

We received a few comments objecting to the exemption of consumer products from HazCom's labeling requirements. A few commenters suggested that consumer product labels provided by manufacturers may not provide adequate warning, given the use of these products at the mine. One of these commenters stated:

> * * * consumer products with warnings on adequate ventilation or that require the use of personal protective equipment cannot be presumed safe for use in the underground mining environment. Further, many mining uses of consumer products may result in exposures that were not contemplated by the manufacturer packaging the product for consumer use. * * * Many consumer products are potential fuel sources for fires (e.g., aerosol solvents or paints). Further, exposure to these volatile solvents may adversely affect the seals and insulators on permissible equipment or adversely alter the explosive characteristics of the atmosphere in underground coal mines.

In response to the concerns expressed by commenters, the interim final rule states specifically that consumer products are exempt from labeling when they are labeled under the standards of another Federal agency, such as the Consumer Product Safety Commission. Consumer products are exempt from HazCom where you can demonstrate that they are used at the mine in the same manner as in normal consumer use. Because consumer products are labeled under the authority of another Federal agency, and these labels generally provide for the listings of chemical identities and hazard warnings, there is no need for additional labeling standards.

One commenter suggested that we provide operators with a list of exempt products commonly found on mine property. We have determined that a list of exempt products commonly found on mine property is neither simple nor appropriate. These products are only exempt when used in the same way as they would normally be used by a consumer. A list could lead you to believe these were exempt under all circumstances. Some exempt items could be overlooked and some that are exempt from labeling may not be exempt from other provisions of HazCom. Even for exempt products, for example, you may not deface or remove labels from containers of hazardous chemicals brought onto mine property. If they are repackaged or transferred at the mine, you must communicate such labeling information to the miner and, if necessary, label the new container.

The interim final rule also includes an exemption from HazCom's labeling requirements for pesticides labeled under standards issued by other Federal agencies. As long as the pesticide is kept in the original container with its label intact and legible, it is exempt from the labeling provisions of this rule. We believe that this partial exemption informs and protects the miner and does not place an undue burden on you. We intend that all pesticides be labeled with their identity, hazards, and precautions for safe use. We believe that existing labels on containers of pesticides brought onto mine property that meet the labeling requirements of other Federal or State standards will fulfill the labeling requirements of HazCom.

The purpose of pesticide labeling is mainly the protection of workers exposed to the pesticide either while handling it or through inadvertent contact with something that has been treated with it. In the case of the other substances, the purpose of the labels is more general consumer protection. The interim final rule does not include a specific labeling exemption for foods, food additives, and color additives used for personal consumption because they are exempt from the full scope of HazCom. A full discussion of this issue is in the Exemption section of the preamble.

*Other suggested exemptions.* Many commenters specifically recommended that we exempt *de minimis* exposures to, or *de minimis* amounts or concentrations of, hazardous chemicals from the labeling requirements. Most of the commenters believed that labeling should focus on serious risks rather than on those that are trivial. Some commenters suggested that we use 5% silica in the mined ore as a *de minimis* threshold below which labeling would not be required. One commenter recommended 1% silica, rather than 5%, for a *de minimis* threshold. Another commenter recommended basing a *de minimis* threshold on a chemical's TLV or PEL. This commenter suggested that employers would simply need to assess whether a hazardous chemical is present in the work area at a level meeting or exceeding its PEL or TLV. Further, this commenter stated that if the chemical did not have a PEL or TLV, no *de minimis* threshold would apply.

We determined that a *de minimis* threshold for silica is inappropriate because respirable crystalline silica is a human carcinogen and the potential for exposure is too great. We discuss this issue more fully in the next section of this preamble (4. Other exemptions discussed in proposal).

Commenters also recommended that we exempt treated wood products from any labeling requirements because labeling every timber in a mine would create an excessive burden on operators with no increase in protection to the miner.

In response to comments, we are exempting from labeling requirements wood and wood products that have been treated with a hazardous chemical and wood which may be sawed or cut, generating dust. Wood and wood products, including lumber, that do not present a health or physical hazard are exempt from the full scope of HazCom as an "article."

4. Other Exemptions Discussed in Proposal

In the preamble to the proposed rule, we requested comments on a variety of options for the scope of the HazCom standard. These alternatives covered exemptions for the size of the mine, the commodity extracted, the work area, or the amount of hazardous substance. For the most part, the interim final rule does not adopt these exemptions for the reasons discussed in the following paragraphs.

*Small mines.* The rulemaking record contains a number of comments suggesting that we exempt small mines

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from HazCom. Commenters stated that HazCom would create additional expenses and recommended that we modify the interim final rule to exempt small operations, especially those with a workforce of 10 or fewer.

We do not exempt small mines from overall compliance with HazCom because chemical hazards are present at all mines, regardless of size, and miners at small operations have the right to know if they are exposed to hazardous chemicals. To address the needs of small mines, however, as well as the variability in the mining industry, the interim final rule allows you to design the HazCom program for the conditions at your mine. To further assist you, and especially small mine operators, we will prepare generic HazCom programs and MSDSs. Many of these aids are available now and the remainder will be available soon. You can contact the National Mine Health and Safety Academy at 304–256–3257 or visit our website at *www.msha.gov* to find out what is available. Also, OSHA has developed training materials for its industries, such as a generic MSDS form, a model hazard communication program, and the HCS Compliance Guide. Many are available from OSHA's website at *www.osha.gov* and can be adapted for use at mining operations. You can use these as models for your own program.

Depending on the size of the mine and the number of hazardous chemicals at the mine, you may have little to add to the generic program. We anticipate that, with minimal effort, the majority of small mines will be able to prepare the written program, MSDSs, and labels, and integrate HazCom training into their established training programs.

*Common minerals.* We considered an exemption from HazCom for certain common minerals (such as coal, sand and gravel aggregates, crushed stone aggregates, and clay) and those minerals containing less than 5% silica and no other hazardous chemicals. In the preamble to the HazCom proposal, we requested comments on—

- The appropriateness of exempting certain minerals;
- The appropriate criteria for making a determination for exemption;
- The degree to which miners are aware of the hazards of these minerals;
- The level of silica in such minerals necessary before the mineral would be considered hazardous;
- How these minerals are used and handled by downstream employers; and
- How we could best publicize and provide hazard information on these substances to you and miners.

A number of commenters addressed the scope of the common minerals exemption. Some expressed support for the exemption and stated that natural rocks and minerals should not be classified as chemicals for the purpose of an MSDS or other HazCom requirements. Others stated that the exemption for minerals containing less than 5% silica is warranted because these minerals do not constitute a hazard, and the exemption would preclude duplicate regulatory requirements and unnecessary expenditures. One commenter stated that such an exemption is especially appropriate for minerals designated as carcinogenic merely because they contain greater than 0.1% silica. Another commenter stated that labeling common minerals is unnecessary because 30 CFR part 48 (and part 46) requires miners to be trained to recognize the hazards of the product being mined.

Commenters also suggested that we exempt specific minerals from HazCom. For example, one commenter stated that we should exempt coal and limestone. In addition, with regard to exempting coal, other commenters stated that the hazards of respirable coal mine dust are strictly controlled through extensive sampling and monitoring programs. Other commenters recommended that we modify the standard to exempt dimension stone quarries and iron ore pellets. One commenter urged us to specify which minerals are of concern to us and suggested an exemption for silica flour or certain industrial sands based upon their purity and particle size.

Several commenters objected to our proposed exemption of common minerals. One stated that most mining products are used by OSHA-regulated facilities and, as such, OSHA already requires that these facilities keep MSDS forms up-to-date for customers, label containers, and fill out the appropriate transport forms. Another commenter expressed concern that, if operators are responsible for preparing the MSDSs and labels, the common minerals exemption could lead to violations of the OSHA HCS for downstream general industry customers. Others objected to the common minerals exemption because it would send conflicting signals to miners; it is inconsistent with OSHA triggers and MSDS requirements; and it fails to provide health protection for miners in the sand and gravel, stone, clay, and shell dredging operations. One commenter stated that these minerals still present sufficient hazards to require MSDSs and training and HazCom should cover them, even though they are common or silica is present in small proportion to the total material.

Some commenters suggested that we exempt or provide limited coverage to mining industry sectors with a low degree of risk. One suggested specifically that we exempt the brick industry from HazCom because the risk posed to miners in the brick industry is lower than that experienced in other mining operations due to the way the industry handles the clay and shale. According to this commenter, there is no reason to regulate clay and shale, the brick industry's principal raw materials, because HazCom relates to free silica and most clay and shale have ≤5% free silica. In addition, this commenter indicated that MSDSs are unnecessary because exposure to silica is a primary part of the training programs administered by brick manufacturers.

We do not agree that the overall degree of risk encountered by miners in a given industry segment is a viable argument for totally exempting an entire mine or commodity from coverage under HazCom. A major concern is that miners are exposed to chemicals without knowing their hazards and, thus, they may not follow the proper procedures for handling or using these chemicals. The extent of risk is not a determining factor in deciding whether or not you have to communicate information on hazardous chemicals. Miners have the right to know that they are being exposed to a potential hazard. As long as the potential for exposure exists in the work area and the chemical is hazardous, HazCom applies.

For these reasons, the interim final rule does not exempt minerals containing 5% silica or less or other hazardous chemicals or certain common minerals, such as coal, clay, and dimension stone. The promulgation of such an exemption would imply that these minerals could not pose a health hazard to exposed miners. On the contrary, depending on the airborne concentration of the dust and other circumstances regarding exposure, respirable crystalline silica in these minerals or respirable coal mine dust may cause pneumoconiosis or cancer. The interim final rule is consistent on this point with OSHA's HCS.

*Nonfuel mining.* One commenter recommended that we exempt the nonfuel mining industry from HazCom. This commenter questioned whether we have demonstrated that such a broad-based standard is necessary for the nonfuel mining industry, given that HazCom would duplicate our existing training and labeling standards.

Based on the findings of the NIOSH National Occupational Health Survey of Mining (NOHSM) and our experience in the mining industry, we concluded that



a HazCom rule applicable to coal, metal, and nonmetal mines is appropriate because all mines use hazardous chemicals, and there are a number of hazardous chemicals common to all types of mines, including non-fuel mines. Fuel oil, solvents, and paint are just three examples of hazardous chemicals used at non-fuel mines. Non-fuel mines report the most chemical burn injuries to MSHA. HazCom is broadly written and performance oriented in recognition of the diversity among mining operations and independent contractors. Our intent is that all miners, including those working in the nonfuel mining industry, have access to information about the chemical hazards to which they are exposed at the mine. This decision is consistent with the mandate of the Mine Act to protect all miners to the extent feasible.

*De minimis requirements.* In the HazCom proposed rule, we solicited comments on whether we should establish *de minimis* criteria for hazardous chemical exposure in general. *De minimis* or trivial risks are those below the threshold of regulatory concern.

A few commenters stated that, for HazCom to be effective, the final rule must contain an exemption for *de minimis* chemical exposures. These commenters urged us to specify minimum quantities for the substances covered by the standard. Commenters suggested that we exclude exposures that are less than one-half of any applicable PEL or ACGIH TLV, or where the health risk is not significant. Some felt that HazCom should address only those chemicals that exceed a PEL or ACGIH TLV. One commenter stated that a meaningful *de minimis* provision could be provided—

- By clarifying the definition of article similar to that found in the mixture definition;
- By defining a significant health risk; and
- By stating a reasonable and consistent interpretation of the terms "minute" or "trace."

A few commenters recommended that we exclude trivial exposures to avoid unnecessary and misleading labeling and the creation of the functional equivalent of a "Delaney Clause."

[**Note:** The Delaney Clause is an amendment to the Food, Drug, and Cosmetic Act (21 U.S.C. 348). It requires the Food and Drug Administration to prohibit the use of any food additive that is carcinogenic without regard to the quantitative level of risk.]

Commenters wanted us to set a *de minimis* concentration below which you would not have to consider whether a substance is hazardous. There are highly toxic substances, however, which can cause adverse health effects from the absorption or inhalation of tiny amounts. HazCom is intended to address all hazardous chemicals at mines. The range of hazards and concentrations are too diverse to address through a single measurement. A *de minimis* exemption, therefore, would not provide sufficient protection to miners and would not address the true issue of concern, informing miners of potential hazards.

Likewise, requiring information disclosure only in situations where exposure might exceed a PEL or ACGIH TLV is not consistent with the purpose of the rule. Exposure limits address a limited number of the hazardous chemicals encountered at the mine. Also, PELs are used to control inhalation exposures. Because the definition of exposure in HazCom includes absorption through the stomach or skin, in addition to the lungs, the exposure limits might be unrelated to the total exposure experienced by a miner. In certain circumstances, the most significant route of exposure may be through the stomach or skin. We have received reports of injuries and illnesses among miners as a result of skin contact with cyanide solutions, cement and trona dusts, and mercury, and as a result of ingesting lead litharge.

*Laboratories.* The proposal requested comments on whether laboratories should be exempt from HazCom, primarily because OSHA's HCS [29 CFR 1910.1200(b)(3)] partially exempted laboratories. OSHA, however, regulates laboratories under both its HCS (29 CFR 1910.1200) and its laboratory standard (29 CFR 1910.1450). The laboratory standard supplements the HCS.

The OSHA HCS requires labels, MSDSs, training, and access. The heart of the OSHA laboratory standard is the Chemical Hygiene Plan. The Plan, which contains elements similar to HazCom's written program, must be reviewed annually. It also requires detailed descriptions of personal protective equipment, standard operating procedures, and engineering controls. Whatever OSHA does not cover under its HCS, it covers in its laboratory standard. The OSHA laboratory standard requires training; access to the plan and "all known reference material * * * including, but not limited to, Material Safety Data Sheets * * *; labels and MSDSs; hazard determination for chemicals produced, including by-products; hazard determination, labels, and MSDSs for chemicals produced for users outside the lab itself; and records of exposure monitoring and medical exams.

Unlike OSHA, we do not have specific standards addressing hazardous chemicals in laboratories. At this time, we do not plan to develop a separate standard to address laboratory hazards.

Several commenters urged us to exempt laboratories. One commenter stated that small laboratories are exempt from OSHA's standards. Another commenter stated that both OSHA's HCS and EPA's SARA exempt laboratories of any size when under the direct supervision of a technically qualified individual. Some commenters supported the application of training requirements to laboratories on mining property unless the lab has trained chemists. Others recommended that we exempt laboratory use of chemicals from HazCom because such use is unique and our training standards already cover laboratory hazards.

Most commenters, however, supported our coverage of laboratories within HazCom. Some commenters found our approach reasonable because covering mine laboratories would preclude the need for us to develop a separate standard to address laboratory hazards, as was done by OSHA.

We agree that laboratories in mining should be subject to the full scope of the standard, including training, with no specific exemptions. Laboratories found in the mining industry differ in several respects from those common to general industry, such as research facilities. Although there may be a few large-scale laboratories in the mining industry supervised by trained chemists, our experience indicates that most mine laboratories are small-scale operations devoted to quality control or process control, with relatively few trained chemists.

Compared to research facilities or laboratories in the chemical manufacturing industry, quality control laboratories in the mining industry use relatively few chemicals and analytical methods. Most of these mine laboratory workers receive on-the-job training. This training can be inadequate in addressing the hazards of the chemicals to which the laboratory workers are exposed. MSHA data, reported under the requirements of 30 CFR part 50, cite illnesses or injuries in laboratories caused by improper mixing of chemicals, mercury spills, use of inadequate or inappropriate personal protective equipment, use of improper procedures, and improper use of controls or inadequate ventilation.

The interim final rule does not exempt laboratories on mine property,

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but gives you the latitude to create a training program based upon the hazards identified. We recognize that these programs may differ from work area to work area because of the different chemicals used. We expect your training program to vary depending on the miners' training needs. To exclude miners working in laboratories from HazCom would not be in keeping with our mandate to prevent mine-related occupational injuries and illnesses. After reviewing the comments and the rulemaking record, and based on the presence of hazardous chemicals in the laboratories, we have concluded that it is necessary to include mine laboratories under the scope of the interim final rule.

*J. Subpart J—Definitions*

HazCom is an information and training standard focused on chemical hazards. Table 47.91 defines the terms needed for understanding the concepts and requirements in the standard. We defined some terms to have a special meaning for this standard, but tried to stay consistent with the ordinary meaning of the terms.

1. Using MSHA and OSHA Terms

We used *employee* in the proposed rule to identify the working person who may be exposed to a hazardous chemical. The proposal included a sentence to clarify that the standard did not apply to individuals, such as office workers, who encounter hazardous chemicals in non-routine instances.

Commenters recommended that we use the term *miner* instead of *employee*. Many commenters pointed out that *miner* is defined in the Mine Act, and that using this term would be consistent with our statute. Because the term *miner*, as defined in the Mine Act, means any individual working in a coal or other mine, including office workers, some suggested that we could add an exemption for office workers in a separate section.

In response to comments, we replaced the term *employee* with the term *miner* throughout the interim final rule, where we thought it was appropriate. The term *miner* does include office workers. We do not intend to exempt office workers from HazCom. The proposal had attempted to clarify that HazCom does not apply to individuals exposed to a hazardous chemical in extraordinary, non-routine situations. We intended this statement in the proposal to complement the scope and emphasize that individuals exposed to a hazardous chemical under normal conditions of use or in a foreseeable emergency, regardless of their job category, are covered by HazCom. For example, you must ensure that hazardous chemicals normally used in or around an office, such as toner for the copy machine, are labeled appropriately; obtain an MSDS for them, and instruct the exposed office workers about their hazards and safe work procedures. Other Federal agencies regulate hazardous chemicals used in or around an office and, therefore, they should already be labeled and have an MSDS available from the supplier.

We defined *employer* in the proposal as a person engaged in a business where chemicals are either used, distributed, or are produced for use or distribution, including a contractor or subcontractor. We intended the term to describe independent contractors on-site, as well as downstream or OSHA jurisdiction customers. In response to the general comment that we should rely on mining terms, in the interim final rule we use the more familiar designation *operator* to mean both the mine operator and independent contractor as defined in the Mine Act. In the preamble, we often use the term "you" instead of "operator." We use the separate terms *mine operator* and *independent contractor* when we want to differentiate between the mine operator responsible for the whole operation and the contractors and subcontractors who have the responsibilities of an operator for specific aspects of the mining operation. We determined that a definition was not necessary for *customer* because we use the term as it is commonly understood to mean the downstream users who purchase your products.

We defined *workplace* in the proposal to mean a mine, establishment, job site, or project at one geographical location containing one or more work areas. The term *mine* is defined by the Mine Act and, like *miner*, is more familiar to the mining industry. *Mine* means the same thing as *workplace* for purposes of HazCom. Accordingly, we have substituted the term *mine* for *workplace* throughout the interim final rule.

Some commenters suggested that we add definitions for terms not proposed. Several commenters requested that coal mine be defined. The definition for mine in the Mine Act includes coal mines and coal preparation facilities. A number of commenters wanted independent contractor defined. This term is defined and commonly used in other MSHA standards and is well-understood by the mining industry. Separate definitions for these terms are unnecessary.

2. Material Impairment and Significant Risk.

Commenters suggested revising definitions for *exposed, hazardous chemical,* and *health hazard,* among others, so the terms would include the concepts of material impairment and significant risk. They suggested deleting the phrase "or potentially subjected" from the definition of *exposed.* (The definition would then read: "Being subjected to a hazardous chemical in the course of employment * * *.") Commenters also objected to the proposal's definition of *hazardous chemical* because it addressed "any chemical, in any quantity, at any time." A health hazard, according to a commenter, should be a health hazard only under conditions of intended use.

If these changes were made in HazCom, the interim final rule would have taken a significant departure from its intended purpose. A fuller discussion of material impairment and significant risk is found under Purpose and Scope in this preamble. We did not change the definitions for *exposed, hazardous chemical,* and *health hazard* in HazCom to include the concepts of material impairment or significant risk.

3. § 47.91 Definitions of Terms used in this Part

A number of the terms defined in HazCom are commonly used by chemists, physicists, and health and safety professionals to identify and describe specific types of physical hazards or physical properties of chemicals. In keeping with the plain language initiative, we have defined terms in the clearest way we could, sometimes balancing technical precision with general clarity. We believe this subpart provides you with the information you need to understand what HazCom requires and to comply with it.

*Access.* The interim final rule, like the proposal, defines *access* as the right to examine and copy records. One commenter wanted this definition to specify that you must provide access without cost to the miner. Another commenter did not want the definition to include the right to copy records. Other commenters suggested that we consolidate the access provisions in a single subpart rather than repeat them for each subpart.

HazCom contains the term *access* principally in the subpart Making HazCom Information Available where, in response to comments and for clarity and ease of use, we consolidate access requirements from several sections of the proposal. Because of the potentially large amount of detailed, technical HazCom material, particularly MSDSs, we believe that the intent to provide information to miners is best served if miners have the right to a copy of the material. The HazCom material may be too voluminous to understand without an opportunity to review it all thoroughly. The cost for providing free copies is a condition for providing access and not appropriate in a definition.



*Article. Article* was defined in the proposal to clarify that many manufactured products commonly found on mine property are exempt from HazCom. Under the proposal, we defined article to mean a manufactured item other than a fluid or a particle that—

(a) Is formed to a specific shape or design during manufacture;

(b) Has end-use functions dependent upon its shape or design; and

(c) Under normal conditions of use, releases no more than very small quantities (that is, minute or trace amounts) of a hazardous chemical, such as the off-gassing of plastic pipes, and does not pose a physical or health risk to employees.

Numerous commenters agreed with the definition in the proposed rule, except for paragraph (c). Commenters claimed that paragraph (c) was unclear about how much of a hazardous chemical released from a manufactured item under normal conditions of use would constitute either very small, minute, trace, or *de minimis* quantities. Commenters also asked that we clarify that *article* means conveyor belts, repair steel, and other equipment and supplies commonly found at mines. To determine when an article is a hazardous chemical, some commenters suggested that the definition include a *de minimis* provision, while other commenters wanted a significant risk provision. One commenter wanted the term "under normal conditions of use" deleted from the definition because it limits the scope of the standard.

Another commenter expressed concern that iron ore pellets would be considered a hazardous chemical under HazCom. Iron ore pellets, like bricks, are manufactured articles. Before they are pellets, however, the iron ore is a raw material which contains respirable crystalline silica. Both the respirable dusts of iron ore and silica are inhalation hazards because they can cause lung damage. When they can pose a hazard to exposed workers, these raw materials are covered by HazCom. As raw material, iron ore is exempt from labeling under HazCom while on mine property. The pellets are exempt from HazCom when they are formed into articles, provided that they do not release more than insignificant or trace amounts of a hazardous chemical and do not pose a physical or health hazard.

We agree with commenters that the definition created confusion. We believe that the confusion arose because the defined term also included the criteria for exemption, which was contrary to the ordinary understanding of the word. An article is first of all a class of material things. An item manufactured to a shape or design that determines its end-use functions will be an article, in the ordinary sense of the word, whether it gives off trace amounts of a hazardous chemical or larger amounts. The exemption of an article, however, is dependent on how the article is used.

To clarify the standard's intent, we moved proposed paragraph (c) from Definitions to Exemptions to indicate that only articles that give off no more than insignificant or trace amounts of a hazardous chemical, and are neither a physical nor a health hazard, are exempt. The definition in the interim final rule describes manufactured goods, other than a fluid or particle, without regard to the chemical hazard produced. The Exemptions subpart now addresses the distinction between exempt and non-exempt articles. We believe that this change is non-substantive, and clarifies the interim final rule. The interim final rule uses the same language as the proposal except for the movement of the last provision to Exemptions.

To illustrate the intent of the change, suppose you purchase a tire and use it on a haul truck. While on the truck, the tire may give off a trace amount of a hazardous chemical. Under this use, the tire is an article exempt from HazCom. When the tire is worn out and can no longer be safely used on the truck, you may send it to a mine that uses tires to supplement the fuel for a kiln. While burning, the tire gives off significant amounts of hazardous chemicals. The tire is still an article, but no longer exempt from HazCom. The miners working at the other mine's kiln must be trained about the chemical hazards associated with the burning tire.

*Chemical.* The interim final rule, like the proposal, defines chemical as any element, chemical compound, or mixture of these. One commenter assumed that, for the purposes of HazCom, the definition of chemical could be interpreted broadly to include the byproducts of chemical reactions. Byproducts of chemical reactions are separate chemicals. We intend that you address any byproducts as you address other chemicals you produce. You can either include the byproducts on the MSDS and label or, if appropriate, develop a separate MSDS and label.

*Chemical name.* The proposal defined *chemical name* as the scientific designation of a chemical in accordance with the nomenclature system developed by the International Union of Pure and Applied Chemistry (IUPAC) or the Chemical Abstracts Service (CAS) rule of nomenclature, or a name that will clearly identify the chemical for the purpose of conducting a hazard evaluation. A commenter recommended that the definition specify Registry of Toxic Effects of Chemical Substances (RTECS) numbers, as well as CAS numbers. Although RTECS numbers are not as widely accepted as CAS numbers as a means of identifying a specific chemical, they are unique and precise and may be used, as well as IUPAC numbers. HazCom retains the proposed definition for chemical name.

*Common name.* In the proposal, we defined *common name* as any designation or identification, such as a code name, code number, trade name, brand name, or generic name, used to identify a chemical other than by its chemical name. Commenters generally supported the proposed definition for the term *common name,* which remains the same in the interim final rule. This definition is consistent with the OSHA HCS.

*Consumer product; food; food additive; color additive.* We used the terms *color additive, food additive, consumer product,* and *food* in the proposed rule and commenters requested that we define them. One commenter suggested that "EPA's consumer products definition is more practical than MSHA's and achieves the result MSHA intended." The interim final rule includes a definition for consumer product which is essentially the same as the one in the Consumer Product Safety Act (15 U.S.C. 2051 *et seq.*). We do not define food, food additive, or color additive in the interim final rule. They are common terms and we use them in the sense in which they are normally understood.

*Container.* As proposed, the interim final rule defines *container* as any bag, barrel, bottle, box, can, cylinder, drum, reaction vessel, storage tank, or the like that contains a hazardous chemical. The definition further states that pipes or piping systems; conveyors; and engines, fuel tanks, or other operating systems or parts on a motor vehicle (such as tires) are not considered to be containers.

One commenter wanted pipes that contain hazardous chemicals to be considered containers. We consider it impractical to label pipes and piping

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systems containing hazardous chemicals. In numerous cases, these systems are used for different chemicals at different times, depending upon the needs of the operation. Our training standards require you to train miners about the hazardous chemicals to which they may be exposed in their work area. These are the same chemicals that would be transported in pipes and piping systems. In addition, the training requirements in this interim final rule specifically cover the hazards of chemicals contained in pipes or piping systems in the miners' work areas.

*Designated representative.* The interim final rule, like the proposal, defines *designated representative* as any individual or organization to whom a miner gives written authority to exercise that miner's right of access to records. A miner's representative, to contrast the two terms, is any individual or organization representing two or more miners.

Many commenters wanted to limit the miner's choice of a designated representative to the duly-selected collective bargaining representative and, if none, a member of a safety and health committee who has been chosen by the miners or an individual miner who has been selected as the walkaround representative by the miners at the same mine. We feel that, by adopting these suggestions, we would restrict a miner's options and that each miner should be allowed to select his or her own designated representative.

The definition of designated representative in the interim final rule does not limit miners to their collective bargaining or miners' representatives. We anticipate that in most instances, the designated representative will be one of those, but it could also be a miner's personal physician, attorney, or other person or organization of the miner's choosing. The interim final rule revises the proposed definition to allow the miner to choose anyone as the designated representative, including a representative of miners under 30 CFR part 40.

*Employee; employer.* The proposal defined *employee* as any individual working in a mine who may be exposed to a hazardous chemical. Individuals such as office workers who encounter hazardous chemicals in non-routine instances were not covered. We use the term *miner* rather than *employee* in the interim final rule. HazCom, therefore, does not include a definition for *employee.*

The proposal defined *employer* as a person engaged in a business where chemicals are either used, distributed, or are produced for use or distribution, including a contractor or subcontractor. We use the term *operator* rather than *employer* in the interim final rule. HazCom, therefore, does not include a definition for *employer.*

*Exposed.* The proposed rule defined *exposed* as being subjected, or potentially subjected, to a hazardous chemical in the course of employment through any route of entry, such as inhalation, ingestion, or skin absorption, during normal operating conditions or in a foreseeable emergency.

A number of commenters wanted the phrase "or potentially subjected" deleted from the definition of *exposed* because it is vague and open to interpretation. Other commenters wanted to modify the definition to read "reasonably foreseeable emergency," and several commenters wanted to delete the entire phrase. Another commenter wanted the term *exposed* to be defined as being subjected, or potentially subjected, to exposure equal to or above the MSHA limit for a hazardous chemical.

Excluding potential exposure to a hazardous chemical, when the chemical does not have an MSHA limit or when the exposure may be below the limit, would circumvent the intent of HazCom. In addition, other MSHA standards address and regulate the miner's exposure to hazardous chemicals. The interim final rule does not incorporate these suggested changes, nor does it retain the phrase "during normal operating conditions or in a foreseeable emergency" in the definition of exposed. As with the changes in the definition of article, this phrase addressed a condition of use and confused the normal understanding of the term "exposed." The phrase "potentially subjected" covers those situations where the threat of exposure to hazardous chemicals exists. We use the phrase "during normal operating conditions or in a foreseeable emergency" with the term *exposed* in § 47.2 to describe when HazCom applies.

*Foreseeable emergency.* The proposed rule defined *foreseeable emergency* as any potential occurrence for which you would normally plan, such as equipment failure, rupture or spill of containers, or failure of control equipment, that could result in an uncontrolled release of a hazardous chemical into the work area. Many commenters stated that the phrase "for which operators would normally plan" is vague and open to interpretation and abuse and should be removed from the definition. Several commenters wanted to substitute "reasonably plan" for "normally plan."

The interim final rule retains the definition of *foreseeable emergency* as proposed. We consider an emergency to be foreseeable if we can reasonably expect you to know that it could occur due to the nature of the mining operation. You are already required to prepare for emergencies through a number of our standards (e.g., fire, ventilation, mine rescue, and training, among others). We believe the term *emergency* is well understood in the mining industry. We expect you to make preparations to address the foreseeable emergencies that can be related to chemicals, should they occur.

*Hazard warning.* The proposed rule defined *hazard warning* as any word, picture, or symbol appearing on a label or other appropriate form of warning that conveys the specific physical and health hazards of the chemical in the container, including target organ effects. (See the definitions for *physical hazard* and *health hazard* for examples of the hazards that must be communicated.)

One commenter suggested that appropriate protective measures should be required as part of hazard warnings. Although giving information about protective measures is a vital part of HazCom, we address this information in the provisions for MSDSs and training. The purpose of the hazard warning in labeling is to convey critical information immediately. We believe that the most critical information for labeling is the name of the chemical and its hazards.

The interim final rule defines *hazard warning* as any words, pictures, symbols, or other forms of warning that convey the specific hazards of the chemical. We removed the text specifically referencing target organ effects or containers from the definition for *hazard warning* in the interim final rule because it was redundant. Labeling requirements in subpart D of HazCom address containers, and the definitions of *health hazard* and *physical hazard* address the effects of hazardous chemicals, including target organs.

*Hazardous chemical.* In the proposed rule, we defined *hazardous chemical* as any chemical that is a physical hazard or a health hazard. We also defined physical hazard and health hazard.

One commenter suggested that the definition of *hazardous chemical* convey the concept that a chemical be considered hazardous based on whether it exists in a quantity or is used in a manner that could present a reasonable risk of overexposure to a miner. Several other commenters suggested that the definition exempt coal and related raw materials and consumer products. Another commenter wanted hazardous material to be substituted for hazardous



chemical, stating that it would be more readily understood. As an example, this commenter stated that asbestos and gasoline are highly hazardous, yet they are not commonly referred to as chemicals.

If we based the application of HazCom on the quantity of a chemical present, it would allow you to ignore chemicals with known hazards if they are in small quantities. Some hazardous chemicals are not evenly dispersed in a mixture of dusts, liquids, or gases, and pockets of high concentration can pose a hazard even if the quantity is low. For example, if a hazardous chemical settles in layers near the ground, a measurement of it near the breathing zone of the miner may lead to a faulty conclusion that the chemical does not present a reasonable risk of overexposure. We believe that it is far more protective, and necessary to prevent illness, to train miners about the presence of the chemical, signs and symptoms of exposure, safe work practices, precautionary measures, and the need to keep engineering controls in proper working order, rather than argue about what level of risk is reasonable or significant and then wait until there is a reasonable or significant risk to inform the miners about it.

Exemptions of coal, raw materials, and consumer products from the definition of hazardous chemical would, in effect, exempt these substances from HazCom. In conjunction with the definition of chemical in this interim final rule, the definition of hazardous chemical adequately addresses our intent that common hazardous substances, such as gasoline, are to be considered hazardous chemicals.

To be consistent with changes in the definitions of *health hazard* and *physical hazard,* we changed the definition of *hazardous chemical* in the interim final rule to mean any chemical that can present a physical hazard or a health hazard. We included the criteria for determining whether a chemical is hazardous in § 47.11, Identifying hazardous chemicals.

*Hazardous substance.* The proposal did not define the term *hazardous substance,* but used it in the provisions for exemptions. A number of commenters felt that hazardous substance should be defined because it is used in the rule. We use the term in this standard specifically to exempt hazardous substances regulated by EPA as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. 9601 *et seq.*) and the Federal Hazardous Substance Act (15 U.S.C. 1261 *et seq.*). We do not define *hazardous substance* in the interim final rule; however, its meaning and use is the same as in the proposal and consistent with OSHA's HCS.

*Hazardous waste.* Hazardous waste was defined in the proposed rule as any chemical regulated by the Environmental Protection Agency (EPA) as a hazardous waste, as such term is defined by the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6901 *et seq.*). Many commenters wanted hazardous waste re-defined to include only those chemical wastes which, because of their quantity, concentration, or physical, chemical, or infectious characteristics, may result in death or serious illness or pose a substantial hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed. One commenter requested that HazCom include an operational definition for hazardous waste.

We believe that an operational definition of hazardous waste specifically for mining operations would cause confusion for you in complying with other Federal and State standards. Other wastes from the mining operation or brought to the mine that are not regulated by EPA also can contain hazardous chemicals. The primary difference between the hazardous waste regulated by EPA from those unregulated by EPA is the amount of information that you can expect from the supplier. Although HazCom exempts EPA-regulated hazardous wastes from labels and MSDSs, you must instruct miners who can be exposed about their hazards. We are especially concerned that you obtain enough information to instruct miners about those wastes that are brought to mine property, the content and hazards of which may be unknown to you.

The interim final rule uses the same definition of hazardous waste as proposed. We intend that our use of the term hazardous waste be consistent with both OSHA's and EPA's use of this term.

*Health hazard.* The term *health hazard* is used in the proposal and the interim final rule to describe those chemicals that can present a risk of disease or other harmful health effects to an exposed miner. The proposed rule defined health hazard as "[a] chemical for which acute or chronic health effects may occur in exposed employees." The proposal then listed the types of illness or injury that we consider to be health hazards.

A few commenters wanted health hazard defined (as in OSHA's HCS) as a chemical for which there is statistically significant evidence of significant risk based on at least one valid study. One commenter stated that much of the information in the definition was overwhelming and that the inclusion of Appendix A and Appendix B as part of the definition was inappropriate and confusing. Some commenters suggested that the final rule reference 30 CFR parts 56, 57, 70, 71, and 75 instead of Appendices A and B.

We agree with the commenters and drafted the definition to be clearer. We also deleted the appendices to eliminate that potential source of confusion. We added for the sake of clarity that there must be statistically significant evidence that the chemical can do harm and described the types of illness and injury in plain language. We believe that the interim final rule clarifies the intent, meaning, and use of the proposed definition.

*Health professional.* We use the term *health professional* in the subpart on Trade Secrets in addressing two situations: an emergency situation when the trade secret information may be needed to save a life, and a non-emergency situation when the information may be needed, but not immediately. The term in the proposed rule referred to a treating physician or nurse. We received comments that others, such as emergency medical technicians, may need access to this information in an emergency. One commenter essentially asked that "occupational" not be used restrictively to limit *health professional.* Another commenter asked that *health professionals* be licensed individuals. This would eliminate industrial hygienists, for example, who may be board certified, as well as some otherwise qualified nurses and technicians.

Some commenters asked that we include "safety professionals" among those who must be given trade secret information that may otherwise be withheld. They stated that it is necessary to add safety professionals to the definition of *health professional* because many mines do not have industrial hygienists; their safety professionals monitor, review, and make corrective recommendations.

In response to comments, we have defined a new term, *health professional,* in the interim final rule to include a physician, nurse, physician's assistant, emergency medical technician, industrial hygienist, toxicologist, epidemiologist, or other person qualified to provide the medical or occupational health services based on education, training, and experience. This definition is deliberately flexible to

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allow you to make decisions that focus on the needs of the miner. The interim final rule does not require that the *health professional* be licensed. We believe that the definition in the interim final rule is restrictive enough to protect trade secret information about the chemical composition of a material, but broad enough to give access to those who need it.

We expect that trade secret chemical information may be needed when a miner is being treated as a result of a chemically-related injury or illness. Only persons involved in treatment, researchers looking into the causes of injuries or illnesses, or the exposed miners or their designated representatives must have access to this critical information when it is necessary. Information appropriate to a safety professional would be available on the MSDS. In any event, a safety professional charged by you with a responsibility for chemical hazard communication should already have access to the chemical information.

*Identity; specific chemical identity.* The interim final rule retains the proposed definition of identity as a chemical's common or chemical name, which must permit cross-references among the required list of hazardous chemicals, the label, and the MSDS. The proposed rule defined *specific chemical identity* as the chemical name, CAS number, or any other designation that precisely identifies the chemical. One commenter suggested that the definition of *specific chemical identity* duplicate that of *identity.*

For purposes of HazCom, we determined that *specific chemical identity* was an unnecessary term because the interim final rule, as did the proposal, defines the terms *identity, chemical name,* and *common name* which duplicate its definition. The proposed rule had defined *chemical name* to include CAS numbers, *common name* to include other designations, and *identity* to include the chemical name and common name. We do not use or define the term *specific chemical identity* in the interim final rule.

*Immediate use.* The term *immediate use* in the proposal clarified under what conditions it would be appropriate to use an unlabeled, temporary, portable container. In the proposal, *immediate use* meant that the miner who transferred the substance from a labeled container into a temporary, portable, unlabeled container must use it during the same work shift. We removed this term from the Definitions subpart in the interim final rule and, instead, incorporated the proposed definition in the standard.

*Label.* The proposal defined *label* as "any written, printed, or graphic material, displayed on or affixed to containers of hazardous chemicals." We define *label* in the interim final rule in essentially the same way. For the final HazCom rule, however, we added the phrase "to identify its contents and convey other relevant information" and deleted the phrase "of hazardous chemicals" in an effort to make this definition consistent with the common understanding of this term. A label on a container usually identifies its contents, whether or not it contains a hazardous chemical.

*Material safety data sheet (MSDS).* We defined *material safety data sheet (MSDS)* in the proposal as written or printed material that an operator prepares in accordance with HazCom's requirements, or which the manufacturer or supplier prepares under OSHA's HCS for hazardous chemicals brought to the mine. One commenter urged us to include an operational definition for MSDS rather than reference HazCom's requirements or OSHA's HCS. An operational definition, without reference to the standards, misses the fact that we intend the MSDS to be an information fact sheet that conforms to the cited regulatory requirements. Although HazCom does not require a specific format, we do encourage you to use an established format for consistency within the mining industry and to be in accord with other industries, your customers. In the interim final rule, we revised the definition of MSDS without changing its requirements by expanding the reference to OSHA standards and by referencing Table 47.42, which contains the requirements for the contents of an MSDS.

*Mixture.* The interim final rule retains the proposed definition of *mixture* as "any combination of two or more chemicals which is not the result of a chemical reaction." We intend that the definition of mixture be applied broadly to include both solutions of chemicals and combinations of chemical solids. A characteristic of any mixture is that its individual components could be separated by mechanical or physical methods.

One commenter felt that this definition would include those chemical byproducts or impurities in trace amounts that are contained in otherwise pure chemicals and that we should clarify the definition. We intend that you treat pure compounds or elements as individual chemicals, rather than as mixtures, even when they contain small amounts of other chemicals as impurities. This treatment is similar to our treatment of trace releases from articles and is consistent with OSHA's HCS.

*Operator; miner.* As discussed above, HazCom uses the mining terms *operator* and *miner* as defined in the Mine Act instead of *employer* and *employee.* The Mine Act defines *operator* as "any owner, lessee, or other person who operates, controls, or supervises a coal or other mine or any independent contractor performing services or construction at such mine," and *miner* as "any individual working in a coal or other mine." Because they are defined in the Mine Act, we do not define these mining terms in HazCom.

We removed the definitions for *employer* and *employee* from the interim final rule. Although not included in the definitions, we use these terms in the context of their ordinary meaning.

*Ordinary consumer use.* In response to comments, we are defining the phrase *ordinary consumer use.* For the purpose of HazCom, *ordinary consumer use* means:

(1) The product or article is packaged and sold by the manufacturer or retailer for use in or around a residence, a family, or a school; in recreation; or elsewhere for personal use or enjoyment, as opposed to business use.

(2) The miner's exposure is the same as it would be for an ordinary consumer using the product as the manufacturer intended.

To be considered *ordinary consumer use,* the miner could not be exposed to the product at more than the same concentration, frequency, and duration of time than an ordinary consumer would. For example, using an organic solvent that is an ingredient in a hand soap in a washroom would be considered normal consumer use. Using that same solvent as a detergent in a flotation reagent is not.

*Pesticide.* The term *pesticide* appears in the interim final rule to clarify that *pesticides* are regulated by another Federal agency and are exempt from HazCom. We do not define this term.

*Physical hazard.* The term *physical hazard* is used in the proposal and the interim final rule to describe those chemicals with properties that can present a risk of injury to a miner. The proposal listed examples of chemical reactions, such as flammability, that are physical hazards. The interim final rule lists the chemical reactions and then further defines each of them: a combustible liquid, a compressed gas, an explosive, a flammable, an organic peroxide, an oxidizer, a pyrophoric, an unstable (reactive), or a water reactive material. As normally used, *physical hazard* means the actual physical effect



that a chemical can cause, rather than the chemical itself. The proposed definition differed from this common meaning. To eliminate possible confusion or ambiguity, the interim final rule defines physical hazard consistent with its common meaning by listing examples of the types of chemical reactions that can cause physical harm to miners.

(1) *Combustible liquid.* We defined *combustible liquid* in the proposal as a liquid with a flashpoint at or above 100°F (100 degrees Fahrenheit) which is 37.8°C (37.8 degrees centigrade). The proposal listed the following three classes of *combustible liquids*:

(a) Class II liquids—those having flashpoints at or above 100°F (37.8°C) and below 140°F (60°C).

(b) Class III A liquids—those having flashpoints at or above 140°F (60°C) and below 200°F (93.4°C).

(c) Class III B liquids—those having flashpoints at or above 200°F (93.4°C).

OSHA's HCS had defined a *combustible liquid* as a liquid having a flashpoint at or above 100°F but below 200°F, except any mixture having components with flashpoints of 200°F or higher, the total volume of which make up 99% or more of the total volume of the mixture. Commenters stated that it would be preferable to have our definition of *combustible liquid* coincide with OSHA's definition, because many facilities are covered by both rules.

We believe that the proposed definition of *combustible liquid* is compatible with OSHA's definition. We had proposed to list the various classes of combustible liquids to match the definition in other MSHA standards. In response to comments, however, the interim final rule does not list these classes of combustible liquids. The interim final rule defines *combustible liquid* as a liquid having a flashpoint at or above 100°F (37.8°C) and below 200°F (93.3°C) or a liquid mixture having components with flashpoints of 200°F (93.3°C) or higher, the total volume of which make up 99% or more of the mixture. The definition in HazCom is the same as in OSHA's HCS.

(2) *Compressed gas.* We defined *compressed gas* to mean a contained gas or mixture of gases with an absolute pressure exceeding 40 psi (pounds per square inch) [276 kPa (kiloPascals)] at 70°F (21.1°C) or 104 psi (276 kPa) at 130°F (54.4°C) regardless of pressure at 70°F. In addition, we consider a liquid to be a compressed gas when its vapor pressure exceeds 40 psi (276 kPa) at 100°F (37.8°C), as determined by ASTM D–323–72. This definition is consistent with OSHA's HCS and is unchanged in the interim final rule.

One commenter stated that the definition of *compressed gas* includes compressed air in motor vehicle tires and air compressors. Although compressed air meets the definition in HazCom for a compressed gas, an inflated tire is an article and exempt from HazCom. Also, an inflated tire is part of a motor vehicle and, thus, is not a container under HazCom. Neither do we consider compressed air in a tire or compressor to be a hazardous chemical under HazCom. A shop compressor contains compressed, ambient air and, unlike compressed gas cylinders, it is equipped with a safety valve to release excess pressure. We recognize that serious hazards exist when working with inflated tires and compressed air receivers, but we address these hazards in our safety standards. We do not require an MSDS or a label for compressors or compressed air.

(3) *Explosive.* We defined *explosive* in the proposed rule in the same way as it is defined in OSHA's HCS and added a reference to Department of Transportation requirements. There were a number of comments that objected to the use of an incorporation by reference. In response to comments, we eliminated this reference in the interim final rule and rely on the more familiar definition of *explosive* as a chemical that undergoes a rapid chemical change causing a sudden, almost instantaneous release of pressure, gas, and heat when subjected to sudden shock, pressure, or high temperature. We intend this definition to cover the same substances that were covered in the proposal, and we believe the term will be better understood by the mining industry.

(4) *Flammable.* We defined *flammable* in the proposed rule as a chemical that is an aerosol, a gas, a Class I liquid, or a solid that would meet specific criteria relating to its capability to ignite, to burn, and to sustain a flame. The proposal referenced testing methods in 16 CFR and classifications of *explosives* in 49 CFR, but did not include a specific publication date. A commenter requested that we include the dates of publication for references in the definition of *flammable.* This commenter also stated that unless—

> • • • operational definitions are included in the rule, it is difficult to understand, and becomes a deterrent to compliance. The mine supervisor should be able to look at the definition and determine if an item such as a conveyor belt is flammable.

As with the term *explosive,* we recognize that the proposed definition was highly technical and that a simpler, more generally understood definition would better serve the industry. Accordingly, and in response to comments, the interim final rule defines a *flammable* chemical as one that will readily ignite and, when ignited, will burn persistently at ambient temperature and pressure in the normal concentration of oxygen in the air. We intend that this definition include the same chemicals as would have been included under the proposed definition and under OSHA's HCS. We will include the more technical definition in the Compliance Guide for this rule.

We did not define *flashpoint* in the interim final rule. We believe that qualified persons who already know the meaning of the term will be determining a chemical's flashpoint.

(5) *Organic peroxide.* The proposal defined *organic peroxide* as an *explosive,* shock sensitive compound or an oxide that contains a high proportion of oxygen-superoxide. We received no specific comments on this definition. It is unchanged in the interim final rule except for the addition of the word "organic" to the description of the chemical. We intend the definition in HazCom to be essentially the same as in OSHA's HCS. OSHA defined organic peroxide as—

> • • • an organic compound that contains the bivalent –O–O– structure and which may be considered to be a structural derivative of hydrogen peroxide where one or both of the hydrogen atoms has been replaced by an organic radical.

(6) *Oxidizer.* The proposal defined *oxidizer* as a chemical other than a blasting agent or explosive as classified in 49 CFR 173.53, 173.88, 173.100 or 173.114(a) that initiates or promotes combustion in other materials, thereby causing fire by itself or through the release of oxygen or other gases. This definition is consistent with the definition for *oxidizer* in OSHA's HCS. A commenter objected to our referencing 49 CFR in our definition of this term. In response to comments, we eliminated the reference from the interim final rule. We will include these further explanatory details in the Compliance Guide for HazCom.

(7) *Pyrophoric.* The interim final rule retains the proposed definition of *pyrophoric* with minor editorial changes. This definition is consistent with that in OSHA's HCS.

(8) *Unstable (reactive).* We defined *unstable (reactive)* in the proposal and interim final rule as a chemical which in the pure state, or as produced or transported, will vigorously polymerize, decompose, condense, or become self-

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reactive under conditions of shock, pressure, or temperature. This definition is consistent with OSHA's HCS.

(9) We defined *water-reactive* in the proposal and interim final rule as a chemical that reacts with water to release a gas that is either flammable or a health hazard. This definition is consistent with that in OSHA's HCS.

*Produce.* We defined *produce* in the proposal as to "manufacture, process, formulate, or repackage." This definition, together with the definition for use, is intentionally broad to include any situation where a hazardous chemical is present in such a way that a miner may be exposed.

We received a few comments supporting the proposed definition and no comments specifically opposing it. Other comments, however, are applicable to this issue. For example, one commenter suggested that we exempt certain mine emissions, such as diesel exhaust and welding fumes, from the MSDS requirements of HazCom. This commenter stated that the composition of these produced chemicals can vary so much that not even "* * * generic MSDSs, created by MSHA as assistance to mine operators, will be very useful." Another commenter on the definition of *chemical* also assumed that it includes the byproducts of mining activities, such as diesel exhausts. This commenter stated that "constituent ingredients in diesel exhaust—nitrogen, carbon, and sulfur oxides, organic vapor, diesel particular matter—would have to be subject of this standard also."

The interim final rule defines *produce* as to "manufacture, process, formulate, generate, or repackage." By adding the term "generate" to the proposed definition, we clarify our intent that HazCom apply to byproducts of mining activities. For example, HazCom would apply to diesel emissions, the inadvertent generation of cyanide in a storage tank, or welding fumes from construction or repair of machinery. As explained under the definition for chemical, the byproducts of mining activities may be covered in the MSDS for the initial chemical or separately for the hazardous chemical byproduct itself. Also, you may develop an MSDS for a process if that is more relevant to the chemical hazard. For the most part, solid waste sites and tailings ponds are covered by other MSHA, Federal, or State standards. You already must train miners about these hazards and appropriate safe work practices and protective measures.

*Raw material.* In the proposal, we defined *raw material* as a mineral, or combination of minerals, that is extracted from natural deposits by mining or is upgraded through milling. The proposed definition added that the term applied to the ore and valuable minerals extracted, as well as to the worthless material, gangue, or overburden removed during the mining or milling process. One commenter agreed that this definition correctly includes the tailings from crushed stone, and sand and gravel operations. Another commenter wanted to substitute the word "material" for "mineral" in the definition of *raw material,* stating that—

> The term "mineral" has different uses in different areas of mining and geology that imply different definitions. The term "material" should be substituted in this definition as a more generic and less restrictive term for "mineral."

The interim final rule does not incorporate this suggestion, but retains the proposed definition of *raw material* with minor editorial changes. Our intent is that *raw material* be limited to minerals.

*Trade secret.* Like the proposal, the interim final rule defines *trade secret* as any confidential formula, pattern, process, device, information, or compilation of information that is used by the operator to give him or her an opportunity to obtain an advantage over competitors who do not know or use it. This definition is taken from the Restatement of Torts § 757, comment b (1939). HazCom allows you to withhold the *identity* of the chemical declared a trade secret under certain conditions. It requires that you provide the miners with all other pertinent HazCom information, though not process or percentage of mixture information.

One commenter was concerned that *trade secret,* as defined in the proposal, would allow you to arbitrarily restrict access. This commenter also recommended that the final rule include Appendix D from OSHA's HCS, which would reprint the entire Restatement of Torts comment, to guide you in applying the trade secret definition. Another commenter saw extremely limited utility and could find no reason to include this appendix.

We do not believe that this appendix is necessary. As stated in the preamble to the proposal, the Restatement of Torts indicates that there are at least six well-accepted factors in establishing a trade secret claim. Those six factors are—

(1) The extent to which the information is known outside of the business;

(2) The extent to which information is known by employees and others involved in the business;

(3) The extent of measures taken by the business to guard the secrecy of the information;

(4) The value of the information to the business and its competitors;

(5) The amount of effort and money expended in developing the information; and

(6) The ease or difficulty with which the information could be properly acquired or duplicated by others.

We believe these principles provide sufficient guidance in determining the legitimacy of a trade secret claim without publishing an appendix. We considered including several of the proposed appendices in the interim final rule. We determined, however, that the overall effect of these additions was to obscure rather than clarify the requirements. Instead, we intend to publish a Compliance Guide, a Toolbox, and other information apart from HazCom to assist the industry in complying.

*Use.* We defined *use* in the proposal as "to package, handle, react, or transfer." OSHA has defined *use* as "to package, handle, react, emit, extract, generate as a byproduct, or transfer." We did not include the terms "extract, emit, or generate as a byproduct" because we believe they are already covered under the definition for *produce.* The interim final rule is the same as the proposal in this respect. We intend this definition to be broad enough to include any situation where a hazardous chemical is present in such a way that a miner may be exposed.

*Work area.* We defined work area in the proposal as a room or defined space in a workplace (now a mine) where hazardous chemicals are produced or used and where employees (now miners) are present. The interim final rule changes the definition of *work area* to mean any place in or about a mine where a miner works or a chemical is used or produced to make HazCom's definition more consistent with common understanding and retain its application to the presence of chemicals. The definition is consistent with the intent of the proposal, but clarifies the conditions that must be present for a work area. We were going to use the more familiar term "working place," but it has different meanings for different segments of the mining industry.

*Workplace.* The proposal defined *workplace* as a mine, establishment, job site, or project at one geographical location containing one or more work areas. HazCom uses the term *mine* instead of *workplace.* Because the interim final rule does not include the term *workplace,* we removed its definition.



*K. Appendices*

The proposal contained three appendices. Appendix A, Health Hazard Definition, a mandatory section providing additional details for the proposal's definitions. Appendix B, Information Sources, was a comprehensive advisory list of sources to evaluate the physical hazards of chemicals and their specific health effects. Appendix C, Guidelines for Operator Compliance, provided additional advisory guidance for complying with the HazCom standard. The interim final rule does not include these appendices. We also included a table of Hazard Communication Chemicals, identified in the proposal as Table 1, which was intended to help determine if a chemical was hazardous by listing chemicals from MSHA's health standards, the ACGIH, the NTP, and IARC. Table 1 has been deleted from the interim final rule. Much of this information will be included in a HazCom Toolbox to be published separately from the interim final rule.

## IV. Legal Authority and Feasibility

The primary purpose of the Federal Mine Safety and Health Act of 1977 (Mine Act) is to ensure safe and healthful working conditions for the Nation's miners. One means established by Congress to achieve this goal is the authority vested in the Secretary of Labor (Secretary) to set mandatory safety and health standards. The HazCom interim final rule is being promulgated as a mandatory safety and health training and information standard under § 101 and § 115 of the Mine Act.

*A. Statutory Requirements*

Section 101(a)(6)(A) of the Mine Act applies to all mandatory standards involving toxic materials or harmful physical agents. It requires us to set standards to ensure that a miner will not suffer a material impairment of health or functional capacity as a result of exposure to the hazard, even if the miner is exposed for his or her working life. We must also consider the latest scientific data in the field, feasibility of the standard, and experience gained under this and other health and safety laws.

*Material impairment.* Section 101(a)(6)(A) of the Mine Act and § 6(b)(5) of the Occupational Safety and Health Act (OSH Act) contain similar statutory language. Both statutory sections contain provisions indicating that mandatory standards must be designed to prevent "material impairment of health or functional capacity * * *"

The Supreme Court has indicated, in discussing significant risk of material impairment of health in the context of litigation under § 6(b)(5) of the OSH Act, that the significant risk determination constitutes a finding that, absent the change in practices mandated by the standard, the workplaces in question would be "unsafe" in the sense that workers would be threatened with a significant risk of harm. [*Industrial Union Dept.* v. *American Petroleum Institute,* 448 U.S. 607, 642 (1980) (Benzene)]. This finding, however, does not require mathematical precision or anything approaching scientific certainty if the "best available evidence" does not warrant that degree of proof. [Id. at 655–656]. Rather, the agency may base its findings largely on policy considerations and has considerable leeway with the kinds of assumptions it applies in interpreting the supporting data. [Id. at 656].

*Feasibility.* The Mine Act and the OSH Act also have similar statutory requirements regarding "feasibility." While § 6(b)(5) of the OSH Act requires that standards assure, "to the extent feasible, * * * that no employee will suffer material impairment of health or functional capacity," § 101(a)(6)(A) of the Mine Act requires us to consider "the feasibility of the standard * * *." In addition, the legislative history of the Mine Act specifically cites feasibility cases decided under the OSH Act and strongly suggests that "feasibility" principles applicable to OSHA standards are also applicable to MSHA standards. [S. Rep. No. 95–181, 95th Cong., 1st Sess. 21 (1977)]. The legislative history of the Mine Act also states that:

> In adopting the language of [this section], the Committee wishes to emphasize that it rejects the view that cost benefit ratios alone may be the basis for depriving miners of the health protection which the law was intended to insure. Id.

Though the Mine Act and its legislative history are not specific in defining feasibility, the Supreme Court clarified its meaning in *American Textile Manufacturers' Institute* v. *Donovan* [452 U.S. 490, 508–509 (1981) (Cotton Dust)]. In that case, the Court defines the word "feasible" as "capable of being done, executed, or affected." The Court stated, however, that a standard would not be considered economically feasible if it threatened an entire industry's competitive structure. In promulgating standards, agencies do not have to rely on hard and precise predictions regarding feasibility. We need only base our projections on reasonable inferences drawn from existing facts. Thus, to establish the economic and technological feasibility of a new rule, we must assess the likely range of costs that it will impose on mines, and show that a reasonable probability exists that a typical mine will be able to meet the standard.

Also, the 11th Circuit, in *National Mining Association* v. *Secretary of Labor* [153 F.3d 1264 (1998) (single sample)], has stated that we are required to comply not only with the procedural provisions of § 101 of the Mine Act when developing, promulgating, and modifying mandatory safety and health standards, but with all provisions of that section, including showings of feasibility, best available evidence, latest available scientific data, and experience. Accordingly, when developing, promulgating, and modifying mandatory standards, we must enact the most protective standard possible to eliminate a significant risk of material health impairment, subject to the constraints of technological and economic feasibility.

Also, § 101(a)(7) requires that any health or safety standard promulgated under the authority of § 101(a) of the Mine Act must—

> * * * prescribe the use of labels or other appropriate forms of warning as are necessary to insure that miners are apprised [sic] of all hazards to which they are exposed, relevant symptoms and appropriate emergency treatment, and proper conditions and precautions of safe use or exposure.

These requirements provide basic protections for workers in the absence of specific permissible exposure limits.

*B. Finding of Significant Risk*

We have determined that hazardous chemicals are found in all mining environments and that many operators and miners are not sufficiently aware of the presence of these hazardous chemicals nor the nature of the hazards. Also, we have determined that this lack of knowledge increases a miner's risk of suffering a chemically-related occupational illness or injury, because precautions and appropriate protective measures are used only when the presence of a chemical hazard is known. Communicating this information to miners is intended to reduce the incidence of chemically-related occupational illnesses and injuries in the mining industry by changing the workplace behavior of miners and mine operators to reduce the risk of harmful exposures.

The provisions of this interim final rule—hazard evaluations, written

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HazCom programs, labels and other forms of warning, MSDSs, and miner training—are directed not only at the identification of hazardous chemicals at the mine, but more significantly at the mitigation of their hazards. The probability of harm will decrease largely as a result of operators' and miners' increased awareness of the hazardous nature of the chemicals and the protective measures to avoid harmful exposures. Increased care and use of protective measures when working around hazardous chemicals will reduce the incidence of chemically-related illnesses and injuries at mines.

The information provided under this interim final rule also will enable health and safety professionals to provide better services to exposed miners. The ready availability of health and safety information, such as signs and symptoms of exposure, will aid medical surveillance and the early detection and treatment of problems. It also will help you make better decisions regarding exposure monitoring, process or exposure controls, and appropriate personal protective equipment. Because our rulemaking record clearly indicates that inadequate communication about serious chemical hazards endangers miners, and that the requirements of this standard are necessary and appropriate for the elimination or mitigation of these hazards, we are able to make the threshold "significant risk" determination.

Several commenters indirectly suggested that we needed to find significant risk for each chemical covered and for each exposure situation. We address these comments in more detail in our discussion of § 47.2, Operators and chemicals covered. It is clear from relevant court decisions involving OSHA's HCS, however, that a specific finding of significant risk is not required for a standard such as this, where the significant risk being regulated is that of inadequate knowledge.

In *Associated Builders & Contractors v. Brock* [862 F.2d 63 (1988)], industry confronted the 3rd Circuit Court with a similar argument involving the OSHA HCS and OSHA's general finding of significant risk. Industry argued that the standard was invalid because OSHA had promulgated it without a significant risk determination. Industry also claimed that OSHA needed to find significant risk for each chemical covered and for each industry covered. The court disagreed with industry and ruled that the general significant risk finding for the original 1983 rule was appropriate for the entire manufacturing sector, and that it was also applicable to each of the 20 major Standard Industrial Classification (SIC) Code manufacturing subdivisions [Id. at 67].

The court also stated that OSHA was not required to determine significant risk for each chemical covered under the rule because the rule was not a substance based rule, but an information disclosure standard. The court concluded that—

> * * * there is no more obvious need for industry specific significant risk determinations for the (non-manufacturing) industries than for subdivisions of the manufacturing sector. [Id. at 67–68]

Specifically, the court held that:

> * * * for this performance-oriented information disclosure standard covering thousands of chemical substances used in numerous industries, the significant risk requirement must of necessity be satisfied by a general finding concerning all potentially covered industries. A requirement that the Secretary assess risk to workers and the need for disclosure with respect to each substance in each industry would effectively cripple OSHA's performance of the duty imposed on it by 29 U.S.C. 655(b)(5); a duty to protect all employees, to the maximum extent feasible. [Id. at 68]

OSHA was not required to assess individually the significant risk that would be alleviated by the HCS's application to each of the seventy major business classifications, much less for each of the hazardous substances used in those industries. In addition, OSHA's application of the 1983 general finding of significant risk to the construction and grain processing and storage industries was upheld by the 5th Circuit in *National Grain and Feed Association v. OSHA* [866 F.2d 717 (1989)(petition for review of OSHA's modified HCS as it applied to the construction and grain processing and storage industries)].

Because our HazCom rule was modeled on OSHA's HCS, and the Mine Act and OSH Act are similar with respect to the regulatory requirements for the promulgation of mandatory safety and health standards, we believe that we have satisfied our statutory threshold of significant risk with our general finding of risk presented in this section. We conclude that neither the record evidence nor policy considerations support the argument that we should apply HazCom only where chemical exposures pose known significant risks. We find that the risk of harm to miners will increase if operators allow a condition or situation to develop that poses a significant risk of harm to miners before providing the potentially exposed miners with chemical hazard information.

In addition, in light of § 101(a)(7) of the Mine Act which requires us to "insure that miners are apprised [sic] of all hazards to which they are exposed," you must inform miners about all hazards before the miner could be exposed to them. Linking the application of HazCom to a risk level is contrary to the standard's purpose—to change operator and miner behavior before an illness or injury occurs by preventing exposure.

Likewise, requiring information disclosure only in situations where exposure might exceed a PEL or ACGIH TLV is not consistent with the purpose of the rule. HazCom is intended to address all hazardous chemicals at mines. The range of hazards and concentrations are too diverse to address through a single measurement. Also, some chemicals are highly hazardous even in small amounts or low concentrations. A *de minimis* exemption, therefore, would not provide sufficient protection to miners and would not address the true issue of concern—informing miners of potential hazards. Exposure limits address a limited number of the hazardous chemicals encountered at the mine. Also, PELs are used to control inhalation exposures. Because the definition of exposure in HazCom includes absorption through the stomach or skin, in addition to the lungs, the exposure limits might be unrelated to the total exposure experienced by a miner. In certain circumstances, the most significant route of exposure may be through the stomach or skin.

These HazCom requirements are both necessary and appropriate to protect miners, even when we have not determined that the level of risk from a particular chemical exposure warrants a substance-specific standard that would require more complex and costly types of controls. We conclude that operators must obtain information for all hazardous chemicals to which miners can be exposed and provide it to miners, regardless of any judgments about possible levels of risk.

*C. Finding of Feasibility*

Only one commenter claimed that a provision was infeasible, stating that those working in isolated workplaces could not have immediate access to MSDSs. The interim final rule allows MSDSs to be kept in a central location, as well as electronic access.

The record contains substantial evidence of feasibility. We conclude that these administrative requirements can be merged economically into present practices. The performance-oriented, informational provisions of HazCom are capable of being done and will not threaten the viability or long-term profitability of the mining industry.

This standard does not relate to activities on the frontiers of scientific knowledge. The informational requirements contained in this interim final rule are not the sorts of obligations that approach the limits of feasibility. There are no technological barriers preventing implementation of the HazCom requirements because most of these requirements are accepted, common business practices that are administrative in nature.

As estimated in our Regulatory Economic Analysis (REA) supporting this HazCom interim final rule, the mining industry will incur costs of about $5.7 million annually to comply with the interim final rule. These compliance costs represent much less than 1% (about 0.01%) of mining industry annual revenues of $59.7 billion and provide convincing evidence that the interim final rule is economically feasible.

1. Compliance Burden

We intend a number of factors to reduce the compliance burden associated with MSHA's HazCom interim final rule. The rule is closely modeled on OSHA's HCS and informational materials, training aids, and model training programs, developed and made widely available by both OSHA and commercial sources, will help mine operators comply. We are developing a HazCom Toolbox, designed particularly for small mine operators, that will provide MSDSs, labels, and formal programs for ease-of-use and ready adaptability. We will focus state grants on including HazCom training and informational materials, and will have trainers and videos available. Although we do not intend to conduct HazCom training for the mining industry, we will provide information and assistance to trainers through our Mine Health and Safety Academy, Educational Field Services, and the MSHA district offices.

Finally, we have simplified the language of the rule to make it easier to understand and, thus, easier to comply with.

2. Flexibility of Program

We wrote or revised the major provisions of the HazCom rule to provide the most flexibility possible that also ensured an enforceable interim final rule.

*List of chemicals.* Mine operators can compile the list for the mine or individual work areas. We did not specify a format or chemical identification system, which will allow operators great latitude in how they identify their chemicals.

*Hazard determination.* We did not specify the format and criteria for establishing hazard determination procedures. Operators have considerable discretion in how they conduct the determination, so long as others can understand how they made their determinations.

*Exchanging information.* We used performance language rather than specification language in requiring operators to establish a way to exchange information with other operators on-site.

*Labels.* The label requirements in the interim final rule are performance-oriented, flexible, and consistent with the proposal and OSHA's HCS. Therefore, labels that comply with OSHA's HCS will comply with HazCom. The interim final rule does not require operators to label for downstream users; re-label containers of hazardous materials that are labeled in accordance with other Federal standards; update labels that they did not prepare; nor label chemicals in a particular format. They may substitute various types of standard operating procedures, process sheets, batch tickets, blend tickets, and similar written materials for container labels on stationary process equipment. The interim final rule is deliberately flexible to allow for the adoption of an international system for classifying and displaying hazard information, when it becomes available. We are not requiring that operators label raw materials at a mine.

*Training.* Relevant training that meets OSHA's HCS will comply with HazCom. Operators can combine HazCom training with pre-existing requirements under parts 46 and 48. We delayed the HazCom rule's effective date until 1 year from its date of publication in the **Federal Register** to allow operators the flexibility to include HazCom training in their annual refresher training under parts 46 and 48. Operators can use instructors already on staff qualified under parts 46 and 48.

*MSDS.* We did not require that MSDSs be in a particular format, only requiring certain basic information. Operators must only provide an MSDS for a mine product upon request. We are also allowing the MSDS to be in an electronic medium.

*Hazardous waste.* Operators are not required to have an MSDS for hazardous waste although they must make any relevant information available to the miner.

*D. Petitions for Modification*

Our classification of HazCom as both a safety and a health standard impacts whether operators or representative of miners can petition us for a modification. Under § 101(c) of the Mine Act, operators or representatives of miners may petition us to modify the application of a mandatory safety standard, but not a health standard. Because the HazCom standard is being promulgated as both a health and safety standard, operators may not petition us for a modification. To allow as much compliance flexibility as possible, the final HazCom requirements are performance oriented. We cannot envision any equally protective alternatives that HazCom does not already allow.

## V. The Regulatory Flexibility Act, the Small Business Regulatory Enforcement Fairness Act, and Executive Order 12866

The Regulatory Flexibility Act (RFA) requires a regulatory agency to evaluate each proposed and final rule and to consider alternatives so as to minimize the rule's impact on small entities (businesses and local governments). Under the RFA, we must use the Small Business Administration's (SBA) definition of a small entity in determining a rule's economic impact unless, after consultation with SBA, we establish a different definition.

In the preamble to our HazCom proposal, we certified that this rule would not have a significant economic impact on a substantial number of small mining operations. The preamble also included a full discussion of the regulatory alternatives that we were considering and invited the public to comment.

In 1996, Congress enacted the Small Business Regulatory Enforcement Fairness Act (SBREFA) amending the RFA. SBREFA requires a regulatory agency to include in the preamble to a rule the factual basis for that agency's certification that the rule has no significant impact on a substantial number of small entities. The agency then must publish the factual basis in the **Federal Register**, followed by an opportunity for public comment. Although SBREFA did not exist when we published the HazCom proposal, we published a notice reopening the record in March 1999, to give you an opportunity to comment on the factual basis for our previous certification that the HazCom proposal would pose "no significant impact."

This rule has been drafted and reviewed in accordance with Executive

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Order (E.O.) 12866, § 1(b), Principles of Regulation. E.O. 12866 requires a regulatory agency to assess both the costs and benefits of proposed and final rules and to complete a Regulatory Economic Analysis (REA) for any rule having major economic consequences for the national economy, an individual industry, a geographic region, or a level of government. We prepared a REA and Regulatory Flexibility Certification Statement to fulfill the requirements of the RFA and E.O. 12866. Based on our REA, we determined that this interim final rule is not an economically significant regulatory action pursuant to § 3(f)(1) of E.O. 12866. Because it affects all mining operations, almost all of which are small businesses using SBA's definition of a small business, we determined that this interim final rule is significant under § 3(f)(4) of E.O. 12866. This section defines a significant regulatory action as one that may—

* * * Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

The REA is available on request from MSHA, Office of Standards, Regulations, and Variances, 4015 Wilson Boulevard, Arlington, VA 22203 or from our Internet Home Page at *www.msha.gov*.

*A. Alternatives Considered*

In accordance with § 604 of the RFA, we are including a discussion of the regulatory alternatives considered in developing this interim final rule. We used OSHA's HCS as a model for the proposed rule. For the interim final rule, we also considered suggestions from commenters to the proposal. In part, the limited impact of the interim final rule on small mines reflects our decision not to require more costly alternatives. Most of the alternatives addressed the scope of the standard—what would be covered and what would be exempt. The interim final rule did not adopt any alternatives that were not discussed in the proposal. In response to comments, we did adopt several provisions that differ from the proposal or OSHA's HCS.

1. The proposal would have exempted hazardous waste regulated by EPA under the Resource Conservation and Recovery Act from both the labeling and MSDS provisions of HazCom. The interim final rule does not exempt hazardous waste regulated by EPA from labeling and MSDSs. We determined that such an exemption would put miners at risk of a potential injury or illness.

2. As proposed, the interim final rule exempts the raw material being mined or milled from labeling while on mine property.

3. The proposed rule exempted from HazCom's labeling requirements certain hazardous substances regulated and labeled under the authority and standards of other Federal agencies. These hazardous substances include cosmetics, drugs, tobacco products, foods, food additives, and color additives which are labeled in accordance with the requirements of the Food and Drug Administration or the Department of Agriculture. The interim final rule extends these exemptions to the full scope of the rule rather than to labeling only.

4. To be consistent with OSHA's HCS, we included exemptions from labeling for hazardous substances that EPA or other Federal agencies require to be labeled for hazards.

5. The proposal would have allowed you to not label temporary, portable containers of a hazardous chemical that was to be used only by the miner who transferred it from its labeled container. The interim final rule allows other miners to use the hazardous chemical from the unlabeled container if you ensure that all miners know the chemical's identity, its hazards, and protective measures; and that you ensure the container is left empty at the end of the shift.

6. In the proposal, we would have required you to label containers of your hazardous product or provide a copy of the labeling information with the first shipment to an employer. The interim final rule does not require you to label your hazardous product for sale to customers who are employers. Rather, we require you to provide the label or labeling information and an MSDS when requested.

7. The interim final rule allows you to credit relevant training provided for compliance with other MSHA standards or OSHA's HCS to meet HazCom's training requirements and we require training records.

*B. Consultation With SBA*

The RFA requires regulatory agencies to consult with SBA's Chief Counsel for Advocacy about regulations that have an impact on small entities. The RFA also requires us to use SBA's definition of a small entity in determining a rule's economic impact. To comply with this law, we consulted with SBA about this rule and our certification of no significant economic impact on small mines. For the mining industry, SBA defines "small" as a business with 500 or fewer employees (13 CFR 121.201). Almost all of the coal and M/NM mines fall into this category. To establish an alternative definition for the mining industry, after consultation with SBA, we must publish that definition in the **Federal Register** providing an opportunity for public notice and comment.

Traditionally, for regulatory purposes over the past 20 years, we have considered a mine "small" if it employs fewer than 20 miners and "large" if it employs 20 or more. These small mines differ from larger mines not only in the number of employees, but also, among other things, in economies of scale in material produced, in the type and amount of production equipment, and in supply inventory. Their costs of complying with the interim final rule and the impact of the interim final rule on them will also differ. It is for this reason that "small mines," as traditionally defined by the mining community, are of special concern to us.

For purposes of the REA and to comply with the RFA, we analyzed the impact of the interim final rule on mines using SBA's definition of "small," as well as our traditional definition.

*C. Compliance Costs*

We estimate that the total net yearly cost of the final HazCom rule (30 CFR part 47) will be about $5.7 million. Table 4 summarizes our estimate of the yearly costs by mine size and by major provision. These costs reflect first year (one-time, start-up) costs of $15 million and annually recurring costs of $4.7 million. HazCom will affect all coal and M/NM mines; some only insignificantly.



TABLE 4.—YEARLY COSTS FOR HAZCOM INTERIM FINAL RULE BY PROVISION, COMMODITY, AND MINE SIZE*

| Mine size | Provision | | | | | Total |
|---|---|---|---|---|---|---|
| | Written program | Labels | MSDSs | HazCom training | Access | |
| **Coal Mines and Independent Contractors** | | | | | | |
| <20 | $375,300 | $15,700 | $134,400 | $284,300 | $137,500 | $947,300 |
| ≥20 | 258,500 | 6,231 | 84,900 | 261,000 | 132,200 | 742,800 |
| **M/NM Mines and Independent Contractors (M/NM)** | | | | | | |
| <20 | 1,062,900 | 31,800 | 450,700 | 963,000 | 486,100 | 2,994,400 |
| ≥20 | 244,300 | 9,200 | 94,700 | 352,900 | 309,100 | 1,010,100 |
| All Mining | 1,941,000 | 63,000 | 764,600 | 1,861,100 | 1,064,900 | 5,694,600 |

*Values are rounded.

*D. Regulatory Flexibility Certification and Factual Basis*

Based on our analysis of costs and benefits in the REA, we certify that this HazCom interim final rule will not have a significant economic impact on a substantial number of small mining entities using either SBA's or our traditional definition of "small."

1. Derivation of Costs and Revenues

In this interim final rule, both coal and M/NM mines must absorb compliance costs. We examined the relationship between costs and revenues for the coal and M/NM mine sectors as two independent entities, rather than combining them into one category. All cost estimates in this chapter are presented in 1998 dollars.

For this interim final rule, we estimated the one-time costs, annualized costs (one-time costs amortized over a specific number of years), and annual costs. One-time costs are those that are incurred once and do not recur. For example, the cost to develop a written procedural program occurs only once. For the purpose of this REA, we amortized one-time costs over an infinite life resulting in an annualized cost equal to 7% of the one-time cost. Converting one-time costs to annualized costs allows us to add them to annual costs in order to compute a combined yearly cost for the rule. Annual costs are those that normally recur annually. Three examples of annual costs are maintenance costs, operating expenses, and recordkeeping costs.

Commenters to the recent request for information on the economic impact of HazCom on small mines expressed their belief that we underestimated the costs. Commenters stated that costs for gathering MSDSs and keeping them updated could cost thousands of dollars per year; that we had not included a cost for lost production; that operators could not train miners or label containers for the $10 per miner that we estimated as the cost of the rule; and that the wage rates were two to three times too low because consultants, not mine employees, would be conducting the hazard evaluation.

We believe that the cost estimates in the final REA, $5.7 million affecting about 193,000 miners or about $30 per miner, represent a reasonable approximation of the burden on operators for the following reasons.

First, we have existing standards for training. We did not calculate a cost for miners to attend training or for lost production because the HazCom training can be accomplished during annual refresher training or task training, both of which require operators to cover health and safety hazards. Our recent final training rules, both the new part 46 and the modified part 48, give operators more flexibility in developing training courses to meet the changing needs of the miners and the changing hazards of the mine environment. For example, these training standards allow the operator to adjust the amount of time spent on each topic. This, in turn, allows the operator to spend more of the training time on mine-specific, task-specific, or new information, tailored to their assessment of the miners' training needs. Operators can credit relevant training already provided to comply with HazCom training requirements. In addition, we delayed the effective date of the rule for one year to give operators the time needed to incorporate the HazCom training into their mines' training cycles. Training costs for HazCom include the time to develop a HazCom training course, time for the instructor to prepare the lesson, the cost for training materials, and the time for making a record of the training.

Second, we have existing standards for labeling. We calculated only a small cost for labels because most hazardous chemicals are already labeled by the manufacturer or supplier before they are brought to the mine, our existing standards require hazardous materials to be labeled, and HazCom exempts the raw materials being mined or milled from labeling. The small cost is for labeling storage tanks of bulk hazardous materials and portable transport containers, as necessary, and for replacing damaged or missing labels.

Third, OSHA's HCS has had widespread impact on State right-to-know regulations and, indirectly, on the mining industry. All operators already comply with some of the provisions of this interim final rule (at least labeling and training). Some comply with most or all of the provisions because of existing Federal, State, or local regulations; voluntarily because of corporate policy; or because they work in industries under OSHA jurisdiction, as well as in the mining industry.

Finally, we are developing compliance aids to reduce the burden on operators, especially small operators. These include generic HazCom programs, MSDSs for common minerals and common hazardous chemicals at mines, generic training programs, training materials, and videos (some to help the operator develop a HazCom program and some to use in training the miner). We will also provide training and compliance assistance through state grants, MSHA health specialists, and our Educational Field Services so that you can understand the rule and comply yourself. The benefit we see is that if you develop your program yourself to meet the unique needs of your operation, you will be better prepared to maintain it. HazCom's effective date is one year after the publication of the rule. During this period, we will make

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every effort to help the industry gain compliance before HazCom goes into effect.

Because of our commitment to help the mining industry, especially small operators, implement a HazCom program with minimum burden, we do not anticipate a need for them to hire consultants. We anticipate that the vast majority of hazard determinations will be made by reading the MSDS and label and acting accordingly. We assumed in our calculation of wage rates that mine employees will conduct the hazard determination rather than consultants and this is appropriate for the industry.

In determining revenues for coal mines, we multiplied mine production data (in tons) by the estimated price per ton of the commodity ($17.58 per ton in 1998). We obtained production data from our CM441 reports [6] and the price estimates from the Department of Energy.[7] Because we do not collect data on M/NM mine production, we took the total revenue generated by the M/NM industry ($40 billion) [8] and divided it by the total number of employee hours to arrive at the average revenue per hour of employee production ($104.86). We then took the $104.86 and multiplied it by the employee hours in specific size categories to arrive at the estimated revenues for the size category.

2. Factual Basis for Certification

Whether or not compliance costs impose a "significant" impact on small entities depends on their effect on the profits, market share, and financial viability of small mines. To address these issues, we had to determine whether compliance with HazCom will place small mines at a significant competitive disadvantage relative to large mines or impose a significant cost burden on small mines.

The first step in this determination is to establish whether the compliance costs impose a significant burden on small mines in absolute terms. For this purpose, we began with a "screening" analysis of compliance costs relative to revenues for small mines. When estimated compliance costs are less than 1% of estimated revenues, we conclude that there is no significant impact on a substantial number of small entities. When estimated compliance costs approach or exceed 1% of revenue, we conclude that further analysis is needed.

The second step in this determination is to establish whether compliance with HazCom will impose substantial capital or first-year, start-up costs on small mines. Because financing is typically more difficult or more expensive to obtain for small mines than for large mines, initial costs may impose a greater burden on small mines than on large mines. HazCom, however, does not require engineering controls or other items requiring a substantial initial capital expenditure. The initial costs associated with HazCom are those necessary to develop and implement a HazCom program. Because this cost is well below 1% of revenues. we do not consider it to be significant.

The third step in this determination is to establish whether there are significant economies of scale in compliance that place small mines at a competitive disadvantage relative to large mines. We investigated economies of scale by calculating whether compliance costs are proportional to mine employment. Although the annual compliance cost per miner is greater for small operations than for large, this difference is unlikely to provide strategic leverage because small mines generate over 95% of the revenues in their respective markets. Furthermore, total compliance costs will be greater, on average, for a large mine than for a small mine.

3. Results of Screening Analysis

In all cases, the cost of complying with the interim final rule is well below 1% of revenues.

- For coal mines with fewer than 20 miners, the estimated average yearly cost of HazCom is $190 per operation, which is about 0.14% of the average annual revenue per operation.
- For coal mines with 500 or fewer miners, the estimated average yearly cost is $270 per operation, which is about 0.01% of the average annual revenue per operation.
- For M/NM mines with fewer than 20 miners, the estimated average yearly cost of HazCom is $230 per operation, which is about 0.02% of the average annual revenue per operation.
- For M/NM mines with 500 or fewer miners, the estimated average yearly cost is $270 per operation, which is less than 0.01% of the average annual revenue per operation. As shown in Table 5, compliance costs represent only about 0.01% of the value of mine production.

TABLE 5.—COMPLIANCE COSTS COMPARED TO REVENUE *

| Small mines (1–500) | Average cost per mine | Total yearly cost (millions) | Total revenue (millions) | Cost as % of revenue |
|---|---|---|---|---|
| Coal | $270 | $1.69 | $18,252 | 0.009 |
| M/NM | 269 | 4.00 | 35,137 | 0.011 |

* Includes independent contractors and their employees.

Because the cost of HazCom as a percentage of revenue is considerably less than 1%, we believe that this result, in conjunction with the previous analysis, provides a reasonable basis for the certification of "no significant impact" in this case.

*E. Benefits*

In considering a HazCom standard; we reviewed chemically-related injuries and illnesses reported to MSHA between January 1983 and June 1999. During this period, the mining industry reported almost 4,700 chemical burns crossing 57 commodities and 70 job classifications and involving exposures to chemicals at all sizes and types of mines. This same accident and injury data indicated more than 800 poisonings, 2,600 eye injuries, and 2,100 cases of dermatitis or skin injury as a result of chemical exposures. These data only account for the acute effects of chemical hazards, not the chronic effects which we know exist.

We conclude that miners face a significant risk from exposure to hazardous chemicals. We further conclude that compliance with this rule will prevent a substantial number of acute illnesses, injuries, and fatalities, as well as long term cancer cases.

HazCom is an important means of ensuring that both operators and miners are aware of the chemical hazards to which they may be exposed at the mine. We anticipate that our HazCom standard will enhance both operator and miner awareness of the safety and health hazards associated with hazardous chemical substances in such a way that both parties will take positive steps to lower exposures, resulting in lower incidence of chemically-related injuries and illnesses. Also, if the miner and operator know the potential health effects from exposure to a chemical, they can forewarn their doctor to watch for signs and symptoms of exposure and further reduce the risk of injury by obtaining early diagnosis and treatment.

Based on our review and analysis of the available data, we estimate that compliance with this rule will prevent one fatality every four years, beginning when the rule takes effect, as well as an annual average of 57 chemically-related acute injuries and illnesses (15 in coal mines and 42 in M/NM mines). Of these 57 injuries and illnesses, 32 will result in 386 lost workdays and 25 will not require lost workdays.

In addition, we expect that HazCom will prevent 76 cancer deaths (51 in coal and 25 in M/NM) from year 11 through year 20 after promulgation and 13.8 cancer deaths every year thereafter.

[6] MSHA's 1998 CM441 Report, cycle 1998/198.

[7] U.S. Department of Energy, Energy Information Administration, *Annual Energy Review 1998*, July 1999, p. 203.

[8] U.S. Department of the Interior, U.S. Geological Survey, January 1999, pp. 3 and 6.



**VI. Other Regulatory Considerations**

We recognize that the mining industry has changed since 1990 when we developed the Preliminary Regulatory Impact Analysis (PRIA) and published the HazCom proposal. Most of the changes, however, decreased the impact of HazCom on the mining industry. For example, the number of mines and miners has decreased while the number of independent contractors has increased. Independent contractors are more likely than mines to have an existing hazard communication program because they are more likely to work in operations under OSHA jurisdiction, as well as in mines under MSHA jurisdiction. Similarly, more mines have a hazard communication program now than in 1990 because the parent company also has operations in industries subject to OSHA's HCS, or the mine is located in a State with a State right-to-know law that covers mining. We believe that these existing programs decrease the economic impact of HazCom on the mining industry.

Another change that affects the hazard communication environment is increased public awareness due to the length of time that the OSHA HCS has been in effect. There is an abundance of hazard communication information, supplies, training, and training aids readily available to the public off-the-shelf or through the Internet.

On March 30, 1999, we reopened the rulemaking record (64 FR 15144) for the limited purpose of receiving comments on several regulatory mandates, some of which were not in existence when the Agency published the hazard communication proposal in 1990. These statutory mandates and Executive Orders require the Agency to evaluate the impact of a regulatory action on small mines; on State, local, and tribal governments; on the environment; on constitutionally protected property rights; on the Federal court system; on children; on Indian tribal governments; and on Federalism.

*A. The National Environmental Policy Act of 1969*

The National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) requires each Federal agency to consider the environmental effects of its actions. NEPA also requires an agency to prepare an Environmental Impact Statement for major actions significantly affecting the quality of the environment. We have reviewed HazCom in accordance with the requirements of NEPA, the regulations of the Council on Environmental Quality (40 CFR 1500), and the Department of Labor's NEPA regulations (29 CFR 11). As a result of this review, we determined that this interim final rule has no significant environmental impact.

*B. Unfunded Mandates Reform Act of 1995*

For purposes of the Unfunded Mandates Reform Act of 1995, this rule does not include any Federal mandate that may result in increased expenditures by State, local, and tribal governments in the aggregate of more than $100 million, or increased expenditures by the private sector of more than $100 million.

*C. Executive Order 12630: Government Actions and Interference With Constitutionally Protected Property Rights*

HazCom is not subject to E.O. 12630 because it does not involve implementation of a policy with takings implications.

*D. Executive Order 12988: Civil Justice Reform*

We have reviewed E.O. 12988 and determined that the HazCom interim final rule will not unduly burden the Federal court system. We wrote HazCom to provide a clear legal standard for affected conduct and have reviewed it carefully to eliminate drafting errors and ambiguities.

*E. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks*

We have evaluated the environmental safety and health effects of the rule on children and have determined that the interim final rule will have no disproportionate effect on children.

HazCom is a health and safety information and training rule. It does not set exposure limits or require controls. It can, however, benefit children indirectly. One commenter to the reopened record supported the interim final rule stating that—

- Parents exposed to a genotoxic material could have their reproductive genes damaged which, in turn, could result in miscarriages or congenital or developmental impairments in their children;
- Parents could bring home hazardous chemicals on their clothing or their person which could result in children being injured by contact with the parent; and
- If parents knew that a chemical could adversely affect their children, they would take more precautions to prevent their own and their children's exposure.

*F. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments*

We certify that the interim final rule does not impose substantial direct compliance costs on Indian tribal governments.

Further, MSHA provided the public, including Indian tribal governments which operated mines, the opportunity to comment during the proposed rule's comment period. No Indian tribal government applied for a waiver or commented on the proposal.

*G. Executive Order 13132: Federalism*

We have reviewed this rule in accordance with E.O. 13132 regarding federalism, and have determined that it does not have "federalism implications." The rule does not "have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

**List of Subjects**

*30 CFR Part 42*

Education, Intergovernmental relations, Mine safety and health.

*30 CFR Part 47*

Chemicals, Hazard communication, Hazardous substances, Labeling,

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Material safety data sheets, Mine safety and health, Reporting and recordkeeping requirements, Right-to-know, Training.

*30 CFR Part 56*

Chemicals, Electric power, Explosives, Fire prevention, Hazardous substances, Metals, Mine safety and health, Noise control, Reporting and recordkeeping requirements.

*30 CFR Part 57*

Chemicals, Electric power, Explosives, Fire prevention, Gases, Hazardous substances, Metals, Mine safety and health, Noise control, Radiation protection, Reporting and recordkeeping requirements.

*30 CFR Part 77*

Communications equipment, Electric power, Emergency medical services, Explosives, Fire prevention, Mine safety and health, Reporting and recordkeeping requirements.

Dated: September 22, 2000.

**J. Davitt McAteer,**

*Assistant Secretary for Mine Safety and Health.*

For the reasons set out in the preamble, and under the authority of the Federal Mine Safety and Health Act of 1977, we are amending chapter I of title 30 of the Code of Federal Regulations as follows.

## PART 47—[REDESIGNATED AS PART 42]

1. The authority for part 47 continues to read as follows:

**Authority:** 30 U.S.C. 957.

2. Part 47—National Mine Health and Safety Academy is transferred to subchapter G—Filing and other administrative requirements, and redesignated as part 42.

## PART 56—[AMENDED]

3. The authority citation for part 56 continues to read as follows:

**Authority:** 30 U.S.C. 811.

4. Section 56.16004 is revised to read as follows:

**§ 56.16004 Containers for hazardous materials.**

Containers holding hazardous materials must be of a type approved for such use by recognized agencies.

**§ 56.20012 [Removed]**

5. Section 56.20012 is removed.

## PART 57—[AMENDED]

6. The authority citation for part 57 continues to read as follows:

**Authority:** 30 U.S.C. 811.

7. Section 57.16004 is revised to read as follows:

**§ 57.16004 Containers for hazardous materials.**

Containers holding hazardous materials must be of a type approved for such use by recognized agencies.

**§ 57.20012 [Removed]**

8. Section 57.20012 is removed.

## PART 77—[AMENDED]

9. The authority citation for part 77 continues to read as follows:

**Authority:** 30 U.S.C. 811.

10. Paragraph (c) of § 77.208 is revised to read as follows:

**§ 77.208 Storage of materials.**

* * * * *

(c) Containers holding hazardous materials must be of a type approved for such use by recognized agencies.

* * * * *

## PART 47—HAZARD COMMUNICATION (HAZCOM)

11. Add a new part 47 to subchapter H in chapter I, title 30 of the Code of Federal Regulations to read as follows:

**PART 47—HAZARD COMMUNICATION (HAZCOM)**

**Subpart A—Purpose and Scope of HazCom**

Sec.
47.1 Purpose of a HaZCoM standard.
47.2 Operators and chemicals covered.

**Subpart B—Hazard Determination**

47.11 Identifying hazardous chemicals.

**Subpart C—HaZCoM Program**

47.21 Requirement for a HazCom program.
47.22 HazCom program contents.

**Subpart D—Container Labels and Other Forms of Warning**

47.31 Requirement for container labels.
47.32 Label contents.
47.33 Label alternatives.
47.34 Temporary, portable containers.

**Subpart E—Material Safety Data Sheet (MSDS)**

47.41 Requirement for an MSDS.
47.42 MSDS contents.
47.43 MSDS for hazardous waste.
47.44 Access to an MSDS.
47.45 Retaining an MSDS.

**Subpart F—HazCom Training**

47.51 Requirement for HazCom training.
47.52 HazCom training contents.
47.53 HazCom training records.

**Subpart G—Making HazCom Information Available**

47.61 Access to HazCom materials.
47.62 Cost for copies.
47.63 Providing labels and MSDSs to customers.

**Subpart H—Trade Secret Hazardous Chemical**

47.71 Provisions for withholding trade secrets.
47.72 Disclosure of trade secret information to MSHA.
47.73 Disclosure in a medical emergency.
47.74 Non-emergency disclosure.
47.75 Confidentiality agreement and remedies.
47.76 Denial of a written request for disclosure.
47.77 Review of denial.

**Subpart I—Exemptions**

47.81 Exemptions from the HazCom standard.
47.82 Exemptions from labeling.

**Subpart J—Definitions**

47.91 Definitions of terms used in this part.

**Authority:** 30 U.S.C. 811, 825.

### Subpart A—Purpose and Scope of HazCom

**§ 47.1 Purpose of a HazCom standard.**

The purpose of this part is to reduce injuries and illnesses by ensuring that each operator—

(a) Identifies the chemicals at the mine,

(b) Determines which chemicals are hazardous,

(c) Establishes a HazCom program, and

(d) Informs each miner who can be exposed, and other on-site operators whose miners can be exposed, about those hazards and appropriate protective measures.

**§ 47.2 Operators and chemicals covered.**

This part applies to any operator producing or using a hazardous chemical to which a miner can be exposed under normal conditions of use or in a foreseeable emergency. (Subpart I lists exemptions from coverage.)

### Subpart B—Hazard Determination

**§ 47.11 Identifying hazardous chemicals.**

A hazardous chemical is any chemical that is a physical or health hazard. The operator must evaluate each chemical brought onto mine property and each chemical produced on mine property to determine if it is hazardous as specified in Table 47.11 as follows:



TABLE 47.11.—IDENTIFYING HAZARDOUS CHEMICALS

| Category | Basis for determining if a chemical is hazardous |
|---|---|
| (a) Chemical brought to the mine | (1) The chemical is hazardous when its MSDS or container label indicates it is a physical or health hazard; or the operator may choose to evaluate the chemical using the criteria in paragraph (b) or (c) of this table.<br>(2) If the chemical is a hazardous waste and an MSDS is unavailable, the chemical is hazardous if any of the sources in paragraph (b) of this table indicates it is a physical or health hazard. |
| (b) Chemical produced at the mine | The chemical is hazardous if any one of the following indicates that it is a hazard:<br>(1) Available evidence concerning its physical hazards.<br>(2) MSHA standards in 30 CFR chapter 1.<br>(3) American Conference of Governmental Industrial Hygienists (ACGIH), "Threshold Limit Values and Biological Exposure Indices" (latest edition).<br>(4) National Toxicology Program (NTP), "Annual Report on Carcinogens" (latest edition).<br>(5) International Agency for Research on Cancer (IARC), Supplement 7 "Overall Evaluations of Carcinogenicity: An Updating of IARC Monographs Volumes 1 to 42," or any subsequent IARC "Monographs" or "Supplements". |
| (c) Mixture produced at the time | (1) If a mixture has been tested as a whole to determine its hazards, use the results of that testing.<br>(2) If a mixture has not been tested as a whole to determine its hazards—<br>(i) Use whatever scientifically valid evidence is available to determine its physical hazards;<br>(ii) Assume that it presents the same health hazard as a component that makes up 1% or more (by weight or volume) of the mixture; and<br>(iii) Assume that it presents a carcinogenic hazard if a component considered carcinogenic by ACGIH, NTP, or IARC makes up 0.1% or more (by weight or volume) of the mixture.<br>(3) If evidence indicates that a component could be released from a mixture in a concentration that could present a health risk to miners, assume that the mixture presents the same hazard. |

### Subpart C—HazCom Program

**§ 47.21 Requirement for a HazCom program.**

Each operator must—

(a) Develop and implement a written HazCom program;

(b) Maintain it for as long as a hazardous chemical is known to be at the mine; and

(c) Share relevant HazCom information with other operators whose miners can be affected.

**§ 47.22 HazCom program contents.**

The HazCom program must include the following:

(a) How this part is put into practice at the mine through the use of—

(1) Hazard determination,

(2) Labels and other forms of warning,

(3) Material safety data sheets (MSDSs), and

(4) Miner training.

(b) A list or other record of the identity of all hazardous chemicals known to be at the mine. The list must—

(1) Use a chemical identity that permits cross-referencing between the list, a chemical's label, and its MSDS; and

(2) Be compiled for the whole mine or by individual work areas.

(c) At mines with more than one operator, the methods for—

(1) Providing other operators with access to MSDSs, and

(2) Informing other operators about—

(i) Hazardous chemicals to which their employees can be exposed,

(ii) The labeling system on the containers of these chemicals, and

(iii) Appropriate protective measures.

### Subpart D—Container Labels and Other Forms of Warning

**§ 47.31 Requirement for container labels.**

(a) The operator must ensure that each container of a hazardous chemical has a label. If a container is tagged or marked with the appropriate information, it is labeled.

(1) The operator must replace a container label immediately if it is missing or if the hazard information on the label is unreadable.

(2) The operator must not remove or deface existing labels on containers of hazardous chemicals.

(b) For each hazardous chemical produced at the mine, the operator must prepare a container label and update this label with any significant new information about the chemical's hazards within 3 months of becoming aware of this information.

(c) For each hazardous chemical brought to the mine, the operator must replace an outdated label when a revised label is received from the chemical's manufacturer or supplier.

(d) The operator is not responsible for an inaccurate label obtained from the chemical's manufacturer or supplier.

**§ 47.32 Label contents.**

If an operator must make a label, the label must—

(a) Be prominently displayed, legible, accurate, and in English;

(b) Display appropriate hazard warnings; and

(c) Use a chemical identity that permits cross-referencing between the

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list of hazardous chemicals, a chemical's label, and its MSDS.

**§ 47.33 Label alternatives.**

The operator may use signs, placards, process sheets, batch tickets, operating procedures, or other label alternatives for individual, stationary process containers, provided that the alternative—

(a) Identifies the container to which it applies,

(b) Communicates the same information as required on the label, and

(c) Is readily accessible throughout each work shift to miners in the work area.

**§ 47.34 Temporary, portable containers.**

The operator does not have to label a temporary, portable container into which a hazardous chemical is transferred from a labeled container provided that—

(a) The operator ensures that the miner using the portable container knows the identity of the chemical, its hazards, and any protective measures needed; and

(b) The portable container is left empty at the end of the shift.

## Subpart E—Material Safety Data Sheets (MSDS)

**§ 47.41 Requirement for an MSDS.**

(a) The operator must have an MSDS for each hazardous chemical before using it. The MSDS may be in any medium, such as paper or electronic, that does not restrict access.

(b) For each hazardous chemical produced at the mine, the operator must prepare an MSDS and update this MSDS with significant new information about the chemical's hazards or protective measures within 3 months of becoming aware of this information.

(c) For each hazardous chemical brought to the mine, the operator must replace an outdated MSDS when a revised MSDS is received from the chemical's manufacturer or supplier.

(d) Operators may choose to rely on the MSDS received from the chemical manufacturer or supplier. Alternatively, operators may develop their own MSDS or they may obtain one from another source. The operator is not responsible for an inaccurate MSDS obtained from the chemical's manufacturer or supplier.

**§ 47.42 MSDS contents.**

If an operator must prepare an MSDS, the MSDS must—

(a) Be legible, accurate, and in English;

(b) Use a chemical identity that permits cross-referencing between the list of hazardous chemicals, the chemical's label, and its MSDS; and

(c) Contain information, or indicate if no information is available, for the categories listed in Table 47.42 as follows:

TABLE 47.42.—CONTENTS OF MSDS

| Category | Requirements, descriptions, and exceptions |
|---|---|
| (1) Identity | The identity of the chemical or, if the chemical is a mixture, the identities of all hazardous ingredients. See § 47.11 (identifying hazardous chemicals). |
| (2) Properties | The physical and chemical characteristics of the chemical such as vapor pressure and solubility in water. |
| (3) Physical hazards | The physical hazards of the chemical including the potential for fire, explosion, and reactivity. |
| (4) Health hazarads | The health hazards of the chemical including—<br>(i) Signs and symptoms of exposure;<br>(ii) Any medical conditions which are generally recognized as being aggravated by exposure to the chemical; and<br>(iii) The primary routes of entry for the chemical, such as lungs, stomach, or skin. |
| (5) Exposure limits | For the chemical, or for the ingredients of the mixture—<br>(i) The MSHA permissible limit, if there is one, and<br>(ii) Any other exposure limit recommended by the preparer of the MSDS. |
| (6) Carcinogenicity | Whether the chemical or an ingredient in the mixture is a carcinogen or potential carcinogen. See the sources specified in § 47.11 (identifying hazardous chemicals). |
| (7) Safe use | Precautions for safe handling and use including—<br>(i) Appropriate hygienic practices,<br>(ii) Protective measures during repair and maintenance of contaminated equipment, and<br>(iii) Procedures for clean-up of spills and leaks. |
| (8) Control measures | Generally applicable control measures such as engineering controls, work practices, and personal protective equipment. |
| (9) Emergency information | (i) Emergency medical and first-aid procedures, and<br>(ii) The name and telephone number of a person who can provide additional information on the hazardous chemical and appropriate emergency procedures. |
| (10) Date prepared | The date the MSDS was prepared or last changed. |



**§ 47.43 MSDS for hazardous waste.**

(a) If an MSDS is not available for hazardous waste and the operator is unable to obtain or develop one, the operator must provide each potentially exposed miner with the information specified in Table 47.42 for the hazardous waste to the extent that it is available.

(b) If the mine produces or uses hazardous waste, the operator must provide each exposed miner and designated representative with access to any HazCom material which—

(1) Identifies its hazardous chemical components,

(2) Describes its physical or health hazards, or

(3) Specifies appropriate protective measures.

**§ 47.44 Access to an MSDS.**

The operator must provide miners with access during each work shift to the MSDS for each hazardous chemical to which they may be exposed either—

(a) At each work area where the hazardous chemical is produced or used, or

(b) At a central location, provided that a miner can readily access it in an emergency.

**§ 47.45 Retaining an MSDS.**

The operator must—

(a) Retain its MSDS for as long as the hazardous chemical is known to be at the mine, and

(b) Notify miners at least 3 months before disposing of the MSDS.

## Subpart F—HazCom Training

**§ 47.51 Requirement for HazCom Training.**

(a) The operator must instruct each miner about the hazardous chemicals in his or her work area—

(1) Before the miner's first assignment to that work area;

(2) Whenever the operator introduces a new hazardous chemical into the miner's work area, unless the operator has previously trained the miner about the hazard; and

(3) Whenever the operator becomes aware of new and significant information about a chemical's hazards.

(b) Relevant training conducted in compliance with other parts of this chapter or with OSHA's Hazard Communication Standard can be used to meet the requirements of this part. Relevant training conducted in compliance with this part can be used to meet the requirements of other parts of this chapter.

**§ 47.52 HazCom training contents.**

HazCom training must include instruction on the following:

(a) The physical and health hazards of chemicals in the work area.

(b) The requirements of this part.

(c) The mine's HazCom program, including an explanation of the labeling system and MSDSs and how miners can obtain and use this hazard information.

(d) The location and availability of the written HazCom program, the list of hazardous chemicals, labeling information, and MSDSs.

(e) The operations or locations where hazardous chemicals are present in the miner's work area, such as unlabeled pipes, stockpiles, conveyors, rod or ball mills, containers of raw materials, and non-routine tasks, such as the cleaning of a storage tank that had contained a hazardous chemical.

(f) The methods and observations that can be used to detect the presence or release of a hazardous chemical in the work area.

(g) The measures that a miner can take to protect himself or herself from these hazards.

(h) The specific procedures, such as work practices, engineering controls, emergency procedures, and use of personal protective equipment, in place at the mine to protect miners from hazardous chemical exposure.

**§ 47.53 HazCom training records.**

The operator must make a record of each miner's HazCom training and keep the record for 2 years.

## Subpart G—Making HazCom Information Available

**§ 47.61 Access to HazCom materials.**

Upon request, the operator must provide access to all HazCom materials required by this part to miners and designated representatives, except as provided in § 47.71 through § 47.77 (provisions for trade secrets).

**§ 47.62 Cost for copies.**

(a) The operator must provide the first copy and each revision of the HazCom material without cost.

(b) Fees for a subsequent copy of the HazCom material must be non-discriminatory and reasonable.

**§ 47.63 Providing labels and MSDSs to customers.**

(a) For a hazardous chemical produced at the mine, the operator must provide customers, upon request, with the chemical's label, or a copy of the label information, and the chemical's MSDS.

(b) The label or label information must include the name and address of a responsible party who can provide additional information about the hazardous chemical.

## Subpart H—Trade Secret Hazardous Chemical

**§ 47.71 Provisions for withholding trade secrets.**

(a) Operators may withhold the identity of a trade secret chemical, including the name and other specific identification, from the written list of hazardous chemicals, the label, and the MSDS, provided that the operator—

(1) Can support the claim that the chemical's identity is a trade secret,

(2) Identifies the chemical in a way that it can be referred to without disclosing the secret,

(3) Indicates in the MSDS that the chemical's identity is withheld as a trade secret, and

(4) Discloses in the MSDS information on the properties and effects of the hazardous chemical.

(b) The operator must make the chemical's identity available to miners, designated representatives, and health professionals in accordance with the provisions of this subpart H.

(c) This subpart H does not require the operator to disclose process or percentage of mixture information, which is a trade secret, under any circumstances.

**§ 47.72 Disclosure of information to MSHA.**

(a) Even if the operator has a trade secret claim, the operator must disclose to MSHA, upon request, any information which this subpart H requires the operator to make available.

(b) The operator must make a trade secret claim, no later than at the time the information is provided to MSHA, so that MSHA can determine the trade secret status and implement the necessary protection.

**§ 47.73 Disclosure in a medical emergency.**

(a) Upon request and regardless of the existence of a written statement of need or a confidentiality agreement, the operator must immediately disclose the identity of a trade secret chemical to the treating health professional when that person determines that—

(1) A medical emergency exists, and

(2) The identity of the hazardous chemical is necessary for emergency or first-aid treatment.

(b) The operator may require a written statement of need and confidentiality agreement in accordance with the provisions of § 47.74 and § 47.75 as soon as circumstances permit.

**§ 47.74 Non-emergency disclosure.**

Upon request, the operator must disclose the identity of a trade secret chemical in a non-emergency situation

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to an exposed miner, the miner's designated representative, or a health professional providing services to the miner, if the following conditions are met.

(a) The request is in writing.

(b) The request describes in reasonable detail an occupational health need for the information, as follows:

(1) To assess the chemical hazards to which the miner will be exposed.

(2) To conduct or assess health sampling to determine the miner's exposure levels.

(3) To conduct reassignment or periodic medical surveillance of the exposed miner.

(4) To provide medical treatment to the exposed miner.

(5) To select or assess appropriate personal protective equipment for the exposed miner.

(6) To design or assess engineering controls or other protective measures for the exposed miner.

(7) To conduct studies to determine the health effects of exposure.

(c) The request explains in detail why the disclosure of the following information would not satisfy the purpose described in paragraph (b) of this section:

(1) The properties and effects of the chemical.

(2) Measures for controlling the miner's exposure to the chemical.

(3) Methods of monitoring and analyzing the miner's exposure to the chemical.

(4) Methods of diagnosing and treating harmful exposures to the chemical.

(d) The request describes the procedures to be used to maintain the confidentiality of the disclosed information.

(e) The requester enters a written confidentiality agreement that he or she will not use the information for any purpose other than the health needs asserted and agrees not to release the information under any circumstances, except as authorized by § 47.75, by the terms of the agreement, or by the operator.

**§ 47.75 Confidentiality agreement and remedies.**

(a) The confidentiality agreement authorized by § 47.74—

(1) May restrict the use of the trade secret chemical identity to the health purposes indicated in the written statement of need;

(2) May provide for appropriate legal remedies in the event of a breach of the agreement, including stipulation of a reasonable pre-estimate of likely damages;

(3) Must allow the exposed miner, the miner's designated representative, or the health professional to disclose the trade secret chemical identity to MSHA.

(4) May provide that the exposed miner, the miner's designated representative, or the health professional inform the operator who provided the trade secret chemical identity prior to or at the same time as its disclosure to MSHA; and

(5) May not include requirements for the posting of a penalty bond.

(b) Nothing in this subpart precludes the parties from pursuing non-contractual remedies to the extent permitted by law.

**§ 47.76 Denial of a written request for disclosure.**

To deny a written request for disclosure of the identity of a trade secret chemical, the operator must—

(a) Put the denial in writing, and

(1) Include evidence to substantiate the claim that the chemical's identity is a trade secret,

(2) State the specific reasons why the request is being denied, and

(3) Explain how alternative information will satisfy the specific medical or occupational health need without revealing the chemical's identity.

(b) Provide the denial to the health professional, miner, or designated representative within 30 days of the request.

**§ 47.77 Review of denial.**

(a) The health professional, miner, or designated representative may refer the written denial to MSHA for review. The request for review must include a copy of—

(1) The request for disclosure of the identity of the trade secret chemical,

(2) The confidentiality agreement, and

(3) The operator's written denial,

(b) If MSHA determines that the identity of the trade secret chemical should have been disclosed, the operator shall be subject to citation by MSHA.

(c) If MSHA determines that the confidentiality agreement would not sufficiently protect against unauthorized disclosure of the trade secret, MSHA may impose additional conditions to ensure that the occupational health services are provided without an undue risk of harm to the operator.

(d) If the operator contests a citation for a failure to release the identity of a trade secret chemical, the matter will be adjudicated by the Mine Safety and Health Review Commission. The Administrative Law Judge may review the citation and supporting documentation in camera or issue appropriate orders to protect the trade secret.

## Subpart I—Exemptions

**§ 47.81 Exemptions from the HazCom standard.**

A hazardous chemical is exempt from this part 47 under the conditions described in Table 47.81 as follows:

TABLE 47.81.—CHEMICALS AND PRODUCTS EXEMPT FROM THIS HAZCOM STANDARD

| Exemption | Conditions for exemption |
|---|---|
| Article | If, under normal conditions of use, it—<br>(1) Releases no more than insignificant amounts of a hazardous chemical, and<br>(2) Poses no physical or health risk to exposed miners. |
| Biological hazards | All biological hazards, such as poisonous plants, insects, and micro-organisms. |
| Consumer product | As defined in the Consumer Product Safety Act, if the operator can show that—<br>(1) The miner uses it for the purpose the manufacturer intended; and<br>(2) Such use does not expose the miner more often and for longer than ordinary consumer use. |



TABLE 47.81.—CHEMICALS AND PRODUCTS EXEMPT FROM THIS HAZCOM STANDARD—Continued

| Exemption | Conditions for exemption |
|---|---|
| Cosmetics, drugs, food, food additive, color additive drinks, alcoholic beverages, tobacco and tobacco products, or medical or veterinary device or product, including materials intended for use as ingredients in such products (such as flavors and fragrances). | When labeled in accordance with the Federal Food, Drug, and Cosmetic Act or the Virus-Serum-Toxin Act or regulations issued under those Acts, if they are packaged for retail sale and color intended for personal consumption or use by additive, miners while on mine property. |
| Hazardous substance | As defined in the Federal Hazardous Substances Act, if the operator can show that—<br>(1) The miner uses it for the purpose the manufacturer intended; and<br>(2) Such use does not expose the miner more often and for longer than ordinary consumer use. |
| Radiation | All ionizing or non-ionizing radiation, such as alpha or gamma, microwaves, or x-rays. |
| Wood or wood products, including lumber | If they do not release or otherwise result in exposure to a hazardous chemical under normal conditions of use. For example, wood is not exempt if it is treated with a hazardous chemical or if it will be subsequently cut or sanded. |

**§ 47.82 Exemptions from labeling.**

A hazardous chemical is exempt from subpart D of this part 47 under the conditions described in Table 47.82 as follows:

TABLE 47.82.—HAZARDOUS CHEMICALS EXEMPT FROM LABELING

| Exemption | Conditions for exemption |
|---|---|
| Chemical substance or mixture regulated by EPA | When labeled in accordance with the Toxic Substances Control Act or regulations issued under that Act. |
| Consumer product or hazardous substance not exempt under § 47.81 | When subject to a consumer product safety standard or a labeling requirement of the Consumer Product Safety Act and Federal Hazardous Substances Act respectively, or regulations issued under those Acts. |
| Hazardous substances | When the subject of remedial or removal action under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) in accordance with EPA regulations. |
| Pesticide regulated by EPA or the Department of Agriculture | When labeled in accordance with the Federal Insecticide, Fungicide, and Rodenticide Act or the Federal Seed Act or regulations issued under those Acts. |
| Raw material being mined or processed | While on mine property, except when the container holds a mixture of the raw material and another hazardous chemical and the mixture is determined to be hazardous under § 47.11 (identifying hazardous chemicals) of this part. |
| Wood or wood products, including lumber, not exempt under § 47.81 | If it releases more than insignificant amounts of a hazardous chemical or will be subsequently cut or sanded. |

## Subpart J—Definitions

**§ 47.91 Definitions of terms used in this part.**

The definitions in Table 47.91 apply in this part 47 as follows:

TABLE 47.91.—DEFINITIONS

| Term | Definition for purposes of HazCom |
|---|---|
| Access | The right to examine and copy records. |

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TABLE 47.91.—DEFINITIONS—Continued

| Term | Definition for purposes of HazCom |
|---|---|
| Article | A manufactured item, other than a fluid or particle, that—<br>(1) Is formed to a specific shape or design during manufacture, and<br>(2) Has end-use functions dependent upon its shape or design. |
| Chemical | Any element, chemical compound, or mixture of these. |
| Chemical name | (1) The scientific designation of a chemical in accordance with the nomenclature system of either the International Union of Pure and Applied Chemistry (IUPAC) or the Chemical Abstracts Service (CAS), or<br>(2) A name that will clearly identify the chemical for the purpose of conducting a hazard evaluation. |
| Common name | Any designation or identification (such as a code name, code number, trade name, brand name, or generic name) used to identify a chemical other than by its chemical name. |
| Consumer product | Any article or component that is—<br>(1) Produced or distributed for sale to a consumer;<br>(2) Normally used for personal, family, household, school, or recreation purposes; and<br>(3) Labeled in accordance with the Consumer Product Safety Act or regulations issued under that Act. |
| Container | (1) Any bag, barrel, bottle, box, can, cylinder, drum, reaction vessel, storage tank, or the like.<br>(2) The following are not considered to be containers for the purpose of compliance with this part:<br>(i) Pipes or piping systems;<br>(ii) Conveyors; and<br>(iii) Engines, fuel tanks, or other operating systems or parts in a vehicle. |
| Cosmetics and drugs | (1) Cosmetics are any article applied to the human body for cleansing, beautifying, promoting attractiveness or altering appearance.<br>(2) Drugs are any article used to affect the structure or any function of the body of humans or other animals. |
| Designated representative | (1) Any individual or organization to whom a miner gives written authorization to exercise the miner's rights under this part, or<br>(2) A representative of miners under part 40 of this chapter. |
| EPA | The U.S. Environmental Protection Agency. |
| Exposed | Subjected, or potentially subjected, to a physical or health hazard in the course of employment. "Subjected," in terms of health hazards, includes any route of entry, such as through the lungs (inhalation), the stomach (ingestion), or the skin (skin absorption). |
| Foreseeable emergency | Any potential occurrence that could result in an uncontrolled release of a hazardous chemical into the mine and for which an operator normally would plan, such as equipment failure, breaks or spills of containers, or failure of control equipment. |
| Hazard warning | Any words, pictures, or symbols, appearing on a label or other form of warning, that convey the specific physical and health hazards of the chemical. (See the definitions for *physical hazard* and *health hazard* for examples of the hazards that the warning must convey.) |
| Hazardous chemical | Any chemical that presents a physical or health hazard. |
| Hazardous waste | Chemicals regulated by EPA under the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act. |



TABLE 47.91.—DEFINITIONS—Continued

| Term | Definition for purposes of HazCom |
|---|---|
| Health hazard | A chemical for which there is statistically significant evidence that it can cause acute or chronic health effects in exposed persons. *Health hazard* includes chemicals which—<br>(1) Cause cancer;<br>(2) Damage the reproductive system or cause birth defects;<br>(3) Irritate or corrode tissues;<br>(4) Cause a sensitization reaction;<br>(5) Damage the liver;<br>(6) Damage the kidneys;<br>(7) Damage the nervous system, including psychological or behavioral problems;<br>(8) Damage the blood or lymphatic systems;<br>(9) Damage the stomach or intestines; and<br>(10) Damage the lungs, skin, eyes, or mucous membranes. |
| Health professional | A physician, nurse, physician's assistant, emergency medical technician, industrial hygienist, toxicologist, epidemiologist, or other person qualified to provide medical or occupational health services. |
| Identity | A chemical's *common name* or *chemical name*. |
| Label | Any written, printed, or graphic material displayed on or affixed to a container to identify its contents and convey other relevant information. |
| Material safety data sheet (MSDS) | Written or printed material concerning a hazardous chemical which—<br>(1) An operator prepares in accordance with Table 47.42 (MSDS requirements) of this part, or<br>(2) An employer prepares in accordance with 29 CFR 1910.1200, 1915.1200, 1917.28, 1918.90, 1926.59, or 1928.21 (OSHA Hazard Communication regulations). |
| Mixture | Any combination of two or more chemicals which is not the result of a chemical reaction. |
| Ordinary consumer use | A product or article packaged by the manufacturer or retailer for ordinary household, family, school, recreation, or other personal use or enjoyment, as opposed to business use, and the miner's exposure is not more than it would be for an ordinary consumer using the product as the manufacturer intended. |
| OSHA | The Occupational Safety and Health Administration, U.S. Department of Labor. |

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TABLE 47.91.—DEFINITIONS—Continued

| Term | Definition for purposes of HazCom |
|---|---|
| Physical hazard | A chemical for which there is scientifically valid evidence that it is—<br>(1) A *combustible liquid, i.e.*<br>(i) A liquid having a flash point at or above 100 °F (37.8 °C) and below 200 °F (93.3 °C); or<br>(ii) A liquid mixture having components with flashpoints of 200 °F (93.3 °C) or higher, the total volume of which make up 99% or more of the mixture.<br>(2) A *compressed gas, i.e.*<br>(i) A contained gas or mixture of gases with an absolute pressure exceeding:<br>(A) 40 psi (276 kPa) at 70 °F (21.1 °C); or<br>(B) 104 psi (717 kPa) at 130 °F (54.4 °C) regardless of pressure at 70 °F.<br>(ii) A liquid having a vapor pressure exceeding 40 psi (276 kPa) at 100 °F (37.8 °C) as determined by ASTM D–323–72.<br>(3) An *explosive, i.e.*, a chemical that undergoes a rapid chemical change causing a sudden, almost instantaneous release of pressure, gas, and heat when subjected to sudden shock, pressure, or high temperature;<br>(4) A *flammable, i.e.*, a chemical that will readily ignite and, when ignited, will burn persistently at ambient temperature and pressure in the normal concentration of oxygen in the air;<br>(5) An *organic peroxide, i.e.*, an explosive, shock sensitive, organic compound or an oxide that contains a high proportion of oxygen-superoxide;<br>(6) An *oxidizer, i.e.*, a chemical, other than an explosive, that initiates or promotes combustion in other materials, thereby causing fire either of itself or through the release of oxygen or other gases;<br>(7) A *pyrophoric, i.e.*, capable of igniting spontaneously in air at a temperature of 130 °F (54.4 °C) or below.<br>(8) *Unstable (reactive), i.e.*, a chemical which in the pure state, or as produced or transported, will vigorously polymerize, decompose, condense, or become self-reactive under conditions of shock, pressure, or temperature; or<br>(9) *Water-reactive, i.e.*, a chemical that reacts with water to release a gas that is either flammable or a health hazard. |
| Produce | To manufacture, process, formulate, generate, or repackage. |
| Raw material | Ore, valuable minerals, worthless material or gangue, overburden, or a combination of these, that is removed from natural deposits by mining or is upgraded through milling. |
| Trade secret | Any confidential formula, pattern, process, device, information, or compilation of information that is used by the operator and that gives the operator an opportunity to obtain an advantage over competitors who do not know or use it. |
| Use | To package, handle, react, or transfer. |
| Work area | Any place in or about a mine where a miner works. |

[FR Doc. 00–24803 Filed 9–27–00; 8:45 am]
BILLING CODE 4510–43–P



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## REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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**ENVIRONMENTAL PROTECTION AGENCY**
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**Food and Drug Administration**
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**HEALTH AND HUMAN SERVICES DEPARTMENT**
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**JUSTICE DEPARTMENT**
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**COMMERCE DEPARTMENT**
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## LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

**H.R. 1729/P.L. 106–266**
To designate the Federal facility located at 1301 Emmet Street in Charlottesville, Virginia, as the "Pamela B. Gwin Hall". (Sept. 22, 2000; 114 Stat. 787)



**H.R. 1901/P.L. 106–267**
To designate the United States border station located in Pharr, Texas, as the "Kika de la Garza United States Border Station". (Sept. 22, 2000; 114 Stat. 788)

**H.R. 1959/P.L. 106–268**
To designate the Federal building located at 643 East Durango Boulevard in San Antonio, Texas, as the "Adrian A. Spears Judicial Training Center". (Sept. 22, 2000; 114 Stat. 789)

**H.R. 4608/P.L. 106–269**
To designate the United States courthouse located at 220 West Depot Street in Greeneville, Tennessee, as the "James H. Quillen United States Courthouse". (Sept. 22, 2000; 114 Stat. 790)

**S. 1027/P.L. 106–270**
Deschutes Resources Conservancy Reauthorization Act of 2000 (Sept. 22, 2000; 114 Stat. 791)

**S. 1117/P.L. 106–271**
Corinth Battlefield Preservation Act of 2000 (Sept. 22, 2000; 114 Stat. 792)

**S. 1374/P.L. 106–272**
Jackson Multi-Agency Campus Act of 2000 (Sept. 22, 2000; 114 Stat. 797)

**S. 1937/P.L. 106–273**
To amend the Pacific Northwest Electric Power Planning and Conservation Act to provide for sales of electricity by the Bonneville Power Administration to joint operating entities. (Sept. 22, 2000; 114 Stat. 802)

**S. 2869/P.L. 106–274**
Religious Land Use and Institutionalized Persons Act of 2000 (Sept. 22, 2000; 114 Stat. 803)

**Last List September 21, 2000**

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**106th Congress, 2nd Session, 2000**

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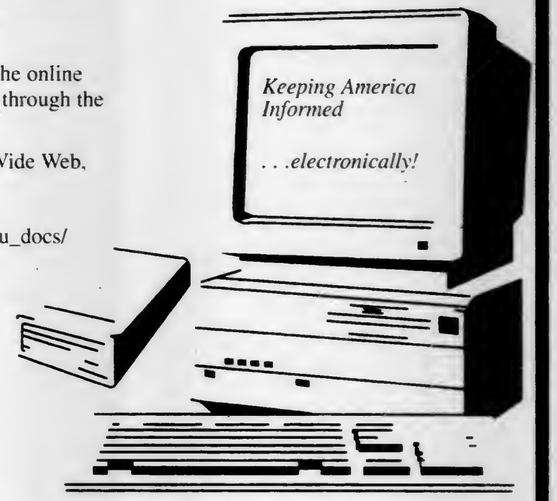
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# Federal Register

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# Rules and Regulations

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**DEPARTMENT OF AGRICULTURE**

**Food and Nutrition Service**

**7 CFR Parts 272 and 274**

**[Amendment No. 390]**

**RIN 0584–AC44**

## Food Stamp Program, Regulatory Review: Electronic Benefit Transfer (EBT) Provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This action provides final rulemaking for a proposed rule published May 27, 1999. It revises Food Stamp Program regulations pertaining to implementation of Electronic Benefit Transfer (EBT) systems in accordance with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) signed by the President August 22, 1996. This rule implements the EBT provisions found in Section 825 of PRWORA which are meant to encourage implementation of EBT systems to replace food stamp coupons.

**DATES:** This rule is effective November 3, 2000. State agencies may implement the provisions anytime after the effective date. However, EBT systems must be in place no later than October 1, 2002, unless the State is granted a waiver by the Secretary of Agriculture.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey N. Cohen, Chief, Electronic Benefit Transfer Branch, Benefit Redemption Division, Food and Nutrition Service, USDA, room 718, 3101 Park Center Drive, Alexandria, Virginia, 22302, or telephone (703) 305–2517.

**SUPPLEMENTARY INFORMATION:**

**Executive Order 12866**

This rule has been determined to be significant and was reviewed by the Office of Management and Budget under Executive Order 12866.

**Executive Order 12372**

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule in 7 CFR 3015, Subpart V and related Notice (48 FR 29115), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

**Executive Order 13132, Federalism**

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments and consult with them as they develop and carry out those policy actions. The Food and Nutrition Service (FNS) has considered the impact of this rule which requires mandatory implementation of Electronic Benefit Transfer (EBT) systems to deliver food stamp benefits in accordance with non-discretionary requirements set forth in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA). In addition, FNS added the two discretionary cost neutrality provisions directly in response to State concerns. FNS is not aware of any case where any of these provisions would in fact preempt State law and no comments were made to that effect. Prior to drafting this final rule, we received input from State agencies at various times. Since the Food Stamp Program (FSP) is a State administered, federally funded program, our national headquarters staff and regional offices have informal and formal discussions with State and local officials on an ongoing basis regarding EBT implementation issues. This arrangement allows State agencies to provide feed back that form the basis for many discretionary decisions in this and other FSP rules. In addition, we sent representatives to regional, national, and professional conferences to discuss our issues and receive feedback on EBT implementation timeframes, cost-neutrality issues and other more general EBT concerns. Lastly, the comments on the proposed rule from State officials were carefully considered in the drafting of this final rule.

**Regulatory Flexibility Act**

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). Shirley R. Watkins, Under Secretary for Food, Nutrition and Consumer Services, has certified that this rule will not have a significant economic impact on a substantial number of small entities. State and local welfare agencies will be the most affected to the extent that they administer the Food Stamp Program.

**Paperwork Reduction Act**

This rule does not contain additional reporting or recordkeeping requirements other than those that have been previously approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 and assigned OMB control numbers 0584–0083 and 0505–0008.

**Executive Order 12988**

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the **DATES** paragraph of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In the Food Stamp Program (FSP), the administrative procedures are as follows: (1) For Program benefit recipients—State administrative procedures issued pursuant to 7 U.S.C. 2020(e)(11) and 7 CFR 273.15; (2) for State agencies—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 276.7 (for rules related to non-quality control (QC) liabilities) or 7 CFR Part 283 (for rules related to QC liabilities); (3) for Program retailers and wholesalers—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 278.8.

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**Public Law 104–4**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the Food and Nutrition Service (FNS) generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires FNS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector of $100 million or more in any one year. Thus this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

**Background**

Proposed rules were published in the **Federal Register** on May 27, 1999 at 64 FR 28763 to implement the provisions of section 825 of the PRWORA (Pub. L. 104–193) which amended Section 7 of the Food Stamp Act of 1977, as amended (7 U.S.C. 2016) (the FSA). Comments on the proposed rule were solicited through July 26, 1999. This final action takes the comments received into account. Readers are referred to the proposed regulation for a more complete understanding of this final action.

Eighteen comment letters were received in response to the proposed rule. Individual comments were received from 8 State agencies. Of the remaining letters, 2 were from retailer associations, 2 were from banking associations, 2 were from Public Interest Groups, 1 was from an EBT processor, 1 was from an EBT industry trade group, 1 was from a planning company, and 1 was from an alliance of States, networks, contractors, financial institutions and retailers.

In general, the commenters supported EBT and the Department's efforts to encourage implementation. Various provisions of this rule: mandate EBT systems for food stamps; allow for implementation of off-line EBT systems; relax cost-neutrality requirements; allow collection of EBT replacement card fees from client household benefit accounts; and identify operational limitations for including client photographs on EBT cards. The specific provisions are discussed below.

**Mandate EBT**

The proposed rule would mandate that each State agency fully implement EBT statewide for issuance of food stamp benefits no later than October 1, 2002, unless the Secretary provided a waiver because a State agency faced unusual barriers to implementing an EBT system. Each State agency was encouraged to implement an EBT system as soon as practicable. Although a majority of the commenters supported the EBT mandate in general, several had serious concerns with this requirement.

Three comments reflected a concern that the lack of competition in the current EBT environment will impede full implementation efforts. Three commenters expressed concern that the Department's interpretation of the legislation was too stringent in requiring that State agencies be fully implemented statewide by October 1, 2002. They felt that if a State agency is actively moving toward statewide implementation by the deadline, the regulatory requirement should be satisfied. One commenter suggested allowing an extra six months for full implementation, while another suggested short-term waivers to ensure that systems will be ready for reliable operation within a few months after the October 1, 2002 date. One commenter felt that there should be a prohibition on implementations and system changes between October 1999 and the first quarter of 2000 because of Y2K considerations.

The Department was impressed by the show of concern from State agencies and other interested parties about the requirement for full implementation by October 1, 2002. However, Congress was clear in its intent that State agencies must implement EBT for food stamps statewide by the deadline of October 1, 2002, unless they receive a waiver granted by the Secretary because of unusual barriers to full implementation.

Three commenters felt that the rule should specify what will qualify as "unusual barriers" to implementation, and thus warrant a waiver. Without knowing what, if any, obstacles State agencies might face, the Department is not able to specify what kinds of problems would justify a waiver from the Secretary. The Department will need to evaluate any waiver requests submitted on an individual basis. However, the Department does not foresee any obstacles that cannot be overcome in order to meet the requirements that State agencies implement EBT systems statewide by October 1, 2002.

The preamble of the proposed rule also stated that any State agency not granted a waiver and not having fully implemented EBT statewide by October 1, 2002, will be out of compliance with these rules and may be subject to disallowance of administrative funds pursuant to the provisions of 7 CFR 276.4. Two commenters requested clarification with respect to penalties that would result if States had not implemented EBT by the deadline. We believe that the regulations, as cited above, provide the State agencies sufficient detail on the disallowance of administrative funds to impart the importance of complying with this requirement.

**Off-Line Technology**

The proposed regulation would implement the statutory amendment which removed the prohibition against State agencies implementing off-line EBT systems. A majority of the comments on this provision support the change to allow off-line systems because it provides State agencies greater flexibility to determine the kind of system suitable for their own needs. However, one commenter recommended that off-line technologies be implemented transitionally to protect existing investments by States and retailers in on-line systems. Another felt that, while off-line systems can make the integration of cash and non-cash benefits more efficient and convenient for recipients, costs must come down before the technology can be widely implemented. Another raised the concern that retailers should not have to bear the cost of the new technology. By allowing off-line system implementation, the Department is offering State agencies more flexibility but is not endorsing off-line technology over magnetic stripe on-line technology. We recognize that the cost implications for State agencies and for retailers will largely drive the degree to which this technology is adopted over time.

The proposed rule also defines an off-line EBT system as a benefit delivery system in which a benefit allotment can be stored on a card and used to purchase authorized items at a point-of-sale terminal without real-time authorization from a central processor. One commenter suggested modifying the definition of off-line systems to "* * * a benefit delivery system in which a benefit allotment can be stored on a card or in a card access device.



* * *" We are incorporating the language of the suggested definition into the regulation to convey that in some cases with an off-line system, benefits must be downloaded onto a card at the point-of-sale terminal or some other card access device.

Another commenter wanted us to specify that off-line systems not be permitted to retain information on recipients, including food choices, for privacy reasons. Off-line systems are held to the same privacy requirements as on-line systems as found in current Food Stamp regulations at 7 CFR 274.12(e)(1)(ix), (redesignated by this publication as 7 CFR 274.12(f)(1)(ix)). This provision states that State agencies shall ensure the privacy of household data and provide benefit and data security. Retailers, for instance, are not permitted to store any information on EBT cards or accounts, on-line or off-line. Because of the existing protections, we have not made any further changes to the rule with regard to this issue.

The rule did not propose standards specific to off-line systems but did solicit comments from the public to provide input into our decision regarding what standards we should propose in the future. One commenter disagreed with this approach and suggested that national uniform standards must be developed before off-line systems can be implemented. The Department has already tested off-line technology for EBT and sees no reason not to allow State agencies to move in this direction if they choose. However, we understand the limitations of not having standards in place and will continue to work with the State agencies and other interested parties to keep apprised of advances being made toward standards in the off-line industry as it evolves.

**Cost Neutrality**

This rule implements two discretionary changes (offers option of a national issuance cost cap and allows for prospective certification of EBT systems), and one non-discretionary change (removes requirement that EBT systems be cost neutral in any one year) to the EBT cost neutrality requirements of 7 CFR 274.12(c). Most of the comments that we received on the proposed rule were in response to the cost neutrality section. In general, the comments reflect that cost neutrality continues to be a source of concern and frustration for State agencies and other stakeholders, even as we strive to make the requirements less burdensome.

Three of the commenters acknowledged general support of these provisions because they offer State agencies more flexibility to determine and track cost neutrality; however, a majority of the commenters expressed the belief that the Department needs to go further to reduce the impact of cost neutrality requirements. Four commenters recommend exempting certain EBT activities and associated costs from the cost neutrality determination, such as farmers' market participation in the FSP. Similarly, two commenters complained that the cost cap does not take into consideration certain State costs which are not related to coupon issuance but are required for EBT or by FSP regulations, *e.g.*, an annual Statement of Auditing Standards (SAS) 70 audit of EBT systems. Three commenters said that FNS should take into consideration the increased costs to operate EBT and the States' limited financial resources. Four commenters mentioned that the lack of EBT competition has meant higher costs; therefore, further relaxation of cost neutrality requirements are needed. One commenter suggests that State agencies with smaller caseloads need flexibility in choosing a contractor, because it is harder for them to be cost neutral.

The Department has similar concerns about the costs related to EBT and how they impact on a State's cost neutrality. For instance, the Department has decided to exempt all SAS 70 audit costs from State agencies' cost neutrality determinations, and we will continue to examine activities and costs with an eye to whether they should be part of EBT cost neutrality consideration. However, we believe that, by implementing the changes in this rule, a majority of the concerns about the implications of Federal cost neutrality can be overcome.

Two comments specifically welcomed the non-discretionary change to remove the annual cost neutrality assessment of EBT compared to paper systems. However, one comment letter reflected some misunderstanding by questioning whether there is any change to the time periods for calculating cost neutrality under an EBT contract since there are so few billable case months in the first year or so of a first generation EBT system. With the legislative removal of the annual cost neutrality requirement, State agencies will now assess the cost neutrality of the entire contract period, not year to year. This provision should greatly reduce the likelihood that State agencies are held responsible for costs exceeding the cost cap, because they are able to spread them out over the full contract period.

The national cap is a case-month issuance amount calculated by FNS to be $2.42 for fiscal year 2000. The amount is based on nationwide State and Federal coupon issuance costs as validated by FNS. State agencies may opt for this method for determining the cost neutrality of their EBT systems rather than derive their own coupon issuance cost cap. One commenter generally supported the provision. Another commenter suggested that the national cap be lowered or eliminated if it becomes apparent that EBT contractors are tying project bids to the cap rather than competing aggressively. This also included the suggestion of not publishing the national cap for this reason. The Department does not foresee this being a problem because each State agency has its own cost constraints to doing EBT that may in fact be lower than the national cost cap. Contractors will have to be sensitive to how much the individual States can spend on an EBT system when submitting bid proposals, regardless of the national cost cap.

Only one commenter reacted specifically to the proposal on prospective certification. The commenter suggested that FNS deny prospective certification to State agencies with contracts containing troublesome provisions such as a contractor's ability to increase unit costs if caseloads fall below expectations but not reducing those unit costs in the event a recession or other event causes caseloads to rise. The Department agrees that these contract provisions can sometimes be questionable; however, the State agency would have to take such contractual impacts into account when submitting the prospective analysis for FNS approval.

Three comments requested clarification on how the proposed cost neutrality changes will impact on a re-bid contract. The Department does not foresee making any distinction between first time contracts and re-bid contracts when doing cost neutrality assessments. In both cases, the State agency will choose to either: (1) calculate their own State cost cap which is based on individual States' statewide coupon issuance costs, multiplied by the percentage of Federal financial participation, plus Federal only coupon issuance costs, and then validated by FNS; or (2) use the national cap which is calculated by FNS. The State agency then projects the costs of the EBT system for the life of the system; i.e., the contract period. If the State agency can demonstrate up front that the system will be cost neutral, no further cost assessment of the project during the contract period is necessary, unless the State agency makes significant changes to the system which increase contract or

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other costs enough to warrant a reassessment.

Clarification was requested by several other commenters. One commenter wanted to know if validated cost caps would have to be recalculated. If the State agency already has a validated cost cap, it may use that cap or switch to the national cap, whichever it wants to use. Another commenter wanted to be able to exclude residual coupon costs from assessment when the State agency is operating statewide. In fact, this is already permitted. State agencies may request that residual coupon costs be taken into consideration as they are rolling out an EBT system, but there are no residual coupon costs once the EBT system is implemented statewide.

Another commenter wanted a more equitable method of determining the cost of off-line systems since off-line systems suffer under current requirements. The Department does not intend to change cost neutrality requirements to fit off-line systems. We recognize that those systems still tend to cost more than on-line systems, but this will likely change if off-line technology advances in the market place.

Two commenters specifically requested clarification of the distinction between direct and indirect costs. After review of the comments, we have determined that the level of detail on direct and indirect costs in the proposed rule, as well as much of the detail on process and procedures related to calculating cost neutrality, is more appropriately handled through guidance to the State agencies. FNS is currently developing the cost neutrality guidance for distribution to the State agencies shortly after publication of this rule. We have revised the cost neutrality section of the final regulation extensively to reflect this.

**Differentiate Food Stamp Eligible Items**

As discussed in the preamble of the proposed rule, PRWORA requires, to the extent practicable, the establishment of system approval standards for measures that permit a system to differentiate items of food that may be bought using food stamps from items that may not be bought using food stamps. This resulted in a report to Congress in August of 1998 explaining that we would have to require scanners at all authorized food stamp retailers to accomplish this and, while it is technically feasible, it is cost prohibitive to do so at this time. No regulatory change was proposed. We received seven comments supporting this position.

**Replacement Card Fee**

The proposed rule would provide State agencies with the option to collect a charge for replacement of an EBT card by reducing the monthly allotment of the household. We received five comments generally supporting this provision. Two commenters suggested that we allow collection of future months' benefits for replacement cards. The Department does not see why it should be necessary for a State agency to collect a replacement card fee from a household's future months' benefits. There is currently no prohibition against waiting until funds are available in the benefit account before collecting the fee for replacing the card.

One commenter felt that, since replacing cards is an administrative function, this should not be considered program income. All administrative functions are shared costs and, therefore, if the State agency is being reimbursed for a cost that the Department has already shared in through payment to the EBT contractor, the fee collected must be treated as program income and shared with the Department. Another commenter suggested that State agencies should offer one free replacement per year similar to the credit card industry. State agencies have the flexibility to implement a provision with this kind of leniency if they wish, but the Department will not mandate it.

One commenter had several suggestions to restrict the provision in ways to further protect food stamp households. One point was that, in order to be in compliance with the Americans with Disabilities Act of 1990, as amended (ADA), State agencies should not charge fees to clients with disabilities who frequently request replacement cards, because this is an indication that the client needs better training or help obtaining an authorized representative. It was further recommended that State agencies be required to waive the replacement fee if a client shows good cause.

The Department shares the commenter's concerns for recipients that experience difficulties keeping up with their EBT cards because of disabilities or those that can otherwise show good cause reasons for requesting a replacement card. Therefore, we strongly urge State agencies to consider the circumstances surrounding the recipients' need for a replacement card. Furthermore, we recommend that each State agency develop their own good cause policy for card replacement fees. Such policies would allow free replacement cards in instances of fires or other household emergencies, robbery or other crimes, and for recipients with disabilities that significantly impair their ability to secure the card. We have added regulatory language to emphasize these concerns.

It should be noted, however, that EBT card replacement is significantly different from replacement of coupons lost as a result of household emergencies or mail theft. When coupons are replaced, the actual benefits which were lost are replaced. When a household reports an EBT card lost or stolen, a hold is placed on the benefits remaining on that card, thereby protecting the household from unauthorized access to those benefits. When the card is replaced, the household will have access to the benefits that were on the card at the time it was reported lost or stolen.

Another suggestion was to establish a cap on the fee amount which would be announced annually and for FNS to refuse to grant training waivers (*i.e.*, allow States to mail EBT training to food stamp households rather than conduct hands-on sessions) to State agencies that charge a fee. The Department does not believe that these recommendations are necessary or required under the law. Therefore, we are not changing the regulatory language further in response to this comment. However, FNS will continue to review State agencies' plans for replacement card fee collection to ensure that households are not being charged exorbitant fees and are not being treated unfairly.

**Photograph on EBT Card**

The proposed regulation specifies that State agencies may require that EBT cards contain a photograph of one or more members of a household but that the State agency must establish procedures to ensure that any other appropriate member of the household or any authorized representative of the household may utilize the EBT card if a photo is used. Four commenters generally supported the provision to use a photo on the card at State agency option. One comment specifically supported the Department's concern that all eligible household members must still be able to use the card. One commenter remarked that putting a photo on the card may reduce card replacements and selling of cards to non-beneficiaries and that any State doing so would need to have uniform procedures in place as part of their EBT program.

One commenter suggested that State agencies be required to place photos on the EBT card similar to how photos appear on credit cards so as not to make it obvious that a client is using a food stamp card. The Department does not intend to dictate how the photo should be placed on the EBT card.

Another commenter suggested that placing a photo on the card will create confusion for retailers and shift burden of policing the program to the stores. The Department has no intention of shifting the burden of monitoring the compliance of food stamp program recipients to the retail community. That is why the regulation is explicit in requiring State agencies to have a plan in place to ensure that all appropriate household members or authorized representatives can access benefits from the account as necessary. This plan might include retailer training to ensure that they understand someone other than the client pictured on the card may be entitled to use the card.



**Anti-tying Restrictions**

In the preamble of the proposed rule we discussed the anti-tying provision in PRWORA and the Department's response to it. To summarize, after consulting with the Federal Reserve System Board of Governors, the Department learned that anti-tying prevents the conditioning of any service on the purchase of another service or product. Since EBT is non-conditioned and, therefore, must be offered to retailers at no cost, the Federal Reserve agrees that the existing anti-tying laws are not relevant in the EBT environment. A majority of the commenters to this section agreed with the Department's position.

Two commenters did not agree and felt that USDA needs to do more to find a means to implement the intent of section 825 pertaining to anti-tying for the sake of promoting competition for Point of Sale (POS) services. They suggest that the Department use its expertise to ensure maximum competition and that perhaps prohibiting EBT contractors from offering commercial equipment in the States where they hold contracts is a cost effective and a pro-competitive approach. The Department has no evidence that this is a problem in the current EBT environment, a position which is supported by the Federal Reserve Board of Governors, as well as a majority of the commenters. However, we will continue to look at this issue to determine if further action may be necessary in the future.

**System Compatibility**

The preamble language in the proposed rule spoke to the sense of Congress that State agencies should operate their EBT systems in a manner that makes them compatible with one another. It further went on to say that, since current rules already require system compatibility, no regulatory change was necessary. Several commenters wanted us to interpret the term "system compatibility" to be synonymous with system interoperability and took this opportunity to express their support of system interoperability; *i.e.*, the ability for food stamp households in one State to use their EBT benefits in another State.

Three comments say we must achieve or require interoperability. Two other commenters want the Department to require interoperability and to specify who pays for it. One commenter supports interoperability and believes the Department should pay for it. Another three commenters merely state their support of interoperability while one other noted that without interoperability, cash-out should be allowed when recipients move from State to State. Interoperability legislation has now been passed by Congress and the Department published an interim rule on interoperability in the **Federal Register** August 15, 2000 at 65 FR 49719, entitled Food Stamp Program: EBT Systems Interoperability and Portability.

Three commenters expressed concern about transaction processing standards being inconsistent with commercial standards. The Department continues to work with State agencies, EBT processors, and other interested parties through forums like the EBT Industry Council, a subgroup of the Electronic Funds Transfer Association (EFTA), and the National Automated Clearing House Association (NACHA) to see if better standards for transaction processing can be developed. Under current regulations at 7 CFR 273.12(h), State agencies do have the option to request prior written approval from FNS to use the prevailing regional industry standards rather than the standards specified in this section. One commenter expressed concern that customer service and help line performance standards are also inconsistent with commercial standards. FNS does not prescribe standards in these areas, giving State agencies the flexibility to set their own requirements in individual contracts for EBT services.

One commenter requested FNS consider reviewing the pay-phone access issue and adjustments with an eye toward system compatibility. Another comment said that we need to ensure that other programs like the State food stamp programs can be added to existing systems in a cost effective manner. A final comment suggested that nationwide system compatibility at all levels would greatly enhance EBT systems. We appreciate these broader comments but felt they did not fit within the scope of this rule. The Department will, however, continue to look at how system compatibility can be enhanced with the ongoing evolution of EBT.

**Regulation E**

As stated in the preamble of the proposed regulation, Section 907 of the PRWORA amends Section 904 of the Electronic Funds Transfer Act, commonly known as Regulation E, to exempt from coverage government EBT accounts held for recipients of State-administered needs-tested assistance programs, including the FSP. Because this provision does not amend the FSA, we did not propose changes to our current regulations. We received only two comments on this issue. One commenter supported FNS's position; the other believed we must reserve further action on this issue until the effects of abrogating Reg E are clear.

**Implementation**

This rule is effective November 3, 2000. State agencies may implement the provisions anytime after the effective date. However, EBT systems must be in place statewide no later than October 1, 2002, unless the State is granted a waiver by the Secretary of Agriculture.

**List of Subjects**

*7 CFR Part 272*

Alaska, Civil Rights, Food Stamps, Grant Programs-social programs, Reporting and recordkeeping requirements.

*7 CFR Part 274*

Administrative practice and procedure, Food stamps, Fraud, Grant programs-social programs, Reporting and recordkeeping requirements, State liabilities.

Accordingly, for the reasons set forth in the preamble, 7 CFR parts 272 and 274 are amended as follows:

1. The authority citation for 7 CFR parts 272 and 274 continues to read as follows:

**Authority:** 7 U.S.C. 2011–2036.

## PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. In § 272.1, paragraph (g)(164) is added to read as follows:

**§ 272.1 General terms and conditions.**

* * * * *

(g) *Implementation.* * * *

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(164) *Amendment No. 390.* The provisions of Amendment No. 390 are effective November 3, 2000. State agencies may implement the provisions anytime after the effective date. However, Electronic Benefit Transfer (EBT) systems must be in place statewide no later than October 1, 2002, as required by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

## PART 274—ISSUANCE AND USE OF COUPONS

3. In § 274.3, a new paragraph (a)(5) is added to read as follows:

**§ 274.3 Issuance systems.**

(a) * * *

(5) An off-line Electronic Benefit Transfer system in which benefit allotments can be stored on a card or in a card access device and used to purchase authorized items at a point-of-sale terminal without real-time authorization from a central processor.

* * * * *

4. In § 274.12:

a. Paragraph (a) is revised.

b. Paragraph (b)(1) is amended by removing the second sentence and by removing the words "However the" and adding "The" in its place in the third sentence.

c. Paragraphs (c)(3)(i) through (c)(3)(vi) are removed.

d. Paragraphs (e), (f), (g), (h), (i), (j), (k), (l), and (m) are redesignated as paragraphs (f), (g), (h), (i), (j), (k), (l), (m), and (n), respectively, and a new paragraph (e) is added.

e. Newly redesignated paragraph (g)(5)(v) is revised.

f. In newly redesignated paragraph (i), a new paragraph (i)(6)(iv) is added.

g. Newly redesignated paragraph (l)(6) is removed.

The revisions and additions read as follows:

**§ 274.12 Electronic Benefit Transfer issuance system approval standards.**

(a) *General.* This section establishes rules for the approval, implementation and operation of Electronic Benefit Transfer (EBT) systems for the Food Stamp Program as an alternative to issuing food stamp coupons. By October 1, 2002, State agencies must have EBT systems implemented statewide, unless the Secretary provides a waiver for a State agency that faces unusual barriers to implementing an EBT system. In general, these rules apply to both on-line and off-line EBT systems, unless stated otherwise herein, or unless FNS determines otherwise for off-line systems during the system planning and development process.

* * * * *

(e) *Cost neutrality.* To receive full Federal reimbursement for food stamp administrative costs, the State agency must operate its EBT system in a cost-neutral manner, whereby the Federal cost of issuing benefits in the State after implementation of the EBT system does not exceed the Federal cost of delivering coupon benefits under the previous coupon issuance system. The issuance cost cap is expressed in terms of a cost per case month derived by dividing the annual total cost of issuance by the total number of households issued food stamp benefits during the year the costs were incurred. In determining its coupon issuance cap, the State agency shall use either: the National Coupon Issuance Cap, as determined by FNS, or calculate a State Coupon Issuance Cap based on the State agency's statewide issuance costs under the coupon issuance system. FNS will not reimburse the State agency for any costs incurred above the approved coupon issuance cap.

(1) The National Coupon Issuance Cap is a case-month issuance amount, as calculated by FNS.

(2) A State Coupon Issuance Cap is a case-month issuance amount, as calculated by the State agency based on guidance provided by FNS. The State agency must provide narrative explanations and satisfactory supporting documentation to clarify each cost item, its relationship to the coupon issuance function, and how it was calculated. All issuance costs included in the State coupon issuance cap must have been charged to the Federal government and are subject to validation by FNS.

(3) The State agency shall submit its State coupon issuance cap or indicate it has opted to use the National Coupon Issuance Cap as part of the Implementation APD process. The State coupon issuance cap must be approved by FNS prior to implementation of the pilot, and shall be effective from the first date benefits are issued to households through the EBT system during the pilot project.

(4) Each State agency's approved State issuance coupon cap and the National Coupon Issuance Cap will be adjusted each Federal fiscal year based on the percentage change in the most recently published Gross Domestic Product Implicit Price Deflator Index (GDP Price Deflator) calculated from the percentage change in the index between the first quarter of the current calendar year and the first quarter of the previous year, as published each June by the Bureau of Economic Analysis.

(5) The determination of cost neutrality will be assessed on a prospective basis; that is, FNS will make a determination whether the EBT system will be cost neutral based on a comparison of the coupon issuance costs to the projected costs of the EBT system. The State agency may choose how they determine coupon issuance costs either according to paragraph (e)(1) or paragraph (e)(2) of this section. After approval of its coupon cost cap, the State agency shall submit to FNS an analysis, completed according to FNS guidance, comparing the coupon issuance costs to the projected EBT costs over the contract period for system operation which defines the life of the system. If the State agency uses the National Coupon Issuance Cap, Statewide cost projections for issuance costs after EBT implementation must include all contract costs and all other direct EBT issuance costs. If the State agency develops their own State issuance cost cap, Statewide cost projections for issuance costs after EBT implementation must include all of the direct EBT costs, and projections for all categories of allocated costs which were included in the coupon cost cap calculation using the same allocation methodology as in the cost cap calculation.

(i) EBT planning costs are to be excluded from the cost neutrality assessment and shall include costs attributed to the preparation of the Planning APD, all activities leading to the development of the EBT implementation plan, and the completion of the documentation contained in the FNS approved Implementation APD.

(ii) The cost neutrality assessment must include pre-issuance costs, which can include system design, development and start-up costs, and operations costs. The operations phase is defined as beginning with the first EBT issuance in the pilot area.

(iii) If the comparison demonstrates the proposed system will cost less than the coupon issuance system, no further measurement will be required for the life of the system unless there is a substantial increase in EBT costs requiring prior approval as described in § 277.18 (c)(2)(ii)(C) of this chapter and the submittal of an Implementation APD Update as outlined in the FNS Handbook 901 (APD Handbook).

(iv) Any State agency that cannot demonstrate cost neutrality prospectively will be required to track EBT costs throughout the life of the system according to FNS guidance, and reimburse FNS for any excess at the end of the defined system life.

(6) The State agency is required to provide an updated cost neutrality assessment for all subsequent EBT systems developed or implemented, incorporating the revised costs of the new system.

* * * * *

(g) * * *

(5) * * *

(v) The State agency may impose a replacement fee by reducing the monthly allotment of the household receiving the replacement card; however, the fee may not exceed the cost to replace the card. If the State agency intends to collect the fee by reducing the monthly allotment, it must follow FNS reporting procedures for collecting program income. State agencies currently operating EBT systems must inform FNS of their proposed collection operations. State agencies in the process of developing an EBT system must include the procedure for collection of the fee in their system design document. All plans must specify how the State agency intends to account for card replacement fees and include identification of the replacement threshold, frequency, and circumstances in which the fee shall be applicable. State agencies may establish good cause policies that provide exception rules for cases where replacement card fees will not be collected.

* * * * *

(i) * * *

(6) * * *

(iv) State agencies may require the use of a photograph of one or more household members on the card. If the State agency does require the EBT cards to contain a photo, it must establish procedures to ensure that all appropriate household members or authorized representatives are able to access benefits from the account as necessary.

* * * * *

Dated: September 21, 2000.

**Shirley R. Watkins,**

*Under Secretary for Food, Nutrition and Consumer Services.*

[FR Doc. 00–25364 Filed 10–3–00; 8:45 am]

**BILLING CODE 3410–30–P**



## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### 18 CFR Part 284

**[Docket No. RM96–1–016]**

### Standards For Business Practices Of Interstate Natural Gas Pipelines

Issued September 28, 2000.

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Final rule; Order Granting Clarification.

**SUMMARY:** The Federal Energy Regulatory Commission is granting clarification of Order No. 587–L (65 FR 41873), which established November 1, 2000, as the date by which pipelines are required to comply with the regulation requiring them to permit shippers to offset imbalances on different contracts held by the shipper and to trade imbalances. (18 CFR 284.12(c)(2)(ii)). The order clarifies that pipelines on which shippers do not incur imbalances and are not subject to imbalance penalties need not implement imbalance trading on their systems.

**DATES:** Pipelines seeking an exemption from the imbalance trading requirement must file within 15 days of the order to show why they should not be required to implement imbalance trading.

**ADDRESSES:** Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426.

**FOR FURTHER INFORMATION CONTACT:**

Michael Goldenberg, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–2294.

Marvin Rosenberg, Office of Markets, Tariffs, and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–1283.

Kay Morice, Office of Markets, Tariffs, and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–0507.

**SUPPLEMENTARY INFORMATION:**

Before Commissioners: James J. Hoecker, Chairman; William L. Massey, Linda Breathitt, and Curt Hebert, Jr.

### Order Granting Clarification

Issued September 28, 2000.

Iroquois Gas Transmission System, L.P. (Iroquois) and Michigan Gas Storage Company (Michigan) filed requests for clarification or rehearing of Order No. 587–L.[1] Order No. 587–L established November 1, 2000 as the date by which pipelines are required to implement section 284.12(c)(2)(ii) of the Commission's regulations requiring pipelines to implement imbalance netting and trading on their systems.[2] Pipelines are required to file tariff sheets to implement imbalance trading in sufficient time for the tariff changes to become effective November 1, 2000.

Iroquois and Michigan request clarification that pipelines on which shippers do not incur imbalances and are not subject to imbalance penalties are not required to implement imbalance trading on their systems. Iroquois and Michigan state that, in Order No. 637–A,[3] the Commission determined that pipelines without imbalance penalties would not be required to offer imbalance management services, and contend that the same rationale should apply to imbalance trading.

The Commission agrees that pipelines on which shippers do not incur imbalances and are not subject to imbalance penalties need not implement imbalance trading on their systems. The purpose of requiring imbalance trading was to establish a mechanism by which shippers can avoid imbalance charges. If shippers cannot incur imbalances, then shippers do not need to trade imbalances.

However, the Commission cannot make a determination in a generic rulemaking proceeding as to whether the circumstances on an individual pipeline permit an exemption from the requirement to provide imbalance trading. Shippers on the individual systems should be given the opportunity to respond to any request for such an exemption. Accordingly, pipelines that seek an exemption from the imbalance trading requirement must file within 15 days of this order showing why they should not be required to implement imbalance trading on their systems.

### The Commission Orders

(A) The requests for clarification are granted, in part, as discussed in the body of the order.

(B) Pipelines seeking an exemption from the imbalance trading requirement are required to file within 15 days of the

[1] Standards For Business Practices Of Interstate Natural Gas Pipelines, Order No. 587–L, 65 FR 41873 (July 7, 2000), III FERC Stats. & Regs. Regulations Preambles ¶ 31,100 (June 30, 2000).

[2] 18 CFR 284.12(c)(2)(ii).

[3] Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services, Order No. 637–A, 65 FR 35706, 35736 (Jun. 5, 2000), III FERC Stats. & Regs. Regulations Preambles ¶ 31,099, at 31,600–601 (May 19, 2000).

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order to show why they should not be required to implement imbalance trading.

By the Commission.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–25437 Filed 10–3–00; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF TRANSPORTATION

**National Highway Traffic Safety Administration**

**Federal Highway Administration**

**23 CFR Part 1275**

**[Docket No. NHTSA–98–4537]**

**RIN 2127–AH47**

## Repeat Intoxicated Driver Laws

**AGENCIES:** National Highway Traffic Safety Administration (NHTSA) and Federal Highway Administration (FHWA), Department of Transportation.

**ACTION:** Final rule.

**SUMMARY:** This document adopts as a final rule, with some changes, the regulations that were published in an interim final rule to implement a new program established by the Transportation Equity Act for the 21st Century (TEA 21) Restoration Act. The final rule provides for a transfer of Federal-aid highway construction funds authorized under 23 U.S.C. 104 to the State and Community Highway Safety Program under 23 U.S.C. 402 for any State that fails to enact and enforce a conforming "repeat intoxicated driver" law.

**DATES:** This final rule becomes effective on October 4, 2000.

**FOR FURTHER INFORMATION CONTACT:** In NHTSA: Mr. Glenn Karr, Office of State and Community Services, NSC–01, telephone (202) 366–2121; or Ms. Heidi L. Coleman, Office of Chief Counsel, NCC–30, telephone (202) 366–1834, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. In FHWA: Mr. Byron E. Dover, Safety, HSA–1, telephone (202) 366–2161; or Mr. Raymond W. Cuprill, Office of the Chief Counsel, HCC–20, telephone (202) 366–0834, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590–0001.

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## I. Background

The Transportation Equity Act for the 21st Century (TEA 21), H.R. 2400, Pub. Law 105–178, was signed into law on June 9, 1998. On July 22, 1998, the TEA 21 Restoration Act (the Act), Pub. Law 105–206, was enacted to restore provisions that had been agreed to by the conferees on TEA 21, but were not included in the TEA 21 conference report. Section 1406 of the Act amended chapter 1 of title 23, United States Code (U.S.C.), by adding section 164, which established a program to transfer a percentage of a State's Federal-aid highway construction funds to the State's apportionment under section 402 of Title 23 of the United States Code, if the State fails to enact and enforce a conforming "repeat intoxicated driver" law that provides for certain specified minimum penalties for persons who have been convicted of driving while intoxicated or under the influence upon their second and subsequent convictions.

In accordance with section 164, these funds are to be used for alcohol-impaired driving countermeasures or the enforcement of driving while intoxicated (DWI) laws, or States may elect instead to use all or a portion of the funds for hazard elimination activities, under 23 U.S.C. section 152.

### *A. The Problem of Impaired Driving*

Injuries caused by motor vehicle traffic crashes are the leading cause of death in America for people aged 5 to 29. Each year, traffic crashes in the United States claim approximately 41,000 lives and cost Americans an estimated $150 billion, including $19 billion in medical and emergency expenses, $42 billion in lost productivity, $52 billion in property damage, and $37 billion in other crash-related costs. In 1999, alcohol was involved in approximately 38 percent of fatal traffic crashes. Every 33 minutes, someone in this country dies in an alcohol-related crash. Impaired driving is the most frequently committed violent crime in America.

### *B. Repeat Intoxicated Driver Laws*

State laws that are directed to individuals who have been convicted more than once of driving while intoxicated or driving under the influence are critical tools in the fight against impaired driving. To encourage States to enact and enforce effective impaired driving laws, Congress has created a number of different programs. Under the section 410 program (23 U.S.C. 410), and its predecessor the section 408 program (23 U.S.C. 408), for example, States could qualify for incentive grant funds if they adopted and implemented certain specified laws and programs designed to deter impaired driving. Some of these laws and programs were directed specifically toward repeat impaired driving offenders.

For example, prior to the enactment of TEA 21, to qualify for an incentive grant under the section 410 program, a State was required to meet five out of seven basic grant criteria that were specified in the Act and the implementing regulation. The criteria included, among others, an expedited driver license suspension system, which required a mandatory minimum one-year license suspension for repeat offenders, and a mandatory minimum sentence of imprisonment or community service for individuals convicted of driving while intoxicated more than once in any five-year period.

States that were eligible for a basic section 410 grant could qualify also for additional grant funds by meeting supplemental grant criteria, such as the suspension of registration and return of license plate program. States could demonstrate compliance with this program by showing that they provided for the impoundment, immobilization or confiscation of an offender's motor vehicles.



TEA 21 changed the section 410 program and, specifically, the section 410 criteria that were directed toward repeat offenders. The conferees to that legislation had intended to create a new repeat intoxicated driver transfer program to encourage States to enact repeat intoxicated driver laws, but this new program was inadvertently omitted from the TEA 21 conference report. The program was included instead in the TEA 21 Restoration Act, which was signed into law on July 22, 1998.

### *C. Section 164 Repeat Intoxicated Driver Law Program*

Section 164 provides that, on October 1 of each year, the Secretary must transfer a portion of a State's Federal-aid highway construction funds apportioned under sections 104(b)(1), (3), and (4) of title 23 of the United States Code, for the National Highway System, Surface Transportation Program and Interstate System, to the State's apportionment under section 402 of that title, if the State fails to enact and enforce a conforming "repeat intoxicated driver" law. If a State does not meet the statutory requirements on October 1, 2000 or October 1, 2001, an amount equal to one and one-half percent of the funds apportioned to the State will be transferred. If a State does not meet the statutory requirements on October 1, 2002, or on October 1 of any subsequent year, an amount equal to three percent of the funds apportioned to the State will be transferred.

To avoid the transfer of funds, a State must enact and enforce a law that establishes, at a minimum, certain specified penalties for second and subsequent convictions for driving while intoxicated or under the influence. These penalties include: a one-year driver's license suspension; the impoundment or immobilization of, or the installation of an ignition interlock system on, the repeat intoxicated driver's motor vehicles; assessment of the repeat intoxicated driver's degree of alcohol abuse, and treatment as appropriate; and the sentencing of the repeat intoxicated driver to a minimum number of days of imprisonment or community service.

## II. Interim Final Rule

On October 19, 1998, NHTSA and the FHWA published an interim final rule in the **Federal Register** to implement the section 164 program (63 FR 55798). The interim final rule provided that, to avoid the transfer of funds, a State must have a law that has been enacted and made effective, and the State must be actively enforcing the law. In addition, the law must meet certain requirements.

### *A. Compliance Criteria*

The interim final rule provided that, to avoid a transfer of funds, a State must meet the following requirements:

1. *A minimum one-year license suspension.* The State's law must impose a mandatory minimum one-year driver's license suspension or revocation on all repeat intoxicated drivers. Accordingly, during the one-year term, the offender cannot be eligible for any driving privileges, such as a restricted or hardship license.

2. *Impoundment or immobilization of, or the installation of an ignition interlock system on, motor vehicles.* The State's law must require the impoundment or immobilization of, or the installation of an ignition interlock on, all motor vehicles owned by the repeat intoxicated offender. To comply with this criterion, the State law must require that the impoundment or immobilization be imposed during the one-year suspension term, or that the ignition interlock system be installed at the conclusion of the suspension period.

3. *An assessment of their degree of alcohol abuse, and treatment as appropriate.* To avoid the transfer of funds, the State's law must require that all repeat intoxicated drivers undergo an assessment of their degree of alcohol abuse and the law must authorize the imposition of treatment as appropriate.

4. *Mandatory minimum sentence.* The State's law must impose a mandatory minimum sentence on all repeat intoxicated drivers. For a second offense, the law must provide for a mandatory minimum sentence of not less than five days of imprisonment or 30 days of community service. For a third or subsequent offense, the law must provide for a mandatory minimum sentence of not less than ten days of imprisonment or 60 days of community service.

A more detailed discussion of the four elements described above is contained in the interim final rule (63 FR 55798–800).

### *B. Demonstrating Compliance*

Section 164 provides that nonconforming States will be subject to the transfer of funds beginning in fiscal year 2001. The interim final rule provides that, to avoid the transfer, each State must submit a certification by an appropriate State official that the State has enacted and is enforcing a repeat intoxicated driver law that conforms to 23 U.S.C. 164 and section 1275 of this part. A more detailed discussion regarding the certifications is contained in the interim final rule (63 FR 55800).

### *C. Enforcement*

Section 164 provides that a State must not only enact a conforming law, but must also enforce the law. In the interim final rule, the agencies encouraged the States to enforce their repeat intoxicated driver laws rigorously. In particular, the agencies recommended that States incorporate into their enforcement efforts activities designed to inform law enforcement officers, prosecutors, members of the judiciary and the public about all aspects of their repeat intoxicated driver laws. States should also take steps to integrate their repeat intoxicated driver enforcement efforts into their enforcement of other impaired driving laws.

To demonstrate that they are enforcing their laws under the regulations, the interim rule indicated that States are required to submit a certification that they are enforcing their laws.

### *D. Notification of Compliance*

The interim final rule provided that, for each fiscal year, beginning with FY 2001, NHTSA and the FHWA will notify States of their compliance or noncompliance with section 164, based on a review of certifications received. If, by June 30 of any year, beginning with the year 2000, a State has not yet been determined by the agencies, based on the State's laws and a conforming certification, to comply with section 164 and the implementing regulations, the agencies will make an initial determination that the State does not comply with section 164, and the transfer of funds will be noted in the FHWA's advance notice of apportionment for the following fiscal year, which generally is issued in July.

Each State determined to be in noncompliance will have until September 30 to rebut the initial determination or to come into compliance. The State will be notified of the agencies' final determination of compliance or noncompliance and the amount of funds to be transferred as part of the certification of apportionments, which normally occurs on October 1 of each fiscal year.

## III. Written Comments

The agencies requested written comments from interested persons on the interim final rule. The agencies stated in the interim rule that all comments submitted would be considered and that, following the close of the comment period, the agencies would publish a document in the **Federal Register** responding to the comments and, if appropriate, make revisions to the provisions of part 1275.

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*A. Comments Received*

The agencies received submissions from thirteen commenters in response to the interim final rule. Comments were received from five States, three organizations representing State interests and five other individuals or organizations with an interest in the issues being considered as part of these proceedings. The State comments were submitted by Tricia Roberts, Director of the Delaware Office of Highway Safety, Brian J. Bushweller, Secretary of the Delaware Department of Public Safety and Anne P. Canby, Secretary of the Delaware Department of Transportation (Delaware); James R. DeSana, Director of the Michigan Department of Transportation and Betty J. Mercer, Division Director of the Office of Highway Safety Planning, Michigan Department of State Police (Michigan); Thomas E. Stephens, P.E., Director of the Nevada Department of Transportation (Nevada); Keith C. Magnusson, Director of Driver and Vehicle Services, North Dakota Department of Transportation (North Dakota); and Charles H. Thompson, Secretary of the Wisconsin Department of Transportation (Wisconsin).

The comments received from organizations representing State interests were submitted by Kenneth M. Beam, President and CEO of the American Association of Motor Vehicle Administrators (AAMVA); Carl D. Tubbesing, Deputy Executive Director of the National Conference of State Legislatures (NCSL); and K. Craig Allred, Director of the Utah Highway Safety Office, who commented in his capacity as the Chair of the National Association of Governors' Highway Safety Representatives (NAGHSR).

The comments from individuals or organizations with an interest in the issues being considered in these proceedings were submitted by Mothers Against Drunk Driving (MADD); Richard Freund, President of LifeSafer Interlock, Inc. (LifeSafer); Henry Jasny, General Counsel for Advocates for Highway and Auto Safety (Advocates); Robert B. Voas, Ph.D., of the Pacific Institute (Dr. Voas); and James Hedlund of Highway Safety North (Dr. Hedlund).

Additionally, while not written in response to this rulemaking action, the National Transportation Safety Board (NTSB) issued a Safety Recommendation (H–00–27) to the Secretary of Transportation on August 7, 2000, related to the section 164 program.

The comments, and the agencies' responses to them, are discussed in detail below. Also discussed below are certain changes that the agencies have decided to make in this final rule based on their experience reviewing State laws and proposed legislation since the issuance of the interim final rule.

*B. General Comments*

Some of the comments submitted in response to the interim final rule commended the agencies on the manner in which the interim rule implemented the statutory requirements. North Dakota, for example, stated that it did "not have any problems with the text of the regulation" and that the regulations "appear to track with the law" and "seem to be straight forward and appropriate." Advocates also supported the interim regulations. Its comments provided that "in nearly all respects, the agencies have made reasoned and well thought out decisions in areas left to agency discretion by the statute."

Many of the comments, however, were critical of the section 164 program in general. While most commenters recognized that the criteria that States must meet and the consequences that will result to any State that fails to comply with them were defined by statute, many of the commenters were critical of these features of the program.

For example, regarding the use of consequences for State non-compliance, Delaware asserted that, while it "has long supported efforts to reduce impaired driving on our roadways, we strongly oppose the sanctions related to this Repeat Intoxicated Driver Law. We believe that transfer penalties interfere with the [States'] progress towards comprehensive efforts." Michigan recommended that Congress should establish instead a "performance-based alternative" under which States "can demonstrate measurable, significant success in reducing recidivism, either within the state or as compared to the national average." NCSL and the State of Wisconsin also objected to the use of transfer sanctions.

Regarding the statutory criteria that States must meet to avoid the sanction, NCSL expressed its belief that "a one-size-fits-all approach is not the best way to tackle the nation's drunk driving problem." In addition, NAGHSR and some of the State commenters predicted that the criteria are so stringent, it is unlikely that any State will fully comply.

NHTSA and the FHWA acknowledge that some of the compliance criteria are strictly defined in section 164 and that some may consider the consequences established in section 164 for States that fail to comply with these criteria to be rather severe. However, the agencies are bound to implement the section 164 program, in accordance with the requirements that were established by the statute. Regarding Michigan's suggestion that a performance-based alternative be established, we note that Congress has established performance-based programs under section 157 (for seat belt use) and section 410 (for impaired driving), but Congress has thus far chosen to use a different approach in the area of repeat intoxicated drivers.

Moreover, we note that this program has had a significant impact on State repeat intoxicated driver laws. Since the enactment of the TEA 21 Restoration Act, State repeat intoxicated driver laws have been strengthened, through the passage of new legislation, in 19 States and the District of Columbia. NHTSA has determined that the laws of nearly half the States (23 of them to date) and the District of Columbia fully comply with the section 164 requirements.

Finally, we note that, in the Safety Recommendation that it issued to the Secretary on August 7, 2000, NTSB submitted detailed comments regarding the statutory requirements contained in section 164. NTSB stated that the section 164 program represents "a substantial effort by Congress to address the hard core drinking driver problem * * * However, the Safety Board believes that this legislation could be even more effective." The Board recommended that the agency:

> Evaluate modifications to the provisions of [the TEA 21 Restoration Act] so that it can be more effective in assisting the States to reduce the hard core drinking driver problem [and] recommend changes to Congress as appropriate. Considerations should include (a) a revised definition of "repeat offender" to include administrative actions on DWI offenses; (b) mandatory treatment for hard core offenders; (c) a minimum period of 10 years for records retention and DWI offense enhancement; (d) administratively imposed vehicle sanctions for hard core drinking drivers; (e) elimination of community service as an alternative to incarceration; and (f) inclusion of home detention with electronic monitoring as an alternative to incarceration.

Since NTSB's comments recommend that the agency seek legislative changes to the section 164 program, these comments will not be addressed specifically in this final rule. These recommendations are being considered separately by the agency, outside the scope of this rulemaking action.

*C. Definitions Adopted in the Interim Final Rule*

Section 164 provides that, to avoid the transfer of funds under this program, a State must enact and enforce:

> a "repeat intoxicated driver law" * * * that provides * * * that an individual convicted of a second or subsequent offense for driving while intoxicated or driving under the influence [must be subject to certain specified minimum penalties].



The statute defines the term "repeat intoxicated driver law" to mean "a State law that provides [certain specified minimum penalties for] an individual convicted of a second or subsequent offense for driving while intoxicated or driving under the influence * * *" The agencies incorporated this definition into the interim final rule. The interim rule also defined the term "repeat intoxicated driver." Consistent with other programs conducted by the agencies and with State laws and practices, the interim regulations provided that an individual is a "repeat intoxicated driver" if the driver was convicted of driving while intoxicated or driving under the influence of alcohol more than once in any five-year period.

The terms "driving while intoxicated" and "driving under the influence" were defined in the statute to mean "driving or being in actual physical control of a motor vehicle while having an alcohol concentration above the permitted limit as established by each State." The statute also defined the term "alcohol concentration." The interim regulations adopted these definitions without change.

The agencies received a number of comments regarding these definitions. Most of the comments sought to expand the definition of the terms "driving while intoxicated" and "driving under the influence," so that a broader set of offenses would result in mandatory sanctions.

For example, MADD, Dr. Hedlund and Dr. Voas questioned the use of language in this definition, which provides that offenders must have had "an alcohol concentration above the permitted limit as established by [the] State." As Dr. Hedlund explained in his comments, the inclusion of this language "raises the issue of whether an alcohol concentration test is required to establish the offense of driving while intoxicated (or driving under the influence). In practice, for a variety of reasons, it is not possible to obtain an alcohol concentration test for every individual arrested for driving while intoxicated. In particular, some individuals refuse to provide a breath test. But many individuals are convicted of driving while intoxicated without an alcohol concentration test, based on other evidence obtained by the arresting officer." Accordingly, these three commenters urged the agencies to modify the interim regulations to clarify that the mandatory sanctions must apply to offenders who are convicted of "driving while intoxicated" or "driving under the influence," even if their alcohol concentrations are not known.

The agencies agree with these comments. Offenders who were convicted of driving while intoxicated or driving under the influence should not avoid the mandatory sanctions, simply because their alcohol concentrations are not known. Congress would not have intended such an outcome. To provide clarification in the implementing regulations, the agencies have modified the definition of the terms "driving while intoxicated" and "driving under the influence" to mean "driving or being in actual physical control of a motor vehicle while having an alcohol concentration above the permitted limit as established by each State, or an equivalent non-BAC intoxicated driving offense."

These definitions should clarify that, to comply with the Section 164 program, a State's law must apply the mandatory sanctions to any offender who is convicted of driving while intoxicated or driving under the influence of alcohol, whether or not the conviction is based on the offender's alcohol concentration level. The definitions should clarify also that the driving while intoxicated or driving under the influence offense must be the "standard" offense in the State. In other words, the sanctions need not apply to lesser included offenses (such as .05 BAC driving while impaired offenses), but it is not sufficient if the sanctions apply only to "high BAC" (such as .17 or .20 BAC) offenses.

MADD and the State of Wisconsin recommended two additional changes. They urged the agencies to expand these definitions to require the imposition of mandatory sanctions on offenders who refuse to submit to an alcohol test, even if they are not convicted of driving while intoxicated or driving under the influence, and on offenders who are convicted of driving while under the influence "of drugs" other than alcohol.

The agencies are unable to adopt these recommendations because they are outside the scope of the section 164 program, as authorized by Congress. section 164 specifically provides that a conforming "repeat intoxicated driver law" is a law that applies the specified mandatory sanctions to individuals "convicted" of a second or subsequent offense. Accordingly, the agencies do not have the authority to require that States apply these sanctions to offenders who are not convicted of the driving while intoxicated or driving while under the influence offense. As discussed above, the agencies have modified the regulations to clarify that the mandatory sanctions specified in section 164 must apply to offenders who refuse to submit to an alcohol test and are convicted of driving while intoxicated or driving under the influence. However, the sanctions need not apply to offenders who refuse to submit to an alcohol test and are not convicted of such an offense. Of course, if States choose to apply additional sanctions to these offenders, the section 164 program will not prevent them from doing so.

Similarly, there is nothing in the language or the legislative history of section 164 that indicates that Congress expected that the mandatory sanctions must apply to offenders convicted of driving under the influence "of drugs" other than alcohol. In fact, several portions of the statute make it clear that the program was designed specifically to address repeat offenders convicted only of driving while intoxicated or under the influence "of alcohol." For example, the offenses are defined to require that the driver had "an alcohol concentration above the permitted limit." In addition, two of the sanctions that must be imposed include requiring "an assessment of the individual's degree of abuse of alcohol [not drugs]" and vehicle sanctions, such as "the installation of an ignition interlock system" on the offenders" vehicles, which would prevent the offender from starting or operating a vehicle with any alcohol (not drugs) in his or her system.

Since these recommended changes would exceed the scope of section 164, they have not been adopted in this final rule.

As stated above, the interim regulations defined the term "repeat intoxicated driver" to mean "a person who has been convicted previously of driving while intoxicated or driving under the influence within the past five years." The agencies received two comments, from the State of Delaware and from Advocates, regarding the meaning of this definition.

Specifically, Delaware noted that "this provision does not take into account an offender who has been arrested of more than one DUI offense within a 5 year period but has not been convicted of both at the time of the second or subsequent arrest." Advocates requested clarification about the effect of this definition on States that do not maintain or, "look back" at, records for the full five-year period. According to Advocates, "the agencies do not unequivocally state that laws with only a 3 year "look back" provision do not comply with the implementing regulations in the interim final rule."

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The agencies wish to verify that Delaware's interpretation of the regulations is correct. To determine whether an individual is a repeat intoxicated offender for the purpose of this program, the State is required to consider whether an individual was convicted (not arrested) more than once within a five-year period. In response to the comments received from Advocates, we wish to clarify that, to comply with the section 164 requirements, States must not only provide that mandatory sanctions apply to offenders convicted more than once within a five-year period, the States must also ensure that such sanctions are imposed. This requires necessarily that the State has the ability to, and in fact does, "look back" five (or more) years to determine whether the sanctions should be applied.

To further clarify this definition, the agencies have modified the language slightly, so that it now provides that the term "repeat intoxicated driver" means "a person who has been convicted of driving while intoxicated or driving under the influence of alcohol more than once in any five-year period."

*D. Specific Comments Regarding the Repeat Intoxicated Driver Criteria*

Most comments received by the agencies in response to the interim final rule related to the specific criteria that repeat intoxicated driver laws must meet for a State to avoid a transfer of funds. Comments were received regarding each of the four penalties, described in the criteria, that State laws must impose on repeat intoxicated drivers. These comments and the agencies' responses to them are discussed in greater detail below.

1. A Minimum One-Year License Suspension

Section 164 provides that, to avoid a transfer of funds, the State must have a law that imposes a mandatory minimum one-year driver's license suspension on all repeat intoxicated drivers. The statute defines the term "license suspension" to mean "the suspension of all driving privileges." Accordingly, the interim final rule provided that the offender must be subject to a hard suspension (or revocation), for a minimum period of one year, during which the offender cannot be eligible for any driving privileges, such as a restricted or hardship license.

The agencies received comments from NAGHSR, LifeSafer, and the States of Wisconsin, Michigan and Delaware objecting to the one-year hard license suspension requirement. These commenters cited a number of reasons for their objections. Wisconsin, NAGHSR and Michigan, for example, thought a one-year hard license suspension could result in financial hardships to some offenders, particularly those who live in rural communities. According to comments from both NAGHSR and Michigan, "Rural offenders would be especially adversely impacted since they may not be able to arrange for alternative means of transportation during such an extended period." In addition, Delaware, Wisconsin and Michigan suggested that, ultimately, this strict requirement might have the unintended effect of, as Delaware put it, offering some offenders with "no alternatives" and encouraging them to drive without a valid license. These commenters all seem to agree that repeat intoxicated drivers should be subject to a one-year driver's license suspension that includes some period of hard suspension, but they suggested hard suspension periods of less than one year, such as 30 or 60 days.

Further, NAGHSR asserted that it had "found nothing in the legislative history of [section 164] which would support the need for a one-year hard license suspension." In addition, Michigan stated that it thought it "unlikely that any State will be in compliance with the provision" and NAGHSR predicted that "few State legislatures will be willing to enact [conforming] legislation."

The agencies do not share the concerns that were expressed in these comments. Regarding the agencies' authority to include in the regulations a one-year hard driver's license suspension requirement, the agencies have determined that inclusion of this requirement is not only supported by section 164's legislative history, but is required by the plain language of the statute itself. The statute provides specifically that State laws must provide, "as a minimum penalty, that [repeat intoxicated drivers] * * * shall receive a driver's license suspension for not less than 1 year" and the statute defines the term "license suspension" to mean "the suspension of *all* driving privileges." [Emphasis added.]

Regarding the predictions that few, if any, States would enact conforming legislation, we note that, to date, 23 States and the District of Columbia have laws that NHTSA has determined meet all the section 164 requirements and at least 11 additional States meet the one-year hard driver's license suspension criterion, although they do not meet all the requirements of the section 164 program. We note also that, although they objected initially to this criterion in their comments to the interim final rule, Michigan and Utah are two of the States whose laws have been determined to comply fully with section 164, including the one-year hard license suspension requirement.

Regarding the comments that suggest that a one-year hard license suspension could result in financial hardships to some offenders, particularly those who live in rural communities, the agencies note that the research that has been performed in this area does not support that conclusion. Although the research to date has not studied the impact of hard suspensions of a full one-year period, there has been research that found that hard suspensions of a shorter length of time did not have an impact at all on an offender's employment. In a 1996 study of three States with administrative license revocation programs, for example, researchers found that 94% of the offenders who were employed at the time of arrest were still working after a one-month revocation period. The researchers found also that the percentage of offenders still employed one month after arrest was the same in comparison States that did not apply a license revocation sanction. Moreover, the agencies note that many of the States with conforming laws contain regions that are rural in nature. Some of the States with conforming laws include Alabama, Arizona, Iowa, New Hampshire, Oregon and Utah.

The agencies recognize, as the commenters do, that many offenders who are subject to license suspensions or revocations operate motor vehicles anyway, without a valid license. As we noted in the interim final rule, some studies have found that as many as 70 percent of all repeat offenders continue to drive even after their driver's licenses have been suspended or revoked.

However, the agencies do not believe that the elimination or even the reduction of driver licensing sanctions is the best remedy for this problem. We believe that Congress hoped that States would address that concern instead by enacting strong vehicle sanctions, including those outlined in the second criterion of the section 164 program (and discussed in greater detail below), such as by impounding or immobilizing the motor vehicles owned by the offender during the suspension or revocation period. In addition, States are encouraged, under NHTSA's Section 410 program, to establish separate vehicle sanctions for offenders who operate a motor vehicle while their license is under suspension or revocation.



For the reasons discussed above, this portion of the interim regulations has been adopted without change.

2. Impoundment or Immobilization of, or the Installation of an Ignition Interlock System, on Motor Vehicles

Section 164 provides that, to avoid the transfer of funds, the State must have a law that requires the impoundment or immobilization of, or the installation of an ignition interlock on, each motor vehicle owned by the repeat intoxicated offender.

The term "impoundment or immobilization" was defined in the interim regulations to mean "the removal of a motor vehicle from a repeat intoxicated driver's possession or the rendering of a repeat intoxicated driver's motor vehicle inoperable," and the agencies indicated that the definition would also include "the forfeiture or confiscation of a repeat intoxicated driver's motor vehicle or the revocation or suspension of a repeat intoxicated driver's motor vehicle license plate or registration." The agencies defined the term "ignition interlock system" in the interim regulations to mean "a State-certified system designed to prevent drivers from starting their [motor vehicles] when their breath alcohol concentration is at or above a preset level."

The interim final rule explained that the State law does not need to provide for all three types of penalties to comply with this criterion, but it must require that at least one of the three penalties will be imposed on all repeat intoxicated drivers for the State to avoid the transfer of funds.

The interim final rule also specified that, to comply with the interim regulations, the State law must require that the impoundment or immobilization must be imposed during the one-year suspension period, or that the ignition interlock be installed at the conclusion of the suspension period. The interim regulations did not specify the length of time during which these penalties must remain in effect.

The impoundment, immobilization or ignition interlock criterion is the most complex of the section 164 requirements. Accordingly, it is not surprising that it generated the most comments. Every respondent that submitted comments in response to the interim final rule addressed at least some aspect of this requirement. The comments received regarding this criterion and the agencies' responses to them are discussed in detail below.

a. *Mandatory Penalty.* The agencies explained, in the preamble to the interim final rule, that the State law does not need to provide for all three types of penalties to comply with this criterion, but it must require that at least one of the three penalties will be imposed on all repeat intoxicated drivers, for the State to avoid the transfer of funds. Later in the interim rule, when describing the time frame for these three penalties, the agencies stated that the State law must require that the impoundment or immobilization be imposed during the one-year suspension term, and that the ignition interlock system be installed at the conclusion of the one-year term. These statements generated four comments regarding the mandatory nature of this criterion.

AAMVA and the State of North Dakota objected to the statement that the State law must "require that at least one of the three penalties will be imposed." They asserted that the impoundment, immobilization or ignition interlock sanctions need only "be available" or that they "may" be imposed. These commenters did not believe that these sanctions "must" be imposed. The agencies disagree. Section 164 provides for four minimum penalties, and we find that there is nothing in either the statutory language or the legislative history to suggest that three of the penalties are mandatory and the fourth (the impoundment, immobilization or ignition interlock requirement) is optional.

The commenters seem to base their assertion on the fact that the statute provides that State laws must require that repeat intoxicated drivers must "receive" license suspensions, minimum sentences and assessment and treatment, while the statute provides that they must "be subject to" the impoundment, immobilization or ignition interlock requirement. The agencies conclude that the difference in language in this provision does not signify any difference in the mandatory nature of the requirement, but is simply a grammatical device used, since an offender may "receive" a suspension, a sentence, an assessment and treatment, but an offender would not "receive" an impoundment, immobilization or ignition interlock installation. Rather the offender is "subject to" these sanctions when the sanctions are applied to the offender's vehicles. The agencies continue to conclude that, to avoid a sanction, the State law must require that at least one of these three penalties must be imposed on all repeat intoxicated drivers.

The State of Nevada objected to the statement in the interim final rule that "the State law must require that the impoundment or immobilization be imposed during the one-year suspension term, *and* that the ignition interlock system be installed at the conclusion of the one-year term." [Emphasis added.] Nevada thought this statement was meant to signify that States must impose the impoundment or immobilization penalty (during the license suspension period) *and also* the ignition interlock penalty (at the end of the suspension period).

However, this was not the meaning that the agencies had intended to convey. Rather, the statement was included simply to clarify the time frames for each of these sanctions. Regarding the mandatory nature of these sanctions, the agencies believe the plain language in the interim regulations is clear. It provides, "to avoid the transfer of funds * * *, a State must enact and enforce a law that establishes that all repeat intoxicated drivers shall * * * be subject to either * * * the impoundment * * *, immobilization * * * or ignition interlock [sanction]." In addition, as the agencies explain in the preamble to the interim final rule, "the State law does not need to provide for all three types of penalties to comply with this criterion, but it must require that at least one of the three penalties will be imposed." Since the statement which Nevada found ambiguous was in the preamble to the rule, and not the interim regulations themselves, no regulatory changes are needed in this final rule to clarify this statement.

Moreover, we note that no other commenters interpreted the interim final rule in this way. Advocates, for example, stated in its comments, "The agencies appropriately analyzed the distinct purposes of these sanctions, and correctly noted that section 164 requires the imposition only of one sanction since they are set forth disjunctively in the statute."

Accordingly, no changes to the interim regulations have been adopted in response to these comments.

b. *Timing of the Sanctions.* In the interim final rule, the agencies explained that Section 164 does not specify when a State must impose the impoundment or immobilization of, or the installation of an ignition interlock system on, motor vehicles. Therefore, to determine when these penalties must be imposed, the agencies considered the purpose of the three penalties.

The agencies recognized in the interim rule that the purpose of an impoundment or immobilization sanction is very different from that of the installation of an ignition interlock system. We explained that, when an individual convicted of driving while intoxicated is subject to a driver license suspension, it is expected that the

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individual will not drive for the length of the suspension term. However, some studies have found that as many as 70 percent of all repeat offenders continue to drive even after their driver's licenses have been suspended or revoked.

Accordingly, the agencies concluded that the laws that provide for the impoundment or immobilization of motor vehicles are designed to ensure that driver's license suspension sanctions are not ignored. They seek to prevent offenders from driving vehicles while their driver's licenses are under suspension.

The agencies explained in the interim final rule that laws that provide for the installation of an ignition interlock system on a motor vehicle, on the other hand, are not designed to prevent the individual from driving. Such laws generally provide that these systems will be installed on a motor vehicle once the individual's driver's license has been restored. The agencies stated that these laws recognize that many individuals convicted of driving while intoxicated have difficulty controlling their drinking. Accordingly, they are designed to prevent individuals, once they are permitted to drive again, from drinking and driving.

Based on the nature of these penalties, the agencies decided in the interim final rule not to adopt a uniform time frame for these three penalties. Instead, the interim regulations provided that the State law must require either the impoundment or immobilization of the offender's vehicles during the one-year suspension term or the installation of an ignition interlock system at the conclusion of the suspension. The interim regulations did not specify the length of time during which these penalties must remain in effect.

The agencies received a number of comments regarding these features of the interim regulations.

Some of the comments expressed support for these aspects of the interim regulations. For example, Advocates stated, "the agencies accurately recognize that impoundment or immobilization are sanctions that should be imposed concurrently with a one-year suspension, whereas the ignition interlock would logically apply after the suspension is completed." However, most of the comments received by the agencies were critical of these aspects of the interim rule.

Regarding the application of impoundment or immobilization sanctions, many of the commenters were troubled that the interim regulations did not establish a minimum length of time for these penalties. NCSL, NAGHSR and the State of Michigan, for example, were concerned that a State could comply with this requirement by impounding or immobilizing a vehicle for a single day, and MADD and LifeSafer ventured that a State may even be able to comply by impounding or immobilizing a vehicle for only an hour. Some of the commenters specified a minimum period of time that would be appropriate, such as 30 days, which was suggested by MADD and Dr. Voas, or 15–30 days, which was suggested by LifeSafer.

Some of the commenters also suggested that the impoundment or immobilization sanction should be imposed quickly, to maximize the impact of these sanctions and to prevent offenders from transferring their vehicles. MADD, LifeSafer and Dr. Voas, for example, urged the agencies to require that such sanctions occur immediately, at the time of the offender's arrest.

Regarding the installation of ignition interlock devices, many of the commenters objected to the requirement that ignition interlock devices must be installed at the conclusion of the one-year driver's license suspension. LifeSafer asserted that these devices have been shown to be effective and predicted that a one-year delay would greatly curtail their use. NCSL and the State of Michigan thought it was unlikely that any State would adopt the ignition interlock sanction under these conditions. MADD asserted that, "the longer the ignition interlock device remains on the offender's vehicle, the more effective it is in changing his or her behavior and increasing the likelihood of reducing recidivism." Accordingly, MADD suggested that ignition interlock devices should be installed at the time of arrest and should remain on the offender's vehicle for a minimum period of one year following license reinstatement.

The agencies have decided not to change the regulations in response to these comments. As the agencies explained in the interim final rule, while section 164 required that State laws must provide for the impoundment or immobilization of, or the installation of an ignition interlock device on, motor vehicles, the statute was silent regarding the timing of these sanctions. Section 164 did not specify the length of time that these sanctions must remain in effect, or require that these sanctions must take place immediately at the time of arrest.

Moreover, the use of these sanctions is still a relatively new development in the field of impaired driving countermeasures. The agencies do not believe there are currently sufficient research findings to dictate a minimum period of time for these sanctions, in the absence of statutory direction. In addition, while States may choose to require the imposition of these sanctions at the time of the offender's arrest as part of their programs, the agencies do not believe we have sufficient information, in the absence of statutory direction, to make this a condition of compliance. Plus, we do not want to stifle innovation. The rule has been drafted, within the framework of the statute, to provide States with as much flexibility as possible, to enable them to establish the terms for conducting their programs in ways that are most appropriate under their own statutory schemes.

While a number of the commenters were concerned that States would be able to qualify under this criterion by impounding or immobilizing vehicles for only a day or even an hour, the agencies note that, to date, 11 States and the District of Columbia have demonstrated compliance with this section 164 criterion based on an impoundment or immobilization law, and no State law provides that vehicles (or the license plate or registration) will be impounded or immobilized for such an insignificant period of time. Although two States provide for a five-day minimum and one State requires a 30 day minimum impoundment or immobilization, all other States and the District of Columbia require that the impoundment or immobilization remain in effect for the duration of the license suspension or for a minimum of at least one year.

Regarding the installation of ignition interlock devices, the agencies recognize that a significant number of offenders continue to drive even after they lose their driving privileges, and that many of them choose not to reapply for a license even once they become eligible to do so. We recognize also that ignition interlock devices have been shown to be effective at reducing the incidence of impaired driving during their use. Accordingly, the agencies appreciate the sentiments expressed by a number of the commenters, who suggested that strategies be used to create an incentive for repeat offenders to drive only with a valid license and not to drink and drive. These commenters recommended that we permit States to restore restricted driving privileges to repeat intoxicated drivers and install ignition interlock devices on their vehicles prior to the completion of a one-year hard license suspension.

However, the agencies continue to conclude that such a strategy is not permitted under section 164, since the statute specifically provides under the first criterion (discussed in detail above) that State laws must require that repeat intoxicated drivers receive a one-year suspension of *all* their driving privileges. In addition, we find that, while the installation of ignition interlocks has been shown to reduce the incidence of drinking and driving, other strategies (such as impoundment, immobilization or strict driving while suspended laws) may be more appropriate when seeking to prevent offenders whose licenses have been suspended from getting behind the wheel of a vehicle during their periods of suspension.

Morever, we note that, if States choose to install ignition interlock devices on offenders' vehicles prior to the end of the one-year license suspension, as an extra measure of protection against impaired driving, even though the offender should not be driving at all, the regulations will not prevent the States from doing so. However, to satisfy the one-year license suspension criterion of section 164, such States may not restore to these offenders any driving privileges during the one-year period. In addition, to satisfy the impoundment, immobilization or ignition interlock criterion of section 164, the ignition interlock devices must remain on the offenders' vehicles for some period of time after the license suspension has ended.

While some commenters were concerned that States would not be willing to adopt a law that provides for the installation of ignition interlock devices under the conditions established in the interim regulations, the agencies note that, to date, 12 States have demonstrated compliance with this section 164 criterion based on an ignition interlock law.

For all of the reasons discussed above, the agencies have adopted this portion of the interim regulations without change.

c. *All Vehicles Owned by the Offender.* The agencies indicated in the interim final rule that, in order to qualify under this criterion, each motor vehicle owned by the repeat intoxicated driver must be subject to one of the three penalties.

A number of comments were submitted to the agencies objecting to this feature of the rule. The comments raised two types of concerns. Some considered this requirement to be overly broad; others considered its scope not to be broad enough.

The commenters who considered the requirement to be overly broad called it "unreasonably severe," "unjustified" and "counter productive." Dr. Hedlund of Highway Safety North, for example, explained that "State impoundment and immobilization laws typically apply to a single vehicle (the vehicle driven by the offender when the offense was committed), not to all vehicles owned by the offender" and that "State interlock programs typically require the offender to install an interlock on his (or her) primary vehicles and require the offender to drive only that vehicle."

Dr. Hedlund, LifeSafer, NAGHSR and others expressed concern that such a strict application of this requirement could prove to be a disincentive to its adoption and use. In addition, the State of Wisconsin questioned whether the impoundment or seizure of all vehicles owned by an offender would raise constitutional issues. As an alternative, LifeSafer recommended that the ignition interlock sanction should be "tied" to the offender's license, rather than to the vehicles owned by the offender (*i.e.*, as a license restriction that provides that the offender may drive only vehicles on which ignition interlocks are installed). Finally, NAGHSR asserted that "nothing in the legislative history of this provision indicates that Congress intended the sanctions to apply to every vehicle owned by the offender."

Regarding the agencies' authority to require that these sanctions apply to every vehicle owned by the offender, the agencies have determined that inclusion of this requirement is not only supported by section 164's legislative history, but is required by the plain language of the statute itself. Section 164 provides specifically that repeat intoxicated offenders must "be subject to the impoundment or immobilization of *each of the individual's motor vehicles* or the installation of an ignition interlock system on *each of the motor vehicles* [emphasis added]."

The agencies believe Congress established these requirements because, for repeat offenders, taking his or her vehicle at the time of arrest and placing an ignition interlock restriction on the offender's license may not be enough. Congress wanted to do more than get the attention of these offenders. Congress wanted States to take steps to prevent repeat intoxicated drivers from driving at all during their license suspension or from drinking and driving once their licenses were returned. If one of the offender's vehicles has been impounded or immobilized, but another vehicle is available at home, or if one of the offender's vehicles is fitted with an ignition interlock device and another is not, these objectives may not be achieved.

Moreover, the agencies note that, to date, 25 States and the District of Columbia have been determined to comply with this criterion, by applying either an impoundment, immobilization or the installation of ignition interlock devices on all motor vehicles owned by repeat intoxicated drivers.

The commenters who considered the requirement not to be broad enough were concerned that offenders could avoid these sanctions by using a variety of "loopholes." Dr. Hedlund of Highway Safety North, MADD and the State of Michigan, for example, were concerned that offenders could transfer title to their vehicles after arrest and prior to conviction; the State of Wisconsin suggested that offenders could register vehicles using the names of friends or family members, or other aliases; and MADD was concerned that offenders could operate vehicles that are "owned" by other people.

Section 164 did not require that State laws address these particular issues, and the agencies have not expanded this criterion by adding any such requirements. The agencies note, however, that some States have enacted laws that surpass the minimum requirements established in section 164, and include provisions that have the potential to "close" some of these "loopholes." Some States, for example, apply their vehicle sanctions not only to vehicles "owned" by the repeat offender, but also to vehicles "operated" by such offender. Other State laws contain provisions that specifically prohibit offenders from transferring title to their vehicles. States that choose to include in their laws similar provisions, which exceed the section 164 requirements, are able (and encouraged) to do so, but such provisions are not necessary for the State to demonstrate compliance with the impoundment, immobilization or ignition interlock criterion.

For the reasons discussed above, this portion of the interim regulations has been adopted without change.

d. *Exceptions Permitted.* In the interim final rule, the agencies explained that, consistent with past practices under the section 410 program, the agencies will permit States to provide limited exceptions to the impoundment or immobilization requirements on an individual basis, to avoid undue hardship to an individual, including a family member of the repeat intoxicated driver, or a co-owner of the motor vehicle, but not including the repeat intoxicated driver. However, the agencies decided not to permit an exception to the installation of the ignition interlock system requirement.

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The interim final rule explained that the agencies believe that an exception to the requirement that an ignition interlock system be installed is not necessary, since the requirement does not prevent a motor vehicle from being available for others dependent on that vehicle. It only prevents an individual from operating the vehicle under the influence of alcohol.

Comments regarding this portion of the interim regulations suggested that additional exceptions should be permitted. NAGHSR, NCSL and the States of Delaware, Michigan and Wisconsin emphasized that the imposition of an impoundment or immobilization or the installation of ignition interlock devices can be very costly to offenders and their families. Not only do these sanctions cause vehicles to be unavailable, but there are also administrative costs associated with the sanctions. The commenters asserted that these costs can result in an undue financial hardship for many families.

In addition, NAGHSR and LifeSafer both asserted that there is a need for an employer exception. LifeSafer explained that, in States where the ignition interlock device is tied to a restriction on the license, States "have recognized the need for an employer exemption that allows the offender to operate an employer vehicle in the course and scope of employment without the [ignition interlock device]" so long as certain conditions are met. LifeSafer states that the exemption is necessary "to avoid undue hardship on an employer."

NAGHSR and LifeSafer indicated that the employer exception they seek is needed if the ignition interlock device is tied to a restriction on the offender's license. Since section 164 requires that the installation of ignition interlocks must be tied to all vehicles owned by the offender, and not to the offender's driver's license, the agencies believe the employer exception sought by NAGHSR and LifeSafer is not needed. Accordingly, the agencies have not added an employer exception to the regulations.

Based on the concerns raised in the comments regarding the financial hardship that families may suffer due to the administrative expenses that may be imposed in connection with the installation of ignition interlock devices on each vehicle owned by the offender, however, the agencies have reconsidered their decision to not permit a hardship exception to the ignition interlock sanction.

Accordingly, the interim regulations have been modified in this final rule to add an exception to the ignition interlock requirement. A State may provide an exception to the ignition interlock requirement for financial hardship, provided the State law requires that the offender may not drive a vehicle without an ignition interlock system, such as by requiring that a restriction be placed on the offender's license.

To ensure that the availability of these exceptions do not undermine the impoundment, immobilization or ignition interlock requirements, exceptions must be made in accordance with Statewide published guidelines developed by the State, and in exceptional circumstances specific to the offender's motor vehicle.

e. *Other Comments Related to the Sanctions.* The interim regulations provided that "impoundment or immobilization" included "the removal of a motor vehicle from a repeat intoxicated driver's possession or the rendering of a repeat intoxicated driver's motor vehicle inoperable." The interim regulations provided that these terms include also "the forfeiture or confiscation of a repeat intoxicated driver's motor vehicle or the revocation or suspension of a repeat intoxicated driver's motor vehicle license plate or registration."

LifeSafer objected to this aspect of the interim regulations. According to LifeSafer, "physically revoking the license plate or canceling the registration is not anywhere near as strong a message of physically taking or rendering incapable the operation [of] a motor vehicle. Secondly, the sanction is rendered ineffective because another license plate can be quickly obtained or transferred from another vehicle or the vehicle re-registered under another name."

The agencies find, based on studies conducted in Minnesota and Ohio, that the research demonstrates that the revocation or suspension of vehicle registrations and license plates is an effective sanction. In fact, NHTSA has encouraged States to impose such a sanction on repeat offenders and individuals who drive with a suspended driver's license, under its section 410 program since 1992. Moreover, the agencies are not aware of any research findings that demonstrate a significant difference in effectiveness between the impoundment or immobilization of a motor vehicle as compared with the revocation or suspension of a vehicle registration or license plate. In the absence of any such findings, the agencies prefer to provide the States with some flexibility in this regard.

Finally, NAGHSR recommended in its comments that ignition interlocks should be used as part of a comprehensive, interrelated system, such as one under which the driver's license of the offender is suspended and the offender's vehicle is impounded or immobilized for a short period (*e.g.*, 15–30 days), at the time of arrest. Once that period of time passes, limited driving privileges are restored, the vehicle may be reclaimed and an ignition interlock is installed. Then, when the offender participates and completes treatment, the ignition interlock is removed.

The agencies appreciate the objectives that NAGHSR seeks to meet by suggesting such an approach, and we note that States may take this type of approach, if they wish to do so, when fashioning sanctions for first offenders. However, as stated previously in this final rule, such an approach would not be permitted under section 164 for repeat offenders. Under such an approach, a repeat intoxicated driver would be permitted to receive driving privileges during the initial one-year driver's license suspension period, and the statutory language contained in section 164 specifically requires that *all* driving privileges must be suspended for a period of one year. Accordingly, the agencies are unable to address this comment without an amendment to the underlying statute.

Accordingly, no changes will be made to the interim regulations in response to these particular comments.

3. An Assessment of Their Degree of Alcohol Abuse, and Treatment as Appropriate

Section 164 provides that, to avoid the transfer of funds, the State must have a law that requires that all repeat intoxicated drivers must receive "an assessment of the individual's degree of abuse of alcohol and treatment as appropriate." In the interim final rule, the agencies specified further that the State's law must require that all repeat intoxicated drivers must undergo an alcohol assessment and the law must authorize the imposition of treatment as appropriate.

The agencies received comments regarding this criterion from LifeSafer, NAGHSR, MADD, the State of Delaware and Dr. Voas. Both NAGHSR and LifeSafer indicated that they are aware that there are some States that provide for mandatory treatment of repeat intoxicated offenders, but may not require that these offenders be assessed. In their view, since the treatment is provided automatically, these States should be considered to be fully in compliance with the assessment and treatment requirement.



It is the view of the agencies that, if a State provides for mandatory treatment of repeat intoxicated offenders and the State's mandatory treatment program includes a mandatory assessment component, such a program will enable the State to demonstrate compliance with the section 164 assessment and treatment criterion. If assessments are not conducted of all repeat offenders as part of such a program, however, the agencies will find that the State's program does not fully comply. This decision is based on the agencies' conclusion that the purpose of the assessment is to determine not only whether an offender should undergo treatment, but also what type and level of treatment is appropriate for that offender. Programs that assign treatment to offenders without first assessing the needs of those offenders may be ineffective in resolving any alcohol abuse problems that the offenders may have. The agencies note that, in addition to the District of Columbia and the 23 States that meet all of the section 164 requirements, at least 10 additional States meet the assessment and treatment criterion.

The agencies received comments also from MADD, the State of Delaware and Dr. Voas regarding this criterion. According to their statements, these commenters do not believe the agencies went far enough in the interim regulations when we provided that the State's law "must authorize the imposition of treatment as appropriate." These commenters urged the agencies instead to require that States make treatment mandatory. MADD, for example, stated that, "while the rule requires mandatory alcohol assessment, there is no requirement that treatment is mandatory even when the results of the assessment calls for treatment." Dr. Voas explained why he thought such a requirement should be adopted. He asserted that "the value of assessment is entirely dependent on the offender receiving the treatment."

As the agencies indicated in the interim final rule, there is a wide array of programs and activities that can be used to treat offenders who have alcohol abuse problems. Because of the many options available, the agencies believe it would be difficult to establish a specific requirement in the regulations that would have meaning, and also provide the States and their judicial systems with the flexibility they need to have the greatest impact.

In his comments, Dr. Voas took particular issue with a statement that was included in the preamble to the interim final rule, in which the agencies said that, "to qualify under this criterion, the State law must make it mandatory for the repeat intoxicated driver to undergo an assessment, but the law need not impose any particular treatment (or any treatment at all)." The agencies wish to clarify that, the agencies did not mean to imply by this statement that States should not refer individuals to treatment if treatment is warranted. Since the Section 164 requirements provide that all repeat intoxicated drivers must be assessed, we trust that the court systems will refer those offenders to treatment when warranted, and that offenders will be referred to the treatment that is most appropriate. Since the statement to which Dr. Voas objected was in the preamble to the rule, and not the interim regulations themselves, no regulatory changes are needed in this final rule to clarify this statement.

For the reasons discussed above, this portion of the interim regulations has been adopted without change.

4. Mandatory Minimum Sentence

Section 164 provides that, to avoid a transfer of funds, the State must have a law that imposes a mandatory minimum sentence on all repeat intoxicated drivers. For a second offense, the law must provide for a mandatory minimum sentence of not less than five days of imprisonment or 30 days of community service. For a third or subsequent offense, the law must provide for a mandatory minimum sentence of not less than ten days of imprisonment or 60 days of community service.

The agencies explained in the interim final rule that, consistent with NHTSA's administration of the section 410 program, the term "imprisonment" has been defined to include "confinement in a jail, minimum security facility, community corrections facility, * * * inpatient rehabilitation or treatment center, or other facility, provided the individual under confinement is in fact being detained." In addition, we indicated in the interim final rule that house arrests would be included within the definition of "imprisonment" under the section 164 program, provided that electronic monitoring is used.

We received five comments in response to the interim final rule regarding this criterion. Most of the comments received related to the agencies' decision to include house arrests within the definition of imprisonment.

MADD and Dr. Voas objected to its inclusion. They argued that a house arrest for a period of only five or ten days is not a sufficiently strong penalty. MADD, for example, asserted "House arrest does not carry with it the specific deterrence or social stigma that incarceration in a jail facility does." According to MADD, such a penalty "will have little or no impact on reducing recidivism which is the very purpose of this legislation."

Conversely, LifeSafer, NAGHSR and Advocates supported the inclusion of house arrest, coupled with electronic monitoring, within the definition of the term imprisonment. LifeSafer "applauded" this decision based on its belief that "jail is the least effective sanction to reduce recidivism, States have severe jail overcrowding problems * * * [and] studies which indicate electronic monitoring has an impact greater than jail on reducing recidivism." NAGHSR called this aspect of the interim rule the "most positive attribute of the interim final regulations." According to Advocates, "although the historic use of the word imprisonment entails confinement in a traditional prison facility, we agree with the agencies that non-traditional approaches and the use of technological advancements should be utilized in attempt to make inroads against repeat intoxicated offenders. In this regard it is clear that courts are using home confinement and monitoring as an alternative means of detaining criminal offenders."

As noted in the interim final rule, recent NHTSA research seems to indicate that house arrests are effective if they are coupled with electronic monitoring. While the agencies recognize that the periods of house arrest studied tended to be longer than five or ten days, we consider this alternative means of detaining offenders to be a promising strategy that should not be stifled under the provisions of these regulations. Accordingly, the agencies have decided to continue to permit States to use house arrest, coupled with electronic monitoring, in lieu of other confinement methods.

Dr. Voas suggested in his comments that, if the use of house arrest is permitted under the regulations, the State should extend the period of detention from five or ten days to a period of 90 days. The agencies do not find authority for establishing such an alternative length of time in the section 164 statute. Accordingly, we have not adopted this change in the regulations.

Finally, NCSL pointed out that many States have, over the years, enacted mandatory minimum sentences for repeat intoxicated drivers, in response to the Federal requirements that were established in the section 410 program.

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However, since section 164 requires States to establish a longer mandatory sentence (five and ten days, rather than 48 hours), even these States will need to enact new legislation. The agencies agree with NCSL's observation. However, these longer sentencing requirements are dictated by the statute.

This portion of the interim regulations has been adopted without change.

*E. Certifications*

The interim final rule provided that, to avoid a transfer of funds, each State must submit a certification demonstrating compliance with the four section 164 criteria, which includes citations to all applicable provisions of their laws, as well as regulations or case law, as needed. The certifications must also assert that the State is enforcing its law. According to the interim final rule, once a State has been determined to be in compliance with the section 164 requirements, the State would not be required to resubmit certifications in subsequent fiscal years, unless the State's law had changed or the State had ceased to enforce its repeat intoxicated driver law. The interim final rule provided that it is the responsibility of each State to inform the agencies of any such change in a subsequent fiscal year, by submitting an amendment or supplement to its certification.

The interim final rule provided further that, to avoid a transfer in FY 2001, the agencies must receive a State's certification no later than September 30, 2000, and the certification must indicate that the State "has enacted and is enforcing a repeat intoxicated driver law that conforms to 23 U.S.C. 164 and [the agencies' implementing regulations]." States found in noncompliance with the requirements in any fiscal year, once they have enacted complying legislation and are enforcing the law, must submit a certification to that effect before the following fiscal year to avoid a transfer of funds in that following fiscal year. The interim rule indicated that such certifications must be submitted by October 1 of the following fiscal year.

In its comments in response to the interim final rule, Advocates recommended that States should be required to submit more than a certification to demonstrate that they are enforcing their repeat intoxicated driver laws. Advocates stated, "while the agencies need not require burdensome evidence of such enforcement, some indicia that a good faith effort is being made to enforce the repeat offender law should be sought. Since convictions and penalties imposed under such a law are relatively simple to establish through computerized records, the agencies can require some indicia as to the level of state enforcement without imposing significant burdens on the states."

The agencies have not adopted this change. While there may be information in computerized records that States would be able to compile and submit to the agencies, we are uncertain how such a sufficient "level of enforcement" would be defined. Moreover, we find that the benefit of such a reporting requirement would not justify the effort that would be required.

Although the agencies did not receive any comments regarding the dates by which certifications must be submitted, we have concluded that this feature of the regulations requires clarification. The interim final rule provided that conforming certifications were due by September 30 to avoid a transfer of funds in FY 2001, and that certifications from States that did not previously comply with section 164 were due by October 1 to avoid a transfer of funds in subsequent fiscal years. To avoid confusion, the agencies have concluded that the same date should apply in any fiscal year. Accordingly, the regulations have been changed to provide that, to avoid a transfer of funds in FY 2001 or in any subsequent fiscal year, States will be required to submit certifications by September 30.

In addition, some States enacted conforming laws prior to September 30, 2000, but their new laws will not be effective until the next day, on October 1, 2000. The interim rule, which requires States to assert that they are already enforcing their laws on September 30, did not anticipate this occurrence. The agencies have determined that a conforming law that becomes effective on October 1 will enable a State to avoid a transfer of funds on that date. Accordingly, the agencies have amended the regulations to enable these States to certify that they have enacted a repeat intoxicated driver law that conforms to 23 U.S.C. 164 and the agencies' implementing regulations, and that the law will become effective and be enforced by October 1 of the following fiscal year.

*F. Transfer of Funds*

As explained in the interim final rule, section 164 provides that the Secretary must transfer a portion of a State's Federal-aid highway funds apportioned under sections 104(b)(1), (3), and (4) of Title 23 of the United States Code, for the National Highway System, Surface Transportation Program and Interstate System, to the State's apportionment under section 402 of that title, if the State does not meet certain statutory requirements.

The interim rule indicated that, in accordance with the statute, the amount to be transferred from a non-conforming State will be calculated based on a percentage of the funds apportioned to the State under each of sections 104(b)(1), (3) and (4). However, the actual transfers need not be drawn evenly from these three sources. The transferred funds may come from any one or a combination of the apportionments under sections 104(b)(1), (3) and (4), as long as the total amount meets the statutory requirement.

One commenter noted that the interim rule did not specify which State agency has authority to decide from which category funds should be transferred. The agencies believe that, because the decision concerning which of the three highway apportionments should lose funds solely affects State Department of Transportation (DOT) programs, the State DOT should have authority to inform the FHWA of any changes in distribution. The agencies have added language to the final rule, in the section on Transfer of Funds, indicating that on October 1, the FHWA will make the transfers based on a proportionate amount, then the State's Department of Transportation will be given until October 30 to notify the FHWA if they would like to change the distribution among sections 104(b)(1), (3) and (4).

The interim rule indicated that the funds transferred to section 402 could be used for alcohol-impaired driving countermeasures or directed to State and local law enforcement agencies for the enforcement of laws prohibiting driving while intoxicated, driving under the influence or other related laws or regulations. In addition, the interim final rule indicated that States may elect to use all or a portion of the transferred funds for hazard elimination activities under 23 U.S.C. 152.

NAGHSR, Michigan, Delaware and NCSL noted that the interim final rule did not specify which State agency has the authority to determine how transferred funds should be used. NAGSHR stated that "it is unclear whether these decisions are state department of transportation decisions, state highway safety office decisions, or both." Michigan suggested that "it should be made clear that all affected state agencies are to participate, and that states' decisions may be guided by the traffic safety benefit returned by the investment."

The agencies have determined that all of the affected State agencies should participate in deciding how transferred funds should be directed. Accordingly, the agencies have added language to the section on Use of Transferred Funds specifying that both the State DOT, which will "lose" the funds, and the State Highway Safety Office (SHSO), which will "gain" the funds must decide jointly.

The State DOT and SHSO officials will provide written notification of their funding decisions to the agencies, within 60 days of the transfer, identifying the amounts of apportioned funds to be obligated to alcohol-impaired driving programs, hazard elimination programs, and related planning and administration costs allowable under section 402. This process will permit account entries to be made. Joint decision making by the DOT and SHSO is the same process required by NHTSA and the FHWA for other TEA 21 programs in which Congress authorized flexible highway safety/highway construction funding choices—the section 157 Seat Belt Use Incentive Grant Program, the section 163.08 BAC *Per Se* Incentive Program and the section 154 Open Container Transfer Program.



## IV. Regulatory Analyses and Notices

*A. Executive Order 12778 (Civil Justice Reform)*

This final rule will not have any preemptive or retroactive effect. The enabling legislation does not establish a procedure for judicial review of final rules promulgated under its provisions. There is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceedings before they may file suit in court.

*B. Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures*

The agencies have determined that this action is not a significant action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation Regulatory Policies and Procedures. States can choose to enact and enforce a repeat intoxicated driver law, in conformance with Pub. Law 105–206, and thereby avoid the transfer of Federal-aid highway construction funds. Alternatively, if States choose not to enact and enforce a conforming law, their funds will be transferred, but not withheld. Accordingly, the amount of funds provided to each State will not change.

In addition, the costs associated with this rule are minimal and are expected to be offset by resulting highway safety benefits. The enactment and enforcement of repeat intoxicated driver laws should help to reduce impaired driving, which is a serious and costly problem in the United States. Accordingly, further economic assessment is not necessary.

*C. Regulatory Flexibility Act*

In compliance with the Regulatory Flexibility Act (Pub. Law 96–354, 5 U.S.C. 601–612), the agencies have evaluated the effects of this action on small entities. This rulemaking implements a new program enacted by Congress in the TEA 21 Restoration Act. As the result of this new Federal program and the implementing regulations, States will be subject to a transfer of funds if they do not enact and enforce repeat intoxicated driver laws that provide for certain specified mandatory penalties. This final rule will affect only State governments, which are not considered to be small entities as that term is defined by the Regulatory Flexibility Act. Thus, we certify that this action will not have a significant impact on a substantial number of small entities and find that the preparation of a Regulatory Flexibility Analysis is unnecessary.

*D. Paperwork Reduction Act*

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. Chapter 35, as implemented by the Office of Management and Budget (OMB) in 5 CFR part 1320.

*E. National Environmental Policy Act*

The agencies have analyzed this action for the purpose of the National Environmental Policy Act, and have determined that it will not have a significant effect on the human environment.

*F. The Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (Pub. Law 104–4) requires agencies to prepare a written assessment of the costs, benefits and other effects of final rules that include a Federal mandate likely to result in the expenditure by the State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. In the interim final rule, the agencies indicated that the section 164 program did not meet the definition of a Federal mandate, because the resulting annual expenditures were not expected to exceed $100 million and because the States were not required to enact and enforce a conforming repeat intoxicated driver law.

NCSL asserted that the rule will result in an unfunded mandate. It stated that "the total cost to the states to enforce these repeat offender laws will exceed one hundred million dollars in cost." NCSL noted that the UMRA requires agencies to prepare a written assessment of the anticipated costs and benefits of any unfunded Federal mandate and that NHTSA failed to do so. NCSL asserted also that NHTSA failed to consult with State officials to determine the financial and political ramifications of this regulatory proposal.

The agencies have determined that the rule will not result in an unfunded mandate because the section 164 program is optional to the States. States may choose to enact and enforce a conforming repeat intoxicated driver law and avoid the transfer of funds altogether. Alternatively, if States choose not to enact and enforce a conforming law, funds will be transferred, but no funds will be withheld from any State. Moreover, the agencies do not believe that the resulting cost to States from implementing conforming laws will be over $100 million. Prior to the passage of TEA 21, States already had enacted and were enforcing repeat intoxicated driver laws. Some of these States have amended their laws to conform to the new section 164 requirements, but such changes will not result in expenditures of over $100 million. For States that have amended their repeat intoxicated driver laws, the cost to enact such amendments will be minimal. There may be some costs to provide training to law enforcement or other officials or to educate the public about these changes, but these costs are not likely to be significant.

In the interim final rule, the agencies recommended that States incorporate into their enforcement efforts activities designed to inform law enforcement officers, prosecutors, members of the judiciary and the public about their repeat intoxicated driver laws. In addition, the agencies advised States to take steps to integrate their repeat intoxicated driver enforcement efforts into their enforcement of other impaired driving laws. If States take these steps, the cost to enforce such laws would likely be absorbed into the State's overall law enforcement budget because the States would not be required to conduct separate enforcement efforts to enforce their repeat intoxicated driver laws.

Accordingly, the agencies have determined that it is not necessary to prepare a written assessment of the costs and benefits, or other effects of the rule.

*G. Executive Order 13132 (Federalism)*

This action has been analyzed in accordance with the principles and

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criteria contained in Executive Order 13132, and it has been determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment. Accordingly, a Federalism Assessment has not been prepared.

**List of Subjects in 23 CFR Part 1275**

Alcohol and alcoholic beverages, Grant programs—transportation, Highway safety.

In consideration of the foregoing, the interim final rule published in the **Federal Register** of October 19, 1998, 63 FR 55796, is adopted as final, with the following changes:

## PART 1275—REPEAT INTOXICATED DRIVER LAWS

1. The authority citation for part 1275 continues to read as follows:

**Authority:** 23 U.S.C. 164; delegation of authority at 49 CFR 1.48 and 1.50.

2. Section 1275.3 is amended by revising paragraphs (c) and (k) to read as follows:

**§ 1275.3 Definitions.**

* * * * *

(c) *Driving while intoxicated* means driving or being in actual physical control of a motor vehicle while having an alcohol concentration above the permitted limit as established by each State, or an equivalent non-BAC intoxicated driving offense.

* * * * *

(k) *Repeat intoxicated driver* means a person who has been convicted of driving while intoxicated or driving under the influence of alcohol more than once in any five-year period.

* * * * *

3. In § 1275.4, paragraph (b)(2) is redesignated as paragraph (b)(3) and a new paragraph (b)(2) is added to read as follows:

**§ 1275.4 Compliance criteria.**

* * * * *

(b) * * *

(2) A State may provide limited exceptions to the requirement to install an ignition interlock system on each of the offender's motor vehicles, contained in paragraph (a)(2)(iii) of this section, on an individual basis, to avoid undue financial hardship, provided the State law requires that the offender may not operate a motor vehicle without an ignition interlock system.

* * * * *

4. Section 1275.5 is amended by revising paragraph (b) to read as follows:

**§ 1275.5 Certification requirements.**

* * * * *

(b) The certification shall be made by an appropriate State official, and it shall provide that the State has enacted and is enforcing a repeat intoxicated driver law that conforms to 23 U.S.C. 164 and § 1275.4 of this part.

(1) If the State's repeat intoxicated driver law is currently in effect and is being enforced, the certification shall be worded as follows:

(Name of certifying official), (position title), of the (State or Commonwealth) of _____, do hereby certify that the (State or Commonwealth) of _____, has enacted and is enforcing a repeat intoxicated driver law that conforms to the requirements of 23 U.S.C. 164 and 23 CFR 1275.4, (citations to pertinent State statutes, regulations, case law or other binding legal requirements, including definitions, as needed).

(2) If the State's repeat intoxicated driver law is not currently in effect, but will become effective and be enforced by October 1 of the following fiscal year, the certification shall be worded as follows:

(Name of certifying official), (position title), of the (State or Commonwealth) of _____, do hereby certify that the (State or Commonwealth) of _____, has enacted a repeat intoxicated driver law that conforms to the requirements of 23 U.S.C. 164 and 23 CFR 1275.4, (citations to pertinent State statutes, regulations, case law or other binding legal requirements, including definitions, as needed), and will become effective and be enforced as of (effective date of the law).

* * * * *

5. Section 1275.6 is amended by adding paragraph (c) to read as follows:

**§ 1275.6 Transfer of funds.**

* * * * *

(c) On October 1, the transfers to section 402 apportionments will be made based on proportionate amounts from each of the apportionments under 23 U.S.C. 104(b)(1),(b)(3) and (b)(4). Then the States will be given until October 30 to notify FHWA, through the appropriate Division Administrator, if they would like to change the distribution among 23 U.S.C. 104(b)(1),(b)(3) and (b)(4).

6. Section 1275.7 is amended by redesignating paragraphs (c) through (f) as paragraphs (d) through (g), and by adding a new paragraph (c) to read as follows:

**§ 1275.7 Use of transferred funds.**

* * * * *

(c) The Governor's Representative for Highway Safety and the Secretary of the State's Department of Transportation for each State shall jointly identify, in writing to the appropriate NHTSA Administrator and FHWA Division Administrator, how the funds will be programmed among alcohol-impaired driving programs, hazard elimination programs, and planning and administration costs, no later than 60 days after the funds are transferred.

* * * * *

Issued on: September 28, 2000.

**Kenneth R. Wykle,**

*Administrator, Federal Highway Administration.*

**Dr. Sue Bailey,**

*Administrator, National Highway Traffic Safety Administration.*

[FR Doc. 00–25384 Filed 9–29–00; 3:34 pm]

BILLING CODE 4910–59–P

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## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 66

**[USCG 2000–7466]**

**RIN 2115–AF98**

## Allowing Alternatives to Incandescent Light in Private Aids to Navigation

**AGENCY:** Coast Guard, DOT.

**ACTION:** Direct final rule.

**SUMMARY:** The Coast Guard is removing the requirement to use only tungsten-incandescent lighting for private aids to navigation. It will enable private industry and owners of private aids to navigation to take advantage of recent changes in lighting technology-specifically to use lanterns based on light-emitting diodes (LEDs). The greater flexibility will reduce the consumption of power and simplify the maintenance of private aids to navigation.

**DATES:** This direct final rule is effective January 3, 2001, unless a written adverse comment, or written notice of intent to submit one, reaches the Docket Management Facility on or before December 4, 2000. If an adverse comment, or notice of intent to submit one, does reach the Facility on or before then, the Coast Guard will withdraw this rule and publish a timely notice of withdrawal in the **Federal Register**.

**ADDRESSES:** You may mail your comments or notices of intent to submit them to the Docket Management Facility [USCG 2000–7466], U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington DC 20590–0001, or deliver them to room PL–401 on the Plaza level of the Nassif Building at the same address between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.



The Docket Management Facility maintains the public docket for this rulemaking. Comments, and documents as indicated in this preamble, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building at the same address between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also access this docket on the Internet at http://dms.dot.gov.

**FOR FURTHER INFORMATION CONTACT:** For questions on this direct final rule, call Dan Andrusiak, G–OPN–2, Coast Guard, telephone 202–267–0327. For questions on viewing or submitting material to the docket, call Dorothy Beard, Chief of Dockets, Department of Transportation, telephone 202–366–9329.

**SUPPLEMENTARY INFORMATION:**

### Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking [USCG 2000–7466] and the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing to the Docket Management Facility at the address under **ADDRESSES.** Persons wanting acknowledgment of receipt of comments should enclose stamped self-addressed postcards or envelopes.

### Regulatory Information

The Coast Guard is publishing a direct final rule, the procedures for which appear in 33 CFR 1.05–55, because it anticipates no adverse comment. If no adverse comment or written notice of intent to submit one reaches the Docket Management Facility within the comment period specified in DATES, this rule will become effective as indicated. In that case, about 30 days before the effective date, the Coast Guard will publish a document in the **Federal Register** indicating that it received no adverse comment or written notice of intent to submit one and confirming that this rule will become effective as scheduled. However, if the Coast Guard receives a written adverse comment or written notice of intent to submit one, it will publish a document in the **Federal Register** announcing withdrawal of all or part of this rule (e.g., an amendment, a paragraph, or a section). If an adverse comment applies to only part of this rule and if removal of that part is possible without defeating the purpose of this rule, the Coast Guard may adopt as final those parts of this rule unaffected by the comment and withdraw the others. If the Coast Guard decides to proceed with a rulemaking following receipt of an adverse comment, it will publish a separate Notice of Proposed Rulemaking (NPRM) and provide a new opportunity for comment.

A comment is considered "adverse" if it explains why this rule would be inappropriate; including a challenge to the rule's underlying premise or approach, or why it would be ineffective or unacceptable without a change.

### Background and Purpose

The Marine Safety Council of the Coast Guard recommended this rulemaking. The intent of the rule is to reduce the consumption of power and simplify the maintenance of private aids to navigation by allowing for the use of lanterns based on LEDs as well as on tungsten-incandescent lights.

### Discussion of Rule

The Coast Guard will allow private industry and owners of private aids to navigation to take advantage of recent changes in lighting technology—specifically the use of lanterns based on LEDs.

### Regulatory Evaluation

This direct final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) [44 FR 11040 (February 26, 1979)]. The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is not necessary.

### Cost of Rule

This direct final rule would not impose any costs on the public. While it permits the use of lanterns based on LEDs as well as tungsten-incandescent lights, it does not require it.

Manufacturers of tungsten-incandescent lights also provide LED lights. This rule would not impose any costs on these manufacturers; it would instead expand a market for the LED lights they are already manufacturing.

### Small Entities

Under the Regulatory Flexibility Act [5 U.S.C. 601 *et seq.*], the Coast Guard considered whether this direct final rule would have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Small Business Administration (SBA) has set up size standards for each SIC code based on the number of employees or annual receipts. The only type of small entity that this rule would affect would be small businesses.

The Coast Guard performed a survey of the industry, and discovered that there are currently two major U.S. manufacturers of tungsten-incandescent lights used for aids to navigation. One of them is considered small by the size standards set up by the SBA. However, the impact of this rule would be positive because it would open new markets for other small business manufacturers who currently possess LED technology.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities. It will evaluate comments submitted in response to this finding under the criteria in *Regulatory Information*.

### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 [Pub. L. 104–121], we want to assist small entities in understanding this direct final rule so that they can better evaluate its effect on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call Dan Andrusiak, G–OPN–2, Coast Guard, telephone 202–267–0327.

### Collection of Information

This direct final rule would call for no new collection of information under the Paperwork Reduction Act of 1995 [44 U.S.C. 3501–3520].

### Federalism

The Coast Guard has analyzed this direct final rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

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**Environment**

The Coast Guard considered the environmental impact of this direct final rule and concluded that, under figure 2–1, paragraph (34)(i) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. A Determination of Categorical Exclusion is available in the docket for inspection or copying where indicated under **ADDRESSES.**

**List of Subjects in 33 CFR Part 66**

Navigation (water).

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 66 as follows:

1. The citation of authority continues to read as follows:

**Authority:** 14 U.S.C. 83, 85; 43 U.S.C. 1333; 49 CFR 1.46.

2. Section 66.01–10 is revised to read as follows:

**§ 66.01–10 Characteristics.**

The characteristics of a private aid to navigation must conform to the United States Aids to Navigation System described in subpart B of Part 62 of this subchapter, except that the Coast Guard will approve both tungsten-incandescent lights and light-emitting diodes (LEDs) with a flash length of at least 0.2 seconds, as sources of light for electric lanterns.

Dated: September 26 2000.

**Kenneth T. Venuto,**

*U.S. Coast Guard, Acting Assistant Commandant for Operations.*

[FR Doc. 00–25484 Filed 10–3–00; 8:45 am]

**BILLING CODE 4910–15–P**

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**DEPARTMENT OF TRANSPORTATION**

**Coast Guard**

**33 CFR Part 117**

**[GGD07–00–092]**

**Drawbridge Operation Regulations; CSX Railroad Bridge (South Fork of the New River), Ft. Lauderdale, Broward County, FL**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of temporary deviation from regulations.

**SUMMARY:** The Commander, Seventh Coast Guard District, has approved a temporary deviation from the regulations governing the operation of the CSX Railroad Drawbridge across the South Fork of the New River, mile 2.8, Ft. Lauderdale, Broward County, Florida. This deviation allows the drawbridge owner not to open for vessel traffic. This temporary deviation is required October 7, 2000 from 6:00 a.m. until 12:00 p.m., to allow the bridge owner to safely complete repairs to the drawbridge.

**DATES:** This deviation is effective on October 7, 2000, from 6:00 a.m. until 12:00 p.m.

**FOR FURTHER INFORMATION CONTACT:** Mr. Barry Dragon, Chief, Operations Section, Seventh Coast Guard District, Bridge Section at (305) 415–6743.

**SUPPLEMENTARY INFORMATION:** The CSX Railroad Drawbridge across the South Fork of the New River at Ft. Lauderdale, has a vertical clearance of 2 feet above mean high water (MHW) measured at the fenders in the closed position. On July 11, 2000 the owner, requested a deviation from the current operating regulation in 33 CFR 117.5 which requires the drawbridge to open promptly and fully when a request to open is given. This temporary deviation was requested to allow necessary repairs to the drawbridge in a critical time sensitive manner.

The District Commander has granted a temporary deviation from the operating requirements listed in 33 CFR 117.5 for the purpose of repair completion of the drawbridge. Under this deviation, the CSX Railroad Drawbridge (South Fork of the New River) need not open. The deviation is effective on October 7, 2000 from 6:00 a.m. until 11:59 p.m.

Dated: September 22, 2000.

**G.E. Shapley,**

*Chief, Bridge Administration, Seventh Coast Guard District.*

[FR Doc. 00–25486 Filed 10–3–00; 8:45 am]

**BILLING CODE 4910–15–M**

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**DEPARTMENT OF TRANSPORTATION**

**Coast Guard**

**33 CFR Part 117**

**[CGD07–00–097]**

**Drawbridge Operation Regulations; Florida East Coast Railway Bridge, across the Okeechobee Waterway, mile 7.4, at Stuart, Martin County, FL**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of temporary deviation from regulation.

**SUMMARY:** The Commander, Seventh Coast Guard District, has approved a temporary deviation from the regulations governing the operation of the Florida East Coast Railway bridge across the Okeechobee Waterway, mile 7.4, Stuart, Martin County, Florida. This deviation allows the drawbridge owner or operator to not open the bridge for short periods of time, approximately 30 to 45 minutes in duration, from 7:00 until 4:00 pm from October 9, 2000 through October 12, 2000. This temporary deviation is required from October 9, 2000 until October 12, 2000, to allow the bridge owner to safely complete repairs of the bridge.

**DATES:** This deviation is effective from October 9, 2000 to October 12, 2000.

**FOR FURTHER INFORMATION CONTACT:** Mr. Barry Dragon, Chief, Operations Section, Seventh Coast Guard District, Bridge Section at (305) 415–6743.

**SUPPLEMENTARY INFORMATION:** The Florida East Coast Railway drawbridge across the Okeechobee Waterway at Stuart, has a vertical clearance of 7 feet above mean high water (MHW) measured at the fenders in the closed position and during construction will have a horizontal clearance of 50 feet. On September 8, 2000, Florida East Coast Railway, the drawbridge owner, requested a deviation from the current operating regulation in 33 CFR 117.5 which requires drawbridge to open promptly and fully when a request to open is given. This temporary deviation was requested to allow necessary repairs to the drawbridge in a critical time sensitive manner.

The District Commander has granted a temporary deviation from the operating requirements listed in 33 CFR 117.35 for the purpose of repair completion of the drawbridge. Under this deviation, the Florida East Coast Railway Bridge need not open the bridge for short periods of time, approximately 30 to 45 minutes in duration. The deviation is effective for a period of 4 days beginning on October 9, 2000 and ending on October 12, 2000.

Dated: September 22, 2000.

**Greg E. Shapley,**

*Chief, Bridge Administration, Seventh Coast Guard District.*

[FR Doc. 00–25485 Filed 10–3–00; 8:45 am]

**BILLING CODE 4910–15–M**



**DEPARTMENT OF DEFENSE**

**DEPARTMENT OF TRANSPORTATION**

**Coast Guard**

**DEPARTMENT OF VETERANS AFFAIRS**

**38 CFR Part 21**

**RIN 2900–AJ88**

**Increase in Rates Payable Under the Montgomery GI Bill—Selected Reserve**

**AGENCIES:** Department of Defense, Department of Transportation (Coast Guard), and Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** By statute, the monthly rates of basic educational assistance payable to reservists under the Montgomery GI Bill—Selected Reserve must be adjusted each fiscal year. In accordance with the statutory formula, the regulations governing rates of basic educational assistance payable under the Montgomery GI Bill—Selected Reserve for fiscal year 2000 (October 1, 1999, through September 30, 2000) are changed to show a 1.6% increase in these rates.

**DATES:**

*Effective Date:* October 4, 2000.

*Applicability Date:* The changes in rates are applied retroactively to conform to statutory requirements. For more information concerning the dates of application, see the **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:** William G. Susling, Jr., Assistant Director for Policy and Program Development, Education Service, Veterans Benefits Administration (202) 273–7187.

**SUPPLEMENTARY INFORMATION:** Under the formula mandated by 10 U.S.C. 16131(b) for fiscal year 2000, the rates of basic educational assistance under the Montgomery GI Bill—Selected Reserve payable to students pursuing a program of education full time, three-quarter time, and half time must be increased by 1.6%, which is the percentage by which the total of the monthly Consumer Price Index-W for July 1, 1998, through June 30, 1999, exceeds the total of the monthly Consumer Price Index-W for July 1, 1997, through June 30, 1998.

10 U.S.C. 16131(b) requires that full-time, three-quarter time, and half-time rates be increased as noted above. In addition, 10 U.S.C. 16131(d) requires that monthly rates payable to reservists in apprenticeship or other on-the-job training must be set at a given percentage of the full-time rate. Hence, there is a 1.6% raise for such training as well.

10 U.S.C. 16131(b) also requires that the Department of Veterans Affairs (VA) pay reservists training less than half time at an appropriately reduced rate. Since payment for less than half-time training became available under the Montgomery GI Bill—Selected Reserve in fiscal year 1990, VA has paid less than half-time students at 25% of the full-time rate. Changes are made consistent with the authority and formula described in this paragraph.

Nonsubstantive changes also are made for the purpose of clarity.

The changes set forth in this final rule are effective from the date of publication, but the changes in rates are applied from October 1, 1999, in accordance with the applicable statutory provisions discussed above.

Substantive changes made by this final rule merely reflect statutory requirements and adjustments made based on previously established formulas. Accordingly, there is a basis for dispensing with prior notice and comment and delayed effective date provisions of 5 U.S.C. 552 and 553.

The Secretary of Defense, the Commandant of the Coast Guard, and the Secretary of Veterans Affairs hereby certify that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This final rule directly affects only individuals and does not directly affect small entities. Pursuant to 5 U.S.C. 605(b), this final rule, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

**Executive Order 12866**

The Office of Management and Budget has reviewed this final rule under Executive Order 12866.

**Unfunded Mandates**

The Unfunded Mandates Reform Act requires (in section 202) that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This rule would have no consequential effect on State, local, or tribal governments.

There is no Catalog of Federal Domestic Assistance number for the program affected by this final rule.

**List of Subjects in 38 CFR Part 21**

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Defense Department, Education, Employment, Grant programs-education, Grant programs-veterans, Health programs, Loan programs-education, Loan programs-veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: March 24, 2000.

**Togo D. West, Jr.,**

*Secretary of Veterans Affairs.*

Approved: April 28, 2000.

**Charles L. Cragin,**

*Principal Deputy Assistant Secretary of Defense for Reserve Affairs.*

Approved: April 25, 2000

**F.L. Ames,**

*U.S. Coast Guard, Assistant Commandant for Human Resources.*

For the reasons set out above, 38 CFR part 21, subpart L, is amended as set forth below.

**PART 21—VOCATIONAL REHABILITATION AND EDUCATION**

**Subpart L—Educational Assistance for Members of the Selected Reserve**

1. The authority citation for part 21, subpart L continues to read as follows:

**Authority:** 10 U.S.C. ch. 1606; 38 U.S.C. 501(a), ch. 36, unless otherwise noted.

2. Section 21.7636 is amended by:

A. In paragraph (a)(3), removing "September 30, 1998" and adding, in its place, "September 30, 1999"; and removing "October 1, 1999" and adding, in its place, "October 1, 2000".

B. Revising paragraph (a)(1), (a)(2) introductory text, and (a)(2)(i).

**§ 21.7636 Rates of payment.**

(a) * * *

(1) Except as otherwise provided in this section or in * 21.7639, the monthly rate of basic educational assistance payable for training that occurs after September 30, 1999, and before October 1, 2000, to a reservist pursuing a program of education is the amount stated in this table:

| Training | Monthly rate |
|---|---|
| Full time | $255.00 |
| ¾ time | 191.00 |
| ½ time | 127.00 |
| ¼ time | 63.75 |

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(2) The monthly rate of basic educational assistance payable to a reservist for apprenticeship or other on-the-job training full time that occurs after September 30, 1999, and before October 1, 2000, is the rate stated in this table:

| Training period | Monthly rate |
|---|---|
| First six months of pursuit of training | $191.25 |
| Second six months of pursuit of training | 140.25 |
| Remaining pursuit of training | 89.25 |

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[FR Doc. 00–25488 Filed 10–3–00; 8:45 am]

BILLING CODE 8320–01–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

**[WA–71–7146a; FRL–6879–6]**

### Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes: Washington

**AGENCY:** Environmental Protection Agency.

**ACTION:** Direct final rule.

**SUMMARY:** Environmental Protection Agency (EPA) approves the Thurston County, Washington PM–10 area maintenance plan and redesignation request from nonattainment to attainment as revisions to the Washington State Implementation Plan. PM–10 air pollution is suspended particulate matter with a diameter less than or equal to a nominal ten micrometers.

**DATES:** This direct final rule is effective on December 4, 2000 without further notice, unless EPA receives adverse comment by November 3, 2000. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Written comments should be addressed to: Debra Suzuki, EPA, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101.

Copies of the State's request and other information supporting this action are available for inspection during normal business hours at the following locations: EPA, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101, and State of Washington Department of Ecology, 300 Desmond Drive, PO Box 47600, Olympia, Washington 98504–7600.

**FOR FURTHER INFORMATION CONTACT:** Scott Downey, Office of Air Quality (OAQ–107), EPA, Seattle, Washington, (206) 553–0682.

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## I. Summary of Action

Environmental Protection Agency (EPA) approves the Thurston County PM–10 area maintenance plan and redesignation request from nonattainment to attainment as revisions to the Washington State Implementation Plan.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective December 4, 2000, without further notice unless the Agency receives adverse comments by November 3, 2000.

If the EPA receives adverse comments, then EPA will publish a **Federal Register** document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on December 4, 2000, and no further action will be taken on the proposed rule.

## II. Supplementary Information

### *1. What Is the Purpose of This Rulemaking?*

Today's rulemaking announces two actions being taken by EPA related to air quality in the State of Washington. These actions are taken at the request of the Governor of Washington in response to Clean Air Act (Act) requirements and EPA regulations.

First, EPA approves the PM–10 maintenance plan for the Thurston County nonattainment area and incorporates this plan into the Washington State Implementation Plan (SIP).

Second, EPA redesignates Thurston County from nonattainment to attainment for PM–10. This redesignation is based on validated monitoring data and projections of ambient concentrations made in the maintenance plan's demonstration. EPA believes the area will continue to meet the National Ambient Air Quality Standards for PM–10 for at least ten years beyond this redesignation, as required by the Act.

### *2. What Is a State Implementation Plan?*

The Clean Air Act requires States to keep ambient concentrations of specific air pollutants below certain thresholds to provide an adequate margin of safety for public health and welfare. These maximum concentrations are established by EPA and known as the National Ambient Air Quality Standards, or NAAQS.

The State's plan for attaining the NAAQS are outlined in its State Implementation Plan, or SIP. The SIP is a planning document that, when implemented, is designed to ensure the attainment of the NAAQS. Each State currently has a SIP in place, and the Act requires that SIP revisions be made periodically.

SIPs include the following: (1) Inventories of emissions from point, area, and mobile sources; (2) relevant statutes and regulations adopted by the state legislature and executive agencies; (3) air quality analyses that include demonstrations that adequate controls are in place to ensure the area will attain the NAAQS; and (4) contingency measures to be implemented if an area fails to attain or make reasonable progress toward attainment by the required date.

The SIP must be presented to the public in a hearing and approved by the Governor of the State or appointed designee prior to submittal to EPA. The approved SIP serves as the State's commitment to actions that will reduce or eliminate air quality problems. Once approved by EPA, the SIP becomes part of the Code of Federal Regulations and is Federally enforceable. Any subsequent changes must go through the formal SIP revision process specified in the Act.

Washington submitted their original SIP on January 28, 1972 and it was subsequently approved by EPA. The Thurston County PM–10 maintenance plan and redesignation request was submitted as a revision to the SIP on August 16, 1999. This revision is the subject of today's action.

### *3. What National Ambient Air Quality Standards Are Considered in Today's Rulemaking?*

As stated previously, National Ambient Air Quality Standards (NAAQS) are safety thresholds for certain ambient air pollutants set by EPA to protect public health and welfare. Suspended particulate matter is one of these criteria air pollutants regulated by EPA by way of these health-based national standards.

Particulate matter causes adverse health effects by penetrating deep in the lung, aggravating the cardiopulmonary system. Children, the elderly, and people with asthma and heart conditions are the most vulnerable.

On July 1, 1987 (52 FR 24634), the Environmental Protection Agency (EPA) revised the National Ambient Air Quality Standards (NAAQS) for particulate matter with a new indicator that includes only those particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM–10). (See 40 CFR 50.6).

The 24-hour primary PM–10 standard is 150 micrograms per cubic meter (μg/m³), with no more than one expected exceedance per year. The annual primary PM–10 standard is 50 μg/m³ expected annual arithmetic mean. The secondary PM–10 standards are identical to the primary standards.

### *4. What are the characteristics of the Thurston County airshed?*

The Thurston County PM–10 area consists of the adjoining cities of Olympia, Lacey, and Tumwater, Washington. Geographically, the area is characterized by low rolling terrain with hills rising higher toward its southern and western boundaries. Land use is primarily residential and commercial with several office parks and very little industry. The surrounding hills trap pollutants during stable meteorological conditions that occur frequently in the late fall and winter.

Residential wood combustion is the largest source of PM–10 in the nonattainment area. Re-suspended road dust is also a significant, but smaller, source. All other sources are considered insignificant. The Thurston County PM–10 attainment plan, approved in 1993, identifies a 24-hour concentration of 286 μg/m³ as representative of worst case PM–10 conditions before the use of any emission controls. For a discussion of the initial Thurston County PM–10 SIP see 58 FR 40056 (July 27, 1993). Because the health based standard is set at 150 μg/m³, this clearly shows that Thurston County experienced severely impaired air quality prior to implementing the control strategy in the attainment plan. As presented in the maintenance demonstration, with implementation of the control strategy, modeling predicts maximum concentrations that are below the 24-hour NAAQS of 150 μg/m³ through the year 2010.

### *5. What Is the Background Information for This Action?*

On August 7, 1987 (52 FR 29383), EPA identified the Thurston County, Washington area as a PM–10 "Group I" area of concern, *i.e.*, an area with a 95% or greater likelihood of violating the PM–10 NAAQS and requiring substantial SIP revisions. Subsequent monitoring data and emission inventory estimates confirmed that the area experienced episodes where the 24-hour PM–10 NAAQS was exceeded, violating the health-based standard. The area was subsequently designated as a moderate PM–10 nonattainment area upon enactment of the Clean Air Act Amendments of 1990 (November 15, 1990).

Title I, section 107(d)(3)(D) of the Act as explained in detail in the General Preamble to Title I (57 FR 13498 (April 16, 1992) hereafter referred to as the General Preamble), allow the Governor of a State to request the redesignation of an area from nonattainment to attainment. Under a cover letter dated August 16, 1999, the State submitted a maintenance plan and redesignation request for the Thurston County PM–10 nonattainment area.

### *6. What Criteria Did EPA Use to Review of the Thurston County PM–10 Redesignation Request and Maintenance Plan?*

The criteria used to review the redesignation request are derived from the Act, General Preamble, and the following policy and guidance memorandum from John Calcagni, September 4, 1992, *Procedures for Processing Requests to Redesignate Areas to Attainment.* Section 107(d)(3)(E) of the Act states that an area can be redesignated to attainment if the following conditions are met:

1. EPA has determined that the NAAQS have been attained.
2. The applicable implementation plan has been fully approved by EPA under section 110(k).
3. EPA has determined that the improvement in air quality is due to permanent and enforceable reductions in emissions.
4. The State has met all applicable requirements for the area under section 110 and part D.
5. EPA has fully approved a maintenance plan, including a contingency plan, for the area under section 175A.

### *7. How Does the State Show That the Thurston County Area Has Attained the PM–10 National Ambient Air Quality Standard?*

Demonstrating that an area has attained the PM–10 NAAQS involves submittal of ambient air quality data from an ambient air monitoring network representing peak PM–10 concentrations, which is recorded in the Aerometric Information Retrieval System (AIRS). The area must show that the average number of expected exceedances per year is less than or equal to one. (40 CFR 50.6) To make this determination, three consecutive years of complete ambient air quality,

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collected in accordance with EPA methodologies, must be used.

There is one PM–10 ambient air quality monitoring site in Thurston County. The Olympic Air Pollution Control Agency (OAPCA) has operated this monitor, located at the Mt. View Elementary School, since November 1985.

The Washington State Department of Ecology submitted ambient air quality data and supporting documentation from this monitoring site for the 1985–1995 period demonstrating that the area has attained the PM–10 NAAQS. Also, supplemental data was submitted under separate cover by the Olympic Air Pollution Control Authority for 1996–1999. This air quality data was quality assured and entered into AIRS. These data are summarized in the following table:

TABLE 1: MT. VIEW PM–10 DATA (24 HR. AVERAGE μG/M$^3$)

| Year | Maximum | 2nd highest |
|---|---|---|
| 1985 | 254 | 242 |
| 1986 | 193 | 179 |
| 1987 | 177 | 130 |
| 1988 | 169 | 120 |
| 1989 | 128 | 118 |
| 1990 | 141 | 86 |
| 1991 | 106 | 99 |
| 1992 | 102 | 78 |
| 1993 | 79 | 78 |
| 1994 | 77 | 63 |
| 1995 | 76 | 65 |
| 1996 | 55 | 53 |
| 1997 | 66 | 58 |
| 1998 | 54 | 46 |
| 1999 | 41 | 35 |

As shown above, an exceedance of the 24-hour NAAQS was not recorded at the Mt. View Elementary School site between 1989 and 1999. Also, the State has adequately demonstrated attainment of the 24-hour PM–10 NAAQS through the dispersion modeling and the attainment of the annual PM–10 NAAQS through emissions inventory comparison (this is discussed in greater detail later in this action). Thus, the area is considered in attainment of the PM–10 NAAQS, easily meeting the requirement of three consecutive years of clean data.

*8. Does the Thurston County Nonattainment Area Have a Fully Approved Attainment Plan SIP?*

Yes. Those States containing initial moderate PM–10 nonattainment areas were required to submit a SIP by November 15, 1991, which implemented reasonably available control measures (RACM) by December 10, 1993, and demonstrated attainment of the PM–10 NAAQS by December 31, 1994. The SIP for the area must be fully approved under section 110(k) of the Act, and must satisfy all requirements that apply to the area.

On July 27, 1993, (58 FR 40056), EPA approved the Thurston County PM–10 nonattainment area SIP originally submitted by the State on February 17, 1989, and supplemented on November 13, 1991.

*9. Are the Improvements in Air Quality Permanent and Enforceable?*

Yes. The State must be able to reasonably attribute the improvement in air quality to permanent and enforceable emission reductions. In making this showing, the State must demonstrate that air quality improvements are the result of actual enforceable emission reductions. This estimate should consider emission rates, production capacities, and other related information. The analysis should assume that sources are operating at permitted levels (or historic peak levels) unless evidence is presented that such an assumption is unrealistic.

The attainment plan and the maintenance plan identify residential wood combustion as the primary source of PM–10 emissions in the area, citing a 1986 aerosol characterization study. Chemical mass balance analysis of the filters collected at the Mt. View Elementary School show that woodsmoke contributes 80–95% of ambient PM–10 concentrations on the high pollution days analyzed. The State concluded that the most important control measures for achieving attainment are those that reduce emissions from residential wood combustion.

In response, Thurston County has implemented a residential wood burning curtailment program, a public education program, emission standards for new woodstoves, and restrictions on certain fuels since the submittal of the 1989 attainment plan SIP. The attainment demonstration (discussed in further detail below) clearly shows that these controls are responsible for the attainment of the NAAQS. The continued implementation of these and other controls in the maintenance plan will assure continued attainment of the NAAQS.

The State shows that the reduction of 136 μg/m$^3$ needed for attainment, or 6841 kg PM–10 emissions per day, is a result of implementing the federally enforceable control measures (see the Technical Support Document accompanying this **Federal Register** document for additional description of the control measures). Thus, the emission reductions responsible for attainment of the NAAQS are permanent and enforceable.

*10. Has the State met all the Section 110 and Part D Planning Requirements Applicable to This Nonattainment Area?*

Yes. The September 1992 Calcagni memorandum explains that for redesignation purposes a State must meet all of the applicable section 110 and part D planning requirements. Thus, EPA interprets the Act to mean that before EPA may approve a redesignation request, the applicable programs under section 110 and part D, that were due prior to the submittal of a redesignation request, must be adopted by the State and approved by EPA into the SIP. How the State has met these requirements is discussed in detail below.

*11. How Does the State Meet Section 110 Requirements?*

Section 110(a)(2) of the Act contains general requirements for nonattainment plans. These requirements include, but are not limited to, submittal of a SIP that has been adopted by the State after reasonable notice and public hearing; provisions for establishment and operation of appropriate apparatus, methods, systems and procedures necessary to monitor ambient air quality; implementation of a permit program; provisions for part C—Prevention of Significant Deterioration (PSD) and part D—New Source Review (NSR) permit programs; criteria for stationary source emission control measures, monitoring, and reporting; provisions for modeling; and provisions for public and local agency participation. See the General Preamble for further explanation of these requirements.

For purposes of redesignation, the Washington SIP was reviewed to ensure that all requirements under the Act were satisfied. 40 CFR 52.2473, further evidences that the Washington SIP was approved under section 110 of the Act and found that the SIP satisfied all part D, Title I requirements (46 FR 45607, September 14, 1981).

*12. How Does the State Meet Part D Requirements?*

Part D consists of general requirements applicable to all areas which are designated nonattainment based on a violation of the NAAQS. The general requirements are followed by a series of subparts specific to each pollutant. All PM–10 nonattainment areas must meet the applicable general provisions of subpart 1 and the specific PM–10 provisions in subpart 4, "Additional Provisions for Particulate Matter Nonattainment Areas." The following paragraphs discuss these requirements as they apply to the Thurston County area.



*13. How Does the State Meet the Section 172(c) Plan Provisions Requirements?*

Section 172(c) contains general requirements for nonattainment plans. A thorough discussion of these requirements may be found in the General Preamble. EPA anticipates that areas will already have met most or all of these requirements to the extent that they are not superseded by more specific part D requirements. The requirements for reasonable further progress, identification of certain emissions increases, and other measures needed for attainment will not apply to redesignations because they only have meaning for areas not attaining the standard. The requirements for an emission inventory will be satisfied by the inventory requirements of the maintenance plan. The requirements of the part D New Source Review (NSR) program will be replaced by the part C Prevention of Significant Deterioration (PSD) program for PM–10 upon the effective date of this redesignation action. The Federal PSD regulations found in 40 CFR 52.21 are the PSD rules in effect in Washington.

*14. How Does the State Meet Subpart 4 Requirements?*

The Thurston County area is classified as a moderate nonattainment area. Therefore, part D, subpart 4, section 189(a) requirements apply. The requirements which came due prior to the submission of the request to redesignate the Thurston County area must be fully approved into the SIP before redesignating the area to attainment. These requirements are discussed below:

(a) Provisions to assure that RACM shall be implemented by December 10, 1993;

(b) Either a demonstration that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994, or a demonstration that attainment by that date is impracticable;

(c) Quantitative milestones which are to be achieved every 3 years and which demonstrate reasonable further progress (RFP) toward attainment by December 31, 1994; and

(d) Provisions to assure that the control requirements applicable to major stationary sources of PM–10 also apply to major stationary sources of PM–10 precursors except where the Administrator determines that such sources do not contribute significantly to PM–10 levels which exceed the NAAQS in the area.

As previously stated, EPA approved the Thurston County PM–10 SIP, which met the initial requirements of the 1990 amendments for moderate PM–10 nonattainment areas, on July 27, 1993, (58 FR 40056). Other provisions were due at a later date.

States with initial PM–10 nonattainment areas were required to submit a permit program for the construction and operation of new and modified major stationary sources of PM–10 by June 30, 1992. States also were to submit contingency measures by November 15, 1993, which become effective without further action by the State or EPA, upon a determination by EPA that the area has failed to achieve RFP or to attain the PM–10 NAAQS by the applicable statutory deadline. See sections 172(c)(9) and 189(a) and 57 FR 13543–13544.

The State has presented an adequate demonstration that it has met the requirements applicable to the area under section 110 and part D. EPA approved Washington State's NSR regulations effective June 2, 1995. EPA approved, as part of the Thurston County PM–10 attainment plan, a contingency measure that would ban the use of uncertified woodstoves in the Thurston county nonattainment area if the area failed to attain or maintain the standard. State law allowed this regulation to take effect on or after July 1, 1995.

*15. Has the State Submitted a Fully Approvable Maintenance Plan for The Thurston County PM–10 Area?*

Yes. Section 107(d)(3)(E) of the Act stipulates that for an area to be redesignated, EPA must fully approve a maintenance plan which meets the requirements of section 175A. Section 175A defines the general framework of a maintenance plan, which must provide for maintenance of the relevant NAAQS in the area for at least 10 years after redesignation. The following is a list of core provisions required in an approvable maintenance plan.

(a) Plan revision: the maintenance plan must provide for the maintenance of the NAAQS for ten years beyond redesignation.

(b) Subsequent plan revisions: Eight years after redesignation, the maintenance plan must provide for additional revisions as needed to maintain the standard for an additional ten years.

(c) Nonattainment requirements applicable pending plan approval: all provisions and controls in place as part of the nonattainment plan must be implemented until final redesignation to attainment.

(d) Contingency provisions: the maintenance plan must include contingency control measures which will go into effect automatically to correct any future violation of the NAAQS. These provisions must include a requirement that the State will implement all measures contained in the nonattainment area SIP.

*16. How Has the State Met the Attainment Inventory Requirement?*

The State should develop an attainment emissions inventory to identify the level of emissions in the area which is sufficient to attain the NAAQS. Where the State has made an adequate demonstration that air quality has improved as a result of the SIP, the attainment inventory will generally be the actual inventory at the time the area attained the standard. This inventory should be consistent with EPA's most recent guidance on emission inventories for nonattainment areas available at the time and should include the emissions during the time period associated with the monitoring data showing attainment.

For the Thurston County maintenance plan, updated, gridded based year (1995) and future year (2010) emission inventories were compiled to show emission levels consistent with attainment and continued maintenance of the PM–10 standard. The previous inventories for the area prepared for a base year of 1985 consisted primarily of emissions from woodsmoke sources. Updated emission factors and sources of activity data were used to develop the revised PM–10 emission inventories.

The inventories were gridded and temporally allocated for use in air quality modeling. This is discussed in further detail below.

The State has adequately developed an attainment emissions inventory for 1995 that identifies the levels of emissions of PM–10 in the area that are consistent with attainment of the NAAQS.

*17. How Does the State Demonstrate Maintenance of the PM–10 Standard in the Future?*

A State may generally demonstrate maintenance of the NAAQS by either showing that future emissions of a pollutant or its precursors will not exceed the level of the attainment inventory, or by modeling to show that the future mix of sources and emission rates will not cause a violation of the NAAQS. Under the Act, PM–10 areas

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were required to submit modeled attainment demonstrations to show that proposed reductions in emissions will be sufficient to attain the applicable NAAQS. For these areas, the maintenance demonstration should be based upon the same level of modeling.

The State has adequately demonstrated attainment of the 24-hour PM–10 NAAQS through the dispersion modeling and the annual PM–10 NAAQS through emissions inventory comparison (*i.e.*, rollback). The dispersion modeling analysis was based upon the guidelines established by EPA for the regulatory application of the urban airshed model for area wide sources.

Inputs for this model were developed using available meteorological, emissions, air quality, and land use data. The domain modeled was 30 x 27 grids, 1 km each. These parameters were chosen based on future and known emission sources, location of meteorological sites, and the wind direction during typical PM–10 episodes. Air quality inputs were based on hourly tapered element oscillating microbalance (TEOM) data collected at the Mt. View Elementary School site and assumed to represent uniform concentrations across the domain. The model used was a base case scenario that took place on January 2–3, 1995. Day specific emission rates for point sources, activity patierns, and meteorological data were used. The emission reduction benefits from the burn ban implemented on that day were also considered.

After comparing the concentrations generated by the model for January 2–3, 1995 with the actual monitored data collected on those days, the State concluded that the model adequately characterized the PM–10 episode. Based on this success, the model was used to generate future year concentrations.

The 2010 model was run using the projected inventory and the inputs from the 1995 run. Higher concentrations were simulated for 2010 than for 1995, but the maximum concentration in any one grid, 149.9 $\mu g/m^3$, does not exceed the 24-hour standard. (**Note:** despite the fact that this maximum value is very near the standard of 150.0 $\mu g/m^3$, EPA is confident that the area will maintain the standard based on the area's history and the overall strength of the maintenance plan.)

When the model was run without the benefits of the burn ban, the grid cell over the urban core exceeded the standard with a concentration of 177.7 $\mu g/m^3$. Thus, the model demonstrates that the continued implementation of the control measures in the attainment plan are needed to demonstrate maintenance of the 24-hour standard.

The emissions inventory comparison between attainment and forecast years demonstrated continued attainment of the annual PM–10 standard. The projected annual average was 25.6 $\mu g/m^3$ in 2010, well within the standard of 50.0 $\mu g/m^3$. This concentration was based on maximum allowable point source emissions and is therefore somewhat conservative.

The State has adequately demonstrated attainment of the 24-hour PM–10 NAAQS through the dispersion modeling and the annual PM–10 NAAQS through emissions inventory comparison (*i.e.*, rollback). The dispersion modeling analysis was based upon the guidelines established by EPA for the regulatory application of the urban airshed model for area wide sources (EPA, 1991, 1992).

*18. How Will the State Monitor Air Quality to Verify Continued Attainment?*

Once an area has been redesignated, the State must continue to operate an appropriate air quality monitoring network, in accordance with 40 CFR part 58, to verify the attainment status of the area. The maintenance plan should contain provisions for continued operation of air quality monitors that will provide such verification. In its submittal, the State commits to continue to operate and maintain the network of PM–10 monitoring stations necessary to verify ongoing compliance with the PM–10 NAAQS.

*19. What Contingency Plan Will the State Rely Upon To Correct any Future Violation of the NAAQS?*

Section 175A of the Act also requires that a maintenance plan include contingency provisions, as necessary, to promptly address any violation of the NAAQS that occurs after redesignation. These contingency measures are distinguished from those generally required for nonattainment areas under section 172(c)(9) which are discussed above. However, if the contingency measures in a nonattainment SIP have not been implemented at the time the area is redesignated to attainment and the contingency measures included a requirement that they be implemented prior to redesignation, then they can be carried over into the area's maintenance plan.

The major contingency measure in the Thurston County PM–10 attainment plan, and carried forward in the maintenance plan, further reduced residential woodsmoke emissions. Under this measure, RCW 70.94.477(2), Olympic Air Pollution Control Authority can limit wood burning devices to fireplaces, certified woodstoves, and pellet stoves in a specific geographical area.

The State believes that additional contingency measures beyond tighter residential wood combustion regulations are not needed in the maintenance plan to assure prompt correction of a violation. However, the plan cites many additional options the State could use to control major sources of PM–10 if needed. These include additional wood seasoning rules, stove retrofits, weatherization, utility rate incentives, stove replacement, stove licensing, stove and fireplace ban, woodstove removal, voluntary curtailment, asphalt shoulders, street maintenance, sanding reduction, control of construction entrainment, new paving, and others. EPA finds the State plan includes adequate contingency measures in the maintenance plan to meet the requirement of 175A.

*20. How Does This Action Affect Transportation Conformity?*

Under section 176(c) of the Act, transportation plans, programs, and projects in nonattainment or maintenance areas that are funded or approved under 23 U.S.C. or the Federal Transit Act, must conform to the applicable SIPs. However, a motor vehicle emission budget was not included in the 1998 attainment plan because at the time of the attainment demonstration, it was believed that motor vehicle emissions were not a significant factor for attainment. In the maintenance plan, motor vehicle emissions are a much higher percentage of the total emission inventory. Therefore, it is more important to monitor growth of motor vehicle emissions in the air quality planning process. The maintenance plan includes a motor vehicle emissions budget which results in the need for conformity determinations for PM–10 on future Transportation Improvement Plans and Regional Transportation Plans.

*21. What is the Motor Vehicle Emissions Budget for Thurston County?*

Transportation conformity determinations must be consistent with the motor vehicle emissions budget of 776.36 tons of PM–10 per year. The mobile source emissions are a combination of vehicle exhaust, tire wear, and road dust.



*22. In Summary, What Conclusion has EPA Reached and What is it Doing in This Action?*

EPA has reviewed the maintenance plan as a revision to the Washington SIP and the adequacy of the State's request to redesignate the Thurston County PM–10 nonattainment area to attainment. EPA finds that the submittal sufficiently meets the requirements for redesignation requests. Therefore, the EPA approves Washington's redesignation request for the Thurston County PM–10 area and approves the maintenance plan as a revision to the Washington SIP.

**III. Final Action**

EPA approves the PM–10 maintenance plan for the Thurston County, Washington PM–10 nonattainment area and redesignates the area from nonattainment to attainment for PM–10.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to any SIP shall be considered separately in light of specific technical, economic, and environmental factors, and in relation to relevant statutory and regulatory requirements.

**IV. Administrative Requirements**

*A. Executive Order 12866*

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

*B. Executive Order 13045*

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

*C. Executive Order 13084*

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

*D. Executive Order 13132*

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

*E. Regulatory Flexibility*

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Additionally, redesignation of an area to attainment under section 107(d)(3)(E) of the CAA does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any regulatory requirements on sources. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S.*

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*EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

*F. Unfunded Mandates*

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

*G. Submission to Congress and the Comptroller General*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective December 4, 2000 unless EPA receives adverse written comments by November 3, 2000.

*H. National Technology Transfer and Advancement Act*

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

*I. Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 4, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects**

*40 CFR Part 52*

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

*40 CFR Part 81*

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: September 12, 2000.

**Michael F. Gearheard,**

*Acting Regional Administrator, Region 10.*

Parts 52 and 81, chapter I, title 40 of the Code of Federal Regulations are amended as follows:

**PART 52—[AMENDED]**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

**Subpart WW—Washington**

2. Section 52.2470 is amended by adding paragraph (c)(80) to read as follows:

**§ 52.2470 Identification of plan.**

* * * * *

(c) * * *

(80) On August 16, 1999, the Washington State Department of Ecology submitted a maintenance plan and redesignation request for the Thurston County PM–10 nonattainment area (dated June 11, 1997). EPA approves the Thurston County, Washington PM–10 area maintenance plan and the redesignation to attainment.

**PART 81—[AMENDED]**

1. The authority citation for part 81 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

**§ 81.348 [Amended]**

2. In § 81.348, the table entitled "Washington—PM–10" is amended by revising the entry for "Thurston County, Cities of Olympia, Tumwater, and Lacey" to read as follows:

* * * * *

WASHINGTON—PM–10

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date | Type | Date | Type |
| . . . . . | | | | |
| Thurston County Cities of Olympia, Tumwater, and Lacey. | December 4, 2000 ..... | Attainment ..... | ..... | ..... |
| . . . . . | | | | |



* * * * *

[FR Doc. 00–25226 Filed 10–3–00; 8:45 am]

BILLING CODE 6560–50–P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 271**

**[FRL–6879–3]**

## South Carolina: Final Authorization of State Hazardous Waste Management Program Revision

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Immediate final rule.

**SUMMARY:** South Carolina has applied to EPA for Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these changes satisfy all requirements needed to qualify for Final authorization, and is authorizing the State's changes through this immediate final action. EPA is publishing this rule to authorize the changes without a prior proposal because we believe this action is not controversial and do not expect comments that oppose it. Unless we get written comments which oppose this authorization during the comment period, the decision to authorize South Carolina's changes to their hazardous waste program will take effect. If we get comments that oppose this action, we will publish a document in the **Federal Register** withdrawing this rule before it takes effect and a separate document in the proposed rules section of this **Federal Register** will serve as a proposal to authorize the changes.

**DATES:** This Final authorization will become effective on December 4, 2000, unless EPA receives adverse written comment by November 3, 2000. If EPA receives such comment, it will publish a timely withdrawal of this immediate final rule in the **Federal Register** and inform the public that this authorization will not take effect.

**ADDRESSES:** Send written comments to Narindar Kumar, Chief RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, GA, 30303–3104; (404) 562–8440. You can view and copy South Carolina's application from 9:00 a.m. to 4:00 p.m. at the following addresses: South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201, (803) 896–4174; and EPA Region 4, Atlanta Federal Center, Library, 61 Forsyth Street, SW., Atlanta, Georgia 30303; (404) 347–4216.

**FOR FURTHER INFORMATION CONTACT:** Narindar Kumar, Chief RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, GA, 30303–3104; (404) 562–8440.

**SUPPLEMENTARY INFORMATION:**

### A. Why Are Revisions to State Programs Necessary?

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

### B. What Decisions Have We Made in This Rule?

We conclude that South Carolina's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant South Carolina Final authorization to operate its hazardous waste program with the changes described in the authorization application. South Carolina has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders (except in Indian Country) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in South Carolina, including issuing permits, until the State is granted authorization to do so.

### C. What Is the Effect of Today's Authorization Decision?

The effect of this decision is that a facility in South Carolina subject to RCRA will now have to comply with the authorized State requirements instead of the equivalent federal requirements in order to comply with RCRA. South Carolina has enforcement responsibilities under its state hazardous waste program for violations of such program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- Do inspections, and require monitoring, tests, analyses or reports
- Enforce RCRA requirements and suspend or revoke permits
- Take enforcement actions regardless of whether the State has taken its own actions

This action does not impose additional requirements on the regulated community because the regulations for which South Carolina is being authorized by today's action are already effective, and are not changed by today's action.

### D. Why Wasn't There a Proposed Rule Before Today's Rule?

EPA did not publish a proposal before today's rule because we view this as a routine program change and do not expect comments that oppose this approval. We are providing an opportunity for public comment now. In addition to this rule, in the proposed rules section of today's **Federal Register** we are publishing a separate document that proposes to authorize the state program changes.

### E. What Happens if EPA Receives Comments That Oppose This Action?

If EPA receives comments that oppose this authorization, we will withdraw this rule by publishing a document in the **Federal Register** before the rule becomes effective. EPA will base any further decision on the authorization of the state program changes on the proposal mentioned in the previous paragraph. We will then address all public comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

If we receive comments that oppose only the authorization of a particular change to the State hazardous waste program, we will withdraw that part of this rule but the authorization of the program changes that the comments do not oppose will become effective on the date specified above. The **Federal Register** withdrawal document will specify which part of the authorization will become effective, and which part is being withdrawn.

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**F. What Has South Carolina Previously Been Authorized for?**

South Carolina initially received Final authorization on November 8, 1985, effective November 22, 1985 (50 FR 46437) to implement the RCRA hazardous waste management program. We granted authorization for changes to their program on September 8, 1988, effective November 7, 1988 (53 FR 34758), February 10, 1993, effective April 12, 1993 (58 FR 7865), November 29, 1994, effective January 30, 1995, and April 26, 1996, effective June 25, 1996 (61 FR 18502).

**G. What Changes Are We Authorizing With Today's Action?**

On September 11, 1995, South Carolina submitted a final complete program revision application, seeking authorization of their changes in accordance with 40 CFR 271.21. We now make an immediate final decision, subject to receipt of written comments that oppose this action, that South Carolina's hazardous waste program revision satisfies all of the requirements necessary to qualify for Final authorization. As a result of today's final authorization of South Carolina for the February 16, 1993 Corrective Action Management Unit (CAMU) rule, the State will be eligible for interim authorization-by-rule process (see August 22, 2000, 65 FR 51080, 51115). South Carolina will also become eligible for conditional authorization if that alternative is chosen by EPA in the final CAMU amendments rule. Therefore, we grant South Carolina Final authorization for the following program changes:

| Federal requirement | Federal Register | Analogous state authority [1] |
|---|---|---|
| Wood Preserving Listing Technical Corrections, Checklist 92. | 56 *FR* 30192, 07/01/1992 | SCHWMA §44–56–30; SCHWM R.61–261.4(a)(9)(i)–(a)(9)(ii), R.61–79.261.35(b)–(b)(4)(i), R.61–79.262.34(a)(1)–(a)(4), R.61–79.264.570(a), (b), R.61–79.264.571(a)–(d), R.61–79.264.572, R.61–79.264.573, R.61–79.264.573(a)(5), R.61–79.264.573(b)(2)(i)(B), R.61–79.264.573(b)(2)(ii), R.61–79.264.573(e), R.61–79.264.573(m), R.61–79.264.573(m)(1), R.61–79.264.573(m)(3), R.61–79.264.574, R.61–79.264.547(a), R.61–79.264.575, R.61–79.264.575(b), R.61–79.264.575(c)(1), R.61–79.265.440(a), R.61–79.265.443(b)(2)(ii)–(iii) R.61–79.265.443(m), R.61–79.265.443(m)(1), R.61–79.265.443(m)(3), R.61–79.270.26, R.61–79.270.26(c), R.61–79.270.26(c)(14)–(16). |
| Land Disposal Restrictions for Electric Arc Furnace Dust (K061), Checklist 95. | 56 *FR* 41164, 08/19/1991 | SCHWMA §44–56–30; SCHWM R.61–79.261.3(c)(2)(ii)(C), R.61–79.261.4(a)(11), R.61–79.268.4(a)/Table CCWE, R.61–79.268.41(b), R.61–79.268.42(a)/Table 2. |
| Exports of Hazardous Waste, Checklist 97 | 56 *FR* 43704, 09/04/1991 | SCHWMA §44–56–30; SCHWM R.61–79.262.50, R.61–79.262.53(b), R.61–79.262.56(b). |
| Amendment to Interim Status Standards of Downgradient Groundwater Monitoring Well Location, Checklist 99. | 56 *FR* 66365, 12/23/1991 | SCHWMA §44–56–30, §44–56–40; SCHWM R.61–79.260.10, R.61–79.265.91(a)(3), R.61–79.265.91(a)(3)(i)–(iv). |
| Liners and Leak Detection Systems for Hazardous Waste Land Disposal Units, Checklist 100. | 57 *FR* 3462, 01/29/1992 | SCHWMA §44–56–30; SCHWMA §44–56–90; SCHWM R.61–79.260.10, R.61–79.264.15(b)(4), R.61–79.264.19(a)–(d), R.61–79.264.73(b)(6), R.61–79.264.221(c), R.61–79.264.221(c)(1)(i)(A), R.61–79.264.221(c)(1)(i)(B), R.61–79.264.221(c)(1)(ii), R.61–79.264.221(c)(2)–(c)(4), R.61–79.264.221(d), R.61–79.264.221(d)(1)–(d)(2), R.61–79.264.221(f)(1)–(f)(2), R.61–79.264.221(g)–(i), R.61–79.264.222(a)–(b), R.61–79.264.223(a)–(c)(2), R.61–79.264.226(d)(1)–(d)(3), R.61–79.264.228(b)(2)–(b)(4), R.61–79.264.251(c)–(k), R.61–79.264.252(a)–(b), R.61–79.264.253(a)–(c)(2), R.61–79.264.254(c), R.61–79.264.301(c)–(k), R.61–79.264.302(a),(b), R.61–79.264.303(c)(1)–(c)(3), R.61–79.264.304(a)–(c)(2), R.61–79.264.310(b)(3)–(b)(6), R.61–79.265.15(b)(4), R.61–79.265.19(a)–(d), R.61–79.265.73(b)(6), R.61–79.265.221(a), R.61–79.265.221(c)–(c)(2), R.61–79.265.221(f), R.61–79.265.221(g), R.61–79.265.222(a)–(c), R.61–79.265.223(a)–(c)(2), R.61–79.265.226(b)(1)–(b)(3), R.61–79.265.228(b)(2)–(b)(4), R.61–79.265.254, R.61–79.265.255(a)–(c), R.61–79.265.259(a)–(c)(2), R.61–79.265.260, R.61–79.265.301(a), R.61–79.265.301(c)–(c)(2), R.61–79.265.301(f)–(i), R.61–79.265–302(a)–(c), R.61–79.265.301(i), R.61–79.265.303(a)–(c)(2), R.61–79.265.304(a)–(c), R.61–79.265.310(b)(2)–(b)(5), R.61–79.270.4(a)–(a)(3), R.61–79.270.17(b)–(b)(7), R.61–79.270.17(c), R.61–79.270.18(c)–(d), R.61–79.270.21(b)–(b)(1)(v), R.61–79.270.21(d), R.61–79.270.42/ Appendix 1. |
| Administrative Stay for the Requirement that Existing Drip Pads be Impermeable, Checklist 101. | 57 *FR* 5859, 02/18/1992 | SCHWMA §44–56–30; SCHWMA §44–56–40; SCHWM R.61–79.264.573(a)(4)/note, R.61–79.265.443(a)(4)/note. |
| Second Correction to the Third Third Land Disposal Restrictions, Checklist 102. | 57 *FR* 8086, 03/06/1992 | SCHWMA §44–56–30; SCHWM R.61–79.264.13(a)(1), R.61–79.268.3(b), R.61–79.268.41(a), R.61–79.268.42/Table 2. |
| Hazardous Debris Case-by-Case Capacity Variance, Checklist 103. | 57 *FR* 20766, 05/15/1992 | SCHWMA §44–56–30; SCHWM R.61–79.268.35(e). |
| Used Oil Filter Exclusion, Checklist 104 | 57 *FR* 21524, 05/20/1992 | SCHWMA §44–56–30; SCHWMA §44–56–40; SCHWM R.61–79.261.4(b)(13), R.61–79.261.4(b)(13)(i)–(iv). |



| Federal requirement | Federal Register | Analogous state authority [1] |
|---|---|---|
| Recycled Coke By-Product Exclusion, Checklist 105. | 57 *FR* 27880, 06/22/1992 | SCHWMA §44–56–30; SCHWM R.61–79.261.4(a)(10), R.61–79.266.100(a). |
| Lead-bearing Hazardous Materials Case by Case Variance, Checklist 106. | 57 *FR* 28628, 06/26/1992 | SCHWMA §44–56–30; SCHWM R.61–79.268.35(k). |
| Used Oil Filter Exclusion; Technical Corrections, Checklist 107. | 57 *FR* 29220, 07/01/1992 | SCHWMA §44–56–30; SCHWMA §44–56–40; SCHWM R.61–79.261.4(b)(13). |
| Toxicity Characteristics Revising Technical Corrections, Checklist 108. | 57 *FR* 30657, 07/10/1992 | SCHWMA §44–56– ; SCHWM R.61–79.261.4(b)(6)(ii), R.61–79.261.4(b)(9), R.61–79.265.01(d)(1). |
| Land Disposal Restrictions for Newly Listed Waste and Hazardous Debris, Checklist 109. | 57 *FR* 37194, 08/18/1992 | SCHWMA §44–56–30; SCHWM R.61–79.260.10. R.61–79.261.3(a)(2)(iii), R.61–79.261.3(c)(2)(ii)(C)(1)–(2), R.61–79.261.3(f)–(f)(2), R.61–79.262.34(a)(1)(iii), R.61–79.262.34(a)(1)(iii)(B), R.61–79.262.34(a)(1)(iv), R.61–79.262.34(a)(1)(iv)(A)–(B), R.61–79.262.34(a)(2), R.61–79.264.110(b)(1)–(4), R.61–79.264.111(c), R.61–79.264.112(a)(2), R.61–79.264.140(b)(1)–(b)(4), R.61–79.264.142(a), R.61–79.264.1100, R.61–79.264.1100(a)–(e), R.61–79.264.1101(a)–(a)(4), R.61–79.264.1101(b)–(b)(4)(iii), R.61–79.264.1101(c)–(c)(4), R.61–79.264.1101(d)–(d)(3), R.61–79.264.1101(e), R.61–79.264.1102(a), R.61–79.264.1103–1110, R.61–79.265.110(b)(1)–(b)(4), R.61–79.265.111(c), R.61–79.265.112(d)(4). |
| Land Disposal Restrictions for Newly Listed Waste and Hazardous Debris, cont, Checklist 109. | 57 *FR* 37194, 08/18/92 | R.61–79.265.140(b)–(b)(3), R.61–79.265.142(a), R.61–79.265.221(h), R.61–79.265.1100, R.61–79.265.1100(a)–(e), R.61–79.265.1101(a)–(a)(4), R.61–79.265.1101(b)–(b)(4)(iii), R.61–79.265.1101(c)–(c)(4), R.61–79.264.151(m)(1)–(m)(2), R.61–79.264.151(n)(1)–(n)(2), R.61–79.265.141(h), R.61–79.265.143(e)(10)–(e)(11), R.61–79.265.1101(d)–(e), R.61–79.265.1102(a),(b), R.61–79.265.1103–1110, R.61–79.268.2(g),(h), R.61–79.268.7(a)(1)(iii)–(v), R.61–79.268.7(a)(2), R.61–79.268.7(a)(3)(iv)–(vi), R.61–79.268.7(a)(4), R.61–79.268.7(b)(4)–(b)(5), R.61–79.268.7(d)–(d)(3)(iii), R.61–79.268.9(d)–(d)(2), R.61–79.268.14(a)–(c), R.61–79.268.36(a)–(i), R.61–79.268.40(b),(d), R.61–79.268.41(a), R.61–79.268.41(c), R.61–79.268.41(a)/Table CCWE, R.61–79.268.41(c), R.61–79.268.42/Table 2, R.61–79.268.42(d), R.61–79.268.43/Table CCW, R.61–79.268.45(a)–(a)(5), R.61–79.268.45(b)–(b)(3), R.61–79.268.45(c), R.61–79.268.45(d)(1)–(d)(5), R.61–79.268.46, R.61–79.268.46/Table 1, R.61–79.268.50(a)(1)–(a)(2), Appendix II, R.61–79.270.13(n), R.61–79.270.14(b)(2), R.61–79.270.42(e)(3)(ii)(B), R.61–79.270.42 Appendix I, 1(b), R.61–79.270.42 Appendix I, M, R.61.270.72(b)(6). |
| Coke By-Products Listings, Checklist 110 | 57 *FR* 37284, 08/18/92 | SCHWMA §44–56–30; SCHWM R.61–79.261.4(a)(10); R.61–79.261.32; R.61–79.261, Appendix VII. |
| Consolidated Liability Requirements, Checklist 113. | 53 *FR* 33938, 07/02/91 57 *FR* 42832, 08/16/92. | SCHWMA §44–56–30; SCHWMA §44–56–40; SCHWM R.61–79.264.141(h), R.61–79.264.143(f)(10)–(11), R.61–79.264.145(e)(11), R.61–79.264.147(a)–(a)(7)(iii), R.61–79.147(b)–(b)(7)(iii), R.61–79.264.147(f)(6), R.61–79.264.147(g)–(g)(2)(ii), R.61–79.264.147(h)–(h)(5), R.61–79.264.147(i)–(i)(4)(ii), R.61–79.264.147(j)–(j)(4), R.61–79.264.147(k), R.61–79.264.151(b), R.61–79.264.151(f), R.61–79.264.151(g), R.61–79.264.151(h)(1)–(h)(2), R.61–79.264.151(i)(2)(d), R.61–79.264.151(j)(2)(d), R.61–79.264.151(k),(l), R.61–79.264.151(m)(1)–(m)(2), R.61–79.264.151(n)(1)–(n)(2), R.61–79.265.141(h), R.61–79.265.143(e)(10), R.61–79.264.145(e)(11), R.61–79.265.147(a)–(a)(7)(iii), R.61–79.265.147(b)–(b)(7)(iii), R.61–79.265.147(f)(6), R.61–79.265.147(g)–(g)(2)(ii), R.61–79.265.147(h)–(h)(5), R.61–79.265.147(i)–(i)(4)(ii), R.61–79.147(j)–(j)(4), R.61–79.147(k). |
| Chlorinated Toluenes Production Waste Listing, Checklist 115. | 57 *FR* 47376, 10/15/92 | SCHWMA §44–56–30; SCHWM R.61–79.261.32; Appendix VII. |
| Hazardous Soil Case-by-Case Capacity Variance, Checklist 116. | 57 *FR* 47772, 10/20/92 | SCHWMA §44–56–30; SCHWM R.61–79.268.35(c), R.61–79.268.35(d), R.61–79.268.35(e)–(e)(2). |
| Reissuance of the "Mixture" and "Derived-From" Rules, Checklist 117A. | 57 *FR* 6728, 03/03/92 | SCHWMA §44–56–30, §44–56–40; SCHWM R.61–79.261.3(a)–(a)(2)(iv)(E), R.61–79.261.3(b)–(b)(3), R.61–79.261.3(c)–(c)(2)(ii)(c)(1)&(2), R.61–79.261.3(d)–(d)(2). |
| Toxicity Characteristic Amendment, Checklist 117B. | 57 *FR* 23062, 06/01/92 | SCHWMA §44–56–30; SCHWMA §44–56–40; SCHWM R.61–79.261.3(a)(2)(i). |

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| Federal requirement | Federal Register | Analogous state authority [1] |
|---|---|---|
| Liquid in Landfills II, Checklist 118 | 57 *FR* 54452, 11/18/92 | SCHWMA §44–56–30; SCHWM R.61–79.260.10, R.61–79.264.13(c)(3), R.61–79.264.314(a)(2), R.61–79.264.314(b), R.61–79.314(d)(1)(ii), R.61–79.264.314(e), R.61–79.264.314(e)(1)–(e)(2)(ii), R.61–79.264.314(f)–(f)(2), R.61–79.264.316(b), R.61–79.264.316(c), R.61–79.265.13(c)(3), R.61–79.265.314(a)(2), R.61–79.265.314(b), R.61–79.265.314(c)(1)(ii), R.61–79.265.314(f), R.61–79.265.314(f)(1)–(f)(2)(ii), R.61–79.265.314(g)–(g)(2), R 61–79.265.316(b), R.61–79.265.316(c). |
| Toxicity Characteristic Revision; TCLP correction, Checklist 119. | 57 *FR* 44114, 11/24/92; 58 *FR* 6854, 02/02/93. | SCHWMA §44–56–30; SCHWMA §44–56–40; SCHWM R.61–79.261; Appendix II. |
| Wood Preserving; Revisions to Listing and Technical Requirements, Checklist 120. | 57 *FR* 61492, 12/24/92 | SCHWMA §44–56–30; SCHWMA §44–56–40; SCHWM R.61–79.261.31(a)/Table R.61–79.264.570(a), R.61–79.264.570(c)–(c)(1)(iv), R.61–79.264.571(a), R.61–79.264.571(b)–(b)(3), R.61–79.264.572, R.61–79.264.572(a), R.61–79.265.572(b), R.61–79.265.573(a)(4)(i)–(ii), R.61–79.265.573(b), R.61–79.264.573(b)(3), R.61–79.264.573(i), R.61–79.265.440(a), R.61–79.265.440(c)–(c)(1)(iv), R.61–79.265.441(a), R.61–79.265.441(b)–(b)(3), R.61–79.265.442, R.61–79.265.442(a),(b), R.61–79.265.443(a)(4)(i)–(ii), R.61–79.265.443(b), R.61–79.265.443(b)(3), R.61–79.265.443(i). |
| Corrective Action Management Units and Temporary Units, Checklist 121. | 58 *FR* 8658, 02/16/93 | SCHWMA §44–56–30; SCHWMA §44–56–40; SCHWMA §44–56–140; SCHWM R.61–79.260.10, R.61–79.264.3, R.61–69.264.101(b), R.61–79.264.552(a)–(a)(2), R.61–79.264.552(b)(1)–(b)(2), R.61–79.264.552(c)–(c)(7), R.61–79.264.552(d), R.61–79.264.552(e)–(e)(4)(iv), R.61–79.264.552(f)–(h), R.61–79.264.553(a), R.61–79.264.553(b)–(b)(2), R.61–79.264.53(c)–(c)(7), R.61–79.264.553(d), R.61–79.264.553(e)–(e)(2), R.61–79.264.553(f)–(f)(2), R.61–79.264.553(g), R.61–79.265.1(b), R.61–79.268.2(c), R.61–79.270.2, R.61–79.260.42 Appendix 1. |
| Land Disposal Restrictions Renewal of Hazardous Waste Debris Case-by-Case Capacity Variance, Checklist 123. | 58 *FR* 28506, 05/14/93 | SCHWMA §44–56–30; SCHWM R.61–79.268.35(e)(1), R.61–79.268.35(e)(2)–(e)(5), R.61–79.268.35(e)(5)(i)–(e)(5)(ii)(H). |
| Land Disposal Restriction for Ignitable and Corrosive Characteristic Waste Whose Treatment Standards were Vacated, Checklist 124. | 58 *FR* 29860, 05/24/93 | SCHWMA §44–56–30; SCHWM R.61–79.264.1(g)(6), R.61–79–265.1.(c)(10), R.61–79.268.1(e)(4)–(e)(5), R.61–79.268.2(i), R.61–79.268.7(a), R.61–79.268.7(a)(1)(ii), R.61–79.268.7(b)(4)(ii), R.61–79.268.9(a), R.61–79.268.37(a),(b), R.61–79.268.40(b), R.61–69.268.41(a),Table CCWE, R.61–79.268.42(a), Table 2, R.61–79.268.43(a), Table CCW, R.61–79.270.42 Appendix 1. |
| Testing and Monitoring Activities, Checklist 126 | 58 *FR* 46040, 08/31/93 | SCHWMA §44–56–30; SCHWMA §44–56–40; SCHWMA §44–56–120; SCHWM R.61–79.260.11(a), R.61–79.260.22(d)(1)(i), R.61–79.261.22(a)(1)–(a)(2), R.61–79.261.24(a), Appendix II, Appendix III, R.61–79.264.190(a), R.61–79.264.314(c), R.61–79.265.190(a), R.61–79.265.314(d), R.61–79.268.7(a), R.61–79.268.40(a), R.61–79.268.41(a), R.61–79.268 Appendix I, R.61–79.268 Appendix IX, R.61–79.270.6(a), R.61–79.270.19(c)(1)(iii), R.61–79.270.19(c)(1)(iv), R.61–79.270.62(b)(2)(i)(C), R.61–79.270.62(b)(2)(i)(D), R.61–79.270.66(C)(2)(i), R.61–69.270.66(c)(2)(ii). |
| Wastes from the Use of Chlorophenolic Formulations in Wood Surface Protection, Checklist 128. | 59 *FR* 458, 01/04/94, | SCHWMA §44–56–30; SCHWMA §44–56–40; SCHWM R.61–79.260.11(a); Appendix VIII. |
| Revision of Conditional Exemption for Small Scale Treatability Studies, Checklist 129. | 59 *FR* 8362, 02/18/94 | SCHWMA §44–56–30; SCHWMA §44–56–40; SCHWM R.61–79.261.4(e)(2)(i), R.61–79.261.4(e)(2)(ii), R.61–79.261.4(e)(3), R.61–79.261.4(e)(3)(i)–(iii)(E), R.61–79.261.4(f)(3)–(f)(5). |
| Recordkeeping Instructions; Technical Amendment, Checklist 131. | 59 *FR*, 13891, 03/24/94 | SCHWMA §44–56–30; SCHWMA §44–56–80; SCHWM R.61–79.264, Appendix 1/Table 1, Appendix 1/Table 2, R.61–79.265, Appendix 1/Table 1, Appendix 1/Table 2. |
| Wood Surface Protection, Correction, Checklist 132. | 59 *FR* 28484, 06/02/94 | SCHWMA §44–56–30; SCHWMA §44–56–40; SCHWM R.61–79.260.11(a). |
| Letter of Credit Revision, Checklist 133 | 59 *FR*, 29958, 06/10/94 | SCHWMA §44–56–30; SCHWMA §44–56–40; SCHWM R.61–79.264.151(d), Appendix D, R.61–79.264.151(k), Appendix K. |



| Federal requirement | Federal Register | Analogous state authority [1] |
|---|---|---|
| Correction of Beryllium Powder (PO15) Listing, Checklist 134. | 59 *FR*, 31551, 06/20/94 | SCHWMA §44–56–30; SCHWMA §44–56–40; SCHWM R.61–79.268.42(a)/Table 2, R.61–79.261.33(e), Appendix VIII. |

[1] The South Carolina provisions are from the South Carolina Hazardous Waste Management Regulations, May 24, 1996, unless otherwise stated.

**H. Where Are the Revised State Rules Different From the Federal Rules?**

EPA cannot delegate the Federal requirements at: 40 CFR 268.5 (h)(2)(ii), 268.5(h)(2)(iv), 268.5(h)(2)(v), 268.5(h)(2)(vi) and 268.42(b). Although South Carolina has adopted these requirements verbatim from the federal regulations—SCHWM R.61–79.268.5 (h)(2)(ii), R.61–79.268.5 (h)(2)(iv), R.61–79.268.5 (h)(2)(v), R.61–79.268.5 (h)(2)(vi) and R.61–79.268.42(b), EPA will continue to implement those requirements.

**I. Who Handles Permits After the Authorization Takes Effect?**

South Carolina will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits which we issued prior to the effective date of this authorization. At the time the State Program is approved in the new areas, EPA will suspend issuance of Federal permits in the State and terminate those Federal permits issued pursuant to 40 CFR 124.5 and 271.8 upon effectiveness of equivalent state permit conditions. EPA will also transfer any pending permit applications, completed permits, or pertinent file information to the State within thirty (30) days of the approval of the State Program in conformance with the conditions of this agreement. We will not issue any more new permits or new portions of permits for the provisions listed in the Table above after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which South Carolina is not yet authorized.

**J. What Is Codification and is EPA Codifying South Carolina's Hazardous Waste Program as Authorized in This Rule?**

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. We do this by referencing the authorized State rules in 40 CFR part 272. We reserve the amendment of 40 CFR part 272, subpart PP for this authorization of South Carolina's program until a later date.

**K. Administrative Requirements**

The Office of Management and Budget has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. This action authorizes state requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by state law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). For the same reason, this action also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes state requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks.

Under RCRA 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This action will be effective December 4, 2000.

**List of Subjects in 40 CFR Part 271**

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

**Authority:** This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

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Dated: September 15, 2000.

**A. Stanley Meiburg,**

*Acting Regional Administrator, Region IV.*

[FR Doc. 00–25345 Filed 10–3–00; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL COMMUNICATIONS COMMISSION

**47 CFR Part 25**

**[IB Docket 99–81; FCC 00–302]**

## Policies and Service Rules for the Mobile Satellite Service in the 2 GHz Band

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Federal Communications Commission has adopted licensing and service rules for entities to provide Mobile Satellite Service in the 2 GHz Band, specifically the 1990–2025 MHz and 2165–2200 MHz frequency bands. System proponents currently on file are required to amend their proposals to comply with the adopted rules. Following a public comment period, qualified systems will be authorized to operate. Upon launch, these new systems will provide mobile voice, data, Internet and other services to U.S. consumers for communications in the United States and around the world.

**DATES:** Effective November 3, 2000.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW., TW–325, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** For more information regarding the Report and Order contact Howard Griboff (202) 418–0657 of the International Bureau. For more information regarding the information collections in the Report and Order, contact Judy Boley at 202–418–0214; 445 12th Street SW., Rm. 1–C804, Washington DC 20554 or via internet at jboley@fcc.gov.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Report and Order* in IB Docket No. 99–81; FCC 00–302, adopted August 14, 2000 and released on August 25, 2000. The complete text of this *Report and Order* is available for inspection and copying during normal business hours in the FCC Reference Center (Room), 445 12th Street, SW., Washington, DC 20554, and also may be purchased from the Commission's copy contractor, International Transcription Service, Inc. (ITS, Inc.), 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

### Summary of Report and Order

The Federal Communications Commission has adopted rules for the 2 GHz (1990–2025MHz/2165–2200 MHz) mobile satellite services (MSS). These systems will provide mobile voice, data, Internet and other services to U.S. consumers for communications in the United States and around the world. The systems under consideration include geostationary and non-geostationary orbit systems.

The Commission adopted an innovative band arrangement that can accommodate the multiple and technically-diverse systems that have requested authorization and described the method to be used for licensing. Pursuant to the Commission's new rules, each authorized system will receive an equal share of the available frequencies. A licensee will select the specific frequencies in which its primary service operations will take place at the time it has launched one satellite into its intended orbit. In addition, because there are a number of incumbent terrestrial services (*e.g.*, broadcast auxiliary service and and fixed microwave service) in the 2 GHz MSS bands, each authorized system will have flexibility to operate at other frequencies in the band. This flexibility may lower the costs of relocating incumbent systems and facilitate quicker deployment of service. To encourage delivery of mobile satellite services to rural service areas, the Commission reserved an additional spectrum segment to be awarded in equal shares to systems demonstrating that a percentage of their capacity is contracted with service providers that offer service to consumers in rural and unserved service areas.

The Commission found that it was not necessary to apply financial qualification requirements to the applicants because there is sufficient spectrum to accommodate all of the proposed systems. 2 GHz MSS licenses will be for a fifteen-year period. Consistent with its past spectrum management policies, the Commission is requiring that system proponents enter non-contingent satellite manufacturing contracts within one year of authorization and launch of authorized 2 GHz MSS systems no later than six years from the date of authorization. System proponents will have to complete critical design review (CDR) within two years of authorization. The rules require that physical construction of all satellites in the system commence within two and a half years of authorization (non-geostationary systems) and three years of authorization (geostationary systems). Construction and launch of the first two satellites must be complete within three and a half years of grant for non-geostationary systems and five years for geostationary systems. Non-compliance with implementation milestones will result in cancellation of the authorization. Failure to file a timely certification of milestone compliance, or filing disclosure of non-compliance, will result in automatic cancellation of an operator's system authorization with no further action required on the Commission's part.

In addition, the new rules require disclosure, prior to authorization, of orbital debris mitigation measures for 2 GHz MSS systems. The Commission also addressed provision of distress and safety communications and 911 services, and stated that it would study this issue in greater detail in the pending Global Mobile Personal Communications by Satellite proceeding.

The system proponents are required to amend their proposals to comply with the rules adopted on or before November 3, 2000. Following a public comment period, qualified systems will be authorized to operate.

### Final Regulatory Flexibility Analysis

*A. Need for, and Objectives of, This Report and Order*

This Report and Order establishes a spectrum authorization approach to accommodate all proposed 2 GHz MSS systems, and service rules to govern the 2 GHz MSS systems. These actions are designed to assign the 2 GHz MSS spectrum to applicants, or reserve the 2 GHz MSS spectrum in the case of letter of intent filers, in an efficient manner. At the same time, these rules are designed to ensure systems implement their proposals in a manner that serves the public interest and results in the continued deployment of mobile satellite services to the public, with minimal disruption to existing 2 GHz band permittees and licensees.

*B. Summary of Significant Issues Raised in Comments in Response to the IRFA*

There were no comments which solely discussed or addressed the IRFA. The Commission has nonetheless considered any potential significant economic impact of the rules on small entities, and has designed its rules to reduce regulatory burdens on these entities accordingly.



*C. Description and Estimate of Number of Small Entities to Which Rules Will Apply*

The Commission has not developed a definition of small entities applicable to geostationary or non-geostationary orbit fixed-satellite or mobile satellite service operators. Therefore, the applicable definition of small entity is the definition under the Small Business Administration (SBA) rules applicable to Communications Services, Not Elsewhere Classified. This definition provides that a small entity is one with $11.0 million or less in annual receipts. 13 CFR 121.201, Standard Industrial Classification (SIC) Code 4899. According to Census Bureau data, there are 848 firms that fall under the category of Communications Services, Not Elsewhere Classified, which could potentially fall into the 2 GHz MSS category. Of those, approximately 775 reported annual receipts of $11 million or less and qualify as small entities. U.S. Bureau of Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, Utilities, UC92–S–1, Subject Series, Establishment and Firm Size, Table 2D, Employment Size of Firms: 1992, SIC Code 4899 (issued May 1995). The rules adopted in this Report and Order apply only to entities providing 2 GHz mobile satellite service. At least one of the 2 GHz MSS system proponents may be considered a small business at this time. Small businesses often do not have the financial ability to become 2 GHz MSS system operators because of the high implementation costs associated with satellite systems and services. By the time of system implementation, we expect that the one small entity will no longer be considered a small business due to the capital requirements for launching and operating its proposed system. Therefore, because of the high implementation costs of providing 2 GHz MSS, we believe that this Report and Order will have no significant impact on small entities.

*D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements*

The rules adopted in the Report and Order affect those entities applying for 2 GHz MSS space station and earth station authorizations and those participating in assignment of 2 GHz MSS spectrum. As an initial matter, the nine 2 GHz MSS system proponents under consideration in this Report and Order are required to submit amendments to their previously-filed applications or letters of intent, to conform their proposed systems to the spectrum authorization and service rules adopted herein, including an orbital debris statement. The adopted rules also require each authorized 2 GHz MSS system to notify the Commission that it has met construction milestones, notify the Commission as to which spectrum block it chooses as its preferred spectrum block at the time that the first satellite in its system reaches its intended orbit, and, if it desires additional spectrum under the rural service initiative, notify the Commission of how it has achieved the required rural service criteria. Once operational, the 2 GHz MSS systems may need to coordinate with each other the use of spectrum outside of its preferred spectrum block. These negotiations are likely to require the skills of engineers to evaluate the technical requirements of co-frequency spectrum sharing and/or adjacent frequency operation on a non-interference basis.

*E. Steps Taken To Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered*

In developing the rules and policies adopted in this Report and Order, the Commission has attempted to minimize the burdens on all entities in order to allow maximum participation in the 2 GHz MSS market, while achieving the item's other objectives. The Commission considered band arrangements that would have assigned specified blocks of spectrum based on modulation technology (*i.e.*, code division multiple access or time division multiple access). Similarly, the Commission considered Globalstar's suggested band arrangement that would have required all systems to pre-negotiate a sharing architecture. The Commission rejected these alternatives, in part because these alternatives would have required all 2 GHz MSS operators to choose their technological parameters immediately, rather than allowing systems to optimize designs in order to promote innovation and reduce the economic impact of system build-out. In addition, to reduce the 2 GHz MSS operators' incumbent relocation costs, the Commission will exempt any 2 GHz MSS operator from relocation obligations if it is capable of sharing spectrum on a non-interference basis with the existing incumbent operations.

### Paperwork Reduction Act

This Report and Order contains a new or modified information collection. The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Comments on emergency request for approval of information collections are due on or before October 25, 2000; public and agency comments on the regular request for approval of the information collections are due on or before December 4, 2000.

Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarify of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. These comments on both regular and emergency requests for approval of the information collection should be submitted to Judy Boley at 445 12th Street S.W., Rm. 1–C804, Washington DC 20554 or via internet at jboley@fcc.gov; phone 202–418–0214. In addition, comments on the emergency request for approval of the information collections should be submitted to Edward C. Springer, OMB Desk Officer, Rm. 10236 NEOB, 725 17th Street, NW., Washington, DC 20503, or via the Internet to Edward.Springer@omb.eop.gov.

*OMB Approval Number:* 3060-XXXX.

*Title:* 2 GHz Mobile Satellite Service Reports.

*Form No.:* NA.

*Type of Collection:* New Collection.

*Respondents:* Business or other for-profit.

*Number of Respondents:* 9.

*Estimated Time for Response:* 3 hours.

*Total Annual Burden:* 27 hours.

*Estimated Annual Reporting and Recordkeeping Cost Burden:* $14,000.

*Needs and Uses:* The information will be used by the Federal Communications Commission (FCC) and interested members of the public to ensure compliance with the rules adopted for the 2 GHz mobile satellite service. Specifically, the rules require disclosure in the form of a narrative statement, through amendments to applications or letters of intent, of orbital debris mitigation design and operational strategies and a casualty risk assessment if planned post-mission disposal involves atmospheric re-entry of spacecraft. This requirement will permit the Commission and the public to comment on each system's design. 2

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GHz mobile satellite systems receiving expansion spectrum as part of the rural and unserved areas spectrum incentive must provide a report on the actual number of subscriber minutes originating or terminating in unserved areas as a percentage of the actual U.S. system use. This rule will permit the Commission to verify that service is being provided in rural and unserved areas. In addition, system proponents will have to complete critical design review (CDR) within two years of authorization. CDR is a new milestone for satellite services and will permit the Commission to more closely monitor system construction. Without such information, the FCC could not determine whether satellite licenses are operating in conformance with its rules.

**Ordering Clauses**

Pursuant to Sections 4(i), 7, 302, 303(c), 303(e), 303(f) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. Section 154(i), 157, 302, 303(c), 303(e), 303(f) and 303(r), this *Report and Order Is Adopted* and that part 25 of the Commission's Rules *Is Amended* and is effective November 3, 2000.

The applicants and LOI filers will be required to file conforming amendments and all necessary fees no later than November 3, 2000 for continued consideration in this processing round.

The Regulatory Flexibility Analysis, as required by Section 604 of the Regulatory Flexibility Act, *Is Adopted.*

The Commission's Consumer Information Bureau, Reference Information Center, *Shall Send* a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

**List of Subjects in 47 CFR Part 25**

Satellites.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

**Rule Changes**

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 25 as follows:

1. The authority citation for part 25 is revised to read as follows:

**Authority:** 47 U.S.C. 701–744. Interprets or applies Sections 4, 301, 302, 303, 307, 309 and 332 of the Communications Act, as amended, 47 U.S.C. Sections 154, 301, 302, 303, 307, 309 and 332, unless otherwise noted.

2. Section 25.114 is amended by revising paragraphs (c)(6)(iii) and (c)(21) to read as follows:

**§ 25.114 Applications for space station authorizations.**

* * * * *

(c) * * *

(6) * * *

(iii) If applicable, the feeder link and inter-satellite service frequencies requested for the satellite, together with any demonstration otherwise required by this chapter for use of those frequencies (*see, e.g.*, §§ 25.203(j) and (k));

* * * * *

(21) Applications for authorizations in the 1.6/2.4 GHz Mobile-Satellite Service or 2 GHz Mobile-Satellite Service shall also provide all information specified in § 25.143.

* * * * *

3. Section 25.115 is amended by revising paragraph (d) to read as follows:

**§ 25.115 Application for earth station authorizations.**

* * * * *

(d) User transceivers in the NVNG, 1.6/2.4 GHz Mobile-Satellite Service, and 2 GHz Mobile-Satellite Service need not be individually licensed. Service vendors may file blanket applications for transceivers units using FCC Form 312, Main Form and Schedule B, and specifying the number of units to be covered by the blanket license. Each application for a blanket license under this section shall include the information described in § 25.136.

* * * * *

4. Section 25.121 is amended by revising paragraph (a) to read as follows:

**§ 25.121 License term and renewals.**

(a) *License term.* Licenses for facilities governed by this part will be issued for a period of 10 years, except that licenses and authorizations in the 2 GHz Mobile-Satellite Service will be issued for a period of 15 years.

* * * * *

5. Section 25.133 is amended by revising paragraph (b) to read as follows:

**§ 25.133 Period of construction; certification of commencement of operation.**

* * * * *

(b) Each license for a transmitting earth station included in this part shall also specify as a condition therein that upon the completion of construction, each licensee must file with the Commission a certification containing the following information: The name of the licensee; file number of the application; call sign of the antenna; date of the license; a certification that the facility as authorized has been completed and that each antenna facility has been tested and is within 2 dB of the pattern specified in §§ 25.209, 25.135 (NVNG MSS earth stations), or § 25.213 (1.6/2.4 GHz Mobile-Satellite Service and 2 GHz Mobile-Satellite Service earth stations); the date on which the station became operational; and a statement that the station will remain operational during the license period unless the license is submitted for cancellation. For stations authorized under § 25.115(c) (Large Networks of Small Antennas operating in the 12/14 GHz bands) and § 25.115(d) (User Transceivers in the Mobile-Satellite Service), a certificate must be filed when the network is put into operation.

* * * * *

6. Section 25.136 is revised to read as follows:

**§ 25.136 Operating provisions for earth station networks in the 1.6/2.4 GHz mobile-satellite service and 2 GHz mobile-satellite service.**

In addition to the technical requirements specified in § 25.213, earth stations operating in the 1.6/2.4 GHz Mobile-Satellite Service or 2 GHz Mobile-Satellite Service are subject to the following operating conditions:

(a) User transceiver units associated with the 1.6/2.4 GHz Mobile-Satellite Service or 2 GHz Mobile-Satellite Service may not be operated on civil aircraft unless the earth station has a direct physical connection to the aircraft Cabin Communication system.

(b) No person shall transmit to a space station unless the user transceiver is first authorized by the space station operator or by a service vendor authorized by that operator, and the specific transmission is conducted in accordance with the operating protocol specified by the system operator.

(c) Any user transceiver unit associated with this service will be deemed, when communicating with a particular 1.6/2.4 GHz Mobile-Satellite Service or 2 GHz Mobile-Satellite Service system pursuant to paragraph (b) of this section, to be temporarily associated with and licensed to the system operator or service vendor holding the blanket earth station license awarded pursuant to § 25.115(d). The domestic earth station licensee shall, for this temporary period, assume the same licensee responsibility for the user transceiver as if the user transceiver were regularly licensed to it.

7. Section 25.137 is amended by adding paragraph (d) to read as follows:



**§ 25.137 Application requirements for earth stations operating with non-U.S. licensed space stations.**

* * * * *

(d) Earth station applicants requesting authority to operate with a non-U.S. licensed space station must demonstrate that the space station the applicant seeks to access has complied with all applicable Commission milestones, reporting requirements, and any other applicable service rules required for non-U.S. licensed systems to operate in the United States.

8. Section 25.143 is amended by revising paragraphs (a), (b)(1), (b)(2), (e)(1), (e)(1)(iii), and (f)(1), and by adding paragraph (e)(3) to read as follows:

**§ 25.143 Licensing provisions for the 1.6/2.4 GHz mobile-satellite service and 2 GHz mobile-satellite service.**

(a) *System license.* Applicants authorized to construct and launch a system of technically identical satellites will be awarded a single "blanket" license. In the case of non-geostationary satellites, the blanket license will cover a specified number of space stations to operate in a specified number of orbital planes. In the case of geostationary satellites, as part of a geostationary-only satellite system or a geostationary/non-geostationary hybrid satellite system, an individual license will be issued for each satellite to be located at a geostationary orbital location.

* * * * *

(b) * * *

(1) *General requirements.* Each application for a space station system authorization in the 1.6/2.4 GHz Mobile-Satellite Service or 2 GHz Mobile-Satellite Service shall describe in detail the proposed satellite system, setting forth all pertinent technical and operational aspects of the system, and the technical, legal, and financial qualifications of the applicant. In particular, each application shall include the information specified in § 25.114. Non-U.S. licensed systems shall comply with the provisions of § 25.137. System proponents seeking authorization in the 2 GHz Mobile-Satellite Service also shall describe the design and operational strategies that they will use, if any, to mitigate orbital debris. Applicants must submit a casualty risk assessment if planned post-mission disposal involves atmospheric re-entry of the spacecraft.

(2) *Technical qualifications.* In addition to providing the information specified in paragraph (b)(1) of this section, each applicant and letter of intent filer shall demonstrate the following:

(i) That a proposed system in the 1.6/2.4 GHz MSS frequency bands employs a non-geostationary constellation or constellations of satellites;

(ii) That a system proposed to operate using non-geostationary satellites be capable of providing mobile satellite services to all locations as far north as 70 deg. North latitude and as far south as 55 deg. South latitude for at least 75% of every 24-hour period, *i.e.*, that at least one satellite will be visible above the horizon at an elevation angle of at least 5 deg. for at least 18 hours each day within the described geographic area;

(iii) That a system proposed to operate using non-geostationary satellites be capable of providing mobile satellite services on a continuous basis throughout the fifty states, Puerto Rico and the U.S. Virgin Islands, i.e., that at least one satellite will be visible above the horizon at an elevation angle of at least 5 deg. at all times within the described geographic areas; and

(iv) That a system only using geostationary orbit satellites, at a minimum, be capable of providing mobile satellite services on a continuous basis throughout the 50 states, Puerto Rico, and the U.S. Virgin Islands, if technically feasible.

(v) That operations will not cause unacceptable interference to other authorized users of the spectrum. In particular, each application in the 1.6/2.4 GHz frequency bands shall demonstrate that the space station(s) comply with the requirements specified in § 25.213.

* * * * *

(e) * * *

(1) All operators of 1.6/2.4 GHz Mobile-Satellite Service systems and 2 GHz Mobile-Satellite Service systems shall, on October 15 of each year, file with the International Bureau and the Commission's Columbia Operations Center, Columbia, Maryland, a report containing the following information current as of September 30 of that year:

* * * * *

(iii) A detailed description of the utilization made of the in-orbit satellite system. That description should identify the percentage of time that the system is actually used for U.S. domestic or transborder transmission, the amount of capacity (if any) sold but not in service within U.S. territorial geographic areas, and the amount of unused system capacity. 2 GHz Mobile Satellite systems receiving expansion spectrum as part of the unserved areas spectrum incentive must provide a report on the actual number of subscriber minutes originating or terminating in unserved areas as a percentage of the actual U.S. system use; and

* * * * *

(3) All operators of 2 GHz Mobile-Satellite Service systems must begin system construction upon award of a service link license to U.S.-based applicants, or upon designation of spectrum for non-U.S.-based systems, in accordance with milestones set forth in the respective system's authorization. All operators of 2 GHz Mobile-Satellite Service systems shall, within 10 days after a required implementation milestone as specified in the system authorization, certify to the Commission by affidavit that the milestone has been met or notify the Commission by letter that it has not been met. At its discretion, the Commission may require the submission of additional information (supported by affidavit of a person or persons with knowledge thereof) to demonstrate that the milestone has been met. Failure to file timely certification of milestones, or filing disclosure of non-compliance, will result in automatic cancellation of the authorization with no further action required on the Commission's part.

* * * * *

(f) * * *

(1) Stations operating in the 1.6/2.4 GHz Mobile-Satellite Service and 2 GHz Mobile-Satellite Service that are voluntarily installed on a U.S. ship or are used to comply with any statute or regulatory equipment carriage requirements may also be subject to the requirements of sections 321(b) and 359 of the Communications Act of 1934. Licensees are advised that these provisions give priority to radio communications or signals relating to ships in distress and prohibits a charge for the transmission of maritime distress calls and related traffic.

* * * * *

9. Section 25.201 is amended by adding the following definition in alphabetical order to read as follows:

**§ 25. 201 Definitions.**

* * * * *

*2 GHz Mobile-Satellite Service.* A mobile-satellite service that operates in the 1990–2025 MHz and 2165–2200 MHz frequency bands, or in any portion thereof.

* * * * *

10. Section 25.202 is amended by revising paragraph (a)(4) to read as follows:

**§ 25. 202 Frequencies, frequency tolerance and emission limitations.**

(a) * * *

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(4)(i) The following frequencies are available for use by the 1.6/2.4 GHz Mobile-Satellite Service:

1610–1626.5 MHz: User-to-Satellite Link
1613.8–1626.5 MHz: Satellite-to-User Link (secondary)
2483.5–2500 MHz: Satellite-to-User Link

(ii) The following frequencies are available for use by the 2 GHz Mobile-Satellite Service:

1990–2025 MHz: User-to-Satellite Link
2165–2200 MHz: Satellite-to-User Link

* * * * *

11. Section 25.203 is amended by revising paragraph (c) introductory text to read as follows:

**§ 25.203 Choice of sites and frequencies.**

* * * * *

(c) Prior to the filing of an application, an earth station applicant shall coordinate the proposed frequency usage with existing terrestrial users and with applicants for terrestrial station authorizations with previously filed applications in accordance with the following procedure:

* * * * *

12. Section 25.279 is amended by revising paragraph (a) to read as follows:

**§ 25.279 Inter-satellite service.**

(a) Any satellite communicating with other space stations may use frequencies in the inter-satellite service as indicated in § 2.106 of this chapter. This does not preclude the use of other frequencies for such purposes as provided for in several service definitions, e.g., FSS. The technical details of the proposed inter-satellite link shall be provided in accordance with § 25.114(c).

* * * * *

[FR Doc. 00–25388 Filed 10–3–00; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[DA 00–2147; MM Docket No. 00–22; RM–9795]**

### Radio Broadcasting Services; Charlotte, TX

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document allots Channel 272A to Charlotte, Texas, in response to a petition filed by Kay-Zam Radio Company. See 65 FR 8931, February 23, 2000. The coordinates for Channel 272A at Charlotte are 28–46–00 NL and 98–42–00 WL. There is a site restriction 10.7 kilometers (6.7 miles) south of the community. A filing window for Channel 272A at Charlotte will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

**DATES:** Effective November 6, 2000.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 00–22, adopted September 13, 2000, and released September 22, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

**PART 73—[AMENDED]**

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334 and 336.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Charlotte, Channel 272A.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 00–25391 Filed 10–3–00; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[DA 00–2156; MM Docket No. 99–57; RM–9460, RM–9610]**

### Radio Broadcasting Services; Upton and Pine Haven, WY

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of Windy Valley Broadcasting, allots Channel 290C1 at Upton, Wyoming, as the community's first local aural transmission service (RM–9460). See 64 FR 8786, February 23, 1999. At the request of Mount Rushmore Broadcasting, Inc., we also allot Channel 283A at Upton, Wyoming, and Channel 259A at Pine Haven, Wyoming (RM–9610). Channels 283A and 290C1 can be allotted to Upton in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channels 283A and 290C1 at Upton are 44–05–54 North Latitude and 104–37–36 West Longitude. Additionally, Channel 259A can be allotted to Pine Haven in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 259A at Pine Haven are 44–21–28 North Latitude and 104–48–36 West Longitude.

**DATES:** Effective November 6, 2000. A filing window for Channels 283A and 290C1 at Upton, Wyoming, and Channel 259A at Pine Haven, Wyoming, will not be opened at this time. Instead, the issue of opening filing windows for these channels will be addressed by the Commission in a subsequent order.

**ADDRESSES:** Federal Communications Commission, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 99–57, adopted September 13, 2000, and released September 22, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

**PART 73—[AMENDED]**

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 54, 303, 334, 336.



**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Wyoming is amended by adding Upton, Channels 283A and 290C1; and Pine Haven, Channel 259A.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 00–25392 Filed 10–3–00; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[DA 00–2149; MM Docket No. 00–26; RM–9822]**

### Radio Broadcasting Services; Pearsall, TX

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document allots Channel 277A to Pearsall, Texas, in response to a petition filed by The Pearsall Company. See 65 FR 11538, March 3, 2000. The coordinates for Channel 277A at Pearsall are 28–56–40 NL and 99–11–44 WL. There is a site restriction 11.3 kilometers (7 miles) northwest of the community. Although Mexican concurrence has been requested for Channel 277A at Pearsall as a specially negotiated short-spaced allotment, notification has not been received. Therefore, operation with the facilities specified for Pearsall herein is subject to modification, suspension, or termination without right to hearing, if found by the Commission to be necessary in order to conform to the 1992 USA-Mexico FM Broadcast Agreement or if specifically objected to by Mexico. A filing window for Channel 277A at Pearsall will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

**DATES:** Effective November 6, 2000.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 00–26, adopted September 13, 2000, and released September 22, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

**PART 73—[AMENDED]**

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334 and 336.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 277A at Pearsall.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 00–25396 Filed 10–3–00; 8:45 am]

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VOL 65 ISS 193 OCT 4 2000 UMI



# Proposed Rules

Federal Register
Vol. 65, No. 193
Wednesday, October 4, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. 99–NM–164–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; McDonnell Douglas Model DC–9–80 Series Airplanes and Model MD–88 Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9–80 series airplanes and Model MD–88 airplanes, that currently requires a one-time inspection to detect cracking of the main landing gear (MLG) pistons, and repair or replacement of the pistons with new or serviceable parts, if necessary. This action would require, among other actions, repetitive dye penetrant and magnetic particle inspections to detect cracks of the MLG pistons; repair and replacement of discrepant parts; and installation of a preventative modification; as applicable. This action also would provide for an optional terminating action for certain MLG pistons. This proposal is prompted by additional reports of failure of the MLG pistons during towing of the airplanes. The actions specified by the proposed AD are intended to prevent fatigue cracking of the MLG pistons, which could result in failure of the pistons and subsequent damage to the airplane structure or injury to airplane occupants.

**DATES:** Comments must be received by November 20, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–164–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 99–NM–164–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

**FOR FURTHER INFORMATION CONTACT:** Brent Bandley, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5237; fax (310) 627–5210.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–164–AD." The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–164–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

### Discussion

On September 5, 1996, the FAA issued AD 96–19–09, amendment 39–9756 (61 FR 48617, September 16, 1996), applicable to certain McDonnell Douglas Model DC–9–80 series airplanes and Model MD–88 airplanes, to require a one-time inspection to detect cracking of the main landing gear (MLG) pistons, and repair or replacement of the pistons with new or serviceable parts, if necessary. That action was prompted by reports of failure of the MLG pistons that occurred during towing of the airplanes. The requirements of that AD are intended to prevent fatigue cracking of the MLG pistons, which could result in failure of the pistons and subsequent damage to the airplane structure or injury to airplane occupants.

### Actions Since Issuance of Previous Rule

Since the issuance of AD 96–19–09, the FAA has received additional reports of cracked MLG pistons on the affected airplanes. The FAA has determined that the one-time inspection of the MLG pistons required by AD 96–19–09 does not adequately preclude fatigue cracking of the MLG pistons. Also, Boeing has completed its assessment to establish a life limit for the MLG pistons affected by this AD.



### Explanation of Relevant Service Information

The manufacturer issued, and the FAA reviewed and approved, McDonnell Douglas Service Bulletin MD80–32–277, Revision 04, dated December 7, 1999. The service bulletin describes a new life limit (*i.e.*, 30,000 or 60,000 total landings, as applicable) for the affected MLG pistons. The service bulletin also describes the following improved procedures for the affected airplanes depending on the configuration:

- Performing repetitive dye penetrant and magnetic particle inspections to detect cracks of the MLG pistons. And
- Performing a preventative modification that involves various inspections to detect cracks of the MLG pistons; repair and replacement of discrepant parts, as applicable; wet grinding the rework area; flap shot peening the rework area; and reidentifying the MLG pistons. Accomplishment of the preventative modification stops the repetitive dye penetrant and magnetic particle inspections. And
- Flap shot peening, replacing the MLG piston with a new or serviceable MLG piston, and contacting Boeing for certain conditions.

### Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 96–19–09 to require accomplishment of the actions specified in the service bulletin described previously, except as described below.

### Error in Referenced Service Bulletin

For Group 1 airplanes, the referenced service bulletin incorrectly refers to paragraph 1.E. for the repetitive inspection schedule for Condition 3, Option 1 of the Accomplishment Instructions. Paragraph 1.E. does not contain such a repetitive inspection schedule.

### Differences Between Proposed Rule and Service Bulletin

The effectivity listing of the referenced service bulletin lists the affected airplanes by groups (*i.e.*, Group 1, Group 2, and Group 3). The FAA finds that Group 1 and 2 airplanes do not include all of the affected modified pistons. For Groups 1 and 2, the referenced service bulletin only refers to pistons that have been inspected, replaced, or modified per prior issues of the service bulletin. However, affected pistons may have been modified per other service documents in addition to previous revisions of the referenced service bulletin. Also, the FAA finds no need to specifically reference MLG pistons that have been inspected or replaced per prior issues of the service bulletin, because the only thing that defines Groups 1 and 2 is whether the affected piston has been modified. The FAA also finds that Groups 1 and 2 of the referenced service bulletin do not include the specific affected MLG pistons [*i.e.*, part number (P/N) 5935347–1 through 5935347–509 inclusive]. Therefore, this proposed AD references the specific affected MLG pistons and whether that piston has been modified, rather than the airplanes specified in the service bulletin.

Operators also should note that, although the referenced service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this proposed AD would require the repair of those conditions to be accomplished in accordance with a method approved by the FAA.

The referenced service bulletin also specifies that landing gear pistons, modified per one of the following conditions, are acceptable as having complied with the intent of the service bulletin:

1. As a result of procedure verification;
2. As a repair per operator's inquiry and Boeing disposition; or
3. As a preventative modification accomplished by operators who participated in the procedure verification prior to the issuance of this service bulletin revision. However, this proposed AD would require accomplishment of the actions in accordance with the procedures specified in the referenced service bulletin. Any other procedure may be used only if approved as an alternative method of compliance in accordance with paragraph (m) of this AD.

The referenced service bulletin recommends performing repetitive visual inspections to detect cracks in the topcoat paint of the MLG piston, performing a non-destructive testing (NDT) inspection, and contacting Boeing, if necessary. The FAA has determined that the repetitive inspections of the MLG pistons and eventual preventative modification required by this proposed AD adequately addresses the identified unsafe condition for the interim. Therefore, the repetitive visual inspections of the topcoat paint and NDT inspection are not required by the proposed AD.

For any piston having P/N 5935347–511 that has accumulated 30,000 or more total landings, the referenced service bulletin recommends either replacing the MLG piston with a new or serviceable MLG piston or contacting Boeing. The FAA has consulted with Boeing and determined that any piston having P/N 5935347–511 that has accumulated 30,000 or more total landings must be replaced. Therefore, the proposed AD only requires replacement of those pistons.

Operators also should note that, unlike the referenced service bulletin, the proposed AD provides for an optional terminating action for the requirements of the AD. The optional terminating action involves replacing all MLG pistons with MLG pistons having P/N 5935347–517, which are redesigned pistons that will adequately address the identified unsafe condition.

### Interim Action

This is considered to be interim action. The manufacturer has advised that it currently is developing a replacement schedule to eventually remove all affected MLG pistons from the fleet and replace them with redesigned MLG pistons. Once this replacement schedule is developed, approved, and available, the FAA may consider additional rulemaking.

### Cost Impact

There are approximately 1,200 Model DC–9–80 series airplanes and Model MD–88 airplanes of the affected design in the worldwide fleet. The FAA estimates that 700 airplanes of U.S. registry would be affected by this proposed AD.

Should an operator be required to do the dye pernetrant and magnetic particle inspections, it would take approximately 2 work hours per MLG piston to accomplish the inspections, at an average lavor rate of $60 per work hour. Based on thes figures, the cost impact of these inspections proposed by this AD on U.S. operators is estimated to be $120 per MLG piston.

Should an operator be required to do the preventative modidfication, it would take approximately 6 work hours per MLG piston to accomplish the inspections, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of these inspections proposed by this AD on U.S.

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operators is estimated to be $36 per MLG piston.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Should an operator elect to accomplish the optional terminating action that would be provided by this AD action, it would take approximately 31 work hours per MLG piston to accomplish it, at an average labor rate of $60 per work hour. The cost of required parts would be approximately $107,070 per MLG piston. Based on these figures, the cost impact of the optional terminating action would be $108,930 per MLG piston.

**Regulatory Impact**

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by removing amendment 39–9756 (61 FR 48617, September 16, 1996), and by adding a new airworthiness directive (AD), to read as follows:

**McDonnell Douglas:** Docket 99–NM–164–AD. Supersedes AD 96–19–09, Amendment 39–9756.

*Applicability:* Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) series airplanes; and Model MD–88 airplanes; as listed in McDonnell Douglas Service Bulletin MD80–32–277, Revision 04, dated December 7, 1999; certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (m)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent fatigue cracking of the main landing gear (MLG) pistons, which could result in failure of the pistons and subsequent damage to the airplane structure or injury to airplane occupants, accomplish the following:

**For Airplanes on Which Certain Pistons Have Not Been Modified: Inspections**

(a) For airplanes on which any MLG piston, part number (P/N) 5935347–1 through 5935347–509 inclusive, has NOT been modified: Do the actions specified in paragraph (a)(1), (a)(2), or (a)(3) of this AD, as applicable, per the Accomplishment Instructions of McDonnell Douglas Service Bulletin MD80–32–277, Revision 04, dated December 7, 1999.

(1) For any MLG piston that has accumulated less than 5,000 total landings since date of manufacture: Prior to the accumulation of 5,000 total landings on the MLG piston, or within 12 months after the effective date of this AD, whichever occurs later, do dye penetrant and magnetic particle inspections to detect cracks of the MLG pistons.

(2) For any MLG piston that has accumulated 5,000 or more total landings since date of manufacture, but less than 30,000 total landings since date of manufacture: Within 1,500 landings on the MLG piston or 12 months after the effective date of this AD, whichever occurs later, do dye penetrant and magnetic particle inspections to detect cracks of the MLG pistons.

(3) For any MLG piston that has accumulated 30,000 or more total landings since date of manufacture: Within 2 years or 5,000 landings on the MLG piston after the effective date of this AD, whichever occurs first, do the preventative modification (including inspections; corrective actions, if necessary; wet grind rework area; flap shot peen rework area; and reidentify the MLG pistons); except as required by paragraph (k) of this AD. Following accomplishment of the preventative modification, do the actions specified in paragraph (e) at the time indicated in that paragraph.

**For Airplanes on Which Certain Pistons Have Not Been Modified: Condition 1 (No Crack)**

(b) If no crack is found during any inspection required by either paragraph (a)(1) or (a)(2) of this AD, do the actions specified in either paragraph (b)(1) or (b)(2) of this AD.

(1) Condition 1, Option 1. Do the actions specified in either paragraph (b)(1)(i) or (b)(1)(ii) of this AD, and in paragraph (b)(1)(iii) of this AD.

(i) Repeat the inspections required by either paragraph (a)(1) or (a)(2) of this AD thereafter at intervals not to exceed 1,500 landings until the permanent modification required by paragraph (b)(1)(iii) of this AD has been done.

(ii) Before further flight, do the flap shot peening per McDonnell Douglas Service Bulletin MD80–32–277, Revision 04, dated December 7, 1999. Repeat the inspections required by either paragraph (a)(1) or (a)(2) of this AD thereafter at intervals not to exceed 2,500 landings until the permanent modification required by paragraph (b)(1)(iii) of this AD has been done.

(iii) Prior to the accumulation of 30,000 or more total landings on the MLG piston, do the preventative modification (including inspections; corrective actions, if necessary; wet grind rework area; flap shot peen rework area; and reidentify the MLG pistons), per the Accomplishment Instructions of McDonnell Douglas Service Bulletin MD80–32–277, Revision 04, dated December 7, 1999; except as required by paragraph (k) of this AD. Accomplishment of the permanent modification stops the repetitive inspection requirements of paragraphs (b)(1)(i) and (b)(1)(ii) of this AD. Following accomplishment of the preventative modification, do the actions specified in paragraph (e) at the time indicated in that paragraph.

(2) Condition 1, Option 2. Before further flight, do the preventative modification (including inspections; corrective actions, if necessary; wet grind rework area; flap shot peen rework area; and reidentify the MLG pistons) per Condition 1, Option 2, of the Accomplishment Instructions of McDonnell Douglas Service Bulletin MD80–32–277, Revision 04, dated December 7, 1999; except as required by paragraph (k) of this AD. Following accomplishment of the preventative modification, do the actions specified in paragraph (e) at the time indicated in that paragraph.



**For Airplanes on Which Certain Pistons Have Not Been Modified: Condition 2 (Any Crack Within Limits)**

(c) If any crack is found during any inspection required by either paragraph (a)(1) or (a)(2) of this AD, and that crack is within the limits specified in McDonnell Douglas Service Bulletin MD80–32–277, Revision 04, dated December 7, 1999, before further flight, do the action(s) specified in either paragraph (c)(1) or (c)(2) of this AD.

(1) Do the preventative modification (including inspections; corrective actions, if necessary; wet grind rework area; flap shot peen rework area; and reidentify the MLG pistons) per the Accomplishment Instructions of the service bulletin; except as required by paragraph (k) of this AD. Following accomplishment of the preventative modification, do the actions specified in paragraph (e) or (h) of this AD, as applicable, at the time indicated in that paragraph.

(2) Replace the MLG piston with a new or serviceable MLG piston per the service bulletin. Following accomplishment of the replacement, do the actions specified in paragraph (a), (e), or (h) of this AD, as applicable, at the time indicated in that paragraph.

**For Airplanes on Which Certain Pistons Have Not Been Modified: Condition 3 (Any Crack Outside Limits)**

(d) If any crack is found during any inspection required by either paragraph (a)(1) or (a)(2) of this AD that is outside the limits specified in McDonnell Douglas Service Bulletin MD80–32–277, Revision 04, dated December 7, 1999, before further flight, do the action(s) specified in paragraph (d)(1) or (d)(2) of this AD.

(1) Condition 3, Option 1. Replace the MLG piston with a new or serviceable MLG piston per the service bulletin. Following accomplishment of the replacement, do the actions specified in paragraph (a), (e), or (h) of this AD, as applicable, at the time indicated in that paragraph.

(2) Condition 3, Option 2. Repair per a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA.

**For Airplanes on Which Certain Pistons Have Been Modified: Replacement or Inspections and Corrective Actions, If Necessary**

(e) For airplanes on which any MLG piston, part number (P/N) 5935347–1 through 5935347–509 inclusive, has been modified:

(1) For any MLG piston that has accumulated 30,000 or more landings since accomplishment of the modification: Within 6 months after the effective date of this AD, replace the MLG piston with a new or serviceable MLG piston per the service bulletin. Following accomplishment of the replacement, do the actions specified in paragraph (a), (e), or (h) of this AD, as applicable, at the time indicated in that paragraph.

(2) For any MLG piston that has accumulated less than 30,000 landings since accomplishment of the modification: Do dye penetrant and magnetic particle inspections to detect cracks of the MLG pistons, per the Accomplishment Instructions of McDonnell Douglas Service Bulletin MD80–32–277, Revision 04, dated December 7, 1999; at the applicable time(s) specified in paragraph (e)(2)(i) or (e)(2)(ii) of this AD.

(i) For any MLG piston that has been modified per paragraph (a)(3), (b)(1)(iii), (b)(2), or (c)(1) of this AD, or that has been replaced with a modified MLG piston per paragraph (c)(2) or (d)(1) of this AD: Inspect within 2,500 landings following accomplishment of the modification or replacement with a modified MLG piston.

(ii) For any MLG piston that has been modified prior to the effective date of this AD: Inspect within 1,500 landings or 12 months after the effective date of this AD, whichever occurs later.

(f) If no crack is found during any inspection required by paragraph (e)(2) of this AD, repeat the dye penetrant and magnetic particle inspections required by paragraph (e)(2) of this AD thereafter at intervals not to exceed 2,500 landings. Prior to the accumulation of 30,000 or more total landings on the MLG piston, replace the MLG piston with a new or serviceable MLG piston per the Accomplishment Instructions of McDonnell Douglas Service Bulletin MD80–32–277, Revision 04, dated December 7, 1999. Following accomplishment of the replacement, do the actions specified in paragraph (a), (e), or (h) of this AD, as applicable, at the time indicated in that paragraph.

(g) If any crack is found during any inspection required by paragraph (e)(2) of this AD, before further flight, do the action(s) specified in either paragraph (d)(1) or (d)(2) of this AD.

**For Airplanes on Which a Certain Piston Has Been Installed**

(h) For airplanes on which any MLG piston, P/N 5935347–511, has been installed: Do the actions specified in paragraph (h)(1), (h)(2), or (h)(3) of this AD, as applicable, per the Accomplishment Instructions of McDonnell Douglas Service Bulletin MD80–32–277, Revision 04, dated December 7, 1999.

(1) For any MLG piston that has accumulated less than 5,000 total landings since date of manufacture: Prior to the accumulation of 5,000 total landings on the MLG piston, or within 12 months after the effective date of this AD, whichever occurs later, do dye penetrant and magnetic particle inspections to detect cracks of the MLG pistons.

(2) For any MLG piston that has accumulated 5,000 or more total landings since date of manufacture, but less than 30,000 total landings since date of manufacture: Within 1,500 landings on the MLG piston or 12 months after the effective date of this AD, whichever occurs later, do dye penetrant and magnetic particle inspections to detect cracks of the MLG pistons.

(3) For any MLG piston that has accumulated 30,000 or more total landings since date of manufacture: Within 6 months after the effective date of this AD, replace the MLG piston with a new or serviceable MLG piston per the service bulletin. Following accomplishment of the replacement, do the actions specified in paragraph (a), (e), or (h) of this AD, as applicable, at the time indicated in that paragraph.

(i) If no crack is found during any inspection required by either paragraph (h)(1) or (h)(2) of this AD, repeat the dye penetrant and magnetic particle inspections required by either paragraph (h)(1) or (h)(2) of this AD thereafter at intervals not to exceed 2,500 landings. Prior to the accumulation of 30,000 or more total landings on the MLG piston, do the actions specified in paragraph (d)(1) of this AD.

(j) If any crack is found during any inspection required by either paragraph (h)(1) or (h)(2) of this AD, before further flight, do the action(s) specified in either paragraph (d)(1) or (d)(2) of this AD.

**Exception to Actions Referenced in Service Bulletin**

(k) If any discrepancy is found during any inspection while accomplishing the preventative modification required by this AD, prior to further flight, do applicable corrective action(s) per McDonnell Douglas Service Bulletin MD80–32–277, Revision 04, dated December 7, 1999. If the service bulletin specifies to contact the manufacturer for appropriate action: Prior to further flight, repair in accordance with a method approved by the Manager, Los Angeles ACO. For a repair method to be approved by the Manager, Los Angeles ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

**Optional Terminating Action**

(l) Replacement of any MLG piston with a MLG piston, P/N 5935347–517, per McDonnell Douglas Service Bulletin MD80–32–277, Revision 04, dated December 7, 1999; constitutes terminating action for the requirements of this AD for that MLG piston.

**Alternative Methods of Compliance**

(m)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 96–19–09, amendment 39–9756, are approved as alternative methods of compliance with this AD.

**Special Flight Permits**

(n) Special flight permits may be issued in accordance with sections 21.197 and 21.199

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of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on September 28, 2000.

**Donald L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–25434 Filed 10–3–00; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

### 30 CFR Part 920

**[MD–046–FOR]**

### Maryland Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Proposed rule; reopening of comment period.

**SUMMARY:** OSM is reopening the public comment period on a proposed amendment to the Maryland permanent regulatory program.(Maryland program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to the Maryland regulations regarding a definition of previously mined area, termination of jurisdiction, permitting requirements, bond release requirements and performance standards for inspections. The amendment is intended to revise the Maryland program to be no less effective than the corresponding Federal regulations.

**DATES:** If you submit written comments, they must be received by 4 p.m., E.D.T., October 19, 2000.

**ADDRESSES:** Mail or hand-deliver your written comments to Mr. George Rieger, Manager, Oversight and Inspection Office, at the address listed below. You may review copies of the Maryland program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the proposed amendment by contacting OSM's Appalachian Regional Coordinating Center.

George Rieger, Manager, Oversight and Inspection Office, Appalachian Regional Coordinating Center, Office of Surface Mining Reclamation and Enforcement, 3 Parkway Center, Pittsburgh PA 15220, Telephone: (412) 937–2153, E-mail: *grieger@osmre.gov*.

Maryland Bureau of Mines, 160 South Water Street, Frostburg, Maryland 21532, Telephone: (301) 689–4136.

**FOR FURTHER INFORMATION CONTACT:** George Rieger, Manager, Oversight and Inspection Office, Appalachian Regional Coordinating Center, Telephone: (412) 937–2153.

**SUPPLEMENTARY INFORMATION:**

#### I. Background on the Maryland Program

On February 18, 1982, the Secretary of the Interior approved the Maryland program. You can find background information on the Maryland program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the February 18, 1982, **Federal Register** (47 FR 7214). You can find subsequent actions concerning the conditions of approval and program amendments at 30 CFR 920.15 and 920.16.

#### II. Description of the Proposed Amendment

By letter dated September 14, 1999 (Administrative Record No. 577–04), Maryland provided an informal amendment to OSM regarding a definition of previously mined area, termination of jurisdiction, permitting requirements, bond release requirements and performance standards for inspections. Maryland submitted the informal amendment in response to requests made by OSM as required under 30 CFR 732.17(d) in letters dated July 8, 1997, and August 11, 1999 (Administrative Record Nos. 577–01 and 577–03, respectively). OSM completed its review of the informal amendment and submitted comments to Maryland in a letter dated March 20, 2000 (Administrative Record No. 577–05). By letter dated April 11, 2000 (Administrative Record No. MD–577–06), Maryland submitted its response to OSM's comments in the form of a proposed amendment to the Code of Maryland Regulations (COMAR). The proposed amendments were announced in the April 28, 2000, **Federal Register** (65 FR 24897). However, OSM's review determined that the proposed revisions to COMAR 26.20.31.02H regarding the inspection frequency on reclaimed bond forfeiture sites were inconsistent with 30 CFR 840.11 and 700.11(d). As a result, a letter requesting clarification was sent to Maryland dated August 17, 2000 (Administrative Record No. MD–577–12). Maryland responded in its letter dated August 31, 2000 (Administrative Record No. MD 577–13) with a new revision to COMAR 26.20.31.02H regarding the inspection frequency on reclaimed bond forfeiture sites. Therefore, OSM is reopening the public comment period regarding the following proposed amendments to Maryland's regulatory program:

1. *COMAR 26.20.31.02 Inspections.*

Maryland proposes to delete the existing paragraph H. in its entirety and substitute the following new paragraph H:

H. An abandoned site means a surface coal mining and reclamation operation for which the Bureau has found in writing that:

(1) All surface and underground coal mining and reclamation activities at the site have ceased;

(2) At least one notice of violation has been issued and the notice could not be served in accordance with Regulation .08 of this chapter or the notice was served and has progressed to a failure-to-abate cessation order;

(3) Action is being taken to ensure that the permittee and the operator, and owners and controllers of the permittee and the operator, will be precluded from receiving future permits while the violations continue at the site;

(4) Action is being taken in accordance with the requirements of the Regulatory Program to ensure that abatement occurs or that there will not be a recurrence of the failure-to-abate, except where after evaluating the circumstances it is concluded that further enforcement offers little or no likelihood of successfully compelling abatement or recovering any reclamation costs; and

(5) Where the site is or was permitted and bonded and the permit has either expired or been revoked, the forfeiture of any available performance bond is being diligently pursued or has been forfeited.

Maryland also proposes to add new paragraph I .as follows:

I. Instead of the inspection frequency required in § A and B of this regulation, the Bureau shall inspect each abandoned site on a set frequency commensurate with the public health and safety and environmental considerations present at each specific site. However, in no case shall the inspection frequency be set at less than one complete inspection per calendar year.

Maryland also proposes to add new paragraph J. as follows:

J. The Bureau shall conduct a complete inspection of the abandoned site and provide the public notice required under § K of this regulation in order to select an alternative inspection frequency authorized under § I of this regulation. Following the inspection and public notice the Bureau shall prepare and maintain for public review a written finding that justifies the selected alternative inspection frequency. The written finding shall justify the new inspection frequency by addressing in detail all of the following criteria:

(1) How the site meets each of the criteria under the definition of abandoned site under § H of this regulation and thereby qualifies for a reduction in inspection frequency;

(2) Whether there exists on the site, and to what extent, impoundments, earthen structures, or other conditions that pose, or may reasonably be expected to ripen into, imminent dangers to the health and safety of the public or significant environmental harms to land, air, or water resources;

(3) The extent to which existing impoundments or earthen structures were constructed in accordance with prudent engineering designs approved in the permit;

(4) The degree to which erosion and sediment control is present and functioning;

(5) The extent to which the site is located near or above urbanized areas, communities, occupied dwellings, schools, and other public or commercial buildings and facilities;

(6) The extent of reclamation completed prior to abandonment and the degree of stability of unreclaimed areas taking into consideration the physical characteristics of the land mined and the extent of settlement or revegetation that has occurred naturally with them; and

(7) Based on a review of the complete and the partial inspection report record for the site during at least the last two consecutive years, the rate at which adverse environmental or public health and safety conditions can be expected to progressively deteriorate.

Maryland also proposes to add new paragraph K. as follows:

*K. Public Notice*

(1) The Bureau shall place a notice in the newspaper with the broadest circulation in the locality of the abandoned site providing the public with a 30-day period in which to submit written comments concerning the alternative inspection frequency.

(2) The public notice shall contain the:

(a) Permittee's name and permit number;

(b) Precise location of the land affected.

(c) Inspection frequency proposed.

(d) General reasons for reducing the inspection frequency;

(e) Bond status of the permit;

(f) Telephone number and address of the Bureau where written comments on the reduced inspection frequency may be submitted; and

(g) Closing date of the comment period.

#### III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. Specifically, OSM is seeking comments on the revisions to the State's regulations that were submitted on August 31, 2000 (Administrative Record No. MD–577–13). Comments should address whether the proposed amendment with these revisions satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Maryland program.

*Written Comments:* If you submit written or electronic comments on the proposed rule during the 15-day comment period, they should be specific, should be confined to issues pertinent to the notice, and should explain the reason for your recommendation(s). We may not be able to consider or include in the Administrative Record comments delivered to an address other than the one listed above (see **ADDRESSES**).

*Electronic comments*: Please submit Internet comments as an ASCII, WordPerfect, or Word file avoiding the use of special characters and any form of encryption. Please also include "Attn: SPATS NO. MD–046–FOR" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Appalachian Regional Coordinating Center at (412) 937–2153.

*Availability of Comments:* Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours at the OSM Administrative Record Room (see **ADDRESSES**). Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

#### IV. Procedural Determinations

*Executive Order 12866—Regulatory Planning and Review*

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

*Executive Order 12630—Takings*

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart federal regulation.

*Executive Order 13132—Federalism*

This rule does not have federalism implications. SMCRA delineates the roles of the federal and state governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that state laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that state programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

*Executive Order 12988—Civil Justice Reform*

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of state regulatory programs and program amendments since each such program is drafted and promulgated by a specific state, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed state regulatory programs and program amendments submitted by the states must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing

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federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

*National Environmental Policy Act*

Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that a decision on a proposed state regulatory program provision does not constitute a major federal action within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA) (42 U.S.C. 4332(2)(C)). A determination has been made that such decisions are categorically excluded from the NEPA process (516 DM 8.4.A).

*Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

*Regulatory Flexibility Act*

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

*Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million.

b. Will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the state submittal which is the subject of this rule is based upon counterpart federal regulations for which an analysis was prepared and a determination made that the federal regulation was not considered a major rule.

*Unfunded Mandates*

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

**List of Subjects in 30 CFR Part 920**

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 22, 2000.

**Michael K. Robinson,**

*Acting Regional Director, Appalachian Regional Coordinating Center.*

[FR Doc. 00–25404 Filed 10–3–00; 8:45 am]

BILLING CODE 4310–05–P

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

### 30 CFR Part 946

**[VA–119–FOR]**

### Virginia Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Proposed rule; public comment period and opportunity for public hearing.

**SUMMARY:** OSM is announcing receipt of a proposed amendment to the Virginia regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The program amendment consists of changes to the Virginia Surface Mining Reclamation Regulations concerning letters of credit. The amendment is intended to revise the Virginia program to be consistent with the corresponding Federal regulations.

**DATES:** If you submit written comments, they must be received on or before 4 p.m. (local time), on November 3, 2000. If requested, a public hearing on the proposed amendment will be held on October 30, 2000. Requests to speak at the hearing must be received by 4:00 p.m. (local time), on October 19, 2000.

**ADDRESSES:** Mail or hand-deliver your written comments and requests to speak at the hearing to Mr. Robert A. Penn, Director, Big Stone Gap Field Office at the address listed below.

You may review copies of the Virginia program, the proposed amendment, a listing of any scheduled hearings, and all written comments received in response to this document at the addresses below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the proposed amendment by contacting OSM's Big Stone Gap Field Office.

Mr. Robert A. Penn, Director, Office of Surface Mining Reclamation and Enforcement, Big Stone Gap Field Office, 1941 Neeley Road, Suite 201, Compartment 116, Big Stone Gap, Virginia 24219, Telephone: (540) 523–4303, E-mail: rpenn@osmre.gov.

Virginia Division of Mined Land Reclamation, P. O. Drawer 900, Big Stone Gap, Virginia 24219, Telephone: (540) 523–8100, E-mail: whb@mme.state.va.us.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert A. Penn, Director, Big Stone Gap Field Office; Telephone: (540) 523–4303.

**SUPPLEMENTARY INFORMATION:**

### I. Background on the Virginia Program

On December 15, 1981, the Secretary of the Interior conditionally approved the Virginia program. You can find background information on the Virginia program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the December 15, 1981, **Federal Register** (46 FR 61085–61115). You can find later actions concerning the conditions of approval and program amendments at 30 CFR 946.12, 946.13, 946.15, and 946.16.

### II. Discussion of the Proposed Amendment

By letter dated September 22, 2000 (Administrative Record Number VA–1008) the Virginia Department of Mines, Minerals and Energy (DMME) submitted an amendment to the Virginia program. In its letter, the DMME stated that the program amendment changes the Virginia program rules at 4 VAC 25–130–700.5 and 4 VAC 25–130–800.21 in response to amendments required by OSM in the May 3, 1999, **Federal Register** (64 FR 23542).

On May 3, 1999, OSM approved an amendment to the Virginia program which amended the Virginia Coal Surface Mining Control and Reclamation Act by adding "letter of credit" as an acceptable form of collateral bond to satisfy the performance bonding requirements of the Virginia Act. In our approval of the Virginia amendment, we required that the Virginia program regulations be



revised to be no less effective than the Federal regulations at 30 CFR 800.5(b), and 30 CFR 800.21(b)(2) concerning letters of credit. We codified this requirement at 30 CFR 946.16(a).

The amendment submitted by the DMME is described below.

4 VAC 25–130–700.5. Definitions.

The definition of "Collateral bond" is amended by adding a new paragraph (d) to read as follows.

(d) An irrevocable letter of credit of any bank organized or authorized to transact business in the United States, payable only to the Department at sight prepared in accordance with the Uniform Customs and Practices for Documentary Credits (1993 revision or the UCP revision current at the time of issuance of the letter of credit) International Chamber of Commerce (Publication No. 500).

4 VAC 25–130–800.21. Collateral bonds.

This provision is amended by revising paragraph (a) by adding the words "except for letters of credit" in the introductory sentence, adding a new paragraph (c), and re-lettering existing paragraph (c) as paragraph (d).

As amended, 4 VAC 25–130–800.21(a) reads as follows.

(a) Collateral bonds, except for letters of credit, shall be subject to the following conditions: The division shall. * * *

As amended, subsections 4 VAC 25–130–800.21(c) and (d) read as follows.

(c) Letters of credit shall be subject to the following conditions:

(1) The letter may be issued only by a bank organized or authorized to do business in the United States and must conform to the Uniform Customs and Practice for Documentary Credits (1993 Revision or revision current at the time of issuance of the letter of credit) International Chamber of Commerce (Publication No. 500);

(2) Letters of credit shall be irrevocable during their terms. A letter of credit used as security in areas requiring continuous bond coverage shall be forfeited and shall be collected by the division if not replaced by other suitable bond or letter of credit at least 30 days before its expiration date; and

(3) The letter of credit shall be payable to the Department at sight, in part or in full, upon receipt from the division of a notice of forfeiture issued in accordance with 4 VAC 25–130–800.50.

(d) Persons with an interest in collateral posted as a bond, and who desire notification of actions pursuant to the bond, shall request the notification in writing to the division at the time collateral is offered.

### III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments, on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Virginia program.

*Written Comments*

If you submit written or electronic comments on the proposed amendment during the 30-day comment period, they should be specific, should be confined to issues pertinent to the notice, and should explain the reason for your recommendation(s). We may not be able to consider or include in the Administrative Record comments delivered to an address other than the one listed above (see **ADDRESSES**).

*Electronic Comments*

Please submit Internet comments as an ASCII, Word Perfect, or Word file avoiding the use of special characters and any form of encryption. Please also include "Attn: SPATS NO. VA–119-FOR" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Big Stone Gap Field office at (540) 523–4303.

*Availability of Comments*

Our practice is to make comments, including names and home addresses of respondents, available for public review during our regular business hours at the OSM Administrative Record Room (see **ADDRESSES**). Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

*Public Hearing*

If you wish to speak at the public hearing, you should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m. (local time), on October 19, 2000. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who testifies at a public hearing provide us with a written copy of his or her testimony. The public hearing will continue on the specified date until all persons scheduled to speak have been heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**.

*Public Meeting*

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. If you wish to meet with OSM representatives to discuss the proposed amendment, you may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the Administrative Record.

### IV. Procedural Determinations

*Executive Order 12866—Regulatory Planning and Review*

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

*Executive Order 12630—Takings.*

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart federal regulation.

*Executive Order 13132—Federalism*

This rule does not have federalism implications. SMCRA delineates the roles of the federal and state governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse

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effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that state laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that state programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

*Executive Order 12988—Civil Justice Reform*

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of state regulatory programs and program amendments since each such program is drafted and promulgated by a specific state, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed state regulatory programs and program amendments submitted by the states must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

*National Environmental Policy Act*

Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that a decision on a proposed state regulatory program provision does not constitute a major federal action within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA) (42 U.S.C. 4332(2)(C)). A determination has been made that such decisions are categorically excluded from the NEPA process (516 DM 8.4.A).

*Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

*Regulatory Flexibility Act*

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The state submittal which is the subject of this rule is based upon counterpart federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the state. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart federal regulation.

*Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million.

b. Will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the state submittal which is the subject of this rule is based upon counterpart federal regulations for which an analysis was prepared and a determination made that the federal regulation was not considered a major rule.

*Unfunded Mandates*

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

**List of Subjects in 30 CFR Part 946**

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 26, 2000.

**Michael K. Robinson,**

*Acting Regional Director, Appalachian Regional Coordinating Center.*

[FR Doc. 00–25403 Filed 10–3–00; 8:45 am]

BILLING CODE 4310–05–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

**[WA–71–7146b; FRL–6879–7]**

### Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Washington

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** Environmental Protection Agency proposes to approve the Thurston County, Washington PM–10 area maintenance plan and redesignation request from nonattainment to attainment as revisions to the Washington State Implementation Plan. PM–10 air pollution is suspended particulate matter with a diameter less than or equal to a nominal ten micrometers.

In the Final Rules section of this **Federal Register**, the EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated.

If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

**DATES:** Written comments must be received in writing by November 3, 2000.

**ADDRESSES:** Written comments should be addressed to Debra Suzuki, Environmental Protection Specialist (OAQ–107), Office of Air Quality, at the EPA Regional Office listed below.

Copies of the State's request and other information supporting this action are available for inspection during normal business hours at the following locations: EPA, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101, and State of Washington Department of Ecology, 300 Desmond Drive, PO Box 47600, Olympia, Washington 98504–7600.

**FOR FURTHER INFORMATION CONTACT:** Scott Downey, Office of Air Quality (OAQ–107), EPA, Seattle, Washington, (206) 553–0682.



**SUPPLEMENTARY INFORMATION:** For additional information, see the Direct Final rule which is located in the Rules section of this **Federal Register**.

Dated: September 12, 2000.

**Michael F. Gearheard,**

*Acting Regional Administrator, Region 10.*

[FR Doc. 00–25227 Filed 10–3–00; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 271

**[FRL–6879–2]**

### South Carolina: Final Authorization of State Hazardous Waste Management Program Revisions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** South Carolina has applied to EPA for Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA proposes to grant final authorization to South Carolina. In the "Rules and Regulations" section of this **Federal Register**, EPA is authorizing the changes by an immediate final rule. EPA did not make a proposal prior to the immediate final rule because we believe this action is not controversial and do not expect comments that oppose it. We have explained the reasons for this authorization in the preamble to the immediate final rule. Unless we get written comments which oppose this authorization during the comment period, the immediate final rule will become effective on the date it establishes, and we will not take further action on this proposal. If we get comments that oppose this action, we will withdraw the immediate final rule and it will not take effect. We will then respond to public comments in a later final rule based on this proposal. You may not have another opportunity for comment. If you want to comment on this action, you must do so at this time.

**DATES:** Send your written comments by November 3, 2000.

**ADDRESSES:** Send written comments to Narindar Kumar, Chief RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, GA, 30303–3104; (404) 562–8440. You can examine copies of the materials submitted by South Carolina during normal business hours at the following locations: EPA Region IV Library, Atlanta Federal Center, Library, 61 Forsyth Street, SW., Atlanta, Georgia 30303; phone number: (404) 347–4216, or the South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201, phone number: (803) 896–4174.

**FOR FURTHER INFORMATION CONTACT:** Narindar Kumar, Chief RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, at the above address and phone number.

**SUPPLEMENTARY INFORMATION:** For additional information, please see the immediate final rule published in the "Rules and Regulations" section of this **Federal Register**.

Dated: September 15, 2000.

**A. Stanley Meiburg,**

*Acting Regional Administrator, Region IV.*

[FR Doc. 00–25346 Filed 10–3–00; 8:45 am]

BILLING CODE 6560–50–P

## CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

### 40 CFR Part 1601

### Freedom of Information Act Program

**AGENCY:** Chemical Safety and Hazard Investigation Board.

**ACTION:** Proposed rule.

**SUMMARY:** The Chemical Safety and Hazard Investigation Board proposes to adopt regulations for requesting and disclosing records under the Freedom of Information Act (FOIA). The FOIA requires Federal agencies to create regulations establishing procedures for its implementation. These regulations will ensure the proper handling of agency records and requests for those records under the FOIA.

**DATES:** Submit comments on or before November 3, 2000.

**ADDRESSES:** Address all comments concerning this proposed rule to Ray Porfiri, United States Chemical Safety and Hazard Investigation Board, 2175 K Street, NW., Suite 400, Washington, DC 20037–1809.

**FOR FURTHER INFORMATION CONTACT:** Ray Porfiri, 202–261–7629.

**SUPPLEMENTARY INFORMATION:** These proposed regulations implement the Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended by the Electronic Freedom of Information Act Amendments of 1996, Public Law 104–231, 110 Stat. 3048. The Board proposes the following set of regulations to discharge its responsibilities under the FOIA. The FOIA establishes: basic procedures for public access to agency records and guidelines for waiver or reduction of fees the agency would otherwise assess for the response to the records request; categories of records that are exempt for various reasons from public disclosure; and basic requirements for Federal agencies regarding their processing of and response to requests for agency records. The Board invites comments from interested groups and members of the public on these proposed regulations.

**Regulatory Flexibility Act**

The Board, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this proposed regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Under the FOIA, agencies may recover only the direct costs of searching for, reviewing, and duplicating the records processed for requesters. Thus, fees assessed by the Board will be nominal. Further, the "small entities" that make FOIA requests, as compared with individual requesters and other requesters, are relatively few in number.

**Unfunded Mandates Reform Act of 1995**

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, we did not deem any action necessary under the provisions of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4, 109 Stat. 48.

**List of Subjects in 40 CFR Part 1601**

Administrative practice and procedure, Archives and records, Freedom of information.

For the reasons set forth in the preamble, the Chemical Safety and Hazard Investigation Board proposes to establish 40 CFR Chapter VI—Chemical Safety and Hazard Investigation Board, consisting of parts 1600 through 1699, and add part 1601 to read as follows:

## PART 1601—PROCEDURES FOR DISCLOSURE OF RECORDS UNDER THE FREEDOM OF INFORMATION ACT

### Subpart A—PURPOSE, SCOPE, AND APPLICABILITY

Sec.

1601.1 Purpose and scope.
1601.2 Applicability.
1601.3 Definitions.

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**Subpart B—Administration**

1601.10 Protection of records.
1601.11 Preservation of records pertaining to requests under this part.
1601.12 Public reading room.

**Subpart C—Procedures for Requesting and Disclosing Records**

1601.20 Requests for records.
1601.21 Response to requests.
1601.22 Form and content of responses.
1601.23 Appeals of denials.
1601.24 Timing of responses to requests.
1601.25 Disclosure of requested records.
1601.26 Special procedures for confidential business information.

**Subpart D—Fees**

1601.30 Fees to be charged—general.
1601.31 Fees to be charged—categories of requesters.
1601.32 Limitations on charging fees.
1601.33 Miscellaneous fee provisions.

**Authority:** 5 U.S.C. 552, 553; 42 U.S.C. 7412 *et seq.*

## Subpart A—Purpose, Scope, and Applicability

### § 1601.1 Purpose and scope.

This part contains the regulations of the Chemical Safety and Hazard Investigation Board ("CSB" or "Board" or "agency") implementing the Freedom of Information Act ("FOIA"). These regulations provide procedures by which members of the public may obtain access to records compiled, created, and maintained by the CSB, along with procedures it must follow in response to such requests for records.

### § 1601.2 Applicability.

(a) *General.* The FOIA and the regulations in this part apply to all CSB documents and information. However, if another law sets specific procedures for disclosure, the CSB will process a request in accordance with the procedures that apply to those specific documents. If a request is received for disclosure of a document to the public which is not required to be released under those provisions, the CSB will consider the request under the FOIA and the regulations in this part.

(b) *Records available through routine distribution procedures.* When the record requested includes material published and offered for sale, *e.g.*, by the Superintendent of Documents of the Government Printing Office, or by an authorized private distributor, the CSB will first refer the requester to those sources. Nevertheless, if the requester is not satisfied with the alternative sources, the CSB will process the request under the FOIA.

### § 1601.3 Definitions.

*Appeals Officer* means the person designated by the Chairperson to process appeals of denials of requests for CSB records under the FOIA.

*Business submitter* means any person or entity which provides confidential business information, directly or indirectly, to the CSB and who has a proprietary interest in the information.

*Chairperson* means the Chairperson of the CSB (including, in the absence of a Chairperson, the Board Member supervising personnel matters) or his or her designee.

*Commercial-use requester* means requesters seeking information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, the CSB shall determine, whenever reasonably possible, the use to which a requester will put the documents requested. Where the CSB has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, the CSB shall seek additional clarification before assigning the request to a specific category.

*Confidential business information* means records provided to the government by a submitter that arguably contain material exempt from disclosure under Exemption 4 of the FOIA, because disclosure could reasonably be expected to cause substantial competitive harm.

*Direct costs* means those expenditures by the CSB actually incurred in searching for and duplicating records to respond to a FOIA request. Direct costs include the salary of the employee or employees performing the work (the basic rate of pay for the employee plus a percentage of that rate to cover benefits) and the cost of operating duplicating machinery. Direct costs do not include overhead expenses, such as the cost of space and heating or lighting of the facility in which the records are stored.

*Duplication* refers to the process of making a copy of a document necessary to fulfill a FOIA request. Such copies can take the form of, among other things, paper copy, microform, audio-visual materials, or machine-readable documentation. The copies provided shall be in a form that is reasonably usable by requesters.

*Educational institution* refers to a preschool, a public or private elementary or high school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, and an institution of vocational education, which operates a program of scholarly research.

*FOIA Officer* means the person designated to process requests for CSB documents under the FOIA.

*Non-commercial scientific institution* refers to an institution that is not operated on a commercial basis as that term is used above in defining *commercial-use requester*, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

*Record* includes any writing, drawing, map, recording, tape, film, photo, or other documentary material by which information is preserved.

*Representative of the news media* refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term *news* means information that is about current events or that would be of current interest to the public. For freelance journalists to be regarded as working for a news organization, they must demonstrate a solid basis for expecting publication through that organization. A publication contract would be the clearest proof, but components shall also look to the past publication record of a requester in making this determination.

*Requester* means any person, including an individual, Indian tribe, partnership, corporation, association, or public or private organization other than a Federal agency, that requests access to records in the possession of the CSB.

*Review* refers to the process of examining a record, in response to a FOIA request, to determine whether any portion of that record may be withheld under one or more of the FOIA exemptions. It also includes the processing of any record for disclosure; for example, redacting information that is exempt from disclosure under the FOIA. Review does not include time spent resolving general legal or policy issues regarding the use of FOIA exemptions.

*Search* refers to the time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within a document. The CSB shall ensure that searches are conducted in the most efficient and least expensive manner reasonably possible.

*Submitter* means any person or entity who provides information directly or indirectly to the CSB. The term includes, but is not limited to, corporations, Indian tribal governments, state governments, and foreign governments.



*Working day* means a Federal workday that does not include Saturdays, Sundays, or Federal holidays.

## Subpart B—Administration

### § 1601.10 Protection of records.

(a) Except as authorized by this part or as otherwise necessary in performing official duties, no employee shall in any manner disclose or permit disclosure of any document or information in the possession of the CSB that is confidential or otherwise of a nonpublic nature, including that regarding the CSB, the Environmental Protection Agency or the Occupational Safety and Health Administration.

(b) No person may, without permission, remove from the place where it is made available any record made available to him for inspection or copying. Stealing, altering, mutilating, obliterating, or destroying, in whole or in part, such a record shall be deemed a crime.

### § 1601.11 Preservation of records pertaining to requests under this part.

The CSB will preserve all correspondence pertaining to the requests that it receives under this part, as well as copies of all requested records, until disposition or destruction is authorized by Title 44 of the United States Code or the National Archives and Records Administration's General Records Schedule 14. Records will not be disposed of while they are the subject of a pending request, appeal, or lawsuit under the FOIA.

### § 1601.12 Public reading room.

(a) The CSB maintains a public reading room that contains the records that the FOIA requires to be made regularly available for public inspection and copying as well as a current subject-matter index of its reading room records.

(b) Because of the lack of requests to date for material required to be indexed, the CSB has determined that it is unnecessary and impracticable to publish quarterly, or more frequently, and distribute (by sale or otherwise) copies of each index and supplements thereto, as provided in 5 U.S.C. 552(a)(2). However, the CSB will provide a copy of such indexes to a member of the public upon request, at a cost not to exceed the direct cost of duplication and mailing, if sending records by other than ordinary mail.

(c) The CSB maintains a public reading room at its headquarters: 2175 K Street, NW., Suite 400, Washington, DC 20037–1809.

(d) *Copying.* The cost of copying information available in the offices of the CSB shall be imposed on a requester in accordance with the provisions of §§ 1601.30 through 1601.33.

(e) The CSB also makes reading room records available electronically through the agency's World Wide Web site (which can be found at http://www.csb.gov). This includes the index of its reading room records, indicating which records are available electronically.

## Subpart C—Procedures for Requesting and Disclosing Records

### § 1601.20 Requests for records.

(a) *Addressing requests.* Requests for records in the possession of the CSB shall be made in writing. The envelope and the request both should be clearly marked *FOIA Request* and addressed to: FOIA Officer, Chemical Safety and Hazard Investigation Board, 2175 K Street, NW., Suite 400, Washington, DC 20037–1809. A request improperly addressed will be deemed not to have been received for the purposes of § 1601.24(a) until it is received, or would have been received with the exercise of due diligence, by the FOIA Officer. Records requested in conformance with this section and which are not withholdable records may be obtained in person or by mail as specified in the request. Records to be obtained in person will be available for inspection or copying during business hours on a regular business day in the office of the CSB.

(b) *Description of records.* Each request must reasonably describe the desired records in sufficient detail to enable CSB personnel to locate the records with a reasonable amount of effort. A request for a specific category of records will be regarded as fulfilling this requirement if it enables responsive records to be identified by a technique or process that is not unreasonably burdensome or disruptive of CSB operations.

(1) Whenever possible, a request should include specific information about each record sought, such as the date, title or name, author, recipient, and subject matter of the record.

(2) If the FOIA Officer determines that a request does not reasonably describe the records sought, he or she will either advise the requester what additional information is needed to locate the record or otherwise state why the request is insufficient. The FOIA Officer will also extend to the requester an opportunity to confer with CSB personnel with the objective of reformulating the request in a manner which will meet the requirements of this section.

(c) *Agreement to pay fees.* A FOIA request shall be considered an agreement by the requester to pay all applicable fees charged under §§ 1601.30 through 1601.33 up to $25, unless the requester seeks a waiver of fees. The CSB ordinarily will confirm this agreement in an acknowledgement letter. When making a request, you may specify a willingness to pay a greater or lesser amount.

(d) *Types of records not available.* The FOIA does not require the CSB to:

(1) Compile or create records solely for the purpose of satisfying a request for records;

(2) Provide records not yet in existence, even if such records may be expected to come into existence at some future time; or

(3) Restore records destroyed or otherwise disposed of, except that the FOIA Officer must notify the requester that the requested records have been destroyed or otherwise disposed of.

### § 1601.21 Responses to requests.

(a) *Response to initial request.* The FOIA Officer is authorized to grant or deny any request for a record and to determine appropriate fees.

(b) *Referral to another agency.* When a requester seeks records that originated in another Federal government agency, the CSB will refer the request to the other agency for response. If the CSB refers the request to another agency, it will notify the requester of the referral. A request for any records classified by some other agency will be referred to that agency for response.

(c) *Creating records.* If a person seeks information from the CSB in a format that does not currently exist, the CSB will make reasonable efforts to provide the information in the format requested. The CSB will not create a new record of information to satisfy a request.

(d) *No responsive record.* If no records are responsive to the request, the FOIA Officer will so notify the requester in writing.

### § 1601.22 Form and content of responses.

(a) *Form of notice granting a request.* After the FOIA Officer has granted a request in whole or in part, the requester will be notified in writing. The notice shall describe the manner in which the record will be disclosed, whether by providing a copy of the record with the response or at a later date, or by making a copy of the record available to the requester for inspection at a reasonable time and place. The procedure for such an inspection may not unreasonably disrupt the operation

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of the CSB. The response letter will also inform the requester of any fees to be charged in accordance with the provisions of §§ 1601.30 through 1601.33.

(b) *Form of notice denying a request.* When the FOIA Officer denies a request in whole or in part, he or she will so notify the requester in writing. The response will be signed by the FOIA Officer and will include:

(1) The name and title or position of the person making the denial;

(2) A brief statement of the reason or reasons for the denial, including the FOIA exemption or exemptions which the FOIA Officer has relied upon in denying the request; and

(3) A statement that the denial may be appealed under § 1601.23 and a description of the requirements of that section.

**§ 1601.23 Appeals of denials.**

(a) *Right of appeal.* If a request has been denied in whole or in part, the requester may appeal the denial to: FOIA Appeals Officer, Chemical Safety and Hazard Investigation Board, 2175 K Street, NW, Suite 400, Washington, DC 20037–1809.

(b) *Letter of appeal.* The appeal must be in writing and must be sent within 30 days of receipt of the denial letter. An appeal should include a copy of the initial request, a copy of the letter denying the request in whole or in part, and a statement of the circumstances, reasons, or arguments advanced in support of disclosure of the requested record. Both the envelope and the letter of appeal must be clearly marked *FOIA Appeal.* An appeal improperly addressed shall be deemed not to have been received for purposes of the 20-day time period set forth in § 1601.24(e) until it is received, or would have been received with the exercise of due diligence, by the Appeals Officer.

(c) *Action on appeal.* The disposition of an appeal will be in writing and will constitute the final action of the CSB on a request. A decision affirming in whole or in part the denial of a request will include a brief statement of the reason or reasons for affirmance, including each FOIA exemption relied on. If the denial of a request is reversed in whole or in part on appeal, the request will be processed promptly in accordance with the decision on appeal.

(d) *Judicial review.* If the denial of the request for records is upheld in whole or in part, or if a determination on the appeal has not been mailed at the end of the 20-day period or the last extension thereof, the requester is deemed to have exhausted his or her administrative remedies, giving rise to a right of judicial review under 5 U.S.C. 552(a)(4).

**§ 1601.24 Timing of responses to requests.**

(a) *In general.* The CSB ordinarily shall respond to requests according to their order of receipt.

(b) *Multitrack processing.* (1) The CSB may use two processing tracks by distinguishing between simple and more complex requests based on the amount of work and/or time needed to process the request, including according to limits based on the number of pages involved. If the agency does so, it shall advise requesters assigned to its slower track of the eligibility limits for its faster track.

(2) The agency may provide requesters in its slower track with an opportunity to limit the scope of their requests in order to qualify for faster processing within the specified limits of the agency's faster track. If it does so, the agency will contact the requester either by telephone or by letter, whichever is most efficient in each case.

(c) *Unusual circumstances.* (1) Where the time limits for processing a request cannot be met because of unusual circumstances and the CSB determines to extend the time limits on that basis, the agency shall as soon as practicable notify the requester in writing of the unusual circumstances and of the date by which processing of the request can be expected to be completed. Where the extension is for more than ten working days, the CSB shall provide the requester with an opportunity either to modify the request so that it may be processed within the time limits or to arrange an alternative time period for processing the request or a modified request.

(2) Where the CSB reasonably believes that multiple requests submitted by a requester, or by a group of requesters acting in concert, constitute a single request that would otherwise involve unusual circumstances, and the requests involve clearly related matters, they may be aggregated. Multiple requests involving unrelated matters will not be aggregated.

(d) *Expedited processing.* (1) Requests and appeals will be taken out of order and given expedited treatment whenever it is determined that they involve:

(i) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

(ii) An urgency to inform the public about an actual or alleged Federal government activity, if made by a person primarily engaged in disseminating information;

(iii) The loss of substantial due process rights; or

(iv) A matter of widespread and exceptional media interest in which there exists possible questions about the government's integrity which affect public confidence.

(2) A request for expedited processing may be made at the time of the initial request for records or at any later time.

(3) A requester who seeks expedited processing must submit a statement, certified to be true and correct to the best of that person's knowledge and belief, explaining in detail the basis for requesting expedited processing. For example, a requester within the category in paragraph (d)(1)(ii) of this section, if not a full-time member of the news media, must establish that he or she is a person whose main professional activity or occupation is information dissemination, though it need not be his or her sole occupation. A requester within the category in paragraph (d)(1)(ii) of this section also must establish a particular urgency to inform the public about the government activity involved in the request, beyond the public's right to know about government activity generally. The formality of certification may be waived as a matter of administrative discretion.

(4) Within ten calendar days of its receipt of a request for expedited processing, the CSB shall decide whether to grant it and shall notify the requester of the decision. If a request for expedited treatment is granted, the request shall be given priority and shall be processed as soon as practicable. If a request for expedited processing is denied, any appeal of that decision shall be acted on expeditiously.

(e) *Appeals.* A written determination on an appeal submitted in accordance with § 1601.23 will be issued within 20 working days after receipt of the appeal. This time limit may be extended in unusual circumstances up to a total of 10 working days after written notice to the requester setting forth the reasons for the extension and the date on which a determination is expected to be made. As used in this paragraph, unusual circumstances means that there is a need to:

(1) Search for and collect the requested records from facilities that are separate from the office processing the request;

(2) Search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or



(3) Consult with another agency having a substantial interest in the determination of the request, or consult with various offices within the CSB that have a substantial interest in the records requested.

(f) When a determination cannot be mailed within the applicable time limit, the appeal will nevertheless be processed. In such case, upon the expiration of the time limit, the requester will be informed of the reason for the delay, of the date on which a determination may be expected to be mailed, and of that person's right to seek judicial review. The requester may be asked to forego judicial review until determination of the appeal.

**§ 1601.25 Disclosure of requested records.**

(a) The FOIA Officer shall make requested records available to the public to the greatest extent possible in keeping with the FOIA, except that the following records are exempt from the disclosure requirements:

(1) Records specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and which are, in fact, properly classified pursuant to such Executive Order;

(2) Records related solely to the internal personnel rules and practices of the CSB;

(3) Records specifically exempted from disclosure by statute (other than 5 U.S.C. § 552(b)) provided that such statute requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue or that the statute establishes particular criteria for withholding information or refers to particular types of matters to be withheld;

(4) Records containing trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Interagency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the CSB;

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local or foreign agency or authority or any private institution which furnished information on a confidential basis, and in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual.

(8) Records contained in or related to examination, operating, or condition reports prepared by, or on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(9) Geological or geophysical information and data, including maps, concerning wells.

(b) If a requested record contains exempted material along with nonexempted material, all reasonably segregable nonexempt material shall be disclosed.

(c) Even if an exemption described in paragraph (a) of this section may be reasonably applicable to a requested record, or portion thereof, the CSB may elect under the circumstances of any particular request not to apply the exemption to such requested record, or portion thereof, subject to the provisions in § 1601.26 for confidential business information. The fact that the exemption is not applied by the CSB to any requested record, or portion thereof, has no precedential significance as to the application or non-application of the exemption to any other requested record, or portion thereof, no matter when the request is received.

**§ 1601.26 Special procedures for confidential business information.**

(a) *In general.* Confidential business information provided to the CSB by a business submitter shall not be disclosed pursuant to a FOIA request except in accordance with this section.

(b) *Designation of business information.* Business submitters should use good-faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, those portions of their submissions which they deem to be protected under Exemption 4 of the FOIA, 5 U.S.C. 552(b)(4). Any such designation will expire 10 years after the records were submitted to the government, unless the submitter requests, and provides reasonable justification for, a designation period of longer duration.

(c) *Predisclosure notification.* (1) Except as is provided for in paragraph (h) of this section, the FOIA Officer shall, to the extent permitted by law, provide a submitter with prompt written notice of a FOIA request or administrative appeal encompassing its confidential business information whenever required under paragraph (d) of this section. Such notice shall either describe the exact nature of the business information requested or provide copies of the records or portions thereof containing the business information.

(2) Whenever the FOIA Officer provides a business submitter with the notice set forth in this paragraph, the FOIA Officer shall notify the requester that the request includes information that may arguably be exempt from disclosure under Exemption 4 of the FOIA and that the person or entity who submitted the information to the CSB has been given the opportunity to comment on the proposed disclosure of information.

(d) *When notice is required.* The CSB shall provide a business submitter with notice of a request whenever:

(1) The business submitter has in good faith designated the information as business information deemed protected from disclosure under 5 U.S.C. 552(b)(4); or

(2) The CSB has reason to believe that the request seeks business information the disclosure of which may result in substantial commercial or financial injury to the business submitter.

(e) *Opportunity to object to disclosure.* Through the notice described in paragraph (c) of this section, the CSB shall, to the extent permitted by law, afford a business submitter at least 10 working days within which it can provide the CSB with a detailed written statement of any objection to disclosure. Such statement shall demonstrate why the information is contended to be a trade secret or commercial or financial information that is privileged or confidential and why disclosure would cause competitive harm. Whenever possible, the business submitter's claim of confidentiality should be supported by a statement or certification by an officer or authorized representative of the business submitter. Information

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provided by a submitter pursuant to this paragraph may itself be subject to disclosure under the FOIA.

(f) *Notice of intent to disclose.* (1) The FOIA Officer shall consider carefully a business submitter's objections and specific grounds for nondisclosure prior to determining whether to disclose confidential commercial business information. Whenever the FOIA Officer decides to disclose such information over the objection of a business submitter, the FOIA Officer shall forward to the business submitter a written notice at least 10 working days before the date of disclosure containing:

(i) A statement of the reasons for which the business submitter's disclosure objections were not sustained,

(ii) A description of the confidential commercial information to be disclosed, and

(iii) A specified disclosure date.

(2) Such notice of intent to disclose likewise shall be forwarded to the requester at least 10 working days prior to the specified disclosure date.

(g) *Notice of FOIA lawsuit.* Whenever a requester brings suit seeking to compel disclosure of confidential business information, the FOIA Officer shall promptly notify the business submitter of such action.

(h) *Exceptions to predisclosure notification.* The requirements of this section shall not apply if:

(1) The FOIA Officer determines that the information should not be disclosed;

(2) The information lawfully has been published or has been officially made available to the public;

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552); or

(4) The designation made by the submitter in accordance with paragraph (b) of this section appears obviously frivolous; except that, in such a case, the FOIA Officer will provide the submitter with written notice of any final decision to disclose confidential business information within a reasonable number of days prior to a specified disclosure date.

## Subpart D—Fees

### § 1601.30 Fees to be charged—general.

(a) *Policy.* Generally, the fees charged for requests for records pursuant to 5 U.S.C. 552 shall cover the full allowable direct costs of searching for, reproducing, and reviewing records that are responsive to a request for information. Fees shall be assessed according to the schedule contained in paragraph (b) of this section and the category of requesters described in § 1601.31 for services rendered by the CSB staff in responding to, and processing requests for, records under this part. Fees assessed will be paid by check or money order payable to the United States Treasury.

(b) *Types of charges.* The types of charges that may be assessed in connection with the production of records in response to a FOIA request are as follows:

(1) *Searches.*

(i) *Manual searches for records.* For each quarter hour spent in searching for and/or reviewing a requested record, the fees will be: $4.00 for clerical personnel; $8.00 for professional personnel; and $11.00 for managerial personnel.

(ii) *Computer searches for records.* Requesters will be charged at the actual direct costs of conducting a search using existing programming. These direct costs will include the cost of operating the central processing unit for that portion of operating time that is directly attributable to searching for records and the operator/programmer salary, i.e., basic pay plus 16 percent, apportionable to the search. A charge shall also be made for any substantial amounts of special supplies or materials used to contain, present, or make available the output of computers, based upon the prevailing levels of costs to the CSB for the type and amount of such supplies or materials that are used. Nothing in this paragraph shall be construed to entitle any person or entity, as of right, to any services in connection with computerized records, other than services to which such person or entity may be entitled under the provisions of this section or § 1601.32. The CSB will not alter or develop programming to conduct a search.

(iii) *Unproductive searches.* The CSB will charge search fees even if no records are found which are responsive to the request or if the records found are exempt from disclosure.

(2) *Duplication.* Records will be reproduced at a rate of $0.25 per page. For copies prepared by computer, such as tapes or printouts, the requester shall be charged the actual cost, including operator time, of production of the tape or printout. For other methods of reproduction, the actual direct costs of reproducing the record(s) shall be charged.

(3) *Review.* Only commercial-use requesters may be charged for time spent reviewing records to determine whether they are exempt from mandatory disclosure. Charges may be assessed only for initial review, *i.e.*, the review undertaken the first time the CSB analyzes the applicability of a specific exemption to a particular record or portion of a record. Records or portions of records withheld in full under an exemption that is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The costs for such a subsequent review are properly assessable.

(4) *Other services and materials.* Where the CSB elects, as a matter of administrative discretion, to comply with a request for a special service or materials, such as certifying that records are true copies or sending records by special methods, the actual direct costs of providing the service or materials will be charged.

### § 1601.31 Fees to be charged—categories of requesters.

(a) *Fees for various requester categories.* Paragraphs (b) through (e) of this section state, for each category of requester, the types of fees generally charged by the CSB. However, for each of these categories, the fees may be limited, waived or reduced in accordance with the provisions set forth in § 1601.32(c). If the CSB has reasonable cause to doubt the purpose specified in the request for which a requester will use the records sought, or where the purpose is not clear from the request itself, the CSB will seek clarification before assigning the request a specific category.

(b) *Commercial use requester.* The CSB shall charge fees for records requested by persons or entities making a commercial use request in an amount that equals the full direct costs for searching for, reviewing for release, and reproducing the records sought. Commercial use requesters are not entitled to 2 hours of free search time nor 100 free pages of reproduction of records. In accordance with § 1601.30, commercial use requesters may be charged the costs of searching for and reviewing records even if there is ultimately no disclosure of records.

(c) *Educational and noncommercial scientific institutions.* The CSB shall charge fees for records requested by, or on behalf of, educational institutions and noncommercial scientific institutions in an amount which equals the cost of reproducing the records responsive to the request, excluding the cost of reproducing the first 100 pages. No search fee shall be charged with respect to requests by educational and noncommercial scientific institutions. For a request to be included in this category, requesters must show that the request being made is authorized by and under the auspices of a qualifying institution, and that the records are not



sought for commercial use but are sought in furtherance of scholarly research (if the request is from an educational institution) or scientific research (if the request is from a noncommercial scientific institution).

(d) *News media.* The CSB shall charge fees for records requested by representatives of the news media in an amount which equals the cost of reproducing the records responsive to the request, excluding the costs of reproducing the first 100 pages. No search fee shall be charged with respect to requests by representatives of the news media. For a request to be included in this category, the requester must qualify as a representative of the news media and the request must not be made for a commercial use. A request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for commercial use.

(e) *All other requesters.* The CSB shall charge fees for records requested by persons or entities that are not classified in any of the categories listed in paragraphs (b), (c), or (d) of this section in an amount that equals the full reasonable direct cost of searching for and reproducing records that are responsive to the request, excluding the first 2 hours of search time and the cost of reproducing the first 100 pages of records. In accordance with § 1601.30, requesters in this category may be charged the cost of searching for records even if there is ultimately no disclosure of records, excluding the first 2 hours of search time.

(f) For purposes of the exceptions contained in this section on assessment of fees, the word *pages* refers to paper copies of 8½ × 11 inches or 11 × 14 inches. Thus, requesters are not entitled to 100 microfiche or 100 computer disks, for example. A microfiche containing the equivalent of 100 pages or a computer disk containing the equivalent of 100 pages of computer printout meets the terms of the exception.

(g) For purposes of paragraph (e) of this section, the term *search time* has as its basis, manual search. To apply this term to searches made by computer, the CSB will determine the hourly cost of operating the central processing unit and the operator's hourly salary plus 16 percent. When the cost of the search (including the operator time and the cost of operating the computer to process a request) equals the equivalent dollar amount of 2 hours of the salary plus 16 percent of the person performing the search, *i.e.*, the operator, the CSB will begin assessing charges for the computer.

### § 1601.32 Limitations on charging fees.

(a) *In general.* Except for requesters seeking records for a commercial use as described in § 1601.31(b), the CSB will provide, without charge, the first 100 pages of duplication and the first 2 hours of search time, or their cost equivalent.

(b) *No fee charged.* The CSB will not charge fees to any requester, including commercial use requesters, if the cost of collecting a fee would be equal to or greater than the fee itself. The elements to be considered in determining the cost of collecting a fee are the administrative costs of receiving and recording a requester's remittance and of processing the fee.

(c) *Waiver or reduction of fees.* The CSB may grant a waiver or reduction of fees if the CSB determines that the disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Federal government, and the disclosure of the information is not primarily in the commercial interest of the requester. Requests for a waiver or reduction of fees will be considered on a case-by-case basis.

(1) The following factors will be considered by the CSB in determining whether a waiver or reduction of fees is in the public interest:

(i) *The subject of the request.* Whether the subject of the requested records concerns the operations or activities of the government. The subject matter of the requested records, in the context of the request, must specifically concern identifiable operations or activities of the Federal government with a connection that is direct and clear, not remote or attenuated. Furthermore, the records must be sought for their informative value with respect to those government operations or activities; a request for access to records for their intrinsic informational content alone will not satisfy this threshold consideration.

(ii) *The informative value of the information to be disclosed.* Whether the disclosure is likely to contribute to an understanding of government operations or activities. The disclosable portions of the requested records must be meaningfully informative on specific government operations or activities in order to hold potential for contributing to increased public understanding of those operations and activities. The disclosure of information that is already in the public domain, in either a duplicative or substantially identical form, would not be likely to contribute to such understanding, as nothing new would be added to the public record.

(iii) *The contribution to an understanding of the subject by the general public.* Whether disclosure of the requested information will contribute to the public understanding. The disclosure must contribute to the understanding of the public at large, as opposed to the individual understanding of the requester or a narrow segment of interested persons. A requester's identity and qualifications, *e.g.*, expertise in the subject area and ability and intention to convey information to the general public, will be considered.

(iv) *The significance of the contribution in public understanding.* Whether the disclosure is likely to significantly enhance the public understanding of government operations or activities. The public's understanding of the subject matter in question, as compared to the level of public understanding existing prior to the disclosure, must be likely to be enhanced by the disclosure to a significant extent. The FOIA Officer shall not make a separate value judgment as to whether information, even though it in fact would contribute significantly to public understanding of the operations or activities of the government, is "important" enough to be made public.

(2) In order to determine whether the second fee waiver requirement is met, *i.e.*, that disclosure of the requested information is not primarily in the commercial interest of the requester, the CSB shall consider the following two factors in sequence:

(i) *The existence and magnitude of a commercial interest.* Whether the requester, or any person on whose behalf the requester may be acting, has a commercial interest that would be furthered by the requested disclosure. In assessing the magnitude of identified commercial interests, consideration will be given to the effect that the information disclosed would have on those commercial interests, as well as to the extent to which FOIA disclosures serve those interests overall. Requesters shall be given a reasonable opportunity in the administrative process to provide information bearing upon this consideration.

(ii) *The primary interest in disclosure.* Whether the magnitude of the identified commercial interest of the requester is sufficiently large in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester. A fee waiver or reduction is warranted only where, once the public interest standard set out in paragraph (c)(1) of this section is satisfied, that public

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interest can fairly be regarded as greater in magnitude than that of the requester's commercial interest in disclosure. The CSB will ordinarily presume that, where a news media requester has satisfied the public interest standard, the public interest will be serviced primarily by disclosure to that requester. Disclosure to requesters who compile and market Federal government information for direct economic gain will not be presumed to primarily serve the public interest.

(3) Where only a portion of the requested record satisfies the requirements for a waiver or reduction of fees under this paragraph, a waiver or reduction shall be granted only as to that portion.

(4) A request for a waiver or reduction of fees must accompany the request for disclosure of records and should include:

(i) A clear statement of the requester's interest in the records;

(ii) The proposed use of the records and whether the requester will derive income or other benefit from such use;

(iii) A statement of how the public will benefit from release of the requested records; and

(iv) If specialized use of the documents is contemplated, a statement of the requester's qualifications that are relevant to the specialized use.

(5) A requester may appeal the denial of a request for a waiver or reduction of fees in accordance with the provisions of § 1601.23.

**§ 1601.33 Miscelianeous fee provisions.**

(a) *Notice of anticipated fees in excess of $25.* Where the CSB determines or estimates that the fees chargeable will amount to more than $25, the CSB shall promptly notify the requester of the actual or estimated amount of fees or such portion thereof that can be readily estimated, unless the requester has indicated his or her willingness to pay fees as high as those anticipated. Where a requester has been notified that the actual or estimated fees may exceed $25, the request will be deemed not to have been received until the requester has agreed to pay the anticipated total fee. A notice to the requester pursuant to this paragraph will include the opportunity to confer with CSB personnel in order to reformulate the request to meet the requester's needs at a lower cost.

(b) *Aggregating requests.* A requester may not file multiple requests at the same time, each seeking portions of a record or records, solely in order to avoid the payment of fees. When the CSB reasonably believes that a requester, or a group of requesters acting in concert, is attempting to break a request into a series of requests for the purpose of evading the assessment of fees, the CSB may aggregate such requests and charge accordingly. One element to be considered in determining whether a belief would be reasonable is the time period over which the requests have occurred. The CSB will presume that multiple requests of this type made within a 30-day period have been made in order to evade fees. Where requests are separated by a longer period, the CSB shall aggregate them only where there exists a solid basis for determining that such aggregation is warranted, *e.g.*, where the requests involve clearly related matters. Multiple requests regarding unrelated matters will not be aggregated.

(c) *Advance payment of fees.* (1) The CSB does not require an advance payment before work is commenced or continued, unless:

(i) The CSB estimates or determines that the fees are likely to exceed $250. If it appears that the fees will exceed $250, the CSB will notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payment of FOIA fees. In the case of requesters with no history of payment, the CSB may require an advance payment of fees in an amount up to the full estimated charge that will be incurred; or

(ii) The requester has previously failed to pay a fee in a timely fashion, *i.e.*, within 30 days of the date of a billing. In such cases, the CSB may require the requester to pay the full amount owed plus any applicable interest, as provided in paragraph (d) of this section, or demonstrate that the fee owed has been paid, prior to processing any further record request. Under these circumstances, the CSB may require the requester to make an advance payment of the full amount of the fees anticipated before processing a new request or finishing processing of a pending request from that requester.

(2) A request for an advance deposit shall ordinarily include an offer to the requester to confer with identified CSB personnel to attempt to reformulate the request in a manner which will meet the needs of the requester at a lower cost.

(3) When the CSB requests an advance payment of fees, the administrative time limits described in 5 U.S.C. 552(a)(6) begin only after the CSB has received the advance payment.

(d) *Interest.* The CSB may assess interest charges on an unpaid bill starting on the 31st day following the day on which the bill was sent. Once a fee payment has been received by the CSB, even if not processed, the accrual of interest shall be stayed. Interest charges shall be assessed at the rate prescribed in 31 U.S.C. 3717 and shall accrue from the date of the billing.

(e) Whenever a total fee calculated under paragraph (d) of this section is $14.00 or less for any request, no fee will be charged.

Dated: September 26, 2000.

**Christopher W. Warner,**

*General Counsel*

[FR Doc. 00–25300 Filed 10–3–00; 8:45 am]

BILLING CODE 6350–01–U

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[DA 00–2146, MM Docket No. 00–171, RM–9926]**

### Radio Broadcasting Services; Woodville and Wells, TX

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition filed by Radio Woodville, Inc. requesting the reallotment of Channel 234C2 from Woodville, Texas, to Wells, Texas, and modification of the license for Station KVLL to specify Wells, Texas, as the community of license. The coordinates for Channel 234C2 at Wells are 31–12–37 and 94–57–15. In accordance with Section 1.420(i) of the Commission's Rules, we shall not accept competing expressions of interest in the use of Channel 234C2 at Wells.

**DATES:** Comments must be filed on or before November 13, 2000, and reply comments on or before November 28, 2000.

**ADDRESSES:** Federal Communications Commission, Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Mark N. Lipp, Scott C. Cinnamon, Shook, Hardy & Bacon, 600 14th Street, NW, suite 800, Washington, DC 20005.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–171, adopted September 13, 2000, and released September 22, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805. Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 00–25390 Filed 10–3–00; 8:45 am]

BILLING CODE 6712–01–P



## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[DA 00–2161; MM Docket No. 00–174, RM–9965]**

### Radio Broadcasting Services; Kailua-Kona, HI

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by Nick Koster proposing the allotment of Channel 244A at Kailua-Kona, Hawaii, as the community's second local aural transmission service. Channel 244A can be allotted to Kailua-Kona in compliance with the Commission's minimum distance separation requirements with no site restriction. The coordinates for Channel 244A at Kailua-Kona are 19–38–26 North Latitude and 155–59–44 West Longitude.

**DATES:** Comments must be filed on or before November 13, 2000, and reply comments on or before November 28, 2000.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, his counsel, or consultant, as follows: Nick Koster, P.O. Box 340091, Austin, TX 78734.

**FOR FURTHER INFORMATION CONTACT:** Arthur D. Scrutchins, Mass Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–174; adopted September 13, 2000 and released September 22, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 00–25393 Filed 10–3–00; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[DA 00–2161; MM Docket No. 00–173, RM–9964]**

### Radio Broadcasting Services; Burgin, KY

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by Vernon R. Baldwin proposing the allotment of Channel 290A at Burgin, Kentucky, as the community's first local aural transmission service. Channel 290A can be allotted to Burgin in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.01 kilometers (3.11 miles) southeast of city reference coordinates. The coordinates for Channel 290A at Burgin are 37–42–56 North Latitude and 84–44–08 West Longitude.

**DATES:** Comments must be filed on or before November 13, 2000, and reply comments on or before November 28, 2000.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, his counsel, or consultant, as follows, Dennis F. Begley, Esq., Reddy, Begley & McCormick, 2175 K Street, NW., Suite 350, Washington, DC 20037 (Counsel for Vernon R. Baldwin)

**FOR FURTHER INFORMATION CONTACT:** Arthur D. Scrutchins, Mass Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–173; adopted September 13, 2000, and released September 22, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 00–25394 Filed 10–3–00; 8:45 am]

BILLING CODE 6712–01–P

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[DA 00–2161; MM Docket No. 00–172, RM–9963**

### Radio Broadcasting Services; McConnelsville, OH

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by Donald Staats proposing the allotment of Channel 279A at McConnelsville, Ohio, as the community's second local aural transmission service. Channel 279A can be allotted to McConnelsville in compliance with the Commission's minimum distance separation requirements with a site restriction of 0.7 kilometers (0.4 miles) east of city reference coordinates. The coordinates for Channel 279A at McConnelsville are 39–38–48 North Latitude and 81–50–43 West Longitude.

**DATES:** Comments must be filed on or before November 13, 2000, and reply comments on or before November 28, 2000.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Donald Staats, 2503 Twelfth Ave., Vienna, WV. 26105

**FOR FURTHER INFORMATION CONTACT:** Arthur D. Scrutchins, Mass Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–172; adopted September 13, 2000 and released September 22, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 00–25395 Filed 10–3–00; 8:45 am]

**BILLING CODE 6712–01–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 216

**[Docket No. 000922272-0272-01;I.D. 061600A]**

**RIN 0648-AO16**

### Taking of the Cook Inlet (CI), Alaska, Stock of Beluga Whales by Alaska Natives

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; notice of hearing; request for comments.

**SUMMARY:** NMFS is proposing regulations under the Marine Mammal Protection Act (MMPA) that would limit the harvest and use of CI beluga whales. The management objectives of the proposed regulations are to recover this depleted stock to its Optimum Sustainable Population (OSP) level, and to provide for the continued traditional subsistence use by Alaska Natives. The MMPA imposes a general moratorium on the taking of marine mammals; however, it provides an exception to the moratorium that allows Alaska Natives to harvest marine mammals for subsistence use or for traditional Native handicrafts. Under the MMPA, the Federal government may regulate Native subsistence harvest when the stock in question is designated as depleted pursuant to the MMPA and after regulations specific to the depleted stock are issued. NMFS designated the CI beluga whale stock as depleted on May 31, 2000 and believes that control of the harvest is necessary to promote recovery of this stock. NMFS has also prepared a National Environmental Policy Act (NEPA) Draft Environmental Impact Statement (DEIS) on this proposed action. NMFS solicits public comments on the proposed rule and the DEIS..

**DATES:** Comments on the proposed rule and on the DEIS must be received in the Office of Protected Resources (see **ADDRESSES** no later than 5 pm, eastern standard time, on November 27, 2000.

NMFS has scheduled a formal on-the-record hearing regarding these proposed regulations before Administrative Law Judge Parlen McKenna, to commence at 9 am, December 5, 2000, in Anchorage, Alaska, at the Federal Building. A pre-hearing conference is scheduled at 9 am, November 15, 2000.

*Filing Deadlines*: By November 1, 2000, any interested person or party must file an initial notice of intent to participate in the hearing, any direct testimony and any documentary evidence. By November 15, 2000, any rebuttal testimony and documentary evidence must be filed. Interested parties should consult procedural regulations at 50 CFR part 228 (65 FR 39560, June 27, 2000) for additional deadlines and hearing procedures.

**ADDRESSES:** Written comments on the proposed rule and DEIS should be sent to Chief, Marine Mammal Division, Office of Protected Resources, Silver Spring, MD 20910. Comments will not be accepted if submitted via e-mail or Internet.

All filings, including those of NMFS, become part of the record. The record for the proposed rule and the DEIS are available and all original filings and written comments should be filed at: Chief, Marine Mammal Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. One copy should also be filed at: ALJ Docketing Center, 40 South Gay Street, Room 412, Baltimore, Maryland 21202-4022. Fax copies are accepted at (410) 962-1746 or -1742. Another copy should also be filed at: Judge Parlen McKenna, U.S. Coast Guard Island, Building 54-C, Alameda, California 94501, email *PMcKenna@D11.USCG.mil*, (510) 437-3361, fax (510) 437-2717.

Also, the record for the proposed rule and the DEIS is available at NMFS Alaska Region, 709 W. 9th St, Federal Building room 461, Juneau, AK 99802. Information related to the hearing and the DEIS will be available on the NMFS, Alaska Region Protected Resources website at: http://www.fakr.noaa.gov/protectedresources/whales/beluga.htm

**FOR FURTHER INFORMATION CONTACT:** Barbara Mahoney, NOAA/NMFS, Alaska Region, Anchorage Field Office, (907) 271-5006, fax (907) 271-3030, or Michael Payne, NOAA/NMFS, Alaska Region, (907) 586-7235, fax (907) 586-7012, or Thomas Eagle, Office of Protected Resources, (301) 713-2322, ext. 105, fax (301) 713-4060.



**SUPPLEMENTARY INFORMATION:**

### Background

The MMPA was enacted to conserve and protect marine mammals by regulating activities of U.S. citizens and activities of all persons conducted within the jurisdiction of the United States. As such, the MMPA imposes a general moratorium on the taking of marine mammals. However, it also provides an exception to the moratorium by allowing "any Indian, Aleut or Eskimo who resides in Alaska and who dwells on the coast of the North Pacific Ocean or the Arctic Ocean . . ." to take any marine mammal if such taking is for subsistence purposes or for creating traditional Native handicrafts and is not accomplished in a wasteful manner.

Under the MMPA, the Federal government may regulate Native subsistence harvest when the stock in question is designated as depleted pursuant to the MMPA, and after regulations specific to the depleted stock are issued (16 U.S.C. 1371). Whenever a species or stock of marine mammal subject to taking by Indian, Aleut, or Eskimo has been determined to be depleted, the Secretary of Commerce (Secretary) may limit the harvest using the following procedures, which are found in section 101(b)(3) of the MMPA:

> [The Secretary] may prescribe regulations upon such taking of such marine mammals by any Indian, Aleut, or Eskimo described in this subsection. Such regulations may be established with reference to species or stocks, geographical description of the area included, the season for taking, or any other factors related to the reason for establishing such regulations and consistent with the purposes of this Act. Such regulations shall be prescribed after notice and hearing required by section 103 of this title and shall be removed as soon as possible as the Secretary determines that the need for their imposition has disappeared.

On May 31, 2000, NMFS designated the CI stock of beluga whales as depleted pursuant to the MMPA (65 FR 34590). Abundance estimates from surveys conducted between 1994 and 1998 indicated that the number of individuals in this stock declined dramatically during this period. The 1998 estimate (347 animals) was nearly 50 percent lower than the 1994 estimate (653 animals). This represents a decline of 15 percent per year. The Native harvest is the only factor that has been identified to account for the observed level of decline, and, therefore, the control of the harvest is directly related to the immediate protection for this stock.

Furthermore, reports from Alaska Native hunters and estimates derived from counts made by the Alaska Department of Fish and Game in the 1960s and 1970s indicate that the historical abundance of the stock exceeded 1,000 beluga whales. Observations of Alaska Native hunters also support these numbers. NMFS currently estimates that the maximum historical abundance of the stock is 1,300 whales. This estimate is based on the results of an abundance survey by the Alaska Department of Fish and Game (ADFG) in 1979 that resulted in a minimum abundance estimate of 1,293 whales (Calkins, 1989). Therefore, the extent of depletion (as a proportion of maximum historical abundance) is much greater than the dedicated surveys from 1994-1999 indicate.

The following information is a summary of available information on the abundance, trend and harvest levels for the CI stock of beluga whales. A more detailed discussion of this information is included in the final rule to designate the stock as depleted (65 FR 34590, May 31, 2000) and in the final determination on the status of the stock under the Endangered Species Act (ESA) (65 FR 38778, June 22, 2000).

The CI stock is genetically and geographically isolated from the other Alaskan stocks of beluga whales. When NMFS learned that the harvest may be above levels that the stock could sustain, NMFS initiated studies to document the levels of the harvest and the abundance and trend of the stock. Abundance surveys from 1994 though 1998 indicated a decline from 653 to 347 whales during that period. However, NMFS believes that the stock was in decline when the abundance surveys were initiated.

There are no reliable mortality estimates prior to 1994. Prior to 1994 the harvest estimates do not include an estimate of those struck but lost, nor do they represent a complete effort of harvest. However, Native hunter groups and some individual hunters provided NMFS with documented information on the harvest levels from 1995 through 1998. The sources of these data include estimates by ADFG, the Cook Inlet Marine Mammal Council (CIMMC), and data compiled by NMFS based on reports from hunters, and from the direct observation of harvested whales.

Based on this information, NMFS estimated that the average annual take in this harvest, including whales that were struck and lost, was 65 whales per year from 1994 through 1998. The estimated annual average harvest from 1995 thru 1997 (including struck but lost) was 87 whales. Annual harvest estimates for 1994 thru 1998 are 21 whales (1994), 68 whales (1995), 123 whales (1996), 70 whales (1997) and 42 whales (1998). The harvest, which was as high as 20 percent of the stock in 1996, was sufficiently high to account for the 14 percent annual rate of decline in the stock during the period from 1994 through 1998. The numbers of animals harvested between 1994 and 1998 can account for the estimated decline of the stock during that interval. Therefore, the annual harvest estimates and rate of decline from 1994 through 1998 clearly indicate that the harvest was unsustainable prior to restriction in 1999. Therefore, the protection of this stock of beluga whales is directly related to the control of the harvest.

In 1999, there was no subsistence harvest. On May 21, 1999, President Clinton signed into effect Pub. L. 106-31, 113 Stat. 100 (hereafter referred to as Pub. L. 106-31). As a result of this legislation, and in combination with the voluntary moratorium by the hunters in spring, there were no CI beluga whales harvested in 1999. NMFS and CIMMC have negotiated a co-management agreement under this legislation that authorized the harvest of a single beluga whale in Cook Inlet in 2000.

The 1999 abundance estimate was 357 whales. Although a single year under the restricted harvest is insufficient to detect a population response, the lack of continued decline is an encouraging indication that restricting the harvest could promote recovery of the stock.

### The Proposed Regulations

The depleted determination on May 31, 2000 (65 FR 34590), was a preliminary step for the Federal government to regulate the taking of marine mammals by Alaska Natives. NMFS is proposing to regulate the harvest of CI beluga whales by Alaska Natives under section 101(b)(3) of the MMPA. Because Native harvest is believed to be responsible for the observed level of decline, NMFS believes this action is necessary to recover this stock to its OSP level. This proposed rule would provide a long-term mechanism to control the harvest.

NMFS is proposing to regulate the harvest of CI beluga whales by Alaska Natives by requiring: (1) that subsistence hunting can only occur under an agreement between NMFS and an Alaska Native organization pursuant to section 119 of the MMPA; (2) that the harvest shall be limited to no more than two strikes annually until the stock is no longer considered depleted under the MMPA; (3) that the sale of CI beluga

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whale products shall be prohibited; (4) that all hunting shall occur after July 15, to minimize the harvest of pregnant females; and (5) that the taking of newborn calves, or adult whales with maternally dependent calves shall be prohibited (calves may remain dependent for several years after birth). The following discussion describes the regulatory measures contained in the proposed rule and the justification for their implementation.

*(1) Subsistence hunting of CI beluga whales can occur only under an agreement between NMFS and an Alaska Native organization pursuant to section 119 of the MMPA*: This provision is based upon Pub. L. 106-31, which provides that ≥the taking of a Cook Inlet beluga whale under (MMPA section 101(b)) shall be a violation of (the MMPA) unless such taking occurs pursuant to a cooperative agreement between (NMFS) and affected (ANOs)≥. It eliminates the primary threat to CI beluga whales because it prohibits hunting CI beluga whales except under an agreement between NMFS and an ANO.

*(2) The harvest shall be limited to no more than 2 strikes annually*: The best estimate of abundance for this stock is currently 357 animals (from 1999 survey). NMFS developed a logistic growth population model to project the recovery of the population (expressed in terms of years to recovery) under various levels of annual harvest and compared this to a no-harvest scenario. Annual changes in the population were then modeled using the following population parameters:

Maximum net productivity rate = 4 percent per year,

carrying capacity (K) = 1,300 individuals, and

starting population size = 357 whales (based on NMFS 1999 survey results).

Using this model, the size of the population and recovery time can be estimated for any year, simulating the impacts of differing levels of harvest on recovery times. The results of these analyses are described in detail in the DEIS. Without a harvest, this population should recover to a level where it would no longer be depleted under the MMPA in 22 years (i.e., to the lower level of OSP). In this case, the lower level of OSP would be equal to 60 percent of K (1,300) or 780 whales.

With a harvest of 1 whale per year the population should reach 780 whales in 23 years (a delay in recovery of 1 year). A harvest of 2 whales per year should require approximately 25 years for the population to recover to OSP. Under either harvest scenario, the population is predicted to double in size over the next 2 decades and reach OSP in 23-25 years (See DEIS for further information).

NMFS' management objectives for CI beluga whales are to recover this stock while still providing an opportunity for a traditional harvest that does not significantly increase the amount of time to recovery. A harvest level of either 1 or 2 whales per year would meet both of those objectives. NMFS will review the harvest and its effect on the stock on a periodic basis, and, if appropriate, may adjust the number of allowable annual strikes through notice and comment rulemaking.

(3) *Prohibition on the sale of Cook Inlet beluga whale products*: The sale of edible portions of subsistence-harvested marine mammals is allowed under certain conditions by the MMPA. Some muktuk (the skin and a thin layer of blubber) from subsistence harvests has appeared in Native food stores in the Anchorage area in recent years. At least some of this muktuk was identified by DNA analyses as having come from CI beluga whales. Some hunters have sold beluga whale meat and muktuk by word-of-mouth within the local Native community. One Native hunter said he supported his family by hunting beluga whales and selling the meat and muktuk to Native families (Anchorage Daily News, 1994). While the amount of CI beluga whale products sold commercially in Anchorage and elsewhere has not been determined, one local Anchorage retailer estimated selling approximately 3,000 lb (1,360.8 kg) of beluga muktuk annually. A single adult beluga may provide 200 lb (90.72 kg) of muktuk. By this measure, the retailer may have sold the muktuk from 15 beluga whales per year.

Some of this product might have come from beluga whales from other stocks. However, NMFS analyzed nine samples of beluga whale muktuk sold in Anchorage from June through November, 1998. The genetic analysis of these samples determined that they came from 5 individual beluga whales, all of which came from the CI population.

NMFS believes that allowing the sale of CI beluga whale products or meat may provide an incentive that is unacceptable given the current depleted status of the population. The concentration of more than 20,000 Alaska Natives in the Anchorage area apparently creates a demand for beluga products that exceeds the level of harvest that the small, isolated stock of CI beluga whales can sustain. Therefore, as part of the regulations on the harvest, NMFS would prohibit the sale of edible portions of CI beluga whales. NMFS will also prohibit the sale of CI beluga whale products under this rule. NMFS intends to provide for a traditional harvest while eliminating any commercial incentive;

(4) *All hunting shall occur after July 15 of each year*: Calving by beluga whales in CI is generally complete by July 1 of each year; therefore, a harvest season beginning July 15 would minimize the probability of killing a pregnant female. This is consistent with the intent to promote recovery of this stock of whales yet allowing a harvest to occur.

(5) *The taking of calves or adult whales with calves is prohibited*: This prohibition is necessary to ensure that cow-calf pairs are not disturbed. For the purposes of this proposed rule a calf is any beluga whale that is maternally dependent (maternally dependent animals may be a year or more of age). The season limitation and prohibition on taking calves and adults with calves should protect reproductively active adult females.

Other harvest specifics, including specific locations or techniques for taking whales, can be established through a co-management agreement rather than through regulation. This restricts the scope of the regulations to the population effects of the harvest.

**Required Procedure for Proposed Regulations**

Section 101(b) and section 103(d) of the MMPA require that regulations prescribed to limit the subsistence harvest of Alaska Natives be made on the record after opportunity for an agency hearing.

*Notice of Hearing*: Newly re-established regulations at 50 CFR part 228 (65 FR 39560, June 27, 2000) contain detailed requirements for the procedures for conducting an agency hearing on the proposed regulations to limit the harvest. People interested in participating in the hearing are advised to review these procedural regulations. The procedures require specific information to be included in the notice of the hearing, and that information follows.

*(1) The nature of the hearing*: The purpose of the hearing is to allow parties affected by the agency's proposed regulations to present additional testimony and evidence for inclusion in the administrative record. At the conclusion of the hearing and after consideration of the whole record, the Administrative Law Judge shall make a recommendation to the Secretary regarding adoption of the regulations.

*(2) The place and date of the hearing*: (see **ADDRESSES** and **DATES**).



*(3) The legal authority for the hearing*: The hearing is held under the authority of Section 103 of the MMPA (16 U.S.C. 1373) and implementing regulations (50 CFR part 228).

*(4) The proposed regulations and statements required by section 103(d) of the Act (16 U.S.C. 1373(d))*: See the proposed regulatory text at the end of this document.

*(a) Estimated existing levels of the species and stock*: The worldwide abundance of beluga whales is unknown but, according to International Whaling Commission estimates, exceeds 100,000 whales. Based on the 1999 surveys, the abundance estimate for the CI beluga whale stock, which is discrete and genetically isolated from other stocks of beluga whales in waters under U.S. jurisdiction, is 357 animals.

*(b) Expected impact of the proposed regulations on the OSP of the stock*: The proposed regulations are not expected to alter the existing estimates of the OSP levels of the stocks. The proposed regulations are expected to allow the stock to recover to OSP levels in about 25 years.

*(c) Description of the evidence before the Secretary*:

Related to stock structure: results of a multi-year study on the molecular genetics of beluga whales.

Related to carrying capacity (K): ADFG surveys producing direct counts of beluga whales in CI in the 1960s and 1970s, observations of Alaska Native hunters.

Related to current abundance (1994-1999): results of dedicated aerial surveys conducted by NMFS scientists.

Related to mortality estimates: reports from NMFS contract with CIMMC and NMFS harvest estimates.

Related to productivity rates: life history traits comparable to other small cetaceans and use of the general default value for cetacean maximum net productivity levels.

*(d) Studies by or for the Secretary or recommendations by or for the Marine Mammal Commission (MMC)*: Relevant studies include those on stock structure (O'Corry-Crowe, *et al.*1997), abundance estimates (Hobbs et al. in press), Alaska Native harvest (NMFS and CIMMC contract report). Relevant recommendations include those by the Alaska Scientific Review Group (SRG)—list of recommendations related to the harvest regulations; and those by the MMC—see item 17 below. Note that the Alaska SRG was established by NMFS pursuant to the 1994 amendments to the MMPA to provide advice on marine mammal research and conservation to the Secretary.

*(5) Issues of fact which may be involved in the hearing*: Public comments related to the status review and subsequent actions related to CI beluga whales indicate that there may be several disputed facts regarding the biology and conservation of the Cook Inlet Beluga whale populations. Among the potential factual issues are the following:

(A) What is the carrying capacity of the Cook Inlet Beluga whale stock?;

(B) How many Cook Inlet Beluga whales currently exist?; and

(C) Should the subsistence harvest of Cook Inlet Beluga whales be restricted to no more than two annually?

*(6) Draft Environmental Impact Statement (DEIS)*: The DEIS is available and may be viewed upon request (see **ADDRESSES**).

*(7) Written advice received from the MMC*: The following summarizes a record of three letters forwarded to NMFS by the MMC with recommendations specific to the CI beluga whale stock. These letters contained additional advice on CI beluga whales (e.g., recommendations to list under the ESA). However, these recommendations did not pertain to the harvest regulations nor directly to the information needed to implement these regulations. Therefore, the additional advice is not included in this summary.

*Letter dated January 22, 1999*

1. A brief summary of the information that NMFS has reported in various outlets (SRG meetings, reports, Stock Assessment Reports).

2. MMC stated that "Clearly, a main part of the problem with the Cook Inlet beluga population is the fact that the number of animals being killed by Alaska Natives greatly exceeds the number that can be supported by the population on a sustainable basis."

3. The sale of muktuk in Anchorage compounds the problem; therefore, the sale of CI beluga products should be prohibited.

4. MMC stated that the preferred approach for addressing overharvest should be through a co-management agreement.

5. NMFS should act quickly and decisively to protect the stock through rulemaking under the ESA and MMPA to limit the harvest. The process could be completed in as little as 6 weeks; therefore, in time to address the 1999 harvest.

6. If a regulatory approach to limit the harvest is not feasible in a timely manner, NMFS should work with Congress to seek a legislative solution.

7. NMFS should implement a marking, tagging and reporting program for CI beluga.

*Letter dated July 23, 1999*

1. Based upon the portions of the preliminary analyses provided to the MMC, the MMC advised that the limited information that NMFS had provided would not adequately support a depletion finding.

2. Despite the lack of detailed analyses provided by NMFS, the MMC advised that the population is likely below its OSP and, therefore, should be designated as depleted.

3. The MMC advised to incorporate a discussion of historical abundance or carrying capacity, an estimate of the percentage of historical populations size that would correspond to the maximum net productivity level, and to compare the current population size to the best estimates of historical abundance and MNPL.

*Letter dated December 21, 1999*

1. The MMC acknowledged the proposed depletion rule and advised to publish a final rule as quickly as possible after the comment period is closed.

2. The MMC recognized that the overharvest by Alaska Natives for subsistence purposes was the primary factor contributing to the decline, acknowledged the special legislation that restricted harvest until October 1, 2000, and recommended that NMFS make it a high priority to implement regulations to govern the harvest by the expiration of the legislation.

3. MMC advised that the co-management process is the preferred approach to establishing harvest limits; however, NMFS should pursue regulations and additional legislation to ensure no gap in protection of the stock.

*(8) Places where records and submitted direct testimony will be kept for public inspection*: See **ADDRESSES**.

*(9) Final date for filing with the Assistant Administrator a notice of intent to participate in the hearing*: See **DATES**.

*(10) Final date for submission of direct testimony on the proposed regulations and the number of copies required*: Parties must submit the original and two copies of all filings. All documents and exhibits must be clearly marked with the docket number of the proceedings (see below). See **ADDRESSES** and **DATES** for deadlines and addresses for filings.

*(11) Docket number assigned to the case*: 000922272-0272-01.

*(12) Place and date of the pre-hearing conference*: (see **ADDRESSES** and **DATES**).

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Prior to the conference, the ALJ will determine whether parties may participate by telephone as well as the location of the conference if personal appearances are necessary.

Section 103(e) also requires that NMFS conduct a periodic review of the regulations promulgated pursuant to this section, and modifications may be made in such a manner as the Secretary deems consistent with and necessary to carry out purposes of the Act. This review will compare the results of the survey data with the management of the harvest to determine that the CI beluga whale population is increasing as projected, and to determine whether changes in the harvest or level of harvest could occur without compromising the recovery of the population. NMFS has also scheduled a hearing on the record, consistent with the requirements of this section of the MMPA (see **DATES**).

**Discussion**

Throughout this process, NMFS has provided an opportunity for comment during the status review of CI beluga whales, following the proposed depleted determination, and at the initiation of the NEPA process. NMFS has also convened workshops and public meetings on this subject. It remains the intent of NMFS to insure that the depleted determination, and any proposed regulations subsequent to this determination, be as accurate and as effective as possible. Therefore, comments or suggestions from the public, Native organizations, other governmental agencies, the scientific community, industry, or other interested parties concerning these issues have always been solicited and taken into account prior to any final action. Throughout this process there has been considerable comment provided on the subsistence harvest of beluga whales in Cook Inlet and its impact on the stock. Some of the most common comments received by NMFS on this subject are reviewed in this section.

The most immediate concerns by those who petitioned NMFS to list the CI beluga whale population under the ESA were (1) the level of mortality as a result of subsistence harvest, and (2) the inability of NMFS, at the time of the petition, to control this harvest. The petitioners further stated that the MMPA was inadequate to protect CI beluga whales. They stated that, under the MMPA, NMFS can pursue a co-management agreement with the tribes in the Cook Inlet region. However, the petitioners noted that such an agreement provided no additional legal authority to NMFS to prosecute violations of the MMPA. Therefore, there was no guarantee that a harvest would not occur outside of the agreement by Native hunters who were not part of the agreement. Even with a co-management agreement in place, neither NMFS, nor the co-management body, can enforce its recommendations if hunters choose not to comply. As such, the petitioners stated that a co-management agreement was unlikely to reduce the Native hunt to sustainable levels.

NMFS agreed, generally, that the management of the CI beluga whale stock could be achieved through voluntary and cooperative efforts within a traditional Native community, or through a co-management agreement. However, Anchorage provides an exception to what is generally considered as a traditional Native community. Although tribal authority may apply to Alaska Natives who live in local communities, there is a lack of area-wide tribal authorities or traditional Native laws that would apply to the harvest of CI beluga whales by Alaska Natives of non-local origin and now reside in Anchorage. Because of this, and prior to Pub. L. 106-31, an Alaska Native could have harvested beluga whales from Cook Inlet without the approval of local tribal authorities or governing bodies. For this reason, and in this particular situation, NMFS agreed with the petitioners in stating that a co-management agreement would not necessarily provide the level of authority that would ensure that over harvest would not occur outside an agreement.

NMFS received several recommendations to expeditiously enter into a co-management agreement with an Alaska Native Organization (ANO) and most of these suggested that NMFS should coordinate this agreement with CIMMC. A few commenters thought the most effective way to achieve conservation and subsistence goals for CI beluga whales is through a single, comprehensive co-management agreement and this should be an agency priority. A few commenters stated the agreement should strictly limit hunting to personal and family subsistence and ban the sale of beluga whale products.

NMFS agrees that a co-management agreement with an ANO is both desirable and necessary, and has signed into an agreement with CIMMC for the harvest of one CI beluga whale for the year 2000. Further, NMFS has authority to co-manage subsistence harvest under section 119 of the MMPA. However, any restrictions on the level of subsistence harvest through a co-management agreement would be enforced by tribal authority, not by Federal regulation, unless specific regulations are established under section 101(b) and 103 of the MMPA. As stated earlier, NMFS believes that a co-management agreement would not necessarily provide the level of authority that would ensure that over- harvest would not occur outside of an agreement. Therefore, NMFS believes that the recovery of this stock requires not only the authority of a co-management agreement, but also a Federal authority to protect and conserve CI beluga whales. For that reason, NMFS is proposing these regulations on the subsistence harvest.

One commenter on the proposed depleted determination indicated that if NMFS designates CI beluga whales as depleted, NMFS will regulate the harvest with little regard for the opinions of Alaska Native hunters. NMFS does not believe it is possible to effectively manage the CI beluga whale stock without input from local Native groups in Cook Inlet. Also, NMFS does not want to unilaterally manage CI beluga whales without input from local Natives. NMFS recognizes the importance of beluga whales to the Native Cook Inlet communities. NMFS believes it should work with them to develop a co-management agreement that protects and conserves CI beluga whales while preserving traditional beluga subsistence hunting activities. Co-management will involve both Federal and Tribal authorities.

With these proposed regulations, Federal authority is established to enforce harvest regulation at levels that are sustainable while assuring that the stock can recover. This proposed rule establishes harvest levels until such time the stock reaches the lower level of OSP, i.e., until it is no longer depleted. These regulations will be reviewed and modified as appropriate but remain in effect unless otherwise rescinded or modified through notice and comment rulemaking.

**Classification**

*NEPA*

NMFS has prepared an Draft Environmental Impact Statement (DEIS) under the requirements of NEPA. Because the CI beluga whale stock is depleted, NMFS believes that any long term federally-approved harvest plan constitutes a major action subject to the requirements of NEPA. Therefore, these proposed regulations will not be finalized until an Environmental Impact Statement has been finalized and a Record of Decision is made. NMFS has prepared a DEIS to address actions taken by NMFS to manage and recover this stock. The primary management action proposed is to limit Native subsistence harvest of CI beluga whales. The impact of this action was evaluated in the DEIS through a model that examines the length of time it would take for the stock to recover under different harvest alternatives. The preferred harvest plan provides for the cultural needs of Alaska Natives by allowing up to 2 strikes (multiple strikes on one whale equals one strike), while not significantly extending the time required for this stock to recover. The DEIS also presents an assessment of the impacts of other anthropogenic activities, which occur in Cook Inlet, that might impact the CI beluga whales, or their habitat. This assessment includes a discussion of the cumulative impacts and evaluates the need for measures for the protection and conservation of important CI beluga whale habitat.

*Paperwork Reduction Act*

This proposed rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act of 1980.

*ESA*

The ESA provides for the conservation of endangered and threatened species of fish, wildlife, and plants. The program is administered jointly by NMFS (for most marine species) and the U.S. Fish and Wildlife Service (for terrestrial and freshwater species). The ESA provides for listing species as either threatened or endangered, based on the biological health of a species. Threatened species are those likely to become endangered in the foreseeable future (16 U.S.C. 1532(20)). Endangered species are those in danger of becoming extinct throughout all or a significant portion of their range (16 U.S.C. 1532(20)). The Secretary, acting through NMFS, is authorized to list selected marine mammals, including beluga whales, and fish species.

On March 3, 1999, NMFS received a petition from seven organizations and one individual to list the CI stock of beluga whale as "endangered" under the ESA. This petition requested emergency listing under section 4(b)(7) of the ESA, designation of critical habitat, and immediate action to implement regulations to regulate the subsistence harvest of these whales. NMFS determined that these petitions presented substantial information which indicated the petitioned actions may be warranted in April 1999 (64 FR 17347). Upon further review, and taking into account legislative and management measures put in place to regulate the subsistence harvest following receipt of the petition, and measures proposed in this regulation, NMFS, on June 22, 2000, determined that an ESA listing is not warranted at this time. Based on that determination, this proposed rule does not impact any ESA listed species or its habitat.

*Executive Order 12866—Regulatory Planning and Review*

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

*Regulatory Flexibility Act*

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed action would not have a significant economic impact on a substantial number of small entities as follows:

The proposed rule would limit the subsistence harvest of Cook Inlet, Alaska, beluga whales and require that subsistence hunting can only occur under an agreement between the National Marine Fisheries Service (NMFS) and Alaska Native organizations pursuant to section 119 of the MMPA.

The MMPA imposes a general moratorium on the taking of marine mammals. However, section 101(b) of the MMPA provides an exemption to the taking by allowing Alaskan Natives to harvest marine mammals for subsistence use or for purposes of traditional Native handicraft. Under the MMPA, the Federal Government may regulate Native subsistence harvest after the stock in question is designated as depleted and after formal rulemaking.

NMFS designated the CI beluga whale stock as depleted on May 31, 2000 (65 FR 34590), due to a 50 percent decline in the abundance of the stock between 1994 and 1998. Native harvest is believed to be responsible for the observed decline, and NMFS believes that the control of the harvest is necessary to provide continued protection for this stock.

Therefore, a regulatory flexibility analysis was not prepared.

*Executive Order 12898—Federal Actions to Address Environmental Justice in Minority Populations and Low-Incomed Populations*

Section 4-4, Subsistence Consumption of Fish and Wildlife, of Executive Order 12898, requires Federal agencies to ensure protection of populations with differential patterns of subsistence consumption of fish and wildlife and to communicate to the public the human health risks of those consumption patterns. NMFS has monitored and evaluated contaminant loads in all populations of beluga whales in Alaska for nearly a decade, and has reported this information to Alaska Native communities as these analyses have become available. A summary is available in the DEIS.

*Consultation with State and Local Government Agencies*

In keeping with the intent of the Administration and Congress to provide continuing and meaningful dialogue on issues of mutual State and Federal interest, NMFS has conferred with state and local government agencies in the course of assessing the status of CI beluga whales. State and local governments have expressed support for the conservation of this stock of beluga whales. Dialogue with state and local agencies included an exchange and discussion of scientific information regarding beluga whales, factors that may be affecting them, and their status under the ESA and MMPA.

*Executive Order 13084-Consultation and Coordination with Indian Tribal Governments*

This proposed rule is consistent with policies and guidance established in Executive Order 13084 of May 14, 1998 (63 FR 27655). Executive Order 13084 requires that if NMFS issues a regulation that significantly or uniquely affects the communities of Indian tribal governments and imposes substantial direct compliance costs on those communities, NMFS must consult with those governments, or the Federal government must provide the funds necessary to pay the direct compliance costs incurred by the tribal governments. NMFS has taken several steps to consult and inform affected tribal governments and solicit their input during development of these proposed regulations including the development of a co-management agreement with the Cook Inlet Marine Mammal Council which provides for the harvest of 1 whale during 2000. This proposed rule does not impose substantial direct compliance costs on the communities of Indian tribal governments.

**List of Subjects in 50 CFR Part 216**

Administrative practice and procedure, Exports, Imports, Marine mammals, Transportation.

Dated: September 26, 2000.

**William T. Hogarth,.**

*Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service .*

For the reasons set out in the preamble, 50 CFR part 216 is proposed to be amended as follows:

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**PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS**

1. The authority citation for part 216 continues to read as follows:

**Authority:** 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

2. In § 216.23, paragraph (f) is added to read as follows:

**§ 216.23 Native exceptions.**

* * * * *

(f) *Cook Inlet beluga whales.*

(1) *Cooperative Agreement.* Notwithstanding the provisions of 16 U.S.C. 1371(b) or paragraph (a) of this section, any taking of a Cook Inlet beluga whale by an Alaska Native must be authorized under a cooperative agreement between the National Marine Fisheries Service and an Alaska Native organization(s). The Cook Inlet beluga whale stock includes all beluga whales occurring in waters of the Gulf of Alaska north of 58 degrees North latitude including, but not limited to, Cook Inlet, Kamishak Bay, Chinitna Bay, Tuxedni Bay, Prince William Sound, Yakutat Bay, Shelikof Strait, and off Kodiak Island and freshwater tributaries to these waters.

(2) *Limitations on the Number of Cook Inlet Beluga Whales Taken for Subsistence.* Notwithstanding the provisions of 16 U.S.C. 1371(b) or paragraph (a) of this section, the number of whales that may be taken (killed or struck and lost) each year from the Cook Inlet, Alaska, stock of beluga whales for subsistence purposes shall be limited to no more than two (2) strikes annually until the stock is no longer designated as depleted.

(3) *Prohibition on the Sale of Cook Inlet Beluga Whale.* Notwithstanding the provisions of 16 U.S.C. 1371(b) or paragraph (b) of this section, the sale of products or foodstuffs from Cook Inlet beluga whales is prohibited.

(4) *Season.* Notwithstanding the provisions of 16 U.S.C. 1371(b) or paragraph (a) of this section, all hunting shall only occur after July 15 of each year.

(5) *Beluga calves or adult belugas with calves.* Notwithstanding the provisions of 16 U.S.C. 1371(b) or paragraph (a) of this section, the taking of beluga whale newborn calves, or adult whales with older, maternally dependent calves is prohibited.

[FR Doc. 00–25481 Filed 10–3–00; 8:45 am]

BILLING CODE 3510–22–S

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 622**

**[Docket No. 981022265-8265-01; I.D. 101698L]**

**RIN 0648-AL93**

## Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Fishing in the EEZ Seaward of Navassa Island

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS issues this proposed rule to prohibit fishing and anchoring of fishing vessels in the exclusive economic zone (EEZ) within 15 nautical miles (nm) seaward from the baseline of Navassa Island.

**DATES:** Comments must be received no later than 4:30 p.m., eastern daylight savings time, on November 3, 2000.

**ADDRESSES:** Written comments regarding this proposed rule must be sent to, and copies of a draft environmental assessment supporting this action, may be obtained from Michael Barnette, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Comments also may be sent via fax to 727-570-5583. Comments will not be accepted if submitted via e-mail or Internet. Comments on any ambiguity or unnecessary complexity arising from the language used in this rule should be addressed to Rod Dalton, Southeast Regional Office, NMFS, at the above address.

**FOR FURTHER INFORMATION CONTACT:** Michael Barnette, telephone: 727-570-5305, fax: 727-570-5583, e-mail: Michael.Barnette@noaa.gov.

**SUPPLEMENTARY INFORMATION:** The U.S. Territory of Navassa Island is located in the Caribbean Sea approximately 60 nm northeast of Jamaica and 34 nm west of Haiti. The uninhabited island covers an area of approximately 2 square miles (518 hectares).

NMFS has received several inquiries regarding whether fishing activities are permitted in the EEZ seaward of Navassa Island. In addition, a recent scientific expedition to Navassa Island publicized the unique and unprotected marine resources of the area. Important marine resources of this area include reef fish and invertebrates, especially coral, live rock, sponges, queen conch, and spiny lobsters. NMFS believes these resources are in a relatively pristine condition due to the isolation of this area and its distance from the commercial fishing grounds of the major fishing nations.

Fishing in the EEZ seaward of Navassa Island is subject to regulation under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U.S.C. 1801 *et seq.*) and the Atlantic Tuna Conventions Act (16 U.S.C. 971 *et seq.*). The Caribbean Fishery Management Council (Council) has authority only over the fisheries in the EEZ of the Caribbean Sea and Atlantic Ocean seaward of the U.S. Virgin Islands and the Commonwealth of Puerto Rico. An amendment to the Magnuson-Stevens Act would be necessary to extend the Council's authority to the EEZ seaward of Navassa Island. However, the Secretary of Commerce has the authority under section 305(d) of the Magnuson-Stevens Act to promulgate such regulations as may be necessary to carry out the provisions and purposes of that act, including conserving and managing the fishery resources in the EEZ not within the authority of a regional fishery management council such as in the EEZ seaward of Navassa Island.

As a precautionary approach to fisheries management, NMFS is proposing this rule to protect the fishery resources in the EEZ seaward of Navassa Island from unregulated harvests until the Magnuson-Stevens Act can be amended to give the Council authority over the fishery resources of the EEZ seaward of Navassa Island, and until conservation and management measures, as recommended by the Council and approved and implemented by NMFS, are in effect. This rule would prohibit all fishing, including fishing for Atlantic highly migratory species, and anchoring of fishing vessels in the EEZ within 15 nm seaward from the baseline of Navassa Island. These measures would apply to vessels of the United States and to all foreign vessels except vessels of the Republic of Haiti.

This proposed rule is intended to protect coral reef resources from directed fishing or bycatch mortality and to prevent possible damage from unregulated fishing gear or from harmful fishing practices, such as the use of explosives or poisons. Establishment of a no-fishing zone would simplify and facilitate enforcement in this remote area. The anchoring prohibition would protect coral habitats from physical damage and facilitate enforcement of the fishing ban.



NMFS requests information regarding the fishery resources and existing or expected fishing activities in the EEZ within 15 nm of Navassa Island. Because of the scarcity of data regarding fishing activities in the area, NMFS is requesting public comment, especially from the longline fishing community, on the number, if any, of longline vessels that routinely fish within 15 nm of Navassa Island. If any such vessels have historically fished in the area, then additional information on the importance of the area in terms of overall catches is requested.

The U.S. Fish and Wildlife Service (Service) recently established the Navassa Island National Wildlife Refuge. For information regarding the refuge, see the Service's notice in the **Federal Register** (64 FR 73062; December 29, 1999).

### Classification

This proposed rule is necessary in order to protect the coral reef and other fishery resources surrounding Navassa Island from harmful fishing practices until the Magnuson-Stevens Act can be amended to establish the Council's authority over the fishery resources of the EEZ seaward of Navassa Island, and conservation and management measures can be implemented through the Council process. NMFS is concerned that fishing activities in the EEZ seaward of Navassa Island will increase as a result of recent publicity and inquiries about the area.

NMFS prepared a draft environmental assessment (EA) for this proposed rule and the Assistant Administrator for Fisheries has preliminarily concluded that there will be no significant impact on the human environment as a result of this proposed rule. A copy of the draft EA is available from NMFS (see **ADDRESSES**).

This proposed rule has been determined to be significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as follows:

The U.S. Territory of Navassa Island is located in the Caribbean Sea approximately 60 nm northeast of Jamaica and 34 nm west of Haiti. The uninhabited island covers an area of approximately 2 square miles (518 hectares). NMFS believes the resources in the nearshore waters surrounding Navassa Island are in a relatively pristine condition due to the isolation of this area and its distance from the commercial fishing grounds of major fishing nations. As a precautionary approach to fisheries management, NMFS is proposing this rule to protect the fishery resources around Navassa Island from unregulated harvests and habitat damage. Accordingly, this rule would prohibit all fishing and anchoring of fishing vessels in the EEZ within 15 nm seaward from the baseline of Navassa Island. This rule and its measures would apply to vessels of the United States and to all foreign vessels except vessels of the Republic of Haiti.

Because of its remote location, there is a scarcity of data about current and historical fishing around Navassa Island. Anecdotal evidence based on infrequent visits to the island by scientists from non-governmental organizations (e.g., Center for Marine Conservation) and verbal information from Navassa Island National Wildlife Refuge staff indicates that the current level of fishing near the island is negligible, if any. Information from NMFS Highly Migratory Species (HMS) Division indicates that some longline fishermen may fish in the near vicinity of Navassa Island. However, NMFS' data on HMS fishing locations is not precise enough to establish the presence or absence of fishing within 15 nm of Navassa Island.

NMFS believes that the main effect of this rule would be to preserve the status quo. Given what little data are available, and the preliminary conclusion that fishing activity in the marine waters near the island is negligible, if any, NMFS has concluded that the proposed rule will not have a significant negative economic impact on a substantial number of small entities.

Accordingly, an initial regulatory flexibility analysis was not prepared for this proposed rule.

The President has directed Federal agencies to use plain language in their communications with the public, including regulations. To comply with this directive, we seek public comment on any ambiguity or unnecessary complexity arising from the language used in this proposed rule. Such comments should be directed to Rod Dalton at NMFS Southeast Regional Office (see **ADDRESSES**).

### List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: September 27, 2000.

**William T. Hogarth,**

*Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

**PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC**

1. The authority citation for part 622 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

2. In § 622.1, paragraph (c) is added to read as follows:

**§ 622.1 Purpose and scope.**

* * * * *

(c) This part also governs fishing in the EEZ seaward of Navassa Island, which is not under the authority of a Regional Fishery Management Council.

3. In § 622.3, paragraph (f) is added to read as follows:

**§ 622.3 Relation to other laws and regulations.**

* * * * *

(f) In Navassa Island National Wildlife Refuge, the regulations of the U.S. Fish and Wildlife Service also apply.

4. In § 622.7, paragraph (l) is revised to read as follows:

**§ 622.7 Prohibitions.**

* * * * *

(l) Fish in violation of the prohibitions, restrictions, and requirements applicable to seasonal and/or area closures, including but not limited to: Prohibition of all fishing, gear restrictions, restrictions on take or retention of fish, fish release requirements, and restrictions on use of an anchor or grapple, as specified in §§ 622.33, 622.34, 622.35, 622.49, or as may be specified under § 622.46(b) or (c).

* * * * *

5. Section 622.49 is added to subpart C to read as follows:

**§ 622.49 Activities prohibited in the EEZ surrounding Navassa Island.**

In the EEZ within 15 nm seaward from the baseline of Navassa Island, fishing for any species of fish is prohibited, and a fishing vessel may not anchor, use an anchor and chain, or use a grapple and chain. These prohibitions do not apply to vessels or citizens of the Republic of Haiti.

[FR Doc. 00–25479 Filed 10–3–00; 8:45 am]

BILLING CODE 3510–22–S

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# Notices

Federal Register
Vol. 65, No. 193
Wednesday, October 4, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Klamath Provincial Advisory Committee (PAC)

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Klamath Provincial Advisory Committee will meet on October 11, 2000, at the Northern California Service Center, Training Room 1, 6101 Airport Road, Redding, California. The meeting will start at 9 A.M. and adjourn at 5 P.M. Agenda items for the meeting include: (1) Discussion on topics of general interest to the PAC (Implementation Monitoring Field Trips); (2) the President's Fire and Fuels Report; (3) Socio-Economic Issues: and (4) Public Comment Periods. All Provincial Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend.

**FOR FURTHER INFORMATION CONTACT:** Connie Hendryx, USDA, Klamath National Forest, 11263 N. Hwy 3, Fort Jones, California 96032; telephone 530–468–1281 (voice), TDD 530–468–2783.

Dated: September 27, 2000.

**Constance J. Hendryx,**

*PAC Support Staff.*

[FR Doc. 00–25385 Filed 10–3–00; 8:45 am]

**BILLING CODE 3410–11–M**

## DEPARTMENT OF AGRICULTURE

### Rural Utilities Service

### Oglethorpe Power Corporation; Notice of Intent

**AGENCY:** Rural Utilities Service, USDA.

**ACTION:** Notice of Intent to Hold a Public Meeting and Prepare an Environmental Assessment.

**SUMMARY:** Notice is hereby given that the Rural Utilities Service (RUS), pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality (CEQ) Regulations for Implementing NEPA (40 CFR Parts 1500–1508), and RUS Environmental Policies and Procedures (7 CFR Part 1794) proposes to prepare an Environmental Assessment related to possible financing assistance to Oglethorpe Power Corporation to construct a 520 megawatt, combined cycle combustion turbine project in Heard County, Georgia.

**DATES:** RUS will conduct a public scoping meeting in an open house format on Thursday, October 19, 2000, from 4:30 p.m. until 7:30 p.m.

**ADDRESSES:** The scoping meeting will be held at the Heard County Parks and Recreation Department, Riverside Park Gymnasium, 101 Glover Road, Franklin, Georgia. All interested parties are invited to attend the meeting.

**FOR FURTHER INFORMATION CONTACT:** Bob Quigel, Engineering and Environmental Staff, Rural Utilities Service, at (202) 720–0468. Bob's E-mail address is bquigel@rus.usda.gov. You can also contact Greg Jones of Oglethorpe Power Corporation at 1–800–241–5374, extension 7890. Greg's email address is greg.jones@opc.com.

**SUPPLEMENTARY INFORMATION:**

Oglethorpe Power Corporation proposes to construct the natural gas fired electric generation plant at the Hal B. Wansley Plant site in northeast Heard County approximately six miles southeast of Roopville, Georgia. The existing Wansley Plant is a 1,730 megawatt, coal fired, electric generation facility owned by Oglethorpe Power Corporation, Georgia Power Company, the Municipal Electricity Authority of Georgia, and the City of Dalton. The proposed plant is one of four blocks of additional electric generation facilities planned for construction at the site. Each block of additional generation is proposed to consist of two combustion turbines and one heat recovery steam generator. The total build-out of the four blocks would total approximately 2,280 megawatts. No new electric transmission lines will need to be constructed to connect this plant to the existing electric transmission grid. No new natural gas pipeline will be constructed to exclusively serve this plant. Georgia Power Company is proposing to construct a natural gas pipeline that is planned to provide an adequate gas supply to the total build-out at the Wansley Plant site.

The proposed project will be composed of two, nominal 167 megawatt Siemens V84.3A2 connected to a heat recovery steam generator which will power a Siemens steam turbine. Which This will increase the total plant output by 187 megawatts for a total of 520 megawatts. It is the goal of Oglethorpe Power Corporation to have the plant in operation by the spring of 2003.

Alternatives considered by RUS and Oglethorpe Power Corporation to constructing the proposed generation facility proposed include: (a) No action, (b) purchased power, (c) load management, (d) renewable energy, (e) hydroelectric generation, (f) pumped storage hydroelectric generation, and (g) distributed generation.

An alternative evaluation and site selection study for the project was prepared by Oglethorpe Power Corporation. The alternative evaluation and site selection study are available for public review at RUS in Room 2242, 1400 Independence Avenue, SW, Washington, DC, and at the headquarters of Oglethorpe Power Corporation located at 2100 East Exchange Place, Tucker, Georgia. This document will also be available at the West Georgia Regional Library at 710 Rome Street, Carrollton, Georgia, phone (770) 836–6711,; the Heard County Public Library at 564 Main Street, Franklin, Georgia, phone (706) 675–6501; and the Newnan-Coweta Public Library at 25 Hospital Road, Newnan, Georgia, phone (770) 253–3625.

Government agencies, private organizations, and the public are invited to participate in the planning and analysis of the proposed project. Representatives of RUS and Oglethorpe Power Corporation will be available at the scoping meeting to discuss RUS' environmental review process, describe the project and alternatives under consideration, discuss the scope of environmental issues to be considered, answer questions, and accept oral and written comments. Written comments will be accepted for at least 30 days after the public scoping meeting.

From information provided in the alternative evaluation and site selection study, input that may be provided by government agencies, private organizations, and the public, Oglethorpe Power Corporation will prepare an environmental analysis to be submitted to RUS for review. RUS will use the environmental analysis to determine the significance of the impacts of the project and may adopt it as its environmental assessment of the project. RUS' environmental assessment of the project would be available for review and comment for 30 days.

Should RUS determine, based on the environmental assessment of the project, that the impacts of the construction and operation of the plant would not have a significant environmental impact, it will prepare a finding of no significant impact. Public notification of a finding of no significant impact would be published in the **Federal Register** and in newspapers with a circulation in the project area.

Any final action by RUS related to the proposed project will be subject to, and contingent upon, compliance with environmental review requirements as prescribed by CEQ and RUS environmental policies and procedures.

Dated: September 28, 2000.

**Glendon Deal,**

*Acting Director, Engineering and Environmental Staff.*

[FR Doc. 00–25452 Filed 10–3–00; 8:45 am]

**BILLING CODE 3410–15–P**



## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–475–811]**

### Grain-Oriented Electrical Steel From Italy: Notice of Extension of Time Limit for Final Results of Antidumping Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of extension of time limit for the final results of antidumping duty administrative review.

**SUMMARY:** The Department of Commerce (the Department) is extending the time limit for the final results of the antidumping duty administrative review of grain-oriented electrical steel (GOES) from Italy. The period of review is August 1, 1998 through July 31, 1999.

**EFFECTIVE DATE:** October 4, 2000.

**FOR FURTHER INFORMATION CONTACT:** Maureen McPhillips or Nancy Decker, Office of AD/CVD Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–0193 or (202) 482–0196, respectively.

**The Applicable Statute**

Unless otherwise indicated, all citations to the Tariff Act of 1930 (the Act), as amended, are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, all citations to the Department's regulations are to the regulations at 19 CFR Part 351 (1999).

**Background**

On August 31, 1999, AST requested that the Department conduct an administrative review of its exports of grain-oriented electrical steel. The Department initiated this administrative review on October 1, 1999 (64 FR 53318). On September 7, 2000, we published the preliminary results of review in the **Federal Register** (65 FR 54215).

**Extension of Time Limit for Final Results**

During this review complex issues have been raised regarding the classification of AST's sales of GOES to the United States. In order to analyze this issue appropriately, the Department sent an additional supplementary questionnaire after the publication of the Preliminary Results. Due to the time constraints placed on the respondent to answer this questionnaire and petitioners to comment on the response, we require an extension. Therefore, because it is not practicable to complete this review within the time limits mandated by section 751(a)(3)(A) of the Act, the Department is extending the time limit for the final results to be 180 days from the date of the publication of the preliminary results. Therefore, our final results are due no later than March 6, 2001. This extension of the time limit is in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2).

Dated: September 27, 2000.

**Joseph A. Spetrini,**

*Deputy Assistant Secretary, AD/CVD Enforcement Group III.*

[FR Doc. 00–25464 Filed 10–3–00; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–533–810]**

### Stainless Steel Bar From India: Preliminary Results of New Shipper Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of preliminary results of new shipper antidumping duty administrative review: stainless steel bar from India.

**SUMMARY:** In response to requests from Atlas Stainless Corporation, the Department of Commerce is conducting a new shipper administrative review of the antidumping duty order on stainless steel bar from India. This review covers sales of the subject merchandise to the United States during the period February 1, 1999 through January 31, 2000.

We have preliminarily determined that Atlas Stainless Corporation, has not made sales of subject merchandise below normal value. If these preliminary results are adopted in our final results, we will instruct the Customs Service not to assess antidumping duties.

Interested parties are invited to comment on these preliminary results.

**EFFECTIVE DATE:** October 4, 2000.

**FOR FURTHER INFORMATION CONTACT:** Blanche Ziv or Ryan Langan, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone (202) 482–4207 or (202) 482–1279, respectively.

**Applicable Statute**

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, all references to the Department of Commerce's ("the Department's") regulations are to 19 CFR Part 351 (April 1999).

**Background**

On February 26, 2000, the Department received a request from Atlas Stainless Corporation ("Atlas") to conduct a new shipper administrative review of the antidumping duty order on stainless steel bar from India. The Department published in the **Federal Register**, on

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April 7, 2000, a notice of initiation of a new shipper administrative review of Atlas covering the period February 1, 1999 through January 31, 2000 (65 FR 18295). The initiation notice incorrectly stated the period of review as being February 1, 1998 through January 31, 1999. The period covered by this review is February 1, 1999 through January 31, 2000. See 351.214(g)(1)(A).

**Scope of Review**

Imports covered by this review are shipments of stainless steel bar ("SSB"). SSB means articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons, or other convex polygons. SSB includes cold-finished SSBs that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi-finished products, cut length flat-rolled products (*i.e.*, cut length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), wire (*i.e.*, cold-formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat-rolled products), and angles, shapes and sections.

The SSB subject to these orders is currently classifiable under subheadings 7222.10.0005, 7222.10.0050, 7222.20.0005, 7222.20.0045, 7222.20.0075, and 7222.30.0000 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

**Treatment of Sales of Tolled Merchandise**

Pursuant to 19 CFR 351.401(h) of its regulations, the Department will not consider a toller or subcontractor to be a manufacturer or producer when the toller or subcontractor does not acquire ownership of the finished products and does not control the relevant sales of the subject merchandise and the foreign like product. In determining whether a company that uses a subcontractor in a tolling arrangement is a producer pursuant to 19 CFR 351.401(h), we examine all relevant facts surrounding a tolling agreement. Atlas claims that under the tolling arrangement with its unaffiliated subcontractor, Atlas is the producer of the subject merchandise at issue. In support of this claim, Atlas reports that it: (1) Purchases all of the inputs, (2) pays the subcontractor a processing fee, and (3) maintains ownership at all times of the inputs as well as the final product. Based on this evidence, we preliminarily determine that Atlas is the producer of the tolled merchandise, and hence the appropriate respondent.

**United States Price**

In calculating the price to the United States, we used export price ("EP"), in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation into the United States and the use of constructed export price was not otherwise indicated.

We calculated EP based on the CIF price to the United States. In accordance with section 772(c)(2) of the Act, we made deductions, as appropriate, for foreign inland freight, international freight, marine insurance, and brokerage and handling.

*Normal Value*

Atlas reported no home market sales or third country sales during the POR. Therefore, in accordance with section 773(e) of the Act, we calculated a constructed value ("CV") for Atlas based on the sum of the respondent's cost of materials, labor, overhead, general and administrative expenses ("GNA"), profit, and U.S. packing costs. With respect to G&A, we used the amounts reported by Atlas in their April 28, 2000 response. With respect to profit, we used the profit from the 1999–2000 financial statements submitted by Atlas in their September 1, 2000 response. We divided that amount by its total cost of production, also as reported in their 1999–2000 financial statements.

**Preliminary Results of the Review**

As a result of our comparison of EP and CV, we preliminarily determine the following weighted-average dumping margin:

| Manufacturer/ exporter | Period of review | Margin (percent) |
|---|---|---|
| Atlas Stainless Corporation ... | 2/1/99–1/31/00 | 0.00 |

**Public Comment**

Interested parties may request a hearing within 30 days of the date of publication of this notice. Any hearing, if requested, will be held two days after the scheduled date for submission of rebuttal briefs (*see* below). Interested parties may submit written arguments in case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in case briefs, may be filed no later than five days after the date of filing the case briefs. Parties who submit briefs in these proceedings should provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f)(3).

The Department will issue the final results of this administrative review within 120 days from the publication of these preliminary results.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This new shipper review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: September 27, 2000.

**Troy H. Cribb,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 00–25465 Filed 10–3–00; 8:45 am]

BILLING CODE 3510–DS–U

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and



be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 A.M. and 5 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC.

*Docket Number:* 00–030. *Applicant:* Central Institute for the Deaf, 4560 Clayton Avenue, St. Louis, MO 63110. *Instrument:* Electron Microscope, Model H–7500. *Manufacturer:* Hitachi, Japan. *Intended Use:* The instrument is intended to be used for studies of the biological ultrastructure of the nervous system during research regarding the development of the olivocochlear innervation based on procedures that represent a refinement in established techniques and methods developed specifically to address issues concerning this application. In addition, the instrument will be used for educational purposes for the training of graduate students, medical students, postdoctoral fellows and medical residents. *Application accepted by Commissioner of Customs:* September 13, 2000.

*Docket Number:* 00–031. *Applicant:* University of Georgia, The Applied Genetics Technology Resource and Business Facility (AGTEC), 111 Riverbend Road, Athens, GA 30602. *Instrument:* (Two) Plant Growth Chambers, Model GC8–2H. *Manufacturer:* Enconair Ecological Chambers, Canada. *Intended Use:* The instrument is intended to be used for studies of plants that have been recovered from cell culture for the purpose of determining gene function by expressing the genes in genetically engineered plants. *Application accepted by Commissioner of Customs:* September 13, 2000.

**Frank W. Creel,**

*Director, Statutory Import Programs Staff.*

[FR Doc. 00–25466 Filed 10–3–00; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### Minority Business Development Agency

**[Docket No. 000724217–0217–01]**

**RIN 0640–ZA08**

### Solicitation of Applications for the Minority Business Development Center (MBDC) Program

**AGENCY:** Minority Business Development Agency, Commerce.

**ACTION:** Notice.

**SUMMARY:** The Minority Business Development Agency (MBDA) published a document in the **Federal Register** of August 28, 2000, concerning solicitation of competitive applications from organizations to operate new and enhanced Minority Business Development Centers (MBDC) under its Minority Business Development Center (MBDC) Program. This document extends the closing date of the award to no later than 5 p.m., EDT on October 6, 2000.

**DATES:** The closing date for receipt of applications has been extended until October 6, 2000.

**ADDRESSES:** Applicants must submit one signed original plus two (2) copies of the application. Completed application packages must be submitted to: Minority Business Development Center Program Office, Room 5600, Minority Business Development Agency, U.S. Department of Commerce, 14th & Constitution Avenue, NW, Washington, DC 20230.

If the application is hand-delivered by the applicant or its representative, the application must be delivered to Room 1874, which is located at Entrance #10, 15th Street, NW, between Pennsylvania and Constitution Avenues. Applicants are encouraged to submit their proposal electronically via the World Wide Web. However, the following paper forms must be submitted with original signatures in conjunction with any electronic submissions by the closing date and time stated above: (1) SF–424, Application for Federal Assistance; (2) the SF–424B, Assurances-Non-Construction Programs; (3) the SF–LLL (Rev. 7–97) (if applicable), Disclosure of Lobbying Activities; (4) Department of Commerce Form CD–346 (if applicable), Applicant for Funding Assistance; and (5) the CD–511, Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying. MBDA's web site address to submit an application on-line is www.mbda.gov/e-grants. All required forms are located at this web address.

Failure to submit a signed, original SF–424 with the application, or separately in conjunction with submitting a proposal electronically, by the deadline will result in the application being rejected and returned to the applicant. Failure to sign and submit with the application, or separately in conjunction with submitting a proposal electronically, the forms identified above by the deadline will automatically cause an application to lose two (2) points. Failure to submit other documents or information may adversely affect an applicant's overall score.

**FOR FURTHER INFORMATION CONTACT:** For further information, contact the MBDA Regional Office for the geographic service area in which the project will be located.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** issue of August 28, 2000, in FR Doc. 00–21858, on page 52069, in the third column (third paragraph), change the date from September 29, 2000 to October 6, 2000. Applications will be accepted until 5:00 p.m. Eastern Daylight Time.

Dated: September 22, 2000.

**Edith Jett McCloud,**

*Associate Director for Management, Minority Business Development Agency.*

**Juanita E. Berry,**

*Federal Register Liaison Officer, Minority Business Development Agency.*

[FR Doc. 00–25467 Filed 10–3–00; 8:45 am]

BILLING CODE 3510–21–P

## DEPARTMENT OF COMMERCE

### Minority Business Development Agency

**[Docket No. 000724218–0217–01]**

**RIN 0640–ZA09**

### Solicitation of Applications for the Native American Business Development Center (NABDC) Program

**AGENCY:** Minority Business Development Agency, Commerce.

**ACTION:** Notice.

**SUMMARY:** The Minority Business Development Agency (MBDA) published a document in the **Federal Register** of August 28, 2000, concerning solicitation of competitive applications from organizations to operate new and enhanced Native American Business Development Centers (NABDC) under its Native American Business Development Center (NABDC) Program. This document extends the closing date of the award to no later than 5:00 p.m., EDT on October 6, 2000.

**DATES:** The closing date for receipt of applications has been extended until October 6, 2000.

**ADDRESSES:** Applicants must submit one signed original plus two (2) copies of the application. Completed application packages must be submitted to: Native American Business Development Center Program Office, Room 5600, Minority Business Development Agency, U.S. Department of Commerce, 14th & Constitution Avenue, NW, Washington, DC 20230.

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If the application is hand-delivered by the applicant or its representative, the application must be delivered to Room 1874, which is located at Entrance #10, 15th Street, NW, between Pennsylvania and Constitution Avenues. Applicants are encouraged to submit their proposal electronically via the World Wide Web. However, the following paper forms must be submitted with original signatures in conjunction with any electronic submissions by the closing date and time stated above: (1) SF–424, Application for Federal Assistance; (2) the SF–424B, Assurances-Non-Construction Programs; (3) the SF–LLL (Rev. 7–97) (if applicable), Disclosure of Lobbying Activities; (4) Department of Commerce Form CD–346 (if applicable), Applicant for Funding Assistance; and (5) the CD–511, Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying. MBDA's web site address to submit an application on-line is www.mbda.gov/e-grants. All required forms are located at this web address.

Failure to submit a signed, original SF–424 with the application, or separately in conjunction with submitting a proposal electronically, by the deadline will result in the application being rejected and returned to the applicant. Failure to sign and submit with the application, or separately in conjunction with submitting a proposal electronically, the forms identified above by the deadline will automatically cause an application to lose two (2) points. Failure to submit other documents or information may adversely affect an applicant's overall score.

**FOR FURTHER INFORMATION CONTACT:** For further information, contact the MBDA Regional Office for the geographic service area in which the project will be located.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** issue of August 28, 2000, in FR Doc. 00–21859, on page 52084, in the third column (second paragraph), change the date from September 29, 2000 to October 6, 2000. Applications will be accepted until 5:00 p.m. Eastern Daylight Time.

Dated: September 22, 2000.

**Edith Jett McCloud,**

*Associate Director for Management, Minority Business Development Agency.*

**Juanita E. Berry,**

*Federal Register Liaison Officer, Minority Business Development Agency.*

[FR Doc. 00–25468 Filed 10–3–00; 8:45 am]

**BILLING CODE 3510–21–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 092700A]**

### Fisheries of the Exclusive Economic Zone Off Alaska; Recordkeeping and Reporting Requirements; Public Workshop

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of workshop.

**SUMMARY:** NMFS, Alaska Region, and the U.S. Coast Guard (USCG) North Pacific Regional Fisheries Training Center will present a workshop at FISH EXPO concerning 2001 recordkeeping and reporting (R&R) requirements for the Alaska groundfish fisheries.

**DATES:** The workshop will be held on Friday, November 17, 2000, from 10 a.m. to 12 noon, local time, Seattle, WA.

**ADDRESSES:** The workshop will be held in Room 310, FISH EXPO at the Washington State Trade and Convention Center, Seattle, WA.

**FOR FURTHER INFORMATION CONTACT:** Patsy A. Bearden, 907-586-7008.

**SUPPLEMENTARY INFORMATION:** The workshop will include discussion of proposed changes to the R&R requirements, codified at 50 CFR part 679, along with instructions for completion and submittal of the required forms and logsheets. Suggestions and feedback on existing procedures are welcome. Other R&R workshops are scheduled as follows; the times of these workshops will be decided at a later date.

1. January 4, 2001, NOAA/NMFS Alaska Fisheries Science Center, Building 9, Room A/B, Seattle, WA;
2. January 16, 2001, USCG Training Center, Kodiak, AK; and
3. January 18 and 19, 2001, Unalaska City Hall, Council Chambers, Unalaska, AK.

### Special Accommodations

This workshop is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Patsy Bearden at 907-586-7008 at least 7 working days prior to the meeting date.

Dated: September 28, 2000

**Bruce C. Morehead,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 00–25480 Filed 10–3–00; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF ENERGY

### Office of Arms Control and Nonproliferation; Proposed Subsequent Arrangement

**AGENCY:** Department of Energy.

**ACTION:** Subsequent arrangement.

**SUMMARY:** This notice has been issued under the authority of Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160). The Department is providing notice of a proposed "subsequent arrangement" under the Agreement for Cooperation Concerning Civil Uses of Atomic Energy between the United States and Canada and Agreement for Cooperation in the Peaceful Uses of Nuclear Energy between the United States and the European Atomic Energy Community (EURATOM).

This subsequent arrangement concerns the retransfer of 40,168.3kg of U.S.-origin natural uranium, 27,153.8kg of which is in the form of $UF_6$, from the Cameco Corporation, Ontario, Canada to Urenco Almelo, Netherlands. The material, which is now located at Cameco Corp., Port Hope, Ontario, will be transferred to Urenco for toll enrichment. Upon completion of the toll enrichment, the material will be transferred to the Northern States Power, Minneapolis, MN for use as fuel. The uranium hexafluoride was originally obtained by the Cameco Corp. from IMC—Agrico Bannockburn, Il pursuant to export license number XSOU8714.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, we have determined that this subsequent arrangement is not inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

**Trisha Dedik,**

*Director, International Policy and Analysis for Arms Control and Nonproliferation Office of Defense Nuclear Nonproliferation.*

[FR Doc. 00–25454 Filed 10–3–00; 8:45 am]

**BILLING CODE 6450–01–U**

## DEPARTMENT OF ENERGY

### Office of Science; Advanced Scientific Computing Advisory Committee

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces the first meeting of the Advanced Scientific Computing Advisory Committee (ASCAC). Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

**DATES:** Tuesday, October 31, 2000, 8:30 a.m. to 5:00 p.m.; Wednesday, November 1, 2000, 8:30 a.m. to 4:15 p.m.

**ADDRESSES:** Key Bridge Marriott, 1401 Lee Highway, Arlington, VA 22209

**FOR FURTHER INFORMATION CONTACT:** Melea Baker, Office of Advanced Scientific Computing Research; U.S. Department of Energy; 19901 Germantown Road; Germantown, MD 20874–1290; Telephone (301) 903–7486 (E-mail: Melea.Baker@science.doe.gov).

**SUPPLEMENTARY INFORMATION:**

### Purpose of the Meeting

The purpose of this meeting is to provide advice and guidance with respect to the advanced scientific computing research program.

Tentative Agenda: Agenda will include discussions of the following:

Tuesday, October 31, 2000

- Introduction
- Briefings on Advisory Committee Operations
- Remarks from the Director, Office of Science
- Remarks from Associate Director, Advanced Scientific Computing Research
- Presentations of Office of Science Programs
- Public Comment

Wednesday, November 1, 2000

- Overview of Mathematical, Information, and Computational Sciences Division
- Presentations of the Mathematical, Information, and Computational Sciences Programs
- Overview of Scientific Discovery Through Advanced Computing
- Advisory Committee Open Discussion of Issues
- Review Calendar for CY2001
- Public Comment

### Public Participation

The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Melea Baker via FAX at 301–903–4846 or via E-mail (*Melea.Baker@science.*doe.gov). You must make your request for an oral statement at least 5 business days prior to the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

### Minutes

The minutes of this meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room; 1E–190, Forrestal Building; 1000 Independence Avenue, SW; Washington, DC 20585; between 9:00 a.m. and 4:00 p.m., Monday through Friday, except holidays.

Issued in Washington, D.C. on September 28, 2000.

**Rachel M. Samuel,**

*Deputy Advisory Committee, Management Officer.*

[FR Doc. 00–25455 Filed 10–3–00; 8:45 am]

**BILLING CODE 6450–01–U**



## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Los Alamos

**AGENCY:** Department of Energy

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Los Alamos. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

**DATES:** Wednesday, October 25, 2000, 6 p.m.–9 p.m.

**ADDRESSES:** Johnson Controls, 1027 North Railroad Avenue, Espanola, New Mexico.

**FOR FURTHER INFORMATION CONTACT:** Ann DuBois, Northern New Mexico Citizens' Advisory Board, 1640 Old Pecos Trail, Suite H, Santa Fe, NM 87505. Phone (505) 989–1662; fax (505) 989–1752 or e-mail: *adubois@doeal.gov.*

**SUPPLEMENTARY INFORMATION:**

### Purpose of the Board

The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

### Tentative Agenda

1. Opening Activities 6–6:30 p.m.
2. Public Comments 6:30–7 p.m.
3. Reports
4. Committee Reports:
   - Waste Management
   - Environmental Restoration
   - Monitoring and Surveillance
   - Community Outreach
   - Budget
5. Other Board business will be conducted as necessary

This agenda is subject to change at least one day in advance of the meeting.

### Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ann DuBois at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments at the beginning of the meeting.

### Minutes

Minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Public Reading Room located at the Board's office at 1640 Old Pecos Trail, Suite H, Santa Fe, NM. Hours of operation for the Public Reading Room are 9 a.m.–4 p.m. on Monday through Friday. Minutes will also be made available by writing or calling Ann DuBois at the Board's office address or telephone number listed above. Minutes and other Board documents are on the Internet at: *http://www.nnmcab.org.*

Issued at Washington, DC on September 28, 2000.

**Rachel M. Samuel,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 00–25456 Filed 10–3–00; 8:45 am]

**BILLING CODE 6450–01–P**

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## DEPARTMENT OF ENERGY

### Energy Information Administration

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** Energy Information Administration (EIA), Department of Energy (DOE).

**ACTION:** Agency information collection activities: submission for OMB review; comment request.

**SUMMARY:** The EIA has submitted the energy information collections listed at the end of this notice to the Office of Management and Budget (OMB)for review and a three-year extension under section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) (44 U.S.C. 3501 *et seq*).

**DATES:** Comments must be filed on or before November 3, 2000. If you anticipate that you will be submitting comments but find it difficult to do so within that period, you should contact the OMB Desk Officer for DOE listed below as soon as possible.

**ADDRESSES:** Send comments to the OMB Desk Officer for DOE, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. The OMB DOE Desk Officer may be telephoned at (202) 395–3084. (A copy of your comments should also be provided to EIA's Statistics and Methods Group at the address below.)

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to Jay Casselberry, Statistics and Methods Group, (EI–70), Forrestal Building, U.S. Department of Energy, Washington, DC 20585–0670. Mr. Casselberry may be contacted by telephone at (202) 426–1116, FAX at (202) 426–1081, or e-mail at Jay.Casselberry@eia.doe.gov.

**SUPPLEMENTARY INFORMATION:** This section contains the following information about the energy information collections submitted to OMB for review: (1) The collection numbers and title; (2) the sponsor (i.e., the Department of Energy component); (3) the current OMB docket number (if applicable); (4) the type of request (i.e, new, revision, extension, or reinstatement); (5) response obligation (i.e., mandatory, voluntary, or required to obtain or retain benefits); (6) a description of the need for and proposed use of the information; (7) a categorical description of the likely respondents; and (8) an estimate of the total annual reporting burden (*i.e.*, the estimated number of likely respondents times the proposed frequency of response per year times the average hours per response).

1. Forms EIA–23, 23P, and 64A, "Oil and Gas Reserves System Surveys"
2. Energy Information Administration
3. OMB Number 1905–0057
4. Three-year extension with changes
5. Mandatory
6. EIA's Oil and Gas Reserves Systems Surveys collect data used to estimate reserves of crude oil, natural gas, and natural gas liquids, and to determine the status and approximate levels of production. Data are published by EIA and used by public and private analysts. Respondents are operators of oil wells, natural gas wells, and natural gas processing plants.
7. Business or other for-profit
8. 74,236 (4505 respondents 7 × 1 response per year × 16.4786 hours per response)

**Statutory Authority:** Section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

Issued in Washington, DC, September 27, 2000.

**Jay H. Casselberry,**

*Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.*

[FR Doc. 00–25457 Filed 10–3–00; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–565–000]**

### ANR Storage Company; Notice of Tariff Filing

September 28, 2000.

Take notice that on September 25, 2000, ANR Storage Company (ANRS) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the tariff sheets listed on Appendix A to the filing, to be effective March 27, 2000.

ANRS states that the purpose of the filing is to incorporate changes to conform to the new regulations under Section 284.8(i), governing standards for Ceiling Rates for Short Term Capacity Releases.

ANRS states that copies of the filing were served upon the company's Jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–25415 Filed 10–3–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–564–000]**

### Blue Lake Gas Storage Company; Notice of Compliance Filing

September 28, 2000.

Take notice that on September 25, 2000, Blue Lake Gas Storage Company (Blue Lake) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to be effective March 27, 2000.

Blue Lake states that the purpose of the filing is to incorporate changes to conform to the new regulations under Section 284.8(i), governing standards for Ceiling Rates for Short Term Capacity Releases.

Blue Lake states that copies of the filing were served upon the company's Jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–25414 Filed 10–03–00; 8:45 am]

BILLING CODE 6717–01–M



## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. MG00–1–002]**

### Clear Creek Storage Company, L.L.C.; Notice of Filing

September 28, 2000.

Take notice that Clear Creek Storage Company, L.L.C. submitted revised standards of conduct on September 7, 2000 in response to the Commission's June 2, 2000 Order on Standards of Conduct, 91 FERC ¶ 61,240 (2000).

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest in this proceeding with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 oR 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before October 13, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with Commission and are available for public inspection. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–25407 Filed 10–3–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER00–3758–000]**

### Coyote Springs 2, LLC; Notice of Filing

September 28, 2000.

Take notice that on September 26, 2000, Coyote Springs 2, LLC (Coyote Springs 2) tendered for filing a petition for acceptance of an initial rate schedule authorizing Coyote Springs 2 to make wholesale sales of power at market-based rates.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 or 215 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene and protests should be filed on or before October 6, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–25411 Filed 10–3–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. MG00–8–001]**

### Egan Hub Partners, L.P.; Notice of Filing

September 28, 2000.

Take notice that Egan Hub Partners, L.P. submitted revised standards of conduct on August 31, 2000 in response to the Commission's August 1, 2000 Order on Standards of Conduct, 92 FERC ¶ 61,137 (2000).

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest in this proceeding with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Rules 211 or 215 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before October 13, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–25408 Filed 10–3–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. MG00–11–000]**

### Kern River Gas Transmission Company; Notice of Filing

September 28, 2000.

Take notice that on September 22, 2000, Kern River Gas Transmission Company filed revised standards of conduct under Order Nos. 497 *et seq.*,[1] Order Nos. 566 *et seq.*,[2] and Order No. 599.[3]

[1] Order No. 497, 53 FR 22139 (June 14, 1988), FERC Stats. & Regs. 1986–1990 ¶30,820 (1988); Order No. 497–A, *order on rehearing*, 54 FR 52781 (December 22, 1989), FERC Stats. & Regs. 1986–1990 ¶30,868 (1989); Order No. 497–B, *order extending sunset date*, 55 FR 53291 (December 28, 1990), FERC Stats. & Regs. 1986–1990 ¶30,908 (1990); Order No. 497–C, *order extending sunset date*, 57 FR 9 (January 2, 1992), FERC Stats. & Regs. 1991–1996 ¶30,934 (1991), *rehearing denied*, 57 FR 5815 (February 18, 1992), 58 FERC ¶61,139 (1992); Tenneco Gas v. FERC (affirmed in part and remanded in part), 969 F.2d 1187 (D.C. Cir. 1992); Order No. 497–D, *order on remand and extending sunset date*, 57 FR 58978 (December 14, 1992), FERC Stats. & Regs. 1991–1996 ¶30,958 (December 4, 1992); Order No. 497–E, *order on rehearing and extending sunset date*, 59 FR 243 (January 4, 1994), FERC Stats. & Regs. 1991–1996 ¶30,987 (December 23, 1993); Order No. 497–F, *order denying rehearing and granting clarification*, 59 FR 15336 (April 1, 1994), 66 FERC ¶61,347 (March 24, 1994); and Order No. 497–G, *order extending sunset date*, 59 FR 32884 (June 27, 1994), FERC Stats. & Regs. 1991–1996 ¶30,996 (June 17, 1994).

[2] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), FERC Stats. & Regs. 1991–1996 ¶30,997 (June 17, 1994); Order No. 566–A, *order on rehearing*, 59 FR 52896 (October 20, 1994), 69 FERC ¶61,044 (October 14, 1994); Order No. 566–B, *order on rehearing*, 59 FR 65707, (December 21, 1994), 69 FERC ¶61,334 (December 14, 1994).

[3] Reporting Interstate Natural Gas Pipeline Marketing Affiliates on the Internet, Order No. 599.

Continued

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Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before October 13, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–25410 Filed 10–3–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–337–000]**

### Kern River Gas Transmission Company; Notice of Technical Conference

September 28, 2000.

On June 15, 2000, Kern River Gas Transmission Company (Kern River) filed in compliance with Order No. 637. Several parties have protested various aspects of Kern River's filing.

Take notice that the technical conference to discuss the various issues raised by Kern River's filing will be held on Thursday, October 12, 2000, at 9:30 am, in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426. Parties protesting aspects of Kern River's filing should be prepared to discuss alternatives.

All interested persons and Staff are permitted to attend.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–25412 Filed 10–3–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. MG00–10–000]**

### Northwest Gas Pipeline Corporation; Notice of Filing

September 28, 2000.

Take notice that on September 22, 2000, Northwest Gas Pipeline Corporation filed revised standards of conduct under Order Nos. 497 *et seq.*,[1] Order Nos. 566 *et seq.*,[2] and Order No. 599.[3]

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest in this proceeding with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before October 13, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–25409 Filed 10–3–00; 8:45 am]

BILLING CODE 6717–01–M

[1] Order No. 497, 53 FR 22139 (June 14, 1988), FERC Stats. & Regs. 1986–1990 ¶ 30,820 (1988); Order No. 497–A, *order on rehearing*, 54 FR 52781 (December 22, 1989), FERC Stats. & Regs. 1986–1990 ¶ 30,868 (1989); Order No. 497–B, *order extending sunset date*, 55 FR 53291 (December 28, 1990), FERC Stats. & Regs. 1986–1990 ¶ 30,908 (1990); Order No. 497–C *order extending sunset date*, 57 FR 9 (January 2, 1992), FERC Stats. & Regs. 1991–1996 ¶ 30,934 (1991), *rehearing denied*, 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); Tenneco Gas v. FERC (Affirmed in part and remanded in part), 969 F.2d 1187 (D.C. Cir. 1992); Order No. 497–D *order on remand and extending sunset date*, 57 FR 58978 (December 14, 1992), FERC Stats. & Regs. 1991–1996 ¶ 30,958 (December 4, 1992); Order No. 497–E, *order on rehearing and extending sunset date*, 59 FR 243 (January 4, 1994), FERC Stats. & Regs. 1991–1996 ¶ 30,987 (December 23, 1993); Order No. 497–F *order denying rehearing and granting clarification*, 59 FR 15336 (April 1, 1994), 66 FERC ¶ 61,347 (March 24, 1994); and Order No. 497–G, *order extending sunset date*, 59 FR 32884 (June 27, 1994), FERC Stats. & Regs. 1991–1996 ¶ 30,996 (June 17, 1994).

[2] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994) FERC Stats. & Regs. 1991–1996 ¶ 30,997 (June 17, 1994); Order No. 566–A *order on rehearing*, 59 FR 52896 (October 20, 1994), 69 FERC ¶ 61,044 (October 14, 1994); Order No. 566–B, *order on rehearing*, 59 FR 65707, (December 21, 1994), 69 FERC ¶ 61,334 (December 14, 1994).

[3] Reporting Interstate Natural Gas Pipeline Marketing Affiliates on the Internet, Order No. 599, 63 FR 43075 (August 12, 1998), FERC Stats. & Regs. 31,064 (1998).

63 FR 43075 (August 12, 1998), FERC Stats. & Regs. 31,064 (1998).

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–566–000]**

### PG&E Gas Transmission, Northwest Corporation; Notice of Tariff Filing

September 28, 2000.

Take notice that on September 25, 2000, PG&E Gas Transmission, Northwest Corporation (PG&E GTN) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A, the following sheets, with an effective date of October 25, 2000:

Third Revised Sheet No. 81.01a
Fifth Revised Sheet No. 121
Fourth Revised Sheet No. 122
Fourth Revised Sheet No. 168

PG&E GTN asserts that the purpose of this filing is to eliminate its queue for scheduling interruptible capacity.

PG&E GTN further states that a copy of this filing has been served on PG&E GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–25416 Filed 10–3–00; 8:45 am]

BILLING CODE 6717–01–M



## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–567–000]**

### PG&E Gas Transmission, Northwest Corporation; Notice of Tariff Filing

September 28, 2000.

Take notice that on September 25, 2000, PG&E Gas Transmission, Northwest Corporation (PG&E GTN) tendered for filing to be part of its FERC Gas Tariff, First Revised Volume No. 1–A, the following tariff sheets, with an effective date of March 27, 2000:

Third Revised Sheet No. 99
Third Revised Sheet No. 101

PG&E GTN states that these sheets were filed to remove tariff language inconsistent with the Commission's temporary elimination of the rate cap for short-term capacity release transactions.

PG&E GTN further states that a copy of this filing has been served on its jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–25417 Filed 10–3–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–569–000]**

### Portland Natural Gas Transmission System; Notice of Proposed Changes in FERC Gas Tariff

September 28, 2000.

Take notice that on September 25, 2000, Portland Natural Gas Transmission System (PNGTS) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets to become effective March 27, 2000;

First Revised Sheet No. 343
First Revised Sheet No. 345
First Revised Sheet No. 347
First Revised Sheet No. 348
First Revised Sheet No. 351
First Revised Sheet No. 352
First Revised Sheet No. 354
First Revised Sheet No. 355

PNGTS states that the purpose of this filing is to comply with the requirements of Order No. 637 regarding the waiver of the rate ceiling for short-term capacity release transactions.

PNGTS states that copies of the filing were mailed to all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–25419 Filed 10–3–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–559–001]**

### Reliant Energy Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

September 28, 2000.

Take notice that on September 25, 2000, Reliant Energy Gas Transmission Company (REGT) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets to be effective November 1, 2000:

First Revised Sheet No. 10
Original Revised Sheet No. 15

REGT states that these tariff sheets were inadvertently omitted from its filing on September 22, 2000 to implement an in-kind option for Shippers electing service under REGT's Rate Schedule ANS.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–25413 Filed 10–3–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–568–000]**

### Viking Gas Transmission Company; Notice of Tariff Filing

September 28, 2000.

Take notice that on September 25, 2000, Viking Gas Transmission Company (Viking) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets:

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Fourth Revised Sheet No. 72
Second Revised Sheet No. 79
Seventh Revised Sheet No. 86
Second Revised Sheet No. 86A

Viking states that the purpose of this filing is to comply with the Commission's requirement in Order No. 637, Regulation of Short-Term Natural Gas Transportation Service and Regulation of Interstate Natural Gas Transportation Services, FERC Regulations Preambles ¶31,091 (February 9, 2000) that pipelines remove tariff provisions that are inconsistent with the removal of the maximum ceiling rate for short-term capacity release transactions. Viking is also clarifying its tariff to better reflect current Commission policy on the right of first refusal (ROFR).

Viking requests an effective date of March 27, 2000 for Sheet Nos. 72 and 79 (capacity release provisions) to coincide with the effective date of Order No. 637 and accordingly requests waiver of the Commission's notice requirements, Viking requests an effective date of October 25, 2000 for Sheet Nos. 86 and 86A (ROFR provisions).

Viking further states that copies of this filing have been served on all Viking's jurisdictional customers and to affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accorrdance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–25418 Filed 10–3–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. EC00–142–000, et al.]**

## Cleco Utility Group Inc., et al.; Electric Rate and Corporate Regulation Filings

September 27, 2000.

Take notice that the following filings have been made with the Commission:

**1. Cleco Utility Group Inc.**

[Docket No. EC00–142–000]

Take notice that on September 22, 2000, Cleco Utility Group Inc. (Cleco Utility) submitted an application pursuant to Section 203 of the Federal Power Act for authority to implement a proposed restructuring of Cleco Utility's business organization to operate as a limited liability company rather than a corporation that would be accomplished by means of a merger.

*Comment date:* October 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

**2. Cannelton Hydroelectric Project, L.P.**

[Docket No. EG00–257–000]

Take notice that on September 25, 2000, Cannelton Hydroelectric Project, L.P. (Cannelton), 120 Calumet Court, Aiken, South Carolina 29801, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Cannelton is a Tennessee limited partnership that proposes to construct, own and operate a hydroelectric facility in Hancock County, Kentucky. The facility will consist of a 79.2 MW hydroelectric plant at the United States Army Corps of Engineers' Cannelton Locks and Dam on the Ohio River in Hancock County, Kentucky. Power modules, containing small turbines and generators, will be installed in eight of the gate bays at the existing Cannelton Dam. Expected annual energy generated will be 363 GWh. Interconnecting transmission facilities necessary to effect a sale of electric energy at wholesale include switchgear and an 8.3 mile long, 138 kV transmission line from the project along the Kentucky side of the river to the LG&E Cloverport substation.

*Comment date:* October 18, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

**3. Smithland Hydroelectric Partners, Ltd.**

[Docket No. EG00–258–000]

Take notice that on September 25, 2000, Smithland Hydroelectric Partners, Ltd. (Smithland), 120 Calumet Court, Aiken, South Carolina 29801, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Smithland is a Kentucky partnership that proposes to construct, own and operate a hydroelectric facility in Livingston County, Kentucky. The facility will consist of an 83 MW hydroelectric plant at the United States Army Corps of Engineers' Smithland Lock and Dam on the Ohio River east of Smithland, Kentucky in Livingston County. Power modules, containing small turbines and generators, will be installed in five of the eleven gate bays at Smithland Dam. Expected annual energy generated will be 352 GWh. Interconnecting transmission facilities necessary to effect a sale of electric energy at wholesale include gas-isolated switchgear and an 11.4 mile long, 161 kV transmission line from the project to an interconnection with TVA's 500/161 kV Marshall substation or, alternatively if subsequently approved by the Commission, to an interconnection with the LG&E Energy Livingston County, KY substation.

*Comment date:* October 18, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

**4. Duke Power, a Division of Duke Energy Corporation**

[Docket No. ER00–3454–001]

Take notice that on September 22, 2000, Duke Power, a division of Duke Energy Corporation (Duke Power), tendered for filing FERC Electric Tariff, Original Vol. No. 5—Wholesale Market-Based Rate Tariff Providing For Sales Of Capacity, Energy, Or Ancillary Services And Resale Of Transmission Rights. This filing replaces an earlier filing in Docket ER00–3454.

*Comment date:* October 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

**5. Mid-Atlantic Area Council**

[Docket No. ER00–3735–000]

Take notice that on September 22, 2000, PJM Interconnection, L.L.C. (PJM) in its administrative support role to the Mid-Atlantic Area Council (MAAC), submitted for filing a new Mid-Atlantic Area Council Agreement (MAAC Agreement). PJM states that the new MAAC Agreement provides for broad membership, a new governance structure that is not dominated by any company or sector, an independent compliance and enforcement unit, and recovery of MAAC expense through PJM's Open Access Transmission Tariff.

PJM requests an effective date of January 1, 2001 for the new MAAC Agreement.

*Comment date:* October 13, 2000, in accordance with Standard Paragraph E at the end of this notice.



**6. Southern California Edison Company**

[Docket No. ER00–3739–000]

Take notice that on September 22, 2000, Southern California Edison Company (SCE) tendered for filing a Service Agreement for Wholesale Distribution Service (Agreement) between AES Placerita, Inc. (Placerita) and SCE.

This Agreement specifies the terms and conditions pursuant to which SCE will provide Distribution Service for up to an additional 15 MW of power produced by Placerita's generating facility. The facilities provided for in the Interconnection Facilities Agreement executed October 3, 1999 are all the Direct Assignment Facilities required to provide this service.

*Comment date:* October 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

**7. New York Independent System Operator, Inc.**

[Docket No. ER00–3740–000]

Take notice that on September 22, 2000, the New York Independent System Operator, Inc. (NYISO) tendered for filing proposed revisions to Sections 5.9–5.15 of its Market Administration and Control Area Services Tariff.

The NYISO requests an effective date of 60 days after this filing (November 21, 2000).

Copies of this filing were served upon all persons who have signed the NYISO Market Administration and Control Area Services Tariff.

*Comment date:* October 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

**8. PJM Interconnection, L.L.C.**

[Docket No. ER00–3741–000]

Take notice that on September 22, 2000, PJM Interconnection, L.L.C. (PJM), tendered for filing an executed umbrella service agreement for short-term firm point-to-point transmission service for Amerada Hess Corporation (Amerada), an executed service agreement for non-firm point-to-point transmission service for Amerada, and an executed umbrella service agreement for network integration transmission service for Metromedia Energy, Inc. (Metromedia).

Copies of this filing were served upon Amerada, Metromedia, and the state commissions within the PJM control area.

*Comment date:* October 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

**9. Northeast Utilities Service Company**

[Docket No. ER00–3742–000]

Take notice that on September 22, 2000, Northeast Utilities Service Company (NUSCO), on behalf of The Connecticut Light and Power Company (CL&P) and Western Massachusetts Electric Company (WMECO), tendered for filing two agreements dated April 10, 2000, under which the Companies have agreed to sell and deliver to Constellation Power Source, Inc. (CPS) capacity and energy and associated ancillary services to which the Companies are entitled under sixteen power purchase agreements.

To permit the transaction to close as scheduled, NUSCO requests that this filing be accepted by no later than December 1, 2000.

*Comment date:* October 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraphs**

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–25406 Filed 10–3–00; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. ER98–495–019, et al.]**

## Geysers Power Company, LLC, et al.; Electric Rate and Corporate Regulation Filings

September 26, 2000.

Take notice that the following filings have been made with the Commission:

**1. Geysers Power Company, LLC**

[Docket No. ER98–495–019]

Take notice that on September 21, 2000, Geysers Power Company, LLC (Geysers Power) filed its final report regarding refunds for the reliability must-run (RMR) agreement under which Geysers Power provides RMR services to the Independent System Operator Corporation (ISO). Geysers Power submits the final refund report in accordance with the Commission letter order dated January 31, 2000, Geysers Power Company, LLC, 90 FERC ¶ 61,096 (2000) approving the settlement among Geysers Power, Pacific Gas and Electric Company, the ISO and the California Electricity Oversight Board.

As stated in its interim refund report filed on March 16, 2000, Geysers Power issued refunds to the ISO by crediting the refund amount which resulted from the settlement against subsequent charges for RMR services. Geysers Power's refund obligation has now been fulfilled.

*Comment date:* October 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

**2. Entergy Services, Inc.**

[Docket No. ER00–2415–001]

Take notice that on September 21, 2000, Entergy Services, Inc. (Entergy Services), as agent for Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing certain corrections to the 2000 annual rate redetermination for Entergy Services' Open Access Transmission Tariff.

*Comment date:* October 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

**3. Entergy Services, Inc.**

[Docket No. ER00–2854–001]

Take notice that on September 21, 2000, pursuant to the Commission's order issued in the above-referenced docket on August 22, 2000, Entergy Services, Inc., 92 FERC ¶ 61,171 (2000),

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Entergy Services, Inc., on behalf of the Entergy Operating Companies (Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc. and Entergy New Orleans, Inc.) (collectively, Entergy), re-filed the entire System Agreement according to the requirements of Order No. 614, 65 Fed. Reg. 18,221, FERC Stats. and Regs. ¶ 31,096 (2000).

Entergy has served a copy of this filing on the service list in the above-referenced docket.

*Comment date:* October 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

**4. DePere Energy Marketing, Inc.**

[Docket No. ER00–3446–001]

Take notice that on September 21, 2000, DePere Energy Marketing, Inc. tendered for filing, pursuant to Order No. 614, the rate schedule designations for the cancellation of its Rate Schedule FERC No. 1.

*Comment date:* October 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

**5. Virginia Electric and Power Company**

[Docket No. ER00–3724–000]

Take notice that on September 21, 2000, Virginia Electric and Power Company (Virginia Power) tendered for filing a Letter of Termination from PPL EnergyPlus, LLC, successor to Pennsylvania Power and Light Co. (PP&L). The Letter of Termination requests termination of the Service Agreement with Virginia Power dated May 15, 1995 and approved by the FERC in an order dated July 19, 1995 in Docket No. ER95–1214–000. Virginia Power requests that the Letter of Termination be designated as Second Revised Service Agreement No. 17 under FERC Electric Tariff, Original Volume No. 4.

Virginia Power respectfully requests an effective date of the termination of the Service Agreement of November 6, 2000, as requested by PPL EnergyPlus, LLC.

Copies of the filing were served upon PPL EnergyPlus, LLC, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

*Comment date:* October 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

**6. PacifiCorp**

[Docket No. ER00–3725–000]

Take notice that on September 21, 2000, PacifiCorp tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, a Notice of Filing Mutual, and a Netting/Closeout Agreement (Netting Agreement) between PacifiCorp and the BP Energy Company (BP).

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

*Comment date:* October 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

**7. PacifiCorp**

[Docket No. ER00–3726–000]

Take notice that on September 21, 2000, PacifiCorp tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, an umbrella Service Agreement with Coral Power LLC (Coral) under PacifiCorp's FERC Electric Tariff, Third Revised Volume No. 12 (Tariff). In addition, PacifiCorp has resubmitted the Tariff in accordance with the Commission's Order No. 614.

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

*Comment date:* October 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

**8. Entergy Services, Inc.**

[Docket No. ER00–3728–000]

Take notice that on September 21, 2000, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., tendered for filing an Interconnection and Operating Agreement with Wrightsville Power Facility, LLC (Wrightsville), and a Generator Imbalance Agreement with Wrightsville.

*Comment date:* October 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

**9. Public Service Company of Oklahoma**

[Docket No. ER00–3729–000]

Take notice that on September 21, 2000, Public Service Company of Oklahoma (PSO) filed an Interconnection Agreement between PSO and Panda Oneta Power, L.P. (Panda).

PSO states that a copy of the filing was served on Panda and the Oklahoma Corporation Commission.

*Comment date:* October 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

**10. KPIC North America Corporation**

[Docket No. ER00–3734–000]

Take notice that on September 21, 2000, KPIC North America Corporation (Seller) petitioned the Commission for an order: (1) Accepting Seller's proposed FERC Electric Tariff (Market-Based Rate Tariff); (2) granting waiver of certain requirements under Subparts B and C of Part 35 of the regulations, (3) granting the blanket approvals normally accorded sellers permitted to sell at market-based rates, and (4) granting waiver of the 60-day notice period.

*Comment date:* October 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

**11. Cinergy Services, Inc.**

[Docket No. ER00–3737–000]

Take notice that on September 21, 2000, Cinergy Services, Inc. (Cinergy) tendered for filing a Service Agreement under Cinergy's Resale, Assignment or Transfer of Transmission Rights and Ancillary Service Rights Tariff (the Tariff) entered into between Cinergy and TXU Energy Trading Company (TXU). This Service Agreement has been executed by both parties and is to replace the existing unexecuted Service Agreement.

*Comment date:* October 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

**12. Cinergy Services, Inc.**

[Docket No. ER00–3738–000]

Take notice that on September 21, 2000, Cinergy Services, Inc. (Cinergy) tendered for filing a Service Agreement under Cinergy's Resale, Assignment or Transfer of Transmission Rights and Ancillary Service Rights Tariff (the Tariff) entered into between Cinergy and Canadian Niagara Power Co., LTD. (CanNiagara). This Service Agreement has been executed by both parties and is to replace the existing unexecuted Service Agreement.

*Comment date:* October 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraphs**

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–25405 Filed 10–3–00; 8:45 am]

BILLING CODE 6717–01–P



## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–30500; FRL–6742–1]**

## Pesticide Products; Registration Applications

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces receipt of applications to register pesticide products containing active ingredients not included in any previously registered products and a pesticide product involving a changed use pattern pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

**DATES:** Written comments, identified by the docket control number OPP–30500, must be received on or before November 3, 2000.

**ADDRESSES:** Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–30500 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** The Regulatory Action Leader, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, listed in the table below:

| Regulatory Action Leader | Telephone number/e-mail address | Mailing address | File symbol/EPA reg. # |
|---|---|---|---|
| Driss Benmhend | 703–308–9525; e-mail: benmhend.driss@epa.gov | 1200 Pennsylvania Ave., NW., Washington, DC 20460 | 71297–1 |
| Sharlene R. Matten | 703–605–0514; e-mail: matten.sharlene@epa.gov | Do. | 69697–R and 69697–E |
| Alan Reynolds | 703–605–0515; e-mail: reynolds.alan@epa.gov | Do. | 70571–E, 73314–E and 73314–R |

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this Action Apply to Me?*

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

| Categories | NAICS codes | Examples of potentially affected entities |
|---|---|---|
| Industry | 111<br>112<br>311<br>32532 | Crop production<br>Animal production<br>Food manufacturing<br>Pesticide manufacturing |

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

*B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?*

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–30500. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

*C. How and to Whom Do I Submit Comments?*

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–30500 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

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2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: "opp-docket@epa.gov," or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–30500. Electronic comments may also be filed online at many Federal Depository Libraries.

*D. How Should I Handle CBI that I Want to Submit to the Agency?*

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT.**

*E. What Should I Consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the registration activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

## II. Registration Application

EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products or registered active ingredients with a significant new use pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

*A. Products Containing Active Ingredients Not Included in Any Previously Registered Products*

1. File Symbol: 69697–R and 69697–E. Applicant: Jellinek, Schwartz & Connolly, Inc., 1525 Wilson Boulevard, Suite 600, Arlington, VA 22209 for Plant Products Co. Ltd., 314 Orenda Road, Brampton, Ontario, Canada. Product Name: Sporodex WP. Biological fungicide. Active ingredient: *Pseudozyma flocculosa* at 2%. Proposed classification/Use: Control powdery mildew disease on greenhouse-grown cut roses and English seedless cucumber.

2. File Symbol: 70571–E. Applicant: Encore Technologies LLC, 111 Cheshire Lane, Minnetonka, MN 55305. Product Name: Mallet WP. Herbicide. Active ingredient: *Colletotrichum gloeosporioides* f. sp. *malvae* at 8.0%. Proposed classification/Use: Post-emergent control of the weeds round-leaved mallow and small-flowered mallow.

3. File Symbols: 73314–R and 73314–E. Applicant: Natural Industries, Inc., 6223 Theall Road, Houston, TX 77066. Product Name: Actinovate Soluble and Actinovate Iron Fulvate. Fungicide. Active ingredient: *Streptomyces lydicus* WYEC 108 at 1.0%. Proposed classification/Use: Control of soil borne plant root rot and damping-off fungi.

*B. Product Containing the Active Ingredient (1-methylcyclopropene) Involving a Changed Use Pattern*

EPA Registration Number: 71297–1. Applicant: BioTechnologies for Horticulture, Inc., 101 Independence Mall West, Philadelphia, PA 19106–2399. Product name: EthylBloc®. The product contains the already registered active ingredient 1-methylcyclopropene and is intended for indoor use as a plant growth regulator on post-harvest fruits and vegetables for the purpose of inhibiting the effects of ethylene on food commodities. This is a significant new use.

**List of Subjects**

Environmental protection, Pesticides and pest.

Dated: September 18, 2000.

**Janet L. Andersen,**

*Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.*

[FR Doc. 00–25229 Filed 10–3–00; 8:45 am]

BILLING CODE 6560–50–F

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6880–9]**

## Draft Dioxin Reassessment Documents; Dose-Response Modeling for 2,3,7,8-TCDD, Toxic Equivalency Factors (TEFS) for Dioxin and Related Compounds and Integrated Summary and Risk Characterization for 2,3,7,8-Tetrachlorodibenzo-*p*-Dioxin (TCDD) and Related Compounds

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of availability of draft documents for public review and comment and announcement of close of public comment period.

**SUMMARY:** The U.S. Environmental Protection Agency (EPA) is announcing the availability of Science Advisory Board (SAB) review drafts of the Draft Dioxin Reassessment Documents, Chapter 8: Dose-Response Modeling for 2,3,7,8-TCDD, Chapter 9: Toxic Equivalency Factors (TEFs) for Dioxin and Related Compounds, and Part III: Integrated Summary and Risk Characterization for 2,3,7,8-Tetrachlorodibenzo-*p*-Dioxin (TCDD) and Related Compounds, for public review and comment. The documents were prepared by the EPA's Office of Research and Development (ORD) with the involvement of other federal agencies, in particular the National Institutes of Health's National Institute of Environmental Health Sciences. The Agency is also announcing the date for the close of the public comment period that began on June 12, 2000.



**DATES:** In a June 12, 2000 **Federal Register** (65 FR 36898), the Agency announced the beginning of an extended public comment period, on both a previous version of these draft documents as well as those discussed in this Notice. It announced that the comment period began on June 12 and will be concluded two weeks following the SAB peer review meeting in the Fall. All public comments should be submitted by close of business on November 17, 2000. The SAB review meeting is scheduled for November 1 and 2, 2000, and details related to that meeting will be announced in a separate FR notice.

*Document Availability*

The primary distribution method for the three SAB review drafts of the dose-response modeling chapter (hereafter, Chapter 8), the TEF chapter (hereafter, Chapter 9) and Integrated Summary and Risk Characterization (hereafter, Part III) will be via the Internet on ORD's National Center for Environmental Assessment (NCEA) website. These SAB review drafts, in PDF format, are available at http://www.epa.gov/ncea/dioxin.htm. These documents can be reviewed and downloaded from the Internet. Background information is also available at the above-mentioned Internet site. This information, provided as background only, consists of other draft final exposure and health sections of the reassessment, specifically Part I: Estimating Exposure to Dioxin-Like Compounds (Volumes 2–4) and Part II: Health Assessment for 2,3,7,8-Tetrachlorodibenzo-*p*-Dioxin (TCDD) and Related Compounds (Chapters 1–7). In addition, a Compact Disk-Read Only Memory (CD–ROM) containing the three SAB review drafts, the background information, and the draft final Database of Sources of Environmental Releases of Dioxin-Like Compounds in the United States, is available from EPA's National Service Center for Environmental Publications (NSCEP) in Cincinnati, Ohio (telephone: 1–800–490–9198, or 513–489–8190; facsimile 513–489–8695). If you are requesting a copy of the CD–ROM, please provide your name, mailing address, and reference the "Dioxin CD/September 2000" and document number EPA/600/P–00/001Bb-Be. The background documents are available only on CD–ROM and the Internet. A limited number of paper copies of draft Chapter 8, Chapter 9, and Part III will be available from NSCEP. To receive paper copies please provide your name, mailing address, and the document title and number, Part II. Chapter 8: Dose-Response Modeling for 2,3,7,8–TCDD, document number NCEA–I–0835; Part II. Chapter 9: Toxic Equivalency Factors (TEFs) for Dioxin and Related Compounds, document number NCEA–I–0836; and/or Part III. Integrated Summary and Risk Characterization for 2,3,7,8-Tetrachlorodibenzo-*p*-Dioxin (TCDD) and Related Compounds, document number EPA/600/P–00/001Bg.

*Comment Submission*

Comments should be in writing and mailed to the Technical Information Staff (8623D), NCEA–W, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Ariel Rios Building, Washington, DC 20460, or delivered to the Technical Information Staff at 808 17th Street, N.W., 5th Floor, Washington, DC 20006; telephone: (202) 564–3261; facsimile: (202) 565–0050. One unbound original with pages numbered consecutively, including attachments, and three copies should be submitted. An index is required for any attachments. Electronic comments may be emailed to: ncea.dioxin@epa.gov. Commentors are requested to make clear that their comments pertain to the September 2000 SAB review drafts.

Please note that all technical comments received in response to this notice will be placed in a public record. Commentors should not submit personal information (such as medical data or home address), Confidential Business Information, or information protected by copyright. Due to limited resources, acknowledgments will not be sent.

**FOR FURTHER INFORMATION CONTACT:** For information contact the Technical Information Staff, NCEA–W (8623D), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, N.W., Washington, DC 20460; telephone: 202–564–3261; facsimile: 202–565–0050; e-mail: ncea.dioxin@epa.gov.

**SUPPLEMENTARY INFORMATION:** In April 1991, EPA announced that it would conduct a scientific reassessment of the health risks of exposure to dioxin and dioxin-like compounds. EPA undertook the 1991 reassessment in light of significant advances in our scientific understanding of mechanisms of dioxin toxicity, significant new studies of dioxin's carcinogenic potential in humans and increased evidence of other adverse health effects.

In September 1994, EPA released the external review drafts of the health effects and exposure documents. In late 1994, EPA took public comment and held numerous public meetings across the country on the drafts, followed by SAB review of the draft dioxin reassessment in May 1995. The SAB's report was received in the Fall of that year. In its report to the Agency, the SAB responded favorably to most portions of the reassessment, but recommended substantive revision of two key sections (Chapter 8 and the Risk Characterization document) and development of an additional document that would focus on TEFs for dioxin and dioxin-like compounds. They also requested that the two redrafted documents and the new TEF chapter be submitted for independent external peer review before being returned to the SAB for re-review. With respect to Chapters 1–7 of the health document and the full exposure reassessment document, the SAB accepted these sections. They suggested that the sections be updated to address public and SAB comments and to incorporate new scientific data. However, the SAB's report stated that substantive further review of these sections by the SAB was not needed.

On July 25 and 26, 2000, an external scientific peer-review meeting was held to review the new Chapter 9 and revised Part III. The third section of the reassessment on which the SAB recommended substantive revision, Chapter 8, underwent public comment and external peer review in March 1997. The July peer review meeting focused on the key science issues including: the characterization of cancer risk, how to extrapolate between animals and humans, non-cancer effects seen close to background exposures, and children's risk. A range of opinions regarding EPA's treatment of these issues in the draft chapters were expressed. Suggestions were made regarding improved presentation of these key science issues.

After the July 25 and 26 external peer review meeting and subsequent receipt of the final meeting report, dated August 24, the documents were revised to address the comments of the scientific peer reviewers and the public comments received prior to September 25, the date the drafts were provided to the SAB review panel. The SAB will conduct its scientific peer review of draft Chapter 8, Chapter 9, and Part III on Wednesday and Thursday, November 1 and 2. The SAB review will be announced in a separate **Federal Register** notice. Following the SAB meeting, EPA will revise the draft reassessment documents to incorporate appropriate changes that have been indicated by the comments of Federal agencies, the public, and the SAB review panel. SAB approval is

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needed to produce a final EPA dioxin reassessment document.

Dated: September 28, 2000.

**Henry L. Longest II,**

*Deputy Assistant Administrator for Management, Office of Research and Development.*

[FR Doc. 00–25473 Filed 10–3–00; 8:45 am]

BILLING CODE 6560–50–U

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6880–4]**

### Proposed CERCLA Administrative Cost Recovery Settlement; Jasco Chemical Superfund Site

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice; request for public comment.

**SUMMARY:** In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of past and future response costs concerning the Jasco Chemical Superfund Site in Mountain View, California with the following settling parties: JASCO Chemical Corporation, Harry M. Anthony, and Carol Jean Anthony. The settlement requires the settling parties to pay $5,862.60, all of the outstanding past response costs as of 31 March 2000, and all future response costs (costs after 31 March 2000) to the U.S. Environmental Protection Agency (the "Agency" or "EPA") Hazardous Substance Superfund. Under the terms of the AOC, the Parties will pay $5,862.60 to the Superfund within 10 days of the effective date of the AOC. Furthermore, the Parties agree to pay the United States' future response costs incurred at or in connection with the Site. Upon payment by the settling parties of EPA's response costs, the settling parties shall have resolved any and all civil liability to EPA under Section 107(a) of CERCLA, 42 U.S.C. 9607(a), for reimbursement of such response costs. For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at Jasco Chemical Superfund Site at 1710 Villa Street, Mountain View, California and at USEPA Region IX, 75 Hawthorne Street, San Francisco, California.

**DATES:** Comments must be submitted on or before November 3, 2000.

**ADDRESSES:** The proposed settlement document is available for public inspection at EPA Region IX, 75 Hawthorne Street, San Francisco, California. A copy of the proposed settlement document may be obtained from Ellen Manges, Superfund Division (SFD–7–2), USEPA Region IX, 75 Hawthorne St., San Francisco, California, (415) 744–2228. Comments should reference the Jasco Chemical Superfund Site, Mountain View, California, and EPA Docket No. 2000–11 and should be addressed to Ellen Manges, Superfund Division (SFD–7–2), USEPA Region IX, 75 Hawthorne St., San Francisco, California.

**FOR FURTHER INFORMATION CONTACT:** Ellen Manges, Superfund Division (SFD–7–2), USEPA Region IX, 75 Hawthorne St., San Francisco, California, (415) 744–2228.

Dated: September 25, 2000.

**John Kemmerer,**

*Acting Director, Superfund Division, Region IX.*

[FR Doc. 00–25472 Filed 10–3–00; 8:45 am]

BILLING CODE 6560–50–U

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) being Reviewed by the Federal Communications Commission

September 26, 2000.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Written comments should be submitted on or before November 3, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, DC 20554 or via the Internet to jboley@fcc.gov.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at jboley@fcc.gov.

**SUPPLEMENTARY INFORMATION:**

*OMB Control No.:* 3060–0292.

*Title:* Part 69—Access Charges.

*Form No.:* N/A.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Business or other for-profit.

*Number of Respondents:* 1,458 respondents; 5,832 responses.

*Estimated Time Per Response:* 5 hours.

*Frequency of Response:* Third party disclosure requirement; on occasion, semi-annual, annual, biennial, and/or monthly reporting requirements.

*Total Annual Burden:* 27,702 hours.

*Total Annual Cost:* N/A.

*Needs and Uses:* Part 69 of the Commission's rules and regulations establishes the rules for access charges for interstate or foreign access provided by telephone companies. Local telephone companies and states are required to submit information to the Commission and/or the National Exchange Carrier Association (NECA). The information is used to compute charges in tariffs for access service (or origination and termination) and to computer revenue pool distributions. This information collection was revised due to expiration of two requirements, *i.e.,* Section 69.104(k)(1) and 69.104(l).

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 00–25389 Filed 10–3–00; 8:45 am]

BILLING CODE 6712–01–U



## FEDERAL MARITIME COMMISSION

### Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

*Agreement No.:* 010776–117.

*Title:* Asia North America Eastbound Rate Agreement.

*Parties:* A.P. Moller-Maersk Sealand, American President Lines, Ltd., APL Co. PTE Ltd., Hapag-Lloyd Container Linie GmbH, Kawasaki Kisen Kaisha, Ltd., Mitsui O.S.K. Lines, Ltd., Nippon Yusen Kaisha, Orient Overseas Container Line, Inc., P&O NedLloyd B.V., P&O NedLloyd Limited.

*Synopsis:* The subject modification would extend the current suspension of the agreement for an additional six months through May 1, 2001.

*Agreement No.:* 011695–002.

*Title:* CMA–CGM/Norasia Reciprocal Space Charter, Sailing and Cooperative Working Agreement.

*Parties:* Norasia Container Lines Limited ("Norasia"), CMA–CGM S.A.

*Synopsis:* The proposed amendment increases Norasia's allocation under the agreement from 4% to 30% due to Norasia's sale of four of its vessels. The parties have requested expedited review.

*Agreement No.:* 011725.

*Title:* APL/GWF Slot Exchange Agreement.

*Parties:* American President Lines, Ltd. ("APL"), APL Co. Pte. Ltd.("APL"), Great White Fleet (U.S.) Ltd. ("GWF").

*Synopsis:* The proposed agreement authorizes the exchange or sale of space between APL and GWF on each other's vessel operating in the trade between United States Atlantic and Gulf Coast ports, and U.S. inland and coastal points served via those ports, and ports and points in Guatemala, Honduras, El Salvador, Nicaragua, and Costa Rica.

*Agreement No.:* 011726.

*Title:* Maersk Sealand—New World Alliance/CMA–CGM Slot Charter Agreement.

*Parties:* A. P. Moller-Maersk Sealand, American President Lines, Ltd., APL Co. PTE Ltd., CMA–CGM S.A., Hyundai Merchant Marine Co., Ltd., Mitsui O.S.K. Lines, Ltd.

*Synopsis:* Under the proposed agreement, CMA–CGM will charter 600 slots each week on vessels operated by Maersk Sealand and the New World Alliance in the trade between U.S. East and Gulf Coast ports and ports in Europe.

*Agreement No.:* 011727.

*Title:* CMA–CGM/Norasia Pacific Slot Charter Agreement.

*Parties:* Norasia Container Lines Limited ("Norasia"), CMA–CGM S.A. ("CMA–CGM").

*Synopsis:* The proposed agreement authorizes CMA–CGM to slot charter space to Norasia in the trade between Long Beach, CA and ports in China, South Korea, and Taiwan. The parties request expedited review.

Dated: September 29, 2000.

By Order of the Federal Maritime Commission

**Theodore A. Zook,**

*Assistant Secretary.*

[FR Doc. 00–25477 Filed 10–3–00; 8:45 am]

BILLING CODE 6730–01–P

## FEDERAL MARITIME COMMISSION

**[Docket No. 00–11]**

### New Orleans Stevedoring Co. v. Board of Commissioners, Port of New Orleans; Notice of Filing of Complaint and Assignment

Notice is given that a complaint was filed by New Orleans Stevedoring Company, a division of James J. Flanagan Shipping Corporation, ("Complainant") against the Board of Commissioners of the Port of New Orleans ("Respondent"). Complainant alleges that Respondent violated the Shipping Act of 1984 ("Shipping Act") by unreasonably refusing to deal or negotiate with Complainant and by giving undue and unreasonable preference and advantage to Complainant's competitors and by inflicting undue and unreasonable prejudice and disadvantage upon Complainant in connection with the use of marine terminal facilities in New Orleans.

Complainant asks that the Respondent be made to answer these charges, and that after due hearing, an order be made commanding the Respondent to cease and desist from these violations; to establish and put in force such practices as the Commission determines to be lawful and reasonable; to pay Complainant by way of reparations $1,000,000 plus such additional damages as may be proved, together with interest and attorney fees, or such other sum as the Commission may determine to be proper as reparation.

This proceeding has been assigned to the office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by October 1, 2001, and the final decision of the Commission shall be issued by January 29, 2002.

**Theodore A. Zook,**

*Assistant Secretary.*

[FR Doc. 00–25478 Filed 10–3–00; 8:45 am]

BILLING CODE 6730–01–P

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 18, 2000.

**A. Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

*1. James Robert Burns, Charles Edward Burns, James Ryan Burns, Traci Lee Burns, Staci Ann Burns,* all of St. Francisville, Illinois, and Virginia Ann

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Fredrick, Vincennes, Indiana, also known as Burns Control Group, St. Francisville, Illinois; to acquire additional voting shares of HBbancorporation, Inc., Lawrenceville, Illinois, and thereby indirectly acquire additional voting shares of Heritage National Bank, Lawrenceville, Illinois.

Board of Governors of the Federal Reserve System, September 28, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00–25401 Filed 10–3–00; 8:45 am]

**BILLING CODE 6210–01–P**

## GENERAL SERVICES ADMINISTRATION

### Notice of Public Meeting and Intent To Prepare a Master Plan and an Environmental Impact Statement

The General Services Administration (GSA) announces its intent to prepare a master plan and an Environmental Impact Statement (EIS) for the Suitland Federal Center, and to conduct a public meeting to discuss the project. The master plan will identify sites suitable for development and provide alternative development programs and building configurations, including new construction, building renovations, demolition, or combinations thereof. GSA will prepare the EIS pursuant to Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, as implemented by the Council on Environmental Quality (40 CFR Parts 14500–14508), Section 106 of the National Historic Preservation Act of 1966, as amended, and in accordance with the Environmental Policies and Procedures implemented by GSA.

GSA is preparing a master plan for the Suitland Federal Center that could accommodate current and future personnel. The master plan will identify developable parcels and provide alternative development scenarios, which may include new construction, renovation of existing facilities, demolition, parking facilities, and open space. The EIS will evaluate the effects of the master plan and resulting employment populations on land use and socio-economic, transportation, cultural, and natural resources.

A public meeting will be held to determine the significant issues related to implementation of the master plan and the long-term use of the Suitland Federal Center. The meeting will serve as part of the formal environmental review/scoping process for the preparation of the EIS. It is important that Federal, regional and local agencies, and interested individuals and groups take this opportunity to identify environmental concerns that should be addressed during preparation of the EIS. The public and review agencies are also encouraged to submit written comments on the potential impacts of the proposed master plan. Public comments received on the potential impacts of the proposed project will be considered for the environmental document. The public and review agencies are encouraged to provide additional comments once the Draft EIS is released.

The public meeting will be held:

Wednesday, October 25th, at 7:00 P.M.
At the Suitland High School Auditorium, 5200 Silver Hill Road, Forestville, Maryland

Adequate signs will be posted on the building to direct meeting participants. The meeting will begin with a brief, formal presentation of the project and the environmental impact assessment process. After the presentation, GSA representatives will be available to receive comments from the public regarding issues of concern and the scope of the EIS. In the interest of available time, each speaker will be asked to limit oral comments to five minutes.

An Informational Packet will be available for review at the public meeting or upon request to the General Services Administration contact identified below. Agencies and the general public are invited and encouraged to provide written comments on the scoping issues in addition to, or in lieu of, oral comments at the public meeting. To be most helpful, environmental review/scoping comments would clearly describe specific issues or topics that the community believes the EIS should address. All written comments regarding the proposed project must be postmarked no later than October 23rd to:

General Services Administration
Attn: Mr. Jag Bhargava
Project Executive, Portfolio Development Division, 7th and D Streets, S.W., Room 2110, Washington, DC 20407

For further information please contact: Mr. Jag Bhargava, General Services Administration (202–708–6944); E-mail: *jag.bhargava@gsa.gov*

Dated: September 25, 2000.

Approved By:

**Arthur M. Turowski;**

*Deputy Assistant Regional Administrator, National Capital Region, GSA.*

[FR Doc. 00–25183 Filed 10–3–00; 8:45 am]

**BILLING CODE 6820–61–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Agency Information Collection Activities Announcement of OMB Approval; Restrictions on Interstate Travel of Persons

**AGENCY:** Centers for Disease Control and Prevention (CDC), Department of Health and Human Services.

**ACTION:** Notice.

**SUMMARY:** The Centers for Disease Control and Prevention (CDC) is announcing that a collection of information entitled Restriction on Interstate Travel of Persons has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

**FOR FURTHER INFORMATION CONTACT:** Anne O'Connor, Assistant Reports Clearance Officer, Centers for Disease Control and Prevention, Office of Program Planning and Evaluation, 1600 Clifton Road, MS D–24, Atlanta, Georgia 30333, (404) 639–7090.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of August 1, 2000 (65 FR 148, Pgs. 46935–46936), the agency announced that the proposed information collection had been submitted to OMB for review and clearance. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0920–0488. The approval expires on September 30, 2003. A copy of the supporting statement for this information collection is available by contacting the CDC Reports Clearance Officer at the address and phone number listed above.

Dated: September 28, 2000.

**Nancy Cheal,**

*Acting Associate Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 00–25430 Filed 10–3–00; 8:45 am]

**BILLING CODE 4163–18–P**



## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

**[Program Announcements Nos. OCS–2000–01 and OCS–2001–01]**

### Request for Applications for the Office of Community Services' Fiscal Years 2000 and 2001 Discretionary Grants Program; Correction

**AGENCY:** Office of Community Services (OCS), ACF, DHHS.

**ACTION:** Notice; clarification and correction.

**SUMMARY:** This notice clarifies Program Announcement No. OCS–2000–01 published in the **Federal Register** on August 19, 1999 (64 FR 45302) and corrects Program Announcement No. OCS–2001–01, published on June 20, 2000 (65 FR 38336). This notice clarifies the Rural Community Facilities Development Program Sub-Priority Area 2.0; it explains what information should have been included in the FY 2000 announcement; and it corrects the error made requesting proposals in the FY 2001 announcement. OCS will not be accepting proposals for FY 2001 under the Rural Community Facilities Development Program—Sub-Priority Area 2.1.

**FOR FURTHER INFORMATION CONTACT:** Veronica Terrell, Administration for Children and Families, Office of Community Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Phone: 202–401–5295.

For Fiscal Year (FY) 2000: Program Announcement, OCS–2000–01, issued in the **Federal Register** on August 19, 1999, the information provided on page 45304 in the last paragraph under 3. Project and Budget Periods, states "For Priority Area 2.0, grantees will be funded for 24 month project periods and 12 month budget periods." OCS did not mention that the program awardees selected through the competitive process in this round would be awarded a "Non-Competitive Continuation Grant" for FY 2001.

For FY 2001: Program Announcement, OCS–2000–01, issued in the **Federal Register** on June 20, 2000, OCS makes the following corrections:

1. On page 38338—Under *3. Project and Budget Periods:* delete the last paragraph and replace it with the following note:

**Note:** There will be no new grant awards made in Fiscal Year 2001 under Sub-Priority Area 2.1. In Fiscal Year 2000, certain grantees were awarded grants for 24-month project periods and 12 month budget periods. These grantees will receive the grant funds from this category to supplement their second year of funding.

2. On page 38344—Priority Area 2.0 Rural Community Facilities Development should be corrected as follows:

FY 2001 in the first heading and the first sentence should be revised to "FY 2000."

The initial 1. should be removed.

The last paragraph should be removed and replaced with a new paragraph to read as follows: "One grant of approximately $300,000 is anticipated to be made under this sub-priority area for FY 2000.

Remove section 2., Rural Community Facilities, in its entirety. OCS does not intend to compete this sub-priority area for FY 2001. The FY 2000 grantees do not have to apply competitively; their FY 2001 grants will be administered as a non-competitive continuation grant action. At an appropriate time, OCS will invite these grantees to submit requests for continuation funding for the balance of their two-year projects, subject to the availability of funds.

Dated: September 29, 2000.

**Robert L. Mott,**

*Deputy Director, Office of Community Services.*

[FR Doc. 00–25476 Filed 10–3–00; 8:45 am]

**BILLING CODE 4184–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Nutrient Requirements of Domestic Animals and Critical Roles of Animal Nutrition

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA), Center for Veterinary Medicine, announces the availability of funds to support an unsolicited grant application submitted by the National Academy of Sciences (NAS). The academy has requested funds to support the activities of the National Research Council's (NRC) Committee on Animal Nutrition (CAN). The central emphasis of CAN, through its species subcommittees is the preparation and updating of a series of reports on the nutrient requirements of animals. This series addresses economically important domestic animals, including food- and fiber-producing species, as well as captive fur-bearing species, aquatic species, companion animals, service and working animals, endangered species, and animals that serve as experimental models in biomedical research. In addition CAN identifies emerging problems in the area of animal nutrition and implements appropriate mechanisms, such as deliberative studies, symposia, workshops, or roundtables to address the issues.

**FOR FURTHER INFORMATION CONTACT:**

*Regarding the administrative and financial management aspects of this notice:* Peggy L. Jones, Division of Contracts and Procurement Management (HFA–520), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7160. Correspondence hand-carried or commercially delivered should be addressed to 5630 Fishers Lane (HFA–520), rm. 2129, Rockville, MD 20857.

*Regarding the programmatic aspects of this notice:* David B. Batson, Office of Research, Center for Veterinary Medicine (HFV–502), Food and Drug Administration, 8401 Muirkirk Rd., Laurel, MD 20708, 301–827–8021.

**SUPPLEMENTARY INFORMATION:**

### I. Eligible Applicants

Assistance will only be provided to the National Academy of Sciences because of the following:

1. The NAS is the only organization that submitted an unsolicited application for the purpose stated above.

2. The NAS is the only organization that has a standing Committee on Animal Nutrition for the purpose of preparing and updating reports on the nutrient requirements of animals.

3. The NRC is unique with regard to its operation and policies. The core of the NRC's work consists of studies conducted by experts selected by the NRC expressly for their expertise in the relevant scientific issues at hand.

4. CAN was formally organized in 1928 under the auspices of the NAS and NRC to provide advice to Federal agencies and the nation on the nutritional management of important domestic animals.

5. Reports produced by CAN have been widely used and accepted by Federal agencies, the biomedical community, the U.S. animal industry and abroad as a group of unbiased and comprehensive reports that form the basis of nutrient recommendations for animals in the United States and many parts of the world.

6. Reports of CAN have been translated into at least five other

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languages (Spanish, Russian, Chinese, Japanese, and Turkish) and are used as a standard for animal nutrition throughout the world.

**II. Funding**

We anticipate that approximately $20,000 will be made available to fund this project. It is expected that the award will begin in either fiscal year (FY) 2000 or FY 2001 and will be made for a 12-month budget period within a project period of up to 3 years. Funding estimates may change. Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Dated: September 28, 2000.

**William K. Hubbard,**

*Senior Associate Commissioner for Policy, Planning, and Legislation.*

[FR Doc. 00–25449 Filed 10–3–00; 8:45 am]

**BILLING CODE 4160–01–F**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 00N–1519]**

### Clinical Pharmacology During Pregnancy; Public Meeting

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of public meeting.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing an FDA/National Institute for Child Health and Human Development co-sponsored meeting on "Clinical Pharmacology During Pregnancy: Addressing Clinical Needs Through Science." Experts from industry, academia, and the public have been invited to provide their perspectives on drug therapeutics during the second and third trimester of pregnancy. The goals of the meeting are: To summarize the state of knowledge regarding clinical pharmacology in pregnancy; to raise awareness among clinician researchers and leaders about the need for clinical research and collaboration in this area; and to garner support for such research from health advocacy groups and others.

**DATES:** The meeting will be held on Monday and Tuesday, December 4 and 5, 2000, from 8 a.m. to 5 p.m. The deadline for registration is November 13, 2000.

**ADDRESSES:** The location of the meeting is the Holiday Inn, Capitol room, 550 C St. SW., Washington, DC 20024, 202–479–4000. Transcripts of the meeting will be available from the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, and on the Internet at http://www.fda.gov/ohrms/dockets. Register on the Internet at http://www.fda.gov/cder/audiences/women/pharmpreg2000.htm.

**FOR FURTHER INFORMATION CONTACT:** Dianne L. Kennedy, Center for Drug Evaluation and Research (HFD–104), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857 301–827–2185, e-mail: kennedyd@cder.fda.gov.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Most women and physicians seek to avoid the use of medications during pregnancy to protect the developing fetus from any potential adverse effects. However, medication use by pregnant women is common. A study conducted in 1994 by FDA, using several managed care data bases, found that the average number of prescriptions per patient during pregnancy (excluding prenatal vitamins, iron preparations, and medications at the time of delivery) was three. The number of prescriptions increased with maternal age. For pregnant women over the age of 35, the average number of prescriptions was five (unpublished data, FDA).

In considering the needs for clinical pharmacology data to guide drug dosing among special populations, the pregnant woman is rarely addressed. Yet, the physiology of pregnancy is dynamic and capable of influencing the pharmacokinetic profiles of many drugs. It is commonly appreciated that hormonal changes, particularly elevated estrogens and progesterone, accompany normal pregnancy, but their effects are often unappreciated.

Many women enter pregnancy with health conditions that require medications, such as neurologic and psychiatric conditions. Some health conditions tend to worsen during pregnancy, including hypertension, asthma, endocrinopathies, rheumatologic diseases, and cardiac conditions. Previously healthy women often develop illnesses during pregnancy, such as infections, diabetes, thyroid disease, thromboembolism, or cancers. Often, not using medications poses far greater risk to fetal well being and survival than the risk of a particular drug.

Most physicians seek to prescribe the lowest effective dose of any given drug to treat a pregnant woman. Their goal is to provide the best effect for the least exposure possible to the fetus. However, when deciding what the appropriate dose is for a given patient, health care practitioners usually rely on information (typically from product circulars) from studies of individuals who are not pregnant. Particularly for drugs with a narrow therapeutic window, or with marginal efficacy at the lower end of the therapeutic spectrum, this practice risks exposing the fetus to a dose of medication with little or no benefit to the mother. The result may be that the mother's condition worsens. She may require a second course of the same treatment or a switch to a second or third drug, exposing her developing infant to multiple courses of treatment over a much longer period of time.

Pregnant women are usually excluded from clinical trials and even in situations where pregnant women require therapeutics, pharmacokinetic studies are rarely done. There are many reasons for this. Pregnancy is a temporary condition and easily forgotten in "wish lists" for data, by subspecialists who treat pregnant women with serious medical problems. Also, interested investigators may be reluctant to pursue pharmacokinetic studies in pregnant women because of their lack of knowledge related to pregnancy or fetal development. Finally, where information does exist in the medical literature about pharmacokinetics of individual drugs in pregnancy, the data have rarely appeared in product labels, creating further disincentives for conducting such clinical research. This latter reality has its own set of probable causes, but may change as FDA enhances requirements for product safety updates based on scientific literature and human experience data. Regardless of the root causes for the current paucity of information, rational prescribing for the pregnant patient must attempt to ensure that she will have the greatest likelihood of clinical benefit from a medication in exchange for the safest or least exposure of her developing baby. This can only be achieved when adequate pharmacokinetic dosing data are available.

The agency hopes this meeting will help summarize the state of knowledge on clinical pharmacology in pregnancy, raise awareness among clinician researchers and leaders about the need for clinical research and collaboration in this area, and garner support for such research from health advocacy groups and others.



**II. Registration**

There is no registration fee, however preregistration is required. Register early, as space is limited. The meeting room will hold approximately 250 people. Registration will begin with the publication of this notice. If you will need special accommodations due to a disability to attend the meeting, please inform the contact person listed above. You may obtain information and register on the Internet at http://www.fda.gov/cder/audiences/women/pharmpreg2000.htm.

Dated: September 25, 2000.

**William K. Hubbard,**

*Senior Associate Commissioner for Policy, Planning, and Legislation.*

[FR Doc. 00–25386 Filed 10–3–00; 8:45 am]

**BILLING CODE 4160–01–F**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

### Privacy Act of 1974; Report of New System

**AGENCY:** Health Care Financing, Department of Health and Human Services (HHS), Administration (HCFA).

**ACTION:** Notice of New System of Records.

**SUMMARY:** In accordance with the requirements of the Privacy Act of 1974, we are proposing to establish a new system of records, "Record of Individuals Allowed Regular and Special Parking Privileges at the HCFA Building (PRKG), HHS/HCFA/OICS, System No. 09–70–3004." PRKG will be used as part of our building security plan. All Federal employees will be issued parking permits by HCFA to provide regular or special parking based on specific needs.

The primary purpose of the system of records is to issue parking permits for the HCFA complex at 7500 Security Boulevard, Baltimore, Maryland. Information retrieved from this system of records will also be used to support regulatory and policy activities performed within the agency or by a contractor or consultant; support constituent requests made to a Congressional representative; and to support litigation involving the agency related to this system of records. We have provided background information about the proposed system in the "Supplementary Information" section below. Although the Privacy Act requires only that HCFA provide an opportunity for interested persons to comment on the proposed routine uses, HCFA invites comments on all portions of this notice. See "Effective Dates" section for comment period.

**EFFECTIVE DATES:** HCFA filed a new system report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on September 20, 2000. To ensure that all parties have adequate time in which to comment, the new system of records, including routine uses, will become effective 40 days from the publication of the notice, or from the date it was submitted to OMB and the Congress, whichever is later, unless HCFA receives comments that require alterations to this notice.

**ADDRESSES:** The public should address comments to: Director, Division of Data Liaison and Distribution (DDLD), HCFA, Room N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.–3 p.m., eastern time zone.

**FOR FURTHER INFORMATION CONTACT:** Ms. Kris Zaruba, Division of Facilities Management Services, Administrative Services Group, Office of Internal Customer Support, HCFA, 7500 Security Boulevard, SLL–11–08, Baltimore, Maryland 21244–1850. The telephone number is 410–786–0837.

**SUPPLEMENTARY INFORMATION:**

**I. Description of the New System of Records**

*Statutory and Regulatory Basis for System of Records*

HCFA proposes a new system of records collecting data under the authority of 5 U.S.C. 301.

**II. Collection and Maintenance of Data in the System.**

*A. Scope of the Data Collected*

The collected information on all HCFA employees and non-HCFA employees who require parking privileges at HCFA buildings, will contain name, social security number, parking permit number, telephone number, work location, position, title and grade, supervisor's name and telephone number and background information relating to medical or specific parking needs.

*B. Agency Policies, Procedures, and Restrictions on the Routine Use*

The Privacy Act permits disclosure of information without an individual's consent if the information is to be used for a purpose, which is compatible with the purpose(s) for which the information was collected. Any such disclosure of data is known as a "routine use." The government will only release PRKG information as provided for under "Section III. Entities Who May Receive Disclosures Under Routine Use."

We will only disclose the minimum personal data necessary to achieve the purpose of PRKG. HCFA has the following policies and procedures concerning disclosures of information, which will be maintained in the system. In general, disclosure of information from the system of records will be approved only to the extent necessary to accomplish the purpose of the disclosure and only after HCFA:

(a) Determines that the use or disclosure is consistent with the reason data is being collected; e.g., implements the regulations and directives that established that Federal workers and other authorized personnel will be issued parking permits for the HCFA complex.

(b) Determines:

(1) That the purpose for which the disclosure is to be made can only be accomplished if the record is provided in individually identifiable form;

(2) That the purpose for which the disclosure is to be made is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring; and

(3) That there is a strong probability that the proposed use of the data would in fact accomplish the stated purpose(s).

(c) Requires the information recipient to:

(1) Establish administrative, technical, and physical safeguards to prevent unauthorized use of disclosure of the record;

(2) Remove or destroy at the earliest time all individually-identifiable information; and

(3) Agree to not use or disclose the information for any purpose other than the stated purpose under which the information was disclosed.

(d) Determines that the data are valid and reliable.

**III. Proposed Routine Use Disclosures of Data in the System**

*Entities Who May Receive Disclosures Under Routine Use*

The routine use disclosures in this system may occur only to the following

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three (3) categories of entities (i.e., the entities, which can get identifiable data only if we apply the policies and procedures in Section II.B. above). Disclosures may be made:

1. To agency contractors, or consultants who have been engaged by the agency to assist in the performance of a service related to this system of records and who need to have access to the records in order to perform the activity.

We contemplate disclosing information under this routine use only in situations in which HCFA may enter into a contract or similar agreement with a third party to assist in accomplishing HCFA activities relating to purposes for this system of records.

HCFA occasionally contracts out certain of its activities when this would contribute to effective and efficient operations. HCFA must be able to give a contractor or consultant whatever information is necessary for the contractor or consultant to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor or consultant from using or disclosing the information for any purpose other than that described in the contract and to return or destroy all information at the completion of the contract.

2. To a member of Congress or to a Congressional staff member in response to an inquiry of the Congressional Office made at the written request of the constituent about whom the record is maintained.

Constituents may request the help of a Member of Congress in resolving some issue relating to a matter before HCFA. The Member of Congress then writes HCFA, and HCFA must be able to give sufficient information to be responsive to the inquiry.

3. To the Department of Justice (DOJ), court or adjudicatory body when:

(a) The agency or any component thereof, or

(b) Any employee of the agency in his or her official capacity, or

(c) Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

(d) The United States Government is a party to litigation or has an interest in such litigation, and by careful review, HCFA determines that the records are both relevant and necessary to the litigation.

Whenever HCFA is involved in litigation, or occasionally when another party is involved in litigation and HCFA's policies or operations could be affected by the outcome of the litigation, HCFA would be able to disclose information to the DOJ, court or adjudicatory body involved. A determination would be made in each instance that, under the circumstances involved, the records are both relevant and necessary to the litigation.

## IV. Safeguards

*A. Authorized Users*

Personnel having access to the system have been trained in Privacy Act requirements. Employees who maintain records in the system are instructed not to release any data until the intended recipient agrees to implement appropriate administrative, technical, procedural, and physical safeguards sufficient to protect the confidentiality of the data and to prevent unauthorized access to the data. Records are used in a designated work area or workstation and the system location is attended at all times during working hours.

To ensure security of the data, the proper level of class user is assigned for each individual user. This prevents unauthorized users from accessing and modifying critical data. The system database configuration includes five classes of database users:

- *Database Administrator* class owns the database objects; e.g., tables, triggers, indexes, stored procedures, packages, and has database administration privileges to these objects;
- *Quality Control Administrator* class has read and write access to key fields in the database;
- *Quality Indicator Report Generator* class has read-only access to all fields and tables;
- *Policy Research* class has query access to tables, but are not allowed to access confidential patient identification information; and
- *Submitter* class has read and write access to database objects, but no database administration privileges.

*B. Physical Safeguards*

All server sites have implemented the following minimum requirements to assist in reducing the exposure of computer equipment and thus achieve an optimum level of protection and security for the PRKG system:

Access to all servers is controlled, with access limited to only those support personnel with a demonstrated need for access. Servers are to be kept in a locked room accessible only by specified management and system support personnel. Each server requires a specific log-on process. All entrance doors are identified and marked. A log is kept of all personnel who were issued a security card, key and/or combination, which grants access to the room housing the server, and all visitors are escorted while in this room. All servers are housed in an area where appropriate environmental security controls are implemented, which include measures implemented to mitigate damage to Automated Information System (AIS) resources caused by fire, electricity, water and inadequate climate controls.

Protection applied to the workstations, servers and databases include:

- *User Log-on*—Authentication is performed by the Primary Domain Controller/Backup Domain Controller of the log-on domain.
- *Workstation Names*—Workstation naming conventions may be defined and implemented at the agency level.
- *Hours of Operation*—May be restricted by Windows NT. When activated all applicable processes will automatically shut down at a specific time and not be permitted to resume until the predetermined time. The appropriate hours of operation are determined and implemented at the agency level.
- *Inactivity Log-out*—Access to the NT workstation is automatically logged out after a specified period of inactivity.
- *Warnings*—Legal notices and security warnings display on all servers and workstations.
- *Remote Access Services (RAS)*—Windows NT RAS security handles resource access control. Access to NT resources is controlled for remote users in the same manner as local users, by utilizing Windows NT file and sharing permissions. Dial-in access can be granted or restricted on a user-by-user basis through the Windows NT RAS administration tool.

There are several levels of security found in the PRKG system. Windows NT provides much of the overall system security. The Windows NT security model is designed to meet the C2-level criteria as defined by the U.S. Department of Defense's Trusted Computer System Evaluation Criteria document (DoD 5200.28–STD, December 1985). Netscape Enterprise Server is the security mechanism for all PRKG transmission connections to the system. As a result, Netscape controls all PRKG information access requests. Anti-virus software is applied at both the workstation and NT server levels.

Access to different areas on the Windows NT server are maintained through the use of file, directory and share level permissions. These different levels of access control provide security that is managed at the user and group level within the NT domain. The file and directory level access controls rely on the presence of an NT File System (NTFS) hard drive partition. This provides the most robust security and is tied directly to the file system. Windows NT security is applied at both the workstation and NT server levels.

*C. Procedural Safeguards*

All automated systems must comply with Federal laws, guidance, and policies for information systems security. These include, but are not limited to: the Privacy Act of 1974; the Computer Security Act of 1987; OMB Circular A–130, revised; HHS, Information Resource Management (IRM) Circular #10; HHS Automated Information Systems Security Program; the HCFA Information Systems Security Policy and Program Handbook; and other HCFA systems security policies. Each automated information system should ensure a level of security commensurate with the level of sensitivity of the data, risk, and magnitude of the harm that may result from the loss, misuse, disclosure, or modification of the information contained in the system.

## V. Effect of the Proposed System of Records on Individual Rights

HCFA proposes to establish this system in accordance with the principles and requirements of the Privacy Act and will collect, use, and disseminate information only as prescribed therein. Data in this system will be subject to the authorized releases in accordance with the routine uses identified in this system of records.

HCFA will monitor the collection and reporting of PRKG data. HCFA will take precautionary measures (see item IV. above) to minimize the risks of unauthorized access to the records and the potential harm to individual privacy or other personal or property rights. HCFA will collect only that information necessary to perform the system's activities. In addition, HCFA will make disclosure from the proposed system only with consent of the subject individual, or his/her legal representative, or in accordance with an applicable exception provision of the Privacy Act.

HCFA, therefore, does not anticipate an unfavorable effect on individual privacy as a result of maintaining this system.

Dated: September 18, 2000.

**Nancy-Ann Min DeParle,**

*Administrator, Health Care Financing Administration.*

**09–70–3004**

**SYSTEM NAME:**

Record of Individuals Allowed Regular and Special Parking Privileges at the Health Care Financing Administration (HCFA) Building (PRKG), HHS/HCFA/OICS.

**SECURITY CLASSIFICATION:**

Level Three, Privacy Act Sensitive Data

**SYSTEM LOCATION:**

HCFA Data Center, 7500 Security Boulevard, North Building, and the Office of Internal Customer Support, South Building, Lower Level, Baltimore, Maryland 21244–1850.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

All Federal employees who require parking privileges at HCFA buildings.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

This system contains the collected information on all Federal employees at HCFA buildings, i.e., name, social security number, parking permit number, telephone number, work location, position, title and grade, supervisor's name and telephone number and background information relating to medical or specific parking needs.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 301.

**PURPOSE (S) OF THE SYSTEM:**

The primary purpose of the system of records is to issue parking permits for the HCFA complex at 7500 Security Boulevard, Baltimore, Maryland. Information retrieved from this system of records will also be used to support regulatory and policy activities performed within the agency or by a contractor or consultant; support constituent requests made to a Congressional representative; and to support litigation involving the agency related to this system of records.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES:**

The Privacy Act permits disclosure of information without an individual's consent if the information is to be used for a purpose, which is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a "routine use". We are proposing to disclose information from this system of records under the following routine uses. These routine uses are discussed in detail in the attached Preamble.

1. To agency contractors, or consultants who have been engaged by the agency to assist in the performance of a service related to this system of records and who need to have access to the records in order to perform the activity.

2. To a member of Congress or to a Congressional staff member in response to an inquiry of the Congressional Office made at the written request of the constituent about whom the record is maintained.

3. To the Department of Justice (DOJ), court or adjudicatory body when:

(a) The agency or any component thereof, or

(b) Any employee of the agency in his or her official capacity, or

(c) Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

(d) The United States Government is a party to litigation or has an interest in such litigation, and by careful review, HCFA determines that the records are both relevant and necessary to the litigation.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Information is maintained on paper, computer diskette and on magnetic storage media.

**RETRIEVABILITY:**

Name and parking permit identification number are used to retrieve the records.

**SAFEGUARDS:**

HCFA has safeguards for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and systems security requirements. Employees who maintain records in the system are instructed not to release any data until the intended recipient agrees to implement appropriate administrative, technical, procedural, and physical safeguards sufficient to protect the confidentiality of the data and to prevent unauthorized access to the data.

In addition, HCFA has physical safeguards in place to reduce the exposure of computer equipment and thus achieve an optimum level of protection and security for the PRKG system. For computerized records,

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safeguards have been established in accordance with HHS standards and National Institute of Standards and Technology guidelines; e.g., security codes will be used, limiting access to authorized personnel. System securities are established in accordance with HHS, Information Resource Management (IRM) Circular #10, Automated Information Systems Security Program; HCFA Automated Information Systems (AIS) Guide, Systems Securities Policies; and OMB Circular No. A–130 (revised), Appendix III.

**RETENTION AND DISPOSAL:**

All records are destroyed one year after parking privileges are terminated.

**SYSTEM MANAGER AND ADDRESS:**

Director, Division of Facilities Management Services, Administrative Services Group, Office of Internal Customer Support, HCFA, 7500 Security Boulevard, Baltimore, Maryland, 21244–1850.

**NOTIFICATION PROCEDURE:**

For purposes of access, the subject individual should write to the system manager who will require the system name, parking permit number, and for verification purposes, the subject individual's name (woman's maiden name, if applicable), address, date of birth, sex, and social security number (SSN) (furnishing the SSN is voluntary, but it may make searching for a record easier and prevent delay).

**RECORD ACCESS PROCEDURE:**

For purposes of access, use the same procedures outlined in Notification Procedures above. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with Department regulation 45 CFR 5b.5(a)(2).)

**CONTESTING RECORD PROCEDURES:**

The subject individual should contact the system manager named above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department regulation 45 CFR 5b.7.)

**RECORD SOURCE CATEGORIES:**

Sources of information contained in this records system are received from the individual requesting parking privileges on HCFA Form 182 04/99.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

None.

[FR Doc. 00–25450 Filed 10–3–00; 8:45 am]

**BILLING CODE 4120–03–P**

## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

### Meeting of Advisory Committee to the Interagency Task Force To Improve Hydroelectric Licensing Processes

**AGENCY:** Office of the Secretary, Department of the Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice informs the public of final meeting of the Advisory Committee to the Interagency Task Force to Improve Hydroelectric Licensing Processes on October 17, 2000, at the Department of Energy. Interested members of the public can attend the meeting.

**DATES:** October 17, 2000; 9:30 a.m.–3 p.m.

**ADDRESSES:** Program Review Center, Room 8E–089; United States Department of Energy, 1000 Independence Ave. NW., Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:** Larry Mansueti, Office of Power Technologies, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, (202) 586–2588.

**SUPPLEMENTARY INFORMATION:** In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the Advisory Committee to the Interagency Task Force to Improve Hydroelectric Licensing Processes will meet for the final time on October 17, 2000, at the Department of Energy. The purpose of the meeting is to:

(1) Update Committee members on the current activities of the Interagency Task Force (ITF);

(2) Review and discuss the Interagency Task Force Working Groups' products on: (i) Endangered Species Act; (ii) Federal Power Act; and (iii) Adaptive Management; and

(3) Provide a retrospective and review of the entire body of work of the advisory committee.

The Secretary of the Interior and the Chairman, Federal Energy Regulatory Commission, with the concurrence of ITF members, established the Advisory Committee to provide a forum for non-Federal entities to review and provide comments on the deliberations of the ITF. Interested parties are invited to attend the meeting and will be given an opportunity to provide comments.

You should inform Security at the visitors desk that you are attending a meeting hosted by the Office of Biopower and Hydropower Technologies at (202) 586–5188 or (202) 586–9275. After calling either of these numbers to approve your admittance, Security will issue you a visitor's pass and direct you to the Program Review Center, Room 8E089.

**Tom Iseman,**

*Special Assistant to the Designated Federal Officer.*

[FR Doc. 00–25483 Filed 10–3–00; 8:45 am]

**BILLING CODE 4310–RK–M**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Notice of Receipt of Applications for Permit

**Endangered Species**

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

*Applicant:* Barbara Dicely, dba Leopards, Etc., Occidental, CA, PRT–033596.

The applicant requests a permit to import a male cheetah cub (*Acinonyx jubatus*) from DeWildt Cheetah and Wildlife Centre, South Africa, for the purpose of enhancement of the survival of the species through conservation education.

*Applicant:* Thomas W. Avara, II Houston, TX PRT–034115.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

*Applicant:* Dannine Avara, Houston, TX PRT–034122.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

**Marine Mammals**

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

*Applicant:* Gloria Erickson, Holdrege, NE, PRT–033948.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Lancaster Sound, polar bear population, Canada for personal use.

*Applicant:* Robert Miller, North East, PA, PRT–034022.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the McClintock Channel, polar bear population, Canada for personal use.

*Applicant:* Chicago Zoological Society, Brookfield, IL, PRT–032510.

The applicant requests a permit to import 1.0 live captive born polar bear (*Ursus maritimus*) from the Jardin Zoo, Quebec, Canada, for the purpose of public display and conservation education.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

The U.S. Fish and Wildlife has information collection approval from OMB through February 28, 2001. OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: September 28, 2000.

**Charlie Chandler,**

*Chief, Branch of Permits, Division of Management Authority.*

[FR Doc. 00–25444 Filed 10–3–00; 8:45 am]

**BILLING CODE 4310–55–U**



## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Initial Meeting of the Alaska Migratory Bird Co-management Council

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** The Alaska Migratory Bird Co-management Council has scheduled its first meeting to begin the process of recommending regulations for the spring/summer migratory bird subsistence harvest for the period beginning March 10, 2002. At this meeting the Co-management Council will approve its by-laws, finalize an operations manual for Council members, elect officers, review resource information presented by staff of the Alaska Department of Fish and Game and the U.S. Fish and Wildlife Service, and establish regulations frameworks for seven geographic regions.

**DATES:** The Co-management Council will meet October 30–November 1, 2000.

**ADDRESSES:** The meeting will be conducted at the Hawthorn Suites Hotel at 1110 W. 8th Avenue in Anchorage, Alaska.

**FOR FURTHER INFORMATION CONTACT:** For additional information call Mimi Hogan at 907/786–3673 or Bob Stevens at 907/786–3499. Individuals with a disability who may need special accommodations in order to participate in the public comment portion of the meeting should call one of the above numbers.

**SUPPLEMENTARY INFORMATION:** The U.S. Fish and Wildlife Service formed the Alaska Migratory Bird Co-Management Council, which includes Native, State, and Federal representatives as equals, by means of a Notice of Decision published in the **Federal Register**, 65 FR 16405–16409, March 28, 2000. Amended migratory bird treaties with Canada and Mexico required the formation of such a management body. The Co-management Council will make recommendations for, among other things, regulations for spring/summer harvesting of migratory birds in Alaska. In addition to creation of the Co-managment Council, the Notice of Decision identified seven geographic regions. Each region will submit to the Co-management Council requests for specific regulations for its area. The Co-management Council will then develop recommendations for statewide regulations and submit them to the Fish and Wildlife Service for approval.

The initial meeting of the Co-management Council will begin on Monday, October 30 at 1 p.m. Sessions on October 31 and November 1 will begin at 8:00 a.m. The public is invited to attend. The Co-management Council will provide opportunities for public comment on agenda items. Agendas will be available at the door.

Dated: September 20, 2000.

**David B. Allen,**

*Regional Director, Anchorage, Alaska.*

[FR Doc. 00–25402 Filed 10–3–00; 8:45 am]

**BILLING CODE 4310–55–M**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[NM–932–1320–05; NMNM 99144]**

### Notice of Coal Lease Offering

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of competitive coal lease sale.

**SUMMARY:** Notice is hereby given that certain coal resources in the tract described below in San Juan County, New Mexico, will be offered for competitive lease by sealed bid in accordance with the provisions of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 *et seq.*).

**DATES:** The lease sale will be held at 10:00 a.m., Wednesday, November 1, 2000. Sealed bids must be submitted on or before 9 a.m., on November 1, 2000.

**ADDRESSES:** The lease sale will be held in the BLM Conference Room, located at 1474 Rodeo Road, Santa Fe, NM 87505. Sealed bids must be submitted on or before 9 a.m. on November 1, 2000, to: Cashier, New Mexico State Office, P.O. Box 27115, Santa Fe, NM 87502–0115.

**FOR FURTHER INFORMATION CONTACT:** Ida T. Viarreal at (505) 438–7603.

**SUPPLEMENTARY INFORMATION:** The tract will be leased to the qualified bidder submitting the highest cash offer provided that the high bid meets or exceeds the fair market value of the tract as determined by the Authorized Officer after the sale. Each bid should be clearly identified by tract number or serial number on the outside of the envelope containing the bid. No bid that is less than $100.00 per acre, or fraction thereof, will be considered.

This $100.00 per acre is a regulatory minimum, and is not intended to reflect fair market value of the tract. Sealed bids clearly marked "Sealed Bid for NMNM 99144 Coal Sale—Not to be opened before 10 a.m. Wednesday, November 1, 2000," must be received on or before 9 a.m., Wednesday, November 1, 2000. Bids should be sent by certified

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mail, return receipt requested, or should be hand delivered. The cashier will issue a receipt for each hand delivered sealed bid. Bids received after 9 a.m., on November 1, 2000, will not be considered. The fair market value of the tract will be determined by the Authorized Officer after the sale. If identical high sealed bids are received, the tying bidders will be requested to submit follow-up sealed bids until a high bid is received. All tie-breaking sealed bids must be within 15 minutes following the sale official's announcement at the sale that identical sealed bids have been received.

*Coal Tract to be Offered:* The coal resources to be offered consist of all recoverable reserves in the following described lands located in San Juan County, New Mexico and are described as follows:

T.30 N., R. 14 W., NMPM
Sec. 17, All;
Sec. 18, All;
Sec. 19, All;
Sec. 20, All;
Sec. 29, All;
Sec. 30, All;
Sec. 31, Lots 1–4, N½,N½S½.

Containing 4,483.88 acres, more or less.

The tract that is being offered for lease is comprised of seven sections of Bureau of Land Management Lands. The tract is subject to several prior valid and pre-existing surface and subsurface rights. These include, but are not limited to: (1) rights-of-way issued for large fluid transmission pipelines, electrical power transmission lines, water lines, roads, and other utilities, (2) surface grazing and water rights, (3) subsurface leases for oil and gas, which include all of the coal bed methane gas within the Fruitland coal, and associated oil and gas lease surface rights for storage, gathering lines, access roads, drilling pads, etc., and (4) existing producing and non-producing oil, gas and coal bed methane wells on the aforementioned leases. It shall be the responsibility of the successful coal bidder to determine just how any and all of the pre-existing rights will affect the mining operations. A list of the pre-existing surface and subsurface encumbrances by serial number and type that are currently a matter of public record can be obtained at the BLM New Mexico State Office.

The right to mine and remove coal from the tract is a subordinate right to any and all prior valid and pre-existing rights. If during any of the operations related to the mining of the coal it becomes necessary to infringe upon the prior rights, then any and all actions, and negotiations allowing adjustments, relinquishments, suspensions, etc., and the costs and compensations related thereto, shall be the sole responsibility of the successful coal bidder. Any conflicts between the successful bidder and the holders of oil and gas leases must be cleared by negotiations between the successful bidder and said oil and gas lesses(s). The Bureau of Land Management will not be a party to or have any involvement in any negotiations between any parties in regards to this tract.

*Rental and Royalty:* The lease issued as a result of this lease offering will require payment of an annual rental of $3.00 per acre or a fraction thereof, and a royalty payable to the United States of 12½ percent of the value of the coal removed by surface methods and 8 percent of the value of the coal removed by underground methods. The value of the coal will be determined in accordance with 30 CFR § 206.250.

*Notice of Availability:* Bidding instructions for the offered tract is included in the Detailed Statement of Coal Lease Sale. Copies of the Statement and the proposed coal lease are available upon request in person or by mail from the BLM New Mexico State Office at the addresses shown above. The case files are available for inspection during normal business hours only at the Santa Fe, New Mexico location.

Dated: September 27, 2000.

**Carsten F. Goff,**

*Acting State Director.*

[FR Doc. 00–25326 Filed 10–3–00; 8:45 am]

BILLING CODE 4310–84–M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

### Notice of Realty Action, Recreation and Public Purposes (R&PP) Act Classification

**AGENCY:** Bureau of Land Management, Department of the Interior.

**ACTION:** Notice of Realty Action, Recreation and Public Purposes (R&PP) Act Classification, UTU–78912.

**SUMMARY:** The following public land in Garfield County, Utah has been examined and found suitable for classification for conveyance under the provisions of the R&PP Amendment Act of 1988 (Pub. L. 100–648): Salt Lake Meridian, Utah, T. 35 South, R. 5 West, Section 5, S½SW¼SE¼, S½SE¼SW¼, and Section 9, N½NW¼NW¼, N½NE¼NW¼ containing 80 Acres. Garfield County intends to use the land for a public shooting range. The land is not needed for a Federal purpose. Conveyance is consistent with current Bureau of Land Management land use planning and would be in the public interest.

**DATES:** On or before November 20, 2000, interested parties may submit comments regarding the proposed classification. In the absence of adverse comments, the classification will become effective December 4, 2000.

**ADDRESSES:** For further information, contact the Field Manager, Kanab Field Office, Bureau of Land Management, 318 North 100 East, Kanab, Utah 84741, 435–644–4600. Comments should be submitted to the same address.

**SUPPLEMENTARY INFORMATION:** The patent, when issued, will be subject to the following terms, conditions and reservations:

1. Provisions of the R&PP Act and to all applicable regulations of the Secretary of the Interior.
2. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.
3. A right-of-way for ditches and canals constructed by authority of the United States (Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945).
4. Those rights for power transmission line purposes granted by right-of-way # SL 052370.
5. All other valid existing rights.
6. The (patentee), its successors or assigns, assumes all liability for and shall defend, indemnify, and save harmless the United States and its officers, agents, representatives, and employees (hereinafter referred to in this clause as the United States), from all claims, loss, damage, actions, causes of action, expense, and liability (hereinafter referred to in this clause as claims) resulting from, brought for, or on account of, any personal injury, threat of personal injury, or property damage received or sustained by any person or persons (including the patentee's employees) or property growing out of, occurring, or attributable directly or indirectly, to the disposal of solid waste on, or the release of hazardous substances from the above described public land, regardless of whether such claims shall be attributable to: (1) the concurrent, contributory, or partial fault, failure, or negligence of the United States, or (2) the sole fault, failure, or negligence of the United States.
7. Title shall revert to the United States upon a finding, after notice and opportunity for a hearing, that the patentee has not substantially developed the lands in accordance with the approved plan of development on or before the date five years after the date of conveyance. No portion of the land shall under any circumstance revert to the United States if any such portion has been used for solid waste disposal or for any other purpose which may result in the disposal, placement, or release of any hazardous substance.
8. If, at any time, the patentee transfers to another party ownership of any portion of the land not used for the purpose(s) specified in the application and approved plan of development, the patentee shall pay the Bureau of Land Management the fair market value, as determined by the authorized officer, of the transferred portion as of the date of transfer, including the value of any improvements thereon.

Upon publication of this notice in the **Federal Register** the lands will be segregated from all forms of appropriation under public land laws, including the general mining laws, except for conveyance under the R&PP Act and leasing under the Mineral leasing laws.

Dated: September 26, 2000.

**A. Jerry Meredith,**

*District Manager.*

[FR Doc. 00–25431 Filed 10–3–00; 8:45 am]

BILLING CODE 4310–$$–M



## DEPARTMENT OF THE INTERIOR

### National Park Service

### Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Haffenreffer Museum of Anthropology, Brown University, Bristol, RI

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Haffenreffer Museum of Anthropology, Brown University, Bristol, RI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by Haffenreffer Museum professional staff in consultation with representatives of the Wampanoag Repatriation Confederation, representing the Wampanoag Tribe of Gay Head, the Mashpee Wampanoag (a non-Federally recognized Indian group), and the Assonet Band of the Wampanoag Nation (a non-Federally recognized Indian group); the Narragansett Indian Tribe of Rhode Island; and the Council of Seven/Royal House of Pokanoket/Pokanoket Tribe/ Wampanoag Nation (a non-Federally recognized Indian group).

In 1913, human remains representing one individual were excavated at Burr's Hill in Warren, RI. During the 1920's, Rudolf Haffenreffer acquired these remains as part of the Drown collection. No known individual was identified. The seven associated funerary objects are five small brass kettle fragments and two wool blanket fragments.

Burr's Hill is believed to be located on the southern border of Sowams, a Wampanoag village. Sowams is identified in historic documents of the 17th and 18th centuries as a Wampanoag village, and was ceded to the English in 1653 by Massasoit and his eldest son Wamsutta (Alexander). Sporadic finds and excavations have been made at this site from the middle of the 19th century through the early 20th century. Based the presence of European trade goods and types of cultural items, these cultural items have been dated to between A.D. 1600–1710.

Based on the above-mentioned information, officials of the Haffenreffer Museum of Anthropology have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the Haffenreffer Museum of Anthropology also have determined that, pursuant to 43 CFR 10.2 (d)(2), the seven objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Haffenreffer Museum of Anthropology have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Wampanoag Repatriation Confederation, representing the Wampanoag Tribe of Gay Head, the Mashpee Wampanoag (a non-Federally recognized Indian group), and the Assonet Band of the Wampanoag Nation (a non-Federally recognized Indian group). This notice has been sent to officials of the Wampanoag Repatriation Confederation, representing the Wampanoag Tribe of Gay Head, the Mashpee Wampanoag (a non-Federally recognized Indian group), and the Assonet Band of the Wampanoag Nation (a non-Federally recognized Indian group); the Narragansett Indian Tribe of Rhode Island; and the Council of Seven/Royal House of Pokanoket/Pokanoket Tribe/ Wampanoag Nation (a non-Federally recognized Indian group). Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Thierry Gentis, NAGPRA Coordinator, Haffenreffer Museum of Anthropology, Mount Hope Grant, Bristol, RI 02805, telephone (401) 253–8388, facsimile (401) 253–1198, before November 3, 2000. Repatriation of the human remains and associated funerary objects to the Wampanoag Repatriation Confederation, representing the Wampanoag Tribe of Gay Head, the Mashpee Wampanoag (a non-Federally recognized Indian group), and the Assonet Band of the Wampanoag Nation (a non-Federally recognized Indian group) may begin after that date if no additional claimants come forward.

Dated: September 21, 2000.

**John Robbins,**

*Assistant Director, Cultural Resources Stewardship and Partnerships.*

[FR Doc. 00–25398 Filed 10–03–00; 8:45 am]

BILLING CODE 4310–70–F

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Control of the New Mexico State Office, Bureau of Land Management, Santa Fe, NM

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the control of the New Mexico State Office, Bureau of Land Management, Santa Fe, NM.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this

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notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by the University of Colorado Museum, Eastern New Mexico University, the Maxwell Museum of Anthropology (University of New Mexico), the New Mexico State University Museum, the Museum of New Mexico, the San Juan County Museum, and Bureau of Land Management professional staff in consultation with representatives of the Hopi Tribe, the Navajo Nation, the Pueblo of Acoma, the Pueblo of Jemez, the Pueblo of Isleta, the Pueblo of San Ildefonso, the Pueblo of Zia, and the Zuni Tribe of the Zuni Reservation.

In 1981, human remains representing eight individuals were recovered from site LA 282 in New Mexico during legally authorized excavations and collections conducted by the Archeological Field School of the University of New Mexico. These human remains are presently curated at the Maxwell Museum of Anthropology, University of New Mexico. No known individuals are identified. The 11 associated funerary objects are pottery bowls and sherds.

Based on material culture, architecture, and site organization, site LA 282 has been identified as an Anasazi pueblo occupied between A.D.1300–1600.

Continuities of ethnographic materials, technology, and architecture indicate affiliation of Anasazi sites in this area of New Mexico with historic and present-day Puebloan cultures. Oral tradition presented by representatives of the Pueblo of Isleta indicate cultural affiliation with the Anasazi sites in this portion of New Mexico.

Based on the above-mentioned information, officials of the New Mexico State Office of the Bureau of Land Management have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of eight individuals of Native American ancestry. Officials of the New Mexico State Office of the Bureau of Land Management also have determined that, pursuant to 43 CFR 10.2 (d)(2), the 11 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the New Mexico State Office of the Bureau of Land Management have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Pueblo of Isleta and the Pueblo of Ysleta del Sur. This notice has been sent to officials of the Hopi Tribe, the Navajo Nation, the Pueblo of Acoma, the Pueblo of Jemez, the Pueblo of Isleta, the Pueblo of San Ildefonso, the Pueblo of Zia, and the Zuni Tribe of the Zuni Reservation. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Stephen L. Fosberg, State Archeologist and NAGPRA Coordinator, New Mexico State Office, Bureau of Land Management, 1474 Rodeo Road, Santa Fe, NM 87502–0115, telephone (505) 438–7415, before November 3, 2000. Repatriation of the human remains and associated funerary objects to the Pueblo of Isleta and the Pueblo of Ysleta del Sur may begin after that date if no additional claimants come forward.

Dated: September 26, 2000.

**John Robbins,**

*Assistant Director, Cultural Resources Stewardship and Partnerships.*

[FR Doc. 00–25399 Filed 10–3–00; 8:45 am]

BILLING CODE 4310–70–F

## DEPARTMENT OF THE INTERIOR

### Bureau of Reclamation

### Colorado River Basin Salinity Control Advisory Council

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice of public meeting.

**SUMMARY:** The Colorado River Basin Salinity Control Advisory Council (Council) was established by the Colorado River Basin Salinity Control Act of 1974 (P.L. 93–320) (Act) to receive reports and advise federal agencies on implementing the Act. In accordance with the Federal Advisory Committee Act, the Bureau of Reclamation announces that the Council will meet as detailed below.

**DATES AND LOCATION:** The Advisory Council will conduct its annual meeting at the following time and location:

*Henderson, Nevada—October 26, 2000.* The meeting will begin at 8 a.m. and recess at 12 noon and reconvene briefly the following day at about 1 p.m. The meeting will be held in the Sierra Room of the Henderson Convention Center at 200 Water Street in Henderson, Nevada.

*Agenda:* The purpose of the meeting will be to discuss the accomplishments of federal agencies and make recommendations on future activities to control salinity. Council members will be briefed on the status of salinity control activities and receive input for drafting the Council's annual report. The Department of the Interior, the Department of Agriculture, and the Environmental Protection Agency will each present a progress report and a schedule of activities on salinity control in the Colorado River Basin. The Council will discuss salinity control activities and the content of their report.

The meeting of the Council is open to the public. Any member of the public may file written statements with the Council before, during, or up to 30 days after the meeting, in person or by mail. To the extent that time permits, the Council chairman may allow public presentation of oral statements at the meeting. To allow full consideration of information by the Advisory Council members, written notice must be provided to David Trueman, Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room 6107, Salt Lake City, Utah 84138–1102; telephone (801) 524–3753; faxogram (801) 524–5499; E-mail at: *dtrueman@uc.usbr.gov* at least FIVE (5) days prior to the meeting. Any written comments received will be provided to the Advisory Council members at the meeting.

**FOR FURTHER INFORMATION CONTACT:** David Trueman, telephone (801) 524–3753; faxogram (801) 524–5499; E-mail at: *dtrueman@uc.usbr.gov.*

Dated: September 29, 2000.

**Eluid L. Martinez,**

*Commissioner, Bureau of Reclamation.*

[FR Doc. 00–25458 Filed 10–3–00; 8:45 am]

BILLING CODE 4310–10–P

## DEPARTMENT OF JUSTICE

### Confidentiality in Federal Alternative Dispute Resolution Programs; Evaluation of Federal Alternative Dispute Resolution Programs

**AGENCY:** Department of Justice/Federal Alternative Dispute Resolution Council.

**ACTION:** Notice.

**SUMMARY:** This notice solicits public comment on two documents designed to assist Federal agencies in developing alternative dispute resolution (ADR) programs: "Confidentiality in Federal Alternative Dispute Resolution Programs" and "Evaluation of Federal Alternative Dispute Resolution Programs." These documents were created by the Federal ADR Steering Committee, a group of subject matter experts from federal agencies with active ADR programs. They were approved for publication in draft form by the Federal ADR Council, a group of high level government officials chaired by the Attorney General. The first document contains detailed guidance on the nature and limits of confidentiality in Federal ADR programs and also includes a statement on these issues for Federal neutrals to use in ADR proceedings. The second document contains detailed recommendations for agencies to follow when evaluating their ADR programs.

All interested individuals or organizations are invited to submit comments on these documents for the consideration of the Federal ADR Council before they are published in final form at the end of this year.

**DATES:** All comments must be postmarked by November 1, 2000, in order to receive consideration.

**ADDRESSES:** Address all comments to Jeffrey M. Senger, Deputy Senior Counsel for Dispute Resolution, United States Department of Justice, 950 Pennsylvania Ave. NW, Room 4328, Washington, D.C., 20530

Dated: September 27, 2000.

**Jeffrey M. Senger,**

*Deputy Senior Counsel for Dispute Resolution, Department of Justice.*

**SUPPLEMENTARY INFORMATION:** In recent years, the government and the private sector increasingly have been using techniques known as alternative dispute resolution (ADR). Our experience has shown that ADR can resolve disputes in a manner that is quicker, cheaper, and less adversarial than traditional processes such as litigation. In ADR, parties meet with each other directly, under the guidance of a neutral professional who is trained and experienced in handling disputes. They talk about the problems that led to the complaint and the resolution that will work best for them in the future. While litigation often silences the parties and severely restricts their control over the outcome of their own dispute, ADR allows them instead to work collaboratively to find creative, effective solutions that are agreeable to all sides.

The Administrative Dispute Resolution Act of 1996 (ADRA), 5 U.S.C. 571–584, requires each Federal agency to promote the use of ADR and calls for the establishment of an interagency committee to assist agencies in the use of ADR. Pursuant to this Act, a Presidential Memorandum dated May 1, 1998, created the Interagency ADR Working Group, chaired by the Attorney General, to "facilitate, encourage, and provide coordination" for Federal agencies. In the Memorandum, the President charged the Working Group with assisting agencies with training in "how to use alternative means of dispute resolution" and evaluation "to ascertain the benefits of alternative means of dispute resolution." The following two documents are designed to serve these goals.

The first document describes the nature and limits of confidentiality in Federal ADR proceedings. Confidentiality is vital for the success of ADR for several reasons. Parties must be free to engage in candid, informal discussions of their interests in order to reach the best possible settlement of their claims. Guarantees of confidentiality permit parties to speak openly, without fear their statements will be used against them later. Confidentiality also facilitates ADR by encouraging parties to avoid the posturing that often occurs when proceedings are on the record. Further, confidentiality gives parties the ability to trust the mediator because they are assured he or she will not later take sides and talk publicly in favor of one party or the other. At the same time, members of the public have a general right to know what happens in government proceedings and do not want ADR to be used to shield improper activity that involves public business. The ADRA is designed to strike the appropriate balance between the public interest in access to government decision-making and the necessity for certain guarantees of confidentiality in ADR in order for the process to be effective.

Understandably, there has been a great deal of interest in understanding what statements made in the context of a Federal ADR proceeding are confidential and what statements are not. This document is designed to give a detailed explanation of the reasonable expectations of confidentiality for parties who participate in ADR involving the government. The first section of the report reprints the confidentiality provisions of the ADRA. Next, the report contains a section-by-section analysis of these confidentiality provisions. Then the report sets forth, in question-and-answer format, an expanded analysis of the issues likely to arise in practice. Finally, the report presents a model confidentiality statement suitable for use by neutrals in Federal ADR proceedings.

The second document contains detailed guidance for agencies to use when conducting evaluations of their ADR programs. Proponents of ADR have described many benefits from its use, including savings of time and money, increased party satisfaction with the process and its outcome, increased settlement rates, and improved relationships. In order to ensure the growth of ADR programs, these benefits must be rigorously documented and communicated to the public. If evaluations determine problems with ADR programs, these must be remedied. Evaluation is a vital part of any ADR program, and it is consistent with the obligations of all Federal agencies under the Government Performance and Results Act (Pub. L. 103–62).

The first part of this document is a two-page description of general evaluation recommendations for Federal ADR programs. It sets forth specific data that agencies should capture and gives a brief introduction to other important concepts, such as validity, reliability, and presentation of data. The remainder of the report is a twenty-page detailed description of evaluation, including planning and design, methodology, and communicating results. The report concludes with a bibliography of additional resources in this area.

The Federal ADR Council encourages all interested parties to submit comments on these documents. The Council will consider all comments in connection with its review of the final versions of these documents at the end of 2000.

Nothing in these guidance documents shall be construed to create any right or benefit, substantive or procedural, enforceable at law or in equity, by a party against the United States, its agencies, its officers or any other person.

**The Federal ADR Council**

Chair: Janet Reno, Attorney General, Department of Justice

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Potts, Counsel to the Secretary, Department of Agriculture; Harriett S. Rabb, General Counsel, Department of Health and Human Services; Henry L. Solano, Solicitor, Department of Labor; John Sparks, Principal Deputy General Counsel, Department of the Navy; Peter R. Steenland, Jr., Senior Counsel for Dispute Resolution, U.S. Department of Justice; Mary Ann Sullivan, General Counsel, Department of Energy; Robert Ward, Dispute Resolution Specialist, Environmental Protection Agency.

**Report on the Reasonable Expectations of Confidentiality Under the Administrative Dispute Resolution Act of 1996**

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IV. Questions & Answers on Confidentiality under the Administrative Dispute Resolution Act (ADR Act)
V. Model Confidentiality Statement for Use by Neutrals

**I. Introduction**

The Administrative Dispute Resolution Act of 1996 ("ADR Act") contains provisions that affect the confidentiality of administrative ADR proceedings. Neutrals and participants in federal dispute resolution proceedings need to have an accurate understanding of these provisions. The Federal ADR Council directed the Interagency ADR Working Group Steering Committee to review the ADR Act confidentiality provisions and provide the Council with a report outlining reasonable expectations of confidentiality for parties in federal dispute resolution. This report, the product of that effort, describes the ADR Act confidentiality provisions principally located at 5 U.S.C. Section 574.

The report has four sections: (1) A reprint of the confidentiality provisions of the ADR Act; (2) a section-by-section analysis of the confidentiality provisions; (3) a set of questions and answers designed to expand upon the analysis and address issues likely to arise in practice; and (4) a model confidentiality statement suitable for use by neutrals in federal ADR proceedings.

During preparation of this report, several issues emerged regarding implementation of the ADR Act that are not fully addressed in this report. These issues are important to the practice of federal ADR and would benefit from further investigation and study. As federal sector experience with ADR evolves, some issues addressed in this report will be refined and new issues are likely to arise. It is also important to note that the ADR Act is not the only means of maintaining confidentiality and other laws, regulations, and agency policies may impact confidentiality. A complete analysis of all such authorities is beyond the scope of this report.

**II. Administrative Dispute Resolution Act**

*Definitions (5 U.S.C. 571)*

For the purposes of this subchapter, the term—

(1) "agency" has the same meaning as in section 551(1) of this title;

(2) "administrative program" includes a Federal function which involves protection of the public interest and the determination of rights, privileges, and obligations of private persons through rule making, adjudication, licensing, or investigation, as those terms are used in subchapter II of this chapter;

(3) "alternative means of dispute resolution" means any procedure that is used to resolve issues in controversy, including, but not limited to, conciliation, facilitation, mediation, factfinding, minitrials, arbitration, and use of ombuds, or any combination thereof;

(4) "award" means any decision by an arbitrator resolving the issues in controversy;

(5) "dispute resolution communication" means any oral or written communication prepared for the purposes of a dispute resolution proceeding, including any memoranda, notes or work product of the neutral, parties or nonparty participant; except that a written agreement to enter into a dispute resolution proceeding, or final written agreement or arbitral award reached as a result of a dispute resolution proceeding, is not a dispute resolution communication;

(6) "dispute resolution proceeding" means any process in which an alternative means of dispute resolution is used to resolve an issue in controversy in which a neutral is appointed and specified parties participate;

(7) "in confidence" means, with respect to information, that the information is provided—

(A) with the expressed intent of the source that it not be disclosed; or

(B) under circumstances that would create the reasonable expectation on behalf of the source that the information will not be disclosed;

(8) "issue in controversy" means an issue which is material to a decision concerning an administrative program of an agency, and with which there is disagreement—

(A) between an agency and persons who would be substantially affected by the decision; or

(B) between persons who would be substantially affected by the decision;

(9) "neutral" means an individual who, with respect to an issue in controversy, functions specifically to aid the parties in resolving the controversy;

(10) "party" means—

(A) for a proceeding with named parties, the same as in section 551(3) of this title; and

(B) for a proceeding without named parties, a person who will be significantly affected by the decision in the proceeding and who participates in the proceeding;

(11) "person" has the same meaning as in section 551(2) of this title; and

(12) "roster" means a list of persons qualified to provide services as neutrals.

*Confidentiality (5 U.S.C.574)*

(a) Except as provided in subsections (d) and (e), a neutral in a dispute resolution proceeding shall not voluntarily disclose or through discovery or compulsory process be required to disclose any dispute resolution communication or any communication provided in confidence to the neutral, unless—

(1) all parties to the dispute resolution proceeding and the neutral consent in writing, and, if the dispute resolution communication was provided by a nonparty participant, that participant also consents in writing;

(2) the dispute resolution communication has already been made public;

(3) the dispute resolution communication is required by statute to be made public, but a neutral should make such communication public only if no other person is reasonably available to disclose the communication; or

(4) a court determines that such testimony or disclosure is necessary to—

(A) prevent a manifest injustice;

(B) help establish a violation of law; or

(C) prevent harm to the public health or safety, of sufficient magnitude in the particular case to outweigh the integrity of dispute resolution proceedings in general by reducing the confidence of parties in future cases that their communications will remain confidential.

(b) A party to a dispute resolution proceeding shall not voluntarily disclose or through discovery or compulsory process be required to disclose any dispute resolution communication, unless—

(1) the communication was prepared by the party seeking disclosure;

(2) all parties to the dispute resolution proceeding consent in writing;

(3) the dispute resolution communication has already been made public;

(4) the dispute resolution communication is required by statute to be made public;

(5) a court determines that such testimony or disclosure is necessary to—

(A) prevent a manifest injustice;

(B) help establish a violation of law; or

(C) prevent harm to the public health and safety, of sufficient magnitude in the particular case to outweigh the integrity of dispute resolution proceedings in general by reducing the confidence of parties in future cases that their communications will remain confidential;

(6) the dispute resolution communication is relevant to determining the existence or meaning of an agreement or award that resulted from the dispute resolution proceeding or to the enforcement of such an agreement or award; or

(7) except for dispute resolution communications generated by the neutral, the dispute resolution communication was provided to or was available to all parties to the dispute resolution proceeding.

(c) Any dispute resolution communication that is disclosed in violation of subsection (a) or (b), shall not be admissible in any proceeding relating to the issues in controversy with respect to which the communication was made.

(d)(1) The parties may agree to alternative confidential procedures for disclosures by a neutral. Upon such agreement the parties shall inform the neutral before the commencement of the dispute resolution proceeding of any modifications to the provisions of subsection (a) that will govern the confidentiality of the dispute resolution proceeding. If the parties do not so inform the neutral, subsection (a) shall apply.

(2) To qualify for the exemption established under subsection (j), an alternative confidential procedure under this subsection may not provide for less disclosure than the confidential procedures otherwise provided under this section.

(e) If a demand for disclosure, by way of discovery request or other legal process, is made upon a neutral regarding a dispute resolution communication, the neutral shall make reasonable efforts to notify the parties and any affected nonparty participants of the demand. Any party or affected nonparty participant who receives such notice and within 15 calendar days does not offer to defend a refusal of the neutral to disclose the requested information shall have waived any objection to such disclosure.

(f) Nothing in this section shall prevent the discovery or admissibility of any evidence that is otherwise discoverable, merely because the evidence was presented in the course of a dispute resolution proceeding.

(g) Subsections (a) and (b) shall have no effect on the information and data that are necessary to document an agreement reached or order issued pursuant to a dispute resolution proceeding.

(h) Subsections (a) and (b) shall not prevent the gathering of information for research or educational purposes, in cooperation with other agencies, governmental entities, or dispute resolution programs, so long as the parties and the specific issues in controversy are not identifiable.

(i) Subsections (a) and (b) shall not prevent use of a dispute resolution communication to resolve a dispute between the neutral in a dispute resolution proceeding and a party to or participant in such proceeding, so long as such dispute resolution communication is disclosed only to the extent necessary to resolve such dispute.

(j) A dispute resolution communication which is between a neutral and a party and which may not be disclosed under this section shall also be exempt from disclosure under section 552(b)(3).

**III. Section-by-Section Analysis of Confidentiality Provisions (5 U.S.C. 574)**

*Section 574(a)*

In general, a neutral in a dispute resolution proceeding is prohibited from disclosing any dispute resolution communication or any communication provided to him or her in confidence. Unless the communication falls within one of the exceptions listed below, the neutral cannot voluntarily disclose a communication and cannot be forced to disclose a communication through a discovery request or by any other compulsory process.

The exceptions to this general rule are found in subsections 574(a)(1)–(4), 574(d) and 574(e).

*Section 574(a)(1)*

A neutral may disclose a communication if all parties *and* the neutral agree in writing to the disclosure. If a nonparty provided the communication, then the nonparty must also agree in writing to the disclosure.

*Section 574(a)(2)*

A neutral may disclose a communication if the communication has already been made public.

*Section 574(a)(3)*

A neutral may disclose a communication if there is a statute which requires it to be made public. However, the neutral should not disclose the communication unless there is no other person available to make the disclosure.

*Section 574(a)(4)*

A neutral may disclose a communication if a court finds that the neutral's testimony, or the disclosure, is necessary to:

A. prevent a manifest injustice;

B. help establish a violation of law; or

C. prevent harm to the public health and safety.

In order to require disclosure, a court must determine that the need for disclosure is of sufficient magnitude to outweigh the detrimental impact on the integrity of dispute resolution proceedings in general. The need for the information must be so great that it outweighs a loss of confidence among other potential parties that their dispute resolution communications will remain confidential in future proceedings.

*Section 574(b)*

Unless the communication falls within one of the exceptions listed below, the party cannot voluntarily disclose a communication and cannot be forced to disclose a communication through a discovery request or by any other compulsory process.

*Section 574(b)(1)*

The party who makes a statement or communication is free to disclose it.

*Section 574(b)(2)*

A party may disclose a communication if all the parties agree in writing to the disclosure.

*Section 574(b)(3)*

A party may disclose a communication if the communication has already been made public.

*Section 574(b)(4)*

A party may disclose a communication if there is a statute which requires it to be made public.

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*Section 574(b)(5)*

A party may disclose a communication if a court finds that the party's testimony, or the disclosure, is necessary to:

A. prevent a manifest injustice;

B. help establish a violation of law; or

C. prevent harm to the public health and safety.

In order to require disclosure, a court must determine that the need for disclosure is of sufficient magnitude to outweigh the detrimental impact on the integrity of dispute resolution proceedings in general. The need for the information must be so great that it outweighs a loss of confidence among other potential parties that their dispute resolution communications will remain confidential in future proceedings.

*Section 574(b)(6)*

(1) Parties may use dispute resolution communications to show that a settlement agreement was in fact reached or to show what the terms of this agreement mean.

(2) Parties may also use communications in connection with later issues regarding enforcing the agreement.

(3) Communications may only be revealed to the extent that they meet the above purposes.

*Section 574(b)(7)*

(1) There is no confidentiality protection for parties' dispute resolution communications that were available to everyone in the proceeding. For example, in a joint mediation session with all parties present, statements made and documents provided by parties are not confidential.

(2) Communications coming from the neutral are confidential. For example, early neutral evaluations or settlement proposals from the neutral are protected.

(3) A party may not use this provision to gain protection for a communication by providing it to the neutral who then provides it to the other party.

*Section 574(c)*

No one may use any dispute resolution communication in a related proceeding, if that communication was disclosed in violation of Section 574 (a) and (b).

*Section 574(d)(1)*

(1) Parties may agree to alternative confidentiality procedures to limit disclosure by a neutral.

(2) Parties must inform the neutral of the alternative procedures before the dispute resolution proceeding begins.

(3) If parties do not inform the neutral of the alternative procedures, the procedures outlined in Section 574(a) will apply.

*Section 574(d)(2)*

(1) Dispute resolution communications covered by alternative confidentiality procedures may be protected from disclosure under FOIA.

(2) To qualify for this protection, the alternative procedures must provide for as much, or more, disclosure than the procedures provided in Section 574.

(3) Dispute resolution communications covered by alternative confidentiality procedures do not qualify for protection from disclosure under FOIA if they provide for less disclosure than those outlined in Section 574.

*Section 574(e)*

(1) A neutral who receives a demand for disclosure, in the form of a discovery request or other legal process, must make reasonable efforts to notify the parties and any affected non-party participants of the demand.

(2) Parties and non-party participants who receive a notice of a demand for disclosure from a neutral:

a. must respond within 15 days and offer to defend a refusal to disclose the information; or

b. if they do not respond within 15 days, will have waived their objections to disclosure of the information.

*Section 574(f)*

Evidence that is otherwise discoverable or admissible is not protected from disclosure under this Section merely because the evidence was presented during a dispute resolution proceeding.

*Section 574(g)*

The provisions of Section 574 (a) and (b) do not affect information and data that are necessary to document agreements or orders resulting from dispute resolution proceedings.

*Section 574(h)*

Information from and about dispute resolution proceedings may be used for educational and research purposes as long as the parties and specific issues in controversy are not identifiable.

*Section 574(i)*

(1) Dispute resolution communications may be used to resolve disputes between the neutral in a dispute resolution proceeding and a party or non-party participant.

(2) Dispute resolution communications may be disclosed only to the extent necessary to resolve a dispute between a neutral and party or non-party participant.

*Section 574(j)*

A dispute resolution communication between a neutral and a party that is protected from disclosure under this section is also protected from disclosure under FOIA (Section 552(b)).

**IV. Questions and Answers on Confidentiality under the Administrative Dispute Resolution Act of 1996 (ADR Act)**

*General Confidentiality Rules*

1. What communications are confidential?

Subject to certain exceptions, the following two types of communications are potentially confidential under the ADR Act:

*A. A dispute resolution communication.* A dispute resolution communication is any oral or written statement made by a party or a neutral that occurs during a dispute resolution proceeding and any writing prepared specifically for the purposes of a dispute resolution proceeding. Written agreements to enter into a dispute resolution proceeding and any written final agreement reached as a result of the proceeding are not dispute resolution communications. Citation: 5 U.S.C. 571(5).

*B. A "communication provided in confidence to the neutral."* A "communication provided in confidence to the neutral" is any oral statement or document provided to a neutral during a dispute resolution proceeding. The communication must be made: (1) With the express intent that it not be disclosed, or (2) provided under circumstances that would create a reasonable expectation that it not be disclosed. Citation: 5 U.S.C. 571(7) and 574(a).

2. What confidentiality protection is provided for dispute resolution communications?

Generally, neutrals and parties may not voluntarily disclose or be compelled to disclose dispute resolution communications. The ADR Act contains specific exceptions to the general rule. Citation: 5 U.S.C. 574(a), (b).

3. What confidentiality protection applies to a "communication provided in confidence" by a party to a neutral?

A neutral may not disclose any communication provided in confidence. Citation: 5 U.S.C. 574(a).



4. What is a dispute resolution proceeding?

A dispute resolution proceeding is any process involving the services of a neutral that is used to resolve an issue in controversy arising from an agency's program, operations, or actions. A dispute resolution proceeding includes any stage of such a dispute resolution process. Citation: 5 U.S.C. 571(6) and (8). See also, Question 10.

5. Who is a Neutral?

A neutral is anyone who functions specifically to aid the parties during a dispute resolution process. A neutral may be a private person or a federal government employee who is acceptable to the parties. There may be more than one neutral during the course of a dispute resolution process (*e.g.*, an "intake" neutral, a "convener" neutral, as well as the neutral who facilitates a face-to-face proceeding). It is important that agencies clearly identify neutrals to avoid misunderstanding.

The ADR Act supports a broad reading of the term "neutral." An intake or convening neutral is included in this definition as "an individual who * * * functions specifically to aid the parties in resolving the controversy" because such neutrals take the necessary first steps toward a potential resolution of a dispute.

In situations where an intake neutral is identified by an agency, a party's willingness to contact and/or work with the intake neutral to initiate an ADR process is an indication that the intake neutral is acceptable to the party. Citation: 5 U.S.C 571(9), 571(6), 571(3), 573(a).

*Example:* An employee contacts an agency ADR program and describes a dispute to an intake person. The conversation is confidential only if the intake person has been appropriately identified as a neutral by the agency to aid parties in resolving such disputes.

6. Who Is a Party?

A party is any person or entity who participates in a dispute resolution proceeding and is named in a legal proceeding or will be affected significantly by the outcome of the proceeding. The obligations of parties extend to their representatives and agents. Citation: 5 U.S.C. 571(10).

7. What Constitutes Disclosure?

Disclosure is not defined in the ADR Act. Disclosure occurs when a neutral, a party, or a non-party participant makes a communication available to some other person by any method.

8. May a Party or Neutral Disclose Dispute Resolution Communications in Response to Discovery or Compulsory Process?

In general, neither a neutral nor a party can be required to disclose dispute resolution communications through discovery or compulsory process. Compulsory processes include any administrative, judicial or regulatory process that compels action by an individual. (See also Question 15) Citation: 5 U.S.C. 574(a) & 574(b).

9. What Confidentiality Protection Is Provided for Communications by a Nonparty Participant in a Dispute Resolution Proceeding?

A nonparty participant in a dispute resolution proceeding is an individual other than a party, agent or representative of a party, or the neutral. This could be an individual who is asked by the neutral to present information for use of the neutral or parties. A nonparty participant has an independent right to protect his or her communications from disclosure by a neutral. A neutral needs to obtain the consent of all parties and the nonparty participant to disclose such a communication. Citation: 5 U.S.C. 574(a)(1).

10. When in an ADR Process do the Confidentiality Protections of ADR Act Apply?

Confidentiality applies to communications when a person seeking ADR services contacts an appropriate neutral. A communication made by a party to a neutral is covered even if made prior to a face-to-face ADR proceeding. Confidentiality does not apply to communications made after a final written agreement is reached, or after resolution efforts aided by the neutral have otherwise ended. Citation: 5 U.S.C. 571(6), 574(a) and (b).

*Exceptions to Confidentiality Protection*

11. What Communications Are Not Protected by the ADR Act?

*A. A party's own communications made during a dispute resolution proceeding.* A party may disclose any oral or written communication which the party makes or prepares for a dispute resolution proceeding. Citation: 5 U.S.C. 574(b)(1).

*B. A dispute resolution communication that has "already been made public."* The ADR Act's confidentiality protections do not apply to a communication that has already been made public. Examples of communications that have "already been made public" include:

1. The communication has been discussed in a Congressional hearing;

2. The communication has been posted on the Internet;

3. The communications has been released to the media;

4. The communication has been placed in a court filing or testified about in a court in a proceeding not under seal;

5. The communication has been reported in the newspapers;

6. The communication has been discussed in an open meeting;

7. The communication has been released under FOIA.

*Citation: 5 U.S.C. 574(a)(2) & 574(b)(3).*

*C. Communications required by statute to be made public.* FOIA is an example of a federal statute which requires agency records to be made public under certain circumstances. NOTE: A protected dispute resolution communication which is between a neutral and a party is exempt from disclosure under FOIA. (See Question 23) *Citation: 5 U.S.C. 574(a)(3), 574(b)(4), & 574(j).*

*D. When a court orders disclosure.* A federal court may override the confidentiality protections of ADR Act in three limited situations. In order to override the confidentiality protections, a court must determine that testimony or disclosure of a communication is necessary to either (1) prevent a manifest injustice, (2) help establish a violation of law, or (3) prevent harm to the public health or safety. The court must also determine that the need for the information is of a sufficient magnitude in the particular case to outweigh the integrity of dispute resolution proceedings in general by reducing the confidence of parties in future cases that their communications will remain confidential. There are no cases as of August 2000 that have interpreted these provisions. *Citation: 5 U.S.C. 574(a)(4) & (b)(5).*

*E. In order to resolve a dispute over the existence or meaning of a settlement arrived at through a dispute resolution proceeding.* The ADR Act creates an exception to the general rule of nondisclosure for the limited purpose of determining the existence or meaning of an agreement arrived at through a dispute resolution proceeding. Parties may also disclose communications as required to enforce an agreement arrived at through a dispute resolution proceeding. *Citation: 5 U.S.C. 574(b)(6).*

*Example:* Parties may disclose dispute resolution communications as required to show that a settlement agreement was reached or to show what the terms of this agreement were.

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*F. Parties' communications in joint session, with all parties present.* A neutral may not disclose communications made in joint session. However, there is no prohibition against a party disclosing communications available to everyone in the proceeding. *Citation: 5 U.S.C. 574(b)(7).*

*G. Information sought for specific purposes.* The ADR Act allows for the disclosure of information for educational and research purposes, in cooperation with agencies, governmental entities, or dispute resolution programs. It is essential that the parties and specific issues in controversy not be identifiable, however. *Citation: 5 U.S.C. 574(h).*

*Example:* An individual who has served as a neutral in a number of agency ADR proceedings may share collected experiences when participating in a training program provided that the parties and specific issues are not identifiable.

*Example:* An ADR program administrator may collect statistics to monitor the results of the program.

*H. Communications required to resolve disputes that arise between the neutral and a party.* If there is a dispute between a neutral and a party regarding the conduct of a dispute resolution proceeding, both may disclose information to the extent necessary to resolve the dispute. Citation: 5 U.S.C. 574(i)

*Example:* If a party refuses to pay the neutral for services, the neutral can disclose communications to the extent necessary to establish that payment is due.

12. Are a neutral's communications to parties in joint session or provided to all parties confidential?

Yes. ADR Act protects communications by a neutral.

*Example:* Early neutral evaluations or settlement proposals provided to the parties by a neutral are protected.

**Note:** A party, however, may not use this provision to gain protection for a communication by providing it to the neutral who then provides it to the other party. The statute says that the communication must be "generated" by the neutral, not just passed along by the neutral. Citation: 5 U.S.C. 574 (b)(7). (*See* H. Rept. 104–841,142 Cong. Rec. H11108–11 (September 25, 1996).

13. Can confidentiality attach to communications that are provided to or available to fewer than all of the parties?

Yes. The ADR Act does not prohibit disclosure of dispute resolution communications that are "provided to or * * * available to all parties to the dispute resolution proceeding." Under a plain reading of the statute, communications are not protected when provided to, or available to, all parties; thus, they remain protected if they are provided to, or are available to, some (but not all) of the parties in a dispute.

The legislative history states, "A dispute resolution communication originating from a party to a party or parties is not protected from disclosure by the ADR Act." H.R. Rep. No. 104–841, 142 Cong. Rec. H11, 110 (Sept. 25, 1996). The plain language of the statute is not inconsistent with this piece of legislative history, in that it can be interpreted to mean both parties in a two-party ("party to the other party") or all parties in a multi-party dispute ("party to all other parties"). Citation: 5 U.S.C. 574(b)(7).

14. Does ADR Act provide confidentiality protection for all evidence used in the course of a dispute resolution proceeding?

No. All evidence that is otherwise discoverable is not protected merely because it was presented at a dispute resolution proceeding. Citation: 5 U.S.C. 574(f).

15. Does the ADR Act protect against the disclosure of dispute resolution communications in response to requests by federal entities for such information?

Section 574 of the ADR Act prohibits a neutral or a party from disclosing, voluntarily or in response to discovery or compulsory process, any protected communication. The ADR Act further states that neutrals and parties shall not "be required" to disclose such communications. However, a number of federal entities have statutory authority to request disclosure of documents from federal agencies and employees. Examples of such statutes include, but are not limited to, The Inspector General Act (5 U.S.C. App.); The Whistleblower Protection Act (5 U.S.C. Section 1212(b)(2)); and the Federal Service Labor-Management Relations Act (5 U.S.C. Section 7114(4)). None of the exceptions to the ADR Act's confidentiality provisions directly applies to requests for disclosure of information from federal entities. For example, these statutes do not require information to be made public under ADR Act Section 574 (a)(3) & (b)(4). In addition, the judicial override procedure outlined in Section 574 (a)(4) & (b)(5) is not always available to federal entities with authority to access information. Some federal entities may lack jurisdiction to seek a court order to compel disclosure. Other federal entities may have such jurisdiction, but may seek disclosure under other statutory authority.

In summary, a tension between these statutory authorities exists. The issues of statutory interpretation of these differing authorities have not yet been considered in an appropriate forum. We do not anticipate that there will be many occasions when such requests will be directed to neutrals or participants. However, it is important for agencies, neutrals and participants to be aware of the potential for requests.

In order to prevent unnecessary disputes over requests for information pursuant to an access statute and to mitigate damage to ADR programs, we recommend:

- Agency ADR programs should enter into a dialogue with potential requesting entities so that each may be educated about their respective missions.
- Procedures should be established for access to information that recognize the importance of confidentiality in dispute resolution processes and protect the integrity of the agency's ADR program.
- ADR programs should identify classes of information that are not confidential.
- Requesting entities should use non-confidential information as a basis for information requests.
- Requesting entities should seek confidential information only after other potential sources have been exhausted.
- Requesting entities should seek information from a neutral only as a last resort.
- The ADR program and requesting entities should agree to procedures to resolve specific disagreements that arise with regard to the disclosure of information.
- If a federal employee party or neutral receives a request for disclosure, he or she should contact the agency's ADR program as soon as possible to discuss appropriate courses of action. Neutrals must also notify parties of any such request (See Question 19).

*Alternative Procedures To Establish Confidentiality Protection*

16. May parties agree to confidentiality procedures which are different from those contained in ADR Act?

Yes. Parties may agree to more, or less, confidentiality protection for disclosure by the neutral or themselves than is provided for in the Act.

Subsection 574(d)(1) provides that the parties can agree to alternative confidential procedures for disclosures by a neutral. While there is no parallel provision for parties, the exclusive wording of this subsection should not be construed as indicating Congressional intent to limit alternative procedures by parties. Parties have a general right to sign confidentiality agreements, and there is no reason this should change in a mediation context.

If the parties agree to alternative confidentiality procedures regarding disclosure by a neutral, they must so inform the neutral before the dispute resolution proceeding begins or the confidentiality procedures in the ADR Act will apply. An agreement providing for alternative confidentiality procedures is binding on anyone who signs the agreement. (See Questions 23 and 24 for potential FOIA implications.)

*Example:* Parties to an ADR proceeding can agree to authorize the neutral to use his or her judgment about whether to voluntarily disclose a protected communication, as long as the neutral is informed of this agreement before the ADR proceeding commences.

*Example:* Parties to an ADR proceeding can agree that they, and the neutral, will keep everything they say to each other in joint session confidential.

*Issues Regarding the Disclosure of Protected Communications*

17. What restrictions are put on the use of confidential communications disclosed in violation of the ADR Act?

If the neutral or any participant discloses a confidential communication in violation of Sections 574(a) or (b), that communication may not be used in any proceeding that is related to the subject of the dispute resolution proceeding in which the protected communication was made. A dispute resolution communication that was improperly disclosed may not be protected from use in an unrelated proceeding. Citation: 5 U.S.C. 574(c).

18. What is the penalty for disclosing confidential communications in violation of the statute?

The ADR Act does not specify any civil or criminal penalty for the disclosure of a protected communication in violation of the Act. However, such disclosure may violate other laws, regulations or agreements of the parties.

19. What must a neutral do when he or she receives a "demand for disclosure" of confidential communications?

A demand for disclosure is a formal request for confidential information. The demand must be made by a discovery request or some other legal process. Upon receiving a demand for disclosure of a confidential communication, a neutral must make a reasonable effort to notify the parties and any affected non-party participants of the demand. Notice must be provided even if the neutral believes that there is no basis for refusing to disclose the communication.

Notice should be delivered to the last address provided by a party. Parties have fifteen days, from the date they receive the notice, in which to offer to defend the neutral against disclosure. Therefore, notice should be sent by a process that provides certification of delivery. For example, delivery could be by registered mail, by any carrier that provides tracking and certification of delivery, or by courier. Use of telephone or email communications as notice could be problematic. Since the parties must respond within 15 days or waive their right to object to disclosure, there must be a written record of when the notice was sent and when it was received. Citation: 5 U.S.C. 574(e).

*Example:* A colleague asks a neutral what happened in a mediation. The neutral must simply refuse to discuss the matter. The neutral does not need to notify the parties of the request.

*Example:* A neutral receives a formal discovery request for information on what happened in a mediation. The neutral must notify the parties of this demand for disclosure using the procedures described above.

20. What can/must parties do when they receive notice of a demand for disclosure from the neutral?

If a party has no objection to the disclosure of confidential communications, it need not respond to the notice. On the other hand, if a party believes that the sought-after communications should not be disclosed, it should notify the neutral and make arrangements to defend the neutral. Where the party is a federal agency, it should develop departmental procedures for processing the notice.

21. What responsibilities do agencies have for ensuring that the notification requirement is met?

In some federal ADR programs, the neutral may be a federal employee performing collateral duty. Imposing an obligation upon these neutrals to keep records of parties to dispute resolution proceedings may be unduly onerous and ineffective. Agencies should develop administrative procedures to assure that the notification functions are fulfilled.

22. May a neutral refuse to disclose communications even when the parties have failed to agree to defend the neutral?

Yes. The ADR Act permits, but does not compel, a neutral to disclose if the parties have waived objections to disclosure under Section 574(e). While the statute is clear that a neutral "shall not" disclose where a party objects, the statute does not say that a neutral must disclose if a party does not object.

The effectiveness and integrity of mediation and other ADR processes is largely dependent on the credibility and trustworthiness of neutrals. In order to safeguard the integrity of ADR programs and to eliminate the potential for eroding confidence in future ADR proceedings, neutrals should be allowed to rely on established codes of ethics and confidentiality standards to support a decision not to disclose. Citation: 5 U.S.C. 574(a) & (e).

*Issues Related to the Freedom of Informotion Act (FOIA)*

23. What dispute resolution communications are protected from disclosure under FOIA?

Dispute resolution communications between a neutral and a party that are covered by the confidentiality protections of the ADR Act are specifically exempted from disclosure under the Freedom of Information Act. This includes communications that are generated by a neutral and provided to all parties, such as an Early Neutral Evaluation. In addition, other FOIA exemptions may apply.

Since only federal records are subject to FOIA, dispute resolution communications that are not federal records are not subject to the disclosure requirements of FOIA. Therefore, this subsection would not apply to oral dispute resolution communications. Citation: 5 U.S.C. 574(j).

24. If parties agree to alternative confidentiality procedures, are dispute resolution communications subject to FOIA?

Parties may agree to confidentiality procedures that differ from those provided for in the ADR Act. Parties should be aware, however, that the FOIA exemption may not apply to all the communications protected under their agreement.

If the agreement provides for the same or more disclosure than provided by the Act, dispute resolution communications are exempt from disclosure under FOIA. If the agreement provides for less disclosure, communications are not exempt from disclosure under FOIA. The ADR Act, in effect, establishes a ceiling on the extent to which confidential communications will be exempt. Parties cannot contract for more FOIA protection than the ADR Act provides.

**V. Model Confidentiality Statement for Use by Neutrals**

The confidentiality provisions of the Administrative Dispute Resolution Act

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(ADR Act) apply to this process. Generally, if you tell me something during this process, I will keep it confidential. The same is true for written documents you prepare for this process and give to me. [Similarly, you are generally required to keep information confidential that you receive during conversations with other parties or me and from writings prepared for this process. *

Be advised, there are limits on our ability to keep information confidential. If you say something or provide documents to all the other parties it is not confidential. Under rare circumstances, a judge can order disclosure of confidential information. Even though not required by the ADR Act, information about a violation of criminal law, or an act of fraud, waste, or abuse, or an imminent threat of serious harm may have to be disclosed to appropriate authorities by a participant, but not necessarily by me.

You can agree to more confidentiality if you want to. For example, you can agree to keep confidential things you share with all the parties. If you want to do any of that, it will require the agreement of all parties and should be memorialized in writing. You should be aware that if you agree to more confidentiality, written documents may still be available to others, for example, through the Freedom of Information Act. Confidentiality provisions other than those in the ADR Act may also apply to this process.

**ADR Program Evaluation Recommendations**

**I. Introduction**

The alternative dispute resolution (ADR) field has long promoted the various benefits of using non-traditional methods to resolve disputes, such as savings of time and money, party satisfaction with the ADR process and outcomes, high settlement rates, and improved relationships. The ADR Council recognizes that ADR has the potential to produce these results, and notes the value of hard data to back up the assertion that ADR really delivers these benefits to agencies. The Council's Core Principles for Non-binding Workplace ADR Programs [and if approved, the ADR Pledge] identify evaluation as a key component of successful ADR program management. Up-front and thorough evaluation initiatives allow ADR program managers to ensure the quality of their programs, to identify programmatic successes and difficulties, and to make necessary improvements. Therefore, it is important that all federal ADR programs engage in a rigorous evaluation of ADR's use and benefits to ensure quality ADR programs and to provide the necessary information to sustain and increase support of ADR.

As the use of ADR becomes institutionalized within federal agencies, the government has a heightened interest in evaluating the benefits and impact of these dispute resolution initiatives. This type of formal evaluation is consistent with the legal obligations of all federal programs, under the Government Performance and Results Act (Pub. L. 103–62) which requires that agencies create a performance plan, define goals, and track the extent to which they achieve their desired outcomes. ADR program management best practices emphasize the importance of an evaluation component in program design as well as practice, and some federal agencies have initiated evaluations of their ADR programs. However, the federal sector will benefit from agencies' coordinated and uniform efforts at ADR program evaluation.

**II. Recommendations**

The Council acknowledges that throughout the government, ADR program goals and services differ dramatically among Federal agencies. Consequently, it is appropriate to tailor evaluation plans and methods to meet the needs of a particular program. Even with agency-specific tailoring, effective evaluations will include certain common elements. Therefore, to promote consistency and coordination among Federal ADR evaluation efforts, the Council makes the following recommendations to agencies:

1. *Importance of Evaluation.* Each agency should engage in an up-front and ongoing evaluation of its ADR programs.

2. *Data to be Captured.* At a minimum, evaluators should attempt to capture and analyze in a timely manner the following information:

a. *Usage:* the extent to which ADR is considered and used.

b. *Time Savings:* the time it takes for a case to be resolved through ADR as compared to traditional dispute resolution processes.

c. *Cost Avoidance:* the amount of financial savings (or costs) to the agency, including staff time, dollars, or other quantifiable factors, by resolving cases through ADR as compared to traditional dispute resolution processes.

d. *Customer Satisfaction:* parties' satisfaction with the process and outcomes, including the quality of the neutral.

e. *Improved Relationships:* where ongoing relationships are important, to what extent relationships are improved.

f. *Other Appropriate Indicators:* in line with the agency's strategic goals and objectives.

3. *Validity and Reliability of Data.* Methodologies should be valid and reliable. ADR program results should be compared to results from alternate or previously existing dispute resolution methods.

4. *Presentation of Data.* ADR Program Managers should present a realistic, accurate and complete picture of the results of their program.

5. *Use of Data.* ADR success stories should be summarized and publicized, to help foster a culture in which ADR is accepted as beneficial to Federal agencies and their customers. If areas for improvement are identified, that information should be used to enhance the ADR program.

6. *Reporting.* Federal ADR Program Managers are encouraged to report the results of their evaluations to the Federal Interagency ADR Working Group.

7. *Potential Resources.* In undertaking ADR activities, agencies should consult: (1) The Federal ADR Program Manager's Resource Manual, Chapter 8: Evaluating ADR Programs, and (2) The Electronic Guide to Federal Procurement ADR. Both of these resources, as well as other valuable information are available electronically at: *www.financenet.gov/iadrwg*

**Evaluating ADR Programs**

**I. Introduction**

For the past ten years the practice of ADR, the creation of ADR programs, and the discipline of ADR evaluation have been developing in tandem. We have learned that organizations best design and develop ADR programs by knowing an organization's conflict resolution culture, we see that evaluation can and should be a reflective feedback mechanism for ADR program development, and that evaluation belongs at the beginning of ADR program design. While evaluation is ideally present at the beginning of ADR program development, we recognize that there are many ADR programs already up and running that do not have evaluation components. This chapter will address ADR programs at any stage along the way of program development.

**II. Planning and Designing the Evaluation**

Traditional ADR program evaluation is a way to determine whether an ADR program is meeting its goals and objectives. Evaluation data are useful in finding out what works and what does not work and may be a critical factor in decisions to modify or expand a program.

When planning and designing a federal ADR program evaluation, it is important to understand what components of the program are essential to comply with federal statutes and initiatives. To the extent that an ADR program maintains compliance with federal ADR requirements, it fulfills a necessary and useful function for your organization or agency. A good design will build upon an existing program structure and will establish an evaluation methodology for each program "core" area, core areas being defined by statute or initiative. Overall program effectiveness can then be determined by combining data from all function areas, with consideration being given to intangible benefits and consumer satisfaction.

Evaluation is an art as well as a science, even, perhaps, a state of mind. It is almost never a linear process. Decisions made early in the evaluation planning and design process will almost certainly need to be reconsidered and modified as your ADR program grows and develops. In addition, traditional cost/benefit analysis does not capture many of the benefits derived from ADR service programs because these benefits are often intangible and not easily quantifiable. With all of this in mind, evaluators need to strive for a workable balance between the need for defensible results and practical limitations.

Key questions to ask when planning and designing an ADR program evaluation are:

- What are your goals and objectives for your ADR program evaluation?
- How will you pay for your ADR evaluation?
- Who will evaluate your ADR program?
- Who is your audience for this evaluation?
- What is your evaluation design strategy?
- What are your measures of success?

*A. What Are Your Goals and Objectives for Your ADR Program Evaluation?*

The goals and objectives of an evaluation should link closely with the goals and objectives of the ADR program being evaluated, should reflect the needs and interests of those requesting the evaluation, and should be sensitive to the needs and interests of the expected audiences for the results. Ideally, the ADR program's goals and objectives will have been established early on. Sometimes, however, these goals may not have been clearly articulated, may not be measurable as stated, or may have changed. Evaluators may need to ask program managers and other stakeholders to provide input (and hopefully arrive at a consensus) on the program's goals, while addressing questions such as, how well is the program working, should changes be made, should the program be continued or expanded, and how well is the ADR program working in a particular federal context?

*B. How Will You Pay For Your ADR Evaluation?*

The cost of conducting an ADR program evaluation depends upon a number of factors, such as the number and complexity of success measures, the type of ADR program selected, the level of statistical significance required of the results, the availability of acceptable data, and who is selected to carry out the evaluation. Costs can be controlled, however, by careful planning, appropriate adjustments in the design phase, and a creative use of outside evaluators, from universities, for example.

*C. Who Will Evaluate Your ADR Program?*

When selecting an evaluator, or a team of evaluators, a number of qualifications should be considered. Objectivity (*i.e.* no stake in the outcome) is essential for your results to be seen as credible. An evaluator should have sufficient knowledge of the ADR process as well as program expertise to design the evaluation, perform the data collection process and data analysis as well as present your results to your audience if you chose to have the evaluator present your results. Such expertise may be found inside some agency policy and program evaluation offices, at the U. S. General Accounting Office, or at various outside evaluation consulting firms and university departments specializing in social science research. Some understanding of the organization or the context in which the program operates can be helpful to the evaluator, as are good interpersonal and management skills.

Evaluations can be conducted by people outside the agency, within the agency but outside the program being evaluated, or by people involved with the ADR program. There are advantages and disadvantages to each option. An outside evaluator has the potential for the greatest impartiality, lending credibility and validity to your results. In addition, depending upon the expertise available in a particular agency, an outside evaluator may have more technical knowledge and experience. Outside evaluation may be relatively expensive, however, depending upon the affiliation of the evaluators (e.g. colleges or universities, other non-profit groups, or private sector entities such as management consulting or social science research firms). If the agency has evaluation capacity inside the organization where the ADR program is being implemented, the requisite neutrality may be available at a potentially lower cost. An inside evaluator involved in ADR program implementation or design may be the least expensive, and offer the best understanding of program context, but it also carries with it potential perceptions of a lack of impartiality. One way to avoid some of the disadvantages of each of these approaches is to use a team of people, representing internal and external groups.

Regardless of who does the evaluation (outside or inside), it is useful to have someone in the ADR program who can serve as a liaison with the evaluator to ensure access to the necessary information. The liaison might be the person responsible for planning the evaluation.

*D. Who Is Your Audience For This Evaluation?*

There are usually a variety of people who have an interest in the results of a program evaluation. These audiences may be interested in different issues and seek different types of information. Potential audiences should be identified as early as possible, and kept in mind while planning the evaluation, so that their questions will be addressed.

Possible audiences for an ADR program evaluation include ADR program officials, other agency officials, program users, members of Congress, the general public, and others. Agency program officials may be interested in finding out how the ADR program is working, and how it might be improved. Their interests might focus, for example, on the program's impact on case inventory (backlogs), the effects of ADR use on long-term relationships among disputants, or how well information about the program is being disseminated. Program officials involved in the day-to-day operation may have different interests than those at higher levels.

Other agency officials such as budget officers, staff within offices of General Counsel and Inspector General, or managers from other programs may also have an interest in evaluation results. Budget officials may be interested in

* Include for multi-party disputes.

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whether cost savings have been achieved through implementation of the program. The Inspector General may be interested in the nature of the settlements and whether ADR use promotes long-term compliance. General Counsels may care about how long it takes to resolve cases or the nature of outcomes; other managers may want to know how effectively the program was implemented.

Members of Congress and their staffs may be interested in how ADR use affects budgets and how related laws, such as the Administrative Dispute Resolution Act, are being implemented. Members of the public may be interested in how efficiently the agency is resolving its disputes, and how satisfied participants are with ADR processes. Disputants may be interested in finding out how typical their experience was compared to other users. Officials in other federal agencies may find evaluation results helpful as they plan or modify their own ADR programs. There may be other audiences whose interests or desire for information should be considered.

Although terminology differs, evaluations are commonly characterized as either: (1) Program effectiveness (also known as impact, outcome, or summative) evaluations, which focus on whether a program is meeting its goals and/or having the desired impact; or (2) program design and administration (also known as process or formative) evaluations, which examine how a program is operating. Program effectiveness evaluations may be useful in determining whether a program should be continued or expanded; program design/administration evaluations often focus on how a continuing program can be improved.

Remember that decisions on the future of programs (or even how they could be improved) are usually not made solely on the basis of program evaluation results. Agency priorities, other institutional concerns, budget limitations, and other factors will also affect program decisions.

While it is not possible to satisfy every audience by answering all potential questions, it is useful to figure out what the possible questions are and then focus the evaluation on the most important ones. Talking to members of the various potential audiences can help identify the issues they are interested in, and may help develop consensus about which issues to address. Such discussions also improve the likelihood that evaluation results will be a useful and meaningful part of future decision making processes.

*E. What Is Your Evaluation Design Strategy?*

ADR program design is based on an understanding that certain components of a program are essential to comply with federal statutes and initiatives. Program effectiveness evaluations are conducted to answer fundamental questions about a program's utility, e.g., does the program provide a necessary or useful function, is the program accomplishing its goals, and is the program being administered effectively. A comprehensive evaluation system measures tangible and intangible benefits, including customer satisfaction, using both quantitative and qualitative data. To be a useful and effective management and planning tool, an evaluation system must do more than provide comparison data. It also must provide a flexible process for reevaluating the goals of the program, modifying the evaluation methodology, and implementing necessary changes.

Development of an evaluation design might include the following steps:

1. Identification and Clarification of ADR Program Goals

Clear goals and objectives mean that useful conclusions can be drawn from the data collected.

2. Development of an Appropriate Evaluation Methodology

It is necessary to determine what is to be measured and how, what the sources of the data are, and how the data will be collected. To do this most effectively, core functional areas of ADR program practice need to be identified, as do quantitative and qualitative sources of data.

3. Development of an Analysis Plan and Research Methodologies

Traditionally-based experimental designs (time-cost benefit analysis) provide statistically reliable results. Program analysis, while producing quantifiable results, must go beyond a bare assessment of program outcomes to explain the outcomes and to offer suggestions for program improvement.

4. Collection Data Mechanisms

Status reports, case studies, time series collections, agency databases, logs, surveys, and evaluation forms are all sources of information, as are personal interviews.

*F. What Are Your Measures of Success?*

1. Program Effectiveness (Impact)

Program effectiveness measures are aimed at assessing the impact of the program on users/participants, overall mission accomplishment, etc.

The indicators of program effectiveness can be further divided into three categories: efficiency, effectiveness, and customer satisfaction.

• Efficiency

☐ Cost to the Government of using alternative dispute resolution vs. traditional dispute resolution processes:

Is the use of ADR more or less costly than the use of traditional means of dispute resolution? (Cost may be measured in staff time, dollars, or other quantifiable factors.)

☐ Cost to disputants of using alternative dispute resolution vs. traditional dispute resolution processes:

Is the use of ADR more or less costly than the use of traditional means of dispute resolution? (Cost may be measured in terms of staff time, dollars, or other quantifiable factors.)

☐ Time required to resolve disputes using alternative dispute resolution vs. traditional means of dispute resolution:

Are disputes resolved more or less quickly using ADR, compared to traditional means of dispute resolution? Such factors as administrative case processing, participant preparation, dispute resolution activity timeframes, and/or days to resolution may be considered.

• Effectiveness

☐ Dispute Outcomes

Number of settlements achieved through the use of mediation vs. traditional dispute resolution processes:

Does the use of alternative dispute resolution result in a greater or a fewer number of settlements?

Number of cases going beyond mediation steps:

Does the use of alternative dispute resolution result in a greater/fewer number of investigations, further litigation activities, etc.?

Nature of outcomes:

What impact does the use of alternative dispute resolution have on the nature of outcomes, e.g. do settlement agreements "look different"? Do settlement agreements reflect more "creative" solutions? Do outcomes vary according to the type of alternative dispute resolution process used?

Correlations for cases selected for alternative dispute resolution, between dispute outcomes and such factors as complexity or number of issues, or number of parties:

Is there any correlation, where ADR is used, between the complexity and/or number of parties/issues in a case and the outcome of the case?

☐ Durability of Outcomes

Rate of compliance with settlement agreements:



Does the use of alternative dispute resolution result in greater or lesser levels of compliance with settlement agreements?

Rate of dispute recurrence:

Does the use of alternative dispute resolution result in greater or lesser levels of dispute recurrence, *i.e.* recurrence of disputes among the same parties?

☐ Impact on Dispute Environment

Size of case inventory:

Does the use of alternative dispute resolution result in an increase/decrease in case inventory?

Types of disputes:

Does the use of alternative dispute resolution have an impact on the types of disputes that arise?

Negative impacts:

Does the use of alternative dispute resolution have any negative consequences, e.g. an inability to diagnose and correct systemic problem/issues?

Timing of dispute resolution:

Does the use of alternative dispute resolution affect the stage at which disputes are resolved?

Level at which disputes are resolved:

Does the use of alternative dispute resolution have any impact on where and by whom disputes are resolved?

Management perceptions:

What are the quantitative and qualitative effects of using alternative dispute resolution on management, e.g. how does the use of ADR impact upon allocation and use of management time and resources? Does the use of ADR ease the job of managing?

Public perceptions:

Is the public satisfied with alternative dispute resolution outcomes? Is there any perceived impact of use of ADR on effectiveness of the underlying program? "Public" may be defined differently, depending on the particular program/setting involved.

• Customer Satisfaction

☐ Participants' Satisfaction with Process

Participants' perceptions of fairness:

What are participant perceptions of access to alternative dispute resolution, procedural fairness, fair treatment of parties by neutrals, etc.?

Participants' perceptions of appropriateness:

What are participant perceptions of appropriateness of matching decisions (i.e. matching of particular process to particular kinds of disputes or specific cases)?

Participants' perceptions of usefulness:

What are participant perceptions of the usefulness of alternative dispute resolution in the generation of settlement options, the quantity and reliability of information exchanged, *etc.*?

Participants' perceptions of control over their own decisions:

Do participants feel a greater or lesser degree of control over dispute resolution process and outcome through the use of alternative dispute resolution? Is greater control desirable?

☐ Impact on Relationships Between Parties

Nature of relationships among the parties:

Does the use of alternative dispute resolution improve or otherwise change the parties' perceptions of one another? Is there a decrease or increase in the level of conflict between the parties? Are the parties more or less likely to devise ways of dealing with future disputes? Are the parties able to communicate more directly or effectively at the conclusion of the ADR process and/or when new problems arise?

☐ Participants' Satisfaction with Outcomes

Participants' satisfaction with outcomes:

Are participants satisfied or unsatisfied with the outcomes of cases in which alternative dispute resolution has been used?

Participants' willingness to use alternative dispute resolution in the future:

Would participants elect to use alternative dispute resolution in future disputes?

2. Program Design and Administration (Structure and Process)

How a program is implemented will have an impact on how effective a program is in meeting its overall goals. Program design and administration measures are used to examine this relationship and to determine how a program can be improved.

The indicators of program design and administration are further divided into three categories: program organization, service delivery, and program quality.

• Program Organization

☐ Program structure and process:

Are program structure and process consistent with underlying laws, regulations, executive orders, and/or agency guidance? Do program structure and process adequately reflect program design? Are program structure and process adequate to permit appropriate access to and use of the program?

☐ Directives, guides, and standards:

Do program directives, guides, and standards provide staff/users with sufficient information to appropriately administer/use the program?

☐ Delineation of responsibilities:

Does the delineation of staff/user responsibilities reflect program design? Is the delineation of responsibilities such that it fosters smooth and effective program operation?

☐ Sufficiency of staff (number/type):

Is the number/type of program staff consistent with program design and operational needs?

☐ Coordination/working relationships:

Is needed coordination with other relevant internal and external individuals and organizations taking place? Have effective working relationships been established to carry out program objectives?

• Service Delivery

☐ Access and Procedure

Participant access to alternative dispute resolution:

Are potential participants made aware of the program? Is the program made available to those interested in using ADR?

Relationship between participant perceptions of access and usage of alternative dispute resolution:

What impact do participants' perceptions about the availability of the program have on the levels of program usage?

Participant understanding of procedural requirements:

Do program users understand how the program works? Did they feel comfortable with the process in advance?

Relationship between procedural understanding and rates of usage:

Is there any relationship between the level of participant understanding and the degree of program use, *e.g.* is a lack of participant understanding serving as a disincentive to using the program?

☐ Case Selection Criteria

Participants' perceptions of fairness, appropriateness:

Do participants feel that appropriate types of cases are being handled in the program? Do participants or non-participants feel that the criteria for which cases are eligible for alternative dispute resolution are fair? Are cases being sent to the program at the appropriate dispute stages?

Relationship between dispute outcomes and categories of cases:

Is there a correlation between the nature (size, types of disputants, and/or stage of the dispute) of cases and the outcome of the dispute? Are certain types of cases more likely to be resolved through alternative dispute resolution than other types?

• Program Quality

☐ Training

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Participants' perceptions of the appropriateness of staff and user training:

Do participants feel that they were provided with sufficient initial information and/or training on how to use the program? Do they feel that program staff had sufficient training and/or knowledge to appropriately conduct the program?

Relationship between training variable and dispute outcomes:

Is there a relationship between the type/amount of training (for participant and/or staff) and dispute outcomes?

☐ Neutrals

Participants' views of the selection process:

Are participants satisfied with the manner in which neutrals were selected and assigned to cases? Were they involved in the selection decision? If not, did they feel they should be?

Relationship between participants' views of the selection process, perceptions of neutral competence and objectivity, and dispute outcomes:

Is there any relationship between participant views about the neutrals selection process and dispute outcomes? How do these views affect participants' assessment of the competence and neutrality of neutrals?

Participants' perceptions of competence (including appropriateness of skill levels/training):

Do participants feel that neutrals were sufficiently competent or trained? Do participants feel that more or less training was needed?

Participants' perceptions of neutrality/objectivity:

Do participants feel that neutrals were sufficiently objective? Do participants feel that neutrals were fair in their handling of the dispute?

*G. Other Specific Program Features*

Every dispute resolution program is unique. Those requesting and/or conducting an evaluation may want to consider examining other aspects of the program. These unique features may relate to the design of a program, who was and continues to be involved in program design and administration, etc. Each is likely to have at least some impact on service delivery and the quality of the program, and should be considered for inclusion in either a comprehensive or selected evaluation of the program, as appropriate.

**II. Presentation, Dissemination, and Use of Results**

Results should be communicated in ways that will allow meaningful decisionmaking by program administrators and decisionmakers.

It is easier to make decisions about the best way to present and disseminate results if the people who will use the results (the audience) have been consulted during the initial and subsequent evaluation processes. Such consultation can avoid costly or embarrassing errors; e.g., omission of a key area for analysis, and can ensure the report meets the needs of those who will be using it.

*A. What Is the Best Method for Communicating Your Findings?*

There are a variety of ways that evaluators can communicate results to potential audiences. Evaluators or program staff may provide briefings, hold meetings with users, and/or prepare a written report.

Briefings and presentations allow evaluators or program staff to convey important evaluation information quickly and selectively. In selecting material to be presented, care should be taken to avoid bias or presentation of material out of context. Some discussion of methodology is important, as are appropriate cautions about the limits and appropriate use of evaluation data. Providing for interaction with or feedback from the audience may allow issues and potential problems to be identified.

Written reports typically take a great deal of time to prepare, but allow evaluators to provide considerably more detail on both methodology and results. Legislation or executive decisions often require a final, written report. If it is important to ensure that there is one "official" source of information on evaluation methodology and results, a formal, written report may be an important and/or required format in addition to briefings and presentations by evaluators or staff.

*B. What Kind of Information Needs to Be Communicated?*

Although the potential audiences, program content, and evaluation objectives will vary for each ADR program evaluation, it is generally helpful to include the following kinds of information in a report or other type of presentation:

- Description of the ADR program and how it operates;
- Goals and objectives of the evaluation;
- Description of the evaluator's methodology;
- Presentation of evaluation findings;
- Discussion of program strengths and weaknesses;
- Implications for program administration (e.g., training, budget, staff.); and
- Recommendations as appropriate.

Presentation style is entirely a matter of what works for whom. It is always important, however, to make sure that evaluation data are presented accurately and completely, to prevent charges of misrepresentation or overreaching, and to avoid misuse of results.

*B. How Can You Enhance the Effectiveness of Your Presentation?*

Variations in presentation format and style aside, we offer the following suggestions for making the presentation of evaluation results as effective as possible.

- Involve potential users as early as possible in determining presentation format and style:

Evaluation data should be organized and communicated in a way that is useful for potential audiences and users.

- Tailor presentation method, format, and style to audience needs:

Select the method of presentation (*e.g.*, oral briefing, written report), format, and style of presentation (*e.g.*, formal vs. informal, briefing vs. discussion) based on who your audience is and what their needs are. There may be multiple audiences with multiple needs. Be flexible and willing to adapt material as appropriate.

- Be clear and accurate:

Evaluation information must be presented clearly and accurately. Always keep the audience in mind as you prepare to describe your ADR program and present evaluation data. Avoid any gaps in describing the program or presenting the results. A clear and accurate portrayal of the program and evaluation results will allow the audience to draw appropriate conclusions about program effectiveness and any need for change.

- Be honest and direct:

Sharing evaluation findings with potential users and involving them in key decisions concerning presentation format and style does not mean publishing only those findings that reflect well on the program or those affiliated with it. Evaluators must present the story objectively; too heavy an emphasis on the positive may cast doubt on the integrity of the results as well as the integrity of the evaluators. Data that suggest weaknesses in program design or administration or that reveal failure to accomplish program goals or objectives should be reported and can be used as a basis for suggesting appropriate changes. Honest analysis and thoughtful consideration of the information will enhance both the credibility and usefulness of the results.

- Keep the body of the report or the bulk of the presentation simple: Reduce complex data to understandable form, use graphic illustrations where appropriate. Evaluation results must be presented so that the most essential data are available, understandable, and useful. Too complex a format or over-reliance on narrative may detract from evaluation results and analysis. Organize the presentation or report for multiple uses. Use headings and subheadings to help the audience identify useful information quickly.

Limit the use of technical jargon. Prevent misinterpretation or misuse by considering how the data will look if lifted from the context of the presentation or report. Use simple graphics to illustrate results and call attention to key findings. Use footnotes and make technical data available in handouts or appendices so that the body of the presentation or report is as uncomplicated as possible.

- Provide an executive summary or abstract:

Evaluators should provide an overview. The "quick take" should be supplemented by more detailed discussion later in the report.

- Make survey instruments and other data collection tools available: Materials can be made available as handouts, at an oral presentation or face-to-face meeting, or as appendices to a written report. The availability of such material enhances both understanding and credibility. It also allows other ADR program evaluators to learn from the experiences of their peers.

- Note limitations on the interpretation and use of evaluation data, where appropriate: Limitations on the interpretation of the data, such as those that might relate to the ability to study results, should be communicated to the audience. Evaluators need to exercise caution in expressing their own views and conclusions. Where conclusions are not an objective reflection of the data, they need to be labeled appropriately; *i.e.*, as the views of the evaluators and not necessarily of officials responsible for the program.

- Expect the need for follow-up; be flexible and responsive:

Have extra copies of reports and presentation handouts available. Keep materials accessible. Provide addresses and telephone numbers for follow-up discussion or questions. Be available for consultation. Stay abreast of how results are being used; provide clarification or added direction in the case of misinterpretation or misuse. Prepare additional materials as needed. Tailor subsequent releases to customer needs.



*B. Who Is Responsible for Making Decisions Regarding the Dissemination of Evaluation Results?*

It is important to think about dissemination of the results at two points: early in the planning process, and again as results become available. Decisions about dissemination may be made solely by the evaluator, solely by program officials or other entity that has requested the evaluation, or, more typically, cooperatively. Such decisions may be circumscribed by contract or agreement, or may be discussed and resolved informally by evaluators and decisionmakers.

*C. When Should Evaluation Results Be Made Available?*

Decisionmakers need to consider the implications of releasing evaluation results at different times. For example, if you want publicity for the results, select slower news days. The timing of data release may be defined by contract or agreement, or may otherwise be discussed and resolved by evaluators and decisionmakers. Releasing preliminary data before all data are collected or analyzed may be risky.

*D. How Widely Will Evaluation Results Be Disseminated?*

Evaluation results may be disseminated widely or narrowly. Cost, convenience, and level of interest are likely to play a role. It is rare that either the evaluator or program officials will have complete control over dissemination of the results.

*E. How Will Evaluation Results Be Disclosed Initially?*

Evaluation results can be initially disclosed in different ways, with more or less fanfare. They may be made available to the selected audiences by memorandum, by press release, by press conference, etc. Typically, such decisions will be made at the executive level, by those who have the authority to make the disclosure.

**Evaluation Checklist**

✔ Is your ADR program ongoing or in the formative stage?

✔ What are your goals and objectives for your ADR program evaluation?

✔ How will you pay for your ADR program evaluation?

✔ Who will do the evaluation?

✔ Who is your audience?

✔ What is your evaluation design strategy?

✔ What are your measures of success?

✔ What do you need to know about your program effectiveness (impact)?

✔ What do you need to know about your program structure and administration?

✔ How and when will you disseminate your evaluation results?

**Resources**


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This document was written by Lee Scharf, ADR Specialist at the Environmental Protection Agency, and draws from the work of Cathy Costantino and Christine Sickles-Merchant as well as that of the Administrative Conference of the United States. See the Resources section for cites.

[FR Doc. 00–25397 Filed 10–3–00; 8:45 am]
BILLING CODE 4410–AR–U

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

**[DEA # 207P]**

### Controlled Substances: Proposed Aggregate Production Quotas for 2001

**AGENCY:** Drug Enforcement Administration (DEA), Justice.

**ACTION:** Notice of proposed year 2001 aggregate production quotas.

**SUMMARY:** This notice proposes initial year 2001 aggregate production quotas for controlled substances in Schedules I and II of the Controlled Substances Act (CSA).

**DATES:** Comments or objections must be received on or before November 3, 2000.

**ADDRESSES:** Send comments or objections to the Deputy Administrator, Drug Enforcement Administration, Washington, D.C. 20537, Attn.: DEA Federal Register Representative (CCR).

**FOR FURTHER INFORMATION CONTACT:** Frank L. Sapienza, Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, D.C. 20537, Telephone: (202) 307–7183.

**SUPPLEMENTARY INFORMATION:** Section 306 of the CSA (21 U.S.C. 826) requires that the Attorney General establish aggregate production quotes for each basic class of controlled substance listed in Schedules I and II. This responsibility has been delegated to the Administrator of the DEA by Section 0.100 of Title 28 of the Code of Federal Regulations. The Administrator, in turn, has redelegated this function to the Deputy Administrator of the DEA pursuant to Section 0.104 of Title 28 of the Code of Federal Regulations.

The proposed year 2001 aggregate production quotas represent those quantities of controlled substances that may be produced in the United States in 2001 to provide adequate supplies of each substance for: The estimated medical, scientific, research, and industrial needs of the United States; lawful export requirements; and the establishment and maintenance of reserve stocks. These quotas do not include imports of controlled substances for use in industrial processes.

In determining the proposed year 2001 aggregate production quotas, the Deputy Administrator considered the following factors: total actual 1999 and estimated 2000 and 2001 net disposals of each substance by all manufacturers; estimates of 2000 year-end inventories of each substance and of any substance manufactured from it and trends in accumulation of such inventories; product development requirements of both bulk and finished dosage form manufacturers; projected demand as indicated by procurement quota applications filed pursuant to Section 1303.12 of Title 21 of the code of Federal Regulations; and other pertinent information.

Pursuant to Section 1303 of Title 21 of the Code of Federal Regulations, the Deputy Administrator of the DEA will, in early 2001, adjust aggregate production quotas and individual manufacturing quotas allocated for the year based upon 2000 year-end inventory and actual 2000 disposition data supplied by quota recipients for each basic class of Schedules I or II controlled substance.

Therefore, under the authority vested in the Attorney General by Section 306 of the CSA of 1970 (21 U.S.C. 826), delegated to the Administrator of the DEA by Section 0.100 of Title 28 of the Code of Federal Regulations, and redelegated to the Deputy Administrator pursuant to Section 0.104 of Title 28 of the Code of Federal Regulations, and the Deputy Administrator hereby proposes that the year 2001 aggregate production quotas for the following controlled substances, expressed in grams of anhydrous acid or base, be established as follows:

| Basic class | Proposed year 2001 quotas |
|---|---|
| Schedule I: | |
| 2,5-Dimethoxyamphetamine | 15,501,000 |
| 2,5-Dimethoxy-4-ethylamphetamine (DOET) | 2 |
| 3-Methylfentanyl | 14 |
| 3-Methylthiofentanyl | 2 |
| 3,4-Methylenedioxyamphetamine (MDA) | 25 |
| 3,4-Methylenedioxy-N-ethylamphetamine (MDEA) | 30 |
| 3,4-Methylenedioxymethamphetamine (MDMA) | 10 |
| 3,4,5-Trimethoxyamphetamine | 2 |
| 4-Bromo-2,5-Dimethoxyamphetamine (DOB) | 2 |
| 4-Bromo-2,5-Dimethoxyphenethylamine (2–CB) | 2 |
| 4-Methoxyamphetamine | 201,000 |
| 4-Methylaminorex | 2 |
| 4-Methyl-2,5-Dimethoxyamphetamine (DOM) | 2 |
| 5-Methoxy-3,4-Methylenedioxyamphetamine | 2 |
| Acetyl-alpha-methylfentanyl | 2 |
| Acetyldihydrocodeine | 2 |
| Acetylmethadol | 2 |
| Allylprodine | 2 |
| Alphacetylmethadol | 7 |
| Alpha-ethyltryptamine | 2 |
| Alphameprodine | 2 |
| Alphamethadol | 2 |
| Alpha-methylfentanyl | 2 |
| Alpha-methylthiofentanyl | 2 |
| Aminorex | 7 |
| Benzylmorphine | 2 |
| Betacetylmethadol | 2 |
| Beta-hydroxy-3-methylfentanyl | 2 |
| Beta-hydroxyfentanyl | 2 |
| Betameprodine | 2 |
| Betamethadol | 2 |
| Betaprodine | 2 |
| Bufotenine | 2 |
| Cathinone | 9 |
| Codeine-N-oxide | 2 |
| Diethyltryptamine | 2 |
| Difenoxin | 9,000 |
| Dihydromorphine | 634,000 |
| Dimethyltryptamine | 2 |
| Gamma-hydroxybutyric acid | 15,000,000 |
| Heroin | 2 |
| Hydroxypethidine | 2 |
| Lysergic acid diethylamide (LSD) | 37 |
| Marihuana | 350,000 |
| Mescaline | 7 |
| Methaqualone | 19 |
| Methcathinone | 11 |
| Morphine-N-oxide | 2 |
| N,N-Dimethylamphetamine | 7 |
| N-Ethyl-I-Phenylcyclohexylamine (PCE) | 5 |
| N-Ethylamphetamine | 7 |
| N-Hydroxy-3,4-Methylenedioxyamphetamine | 2 |
| Noracymethadol | 2 |
| Norlevorphanol | 2 |
| Normethadone | 7 |
| Normorphine | 7 |
| Para-fluorofentanyl | 2 |
| Pholcodine | 2 |
| Porpiram | 415,000 |
| Psilocybin | 2 |
| Psilocyn | 2 |
| Tetrahydrocannabinols | 131,000 |
| Thiofentanyl | 2 |
| Trimeperidine | 2 |
| Schedule II: | |
| 1-Phenylcyclohexylamine | 12 |
| 1-Piperidinocyclohexanecarbonitrile (PCC) | 10 |
| Alfentanil | 3,000 |
| Alphaprodine | 2 |
| Amobarbital | 12 |
| Amphetamine | 10,958,000 |
| Cocaine | 251,000 |
| Codeine (for sale) | 43,248,000 |
| Codeine (for conversion) | 59,051,000 |
| Dextropropoxyphene | 134,401,000 |
| Dihydrocodeine | 272,000 |
| Diphenoxylate | 401,000 |
| Ecgonine | 51,000 |
| Ethylmorphine | 12 |
| Fentanyl | 440,000 |
| Glutethimide | 2 |
| Hydrocodone (for sale) | 21,417,000 |
| Hydrocodone (for conversion) | 26,540,000 |
| Hydromorphone | 1,409,000 |
| Isomethadone | 12 |
| Levo-alphacetylmethadol (LAAM) | 41,000 |
| Levomethorphan | 2 |
| Levorphanol | 15,000 |
| Meperidine | 10,168,000 |
| Methadone (for sale) | 8,347,000 |
| Methadone (for conversion) | 60,000 |
| Methadone Intermediate | 9,503,000 |
| Methamphetamine | 2,226,000 |
| 850,000 grams of levo-desoxyephedrine for use in a non-controlled, non-prescription product; 1,325,000 grams for methamphetamine for conversion to a Schedule III product; and 51,000 grams for methamphetamine (for sale). | |
| Methylphenidate | 14,957,000 |
| Morphine (for sale) | 14,706,000 |
| Morphine (for conversion) | 117,675,000 |
| Nabilone | 2 |
| Noroxymorphone (for sale) | 25,000 |
| Noroxymorphone (for conversion) | 3,180,000 |
| Opium | 570,000 |
| Oxycodone (for sale) | 46,680,000 |
| Oxycodone (for conversion) | 449,000 |
| Oxymorphone | 264,000 |
| Pentobarbital | 22,037,000 |
| Phencyclidine | 40 |
| Phenmetrazine | 2 |
| Phenylacetone | 10 |
| Secobarbital | 12 |
| Sufentanil | 1,000 |
| Thebaine | 65,596,000 |

The Deputy Administrator further proposes that aggregate production quotas for all other Schedules I and II controlled substances included in Sections 1308.11 and 1308.12 of Title 21 of the Code of Federal Regulations be established at zero.

All interested persons are invited to submit their comments and objections in writing regarding this proposal. A person may object to or comment on the proposal relating to any of the above-mentioned substances without filing comments or objections regarding the others. If a person believes that one or more or these issues warrant a hearing, the individual should so state and summarize the reasons for this belief.

In the event that comments or objections to this proposal raise one or more issues which the Deputy Administrator finds warrant a hearing, the Deputy Administrator shall order a public hearing by notice in the **Federal Register**, summarizing the issues to be heard and setting the time for the hearing.

The Office of Management and Budget has determined that notices of aggregate production quotas are not subject to centralized review under Executive Order 12866. This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and it has been determined that this matter does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The Deputy Administrator hereby certifies that this action will have no significant impact upon small entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The establishment of aggregate production quotas for Schedules I and II controlled substances is mandated by law and by international treaty obligations. The quotas are necessary to provide for the estimated medical, scientific, research and industrial needs of the United States, for export requirements and the establishment and maintenance of reserve stocks. While aggregate production quotas are of primary importance to large manufacturers, their impact upon small entities is neither negative nor beneficial. Accordingly, the Deputy Administrator has determined that this action does not require a regulatory flexibility analysis.

Dated: September 27, 2000.

**Julio F. Mercado,**

*Deputy Administrator.*

[FR Doc. 00–25421 Filed 10–3–00; 8:45 am]
BILLING CODE 4410–09–M



## NATIONAL SCIENCE FOUNDATION

### Committee Management; Renewal

The NSF management official having responsibility for the U.S. National Assessment Synthesis Team (#5219) has determined that renewing through October 31, 2000, is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF), by 42 USC 1861 et seq. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Authority for this Committee will expire on October 31, 2000. For more information, please contact Karen York, NSF, at (703) 292–4387.

Dated: September 28, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–25400 Filed 10–3–00; 8:45 am]
BILLING CODE 7555–01–M

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–213]**

### Connecticut Yankee Atomic Power Company, et al., Haddam Neck Plant; Notice of Public Meeting To Discuss the Haddam Neck License Termination Plan

The Nuclear Regulatory Commission (NRC) is in receipt of and has made available for public inspection and comment the License Termination Plan (LTP) for the Haddam Neck Plant (HNP) located in Haddam, Connecticut. NRC's receipt of the HNP LTP and the LTP's availability for comment was noticed in the **Federal Register** on August 23, 2000 (65 FR 51345). The subject of this notice is to announce that NRC staff will conduct a public meeting to discuss the HNP LTP on Tuesday, October 17, 2000, at 7:00 p.m. at Haddam—Killingworth High School, Higganum, Connecticut.

Connecticut Yankee Atomic Power Company (CYAPC, or the licensee) announced permanent cessation of power operations of HNP on December 5, 1996. In accordance with NRC regulations, CYAPC submitted a Post-Shutdown Decommissioning Activities Report (PSDAR) for HNP to the NRC on August 22, 1997. The facility is undergoing active decontamination and dismantlement.

In accordance with 10 CFR 50.82(a)(9), all power reactor licensees must submit an application for termination of their license. The application for termination of license

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must be accompanied or preceded by an LTP to be submitted for NRC approval. If found acceptable by the NRC staff, the LTP is approved by license amendment, subject to such conditions and limitations as the NRC staff deems appropriate and necessary. CYAPC submitted the proposed LTP for HNP by application dated July 7, 2000. In accordance with 10 CFR 20.1405 and 10 CFR 50.82(a)(9)(iii), the NRC provided notice to individuals in the vicinity of the site that the NRC was in receipt of the HNP LTP and would accept comments from affected parties (65 FR 51345). In accordance with 10 CFR 50.82(a)(9)(iii), the NRC is hereby providing notice that NRC staff will conduct a meeting to discuss the HNP LTP.

The HNP LTP (ADAMS Accession Number ML003735143) may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and is accessible electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Public Electronic Reading Room). The LTP may also be viewed at the CYAPC Web site at *www.connyankee.com*.

For further information, contact: Mr. Louis L. Wheeler by mail, Mail Stop O–7–C2, Project Directorate IV & Decommissioning, Division of Licensing Project Management, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001; telephone 301–415–1444; or e-mail dxw@nrc.gov.

Dated at Rockville, Maryland, this 28th day of September 2000.

For the Nuclear Regulatory Commission.

**Michael T. Masnik,**

*Chief, Decommissioning Section, Project Directorate IV and Decommissioning, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 00–25462 Filed 10–3–00; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–368]**

### Entergy Operations, Inc.; Arkansas Nuclear One, Unit 2 Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from 10 CFR Part 50, Appendix J, for Facility Operating License No. NPF–6, issued to Entergy Operations, Inc. (the licensee), for operation of Arkansas Nuclear One, Unit 2 (ANO–2), located in Pope County, Arkansas.

**Environmental Assessment**

*Identification of the Proposed Action*

The proposed action would provide a one-time exemption to Entergy Operations, Inc. from the requirements of Title 10 of the Code of Federal Regulations (10 CFR) Part 50, Appendix J, "Primary Reactor Containment Leakage Testing For Water-Cooled Power Reactors," which requires that licensees of all power reactors conduct integrated leakage rate tests (ILRT) under conditions representing design basis loss-of-coolant accident containment peak pressure. The licensee requires an exemption in order to conduct the ILRT at the same pressure that is used for the structural integrity test (SIT).

The proposed action is in accordance with the licensee's application for exemption dated June 29, 2000.

*The Need for the Proposed Action*

The ANO–2 steam generators (SGs) are scheduled for replacement during the fall of 2000. The replacement SGs (RSGs) will require that an access opening be cut in the containment building structure. Upon closure of the structure, an ILRT will be required to test for primary containment leakage integrity.

The ANO–2 containment building was originally designed and tested for an internal pressure of 54 psig. The ANO–2 containment building has recently been reevaluated, to address the containment post-accident response resulting from the RSGs, for an increase in accident pressure to 58 psig with a design pressure of 59 psig, and shown to be acceptable as discussed in a letter to the NRC dated November 3, 1999, as revised by a letter dated June 29, 2000. As a result of this increase, an SIT will be performed to evaluate the ANO–2 containment building for the change in containment design pressure. The purpose of the SIT is to verify that the containment building structure can safely carry design loads and that the structural behavior is similar to that predicted by analysis. The post-RSG SIT will be performed at 68 psig (1.15 times the revised design pressure). The licensee would like to also perform the ILRT concurrently with the post-RSG SIT, at the SIT pressure of 68 psig, in order to recover approximately 30 hours of projected plant outage time. However, Appendix J requires that the ILRT be conducted at a pressure representing the design basis loss-of-coolant accident containment peak pressure, which is 58 psig. Hence, the need for the proposed exemption.

*Environmental Impacts of the Proposed Action*

The NRC has completed its evaluation of the proposed action and concludes that the proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts; the proposed action does not involve any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

*Alternatives to the Proposed Action*

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

*Alternative Use of Resources*

This action does not involve the use of any resources not previously considered in the "Final Environmental Statement Related to the Operation of Arkansas Nuclear One, Unit 2," dated June 1977.

*Agencies and Persons Consulted*

In accordance with its stated policy, on September 7, 2000, the staff consulted with the Arkansas State official, Bernie Bevill of the Arkansas Department of Health, regarding the environmental impact of the proposed action. The State official had no comments.

**Finding of No Significant Impact**

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated June 29, 2000, which may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, *http:www.nrcgov* (the Electronic Reading Room).

Dated at Rockville, Maryland, this 28th day of September 2000.

For the Nuclear Regulatory Commission.

**Mohan C. Thadani,**

*Acting Chief, Section 1, Project Directorate IV–1 & Decommissioning Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 00–25463 Filed 10–3–00; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Reactor Safeguards; Meeting of the Ad Hoc Subcommittee; Revised

The ACRS Ad Hoc Subcommittee meeting scheduled for October 10–13, 2000 has been extended to Saturday, October 14, 2000, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland, 8:30 a.m. until 12 Noon to discuss proposed comments and recommendations on the technical merits of the Differing Professional Opinion Issues associated with steam generator tube integrity. Notice of this meeting was previously published in the **Federal Register** on Wednesday, September 20, 2000 (65 FR 56945). All other items pertaining to this meeting remains the same as previously published.

For further information contact either Mr. Sam Duraiswamy (telephone 301–415–7364) or Ms. Undine Shoop (telephone 301–415–8086) between 7:30 a.m. and 4:15 p.m. (EDT).

Dated: September 28, 2000.

**James E. Lyons,**

*Associate Director for Technical Support, ACRS/ACNW.*

[FR Doc. 00–25459 Filed 10–3–00; 8:45 am]

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## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Reactor Safeguards; Meeting of the Subcommittee on Plant License Renewal

The ACRS Subcommittee on Plant License Renewal will hold a meeting on October 19–20, 2000, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

*Thursday, October 19, 2000—8 a.m. until the conclusion of business.*

The Subcommittee will review drafts of the Standard Review Plan for license renewal and the Generic Aging Lessons Learned (GALL) Report sections 2, 3, and 4.

*Friday, October 20, 2000—8 a.m. until the conclusion of business.*

The Subcommittee will review drafts of GALL Report sections 5 through 8, the associated Regulatory Guide, and Nuclear Energy Institute (NEI) 95–10, "Industry Guideline For Implementing The Requirements of 10 CFR Part 54—The License Renewal Rule."

The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, the Nuclear Energy Institute, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor, can be obtained by contacting the cognizant ACRS staff engineer, Mr. Noel F. Dudley (telephone 301/415–6888) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: September 28, 2000

**James E. Lyons,**

*Associate Director for Technicol Support, ACRS/ACNW.*

[FR Doc. 00–25460 Filed 10–3–00; 8:45 am]

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## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Reactor Safeguards; Subcommittee Meeting on Reactor Fuels; Notice of Meeting

The ACRS Subcommittee on Reactor Fuels will hold a meeting on October 18, 2000, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

*Wednesday, October 18, 2000—8:30 a.m. until the conclusion of business.*

The Subcommittee will discuss the status of the staff's effort regarding the draft report of a technical study of Spent Fuel Pool Accident Risk at Decommissioning Nuclear Power Plants, and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be

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present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Dr. Medhat El-Zeftawy (telephone 301/415–6889) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes in the proposed agenda, etc., that may have occurred.

Date: September 27, 2000.

**James E. Lyons,**

*Associate Director for Technical Support ACRS/ACNW.*

[FR Doc. 00–25461 Filed 10–3–00; 8:45 am]

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## NUCLEAR REGULATORY COMMISSION

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Nuclear Regulatory Commission.

**DATES:** Weeks of October 2, 9, 16, 23, 30, and November 6, 2000.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Public and Closed.

**MATTERS TO BE CONSIDERED:**

**Week of October 2**

*Friday, October 6*

9:25 a.m.
Affirmation Session (Public Meeting) (If needed)

9:30 a.m.
Meeting with ACRS (Public Meeting) (Contact: John Larkins, 301–415–7360)

This meeting will be webcast live at the Web address—

*www.nrc.gov/live.html*

**Week of October 9—Tentative**

There are no meetings scheduled for the Week of October 9.

**Week of October 16—Tentative**

*Tuesday, October 17*

9:25 a.m.
Affirmation Session (Public Meeting) (If needed)

**Week of October 23—Tentative**

*Monday, October 23*

1:55 p.m.
Affirmation Session (Public Meeting) (If needed)

**Week of October 30—Tentative**

There are no meetings scheduled for the week of October 30.

**Week of November 6—Tentative**

There are no meetings scheduled for the Week of November 6.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 415–1292. Contact Person for More Information: Bill Hill (301) 415–1661.

The NRC Commission Meeting Schedule can be found on the Internet at:

http://www.nrc.gov/SECY/smj/schedule.htm

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: September 29, 2000.

**William M. Hill, Jr.,**

*SECY Tracking Officer, Office of the Secretary.*

[FR Doc. 00–25564 Filed 10–2–00; 11:36 am]

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## NUCLEAR REGULATORY COMMISSION

### Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations; Biweekly Notice

### I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from September 11, 2000, through September 22, 2000. The last biweekly notice was published on September 20, 2000 (65 FR 56946, as corrected at 65 FR 57484 and 65 FR 58113).

### Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By November 3, 2000, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch, or may be delivered to the NRC's Public Document Room, One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

*Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona*

*Date of amendments request:* June 8, 2000.

*Description of amendments request:* The licensee proposes to amend Technical Specification (TS) 5.6.5, "Core Operating Limits Report (COLR)," to add a methodology using the

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CASMO–4 and SIMULATE–3 codes to the list of analytical methods used to determine core operating limits contained in TS 5.6.5.b. The change would allow the use of the CASMO–4 and SIMULATE–3 methodology to perform nuclear design calculations.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Standard 1—Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Arizona Public Service Company (APS) intends to replace the DIT/ROCS/MC methodology with CASMO–4/SIMULATE–3 code package. The proposed amendment would add methodology using CASMO–4 and SIMULATE–3 codes to the list of analytical methods used to determine core operating limits contained in Technical Specification 5.6.5.b. This will allow the use of the CASMO–4 and SIMULATE–3 methodology to perform all steady-state PWR [pressurized-water reactor] core physics analyses.

The probability of occurrence of an accident previously evaluated will not be increased by the proposed change in the particular codes used for physics calculations for nuclear design analysis. The results of nuclear design analyses are used as inputs to the analysis of accidents that are evaluated in the Updated Final Safety Analysis Report (UFSAR). These inputs do not alter the physical characteristics or modes of operation of any system, structure, or component involved in the initiation of an accident. Thus, there is no significant increase in the probability of an accident previously evaluated as a result of this change.

The consequences of an accident evaluated in the UFSAR are affected by the value of inputs to the transient safety analysis. An extensive benchmark of CASMO–4/SIMULATE–3 predictions with measured data using a variety of fuel designs and operating conditions in power reactors and critical experiments, was performed. The accuracy of CASMO–4/SIMULATE–3 is similar to, and sometimes better than, the accuracy of DIT/ROCS/MC. Furthermore, there is always the potential for the value of the nuclear design parameters to change solely as a result of the new reload fuel core loading pattern. Regardless of the source of a change, an assessment is always made of changes to the nuclear design parameters with respect to their effects on the consequences of accidents previously evaluated in the UFSAR. Refueling is an anticipated activity which is described in the UFSAR. If increased consequences are anticipated, compensatory actions are implemented to neutralize any expected increase in consequences. These compensatory actions include, but are not limited to, crediting any existing margins in the analysis or redefining the operating envelope to avoid increased consequences. Thus, the nuclear design parameters are intermediate results and by themselves will not result in an increase in the consequence of an accident evaluated in the UFSAR.

Therefore, the replacement of the DIT/ROCS/MC codes with the CASMO–4/SIMULATE–3 code package, which will perform the same functions as the DIT/ROCS/MC codes with similar accuracy, does not significantly increase the consequences of an accident previously evaluated.

Standard 2—Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Arizona Public Service Company (APS) intends to replace the DIT/ROCS/MC methodology with CASMO–4/SIMULATE–3 code package. The proposed amendment would add methodology using CASMO–4 and SIMULATE–3 codes to the list of analytical methods used to determine core operating limits contained in Technical Specification 5.6.5.b.

The possibility for a new or different kind of accident evaluated previously in the UFSAR will not be created by the proposed change to the particular codes used for physics calculations for nuclear design analyses. The change involves replacing the NRC approved ABB Combustion Engineering Nuclear Power (ABB/CE) DIT and ROCS/MC codes, with the Studsvik CASMO–4 and SIMULATE–3 codes. The results of nuclear design analyses are used as inputs to the analysis of accidents that are evaluated in the UFSAR. These inputs do not alter the physical characteristics or modes of operation of any system, structure or component involved in the initiation of an accident.

Therefore, the replacement of the DIT/ROCS/MC codes with the CASMO–4/SIMULATE–3 code package, which will perform the same functions as the DIT/ROCS/MC codes with similar accuracy, does not increase the possibility of a new or different kind of accident from any accident previously evaluated.

Standard 3—Does the proposed change involve a significant reduction in a margin of safety?

No. The proposed change does not involve a significant reduction in a margin of safety.

The margin of safety as defined in the basis for any technical specification will not be reduced nor increased by the proposed change to the particular codes used for physics calculations for nuclear design analyses. The change involves replacing the NRC approved ABB/CE DIT and ROCS/MC codes, with the Studsvik CASMO–4 and SIMULATE–3 codes. Extensive benchmarking of the CASMO–4/SIMULATE–3 computer codes has demonstrated that the values of those parameters used in the safety analysis are not significantly changed relative to the values obtained using the DIT/ROCS/MC computer codes. For any changes in the calculated values that do occur, the application of appropriate biases and uncertainties ensures that the current margin of safety is maintained. Specifically, use of these code specific biases and uncertainties in safety evaluations continues to provide the same statistical assurance that the values of the nuclear parameters used in the safety analysis are conservative with respect to the actual values on at least a 95/95 probability/confidence basis.

**The NRC staff has reviewed the licensee's analysis and, based on that review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.**

*Attorney for licensee:* Nancy C. Loftin, Esq., Corporate Secretary and Counsel, Arizona Public Service Company, P.O. Box 53999, Mail Station 9068, Phoenix, Arizona 85072–3999

*NRC Section Chief:* Stephen Dembek.

*Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona*

*Date of amendments request:* June 16, 2000.

*Description of amendments request:* The licensee proposes to amend Technical Specification (TS) Table 3.3.10–1, "Post Accident Monitoring Instrumentation," to add the High Pressure Safety Injection cold leg flow and hot leg flow instrumentation to this table. This change is required because this instrumentation meets the criteria for a Regulatory Guide 1.97, "Instrumentation for Light-Water-Cooled Nuclear Power Plants To Assess Plant and Environs Conditions During and Following an Accident," Revision 2, Type A, Category 1 variable.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Standard 1—Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed change to TS Table 3.3.10–1, by adding the High Pressure Safety Injection (HPSI) hot and cold leg flow instrumentation, does not involve a significant increase in the probability or consequences of an accident previously evaluated because it does not represent a change to design configuration or operation of the plant. The amendment does not affect



the operability or availability of the HPSI system or any other safety related equipment. Additionally, there are no effects on the failure modes associated with the probability of a failure of a system important to safety.

Standard 2—Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated because the change does not impact the response or operation of the plant. The availability and operability of the plant equipment is unchanged, as the design requirements have not changed.

The proposed change revises only the Regulatory Guide (RG) 1.97, Revision 2, classification of the HPSI hot leg and cold leg flow indication loops. Regardless of RG classification the instruments remain seismically, electrically, and otherwise qualified for the application. Hence, the revised classification will not subject these components to new modes of operation that could result in a new failure mode, thus initiating an accident of a different type.

Standard 3—Does the proposed change involve a significant reduction in a margin of safety?

No. This proposed amendment does not involve a significant reduction in the margin of safety because neither of the following PVNGS Technical Specification (TS) Bases (B 3.5.3 ECCS [emergency core cooling system]—Operating, or 3.3.10 Post Accident Monitoring [PAM] Instrumentation) is changed by the proposed amendment.

TS Bases B 3.5.3 ECCS—Operating—states that the function of the ECCS is to provide core cooling and negative reactivity to ensure that the reactor core is protected after any of the following accidents:

a. Loss of Coolant Accident (LOCA);

b. Control Element Assembly (CEA) ejection accident;

c. Loss of secondary coolant accident, including uncontrolled steam release or loss of feedwater; and

d. Steam Generator Tube Rupture (SGTR).

Changing the RG 1.97 Type and Category of these instruments does not affect the ability of the ECCS to provide core cooling and negative reactivity during these accidents.

TS Bases B 3.3.10—Post Accident Monitoring (PAM) Instrumentation—states that the primary purpose of PAM instrumentation is to display plant variables that provide information required by the control room operators during accident situations. This information provides the necessary support for the operator to take the manual actions, for which no automatic control is provided, that are required for safety systems to accomplish their safety functions for Design Basis Events.

The OPERABILITY of PAM instrumentation ensures that there is sufficient information available on selected plant parameters to monitor and assess plant status and behavior following an accident.

These Type A variables are required to be included in this LCO [Limiting Condition for Operation] because they provide the primary information required to permit the control room operator to take specific manually controlled actions, for which no automatic control is provided, that are required for safety systems to accomplish their safety functions for Design Basis Accidents (DBAs). The addition of these instruments supports this TS Bases. Therefore, the proposed change does not involve a significant reduction in the margin of safety.

**The NRC staff has reviewed the licensee's analysis and, based on that review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.**

*Attorney for licensee:* Nancy C. Loftin, Esq., Corporate Secretary and Counsel, Arizona Public Service Company, P.O. Box 53999, Mail Station 9068, Phoenix, Arizona 85072–3999.

*NRC Section Chief:* Stephen Dembek.

*Consolidated Edison Company of New York, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York*

*Date of amendment request:* May 5, 1999, as supplemented on December 22, 1999, and September 18, 2000.

*Description of amendment request:* **The proposed amendment would revise Technical Specification (TS) 3.5, "Instrumentation Systems," for the reactor protection system and engineered safety features actuation system instrumentation. Specifically, the proposed amendment would (1) change the allowed outage times for the instrumentation and the analog channel test bypass time and (2) allow on-line testing and maintenance of instrumentation. The proposed amendment also includes several editorial changes to TS Tables 3.5–2 and 3.5–3. The proposed amendment was originally noticed in the Federal Register on September 8, 1999 (64 FR 48861). It is now being noticed to correct errors made in the original notice description of amendment request.**

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The reactor protection and engineered safety features functions are not initiators of any design basis accident or event and therefore do not increase the probability of any accident previously evaluated. The proposed changes to the AOTs [allowed outage times], bypass times, and allowing on-line testing and maintenance have an insignificant impact on plant safety based on the calculated CDF [core damage frequency] increase being less than 1.0E–06. Therefore, the proposed changes do not result in a significant increase in the consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not result in a change in the manner in which the RPS [reactor protection system] and ESFAS [engineered safety features actuation system] provide plant protection. No change is being made which alters the functioning of the RPS and ESFAS. Rather, the likelihood or probability of the RPS or ESF functioning properly is affected as described above. Therefore, the proposed changes do not create the possibility of a new or different kind of accident nor involve a reduction in the margin of safety as defined in the Safety Analysis Report.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes do not alter the manner in which safety limits, limiting safety system setpoints or limiting conditions for operations are determined. The impact of increased AOTs, testing times, and allowing on-line testing and maintenance are expected to result in an overall improvement in safety because:

The longer AOTs for the master relays, logic cabinets, and analog channels will promote improved maintenance practices that will provide improved component performance, improved availability of the protection system, and a reduced number of spurious reactor trips and spurious actuation of safety equipment.

The longer AOTs and bypass times for the analog channels will provide additional time before being required to place the channel in trip. With the channel in trip, the logic required to cause a reactor trip or a safety system actuation is reduced to 1 of 2 (for 2 of 3 logic) and to 1 of 3 (for 2 of 4 logic). With the reduced logic requirement, the potential for a spurious actuation is increased. Leaving the channel in the bypass state for additional time does reduce the availability of signals to initiate component actuation for event mitigation when required, but as shown in this analysis, the impact on plant safety is small due to the availability of other signals or operator action to trip the reactor or cause component actuation.

The longer allowed outage times will provide plant operators additional flexibility in operating the plant. There will be additional time available before an action needs to be taken to shut down the plant or place a channel in the tripped state. This additional flexibility will facilitate prioritizing component repairs.

**The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff**

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proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Brent L. Brandenburg, Esquire, 4 Irving Place, New York, New York 10003.

*NRC Section Chief:* Marsha Gamberoni.

*Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina*

*Date of amendment request:* September 12, 2000.

*Description of amendment request:* The proposed amendments would revise the Technical Specifications 5.5.10, Item e.6, Steam Generator Tube Surveillance Program, by (1) removing the restriction on the lower tube sheet area rolling, (2) removing the limitation of only one reroll per steam generator tube, (3) eliminating the requirement that the reroll be one inch in depth, and (4) changing the revision number reference for Topical Report BAW–2303P, August 2000, "OTSG Repair Roll Qualification Report," from Revision 3 to Revision 4.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Duke Energy Corporation (Duke) has made the determination that this amendment request involves a No Significant Hazards Consideration by applying the standards established by NRC regulations in 10CFR50.92. This ensures operation of the facility in accordance with the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed change to the Technical Specifications incorporates Revision 4 of Topical Report BAW–2303P, OTSG Repair Roll Qualification Report. This document is also being submitted for NRC review and approval. This revision addresses, and is consistent with, the conclusions of all applicable Oconee licensing basis analyses and ensures that previously evaluated accidents are bounding. All the established acceptance criteria for the accidents analyzed in the Oconee licensing basis continue to be met. Therefore, no existing accident probabilities or consequences will be impacted.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated?

No. Revision 4 of BAW–2303P addresses limiting events for steam generator tube reroll repairs. These events include Main Steam Line Break, the Small Break Loss of Coolant Accident, and other transients on B&W Once-Through Steam Generators. For Oconee, the Main Steam Line Break is the limiting event. This revised topical report confirms the acceptability of the reroll repair techniques previously used at Oconee. As a result, no new failure modes are being created. BAW–2303P, as submitted for NRC review and approval, does not create the possibility of a new or different kind of accident.

3. Involve a significant reduction in a margin of safety?

No. Margin of safety is related to the confidence in the ability of the fission product barriers to perform their design functions during and following an accident situation. These barriers include the fuel cladding, the reactor coolant system, and the containment system. As part of the reactor coolant system pressure boundary, the steam generator tubes are unique in that they are also relied upon as a heat transfer surface between the primary and secondary systems, such that residual heat can be removed from the primary system. In addition, the steam generator tubes also isolate the radioactive fission products in the primary coolant from the secondary system. Finally, the steam generator tubes may be relied upon to maintain their integrity under conditions resulting from core damage severe accidents consistent with the containment objectives of preventing uncontrolled fission product release. The functions of the steam generator tubes will not be significantly affected by the changes proposed in this license amendment request. Implementation of BAW–2303P, Revision 4, as submitted for NRC review and approval, at Oconee will result in assurance that parameters affecting the integrity of the steam generator tubes continue to meet applicable safety analyses and industry codes and standards. Therefore, no safety margin will be significantly reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Anne W. Cottington, Winston and Strawn, 1200 17th Street, NW., Washington, DC 20005.

*NRC Section Chief:* Richard L. Emch, Jr.

*Florida Power and Light Company, et al., Docket Nos. 50–335 and 50–389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida*

*Date of amendment request:* July 26, 2000.

*Description of amendment request:* The amendments would revise the Technical Specifications (TS) Index to delete reference to the Bases since, in accordance with 10 CFR 50.36(a), the Bases are not a part of the TS. Future changes to the TS Bases will be evaluated per 10 CFR 50.59 and made under administrative control and reviews and in accordance with the proposed TS Bases control program as described in TS 5.5.14 of NUREG–1432, Revision 1, "Standard Technical Specifications Combustion Engineering Plants."

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendments are administrative in nature and do not affect assumptions contained in plant safety analyses, the physical design and operation of the plant, nor do they affect Technical Specifications that preserve safety analysis assumptions. The Technical Specification BASES, per 10 CFR 50.36(a), are not part of the Technical Specifications. Changes to the TS BASES will be controlled by a plant procedure under administrative controls and reviews. Proposed changes to the TS BASES will be evaluated in accordance with 10 CFR 50.59 and made under the programmatic controls and requirements of the proposed Technical Specifications (TS) Bases Control Program. Therefore, the proposed changes do not increase the probability or consequences of accidents previously analyzed.

(2) Operation of the facility in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendments are administrative in nature. The proposed amendments will not create the possibility of a new or different kind of accident from any accident previously evaluated since the proposed amendments will not change the physical plant or the modes of plant operation defined in the facility operating license. No new failure mode is introduced due to the administrative change, since the proposed change does not involve the addition or modification of equipment nor does it alter the design or operation of affected plant systems, structures, or components.

(3) Operation of the facility in accordance with the proposed amendments would not involve a significant reduction in a margin of safety.

The operating limits and functional capabilities of the affected systems, structures, and components are unchanged by the proposed amendments. The BASES information, per 10 CFR 50.36(a), is not a part of the Technical Specifications. Changes to the TS BASES will be controlled by a plant procedure under administrative controls and reviews and made under the programmatic controls and requirements of the proposed Technical Specifications (TS) Bases Control Program. Proposed changes to the TS BASES will be evaluated in accordance with 10 CFR 50.59 and the TS BASES will be maintained



in an FPL-controlled document. Therefore, the proposed changes do not reduce any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

*NRC Section Chief:* Richard P. Correia.

*Florida Power Corporation, et al., Docket No. 50–302, Crystal River Nuclear Generating Plant, Unit No. 3, Citrus County, Florida*

*Date of amendment request:* August 31, 2000.

*Description of amendment request:* This amendment would revise Improved Technical Specification (ITS) Table 3.3.18–1, "Remote Shutdown System Instrumentation." The table would be updated to reflect plant modifications and procedure changes regarding placing and maintaining the plant in a safe shutdown condition if the control room becomes inaccessible.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes do not involve a significant hazards consideration. In support of this conclusion, the following analysis is provided:

(1) Does not involve a significant increase in the probability or consequences of an accident previously analyzed.

The instruments listed in Table 3.3.18–1 are used to provide information on selected parameters to the operators that will allow them to place and maintain the plant in a safe shutdown condition in the event the control room becomes inaccessible. The proposed license amendment revises Table 3.3.18–1, Remote Shutdown System Instrumentation, to more accurately reflect the instruments that would be used by the operators to perform abnormal operating procedure AP–990, Shutdown from Outside the Control Room. The proposed license amendment also revises ITS Bases Section B 3.3.18 to add a table that identifies, by equipment tag number, the specific instruments used to satisfy the requirements of ITS 3.3.18 and ITS Table 3.3.18–1. The instruments identified in ITS Table 3.3.18–1 and ITS Bases Table B 3.3.18–1 are not initiators of any design basis accidents. The design functions of the Remote Shutdown System Instrumentation and the initial conditions for accidents that require the Remote Shutdown System will not be effected by the change. Therefore, the change will not increase the probability or consequences of an accident previously evaluated.

(2) Does not create the possibility of a new or different kind of accident from any accident previously analyzed.

The proposed amendment involves no changes to the CR–3 design or to the functions or operation of the Remote Shutdown System. The proposed amendment will ensure that sufficient and appropriate instrumentation is available to allow the operators to place and maintain the plant in a safe shutdown condition in the event the control room becomes inaccessible. The proposed amendment will also add information to Bases Section B 3.3.18 that will ensure timely and accurate operability evaluations and entry into the appropriate Conditions and Required Actions of ITS 3.3.18. The proposed amendment will not create any new plant configurations different from those already analyzed. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Does not involve a significant reduction in the margin of safety.

The proposed amendment revises Table 3.3.18–1, Remote Shutdown System Instrumentation, to more accurately reflect the instruments that would be used by the operators to perform a shutdown from outside the control room. The proposed amendment will revise ITS Bases Section B 3.3.18 to provide the operators with guidance that will assist them in making timely and accurate operability determinations and entries into the appropriate Conditions and Required Actions for ITS 3.3.18. The proposed changes will not reduce the ability of the Remote Shutdown System to monitor and control reactivity, RCS [reactor coolant system] pressure, core heat removal, or RCS inventory. Thus, the proposed amendment will not result in a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* R. Alexander Glenn, General Counsel, Florida Power Corporation, MAC—A5A, P.O. Box 14042, St. Petersburg, Florida 33733–4042.

*NRC Section Chief:* Richard P. Correia.

*Pacific Gas and Electric Company, Docket No. 50–323, Diablo Canyon Nuclear Power Plant, Unit No. 2, San Luis Obispo County, California*

*Date of amendment requests:* June 19, 2000.

*Description of amendment requests:* The proposed license amendment would revise Technical Specifications 5.5.9, "Steam Generator (SG) Tube Surveillance Program," and 5.6.10, "SG Tube Inspection Report," to add new surveillance and reporting requirements associated with a SG tube inspection and repair. The new requirements establish alternate repair criteria for axial primary water stress corrosion cracking at dented tube support plate intersections.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Examination of crack morphology for primary water stress corrosion cracking (PWSCC) at dented intersections has been found to show one or two microcracks well aligned with only a few uncorroded ligaments and little or no other inside diameter axial cracking at the intersection. This relatively simple morphology is conducive to obtaining good accuracy in nondestructive examination (NDE) sizing of these indications. Accordingly, alternate repair criteria (ARC) is established based on crack length and average and maximum depth within the thickness of the tube support plate (TSP).

The application of the ARC requires a Monte Carlo condition monitoring assessment to determine the as-found condition of the tubing. The condition monitoring analysis described in WCAP–15128 Revision 3 is consistent with NRC Generic Letter 95–05 requirements.

The application of the ARC requires a Monte Carlo operational assessment to determine the need for tube repair. The repair bases are obtained by projecting the crack profile to the end of the next operating cycle and determining the burst pressure and leakage for the projected profile using Monte Carlo analysis techniques described in WCAP–15128 Revision 3. The burst pressure and leakage is compared to the requirements in WCAP–15128 Revision 3. Separate analyses are required for the total crack length and the length outside the TSP due to differences in requirements. If the projected end of cycle (EOC) requirements are satisfied, the tube will be left in service.

A steam generator (SG) tube rupture event is one of a number of design basis accidents that are analyzed as part of a plant's licensing basis. A single or multiple tube rupture event would not be expected in a SG in which the ARC has been applied. The ARC requires repair of any indication having a maximum crack depth greater than or equal to 40 percent outside the TSP, thus limiting the potential length of a deep crack outside the TSP at EOC conditions and providing margin

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against burst and leakage for free span indications.

For other design basis accidents such as a main steam line break, main feed line break, control rod ejection, and locked reactor coolant pump motor, the tubes are assumed to retain their structural integrity.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Implementation of the proposed SG tube ARC does not introduce any significant changes to the plant design basis. A single or multiple tube rupture event would not be expected in a SG in which the ARC has been applied. Both condition monitoring and operational assessments are completed as part of the implementation of ARC to determine that structural and leakage margin exists prior to returning SGs to service following inspections. If the condition monitoring requirements are not satisfied for burst or leakage, the causal factors for EOC indications exceeding the expected values will be evaluated. The methodology and application of this ARC will continue to ensure that tube integrity is maintained during all plant conditions consistent with the requirements of Regulatory Guide (RG) 1.121 and Revision 1 of RG 1.83. Therefore, a permanent ARC is justified.

In the analysis of a SG tube rupture event, a bounding primary-to-secondary leakage rate equal to the operational leakage limits in the Technical Specifications (TS), plus the leak rate associated with the double ended rupture of a single tube, is assumed. For other design basis accidents, the tubes are assumed to retain their structural integrity and exhibit primary-to-secondary leakage within the limits assumed in the current licensing basis accident analyses. Steam line break leakage rates from the proposed PWSCC ARC are combined with leakage rates from other approved ARC (*i.e.*, voltage-based ARC and W* ARC). The combined leakage rates will not exceed the limits assumed in the current licensing basis accident analyses.

The 40 percent maximum depth repair limit for free span indications provides a very low likelihood of free span leakage under design basis or severe accident conditions. Leakage from indications inside the TSP is limited by the constraint of the TSP even under severe accident conditions, and leakage behavior in a severe accident would be similar to that found acceptable by the NRC under approved ARC for axial outside diameter stress corrosion cracking (ODSCC) at TSP intersections. Therefore, even under severe accident conditions, it is concluded that application of the proposed ARC for PWSCC at dented TSP locations results in a negligible difference in risk of a tube rupture or large leakage event, when compared to current 40 percent repair limits or previously approved ARC.

DCPP continues to implement a maximum operating condition leak rate limit of 150 gallons per day per SG to preclude the potential for excessive leakage during all plant conditions.

The possibility of a new or different kind of accident from any previously evaluated is not created because SG tube integrity is maintained by inservice inspection, condition monitoring, operational assessment, tube repair, and primary-to-secondary leakage monitoring.

3. The proposed change does not involve a significant reduction in a margin of safety.

Tube repair limits provide reasonable assurance that tubes accepted for continued service without plugging or repair will exhibit adequate tube structural and leakage integrity during subsequent plant operation. The implementation of the proposed ARC is demonstrated to maintain SG tube integrity consistent with the criteria of draft NRC Regulatory Guide 1.121. The guidelines of RG 1.121 describe a method acceptable to the NRC staff for meeting General Design Criteria (GDC) 2, 4, 14, 15, 31, and 32 by ensuring the probability or the consequences of SG tube rupture remain within acceptable limits. This is accomplished by determining the limiting conditions of degradation of SG tubing, for which tubes with unacceptable cracking should be removed from service.

Upon implementation of the proposed ARC, even under the worst-case conditions, the occurrence of PWSCC at the tube support plate elevations is not expected to lead to a SG tube rupture event during normal or faulted plant conditions. The ARC involves a computational assessment to be completed for each indication left in service ensuring that performance criteria for tube integrity and leak tightness are met until the next scheduled outage. Therefore, a permanent ARC is justified.

As discussed below, certain tubes are excluded from application of ARC. Existing tube integrity requirements apply to these tubes, and the margin of safety is not reduced.

In addressing the combined loading effects of a loss-of-coolant (LOCA) and safe shutdown earthquake (SSE) on the SGs (as required by GDC 2), the potential exists for yielding of the TSP in the vicinity of the wedge groups, accompanied by deformation of tubes and a subsequent postulated in-leakage. Tube deformation could lead to opening of pre-existing tight through wall cracks, resulting in secondary to primary in-leakage following the event, which could have an adverse affect on the Final Safety Analysis Report (FSAR) results. Based on a DCPP analysis of LOCA and SSE, SG tubes located in wedge region exclusion zones are susceptible to deformation, and are excluded from application of ARC.

A DCPP tube stress analysis for feed line break (FLB)/steam line break (SLB) plus SSE loading determined that high bending stresses occur in certain SG tubes at the seventh TSP, because the stresses exceed the maximum imposed bending stress for existing test data (equal to approximately the lower tolerance limit yield stress). These tubes are located in rows 11 to 15 and 36 to 46, and are excluded from application of ARC.

Tube intersections that contain TSP ligament cracking are also excluded from application of ARC.

Based on the above, it is concluded that the proposed license amendment requires does not result in a significant reduction in margin [of safety] with respect to the plant safety analyses as defined in the FSAR or TS.

Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

*Attorney for licensee:* Christopher J. Warner, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

*NRC Section Chief:* Stephen Dembek.

*Tennessee Valley Authority, Docket Nos. 50–259, 50–260 and 50–296, Browns Ferry Nuclear Plant (BFN), Units 1, 2 and 3, Limestone County, Alabama*

*Date of amendment request:* August 28, 2000.

*Description of amendment request:* The proposed amendment would revise the Units 1, 2 and 3 Technical Specifications (TS) to incorporate Technical Specifications Task Force (TSTF) Nos.TSTF–71, TSTF–208, TSTF–222, TSTF–284, TSTF–258 and TSTF–364. TSTFs are changes that were submitted to the staff by the nuclear power industry TSTF that have generic applicability. A description of each of the six TSTFs follows: (1) TSTF–71, Revision 2, adds an example of the application of the Safety Function Determination Program (SFDP) to the Bases for Limiting Conditions for Operation (LCO) 3.0.6. (2) TSTF–208, Revision 0, extends the allowed time to reach MODE 2 in LCO 3.0.3 from 7 hours to 10 hours. The change is based on plant experience regarding the time needed to perform a controlled shutdown in an orderly manner. (3) TSTF–222, Revision 1, clarifies Improved Technical Specification (ITS) Section 3.1.4, Control Rod Scram Times, Surveillance Requirements (SRs) to better delineate the requirements for testing control rods following refueling outages and for control rods requiring testing due to work activities. (4) TSTF–258, Revision 4, revises TS Section 5.0, Administrative Controls, to delete specific TS staffing requirement provisions for Reactor Operators (ROs), eliminates TS details for working hour limits, clarifies requirements for the Shift Technical Advisor (STA) position, adds regulatory definitions for Senior ROs and ROs, revises the Radioactive Effluent Controls Program to be consistent with the intent of 10 CFR Part 20, deletes periodic reporting requirements for mainsteam relief valve openings, and revises radiological area control requirements for radiation areas to be consistant with those specified in 10 CFR 20.1601(c). (5) TSTF–284, Revision 3, modifies Improved ITS Section 1.4, Frequency, to clarify the usage of the terms "met" and "performed" to facilitate the application of SR Notes. Two new SR Examples, 1.4–5 and 1.4–6, are added to illustrate the application of the terms. (6) TSTF–364, Revision 0, revises Section 5.5.10, TS Bases Control Program, to reference 10 CFR 50.59 rather than "unreviewed safety question." Also, editorial change WOG–ED–24, which substitutes "require" for "involve" in 5.5.10.b is made for consistency in usage.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analyses of the issue of no significant hazards consideration, which are presented below:

(1) TSTF–71, Revision 2.

A. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The change adds an example of SFDP use to facilitate the application of the TS, which serves to improve TS usefulness. The proposed change is an administrative clarification of existing requirements, and does not change TS requirements. Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

B. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve a physical alteration of the plant, add any new equipment, or require any existing equipment to be operated in a manner different from the present design. The proposed change will not impose any new or eliminate any existing requirements. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

C. The proposed amendment does not involve a significant reduction in a margin of safety.

The proposed change will not reduce a margin of safety because it has no effect on any safety analyses assumptions. This change is administrative in nature. For these reasons, the proposed amendment does not involve a significant reduction in the margin of safety.

(2) TSTF–208, Revision 0.

A. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change relaxes the Action time for LCO 3.0.3. The subject Action time is not an initiating condition for any accident previously evaluated and the accident analyses do not assume that equipment is out of service (requiring entry into LCO 3.0.3) prior to postulated events. Consequently, the extended action time does not significantly increase the probability of an accident previously evaluated. The consequences of an analyzed accident during the extended action time are the same as the consequences during the existing action time. As a result, the consequences of an accident previously evaluated are not significantly increased.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

B. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve a physical alteration of the plant, add any new equipment, or require any existing equipment to be operated in a manner different from the present design. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

C. The proposed amendment does not involve a significant reduction in a margin of safety.

The proposed change will not reduce a margin of safety because it has no effect on any safety analyses assumptions. The TS defines specific time limits during which operation with degraded condition is permitted. In this case, actual plant experience indicates that the Action time in existing TS is too short to accomplish the specified action to be in MODE 2 in an orderly manner. Extension of the time would allow the reactor to be shutdown in a controlled manner while minimizing risks associated with the initiation of inadvertent transients. This maximizes reactor safety. For these reasons, the proposed amendment does not involve a significant reduction in the margin of safety.

(3) TSTF–222, Revision 1.

A. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change is an administrative clarification of existing TS requirements which clarifies scram time testing requirements for control rods. The rewording and reformatting involves no technical changes to the existing TS. As such, there is no effect on initiators of analyzed events or assumed mitigation of accidents or transients. Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

B. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve a physical alteration of the plant, add any new equipment, or require any existing equipment to be operated in a manner different from the present design. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

C. The proposed amendment does not involve a significant reduction in a margin of safety.

The proposed change will not reduce a margin of safety because it has no effect on any safety analyses assumptions. For these reasons, the proposed amendment does not involve a significant reduction in the margin of safety.

(4) TSTF–258, Revision 4.

A. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change is an administrative clarification of existing TS requirements which clarifies and modifies administrative controls in the areas of operator staffing requirements, working hour limits, STA position, Radioactive Effluent Controls Program, periodic reporting requirements for relief valve openings, and radiological control requirements. These TS revisions do not affect analysis inputs for analyzed accidents and transients. Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

B. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve a physical alteration of the plant, add any new equipment, or require any existing equipment to be operated in a manner different from the present design. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

C. The proposed amendment does not involve a significant reduction in a margin of safety.

The proposed changes are administrative type revisions and do not reduce a margin of safety because they have no effect on any safety analyses assumptions. For these reasons, the proposed amendment does not involve a significant reduction in the margin of safety.

(5) TSTF–284, Revision 3.

A. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change is an administrative clarification of existing requirements. The change clarifies the TS terminology to facilitate the use and application of Surveillance Requirement Notes to improve TS use. Also, two additional examples of the application of Surveillance Requirement Notes are incorporated. Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

B. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

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The proposed change does not involve a physical alteration of the plant, add any new equipment, or require any existing equipment to be operated in a manner different from the present design. The proposed change will not impose any new or eliminate any existing requirements. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

C. The proposed amendment does not involve a significant reduction in a margin of safety.

The proposed change will not reduce a margin of safety because it has no effect on any safety analyses assumptions. This change is administrative in nature.

For these reasons, the proposed amendment does not involve a significant reduction in the margin of safety.

(6) TSTF–364, Revision 0.

A. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change is an administrative modification of existing TS requirements for the TS Bases change program to simply reference changes pursuant to 10 CFR 50.59 rather than "unreviewed safety question". This change is administrative and has no affect on the current review and approval process for Final Safety Analyses Report and Bases changes. As such, there is no effect on initiators of analyzed events or assumed mitigation of accidents or transients. Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

B. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change does not involve a physical alteration of the plant, add any new equipment, or require any existing equipment to be operated in a manner different from the present design. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

C. The proposed amendment does not involve a significant reduction in a margin of safety.

The proposed change modifies [sic] is an administrative modification of existing TS requirements for the TS FSAR and Bases change program to simply reference changes pursuant to 10 CFR 50.59 rather than "unreviewed safety question." This change is administrative and has no affect on the current review process for FSAR and Bases changes, and will not reduce a margin of safety because it has no effect on any safety analyses assumptions.

For these reasons, the proposed amendment does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 10H, Knoxville, Tennessee 37902.

*NRC Section Chief:* Richard P. Correia.

*Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee*

*Date of application for amendments:* August 31, 2000 (TS 00–05).

*Brief description of amendments:* The proposed amendment would revise the Sequoyah Nuclear Plant (SQN) Technical Specifications (TSs). The revision would relocate certain specifications related to reactivity control that are not required to be contained in the TSs by NRC regulations. These specifications include TSs 3.1.2.1 and 3.1.2.2 for boration flow paths, TSs 3.1.2.3 and 3.1.2.4 for boration charging pumps, TSs 3.1.2.5 and 3.1.2.6 for borated water sources, TS 3.1.3.3 for position indication systems during shutdown, and TS 3.10.5 for special test exceptions for the position indication system. These specifications will be relocated in their entirety to the SQN Technical Requirements Manual without changing the requirements currently contained in the TSs.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), Tennessee Valley Authority (TVA), the licensee, has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed revision relocates the boration specifications and one rod position indication system specification without a change to the requirements and deletes a special test exception for rod position indication that is no longer applicable to SQN. Relocation to the TRM continues to provide an acceptable level of applicability to plant operation and requires revisions to be processed in accordance with the provisions in 10 CFR 50.59. Evaluations of revisions in accordance with 10 CFR 50.59 will continue to ensure that these specifications adequately control the functions for boration and rod position indication systems to maintain safe operation of the plant. The boration systems and the rod position indication system is not postulated to be the initiator of a design basis accident. Since there are no changes to these functions and their operation will remain the same, the probability of an accident is not increased by relocating these requirements to the TRM. Additionally, the accident mitigation capability and offsite dose consequences associated with accidents will not change because these functions will not be altered by the proposed relocation. Therefore the consequences of an accident are not increased by this relocation to the TRM and the control of revisions to these specifications in accordance with 10 CFR 50.59.

B. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed revision will not alter the functions for the boration or the rod position indication systems such that accident potential would be changed. The location of these specifications in the TRM and the performance of revisions in accordance with 10 CFR 50.59 will continue to maintain acceptable operability requirements. Therefore, the possibility of an accident of a new or different kind is not created by the proposed relocation and deletion.

C. The proposed amendment does not involve a significant reduction in a margin of safety.

The proposed specification relocation and special test deletion will not affect plant setpoints or functions that maintain the margin of safety. This is based on the relocation to the TRM continuing to maintain the same level of operability requirements and surveillance testing to adequately ensure functionality of the boration and rod position indication systems. Control of TRM requirements in accordance with 10 CFR 50.59 will ensure that revisions to these functions will not inappropriately impact the health and safety of the public without prior review and approval by NRC. Therefore, the proposed relocation and deletion is acceptable and will not reduce the margin of safety.

The NRC has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 10H, Knoxville, Tennessee 37902.

*NRC Section Chief:* Richard P. Correia.

*TXU Electric, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas*

*Date of amendment request:* May 2, 2000, as supplemented by letter dated August 30, 2000.

*Brief description of amendment:* The proposed license amendment would obtain approval from the Nuclear Regulatory Commission (NRC) of changes to the Comanche Peak Steam Electric Station, Units 1 and 2 (CPSES) Security Plans prior to their implementation. Prior approval is being requested from the NRC, in accordance with the requirements of 10 CFR 50.54(p)(1), because some of the changes could have the potential of reducing the effectiveness of the security plans.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No

The proposed changes involving Security activities, do not reduce the ability for the Security organization to prevent radiological sabotage and therefore does not increase the probability or consequences of a radiological release previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No

The proposed changes involve functions of the Security organization concerning intrusion detection, material search requirements, alarm response and compensation, and vehicle control. Analysis of the proposed changes has not indicated nor identified a new or different kind of accident previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

*Response:* No

Analysis of the proposed changes show that the proposed changes affect only the functions of the Security organization and have no impact upon nor cause a significant reduction in margin of safety for plant operation. The failure points of key safety parameters are not affected.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, NW., Washington, DC 20036

*NRC Section Chief:* Robert A. Gramm

*Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas*

*Date of amendment request:* September 15, 2000 (WO 00–0036).

*Description of amendment request:* The proposed amendment would revise footnotes (b) and (c) to Table 1.1–1, "Modes," of the Wolf Creek Technical Specifications, and allow one reactor pressure vessel (RPV) head closure bolt to not be fully tensioned in Mode 4 (hot shutdown) and Mode 5 (cold shutdown). Each RPV head closure bolt is composed of a stud, nut, and washer, and the bolts attach the vessel head to the vessel body. The proposed revisions would allow the plant (1) to be in Modes 4 and 5 with only 53 of 54 RPV head closure bolts fully tensioned (*i.e.*, to allow one head closure bolt to not be fully tensioned), and (2) to operate with one RPV head closure bolt less than fully tensioned. The proposed revision to footnote (b) requires the proposed revision to the definition of refueling (*i.e.*, footnote (c) from the current "one or more" RPV head closure bolts detensioned to the proposed "two or more" RPV head closure bolts detensioned). In refueling, the RPV head closure bolts are detensioned and removed from the vessel body, and the RPV head is removed from the vessel. The licensee committed to the following program before operating with a not fully tensioned RPV head closure bolt: (1) The circumstances for the closure bolt not being fully tensioned will be reviewed to determined that the analysis in the application is still applicable, (2) the RPV will not be subject to hydrostatic test conditions before the closure bolt is returned to service, and (3) the plant heatup rate will be held to 50°F per hour (half the normal rate) until the closure bolt is returned to service.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Overall protection system performance will remain within the bounds of the accident analyses, since no hardware changes are proposed. Since the stresses [in the RPV head and body] remain within [the American Society of Mechanical Engineers Boiler and Pressure Vessel (ASME)] Code allowables, the proposed change will not affect the probability of any event initiators nor will the proposed change affect the ability of any safety related equipment to perform its intended function. There will be no degradation in the performance of nor an increase in the number of challenges imposed on safety related equipment assumed to function during an accident situation.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously analyzed.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

There are no hardware changes nor are there any changes in the method by which any safety related plant system performs it[s] safety function. The method of plant operation is unaffected. Leakage would be precluded since, as noted in the evaluation [in the application dated September 15, 2000,] adequate compression [of the RPV head closure bolts] remains. However, if leakage were to result from having less than the total number of closure studs fully tensioned it would be detected by an increase in the temperature on the leak-off line from the annular space between the inner and outer vessel head o-rings. That temperature increase would be detected by installed temperature indicators and alarmed in the control room. Any leakage would be detected as an increase in RCS [reactor coolant system] identified LEAKAGE. Since stresses remain within Code allowables, no new accident scenarios, transient precursors, failure mechanisms, or limiting single failures are introduced as a result of this change.

Therefore, the proposed change will not create a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

As indicated in Section 4.0 above [of the application dated September 15, 2000,] ASME Section III stress limits for effected components are not exceeded. The evaluations indicate that the reactor vessel will continue to meet ASME Code allowable stress criteria with a single untensioned reactor vessel closure stud, or with a single closure stud which fails in service. The proposed change does not alter nor exceed the acceptance criteria for any analyzed event. There will be no effect on the manner in which safety limits or limiting safety system settings are determined nor will there be any effect on those plant systems necessary to assure the accomplishment of protection functions.

Therefore, the proposed change to the Technical Specifications do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration. The licensee's reference to "closure studs" in the above not significant hazards consideration is a reference to the "closure bolts" in the proposed amendment.

*Attorney for licensee:* Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

*NRC Section Chief:* Stephen Dembek.

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**Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing**

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

*Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina*

*Date of amendment request:* September 7, 2000.

*Description of amendment request:* The amendments revise Surveillance Requirement 3.8.1.9.a by adding a note that states the upper limits on frequency and voltage are not required to be met for the annual test of the Keowee Hydro Units until the NRC issues an amendment that removes the note in response to an amendment request to be submitted no later than April 5, 2001.

*Date of publication of individual notice in* ***Federal Register:*** September 19, 2000 (65 FR 56600).

*Expiration date of individual notice:* October 3, 2000, for comments; October 19, 2000, for hearings.

*Niagara Mohawk Power Corporation, Docket No. 50–410, Nine Mile Point Nuclear Station Unit No. 2, Oswego County, New York*

*Date of application for amendment:* July 14, 2000.

*Brief description of amendment request:* The proposed amendment would revise License Condition 2.c.(10), "Additional Condition 1," which was imposed by Amendment No. 91 dated February 15, 2000. License Condition 2.c.(10) defines the meaning of implementation of Improved Technical Specifications and specifies that implementation be completed by August 31, 2000. The licensee has proposed to revise the implementation date from August 31, 2000, to December 31, 2000.

*Date of publication of individual notice in* ***Federal Register:*** July 27, 2000 (65 FR 46183).

*Expiration date of individual notice:* August 28, 2000.

*Tennessee Valley Authority, Docket No. 50–390 Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee*

*Date of application for amendments:* June 7, as supplemented June 23, and August 24, 2000.

*Brief description of amendment:* Changes to Facility Operating License and Technical Specifications to reflect an increase in allowable thermal power from 3411 to 3459 megawatts.

*Date of publication of individual notice in the* ***Federal Register:*** September 7, 2000 (65 FR 54322).

*Expiration date of individual notice:* October 10, 2000.

**Notice of Issuance of Amendments to Facility Operating Licenses**

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, http://www.nrc.gov (the Electronic Reading Room).

*Carolina Power & Light Company, Docket No. 50–261, H. B. Robinson, Steam Electric Plant, Unit No. 2, Darlington County, South Carolina*

*Date of application for amendment:* November 30, 1999.

*Brief description of amendment:* This amendment revises the testing requirements in Technical Specification 5.5.11, "Ventilation Filter Testing Program (VFTP)," in response to Generic Letter 99–02, "Laboratory Testing of Nuclear-Grade Activated Charcoal."

*Date of issuance:* September 14, 2000.
*Effective date:* September 14, 2000.
*Amendment No.:* 189.
*Facility Operating License No. DPR–23.* Amendment revises the Technical Specifications.
*Date of initial notice in* ***Federal Register:*** December 29, 1999 (64 FR 73087).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 14, 2000.

No significant hazards consideration comments received: No.

*Carolina Power & Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina.*

*Date of application for amendment:* June 7, 2000, as supplemented on August 23, 2000.

*Brief description of amendment:* This amendment revises the surveillance test intervals and allowed outage times for Engineered Safety Features Actuation System (ESFAS) instrumentation in Technical Specification (TS) 3/4.3.2. It also revises the reactor trip system instrumentation requirements in TS 3/4.3.1 associated with implementing the ESFAS relaxations.

*Date of issuance:* September 13, 2000.
*Effective date:* September 13, 2000.
*Amendment No.:* 101.
*Facility Operating License No. NPF–63.* Amendment revises the Technical Specifications.
*Date of initial notice in* ***Federal Register:*** July 12, 2000 (65 FR 43044).

The supplemental submittal dated August 23, 2000, provided clarifying information only, and did not change the initial no significant hazards consideration determination.



The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 13, 2000.

No significant hazards consideration comments received: No.

*Commonwealth Edison Company, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois*

*Date of application for amendments:* February 23, 2000, as supplemented by letters dated June 19 and July 17, 2000.

*Brief description of amendments:* The amendments changed Technical Specification (TS) 3/4.6.K to revise the reactor pressure-temperature (P–T) limits; changed TSs 1.0 and 3/4.12.C to delete a special test exception that allowed the hydrostatic test to be performed above 212 degrees Fahrenheit while in Mode 4; and added a condition to the Unit 2 and 3 licenses to specify expiration dates for the P–T limits.

*Date of issuance:* September 19, 2000.
*Effective date:* Immediately, to be implemented within 30 days.
*Amendment Nos.:* 179 and 174.
*Facility Operating License Nos. DPR–19 and DPR–25:* The amendments revised the Facility Operating Licenses and Technical Specifications.
*Date of initial notice in* ***Federal Register:*** April 5, 2000 (65 FR 17911).

The June 19 and July 17, 2000, letters are within the scope of the original notice and did not change the original no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 19, 2000.

No significant hazards consideration comments received: No.

*Commonwealth Edison Company, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois*

*Date of application for amendments:* August 3, 1999, as supplemented by letter dated February 25, 2000.

*Brief description of amendments:* The amendments revised Technical Specification (TS) Section 2.1.B to reflect a change to the Minimum Critical Power Ratio for Unit 2; added an approved analytical method to TS Section 6.9.A.6 for Units 2 and 3 for use in determining core operating limits; and added conditions to the Unit 2 and 3 licenses to limit the maximum rod average burnup for any rod to 60 GWD/MTU until the staff has completed an environmental assessment supporting a greater limit.

*Date of issuance:* September 21, 2000.
*Effective date:* Immediately, to be implemented within 30 days.
*Amendment Nos.:* 180 and 175.
*Facility Operating License Nos. DPR–19 and DPR–25:* The amendments revised the Facility Operating Licenses and Technical Specifications.
*Date of initial notice in* ***Federal Register:*** September 8, 1999 (64 FR 48859). The February 25, 2000, submittal provided additional clarifying information that did not change the initial proposed no significant hazards consideration.

The Commission's related evaluation of the amendments is contained in an Environmental Assessment dated September 19, 2000, and a Safety Evaluation dated September 21, 2000.

No significant hazards consideration comments received: No.

*Duke Energy Corporation, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina*

*Date of application for amendments:* February 29, 2000, as supplemented by letter dated July 5, 2000.

*Brief description of amendments:* The amendments revised the Technical Specifications Table 3.3.2–1, Engineered Safety Feature Actuation System Instrumentation, Function 6.f, Auxiliary Feedwater Pump Suction Pressure-Lo.

*Date of issuance:* September 13, 2000.
*Effective date:* As of the date of issuance and shall be implemented within 30 days from the date of issuance.
*Amendment Nos.:* 193 and 174.
*Facility Operating License Nos. NPF–9 and NPF–17:* Amendments revised the Technical Specifications.
*Date of initial notice in* ***Federal Register:*** August 23, 2000 (65 FR 51350).

The supplement dated July 5, 2000, provided clarifying information that did not change the scope of the February 29, 2000, application and the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 13, 2000.

No significant hazards consideration comments received: No.

*Duke Energy Corporation, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina*

*Date of application for amendments:* January 6, 2000, as supplemented by letter dated July 20, 2000.

*Brief description of amendments:* The amendments revised the Technical Specifications (TS) 3.3.1, "Reactor Trip System Instrumentation;" TS 3.3.2, "Engineered Safety Features Actuation System Instrumentation;" TS 3.3.5, "Loss of Power Diesel Generator Start Instrumentation;" and TS 3.3.6, "Containment Purge and Exhaust Isolation Instrumentation."

*Date of issuance:* September 18, 2000.
*Effective date:* As of the date of issuance and shall be implemented within 30 days from the date of issuance.
*Amendment Nos.:* 194/175.
*Facility Operating License Nos. NPF–9 and NPF–17:* Amendments revised the Technical Specifications.
*Date of initial notice in* ***Federal Register:*** March 22, 2000 (65 FR 15378).

The supplement dated July 20, 2000, provided clarifying information that did not change the scope of the January 6, 2000, application and the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 18, 2000.

No significant hazards consideration comments received: No.

*Duke Energy Corporation, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina*

*Date of application for amendments:* June 29, 2000, as supplemented by letters dated July 27, and August 10, 2000. Other related information was submitted by letters dated April 10, April 17, and June 19, 2000.

*Brief description of amendments:* The amendments revised the Technical Specifications (TS) to reference the Westinghouse Best Estimate Large Break Loss-of-Coolant Accident analysis methodology described in WCAP–12945–P–A, March 1998. The changes also address corresponding TS Bases changes.

*Date of issuance:* September 22, 2000.
*Effective date:* As of the date of issuance and shall be implemented within 30 days from the date of issuance.
*Amendment Nos.:* 195 and 176.
*Facility Operating License Nos. NPF–9 and NPF–17:* Amendments revised the Technical Specifications.
*Date of initial notice in* ***Federal Register:*** August 23, 2000 (65 FR 51349).

The supplements dated April 10, April 17, June 19, July 27, and August 10, 2000, provided clarifying information that did not change the scope of the June 29, 2000, application and the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 22, 2000.

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No significant hazards consideration comments received: No.

*Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina*

*Date of application of amendments:* April 26, 1999; supplemented May 15, July 26, and August 23, 2000.

*Brief description of amendments:* The amendments revised various provisions of the Technical Specifications and Final Safety Analysis Report related to the steam generator tube loads following a main steam line break and runout protection for the turbine-driven emergency feedwater pump.

*Date of Issuance:* September 18, 2000.

*Effective date:* As of the date of issuance and shall be implemented within 30 days from the date of issuance.

*Amendment Nos.:* 315, 315, & 315.

*Facility Operating License Nos. DPR–38, DPR–47, and DPR–55:* Amendments revised the Technical Specifications and Final Safety Analysis Report.

*Date of initial notice in* ***Federal Register:*** May 19, 1999 (64 FR 27320).

The supplements dated May 15, July 26, and August 23, 2000, provided clarifying information that did not change the scope of the April 26, 2000, application and the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 18, 2000.

No significant hazards consideration comments received: No.

*Energy Northwest, Docket No. 50–397, WNP–2, Benton County, Washington*

*Date of application for amendment:* April 13, 2000, as supplemented by letter dated May 15, 2000.

*Brief description of amendment:* The amendment revised Surveillance Requirements 3.3.1.1.10 for Function 8 of Table 3.3.1.1–1 and 3.3.4.1.2.a. for reactor protection system and end of cycle recirculation pump trip instrumentation of the WNP–2 technical specifications. The amendment extends the frequency of these surveillance requirements from 18 months to 24 months.

*Date of issuance:* September 15, 2000.

*Effective date:* September 15, 2000, to be implemented within 30 days from the date of issuance.

*Amendment No.:* 168.

*Facility Operating License No. NPF–21:* The amendment revised the Technical Specifications.

*Date of initial notice in* ***Federal Register:*** June 14, 2000 (65 FR 37423).

The May 15, 2000, supplemental letter provided clarifying information, did not expand the scope of the application as originally noticed and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 15, 2000.

No significant hazards consideration comments received: No.

*FirstEnergy Nuclear Operating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio*

*Date of application for amendment:* July 28, 1999, as supplemented on June 6, 2000.

*Brief description of amendment:* This amendment revised the ultimate heat sink (UHS) average water temperature from 85 degrees Fahrenheit (°F) to ≤90 °F and permits plant operations in Operating Modes 1 through 4 with an average water temperature of ≤90 °F.

*Date of issuance:* September 12, 2000.

*Effective date:* Immediately, to be implemented within 90 days.

*Amendment No.:* 242.

*Facility Operating License No. NPF–3:* The amendment revised the Technical Specifications.

*Date of initial notice in* ***Federal Register:*** August 25, 1999 (64 FR 46438).

The June 6, 2000, submittal provided additional clarifying information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 12, 2000.

No significant hazards consideration comments received: No.

*FirstEnergy Nuclear Operating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio*

*Date of application for amendment:* September 7, 1999, supplemented July 14, 2000.

*Brief description of amendment:* This amendment revises Technical Specification 3/4.3.2.1, Safety Features Actuation System Instrumentation Trip Setpoints, to remove the "Trip Setpoint" values for Instrument String Functional Unit "b", Containment Pressure-High, and Functional Unit "c", Containment Pressure-High-High, and also modifies the "Allowable Values" entry for these same Functional Units, consistent with updated calculations using current setpoint methodology. The changes also revise Limiting Conditions for Operation (LCO) 3.3.2.1, and Bases 3/4.3.1 and 3/4.3.2 to reflect the removal of the "Trip Setpoint" values for these Functional Units.

*Date of issuance:* September 14, 2000.

*Effective date:* As of the date of issuance and shall be implemented within 90 days.

*Amendment No.:* 243.

*Facility Operating License No. NPF–3:* Amendment revised the Technical Specifications.

*Date of initial notice in* ***Federal Register:*** December 15, 1999 (64 FR 70086).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 14, 2000.

No significant hazards consideration comments received: No.

*FirstEnergy Nuclear Operating Company, Docket No. 50–440, Perry Nuclear Power Plant, Unit 1, Lake County, Ohio*

*Date of application for amendment:* August 4, 1999, and as supplemented by letter dated August 7, 2000.

*Brief description of amendment:* This amendment revised Technical Specification 3.9.1, "Refueling Equipment Interlocks," by introducing an optional operator action when one or more required refueling equipment interlocks are inoperable. The new operator action permits continued in-vessel fuel movement under specific administrative controls.

*Date of issuance:* September 12, 2000.

*Effective date:* As of the date of issuance and shall be implemented within 90 days.

*Amendment No.:* 116.

*Facility Operating License No. NPF–58:* This amendment revised the Technical Specifications.

*Date of initial notice in* ***Federal Register:*** August 25, 1999 (64 FR 46439).

The August 7, 2000, supplement contained clarifying information that was within the scope of the original application and **Federal Register** notice and did not change the staff's initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 12, 2000.

No significant hazards consideration comments received: No.

*Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida*

*Date of application for amendment:* September 16, 1999, as supplemented by letters dated May 3 and June 29, 2000.

*Brief description of amendment:* To allow an increase in the spent fuel pool (SFP) storage capacity by replacing fuel racks in the "B" SFP with new high-density fuel racks.

*Date of issuance:* September 13, 2000.

*Effective date:* September 13, 2000.

*Amendment No.:* 193.

*Facility Operating License No. DPR–31:* Amendment revised the Technical Specifications.

*Date of initial notice in* ***Federal Register:*** December 8, 1999 (64 FR 68702).

The May 3 and June 29, 2000 supplements provided clarifying information and did not affect the initial no significant hazards determination.

The Commission's related evaluation of the amendment is contained in an Environmental Assessment dated September 5, 2000 and in a Safety Evaluation dated September 13, 2000.

No significant hazards consideration comments received: No.

*GPU Nuclear, Inc. et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey*

*Date of application for amendment:* June 18, 1999, as supplemented on June 22 and December 10, 1999, and February 10, and May 2, 2000.

*Brief description of amendment:* The amendment revised the Technical Specifications to reflect the installation of additional spent fuel pool storage racks. The additional new racks will provide 390 additional spent fuel assembly storage locations.

*Date of issuance:* September 15, 2000.

*Effective date:* As of the date of issuance to be implemented within 30 days.

*Amendment No.:* 215

*Facility Operating License No. DPR–16:* Amendment revised the Technical Specifications.

*Date of initial notice in* ***Federal Register:*** August 17, 1999 (64 FR 44757).

The supplemental letters dated June 22 and December 10, 1999, and February 10 and May 2, 2000, did not affect the proposed finding of no significant hazards consideration, and was within the scope of the amendment application as noticed.

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated September 15, 2000.

No significant hazards consideration comments received: No.



*North Atlantic Energy Service Corporation, et al., Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire*

*Date of amendment request:* February 18, 2000, as superseded by a letter dated June 20, 2000.

*Description of amendment request:* The amendment changes the Seabrook Station Technical Specifications to provide operational flexibility during the shutdown modes of operation. These enhancements include: (1) The ability to have a standby Safety Injection (SI) pump available during Reactor Coolant System (RCS) reduced inventory conditions with the RCS pressure boundary intact; (2) realigning a footnote to clarify the allowance of an inoperable SI pump to be energized for testing or filling accumulators; (3) allowance for an additional charging pump to be made capable of injection during pump-swap operations; (4) recognition that a substantial vent area exists for cold overpressure protection when the reactor vessel head is on and the studs are fully detensioned; (5) limit maneuvering the plant beyond Hot Shutdown when one charging pump is operable; and (6) establishes a new value for the open permissive interlock associated with the Residual Heat Removal System suction isolation valves.

*Date of issuance:* September 11, 2000.

*Effective date:* As of its date of issuance, and shall be implemented within 60 days.

*Amendment No.:* 74.

*Facility Operating License No. NPF–86:* Amendment revised the Technical Specifications.

*Date of initial notice in* ***Federal Register:*** August 9, 2000 (65 FR 48752).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 11, 2000.

No significant hazards consideration comments received: No.

*North Atlantic Energy Service Corporation, et al., Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire*

*Date of amendment request:* December 3, 1999.

*Description of amendment request:* The amendment changes the Technical Specifications by incorporating reference to the American Society for Testing and Materials (ASTM) Standard D3803–1989, "Standard Test Method for Nuclear-Grade Activated Charcoal," as the test protocol for charcoal filter laboratory testing. In addition, there is a change to Surveillance Requirement 4.7.6.1d.5) and 4.9.12d.4) specifying a minimum required heater output based on design rated voltage.

*Date of issuance:* September 19, 2000.

*Effective date:* As of its date of issuance, and shall be implemented within 60 days.

*Amendment No.:* 75

*Facility Operating License No. NPF–86:* Amendment revised the Technical Specifications.

*Date of initial notice in* ***Federal Register:*** January 26, 2000 (65 FR 4282).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 19, 2000.

No significant hazards consideration comments received: No.

*Northeast Nuclear Energy Company, et al., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut*

*Date of application for amendment:* February 1, 2000, as supplemented on June 1 and July 13, 2000.

*Brief description of amendment:* The amendment modifies Technical Specification (TS) 3.0.3 to state that this specification is not applicable in MODES 5 or 6. The amendment also makes various changes to TSs 3/4.1 "Reactor Coolant System—Coolant Loops and Coolant Recirculation" and 3/4.9.8, "Refueling Operations—Shutdown Cooling and Coolant Circulation." In addition, various corrections and formats are revised to achieve consistency of the structure and wording of the TSs. The Bases for the affected TSs have also been revised accordingly.

*Date of issuance:* September 14, 2000.

*Effective date:* As of the date of issuance and shall be implemented within 60 days from the date of issuance.

*Amendment No.:* 249.

*Facility Operating License No. DPR–65:* Amendment revised the Technical Specifications.

*Date of initial notice in* ***Federal Register:*** July 31, 2000 (65 FR 46748).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 14, 2000.

No significant hazards consideration comments received: No.

*Northeast Nuclear Energy Company, et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut*

*Date of application for amendment:* January 18, 1999, and supplemented by letters dated April 5 and December 21, 1999; and May 2 and August 10, 2000.

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*Brief description of amendment:* The amendment revises the Technical Specifications (TSs) and the Final Safety Analysis Report for Millstone 3 to allow an entire reactor core to be offloaded to the spent fuel pool (SFP) and an increase in the maximum design basis normal SFP water temperature limit from 140 °F to 150 °F during planned refueling outages. The increase in maximum design basis normal SFP water temperature up to 150 °F affects certain Fuel Building area TS temperature limits that require a revision to the TSs.

*Date of issuance:* September 12, 2000.

*Effective date:* As of the date of issuance and shall be implemented within 60 days from the date of issuance.

*Amendment No.:* 182.

*Facility Operating License No. NPF–49:* Amendment revised the Technical Specifications.

*Date of initial notice in* ***Federal Register:*** March 10, 1999 (64 FR 11962).

The letters dated April 5 and December 21, 1999, and May 2, and August 10, 2000, provided clarifying information and did not change the staff's initial proposed no significant hazards consideration determination or expand the scope of the application as published in the **Federal Register**.

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated September 12, 2000.

No significant hazards consideration comments received: No.

*Northeast Nuclear Energy Company, et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut*

*Date of application for amendment:* February 3, 2000

*Brief description of amendment:* The amendment changes the Millstone Unit No. 3 Final Safety Analysis Report to show that the configuration of valves 3CHS*V61 and 3CHS*V62 takes exception to the American Society of Mechanical Engineers Section III code requirements for class 2 components.

*Date of issuance:* September 15, 2000.

*Effective date:* As of the date of issuance and shall be implemented within 60 days from the date of issuance.

*Amendment No.:* 183.

*Facility Operating License No. NPF–49:* Amendment revised the Final Safety Analysis Report.

*Date of initial notice in* ***Federal Register:*** June 28, 2000 (65 FR 39958).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 15, 2000.

No significant hazards consideration comments received: No.

*PECO Energy Company, Docket Nos. 50–352 and 50–353, Limerick Generating Station, (LGS) Units 1 and 2, Montgomery County, Pennsylvania*

*Date of amendment request:* November 5, 1999, as supplemented July 17, 2000.

*Description of amendment request:* The amendments make changes to Technical Specifications Sections 4.6.5.3.b.2 and 4.6.5.3.c, "Standby Gas Treatment System," 4.6.5.4.b.2 and 4.6.5.4.c, "Reactor Enclosure Recirculation System," and 4.7.2.c.2 and 4.7.2.d, "Control Room Emergency Air System."

*Date of Issuance:* September 8, 2000.

*Effective Date:* September 8, 2000.

*Amendment Nos.:* 144 & 106.

*Facility Operating License Nos. NPF–39 and NPF–85.* The amendments revised the Technical Specifications.

*Date of Initial notice in* ***Federal Register:*** January 26, 2000 (65 FR 4287)

The July 17, 2000, letter provided clarifying information that did not change the initial no significant hazards consideration determination or expand the scope of the original **Federal Register** Notice.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 8, 2000.

No significant hazards consideration comments received: No.

*PECO Energy Company, Docket No. 50–352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania*

*Date of application for amendment:* May 15, 2000, as supplemented August 10, 2000.

Brief description of amendment: The amendment revises the pressure-temperature limit curves.

*Date of issuance:* September 15, 2000.

*Effective date:* As of date of issuance, to be implemented within 30 days.

*Amendment No.:* 145.

*Facility Operating License No. NPF–39.* This amendment revised the Technical Specifications.

*Date of initial notice in* ***Federal Register:*** July 12, 2000 (65 FR 43051).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 15, 2000. The August 10, 2000, letter provided clarifying information that did not change the initial no significant hazard consideration determination or expand the scope of the original **Federal Register** notice.

No significant hazards consideration comments received: No.

*Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California*

*Date of application for amendments:* April 20, 2000 (PCN–503), and supplemented by letter dated June 6, 2000.

*Brief description of amendments:* The amendments revise TS 5.5.2.5, "Reactor Coolant Pump Flywheel Inspection Program" by changing the volumetric examination frequency of the upper flywheel on each of the primary reactor coolant pump motors from a 3-year to a 10-year cycle.

*Date of issuance:* September 8, 2000.

*Effective date:* September 8, 2000, to be implemented within 30 days of issuance.

*Amendment Nos.:* Unit 2—170; Unit 3—161.

*Facility Operating License Nos. NPF–10 and NPF–15:* The amendments revised the Technical Specifications.

*Date of initial notice in* ***Federal Register:*** May 17, 2000 (65 FR 31360). The supplemental letter dated June 6, 2000, provided clarifying information that was within the scope of the April 20, 2000, application and the **Federal Register** notice and did not change the staff's initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 8, 2000.

No significant hazards consideration comments received: No.

*Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California*

*Date of application for amendments:* September 12, 2000.

*Brief description of amendments:* The amendments revise TS 3.6.6.1, "Containment Spray and Cooling Systems," to change the allowed outage time (AOT) for a single inoperable train of the containment spray system from 72 hours to 7 days. Also, the combined AOT that appears in both Conditions A and C of TS 3.6.6.1 is revised from 10 days to 14 days.

*Date of issuance:* September 12, 2000.

*Effective date:* September 12, 2000, to be implemented within 30 days of issuance.

*Amendment Nos.:* Unit 2—171; Unit 3—162.

*Facility Operating License Nos. NPF–10 and NPF–15:* The amendments revised the Technical Specifications.



*Date of initial notice in* ***Federal Register:*** May 3, 2000 (65 FR 25769).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 12, 2000.

No significant hazards consideration comments received: No.

*Southern Nuclear Operating Company, Inc., et al., Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia*

*Date of application for amendments:* March 6, 2000, as supplemented by letter dated July 7, 2000.

*Brief description of amendments:* The amendments revised Technical Specification (TS) 3.9.4, "Containment Penetration," allowing the equipment hatch to be open during core alteration and/or during movement of irradiated fuel within the containment, provided the capability for closure is maintained.

*Date of issuance:* September 11, 2000.

*Effective date:* As of the date of issuance and shall be implemented within 30 days from the date of issuance.

*Amendment Nos.:* 115 and 93.

*Facility Operating License Nos. NPF–68 and NPF–81:* Amendments revised the Technical Specifications.

*Date of initial notice in* ***Federal Register:*** June 28, 2000 (65 FR 39961), July 20, 2000 (65 FR 45115). The supplemental letter dated July 7, 2000, provided clarifying information that did not change the scope of the March 6, 2000, application and the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 11, 2000.

No significant hazards consideration comments received: No.

*Tennessee Valley Authority, Docket No. 50–3a0, Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee*

*Date of application for amendment:* July 10, 2000 (TS 00–08).

*Brief description of amendment:* Regarding the need to conduct channel operational tests within 12 hours prior to physics tests and the placing of a reactor trip instrumentation channel used in physics tests in a bypassed condition instead of a tripped condition.

*Date of issuance:* September 13, 2000.

*Effective date:* September 13, 2000.

*Amendment No.:* 28.

*Facility Operating License No. NPF–90:* Amendment revises the Technical Specifications.

*Date of initial notice in* ***Federal Register:*** August 9, 2000 (65 FR 48759).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 13, 2000.

No significant hazards consideration comments received: No.

*Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas*

*Date of amendment request:* June 23, 2000, and supplements dated July 21 and 26, 2000.

*Brief description of amendment:* The amendment revises TS 3.9.4, "Containment Penetrations," to allow containment penetrations (with direct access to the outside atmosphere) to be unisolated under administrative controls during refueling operations with core alterations or irradiated fuel movement inside containment. The amendment (1) revises the note in the Limiting Condition for Operation 3.4.9 for containment penetrations that may be unisolated under administrative controls, deleting the reference to penetrations P–63 and P–98, and (2) deletes the exception for penetrations P–63 and P–98 in Surveillance Requirement 3.9.4.1. In addition, there are format and editorial corrections to TS 3.8.3, "Diesel Fuel Oil, Lube Oil, and Start Air," and TS 5.2.2.b, "Administrative Controls," to correct errors issued in Amendment No. 123, issued March 31, 1999.

*Date of issuance:* September 12, 2000.

*Effective date:* September 12, 2000, to be implemented within 30 days of the date of issuance, including the completion of the administrative procedures that ensure that open containment penetrations, with direct access to the outside atmosphere during refueling operations with core alterations and irradiated fuel movement inside containment, will be promptly closed in the event of a fuel handling accident inside containment.

*Amendment No.:* 135.

*Facility Operating License No. NPF–42.* The amendment revised the Technical Specifications.

*Date of initial notice in* ***Federal Register:*** July 12, 2000 (65 FR 43053). The July 21 and 26, 2000, supplements provided additional clarifying information, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 12, 2000.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 28th day of September 2000.

For the Nuclear Regulatory Commission.

**Elinor G. Adensam,**

*Acting Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 00–25377 Filed 10–3–00; 8:45 am]

BILLING CODE 7590–01–P

## OFFICE OF PERSONNEL MANAGEMENT

### Excepted Service

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** This gives notice of positions placed or revoked under Schedules A and B in the excepted service, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

**FOR FURTHER INFORMATION CONTACT:** Janice Reid, Staffing Policy Division, Employment Service (202) 606–0830.

**SUPPLEMENTARY INFORMATION:** The Office of Personnel Management publishes this monthly notice to update appointing authorities established or revoked under the Excepted Service provisions of 5 CFR 213. Individual authorities established or revoked under Schedules A and B between August 1, 2000, and August 31, 2000, appear in the following listing. A consolidated listing of all authorities as of June 30 is published annually.

**Schedule A**

No Schedule A authorities were established or revoked during August 2000.

**Schedule B**

The following Schedule B authority was amended effective August 17, 2000.

Schedule B 213.3209

"(a) Not to exceed six interdisciplinary positions for the Airpower Research Institute at the Air University, Maxwell Air Force Base, Alabama, for employment to complete studies proposed by candidates and acceptable to the Air Force. Initial appointments are made not to exceed 3 years, with an option to renew or extend the appointments in increments of 1, 2, or 3 years indefinitely thereafter."

**Authority:** 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., P.218.

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Office of Personnel Management.
**Janice R. Lachance,**
*Director.*
[FR Doc. 00–25443 Filed 10–3–00; 8:45 am]
**BILLING CODE 6325–01–M**

## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of Filings and Information Services, Washington, D.C. 20549.

Extension:
Rule 17Ad–10; SEC File No. 270–265; OMB Control No. 3235–0273.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

• Rule 17Ad–10 Prompt Posting of Certificate Detail to Master Securityholder Files; Maintenance of Accurate Securityholder Files and Control Book; and Retention of Certificate Detail

Rule 17Ad–10, 17 CFR 240.17Ad–10, under the Securities Exchange Act of 1934, requires approximately 1,093 registered transfer agents to create and maintain minimum information on securityholders' ownership of an issue of securities for which it performs transfer agent functions, including the purchase, transfer and redemptions of securities. In addition, the rule also requires transfer agents that maintain securityhodler records to keep certificate detail that has been cancelled from those records for a minimum of six years and to maintain and keep current an accurate record of the number of shares or principle dollar amount of debt securities that the issuer has authorized to be outstanding (a "control book"). These recordkeeping requirements assist in the creation and maintenance of accurate securityholder records, the ability to research errors, and ensure the transfer agent is aware of the number of securities that are properly authorized by the issuer, thereby avoiding over issuance.

The staff estimates that the average number of hours necessary for each transfer agent to comply with Rule 17 Ad–10 is approximately 20 hours per year, totaling 21,860 hours industrywide. The average cost per hour is approximately $20 per hour, with the industry-wide cost estimated at approximately $437,200. However, information required by Rule 17Ad–10 generally already is maintained by registered transfer agents. The amount of time devoted to compliance with Rule 17Ad–10 varies according to differences in business activity.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, N.W. Washington, DC 20549.

Dated: September 26, 2000.
**Margaret H. McFarland,**
*Deputy Secretary.*
[FR Doc. 00–25422 Filed 10–3–00; 8:45 am]
**BILLING CODE 8010–01–M**

## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

*Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.*

Extensions: Rule 6c–7 SEC File No. 270–269; OMB Control No. 3235–0276; Rule 11a–2; SEC File No. 270–267; OMB Control No. 3235–0272.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the "Commission") has submitted to the Office of Management and Budget requests for approval of extension of the previously approved collection of information discussed below.

Rule 6c–7 [17 CFR 270.6c–7] under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) ("1940 Act") provides exemption from certain provisions of Sections 22(e) and 27 of the 1940 Act for registered separate accounts offering variable annuity contracts to certain employees of Texas institutions of higher education participating in the Texas Optional Retirement Program. There are approximately 82 registrants governed by Rule 6c–7. The burden of compliance with Rule 6c–7, regarding obtaining from a purchaser, prior to or at the time of purchase, a signed document acknowledging the restrictions on redeemability imposed by Texas law, is estimated to be approximately 3 minutes per response for each of 2,649 purchasers annually, for a total annual burden of 132.45 hours.

Rule 6c–7 requires that the separate account's Registration Statement under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) ("1933 Act") include a representation that Rule 6c–7 is being relied upon and is being complied with. This requirement enhances the Commission's ability to monitor utilization of and compliance with the rule. There are no recordkeeping requirements with respect to Rule 6c–7.

Rule 11a–2 [17 CFR 270.11a–2] permits certain registered insurance company separate accounts, subject to certain conditions, to make exchange offers without prior approval by the Commission of the terms of those offers. There are approximately 649 registrants governed by Rule 11a–2, with an estimated compliance time of 15 minutes per registrant, for a total annual burden of 162.25 hours.

Rule 11a–2 requires disclosure, in certain registration statements filed pursuant to the 1933 Act, of any administrative fee or sales load imposed in connection with an exchange offer. The information resulting from the disclosure is used by the Commission to monitor the terms and conditions of such exchange offers. There are no recordkeeping requirements with respect to this rule.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules or forms. With regard to Rule 6c–7, the Commission does not include in the estimate of average burden hours the time preparing registration statement and sales literature disclosure regarding the restrictions on redeemability imposed by Texas law. The estimate of burden hours for completing the relevant registration statements are reported on the separate PRA submissions for those statements (see the separate PRA submissions for Form N–3 [17 CFR 274.11b] and Form N–4 [17 CFR 274.11c]). With regard to Rule 11a–2, the Commission includes the estimate of burden hours in the total number of burden hours estimated for completing the relevant registration statements and reported on the separate PRA submissions for those statements (see the separate PRA submissions for Form N–3 and Form N–4).

Complying with the collection of information requirements of the rules is necessary to obtain a benefit. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, D.C. 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: September 25, 2000.
**Margaret H. McFarland,**
*Deputy Secretary.*
[FR Doc. 00–25423 Filed 10–3–00; 8:45 am]
**BILLING CODE 8010–01–M**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43380; File No. 265–22]**

### Advisory Committee on Market Information

**AGENCY:** Securities and Exchange Commission.
**ACTION:** Supplemental notice.

**SUMMARY:** This notice supplements the Securities and Exchange Commission's notice of intent to establish the Securities and Exchange Commission Advisory Committee on Market Information ("Committee"), and intent to hold the first Committee meeting on October 10, 2000 (65 FR 58135).

**ADDRESSES:** Written comments should be submitted in triplicate and should refer to File No. 265–22. Comments should be submitted to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609.

**FOR FURTHER INFORMATION CONTACT:** Anitra Cassas, Attorney, Division of Market Regulation, at 202–942–0089; Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–1001.

**SUPPLEMENTARY INFORMATION:** On September 20, 2000, the Commission issued a notice that the first meeting of the Securities and Exchange Commission Advisory Committee on Market Information is to be held on October 10, 2000, in the William O. Douglas Room at the Commission's main offices, 450 Fifth Street, N.W., Washington, DC, beginning at 1 p.m. (Securities Exchange Act Release No. 43313, September 20, 2000). The meeting will be open to the public, and the public is invited to submit written comments to the Committee. The notice was published in the **Federal Register** on September 27, 2000, less than 15 days prior to the first meeting as required by 41 CFR 101–61015. To accommodate all of the committee members' schedules and travel arrangements, however, the Commission finds good cause to continue to hold the meeting on October 10, 2000.

Dated: September 28, 2000.
**Jonathan G. Katz,**
*Secretary.*
[FR Doc. 00–25424 Filed 10–3–00; 8:45 am]
**BILLING CODE 8010–01–M**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–4338; File No. SR–Amex–00–53]**

### Self Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the American Stock Exchange LLC Relating to the streetTracks℠ Dow Jones Global Titans Index Fund

September 25, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 13, 2000, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to approve the proposal on an accelerated basis.

[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240.19b–4.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Amex proposes to list and trade under Amex Rules 1000A *et seq.* ("Index Fund Shares"), shares of the streetTracks℠ Dow Jones Global Titans Index Fund. The text of the proposed rule change is available upon request from the Office of the Secretary, the Amex or the Commission.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

On March 8, 1996, the Commission approved Amex's listing and trading of Index Fund Shares under Rules 1000A *et seq.*[3] Index Fund Shares are shares issued by an open-end management investment company that seeks to provide investment results that correspond generally to the price and yield performance of a specified foreign or domestic equity market index. The Exchange currently trades the following Index Fund Shares under Amex Rules 1000A *et seq.*: Select Sector SPDRs based on industry sectors in the S&P 500 Index;[4] iShares MSCI Index Funds (formerly "WEBS") based on Morgan Stanley Capital International foreign indexes;[5] series of the iShares Trust based on domestic stock indexes; [6] and

[3] *See* Securities Exchange Act Release No. 36947 (March 8, 1996), 61 FR 10606 (March 14, 1996).
[4] *See* Securities Exchange Act Release No. 40749 (December 4, 1998), 63 FR 68483 (December 11, 1998).
[5] *See* Securities Exchange Act Release Nos. 42748 (May 2, 2000), 65 FR 30155 (May 10, 2000); and 36947 (March 8, 1996), 61 FR 10606 (March 14, 1996).
[6] *See* Securities Exchange Act Release No. 42787 (May 15, 2000), 65 FR 33598 (May 24, 2000).

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series of the iShares Trust based on the S&P Europe 350 Index and the S&P/TSE 60 Index.[7]

The Exchange proposes to list and trade under Amex Rules 1000A *et seq.* shares ("Shares") of the streetTracks℠ Dow Jones Global Titans Index Fund ("Fund").[8] The Fund is a series of the streetTracks℠ Series Trust ("Trust"), an open-end management investment company.[9] State Street Bank and Trust Company ("State Street"), through its State Street Global Advisors (SSgA) division, acts as investment adviser to the Trust and, subject to the supervision of the Trust's Board of Trustees, is responsible for the management of the Fund. State Street also is the administrator and transfer agent for the Fund and is custodian for the Fund's assets. State Street Capital Markets LLC is the distributor for the Fund's shares.

a. The Global Titans Index [10]

The Global Titans index is composed of 50 common stocks, which are chosen by Dow. The stock must, in the opinion of Dow, meet all four of the following criteria to qualify as a candidate for the Index: (1) it must be a well established company with a solid financial situation and a broad client base; (2) it must be well known to global investors for either its long history of success or its widely used products or services; (3) it must be a market leader in its industry with either a dominant position or a competitive advantage; and (4) it must be among the largest of blue-chip companies in the global arena. In constructing the Global Titans Index, a multi-factor methodology is adopted. First, the 3,000 stocks of the Dow Jones Global Indexes are used as the Initial Pool with a view towards ensuring that all candidates are investable, liquid and representative of the global markets. Market capitalization is then used as the first screen to create the Final Pool by selecting the top 100 companies. Dow's rationale for this step is that market value is a universal measurement across industries, and also that its use is most appropriate for an index built for investment purposes. Every company in the Final Pool of 100 must derive some revenue from outside its home country. This screen is instituted to ensure that all stocks in the Index are truly global companies. The next step in Index construction is to combine the Final Pool components' market capitalization rankings with their rankings according to four other indicators of size and leadership. These four indicators, two from the balance sheet and two from the income statement, are assets, book value, sales/revenue, and net profit. The combined rankings of these four factors determine the fundamental rank of each company. The fundamental rank and the market capitalization rank are used equally as the basis for selecting the Index components.

The Index methodology described in the preceeding paragraph is subject to an annual review. A three-month window—March through June—is used for stock evaluation. The steps described above are repeated to build the Final Pool and to calculate the final ranking with respect to the four fundamental measures and weighted average market value. Any non-components that fall into the top 25 of the new final ranking are added to the Index, automatically replacing the lowest ranked components. A 20% buffer zone rule is applied, meaning that any component stocks ranked higher than 20% above the Index's target number of stocks are retained, while those ranked lower than 20% above the target number are replaced by the top ranked non-component stocks.

For purposes of calculation of the Index Value, securities for which the primary market is outside of the U.S. are valued based on the last sale price on the primary market. During periods when the primary market is closed, these securities are valued based on the last sale price of the corresponding American Depositary Receipts ("ADR"), if any.

The Fund will invest in foreign securities, including non-U.S. dollar-denominated securities traded outside the United States and dollar-denominated securities of foreign issuers traded in the United States. Foreign securities also include investments such as ADRs which are U.S. dollar-denominated receipts representing shares of foreign-based corporations. ADRs are issued by the U.S. banks or trust companies and entitle the holder to all dividends and capital gains that are paid out on the underlying foreign shares.

As of August 31, 2000, the Index included 27 U.S. companies, 20 Western European companies and 3 Japanese companies, representing 68.17%, 27.45% and 4.38% of the Index weight, respectively. Forty-four Index components, representing 94.36% of the Index weight, are listed on the New York Stock Exchange ("NYSE") or on the National Association of Securities Dealers Automated Quotations System ("Nasdaq"). Seventeen of the 23 non-U.S. companies in the Index have ADRs listed and traded on the NYSE. The following five non-U.S. companies in the Index, with a combined Index weight of 5.07%, have ADRs traded in the U.S. in the over-the counter "Pink Sheet" market: Credit Suisse Group, Lloyds/TSB Group PLC, Nestle S.A., Roche Holding AG, and Siemens AG. ADRs for one non-U.S. company in the Index, Allianz AG Holding, are not currently available.

The Fund's investment objective is to replicate, using an "indexing" investment approach, as closely as possible, before expenses, the performance of the Global Titans Index. The Fund uses a passive management strategy designed to track the performance of the Global Titans Index. The adviser seeks a correlation of 0.95 or better between the Fund's performance and the performance of the Index; a figure of 1.00 would represent perfect correlation. The Fund generally will invest in all of the stocks comprising the Index in proportion to their weightings in the Index. However, under various circumstances, it may not be possible or practicable to purchase all of those stocks in those weightings. In those circumstances, the Fund may purchase a sample of the stocks in the Index in proportions expected by the Adviser to replicate generally the performance of the Index as a whole. There may also be instances in which the Adviser may choose to overweight another stock in the Index, purchase securities not in the Index which the Adviser believes are appropriate to substitute for the Index Securities, or utilize various combinations of other available investment techniques, in seeking to track accurately the Index. In addition, from time to time stocks are added to or removed from the Index. The Fund may sell stocks that are represented in the Index, or purchase stocks that are not yet represented in the Index, in anticipation of their removal from or addition to the Index. The Fund will normally invest at least 95% of its total assets in common stocks that comprise the Index.

[7] *See* Securities Exchange Act Release No. 42786 (May 15, 2000), 65 FR 33586 (May 24, 2000).

[8] "streetTracks"℠ is a service mark of State Street Corporation.

[9] The Fund has filed with the Commission an Application for Orders ("Application") under Sections 6(c) and 17(b) of the Investment Company Act of 1940 ("1940 Act") as amended for the purpose of exempting the Fund, together with other funds specified in the Application, from various provisions of the 1940 Act and rules thereunder. (File No. 812–11882) (Investment Company Act Release No. 24631 (September 1, 2000), 65 FR 54327 (September 7, 2000)).

[10] Information relating to the Global Titans Index methodology is based on materials prepared by Dow Jones and Company ("Dow").



b. Purchase or Creation of Creation Unit Aggregations

The Fund will issue and redeem Shares only in Creation Unit size aggregations (50,000 shares per Creation Unit). The Fund will issue and sell Shares through the distributor on a continuous basis at the net asset value per share next determined after an order to purchase Shares in Creation Unit size aggregations is received in proper form. Following issuance, Shares are traded on the Exchange like other equity securities by professionals, as well as retail and institutional investors.

To create (*i.e.*, purchase) Creation Units of the Fund, an investor must generally deposit a designated portfolio of equity securities constituting a substantial replication, or a representation, of the stocks included in the Index (the "Deposit Securities") and generally makes a small cash payment referred to as the "Cash Component." The list of the names and the number of shares of the Deposit Securities is made available by the custodian through the facilities of the National Securities Clearing Corporation ("NSCC") immediately prior to the opening of business on the Exchange. The Cash Component represents the difference between the net asset value of a Creation Unit and the market value of the Deposit Securities.

Orders must be placed in proper form by or through either (1) a "Participating Party," *i.e.*, a broker-dealer or other participant in the clearing process of the Continuous Net Settlement System of the NSCC (the "Clearing Process"); or (2) a Depository Trust Company ("DTC") Participant, that, in either case, has entered into an agreement with the Trust, the distributor and the transfer agent with respect to creations and redemptions of Creation Units ("Participant Agreement"). All orders must be placed for one or more whole Creation Units of Shares of the Fund and must be received by the distributor in proper form no later than the close of regular trading on the NYSE (ordinarily 4:00 p.m., New York time) to receive that day's closing net asset value per Share.

c. Redemption of Creation Unit Aggregations

Shares may be redeemed only in Creation Units at their net asset value and only on a day the NYSE is open for business. The custodian makes available immediately prior to the opening of business on the Exchange, through the facilities of the NSCC, the list of the names and the number of Shares of the Fund's portfolio securities that will be applicable that day to redemption requests in proper form ("Fund Securities"). Fund Securities received on redemption may not be identical to Deposit Securities which are applicable to creations of Creation Units. Unless cash redemptions are available or specified for the Fund, the redemption proceeds consist of the Fund Securities, plus cash in an amount equal to the difference between the net asset value of the Shares being redeemed as next determined after receipt by the transfer agent of a redemption request in proper form, and the value of the Fund Securities (the "Cash Redemption Amount"), less the applicable redemption fee. Shares cannot be redeemed individually but must be redeemed in Creation Unit size aggregations.

d. Other Information

Income dividend distributions, if any, are distributed to shareholders quarterly. Net capital gains are distributed at least annually. Dividends may be declared and paid more frequently to improve Index tracking or to comply with the distribution requirements of the Internal Revenue Code. Distributions in cash may be reinvested automatically in additional whole Shares if the broker through which the investor purchased Shares makes such option available. Broker-dealers may make available the DTC book-entry Dividend Reinvestment Service for use by beneficial owners of Shares through DTC Participants for reinvestment of their dividend distributions. If this service is available and used, dividend distributions of both income and realized gains will be automatically reinvested in additional whole Shares issued by the Fund based on a payable date net asset value.

The net asset value for the Fund is calculated by the Fund's custodian. After calculation, such net asset value is available to the public from the Fund's distributor, and is also available to NSCC participants through data made available from NSCC.

Shares are registered in book entry form through the DTC. Trading in shares of Shares on the Exchange is effected until 4:00 p.m. (New York Time) each business day. The minimum trading increment for Shares will be 1/64 of $1.00, pursuant to Amex Rule 127, Commentary .03 (pending implementation of decimal pricing for all Amex equity securities).

To provide updated information relating to the Fund for use by investors, professionals and persons wishing to create or redeem shares of Shares based on Index with non-U.S. components, the Amex intends to disseminate a variety of data with respect to the Fund on a daily basis by means of CTA Tape B and Consolidated Quotation High Speed Lines, including Shares outstanding and Cash Component per Creation Unit size aggregation, which will be made available prior to the opening of the Amex. The closing prices of the Fund's Deposit Securities are readily available from, as applicable, the relevant exchanges, automated quotation systems, or on-line information services such as Bloomberg or Reuters. The Amex will also disseminate over Tape B an updated portfolio value ("Value") for Shares on a per Share basis every 15 seconds during regular Amex trading hours of 9:30 a.m. to 4:00 New York time. This value will be based on last sale prices disseminated by U.S. and applicable foreign exchange markets, the price of foreign issues being converted into U.S. dollars based on current currency exchange rates, and/or reported ADR prices in the U.S. (in U.S. dollars).

e. Criteria for Initial and Continued Listing

Shares are subject to the criteria for initial and continued listing of Index Fund Shares in Amex Rule 1002A. It is anticipated that a minimum of two Creation Units (100,000 Shares) will be required to be outstanding at the start of trading. This minimum number of Shares required to be outstanding at the start of trading will be comparable to requirements that have been applied to previously listed series of Portfolio Depositary Receipts and Index Fund Shares. It is anticipated that the net asset value of an individual Share will be approximately 1/3 of the Index value. For example, if the Index value is 270 (the Index value as of September 8, 2000), the initial Share price would be approximately $90.

The Exchange believes that the proposed minimum number of Shares outstanding at the start of trading is sufficient to provide market liquidity and to further the Fund's objective to seek to provide investment results that correspond generally to the price and yield performance of the Index.

f. Original and Annual Listing Fees

The Amex original listing fee applicable to the listing of Shares is $5,000. In addition, the annual listing fee applicable to the Fund under Section 141 of the *Amex Company Guide* will be based upon the year-end aggregate number of outstanding Shares in all funds of the Trust listed on the

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Exchange.[11] As noted above, the 1940 Act Application for Orders with respect to the Fund encompasses a number of funds in addition to the Fund, as specified in the Application.

g. Stop and Stop Limit Orders

Amex Rule 154, Commentary .04(c) provides that stop and stop limit orders to buy or sell a security (other than an option, which is covered by Amex Rule 950(f) and Commentary thereto) the price of which is derivatively priced based upon another security or index of securities, may with the prior approval of a Floor Official, be elected by a quotation, as set forth in Commentary .04(c)(i–v). The Exchange has designated Index Fund Shares, including Shares, as eligible for this treatment.[12]

h. Rule 190

Amex Rule 190, Commentary .04 applies to Index Fund Shares listed on the Exchange, including Shares. Commentary .04 states that nothing in Amex Rule 190(a) should be construed to restrict a specialist registered in a security issued by an investment company from purchasing and redeeming the listed security, or securities that can be subdivided or converted into the listed security, from the issuer as appropriate to facilitate the maintenance of a fair and orderly market.

i. Prospectus Delivery

The Exchange, in an Information Circular to Exchange members and member organizations, will inform members and member organizations, prior to commencement of trading, that investors purchasing Shares shall be required to receive a Fund prospectus prior to or concurrently with the confirmation of a transaction therein.

j. Trading Halts

In addition to other factors that may be relevant, the Exchange may consider factors such as those set forth in Amex Rule 918C(b) in exercising its discretion to halt or suspend trading in Index Fund Shares, including Shares. These factors would include, but are not limited to, (1) the extent to which trading is not occurring in stocks underlying the index; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.[13] In addition, trading in Shares will be halted if the circuit breaker parameters under Amex Rule 117 have been reached.

k. Suitability

Prior to commencement of trading, the Exchange will issue an Information Circular informing members and member organizations of the characteristics of the Fund and of applicable Exchange rules, as well as of the requirements of Amex Rule 411 (Duty to Know and Approve Customers).

l. Purchases and Redemptions in Creation Unit Size

In the Information Circular referenced above, members and member organizations will be informed that procedures for purchases and redemptions of Shares in Creation Unit Size are described in the Fund prospectus and Statement of Additional Information, and that Shares are not individually redeemable but are redeemable only in Creation Unit Size aggregations or multiples thereof.

m. Surveillance

Exchange surveillance procedures applicable to trading in the proposed Shares are comparable to those applicable to other Index Fund Shares currently trading on the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act[14] in general and furthers the objectives of Section 6(b)(5)[15] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities and, in general, to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange did not receive any written comments on the proposed rule change.

**III. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–00–53 and should be submitted by October 25, 2000.

**IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change**

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b)(5) of the Act.[16] The Commission believes that the Exchange's proposal to list and trade under Amex Rules 1000A *et seq.*, Shares of the streetTracks℠ Dow Jones Global Titans Index Fund will provide investors with a convenient and efficient way of participating in the securities markets, including involvement with equities issued by foreign investors. The Exchange's proposal should provide investors with increased flexibility in satisfying their investment needs by allowing them to purchase and sell a single security, at negotiated prices throughout the business day, that replicates the performance of a portfolio of stocks.

[11] As noted above, the 1940 Act Application for Orders with respect to the Fund encompasses a number of funds in addition to the Fund, as specified in the Application. *See supra* note 9.

[12] *See* Securities Exchange Act Release No. 29063 (April 10, 1991), 56 FR 15652 (April 17, 1991), note 9, regarding Exchange designation of equity derivative securities as eligible for such treatment under Amex Rule 154, Commentary .04(c).

[13] *See* Amex Rule 918C.

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

[16] 15 U.S.C. 78f(b)(5).



Accordingly, as discussed below, the Commission finds that the Exchange's proposal will promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, protect investors and the public interest consistent with Section 6(b)(5) of the Act.[17]

Amex Rules 1000A *et seq.* provide for the listing and trading of Index Fund Shares, which are shares issue by an open-end management investment company that seeks to provide investment results that correspond generally to the price and yield performance of a specified foreign or domestic index. The Exchange currently lists under Amex Rules 1000 *et seq.*: Select Sector SPDRs based on industry sectors in the S&P 500 Index;[18] Shares MSCI Index Funds (formerly "WEBS") based on Morgan Stanley Capital International foreign indexes;[19] series of the iShares Trust based on domestic stock indexes;[20] and series of the iShares Trust based on the S&P Europe 350 Index and the S&P/TSE 60 Index.[21] Similar to these other types of Index Fund Shares, the Commission believes that the streetTracks℠ Dow Jones Global Titans Index Fund will provide investors with an alternative to trading a broad range of securities on an individual basis, and will give investors the ability to trade a product representing an interest in a portfolio of securities designed to reflect substantially the applicable underlying index. The streetTracks℠ Dow Jones Global Titans Index Fund should allow investors to: (1) respond quickly to market changes through intra-day trading opportunities; (2) engage in hedging strategies similar to those used by institutional investors; and (3) reduce transaction costs for trading a portfolio of securities.

Although the fund is not a leveraged instrument, and, therefore, does not possess any of the attributes of stock index options, its prices will be derived and based upon the securities and the cash held in the Fund. Accordingly, the level of risk involved in the purchase or sale of this Fund is similar to the risk involved in the purchase or sale of traditional common stock, with the exception that the pricing mechanism for the Fund is based on a portfolio of securities. Based on these factors, the Commission believes that it is appropriate to regulate the Fund in a manner similar to other equity securities. Nevertheless, the Commission believes that the nature of the Fund raises certain product design, disclosure, trading, market impact and other issues that must be addressed adequately. As discussed in more detail below, the Commission believes Amex has adequately addressed these concerns.

*A. The Global Titans Index Fund Generally*

The Commission believes that the proposed Fund is reasonably designed to provide investors with an investment vehicle that substantially reflects in value the index it is based upon. In this regard, the Commission notes that the Fund will use an "indexing" investment approach that attempts to replicate, before expenses, the performance of the Index. The Fund generally will invest in all of the stocks comprising the Index in proportion to their weightings in the Index. The Fund Adviser may, however, choose stock equivalent positions that the Advisor deems appropriate as an alternative to such stocks. The Commission also notes that the Fund will normally invest at least 95% of its total assets in stocks that comprise the Index. The Commission believes that the component selection and replacement procedures for the Fund should help to ensure that the component securities generally remain highly capitalized and actively traded.

*B. Disclosure*

The Commission believes that the Exchange's proposal should ensure that investors are adequately apprised of the terms, characteristics, and risks of trading the Fund. As noted above, all investors will receive a prospectus regarding the product, prior to or concurrently with the confirmation of a transaction therein. Alternatively, as previously noted, the Fund will be subject to the Exchange's rules and procedures for Index Fund Shares. This includes the provisions in Commentary .03 to Amex Rule 1000A, which provides for delivery requirements of a product description for series that have been granted relief from the prospectus delivery requirements of the Act.[22] Because the Fund will be in continuous distribution, the prospectus delivery requirements of the Securities Act of 1933 will apply both to initial investors and to all investors purchasing such securities in secondary market transactions on the Amex. The prospectus or product description will address the special characteristics of Shares of the streetTracks℠ Dow Jones Global Titans Index Fund, including a statement regarding redeemability and method of creation.

The Commission notes that the Exchange will issue an information circular to its members explaining the unique characteristics of this type of security prior to the commencement of trading in shares of the Fund. The Commission also notes that the circular will inform members of responsibilities under Amex Rule 411 in connection with customer transactions in this security.[23] The circular also will address members' responsibility to deliver a prospectus or product description to all investors and highlight the characteristics of purchases in the Fund, including the procedures for purchases and redemptions and that such purchases and redemptions must be in Creation Unit size aggregations.

*C. Listing and Trading of the Index Fund Shares*

The Commission finds that adequate rules and procedures exist to govern the listing and trading of the Fund. The Fund will be subject to the full panoply of Amex listing and delisting/suspension rules and procedures governing the training of Index Fund Shares on the Amex. The Fund will be deemed an equity security subject to all Amex rules governing the trading of equity securities, including, among others, rules governing trading halts, notices to members, responsibilities of the specialist, customer suitability requirements and the election of a stop and stop limit order. Amex surveillance procedures for Index Fund Shares will be applicable to the streetTracks℠ Dow Jones Global Titans Index Fund. The Commission believes that the surveillance procedures developed by the Amex for Index Fund Shares are adequate to address the concerns associated with the listing and trading of this Fund, including any concerns associated with purchasing and redeeming Creation Units.

In addition, the Exchange has designated that a minimum of two

[17] 15 U.S.C. 78f(b)(5). In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[18] See *supra* note 4.

[19] See *supra* note 5.

[20] See *supra* note 6.

[21] See *supra* note 7.

[22] See *supra* note 6 (approving delivery of product description in lieu of prospectus).

[23] Amex Rule 411 generally requires that members use due diligence to learn the essential facts relative to every customer, every order or account accepted. As per telephone conversation between Florence E. Harmon, Senior Special Counsel, Division of Market Regulation, SEC, and Mike Cavalier, Associate General Counsel, Amex, on September 25, 2000.

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Creation Units, approximately 100,000 shares, will be required to be outstanding at the start of trading. The Commission believes this minimum number is sufficient to help to ensure that a minimum level of liquidity will exist at the start of trading. Furthermore, the Commission finds that registering the Fund shares in book-entry form through DTC, managing the distribution of dividends from net investment income, if any, and permitting beneficial owners of the Funds to offer the DTC book-entry Dividend Reinvestment Service are characteristics of the Fund that are consistent with the Act and should allow for the maintenance of fair and orderly markets and perfect the mechanism of a free and open market.

Further, the Commission believes that the Exchange's proposal to trade the Fund in minimum fractional increments of 1/64 of $1.00 is consistent with the Act. The Commission believes that such trading should enhance market liquidity, and should promote more accurate pricing, tighter quotations, and reduced price fluctuations. The Commission also believes that such trading should allow customers to receive the best possible execution of their transactions in the Fund. Additionally, the Commission believes that the proposed original listing fee of $5,000 is reasonable as is the proposed method for calculating the annual fee.

*D. Dissemination of Information and Regarding the Fund*

The Commission believes that the Values and figures that the Exchange proposes to have disseminated for the Fund will provide investors with timely and useful information concerning the value of the Fund. The Exchange represents that the Value information will be disseminated, every 15 seconds during regular Amex trading hours, through the facilities of the CTA and will reflect currently-available information concerning the value for Shares of the Fund. On a daily basis, the Exchange represents that it will disseminate the Shares outstanding, the cash amount per Creation Unit Aggregation, and the net asset value. The Exchange represents that the closing prices of the Fund's Deposit Securities are readily available from, as applicable, the relevant exchanges, automated quotation systems, or on-line information services such as Bloomberg or Reuters. The intra-day value of the Underlying Index will be available from Dow.

*E. Accelerated Approval*

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register** pursuant to Section 19(b)(2) of the Act. The Commission notes that the proposed rule change is based on the listing and trading standards in Amex Rule 1000A *et seq.* (Index Fund Shares), which the Commission previously approved after soliciting public comment on the proposal pursuant to Section 19(b)(1) of the Act.[24] The Commission does not believe that the proposed rule change raises novel regulatory issues that were not addressed in the Amex filing. Accordingly, the Commission believes it is appropriate to permit investors to benefit from the flexibility afforded by this new instrument by trading them as soon as possible. Accordingly, the Commission finds that there is good cause, consistent with Section 6(b)(5) of the Act,[25] to approve the proposal on an accelerated basis.

**V. Conclusion**

*It Is Therefore Ordered*, pursuant to Section 19(b)(2) of the Act,[26] that the proposed rule change (SR–Amex–00–53), is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[27]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–25438 Filed 10–3–00; 8:45 am]

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[24] *See supra* note 6 (approving SR–Amex–00–14); Securities Exchange Act Release No. 42542 (March 17, 2000), 65 FR 16437 (March 28, 2000) (noticing SR–Amex–00–14).

[25] 15 U.S.C. 78s(b)(5).

[26] 15 U.S.C. 78s(b)(2).

[27] 17 U.S.C. 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43370; File No. SR–NASD–00–38]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 to the Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Application of NASD Rules and Interpretive Materials to Certain Exempted Securities

September 27, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 16, 2000, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary, NASD Regulation, filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.[4]

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The NASD proposes to amend its rules to: (1) Codify an NASD staff interpretation that the non-cash compensation provisions set forth in paragraph (g) of NASD Rule 2820, "Variable Contracts of an Insurance Company," apply to group variable contracts that are exempted securities; and (2) adopt new NASD Rule 0116, "Application of Rules of the Association to Exempted Securities," to enumerate the NASD rules and interpretive materials that apply to exempted securities, including government securities, other than municipal securities. The text of the proposed rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On September 11, 2000, NASD Regulation filed Amendment No. 1 to the proposal. *See* letter from Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated September 11, 2000 ("Amendment No. 1"). In Amendment No. 1, NASD Regulation amended proposed NASD Rule 0116 to: (1) delete a reference to NASD Rule 2300; (2) replace a reference in proposed NASD Rule 0116 to IM–2520 with a reference to IM–2522; and (3) add references to NASD Rules 8110, 8120, 8210, 8221, 8222, 8223, 8224, 8225, 8226, 8227, 8310, IM–8310–1, IM–8310–2, 8230. In addition, Amendment No. 1 clarifies that the non-cash compensation provisions in NASD Rule 2820 will appear in NASD Rule 2820(g) rather than NASD Rule 2820(h) as a result of a rule change approved in October 1999 that deleted paragraph (c) of NASD Rule 2820. *See* Securities Exchange Act Release No. 4204 (October 20, 1999), 84 FR 58112 (October 28, 1999) (order approving File No. SR–NASD–98–14).

[4] In its proposal, NASD Regulation asked the Commission to approve the proposal on an accelerated basis. The Commission received two comment letters asking the Commission not to approve the proposal on an accelerated basis. *See* letter from Carl B. Wilkerson, Chief Counsel, Securities, American Conncil of Life Insurers, to Jonathan G. Katz, Secretary, Commission, dated August 4, 2000; and letter from David A. Winston, Vice President, Government Affairs, National Association of Insurance and Financial Advisors, dated August 30, 2000. The Commission is publishing the proposal for comment with a 15-day comment period.



change appears below. Proposed new language is in *italics*.

* * * * *

**0100. GENERAL PROVISIONS**

**0110. Adoption and Application of Rules**

*0116. Application of Rules of the Association to Exempted Securities*

*(a) For purposes of this Rule, the terms "exempted securities" and "municipal securities" shall have the meanings specified in Sections 3(a)(12) and 3(a)(29) of the Act, respectively.*

*(b) Unless otherwise indicated within a particular provision, the following Rules of the Association and Interpretative Materials thereunder are applicable to transactions and business activities relating to exempted securities, except municipal securities, conducted by members and associated persons: 2110, 2120, 2210, IM–2210–1, IM–2210–2, IM–2210–3, 2250, 2270, 2300, 2310, IM–2310–2, IM–2310–3, 2320, 2330, IM–2330, 2340, 2430, 2450, 2510, 2520, IM–2520, 2770, 2780, 2820(g), 2910, 3010, 3020, 3030, 3040, 3050, 3060, 3070, 3110, IM–3110, 3120, 3130, IM–3130, 3131, 3140, 3230, 3310, IM–3310, 3320, IM–3320, 3330, 8110, 8120, 8210, 8221, 8222, 8223, 8224, 8225, 8226, 8227, 8310, IM–8310, IM–8310–1, IM–8310–2, 8320, and 8330.*[5]

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**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, NASD Regulation included statements concerning the purpose of, and basis for, the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Regulation has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

(1) Purpose

The Government Securities Act Amendments of 1993 ("GSAA")[6] eliminated the statutory limitations on the NASD's authority to apply sales-practice rules to members' transactions in exempted securities, including government securities, other than municipal securities.[7] To implement the expanded sales practice authority granted to it pursuant to the GSAA, the NASD in 1995 submitted a proposal to the Commission to apply various NASD rules to exempted securities, including government securities, other than municipal securities. The Commission approved the NASD's proposal.[8] The 1996 Order and NASD Notice to Members 96–66 (October 1996) list the NASD rules that apply to members' transactions in exempted securities other than municipal securities.[9] However, this list was not incorporated into a specific NASD rule and does not currently appear in the NASD Manual. The proposal will codify in proposed NASD Rule 0116 the list of NASD rules and interpretative materials applicable to exempted securities, including government securities, other than municipal securities, and, as discussed more fully below, will add NASD Rule 2820(g) to the list. NASD Regulation believes that codifying this information in an NASD rule will enable members and other interested parties to identify the rules applicable to exempted securities, other than municipal securities, in a more efficient manner.

In Amendment No. 1, NASD Regulation proposes to add NASD Rules 8110, 8120, 8210, 8221, 8222, 8223, 8224, 8225, 8226, 8227, 8310, IM–8310, IM–8310–1, IM–8310–2, 8320, and 8330 to proposed NASD Rule 0116. According to NASD Regulation, the 8000 Series rules were excluded inadvertently from the original proposal and should be included in proposed NASD Rule 0116 because they are applicable to transactions and business activities relating to exempted securities.[10]

NASD Regulation notes that at the time the NASD identified the NASD rules that would apply to exempted securities other than municipal securities, the NASD had not adopted NASD Rule 2820(g).[11] Accordingly, NASD Rule 2820(g) was not listed as one of the provisions applicable to exempted securities. NASD Rule 2820(g), the non-cash compensation rule, limits the manner in which members may pay or accept non-cash compensation in connection with the sale or distribution of variable contracts.

NASD Regulations states that because certain group variable contracts are exempted securities under the Act, questions have arisen regarding whether NASD Rule 2820(g) applies to group variable contracts.[12] According to NASD Regulation, NASD Regulation staff have interpreted NASD Rule 2820(g) to apply to group variable contracts that are exempted securities since the adoption of NASD Rule 2820(g). To clarify the application of NASD Rule 2820(g) to group variable contracts that are exempted securities, NASD Regulation proposes to codify the current staff interpretation by including NASD Rule 2820(g) in proposed NASD Rule 0116.[13]

(2) *Statutory Basis*

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD Regulation believes that the proposed rule change will assist members and associated persons in more easily identifying those NASD rules applicable to transactions and business activities relating to exempted securities (other than municipal securities).

*B. Self-Regulatory Organization's Statement on Burden on Competition*

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not

[5] *See* Amendment No. 1, *supra* note 30.

[6] Government Securities Act Amendments of 1993, Pub. L. No. 103–202, § 1(a), 107 Stat. 2344 (1993).

[7] The terms exempted securities, government securities, and municipal securities are defined in Sections 3(a)(12), 3(a)(42), and 3(a)(29) of the Act, respectively. Rules for municipal securities are promulgated by the Municipal Securities Rulemaking Board.

[8] *See* Securities Exchange Act Release No. 37588 (August 20, 1996), 61 FR 44100 (August 27, 1996) (order approving File No. SR–NASD–95–39) ("1996 Order").

[9] Specifically, NASD Regulation notes that the 1996 Order and Notice to Members 96–66 indicate that the following NASD rules and interpretative materials are applicable to transactions and business activities relating to exempted securities (other than municipal securities) conducted by NASD members and associated persons: 2110, 2120, 2210, IM–2210–1, IM–2210–2, IM–2210—3, 2250, 2270, 2300, 2310, IM–2310–2, IM–2310–3, 2320, 2330, IM–2330, 2340, 2430, 2450, 2510, 2520, IM–2520, 2770, 2780, 2910, 3010, 3020, 3030, 3040, 3050, 3060, 3070, 3110, IM–3110, 3120, 3130, IM–3130, 3131, 3140, 3230, 3310, IM–3310, 3320, IM–3320 and 3330.

[10] *See* Amendment No. 1, *supra* note 3. The 1996 Order indicated that various NASD rules in the 8000 Series applied to exempted securities, including government securities, other than municipal securities. The Commission subsequently approved amendments to the 8000 Series that adopted NASD Rules 8221 through 8227. *See* Securities Exchange Act Release No. 38908 (August 7, 1997), 62 FR 43385 (August 13, 1997) (order approving File No. SR–NASD–97–28) ("1997 Order"). As indicated above, proposed NASD Rule 0116 includes NASD Rules 8221 through 8227 in its list of NASD rules that are applicable to exempted securities, including government securities, other than municipal securities.

[11] *See* Amendment No. 1, *supra* note 3.

[12] Section 3(a)(12)(A)(iv) of the Act includes as an exempted security "* * * any security arising out of a contract issued by an insurance company, which * * * security is issued in connection with a qualified plan as defined in subparagraph (C) of this paragraph."

[13] Because Rule 2820(g) applies only to transactions in variable products, the proposed rule change would result in Rule 2820(g) expressly applying to all variable products, including variable products that are exempted securities, such as group variable or similar products. NASD Regulation is not at this time recommending that other provisions of Rule NASD Rule 2820 apply to exempted securities.

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necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were not solicited. However, NASD Regulation received a letter from the National Association for Variable Annuities ("NAVA"), which argues that the non-cash compensation rules do not apply to sales of group variable annuities for several reasons.[14] First, NAVA contends that the specific language of NASD Rule 2820 limits its application to activities of members in connection with variable contracts, to the extent such activities are subject to regulation under the federal securities laws.[15] However, although certain provisions of the federal securities laws do not apply to exempted securities, other provisions of the federal securities laws do apply, including the anti-fraud provisions. Therefore, NASD Rule 2820(a) does not restrict the application of NASD Rule 2820(g) to group variable activities.

Second, NAVA argues that because NASD Rule 2820(g) was not specifically included in the 1996 Order's list of NASD rules applicable to exempted securities, the non-cash compensation provisions do not apply to sales of group variables. As described above, NASD Rule 2820(g) had not been adopted at the time the NASD identified the NASD rules that would apply to exempted securities, other than municipal securities. Accordingly, NASD Rule 2820(g) was not listed as one of the provisions applicable to exempted securities.

Third, NAVA argues that if the non-cash compensation rules do apply to group variables, separate contests should be permissible for group variable products given their different design, cost structures and commission payouts. With respect to the allowance of separate contests for group variable products, NASD Regulation staff has stated in Question #22 of Notice to Member 99–55 (July 1999) that a member may structure a non-cash arrangement that is limited only to a specific division of the firm. Therefore, if a separate sales force or division sells group variable contracts, as the NAVA letter indicates often occurs, then a separate contest may be appropriate. However, where the same salesperson sells both group variable products and individual variable annuities, separate contests would not be permissible, *i.e.*, the contest must be based on the entire universe of products within a specific product category that the individual sells.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change and Amendment No. 1 are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–00–38 and should be submitted by October 19, 2000.[16]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–25441 Filed 10–3–00; 8:45 am]

**BILLING CODE 8010–01–M**

[14] *See* letter from Mark J. Mackey, President and Chief Executive Officer, NAVA, to John M. Ramsay, Vice President and Deputy General Counsel, Office of General Counsel, NASD Regulation, dated April 16, 1999.

[15] NASD Rule 2820(a) states "[t]his Rule shall apply exclusively (and in lieu of Rule 2830) to the activities of members in connection with variable contracts, to the extent such activities are subject to regulation under the federal securities laws."

[16] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43342; File No. SR–PCX–00–08]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Stock Exchange, Inc. Relating to the Dissolution of the Appointments Committee

September 26, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 20, 2000, the Pacific Stock Exchange, Inc. ("PCX" or the "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. On September 21, 2000, the Exchange filed Amendment No. 1 to the proposal.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange has filed with the Commission a proposed rule change to dissolve the Options Appointments Committee and to transfer all powers of the Options Appointments Committee to the Options Allocation Committee. The text of the proposed rule change is available at the Office of the Secretary, the PCX and at the Commission.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange made technical corrections to the rule language and made non-substantive changes to the purpose section of the filing for clarity. *See* letter from Cindy L. Sink, Senior Attorney, Regulatory Policy, PCX to Jennifer L. Colihan, Division of Market Regulation, Commission, dated September 20, 2000.



*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

Current PCX rules state that the duty of the Options Appointment Committee is to recommend to the Board of Governors the appointment, assignment, retention, reassignment, transfer, and taking leave of the privileges to deal in and trade options to, by, and among members on the Options Trading Floor.[4] The Options Appointment Committee is also responsible for appointing Market Makers and appointing and approving Lead Market Makers ("LMMs").[5] The Options Appointment Committee may relieve LMMs of their appointments, designate interim LMMs, and make determinations pertaining to LMM-related issues not within the jurisdiction of any other standing committee. The Exchange proposes to eliminate the Options Appointment Committee and to transfer all of its authority and duties to the Options Allocation Committee, in order to centralize the PCX rules relating to the approval, evaluation, allocation to, and appointment of LMMs.

Specifically, the Exchange proposes to change all references to the "Options Appointment Committee" in PCX Rule 11.10(a), to the "Options Allocation Committee" and to transfer the language of PCX Rule 11.10(a), relating to the current duties of the Options Appointment Committee, to the Options Allocation Committee under new proposed PCX Rule 11.10(b)(2). The Exchange also proposes to renumber PCX Rule 11.10(b) as 11.10(a) and PCX Rule 11.10(c) as 11.10(b)(1). The Exchange believes that these changes will make the application of the transfer of all authority and duties from the Options Appointment Committee to the Options Allocation Committee consistent throughout the text of PCX Rule 11.

The Exchange also proposes to change the references to the "Options Appointment Committee" in PCX Rules 6.35; 6.37; Commentary .08; 6.82(a)(1) and (3); 6.82(b)(1) and (2); 6.82(f)(3); 6.82(g)(1); and 6.82(h)(1) to the "Options Allocation Committee." The Exchange believes that these changes will make all rules referencing or relating to the Options Appointment Committee consistent with that committee's elimination and the delegation of its duties and powers to the Options Allocation Committee.

[4] *See* PCX Rules 6.35, 6.37, 6.82, 11.10(c).

[5] *See* PCX Rules 6.35 and 6.82.

2. Statutory Purpose

The Exchange believes that the proposed rule changes are consistent with Section 6(b) of the Act,[6] in general, and further the objectives of Section 6(b)(5),[7] in particular, in that they are designed to promote just and equitable principles of trade, to enhance competition and to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

The Exchange neither solicited nor received written comments with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Amex consents, the Commission will:

A. by order approve the proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–00–08 and should be submitted by October 25, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–25439 Filed 10–3–00; 8:45 am]

**BILLING CODE 8010–01–M**

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43343; File No. SR–Phlx–00–80]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Waive Transaction and Comparison Fees on Customer Equity Option Orders.

September 26, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 1, 2000, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Phlx proposes to amend its schedule of dues, fees and charges to waive all comparison and transaction charges for customers trading equity options. The proposed fee is effective on September 1, 2000.

The text of the proposed rule change is available at the Phlx and the Commission.

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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**II. Self-Regulatory Organization's Statements Regarding the Purpose of, and the Statutory Basis for the Proposed Rule Change**

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposed rule change is to amend the Phlx fee schedule to waive and eliminate all comparison and transaction charges to customers connected with the trading of equity options. [3]

Currently, the Phlx imposes both comparison and transaction fees on all equity option trades, which vary in amount depending on whether a transaction involves a Registered Options Trader ("ROT"), a firm, a specialist or a customer. Customer orders electronically executed through the Phlx's Automated Options Market (AUTOM) system are entirely exempt from both comparison and transaction fees. Customer block orders (in certain size categories) are entitled to transaction fee discounts up to 25% of the normal charge. Under the proposed rule change all charges to ROTs, firms and specialists will remain unchanged.

The Phlx estimates that annual cost savings for customers will approximate $4.5 million based upon year-to-date results through July, 2000. These proposed fee adjustments are necessary in order to make the Phlx's fees more competitive with equivalent fees charged by other exchanges and to either maintain or enhance the volume of equity option orders placed with the Phlx. These downward adjustments in fee levels will also encourage the use of options by the investing public and promote competition and efficiencies among exchanges.

Recently, the American Stock Exchange,[4] Chicago Board Options Exchange [5] and the Pacific Exchange [6] have all changed their respective rules to eliminate similar equity option fees.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act [7] in general and furthers the objectives of Section 6(b)(4) of the Act,[8] in particular, because it provides for the equitable allocation of reasonable dues, fees and other charges among its Members and others utilizing the Phlx.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Phlx does not believe that the proposed rule change will impose any burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Phlx has neither solicited nor received written comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change establishes or changes a due, fee or charge imposed by the Phlx and, therefore, has become effective upon filing pursuant to Rule 19(b)(3)(A) of the Act [9] and Rule 19b–4(f)(2) thereunder.[10] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–00–80 and should be submitted by October 25, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–25425 Filed 10–3–00; 8:45 am]

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[3] *See* Phlx Options Rule 1051.

[4] *See* Securities Exchange Act Release No. 42675 (April 13, 2000), 65 FR 21223 (April 20, 2000) (eliminating all transaction, clearance and floor brokerage fees for all customer equity option orders).

[5] *See* Securities Exchange Act Release No. 42850 (May 30, 2000), 65 FR 36187 (June 7, 2000) (rescinding transaction and trade match fees for customer equity option orders routed through its electronic order routing system).

[6] *See* Securities Exchange Act Release No. 43115 (August 3, 2000), 65 FR 49280 (August 11, 2000) (eliminating both the fee for all manual executions of customer option orders and the ticket data entry fee applicable to all customer option orders). *See also* Securities Exchange Act Release No. 43020 (July 10, 2000), 65 FR 44558 (July 18, 2000) (eliminating of all transaction charges for all forms of electronic executions of customer orders and all on-line comparison charges for all customer executions).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(2).

[11] 17 CFR 240.30–2(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43339; File No. SR–PHLX–97–46]**

## Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 to the Proposed Rule Change Amending Article V, Section 5–5 and Article XXII, Section 22–1 of the Exchange's By-Laws

September 25, 2000.

**I. Introduction**

On February 11, 1998,[1] the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [2] and Rule 19b–4 thereunder,[3] a proposed rule change to amend the Exchange's By-Laws. On February 17, 1998, the Exchange filed Amendment No. 1 to the proposal with the Commission.[4] The proposed rule change, including Amendment No. 1, was published for comment in the **Federal Register** on March 17, 1998.[5] No comments were received on the proposal. On September 7, 1999, the Exchange filed Amendment No. 2 to the proposal with the Commission.[6]

This order approves the proposal, as amended, and requests comment from interested persons regarding Amendment No. 2 to the proposal.

**II. Description of the Proposal**

The Exchange proposes to amend Article V, Section 5–5, of its By-Laws to provide a mechanism to designate the Chief Operating Officer or another senior officer to assume the duties of Chairman on an interim basis in circumstances of an extended absence or inability of the Chairman to serve.[7] The Exchange also proposes to amend Article XXII, Section 22–1 to clarify the procedures with respect to the submission of amendments to the By-Laws. This proposed amendment to Section 22–1 would raise from fifty to seventy-five the number of Phlx members required to offer an amendment to the By-Laws; would lengthen from two weeks to four weeks the time period in which a vote on a proposed amendment must be held; and would establish the date of the submission of the proposed amendment as the record date for determining the eligibility of members to vote on the proposed amendment. The proposal also changes the requirement that the proposed amendment be submitted to the Board. Under the proposal, the proposed amendment will be submitted to the Secretary.

[1] The Phlx had originally submitted the filing on December 10, 1997; however, at that time, the filing was incomplete. At the Commission's request the Phlx made a complete filing on February 11, 1998.

[2] 15 U.S.C. 78s(b)(1).

[3] 17 CFR 240.19b–4.

[4] *See* Letter from Murray L. Ross, Vice President and Secretary, Phlx, to Marie Ito, Special Counsel, Commission, dated February 13, 1998 ("Amendment No. 1"). In Amendment No. 1, the Exchange made technical corrections to the language contained in Exhibit A to the proposal and provided support for the proposed changes to the By-Laws.

[5] Securities Exchange Act Release No. 39740 (March 10, 1998), 63 FR 13083.

[6] *See* Letter from Edith Hallahan, Deputy General Counsel, Phlx, to Michael Walinskas, Deputy Associate Director, SEC, dated September 3, 1999 ("Amendment No. 2"). In Amendment No. 2, the Exchange eliminated references in the proposal to By-Law Article IV, Section 4–8. The Exchange has filed the proposed changes to Section 4–8 in a separate proposal. *See* SR–PHLX–00–39.

[7] The Exchange has defined "extended absence or inability to act" as an inability of the Chairman to fulfill his or her duties for a period longer than four weeks.



**III. Discussion**

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[8] In particular, the Commission believes that the proposal is consistent with the Section 6(b)(3) [9] requirements that the rules of an Exchange be designed to assure a fair representation of its members in the selection of its directors and administration of its affairs.[10]

Under the proposed amendment to Article V, Section 5–5 of the Exchange's By-Laws, the Phlx board will be required to designate an acting Chairman if the Chairman of the Board is unable to fulfill his or her duties for more than four weeks. The Commission finds that the proposal may enable the Exchange to function more efficiently in the face of the extended absence or inability of the Chairman of the Board to act. By clarifying the circumstances under which the Chairman of the Phlx's board will be replaced on a temporary basis, the proposal strengthens existing provisions of the By-Laws, enabling the Exchange to better fulfill its responsibilities as a self-regulatory organization.

The Commission finds that the proposed amendments to Article XXII, Section 22–1 of the Phlx's By-Laws are designed to promote a fair and reasonable process for amending the Phlx's By-Laws that is consistent with the requirements of the Act. The Exchange represents that extending the period of time from two weeks to four weeks to conduct a vote on an amendment to the By-Laws will allow the Exchange sufficient time to send ballots to its membership while allowing the membership sufficient time to cast a reasoned and informed vote.[11] In addition, the Commission believes that the proposal, by establishing the record date for determining which members will be entitled to vote on a particular amendment to the Exchange's By-Laws, should improve and clarify the process by which By-Laws are amended.

The Commission finds good cause for approving Amendment No. 2 prior to the thirtieth day after the date of publication of notice in the **Federal Register**. Amendment No. 2 removes the section of the proposal amending Article IV, Section 4–8 of the Exchange's By-Laws. As a result, the Amendment raises no new significant regulatory issues. Accordingly, the Commission finds good cause, consistent with Sections 6(b)(6) [12] and 19(b)(2) [13] of the Act, to approve Amendment No. 2 to the proposed rule change on an accelerated basis.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2, including whether Amendment No. 2 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–PHLX–97–46 and should be submitted by October 25, 2000.

**V. Conclusion**

*It Is Therefore Ordered*, pursuant to Section 19(b)(2) of the Act, [14] that the proposed rule change (SR–PHLX–97–46) is approved, as amended, and Amendment No. 2 is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. [15]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–25440 Filed 10–3–00; 8:45 am]

BILLING CODE 8010–01–M

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(3).

[10] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] Telephone conversation between Murray L. Ross, Vice President and Secretary, Phlx and David Sieradzki, Special Counsel, Commission, on July 20, 2000.

[12] 15 U.S.C. 78f(b)(6).

[13] 15 U.S.C. 78s(b)(2).

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Summary Notice No. PE–2000–54]**

### Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of petitions for exemption received and of dispositions of prior petitions.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**DATES:** Comments on petitions received must identify the petition docket number involved and must be received on or before October 23, 2000.

**ADDRESSES:** Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

**FOR FURTHER INFORMATION CONTACT:** Forest Rawls (202) 267–8033, or Vanessa Wilkins (202) 267–8029 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to § 11.85 and 11.91 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on September 27, 2000.

**Donald P. Byrne,**

*Assistant Chief Counsel for Regulations.*

### Dispositions of Petitions

*Docket No.:* 30010
*Petitioner:* Avcon Industries, Inc.
*Section of the FAR Affected:* 14 CFR § 25.87(e)(4)
*Description of Relief Sought/ Disposition:* To permit supplemental type certification of the Learjet Models 20 and 30 series airplanes, modified for the carriage of cargo, to exclude hazardous quantities of smoke, flames, or noxious gases from the flight crew compartment.
*Grant, 09/05/00, Exemption No. 7341*

*Docket No.:* 28660
*Petitioner:* The Collings Foundation
*Section of the FAR Affected:* 14 CFR §§ 91.315, 93.319(a), 119.5(g), and 119.21(a)
*Description of Relief Sought/ Disposition:* To permit Collings to operate its Boeing B–17 (B–17) aircraft, which is certificated in the limited category, and its Consolidated B–24 (B–24) aircraft, which is certificated in the experimental category, for the purpose of carrying passengers on local flights for compensation or hire. You request that the jurisdictional Flight Standards District Office (FSDO) be changed in the grant of exemption (*i.e.*, Condition No. 10) from "NE FSDO No. 1" to the FAA's SO FSDO No. 15, 5950 Hazeltine National Drive, Suite 550, Orlando, Florida 32822–5023, because Collings is relocating its base of maintenance and operations to Orlando, Florida and Smyrna Beach, Florida.
*Grant, 09/05/00, Exemption No. 6540C*

*Docket No.:* 29914
*Petitioner:* Gemini Air Cargo, Inc.
*Section of the FAR Affected:* 14 CFR § 121.583(a)(8)
*Description of Relief Sought/ Disposition:* To permit up to three dependents of GAC employees who are accompanied by an employee sponsor traveling on official business only and who are trained and qualified in the operation of the emergency equipment on GAC's Boeing–DC–10–30F and MD–11F all-cargo airplanes, to be added to the list of persons specified in § 121.583(a)(8) that GAC is authorized to transport without complying with the passenger-carrying airplane requirements in §§ 121.309(f), 121.310, 121.391, 121.571, and 121.587; the passenger-carrying operation requirements in §§ 121.157(c), 121.161, and 121.291; and the requirements pertaining to passengers in §§ 121.285, 121.313(f), 121.317, 121.547, and 121.573.
*Grant, 08/25/00, Exemption No. 7339*

*Docket No.:* 30179
*Petitioner:* Evergreen International Airlines, Inc.
*Section of the FAR Affected:* 14 CFR Special Federal Aviation Regulation No. 79
*Description of Releif Sought/ Disposition:* To permit one flight to Pyongyang, the capital city of the Democratic People's Republic of Korea, on or about August 28, 2000.
*Grant, 08/24/00, Exemption No. 7325*

*Docket No.:* 30189
*Petitioner:* Experimental Aircraft Association Chapter 1056
*Section of the FAR Affected:* 14 CFR §§ 135.251, 135.255, 135.353, and appendixes I and J to part 121
*Description of Relief Sought/ Disposition:* To permit EAA Chapter 1056 to conduct local sightseeing flights at Maple Grove Airport, Fowlerville, Michigan, for a two-day charitable event in September 2000, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.
*Grant, 09/08/00, Exemption No. 7343*

[FR Doc. 00–25266 Filed 10–3–00; 8:45 am]
**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Environmental Impact Statement; Highway 75, Timmerman Junction to Ketchum, Blaine County, ID

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for proposed transportation improvements within the Highway 75 corridor from Timmerman Junction to Ketchum, Idaho.

**FOR FURTHER INFORMATION CONTACT:** Ms. Mary Gray, Environmental /Right-of-Way Program Manager, Federal Highway Administration, 3050 Lakeharbor Lane, Suite 126, Boise, ID 83702, (208) 334–1843; or Mr. Charles Carnohan, Senior Environmental Planner, Idaho Department of Transportation, P.O. Box 2–A, Shoshone, ID 83205–4700, (208) 886–7823.

**SUPPLEMENTARY INFORMATION:**



**Electronic Access**

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**Background**

The FHWA, in cooperation with the Idaho Transportation Department, will prepare an environmental impact statement (EIS) on proposed transportation improvements to the Highway 75 corridor from the intersection with Highway 20 (Timmerman Junction) north to Ketchum, Idaho. The EIS process will include identification of issues, development of the project's purpose and need, and identification and evaluation of a range of multi modal transportation alternatives as well as project mitigation measures.

A series of public scoping meetings will be held in Hailey and Ketchum Idaho to ensure that the full range of issues related to this proposed action are identified. Notices of specific meeting times and places will be placed in local newspapers. In addition, public meetings and consultation with Federal, State and local agencies will also be held. Comments and suggestions are invited from all interested parties. Comments or questions can be directed to the contacts listed in the caption **FOR FURTHER INFORMATION CONTACT.**

**Authority:** 23 U.S.C. 315; 23 CFR 1.48.

Issued on: September 28, 2000.

**Stephen A. Moreno,**

*Division Administrator.*

[FR Doc. 00–25435 Filed 10–3–00; 8:45 am]
**BILLING CODE 4910–22–P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA 2000–8014; Notice 1]**

### Mercedes-Benz USA, Receipt of Application for Decision of Inconsequential Noncompliance

Mercedes-Benz, U.S.A., L.L.C., Montvale, New Jersey (MBUSA), has determined that a limited number of model year 2000 Mercedes-Benz CL500 vehicles were produced and sold with upper beam headlamps that do not meet the photometric requirements mandated by Federal Motor Vehicle Safety Standard (FMVSS) No. 108, "Lamps, Reflective Devices, and Associated Equipment." A number of Mercedes-Benz CL500 vehicles were produced with upper beam headlamps that exceed the photometric limits of FMVSS 108.

Pursuant to 49 U.S.C. 30118(d) and 30120(h), Mercedes-Benz has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports."

This notice of receipt of this application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

Mercedes-Benz CL500 vehicles are equipped with Xenon headlamps. The lamps are a type of lighting technology that replaces the filament of the light bulb with a capsule of gas, in this case Xenon. When high voltage is applied, the Xenon gas is ignited to produce an arc of light. The amount of light produced is greater than a standard halogen bulb, while consuming less power, and more closely approximating the color temperature of natural daylight. When the lower beams of the Mercedes-Benz CL500 are illuminated, the Xenon lamps are illuminated and, through the use of a mechanical flap, are directed at an angle that optimizes illumination of road surfaces in front of the vehicle. In lower-beam mode the Xenon lamps meet all photometric requirements outlined in FMVSS 108. When the upper beam headlamps are activated, the mechanical flap alters the angle of the Xenon lamp illumination to provide higher angle illumination. In 613 Model Year 2000 CL500 vehicles, in addition to the Xenon lamp, a separate H7 lamp was improperly wired to illuminate at the same time the mechanical flap was activated to increase the Xenon light angle. In upper-beam mode, the Xenon and H7 lamp combination emit 89,000 candela of light and 12,731 candela of light at test points H,V and 4D–V respectively. This measurement exceeds the maximum photometric requirements of FMVSS 108 by approximately 20 percent.

MBUSA does not believe that the foregoing noncompliance will impact motor vehicle safety for the following reasons:

(1) Only a very limited number of Mercedes-Benz CL500 vehicles were produced containing the foregoing noncompliance (613 units). This number represents only minimal percentage of all vehicles operating in the United States.

(2) Upper beam headlamps are not legal in States for operation in the presence of oncoming traffic. Therefore, the higher output upper beam headlamps will likely not even be noticed by other drivers or vehicle occupants. Moreover, MBUSA believes that the approximately 20% increase in upper beam headlamp output in affected CL500's is indistinguishable to occupants of oncoming vehicles.

(3) With regards to the driver of the affected vehicles, MBUSA believes that the increase in output for upper beam headlamps may actually enhance vehicle safety in that drivers will have a greater view down the road thereby providing earlier warning of obstacles in the vehicle's intended path of travel.

MBUSA has not received, nor is the Company aware of, any complaints, accidents or injuries caused by the higher output upper beam headlamps.

Interested persons are invited to submit written data, views, and arguments on the application described above. Comments should refer to the docket number and be submitted to: U.S. Department of Transportation, Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. It is requested that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below. Comment closing date: November 3, 2000.

(49 U.S.C. 301118, 301120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: September 28, 2000.

**Stephen R. Kratzke,**

*Associate Administrator for Safety Performance Standards.*

[FR Doc. 00–25436 Filed 10–3–00; 8:45 am]
**BILLING CODE 4910–59–P**

## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

### Actions on Exemption Applications

**AGENCY:** Research and Special Programs Administration, DOT

**ACTION:** Notice of actions on Exemption Applications.

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**SUMMARY:** In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given of the actions on exemption applications in May–August 2000. The modes of transportation involved are identified by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Exemptions. It should be noted that some of the sections cited were those in effect at the time certain exemptions were issued.

Issued in Washington, DC, on September 28, 2000.

**J. Suzanne Hedgepeth,**

*Director, Office of Hazardous Materials Exemptions and Approvals.*

| Application No. | Exemption No. | Applicant | Regulation(s) affected | Nature of exemption thereof |
|---|---|---|---|---|
| **Modification Exemptions** | | | | |
| 8723–M | DOT–E 8723 | Austin Powder Company, Cleveland, OH. | 49 CFR 172.101, 173.242, 173.62, 176.83, 177.848. | To modify the exemption to allow for an additional tote bin packaging for the transportation in commerce of bulk shipments of certain blasting agents. |
| 9830–M | DOT–E 9830 | Worthington Cylinder Corporation, Columbus, OH. | 49 CFR 173.201, 173.202, 173.203, 173.302(a), 173.304(a), 173.304(d), 175.3. | To modify the exemption to allow for the transportation of Class 3 and Division 6.1 materials in non-DOT specification stainless steel cylinders designed in part with DOT Specification 4BA cylinders. |
| 10555–M | DOT–E 10555 | Pacific Scientific, HTL/KIN-Tech Division, Duarte, CA. | 49 CFR 173.304(a)(1), 175.3 ..... | To modify the exemption to allow for the transportation of an additional Division 2.2 material in an alternative non-DOT specification cylinder. |
| 10595–M | DOT–E 10595 | Allied Universal Corp., Miami, FL | 49 CFR 176.67(i), (j) ..... | To modify the exemption to allow for the transportation of Class 8 materials in tanks cars, to remain standing with unloading connections attached when no product is being transferred. |
| 10704–M | DOT–E 10704 | Puritan-Bennett Medical Gases (Mallinckrodt, Inc.), Overland Park, KS. | 49 CFR 173.302(a), Part 172, Part 172, Subpart C, E & F, Part 174, Part 177. | To modify the exemption to allow for calibration and functional checks of medical analyzers or monitors; lower minimum burst pressure to 340 psig. |
| 10832–M | DOT–E 10832 | Autoliv ASP, Inc., Ogden, UT ..... | 49 CFR 173.56(b), 173.61(b), Part 172, Subpart D, E. | To modify the exemption to include two additional manufacturing sites for the transportation for disposal of unapproved waste explosive materials used in passive restraint systems. |
| 11327–M | DOT–E 11327 | Phoenix Services Limited Partnership, Pasadena, MD. | 49 CFR 172.101 Column (8b), (8c), 173.197. | To modify the exemption to include changes to the packaging system for the transportation of regulated medical waste in non-DOT specification dual packaging. |
| 11327–M | DOT–E 11327 | Phoenix Services Limited Partnership, Pasadena, MD. | 49 CFR 172.101 Column (8b), (8c), 173.197. | To modify the exemption to allow for the use of an additional container design type for the transportation of regulated medical waste. |
| 11406–M | DOT–E 11406 | Conf. of Radiation Control Program Directors, Inc., Frankfort, KY. | 49 CFR 173.22(a)(1), 177.842, Part 172, Subparts C, D, E, F, G, H, Part 173, Subparts B, I, Part 174, Subpart K. | To modify the exemption to revise approval provisions and documentation required for shipments of waste or recycled materials, Class 7. |
| 11548–M | DOT–E 11548 | Lyondell Chemical Co/Equistar Chemicals, LP, Houston, TX. | 49 CFR 173.187, 173.211, 173.212, 173.213. | To modify the exemption to allow for the transportation of additional Division 4.1 and Division 4.2 materials in DOT Specification cylinders except Specification 8 and 3HT. |
| 11722–M | DOT–E 11722 | CITERGAS, S.A., Civray, FR ..... | 49 CFR 173.302 ..... | To modify the exemption to permit new construction of the non-DOT specification spherical pressure vessels and additions to the product list. |



| Application No. | Exemption No. | Applicant | Regulation(s) affected | Nature of exemption thereof |
|---|---|---|---|---|
| 11749–M | DOT–E 11749 | Union Tank Car Company, East Chicago, IN. | 49 CFR 172.203(a), 172.302(c), 180.509(e). | To modify the exemption to change the requirements for shippers holding party status and the need for them to maintain a copy of the exemption at their facilities. |
| 11749–M | DOT–E 11749 | Union Tank Car Company, East Chicago, IN. | 49 CFR 172.203(a), 172.302(c), 180.509(e). | To modify the exemption to allow for the use of acoustic emission for specific areas of a tank car in conjunction with other non-destructive test methods for structural integrity inspections. |
| 11761–M | DOT–E 11761 | Westvaco Corporation, Richmond, VA. | 49 CFR 172.302(c), 173.31(d)(1)(vi). | To modify the exemption to allow for the transportation of additional Class 8 materials in certain DOT specification and AAR specification tank cars; to allow relief from the marking requirements. |
| 11761–M | DOT–E 11761 | Vulcan Chemicals, Birmgingham, AL. | 49 CFR 172.302(c), 173.31(d)(1)(vi). | To modify the exemption to eliminate the marking requirements of certain DOT specifications and AAR specifications tank cars containing a residue of Class 8 materials. |
| 11777–M | DOT–E 11777 | Autoliv ASP, Inc., Ogden, UT ..... | 49 CFR 173.301(h), 173.302 ..... | To modify the exemption to authorize a design change to allow for side wall attachment studs on a non-DOT specification pressure vessel. |
| 12132–M | DOT–E 12132 | Carleton Technologies, Inc., Orchard Park, NY. | 49 CFR 173.302(a)(1), 175.3, 178.35, 178.65. | To modify the exemption to allow for a design change of the hermetically sealed high pressure gas cylinder containing Division 2.2 argon gas. |
| 12189–M | DOT–E 12189 | Automotive Recyclers Association, Fairfax, VA. | 49 CFR 173.166(c)(5) ..... | To modify the exemption to allow for rail freight and cargo vessel as authorized modes of transportation for shipments of air bag modules or seat belt pretensioners. |
| 12221–M | DOT–E 12221 | Advanced Technology Materials, Inc. (ATMI), Danbury, CT. | 49 CFR 173.192, 173.302, 173.304. | To modify the exemption to authorize non-DOT specification containers to be constructed of stainless steel; smaller initial capacity size for specific lab containers; and the inclusion of Division 2.2, 6.1 and additional Division 2.3 materials. |
| 12378–M | DOT–E 12378 | Federal Express Corporation, Memphis, TN. | 49 CFR 172.203(a), 172.301(c), 175.33. | To modify the exemption to eliminate the recordkeeping requirements outlines in the exemption for the transportation of dry ice not meeting the exceptions identified in Section 175.10. |
| 12378–M | DOT–E 12378 | Federal Express, Memphis, TN .... | 49 CFR 172.203(a), 172.301(c), 175.33. | To modify the exemption to indicate applicability to companies under subcontract operating under exclusive use for Federal Express for the transportation in commerce of dry ice by cargo aircraft only. |
| 12399–M | DOT–E 12399 | BOC Gases, Murray Hill, NJ ..... | 49 CFR 173.34(e)(1), 173.34(e)(14), 173.34(e)(15)(vi), 173.34(e)(3), 173.34(e)(4), 173.34(e)(8). | To modify the exemption to amend the equipment performance and test procedure language authorizing the use of an alternative test method for certain DOT Specification 3AL cylinders for the transportation of compressed gases. |

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| Application No. | Exemption No. | Applicant | Regulation(s) affected | Nature of exemption thereof |
|---|---|---|---|---|
| 12447–M | DOT–E 12447 | Akzo Nobel Coatings, Inc., Norcross, GA. | 49 CFR 172.407(c)(1) | To reissue the exemption originally issued on an emergency basis authorizing the use of hazard warning labels that do not conform with the specifications in the HMR. |
| 12448–M | DOT–E 12448 | Onyx Environmental Services, L.L.C., Flanders, NJ. | 49 CFR 173.304(a)(2) | To reissue the exemption originally issued on an emergency basis for the transportation of anhydrous ammonia in DOT specification cylinders. |
| 12463–M | DOT–E 12463 | Washington State Ferries, Seattle, WA. | 49 CFR 172.101 Column (10), 172.301(c), 172.302(c), 173.302(a). | To reissue the exemption originally issued on an emergency basis for the transportation of oxygen, refrigerated liquid, in insulated cylinders or insulated cargo tanks aboard passenger vessels. |
| 12106–N | DOT–E 12106 | Air Liquide America Corporation, Houston, TX. | 49 CFR 173.24(g), 173.314(o) | To authorize the venting of a DOT-specification 105A400W tank car used for the transportation of carbon dioxide, Division 2.2. (mode 2) |
| 12205–N | DOT–E 12205 | Independent Chemical Corp., Glendale, NY. | 49 CFR 177.848 | To authorize the transportation in commerce of Division 4.2 and Class 8 material inside poly bags within plastic lined UN 1G/Y fiber drums to be transported exempt from segregation criteria. (mode 1) |
| 12292–N | DOT–E 12292 | Westway Trading Corporation, New Orleans, LA. | 49 CFR 179.12 | To authorize the one-time transportation in commerce of a loaded non-hazardous material railcars containing broken interior steam coils. (mode 2) |
| 12297–N | DOT–E 12297 | Applied Companies, Valencia, CA | 49 CFR 173.302 | To authorize the transportation in commerce of non-DOT specification cylinders for aircraft use constructed of stainless steel with a psi maximum service pressure that exceeds the requirement for use in transportation Division 2.2 material. (mode 4) |
| 12325–N | DOT–E 12325 | Lifeline Technologies, Inc., Sharon Hill, PA. | 49 CFR 172.302(c), 174.67(i), (j) | To authorize an alternative monitoring system during unloading of various hazardous materials without the physical presence of an unloader. (mode 2) |
| 12341–N | DOT–E 12341 | Space Systems/Loral, Palo Alto, CA. | 49 CFR 173.302 | To authorize the transportation in commerce of non-DOT Specification cylinders pressurized to a low storage pressure with Division 2.2 material. (modes 1, 4) |
| 12350–N | DOT–E 12350 | BAC Technologies, Ltd, West Liberty, OH. | 49 CFR 173.302(a), 173.304(a), 173.34, 175.3. | To authorize the manufacture, marking and sale of non-DOT specification fiber reinforced plastic full composite cylinders for the transportation in commerce of certain compressed gases. (modes 1, 2, 3, 4, 5) |
| 12356–N | DOT–E 12356 | Memorial Healthcare System, Pembroke Pines, FL. | 49 CFR 172.101 Columns (8b), (8c), 173.197. | To authorize the transportation in commerce of Regulated medical waste, Division 6.1, in polyethylene bags overpacked in non-DOT specification bulk bins. (mode 1) |
| 12370–N | DOT–E 12370 | Eurotainer US, Inc., Somerset, NJ | 49 CFR 173.242(c) | To authorize the transportation in commerce of Division 4.2 and 6.1 hazardous materials in IM–101 portable tanks. (modes 1, 2, 3) |



| Application No. | Exemption No. | Applicant | Regulation(s) affected | Nature of exemption thereof |
|---|---|---|---|---|
| 12383–N | DOT–E 12383 | Sealift Inc., Oyster Bay, NY | 49 CFR 176.116(e)(3) | To authorize the transportation in commerce of Class 1 explosives onboard cargo vessel to be exempt from stowage requirements. (mode 3) |
| 12385–N | DOT–E 12385 | Maine Yankee Atomic Power Co., Wiscasset, ME. | 49 CFR 173.403, 173.427(a) | To authorize the transportation in commerce of steam generators and pressurizer packages containing radioactive components. (modes 1, 3) |
| 12386–N | DOT–E 12386 | Maine Yankee Atomic Power Co., Wiscasset, ME. | 49 CFR 173.411, 173.427(a)(1), 173.465. | To authorize the transportation in commerce of an atomic power station reactor pressure vessel. (modes 1, 2) |
| 12388–N | DOT–E 12388 | Mountain Safety Research, Seattle, WA. | 49 CFR 173.304(d)(3)(ii), 178.33 | To authorize the transportation in commerce of a non-DOT specification container conforming to DOT specification 2P, except for size, testing requirements, and markings, for use in transporting Division 2.1 material. (modes 1, 2, 3, 4) |
| 12390–N | DOT–E 12390 | Industrial Metals, Beaumont, TX | 49 CFR 172.203(a), 173.242 | To authorize the transportation in commerce of IM–101 portable tanks equipped with alternative relief value for use in transporting Class 3 material. (modes 1, 3) |
| 12396–N | DOT–E 12396 | United States Alliance, Houston, TX. | 49 CFR 173.302(a), 173.34(d), 175.3. | To authorize the transportation in commerce of a non-DOT specification cylinder as part of a specifically designed device for space flight for use in transporting Nitrogen, Division 2.2. (modes 1, 4) |
| 12398–N | DOT–E 12398 | Praxair, Danbury, CT | 49 CFR 173.34(d), 178.35(e) | To authorize the transportation in commerce of DOT 3A and 3AA cylinders equipped with alternative relief devices for use in transporting Division 2.2 material. (modes 1, 2) |
| 12399–N | DOT–E 12399 | BOC Gases, Murray Hill, NJ | 49 CFR 173.34(e)(1), 173.34(e)(14), 173.34(e)(15)(vi), 173.34(e)(3), 173.34(e)(4), 173.34(e)(8). | To authorize the use of ultrasonic inspection as an alternative retest method for DOT Specification 3AL cylinders. (modes 1, 2, 3) |
| 12402–N | DOT–E 12402 | Taylor-Wharton, Huntsville, AL | 49 CFR 172.203(a), 172.301(c), 178.35(f)(2)(i), 178.39(e). | To authorize the manufacture, marking and sale of non-DOT specification cylinders (comparable to DOT Specification 3BN cylinders) equipped with an alternative bottom plug for use in transporting presently authorized hazardous materials. (modes 1, 2, 3, 4, 5) |
| 12407–N | DOT–E 12407 | Qual-X, Inc., Powell, OH | 49 CFR 173.403, 173.410, 173.412, 173.465, 173.466. | To authorize the transportation in commerce of a specially designed device containing Class 7 hazardous materials. (mode 1) |
| 12411–N | DOT–E 12411 | International Fuel Cells, South Windsor, CT. | 49 CFR 173.212 | To authorize the transportation in commerce of dry metal catalysts classified as, Self-heating, solid, inorganic, n.o.s., Division 4.2, in non-DOT specification packaging. (modes 1, 3, 4) |
| 12414–N | DOT–E 12414 | Med-Flex, Inc., Mt. Holly, NJ | 49 CFR 172.101 Columns (8b), (8c), 173.197. | To authorize the transportation in commerce of solid regulated medical waste in non-DOT specification packaging consisting of a bulk outer packaging and non-bulk inner packagings. (mode 1) |

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| Application No. | Exemption No. | Applicant | Regulation(s) affected | Nature of exemption thereof |
|---|---|---|---|---|
| 12415–N | DOT–E 12415 | Canberra Industries, Meriden, CT | 49 CFR 173.302, 175.3 | To authorize the manufacture, mark, sale and use of non-DOT specification containers described as hermetically-sealed electron tube devices for use in transporting various Division 2.2 material. (modes 1, 2, 3, 4, 5) |
| 12423–N | DOT–E 12423 | Reagent Chemical & Research, Inc., Houston, TX. | 49 CFR 172.203(a), 179.13 | To authorize the transportation in commerce of DOT 111A100W5 tank cars that exceed the authorized load capacity for use in transporting hydrochloric acid, Class 8. (mode 2) |
| 12429–N | DOT–E 12429 | National Aeronautics & Space Administration (NASA), Washington, DC. | 49 CFR 172.203(a), 172.301(c), 173.309. | To authorize the transportation of carbon dioxide in flight certified, cylindrical portable fire extinguishers used as part of a specially designed device for the Space Station Program. (mode 1) |
| 12431–N | DOT–E 12431 | TITEQ Corp., Palmdale, CA | 49 CFR 172.302, 173.304, 175.3 | To authorize the manufacture, marking, and sale of a reusable non-DOT specification, welded stainless steel cylinder for use in transportation of certain Division 2.2 materials. (modes 1, 2, 4, 5) |
| 12432–N | DOT–E 12432 | Toxco Inc., Anaheim, CA | 49 CFR 171.14(a)(1) | To authorize the transportation in commerce of Class 8 material in non-UN packaging after October 1, 2001 that was filled prior to October 1, 1991. (mode 1) |
| 12437–N | DOT–E 12437 | Stericycle, Inc., Atlanta, GA | 49 CFR 172.101 Columns (8b), (8c), 173.197. | To authorize the transportation in commerce of non-DOT specification steel roll-off containers as outer packagings for use in transporting medical waste in dual packaging. (mode 1) |
| 12442–N | DOT–E 12442 | Cryogenic Vessel Alternatives, La Porte, TX. | 49 CFR 176.76(g)(1), 178.318 | To authorize the transportation in commerce of liquid nitrogen, cryogenic liquid, Division 2.2 in insulated portable tanks by cargo vessel for delivery to oil and gas production facilities. (modes 1, 3) |
| 12449–N | DOT–E 12449 | Chlorine Service Company, Kingswood, TX. | 49 CFR 173.314 | To authorize the manufacture, marking and sale of a non-DOT specification pressure vessel for use in transporting compressed gases classed in Division 2.1 and 2.2. (modes 1, 2, 3) |
| 12450–N | DOT–E 12450 | Chlorine Service Company, Kingswood, TX. | 49 CFR 173.314 | To authorize the manufacture, marking and sale of a non-DOT specification pressure vessel for use in transporting chlorine, Division 2.3. (modes 1, 2, 3) |
| 12452–N | DOT–E 12452 | CA Dept. of Health Services, Berkeley, CA. | 49 CFR 172.301(a), 172.301(b), 172.301(c), 173.196, Subpart C of Part 172. | To authorize the transportation in commerce of biological specimens classed as Infectious substance (Etiologic agent) in specially designed packagings inside mechanical freezers. (mode 1) |
| 12483–N | DOT–E 12483 | Security Disposal Inc., Waycross, GA. | 49 CFR 172.101 Columns (8b), (8c), 173.197. | To authorize the transportation in commerce of solid regulated medical waste, Division 6.2, in a non-DOT specification packaging consisting of a bulk outer packaging and non-bulk inner packagings. (mode 1) |



| Application No. | Exemption No. | Applicant | Regulation(s) affected | Nature of exemption thereof |
|---|---|---|---|---|
| 12492–N | DOT–E 12492 | Honeywell International Inc., Morristown, NJ. | 49 CFR 173.304(a)(1) | To authorize the transportation in commerce of liquefied gas, n.o.s., Division 2.2 in DOT–3AL 1800 cylinders. (modes 1, 2, 3) |
| | | **Emergency Exemptions** | | |
| EE 8178–M | DOT–E 8178 | NASA, Washington, DC | 49 CFR 173.302(a), 173.34(d), 175.3. | Request for emergency mod to extend the life cycle of the primary oxygen bottles to 25 years or 375 pressurizations. (modes 1, 4) |
| EE 9275–P | DOT–E 9275 | Blissworld, Brooklyn, NY , | 49 CFR Parts 100–199 | To become a party to exemption 9275. (modes 1, 2, 3) |
| EE 9791–M | DOT–E 9791 | Pressed Steel Tank Co., Inc., Milwaukee, WI. | 49 CFR 173.301(h), 173.302(a), 173.34(a)(1). | Request for authorization for an additional grade of steel used in the manufacture of non-DOT spec. cylinders. (mode 1) |
| EE 10926–M | DOT–E 10926 | Radcal Corporation, Monrovia, CA | 49 CFR 173.302, 173.34(d), 175.3 | To modify the exemption to authorize the manufacture, marking, sale and use of non-DOT specification radiation monitors without a safety relief device, which have passed an additional drop test procedure, for the transportation of argon, compressed. (modes 1, 4, 5) |
| EE 11103–M | DOT–E 11103 | Space Systems/Loral, Palo Alto, CA. | 49 CFR 107.302 | To modify the exemption to allow for an alternate landing site for the GOES weather satellite containing non-DOT specification spherical containers pressurized with certain Division 2.2 materials. (mode 1) |
| EE.12453–M | DOT–E 12453 | EQ-The Environmental Quality Company, Wayne, MI. | 49 CFR 172. 302(c), 173.24b(d)(2), 173.26. | Extended exemption to provide for shipment of two additional overloaded rail cars. (mode 2) |
| EE 12458–N | DOT–E 12458 | Bimax Inc., Cockeysville, MD | 49 CFR 172.301(c), 173.227(c) | Request for an emergency exemption to transport non-DOT specification drums containing a div. 6.1 material. (mode 1) |
| EE 12459–N | DOT–E 12459 | Alaska Pacific Powder Co., Olympia, WA. | 49 CFR 172.101 Column (9), 175.320(a). | Request for an emergency exemption to transport explosives by air. (mode 4) |
| EE 12462–N | DOT–E 12462 | Rinchem Company, Albuquerque, NM. | 49 CFR 173.24 | Request for an emergency exemption for a one-time movement of sulfuric acid contained in a leaking tote (bulk) container. (mode 1) |
| EE 1244–N | DOT–E 12463 | Washington State Ferries, Seattle, WA. | 49 CFR 172.101 Column (10), 172.301(c), 172.302(c), 173.302(a). | Request for an emergency exemption for the movement of oxygen in insulated cylinders or cargo tanks on passenger vessels. (mode 3) |
| EE 12464–N | DOT–E 12463 | DPC Enterprises, Inc., Houston, TX. | 49 CFR 173.24(b), 179.300–12(b), 179.300–13(a), 179.300–14. | Request for a one-time emergency exemption to transport a leaking ton container fitted with a "B" kit. (mode 1) |
| EE 12467–N | DOT–E 12467 | Allied Universal Corp., Miami, FL | 49 CFR 173.34(d) | Request for an emergency exemption for a one-time transport of a leaking cylinder that has been fitted with a chlorine institute A kit. (mode 1) |
| EE 12478–N | DOT–E 12478 | American Reclamation Group, LLC, Anchorage, AK. | 49 CFR 172.101 Columns (9b), 172.301(c), 173.27(c)(2). | Request for an emergency exemption for the one-time transportation in commerce of hydrogen peroxide aqueous solution by cargo aircraft, which is forbidden. (mode 1) |

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| Application No. | Exemption No. | Applicant | Regulation(s) affected | Nature of exemption thereof |
|---|---|---|---|---|
| EE 12480–N | DOT–E 12480 | Allied Universal Corp., Miami, FL | 49 CFR 173.24(b), 179.300–12(b), 179.300–13(a), 179.300–14. | Request for an emergency exemption for the one-time transportation of a leaking ton container fitted with a chemical B kit to prevent leakage during transportation. (mode 1) |
| EE 12482–N | DOT–E 12482 | Chemical Waste Management Co., Sulphur, LA. | 49 CFR 172.302(c), 173.24b(d)(2), 173.26. | Request for an emergency exemption for the one-time transportation of 3 overweight gondola rail cars. (mode 2) |
| EE 12484–N | DOT–E 12484 | Safety Kleen, Columbia, SC ..... | 49 CFR 173.244(c) ..... | Request for an emergency exemption to transport 2 storage tanks containing sodium. The tanks are not an authorized packaging. (mode 1) |
| EE 12486–N | DOT–E 12486 | International Paper, Griffin, GA .... | 49 CFR 172.203(a), 172.301(a)(1), 172.303(c), 178.503(a)(6). | Request for an emergency exemption to use existing stock of mis-marked UN bags that contain ammonium nitrate fertilizer. (mode 1) |
| EE 12487–N | DOT–E 12487 | DPC Industries, Houston, TX ..... | 49 CFR 173.24(b), 179.300–12(b), 179:300–13(a), 179.300–14. | Request for an emergency exemption for the one-time transportation of a leaking multi-unit tank car tank containing chlorine, that has been fitted with a chemical "B" kit. (mode 1) |
| EE 12488–N | DOT–E 12488 | JCI Jones Chemicals, Inc., Charlotte, NC. | 49 CFR 173.24(b), 179.300–12(b). 179.300–13(a), 179.300–14. | Request for an emergency exemption for the one time transportation in commerce of a leaking tank car tank that is equipped with a Chemical B kit to prevent leakage during transportation. (mode 1) |
| EE 12489–N | DOT–E 12489 | Solvay Interox, Houston, TX ..... | 49 CFR 173.24(d)(2) ..... | Request for an emergency exemption for the one-time transportation of an over-loaded tank car tank that exceeds the weight limitation for that car. (mode 2) |
| EE 12490–N | DOT–E 12490 | Hydrite Chemical, Lake Zurich, IL | 49 CFR 172.302(c), 173.24b, 173.26. | Request for a one-time authorization to ship a leaking ton cylinder fitted with an A Kit. (mode 1) |
| EE 12498–N | DOT–E 12498 | Cook Inlet Pipe Line Co., Anchorage, AK. | 49 CFR 172.101 Column (9b), 172.301(c), 173.27(c)(2). | Request for an emergency exemption for the one-time transportation in commerce of a 5.1 material by aircraft. The quantity limitations and chemical concentration exceed those in the HMR. (mode 4) |
| EE 12499–N | DOT–E 12499 | M&M Service Co., Carlinville, IL ... | 49 CFR 173.315(k)(6) ..... | Request for an emergency exemption to transport liquefied petroleum gas in a non-DOT specification cargo tank. (mode 1) |
| EE 12500–N | DOT–E 12500 | National Propane Gas Association, Washington, DC. | 49 CFR 173.315(a), 178.245–4(e) | To authorize the one-time one-way transportation of non-DOT specification portable tanks containing residual amounts of liquefied petroleum gas for the purpose of requalifcation and recertification. (modes 1, 3) |
| EE 12501–N | DOT–E 12501 | Northland Services, Inc., Seattle, WA. | 49 CFR 178.245–4(e) ..... | Request for an emergency exemption to transport propane in DOT spec. 51 tanks that technically do not meet the definition of the spec. (mode 3) |
| EE 12503–N | DOT–E 12503 | Chemical Waste Management, Sulphur, LA. | 49 CFR 172.302(c), 173.24b(d)(2), 173.26. | Request for an emergency exemption to transport 3 overloaded gondola cars. (mode 2) |



| Application No. | Exemption No. | Applicant | Regulation(s) affected | Nature of exemption thereof |
|---|---|---|---|---|
| EE 12505–N | DOT–E 12505 | Allied Universal Corp., Miami, FL | 49 CFR 173.34(d) ..... | Request for a one-time emergency exemption to transport a leaking ton cylinder containing chlorine that has been equipped with a Chlorine Institute Emergency A kit. (mode 1) |
| EE 12507–N | DOT–E 12507 | DPC Industries, Inc., Houston, TX | 49 CFR 172.302(c), 173.24(b), 179.300–12(b), 179.300–13(a), 179.300–14. | Request for emergency exemption to transport a leaking ton cylinder equipped with a chemical B kit. (mode 1) |
| EE 12508–N | DOT–E 12508 | BASF, Mt. Olive, NJ ..... | 49 CFR 172.101 Column (7) special provision B6, 172.102(c)(3). | Request for a one-time authorization to transport a class 8 material in a UN IBC, which is not an authorized packaging for the material. (mode 1) |
| EE 12509–N | DOT–E 12509 | U.S. Department of Defense, Washington, DC. | 49 CFR 172.101 col. 10A ..... | Request for an emergency exemption to authorize the US DOD to stow palletized cargo of a class 4.2 in an under deck forecastle location instead of on deck. (mode 3) |
| EE 12510–N | DOT–E 12510 | DPC Enterprises, LP, Houston, TX | 49 CFR 173.34(d) ..... | To authorize the emergency one-time transportation in commerce of a DOT specification 3A480 cylinder containing chlorine. (mode 2) |
| EE 12511–N | DOT–E 12511 | IMCO Recylcing, Inc., Irving, TX .. | 49 CFR 173.24b(d)(2), 173.26 ..... | To authorize the emergency transportation in commerce of a rail box car transporting Aluminum Remelting By Products that exceed the maximum gross weight on rail by 3,600 pounds. (mode 2) |
| EE 12512–N | DOT–E 12512 | Alaska Airlines, Seattle, WA ..... | 49 CFR 172.203(a), 172.301(c), 172.303(a), 172.401(a)(1) and (2). | Request for an emergency exemption to conduct compliance testing of Alaska Airlines; hazardous materials acceptance, storage, and handling procedures. (mode 4) |
| EE 12513–N | DOT–E 12513 | Sterling Chemicals Inc., Texas City, TX. | 49 CFR 172.302(c), 173.24b(d)(2), 173.26. | Request for an emergency exemption to authorize the transportation of an overloaded rail car. (mode 2) |
| EE 12514–N | DOT–E 12514 | SMI Steel, Cayce, SC ..... | 49 CFR 172.302(c), 173.24b(d)(2), 173.26. | Request for an emergency exemption to transport an overloaded hopper rail car. (mode 2) |
| EE 12524–N | DOT–E 12524 | EQ—The Environmental Quality Company, Wayne, MI. | 49 CFR 172.302(c), 173.24b(d)(2), 173.26. | Request for an emergency exemption to transport an overloaded gondola rail car. (mode 2) |
| EE 12528–N | DOT–E 12528 | Permagas, Lake Stevens, WA ..... | 49 CFR 178.245–4(e), 450.3(a)(2) | To authorize the transportation in commerce of an MC–330 tank welded into a 40ft intermodal container for use in transporting propane, Division 2.1 to remote areas. (modes 1, 3) |
| EE 12529–N | DOT–E 12529 | BP Chemicals Inc., Naperville, IL | 49 CFR 172.302(c), 173.24b(d)(2), 173.26. | Request for an emergency exemption to transport an overweight rail car. (mode 2) |
| EE 12543–N | DOT–E 12543 | JCI Jones Chemicals, Inc., Jacksonville, FL. | 49 CFR 1 2 3 ..... | To authorize emergency transportation in commerce of a DOT 3A 480 Specification container that contains Chlorine that is leaking at the value to be transported with an approved A-Kit. (mode 1) |

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| Denials | |
|---|---|
| 6611–M | Request by Gardner Cryogenics Lehigh Valley, PA to modify the exemption to provide for design changes of a non-DOT specification vacuum insulated portable tank manufactured in accordance with ASME Code criteria resulting in an increase of the Maximum Allowable Working Pressure for the transportation of a nonflammable cryogenic liquid denied May 16, 2000. |
| 6765–M | Request by Gardner Cryogenics Lehigh Valley, PA to modify the exemption to provide for design changes of the non-DOT specification portable tanks manufactured in accordance with the ASME Code criteria resulting in an increase of the Maximum Allowable Working Pressures for the transportation of a Division 2.1 and a Division 2.2 material denied May 16, 2000. |
| 10480–M | Request by Gardner Cryogenics Lehigh Valley, PA to modify the exemption to provide for design changes of a non-DOT specification portable tank manufactured in accordance with ASME Code criteria resulting in an increase of the Maximum Allowable Working Pressures; the addition of a 6700 gallon liquid helium tank denied May 16, 2000. |
| 10821–M | Request by BFI Waste Systems of North America, Inc. Atlanta, GA to modify the exemption to relieve the marking requirements of inner packages, inside roll off containers, when transporting regulated medical waste from a single offeror denied May 16, 2000. |
| 11826–M | Request by Spectra Gases, Inc. Branchburg, NJ to modify the exemption to authorize additional Division 2.2 materials transported in DOT–3AL aluminum cylinders denied July 28, 2000. |
| 12155–M | Request by S&C Electric Company Chicago, IL to modify the exemption to authorize an alternative pressure vessel constructed of spirally-wound fiberglass for the transportation of certain Division 2.2 materials denied August 17, 2000. |

[FR Doc. 00–25426 Filed 10–3–00; 8:45 am]
BILLING CODE 4909–60–M

## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration (RSPA)

[Notice No. 00–11]

**AGENCY:** Research and Special Programs Administration, DOT.

**ACTION:** Advisory Notice.

**SUMMARY:** Until recently, Q3 Comdyne, Inc. held four exemptions authorizing the manufacture, mark and sale of non-DOT specification fiber reinforced plastic (FRP) full composite (FC) cylinders. Recently, RSPA (we) was informed that Q3 Comdyne, Inc., is no longer in business. We are issuing this advisory notice to (1) provide information concerning the current requirements for transportation of the cylinders under exemption, and (2) inform the owners and users of these cylinders of the actions we have taken to date and plan to take in the future.

**FOR FURTHER INFORMATION CONTACT:** Sherrie Nelson, Office of Hazardous Materials Exemptions and Approvals, RSPA, Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590–0001, Telephone (202) 366–4535.

**SUPPLEMENTARY INFORMATION:** Recently, RSPA was notified by Q3 Comdyne, Inc. that it is no longer in business. Q3 Comdyne, Inc. was the grantee of four exemptions (E–9716, E–10823, 10256, and E–10905) authorizing the manufacture, mark, and sale (MMS) of FRP cylinders. After receiving several applications for renewal from cylinder owners and users and in light of Q3 Comdyne's current business status, we have modified DOT E–9716 and 10256 by converting them from MMS exemptions to "offeror" exemptions. The exemption change permits the continued use of the Comdyne exemption cylinders. Determination of whether party status is required on any of these exemptions is based on the following criteria: (1) A person filling and offering a cylinder for transportation in commerce would be required to have party status; (2) A person only reoffering a cylinder without modifying or changing the cylinder or its contents would not require party status. The requirements for exemption renewal are applicable to both the grantee and persons holding party status in accordance with 49 CFR 107.109. A fire department filling and offering a cylinder, containing a hazardous material, for transportation that is not in commerce is not required to have party status to the exemption. However, we do recommend each person who uses an exemption package maintain a current copy of the exemption. Current copies of DOT–E 9716 and 10256 are available on the HazMat Safety Homepage at http://hazmat.dot.gov.

Issued in Washington, DC on September 28, 2000.

**Robert A. McGuire,**

*Associate Administrator for Hazardous Materials Safety.*

[FR Doc. 00–25448 Filed 10–3–00; 8:45 am]
BILLING CODE 4910–60–M

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Finance Docket No. 33936]**

### Lapeer Industrial Railroad Company-Acquisition and Operation Exemption-Adrian & Blissfield Rail Road Company

Lapeer Industrial Railroad Company (LIRR), a noncarrier, has filed a notice of exemption under 49 CFR 1150.31 to acquire and operate approximately 1.34 miles of rail line owned by Adrian & Blissfield Rail Road Company (ADBF). The line, known as the "Lapeer Spur," is part of Grand Trunk Western Railroad Incorporated's (GTW) Lapeer Subdivision at Lapeer, in Lapeer County, MI, and runs between milepost 56.28 and milepost 57.62. LIRR will also acquire the right to operate approximately .88 miles of rail line which ADBF currently leases from GTW, known as the "Flint Subdivision" at Lapeer, in Lapeer County, MI. The leased line is part of GTW's second main line, and runs between milepost 289.90 and milepost 290.78.[1] LIRR certifies that its projected revenues as a result of this transaction will not result in the creation of a Class II or Class I rail carrier, and further certifies that its projected annual revenues will not exceed $5 million.

The transaction is expected to be consummated on or shortly after September 28, 2000.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33936, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Kenneth J. Bisdorf, 2301 West Big Beaver Road, Suite 600, Troy, MI 48084–3329.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: September 26, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 00–25244 Filed 10–2–00; 8:45 am]
BILLING CODE 4915–00–P

[1] *See* Adrian & Blissfield Rail Road Company-Acquisition Exemption-Grand Trunk Western Railroad Incorporated, STB Finance Docket No. 33747 (STB served June 3, 1999).



## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Finance Docket No. 33935]**

### Detroit Connecting Railroad Company—Acquisition and Operation Exemption—Adrian & Blissfield Rail Road Company

Detroit Connecting Railroad Company (DCON), a noncarrier, has filed a notice of exemption under 49 CFR 1150.31 to acquire and operate approximately 2.27 miles of rail line owned by Adrian & Blissfield Rail Road Company. The line, known as the "Dequindre Line," is part of Grand Trunk Western Railroad Incorporated's Holly Subdivision at Detroit, Wayne County, MI, and runs between milepost 1.77 and milepost 4.04.[1] DCON certifies that its projected revenues as a result of this transaction will not result in the creation of a Class II or Class I rail carrier, and further certifies that its projected annual revenues will not exceed $5 million.

The transaction is expected to be consummated on or shortly after September 28, 2000.

If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33935, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Kenneth J. Bisdorf, 2301 West Big Beaver Road, Suite 600, Troy, MI 48084–3329.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: September 26, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 00–25245 Filed 10–4–00; 8:45 am]
BILLING CODE 4915–00–P

[1] *See* Adrian & Blissfield Rail Road Company-Acquisition Exemption-Grand Trunk Western Railroad Incorporated, STB Finance Docket No. 33692 (STB served Dec. 28, 1998).

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Finance Docket No. 33937]**

### Charlotte Southern Railroad Company-Acquisition and Operation Exemption-Adrian & Blissfield Rail Road Company

Charlotte Southern Railroad Company (CHS), a noncarrier, has filed a notice of exemption under 49 CFR 1150.31 to acquire and operate approximately 3.22 miles of rail line owned by Adrian & Blissfield Rail Road Company. The line, known as the "Charlotte Spur," is part of Grand Trunk Western Railroad Incorporated's Flint Subdivision at Charlotte, Eaton County, MI, and runs between milepost 21.24 and milepost 24.46.[1] CHS certifies that its projected revenues as a result of this transaction will not result in the creation of a Class II or Class I rail carrier, and further certifies that its projected annual revenues will not exceed $5 million.

The transaction is expected to be consummated on or shortly after September 28, 2000.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33937, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Kenneth J. Bisdorf, 2301 West Big Beaver Road, Suite 600, Troy, MI 48084–3329.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: September 26, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 00–25246 Filed 10–3–00; 8:45 am]
BILLING CODE 4915–00–P

[1] *See* Adrian & Blissfield Rail Road Company-Acquisition Exemption-Grand Trunk Western Railroad Incorporated, STB Finance Docket No. 33718 (STB served Mar. 3, 1999).

## DEPARTMENT OF THE TREASURY

### Office of Thrift Supervision

**[AC–2: OTS Nos. H–2241, H–3609 and 07874]**

### Finger Lakes Bancorp, Inc., Geneva, New York; and Savings Bank of the Finger Lakes, Geneva, New York; Approval of Conversion Application

Notice is hereby given that on September 28, 2000, the Managing Director, Office of Supervision, Office of Thrift Supervision, or his designee, acting pursuant to delegated authority, approved the application of Finger Lakes Bancorp, Inc., Geneva, New York, and Savings Bank of the Finger Lakes, Geneva, New York, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and the Northeast Regional Office, Office of Thrift Supervision, 10 Exchange Place, 18th Floor, Jersey City, New Jersey 07302.

Dated: September 29, 2000.

By the Office of Thrift Supervision.

**Nadine Y. Washington,**

*Corporate Secretary.*

[FR Doc. 00–25451 Filed 10–3–00; 8:45 am]
BILLING CODE 6720–01–M

## DEPARTMENT OF VETERANS AFFAIRS

### Research and Development Cooperative Studies Evaluation Committee; Notice of Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463 (Federal Advisory Committee Act) as amended, by section 5(C) of Public Law 94–409, that a meeting of the Research and Development Cooperative Studies Evaluation Committee will be held at The Madison Hotel, 15th & M Street NW, Washington, DC 20005, October 11–12, 2000. This session is scheduled to begin at 7:30 a.m. and end at 5 p.m. The meeting will be for the purpose of reviewing the following three new proposals: A Randomized Clinical Trial of Cognitive-Behavioral Treatment for PTSD in Women Veterans, Heart Failure in Patients with Preserved Systolic Function, and Tri-National Study—Optimal Management of Patients with HIV Infection of Whom 1st and 2nd Line Highly Active Anti-Retroviral Therapy Has Failed (OPTIMA).

The Committee advises the Chief Research and Development Officer

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through the Director of the Cooperative Studies Program on the relevance and feasibility of the studies, the adequacy of the protocols, and the scientific validity and propriety of technical details, including protection of human subjects.

The meeting will be open to the public from 7:30 a.m. to 8 a.m. to discuss the general status of the program. Those who plan to attend should contact Ms. Carla DeSpain, Coordinator, Department of Veterans Affairs, Washington, DC, at (202) 273–8274.

The meeting will be closed from 8 a.m. to 5 p.m. This portion of the meeting involves consideration of specific proposals in accordance with provisions set forth in 10(d) of Public Law 92.463, as amended by sections 5(C) of Public Law 94–409, and 5 U.S.C. 552b(C)(6). During the closed session of the meeting, discussions and recommendations will deal with qualifications of personnel conducting the studies, staff and consultant critiques of research proposals, and similar documents, and the medical records of patients who are study subjects, the disclosures of which would constitute a clearly unwarranted invasion of personal privacy.

Dated: September 28, 2000.

By Direction of the Acting Secretary.

**Marvin R. Eason,**

*Committee Management Officer.*

[FR Doc. 00–25489 Filed 10–3–00; 8:45 am]

BILLING CODE 8320–01–M

## DEPARTMENT OF VETERANS AFFAIRS

### Voluntary Service National Advisory Committee, Notice of Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463 that the Executive Committee, Department of Veterans Affairs Voluntary Service (VAVS) National Advisory Committee (NAC) will meet October 24–25, 2000 at Double Tree Hotel at Reid Park, 445 South Alvernon Way, Tucson, AZ. The meeting is scheduled from 8 a.m. until 4:30 p.m. on October 24, 2000, and from 8 a.m. until 12 noon on October 25, 2000.

The NAC consists of sixty national organization and advises the Under Secretary for Health and other members of the Department of Veterans Affairs Central Office staff on how to coordinate and promote volunteer activities within VA facilities. The Executive Committee consists of nineteen representatives from the NAC member organizations and acts as the NAC governing body in the interim period between NAC Annual Meetings. Business topics for the October 24, 2000, morning session include: VHA update and a VAVS update of the Voluntary Service program's progress since the 2000 NAC Annual Meeting, Parke Board update, and review of the 2000 Annual Meeting Evaluations. The October 24, 2000, afternoon business session topics include: 55th Annual Meeting plans, and a tour of the Tucson, VAMC. The October 25, 2000, morning business session topics include: 2003 NAC Annual Meeting planning, membership report review recommendations approved at the 1999 NAC Annual Meeting, subcommittee reports, Standard Operating Procedure Revisions, New Business and EC Committee Appointments.

The meeting is open to the public. Individuals interested in attending are encouraged to contact: Ms. Laura Balun, Administrative Officer, Voluntary Service Office (10C2), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC, 20420, (202) 273–8392.

Dated: September 27, 2000.

By Direction of the Secretary.

**Marvin R. Eason,**

*Committee Management Officer.*

[FR Doc. 00–25490 Filed 10–3–00; 8:45 am]

BILLING CODE 8320–01–M

Federal Register

Wednesday,
October 4, 2000

Part II

# Department of Agriculture

**Cooperative State Research, Education, and Extension Service**

**Request for Proposals (RFP): Special Research Grants Program, Potato Research; Notice**

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**DEPARTMENT OF AGRICULTURE**

**Cooperative State Research, Education, and Extension Service**

**Request for Proposals (RFP): Special Research Grants Program, Potato Research**

**AGENCY:** Cooperative State Research, Education, and Extension Service, USDA.

**ACTION:** Notice of Request for Proposals and Request for Input.

**SUMMARY:** The Cooperative State Research, Education, and Extension Service (CSREES) announces the availability of grant funds and requests proposals for the Special Research Grants Program, Potato Research for fiscal year (FY) 2001. Subject to the availability of funds, the amount available for support of this program in FY 2001 is anticipated to be between approximately $1,330,000 and $1,425,000, subject to the enactment of the appropriations act that provides funds to CSREES.

This notice sets out the objectives for these projects, the eligibility criteria for projects and applicants, the application procedures, and the set of instructions needed to apply for a Potato Research Project grant.

CSREES also is soliciting comments regarding this request for proposals from any interested party. These comments will be considered in the development of the next request for proposals for this program. Such comments will be used in meeting the requirements of section 103(c)(2) of the Agricultural Research, Extension, and Education Reform Act of 1998 (AREERA).

**DATES:** All proposals must be received at USDA on or before January 22, 2001. Proposals not received on or before this date will not be considered for funding.

User comments are requested within six months from the issuance of the request for proposals (RFP). Comments received after that date will be considered to the extent practicable (see Part VII. G.).

**ADDRESSES:** Proposals should be submitted to the following mailing address: Special Research Grants Program, Potato Research; c/o Proposal Services Unit; Office of Extramural Programs; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2245; 1400 Independence Ave., S.W.; Washington D.C. 20250–2245.

The address for hand-delivered proposals or proposals submitted using an express mail or overnight courier service is: Special Research Grants Program, Potato Research; c/o Proposal Services Unit; Office of Extramural Programs; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; First Floor, Waterfront Centre; 800 9th Street, S.W.; Washington D.C. 20024. Telephone: (202) 401–5048.

Written user comments should be submitted by mail to: Policy and Program Liaison Staff; Office of Extramural Programs; USDA–CSREES; STOP 2299; 1400 Independence Avenue, S.W.; Washington, D.C. 20250–2299; or via e-mail to: RFP-OEP@reeusda.gov. (This e-mail address is intended only for receiving stakeholder input comments regarding this RFP, and not for requesting information or forms.)

**FOR FURTHER INFORMATION CONTACT:** Dr. James Parochetti; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2220; 1400 Independence Avenue, S.W.; Washington, D.C. 20250–2220; telephone: (202) 401–4354; e-mail: jparochetti@reeusda.gov.

**SUPPLEMENTARY INFORMATION:**

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## Part I—General Information

### *A. Legislative Authority*

The authority for this program is contained in subsection (c)(1)(B) of section 2 of the Competitive, Special, and Facilities Research Grant Act, of Pub. L. No. 89–106, as amended (7 U.S.C. 450i(c)(1)(B)). Only section 3400.1, Applicability of regulations, Subpart C, Peer and Merit Review Arranged by Grantees, and Subpart D, Annual Reports, of the administrative regulations at 7 CFR part 3400 for the Special Grants Programs awarded under the authority of section 2(c) of this Act (7 U.S.C. 450i(c)) apply to grants solicited and awarded under subsection (c)(1)(B).

In accordance with the statutory authority, grants awarded under this program will be for the purpose of facilitating or expanding ongoing State-Federal food and agricultural research programs that—(i) promote excellence in research on a regional and national level; (ii) promote the development of regional research centers; (iii) promote the research partnership between the Department of Agriculture, colleges and universities, research foundations, and State agricultural experiment stations for regional research efforts; and (iv) facilitate coordination and cooperation of research among States through regional research grants.

### *B. Definitions*

For the purpose of awarding grants under this program, the following definitions are applicable:

(1) *Administrator* means the Administrator of the Cooperative State Research, Education, and Extension Service (CSREES) and any other officer or employee of the Department to whom the authority involved is delegated.

(2) *Authorized departmental officer (ADO)* means the Secretary or any employee of the Department who has the authority to issue or modify grant instruments on behalf of the Secretary.

(3) *Authorized organizational representative (AOR)* means the president, director, or chief executive officer or other designated official of the applicant organization who has the authority to commit the resources of the organization.

(4) *Budget period* means the interval of time (usually 12 months) into which the project period is divided for budgetary and reporting purposes.

(5) *Department or USDA* means the United States Department of Agriculture.

(6) *Grantee* means the entity designated in the grant award document as the responsible legal entity to which a grant is awarded.

(7) *Peer review panel* means an assembled group of experts or consultants qualified by training and experience in particular scientific or technical fields to give expert advice on the scientific and technical merit of grant applications in those fields.

(8) *Principal Investigator/Project Director* means the single individual designated in the grant application and approved by the Secretary who is responsible for the direction and management of the project. Note that a proposal may have multiple secondary co-principal investigators/project directors but only one principal investigator/project director.

(9) *Prior approval* means written approval evidencing prior consent by an ADO as defined in (2) above.

(10) *Project* means the particular activity within the scope of the program supported by a grant award.

(11) *Project period* means the total length of time that is approved by the Administrator for conducting the research project, as stated in the award document, during which Federal sponsorship begins and ends.

(12) *Scientific peer review* means an evaluation of a proposed project for technical quality and relevance to regional or national goals performed by experts with the scientific knowledge and technical skills to conduct the proposed research work. Peer reviewers may be selected from an applicant organization or from outside the organization, but shall not include principals, collaborators or others involved in the preparation of the application under review.

(13) *Secretary* means the Secretary of Agriculture and any other officer or employee of the Department to whom the authority involved is delegated.

### *C. Eligibility*

Proposals may be submitted by State agricultural experiment stations, land-grant colleges and universities, research foundations established by land-grant colleges and universities, colleges and universities receiving funds under the Act of October 10, 1962, as amended (16 U.S.C. 582a *et seq.*), and accredited schools or colleges of veterinary medicine. The proposals must be directly related to potato varietal development/testing. Although an applicant may be eligible based on its status as one of these entities, other factors may exclude an applicant from receiving Federal assistance under this program (*e.g.*, debarment or suspension, a determination of non-responsibility based on submitted organizational management information, etc.).

## Part II—Program Description

### *A. Purpose of the Program*

Proposals are invited for competitive grant awards under the Special Research Grants Program, Potato Research for FY 2001. The purpose of this grant program is to support potato research that focuses on varietal development/testing. As used herein, varietal development/testing is research using traditional and biotechnological genetics to develop improved potato variety(ies). Aspects of evaluation, screening and testing must support or complement the development of improved varieties. This program is administered by CSREES of USDA.

### *B. Available Funds and Award Limitations*

Funds will be awarded on a competitive basis to support regional research projects that are composed of potato research that focuses on varietal development/testing. For purposes of this program, regional research means research having application beyond the immediate State in which the awardee resides and performs the project. The amount of funds available in FY 2001 for support of this program is anticipated to be between approximately $1,330,000 and $1,425,000 subject to the enactment of the appropriations act that provides funds to CSREES. Each proposal submitted in FY 2001 shall request funding for a period not to exceed one year. Funding for additional years will depend upon the availability of funds and progress toward objectives. FY 2001 awardees would need to recompete in future years for additional funding.

Under this program, the Secretary may extend grant awards for the support of research projects for up to three years to further the program.

### *C. Applicant Peer Review Requirements*

Subsection (c)(5)(A) of the Competitive, Special, and Facilities Research Grant Act, as amended (7 U.S.C. 450i(c)(5)(A)) requires applicants to conduct a scientific peer review of a proposed research project in accordance with regulations promulgated by the Secretary prior to the Secretary making a grant award under this authority. Regulations implementing this requirement are set forth in 7 CFR 3400.20 and 3400.21. The regulations impose the following requirements for scientific peer review by applicants of proposed research projects:

1. Credible and independent. Review arranged by the grantee must provide for a credible and independent assessment of the proposed project. A credible review is one that provides an appraisal of technical quality and relevance sufficient for an organizational representative to make an informed judgment as to whether the proposal is appropriate for submission for Federal support. To provide for an independent review, such review may include USDA employees, but should not be conducted solely by USDA employees.

2. Notice of completion and retention of records. A notice of completion of the review shall be conveyed in writing to CSREES either as part of the submitted proposal or prior to the issuance of an award, at the option of CSREES (see Part III. R.). The written notice constitutes certification by the applicant that a review in compliance with these regulations has occurred. Applicants are not required to submit results of the review to CSREES; however, proper documentation of the review process and results should be retained by the applicant.

3. Renewal and supplemental grants. Review by the grantee is not automatically required for renewal or supplemental grants as defined in 7 CFR 3400.6. A subsequent grant award will require a new review if, according to CSREES, either the funded project has changed significantly, other scientific discoveries have affected the project, or the need for the project has changed. Note that a new review is necessary when applying for another standard or continuation grant after expiration of the grant term.

## Part III—Content of a Proposal

All proposals must contain the following forms and narrative information to assist CSREES personnel during the review and award processes:

### *A. Application for Funding (Form CSREES–661)*

Each copy of each grant proposal must contain an Application for Funding (Form CSREES–661). One copy of the application, preferably the original, must contain the pen-and-ink

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signature(s) of the proposing principal investigator(s)/project director(s) and the AOR who possesses the necessary authority to commit the organization's time and other relevant resources to the project. Any proposed principal investigator or co-principal investigator whose signature does not appear on Form CSREES–661 will not be listed on any resulting grant award. Complete both signature blocks located at the bottom of the Application for Funding form.

Form CSREES–661 serves as a source document for the CSREES grant database; it is therefore important that it be completed accurately. The following items are highlighted as having a high potential for errors or misinterpretations:

1. Title of Project (Block 6). The title of the project must be brief (80-character maximum), yet represent the major thrust of the effort being proposed. Project titles are read by a variety of nonscientific people; therefore, highly technical words or phraseology should be avoided where possible. In addition, introductory phrases such as "investigation of" or "research on" should not be used.

2. Program to Which You Are Applying (Block 7). "Special Research Grants Program, Potato Research" should be inserted in this block. You may ignore the reference to a **Federal Register** announcement.

3. Program Area and Number (Block 8). The name of the program area, "Potato Research," should be inserted in this block. You should ignore references to the program number and the **Federal Register** announcement.

4. Type of Request (Block 13). If the project being proposed is a renewal of a grant that has been supported under the same program at any time during the previous five fiscal years, it is important that you show the latest grant number assigned to the project by CSREES.

5. Principal Investigator(s)/Project Director(s) (Block 15). The designation of excessive numbers of co-principal investigators creates problems during final review and award processes. Listing multiple co-principal investigators, beyond those required for genuine collaboration, is therefore discouraged.

6. Type of Performing Organization (Block 18). A check should be placed in the box beside the type of organization which actually will carry out the effort. For example, if the proposal is being submitted by an 1862 land-grant institution but the work will be performed in a department, laboratory, or other organizational unit of an agricultural experiment station, box "03" should be checked. If portions of the effort are to be performed in several departments, check the box that applies to the individual listed as PI/PD #1 in Block 15.a.

7. Other Possible Sponsors (Block 22). List the names or acronyms of all other public or private sponsors including other agencies within USDA and other programs funded by CSREES to whom your application has been or might be sent. In the event you decide to send your application to another organization or agency at a later date, you must inform the identified CSREES program manager as soon as practicable. Submitting your proposal to other potential sponsors will not prejudice its review by CSREES; however, duplicate support for the same project will not be provided.

*B. Table of Contents*

For consistency and ease of locating information, each proposal submitted should contain a Table of Contents.

*C. Objectives*

Clear, concise, complete, and logically arranged statement(s) of the specific aims of the proposed effort must be included in all proposals. For renewal applications, a restatement of the objectives outlined in the active grant also should be provided.

*D. Progress Report*

If the proposal is a renewal of an existing project supported under the same program, include a clearly identified summary progress report describing the results to date. The progress report should contain the following information:

1. A comparison of actual accomplishments with the goals established for the active grant;
2. The reasons for slippage if established goals were not met; and
3. Other pertinent information, including, when appropriate, cost analysis and explanation of cost overruns or unexpectedly high unit costs.

*E. Procedures*

The procedures or methodology to be applied to the proposed effort should be explicitly stated. This section should include but not necessarily be limited to:

1. A description of the proposed investigations and/or experiments in the sequence in which it is planned to carry them out;
2. Techniques to be employed, including their feasibility;
3. Kinds of results expected;
4. Means by which data will be analyzed or interpreted;
5. Pitfalls which might be encountered; and
6. Limitations to proposed procedures.

*F. Justification*

This section should include in-depth information on the following, when applicable:

1. Estimates of the magnitude of the problem and its relevance to ongoing State-Federal food and agricultural research programs;
2. Importance of starting the work during the current fiscal year; and
3. Reasons for having the work performed by the proposing institution.

*G. Cooperation and Institutional Units Involved*

Cooperative and multi-state applications are encouraged. Identify each institutional unit contributing to the project. Identify each State in a multiple-state proposal and designate the lead State. When appropriate, the project should be coordinated with the efforts of other State and/or national programs. Clearly define the roles and responsibilities of each institutional unit of the project team, if applicable.

*H. Literature Review*

A summary of pertinent publications with emphasis on their relationship to the effort being proposed should be provided and should include all important and recent publications from other institutions, as well as those from the applicant institution. The citations themselves should be accurate, complete, and written in an acceptable journal format.

*I. Current Work*

Current unpublished institutional activities to date in the program area under which the proposal is being submitted should be described.

*J. Facilities and Equipment*

All facilities which are available for use or assignment to the project during the requested period of support should be reported and described briefly. Any potentially hazardous materials, procedures, situations, or activities, whether or not directly related to a particular phase of the effort, must be explained fully, along with an outline of precautions to be exercised. Examples include work with toxic chemicals and experiments that may put human subjects or animals at risk.

All items of major instrumentation available for use or assignment to the proposed project also should be itemized. In addition, items of nonexpendable equipment needed to conduct and bring the project to a successful conclusion should be listed, including dollar amounts and, if funds are requested for their acquisition, justified.



*K. Project Timetable*

The proposal should outline all important phases as a function of time, year by year, for the entire project, including periods beyond the grant funding period.

*L. Personnel Support*

All senior personnel who are expected to be involved in the effort must be clearly identified. For each person, the following should be included:

1. An estimate of the time commitment involved;
2. Vitae of the principal investigator(s), senior associate(s), and other professional personnel. This section should include vitae of all key persons who are expected to work on the project, whether or not CSREES funds are sought for their support. Each vita should be limited to two (2) pages each in length, excluding publications listings; and
3. A chronological listing of the most representative publications during the past five years. This listing must be provided for each professional project member for whom a vita appears. Authors should be listed in the same order as they appear on each paper cited, along with the title and complete reference as these usually appear in journals.

*M. Collaborative and/or Subcontractual Arrangements*

If it will be necessary to enter into formal consulting or collaborative arrangements with other individuals or organizations, such arrangements should be fully explained and justified. For purposes of proposal development, informal day-to-day contacts between key project personnel and outside experts are not considered to be collaborative arrangements and thus do not need to be detailed.

All anticipated subcontractual arrangements should be explained and justified in this section. A proposed statement of work, a budget, and a budget narrative for each arrangement involving the transfer of substantive programmatic work or the providing of financial assistance to a third party must be provided. Agreements between departments or other units of your own institution and minor arrangements with entities outside of your institution (*e.g.*, requests for outside laboratory analyses) are excluded from this requirement.

If you expect to enter into subcontractual arrangements, please note that the provisions contained in 7 CFR Part 3019, USDA Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations, and the general provisions contained in 7 CFR 3015.205, which is part of the USDA Uniform Federal Assistance Regulations, flow down to subrecipients. In addition, required clauses from 7 CFR Part 3019 sections 3019.40–3019.48 (Procurement Standards) and Appendix A (Contract Provisions) should be included in final contractual documents, and it is necessary for the subawardee to make a certification relating to debarment/suspension. This latter requirement is explained further under subsection S. of this part.

*N. Budget (Form CSREES–55)*

Each proposal must contain a detailed budget (Form CSREES–55) for up to 12 months of support. Funds may be requested under any of the categories listed on the budget form, provided that the item or service for which support is sought is allowable under the enabling legislation and the applicable Federal cost principles and can be identified as necessary and reasonable for the successful conduct of the project.

The following guidelines should be used in developing your proposal budget:

1. Salaries and Wages. Salaries and wages are allowable charges and may be requested for personnel who will be working on the project in proportion to the time such personnel will devote to the project. If salary funds are requested, the number of Senior and Other Personnel and the number of CSREES Funded Work Months must be shown in the spaces provided. Grant funds may not be used to augment the total salary or rate of salary of project personnel or to reimburse them for time in addition to a regular full-time salary covering the same general period of employment. Salary funds requested must be consistent with the normal policies of the institution and with OMB Circular No. A–21, Cost Principles for Educational Institutions. Administrative and Clerical salaries are normally classified as indirect costs. (See Item 9. below.) However, if requested under A.2.e., they must be fully justified.

**Note:** In accordance with section 1473 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended, 7 U.S.C. 3319, tuition remission is not an allowable cost under section 2(c)(1)(B) projects, and no funds will be approved for this purpose.

2. Fringe Benefits. Funds may be requested for fringe benefit costs if the usual accounting practices of your institution provide that institutional contributions to employee benefits (social security, retirement, etc.) be treated as direct costs. Fringe benefit costs may be included only for those personnel whose salaries are charged as a direct cost to the project. See OMB Circular No. A–21, Cost Principles for Educational Institutions, for further guidance in this area.

3. Nonexpendable Equipment. Nonexpendable equipment means tangible nonexpendable personal property including exempt property charged directly to the award having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. However, consistent with recipient policy, lower limits may be established. As such, items of necessary instrumentation or other nonexpendable equipment should be listed individually by description and estimated cost. This applies to revised budgets as well, as the equipment item(s) and amount(s) may change.

**Note:** For projects awarded under the authority of section 2(c)(1)(B), no funds will be awarded for the renovation or refurbishment of research spaces; the purchase or installation of fixed equipment in such spaces; or for the planning, repair, rehabilitation, acquisition, or construction of a building or facility.

4. Materials and Supplies. The types of expendable materials and supplies which are required to carry out the project should be indicated in general terms with estimated costs.

5. Travel. The type and extent of travel and its relationship to project objectives should be specified. Funds may be requested for field work or for travel to professional meetings. In the budget narrative, for both domestic and foreign travel, provide the purpose, the destination, method of travel, number of persons traveling, number of days, and estimated cost for each trip. If details of each trip are not known at the time of proposal submission, provide the basis for determining the amount requested.

Travel and subsistence should be in accordance with organizational policy. Irrespective of the organizational policy, allowances for airfare will not normally exceed round trip jet economy air accommodations. Please note that 7 CFR 3015.205 is applicable to air travel.

6. Publication Costs/Page Charges. Anticipated costs of preparing and publishing results of the research being proposed (including page charges,

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necessary illustrations, and the cost of a reasonable number of coverless reprints) may be estimated and charged against the grant.

7. Computer (ADPE) Costs. Reimbursement for the costs of using specialized facilities (such as a university- or department-controlled computer mainframe or data processing center) may be requested if such services are required for completion of the work.

8. All Other Direct Costs. Anticipated direct project charges not included in other budget categories must be itemized with estimated costs and justified on a separate sheet of paper attached to Form CSREES–55. This applies to revised budgets as well, as the item(s) and dollar amount(s) may change. Examples may include space rental at remote locations, subcontractual costs, charges for consulting services, telephone, facsimile, e-mail, shipping costs, and fees for necessary laboratory analyses. You are encouraged to consult the "Instructions for Completing Form CSREES–55, Budget," of the Application Kit for detailed guidance relating to this budget category.

9. Indirect Costs. Pursuant to Section 1473 of the National Agriculture Research, Extension, and Teaching Policy Act of 1977, as amended, 7 U.S.C. 3319, indirect costs are not allowable costs under section 2(c)(1)(B) projects, and no funds will be approved for this purpose. Further, costs that are a part of an institution's indirect cost pool (*e.g.*, administrative or clerical salaries) may not be reclassified as direct costs for the purpose of making them allowable.

10. Cost-sharing. Cost-sharing is not required nor will it be a factor in the awarding of any grant.

*O. Budget Narrative*

All budget categories for which support is requested, must be individually listed (with costs) and justified on a separate sheet of paper and placed immediately behind the Budget Form.

*P. Current and Pending Support (Form CSREES–663)*

All proposals must contain Form CSREES–663 listing this proposal and any other current or pending support to which key project personnel have committed or are expected to commit portions of their time, whether or not salary support for the person(s) involved is included in the budget for each project. This proposal should be identified in the pending section of this form.

*Q. Assurance Statement(s) (Form CSREES–662)*

A number of situations encountered in the conduct of projects require special assurance, supporting documentation, etc., before funding can be approved for the project. In addition to any other situation that may exist with regard to a particular project, it is expected that some applications submitted in response to these guidelines will include the following:

1. Recombinant DNA or RNA Research. As stated in 7 CFR 3015.205(b)(3), all key personnel identified in the proposal and all signatory officials of the proposing organization are required to comply with the guidelines established by the National Institutes of Health entitled, "Guidelines for Research Involving Recombinant DNA Molecules," as revised. If your project proposes to use recombinant DNA or RNA techniques, the application must so indicate by checking the "yes" box in Block 19 of Form CSREES–661 (Application for Funding) and by completing Section A of Form CSREES–662 (Assurance Statement(s)). For applicable proposals recommended for funding, Institutional Biosafety Committee approval is required before CSREES funds will be released.

2. Animal Care. Responsibility for the humane care and treatment of live vertebrate animals used in any grant project supported with funds provided by CSREES rests with the performing organization. Where a project involves the use of living vertebrate animals for experimental purposes, all key project personnel and all signatory officials of the proposing organization are required to comply with the applicable provisions of the Animal Welfare Act of 1966, as amended (7 U.S.C. 2131 *et seq.*), and the regulations promulgated thereunder by the Secretary in 9 CFR Parts 1, 2, 3 and 4 pertaining to the care, handling, and treatment of these animals. If your project will involve these animals or activities, you must check the "yes" box in Block 20 of Form CSREES–661 and complete Section B of Form CSREES–662. In the event a project involving the use of live vertebrate animals results in a grant award, funds will be released only after the Institutional Animal Care and Use Committee has approved the project.

3. Protection of Human Subjects. Responsibility for safeguarding the rights and welfare of human subjects used in any grant project supported with funds provided by CSREES rests with the performing organization. Guidance on this issue is contained in the National Research Act, Pub. L. No. 93–348, as amended, and implementing regulations established by the Department under 7 CFR Part 1c. If you propose to use human subjects for experimental purposes in your project, you should check the "yes" box in Block 21 of Form CSREES–661 and complete Section C of Form CSREES–662. In the event a project involving human subjects results in a grant award, funds will be released only after the appropriate Institutional Review Board has approved the project.

*R. Peer Review Certification*

By signing the Application for Funding form, the AOR of the applicant institution is providing the required certification that the full proposal has received a credible and independent peer review arranged by the institution (see Part II. C.).

*S. Other Certifications*

Note that by signing the Application for Funding form the applicant is providing the required certifications set forth in 7 CFR Part 3017, regarding Debarment and Suspension and Drug-Free Workplace, and 7 CFR Part 3018, regarding Lobbying. The certification forms are included in this application package for informational purposes only. These forms should not be submitted with your proposal since by signing the Form CSREES–661 your organization is providing the required certifications.

If the project will involve a subcontractor or consultant, the subcontractor/consultant should submit a Form AD–1048 to the grantee organization for retention in their records. This form should not be submitted to USDA.

*T. Compliance With the National Environmental Policy Act*

As outlined in 7 CFR Part 3407 (CSREES's regulations implementing the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*)), environmental data or documentation for the proposed project is to be provided to CSREES in order to assist CSREES in carrying out its responsibilities under NEPA. These responsibilities include determining whether the project requires an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) or whether it can be excluded from this requirement on the basis of several categorical exclusions listed in 7 CFR 3407.6. To assist CSREES in this determination, the applicant should review the categories defined for exclusion to ascertain whether the proposed project may fall within one of the exclusions.

Form CSREES–1234, NEPA Exclusions Form (copy in Application Kit), indicating the applicant's opinion of whether or not the project falls within one or more categorical exclusions, along with supporting documentation, must be included in the proposal. The information submitted in association with NEPA compliance should be identified in the Table of Contents as "NEPA Considerations" and Form CSREES–1234 and supporting documentation should be placed after the Form CSREES–661, Application for Funding, in the proposal.

Even though the applicant considers that a proposed project may fall within a categorical exclusion, CSREES may determine that an EA or an EIS is necessary for an activity if substantial controversy on environmental grounds exists or if other extraordinary conditions or circumstances are present that may cause such activity to have a significant environmental effect.

*U. Additions to Project Description*

Each project description is expected to be complete in itself. However, in those instances in which the inclusion of additional information is necessary, the number of copies submitted should match the number of copies of the application requested in Part V.A. below. Each set of such materials must be identified with the title of the project and the name(s) of the principal investigator(s)/project director(s) as they appear on the "Application for Funding." Examples of additional materials include photographs that do not reproduce well, reprints, and other pertinent materials which are deemed to be unsuitable for inclusion in the body of the proposal.

*Part IV—How To Obtain Application Materials*

Copies of this request for proposals and the Application Kit may be obtained by writing to the address or calling the telephone number which follows: Proposal Services Unit, Office of Extramural Programs; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2245; 1400 Independence Ave., S.W.; Washington D.C. 20250–2245; Telephone: (202) 401–5048. When contacting the Proposal Services Unit, please indicate that you are requesting forms for the Special Research Grants Program, Potato Research.

These materials may also be requested via Internet by sending a message which states that you want a copy of the application materials for the FY 2001 Special Research Grants Program, Potato Research with your name, mailing address (not e-mail) and phone number to psb@reeusda.gov. The materials will then be mailed to you (not e-mailed) as quickly as possible.

**Part V—Submission of a Proposal**

A. What To Submit

An original and 18 copies of each grant proposal must be submitted. Proposals should contain all requested information when submitted. Each proposal should be typed on 8½″ × 11″ white paper, single-spaced, and on one side of the page only. Please note that the text of the proposal should be prepared using no type smaller than 12 point font size and one-inch margins. It would be helpful if the name of the submitting institution were typed at the top of each page for easy identification in the event the proposal becomes disassembled while being reviewed. Staple each copy of the proposal in the upper left-hand corner. Please do not bind copies of the proposal.

*B. Where and When To Submit*

Proposals must be received on or before January 22, 2001, and submitted to the following mailing address: Special Research Grants Program, Potato Research; c/o Proposal Services Unit; Office of Extramural Programs; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2245; 1400 Independence Ave., S.W.; Washington, D.C. 20250–2245; Telephone: (202) 401–5048.

**Note:** Hand-delivered proposals or those delivered by overnight express service should be brought to the following address: Special Research Grants Program, Potato Research; c/o Proposal Services Unit, Office of Extramural Programs; CSREES/USDA; First Floor, Waterfront Centre; 800 9th Street, S.W.; Washington, D.C. 20024. The telephone number is (202) 401–5048.

*C. Acknowledgment of Proposals*

The receipt of all proposals will be acknowledged via e-mail. Therefore, it is important to include your e-mail address on Form CSREES–712 when applicable. This acknowledgment will contain a proposal identification number. Once your proposal has been assigned a proposal number, please cite that number in future correspondence.

**Part VI—CSREES Selection Process and Evaluation Criteria**

*A. Selection Process*

Applicants should submit fully developed proposals that meet all the requirements set forth in this request for proposals.

Each proposal will be evaluated in a two-part process. First, each proposal will be screened to ensure that it meets the requirements as set forth in this request for proposals. Second, proposals that meet these requirements will be technically evaluated by a scientific peer review panel.

The individual panel members will be selected from among those persons recognized as specialists who are uniquely qualified by training and experience in their respective fields to render expert advice on the merit of the proposals being reviewed. The individual views of the panel members will be used to determine which proposals should be recommended to the Administrator (or his designee) for final funding decisions.

There is no commitment by CSREES to fund any particular proposal or to make a specific number of awards. Care will be taken to avoid actual and potential conflicts of interest among reviewers. Evaluations will be confidential to CSREES staff members, peer reviewers, and the proposed principal investigator(s), to the extent permitted by law.

*B. Evaluation Criteria*

1. Overall scientific and technical quality of the proposal—10 points.

2. Scientific and technical quality of the approach—10 points.

3. Relevance and importance of proposed research to solution of specific areas of inquiry, and application of expected results for States beyond the State in which the grantee resides and will perform the work—30 points.

4. Feasibility of attaining objectives; adequacy of professional training and experience, facilities and equipment; the cooperation and involvement of multiple institutions or states—50 points.

**Part VII—Supplementary Information**

*A. Access to CSREES Scientific Peer Review Information*

After final decisions have been announced, CSREES will, upon request, inform the principal investigator of the reasons for its decision on a proposal.

*B. Grant Awards*

1. General: Within the limit of funds available for such purpose, the awarding official of CSREES shall make grants to those responsible, eligible applicants whose proposals are judged most meritorious in the announced program area and procedures set forth in this request for proposals. The date specified

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by the Administrator as the effective date of the grant shall be no later than September 30 of the fiscal year for which a grant is awarded. It should be noted that the project need not be initiated on the grant effective date, but as soon thereafter as practicable so that project goals may be attained within the funded project period. All funds granted by CSREES under this request for proposals shall be expended solely for the purpose for which the funds are granted in accordance with the approved application and budget, the terms and conditions of the award, the applicable Federal cost principles, and the Department's assistance regulations (Parts 3015 and 3019 of 7 CFR).

2. Organizational Management Information: Specific management information relating to an applicant shall be submitted on a one-time basis as part of the responsibility determination prior to the award of a grant if such information has not been provided previously under this or another program for which the sponsoring agency, CSREES, is responsible. Copies of forms recommended for use in fulfilling the requirements contained in this section will be provided by CSREES as part of the pre-award process.

3. Grant Award Document: The grant award document shall include at a minimum the following:

a. Legal name and address of performing organization or institution to whom the Administrator has awarded a grant under this program;

b. Title of Project;

c. Name(s) and address(es) of principal investigator(s) chosen to direct and control approved activities;

d. Grant identification number assigned by the Department;

e. Project period, specifying the amount of time the Department intends to support the project without requiring recompetition for funds;

f. Total amount of Departmental financial assistance approved by the Administrator during the project period;

g. Legal authority(ies) under which the grant is awarded;

h. Approved budget plan for categorizing project funds to accomplish the stated purpose of the grant award; and

i. Other information or provisions deemed necessary by CSREES to carry out its respective granting activities or to accomplish the purpose of a particular grant.

4. Notice of Grant Award: The notice of grant award, in the form of a letter, will be prepared and will provide pertinent instructions or information to the grantee that is not included in the grant award document.

5. CSREES will award standard grants to carry out this program. A standard grant is a funding mechanism whereby CSREES agrees to support a specified level of effort for a predetermined time period without any guarantee of additional support at a future date.

*C. Use of Funds; Changes*

Unless otherwise stipulated in the terms and conditions of the grant award, the following provisions apply:

1. Delegation of Fiscal Responsibility: The grantee may not in whole or in part delegate or transfer to another person, institution, or organization the responsibility for use or expenditure of grant funds.

2. Changes in Project Plans:

a. The permissible changes by the grantee, principal investigator(s), or other key project personnel in the approved research project grant shall be limited to changes in methodology, techniques, or other aspects of the project to expedite achievement of the project's approved goals. If the grantee and/or the principal investigator(s) are uncertain as to whether a change complies with this provision, the question must be referred to the ADO for a final determination.

b. Changes in approved goals, or objectives, shall be requested by the grantee and approved in writing by the ADO prior to effecting such changes. In no event shall requests for such changes be approved which are outside the scope of the original approved project.

c. Changes in approved project leadership or the replacement or reassignment of other key project personnel shall be requested by the grantee and approved in writing by the awarding official of CSREES prior to effecting such changes.

*D. Other Federal Statutes and Regulations That Apply*

Several other Federal statutes and regulations apply to grant proposals considered for review and to project grants awarded under this program. These include but are not limited to:

7 CFR Part 1, Subpart A—USDA implementation of the Freedom of Information Act.

7 CFR Part 3—USDA implementation of OMB Circular No. A–129 regarding debt collection.

7 CFR Part 15, Subpart A—USDA implementation of Title VI of the Civil Rights Act of 1964, as amended.

7 CFR Part 3015—Uniform Federal Assistance Regulations, implementing OMB directives (*i.e.*, Circular Nos. A–21 and A–122) and incorporating provisions of 31 U.S.C. 6301–6308 (formerly the Federal Grant and Cooperative Agreement Act of 1977, Pub. L. No. 95–224), as well as general policy requirements applicable to recipients of Departmental financial assistance.

7 CFR Part 3017—USDA implementation of Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants).

7 CFR Part 3018—USDA implementation of Restrictions on Lobbying. Imposes prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans.

7 CFR Part 3019—USDA implementation of OMB Circular A–110, Uniform Administrative Requirements for Grants and Other Agreements With Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations.

7 CFR Part 3052—USDA implementation of OMB Circular No. A–133, Audits of States, Local Governments, and Nonprofit Organizations.

7 CFR Part 3407—CSREES procedures to implement the National Environmental Policy Act of 1969, as amended.

29 U.S.C. 794, section 504 of the Rehabilitation Act of 1973, and 7 CFR Part 15d (USDA implementation of statute)—prohibiting discrimination based upon disability in Federally assisted programs.

35 U.S.C. 200 *et seq.*—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR Part 401).

*E. Confidential Aspects of Proposals and Awards*

When a proposal results in a grant, it becomes a part of the record of CSREES's transactions, available to the public upon specific request. Information that the Secretary determines to be of a privileged nature will be held in confidence to the extent permitted by law. Therefore, any information that the applicant wishes to have considered as privileged should be clearly marked as such and sent in a separate statement, two copies of which should accompany the proposal.

The original copy of a proposal that does not result in a grant will be retained by CSREES for a period of one year. Other copies will be destroyed. Such a proposal will be released only with the consent of the applicant or to the extent required by law. A proposal may be withdrawn at any time prior to the final action thereon.



*F. Regulatory Information*

For the reasons set forth in the final Rule-related Notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of the Executive Order 12372 which requires intergovernmental consultation with State and local officials. Under the provisions of the Paperwork Reduction Act of 1995, as amended (44 U.S.C. chapter 35), the collection of information requirements contained in this Notice have been approved under OMB Document No. 0524–0022.

*G. Stakeholder Input*

CSREES is soliciting comments regarding this request for proposals from any interested party. In your comments, please include the name of the program and the fiscal year of the request for proposals to which you are responding. These comments will be considered in the development of the next request for proposals for the program. Such comments will be used in meeting the requirements of section 103(c)(2) of AREERA, 7 U.S.C. 7613(c). Comments should be submitted as provided in the **ADDRESSES** and **DATES** portions of this Notice.

Done at Washington, D.C., this 22nd day of September, 2000.

**Charles W. Laughlin,**

*Administrator, Cooperative State Research, Education, and Extension Service.*

[FR Doc. 00–25365 Filed 10–3–00; 8:45 am]

BILLING CODE 3410–22–P

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Federal Register

Wednesday,
October 4, 2000

Part III

# Nuclear Regulatory Commission

10 CFR Parts 1, 2 and 13
Adjustment of Civil Penalties for Inflation; Miscellaneous Administrative Changes and Revision of the NRC Enforcement Policy; Final Rule and Notice

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ISS
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**NUCLEAR REGULATORY COMMISSION**

**10 CFR Parts 1, 2 and 13**

**RIN 3150–AG59**

## Adjustment of Civil Penalties for Inflation; Miscellaneous Administrative Changes

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is amending its regulations to adjust the maximum Civil Monetary Penalties (CMPs) it can assess under statutes within the jurisdiction of the NRC. These changes are mandated by Congress in the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996.

The NRC's Rules of Practice are amended by adding a provision that adjusts the maximum CMP for a violation of the Atomic Energy Act (AEA) or any regulations or order issued thereunder from $110,000 to $120,000 per violation per day. The provisions concerning program fraud civil penalties are amended by adjusting the maximum civil penalties under the Program Fraud Civil Remedies Act from $5,500 to $6,000 for each false claim or statement. This final rule also amends the designation of the term "Reviewing official" for the purposes of the Program Fraud Civil Remedies Act to reflect a reorganization in the Office of the General Counsel (OGC) as well as making a minor modification to NRC regulations to reflect OGC's role in providing legal advice to NRC staff upon request on agency procurement matters.

**DATES:** The rule shall be effective on November 3, 2000.

**FOR FURTHER INFORMATION CONTACT:** Norman St. Amour, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001, telephone (301) 415–1589; e-mail *NXS1@nrc.gov*.

### I. Background

*A. Civil Penalty Adjustment*

The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, requires that the head of each agency adjust by regulation the CMPs within the jurisdiction of the agency for inflation at least once every four years. The NRC's last adjustment to the CMPs within its jurisdiction occurred on November 12, 1996. Thus, this inflation adjustment must be implemented by November 12, 2000.

The inflation adjustment is to be determined by increasing the maximum CMPs or the range of the minimum and maximum CMPs, as applicable, by the percentage that the Consumer Price Index (CPI) for the month of June of the calendar year preceding the adjustment exceeds the CPI for the month of June of the last calendar year in which the amount of such penalty was last set. For the purposes of this adjustment, applying this formula results in a six percent increase to the CMPs. In the case of penalties greater than $1,000, but less than or equal to $10,000, inflation adjustment increases are to be rounded to the nearest multiple of $1,000. Increases are to be rounded to the nearest multiple of $10,000 in the case of penalties greater than $100,000 but less than or equal to $200,000.

*B. Miscellaneous Administrative Changes*

Under the Program Fraud Civil Remedies Act, the NRC is required to designate a "reviewing official." The reviewing official has several duties under the Act, including making the determination as to whether there is adequate evidence against an individual to warrant commencement of an administrative proceeding.

Under the Commission's original rules implementing the Act, the Deputy General Counsel for Licensing and Regulation, or his or her designee, is identified as the reviewing official for the purposes of the Program Fraud Civil Remedies Act. 10 CFR 13.2 (2000). Because the position of Deputy General Counsel for Licensing and Regulation does not exist as such in the Office of the General Counsel, the Commission is designating the General Counsel as the "reviewing official." The General Counsel may delegate this authority.

This final rule would also make a minor modification to the language of 10 CFR 1.23(e). This modification reflects the Office of General Counsel's long-standing practice of providing legal advice and opinions to NRC staff on procurement matters in response to specific requests from contracting offices and other interested agency offices, rather than preparing or concurring in all NRC contracts and interagency agreements to acquire supplies and services.

### II. Discussion

Section 234 of the AEA has limited civil penalties for violations of the Atomic Energy Act to $100,000 per day per violation. In 1996, pursuant to the Debt Collection Improvement Act (DCIA), the NRC adjusted this figure to $110,000. The DCIA also amended the Federal Civil Penalties Inflation Adjustment Act of 1990 to require that the head of each agency adjust the CMPs within the jurisdiction of the agency for inflation at least once every four years. Therefore, the NRC is required to adjust the CMPs within its jurisdiction this year. After this mandatory adjustment for inflation, the new CMP penalty amount for a violation of the AEA will be $120,000 per day per violation (rounding the amount of the inflation adjustment increase to the nearest multiple of $10,000). Thus, by regulation, the NRC has amended 10 CFR 2.205 to reflect a new maximum CMP under the AEA in the amount of $120,000 per day per violation. This new maximum CMP applies only to violations that occur after the effective date of this regulation.

Monetary penalties under the Program Fraud Civil Remedies Act, 31 U.S.C. 3801, 3802, and the NRC's implementing regulations, 10 CFR 13.3 (a)(1) and (b)(1), are currently limited to $5,500. As adjusted for inflation, the penalty amount will be $6,000. Thus, NRC has amended 13.3 (a)(1) and (b)(1) by increasing the maximum CMP for each false statement or claim under the Program Fraud Civil Remedies Act from $5,500 to $6,000. Again, this new maximum CMP applies only to violations which occur after the effective date of this regulation.

The Commission has no discretion to set alternative levels of adjusted civil penalties since the amount of inflation adjustment must be calculated in accordance with a formula established by statute. Conforming changes to the NRC Enforcement Policy (NUREG–1600) published in the **Federal Register** on May 1, 2000 will be made and published in a notice accompanying this rule.

The Program Fraud Civil Remedies Act "reviewing official" in 10 CFR 13.2 currently means the Deputy General Counsel for Licensing and Regulation of the NRC or his or her designee. This position does not exist in the current OGC organization. Accordingly, the Commission is amending the designation of "reviewing official" to mean the General Counsel of the NRC or his or her designee.

This final rule would also make a minor modification to the language of 10 CFR 1.23(e). The existing language implies that OGC provides legal advice and opinions on all agency procurement matters. This modification reflects OGC's long-standing practice of providing legal advice and opinions to NRC staff on procurement matters only in response to specific requests from contracting offices and other interested offices, rather than preparing or concurring in all NRC contracts and interagency agreements to acquire supplies and services.



### III. Procedural Background

This final rule has been issued without prior public notice or opportunity for public comment. The Administrative Procedure Act (5 U.S.C. 553(b)(B)) does not require that an agency use the public notice and comment process "when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." In this instance, the NRC finds, for good cause, that solicitation of public comment on this final rule is unnecessary and impractical. Congress has required that the agency adjust the CMPs within the jurisdiction of the agency for inflation at least once every four years, and provided no discretion to the agency regarding the substance of the amendments. All that is required of the NRC for determination of the inflation adjustment are ministerial computations. The NRC also finds that amending the designation of reviewing official under the Program Fraud Civil Remedies Act and the minor modification to reflect OGC's actual long-standing practice of providing legal advice to NRC staff on procurement matters upon request are routine matters of agency organization, procedure, or practice exempt from the requirement for public notice and comment.

### IV. Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described as a categorical exclusion in 10 CFR 51.22(c)(1) and 51.22(c)(2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this regulation. This action involves no policy determinations. It merely adjusts monetary civil penalties for inflation as required by statute and amends the definition of "reviewing official" for Program Fraud Civil Remedies Act matters to reflect a reorganization in the Office of the General Counsel and incorporates a minor modification to the language of 10 CFR 1.23(e) to reflect actual long-standing OGC practice in providing legal advice to NRC staff, upon request, on agency procurement matters.

### V. Paperwork Reduction Act Statement

This final rule does not contain new or amended information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

### VI. Regulatory Analysis

This final rule adjusts for inflation the maximum civil penalties under the Atomic Energy Act of 1954, as amended, and under the Program Fraud Civil Remedies Act of 1986. The adjustments and the formula for determining the amount of the adjustment are mandated by Congress in the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. No. 101–410, 104 Stat. 890), as amended by the Debt Collection Improvement Act of 1996, as amended (Pub. L. No. 104–134, 110 Stat. 1321–358, 373, codified at 28 U.S.C. 2461 note). Congress passed that legislation on the basis of its findings that the power to impose monetary civil penalties is important to deterring violations of Federal law and furthering the policy goals of Federal laws and regulations. Congress has also found that inflation has diminished the impact of these penalties and their effect. The principal purposes of this legislation are to provide for adjustment of civil monetary penalties for inflation, maintain the deterrent effect of civil monetary penalties, and promote compliance with the law. Thus, these are anticipated impacts of implementation of the mandatory provisions of the legislation. Direct monetary impacts fall only upon licensees or other persons subjected to NRC enforcement or those licensees or persons subjected to liability pursuant to the provisions of the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801–3812) and the NRC's implementing regulations (10 CFR part 13). This final rule also makes an adjustment to the designation of "reviewing official" for Program Fraud Civil Remedies Act matters to reflect an Office of the General Counsel reorganization and incorporates a minor modification to the language of 10 CFR 1.23(e) to reflect OGC's long-standing practice of providing legal advice and opinions to NRC staff on procurement matters in response to specific requests from contracting offices and other interested agency offices, rather than preparing or concurring in all NRC contracts and interagency agreements to acquire supplies and services.

### VII. Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rulemaking adjusts, for inflation, the amount charged for civil penalties, as required by the Debt Collection Improvement Act. The law mandates that adjustments for inflation be made at least every four years and sets forth a formula for determining the amount of the adjustment. The Nuclear Regulatory Commission has no discretion in implementing these requirements. To the extent that small entities are impacted by this rule, these are anticipated impacts resulting from the mandatory provisions of the legislation authorized by Congress.

### VIII. Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

### IX. National Technology Transfer and Advancement Act

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104–113, requires that Federal agencies use technical standards developed by or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. There are no consensus standards that apply to the inflation adjustment requirements in this final rule. Thus, the provisions of the Act do not apply to this rulemaking.

### X. Backfit Analysis

The NRC has determined that these amendments do not involve any provisions which would impose backfits as defined in 10 CFR Chapter 1; therefore, a backfit analysis need not be prepared.

### List of Subjects

*10 CFR Part 1*

Organization and functions (Government Agencies).

*10 CFR Part 2*

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalties, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

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*10 CFR Part 13*

Claims, Fraud, Organization and function (government agencies), Penalties.

For the reasons set out above and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 1, 2 and 13.

## PART 1—STATEMENT OF ORGANIZATION AND GENERAL INFORMATION

1. The authority citation for part 1 continues to read as follows:

**Authority:** Secs. 23, 161, 68 Stat. 925, 948, as amended (42 U.S.C. 2033, 2201); sec. 29, Pub. L. 85–256, 71 Stat. 579, Pub. L. 95–209, 91 stat. 1483 (42 U.S.C. 2039); sec. 191, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); secs. 201, 203, 204, 205, 209, 88 Stat. 1242, 1244, 1245, 1246, 1248, as amended (42 U.S.C. 5841, 5843, 5844, 5845, 5849); 5 U.S.C. 552, 553; Reorganization Plan No. 1 of 1980, 45 FR 40561, June 16, 1980.

2. In § 1.23, paragraph (e) is revised to read as follows:

**§ 1.23 Office of the General Counsel.**

* * * * *

(e) As requested, provides the agency with legal advice and opinions on acquisition matters, including agency procurement contracts; placement of work at Department of Energy national laboratories; interagency agreements to acquire supplies and services; and grants and cooperative agreements. Prepares or concurs in all other interagency agreements, delegations of authority, regulations; orders; licenses; and other legal documents and prepares legal interpretations thereof;

* * * * *

## PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS AND ISSUANCES OF ORDERS

3. The authority citation for part 2 continues to read as follows:

**Authority:** Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f), Pub. L. 97–425, 96 Stat. 2213, as amended (42 U.S.C. 10134(f)); sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200–2.206 also issued under secs. 161 b, i, o, 182, 186, 234, 68 Stat. 948–951, 955, 83 Stat. 444, as amended (42 U.S.C. 2201 (b), (i), (o), 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Sections 2.205(j) also issued under Pub. L. 101–410, 104 Stat. 890, as amended by section 31001(s), Pub. L. 104–134, 110 Stat. 1321–373 (28 U.S.C. 2461 note). Sections 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5. U.S.C. 553. Section 2.809 also issued under 5. U.S.C. 553 and sec. 29, Pub. L. 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91–560, 84 Stat. 1473 (42 U.S.C. 2135).

4. In § 2.205 paragraph (j) is revised to read as follows:

**§ 2.205 Civil Penalties.**

* * * * *

(j) *Amount.* A civil monetary penalty imposed under Section 234 of the Atomic Energy Act of 1954, as amended, or any other statute within the jurisdiction of the Commission that provides for the imposition of a civil penalty in an amount equal to the amount set forth in Section 234, may not exceed $120,000 for each violation. If any violation is a continuing one, each day of such violation shall constitute a separate violation for the purpose of computing the applicable civil penalty.

## PART 13—PROGRAM FRAUD CIVIL REMEDIES

5. The authority citation for part 13 continues to read as follows:

**Authority:** Public Law 99–509, sec 6101–6104, 100 Stat. 1874 (31 U.S.C. 3801–3812). Sections 13.13(a) and (b) also issued under Pub. L. 101–410, 104 Stat. 890, as amended by section 31001(s), Pub. L. 104–134, 110 Stat. 1321–373 (28 U.S.C. 2461 note).

6. In § 13.2 the definition of "Reviewing official" is revised to read as follows:

**§ 13.2 Definitions.**

* * * * *

Reviewing official means the General Counsel of the Nuclear Regulatory Commission or his or her designee who is—

(a) Not subject to supervision by, or required to report to, the investigating official;

(b) Not employed in the organizational unit of the authority in which the investigating official is employed; and

(c) Serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS–16 under the General Schedule.

* * * * *

7. In § 13.3, paragraphs (a)(1) and (b)(1) are revised to read as follows:



**§ 13.3 Basis for civil penalties and assessments.**

(a) *Claims.* (1) Any person who makes a claim that the person knows or has reason to know—

(i) Is false, fictitious, or fraudulent;

(ii) Includes or is supported by any written statement which asserts a material fact which is false, fictitious, or fraudulent;

(iii) Includes or is supported by any written statement that—

(A) Omits a material fact;

(B) Is false, fictitious, or fraudulent as a result of such omission; and (C) Is a statement in which the person making such statement has a duty to include such material fact; or

(iv) Is for payment for the provision of property or services which the person has not provided as claimed, shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $6,000 for each such claim.

* * * * *

(b) *Statements.* (1) Any person who makes a written statement that—

(i) The person knows or has reason to know—

(A) Asserts a material fact which is false, fictitious, or fraudulent; or

(B) Is false, fictitious, or fraudulent because it omits a material fact that the person making the statement has a duty to include in such statement; and

(ii) Contains or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement, shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $6,000 for each such statement.

* * * * *

Dated at Rockville, Maryland, this 27th day of September, 2000.

For the Nuclear Regulatory Commission.

**Annette L. Vietti-Cook,**

*Secretary of the Commission.*

[FR Doc. 00–25374 Filed 10–3–00; 8:45 am]

BILLING CODE 7590–01–P

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## NUCLEAR REGULATORY COMMISSION

[NUREG—1600]

### Revision of the NRC Enforcement Policy

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Policy statement: revision.

**SUMMARY:** The Nuclear Regulatory Commission (NRC or Commission) is publishing a revision to its General Statement of Policy and Procedure for NRC Enforcement Actions (NUREG–1600) (Enforcement Policy or Policy) to address the requirements of the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996. The Act requires Federal agencies to adjust civil monetary penalties to reflect inflation.

**DATES:** This action is effective on November 3, 2000. Comments on this revision should be submitted on or before November 3, 2000 and will be considered by the NRC before the next Enforcement Policy revision. The Commission will apply the modified Policy to violations that occur after the effective date.

**ADDRESSES:** Submit written comments to: David L. Meyer, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mail Stop: T6D59, U. S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hand deliver comments to: Room T6D22, 11545 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m., Federal workdays. Copies of comments received may be examined at the NRC Public Document Room, 11555 Rockville Pike, Room O1–F21, Rockville, MD, and through the NRC Agencywide Documents Access and Management System (ADAMS). Comments may also be sent electronically by completing the online comment form available on the NRC's Office of Enforcement Internet webpage at www.nrc.gov/OE/rpr/oe_10.htm.

The NRC's Office of Enforcement maintains the current policy statement on its homepage on the Internet at www.nrc.gov/OE.

**FOR FURTHER INFORMATION CONTACT:** Bill Borchardt, Director, Office of Enforcement, (301) 415–2741, e-mail rwb1@nrc.gov or Rene Pedersen, Senior Enforcement Specialist, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001, (301) 415–2742, e-mail rmp@nrc.gov.

**SUPPLEMENTARY INFORMATION:**

Section 234 of the Atomic Energy Act (AEA) limits the maximum civil penalty amount that the NRC may issue for violations of the AEA at $100,000 per violation, per day. The Federal Civil Monetary Penalties Inflation Adjustment Act of 1990 (as amended by the Debt Collection Improvement Act of 1996 (the Act)) requires that the head of each agency adjust by regulation the civil monetary penalties (CMPs) provided by law within the jurisdiction of the agency for inflation at least once every four years. On November 12, 1996, the NRC adjusted the aforementioned maximum civil penalty amount to $110,000. Thus, the NRC is required to adjust this civil penalty by November 12, 2000.

The inflation adjustment mandated by the Act results in a six percent increase to the maximum CMPs.[1] Increases are to be rounded to the nearest multiple of $10,000 in the case of penalties greater than $100,000, but less than or equal to $200,000.

After this mandatory adjustment for inflation and the rounding mandated by statute, the new maximum civil penalty amount will be $120,000 per violation, per day. Concurrent with this change, the NRC is publishing in the **Federal Register**, a change to 10 CFR 2.205 to reflect the new maximum CMP mandated by the Act. The new maximum civil penalty applies only to violations that occur after the date that the increase takes effect.

The changes mandated by the Act apply to the maximum CMP. This is also the amount that, under the Enforcement Policy approved by the Commission, is assigned as the base civil penalty for power reactors and gaseous diffusion plants for a Severity Level I violation (considered the most significant severity level). Also as a matter of policy, the Commission has approved use of lesser amounts for other types of licensees, primarily materials licensees, and for violations that are assessed at lower severity levels. This approach is set out in Tables 1A and 1B of the Enforcement Policy. While the 1996 Act does not mandate changes to these lesser civil penalty amounts, the NRC is modifying Table 1A of the Enforcement Policy by increasing each amount to maintain the same proportional relationships between the penalties. These changes apply to violations occurring after the effective date of this Policy Statement.

[1] Adjustment for inflation=Consumer Price Index (CPI) for June 1999—CPI for June 1996.

### Paperwork Reduction Act

This final policy statement does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, approval number 3150–0136.

### Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

### Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a "major" rule and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

Accordingly, the NRC Enforcement Policy published on May 1, 2000 (65 FR 25368) is revised to read as follows:

### General Statement of Policy and Procedure for NRC Enforcement Actions

* * * * *

### VI. Disposition of Violations

* * * * *

*C. Civil Penalty*

* * * * *

*1. Base Civil Penalty*

* * * * *



TABLE 1A.—BASE CIVIL PENALTIES

| | |
|---|---|
| a. Power reactors and gaseous diffusion plants | $120,000 |
| b. Fuel fabricators authorized to possess Category I or II quantities of SNM | 60,000 |
| c. Fuel fabricators, industrial processors,[1] and independent spent fuel and monitored retrievable storage installations | 30,000 |
| d. Test reactors, mills and uranium conversion facilities, contractors, waste disposal licensees, industrial radiographers, and other large material users | 12,000 |
| e. Research reactors, academic, medical, or other small material users[2] | 6,000 |

[1] Large firms engaged in manufacturing or distribution of byproduct, source, or special nuclear material.

[2] This applies to nonprofit institutions not otherwise categorized in this table, mobile nuclear services, nuclear pharmacies, and physician offices.

* * * * *

*2. Civil Penalty Assessment*

* * * * *

d. Exercise of Discretion

As provided in Section VII, "Exercise of Discretion," discretion may be exercised by either escalating or mitigating the amount of the civil penalty determined after applying the civil penalty adjustment factors to ensure that the proposed civil penalty reflects all relevant circumstances of the particular case. However, in no instance will a civil penalty for any one violation exceed $120,000 per day.

* * * * *

### VII. Exercise of Discretion

* * * * *

A. Escalation of Enforcement Sanctions

The NRC considers violations categorized at Severity Level I, II, or III to be of significant regulatory concern. The NRC also considers violations associated with findings that the Reactor Oversight Process's Significance Determination Process evaluates as having low to moderate, or greater safety significance (i.e., white, yellow, or red) to be of significant regulatory concern. If the application of the normal guidance in this policy does not result in an appropriate sanction, with the approval of the Deputy Executive Director and consultation with the EDO and Commission, as warranted, the NRC may apply its full enforcement authority where the action is warranted. NRC action may include: (1) escalating civil penalties; (2) issuing appropriate orders; and (3) assessing civil penalties for continuing violations on a per day basis, up to the statutory limit of $120,000 per violation, per day.

* * * * *

3. Daily Civil Penalties

In order to recognize the added significance for those cases where a very strong message is warranted for a significant violation that continues for more than one day, the NRC may exercise discretion and assess a separate violation and attendant civil penalty up to the statutory limit of $120,000 for each day the violation continues. The NRC may exercise this discretion if a licensee was aware of or clearly should have been aware of a violation, or if the licensee had an opportunity to identify and corerct the violation but failed to do so.

* * * * *

Dated at Rockville, Maryland, this 27th day of September, 2000.

For the Nuclear Regulatory Commission.

**Annette L. Vietti-Cook,**

*Secretary of the Commission.*

[FR Doc. 00–25375 Filed 10–3–00; 8:45 am]

BILLING CODE 7590–01–P

VOL
65
ISS
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OC
4
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UMI




Federal Register

Wednesday,
October 4, 2000

Part IV

# Department of Education

Bilingual Education: Career Ladder Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2001; Notice

VOL 65 ISS 193 OCT 4 2000 UMI



**DEPARTMENT OF EDUCATION**

**[CFDA No.: 84.195E]**

## Bilingual Education: Career Ladder Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2001

*Note to Applicants*

This notice is a complete application package. Together with the statute authorizing the program and the applicable regulations governing this program, including the Education Department General Administrative Regulations (EDGAR), this notice contains all of the information, application forms, and instructions needed to apply for a grant under this program.

*Purpose of Program*

This program provides grants to (1) upgrade the qualifications and skills of noncertified educational personnel, especially educational paraprofessionals, to meet high professional standards, including certification and licensure as bilingual teachers and other educational personnel who serve limited English proficient students, and (2) help recruit and train secondary students as bilingual education teachers and other educational personnel to serve limited English proficient students.

*Eligible Applicants:* One or more institutions of higher education (IHEs) that have entered into consortia arrangements with local educational agencies (LEAs) or State educational agencies (SEAs) to achieve the purposes of this section. Consortia may include community-based organizations or professional education organizations.

*Deadline for Transmittal of Applications:* 11/30/2000.

*Deadline for Intergovernmental Review:* 1/29/2001.

*Available Funds:* $5 million.

*Estimated Range of Awards:* $150,000–$250,000.

*Estimated Average Size of Awards:* $200,000.

*Estimated Number of Awards:* 25.

**Note:** The Administration has requested $5 million for new awards to this program in 2001. The actual level of funding, if any, depends upon final congressional action.

*Project Period:* 60 Months.

*Page Limit:* The application narrative (Part III of the application) is where you, the applicant, address the selection criteria reviewers use to evaluate your application. You must limit the application narrative to the equivalent of no more than 30 pages, using the following standards:

- A page is 8.5 × 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including budget justification and the cost itemization; Part IV, the assurances and certifications; or the table of contents, the one-page abstract, the resumes, the bibliography, or the letters of support. However you must include all of the application narrative in Part III.

If, to meet the page limit, you use more than one side of the page, you use a larger page, or you use a print size, spacing, or margins smaller than the standards in this notice, we will reject your application.

*Applicable Regulations*

The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, 85, 86, 97, 98 and 99.

*Description of Program*

The statutory authorization for this program, and the application requirements that apply to this competition, are set out in sections 7144 and 7146–7150 of the Elementary and Secondary Education Act of 1965, as amended by the Improving America's Schools Act of 1994 (Pub. L. 103–382, enacted October 20, 1994) (the Act) (20 U.S.C. 7474 and 7476–7480).

Funds under this program may be used: to develop bilingual education career ladder program curricula appropriate to the needs of consortia participants; provide assistance for stipends and costs related to tuition fees and books for coursework required to complete degree and certification requirements for bilingual education teachers; and for programs to introduce secondary school students to careers in bilingual education teaching that are coordinated with other activities assisted under this program. Activities conducted under this program must assist educational personnel in meeting State and local certification requirements for bilingual education and, wherever possible, must lead to the awarding of college or university credit.

**Priorities**

*Competitive Priority 1*

Under 34 CFR 75.105(c)(2)(i) and 34 CFR 299.3(b), we award up to 3 points for an application that meets the competitive priority. These points are in addition to any points the application earns under the selection criteria for the program.

Projects that will contribute to a systemic educational reform in an Empowerment Zone, including a Supplemental Empowerment Zone, or an Enterprise Community designated by the United States Department of Housing and Urban Development or the United States Department of Agriculture, and are made an integral part of the Zone's or Community's comprehensive community revitalization strategies.

A list of areas that have been designated as Empowerment Zones and Enterprise Communities is provided at the end of this notice.

*Competitive Priority 2*

We give preference to an application that meets the priority over an application of comparable merit that does not meet the priority:

Applications that propose to provide for: participant completion of baccalaureate and master's degree teacher education programs, and certification requirements and may include effective employment placement activities; the development of teacher proficiency in English as a second language, including demonstrating proficiency in the instructional use of English and, as appropriate, a second language in classroom contexts; coordination with programs for the recruitment and retention of bilingual students in secondary and postsecondary programs training to become bilingual educators; and the applicant's contribution of additional student financial aid to participating students.

*Invitational Priority*

The Secretary is particularly interested in applications that meet the following invitational priority. However, an application that meets this invitational priority receives no competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Applicants that propose to collaborate with 2-year institutions of higher education to develop or improve teacher preparation programs for bilingual paraprofessionals.



**Selection Criteria**

The Secretary uses the following selection criteria in 34 CFR 75.210 to evaluate applications for new grants under this competition.

The maximum score for all of these criteria is 100 points.

The maximum score for each criterion is indicated in parentheses.

(a) *Need for project.* (10 points) (1) The Secretary considers the need for the proposed project.

(2) In determining the need for the proposed project, the Secretary considers the following factors:

(i) The magnitude or severity of the problem to be addressed by the proposed project.

(ii) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and the magnitude of those gaps or weaknesses.

(b) *Quality of the project design.* (50 points) (1) The Secretary considers the quality of the design of the proposed project.

(2) In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(ii) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.

(iii) The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of Federal financial assistance.

(iv) The extent to which the proposed activities constitute a coherent, sustained program of training in the field.

(v) The extent to which the design of the proposed project reflects up-to-date knowledge from research and effective practice.

(vi) The extent to which the proposed project will be coordinated with similar or related efforts, and with other appropriate community, State, and Federal resources.

(vii) The extent to which the proposed project is part of a comprehensive effort to improve teaching and learning and support rigorous academic standards for students.

(viii) The extent to which fellowship recipients or other project participants are to be selected on the basis of academic excellence.

(c) *Quality of project services.* (10 points) (1) The Secretary considers the quality of the services to be provided by the proposed project.

(2) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been under-represented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factor:

(i) The extent to which the training or professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to lead to improvements in practice among the recipients of those services.

(d) *Quality of project personnel.* (5 points) (1) The Secretary considers the quality of the personnel who will carry out the proposed project.

(2) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factor: the qualifications, including relevant training and experience, of key project personnel.

(e) *Quality of the management plan.* (5 points) (1) The Secretary considers the quality of the management plan for the proposed project.

(2) In determining the quality of the management plan for the proposed project, the Secretary considers the following factor: the adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(f) *Quality of the project evaluation.* (20 points) (1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation provide for examining the effectiveness of project implementation strategies.

(ii) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(iii) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

*Intergovernmental Review of Federal Programs*

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR part 79.

One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

If you are an applicant you must contact the appropriate State Single Point of Contact (SPOC) to find out about, and to comply with, the State's process under Executive order 12372.

If you propose to perform activities in more than one State, you should immediately contact the SPOC for each of those States and follow the procedure established in each State under the Executive order.

If you want to know the name and address of any SPOC, see the list in the appendix to this application notice: or you may view the latest official SPOC list on the Web site of the Office of Management and Budget at the following address: http://www.whitehouse.gov/omb/grants

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a SPOC and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA# 84.195E, U.S. Department of Education, Room 7E200 400 Maryland Avenue, SW., Washington, D.C. 20202–0125.

We will determine proof of mailing under 34 CFR 75.102 (Deadline date for applications). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, D.C. time) on the date indicated in this notice.

Please note that the above address is not the same address as the one to which the applicant submits its

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completed application. Do not send applications to the above address.

**Instructions for Transmittal of Applications**

If you want to apply for a grant and be considered for funding you must meet the following deadline requirements:

(a) *If you send your application by mail*—

You must mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA# 84.195E), Washington, D.C. 20202–4725.

You must show one of the following as proof of mailing.

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

If you mail an application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

(b) Hand-deliver the original and two copies of the application by 4:30 p.m. (Washington, D.C. time) on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA# 84.195E), Room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, D.C.

The Application Control Center accepts application deliveries daily between 8:00 a.m. and 4:30 p.m. (Washington, DC time), except Saturdays, Sundays and Federal holidays. The Center accepts application deliveries through the D Street entrance only. A person delivering an application must show identification to enter the building.

*If you submit your application by courier*—

You must deliver the original and two copies of your application to the courier service on or before the deadline date. You must show as proof of delivery to the courier service a dated shipping label, invoice, or receipt from the courier service.

The courier service must deliver your application to: U.S. Department of Education, Application Control Center, Attn: (84.195E), Room 3633, Regional Office Building 3, 7th and D Streets, SW., Washington, DC.

The Application Control Center accepts application deliveries daily between 8:00 a.m. and 4:30 p.m. (Washington, DC time), except Saturdays, Sundays and Federal holidays. The Center accepts application deliveries through the D Street entrance only. A courier delivering an application must show identification to enter the building.

**Notes:** (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) If you send your application by mail or deliver it by hand or by a courier service, the Application Control Center will mail a Grant Application Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–9495.

(3) You *must* indicate on the envelope and—if not provided by the Department—in Item 3 of the Application for Federal Assistance (Standard Form 424) the CFDA number and suffix letter, if any, of the competition under which the application is being submitted.

**Application Instructions and Forms**

The appendix to this notice contains the following forms and instructions plus a statement regarding estimated public reporting burden, a notice to applicants regarding compliance with Section 427 of the General Education Provisions Act, questions and answers on this program (located at the end of the notice) and various assurances, certifications, and required documentation:

a. Estimated Public Reporting Burden.

b. Application Instructions.

c. Nonregulatory Guidance: Questions and Answers.

d. Checklist for Applicants.

e. List of Empowerment Zones and Enterprise Communities.

f. Application for Federal Education Assistance (ED 424) and instructions.

g. Group Application Form.

h. Budget Information.

i. Participant Data.

j. Project Documentation.

k. Program Assurances.

l. Assurances—Non-Construction Programs (Standard Form 424B) and instructions.

m. Certifications Regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013) and instructions.

n. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (ED 80–0014) and instructions. (Note: This form is intended for the use of grantees and should not be transmitted to the Department.)

o. Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions. The document has been marked to reflect statutory changes.

p. Notice to All Applicants (GEPA Requirement) and Instructions (OMB No. 1801–0004).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. All applicants must submit *ONE* original signed application, including ink signatures on all forms and assurances, and *TWO* copies of the application. Please mark each application as "original" or "copy". No grant may be awarded unless a completed application has been received.

**FOR FURTHER INFORMATION CONTACT:** Mahal May or Elizabeth Judd, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5090, Switzer Building, Washington, D.C. 20202–6510. Telephone: Mahal May: (202)205–8727; Elizabeth Judd: (202)205–9157 E-mail addresses: Mahal_May@ed.gov Elizabeth_Judd@ed.gov.

If you use a telecommunications device for the deaf (TDD) you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339. Individuals with disabilities may obtain this notice in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact persons listed in the preceding paragraph. Please note, however, that the Department is not able to reproduce in an alternative format the standard forms included in the notice.

*Electronic Access to this Document*

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (PFD) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use PDF you must have Adobe Acrobat Reader, which is available free at either of the preceding sites. If you have questions about using PDF, call the U.S. Government Printing Office toll free at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

**Note:** The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available at GPO access at: http://www.access.gpo.gov.nara.index.html



**Program Authority:** 20 U.S.C. 7474.

**Art Love,**

*Acting Director, Office of Bilingual Education and Minority Languages Affairs.*

**Appendix**

*Estimated Burden Statement*

According to the Paperwork Reduction Act of 1995, you are not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is OMB No. 1885–0542, Exp. Date: 12/31/01. We estimate the time required to complete this information collection is estimated to average 120 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. *If you have any comments concerning the accuracy of the time estimate or suggestions for improving this form, please write to:* U.S. Department of Education, Washington, D.C. 20202–4651. *If you have any comments or concerns regarding the status of your individual submission of this form, write directly to:* Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, D.C. 20202–6510.

**Application Instructions**

*Abstract*

The narrative section should be preceded by a one-page abstract that includes a short description of the population to be served by the project, project objectives, planned activities, and invitational priorities the project proposes to address.

*Selection Criteria*

The narrative should address fully all aspects of the selection criteria in the order listed and should give detailed information regarding each criterion. Do not simply paraphrase the criteria. Do not include extensive resumes. Provide position descriptions for key personnel. Do not include bibliographies, letters of support, or appendices in your application. This package includes questions and answers to assist you in preparing the narrative portion of your application.

*Empowerment Zone/Enterprise Community Priority*

Applicants that wish to be considered under the competitive priority for Empowerment Zones and Enterprise Communities, as specified in a previous section of this notice, should identify in Section D of the Project Documentation Form the Applicable Empowerment Zone or Enterprise Community. The application narrative should describe the extent to which the proposed project will contribute to systemic educational reform in the particular Empowerment Zone or Enterprise Community and be an integral part of the Zone's or Community's comprehensive revitalization strategies. A list of areas that have been designated as Empowerment Zones and Enterprise Communities is provided at the end of this notice.

*Table of Contents*

The application should include a table of contents listing the various parts of the narrative in the order of the selection criteria. Be sure that the table includes the page numbers where the parts of the narrative are found.

*Budget*

Budget line items must support the goals and objectives of the proposed project and be directly applicable to the program design and all other project components. A separate budget summary and cost itemization must be provided on the Budget Information Form (ED 524). Prepare an itemized budget for each year of requested funding. Indirect costs for institutions of higher education which are the fiscal agents for Career Ladder Programs are limited to the lower of either 8% of a modified total direct cost base or the institution for higher education's actual indirect cost agreement. A modified direct cost base is defined as total direct costs less stipends, tuition and related fees and capital expenditures of $5,000 or more. In describing student support costs distinguish costs for tuition and fees from costs for stipends.

*Submission Of Application To State Educational Agency*

Section 7146(a)(4) of the Act (Elementary and Secondary Education Act of 1965, as amended by the Improving America's Schools Act of 1994, Pub. L. 103–382) requires all applicants except schools funded by the Bureau of Indian Affairs to submit a copy of their application to their State educational agency (SEA) for review and comment (20 U.S.C. 7476(a)(4)). Section 75.156 of the Education Department General Administrative Regulations (EDGAR) requires these applicants to submit their application to the SEA on or before the deadline date for submitting their application to the Department of Education. This section of EDGAR also requires applicants to attach to their application a copy of their letter that requests the SEA to comment on the application. A copy of this letter should be attached to the Project Documentation Form contained in this application package.

Applicants that do not submit a copy of their application to their SEA will not be considered for funding. Applicants are reminded that the requirement for submission to the SEA and the requirements for Executive Order 12372 are two separate requirements.

**Final Application Preparation**

Use the checklist following the Questions and Answers to verify that all items are addressed. Prepare one original with an original signature, and include two additional copies. Do not use elaborate bindings or covers. The application package must be mailed to the Application Control Center (ACC) and postmarked by the deadline date published in the notice.

**Questions and Answers**

*Does the Career Ladder Program have specific evaluation requirements?*

Yes, the evaluation requirements are described in section 7149 of title VII of ESEA, 20 U.S.C. 7479.

*What requirements must grantees meet related to teacher certification?*

The Title VII statute requires grantees to assist educational personnel in meeting State and local certification requirements. However, because certification requirements vary among States, applicants are given flexibility in designing activities that lead to meeting State and local certification requirements.

*May program budgets include costs for items other than student tuition and fees?*

Project budgets should reflect the proposed program activities. In addition to student support costs, budget items may include costs for personnel, supplies or equipment, and other reasonable and necessary costs to support developmental activities.

*What information may be helpful in preparing the application narrative for a Career Ladder Program?*

In responding to the selection criteria applicants may wish to consider the following questions as a guide for preparing application narrative.

- What are the specific responsibilities of districts, schools, institutions of higher education (IHEs) and other partnership organizations in planning, implementing and evaluating the proposed program? How is the program linked to the school district's overall professional development plan?
- What resources and support will each of the consortia members provide? How will resources be integrated to ensure maximum effectiveness of the program resources and to promote capacity building and long-range collaboration?
- How will the program collaborate with other teacher preparation programs within the institution, including those funded under the Higher Education Act of 1965, as amended?
- How does the training curricula reflect high standards for pedagogy, content, and proficiency in English and a second language to ensure that participants are effectively prepared to provide instruction and support to LEP students?
- How will the program assist in systemically reforming policies and practices in the target schools and in the IHEs related to the preparation of new teachers, the induction of new bilingual teachers, clinical experiences for new bilingual teachers and other educational personnel, or professional development opportunities for all teachers?
- What special selection criteria will the applicant adopt to ensure that individuals selected to participate in the program hold promise for successfully completing program requirements?
- What special support will be provided to participants by experienced bilingual teachers, higher education faculty, and school administrators to guide them during their period of induction?

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- How will the instructional responsibilities of participants be balanced with appropriate professional development, support and planning time?
- How will clinical experiences for preservice participants be structured to ensure that they are well-supervised, of sufficient duration and in a setting which provides opportunities for participants to experience a variety of effective bilingual education instructional methods and approaches?
- How is the training curriculum based on current research related to effective teaching and learning? What evidence of effectiveness supports the training model?
- What are the expected outcomes for participant learning, effectiveness in the instructional setting, reform and improvement in the school or the university? What measures will the proposed program use to collect data on the effectiveness of the program in meeting its objectives, such as: field practice assessments, National or State benchmark tests, surveys of graduates, mentor teachers, school administrators, rates of transfer from 2-year to 4-year institutions, graduate rates, placement rates? How are needs, objectives, activities and measures linked?
- How will the program evaluation incorporate strategies for assessing the progress and performance of participants; communicating meaningful, regular and timely feedback to participants; improving the quality of the training program; documenting and identifying exemplary program features and successful strategies; and reporting on specific data related to the number of participants completing the program and the number of graduates placed in the instructional setting?

In addition, applicants may wish to consider the Department of Education Professional Development Principles in planning a Career Ladder Program

The following are the professional development principles:

- Focuses on teachers as central to student learning, yet includes all other members of the school community;
- Focuses on individual, collegial and organizational improvement;
- Respects and nurtures the intellectual and leadership capacity of teachers, principals, and others in the school community;
- Reflects best available research and practice in teaching, learning, and leadership; enables teachers to develop further expertise in subject content, teaching strategies, uses of technologies, and other essential elements in teaching to high standards;
- Promotes continuous inquiry and improvement embedded in the daily life of schools;
- Is planned collaboratively by those who will participate in and facilitate that development;
- Requires substantial time and other resources;
- Is driven by a coherent long-term plan;
- Is evaluated ultimately on the basis of its impact on teacher effectiveness and student learning; and uses this assessment to guide subsequent professional development efforts.

*What Other Information May Be Helpful in Applying for a Career Ladder Program?*

For additional technical assistance information on Title VII programs, visit the OBEMLA website at: *www.ed.gov/offices/OBEMLA*. Select funding opportunities, then professional development programs. Applicants are reminded that they must submit a copy of their application to the SEA for review and comment. In addition, applicants must submit a copy of their application to the State Single Point of Contact to satisfy the requirements of Executive order 12372. The SEA review requirement and the requirements for Executive order 12372 are two separate requirements.

*Checklist for Applicants*

The following forms and other items must be included in the application:

1. Application for Federal Assistance (SF 424)
2. Group Application Certification (To be signed by authorized Representative of LEA in consortia with the applicant)
3. Budget Information (ED Form No. 524)
4. Itemized Budget for each year (attached to ED Form No. 524)
5. Participant Data—approximate number of participants to be served each year.
6. Project Documentation

Section A—Copy of Transmittal Letter to SEA requesting SEA to comment on application

Section B—Documentation of Empowerment Zone or Enterprise Community—if applicable

7. Program Assurances
8. Non-Construction Programs (SF 424B)
9. Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013)
10. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (ED 80–0014)
11. Disclosure of Lobbying Activities (SF–LLL)
12. Notice to all Applicants (See form provided below)
13. Table of Contents
14. One-page single-spaced abstract
15. Application narrative (Not to exceed 30 double-spaced pages, see instructions below)
16. One original and two copies of the application to the Department of Education Application Control Center
17. One copy to the SEA
18. One copy to the State Single Point of Contact

BILLING CODE 4000–01–P



## Application for Federal Education Assistance

Note: If available, please provide application package on diskette and specify the file format

**U.S. Department of Education**

Form Approved OMB No. 1875-0106 Exp. 06/30/2001

**Applicant Information**

1. Name and Address
Legal Name: _____
Address: _____
_____
City _____ State _____ County _____ ZIP Code + 4 _____ - _____
Organizational Unit

2. Applicant's D-U-N-S Number: |_|_|_|_|_|_|_|_|_|
3. Applicant's T-I-N |_|_|-|_|_|_|_|_|_|_|
4. Catalog of Federal Domestic Assistance #: **84.195E →**
Title: Bilingual Education: Career Ladder Program
5. Project Director: _____
Address: _____
City _____ State _____ Zip code + 4 _____
Tel. #: ( ) _____ - _____ Fax #: ( ) _____ - _____
E-Mail Address: _____
6. Is the applicant delinquent on any Federal debt? ___Yes ___No
*(If "Yes," attach an explanation.)*
7. Type of Applicant *(Enter appropriate letter in the box.)* |_|_|

| | |
|---|---|
| A - State | H - Independent School District |
| B - County | I - Public College or University |
| C - Municipal | J - Private, Non-Profit College or University |
| D - Township | K - Indian Tribe |
| E - Interstate | L - Individual |
| F - Intermunicipal | M - Private, Profit-Making Organization |
| G - Special District | N - Other *(Specify)*: _____ |

8. Novice Applicant ___Yes ___No

**Application Information**

9. Type of Submission:
*-PreApplication* ___Construction ___Non-Construction
*-Application* ___Construction ___Non-Construction
10. Is application subject to review by Executive Order 12372 process?
___ Yes *(Date made available to the Executive Order 12372 process for review):* ___/___/_____
___ No *(If "No," check appropriate box below.)*
___ Program is not covered by E.O. 12372.
___ Program has not been selected by State for review.
11. Proposed Project Dates: ___/___/_____ ___/___/_____
Start Date: End Date:
12. Are any research activities involving human subjects planned at any time during the proposed project period? ___Yes ___No
a. If "Yes," Exemption(s) #: b. Assurance of Compliance #:
_____ *OR* _____
c. IRB approval date: _____ ___ Full IRB or ___ Expedited Review
13. Descriptive Title of Applicant's Project:

**Estimated Funding**

| | |
|---|---|
| 14a. Federal | $ _____ .00 |
| b. Applicant | $ _____ .00 |
| c. State | $ _____ .00 |
| d. Local | $ _____ .00 |
| e. Other | $ _____ .00 |
| f. Program Income | $ _____ .00 |
| g. TOTAL | $ _____ .00 |

**Authorized Representative Information**

15. To the best of my knowledge and belief, all data in this preapplication/application are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.
a. Typed Name of Authorized Representative _____
b. Title: _____
c. Tel. #: ( ) _____ - _____ Fax #: ( ) _____ - _____
d. E-Mail Address: _____
e. Signature of Authorized Representative _____ Date: ___/___/_____

ED 424 (rev 11/12/99)

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**Instructions for ED 424**

1. **Legal Name and Address.** Enter the legal name of applicant and the name of the primary organizational unit which will undertake the assistance activity.

2. **D-U-N-S Number.** Enter the applicant's D-U-N-S Number. If your organization does not have a D-U-N-S Number, you can obtain the number by calling 1-800-333-0505 or by completing a D-U-N-S Number Request Form. The form can be obtained via the Internet at the following URL: **http://www.dnb.com/dbis/aboutdb/intlduns.htm.**

3. **Tax Identification Number.** Enter the tax identification number as assigned by the Internal Revenue Service.

4. **Catalog of Federal Domestic Assistance (CFDA) Number.** Enter the CFDA number and title of the program under which assistance is requested.

5. **Project Director.** Name, address, telephone and fax numbers, and e-mail address of the person to be contacted on matters involving this application.

6. **Federal Debt Delinquency.** Check **"Yes"** if the applicant's organization is delinquent on any Federal debt. (This question refers to the applicant's organization and not to the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.) Otherwise, check **"No."**

7. **Type of Applicant.** Enter the appropriate letter in the box provided.

8. **Novice Applicant.** Check **"Yes"** only if assistance is being requested under a program that gives special consideration to novice applicants and you meet the program requirements for novice applicants. By checking "Yes" the applicant certifies that it meets the novice applicant requirements specified by ED. Otherwise, check **"No."**

9. **Type of Submission.** Self-explanatory.

10. **Executive Order 12372.** Check **"Yes"** if the application is subject to review by Executive Order 12372. Also, please enter the month, date, and four (4) digit year (e.g., 12/12/2000). Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process. Otherwise, check **"No."**

11. **Proposed Project Dates.** Please enter the month, date, and four (4) digit year (e.g., 12/12/2000).

12. **Human Subjects.** Check "Yes" or "No" If research activities involving human subjects are not planned at any time during the proposed project period, check **"No." The remaining parts of item 12 are then not applicable.**

    If research activities involving human subjects, whether or not exempt from Federal regulations for the protection of human subjects, are planned at any time during the proposed project period, either at the applicant organization or at any other performance site or collaborating institution, check **"Yes."** If all the research activities are designated to be exempt under the regulations, enter, in item 12a, the exemption number(s) corresponding to one or more of the six exemption categories listed in **"Protection of Human Subjects in Research"** attached to this form. Provide sufficient information in the application to allow a determination that the designated exemptions in item 12a, are appropriate. **Provide this narrative information in an "Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page. Skip the remaining parts of item 12.**

    If some or all of the planned research activities involving human subjects are covered (nonexempt), skip item 12a and continue with the remaining parts of item 12, as noted below. In addition, follow the instructions in **"Protection of Human Subjects in Research"** attached to this form to prepare the six-point narrative about the nonexempt activities. **Provide this six-point narrative in an "Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

    **If the applicant organization has an approved Multiple Project Assurance of Compliance** on file with the Grants Policy and Oversight Staff (GPOS), U.S. Department of Education, or with the Office for Protection from Research Risks (OPRR), National Institutes of Health, U.S. Department of Health and Human Services, that covers the specific activity, enter the Assurance number in item 12b and the date of approval by the Institutional Review Board (IRB) of the proposed activities in item 12c. This date must be no earlier than one year before the receipt date for which the application is submitted and must include the four (4) digit year (e.g., 2000). Check the type of IRB review in the appropriate box. An IRB may use the expedited review procedure if it complies with the requirements of 34 CFR 97.110. If the IRB review is delayed beyond the submission of the application, enter **"Pending"** in item 12c. If your application is recommended/selected for funding, a follow-up certification of IRB approval from an official signing for the applicant organization must be sent to and received by the designated ED official within 30 days after a specific formal request from the designated ED official. **If the applicant organization does not have** on file with GPOS or OPRR **an approved Assurance of Compliance** that covers the proposed research activity, enter **"None"** in item 12b and skip 12c. In this case, the applicant organization, by the signature on the application, is declaring that it will comply with 34 CFR 97 within 30 days after a specific formal request from the designated ED official for the Assurance(s) and IRB certifications.

13. **Project Title.** Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

14. **Estimated Funding.** Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 14.

15. **Certification.** To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office.

    Be sure to enter the telephone and fax number and e-mail address of the authorized representative. Also, in item 15e, please enter the month, date, and four (4) digit year (e.g., 12/12/2000) in the date signed field.

**Paperwork Burden Statement**

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is **1875-0106.** The time required to complete this information collection is estimated to average between 15 and 45 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, D.C. 20202-4651. **If you have comments or concerns regarding the status of your individual submission of this form write directly to:** Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, S.W. ROB-3, Room 3633, Washington, D.C. 20202-4725

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## Protection of Human Subjects in Research (Attachment to ED 424)

### I. Instructions to Applicants about the Narrative Information that Must be Provided if Research Activities Involving Human Subjects are Planned.

If you marked item 12 on the application "Yes" and designated exemptions in 12a , **(all research activities are exempt),** provide sufficient information in the application to allow a determination that the designated exemptions are appropriate. Research involving human subjects that is exempt from the regulations is discussed under **II.B. "Exemptions,"** below. The Narrative must be succinct. **Provide this information in an "Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

If you marked "Yes" to item 12 on the face page, and designated no exemptions from the regulations **(some or all of the research activities are nonexempt),** address the following six points for each nonexempt activity. In addition, if research involving human subjects will take place at collaborating site(s) or other performance site(s), provide this information before discussing the six points. Although no specific page limitation applies to this section of the application, be succinct. Provide the six-point narrative and discussion of other performance sites in an **"Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

(1) Provide a detailed description of the proposed involvement of human subjects. Describe the characteristics of the subject population, including their anticipated number, age range, and health status. Identify the criteria for inclusion or exclusion of any subpopulation. Explain the rationale for the involvement of special classes of subjects, such as children, children with disabilities, adults with disabilities, persons with mental disabilities, pregnant women, prisoners, institutionalized individuals, or others who are likely to be vulnerable.

(2) Identify the sources of research material obtained from individually identifiable living human subjects in the form of specimens, records, or data. Indicate whether the material or data will be obtained specifically for research purposes or whether use will be made of existing specimens, records, or data.

(3) Describe plans for the recruitment of subjects and the consent procedures to be followed. Include the circumstances under which consent will be sought and obtained, who will seek it, the nature of the information to be provided to prospective subjects, and the method of documenting consent. State if the Institutional Review Board (IRB) has authorized a modification or waiver of the elements of consent or the requirement for documentation of consent.

(4) Describe potential risks (physical, psychological, social, legal, or other) and assess their likelihood and seriousness. Where appropriate, describe alternative treatments and procedures that might be advantageous to the subjects.

(5) Describe the procedures for protecting against or minimizing potential risks, including risks to confidentiality, and assess their likely effectiveness. Where appropriate, discuss provisions for ensuring necessary medical or professional intervention in the event of adverse effects to the subjects. Also, where appropriate, describe the provisions for monitoring the data collected to ensure the safety of the subjects.

(6) Discuss why the risks to subjects are reasonable in relation to the anticipated benefits to subjects and in relation to the importance of the knowledge that may reasonably be expected to result.

### II. Information on Research Activities Involving Human Subjects

**A. Definitions.**

A research activity involves human subjects if the activity is research, as defined in the Department's regulations, and the research activity will involve use of human subjects, as defined in the regulations.

**—Is it a research activity?**

The ED Regulations for the Protection of Human Subjects, Title 34, Code of Federal Regulations, Part 97, define research as "a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge." *If an activity follows a deliberate plan whose purpose is to develop or contribute to generalizable knowledge, such as an exploratory study or the collection of data to test a hypothesis, it is research.* Activities which meet this definition constitute research whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities.

**—Is it a human subject?**

The regulations define human subject as "a living individual about whom an investigator (whether professional or student) conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information." *(1) If an activity involves obtaining information about a living person by manipulating that person or that person's environment, as might occur when a new instructional technique is tested, or by communicating or interacting with the individual, as occurs with surveys and interviews, the definition of human subject is met. (2) If an activity involves obtaining private information about a living person in such a way that the information can be linked to that individual (the identity of the subject is or may be readily determined by the investigator or associated with the information), the definition of human subject is met.* [Private information includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (for example, a school health record).]



**B. Exemptions.**

Research activities in which the only involvement of human subjects will be in one or more of the following six categories of *exemptions* are not covered by the regulations:

(1) Research conducted in established or commonly accepted educational settings, involving normal educational practices, such as (a) research on regular and special education instructional strategies, or (b) research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

(2) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless: (a) information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and (b) any disclosure of the human subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation. ***If the subjects are children, this exemption applies only to research involving educational tests or observations of public behavior when the investigator(s) do not participate in the activities being observed.*** [Children are defined as persons who have not attained the legal age for consent to treatments or procedures involved in the research, under the applicable law or jurisdiction in which the research will be conducted.]

(3) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior that is not exempt under section (2) above, if the human subjects are elected or appointed public officials or candidates for public office; or federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter.

(4) Research involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

(5) Research and demonstration projects which are conducted by or subject to the approval of department or agency heads, and which are designed to study, evaluate, or otherwise examine: (a) public benefit or service programs; (b) procedures for obtaining benefits or services under those programs; (c) possible changes in or alternatives to those programs or procedures; or (d) possible changes in methods or levels of payment for benefits or services under those programs.

(6) Taste and food quality evaluation and consumer acceptance studies, (a) if wholesome foods without additives are consumed or (b) if a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S Department of Agriculture.

***Copies of the Department of Education's Regulations for the Protection of Human Subjects, 34 CFR Part 97 and other pertinent materials on the protection of human subjects in research are available from the Grants Policy and Oversight Staff (GPOS) Office of the Chief Financial and Chief Information Officer, U.S. Department of Education, Washington, D.C., telephone: (202) 708-8263, and on the U.S. Department of Education's Protection of Human Subjects in Research Web Site at http://ocfo.ed.gov/humansub.htm.***

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## GROUP APPLICATION CERTIFICATION

**NOTE:** This form must be completed by eligible parties applying as a group for a grant. This form must be accompanied by a group agreement that details the activities that each member of the group plans to perform under the grant.

(34 CFR 75.128(b)-(c)).

To the best of my knowledge and belief, all data in this application are true and correct. I agree to be bound to every statement and assurance made in this application.

| Authorized Representative | | | | | |
|---|---|---|---|---|---|
| Typed Name | Title | Signature | Date Signed | Telephone Number (including Area Code) | Name of Institution/ Organization |
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U.S. DEPARTMENT OF EDUCATION

BUDGET INFORMATION

NON-CONSTRUCTION PROGRAMS

OMB Control Number: 1890-0004

Expiration Date: 02/28/2003

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

### SECTION A - BUDGET SUMMARY
### U.S. DEPARTMENT OF EDUCATION FUNDS

| Budget Categories | Project Year 1 (a) | Project Year 2 (b) | Project Year 3 (c) | Project Year 4 (d) | Project Year 5 (e) | Total (f) |
|---|---|---|---|---|---|---|
| 1. Personnel | | | | | | |
| 2. Fringe Benefits | | | | | | |
| 3. Travel | | | | | | |
| 4. Equipment | | | | | | |
| 5. Supplies | | | | | | |
| 6. Contractual | | | | | | |
| 7. Construction | | | | | | |
| 8. Other | | | | | | |
| 9. Total Direct Costs (lines 1-8) | | | | | | |
| 10. Indirect Costs | | | | | | |
| 11. Training Stipends | | | | | | |
| 12. Total Costs (lines 9-11) | | | | | | |

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Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

Name of Institution/Organization

**SECTION B - BUDGET SUMMARY NON-FEDERAL FUNDS**

| Budget Categories | Project Year 1 (a) | Project Year 2 (b) | Project Year 3 (c) | Project Year 4 (d) | Project Year 5 (e) | Total (f) |
|---|---|---|---|---|---|---|
| 1. Personnel | | | | | | |
| 2. Fringe Benefits | | | | | | |
| 3. Travel | | | | | | |
| 4. Equipment | | | | | | |
| 5. Supplies | | | | | | |
| 6. Contractual | | | | | | |
| 7. Construction | | | | | | |
| 8. Other | | | | | | |
| 9. Total Direct Costs (lines 1-8) | | | | | | |
| 10. Indirect Costs | | | | | | |
| 11. [illegible] | | | | | | |
| 12. Total Costs (lines 9-11) | | | | | | |

**SECTION C - OTHER BUDGET INFORMATION (see instructions)**

ED Form No. 524



Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours per response, including the time reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington DC 20503.

## INSTRUCTIONS FOR ED FORM 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary
U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary
Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information
Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.
2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.
3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.
4. Provide other explanations or comments you deem necessary.

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## PARTICIPANT DATA

**Note: This form must be completed by applicants under the following programs:**

- **Teachers and Personnel Grants**
- **Career Ladder Program**
- **Training for all Teachers**

**Number of proposed participants in each of the following categories to be served each year of the grant.**

**Preservice Teachers (who are not paraprofessionals)** _____

**Preservice Teachers (who are currently paraprofessionals)** _____

**Inservice Teachers** _____

**Other Educational Personnel (Specify type of personnel below)** _____

_____ _____

_____ _____

**Degree level(s) to be attained (if applicable)** _____

**Certification Type(s) to be attained** _____

**Language(s) of Participants (other than English)** _____

_____

_____



## PROJECT DOCUMENTATION

Note: Submit the appropriate documents and information as specified below for the following programs.

- Teachers and Personnel Grants
- Career Ladder Program
- Training for All Teachers

Section A

A copy of the applicant's transmittal letter requesting the appropriate State educational agency to comment on the application.

Section B

If applicable, identify on the line below the Empowerment Zone, Supplemental Empowerment Zone, or Enterprise Community that the proposed project will serve. Attach any documentation to support how the project will contribute to systemic educational reform in an Empowerment Zone, Suppplemental Empowerment Zone or an Enterprise Community
(See the competitive priority and the list of designated Empowerment Zones in previous sections of this application package.)

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## PROGRAM ASSURANCES

NOTE: The authorizing statute requires applicants under certain programs to provide assurances. These assurances are specified below under the relevant programs. If your application pertains to any of these programs, this form must be completed.

As the duly authorized representative of the applicant, I certify that the applicant, in regard to the program relevant to this application:

- Teachers and Personnel Grants
- Career Ladder Program
- Training for All Teachers

Will include, if applicable, as part of the project implementing a master's or doctoral-level program, a training practicum in a local school program serving children and youth of limited English proficiency.
(Authority: 20 U.S.C. 7426(g)(3)

Authorized Representative

Name: _____

Signature: _____

Typed Name: _____

Date: _____

Applicant Organization: _____



OMB Approval No. 0348-0040

## ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503

**PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.**

**Note:** Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management, and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with the provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

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**Prescribed by OMB Circular A-102**

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9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. ээ276a to 276a-7), the Copeland Act (40 U.S.C. э276c and 18 U.S.C. ээ874) and the Contract Work Hours and Safety Standards Act (40 U.S.C. ээ 327-333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. ээ1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. ээ7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12 Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. ээ1721 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. э470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. ээ469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. ээ2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. ээ4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, AAudits of States, Local Governments, and Non-Profit Organizations.≅

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

| SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL | TITLE |
|---|---|
| APPLICANT ORGANIZATION | DATE SUBMITTED |

**Standard Form 424B (Rev. 7-97) Back**



**CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS**

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. **LOBBYING**

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. **DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS**

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110--

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. **DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)**

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

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(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants Policy and Oversight Staff, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address. city, county, state, zip code)

_____

_____

_____

Check [ ] if there are workplaces on file that are not identified here.

**DRUG-FREE WORKPLACE**
**(GRANTEES WHO ARE INDIVIDUALS)**

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants Policy and Oversight Staff, Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

| NAME OF APPLICANT | PR/AWARD NUMBER AND / OR PROJECT NAME |
|---|---|
| PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE | |
| SIGNATURE | DATE |

ED 80-0013 12/98



**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions**

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

**Instructions for Certification**

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," " person," "primary covered transaction," " principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled ACertification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions,≅ without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

**Certification**

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

| NAME OF APPLICANT | PR/AWARD NUMBER AND/OR PROJECT NAME |
|---|---|
| PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE | |
| SIGNATURE | DATE |

ED 80-0014, 9/90 (Replaces GCS-009 (REV.12/88), which is obsolete)

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Approved by OMB
0348-0046

## Disclosure of Lobbying Activities

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure)

| | | |
|---|---|---|
| **1. Type of Federal Action:**<br>a. contract<br>____ b. grant<br>c. cooperative agreement<br>d. loan<br>e. loan guarantee<br>f. loan insurance | **2. Status of Federal Action:**<br>a. bid/offer/application<br>_____ b. initial award<br>c. post-award | **3. Report Type:**<br>a. initial filing<br>_____ b. material change<br>**For material change only:**<br>Year _____ quarter _____<br>Date of last report_____ |
| **4. Name and Address of Reporting Entity:**<br>____ Prime _____ Subawardee<br>Tier_____, if Known:<br>**Congressional District, if known:** | | **5. If Reporting Entity in No. 4 is Subawardee,** Enter Name and Address of Prime:<br>**Congressional District, if known:** |
| **6. Federal Department/Agency:** | | **7. Federal Program Name/Description:**<br>CFDA Number, *if applicable*: _____ |
| **8. Federal Action Number,** *if known:* | | **9. Award Amount,** *if known:*<br>$ |
| **10. a. Name and Address of Lobbying Registrant**<br>*(if individual, last name, first name, MI):* | | **b. Individuals Performing Services** *(including address if different from No. 10a)*<br>*(last name, first name, MI):* |
| **11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.** | | **Signature:** _____<br>**Print Name:** _____<br>**Title:** _____<br>**Telephone No.:** _____ **Date:** _____ |
| **Federal Use Only** | | **Authorized for Local Reproduction**<br>**Standard Form - LLL (Rev. 7-97)** |



### INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitations for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Included prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503

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OMB Control No. 1801-0004 (Exp. 8/31/2001)

## NOTICE TO ALL APPLICANTS

The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is Section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Pub. L. 103-382).

### To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new grant awards under this program. **ALL APPLICANTS FOR NEW AWARDS MUST INCLUDE INFORMATION IN THEIR APPLICATIONS TO ADDRESS THIS NEW PROVISION IN ORDER TO RECEIVE FUNDING UNDER THIS PROGRAM.**

(If this program is a State-formula grant program, a State needs to provide this description only for projects or activities that it carries out with funds reserved for State-level uses. In addition, local school districts or other eligible applicants that apply to the State for funding need to provide this description in their applications to the State for funding. The State would be responsible for ensuring that the school district or other local entity has submitted a sufficient section 427 statement as described below.)

### What Does This Provision Require?

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its Federally-assisted program for students, teachers, and other program beneficiaries with special needs. This provision allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation: gender, race, national origin, color, disability, or age. Based on local circumstances, you should determine whether these or other barriers may prevent your students, teachers, etc. from such access or participation in, the Federally-funded project or activity. The description in your application of steps to be taken to overcome these barriers need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

### What are Examples of How an Applicant Might Satisfy the Requirement of This Provision?

The following examples may help illustrate how an applicant may comply with Section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it intends to conduct "outreach" efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

### Estimated Burden Statement for GEPA Requirements

The time required to complete this information collection is estimated to vary from 1 to 3 hours per response, with an average of 1.5 hours, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: U.S. Department of Education, Washington, DC 20202-4651.



## EMPOWERMENT ZONES AND ENTERPRISE COMMUNITIES
(as of January 13, 1999)

EMPOWERMENT ZONES

**California:** Los Angeles, Oakland, Santa Ana, Riverside County*
**Connecticut:** New Haven+
**Florida:** Miami+
**Georgia:** Atlanta, Cordele*+
**Illinois:** Chicago, East St. Louis+, Ullin*
**Indiana:** Gary, East Chicago
**Kentucky:** Kentucky Highlands* (Clinton, Jackson, and Wayne Counties)
**Maryland:** Baltimore
**Massachusetts:** Boston+
**Michigan:** Detroit
**Minnesota:** Minneapolis+
**Mississippi:** Mid-Delta* (Bolivar, Holmes, Humphreys, LeFlore, Sunflower, Washington Counties)
**Missouri/Kansas:** Kansas City, Kansas City
**Missouri:** St. Louis+
**New Jersey:** Cumberland County
**New York:** Harlem, Bronx
**North Dakota:** Lake Agassiz*
**Ohio:** Cleveland, Cincinnati, Columbus+
**Ohio/West Virginia:** Ironton/Huntington+
**Pennsylvania/New Jersey:** Philadephia/ Camden
**South Carolina:** Columbia/Sumter
**South Dakota:** Oglala Sioux Reservation in Pine Ridge*
**Tennessee:** Knoxville
**Texas:** Houston, El Paso+, Rio GrandeValley* (Cameron, Hidalgo, Starr, and Willacy Counties)
**Virginia:** Norfolk+/Portsmouth

ENTERPRISE COMMUNITIES

**Alabama:** Birmingham
**Alabama:** Chambers County* Greene County*, Sumter County*
**Alaska:** Juneau*
**Arizona:** Arizona Border* (Cochise, Santa Cruz and Yuma Counties), Phoenix, Window Rock*
**Arkansas:** East Central* (Cross, Lee, Monroe, and St. Francis Counties), Mississippi County*, Pulaski County
**California:** Imperial County*, Los Angeles, Huntington Park, San Diego, San Francisco, Bayview, Hunter's Point, Watsonville*, Orange Cove*
**Colorado:** Denver
**Connecticut:** Bridgeport, New Haven
**Delaware:** Wilmington
**District of Columbia:** Washington
**Florida:** Jackson County*, Miami, Dade County, Tampa, Immokalee*
**Georgia:** Albany, Central Savannah River*(Burke, Hancock, Jefferson, McDuffie, Tallafero, and Warren Counties), Crisp County*, Dooley County*
**Hawaii:** Kaunakakai*
**Illinois:** East St. Louis, Springfield
**Indiana:** Indianapolis, Austin*
**Iowa:** Des Moines
**Kansas:** Leoti*
**Kentucky:** Louisville, Bowling Green*
**Louisiana:** Macon Ridge* (Catahoula, Concordia, Franklin, Morehouse, and Tensas Parishes), New Orleans, Northeast Louisiana Delta* (Madison Parish), Ouachita Parish
**Maine:** Lewiston*
**Massachusetts:** Lowell, Springfield
**Michigan:** Five Cap*, Flint, Muskegon, Harrison*
**Minnesota:** Minneapolis, St. Paul
**Mississippi:** Jackson, North Delta Area* (Panola, Quitman, and Tallahatchie Counties)
**Missouri:** East Prairie*, St. Louis
**Montana:** Poplar*
**Nebraska:** Omaha
**Nevada:** Clarke County, Las Vegas
**New Hampshire:** Manchester
**New Jersey:** Newark
**New Mexico:** Albuquerque, La Jicarita* (Mora, Rio Arriba, Taos Counties), Deming*
**New York:** Albany, Schenectady, Troy
**New York:** Buffalo, Rochester
**New York:** Newburgh, Kingston
**North Carolina:** Charlotte
**North Carolina:** Edgecombe, Halifax, Robeson, Wilson Counties*
**Ohio:** Akron, Columbus, Greater Portsmouth* (Scioto County)
**Oklahoma:** Choctaw, McCurtain Counties*, Oklahoma City, Ada*
**Oregon:** Josephine County*, Portland
**Pennsylvania:** Harrisburg, Lock Haven*, Pittsburgh, Uniontown*
**Rhode Island:** Providence
**South Carolina:** Charleston, Williamsburg, Florence County*, Hallandale*
**South Dakota:** Beadle, Spink Counties*
**Tennessee:** Fayette, Haywood Counties*, Memphis, Nashville, Rutledge*
**Tennessee/Kentucky:** Scott, McCreary Counties*
**Texas:** Dallas, El Paso, San Antonio, Waco, Uvalde*
**Utah:** Ogden
**Vermont:** Burlington
**Virginia:** Accomack (Northampton County)*, Norfolk
**Washington:** Lower Yakima County*, Seattle, Tacoma, Collie*
**West Virginia:** Charleston*, Huntington, McDowell County*, West Central Appalachia* (Braxton, Clay, Fayette, Nicholas, and Roane)
**Wisconsin:** Milwaukee, Keshena*

* Denotes rural designee
+Also an Enterprise Community, Round One

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## STATE SINGLE POINT OF CONTACT
(As of April 22, 1999)

Note: In accordance with Executive Order 12372, Intergovernmental Review of Federal Programs, this listing represents the designated State Single Points of Contact (SSPOCs). Because participation is voluntary, some States and Territories no longer participate in the process. These include: Alabama, Alaska, American Samoa, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, and Washington.

The jurisdictions not listed no longer participate in the process. However, an applicant is still eligible to apply for a grant or grants even if its respective State, Territory, Commonwealth, etc. does not have a SSPOC.

**ARIZONA**
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3800 N. Central Avenue
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**ARKANSAS**
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**CALIFORNIA**
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**ILLINOIS**
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**INDIANA**
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Note: This list is based on the most current information provided by the States. Information on any changes or apparent errors should be provided to Sherron Duncan at the Office of Management and Budget (202) 395-3914 and to the State in question. Changes to the list will only be made upon formal notification by the State. The list is updated every six months and is also published biannually in the Catalog of Federal Domestic Assistance. The last changes made were to Delaware, Indiana, Missouri, New Mexico, Puerto Rico, Rhode Island, Utah, and Wisconsin.

*Guam and the Virgin Islands are not confirmed.

[FR Doc. 00–25442 Filed 10–3–00; 8:45 am]
BILLING CODE 4000–01–C

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Federal Register

Wednesday,
October 4, 2000

Part V

## The President

Proclamation 7346—National Breast Cancer Awareness Month, 2000

Proclamation 7347—National Disability Employment Awareness Month, 2000

Proclamation 7348—National Domestic Violence Awareness Month, 2000

Proclamation 7349—Child Health Day, 2000

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# Presidential Documents

Title 3—

The President

**Proclamation 7346 of September 29, 2000**

## National Breast Cancer Awareness Month, 2000

**By the President of the United States of America**

**A Proclamation**

As we once again observe National Breast Cancer Awareness Month, we can be heartened by the progress we have made in the battle against breast cancer. Today we have a better under standing of what causes the disease, and advances in research are leading to improvements in detection and diagnosis and to treatments that are improving patients' quality of life and chances of survival.

Two million Americans today are breast cancer survivors, thanks in large part to earlier detection and more effective treatments. Statistics from the Centers for Disease Control and Prevention (CDC) show that nearly 70 percent of women aged 50 and older have had a mammogram in the past 2 years, compared with only 27 percent in 1987. While these increases were found among women at all income levels, those with lower incomes are still less likely to be screened than those at higher income levels. The National Cancer Institute (NCI) and the Health Care Financing Administration are working together to inform women aged 65 and older that Medicare coverage is available for mammography screenings; and the CDC's National Breast and Cervical Cancer Early Detection provides free or low-cost mammograms to uninsured, low-income, and elderly women. And, to assist the thousands of low-income uninsured women whose breast cancer was detected through federally funded screening programs, my proposed budget for fiscal 2001 includes a new Medicaid option to fund the lifesaving follow-up treatment they need to increase their chances of survival.

Research is one of our most powerful tools in our effort to eradicate breast cancer, and I am proud that my Administration has made historic increases in funding for biomedical research. A number of Federal agencies and programs are adding to our knowledge about the disease. The National Toxicology Program (NTP), which is part of the National Institute of Environmental Health Services, is studying chemical compounds that may cause cancer in humans. Based on data from the NTP, agencies such as the Environmental Protection Agency and the Food and Drug Administration are working to reduce human exposure to environ mental agents that might increase the risk for breast and other cancers. The NCI, through the Long Island Breast Cancer Study Project and the Triana Community Health Initiative, is exploring the possible relationship between different sources of pollution and the incidence of breast cancer. Findings from these studies will help researchers and health care providers identify women who are at higher risk for breast cancer and develop better strategies for preventing the disease.

The NCI's landmark Breast Cancer Prevention Trial (BCPT) focused on tamoxifen, an anti-estrogen medication that helps reduce the chance that women who are at higher risk for breast cancer will develop the disease. Building on the success of the BCPT, a current study of tamoxifen and raloxifene will determine whether raloxifene is as effective as tamoxifen, with fewer side effects. The NCI is also sponsoring clinical trials of sentinel node biopsy, a procedure where the surgical removal of a small number of lymph nodes can determine whether cancer has spread outside of the breast.

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The American people have also played a role in funding research through activities such as the purchase of the 40-cent breast cancer awareness stamp from the U.S. Postal Service. The sale of this stamp has raised millions of dollars for breast cancer research, and, on July 28 of this year, I was proud to sign legislation authorizing the sale of this special stamp for an additional 2 years.

We are gaining ground in our fight against breast cancer, but we cannot become complacent. This year alone, more than 40,000 Americans will die from the disease, and an estimated 184,200 new cases will be diagnosed. We must continue to raise awareness among our friends, loved ones, and fellow citizens about the importance of screening and early detection and the need to support new research. By doing so, we will one day triumph over this devastating disease and ensure a brighter, healthier future for our children.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim October 2000 as National Breast Cancer Awareness Month. I call upon government officials, businesses, communities, health care professionals, educators, volunteers, and all the people of the United States to publicly reaffirm our Nation's strong and continuing commitment to controlling and curing breast cancer.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of September, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fifth.

William J. Clinton

[FR Doc. 00–25673
Filed 10–3–00; 8:45 am]
Billing code 3195–01–P



## Presidential Documents

**Proclamation 7347 of September 29, 2000**

### National Disability Employment Awareness Month, 2000

**By the President of the United States of America**

**A Proclamation**

This year marks the 25th anniversary of the Individuals with Disabilities Education Act and the 10th anniversary of the Americans with Disabilities Act (ADA). These two landmark civil rights laws have opened the doors of opportunity for people with disabilities and increased our awareness of the enormous contributions that Americans with disabilities can make to our national life.

A decade ago, when we were debating the Americans with Disabilities Act, critics said that making workplaces, public transportation, public facilities, and telecommunications more accessible would be too costly and burdensome. But they have been proved wrong. Since passage of the ADA in 1990, more than a million men and women with disabilities have entered the labor force and, as taxpayers, consumers, and workers, they are contributing to a period of unprecedented prosperity and record employment in our country.

Throughout my Administration, we have worked hard to break down the barriers that people with disabilities continue to face on a daily basis. In 1998, I signed the Workforce Investment Act, requiring that information technology purchased by the Federal Government be accessible to people with disabilities. In 1999, I was proud to sign the Ticket to Work and Work Incentives Improvement Act, which enables Americans with disabilities to retain their Medicare or Medicaid coverage when they go to work, because no one should have to choose between health care and a job. We are also dramatically expanding the income students with disabilities can earn while retaining access to disability benefits; and to lead by example, we are hiring more people with disabilities throughout the Federal Government.

Today's revolution in information and communications technology offers us powerful new tools to expand employment and training opportunities for people with disabilities. Whether translating web pages aloud for people who are blind or visually impaired, creating captioning for those who are deaf or hard of hearing, or enabling people with physical disabilities to control a computer through eye movement and brain waves, these technologies show enormous potential for increasing access to employment and full participation in society. We are exploring ways that Medicare and Medicaid can be enhanced to cover the cost of assistive technology so that people can live and work more independently in the communities of their choosing. And I was pleased to announce on September 21 that dozens of corporate leaders from the technology sector and the presidents of many of America's leading research universities have pledged to make their products and services accessible to and usable by people with disabilities.

A new generation of young people with disabilities is growing up in America today—graduating from high school, going to college, and preparing to participate fully in the workplace. They have a right to make the most of their potential, and our Nation must make the most of their intellect, talents, and abilities. By working together to break down barriers for Americans

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with disabilities, we will keep our economy growing, make a lasting investment in the future of our country, and uphold our fundamental commitment to justice and equality for all our people.

To recognize the enormous potential of individuals with disabilities and to encourage all Americans to work toward their full integration into the workforce, the Congress, by joint resolution approved August 11, 1945, as amended (36 U.S.C. 121), has designated October of each year as "National Disability Employment Awareness Month."

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim October 2000 as National Disability Employment Awareness Month. I call upon Government officials, educators, labor leaders, employers, and the people of the United States to observe this month with appropriate programs and activities that reaffirm our determination to fulfill the letter and spirit of the Americans with Disabilities Act.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of September, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fifth.

William J. Clinton

[FR Doc. 00–25674
Filed 10–3–00; 8:45 am]
Billing code 3195–01–P



## Presidential Documents

**Proclamation 7348 of September 29, 2000**

### National Domestic Violence Awareness Month, 2000

**By the President of the United States of America**

**A Proclamation**

Domestic violence transcends all ethnic, racial, and socioeconomic boundaries. Its perpetrators abuse their victims both physically and mentally, and the effects of their attacks are far-reaching—weakening the very core of our communities. Domestic violence is particularly devastating because it so often occurs in the privacy of the home, which is meant to be a place of shelter and security. During the month of October, all Americans should contemplate the scars that domestic violence leaves on our society and what each of us can do to prevent it.

Because domestic violence usually takes place in private, many Americans may not realize how widespread it is. According to the National Violence Against Women Survey, conducted jointly by the Centers for Disease Control and Prevention and the National Institute of Justice, each year in the United States approximately 1.5 million women are raped and/or physically assaulted by their current or former husbands, partners, or boyfriends. Many of these women are victimized more than once over the course of a year. As unsettling as these statistics are, it is also disturbing to realize that the children of battered women frequently witness these attacks, thus becoming victims themselves.

My Administration has worked hard to reduce domestic violence in our Nation and to assist victims and their families. The cornerstone of our efforts has been the Violence Against Women Act (VAWA), which the Congress passed with bipartisan support in 1994 and which I signed into law as part of our comprehensive crime control bill. This important piece of legislation, which contains a broad array of ground-breaking measures to combat violence against women, combines tough penalties with programs to prosecute offenders and provide assistance to women who are survivors of violence.

In the 6 years since I signed VAWA into law, the legislation has provided more than $1.6 billion to support prosecutors, law enforcement officials, courts, victim advocates, and intervention efforts. We have quadrupled funding for battered women's shelters, created the National Domestic Violence Hotline, and supported community outreach and prevention programs, children's counseling, and child protection services. The Department of Justice has awarded more than 900 discretionary grants and 280 STOP (Services, Training, Officers, Prosecutors) Violence Against Women formula grants to help State, tribal, and local governments and community-based organizations establish specialized domestic violence and sexual assault units, train personnel, enforce laws, develop policies, assist victims of violence, and hold abusers accountable.

These VAWA programs are making a difference across the country. A recent report by the Bureau of Justice Statistics shows that the number of women experiencing violence at the hands of an intimate partner declined 21 percent from 1993 to 1998. I call on the Congress to reauthorize and strengthen VAWA so that we may continue to build on the progress we have made in combating domestic violence in our Nation.

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Through VAWA and other initiatives and programs, we are striving to create a responsive legal system in American communities that not only prevents domestic violence and sexual assault, but also ensures that every victim has immediate access to helpful information and emergency assistance. By taking strong public action against this crime, we are creating a society that promotes strong values, fosters a safe, loving home environment for every family, and refuses to tolerate domestic violence in any form.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim October 2000 as National Domestic Violence Awareness Month. I call upon government officials, law enforcement agencies, health professionals, educators, community leaders, and the American people to join together to end the domestic violence that threatens so many of our people.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of September, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fifth.

William J. Clinton

[FR Doc. 00–25675
Filed 10–3–00; 8:45 am]
Billing code 3195–01–P



## Presidential Documents

**Proclamation 7349 of September 29, 2000**

### Child Health Day, 2000

**By the President of the United States of America**

**A Proclamation**

As parents and as concerned citizens, we have a profound responsibility to ensure that America's children not only receive a healthy start in life, but also that they continue to grow and develop in a nurturing environment where they have the opportunity to reach their full potential.

Recognizing the importance of healthy, happy children to the future of our Nation, my Administration has strived to offer America's families the tools they need to fulfill their responsibilities. In 1997, I was proud to sign into law the Child Health Insurance Program (CHIP), the largest investment in children's health care since the creation of Medicaid 35 years ago. This innovative program allows States to use Federal funds to provide health insurance for children of working families whose incomes are too high to qualify for Medicaid but too low to afford private health insurance. Children with health insurance are more likely to receive the immunizations and other preventive care they need to avoid serious illnesses and to enjoy a healthier start in life. In March of 1997, only 4 States provided such coverage for children. Today, 30 States have plans approved to cover qualified children, and I have proposed an additional $5.5 billion over the next 10 years to cover even more children and to raise awareness of CHIP among families who may not realize they are eligible.

In addition to quality health care, children need nutritious meals every day. I am pleased that our national school lunch program provides healthy lunches to more than 25 million students in more than 96,000 schools across our nation, ensuring that some of our most vulnerable children can look forward to at least one healthy meal each day. We can also be heartened to know that children enrolled in programs funded under the Department of Agriculture's Special Supplemental Program for Women, Infants, and Children not only receive the nutritious food they need, but also are immunized earlier, perform better in school, and spend less time in the doctor's office.

Since 1965, in addition to engaging parents in the early educational development of their children, the Head Start program has provided medical, mental health, nutrition, and dental services to more than 17 million children from birth to age 5. My Administration will continue this investment by increasing Head Start funding in our proposed fiscal 2001 budget by $1 billion—the largest Head Start expansion in history.

It is also our responsibility to ensure that our children feel part of a safe, strong, nurturing community. Through our Safe Schools/Healthy Students initiative, my Administration is helping parents, school principals, police, and mental health providers to collaborate on local solutions to school and youth violence. My proposed budget for fiscal 2001 includes an increase of more than $100 million for this program. I have also called on the Congress to allow eligible workers under the Family and Medical Leave Act to take up to 24 hours of additional leave each year to meet family obligations, including school activities such as parent-teacher conferences. America is enjoying a period of unprecedented economic success today; but we will never be truly successful as a Nation until we ensure that

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all families have the tools and opportunity they need in order to raise healthy children. To acknowledge the importance of our children's health, the Congress, by joint resolution approved May 18, 1928, as amended (36 U.S.C. 105), has called for the designation of the first Monday in October as "Child Health Day" and has requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim Monday, October 2, 2000, as Child Health Day. I call upon families, schools, communities, and governments to dedicate themselves to promoting and protecting the health and well-being of all our children.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of September, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fifth.

William J. Clinton

[FR Doc. 00–25676
Filed 10–3–00; 8:45 am]
Billing code 3195–01–P

Federal Register

Wednesday,
October 4, 2000

Part VI

# The President

Proclamation 7350—To Implement the African Growth and Opportunity Act and To Designate Eritrea as a Beneficiary Developing Country for Purposes of the Generalized System of Preferences

Proclamation 7351—To Implement the United States-Caribbean Basin Trade Partnership Act

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# Presidential Documents

Title 3—

The President

## Proclamation 7350 of October 2, 2000

## To Implement the African Growth and Opportunity Act and To Designate Eritrea as a Beneficiary Developing Country for Purposes of the Generalized System of Preferences

**By the President of the United States of America**

**A Proclamation**

1. Section 111(a) of the African Growth and Opportunity Act (Title I of Public Law 106–200) (AGOA) amends Title V of the Trade Act of 1974, as amended (the "1974 Act"), to provide, in new section 506A(a) (19 U.S.C. 2466a(a)), that the President is authorized to designate countries listed in section 107 of the AGOA as "beneficiary sub-Saharan African countries."

2. Section 112(a) of the AGOA (19 U.S.C. 3721(a)) provides that eligible textile and apparel articles that are imported directly into the customs territory of the United States from a beneficiary sub-Saharan African country shall enter the United States free of duty and free of quantitative limitations, provided that the country has satisfied the requirements of section 113(a) of the AGOA (19 U.S.C. 3722(a)) relating to the establishment of procedures to protect against unlawful transshipments, and section 113(b)(1)(B) of the AGOA (19 U.S.C. 3722(b)(1)(B)) relating to the implementation of procedures and requirements similar to those in chapter 5 of the North American Free Trade Agreement (NAFTA).

3. Section 112(b)(3)(B) of the AGOA (19 U.S.C. 3721(b)(3)(B)) provides special rules for certain apparel articles imported from "lesser developed beneficiary sub-Saharan African countries."

4. Section 112(c) of the AGOA (19 U.S.C. 3721(c)) provides that the President shall eliminate the existing quotas on textile and apparel articles imported into the United States (a) from Kenya within 30 days after that country adopts an effective visa system to prevent unlawful transshipment of textile and apparel articles and the use of counterfeit documents relating to the importation of the articles into the United States, and (b) from Mauritius within 30 days after that country adopts such a visa system.

5. In order to implement the tariff treatment provided under the AGOA, it is necessary to modify the Harmonized Tariff Schedule of the United States (HTS), thereby incorporating the substance of the relevant provisions of the AGOA.

6. Sections 501 and 502 of the 1974 Act (19 U.S.C. 2461 and 2462) authorize the President to designate countries as beneficiary developing countries for purposes of the Generalized System of Preferences (GSP).

7. Section 604 of the 1974 Act (19 U.S.C. 2483) authorizes the President to embody in the HTS the substance of the relevant provisions of that Act, and of other acts affecting import treatment, and actions thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

8. I have determined that it is appropriate to authorize the United States Trade Representative (USTR) to perform the functions specified in sections 112(c) and 113(b)(1)(B) of the AGOA and to make the findings identified in section 113(a) of the AGOA and to perform certain functions under section 604 of the 1974 Act.

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9. For Sierra Leone, I have determined that it is appropriate to authorize the USTR to determine the effective date of its designation as a beneficiary sub-Saharan African country.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States, including section 301 of title 3, United States Code, sections 111, 112, and 113 of the AGOA, and sections 501, 502, 506A, and 604 of the 1974 Act, do proclaim that:

(1) In order to provide for the preferential treatment provided for in section 112(a) of the AGOA, the HTS is modified as provided in the Annex to this proclamation.

(2) The following countries are designated as beneficiary sub-Saharan African countries pursuant to section 506A(a) of the 1974 Act:

Republic of Benin
Republic of Botswana
Republic of Cape Verde
Republic of Cameroon
Central African Republic
Republic of Chad
Republic of Congo
Republic of Djibouti
State of Eritrea
Ethiopia
Gabonese Republic
Republic of Ghana
Republic of Guinea
Republic of Guinea-Bissau
Republic of Kenya
Kingdom of Lesotho
Republic of Madagascar
Republic of Malawi
Republic of Mali
Islamic Republic of Mauritania
Republic of Mauritius
Republic of Mozambique
Republic of Namibia
Republic of Niger
Federal Republic of Nigeria
Republic of Rwanda
Democratic Republic of São Tomé and Principe
Republic of Senegal
Republic of Seychelles
Republic of Sierra Leone
Republic of South Africa
United Republic of Tanzania
Republic of Uganda
Republic of Zambia



(3) For purposes of section 112(b)(3)(B) of the AGOA, the following designated beneficiary sub-Saharan African countries shall be considered lesser developed beneficiary sub-Saharan African countries:

Republic of Benin
Republic of Cape Verde
Republic of Cameroon
Central African Republic
Republic of Chad
Republic of Congo
Republic of Djibouti
State of Eritrea
Ethiopia
Republic of Ghana
Republic of Guinea
Republic of Guinea-Bissau
Republic of Kenya
Kingdom of Lesotho
Republic of Madagascar
Republic of Malawi
Republic of Mali
Islamic Republic of Mauritania
Republic of Mozambique
Republic of Niger
Federal Republic of Nigeria
Republic of Rwanda
Democratic Republic of São Tomé and Principe
Republic of Senegal
Republic of Sierra Leone
United Republic of Tanzania
Republic of Uganda
Republic of Zambia

(4) The USTR is authorized to determine whether each designated beneficiary sub-Saharan African country has satisfied the requirements of section 113(a) of the AGOA relating to the establishment of procedures to protect against unlawful transshipments and section 113(b)(1)(B) of the AGOA relating to the implementation of procedures and requirements similar in all material respects to the relevant procedures and requirements under chapter 5 of the NAFTA. The determination or determinations of the USTR under this paragraph shall be set forth in a notice or notices that the USTR shall cause to be published in the **Federal Register**. Such notice or notices shall modify the HTS by listing the countries that satisfy the requirements of sections 113(a) and 113(b)(1)(B) of the AGOA. To implement such determination or determinations, the USTR is authorized to exercise the authority provided to the President under section 604 of the 1974 Act to embody modifications and technical or conforming changes in the HTS.

(5) The USTR is authorized to determine whether Kenya and Mauritius have satisfied the requirements of section 112(c) of the AGOA. The determination or determinations of the USTR under this paragraph shall be set forth

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in a notice or notices that the USTR shall cause to be published in the **Federal Register**. Within 30 days after any such determination by the USTR, the USTR shall cause the existing quotas on textile and apparel articles imported into the United States from such country to be eliminated by direction to the appropriate agencies or departments. To implement such determination or determinations, the USTR is authorized to exercise the authority provided to the President under section 604 of the 1974 Act to embody modifications and technical or conforming changes in the HTS.

(6) The USTR is authorized to determine the effective date of the designation of the Republic of Sierra Leone as a beneficiary sub-Saharan African country and, therefore, the date upon which Sierra Leone will be considered a lesser developed beneficiary sub-Saharan African country. The determination of the USTR under this paragraph shall be set forth in a notice that the USTR shall cause to be published in the **Federal Register.** To implement such determination, the USTR is authorized to exercise the authority provided to the President under section 604 of the 1974 Act to embody modifications and technical or conforming changes in the HTS.

(7) Pursuant to sections 501 and 502 of the 1974 Act, Eritrea is designated as a beneficiary developing country for purposes of the GSP.

(8) In order to reflect in the HTS the designation of Eritrea as a beneficiary developing country under the GSP, general note 4(a) to the HTS is modified by inserting in alphabetical sequence "Eritrea" in the list of independent countries.

(9) Any provisions of previous proclamations and Executive orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

(10) This proclamation is effective on the date of signature of this proclamation, except that (a) the modifications to the HTS made by the Annex to this proclamation, as further modified by any notice to be published in the **Federal Register** as described in paragraph 4 of this proclamation, shall be effective on the date announced by the USTR in such notice, and (b) the designation of the Republic of Sierra Leone as a beneficiary sub-Saharan African country shall be effective on the date announced by the USTR in the **Federal Register**.

IN WITNESS WHEREOF, I have hereunto set my hand this second day of October, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fifth.

William J. Clinton

Billing code 3195–01–P



ANNEX

Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after the date published in the Federal Register by the United States Trade Representative, chapter 98 of the Harmonized Tariff Schedule of the United States is modified as set forth herein, with the material in the new tariff provisions being inserted in the columns labeled "Heading/Subheading", "Article Description", and "Rates of Duty 1-Special".

(1). The following new U.S. note is inserted in numerical sequence in subchapter II of chapter 98 of the tariff schedule:

"7. For purposes of the special tariff treatment authorized by the African Growth and Opportunity Act (AGOA) (title I of Pub.L. No. 106-200) for certain goods of heading 9802.00.80 imported directly from those beneficiary sub-Saharan African countries previously designated by proclamation that are subsequently enumerated in a notice published in the Federal Register by the United States Trade Representative (USTR) as having been determined to have satisfied the requirements of the AGOA and therefore to be afforded such tariff treatment, the duty-free treatment indicated for such heading shall apply only to apparel articles assembled in one or more such beneficiary countries from fabrics wholly formed and cut in the United States, from yarns wholly formed in the United States (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 or 5603 of chapter 56 and are wholly formed and cut in the United States). Articles otherwise eligible to enter under this heading, and which satisfy the conditions set forth in U.S. note 3 to subchapter XIX of this chapter, shall not be ineligible to enter under this heading. Such countries shall be enumerated in this note whenever the USTR issues a Federal Register notice as described herein. Articles covered by the provisions of this note shall be eligible to enter the customs territory of the United States free of quantitative limitations."

(2). (a) The article description of heading 9802.00.80 is modified by inserting immediately after "heading 9802.00.90" the expression "and goods imported under provisions of subchapter XIX of this chapter".

(b) The Rates of Duty 1-Special subcolumn for such heading is modified by inserting below the last rate in such subcolumn the expression "Free, for qualifying articles from sub-Saharan African countries enumerated in U.S. note 7 to this subchapter".

(3). The following new subchapter XIX is inserted in chapter 98 of the HTS, together with its U.S. notes and tariff provisions:

"SUBCHAPTER XIX
TEXTILE AND APPAREL GOODS ELIGIBLE FOR SPECIAL TARIFF BENEFITS
UNDER THE AFRICA GROWTH AND OPPORTUNITY ACT

U.S. Notes

1. For purposes of this subchapter, the tariff treatment provided herein shall be accorded only to textile and apparel articles that are described in such subheadings and imported directly into the customs territory of the United States from those beneficiary sub-Saharan African countries previously designated by proclamation which have subsequently been determined in a Federal Register notice issued by the United States Trade Representative (USTR) to have satisfied the requirements of the African Growth and Opportunity Act (AGOA) (title I of Pub.L. No. 106-200) and therefore should be afforded the tariff treatment authorized in such Act and set forth in the provisions of this subchapter. Such countries shall be enumerated in this note whenever the USTR issues a Federal Register notice as described herein. Such articles shall be eligible to enter free of duty and free of any quantitative limitations, except as provided in the notes to this subchapter.

2. (a) Imports of apparel articles under subheadings 9819.11.09 and 9819.11.12 shall be limited, in the period beginning on the date announced in a notice published in the Federal Register by the United States Trade Representative and continuing through the close of September 30, 2001, to an aggregate quantity not to exceed 1.5 percent of the aggregate square meter equivalents of all apparel articles imported into the United States in the preceding 12-month period for which data are available. Of that aggregate quantity, an amount not to exceed 1 percent of such aggregate square meter equivalents shall be eligible to enter under such subheadings during the period beginning on the date announced in such Federal Register notice and continuing through the close of December 31, 2000. The remaining 0.5 percent of such aggregate square meter equivalents, together with any quantity remaining unfilled from the 1 percent eligible to enter prior to January 1, 2001, shall be eligible to enter under such subheadings during the period beginning on January 1, 2001 and continuing through the close of September 30, 2001.

(b) Such imports of apparel articles under subheadings 9819.11.09 and 9819.11.12 shall be limited, in each of the seven one-year periods beginning on October 1, 2001, to an aggregate quantity not to exceed the applicable percentage set forth herein of aggregate square meter equivalents of all apparel articles imported into the United States in the preceding 12-month period for which data are available:

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| 12-Month Period | Applicable Percentage |
|---|---|
| October 1, 2001 through September 30, 2002 | 1.7857 |
| October 1, 2002 through September 30, 2003 | 2.0714 |
| October 1, 2003 through September 30, 2004 | 2.3571 |
| October 1, 2004 through September 30, 2005 | 2.6428 |
| October 1, 2005 through September 30, 2006 | 2.9285 |
| October 1, 2006 through September 30, 2007 | 3.2142 |
| October 1, 2007 through September 30, 2008 | 3.5 |

(c) The aggregate quantity of imports allowed during each enumerated 12-month period shall be published in the Federal Register by the Committee for the Implementation of Textile Agreements.

(d) For purposes of subheading 9819.11.12, only those designated beneficiary sub-Saharan African countries that have been enumerated in U.S. note 1 to this subchapter, following publication of a notice by the United States Trade Representative, shall be eligible to be treated as lesser developed beneficiary countries pursuant to section 112(b)(3)(B) of the AGOA (19 U.S.C. 3721(b)(3)(B)). Countries qualifying for designation as a lesser developed beneficiary country shall be enumerated in this note whenever the USTR issues a Federal Register notice as described herein and shall be eligible to enter goods under such subheading as of the effective date announced in such notice.

3. (a) An article otherwise eligible for preferential treatment under any provision of this subchapter shall not be ineligible for such treatment because the article contains–

(i) findings or trimmings of foreign origin, if the value of such findings and trimmings does not exceed 25 percent of the cost of the components of the assembled article; or

(ii) certain interlinings of foreign origin, if the value of such interlinings (and any findings and trimmings of foreign origin) does not exceed 25 percent of the cost of the components of the assembled article; or

(iii) fibers or yarns not wholly formed in the United States or in one or more designated beneficiary countries enumerated in U.S. note 1 to this subchapter, provided that the total weight of all such fibers and yarns is not more than 7 percent of the total weight of the article.

(b) For purposes of subdivision (a)(i) above, findings or trimmings eligible under such subdivision include sewing thread, hooks and eyes, snaps, buttons, "bow buds", decorative lace trim, elastic strips, and zippers, including zipper tapes and labels. Elastic strips are considered findings or trimmings only if they are each less than 2.54 cm in width and used in the production of brassieres. For purposes of articles described in subheading 9819.11.06, sewing thread shall not be considered to be findings or trimmings.

(c) For purposes of subdivision (a)(ii) above, the interlinings eligible under such subdivision include only a chest type plate, a "hymo" piece, or "sleeve header", of woven or weft-inserted warp knit construction and of coarse animal hair or man-made filaments.

4. For purposes of subheading 9819.11.27, goods entered under this provision must be certified, by a competent authority of a designated beneficiary country enumerated in U.S. note 1 to this subchapter, as eligible products of such country, in accordance with any requirements established by the appropriate U.S. government authority.

| | | |
|---|---|---|
| | Articles imported from a designated beneficiary sub-Saharan African country enumerated in U.S. note 1 to this subchapter: | |
| 9819.11.03 | Apparel articles of chapter 61 or 62 assembled in one or more such countries from fabrics wholly formed and cut in the United States, from yarns wholly formed in the United States (including fabrics not formed from yarns, if such fabrics are classifiable in heading 5602 or 5603 and are wholly formed and cut in the United States), the foregoing which (1) are embroidered or were subjected to stone-washing, enzyme-washing, acid washing, permapressing, oven-baking, bleaching, garment-dyeing, screen printing or other similar processes, and (2) but for such embroidery or processing are of a type otherwise described in heading 9802.00.80 of the tariff schedule | Free |
| 9819.11.06 | Apparel articles cut in one or more such countries from fabric wholly formed in the United States from yarns wholly formed in the United States (including fabrics not formed from yarns, if such fabrics are classifiable in heading 5602 or 5603 and are wholly formed in the United States), where such articles are assembled in one or more such countries with thread formed in the United States | Free |



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| | | |
|---|---|---|
| | [Articles...(con.):] | |
| 9819.11.09 | Apparel articles wholly assembled in one or more such countries from fabric wholly formed in one or more such countries from yarn originating in either the United States or one or more such countries (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 or 5603 and are wholly formed and cut in one or more such countries), subject to the provisions of U.S. note 2 to this subchapter | Free |
| 9819.11.12 | Apparel articles wholly assembled in a lesser developed such country enumerated in U.S. note 2(d) to this subchapter, subject to the provisions of U.S. note 2 to this subchapter, if entered during the period beginning on the date announced in a Federal Register notice issued by the United States Trade Representative and continuing through September 30, 2004, inclusive | Free |
| 9819.11.15 | Sweaters, in chief weight of cashmere, knit-to-shape in one or more such countries, the foregoing classifiable in subheading 6110.10 | Free |
| 9819.11.18 | Sweaters containing 50 percent or more by weight of wool measuring 18.5 microns in diameter or finer, knit-to-shape in one or more such countries | Free |
| 9819.11.21 | Apparel articles both cut (or knit-to-shape) and sewn or otherwise assembled in one or more such countries from fabrics or yarn that is not formed in the United States or a beneficiary country, provided that such apparel articles of such fabrics or yarn would be considered an originating good under the terms of general note 12(t) to the tariff schedule without regard to the source of the fabric or yarn if such apparel article had been imported from the territory of Canada or the territory of Mexico directly into the customs territory of the United States | Free |
| 9819.11.24 | Apparel articles both cut (or knit-to-shape) and sewn or otherwise assembled in one or more such countries from fabrics or yarn designated by the appropriate U.S. government authority in the Federal Register as fabrics or yarn not available in commercial quantities in the United States, under any terms as such authority may provide | Free |
| 9819.11.27 | Handloomed, handmade or folklore textile and apparel goods, under the provisions of U.S. note 4 to this subchapter | Free |"

[FR Doc. 00–25692
Filed 10–3–00; 11:03 am]
Billing code 3190–01–C

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## Presidential Documents

**Proclamation 7351 of October 2, 2000**

### To Implement the United States-Caribbean Basin Trade Partnership Act

**By the President of the United States of America**

**A Proclamation**

1. Section 211 of the United States-Caribbean Basin Trade Partnership Act (Title II of Public Law 106–200) (CBTPA), which amends section 213(b) of the Caribbean Basin Economic Recovery Act (CBERA) (19 U.S.C. 2703(b)), provides that certain preferential tariff treatment may be provided to eligible articles that are the product of any country that the President designates as a "CBTPA beneficiary country" pursuant to section 213(b)(5)(B) of the CBERA (19 U.S.C. 2703(b)(5)(B)), provided that the President determines that the country has satisfied the requirements of section 213(b)(4)(A)(ii) of the CBERA (19 U.S.C. 2703(b)(4)(A)(ii)) relating to the implementation of procedures and requirements similar to those in chapter 5 of the North American Free Trade Agreement (NAFTA).

2. Section 211 of the CBTPA, which amends section 213(b) of the CBERA (19 U.S.C. 2703(b)), provides that eligible textile and apparel articles of a designated CBTPA beneficiary country shall enter the United States free of duty and free of quantitative limitations, provided that the President determines that the country has satisfied the requirements of section 213(b)(4)(A)(ii) of the CBERA relating to the implementation of procedures and requirements similar to those in chapter 5 of the NAFTA.

3. Section 212 of the CBTPA, which amends section 213(a) of the CBERA (19 U.S.C. 2703(a)), provides duty-free treatment for certain liqueurs and spirituous beverages produced in Canada from rum that originates in a designated beneficiary country or the Virgin Islands of the United States.

4. In order to implement the tariff treatment provided under the CBTPA, it is necessary to modify the Harmonized Tariff Schedule of the United States (HTS), thereby incorporating the substance of the relevant provisions of the CBTPA.

5. Section 604 of the Trade Act of 1974 (the "1974 Act") (19 U.S.C. 2483) authorizes the President to embody in the HTS the substance of the relevant provisions of that Act, and of other acts affecting import treatment, and actions thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

6. I have determined that it is appropriate to authorize the United States Trade Representative (USTR) to perform the functions specified in section 213(b)(4)(A)(ii) of the CBERA and certain functions under section 604 of the 1974 Act.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States, including section 301 of title 3, United States Code, sections 211 and 212 of the CBTPA, section 213 of the CBERA, and section 604 of the 1974 Act, do proclaim that:

(1) In order to provide for the preferential treatment provided for in section 213 of the CBERA (19 U.S.C. 2703), as amended by the CBTPA, the HTS is modified as provided in the Annex to this proclamation.

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(2) The following countries are designated as CBTPA beneficiary countries pursuant to section 213(b)(5)(B) of the CBERA:

Antigua and Barbuda
Aruba
Bahamas
Barbados
Belize
Costa Rica
Dominica
Dominican Republic
El Salvador
Grenada
Guatemala
Guyana
Haiti
Honduras
Jamaica
Montserrat
Netherlands Antilles
Nicaragua
Panama
St. Kitts and Nevis
Saint Lucia
Saint Vincent and the Grenadines
Trinidad and Tobago
British Virgin Islands

(3) The USTR is authorized to determine whether each designated beneficiary country has satisfied the requirements of section 213(b)(4)(A)(ii) of the CBERA relating to the implementation of procedures and requirements similar in all material respects to the relevant procedures and requirements under chapter 5 of the NAFTA. To implement such determination or determinations, the USTR is authorized to exercise the authority provided to the President under section 604 of the 1974 Act to embody modifications and technical or conforming changes in the HTS. The determination or determinations of the USTR under this paragraph shall be set forth in a notice or notices that the USTR shall cause to be published in the **Federal Register**. Such notice or notices shall modify general note 17 of the HTS by listing the countries that satisfy the requirements of section 213(b)(4)(A)(ii) of the CBERA.

(4) Any provisions of previous proclamations and Executive orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

(5) This proclamation is effective on the date of signature of this proclamation, except that the modifications to the HTS made by the Annex to this proclamation, as further modified by any notice to be published in the **Federal Register** as described in paragraph 3 of this proclamation, shall be effective on the date announced by the USTR in such notice.



IN WITNESS WHEREOF, I have hereunto set my hand this second day of October, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fifth.

William J Clinton

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**ANNEX**

Section A. Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after the date published by the United States Trade Representative in the *Federal Register*, the Harmonized Tariff Schedule of the United States (HTS) is modified as set forth herein, with the material in the new tariff provisions being inserted in the columns labeled "Heading/Subheading", "Article Description", and "Rates of Duty 1-Special".

(1). General note 3(c)(i) to the tariff schedule is modified by inserting at the end thereof a new line reading "United States-Caribbean Basin Trade Partnership Act...R".

(2). General notes 16, 17, 18, 19, 20 and 21 to the tariff schedule are redesignated as general notes 18, 19, 20, 21, 22 and 23.

(3). The following new general note 17 to the tariff schedule is inserted in numerical sequence:

"17. Products of Countries Designated as Beneficiary Countries under the United States-Caribbean Basin Trade Partnership Act of 2000.

(a) The Caribbean Basin countries that will be enumerated in this note in a Federal Register notice by the United States Trade Representative, having previously been designated by the President pursuant to section 211 of the United States-Caribbean Basin Trade Partnership Act (CBTPA), shall be treated as beneficiary countries for purposes of this note on and after the effective date announced in such notice.

(b) Articles provided for in a provision for which a rate of duty appears in the "Special" subcolumn followed by the symbol "R" in chapters 1 through 97 of the tariff schedule are those designated by the President to be eligible articles for purposes of the CBTPA pursuant to section 211 of that Act. Whenever an eligible article which is a good of one or more designated beneficiary CBTPA countries enumerated in subdivision (a) of this note is imported directly into the customs territory of the United States, such article shall be entitled to receive the duty-free or reduced duty treatment provided for herein, provided that such good--

(i) was wholly obtained or produced entirely in the territory of one or more designated beneficiary countries enumerated in subdivision (a) of this note, or

(ii) would be an originating good for purposes of general note 12 to the tariff schedule, if such good were imported thereunder.

No article or material of a designated beneficiary country enumerated in subdivision (a) of this note and receiving the tariff treatment specified in this note shall be eligible for such duty-free treatment by virtue of having merely undergone simple combining or packing operations, or mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the article.

(c) Whenever a rate of duty other than "Free" appears in the "Special" rates of duty subcolumn for any heading or subheading followed by the symbol "E" or "E*" and a lower rate of duty appears in such subcolumn followed by the symbol "R", an eligible article under the terms of this note entered under such provision from a designated beneficiary CBTPA country enumerated in subdivision (a) of this note shall receive such lower rate of duty.

(d) The duty-free treatment provided for in this note shall be effective with respect to eligible articles from a designated CBTPA country enumerated in subdivision (a) of this note that are entered, or withdrawn from warehouse for consumption, on or after the date announced in a Federal Register notice issued by the United States Trade Representative, and shall remain in effect through the earlier of--,

(i) the close of September 30, 2008; or

(ii) the date on which the Free Trade Area of the Americas or another free trade agreement that makes substantial progress in achieving the negotiating objectives set forth in section 108(b)(5) of Public Law 103-182 (19 U.S.C. 3317(b)(5)) enters into force with respect to the United States and the CBTPA beneficiary country."

(4). The Rates of Duty 1-Special subcolumn in the HTS is modified for each of the following HTS provisions by inserting the symbol "R" in alphabetical order in the parentheses following the "Free" rate of duty.

| | | | | |
|---|---|---|---|---|
| 2710.00.35 | 4602.10.25 | 6402.19.50 | 6402.99.14 | 6404.11.90 |
| 2710.00.40 | 4602.10.29 | 6402.19.70 | 6403.19.40 | 6404.19.40 |
| 4602.10.21 | 6401.92.60 | 6402.19.90 | 6403.59.15 | 6404.19.90 |
| 4602.10.22 | 6402.19.15 | 6402.30.60 | 6404.11.40 | 6406.10.50 |



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(5). Subchapter XVII of chapter 98 of the HTS is modified by inserting in numerical sequence the following new U.S. note and heading:

"6. For purposes of heading 9817.22.05, the duty-free treatment shall apply to liqueurs and spirituous beverages produced in the territory of Canada from rum if--

(i) such rum is the growth, product, or manufacture of a designated Caribbean Basin Economic Recovery Act (CBERA) beneficiary country enumerated in general note 7(a) to the tariff schedule or of the Virgin Islands of the United States;

(ii) such rum is imported directly from a designated CBERA beneficiary country enumerated in general note 7(a) to the tariff schedule or from the Virgin Islands of the United States into the territory of Canada, and such liqueurs and spirituous beverages are imported directly from the territory of Canada into the customs territory of the United States;

(iii) when imported into the customs territory of the United States, such liqueurs and spirituous beverages are classified in subheading 2208.40 or 2208.90 of the tariff schedule; and

(iv) such rum accounts for at least 90 percent by volume of the alcoholic content of such liqueurs and spirituous beverages.

| | | | |
|---|---|---|---|
| 9817.22.05 | : Rum, tafia, liqueurs and spirituous beverages, of a type classifiable in subheading 2208.40 or 2208.90 and described in U.S. note 6 to this subchapter..... | : | : Free : " |

Section B. Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after the date published in the Federal Register by the United States Trade Representative, chapter 98 of the Harmonized Tariff Schedule of the United States is modified as set forth herein, with the material in the new tariff provisions being inserted in the columns labeled "Heading/Subheading", "Article Description", and "Rates of Duty 1-Special".

(1). The following new U.S. note is inserted in numerical sequence in subchapter II of chapter 98 of the tariff schedule:

"7. For purposes of heading 9802.00.80, duty-free treatment shall be accorded to the following articles imported directly from a beneficiary United States-Caribbean Basin Trade Partnership Act (CBTPA) country previously designated by the President in a proclamation issued pursuant to such Act and enumerated in general note 17(a) to the tariff schedule--

(i) apparel articles assembled in one or more such beneficiary countries from fabrics wholly formed and cut in the United States, from yarns wholly formed in the United States (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 or 5603 of chapter 56 and are wholly formed and cut in the United States); or

(ii) textile luggage assembled in a designated beneficiary country from fabric wholly formed and cut in the United States, from yarns wholly formed in the United States.

Articles otherwise eligible to enter under this heading, and which satisfy the conditions set forth in U.S. note 3 to subchapter XX of this chapter, shall not be ineligible to enter under this heading. Articles covered by the terms of this note shall be admitted into the customs territory of the United States free of quantitative limitations. "

(2). (a) The article description of heading 9802.00.80 is modified by inserting immediately after "heading 9802.00.90" the expression "and goods imported under provisions of subchapter XX".

(b) The Special rates of duty subcolumn for such heading is modified by inserting below the last rate in such subcolumn the expression "Free, for products described in U.S. note 7 to this subchapter".

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(3). The following new subchapter XX is inserted in chapter 98 of the HTS, together with its U.S. notes and tariff provisions:

"SUBCHAPTER XX
GOODS ELIGIBLE FOR SPECIAL TARIFF BENEFITS UNDER THE UNITED STATES-CARIBBEAN BASIN TRADE PARTNERSHIP ACT

U.S. Notes

1. The tariff treatment provided in this subchapter shall be accorded only to textile and apparel articles that are described in such subheadings and imported directly into the customs territory of the United States from a designated United States-Caribbean Basin Trade Partnership Act (CBTPA) beneficiary country enumerated in general note 17(a) to the tariff schedule.

2. (a) Except as provided in this note, textile and apparel articles described in subheadings 9820.11.03 through 9820.11.30, inclusive, of this subchapter that are imported directly into the customs territory of the United States from a designated beneficiary CBTPA country enumerated in general note 17(a) to the tariff schedule shall be eligible to enter free of duty and free of any quantitative limitations, except as provided in this subchapter, under the terms of the provisions set forth in such subheadings and applicable legal notes, as indicated by the rate of duty of "Free" in the Special rates of duty subcolumn for such provisions.

(b) Imports of apparel articles under subheading 9820.11.09 shall be limited, in the period beginning on the date announced in a Federal Register notice issued by the United States Trade Representative and continuing through the close of September 30, 2001, to an aggregate quantity not to exceed 250,000,000 square meter equivalents. Such imports of apparel articles shall be limited, during each of the one-year periods provided for herein, to the following aggregate quantity of square meter equivalents:

| 12-Month Period | Square Meter Equivalents |
|---|---|
| October 1, 2001 through September 30, 2002 | 290,000,000 |
| October 1, 2002 through September 30, 2003 | 336,400,000 |
| October 1, 2003 through September 30, 2004 and subsequent 12-month periods | 390,224,000 |

(c) Imports of t-shirts under subheading 9820.11.12 shall be limited, in the period beginning on the date announced in a Federal Register notice issued by the United States Trade Representative and continuing through the close of September 30, 2001, to an aggregate quantity not to exceed 4,200,000 dozen. Such imports of such t-shirts shall be limited, during each of the one-year periods provided for herein, to the following aggregate quantity:

| 12-Month Period | Aggregate Quantity in Dozens |
|---|---|
| October 1, 2001 through September 30, 2002 | 4,872,000 |
| October 1, 2002 through September 30, 2003 | 5,651,520 |
| October 1, 2003 through September 30, 2004 | 6,555,763 |
| October 1, 2004 through September 30, 2005 and subsequent 12-month periods | 7,604,685 |

(d) For purposes of subheading 9820.11.15, imports of brassieres of a producer or an entity controlling production, during the period beginning on October 1, 2001, and during each of the six succeeding 1-year periods, shall be eligible for preferential treatment only if the aggregate cost of fabric components formed in the United States that are used in the production of all such articles of that producer or entity during the preceding 1-year period is at least 75 percent of the aggregate declared customs value of the fabric contained in all such articles of that producer or entity that are entered during the preceding 1-year period. The United States Customs Service shall develop and implement methods and procedures to ensure ongoing compliance with the provisions of this paragraph. If the Customs Service finds that a producer or an entity controlling production has not satisfied such provisions in a 1-year period, then such apparel articles of that producer or entity shall be ineligible for preferential treatment under subheading 9820.11.15 during any succeeding 1-year period until the aggregate cost of fabric components formed in the United States used in the production of such articles of that producer or entity in the preceding 1-year period is at least 85 percent of the aggregate declared customs value of the fabric contained in all such articles of that producer or entity that are entered during the preceding 1-year period.

3. (a) An article otherwise eligible for preferential treatment under any provision of this subchapter shall not be ineligible for such treatment because the article contains–

(i) findings or trimmings of foreign origin, if the value of such findings and trimmings does not exceed 25 percent of the cost of the components of the assembled article; or

(ii) certain interlinings of foreign origin, if the value of such interlinings (and any findings and trimmings of foreign origin) does not exceed 25 percent of the cost of the components of the assembled article; or



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(iii) fibers or yarns not wholly formed in the United States or in one or more designated beneficiary countries enumerated in general note 17(a) to the tariff schedule, provided that the total weight of all such fibers and yarns is not more than 7 percent of the total weight of the article.

Notwithstanding subdivision (iii) above, an apparel article containing elastomeric yarns shall be eligible for preferential tariff treatment under this note only if such yarns are wholly formed in the United States.

(b) For purposes of subdivision (a)(i) above, findings or trimmings eligible under such subdivision include sewing thread, hooks and eyes, snaps, buttons, "bow buds", decorative lace trim, elastic strips, zippers (including zipper tapes and labels) and other similar products. Elastic strips are considered findings or trimmings only if they are each less than 2.54 cm in width and used in the production of brassieres. For purposes of articles described in subheading 9820.11.06 and 9820.11.18, sewing thread shall not be considered to be findings or trimmings.

(c) For purposes of subdivision (a)(ii) above, the interlinings eligible under such subdivision include only a chest type plate, a "hymo" piece, or "sleeve header", of woven or weft-inserted warp knit construction and of coarse animal hair or man-made filaments.

(d) For purposes of U.S. note 7(i) to subchapter II of this chapter and subheadings 9820.11.03, 9820.11.06 and 9820.11.18, an article otherwise eligible for preferential treatment under such subheadings shall not be ineligible for such treatment because the article contains nylon filament yarn (other than elastomeric yarn) classifiable under subheading 5402.10.30, 5402.10.60, 5402.31.30, 5402.31.60, 5402.32.30, 5402.32.60, 5402.41.10, 5401.41.90, 5402.51.00 or 5402.61.00 of the tariff schedule that entered free of duty as a product of Israel under the terms of general note 8 to the tariff schedule or as a good of Canada or a good of Mexico under the terms of general note 12 to the tariff schedule.

4. For purposes of subheading 9820.11.30, goods entered under this provision must be certified, by a competent authority of a designated beneficiary country enumerated in general note 17(a) to the tariff schedule, as eligible products of such country, in accordance with requirements established by the appropriate U.S. government authority.

| | | |
|---|---|---|
| | Articles imported from a designated beneficiary Caribbean Basin Trade Partnership country enumerated in general note 17(a) to the tariff schedule: | |
| 9820.11.03 | Apparel articles of chapter 61 or 62 assembled in one or more such countries from fabrics wholly formed and cut in the United States, from yarns wholly formed in the United States (including fabrics not formed from yarns, if such fabrics are classifiable in heading 5602 or 5603 and are wholly formed and cut in the United States), the foregoing which (1) are embroidered or were subjected to stone-washing, enzyme-washing, acid washing, permapressing, oven-baking, bleaching, garment-dyeing, screen printing or other similar processes, and (2) but for such embroidery or processing are of a type otherwise described in heading 9802.00.80 of the tariff schedule | Free |
| 9820.11.06 | Apparel articles cut in one or more such countries from fabric wholly formed in the United States from yarns wholly formed in the United States (including fabrics not formed from yarns, if such fabrics are classifiable in heading 5602 or 5603 and are wholly formed in the United States), if such articles are assembled in one or more such countries with thread formed in the United States | Free |
| 9820.11.09 | Apparel articles (other than socks provided for in heading 6115 of the tariff schedule) knit to shape in such a country from yarns wholly formed in the United States; knitted or crocheted apparel articles (except t-shirts, other than underwear, classifiable in subheadings 6109.10.00 and 6109.90.10 and described in subheading 9820.11.12) cut and wholly assembled in one or more such countries from fabrics formed in one or more such countries or from fabrics formed in one or more such countries and the United States, all the foregoing from yarns wholly formed in the United States (including fabrics not formed from yarns, if such fabrics are classifiable in heading 5602 or 5603 of the tariff schedule and are formed in one or more such countries) and subject to the provisions of U.S. note 2(b) to this subchapter | Free |
| 9820.11.12 | T-shirts, other than underwear, classifiable in subheadings 6109.10.00 and 6109.90.10 of the tariff schedule, made in one or more such countries from fabric formed in one or more such countries from yarns wholly formed in the United States, subject to the provisions of U.S. note 2(c) to this subchapter | Free |

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| | | |
|---|---|---|
| | :[Articles...(con.):] | |
| 9820.11.15 | Brassieres classifiable in subheading 6212.10 of the tariff schedule, both cut and sewn or otherwise assembled in the United States or one or more such countries or both, subject to the provisions of U.S. note 2(d) to this subchapter | Free |
| 9820.11.18 | Knitted or crocheted apparel articles (except t-shirts, other than underwear, classifiable in subheadings 6109.10.00 and 6109.90.10 and described in subheading 9820.11.12) cut and assembled in one or more such countries from fabrics wholly formed in the United States from yarns wholly formed in the United States (including fabrics not formed from yarns, if such fabrics are classifiable in heading 5602 or 5603 of the tariff schedule and are formed wholly in the United States), if such assembly is with thread formed in the United States | Free |
| 9820.11.21 | Textile luggage assembled in such a country from fabric cut in a beneficiary country from fabric wholly formed in the United States from yarns wholly formed in the United States | Free |
| 9820.11.24 | Apparel articles both cut (or knit-to-shape) and sewn or otherwise assembled in one or more such countries from fabrics or yarn not formed in the United States or in one or more such countries, provided that such apparel articles of such fabrics or yarn would be considered an originating good under the terms of general note 12(t) to the tariff schedule without regard to the source of the fabric or yarn if such apparel article had been imported from the territory of Canada or the territory of Mexico directly into the customs territory of the United States | Free |
| 9820.11.27 | Apparel articles both cut (or knit-to-shape) and sewn or otherwise assembled in one or more such countries from fabrics or yarn designated by the appropriate U.S. government authority in the Federal Register as fabrics or yarn not available in commercial quantities in the United States, under any terms as such authority may provide | Free |
| 9820.11.30 | Handloomed, handmade or folklore textile and apparel goods, under the terms of U.S. note 4 to this subchapter | Free |



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Section C. Effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the dates set forth in this table for each of the following subheadings, the Rates of Duty 1-Special subcolumn in the HTS is modified by (i) inserting the rate of duty specified in the Initial Stage column in this table, which shall be effective on or after the date specified in a notice issued by the United States Trade Representative and through the close of December 31, 2000, followed by the symbol "R" in parentheses, and (ii) for each of the subsequent dated columns in this table the rate of duty in the HTS that is followed by the symbol "R" in parentheses is deleted and the rate of duty for such dated column is inserted in such subheading in lieu thereof.

| HTS Subheading | Initial Stage | January 1, 2001 | January 1, 2002 | January 1, 2003 | January 1, 2004 | January 1, 2005 | January 1, 2006 | January 1, 2007 | January 1, 2008 |
|---|---|---|---|---|---|---|---|---|---|
| 1604.14.10 | 18.6% | 16.3% | 14% | 11.6% | 9.3% | 7% | 4.6% | 2.3% | Free |
| 1604.14.20 | 3.2% | 2.8% | 2.4% | 2% | 1.6% | 1.2% | 0.8% | 0.4% | Free |
| 1604.14.30 | 6.6% | 5.8% | 5% | 4.1% | 3.3% | 2.5% | 1.6% | 0.8% | Free |
| 2709.00.10 | 1.5¢/bbl | 1¢/bbl | 0.5¢/bbl | Free | Free | Free | Free | Free | Free |
| 2709.00.20 | 3.1¢/bbl | 2.1¢/bbl | 1¢/bbl | Free | Free | Free | Free | Free | Free |
| 2710.00.05 | 1.5¢/bbl | 1¢/bbl | 0.5¢/bbl | Free | Free | Free | Free | Free | Free |
| 2710.00.10 | 3.1¢/bbl | 2.1¢/bbl | 1¢/bbl | Free | Free | Free | Free | Free | Free |
| 2710.00.15 | 15.7¢/bbl | 10.5¢/bbl | 5.2¢/bbl | Free | Free | Free | Free | Free | Free |
| 2710.00.18 | 15.7¢/bbl | 10.5¢/bbl | 5.2¢/bbl | Free | Free | Free | Free | Free | Free |
| 2710.00.20 | 3.1¢/bbl | 2.1¢/bbl | 1¢/bbl | Free | Free | Free | Free | Free | Free |
| 2710.00.25 | 3.1¢/bbl | 2.1¢/bbl | 1¢/bbl | Free | Free | Free | Free | Free | Free |
| 2710.00.30 | 25.2¢/bbl | 16.8¢/bbl | 8.4¢/bbl | Free | Free | Free | Free | Free | Free |
| 2710.00.45 | 3.1¢/bbl | 2.1¢/bbl | 1¢/bbl | Free | Free | Free | Free | Free | Free |
| 4202.11.00 | 2.4% | 1.6% | 0.8% | Free | Free | Free | Free | Free | Free |
| 4202.12.20 | 6% | 4% | 2% | Free | Free | Free | Free | Free | Free |
| 4202.19.00 | 6% | 4% | 2% | Free | Free | Free | Free | Free | Free |
| 4202.21.30 | 1.5% | 1% | 0.5% | Free | Free | Free | Free | Free | Free |
| 4202.21.60 | 3% | 2% | 1% | Free | Free | Free | Free | Free | Free |
| 4202.21.90 | 2.7% | 1.8% | 0.9% | Free | Free | Free | Free | Free | Free |
| 4202.22.15 | 6% | 4% | 2% | Free | Free | Free | Free | Free | Free |
| 4202.29.90 | 6% | 4% | 2% | Free | Free | Free | Free | Free | Free |
| 4202.31.60 | 2.4% | 1.6% | 0.8% | Free | Free | Free | Free | Free | Free |
| 4202.91.00 | 2% | 1.3% | 0.6% | Free | Free | Free | Free | Free | Free |
| 4202.92.45 | 6% | 4% | 2% | Free | Free | Free | Free | Free | Free |
| 4202.99.90 | 6% | 4% | 2% | Free | Free | Free | Free | Free | Free |
| 4203.10.40 | 1.8% | 1.2% | 0.6% | Free | Free | Free | Free | Free | Free |
| 4203.29.08 | 4.2% | 2.8% | 1.4% | Free | Free | Free | Free | Free | Free |
| 4203.29.18 | 4.2% | 2.8% | 1.4% | Free | Free | Free | Free | Free | Free |
| 6401.10.00 | 20% | 17.5% | 15% | 12.5% | 10% | 7.5% | 5% | 2.5% | Free |
| 6401.91.00 | 20% | 17.5% | 15% | 12.5% | 10% | 7.5% | 5% | 2.5% | Free |
| 6401.92.90 | 20% | 17.5% | 15% | 12.5% | 10% | 7.5% | 5% | 2.5% | Free |
| 6401.99.30 | 13.3% | 11.6% | 10% | 8.3% | 6.6% | 5% | 3.3% | 1.6% | Free |
| 6401.99.60 | 20% | 17.5% | 15% | 12.5% | 10% | 7.5% | 5% | 2.5% | Free |
| 6401.99.90 | 20% | 17.5% | 15% | 12.5% | 10% | 7.5% | 5% | 2.5% | Free |
| 6402.19.05 | 1.8% | 1.2% | 0.6% | Free | Free | Free | Free | Free | Free |
| 6402.30.30 | 1.8% | 1.2% | 0.6% | Free | Free | Free | Free | Free | Free |
| 6402.30.50 | 20% | 17.5% | 15% | 12.5% | 10% | 7.5% | 5% | 2.5% | Free |
| 6402.30.70 | 48¢/pr. + 20% | 42¢/pr. + 17.5% | 36¢/pr. + 15% | 30¢/pr. + 12.5% | 24¢/pr. + 10% | 18¢/pr. + 7.5% | 12¢/pr. + 5% | 6¢/pr. + 2.5% | Free |
| 6402.30.80 | 48¢/pr. + 10.6% | 42¢/pr. + 9.3% | 36¢/pr. + 8% | 30¢/pr. + 6.6% | 24¢/pr. + 5.3% | 18¢/pr. + 4% | 12¢/pr. + 2.6% | 6¢/pr. + 1.3% | Free |
| 6402.30.90 | 6% | 4% | 2% | Free | Free | Free | Free | Free | Free |
| 6402.91.40 | 1.8% | 1.2% | 0.6% | Free | Free | Free | Free | Free | Free |
| 6402.91.50 | 20% | 17.5% | 15% | 12.5% | 10% | 7.5% | 5% | 2.5% | Free |
| 6402.91.60 | 14.4% | 9.6% | 4.8% | Free | Free | Free | Free | Free | Free |
| 6402.91.70 | 27¢/pr. + 11.2% | 18¢/pr. + 7.5% | 9¢/pr. + 3.7% | Free | Free | Free | Free | Free | Free |
| 6402.91.80 | 48¢/pr. + 10.6% | 42¢/pr. + 9.3% | 36¢/pr. + 8% | 30¢/pr. + 6.6% | 24¢/pr. + 5.3% | 18¢/pr. + 4% | 12¢/pr. + 2.6% | 6¢/pr. + 1.3% | Free |
| 6402.91.90 | 10.6% | 9.3% | 8% | 6.6% | 5.3% | 4% | 2.6% | 1.3% | Free |
| 6402.99.05 | 2.4% | 1.6% | 0.8% | Free | Free | Free | Free | Free | Free |
| 6402.99.10 | 3.7% | 2.5% | 1.2% | Free | Free | Free | Free | Free | Free |
| 6402.99.18 | 1.8% | 1.2% | 0.6% | Free | Free | Free | Free | Free | Free |
| 6402.99.20 | 20% | 17.5% | 15% | 12.5% | 10% | 7.5% | 5% | 2.5% | Free |
| 6402.99.30 | 20% | 17.5% | 15% | 12.5% | 10% | 7.5% | 5% | 2.5% | Free |
| 6402.99.60 | 14.4% | 9.6% | 4.8% | Free | Free | Free | Free | Free | Free |

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| HTS Subheading | Initial Stage | January 1, 2001 | January 1, 2002 | January 1, 2003 | January 1, 2004 | January 1, 2005 | January 1, 2006 | January 1, 2007 | January 1, 2008 |
|---|---|---|---|---|---|---|---|---|---|
| 6402.99.80 | 48¢/pr. + 10.6% | 42¢/pr. + 9.3% | 36¢/pr. + 8% | 30¢/pr. + 6.6% | 24¢/pr. + 5.3% | 18¢/pr. + 4% | 12¢/pr. + 2.6% | 6¢/pr. + 1.3% | Free |
| 6402.99.90 | 10.6% | 9.3% | 8% | 6.6% | 5.3% | 4% | 2.6% | 1.3% | Free |
| 6403.19.10 | 1.5% | 1% | 0.5% | Free | Free | Free | Free | Free | Free |
| 6403.19.30 | 2.5% | 1.7% | 0.8% | Free | Free | Free | Free | Free | Free |
| 6403.19.50 | 3% | 2% | 1% | Free | Free | Free | Free | Free | Free |
| 6403.40.30 | 1.5% | 1% | 0.5% | Free | Free | Free | Free | Free | Free |
| 6403.40.60 | 2.5% | 1.7% | 0.8% | Free | Free | Free | Free | Free | Free |
| 6403.51.30 | 1.5% | 1% | 0.5% | Free | Free | Free | Free | Free | Free |
| 6403.51.60 | 2.5% | 1.7% | 0.8% | Free | Free | Free | Free | Free | Free |
| 6403.51.90 | 3% | 2% | 1% | Free | Free | Free | Free | Free | Free |
| 6403.59.30 | 1.5% | 1% | 0.5% | Free | Free | Free | Free | Free | Free |
| 6403.59.60 | 2.5% | 1.7% | 0.8% | Free | Free | Free | Free | Free | Free |
| 6403.59.90 | 3% | 2% | 1% | Free | Free | Free | Free | Free | Free |
| 6403.91.30 | 1.5% | 1% | 0.5% | Free | Free | Free | Free | Free | Free |
| 6403.91.60 | 4.5% | 3.9% | 3.4% | 2.8% | 2.2% | 1.7% | 1.1% | 0.5% | Free |
| 6403.91.90 | 3% | 2% | 1% | Free | Free | Free | Free | Free | Free |
| 6403.99.20 | 2.4% | 1.6% | 0.8% | Free | Free | Free | Free | Free | Free |
| 6403.99.40 | 1.5% | 1% | 0.5% | Free | Free | Free | Free | Free | Free |
| 6403.99.60 | 2.5% | 1.7% | 0.8% | Free | Free | Free | Free | Free | Free |
| 6403.99.75 | 4.5% | 3% | 1.5% | Free | Free | Free | Free | Free | Free |
| 6403.99.90 | 3% | 2% | 1% | Free | Free | Free | Free | Free | Free |
| 6404.11.20 | 3.1% | 2.1% | 1% | Free | Free | Free | Free | Free | Free |
| 6404.11.50 | 25.6% | 25.6% | 19.2% | 16% | 12.8% | 9.6% | 6.4% | 3.2% | Free |
| 6404.11.60 | 20% | 17.5% | 15% | 12.5% | 10% | 7.5% | 5% | 2.5% | Free |
| 6404.11.70 | 48¢/pr. + 20% | 42¢/pr. + 17.5% | 36¢/pr. + 15% | 30¢/pr. + 12.5% | 24¢/pr. + 10% | 18¢/pr. + 7.5% | 12¢/pr. + 5% | 6¢/pr. + 2.5% | Free |
| 6404.11.80 | 48¢/pr. + 10.6% | 42¢/pr. + 9.3% | 36¢/pr. + 8% | 30¢/pr. + 6.6% | 24¢/pr. + 5.3% | 18¢/pr. + 4% | 12¢/pr. + 2.6% | 6¢/pr. + 1.3% | Free |
| 6404.19.15 | 3.1% | 2.1% | 1% | Free | Free | Free | Free | Free | Free |
| 6404.19.20 | 20% | 17.5% | 15% | 12.5% | 10% | 7.5% | 5% | 2.5% | Free |
| 6404.19.25 | 2.2% | 1.5% | 0.7% | Free | Free | Free | Free | Free | Free |
| 6404.19.30 | 3.7% | 2.5% | 1.2% | Free | Free | Free | Free | Free | Free |
| 6404.19.35 | 20% | 17.5% | 15% | 12.5% | 10% | 7.5% | 5% | 2.5% | Free |
| 6404.19.50 | 25.6% | 22.4% | 19.2% | 16% | 12.8% | 9.6% | 6.4% | 3.2% | Free |
| 6404.19.60 | 11.2% | 7.5% | 3.7% | Free | Free | Free | Free | Free | Free |
| 6404.19.70 | 48¢/pr. + 20% | 42¢/pr. + 17.5% | 36¢/pr. + 15% | 30¢/pr. + 12.5% | 24¢/pr. + 10% | 18¢/pr. + 7.5% | 12¢/pr. + 5% | 6¢/pr. + 2.5% | Free |
| 6404.19.80 | 27¢/pr. + 6% | 18¢/pr. + 4% | 9¢/pr. + 2% | Free | Free | Free | Free | Free | Free |
| 6404.20.20 | 4.5% | 3% | 1.5% | Free | Free | Free | Free | Free | Free |
| 6404.20.40 | 3% | 2% | 1% | Free | Free | Free | Free | Free | Free |
| 6404.20.60 | 11.2% | 7.5% | 3.7% | Free | Free | Free | Free | Free | Free |
| 6405.10.00 | 3% | 2% | 1% | Free | Free | Free | Free | Free | Free |
| 6405.20.30 | 2.2% | 1.5% | 0.7% | Free | Free | Free | Free | Free | Free |
| 6405.20.90 | 3.7% | 2.5% | 1.2% | Free | Free | Free | Free | Free | Free |
| 6405.90.90 | 3.7% | 2.5% | 1.2% | Free | Free | Free | Free | Free | Free |
| 6406.10.05 | 2.5% | 1.7% | 0.8% | Free | Free | Free | Free | Free | Free |
| 6406.10.10 | 3% | 2% | 1% | Free | Free | Free | Free | Free | Free |
| 6406.10.20 | 3.1% | 2.1% | 1% | Free | Free | Free | Free | Free | Free |
| 6406.10.45 | 1.8% | 1.2% | 0.6% | Free | Free | Free | Free | Free | Free |

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**H.J. Res. 109/P.L. 106–275**
Making continuing appropriations for the fiscal year 2001, and for other purposes. (Sept. 29, 2000; 114 Stat. 808)

**S. 1638/P.L. 106–276**
To amend the Omnibus Crime Control and Safe Streets Act of 1968 to extend the retroactive eligibility dates for financial assistance for higher education for spouses and dependent children of Federal, State, and local law enforcement officers who are killed in the line of duty. (Oct. 2, 2000; 114 Stat. 812)

**S. 2460/P.L. 106–277**
To authorize the payment of rewards to individuals furnishing information relating to persons subject to indictment for serious violations of international humanitarian law in Rwanda, and for other purposes. (Oct. 2, 2000; 114 Stat. 813)

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# Presidential Documents

Title 3—

The President

**Presidential Determination No. 2000–30 of September 19, 2000**

## Classified Information Concerning the Air Force's Operating Location Near Groom Lake, Nevada

**Memorandum for the Administrator of the Environmental Protection Agency [and] the Secretary of the Air Force**

I find that it is in the paramount interest of the United States to exempt the United States Air Force's operating location near Groom Lake, Nevada, (the subject of litigation in *Kasza v. Browner* (D. Nev. CV–S–94–795–PMP) and *Frost v. Perry* (D. Nev. CV–S–94–714–PMP)), from any applicable requirement for the disclosure to unauthorized persons of classified information concerning that operating location. Therefore, pursuant to 42 U.S.C. 6961(a), I hereby exempt the Air Force's operating location near Groom Lake, Nevada, from any Federal, State, interstate, or local provision respecting control and abatement of solid waste or hazardous waste disposal that would require the disclosure of classified information concerning that operating location to any unauthorized person. This exemption shall be effective for the full one-year statutory period.

Nothing herein is intended to: (a) imply that in the absence of such a Presidential exemption, the Resource Conservation and Recovery Act (RCRA) or any other provision of law permits or requires disclosure of classified information to unauthorized persons; or (b) limit the applicability or enforcement of any requirement of law applicable to the Air Force's operating location near Groom Lake, Nevada, except those provisions, if any, that would require the disclosure of classified information.

The Secretary of the Air Force is authorized and directed to publish this determination in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
*Washington, September 19, 2000.*

[FR Doc. 00–25742
Filed 10–4–00; 8:45 am]
Billing code 5001–05–M

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# Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 71**

**[Airspace Docket No. 00–ACE–13]**

## Amendment to Class E Airspace; Fairfield, IA

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Direct final rule; confirmation of effective date.

**SUMMARY:** This document confirms the effective date of a direct final rule which revises Class E airspace at Fairfield, IA.

**DATES:** The direct final rule published at 65 FR 40991 is effective on 0901 UTC, November 30, 2000.

**FOR FURTHER INFORMATION CONTACT:** Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

**SUPPLEMENTARY INFORMATION:** The FAA published this direct final rule with a request for comments in the **Federal Register** on July 3, 2000 (65 FR 40991). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on November 30, 2000. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on September 6, 2000.

**Richard L. Day,**

*Acting Manager, Air Traffic Division, Central Region.*

[FR Doc. 00–25642 Filed 10–4–00; 8:45 am]

BILLING CODE 4910–13–M

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 73**

**[Airspace Docket No. 00–ANM–10]**

**RIN 2120–AA66**

## Subdivision of Restricted Areas R–6412A and R–6412B, and Establishment of R–6412C and R–6412D, Camp Williams, UT

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action modifies Restricted Area R–6412A and R–6412B, Camp Williams, Utah, by subdividing the two areas into four separate areas designated as R–6412A, R–6412B, R–6412C, and R–6412D. The dimensions of R–6412 will remain the same, however, the internal modification of the present R–6412A and R–6412B and subsequent establishment of R–6412C and R–6412D will enable the military to activate only that portion of the airspace that is actually needed to contain their operations.

**EFFECTIVE DATE:** 0901 UTC, January 25, 2001.

**FOR FURTHER INFORMATION CONTACT:** Ken McElroy, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

**SUPPLEMENTARY INFORMATION:**

### Background

As a result of a recent review of R–6412 airspace, the U.S. Army has requested that the FAA take action to internally subdivide the two subareas in R–6412 into four subareas. Dividing the airspace into four subareas will enhance traffic management, allow for more efficient real-time use of the airspace, and allow more public access. The subdivision will allow for smaller parts of the airspace to be used for military training while allowing public use of the non-active parts. This action does not require any change in the existing external boundaries.

### The Rule

This action amends 14 CFR part 73 by subdividing R–6412A, and R–6412B, and by establishing R–6412C and R–6412D. There are no changes to the external boundaries, altitudes, time of designation or activities conducted within the restricted area. This action further subdivides an existing restricted area. As the solicitation of comments would not offer any meaningful right or benefit to any segment of the public, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

Section 73.64 of part 73 was republished in FAA Order 7400.8H, dated September 1, 2000.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### Environmental Review

This action is a minor administrative change to further internally subdivide an existing Restricted Area. There are no changes to air traffic control procedures or routes as a result of this action. Therefore, this action is not subject to environmental assessments and procedures in accordance with FAA Order 1050.1D, "Policies and Procedures for Considering Environmental Impacts," and the National Environmental Policy Act of 1969.

### List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

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**Adoption of the Amendment**

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

**PART 73—SPECIAL USE AIRSPACE**

1. The authority citation for part 73 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 73.64 [Amended]**

2. § 73.64 is amended as follows:

* * * * *

**R–6412A Camp Williams, UT [Amended]**

*Boundaries:* Beginning at lat. 40°27′30″ N., long. 112°00′00″ W.; thence to lat. 40°23′30″ N., long. 112°00′00″ W.; to lat. 40°23′30″ N., long. 112°06′03″ W.; to lat. 40°27′30″ N., long. 112°06′03″ W.; to the point of beginning.

*Designated altitudes:* Surface to 9,000 feet MSL.

*Time of designation:* By Notice to Airman (NOTAM).

*Controlling agency:* FAA, Salt Lake City TRACON.

*Using agency:* The Adjutant General, UT.

**R–6412B Camp Williams, UT [Amended]**

*Boundaries:* Beginning at lat. 40°27′30″ N., long. 112°00′00″ W.; thence to lat. 40°23′30″ N., long. 112°00′00″ W.; to lat. 40°23′30″ N., long. 112°06′03″ W.; to lat. 40°27′30″ N., long. 112°06′03″ W.; to the point of beginning.

*Designated altitudes:* 9,000 feet to 10,000 feet MSL.

*Time of designation:* By Notice to Airman (NOTAM).

*Controlling agency:* FAA, Salt Lake City TRACON.

*Using agency:* The Adjutant General, UT.

**R–6412C Camp Williams, UT [New]**

*Boundaries:* Beginning at lat. 40°27′30″ N., long. 111°56′27″ W.; thence southerly along Redwood Road (Utah Highway 68) to lat. 40°23′30″ N., long. 111°55′01″ W.; to lat. 40°23′30″ N., long. 112°00′00″ W.; to lat. 40°27′30″ N., long. 112°00′00″ W.; to the point of beginning.

*Designated altitudes:* Surface to 9,000 feet MSL.

*Time of designation:* By Notice to Airman (NOTAM).

*Controlling agency:* FAA, Salt Lake City TRACON.

*Using agency:* The Adjutant General, UT.

**R–6412D Camp Williams, UT [New]**

*Boundaries:* Beginning at lat. 40°27′30″ N., long. 111°56′27″ W.; thence southerly along Redwood Road (Utah Highway 68) to lat. 40°23′30″ N., long. 111°55′01″ W.; to lat. 40°23′30″ N., long. 112°00′00″ W.; to lat. 40°27′30″ N., long. 112°00′00″ W.; to the point of beginning.

*Designated altitudes:* 9,000 feet to 10,000 feet MSL.

*Time of designation:* By Notice to Airman (NOTAM).

*Controlling agency:* FAA, Salt Lake City TRACON.

*Using agency:* The Adjutant General, UT.

* * * * *

Issued in Washington, DC, on September 27, 2000.

**Reginald C. Matthews,**

*Manager, Airspace and Rules Division.*

[FR Doc. 00–25644 Filed 10–4–00; 8:45 am]

BILLING CODE 4910–13–P

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 97**

**[Docket No. 30205; Amdt. No. 2013]**

**Standard Instrument Approach Procedures; Miscellaneous Amendments**

**AGENCY:** Federal Aviation Administration.(FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

**ADDRESSES:** Availability of matter incorporated by reference in the amendment is as follows:

*For Examination*

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591.
2. The FAA Regional Office of the region in which affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

*For Purchase*

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

*By Subscription*

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

**FOR FURTHER INFORMATION CONTACT:** Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125); telephone: (405) 954–4164.

**SUPPLEMENTARY INFORMATION:** This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and



publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

**The Rule**

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMS is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

**Conclusion**

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 97**

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on September 29, 2000.

**L. Nicholas Lacey,**

*Director, Flight Standards Service.*

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

**PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES**

1. The authority citation for part 97 is revised to read as follows:

**Authority:** 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

**§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]**

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * *Effective Upon Publication*

| FDC date | State | City | Airport | FDC No. | SIAP |
|---|---|---|---|---|---|
| 08/30/00 | PA | HAZELTON | HAZELTON MUNI | 0/0580 | LOC RWY 28 AMDT 5C... THIS CORRECTS FDC 0/0580 IN TL 00–21. |
| 09/07/00 | KS | WICHITA | WICHITA MID-CONTINENT | 0/0964 | GPS RWY 19L, ORIG... |
| 09/8/00 | AZ | SHOW LOW | SHOW LOW MUNI | 0/1046 | NDB OR GPS–A ORIG–A... THIS CORRECTS FDC 0/1046 IN TL 00–21. |
| 09/08/00 | CO | EAGLE | EAGLE COUNTY REGIONAL | 0/1043 | LOC–B, AMDT 1... |
| 09/08/00 | CO | EAGLE | EAGLE COUNTY REGIONAL | 0/1044 | LOC/DME–C, AMDT 2... |
| 09/08/00 | MO | ST LOUIS | SPIRIT OF ST LOUIS | 0/1054 | ILS RWY 8R AMDT 13A... THIS CORRECTS FDC 0/1054 IN TL00–21. |
| 09/08/00 | SC | ANDERSON | ANDERSON REGIONAL | 0/1025 | ILS RWY 5 ORIG... |
| 09/08/00 | SC | ANDERSON | ANDERSON REGIONAL | 0/1026 | VOR OR GPS RWY 5 AMDT 9A... |
| 09/08/00 | SC | ANDERSON | ANDERSON REGIONAL | 0/1037 | GPS RWY 23, ORIG... |
| 09/12/00 | KY | LOUISVILLE | BOWMAN FIELD | 0/1547 | NDB OR GPS RWY 32 AMDT 15A... |
| 09/13/00 | TN | KNOXVILLE | MCGHEE-TYSON | 0/1283 | HI–ILS RWY 5L AMDT 3... |
| 09/14/00 | GA | STATESBORO | STATESBORO MUNI | 0/1352 | LOC RWY 32, AMDT 4B... |
| 09/14/00 | KS | INDEPENDENCE | INDEPENDENCE MUNI | 0/1336 | VOR OR GPS–A, AMDT 1A... |
| 09/14/00 | KS | INDEPENDENCE | INDEPENDENCE MUNI | 0/1337 | NDB RWY 35, ORIG–A... |
| 09/14/00 | ND | OAKES | OAKES MUNI | 0/1307 | GPS RWY 30. |
| 09/14/00 | OH | SEBRING | TRI-CITY | 0/1312 | VOR OR GPS RWY 17, AMDT 3A... |
| 09/14/00 | TN | KNOXVILLE | MCGHEE-TYSON | 0/1305 | HI-VOR/DME OR TACAN RWY 5L, AMDT 2... |

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| FDC date | State | City | Airport | FDC No. | SIAP |
|---|---|---|---|---|---|
| 09/14/00 | TX | BIG SPRING | BIG SPRING MCMAHON-WRINKLE | 0/1333 | VOR/DME OR GPS RWY 35, AMDT 7... |
| 09/14/00 | TX | PALACIOS | PALACIOS MUNI | 0/1327 | VOR RWY 13, AMDT 10... |
| 09/14/00 | WI | FRIENDSHIP | ADAMS COUNTY LEGION FIELD | 0/1318 | GPS RWY 33, ORIG... |
| 09/14/00 | WI | OSHKOSH | WITTMAN REGIONAL | 0/1317 | LOC/DME BC RWY 18, AMDT 6... |
| 09/15/00 | GA | STATESBORO | STATESBORO MUNI | 0/1382 | NDB OR GPS RWY 32, AMDT 4A... |
| 09/15/00 | KS | INDEPENDENCE | INDEPENDENCE MUNI | 0/1365 | GPS RWY 35, ORIG–A... |
| 09/15/00 | PA | BEDFORD | BEDFORD COUNTY | 0/1375 | GPS RWY 14, ORIG–A... |
| 09/15/00 | PA | BEDFORD | BEDFORD COUNTY | 0/1376 | GPS RWY 32, ORIG–A... |
| 09/15/00 | PA | CLARION | CLARION COUNTY | 0/1403 | VOR/DME RNAV OR GPS RWY 24, ORIG... |
| 09/15/00 | PA | CLARION | CLARION COUNTY | 0/1404 | VOR/DME RNAV OR GPS RWY 6, ORIG–A... |
| 09/15/00 | PA | CLARION | CLARION COUNTY | 0/1405 | VOR OR GPS–A, AMDT 1A... |
| 09/15/00 | SC | HILTON HEAD ISLAND | HILTON HEAD | 0/1391 | VOR/DME RNAV OR GPS RWY 3, AMDT 4A... |
| 09/15/00 | SC | HILTON HEAD ISLAND | HILTON HEAD | 0/1392 | LOC/DME RWY 21, AMDT 2... |
| 09/15/00 | SC | HILTON HEAD ISLAND | HILTON HEAD | 0/1393 | VOR/DME RNAV RWY 21, AMDT 4B... |
| 09/15/00 | SC | HILTON HEAD ISLAND | HILTON HEAD | 0/1394 | VOR/DME OR GPS–A, AMDT 9B... |
| 09/15/00 | TX | CHILDRESS | CHILDRESS MUNI | 0/1369 | VOR RWY 35, AMDT 9... |
| 09/18/00 | KS | INDEPENDENCE | INDEPENDENCE MUNI | 0/1455 | GPS RWY 17, ORIG... |
| 09/18/00 | TX | CHILDRESS | CHILDRESS MUNI | 0/1490 | GPS RWY 35, ORIG... |
| 09/18/00 | TX | DALHART | DALHART MUNI | 0/1512 | VOR/DME OR GPS RWY 35, AMDT 2A... |
| 09/19/00 | FL | CROSS CITY | CROSS CITY | 0/1543 | VOR OR GPS RWY 31, AMDT 17... |
| 09/19/00 | FL | FORT LAUDERDALE | FORT LAUDERDALE-EXECUTIVE | 0/1554 | LS RWY 8, AMDT 4A... |
| 09/19/00 | KY | LOUISVILLE | BOWMAN FIELD | 0/1546 | VOR RWY 24, AMDT 7A... |
| 09/19/00 | KY | LOUISVILLE | LOUISVILLE INTL-STANDFORD FIELD. | 0/1544 | NDB RWY 29, AMDT 19A... |
| 09/19/00 | NC | WILMINGTON | WILMINGTON INTL | 0/1526 | LOC BC RWY 17, AMDT 7... |
| 09/19/00 | NC | WILMINGTON | WILMINGTON INTL | 0/1527 | GPS RWY 6, AMDT 1... |
| 09/19/00 | NC | WILMINGTON | WILMINGTON INTL | 0/1528 | GPS RWY 24, AMDT 1... |
| 09/20/00 | TX | KERRVILLE | KERRVILLE MUNI/LOUIS SCHREINER FIELD. | 0/1591 | NDB OR GPS RWY 30, AMDT 3... |
| 09/20/00 | TX | KERRVILLE | KERRVILLE MUNI/LOUIS SCHREINER FIELD. | 0/1592 | LOC RWY 30, AMDT 3... |
| 09/20/00 | TX | KERRVILLE | KERRVILLE MUNI/LOUIS SCHREINER FIELD. | 0/1593 | VOR/DME RNAV OR GPS RWY 12, AMDT 2... |
| 09/20/00 | TX | KERRVILE | KERRVILLE MUNI/LOUIS SCHREINER FIELD. | 0/1595 | VOR OR GPS–A, AMDT 2... |
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| 09/21/00 | AR | EL DORADO | SOUTH ARKANSAS REGIONAL AT GOODWIN FIELD. | 0/1660 | VOR/DME OR GPS RWY 4, AMDT 9A... |
| 09/21/00 | AR | EL DORADO | SOUTH ARKANSAS REGIONAL AT GOODWIN FIELD. | 0/1662 | GPS RWY 22, ORIG–A... |
| 09/21/00 | AR | HELENA/WEST HELENA | THOMPSON-ROBBINS | 0/1709 | GPS RWY 35, AMDT 1... |
| 09/21/00 | AR | MORRILTON | PETIT JEAN PARK | 0/1664 | GPS RWY 3, ORIG–A... |
| 09/21/00 | AR | MOUNTAIN HOME | BAXTER COUNTY REGIONAL | 0/1656 | GPS RWY 23, ORIG–A... |
| 09/21/00 | AR | MOUNTAIN HOME | BAXTER COUNTY REGIONAL | 0/1658 | VOR/DME RNAV RWY 5, AMDT 9B... |
| 09/21/00 | AR | MOUNTAIN HOME | BAXTER COUNTY REGIONAL | 0/1659 | VOR–A, AMDT 9B... |
| 09/21/00 | AR | MOUNTAIN HOME | BAXTER COUNTY REGIONAL | 0/1708 | GPS RWY 5, ORIG–B... |
| 09/21/00 | AZ | KINGMAN | KINGMAN | 0/1580 | VOR/DME RWY 21 AMDT 6A... THIS REPLACES FDC 0/1048 IN TL 00–21. |
| 09/21/00 | CO | DURANGO | DURANGO-LA PLATA COUNTY | 0/1614 | ILS/DME RWY 2, AMDT 2... |
| 09/21/00 | CO | DURANGO | DURANGO-LA PLATA COUNTY | 0/1623 | VOR/DME RWY 2, AMDT 4... |
| 09/21/00 | KS | WICHITA | WICHITA MID-CONTINENT | 0/1666 | VOR/DME RNAV OR GPS RWY 1L, AMDT 1A... |
| 09/21/00 | KS | WICHITA | WICHITA MID-CONTINENT | 0/1667 | GPS RWY 32 ORIG... |
| 09/21/00 | KS | WICHITA | WICHITA MID-CONTINENT | 0/1690 | VOR/DME RNAV OR GPS RWY 19R, AMDT 1... THIS REPLACES FDC 0/0961. |
| 09/21/00 | MO | CAPE GIRARDEAU | CAPE GIRARDEAU REGIONAL | 0/1670 | ILS RWY 10, AMDT 10... |
| 09/21/00 | MS | GREENWOOD | GREENWOOD-LEFLORE | 0/1583 | ILS RWY 18, AMDT 5A... |
| 09/21/00 | OR | PORTLAND | PORTLAND INTL | 0/1678 | ILS RWY 10L, AMDT 1B... |
| 09/21/00 | OR | PORTLAND | PORTLAND INTL | 0/1679 | ILS RWY 28R, AMDT 12A... |
| 09/21/00 | OR | PORTLAND | PORTLAND INTL | 0/1680 | ILS RWY 28L, ORIG–A... |



| FDC date | State | City | Airport | FDC No. | SIAP |
|---|---|---|---|---|---|
| 09/21/00 | OR | PORTLAND | PORTLAND INTL | 0/1682 | ILS RWY 10R (CAT I, II AND III), AMDT 31... |
| 09/21/00 | PA | CLEARFIELD | CLEARFIELD-LAWRENCE | 0/1581 | GPS RWY 30 ORIG... |
| 09/21/00 | PA | CLEARFIELD | CLEARFIELD-LAWRENCE | 0/1582 | VOR RWY 30 AMDT 5... |
| 09/21/00 | PA | MYERSTOWN | DECK | 0/1604 | VOR/DME OR GPS–A AMDT 1A... |
| 09/21/00 | TX | PAMPA | PERRY LEFORS FIELD | 0/1694 | VOR/DME OR GPS–A, AMDT 2... |
| 09/21/00 | TX | PAMPA | PERRY LEFORS FIELD | 0/1695 | NDB RWY 17, AMDT 4... |
| 09/21/00 | TX | PAMPA | PERRY LEFORS FIELD | 0/1700 | GPS RWY 17, ORIG... |
| 09/21/00 | VA | PETERSBURG | PETERSBURG MUNI | 0/1673 | NDB OR GPS RWY 5 AMDT 4B... |
| 09/21/00 | VA | PETERSBURG | PETERSBURG MUNI | 0/1674 | LOC RWY 5 ORIG–C... |
| 09/22/00 | DC | WASHINGTON | WASHINGTON DULLES INTL | 0/1746 | ILS RWY 12 AMDT 6C... |
| 09/25/00 | TX | PLAINVIEW | HALE COUNTY | 0/1827 | VOR RWY 4, AMDT 9... |
| 09/25/00 | TX | PLAINVIEW | HALE COUNTY | 0/1844 | GPS RWY 22, ORIG... |
| 09/26/00 | TX | SPEARMAN | SPEARMAN MUNI | 0/1911 | VOR/DME OR GPW RWY 2, ORIG... |
| 09/27/00 | MO | KANSAS CITY | KANSAS CITY INTL | 0/1947 | ILS RWY 9, AMDT 11A... |
| 09/27/00 | ND | MOHALL | MOHALL MUNI | 0/1981 | VOR/DME OR GPS RWY 31, AMDT 2B... |
| 09/27/00 | TX | WICHITA FALLS | SHEPPARD AFB/WICHITA FALLS MUNI. | 0/1923 | NDB OR GPS RWY 33L, AMDT 10A... |
| 09/27/00 | TX | WICHITA FALLS | SHEPPARD AFB/WICHITA FALLS MUNI. | 0/1924 | ILS RWY 33L, AMDT 12B... |
| 09/28/00 | TX | DALHART | DALHART MUNI | 0/2001 | VOR RWY 17, AMDT 12A... |
| 09/28/00 | TX | DALHART | DALHART MUNI | 0/2002 | GPS RWY 17, ORIG... |

[FR Doc. 00–25634 Filed 10–4–00; 8:45 am]
BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 97

[Docket No. 30204; Amdt. No. 2012]

## Standard Instrument Approach Procedures; Miscellaneous Amendments

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

**ADDRESSES:** Availability of matters incorporated by reference in the amendment is as follows:

*For Examination*

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

*For Purchase*

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

*By Subscription*

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

**FOR FURTHER INFORMATION CONTACT:** Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125); telephone: (405) 954–4164.

**SUPPLEMENTARY INFORMATION:** This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The

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provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

**The Rule**

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

**Conclusion**

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 97**

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC, on September 29, 2000.

**L. Nicholas Lacey,**

*Director, Flight Standards Service.*

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

## PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

**§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]**

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective November 2, 2000*

Huntsville, AL, Huntsville Intl-Carl T. Jones Field, ILS RWY 36R, Orig
Fayetteville, AR, Drake Field, MLS RWY 34, Amdt 2, CANCELLED
Prineville, OR, Prineville, NDB RWY 10, Orig
Fredericksburg, VA, Shannon, VOR RWY 24, Amdt 7A, CANCELLED
Martinsburg, WV, Eastern West Virginia Regional/Shepherd Field, ILS RWY 26, Amdt 6

** * * Effective November 30, 2000*

Bethel, AK, Bethel, MLS RWY 36, Orig, CANCELLED
Cold Bay, AK, Cold Bay, MLS RWY 32, Amdt 1, CANCELLED
Cold Bay, AK, Cold Bay, GPS RWY 32, Orig-A
Fairbanks, AK, Fairbanks Intl, RADAR–1, Amdt 2, CANCELLED
King Salmon, AK, King Salmon, VOR OR TACAN RWY 11, Amdt 11A
King Salmon, AK, King Salmon, NDB RWY 11, Amdt 2A
Kodiak, AK, Kodiak, GPS RWY 25, Orig-A
Port Heiden, AK, Port Heiden, MLS RWY 5, Orig, CANCELLED
St. Paul Island, AK, St. Paul Island, MLS RWY 18, Orig-A, CANCELLED
Lafayette, IN, Purdue University, NDB RWY 10, Amdt 13
Lafayette, IN, Purdue University, ILS RWY 10, Amdt 11
Lafayette, IN, Purdue University, VOR/DME RNAV RWY 28, Amdt 6
Lafayette, IN, Purdue University, RNAV RWY 10, Orig
Lafayette, IN, Purdue University, RNAV RWY 28, Orig
Burlington, IA, Burlington Regional, RNAV RWY 36, Orig
Picayune, MS, Picayune Muni, VOR–A, Orig
McCook, NE, McCook Muni, RNAV RWY 21, Orig
O'Neill, NE, The O'Neill Muni-John L. Baker Field, RNAV RWY 13, Orig
O'Neill, NE, The O'Neill Muni-John L. Baker Field, RNAV RWY 13, Orig
Islip, NY, Long Island MacArthur, NDB OR GPS RWY 6, Amdt 19
Islip, NY, Long Island MacArthur, ILS RWY 6, Amdt 22
Islip, NY, Long Island MacArthur, ILS RWY 24, Amdt 2
New York, NY, La Guardia, Copter RNAV 250, Orig
Saranac Lake, NY, Adirondack Regional, ILS RWY 23, Amdt 8
Cleveland, OH, Cleveland-Hopkins Intl, ILS RWY 28, Amdt 22
Anderson, SC, Anderson Regional, RNAV RWY 5, Orig
Salt Lake City, UT, Salt Lake City Intl, ILS RWY 17, Amdt 11
Wendover, UT, Wendover, VOR/DME OR TACAN–B, Orig
Wendover, UT, Wendover, VOR/DME OR TACAN RWY 26, Orig
Wendover, UT, Wendover, VOR/DME OR TACAN–A Amdt 2, CANCELLED
Wendover, UT, Wendover, RNAV–A, Orig
Wendover, UT, Wendover, RNAV RWY 26, Orig
Black River Falls, WI, Black River Falls Area, NDB RWY 8, Amdt 6

[FR Doc. 00–25635 Filed 10–4–00; 8:45 am]

BILLING CODE 4910–13–M

## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Part 180**

**[OPP–301030; FRL–6599–1]**

**RIN 2070–AB**

## Phosphorous Acid; Exemption From the Requirement of a Tolerance

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes an exemption from the requirement of a tolerance for residues of phosphorous acid and its ammonium, sodium and potassium salts in or on all food commodities when used as an agricultural fungicide on food crops. Agtrol International submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996, requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of phosphorous acid and its ammonium, sodium and potassium salts.



**DATES:** This regulation is effective October 5, 2000. Objections and requests for hearings, identified by docket control number [OPP–301030], must be received by EPA, on or before December 4, 2000.

**ADDRESSES:** Written objections and hearing requests may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit IX. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number [OPP–301030] in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** By mail: Driss Benmhend, c/o Product Manager (PM) 90, Biopesticides and Pollution Prevention Division (7511C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9525; and e-mail address: benmhend.driss @epa.gov.

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this Action Apply to Me?*

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

| Categories | NAICS codes | Examples of potentially affected entities |
|---|---|---|
| Industry | 111<br>112<br>311<br>32532 | Crop production<br>Animal production<br>Food manufacturing<br>Pesticide manufacturing |

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

*B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?*

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–301030. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

**II. Background and Statutory Findings**

In the **Federal Register** of December 16, 1999 (64 FR 70255) (FRL–6393–4), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e), as amended by the Food Quality Protection Act (FQPA) (Public Law 104–170) announcing the filing of a pesticide tolerance petition by Agtrol International, 7322 Southwest Freeway, Suite 1400, Houston, TX 77074. This notice included a summary of the petition prepared by the petitioner Agtrol International.

EPA received a comment from Aventis CropScience that requested EPA deny the waiver for residue chemistry data requirements for phosphorous acid. Aventis claims that phosphorous acid does not degrade rapidly in the environment, and that significant residues of phosphorous acid are expected to be found in or on raw agricultural commodities treated with products containing the active ingredient phosphorous acid. These residues of phosphorous acid according to Aventis, in or on food crops, cannot be considered to be negligible. EPA reviewed the data submitted by Aventis and concluded the following:

1. Phosphorous acid and its salts are important fertilizer compounds and used in significant quantities in this country. Tests performed using the Agtrol product showed an $LD_{50}$ of greater than 5,000 milligrams per kilogram of bodyweight. Human toxicity from consumption of crops treated with phosphorus acid fertilizers would be well known, if it occurred. The lack of reported dietary toxicity from consumption of crops treated with phosphorous acid fertilizers is further supporting evidence that use of phosphorous acid applications as a fungicide should not result in dietary toxicity. EPA does not require residue chemistry data in cases where the toxicity is so low and the use pattern will result in exposures much lower than the highest dose tested without an effect.

2. The Agency does note that the information provided by Aventis on the dissociation of phosphorous acid actually supports the tolerance exemption request. Further details on the dissociation of phosphorous acid at a pH of 7 indicates that the equilibrium ratio of acid phosphite ion to undissolved phosphorous acid is 500,000 to 1, and that the ratio of phosphite ion to acid phosphite ion is 2 to 1. This indicates the presence of almost no undissociated phosphorous acid.

3. Phosphorous is a required substance in the human body in the form of phosphates. This and the above are among the reasons why EPA does not regulate residues of phosphorous acid arising from the application of another pesticide which dissociates to phosphorous acid and is produced by Aventis. Also included were toxicological information provided by Aventis which proved to EPA there was no need to monitor the phosphorous acid residue.

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As a result, EPA does not believe phosphorous acid and its salts should be denied the exemption from the requirement of a tolerance because of the reasons given by Aventis CropScience.

The petition requested that 40 CFR part 180 be amended by establishing an exemption from the requirement of a tolerance for residues of phosphorous acid.

**III. Risk Assessment**

New section 408(c)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(c)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...." Additionally, section 408(b)(2)(D) requires that the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

**IV. Toxicological Profile**

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness, and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

1. *Acute toxicity.* Phosphorous acid is of high acute toxicity through the oral, dermal, and inhalation routes of exposure. Phosphorous acid is corrosive to eyes and skin. However, results of studies conducted on Agri-Phostrol Agricultural Fungicide, the end-use product for which Agtrol International has applied for registration, demonstrate that this product has a low order of toxicity. The acute oral $LD_{50}$ in the rat was greater than 5,000 milligrams per kilograms of bodyweight. The acute dermal $LD_{50}$ in the rat was greater than 5,000 milligrams per kilogram of bodyweight. The acute inhalation $LC_{50}$ in the rat was greater than 2.06 milligrams per liter. The product was found slightly irritating to the skin of guinea pigs and produced irritation to the eyes of rabbits that cleared within 48 hours. The product was not positive in guinea pigs for skin sensitization.

2. *Developmental/reproductive effects, chronic effects and carcinogenicity.* There is adequate information available from literature sources to characterize the toxicity of phosphorous acid. Phosphorous acid can affect human health through inhalation of mist, ingestion, and contact with the skin and eyes. It will cause corrosive effects (burns or irreversible damage) to the eyes, skin, throat, digestive tract, upper respiratory tract and nose. Signs of overexposure to this chemical are severe burning of eyes and skin, possible nausea and vomiting, coughing, burning and tightness of the chest and shortness of breath. Based on corrosiveness and the current use patterns for the mineral acids, EPA did not require these studies as part of the Reregistration Eligibility Decision (RED) on the Mineral Acids (EPA 738–R–029; December 1993).

**V. Aggregate Exposures**

In examining aggregate exposure, FFDCA section 408 directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

1. *Dietary exposure.* No dietary exposure is expected. When phosphorous acid is applied to growing crops in the environment, it rapidly dissociates to form hydrogen and phosphite ions.

2. *Drinking water exposure.* No significant exposure is expected to result from phosphorous acid because it is likely to be degraded in the terrestrial and aquatic environments to hydrogen and phosphite ions. The effects on humans resulting from anticipated concentrations to these ions due to agricultural uses will be moderated by natural means. Moreover, there is no potential for either ion to be significantly accumulated by the biota. Phosphorous acid is not regulated under the Safe Drinking Water Act; therefore, no maximum contaminant level (MCL) has been established for it.

3. *Other non-occupational exposure.* The primary non-pesticidal uses of phosphorous acid are industrial in closed production systems. There are no residential, indoor, school or day care uses proposed for this product. The proposed use pattern is for agricultural food crops. Therefore, there is no potential for non-occupational exposure to the general population.

Dermal inhalation exposures are expected to be minimal to applicators because of the label mitigating language.

**VI. Cumulative Effects**

Agri-Phostrol Agricultural Fungicide may share a common metabolic mechanism with other salts of phosphorous acid (such as calcium); however, due to the lack of toxicity of Agri-Phostrol Agricultural Fungicide and lack of reported dietary toxicity associated with the use of phosphorous fertilizers on crops, no cumulative effect from the use of Agri-Phostrol Agricultural Fungicide is expected.

**VII. Determination of Safety for U.S. Population, Infants and Children**

1. *U.S. general population.* Aggregate exposure to phosphorous acid is expected to be minimal. There is very little potential for exposure to phosphorous acid in drinking water and from non-dietary, non-occupational exposures. This chemical will be applied to agricultural food crops by commercial applicators. Once released into the environment, the chemical rapidly dissociates to form hydrogen and phosphite ions. The hydrogen ions affect pH, but this is moderated by natural means. Many phosphite salts are generally recognized as safe (GRAS). Therefore, the health risk to humans is negligible based on the low toxicity of these ions and a low application rate for the active ingredient, and one can conclude that there is a reasonable certainty that no harm will result from aggregate exposure to phosphorous acid.

2. *Infants and children.* Aggregate exposure to phosphorous acid is expected to be minimal. There is very little potential for exposure to phosphorous acid in drinking water and from non-dietary, non-occupational exposures. This chemical will be applied to agricultural food crops. Once released into the environment, the chemical rapidly dissociates to form hydrogen and phosphite ions. The hydrogen ions affect pH, but this is moderated by natural means. Many phosphite salts are "GRAS." Therefore, the health risk to humans is negligible based on the low toxicity of Phostrol™ Agricultural Fungicide and these ions and a low application rate for the active ingredient. One can conclude that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to phosphorous acid residues.

**VIII. Other Considerations**

Phosphorous acid and its salts are rapidly dissociated in the environment to yield hydrogen and phosphite ions. Release of hydrogen ions will increase the pH of the plant's surface, which will be moderated by the amount of neutralizing ions present, the buffering capacity, and the amount of dilution possible. Phosphite ions are available for uptake by plants usually in the form of ammonium, calcium, and potassium and sodium phosphites (phosphite salts).

*A. Endocrine Disruption*

Phosphorous acid does not belong to a class of chemicals known or suspected of having adverse effects on the endocrine system. Further, Agtrol International is not aware of any evidence that phosphorous acid has any effect on endocrine function. Last, there is no evidence that phosphorous acid bioaccumulates in the environment.

*B. Analytical Method*

Agtrol International has not submitted a practical analytical method for the detection and measurement of pesticide chemical residues. Phosphorous acid *per se* is not expected to be found in or on raw agricultural commodities, because once this chemical is released into the environment it dissociates rapidly to form the less toxic compounds, hydrogen and phosphite ions.

*C. Codex Maximum Residue Level*

No maximum residue levels (MRLs) have been established for phosphorous acid by the Codex Alimentarius Commission (CODEX).

**IX. Objections and Hearing Requests**

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

*A. What Do I Need to Do to File an Objection or Request a Hearing?*

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301030 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before December 4, 2000.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit IX.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket number OPP–301030, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

*B. When Will the Agency Grant a Request for a Hearing?*

A request for a hearing will be granted if the Administrator determines that the

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material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

**X. Regulatory Assessment Requirements**

This final rule establishes an exemption from the tolerance requirement under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

**XI. Submission to Congress and the Comptroller General**

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

**List of Subjects in 40 CFR Part 180**

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 27, 2000.

**Susan B. Hazen,**

*Acting Director, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I is amended as follows:

**PART 180–[AMENDED]**

1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346(a) and 371.

2. Section 180.1210 is added to subpart D to read as follows:

**§ 180.1210 Phosphorous acid, exemption from the requirement of a tolerance.**

An exemption from the requirement of a tolerance is established for residues of phosphorous acid and its ammonium, sodium and potassium salts in or on all food commodities when used as an agricultural fungicide on food crops.

[FR Doc. 00–25598 Filed 10–4–00; 8:45 am]
BILLING CODE 6560–50–F

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**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Parts 1, 2, 87 and 101**

**[FCC 00–272; WT Docket No. 99–327]**

**24 GHz Service; Licensing and Operation**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document adds and amends regulations governing the licensing and operation of the 24.25–24.45 GHz and 25.05–25.25 GHz bands. In addition, the Commission adopts competitive bidding rules to select among mutually exclusive applicants for licenses in these bands. We expect such amendments to promote the effective use of the 24 GHz band and to accommodate deployment of point-to-point, point-to-multipoint, and multipoint-to-multipoint fixed wireless technology at 24 GHz.

**DATES:** Effective December 4, 2000, except for §§ 101.527 and 101.529, which contain information collection requirements that have not been approved by the Office of Management and Budget. The Commission will publish a document in the **Federal Register** announcing the effective date of those sections. Public comments on the information collections contained in the *Report and Order* are due November 6, 2000.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW., Room 4–C207, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Michael Pollak, Shellie Blakeney or Paul Moon of the Policy and Rules Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, (202) 418–0680, or Nese Guendelsberger of the Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, (202) 418–0660.



**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Report and Order* (*R&O*) in WT Docket No. 99–327, FCC 00–272, adopted July 25, 2000, and released August 1, 2000. The full text of the *R&O* is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The full text of the *R&O* may also be purchased from the Commission's copy contractor, International Transcription Services, 1231 20th Street, NW., Washington, DC 20036, telephone (202) 857–3800, facsimile (202) 857–3805. The full text of the *R&O* may also be downloaded at: <http://www.fcc.gov/Bureaus/Wireless/Orders/2000/fcc00272>. Alternative formats (computer diskette, large print, audio cassette, and Braille) are available to persons with disabilities by contacting Martha Contee at (202) 418–0260, TTY (202) 418–2555, or at mcontee@fcc.gov.

**Synopsis of the *Report and Order***

The *R&O* gives maximum regulatory flexibility to 24 GHz Service providers. Both incumbent 24 GHz band licensees and new licensees will be governed by part 101 of the Commissions Rules, 47 CFR part 101. The Commission will assign the 24 GHz band for licensing throughout the United States by 172 Economic Areas. The Commission also authorized additional economic areas for licensing covering the following United States territories and possessions: Guam, Northern Mariana Islands, Puerto Rico, the United States Virgin Islands, America Samoa and the Gulf of Mexico. The Commission will license the 24 GHz band in 40 MHz flexible channel pairs, five per economic area. The *R&O* also permitted 24 GHz licensee more flexibility in system design, by designating that either the upper or lower side of the 40 MHz channel pairs can be used for the nodal station or the subscriber station.

The *R&O* allowed 24 GHz band licensees to offer a variety of fixed services. 24 GHz providers may elect their regulatory status as either common carrier or private, under the conditions set forth in Title II and III of the Communications Act of 1934, as amended. Regarding service and construction requirements, the *R&O* adopted a ten-year license term and required a "substantial service" showing at the ten year license renewal date. Substantial service is defined as a "service" that is sound, favorable, and substantially above a level of mediocre service which might minimally warrant renewal. In addition, the following "safe harbor" examples achieve compliance: (a) A demonstration of four links per million population within a service area; (b) a demonstration of service to an area that has limited wireless or wireline telecommunication services.

Partitioning and disaggregation are permitted, and any partitionee/disaggregatee is authorized to hold its license for the remainder of the original licensee's term. The *R&O* also clarified that licensees may aggregate 24 GHz band spectrum.

The *R&O* adopted flexible technical standards as well that are both consistent with the Commission's part 101 Rules, 47 CFR part 101. These rules include, but are not limited to the revision of the emission mask for the 24 GHz band; allowing the use of non-directional antennas and one foot parabolic antennas; eliminating individual licensing for nodal stations; and allowing a maximum contiguous bandwidth of up to 200 MHz through aggregation.

The *R&O* provides that the competitive bidding rules set forth in part 1, subpart Q, of the Commission's rules will apply to the auction of licenses in the 24 GHz band unless otherwise provided therein. The application of the part 1 rules to the 24 GHz band will include any amendments that may be adopted in the ongoing part 1 proceeding. Consistent with current practice, the Wireless Telecommunications Bureau (Bureau) will seek comment on matters such as auction design in a public notice prior to the auction. The *R&O* adopts a ten-day period for filing petitions to deny against long-form applications and delegates to the Bureau the discretion to implement a five-day period in exigent circumstances.

The *R&O* also adopts a three-tiered approach to bidding credits. Entrepreneurs, which are defined as entities having average annual gross revenues not exceeding $40 million for the preceding three years, are eligible to receive a 15 percent bidding credit. Small businesses, which are defined as entities having average annual gross revenues not exceeding $15 million for the preceding three years, are eligible to receive a 25 percent bidding credit. Very small businesses, which are defined as entities having average annual gross revenues not exceeding $3 million for the preceding three years, are eligible to receive a 35 percent bidding credit.

Finally, the *R&O* adopts attribution rules for the 24 GHz band. Under these rules, the Commission will attribute to the applicant the gross revenues of its controlling interests and their affiliates in assessing whether the applicant is qualified to take advantage of the Commission's small business provisions.

**Regulatory Flexibility Act Final Analysis**

As required by the Regulatory Flexibility Act ("RFA"), an Initial Regulatory Flexibility Analysis ("IRFA") was incorporated in the Amendment to parts 1, 2, and 101 of the Commission's Rules To License Fixed Services at 24 GHz, WT Docket 99–327, Notice of Proposed Rulemaking (*NPRM*), 64 FR 71088 (rel. Dec. 20, 1999), issued in this proceeding. The Commission sought written public comment on the proposals in the *NPRM*, including comment on the IRFA. No comments were filed in direct response to the IRFA. This Final Regulatory Flexibility Analysis ("FRFA") conforms to the Regulatory Flexibility Act.

*I. Need for, and Objectives of, the Report and Order in the Report and Order*

We adopt rules for licensing and operation of the 24.25–24.45 GHz and 25.05–25.25 GHz bands. In addition, the Commission adopts competitive bidding rules to select among new licensees for this band. We amend parts 1, 2, 87 and 101 of the Commission's Rules and expect such amendments to promote the effective use of the 24 GHz band and to accommodate deployment of point-to-point, point-to-multipoint, and multipoint-to-multipoint fixed wireless technology at 24 GHz. The rule changes we adopt today establish a flexible regulatory and licensing framework, which will enhance opportunities to provide a broadband wireless service, foster effective competition, and further our efforts for consistent rule application regarding broadband wireless services.

*II. Summary of Significant Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis*

No comments were filed in direct response to the IRFA. However, as described in Section V, we have taken into account all comments submitted generally by small entities.

*III. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply*

The Regulatory Flexibility Act directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The Regulatory Flexibility Act defines the term "small entity" as having the same meaning as the terms "small business," "small organization,"

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and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 1992, there were approximately 275,801 small organizations. "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000." As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or ninety-six percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (ninety-one percent) are small entities. The rules we are adopting today will affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. The Commission has not developed a definition of small entities applicable to licensees in the 24 GHz band. Therefore, the applicable definition of small entity is the definition under the SBA rules for the radiotelephone industry that provides that a small entity is a radiotelephone company employing fewer than 1,500 persons. The 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, which is the most recent information available, shows that only 12 radiotelephone firms out of a total of 1,178 such firms that operated during 1992 had 1,000 or more employees. This information notwithstanding, we believe that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent and TRW, Inc. It is our understanding that Teligent and its related companies have less than 1,500 employees, though this may change in the future. However, TRW is not a small entity. Therefore, only one incumbent licensee in the 24 GHz band is a small business entity. The proposals also affect potential new licensees on the 24 GHz band. Pursuant to 47 CFR 24.720(b), the Commission has defined "small business" for Blocks C and F broadband PCS licensees as firms that had average gross revenues of less than $40 million in the three previous calendar years. This regulation defining "small business" in the context of broadband PCS auctions has been approved by the SBA. With respect to new applicants in the 24 GHz band, we shall use this definition of "small business" and apply it to the 24 GHz band under the name "entrepreneur." With regard to "small business," we shall adopt the definition of "very small business" used for 39 GHz licenses and PCS C and F block licenses: Businesses with average annual gross revenues for the three preceding years not in excess of $15 million. Finally, "very small business" in the 24 GHz band shall be defined as an entity with average gross revenues not to exceed $3 million for the preceding three years. The Commission will not know how many licensees will be small or very small businesses until the auction, if required, is held. Even after that, the Commission will not know how many licensees will partition their license areas or disaggregate their spectrum blocks, if partitioning and disaggregation are allowed.

*IV. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements*

This *R&O* adopts rules that will entail reporting, recordkeeping, and/or third-party consultation. However, the Commission believes that these requirements are the minimum needed. By this *R&O*, we require licensees to notify the Commission within 30 days of a change in regulatory status between common carrier and/or non-common carrier. We also require licensees to substantiate their renewal expectancies with information demonstrating substantial service. In addition, because we consider partitioning and disaggregation to be a form of license assignment, we require such action to receive Commission approval via application for assignment on FCC Form 603. With regard to alien ownership, we require licensees to amend their FCC Form 602 to reflect any changes in foreign ownership information, together with the initial information required by FCC Form 601.

*V. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered*

The Regulatory Flexibility Act requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

In the *NPRM*, we noted that the Commission originally used Standard Metropolitan Statistical Areas (SMSA) to license the DEMS service, which failed to include rural communities because SMSAs are too large. We then proposed to reduce the licensing service area in order to: (1) Include rural communities; (2) maximize the opportunities for the dissemination of 24 GHz licenses among a wide array of entities; and (3) facilitate efficient use of this spectrum. While adopting Economic Areas (EAs) in this *R&O*, we cite to our experience with the 39 GHz auction in which the majority of small, very small and rural qualified bidders won licenses. We also note that our decision to offer flexible partitioning and disaggregation/aggregation will speed service to rural areas and encourage the participation of smaller entities at auction. In addition, we adopt flexible bidding credits for smaller entities, while noting that small entities may further form bidding consortiums to prevail at auction. In sum, we believe that adopting EAs for licensing this service will serve the public interest best, in light of the overall changes we are making here to specifically benefit small entities.

In this *R&O*, we authorize 24 GHz licensees to provide common carrier service, non-common carrier service, or both under a single license. We also adopt our proposal in the *NPRM* to require licensees to notify us within 30 days of such a change in regulatory status. However, we minimize the reporting burden by declining to require licensees to obtain Commission authorization prior to a change in regulatory status. In addition, we decline to require that the licensees detail the specific services they seek to provide. This is consistent with our streamlined application process, and it serves to simplify the reporting requirements for small entities.

In this *R&O*, we adopt a ten-year license term in conjunction with a renewal expectancy based on substantial service. In order to demonstrate substantial service, licensees must provide the Commission with a description of geographic coverage and population served or links installed, and a description of how the service complies with the substantial service requirement. In addition, licensees must submit copies of any violations or proceedings that relate to their renewal expectancy. While taking into account this burden on small entities, we note that such recordkeeping ensures that the 24 GHz band is not "warehoused" or abused to the preclusion of small business opportunities. In this context, we also note that we declined here to adopt a license term in excess of ten years, in order to afford more opportunities for entities, including small businesses, to capture licenses that fail to meet substantial service.

In order to overcome entry barriers for smaller entities, we adopt here flexible partitioning and disaggregation rules. Parties to partitioning and disaggregation agreements may negotiate whether one party or both will be responsible for demonstrating fulfillment of pertaining construction requirements. Parties may also combine partitioning and disaggregation agreements. Any such agreements are treated, however, as a form of license assignment and therefore require Commission approval via filing FCC Form 603. Licensees who received bidding credits at auction and who subsequently partition or disaggregate are also subject to the unjust enrichment provision contained in our Rules. We believe that these recordkeeping and unjust enrichment restrictions are the minimum needed, when weighed against the significant benefits to small entities that result from the flexible approach we are adopting here.

In order to supervise effectively the compliance of 24 GHz licensees with regard to our alien ownership restrictions, we require both common carrier and non-common carrier licensees in the 24 GHz band to provide the alien ownership information requested in FCC Form 601, as well as amendments in FCC Form 602 to reflect any changes in foreign ownership information. This enforcement is a mutual benefit to all licensees and a minimal reporting burden.

In the *R&O*, we adopt a ten-day period for filing petitions to deny long-form applications. We decline to adopt a five-day period in order to give small businesses more flexibility in challenging license awards. We also adopt a third level of small business bidding credits in addition to those proposed in the *NPRM*, in respect of the fact that the capital costs of operating facilities in the 24 GHz band will vary widely. Finally, we adopt attribution rules based on a "controlling interest" standard to determine eligibility for our small business provisions. We believe these rules, along with our affiliation rules, will prevent larger firms from illegitimately seeking status as a small business. All of these decisions regarding competitive bidding procedures will work to the benefit of small entities.



**Report to Congress**

The Commission will send a copy of this *R&O*, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, *see* 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the *R&O*, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *R&O* and this FRFA (or summaries thereof) will also be published in the **Federal Register**. *See* 5 U.S.C. 604(b).

**Paperwork Reduction Analysis**

This *R&O* contains either a new or modified information collection. As part of its continuing effort to reduce paperwork burdens, the Commission invites the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on revision to the information collections contained in the *R&O*. As required by the Paperwork Reduction Act of 1995, Public Law 104–13, public comments on the information collections contained in the *R&O* are due November 6, 2000.

Comments on the modified and proposed information collections contained in the *R&O* should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. These comments should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to <jboley@fcc.gov>. Furthermore, a copy of any such comments should be submitted to Edward C. Springer, OMB Desk Officer, 10236 NEOB, 725 17th Street, NW., Washington, DC 20503 or via the Internet to <edward_c._springer@omb.eop.gov>.

*OMB Approval Number:* 3060–XXXX.

*Title:* Section 101.527 Construction requirements of 24 GHz operations & 101.529 Renewal Expendancy criteria for 24 GHz licenses.

*Form No:* N/A.

*Type of Review:* New collection.

*Respondents:* Business or other for-profit.

*Number of Respondents:* 952.

*Estimated Time Per Response:* 20 hours.

*Total Annual Burden:* 14,399 hours.

*Total Annual Cost:* $952,000.

*Needs and Uses:* The information required in Sections 101.527 and 101.529 is used to determine whether a renewal applicant of a 24 GHz Service system has complied with the requirements to provide substantial service by the end of the ten-year initial license term. The FCC uses the information to determine whether an applicant's license will be renewed at the end of the license period.

**Ordering Clauses**

The actions of the Commission herein are taken pursuant to Sections 4(i), 257, 303, 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 257, 303, 309(j).

The rules in this Report and Order are effective December 4, 2000, except for §§ 101.527 and 101.529, which contain information collection requirements that have not been approved by the Office of Management and Budget. The Commission will publish a document in the **Federal Register** announcing the effective date of those sections. Public comments on the information collections contained in the *Report and Order* are due November 6, 2000.

Pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), that the Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

**List of Subjects**

*47 CFR Part 1*

Administrative practice and procedure, Radio.

*47 CFR Parts 2, 87, and 101*

Communications equipment, Radio, Reporting and recordkeeping requirements.

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Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

**Rule Changes**

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 1, 2, 87 and 101 as follows:

## PART 1—PRACTICE AND PROCEDURE

1. The authority citation for part 1 continues to read as follows:

**Authority:** 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303(r), 309 and 325(e).

2. In Table 1 in § 1.1307(b)(1), the entry for Local Multipoint Distribution Service is removed and a new entry is added in its place, to read as follows:

**§ 1.1307 Actions which may have a significant environmental effect, for which Environmental Assessments (EAs) must be prepared.**

* * * * *

(b) * * *

(1) * * *

TABLE 1.—TRANSMITTERS, FACILITIES AND OPERATIONS SUBJECT TO ROUTINE ENVIRONMENTAL EVALUATION

| Service (title 47 CFR rule part) | Evaluation required if |
|---|---|
| . . . . . | . . . . . |
| Local Multipoint Distribution Service (subpart L of part 101) and 24 GHz (subpart G of part 101). | *Non-building-mounted antennas:* height above ground level to lowest point of antenna <10 m *and* power>1640 W EIRP<br>*Building-mounted antennas:* power >1640 W EIRP LMDS and 24 GHz Service licensees are required to attach a label to subscriber transceiver antennas that:<br>(1) provides adequate notice regarding potential radiofrequency safety hazards, e.g., information regarding the safe minimum separation distance required between users and transceiver antennas; and<br>(2) references the applicable FCC-adopted limits for radio-frequency exposure specified in § 1.1310. |
| . . . . . | . . . . . |

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## PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

3. The authority citation for part 2 continues to read as follows:

**Authority:** 47 U.S.C. 154, 302a, 303 and 336 unless otherwise noted.

**§ 2.106 [Amended]**

4. Section 2.106 is amended by revising pages 71 and 72 of the Table to read as follows:

BILLING CODE 6712–02–P



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22.5-27.5 GHz (SHF)

| United States Table | | | International Table | |
|---|---|---|---|---|
| Federal Government | Non-Federal Government | FCC Rule Part(s) | Region 2 | Region 3 |
| 22.5-22.55<br>FIXED<br>MOBILE<br><br>US211 | | Fixed Microwave (101) | 22.5-22.55<br>FIXED<br>MOBILE | |
| 22.55-23.55<br>FIXED<br>INTER-SATELLITE<br>MOBILE<br><br>S5.149 US278 | | Satellite Communications (25)<br>Fixed Microwave (101) | 22.55-23.55<br>FIXED<br>INTER-SATELLITE<br>MOBILE<br><br>S5.149 | |
| 23.55-23.6<br>FIXED<br>MOBILE | | Fixed Microwave (101) | 23.55-23.6<br>FIXED<br>MOBILE | |
| 23.6-24<br>EARTH EXPLORATION-SATELLITE (passive)<br>RADIO ASTRONOMY US74<br>SPACE RESEARCH (passive)<br><br>US246 | | | 23.6-24<br>EARTH EXPLORATION-SATELLITE (passive)<br>RADIO ASTRONOMY<br>SPACE RESEARCH (passive)<br><br>S5.340 | |
| 24-24.05<br><br>S5.150 US211 | 24-24.05<br>AMATEUR<br>AMATEUR-SATELLITE<br><br>S5.150 US211 | ISM Equipment (18)<br>Amateur (97) | 24-24.05<br>AMATEUR<br>AMATEUR-SATELLITE<br><br>S5.150 | |
| 24.05-24.25<br>RADIOLOCATION US110<br>G59<br>Earth exploration-satellite (active)<br><br>S5.150 | 24.05-24.25<br>Radiolocation US110<br>Amateur<br>Earth exploration-satellite (active)<br><br>S5.150 | ISM Equipment (18)<br>Private Land Mobile (90)<br>Amateur (97) | 24.05-24.25<br>RADIOLOCATION<br>Amateur<br>Earth exploration-satellite (active)<br><br>S5.150 | |
| 24.25-24.45<br>FIXED | 24.25-24.45<br>FIXED | Fixed Microwave (101) | 24.25-24.45<br>24.25-24.45<br>RADIONAVIGATION<br>FIXED<br>MOBILE | 24.25-24.45<br>RADIONAVIGATION<br>FIXED<br>MOBILE |

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| | | |
|---|---|---|
| 24.45-24.65<br>INTER-SATELLITE<br>RADIONAVIGATION<br>S5.533 | | Satellite Communications (25) |
| 24.65-24.75<br>INTER-SATELLITE<br>RADIOLOCATION-SATELLITE (Earth-to-space) | | |
| | 24.75-25.05<br>FIXED-SATELLITE (Earth-to-space) NG167<br>RADIONAVIGATION | Satellite Communications (25)<br>Aviation (87) |
| | 25.05-25.25<br>FIXED-SATELLITE (Earth-to-space) NG167<br>FIXED | Satellite Communications (25)<br>Fixed Microwave (101) |
| | 25.25-27<br>Standard frequency and time signal-satellite (Earth-to-space)<br>Earth exploration-satellite (space-to-space) | Note: In its *Manual*, NTIA has added a primary inter-satellite service allocation to the band 25.25-27.5 GHz, limited the use of this allocation by adopting footnote S5.536, and has changed the directional indicator for the Earth exploration-satellite service allocation in the band 25.5-27 GHz from space-to-space to space-to-Earth. |
| | | 27-27.5<br>Earth exploration-satellite (space-to-space) |

| | | |
|---|---|---|
| 24.45-24.75<br>FIXED<br>INTER-SATELLITE | 24.45-24.65<br>INTER-SATELLITE<br>RADIONAVIGATION<br>S5.533 | 24.45-24.65<br>FIXED<br>INTER-SATELLITE<br>MOBILE<br>RADIONAVIGATION<br>S5.533 |
| | 24.65-24.75<br>INTER-SATELLITE<br>RADIOLOCATION-SATELLITE (Earth-to-space)<br>S5.533 S5.534 | 24.65-24.75<br>FIXED<br>INTER-SATELLITE<br>MOBILE<br>S5.533 S5.534 |
| 24.75-25.25<br>FIXED | 24.75-25.25<br>FIXED-SATELLITE<br>(Earth-to-space) S5.535 | 24.75-25.25<br>FIXED<br>FIXED-SATELLITE<br>(Earth-to-space) S5.535<br>MOBILE<br>S5.534 |
| 25.25-25.5<br>FIXED<br>INTER-SATELLITE S5.536<br>MOBILE<br>Standard frequency and time signal-satellite (Earth-to-space) | 25.25-25.5<br>FIXED<br>MOBILE<br>Standard frequency and time signal-satellite (Earth-to-space) | |
| 25.5-27<br>EARTH EXPLORATION-SATELLITE (space-to-Earth) S5.536A S5.536B<br>FIXED<br>INTER-SATELLITE S5.536<br>MOBILE<br>Standard frequency and time signal-satellite (Earth-to-space) | 25.5-27<br>FIXED<br>MOBILE<br>Standard frequency and time signal-satellite (Earth-to-space)<br>Earth exploration-satellite (space-to-space) | |
| 27-27.5<br>FIXED<br>INTER-SATELLITE S5.536<br>MOBILE | 27-27.5<br>FIXED<br>MOBILE | 27-27.5<br>Earth exploration-satellite (space-to-space) |
| | 27-27.5<br>FIXED<br>FIXED-SATELLITE (Earth-to-space)<br>INTER-SATELLITE S5.536 S5.537<br>MOBILE | |

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* * * * *

## PART 87—AVIATION SERVICES

5. The authority citation for part 87 is revised to read as follows:

**Authority:** 47 U.S.C. 154, 303 and 307(e), unless otherwise noted.

**§ 87.173 [Amended]**

6. Section 87.173(b), the Frequency Table, is amended in the first column by revising "24250–25250 MHz" to read "24750–25050 MHz".

## PART 101—FIXED MICROWAVE SERVICES

7. The authority citation for part 101 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

8. Section 101.1 is amended by revising paragraph (b) to read as follows:

**§ 101.1 Scope and authority.**

* * * * *

(b) The purpose of the rules in this part is to prescribe the manner in which portions of the radio spectrum may be made available for private operational, common carrier, 24 GHz Service and Local Multipoint Distribution Service fixed, microwave operations that require transmitting facilities on land or in specified offshore coastal areas within the continental shelf.

* * * * *

9. Section 101.3 is amended by adding a definition for "24 GHz Service" immediately preceding the alphabetical definitions and adding a definition for "User or Subscriber Station," in alphabetical order, and by revising the definitions of "Digital Electronic Message Service" and "Nodal Station," to read as follows:

**§ 101.3 Definitions.**

* * * * *

*24 GHz Service.* A fixed point-to-point, point-to-multipoint, and multipoint-to-multipoint radio system in the 24.25–24.45 GHz band and in the 25.05–25.25 GHz band consisting of a fixed main (nodal) station and a number of fixed user terminals. This service may encompass any digital fixed service.

* * * * *

*Digital Electronic Message Service.* A two-way end-to-end fixed radio service utilizing digital termination systems for the exchange of digital information in the frequency bands 10,550–10,680 MHz, 18,820–18,920 MHz, and 19,160–19,260 MHz. This service may also make use of point-to-point microwave facilities, satellite facilities or other communications media to interconnect digital termination systems to comprise a network.

* * * * *

*Nodal station.* The central or controlling stations in a microwave radio system operating on point-to-multipoint or multipoint-to-multipoint frequencies with one or more user stations or internodal links.

* * * * *

*User or subscriber station.* The station(s) in a microwave radio system operating at the users' premises on point-to-multipoint or multipoint-to-multipoint frequencies and communicating with one or more nodal stations.

* * * * *

10. Section 101.21 is amended by revising paragraph (g) to read as follows:

**§ 101.21 Technical content of applications.**

* * * * *

(g) Each application in the Local Multipoint Distribution Service and 24 GHz Service must contain all technical information required by FCC Form 601 and any other applicable form or associated Public Notices and by any applicable rules in this part.

11. Section 101.45 is amended by revising paragraph (b) introductory text to read as follows:

**§ 101.45 Mutually exclusive applications.**

* * * * *

(b) A common carrier application, except in the Local Multipoint Distribution Service and in the 24 GHz Service, will be entitled to comparative consideration with one or more conflicting applications only if:

* * * * *

12. Section 101.61 is revised to read as follows:

**§ 101.61 Certain modifications not requiring prior authorization in the Local Multipoint Distribution Service and 24 GHz Service**

In the Local Multipoint Distribution Service (LMDS) licensees may add, remove, or relocate facilities within the area authorized by the license without prior authorization. Upon request by an incumbent licensee or the Commission, an LMDS licensee shall furnish the technical parameters, location and coordinates of the completion of the addition, removal, relocation or modification of any of its facilities within the BTA. The LMDS licensee must provide such information within ten (10) days of receiving a written request. This section also applies to 24 GHz licensees that are licensed according to Economic Areas.

13. Section 101.63 is amended by revising paragraph (a) to read as follows:

**§ 101.63 Period of construction; certification of completion of construction.**

(a) Each Station, except in Local Multipoint Distribution Services, 24 GHz Service and the 38.6–40.0 GHz band, authorized under this part must be in operation within 18 months from the initial date of grant.

* * * * *

14. Section 101.101 is amended by revising the entry for 24,250–25,250 MHz in the table to read as follows:

**§ 101.101 Frequency availability.**

| Frequency band (MHz) | Radio service | | | | |
|---|---|---|---|---|---|
| | Common carrier (Part 101) | Private radio (Part 101) | Broadcast auxiliary (Part 74) | Other (Parts 15, 21, 22, 24, 25, 74, 78 & 100) | Notes |
| . | . | . | . | . | . |
| 24,250–25,250 ..... | CC ..... | OFS. | | | |
| . | . | . | . | . | . |

* * * * *

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15. Section 101.105 is amended by revising the text of paragraph (c)(6) preceding the table to read as follows:

**§ 101.105 Interference protection criteria.**

* * * * *

(c) * * *

(6) Each application for new or modified nodal station on channels numbered 4A, 4B, 7, 9, and 19/20 in the 10.6 GHz band must demonstrate that all existing co-channel stations are at least 56 kilometers from the proposed nodal station site. Applicants for these channels must certify that all licensees and applicants for stations on the adjacent channels within 56 kilometers of the proposed nodal station have been notified of the proposed station and do not object. Alternatively, or if one of the affected adjacent channel interests does object, the applicant may show that all affected adjacent channel parties are provided a C/I protection ratio of 0 dB. An applicant proposing to operate at an AAT greater than 91 meters must reduce its EIRP in accordance with the following table; however, in no case may EIRP exceed 70 dBm on the 10.6 GHz channels:

* * * * *

16. Section 101.109(c) is amended in the table by revising the entry for 24,250 to 25,250 MHz and by revising footnote 7 and the note to footnote 7 to read as follows:

**§ 101.109 Bandwidth.**

* * * * *

(c) * * *

| Frequency band (MHz) | Maximum authorized bandwidth |
|---|---|
| . . . . . | |
| 24,250 to 25,250 ..... | 40 MHz [7] |
| . . . . . | |

[7] For channel block assignments in the 24,250–25,250 MHz and 38,600–40,000 MHz bands, the authorized bandwidth is equivalent to an unpaired channel block assignment or to either half of a symmetrical paired channel block assignment. When adjacent channels are aggregated, equipment is permitted to operate over the full channel block aggregation without restriction.

**Note to Footnote 7:** Unwanted emissions shall be suppressed at the aggregate channel block edges based on the same roll-off rate as is specified for a single channel block in § 101.111(a)(1) or in § 101.111(a)(2)(ii) and (iii) as appropriate.

17. Section 101.111 is amended by adding paragraph (a)(2)(iv) and by revising paragraph (a)(4) introductory text to read as follows:

**§ 101.111 Emission limitations.**

(a) * * *

(2) * * *

(iv) The emission mask for 24 GHz Service used the equation in paragraph (a)(2)(ii) of this section applies only to the edge of each channel, but not to subchannels established by licensees. The value of P in the equation is for the percentage removed from the carrier frequency and assumes that the carrier frequency is the center of the actual bandwidth used. The emission mask can be satisfied by locating a carrier of the subchannel sufficiently far from the channel edges so that the emission levels of the mask are satisfied. The 24 GHz emission mask shall use a value B (bandwidth) of 40 MHz, for all cases even in the case where a narrower subchannel is used (for instance the actual bandwidth is 10 MHz) and the mean output power used in the calculation is the sum of the output power of a fully populated channel.

* * * * *

(4) For DEMS channels in the 17,700–19,700 MHz band:

* * * * *

18. In § 101.115(c), the table is amended by revising the entry for "24,250 to 25,250" and footnote 10 to read as follows:

**§ 101.115 Directional antennas.**

* * * * *

(c) * * *

ANTENNA STANDARDS

| Frequency (MHz) | Category | Maximum beamwidth to 3 dB points [1] (included angle in degrees) | Minimum antenna gain (dbi) | Minimum radiation suppression to angle in degrees from centerline of main beam in decibels | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | | 5° to 10° | 10° to 15° | 15° to 20° | 20° to 30° | 30° to 100° | 100° to 140° | 140° to 180° |
| . | . | . | . | . | . | . | . | . | . | . |
| 24,250 to 25,250 [10] .... | A | 2.8 | 38 | 25 | 29 | 33 | 36 | 42 | 55 | 60 |
| | B | 2.8 | 38 | 20 | 24 | 28 | 32 | 35 | 36 | 45 |
| . | . | . | . | . | . | . | . | . | . | . |

[1] If a licensee chooses to show compliance using maximum beamwidth to 3 dB points, the beamwidth limit shall apply in both the azimuth and the elevation planes.

* * * * * * *

[10] DEMS User Station antennas in this band must meet performance Standard B and have a minimum antenna gain of 34 dBi. The maximum beamwidth requirement does not apply to DEMS User Stations. DEMS Nodal Stations need not comply with these standards. Stations authorized to operate in the 24,250–25,250 MHz band do not have to meet these standards, however, the Commission may require the use of higher performance antennas where interference problems can be resolved by the use of such antennas.

* * * * *

19. Section 101.139 is amended by adding paragraph (g) to read as follows:

**§ 101.139 Authorization of transmitters.**

* * * * *

(g) After January 1, 2001, a transmitter operating on the 24,250–24,450 MHz and 25,050–25,250 MHz bands must meet the emission limitation set forth in § 101.111(a)(2)(ii).

20. Section 101.141 is amended by revising paragraph (a) introductory text to read as follows:

**§ 101.141 Microwave modulation.**

(a) Microwave transmitters employing digital modulation techniques and operating below 19.7 GHz band must, with appropriate multiplex equipment, comply with the following additional requirements:

* * * * *

21. Section 101.147 is amended by:

A. Revising the fifth sentence of paragraph (r) introductory text.

B. Revising the introductory text of paragraph (r)(9) preceding the table and paragraphs (r)(9)(i) and (r)(9)(ii).



C. Adding paragraph (r)(9)(iii).

The additions and revisions read as follows:

**§ 101.147 Frequency assignments.**

* * * * *

(r) *17,700 to 19,700 and 24,250 to 25,250 MHz.* * * * Licensees, except 24 GHz band licensees, may use either a two-way link or one frequency of a frequency pair for a one-way link and must coordinate proposed operations pursuant to the procedures required in § 101.103. * * *

* * * * *

(9) The following frequencies are available for point-to-multipoint DEMS Systems, except that channels 35–39 were available only to existing 18 GHz DEMS licensee as of March 14, 1997 and are now available by geographic area licensing in the 24 GHz Service to be used as the licensee desires. The 24 GHz spectrum can be aggregated or disaggregated and does not have to be used in the transmit/receive manner shown except to comply with international agreements along the US borders. Systems operating on Channels 25–34 must cease operations as of January 1, 2001, except that those stations on these channels within 150 km of the coordinates 38°48′ N/76°52′ W (Washington, DC, area) and 39°43′ N/101°46′ W (Denver, Colorado area) must cease operations of June 5, 1997:

* * * * *

(i) Each station on channels 25 through 34 will be limited to one frequency pair per SMSA. Additional channel pairs may be assigned upon a showing that the service to be provided will fully utilize the spectrum requested. A channel pair may be subdivided as desired by the licensee.

(ii) A frequency pair on channels 25 through 34 may be assigned to more than one licensee in the same SMSA or service area so long as the interference protection criteria of § 101.105 are met.

(iii) Channels 35 through 39 are licensed in the 24 GHz Service by Economic Areas for any digital fixed service. Channels may be used at either nodal or subscriber station locations for transmit or receive but must be coordinated with adjacent channel and adjacent area users in accordance with the provisions of § 101.509. Stations must also comply with international coordination agreements.

* * * * *

22. Section 101.305 is amended by revising paragraphs (a), (b) and (c) to read as follows:

**§ 101.305 Discontinuance, reduction or impairment of service.**

(a) If the public communication service provided by a station in the Common Carrier Radio Services, the Local Multipoint Distribution Service or 24 GHz Service is involuntarily discontinued, reduced or impaired for a period exceeding 48 hours, the station licensee must promptly notify the Commission. In every such case, the licensee must furnish full particulars as to the reasons for such discontinuance, reduction or impairment of service, including a statement as to when normal service is expected to be resumed. When normal service is resumed, prompt notification thereof must be given Commission.

(b) No station licensee subject to title II of the Communications Act of 1934, as amended, may voluntarily discontinue, reduce or impair public communication service to a community or part of a community without obtaining prior authorization from the Commission pursuant to the procedures set forth in part 63 of this chapter. In the event that permanent discontinuance of service is authorized by the Commission, the station license is terminated; except that station licenses in the Local Multipoint Distribution Service and 24 GHz Service are not terminated if the discontinuance is a result of a change of status by the licensee from common carrier to non-common carrier pursuant to § 1.929 of this chapter.

(c) Any licensee not subject to title II of the Communications Act of 1934, as amended, who voluntarily discontinues, reduces or impairs public communication service to a community or a part of a community must notify the Commission within 7 days thereof. In the event of permanent discontinuance of service, the station license is automatically terminated; except that station licenses in the Local Multipoint Distribution Service and 24 GHz Service are not terminated if the discontinuance is a result of a change of status by the licensee from non-common carrier to common carrier pursuant to § 1.929 of this chapter.

* * * * *

23. Section 101.311 is revised to read as follows:

**§ 101.311 Equal employment opportunities.**

Equal opportunities in employment must be afforded by all common carrier licensees and all Local Multipoint Distribution Service and 24 GHz Service licensees in accordance with the provisions of § 21.307 of this chapter.

24. Subpart G is amended by:

A. Revising the table of contents for subpart G.

B. Revising the heading of subpart G.

C. Revising §§ 101.501, 101.503, 101.505, 101.509, and 101.511.

The revisions read as follows:

**Subpart G—24 GHz Service and Digital Electronic Message Service**

Sec.
101.501 Eligibility.
101.503 Digital Electronic Message Service Nodal Stations.
101.505 Frequencies.
101.509 Interference protection criteria.
101.511 Permissible services.
101.513 Transmitter power.
101.515 Emissions and bandwidth.
101.519 Interconnection.
101.521 Spectrum utilization.
101.523 Service areas.
101.525 24 GHz system operations.
101.526 License term.
101.527 Construction requirements for 24 GHz operations.
101.529 Renewal expectancy criteria for 24 GHz licenses.
101.531 Application form and contents.
101.533 Regulatory status.
101.535 Geographic partitioning and spectrum aggregation/disaggregation.
101.537 24 GHz band subject to competitive bidding.
101.538 Designated entities.

**Subpart G—24 GHz Service and Digital Electronic Message Service**

**§ 101.501 Eligibility.**

See § 101.147(n) for licensing of DEMS facilities in the 10.6 GHz band. Applications for new facilities using the 18 GHz band are no longer being accepted. Any entity, other than one precluded by § 101.7, is eligible for authorization to provide 24 GHz Service under this subpart.

**§ 101.503 Digital Electronic Message Service Nodal Stations.**

10.6 GHz DEMS Nodal Stations may be authorized only as a part of an integrated communication system wherein 10.6 GHz DEMS User Stations associated therewith also are licensed to the 10.6 GHz DEMS Nodal Station licensee. Applications for 10.6 GHz DEMS Nodal Station licenses should specify the maximum number of 10.6 GHz DEMS User Stations to be served by that nodal station. Any increase in that number must be applied for pursuant to § 1.913 of this chapter.

**§ 101.505 Frequencies.**

Frequencies, and the conditions on which they are available, for DEMS operations are contained in this subpart as well as in § 101.147(m), (n), and (r)(9).

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**§ 101.509 Interference protection criteria.**

(a) As a condition for use of frequencies in this service each licensee is required to:

(1) Engineer the system to be reasonably compatible with adjacent and co-channel operations in the same or adjacent areas on all frequencies; and

(2) Cooperate fully and in good faith to resolve whatever potential interference and transmission security problems may be present in adjacent and co-channel operations.

(b) All harmful interference to other users of co-channel and adjacent channel use in the same or adjacent geographical area are prohibited. In areas where Economic Areas are in close proximity, careful consideration should be given to minimum power requirements and to the location, height, and radiation pattern of the transmitting and receiving antennas. Licensees are expected to cooperate fully in attempting to resolve problems of potential interference before bringing the matter to the attention of the Commission.

(c) Licensee shall coordinate their facilities whenever the facilities have optical line-of-sight into other licensees' areas or are within the same geographic area. Licensees are encouraged to develop operational agreements with relevant licensees in the same or adjacent areas. Incumbent SMSA licensee(s) shall retain exclusive rights to its channel(s) within its SMSA and must be protected.

(d) Licensees shall comply with the appropriate coordination agreements between the United States and Canada and the United States and Mexico concerning cross-border sharing and use of the 24 GHz bands which may require using channels pairs in accordance with the table in § 101.147(r)(9).

(e) The Commission recommends that coordination is not necessary if the power flux density (pfd) at the boundary of the relevant adjacent area is lower than $-14$ dBW/m$^2$ in any 1 MHz. This value can be changed and agreed upon by both coordinating parties. Licensees should be able to deploy with a pfd up to $-94$ dBW/m$^2$ in any 1 MHz at the boundary of the relevant adjacent area without negatively affecting the successful operations of the adjacent area licensee.

**§ 101.511 Permissible services.**

(a) Authorizations for stations in the 24 GHz Service will be granted to provide services on a common carrier basis or a non-common carrier basis or on both a common carrier and non-common carrier basis in a single authorization.

(b) Stations may render any kind of digital communications service consistent with the Commission's rules and the regulatory status of the station to provide services on a common carrier or non-common carrier basis.

(c) An applicant or licensee may submit a petition at any time requesting clarification of the regulatory status required to provide a specific communications service.

25. Section 101.521 is revised to read as follows:

**§ 101.521 Spectrum utilization.**

All applicants for DEMS frequencies in the 10.6 GHz band must submit as part of the original application a detailed plan indicating how the bandwidth requested will be utilized. In particular the application must contain detailed descriptions of the modulation method, the channel time sharing method, any error detecting and/or correcting codes, any spatial frequency reuse system and the total data throughput capacity in each of the links in the system. Further, the application must include a separate analysis of the spectral efficiency including both information bits per unit bandwidth and the total bits per unit bandwidth.

26. Sections 101.523, 101.525, 101.526, 101.527, 101.529, 101.531, 101.533, 101.535, 101.537 and 101.538 are added to subpart G to read as follows:

**§ 101.523 Service areas.**

(a) The service areas for 24 GHz are Economic Areas (EAs) as defined in this paragraph (a). EAs are delineated by the Regional Economic Analysis Division, Bureau of Economic Analysis, U.S. Department of Commerce. The Commerce department organizes the 50 States and the District of Columbia into 172 EAs. Additionally, there are three EA-like areas: Guam and Northern Mariana Islands; Puerto Rico and the U.S. Virgin Islands; and American Samoa and the Gulf of Mexico. A total of 176 authorizations will be issued for the 24 GHz Service by the FCC.

(b) Where an incumbent SMSA license area in the 24 GHz band occupies only a portion of an EA available for application under the competitive bidding rules, the SMSA portion will be excluded from auction and the incumbent licensee will retain the exclusive right to those channels within the SMSA.

**§ 101.525 24 GHz system operations.**

(a) A licensee using the 24 GHz band may construct and operate any number of fixed stations anywhere within the area authorized to serve without prior authorization, except as follows:

(1) A station would be required to be individually licensed if:

(i) International agreements require coordination;

(ii) Submission of an Environmental Assessment is required under § 1.1307 of this chapter;

(iii) The station would affect the radio quiet zones under § 1.924 of this chapter.

(2) Any antenna structure that requires notification to the Federal Aviation Administration (FAA) must be registered with the Commission prior to construction under § 17.4 of this chapter.

(b) Whenever a licensee constructs or makes system changes as described in paragraph (a)(1) of this section, the licensee is required to notify the Commission within 30 days of the change under § 1.947 of this chapter and include a statement of the technical parameters of the changed station.

**§ 101.526 License term.**

The license term for stations licensed under this subpart is ten years from the date of license grant or license renewal for incumbent licensees.

**§ 1A101.527 Construction requirements for 24 GHz operations.**

(a) Each licensee must make a showing of "substantial service" within ten years of its license grant. A "substantial service" assessment will be made at renewal pursuant to the provisions and procedures set forth in § 1.949 of this chapter. "Substantial service" is a service which is sound, favorable, and substantially above a level of mediocre service which just might minimally warrant renewal during its past license term.

(b) Each licensee must, at a minimum file:

(1) A report, maps and other supporting documents describing its current service in terms of geographic coverage and population served to the Commission. The report must also contain a description of the licensees' investments in its operations. The report must be labeled as an attachment to the renewal application; and

(2) Copies of all FCC orders finding the licensee to have violated the Communications Act or any FCC rule or policy; and a list of any pending proceedings that relate to any matter described in this paragraph (b)(2).

(c) Failure to demonstrate that substantial service is being provided in the service area will result in forfeiture of the license, and the licensee will be unable to regain it.



(d) The frequencies associated with incumbent authorizations, licensed on a SMSA basis, that have cancelled automatically or otherwise been recovered by the Commission will automatically revert to the applicable EA licensee.

**§ 101.529 Renewal expectancy criteria for 24 GHz licenses.**

(a) A renewal applicant involved in a renewal proceeding shall receive a preference, commonly referred to as a renewal expectancy, that is the most important factor to be considered in the proceeding as long as the applicant's past record for the relevant license period demonstrates that:

(1) The renewal applicant has provided "substantial service" pursuant to § 101.527; and

(2) The renewal applicant has substantially complied with applicable FCC rules, policies, and the Communications Act of 1934, as amended.

(b) In order to establish its right to a renewal expectancy, a licensee in the 24 GHz service involved in a renewal proceeding must submit a showing explaining why it should receive a renewal expectancy. At a minimum, this showing must include:

(1) A description of how the licensee has complied with the "substantial service" requirement; and

(2) Copies of all FCC orders finding the licensee to have violated the Communications Act or any FCC rule or policy; and a list of any pending proceedings that relate to any matter described in this paragraph (b)(2).

(c) In making its showing of entitlement to a renewal expectancy, a renewal applicant may claim credit for any system modification applications that were pending on the date it filed its renewal application. Such credit will not be allowed if the modification application is dismissed or denied.

**§ 101.531 Application form and contents.**

(a) Applications for initial authorization of 24 GHz facilities are filed on FCC Form 175 in accordance with subpart M and subpart Q of part 1 of this chapter. FCC Form 601 is submitted subsequently either by the winning bidder, if an auction is held to decide among two or more mutually exclusive applications, or, in cases of no mutual exclusivity, by the sole applicant. Applications to amend pending applications and to modify licenses are filed on FCC Form 601.

(b) *Foreign ownership information.* All applicants for 24 GHz licenses must provide the information requested on FCC Form 601 to address all of the eligibility requirements in § 101.7 of this part. All licensees will keep the information updated.

**§ 101.533 Regulatory status.**

(a) *Initial applications.* An applicant for a 24 GHz license must specify on FCC Form 601 if it is requesting authorization to provide services on a common carrier basis, a non-common carrier basis, or on both a common carrier and non-common carrier basis.

(b) *Amendment of pending applications.* Any pending application may be amended to:

(1) Change the carrier status requested; or

(2) Add to the pending request in order to obtain both common carrier and non-common carrier status in a single license.

(c) *Modification of license.* A licensee may modify a license to:

(1) Change the carrier status authorized; or

(2) Add to the status authorized in order to obtain both common carrier and non-common carrier status in a single license.

**§ 101.535 Geographic partitioning and spectrum aggregation/disaggregation.**

(a) *Eligibility.* (1) Parties seeking approval for partitioning and disaggregation shall request from the Commission an authorization for partial assignment of a license pursuant to § 1.948 of this chapter.

(2) 24 GHz licensees may apply to the Commission to partition their licensed geographic service areas to eligible entities and are free to determine the portion of their service areas to be partitioned. 24 GHz licensees may aggregate or disaggregate their licensed spectrum at any time following the grant of a license.

(3) Any existing frequency coordination agreements shall convey with the assignment of the geographic area or spectrum, and shall remain in effect unless new agreements are reached.

(b) *Technical standards.*—(1) *Aggregation.* There is no limitation on the amount of spectrum that a 24 GHz licensee may aggregate.

(2) *Partitioning.* In the case of partitioning, applicants and licensees must file FCC Form 603 pursuant to § 1.948 of this chapter and list the partitioned service area on a schedule to the application. The geographic coordinates must be specified in degrees, minutes, and seconds to the nearest second of latitude and longitude and must be based upon the 1983 North American Datum (NAD83).

(3) *Disaggregation.* Spectrum may be disaggregated in any amount. A licensee need not retain a minimum amount of spectrum.

(4) *Combined partitioning and disaggregation.* The Commission will consider requests for partial assignment of licenses that propose combinations of partitioning and disaggregation.

(c) *Unjust enrichment.* 24 GHz licensees that received a bidding credit and partition their licenses or disaggregate their spectrum to entities not meeting the eligibility standards for such a bidding credit, will be subject to the provisions concerning unjust enrichment as set forth in § 1.2111 of this chapter.

(d) *License term.* The license term for a partitioned license area and for disaggregated spectrum shall be the remainder of the original licensee's license term as provided for in § 101.526.

(e) *Construction requirements.* Applications requesting approval for partitioning or disaggregation must include a certification by each party stating that one or both parties will satisfy the construction requirement set forth in § 101.529. Failure by a party to meet its respective construction requirement will result in the automatic cancellation of its license without further Commission action.

**§ 101.537 24 GHz band subject to competitive bidding.**

Mutually exclusive initial applications for licenses in the 24 GHz band are subject to competitive bidding procedures. The procedures set forth in part 1, subpart Q, of this chapter will apply unless otherwise provided in this part.

**§ 101.538 Designated entities.**

(a) *Eligibility for small business provisions.* (1) A very small business is an entity that, together with its controlling interests and affiliates, has average gross revenues not exceeding $3 million for the preceding three years.

(2) A small business is an entity that, together with its controlling interests and affiliates, has average gross revenues not exceeding $15 million for the preceding three years.

(3) An entrepreneur is an entity that, together with its controlling interests and affiliates, has average gross revenues not exceeding $40 million for the preceding three years.

(4) For purposes of determining whether an entity meets one of the definitions set forth in paragraphs (a)(1), (a)(2), and (a)(3) of this section, the gross revenues of the entity, its controlling interests and affiliates shall be considered on a cumulative basis and aggregated. An applicant seeking status

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as a very small business, small business, or entrepreneur under this section must disclose on its short- and long-form applications, separately and in the aggregate, the gross revenues of the applicant (or licensee), its controlling interests and affiliates for each of the previous three years.

(5) Persons or entities that hold interests in an applicant (or licensee) that are affiliates of each other or have an identity of interests identified in § 1.2110(b)(4)(iii) of this chapter will be treated as though they were one person or entity and their ownership interests aggregated for purposes of determining an applicant's (or licensee's) compliance with the requirements of this section.

(6) Where an applicant (or licensee) cannot identify controlling interests under the standards set forth in this section, the gross revenues of all interest holders in the applicant, and their affiliates, will be attributable.

(7) A consortium of very small businesses, a consortium of small businesses, or a consortium of entrepreneurs is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the applicable definition in paragraphs (a)(1), (a)(2) and (a)(3) of this section. Where an applicant or licensee is a consortium of very small businesses, a consortium of small businesses, or a consortium of entrepreneurs, the gross revenues of each very small business, small business, or entrepreneur shall not be aggregated.

(8) Designated entities must describe on their long-form applications how they satisfy the requirements for eligibility for designated entity status, and must list and summarize on their long-form applications all agreements that affect designated entity status such as partnership agreements, shareholder agreements, management agreements and other agreements, including oral agreements, establishing, as applicable, *de facto* or *de jure* control of the entity. Such information must be maintained at the licensee's facilities or by its designated agent for the term of the license in order to enable the Commission to audit designated entity eligibility on an ongoing basis.

(b) *Controlling interest.* (1) For purposes of this section, a controlling interest includes individuals or entities with either *de jure* or *de facto* control of the applicant. *De jure* control is evidenced by holdings of greater than 50 percent of the voting stock of a corporation, or in the case of a partnership, general partnership interests. *De facto* control is determined on a case-by-case basis. An entity must disclose its equity interest and demonstrate at least the following indicia of control to establish that it retains *de facto* control of the applicant:

(i) The entity constitutes or appoints more than 50 percent of the board of directors or management committee;

(ii) The entity has authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the licensee; and

(iii) The entity plays an integral role in management decisions.

(2) The following rules apply for the calculation of certain interests.

(i) Ownership interests shall be calculated on a fully diluted basis; all agreements such as warrants, stock options, and convertible debentures will generally be treated as if the rights thereunder already have been fully exercised.

(ii) Partnership and other ownership interests and any stock interest equity, or outstanding stock, or outstanding voting stock shall be attributed as specified.

(iii) Stock interests held in trust shall be attributed to any person who holds or shares the power to vote such stock, to any person who has the sole power to sell such stock, and to any person who has the right to revoke the trust at will or to replace the trustee at will. If the trustee has a familial, personal, or extra-trust business relationship to the grantor or the beneficiary, the stock interests held in trust will be attributed to the grantor or beneficiary, as appropriate.

(iv) Non-voting stock shall be attributed as an interest in the issuing entity.

(v) Limited partnership interests shall be attributed to limited partners and shall be calculated according to both the percentage of equity paid in and the percentage of distribution of profits and losses.

(vi) Officers and directors of an entity shall be considered to have a controlling interest in the entity. The officers and directors of an entity that controls a licensee or applicant shall be considered to have a controlling interest in the licensee or applicant.

(vii) Ownership interests that are held indirectly by any party through one or more intervening corporations will be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that if the ownership percentage for an interest in any link in the chain exceeds 50 percent or represents actual control, it shall be treated as if it were a 100 percent interest.

(viii) Any person who manages the operations of an applicant or licensee pursuant to a management agreement shall be considered to have a controlling interest in such applicant or licensee if such person, or its affiliate, has authority to make decisions or otherwise engage in practices or activities that determine, or significantly influence:

(A) The nature or types of services offered by such an applicant or licensee;

(B) The terms upon which such services are offered; or

(C) The prices charged for such services.

(ix) Any licensee or its affiliate who enters into a joint marketing arrangement with an applicant or licensee, or its affiliate, shall be considered to have a controlling interest, if such applicant or licensee, or its affiliate, has authority to make decisions or otherwise engage in practices or activities that determine, or significantly influence:

(A) The nature or types of services offered by such an applicant or licensee;

(B) The terms upon which such services are offered; or

(C) The prices charged for such services.

(c) *Bidding credits.* A winning bidder that qualifies as a very small business or a consortium of very small businesses as defined in this section may use the bidding credit specified in § 1.2110(e)(2)(i) of this chapter. A winning bidder that qualifies as a small business or a consortium of small businesses as defined in this section may use the bidding credit specified in § 1.2110(e)(2)(ii) of this chapter. A winning bidder that qualifies as an entrepreneur or a consortium of entrepreneurs as defined in this section may use the bidding credit specified in § 1.2110(e)(2)(iii) of this chapter.

[FR Doc. 00–24065 Filed 10–4–00; 8:45 am]

BILLING CODE 6712–01–P



**DEPARTMENT OF TRANSPORTATION**

**Federal Motor Carrier Safety Administration**

**49 CFR Part 391**

**[FMCSA Docket No. 98–3542 (formerly FHWA Docket No. 98–3542)]**

**RIN 2126–AA06 (formerly 2125–AC63)**

## Physical Qualification of Drivers; Medical Examination; Certificate

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This document updates and simplifies the medical examination form that is currently used to determine the physical qualification of commercial motor vehicle (CMV) drivers operating in interstate commerce. The FMCSA takes this action in response to numerous requests from medical examiners to update and simplify the medical examination form that is currently used. This action is intended to reduce the incidence of errors on such forms and to provide more uniform medical examinations of CMV drivers engaged in interstate commerce. The current Federal physical qualification standards tested by medical examiners and recorded on the form will not be revised in this rulemaking.

**DATES:** November 6, 2000.

**FOR FURTHER INFORMATION CONTACT:** For information about the rulemaking, Ms. Sandra Zywokarte, Office of Bus and Truck Standards and Operations, (202) 366–2987; for information about legal issues related to this notice, Ms. Judith Rutledge, Office of the Chief Counsel, (202) 366–2519, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

### Electronic Access

An electronic copy of this document may be downloaded using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the **Federal Register's** home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's web page at *http://www.access.gpo.gov/nara.*

### Background

The authority to require medical certification of CMV driver qualification was originally granted to the Interstate Commerce Commission (ICC) in the Motor Carrier Act of 1935. The authority was transferred to the DOT in 1966 and is currently codified at 49 U.S.C. 31502(b). On October 9, 1999, the Secretary of Transportation transferred the motor carrier safety functions performed by the Federal Highway Administration (FHWA) to the Office of Motor Carrier Safety, a new office created in the DOT. This transfer was performed pursuant to section 338 of the DOT and Related Agencies Appropriations Act, 2000, Public Law 106–69, 113 Stat. 986, as amended by Public Law 106–73, 113 Stat. 1046. The Motor Carrier Safety Improvement Act of 1999, Public Law 106–159, 113 Stat. 1748, transferred the functions to the Federal Motor Carrier Safety Administration (FMCSA). As a result of the transfer of functions, the FMCSA now administers the driver physical qualification standards and examinations in 49 CFR Part 391.

The first physical qualification standard for CMV drivers was published by the ICC in 1939. It required a driver to have the following minimum qualifications:

> Good physical and mental health; good eyesight; adequate hearing; no addiction to narcotic drugs; and no excessive use of alcoholic beverages or liquors.

Over the next three decades, other physical qualification regulations were promulgated by the ICC, but most were not clearly defined until 1970, after the creation of the DOT. On April 22, 1970 (35 FR 6458), the existing physical qualification requirements were substantially tightened, based upon discussions with our agency's medical advisors. This rule required a driver to have a physical examination every 2 years, included guidelines for evaluation of persons in high-risk medical categories, and provided that the examining physician be given full information about the responsibilities of and the exacting demands made on CMV drivers. There have been no major changes since then.

### Current Medical Examination Form

The current form, at 49 CFR 391.43(f), has remained unchanged since it was adopted by the DOT in 1970. As a result, our agency has received numerous requests to make changes to the current medical examination form. Physicians and other medical providers have indicated that the format, layout and content of the current form are outdated, difficult to use, or irrelevant.

Additionally, substantial changes in medical technology and the technology, operating practices, and economics of the motor carrier industry have affected the lifestyles of and, therefore, the physical and mental demands placed on CMV drivers. Having agreed that the current medical form is outdated and its continued use problematic, we decided to initiate rulemaking to revise the form.

### Medical Examination Form Revision Process

We contracted with the Association for the Advancement of Automotive Medicine (AAAM) to review and evaluate the current form and develop a revised form. The process was defined and limited by several norms. The underlying physical qualification standards tested by medical providers and recorded on the form would not be revised in this rulemaking. In addition, the instructions for performing and recording physical examinations found in 49 CFR 391.43 would be revised only to the extent necessary to ensure that instructions to medical examiners are understandable and consistent with the information provided on the proposed medical examination form and guidance materials established by us for medical examiners.

To ensure that the revised form reflected the most current medical concepts and was responsive to the needs of the groups using the forms, the AAAM convened a working group to serve as reviewers of the draft form. The review panel members included two occupational health physicians, a motor carrier, two State motor vehicle administration officials and our agency representatives. A second draft of the form was then submitted to a correspondence advisory group, providing a more comprehensive review process. This larger group of reviewers was made up of medical providers, motor carriers, State motor vehicle agency representatives, Canadian motor transport officials, our agency field staff, and other interested groups.

### Revised Medical Examination Form

The revised form, modeled after physical examination forms in use today, has been organized to (1) gain simplicity and efficiency, (2) reflect current medical terminology and examination components and (3) be a self-contained document (i.e., the form will, to the extent possible, include all relevant information necessary to conduct the physical examination and certification).

Consistent with accepted practices regarding the order of the examination, the first section of the examination form is completed by the driver. This section requests information on the driver's

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health history, seeking "yes" or "no" answers to a variety of medical condition questions. Any "yes" response requires further clarification by the driver. Once this section is completed, the driver is required to sign the form, affirming that all the information contained in this section is accurate and complete. An additional statement indicates that inaccurate, false, or missing information may invalidate both the examination and any Medical Examiner's Certificate issued based on it.

The second section of the examination form covers the physical examination and tests that are performed by the medical examiner. The medical examiner is provided information on both the relevant Federal physical qualification standards and the tests required to measure compliance with those standards. The Federal standards and guidelines for evaluation of a driver's vision, hearing, and blood pressure are included in this section of the form, thereby reducing the potential for errors by the medical examiner.

Unlike the current physical examination form, the revised form clearly indicates when numerical readings must be recorded. Space is also provided on the form for recording any optional tests which the medical examiner considers necessary to evaluate a driver's physical qualification.

A full page of the revised form is devoted to instruction and recordation of the medical examiner's findings. The medical certificate is also provided, and must be completed by the medical examiner if he or she finds that the driver meets all the Federal physical qualification requirements.

The third section of the revised form not only sets forth the Federal physical qualification standards found at 49 CFR 391.41, but also contains more detailed information for the medical examiner regarding the driver's role and the types of duties he or she may face as a result of his or her employment. This section also contains the agency's guidelines to help medical examiners assess a driver's physical qualification. These guidelines are strictly advisory and were established after consultation with physicians, States, and industry representatives.

In addition to the revisions to 49 CFR 391.43 in the final rule, we are making technical corrections to paragraphs (d) and (g) of that section, to paragraphs (b)(1) and (b)(2)(ii) under § 391.41 and paragraph (d)(2) under § 391.49.

The FMCSA's primary concern is to enhance highway safety, rather than to unnecessarily limit employment opportunities for individuals with physical impairments. The intent of the final rule is to facilitate medical providers' efforts to establish and document the physical qualification of a driver to operate a CMV by promoting reliable and understandable determinations of medical qualification.

**Comments**

On August 5, 1998, we published an NPRM rulemaking (63 FR 41769) seeking comments on our proposed medical examination form. We invited individuals, medical providers, motor carriers, and other interested parties to provide comments on how to improve our proposed examination form and instructions for performing and recording physical examinations. Forty-six public comments addressing the notice were received and have been considered in our final decision to amend Federal regulations governing the examination to determine the physical qualification of CMV drivers engaged in interstate commerce.

We received comments from 23 physicians, 8 employers of truck drivers, 4 State motor vehicle administrations, 1 State enforcement agency, 1 Canadian motor vehicle agency, 3 trucking associations, 1 motor coach association, 1 trade association, 1 nursing association, 1 medical association and 2 advocacy groups. The majority of the comments supported the proposed medical examination form with suggestions for additions and deletions to the form. One comment completely opposed the proposal. Some comments offered suggestions for additions or deletions without indicating support for the form. Others suggested changes to the Federal physical qualification standards tested by medical examiners and recorded on the form.

Although most comments were generally supportive, a number of comments strongly opposed providing space on the proposed form for recording the results of such optional tests as an electrocardiogram (ECG) and exercise stress test (EST). Still others expressed concerns that the form has too many pages. These comments and others will be discussed in detail below by section, and in accordance with the order of the examination.

**Discussion of Comments**

*Driver's Information*

Comments directed to this section of the examination form suggested format changes for recording and denoting certain information on the form. The FMCSA has considered these comments and modified the form as follows: The format for recording the date of birth on the form will show month, day and year and the area code will be denoted by parentheses. The agency has also added another category, *other*, to the area on the form denoting the class of license held by the driver. This change is provided to accommodate non-CDL licensed drivers.

*Health History*

This section of the form received a number of comments suggesting additions or deletions of information and changes to the format. The Alabama Power Company, J.B. Hunt Transport, Inc., the Maryland Motor Vehicle Administration, the Wisconsin Department of Transportation and the Ministry of Transportation and Highways in British Columbia expressed support for the inclusion of a driver certification statement affirming that the information provided by the driver is accurate and complete. The American Association of Occupational Health Nurses (AAOHN) and the Maryland Motor Vehicle Administration indicated that the agency's statement that encourages the medical examiner to discuss health history information with the driver is not strong enough and the discussion should be required. Dr. Ellison Wittels commented that "the medical examiner needs to comment on any "yes" answer and address the severity of the problem." Comments from Dr. Wittles and the AAOHN indicated that more space should be allotted for the medical examiner's review of the health history. Dr. John A. Hansen agreed that there is inadequate space on the proposed form for the medical examiner's "impression and opinion," and indicated that too much space is allocated to driver's comments and the listing of their medications. In fact, Dr. Hansen suggests that, in general, the format of the proposed form is "excessive."

The American College of Occupational and Environmental Medicine (ACOEM) believes that the "expanded medical history section assists the [medical] examiner in making a thorough evaluation," but questions whether any of the conditions listed in the health history are likely to interfere with the driver's ability to safely operate a CMV. The ACOEM also expressed concerns over the potential for breaching confidential medical information.

The Owner Operator Independent Drivers Association, Inc., (OOIDA) an international trade association representing the interests of independent owner-operators and professional truck drivers, supports the overall goals of the proposal. However, the OOIDA raised concerns regarding the amount and relevancy of information solicited under the health history section and the confidentiality of medical information of drivers. The OOIDA believes that vague terminology and a lack of understanding of medical terms and conditions on the part of drivers will unjustly result in a driver being determined medically unqualified. Therefore, the OOIDA suggests that the medical examiner complete the health history section. The OOIDA also expressed concern that information in this section which it views as "unnecessary and irrelevant" would be used by employers for purposes other than the intended medical certification. Finally, the OOIDA opposes the requirement for a driver certification statement suggesting that such a requirement will not prevent drivers from falsifying or omitting information if a "yes" response would result in the driver being found medically unqualified.

The AHAS commented that the "FHWA could significantly improve highway safety by promoting increased definitive diagnoses and treatment of apnea" and noted that "many preliminary diagnoses of apnea are made on the basis of selfreport." The FMCSA believes the information on sleep disorders in this section will help elicit information from the driver regarding any history of sleep disorders and thereby, facilitate the identification and treatment of such disorders.

The FMCSA has considered the comments to this section and modified the form as follows: The two questions regarding hospitalization and serious illness in the last 5 years have been combined into one question that reads: "any illness or injury in the last 5 years." A box has been added to indicate when medications are taken for nervous or psychiatric disorders. The section on sleep disorders was modified to include "pauses in breathing while asleep" and to substitute "loud snoring" for severe snoring. The term "severe" has been dropped from the health history because it is too subjective. Under the section on diabetes, the term "pills" was substituted for "medication." The condition "pleurisy" has been deleted from the form because it is non-specific and non-discriminating.

The format for this section has been modified to increase the space allotted for the medical examiner's comments. As a result, the space allocated for the driver's comments has been reduced. The statement encouraging the medical examiner to discuss the health history with the driver has been modified and expanded to address the use of prescription and over-the-counter medications. The statement now reads: the medical examiner must review and discuss with the driver any "yes" answers and potential hazards of medications, including over-the-counter medications, while driving.

The FMCSA's modification of the information in the health history is limited because this information has previously been subject to several levels of review and subsequent changes by the medical community and other interested groups.

Although the health history section has been expanded, the FMCSA believes that this information is necessary and relevant. Having this information will assist the medical examiner in conducting a thorough evaluation and facilitate the determination as to the likelihood that an individual has a condition that would interfere with the safe operation of a CMV.

The FMCSA agrees with the comments that the confidentiality of medical information is an important issue and takes the position that medical information is best maintained by the medical examiner. In fact, the Medical Examiner's Certificate at 49 CFR 391.43(h) carries a statement indicating that the completed medical examination is on file in the office of the medical examiner. Although the FMCSRs do not require that the completed medical examination form be provided to the employer, the FMCSA does not prohibit employers from obtaining copies of the form. The FMCSA does not believe this is a problem since employers must comply with applicable State and Federal laws regarding the privacy and maintenance of employee medical information.

The agency maintains that the driver certification statement requirement would discourage an individual from omitting or falsifying information as someone is likely to pause and consider his/her action before signing such a statement. This is especially so since the deliberate omission or falsification of information may invalidate the examination and any Medical Examiner's Certificate issued based on it.

The agency did not adopt the suggestion of one comment to allow medical examiners to complete the health history since this is not the usual process for completion of a health history. However, to ensure involvement by the medical examiner, the FMCSA has made the review and discussion of any "yes" responses with the driver mandatory.

*Testing: Vision and Hearing*

The majority of comments to this section were suggestions for amending the actual vision and hearing standards which is beyond the scope of this rulemaking. The FMCSA will consider these comments in its ongoing review of physical qualification requirements and in any future rulemakings to amend the standards under § 391.41. The agency is considering, under a separate notice, a rule change regarding field of vision, an area of concern raised in several of the comments. This proposed change is based on a recent review and the recommendations from an expert panel of ophthalmologists. (See Frank C. Berson, M.D., Mark C. Kuperwaser, M.D., Lloyd Paul Aiello, M.D., and James W. Rosenberg, M.D., "Visual Requirements and Commercial Drivers," October 16, 1998, filed in the docket.)

The FMCSA has considered the comments to these sections and modified the form as follows: A single box designating "corrective lens" has been added to the form. The four boxes designating "glasses", "contact lenses", "right lens" and "left lens" on the proposed form have been deleted. Several comments indicated confusion over which box to check if an individual wore both glasses and contact lenses. The word "individual" has been substituted for the word "patient" under the section for recording numerical readings for hearing testing.

*Testing: Blood Pressure/Pulse Rate*

There were relatively few comments on this section and the majority of them focused on the need for additional space on the form. Several comments suggested the need for additional space on the form to record both the pulse rate and the quality of the pulse. Other comments suggested space for recording the second reading of the blood pressure since the instructions indicate that the medical examiner should take at least two readings to confirm an individual's blood pressure. Finally, two comments suggested changes to the recommended thresholds for acceptable blood pressures.

The FMCSA has considered the comments to this section and modified the form as follows: The space allocated for the pulse rate has been enlarged to accommodate the recording of both the pulse rate and the quality of the pulse. The recommendation for space for recording a second blood pressure reading was not adopted because the medical examiner is not limited to just two readings and the possibility exists

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that several readings may be necessary to establish a fixed blood pressure. Only the fixed blood pressure should be recorded on the form. Any change to the threshold value for an acceptable blood pressure is outside the scope of this rulemaking. The FMCSA is considering a review and update of its recommendations regarding blood pressure.

*Testing: Laboratory and Other Test Findings*

This was clearly one of the most commented on sections in the proposal. The majority of the comments were opposed to including space on the form for recording the optional tests, ECG and EST. Those opposing or having serious concerns over this issue include: the ATA, the OOIDA, the National Automobile Dealers Association, the Georgia Motor Trucking Association, DSI Transport, Inc., Houston Industries, Inc., the Illinois State Police, Dr. Russell J. Green, Medical Director for Hillcrest Health Works, and Dr. Ellison H. Wittels. The OOIDA, Houston Industries, Inc., and Dr. Wittels also recommended that the Echocardiogram and chest x-ray be deleted from the form. Their opposition was based on the following concerns: (1) The efficacy of these tests to detect coronary artery disease (CAD) and predict future coronary events in asymptomatic individuals is unsupported, (2) optional tests would increase the costs for all parties, and (3) the appearance of the optional tests on the form will be misinterpreted as mandatory requirements.

The FMCSA believes that the concerns of the ATA, the OOIDA and others regarding the recommendations for and recordation of the optional tests, ECG and EST, on the examination form have merit. According to the information (See part A.l. on "Screening for Asymptomatic Coronary Artery Disease," by the U.S. Preventive Services Task Force's "Guide to Clinical Preventive Services," 2nd ed., Baltimore: Williams & Wilkins, December 1995, in the docket as appendix 1 to the ATA's comment) submitted by Dr. Donald Whorton (on behalf of the ATA) and Dr. Richard Moore, it seems that the benefits of screening to identify asymptomatic CAD are unproven. The evidence summarized in the Guide indicated that the use of a resting ECG for screening for asymptomatic CAD showed limited sensitivity and specificity. Relative to the first quality, it was reported that 29 percent of patients with clinically proven CAD had a normal resting ECG (a sensitivity of 71 percent). The evidence presented also indicated that one-third to one-half of patients with normal coronary arteries had positive findings (poor specificity in the 50 to 67 percent range). Moreover, the Guide gave evidence that the predictive value of the resting ECG was low. Prospective studies found that symptomatic CAD develops in 3 to 15 percent of persons with abnormal ECG findings and that most coronary events occur in persons without resting ECG abnormalities. Based on these findings, routine ECG testing is not an efficient approach for detecting CAD or predicting future events.

While exercise ECG is more accurate than resting ECG in detecting CAD and predicting future coronary events, the Guide reported that its sensitivity and predictive values do not promote comprehensive endorsement as a screening test. For example, most patients with asymptomatic CAD do not have positive exercise results (poor sensitivity). Relative to prediction, although asymptomatic persons with a positive result on an exercise ECG are more likely to experience an event than those with a negative result, long-term studies have shown that only one to eleven percent will suffer an acute myocardial infarction or sudden death. The majority of events will occur with a negative test result. Thus, the less than desirable qualities of exercise ECG do not allow it to enjoy a broad endorsement as a screening tool and, in addition, it is more expensive than the resting ECG.

Notwithstanding this lack of evidence to support screening for asymptomatic CAD, the FMCSA believes that screening individuals in certain occupations, such as truck and bus drivers, may be justified because of possible benefits to public safety. However, since the FMCSA is not aware of any studies which have addressed the efficacy of screening these individuals to detect asymptomatic CAD, it proposes to establish a panel of medical experts to review and make recommendations for amending the agency's standards and guidelines for qualifying commercial drivers with cardiac conditions, and for screening drivers for cardiac risk factors.

The FMCSA has considered the comments to this section and modified the form as follows: Space will be provided for describing and recording any optional tests which the medical examiner considers necessary to assess a driver's physical qualification. However, references to specific tests (ECG, EST, echocardiogram, and chest x-ray) in this section have been removed. This will eliminate the potential for such optional tests to be misinterpreted as mandatory requirements and allow more space for the medical examiner to describe, record and comment on any optional test conducted as part of the examination.

Although the FMCSA has not adopted the recommendations of the Parents Against Tired Truckers (P.A.T.T.) to require the eight question Epworth Sleep Disorder Test as part of the physical examination, the agency recognizes and shares P.A.T.T.'s concerns that excessive day-time sleepiness as a result of untreated sleep apnea can affect a driver's ability to perform safely. The FMCSA has ongoing research to evaluate the prevalence and performance of a population of CMV drivers with sleep apnea. An extension of this research involves the development and evaluation of a screening tool for identifying drivers with sleep apnea. Moreover, the FMCSA's 1991 report, "Pulmonary/Respiratory Conditions and Commercial Drivers," provides specific recommendations for qualifying CMV drivers with sleep apnea. This report may be obtained from the National Technical Information Service, by calling 1–800–553–6847 and identifying the report by title and "PB" number (PB91–236455), or by going to: *http://www.fmcsa.dot.gov/rulesregs/medreports.htm.*

*Physical Examination*

This section of the form received a number of comments suggesting additions or deletions of information and changes to the format. There was unanimous agreement among those commenting that the recording of height and weight in centimeters and kilograms may be problematic and a source of errors and, therefore, should be recorded in inches and pounds. Other comments indicated that the "yes" and "no" columns which answer the question, "Is driver's ability to safely operate a commercial motor vehicle affected?" may be confusing as the usual procedure is to check "yes" if there are underlying abnormalities and then comment on whether they present a safety risk. A number of comments indicated that routine rectal and pelvic examinations are not appropriate or relevant to driver safety and should be eliminated. The AAOHN indicated that more space should be allotted for the medical examiners comments to "yes" answers under this section and recommended expanding the section on certification status to include the status of individuals who meet the standard and qualify for a 2-year medical certificate. The proposed form indicated that this section should be completed only if the driver does not qualify for a 2-year certificate.

The FMCSA has considered the comments to this section and modified the form as follows: The directions for completing this section appear in one location on the form and now read: Check "yes" if there are any abnormalities. Check "no" if the body system is normal. Discuss any "yes" answers in detail in the space below, and indicate whether it would affect the driver's ability to operate a commercial motor vehicle safely. Enter applicable item number before each comment. If organic disease is present, note that it has been compensated for. Height and weight will be recorded on the form in inches and pounds as the medical community has indicated that it is more comfortable with these units of measurement. References to both the pelvic or rectal examination have been dropped from the form, and as a result, the reference to hemorrhoids was dropped too. The term "abnormal" has been dropped because it is too subjective and the term "weakness" has been substituted for semi-paralysis. Several comments were not adopted as they addressed areas extensively discussed by medical providers and other interested parties during the development of this rule.

The instructions for completing the section on the certification status has been modified and reads: Note Certification Status Here. Additional boxes have been added to indicate (1) when a driver meets the standards in 49 CFR 391.41 and qualifies for a 2-year medical certificate, and (2) when the certification is conditionally met under the FMCSRs (*e.g.*, when wearing corrective lenses, a hearing aid or when accompanied by a waiver/exemption/skill performance evaluation (SPE) certificate). The handicapped driver waiver form has been replaced by a skill performance evaluation certificate. See 65 FR 25285 (May 1, 2000) for more detailed information.

*Medical Examiner's Certificate*

The replica of the Medical Examiner's Certificate that appeared on the proposed form under item number 7 "Physical Examination" has been removed to allow more space on the form. This will accommodate the information added to the section on Certification Status and provide significantly more space for the medical examiner's comments under this section.

The box on the Medical Examiner's Certificate titled, "Name (Print)" has been changed and reads: Medical Examiner's Name (Print). This was done to clarify whose name is to be entered in the box. Another box on the Certificate which indicates that a driver is qualified only when accompanied by a waiver has been modified and reads: accompanied by a _____ waiver/exemption. The term "exemption" has been added to be consistent with the terminology in 49 U.S.C. 31315 and 31136(e) regarding the granting of waivers and exemptions. A box has been added to indicate that a driver is qualified only when carrying an SPE certificate.

*Instructions to the Medical Examiner*

The majority of the comments directed to this section of the form were favorable and support the concept of a self-contained form which ensures the medical examiner access to the applicable medical standards, guidelines and other useful information including the role and duties of both the medical examiner and driver. For example, not all medical examiners, as suggested in one comment, are aware of existing guidance which allows medical examiners to issue medical certificates for periods less than 2 years in cases where drivers are qualified, but may have conditions which require more frequent monitoring.

A number of comments opposed the inclusion in this section of the recommendations to conduct optional ECG and EST tests. They cited the lack of evidence to support such screening, costs versus benefits, and the potential for the optional tests to be misinterpreted as mandatory.

The FMCSA has considered the comments to this section of the form and made the following modifications. The recommendations for evaluating cardiac risk factors and conducting the optional baseline ECG and EST tests have been removed from the Instructions to the Medical Examiner (Advisory Criteria) on the form and from the Instructions for Performing and Recording Physical Examinations, *Heart*, at 49 CFR 391.43 (f). However, these recommendations have been and are currently available to assist medical examiners in making physical qualification determinations, and are found in the FMCSA's conference report, "Cardiac Conditions and Commercial Drivers." This report may be obtained from the National Technical Information Service, by calling 1–800–553–6847, and identifying the report by title and "PB" number (PB88–233960), or by going to: *http://www.fmcsa.dot.gov/rulesregs/medreports.htm*. Moreover, as previously indicated, the FMCSA plans to establish a medical panel to review its cardiac standards and guidelines for qualifying commercial drivers. As part of the review, the panel will be asked to address the issue of screening CMV drivers for CAD. Other modifications to this section were either editorial in nature or changes to update information to be consistent with current FMCSA guidelines.

Several comments recommended designating or certifying medical examiners to ensure more uniform evaluations for fitness to operate CMVs. This issue is being addressed under a separate rulemaking which proposes to link the driver physical qualification determinations with the CDL process.

*Format of the Examination Form*

In general, comments on the format were favorable. J.B. Hunt Transport, Inc. stated, "placing applicable FHWA guidance directly on the proposed form * * * is an effective way to insure the medical examiner is aware of the specific regulation." The ATA stated, "FHWA's revised medical examination form, coupled with the above discussed ATA recommendations, will help serve as an adequate means to provide consistency and completeness." The ATA recommended that the FHWA permit motor carriers the flexibility to reformat the form to fewer pages, provided that the content of the form remains the same, and allow the form to be maintained electronically. The AHAS commented, "Advocates believes that, taken as a whole, both the form itself and the supplementary guidance that the agency wants to provide in order to guide health care providers will be substantial improvements over the present form. We agree with FHWA that the use of this form with its added guidance to practitioners could have a positive economic impact by resulting in more careful screening of commercial drivers to detect health conditions that could prove to be a safety risk both for drivers and for the occupants of other vehicles sharing the road with large trucks and buses."

Other comments indicated that the form has too many pages and questioned whether medical examiners would read them. The ACOEM commented, "It is unlikely that expanding explanations from one side of a page to four sides will drastically increase the quality." The Federal Express Corporation believes "the proposed three page form unnecessarily adds to the paperwork burden of medical examiners and motor carriers." Schneider National did not comment specifically on the proposed form, but

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included a copy of its physical exam form which Schneider considers both "comprehensive" and "helpful" in determining driver fitness. The Schneider form includes a 3-page physical exam form, 1-page driver's job description and 2 pages of instructional/informational materials, for a total of 6 pages.

The FMCSA believes the format of its examination form achieves the agency's overall objectives of accuracy and efficiency, and to be a self-contained document. Although the FMCSA has concluded that the new form would not increase cost and time burdens, it has adopted the ATA's recommendation to allow motor carriers and others to reformat the form, including an electronic version, so long as it remains a self-contained form and incorporates all of the information in 49 CFR 391.43(f), as amended in this rulemaking.

In addition to the revisions to 49 CFR 391.43 in this final rule, the FMCSA has made technical corrections to paragraphs (c)(1), (d) and (g) of that section. We are also making technical corrections to 49 CFR 391.41, paragraphs (b)(1) and (b)(2)(ii) and finally, to 49 CFR 391.49, paragraph (d)(2).

The FMCSA's primary concern is to enhance highway safety, not to unnecessarily limit employment opportunities for individuals with physical impairments. Consistent with its safety mandate and regulations, the FMCSA is interested in promoting individual determinations of medical qualification to operate a CMV. The revised medical examination form is intended to facilitate medical examiners' efforts to establish and document the physical qualifications of a driver to operate a CMV by promoting reliable and understandable determinations of physical qualification.

**Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures**

The FMCSA has determined that this action is not a significant regulatory action under Executive Order 12866 or significant under the regulatory policies and procedures of the DOT. It is anticipated that the economic impact of this final rule will be minimal because the use of existing printed supplies of the forms addressed in this action will be allowed until the forms are depleted, or until 12 months after the effective date of this rulemaking, whichever occurs first. Allowing the use of existing forms will avert substantial monetary loss by motor carriers, medical providers, and vendors of forms that might otherwise result from this rulemaking. Moreover, users of the examination form have the flexibility to reformat the form to fewer pages, including an electronic version so long as it remains a self-contained form and incorporates all of the information in 49 CFR 391.43(f), as amended in this rulemaking. According such flexibility will have the potential to reduce costs. This action will facilitate regulatory uniformity and result in easier compliance with and enforcement of the driver qualification requirements of the FMCSRs. This form will, to the extent possible, include all relevant information necessary to establish and record the physical qualification of a driver to operate a CMV. As a result, the FMCSA believes that this rulemaking will have a positive economic impact. Therefore, a full regulatory evaluation is not required.

**Regulatory Flexibility Act**

In compliance with the Regulatory Flexibility Act, 5 U.S.C. 601–612, the FMCSA has evaluated the effects of this final rule on small entities. The FMCSA believes that this action will not have a significant economic impact on a substantial number of small entities or the nation's economy because it would allow individual small carriers, medical examiners and vendors of the form to use the forms they now have on hand until those supplies have been depleted, or until 12 months after the effective date of this rulemaking. Additionally, users of the forms will have the flexibility to reformat the forms to less pages, including an electronic version, so long as it remains a self-contained form and incorporates all of the information in 49 CFR 391.43(f), as amended in this rulemaking. To the extent that this final rule will facilitate compliance with driver qualification requirements, the projected positive economic impact is not expected to be sufficiently significant to warrant a full regulatory evaluation. Accordingly, the FMCSA certifies that this action will not have a significant economic impact on a substantial number of small entities.

**Unfunded Mandates Reform Act of 1995**

The FMCSA has determined that this rulemaking will not result in the expenditure by State, local and tribal governments, or by the private sector, in the aggregate of $100 million or more in any one year, as required by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 15e32).

**Executive Order 13132 (Federalism)**

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 dated August 4, 1999, and it has been determined this action does not have a substantial direct effect or sufficient federalism implications on States that would limit the policymaking discretion of the States. Nothing in this document directly prempts any State law or regulation.

**Executive Order 12372 (Intergovernmental Review)**

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

**National Environmental Policy Act**

The agency has analyzed this action for the purposes of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and has determined that this action will not have any effect on the quality of the environment.

**Paperwork Reduction Act of 1995**

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. The FMCSA has determined that this final rule will affect collection of information requirements for the purposes of the PRA because it revises a form associated with a currently-approved information collection covered by OMB Approval No. 2126–0006, entitled Medical Qualification Requirements. Interested parties were invited to provide comments regarding the form revision in an NPRM which was issued on August 5, 1998. Comments which were received are discussed above in Discussion of Comments. Because the current information collection is due to expire on September 30, 2000, it has been submitted to OMB for a three-year renewal. The renewal request, which includes a revised estimate of 20 minutes to complete and document the medical examination, is more accurate. The FMCSA is not making any additional revisions to the information collection as a result of this final rule.

**Regulation Identification Number**

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.



**List of Subjects in 49 CFR Part 391**

Driver qualifications-physical examinations, Highway safety, Motor carriers, Reporting and recordkeeping requirements, Safety, Transportation.

Issued on: September 19, 2000.

**Clyde J. Hart, Jr.,**

*Acting Deputy Administrator, Federal Motor Carrier Safety Administration.*

In consideration of the foregoing, the FMCSA amends title 49, CFR, chapter III, part 391 as set forth below:

## PART 391—QUALIFICATIONS OF DRIVERS [AMENDED]

1. The authority citation for part 391 continues to read as follows:

**Authority:** 49 U.S.C. 322, 504, 31133, 31136, and 31502; and 49 CFR 1.73.

2. Section 391.41 is amended by revising paragraphs (b)(1) and (b)(2)(ii) to read as follows:

**§ 391.41 Physical qualifications for drivers.**

* * * * *

(b) * * *

(1) Has no loss of a foot, a leg, a hand, or an arm, or has been granted a skill performance evaluation certificate pursuant to § 391.49;

(2) * * *

(ii) An arm, foot, or leg which interferes with the ability to perform normal tasks associated with operating a commercial motor vehicle; or any other significant limb defect or limitation which interferes with the ability to perform normal tasks associated with operating a commercial motor vehicle; or has been granted a skill performance evaluation certificate pursuant to § 391.49.

* * * * *

3. Section 391.43 is amended by revising paragraphs (c)(1), (d), (f), (g) and (h) to read as follows:

**§ 391.43 Medical examination; certificate of physical qualification.**

* * * * *

(c) * * *

(1) Be knowledgeable of the specific physical and mental demands associated with operating a commercial motor vehicle and the requirements of this subpart, including the medical advisory criteria prepared by the FHWA as guidelines to aid the medical examiner in making the qualification determination; and

* * * * *

(d) Any driver authorized to operate a commercial motor vehicle within an exempt intracity zone pursuant to § 391.62 of this part shall furnish the examining medical examiner with a copy of the medical findings that led to the issuance of the first certificate of medical examination which allowed the driver to operate a commercial motor vehicle wholly within an exempt intracity zone.

* * * * *

(f) The medical examination shall be performed, and its results shall be recorded, substantially in accordance with the following instructions and examination form. Existing forms may be used until current printed supplies are depleted or until November 6, 2001, whichever occurs first.

**Instructions for Performing and Recording Physical Examinations**

The medical examiner must be familiar with 49 CFR 391.41, Physical qualifications for drivers, and should review these instructions before performing the physical examination. Answer each question "yes" or "no" and record numerical readings where indicated on the physical examination form.

The medical examiner must be aware of the rigorous physical, mental, and emotional demands placed on the driver of a commercial motor vehicle. In the interest of public safety, the medical examiner is required to certify that the driver does not have any physical, mental, or organic condition that might affect the driver's ability to operate a commercial motor vehicle safely.

*General information.* The purpose of this history and physical examination is to detect the presence of physical, mental, or organic conditions of such a character and extent as to affect the driver's ability to operate a commercial motor vehicle safely. The examination should be conducted carefully and should at least include all of the information requested in the following form. History of certain conditions may be cause for rejection. Indicate the need for further testing and/or require evaluation by a specialist. Conditions may be recorded which do not, because of their character or degree, indicate that certification of physical fitness should be denied. However, these conditions should be discussed with the driver and he/she should be advised to take the necessary steps to insure correction, particularly of those conditions which, if neglected, might affect the driver's ability to drive safely.

*General appearance and development.* Note marked overweight. Note any postural defect, perceptible limp, tremor, or other conditions that might be caused by alcoholism, thyroid intoxication or other illnesses.

*Head-eyes.* When other than the Snellen chart is used, the results of such test must be expressed in values comparable to the standard Snellen test. If the driver wears corrective lenses for driving, these should be worn while driver's visual acuity is being tested. If contact lenses are worn, there should be sufficient evidence of good tolerance of and adaptation to their use. Indicate the driver's need to wear corrective lenses to meet the vision standard on the Medical Examiner's Certificate by checking the box, "Qualified only when wearing corrective lenses." In recording distance vision use 20 feet as normal. Report all vision as a fraction with 20 as the numerator and the smallest type read at 20 feet as the denominator. Monocular drivers are not qualified to operate commercial motor vehicles in interstate commerce.

*Ears.* Note evidence of any ear disease, symptoms of aural vertigo, or Meniere's Syndrome. When recording hearing, record distance from patient at which a forced whispered voice can first be heard. For the whispered voice test, the individual should be stationed at least 5 feet from the examiner with the ear being tested turned toward the examiner. The other ear is covered. Using the breath which remains after a normal expiration, the examiner whispers words or random numbers such as 66, 18, 23, etc. The examiner should not use only sibilants (s-sounding test materials). The opposite ear should be tested in the same manner. If the individual fails the whispered voice test, the audiometric test should be administered. For the audiometric test, record decibel loss at 500 Hz, 1,000 Hz, and 2,000 Hz. Average the decibel loss at 500 Hz, 1,000 Hz and 2,000 Hz and record as described on the form. If the individual fails the audiometric test and the whispered voice test has not been administered, the whispered voice test should be performed to determine if the standard applicable to that test can be met.

*Throat.* Note any irremediable deformities likely to interfere with breathing or swallowing.

*Heart.* Note murmurs and arrhythmias, and any history of an enlarged heart, congestive heart failure, or cardiovascular disease that is accompanied by syncope, dyspnea, or collapse. Indicate onset date, diagnosis, medication, and any current limitation. An electrocardiogram is required when findings so indicate.

*Blood pressure (BP).* If a driver has hypertension and/or is being medicated for hypertension, he or she should be recertified more frequently. An individual diagnosed with mild hypertension (initial BP is greater than 160/90 but below 181/105) should be certified for one 3-month period and should be recertified on an annual basis thereafter if his or her BP is reduced. An individual diagnosed with moderate to severe hypertension (initial BP is greater than 180/104) should not be certified until the BP has been reduced to the mild range (below 181/105). At that time, a 3-month certification can be issued. Once the driver has reduced his or her BP to below 161/91, he or she should be recertified every 6 months thereafter.

*Lungs.* Note abnormal chest wall expansion, respiratory rate, breath sounds including wheezes or alveolar rales, impaired respiratory function, dyspnea, or cyanosis. Abnormal finds on physical exam may require further testing such as pulmonary tests and/or x-ray of chest.

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*Abdomen and Viscera.* Note enlarged liver, enlarged spleen, abnormal masses, bruits, hernia, and significant abdominal wall muscle weakness and tenderness. If the diagnosis suggests that the condition might interfere with the control and safe operation of a commercial motor vehicle, further testing and evaluation is required.

*Genital-urinary and rectal examination.* A urinalysis is required. Protein, blood or sugar in the urine may be an indication for further testing to rule out any underlying medical problems. Note hernias. A condition causing discomfort should be evaluated to determine the extent to which the condition might interfere with the control and safe operation of a commercial motor vehicle.

*Neurological.* Note impaired equilibrium, coordination, or speech pattern; paresthesia; asymmetric deep tendon reflexes; sensory or positional abnormalities; abnormal patellar and Babinski's reflexes; ataxia. Abnormal neurological responses may be an indication for further testing to rule out an underlying medical condition. Any neurological condition should be evaluated for the nature and severity of the condition, the degree of limitation present, the likelihood of progressive limitation, and the potential for sudden incapacitation. In instances where the medical examiner has determined that more frequent monitoring of a condition is appropriate, a certificate for a shorter period should be issued.

*Spine, musculoskeletal.* Previous surgery, deformities, limitation of motion, and tenderness should be noted. Findings may indicate additional testing and evaluation should be conducted.

*Extremities.* Carefully examine upper and lower extremities and note any loss or impairment of leg, foot, toe, arm, hand, or finger. Note any deformities, atrophy, paralysis, partial paralysis, clubbing, edema, or hypotonia. If a hand or finger deformity exists, determine whether prehension and power grasp are sufficient to enable the driver to maintain steering wheel grip and to control other vehicle equipment during routine and emergency driving operations. If a foot or leg deformity exists, determine whether sufficient mobility and strength exist to enable the driver to operate pedals properly. In the case of any loss or impairment to an extremity which may interfere with the driver's ability to operate a commercial motor vehicle safely, the medical examiner should state on the medical certificate "medically unqualified unless accompanied by a Skill Performance Evaluation Certificate." The driver must then apply to the Field Service Center of the FMCSA, for the State in which the driver has legal residence, for a Skill Performance Evaluation Certificate under § 391.49.

*Laboratory and Other Testing.* Other test(s) may be indicated based upon the medical history or findings of the physical examination.

*Diabetes.* If insulin is necessary to control a diabetic driver's condition, the driver is not qualified to operate a commercial motor vehicle in interstate commerce. If mild diabetes is present and it is controlled by use of an oral hypoglycemic drug and/or diet and exercise, it should not be considered disqualifying. However, the driver must remain under adequate medical supervision.

Upon completion of the examination, the medical examiner must date and sign the form, provide his/her full name, office address and telephone number. The completed medical examination form shall be retained on file at the office of the medical examiner.

BILLING CODE 4910–22–P



# Medical Examination Report

## FOR COMMERCIAL DRIVER FITNESS DETERMINATION

**1.** DRIVER'S INFORMATION — Driver completes this section.

Driver's Name (Last, First, Middle) | Social Security No. | Birthdate M/D/Y | Age | Sex ☐M ☐F | New certification ☐ Recertification ☐ Follow Up | Date of Exam

Address | City, State, Zip Code | Work Tel: ( ) Home Tel: ( ) | Driver License No. | License Class ☐A ☐B ☐C ☐D ☐Other | State of Issue

**2.** HEALTH HISTORY — Driver completes this section, but medical examiner is encouraged to discuss with driver.

| Yes | No | | Yes | No | |
|---|---|---|---|---|---|
| ☐ | ☐ | Any illness or injury in last 5 years? | ☐ | ☐ | Lung disease, emphysema, asthma, chronic bronchitis |
| ☐ | ☐ | Head/Brain injuries, disorders or illnesses | ☐ | ☐ | Kidney disease, dialysis |
| ☐ | ☐ | Seizures, epilepsy ☐ medication | ☐ | ☐ | Liver disease |
| ☐ | ☐ | Eye disorders or impaired vision (except corrective lenses) | ☐ | ☐ | Digestive problems |
| ☐ | ☐ | Ear disorders, loss of hearing or balance | ☐ | ☐ | Diabetes or elevated blood sugar controlled by: ☐ diet ☐ pills ☐ insulin |
| ☐ | ☐ | Heart disease or heart attack; other cardiovascular condition ☐ medication | ☐ | ☐ | Nervous or psychiatric disorders, e.g., severe depression ☐ Medication |
| ☐ | ☐ | Heart surgery (valve replacement/bypass, angioplasty, pacemaker) | ☐ | ☐ | Loss of, or altered consciousness |
| ☐ | ☐ | High blood pressure ☐ medication _____ | ☐ | ☐ | Fainting, dizziness |
| ☐ | ☐ | Muscular disease | ☐ | ☐ | Sleep disorders, pauses in breathing while asleep, daytime sleepiness, loud snoring |
| ☐ | ☐ | Shortness of breath | ☐ | ☐ | Stroke or paralysis |
| | | | ☐ | ☐ | Missing or impaired hand, arm, foot, leg, finger, toe |
| | | | ☐ | ☐ | Spinal injury or disease |
| | | | ☐ | ☐ | Chronic low back pain |
| | | | ☐ | ☐ | Regular, frequent alcohol use |
| | | | ☐ | ☐ | Narcotic or habit forming drug use |

For any YES answer, indicate onset date, diagnosis, treating physician's name and address, and any current limitation. List all medications (including over-the-counter medications) used regularly or recently.

I certify that the above information is complete and true. I understand that inaccurate, false or missing information may invalidate the examination and my Medical Examiner's Certificate.

_____ Date _____

Driver's Signature

**Medical Examiners Comments on Health History** (The medical examiner must review and discuss with the driver any "yes" answers and potential hazards of medications, including over-the-counter medications, while driving.)

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## TESTING (Medical Examiner completes Section 3 through 7)

**3. VISION** **Standard: At least 20/40 acuity (Snellen) in each eye with or without correction. At least 70° peripheral in horizontal meridian measured in each eye. The use of corrective lenses should be noted on the Medical Examiner's Certificate.**

**INSTRUCTIONS:** *When other than the Snellen chart is used, give test results in Snellen-comparable values. In recording distance vision, use 20 feet as normal. Report visual acuity as a ratio with 20 as numerator and the smallest type read at 20 feet as denominator. If the applicant wears corrective lenses, these should be worn while visual acuity is being tested. If the driver habitually wears contact lenses, or intends to do so while driving, sufficient evidence of good tolerance and adaptation to their use must be obvious. Monocular drivers are not qualified.*

**Numerical readings must be provided.**

| ACUITY | UNCORRECTED | CORRECTED | HORIZONTAL FIELD OF VISION |
|---|---|---|---|
| Right Eye | 20/ | 20/ | Right Eye o |
| Left Eye | 20/ | 20/ | Left Eye o |
| Both Eyes | 20/ | 20/ | o |

Applicant can recognize and distinguish among traffic control signals and devices showing standard red, green, and amber colors? ☐ Yes ☐ No

Applicant meets visual acuity requirement only when wearing: ☐ Corrective Lenses

Monocular Vision: ☐ Yes ☐ No

Complete next line only if vision testing is done by an ophthalmologist or optometrist

Date of Examination _____ Name of Ophthalmologist or Optometrist (print) _____ Tel No. _____ License No./State of Issue _____ Signature _____

**4. HEARING** **Standard: a) Must first perceive forced whispered voice ≥ 5 ft., with or without hearing aid, or b) average hearing loss in better ear ≤ 40 dB**

☐ Check if hearing aid used for tests. ☐ Check if hearing aid **required** to meet standard.

**INSTRUCTIONS:** *To convert audiometric test results from ISO to ANSI, -14 dB from ISO for 500 Hz, -10 dB for 1,000 Hz, -8.5 dB for 2,000 Hz. To average, add the readings for 3 frequencies tested and divide by 3.*

**Numerical readings must be recorded.**

| a) Record distance from individual at which forced whispered voice can first be heard. | Right Ear | Left Ear |
|---|---|---|
| | Feet | Feet |

| b) If audiometer is used, record hearing loss in decibels. (acc. to ANSI Z24.5-1951) | Right Ear 500 Hz | 1000 Hz | 2000 Hz | Left Ear 500 Hz | 1000 Hz | 2000 Hz |
|---|---|---|---|---|---|---|
| | Average: | | | Average: | | |

**5. BLOOD PRESSURE / PULSE RATE** **Numerical readings must be recorded.**

| Blood Pressure | Systolic | Diastolic |
|---|---|---|
| | | |

Driver qualified if ≤ 160/90 on initial exam.

| Pulse Rate | ☐ Regular ☐ Irregular |
|---|---|

GUIDELINES FOR BLOOD PRESSURE EVALUATION

| On initial exam | Within 3 months | Certify |
|---|---|---|
| If 161-180 and/or 91-104, Qualify 3 mos. only | If ≤ 160 and/or 90, Qualify for 1 yr. Document Rx & control the 3rd month | Annually if acceptable BP is maintained |
| If > 180 and/or 104, not qualified until reduced to < 181/105. Then qualify for 3 mos. only. | If ≤ 160 and/or 90, qualify for 6 mos. Document Rx & control the 3rd month | Biannually |

*Medical examiner should take at least 2 readings to confirm blood pressure.*

**6. LABORATORY AND OTHER TEST FINDINGS** **Numerical readings must be recorded.**

**Urinalysis is required.** Protein, blood or sugar in the urine may be an indication for further testing to rule out any underlying medical problem.

| URINE SPECIMEN | SP. GR. | PROTEIN | BLOOD | SUGAR |
|---|---|---|---|---|
| | | | | |

Other Testing (*Describe and record*)

_____

_____

_____

_____



**7. PHYSICAL EXAMINATION** Height: _____ (in.) Weight: _____ (lbs)

**The presence of a certain condition may not necessarily disqualify a driver, particularly if the condition is controlled adequately, is not likely to worsen or is readily amenable to treatment. Even if a condition does not disqualify a driver, the medical examiner may consider deferring the driver temporarily. Also, the driver should be advised to take the necessary steps to correct the condition as soon as possible particularly if the condition, if neglected, could result in more serious illness that might affect driving.**

Check YES if there are any abnormalities. Check NO if the body system is normal. Discuss any YES answers in detail in the space below, and indicate whether it would affect the driver's ability to operate a commercial motor vehicle safely. Enter applicable item number before each comment. If organic disease is present, note that it has been compensated for. See *Instructions To The Medical Examiner for guidance.*

| BODY SYSTEM | CHECK FOR: | YES* | NO |
|---|---|---|---|
| 1. General Appearance | Marked overweight, tremor, signs of alcoholism, problem drinking, or drug abuse. | | |
| 2. Eyes | Pupillary equality, reaction to light, accommodation, ocular motility, ocular muscle imbalance, extraocular movement, nystagmus, exophthalmos, strabismus uncorrected by corrective lenses, retinopathy, cataracts, aphakia, glaucoma, macular degeneration. | | |
| 3. Ears | Middle ear disease, occlusion of external canal, perforated eardrums. | | |
| 4. Mouth and Throat | Irremediable deformities likely to interfere with breathing or swallowing. | | |
| 5. Heart | Murmurs, extra sounds, enlarged heart, pacemaker. | | |
| 6. Lungs and chest, not including breast examination. | Abnormal chest wall expansion, abnormal respiratory rate, abnormal breath sounds including wheezes or alveolar rales, impaired respiratory function, dyspnea, cyanosis. Abnormal findings on physical exam may require further testing such as pulmonary tests and/or xray of chest. | | |
| 7. Abdomen and Viscera | Enlarged liver, enlarged spleen, masses, bruits, hernia, significant abdominal wall muscle weakness. | | |
| 8. Vascular system | Abnormal pulse and amplitude, carotid or arterial bruits, varicose veins. | | |
| 9. Genito-urinary system, | Hernias. | | |
| 10. Extremities - Limb impaired. Driver may be subject to SPE certificate if otherwise qualified. | Loss or impairment of leg, foot, toe, arm, hand, finger. Perceptible limp, deformities, atrophy, weakness, paralysis, clubbing, edema, hypotonia. Insufficient grasp and prehension in upper limb to maintain steering wheel grip. Insufficient mobility and strength in lower limb to operate pedals properly. | | |
| 11. Spine, other musculoskeletal | Previous surgery, deformities, limitation of motion, tenderness. | | |
| 12. Neurological | Impaired equilibrium, coordination or speech pattern; paresthesia, asymmetric deep tendon reflexes, sensory or positional abnormalities, abnormal patellar and Babinski's reflexes, ataxia. | | |

* COMMENTS: _____

_____

_____

_____

**Note certification status here.** See Instructions to the Medical Examiner for guidance.

☐ **Meets standards in 49 CFR 391.41; qualifies for 2 year certificate**

☐ **Does not meet standards**

☐ **Meets standards, but periodic evaluation required.**

Due to _____ driver qualified only for:

☐ 3 months ☐ 1 year

☐ 6 months ☐ Other

☐ Temporarily disqualified due to (condition or medication): _____

Return to medical examiner's office for follow up on _____

☐ **Wearing corrective lenses**

☐ **Wearing hearing aid**

☐ **Accompanied by a _____ waiver/exemption**

☐ **Skill Performance Evaluation (SPE) Certificate**

☐ **Driving within an exempt intracity zone.**

☐ **Qualified by operation of 49 CFR 391.64**

Medical Examiner's Signature _____

Medical Examiner's Name (print) _____

Address _____

Telephone Number _____

**If meets standards, complete a Medical Examiner's Certificate according to 49 CFR 391.43(h).** (Driver must carry certificate when operating a commercial vehicle.)

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## 49 CFR 391.41 Physical Qualifications for Drivers

**THE DRIVER'S ROLE**

Responsibilities, work schedules, physical and emotional demands, and lifestyles among commercial drivers vary by the type of driving that they do. Some of the main types of drivers include the following: turn around or short relay (drivers return to their home base each evening); long relay (drivers drive 8-10 hours and then have an 8-hour off-duty period), straight through haul (cross country drivers); and team drivers (drivers share the driving by alternating their 4-hour driving periods and 4-hour rest periods).

The following factors may be involved in a driver's performance of duties: abrupt schedule changes and rotating work schedules, which may result in irregular sleep patterns and a driver beginning a trip in a fatigued condition; long hours; extended time away from family and friends, which may result in lack of social support; tight pickup and delivery schedules, with irregularity in work, rest, and eating patterns, adverse road, weather and traffic conditions, which may cause delays and lead to hurriedly loading or unloading cargo in order to compensate for the lost time; and environmental conditions such as excessive vibration, noise, and extremes in temperature. Transporting passengers or hazardous materials may add to the demands on the commercial driver.

There may be duties in addition to the driving task for which a driver is responsible and needs to be fit. Some of these responsibilities are: coupling and uncoupling trailer(s) from the tractor, loading and unloading trailer(s) (sometimes a driver may lift a heavy load or unload as much as 50,000 lbs. of freight after sitting for a long period of time without any stretching period); inspecting the operating condition of tractor and trailer(s) before, during, and after delivery of cargo; lifting, installing, and removing heavy tire chains; and, lifting heavy tarpaulins to cover open top trailers. The above tasks demand agility, the ability to bend and stoop, the ability to maintain a crouching position to inspect the underside of the vehicle, frequent entering and exiting of the cab, and the ability to climb ladders on the tractor and/or trailer(s).

In addition, a driver must have the perceptual skills to monitor a sometimes complex driving situation, the judgment skills to make quick decisions, when necessary, and the manipulative skills to control an oversize steering wheel, shift gears using a manual transmission, and maneuver a vehicle in crowded areas.

**§ 391.41 PHYSICAL QUALIFICATIONS FOR DRIVERS**

(a) A person shall not drive a commercial motor vehicle unless he is physically qualified to do so and, except as provided in §391.67, has on his person the original, or a photographic copy, of a medical examiner's certificate that he is physically qualified to drive a commercial motor vehicle.

(b) A person is physically qualified to drive a motor vehicle if that person:

(1) Has no loss of a foot, a leg, a hand, or an arm, or has been granted a Skill Performance Evaluation (SPE) Certificate (formerly Limb Waiver Program) pursuant to §391.49.

(2) Has no impairment of: (i) A hand or finger which interferes with prehension or power grasping; or (ii) An arm, foot, or leg which interferes with the ability to perform normal tasks associated with operating a commercial motor vehicle; or any other significant limb defect or limitation which interferes with the ability to perform normal tasks associated with operating a commercial motor vehicle; or has been granted a SPE Certificate pursuant to §391.49.

(3) Has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control;

(4) Has no current clinical diagnosis of myocardial infarction, angina pectoris, coronary insufficiency, thrombosis, or any other cardiovascular disease of a variety known to be accompanied by syncope, dyspnea, collapse, or congestive cardiac failure.

(5) Has no established medical history or clinical diagnosis of a respiratory dysfunction likely to interfere with his ability to control and drive a commercial motor vehicle safely.

(6) Has no current clinical diagnosis of high blood pressure likely to interfere with his ability to operate a commercial motor vehicle safely.

(7) Has no established medical history or clinical diagnosis of rheumatic, arthritic, orthopedic, muscular, neuromuscular, or vascular disease which interferes with his ability to control and operate a commercial motor vehicle safely.

(8) Has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a commercial motor vehicle;

(9) Has no mental, nervous, organic, or functional disease or psychiatric disorder likely to interfere with his ability to drive a commercial motor vehicle safely;

(10) Has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70 degrees in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green and amber;

(11) First perceives a forced whispered voice in the better ear not less than 5 feet with or without the use of a hearing aid, or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5-1951;

(12) (i) Does not use a controlled substance identified in 21 CFR 1308.11 Schedule I, an amphetamine, a narcotic, or any other habit-forming drug. (ii) Exception: A driver may use such a substance or drug, if the substance or drug is prescribed by a licensed medical practitioner who: (A) Is familiar with the driver's medical history and assigned duties; and (B) Has advised the driver that the prescribed substance or drug will not adversely affect the driver's ability to safely operate a commercial motor vehicle; and

(13) Has no current clinical diagnosis of alcoholism.



## INSTRUCTIONS TO THE MEDICAL EXAMINER

### General Information

The purpose of this examination is to determine a driver's physical qualification to operate a commercial motor vehicle (CMV) in interstate commerce according to the requirements in 49 CFR 391.41-49. Therefore, the medical examiner must be knowledgeable of these requirements and guidelines developed by the FMCSA to assist the medical examiner in making the qualification determination. The medical examiner should be familiar with the driver's responsibilities and work environment and is referred to the section on the form, The Driver's Role.

In addition to reviewing the Health History section with the driver and conducting the physical examination, the medical examiner should discuss common prescriptions and over-the-counter medications relative to the side effects ad hazards of these medications while driving. Educate driver to read warning labels on all medications. History of certain conditions may be cause for rejection, particularly if required by regulation, or may indicate the need for additional laboratory tests or more stringent examination perhaps by a medical specialist. These decisions are usually made by the medical examiner in light of the driver's job responsibilities, work schedule and potential for the condition to render the driver unsafe.

Medical conditions should be recorded even if they are not cause for denial, and they should be discussed with the driver to encourage appropriate remedial care. This advice is especially needed when a condition, if neglected, could develop into a serious illness that could affect driving.

If the medical examiner determines that the driver is fit to drive and is also able to perform non-driving responsibilities as may be required, the medical examiner signs the medical certificate which the driver must carry with his/her license. The certificate must be dated. Under current regulations, the certificate is valid for two years, unless the driver has a medical condition that does not prohibit driving but does require more frequent monitoring. In such situations, the medical certificate should be issued for a shorter length of time. The physical examination should be done carefully and at least as complete as is indicated by the attached form. Contact the FMCSA at (202) 366-1790 for further information (a vision exemption, qualifying drivers under 49 CFR 391.64, etc.).

### Interpretation of Medical Standards

Since the issuance of the regulations for physical qualifications of commercial drivers, the Federal Motor Carrier Safety Administration (FMCSA) has published recommendations called Advisory Criteria to help medical examiners in determining whether a driver meets the physical qualifications for commercial driving. These recommendations have been condensed to provide information to medical examiners that (i) is directly relevant to the physical examination and (2) is not already included in the medical examination form. The specific regulation is printed in italics and its reference by section is highlighted.

### Federal Motor Carrier Safety Regulations - Advisory Criteria -

**Loss of Limb:**
**§ 391.41(b)(1)**
A person is physically qualified to drive a commercial motor vehicle if that person:
*Has no loss of a foot, leg, hand or an arm, or has been granted a Skill Performance Evaluation (SPE) Certificate pursuant to Section 391.49.*

**Limb Impairment:**
**§ 391.41(b)(2)**
A person is physically qualified to drive a commercial motor vehicle if that person:
*Has no impairment of: (i) A hand or finger which interferes with prehension or power grasping; or (ii) An arm, foot, or leg which interferes with the ability to perform normal tasks associated with operating a commercial motor vehicle; or (iii) Any other significant limb defect or limitation which interferes with the ability to perform normal tasks associated with operating a commercial motor vehicle; or (iv) Has been granted a Skill Performance Evaluation Certificate pursuant to Section 391.49.*

A person who suffers loss of a foot, leg, hand or arm or whose limb impairment in any way interferes with the safe performance of normal tasks associated with operating a commercial motor vehicle is subject to the Skill Performance Evaluation (SPE) Certification Program pursuant to section 391.49, assuming the person is otherwise qualified.

With the advancement of technology, medical aids and equipment modifications have been developed to compensate for certain disabilities. The SPE Certification Program (formerly the Limb Waiver Program) was designed to allow persons with the loss of a foot or limb or with functional impairment to qualify under the Federal Motor Carrier Safety Regulations (FMCSRs) by use of prosthetic devices or equipment modifications which enable them to safely operate a commercial motor vehicle. Since there are no medical aids equivalent to the original body or limb, certain risks are still present, and thus restrictions may be included on individual SPE certificates when a State Director for the FMCSA determines they are necessary to be consistent with safety and public interest.

If the driver is found otherwise medically qualified (391.41(b)(3) through (13)), the medical examiner must check on the medical certificate that the driver is qualified only if accompanied by a SPE certificate. The driver and the employing motor carrier are subject to appropriate penalty if the driver operates a motor vehicle in interstate or foreign commerce without a current SPE certificate for his/her physical disability.

**Diabetes**
**§ 391.41(b)(3)**
A person is physically qualified to drive a commercial motor vehicle if that person:
*Has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control.*

Diabetes mellitus is a disease which, on occasion, can result in a loss of consciousness or disorientation in time and space. Individuals who require insulin for control have conditions which can get out of control by the use of too much or too little insulin, or food intake not consistent with the insulin dosage. Incapacitation may occur from symptoms of hyperglycemic or hypoglycemic reactions (drowsiness, semiconsciousness, diabetic coma or insulin shock).

The administration of insulin is, within itself, a complicated process requiring insulin, syringe, needle, alcohol sponge and a sterile technique. Factors related to long-haul commercial motor vehicle operations, such as fatigue, lack of sleep, poor diet, emotional conditions, stress, and concomitant illness, compound the diabetic problem. Thus, because of these inherent dangers, the FMCSA has consistently held that a diabetic who uses insulin for control does not meet the minimum physical requirements of the FMCSRs.

Hypoglycemic drugs, taken orally, are sometimes prescribed for diabetic individuals to help stimulate natural body production of insulin. If the condition can be controlled by the use of oral medication and diet, then an individual may be qualified under the present rule.
(See Conference Report on Diabetic Disorders and Commercial Drivers and Insulin-Using Commercial Motor Vehicle Drivers at:
*http://www.fmcsa.dot.gov/rulesregs/medreports.htm)*

**Cardiovascular Condition**
**§ 391.41(b)(4)**
A person is physically qualified to drive a commercial motor vehicle if that person:
*Has no current clinical diagnosis of myocardial infarction, angina pectoris, coronary insufficiency, thrombosis or any other cardiovascular disease of a variety known to be accompanied by syncope, dyspnea, collapse or congestive cardiac failure.*

The term "has no current clinical diagnosis of" is specifically designed to encompass: *"a clinical diagnosis of"* (i) a current cardiovascular condition, or (2) a cardiovascular condition which has not fully stabilized regardless of the time limit. The term *"known to be accompanied by"* is defined to include: a *clinical diagnosis of* a cardiovascular disease (1) which is

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accompanied by symptoms of syncope, dyspnea, collapse or congestive cardiac failure; and/or (2) which is likely to cause syncope, dyspnea, collapse or congestive cardiac failure.

It is the intent of the FMCSRs to render unqualified a driver who has a current cardiovascular disease which is accompanied by and/or likely to cause symptoms of syncope, dyspnea, collapse, or congestive cardiac failure. However, the subjective decision of whether the nature and severity of an individual's condition will likely cause symptoms of cardiovascular insufficiency is on an individual basis and qualification rests with the medical examiner and the motor carrier. In those cases where there is an occurrence of cardiovascular insufficiency (myocardial infarction, thrombosis, etc.), it is suggested before a driver is certified that he or she have a normal resting and stress electrocardiogram (ECG), no residual complications and no physical limitations, and is taking no medication likely to interfere with safe driving.

Coronary artery bypass surgery and pacemaker implantation are remedial procedures and thus, not unqualifying. Coumadin is a medical treatment which can improve the health and safety of the driver and should not, by its use, medically disqualify the commercial driver. The emphasis should be on the underlying medical condition(s) which require treatment and the general health of the driver. The FMCSA should be contacted at (202) 366-1790 for additional recommendations regarding the physical qualification of drivers on coumadin.

(See Conference on Cardiac Disorders and Commercial Drivers at: http://www.fmcsa.dot.gov/rulesregs/medreports.htm)

**Respiratory Dysfunction**

**§ 391.41(b)(5)**

A person is physically qualified to drive a commercial motor vehicle if that person:

*Has no established medical history or clinical diagnosis of a respiratory dysfunction likely to interfere with ability to control and drive a commercial motor vehicle safely.*

Since a driver must be alert at all times, any change in his or her mental state is in direct conflict with highway safety. Even the slightest impairment in respiratory function under emergency conditions (when greater oxygen supply is necessary for performance) may be detrimental to safe driving.

There are many conditions that interfere with oxygen exchange and may result in incapacitation, including emphysema, chronic asthma, carcinoma, tuberculosis, chronic bronchitis and sleep apnea. If the medical examiner detects a respiratory dysfunction, that in any way is likely to interfere with the driver's ability to safely control and drive a commercial motor vehicle, the driver must be referred to a specialist for further evaluation and therapy. Anticoagulation therapy for deep vein thrombosis and/or pulmonary thromboembolism is not unqualifying once optimum dose is achieved, provided lower extremity venous examinations remain normal and the treating physician gives a favorable recommendation.

(See Conference on Pulmonary/Respiratory Disorders and Commercial Drivers at: http://www.fmcsa.dot.gov/rulesregs/medreports.htm)

**Hypertension**

**§ 391.41(b)(6)**

A person is physically qualified to drive a commercial motor vehicle if that person:

*Has no current clinical diagnosis of high blood pressure likely to interfere with ability to operate a commercial motor vehicle safely.*

Hypertension alone is unlikely to cause sudden collapse; however, the likelihood increases when target organ damage, particularly cerebral vascular disease, is present. This regulatory criteria is based on FMCSA's Cardiac Conference recommendations, which used the report of the 1984 Joint National Committee on Detection, Evaluation, and Treatment of High Blood Pressure.

A blood pressure of 161-180 and/or 91-104 diastolic is considered mild hypertension, and the driver is not necessarily unqualified during evaluation and institution of treatment. The driver is given a 3-month period to reduce his or her blood pressure to less than or equal to 160/90; the certifying physician should state on the medical certificate that it is only valid for that 3-month period. If the driver is subsequently found qualified with a blood pressure less than or equal to 160/90, the certifying physician may issue a medical certificate for a 1-year period, but should confirm blood pressure control in the third month of this 1-year period. The individual should be certified annually thereafter. The expiration date must be stated on the medical certificate.

A blood pressure of greater than 180 systolic and/or greater than 104 diastolic is considered moderate to severe. The driver may not be qualified, even temporarily, until his or her blood pressure has been reduced to less than 181/105. The examining physician may temporarily certify the individual once the individual's blood pressure is below 181 and/or 105. For blood pressure greater than 180 and/or 104, documentation of continued control should be made every 6 months. The individual should be certified biannually thereafter. The expiration date must be stated on the medical certificate. Commercial drivers who present for certification with normal blood pressures but are taking medication(s) for hypertension should be certified on the same basis as individuals who present with blood pressures in the mild or moderate to severe range. Annual recertification is recommended if the medical examiner is unable to establish the blood pressure at the time of diagnosis.

An elevated blood pressure finding should be confirmed by at least two subsequent measurements on different days. Inquiry should be made regarding smoking, cardiovascular disease in relatives, and immoderate use of alcohol. An electrocardiogram (ECG) and blood profile, including glucose, cholesterol, HDL cholesterol, creatinine and potassium, should be made. An echocardiogram and chest x-ray are desirable in subjects with moderate or severe hypertension.

Since the presence of target damage increases the risk of sudden collapse, group 3 or 4 hypertensive retinopathy, left ventricular hypertrophy not otherwise explained (echocardiography or ECG by Estes criteria), evidence of severely reduced left ventricular function, or serum creatinine of greater than 2.5 warrants the driver being found unqualified to operate a commercial motor vehicle in interstate commerce.

Treatment includes nonpharmacologic and pharmacologic modalities as well as counseling to reduce other risk factors. Most antihypertensive medications also have side effects, the importance of which must be judged on an individual basis. Individuals must be alerted to the hazards of these medications while driving. Side effects of somnolence or syncope are particularly undesirable in commercial drivers.

A commercial driver who has normal blood pressure 3 or more months after a successful operation for pheochromocytoma, primary aldosteronism (unless bilateral adrenalectomy has been performed), renovascular disease, or unilateral renal parenchymal disease, and who shows no evidence of target organ may be qualified. Hypertension that persists despite surgical intervention with no target organ disease should be evaluated and treated following the guidelines set forth above. (See Conference on Cardiac Disorders and Commercial Drivers at: http://www.fmcsa.dot.gov/rulesregs/medreports.htm)

**Rheumatic, Arthritic, Orthopedic, Muscular, Neuromuscular or Vascular Disease**

**§ 391.41(b)(7)**

A person is physically qualified to drive a commercial motor vehicle if that person:

*Has no established medical history or clinical diagnosis of rheumatic, arthritic, orthopedic, muscular, neuromuscular or vascular disease which interferes with ability to control and operate a commercial motor vehicle safely.*

Certain diseases are known to have acute episodes of transient muscle weakness, poor muscular coordination (ataxia), abnormal sensations (paresthesia), decreased muscular tone (hypotonia), visual disturbances and pain which may be suddenly incapacitating. With each recurring episode, these symptoms may become more pronounced and remain for longer periods of time. Other diseases have more insidious onsets and display symptoms of muscle wasting (atrophy), swelling and paresthesia which may not suddenly incapacitate a person but may restrict his/her movements and eventually interfere with the ability to safely operate a motor vehicle. In many instances these diseases are degenerative in nature or may result in deterioration of the involved area.

Once the individual has been diagnosed as having a rheumatic, arthritic, orthopedic, muscular, neuromuscular or vascular disease, then he/she has an established history of that disease. The physician, when examining an individual, should consider the following: (1) the nature and severity of the individual's condition (such as sensory loss or loss of strength); (2) the degree of limitation present (such as range of motion); (3) the likelihood of progressive limitation (not always present initially but may manifest itself over time); and (4) the likelihood of sudden incapacitation. If severe functional impairment exists, the driver does not qualify. In cases where more frequent monitoring is required, a certificate for a shorter time period may be issued.

(See Conference on Neurological Disorders and Commercial Drivers at: http://www.fmcsa.dot.gov/rulesregs/medreports.htm)



**Epilepsy**

**§ 391.41(b)(8)**

A person is physically qualified to drive a commercial motor vehicle if that person:

*Has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a motor vehicle.*

Epilepsy is a chronic functional disease characterized by seizures or episodes that occur without warning, resulting in loss of voluntary control which may lead to loss of consciousness and/or seizures. Therefore, the following drivers cannot be qualified: (l) a driver who has a medical history of epilepsy; (2) a driver who has a current clinical diagnosis of epilepsy; or (3) a driver who is taking antiseizure medication.

If an individual has had a sudden episode of a nonepileptic seizure or loss of consciousness of unknown cause which did not require antiseizure medication, the decision as to whether that person's condition will likely cause loss of consciousness or loss of ability to control a motor vehicle is made on an individual basis by the medical examiner in consultation with the treating physician. Before certification is considered, it is suggested that a 6-month waiting period elapse from the time of the episode. Following the waiting period, it is suggested that the individual have a complete neurological examination. If the results of the examination are negative and antiseizure medication is not required, then the driver may be qualified.

In those individual cases where a driver has a seizure or an episode of loss of consciousness that resulted from a known medical condition (e.g., drug reaction, high temperature, acute infectious disease, dehydration or acute metabolic disturbance), certification should be deferred until the driver has fully recovered from that condition and has no existing residual complications, and not taking antiseizure medication.

(See Conference on Neurological Disorders and Commercial Drivers at: http://www.fmcsa.dot.gov/rulesregs/medreports.htm)

**Mental Disorders**

**§ 391.41(b)(9)**

A person is physically qualified to drive a commercial motor vehicle if that person:

*Has no mental, nervous, organic or functional disease or psychiatric disorder likely to interfere with ability to drive a motor vehicle safely.*

Emotional or adjustment problems contribute directly to an individual's level of memory, reasoning, attention and judgment. These problems often underlie physical disorders. A variety of functional disorders can cause drowsiness, dizziness, confusion, weakness or paralysis that may lead to incoordination, inattention, loss of functional control and susceptibility to accidents while driving. Physical fatigue, headache, impaired coordination, recurring physical ailments and chronic "nagging" pain may be present to such a degree that certification for commercial driving is inadvisable. Somatic and psychosomatic complaints should be thoroughly examined when determining an individual's overall fitness to drive. Disorders of a periodically incapacitating nature, even in the early stages of development, may warrant disqualification.

Many bus and truck drivers have documented that "nervous trouble" related to neurotic, personality, emotional or adjustment problems is responsible for a significant fraction of their preventable accidents. The degree to which an individual is able to appreciate, evaluate and adequately respond to environmental strain and emotional stress is critical when assessing an individual's mental alertness and flexibility to cope with the stresses of commercial motor vehicle driving.

When examining the driver, it should be kept in mind that individuals who live under chronic emotional upsets may have deeply ingrained maladaptive or erratic behavior patterns. Excessively antagonistic, instinctive, impulsive, openly aggressive, paranoid or severely depressed behavior greatly interfere with the driver's ability to drive safely. Those individuals who are highly susceptible to frequent states of emotional instability (schizophrenia, affective psychoses, paranoia, anxiety or depressive neuroses) may warrant disqualification. Careful consideration should be given to the side effects and interactions of medications in the overall qualification determination. See Psychiatric Conference Report for specific recommendations on the use of these medications and potential hazards for driving.

(See Conference on Psychiatric Disorders and Commercial Drivers at: http://www.fmcsa.dot.gov/rulesregs/medreports.htm)

**Vision**

**§ 391.41(b)(10)**

A person is physically qualified to drive a commercial motor vehicle if that person:

*Has distant visual acuity of at least 20/40 (Snellen) in each eye with or without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70 degrees in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber.*

The term "ability to recognize the colors of" is interpreted to mean if a person can recognize and distinguish among traffic control signals and devices showing standard red, green and amber, he or she meets the minimum standard, even though he or she may have some type of color perception deficiency. If certain color perception tests are administered, (such as Ishihara, Pseudoisochromatic, Yarn) and doubtful findings are discovered, a controlled test using signal red, green and amber may be employed to determine the driver's ability to recognize these colors.

Contact lenses are permissible if there is sufficient evidence to indicate that the driver has good tolerance and is well adapted to their use. Use of a contact lens in one eye for distance visual acuity and another lens in the other eye for near vision is not acceptable, nor telescopic lenses acceptable for the driving of commercial motor vehicles.

If an individual meets the criteria by the use of glasses or contact lenses, the following statement shall appear on the Medical Examiner's Certificate: "Qualified only if wearing corrective lenses".

(See Visual Disorders and Commercial Drivers at: http://www.fmcsa.dot.gov/rulesregs/medreports.htm)

**Hearing**

**§ 391.41(b)(11)**

A person is physically qualified to drive a commercial motor vehicle if that person:

*First perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid, or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5-1951.*

Since the prescribed standard under the FMCSRs is the American Standards Association (ANSI), it may be necessary to convert the audiometric results from the ISO standard to the ANSI standard. Instructions are included on the Medical Examination report form.

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If an individual meets the criteria by using a hearing aid, the driver must wear that hearing aid and have it in operation at all times while driving. Also, the driver must be in possession of a spare power source for the hearing aid.

For the whispered voice test, the individual should be stationed at least 5 feet from the examiner with the ear being tested turned toward the examiner. The other ear is covered. Using the breath which remains after a normal expiration, the examiner whispers words or random numbers such as 66, 18, 23, etc. The examiner should not use only sibilants (s-sounding test materials). The opposite ear should be tested in the same manner. If the individual fails the whispered voice test, the audiometric test should be administered.

If an individual meets the criteria by the use of a hearing aid, the following statement must appear on the Medical Examiner's Certificate "Qualified only when wearing a hearing aid".

(See Hearing Disorders and Commercial Motor Vehicle Drivers at:
http://www.fmcsa.dot.gov/rulesregs/medreports.htm)

**Drug Use**
**§ 391.41(b)(12)**

A person is physically qualified to drive a commercial motor vehicle if that person:

*Does not use a controlled substance identified in 21 CFR 1308.ll. Schedule I, an amphetamine, a narcotic, or any other habit-forming drug. Exception: A driver may use such a substance or drug, if the substance or drug is prescribed by a licensed medical practitioner who is familiar with the driver's medical history and assigned duties; and has advised the driver that the prescribed substance or drug will not adversely affect the driver's ability to safely operate a commercial motor vehicle.*

This exception does not apply to methadone. The intent of the medical certification process is to medically evaluate a driver to ensure that the driver has no medical condition which interferes with the safe performance of driving tasks on a public road. If a driver uses a Schedule I drug or other substance, an amphetamine, a narcotic, or any other habit-forming drug, it may be cause for the driver to be found medically unqualified. Motor carriers are encouraged to obtain a practitioner's written statement about the effects on transportation safety of the use of a particular drug.

A test for controlled substances is not required as part of this biennial certification process. The FMCSA or the driver's employer should be contacted directly for information on controlled substances and alcohol testing under Part 382 of the FMCSRs.

The term "uses" is designed to encompass instances of prohibited drug use determined by a physician through established medical means. This may or may not involve body fluid testing. If body fluid testing takes place, positive test results should be confirmed by a second test of greater specificity. The term "habit- forming" is intended to include any drug or medication generally recognized as capable of becoming habitual, and which may impair the user's ability to operate a commercial motor vehicle safely.

The driver is medically unqualified for the duration of the prohibited drug(s) use and until a second examination shows the driver is free from the prohibited drug(s) use. Recertification may involve a substance abuse evaluation, the successful completion of a drug rehabilitation program, and a negative drug test result. Additionally, given that the certification period is normally two years, the examiner has the option to certify for a period of less than 2 years if this examiner determines more frequent monitoring is required. (See Conference on Neurological Disorders and Commercial Drivers and Conference on Psychiatric Disorders and Commercial Drivers at:
http://www.fmcsa.dot.gov/rulesregs/medreports.htm)

**Alcoholism**
**§ 391.41(b)(13)**

A person is physically qualified to drive a commercial motor vehicle if that person:

*Has no current clinical diagnosis of alcoholism.*

The term "current clinical diagnosis of" is specifically designed to encompass a current alcoholic illness or those instances where the individual's physical condition has not fully stabilized, regardless of the time element. If an individual shows signs of having an alcohol-use problem, he or she should be referred to a specialist. After counseling and/or treatment, he or she may be considered for certification.



(g) If the medical examiner finds that the person he/she examined is physically qualified to drive a commercial motor vehicle in accordance with § 391.41(b), the medical examiner shall complete a certificate in the form prescribed in paragraph (b) of this section and furnish one copy to the person who was examined and one copy to the motor carrier that employs him/her.

(h) The medical examiner's certificate shall be substantially in accordance with the following form. Existing forms may be used until current printed supplies are depleted or until November 6, 2001, whichever occurs first.

**MEDICAL EXAMINER'S CERTIFICATE**

I certify that I have examined _____ in accordance with the Federal Motor Carrier Safety Regulations (49 CFR 391.41-391.49) and with knowledge of the driving duties, I find this person is qualified; and, if applicable, only when:

- ☐ wearing corrective lenses
- ☐ wearing hearing aid
- ☐ accompanied by a _____ waiver/exemption
- ☐ driving within an exempt intracity zone (49 CFR 391.62)
- ☐ accompanied by a Skill Performance Evaluation Certificate (SPE)
- ☐ Qualified by operation of 49 CFR 391.64

The information I have provided regarding this physical examination is true and complete. A complete examination form with any attachment embodies my findings completely and correctly, and is on file in my office.

| SIGNATURE OF MEDICAL EXAMINER | TELEPHONE | DATE |
|---|---|---|
| | | |

| MEDICAL EXAMINER'S NAME (PRINT) | ☐ MD ☐ DO ☐ Physician Assistant | ☐ Chiropractor ☐ Advanced Practice Nurse |
|---|---|---|
| | | |

MEDICAL EXAMINER'S LICENSE OR CERTIFICATE NO. / ISSUING STATE

| SIGNATURE OF DRIVER | DRIVER'S LICENSE NO. | STATE |
|---|---|---|
| | | |

ADDRESS OF DRIVER

MEDICAL CERTIFICATE EXPIRATION DATE

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**§ 391.49 [Amended]**

4. Section 391.49 is amended in paragraph (d)(2) by revising the erroneous reference "§ 391.43(e)" to read "§ 391.43(h)".

[FR Doc. 00–25337 Filed 10–4–00; 8:45 am]
BILLING CODE 4910–22–C

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 679

**[Docket No. 000211039-0039-01; I.D. 092900A]**

### Fisheries of the Exclusive Economic Zone Off Alaska; Shortraker and Rougheye Rockfish in the Eastern Regulatory Area of the Gulf of Alaska

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Closure.

**SUMMARY:** NMFS is prohibiting retention of shortraker and rougheye rockfish in the Eastern Regulatory Area of the Gulf of Alaska (GOA). NMFS is requiring that catch of shortraker and rougheye rockfish in this area be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the amount of the 2000 total allowable catch (TAC) of shortraker and rougheye rockfish in this area has been reached.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), October 2, 2000, until 2400 hrs, A.l.t., December 31, 2000.

**FOR FURTHER INFORMATION CONTACT:** Nick Hindman 907-586-7006 or nick.hindman@noaa.gov.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The amount of the 2000 TAC of shortraker and rougheye rockfish in the Eastern Regulatory Area of the GOA was established as 590 metric tons by the Final 2000 Harvest Specifications of Groundfish for the GOA (65 FR 8298, February 18, 2000). See § 679.20(c)(3)(ii).

In accordance with § 679.20(d)(2), the Administrator, Alaska Region, NMFS, has determined that the amount of the 2000 TAC for shortraker and rougheye rockfish in the Eastern Regulatory Area of the GOA has been reached. Therefore, NMFS is requiring that further catches of shortraker and rougheye rockfish in the Eastern Regulatory Area of the GOA be treated as prohibited species in accordance with § 679.21(b).

### Classification

This action responds to the best available information recently obtained from the fishery. NMFS finds that implementing this action immediately to prevent overharvesting the amount of the 2000 TAC for shortraker and rougheye rockfish in the Eastern Regulatory Area of the GOA constitutes good cause to waive the requirement to provide prior notice and the opportunity for public comment pursuant to authority set forth at 5 U.S.C. 553(b)(B) as such procedure would be impracticable and contrary to the public interest. Moreover, the fleet has taken the amount of the 2000 TAC for shortraker and rougheye rockfish in the Eastern Regulatory Area of the GOA. As further delay would only result in overharvest, NMFS finds that this constitutes good cause under 5 U.S.C. 553(d), to waive the delay in the effective date.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: October 2, 2000.

**Clarence Pautzke,**

*Director, Office of Sustainable Fisheries; National Marine Fisheries Service.*

[FR Doc. 00–25621 Filed 10–2–00; 4:30 pm]
BILLING CODE: 3510–22 –S



# Proposed Rules

Federal Register
Vol. 65, No. 194
Thursday, October 5, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 2000–NM–205–AD]**

**RIN 2120–AA64**

### Airworthiness Directives; Boeing Model 737–200, –200C, –300, and –400 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes to revise an existing airworthiness directive (AD), applicable to certain Boeing Model 737–200, –200C, –300, and –400 series airplanes, that currently requires repetitive visual and high frequency eddy current (HFEC) inspections to detect cracking of the corners of the door frame and the cross beams of the aft cargo door, and corrective actions, if necessary. That amendment also mandates accomplishment of a modification to the aft cargo door, which would terminate the repetitive inspection requirements. This action would revise the compliance time of the terminating action. The actions specified by this proposal are intended to prevent fatigue cracking of the corners of the doorframe and the crossbeams of the aft cargo door, which could result in rapid depressurization of the airplane.

**DATES:** Comments must be received by November 20, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–205–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via the Internet must contain "Docket No. 2000–NM–205–AD" in the subject line and need not be submitted in triplicate.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Nancy Marsh, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–2028; telephone (425) 227–2557; fax (425) 227–1181.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–205–AD." The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–205–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

### Discussion

On March 24, 2000, the FAA issued AD 2000–06–13, amendment 39–11654 (65 FR 17583, April 4, 2000), applicable to certain Boeing Model 737–200, –200C, –300, and –400 series airplanes, to require repetitive visual inspections and repetitive high frequency eddy current (HFEC) inspections to detect cracking of the corners of the door frame and the cross beams of the aft cargo door, and corrective actions, if necessary. That amendment also mandates accomplishment of a modification to the aft cargo door that terminates the repetitive inspection requirements. The actions specified by that AD are intended to prevent fatigue cracking of the corners of the door frame and the cross beams of the aft cargo door, which could result in rapid depressurization of the airplane.

### Actions Since Issuance of Previous Rule

Since the issuance of that AD, the FAA has reviewed AD 2000–06–13 and determined that the compliance times specified for the terminating action in paragraph (e) of that AD can be relaxed somewhat. Paragraph (e) of that AD states the compliance times as, "prior to the accumulation of 12,000 total flight cycles, or within 4 years after the effective date of this AD, whichever occurs later." However, the FAA now has determined that the terminating action (modification of the aft cargo door) could be accomplished within "12,000 flight cycles or 4 years after the effective date of this AD, whichever occurs later." The revision to the compliance time will permit a reasonable and adequate amount of time for operators to accomplish the

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terminating action, and will not adversely affect safety.

**Editorial Explanation**

The FAA also has noted that in paragraphs (a)(2), (a)(3), (a)(4), and Note 2 of AD 2000–06–13, reference is made to performing certain actions in accordance with certain paragraphs (*i.e.*, paragraph III.C., paragraph III.E., or paragraph III.F) of part 1 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–52A1079, Revision 6, dated November 18, 1999. While those specific paragraph references are correct for references to Revision 5 of the Boeing Alert Service Bulletin, they are not the correct paragraph references of Revision 6 of the alert service bulletin. However, the correct reference section for both Revision 5 and Revision 6 is still in part 1 of the Accomplishment Instructions. Therefore, the FAA has deleted the references to specific paragraphs of part 1 of the Accomplishment Instructions of the alert service bulletin and retained reference only to part 1. Specifying that the actions must be accomplished in accordance with "Part 1 of the Accomplishment Instructions" of either revision will clarify and correct the appropriate references.

**Explanation of Requirements of Proposed Rule**

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would revise AD 2000–06–13 to continue to require repetitive visual and HFEC inspections to detect cracking of the corners of the door frame and the cross beams of the aft cargo door, and corrective actions, if necessary. This proposal also would relieve the existing compliance time for the terminating action required by AD 2000–06–13 to modify the aft cargo door.

**Cost Impact**

There are approximately 1,636 Model 737 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 707 airplanes of U.S. registry would be affected by this AD.

The detailed visual inspections that currently are required by AD 2000–06–13, and retained in this AD, would take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required inspections on U.S. operators is estimated to be $84,840, or $120 per airplane, per inspection cycle.

The high frequency eddy current inspections that would be required by this proposal would take approximately 4 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed inspections on U.S. operators is estimated to be $169,680, or $240 per airplane, per inspection cycle.

The modification proposed in this action would take approximately 144 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $4,530 per airplane. Based on these figures, the estimated cost impact of the proposed modification on U.S. operators is estimated to be $9,311,190, or $13,170 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

**Regulatory Impact**

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by removing amendment 39–11654 (65 FR 17583, April 4, 2000), and by adding a new airworthiness directive (AD), to read as follows:

**Boeing:** Docket 2000–NM–205–AD. Revises AD 2000–06–13, Amendment 39–11654.

*Applicability:* The following airplane models, certificated in any category.

- Model 737–200 and –200C series airplanes, line numbers 6 through 873 inclusive;
- Model 737–200, –200C, –300, and –400 series airplanes; line numbers 874 through 1642 inclusive; equipped with an aft cargo door having Boeing part number (P/N) 65–47952–1 or P/N 65–47952–524;

excluding:

1. Those airplanes on which that door has been modified in accordance with Boeing Service Bulletin 737–52–1079; or

2. Those airplanes on which the door assembly having P/N 65–47952–524 includes four straps (P/N's 65–47952–139, 65–47952–140, 65–47952–141, and 65–47952–142) and a thicker lower cross beam web (P/N 65–47952–157).

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent fatigue cracking of the corners of the doorframe and the cross beams of the aft cargo door, which could result in rapid depressurization of the airplane, accomplish the following:

**Restatement of the Requirements of AD 98–25–06**

*Inspections and Corrective Actions*

(a) Within 90 days or 700 flight cycles after December 24, 1998 (the effective date of AD 98–25–06, amendment 39–10931), whichever occurs later, perform an internal detailed visual inspection to detect cracking of the corners of the door frame and the cross beams of the aft cargo door, in accordance with Boeing Service Bulletin 737–52–1079, Revision 5, dated May 16, 1996, or Boeing Alert Service Bulletin 737–52A1079, Revision 6, dated November 18, 1999.

(1) If no cracking is detected, accomplish the requirements of either paragraph (a)(1)(i) or (a)(1)(ii) of this AD.

(i) Repeat the internal visual inspection thereafter at intervals not to exceed 4,500 flight cycles. Or

(ii) Prior to further flight, modify the corners of the doorframe and the crossbeams of the aft cargo door in accordance with the service bulletin. Accomplishment of such modification constitutes terminating action for the repetitive inspection requirements of paragraph (a)(1)(i) of this AD.

(2) If any cracking is detected in the upper or lower cross beams, prior to further flight, modify the cracked beam in accordance with Part I of the Accomplishment Instructions of the service bulletin. Accomplishment of such modification constitutes terminating action for the repetitive inspection requirements of paragraph (a)(1)(i) of this AD for the repaired beam.

(3) If any cracking is detected in the forward or aft upper door frame, prior to further flight, repair the frame and modify the corners of the door frame of the aft cargo door, in accordance with Part I of the Accomplishment Instructions of the service bulletin, except as provided by paragraph (b) of this AD. Accomplishment of such modification constitutes terminating action for the repetitive inspection requirements of paragraph (a)(1)(i) of this AD for the upper doorframe.

**Note 2:** Cracks of the forward or aft upper door frame, regardless of length, must be repaired prior to further flight in accordance with Part I of the Accomplishment Instructions of the service bulletin.

(4) If any cracking is detected in the forward or aft lower door frame, prior to further flight, replace the damaged frame with a new frame, and modify the corners of the door frame of the aft cargo door, in accordance with Part I of the Accomplishment Instructions of the service bulletin. Accomplishment of such modification constitutes terminating action for the repetitive inspection requirements of paragraph (a)(1)(i) of this AD for the lower doorframe.

(b) Where Boeing Service Bulletin 737–52–1079, Revision 5, dated May 16, 1996, or Boeing Alert Service Bulletin, 737–52A1079, Revision 6, dated November 18, 1999, specifies that certain repairs are to be accomplished in accordance with instructions received from Boeing, this AD requires that, prior to further flight, such repairs be accomplished in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA.

**New Requirements of This AD**

*Inspections and Corrective Actions*

(c) If any cracking of the outer chord of the upper or lower cross beams of the aft cargo door is detected as a result of any inspection required by paragraph (a) of this AD, prior to further flight, repair in accordance with a method approved by the Manager, Seattle ACO; Boeing Alert Service Bulletin, 737–52A1079, Revision 6, dated November 18, 1999; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings.

(d) Within 4,500 flight cycles or one year after the effective date of this AD, whichever occurs later: Perform a high frequency eddy current inspection (HFEC) to detect cracking of the four corners of the door frame of the aft cargo door, in accordance with the procedures specified in Boeing 737 Nondestructive Test Manual, Part 6, Chapter 51–00–00 (Figure 4 or Figure 23), or Boeing Alert Service Bulletin, 737–52A1079, Revision 6, dated November 18, 1999;

(1) If no cracking of the corners of the doorframe of the aft cargo door is detected, repeat the HFEC inspections thereafter at intervals not to exceed 4,500 flight cycles until accomplishment of the modification specified in paragraph (e) of this AD.

(2) If any cracking of the corners of the door frame of the aft cargo door is detected, prior to further flight, replace the damaged frame with a new frame, and modify the four corners of the door frame, in accordance with Parts II and III of the Accomplishment Instructions of Boeing Service Bulletin 737–52–1079, Revision 5, dated May 16, 1996, or Boeing Alert Service Bulletin 737–52A1079, Revision 6, dated November 18, 1999. Accomplishment of such modification constitutes terminating action for the repetitive inspection requirements of paragraph (d)(1) of this AD for that doorframe.

*Terminating Action*

(e) Within 4 years or 12,000 flight cycles after the effective date of this AD, whichever occurs later: Modify the four corners of the door frame and the cross beams of the aft cargo door, in accordance with Part II of the Accomplishment Instructions of Boeing Service Bulletin 737–52–1079, Revision 5, dated May 16, 1996, or Boeing Alert Service Bulletin 737–52A1079, Revision 6, dated November 18, 1999. Accomplishment of that modification constitutes terminating action for the repetitive inspection requirements of this AD.

**Note 3:** Accomplishment of the modification required by paragraph (a) of AD 90–06–02, amendment 39–6489, is considered acceptable for compliance with paragraph (e) of this AD.

**Note 4:** Modification of the corners of the door frame and the cross beams of the aft cargo door accomplished prior to the effective date of this AD in accordance with Boeing Service Bulletin 737–52–1079, dated December 16, 1983; Revision 1, dated December 15, 1988; Revision 2, dated July 20, 1989; Revision 3, dated May 17, 1990; Revision 4, dated February 21, 1991; is considered acceptable for compliance with paragraph (e) of this AD.

*Alternative Methods of Compliance*

(f)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 98–25–06, amendment 39–10931, are approved as alternative methods of compliance with this AD.

**Note 5:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

*Special Flight Permits*

(g) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on September 29, 2000.

**Donald L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–25534 Filed 10–4–00; 8:45 am]

BILLING CODE 4910–13–P



## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 2000–NM–80–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; CL–604 Variant of Bombardier Model Canadair CL–600–2B16 Series Airplanes Modified in Accordance With Supplemental Type Certificate SA8060NM–D, SA8072NM–D, or SA8086NM–D

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the supersedure of an existing airworthiness directive (AD), applicable to Model CL–604 variant of Bombardier Model Canadair CL–600–2B16 series airplanes modified in accordance with certain Supplemental Type Certificates that currently requires that the fuel service panel maintenance light on the fuel service panel be disconnected. This action would require modification of the wiring of the fuel port flood light (which is the name given to the fuel service

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panel maintenance light in the service bulletin that describes the wiring modification). This proposal is prompted by a report indicating that an electrical spark was noted when the fuel cap chain contacted the fuel port flood light housing of the fuel service panel. The actions specified by the proposed AD are intended to prevent electrical sparks from a grounded object from coming into contact with the fuel port flood light housing of the fuel service panel, which could result in a fuel fire due to the proximity of the fuel service panel to the fuel port.

**DATES:** Comments must be received by November 6, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–80–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment @faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–80–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

**FOR FURTHER INFORMATION CONTACT:** Abby Malmir, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5351; fax (562) 627–5210.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2000–NM–80–AD." The postcard will be date stamped and returned to the commenter.

**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–80–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

**Discussion**

On January 13, 2000, the FAA issued AD 2000–01–51, amendment 39–11519, (65 FR 3379, January 21, 2000) applicable to CL–604 variant of Bombardier Model Canadair CL–600–2B16 series airplanes modified in accordance with Supplemental Type Certificate SA8060NM–D, SA8072NM–D, or SA8086NM–D. That AD required that the fuel service panel maintenance light on the fuel service panel be disconnected. That action was prompted by a report indicating that an electrical spark was noted when the fuel cap chain contacted the maintenance light housing of the fuel service panel. The requirements of that AD were intended to prevent electrical sparks from a grounded object from coming into contact with the maintenance light housing of the fuel service panel, which could result in a fuel fire due to the close proximity of the fuel service panel to the fuel port.

**Actions Since Issuance of Previous Rule**

In the preamble of AD 2000–01–51, the FAA indicated that the action required by that AD was considered "interim action" and that further rulemaking was being considered. Since the issuance of that AD, the manufacturer has advised that it has developed a modification that will positively address the unsafe condition. The FAA has determined that further rulemaking is indeed necessary; this proposed AD follows from that determination.

**Explanation of Relevant Service Information**

Bombardier has issued Service Bulletins TUC–33–30–01–1, dated February 1, 2000, and TUC–33–30–01–1, Revision A, dated March 10, 2000, which describe procedures for modification of the wiring of the fuel port flood lights. The modification involves re-routing the wires in the flood light assembly, verifying the proper termination, adding an additional ground wire to the flood light assembly, and verifying the bonding of the fuel port flood light to the airplane structure. Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition.

**FAA's Conclusions**

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. The FAA has reviewed all available information and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

**Explanation of Requirements of Proposed Rule**

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 2000–01–51 to require modification of the wiring of the fuel port flood lights. The actions would be required to be accomplished in accordance with the service bulletins described previously. The FAA has determined that long term operational safety will be better assured by this modification than by leaving the fuel port flood lights disconnected. This determination was based in part on the possibility of human error associated with possible future reconnection of the lights.



**Cost Impact**

There are approximately 22 airplanes of U.S. registry that would be affected by this proposed AD.

The modification that is proposed in this AD action would take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. The cost of the parts required for each airplane are minimal. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be $2,640, or $120 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

**Regulatory Impact**

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

**PART 39—AIRWORTHINESS DIRECTIVES**

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by removing Amendment 39–11519 (65 FR 3379, January 21, 2000), and by adding a new airworthiness directive (AD), to read as follows:

**Bombardier, Inc.** (Formerly Canadair): Docket 2000–NM–80–AD. Supersedes AD 2000–01–51, Amendment 39–11519.

*Applicability:* CL–604 Variant of Bombardier Model Canadair CL–600–2B16 Series Airplanes Modified in Accordance with Supplemental Type Certificate SA8060NM–D, SA8072NM–D, or SA8086NM–D

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent electrical sparks from a grounded object from coming into contact with the fuel port flood light housing of the fuel service panel, which could result in a fuel fire due to the close proximity of the fuel service panel to the fuel port, accomplish the following:

**Modification**

(a) Within 90 days after the effective date of this AD, modify the wiring of the fuel port flood light in accordance with the Accomplishment Instructions of Bombardier Service Bulletin TUC–33–30–01–1, dated February 1, 2000, or Revision A, dated March 10, 2000.

**Alternative Methods of Compliance**

(b)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 2000–01–51, amendment 39–11519, are approved as alternative methods of compliance with this AD.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

**Special Flight Permits**

(c) Special flight permits may be issued in accordance with § 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on September 29, 2000.

**Donald L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–25535 Filed 10–4–00; 8:45 am]

BILLING CODE 4910–13–P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 123**

**[FRL–6874–1]**

**Water Pollution Control; Program Modification Application by South Dakota To Administer the Sludge Management (Biosolids) Program**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule; notice of application and public comment period.

**SUMMARY:** The State of South Dakota has submitted an application to EPA to revise the existing South Dakota Pollutant Discharge Elimination System (SDPDES) program to include administration and enforcement of the sludge management (biosolids) program. According to the State's proposal dated March 23, 1998, this program would be administered by the South Dakota Department of Environment and Natural Resources (SDDENR).

The application from South Dakota is complete and is available for inspection and copying. EPA has reviewed the State's request for delegation for completeness and adequacy and has found that the proposal meets Federal equivalency regulations.

**DATES:** Comments on this proposed rule received on or before November 20, 2000 will be considered before issuing a final rule. Comments postmarked after this date may not be considered.

**ADDRESSES:** You can view and copy South Dakota's application for modification from 8:00 a.m. until 5:00 p.m. Monday through Friday, excluding holidays, at the South Dakota Department of Environment and Natural Resources; Joe Foss Building, Pierre, South Dakota or at the EPA Regional

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Office at 999 18th Street, Denver, Colorado. Requests for copies should be addressed to Kelli Buscher, South Dakota Department of Environment and Natural Resources at the above address or at telephone number 605–773–3351. (There will be a $15 charge for copies.) Electronic comments are encouraged and should be submitted to brobst.bob@epa.gov or send written comments to Robert Brobst, U.S. EPA/ 8P–WP, 999 18th Street, Suite 500, Denver, Colorado 80202–2466.

**FOR FURTHER INFORMATION CONTACT:** Robert Brobst at the above address by phone at (303) 312–6129, or by e-mail at brobst.bob@epa.gov.

**SUPPLEMENTARY INFORMATION:** Section 405 of the Clean Water Act (CWA), 33 U.S.C. 1345, created the sludge management program, allowing EPA to issue permits for the disposal of sewage sludge under conditions required by the CWA. Section 405(c) of the CWA provides that a state may submit an application to EPA for administering its own program for issuing sewage sludge permits within its jurisdiction. EPA is required to approve each such submitted state program unless EPA determines that the program does not meet the requirements of sections 304(i) and/or 402(b) of the CWA or the EPA regulations implementing those sections.

South Dakota's application for sludge management program approval contains a letter from the Governor requesting program approval, an Attorney General's Statement, copies of pertinent State statutes and regulations, amendments to the SDPDES Program Description, and amendments to the SDDENR/EPA Memorandum of Agreement (MOA) executed by the Regional Administrator, Region 8, EPA, and the Secretary, Department of Environment and Natural Resources.

The State of South Dakota has existing environmental self-evaluation laws and rules. These provide evidentiary privilege and limited immunity for certain disclosures made in an environmental self-evaluation. SDCL section 1–40–35 provides that no privilege or immunity exists for information required to be collected, developed, maintained, or reported to the department according to State law, rule, regulation, or permit.

South Dakota has incorporated Federal sludge management regulations by reference into its State rules. These rules require recordkeeping and reporting for certain technical monitoring and assessment, management practices, and certain certifications of compliance. Because these requirements and any requirement in sludge permits would be excluded from the self-evaluation privilege, EPA believes that South Dakota has the authority necessary to administer the sludge management program to assure protection of public health and the environment, and invites comment on this issue.

EPA discussed the SDDENR program application with the South Dakota Office of the U.S. Fish and Wildlife Service and received their concurrence dated June 29, 2000 stating that the proposed program authorization was unlikely to jeopardize the continued existence of any endangered species or threatened species, or result in the destruction or adverse modification of habitat of such species.

By Letter dated October 20, 1999, EPA discussed the program application with the South Dakota State Historic Preservation Officer and received concurrence by letter dated November 5, 1999. The State Historic Preservation Officer determined that no historic properties would be affected by the addition of the biosolids program.

*What are biosolids?* Biosolids are, in effect, a slow release nitrogen fertilizer with low concentrations of other plant nutrients. In addition to significant amounts of nitrogen, biosolids also contain phosphorus, potassium, and essential micronutrients such as zinc and iron. Many western soils are deficient in micronutrients. Biosolids are rich in organic matter that can improve soil quality by improving water holding capacity, soil structure and air and water transport. Proper use of biosolids can ultimately decrease topsoil erosion. When applied at agronomic rates (the rates at which plants require nitrogen during a defined growth period), biosolids provide an economic benefit in addition to their environmental benefits.

*How do biosolids differ from sewage sludge?* Most simply, biosolids is the new name for what had previously been referred to as sewage sludge. Biosolids are primarily organic treated solids at wastewater treatment plants—with the emphasis on the word treated—that are suitable for recycling as a soil amendment. Sewage sludge now refers to untreated primary and secondary organic solids. This differentiates biosolids that have received stabilization treatment at a municipal wastewater treatment plant from other types of existing sludge (such as oil and gas field wastes) that cannot be beneficially recycled as soil amendments.

*What are the traditional practices in this region?* Until 25 years ago, the traditional practice in this Region was to landfill or incinerate what was then called sewage sludge. During the past quarter century the practice changed to recycling biosolids as soil amendments. States in Region 8 recycle 85% of the biosolids generated in the six state Region.

*What are the Federal requirements?* The EPA in 1993 set forth requirements for management of all biosolids generated during the process of treating municipal wastewater, commonly called the 503 rule. The 503 rule encourages the beneficial reuse of biosolids, and establishes strict standards under which wastewater residuals can be beneficially recycled as soil amendments. The EPA believes that biosolids are an important resource that can and should be safely recycled. The 503 rule is designed to protect public health and the environment. Most of the requirements were based on the results of extensive multimedia risk assessment and on more that 25 years of independent research. The 503 rule establishes standards for pathogen destruction and for levels of metals that can be present in biosolids. It also governs the agricultural practices, site restrictions, and crop harvesting restrictions and the stability of the materials by reducing the attraction of disease vectors (such as flies).

**Indian Country**

South Dakota is not authorized to carry out its Biosolids program in Indian Country, as defined in 18 U.S.C. 1151. This includes, but is not limited to: Lands within the exterior boundaries of the following Indian reservations located within the State of South Dakota:

A. Cheyenne River Indian Reservation,
B. Crow Creek Indian Reservation,
C. Flandreau Indian Reservation,
D. Lower Brule Indian Reservation,
E. Pine Ridge Indian Reservation,
F. Rosebud Indian Reservation,
G. Standing Rock Indian Reservation, and
H. Yankton Indian Reservation.

EPA held a public hearing on December 2, 1999, in Badlands National Park, South Dakota, and accepted public comments on the question of the location and the extent of Indian Country within the State of South Dakota. In a forthcoming **Federal Register** document, EPA will respond to the comments that have been received and more specifically identify Indian Country areas in the State of South Dakota.



**Public Notice Procedures**

Copies of all submitted statements and documents shall become a part of the record submitted to EPA. All comments or objections presented in writing to EPA Region 8 and postmarked within 45 days of this document will be considered by EPA before it takes final action on South Dakota's request for program modification approval. All written comments and questions regarding the sludge management program should be addressed to Robert Brobst at the above address. The public is also encouraged to notify anyone who may be interested in this matter.

**EPA's Decision**

After the close of the public comment period, EPA will decide whether to approve or disapprove South Dakota's sludge management program. EPA will consider and respond to all significant comments received before taking final action South Dakota's request for Sludge program approval. The decision will be based on the requirements of sections 405, 402 and 304(i) of the CWA and EPA regulations promulgated thereunder.

If the South Dakota program modifications are approved, EPA will so notify the State and anyone who has submitted significant comments. Notice will be published in the **Federal Register** and, as of the date of program approval, EPA will suspend issuance of federal NPDES sludge management permits in South Dakota (except, as discussed above, for those dischargers in "Indian Country"). The State's program will operate in lieu of the EPA-administered program. However, EPA will retain the right, among other things, to object to SDNPDES permits proposed by South Dakota and to take enforcement actions for violations, as allowed by the CWA.

If EPA disapproves South Dakota's sludge management program, EPA will notify the State and anyone who submitted significant comments of the reasons for disapproval and of any revisions or modifications to the State program that are necessary to obtain approval.

**Regulatory Flexibility Act**

Based on General Counsel Opinion 78–7 (April 18, 1978), EPA has long considered a determination to approve or deny a State NPDES program submission to constitute an adjudication because an "approval," within the meaning of the Administrative Procedure Act (APA), constitutes a "licence," which, in turn, is the project of an "adjudication." For this reason, the statutes and Executive Orders that apply to rulemaking action are not applicable here. Among these are provisions of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.* Under the RFA, whenever a Federal agency proposes or promulgates a rule under section 553 of the APA, after being required by that section or any other law to publish a general notice of proposed rulemaking, the Agency must prepare a regulatory flexibility analysis for the rule, unless the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. If the Agency does not certify the rule, the regulatory flexibility analysis must describe an assess the impact of a rule on small entities affected by the rule.

Even if the NPDES program approval were a rule subject to the FRA, the Agency would certify that approval of the State proposed SDPDES program would not have a significant economic impact on a substantial number of small entities. EPA's action to approve an NPDES program merely recognizes that the necessary elements of an NPDES program have already been enacted as a matter of State law; it would, therefore, impose no additional obligation upon those subject to the State's program. Accordingly, the Regional Administrator would certify that this program, even if a rule, would not have significant economic impact on a substantial number of small entities.

**Unfunded Mandates Reform Act**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year.

Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires WPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law.

Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or lease burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's decision includes no Federal mandates for State, local or tribal governments or the private sector. The Act excludes from the definition of a "Federal mandate" duties that arise from participation in a voluntary Federal program, except in certain cases where a "Federal intergovernmental mandate" affects an annual Federal entitlement program of $500 million or more which are not applicable here. South Dakota's request for approval of its budget management program is voluntary and imposes no Federal mandate within the meaning of the Act. Rather, by having its sludge management program approved, the State will gain the authority to implement the program within its jurisdiction, in lieu of EPA, thereby eliminating duplicative State and Federal requirements. If a State chooses not to seek authorization for administration of a sludge management program, regulation is left to EPA.

EPA's approval of state programs generally may reduce compliance costs for the private sector, since the State, by virtue of the approval, may now administer the program in lieu of EPA and exercise primary enforcement. Hence, owners and operators of sludge management facilities or businesses generally no longer face dual Federal and State compliance requirements, thereby reducing overall compliance costs. Thus, today's decision is not subject to the requirements of sections 202 and 205 of the UMRA.

The Agency recognizes that small governments may own and/or operate sludge management facilities that will become subject to the requirements of an approved State sludge management program. However, small governments that own and/or operate sludge management facilities are already subject to the requirements in 40 CFR

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parts 123 and 503 and are not subject to any additional significant or unique requirements by virtue of this program approval. Once EPA authorizes a State to administer its own sludge management program and any revisions to that program, these same small governments will be able to own and operate their sludge management facilities or businesses under the approved State program, in lieu of the Federal program. Therefore, EPA has determined that this document contains no regulatory requirements that might significantly or uniquely affect small governments.

Dated: September 26, 2000.

**William P. Yellowtail,**

*Regional Administrator, Region 8.*

[FR Doc. 00–25600 Filed 10–4–00; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[DA 00–2208, MM Docket No. 00–177, RM–9954]**

### Digital Television Broadcast Service; Rapid City, SD

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by Duhamel Broadcasting Enterprises, licensee of Station KOTA–TV, NTSC Channel 3, Rapid City, South Dakota. Duhamel requests the substitution of DTV Channel 2 for Station KOTA–TV's assigned DTV Channel. DTV Channel 2 can be allotted to Rapid City, South Dakota, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates (44–04–08 N. and 103–15–03 W.). As requested, we propose to allot DTV Channel 2 to Rapid City with a power of 8 and a height above average terrain (HAAT) of 174 meters.

**DATES:** Comments must be filed on or before November 24, 2000, and reply comments on or before December 11, 2000.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, S.W., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Richard R. Zaragoza, Colette M. Capretz, Shaw Pittman, 2300 N Street, NW., Washington, DC 20037–1128 (counsel for Duhamel Broadcasting Enterprises).

**FOR FURTHER INFORMATION CONTACT:** Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–177, adopted September 29, 2000, and released October 2, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, S.W., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

Federal Communications Commission.

**Barbara A. Kreisman,**

*Chief, Video Services Division, Mass Media Bureau.*

[FR Doc. 00–25529 Filed 10–4–00; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[DA 00–2209, MM Docket No. 00–178, RM–9914]**

### Digital Television Broadcast Service; Charlotte, NC

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by Charlotte-Mecklenburg Public Broadcasting Authority, licensee of noncommercial educational station WTVI–TV, NTSC Channel *42, Charlotte, North Carolina, requesting the substitution of DTV Channel *11 for its assigned DTV Channel *24. DTV Channel *11 can be allotted to Charlotte, North Carolina, in compliance with the principle community coverage requirements of section 73.625(a) at reference coordinates (35–17–14 N. and 80–41–45 W.). As requested, we propose to allot DTV Channel *11 to Charlotte, North Carolina, with a power of 2.0 and a height above average terrain (HAAT) of 387 meters.

**DATES:** Comments must be filed on or before November 24, 2000, and reply comments on or before December 11, 2000.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, S.W., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Lawrence M. Miller, Schwartz, Woods & Miller, 1350 Connecticut Avenue, NW, Suite 300, Washington, DC 20036–1717 (counsel for Charlotte-Mecklenburg Public Broadcasting Authority).

**FOR FURTHER INFORMATION CONTACT:** Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–178, adopted September 29, 2000, and released October 2, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, S.W., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts:

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

Federal Communications Commission.

**Barbara A. Kreisman,**

*Chief, Video Services Division, Mass Media Bureau.*

[FR Doc. 00–25528 Filed 10–4–00; 8:45 am]

**BILLING CODE 6712–01–P**



## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[DA 00–2210, MM Docket No. 00–179, RM–9947]**

### Digital Television Broadcast Service; Arkadelphia, AR

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by the Arkansas Educational Television Commission ("AETC"), licensee of noncommercial educational Station KETG(TV), NTSC Channel *9, Arkadelphia, Arkansas. AETC requests the substitution of DTV Channel *13 for Station KETG(TV)'s assigned DTV Channel *46 at Arkadelphia. DTV Channel *13 can be allotted to Arkadelphia, Arkansas, in compliance with the principle community coverage requirements of section 73.625(a) at reference coordinates (33–54–26 N. and 93–06–46 W.). As requested, we propose to allot DTV Channel *13 to Arkadelphia with a power of 7.3 and a height above average terrain (HAAT) of 320.9 meters.

**DATES:** Comments must be filed on or before November 24, 2000, and reply comments on or before December 11, 2000.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, S.W., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Todd D. Gray, Dow, Lohnes & Albertson, PLLC, 1200 New Hampshire Avenue, NW, Suite 800, Washington, DC 20036 (counsel for Arkansas Educational Television Commission).

**FOR FURTHER INFORMATION CONTACT:** Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–179, adopted September 29, 2000, and released October 2, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, S.W., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

Federal Communications Commission.

**Barbara A. Kreisman,**

*Chief, Video Services Division, Mass Media Bureau.*

[FR Doc. 00–25527 Filed 10–4–00; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[DA 00–2211, MM Docket No. 00–180, RM–9956]**

### Digital Television Broadcast Service; Fort Myers, FL

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by Fort Myers Broadcasting, licensee of Station WINK–TV, NTSC Channel 11, Fort Myers, Florida, proposing the substitution of DTV Channel 9 for Station WINK–TV's assigned DTV Channel 53. DTV Channel 9 can be allotted to Fort Myers, Florida, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates (26–48–01 N. and 81–45–47 W.). As requested, we propose to allot DTV Channel 9 to Fort Myers with a power of 20 and a height above average terrain (HAAT) of 451 meters.

**DATES:** Comments must be filed on or before November 24, 2000, and reply comments on or before December 11, 2000.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, S.W., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Joseph A. Belisle, Leibowitz & Associates, P.A., One SE 3rd Avenue, Suite 1450, Miami, Florida 33131 (counsel for Fort Myers Broadcasting Company).

**FOR FURTHER INFORMATION CONTACT:** Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–180, adopted September 29, 2000, and released October 2, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, S.W., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

Federal Communications Commission.

**Barbara A. Kreisman,**

*Chief, Video Services Division, Mass Medio Bureau.*

[FR Doc. 00–25526 Filed 10–4–00; 8:45 am]

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# Notices

Federal Register
Vol. 65, No. 194
Thursday, October 5, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

### Renewal of Advisory Committee on Actuarial Examinations

**AGENCY:** Joint Board for the Enrollment of Actuaries.

**ACTION:** Renewal of Advisory Committee.

**SUMMARY:** The Joint Board for the Enrollment of Actuaries announces the renewal of the Advisory Committee on Actuarial Examinations.

**FOR FURTHER INFORMATION CONTACT:** Gloria Walker, 202–694–1854.

**SUPPLEMENTARY INFORMATION:** The purpose of the Committee is to advise the Joint Board on examinations in actuarial mathematics and methodology. The Joint Board administers such examinations in discharging its statutory mandate to enroll individuals who wish to perform actuarial services with respect to pension plans subject to the Employee Retirement Income Security Act of 1974. The Committee's advisory functions will include, but will not necessarily be limited to: (1) Considering areas of actuarial knowledge that should be treated on the examinations; (2) developing examination questions; (3) recommending proposed examinations and pass marks; and (4), as requested by the Joint Board, making recommendations relative to the examination program.

Dated: September 29, 2000.

**Paulette Tino,**

*Chairman, Joint Board for the Enrollment of Actuaries.*

[FR Doc. 00–25653 Filed 10–4–00; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–580–815]**

### Certain Cold-Rolled Carbon Steel Flat Products From Korea: Initiation of New Shipper Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of initiation of new shipper antidumping administrative review.

**SUMMARY:** The Department of Commerce ("the Department") has received a request to conduct a new shipper administrative review of the antidumping duty order on certain cold-rolled carbon steel flat products ("cold-rolled") from Korea, which has an August anniversary date. In accordance with 19 CFR 351.214 (d), we are initiating this new shipper administrative review.

**EFFECTIVE DATE:** October 5, 2000.

**FOR FURTHER INFORMATION CONTACT:** Robert Bolling or James Doyle, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4733.

**SUPPLEMENTARY INFORMATION:**

#### Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations as codified at 19 CFR Part 351 (1999).

#### Background

On August 31, 2000, the Department received a timely request from Hyundai Pipe Co., Ltd. ("HDP") in accordance with 19 CFR 351.214(d), for a new shipper review of the antidumping duty order on certain cold-rolled carbon steel flat products from Korea, which has an August anniversary date. *See* Antidumping Duty Order: Certain Cold-Rolled Carbon Steel Flat Products from Korea, 58 FR 44159 (August 19, 1993).

#### Initiation of Review

In its request of August 31, 2000, HDP, as required by 19 CFR 351.214(b)(2)(i) and (b)(2)(iii)(A), certified that it did not export the subject merchandise to the United States during the period of investigation ("POI") January 1, 1992 through June 30, 1992, and that since the investigation was initiated on July 20, 1992, (57 FR 33488, July 29, 1992), it has not been affiliated with any company which exported the subject merchandise to the United States during the POI. Pursuant to the Department's regulations at 19 CFR 351.214(b)(2)(iv), HDP submitted documentation establishing the date on which it first entered the subject merchandise to the United States, the volume of that first shipment, and the date of its first sale to an unaffiliated customer in the United States.

In accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214(d), we are initiating a new shipper review of the antidumping order on cold-rolled steel from Korea. In accordance with 19 CFR 351.214(h)(1), we intend to issue preliminary results of this review no later than 180 days after the date of initiation.

In accordance with section 351.214(g)(1)(i)(A) of the Department's regulations, the period of review ("POR") for a new shipper review initiated in the month immediately following the annual anniversary month is the twelve-month period preceding the anniversary month. Therefore, the POR for this new shipper is August 1, 1999 through July 31, 2000.

Concurrent with publication of this notice and in accordance with 19 CFR 351.214(e), we will instruct the U.S. Customs Service to allow, at the option of the importer, the posting of a bond or security in lieu of a cash deposit for each entry of the merchandise exported by the above listed company, until the completion of this review.

The interested parties must submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.214.



Dated: September 28, 2000.

**Barbara E. Tillman,**

*Acting Deputy Assistant Secretary for AD/CVD Enforcement Group III.*

[FR Doc. 00–25619 Filed 10–4–00; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–580–812]**

### Dynamic Random Access Memory Semiconductors ("DRAMs") of One Megabit and Above From the Republic of Korea; Final Results of Full Sunset Review and Revocation of Order

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of final results of full sunset review: Revocation of antidumping duty order on DRAMs of one megabit and above from the Republic of Korea.

**SUMMARY:** On May 30, 2000, the Department of Commerce ("the Department") published a notice of preliminary results of the full sunset review of the antidumping duty order on DRAMs of one megabit and above from the Republic of Korea (65 FR 34439) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). We provided interested parties an opportunity to comment on our preliminary results. We received comments from both domestic and respondent interested parties. Subsequently, on September 27, 2000, we received a letter from the petitioner, Micron Technology, Inc. ("Micron"), withdrawing its notice of intent to participate in this sunset review, originally filed on November 16, 1999. Further, Micron withdrew its responses from this review and stated its support for revocation of the antidumping order on DRAMs of One Megabit and Above from the Republic of Korea ("DRAMs from Korea"). Because no domestic interested party is now participating in this sunset review, the Department is revoking the order.

**EFFECTIVE DATE:** October 5, 2000.

**FOR FURTHER INFORMATION CONTACT:** John P. Maloney, Jr. or James Maeder, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–1503 or (202) 482–3330, respectively.

#### Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders, 63 FR 13516 (March 20, 1998) ("Sunset Regulations"), and in 19 CFR Part 351 (1999) in general.

Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) ("Sunset Policy Bulletin").

#### Background

On May 30, 2000, the Department published in the **Federal Register** a notice of preliminary results of the full sunset review of the antidumping duty order on DRAMs of one megabit and above from the Republic of Korea pursuant to the Act. In our preliminary results, we determined that revocation of the order would be likely to lead to continuation or recurrence of dumping. In addition, we preliminarily determined that the following margins are likely to prevail for respective manufactures/exporters if the order were revoked: Hyundai—20.88 percent and All Others—4.55 percent.

On July 11, 2000, and on July 12, 2000, we received final versions of case briefs from Hyundai and Micron Technology, Inc. ("Micron"), respectively, within the deadline provided for in 19 CFR 351.309(c)(1)(i). Also, on July 17, 2000, and on July 18, 2000, Micron and Hyundai, respectively, submitted final versions of rebuttal briefs within the deadline provided for in 19 CFR 351.309(d). The Department held a public hearing on August 9, 2000. Subsequently, on September 27, 2000, Micron withdrew its interest in this sunset review and withdrew its responses from the record.

#### Scope of Review

The products covered by this review include DRAMs of one megabit and above from Korea. Assembled DRAMs include all package types. Unassembled DRAMs include processed wafers, uncut die, and cut die. Processed wafers produced in Korea, but packaged or assembled into memory modules in a third country, are included in the scope; wafers produced in a third country and assembled or packaged in Korea are not included in the scope.

The scope of this review includes memory modules. A memory module is a collection of DRAMs, the sole function of which is memory. Modules include single in-line processing modules ("SIPs"), single in-line memory modules ("SIMMs"), or other collections of DRAMs, whether unmounted or mounted on a circuit board. Modules that contain other parts that are needed to support the function of memory are covered. Only those modules which contain additional items which alter the function of the module to something other than memory, such as video graphics adapter ("VGA") boards and cards, are not included in the scope.

The scope of this review also includes video random access memory semiconductors ("VRAMS"), as well as any future packaging and assembling of DRAMs, and removable memory modules placed on motherboards, with or without a central processing unit ("CPU"), unless the importer of motherboards certifies with the Customs Service that neither it nor a party related to it or under contract to it will remove the modules from the motherboards after importation. The scope of this review does not include DRAMs or memory modules that are re-imported for repair or replacement.

The DRAMs and modules subject to this review are classifiable under subheadings 8471.50.0085, 8471.91.8085, 8542.11.0024, 8542.11.8026, 8542.13.8034, 8471.50.4000, 8473.30.1000, 8542.11.0026, 8542.11.8034, 8471.50.8095, 8473.30.4000, 8542.11.0034, 8542.13.8005, 8471.91.0090, 8473.30.8000, 8542.11.8001, 8542.13.8024, 8471.91.4000, 8542.11.0001, 8542.11.8024 and 8542.13.8026 of the Harmonized Tariff Schedule of the United States ("HTSUS").

Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the scope of this review remains dispositive.

#### Final Results of Review

*Determination To Revoke*

Because it withdrew both its notice of intent to participate in this sunset review and its responses from the record, the Department now determines that Micron has not responded to the Notice of Initiation as set out in section 751(c) of the Act. Without responses from Micron or any other domestic interested party on the record of this sunset review, the Department no longer finds that revocation of the order would

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be likely to lead to the continuation of dumping.

In addition, the Department notes that Micron affirmatively supports revocation of the order in this sunset review. Given that the Department no longer finds that revocation of the order would be likely to lead to the continuation of dumping, pursuant to section 751(d)(2) of the Act and section 351.222(i)(1) of the *Sunset Regulations*, the Department hereby revokes the order on DRAMs from Korea.

This notice also serves as the only reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

*Effective Date of Revocation*

Pursuant to section 751(c)(6)(A)(iv) of the Act, the Department will instruct the United States to terminate the suspension of liquidation of the merchandise subject to this order entered, or withdrawn from warehouse, on or after January 1, 2000. Entries of subject merchandise prior to the effective date of revocation will continue to be subject to suspension of liquidation and antidumping duty deposit requirements. The Department will complete any pending administrative reviews of this order and will conduct administrative reviews of subject merchandise entered prior to the effective date of revocation in response to appropriately filed request for review.

Dated: September 29, 2000.

**Troy H. Cribb,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 00–25618 Filed 10–4–00; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–533–809]**

### Certain Stainless Steel Flanges From India; Extension of Time Limit for Preliminary Results of New Shipper Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (the Department) is extending the time limit for the preliminary results of a new shipper review of certain stainless steel flanges from India. This review covers one Indian exporter, Snowdrop Trading PVT LTD (Snowdrop), and the period February 1, 1999 through February 29, 2000.

**EFFECTIVE DATE:** October 5, 2000.

**FOR FURTHER INFORMATION CONTACT:** Thomas Killiam or Robert James, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone: (202) 482–5222, or (202) 482–0649, respectively.

**Applicable Statute**

Unless otherwise indicated, all citations to the statute refer to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, all citations to the Department's regulations are to the current regulations, codified at 19 CFR part 351 (1999).

**Background**

Based on a request from Snowdrop, and pursuant to section 351.214, on March 28, 2000 the Department initiated a new shipper review of the antidumping duty order on certain stainless steel flanges from India, covering the period February 1, 1999 through February 29, 2000 ( 65 FR 17485, April 3, 2000). The preliminary results are currently due no later than September 24, 2000.

**Postponement of Preliminary Results**

The Department has determined that the issues of this case are extraordinarily complicated and consequently, it is not practicable to issue the preliminary results of review within the original time limit. *See* Memorandum from Richard A. Weible to Joseph A. Spetrini, Deputy Assistant Secretary, Enforcement Group III, September 22, 2000. Accordingly, the Department is extending the time limit for completion of the preliminary results until January 22, 2001, in accordance with section 751(a)(2)(B)(iv) of the Act and section 351.214(i)(2) of the Department's regulations. The deadline for the final results of this review will continue to be 90 days after date on which the preliminary results are issued, in accordance with section 351.214(i)(1).

Dated: September 22, 2000.

**Joseph A. Spetrini,**

*Deputy Assistant Secretary, AD/CVD Enforcement Group III.*

[FR Doc. 00–25620 Filed 10–4–00; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Industry Sector Advisory Committee on Lumber & Wood (ISAC 10) for Trade Policy Matters; Continuation of Federal Register Notice Dated December 30, 1999, Volume 64, Number 250, Pages 73518–73519; Request for Nominations

**AGENCY:** International Trade Administration, Trade Development, U.S. Department of Commerce.

**ACTION:** Continuation of request for nominations.

**SUMMARY:** The Secretary of Commerce (Commerce) and the United States Trade Representative (USTR) continue to seek nominations for appointment of an environmental representatives to the Industry Sector Advisory Committee on Lumber and Wood Products for Trade Policy Matters (ISAC 10; see **Federal Register** Notice 73518–73519, Vol. 64, Number 250, dated December 30, 1999). Appointments will be effective for the charter term of this Committee, which expires March 17, 2002. In order to be considered for appointment to the Committee, a nominee must be a U.S. citizen, must represent a U.S. organization with an interest in environmental issues relevant to the work of the Committee, and may not be a registered foreign agent under the Foreign Agents Registration Act. Nominees' special interest in and knowledge of environmental, trade, and sectoral issues will be considered.

This notice will remain in effect for the duration of the current charter period; however, priority will be given to nominations received by November 3, 2000. Nominations will be considered as they are received. Recruitment information is available on the International Trade Administration Website at *www.ita.doc.gov/icp*.

**FOR FURTHER INFORMATION CONTACT:** Further inquiries may be directed to Dominic Bianchi, Acting Assisting USTR for Intergovernmental Affairs and Public Liaison, Winder Building, Room 100, 600 17th Street NW, Washington, DC 20230 or Ingrid V. Mitchem, Acting Director, Industries Consultations Program, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Room 2015–B, Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:**

**Background**

In section 135 of the 1974 Trade Act, as amended (19 U.S.C. 2155), Congress established a private-sector advisory system to ensure that U.S. trade policy and trade negotiation objectives adequately reflect U.S. commercial and economic interests. Section 135(a)(1) of the 1974 Trade Act directs the President to "seek information and advice from representative elements of the private sector and the non-Federal governmental sector with respect to:

(A) Negotiating objectives and bargaining positions before entering into a trade agreement under [title I of the 1974 Trade Act and section 1102 of the Omnibus Trade and Competitiveness Act of 1988];

(B) The operation of any trade agreement once entered into; including preparation for dispute settlement panel proceedings to which the United States is a party; and

(C) Other matters arising in connection with the development, implementation, and administration of the trade policy of the United States.

* * *"

Section 135(c)(2) of the 1974 Trade Act provides:

(2) The President shall establish such sectoral or functional advisory committees as may be appropriate. Such committees shall, insofar as is practicable, be representative of all industry, labor, agricultural, or service interests (including small business interests) in the sector or functional areas concerned. In organizing such committees, the United States Trade Representative and the Secretaries of Commerce, Labor, Agriculture, the Treasury, or other executive departments, as appropriate, shall:

(A) Consult with interested private organizations; and

(B) Take into account such factors as—

(i) Patterns of actual and potential competition between United States industry and agriculture and foreign enterprise in international trade,



(ii) The character of the nontariff barriers and other distortions affecting such competition,

(iii) The necessity for reasonable limits on the number of such advisory committees,

(iv) The necessity that each committee be reasonably limited in size, and

(v) In the case of each sectoral committee, that the product lines covered by each committee be reasonably related.

Pursuant to this provision, Commerce and USTR have established and co-chair seventeen Industry Sector Advisory Committees (ISACs) and four Industry Functional Advisory Committees (IFACs). The Committees' efforts have resulted in strengthening U.S. negotiating positions by enabling the United States to display a united front when it negotiates trade agreements with other nations. Committees meet an average of four times a year in Washington, D.C. Members serve without compensation and are responsible for all expenses incurred in attending Committee meetings. For additional information regarding the functions and membership of these committees, and general qualifications for membership, *see* 64 FR 10448–10449, March 4, 1999 (Volume 64, Number 42).

*Eligibility*

Eligibility to serve as an environmental representative on ISAC 10 is limited to U.S. citizens who are not full-time employees of a governmental entity, who represent a "U.S. entity", and who are not registered with the Department of Justice under the Foreign Agents Registration Act. For purposes of the preceding sentence, a "U.S. entity" is an organization incorporated in the United States (or, if unincorporated, having its headquarters in the United States):

(1) That is controlled by U.S. citizens or by another U.S. entity. An entity is not a U.S. entity if more than 50 percent of its Board of Directors or membership is made up of non-U.S. citizens. If the nominee is to represent an organization more than 10 percent of whose Board of Directors or membership is made up of non-U.S. citizens, or non-U.S. entities, the nominee must demonstrate at the time of nomination that this non-U.S. interest does not constitute control and will not adversely affect his or her ability to serve as a trade advisor to the United States; and

(2) at least 50 percent of whose annual revenue is attributable to non-governmental, U.S. sources.

*Selection Criteria*

USTR and Commerce will select environmental representatives eligible for appointment to ISAC 10 based upon the following:

(1) The organization to be represented will be considered based on environmental interest in trade policies in the sector relevant to the work of the Committee; and

(2) The nominee should demonstrate special interest in and knowledge of the formulation of environmental policies in the sector relevant to the work of the Committee, and the ability to work with governmental officials and industry representatives to reach consensus on complex environmental and trade issues affecting the relevant industry sectors.

(3) Preference will be accorded nominees who also demonstrate knowledge of and familiarity with the relevant industry sectors, as well as with international trade matters, including trade policy development relevant to those sectors.

Environmental representatives, as members of the Committee, will be required to have a security clearance. Members serve without compensation and are responsible for all expenses incurred in attending committee meetings.

*Application Procedures*

Requests for applications should be sent to the Director of the Industry Consultations Program, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Room 2015–B, Washington, D.C. 20230. This notice is issued under the Federal Advisory Committee Act (5 U.S.C., app. 2) and 21 CFR part 14 relating to advisory committees.

**Michael J. Copps,**

*Assistant Secretary for Trade Development.*

[FR Doc. 00–25566 Filed 10–4–00; 8:45 am]

BILLING CODE 3510–DR–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 100200A]**

### New England Fishery Management Council; Public Meetings

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meetings.

**SUMMARY:** The New England Fishery Management Council (Council) is

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scheduling public meetings of its Groundfish Committee, Monkfish Advisory Panel and Research Steering Committee in October 2000, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

**DATES:** The meetings will be held between Tuesday, October 24, 2000, and Thursday, October 26, 2000. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

**ADDRESSES:** The meetings will be held in Danvers, MA; Wakefield, MA; and Warwick, RI. See **SUPPLEMENTARY INFORMATION** for specific locations.

*Council address*: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950: (978) 465-0492.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Howard, Executive Director, New England Fishery Management Council (978)465-0492.

**SUPPLEMENTARY INFORMATION:**

**Meeting Dates, Locations, and Agendas**

*Tuesday, October 24, 2000, 9:30 a.m. and Wednesday, October 25, 2000, 8:30 a.m.—Groundfish Oversight Committee Meeting*

Location: Sheraton Ferncroft, 50 Ferncroft Road, Danvers, MA 01923; telephone: (978) 777-2500.

The Groundfish Oversight Committee will continue its development of management alternatives for Amendment 13 to the Northeast Multispecies Fishery Management Plan. The Committee will consider comments from it's Advisory Panel on the area management and sector allocation proposals and may make changes to those proposals based on the comments received. They will finalize recommendations for rebuilding plans for overfished stocks, measures to address capacity in the groundfish fishery, and recommendations for closed areas. In addition, the Committee will refine its proposals for a revised status quo, area management, and sector allocation alternatives. They will review access by other fisheries or gears to closed areas and may develop recommendations for changes to those vessels and gears that are currently allowed access to closed areas. They will also develop priorities for cooperative research proposals that will be forwarded to the Research Steering Committee. The Committee will meet in a closed session to review advisory panel applications.

*Thursday, October 26, 2000, 9:30 a.m.—Monkfish Advisory Panel Meeting*

Location: Radisson Airport Hotel, 2081 Post Road, Warwick, RI 02886; telephone: (401)739-3000.

The Panel will discuss monkfish trip limit options to address perceived inequities across fleet sectors and develop recommendations to the Monkfish Committee. It will also develop a statement of purpose and a range of alternatives for monkfish spawning area/time management, and will discuss possible options for bycatch control and minimizing discards of monkfish in small mesh fisheries.

*Thursday, October 26, 2000, 9:30 a.m.—Research Steering Committee Meeting*

Location: Sheraton Colonial, One Audubon Road, Wakefield, MA 01880; telephone: (781) 245-9300.

The Research Committee will discuss priorities for funding regional research projects in 2001.

Recommendations from these groups will be brought to the full Council for formal consideration and action, if appropriate. Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

**Special Accommodations**

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least five days prior to the meeting dates.

Dated: October 2, 2000.

**Richard W. Surdi,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 00–25648 Filed 10–4–00; 8:45 am]

**BILLING CODE: 3510–22 –S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D.092800D]**

### Endangered Species; Permits

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Issuance of scientific research permit (1253) and a modification to a scientific research permit (1190).

**SUMMARY:** Notice is hereby given of the following actions regarding permits for takes of endangered and threatened species for the purposes of scientific research and/or enhancement: NMFS has issued permits to: Carlos Diez and Robert Van Dam, Puerto Rico DNR (PR-DNR) (1253); and NMFS has issued modifications to scientific research permits to: NMFS-Southwest Region (1190).

**DATES:** Comments or requests for a public hearing on any of the new applications or modification requests must be received at the appropriate address or fax number no later than 5 p.m. eastern standard time on November 6, 2000.

**ADDRESSES:** Written comments on any of the new applications or modification requests should be sent to the appropriate office as indicated below. Comments may also be sent via fax to the number indicated for the application or modification request. Comments will not be accepted if submitted via e-mail or the Internet. The applications and related documents are available for review in the indicated office, by appointment:

For permits 1253, 1190: Office of Protected Resources, Endangered Species Division, F/PR3, 1315 East-West Highway, Silver Spring, MD 20910 (ph: 301-713-1401, fax: 301-713-0376).

**FOR FURTHER INFORMATION CONTACT:** Terri Jordan, Silver Spring, MD (ph: 301-713-1401, fax: 301-713-0376, e-mail: Terri.Jordan@noaa.gov).

**SUPPLEMENTARY INFORMATION:**

**Authority**

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531-1543) (ESA), is based on a finding that such permits/modifications: (1) are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222-226).

Those individuals requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

**Species Covered in This Notice**

The following species are covered in this notice:

**Sea Turtles**

Green turtle (*Chelonia mydas*), Hawksbill turtle (*Eretmochelys imbricata*), Kemp's ridley turtle (*Lepidochelys kempii*), Leatherback turtle (Dermochelys coriacea), Loggerhead turtle (*Caretta caretta*).

**Fish**

Shortnose sturgeon (*Acipenser brevirostrum*).

**Permits and Modifications Issued**

Notice was published on May 23, 2000 (65 FR 34445) that Mr. Carlos E. Diez, of Department of Natural and Environmental Resources applied for a scientific research permit (1253). The purpose of the research is to provide information on the ecology and population dynamics of the hawksbill and green turtles that inhabit the waters surrounding Puerto Rico and its adjacent islands (Mona, Monito, Desecheo, Caja-de-Muertos, Viques and Culebra). This research will improve the effectiveness of management efforts by addressing priorities set forth in the recovery plans for both species: (1) identification of important marine habitats; (2) determination of adult and juvenile distribution and abundance; (3) determination of sex ratios in the juvenile population; (4) evaluation of the extent of ingestion of persistent marine debris; (5) determination of growth rates and age at sexual maturity, and (6) quantification of threats to adults and juveniles on foraging grounds. Permit 1253 was issued on September 22, 2000, authorizing take of listed species. Permit 1253 expires July 31, 2005.



Notice was published on April 14, 2000 (65 FR 20138) that the Southwest Region, NMFS applied for a modification to 1190. Modification #1 authorizes and increase in the annual take of olive ridley turtles from 10 to 25. The purpose of the research is to document and evaluate the incidental take of pelagic turtles by the longline fishery, to help estimate the impact of the fishery on listed turtles as individuals and as populations, and to determine methods to reduce that impact. Research will evaluate how incidental captures affect sea turtle anatomy and physiology as a function of season, location of take, water temperature, species, size, time of day, and gear configuration. The results of the research will help NMFS to better meet the goals and objectives of the Pacific Sea Turtle Recovery Plans, the Hooking Mortality Workshop, and the requirements of Section 7 Biological Opinions developed for this fishery, and ultimately, to fulfill ESA responsibilities to protect, conserve, and recover listed species.

Incidentally-captured turtles will be examined, tagged, weighed, measured, resuscitated using approved techniques, have tissue samples taken, and be released. Some of these turtles will have transmitters attached. Dead turtles will be removed from the marine environment for research purposes, including necropsy and collection of life history data. Tissue samples may be used lab studies including the following: toxicology, histopathology, and genetic studies to identify nesting origins of incidentally taken turtles. Modification #1 to Permit 1190 was issued on September 21, 2000, authorizing take of listed species. Permit 1190 expires March 31, 2004.

Dated: September 29, 2000.

**Wanda L. Cain,**

*Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 00–25622 Filed 10–4–00; 8:45 am]

**BILLING CODE: 3510–22 –S**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Submission for OMB Review; Comment Request

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Title and OMB Number:* Defense Federal Acquisition Regulation Supplement Subparts 227.71, Rights in Technical Data: 227.72, Rights in Computer Software and Computer Software Documentation; and related clauses and provisions at 252.227; OMB Number 0704–0369.

*Type of Request:* Extension.

*Number of Respondents:* 56,044.

*Responses Per Respondent:* 21 (average).

*Annual Responses:* 1,185,005.

*Average Burden Per Response:* 3.6 hours (average).

*Annual Burden Hours:* 4,320,447.

*Needs and Uses:* The Defense Federal Acquisition Regulation Supplement (DFARS) Subparts 227.71 and 227.72 prescribe the use of solicitation provisions and contract clauses containing information collection requirements that are associated with rights in technical data and computer software. DoD needs this information to implement 10 U.S.C. 2320, Rights in Technical Data, and 10 U.S.C. 23321, Validation of Proprietary Data Restrictions. DoD uses the information to recognize and protect contractor rights in technical data and computer software that are associated with privately funded developments; and to ensure that technical data delivered under a contract is complete and accurate and satisfies contract requirements.

*Affected Public:* Business or other for-profit; not-for-profit institutions.

*Frequency:* On occasion.

*Respondent's Obligation:* Required to obtain or retain benefits.

*OMB Desk Officer:* Lewis W. Oleinick. Written comments and recommendations on the proposed information collection should be sent to Mr. Oleinick at the Office of Management and Budget, Desk Officer for DoD (Acquisition), Room 10236, New Executive Office Building, Washington, DC 20503.

*DOD Clearance Officer:* Robert Cushing. Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: September 29, 2000.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 00–25502 Filed 10–4–00; 8:45 am]

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**DEPARTMENT OF DEFENSE**

**Office of the Secretary**

**[Transmittal No. 00–73]**

**36(b)(1) Arms Sales Notification**

**AGENCY:** Defense Security Cooperation Agency, Department of Defense.

**ACTION:** Notice.

**SUMMARY:** The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 12 July 1996.

**FOR FURTHER INFORMATION CONTACT:** Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 00–73 with attached transmittal and policy justification.

Dated: October 2, 2000.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**BILLING CODE 5001–10–M**



DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

22 SEP 2000

**In reply refer to:**
**I-00/006978**

**Honorable J. Dennis Hastert**
**Speaker of the House of**
**Representatives**
**Washington, D.C. 20515-6501**

**Dear Mr. Speaker:**

**Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 00-73 and under separate cover the classified offset certificate thereto. This Transmittal concerns the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to Israel for defense articles and services estimated to cost $125 million. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.**

**Reporting of Offset Agreements in accordance with Section 36(b)(1)(C) of the Arms Export Control Act (AECA), as amended by Section 1245 of H.R. 3427 enacted by P.L. 106-113 dated November 29, 1999, requires a description of any offset agreement with respect to this proposed sale. Section 36(b)(1)(g) of the AECA, as amended, provides that reported information related to offset agreements be treated as confidential information in accordance with section 12(c) of the Export Administration Act of 1979 (50 U.S.C. App. 2411(c)). Information about offsets for this proposed sale are described in the enclosed confidential attachment.**

**Sincerely,**

A.R. KELTZ
ACTING DIRECTOR

**Attachments**

**Separate Cover:**
**Offset certificate**

**Same ltr to:** **House Committee on International Relations**
**Senate Committee on Appropriations**
**Senate Committee on Foreign Relations**
**House Committee on National Security**
**Senate Committee on Armed Services**
**House Committee on Appropriations**

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**Transmittal No. 00-73**

**Notice of Proposed Issuance of Letter of Offer**
**Pursuant to Section 36(b)(1)**
**of the Arms Export Control Act**

(i) Prospective Purchaser: Israel

(ii) Total Estimated Value:

| | |
|---|---|
| Major Defense Equipment* | $ 0 million |
| Other | $ 125 million |
| TOTAL | $ 125 million |

(iii) Description of Articles or Services Offered: Fourteen non-MDE Beech King Air B200CT/T Fixed Wing aircraft with engines, spare engines, spares and repair parts, engineering support, publications and technical documentation, U.S. Government and contractor technical and logistics personnel services, and other related elements of logistics support.

(iv) Military Department: Army (YWB)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: none

(vii) Date Report Delivered to Congress: 22 SEP 2000

* as defined in Section 47(6) of the Arms Export Control Act.



**POLICY JUSTIFICATION**

**Israel - Beech King Air B200CT/T Fixed Wing Aircraft**

The Government of Israel has requested a possible sale of 14 non-MDE Beech King Air B200CT/T Fixed Wing aircraft with engines, spare engines, spares and repair parts, engineering support, publications and technical documentation, U.S. Government and contractor technical and logistics personnel services, and other related elements of logistics support. The estimated cost is $125 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in Middle East.

The aircraft will be deployed in a combat service support role, which will consist of troop transport movement and cargo transport. Accordingly, the aircraft will be equipped with communications relay stations and other associated communications and navigation support devices. Israel will have no difficulty absorbing these additional aircraft into their armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Raytheon Aircraft Company of Wichita, Kansas. Under this sale, the contractor will incur offset obligations under an existing industrial cooperation agreement.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Israel.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 00–25576 Filed 10–4–00; 8:45 am]
BILLING CODE 5001–10–C

**DEPARTMENT OF DEFENSE**

**Office of the Secretary**

**[Transmittal No. 00–74]**

**36(b)(1) Arms Sales Notification**

**AGENCY:** Department of Defense, Defense Security Cooperation Agency.

**ACTION:** Notice.

**SUMMARY:** The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

**FOR FURTHER INFORMATION CONTACT:** Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 00–74 with attached transmittal and policy justification.

Dated: October 2, 2000.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

BILLING CODE 5001–10–M

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DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

22 SEP 2000
In reply refer to:
I-00/007431

Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 00-74, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to Israel for defense articles and services estimated to cost $111 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

A.R. KELTZ
ACTING DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations



**Transmittal No. 00-74**

**Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act**

(i) Prospective Purchaser: Israel

(ii) Total Estimated Value:

| | |
|---|---|
| Major Defense Equipment* | $ 0 million |
| Other | $ 111 million |
| TOTAL | $ 111 million |

(iii) Description of Articles or Services Offered: JP-8 aviation jet fuel

(iv) Military Department: Army (YWJ)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: none

(vii) Date Report Delivered to Congress: 22 SEP 2000

* as defined in Section 47(6) of the Arms Export Control Act.

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## POLICY JUSTIFICATION

**Israel - JP-8 Aviation Jet Fuel**

**The Government of Israel has requested a possible purchase of JP-8 aviation jet fuel. The estimated cost is $111 million.**

**This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in Middle East.**

**The proposed sale of the JP-8 aviation fuel will enable Israel to maintain the operational capability of its aircraft inventory. Israel will have no difficulty absorbing this additional fuel into their armed forces.**

**The proposed sale of this JP-aviation fuel will not affect the basic military balance in the region.**

**Procurement of the aviation jet fuel will be from the same contractors providing aviation fuel to the U.S. armed forces. There are no offset agreements proposed in connection with this potential sale.**

**Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Israel.**

**There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.**

[FR Doc. 00–25577 Filed 10–4–00; 8:45 am]
BILLING CODE 5001–10–C

### DEPARTMENT OF DEFENSE

**Office of the Secretary**

**Defense Science Board**

**ACTION:** Notice of Advisory Committee meetings.

**SUMMARY:** The Defense Science Board (DSB) Task Force on High Energy Laser Weapon Systems Applications will meet in closed session on October 19–20, 2000, at Strategic Analysis Inc., 3601 Wilson Boulevard, Arlington, VA 22201.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting, the Task Force will review on-going or proposed programs in high energy laser (HEL) applications; examine recent supporting technology advancements and their applications with respect to supporting military HEL weapon system developments; develop potential military and strategic HEL system applications and identify processes required to implement these potentials; determine what needs to be done to "weaponize" these systems; and assess HEL operational concepts, impacts and limitations, considering legal, treaty and policy issues concerning HEL employment.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public. Law. 92–463, as amended (5 U.S.C. App. II, (1994)), it has been determined that these Defense Science Board meetings, concern matters listed in 5 U.S.C. § 552b(c)(1) (1994), and that accordingly these meetings will be closed to the public.

Dated: October 2, 2000.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 00–25573 Filed 10–4–00; 8:45 am]
BILLING CODE 5001–10–M

### DEPARTMENT OF DEFENSE

**Office of the Secretary**

**U.S. Strategic Command Strategic Advisory Group**

**AGENCY:** Department of Defense, USSTRATCOM.

**ACTION:** Notice.

**SUMMARY:** The Strategic Advisory Group (SAG) will meet in closed session on November 2 and 3, 2000. The mission of the SAG is to provide timely advice on scientific, and policy-related issues to the Commander in Chief, U.S. Strategic Command, during the development of the nation's strategic war plans.

At this meeting, the SAG will discuss strategic issues that relate to the development of the Single Integrated Operational Plan (SIOP). Full development of the topics will require discussion of information classified TOP SECRET in accordance with Executive Order 12958, April 17, 1995. Access to this information must be strictly limited to personnel having requisite security clearances and specific need-to-know. Unauthorized disclosure of the information to be discussed at the SAG meeting could have exceptionally grave impact upon national defense.

In accordance with section 10(d) of the Federal Advisory Committee Act, (5 U.S.C. App 2), it has been determined that this SAG meeting concerns matters listed in 5 USC 552b(c) and that, accordingly, this meeting will be closed to the public.

Dated: September 29, 2000.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 00–25503 Filed 10–4–00; 8:45 am]
BILLING CODE 5001–10–M



### DEPARTMENT OF DEFENSE

**Department of the Army**

**Privacy Act of 1974; System of Records**

**AGENCY:** Department of the Army, DOD.

**ACTION:** Notice to Amend Systems of Records.

**SUMMARY:** The Department of the Army is amend a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

**DATES:** This proposed action will be effective without further notice on November 6, 2000, unless comments are received which result in a contrary determination.

**ADDRESSES:** Records Management Division, U.S. Army Records Management and Declassification Agency, ATTN: TAPC–PDD–RP, Stop 5603, Ft. Belvoir, VA 22060–5603.

**FOR FURTHER INFORMATION CONTACT:** Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390; or Ms. Christie King at (703) 806–3711 or DSN 656–3711.

**SUPPLEMENTARY INFORMATION:** The Department of the Army systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety.

The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new a or altered system report.

**A0145–2 TRADOC**

**SYSTEM NAME:**

Junior ROTC/NDCC Instructor Files (February 2, 1996, 61 FR 3914).

**CHANGES:**

* * * * *

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Delete from entry 'and guest speakers at above locations'.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Delete entry and replace with 10 U.S.C. 2031, Junior Reserve Officers' Training Corps; 10 U.S.C. 3013, Secretary of the Army, and E.O. 9397 (SSN).

**STORAGE:**

Delete entry and replace with 'Paper records in file folders'.

**RETRIEVABILITY:**

Delete entry and replace with 'By name, Social Security number or service number'.

* * * * *

**RETENTION AND DISPOSAL:**

Delete entry and replace with 'Records are maintained then destroyed 2 years after instructor's separation.'

* * * * *

**A0145–2 TRADOC**

**SYSTEM NAME:**

Junior ROTC/NDCC Instructor Files.

**SYSTEM LOCATION:**

U.S. Army Reserve Officers Training Corps Cadet Command, Fort Monroe, VA 23651–5000.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Assigned and potential instructors.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Instructor evaluation forms, qualification data, biographical sketches and similar or related documents.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C. 2031, Junior Reserve Officers' Training Corps; 10 U.S.C. 3013, Secretary of the Army, and E.O. 9397 (SSN).

**PURPOSE(S):**

To provide record of qualifications, experience, effectiveness, and similar related information on potential and/or assigned instructors and guest speakers.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

**STORAGE:**

Paper records in file folders.

**RETRIEVABILITY:**

By name, Social Security number and/or service number.

**SAFEGUARDS:**

Records are stored in locked cabinets or rooms, depending on location.

**RETENTION AND DISPOSAL:**

Records are maintained then destroyed 2 years after instructor's separation.

**SYSTEM MANAGER(S) AND ADDRESS:**

Commander, Fort Monroe, Privacy Act Officer, Fort Monroe, VA 23651–5000.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether information about themselves is contained in this record system should address written inquiries to the Commander, U.S. Army Reserve Officers Training Corps Cadet Command, Fort Monroe, VA 23651–5000.

Individual should provide full name, Social Security Number/military service number, duty position, academic department, and dates of service at the training activity to aid in the information search.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, U.S. Army Reserve Officer Training Corps Cadet Command, Fort Monroe, VA 23651–5000.

Individual should provide the full name, Social Security Number/military service number, duty position, academic department, and dates of service at the training activity.

**CONTESTING RECORD PROCEDURES:**

The Army's rules for accessing records, contesting contents; and

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appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

Staff and faculty of appropriate school, college, training center, or ROTC Region responsible for conduct of instruction.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

Dated: October 2, 2000.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 00–25575 Filed 10–4–00; 8:45 am]

**BILLING CODE 5001–10–M**

## DEPARTMENT OF DEFENSE

### Department of the Navy

### Privacy Act of 1974; System of Records

**AGENCY:** Department of the Navy, DOD.

**ACTION:** Delete a records system.

**SUMMARY:** The Department of the Navy proposes to delete two systems of records notices in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

**DATES:** The action will be effective on November 6, 2000 unless comments are received that would result in a contrary determination.

**ADDRESSES:** Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (N09B30), 2000 Navy Pentagon, Washington, DC 20350–2000.

**FOR FURTHER INFORMATION CONTACT:** Doris Lama at (202) 685–6545 or DSN 325–6545.

**SUPPLEMENTARY INFORMATION:** The Department of the Navy's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The Department of the Navy proposes to delete two systems of records notices in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The deletions are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

**N07220–7**

**SYSTEM NAME:**

Travel Pay System (February 22, 1993, 58 Fr 10690).

**REASON:**

These records are now under the cognizance of the Defense Finance and Accounting Service. See DFAS system of records notice T7333, Travel Payment System.

**N07431–1**

**SYSTEM NAME:**

Savings Deposit (February 22, 1993, 58 FR 10690).

**REASON:**

These records are now under the cognizance of the Defense Finance and Accounting Service. See DFAS system of records notice T7280, Uniformed Services Savings Deposit Program (USSDP).

Dated: October 2, 2000.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 00–25574 Filed 10–4–00; 8:45 am]

**BILLING CODE 5001–10–M**

## DEPARTMENT OF EDUCATION

### Notice of Proposed Information Collection Requests

**AGENCY:** Department of Education.

**SUMMARY:** The Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before December 4, 2000.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: September 29, 2000.

**Joseph Schubart,**

*Acting Leader, Regulatory Information Management, Office of the Chief Information Officer.*

*Office of Special Education and Rehabilitative Services*

*Type of Review:* Extension.
*Title:* Annual Client Assistance Program (CAP) Report.
*Frequency:* Annually.
*Affected Public:* State, Local, or Tribal Gov't, SEAs or LEAs.
*Reporting and Recordkeeping Hour Burden:* Responses: 56; burden hours: 350.

*Abstract:* Form RSA–227 is used to analyze and evaluate the Client Assistance Program (CAP) administered by designated CAP agencies. These agencies provide services to clients and client applicants of programs, projects, and community rehabilitation programs authorized by the Rehabilitation Act of 1973, as amended. Data also are reported on information and referral services provided to any individual with a disability.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708–6287 or via her internet address Sheila_Carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–25514 Filed 10–4–00; 8:45 am]

**BILLING CODE 4000–01–U**



## DEPARTMENT OF EDUCATION

### Notice of Proposed Information Collection Requests

**AGENCY:** Department of Education.

**SUMMARY:** The Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before December 4, 2000.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: September 29, 2000.

**Joseph Schubart,**

*Acting Leader, Regulatory Information Managment, Office of the Chief Information Officer.*

*Office of Vocational and Adult Education*

*Type of Review:* New.
*Title:* America's Career Resource Network State Grant Annual Performance Report.
*Frequency:* Annually.
*Affected Public:* State, Local, or Tribal Gov't, SEAs or LEAs.
*Reporting and Recordkeeping Hour Burden:* Responses: 56; burden hours: 9,408.

*Abstract:* Section 118(e) of the Carl D. Perkins Vocational and Technical Education Act requires the Department of Education to report annually to Congress concerning activities carried out by States with grant funds awarded under section 118. This collection solicits information from grantees necessary to fulfill this requirement, as well as to support the Department's monitoring and technical assistance activities.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila_Carey at (202) 708–6287 or via her internet address Sheila_Carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–25515 Filed 10–4–00; 8:45 am]

**BILLING CODE 4000–01–U**

## DEPARTMENT OF EDUCATION

### Notice of Proposed Information Collection Requests

**AGENCY:** Department of Education.

**SUMMARY:** The Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before December 4, 2000.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork

Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

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Dated: September 29, 2000.

**Joseph Schubart,**

*Acting Leader, Regulatory Information Management, Office of the Chief Information Officer.*

*Office of Educational Research and Improvement*

*Type of Review:* New.
*Title:* Education Longitudinal Study of 2002 (ELS 2002).
*Frequency:* Annually.
*Affected Public:* Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.
*Reporting and Recordkeeping Hour Burden:* Responses: 51,597; burden hours: 59,497.
*Abstract:* Year 2001 field test will include 50 schools in five states, students, parents, teachers, and librarians. The main study in Spring 2002 in all 50 states and District of Columbia will constitute the baseline of a longitudinal study of school effectiveness and impact on postsecondary and labor market outcomes.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her internet address Kathy_Axt@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–25516 Filed 10–4–00; 8:45 am]

BILLING CODE 4000–01–U

## DEPARTMENT OF ENERGY

### Secretary of Energy Advisory Board; Notice of Open Meeting

**AGENCY:** Department of Energy.

**SUMMARY:** This notice announces an open meeting of the Secretary of Energy Advisory Board. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), requires that agencies publish these notices in the **Federal Register** to allow for public participation.

**NAME:** Secretary of Energy Advisory Board.

**DATES AND TIMES:** Tuesday, October 10, 2000, 1 pm–4:30 pm.

**ADDRESSES:** Hyatt Regency Denver, Mount Elbert Conference Room, 1750 Welton Street, Denver, Colorado 80202.

**FOR FURTHER INFORMATION CONTACT:** Mary Louise Wagner, Executive Director, Secretary of Energy Advisory Board (AB–1), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–7092 or (202) 586–6279 (fax).

**SUPPLEMENTARY INFORMATION:** The purpose of the Secretary of Energy Advisory Board (The Board) is to provide the Secretary of Energy with essential independent advice and recommendations on issues of national importance. The Board and its subcommittees provide timely, balanced, and authoritative advice to the Secretary of Energy on the Department's management reforms, research, development and technology activities, energy and national security responsibilities, environmental cleanup activities, and economic issues relating to energy.

**Tentative Agenda**

The agenda for the October 10th meeting has not been finalized. However, the meeting will include a series of briefings and discussions on Department of Energy, Board and subcommittee activities including the Laboratory Operations Board, Openness Advisory Panel, Panel on Emerging Technological Alternatives to Incineration, NIF Laser System Task Force, and the Task Force on DOE Nonproliferation Programs with Russia. Members of the Public wishing to comment on issues before the Secretary of Energy Advisory Board will have an opportunity to address the Board during the afternoon period for public comment. The final agenda will be available at the meeting.

**Public Participation**

In keeping with procedures, members of the public are welcome to observe the business of the Secretary of Energy Advisory Board and submit written comments or comment during the scheduled public comment period. The Chairman of the Board is empowered to conduct the meeting in a fashion that will, in the Chairman's judgment, facilitate the orderly conduct of business. During its meeting in Denver, Colorado, the Board welcomes public comment. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. The Board will make every effort to hear the views of all interested parties. You may submit written comments to Mary Louise Wagner, Executive Director, Secretary of Energy Advisory Board, AB–1, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585. This notice is being published less than 15 days before the date of the meeting due to the late resolution of programmatic issues.

**Minutes**

A copy of the minutes and a transcript of the meeting will be made available for public review and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW., Washington, DC between 9 a.m. and 4 p.m., Monday through Friday except Federal holidays. Further information on the Secretary of Energy Advisory Board and its subcommittees may be found at the Board's web site, located at http://www.hr.doe.gov/seab.

Issued at Washington, DC, on October 3, 2000.

**Rachel M. Samuel,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 00–25709 Filed 10–4–00; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP00–34–000]**

### Algonquin Gas Transmission Company; Notice of Site Meeting

September 29, 2000.

On October 11, 2000, the Office of Energy Projects staff will attend a meeting with Algonquin Gas Transmission Company and Braintree Electric Light Department (Braintree) concerning the I–9 Lateral of the Fore River Project in Norfolk County, Massachusetts. The meeting will be held at the Braintree property (150 Potter Road, Braintree, Massachusetts) to discuss the proposed route on its property. Anyone interested in participating in the site meeting is welcome to attend. Interested parties must provide their own transportation.

Additional information about the proposed project is available from the Commission's Office of External Affairs at (202) 208–0004.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–25513 Filed 10–4–00; 8:45 am]

BILLING CODE 6717–01–M



## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER00–3562–000]**

### Calpine Energy Services, L.P.; Notice of Issuance of Order

September 29, 2000.

Calpine Energy Services, L.P. (Calpine) submitted for filing a rate schedule under which Calpine will engage in wholesale electric power and energy transactions at market-based rates. Calpine also requested waiver of various Commission regulations. In particular, Calpine requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Calpine.

On September 21, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Calpine should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Calpine is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonable necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Calpine's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is October 23, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE, Washington, DC 20426. The Order may also be viewed on the Internet at*http:/ /www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–25614 Filed 10–4–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–572–000]**

### Cove Point LNG Limited Partnership; Notice of Tariff Filing

September 29, 2000.

Take notice that on September 26, 2000, Cove Point LNG Limited Partnership (Cove Point) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume 1, First Revised Sheet No. 111. The proposed effective date for the revised tariff sheet is November 1, 2000.

Cove Point states that the purpose of the instant filing is to comply with the Commission's Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services in Docket Nos. RM98–10–000 and RM98–12–000, *et al.* (collectively, Order 637). Among other things, the Commission in Order 637 revised its regulations regarding the availability of the Right-of-First Refusal (ROFR). Specifically, 18 CFR 284.221(d)(2)(ii) provides that the ROFR will be applicable to contracts at the maximum applicable rate with either (1) a term of service of at least twelve consecutive months or (2) for a service which is not available for 12 consecutive months, a contract term of more than one year. A Buyer is eligible for a right of first refusal if the Buyer is receiving firm service at less than the maximum applicable rate pursuant to a service agreement that meets the foregoing term criteria and was executed prior to March 26, 2000; however, the right of first refusal will not apply to any re-executed service agreement not at the maximum applicable rate.

Cove Point states that copies of the instant filing are being mailed to customers, State Commissions, and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–25509 Filed 10–4–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

**[Docket No. EG–00–251–000]**

### Coyote Springs 2, LLC; Notice of Amended Application for Commission Determination of Exempt Wholesale Generator Status

September 29, 2000.

Take notice that on September 28, 2000, Coyote Springs 2, LLC, P.O. Box 10, 200 Ullman Boulevard, Boardman, Oregon 97818, filed with the Federal Energy Regulatory Commission an amended application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

The Applicant proposes to develop and own a natural gas-fired combined-cycle electric generation plant with a maximum capacity of 280 megawatts. The facility will be located in Morrow County, Oregon. The facility is scheduled to be completed in June 2002. All of the electric output of the facility will be sold at wholesale.

Any person desiring to be heard concerning the amended application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the amended application. All such motions and comments should be filed on or before October 12, 2000, and must be served on the applicant. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are

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available for public inspection or on the Internet at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–2222 for assistance.

**Linwood A. Watson, Jr.**

*Acting Secretary.*

[FR Doc. 00–25616 Filed 10–4–00; 8:45 am]

BILLING CODE 6717–01–M

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**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

**[Docket No. EL00–114–000]**

**Dynegy Power Marketing, Inc., Complainant v. Ameren Services Company, Respondent; Notice of Complaint**

September 29, 2000.

Take notice that on September 28, 2000, Dynegy Power Marketing, Inc. (Dynegy) tendered for filing a Complaint against Ameren Services Company, (Ameren).

In its Complaint, Dynegy alleges that Ameren has violated its Open Access Transmission Tariff (OATT) by refusing to recognize rollover rights for existing Point-to-Point Transmission Services.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before October 10, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222) for assistance. Answers to the complaint shall also be due on or before October 10, 2000.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–25617 Filed 10–4–00; 8:45 am]

BILLING CODE 6717–01–M

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**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

**[Project No. 2000–010—New York]**

**New York Power Authority; Notice Extending Deadline for Filing Requests for Additional Studies and Preliminary Comments, Recommendations, Terms and Conditions, and Prescriptions**

September 29, 2000.

On August 18, 2000, the U.S. Department of the Interior requested an extension of time for filing Additional Study Requests and Preliminary Comments, Recommendations, Terms and Conditions, and Prescriptions for the St. Lawrence-FDR Power Project, located on the St. Lawrence River, in St. Lawrence County, New York.

In response, the Commission, by notice of September 1, 2000, granted an extension of time, to September 29, 2000, for the filing of Additional Study Requests and Preliminary Comments, Recommendations, Terms and Conditions, and Prescriptions.

A Cooperative Consultation Process (CCP) Team was established for relicensing of the St. Lawrence-FDR Power Project, which was identified in the Notice of Memorandum of Understanding, Formation of the Cooperative Consultation Process Team, and Initiation of Scoping Process Associated with Relicensing the St. Lawrence-FDR Power Project, issued May 2, 1996 and found in the **Federal Register** dated May 8, 1996, Volume 61, No. 90, on page 20813.

By letter dated September 28, 2000, the New York Power Authority renewed the request for an extension of time in which to comment based on continued settlement negotiations. The goal of the CCP Team is to resolve issues during pre-filing consultation in a collaborative manner so that the Commission may accelerate the environmental review process and the Licensee may receive expedited review of the filed license application.

In this instance, we recognize the benefit to the CCP Team resolving as many issues as possible before they file their Additional Study Requests and Preliminary Comments, Recommendations, Terms and Conditions, and Prescriptions. We will, therefore, pursuant to Rule 2008 of the Commission's Rules of Practice and Procedure,[1] extend the deadline for filing Additional Study Requests and Preliminary Comments, Recommendations, Terms and Conditions, and Prescriptions to October 6, 2000.

All comments should be sent to: Mr. John Suloway, New York Power Authority, 123 Main Street, White Plains, NY 10601, with one copy filed with the Commission at: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, Washington, DC 20426. The copy filed with the Commission must: (1) Bear in all capital letters the title "Additional Study Requests," "Preliminary Comments," "Preliminary Recommendations," "Preliminary Terms and Conditions," or "Preliminary Prescriptions;" (2) set forth in the heading the name of the applicant and the project name and number; and (3) furnish the name, address, and telephone number of the person submitting the filing.

The Commission's contact for the St. Lawrence-FDR Power Project is Dr. Jennifer Hill at (202) 219–2797 or E-mail: *Jennifer.Hill@FERC.FED.US.*

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–25507 Filed 10–4–00; 8:45 am]

BILLING CODE 6717–01–M

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**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

**[Docket No. RP00–571–000]**

**Reliant Energy Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff**

September 29, 2000

Take notice that on September 26, 2000, Reliant Energy Gas Transmission Company (REGT) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the pro forma tariff sheets listed in Appendix A to the filing, to be effective November 1, 2000.

REGT states that the purpose of this filing is to implement a flexible nomination process under REGT's tariff that will give all Shippers the option to submit receipt and delivery nominations to be effective at the top of any hour with at least sixty (60) minutes notice.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

[1] 18 CFR 385.2008.



**David P. Boergers,**

*Secretary.*

[FR Doc. 00–25510 Filed 10–4–00; 8:45 am]

BILLING CODE 6717–01–M

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**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

**[Docket No. RP00–570–000]**

**Reliant Energy Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff**

September 29, 2000.

Take notice that on September 26, 2000, Reliant Energy Gas Transmission Company (REGT) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following revised tariff sheets to be effective November 1, 2000:

Fourth Revised Sheet No. 5
Fourth Revised Sheet No. 6
Fifth Revised Sheet No. 7

REGT states that the purpose of this filing is to adjust REGT's fuel percentages and Electric Power Costs (EPC) Tracker pursuant to Sections 27 and 28 of its General Terms and Conditions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–25511 Filed 10–4–00; 8:45 am]

BILLING CODE 6717–01–M

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**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

**[Docket No. ER00–3400–000]**

**Solar Turbines Incorporated; Notice of Issuance of Order**

September 29, 2000.

Solar Turbines Incorporated (STI) submitted for filing a rate schedule under which STI will engage in wholesale electric power and energy transactions at market-based rates. STI also requested waiver of various Commission regulations. In particular, STI requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by STI.

On September 26, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by STI should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, STI is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of STI's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is October 26, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–25615 Filed 10–4–00; 8:45 am]

BILLING CODE 6717–01–M

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**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

**[Docket No. CP00–469–000]**

**Tennessee Gas Pipeline Company; Notice of Request For Blanket Authorization**

September 29, 2000.

Take notice that on September 21, 2000, Tennessee Gas Pipeline Company (Tennessee), a Delaware corporation, P.O. Box 2511, Houston, Texas 77252, filed in CP00–469–000 a request pursuant to Sections 157.205 and 157.208(f)(2) of the Commission's (Commission) Regulations under the Natural Gas Act, as amended, (18 CFR 157.205 and 157.208(f)(2)) and Tennessee's blanket certificate authorization granted in Docket No. CP82–413–000, 20 FERC ¶ 62,409 (1982), for authorization to increase the maximum allowable operating pressure (MAOP) through an uprate of Tennessee's Mariposa-Humble and Gyp-Hill laterals located in Brooks County, Texas, all as more fully set forth in the request which is on file with the Commission and open to public inspection. The application may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm.* Call (202) 208–2222 for assistance.

Tennessee states that it proposes to increase the MAOPs on Line No. 404A–100 (Mariposa-Humble Line) from 794 to 908 psig and from 795 to 947 psig on Line No. 404B–100 (Gyp-Hill Line) in order to facilitate reliable receipt of natural gas from producers on these laterals. Tennessee indicates that both pipelines are receipt side laterals that connect to Tennessee's parallel mainlines known as Line Nos. 400–1 and 400–2. Tennessee then indicates that the operating pressure of Tennessee's mainline facilities often exceeds the existing MAOP of the

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Mariposa-Humble and Gyp-hill lines and for this reason producers can deliver gas in the Tennessee's system only when the operating pressure of the mainlines are lower than the pressure within the supply laterals. Tennessee states that the operating pressure on Tennessee's Line No. 400–1 can range as high as 903 psig and 860 psig on Line No. 400–2. Thus, Tennessee states that it has proposed these uprates so it can consistently and reliably receive natural gas from the affected producers on these lateral lines. Tennessee indicates that the total cost of the uprates is estimated to be from $5,000 to $15,000.

Tennessee states that Thomas G. Joyce, Certificates Manager, P.O. Box 2511, Houston, Texas 77252 at (713) 420–2459 can be contacted for any further questions on this application.

Any person or the Commission's Staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the regulations under the Natural Gas Act (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–25508 Filed 10–4–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP97–255–013]**

### TransColorado Gas Transmission Company; Notice of Compliance Filing

September 29, 2000.

Take notice that on September 27, 2000, TransColorado Gas Transmission Company (TransColorado) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Thirteenth Revised Sheet No. 21 and Ninth Revised Sheet No. 22, to be effective September 16, 2000.

TransColorado states that the filing has been filed in compliance with the Commission's letter order issued March 20, 1997, in Docket No. RP97–255–000. The tendered tariff sheets revised TransColorado's Tariff to amend its negotiated-rate firm transportation service agreement with Dominion Exploration & Production. TransColorado requested waiver of 18 CFR 154.207 so that the tendered tariff sheets may become effective September 16, 2000.

TransColorado stated that a copy of this filing has been served upon all parties to this proceeding, TransColorado's customers, the Colorado Public Utilities Commission and the New Mexico Public Utilities Commission.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–25512 Filed 10–4–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. EC00–106–000, et al.]**

### Entergy Power Marketing Corp., et al.; Electric Rate and Corporate Regulation Filings

September 28, 2000.

Take notice that the following filings have been made with the Commission:

**1. Entergy Power Marketing Corp. and Koch Energy Trading, Inc.**

[Docket No. EC00–106–000]

Take notice that on September 26, 2000, Entergy power Marketing Corp. (EPMC) and Koch Energy Trading, Inc. (KET) (Collectively, Applicants) filed a response to a letter dated September 14, 2000 from Commission staff (Staff) requesting additional information and an amended competitive analysis for Applicants' pending application under Section 203 of the Federal Power Act, 16 U.S.C. 824d (1994).

*Comment date:* October 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

**2. Connecticut Yankee Atomic Power Company**

[Docket No. ER97–913–003]

Take notice that on September 25, 2000 , Connecticut Yankee Atomic Power Company filed an Informational Filing regarding the consolidation of its pre-1983 Spent Fuel Trust and its Decommissioning Trust . The Informational Filing was made in compliance with the Offer of Settlement dated April 7, 2000, as supplemented April 27, 2000, which was approved by the Commission's Letter Order dated July 26, 2000.

*Comment date:* October 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

**3. Baconton Power LLC**

[Docket Nos. EC00–143–000 and ER00–2398–001 (not consolidated)]

Take notice that on September 22, 2000, as supplemented on September 26, 2000, Baconton Power LLC (Baconton or the Applicant) submitted for filing an application under section 203 of the Federal Power Act for approval of the indirect transfer of control over Baconton's jurisdictional transmission facilities and paper facilities. At present, SOWEGA Energy Resources, LLC owns an 85 percent interest in Baconton and Tejas Power Generation, LLC (Tejas) owns a 15 percent interest. The Applicant states that the transfer of control will occur as a result of a change in the upstream ownership of Tejas, currently a wholly-owned indirect subsidiary of Shell Oil Company, to InterGen N.V., a to-be-formed company to be indirectly owned 68 percent by the Royal Dutch Petroleum Company and The "Shell" Transport and Trading Company, p.l.c., and 32 percent by Bechtel Enterprises Holdings, Inc. Baconton also submitted in the September 22 filing a notice of change of status with respect to its market-based rate tariff authority granted in Docket No. ER00–2398–000. On September 26, 2000, Baconton supplemented its filing in EC00–143–000 to provide materials in fulfillment of the Exhibit H filing requirements found in the Commission's regulations at 18 CFR 33.3. Baconton requests privileged treatment for the Exhibit H materials filed in the September 26 supplement, as provided for under 18 CFR 388.112 of the Commission's regulations.



*Comment date:* October 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

**4. New York State Electric & Gas Corporation**

[Docket No. ER97–2353–005]

Take notice that on September 18, 2000, New York State Electric & Gas Corporation (NYSEG) tendered for filing with the Federal Energy Regulatory Commission (Commission) a refund report.

*Comment date:* October 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

**5. Union Electric Company, d/b/a/ Ameren UE, and Ameren Energy, Inc. on behalf of AmerenUE**

[Docket No. ER00–2687–001]

Take notice that on September 25, 2000, Ameren Energy, Inc., on behalf of AmerenUE, tendered for filing an updated market analysis in connection with its market-based rate authority.

*Comment date:* October 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

**6. EnergyUSA–TPC Corporation**

[Docket No. ER00–3219–001]

Take notice that on September 25, 2000, EnergyUSA–TPC Corporation (EnergyUSA), an indirect wholly owned subsidiary of NiSource, Inc., tendered for filing its FERC Electric Rate Schedule 1 and a Statement of Policy and Code of Conduct.

EnergyUSA seeks an effective date of September 18, 2000 for the tariff sheets submitted with this filing.

EnergyUSA states that this filing is being made to comply with the Commission's August 24, 2000, order in this docket. In particular, the filing contains appropriate tariff sheet designations.

*Comment date:* October 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

**7. Arizona Public Service Company**

[Docket.No. ER00–3283–001]

Take notice that on September 25, 2000, Arizona Public Service Company (APS) tendered for filing a revised rate schedule, APS–FERC Rate Schedule No. 225 in compliance with FERC Order in this docket issued September 20, 2000.

A copy of this filing has been served on the Arizona Corporation Commission and Citizens Utilities Company.

*Comment date:* October 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

**8. Virginia Electric and Power Company**

[Docket No. ER00–3743–000]

Take notice that on September 25, 2000, Virginia Electric and Power Company (Virginia Power or the Company) tendered for filing a Network Integration Transmission Service and Network Operating Agreement (Service Agreement) by Virginia Electric and Power Company to Dominion Energy Direct Sales, Inc. designated as Service Agreement No. 302 under the Company's Retail Access Pilot Program, pursuant to Attachment L of the Company's Open Access Transmission Tariff, FERC Electric Tariff, Second Revised Volume No. 5, to Eligible Purchasers effective June 7, 2000.

Virginia Power requests an effective date of September 25, 2000, the date of filing of the Service Agreement.

*Comment date:* October 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

**9. Duquesne Light Company**

[Docket No. ER00–3744–000]

Take notice that on September 25, 2000, Duquesne Light Company (DLC) filed a Service Agreement for Retail Network Integration Transmission Service and a Network Operating Agreement for Retail Network Integration Transmission Service dated September 22, 2000, The New Power Company under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement and Network Operating Agreement adds The New Power Company as a customer under the Tariff.

DLC requests an September 22, 2000 of September 22, 2000 for the Service Agreement.

*Comment date:* October 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

**10. Sierra Pacific Power Company**

[Docket No. ER00–3745–000]

Take notice that on September 25, 2000, Sierra Pacific Power Company (Sierra) tendered for filing executed Service Agreements (Agreements) with Pacificorp Power Marketing for Non-Firm and Short-Term Firm Transmission Service under Sierra Pacific Resources Operating Companies, FERC Electric Tariff, Original Volume No. 1, Open Access Transmission Tariff (Tariff).

Sierra filed the executed Agreements with the Commission in compliance with Section 13.4 and 14.4 of the Tariff and applicable Commission regulations. Sierra also submitted Original Sheet Nos. 173 and 173A (Attachment E) to the Tariff, which is an updated list of all current subscribers.

Sierra requests waiver of the Commission's notice requirements to permit and effective date of September 26, 2000 for Attachment E, and to allow the Agreements to become effective according to their terms.

Copies of this filing were served upon the Public Utilities Commission of Nevada, the Public Utilities Commission of California and all interested parties.

*Comment date:* October 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

**11. Dominion Nuclear Marketing III, L.L.C.**

[Docket No. ER00–3746–000]

Take notice that on September 25, 2000, Dominion Nuclear Marketing III, L.L.C. tendered for filing its proposed FERC Electric Market-Based Sales Tariff and requested certain waivers of the Commission's regulations.

*Comment date:* October 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

**12. Mid-Continent Area Power Pool**

[Docket No. ER00–3747–000]

Take notice that on September 25, 2000, the Mid-Continent Area Power Pool (MAPP), on behalf of its members that are subject to Commission jurisdiction as public utilities under Section 201(e) of the Federal Power Act, filed an amendment to Schedule R of the Restated Agreement that would extend provision of the redispatch service from October 31, 2000 to October 31, 2001.

*Comment date:* October 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

**13. South Carolina Electric & Gas Company**

[Docket No. ER00–3748–000]

Take notice that on September 25, 2000, South Carolina Electric & Gas Company (SCE&G) submitted a service agreement establishing Sempra Energy Trading Corp. as a customer under the terms of SCE&G's Negotiated Market Sales Tariff.

Copies of this filing were served upon Sempra Energy Trading Corp. and the South Carolina Public Service Commission.

*Comment date:* October 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

**14. Boston Edison Company**

[Docket No. ER00–3749–000]

Take notice that on September 25, 2000, Boston Edison Company (Boston

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Edison) tendered for filing a Standstill Agreement between itself and New England Power Company (NEP) as successor-in-interest to Montaup Electric Company (Montaup). The Standstill Agreement extends through December 4, 2000 the time in which NEP may institute a legal challenge to the 1998 true-up bill under Boston Edison's FERC Rate Schedule No. 69, governing sales to Montaup from the Pilgrim Nuclear Station.

Boston Edison requests waiver of the Commission's notice requirement to allow the Standstill Agreement to become effective September 26, 2000.

*Comment date:* October 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

**15. California Independent System Operator Corporation**

[Docket No. ER00–3750–000]

Take notice that on September 25, 2000, the California Independent System Operator Corporation tendered for filing a Scheduling Coordinator Agreement between the ISO and Enron Energy Services, Inc. for acceptance by the Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Scheduling Coordinator Agreement to be made effective as of September 15, 2000.

The ISO states that this filing has been served on Enron Energy Services, Inc. and the California Public Utilities Commission.

*Comment date:* October 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

**16. ANP Funding I, L.L.C.**

[Docket No. ER00–3751–000]

Take notice that on September 25, 2000 ANP Funding I, L.L.C. tendered for filing pursuant to Rules 205 and 207 of the Commission's Rules of Practice and Procedure (18 CFR 385.205 and 385.207) a petition seeking waivers and blanket approvals under various regulations of the Commission, and an order accepting its FERC Electric Rate Schedule No. 1 for filing, to be effective on the date of the Commission's order on such petition.

FERC Electric Rate Schedule No. 1 provides for the sale of energy and capacity at agreed prices.

*Comment date:* October 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

**17. Arizona Public Service Company, El Paso Electric Company, Public Service Company of New Mexico, and Southern California Edison Company**

[Docket No. ER00–3752–000]

Take notice that on September 25, 2000, Arizona Public Service Company, El Paso Electric Company, Public Service Company of New Mexico, and Southern California Edison Company tendered for filing a Funding Agreement for the Development of a Satellite Switchyard to the ANPP High Voltage Switchyard Between Participating Interconnectors and Salt River Project Agricultural Improvement and Power District.

*Comment date:* October 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

**18. Chicago Housing Authority**

[Docket No. TX98–1–000]

Take notice that on September 5, 2000, Chicago Housing Authority filed a Notice of Withdrawal of its application filed in the above-mentioned proceeding on November 14, 1997.

*Comment date:* October 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraphs**

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–25506 Filed 10–4–00; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. EC00–138–000, et al.]**

### Sithe Energies, Inc., et al. Electric Rate and Corporate Regulation Filings

September 29, 2000.

Take notice that the following filings have been made with the Commission:

**1. Sithe Energies, Inc. and the Sithe Stockholders, Exelon (Fossil) Holdings, Inc., PECO Energy Company, and Exelon Generation Company, L.L.C.**

[Docket No. EC00–138–000]

Take notice that on September 22, 2000, and September 26, 2000, Sithe Energies, Inc. and the Sithe Stockholders, Exelon (Fossil) Holdings, Inc., PECO Energy Company and Exelon Generation Company, L.L.C. (collectively, Applicants) filed supplements to their September 13, 2000, application (initial application) in this proceeding. The September 22, 2000, supplement is an errata correcting corporate structure charts that were included in Attachment B of the initial application. The September 26, 2000, supplement is the Sithe Energies, Inc. and Exelon (Fossil) Holdings, Inc. Joint Petition for Approval to Transfer Stock, which was filed with the New York Public Service Commission on September 14, 2000, and that relates to the transaction for which authorization is sought in the Docket No. EC00–138–000 proceeding.

*Comment date:* October 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

**2. ISO New England Inc.**

[Docket No. EL00–62–011]

Take notice that on September 26, 2000, the New England Power Pool (NEPOOL) Participants Committee submitted the Sixty-Fifth Agreement Amending the Restated NEPOOL Agreement and the Sixty-Sixth Agreement Amending the Restated NEPOOL Agreement in response to the 90-day compliance requirements of the Commission's June 28, 2000 order in Docket Nos. EL00–62–000 *et al., ISO New England Inc.,* 91 FERC ¶ 61,311 (2000) concerning the implementation of a congestion management system and multi-settlement system. In accordance with the requirements of the Commission's June 28, 2000 order, NEPOOL has noted an effective date of September 26, 2000, or such other date as the Commission deems appropriate.

The NEPOOL Participants Committee states that copies of these materials were sent to all persons identified on the service lists in the captioned proceedings, the NEPOOL Participants, non-Participant Transmission Customers and the six New England state governors and regulatory commissions.

*Comment date:* October 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

**3. ISO New England Inc.**

[Docket No. EL00–62–012]

Take notice that on September 26, 2000, ISO New England Inc. submitted a Report of Compliance in response to the Commission's June 28, 2000 Order in this proceeding.

Copies of said filing have been served upon all parties to this proceeding, upon NEPOOL Participants, and upon all non-Participant entities that are customers under the NEPOOL Open Access Transmission Tariff, as well as upon the utility regulatory agencies of the six New England States.

*Comment date:* October 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

**4. Unitil Power Corporation, Unitil Resources, Inc., and Fitchburg Gas and Electric Light Company**

[Docket Nos. ER97–2460–006, ER97–2462–011, and ER97–2463–001]

Take notice that on September 25, 2000, Unitil Power Corp., Unitil Resources, Inc., and Fitchburg Gas and Electric Light Company (Unitil Companies) tendered for filing pursuant to Ordering Paragraph (J), Unitil Power Corporation *et al.*, 80 FERC ¶ 61,358 (1997) (Unitil) an updated generation market analysis.

The Unitil Companies indicate that a copy of this filing was served on the Massachusetts Department of Telecommunications and Energy and the New Hampshire Public Utilities Commission.

*Comment date:* October 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

**5. San Diego Gas & Electric Company**

[Docket Nos. ER98–496–013 and ER98–2160–011]

Take notice that on September 25, 2000, Cabrillo Power I LLC and Cabrillo Power II LLC tendered for filing their refund compliance reports in the above-captioned dockets.

The compliance reports have been served on the California ISO, SDG&E, the EOB, the CPUC and all parties on the restricted service list.

*Comment date:* October 16, 2000, in accordance with Standard Paragraph E at the end of this notice.



**6. Allegheny Energy Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company (Allegheny Power)**

[Docket No. ER00–3588–001]

Take notice that on September 26, 2000, Allegheny Energy Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company (Allegheny Power), filed First Revised Service Agreement No. 324, which makes several technical corrections to Service Agreement No. 324, an Interconnection Agreement (Agreement) with Allegheny Energy Supply Company, LLC under Allegheny Power's Open Access Transmission Tariff.

The proposed effective date under the Agreement is September 1, 2000 or a date ordered by the Commission.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, and the West Virginia Public Service Commission.

*Comment date:* October 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

**7. Cinergy Services, Inc.**

[Docket No. ER00–3753–000]

Take notice that on September 26, 2000, Cinergy Services, Inc. (Cinergy) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Market-Based Service Agreement under Cinergy's Market-Based Power Sales Standard Tariff-MB (the Tariff) entered into between Cinergy and Conectiv Energy Supply, Inc. (CESI).

Cinergy and CESI are requesting an effective date of June 1, 2000.

*Comment date:* October 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

**8. New England Power Pool**

[Docket No. ER00–3754–000]

Take notice that on September 26, 2000, the New England Power Pool (NEPOOL) Participants Committee filed for acceptance materials to permit NEPOOL to expand its membership to include Public Service Company of Colorado and Westcoast Gas Services Delaware (America) Inc. (together, the Applicants).

The Participants Committee requests an effective date of October 1, 2000 for commencement of participation in NEPOOL by the Applicants.

The Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in NEPOOL.

*Comment date:* October 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

**9. Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC**

[Docket No. ER00–3755–000]

Take notice that on September 26, 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply) filed Service Agreement No. 95 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Energy Supply offers generation services.

Allegheny Energy Supply requests a waiver of notice requirements for an effective date of August 28, 2000 for TransAlta Energy Marketing (U.S.) Inc.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

*Comment date:* October 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

**10. Public Service Company of New Mexico**

[Docket No. ER00–3756–000]

Take notice that on September 26, 2000, Public Service Company of New Mexico (PNM) submitted for filing executed service agreements for point to point transmission service under the terms of PNM's Open Access Transmission Tariff (OATT). Two agreements are with OGE Energy Resources Inc, (one for non-firm service and one for short-term firm service), dated September 22, 2000. The other agreement, dated August 22, 2000, is for short-term firm service with Western Resources Generation Services. PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

PNM requests an effective date of September 22, 2000, for each of the service agreements.

Copies of the filing have been sent to OGE Energy Resources, Inc., to Western Resources Generation Services, and to the New Mexico Public Regulation Commission.

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*Comment date:* October 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

**11. American Electric Power Service Corporation**

[Docket No. ER00–3757–000]

Take notice that on September 26, 2000, the American Electric Power Service Corporation (AEPSC) tendered for filing executed Interconnection and Operation Agreement between Ohio Power Company and Duke Energy Washington, LLC. The agreement is pursuant to the AEP Companies' Open Access Transmission Service Tariff (OATT) that has been designated as the Operating Companies of the American Electric Power System FERC Electric Tariff Revised Volume No. 6, effective June 15, 2000.

AEP requests an effective date of August 7, 2000.

A copy of the filing was served upon the Public Utilities Commission of Ohio.

*Comment date:* October 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

**12. Southern Company Energy Marketing L.P., Southern Energy Chalk Point, LLC, Southern Energy Mid-Atlantic, LLC, Southern Energy Peaker, LLC, Southern Energy Potomac River, LLC**

[Docket No. ER00–3760–000]

Take notice that on September 25, 2000, Southern Company Energy Marketing L.P., Southern Energy Chalk Point, LLC, Southern Energy Mid-Atlantic, LLC, Southern Energy Peaker, LLC, and Southern Energy Potomac River, LLC (collectively, the Southern Parties) jointly filed under Section 205 of the Federal Power Act an application requesting approval of their respective proposed Market Rate Tariffs, waiver of certain regulations, and blanket approvals. The proposed Market Rate Tariffs would authorize each of the Southern Parties to engage in wholesale sales of capacity and energy and ancillary services to eligible customers at market rates.

*Comment date:* October 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraphs**

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–25613 Filed 10–4–00; 8:45 am]

BILLING CODE 6717–01–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6881–6]**

**Agency Information Collection Activities: Submission for OMB Review; Comment Request; EPA Information Collection Request; The 2001 Hazardous Waste Report (Biennial Report)**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: The 2001 Hazardous Waste Report (Biennial Report), EPA ICR Number 0976.10; OMB Control Number 2050–0024. This ICR replaces The 1999 Hazardous Waste Report (Biennial Report), EPA ICR Number 0976.09, which expires on November 30, 2000. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

EPA is also submitting to OMB for review modifications to the Notification of Regulated Waste Activity ICR, 262.12, OMB Control Number 2050–0028, expiration date 12/31/02; and the RCRA Part A Permit Application ICR, 262.09, OMB Control Number 2050–0034, expiration date 10/31/02. The actual changes to these two ICRs will be implemented later. These modifications show how the Agency plans to harmonize the site profile information currently collected on these forms and the Biennial Report Information and Certification form.

**DATES:** Comments must be submitted on or before November 6, 2000.

**ADDRESSES:** Send comments, referencing EPA ICR No. 0976.10 to the following addresses: Sandy Farmer, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822), 1200 Pennsylvania Avenue, N.W., Washington, DC 20460; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, N.W., Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Contact Sandy Farmer at EPA by phone at (202) 260–2740, by e-mail at farmer.sandy@epamail.epa.gov, or download off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 0976.10.

**SUPPLEMENTARY INFORMATION:**

*Title:* The 2001 Hazardous Waste Report (Biennial Report), EPA ICR Number 0976.10; OMB Control Number 2050–0024. This is a request for an extension of a currently approved collection.

*Abstract:* Large quantity generators of hazardous waste and owners/operators of hazardous waste facilities must complete, under the authority of RCRA sections 3002 and 3004, a report every other year on the amount of waste they generate and how it was managed. EPA uses the information to understand waste management practices, to expand its database of information for rulemakings, and to monitor compliance with regulatory requirements.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published June 23, 2000 (65 FR 39142). We are implementing all of the recommendations described in the June 23, 2000 notice. Nine comments were received on the June Notice, including a comment from the Tribal Association on Solid Waste and Emergency Response (TASWER). TASWER asked that a data element be added to the Biennial Report that would identify RCRA facilities on or adjacent to Indian Country and Alaska Native Villages. We have begun discussions with TASWER to see how their information needs might be met by the Biennial Report or other means. However, this process cannot be completed in time to make changes to the 2001 Biennial Report.

*Burden Statement:* The annual public reporting and recordkeeping burden for this collection of information is estimated to average 19.49 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

*Respondents/Affected Entities:* Large Quantity Generators and Treatment, Storage, and Disposal Facilities.

*Estimated Number of Respondents:* 10,157.

*Frequency of Response:* Biennially.

*Estimated Total Annual Hour Burden:* 195,214 hours.

*Estimated Total Annualized Capital, O&M Cost Burden:* $26,000.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses listed above.

Please refer to EPA ICR No. 0976.10 and OMB Control No. 2050–0024 in any correspondence.

Dated: September 28, 2000.

**Oscar Morales,**

*Director, Collection Strategies Division.*

[FR Doc. 00–25605 Filed 10–4–00; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6881–7]**

**Agency Information Collection Activities: Submission for OMB Review; Comment Request; Hazardous Waste Specific Unit Requirements, and Special Waste Processes and Types**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.



**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Hazardous Waste Specific Unit Requirements, and Special Waste Processes and Types, OMB Control Number 2050–0050, expiration date December 31, 2000. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before November 6, 2000.

**ADDRESSES:** Send comments, referencing EPA ICR No. 1572.05 and OMB Control No. 2050–0050, to the following addresses: Sandy Farmer, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822), 1200 Pennsylvania Avenue, N.W., Washington, DC 20460; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, N.W., Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** For a copy of the ICR contact Sandy Farmer at EPA by phone at (202) 260–2740, by email at farmer.sandy@epamail.epa.gov, or download a copy of the ICR off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 1572.05. For technical questions about the ICR contact David Eberly on 703–308–8645.

**SUPPLEMENTARY INFORMATION:**

*Title:* Hazardous Waste Specific Unit Requirements, and Special Waste Processes and Types (OMB Control No. 2050–0050; EPA ICR No. 1572.05) expiring December 31, 2000. This is a request for extension of a currently approved collection.

*Abstract:* This ICR provides a discussion of all of the information collection requirements associated with specific unit standards applicable to owners and operators of facilities that treat, store, or dispose of hazardous wastes as defined by 40 CFR part 261. It includes a detailed description of the data items and respondent activities associated with each requirement and with each hazardous waste management unit at a facility. The specific units and processes included in this ICR are: Tank Systems, Surface Impoundments, Waste Piles, Land Treatment, Landfills, Incinerators, Thermal Treatment, Chemical/Physical, and Biological Treatment, Miscellaneous (subpart X), Drip Pads, Process Vents, Equipment Leaks, Containment Buildings, Recovery/Recycling.

With each information collection covered in this ICR, EPA is aiding the goal of complying with its statutory mandate under RCRA to develop standards for hazardous waste treatment, storage, and disposal facilities, to protect human health and the environment. Without the information collection, the agency cannot assure that the facilities are designed and operated properly.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on May 5, 2000 (65 FR 26196); no comments were received.

*Burden Statement:* The annual public reporting and recordkeeping burden for this collection of information is estimated to average the following burden hours per response:

| | |
|---|---|
| Subpart I: Containers | 73 |
| Subpart J: Tank Systems | 77–80 |
| Subpart K: Surface Impoundments | 74–80 |
| Subpart L: Waste Piles | 19 |
| Subpart M: Land Treatment | 0 |
| Subpart N: Landfills | 39–43 |
| Subpart O: Incinerators | 3–5 |
| Subpart P: Thermal Treatment Units | 2 |
| Subpart Q: Chemical, Physical, and Biological Treatment Units | 6 |
| Subpart W: Drip Pads | 0 |
| Subpart X: Miscellaneous Units | 0 |
| Subpart AA: Process Vents | 422–660 |
| Subpart BB: Equipment Leaks | 47–48 |
| Subpart DD: Containment Buildings | 28–32 |
| Part 266: Specific Hazardous Waste Recovery/Recycling Facilities | 4 |

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of

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information; and transmit or otherwise disclose the information.

*Respondents/Affected Entities:* Business.

*Estimated Number of Respondents:* 6,341.

*Frequency of Response:* Occasional.

*Estimated Total Annual Hour Burden:* 287,069 hours.

*Estimated Total Annualized Capital, Operating/ Maintenance Cost Burden:* $874,517.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR No. 1572.05 and OMB Control No. 2050–0050 in any correspondence.

Dated: September 28, 2000

**Oscar Morales,**

*Director, Collection Strategies Division.*

[FR Doc. 00–25606 Filed 10–4–00; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6881–3]**

### National Drinking Water Advisory Council; Request for Nominations

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice; request for nominations.

**SUMMARY:** The U.S. Environmental Protection Agency (EPA) invites all interested persons to nominate qualified individuals to serve a three-year term as members of the National Drinking Water Advisory Council. This Advisory Council was established to provide practical and independent advice, consultation and recommendations to the Agency on the activities, functions and policies related to the implementation of the Safe Drinking Water Act as amended. The Council consists of fifteen members, including a Chair. Five members represent the general public; five members represent appropriate state and local agencies concerned with water hygiene and public water supply; and five members represent private organizations or groups demonstrating an active interest in the field of water hygiene and public water supply. On December 15 of each year, five members complete their appointment. Therefore, this notice solicits names to fill five vacancies, with appointed terms ending on December 15, 2003.

Any interested person or organization may nominate qualified individuals for membership. Nominees should be identified by name, occupation, position, address and telephone number. To be considered, all nominations must include a current resume providing the nominee's background, experience and qualifications.

Persons selected for membership will receive compensation for travel and a nominal daily compensation while attending meetings. The Council holds two face to face meetings each year, generally in the Spring and Fall. Additionally, members may be asked to serve on one of the Council's working groups that are formed each year to assist the EPA in major program issue development. These meetings are held approximately four times a year, with two meetings by conference call.

Nominations should be submitted to Charlene E. Shaw, Designated Federal Officer, National Drinking Water Advisory Council, U.S. Environmental Protection Agency, Office of Ground Water and Drinking Water (4601), 1200 Pennsylvania Avenue, NW, Ariel Rios Building, Washington, DC 20460, no later than October 30, 2000. The Agency will not formally acknowledge or respond to nominations. E-Mail your questions to *shaw.charlene@epa.gov* or call 202/260–2285.

Dated: September 28, 2000.

**Charlene E. Shaw,**

*Designated Federal Officer, National Drinking Water Advisory Council.*

[FR Doc. 00–25603 Filed 10–4–00; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6881–4]**

### National Drinking Water Advisory Council; Notice of Open Meeting

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice.

**SUMMARY:** Under section 10(a)(2) of Public Law 92–423, "The Federal Advisory Committee Act," notice is hereby given that a meeting of the National Drinking Water Advisory Council established under the Safe Drinking Water Act, as amended (42 U.S.C. S3300f *et seq.*), will be held on November 8, 2000, from 9:30 a.m. until 6:30 p.m. and November 9, 2000, from 8:30 a.m. until 12:30 p.m., at the Marriott Residence Inn at Pentagon City, 550 Army Navy Drive, Arlington, VA.

Agenda items will include reports from the Six Year Review and Research Working Groups and an update on regulations including MTBE, arsenic, radon, the Ground Water and Long Term 1/Filter Backwash Rules. Other agenda items include a discussion on the Safe Drinking Water Act gap analysis, the Source Water Protection Strategy and the status of drinking water research initiatives.

The meeting is open to the public. The Council encourages the hearing of outside statements and will allocate one hour for this purpose. Oral statements will be limited to five minutes, and it is preferred that only one person present the statement. Any outside parties interested in presenting an oral statement should petition the Council by telephone at (202) 260–2285 before November 3, 2000.

Any person who wishes to file a written statement can do so before or after a Council meeting. Written statements received prior to the meeting will be distributed to all members of the Council before any final discussion or vote is completed. Any statements received after the meeting will become part of the permanent meeting file and will be forwarded to the Council members for their information.

Members of the public that would like to attend the meeting, present an oral statement, or submit a written statement, should contact Ms. Charlene Shaw, Designated Federal Officer, National Drinking Water Advisory Council, U.S. EPA, Office of Ground Water and Drinking Water (4601), 401 M Street SW., Washington, DC 20460. The telephone number is Area Code (202) 260–2285 or E–Mail *shaw.charlene@epa.gov*.

Dated: September 29, 2000.

**Ephraim King,**

*Acting Director, Office of Ground Water and Drinking Water.*

[FR Doc. 00–25602 Filed 10–4–00; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6881–5]**

### Rouse Steel Drum Superfund Site; Notice of Proposed Settlement

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of proposed settlement.

**SUMMARY:** The United States Environmental Protection Agency is proposing to enter into a settlement with the Rouse Group and the Rouse Work Group for response costs pursuant to section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9622(h)(1) concerning the Rouse Steel Drum Superfund Site located in Jacksonville, Duval County, Florida. EPA will consider public comments on the proposed settlement for thirty (30) days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate. Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, U.S. EPA, Region 4 (WMD–CPSB), 61 Forsyth Street SW, Atlanta, GA 30303, 404/562–8887.

Written comments may be submitted to Ms. Batchelor within 30 calendar days of the date of this publication.

Dated: September 25, 2000.

**Franklin E. Hill,**

*Chief, CERCLA Program Services Branch, Waste Management Division.*

[FR Doc. 00–25604 Filed 10–4–00; 8:45 am]

BILLING CODE 6560–50–P



## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6881–2]**

### Clean Water Act Class II: Proposed Consent Agreement and Opportunity To Comment Regarding Jaxon Enterprises, Inc. and Creative Living Partnership Proceeding Under Clean Water Act Section 309(g)(1), (2)(B) and 40 CFR Part 22.13(b)

**AGENCY:** Environmental Protection Agency ("EPA").

**ACTION:** Notice.

**SUMMARY:** EPA is providing notice of a proposed Consent Agreement for alleged violations of the Clean Water Act ("Act"). EPA is also providing notice of opportunity to comment on the proposed Consent Agreement.

EPA is authorized under section 309(g) of the Act, 33 U.S.C. 1319(g), to assess a civil penalty after providing the person subject to the penalty notice of the proposed penaiiy and the opportunity for a hearing, and after providing interested persons notice of the proposed penalty and a reasonable opportunity to comment on its issuance. Under section 309(g), any person who without authorization discharges a pollutant to a navigable water, as those terms are defined in section 502 of the Act, 33 U.S.C. 1362, may be assessed a penalty in a "Class II" administrative penalty proceeding.

Class II proceedings under section 309(g) are conducted in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits," 40 CFR part 22 ("Consolidated Rules"), published at 64 FR 40138, 40177 (July 23, 1999). The procedures through which the public may submit written comment on a proposed Class II order or participate in a Class II proceeding, and the procedures by which a respondent may request a hearing, are set forth in the Consolidated Rules. The deadline for submitting public comment on a proposed Class II order is thirty (30) days after publication of this notice.

On September 26, 2000, EPA filed with Danielle Carr, Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, California 94105, (415) 744–1391, the following Consent Agreement:

In the Matter of Jaxon Enterprises and Creative Living, Buena Ventura Boulevard Extension, City of Redding, Shasta County, California, Docket No. CWA–09–99–0005.

For the alleged violations set forth in the Consent Agreement, Respondents agree to pay to the United States a civil penalty of $60,000 (sixty thousand dollars) for violations of NPDES Permit No. CAS000002 (issued by the California State Water Resources Control Board (Order No. 92–08–DWQ)) and section 301(a) of the Act, 33 U.S.C. 1311(a), at the Buena Ventura Boulevard Extension, City of Redding, Shasta County, California.

Procedures by which the public may comment on a proposed Class II penalty or participate in a Class II penalty proceeding are set forth in the Consolidated Rules. The deadline for submitting public comment on a proposed Class II penalty is thirty days after issuance of public notice.

**FOR FURTHER INFORMATION CONTACT:** Persons wishing to receive a copy of EPA's Consolidated Rules, review the Complaint or other documents filed in this proceeding, comment upon the proposed assessment, or otherwise participate in the proceeding should contact Danielle Carr, Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, California 94105, (415) 744–1391. The administrative record for this proceeding is located in the EPA Regional Office identified above, and the file will be open for public inspection during normal business hours. All information submitted by Jaxon Enterprises and Creative Living is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will issue no final order assessing a penalty in these proceedings prior to thirty (30) days after the date of publication of this notice.

Dated: September 26, 2000.

**Alexis Strauss,**

*Director, Water Division.*

[FR Doc. 00–25601 Filed 10–4–00; 8:45 am]

BILLING CODE 6560–50–U

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

September 28, 2000

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number.

Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Written comments should be submitted on or before November 6, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

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**ADDRESSES:** Direct all comments to Judy Boley, Federal Communications Commission, Room 1-C804, 445 12th Street, SW., DC 20554 or via the Internet to jboley@fcc.gov.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collection(s), contact Judy Boley at 202–418-0214 or via the Internet at jboley@fcc.gov.

**SUPPLEMENTARY INFORMATION:**

*OMB Control No.:* 3060–0105.

*Title:* Licensee Qualification Report for Multipoint Distribution Service.

*Form No.:* FCC Form 430.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Businesses or other for-profit, not-for-profit institutions.

*Number of Respondents:* 1,500.

*Estimated Time Per Response:* 2 hours.

*Frequency of Response:* On occasion and annual reporting requirement.

*Total Annual Burden:* 3,000 hours.

*Total Annual Cost:* N/A.

*Needs and Uses:* FCC Form 430 is filed by new applicants or annually by licensees if substantial changes occur in the organizational structure to provide information concerning corporate structure, alien ownership, and character of applicant or licensee. Applicants soliciting authority for assignment or transfer of control also file FCC Form 430. The form has been revised to remove all other services from the form except for services authorized under Part 21.

The information will be used by the Commission to determine whether the applicant is legally qualified to become or remain a licensee, as required by the Communications Act. Without such information the Commission would not be able to fulfill its responsibility under the Communications Act to make a finding as to the legal qualifications of an applicant or licensee.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 00–25525 Filed 10–4–00; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

September 29, 2000.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Written comments should be submitted on or before December 4, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all comments to Les Smith, Federal Communications Commissions, 445 12th Street, SW., Room 1–A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

**SUPPLEMENTARY INFORMATION:**

*OMB Control No.:* 3060–0914.

*Title:* Petition, Pursuant to Section 7 of the Act, for a Waiver of the Airborne Cellular Rule, or, in the Alternative, for a Declaratory Ruling.

*Form No.:* None.

*Type of Review:* Extension.

*Respondents:* Business or other for-profit; Federal Government; State, Local or Tribal Government.

*Number of Respondents:* 30.

*Estimated Time Per Response:* 8 hours.

*Frequency of Response:* On occasion.

*Total Annual Burden:* 240 hours.

*Total Annual Cost:* 0.

*Needs and Uses:* The Commission resets a waiver of section 22.925 of the Commission's rules in order to permit AirCell and a number of cellular licensees who, jointly entered into resale agreements with AirCell, to furnish system capacity for the provision of cellular service on a secondary, conditional basis to airborne terminal units using AirCell-developed technology for a period of two years. The waiver allows airborne use of cellular telephones.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 00–25558 Filed 10–4–00; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

September 29, 2000.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Written comments should be submitted on or before December 4, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all comments to Les Smith, Federal Communications Commissions, Room 1 A–804, 445 Twelfth Street, SW., Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

**SUPPLEMENTARY INFORMATION:**

*OMB Approval Number:* 3060–0021.

*Title:* Civil Air Patrol Radio Station License.

*Form No.:* FCC 480.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Non-profit institutions.

*Number of Respondents:* 12.

*Estimated Time Per Response:* 5 minutes.

*Total Annual Burden:* 1 hour.

*Total Costs to Respondents:* 0.

*Needs and Uses:* FCC Rules require that applicants file the FCC Form 480 to apply for a new, renewed, or modified Civil Air Patrol Radio Station License. This form is required by the Communications Act of 1934, as amended; International Treaties and FCC Rules 47 CFR Parts 1.922, 87.21 and 87.31.

The data will be used by Commission personnel to evaluate the application to issue licenses, to provide information for enforcement and rulemaking proceedings and to maintain a current inventory of licensees.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 00–25559 Filed 10–4–00; 8:45 am]

**BILLING CODE 6712–01–P**



## FEDERAL COMMUNICATIONS COMMISSION

**[Report No. AUC–33–H (Auction No. 33); DA 00–2154]**

### 700 MHz Guard Bands Auction Closes

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** This document provides detailed information concerning winning bidders, down payments, bid withdrawal payments and/or deposits, FCC Forms 601 and 602 filing requirements, requests for rule waivers, and licensing matters.

**FOR FURTHER INFORMATION CONTACT:** Howard Davenport, Attorney, Auctions and Industry Analysis Division, at (202) 418–0660.

**SUPPLEMENTARY INFORMATION:** This is a summary of a Public Notice released September 25, 2000. The complete text of the public notice, including the attachments, is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC. It may also be purchased from the Commission's copy contractor, International Transcription Services, Inc. (ITS, Inc.) 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800. It is also available on the Commission's web site at *http://www.fcc.gov.*

List of Attachments available at the FCC:

Attachment A: "Round Results, High Bids" lists winning bidders and both the gross and net high winning bid amounts.

Attachment B: "Bidder Payment/Refund Report" lists down payments and any withdrawn bid payments owed by winning bidders.

Attachment C: "Withdrawal/Payment Report" lists withdrawn bid payments owed by all bidders.

Attachment D: "Instructions for Completing FCC Form 601" provides detailed information about how a winning bidder should complete the required FCC Form 601 for 700 MHz Guard Bands license applications.

Attachment E: "Instructions for Using ULS to Register TIN and Call Signs With FCC and File FCC Form 601 Electronically."

Attachment F: "Accessing the FCC Network using Windows 95/98 for Universal Licensing System Filing."

1. On September 21, 2000, the Federal Communications Commission completed the auction of 104 licenses in the 700 MHz Guard Bands ("Auction No. 33"), raising (in net high bids) a total of $519,892,575.00 for the U.S. Treasury. Nine winning bidders won a total of 96 licenses in this auction.

#### A. Down Payments

2. The Commission's rules require that within ten business days after the release of the Public Notice, in this case 6:00 p.m. ET on October 10, 2000, winning bidders in Auction No. 33 must have on deposit with Mellon Bank in Pittsburgh, Pennsylvania, enough funds to cover all required: (i) down payments on winning bids, and (ii) payments for withdrawn bids, if applicable. If a winning bidder's upfront payment is not sufficient to meet both of these requirements, the winning bidder must deposit additional funds. *See* 47 CFR 1.2107(b), 1.2104(g).

3. The amount now due from each winning bidder, if any, is set out in the last column of Attachment B of the Public Notice. Note that a payment and FCC Form 159 are necessary only if a winning bidder's upfront payment does not cover the required total of down payments and withdrawn bid payments (as reflected in Attachment B) of the Public Notice. Each winning bidder's down payment must be a total of twenty (20) percent of its net winning bid(s) plus any withdrawal payments.

#### B. Final Payments

4. After the termination of the licensing pleading cycle (*see* 47 CFR 1.2108), the Commission will issue a public notice announcing that it is prepared to grant the licenses. Within ten business days after the date of that public notice, winning bidders will be required to make full payment of the balance of their winning bids. *See* 47 CFR 1.2109 and 1.2107(b). Licenses will be granted only after the full and timely payment of winning bids and any applicable late fees, in accordance with § 1.2109(a). *See* 47 CFR 1.2109(a).

#### C. Method of Payment

5. All payments must be in U.S. dollars and made in the form of a wire transfer. No personal checks, credit card payments, or other forms of payment will be accepted. All payments must be accompanied by a completed FCC Remittance Advice Form (FCC Form 159). If applicable, a partially completed copy of the FCC Form 159 will be sent along with the Public Notice to facilitate submission of the correct down payment. Questions regarding FCC Form 159 should be addressed to Tim Dates or Gail Glasser at 202–418–1995. Please note, however, that winning bidders are ultimately responsible for insuring the verification and submission of the correct down payment from their bank to Mellon bank.

6. Wire transfer payments must be received by Mellon Bank by 6 p.m. ET, on October 10, 2000. Winning bidders should coordinate with their bankers ahead of time regarding their wire transfers, and allow sufficient time for the wire transfer to be initiated and completed prior to the deadline. To submit funds by wire transfer, winning bidders will need the following information:

*ABA Routing Number:* 043000261.

*Receiving Bank:* Mellon Pittsburgh.

*BNF:* 911–6106.

*OBI Field:* (Skip one space between each information item) "AUCTIONPAY".

*Taxpayer Identification No.* (same as FCC Form 159, Block 25).

*Payment Type Code* (enter "A33D").

*FCC Code 1* (same as FCC Form 159, Block 23A: "33").

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*Payor Name* (same as FCC Form 159, Block 2).

*Lockbox No.:* 358850.

Winning bidders must fax a completed FCC Form 159 to Mellon Bank at 412–209–6045 or 412–236–5702 at least one hour before placing the order for the wire transfer (but on the same business day).

7. Proper completion of the FCC Form 159 is critical to ensuring correct credit of bidder deposits. Winning bidders must use the same Taxpayer Identification Number used on their FCC Form 175. Questions concerning the calculation and submission of down payments should be directed to Gail Glasser at 202–418–1995.

**D. Withdrawal, Default and Disqualification Payments**

8. The Commission imposes payments on bidders that withdraw high bids during the course of an auction, default on payments due after an auction closes, or those that are disqualified. *See* 47 CFR 1.2104(g), 1.2109.

9. *Bid Withdrawal Payments.* A bidder (Bidder X) that withdraws a high bid during the course of an auction is subject to a bid withdrawal payment equal to the difference between the amount withdrawn and the amount of the subsequent winning bid. If a high bid is withdrawn on a license that remains unsold at the close of the auction, Bidder X will be required to make an interim payment equal to three (3) percent of the net amount of the withdrawn bid. This payment amount is deducted from any upfront payments or down payments that Bidder X has deposited with the Commission. If, in a subsequent auction, that license receives a valid bid in an amount equal to or greater than the withdrawn bid amount, then no final bid withdrawal payment will be assessed, and Bidder X may request a refund of the interim three (3) percent payment. If, in a subsequent auction, the winning bid amount for that license is less than Bidder X's withdrawn bid amount, then Bidder X will be required to make a final bid withdrawal payment equal to either the difference between Bidder X's net withdrawn bid and the subsequent net winning bid, or the difference between Bidder X's gross withdrawn bid and the subsequent gross winning bid, whichever is less. The three (3) percent interim payment will be applied toward the withdrawal payment.

Attachment C of the Public Notice identifies bidders that owe withdrawal payments to the Commission as a result of bid withdrawals made in Auction No. 33.

10. *Bid Default/Disqualification Payments.* If a high bidder defaults or is disqualified after the close of the auction, the defaulting bidder will be subject to the same bid withdrawal payment obligations as described above, plus an additional payment equal to three (3) percent of the subsequent winning bid or three (3) percent of the defaulted bid, whichever is less. Where a bidding credit applies to the winning bid in either the original or the subsequent auction, the calculation of the three percent payment is based on the smaller of the two gross bids or smaller of the two net bids, whichever basis (gross or net) was used to figure the first component. Thus, if the difference between the gross bids is less than the difference between the net bids, the 3 percent payment will be computed on the lower of the gross bids. If the difference between the net bids is less than or equal to the difference between the gross bids, the 3 percent payment will be computed on the lower of the net bids. However, if the differences between both the gross bids and the net bids are less than or equal to zero, the three percent payment will be computed on the lower of the net bids.

11. If a winning bidder fails to remit the required down payment within ten (10) business days after the Commission has released the *Public Notice*, in this case by October 10, 2000, the bidder will be deemed to have defaulted, its application will be dismissed, and it will be liable for a default payment as described above. In such event, the Commission, at its discretion, may either auction the spectrum to existing or new applicants, or offer it to the other highest bidders (in descending order) at their final bids. *See* 47 CFR 1.2109(b).

12. If a winning bidder fails to pay the balance of its winning bids in a lump sum by the applicable deadline as specified by the Commission, it will be allowed to make payment within ten (10) business days after the payment deadline provided that it also pays a late fee equal to five (5) percent of the amount due. When a winning bidder fails to pay the balance of its winning bid plus late fee by the late payment deadline, it is considered to be in default on its license(s) and subject to the applicable default payments. Licenses will be awarded upon the full and timely payment of winning bids and any applicable late fees. *See* 47 CFR 1.2109(a). A winning bidder that is found unqualified to be a licensee, fails to remit the balance of its winning bid in a timely manner, or defaults or is disqualified for any reason after having made the required down payment, will be deemed to have defaulted and will be liable for the payment set forth in § 1.2104(g)(2). In such event, the Commission may either auction the spectrum to existing or new applicants or offer it to the other highest bidders (in descending order) at their final bids. *See* 47 CFR 1.2109(c).

13. Finally, bidders that are found to have violated the antitrust laws or the Commission's rules in connection with their participation in the competitive bidding process may be subject, in addition to any other applicable sanctions, to forfeiture of their upfront payment, down payment, or full bid amount, and may be prohibited from participating in future auctions. *See* 47 CFR 1.2109(d).

**E. Refund of Excess Upfront Payments (for winning bidders)**

14. Upfront monies on deposit that are in excess of the required down payment, withdrawal and/or default payment amounts will be refunded to the payer of record promptly upon receipt of the necessary wire transfer instructions. Winning bidders must fax the necessary wire transfer instructions to Gail Glasser at 202–418–2843. Any questions concerning refunds should be referred to Gail Glasser or Tim Dates at 202–418–1995.

**F. Refund of Upfront Payments (for non-winning bidders)**

15. Non-winning bidders must fax the necessary wire transfer instructions to Gail Glasser or Tim Dates at 202–418–2843. Any questions concerning refunds for non-winning bidders should be referred to Gail Glasser or Tim Dates at 202–418–1995.

**G. FCC Form 601**

16. By 6 p.m. ET on October 10, 2000, winning bidders must submit a completed long-form license application(s) covering each license for which they were the winning high bidder. Attachment D of the Public Notice sets out instructions for completing the FCC Form 601. Applications must be filed electronically. Detailed instructions for filing the Form 601 electronically are set out in Attachment E of the Public Notice. Failure to timely file FCC Form 601 will result in default. Late-filed applications will not be accepted without a showing of good cause.

**H. FCC Form 602**

17. Pursuant to § 1.919 of the Commission's rules, an applicant for a license in an auctionable service must have on file with the Commission a current FCC Form 602 regarding ownership information of the applicant. *See* 47 CFR 1.919. Therefore, unless the applicant already has a current FCC Form 602 on file with the Commission, the applicant must submit one at the time the FCC Form 601 is filed. Any late-filed FCC Form 602 must contain a request for waiver of the filing requirement in 47 CFR 1.919.

18. FCC Form 602 must be filed manually (not electronically), and may be obtained from the Internet at http://www.fcc.gov/formpage.html or by calling the FCC's Form Distribution Center at 1–800–418–FORM (3676). For more detailed information on FCC Form 602, *see* "Wireless Telecommunications Bureau Answers Frequently Asked Questions Concerning Reporting of Ownership Information on FCC Form 602," *Public Notice*, DA 99–1001 (14 FCC Rcd. 8261) 1999.

Applicants that do not have a current FCC Form 602 on file should send the form to: Federal Communications Commission, 1270 Fairfield Road, Gettysburg, PA 17325–7245.

19. Filing FCC Form 602 is a *separate* requirement from, and in addition to, the ownership reporting requirements associated with filing FCC Form 601, Exhibit A, as set forth in Attachment D of the Public Notice. However, to avoid duplication, applicants may provide certain information required in Exhibit A by attaching a copy of their FCC Form 602 (in Adobe PDF Format) to their FCC Form 601 submission. Applicants are reminded, however, that an original FCC Form 602 still must be filed manually in Gettysburg, PA. For further information, see Instructions in Attachment D of the Public Notice.

**I. Applications for Multiple Licenses**

20. Applicants may submit one FCC Form 601 Main Form, Schedule B, and Form 602 for multiple licenses if all filing information (name and address information, all ownership and eligibility attachments, and waiver requests) associated with the application is identical. Licensing information such as market designator, channel block, and/or market name may be different (*i.e.* WXMEA001A and WXMEA001B- Boston, MA; WXMEA022A—Knoxville, TN).

21. Filers whose name and address, ownership, eligibility, and waiver requests are identical for some licenses but different for other licenses must submit a separate Form 601 and 602 for those licenses for which filing information is unique. The streamlined filing procedure described in paragraph 20 may only be used for licenses that have identical filing information.



**J. Maintaining Accuracy of Information**

22. Applicants are no longer required to maintain accuracy and completeness of information furnished on their FCC Form 175 and exhibits. After the auction closes, applicants are required to make all changes in the ULS system (Forms 601/602).

**K. Application Processing and License Grant**

23. Pursuant to 47 CFR 1.2108(b) and the Balanced Budget Act of 1997, Public Law 105–33, 111 Stat. 251 (1997), interested parties will have ten (10) days to file petitions to deny after the Commission releases a public notice announcing the FCC Forms 601 and 602 are acceptable for filing. An applicant may file an opposition to any petition to deny within five (5) days after the time for filing petitions to deny has expired. *See* 47 CFR1.2108(c). The petitioner may file a reply to such opposition within five (5) days after the time for filing oppositions has expired. *See* 47 CFR 1.2108(c). If the Commission determines that an applicant is qualified and there is no substantial and material issue of fact concerning that determination, the Commission will issue a public notice announcing that it is prepared to grant the application conditioned upon the full and timely payment of the remaining balance of the applicant's winning bid. Once the Commission has received full payment of the applicant's winning bid, it will issue a public notice announcing grant of the license (or licenses) to the applicant.

**L. Clarifications**

24. Applicants should be aware that the Policy Division of the Wireless Telecommunications Bureau has issued two Errata. The first Errata, *inter alia*, makes conforming amendments to § 27.308 of the Commission's Rules, concerning technical content of applications. The second Errata, *inter alia*, makes conforming amendments to § 27.6 of the Commission's Rules, referencing the definitional criterion for the Gulf of Mexico EA.

**M. Anti-collusion Rules**

25. To ensure the competitiveness of the auction process, the Commission's rules prohibit applicants for the same geographic license area from communicating with each other during the auction about bids, bidding strategies, or settlements. As explained more fully in the *Auction No. 33 Procedures Public Notice*, 65 FR 21182 (April 20, 2000), this prohibition began with the filing of short-form applications and ends on the down payment due date. The prohibition ends on the down payment due date whether or not a high bidder must supplement its upfront payment to cover its down payment. Applicants certified their compliance with § 1.2105(c) when their FCC Form 175 short-form applications were signed.

26. The following is a list of important numbers relating to Auction No. 33:

News Media: Meribeth McCarrick at 202–418–0654.

Technical Support Hotline: Technical Support Personnel at 202–414–1250 (V) or 202–414–1255 (text telephone (TTY)).

Office of the Managing Director Auctions Accounting Group (Payment, FCC Form 159 and refund questions) Gail Glasser or Tim Dates at 202–418–1995.

Wireless Telecommunications Bureau, Commercial Wireless Division (FCC Form 601 and 602 questions) JoAnn Epps at 202–418–1342, Gary Oshinsky at 202–418–7167 or Erin McGrath at 202–418–2042.

Wireless Telecommunications Bureau, Auctions and Industry Analysis Division Auctions (Auction-related questions) Lisa Stover, Project Manager at 717–338–2888, or Howard Davenport, Attorney, at 202–418–0660.

Federal Communications Commission.

**Margaret Wiener,**

*Deputy Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau.*

[FR Doc. 00–25530 Filed 10–4–00; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

**[DA 00–2013]**

## Wireless Telecommunications Bureau Opens Filing Window for Requests To Be a Frequency Coordinator in the Wireless Medical Telemetry Service

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** The *Public Notice* announces a filing window for requests to be a designated frequency coordinator in the Wireless Medical Telemetry Service, (WMTS). WTB will accept requests for certification beginning September 29, 2000, and ending October 10, 2000. Requests received before or after these dates will not be considered. Entities interested in serving as a WMTS frequency coordinator should familiarize themselves with the Commission's Rules pertaining to the WMTS.

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**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Jeff Tobias, Wireless Telecommunications Bureau, Public Safety and Private Wireless Division, (202) 418–1617.

**SUPPLEMENTARY INFORMATION:** The Public Notice was released on September 28, 2000. The document is available, in entirety, for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A–257), 445 12th Street, SW, Washington, DC 20554. It may also be purchased from the Commission's copy contractor, International Transcription Services, Inc. (ITS, Inc.) 1231 20th Street, NW, Washington, DC 20036, (202) 857–3800. For background information, a copy of the R&O in ET Docket No. 99–255 can be found on the Commission's web page. The Commission's website is *http://www.fcc.gov/Bureaus/Wireless/Orders/2000/fcc00076.pdf.*

*Summary of the Public Notice*

The Commission adopted a Report and Order (R&O) establishing a new WMTS. The WMTS is intended to enhance the ability of health care providers to offer high quality and cost-effective care to patients with acute and chronic health care needs. While WMTS equipment will be licensed by rule, the Commission concluded that it was necessary to designate a frequency coordinator(s) to maintain a database of all WMTS equipment identified by location, operating frequency, emission type and output power. The Commission believed that the database will provide a record of the frequencies used by each facility or device to assist parties in selecting frequencies to avoid interference. The Commission envisioned that the database would be used by users eligible for the WMTS and manufacturers to plan for specific frequency use within a geographic area.

1. *WMTS Frequency Coordinator Duties and Responsibilities.* The designated WMTS frequency coordinator(s) must be familiar with the medical telemetry user community, and must make its services available to all parties on a first-come, first-served and non-discriminatory basis. The WMTS frequency coordinator(s) must be willing to serve a five-year term, which could be renewed by the Commission. The WMTS frequency coordinator(s) will be permitted to set the fee structure associated with such frequency coordination as necessary to recoup costs. Pursuant to § 95.1113 of the Commission's Rules, a WMTS frequency coordinator will be required to: (i) Review and process coordination requests submitted by authorized health care providers as required in 47 CFR 95.1111; (ii) maintain a database of WMTS use; (iii) notify users of potential conflicts; and (iv) coordinate WMTS operation with radio astronomy observatories and Federal Government radar systems as specified in 47 CFR 95.1119 and 95.1121.

2. Each request for designation as a WMTS frequency coordinator must be signed and indicate the name and telephone number of a contact person familiar with the request. Each request must include:

(i) a description of the entity requesting to be a WMTS frequency coordinator and its qualifications;

(ii) how it will prevent any conflicts of interest;

(iii) its proposed fee structure;

(iv) length of time before applicant will be able to begin its duties as a WMTS frequency coordinator;

(v) a statement that the applicant will be able and willing to work with other WMTS frequency coordinators should WTB decide to designate more than one frequency coordinator, and

(vi) the geographic area(s) for which the applicant is willing to coordinate.

3. WTB will base its decision on the information provided. Preference will be given to applicants who can provide nationwide coordination. Once a decision has been made, the name(s) and address(es) of the designated WMTS coordinator(s) will be announced by *Public Notice.*

4. Requests for designation as a WMTS frequency coordinator must reference this *Public Notice,* including the DA number, and be filed with the Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., TW–A325, Washington DC 20554. A copy of each filing should be sent to International Transcription Service, Inc. at 1231 20th Street, NW., Washington, DC 20036, and Jeffrey Tobias, Federal Communications Commission, Wireless Telecommunications Bureau, Public Safety and Private Wireless Division, Policy and Rules Branch, 445 12th Street, SW., 2–C828; Washington, DC 20554.

Federal Communications Commission.

**D'Wana R. Terry,**

*Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau.*

[FR Doc. 00–25557 Filed 10–4–00; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[CC Docket No. 92–237; DA 00–2247]**

### Next Meeting of the North American Numbering Council

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** On October 3, 2000, the Commission released a public notice announcing the October 17 and 18, 2000, meeting and agenda of the North American Numbering Council (NANC). The intended effect of this action is to make the public aware of the NANC's next meeting and its agenda. This notice of the October 17–18, 2000 NANC meeting is being published in the **Federal Register** less than 15 days prior to the meeting due to a delay in finalizing the October NANC agenda.

**FOR FURTHER INFORMATION CONTACT:** Cheryl Callahan or Aaron Goldberger at (202) 418–2320. The address is: Network Services Division, Common Carrier Bureau, Federal Communications Commission, The Portals, 445 12th Street, SW, Suite 6A320, Washington, DC 20554. The fax number is: (202) 418–2345. The TTY number is: (202) 418–0484.

**SUPPLEMENTARY INFORMATION:** Released: October 3, 2000.

The North American Numbering Council (NANC) has scheduled a meeting to be held Tuesday, October 17, 2000, from 8:30 a.m. until 5 p.m., and on Wednesday, October 18, from 8:30 a.m., until 12 noon. The meeting will be held at the Federal Communications Commission, Portals II, 445 12th Street, SW, Room TW–C305, Washington, DC. This meeting is open to members of the general public. The FCC will attempt to accommodate as many participants as possible. The public may submit written statements to the NANC, which must be received two business days before the meeting. In addition, oral statements at the meeting by parties or entities not represented on the NANC will be permitted to the extent time permits. Such statements will be limited to five minutes in length by any one party or entity, and requests to make an oral statement must be received two business days before the meeting. Requests to make an oral statement or provide written comments to the NANC should be sent to Cheryl Callahan or Aaron Goldberger at the address under **FOR FURTHER INFORMATION CONTACT,** stated above.



**Proposed Agenda**

*Tuesday, September 19, 2000*

1. Approval of June 20–21 and July 18–19, 2000, meeting minutes.
2. North American Numbering Plan Administration (NANPA) Report. Presentation of Enterprise Services and associated prices. Discussion of September 27 notice regarding INC issue 220.
3. North American Numbering Plan Administration (NANPA) Oversight Working Group Report. Status of NANPA technical requirements document.
4. Report of Numbering Resource Optimization (NRO). Status of NRUF Requirements Document and ITN Recommendations.
5. JFAX presentation on UMS Issues.
6. Industry Numbering Committee Report. Status of UNP.
7. Report of Toll Free Access Codes IMG.
8. Local Number Portability Administration (LNPA) Working Group Report. Wireless Number Portability Subcommittee report, Third Wireline Wireless Integration Report, and Review of Report on LNP & Pooling.
9. Report of Cost Recovery Working Group.
10. Report from NBANC.
11. Ad Hoc Voluntary UNP Study Group Report. Presentation of Business Rule Model.
12. Steering Group Meeting. Update Table of NANC Projects.

*Wednesday, September 20, 2000*

13. Steering Group Report.
14. Reseller CIC IMG Status Report.
15. NANC Discussion Group on Charging for Telephone Numbers.
16. UMS IMG Report.
17. Oversight of LLCs NPAC.
18. Public participation (5 minutes each, if any).
19. Other Business.
20. Action Items.

Federal Communications Commission.

**L. Charles Keller,**

*Chief, Network Services Division, Common Carrier Bureau.*

[FR Doc. 00–25708 Filed 10–4–00; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL ELECTION COMMISSION

### Sunshine Act Meetings

**AGENCY:** Federal Election Commission.

**DATE & TIME:** Wednesday, October 11, 2000 at 10 a.m.

**PLACE:** 999 E Street, NW., Washington, DC.

**STATUS:** This meeting will be closed to the public.

**ITEMS TO BE DISCUSSED:**

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

**DATE & TIME:** Thursday, October 12, 2000 at 10 a.m.

**PLACE:** 999 E Street, NW., Washington, DC (Ninth Floor).

**STATUS:** This meeting will be open to the public.

**ITEMS TO BE DISCUSSED:**

Correction and Approval of Minutes.

Dole for President—Statement of Reasons (LRA#467).

Dole/Kemp '96, Inc.—Statement of Reasons (LRA#506).

Advisory Opinion 2000–25: Minnesota House of Representatives Democratic Farmer Labor Caucus by counsel, Allan W. Weinblatt.

Advisory Opinion 2000–26: Joel Deckard, Reform Party candidate, U.S. Senate, Florida.

Administrative Matters:

**PERSON TO CONTACT FOR INFORMATION:** Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

**Mary W. Dove,**

*Acting Secretary of the Commission.*

[FR Doc. 00–25707 Filed 10–3–00; 1:29 pm]

**BILLING CODE 6715–01–M**

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 19, 2000.

**A. Federal Reserve Bank of Chicago** (Phillip Jackson, Applications Officer), 230 South LaSalle Street, Chicago, Illinois 60690–1414:

*1. Paul A. Jones,* Glenview, Illinois, William J. Jones, Barrington, Illinois, and Anne Jones White, Mundelein, Illinois; to retain voting shares of Cummins-American Corp., Glenview, Illinois, and thereby indirectly retain voting shares of Glenview State Bank, Glenview, Illinois.

Board of Governors of the Federal Reserve System, September 29, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00–25505 Filed 10–4–00; 8:45 am]

**BILLING CODE 6210–01–P**

## FEDERAL TRADE COMMISSION

### Notice Announcing Dates and Location of Public Forum

**AGENCY:** Federal Trade Commission.

**SUMMARY:** The Federal Trade Commission has: (1) set October 26, 2000 from 8:30 a.m. to 5:30 p.m. and October 27, 2000 from 9:00 a.m. to 5:30 p.m. as the dates and times for its public forum on "Warranty Protection for High-Tech Products and Services," announced in 65 FR 30411 (May 11, 2000); and (2) announced the location of the public forum to be the Federal Trade Commission headquarters at 600 Pennsylvania Avenue, NW., Washington, DC 20580.

**DATES:** The public forum will be held at the Federal Trade Commission headquarters, 600 Pennsylvania Avenue, NW., Washington, DC 20580 on October 26, 2000 from 8:30 a.m. to 5:30 p.m. and October 27, 2000 from 9:00 a.m. to 5:30 p.m.

**FOR FURTHER INFORMATION:** A forum agenda, a list of participants, and all public comments submitted in connection with the public forum will be posted closer to the date of the forum on the Federal Trade Commission Web site, *ftc.gov.* For further information about the public forum, contact any of the following persons by mail at Federal Trade Commission, 600 Pennsylvania Avenue, NW., Room 238, Washington, DC 20580, or by telephone or email as follows: April Major, Attorney, Division of Marketing Practices, telephone 202–326–2972, email *amajor@ftc.gov;* Daniel Salsburg, Attorney, Division of Marketing Practices, telephone 202–326–3402, email *dsalsburg@ftc.gov;* or Carole Danielson, Investigator, Division

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of Marketing Practices, telephone 202–326–3115, email *cdanielson@ftc.gov*.

**SUPPLEMENTARY INFORMATION:** On May 11, 2000, the Federal Trade Commission published a **Federal Register** Notice announcing a public forum in the fall of 2000 to discuss warranty protection for software and other computer information products and services that are marketed to consumers, and soliciting academic papers and written comment relating to those issues. The Commission has not set October 26 and 27, 2000, as the dates for the forum. The forum will be held at the offices of the Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580, from 8:30 a.m. to 5:30 p.m. on October 26 and from 9:00 a.m. to 5:30 p.m. on October 27, 2000. The forum is open to the public, and there is no formal registration process for those wishing to attend. Seating is limited, but overflow rooms will be available.

**Authority:** 15 U.S.C. 41 *et seq.*

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 00–25567 Filed 10–4–00; 8:45 am]

BILLING CODE 6750–01–M

## FEDERAL TRADE COMMISSION

**[File No. 001 0100]**

### Agrium, Inc., and Union Oil Company of California and Unocal Corporation; Analysis To Aid Public Comment

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed Consent Agreement.

**SUMMARY:** The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

**DATES:** Comments must be received on or before October 30, 2000.

**ADDRESSES:** Comments should be directed: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** John B. Kirkwood, FTC Northwest Region, 915 Second Avenue, Suite 2896, Seattle, Washington 98174, (206) 220–4484.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desists, having been filed with and accepted subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home page (for September 29, 2000), on the World Wide Web, at "http://www.ftc.gov/os/2000/09/index.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

### Analysis of the Proposed Consent Order To Aid Public Comment

The Federal Trade Commission ("Commission") has accepted for public comment an Agreement Containing Consent Order with Agrium, Inc. ("Agrium") and Union Oil Company of California and Unocal Corp. ("Unocal"). The purpose of the agreement is to remedy the anticompetitive effects of Agrium's proposed acquisition of Unocal's nitrogen fertilizer business. The proposed order would require that Agrium divest assets that are integral to the sale of nitrogen fertilizers in the Northwest (Washington, Oregon, and Idaho).

Nitrogen fertilizers are used by farmers around the world to improve crop yields by supplying the nitrogen essential to plant growth. Agrium, with production facilities in Texas and near its headquarters in Alberta, Canada, is one of the world's largest producers of nitrogen fertilizers. In 1998, Agrium's wholesale sales of nitrogen fertilizers were $501 million. Unocal produces and sells nitrogen fertilizers through its subsidiaries Alaska Nitrogen Products LLC and Prodica LLC, which have production and distribution facilities in Alaska, Washington, Oregon and California. Unocal's 1998 wholesale sales of nitrogen fertilizers were approximately $377 million.

Agrium and Unocal are the leading sellers of anhydrous ammonia, urea, and UAN 32% solution, which are the most popular nitrogen fertilizers in the Northwest. Substitution among these fertilizers, and between them and other nitrogen fertilizers, is limited because of agricultural considerations (they differ in their suitability for particular crops, soils, weather conditions, etc.) and commercial factors (e.g., each of these fertilizers requires different storage and application equipment). In the manufacture of an important resin, there is no substitute for urea.

The complaint alleges that Agrium's proposed acquisition of Unocal, if consummated, may substantially lessen competition in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45. The complaint identifies three relevant lines of commerce (product markets) in which to analyze the effects of this acquisition: urea, ammonia, and UAN 32%. The Relevant Section of the country (geographic market) alleged in the complaint is the Northwest, which consists of the states of Washington, Oregon, and Idaho. In urea, Agrium's acquisition of Unocal would result in an increase in the Herfindahl-Hirschman Index (commonly referred to as "HHI") from 2200 to over 4800; in ammonia, the HHI rises from 1922 to over 4200; and in UAN 32% it rises from 1560 to over 3800. By eliminating competition between Agrium and Unocal, who are the top two suppliers of each of these products in the Northwest, the acquisition would enable Agrium to unilaterally increase the prices of ammonia, urea, and UAN 32% in that geographic market.

It is unlikely that the competition eliminated by the proposed acquisition would be replaced by new entry into the Northwest. The construction of a new nitrogen fertilizer plant to supply the Northwest appears to be uneconomic. One recent attempt at building a plant in the region was abandoned four years after it was first announced. Design, site selection, permitting and construction of a new plant to supply the Northwest would require considerably more than two years. Producers with plants in the Northwest cannot expand output because these plants are operating at capacity. Importers of offshore fertilizers are unlikely to ship significantly more



to the Northwest because the transfer and storage terminals they need are either unavailable or more expensive to use than Unocal's Rivergate terminal. Midwest producers face obstacles to increasing shipments to the Northwest, including high transportation costs, commitments to local customers, the attractiveness of netbacks closer to their plants, and differences in seasonal demand that often make California a better market for their product.

The proposed consent order would require that Agrium divest Unocal's deepwater terminal at Rivergate, part of its upriver terminal at Hedges (containing urea storage and land for expansion and road access), and leases on three UAN terminals (including one with deepwater access) to J.R. Simplot Company. The order would also require Agrium to provide Simplot with a long-term lease on the ammonia storage at Hedges and perpetual access to the Hedges dock, roadway, rail spur and weight scales.

The Commission is preliminarily satisfied that Simplot is well qualified to reproduce Unocal's competitive role in the Northwest. Simplot is a $2.8 billion agribusiness that, among other things, produces, wholesales and retails nitrogen and other fertilizers around North America. It operates a large nitrogen fertilizer production facility in Manitoba, numerous phosphate plants, and a chain of retail outlets. In the Northwest, Simplot is a substantial source of phosphate fertilizers, but its wholesaling of nitrogen fertilizers is very limited. The proposed divestiture would enable Simplot to become a major wholesaler of nitrogen fertilizers in the Northwest.

The proposed order requires that respondents divest the specified assets to Simplot, in accordance with the agreement between Agrium and Simplot, immediately after Agrium acquires Unocal. If, at the time the Commission decides to make the proposed consent order final, the Commission notifies the respondents that Simplot is not an acceptable acquirer, or that the agreement with Simplot is not an acceptable manner of divestiture, the respondents must immediately rescind the transaction and divest those assets to an acceptable acquirer, and in an acceptable manner, within four months of the date the proposed consent order becomes final.

For a period of ten (10) years from the date the proposed order becomes final, respondents are required to provide written notice to the Commission prior to acquiring any interest in (1) any asset to be divested or (2) any terminal with deepwater access used in the transfer and storage of UAN 32 in the Northwest. These appear to be the only assets in the Northwest whose acquisition might substantially affect competition in the sale of the relevant products but not trigger a reporting obligation under the Hart-Scott-Rodino Act. Respondents are required to provide to the Commission a report of compliance with the proposed order within thirty (30) days of the date the order becomes final every sixty (60) days thereafter until respondents have complied with the divestiture obligations. Respondents are also required to provide annual reports during the term of the order. For Agrium the term of the order would be ten years; for Unocal it would be until the assets to be divested are transferred to Agrium.

The Agreement Containing Consent Order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the proposed order and the comments received and will decide whether it should withdraw from the order or make it final. By accepting the proposed order subject to final approval, the Commission anticipates that the competitive problems alleged in the complaint will be resolved. The purpose of this analysis is to invite public comment on the proposed order, including the specified divestitures, to aid the Commission in its determination of whether it should make the order final. This analysis is not intended to constitute an official interpretation of the proposed order, nor is it intended to modify the terms of the order in any way.

By direction of the Commission, Commissioner Swindle not participating.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 00–25570 Filed 10–4–00; 8:45 am]

BILLING CODE 6750–01–M

## FEDERAL TRADE COMMISSION

**[File No. 991 0103]**

### Alaska Healthcare Network, Inc.; Analysis To Aid Public Comment

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed Consent Agreement.

**SUMMARY:** The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

**DATES:** Comments must be received on or before October 20, 2000.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** Richard Feinstein, FTC/S–3114, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–3688; or Paul J. Nolan, FTC/S–3118, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2770.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for September 20, 2000), on the World Wide Web, at "http://www.ftc.gov/os/2000/09/index.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii))

### Analysis of Agreement Containing Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement with the Alaska Healthcare Network, Inc. ("AHN") containing a proposed consent order. The agreement settles charges that AHN violated

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Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, by facilitating or implementing agreements among its members to fix prices and other terms of dealing with payors, and to refuse to deal with payors except on collectively-determined terms. The proposed consent order has been placed on the public record for 30 days to receive comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make the proposed order final.

The purpose of this analysis is to facilitate public comment on the proposed order. The analysis is not intended to constitute an official interpretation of the agreement and proposed order, or to modify in any way their terms. Further, the proposed consent order has been entered into for settlement purposes only and does not constitute an admission by AHN that it violated the law or that the facts alleged in the complaint (other than jurisdictional facts) are true.

**The Complaint**

The allegations in the Commission' proposed complaint are summarized below.

Respondent AHN is a non-profit corporation composed of more than 60 percent of the physicians with active medical staff privileges at Fairbanks Memorial Hospital (the only private, general acute care hospital in the Fairbanks area). AHN's members include almost half of the family and general practitioners, and from 70 to 100 percent of the internists, pediatricians, obstetrician-gynecologists, and general surgeons in full-time, year-round private practice in Fairbanks.

AHN has served as a vehicle for its physician members to negotiate collectively with health plans. When AHN was formed, a wide range of health plans, including PPOs, HMOs, and government health care purchasing cooperatives, were seeking to contract with Fairbanks physicians. AHN members authorized AHN's Executive Director to bargain on their behalf over the terms and conditions under which individual physicians would deal with third-party payors. AHN emphasized to its members that—as a result of its size and its members' agreement to allow AHN to bargain on their behalf—AHN would be able to bargain from a position of strength and thus avert the competition among physicians that might otherwise be introduced into the Fairbanks area by managed care plans.

From early 1997 through 1998, AHN negotiated price and other contract terms on behalf of its physician members with at least seven third-party payors. It used fee information collected from its member physicians to develop a fee schedule to use in contract negotiations. AHN told its members that its fee schedule represented members' usual fees, and that the fee schedule would be used to obtain a favorable level of reimbursement for area physicians. AHN's Board of Directors and Contracting Committee also adopted a model contract that required payors to use AHN's fee schedule and to delegate their credentialing, utilization review, and formulary management to AHN rather than operating their own programs.

AHN purported to operate as a "messenger model," under which an agent conveys payors' contract offers to individual physicians, who each make an independent decision whether to accept or reject each contract. In practice, however, AHN's Executive Director and Contracting Committee bargained with payors over payment and other terms, and refused to transmit contract offers to AHN members unless the payors agreed to AHN's terms.

AHN functioned de facto as the exclusive representative of its members. Through statements in its newsletters, documents, and other media, AHN repeatedly advised members to deal with payors only through AHN in order to obtain better prices and other terms. Some payors who were seeking to enter the Fairbanks area attempted unsuccessfully to contract with individual physicians instead of dealing with AHN: physicians told the payors that AHN handled contracting for them and for other Fairbanks physicians. Payors believes that they could not go around AHN to contract individually with physicians in Fairbanks, and thus that they had no alternative but to reach agreement with AHN or give up their planned entry into Fairbanks. In several instances, payors approached individual physicians in mass mailings, requests for proposals, or phone calls, and received no responses. This was complete unprecedented and contradicted by payors' favorable responses to RFPs in other markets, including Anchorage, Alaska, and demonstrated the unwillingness of AHN and its members to deal with an entire category of payors.

AHN reached agreement with one payor—NYLCare—in 1998, and transmitted a contract to individual AHN members for their approval. AHN's Executive Director told the members that the Contracting Committee had revised the NYLCare contract proposal in a way that was responsive to the common economic interest of all AHN members. AHN engaged six other third-party payors in protracted negotiations over price and non-price terms that often extended for more than a year with no resolution. AHN demanded that the payors use AHN's fee schedule and its model contract that required payors to delegate credentialing, quality assurance, and utilization review to AHN physicians. However, AHN had not implemented any utilization review, quality assurance, or credentialing systems, and it lacked the capacity to implement some or all of those services. AHN did not refer contract offers from any of these payors to its members. As a result of AHN's conduct, a wide range of third-party payors of physician services, including PPOs, HMOs, and employer health care purchasing cooperatives, were unable to secure physician contracts and thus were unable to do business in the Fairbanks area.

AHN did not engage in any activity that might justify collective agreements on the prices its members would accept for their services. Its actions have restrained price and other competition among physicians in the Fairbanks area and thereby harmed consumers (including third-party payors, subscribers, and their employers) by increasing the prices for physician services, delaying the development of alternative health care financing and delivery systems, and limiting competition among health plans.

**The Proposed Consent Order**

The proposed order is designed to prevent recurrence of the illegal concerted actions alleged in the complaint, while allowing AHN and its members to engage in legitimate joint conduct. The core prohibitions of the proposed order are contained in Paragraph II. Paragraph II.A prohibits AHN from entering into or facilitating any agreement: (1) To negotiate on behalf of any physicians with any payor or provider; (2) to deal or refuse to deal with any payor or provider; (3) regarding any term on which any physicians deal, or are willing to deal, with any payor or provider; or (4) to restrict the ability of any physician to deal with any payor or provider on an individual basis or through any other arrangement.

Paragraph II.B prohibits AHN from exchanging or facilitating the exchange of information among Fairbanks area physicians concerning: (1) Negotiation with any payor or provider regarding reimbursement terms; or (2) any physician's intentions or decisions with respect to any dealings with any payor or provider. Paragraph II.C prohibits AHN from encouraging, advising, or pressuring any person, other than the government, to engage in any action that would be prohibited if the person were subject to the order.



Paragraph II contains two provisos. The first proviso permits respondent to engage in conduct that is approved and supervised by the State of Alaska, so long as that conduct is exempt from liability under the federal antitrust laws under the state action doctrine. That doctrine protects private conduct that is both: (1) In accordance with a clearly articulated and affirmatively expressed state policy to supplant competition; and (2) actively supervised by the state itself. *See, e.g., FTC* v. *Ticor Title Insurance Co.*, 504 U.S. 621 (1992); *California Retail Liquor Dealers Ass'n* v. *Midcal Aluminum, Inc.*, 445 U.S. 97, 105 (1980).

The second proviso in Paragraph II allows AHN to engage in conduct (including collectively determining reimbursement and other terms of contracts) that is reasonably necessary to operate any "qualified risk-sharing joint arrangement" or "qualified clinically-integrated joint arrangement," provided respondent complies with the prior notification requirements set forth in Paragraph VI of the order. The prior notification mechanism will allow the Commission to evaluate a specific proposed arrangement and assess its likely competitive impact.

As defined in the order, a "qualified risk-sharing joint arrangement" must satisfy three conditions. First, all physician participants must share substantial financial risk through the arrangement. The definition of financial risk-sharing tracks the discussion of that term contained in the 1996 FTC/DOJ Statements of Antitrust Enforcement Policy in Health Care. Second, any agreement on prices or terms of reimbursement must be reasonably necessary to obtain significant efficiencies through the joint arrangement. Third, the arrangement must be non-exclusive—that is, it must not restrict the ability, or facilitate the refusal, of participating physicians to deal with payors individually or through any other network or venture.

A "qualified clinically-integrated joint arrangement" is one in which the physicians undertake cooperative activities to achieve efficiencies in the delivery of clinical services, without necessarily sharing substantial financial risk. This definition also reflects the analysis contained in the 1996 FTC/DOJ Statements of Antitrust Enforcement Policy in Health Care. Participating physicians must establish a high degree of interdependence and cooperation through their use of programs to evaluate and modify their clinical practice patterns, in order to control costs and assure the quality of physician services provided. In addition, the arrangement must be non-exclusive, and any agreement on prices or terms of reimbursement must be reasonably necessary to obtaining significant efficiencies through the arrangement.

The proposed order also imposes a structural remedy for a period of five years. Although the Commission has not routinely imposed structural relief on physician groups in previous cases, such relief is not unprecedented. *See e.g., Home Oxygen and Medical Equipment Co.*, 118 F.T.C. 661 (1994) (pulmonologists prohibited for ten years from acquiring ownership interest in any entity that provides home oxygen delivery services if more than 25 percent of the pulmonologists in the area would be affiliated with the entity), and *Physicians Group, Inc.*, 120 F.T.C. 567 (1995) (physician organization ordered to dissolve). The Commission will continue to consider the option of structural remedies in these cases when necessary to achieve effective relief.

Paragraph III.A requires that if AHN operates a qualified risk-sharing or clinically-integrated joint arrangement, its participating physicians must constitute no more than 30 percent of Fairbanks physicians in any of the key medical specialties of family practice and general internal medicine, obstetrics and/or gynecology, pediatrics, general surgery, and orthopedic surgery. Paragraph III.B of the proposed order further requires that, when offering the services of its physicians through any other arrangement, AHN's participating physicians constitute no more than 50 percent of Fairbanks physicians in any of those specialties. Paragraph III.B permits participation by a greater percentage of physicians because it is intended to apply to arrangements in which there is no agreement among AHN participating physicians on price or other competitively significant terms, including messenger model arrangements.

Paragraph III contains two provisos. The first proviso permits AHN to include as a participating physician any single physician or any one pre-existing physician practice group, without regard to the percentage limitations. The single physician exception allows AHN to exceed the percentage limitations in instances where there may be only a few physicians in a designated medical speciality; and the one pre-existing practice group exception allows AHN to exceed the percentage limitations where the alternative would be to require an integrated practice group to downsize. The second proviso permits AHN to exceed the percentage limitations to the extent that the excess arises from certain changes in the marketplace. As a result of these provisos, once AHN is operating in conformity with percentage limitations contained in the order, it will not be required to reduce its physician membership because of (1) the addition of a physician (who was not already in practice in Fairbanks) to a member practice group, or (2) a reduction in the total number of physicians in a particular specialty (and thus in the denominator used in calculating the percentage of physicians in a specialty who can be AHN members) as a result of physician exit from the market.

The structural relief in this case is necessary to prevent continuing tacit collusion among AHN members. Fairbanks is an isolated community with a relatively small number of physicians, a high proportion of whom are AHN members. According to the allegations of the complaint, these doctors have demonstrated an unwillingness to participate in health plans independently of AHN. In these circumstances, there is a significant risk of continuing tacit collusion among AHN members that cannot adequately be addressed by an order limited to prohibiting certain specified conduct (*i.e.*, AHN members might be able to coordinate their refusals to deal with payors without engaging in overt acts of collusion). Moreover, since AHN purported to operate as a messenger model, but in fact actively negotiated price and nonprice terms on behalf of its physician members, an order limited to conduct remedies would have required detailed provisions governing AHN's future operation as a messenger. The structural relief, by contrast, will permit AHN, subject to the five-year size limits, to carry on its activities as it finds most effective without detailed oversight by the Commission, so long as the core prohibitions of Paragraph II are respected.

The structural relief contained in the order responds to the particular facts of this case, and is intended to interrupt the chain of effects flowing from the conduct alleged in the complaint and to permit time for new market structures and relationships to develop among Fairbanks physicians and between the physicians and health plans. The presence of this provision in the

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proposed order does not suggest that other physician networks whose membership exceeds the percentage limitations are likely to have anticompetitive effects. The provision is limited to five years in order to give AHN the greatest possible freedom to respond to changing market conditions thereafter, once the effects of the challenged conduct have dissipated.

The remaining provisions of the proposed order impose obligations on AHN with respect to distributing the order and complaint to its members and other specified persons and reporting information to the Commission. The order terminates twenty years after the date it issues.

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

**Separate Statement of Commissioners Orson Swindle and Thomas B. Leary in *Alaska Healthcare Network, Inc.*, File No. 991 0103**

Although we have voted to accept the consent agreement in this matter because we believe the conduct remedy is justified, we also believe that one component of the relief prescribed by the proposed order—namely, the inclusion of a form of "structural" remedy to help cure the effects of respondent AHN's allegedly unlawful conduct—is inappropriate in this particular case.

If AHN elects to function as a negotiator or merely as a "messenger," then Paragraph III of the proposed order will for five years impose, respectively, either a 30 percent or a 50 percent "cap" on the number of Fairbanks physicians in each of five "relevant physician markets" who may participate in AHN. Although we believe that limits on a physician group's "market shares" in particular specialties can be appropriate fencing-in relief for the type of conduct involved in this case, we are not persuaded that this provision will operate in a rational and predictable way in a market as small as Fairbanks. This concern is exacerbated by the first proviso to Paragraph III, which allows respondent to "grandfather" in "any one pre-existing practice group"—no matter how large—and thus to perpetuate a structure inconsistent with the goals of that paragraph.

The imposition of such structural relief in a setting like Fairbanks results in anomalies that would not arise in a larger urban area. For example, one of the five "relevant physician markets" affected by the order (pediatrics) has only seven practitioners, and five are in a grandfathered group; another "market" (ob/gyn) has only ten practitioners, six of whom are in a grandfathered group. We can certainly understand the desire to refrain from forcing the breakup of a presumably efficient practice group, but this proviso makes the percentage caps ineffective for those specialties. On the other hand, the order itself potentially inhibits the formation of similarly efficient practice groups in the specialties where the caps are effective.

Some form of structural relief might well be warranted in future cases in which the efficacy of a purely "conduct" (*i.e.*, "cease-and-desist") order is in doubt. A formerly collusive group's compliance with the dictates of a conduct order (through the cessation of overtly conspiratorial behavior) does not necessarily spell the end of tacit coordination in the future. In a market with different characteristics from those involved in this case, some type of percentage cap on network membership could go a long way to bolster competition through the creation of one or more competing networks. In this market, however, we question whether the remedy makes sense.

We hope that the public comment period on this consent agreement will yield some illuminating advice from the bar, the medical community, and the public at large, both with respect to the general appropriations of structural measures in "conduct" cases and with regard to whether such measures make sense in a thinly populated market such as Fairbanks.

[FR Doc. 00–25572 Filed 10–4–00; 8:45 am]

BILLING CODE 6750–01–M

## FEDERAL TRADE COMMISSION

**[File No. 001–0092]**

### The Boeing Company; Analysis to Aid Public Comment

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed Consent Agreement.

**SUMMARY:** The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

**DATES:** Comments must be received on or before October 27, 2000.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** Norman A. Armstrong, Jr., FTC/S–2311, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2072.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for September 27, 2000), on the World Wide Web, at "http://www.ftc.gov/os/2000/09/index.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

### Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an Agreement Containing Consent Order ("Consent Agreement") from The Boeing Company ("Boeing") designed to remedy the anticompetitive effects resulting from Boeing's acquisition of certain assets of General Motors Corporation. The proposed Consent Agreement prohibits Boeing from providing systems engineering and technical assistance ("SETA") services to the United States Department of Defense ("DoD") for a certain classified program. The proposed Consent Agreement also prohibits Boeing's launch vehicle division from gaining access to any non-public information that Boeing's satellite division receives from competing launch vehicle suppliers when those competing suppliers launch Boeing's satellites. Similarly, the proposed Consent Agreement prohibits Boeing's satellite division from gaining access to any non-public information that Boeing's launch vehicle business receives from competing satellite suppliers. In addition, the proposed Consent Agreement requires Boeing to make available all necessary satellite interface information, which is used to make a satellite compatible with a launch vehicle, to all launch vehicle suppliers.

The proposed Consent Agreement has been placed on the public record for thirty (30) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the proposed Consent Agreement and any comments received, and will decide whether it should withdraw from the proposed Consent Agreement or make final the proposed Decision & Order.

Pursuant to a Stock Purchase Agreement entered into on January 13, 2000, Boeing agreed to acquire certain assets of General Motors Corporation, including Hughes Space and Communications Company, Hughes Space and Communications International, Hughes Space and Communications International Service Company, Spectrolab, Inc., Hughes Electron Dynamics, Hughes Telecommunications and Space Company's 2.69% interest in ICO Global Communications Ltd., and Hughes Telecommunications and Space Company's 2% interest in Thuraya Satellite Telecommunications Private Joint Stock Company, for approximately $3.75 billion. The Commission's Complaint alleges that the transaction, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 45, and Section 5 of the FTC Act, as amended, 15 U.S.C. 18, in the following markets:

(1) A certain classified program for which Boeing is providing SETA services; [1]

(2) The research, development, manufacture, and sale of commercial geosynchronous earth orbit satellites;

(3) The research, development, manufacture, and sale of commercial medium earth orbit satellites;

(4) The research, development, manufacture, and sale of commercial low earth orbit satellites;

(5) The research, development, manufacture, and sale of government satellites; and

(6) The research, development, manufacture, and sale of launch vehicles.

The proposed Consent Agreement remedies the alleged violations in each market. First, Boeing is the sole supplier of SETA services to DoD for a certain classified program. Boeing provides these services to DoD under a classified contract identified for purposes of the Complaint as Contract 4208. Hughes is one of two competing contractors for the classified program for which Boeing is providing SETA services. Thus, as result of the proposed acquisition, Boeing would be both the provider of SETA services and a competing contractor for this classified program.

As a SETA contractor, Boeing must receive a great deal of competitively sensitive information, including detailed cost and bidding data, from contractors competing for the classified program. With access to such information, Boeing may be able to raise prices for the classified program by bidding less aggressively than it otherwise would. In addition, Boeing's position as SETA contractor could enable it anticompetitively to favor itself and/or disfavor its competitors in a number of ways, such as submitting unfair evaluations of its competitors' proposals.

The proposed Consent Agreement remedies the proposed acquisition's potential anticompetitive effects in this classified program by prohibiting Boeing from performing certain SETA services for this classified program in the future. To prevent the anticompetitive exchange of information, the Consent Agreement requires Boeing to: (1) Use non-public SETA services information only its capacity as provider of technical assistance to DoD, or for the provision of SETA services not prohibited by the Order; and (2) erect a "firewall" between its SETA services division and Boeing's satellite division. In addition, to assist DoD in the transition of these SETA services responsibilities to one of its own research and development centers, the Consent Agreement further requires Boeing to: (1) Provide technical assistance, at the request of DoD, for a period not to exceed one year; and (2) provide to DoD all documents relating to certain SETA services that Boeing has received in its role as SETA contractor.

Second, Hughes is a significant supplier of satellites and Boeing is a significant supplier of launch vehicles, which are used to launch satellites from the Earth's surface into space. In order for a launch vehicle to launch a satellite, launch vehicle suppliers and satellite suppliers must work closely together and share a substantial amount of proprietary and competitively sensitive information to integrate the two products. Thus, as a significant supplier of launch vehicles, Boeing/Hughes would have access to competitively sensitive information of competing satellite manufacturers which it could share with its satellite divisions. If Boeing's satellite divisions gained access to this information, Boeing would be able to determine the cost and technology involved in its competitors' satellite proposals. This could have immediate anticompetitive consequences on upcoming satellite procurements by allowing Boeing to bid less aggressively than it otherwise would. In addition, the incentives of other satellite suppliers to invest in future technological advancements could be reduced due to concerns that Boeing would be able to "free-ride" off its competitors' technological innovations. As a significant supplier of satellites, Boeing/Hughes likewise would have access to sensitive information of competing launch vehicle providers. If Boeing's launch vehicle division were to gain access to this information, it could allow Boeing to bid less aggressively in upcoming launch vehicle procurements and reduce incentives of competitors to invest in technological innovation.

The proposed Consent Agreement is designed to protect the proprietary and competitively sensitive information of launch vehicle and satellite suppliers. Specifically, the Consent Agreement prohibits Boeing's satellite business from making any non-public launch vehicle information obtained from any launch vehicle provider available to Boeing's launch vehicle business. Under the proposed Consent Agreement, Boeing may only use such information as a provider of satellites. Similarly, the proposed Consent Agreement prohibits Boeing's launch vehicle business from

[1] The complaint includes an additional line of commerce, the provision of SETA Services, in which to analyze the effects of the transaction. This line of commerce is included in the complaint because the proposed merger results in the integration of Boeing into two non-horizontal markets: (1) the provision of SETA Services; and (2) a competitor for a certain classified program for which Boeing is providing SETA services. It is necessary to analyze the competitive conditions in the market for provision of SETA Services in order to determine whether there would be anticompetitive effects in the related market for a certain classified program for which Boeing is providing SETA services.

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making any non-public satellite information obtained from any satellite supplier available to Boeing's satellite business. Under the terms of the Consent Agreement, Boeing may only use such information in its capacity as a launch vehicle provider. The Commission has issued similar orders limiting potentially anticompetitive information transfers following mergers or acquisitions, including: *Lockheed Martin*, (C–3685) (September 20, 1996); *Raytheon Company*, (C–3681) (September 10, 1996); *Lockheed Corporation/Martin Marietta Corporation*, (C–3576) (May 9, 1995); *Alliant Techsystems Inc.*, (C–3567) (April 7, 1995); *Martin Marietta*, (C–3500) (June 28, 1994).

Third, the proposed acquisition raises concern that Boeing could withhold satellite interface information, which is necessary to integrate a satellite with a launch vehicle, from its launch vehicle competitors. If Boeing were to withhold such satellite interface information, it could potentially disadvantage or raise the costs of other launch vehicle suppliers that are competing to launch Boeing's satellites, and ultimately to customers. The proposed Consent Agreement remedies this concern by requiring that for any satellite manufactured by Boeing/Hughes prior to the date the Consent Agreement becomes final, Boeing must provide satellite interface information, as that term is defined in the Consent Agreement, to any launch vehicle supplier within thirty (30) days from the date Boeing receives a request for such information. The Order also requires Boeing to notify all launch vehicle suppliers, in writing, that satellite interface information relating to any Boeing/Hughes satellite bus, model, or product line is available upon request. Boeing/Hughes is also required to provide each launch vehicle supplier with instructions on how to request such information. The Consent Agreement further requires Boeing to provide satellite interface information relating to any of its satellite buses, models, or product lines manufactured after the date this Consent Agreement becomes final, to any launch vehicle supplier that requests such information or to whom Boeing previously supplied satellite interface information. However, for each satellite manufactured for the United States Government, Boeing shall only be required to provide satellite interface information to any launch vehicle supplier specified by the United States Government. In addition, the Consent Agreement requires Boeing/Hughes to provide satellite interface information to any launch vehicle supplier specified by any satellite customer no later than Boeing provides such information to its own launch vehicle businesses.

Fourth, the Commission has appointed Sheila Widnall as a monitor trustee pursuant to the proposed Consent Agreement to ensure that Boeing complies with the provisions of the Order. The monitor trustee will, among other things, assist the Commission in monitoring Boeing's compliance with the firewall requirements of the Order and Boeing's efforts to provide satellite interface information to other launch vehicle competitors. Because satellite interface information often involves technical information, the monitor trustee will aid in evaluating the contents of the satellite interface information that is to be distributed. Under the provisions of the Consent Agreement, the monitor trustee will serve for a period of ten (10) years and provide, among other things, written reports sixty (60) days after she is appointed detailing Boeing's compliance with the proposed Consent Agreement and annually thereafter for the next ten (10) on the anniversary of the date the Decision and Order becomes final.

The purpose of this analysis is to facilitate public comment on the Consent Agreement and Decision & Order, and it is not intended to constitute an official interpretation of the Consent Agreement and Decision & Order or to modify their terms in any way.

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 00–25571 Filed 10–4–00; 8:45 am]

BILLING CODE 6750–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

### Notice of Meeting: Secretary's Advisory Committee on Genetic Testing

Pursuant to Public Law 92–463, notice is hereby given of the seventh meeting of the Secretary's Advisory Committee on Genetic Testing (SACGT), U.S. Public Health Service. The meeting will be held from 9 a.m. to 5:30 p.m. on November 2, 2000 and 8 a.m. to 5 p.m. on November 3, 2000 at the National Institutes of Health, Building 31, C Wing, Conference Room 10, 9000 Rockville Pike, Bethesda, MD 20892. The meeting will be open to the public with attendance limited to space available.

The Committee will hear progress reports from the working groups established at its August 4 meeting and discuss plans for future projects. The Committee will also hear presentations on current regulations governing the labeling and advertising of genetic tests and public and private sector policies regarding reimbursement for genetic testing services. There will be a limited period of time provided for public comment and interested individuals should notify the contact person listed below.

Under authority of 42 U.S.C. 217a, Section 222 of the Public Health Service Act, as amended, the Department of Health and Human Services established SACGT to advise and make recommendations to the Secretary through the Assistant Secretary for Health on all aspects of the development and use of genetic tests. The SACGT is directed to (1) recommend policies and procedures for the safe and effective incorporation of genetic technologies into health care; (2) assess the effectiveness of existing and future measures for oversight of genetic tests; and (3) identify research needs related to the Committee's purview.

The draft meeting agenda and other information about SACGT will be available at the following web site: *http://www4.od.nih.gov/oba/sacgt.htm* Individuals who wish to provide public comments or who plan to attend the meeting and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the SACGT Executive Secretary, Ms. Sarah Carr, by telephone at 301–496–9838 or E-mail at *sc112c@nih.gov*. The SACGT office is located at 6000 Executive Boulevard, Suite 302, Bethesda, Maryland 20892.

Dated: September 29, 2000.

**Sarah Carr,**

*Executive Secretary, SACGT.*

[FR Doc. 00–25537 Filed 10–04–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Advisory Committee on Immunization Practices: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting:

*Name:* Advisory Committee on Immunization Practices (ACIP).

*Times and Dates:* 8:30 a.m.–6:30 p.m., October, 18, 2000; 8 a.m.–3:30 p.m., October 19, 2000.

*Place:* Atlanta Marriott Century Center, 2000 Century Boulevard, NE., Atlanta, Georgia 30345–3377.

*Status:* Open to the public, limited only by the space available.

*Purpose:* The Committee is charged with advising the Director, CDC, on the appropriate uses of immunizing agents. In addition, under 42 U.S.C. 1396s, the Committee is mandated to establish and periodically review and, as appropriate, revise the list of vaccines for administration to vaccine-eligible children through the Vaccines for Children (VFC) program, along with schedules regarding the appropriate periodicity, dosage, and contraindications applicable to the vaccines.

*Matters To Be Discussed:* The agenda will include a discussion on the recommended childhood immunization schedule; immunization of foreign adoptees and progress towards recommending immunization of foreign adoptees; influenza vaccine supply for 2000–2001 season; 1999–2000 season vaccine effectiveness; update on the live attenuated influenza vaccine and vaccine recommendations for young children; persistent poliovirus excretion in patients with B cell immune deficiency disorders; meningococcal conjugate vaccination in the United Kingdom; update on measles vaccination and outbreaks in the United Kingdom; anaphylaxis after Measles, Mumps, and Rubella vaccine due to gelatin; pertussis among adolescents and adults in the U.S.; review of recommendations for pneumococcal polysaccharide vaccination among HIV-positive adults; Adult Immunization Action Plan; smallpox vaccine recommendations in bioterrorism event involving smallpox, revised recommendations for smallpox vaccination in laboratory workers using attenuated vaccinia virus strains, alternatives to VIG for treatment of adverse vaccine reactions; Subcommittee on Oversight of the Vaccine Health Care Network; update on the National Immunization Program vaccine safety initiatives; update from the National Center for Infectious Diseases; update from the National Immunization Program; update from the Food and Drug Administration; update from the Vaccine Injury Compensation Program; and an update from the National Vaccine Program.

Agenda items are subject to change as priorities dictate.

*Contact Person for More Information:* Gloria A. Kovach, Program Analyst, Epidemiology and Surveillance Division, National Immunization Program, CDC,1600 Clifton Road, NE., m/s E61, Atlanta, Georgia 30333. Telephone 404/639–8096.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: September 28, 2000.

**Carolyn J. Russell,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 00–25687 Filed 10–4–00; 8:45 am]

BILLING CODE 4163–18–P



## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

**[Program Announcement No. ACF/ACYF–PA–HS–2001–02A]**

### Fiscal Year 2001 Discretionary Announcement for Select Service Areas of Early Head Start; Availability of Funds and Request for Applications

**AGENCY:** Administration on Children, Youth and Families, ACF, DHHS.

**ACTION:** Correction.

**SUMMARY:** This document contains a correction to the Notice that was published in the **Federal Register** on Wednesday September 13, 2000.

On page 55256, in the State of Arkansas, in the County column add the following Counties: "Arkansas", "Lonoke" and "Polk". In the Funding column delete "$1,295,089" and replace with "$1,333,689". In the Current service area column add "Entire County" beside each of these counties: Arkansas, Lonoke and Polk.

On page 55257, in the State of Iowa, Polk County, in the Current service area column, delete "City of Des Moines metropolitan area" and replace with "in the City of Des Moines an area bounded on the West by the County line from Raccoon River to 9400 N; on the North by 9400 N to NW 58th to NW 110th Place to NE 22nd Street to NE 118th Street; on the East by NE 29th to I–80 to NE 120th Street to East University to NE 64th Street to SE 6th to SE 60th to the Des Moines River to I–65 to 80th SW; and on the South by 80th SW/ County line from Des Moines River to 9800 W."

On page 55257, in the State of Maine, in the County Column delete "Southern Oxford County" and replace with "Oxford County"; and in the Current service area column delete "Grafton, Andover, North Surplus and Byron" and replace with "Southern part of the County including all towns South of Grafton, Andover North Surplus and Byron".

On page 55257, in the State of Maryland, in Montgomery County, in the Funding for the following counties column, delete "$782,515" and replace with "$1,090,711"; and in the current service area column delete "Rockville South of Route 28, Silver Spring and Tacoma Park" and replace with "Rockville, Silver Spring and Takoma Park". On page 55258, in the State of Maryland, in Prince George's County, in the Current service area column, delete "Hyattsville, Riverdale and Langley Park" and replace with "Hyattsville, Riverdale, Adelphi/Langley Park, College Park, Greenbelt, Glen Arden, Landover and Capitol Heights".

On page 55258, in the State of Minnesota, in Hennepin County, in the Current service area column delete "American Indian children and families from the communities of North Minneapolis, Phillips, and Northeast Minneapolis" and replace with "North Minneapolis, Phillips, and Northeast Minneapolis".

On page 55259, in the State of New York, in Kings County, add "$769,189" in the Funding for the following counties column.

On page 55259, in the State of Rhode Island, Providence County, in the Funding for the following counties column delete "$97,720" and replace with "$297,720".

**FOR FURTHER INFORMATION CONTACT:** The ACYF Operations Center at 1–800–351–2293 or send an email to *ebs@lcgnet.com*. You can also contact Judith Jerald, Early Head Start, Head Start Bureau at (202) 205–8074.

Dated: September 28, 2000.

**Patricia Montoya,**

*Commissioner, Administration on Children, Youth and Families.*

[FR Doc. 00–25497 Filed 10–4–00; 8:45 am]

BILLING CODE 4184–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

**[Document Identifier: HCFA–R–52]**

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Health Care Financing Administration, HHS. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this

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burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

*Type of Information Collection Request:* Extension of a currently approved collection;

*Title of Information Collection:* Conditions for Coverage of Suppliers of End Stage Renal Disease (ESRD) Services and Supporting Regulations Contained in 42 CFR 405.2100–.2171;

*Form No.:* HCFA–R–52 (OMB# 0938–0386);

*Use:* This information is needed to encourage proper distribution and effective utilization of ESRD treatment sources while maintaining and improving the efficient delivery of care by physicians and dialysis facilities;

*Frequency:* Annually;

*Affected Public:* Business or other for-profit, and Federal Government;

*Number of Respondents:* 3,940;

*Total Annual Responses:* 3,940;

*Total Annual Hours:* 143,721.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Melissa Musotto, HCFA R–52, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: September 25, 2000.

**John P. Burke III,**

*HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.*

[FR Doc. 00–25580 Filed 10–4–00; 8:45 am]

BILLING CODE 4120–03–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

**[Document Identifier: HCFA–3427]**

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** Health Care Financing Administration, DHHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment.

Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

*Type of Information Collection Request:* Extension of a currently approved collection.

*Title of Information Collection:* End Stage Renal Disease Application and Survey and Certification Report and Supporting Regulations in 42 CFR 405.2100–405.2184.

*Form No.:* HCFA–3427 (OMB# 0938–0360).

*Use:* Part I of this form is a facility identification and screening measurement used to initiate the certification and recertification of ESRD facilities. Part II is completed by the Medicare/Medicaid State survey agency to determine facility compliance with ESRD conditions for coverage.

*Frequency:* Annually.

*Affected Public:* State, local or tribal government.

*Number of Respondents:* 3740.

*Total Annual Responses:* 675.

*Total Annual Hours:* 1626.75.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326.

Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: September 25, 2000.

**John P. Burke III,**

*HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.*

[FR Doc. 00–25504 Filed 10–4–00; 8:45 am]

BILLING CODE 4120–03–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

**[Document Identifier: HCFA–R–264A–H, HCFA–684A–I, and HCFA–685]**

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden;

(3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

(1) *Type of Information Collection Request:* Revision of a currently approved collection;

*Title of Information Collection:* Medicare DMEPOS Competitive Bidding Demonstration;

*Form No.:* HCFA–R–264 A–H (OMB# 0938–0748);

*Use:* Section 1847 of the Social Security Act, as added by Section 4319 of the Balanced Budget Act (BBA), mandates HCFA to implement demonstration projects under which competitive acquisition areas are established for contract award purposes for the furnishing of Part B items and services, except for physician's services. The demonstration currently operating in Polk County, Florida and the demonstration planned for San Antonio, Texas involve competitive bidding of categories of durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS). The new set of products to be offered for competitive bidding in San Antonio are: Oxygen equipment and supplies, hospital beds, non-customized orthotic devices, manual wheelchairs and accessories, and nebulizer inhalation drugs. Under the law, suppliers can receive payments from Medicare for items and services covered by the demonstration only if their bids are competitive in terms of quality and price. Each demonstration project may be conducted in up to three metropolitan areas for a three year period. Authority for the demonstration expires on December 31, 2002.

There are eight forms that are required for this demonstration. Form A will be used by the bidding supplier to provide information about the characteristics of the company. Form B will be used by the bidding supplier to provide specific information about the prices it bids for specific product categories, and to provide information about the attributes of the supplier in relation to the specific product category. Form C will be used by HCFA or its agents to obtain information on site regarding the bidding supplier. Form D will be used by HCFA or its agents to obtain financial references on the bidding supplier from banks and other financial sources. Form E will be used by HCFA or its agents to obtain information about the bidding suppliers from referral sources such as home health agencies and hospital discharge planners. Form F will be used to obtain information about the suppliers' financial status and to assure that they have sufficient fiscal resources to operate in a competitive environment where the prices being paid for some products are less than what have been customarily paid. It is required only from suppliers whose bids are in the competitive range. Form G will be used for nursing homes to identify their suppliers of products and services who have not been awarded Demonstration Supplier status for services to beneficiaries in their home. This is to permit payment to those suppliers for products and services furnished to nursing homes. Form H will be used to monitor the performance of Demonstration Suppliers to assure their adherence to the quality standards established for the project.

The competitive bidding demonstration for DMEPOS has the following objectives:

- Test the policies and implementation methods of competitive bidding to determine whether or not it should be expanded as a Medicare Program.
- Reduce the price that Medicare pays for medical equipment and supplies.
- Limit beneficiary out-of-pocket expenditures for copayments.
- Assure beneficiary access to high quality medical equipment and supplies.
- Prevent business transactions with suppliers who engage in fraudulent practices.

*Frequency:* On occasion;

*Affected Public:* Business or other for-profit, and not-for-profit institutions;

*Number of Respondents:* 5,100;

*Total Annual Responses:* 1,700;

*Total Annual Hours:* 12,420.

(2) *Type of Information Collection Request:* Revision of a currently approved collection;

*Title of Information Collection:* End-Stage Renal Disease (ESRD) Network Business Proposal Forms and Supporting Regulations in 42 CFR 405.2110 and 405.2112;

*Form No.:* HCFA–684A–I (OMB# 0938–0658);

*Use:* The submission of business proposal information by current ESRD networks and other bidders, according to the business proposal instructions, meets HCFA's need for meaningful, consistent, and verifiable data when evaluating contract proposals;

*Frequency:* Other: Every 3 years;

*Affected Public:* Not-for-profit institutions;

*Number of Respondents:* 18;

*Total Annual Responses:* 36;

*Total Annual Hours:* 1,080.

(3) *Type of Information Collection Request:* Extension of a currently approved collection;

*Title of Information Collection:* End-Stage Renal Disease (ESRD) Network Semi-Annual Cost Report Forms and Supporting Regulations in 42 CFR 405.2110 and 405.2112;

*Form No.:* HCFA–685 (OMB# 0938–0657);

*Use:* Submission of semi-annual cost reports allow HCFA to review, compare, and project ESRD network costs. The reports are used as an early warning system to determine whether the networks are in danger of exceeding the total cost of the contract. Additionally, HCFA can analyze line item costs to identify any significant aberrations;

*Frequency:* Semi-annually;

*Affected Public:* Not-for-profit institutions;

*Number of Respondents:* 18;

*Total Annual Responses:* 36;

*Total Annual Hours:* 108.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's Web Site Address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: September 20, 2000.

**John P. Burke III,**

*HCFA Reports Clearance Officer, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.*

[FR Doc. 00–25578 Filed 10–4–00; 8:45 am]

BILLING CODE 4120–03–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

**[Document Identifier:HCFA–730/182 & HCFA–R–77]**

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information

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technology to minimize the information collection burden.

(1) *Type of Information Collection Request:* New Collection;

*Title of Information Collection:* Employee Building Pass Application and File;

*Form No.:* HCFA–730 & 182 (OMB# 0938–NEW);

*Use:* The purpose of this system and the forms are to control United States Government Building Passes issued to all HCFA employees and non-HCFA employees who require continuous access to HCFA buildings in Baltimore and other HCFA and HHS buildings.;

*Frequency:* Other; as needed;

*Affected Public:* Federal Government, and business or other for-profit;

*Number of Respondents:* 150;

*Total Annual Responses:* 150;

*Total Annual Hours:* 37.50.

(2) *Type of Information Collection Request:* Extension of a currently approved collection;

*Title of Information Collection:* Limitation on Liability and Information Collection Requirements Referenced in 42 CFR 411.404, 411.406, and 411.408;

*Form No.:* HCFA–R–77 (OMB# 0938–0465);

*Use:* The Medicare program requires to provide written notification of noncovered services to beneficiaries by the providers, practitioners, and suppliers. The notification gives the beneficiary, provider, practitioner, or supplier knowledge that Medicare will not pay for items or services mentioned in the notification. After this notification, any future claim for the same or similar services will not be paid by the program and the affected parties will be liable for the noncovered services.;

*Frequency:* Other; as needed;

*Affected Public:* Individuals or households;

*Number of Respondents:* 890,826;

*Total Annual Responses:* 3,563,304;

*Total Annual Hours:* 296,942.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's Web Site Address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: September 11, 2000.

**John P. Burke III,**

*HCFA Reports Clearance Officer, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.*

[FR Doc. 00–25581 Filed 10–4–00; 8:45 am]

BILLING CODE 4120–03–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of Inspector General

### OIG Compliance Program for Individual and Small Group Physician Practices

**AGENCY:** Office of Inspector General (OIG), HHS.

**ACTION:** Notice.

**SUMMARY:** This **Federal Register** notice sets forth the recently issued Compliance Program Guidance for Individual and Small Group Physician Practices developed by the Office of Inspector General (OIG). The OIG has previously developed and published voluntary compliance program guidance focused on several other areas and aspects of the health care industry. We believe that the development and issuance of this voluntary compliance program guidance for individual and small group physician practices will serve as a positive step towards assisting providers in preventing the submission of erroneous claims or engaging in unlawful conduct involving the Federal health care programs.

**FOR FURTHER INFORMATION CONTACT:** Kimberly Brandt, Office of Counsel to the Inspector General, (202) 619–2078.

**SUPPLEMENTARY INFORMATION:**

#### Background

The creation of compliance program guidances is a major initiative of the OIG in its effort to engage the private health care community in preventing the submission of erroneous claims and in combating fraudulent conduct. In the past several years, the OIG has developed and issued compliance program guidances directed at a variety of segments in the health care industry. The development of these types of compliance program guidances is based on our belief that a health care provider can use internal controls to more efficiently monitor adherence to applicable statutes, regulations and program requirements.

Copies of these compliance program guidances can be found on the OIG web site at http://www.hhs.gov/oig.

#### Developing the Compliance Program Guidance for Individual and Small Group Physician Practices

On September 8, 1999, the OIG published a solicitation notice seeking information and recommendations for developing formal guidance for individual and small group physician practices (64 FR 48846). In response to that solicitation notice, the OIG received 83 comments from various outside sources. We carefully considered those comments, as well as previous OIG publications, such as other compliance program guidance and Special Fraud Alerts, in developing a guidance for individual and small group physician practices. In addition, we have consulted with the Health Care Financing Administration and the Department of Justice. In an effort to ensure that all parties had a reasonable opportunity to provide input into a final product, draft guidance for individual and small group physician practices was published in the **Federal Register** on June 12, 2000 (65 FR 36818) for further comments and recommendations.

#### Components of an Effective Compliance Program

This compliance program guidance for individual and small group physician practices contains seven components that provide a solid basis upon which a physician practice can create a voluntary compliance program:

- Conducting internal monitoring and auditing;
- Implementing compliance and practice standards;
- Designating a compliance officer or contact;
- Conducting appropriate training and education;
- Responding appropriately to detected offenses and developing corrective action;
- Developing open lines of communication; and
- Enforcing disciplinary standards through well-publicized guidelines.

Similar components have been contained in previous guidances issued by the OIG. However, unlike other guidances issued by OIG, this guidance for physicians does not suggest that physician practices implement all seven components of a full scale compliance program. Instead, the guidance emphasizes a step by step approach to follow in developing and implementing a voluntary compliance program. This change is in recognition of the financial and staffing resource constraints faced by physician practices. The guidance should not be viewed as mandatory or as an all-inclusive discussion of the advisable components of a compliance program. Rather, the document is intended to present guidance to assist physician practices that voluntarily choose to develop a compliance program.



#### Office of Inspector General's Compliance Program Guidance for Individual and Small Group Physician Practices

##### I. Introduction

This compliance program guidance is intended to assist individual and small group physician practices ("physician practices")[1] in developing a voluntary compliance program that promotes adherence to statutes and regulations applicable to the Federal health care programs ("Federal health care program requirements"). The goal of voluntary compliance programs is to provide a tool to strengthen the efforts of health care providers to prevent and reduce improper conduct. These programs can also benefit physician practices[2] by helping to streamline business operations.

Many physicians have expressed an interest in better protecting their practices from the potential for erroneous or fraudulent conduct through the implementation of voluntary compliance programs. The Office of Inspector General (OIG) believes that the great majority of physicians are honest and share our goal of protecting the integrity of Medicare and other Federal health care programs. To that end, all health care providers have a duty to ensure that the claims submitted to Federal health care programs are true and accurate. The development of voluntary compliance programs and the active application of compliance principles in physician practices will go a long way toward achieving this goal.

Through this document, the OIG provides its views on the fundamental components of physician practice compliance programs, as well as the principles that a physician practice might consider when developing and implementing a voluntary compliance program. While this document presents basic procedural and structural guidance for designing a voluntary compliance program, it is not in and of itself a compliance program. Indeed, as recognized by the OIG and the health care industry, there is no "one size fits all" compliance program, especially for physician practices. Rather, it is a set of guidelines that physician practices can consider if they choose to develop and implement a compliance program.

As with the OIG's previous guidance,[3] these guidelines are not mandatory. Nor do they represent an all-inclusive document containing all components of a compliance program. Other OIG outreach efforts, as well as other Federal agency efforts to promote compliance,[4] can also be used in developing a compliance program. However, as explained later, if a physician practice adopts a voluntary and active compliance program, it may well lead to benefits for the physician practice.

*A. Scope of the Voluntary Compliance Program Guidance*

This guidance focuses on voluntary compliance measures related to claims submitted to the Federal health care programs. Issues related to private payor claims may also be covered by a compliance plan if the physician practice so desires.

The guidance is also limited in scope by focusing on the development of voluntary compliance programs for individual and small group physician practices. The difference between a small practice and a large practice cannot be determined by stating a particular number of physicians. Instead, our intent in narrowing the guidance to the small practices subset was to provide guidance to those physician practices whose financial or staffing resources would not allow them to implement a full scale, institutionally structured compliance program as set forth in the Third Party Medical Billing Guidance or other previously released OIG guidance. A compliance program can be an important tool for physician practices of all sizes and does not have to be costly, resource-intensive or time-intensive.

*B. Benefits of a Voluntary Compliance Program*

The OIG acknowledges that patient care is, and should be, the first priority of a physician practice. However, a practice's focus on patient care can be enhanced by the adoption of a voluntary compliance program. For example, the increased accuracy of documentation that may result from a compliance program will actually assist in enhancing patient care. The OIG believes that physician practices can realize numerous other benefits by implementing a compliance program. A well-designed compliance program can:

- Speed and optimize proper payment of claims;
- Minimize billing mistakes;
- Reduce the chances that an audit will be conducted by HCFA or the OIG; and
- Avoid conflicts with the self-referral and anti-kickback statutes.

The incorporation of compliance measures into a physician practice should not be at the expense of patient care, but instead should augment the ability of the physician practice to provide quality patient care.

Voluntary compliance programs also provide benefits by not only helping to prevent erroneous or fraudulent claims, but also by showing that the physician practice is making additional good faith efforts to submit claims appropriately. Physicians should view compliance programs as analogous to practicing preventive medicine for their practice. Practices that embrace the active application of compliance principles in their practice culture and put efforts towards compliance on a continued basis can help to prevent problems from occurring in the future.

A compliance program also sends an important message to a physician practice's employees that while the practice recognizes that mistakes will occur, employees have an affirmative, ethical duty to come forward and report erroneous or fraudulent conduct, so that it may be corrected.

[1] For the purpose of this guidance, the term "physician" is defined as: (1) a doctor of medicine or osteopathy; (2) a doctor of dental surgery or of dental medicine; (3) a podiatrist; (4) an optometrist; or (5) a chiropractor, all of whom must be appropriately licensed by the State. 42 U.S.C. 1395x(r).

[2] Much of this guidance can also apply to other independent practitioners, such as psychologists, physical therapists, speech language pathologists, and occupational therapists.

[3] Currently, the OIG has issued compliance program guidance for the following eight industry sectors: hospitals, clinical laboratories, home health agencies, durable medical equipment suppliers, third-party medical billing companies, hospices, Medicare+Choice organizations offering coordinated care plans, and nursing facilities. The guidance listed here and referenced in this document is available on the OIG web site at http://www.hhs.gov/oig in the Electronic Reading Room or by calling the OIG Public Affairs office at (202) 619–1343.

[4] The OIG has issued Advisory Opinions responding to specific inquiries concerning the application of the OIG's authorities, in particular, the anti-kickback statute, and Special Fraud Alerts setting forth activities that raise legal and enforcement issues. These documents, as well as reports from the OIG's Office of Audit Services and Office of Evaluation and Inspections can be obtained via the Internet address or phone number provided in Footnote 3. Physician practices can also review the Health Care Financing Administration (HCFA) web site on the Internet at http://www.hcfa.gov, for up-to-date regulations, manuals, and program memoranda related to the Medicare and Medicaid programs.

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*C. Application of Voluntary Compliance Program Guidance*

The applicability of these recommendations will depend on the circumstances and resources of the particular physician practice.

Each physician practice can undertake reasonable steps to implement compliance measures, depending on the size and resources of that practice. Physician practices can rely, at least in part, upon standard protocols and current practice procedures to develop an appropriate compliance program for that practice. In fact, many physician practices already have established the framework of a compliance program without referring to it as such.

*D. The Difference Between "Erroneous" and "Fraudulent" Claims To Federal Health Programs*

There appear to be significant misunderstandings within the physician community regarding the critical differences between what the Government views as innocent "erroneous" claims on the one hand and "fraudulent" (intentionally or recklessly false) health care claims on the other. Some physicians feel that Federal law enforcement agencies have maligned medical professionals, in part, by a perceived focus on innocent billing errors. These physicians are under the impression that innocent billing errors can subject them to civil penalties, or even jail. These impressions are mistaken.

To address these concerns, the OIG would like to emphasize the following points. First, the OIG does not disparage physicians, other medical professionals or medical enterprises. In our view, the great majority of physicians are working ethically to render high quality medical care and to submit proper claims.

Second, under the law, physicians are not subject to criminal, civil or administrative penalties for innocent errors, or even negligence. The Government's primary enforcement tool, the civil False Claims Act, covers only offenses that are committed with actual knowledge of the falsity of the claim, reckless disregard, or deliberate ignorance of the falsity of the claim.[5] The False Claims Act does not encompass mistakes, errors, or negligence. The Civil Monetary Penalties Law, an administrative remedy, similar in scope and effect to the False Claims Act, has exactly the same standard of proof.[6] The OIG is very mindful of the difference between innocent errors ("erroneous claims") on one hand, and reckless or intentional conduct ("fraudulent claims") on the other. For criminal penalties, the standard is even higher—criminal intent to defraud must be proved beyond a reasonable doubt.

Third, even ethical physicians (and their staffs) make billing mistakes and errors through inadvertence or negligence. When physicians discover that their billing errors, honest mistakes, or negligence result in erroneous claims, the physician practice should return the funds erroneously claimed, but without penalties. In other words, absent a violation of a civil, criminal or administrative law, erroneous claims result only in the return of funds claimed in error.

Fourth, innocent billing errors are a significant drain on the Federal health care programs. All parties (physicians, providers, carriers, fiscal intermediaries, Government agencies, and beneficiaries) need to work cooperatively to reduce the overall error rate.

Finally, it is reasonable for physicians (and other providers) to ask: what duty do they owe the Federal health care programs? The answer is that all health care providers have a duty to reasonably ensure that the claims submitted to Medicare and other Federal health care programs are true and accurate. The OIG continues to engage the provider community in an extensive, good faith effort to work cooperatively on voluntary compliance to minimize errors and to prevent potential penalties for improper billings before they occur. We encourage all physicians and other providers to join in this effort.

**II. Developing a Voluntary Compliance Program**

*A. The Seven Basic Components of a Voluntary Compliance Program*

The OIG believes that a basic framework for any voluntary compliance program begins with a review of the seven basic components of an effective compliance program. A review of these components provides physician practices with an overview of the scope of a fully developed and implemented compliance program. The following list of components, as set forth in previous OIG compliance program guidances, can form the basis of a voluntary compliance program for a physician practice:

- Conducting internal monitoring and auditing through the performance of periodic audits;
- Implementing compliance and practice standards through the development of written standards and procedures;
- Designating a compliance officer or contact(s) to monitor compliance efforts and enforce practice standards;
- Conducting appropriate training and education on practice standards and procedures;
- Responding appropriately to detected violations through the investigation of allegations and the disclosure of incidents to appropriate Government entities;
- Developing open lines of communication, such as (1) discussions at staff meetings regarding how to avoid erroneous or fraudulent conduct and (2) community bulletin boards, to keep practice employees updated regarding compliance activities; and
- Enforcing disciplinary standards through well-publicized guidelines.

These seven components provide a solid basis upon which a physician practice can create a compliance program. The OIG acknowledges that full implementation of all components may not be feasible for all physician practices. Some physician practices may never fully implement all of the components. However, as a first step, physician practices can begin by adopting only those components which, based on a practice's specific history with billing problems and other compliance issues, are most likely to provide an identifiable benefit.

The extent of implementation will depend on the size and resources of the practice. Smaller physician practices may incorporate each of the components in a manner that best suits the practice. By contrast, larger physician practices often have the means to incorporate the components in a more systematic manner. For example, larger physician practices can use both this guidance and the Third-Party Medical Billing Compliance Program Guidance, which provides a more detailed compliance program structure, to create a compliance program unique to the practice.

The OIG recognizes that physician practices need to find the best way to achieve compliance for their given circumstances. Specifically, the OIG encourages physician practices to participate in other provider's compliance programs, such as the compliance programs of the hospitals or other settings in which the physicians practice. Physician Practice Management companies also may serve as a source of compliance program guidance. A physician practice's participation in such compliance programs could be a way, at least partly, to augment the practice's own compliance efforts.

The opportunities for collaborative compliance efforts could include participating in training and education programs or using another entity's policies and procedures as a template from which the physician practice creates its own version. The OIG encourages this type of collaborative effort, where the content is appropriate to the setting involved (i.e., the training is relevant to physician practices as well as the sponsoring provider), because it provides a means to promote the desired objective without imposing excessive burdens on the practice or requiring physicians to undertake duplicative action. However, to prevent possible anti-kickback or self-referral issues, the OIG recommends that physicians consider limiting their participation in a sponsoring provider's compliance program to the areas of training and education or policies and procedures.

The key to avoiding possible conflicts is to ensure that the entity providing compliance services to a physician practice (its referral source) is not perceived as nor is it operating the practice compliance program at no charge. For example, if the sponsoring entity conducted claims review for the physician practice as part of a compliance program or provided compliance oversight without charging the practice fair market value for those services, the anti-kickback and Stark self-referral laws would be implicated. The payment of fair market value by referral sources for compliance services will generally address these concerns.

*B. Steps for Implementing a Voluntary Compliance Program*

As previously discussed, implementing a voluntary compliance program can be a multi-tiered process. Initial development of the compliance program can be focused on practice risk areas that have been problematic for the practice such as coding and billing. Within this area, the practice should examine its claims denial history or claims that have resulted in repeated overpayments, and identify and correct the most frequent sources of those denials or overpayments. A review of claim denials will help the practice scrutinize a significant risk area and improve its cash flow by submitting correct claims that will be paid the first time they are submitted. As this example illustrates, a compliance program for a physician practice often makes sound business sense.

The following is a suggested order of the steps a practice could take to begin the development of a compliance program. The steps outlined below articulate all seven components of a compliance program and there are numerous suggestions for implementation within each component. Physician practices should keep in mind, as stated earlier, that it is up to the practice to determine the manner in which and the extent to which the practice chooses to implement these voluntary measures.

*Step One: Auditing and Monitoring*

An ongoing evaluation process is important to a successful compliance program. This ongoing evaluation includes not only whether the physician practice's standards and procedures are in fact current and accurate, but also whether the compliance program is working, *i.e.*, whether individuals are properly carrying out their responsibilities and claims are submitted appropriately. Therefore, an audit is an excellent way for a physician practice to ascertain what, if any, problem areas exist and focus on the risk areas that are associated with those problems. There are two types of reviews that can be performed as part of this evaluation: (1) A standards and procedures review; and (2) a claims submission audit.

1. Standards and Procedures

It is recommended that an individual(s) in the physician practice be charged with the responsibility of periodically reviewing the practice's standards and procedures to determine if they are current and complete. If the standards and procedures are found to be ineffective or outdated, they should be updated to reflect changes in Government regulations or compendiums generally relied upon by physicians and insurers (*i.e.*, changes in Current Procedural Terminology (CPT) and ICD–9–CM codes).

2. Claims Submission Audit

In addition to the standards and procedures themselves, it is advisable that bills and medical records be reviewed for compliance with applicable coding, billing and documentation requirements. The individuals from the physician practice involved in these self-audits would ideally include the person in charge of billing (if the practice has such a person) and a medically trained person (*e.g.*, registered nurse or preferably a physician (physicians can rotate in this position)). Each physician practice needs to decide for itself whether to review claims retrospectively or concurrently with the claims submission. In the Third-Party Medical Billing Compliance Program Guidance, the OIG recommended that a baseline, or "snapshot," be used to enable a practice to judge over time its progress in reducing or eliminating potential areas of vulnerability. This practice, known as "benchmarking," allows a practice to chart its compliance efforts by showing a reduction or increase in the number of claims paid and denied.

The practice's self-audits can be used to determine whether:

- Bills are accurately coded and accurately reflect the services provided (as documented in the medical records);
- Documentation is being completed correctly;
- Services or items provided are reasonable and necessary; and
- Any incentives for unnecessary services exist.

A baseline audit examines the claim development and submission process, from patient intake through claim submission and payment, and identifies elements within this process that may contribute to non-compliance or that may need to be the focus for improving execution.[7] This audit will establish a consistent methodology for selecting and examining records, and this methodology will then serve as a basis for future audits.

There are many ways to conduct a baseline audit. The OIG recommends that claims/services that were submitted and paid during the initial three months after implementation of the education and training program be examined, so as to give the physician practice a benchmark against which to measure future compliance effectiveness.

Following the baseline audit, a general recommendation is that periodic audits be conducted at least once each year to ensure that the compliance program is being followed. Optimally, a randomly selected number of medical records could be reviewed to ensure that the coding was performed accurately. Although there is no set formula to how many medical records should be reviewed, a basic guide is five or more medical records per Federal payor (*i.e.*, Medicare, Medicaid), or five to ten medical records per physician. The OIG realizes that physician practices receive reimbursement from a number of different payors, and we would encourage a physician practice's auditing/monitoring process to consist of a review of claims from all Federal payors from which the practice receives reimbursement. Of course, the larger the sample size, the larger the comfort level

[5] 31 U.S.C. 3729.

[6] 42 U.S.C. 1320a–7a.

[7] *See* Appendix D.II. referencing the Provider Self-Disclosure Protocol for information on how to conduct a baseline audit.

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the physician practice will have about the results. However, the OIG is aware that this may be burdensome for some physician practices, so, at a minimum, we would encourage the physician practice to conduct a review of claims that have been reimbursed by Federal health care programs.

If problems are identified, the physician practice will need to determine whether a focused review should be conducted on a more frequent basis. When audit results reveal areas needing additional information or education of employees and physicians, the physician practice will need to analyze whether these areas should be incorporated into the training and educational system.

There are many ways to identify the claims/services from which to draw the random sample of claims to be audited. One methodology is to choose a random sample of claims/services from either all of the claims/services a physician has received reimbursement for or all claims/services from a particular payor. Another method is to identify risk areas or potential billing vulnerabilities. The codes associated with these risk areas may become the universe of claims/services from which to select the sample. The OIG recommends that the physician practice evaluate claims/services selected to determine if the codes billed and reimbursed were accurately ordered, performed, and reasonable and necessary for the treatment of the patient.

One of the most important components of a successful compliance audit protocol is an appropriate response when the physician practice identifies a problem. This action should be taken as soon as possible after the date the problem is identified. The specific action a physician practice takes should depend on the circumstances of the situation. In some cases, the response can be as straight forward as generating a repayment with appropriate explanation to Medicare or the appropriate payor from which the overpayment was received. In others, the physician practice may want to consult with a coding/billing expert to determine the next best course of action. There is no boilerplate solution to how to handle problems that are identified.

It is a good business practice to create a system to address how physician practices will respond to and report potential problems. In addition, preserving information relating to identification of the problem is as important as preserving information that tracks the physician practice's reaction to, and solution for, the issue.

*Step 2: Establish Practice Standards and Procedures*

After the internal audit identifies the practice's risk areas, the next step is to develop a method for dealing with those risk areas through the practice's standards and procedures. Written standards and procedures are a central component of any compliance program. Those standards and procedures help to reduce the prospect of erroneous claims and fraudulent activity by identifying risk areas for the practice and establishing tighter internal controls to counter those risks, while also helping to identify any aberrant billing practices. Many physician practices already have something similar to this called "practice standards" that include practice policy statements regarding patient care, personnel matters and practice standards and procedures on complying with Federal and State law.

The OIG believes that written standards and procedures can be helpful to all physician practices, regardless of size and capability. If a lack of resources to develop such standards and procedures is genuinely an issue, the OIG recommends that a physician practice focus first on those risk areas most likely to arise in its particular practice.[8] Additionally, if the physician practice works with a physician practice management company (PPMC), independent practice association (IPA), physician-hospital organization, management services organization (MSO) or third-party billing company, the practice can incorporate the compliance standards and procedures of those entities, if appropriate, into its own standards and procedures. Many physician practices have found that the adoption of a third party's compliance standards and procedures, as appropriate, has many benefits and the result is a consistent set of standards and procedures for a community of physicians as well as having just one entity that can then monitor and refine the process as needed. This sharing of compliance responsibilities assists physician practices in rural areas that do not have the staff to perform these functions, but do belong to a group that does have the resources. Physician practices using another entity's compliance materials will need to tailor those materials to the physician practice where they will be applied.

Physician practices that do not have standards or procedures in place can develop them by: (1) Developing a written standards and procedures manual; and (2) updating clinical forms periodically to make sure they facilitate and encourage clear and complete documentation of patient care. A practice's standards could also identify the clinical protocol(s), pathway(s), and other treatment guidelines followed by the practice.

Creating a resource manual from publicly available information may be a cost-effective approach for developing additional standards and procedures. For example, the practice can develop a "binder" that contains the practice's written standards and procedures, relevant HCFA directives and carrier bulletins, and summaries of informative OIG documents (*e.g.*, Special Fraud Alerts, Advisory Opinions, inspection and audit reports).[9] If the practice chooses to adopt this idea, the binder should be updated as appropriate and located in a readily accessible location.

If updates to the standards and procedures are necessary, those updates should be communicated to employees to keep them informed regarding the practice's operations. New employees can be made aware of the standards and procedures when hired and can be trained on their contents as part of their orientation to the practice. The OIG recommends that the communication of updates and training of new employees occur as soon as possible after either the issuance of a new update or the hiring of a new employee.

1. Specific Risk Areas

The OIG recognizes that many physician practices may not have in place standards and procedures to prevent erroneous or fraudulent conduct in their practices. In order to develop standards and procedures, the physician practice may consider what types of fraud and abuse related topics need to be addressed based on its specific needs. One of the most important things in making that determination is a listing of risk areas where the practice may be vulnerable.

To assist physician practices in performing this initial assessment, the OIG has developed a list of four potential risk areas affecting physician practices. These risk areas include: (a) Coding and billing; (b) reasonable and necessary services; (c) documentation; and (d) improper inducements, kickbacks and self-referrals. This list of risk areas is not exhaustive, or all-encompassing. Rather, it should be viewed as a starting point for an internal review of potential vulnerabilities within the physician practice.[10] The objective of such an assessment is to ensure that key personnel in the physician practice are aware of these major risk areas and that steps are taken to minimize, to the extent possible, the types of problems identified. While there are many ways to accomplish this objective, clear written standards and procedures that are communicated to all employees are important to ensure the effectiveness of a compliance program. Specifically, the following are discussions of risk areas for physician practices:[11]

*a. Coding and Billing.* A major part of any physician practice's compliance program is the identification of risk areas associated with coding and billing. The following risk areas associated with billing have been among the most frequent subjects of investigations and audits by the OIG:

- Billing for items or services not rendered or not provided as claimed;[12]
- Submitting claims for equipment, medical supplies and services that are not reasonable and necessary;[13]
- Double billing resulting in duplicate payment;[14]
- Billing for non-covered services as if covered;[15]
- Knowing misuse of provider identification numbers, which results in improper billing;[16]
- Unbundling (billing for each component of the service instead of billing or using an all-inclusive code);[17]
- Failure to properly use coding modifiers;[18]
- Clustering;[19] and
- Upcoding the level of service provided.[20]

The physician practice written standards and procedures concerning proper coding reflect the current reimbursement principles set forth in applicable statutes, regulations[21] and Federal, State or private payor health care program requirements and should be developed in tandem with coding and billing standards used in the physician practice. Furthermore, written standards and procedures should ensure that coding and billing are based on medical record documentation. Particular attention should be paid to issues of appropriate diagnosis codes and individual Medicare Part B claims (including documentation guidelines for evaluation and management services).[22] A physician practice can also institute a policy that the coder and/or physician review all rejected claims pertaining to diagnosis and procedure codes. This step can facilitate a reduction in similar errors.

*b. Reasonable and Necessary Services.* A practice's compliance program may provide guidance that claims are to be submitted only for services that the physician practice finds to be reasonable and necessary in the particular case. The OIG recognizes that physicians should be able to order any tests, including screening tests, they believe are appropriate for the treatment of their patients. However, a physician practice should be aware that Medicare will only pay for services that meet the Medicare definition of reasonable and necessary.[23]

Medicare (and many insurance plans) may deny payment for a service that is not reasonable and necessary according to the Medicare reimbursement rules. Thus, when a physician provides services to a Medicare beneficiary, he or she should only bill those services that meet the Medicare standard of being reasonable and necessary for the diagnosis and treatment of a patient. A physician practice can bill in order to receive a denial for services, but only if the denial is needed for reimbursement from the secondary payor. Upon request, the physician practice should be able to provide documentation, such as a patient's medical records and

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[6] Physician practices with laboratories or arrangements with third-party billing companies can also check the risk areas included in the OIG compliance program guidance for those industries.

[9] The OIG and HCFA are working to compile a list of basic documents issued by both entities that could be included in such a binder. We expect to complete this list later this fall, and will post it on the OIG and HCFA web sites, as well as publicize this list to physician organizations and representatives (information on how to contact the OIG is contained in Footnote 3; HCFA information can be obtained at www.hcfa.gov/medlearn or by calling 1–800–MEDICARE).

[10] Physician practices seeking additional guidance on potential risk areas can review the OIG's Work Plan to identify vulnerabilities and risk areas on which the OIG will focus in the future. In addition, physician practices can also review the OIG's semiannual reports, which identify program vulnerabilities and risk areas that the OIG has targeted during the preceding six months. All of these documents are available on the OIG's webpage at http://www.hhs.gov/oig.

[11] Appendix A of this document lists additional risk areas that a physician practice may want to review and incorporate into their practice standards and procedures.

[12] For example, Dr. X, an ophthalmologist, billed for laser surgery he did not perform. As one element of proof, he did not even have laser equipment or access to such equipment at the place of service designated on the claim form where he performed the surgery.

[13] Billing for services, supplies and equipment that are not reasonable and necessary involves seeking reimbursement for a service that is not warranted by a patient's documented medical condition. See 42 U.S.C. 1395l(a)(1)(A) ("no payment may be made under part A or part B [of Medicare] for any expenses incurred for items or services which * * * are not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of the malformed body member"). *See* also Appendix A for further discussion on this topic.

[14] Double billing occurs when a physician bills for the same item or service more than once or another party billed the Federal health care program for an item or service also billed by the physician. Although duplicate billing can occur due to simple error, the knowing submission of duplicate claims—which is sometimes evidenced by systematic or repeated double billing—can create liability under criminal, civil, and/or administrative law.

[15] For example, Dr. Y bills Medicare using a covered office visit code when the actual service was a non-covered annual physical. Physician practices should remember that "necessary" does not always constitute "covered" and that this example is a misrepresentation of services to the Federal health care programs.

[16] An example of this is when the practice bills for a service performed by Dr. B, who has not yet been issued a Medicare provider number, using Dr. A's Medicare provider number. Physician practices need to bill using the correct Medicare provider number, even if that means delaying billing until the physician receives his/her provider number.

[17] Unbundling is the practice of a physician billing for multiple components of a service that must be included in a single fee. For example, if dressings and instruments are included in a fee for a minor procedure, the provider may not also bill separately for the dressings and instruments.

[18] A modifier, as defined by the CPT–4 manual, provides the means by which a physician practice can indicate a service or procedure that has been performed has been altered by some specific circumstance, but not changed in its definition or code. Assuming the modifier is used correctly and appropriately, this specificity provides the justification for payment for those services. For correct use of modifiers, the physician practice should reference the appropriate sections of the *Medicare Provider Manual. See Medicare Carrier Manual* Section 4630. For general information on the correct use of modifiers, a physician practice can consult the National Correct Coding Initiative (NCCI). *See* Appendix F for information on how to download the NCCI edits. The NCCI coding edits are updated on a quarterly basis and are used to process claims and determine payments to physicians.

[19] This is the practice of coding/charging one or two middle levels of service codes exclusively, under the philosophy that some will be higher, some lower, and the charges will average out over an extended period (in reality, this overcharges some patients while undercharging others).

[20] Upcoding is billing for a more expensive service than the one actually performed. For example, Dr. X intentionally bills at a higher evaluation and management (E&M) code than what he actually renders to the patient.

[21] The official coding guidelines are promulgated by HCFA, the National Center for Health Statistics, the American Hospital Association, the American Medical Association and the American Health Information Management Association. *See* International Classification of Diseases, 9th Revision, Clinical Modification (ICD–9 CM)(and its successors); 1998 Health Care Financing Administration Common Procedure Coding System (HCPCS) (and its successors); and Physicians' CPT. In addition, there are specialized coding systems for specific segments of the health care industry. Among these are ADA (for dental procedures), DSM IV (psychiatric health benefits) and DMERCs (for durable medical equipment, prosthetics, orthotics and supplies).

[22] The failure of a physician practice to: (i) document items and services rendered; and (ii) properly submit the corresponding claims for reimbursement is a major area of potential erroneous or fraudulent conduct involving Federal health care programs. The OIG has undertaken numerous audits, investigations, inspections and national enforcement initiatives in these areas.

[23] "* * * for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member." 42 U.S.C. 1395y(a)(1)(A).

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physician's orders, to support the appropriateness of a service that the physician has provided.

*c. Documentation.* Timely, accurate and complete documentation is important to clinical patient care. This same documentation serves as a second function when a bill is submitted for payment, namely, as verification that the bill is accurate as submitted. Therefore, one of the most important physician practice compliance issues is the appropriate documentation of diagnosis and treatment. Physician documentation is necessary to determine the appropriate medical treatment for the patient and is the basis for coding and billing determinations. Thorough and accurate documentation also helps to ensure accurate recording and timely transmission of information.

i. Medical Record Documentation. In addition to facilitating high quality patient care, a properly documented medical record verifies and documents precisely what services were actually provided. The medical record may be used to validate: (a) The site of the service; (b) the appropriateness of the services provided; (c) the accuracy of the billing; and (d) the identity of the care giver (service provider). Examples of internal documentation guidelines a practice might use to ensure accurate medical record documentation include the following:[24]

- The medical record is complete and legible;
- The documentation of each patient encounter includes the reason for the encounter; any relevant history; physical examination findings; prior diagnostic test results; assessment, clinical impression, or diagnosis; plan of care; and date and legible identity of the observer;
- If not documented, the rationale for ordering diagnostic and other ancillary services can be easily inferred by an independent reviewer or third party who has appropriate medical training;
- CPT and ICD–9–CM codes used for claims submission are supported by documentation and the medical record; and
- Appropriate health risk factors are identified. The patient's progress, his or her response to, and any changes in, treatment, and any revision in diagnosis is documented.

The CPT and ICD–9–CM codes reported on the health insurance claims form should be supported by documentation in the medical record and the medical chart should contain all necessary information. Additionally, HCFA and the local carriers should be able to determine the person who provided the services. These issues can be the root of investigations of inappropriate or erroneous conduct, and have been identified by HCFA and the OIG as a leading cause of improper payments.

One method for improving quality in documentation is for a physician practice to compare the practice's claim denial rate to the rates of other practices in the same specialty to the extent that the practice can obtain that information from the carrier. Physician coding and diagnosis distribution can be compared for each physician within the same specialty to identify variances.

ii. HCFA 1500 Form. Another documentation area for physician practices to monitor closely is the proper completion of the HCFA 1500 form. The following practices will help ensure that the form has been properly completed:

- Link the diagnosis code with the reason for the visit or service;
- Use modifiers appropriately;
- Provide Medicare with all information about a beneficiary's other insurance coverage under the Medicare Secondary Payor (MSP) policy, if the practice is aware of a beneficiary's additional coverage.

*d. Improper Inducements, Kickbacks and Self-Referrals.* A physician practice would be well advised to have standards and procedures that encourage compliance with the anti-kickback statute [25] and the physician self-referral law.[26] Remuneration for referrals is illegal because it can distort medical decision-making, cause overutilization of services or supplies, increase costs to Federal health care programs, and result in unfair competition by shutting out competitors who are unwilling to pay for referrals. Remuneration for referrals can also affect the quality of patient care by encouraging physicians to order services or supplies based on profit rather than the patients' best medical interests.[27]

In particular, arrangements with hospitals, hospices, nursing facilities, home health agencies, durable medical equipment suppliers, pharmaceutical manufacturers and vendors are areas of potential concern. In general the anti-kickback statute prohibits knowingly and willfully giving or receiving anything of value to induce referrals of Federal health care program business. It is generally recommended that all business arrangements wherein physician practices refer business to, or order services or items from, an outside entity should be on a fair market value basis.[28] Whenever a physician practice intends to enter into a business arrangement that involves making referrals, the arrangement should be reviewed by legal counsel familiar with the anti-kickback statute and physician self-referral statute.

In addition to developing standards and procedures to address arrangements with other health care providers and suppliers, physician practices should also consider implementing measures to avoid offering inappropriate inducements to patients.[29] Examples of such inducements include routinely waiving coinsurance or deductible amounts without a good faith determination that the patient is in financial need or failing to make reasonable efforts to collect the cost-sharing amount.[30]

Possible risk factors relating to this risk area that could be addressed in the practice's standards and procedures include:

- Financial arrangements with outside entities to whom the practice may refer Federal health care program business;[31]
- Joint ventures with entities supplying goods or services to the physician practice or its patients;[32]
- Consulting contracts or medical directorships;
- Office and equipment leases with entities to which the physician refers; and
- Soliciting, accepting or offering any gift or gratuity of more than nominal value to or from those who may benefit from a physician practice's referral of Federal health care program business.[33]

In order to keep current with this area of the law, a physician practice may obtain copies, available on the OIG web site or in hard copy from the OIG, of all relevant OIG Special Fraud Alerts and Advisory Opinions that address the application of the anti-kickback and physician self-referral laws to ensure that the standards and procedures reflect current positions and opinions.

2. Retention of Records

In light of the documentation requirements faced by physician practices, it would be to the practice's benefit if its standards and procedures contained a section on the retention of compliance, business and medical records. These records primarily include documents relating to patient care and the practice's business activities. A physician practice's designated compliance contact could keep an updated binder or record of these documents, including information relating to compliance activities. The primary compliance documents that a practice would want to retain are those that relate to educational activities, internal investigations and internal audit results. We suggest that particular attention should be paid to documenting investigations of potential violations uncovered by the compliance program and the resulting remedial action. Although there is no requirement that the practice retain its compliance records, having all the relevant documentation relating to the practice's compliance efforts or handling of a particular problem can benefit the practice should it ever be questioned regarding those activities.

Physician practices that implement a compliance program might also want to provide for the development and implementation of a records retention system. This system would establish standards and procedures regarding the creation, distribution, retention, and destruction of documents. If the practice decides to design a record system, privacy concerns and Federal or State regulatory requirements should be taken into consideration.[34]

While conducting its compliance activities, as well as its daily operations, a physician practice would be well advised, to the extent it is possible, to document its efforts to comply with applicable Federal health care program requirements. For example, if a physician practice requests advice from a Government agency (including a Medicare carrier) charged with administering a Federal health care program, it is to the benefit of the practice to document and retain a record of the request and any written or oral response (or nonresponse). This step is extremely important if the practice intends to rely on that response to guide it in future decisions, actions, or claim reimbursement requests or appeals.

In short, it is in the best interest of all physician practices, regardless of size, to have procedures to create and retain appropriate documentation. The following record retention guidelines are suggested:

- The length of time that a practice's records are to be retained can be specified in the physician practice's standards and procedures (Federal and State statutes should be consulted for specific time frames, if applicable);
- Medical records (if in the possession of the physician practice) need to be secured against loss, destruction, unauthorized access, unauthorized reproduction, corruption, or damage; and
- Standards and procedures can stipulate the disposition of medical records in the event the practice is sold or closed.

*Step Three: Designation of a Compliance Officer/Contact(s)*

After the audits have been completed and the risk areas identified, ideally one member of the physician practice staff needs to accept the responsibility of developing a corrective action plan, if necessary, and oversee the practice's adherence to that plan. This person can either be in charge of all compliance activities for the practice or play a limited role merely to resolve the current issue. In a formalized institutional compliance program there is a compliance officer who is responsible for overseeing the implementation and day-to-day operations of the compliance program. However, the resource constraints of physician practices make it so that it is often impossible to designate one person to be in charge of compliance functions.

It is acceptable for a physician practice to designate more than one employee with compliance monitoring responsibility. In lieu of having a designated compliance officer, the physician practice could instead describe in its standards and procedures the compliance functions for which designated employees, known as "compliance contacts," would be responsible. For example, one employee could be responsible for preparing written standards and procedures, while another could be responsible for conducting or arranging for periodic audits and ensuring that billing questions are answered. Therefore, the compliance-related responsibilities of the designated person or persons may be only a portion of his or her duties.

Another possibility is that one individual could serve as compliance officer for more than one entity. In situations where staffing limitations mandate that the practice cannot afford to designate a person(s) to oversee compliance activities, the practice could outsource all or part of the functions of a compliance officer to a third party, such as a consultant, PPMC, MSO, IPA or third-party billing company. However, if this role is outsourced, it is beneficial for the compliance officer to have sufficient interaction with the physician practice to be able to effectively understand the inner workings of the practice. For example, consultants that are not in close geographic proximity to a practice may not be effective compliance officers for the practice.

[24] For additional information on proper documentation, physician practices should also reference the *Documentation Guidelines for Evaluation and Management Services*, published by HCFA. Currently, physicians may document based on the 1995 or 1997 E&M Guidelines, whichever is most advantageous to the physician. A new set of draft guidelines were announced in June 2000, and are undergoing pilot testing and revision, but are not in current use.

[25] The anti-kickback statute provides criminal penalties for individuals and entities that knowingly offer, pay, solicit, or receive bribes or kickbacks or other remuneration in order to induce business reimbursable by Federal health care programs. *See* 42 U.S.C. 1320a–7b(b). Civil penalties, exclusion from participation in the Federal health care programs, and civil False Claims Act liability may also result from a violation of the prohibition. *See* 42 U.S.C. 1320a–7a(a)(5), 42 U.S.C. 1320a–7(b)(7), and 31 U.S.C. 3729–3733.

[26] The physician self-referral law, 42 U.S.C. 1395nn (also known as the "Stark law"), prohibits a physician from making a referral to an entity with which the physician or any member of the physician's immediate family has a financial relationship if the referral is for the furnishing of designated health services, unless the financial relationship fits into an exception set forth in the statute or implementing regulations.

[27] *See* Appendix B for additional information on the anti-kickback statute.

[28] The OIG's definition of "fair market value" excludes any value attributable to referrals of Federal program business or the ability to influence the flow of such business. *See* 42 U.S.C. 1395nn(h)(3). Adhering to the rule of keeping business arrangements at fair market value is not a guarantee of legality, but is a highly useful general rule.

[29] *See* 42 U.S.C. 1320a–7a(a)(5).

[30] In the OIG Special Fraud Alert "Routine Waiver of Part B Co-payments/Deductibles" (May 1991), the OIG describes several reasons why routine waivers of these cost-sharing amounts pose concerns. The Alert sets forth the circumstances under which it may be appropriate to waive these amounts. *See* also 42 U.S.C. 1320a–7a(a)(5).

[31] All physician contracts and agreements with parties in a position to influence Federal health care program business or to whom the doctor is in such a position to influence should be reviewed to avoid violation of the anti-kickback, self-referral, and other relevant Federal and State laws. The OIG has published safe harbors that define practices not subject to the anti-kickback statute, because such arrangements would be unlikely to result in fraud or abuse. Failure to comply with a safe harbor provision does not make an arrangement per se illegal. Rather, the safe harbors set forth specific conditions that, if fully met, would assure the entities involved of not being prosecuted or sanctioned for the arrangement qualifying for the safe harbor. One such safe harbor applies to personal services contracts. *See* 42 CFR 1001.952(d).

[32] *See* OIG Special Fraud Alert "Joint Venture Arrangements" (August 1989) available on the OIG web site at http://www.hhs.gov/oig. *See also* OIG Advisory Opinion 97–5.

[33] Physician practices should establish clear standards and procedures governing gift-giving because such exchanges may be viewed as inducements to influence business decisions.

[34] There are various Federal regulations governing the privacy of patient records and the retention of certain types of patient records. Many states also have record retention statutes. Practices should check with their state medical society and/or affiliated professional association for assistance in ascertaining these requirements for their particular specialty and location.

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One suggestion for how to maintain continual interaction is for the practice to designate someone to serve as a liaison with the outsourced compliance officer. This would help ensure a strong tie between the compliance officer and the practice's daily operations. Outsourced compliance officers, who spend most of their time offsite, have certain limitations that a physician practice should consider before making such a critical decision. These limitations can include lack of understanding as to the inner workings of the practice, accessibility and possible conflicts of interest when one compliance officer is serving several practices.

If the physician practice decides to designate a particular person(s) to oversee all compliance activities, not just those in conjunction with the audit-related issue, the following is a list of suggested duties that the practice may want to assign to that person(s):

- Overseeing and monitoring the implementation of the compliance program;
- Establishing methods, such as periodic audits, to improve the practice's efficiency and quality of services, and to reduce the practice's vulnerability to fraud and abuse;
- Periodically revising the compliance program in light of changes in the needs of the practice or changes in the law and in the standards and procedures of Government and private payor health plans;
- Developing, coordinating and participating in a training program that focuses on the components of the compliance program, and seeks to ensure that training materials are appropriate;
- Ensuring that the HHS–OIG's List of Excluded Individuals and Entities, and the General Services Administration's (GSA's) List of Parties Debarred from Federal Programs have been checked with respect to all employees, medical staff and independent contractors; [35] and
- Investigating any report or allegation concerning possible unethical or improper business practices, and monitoring subsequent corrective action and/or compliance.

Each physician practice needs to assess its own practice situation and determine what best suits that practice in terms of compliance oversight.

*Step Four: Conducting Appropriate Training and Education*

Education is an important part of any compliance program and is the logical next step after problems have been identified and the practice has designated a person to oversee educational training. Ideally, education programs will be tailored to the physician practice's needs, specialty and size and will include both compliance and specific training.

There are three basic steps for setting up educational objectives:

- Determining who needs training (both in coding and billing and in compliance);
- Determining the type of training that best suits the practice's needs (*e.g.*, seminars, in-service training, self-study or other programs); and
- Determining when and how often education is needed and how much each person should receive.

Training may be accomplished through a variety of means, including in-person training sessions (*i.e.*, either on site or at outside seminars), distribution of newsletters,[36] or even a readily accessible office bulletin board. Regardless of the training modality used, a physician practice should ensure that the necessary education is communicated effectively and that the practice's employees come away from the training with a better understanding of the issues covered.

1. Compliance Training

Under the direction of the designated compliance officer/contact, both initial and recurrent training in compliance is advisable, both with respect to the compliance program itself and applicable statutes and regulations. Suggestions for items to include in compliance training are: The operation and importance of the compliance program; the consequences of violating the standards and procedures set forth in the program; and the role of each employee in the operation of the compliance program.

There are two goals a practice should strive for when conducting compliance training: (1) All employees will receive training on how to perform their jobs in compliance with the standards of the practice and any applicable regulations; and (2) each employee will understand that compliance is a condition of continued employment. Compliance training focuses on explaining why the practice is developing and establishing a compliance program. The training should emphasize that following the standards and procedures will not get a practice employee in trouble, but violating the standards and procedures may subject the employee to disciplinary measures. It is advisable that new employees be trained on the compliance program as soon as possible after their start date and employees should receive refresher training on an annual basis or as appropriate.

2. Coding and Billing Training

Coding and billing training on the Federal health care program requirements may be necessary for certain members of the physician practice staff depending on their respective responsibilities. The OIG understands that most physician practices do not employ a professional coder and that the physician is often primarily responsible for all coding and billing. However, it is in the practice's best interest to ensure that individuals who are directly involved with billing, coding or other aspects of the Federal health care programs receive extensive education specific to that individual's responsibilities. Some examples of items that could be covered in coding and billing training include:

- Coding requirements;
- Claim development and submission processes;
- Signing a form for a physician without the physician's authorization;
- Proper documentation of services rendered;
- Proper billing standards and procedures and submission of accurate bills for services or items rendered to Federal health care program beneficiaries; and
- The legal sanctions for submitting deliberately false or reckless billings.

3. Format of the Training Program

Training may be conducted either in-house or by an outside source.[37]

[35] The HHS–OIG "List of Excluded Individuals/Entities" provides information to health care providers, patients, and others regarding individuals and entities that are excluded from participation in Federal health care programs. This report, in both an on-line searchable and downloadable database, can be located on the Internet at http://www.hhs.gov/oig. The OIG sanction information is readily available to users in two formats on over 15,000 individuals and entities currently excluded from program participation through action taken by the OIG. The on-line searchable database allows users to obtain information regarding excluded individuals and entities sorted by: (1) The legal bases for exclusions; (2) the types of individuals and entities excluded by the OIG; and (3) the States where excluded individuals reside or entities do business. In addition, the General Services Administration maintains a monthly listing of debarred contractors, "List of Parties Debarred from Federal Programs," at http://www.arnet.gov/epls.

[36] HCFA also offers free online training for general fraud and abuse issues at *http://www.hcfa.gov/medlearn*. *See* Appendix F for additional information.

[37] As noted earlier in this guidance, another way for physician practices to receive training is for the physicians and/or the employees of the practice to attend training programs offered by outside entities, such as a hospital, a local medical society or a



Training at outside seminars, instead of internal programs and in-service sessions, may be an effective way to achieve the practice's training goals. In fact, many community colleges offer certificate or associate degree programs in billing and coding, and professional associations provide various kinds of continuing education and certification programs. Many carriers also offer billing training.

The physician practice may work with its third-party billing company, if one is used, to ensure that documentation is of a level that is adequate for the billing company to submit accurate claims on behalf of the physician practice. If it is not, these problem areas should also be covered in the training. In addition to the billing training, it is advisable for physician practices to maintain updated ICD–9, HCPCS and CPT manuals (in addition to the carrier bulletins construing those sources) and make them available to all employees involved in the billing process. Physician practices can also provide a source of continuous updates on current billing standards and procedures by making publications or Government documents that describe current billing policies available to its employees.[38]

Physician practices do not have to provide separate education and training programs for the compliance and coding and billing training. All in-service training and continuing education can integrate compliance issues, as well as other core values adopted by the practice, such as quality improvement and improved patient service, into their curriculum.

4. Continuing Education on Compliance Issues

There is no set formula for determining how often training sessions should occur. The OIG recommends that there be at least an annual training program for all individuals involved in the coding and billing aspects of the practice.[39] Ideally, new billing and coding employees will be trained as soon as possible after assuming their duties and will work under an experienced employee until their training has been completed.

*Step Five: Responding To Detected Offenses and Developing Corrective Action Initiatives*

When a practice determines it has detected a possible violation, the next step is to develop a corrective action plan and determine how to respond to the problem. Violations of a physician practice's compliance program, significant failures to comply with applicable Federal or State law, and other types of misconduct threaten a practice's status as a reliable, honest, and trustworthy provider of health care. Consequently, upon receipt of reports or reasonable indications of suspected noncompliance, it is important that the compliance contact or other practice employee look into the allegations to determine whether a significant violation of applicable law or the requirements of the compliance program has indeed occurred, and, if so, take decisive steps to correct the problem.[40] As appropriate, such steps may involve a corrective action plan,[41] the return of any overpayments, a report to the Government,[42] and/or a referral to law enforcement authorities.

One suggestion is that the practice, in developing its compliance program, develop its own set of monitors and warning indicators. These might include: Significant changes in the number and/or types of claim rejections and/or reductions; correspondence from the carriers and insurers challenging the medical necessity or validity of claims; illogical patterns or unusual changes in the pattern of CPT–4, HCPCS or ICD–9 code utilization; and high volumes of unusual charge or payment adjustment transactions. If any of these warning indicators become apparent, then it is recommended that the practice follow up on the issues. Subsequently, as appropriate, the compliance procedures of the practice may need to be changed to prevent the problem from recurring.

For potential criminal violations, a physician practice would be well advised in its compliance program procedures to include steps for prompt referral or disclosure to an appropriate Government authority or law enforcement agency. In regard to overpayment issues, it is advised that the physician practice take appropriate corrective action, including prompt identification and repayment of any overpayment to the affected payor.

It is also recommended that the compliance program provide for a full internal assessment of all reports of detected violations. If the physician practice ignores reports of possible fraudulent activity, it is undermining the very purpose it hoped to achieve by implementing a compliance program.

It is advised that the compliance program standards and procedures include provisions to ensure that a violation is not compounded once discovered. In instances involving individual misconduct, the standards and procedures might also advise as to whether the individuals involved in the violation either be retrained, disciplined, or, if appropriate, terminated. The physician practice may also prevent the compounding of the violation by conducting a review of all confirmed violations, and, if appropriate, self-reporting the violations to the applicable authority.

The physician practice may consider the fact that if a violation occurred and was not detected, its compliance program may require modification. Physician practices that detect violations could analyze the situation to determine whether a flaw in their compliance program failed to anticipate the detected problem, or whether the compliance program's procedures failed to prevent the violation. In any event, it is prudent, even absent the detection of any violations, for physician practices to periodically review and modify their compliance programs.

*Step Six: Developing Open Lines of Communication*

In order to prevent problems from occurring and to have a frank discussion

carrier. This sort of collaborative effort is an excellent way for the practice to meet the desired training objective without having to expend the resources to develop and implement in-house training.

[38] Some publications, such as OIG's Special Fraud Alerts, audit and inspection reports, and Advisory Opinions are readily available from the OIG and can provide a basis for educational courses and programs for physician practice employees. *See* Appendix F for a partial listing of these documents. *See* Footnote 3 for information on how to obtain copies of these documents.

[39] Currently, the OIG is monitoring a significant number of corporate integrity agreements that require many of these training elements. The OIG usually requires a minimum of one hour annually for basic training in compliance areas. Additional training may be necessary for specialty fields such as claims development and billing.

[40] Instances of noncompliance must be determined on a case-by-case basis. The existence or amount of a monetary loss to a health care program is not solely determinative of whether the conduct should be investigated and reported to governmental authorities. In fact, there may be instances where there is no readily identifiable monetary loss to a health care provider, but corrective actions are still necessary to protect the integrity of the applicable program and its beneficiaries, *e.g.*, where services required by a plan of care are not provided.

[41] The physician practice may seek advice from its legal counsel to determine the extent of the practice's liability and to plan the appropriate course of action.

[42] The OIG has established a Provider Self-Disclosure Protocol that encourages providers to voluntarily report suspected fraud. The concept of voluntary self-disclosure is premised on a recognition that the Government alone cannot protect the integrity of the Medicare and other Federal health care programs. Health care providers must be willing to police themselves, correct underlying problems, and work with the Government to resolve these matters. The Provider Self-Disclosure Protocol can be located on the OIG's web site at: www.hhs.gov/oig. *See* Appendix D for further information on the Provider Self-Disclosure Protocol.

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of why the problem happened in the first place, physician practices need to have open lines of communication. Especially in a smaller practice, an open line of communication is an integral part of implementing a compliance program. Guidance previously issued by the OIG has encouraged the use of several forms of communication between the compliance officer/committee and provider personnel, many of which focus on formal processes and are more costly to implement (*e.g.*, hotlines and e-mail). However, the OIG recognizes that the nature of some physician practices is not as conducive to implementing these types of measures. The nature of a small physician practice dictates that such communication and information exchanges need to be conducted through a less formalized process than that which has been envisioned by prior OIG guidance.

In the small physician practice setting, the communication element may be met by implementing a clear "open door" policy between the physicians and compliance personnel and practice employees. This policy can be implemented in conjunction with less formal communication techniques, such as conspicuous notices posted in common areas and/or the development and placement of a compliance bulletin board where everyone in the practice can receive up-to-date compliance information.[43]

A compliance program's system for meaningful and open communication can include the following:

- The requirement that employees report conduct that a reasonable person would, in good faith, believe to be erroneous or fraudulent;
- The creation of a user-friendly process (such as an anonymous drop box for larger practices) for effectively reporting erroneous or fraudulent conduct;
- Provisions in the standards and procedures that state that a failure to report erroneous or fraudulent conduct is a violation of the compliance program;
- The development of a simple and readily accessible procedure to process reports of erroneous or fraudulent conduct;
- If a billing company is used, communication to and from the billing company's compliance officer/contact and other responsible staff to coordinate billing and compliance activities of the practice and the billing company, respectively. Communication can include, as appropriate, lists of reported or identified concerns, initiation and the results of internal assessments, training needs, regulatory changes, and other operational and compliance matters;
- The utilization of a process that maintains the anonymity of the persons involved in the reported possible erroneous or fraudulent conduct and the person reporting the concern; and
- Provisions in the standards and procedures that there will be no retribution for reporting conduct that a reasonable person acting in good faith would have believed to be erroneous or fraudulent.

The OIG recognizes that protecting anonymity may not be feasible for small physician practices. However, the OIG believes all practice employees, when seeking answers to questions or reporting potential instances of erroneous or fraudulent conduct, should know to whom to turn for assistance in these matters and should be able to do so without fear of retribution. While the physician practice may strive to maintain the anonymity of an employee's identity, it also needs to make clear that there may be a point at which the individual's identity may become known or may have to be revealed in certain instances.

*Step Seven: Enforcing Disciplinary Standards Through Well-Publicized Guidelines*

Finally, the last step that a physician practice may wish to take is to incorporate measures into its practice to ensure that practice employees understand the consequences if they behave in a non-compliant manner. An effective physician practice compliance program includes procedures for enforcing and disciplining individuals who violate the practice's compliance or other practice standards. Enforcement and disciplinary provisions are necessary to add credibility and integrity to a compliance program.

The OIG recommends that a physician practice's enforcement and disciplinary mechanisms ensure that violations of the practice's compliance policies will result in consistent and appropriate sanctions, including the possibility of termination, against the offending individual. At the same time, it is advisable that the practice's enforcement and disciplinary procedures be flexible enough to account for mitigating or aggravating circumstances. The procedures might also stipulate that individuals who fail to detect or report violations of the compliance program may also be subject to discipline. Disciplinary actions could include: Warnings (oral); reprimands (written); probation; demotion; temporary suspension; termination; restitution of damages; and referral for criminal prosecution. Inclusion of disciplinary guidelines in in-house training and procedure manuals is sufficient to meet the "well publicized" standard of this element.

It is suggested that any communication resulting in the finding of non-compliant conduct be documented in the compliance files by including the date of incident, name of the reporting party, name of the person responsible for taking action, and the follow-up action taken. Another suggestion is for physician practices to conduct checks to make sure all current and potential practice employees are not listed on the OIG or GSA lists of individuals excluded from participation in Federal health care or Government procurement programs.[44]

### C. Assessing A Voluntary Compliance Program

A practice's commitment to compliance can best be assessed by the active application of compliance principles in the day-to-day operations of the practice. Compliance programs are not just written standards and procedures that sit on a shelf in the main office of a practice, but are an everyday part of the practice operations. It is by integrating the compliance program into the practice culture that the practice can best achieve maximum benefit from its compliance program.

## III. Conclusion

Just as immunizations are given to patients to prevent them from becoming ill, physician practices may view the implementation of a voluntary compliance program as comparable to a form of preventive medicine for the practice. This voluntary compliance program guidance is intended to assist physician practices in developing and implementing internal controls and procedures that promote adherence to Federal health care program requirements.

As stated earlier, physician compliance programs do not need to be time or resource intensive and can be developed in a manner that best reflects the nature of each individual practice. Many of the recommendations set forth in this document are ones that many physician practices already have in place and are simply good business practices that can be adhered to with a reasonable amount of effort. By implementing an effective compliance program, appropriate for its size and resources, and making compliance principles an active part of the practice culture, a physician practice can help prevent and reduce erroneous or fraudulent conduct in its practice. These efforts can also streamline and improve the business operations within the practice and therefore innoculate itself against future problems.

Dated: September 27, 2000.

**June Gibbs Brown,**

*Inspector General.*

[43] In addition to whatever other method of communication is being utilized, the OIG recommends that physician practices post the HHS–OIG Hotline telephone number (1–800–HHS–TIPS) in a prominent area.

[44] *See* Footnote 35 for information on how to access these lists.



## Appendix A: Additional Risk Areas

Appendix A describes additional risk areas that a physician practice may wish to address during the development of its compliance program. If any of the following risk areas are applicable to the practice, the practice may want to consider addressing the risk areas by incorporating them into the practice's written standards and procedures manual and addressing them in its training program.

### I. Reasonable and Necessary Services

*A. Local Medical Review Policy*

An area of concern for physicians relating to determinations of reasonable and necessary services is the variation in local medical review policies (LMRPs) among carriers. Physicians are supposed to bill the Federal health care programs only for items and services that are reasonable and necessary. However, in order to determine whether an item or service is reasonable and necessary under Medicare guidelines, the physician must apply the appropriate LMRP.[1]

With the exception of claims that are properly coded and submitted to Medicare solely for the purpose of obtaining a written denial, physician practices are to bill the Federal health programs only for items and services that are covered. In order to determine if an item or service is covered for Medicare, a physician practice must be knowledgeable of the LMRPs applicable to its practice's jurisdiction. The practice may contact its carrier to request a copy of the pertinent LMRPs, and once the practice receives the copies, they can be incorporated into the practice's written standards and procedures manual. When the LMRP indicates that an item or service may not be covered by Medicare, the physician practice is responsible to convey this information to the patient so that the patient can make an informed decision concerning the health care services he/she may want to receive. Physician practices convey this information through Advance Beneficiary Notices (ABNs).

*B. Advance Beneficiary Notices*

Physicians are required to provide ABNs before they provide services that they know or believe Medicare does not consider reasonable and necessary. (The one exception to this requirement is for services that are performed pursuant to EMTALA requirements as described in section II.A). A properly executed ABN acknowledges that coverage is uncertain or yet to be determined, and stipulates that the patient promises to pay the bill if Medicare does not. Patients who are not notified before they receive such services are not responsible for payment. The ABN must be sufficient to put the patient on notice of the reasons why the physician believes that the payment may be denied. The objective is to give the patient sufficient information to allow an informed choice as to whether to pay for the service.

Accordingly, each ABN should:

I. Be in writing;
II. Identify the specific service that may be denied (procedure name and CPT/HCPC code is recommended);
III. State the specific reason why the physician believes that service may be denied; and
IV. Be signed by the patient acknowledging that the required information was provided and that the patient assumes responsibility to pay for the service.

*The Medicare Carrier's Manual*[2] provides that an ABN will not be acceptable if: (1) The patient is asked to sign a blank ABN form; or (2) the ABN is used routinely without regard to a particularized need. The routine use of ABNs is generally prohibited because the ABN must state the specific reason the physician anticipates that the specific service will not be covered.

A common risk area associated with ABNs is in regard to diagnostic tests or services. There are three steps that a physician practice can take to help ensure it is in compliance with the regulations concerning ABNs for diagnostic tests or services:

1. Determine which tests are not covered under national coverage rules;
2. Determine which tests are not covered under local coverage rules such as LMRPs (contact the practice's carrier to see if a listing has been assembled); and
3. Determine which tests are only covered for certain diagnoses.

The OIG is aware that the use of ABNs is an area where physician practices experience numerous difficulties. Practices can help to reduce problems in this area by educating their physicians and office staff on the correct use of ABNs, obtaining guidance from the carrier regarding their interpretation of whether an ABN is necessary where the service is not covered, developing a standard form for all diagnostic tests (most carriers have a developed model), and developing a process for handling patients who refuse to sign ABNs.

*C. Physician Liability for Certifications in the Provision of Medical Equipment and Supplies and Home Health Services*

In January 1999, the OIG issued a Special Fraud Alert on this topic, which is available on the OIG web site at *www.hhs.gov/oig/frdolrt/index.htm*. The following is a summary of the Special Fraud Alert.

The OIG issued the Special Fraud Alert to reiterate to physicians the legal and programmatic significance of physician certifications made in connection with the ordering of certain items and services for Medicare patients. In light of information obtained through OIG provider audits, the OIG deemed it necessary to remind physicians that they may be subject to criminal, civil and administrative penalties for signing a certification when they know that the information is false or for signing a certification with reckless disregard as to the truth of the information. (*See Appendix B* and *Appendix C* for more detailed information on the applicable statutes).

Medicare has conditioned payment for many items and services on a certification signed by a physician attesting that the physician has reviewed the patient's condition and has determined that an item or service is reasonable and necessary. Because Medicare primarily relies on the professional judgment of the treating physician to determine the reasonable and necessary nature of a given service or supply, it is important that physicians provide complete and accurate information on any certifications they sign. Physician certification is obtained through a variety of forms, including prescriptions, orders, and Certificates of Medical Necessity (CMNs). Two areas where physician certification as to whether an item or service is reasonable and necessary is essential and which are vulnerable to abuse are: (1) Home health services; and (2) durable medical equipment.

By signing a CMN, the physician represents that:

1. He or she is the patient's treating physician and that the information regarding the physician's address and unique physician identification number (UPIN) is correct;
2. the entire CMN, including the sections filled out by the supplier, was completed *prior* to the physician's signature; and
3. the information in section B relating to whether the item or service is reasonable and necessary is true, accurate, and complete to the best of the physician's knowledge.

Activities such as signing blank CMNs, signing a CMN without seeing the patient to verify the item or service is reasonable and necessary, and signing a CMN for a service that the physician knows is not reasonable and necessary are activities that can lead to criminal, civil and administrative penalties.

Ultimately, it is advised that physicians carefully review any form of certification (order, prescription or CMN) before signing it to verify that the information contained in the certification is both complete and accurate.

[1] HCFA has recently developed a web site which, when completed by the end of the year 2000, will contain the LMRPs for each of the contractors across the country. The web site can be accessed at http://www.lmrp.net.

[2] The relevant manual provisions are located at MCM, Part III, §§ 7300 and 7320. This section of the manual also includes the carrier's recommended form of an ABN.

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*D. Billing for Non-covered Services as if Covered*

In some instances, we are aware that physician practices submit claims for services in order to receive a denial from the carrier, thereby enabling the patient to submit the denied claim for payment to a secondary payer.

A common question relating to this risk area is: If the medical services provided are not covered under Medicare, but the secondary or supplemental insurer requires a Medicare rejection in order to cover the services, then would the original submission of the claim to Medicare be considered fraudulent? Under the applicable regulations, the OIG would not consider such submissions to be fraudulent. For example, the denial may be necessary to establish patient liability protections as stated in section 1879 of the Social Security Act (the Act) (codified at 42 U.S.C. 1395pp). As stated, Medicare denials may also be required so that the patient can seek payment from a secondary insurer. In instances where a claim is being submitted to Medicare for this purpose, the physician should indicate on the claim submission that the claim is being submitted for the purpose of receiving a denial, in order to bill a secondary insurance carrier. This step should assist carriers and prevent inadvertent payments to which the physician is not entitled.

In some instances, however, the carrier pays the claim even though the service is non-covered, and even though the physician did not intend for payment to be made. When this occurs, the physician has a responsibility to refund the amount paid and indicate that the service is not covered.

**II. Physician Relationships with Hospitals**

*A. The Physician Role in EMTALA*

The Emergency Medical Treatment and Active Labor Act (EMTALA), 42 U.S.C. 1395dd, is an area that has been receiving increasing scrutiny. The statute is intended to ensure that all patients who come to the emergency department of a hospital receive care, regardless of their insurance or ability to pay. Both hospitals and physicians need to work together to ensure compliance with the provisions of this law.

The statute imposes three fundamental requirements upon hospitals that participate in the Medicare program with regard to patients requesting emergency care. First, the hospital must conduct an appropriate medical screening examination to determine if an emergency medical condition exists.[3] Second, if the hospital determines that an emergency medical condition exists, it must either provide the treatment necessary to stabilize the emergency medical condition or comply with the statute's requirements to effect a proper transfer of a patient whose condition has not been stabilized.[4] A hospital is considered to have met this second requirement if an individual refuses the hospital's offer of additional examination or treatment, or refuses to consent to a transfer, after having been informed of the risks and benefits.[5]

If an individual's emergency medical condition has not been stabilized, the statute's third requirement is activated. A hospital may not transfer an individual with an unstable emergency medical condition unless: (1) The individual or his or her representative makes a written request for transfer to another medical facility after being informed of the risk of transfer and the transferring hospital's obligation under the statute to provide additional examination or treatment; (2) a physician has signed a certification summarizing the medical risks and benefits of a transfer and certifying that, based upon the information available at the time of transfer, the medical benefits reasonably expected from the transfer outweigh the increased risks; or (3) if a physician is not physically present when the transfer decision is made, a qualified medical person signs the certification after the physician, in consultation with the qualified medical person, has made the determination that the benefits of transfer outweigh the increased risks. The physician must later countersign the certification.[6]

Physician and/or hospital misconduct may result in violations of the statute.[7] One area of particular concern is physician on-call responsibilities. Physician practices whose members serve as on-call emergency room physicians with hospitals are advised to familiarize themselves with the hospital's policies regarding on-call physicians. This can be done by reviewing the medical staff bylaws or policies and procedures of the hospital that must define the responsibility of on-call physicians to respond to, examine, and treat patients with emergency medical conditions. Physicians should also be aware of the requirement that, when medically indicated, on-call physicians must generally come to the hospital to examine the patient. The exception to this requirement is that a patient may be sent to see the on-call physician at a hospital-owned contiguous or on-campus facility to conduct or complete the medical screening examination as long as:

1. All persons with the same medical condition are moved to this location;
2. there is a bona fide medical reason to move the patient; and
3. qualified medical personnel accompany the patient.

*B. Teaching Physicians*

Special regulations apply to teaching physicians' billings. Regulations provide that services provided by teaching physicians in teaching settings are generally payable under the physician fee schedule only if the services are personally furnished by a physician who is not a resident or the services are furnished by a resident in the presence of a teaching physician.[8]

Unless a service falls under a specified exception, such as the Primary Care Exception,[9] the teaching physician must be present during the key portion of any service or procedure for which payment is sought.[10] Physicians should ensure the following with respect to services provided in the teaching physician setting[11]

- Only services actually provided are billed;
- Every physician who provides or supervises the provision of services to a patient is responsible for the correct documentation of the services that were rendered;
- Every physician is responsible for assuring that in cases where the physician provides evaluation and management (E&M) services, a patient's medical record includes appropriate documentation of the applicable key components of the E&M services provided or supervised by the physician (*e.g.*, patient history, physician examination, and medical decision making), as well as documentation to adequately reflect the procedure or portion of the services provided by the physician; and
- Unless specifically excepted by regulation, every physician must document his or her presence during the key portion of any service or procedure for which payment is sought.

*C. Gainsharing Arrangements and Civil Monetary Penalties for Hospital Payments to Physicians to Reduce or Limit Services to Beneficiaries*

In July 1999, the OIG issued a Special Fraud Alert on this topic, which is available on the OIG web site at *www.hhs.gov/oig/frdalrt/index.htm*. The following is a summary of the Special Fraud Alert.

The term "gainsharing" typically refers to an arrangement in which a hospital gives a physician a percentage share of any reduction in the hospital's costs for patient care attributable in part to the physician's efforts. The civil monetary penalty (CMP) that applies to gainsharing arrangements is set forth in 42 U.S.C. 1320a–7a(b)(1). This section prohibits any hospital or critical access hospital from knowingly making a payment directly or indirectly to a physician as an inducement to reduce or limit services to Medicare or Medicaid beneficiaries under a physician's care.

It is the OIG's position that the Civil Monetary Penalties Law clearly prohibits any gainsharing arrangements that involve payments by, or on behalf of, a hospital to physicians with clinical care responsibilities to induce a reduction or limitation of services to Medicare or Medicaid beneficiaries. However, hospitals and physicians are not prohibited from working together to reduce unnecessary hospital costs through other

[3] *See* 42 U.S.C. 1395dd(a).

[4] *See* 42 U.S.C. 1395dd(b)(1).

[5] *See* 42 U.S.C. 1395dd(b)(2) and (3).

[6] *See* 42 U.S.C. 1395dd(c)(1)(A).

[7] Hospitals and physicians, including on-call physicians, who violate the statute may face penalties that include civil fines of up to $50,000 (or not more than $25,000 in the case of a hospital with less than 100 beds) per violation, and physicians may be excluded from participation in the Federal health care programs.

[8] 42 CFR 415.150 through 415.190.

[9] 42 CFR 415.174.

[10] *Id.*

[11] This section is not intended to be and is not a complete reference for teaching physicians. It is strongly recommended that those physicians who practice in a teaching setting consult their respective hospitals for more guidance.



arrangements. For example, hospitals and physicians may enter into personal services contracts where hospitals pay physicians based on a fixed fee at fair market value for services rendered to reduce costs rather than a fee based on a share of cost savings.

*D. Physician Incentive Arrangements*

The OIG has identified potentially illegal practices involving the offering of incentives by entities in an effort to recruit and retain physicians. The OIG is concerned that the intent behind offering incentives to physicians may not be to recruit physicians, but instead the offer is intended as a kickback to obtain and increase patient referrals from physicians. These recruitment incentive arrangements are implicated by the Anti-Kickback Statute because they can constitute remuneration offered to induce, or in return for, the referral of business paid for by Medicare or Medicaid.

Some examples of questionable incentive arrangements are:

- Provision of free or significantly discounted billing, nursing, or other staff services.
- Payment of the cost of a physician's travel and expenses for conferences.
- Payment for a physician's services that require few, if any, substantive duties by the physician.
- Guarantees that if the physician's income fails to reach a predetermined level, the entity will supplement the remainder up to a certain amount.

**III. Physician Billing Practices**

*A. Third-Party Billing Services*

Physicians should remember that they remain responsible to the Medicare program for bills sent in the physician's name or containing the physician's signature, even if the physician had no actual knowledge of a billing impropriety. The attestation on the HCFA 1500 form, *i.e.*, the physician's signature line, states that the physician's services were billed properly. In other words, it is no defense for the physician if the physician's billing service improperly bills Medicare.

One of the most common risk areas involving billing services deals with physician practices contracting with billing services on a percentage basis. Although percentage based billing arrangements are not illegal *per se*, the Office of Inspector General has a longstanding concern that such arrangements may increase the risk of intentional upcoding and similar abusive billing practices.[12]

A physician may contract with a billing service on a percentage basis. However, the billing service cannot directly receive the payment of Medicare funds into a bank account that it solely controls. Under 42 U.S.C. 1395u(b)(6), Medicare payments can only be made to either the beneficiary or a party (such as a physician) that furnished the services and accepted assignment of the beneficiary's claim. A billing service that contracts on a percentage basis does not qualify as a party that furnished services to a beneficiary, thus a billing service cannot directly receive payment of Medicare funds. According to the *Medicare Carriers Manual* Section 3060(A), a payment is considered to be made directly to the billing service if the service can convert the payment to its own use and control without the payment first passing through the control of the physician. For example, the billing service should not bill the claims under its own name or tax identification number. The billing service should bill claims under the physician's name and tax identification number. Nor should a billing service receive the payment of Medicare funds directly into a bank account over which the billing service maintains sole control. The Medicare payments should instead be deposited into a bank account over which the provider has signature control.

Physician practices should review the third-party medical billing guidance for additional information on third-party billing companies and the compliance risk areas associated with billing companies.

*B. Billing Practices by Non-Participating Physicians*

Even though nonparticipating physicians do not accept payment directly from the Medicare program, there are a number of laws that apply to the billing of Medicare beneficiaries by non-participating physicians.

Limiting Charges

42 U.S.C. 1395w–4(g) prohibits a nonparticipating physician from knowingly and willfully billing or collecting on a repeated basis an actual charge for a service that is in excess of the Medicare limiting charge. For example, a nonparticipating physician may not bill a Medicare beneficiary $50 for an office visit when the Medicare limiting charge for the visit is $25. Additionally, there are numerous provisions that prohibit nonparticipating physicians from knowingly and willfully charging patients in excess of the statutory charge limitations for certain specified procedures, such as cataract surgery, mammography screening and coronary artery bypass surgery. Failure to comply with these sections can result in a fine of up to $10,000 per violation or exclusion from participation in Federal health care programs for up to 5 years.

Refund of Excess Charges

42 U.S.C. 1395w–4(g) mandates that if a nonparticipating physician collects an actual charge for a service that is in excess of the limiting charge, the physician must refund the amount collected above the limiting charge to the individual within 30 days notice of the violation. For example, if a physician collected $50 from a Medicare beneficiary for an office visit, but the limiting charge for the visit was $25, the physician must refund $25 to the beneficiary, which is the difference between the amount collected ($50) and the limiting charge ($25). Failure to comply with this requirement may result in a fine of up to $10,000 per violation or exclusion from participation in Federal health care programs for up to 5 years.

Specifically, 42 U.S.C. 1395u(l)(A)(iii) mandates that a nonparticipating physician must refund payments received from a Medicare beneficiary if it is later determined by a Peer Review Organization or a Medicare carrier that the services were not reasonable and necessary. Failure to comply with this requirement may result in a fine of up to $10,000 per violation or exclusion from participation in Federal health care programs for up to 5 years.

*C. Professional Courtesy*

The term "professional courtesy" is used to describe a number of analytically different practices. The traditional definition is the practice by a physician of waiving all or a part of the fee for services provided to the physician's office staff, other physicians, and/or their families. In recent times, "professional courtesy" has also come to mean the waiver of coinsurance obligations or other out-of-pocket expenses for physicians or their families (*i.e.*, "insurance only" billing), and similar payment arrangements by hospitals or other institutions for services provided to their medical staffs or employees. While only the first of these practices is truly "professional courtesy," in the interests of clarity and completeness, we will address all three.

In general, whether a professional courtesy arrangement runs afoul of the fraud and abuse laws is determined by two factors: (i) How the recipients of the professional courtesy are selected; and (ii) how the professional courtesy is extended. If recipients are selected in a manner that directly or indirectly takes into account their ability to affect past or future referrals, the anti-kickback statute—which prohibits giving anything of value to generate Federal health care program business—may be implicated. If the professional courtesy is extended through a waiver of copayment obligations (*i.e.*, "insurance only" billing), other statutes may be implicated, including the prohibition of inducements to beneficiaries, section 1128A(a)(5) of the Act (codified at 42 U.S.C. 1320a–7a(a)(5)). Claims submitted as a result of either practice may also implicate the civil False Claims Act.

The following are general observations about professional courtesy arrangements for physician practices to consider:

- A physician's regular and consistent practice of extending professional courtesy by waiving the entire fee for services rendered to a group of persons (including employees, physicians, and/or their family members) may not implicate any of the OIG's fraud and abuse authorities so long as membership in the group receiving the courtesy is determined in a manner that does not take into account directly or indirectly any group member's ability to refer to, or otherwise generate Federal health care program business for, the physician.
- A physician's regular and consistent practice of extending professional courtesy by waiving otherwise applicable copayments for services rendered to a group of persons (including employees, physicians, and/or their family members), would not implicate the anti-kickback statute so long as membership in the group is determined in a

[12] This concern is noted in Advisory Opinion No. 98–4 and also the Office of Inspector General Compliance Program Guidance for Third-Party Medical Billing Companies. Both are available on the OIG web site at http://www.hhs.gov/oig.

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manner that does not take into account directly or indirectly any group member's ability to refer to, or otherwise generate Federal health care program business for, the physician.

• Any waiver of copayment practice, including that described in the preceding bullet, does implicate section 1128A(a)(5) of the Act if the patient for whom the copayment is waived is a Federal health care program beneficiary who is not financially needy.

The legality of particular professional courtesy arrangements will turn on the specific facts presented, and, with respect to the anti-kickback statute, on the specific intent of the parties. A physician practice may wish to consult with an attorney if it is uncertain about its professional courtesy arrangements.

**IV. Other Risk Areas**

*A. Rental of Space in Physician Offices by Persons or Entities to Which Physicians Refer*

In February 2000, the OIG issued a Special Fraud Alert on this topic, which is available on the OIG web site at *www.hhs.gov/oig/frdalrt/index.htm*. The following is a summary of the Special Fraud Alert.

Among various relationships between physicians and labs, hospitals, home health agencies, etc., the OIG has identified potentially illegal practices involving the rental of space in a physician's office by suppliers that provide items or services to patients who are referred or sent to the supplier by the physician-landlord. An example of a suspect arrangement is the rental of physician office space by a durable medical equipment (DME) supplier in a position to benefit from referrals of the physician's patients. The OIG is concerned that in such arrangements the rental payments may be disguised kickbacks to the physician-landlord to induce referrals.

Space Rental Safe Harbor to the Anti-Kickback Statute

To avoid potentially violating the anti-kickback statute, the OIG recommends that rental agreements comply with all of the following criteria for the space rental safe harbor:

• The agreement is set out in writing and signed by the parties.

• The agreement covers all of the space rented by the parties for the term of the agreement and specifies the space covered by the agreement.

• If the agreement is intended to provide the lessee with access to the space for periodic intervals of time rather than on a full-time basis for the term of the rental agreement, the rental agreement specifies exactly the schedule of such intervals, the precise length of each interval, and the exact rent for each interval.

• The term of the rental agreement is for not less than one year.

• The aggregate rental charge is set in advance, is consistent with fair market value, and is not determined in a manner that takes into account the volume or value of any referrals or business otherwise generated between the parties for which payment may be made in whole or in part under Medicare or a State health care program.

• The aggregate space rented does not exceed that which is reasonably necessary to accomplish the commercially reasonable business purpose of the rental.

*B. Unlawful Advertising*

42 U.S.C. 1320b–10 makes it unlawful for any person to advertise using the names, abbreviations, symbols, or emblems of the Social Security Administration, Health Care Financing Administration, Department of Health and Human Services, Medicare, Medicaid or any combination or variation of such words, abbreviations, symbols or emblems in a manner that such person knows or should know would convey the false impression that the advertised item is endorsed by the named entities. For instance, a physician may not place an ad in the newspaper that reads "Dr. X is a cardiologist approved by both the Medicare and Medicaid programs." A violation of this section may result in a penalty of up to $5,000 ($25,000 in the case of a broadcast or telecast) for each violation.

**Appendix B: Criminal Statutes**

This Appendix contains a description of criminal statutes related to fraud and abuse in the context of health care. The Appendix is not intended to be a compilation of all Federal statutes related to health care fraud and abuse. It is merely a summary of some of the more frequently cited Federal statutes.

**I. Health Care Fraud (18 U.S.C. 1347)**

*Description of Unlawful Conduct*

It is a crime to knowingly and willfully execute (or attempt to execute) a scheme to defraud any health care benefit program, or to obtain money or property from a health care benefit program through false representations. Note that this law applies not only to Federal health care programs, but to most other types of health care benefit programs as well.

*Penalty for Unlawful Conduct*

The penalty may include the imposition of fines, imprisonment of up to 10 years, or both. If the violation results in serious bodily injury, the prison term may be increased to a maximum of 20 years. If the violation results in death, the prison term may be expanded to include any number of years, or life imprisonment.

*Examples*

1. Dr. X, a chiropractor, intentionally billed Medicare for physical therapy and chiropractic treatments that he never actually rendered for the purpose of fraudulently obtaining Medicare payments.

2. Dr. X, a psychiatrist, billed Medicare, Medicaid, TRICARE, and private insurers for psychiatric services that were provided by his nurses rather than himself.

**II. Theft or Embezzlement in Connection with Health Care (18 U.S.C. 669)**

*Description of Unlawful Conduct*

It is a crime to knowingly and willfully embezzle, steal or intentionally misapply any of the assets of a health care benefit program. Note that this law applies not only to Federal health care programs, but to most other types of health care benefit programs as well.

*Penalty for Unlawful Conduct*

The penalty may include the imposition of a fine, imprisonment of up to 10 years, or both. If the value of the asset is $100 or less, the penalty is a fine, imprisonment of up to a year, or both.

*Example*

An office manager for Dr. X knowingly embezzles money from the bank account for Dr. X's practice. The bank account includes reimbursement received from the Medicare program; thus, intentional embezzlement of funds from this account is a violation of the law.

**III. False Statements Relating to Health Care Matters (18 U.S.C. 1035)**

*Description of Unlawful Conduct*

It is a crime to knowingly and willfully falsify or conceal a material fact, or make any materially false statement or use any materially false writing or document in connection with the delivery of or payment for health care benefits, items or services. Note that this law applies not only to Federal health care programs, but to most other types of health care benefit programs as well.

*Penalty for Unlawful Conduct*

The penalty may include the imposition of a fine, imprisonment of up to 5 years, or both.

*Example*

Dr. X certified on a claim form that he performed laser surgery on a Medicare beneficiary when he knew that the surgery was not actually performed on the patient.

**IV. Obstruction of Criminal Investigations of Health Care Offenses (18 U.S.C. 1518)**

*Description of Unlawful Conduct*

It is a crime to willfully prevent, obstruct, mislead, delay or attempt to prevent, obstruct, mislead, or delay the communication of records relating to a Federal health care offense to a criminal investigator. Note that this law applies not only to Federal health care programs, but to most other types of health care benefit programs as well.

*Penalty for Unlawful Conduct*

The penalty may include the imposition of a fine, imprisonment of up to 5 years, or both.

*Examples*

1. Dr. X instructs his employees to tell OIG investigators that Dr. X personally performs all treatments when, in fact, medical technicians do the majority of the treatment and Dr. X is rarely present in the office.

2. Dr. X was under investigation by the FBI for reported fraudulent billings. Dr. X altered patient records in an attempt to cover up the improprieties.



**V. Mail and Wire Fraud (18 U.S.C. 1341 and 1343)**

*Description of Unlawful Conduct*

It is a crime to use the mail, private courier, or wire service to conduct a scheme to defraud another of money or property. The term "wire services" includes the use of a telephone, fax machine or computer. Each use of a mail or wire service to further fraudulent activities is considered a separate crime. For instance, each fraudulent claim that is submitted electronically to a carrier would be considered a separate violation of the law.

*Penalty for Unlawful Conduct*

The penalty may include the imposition of a fine, imprisonment of up to 5 years, or both.

*Examples*

1. Dr. X knowingly and repeatedly submits electronic claims to the Medicare carrier for office visits that he did not actually provide to Medicare beneficiaries with the intent to obtain payments from Medicare for services he never performed.

2. Dr. X, a neurologist, knowingly submitted claims for tests that were not reasonable and necessary and intentionally upcoded office visits and electromyograms to Medicare.

**VI. Criminal Penalties for Acts Involving Federal Health Care Programs (42 U.S.C. 1320a–7b)**

*Description of Unlawful Conduct*

False Statement and Representations

It is a crime to knowingly and willfully:

(1) make, or cause to be made, false statements or representations in applying for benefits or payments under all Federal health care programs;

(2) make, or cause to be made, any false statement or representation for use in determining rights to such benefit or payment;

(3) conceal any event affecting an individual's initial or continued right to receive a benefit or payment with the intent to fraudulently receive the benefit or payment either in an amount or quantity greater than that which is due or authorized;

(4) convert a benefit or payment to a use other than for the use and benefit of the person for whom it was intended;

(5) present, or cause to be presented, a claim for a physician's service when the service was not furnished by a licensed physician;

(6) for a fee, counsel an individual to dispose of assets in order to become eligible for medical assistance under a State health program, if disposing of the assets results in the imposition of an ineligibility period for the individual.

Anti-Kickback Statute

It is a crime to knowingly and willfully solicit, receive, offer, or pay remuneration of any kind (e.g., money, goods, services):

• for the referral of an individual to another for the purpose of supplying items or services that are covered by a Federal health care program; or

• for purchasing, leasing, ordering, or arranging for any good, facility, service, or item that is covered by a Federal health care program.

There are a number of limited exceptions to the law, also known as "safe harbors," which provide immunity from criminal prosecution and which are described in greater detail in the statute and related regulations (found at 42 CFR 1001.952 and www.hhs.gov/oig/ak). Current safe harbors include:

• investment interests;
• space rental;
• equipment rental;
• personal services and management contracts;
• sale of practice;
• referral services;
• warranties;
• discounts;
• employment relationships;
• waiver of Part A co-insurance and deductible amounts;
• group purchasing organizations;
• increased coverage or reduced cost sharing under a risk-basis or prepaid plan; and
• charge reduction agreements with health plans.

*Penalty for Unlawful Conduct*

The penalty may include the imposition of a fine of up to $25,000, imprisonment of up to 5 years, or both. In addition, the provider can be excluded from participation in Federal health care programs. The regulations defining the aggravating and mitigating circumstances that must be reviewed by the OIG in making an exclusion determination are set forth in 42 CFR part 1001.

*Examples*

1. Dr. X accepted payments to sign Certificates of Medical Necessity for durable medical equipment for patients she never examined.

2. Home Health Agency disguises referral fees as salaries by paying referring physician Dr. X for services Dr. X never rendered to the Medicare beneficiaries or by paying Dr. X a sum in excess of fair market value for the services he rendered to the Medicare beneficiaries.

**Appendix C: Civil and Administrative Statutes**

This Appendix contains a description of civil and administrative statutes related to fraud and abuse in the context of health care. The Appendix is not intended to be a compilation of all federal statutes related to health care fraud and abuse. It is merely a summary of some of the more frequently cited Federal statutes.

**I. The False Claims Act (31 U.S.C. 3729–3733)**

*Description of Unlawful Conduct*

This is the law most often used to bring a case against a health care provider for the submission of false claims to a Federal health care program. The False Claims Act prohibits knowingly presenting (or causing to be presented) to the Federal Government a false or fraudulent claim for payment or approval. Additionally, it prohibits knowingly making or using (or causing to be made or used) a false record or statement to get a false or fraudulent claim paid or approved by the Federal Government or its agents, like a carrier, other claims processor, or State Medicaid program.

*Definitions*

*False Claim*—A "false claim" is a claim for payment for services or supplies that were not provided specifically as presented or for which the provider is otherwise not entitled to payment. Examples of false claims for services or supplies that were not provided specifically as presented include, but are not limited to:

• a claim for a service or supply that was never provided.

• a claim indicating the service was provided for some diagnosis code other than the true diagnosis code in order to obtain reimbursement for the service (which would not be covered if the true diagnosis code were submitted).

• a claim indicating a higher level of service than was actually provided.

• a claim for a service that the provider knows is not reasonable and necessary.

• a claim for services provided by an unlicensed individual.

*Knowingly*—To "knowingly" present a false or fraudulent claim means that the provider: (1) Has actual knowledge that the information on the claim is false; (2) acts in deliberate ignorance of the truth or falsity of the information on the claim; or (3) acts in reckless disregard of the truth or falsity of the information on the claim. It is important to note the provider does not have to deliberately intend to defraud the Federal Government in order to be found liable under this Act. The provider need only "knowingly" present a false or fraudulent claim in the manner described above.

*Deliberate Ignorance*—To act in "deliberate ignorance" means that the provider has deliberately chosen to ignore the truth or falsity of the information on a claim submitted for payment, even though the provider knows, or has notice, that information may be false. An example of a provider who submits a false claim with deliberate ignorance would be a physician who ignores provider update bulletins and thus does not inform his/her staff of changes in the Medicare billing guidelines or update his/her billing system in accordance with changes to the Medicare billing practices. When claims for non-reimbursable services are submitted as a result, the False Claims Act has been violated.

*Reckless Disregard*—To act in "reckless disregard" means that the provider pays no regard to whether the information on a claim submitted for payment is true or false. An example of a provider who submits a false claim with reckless disregard would be a physician who assigns the billing function to an untrained office person without inquiring whether the employee has the requisite knowledge and training to accurately file such claims.

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*Penalty for Unlawful Conduct*

The penalty for violating the False Claims Act is a minimum of $5,500 up to a maximum of $11,000 for *each* false claim submitted. In addition to the penalty, a provider could be found liable for damages of up to three times the amount unlawfully claimed.

*Examples*

- A physician submitted claims to Medicare and Medicaid representing that he had personally performed certain services when, in reality, the services were performed by a nonphysician and they were not reimbursable under the Federal health care programs.
- Dr. X intentionally upcoded office visits and angioplasty consultations that were submitted for payment to Medicare.
- Dr. X, a podiatrist, knowingly submitted claims to the Medicare and Medicaid programs for non-routine surgical procedures when he actually performed routine, non-covered services such as the cutting and trimming of toenails and the removal of corns and calluses.

**II. Civil Monetary Penalties Law (42 U.S.C. 1320a–7a)**

*Description of Unlawful Conduct*

The Civil Monetary Penalties Law (CMPL) is a comprehensive statute that covers an array of fraudulent and abusive activities and is very similar to the False Claims Act. For instance, the CMPL prohibits a health care provider from presenting, or causing to be presented, claims for services that the provider "knows or should know" were:

- not provided as indicated by the coding on the claim;
- not medically necessary;
- furnished by a person who is not licensed as a physician (or who was not properly supervised by a licensed physician);
- furnished by a licensed physician who obtained his or her license through misrepresentation of a material fact (such as cheating on a licensing exam);
- furnished by a physician who was not certified in the medical specialty that he or she claimed to be certified in; or
- furnished by a physician who was excluded from participation in the Federal health care program to which the claim was submitted.

Additionally, the CMPL contains various other prohibitions, including:

- offering remuneration to a Medicare or Medicaid beneficiary that the person knows or should know is likely to influence the beneficiary to obtain items or services billed to Medicare or Medicaid from a particular provider;
- employing or contracting with an individual or entity that the person knows or should know is excluded from participation in a Federal health care program.

The term "should know" means that a provider: (1) Acted in deliberate ignorance of the truth or falsity of the information; or (2) acted in reckless disregard of the truth or falsity of the information. The Federal Government does not have to show that a provider specifically intended to defraud a Federal health care program in order to prove a provider violated the statute.

*Penalty for Unlawful Conduct*

Violation of the CMPL may result in a penalty of up to $10,000 per item or service and up to three times the amount unlawfully claimed. In addition, the provider may be excluded from participation in Federal health care programs. The regulations defining the aggravating and mitigating circumstances that must be reviewed by the OIG in making an exclusion determination are set forth in 42 CFR part 1001.

*Examples*

1. Dr. X paid Medicare and Medicaid beneficiaries $20 each time they visited him to receive services and have tests performed that were not preventive care services and tests.
2. Dr. X hired Physician Assistant P to provide services to Medicare and Medicaid beneficiaries without conducting a background check on P. Had Dr. X performed a background check by reviewing the HHS–OIG List of Excluded Individuals/Entities, Dr. X would have discovered that he should not hire P because P is excluded from participation in Federal health care programs for a period of 5 years.
3. Dr. X and his oximetry company billed Medicare for pulse oximetry that they knew they did not perform and services that had been intentionally upcoded.

**III. Limitations on Certain Physician Referrals ("Stark Laws") (42 U.S.C. 1395nn)**

*Description of Unlawful Conduct*

Physicians (and immediate family members) who have an ownership, investment or compensation relationship with an entity providing "designated health services" are prohibited from referring patients for these services where payment may be made by a Federal health care program unless a statutory or regulatory exception applies. An entity providing a designated health service is prohibited from billing for the provision of a service that was provided based on a prohibited referral. Designated health services include: clinical laboratory services; physical therapy services; occupational therapy services; radiology services, including magnetic resonance imaging, axial tomography scans, and ultrasound services; radiation therapy services and supplies; durable medical equipment and supplies; parenteral and enteral nutrients, equipment and supplies; prosthetics, orthotics, prosthetic devices and supplies; home health services; outpatient prescription drugs; and inpatient and outpatient hospital services.

New regulations clarifying the exceptions to the Stark Laws are expected to be issued by HCFA shortly. Current exceptions articulated within the Stark Laws include the following, provided all conditions of each exception as set forth in the statute and regulations are satisfied.

*Exceptions for Ownership or Compensation Arrangements*

- physician's services;
- in-office ancillary services; and
- prepaid plans.

*Exceptions for Ownership or Investment in Publicly Traded Securities and Mutual Funds*

- ownership of investment securities which may be purchased on terms generally available to the public;
- ownership of shares in a regulated investment company as defined by Federal law, if such company had, at the end of the company's most recent fiscal year, or on average, during the previous 3 fiscal years, total assets exceeding $75,000,000;
- hospital in Puerto Rico;
- rural provider; and
- hospital ownership (whole hospital exception).

*Exceptions Relating to Other Compensation Arrangements*

- rental of office space and rental of equipment;
- bona fide employment relationship;
- personal service arrangement;
- remuneration unrelated to the provision of designated health services;
- physician recruitment;
- isolated transactions;
- certain group practice arrangements with a hospital (pre-1989); and
- payments by a physician for items and services.

*Penalty for Unlawful Conduct*

Violations of the statute subject the billing entity to denial of payment for the designated health services, refund of amounts collected from improperly submitted claims, and a civil monetary penalty of up to $15,000 for each improper claim submitted. Physicians who violate the statute may also be subject to additional fines per prohibited referral. In addition, providers that enter into an arrangement that they know or should know circumvents the referral restriction law may be subject to a civil monetary penalty of up to $100,000 per arrangement.

*Examples*

1. Dr. A worked in a medical clinic located in a major city. She also owned a free standing laboratory located in a major city. Dr. A referred all orders for laboratory tests on her patients to the laboratory she owned.
2. Dr. X agreed to serve as the Medical Director of Home Health Agency, HHA, for which he was paid a sum substantially above the fair market value for his services. In return, Dr. X routinely referred his Medicare and Medicaid patients to HHA for home health services.
3. Dr. Y received a monthly stipend of $500 from a local hospital to assist him in meeting practice expenses. Dr. Y performed no specific service for the stipend and had no obligation to repay the hospital. Dr. Y referred patients to the hospital for in-patient surgery.

**IV. Exclusion of Certain Individuals and Entities From Participation in Medicare and other Federal Health Care Programs (42 U.S.C. 1320a–7)**

*Mandatory Exclusion*

Individuals or entities convicted of the following conduct must be excluded from participation in Medicare and Medicaid for a minimum of 5 years:

(1) a criminal offense related to the delivery of an item or service under Medicare or Medicaid;

(2) a conviction under Federal or State law of a criminal offense relating to the neglect or abuse of a patient;

(3) a conviction under Federal or State law of a felony relating to fraud, theft, embezzlement, breach of fiduciary responsibility or other financial misconduct against a health care program financed by any Federal, State, or local government agency;

(4) a conviction under Federal or State law of a felony relating to the unlawful manufacture, distribution, prescription, or dispensing of a controlled substance.

If there is one prior conviction, the exclusion will be for 10 years. If there are two prior convictions, the exclusion will be permanent.

*Permissive Exclusion*

Individuals or entities convicted of the following offenses, may be excluded from participation in Federal health care programs for a minimum of 3 years:

(1) a criminal offense related to the delivery of an item or service under Medicare or Medicaid;

(2) a misdemeanor related to fraud, theft, embezzlement, breach of fiduciary responsibility or other financial misconduct against a health care program financed by any Federal, State, or local government agency;

(3) interference with, or obstruction of, any investigation into certain criminal offenses;

(4) a misdemeanor related to the unlawful manufacture, distribution, prescription or dispensing of a controlled substance;

(5) exclusion or suspension under a Federal or State health care program;

(6) submission of claims for excessive charges, unnecessary services or services that were of a quality that fails to meet professionally recognized standards of health care;

(7) violating the Civil Monetary Penalties Law or the statute entitled "Criminal Penalties for Acts Involving Federal Health Care Programs;"

(8) ownership or control of an entity by a sanctioned individual or immediate family member (spouse, natural or adoptive parent, child, sibling, stepparent, stepchild, stepbrother or stepsister, in-laws, grandparent and grandchild);

(9) failure to disclose information required by law;

(10) failure to supply claims payment information; and

(11) defaulting on health education loan or scholarship obligations.

The above list of offenses is not all inclusive. Additional grounds for permissive exclusion are detailed in the statute.

*Examples*

1. Nurse R was excluded based on a conviction involving obtaining dangerous drugs by forgery. She also altered prescriptions that were given for her own health problems before she presented them to the pharmacist to be filled.
2. Practice T was excluded due to its affiliation with its excluded owner. The practice owner, excluded from participation in the Federal health care programs for soliciting and receiving illegal kickbacks, was still participating in the day-to-day operations of the practice after his exclusion was effective.



**Appendix D: OIG–HHS Contact Information**

**I. OIG Hotline Number**

One method for providers to report potential fraud, waste, and abuse problems is to contact the OIG Hotline number. All HHS and contractor employees have a responsibility to assist in combating fraud, waste and abuse in all departmental programs. As such, providers are encouraged to report matters involving fraud, waste and mismanagement in any departmental program to the OIG. The OIG maintains a hotline that offers a confidential means for reporting these matters.

Contacting the OIG Hotline

By Phone: 1–800–HHS–TIPS (1–800–447–8477)
By E-Mail: *HTips@os.dhhs.gov*
By Mail: Office of Inspector General, Department of Health and Human Services, Attn: HOTLINE, 330 Independence Ave., SW., Washington, DC 20201

When contacting the Hotline, please provide the following information to the best of your ability:

- Type of Complaint:

Medicare Part A
Medicare Part B
Indian Health Service
TRICARE
Other (please specify)

- HHS Department or program being affected by your allegation of fraud, waste, abuse/mismanagement:

Health Care Financing Administration (HCFA)
Indian Health Service
Other (please specify)

Please provide the following information. (However, if you would like your referral to be submitted anonymously, please indicate such in your correspondence or phone call.)

Your Name
Your Street Address
Your City/County
Your State
Your Zip Code
Your email Address

- Subject/Person/Business/Department that allegation is against.

Name of Subject
Title of Subject
Subject's Street Address
Subject's City/County
Subject's State
Subject's Zip Code

Please provide a brief summary of your allegation and the relevant facts.

**II. Provider Self-Disclosure Protocol**

The recommended method for a provider to contact the OIG regarding potential fraud or abuse issues that may exist in the provider's own organization is through the use of the Provider Self-Disclosure Protocol. This program encourages providers to voluntarily disclose irregularities in their dealings with Federal health care programs. While voluntary disclosure under the protocol does not guarantee a provider protection from civil, criminal, or administrative actions, the fact that a provider voluntarily disclosed possible wrongdoing is a mitigating factor in OIG's recommendations to prosecuting agencies. Although other agencies may not have formal policies offering immunity or mitigation for self-disclosure, they typically view self-disclosure favorably for the self-disclosing entity. Self-reporting offers providers the opportunity to minimize the potential cost and disruption of a full-scale audit and investigation, to negotiate a fair monetary settlement, and to avoid an OIG permissive exclusion preventing the provider from doing business with Federal health care programs. In addition, if the provider is obligated to enter into an Integrity Agreement (IA) as part of the resolution of a voluntary disclosure, there are three benefits the provider might receive as a result of self-reporting:

- If the provider has an effective compliance program and agrees to maintain its compliance program as part of the False Claims Act settlement, the OIG may not even require an IA;
- In cases where the provider's own audits detected the disclosed problem, the OIG may consider alternatives to the IA's auditing provisions. The provider may be able to perform some or all of its billing audits through internal auditing methods rather than be required to retain an independent review organization to perform the billing review; and
- Self-disclosing can help to demonstrate a provider's trustworthiness to the OIG and may result in the OIG determining that it can sufficiently safeguard the Federal health care programs through an IA without the exclusion remedy for a material breach, which is typically included in an IA.

Specific instructions on how a physician practice can submit a voluntary disclosure under the Provider Self-Disclosure Protocol can be found on the OIG's internet site at www.hhs.gov/oig or in the **Federal Register** at 63 FR 58399 (1998). A physician practice may, however, wish to consult with an attorney prior to submitting a disclosure to the OIG.

The Provider Self-Disclosure Protocol can also be a useful tool for baseline audits. The protocol details the OIG's views on the appropriate elements of an effective investigative and audit plan for providers. Physician practices can use the self-disclosure protocol as a model for conducting audits and self-assessments.

In relying on the protocol for audit design and sample selection, a physician practice should pay close attention to the sections on self-assessment and sample selection. These two sections provide valuable guidance regarding how these two functions should be performed.

The self-assessment section of the protocol contains information that can be applied to audit design. Self-assessment is an internal financial assessment to determine the

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monetary impact of the matter. The approach of a review can include reviewing either all claims affected or a statistically valid sample of the claims.

Sample selection must include several elements. These elements are drawn from the Government sampling program known as RAT–STATS.[1] All of these elements are set forth in more detail in the Provider Self-Disclosure Protocol, but the elements are (1) Sampling unit, (2) sampling frame, (3) probe, (4) sample size, (5) random numbers, (6) sample design and (7) missing sample items. All of these sampling items should be clearly documented by the physician practice and compiled in the format set forth in the Provider Self-Disclosure Protocol. Use of the format set forth in the Provider Self-Disclosure Protocol will help physician practices to ensure that the elements of their internal audits are in conformance with OIG standards.

**Appendix E: Carrier Contact Information**

**Medicare**

A complete list of contact information (address, phone number, email address) for Medicare Part A Fiscal Intermediaries, Medicare Part B Carriers, Regional Home Health Intermediaries, and Durable Medical Equipment Regional Carriers can be found on the HCFA web site at *www.hcfa.gov/medicare/incardir.htm.*

**Medicaid**

Contact information (address, phone number, email address) for each State Medicaid carrier can be found on the HCFA web site at *www.hcfa.gov/medicaid/mcontact.htm.* In addition to a list of Medicaid carriers, the web site includes contact information for each State survey agency and the HCFA Regional Offices.

Contact information for each State Medicaid Fraud Control Unit can be found on the OIG web site at *www.hhs.gov/oig/oi/mfcu/index.htm.*

**Appendix F: Internet Resources**

**Office of Inspector General—U.S. Department of Health and Human Services**

www.hhs.gov/oig

This web site includes a variety of information relating to Federal health care programs, including the following:
Advisory Opinions
Anti-kickback Information
Compliance Program Guidance
Corporate Integrity Agreements
Fraud Alerts

Links to web pages for the:
Office of Audit Services (OAS)
Office of Evaluation and Inspections (OEI)
Office of Investigations (OI)
OIG List of Excluded Individuals/Entities
OIG News
OIG Regulations
OIG Semi-Annual Report
OIG Workplan

**Health Care Financing Administration**

*www.hcfa.gov*

This web site includes information on a wide array of topics, including the following:

*Medicare*

National Correct Coding Initiative
Intermediary-Carrier Directory
Payment
Program Manuals
Program Transmittals & Memorandum
Provider Billing/HCFA Forms
Statistics and Data

*Medicaid*

HCFA Regional Offices
Letters to State Medicaid Directors
Medicaid Hotline Numbers
Policy & Program Information
State Medicaid Contacts
State Medicaid Manual
State Survey Agencies
Statistics and Data

**HCFA Medicare Training**

*www.hcfa.gov/medlearn*

This site provides computer-based training on the following topics:
HCFA 1500 Form
Fraud & Abuse
ICD–9–CM Diagnosis Coding
Adult Immunization
Medicare Secondary Payer (MSP)
Women's Health
Front Office Management
Introduction to the World of Medicare
Home Health Agency
HCFA 1450 (UB92)

**Government Printing Office**

*www.access.gpo.gov*

This site provides access to Federal statutes and regulations pertaining to Federal health care programs.

**The U.S. House of Representatives Internet Library**

*uscode.house.gov/usc.htm*

This site provides access to the United States Code, which contains laws pertaining to Federal health care programs.

[FR Doc. 00–25500 Filed 10–4–00; 8:45 am]

BILLING CODE 4152–01–P

[1] Available through the OIG web site at http://www.hhs.gov/oas/ratstat.html.

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the President's Cancer Panel.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

*Name of Committee:* President's Cancer Panel.

*Date:* October 12–13, 2000.

*Time:* 9:00 AM to 4:00 PM.

*Agenda:* Town Hall Meeting. Topic will be Improving Cancer Care for All: Real People—Real Problems.

*Place:* Radisson Northern Hotel, 19 North 28th Street, Billings, MT 59101.

*Contact Person:* Maureen O. Wilson, Executive Secretary, National Cancer Institute, National Institutes of Health, 31 Center Drive, Building 31, Room 4A48, Bethesda, MD 20892, 301/496–1148.

This notice is being published less than 15 days prior to the meeting due to scheduling conflicts.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 26, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–25538 Filed 10–4–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Cancer Institute Director's Consumer Liaison Group.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

*Nome of Committee:* National Cancer Institute Director's Consumer Liaison Group.

*Date:* October 17–18, 2000.

*Time:* 8 AM to 12:30 PM.

*Agenda:* To discuss NCI's activities related to Health Disparities and Quality of Care, and Update on the Office of Communications reorganization regarding DCLG activities, including reports from the working groups.

*Place:* National Cancer Institute, 6116 Executive Boulevard, Suite 300C, Rockville, MD 20852.

*Contact Person:* Elaine Lee, Acting Executive Secretary, Office of Liaison Activities, National Institutes of Health, National Cancer Institute, 6116 Executive Boulevard, Suite 300 C, Bethesda, MD 20892, 301/594–3194.

This notice is being published less than 15 days prior to the meeting due to scheduling conflicts.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 26, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–25539 Filed 10–4–00; 8:45 am]

BILLING CODE 4140–01–M



## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the President's Cancer Panel.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

*Name of Committee:* President's Cancer Panel.

*Date:* November 16–17, 2000.

*Time:* 9:00 AM to 4:00 PM.

*Agenda:* Town Hall Meeting to review Improving Cancer Care for All: Real People—Real Problems.

*Place:* Vanderbilt University, Vanderbilt Cancer Center, Medical Research Building II, Nashville, TN 37322–6838.

*Contact Person:* Maureen O. Wilson, Executive Secretary, National Cancer Institute, National Institutes of Health, 31 Center Drive, Building 31, room 4A48, Bethesda, MD 20892, 301/496–1148.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 26, 2000.

**Laverne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–25540 Filed 10–4–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Cancer Institute Special Emphasis Panel, Institutional Clinical Oncology Research Career Development Program PAR–00–63.

*Date:* October 11, 2000.

*Time:* 5 PM to 6 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn—Georgetown, 2101 Wisconsin Avenue, N.W., Washington, DC 20007.

*Contact Person:* David E. Maslow, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard—Room 8054, Bethesda, MD 20892–7405, 301/496–2330.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Assistance Program Nos. 93.392, Cancer Construction, 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 27, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–25542 Filed 10–4–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health; National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Advisory Committee to the Director, National Cancer Institute.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

*Name of Committee:* Advisory Committee to the Director, National Cancer Institute.

*Date:* November 6, 2000.

*Time:* 9:30 AM to 11:00 PM.

*Agenda:* The purpose of this meeting will be to discuss the Brain Tumor Progress Review Group Report.

*Place:* National Institutes of Health, 9000 Rockville Pike, Building 31, Room 11A10, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Susan J. Waldrop, Executive Secretary, National Institutes of Health, National Cancer Institute, Office of Science Policy, Bethesda, MD 20892, 301/496–1458.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 27, 2000.

**LaVerne Y. Stringfield**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–25543 Filed 10–4–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Heart, Lung, and Blood Institute; Notice of Meeting;

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Sickle Cell Disease Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such

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as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

*Name of Committee:* Sickle Cell Disease Advisory Committee.

*Date:* November 13, 2000.

*Time:* 8:00 AM to 5:00 PM.

*Agenda:* Discussion of program policies and issues.

*Place:* National Institutes of Health, Two Rockledge Center, Conference Room 9112, 9116, 6701 Rockledge Drive, Bethesda, MD 20892.

*Contact Person:* Charles M Peterson, Director, Blood Diseases Program, Division of Blood Diseases and Resources, National Heart, Lung, and Blood Institute, NIH, Two Rockledge Center, Room 10158, MSC 7950, 6701 Rockledge Drive, Bethesda, MD 20892, 301/435–0050.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: September 27, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–25544 Filed 10–4–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Heart, Lung, and Blood Institute Special Emphasis Panel, Women's Ischemia Syndrome Evaluation Study (WISE) Extension.

*Date:* October 30, 2000.

*Time:* 3:30 PM to 5:00 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency, One Metro Center, Bethesda, MD 20814.

*Contact Person:* David T George, Scientific Review Administrator, Review Branch, Room 7188, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: September 27, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–25545 Filed 10–4–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Mental Health; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institutes of Mental Health Special Emphasis Panel, October 18, 2000, 8:30 AM to October 19, 2000, 5:30 PM, Embassy Square, 2000 N Street, NW, Washington, DC, 20036 which was published in the **Federal Register** on September 21, 2000, 65 FR 57198.

The dates and times for the meeting are the same but the location has changed to the Woodfin Suites Hotel, 1380 Piccard Drive, Rockville, MD. The meeting is closed to the public.

Dated: September 26, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–25541 Filed 10–4–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Surgery, Radiology and Bioengineering Integrated Review Group, Surgery, Anesthesiology and Trauma Study Section.

*Date:* October 10–11, 2000.

*Time:* 1:00 PM to 4:00 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* Georgetown Holiday Inn, 2101 Wisconsin Avenue, NW, Washington, DC 20007.

*Contact Person:* Gerald L. Becker, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5114, MSC 7854, Bethesda, MD 20892, (301) 435–1170.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* October 12–13, 2000.

*Time:* 8:00 AM to 5:00 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn—Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Lee S. Mann, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7848, Bethesda, MD 20892, (301) 435–0677.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* October 12–13, 2000.

*Time:* 8:00 AM to 5:00 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

*Contact Person:* Victoria S. Levin, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3172, MSC 7848, Bethesda, MD 20892, (301) 435–0912, levinv@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* October 12–13, 2000.

*Time:* 8:00 AM to 5:00 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* Hotel Sofitel, 1914 Connecticut Ave, NW, Washington, DC 20009.

*Contact Person:* Nancy Lamontagne, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4170, MSC 7806, Bethesda, MD 20892, (301) 435–1726.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* October 12–13, 2000.

*Time:* 8:00 AM to 5:00 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Bill Bunnag, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5124, MSC 7854, Bethesda, MD 20892–7854, (301) 435–1177, bunnagb@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Cardiovascular Sciences Integrated Review Group, Hematology Subcommittee 1.

*Date:* October 12–13, 2000.

*Time:* 8:00 AM to 4:00 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Robert Su, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4134, MSC 7802, Bethesda, MD 20892, (301) 435–1195.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* October 12–13, 2000.

*Time:* 8:00 AM to 5:00 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* Westin Fairfax Hotel, 2100 Massachusetts Ave, N.W., Washington, DC 20008.

*Contact Person:* Gillian Einstein, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5198, MSC 7850, Bethesda, MD 20892, (301) 435–4433, einsteig@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Cell Development and Function Integrated Review Group, Cell Development and Function 1.

*Date:* October 12–13, 2000.

*Time:* 8:00 AM to 5:00 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

*Contact Person:* Michael H. Sayre, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5128, Bethesda, MD 20892, (301) 435–1219.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Immunological Sciences Integrated Review Group, Experimental Immunology Study Section.

*Date:* October 12–13, 2000.

*Time:* 8:30 AM to 4:30 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* The Don Cesar Hotel, 3400 Gulf Boulevard, St. Petersburg, FL 33706.

*Contact Person:* Calbert A. Laing, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4210, MSC 7812, Bethesda, MD 20892, 301–435–1221, laingc@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* October 12, 2000.

*Time:* 8:30 AM to 6:00 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* River Inn, 924 25th Street, NW, Washington, DC 20037.

*Contact Person:* John L. Bowers, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4168, MSC 7806, Bethesda, MD 20892, (301) 435–1725.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* October 12, 2000.

*Time:* 8:30 AM to 5:00 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* Ramada Inn Rockville, 1775 Rockville Pike, Rockville, MD 20852.

*Contact Person:* Jay Cinque, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7846, Bethesda, MD 20892, (301) 435–1252.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* October 12–13, 2000.

*Time:* 9:00 AM to 5:00 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* Governor's House Hotel, 17th & Rhode Island Avenue, NW, Washington, DC 20036.

*Contact Person:* Michael J. Kozak, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3170, MSC 7848, Bethesda, MD 20892, (301) 435–0913, kozakm@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Genetic Sciences Integrated Review Group, Genetics Study Section.

*Date:* October 12–13, 2000.

*Time:* 9:00 AM to 2:00 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW, Washington, DC 20007.

*Contact Person:* David J. Remondini, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6154, MSC 7890, Bethesda, MD 20892, (301) 435–1038, remondid@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* October 12–13, 2000.

*Time:* 9:00 AM to 5:00 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* Georgetown Suites, 1000 29th St., NW, Washington, DC 20007.

*Contact Person:* Thomas A. Tatham, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3188, MSC 7848, Bethesda, MD 20892, (301) 435–0692, tathamt@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* October 12, 2000.

*Time:* 1:00 PM to 3:00 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

*Contact Person:* Richard D. Rodewald, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5142, MSC 7840, Bethesda, MD 20892, (301) 435–1024.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* October 12, 2000.

*Time:* 4:30 PM to 5:00 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* Georgetown Suites, 1000 29th St., NW, Washington, DC 20007.

*Contact Person:* Anita Miller Sostek, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892, (301) 435–1260.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

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*Name of Committee:* Center for Scientific Review Special Emphasis Panel.
*Date:* October 13, 2000.
*Time:* 3:00 PM to 5:00 PM.
*Agenda:* To review and evaluate grant applications.
*Place:* NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
*Contact Person:* Paul K. Strudler, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4100, MSC 7804, Bethesda, MD 20892, (301) 435–1716.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.
*Date:* October 15–17, 2000.
*Time:* 8:00 AM to 3:00 PM.
*Agenda:* To review and evaluate grant applications.
*Place:* University Center Hotel, 1535 SW Archer Rd, Gainesville, FL 32608.
*Contact Person:* Nadarajen A. Vydelingum, Scientific Review Administrator, Special Study Section—8, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, MSC 7854, Rm 5122, Bethesda, MD 20892, (301) 435–1176, vydelinn@csr.nih.gov.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Endocrinology and Reproductive Sciences Integrated Review Group, Reproductive Biology Study Section.
*Date:* October 16–17, 2000.
*Time:* 8:00 AM to 5:00 PM.
*Agenda:* To review and evaluate grant applications.
*Place:* Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20853.
*Contact Person:* Dennis Leszczynski, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6170, MSC 7892, Bethesda, MD 20892, (301) 435–1044.

*Name of Committee:* Endocrinology and Reproductive Sciences Integrated Review Group, Endocrinology Study Section.
*Date:* October 16–17, 2000.
*Time:* 8:00 AM to 5:00 PM.
*Agenda:* To review and evaluate grant applications.
*Place:* Chevy Chase Holiday Inn, Chevy Chase, MD 20815.
*Contact Person:* Syed M. Amir, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6168, MSC 7892, Bethesda, MD 20892, (301) 435–1043, amirs@csr.nih.gov.

*Name of Committee:* Musculoskeletal and Dental Sciences Integrated Review Group, General Medicine A Subcommittee 1.
*Date:* October 16–17, 2000.
*Time:* 8:00 AM to 4:00 PM.
*Agenda:* To review and evaluate grant applications.
*Place:* Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.
*Contact Person:* Harold M. Davidson, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4216, MSC 7814, Bethesda, MD 20892, 301/435–1776, davidsoh@csr.nih.gov.

*Name of Committee:* Endocrinology and Reproductive Sciences Integrated Review Group, Biochemical Endocrinology Study Section.
*Date:* October 16, 2000.
*Time:* 8:00 AM to 6:00 PM.
*Agenda:* To review and evaluate grant applications.
*Place:* Embassy Suites, Chevy Chase Pavilion, 4300 Military Rd., Wisconsin at Western Ave., Washington, DC 20015.
*Contact Person:* Debora L. Hamernik, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6152, Bethesda, MD 20892, (301) 435–4511, hamernid@csr.nih.gov.

*Name of Committee:* Surgery, Radiology and Bioengineering Integrated Review Group, Diagnostic Imaging Study Section.
*Date:* October 16–17, 2000.
*Time:* 8:00 AM to 4:00 PM.
*Agenda:* To review and evaluate grant applications.
*Place:* Holiday Inn Georgetown, 2101 Wisconsin Avenue, N.W., Washington, DC 20007.
*Contact Person:* Lee Rosen, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171.

*Name of Committee:* Surgery, Radiology and Bioengineering Integrated Review Group, Diagnostic Radiology Study Section.
*Date:* October 16–17, 2000.
*Time:* 8 a.m. to 5 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Georgetown Holiday Inn, 2101 Wisconsin Avenue, NW., Washington, DC 20007.
*Contact Person:* Eileen W. Bradley, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5120, MSC 7854, Bethesda, MD 20892, (301) 435–1179, bradleye@csr.nih.gov.

*Name of Committee:* Infectious Diseases and Microbiology Integrated Review Group, Bacteriology and Mycology Subcommittee 1.
*Date:* October 16–17, 2000.
*Time:* 8:30 a.m. to 5 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Bethesda Residence Inn, 7335 Wisconsin Avenue, Bethesda, MD 20814.
*Contact Person:* Timothy J. Henry, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4180, MSC 7808, Bethesda, MD 20892, (301) 435–1147.

*Name of Committee:* Biochemical Sciences Integrated Review Group, Medical Biochemistry Study Section.
*Date:* October 16–17, 2000.
*Time:* 8:30 a.m. to 3 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Ramada Inn Rockville, 1775 Rockville Pike, Rockville, MD 20852.
*Contact Person:* Alexander S. Liacouras, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5154, MSC 7842, Bethesda, MD 20892, (301) 435–1740.

*Name of Committee:* Infectious Diseases and Microbiology Integrated Review Group, Experimental Virology Study Section.
*Date:* October 16–17, 2000.
*Time:* 8:30 a.m. to 5 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Holiday Inn Old Town Alexandria, 480 King Street, Alexandria, VA 22314.
*Contact Person:* Rona L. Hirschberg, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4186, MSC 7808, Bethesda, MD 20892, (301) 435–1150.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 26, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–25536 Filed 10–4–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.
*Date:* October 12, 2000.
*Time:* 3:00 PM to 4:00 PM.
*Agenda:* To review and evaluate grant applications.
*Place:* Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.



*Contact Person:* Lee S. Mann, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7848, Bethesda, MD 20892, (301) 436–0677.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, IFCN–6.
*Date:* October 16–17, 2000.
*Time:* 8:00 AM to 5:00 PM.
*Agenda:* To review and evaluate grant applications.
*Place:* Governor's House Hotel, Washington, DC 20036.
*Contact Person:* Joseph Kimm, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5178, MSC 7844, (301) 435–1249.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.
*Date:* October 16–17, 2000.
*Time:* 8:00 AM to 3:00 PM.
*Agenda:* To review and evaluate grant applications.
*Place:* Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.
*Contact Person:* Dharam S. Dhindsa, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5126, MSC 7854, Bethesda, MD 20892, (301) 435–1174, dhindsad@csr.nih.gov.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.
*Date:* October 16–17, 2000.
*Time:* 9:00 AM to 5:30 PM.
*Agenda:* To review and evaluate grant applications.
*Place:* St James Suites, 950 24th Street, NW, Washington, DC 20037.
*Contact Person:* Ellen K. Schwartz, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3168, MSC 7770, Bethesda, MD 20892, 301–435–0681, schwarte@csr.nih.gov.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.
*Date:* October 16–17, 2000.
*Time:* 3:00 AM to 4:00 PM.
*Agenda:* To review and evaluate grant applications.
*Place:* Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
*Contact Person:* Nancy Pearson, Chief, Genetic Sciences Integrated Review Group, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2112, MSC 7890, Bethesda, MD 20892, (301) 435–1047, pearsonn@csr.nih.gov.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.
*Date:* October 16, 2000.
*Time:* 6:00 AM to 7:00 PM.
*Agenda:* To review and evaluate grant applications.
*Place:* Georgetown Holiday Inn, Kaleidoscope Room, 2101 Wisconsin Ave. NW, Washington, DC 20007.
*Contact Person:* Lee Rosen, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.
*Date:* October 16, 2000.
*Time:* 7:00 AM to 9:00 PM.
*Agenda:* To review and evaluate grant applications.
*Place:* Georgetown Suites, 111 30th Street, NW, Washington, DC 20007.
*Contact Person:* Lee Rosen, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.
*Date:* October 16, 2000.
*Time:* 12:00 PM to 12:30 PM.
*Agenda:* To review and evaluate grant applications.
*Place:* Holiday Inn Georgetown, 2101 Wisconsin Avenue, N.W., Washington, DC 20007.
*Contact Person:* Eileen W. Bradley, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5120, MSC 7854, Bethesda, MD 20892, (301) 435–1179, bradleye@csr.nih.gov.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.
*Date:* October 17–18, 2000.
*Time:* 8:00 AM to 5:00 PM.
*Agenda:* To review and evaluate grant applications.
*Place:* Holiday Inn Rosslyn, 1900 North Fort Myer Drive, Arlington, VA 22209.
*Contact Person:* Joanne T. Fujii, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, Bethesda, MD 20892, (301) 435–1178, fujiij@drg.nih.gov.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.
*Date:* October 17, 2000.
*Time:* 8:00 AM to 8:30 AM.
*Agenda:* To review and evaluate grant applications.
*Place:* Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
*Contact Person:* Syed Amir, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6168, MSC 7892, Bethesda, MD 20892, (301) 435–1043.

*Name of Committee:* Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Integrative, Functional and Cognitive Neuroscience 4.
*Date:* October 17–18, 2000.
*Time:* 8:00 AM to 5:00 PM.
*Agenda:* To review and evaluate grant applications.
*Place:* Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
*Contact Person:* Dan Kenshalo, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, (301) 435–1255.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.
*Date:* October 17, 2000.
*Time:* 10:00 AM to 11:00 AM.
*Agenda:* To review and evaluate grant applications.
*Place:* NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
*Contact Person:* John Bishop, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.
*Date:* October 17, 2000.
*Time:* 1:00 PM to 4:00 PM.
*Agenda:* To review and evaluate grant applications.
*Place:* NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
*Contact Person:* John Bishop, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.
*Date:* October 17, 2000.
*Time:* 3:00 PM to 5:30 PM.
*Agenda:* To review and evaluate grant applications.
*Place:* NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
*Contact Person:* Abubaker A. Shaikh, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6166, MSC 7892, Bethesda, MD 20892, (301) 435–1042, shaikha@csr.nih.gov.).

*Name of Committee:* Infectious Diseases and Microbiology Integrated Review Group, Virology Study Section.
*Date:* October 17–18, 2000.
*Time:* 8:30 PM to 5:00 PM.
*Agenda:* To review and evaluate grant applications.
*Place:* Georgetown Suites, 1000 29th St., NW, Washington, DC 20007.
*Contact Person:* Rita Anand, Scientific Review Administrator, Center for Scientific

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Review, National Institutes of Health, 6701 Rockledge Drive, Room 4188, MSC 7808, Bethesda, MD 20892, (301) 435–1151.

*Name of Committee:* Pathophysiological Sciences Integrated Review Group, Alcohol and Toxicology Subcommittee 1.

*Date:* October 18–19, 2000.

*Time:* 8:00 AM to 6:00 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

*Contact Person:* Russell T. Dowell, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2180, MSC 7818, Bethesda, MD 20892, (301) 435–1169, dowellr@csr.nih.gov.

*Name of Committee:* Biophysical and Chemical Sciences Integrated Review Group, Medicinal Chemistry Study Section.

*Date:* October 18–19, 2000.

*Time:* 8:30 AM to 4:00 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* Ramada Inn, 1775 Rockville Pike, Rockville, MD 20852.

*Contact Person:* Ronald J. Dubois, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, room 4156, MSC 7806, Bethesda, MD 20892, (301) 435–1722, duboisr@csr.nih.gov.

*Name of Committee:* Oncological Sciences Integrated Review Group, Chemical Pathology Study Section.

*Date:* October 18–20, 2000.

*Time:* 8:30 AM to 5:00 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW, Washington, DC 20007.

*Contact Person:* Syed Quadri, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4144, MSC 7804, Bethesda, MD 20892, (301) 435–1211.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 27, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–25546 Filed 10–4–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies, and Laboratories That Have Withdrawn From the Program

**AGENCY:** Substance Abuse and Mental Health Services Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be listed at the end, and will be omitted from the monthly listing thereafter.

This Notice is available on the internet at the following website: *http://www.health.org/workpl.htm*

**FOR FURTHER INFORMATION CONTACT:** Giselle Hersh or Walter Vogl, Division of Workplace Programs, 5600 Fishers Lane, Rockwall 2 Building, Room 815, Rockville, Maryland 20857; Tel.: (301) 443–6014, Fax: (301) 443–3031.

**Special Note:** Please use the above address for all surface mail and correspondence. For all overnight mail service use the following address: Division of Workplace Programs, 5515 Security Lane, Room 815, Rockville, Maryland 20852.

**SUPPLEMENTARY INFORMATION:**

Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840/800–877–7016 (formerly: Bayshore Clinical Laboratory)

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, 901–794–5770/888–290–1150

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, 615–255–2400

Alabama Reference Laboratories, Inc., 543 South Hull St., Montgomery, AL 36103, 800–541–4931/334–263–5745

Alliance Laboratory Services, 3200 Burnet Ave., Cincinnati, OH 45229, 513–585–9000 (formerly: Jewish Hospital of Cincinnati, Inc.)

American Medical Laboratories, Inc., 14225 Newbrook Dr., Chantilly, VA 20151, 703–802–6900

Associated Pathologists Laboratories, Inc., 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866/800–433–2750

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–202–2783 (formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Clinical Laboratory Partners, LLC, 129 East Cedar St., Newington, CT 06111, 860–696–8115 (formerly: Hartford Hospital Toxicology Laboratory)

Clinical Reference Lab, 8433 Quivira Rd., Lenexa, KS 66215–2802, 800–445–6917

Cox Health Systems, Department of Toxicology, 1423 North Jefferson Ave., Springfield, MO 65802, 800–876–3652 / 417–269–3093 (formerly: Cox Medical Centers)

Dept. of the Navy, Navy Drug Screening Laboratory, Great Lakes, IL, Building 38–H, P.O. Box 88–6819, Great Lakes, IL 60088–6819, 847–688–2045/847–688–4171

Diagnostic Services Inc., dba DSI, 12700 Westlinks Drive, Fort Myers, FL 33913, 941–561–8200/800–735–5416



Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Dr., Valdosta, GA 31602, 912–244–4468

DrugProof, Division of Dynacare/Laboratory of Pathology, LLC, 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206–386–2672/800–898–0180 (formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.)

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215–674–9310

Dynacare Kasper Medical Laboratories,* 14940–123 Ave., Edmonton, Alberta, Canada T5V 1B4, 780–451–3702/800–661–9876

ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 662–236–2609

Express Analytical Labs, 1301 18th Ave NW, Suite 110, Austin, MN 55912, 507–437–7322

Gamma-Dynacare Medical Laboratories,* A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall St., London, ONT, Canada N6A 1P4, 519–679–1630

General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6267

Integrated Regional Laboratories, 5361 NW 33rd Avenue, Fort Lauderdale, FL 33309, 954–777–0018, 800–522–0232 (formerly: Cedars Medical Center, Department of Pathology)

Kroll Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823 (formerly: Laboratory Specialists, Inc.)

LabOne, Inc., 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–728–4064 (formerly: Center for Laboratory Services, a Division of LabOne, Inc.)

Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387

Laboratory Corporation of America Holdings, 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984 (formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., a Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., a Member of the Roche Group)

Laboratory Corporation of America Holdings, 4022 Willow Lake Blvd., Memphis, TN 38118, 901–795–1515/800–233–6339 (formerly: LabCorp Occupational Testing Services, Inc., MedExpress/National Laboratory Center)

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986 (formerly: Roche Biomedical Laboratories, Inc.)

Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734/800–331–3734

MAXXAM Analytics Inc.,* 5540 McAdam Rd., Mississauga, ON, Canada L4Z 1P1, 905–890–2555 (formerly: NOVAMANN (Ontario) Inc.)

Medical College Hospitals Toxicology Laboratory, Department of Pathology, 3000 Arlington Ave., Toledo, OH 43699, 419–383–5213

MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 651–636–7466/800–832–3244

MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, Minnesota 55417, 612–725–2088

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250/800–350–3515

NWT Drug Testing, 1141 E. 3900 South, Salt Lake City, UT 84124, 801–293–2300/800–322–3361 (formerly: NorthWest Toxicology, Inc.)

One Source Toxicology Laboratory, Inc., 1705 Center Street, Deer Park, TX 77536, 713–920–2559 (formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory)

Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, 541–687–2134

Pacific Toxicology Laboratories, 6160 Variel Ave., Woodland Hills, CA 91367, 818–598–3110/800–328–6942 (formerly: Centinela Hospital Airport Toxicology Laboratory)

Pathology Associates Medical Laboratories, 11604 E. Indiana Ave., Spokane, WA 99206, 509–926–2400/800–541–7891

PharmChem Laboratories, Inc., 1505–A O'Brien Dr., Menlo Park, CA 94025, 650–328–6200/800–446–5177

PharmChem Laboratories, Inc., Texas Division, 7606 Pebble Dr., Fort Worth, TX 76118, 817–215–8800 (formerly: Harris Medical Laboratory)

Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–339–0372/800–821–3627

Poisonlab, Inc., 7272 Clairemont Mesa Blvd., San Diego, CA 92111, 858–279–2600/800–882–7272

Quest Diagnostics Incorporated, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590 (formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories)

Quest Diagnostics Incorporated, 4444 Giddings Road, Auburn Hills, MI 48326, 248–373–9120/800–444–0106 (formerly: HealthCare/Preferred Laboratories, HealthCare/MetPath, CORNING Clinical Laboratories)

Quest Diagnostics Incorporated, 8000 Sovereign Row, Dallas, TX 75247, 214–638–1301 (formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories)

Quest Diagnostics Incorporated, 4770 Regent Blvd., Irving, TX 75063, 972–916–3376/800–526–0947, (formerly: Damon Clinical Laboratories, Damon/MetPath, CORNING Clinical Laboratories)

Quest Diagnostics Incorporated, 801 East Dixie Ave., Leesburg, FL 34748, 352–787–9006, (formerly: SmithKline Beecham Clinical Laboratories, Doctors & Physicians Laboratory)

Quest Diagnostics Incorporated, 400 Egypt Rd., Norristown, PA 19403, 610–631–4600/800–877–7484, (formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories)

Quest Diagnostics Incorporated, 506 E. State Pkwy., Schaumburg, IL 60173, 800–669–6995/847–885–2010, (formerly: SmithKline Beecham Clinical Laboratories, International Toxicology Laboratories)

Quest Diagnostics Incorporated, 7470 Mission Valley Rd., San Diego, CA 92108–4406, 619–686–3200/800–446–4728, (formerly: Nichols Institute, Nichols Institute Substance Abuse Testing (NISAT), CORNING Nichols Institute, CORNING Clinical Laboratories)

Quest Diagnostics Incorporated, One Malcolm Ave., Teterboro, NJ 07608, 201–393–5590, (formerly: MetPath, Inc., CORNING MetPath Clinical Laboratories, CORNING Clinical Laboratory)

Quest Diagnostics Incorporated, 7600 Tyrone Ave., Van Nuys, CA 91405, 818–989–2520/800–877–2520, (formerly: SmithKline Beecham Clinical Laboratories)

San Diego Reference Laboratory, 6122 Nancy Ridge Dr., San Diego, CA 92121, 800–677–7995/858–677–7970

Scientific Testing Laboratories, Inc., 463 Southlake Blvd., Richmond, VA 23236, 804–378–9130

Scott & White Drug Testing Laboratory, 600 S. 25th St., Temple, TX 76504, 254–771–8379/800–749–3788

S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109, 505–

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727–6300/800–999–5227 South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 219–234–4176,
Southwest Laboratories, 2727 W. Baseline Rd., Tempe, AZ 85283, 602–438–8507/800–279–0027
Sparrow Health System, Toxicology Testing Center, St. Lawrence Campus, 1210 W. Saginaw, Lansing, MI 48915, 517–377–0520, (formerly: St. Lawrence Hospital & Healthcare System)
St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, 405–272–7052
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 2703 Clark Lane, Suite B, Lower Level, Columbia, MO 65202, 573–882–1273
Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260
UNILAB, 18408 Oxnard St., Tarzana, CA 91356, 818–996–7300/800–339–4299, (formerly: MetWest-BPL Toxicology Laboratory)
Universal Toxicology Laboratories, LLC, 9930 W. Highway 80, Midland, TX 79706, 915–561–8851/888–953–8851

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. DHHS, with the DHHS' National Laboratory Certification Program (NLCP) contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do. Upon finding a Canadian laboratory to be qualified, the DHHS will recommend that DOT certify the laboratory (**FEDERAL REGISTER**, 16 July 1996) as meeting the minimum standards of the "Mandatory Guidelines for Workplace Drug Testing" (59 **FEDERAL REGISTER**, 9 June 1994, Pages 29908–29931). After receiving the DOT certification, the laboratory will be included in the monthly list of DHHS certified laboratories and participate in the NLCP certification maintenance program.

**Richard Kopanda,**

*Executive Officer, Substance Abuse and Mental Health Services Administration.*

[FR Doc. 00–25683 Filed 10–4–00; 8:45 am]

BILLING CODE 4160–20–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Notice of Intent to Prepare Comprehensive Conservation Plan for Crab Orchard National Wildlife Refuge in Williamson, Jackson and Union Counties, IL

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of Intent (Revised) to prepare a Comprehensive Conservation Plan (CCP) for Crab Orchard National Wildlife Refuge.

**SUMMARY:** This revised notice advises the public that the U.S. Fish and Wildlife Service (Service) intends to gather information necessary to prepare a comprehensive conservation plan and an associated environmental document for Crab Orchard National Wildlife Refuge in Williamson, Jackson and Union Counties, Illinois. The Service is furnishing this notice in compliance with Service comprehensive conservation plan policy and the National Environmental Policy Act and implementing regulations to achieve the following:

(1) Advise other agencies and the public of our intentions, and

(2) Obtain suggestions and information on the scope of issues, opportunities, and concerns for inclusion in the environmental assessment.

**DATES:** The Service will solicit information from the public via open houses, workshops, focus groups, and written comments. Special mailings, newspapers articles and radio announcements will inform people of the time and place of open houses. The date, time and place of open houses will also be posed on the Crab Orchard National Wildlife Refuge planning web site: http://www.fws.gov/r3pao/planning/cotop.htm

*Public Involvement:* Public scoping will begin with three open houses in October. The first meeting is scheduled Thursday, October 19, from 4 p.m. to 8 p.m. at Southwestern Illinois College in Red Bud, Illinois. The College is located at 500 West South Fourth Street. The meeting will be in the Dining Room of the New Classroom Building. A second meeting is scheduled Friday, October 20, from 2 p.m. to 8 p.m. at the Marion Hotel and Conference Center in Marion, Illinois. The hotel is located at 2600 West DeYoung Street near the intersection of Interstate 57 (Exit 54B) and Illinois New Route 13. A third open house is scheduled from 8 a.m. to 12 p.m. at Crab Orchard National Wildlife Refuge Visitor Center. The Visitor Center is located on the east side of Route 148 about 1¾ miles south of the intersection of Route 148 and New Route 13.

**ADDRESSES:** Address comments and requests from more information to: Refuge Manager, Crab Orchard National Wildlife Refuge, 8588 Route 148, Marion, IL 62959; or E-mail: conwr-ccp@fws.gov

**FOR FURTHER INFORMATION CONTACT:** Mr. Thomas Palmer, Planning Coordinator, Crab Orchard National Wildlife Refuge, U.S. Fish and Wildlife Service, 8588 Route 148, Marion, IL 62959–9970, telephone 618–997–3344; or Mr. John Schomaker, Refuge Planning Specialist, U.S. Fish and Wildlife Service, RO/AP, BHW Federal Building, 1 Federal Drive, Ft. Snelling, MN 55111, telephone 612–713–5476.

**SUPPLEMENTARY INFORMATION:** It is Service policy to have all lands within the National Wildlife Refuge System managed in accordance with an approved comprehensive conservation plan. The plan guides management decisions and identifies Refuge goals, objectives, and strategies for achieving Refuge purposes. Public input into this planning process is encouraged. The plan will provide other agencies and the public with a clear understanding of the desired future conditions of the Refuge and how the Service will implement management strategies. Some of the issues to be addressed in the plan include the following:

(a) Habitat management;
(b) Public use management;
(c) Wildlife population management;
(d) Wilderness management;
(e) Industrial facilities management; and
(f) Cultural resource identification and protection.

After the public scoping of issues, a decision will be made whether to prepare an environmental assessment or an environmental impact statement. If we decide to prepare an environmental impact statement, another notice of intent will be published announcing that decision. The environmental assessment or environmental impact statement will include several alternatives that address the issues and management strategies associated with these topics.

Crab Orchard National Wildlife Refuge was established on August 5, 1947, by Public law 80–361. This Act of Congress transferred certain Federal lands acquired in connection with the Crab Orchard Creek project and the Illinois Ordnance Plant to the Secretary of the Interior. This legislation



mandated that these lands be administered by the Secretary through the Fish and Wildlife Service "for the conservation of wildlife, and for the development of the agricultural, recreational, industrial, and related purposes specified in this Act."

The 43,890-acre Refuge contains three large man-made lakes and numerous small ponds totaling 9,000 acres, 26,000 acres of forest and brush land, 5,000 acres of cropland, 2,000 acres of grassland, and 2,000 acres of administrative lands. The Refuge supports an extensive variety of plant and animal species, hosts 1.2 million recreational visitors per year, provides facilities for industrial tenants, and sponsors cooperative farmers and permittee graziers. The 4,050-acre Crab Orchard Wilderness, the first wilderness are a designated in the State of Illinois, is within the Refuge.

Dated: September 29, 2000.

**Marvin E. Moriarty,**

*Acting Regional Director.*

[FR Doc. 00–25552 Filed 10–4–00; 8:45 am]

BILLING CODE 4310–55–M

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

### Operation and Maintenance Rate Adjustment for the Colorado River Irrigation Project, Arizona

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of proposed rate adjustment.

**SUMMARY:** The Bureau of Indian Affairs proposes to adjust the assessment rates for operating and maintaining the Colorado River Irrigation Project for the 2001 irrigation season.

**DATES:** Interested parties may submit comments on the proposed rate adjustment. Comments must be submitted on or before December 4, 2000.

**ADDRESSES:** All comments concerning the proposed rate adjustment must be in writing and addressed to the Bureau of Indian Affairs, Director of Trust Responsibilities, ATTN: Irrigation and Power, Mail Stop 3061, 1849 C Street, NW., Washington, DC 20240, telephone; (202) 208–5480.

**FOR FURTHER INFORMATION CONTACT:** Regional Director, Bureau of Indian Affairs, Western Region, P.O. Box 10, Phoenix, Arizona 85001; telephone (602) 379–6956.

**SUPPLEMENTARY INFORMATION:** The authority to issue this document is vested in the Secretary of the Interior by 5 U.S.C. 301 and the Act of August 14, 1914 (38 Stat. 583; 25 U.S.C. 385). The Secretary has delegated this authority to the Assistant Secretary—Indian Affairs pursuant to part 209 Departmental Manual, Chapter 8.1A and memorandum dated January 25, 1994, from Chief of Staff, Department of the Interior, to Assistant Secretaries, and Heads of Bureaus and Offices. The new rates are specified in the following schedule.

This notice is given in accordance with Section 171.1(e) and 171.1(g) of part 171, Subchapter H, Chapter 1, of Title 25 of the Code of Federal Regulations, which provides for the fixing and announcing the rates for annual operation and maintenance assessments and related information of Bureau of Indian Affairs irrigation projects.

**Background**

The assessment rates are based on a prepared estimate of the cost of normal operation and maintenance of the irrigation project. Normal operation and maintenance means the expenses we incur to provide direct support or benefit to the project's activities for administration, operation, maintenance, and rehabilitation. We must include at least:

(a) Personnel salaries and benefits for the project engineer/manager and our employees under his management/control;

(b) Materials and supplies;

(c) Major and minor vehicle and equipment repairs;

(d) Equipment, including transportation, fuel, oil, grease, lease and replacement;

(e) Capitalization expenses;

(f) Acquisition expenses; and

(g) Other expenses we determine necessary to properly perform the activities and functions characteristic of an irrigation project.

**Payments**

The irrigation operation and maintenance assessments become due based on locally established payment requirements. No water shall be delivered to any of these lands until all irrigation charges have been paid.

**Interest and Penalty Fees**

Interest, penalty, and administrative fees will be assessed, where required by law, on all delinquent operation and maintenance assessment charges as prescribed in the Code of Federal Regulations, Title 4, Part 102, Federal Claims Collection Standards; and 42 BIAM Supplement 3, part 3.8 Debt Collection Procedures. Beginning 30 days after the due date, interest will be assessed at the rate of the current value of funds to the U.S. Treasury. An administrative fee of $12.50 will be assessed each time an effort is made to collect a delinquent debt; a penalty charge of 6 percent per year will be charged on delinquent debts over 90 days old and will accrue from the date the debt became delinquent. No water shall be delivered to any farm unit until all irrigation charges have been paid. Within 180 days a delinquent debt will be forwarded to the U.S. Treasury for further action in accordance with Debt Collection Improvement Act of 1996 (Public Law 104–134).

**Rate Adjustment**

The following table illustrates the impact of the rate adjustment:

COLORADO RIVER IRRIGATION PROJECT

[Irrigation rate per assessable acre]

| | Present 2000 | Proposed 2001 | Proposed 2002 |
|---|---|---|---|
| Up to 5 acre-feet/acre | $38.50 | $37.00 | $37.00. |
| Excess Water/acre-foot | 17.00 | Unchanged | Unchanged. |

**Determinations and Certifications**

*Regulatory Planning and Review (E.O. 12866):* This rate adjustment is not a significant regulatory action and has been reviewed by the Office of Management and Budget under Executive Order 12866.

*Regulatory Flexibility Act:* This rate making is not a rule for the purposes of the Regulatory Flexibility Act because it is "a rule of particular applicability relating to rates" (5 U.S.C. § 601(2)).

*Unfunded Mandates Reform Act:* This rate adjustment imposes no unfunded

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mandates on any governmental or private entity and is in compliance with the provisions of the Unfunded Mandates Reform Act of 1995.

*Takings Implication Assessment (E.O. 12630):* The Department has determined that this rate adjustment does not have significant "takings" implications.

*Federalism (E.O. 13132):* The Department has determined that this rate adjustment does not have significant Federalism effects because it pertains solely to Federal-tribal relations and will not interfere with the roles, rights, and responsibilities of states.

*Civil Justice Reform (E.O. 12988):* The Department has certified to the Office of Management and Budget (OMB) that this rate adjustment meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

*Paperwork Reduction Act:* This rate adjustment does not contain collections of information requiring approval under the Paperwork Reduction Act of 1995.

*National Environmental Policy Act (NEPA):* The Department has determined that this rate adjustment does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required under the National Environmental Policy Act of 1969.

**Public Comment Solicitation**

Interested persons may submit written comments regarding the proposed rate adjustment to the location identified in the **ADDRESSES** section of this document. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request confidentiality. If you wish to request that we consider withholding your name, street address, and other contact information (such as Internet address, FAX, or phone number) from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. We will honor your request to the extent allowable by law. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: September 27, 2000.

**Kevin Gover,**

*Assistant Secretary—Indian Affairs*

[FR Doc. 00–25531 Filed 10–4–00; 8:45 am]

BILLING CODE 4310–02–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[NV–910–00–0777XQ–241A]**

### Sierra Front-Northwestern Great Basin Resource Advisory Council, Northeastern Great Basin Resource Advisory Council, and Mojave-Southern Great Basin Resource Advisory Council; Notice of Meeting Locations and Times

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Combined Resource Advisory Council meeting locations and times.

**SUMMARY:** In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), the Department of the Interior, Bureau of Land Management (BLM) Council meetings will be held as indicated below. Topics for discussion will be a presentation and discussion of Fiscal Year 2000 operations, and outlook for Fiscal Year 2001 of the BLM in Nevada; opening and closeout reports of the three RACs; implementation of the Southern Nevada Public Land Management Act of 1998; breakout meetings of the three RACs; and other topics the Councils may raise. There will be luncheon speakers both days.

All meetings are open to the public. The public may present written comments to the Council. The public comment period for the Council meeting will be at such times during the meeting as determined by the State Director, and at 2:00 p.m. on Friday, October 27. Individuals who plan to attend and need further information about the meeting or need special assistance such as sign language interpretation or other reasonable accommodations, should contact Robert Stewart at the Nevada State Office, BLM, 1340 Financial Blvd., Reno, telephone (775) 861–6586.

**DATES, TIMES:** The Council will meet on Thursday, October 26, 2000, from 8:30 a.m. to 4:30 p.m. and Friday, October 27, 2000, from 8 a.m. to 3 p.m., or when business is complete, at The Casa Blanca Hotel in Mesquite, Nevada. If due to unforeseeable problems this site is not available, the meeting will be rescheduled. Public comment will be received at the discretion of the State Director, as meeting moderator, with a general public comment period on Friday, October 27, 2000, at 2 p.m.

**FOR FURTHER INFORMATION CONTACT:** Robert Stewart, Public Affairs Specialist, Office of Communications, BLM Nevada State Office, 1340 Financial Blvd., Reno, Nevada, 89502–7147, telephone (775) 861–6586.

Dated: September 29, 2000.

**Robert V. Abbey,**

*Nevada State Director.*

[FR Doc. 00–25551 Filed 10–04–00; 8:45 am]

BILLING CODE 4310–HC–M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[MT–924–1430–ET; MTM 89002]**

### Public Land Order No. 7463; Withdrawal of Public Land for Devil's Elbow Recreation Site; Montana

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public Land Order.

**SUMMARY:** This order withdraws 100.81 acres of public land from surface entry and mining for a period of 20 years for protection and development of a Bureau of Land Management public campground and day use recreation area. The land has been and will remain open to mineral leasing.

**EFFECTIVE DATE:** October 5, 2000.

**FOR FURTHER INFORMATION CONTACT:** Sandra Ward, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406–255–2949, or Susie Williams, BLM Butte Field Office, P.O. Box 3388, Butte, Montana 59702–3388, 406–494–7634.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Subject to valid existing rights, the following described land is hereby withdrawn from settlement, sale, location or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2 (1994)), but not from leasing under the mineral leasing laws, for protection and development of Devil's Elbow Recreation Site:

**Principal Meridian, Montana**

T. 11 N., R. 2 W.,
Sec. 23, that portion of the E½NE¼ lying east of the York Road (State Highway 280) as set out on the Certificate of Survey (COS) filed under Document No. 259800 and tracts 7 and 8 as set out on the COS filed under Document No. 452285/T;



Sec. 24, tracts 4 and 5 as set out on the COS filed under Document 452285/T, and tract 6–A as set out on the COS filed under Document No. 464941/B.

The area described contains 100.81 acres in Lewis and Clark County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the land under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1994), the Secretary determines that the withdrawal shall be extended.

Dated: September 18, 2000.

**Sylvia V. Baca,**

*Assistant Secretary of the Interior.*

[FR Doc. 00–25585 Filed 10–4–00; 8:45 am]

BILLING CODE 4310–DN–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[MT–924–1430–ET; MTM 89170]**

### Public Land Order No. 7464; Withdrawal of Public Land To Aid in Reclamation of the Zortman-Landusky Mining Area; Montana

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public Land Order.

**SUMMARY:** This order withdraws 3,530.62 acres of public land from surface entry and mining for a period of 5 years to protect the reclamation of the Zortman-Landusky mining area. The land has been and will remain open to mineral leasing and mineral material disposal under the Materials Act.

**EFFECTIVE DATE:** October 5, 2000.

**FOR FURTHER INFORMATION CONTACT:** Sandra Ward, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107–6800, 406–896–5052, or Robert Padilla, BLM Lewistown Field Office, Box 1160, Lewistown, Montana 59457–1160, 406–538–1922.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Subject to valid existing rights, the following described land is hereby withdrawn from settlement, sale, location or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2 (1994)), but not from leasing under the mineral leasing laws or mineral material disposal under the Materials Act, to protect the reclamation of the Zortman-Landusky mining area:

**Principal Meridian, Montana**

T. 25 N., R. 24 E.,
Sec. 1, lot 13;
Sec. 10, lots 7 to 11, inclusive, and NE¼SE¼;
Sec. 11, lots 8 and 9;
Sec. 12, lots 8, 11, 12, 13, 17, 18, 19, 20 and 22, and SE¼SW¼;
Sec. 13, NE¼NE¼ and W½NW¼;
Sec. 14, lots 1 to 11, inclusive, E½NE¼, SW¼NE¼, and N½SE¼;
Sec. 15, lots 4 to 18, inclusive;
Sec. 21, E½NE¼, NE¼SE¼, and W½SE¼SE¼;
Sec. 22, lot 1, lots 3 to 7, inclusive, SE¼NE¼, W½NW¼, N½SW¼, E½SW¼SW¼, SE¼SW¼, N½SE¼, E½SE¼SE¼, NW¼SE¼SE¼, E½SW¼SE¼SE¼, and NW¼SW¼SE¼SE¼;
Sec. 23, N½.
T. 25 N., R. 25 E.,
Sec. 6, lots 13 to 17, inclusive, NE¼SW¼, and SE¼;
Sec. 7, lots 5 to 9, inclusive, lots 14, 17, 18, 22, 23, and 24, lots 26 to 31, inclusive, and NW¼NE¼;
Sec. 8, SW¼SW¼;
Sec. 16, lot 2, N½NW¼SW¼, N½SE¼NW¼SW¼, S½S½SW¼SW¼, NE¼SE¼SW¼, S½SE¼SW¼, and SW¼SE¼;
Sec. 17, lots 3 and 4, NE¼, E½NW¼, N½N½NE¼SE¼, N½NE¼NW¼SE¼, SW¼NE¼NW¼SE¼, W½NW¼SE¼, W½SE¼NW¼SE¼, W½NE¼SW¼SE¼, W½SW½SE¼, SE¼SW¼SE¼, and S½SE¼SE¼;
Sec. 18, lots 1 to 5, inclusive, lots 8, 9, and 10, and SW¼NE¼.

The area described contains 3,530.62 acres in Phillips County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the land under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 5 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1994), the Secretary determines that the withdrawal shall be extended.

Dated: September 18, 2000.

**Sylvia V. Baca,**

*Assistant Secretary of the Interior.*

[FR Doc. 00–25586 Filed 10–4–00; 8:45 am]

BILLING CODE 4310–DN–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[NM–930–1430–ET; NMNM 52408, NMNM 52409, NMNM 52410]**

### Public Land Order No. 7462; Revocation of Three Secretarial Orders dated May 1, 1929, April 27, 1939, and May 24, 1939; New Mexico

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public Land Order.

**SUMMARY:** This order revokes three Secretarial orders in their entirety as to the remaining 240 acres of lands withdrawn for Air Navigation Site Nos. 29, 125, and 128. The lands are not needed for the purpose for which they were withdrawn. Eighty acres have been conveyed out of Federal ownership and revocation of the withdrawal on those lands is a record-clearing action only. The remaining 160 acres will be opened to all forms of appropriation under the public land laws.

**EFFECTIVE DATE:** November 6, 2000.

**FOR FURTHER INFORMATION CONTACT:** Jeanette Espinosa, BLM New Mexico State Office, 1474 Rodeo Road, Santa Fe, New Mexico 87502, 505–438–7597.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. The Secretarial Orders dated April 27, 1939 and May 24, 1939, which withdrew lands for Air Navigation Site Nos. 125, and 128 are hereby revoked in their entirety as to the remaining lands described below:

**New Mexico Principal Meridian**

T. 4 S., R. 1 E.,
Sec. 10, NW¼SW¼.
T. 13 S., R. 1 W.,
Sec. 7, E½SW¼;
Sec. 18, NE¼NW¼.

The areas described aggregate 160 acres in Sierra and Socorro Counties.

2. The Secretarial Order dated May 1, 1929, which withdrew lands for Air Navigation Site No. 29, is hereby revoked in its entirety as to the remaining lands described below:

T. 4 N., R. 18 E.,
Sec. 13, NW¼SW¼.
T. 3 N., R. 23 E.,
Sec. 3, SE¼NW½.

The areas described aggregate 80 acres in Guadalupe and De Baca Counties.

3. At 10 a.m. on November 6, 2000, the lands described in paragraph 1 will be opened to all forms of appropriation under the public land laws.

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4. The land described in paragraph 2 has been conveyed out of Federal ownership and this is a record-clearing action only for those lands.

Dated: September 12, 2000

**Sylvia V. Baca,**

*Assistant Secretary of the Interior.*

[FR Doc. 00–25579 Filed 10–4–00; 8:45 am]

BILLING CODE 4310–FB–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[OR–958–1430–ET; HAG01–0001; OR–52315]**

### Proposed Withdrawal and Opportunity for Public Meeting; Oregon

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The United States Department of Agriculture, Forest Service, filed an application to withdraw approximately 9,533 acres of National Forest System lands to protect recreational, scenic, cultural and traditional use values in addition to threatened, endangered, and sensitive flora and fauna natural resource values. This notice closes the lands for up to 2 years from location and entry under the mining laws, subject to valid existing rights. The lands will remain open to such forms of disposition as may by law be made of National Forest System lands. The lands have been and remain open to mineral leasing.

**DATES:** Comments should be received on or before January 4, 2001.

**ADDRESSES:** Comments should be sent to the Forest Supervisor, Rogue River National Forest, 333 W. 8th Street, Medford, Oregon 97501.

**FOR FURTHER INFORMATION CONTACT:** Bengt Hamner, Rogue River National Forest, 541–858–2304.

**SUPPLEMENTARY INFORMATION:** The Forest Service filed an application to withdraw the following described National Forest System lands from location and entry under the mining laws, subject to valid existing rights:

**Willamette Meridian**

Rogue River and Umpqua National Forests

T. 30 S., R. 2 E.,
- Sec. 22, those portions of the SW¼NW¼, W½SW¼, and SE¼SW¼, lying westerly and southwesterly of the Rogue-Umpqua Divide Wilderness boundary;
- Sec. 23, that portion of the SE¼ SW¼ lying westerly of the Abbott Creek Research Natural Area and southeasterly of the Rogue-Umpqua Divide Wilderness boundary;
- Sec. 25, SW¼SW¼ SW¼;
- Sec. 26, SW¼NE¼, SW¼ SE¼ NE¼, that portion of the NW ¼ lying southeasterly of the Rogue-Umpqua Divide Wilderness boundary and southwesterly of the Abbott Creek Research Natural Area, and S½;
- Sec. 27, those portions of the E½ lying westerly, southwesterly and southeasterly of the Rogue-Umpqua Divide Wilderness boundary, and W½;
- Sec. 28, S½NW¼ and S½;
- Sec. 29, S½S½ SE¼;
- Sec. 31, lots 6 and 7, NE¼ and N½ SE ¼;
- Sec. 32 and 33;
- Sec. 34, lots 1, 2, N½, and N½ S½;
- Sec. 35, NW¼ NE¼, and NW¼.

T. 31 S., R. 1 E.,
- Sec. 1, S½ of lot 5, lots 6, and 7, S½ SW¼ NE¼, SW¼, and W½SE ¼;
- Sec. 2,lots 1 and 2, S½ NE¼, S½ S½ SW¼ and SE¼ ;
- Sec. 3, S½SE¼;
- Sec. 10, N½, E½SW¼, SE¼;
- Sec. 11, N½, N½S½, SE¼SW¼, S½SE¼;
- Sec. 12, lots 1 and 2, E½NE¼, NW¼;
- Sec. 13, W½NW¼;
- Sec. 14, NE¼, E½NW¼;
- Sec. 15, N½NE¼, NE¼NW¼.

T. 31 S., R. 2 E.,
- Sec. 3, W½ of lot 3, lot 4, SW¼NW¼, W½SE¼NW¼, W½E½SW¼, and W½SW¼;
- Secs. 4 and 5;
- Sec. 6, lots 1, 2, 6, and 7, S½NE¼, E½SW¼, and SE¼;
- Sec. 7, lot 1, N½NE¼, SE¼NE¼, and NE¼NW¼;
- Sec. 8, N½, E½NE¼SE¼, and NE¼SE¼SE¼;
- Sec. 9, N½, N½SW¼, N½S½SW¼, W½NE¼SE¼, NW¼SE¼, N½SW¼SE¼, NW¼SE¼SE¼;
- Sec. 10, W½NW¼.

The areas described aggregate approximately 9,533 acres in Jackson and Douglas County.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300. All persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing, by the date specified above, to the Forest Supervisor, Rogue River National Forest.

Notice is hereby given that a public meeting relative to the proposed withdrawal will be held at a later date. A notice of time and place will be published in the **Federal Register** and a newspaper in the general vicinity of the lands proposed for withdrawal at least 30 days before the scheduled date of the meeting.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date.

Dated: September 29, 2000.

**Sherrie L. Reid,**

*Acting Chief, Branch of Realty and Records Services.*

[FR Doc. 00–25555 Filed 10–4–00; 8:45 am]

BILLING CODE 4310–33–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[WY–920–1430–ET; WYW 149499]**

### Notice of Proposed Withdrawal and Opportunity for Public Meeting; Wyoming

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The Bureau of Land Management (BLM) proposes to withdraw approximately 4.93 acres of public land in Sweetwater County, to protect capital improvements of the Rock Springs administrative site. This notice closes the land for up to 2 years from surface entry and mining. The land will remain open to mineral leasing.

**DATES:** Comments and requests for a public meeting must be received by January 4, 2001.

**ADDRESSES:** Comments and requests should be sent to the BLM Wyoming State Director, P.O. Box 1828, Cheyenne, Wyoming 82003–1828.

**FOR FURTHER INFORMATION CONTACT:** Janet Booth, BLM Wyoming State Office, 307–775–6124, or Stan McKee, BLM Rock Springs Field Manager, 280 Highway 191 North, Rock Springs, Wyoming 82901, 307–352–0256.

**SUPPLEMENTARY INFORMATION:** On September 15, 2000, a petition/application was approved allowing the Bureau of Land Management to file an application to withdraw the following described public land from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights:

**Sixth Principal Meridian**

T. 19 N., R. 105 W.,
- Sec. 14, Lot 19.

The area described contains approximately 4.93 acres in Sweetwater County.

The purpose of the proposed withdrawal is to protect the capital improvements associated with development and maintenance of the Rock Springs administrative site pending further study and possibly longer-term actions.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the BLM.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Wyoming State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. Licenses, permits, cooperative agreements, or discretionary land use authorizations of a temporary nature which will not significantly impact the values to be protected by the withdrawal may be allowed with the approval of an authorized officer of the BLM during the segregative period.

Dated: September 27, 2000.

**Alan L. Kesterke,**

*Associate State Director.*

[FR Doc. 00–25556 Filed 10–4–00; 8:45 am]

BILLING CODE 4310–22–P

## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

### Outer Continental Shelf (OCS) Policy Committee of the Minerals Management Advisory Board; Notice and Agenda for Meeting

**AGENCY:** Minerals Management Service, Interior.

**SUMMARY:** The OCS Policy Committee of the Minerals Management Advisory Board will meet at the Holiday Inn Fair Oaks Hotel in Fairfax, Virginia, on October 25–26, 2000.

The agenda will cover the following principal subjects;

*Congressional Update.* This presentation will focus on the status of timely congressional issues related to the OCS Program.

*Natural Gas Supply Situation.* This presentation will address the natural gas supply situation from the United States' perspective; Canada's ability to supply natural gas to the U.S. in the future; and, the industry's supply challenge and the transportation and distribution of natural gas, including the possibility of a natural gas pipeline from Alaska.

*EPA Initiatives.* This presentation will address marine protected waters, Section 403 of the Clean Water Act, and study results of synthetically based drilling muds.

*Ocean Issues.* This panel presentation will address implementation of the Ocean Act, the Ocean Exploration Panel, and the Ocean Task Force.

*MMS Environmental Initiatives.* This panel presentation will address the Deep Spill project, biotechnology (bioprospecting), recent sperm whale cruise results in the Gulf, and acoustic impacts on marine mammals.

*Conservation and Reinvestment Act.* This presentation will provide an update on the status of the Conservation and Reinvestment Act and any other pertinent information related to this issue.

*Onshore Impacts of Increasing Offshore Activity.* This presentation will address infrastructure, social and political impacts, and wetlands loss.

*Hard Minerals Update.* This presentation will provide an update on subcommittee activities and other pertinent hard minerals information.

*MMS Regional Updates.* The Regional Directors will highlight activities in the Gulf of Mexico and off the California and Alaska coasts.

The meeting is open to the public. Upon request, interested parties may make oral or written presentation to the OCS Policy Committee. Such requests should be made no later than October 13, 2000, to the Minerals Management Service, 381 Elden Street, MS–4001, Herndon, Virginia, 20170, Attention: Jeryne Bryant.

Requests to make oral statements should be accompanied by a summary of the statement to be made. For more information, call Jeryne Bryant at (703) 787–1211.

Minutes of the OCS Policy Committee meeting will be available for public inspection and copying at the MMS in Herndon, Virginia.

**DATES:** Wednesday, October 25 and Thursday, October 26, 2000.

**ADDRESSES:** Holiday Inn Fair Oaks Hotel, 11787 Lee Jackson Memorial Highway, Fairfax, Virginia 22033, (703) 352–2525.

**FOR FURTHER INFORMATION CONTACT:** Jeryne Bryant at the address and phone number listed above.

**Authority:** Federal Advisory Committee Act, Pub. L. 92–463, 5 U.S.C. Appendix 1, and the Office of Management and Budget's Circular No. A–63, Revised.

Dated: September 29, 2000.

**Carolita U. Kallaur,**

*Associate Director for Offshore Minerals Management.*

[FR Doc. 00–25647 Filed 10–4–00; 8:45 am]

BILLING CODE 4310–MR–M

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Mojave National Preserve, Advisory Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Mojave National Preserve Advisory Commission will be held on October 17, 2000. The meeting will begin at 9 a.m. at the Primm Valley Resort in Primm, Nevada.

The agenda will include updates on park activities, Kelso Depot design status, Hole-in-the-Wall Interagency Fire Center design status, Comprehensive Interpretive Planning overview, and the status of the revised draft General Management Plan.

The Advisory Commission was established by Public Law 103–433 to provide advice on the development and implementation of the general management plan for the Preserve.

Current members of the Commission are: Irene Ausmus, Rob Blair, Peter Burk, Donna Davis, Kathy Davis, Gerald Freeman, Willis Herron, Eldon Hughes, Claudia Luke, Clay Overson, Norbert Riedy, Mal Wessel.

This meeting is open to the public.

**Dennis Schramm,**

*Acting Superintendent, Mojave National Preserve.*

[FR Doc. 00–25565 Filed 10–4–00; 8:45 am]

BILLING CODE 4310–70–P

## DEPARTMENT OF JUSTICE

### Office of Community Oriented Policing Services; Agency Information Collection Activities: Proposed Collection; Comment Request

**ACTION:** Notice of information collection under review; extension of a currently approved collection; National Center for Victims of Crime: Service referral questionnaire.

The Department of Justice, Office of Community Oriented Policing Services, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995.

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Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on March 14, 2000 (Volume 65, page 13791–13792), allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comments from the date listed at the top of this page in the **Federal Register**. This process is conducted in accordance with 5 Code of Federal Regulation, part 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Deputy Clearance Officer, Suite 1220, 1331 Pennsylvania Avenue, NW., Washington, DC 20530.

Written comments and suggestions from the public and affected agencies should address one or more of the following points:

(1) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) evaluate the accuracy of the agency's/component's estimate of the burden on the proposed collection of information, including the validity of the methodology and assumptions used;

(3) enhance the quality, utility, and clarity of the information to be collected; and

(4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

**Overview of the Information Collection is Listed Below**

(1) *Type of information collection.* Extension of a currently approved collection.

(2) *The title of the form/collection.* National Center for Victims of Crime: Service Referral Questionnaire.

*(3) The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form: COPS PPSE/02. Office of Community Oriented Policing Services, United States Department of Justice.

*(4) Affected public who will be asked or required to respond, as well as a brief abstract:* Approximately 10,000 victims' services organizations nationwide will be asked to respond. The Service Referral Questionnaire will allow the National Center for Victims of Crime (NCVC) to collect information on agency name, contact information, types of services provided to crime victims, types of crime victims primarily served by the organization, and to request permission to allow the NCVC to include the listing in its service database on its website.

NCVC will use the information collected to provide referral assistance to victims of crime who request information via the telephone through a toll-free number, e-mail, general mail and the NCVC website.

*(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Surveys will be administered by telephone to approximately 10,000 victims' service organizations nationwide. The survey will also be available to respondents on the NCVC website to allow on-line completion. Administrative preparation and survey completion will take approximately 0.25 hours per respondent (there is no record keeping burden for this collection).

*(6) An estimate of the total public burden (in hours) associated with the collection:* Approximately 2,500 hours.

Public comment on this proposed information collection is strongly encouraged.

Dated: September 29, 2000.

**Brenda E. Dyer,**

*Department Deputy Clearance Officer, Department of Justice.*

[FR Doc. 00–25521 Filed 10–4–00; 8:45 am]

BILLING CODE 4410–AT–M

## DEPARTMENT OF JUSTICE

### Office of Justice Programs

### Agency Information Collection Activities: Proposed Collection; Comment Request

**ACTION:** Notice of information collection for review: extension of a currently approved collection; grants management system online application.

The Department of Justice, Office of Justice Programs, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on April 25, 2000 (Volume 66, page 24224), allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until March 28, 2000. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via fascimile to (202) 395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Deputy Clearance Officer, Suite 1220, 1331 Pennsylvania Avenue, NW, Washington, DC 20530.

Written comments and/or suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.



**Overview of This Information**

*(1) Type of information collection:* Extension of a currently approved collection.

*(2) Title of the form/collection:* Grants Management System Online Application.

*(3) Agency form number, if any, and the applicable component of the Department sponsoring the collection:* None. Office of Justice Programs, United States Department of Justice.

*(4) Affected public who will be as or required to respond, as well as a brief abstract:*

*Primary:* State Government.
*Other:* None.

The Grants Management System Online Application will be used by respondents from State and Local Government offices to request grants from Offices and Bureaus within the Office of Justice Programs. This information, once collected from grantees, will be used to approve applications for funding, that grantees have requested, for grantee use within State and Local Government offices.

*(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* The time burden of the 3,000 respondents to complete the surveys is 4 hours per application.

*(6) An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete applications for the Grants Management System Online Application is 12,000 annual burden hours.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1220, National Place, 1331 Pennsylvania Avenue NW, Washington, DC 20530.

Dated: September 29, 2000.

**Brenda E. Dyer,**

*Department Deputy Clearance Officer, Department of Justice.*

[FR Doc. 00–25520 Filed 10–4–00; 8:45 am]

BILLING CODE 4410–18–M

## DEPARTMENT OF JUSTICE

### Office of Justice Programs

### Agency Information Collection Activities; Proposed Collection; Comment Request

**ACTION:** Notice of information collection under review; extension of a currently approved collection; crime mapping survey.

The Department of Justice, National Institute of Justice, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on March 28, 2000 (Volume 65, page 16419), allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until November 6, 2000. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Deputy Clearance Officer, Suite 1220, 1331 Pennsylvania Avenue, NW, Washington, DC 20530.

Written comments and/or suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Overview of the Collection**

*(1) Type of information collection:* Extension of a currently approved collection.

*(2) The title of the form/collection:* Crime Mapping Survey.

*(3) The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form: None. Office of Research and Evaluation, National Institute of Justice, Office of Justice Programs, United States Department of Justice.

*(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Law enforcement agencies. *Other:* None. This national survey is designated to determine the extent to which police departments, specifically crime analysts, are using computerized crime mapping. Surveys will be mailed to a randomly selected sample of police departments. The questionnaire will determine the level of crime mapping within departments, both in terms of hardware and software resources, as well as the types of maps that are produced and how they are used. The information collected from this survey will be used to advise the activities of the Crime Mapping Research Center.

*(5) An estimate of the total number of respondents and the amount of time estimated for the average respondent to respond/reply:* 2,798 respondents for an average of 33 minutes per response.

*(6) An estimate of the total public burden (in hours) associated with the collection:* The total burden to complete the nomination is 562.

If additional information is required contact: Ms. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1220, National Place, 1331 Pennsylvania Avenue, NW, Washington, DC 20530.

Dated: September 29, 2000.

**Brenda E. Dyer,**

*Department Deputy Clearance Officer, Department of Justice.*

[FR Doc. 00–25519 Filed 10–4–00; 8:45 am]

BILLING CODE 4410–18–M

## DEPARTMENT OF JUSTICE

### National Institute of Justice

**[OJP (NIJ)–1301]**

### Announcement of the Availability of the "NIJ Science and Technology Solicitation"

**AGENCY:** Office of Justice Programs, National Institute of Justice, Justice.

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**ACTION:** Notice of solicitation.

**SUMMARY:** Announcement of the availability of the National Institute of Justice "NIJ Science and Technology Solicitation."

**DATES:** Proposals must be received by 4 p.m. ET on Tuesday, October 24, 2000.

**ADDRESSES:** National Institute of Justice, 810 Seventh Street, NW., Washington, DC 20531.

**FOR FURTHER INFORMATION CONTACT:** For a copy of the solicitation, please call NCJRS 1–800–851–3420. For general information about application procedures for solicitations, please call the U.S. Department of Justice Response Center 1–800–421–6770.

**SUPPLEMENTARY INFORMATION:**

**Authority**

This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, §§ 201–03, as amended, 42 U.S.C. 3721–23 (1994).

**Background**

For fiscal year 2001, NIJ will accept proposals for technology-related awards under this solicitation, and several months later it will accept behavioral and social science-related awards under a separate solicitation.

This solicitation is open to a wide variety of proposals in order to achieve a balanced portfolio of technology product development, implementation, and evaluation projects. This solicitation focuses on near-term (one to three years) development and implementation projects.

To assist in obtaining information that may be helpful in submitting a proposal, you are encouraged to use the resources and expertise of the NIJ National Law Enforcement and Corrections Technology Center (NLECTC) located in Rockville, Maryland; and the regional NLECTCs located in Rome, New York; Charleston, South Carolina; Denver, Colorado; El Segundo, California; and the Border Research and Technology Center (BRTC) located in San Diego, California. More information about the NLECTC system is available on the Internet at <http://www.nlectc.org>.

To learn more about projects currently funded by NIJ, on the Internet go to http://www.nlectc.org/techproj/ or call NIJ's Office of Science and Technology at 202–307–0645.

Interested organizations should call the National Criminal Justice Reference Service (NCJRS) at 1–800–851–3420 to obtain a copy of "NIJ Science and Technology Solicitation" (refer to document no. SL000440). For World Wide Web access, connect to either NIJ at http://www.ojp.usdoj.gov/nij/funding.htm, or the NCJRS Justice Information Center at http://www.ncjrs.org/fedgrant.htm#nij.

Dated: September 27, 2000.

**Doug Horner,**

*Acting Assistant Director, National Institute of Justice.*

[FR Doc. 00–25623 Filed 10–4–00; 8:45 am]

BILLING CODE 4410–18–P

## DEPARTMENT OF LABOR

### Office of the Secretary

### Submission for OMB Review; Comment Request

September 20, 2000.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation for BLS, ETA, PWBA, and OASAM contact Karin Kurz ((202) 693–4127 or by E-mail to Kurz-Karin@dol.gov). To obtain documentation for ESA, MSHA, OSHA, and VETS contact Darrin King ((202) 693–4129 or by E-Mail to King-Darrin@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

*Type of Review:* Extension of a currently approved collection.

*Agency:* Mine Safety and Health Administration (MSHA).

*Title:* Records of Preshift and Onshift Inspections of Slope and Shaft Areas.

*OMB Number:* 1219–0082.

*Affected Public:* Business or other for-profit.

*Frequency:* Twice per shift.

*Number of Respondents:* 35.

*Number of Annual Responses:* 11,858.

*Total Estimated Burden Hours:* 14,823.

*Total Annualized Capital/Startup Costs:* $0.

*Total Annual Costs (operating/maintaining systems of purchasing services):* $0.

*Description:* Requires coal mine operators to conduct examinations of slope and shaft areas for hazardous conditions, including tests for methane and oxygen deficiencies, before and during each shift and before blasting. Records of the results of the inspections are required to be kept.

*Type of Review:* Extension of a currently approved collection.

*Agency:* Mine Safety and Health Administration (MSHA).

*Title:* Fire Protection, Escape and Evacuation Plan.

*OMB Number:* 1219–0051.

*Affected Public:* Business or other for-profit.

*Frequency:* On occasion.

*Number of Respondents:* 59.

*Number of Annual Responses:* 59.

*Total Estimated Burden Hours:* 263.

*Total Annualized Capital/Startup Costs:* $0.

*Total Annual Costs (operating/maintaining systems or purchasing services):* $0.

*Description:* Requires coal mine operators to establish and keep current a specific escape and evacuation plan to be followed in the event of a fire. The plan is used to instruct employees in the proper method of exiting work areas.

*Type of Review:* Revision of a currently approved collection.

*Agency:* Employment and Training Administration.

*Title:* Overpayment Detection and Recovery Activities.

*OMB Number:* 1205–0173.

*Affected Public:* State and local governments.

*Frequency of Response:* Quarterly.

*Total Respondents:* 53.

*Total Responses:* 212.

*Total Estimated Burden Hours:* 2,968.

*Total Annualized Capital/Startup Costs:* $0.

*Total Annual Costs (operating and Maintenance:* $0.

*Description:* The Secretary of Labor has interpreted applicable sections of Federal law to require States to include reasonable provisions in their Unemployment Insurance (UI) laws that concern the prevention, detection and recovery of benefit overpayment caused by willful misrepresentation or errors by claimants or others. This report provides an accounting of the types and amounts of such overpayment and serves as a useful management tool for monitoring overall integrity in the UI system.

**Ira L. Mills,**

*Departmental Clearance Officer.*

[FR Doc. 00–25611 Filed 10–04–00; 8:45 am]

BILLING CODE 4510–43–M



## DEPARTMENT OF LABOR

### Office of the Secretary

### Submission for OMB Review; Comment Request

September 29, 2000.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation for BLS, ETA, PWBA, and OASAM contact Karin Kurz ((202) 693–4127 or by E-mail to Kurz-Karin@dol.gov). To obtain documentation for ESA, MSHA, OSHA, and VETS contact Darrin King ((202) 693–4129 or by E-Mail to King-Darrin@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

*Type of Review:* Extension of a currently approved collection.

*Agency:* Occupational Safety and Health Administration (OSHA).

*Title:* Ionizing Radiation.

*OMB Number:* 1218–0103.

*Affected Public:* Business or other for-profit; Federal Government; and State, Local, or Tribal Government.

*Frequency:* On occasion.

*Number of Respondents:* 15,859.

*Number of Annual Responses:* 258,745.

*Estimated Time Per Response:* Varies from 5 minutes to maintain radiation-exposure records to 15 minutes for employers to prepare a written report of employee overexposure for submission to OSHA

*Total Burden Hours:* 42,518.

*Total Annualized Capital/Startup Costs:* $0.

*Total Annual Costs (operating/maintaining systems or purchasing services):* $2,512,066.

*Description:* The information-collection requirements specified in the Ionizing Radiation Standard protect employees from the adverse health effects that may result from their exposure to ionizing radiation. The information-collection requirements of the Ionizing Radiation Standard include employers phoning OSHA when radiation exposure incidents expose employees over radiation limits stated in the Standard; sending written reports of radiation over exposure to OSHA; maintaining employee exposure records; and furnishing exposure records to employees upon request.

**Ira L. Mills,**

*Departmental Clearance Officer.*

[FR Doc. 00–25612 Filed 10–4–00; 8:45 am]

BILLING CODE 4510–26–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on June 20, 2000, applicable to workers of PCS Nitrogen, Camanche, Iowa. The notice was published in the **Federal Register** on July 24, 2000 (65 FR 45620).

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. New company information shows that worker separations occurred at the LaPlatte, Nebraska facility of PCS Nitrogen in late 1999-early 2000. The workers produced ammonia, urea, nitric acid, ammonium nitrate and fertilizer solutions before ceasing in August, 1999.

Accordingly, the Department is amending the certification to cover the workers of PCS Nitrogen, LaPlatte, Nebraska.

The intent of the Department's certification is to include all workers of PCS Nitrogen who were adversely affected by increased imports.

The amended notice applicable to TA–W–36,693 is hereby issued as follows:

All workers of PCS Nitrogen, Camanche, Iowa (TA–W–37,693) and LaPlatte, Nebraska (TA–W–37,693A) who became totally or partially separated from employment on or after May 22, 1999 through June 20, 2002 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 25th day of September, 2000.

**Edward A. Tomchick,**

*Director, Office of Trade Adjustment Assistance.*

[FR Doc. 00–25610 Filed 10–4–00; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–37,899]**

### Hannah Hardy Inc., New York, NY; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on July 24, 2000, in response to a petition filed on the same date on

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behalf of workers at Hannah Hardy, Inc., New York, New York.

The Department of Labor has been unable to locate an official of the company to provide the information necessary to render a trade adjustment assistance determination. Consequently, the Department of Labor cannot conduct an investigation to make a determination as to whether the workers are eligible for adjustment assistance benefits under the Trade Act of 1974. Therefore, further investigation in this matter would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 20th day of September, 2000.

**Edward A. Tomchick,**

*Director, Division of Trade Adjustment Assistance.*

[FR Doc. 00–25609 Filed 10–4–00; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Proposed Collection; Unemployment Compensation for Federal Employees (UCFE) Program Forms Comment Request

**ACTION:** Notice; request for comments.

**SUMMARY:** The Department of Labor (DOL), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed revision and extension of the Unemployment Compensation for Federal Employees (UCFE) Handbook.

A copy of the proposed information collection request can be obtained by contacting the office listed below in the addressee section of this notice.

**DATES:** Written comments must be submitted to the office listed in the addressee's section below on or before December 4, 2000.

**ADDRESSES:** Merri Baldwin, Office of Workforce Security, U.S. Department of Labor, Room S–4231, Frances Perkins Building, 200 Constitution Ave., NW, Washington, DC 20210, telephone (202) 219–7301 ext. 185 (this is not a toll-free number), fax number (202) 219–8506. E-mail address: mbaldwin@doleta.gov.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

The UCFE law (5 U.S.C. 8501–8509) requires State employment security agencies (SESAs) to pay UCFE in the same amount and under the same terms and conditions as would be payable under the unemployment insurance law of the State if claimants' Federal service and Federal wages had been included as employment and wages under that State law. Each State agency must obtain from the Federal agency wage and separation information for each claimant filing a UCFE claim to enable it to determine his/her eligibility for benefits. The State agencies obtain and record required UCFE information on forms developed by the Department of Labor: ES–931, ES–931A, ES–933, ES–934, and ES–935. The use of each of these forms is essential to the UCFE claims process.

Information pertaining to the UCFE claimant may be obtained from the individual's former employing Federal agency only by using Form ES–931, Request for Wage and Separation Information. If the claimant's former employer does not provide the information, the next most feasible and effective way to obtain this information is by use of Form ES–935, claimants' Affidavit of Federal Civilian Service, Wages and Reason for Separation, prescribed by the Department of Labor for State agency use. Without this information, States could not adequately determine the UCFE eligibility of former Federal employees and would not be able to properly administer the program.

#### II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the Department's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

#### III. Current Actions

This is a request for Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)) of an extension to an existing collection of information previously approved and assigned OMB control no. 1205–0179. A current inventory of 78,000 UCFE claims was filed in calendar year 1999, and an estimated inventory of 78,000 UCFE claims will be reported for fiscal year (FY) 2000, reflecting both a significant decrease of 110,000 from FY 1997 and a decrease of 10,025 hours toward ETA's Information Collection Budget. Following a massive downsizing during FY 1997, the Federal Government workforce now has stabilized, and, therefore, there are fewer UCFE claims being filed.

Fifty-three (53) SESAs fill out these forms. Form ES–931 is completed by SESAs whenever a Federal civilian employee files a claim (UCFE) for unemployment compensation. Form ES–931A is used to request separation information or the reason for non-pay status when a claimant has a previously established benefit year and is reopening his claim after an intervening period of employment in a federal agency. Form ES–933 is used to obtain information from the Office of Workers' Compensation. Form ES–934 is used to obtain information when missing or clarified data is needed from a Federal agency. This form is used in about 10% of claims. Form ES–935 is used, generally, to overcome delays in the normal claims process caused by delayed returns of completed Form ES–931 by the employing Federal agency. The ES–935 is required to be completed in 100% of all claims. Form ES–936, Request for Verification of Wage and Separation Information Furnished on Form ES–931, is sent to payroll offices to verify a sample of the Forms ES–931 submitted by that office and to provide the Federal agency with an opportunity to request technical assistance concerning the UCFE program. This form is used semi-annually. Form ES–939, Federal Agency Visits Report, is completed by a SESA representative, on each visit to a Federal agency installation in connection with the UCFE program. The number of times this form is used varies with each State. Form ETA 8–32, Report of UCFE Activities, is used by each SESA every 6-months to verify activities and Federal agency visits.

*Type of Review:* Extension.

*Agency:* Employment and Training Administration.

*Title:* Unemployment Compensation for Federal Employees (UCFE) Handbook.

*OMB Number:* 1205–0179.

*Recordkeeping:* DOL does not maintain a system of records for the UCFE program. UCFE records are maintained by the SESAs acting as agents for the Federal Government in the administration of the UCFE program. The DOL procedures permit the SESAs, upon request, to dispose of UCFE records according to State law provisions, 3 years after final action (including appeals or court action) on the claim, or such records may be transferred in less than the 3-year period if micro photographed in accordance with appropriate micro photography standards.

*Affected Public:* State governments (State employment security agencies) and Federal Government agencies.

*Cite/Reference/Form/etc.:* Forms ES–931, ES–931A, ES–933, ES–934, ES–935, ES–936, ES–939, and ETA 8–32.

*Total Respondents:* 78,000.

*Frequency:* As needed.

*Total Responses:* 209,521.

*Average Time per Response:* .05 min.

*Estimated Total Burden Hours:* 215.78 hrs.

| Cite/reference | Total respondents | Frequency | Total responses | Average time per response | Burden |
|---|---|---|---|---|---|
| ES–931 | 78,000 | 1 | 78,000 | .05 min. | <3,900 min> 65 hrs. |
| ES–931A | 19,500 | 1 | 19,500 | .05 | <975 min> or 16.25 hrs. |
| ES–935 | 78,00 | 1 | 78,000 | .08 | <6,240 min> or 104 hrs. |
| ES–933 | 3,760 | 1 | 1,560 | .05 | <376 min> 3.13 hrs. |
| ES–934 | 20,680 | 1 | 20,680 | .05 | <1,034 min> 17.23 hrs. |
| ES–936 | 9,400 | 1 | 9,400 | .05 | <470 min> or 7.83 hrs. |
| ES–939 | 75 | 1 | 75 | 1.75 | <131.25 min> or 2.2 hrs. |
| ETA 8–32 | 53 | 2 | 106 | .08 min. | <8.48 min> or .14 hrs. |
| Total | | | 189,721 | | 215.78 hrs. |

*Total Burden Cost (capital/startup):* 0.

*Total Burden Cost (operating/maintaining):* $65,807.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Dated: September 26, 2000.

**Grace A. Kilbane,**

*Administrator, Office of Workforce Security.*

[FR Doc. 00–25607 Filed 10–4–00; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[NAFTA–04129]**

### Imaging Technologies, Inc., Cookeville, TN; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II of the Trade Act of 1974, as amended (19 U.S.C. 2331), an investigation was initiated on August 28, 2000, on behalf of workers at Imaging Technologies Inc., Cookeville, Tennessee.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 26th day of September, 2000.

**Edward A. Tomchick,**

*Director, Division of Trade Adjustment Assistance.*

[FR Doc. 00–25608 Filed 10–4–00; 8:45 am]

BILLING CODE 4510–30–M

## NATIONAL SCIENCE FOUNDATION

### Notice of Permits Issued Under the Antarctic Conservation Act of 1978

**AGENCY:** National Science Foundation.

**ACTION:** Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95–541.

**SUMMARY:** The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

**FOR FURTHER INFORMATION CONTACT:** Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

**SUPPLEMENTARY INFORMATION:** On August 29, 2000, the National Science Foundation published a notice in the **Federal Register** of permit applications received. Permits were issued on September 28, 2000 to the following applicants:

Wayne Z. Trivelpiece, Permit No. 2001–011;

John T. Lisle, Permit No. 2001–014;

Thomas W. Yelvington, Permit Nos. 2001–016 and 2001–021;

Jerry L. Mullins, Permit No. 2001–018.

**Nadene G. Kennedy,**

*Permit Officer.*

[FR Doc. 00–25493 Filed 10–4–00; 8:45 am]

BILLING CODE 7555–01–M

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## NUCLEAR REGULATORY COMMISSION

**[Docket No. 40–8778–MLA–2; ASLBP No. 00–775–03–MLA]**

### Atomic Safety and Licensing Board; Molycorp, Inc.; Site Decommissioning Plan; Notice of Hearing

September 29, 2000.

This proceeding involves a proposed amendment by Molycorp, Inc. to its Source Materials License No. SMB–1393, to authorize a site decommissioning plan (SDP) for the Licensee's former processing facility in Washington, Pennsylvania. The proposal under review (a modification of a previously submitted proposal) represents Part 1 of the SDP. It was submitted to the Nuclear Regulatory Commission on June 30, 1999, and would authorize the decommissioning to unrestricted levels of a portion of the site. (Part 2 of the SDP, covering restricted decommissioning of the remainder of the site, was submitted to the Nuclear Regulatory Commission on August 14, 2000, but an opportunity for hearing has not yet been noticed.)

Notice is hereby given that, by Memorandum and Order dated September 28, 2000, LBP–00–25, 52 NRC __, the Presiding Officer has granted the request for a hearing submitted by Canton Township, Pennsylvania, with respect to Part 1 of the SDP. Parties to this proceeding are the Licensee, Molycorp, Inc.; Canton Township, Pennsylvania, Intervenor; and the Staff of the Nuclear Regulatory Commission.

This proceeding will be conducted under the Commission's informal hearing procedures set forth in 10 CFR Part 2, Subpart L. In response to a Notice of Opportunity for Hearing, published at 64 FR 62227 (November 16, 1999), Canton Township submitted a timely hearing request. Administrative Judge Charles Bechhoefer has been designated Presiding Officer and, pursuant to 10 CFR 2.722 and 2.1209, Administrative Judge Richard F. Cole has been appointed as Special Assistant to assist the Presiding Officer in taking evidence and preparing a suitable record for review. 65 FR 3258 (January 20, 2000).

During the course of this proceeding, the Presiding Officer, pursuant to 10 CFR 2.1211(a), will entertain limited appearance statements from any member of the public who is not a party to the proceeding, for the purpose of stating his or her views on the issues involved in this proceeding. Although these statements are not evidence and do not become part of the decisional record, they may assist the Presiding Officer and parties in their consideration of matters at issue in this proceeding. Limited appearance statements should be made in writing. If the Presiding Officer conducts an oral argument or in-person prehearing conference, the Presiding Officer may, at his discretion, hear oral statements from members of the public, at a time and location yet to be determined. Written statements, and requests to make oral statements, should be submitted to the Office of the Secretary, Rulemaking and Adjudications Staff, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of such statement or request should also be served on the Presiding Officer, T–3 F23, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, or CXB2@nrc.gov.

Documents related to this proceeding, issued prior to December 1, 1999, are available in microfiche form (with print form available on one-day recall) for public inspection at the Commission's Public Document Room (PDR), Room O–1 F21, NRC One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852–2738.

Documents issued subsequent to November 1, 1999 are available electronically through the Agencywide Documents Access and Management System (ADAMS), with access to the public through NRC's Internet Web site (Public Electronic Reading Room Link, *<http://www.nrc.gov/NRC/ADAMS/index.html>*). The PDR and many public libraries have terminals for public access to the Internet.

Dated: September 29, 2000.

**Charles Bechhoefer,**

*Administrative Judge, Presiding Officer, Rockville, Maryland.*

[FR Doc. 00–25492 Filed 10–4–00; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–266 AND 50–301]**

### Nuclear Management Company, LLC; Point Beach Nuclear Plant, Units 1 and 2 Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from certain requirements of Title 10 of the Code of Federal Regulations (10 CFR), Part 50, Section 50.60, for Facility Operating License Nos. DPR–24 and DPR–27, issued to the Nuclear Management Company, LLC (the licensee), for operation of the Point Beach Nuclear Plant (PBNP), Units 1 and 2, Facility Operating License Nos. DPR–24 and DPR–27, respectively, located in the town of Two Rivers, Manitowoc County, Wisconsin.

**Environmental Assessment**

*Identification of the Proposed Action*

The proposed action would exempt the licensee from certain requirements of 10 CFR 50.60 to allow the application of American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code), Section XI, Code Case N–641, for determining the pressure-temperature (P–T) limit curves, the power-operated relief valve setpoint for low temperature overpressure protection (LTOP), and the LTOP effective temperature.

The proposed action is in accordance with the licensee's application for an exemption dated July 14, 2000.

*The Need for the Proposed Action*

ASME Code Case N–641 is needed to (1) determine stress intensity factors for postulated circumferential defects in circumferential welds, and for postulated axial defects in plates, forgings, and axial welds; (2) use the $K_{IC}$ fracture toughness curve shown in ASME Code, Section XI, Appendix A, Figure A–2200–1, in lieu of the $K_{IA}$ fracture toughness curve of ASME Code, Section XI, Appendix G, Figure G–22101, as the lowest bound for fracture toughness; and (3) determine the LTOP system effective temperature on a plant-specific basis consistent with ASME Code, Section XI, Appendix G. Also, ASME Code Case N–641 is needed to revise the method used to determine the RCS P–T limits since continued use of the present curves unnecessarily restricts the P–T operating window. Therefore, application of the code case will relax the LTOP operating window and reduce potential challenges to the reactor coolant system power-operated relief valves.

*Environmental Impacts of the Proposed Action*

The NRC staff has completed its evaluation of the proposed action and concludes that the exemption described above would provide an adequate margin of safety against brittle failure of the reactor pressure vessels at PBNP, Units 1 and 2.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological impacts associated with the proposed action.

With regard to potential nonradiological environmental impacts, the proposed action does not involve any historic sites. It does not affect nonradiological plant effluents and has no other environmental impacts. Therefore, there are no significant nonradiological impacts associated with the proposed action.

Accordingly, the NRC staff concludes that there are no significant environmental impacts associated with the proposed action.

*Alternatives to the Proposed Action*

As an alternative to the proposed action, the NRC staff considered denial of the proposed action (i.e., the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

*Alternative Use of Resources*

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for PBNP, Units 1 and 2.

*Agencies and Persons Consulted*

In accordance with its stated policy, on September 22, 2000, the staff consulted with the Wisconsin State official, Ms. S. Jenkins of the Public Service Commission, regarding the environmental impact of the proposed action. The State official had no comments.

**Finding of No Significant Impact**

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated July 14, 2000, which is available for public inspection at the Commission's Public Document Room, One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publically available records are accessible electronically from the ADAMS Public Library component on the NRC Web site, *http:\\www.nrc.gov* (the Electronic Reading Room).

Dated at Rockville, Maryland, this 29th day of September, 2000.

For The Nuclear Regulatory Commission.

**Beth A. Wetzel,**

*Senior Project Manager, Section 1, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 00–25562 Filed 10–4–00; 8:45 am]

**BILLING CODE 7590–01–P**



## NUCLEAR REGULATORY COMMISSION

### Experts' Meeting on High-Burnup Fuel Behavior Under Postulated Accident Conditions

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of meeting.

**SUMMARY:** The Nuclear Regulatory Commission will hold a meeting to complete the Phenomena Identification and Ranking Tables (PIRTs) for three accidents. PIRTs have been used at NRC since 1988, and they provide a structured way to obtain a technical understanding that is needed to address certain issues. About twenty of the world's best technical experts are participating in this activity, and the experts represent a balance between industry, universities, foreign researchers, and regulatory organizations. The current PIRT activity is addressing high-burnup fuel behavior for a PWR control rod ejection accident, a BWR failure to scram accident with power oscillations, and a loss of coolant accident for a BWR and a PWR.

**DATES:** October 26–27, 2000, 8:30 am–5:30 pm.

**ADDRESSES:** Room T10A1 (TWFN) of the Nuclear Regulatory Commission, 11545 Rockville Pike, Rockville, MD.

**SUPPLEMENTARY INFORMATION:** The meeting agenda will be posted on the NRC Web site at www.nrc.gov/RES/meetings.htm by October 17, 2000. The meeting is open to the public. Attendees will need to obtain a visitor badge at the TWFN building lobby.

**FOR FURTHER INFORMATION CONTACT:** Ralph Meyer, SMSAB, Division of Systems Analysis and Regulatory Effectiveness, Office of Nuclear Regulatory Research, Washington, DC 20555–0001, telephone (301) 415–6789.

Dated at Rockville, Maryland, this 29th day of September 2000.

For the Nuclear Regulatory Commission.

**John H. Flack,**

*Acting Director, Division of Systems Analysis and Regulatory Effectiveness, Office of Nuclear Regulatory Research.*

[FR Doc. 00–25560 Filed 10–4–00; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

### Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a proposed revision of a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guide, temporarily identified by its task number, DG–8026 (which should be mentioned in all correspondence concerning this draft guide), is titled "Health Physics Surveys in Uranium Recovery Facilities." This guide is being revised to describe health physics surveys that are acceptable to the NRC staff for protecting workers at uranium recovery facilities from radiation and the chemical toxicity of uranium while on the job. Uranium recovery facilities can include uranium mills, in situ leach facilities, ion exchange recovery facilities and certain other types of recovery facilities.

This draft guide has not received complete staff approval and does not represent an official NRC staff position.

Comments may be accompanied by relevant information or supporting data. Written comments may be submitted to the Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Comments will be most helpful if received by December 15, 2000.

You may also provide comments via the NRC's interactive rulemaking website through the NRC home page (http://www.nrc.gov). This site provides the availability to upload comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415–5905; email *CAG@NRC.GOV*. For information about the draft guide and the related documents, contact Mr. J.H. Lusher at (301) 415–7694; e-mail JHL@NRC.GOV.

Although a time limit is given for comments on this draft guide, comments and suggestions in connection with items for inclusion in guides currently being developed or

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improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room. The PDR's mailing address is USNRC Public Document Room, Washington, DC 20555; email <pdr@nrc.gov>. Requests for single copies of draft or final guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Reproduction and Distribution Services Section; or by fax to (301) 415–2289, or by email to <DISTRIBUTION@NRC.GOV>. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 19th day of September 2000.

For the Nuclear Regulatory Commission.

**Clare V. Kasputys,**

*Deputy Director, Program Management, Policy Development and Analysis Staff Office of Nuclear Regulatory Research.*

[FR Doc. 00–25561 Filed 10–4–00; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

### Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a proposed revision of a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guide, temporarily identified by its task number, DG–8027 (which should be mentioned in all correspondence concerning this draft guide), is titled "Information Relevant to Ensuring that Occupational Radiation Exposures at Uranium Recovery Facilities Will Be As Low As Is Reasonably Achievable." This guide is being revised to provide guidance on design criteria and administrative practices that are acceptable to the NRC staff for maintaining occupational exposures as low as is reasonably achievable in uranium recovery facilities.

This draft guide has not received complete staff approval and does not represent an official NRC staff position.

Comments may be accompanied by relevant information or supporting data. Written comments may be submitted to the Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Comments will be most helpful if received by December 15, 2000.

You may also provide comments via the NRC's interactive rulemaking website through the NRC home page (http://www.nrc.gov). This site provides the availability to upload comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415–5905; email *CAG@NRC.GOV*. For information about the draft guide and the related documents, contact Mr. J. H. Lusher at (301) 415–7694; email JHL@NRC.GOV.

Although a time limit is given for comments on this draft guide, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room. The PDR's mailing address is USNRC Public Document Room, Washington, DC 20555; email <pdr@nrc.gov>. Requests for single copies of draft or final guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Reproduction and Distribution Services Section; or by fax to (301) 415–2289, or by email to <DISTRIBUTION@NRC.GOV>. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 19th day of September 2000.

For the Nuclear Regulatory Commission.

**Clare V. Kasputys,**

*Deputy Director, Program Management, Policy Development and Analysis Staff, Office of Nuclear Regulatory Research.*

[FR Doc. 00–25563 Filed 10–4–00; 8:45 am]

BILLING CODE 7590–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. IC–24671]**

### Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

September 29, 2000.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of September 2000. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth St., N.W., Washington, DC 20549–0102 (tel. 202–942–8090). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail.

Hearing requests should be received by the SEC by 5:30 p.m. on October 24, 2000, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, SEC, 450 Fifth Street, N.W., Washington, DC 20549–0609.

**FOR FURTHER INFORMATION CONTACT:** Diane L. Titus, at (202) 942–0564, SEC, Division of Investment Management, Office of Investment Company Regulation, 450 Fifth Street, NW, Washington, DC 20549–0506.

**Strategist Income Fund, Inc. [File No. 811–7305]**

*Summary:* Applicant, whose three series are feeder funds in a master/feeder structure, seeks an order declaring that it has ceased to be an investment company. On July 14, 2000, applicant's series transferred their assets to the following corresponding funds: AXP Federal Income Fund, Inc., AXP Extra Income Fund, Inc., and AXP Selective Fund, Inc., based on net asset value. Expenses of $14,460 incurred in connection with the reorganization were paid by American Express Financial Corporation, investment adviser for the master funds.

*Filing Date:* The application was filed on August 17, 2000.

*Applicant's Address:* 200 AXP Financial Center, Minneapolis, Minnesota 55474.

**Strategist Growth Fund, Inc. [File No. 811–7401]**

*Summary:* Applicant, whose three series are feeder funds in a master/feeder structure, seeks an order declaring that it has ceased to be an investment company. On July 14, 2000, applicant's series transferred their assets to the following corresponding funds: AXP Growth Series, Inc. and AXP New Dimensions Fund, Inc., based on net asset value. Expenses of $14,460 incurred in connection with the reorganization were paid by American Express Financial Corporation, investment adviser for the master funds.

*Filing Date:* The application was filed on August 17, 2000.

*Applicant's Address:* 200 AXP Financial Center, Minneapolis, Minnesota 55474.

**Strategist Growth and Income Fund, Inc. [File No. 811–7403]**

*Summary:* Applicant, whose four series are feeder funds in a master/feeder structure, seeks an order declaring that it has ceased to be an investment company. On July 14, 2000, applicant's series transferred their assets to the following corresponding funds: AXP Investment Series, Inc., AXP Stock Fund, Inc., and AXP Managed Series, Inc., based on net asset value. Expenses of $19,280 incurred in connection with the reorganization were paid by American Express Financial Corporation, investment adviser for the master funds.

*Filing Date:* The application was filed on August 17, 2000.

*Applicant's Address:* 200 AXP Financial Center, Minneapolis, Minnesota 55474.

**Strategist World Fund, Inc. [File No. 811–7405]**

*Summary:* Applicant, whose four series are feeder funds in a master/feeder structure, seeks an order declaring that it has ceased to be an investment company. On July 14, 2000, applicant's series transferred their assets to corresponding series of AXP Global Series, Inc., based on net asset value. Expenses of $19,280 incurred in connection with the reorganization were paid by American Express Financial Corporation, investment adviser for the master funds.

*Filing Date:* The application was filed on August 17, 2000.

*Applicant's Address:* 200 AXP Financial Center, Minneapolis, Minnesota 55474.

**Strategist Tax-Free Income Fund, Inc. [File No. 811–7407]**

*Summary:* Applicant, a feeder fund in a master/feeder structure, seeks an order declaring that it has ceased to be an investment company. On July 14, 2000, applicant transferred its assets to AXP High Yield Tax-Exempt Fund, Inc., based on net asset value. Expenses of $4,820 incurred in connection with the reorganization were paid by American Express Financial Corporation, investment adviser for the master fund.

*Filing Date:* The application was filed on August 17, 2000.

*Applicant's Address:* 200 AXP Financial Center, Minneapolis, Minnesota 55474.

**The Russia Growth Fund, Inc. [File No. 811–8456]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make any public offering or engage in business of any kind.

*Filing Date:* The application was filed on July 19, 2000, and amended on September 26, 2000.

*Applicant's Address:* Fleming International Asset Management Ltd., 25 Coptall Avenue, London EC2R 7DR, England.

**Municipal Fund for Temporary Investment [File No. 811–2919]; Municipal Fund for California Investors, Inc. [File No. 811–3574]; and Municipal Fund for New York Investors, Inc. [File No. 811–3678]**

*Summary:* Each applicant seeks an order declaring that it has ceased to be an investment company. On February 10, 1999, each applicant transferred its assets to Provident Institutional Funds based on net asset value. Applicants incurred no expenses in connection with the reorganizations.

*Filing Dates:* The applications were filed on August 4, 2000, and amended on September 22, 2000.

*Applicants' Address:* 400 Bellevue Parkway, Wilmington, Delaware 19809.

**Floating Rate Portfolio [File No. 811–7969]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. On March 31, 2000, applicant made a liquidating distribution to its shareholders based on net asset value. Expenses of $10,730 incurred in connection with the liquidation were paid by AIM Advisors, Inc., applicant's investment adviser.

*Filing Date:* The application was filed on September 14, 2000.

*Applicant's Address:* 11 Greenway Plaza, Suite 100, Houston, Texas 77046–1173.

**GT Global Floating Rate Fund, Inc. (d/b/a AIM Floating Rate Fund) [File No. 811–7957]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. On March 31, 2000, applicant transferred its assets to AIM Floating Rate Fund based on net asset value. Applicant paid $55,355 in expenses incurred in connection with the reorganization, and applicant's investment adviser, AIM Advisors, Inc., paid the remaining $198,813.

*Filing Date:* The application was filed on September 14, 2000.

*Applicant's Address:* 11 Greenway Plaza, Suite 100, Houston, Texas 77046–1173.

**Deep Discount Partners Fund Incorporated [File No. 811–9683]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. Applicant has not made a public offering of its securities, is not now engaged, or intending to engage, in any business actiities other than those necessary for winding up its affairs.

*Filing Date:* The application was filed on September 19, 2000.

*Applicant's Address:* 11 South La Salle Street, Chicago, Illinois 60603.

**Excelsior Funds [File No. 811–8132]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. On December 16, 1999, applicant transferred its assets to Excelsior Funds, Inc.'s Money Fund based on net asset value. Expenses of $314,616 incurred in connection with the reorganization were paid by the acquiring fund's investment advisers, United States Trust Company of New York and U.S. Trust Company.

*Filing Date:* The application was filed on September 11, 2000.

*Applicant's Address:* 73 Tremont Street, Boston, Massachusetts 02108–3913.

**Marketwatch Funds [File No. 811–6696]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. On March 27, 1998, applicant transferred its assets to

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The Wachovia Funds and The Wachovia Municipal Funds based on net asset value. All expenses incurred in connection with the reorganization were paid by Wachovia Bank, N.A., applicant's investment adviser.

*Filing Date:* The application was filed on September 14, 2000.

*Applicant's Address:* 3435 Stelzer Road, Columbus, Ohio 43219–3035.

**Dreyfus New York Insured Tax Exempt Bond Fund [File No. 811–4884]; and Dreyfus Asset Allocation Fund, Inc. [File No. 811–7710]**

*Summary:* Each applicant seeks an order declaring that it has ceased to be an investment company. On September 23, 1999, Dreyfus New York Insured Tax Exempt Bond Fund transferred its assets to General New York Municipal Bond Fund, Inc., based on net asset value. On the same date, Dreyfus Asset Allocation Fund, Inc. transferred its assets to Dreyfus LifeTime Portfolios, Inc.—Growth and Income Portfolio, based on net asset value. Expenses of $15,000 and $35,000, respectively, incurred in connection with the reorganizations were paid by each applicant.

*Filing Date:* The applications were filed on August 24, 2000.

*Applicant's Address:* 200 Park Avenue, New York, New York 10166.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–25590 Filed 10–4–00; 8:45 am]

BILLING CODE 8010–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43371; File No. SR–Amex–00–43]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC Amending Its Rules To Require Companies to Publicly Disclose Receipt of a Delisting Notice

September 27, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 16, 2000, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change to amend its rules to require companies to publicly disclose receipt of a written delisting notice frame the Exchange. On September 26, 2000, the Amex submitted Amendment No. 1 to the proposal to make certain technical modifications.[3] The proposal, as amended, is described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

It is currently the policy of the Exchange whenever delivering a delisting notice to a company whose securities trade on the Exchange to require the company to disclose the receipt of such delisting notice in a public announcement. The Exchange proposes to codify the requirements of this policy in its rules. Below is the text of the proposed rule change. Proposed new language appears in italics; proposed deletions appear in brackets.

* * * * *

Sec. 401. OUTLINE OF EXCHANGE DISCLOSURE POLICIES

The Exchange considers that the conduct of a fair and orderly market requires every listed company to make available to the public information necessary for informed investing and to take reasonable steps to ensure that all who invest in its securities enjoy equal access to such information. In applying this fundamental principle, the Exchange has adopted the following [six]*seven* specific policies concerning disclosure, each of which is more fully discussed (in a Question and Answer format) in § 402:

(a)–(f) No change.

*(g) Receipt of Written Delisting Notice—A company is required to publicly disclose that it has received a written notice indicating that the Exchange has determined to remove a company's securities from listing (or unlisted trading) as a result of non-compliance with the continued listing requirements. (See § 1010).*

Sec. 402. EXPLANATION OF EXCHANGE DISCLOSURE POLICIES

(a)–(f) No change.

*(g) Receipt of Written Delisting Notice.*

*Q. What kinds of information should be included in the public announcement?*

*A. The public announcement must indicate that the Exchange has determined to remove the company's securities from listing (or unlisted trading) and the reason(s) for the determination. In order to assist the company in the preparation of the public announcement, Exchange staff will provide the company with the Section(s) upon which its determination was based and a template for disclosure.*

*Q. When must the public announcement be made?*

*A. The public announcement must be made as promptly as possible, but no more than seven calendar days following the company's receipt of the written notice from the Exchange. The Exchange notes that companies should not construe the seven calendar day time frame as a safe harbor for disclosure.*

*Q. What steps must be taken before the public announcement is made?*

*A. The public announcement must be provided to Amex's StockWatch Department at (212) 306–8383 (phone), (212) 306–1488 (facsimile) and Listing Qualifications Department at (212) 858–5267 (phone), (212) 858–4780 (facsimile) prior to public dissemination.*

*Q. What action may the Exchange take if a company fails to make a public announcement indicating that the Exchange has determined to remove the company's securities from listing (or unlisted trading)?*

*A. Failure by a company to make the required public announcement will result in the institution of a trading halt in the company's securities until the announcement is made, even if the company appeals the determination as provided for under Section 1010. If the company fails to make the announcement by the time that the Adjudicatory Council issues its decision, that decision will also determine whether to delist the company's securities for failure to make the public announcement.*

*Q. Does Section 1010(b) relieve the company of its disclosure obligations under the federal securities laws?*

*A. No. Section 1010(b) does not relieve the company of its obligation to make a materiality assessment of the pending delisting action as it may relate to the disclosure requirements of the federal securities laws, nor should it be construed as providing a safe harbor under the federal securities laws. The Exchange suggests that the company consult with corporate/securities counsel in assessing its disclosure obligations under the federal securities laws.*

* * * * *

Sec. 1010. DELISTING PROCEDURES

Whenever the Exchange determines that it is appropriate to consider removing a security from listing (or from unlisted trading) for other than routine reasons (such as redemptions, maturities, etc.), it will follow, insofar as practicable, the following procedures:

(a) No change.

(b) If, after such conference, the Exchange determines that the security should be removed, it will notify the company in writing, indicating the basis for such decision and the specific delisting policies and guidelines under which action will be taken. Such notice will also inform the company that it may appeal to the Board of Governors of the Exchange, or such committee or committees as the Board may authorize, and request a hearing. *A company shall make a public announcement through the news media that it has received such notice, including the specific policies and guidelines upon which the determination was based. Prior to the release of the public announcement, the company shall provide such disclosure to Amex's StockWatch and Listing Qualifications Departments.* The public announcement shall be made as promptly as possible, but not more than seven calendar days following receipt of the written notice from the Exchange.*

(c)–(h) No change.

* * * * *

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received regarding the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange presently has a policy of requiring any company whose securities are listed on the Exchange (or trade on the Exchange pursuant to unlisted trading privileges) to publicly disclose its receipt from the Exchange of a written delisting notice for failure to comply with the Exchange's continued listing guidelines. The purpose of the proposed rule change is to codify this policy in order to protect present and potential investors in the securities of such a company.

In order to provide investors with the greatest protection possible, the Exchange believes that a company's public announcement of pending delisting should not only disclose the receipt of a written notice from the Exchange, but also indicate upon which section(s) of the Amex Company Guide the determination to delist has been based. The Exchange believes that requiring companies to disclose to investors which specific listing guideline(s) a company has failed to meet will better enable investors to make informed decisions regarding the advisability of making or maintaining investments in the securities of such company. The Exchange additionally proposes that a company be required to make public its announcement regarding the pending delisting as promptly as possible, but not more than seven calendar days following its receipt of the written delisting notice from the Exchange. The Amex believes that the proposed seven-day time frame is consistent with its current policy and that such time frame would provide the subject company with sufficient opportunity to prepare its public announcement and also ensure that investors receive the information in a timely manner. If a company fails to disclose the receipt of a written delisting notice under the proposed requirement, trading of its securities shall be halted until the announcement has been made, even if the company appeals the underlying delisting determination as provided for under Section 1010. In this regard, the Exchange proposes that, if the company has failed to make the required announcement before the Adjudicatory Council issues its decision with regard to the company's appeal, such decision by the Adjudicatory Council whether to delist the company's securities may also be based on the company's failure to make the public announcement.

2. Statutory Basis

The Exchange believes that the proposed rule change, whose purpose is to ensure that investors be notified when the Exchange has determined to delist a company's securities for non-compliance with the continued listing guidelines, is consistent with the provisions of Section 6(b)(5) of the Act[4] which requires that an exchange have rules that are, in general, designed to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Amex believes that the proposed rule change will not impose any burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

Written comments were neither solicited nor received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so findingse 450 or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See letter from Michael J. Ryan, Senior Vice President, Chief of Staff, and Senior Legal Office, Amex, to Alton Harvey, Office Chief, Division of Market Regulation, Commission, dated September 20, 2000.

* *Notification may be provided to Amex's StockWatch Department at (212) 306–8383 (telephone), (212) 306–1488 (facsimile), and Listing Qualifications Department at (212) 858–5267 (telephone), (212) 858–4780 (facsimile).*

[4] 15 U.S.C. 78f(b)(5).

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provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to file number SR–Amex–00–43 and should be submitted by October 26, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–25594 Filed 10–04–00; 8:45 am]

BILLING CODE 8010–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43368; File No. SR–NASD–98–26]**

## Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Amendment No. 9 to a Proposed Rule Change by the National Association of Securities Dealers, Inc. To Institute, on a Pilot Basis, New Primary Nasdaq Market Maker Standards for Nasdaq National Market Securities

September 27, 2000.

On September 20, 2000, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly-owned subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to: (1) Continue to suspend the current PMM standards until June 30, 2001; and (2) extend the NASD's Short Sale Rule pilot until June 30, 2001 ("Amendment No. 9").[3]

Amendment No. 9 to the proposed rule change, SR–NASD–96–28, is described in Items I and II below, which Items have been prepared by the NASD. The Commission is publishing this notice and order to solicit comments on Amendment No. 9 from interested persons and to approve the amendment on an accelerated basis.

[5] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4

[3] *See* letter from Jeffrey S. Davis, Assistant General Counsel, Nasdaq, to Katherine England, Assistant Director, Division of Market Regulation, Commission dated September 20, 2000. The current suspension and extension would expire on September 30, 2000. *See* Securities Exchange Act Release No. 42219 (December 9, 1999), 64 FR 70753 (December 17, 1999).

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

In the current amendment, Nasdaq is proposing to extend the Short Sale Rule pilot and the suspension of the existing PMM standards from September 30, 2000 until June 30, 2001. The proposed rule language, as amended, follows. Additions are italicized; deletions are bracketed.

**NASD Rule 3350**

(a)–(k) No Changes.

(l) This Rule shall be in effect until [September 30, 2000] *June 30, 2001.*

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

(1) Background on the NASD's Short Sale Rule

Section 10(a) of the Exchange Act[4] gives the Commission plenary authority to regulate short sales of securities registered on a national securities exchange, as needed to protect investors. Although the Commission has regulated short sales since 1938, that regulation has been limited to short sales of exchange-listed securities. In 1992, Nasdaq, believing that short-sale regulation is important to the orderly operation of securities markets, proposed a short sale rule for trading of its National Market securities that incorporates the protections provided by Rule 10a–1 of the Exchange Act.[5] On June 29, 1994, the Commission approved the NASD's short sale rule, Rule 3350 ("Short Sale Rule"), applicable to short sales[6] in Nasdaq National Market ("NNM") securities on an eighteen-month pilot basis through March 5, 1996.[7] The NASD and the Commission have extended NASD Rule 3350 numerous times, most recently, until September 30, 2000.[8]

Nasdaq's short-sale rule employs a "bid" test rather than a tick test because Nasdaq trades are not necessarily reported to the tape in chronological order. Nasdaq's short sale rule prohibits short-sales at or below the inside bid when the current inside bid is below the previous inside bid. Nasdaq calculates the inside bid from all market makers in the security (including bids on exchanges trading Nasdaq securities on an unlisted trading privileges basis), and disseminates symbols to denote whether the current inside bid is an "up-bid" or a "down-bid." To effect a "legal" short-sale on a down-bid, the short-sale must be executed at a price at least 1/16th above the current inside bid. The rule is in effect from 9:30 a.m. E.T. until 4 p.m. E.T. each trading day.

To reduce the compliance burdens on its members, Nasdaq's short sale rule also incorporates seven exemptions contained in Rule 10a–1 under the Exchange Act that are relevant to trading on Nasdaq.[9] In addition, in an effort to not constrain the legitimate hedging needs of options market markers, the NASD's short sale rule contains a limited exception for standardized options market makers. The Rule also contains an exemption for warrant market makers similar to the one available for options market makers.

(2) Background on the NASD's Primary Market Maker Standards

To ensure that market maker activities that provide liquidity and continuity to the market are not adversely constrained when the short sale rule is involved,

[4] 15 U.S.C. 78j(a).

[5] 17 CFR 240.10a–1.

[6] A short sale is a sale of a security which the seller does not own or any sale which is consummated by the delivery of a security borrowed by, or for the account of, the seller. To determine whether a sale is a short sale, members must adhere to the definition of a "short sale" contained in Rule 3b–3 of the Exchange Act, which is incorporated into Nasdaq's short sale rule by NASD Rule 3350(k)(1).

[7] *See* Securities Exchange Act Release No. 34277 (June 29, 1994), 59 FR 34885 (July 7, 1994) ("Short Sale Rule Approval Order").

[8] *See supra*, note 3.

[9] *See* NASD Rule 3350(c)(2)–(8). The Rule also provides that a member not currently registered as a Nasdaq market maker in a security, and that has acquired the security while acting in the capacity of a block positioner shall be deemed to own such security for the purposes of the Short Sale Rule, notwithstanding that such member may not have a net long position in such security if and to the extent that such member's short position in such security is subject to one or more offsetting positions created in the course of bona fide arbitrage, risk arbitrage, or bona fide hedge activities. In addition, the NASD has recognized that SEC staff interpretations to Rule 10a–1 under the Exchange Act dealing with the liquidation of index arbitrage positions and an "international equalizing exemptions" are equally applicable to the NASD's short sale rule. *See* NASD Rule 3350(f).



NASD Rule 3350(c)(1) provides an exemption for "qualified" Nasdaq market makers) *i.e.*, market makers that meet the PMM standards). Presently, NASD Rule 4612 provides that a member registered as a Nasdaq market maker pursuant to NASD Rule 4611 may be deemed a PMM if that member meets certain threshold standards.

Since NASD Rule 3350 has been in effect, there have been two methods used to determine whether a market maker is eligible for the PMM exemption. Specifically, from September 4, 1994 through February 1, 1996, Nasdaq market makers that maintained a quotation in a particular NNM security for 20 consecutive business days without interruption were exempt from Rule 3350 for short sales in that security, provided the short sales were made in connection with bona fide market making activity ("the 20-day" test).[10] From February 1, 1996 until the February 14, 1997, the "20-day" test was replaced with a four-part quantitative test known as the PMM standards.[11]

Beginning on February 14, 1997, the PMM standards were suspended for all NNM securities due to the impact of the SEC's Order Handling Rules, and corresponding NASD rule change and system modifications on the operation of the four quantitative standards.[12] For example, the requirement that market makers display customer limit orders adversely affected the ability of market makers to satisfy the "102% Average Spread Standard." Since that time all market makers have been designated as PMMs.

In March 1998, Nasdaq proposed PMM standards that received substantially negative comments.[13] In light of those comments, Nasdaq staff convened an advisory subcommittee to develop new PMM standards ("Subcommittee") in August 1998. The Subcommittee met nine times and formulated new PMM standards. On December 9, 1998, the NASD/Nasdaq staff met with the Commission staff and the Subcommittee to receive informal feedback on the new PMM standards. At the conclusion of the meeting, Commission staff noted the progress made by the Subcommittee and requested time to digest and more carefully analyze the proposed new PMM standards.

On July 29, 1999, members of the Nasdaq staff conducted a conference call with members of the Commission staff to receive feedback on the PMM standards that Nasdaq presented at the December 9, 1998 meeting. During the meeting, the Commission staff suggested that Nasdaq modify several of the proposed standards and analyze the impact of those modifications on the primary market maker determination. On September 27, 1999, Nasdaq reported that the NASD Economic Research staff had analyzed data based on the Commission's suggested revisions, and concluded that the Commission's modified standards produced unfavorable results.[14]

The Commission notes that it has separately proposed amendments to Rule 10a–1 under the Exchange Act, which applies to exchanges. Nasdaq has announced that it is considering registering as an exchange.

(3) Current Amendment

Nasdaq believes that it is in the best interest of investors to extend the short sale regulation pilot program. In the Short Sale Approval Order, the Commission stated that "recognizing the potential for problems associated with short selling, the changing expectations of Nasdaq market participants and the competitive disparity between the exchange markets and the OTC market, the Commission believes that regulation of short selling of Nasdaq National Market securities is consistent with the Act."[15] In addition, the Commission stated that it "believes that the NASD's short sale bid-test, including the market maker exemptions, is a reasonable approach to short sale regulation of Nasdaq National Market securities and reflects the realities of its market structure."[16] Nasdaq believes the benefits that the Commission recognized when it first approved NASD Rule 3350 apply to equal force today.

Similarly, Nasdaq believes the concerns that caused the Commission to waive the PMM standards in February 1997 continue to exist today. Nasdaq and the Commission agreed to waive the PMM standards to avoid frustrating operation of the Commission's Order Handling Rules, in light of market factors that were not apparent at the time the Order Handling Rules were implemented.[17] Nasdaq has worked to address those concerns to the Commission's satisfaction, including convening a special subcommittee on PMM issues, proposing two different sets of PMM standards, and being continuously available and responsive to Commission staff to discuss this issue. Despite these efforts, the Commission and Nasdaq have been unable to establish satisfactory PMM standards. Nasdaq believes that re-

[10] *See* Short Sale Rule Approval Order, *Supra* note 7.

[11] *Id.* Under the PMM standards, a market maker was required to satisfy at least two of the following four criteria each month to be eligible for an exemption from the short sale rule: (1) The market maker must be at the best bid or best offer as shown on Nasdaq no less than 35 percent of the time; (2) the market maker must maintain a spread no greater than 102 percent of the average dealer spread; (3) no more than 50 percent of the market maker's quotation updates may occur without being accompanied by a trade execution of at least one unit of trading; or (4) the market maker executes 1½ times its "proportionate" volume in the stock. If a PMM did not satisfy the threshold standards after a particular review period, the market maker lost its designation as a PMM (*i.e.*, the "P" next to its market maker identification was removed). Market makers could re-qualify for designation as a PMM by satisfying the threshold standards in the next review period.

[12] *See* Securities Exchange Act Release Nos. 38294 (February 14, 1997), 62 FR 8289 (February 24, 1997) (order granting temporary accelerated approval of suspension of PMM standards until October 1, 1997; File No: SR–NASD–97–07); 39198 (October 3, 1997), 62 FR 53365 (October 14, 1997) (order granting temporary accelerated approval of continuing suspension until April 1, 1998; File No. SR–NASD–97–73); 39819 (March 30, 1998), 63 FR 16841 (April 6, 1998) (order granting temporary accelerated approval of continuing suspension until May 1, 1998; File No. SR–NASD–98–26); 39936 (April 30, 1998), 63 FR 25253 (May 7, 1998) (order granting temporary accelerated approval of continuing suspension until July 1, 1998; Amendment No. 3 to File No. SR–NASD–98–26); 40140 (June 26, 1998), 63 FR 36464 (July 6, 1998) (order granting temporary accelerated approval of continuing suspension until October 1, 1998; Amendment No. 4 to File No. SR–NASD–98–26); 40485 (September 25, 1998), 63 FR 52780 (October 1, 1998) (order granting temporary accelerated approval of continuing suspension until March 31, 1999; Amendment No. 5 to File No. SR–NASD–98–26); 41195 (March 19, 1999), 64 FR 14778 (March 26, 1999) (order granting temporary accelerated approval of continuing suspension until June 30, 1999; Amendment No. 6 to File No. SR–NASD–98–26); 41568 (June 28, 1999), 64 FR 36416 (July 6, 1999) (order granting temporary accelerated approval of continuing suspension until December 31, 1999; Amendment No. 7 to File No. SR–NASD–98–26); 42219 (December 9, 1999), 64 FR 70753 (December 17, 1999) (order granting temporary accelerated approval of continuing suspension until September 30, 2000; Amendment No. 8 to File No. SR–NASD–98–26).

[13] *See* Securities Exchange Act Release 39819 (March 30, 1998), 63 FR 16841 (April 6, 1998).

[14] *See* letter from John F. Malitzis, Assistant General Counsel, Nasdaq, to Richard Strasser, Assistant Director, Division of Market Regulation, Commission, dated September 27, 1999.

[15] *See* Short Sale Rule Approval Order, *supra* note 8.

[16] *Id.*

[17] Nasdaq stated at the time that it believed the implementation of the Order Handling Rules created the following three issues: (1) Many market makers voluntarily chose to display customer limit orders in their quotes although the Limit Order Display Rule does not yet require it; (2) SOES decrementation for all Nasdaq stocks significantly affected market makers' ability to meet several of the primary market maker standards; and (3) with the inability to meet the existing criteria for a larger number of securities, a market maker may be prevented from registering as a primary market maker in an initial public offering because it fails to meet the 80% primary market maker test contained in Rule 4612(g)(2)(B). *See* Securities Exchange Act Release No. 38294 (February 14, 1997), 62 FR 8289 (February 24, 1997).

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instating the PMM standards set forth in NASD Rule 4612 would be extremely disruptive to the market and harmful to investors.

Nasdaq also notes that the Commission has signaled to the securities industry that it is considering fundamental changes to Rule 10a–1 of the Exchange Act that could impact the manner in which Nasdaq and the other markets regulate short sales. On October 20, 1999, the Commission issued a Concept Release on Short Sales in which it sought comment on, among other things, revising the definition of short sale, extending short sale regulation to non-exchange listed securities, and eliminating short sale regulation altogether.[18] Nasdaq believes it would be inappropriate for Nasdaq to dramatically alter its regulation of short sales while the Commission is considering fundamentally changing Rule 10a–1 of the Exchange Act.

**III. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 9, including whether the proposed Amendment is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–98–26 and should be submitted by October 26, 2000.

**IV. Commission's Findings and Order Granting Accelerated Approval of the Amendment**

After careful consideration, the Commission finds, for the reasons set forth below, that the extension of the Short Sale Rule pilot and the suspension of the existing PMM standards until June 30, 2001 is consistent with the requirements of the Act and the rules and regulations thereunder. In particular, the extension is consistent with Section 15A(b)(6)[19] of the Act, which requires that the NASD's rules be designed, among other things, to remove impediments to and perfect the mechanism of a free and open market and a national market system and to promote just and equitable principles of trade.

The Commission finds that continuation of the Short Sale Rule pilot and the continued suspension of the current PMM standards will maintain the status quo while the Commission considering amending Rule 10a–1 under the Exchange Act.

The Commission finds good cause for approving the extension of the Short Sale Rule pilot and the suspension of existing PMM standards prior to the 30th day after the date of publication of notice of the filing in the **Federal Register**. It could be disruptive to the Nasdaq market and confusing to market participants to reintroduce the previous PMM standards while new PMM standards are being developed, and while the Commission is considering amending Rule 10a–1 under the Exchange Act.

*It Is Therefore Ordered*, pursuant to Section 19(b)(2) of the Act,[20] that Amendment No. 9 to the proposed rule change, SR–NASD–98–26, which extends the NASD Short Sale Rule pilot and the suspension of the current PMM standards to June 30, 2001, is approved on an accelerated basis.[21]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–25591 Filed 10–4–00; 8:45 am]

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[18] *See* Securities Exchange Act Release No. 42037 (October 20, 1999), 64 FR 57996 (October 28, 1999).

[19] 15 U.S.C. 78o–3(b)(6).

[20] 15 U.S.C. 78s(b)(2).

[21] In approving Amendment No. 9, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[22] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43383; File No. SR–NASD–00–48]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Require an Issuer To Publicly Disclose the Receipt of a Delisting Notice for Failure To Comply With the Continued Listing Standards of The Nasdaq Stock Market

September 28, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 10, 2000, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly owned subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

Nasdaq proposes to require issuers to publicly disclose the receipt of a delisting notice for failure to comply with Nasdaq's continued listing requirements. Below is the text of the proposed rule change. Proposed new language is in italics. Proposed deletions are in brackets.

Rule 4120. Trading Halts

(a) Authority to Initiate Trading Halts.

In circumstances in which Nasdaq deems it necessary to protect investors and the public interest, Nasdaq may, pursuant to the procedures set forth in paragraph (b):

(1)–(4) No change.

(5) Halt trading in a security listed on Nasdaq when Nasdaq requests from the issuer information relating to:

(i) No change;

(ii) The issuer's ability to meet Nasdaq listing qualification requirements, as set forth in the Rule 4300 , [and] 4400, *and 4800* Series; or

(iii) No change.

(b) No change.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.



*IM–4120–2. Disclosure of Written Notice of Staff Determination*

*Rule 4815(b) requires that an issuer make a public announcement through the news medial disclosing the receipt of a Written Notice of Staff Determination ("Staff Determination") to prohibit continued listing of the issuer's securities under Rule 4815(a) as a result of the issuer's failure to comply with the continued listing requirements, and the Rule(s) upon which the Staff Determination was based. Such public announcement shall be made as promptly as possible, but not more than seven calendar days following the receipt of the Staff Determination. If the public announcement is not made by the issuer within the time allotted, trading of its securities shall be halted, even if the issuer appeals the Staff Determination as set forth in Rule 4820. If the issuer fails to make the public announcement by the time that the Listing Qualifications Panel issues its decision, that decision will also determine whether to delist the issuer's securities for failure to make the public announcement.*

*Rule 4815(b) does not relieve an issuer of its obligation to make a materially assessment of the pending delisting action as it may relate to the disclosure requirements of the federal securities laws, nor should it be construed as providing a safe harbor under the federal securities laws. It is suggested that the issuer consult with corporate/securities counsel in assessing its disclosure obligations under the federal securities laws.*

(Existing IM–4120–2 and IM–4120–3 renumbered as IM–4120–3 and IM–4120–4)

Rule 4815. Written Notice of Staff Determination

*(a)* If the Listing Qualifications Department or the Listing Investigations Department reaches a determination (the "Staff Determination") to limit or prohibit the initial or continued listing of an issuer's securities, it will notify the issuer, describe the specific grounds for the determination, identify the quantitative standard or qualitative consideration set forth in the Rule 4000 Series that the issuer has failed to satisfy, and provide notice that upon request the issuer will be provided an opportunity for a hearing under this Rule 4800 Series.

*(b) An issuer that receives a Staff Determination to prohibit continued listing of the issuer's securities under Rule 4815(a) shall make a public announcement through the news media disclosing the receipt of the Staff Determination, including the Rule(s) upon which the Staff Determination was based. Prior to the release of the public announcement, an issuer shall provide such disclosure to Nasdaq's Stock Watch and Listing Qualifications Departments.* The public announcement shall be made as promptly as possible, but not more than seven calendar days following receipt of the Staff Determination.*

** Notification may be provided to the StockWatch section of Nasdaq's MarketWatch Department at 1–800–537–3929 or (301) 590–6411 (telephone), (301) 590–6482 (facsimile) and to the Hearings Department of Nasdaq's Listing Qualifications Department at (301) 978–8079 (telephone), (301) 978–8080 (facsimile).*

* * * * *

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposed rule change is to require a Nasdaq issuer to publicly disclose the receipt of a written delisting notice for failure to comply with the continued listing requirements ("Staff Determination"). Since Nasdaq does not currently have such a requirement, some Nasdaq issuers publicly disclose the receipt of a Staff Determination while other issuers do not make the disclosure. Nasdaq believes that requiring public disclosure of the receipt of a Staff Determination serves to protect present and potential investors in an issuer's securities.

In order to provide investors with the greatest protection possible, Nasdaq believes that the public announcement should not only disclose the receipt of a Staff Determination, but also indicate the Marketplace Rule(s) upon which the Staff Determination was based. By furnishing investors with the specific continued listing requirement(s) that an issuer has failed to meet, Nasdaq believes that investors will be able to make a more informed decision regarding their investment (or potential investment) in an issuer's securities. Furthermore, Nasdaq proposes that an issuer be required to make the public announcement as promptly as possible, but not more than seven calendar days following the receipt of the Staff Determination. Nasdaq believes that this time frame will provide an issuer with a sufficient opportunity to prepare a public announcement while also ensuring that investors receive the information in a timely manner. If an issuer fails to disclose the receipt of a Staff Determination, trading of its securities will be halted until the disclosure is made, even if the issuer appeals the determination to the Listing Qualifications Panel, as provided for under Marketplace Rule 4820. If an issuer fails to make the public announcement by the time that the Listing Qualifications Panel issues its decision, that decision will also determine whether to delist an issuer's securities for failure to make the public announcement.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[3] in that the proposal is designed to protect investors and the public interest. As noted above, the proposed rule change is aimed at ensuring that investors are notified that Nasdaq has determined to delist an issuer's securities for non-compliance with the continued listing requirements.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and

[3] 15 U.S.C. 78o–3(b)(6).

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publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–00–48 and should be submitted by October 26, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[4]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–25595 Filed 10–4–00; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43367; File No. SR–NASD–00–42]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Proposed Recording and Recordkeeping Requirements of Certain Quotation Data

September 27, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 3,2000, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly owned subsidiary, NASD Regulation, Inc. ("NASD Regulation") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

NASD Regulation is proposing to add new NASD Rule 6630 to require members to record and maintain their quotations displayed in certain automated, inter-dealer quotation systems, such as the Electronic Pink Sheets ("EPS"), and to report such data to NASD Regulation upon request.

Below is the text of the proposed rule change. Additions are italicized; deletions are in brackets.

* * * * *

**6600. [REPORTING TRANSACTIONS IN] OVER-THE-COUNTER EQUITY SECURITIES**

This Rule 660 Series sets forth *recording and reporting requirements for certain quotations and unpriced indications of interest displayed on inter-dealer quotation systems and* the trade reporting requirements applicable to members' transactions in equity securities for which real-time trade reporting is not otherwise required (hereinafter referred to as "OTC Equity Securities"). Members shall utilize the Automated Confirmation Transaction Service (ACT) for trade reporting in OTC Equity Securities. Rules 6610 and 6620 No Change.

***Rule 6630. Recording of Quotation Information***

*(a) Quotation Recording Requirements*

*(1) Subject to the terms and conditions contained herein, each OTC Market Maker that displays priced quotations (bid and/or offer) or unpriced indications of interest in OTC Equity Securities in an inter-dealer quotation system that permits quotation updates on a real-time basis shall record each item of information described in paragraph (b) of this Rule. This quote activity record must reflect all changes in an OTC Market Maker's priced quotation or quotation size displayed or unpriced indication of interest, and the time any such change was effected.*

*(2) Members shall record each item of information required to be recorded under this Rule in such form as is prescribed by the Association from time to time.*

*(3) Maintaining and Preserving Records*

*(A) Each member shall maintain and preserve records of the information required to be recorded under this Rule for the period of time and accessibility specified in SEC Rule 17a–4(a).*

*(B) The records required to be maintained and preserved under this Rule may be immediately produced or reproduced on "micrographic media" as defined in SEC Rule 17a–4(f)(1)(i) or by means of "electronic storage media" as defined in SEC Rule 17a–4(f)(1)(ii) that meet the conditions set forth in SEC Rule 17a–4(f) and may be maintained and preserved for the required time in that form.*

*(b) Information to be Recorded*

*The quotation activity record required pursuant to paragraph (a) of this Rule shall contain, at a minimum, the following information for every priced quotation (bid and/or offer) or unpriced indication of interest displayed by the member during the trading day:*

*(1) Submitting firm;*

*(2) Inter-dealer quotation system or medium;*

*(3) Trade date;*

*(4) Time quotation displayed (expressed in hours, minutes and seconds);*

*(5) Security name and symbol;*

*(6) Bid and bid quotation size (if applicable);*

*(7) Offer and offer quotation size (if applicable);*

*(8) Prevailing Inside Bid; and*

*(9) Prevailing Inside Offer*

*If no updates were entered to an OTC Market Maker's quotation or quotation size for any given trading day, the member must record the information in subparagraphs (b)(1) through (7).*

*(c) Quotations Not Required To Be Recorded*

*The recording requirements contained in paragraphs (a) and (b) of this Rule shall not apply to quotations of OTC Equity Securities that are displayed on an inter-dealer quotation system that is:*

*(1) qualified pursuant to Section 17B of the Act; or*

*(2) operated by a member of the Association.*

*(d) Reporting Requirements*

*(1) General Requirement*

*Members shall report information required to be recorded under this Rule to the Association upon its request.*

*(2) Method of Transmitting Data*

*Members shall transmit this information in such form prescribed by the Association.*

*(e) Reporting Agent Agreements*

*(1) "Reporting Agent" shall mean a third party that enters into any agreement with a member pursuant to which such third party agrees to fulfill such member's obligations under this Rule.*

*(2) Any member may enter into an agreement with a Reporting Agent pursuant to which the Reporting Agent agrees to fulfill the obligations of such member under this Rule. Any such agreement shall be evidenced in writing, which shall specify the respective functions and responsibilities of each party to the agreement that are required to effect full compliance with the requirements of this Rule.*

*(3) All written documents evidencing an agreement described in paragraph (e)(2) shall be maintained by each party to the agreement.*

*(4) Each member remains responsible for compliance with the requirements of this Rule, notwithstanding the existence of an agreement described in this paragraph. If a member knows or has reason to believe that its Reporting Agent is not complying with the requirements of this Rule, the member must immediately withdraw its quotations or unpriced indications of interest until such time that the member is satisfied that the quotation data is being properly maintained and reported.*

* * * * *

**II. Self Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, NASD Regulation included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Regulation has prepared summaries, set forth in Sections A, B and C, below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

In September 1999, EPS, which is operated by the Pink Sheets LLC ("Pink Sheets") began displaying real-time, on-line stock quotations for approximately 5,000 securities. Some NASD members may now enter quotations in the EPS, which are displayed over the Internet at the EPS website on a real-time basis. Prior to the availability of EPS, the "pink sheets" consisted of weekly lists of quotes printed in hard copy by Pink Sheets. Pink Sheets updated these non-binding quotations by means of a daily facsimile to subscribers. Market participants could learn of changes to intra-day quotations only by telephone or similar means of communication to market makers in the security.

Because the EPS now displays quotations on a real-time basis, NASD Regulation staff requires access to this quotation data to surveil adequately for member compliance with applicable rules and regulations and, when necessary, to reconstruct market activity. For example, member activities in the EPS are subject to NASD Rule 3320, "Offers at Stated Prices," which requires that a member's quotations be "firm," *i.e.*, that the member buy or sell at least a normal unit of trading in the quoted stock at its then prevailing quotations, unless clearly designated otherwise. In addition, NASD Rule 6750 provides that every member firm that functions as a market maker in over-the-counter ("OTC") equity securities on an inter-dealer quotation system that permits quotation updates on a real-time basis must honor those quotations for the minimum size applicable to the market maker's firm bid or ask. Although complete trade execution data would be available through existing trade reporting requirements and systems, NASD Regulation staff does not otherwise have access to historical quotation activity at the time of trades.[3] Therefore, NASD Regulation is proposing that members that participate in an inter-dealer quotation system,[4] such as the EPS, that permits quotation updates on a real-time basis, be required to record and maintain their quotation data.

Under the proposed rule change, members that publish quotations on the EPS (or any similar automated quotation system) would be required to record and maintain priced quotations and unpriced indications of interest data and to report such quotation data to NASD Regulation upon its request. The proposed rule change would require members to record and report the time of the quotation displayed, the bid and bid quotation size, the offer and offer quotation size, and the prevailing inside bid and offer in the inter-dealer quotation system at the time of the quotation. The member would need to record this information for all updates in quotations or quotation size.

The proposed rule change also would require that members preserve such records in accordance with Rule 17a–4(a) under the Act.[5] Specifically, under Rule 17a–4,[6] members would be required to preserve these records for a period of not less than six years, the first two years in an accessible place.

The proposed rule change would not apply to quotations provided on an inter-dealer quotation system that is qualified pursuant to Section 17B of the Act,[7] because by definition, such a system would be sponsored and regulated by a registered securities association or national securities exchange, and quotation information would be available from the system directly. This includes, for example, the OTC Bulletin Board, which is sponsored and regulated by the NASD. In addition, the proposed rule change would not apply to an inter-dealer quotation system that is operated by a member of the NASD because the NASD would obtain quotation data (or in some cases, the display of limit orders) directly from the member that operates the system.

The proposed rule change would permit a member to use a reporting agent to provide the quotation data to NASD Regulation.[8] NASD Regulation believes that most, if not all, members would use the services of a reporting agent, which would likely be the operator of the system, such as Pink Sheets with respect to the EPS. In this regard, NASD Regulation anticipates that the system operator, as reporting agent, would provide NASD Regulation all relevant quotation data directly on a daily or ongoing basis. The member, however, would remain ultimately responsible for compliance with all requirements of the proposed rule, notwithstanding the use of a reporting agent. If a member knows or has reason to believe that it or its reporting agent is not complying with the requirements of the rule, the member would be

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] While quotation data generally is provided directly by the exchange or system on which it is displayed, in this instance, the operator of the system, Pink Sheets, is not a registered broker-dealer, a member of the NASD, or a national securities exchange.

[4] As defined in Rule 15c2–11(e) of the Act, 17 CFR 240.15c2–11(e), the term inter-dealer quotation system means any system of general circulation to brokers or dealers which regularly disseminates quotations of identified brokers or dealers.

[4] 17 CFR 200.30–3(a)(12).

[5] 17 CFR 240.17a–4(a).

[6] 17 CFR 240.17a–4.

[7] 15 U.S.C. 78q–2.

[8] Proposed Rule 6630(e) provides that a "Reporting Agent" means a third party that enters into any agreement with a member pursuant to which such third party agrees to fulfill such member's obligations under this rule.

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required immediately to withdraw its priced quotations or unpriced indications of interest until such time that the member is satisfied that the quotation data is being properly maintained and reported. In this regard, NASD Regulation would expect a member to periodically review or monitor a reporting agent's activities to ensure continued compliance.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[9] which requires, among other things, that the Association's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD Regulation believes that the proposed rule change will provide it with the quotation data necessary to surveil for and enforce applicable NASD rules and the federal securities laws.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The proposed rule change was published for comment in NASD Notice to Members 00–17 (March 2000) ("Notice"). The comment period expired on April 10, 2000. Six comment letters were received in response to the Notice.[10] Copies of the Notice and the comment letters have been provided to the Commission. Of the six comment letters received, two supported the proposal and four opposed the proposal. The majority of commenters, however, generally supported the concept that regulators should have access to the information sought by the NASD, but differed on the means of obtaining the information.

One commenter opposing the proposal stated that the proposed requirements were overly burdensome for members and recommended that the SEC require that the system operator, not the member, provide the information to the NASD. As an initial matter, NASD Regulation does not have the authority or jurisdiction to require a system operator to provide the necessary information unless the operator is an NASD member. In addition, SEC rules currently do not require the system operators to provide such information to the NASD. Further, although members are ultimately responsible for complying with the proposed rule, the proposed rule permits a member to enter into an agreement with a reporting agent pursuant to which the reporting agent agrees to fulfill the obligations of the member. In this regard, NASD Regulation expects that, in most cases, a system operator will transmit the quotation data to NASD Regulation pursuant to a reporting agent agreement with a member.

Two commenters opposing the proposal recommended, as an alternative, the negotiation of a private contract between NASD Regulation and the system operator. Again, because NASD Regulation does not have jurisdiction over the system operator, NASD Regulation cannot rely on a private contract to obtain the required quotation data, since the system operator could at any time refuse to provide the data to NASD Regulation. Where the system operator is an NASD member, the proposed rule change specifically excludes quotations on such a system from the recording and reporting requirements because NASD Regulation can obtain the quotation data directly from the system operator.

Two commenters viewed as excessively strict the requirement that members immediately withdraw their quotations in the information required by the proposed rule is not furnished to the NASD. In this regard, one commenter suggested that, as an alternative to requiring members to remove quotations entirely, the proposed rule change permit members to maintain unpriced indications of interest. NASD Regulation, however, believes that if quotation information, including unpriced indications of interest, is not properly recorded, NASD Regulation will be unable to ensure that members are in compliance with applicable rules. Therefore, the proposed rule requires members to immediately withdraw their quotations or unpriced indications of interest until such time as the member has obtained assurances that the quotation information is being properly recorded.

In addition, one commenter stated that it is overly burdensome to place on a member firm the responsibility of determining whether its reporting agent is complying with the requirements of the rule. Instead, the commenter suggests that NASD Regulation notify the member in writing that the reporting agent is not complying. However, NASD Regulation believes that the responsibility should lie with the member to determine that, if it chooses to use a reporting agent, the reporting agent is reporting properly on the member's behalf.

Finally, one commenter stated that the proposed rule change lacks objective standards for the form or means of delivery of the data to NASD Regulation. NASD Regulation has specified in the proposed rule change what quotation data and related information must be recorded and reported, and will prescribe the form in which this data will be required to be transmitted to NASD Regulation in a Notice to Members.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–00–42 and should be submitted by October 26, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–25596 Filed 10–4–00; 8:45 am]

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[9] 15 U.S.C. 78o(b)(6).

[10] Comment letters were received from Thomas Murphy, Bishop, Rosen & Co. ("Bishop Rosen"); Elena Fusillo, Clark Dodge and Company ("Clark Dodge"); Trish Stone-Damen, IRM Distributors, Inc. ("IRM Distributors"); Michael Dorsey, Knight Securities, L.P. ("Knight Securities"); Cromwell Coulson, Pink Sheets ("NQB"); and Cindy Witt, US Bancorp Piper Jaffray ("Piper Jaffray").

[11] 17 CFR 200.30–3(a)(12).



## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43369; File No. SR–PCX–00–23]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment Nos. 1 and 2 by the Pacific Exchange, Inc. Relating to the Conversion to Decimal Pricing

September 27, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 8, 2000, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission.[5] The Exchange filed amendments to the proposed rule change on August 25, 2000 and September 22, 2000, respectively.[6] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend certain PCX rules to implement the securities industry's Decimals Implementation Plan submitted to the Commission on July 24, 2000. The text of the proposed rule change is available at the PCX and at the Commission.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the PCX included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in section A, B and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

On June 8, 2000, the Commission issued an order ("Order")[7] requiring the national securities exchanges and the National Association of Securities Dealers, Inc. ("Participants") to act jointly in planning, discussing, developing, and submitting to the Commission a plan that will begin phasing in the implementation of decimal pricing in equity securities and options on or before September 5, 2000 ("Plan"). The Commission directed the Participants to submit the Plan to the Commission by July 24, 2000, and further directed each Participant to file the rule changes necessary to implement the phase-in plan. In compliance with the Order, the Exchange submitted the proposed rule change to implement the Plan.

Equity Trading Rules. The Exchange proposes to amend PCX Rule 7.10(b) to establish a $.01 minimum price variation ("MPV") for equity securities pricing in decimals, as required by the Plan,[7] and to amend Commentary .01 to Rule 7.10 to clarify that the Exchange is prohibited from changing the MPV for securities pricing in decimals while Plan is in effect.[8] The Exchange is also proposing to amend Rule 7.19(c)(1) to provide that a bid or offer will have price priority over another bid or offer only if its price exceeds the price of the other bid or offer by the MPV. The Exchange is proposing to add commentary .06 to PCX Rule 7.41(b) to clarify that for the purposes of the rule, the term "closest trading differential" means the MPV. In addition, the Exchange is proposing to add Commentary .01 to PCX Rule 7.29(a) to clarify that for purposes of the rule, the term "price improvement" means an improvement in price by at least the MPV. The Exchange is also proposing to amend Rule 7.66 to conform the rule to recent amendments to the ITS Plan. Finally, the remaining proposed changes add a decimal reference to Rule 7.12(b), Commentary .05, Rule 7.66(b)(8)(i)(A)(1), and Rule 7.79(e) to supplement the existing fractional references.

Options Trading Rules

PCX Rule 6.37(b)(1) currently specifies the maximum bid/ask spread differentials that an options market maker is permitted to create in the course of maintaining a fair and orderly market.[9] The Exchange is proposing to amend this rule to provide the bid/ask spread differentials in decimals. In addition, the Exchange is proposing to amend PCX Rule 6.37(b)(3) and Commentary .10, Rule 6.75, Commentaries .02–.03, Rule 6.80, Commentary .01, Rule 8.102(f), and Rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] The Commission agreed to waive the 5-day pre-filing notice requirement. The Commission also finds good cause to waive the 30-day pre-operative waiting period. *See* Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

[6] *See* Letter dated August 24, 2000, from Hassan Abedi, Attorney, Regulatory Policy, PCX, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission ("Amendment No. 1"). Amendment No. 1 clarifies that the Exchange is prohibited from changing the minimum price variation for securities pricing in decimals while the Decimals Implementation Plan submitted to the Commission on July 24, 2000 is in effect. Amendment No. 1 also withdraws proposed amendments to PCX Rule 7.40, governing short sales, and clarifies that the minimum price variation for SPDRs and MidCap SPDRs trading in decimals will be $.01. In addition, Amendment No. 1 makes certain technical corrections to the proposed rule change. *See also* Letter dated September 21, 2000, from Hassan Abedi, Attorney, Regulatory Policy, PCX, to Nancy Sanow, Assistant Director, Division, Commission ("Amendment No. 2"). Amendment No. 2 conforms PCX Rule 7.66 to a recent proposed amendment to the Intermarket Trading System Plan ("ITS Plan") relating to decimal pricing.

[7] *See* Securities Exchange Act Release No. 42914 (June 8, 2000), 65 FR 38010 (June 19, 2000).

[7] The Plan provides for MPVs for equities and options of no less than one cent. The Order requires the Participants to submit joint or individual studies two months after Full Implementation (as defined in the Plan) regarding the impact of decimal pricing on systems capacity, liquidity, and trading behavior, including an analysis of whether there should be a uniform minimum quoting increment. If a Participant wishes to move to quoting in an increment of less than one cent, the Participant should include in its study a full analysis of the potential impact of such trading on the Participant's market and the markets as a whole. Within thirty days after submitting the study, and absent Commission action, the Participants individually must submit for notice, comment, and Commission action, proposed rule changes under Section 19(b) of the Exchange Act to establish their individual choice of minimum increments by which equities or options are quoted on their respective markets.

[8] *See* Amendment No. 1, *supra* n.6.

[9] For example, if a market maker's bid price is between $2 and $5, the maximum difference between that bid price and the corresponding offering price will be 3/8 of $1 (*i.e.*, $.40).

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6.64, Commentary .03(c)–(d) to replace fractional references with decimal references. The Exchange is also proposing to amend PCX Rule 6.47(a)(2) and (b)(2), governing non-facilitation crosses, to require floor brokers to bid above the highest bid or below the lowest offer by at least the MPV before crossing orders.

Finally, the PCX proposes to adopt new Rule 6.72 to explicitly state and give effect to the minimum price increments for options mandated by the Plan. Thus, to the extent an option class is pricing in decimals, the MPVs would be as follows: For options quoting under $3 a contract, the MPV would be $.05; and for options quoted at $3 a contract or greater, the MPV would be $.10.[10] This rule would replace current Rule 6.72, which requires bids and offers above $3 to be expressed in eighths of the one dollar and bids and offers below $3 to be expressed in sixteenths of one dollar.

2. Statutory Basis

The PCX believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[11] In particular, the PCX believes that the proposed rule change is consistent with Section 6(b)(5)[12] in that it is designed to promote just and equitable principles of trade, to remove impediments to and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The PCX does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

[10] The Plan contemplates that the options exchanges may wish to consider a pilot program for one-cent minimum price variations for quoting in a limited number of options ("Penny Pilot") at some point in the implementation process. The Commission expects that, before implementing a Penny Pilot, the options exchanges will carefully coordinate on such issues as the selection and number of options to be included in the pilot to ensure the continued orderly operation of the markets and clearing organizations. In particular, the Commission expects that the options exchanges will consult with the Commission regarding the impact on market-wide capacity. Before implementing a Penny Pilot, each options exchange should also submit appropriate rule filings to the Commission under Section 19(b) of the Exchange Act.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange did not solicit or receive written comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate,[13] it has become effective pursuant to Section 19(b)(3)(A) of the Act[14] and Rule 19b–4(f)(6)[15] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The PCX has requested that the Commission accelerate the operative date. The Commission believes that it is consistent with the protection of investors and the public interest and therefore finds good cause to designate the proposal to become immediately operative upon filing. Acceleration of the operative date will ensure that the PCX is able to operate in accordance with the terms and conditions of the Plan. For these reasons, the Commission finds good cause to designate that the proposal, as amended, become operative immediately upon filing.[16]

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of PCX. All submissions should refer to the File No. SR–PCX–00–23 and should be submitted by October 26, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–25592 Filed 10–4–00; 8:45 am]

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[13] The Exchange requested the Commission to waive 5 day pre-filing notice requirement and the 30-day operative period.

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19–4(f)(6).

[16] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43384; File No. SR–PCX–00–31]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to PACEX Reports for Options Order Flow Providers

September 29, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 18, 2000, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the PCX. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The PCX proposes to begin furnishing Pacific Exchange Customer Execution ("PACEX") Reports to its order flow providers on a daily basis. PACEX Reports are designed to provide objective data on option order executions so that PCX order flow providers can assess the quality of the executions they receive on the PCX. The text of the proposed rule change is available at the principal offices of the PCX.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.



**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of the statments.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The Exchange is adopting a new procedure to provide PCX order flow providers with objective data so that they can assess the quality of the executions they receive on their option orders at the PCX.[3] This rule filing is intended to provide a description of the data to be furnished and to provide a general summary of the PCX's electronic systems involved in transmitting and executing option orders.

1. Pacific Exchange Customer Execution Reports

The PCX intends to begin furnishing PACEX Reports to its order flow providers on a daily basis. The PACEX Reports will provide objective data on the quality of execution that order flow providers receive at the PCX. Specifically, the Reports will include statistical information on:

- Price Improvement—this shows the number of trades and option contracts receiving improved pricing on the PCX; and
- Turnaround Time—this shows the time it took to execute a given customer's order on the PCX.

PACEX Reports provide data on all option orders routed to the PCX electronically that remain in an electronic environment. This includes all orders sent through the member firm interface and executed automatically via an automatic execution system ("Auto-Ex"), as well as all option orders routed to a floor broker hand-held terminal, executed by open outcry, and reported electronically.

The Exchange will provide PACEX Reports to order flow providers on a daily basis, whether electronically or in "hard" copy. Upon request, the Exchange will also send the raw data from the Reports to order flow providers so that they may analyze the data in a manner that suits their own requirements.

*a. Price Improvement Statistics.* PACEX Reports show the dollar amount by which order flow providers improved upon the PCX's prevailing best bid or offer ("BBO") in executing their orders at the PCX. Specifically, PACEX Reports provide data on price improvement for each of the following four classifications: (1) Orders executed via Auto-Ex; (2) orders executed by a hand-held terminal; (3) market orders; and (4) marketable limit orders. Within each of these four categories, the PACEX Reports show the percentage of trades that were executed at prices: (1) where the PCX improved the national best bid or offer ("NBBO"); (2) where the PCX set the NBBO; (3) where the PCX matched the NBBO; (4) where the NBBO was set by another market; and (5) where the PCX was the BBO. With regard to category (5), where the PCX was the BBO, the Reports show the amount by which an execution via a hand-held terminal was less favorable than the then-prevailing NBBO. The Reports do not cover orders that were executed during the opening rotation—whether by automated opening rotation or manually—or during a "fast market," as described in PCX Rule 6.28.

PACEX Reports also provide summary information with respect to: (1) Orders executed via Auto-Ex; (2) orders executed by a hand-held terminal; (3) market orders; and (4) marketable limit orders. The Report shows, for each classification, the aggregate dollar amount that the customer saved per contract, the average trade size (in numbers of option contracts), and the average turnaround time during a specific time period.

*b. Details on Turnaround Time.* Turnaround time shows how quickly orders were executed on the PCX. The Report provides data on turnaround time for each of the following four classifications: (1) Orders executed via Auto-Ex; (2) orders received and reported by a hand-held terminal; (3) market orders; and (4) marketable limit orders. PACEX shows within each of these four categories the percentage of trades that were executed within: (a) 0 to 1 seconds; (b) 1 to 5 seconds; (c) 5 to 15 seconds; (d) 15 to 60 seconds; (e) 1 minute to 3 minutes; (f) 3 to 10 minutes; (g) 10 to 15 minutes; and (h) 15 to 30 minutes.

For each of these eight time frames, PACEX Reports also show the percentage of trades that were executed during the regular session and the percentage of trades that were executed during the opening session, *i.e.*, during the opening rotation, which may include executions during the Automated Opening Rotation or during a manual opening rotation.

2. PCX Electronic Trading System

*a. POETS.* The Pacific Options Exchange Trading System ("POETS") is the PCX's automated options trading system, which includes an options routing system, an automatic execution system ("Auto-Ex"), an on-line limit order book system, and an automatic market quote update system. Option orders may be sent to POETS via the Exchange's Member Firm Interface ("MFI"). Market and marketable limit orders that are sent through the MFI first check the limit order book for an eligible contra side.[4] Any unfilled portion of an inbound order will be executed by Auto-Ex, subject to the maximum Auto-Ex size parameters. Non-marketable limit orders may be directed to the limit order book either electronically or manually, subject to established order type and maximum size parameters. Prior to the opening, market orders may be directed to the limit order book so that they may participate in the Automated Opening Rotation. Orders in the limit order book executed in strict price/time priority sequence.

*b. Auto-Ex.* Market and marketable limit orders sent through the MFI will be executed by Auto-Ex if they meet the order type and size requirements designated by the Exchange. Orders executed on Auto-Ex receive the PCX's disseminated market price or better. Pursuant to PCX Rule 6.87, Lead Market Makers ("LMMs") may set Auto-Ex to provide automatic price improvement when the national best bid or offer ("NBBO") is better than the PCX's BBO by one trading increment. In addition, LMMs may set Auto-Ex to execute inbound orders at the NBBO price regardless of whether it is only one trading increment better than the PCX's

[3] The PCX recently adopted a new fee on market makers' transactions in designated equity option issues. The funds are made available to Lead Market Makers, who may use the funds to pay order flow providers for their options order flow. In publishing the PCX's proposed rule change, the Commission stated its concerns that brokers who are paid to send their customers' orders to one exchange have a conflict of interest that may reduce their commitment to the duty they owe the customers to obtain the best execution available. *See* Securities Exchange Act Release No. 43290 (Sept. 13, 2000), 65 FR 57213 (Sept. 21, 2000).

[4] The Exchange notes that this procedure has been in effect since the inception of POETS in 1989.

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BBO, *i.e.*, orders may be executed at prices that may be multiple trading increments better than the PCX's then-prevailing BBO. Furthermore, LMMs may execute improved prices regardless of whether the NBBO is locked or crossed. Auto-Ex prevents inbound orders from being executed at prices inferior to the NBBO. Pursuant to PCX Rule 6.87, only non-broker-dealer customer orders are eligible to be executed by Auto-Ex. The PCX designates the eligible order size, which may be between 20 and 50 option contracts, on an issue-by-issue basis.

*c. Hand-Held Terminals.* Member firms may electronically route orders to the PCX via the floor broker hand-held terminal system pursuant to PCX Rule 6.88. The system allows member firms to route their orders directly to POETS, to a member firm booth on the trading floor, or to a floor broker who is operating a hand-held terminal located in a trading crowd (or elsewhere) on the options floor. Accordingly, orders sent through MFI may be transmitted to a floor broker almost instantaneously for immediate representation in the trading crowd. In the event that option prices have changed to make an order immediately executable, the floor broker can submit the order to POETS for automatic execution (subject to the Exchange's order size requirements). The Exchange notes that the Report uses an extreme measurement standard—the NBBO at the time an order reaches the Exchange. Consequently, the Exchange believes that the reporting process may be subject to some positive or negative price movement. This will occur, for example, if there are changes in the price of the underlying security or there are other orders reaching the trading crowd between the time the original order reaches the trading floor and the time it is executed.

*d. AOR.* Option orders executed at the opening of trading are eligible for execution via the Exchange's Automated Opening Rotation ("AOR"). The AOR permits the Exchange to establish electronically, for eligible option series, a single price opening for executing eligible market and marketable limit orders in the POETS system. Under AOR, various series in an option issue may be opened simultaneously, so that orders in POETS in that issue are executed within seconds. Once the market in an underlying stock has opened, the PCX can open the market in the overlying option almost simultaneously. AOR also allows automated openings when trading in an issue has been halted and then reopened.

The PCX represents that the PACEX Reporting program is designed to provide member firms with greater assurance that they have acted in a manner consistent with the fulfillment of their duty of best execution when they direct orders to the PCX. Accordingly, the Exchange believes that the proposed rule change is consistent with and in furtherance of the objectives of the Act, including specifically Section 6(b)(5) thereof,[5] which requires that the rules of exchanges promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the PCX has designated this proposed rule change as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of existing Exchange rules and procedures, it has become effective pursuant to Section 19(b)(3)(A)(i) of the Act[6] and Rule 19b–4(f)(1) thereunder.[7] At any time within 60 days of the filing of this proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written Communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–00–31 and should be submitted by October 26, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–25597 Filed 10–4–00; 8:45 am]

BILLING CODE 8010–01–M

[5] 15 U.S.C. 78f(b)(5).
[6] 15 U.S.C. 78s(b)(3)(A)(i).
[7] 17 CFR 240.19b–4(f)(1).
[8] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43376; File No. SR–Phlx–00–79]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Prohibition on the Entry of Certain Electronically Generated Orders into the Exchange's AUTOM System

September 28, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 15, 2000, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comment on the proposed rule change.

[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240.19b–4.



**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Phlx proposes to amend Exchange Rule 1080, Philadelphia Stock Exchange Automated Options Market ("AUTOM") and Automatic Execution System ("AUTO–X"), by adopting paragraph (i), which would restrict the entry of certain options orders that are created and communicated electronically, without manual input, into the Exchange's AUTOM system. The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at the Commission.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Phlx proposes to adopt new section (i) to its Rule 1080, governing the entry of certain options orders that are created and communicated electronically, without manual input, into AUTOM.[3] Proposed Phlx Rule 1080(i) would provide that members may not enter nor permit or facilitate the entry of orders into AUTOM if those orders are created and communicated electronically without manual input and if such orders are eligible for execution via AUTO–X[4] at the time they are received. To be permitted under the Rule, order entry by public customers or associated persons of members must involve manual input, such as entering the terms of an order into an order-entry screen or manually selecting a displayed order against which an off-setting order should be sent. The proposed rule states that members are not prohibited from electronically communicating to the Exchange orders manually entered by customers into front-end communications systems, such as Internet gateways and online networks.

The proposed rule clarifies that an order is eligible for execution via AUTO–X if: (1) Its size is equal to or less than the maximum AUTO–X order size for the particular series; (2) the order is marketable at the time it is received; and (3) the order either has no contingency or has a contingency that is accepted for execution by the AUTOM system. As defined in the proposed rule, a marketable order is a market order or a limit order where the specified price to sell is below or at the current bid, or the specified price to buy is above or at the current offer.

The Exchange believes that the proposed rule change will permit specialists and Registered Options Traders ("ROTs") to compete more effectively with customers who are equipped with electronic systems. The Phlx represents that its business model depends on specialists and ROTs to maintain fair and orderly markets and depends on specialists and market makers for competition and liquidity. Public customer orders on the Phlx are provided with certain benefits pursuant to various rules of the Exchange, including Phlx Rule 1080 (Philadelphia Stock Exchange Automated Options Market (AUTOM) and Automatic Execution System (AUTO–X), Phlx Rule 1014 (Obligations and Restrictions Applicable to Specialists and Registered Options Traders), Phlx Rule 1015 (Quotation Guarantees), and Options Floor Procedure Advice A–11 (Responsibility to Make Ten-Up Markets). Allowing electronically generated and communicated customer orders to be routed directly to AUTOM and AUTO–X would give customers with such electronic systems a significant advantage over specialists and ROTs. The Exchange believes that this could undercut its business model, which is dependent on specialists and ROTs for competition and liquidity. The Phlx notes that under the proposed rule change, computer generated orders can still be sent for execution on the Exchange; however, they may not be sent for execution through AUTOM and AUTO–X.

Currently, Phlx member firms and customers who are not located on the trading floor may send option orders to the trading floor in various ways. First, a member firm representative or a customer may telephone an order to a Floor Broker member firm booth on the trading floor. From that point the order may be taken manually to the proper specialist post and trading crowd and represented; alternatively, it may be sent electronically from the Floor Broker booth via the Exchange's Floor Broker Order Entry System. A member firm may also send an order to the Exchange through its interface with AUTOM. Eligible orders sent through AUTOM may be: (1) Placed on the limit order book; (2) automatically executed via AUTO–X; or (3) executed manually by the specialist and the trading crowd.

Under the proposed rule change, electronically generated and communicated orders that are eligible for execution via AUTO–X at the time they are received would be ineligible for routing through AUTOM. These orders could, however, be sent to the trading floor for execution as otherwise described above, *i.e.*, by telephone or through a member firm's proprietary order routing system.

2. Statutory Basis

The Phlx believes that the restriction of the entry of certain options orders that are created and communicated electronically, without manual input, into AUTOM will ensure that Exchange specialists maintain fair and orderly markets and will enable them to continue to provide competition and liquidity in the options markets. The Phlx therefore represents that the proposed rule change is consistent with Section 6(b) of the Act[5] in general and furthers the objectives of Section 6(b)(5)[6] in particular in that it is designed to perfect the mechanisms of a free and open market and a national market system and to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has neither solicited nor received comments on the proposed rule change.

[3] AUTOM is the Exchange's electronic order delivery and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange trading floor. Orders delivered through AUTOM may be executed manually, or certain orders are eligible for AUTOM's automatic execution feature, AUTO–X. Equity option and index option specialists are required by the Exchange to participete in AUTOM and its features and enhancements. Option orders entered by Exchange members into AUTOM are routed to the appropriate specialist unit on the Exchange trading floor.

[4] AUTO–X is the automatic execution feature of the AUTOM system.

[5] 15 U.S.C. 78f(b).
[6] 15 U.S.C. 78f(b)(5).

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**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6)[8] thereunder because the proposal: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative prior to 30 days after the date of filing or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. In addition, the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing the proposed rule change as required by Rule 19b–4(f)(6).[9]

A proposed rule change filed under Rule 19b–4(f)(6)[10] normally does not become operative prior to 30 days after the date of filing. Rule 19b–4(f)(6)(iii),[11] however, permits the Commission to designate such shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission designate such shorter time period so that the proposed rule change may become operative immediately upon filing. The immediate effectiveness would allow the Exchange to promptly implement the rule change concurrently with new Chicago Board Options Exchange to promptly implement the rule change concurrently with new Chicago Board Options Exchange, Inc. ("CBOE") Rule 6.8A. CBOE Rule 6.8A restricts the entry of certain options orders that are created and communicated electronically, without manual input, into the CBOE's Order Routing System.[12]

The Commission, consistent with the protection of investors and the public interest, has determined to make the proposed rule change operative immediately upon filing for the following reasons. Specifically, the Commission previously approved similar proposals by two other exchanges.[13] The Commission notes that the proposed rule change concerns issues that have previously been the subject of a full comment period pursuant to Section 19(b) of the Act,[14] and the Commission does not believe that the proposed rule change raises any new regulatory issues.

Based on the above reasons, the Commission believes it is consistent with the protection of investors and the public interest that the proposed rule change become operative immediately upon the date of filing, September 15, 2000. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.[15]

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Phlx–00–79 and should be submitted by October 26, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–25593 Filed 10–4–00; 8:45 am]

BILLING CODE 8010–01–M

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

[9] *Id.*

[10] *Id.*

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] See Securities Exchange Act Release No. 43285 (September 12, 2000), 65 FR 56972 (September 20, 2000) (order approving CBOE Rule 6.8A, File No. SR–CBOE–00–01).

[13] See Securities Exchange Act Release No. 43285 (September 12, 2000), 65 FR 56972 (September 20, 2000) (order approving CBOE Rule 6.8A, File No. SR–CBOE–00–01) and Securities Exchange Act Release No. 42455 (February 24, 2000), 65 FR 11401 (March 2, 2000) (order approving International Stock Exchange LLC Rule 717(f)).

[14] 15 U.S.C. 78s(b).

[15] For purposes only of accelerating the operative date of this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

## DEPARTMENT OF STATE

**[Public Notice 3427]**

### Bureau of Educational and Cultural Affairs; Fulbright American Studies Institutes for Foreign University Faculty

**NOTICE:** Request for Proposals (RFP).

**SUMMARY:** The Study of the U.S. Branch, Office of Academic Exchange Programs, Bureau of Educational and Cultural Affairs, announces an open competition for four (4) assistance awards. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(C) may apply to develop and implement one of the following four post-graduate level American Studies programs designed for multinational groups of 18 to 30 experienced foreign university faculty and educators:

1. The Civilization of the United States—An Introduction
2. U.S. Foreign Policy: Foundations and Formulation
3. The U.S. Constitution: Origins, Evolution and Contemporary Issues
4. American Studies for Foreign Secondary School Educators

These programs are intended to provide participants with a deeper understanding of American life and institutions, past and present, in order to strengthen curricula and to improve the quality of teaching about the United States at universities abroad.

Programs are six weeks in length and will be conducted during the Summer of 2001.

The Bureau is seeking detailed proposals from colleges, universities, consortia of colleges and universities, and other not-for-profit academic organizations that have an established reputation in one or more of the following fields: political science, international relations, law, history, sociology, literature, American studies, and/or other disciplines or sub-disciplines related to the program theme.

Applicant institutions must demonstrate expertise in conducting post-graduate programs for foreign educators, and must have a minimum of four years experience in conducting international exchange programs.



Bureau guidelines stipulate that grants to organizations with less than four years experience in conducting international exchanges are limited to $60,000. As it is expected that the budget for these programs will exceed $60,000, organizations that can not demonstrate at least four years experience will not be eligible to apply under this competition.

The project director or one of the key program staff responsible for the academic program must have an advanced degree in one of the fields listed above. Staff escorts traveling under the cooperative agreement must have demonstrated qualifications for this service. Programs must conform with Bureau requirements and guidelines outlined in the Solicitation Package. Bureau programs are subject to the availability of funds.

**Program Information**

*Overview and Objectives:* The "Fulbright American Studies Institutes" are intended to offer foreign scholars and teachers whose professional work focuses on the United States the opportunity to deepen their understanding of American institutions and culture. Their ultimate goal is to strengthen curricula and to improve the quality of teaching about the U.S. in universities abroad.

Programs should be six weeks in length and must include an academic residency segment of at least four weeks duration at a U.S. college or university campus (or other appropriate location). A study tour segment of not more than two weeks should also be planned and should directly complement the academic residency segment; the study tour should include visits to one or two additional regions of the United States.

All institutes should be designed as intensive, academically rigorous seminars intended for an experienced group of fellow scholars from outside the United States. The institutes should be organized through an integrated series of lectures, readings, seminar discussions, regional travel, site visits, and they should also include some opportunity for limited but well-directed independent research.

Applicants are encouraged to design thematically coherent programs in ways that draw upon the particular strengths, faculty and resources of their institutions as well as upon the nationally recognized expertise of scholars and other experts throughout the United States. Within the limits of the program's thematic focus and organizing framework, proposals should also be designed to:

A. Provide participants with a survey of contemporary scholarship within the institute's governing academic discipline, delineating the current scholarly debate within the field. In this regard, the seminar should indicate how prevailing academic practice in the discipline represents both a continuation of and a departure from past scholarly trends and practices. A variety of scholarly viewpoints should be included;

B. Bring an interdisciplinary or multi-disciplinary focus to bear on the program content when appropriate;

C. Give participants a multi-dimensional view of U.S. society and institutions that includes a broad and balanced range of perspectives. Programs should include the views not only of scholars, cultural critics and public intellectuals, but also those of other professionals outside the university such as government officials, journalists and others who can substantively contribute to the topics at issue; and,

D. Insure access to library and material resources that will enable grantees to continue their research, study and curriculum development upon returning to their home institutions.

**Program Description**

*1. The Civilization of the United States—An Introduction*

This institute is intended for foreign university faculty who are attempting to develop and introduce courses on the United States at their home institutions. Its main purpose is therefore to introduce grantees to the major disciplines that either singly or in combination are likely to constitute an American studies curriculum in a foreign university. Accordingly, the Institute should be designed as a foreign area studies program on the United States. During the four-week residency segment, the program should offer participants a highly selective yet integrated introduction to the major themes—historical, political, literary and cultural—that scholars abroad would want to present to their students in a comprehensive course on U.S. civilization. A variety of teaching methodologies and media should be employed. During the study tour, the group will be expected to visit and consult with faculty from universities with recognized foreign area studies programs in order to explore various models of foreign area studies scholarship and teaching in the United States.

*2. U.S. Foreign Policy: Foundations and Formulation*

This Institute should examine the domestic institutional foundations—political, social, economic and cultural—of U.S. foreign policy with particular attention to the Post-Cold War era. Principal themes, critical policy debates, and contemporary issues in U.S. foreign policy should be examined in light of the history of U.S. international relations since World War II and within the larger framework of U.S. diplomatic history as a whole. An overarching goal of the program is to illuminate the relationships between U.S. policies and the political, social and economic forces in the United States that make up the domestic institutional context in which such policies are debated, formulated and executed. The program should be structured to give attention to U.S. policy both globally and in particular geographic areas.

*3. The U.S. Constitution: Origins, Evolution, and Contemporary Issues*

This institute should examine the U.S. Constitution in terms of its origins, its historical evolution and its significance in contemporary American life. The program should explore the Constitution's foundations, examine its fundamental political principles (*e.g.* federalism, republicanism, checks and balances, separation of powers), trace its political evolution over time, and explore current Constitutional issues in the United States in both their present and historical context. Throughout the program, consideration should be given to how the Constitution has served as a defining text through which the central values and institutions of American society have been defined and redefined throughout American history.

*4. American Studies for Foreign Secondary School Educators*

This Fulbright American Studies Institute should provide a multinational group of up to 30 experienced foreign secondary school educators with a deeper understanding of U.S. society, culture, values and institutions, past and present. The institute should be organized around a central theme or themes in U.S. civilization and should have a strong contemporary component. Through a combination of traditional, multi-disciplinary and interdisciplinary approaches, the strongest proposals will be imaginatively integrated in such a way that the history and evolution of U.S. institutions will illuminate the contemporary political, social, and economic debates in U.S. society, thus

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providing insights into the nature of U.S. values, broadly defined. The program's ultimate goal is to promote the development and improvement of courses and teaching about the U.S. at secondary schools and teacher training institutions abroad.

*Program Dates:* Ideally, the programs should be 44 days in length (including participant arrival and departure days), and should begin in mid to late June, 2001. However, the Bureau is willing to consider other program dates, based on the needs of the host institution.

*Participants:* As specified in the guidelines in the solicitation package, programs should be designed for groups of either 18 or 30 highly-motivated and experienced foreign university faculty and teacher trainers who are interested in participating in an intensive seminar on aspects of U.S. civilization as a means to develop or improve courses and teaching about the United States at their home institutions. Most participants can be expected to come from educational institutions where the study of the U.S. is relatively well-developed. Thus, while they may not have in-depth knowledge of the particular institute program theme, most will have had some experience in teaching about the United States. Many will have had sustained professional contact with American scholars and American scholarship, and some may have had substantial prior experience studying in the U.S. Participants will be drawn from all regions of the world and will be fluent in English.

Participants will be nominated by Fulbright Commissions and by U.S. Embassies abroad. Nominations will be reviewed by the Study of the U.S. Branch. Final selection of grantees will be made by the Fulbright Scholarship Board.

*Program Guidelines:* While the conception and structure of the institute program is the responsibility of the organizers, it is critically important that proposals provide a full, detailed and comprehensive narrative describing the objectives of the institute; the title, scope and content of each session; and, how each session relates to the overall institute theme. The syllabus must therefore indicate the subject matter for each lecture or panel discussion, confirm or provisionally identify proposed lecturers and discussants, and clearly show how assigned readings will support each session. A calendar of all activities for the program must also be included. Overall, proposals will be reviewed on the basis of their fullness, coherence, clarity, and attention to detail.

Programs must comply with J–1 visa regulations. Please refer to the Solicitation Package for further details on program design and implementation, as well as additional information on all other requirements.

*Budget Guidelines:* Based on groups of 18 participants, the total Bureau-funded budget (program and administrative) for programs one, two and three above should be approximately $176,000, and Bureau-funded administrative costs as defined in the budget details section of the solicitation package should not exceed $53,000. Based on a group of 30 participants, the total Bureau-funded budget (program and administrative) for program four above should be approximately $245,000, and Bureau-funded administrative costs as defined in the budget details section of the solicitation package should not exceed $56,000. Justifications for any costs above these amounts must be clearly indicated in the proposal submission. Proposals should try to maximize cost-sharing in all facets of the program and to stimulate U.S. private sector, including foundation and corporate, support. Applicants must submit a comprehensive budget for the entire program. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program, and availability of U.S. government funding.

Please refer to the "POGI" in the Solicitation Package for complete institute budget guidelines and formatting instructions.

*Announcement Name and Number:* All communications with the Bureau concerning this announcement should refer to the following titles and reference numbers:

1. The Civilization of the United States—An Introduction (ECA/A/E/USS–01–01–Dardeli)
2. U.S. Foreign Policy: Foundations and Formulation (ECA/A/E/USS–01–02–Taylor)
3. The U.S. Constitution: Origins, Evolution, and Contemporary Issues (ECA/A/E/USS–01–03–Bate)
4. American Studies for Foreign Secondary School Educators (ECA/A/E/USS–01–04–Emerson)

*For Further Information:* To request a Solicitation Package containing more detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation, applicants should contact:

U.S. Department of State, Bureau of Educational and Cultural Affairs, Office of Academic Exchange Programs, Study of the U.S. Branch, State Annex 44, ECA/A/E/USS—Room 252, 301 4th Street, S.W., Washington, D.C. 20547, Attention: Richard Taylor; Telephone number: (202) 619–4557; Fax number: (202) 619–6790; Internet address: rtaylor@pd.state.gov.

Please specify Senior Program Officer Richard Taylor on all inquiries and correspondence. Interested applicants should read the complete **Federal Register** announcement before addressing inquiries to the office listed above or submitting their proposals. Once the RFP deadline has passed, Bureau staff may not discuss this competition in any way with applicants until after the proposal review process has been completed.

*To Download a Solicitation Package Via Internet:*

The entire Solicitation Package may be downloaded from the Bureau's website at http://exchanges.state.gov/education/rfps/. Please read all information before downloading.

*Deadline for Proposals:* All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5:00 p.m. Washington D.C. time on Wednesday, January 10, 2001. Faxed documents will NOT be accepted, nor will documents postmarked January 10, 2001 but received at a later date. It is the responsibility of each applicant to ensure that proposal submissions arrive by the deadline.

*Submissions:* Applicants must follow all instructions in the Solicitation Package. The original and 13 copies of the complete application should be sent to:

U.S. Department of State, Bureau of Educational and Cultural Affairs, Reference: (insert appropriate reference number from above, *e.g.* ECA/A/E/USS–00–xx–xxxxxx), Program Management Staff, ECA/EX/PM, Room 336, State Annex 44, 301 4th Street, S.W., Washington, D.C. 20547.

Applicants should also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal on a 3.5" diskette, formatted for DOS. This material must be provided in ASCII text (DOS) format with a maximum line length of 65 characters.

**Diversity, Freedom and Democracy Guidelines**

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the "Support for Diversity" section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of this goal in their program contents, to the full extent deemed feasible.

*Review Process:* The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office. Eligible proposals will then be forwarded to panels of senior Bureau officers for advisory review. Proposals may also be reviewed by the Office of the Legal Advisor or by other Bureau elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the Bureau's Grants Officer.

*Review Criteria:* Technically eligible applications will be competitively reviewed according to the criteria stated below. Particular weight will be given to items one and two, and all remaining criteria will be evaluated equally.

1. *Overall Quality:* Proposals should exhibit originality and substance, consonant with the highest standards of American teaching and scholarship. Program design should reflect the main currents as well as the debates within the subject discipline of each institute. Program elements should be coherently and thoughtfully integrated. Lectures, panels, field visits and readings, taken as a whole, should offer a balanced presentation of issues, reflecting both the continuity of the American experience as well as the diversity and dynamism inherent in it.

2. *Program Planning and Administration:* Proposals should demonstrate careful planning. The organization and structure of the institute should be clearly delineated and be fully responsive to all program objectives. A program syllabus (noting specific sessions and topical readings supporting each academic unit) should be included, as should a calendar of activities. The travel component should not simply be a tour, but should be an integral and substantive part of the program, reinforcing and complementing the academic segment. Proposals should provide evidence of continuous administrative and managerial capacity as well as the means by which program activities and logistical matters will be implemented.

3. *Institutional Capacity:* Proposed personnel, including faculty and administrative staff as well as outside presenters, should be fully qualified to achieve the project's goals. Library and meeting facilities, housing, meals, transportation and other logistical arrangements should fully meet the needs of the participants.

4. *Support for Diversity:* Substantive support of the bureau's policy on diversity should be demonstrated. This can be accomplished through documentation, such as a written statement, summarizing past and/or on-going activities and efforts that further the principle of diversity within the organization and its activities. Program activities that address this issue should be highlighted.

5. *Experience:* Proposals should demonstrate an institutional record of successful exchange program activity, indicating the experience that the organization and its professional staff have had in working with foreign educators.

6. *Evaluation and Follow-up:* A plan for evaluating activities during the Institute and at its conclusion should be included. Proposals should discuss provisions made for follow-up with returned grantees as a means of establishing longer-term individual and institutional linkages.

7. *Cost Effectiveness:* Proposals should maximize cost-sharing through direct institutional contributions, in-kind support, and other private sector support. Overhead and administrative components, including salaries and honoraria, should be kept as low as possible.

**Authority:** Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world."

*Notice:* The terms and conditions published in this RFP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of this RFP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

*Notification:* Final awards cannot be made until funds have been appropriated by Congress, and allocated and committed through internal Bureau procedures.

Dated: September 27, 2000.

**Helena Kane Finn,**

*Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.*

[FR Doc. 00–25372 Filed 10–4–00; 8:45 am]

BILLING CODE 4710–11–P



## DEPARTMENT OF STATE

**[Public Notice 3429]**

### Bureau of Educational and Cultural Affairs Request for Proposals: Future Leaders Exchange (FLEX) Disability Reentry Workshops

**ACTION:** Request for Proposals.

**SUMMARY:** The Office of Citizen Exchanges, Youth Programs Division, of the Bureau of Educational and Cultural Affairs announces an open competition for the FLEX Disability Reentry Workshops. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may submit proposals for the conduct of special year-end reentry workshops for students with disabilities participating, respectively, in the 2000/01 and 2001/02 Future Leaders Exchange (FLEX) programs. Approximately 12–15 students will participate each year (a total of 25–30).

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All programs must comply with J–1 visa regulations. Please refer to the Solicitation Package for further information.

*Budget Guidelines:* Applicants must submit a comprehensive budget for the entire program. Awards may not exceed $55,000. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification. Administrative costs should be kept as low as possible. Cost sharing is encouraged. Allowable costs for the program include the following:

(1) Transportation for participants from their host city/town to workshop site
(2) Daily travel at workshop site location
(3) Room and board during the time of the workshops
(4) Rental of facilities and equipment
(5) Fees for related activities/excursions
(6) Honoraria for speakers/trainers, as appropriate
(7) Necessary reasonable accommodations

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

*Announcement Title and Number:* All correspondence with the Bureau concerning this RFP should reference the above title and number ECA/PE/C–00–75.

**FOR FURTHER INFORMATION CONTACT:** The Youth Programs Division, Office of Citizen Exchanges, ECA/PE/C/PY, Room 568, U.S. Department of State, 301 4th Street, SW, Washington, DC 20547, phone: 202/619–6299, fax: 202/619–5311, e-mail: <daronson@pd.state.gov> to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify Bureau Program Officer Diana Aronson on all other inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

*To Download a Solicitation Package Via Internet:* The entire Solicitation Package may be downloaded from the Bureau's website at http://exchanges.state.gov/education/rfps.

Please read all information before downloading.

*Deadline for Proposals:* All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m. Washington, DC time on Monday, December 4, 2000. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original and seven copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/PE/C–01–75, Program Management, ECA/EX/PM, Room 336, 301 4th Street, SW, Washington, DC 20547.

*Diversity, Freedom and Democracy Guidelines*

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the "Support for Diversity" section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

*Review Process*

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be forwarded to panels of Bureau officers for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the Bureau's Grants Officer.

*Review Criteria*

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Quality of the program idea:* Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission.

2. *Program planning:* Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

3. *Ability to achieve program objectives:* Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the organization will meet the program's objectives and plan.

4. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration

5. *Institutional Capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals. Proposing organization should demonstrate it has experience with disability programming and international youth exchange, as well as familiarity with the culture of the New Independent States (NIS) of the former Soviet Union.

6. *Track Record:* Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grant Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

7. *Multiplier effect/impact:* Proposed programs should describe how workshop participants will be motivated and enabled to reach out to other individuals with disabilities in their home countries.



8. *Follow-on Activities:* Proposals should describe how workshop participants will be provided with knowledge and tools that will prepare them to work in support of disability rights in their home countries.

9. *Project Evaluation:* Proposals should include a plan to evaluate the activity's success. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives is recommended. Successful applicants will be expected to submit a final report after the project has been completed.

10. *Cost-effectiveness/Cost Sharing:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

*Authority*

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through legislation of the Freedom Support Act.

*Notice*

The terms and conditions published in this RFP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

*Notification*

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: September 29, 2000.

**Helena Kane Finn,**

*Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.*

[FR Doc. 00–25650 Filed 10–4–00; 8:45 am]

BILLING CODE 4710–05–P

## DEPARTMENT OF STATE

**[Public Notice #: 3413]**

### U.S. Advisory Commission on Public Diplomacy; Notice of Meeting

The U.S. Advisory Commission on Public Diplomacy, reauthorized pursuant to Public Law 106–113 (H.R. 3194, Consolidated Appropriations Act, 2000), will meet on Friday, October 20, 2000 in Room 600, 301 4th St., SW, Washington, D.C. from 10:30 a.m. to 12:30 p.m.

The Commission will discuss the release of its report on the consolidation of USIA into the State Department and the effectiveness of U.S. public diplomacy in the former Soviet Union.

Members of the general public may attend the meeting, though attendance of public members will be limited to the seating available. Access to the building is controlled, and individual building passes are required for all attendees. Persons who plan to attend should contact David J. Kramer, Executive Director, at (202) 619–4463.

September 29, 2000.

**David J. Kramer,**

*Executive Director, U.S. Advisory Commission on Public Diplomacy, Department of State.*

[FR Doc. 00–25781 Filed 10–4–00; 8:45 am]

BILLING CODE 4710–11–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Agency Information Collection Activity Under OMB Review

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of currently approved collection. The ICR describes the nature of their information collection and the expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on June 30, 2000, (FR 65, page 40716).

**DATES:** Comments must be submitted on or before November 6, 2000. A comment to OMB is most effective if OMB receives it within 30 days of publication.

**FOR FURTHER INFORMATION CONTACT:** Judy Street on (202) 267–9895.

**SUPPLEMENTARY INFORMATION:**

**Federal Aviation Administration (FAA)**

*Title:* Office of the Associate Administrator for Commercial Space Standards Survey.

*Type of Request:* Extension of a currently approved collection.

*OMB Control Number:* 2120–0611.

*Forms(s):* N/A.

*Affected Public:* Approximately 300 representatives of the U.S. commercial launch industry and other industry representatives from related industries such as U.S. satellite manufacturers and users, as well as representatives from businesses and associations which have an interest in our business-related concerns with the U.S. commercial launch industry.

*Abstract:* This survey is being disseminated to collect industry input on the Customer Service standards published and disseminated by the Office of the Associate Administrator for commercial Space Transportation (AST).

*Estimated Annual Burden Hours:* 300 hours annually..

**ADDRESSES:** Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725—17th Street, NW., Washington, DC 20503, Attention FAA Desk Officer.

Comments are invited on whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden on the proposed information collections; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, in including the use of automated collection techniques of other forms of information technology.

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Issued in Washington, DC, on September 29, 2000.

**Patricia W. Carter,**

*Acting Manager, Standards and Information Division, APF–100.*

[FR Doc. 00–25641 Filed 10–4–00; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Agency Information Collection Activity Under OMB Review

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of currently approved collection. The ICR describes the nature of the information collection and the expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on May 9, 2000, [FR 65, pages 26871–26872].

**DATES:** Comments be submitted on or before November 6, 2000. A comment to OMB is most effective if OMB receives it within 30 days of publication.

**FOR FURTHER INFORMATION CONTACT:** Judy Street on (202) 267–9895.

**SUPPLEMENTARY INFORMATION:**

**Federal Aviation Administration (FAA)**

*Title:* Notice and Approval of Airport Noise and Access Restrictions.

*Type of Request:* Extension of a currently approved collection.

*OMB Control Number:* 2120–0563.

*Forms(s):* None.

*Affected Public:* Estimated annual count is 8 (Airport Operators, and aircraft operators).

*Abstract:* The Airport Noise and Capacity Act of 1990 mandates the formulation of a national noise policy. One part of the mandate is the development of a national program to review noise and access restrictions on the operation of Stage 2 and 3 aircraft. 14 CFR part 161 is the principal means to implement this part of the Act. Respondents are airport operators proposing voluntary agreements and/or mandatory restrictions on Stage 2 and Stage 3 aircraft operations, and aircraft operators that request reevaluation of a restriction.

*Estimated Annual Burden Hours:* 30,000 annually.

**ADDRESSES:** Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725—17th Street, NW., Washington, DC 20503, Attention FAA Desk Officer.

Comments are invited on whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collections; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, in including the use of automated collection techniques of other forms of information technology.

Issued in Washington, DC, on September 27, 2000.

**Steve Hopkins,**

*Manager, Standards and Information Division, APF–100.*

[FR Doc. 00–25645 Filed 10–4–00; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Summary Notice No. PRE–2000–55]**

### Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of petitions for exemption received and of dispositions of prior petitions.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**DATES:** Comments on petitions received must identify the petition docket number involved and must be received on or before November 6, 2000.

**ADDRESSES:** Send comments on any petition in triplicate to: Docket Management Facility, U.S. Department of Transportation, Docket No. FAA–2000–8016, 400 Seventh Street, SW., Nassif Building, Room Plaza 401, Washington, DC 20590.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Plaza 401, Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Washington, DC 20590; telephone 1–800–647–5527.

**FOR FURTHER INFORMATION CONTACT:** Forest Rawls (202) 267–8033, or Vanessa Wilkins (202) 267–8029 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to § 11.85 and 11.91 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC on October 2, 2000.

**Donald P. Byrne,**

*Assistant Chief Counsel for Regulations.*

**Petitions For Exemption**

*docket No.:* FAA–20000–8016 (Old Docket Number 30040)

*Petitioner:* Jerry L. Adams, et al

*Section of the FAR Affected:* 14 CFR 121.383(c)

*Description of Relief Sought:* To permit 69 airline pilots seeking exemptions from the age 60 rule, to serve as pilots in air carrier operations after their sixtieth birthdays, subject to appropriate periodic proficiency and fitness requirements, and based on the recommendation of the Age 60 Exemption Panel. (The Age 60 Exemption Panel was formed privately in 1999 to evaluate the medical/neuropsychological status of airline pilots seeking exemptions from the age 60 rule. It was not formed or supervised by the FAA.) This request for exemption was originally denied on July 30, 2000, Docket No. 30040. The petition for exemption is reopened for public comment and reconsideration by the FAA. Personal medical records submitted in support of the petition are not included in the public docket.

[FR Doc. 00–25646 Filed 10–4–00; 8:45 am]

BILLING CODE 4910–13–M



## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

**Appalachian Rail Car Services, Inc.**

[Docket Number FRA–2000–7947]

Appalachian Rail Car Services, Inc, on behalf of Big Eagle Rail LLC, has petitioned for a permanent waiver of compliance for one locomotive from the requirements of the Safety Glazing Standards, 49 CFR Part 223, which requires certified glazing in all locomotive windows, except those locomotives used in yard service. The petitioner indicates that the locomotive is used in captive service hauling coal from a mine to a coal dock a distance of six miles in Winifrede, West Virginia. The petitioner states that the locomotive, a SW 1500 switcher, is only partially equipped with FRA certified glazing.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number FRA–2000–7947) and must be submitted in triplicate to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401, Washington, D.C., 20590–0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 Seventh Street SW., Washington, DC, 20590. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at http://dms.dot.gov.

Issued in Washington, DC. on October 1, 2000.

**Grady C. Cothen, Jr.,**

*Deputy Associate Administrator for Safety Standards and Program Development.*

[FR Doc. 00–25624 Filed 10–4–00; 8:45 am]

BILLING CODE 4910–06–P

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

**Charlotte Southern Railroad**

[Docket Number FRA–2000–7929]

The Adrian & Blissfield Rail Road Company of Madison Heights, Michigan has petitioned on behalf of Charlotte Southern Railroad Company (CHS) for a permanent waiver of compliance for one locomotive from the requirements of the Railroad Safety Appliance Standards, 49 CFR Part 231.30, which requires all locomotives used in switching service be equipped with four corner stairway openings and each stairway opening must be equipped with two vertical handholds. The waiver request is for a 65 ton mid-cab locomotive built by General Electric in 1956. The locomotive is equipped with one set of ladder style steps on each side leading to the cab. CHS indicates that the locomotive is used in switching service over 3.22 miles at a speed not to exceed 10 mph. All switching movements are made with the locomotive attached and air brakes cut in.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number FRA–2000–7929) and must be submitted in triplicate to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401, Washington, D.C., 20590–0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 Seventh Street SW., Washington, DC, 20590. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at http://dms.dot.gov.

Issued in Washington, DC. on October 1, 2000.

**Grady C. Cothen, Jr.,**

*Deputy Associate Administrator for Safety Standards and Program Development.*

[FR Doc. 00–25627 Filed 10–4–00; 8:45 am]

BILLING CODE 4910–06–P

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

**CSX Transportation**

[Docket Number FRA–2000–7701]

The CSX Transportation (CSX) seeks a waiver of compliance for locomotives that operate (move over) hump yard retarders from the requirements of the *Locomotive Safety Standards*, 49 CFR Part 229.123, which requires each lead locomotive be equipped with an end plate, pilot plate, or snow plow, that extends across both rails at a maximum clearance of six inches. CSX indicates that due to the height of the retarders (2 ¾ inches over top of rail) it is not

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uncommon for locomotive pilots to strike the retarder. If the waiver is granted, CSX would increase the height of the pilot plates on locomotives assigned to hump yard service to nine inches, these locomotives would be restricted to trailing position outside hump yard and when moving over the railroad for service or re-assignment.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number FRA–2000–7701) and must be submitted in triplicate to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401, Washington, DC, 20590–0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 Seventh Street S.W., Washington, DC, 20590. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Issued in Washington, DC on October 1, 2000.

**Grady C. Cothen, Jr.,**

*Deputy Associate Administrator for Safety Standards and Program Development.*

[FR Doc. 00–25630 Filed 10–4–00; 8:45 am]

BILLING CODE 4910–06–P

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

**Detroit Connecting Railroad Company**

[Docket Number FRA–2000–7928]

The Adrian & Blissfield Rail Road Company of Madison Heights, Michigan has petitioned on behalf of Detroit Connecting Railroad Company (DCON) for a permanent waiver of compliance for one locomotive from the requirements of the Railroad Safety Appliance Standards, 49 CFR Part 231.30, which requires all locomotives used in switching service to be equipped with four corner stairway openings and each stairway opening must be equipped with two vertical handholds. The waiver request is for a 65 ton mid-cab locomotive built by General Electric in 1942. The locomotive is equipped with one set of ladder style steps on each side leading to the cab. DCON indicates that the locomotive is used in switching service over 2.29 miles at a speed not to exceed 10 mph. All switching movements are made with the locomotive attached and air brakes cut in.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number FRA–2000–7928) and must be submitted in triplicate to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401, Washington, D.C., 20590–0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 Seventh Street SW., Washington, DC, 20590. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at http://dms.dot.gov.

Issued in Washington, DC. on October 1, 2000.

**Grady C. Cothen, Jr.,**

*Deputy Associate Administrator for Safety Standards and Program Development.*

[FR Doc. 00–25625 Filed 10–4–00; 8:45 am]

BILLING CODE 4910–06–P

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favour of relief.

**Inman Service Company**

[Docket Number FRA–2000–7586]

The Inman Service Company of Baytown, Texas, has petitioned on behalf of Watco Switching Company for a temporary waiver of compliance for one locomotive from the requirements of the *Safety Glazing Standards,* 49 CFR Part 223, which requires certified glazing in all locomotive windows, except those locomotives used in yard service. The railroad indicates that the locomotive is used in switching service within the Greensport Industrial Park, in Houston, Texas. They also indicate that some of the cab windows meet the FRA glazing requirements The locomotive is scheduled to be re-built within two years at which time all windows will be replaced with FRA compliant glazing.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number FRA–2000–7586) and must be submitted in triplicate to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401, Washington, DC, 20590–0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 Seventh Street SW., Washington, DC, 20590. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at http://dms.dot.gov.

Issued in Washington, DC on October 1, 2000.

**Grady C. Cothen, Jr.,**

*Deputy Associate Administrator for Safety Standards and Program Development.*

[FR Doc. 00–25626 Filed 10–4–00; 8:45 am]

BILLING CODE 4910–06–P]

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

**Thrall Car Manufacturing Company**

[Docket Number FRA–1999–6358]

Thrall Car Manufacturing Company (TCMC) seeks a permanent waiver of compliance with certain provisions of the Railroad Safety Appliance Standards, 49 CFR Part 231.24, as they apply to auto carrying railcars as follows:

1. Use the reduced wording described in Parts 231.24(j)(1) and 231.24(j)(2) rather than 231.27(j)(1) and (j)(2). Part 231.24.(j)(1) states "That section of each car more than fifteen (15) feet above the top of the rail shall be painted with contrasting reflectorized paint and shall bear the words "No running boards" to the left of center and "Excess height car" to the right of center." Section 231.24(j)(2) states "On each side sill near end corner there shall be painted a yellow rectangular area with a three-fourths (¾) inch black border containing the words "This car excess height-no running board" Lettering to be not less than one and one-half (1½) inches high."

Thrall Car Manufacturing Company (TCMC) has petitioned to eliminate the stencilling regarding running boards on these cars account of the cars not being so equipped.

2. They request that the word material be substituted for paint in this section to permit utilizing new technological advancements in reflectorization.

3. Section 231. 24(j)(2) requires that "On each side sill near end corner there shall be painted a yellow rectangular area with a three-fourths (¾) inch black border containing the words "This car excess height* * * TCMC has petitioned to relocate this stencil/decal from the side-sill, if room is not available, to the shear panel of the auto rack." The stencil/decal will be located as low as possible on three of the corners and directly above the handbrake on the "BL" corner.

4. TCMC requests that "contrasting color" borders be allowed on cars with a dark exterior paint where a black border, required in 231.24(j)(2) and 231.27(j)(2), would not be readily visible.

5. TCMC requests that the maximum allowable misalignment between the front inside edge of the auto rack ladder style to the inside edge of the flat car sill step be increased from the dimensions listed in Motive Power and Equipment Technical Bulletin 98–05 to six (6) inches. This relief would be consistent with guidelines set forth in AAR's Manual of Standards and Recommended Practices, S–2038–85, 2.3.4.

FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number FRA–1999–6358) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's web site at http://dms.dot.gov.

Issued in Washington, DC on October 1, 2000.

**Grady C. Cothen, Jr.,**

*Deputy Associate Administrator for Safety Standards and Program Development.*

[FR Doc. 00–25629 Filed 10–4–00; 8:45 am]

BILLING CODE 4910–06–P

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) Part 235 and 49 U.S.C. 20502(a), the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR Part 236 as detailed below.

[Docket No. FRA–2000–7780]

*Applicant:* Paducah & Louisville Railway, Incorporated, Mr. D. Edwards, General Supervisor of Signals and Structures, 1500 Kentucky Avenue, Paducah, Kentucky 42003.

Paducah & Louisville Railway, Incorporated seeks approval of the proposed modification of the traffic control system, on the single main track, near Charleston, Kentucky, Hopkins County, milepost JK 157.13, consisting of the discontinuance and removal of Control Point Six Vein and associated controlled signals 2R and 2L. The proposed changes are associated with the installation of electronic coded track circuits and pole line elimination.

The reason given for the proposed changes is that Six Vein Mine has long been closed and all switches and tracks have been removed; the location is no longer needed, and maintenance costs will be reduced.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the protestant in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket

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Management Facility, Room PI–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at DOT Central Docket Management Facility, Room PI–401 (Plaza Level), 400 Seventh Street, SW., Washington, DC 20590–0001. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov.*

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, D.C. on October 1, 2000.

**Grady C. Cothen, Jr.,**

*Deputy Associate Administrator for Safety Standards and Program Development.*

[FR Doc. 00–25628 Filed 10–4–00; 8:45 am]

BILLING CODE 4910–06–P

## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

### Proposed Renewal of Information Collection; Comment Request

**AGENCY:** Office of the Comptroller of the Currency (OCC), Treasury.

**ACTION:** Notice and request for comment.

**SUMMARY:** The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. Currently, the OCC is soliciting comment concerning its renewal of an information collection titled, "(MA)-Real Estate Lending and Appraisals—12 CFR 34."

**DATES:** You should submit written comments by December 4, 2000.

**ADDRESSES:** You should direct all written comments to the Communications Division, Attention: 1557–0190, Third Floor, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219. In addition, you may send comments by facsimile transmission to (202) 874–5274, or by electronic mail to regs.comments@occ.treas.gov. You can inspect and photocopy the comments at the OCC's Public Reference Room, 250 E Street, SW., Washington, DC, between 9:00 a.m. and 5:00 p.m. on business days. You can make an appointment to inspect the comments by calling (202) 874–5043.

**FOR FURTHER INFORMATION CONTACT:** You can request additional information from or a copy of the collection from Jessie Dunaway or Camille Dixon, (202)874–5090, Legislative and Regulatory Activities Division (1557–0190), Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

**SUPPLEMENTARY INFORMATION:** The OCC is proposing to extend OMB approval of the following information collection:

*Title:* (MA)-Real Estate Lending and Appraisals—12 CFR 34.

*OMB Number:* 1557–0190.

*Description:* The collections of information contained in 12 CFR Part 34 are as follows:

Subpart C establishes real estate appraisal requirements that a national bank must follow for all federally-related real estate transactions. These requirements provide protections for the bank, further public policy interests, and were issued pursuant to title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3331 et seq.).

Subpart D requires that a national bank adopt and maintain written policies for real estate related lending transactions. These requirements ensure bank safety and soundness and were issued pursuant to section 304 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 1828(o)).

Subpart E requires that a national bank file an application to extend the five-year holding period for Other Real Estate Owned (OREO) and file notice when it makes certain expenditures for OREO development or improvement projects. These requirements further bank safety and soundness and were issued pursuant to 12 U.S.C. 29.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Businesses or other for-profit; individuals.

*Estimated Number of Respondents:* 2,800.

*Estimated Total Annual Responses:* 3,540.

*Frequency of Response:* On occasion.

*Estimated Total Annual Burden:* 240,160 burden hours.

An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless the information collection displays a currently valid OMB control number.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: September 29, 2000.

**Mark J. Tenhundfeld,**

*Assistant Director, Legislative & Regulatory Activities Division.*

[FR Doc. 00–25588 Filed 10–4–00; 8:45 am]

BILLING CODE 4810–33–P

## DEPARTMENT OF THE TREASURY

### Customs Service

**[T.D. 00–65]**

### Cancellation of Customs Broker Licenses

**AGENCY:** Customs Service, Department of the Treasury.

**ACTION:** Broker license cancellations.

I, as Assistant Commissioner, Office Field Operations, pursuant to section 641(f) Tariff Act of 1930, as amended (19 U.S.C. 1641(f)) and section 111.51(a) of the Customs Regulations (19 111.51(a)), hereby cancel the following Customs broker licenses without prejudice.

*Name, Port, and License No.*

Patricia L. Blasdel, Dallas, 06335
Lancer International Corp., Miami, 12183
Meston and Brings, Inc., Seattle, 06060
Paul Joseph Moskowitz, San Francisco, 03251
Hans Joerg Wintsch, San Francisco, 04515



Dated: September 27, 2000.

**Bonni G. Tischler,**

*Assistant Commissioner, Office of Field Operations.*

[FR Doc. 00–25584 Filed 10–4–00; 8:45 am]

BILLING CODE 4820–02–P

## DEPARTMENT OF THE TREASURY

### Customs Service

**[T.D. 00–64]**

### Cancellation of Customs Broker Licenses

**AGENCY:** Customs Service, Department of the Treasury.

**ACTION:** Broker license cancellations.

I, as Assistant Commissioner of Customs, Office of Field Operations, pursuant to section 641(f) Tariff Act of 1930, as amended (19 U.S.C. 1641(f)) and section 111.51(a) of the Customs Regulations (19 111.51(a)), hereby cancel the following Customs brokers licenses due to the deaths of the license holders.

*Name, Port, and License No.*

Manuel A. Enciso, Nogales, 01981
George Flandorffer, Jr., New York, 03598

Dated: September 27, 2000.

**Bonni G. Tischler,**

*Assistant Commissioner, Office of Field Operations.*

[FR Doc. 00–25583 Filed 10–4–00; 8:45 am]

BILLING CODE 4820–02–P

## DEPARTMENT OF THE TREASURY

### Customs Service

**[T.D. 00–66]**

### Retraction of Revocation Notice

**AGENCY:** Customs Service, Department of the Treasury.

**ACTION:** General notice.

**SUMMARY:** The following Customs broker license numbers were erroneously included in a published list of revoked Customs broker licenses in the **Federal Register**.

*Port, Name, and License No.*

Maimi, Olaya Reynaldo, 13732
Chicago, Tammie Krauskopf, 14704

Licenses 13732 and 14704 are valid licenses.

Dated: September 27, 2000.

**Bonni G. Tischler,**

*Assistant Commissioner, Office of Field Operations.*

[FR Doc. 00–25582 Filed 10–4–00; 8:45 am]

BILLING CODE 4820–02–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 8870

**AGENCY:** Internal Revenue Service (IRS), Treasury

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8870, Information Return for Transfers Associated With Certain Personal Benefit Contracts.

**DATES:** Written comments should be received on or before December 4, 2000 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue, NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Information Return for Transfers Associated With Certain Personal Benefit Contracts.

*OMB Number:* 1545–1702.

*Form Number:* 8870.

*Abstract:* Section 537 of the Ticket to Work and Work Incentives Improvement Act of 1999 added section 170(f)(10) to the Internal Revenue Code. Section 170(f)(10)(F) requires an organization to report annually: (1) Any premiums paid after February 8, 1999 to which section 170(f)(10) applies; (2) the name and taxpayer identification number (TIN) of each beneficiary under each contract to which the premiums relate; and (3) any other information the Secretary of the Treasury may require. A charitable organization described in section 170(c) or a charitable remainder trust described in section 664(d) that paid premiums after February 8, 1999, on certain life insurance, annuity, and endowment contracts (personal benefit contracts) must complete and file Form 8870.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Not-for-profit institutions.

*Estimated Number of Respondents:* 5,000.

*Estimated Time Per Respondent:* 14 hours, 50 minutes.

*Estimated Total Annual Burden Hours:* 74,200.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 27, 2000.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 00–25649 Filed 10–4–00; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of Citizen Advocacy Panel, Brooklyn District

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice.

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**SUMMARY:** An open meeting of the Brooklyn District Citizen Advocacy Panel will be held in Brooklyn, New York.

**DATES:** The meeting will be held Thursday, November 2, 2000.

**FOR FURTHER INFORMATION CONTACT:** Eileen Cain at 1–888–912–1227 or 718–488–3555.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an operational meeting of the Citizen Advocacy Panel will be held Thursday, November 2, 2000, 6 p.m. to 9 p.m. at the Internal Revenue Service Brooklyn Building located at 625 Fulton Street, Brooklyn, NY 11201. For more information or to confirm attendance, notification of intent to attend the meeting must be made with Eileen Cain. Mrs. Cain can be reached at 1–888–912–1227 or 718–488–3555. The public is invited to make oral comments from 8:30 p.m. to 9 p.m. on Thursday November 2, 2000. Individual comments will be limited to 5 minutes. If you would like to have the CAP consider a written statement, please call 1–888–912–1227 or 718–488–3555, or write Eileen Cain, CAP Office, P.O. Box R, Brooklyn, NY, 11201.

The Agenda will include the following: various IRS issues.

**Note:** Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: September 28, 2000.

**John J. Mannion,**

*Program Manager, Taxpayer Advocate Service.*

[FR Doc. 00–25654 Filed 10–4–00; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Thursday,
October 5, 2000

Part II

# Office of Management and Budget

Office of Federal Procurement Policy

48 CFR Part 9904

Cost Accounting Standards Board; Accounting for the Costs of Post-Retirement Benefit Plans Sponsored by Government Contractors; Proposed Rule

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**OFFICE OF MANAGEMENT AND BUDGET**

**Office of Federal Procurement Policy**

**48 CFR Part 9904**

## Cost Accounting Standards Board; Accounting for the Costs of Post-Retirement Benefit Plans Sponsored by Government Contractors

**AGENCY:** Cost Accounting Standards Board, Office of Federal Procurement Policy, OMB.

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** The Office of Federal Procurement Policy, Cost Accounting Standards Board (CASB), invites public comments on a proposed Cost Accounting Standard (CAS) on the costs of post-retirement benefit plans to be recognized as contract cost under Government cost-based contracts and subcontracts. This is a new Standard that would directly address the costs of post-retirement benefit plans for the first time in detail. The proposed Standard provides criteria for measuring the costs of post-retirement benefit plans, assigning the measured costs to cost accounting periods, and allocating the assigned costs to segments of an organization. The allocation of a segment's assigned post-retirement benefit costs to contracts and subcontracts is addressed in other existing Standards. The proposed Standard also provides for the adjustment of post-retirement benefit costs for the effect of a curtailment of a post-retirement benefit plan, a settlement of a post-retirement benefit obligation, a granting of termination benefits, a termination of a post-retirement benefit plan, or a segment closing.

**DATES:** Comments must be in writing and must be received by December 19, 2000.

**ADDRESSES:** Comments regarding this Advance Notice of Proposed Rulemaking should be addressed to Mr. Eric Shipley, Project Director, Cost Accounting Standards Board, Office of Federal Procurement Policy, 725 17th Street, NW, Room 9013, Washington, DC 20503, Attn: CASB Docket No. 96–02A. Please include an electronic copy of your comments in a format readable by MS Word.

**FOR FURTHER INFORMATION CONTACT:** Eric Shipley, Project Director, (telephone: 410–786–6381 or e-mail: EShipley@hcfa.gov) or Rein Abel, Director of Research, Cost Accounting Standards Board (telephone: 202–395–3254).

**SUPPLEMENTARY INFORMATION:**

### A. Regulatory Process

The Cost Accounting Standards Board's rules, regulations and Standards are codified at 48 CFR Chapter 99. Section 26(g)(1) of the Office of Federal Procurement Policy Act, 41 U.S.C. 422(g)(1), requires that the Board, prior to the establishment of any new or revised Cost Accounting Standard, complete a prescribed rulemaking process. The process generally consists of the following four steps:

1. Consult with interested persons concerning the advantages, disadvantages and improvements anticipated in the pricing and administration of Government contracts as a result of the adoption of a proposed Standard (*e.g.*, promulgation of a Staff Discussion Paper.)
2. Promulgate an Advance Notice of Proposed Rulemaking (ANPRM).
3. Promulgate a Notice of Proposed Rulemaking (NPRM).
4. Promulgate a Final Rule.

This ANPRM is issued by the Board in accordance with the requirements of 41 U.S.C. 422(g)(1)(B) and (C) and is step two of the four-step process.

### B. Background and Summary

*Prior Promulgations*

Post-retirement benefit plans have existed for many years, sometimes as an adjunct to a company's pension plan, but they generally received little attention until the Financial Accounting Standards Board (FASB) decided to examine the potential liabilities and costs of these plans and ultimately issued Statement No. 106, "Employers' Accounting for Post-Retirement Benefits Other Than Pensions," (SFAS 106) in December of 1990. The adoption of SFAS 106 had the effect of exposing the substantial unfunded liabilities associated with post-retirement benefit plans.

The Cost Accounting Standards Board has received numerous public comments recommending that it establish a case concerning the measurement, assignment, and allocation of the costs of post-retirement benefit plans. These letters came from Federal Government agencies, Government contractors, law firms, trade associations and other respondents. The Board recognized the need to establish a case addressing contract cost accounting issues related to post-retirement benefit plans, but because of the similarities between post-retirement benefit plans and more traditional pension plans, it was decided to defer commencement of this case until the pension case was completed. The pension case was completed when the amendments to Cost Accounting Standards 9904.412 and 9904.413 were published as a final rule on March 30, 1995 (60 FR 16534). At its February 24, 1995 meeting, the CAS Board directed the staff to begin work on a Staff Discussion Paper addressing the accounting treatment of costs of post-retirement benefit plans.

As part of the development of the Staff Discussion Paper, the staff solicited preliminary comments from certain interested and knowledgeable organizations and individuals from both the procuring agencies and contractor communities. The staff also sought comments from organizations and individuals from the accounting, actuarial, and legal professions. The staff asked for assistance in identifying existing guidance and operational practices that should be investigated. These comments provided important information and ideas that were incorporated into the Staff Discussion Paper.

The Board made available on September 20, 1996, (61 FR 49533), a Staff Discussion Paper, Post-Retirement Benefit Plans Other Than Pension Plans Sponsored by Government Contractors, identifying the cost accounting issues related to post-retirement benefit plans. The Staff Discussion Paper identified major topics for consideration by the Board in its deliberations concerning the possible promulgation of an Interpretation, an amendment to existing Standards, or a new Standard regarding post-retirement benefit costs. The Staff Discussion Paper neither advocated nor assumed any position regarding the accounting treatment of post-retirement benefit costs. Rather, the Staff Discussion Paper explored many different approaches in depth so that the Board would have an opportunity to fully consider alternative treatments for costs of post-retirement benefit plans.

As the Board and its staff analyzed the comments and other information submitted for consideration, it became apparent that many commenters had strongly held opposing positions regarding the firmness of the SFAS 106 liability and the role, if any, that funding should play. To better understand these opposing positions, and hopefully to be able to reconcile these positions, on January 12, 1999 the Board sent a letter to all the respondents to the Staff Discussion Paper. This letter was also made widely available for public comment on February 18, 1999 (64 FR 8141).



*Public Comments*

The Board received eighteen (18) sets of public comments in response to the Staff Discussion Paper. These comments came from contractors, Government agencies, professional associations, actuarial firms, and individuals. These public comments are briefly summarized as follows:

Most respondents did not favor the promulgation of a new Standard and believed that the Board could adequately address post-retirement benefit costs through amendments to CAS 9904.412 and 9904.413. A few respondents expressed the belief that the measurement, assignment, and allocation of post-retirement benefit costs were complex and technical subjects and recommended that the Board address post-retirement benefit costs in a comprehensive manner.

The respondents almost universally agreed that accrual accounting following the provisions of SFAS 106 was the most appropriate basis for measuring and assigning the costs of a post-retirement benefit plan that created a firm liability. They stated that the pay-as-you-go cost method (cash basis accounting) was appropriate if there was not a firm; *i.e.*, compellable, liability to provide the promised benefits. However, there was no general agreement as to the criteria for ascertaining the firmness of a plan's liability; especially as to whether funding of the cost should serve as a criterion. There was agreement that if funding was to be a prerequisite for accrual accounting, then any rule or amendments should provide sufficient flexibility in the choice of accounting methods to permit contractors to align their cost accounting practice with their funding opportunities.

Respondents recommended that the Board address special events such as a curtailment of benefits or the termination of the post-retirement benefit plan. Many commenters suggested that a funding requirement may not be necessary if the Board provided adequate safeguards in case of a plan termination or segment closing. Some respondents asked that the segment closing provisions for post-retirement benefit costs be explicitly coordinated with the segment closing provisions of paragraph 9904.413–50(c)(12) regarding pensions.

The Board also received ten (10) sets of comments in response to the Board's letter of January 12, 1999 which can be summarized as follows:

The comments from contractors and other industry representatives reiterated their belief that funding was not necessary to substantiate the liability. Several of these respondents opined that funding did not improve the firmness of the liability. Instead, these respondents expressed the belief that the terms of the post-retirement benefit plan determined the firmness of the liability.

Most commenters, including the Office of the Under Secretary of Defense (OUSD), argued that funding was an allowability; *i.e.*, procurement policy issue, and not an accounting issue. The other two Government respondents expressed a strong belief that funding demonstrated the contractor's intent to continue the post-retirement benefit plan and to be financially prepared to provide the promised benefits.

The Board also reviewed proposed amendments to CAS 9904.412 and 9904.413 addressing post-retirement benefit costs which were voluntarily submitted by the Council of Defense and Space Industry Associations (CODSIA), as well as comments submitted by the American Bar Association's (ABA) Public Contract Law Section regarding CODSIA's proposal.

The Board reviewed information from the Towers Perrin surveys of "SFAS 87 [Statement 87 of the Financial Accounting Standards Board) and SFAS 106 Annual Report Footnote Data" for years 1995, 1996, 1997, and 1998 which was extracted from the corporate financial statements of the "Fortune Top 100" companies. The Board notes three (3) major observations that one can generally conclude from this survey information that influenced the development of this proposed Standard.

1. For pensions, the plan assets generally equaled or exceeded the liability for projected benefits, as measured by the SFAS 87 projected benefit obligation. On the other hand, only slightly over one-half (½) [1] of the companies included in the survey reported any plan assets for their post-retirement benefits plans. For companies that did report plan assets, for 1998 the average plan assets only covered around one-third (⅓) of the average SFAS 106 accumulated post-retirement benefit obligation.

2. While the average SFAS 106 accumulated post-retirement benefit obligation for these Fortune 100 companies is less than one-third [2] of the average SFAS 87 projected benefit obligation for pensions, at $2,312.5 million for 1998, the average post-retirement benefit obligation is still quite large.

3. The 1998 average net periodic cost for post-retirement benefit plans ($150.7 million) exceeds the average net periodic cost for pension plans ($58.4 million).

This proposed Standard is based upon the continuing research performed by the staff of the Cost Accounting Standards Board and the public comments received in response to the Staff Discussion Paper and the Board's January 12, 1999 letter.

[1] 82 companies reported pension plan assets in their SFAS 87 footnotes and 45 companies reported post-retirement benefit plan assets in their SFAS 106 footnotes.

[2] The average Projected Benefit Obligation reported in the SFAS 87 footnotes was $7,170.6 million.

The various comments and proposals are discussed in greater detail under Section E, Public Comments. The Board and its staff would like to thank all the organizations and individuals who provided comments and information in response to the Staff Discussion Paper and the Board's January 12, 1999 letter.

*Conclusions*

While accounting for post-retirement benefits has some similarities with pension accounting, the Board has concluded that post-retirement benefit costs should be treated distinctly from pension costs. The Board proposes to address the accounting treatment of post-retirement benefit costs through the promulgation of a new Cost Accounting Standard rather than through an Interpretation of or an amendment to an existing Standard or Standards. Post-retirement benefits, pensions, and insurance are each intrinsically complex and technical subjects. The Board has determined that it would be extremely difficult, if not impossible, to effectively and efficiently interleave coverage for post-retirement benefit costs into either the pension or insurance Standards.

The Board believes that accrual accounting is the appropriate method for determining the costs of post-retirement benefit plans that create a sufficiently firm liability for contract cost recognition. The Board has concluded that SFAS 106 with some modifications and restrictions provides adequate and appropriate accounting guidance regarding the measurement and period assignment of post-retirement benefit costs when accrual accounting is utilized. In order to implement a definite determination of a firm liability, the Board decided that the annual accrual of the post-retirement benefit cost must be compared to the nonforfeitable portion of the accumulated post-retirement benefit obligation. Post-retirement benefit plans that do not create a firm liability for contract costing purposes must be accounted for using the pay-as-you-go cost method.

The Board has also determined that specific guidance is required regarding the allocation of post-retirement benefit cost to segments. Specifically, the Board believes criteria are necessary regarding when the post-retirement benefit costs of a segment should be based on a general allocation or a separate calculation. Furthermore, because the current and future costs of post-retirement benefit plans are dependent upon the costs accrued in prior periods and the funding of such prior accruals, the Board finds it necessary to provide for the accounting treatment for assets

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and for the accumulation and reporting of unfunded accruals at the segment level.

The Board has concluded that the SFAS 106 provisions on benefit curtailments, liability settlements, and the granting of special termination benefits are inadequate for contract costing purposes and additional guidance is needed. The Board further concluded that specific guidance is needed to address the appropriate contract cost accounting when a segment, as defined by paragraph 9904.403–30(a)(4), is abandoned, sold, or otherwise closed.

*Benefits*

The Board's proposal will eliminate the existing confusion as to which Standard, if any, addresses the contract cost accounting for post-retirement benefits. There have been various opinions and theories as to the proper basis for contract cost accounting for post-retirement benefit plans. Various parties have advocated using either the pension Standards, CAS 9904.412 and 9904.413, or the insurance Standard, Cost Accounting Standard 9904.416. Others have expressed a belief that no existing Cost Accounting Standard addresses such costs. Many parties have argued that Generally Accepted Accounting Principles (GAAP) as evidenced by SFAS 106 should govern the accounting of post-retirement benefit costs, and in fact, paragraph 31.205–6(o) of the Federal Acquisition Regulation (FAR 31.205–6(o)) specifies SFAS 106 as the basis for accrual accounting. A few have even suggested that the tax accounting rules for Internal Revenue Code (IRC) section 501(c) (26 U.S.C. 501(c)) trusts might be an appropriate basis. The Board proposes to clarify the accounting treatment of post-retirement benefit costs for Government contract costing purposes by specifying SFAS 106 as the basis for measurement and period assignment when the proposed criteria for accrual accounting are satisfied.

The Board acknowledges that the accounting for post-retirement benefit costs is a complex subject. When accrual accounting is used, the reliance on the methods and techniques of SFAS 106 for measurement and period assignment eases the burden of complying with this proposed Standard because contractors will be able to use much of the same data and methods used for financial accounting purposes. If use of the pay-as-you-go cost method is required, the determination of costs will be based on actual payments of benefits. Therefore, there should be minimal additional cost associated with complying with the Standard for the plan as a whole, although certain additional effort may be necessary to comply with the proposed provisions regarding the accounting for costs of segments. Furthermore, the proposed criteria regarding when to use accrual accounting or the pay-as-you-go cost method will eliminate disputes and will increase uniformity among contractors.

In the Board's judgement, a Standard is needed to increase consistency of results between accounting periods. Various provisions of SFAS 106 permit contractors to select between full immediate recognition, amortization, and in the case of annual gains and losses, delayed recognition of the various components of post-retirement benefit cost. The Standard being proposed today generally limits the contractor's cost recognition to the amortization method. Besides enhancing uniformity between accounting periods, dampening volatility through amortization will increase predictability when cost data is used to price contracts covering future periods.

The provisions of SFAS 106 and GAAP generally do not address the allocation of costs to segments of the contractor. The additional guidance being proposed addresses this point. While SFAS 106 addresses how major changes in the post-retirement benefit plan; i.e., benefit curtailments, liability settlements, and granting special termination benefits, are to be reported within the results of operations for financial reporting purpose, SFAS 106 does not address how such results are allocated to cost objectives. This proposal provides guidance on how the costs resulting from such major changes in post-retirement benefit plans are to be allocated and recognized for Government contract costing purposes. This proposed Standard also provides for a final settlement based on the proposed measure of the firm liability when the contracting relationship between the Government and a segment ends; this is not addressed by SFAS 106.

The proposed Standard also delineates how post-retirement benefit assets and liabilities are to be accounted for when a segment is divided or combined with another segment as part of an internal reorganization, corporate merger, or when part of the segment is sold or ownership is transferred. This delineation will enable the parties to the sale or transfer to better determine the value of the segment's post-retirement benefit plan assets and liabilities maintained for Government contracting purposes.

In summary, the Board believes that the consistency with financial accounting, specificity as to which benefits are recognized on an accrual or cash accounting basis, and the guidance on allocation of cost to segments will enhance the cost proposal, price negotiation, contract administration and audit processes. The benefits of such enhancements should be substantial and should greatly outweigh any added costs.

*Summary Description of Proposed Standard*

The proposed Standard is divided into six subsections which address (a) the recognition and identification of post-retirement benefit costs, (b) the measurement and period assignment of post-retirement benefit costs, (c) the allocation of post-retirement benefit costs to segments, (d) the allocation of post-retirement benefit costs from segments to the intermediate and final cost objectives of a segment, (e) the adjustment of the contractor's records when there is a curtailment, settlement, or granting of special termination benefits, and (f) the adjustment of contract pricing when a segment is closed. Once it is determined under subsection (a) whether the cost of a particular post-retirement benefit plan is to be accounted for using accrual accounting or the pay-as-you-go cost method, the other sections present the relevant provisions in the following order of applicability: all plans, plans using the pay-as-you-go cost method, defined-contribution plans using accrual accounting, and finally, defined-benefit plans using accrual accounting. In this way, readability and the ability to reference is enhanced. For example, contractors using the more straightforward pay-as-you-go cost method do not need to search the entire subsection for applicable guidance.

1. Definitions

Proposed subsection 9904.419–30(a) includes several new definitions of terms that are unique to post-retirement benefit plans. These new definitions include modified SFAS 106 definitions and selected unmodified SFAS 106 definitions that are frequently used in the proposed Standard. Terms that are applicable to post-retirement benefits plans, but which have previously been defined for pensions, have been modified (usually substituting "post-retirement benefit" for "pension") in subsection 9904.419–30(b) for purposes of this proposed rule. Subsection (c) incorporates all other SFAS 106 definitions into the proposed Standard.



2. Recognition of Post-Retirement Benefit Costs

(a) *Criteria for accrual accounting.* For SFAS 106 purposes, the post-retirement benefit promise arises from the written documents or established practices that comprise the "substantive plan." Subsection 9904.419–40(a) sets forth criteria for determining when the liability for the post-retirement benefit is sufficiently estimable, contractually obligated (compellable), and reasonably foreseeable to warrant accrual accounting for government contract accounting purposes. The proposed criteria require that the promise of future benefits be: (i) Documented in writing, (ii) communicated to employees, (iii) nonforfeitable once earned, and (iv) legally enforceable.

The proposed Standard's requirement that the benefit promise be formalized in writing is consistent with similar CAS provisions regarding pension, insurance, and deferred compensation costs. The pension and insurance Standards require that costs of employee benefits contingent on post-retirement events, such as mortality and inflation, be actuarially determined and funded. This proposed Standard, like Cost Accounting Standard 9904.415, which addresses the accounting for costs of deferred compensation, does not require funding but instead requires that the contractor have a duty to pay the benefit earned by the employee which the contractor cannot unilaterally avoid. As with the pension and insurance Standards, if the post-retirement benefit plan fails to meet the specified criteria for accrual accounting, then the contractor must use the pay-as-you-go cost method.

(b) *Identification of the post-retirement benefit plan.* Some companies that have chosen to fund all or a portion of their post-retirement liability use a combination of investment vehicles to achieve tax-efficient funding of post-retirement benefits. Companies sometimes find they must sponsor somewhat different retiree insurance plans for different plants, states, or classes of employees in order to provide an overall general post-retirement benefit promise. Thus, their post-retirement benefit program is frequently not a single benefit plan, but several different benefit promises to different groups of employees.

To accommodate such pragmatic concerns associated with sponsoring and administering a post-retirement benefit program, the proposal being published today permits contractors to combine different investment vehicles and trust arrangements when identifying the assets of a post-retirement benefit plan. Similarly, the proposed Standard also provides that different benefits provided to the same group of employees, or the same benefit provided to different groups of employees may be aggregated for Government contract accounting purposes. Conversely, different benefits within a single overall plan may be accounted for separately.

Consistent with the position taken by the FASB, the proposed paragraph 9904.419–50(a)(7) explicitly covers separate accounts for medical benefits that are a part of a qualified pension plan and trust (IRC section 401(h) accounts) in this proposed Standard on post-retirement benefits. These medical benefit accounts, which are established, accounted for, and funded distinctly from the retirement income benefit of a qualified pension plan, are not an "integral part of a pension plan."

3. Measurement and Assignment of Post-Retirement Benefit Costs

(a) *Pay-as-you-go cost method.* The proposed Standard provides that for plans using the pay-as-you-go cost method, the assignable cost is measured by an amount equal to the payments made to or on behalf of the plan beneficiaries, providers, and insurers for benefits incurred during the current period, except that any amount paid to settle or terminally fund a liability for current and future benefits must be amortized over fifteen (15) years. Because the fifteen-year period represents an approximation to the life expectancy of a newly retired employee, this provision is consistent with paragraph 52 of SFAS 106 which requires the cost to be spread over the life expectancy of the retirees if the obligation is primarily attributable to such retirees. The proposed Standard is also consistent with the analogous provisions for pensions and insurance which are found at 9904.412–40(b)(3)(ii) and 9904.416–50(a)(1)(v)(C), respectively. The proposed transition provisions permit the continued use of the terminal funding method (without amortization) for contractors who have an established practice of terminal funding prior to this proposed Standard becoming applicable.

When describing the post-retirement benefit payments considered under the pay-as-you-go cost method, the proposed Standard augments the CAS 9904.412 definition of the "pay-as-you-go cost method" by adding the phrase "or on behalf of" because post-retirement benefit payments are often made directly to third parties, *e.g.*, health care providers. The proposed Standard also refers to the "net amount" of the benefit paid to indicate that the cost is based on the contractor's share of the post-retirement benefit after considering refunds, co-payments, deductibles, and amounts payable by unrelated third parties, such as Medicare and Medicaid. This use of "net amount" is consistent with the SFAS 106 provisions relating to "incurred claim cost (by age)" and "net incurred claim cost (by age)." This concept is also consistent with subparagraphs 9904.416–50(a)(1)(i) and (a)(1)(vi) of the insurance Standard, CAS 9904.416.

(b) *Accrual accounting for defined-contribution plans.* For defined-contribution plans using accrual accounting, the proposed Standard follows paragraph 104 of SFAS 106 and measures the assignable cost as the annual amount paid to or otherwise distributed to individual participant accounts. However, in contrast to paragraph 105 of SFAS 106, the proposed Standard does not permit the pre-retirement accrual of contributions expected to be made after retirement. Rather, contributions made after retirement are recognized in the period when the contribution is required under the terms of the plan. This proposed provision, paragraph 9904.419–40(b)(3), is generally consistent with paragraph 9904.412–40(a)(2) of the pension Standard.

(c) *Accrual accounting for defined-benefit plans.* For post-retirement benefit plans that meet the proposed prerequisites for accrual accounting, the Standard being proposed today accepts the actuarial cost method and actuarial assumptions used by the contractor for financial accounting purposes under SFAS 106. The assignable cost is based on the same six (6) components used by SFAS 106, namely: service cost, interest cost, actual return on assets, amortization of prior service costs, amortization of gains and losses, and recognition of the transition obligation.[3] However, the Board proposes to modify or restrict the SFAS 106 measurement and assignment of some components as explained below. Therefore, the values of these components used for contract costing purposes may differ from the values used for financial accounting purposes. Because the proposed measurement and assignment methods and techniques follow SFAS 106 rather than CAS 9904.412, there is no floor placed on the measurement and assignment of the period cost; *e.g.*, the

[3] Throughout this preamble, the term "transition obligation" is used to refer to either a transition obligation or a transition asset.

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assignable post-retirement benefit cost could be a negative amount.

Because contractors may wish to maintain the right to curtail or terminate the benefits for employees who have not yet reached full eligibility, the Board has decided that it would be inappropriate for Government contract costing purposes for the accumulated value of accruals, whether funded or unfunded, to exceed the unavoidable liability for post-retirement benefits. The proposed rules include a ceiling on the accrual cost recognition equal to the benefits paid during the period plus the unfunded portion of the accumulated post-retirement benefit obligation for benefits that cannot be forfeited.[4] The Board notes that the greater the portion of forfeitable benefits included in the accumulated post-retirement benefit obligation, the more restrictive will be the effect of the ceiling.

(i) Service cost, amortization of prior service costs, and interest components. The Board proposes to accept the SFAS 106 provisions regarding the measurement and assignment of the service cost and the amortization of prior service cost components of post-retirement benefit cost but restricts that measurement to the written terms of the post-retirement benefit plan rather than the "substantive plan." Otherwise, there are no modifications or restrictions to the SFAS 106 measurement and assignment provisions for these three components of post-retirement benefit cost.

(ii) Return on assets component and associated asset values. The Board proposes to accept the same measurement of the fair value of assets and the market-related value of assets used for financial accounting. The terminology of the proposed Standard follows that of SFAS 106 and differs from that used for pensions in CAS 9904.412 and 9904.413. The CAS 9904.412 term "market value of plan assets" is analogous to the term "fair value of plan assets" as used in SFAS 106 and this proposed Standard. The term "actuarial value of assets" used in the Employees' Retirement Income Security Act of 1974 (ERISA) and CAS 9904.412 is defined similarly to the "market-related value of plan assets" as used by SFAS 106 and this proposed Standard. For pensions the actuarial value of assets not only affects the recognition of gains and losses, but also is used to determine the unfunded actuarial liability. However, the market-related value of plan assets is only used to measure the annual asset gain or loss under SFAS 106 and this proposal. In SFAS 106 and in this proposed Standard, the fair value of assets is used to determine the unfunded accumulated post-retirement benefit obligation.

SFAS 106 is not concerned with the sources of any net accumulated accrued (unfunded) or prepaid post-retirement benefit cost. By contrast, the Board proposes that the contractor record and track each portion of unfunded accrual and prepayment credit. Consistent with CAS 9904.412, the accumulated values of unfunded accruals and prepayment credits are carried forward and adjusted for interest. The accumulated value of unfunded accruals is treated as if it were a plan asset and the accumulated value of prepayment credits is treated as a reduction to assets. The proposed Standard requires that the actual return on assets component be increased by an interest equivalent on the accumulated value of unfunded accruals to reflect that assets would have generated earnings had the full accrual amount been funded. Similarly, the actual return on assets component is reduced by an interest equivalent on the accumulated value of prepayment credits to reflect the additional earnings generated by any funding in excess of the annual accrual.

The Board has decided that the interest rate determined by the Secretary of the Treasury pursuant to Public Law 92–41, 85 Stat. 97, shall be used to measure the interest equivalent on the accumulated values of unfunded accruals and prepayment credits. The Board notes that for unfunded plans, there are no assets (no investments) and the contractor does not need to make an assumption concerning the long-term expected rate of return. In other cases, the amount of plan assets may be so small that reliance on this assumption may be inappropriate for Government contracting purposes. Also, use of the Treasury rate is consistent with the other Standards.

(iii) Annual gain or loss component. In order to more closely assign costs to cost accounting periods in which they arise, the proposed Standard requires the amortization over the average remaining service period of active participants[5] of the full amount of the annual gain or loss for a cost accounting period, that is, gains and losses other than gains and losses attributable to curtailments, settlements, or special termination benefits. While SFAS 106 permits such amortization, SFAS 106 only requires amortization of that part of the cumulative net gain or loss that falls outside a corridor defined by 10% of the greater of the accumulated post-retirement benefit obligation or the market-related value of plan assets. Under SFAS 106, recognition of any gain or loss within that corridor may be delayed indefinitely. Such delayed recognition is not permitted by this proposed Standard.

(iv) Amortization of the transition obligation component. This proposed Standard restricts the measurement and period assignment of the transition obligation to the delayed recognition method described in paragraphs 112 and 113 of SFAS 106. The proposed Standard provides that when a contractor first becomes subject to the proposed Standard, the contractor will base its period costs on the annual amortization installment for the unrecognized portion of the transition obligation already established for financial accounting purposes. The proposed transition provisions address the recognition of any portion of the SFAS 106 transition obligation that was recognized for financial statement purposes during prior periods for those contractors that used the pay-as-you-go cost method for Government contract costing purposes.

(d) *Post-retirement benefits provided through insurance contracts.* If the contractor provides all or a portion of the post-retirement benefit by purchasing insurance, the Board proposes that the contract accounting cost be determined by the net premium paid for such insurance and that the measurement, assignment to cost accounting periods, and allocation of such premium be subject to the provisions of CAS 416. However, if the insurance is acquired from a captive insurer, then the cost of the post-retirement benefit remains subject to the provisions of this proposed Standard. Because the SFAS 106 definition of "captive insurer" differs from the term as used in the FAR, a potential for disputes exists. In addition, the proposed definition clarifies that affiliates, related organizations and entities that are "owned by or under the control of" the contractor are also included so that the proposed Standard incorporates the phrase found at FAR 31.201–19(c) which is already in use for Government contracting purposes. Consistent with SFAS 106, this proposed Standard permits benefits provided by purchased insurance to be accounted for separately from any portion of a plan's benefits that are not provided through such insurance. The Board notes that this treatment contrasts with the analogous provision in the pension Standard, paragraph 9904.412–50(a)(6), which specifies the accounting for so-called "split-funded" plans.

4. Allocation of Post-Retirement Benefit Costs to Segments

The proposed Standard applies to all post-retirement benefit plans regardless of whether accrual accounting or the pay-as-you-go cost method is used. It embraces the general precepts of paragraph 9904.403–40(b)(4) dealing with the allocation of central payments and accruals to segments. However, this proposed Standard provides specific criteria regarding the allocation of post-retirement benefit costs to intermediate home offices and segments.[6] The contractor must allocate a portion of the total post-retirement plan cost to each segment, including home offices, either by use of an appropriate allocation base (*i.e.*, indirect allocation) or, if certain conditions exist, by use of post-retirement benefit costs separately computed (*i.e.*, direct allocation) at the segment level.

Consistent with the pension and insurance Standards, the Board proposes that the total post-retirement benefit plan cost be allocated to intermediate home offices and segments based upon the factors used to determine the costs. For plans that are accounted for using the pay-as-you-go cost method, the cost is to be allocated only to segments and intermediate home offices that can be identified with the post-retirement benefit plan (*e.g.*, those segments having inactive participants who are eligible to receive benefits under that plan). For defined-benefit plans using accrual accounting, the proposed Standard requires that both active and inactive plan participants of the segment or intermediate home office be included in the allocation base because five of the six components of post-retirement benefit cost are dependent upon the obligation for both groups.[7]

The criteria requiring separate calculation are similar to those found in CAS 9904.413 for pension costs of segments. If actual benefits are disproportionately paid to participants of certain segments, the proposed Standard requires a separate calculation of the cost for the segment instead of an allocation, even for costs determined under the pay-as-you-go cost method. An additional criterion for separate calculation that looks at the "cost of benefits" reflects the fact that post-retirement benefit costs may vary significantly due to differences in state laws, geographical location, or insurance market.

Unless the post-retirement benefit cost allocable to a segment is separately calculated, the same set of actuarial assumptions is used to determine the cost for all segments. Similar to CAS 9904.413, if costs are separately calculated, only those assumptions relating to the demographic differences of a segment's employees are permitted to be different than the assumptions used for other segments. For example, the use of a different turnover assumption to reflect the unique termination of employment experience of one segment does not permit the contractor to use a different pre-retirement mortality assumption without evidence that the segment's mortality is materially different from the average mortality assumed for the plan as a whole.

For defined-benefit plans using accrual accounting the proposed Standard requires that the tracking of assets and funding at the segment level be maintained if costs are separately calculated for the segment. This provision increases the visibility and verifiability of post-retirement benefit costs that are separately calculated for a segment.

This proposed Standard also requires that the market-related value of plan assets be allocated each year in proportion to the fair vale of plan assets allocated to the segments. This provision ensures that the sum of the market-related value of plan assets for all segments equals the total plan's market-related value of assets.

The proposed provisions regarding transfers of plan participants between segments reflect the fact that the accumulated post-retirement benefit obligation is determined by and must follow the plan participants. Therefore, both the assets that funded the obligation and the unfunded portion of the accumulated post-retirement benefit obligation follow the participants, so that future contract costs better follow the performance of future contracts. The Board notes that the exception for immaterial transfers might create a small gain or loss because assets and other values are not transferred.

5. Allocation to Intermediate and Final Cost Objectives of the Segment

Once the post-retirement benefit cost has been measured, assigned to a period, and initially allocated to segments and home offices, the Board believes that Cost Accounting Standard 9904.403 adequately addresses the reallocation from home offices to segments and that Cost Accounting Standard 9904.410 and Cost Accounting Standard 9904.418 fully and adequately address the intra-segment allocation of cost to intermediate and final cost objectives.

6. Adjustments for Curtailments, Settlements, and Special Termination Benefits

(a) *Defined-contribution plans using accrual accounting.* While a defined-contribution plan is on-going, any nonvested account balances that are forfeited by participants who terminate employment during a cost accounting period are typically either reallocated to the other participants or used to reduce the contribution (deposit) required under the terms of the plan. The Board presumes that such forfeiture credits are fairly evenly distributed among periods and therefore no undue volatility occurs. However, when a defined-contribution plan is terminated, the forfeiture of nonvested account balances could cause an inordinately large and non-recurrent credit. In fact, the values of the non-vested account balances could revert to the contractor. To prevent the disruption to the budgeting process for cost type contracts and the forward pricing process for cost-based fixed price contracts, the Board proposes that forfeiture credits due to a termination of a defined-contribution plan using accrual accounting be amortized over 10 years so that the credit can flow to costs included in both cost type contracts and the forward pricing of other negotiated cost-based contracts.

The Board also proposes that this provision will apply to forfeitures that occur whenever the plan participants' rights to become vested are eliminated because the right to earn future vesting or retirement eligibility service is curtailed or terminated by plan amendment or other unilateral action of the contractor.

The pension Standards do not contain a similar provision because qualified pension plans are subject to the vesting requirements of ERISA. However, many post-retirement benefit plans are not subject to similar vesting standards and the Board believes these provisions are necessary to address the significant

[4] Hereafter, the accumulated post-retirement benefit obligation for benefits that cannot be forfeited is referred to as the "nonforfeitable post-retirement benefit obligation."

[5] If the plan population is composed primarily of retirees, the gain or loss is spread over the life expectancies of the retirees. (See paragraphs 52 and 112 of SFAS 106.)

[6] Throughout the discussions of allocations to segments and to intermediate and final cost objectives, the term "segment" is used to refer to a segment, home office, or intermediate home office.

[7] The service cost component is only determined for active plan participants who are still in the attribution period, *i.e.*, prior to the date of full eligibility. A service cost is not developed for inactive plan participants.

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amount of nonvested account balances that might be forfeited.

(b) *Defined-benefit plans using accrual accounting.* Consistent with the Board's intention to accept the accounting provisions of SFAS 106 where practicable, the proposed Standard begins by accepting the SFAS 106 measurement of the adjustment for gains and losses due to benefit curtailments, benefit settlements, and granting of special termination benefits. SFAS 106 provides that any gain or loss not offset against the unrecognized gain or loss, unrecognized transition obligation, or unrecognized prior service cost, as appropriate under SFAS 106, will be immediately recognized in income. To require an analogous immediate recognition for Government contract costing purposes could disrupt the budgeting of cost type contracts as well as the forward-pricing process for cost-based fixed price contracts. Regardless of whether or not the post-retirement plan is terminated, the proposed Standard requires that an adjustment be recorded and that the adjustment for the curtailment, settlement, or termination benefit gain or loss be amortized over a period of 10 years.

7. Adjustments for Segment Closings.

The Board proposes to adopt the CAS 9904.413 definition of segment closing which encompasses three situations: (i) The ownership of the segment changes by sale or transfer, (ii) the segment discontinues operations or is abandoned, and (iii) the contractor is no longer performing or actively seeking government contract work at that segment. Based on comments regarding the amendments to the pension rule, the Board has modified the CAS 9904.413 definition of segment closing to explicitly state that segment mergers or splits within the contractor's on-going operations are not considered to be a segment closing for purposes of this proposed Standard.

(a) *Pay-as-you-go cost method.* When a segment is closed for any of the reasons described above, this proposed Standard does not provide for any adjustment to current or previously determined post-retirement benefit costs for plans that use the pay-as-you-go cost method. The post-retirement benefit costs attributable to current and prior periods were previously determined by the net amount paid to or on behalf of retired employees or their beneficiaries for post-retirement benefits incurred during those periods. The measurement of these prior actual expenditures is unaltered by the segment closing. These previously determined costs include any amortization installments assigned to such prior periods for net amounts paid to irrevocably settle an obligation for post-retirement benefits.

The proposed segment closing provisions also require that any inactive participants left "homeless" (that is, inactive participants that are no longer associated with an operational segment) when a segment is sold or abandoned must be moved to the intermediate or corporate home office to which the closed segment had directly reported. In the future the pay-as-you-go costs for these transferred inactive participants will be included in the post-retirement benefit costs allocated by the closed segment's immediate home office (the proximate home office to which the segment had reported.) Likewise the amortization of lump sums and other settlements for these inactives will continue unabated after being transferred to the closed segment's immediate home office. Any Government contracts performed in other segments reporting to that home office will receive an allocated portion of the post-retirement benefit costs attributable to the transferred inactive participants.

(b) *Defined-contribution plans using accrual accounting.* When a segment is closed for any of the reasons described above, the Board proposes that the contractor measure an immediate period adjustment to recognize any unrecognized portions of any credits for forfeited nonvested account balances due to plan termination or curtailment of vesting or retirement eligibility service. Essentially, this provision aborts the amortization of these credits because there will be no Government contracts in future periods to absorb a share of the credit.

(c) *Defined-benefit plans using accrual accounting.* When a segment is closed for any of the reasons described above, the Board proposes that the contractor measure an immediate period adjustment based upon the unavoidable liability for post-retirement benefits. The adjustment is measured as the difference between the nonforfeitable post-retirement benefit obligation and the sum of the plans assets plus the accumulated value of unfunded accruals (net of any prepayment credits.)

Basing the segment closing adjustment on the nonforfeitable post-retirement benefit obligation may appear to be a fundamental conceptual departure from both the original and amended CAS 9904.412 and 9904.413. The benefit liability for pension plans generally is subject to the stringent controls of ERISA. For post-retirement benefit plans, the nonforfeitable post-retirement benefit obligation provides the nearest analogue to the ERISA protected liability.

In addition to the above proposed general rules for segment closings, the following points should be noted:

(i) Massive layoff gains. The Board notes that when a segment closes, often there is a sizable termination of employees which was one of the original Board's concerns that eventually led to the original 9904.413–50(c)(12) segment closing provision. For post-retirement benefit plans, the effects of any "abnormal forfeitures" or massive layoff gain will dramatically reduce the liability such that the remaining accumulated post-retirement benefit obligation will approximate or equal the nonforfeitable post-retirement benefit obligation.

(ii) Sale or other transfer of ownership of a segment. When a segment is sold or transferred, the active participants of the segment immediately before the sale is effective can be: (i) Transferred with the segment and become active employees of the buyer, (ii) transferred as active employees to other operational segments of the seller, or (iii) terminated and become inactive participants of the seller. When analyzing the proposed provision concerning the sale or transfer of a segment, the reader should carefully consider the plan participants' status in the post-retirement benefit plans of each party to the sale. If both parties to the sale sponsor post-retirement benefit plans, the segment's employees can be both inactive participants in the seller's post-retirement benefit plan and active participants in the buyer's plan.

If only a portion of the operations of a segment is acquired, the proposed Standard provides that the selling contractor first divide the accounting records for the segment into two groups based upon the liability for participants being retained and transferred. Then the segment closing adjustment will be determined using the accounting records for the participants being transferred to the buyer or transferee. This proposed Standard also provides that, when a segment is divided into two or more segments as part of a reorganization, the assets shall be divided in proportion to the accumulated post-retirement benefit obligation. This provision is more specific than the similar coverage found at 9904.413–50(c)(v) for pension plans.

If no active employees are retained in the segment, the unrecognized transition obligation, prior service cost, gains and losses attributed to the remaining inactive participants are moved up to the next immediate home office along with the associated fair



value of plan assets, accumulated value of unfunded accruals and accumulated value of prepayment credits. All amortizations continue unabated. This amortization of these unrecognized amounts parallels the treatment of the liability for future payments to remaining inactives under the pay-as-you-go method.

Unless a segment is sold to a successor-in-interest, the adjustment will be determined using the values of assets and accumulated benefit obligations immediately prior to the sale. If the segment is sold to a successor-in-interest, this proposed Standard provides that the segment accounting will continue at the successor contractor based on the segment accounting up to the time of the sale, taking into account any division of the segment's assets and obligations.

(iii) Government's share of segment closing adjustment. The Government's share of the segment closing adjustment shall reflect the Government's historical participation in post-retirement benefit cost from the time this proposed Standard first becomes applicable. The intent of this provision is for the cognizant Federal agency official and the contractor to generally determine the Government's historical share of post-retirement benefit costs that were allocated to cost type and negotiated cost-based fixed price contracts. The proposed transition provisions extend this period of participation for contractors who employed accrual accounting for Government contract costing in accordance with SFAS 106 prior to this proposed Standard becoming applicable. In such cases, the Government's participation shall be measured from the date that SFAS 106 accruals used for financial statement purposes were first used for Government contract costing purposes. The proposed Standard also permits the parties to negotiate a delayed recognition of the segment closing adjustment through an amortization process. This proposed provision provides more flexibility for the parties to determine the appropriate proportion than paragraph 9904.413–50(c)(vii) of the pension Standard.

8. Illustrations

Generally the illustrations show the accumulated post-retirement benefit obligation and other liabilities or losses as debit balances and the fair value of assets and other asset equivalent values and gains as credit balances. However, for consistency with financial accounting presentation, when the illustrations include SFAS 106 disclosures, the accumulated post-retirement benefit obligations are shown as credit balances and fair values of assets and other asset equivalent values are shown as debit balances.

Because health and life benefits account for about 98% of all post-retirement benefit plan obligations, there are no illustrations or special provisions for post-retirement benefits other than health and life benefits. This lack of text or illustrations regarding other types of post-retirement benefits does not imply nor indicate that the obligations for such benefits, if material, are excluded from coverage under this proposed Standard.

9. Transition Provisions

One of the issues raised in discussions about post-retirement benefit costs concerns inactive plan participants who may have worked for a strictly commercial segment or a government segment that was sold or abandoned at some time in the past. It has been argued that the post-retirement benefit costs associated with these so-called "homeless" inactives should be explicitly excluded from the post-retirement benefit costs allocated to current and future Government contracts. However, often it is impossible to ascertain whether these "homeless" inactives were formerly employed in an abandoned or sold segment or if they are "homeless" because of incomplete human resource records. Rather than require a herculean and possibly futile effort to identify where these inactive participants had been employed, the Board proposes that the retained liability for these "homeless" inactive participants be assigned to an intermediate home office or corporate office in accordance with the contractor's past practice. The costs associated with these inactive participants will be treated as a general cost of doing business for such home office and allocated in accordance with CAS 9904.403.

Some contractors may not have established a specific practice or method for assigning the "homeless" participants to a corporate or intermediate home office. In that case, the Board envisions several acceptable methods of making such an assignment to home offices. These include, but are not limited to:

(i) Assigning all "homeless" to the corporate home office if the post-retirement plan covers employees in all units that report to the corporate home office;

(ii) Assigning the "homeless" to the immediate home office that had responsibility for the closed or abandoned segment;

(iii) If the closed or abandoned segment(s) were primarily associated with a portion of the contractor's current business, assigning the "homeless" to a home office which allocates the post-retirement benefit cost as a residual expense to segments currently performing work for that portion of the contractor's business; or,

(iv) Those "homeless" participants for whom employment records are unavailable, or who worked in a multiplicity of the contractor's operations could be assigned to the corporate home office.

In any of these cases, the Board accepts the fact that the costs associated with these "homeless" will bear no relationship to its current activities and the cost would be allocated to intermediate home offices and segments as an residual expense.

The proposed transition provisions address how a contractor's prior accounting practices are to be reconciled with the accounting provisions of the proposed rule. Some contractors who were using accrual accounting prior to becoming subject to the proposed rule will continue to use accrual accounting if the criteria for accrual accounting are satisfied. Likewise, other contractors who had been using the pay-as-you-go method will continue to use the pay-as-you-go method if those criteria are not satisfied. However, special provisions are needed whenever a contractor must change its previously disclosed accounting practice for post-retirement benefit costs.

If a contractor changes from the pay-as-you-go cost method to accrual accounting for contract costing purposes, the transition section of the proposed Standard provides for the establishment of a supplemental transition obligation so that prior SFAS 106 accruals measured during prior periods when the contractor had cost-based Government contracts can be assigned to periods after the contractor becomes subject to the proposed Standard. Once established, the supplemental transition obligation is accorded the same treatment as the SFAS 106 transition obligation. The prior accruals included in the supplemental transition obligation are based on the delayed recognition of the transition obligation regardless of how the transition obligation was recognized for financial accounting purposes. As an alternative to establishing a supplemental transition obligation, the proposed Standard permits these contractors to use a so-called "fresh start" approach provided the contractor has continually been performing government cost-based contracts since adopting SFAS 106.

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If a contractor switches from accrual accounting to the pay-as-you-go cost method, this proposed Standard requires that the accumulated value of prior unfunded accruals measured during periods when the contractor had cost type or cost-based fixed price Government contracts be carried forward. Like the analogous provision in the amendments to the pension Standard, CAS 9904.412, benefit payments must be charged against the accumulated value of unfunded accruals before pay-as-you-go costs can be measured, assigned to cost accounting periods, and allocated to cost objectives.

If the contractor has an established practice of using terminal funding for its post-retirement benefit costs, that contractor may continue the use of the terminal funding method. A switch from terminal funding to pay-as-you-go accounting is permitted if the criteria for accrual accounting are not met. Any payments previously considered as terminal funding and allocated to cost objectives would not be subject to the fifteen-year amortization requirement. If the criteria for accrual accounting are met and the contractor switches from terminal funding to accrual accounting, then any prior SFAS 106 accruals that exceeded amounts paid for terminal funding may be treated as a supplemental transition obligation

*C. Paperwork Reduction Act*

The Paperwork Reduction Act, Public Law 96–511, does not apply to this proposed rule, because this rule imposes no paperwork burden on offerors, affected contractors and subcontractors, or members of the public which requires the approval of OMB under 44 U.S.C. 3501, *et seq.* The records required by this proposed rule are those normally maintained by contractors who claim reimbursement of post-retirement benefit costs under government contracts.

*D. Executive Order 12866 and the Regulatory Flexibility Act*

Because most contractors must measure and report their post-retirement benefit liabilities and expenses in order to comply with the requirements of SFAS 106 for financial accounting purposes, the economic impact of this final rule on contractors and subcontractors is expected to be minor. As a result, the Board has determined that this rule will not result in the promulgation of a "major rule" under the provisions of Executive Order 12866, and that a regulatory impact analysis will not be required. Furthermore, this proposed rule does not have a significant effect on a substantial number of small entities because small businesses are exempt from the application of the Cost Accounting Standards. Therefore, this rule does not require a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980.

*E. Public Comments*

*Public Comments:* This proposed Standard is based upon responses to the Staff Discussion Paper made available for public comment on September 20, 1996, 61 FR 49533. Eighteen (18) sets of public comments were received from contractors, Government agencies, professional associations, actuarial firms, law firms, public accounting firms, and individuals. The proposed Standard is also based upon the ten (10) sets of responses to the Board's letter of January 12, 1999 which was also made available for public comment on February 18, 1999, 64 FR 8141. The comments received and the Board's actions taken in response thereto are summarized below:

1. Need for a Cost Accounting Standard

*Comment:* The industry associations and some contractors expressed the belief that a Standard might not be needed because GAAP, as articulated by SFAS 106 and augmented by CAS 9904.403, 9904.412, 9904.413, and 9904.418, provide full and adequate guidance on the measurement, assignment to periods, and allocation of post-retirement benefit costs. Some commenters expressed the notion that the promulgation of a Cost Accounting Standard on any subject already addressed by a FASB Statement would be superfluous. But, many respondents noted subject areas where SFAS 106 was either inadequate or inappropriate for contract cost accounting purposes and suggested that some CASB guidance would be helpful.

Both contractor and Government commenters generally preferred amendments to the pension Standards, CAS 9904.412 and 9904.413, and possibly the insurance Standard, CAS 9904.416, rather than the promulgation of a new Standard. The commenters unanimously agreed that a Board Interpretation would be insufficient to address the new and complex issues concerning post-retirement benefit costs. Several commenters opined that substantive action should be taken by the Board. SDP Technologies wrote: "While many technical questions need to be resolved, SDP urges the CASB to pursue this effort and develop a comprehensive solution." And, TRW stated, "the level of detail and range of issues posed in the Discussion Paper highlight the numerous accounting, legal, and practical considerations that must be addressed." The OUSD generally concurred when it stated: "While it is generally preferable to amend existing Standards, a new Standard may be necessary if amendments of existing Standards cannot be accomplished without unreasonably complicating existing Standards."

In its letter of August 4, 1997, CODSIA submitted a straightforward and simple proposal to illustrate how the Board might address post-retirement benefit costs by amending CAS 9904.412 and CAS 9904.413. CODSIA did not support the development of a separate Cost Accounting Standard on post-retirement benefits on the grounds that it would not be an economical and efficient way to address this issue. The Board also received a letter from the ABA discussing some of the shortcomings of the CODSIA proposal, but which generally favored CODSIA's approach of amending the pension Standards.

*Response:* The Board recognizes the concerns expressed regarding the promulgation of a new Standard. These concerns appear to be driven by fears that a new Standard might be conceptually different from the current pension and insurance Standards. However, the Board has determined that amending CAS 9904.412, 9904.413, and 9904.416 would be extremely cumbersome and would add unnecessary complexity. The Board notes that the FASB did not merely extend Statements 87 and 88 (SFAS 87 and 88) to post-retirement benefits, but promulgated a separate Statement, SFAS 106, building upon the concepts and structures of SFAS 87 and 88. The Board believes that the most manageable approach to providing substantive measurement, assignment, and allocation criteria is the promulgation of a new and separate Standard addressing the costs of post-retirement benefits. The Board does not see any reason to unnecessarily muddy the water for the sake of arbitrarily avoiding the promulgation of another Standard.

The Board believes it is appropriate to promulgate a separate Cost Accounting Standard on a subject matter that the FASB has addressed for financial accounting purposes. The Board notes the CASB Concepts Statement (57 FR 31039) which states:

> The Board will give careful consideration to the pronouncements affecting financial and tax reporting and, in the development of Cost Accounting Standards, it will take those pronouncements into account to the extent it can do so in accomplishing its objectives. The nature of the Board's authority and its mission, however, is such that it must retain and exercise full responsibility for meeting its objectives.

In this regard the Board must specifically consider what elements constitute a proper measure of post-retirement benefit costs for contract cost accounting purposes.

The Board agrees that SFAS 106 should be used as the baseline for the development of any promulgation regarding post-retirement benefit costs. However, the Board believes that SFAS 106, augmented by existing Standards, does not provide adequate guidance on contract cost accounting for post-retirement benefit costs. The Board proposes to generally accept the terminology, measurement, assignment, and adjustment provisions of SFAS 106. Modifications and restrictions are made only where necessary for Government contract cost accounting purposes. Thus, the Standard being proposed today does modify, augment, and restrict SFAS 106 provisions that are either inadequate or inappropriate for contract cost accounting. This proposed Standard also augments SFAS 106 and existing Standards by addressing the allocation of costs to segments, segment closing adjustments, and the transition from current contract cost accounting practices to this new Cost Accounting Standard for post-retirement benefit costs.

The essence of the CODSIA proposal to amend CAS 9904.412 was simply to add a sentence to subsection 9904.412–40(b) stating that for administrative convenience, the contractor may, at its option, utilize the methodology provided in SFAS 106 to measure the costs of postretirement medical and life insurance costs. The CODSIA approach would permit very different alternative accounting practices for the same category of cost without any justification for having a choice of accounting methods. Such an approach would be contradictory to the Board's goal of uniformity. The Board does not believe that post-retirement benefit costs should be subjected to the pension rules of CAS 9904.412 and 9904.413 that were originally designed and recently amended to coordinate with the vagaries of the tax code. Furthermore, the subject matter and the terminology employed in the current CAS 9904.412 and 9904.413, as compared with SFAS 106, are so different that any attempt to treat them together in a single amended CAS 9904.412 and 9904.413 would produce an unwieldy document that would be difficult to comprehend or implement.

Thus, the Board has concluded that the promulgation of a new Standard is necessary to adequately and clearly address the cost accounting (measurement, period assignment, and allocation) issues unique to post-retirement benefit costs of Government contracts. Having a separate and distinct Standard will make it clear to users and practitioners where the CAS Standards and GAAP are in agreement and where the Standards and GAAP diverge. Promulgating a new and separate Standard will reduce the administrative burden of trying to apply a single pronouncement for two different purposes; to wit, financial reporting and contract cost determination.

2. Relationship to Existing Standards

*Comment:* Generally the respondents agreed that tax consequences should not be considered in the determination of contract cost. The Aerospace Industries Association (AIA) did suggest that if funding were required as a condition of using accrual accounting, the tax consequences might have to be considered "because funding and tax considerations are irretrievably interwoven." The AIA also noted that if the Board "permits accrual accounting without a funding requirement, tax consequences are generally irrelevant." The industry associations and most contractors believed that CAS 9904.412 and 9904.413, possibly augmented by CAS 9904.416, should form the baseline if there were to be a funding requirement. While some industry commenters felt that the Board should consider tax-rate complementary funding, others expressed their belief that tax-rate complementary funding for nonqualified pension plans in CAS 9904.412 is overly complicated. While Government respondents opposed the use of such tax-rate complementary funding, the OUSD did express its belief that "tax consequences should be considered only to the extent the contractor is unable to fund the entire amount of the accrued cost to a tax deductible funding vehicle."

Some industry commenters expressed their belief that if funding were to be required for cost recognition, then an "assignable cost limitation" would be reasonable, especially if spread-gain actuarial cost methods were permitted. The AIA noted, "the original CAS Board limited the application of spread gain methods by imposing an assignable cost limitation (see old CAS 412.50(b)(2))." Government respondents believed there should be an assignable cost limitation defined similarly to the one used for pensions regardless of whether funding would be required as a prerequisite for accrual accounting.

The Government respondents did not favor any explicit linkage between segment closing adjustments for pension and post-retirement benefit plans. Industry respondents asked that the Board provide that any pension surplus measured under 9904.413–50(c)(12) be explicitly offset against any unfunded post-retirement benefit obligation when a segment closes. Texas Instruments stated:

> Conceivably, the same business interruption event that triggers an adjustment to PRB costs will also trigger a similar adjustment to pension costs. Therefore, both these determinations should be connected.

The Department of Defense commenters expressed an interest in amending CAS 9904.416 to reflect the differences between life insurance, medical insurance, and property and casualty insurance. These respondents noted that each of these types of insurance requires unique actuarial approaches and are generally unrelated to each other. They also recommended that the Board review workers' compensation coverage, which includes health, disability and liability provisions. The comments from industry generally stated that they had no major concerns or problems with CAS 9904.416.

*Response:* When developing these proposed modifications to SFAS 106, the Board sought to maintain consistency where practicable with the analogous provisions of (a) CAS 9904.412 and 9904.413 on pensions, (b) CAS 9904.415 on deferred compensation plans, and (c) CAS 9904.416 on insurance costs. However, this proposed Standard addresses the accounting issues of measurement and period assignment of post-retirement benefit costs and does not address tax-deductibility concerns. The recent amendments to CAS 9904.412 and 9904.413 were exceptional in the incorporation of tax-implications into a Standard. The Board recognizes that tax accounting rules can produce volatility and that such tax rules primarily affect the timing of cost recognition. The Board notes that pension accounting and practices, unlike those for post-retirement benefits, evolved in an environment in which funding was not only permitted, but dominated by tax law and Internal Revenue Service (IRS) and Department of Labor regulations regarding the determination of the benefits and the actual funding and administration of pension plans.

In this proposed Standard, the determination of the cost for a period when accrual accounting is used generally follows SFAS 106 with some

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restrictions and modifications. SFAS 106 imposes no minimum or maximum limits, such as the assignable cost limitation, on the determination of the net periodic post-retirement benefit cost, and neither does this proposed Standard.[8]

The proposed Standard does not address the offsetting of a post-retirement benefit segment closing adjustment against any pension segment closing adjustment. The Board believes that CAS 9904.413 determines the plan termination and segment closing adjustment for pension plans and this proposed Standard would determine the adjustment for post-retirement benefit plans. How either adjustment is actually transacted or effected is best determined by the contracting parties. This proposed Standard and CAS 9904.413 neither require nor preclude the aggregation of these adjustments with each other or other issues for resolution and settlement purposes.

This proposed Standard addresses many issues similar to those considered in the March 30, 1995 amendments to CAS 9904.412 and 9904.413. The fact that any of these issues are treated differently in this proposed Standard on post-retirement benefit costs does not necessarily imply that changes will be made to the pension Standards, nor does it preclude such possibility.

The Board notes the comments from the Department of Defense regarding a general review of CAS 9904.416, but believes that addressing post-retirement benefits as defined by SFAS 106 is a substantial task in its own right. To expand this case to include a comprehensive review of CAS 9904.416 would make the case unmanageable. The Board proposes that the provisions of CAS 9904.416 relating to prefunding of retiree benefits be replaced by this Standard. Otherwise the Board has concluded that any general review of CAS 9904.416 is outside the scope of this project.

3. Funding as a Prerequisite for Accrual Accounting

*Comment:* The perception that any post-retirement benefit liability recognized in the financial statements might be a "soft" liability led some respondents, especially Government respondents, to express the belief that funding must be used as a tool in assessing the firmness of these liabilities.

[8] As discussed elsewhere, the proposed Standard does compare and limit the net periodic post-retirement benefit cost so that the accumulated value of plan assets and unfunded accruals do not exceed the unavoidable liability, *i.e.*, the nonforfeitable post-retirement benefit obligation.

In general, industry commenters argued funding does not necessarily substantiate the liability. They expressed their belief that funding may be an important business consideration, but such considerations generally deal with cash flow consequences and income tax considerations. They recommended that any criteria established as a prerequisite for accrual accounting should address the existence of the liability rather than the existence of funding. They also believed that funding is an allowability issue, not an accounting issue.

The ABA noted that for financial accounting purposes the threshold for recognition is met by a probability that an obligation exists. The ABA did suggest there may be situations when the funding of the annual accrual might serve a legitimate purpose. The ABA wrote in part:

> We do, however, agree that contractors should not be permitted to accrue costs without funding them in cases where the payment cannot be compelled. In such cases, no valid liability has been incurred unless the liability is funded. Additionally, if circumstances indicate that a contractor is likely to default on its PRB obligations, accrual without funding should not be allowed.

The NDIA also acknowledged that while funding could be one means to substantiate (validate) the obligation, there were disadvantages to using funding for contract cost measurement and assignment.

> It is clear that funding validates a liability. It is also clear that funding does not match cost with products. It is also clear that the use of funding (or any other cash payment) as a determinant of cost incurrence decreases uniformity and consistency in accounting.

Industry representatives pointed out the reason for including a funding requirement in the pension Standards and the inappropriateness of a funding requirement for post-retirement benefits costs. The AIA made the point as follows:

> Public policy, as articulated in the tax code, has long encouraged pension plan sponsors to fund their programs at an adequate level. While industry does not agree that funding has any place in the Cost Accounting Standards, the addition of a funding requirement in the recent changes to CAS 412, as well as explicit recognition of tax deductible limits, did not create tension between public policies as expressed in the Internal Revenue Code and the Cost Accounting Standards. "In contrast, however, Congress has intentionally discouraged prefunding of post-retirement medical benefits. It would be inconsistent for the Cost Accounting Standards Board to in essence force contractors to fund these post-retirement benefit costs.

On the other hand, in its response to the Staff Discussion Paper, the OUSD articulated the concern of some members of the Government procurement community that any potential risk that the liability might not be liquidated is unacceptable. The OUSD unequivocally stated:

> Yes, funding is necessary to substantiate accrual of costs. The level of funding necessary is 100 percent of the maximum amount of possible funding in accordance with the contractor's funding vehicle. Permitting funding at less than 100 percent of the cost accrual results in a potential risk that the liabilities for which the Government has paid its fair share might never be liquidated. A 100 percent funding requirement assures the Government that the money will be available when the liability must be paid. If there are valid reasons to accrue the liabilities, the accruals should be fully funded. Permitting less than 100 percent funding effectively results in the Government providing a long-term interest free loan to contractors. Permitting funding at less than 100 percent of the cost accrual would require that earnings on the unfunded amounts be imputed each year to preclude increased costs to the Government resulting from lost earnings on the unfunded amounts.

Government respondents stated there are no appropriate alternatives to a requirement that the cost accrual be fully (100%) funded. Generally, industry respondents stated that the Board did not need to consider any alternatives to a funding requirement because funding was unnecessary to substantiate the cost accrual. Boeing concurred with the belief that funding does not necessarily substantiate the liability, but suggested that more restrictive measures of accrual accounting or cash basis accounting might be used where the contractual rights to a benefit are lacking. Boeing commented that:

> The accounting must be based upon the likelihood that the contractor will liquidate the liability. If the likelihood is in some doubt or remote then the costs should be recognized on more limited accrual basis, *i.e.*, terminal funding or those vested, or if not appropriate on a cash basis. Otherwise the costs must be recognized on an accrual basis over the period of time the benefit is earned.

The responses to the Board's January 12, 1999 letter did focus and advance the discussions regarding the role of funding. Most industry representatives continued to argue that funding neither enhances nor proves the firmness of the liability for post-retirement benefits. Some industry commenters expressed the belief that once established, a contractor's promise to provide post-retirement benefits could not easily be avoided and therefore, a funding



requirement might be superfluous. Industry commenters again argued that funding was merely a cash-flow or financial management decision and as such, was an inappropriate consideration for an accounting standard. These respondents did believe that funding would be a proper consideration for an allowability rule which addresses procurement policy concerns.

Comments from the Department of Defense Inspector General (DOD IG) and the Department of Energy reiterated the position that full (100%) funding of post-retirement benefit costs should be included in the criteria for accrual accounting. The OUSD maintained its opinion that post-retirement benefit costs must be funded, but agreed with the industry comments that funding should be addressed as an allowability constraint and not within the allocability criteria of an accounting standard.

*Response:* In Standards promulgated by the original CAS Board dealing with pension and insurance costs, in most instances the applicable Standards require that pension and retiree insurance costs be funded. Therefore, the Board believes that to maintain consistency with the promulgations of the original CAS Board and amendments promulgated by the current Board, the Board had to consider the role of funding as a prerequisite for the use of accrual accounting for the costs of post-retirement benefits. The Board considered a criterion for accrual accounting based on the contractor's documented commitment to fund at least the government segments' post-retirement benefit costs. But, after reviewing the merits of assessing the liability's firmness using funding as opposed to the terms of the post-retirement benefit plan, the Board decided to propose criteria concerning the contractor's ability to unilaterally reduce or eliminate benefits.

The original pension Standard, CAS 412, and the March 30, 1995 amendments were developed in an environment wherein the large majority of pension costs arose from qualified pension plans subject to ERISA. For qualified pensions plans there was less concern with whether the pension obligation would be systematically funded as costs are accrued for benefits earned by employees working on Government contracts. Tax accounting, financial accounting and contract cost accounting for pensions mostly differ in the pattern in which tax deductible accruals (contributions), financial accounting expense accruals and the contract cost accruals are ascribed to accounting periods.

Generally CAS 412 did not have to establish the contractor's commitment to fund its tax-qualified pension plan as a prerequisite for accrual accounting, the funding requirement was already imposed by ERISA. Even as far back as 1968 paragraph 42 of APB–8 stated: "This Opinion [APB 8] is written primarily in terms of pension plans that are funded." Conversely, for post-retirement benefits, financial accounting uses "pure" accrual accounting while tax accounting for post-retirement benefits is generally limited to cash basis accounting. Thus post-retirement benefits are shown on an accrual basis for the more conservative financial accounting purposes (which tend to maximize liability recognition), but are usually operated on a pay-as-you-go basis.

Despite assertions by some respondents, the original Board did believe that funding played a legitimate role in determining whether the liability for a pension or post-retirement benefit was sufficiently firm for contract cost recognition. In the May 15, 1978 preamble to the Notice of Proposed Rulemaking for CAS 416 (43 FR 20806), the original Board addressed the funding issue when it proposed subparagraph 416.50(a)(1)(v) (which was unchanged when published in the final rule):

> "One respondent objected to the requirement that costs which represent additions to a 'retired lives' reserve be evidenced by payments to an insurer or trustee. Retired lives benefits are analogous to pension costs in that a contract cost is to be recognized in the present but payment of the benefit is to take place in the relatively distant future. In most such programs, the employer reserves the right to discontinue the program at any time, and benefits are limited to those which can be provided by amounts already funded. If an amount is to be recognized currently as a cost of a retired lives program, there should be some evidence that a contractor has, in fact, incurred a liability which he cannot subsequently avoid by a unilateral decision.
>
> "Some respondents suggested the deletion of the requirement that the contractor have no right of recapture of the fund as long as any active or retired participant in the program remains alive. Under some fully prefunded programs, a substantial portion of the fund is to provide for liability to active employees. Without the cited provision, it would be possible for the contractor, at any time, to terminate the program as to employees who had not yet retired, thereby creating a surplus in the fund and obtaining a windfall."

And in Section (1) "RELATIONSHIP TO THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974 AND TO GENERALLY ACCEPTED ACCOUNTING PRINCIPLES" of the September 24, 1975 preamble to the promulgation of CAS 412 as a final rule (40 FR 43873), the original Board stated:

> APB–8 provides criteria for accounting for the cost of pension plans for financial accounting purposes. The Board believes that certain of these criteria are not appropriate for Government contract costing purposes. For example, a fundamental concept of APB–8 is that the annual pension cost to be charged to expense for financial accounting purposes is not necessarily determined by the funding of a pension-plan. The Board believes that a requirement of law for annual minimum funding of pension costs on an irrevocable basis, is strong evidence that an obligation for at least such period.

The Board went on to state:

> In developing the accompanying Cost Accounting Standard, the Board has attempted to stay within the general constraints of APB–8 and the funding provisions of ERISA.

Later, in Section (11) "ASSIGNMENT OF PENSION COST" of the September 24, 1975 Preamble, the Board writes:

> "Certain commentators expressed their disagreement with the sections of the **Federal Register** proposal dealing with the assignment of pension costs among cost accounting periods. The concept set forth in the proposal related in the assignment of costs to the validity of the liability for such costs. Commentators referred to the concept set forth in APB–8 that the accrual of pension expenses and the funding of pensions are not necessarily related. They stated that cost should be assigned to cost accounting periods irrespective of whether or when funded.
>
> "The Board believes that assigning pension costs to cost accounting periods on a cash basis is inappropriate from an accounting viewpoint and could lead to the improper assignment of pension costs among periods. **The Board believes also that the concept which states that funding is unrelated to pension accruals is not appropriate for contract costing because, under such a concept, pension costs could be assigned to cost accounting periods and never be funded; yet such costs would be reimbursed by the Government.** (Emphasis added)
>
> "The underlying concept of the Standard is that when a valid liability exists, the corresponding costs may be accrued irrespective of when the liability is liquidated. If the liability (to the pension fund or, for pay-as-you-go plans, to retirees) is not valid, it cannot be accrued; in order for it to be allocated to cost objectives of the current period, it must be liquidated (funded) in that period or within a reasonable period of time thereafter. In order to clarify its intent with regard to the allocation of pension costs to cost objectives of individual cost accounting periods, the Board has revised the wording of 412.40(c) of the Standard."

Clearly, the original Board believed that funding was a proper accounting

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consideration in promulgating a Cost Accounting Standard. This Board agrees and recognizes that in any case, funding is one method for validating the liability.

The Board also considered adopting the tax-rate complementary funding requirement applicable to nonqualified pension plans. While negating the tax consequences of funding such plans, tax-rate complementary funding adds administrative burden and complexity. Since the amendments to the pension Standards were published in March 1995, it appears that very few, if any, contractors have elected to use the "tax-complement" approach. Furthermore, unlike pensions, the funding of post-retirement benefits is not driven by tax law. The Board has concluded that it is inappropriate to develop provisions of this proposed rule based on tax law.

Looking to other accounting standards, an alternative to imposing a funding requirement might be to follow the approach that the National Association of Insurance Commissioners (NAIC) uses for the statutory accounting policy for "Employer's Accounting for Post-retirement Benefits Other Than Pensions" wherein the obligation is determined for recognizing only benefits for which plan participants are currently eligible. However, the responses to the Staff Discussion Paper, "Accounting for Unfunded Pension Costs," published on June 17, 1991 (56 FR 27780), argued that such recognition would neither have the simplicity and ease of cash basis accounting nor the matching of costs with activities achieved by accrual accounting. These same comments and criticisms would apply to such an approach for post-retirement benefit costs. The Board disagrees and believes that such a restrictive approach does have merit and can address the issue of whether a firm liability exists. Therefore, the Standard being proposed today imposes a cap on the net periodic post-retirement benefit cost for a period which is based on the firm liability for benefits payable to vested and fully-eligible participants.

There is much confusion, misinformation, and perhaps disinformation, concerning funding as a prerequisite for accrual accounting. The Board believes the question of whether accrual accounting or cash basis accounting should be used to measure, assign and allocate costs to Government contracts is an accounting question within the purview of the Cost Accounting Standards Board. The establishment of criteria concerning when alternative accounting approaches (cash versus accrual) should apply is also an accounting question that the CAS Board can and should address. (See CASB Statement of Objectives, Policies and Concepts published May 1992, after SFAS 87 and 106 were promulgated.) The Board disagrees that requiring funding of the period cost developed under an accrual accounting method converts the funded accrual to cash basis accounting because the primary measurement and assignment is still based on accrual accounting. Although this proposal does not impose a funding requirement, the Board reiterates its belief that funding can be an appropriate criterion to ascertain the contractor's commitment to ultimately provide a promised benefit.

4. Criteria for Assessing the Firmness of the Post-Retirement Benefit Liability

*Comment:* The Staff Discussion Paper asked if the post-retirement benefit liability was reasonably foreseeable and could be reasonably estimated. The response from the National Defense Industrial Association (NDIA) was representative of the comments from both industry and the government when NDIA stated: "If it can be determined that there is a valid obligation to pay, determining an annual estimate of the cost of that liability is feasible." Several commenters concurred with AIA who noted that the FASB had "considered this issue at length, and concluded that these amounts could be reasonably estimated (see paragraphs 159 through 163 of SFAS 106)." Towers-Perrin, an actuarial consulting firm, stated that it performs nearly 600 SFAS 106 postretirement benefit plan valuations for nearly 600 clients each year.

Most commenters who addressed the SFAS 106 definition of the "substantive plan" stated the definition might be inadequate for contract cost accounting purposes. There appeared to be a general consensus that in order for a post-retirement benefit to be recognizable, criteria similar to that found in CAS 412 requiring that the plan be in writing and communicated to the employees, and that the benefits be materially nonforfeitable should be applied.

However, comments from the industry associations questioned the usefulness of requiring that the post-retirement benefit plan be written as adequate evidence of a firm liability. NDIA argued that the SFAS 106 concept of established practice coupled with employee communication might be more appropriate: "A written document enhances the likelihood that there is a valid obligation. However, employee notification of future benefits, coupled with a history of payment of benefits, also seems to be substantial evidence of an intent to pay." AIA agreed with NDIA: "A formal document does not make the liability any more compellable than informal documentation or an established practice. A formal document may enhance the auditing of the liability but it doesn't necessarily enhance the validity of the liability."

Funding as a precondition to the use of accrual accounting remains controversial and was discussed in the previous subsection (3). Other than a funding requirement, no commenters suggested any additional or alternative criteria that might be used to assess the firmness of the post-retirement benefit obligation.

The Staff Discussion Paper also inquired whether the firmness of the liability could be enhanced by not projecting benefit levels. None of the commenters found any utility to placing such a restriction on the recognition of the post-retirement benefit liability.

*Response:* The Board agrees that the liability for a plan that meets the criteria for accrual accounting set forth in this proposed Standard can be reasonably estimated. However, the Board does not believe that a liability is a firm liability simply because it can be estimated. The financial effect of many contingencies can be estimated, but the estimated value associated with these contingencies may not rise to the level of a firm liability for contract costing purposes without meeting other criteria.

The SFAS 106 definition is intended to identify any potential liability for financial accounting disclosure purposes. For contract cost accounting purposes, the Board believes there must be a greater expectation that the benefits will ultimately be paid to the employees. The Board concludes that, at a minimum, when accrual accounting is used for contract cost accounting, the benefits must be described in a formal written document, the right to the benefits must be communicated to the plan participants, and the benefit must be materially nonforfeitable once eligibility is attained. The formal document provides the vehicle by which employees can legally enforce payment of the promised benefits. Furthermore, with the numerous changes that corporations have been making to their post-retirement benefit plans to reduce or eliminate benefits or shift the cost to the employees, the Board believes that only benefits currently provided by the written document and which the contractor cannot unilaterally negate or otherwise eliminate form a firm liability that should be recognized on an accrual basis.



The Board notes that, unlike pension benefits, employees' rights to promised post-retirement benefits often do not vest until the employee approaches retirement eligibility, *e.g.*, age 50 and 20 years of employment. Because of this substantial delay in vesting, a contractor can have a formal, ironclad contractual promise that is communicated to its employees, but still be able to discontinue the plan leaving only those employees who are currently eligible or close to eligibility with rights to post-retirement benefits. This Board, like its predecessor, is concerned that the contractor could reap a substantial gain attributable to the liability released by nonvested participants. The recent court decision in *Sprague* v. *General Motors Corporation*, (Nos. 94–1896, 94–1897, 94–1898, 94–1937, U.S. Court of Appeals, 6th Circuit, January 7, 1998) throws into question the usefulness of relying on established practice, documentation, and communication collectively or individually. Even when the post-retirement benefits are provided pursuant to a collectively bargained agreement, a Circuit Court recently found that the commitment to provide post-retirement benefits does not survive beyond the current bargaining agreement (*Joyce, Charles* v. *Curtiss-Wright Corporation* (1999, CA2, 1999 WL 152535). The Board is aware that a similar systemic weakness in the promise of pension benefits to the employees of Studebaker Corporation was a major impetus for the enactment of ERISA in 1974.

The Board examined how the earning of post-retirement benefits is attributed to cost accounting periods by the actuarial cost method employed by SFAS 106. The Board also considered the ERISA and DOL rules which require that pension benefits, once earned, cannot be reduced by the plan sponsor. For accrual accounting, this proposed Standard similarly requires that the portion of the post-retirement benefit for which the employee has achieved eligibility cannot be eliminated or reduced by the unilateral action of the contractor.

Because the Board does not accept the SFAS 106 substantive plan as the basis for the recognizable liability and has chosen not to use funding to substantiate the cost, the proposed rule relies on the nonforfeitable portion of the accumulated post-retirement benefit obligation as the measure of the valid, that is, compellable, liability. To accomplish this, the proposed rule imposes a limitation on the post-retirement benefit cost measured for a period. The proposed limitation is measured as the benefits paid during the period plus the unfunded amount of nonforfeitable accumulated post-retirement benefit obligation. The amount of valuation assets is the fair value of plan assets plus the accumulated value of unfunded accruals minus the accumulated value of prepayment credits. The proposed rule further requires that the measurement of nonforfeitable accumulated post-retirement benefit obligation include nonforfeitable benefits that would be earned during the year.[9]

5. Identification of the Post-Retirement Benefit Plan

*Comment:* Industry and Government commenters alike argued that the Board should permit the use of different accounting methods for different benefits because a post-retirement benefit plan often is not a single-purpose, homogeneous plan. As the AIA expressed it:

> One area of difference between pensions and post-retirement benefits concerns the definition of a single "plan." While the contracting parties must be clear as to the underlying benefits that are reflected in contract costs, and how amounts funded or accrued relate to those individual cost elements, industry feels strongly that the CAS Board should not require contractors to restructure their plans from an ERISA perspective in order to achieve effective cost allocation. In other words, form should not be elevated over substance with regard to plan structure.

The OUSD summed it up this way:

> If separate plans are used to provide different types of post-retirement benefits, different accounting methods should be permitted. Different accounting methods also should be permitted for different benefits provided through the same plan, but only if separate records are maintained. Different accounting methods generally should not be permitted for different groups within the same plan population (e.g., union versus non-union). However, if contractors are permitted to use cash accounting for current retired employees and accrual accounting for active employees, the treatment of post-retirement benefit costs for future retirees must be on an accrual basis. Since the post-retirement benefit liability would have already been accrued during the period of active employment, there is no additional liability to be recognized when active employees retire.

Most commenters felt that immaterial benefits, *e.g.*, legal services, retiree discounts, etc., could be accounted for by the contractor in any reasonable manner. They stated that, as with any item of cost, the CAS should only address costs that are material.

*Response:* The Board agrees. The Board is aware that it is often necessary for a company to use a combination of investment vehicles, *e.g.*, a Voluntary Employee Benefit Association (VEBA) trust combined with an IRC § 401(h) trust, to achieve tax-favorable funding of post-retirement benefits. Similarly, slightly different retiree insurance plans may be required in different plants, locations, or states to provide an overall general post-retirement benefit promise. Thus, the post-retirement benefit plan is frequently not a single benefit plan, but several different benefit promises to different groups of employees.

The proposed Standard permits the contractor to parse its overall post-retirement benefit plan or its plan population into several separately identified plans for purposes of contract cost accounting. Once so established, such division of the plan or population must be consistently maintained and often will require disclosure on the DS–1 Statement. For administrative ease, the proposed Standard also allows the contractor to aggregate different plans or populations for which the same contract cost accounting method is used.

Costs of post-retirement benefits that are immaterial may be accounted for separately on a consistent basis. This proposed Standard does not address post-retirement benefit costs that are immaterial.

6. Cash Basis Accounting (Pay-as-You-Go Cost Method and Terminal Funding)

*Comments:* Many commenters expressed their belief that cash basis (pay-as-you-go) accounting is appropriate whenever the post-retirement benefit liability is not firm. Some commenters expressed a desire for cash basis accounting to be permitted even when the criteria for accrual accounting are satisfied so that contractors could maintain the flexibility to coordinate their contract cost accounting with their financial management decisions regarding the funding of the liability. Other commenters asked that cash basis accounting be permitted as an alternative if a funding requirement were to be imposed as a prerequisite to accrual accounting.

The commenters who addressed terminal funding stated that while terminal funding was not an acceptable accounting method, the Board should permit contractors to continue use of the terminal funding method.

*Response:* The Board generally agrees. Therefore, this proposal provides that if the post-retirement benefit plan does

[9] Including the additional nonforfeitable post-retirement benefit obligation accrued during the year is analogous to, but more straight-forward than, measuring and adding a nonforfeitable annual service cost.

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not satisfy the criteria for accrual accounting, then cash basis accounting is the only appropriate cost accounting method. However, this proposed Standard requires that if the plan does meet the proposed criteria for accrual accounting, then the contractor must use accrual accounting.

The Board agrees that terminal funding is not a generally acceptable accounting method and may introduce excessive volatility into costs. This proposal does not permit contractors to use the terminal funding method, although the transition provisions permit a contractor who has an established practice of using terminal funding to continue such practice.

As discussed later, if the plan fails the criteria for accrual accounting, the Board believes it is inappropriate to recognize any unfunded liability that may exist when a segment closes.

7. Accounting for the Funding of Post-Retirement Benefit Plans

*Comment:* The commenters generally agreed that any portion of the accrued cost for the period that is not funded should be accounted for in some manner. The commenters suggested that the provisions of CAS 9904.412 regarding unfunded accruals could serve as appropriate guidance. The NDIA suggested that some restrictions might be placed on the interest equivalent used to update the accumulated value of the unfunded accruals. The OUSD recommended that the accumulated value of the unfunded accruals be reduced appropriately when post-retirement benefits are paid.

*Response:* The Board agrees with these comments. For plans using the pay-as-you-go cost method, funding is accomplished by payments made directly to the participant or else to a third party to provide service or insurance for the participant. The cost of defined-contribution plans using accrual accounting is measured by the net distribution to individual participant accounts of the amount deposited to the funding agency or paid to cover the administrative expenses of the plan. Interest expenses or other costs of borrowing are excluded from post-retirement benefit costs. For defined-benefit plans using accrual accounting, deposits to the funding agencies plus benefits paid to or on behalf of participants comprise the funding. When accrual accounting is used, the Board believes that contractors who pay benefits directly from corporate resources should be accorded the same treatment as contractors who would make a deposit to a funding agency and then almost immediately use that funded deposit to pay benefits.

Depending on its financial management decisions, a contractor's actual funding may be more or less than its assigned post-retirement benefit cost, therefore the proposed measurement and assignment section includes provisions to account for unfunded accruals and prepayment credits. The Board proposes that any portion of the period accrual that is not funded shall be accounted for and accumulated with interest as an accumulated value of unfunded accruals. Generally the accumulated value of unfunded accruals would be treated the same as a plan asset.

This proposed Standard specifically provides that prepayment credits are not allocated to segments until used to fund the post-retirement benefit cost in a future period. When a portion of the prepayment credit is used to fund post-retirement benefit cost, that portion will be allocated as part of the total funding for that cost accounting period. This means that the paragraph 9904.419–40(b)(5)(iii) balance tests would not include the prepayment credit when applied at the segment level.

Consistent with the pension Standard, CAS 9904.413, a contractor may choose to allocate funding to those segments, including home offices, that allocate costs to contracts subject to this Standard before allocating any funding to other segments. This proposed provision gives contractors flexibility to comply with any funding requirement that might be imposed by procurement allowability rules. Post-retirement benefit plans, like nonqualified pension plans, are not subject to plan-wide minimum funding requirements so that funding the Government segments first could create a situation where those segments are fully funded while the commercial segments are unfunded. The Board is concerned that because all participants generally would have a claim to any assets of the plan, the Government could, in fact, be subsidizing the obligations of commercial operations and therefore funding must then be applied to those segments once the Government segment(s) is funded. Note that in Illustration 9904.419–60(d)(6), the contribution in excess of the minimum required to fund the cost of the Government segments was allocated toward the funding of the commercial segments rather than as a prepayment credit for the Government segments.

If the criteria for accrual accounting are satisfied, this proposed Standard provides that the full post-retirement benefit cost be allocated to segments based on either a separate calculation of costs or general allocation using an appropriate base, *e.g.*, headcount or salaries, etc. Once the post-retirement benefit cost is allocated to segments and intermediate home offices, this proposal provides that the cost be allocated to intermediate and final cost objectives in the same manner as other personal service compensation costs of that segment or home office.

8. Accounting for the Assets of Post-Retirement Benefit Plans

*Comment:* Both Government and industry respondents found IRC Section 401(h) accounts within a qualified pension trust, VEBA trusts, and secular trusts to be acceptable trust arrangements. Industry respondents believed that "rabbi" trusts would be acceptable funding agencies for post-retirement benefit plans just as they are acceptable for nonqualified pension plans under CAS 9904.412. The AIA advised the Board that "any Standards should permit the use of these and other new arrangements as they emerge." Government respondents expressed their belief that any trust arrangement must not be subject to the claims of creditors and therefore objected to "rabbi" trusts. The DOD IG stated:

> CAS 9904.416.50(a)(1)(v)(B) requires that there be no right of recovery from a trust by the trustor as long as any active or retired participant in the program remains alive unless the interests of such remaining participants are satisfied through reinsurance or otherwise. This provision has served to adequately restrain contractors from attempting to cost contingent liabilities in current costing periods.

Some industry respondents believed there was no accounting difference between treating IRC Section 401(h) separate accounts as the assets of a post-retirement benefit plan or the assets of an ancillary benefit that is an integral part of the pension plan. On the other hand, the OUSD said:

> Separate 401(h) accounts should be considered part of the post-retirement benefit plan assets because the assets are segregated in a trust and they are restricted by the IRC to be used solely for post-retirement benefits. This is consistent with the description of post-retirement benefit plan assets contained in paragraph 63 of SFAS 106.

Commenters noted many insurance arrangements, *e.g.*, restricted insurance reserves, separate investment accounts, trust owned life insurance (TOLI) arrangements, that might qualify as funding agencies. While they agreed that all insurance arrangement should be considered, they also agreed that access to the assets must be restricted. In this regard, the commenters expressed a belief that a corporate owned life insurance (COLI) arrangement should not be considered a funding vehicle because a COLI is an unrestricted investment of the company and not the post-retirement benefit plan. The Government respondents believe insurance arrangements must be subject to the same criteria as trusts. The OUSD echoed their concern about "rabbi" trusts and stated, "Insurance arrangements should be permitted to the extent the assets are protected from general creditors and cannot be used at the contractor's discretion."

The commenters agreed that several funding agencies could be combined to form the assets of a post-retirement benefit plan. No one believed that any particular type of funding agency should be given preference or priority.

*Response:* This proposed Standard on post-retirement benefit costs adopts the CAS 9904.412 definition of funding agency. Any investment vehicle or arrangement and any insurance product or reserve that satisfies that definition can be recognized as an asset of the post-retirement benefit plan. Several individual arrangements, such as a VEBA trust, a TOLI arrangement, and an IRC section 401(h) subaccount could be aggregated together to form the plan assets. The Board expresses no preference for one arrangement over another.

The Board is not concerned about the use of "rabbi" trusts. If a "rabbi" trust meets the funding agency definition, the plan participants' and beneficiaries' rights are superior to that of the contractor. Because the procuring agencies are responsible for ensuring that their contractors are financially viable, the Board does not perceive any undue risk to the Government that should affect this proposed accounting Standard.

9. Measurement and Assignment Under the Accrual Accounting Method

*Comment:* The commenters were in general agreement that accrual accounting is the most desirable accounting method for determining the costs of post-retirement benefit plans that meet the criteria for establishing a firm liability. They uniformly observed that accrual accounting affords the best matching of post-retirement benefit costs with the contract activity.

None of the commenters favored limiting the measurement and period assignment of post-retirement costs to a single accounting method. In addition to the firmness of the liability, the commenters expressed their belief that the choice of the appropriate cost accounting method would depend on the nature of the post-retirement benefit plan, the financial management of the plan, and factors affecting a particular industry and employee population. As AIA observed:

> CAS consistency and uniformity is referring to identical treatment under like circumstances. In this area, it is highly unlikely there will be like circumstance. Contractors are different, plans are different, IRS rules are changing and the health care environment is extremely dynamic. A "one size fits all" uniformity is not appropriate for measuring, assigning or allocating this type of cost.

Similarly, TRW stated:

> Due to the different characteristics of post-retirement benefit obligations (for example, the magnitude of the obligation or the ability to fund in a tax-effective manner), a contractor should be free to determine which method is most appropriate.

*Response:* The Board generally agrees that accrual accounting does provide the best matching of costs associated with a firm liability with contract activities. Therefore, for a post-retirement benefit plan that meets the criteria set-forth in this proposed Standard the contractor must use accrual accounting. Post-retirement benefit plans that do not meet the proposed criteria must use cash basis accounting.

10. Actuarial Cost Methods and Assumptions

*Comment:* Looking to SFAS 106 as the primary model, some respondents have implicitly advocated the use of a single method; that is, the unit credit cost method. Other commenters, concerned with matching costing and funding to the greatest degree possible, advised the Board to permit any generally accepted actuarial cost method, including spread-gain methods. Discussing why spread-gain methods should be permitted, TRW suggested:

> Spread-gain methods should be allowed because they frequently are the basis for determining deductible contributions to *401(k)* [Sic] accounts and VEBAs. If only immediate gain methods are permitted, many contractors will find it difficult if not impossible, to match permitted funding with the expense accrual.

Echoing TRW's comment, the AIA recommended "flexibility to follow tax rules is critical if funding is to be a prerequisite for cost allowability." The AIA went on to suggest that "changes in the techniques used from one year to the next should not be treated as accounting changes."

Respondents also commented that the Board should consider addressing actuarial assumptions, especially those used for discount rates and medical cost inflation rates. They were concerned that the SFAS 106 emphasis on current period results, rather than long-term expectations, would cause volatility in annual costs. Several commenters recommended that the assumptions be subject to the same "best-estimate," long-range expectation criteria as the actuarial assumptions used for pension costs. The ABA was adamant that the Board should "refrain from mandating actuarial assumptions." None of the commenters felt that any certification by the plan's actuary or any sensitivity analysis was necessary.

Some commenters held the view that changes in actuarial assumptions should not be treated as a change in cost accounting practice. Other commenters stated that if the basis for actuarial assumptions is changed, rather than the numeric values of assumptions themselves, such changes would appear to meet the criteria of CAS 9903.302 as a change to a cost accounting practice. One commenter added that the Standards need not include guidance already provided for in the regulations.

*Response:* As part of its acceptance of SFAS 106 for the measurement of post-retirement benefit obligations and costs, the Board accepts the SFAS 106 provisions regarding actuarial assumptions. The Board does remain somewhat concerned that currently post-retirement benefit plans are generally unfunded or significantly underfunded. Furthermore, there are no insurance products available to settle the liability for health care benefits. Therefore assumptions regarding expected discount rates cannot be based on the results of actual fund yields nor are there any insurance contracts from which discount rates can be extracted.

The Board notes that the amended CAS 9904.412 prohibits the use of spread-gain methods. Furthermore, when CAS 9904.412 was promulgated, the original Board was concerned that spread-gain methods did not separately identify gains and losses and explicitly imposed a form of assignable cost limitation on costs determined under a spread-gain actuarial cost method.

The Board concurs that post-retirement benefit costs are not sufficiently distinct from pensions and insurance to warrant any special actuarial certification. The Board also notes that when an actuary performs a post-retirement benefit valuation or advises contractors concerning their plans, the actuary is personally subject to the professional standards promulgated by Actuarial Standards Board. The Board has concluded that no special certification requirements are necessary.

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The Board proposes to expand the provisions of CAS 9904.416 that require the accrual cost of prefunded retiree insurance plans be "actuarially determined" and move these provisions to this proposed Standard. By accepting SFAS 106 as the basis for the actuarial determination of the accrual accounting costs for defined-benefit post-retirement plans, the Board is accepting the unit credit actuarial cost method as described in SFAS 106. The proposed Standard does not preclude the contractor from using a spread-gain actuarial cost method to determine the annual contribution to a tax-qualified funding agency, but the contract cost determination is limited to the unit credit cost method as described in SFAS 106.

What constitutes a change in cost accounting practice should be determined in accordance with the provisions of CAS 9903.302. Those provisions describe cost accounting practices as "* * * any disclosed or established accounting method or technique which is used for allocation of cost to cost objectives, assignment of cost to cost accounting periods, or measurement of cost." Additional guidance regarding the disclosure of cost accounting practices applicable to post-retirement benefit plans is provided in Part VII of the Disclosure Statement (Form CASB DS–1 (Rev 2/96)). The DS–1 guidance makes clear that any disclosure only applies to the basis for setting and updating significant actuarial assumptions. Such disclosure does not apply to the current numerical values of the actuarial assumptions which may change in response to experience. On the other hand, a change in the basis used for determining actuarial assumptions would constitute a change in cost accounting practice that should be addressed on a case-by-case basis under the provisions of CAS 9903.302. Additional provisions in this proposed Standard are not deemed necessary.

The Board proposes to place a restriction on the health care trend rate assumption. The proposed limit is implemented by imposing a cap on the health care trend rate equal to the long-term expected rate of return. Of all the actuarial assumptions, the health care trend rate is one of the most volatile and difficult to estimate. Moreover, many economists and other experts do not believe that health care expenditure can continue to increase as a percentage of Gross Domestic Product. Therefore, the Board believes that this restriction will not only reduce volatility, but will introduce a long-term reasonability [10] limit on this problematic assumption. The Board does note that increases in the projected and accumulated post-retirement benefit obligations that are attributable to a period of high health care cost increases will be measured and recognized as an actuarial loss.

11. Accounting for the Transition Obligation

*Comment:* Both industry and Government commenters agreed that if a firm liability exists, then the transition obligation portion of the total liability is a firm liability and should be included in any accrual accounting provisions promulgated by the Board. The commenters noted that both the original and amended CAS 9904.412 identify the initial unfunded liability, which is analogous to the SFAS 106 transition obligation, as one of the portions of unfunded actuarial liability to be recognized and amortized. Similarly, CAS 9904.416 recognized and amortized the actuarial present value of benefits for employees already retired when contractors switched from the pay-as-you-go cost method to the terminal funding method. The commenters generally agreed that immediate recognition of the transition obligation would be disruptive to contract cost accounting. The commenters recommended that the transition obligation be amortized over either a period of 10 to 30 years as required by CAS 9904.412 or else over the average future working lives of the participants as required by SFAS 106.

One commenter argued for some mechanism to reflect the contractor's historical level of cost-based contracts as a means of achieving equity for both parties if there had been a major increase or decrease in the contractor's cost-based Government work over the last ten (10) years. Another commenter suggested that the contractor and the cognizant Federal agency official should be given the latitude to negotiate such an equitable arrangement. Other commenters opined that attempting to reflect past levels of Government participation in costs assigned to future periods would be exceedingly complicated and would impose an administrative burden for both parties.

*Response:* Consistent with the conceptual approaches of CAS 9904.412, SFAS 87 and SFAS 106, the Board agrees that if the post-retirement benefit plan meets the criteria for accrual accounting, the transition obligation should be recognized in accordance with SFAS 106. However, immediate recognition of the transition obligation, as permitted by SFAS 106, would be unmanageable and disruptive to the budgeting process for cost type contracts and the forward-pricing process for negotiated fixed price contracts. The Board proposes to limit recognition of the transition obligation to the delayed recognition method of paragraphs 112 and 113 of SFAS 106.

Neither CAS 9904.412 nor CAS 9904.416 includes any provision to reflect past levels of Government contracting prior to the initial recognition of the prior service liability. Furthermore, the Board views the granting of prior service benefits, which creates the transition obligation, as an inducement or compensation for current and future employment. Accordingly the transition obligation component is to be allocated to the final cost objectives of the period in the same manner as the other five post-retirement benefit components.

12. Accounting for Annual Gains and Losses

*Comment:* The commenters generally recommended that annual gains and losses (also referred to as experience gains and losses) should be amortized. Industry representatives preferred the gain and loss provisions of SFAS 106, while the Government representatives preferred the 15-year amortization period used in CAS 9904.413 and CAS 9904.416. The commenters agreed that immaterial gains and losses could be recognized immediately.

*Response:* As with the other components of post-retirement benefit costs, determination of the annual gain and loss component will follow the provisions of SFAS 106. However, the annual gain and loss measures the experience of a specific cost accounting period and the Board believes that it is inappropriate to inordinately delay contract cost recognition. Therefore, the proposed Standard requires that the full amount of the annual (experience) gain and loss for a cost accounting period be amortized, not just the portion in excess of the corridor established by SFAS 106. The proposed Standard permits the full current period recognition of any immaterial annual gain and loss. Once the contractor has established its policy for recognizing annual gains and losses, the proposed Standard requires the contractor to consistently follow that amortization policy in the future as part of its cost accounting practice. Similar to the provisions of paragraph 9904.412–50(a)(3), the established policy regarding the recognition of annual gains and losses can be dependent upon the size and nature of the gain or loss.

[10] The Board has generally accepted the SFAS 106 guidance on actuarial assumptions which places more emphasis on current conditions rather than long-term expectations. However, in this instance, placing a long-term expectation on the health care trend rate which can exert such a leveraging effect on post-retirement benefit costs seems appropriate.



13. Recognition of Other Changes in the Accumulated Post-Retirement Benefit Obligation

*Comment:* Industry representatives recommended that any gain or loss due to a change in actuarial assumptions or a change in actuarial cost method need not be separately recognized from other causes of the annual gain or loss in accordance with SFAS 106, while the Government representatives suggested the gain and loss amortization rules of CAS 9904.412 should be followed. Similar recommendations were made regarding a change in the benefit provisions of the post-retirement benefit plan.

The commenters agreed that the SFAS 106 market-related value of assets should be used to determine the annual gain or loss. They noted that the market-related value of assets, like the somewhat analogous actuarial value of assets for pensions, helps smooth gains and losses from period to period. The commenters also acknowledged that the actuarial cost method, including the method of determining the market-related value of assets, is part of the contractor's cost accounting practice.

*Response:* Gains and losses due to changes in the actuarial assumptions, the actuarial cost method, or the benefit provisions of the plan are to be determined in accordance with SFAS 106. The Board notes that although the actuarial cost method is prescribed by SFAS 106, substantive changes in the manner in which the actuarial cost method is applied, such as a change in the attribution pattern or in the method of determining the market-related value of assets, would constitute a change in cost accounting practice.

The annual gain and loss includes the effect of actual experience deviating from expected changes in assets and demographics. Under SFAS 106 and this proposed Standard, this component also includes the effects of changes in actuarial assumptions. The Board notes that in CAS 9904.412 the cost effects of changes in actuarial assumptions are determined and amortized separately from the effects of annual experience. This higher level of visibility allows the contractor and the Government to assess the continuing reasonableness of the assumptions in the aggregate. However, because the Board proposes to accept and rely on the assumptions used for SFAS 106, this higher visibility would not seem to serve any function in this proposed Standard and no separate identification of the effect of a change in actuarial assumptions is required.

14. Allocation of Post-Retirement Benefit Costs to Segments

*Comment:* Industry respondents generally expressed a belief that CAS 9904.403 provides sufficient guidance on allocating post-retirement benefit costs to segments. Government respondents suggested that allocation guidance similar to that contained in paragraph 9904.413–50(c)(1) might be needed. The commenters agreed that the allocation method would not necessarily be dependent on the accounting method employed. They did acknowledge that the causal-beneficial relationship between the employees of a segment and the benefits provided to those employees by the post-retirement benefit plan should be a factor in determining the proper allocation basis.

*Response:* The Board agrees and this proposed Standard on post-retirement benefit costs contains provisions analogous to those found in CAS 9904.413. The Board believes that the guidance provided in this proposed Standard regarding the allocation of post-retirement benefits costs to segments is compatible with the allocation process applicable to central payments or accruals as outlined in paragraph 9904.403–40(b)(4). The Board notes that post-retirement health care costs often will be appropriately allocated on a head-count basis as opposed to most pension costs which are related to benefits that are salary-related. The Board proposes that the costs of plans using the pay-as-you-go cost method be allocated to segments and home offices having participants and beneficiaries eligible to receive benefits so that the cost is allocated to the segments where the benefits had been earned, *i.e.*, a new start-up commercial segment will not absorb costs of participants who had retired from a historically Government segment.

The Board concluded that consistent with its decision to accept the measurement and assignment provisions of SFAS 106 and to permit contractors to use the data produced for financial accounting purposes, this proposal will in some instances permit a contractor to apply a general allocation of the total plan cost to segments in spite of the inherent, but immaterial, inaccuracy.

15. Separate Calculation of Post-Retirement Costs of Segments

*Comment:* The respondents generally agreed that separate computation of cost at the segment level should be required whenever demographic, benefit, or experience differences cause material differences in the post-retirement benefit cost of the segment. Government respondents pointed out that such guidance is already a part of the pension and insurance standards, notably at paragraphs 9904.413–50(c)(2) and 9904.416–50(b)(1) and (2). Texas Instruments observed:

> Differences in demographics or other factors may support a separate calculation of post-retirement costs at the segment level. In addition, such a segmented approach may be useful in recognizing acquired groups of employees as well as variations in union contracts, benefit levels, etc. In many cases, however, continued use of composite methodology would remain appropriate.

Although separate computations by corporate division are fairly commonplace, the commenters supported requiring separate computation only when the post-retirement benefit cost for a segment would be materially affected. AIA made the point as follows:

> "We also feel that the following excerpt from the prefatory comments to the old CAS 413 remains appropriate:
>
> 'The Board believes that, in most cases, it will be obvious to the contracting parties whether the presence of one or more of these conditions for a segment will materially affect the pension cost for that segment * * * The Board emphasizes that separate calculations are not routinely required, even though no two segments are likely to be identical with respect to the actuarial factors set forth in the Standard.'"

The respondents did support the creation of special segments for retired or other inactive plan participants. They suggested that paragraph 9904.413–50(c)(9) would serve as an appropriate model. AIA noted that "this method, which has been present in CAS 413 for nearly 20 years, has been of considerable aid in facilitating allocation of pension cost."

*Response:* The Board generally agrees. The proposed Standard adopts the separate calculation requirements of CAS 9904.413. Looking to CAS 9904.413 for consistency and guidance, the proposed Standard does require separate computations whenever certain conditions exist or certain events occur that can be expected to cause a material difference between a general allocation and a separate calculation of post-retirement benefit cost.

The Board considered requiring that post-retirement benefit costs always be

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individually calculated for each segment. There would have been an exemption permitting costs to be determined for the plan as a whole and then allocated across the segments if such composite computation and general allocation did not produce materially different results as compared to the cost separately calculated for the segment. When CAS 9904.413 was written in the 1970's, actuarial valuations involved extensive and expensive manual computations. Now that actuaries use high-speed computers to do the basic annual valuation computations, it is standard practice for an employer to have valuation results produced for subgroups of employees by division or subsidiary, often using differing sets of assumptions by location when warranted. The primary advantage of separately calculating post-retirement benefit costs would be achieving the most accurate determination of the benefit obligation and cost for the particular employees of a segment. However, the Board found no material advantage to requiring separate calculations if there were no material effect on contract cost determination.

The Board also considered a general requirement that costs be separately calculated whenever such a separate calculation would yield a materially different result from a general allocation of costs. But this requirement could cause a contractor to produce the separate calculation in order to assess if a material difference would occur. Therefore, the Board found no particular advantage to such a requirement.

This proposed Standard does not provide for nor permit the use of inactive segments. Instead, consistent with the general concept that costs associated with retired and terminated employees should be regarded as a general cost of doing business, each nonactive participant must be assigned to the appropriate segment, an intermediate home office, or corporate home office.

When the pension Standard, CAS 9904.413, was developed, a common practice for pension plans funded or operated through insurance company products, such as, deposit administration contracts or immediate participation guarantee contracts, was to either purchase annuities as participants retired or to move the participants to a separate account or "retired life reserve" which effectively annuitized the participants' benefits. To alleviate the administrative expense associated with tracking retirees by the segment from which they retired, CAS 9904.413 emulated this concept of a retired life reserve by permitting retirees, and other terminated participants, to be transferred to an inactive segment. The advent of computer-based participant data systems has eliminated most of the administrative work associated with tracking plan participants and such a provision is no longer needed. The Board also is aware that the creation of a non-operational segment is contrary to the 9904.403–30(a) definition of a "segment" and has frequently caused confusion for contractors and auditors.

16. Accounting for the Assets Allocated to Segments

*Comment:* Industry commenters generally expressed that if funding were to be required, then the Board should include a provision allowing Government segments to be funded first. They noted that with the lack of tax-advantaged funding, such a provision might enable a contractor to fully fund the portion of post-retirement benefit cost allocated to Government segments. The NDIA noted, "if contractors could recover through Government contracts funds set aside for post-retirement benefits, there would be some incentive to fund." The AIA felt such a provision was of particular importance to a contractor who performed primarily commercial work. The AIA wrote: "In addition, if contractors that are primarily commercial are not permitted to fund only their segments performing government work, those contractors will be placed at a relative disadvantage compared to contractors that are devoted exclusively to government contracting." The DOD IG concurred stating:

> For the benefit of covered employees, it is most desirable to fund all segments. However, for contract costing purposes, it is acceptable to fund only those segments performing work under Government contracts.

Generally industry respondents opined that memorandum records could provide sufficient evidence of such segmented funding. The DOD IG cautioned:

> Our experience in reviewing CAS 9904.413–50(c)(7) records on business combinations is that memorandum records are adequate only if they are subject to close scrutiny and complete audits by the Government.

Many respondents believed that trust and plan documents could be drafted so that the Government and commercial segments could be effectively covered by separate plans. But they were concerned that such legal separation of the segments would require extra effort, could create employee relations problems, and might run afoul of nondiscrimination rules.

Concerning transfers between funded and unfunded segments, the respondents generally agreed that rules could be drafted, but it might be extremely difficult to draft rules that would be equitable and would not be overly complicated. The OUSD suggested that instead of transferring assets and liabilities with participants, "any liability resulting from prior service should remain with the segment from which the employee is transferred."

The commenters also believed that the methods of CAS 9904.413 regarding the initial allocation of assets to the segment and the subsequent annual update would provide ample guidance for post-retirement benefits plans.

*Response:* The proposed Standard adopts the CAS 9904.413 provisions regarding the initial allocation and subsequent update of assets for contractors that use accrual accounting and separately calculate post-retirement benefit cost for segments.

While the proposed Standard does not impose a funding requirement, this proposal permits contractors to fulfill any funding requirement that might continue to be imposed by procurement regulations regarding allowability for only those segments and home offices that allocate costs to Government contracts. This provision will enable many, if not most, contractors to align the funding of their post-retirement benefit costs with the segments that generate income from cost-based Government contracts.

Commercial segments that are not funded would record a memorandum record and account for their costs as an accumulated value of unfunded accruals. When plan participants transfer between segments, this accumulated value of unfunded accruals would be treated the same as plan assets. The requirement to separately account for the assets of each segment will enable this provision to function in a fairly simple and straightforward manner.

The Board also proposes explicit guidance on how assets and liabilities are treated when segments are split or combined. Regarding transfers, the Board believes that the unamortized portion of an employee's accumulated post-retirement benefit obligation is compensation for future service and should follow the employee. Accordingly, the proposed Standard provides that plan assets, the accumulated value of unfunded accruals, and the accumulated value of prepayment credits shall be transferred in proportion to the employee's accumulated post-retirement benefit obligation.



17. Accounting for Curtailments, Settlements, and Special Termination Benefits

*Comment:* Industry commenters generally agreed that because a benefit curtailment or liability settlement does not disrupt the contractual relationship between the parties, there was no need for a special immediate period adjustment. Most commenters felt that curtailments and settlements should be accounted for as gains or losses.

The OUSD expressed a belief that accounting treatment similar to that contained in paragraph 9904.413–50(c)(12) should be provided for the effects of a post-retirement benefit curtailment, liability settlement, or plan termination whenever accrual accounting had been used. The OUSD also recommended that the unamortized portion of the initial unfunded liability, *i.e.*, the transition obligation, be excluded from the determination of the adjustment. Like industry, the OUSD believed that the Board should permit the plan termination or benefit curtailment adjustment to be amortized if the contractual relationship continued.

Industry commenters expressed their belief that the Government can protect its interests when a post-retirement benefit plan is terminated through provisions similar to the pension plan terminations or segment closing adjustments of CAS 9904.413. They believe that such a provision could provide the Government adequate protection so that a funding prerequisite for accrual accounting might not be necessary. And, they stressed that the Government should recognize its responsibility in regard to underfunded plans. As the NDIA explained:

> Industry commenters generally emphasized that the Government has a responsibility to share in any underfunding as well as any surplus when accrual accounting had been used. Some industry commenters indicated a belief that the Government should share in the underfunding of post-retirement benefit plans that had been accounted for using the pay-as-you-go cost method.

Both industry and Government respondents agreed that the contracting parties are in the best situation to determine whether the adjustment should be effected in the cost accounting period when the plan termination occurs or amortized over several periods with an interest adjustment. Some commenters opined that the option to spread the adjustment should reflect whether or not there is a continuing contractual relationship. The OUSD felt that the choice to immediately adjust or amortize should be at the Government's option. Similarly, TRW believes that the cognizant Federal agency official is in the best position to determine whether immediate adjustment or amortization is appropriate.

*Response:* The Board proposes that any benefit curtailment, liability settlement, or special termination benefit gain (or loss) be measured and first used to offset against unrecognized losses (or gains) in accordance with SFAS 106. While SFAS 106 would then recognize any remaining gain or loss as current period income or expense, the proposed Standard provides that the residual gain or loss be amortized over 10 years as long as the contractual relationship continues. If the segment is closed, any unamortized portion of any curtailment, settlement, or special termination benefit gain or loss is subsumed in the segment closing adjustment.

In this proposed Standard, the Board is presuming that the possibility of any inequity because of a change in the level of government contracting over the ten year amortization period is an acceptable risk when compared to the disruption that would be caused by a repricing of contracts. An additional inequity might occur because the effect of the curtailment, settlement, or termination benefits would not be reflected in currently priced cost-based fixed price contracts during the first few periods of the ten year amortization period. As this case has progressed, the Board's concern about not repricing has increased because of the magnitude of the recent benefit curtailments of some post-retirement benefit plans.

The Board believes that since SFAS 106 requires full current period recognition of curtailments, settlements, and termination benefits gains and losses, it is appropriate to accelerate the normal 15-year amortization period used for annual gains and losses to 10 years for any unrecognized curtailment, settlement, or special termination gain or loss.

If a plan is terminated, much of the unrecognized transition obligation and prior service cost, including any prior service cost from recent plan amendments and benefit improvements, will be eliminated by the coincident benefit curtailment, particularly the post-retirement benefit obligation attributable to nonvested benefits. Accordingly, unlike the pension Standard, the proposed Standard does not include a 60-month phase-in of plan amendments. Any remaining unamortized prior service cost and transition obligation would continue to serve as an inducement or compensation, albeit diminished, for future service.

18. Segment Closing Adjustment for Defined-Benefit Plans Using Accrual Accounting

*Comment:* Industry commenters expressed the view that the Government can protect its interests when a segment is closed through an adjustment similar to that found at paragraph 9904.413–50(c)(12). Industry commenters emphasized the Government's responsibility to share in any underfunding as well as in any surplus. The OUSD agreed that provisions similar to those found at paragraph 9904.413–50(c)(12) regarding pensions would be appropriate to address segment closings when the accrual accounting method had been employed.

*Response:* The proposed segment closing provisions are similar to the CAS 9904.413 segment closing provisions. This proposed Standard explicitly states that internal reorganizations do not constitute a segment closing. The proposed Standard measures an amount to be immediately recognized by an adjustment to contracts. However, this proposal provides that the contracting parties can determine the details on how the actual adjustment will be effected based upon the size of the adjustment and the contracting circumstances.

The Board proposes to measure the segment closing adjustment as the difference between the nonforfeitable post-retirement benefit obligation and the accumulated value of plan assets and unfunded accruals. These measures may result in either a credit or a charge to the Government. As previously discussed, the nonforfeitable post-retirement benefit obligation measures the firm or unavoidable liability.[11]

There has been some confusion about the CAS 9904.413 segment closing provisions when a segment is sold to a successor-in-interest and assets and liabilities are transferred from the seller to the buyer. The concept articulated in CAS 9904.413 and followed in this proposed Standard is that no adjustment is necessary to the extent that the contract cost accounting for the benefits

[11] The actuarial liability determined under the accrued benefit cost method which is used to determine the paragraph 9904.412–50(c)(12) segment closing for pensions is analogous to the nonforfeitable post-retirement benefit obligation in that it measures the firm liability for benefits earned by participants as of the date of the event (segment closing).

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continues unaltered. This proposed Standard makes it clear that the contract cost accounting records used to determine the segment closing adjustment when there is a sale to a successor-in-interest are the same records that have been used up to the point of sale. The proposed Standard also describes how a segment's assets and liabilities shall be divided when part of the segment's liability is retained or the segment is otherwise split or merged as part of the sale, transfer, or other reorganization.

19. Segment Closing Under the Pay-as-You-Go Cost Method

*Comment:* Some industry respondents stated that regardless of whether the Cost Accounting Standards did or did not permit a contractor to use accrual accounting, the prior period post-retirement benefit costs were incurred to produce goods and services for the Government. They believed that any decision to not recognize the unfunded accumulated post-retirement benefit obligation would be a procurement allowability decision and not a cost accounting decision. Other industry commenters argued that the *Remington Arms* decision (Army Contract Adjustment Board (ACAB) Decision No. 1238 (1991)) made it clear that whenever the Government had benefitted from the contractor's use of the pay-as-you-go cost method in the past, the Government should bear responsibility for its share of the unfunded accumulated benefit obligation as a matter of equity and fairness. Texas Instruments did note that the *Remington Arms* case was based on the fact that the Government not only benefitted, but was complicit in the contractor's decision to use the pay-as-you-go cost method. SDP Technologies expanded the concept of complicity to include the Government's arguable influence on companies and segments that perform primarily Government work.

The *Remington Arms* case properly established the basic policy, *i.e.*, the Government has a special responsibility when it is the sole beneficiary of a company's operations. The responsibility is not limited to GOCO facilities but applies equally to situations where companies have been dedicated to supplying the Government, particularly under single source contracts where the Government has a substantial influence on which costs can be recovered.

In response to the Staff Discussion Paper issue on using a phase-in approach for Government responsibility for the unfunded post-retirement benefit obligation when a contractor had used the pay-as-you-go cost method in the past, the AIA made an argument for considering a phase-out of the Government's responsibility.

"In the near-term, a segment closing adjustment should apply to all situations. Industry's use of pay-as-you-go accounting has yielded considerable savings to the Government over the years; considering the unfunded amounts as an adjustment to previously determined postretirement benefit costs is highly appropriate, as it merely puts the Government in the same position it would have been in had accrual accounting been used in past years."

* * * * *

"Over the long-run, however, there is a valid question as to whether or not contractors that account for their postretirement benefits cost on a pay-as-you-go basis should be entitled to a segment closing adjustment. By using pay-as-you-go accounting, these contractors will be relatively more competitive than other contractors that use accrual accounting (assuming that all else is equal, which is rarely true). Thus, the pay-as-you-go basis contractors might win contracts in the near-term due to their lower prices but might ultimately bill the same amount to the Government. This result hardly seems fair.

"To avoid this situation, the CAS Board could require contractors to make an election between pay-as-you-go accounting and accrual accounting with the explicit understanding that those contractors selecting pay-as-you-go accounting would not be able to claim a future segment closing adjustment. In this manner, decisions can be made by contractor management with a full understanding of the ultimate implications."

Government respondents did not feel the Government should bear any responsibility for the unfunded accumulated post-retirement benefit obligation when the contractor had been using the pay-as-you-go cost method in the past. The DOD IG pointed out that "the CASB–1 discloses the accounting practice under which the Government and contractor mutually agree to do business and the Government was not in any position to force the contractor to fund any PRBs." The OUSD commented that because Government regulations have permitted contractors to choose between accrual and cash basis accounting for such costs, the Government has no responsibility for the contractor's unilateral business decision.

*Response:* The segment closing adjustment measured under this proposal does not provide for the recognition of any accumulated post-retirement benefit obligation or nonforfeitable post-retirement benefit obligation for contractors that are required to use the pay-as-you-go cost method because their plan fails to meet the criteria for accrual accounting. For contractors that do use accrual accounting, this proposal measures the adjustment using the nonforfeitable post-retirement benefit obligation. While the contractor had the ability to use any appropriate accounting method, including accrual accounting, the general practice was to use the pay-as-you-go cost method prior to the adoption of SFAS 106. Once this proposed Standard becomes applicable, the contractor will be required to methodically assign and allocate the costs associated with its transition obligation to Government contracts for post-retirement benefit plans that meet the criteria for accrual accounting.

The Board understands that under the pay-as-you-go (cash basis accounting) cost method the Government may have received some benefit from lower contract costs in the past. However, the contractor may have benefitted from achieving a more competitive price by electing to use cash basis accounting. Furthermore, to impose the full responsibility on the Government for costs not accrued under cost-based contracts ignores the fact that both contractors and the accounting profession at large were content to use the pay-as-you-go cost method in the past.

The Board finds no accounting justification for imposing a current period cost adjustment which arises from the contractor's previous decision to use cash basis accounting or terminal funding. The Board does note that a legal question, not an accounting question, of equity may be involved in the very special situation of GOCO facilities, such as that addressed in the *Remington Arms* decision, where the Government was found to be involved in the selection of the accounting method.

20. Determination of the Government's Share of the Segment Closing Adjustment

*Comment:* In its comments, the NDIA discusses how extraordinary events and segment closings require recognition in the financial results of operations for an accounting period and how the same type of adjustments might be appropriate for Government contract cost accounting purposes. The ABA agreed that a segment closing adjustment would be appropriate but expressed concern about how the Government's share is determined and effected when they wrote:

* * * In our earlier submission we counseled against reopening the prices of fixed price type contracts, or cost type contracts in years that are closed. Limiting the adjustment mechanism to costs only is consistent with sound procurement policy and will secure to the government and the contractor equally the benefit of their bargain. Moreover, the OFPP Act Amendments of 1988 do not provide the CAS Board with authority to adjust contract prices, other than the equitable adjustment mechanism for cost accounting practice changes or noncompliances that result in increased costs to the government. *See* Public Law 100–679, section 26(h)(1), 41 U.S.C. 422(h)(1). For this reason, we believe that CAS 413–50(c)(12), as amended March 30, 1995, is subject to challenge as exceeding the Board's statutory authority

*Response:* The Board proposes that this Standard, like CAS 9904.413, consider all prior cost-based contracts that become subject to this proposed Standard when determining the Government's share of any over-or under-funding of the past post-retirement benefit costs. The proposed Standard does not reopen any contracts nor adjust any prior period costs, but instead captures the Government's share of the gain or loss amounts that would have been excluded from or included in the prior period cost accruals used to price contracts had the segment closing been anticipated.

The Board notes that in addition to paragraph 9904.413–50(c)(12) regarding pensions, the original Board recognized the need for exceptional accounting treatment when an usually large or non-routine depreciation gain or loss occurs. Paragraph 9904.409–50(j)(3) provides:

The contracting parties may account for gains and losses arising from mass or extraordinary dispositions in a manner which will result in treatment equitable to all parties.

*F. Additional Public Comments*

Interested persons are invited to participate by submitting data, views or arguments with respect to this ANPRM. All comments must be in writing and submitted to the address indicated in the **ADDRESSES** section.

When reviewing this proposed Cost Accounting Standard, the Board asks that respondents consider and provide comments regarding the questions discussed below. When responding, commenters are asked to discuss the basis for their conclusions.

1. Definition of Nonforfeitable

The Board notes that under many post-retirement benefit plans, employees are often not granted a vested right to post-retirement benefits until they attain retirement or full eligibility age. The proposed definition of the term "nonforfeitable," similar to that in the pension Standard, includes an exception for benefits forfeited because an employee terminates employment prior to attaining eligibility for benefits. Given the extended delay in attaining eligibility rights to a post-retirement benefit under most plans, the Board is interested in any comments regarding the appropriateness of this exception for post-retirement benefit costs.

2. Recognition of Post-Retirement Benefit Costs

(a) *Alternative or additional criteria for determining what creates a firm liability:* As discussed in subsection F.3, the Board believes that the SFAS 106 recognition of the obligation for the "substantive plan" is inappropriate for Government contract cost accounting. In fact, the Board has included a limitation on the annual cost accrual because of its concern that the existence of a written description of the plan which is communicated to the plan participants may not ensure that there is a contractual and enforceable, that is, compellable, obligation to pay the promised benefits. The Board is interested in any alternative or additional criteria that might serve to ascertain the firmness of the post-retirement benefit liability.

(b) *Firmness of the liability and the role of funding:* The Board realizes that many contractors will desire to retain the right to terminate their post-retirement benefit plan or take other actions to reduce or eliminate benefits attributable to prior service. While acknowledging the limitation of tax-advantaged funding vehicles for retiree health benefits, the Board asks respondents to this proposed Standard to consider whether funding could provide an appropriate and effective alternative or whether additional criteria should be considered.

3. Measurement and Assignment of Post-Retirement Benefit Costs

(a) *Actuarial assumptions:* The Board remains concerned that the volatility of health care trends, coupled with the SFAS 106 emphasis on current market conditions, could create an unacceptable degree of uncertainty in the estimates of the liability for future post-retirement benefits, especially for retiree health care benefits. This volatility or uncertainty could adversely affect the forward pricing process which relies on CAS compliant cost data. The Board invites further comments regarding whether actuarial assumptions used for contract costing purposes should each be based on "best-estimate," long-term expectations rather than relying on the SFAS 106 guidance. The Board also asks that contractors, actuaries, or Government officials submit any historical data they may have regarding the volatility of post-retirement benefit costs.

(b) *Reporting on sources of annual gains and losses:* As discussed under subsections F.12 and F.13, greater visibility of cost measurements may be obtained by requiring that annual gains and losses be reported by source, that is, separate identification of gains and losses from asset performance, population and demographic changes, assumption changes, and cost method changes. The Board asks for comments on whether visibility and oversight would be enhanced by a disclosure of each such portion of the annual gain or loss.

(c) *Amortization of gains and losses:* The Board notes that the proposed rule requires full recognition of gains and losses on an amortized basis. This differs from SFAS 106 which requires amortization of cumulative gains and losses that exceed a corridor of the greater of 10% of the projected post-retirement benefit obligation or the fair value of assets. SFAS 106 does permit full recognition of gains and losses on an amortized basis. This proposed provision is intended to keep cost recognition more closely associated with the accounting period in which the gain or loss occurred. The Board would be interested in views regarding the use of the SFAS 106 amortization corridor for Government contract costing purposes.

(d) *Limiting medical inflation assumption:* The Board seeks comments concerning whether a limit should be placed on the health care trend rate. Commenters are asked to consider what limit, *e.g.*, the long-term expected rate of return, the Treasury rate, is appropriate for Government contract costing purposes. The Board is also interested in any information concerning the degree of volatility and uncertainty in the medical inflation assumption.

(e) *Terminal funding method:* Notwithstanding the Board's response in E.6 that terminal funding is an unacceptable cost method under GAAP, the Board would like comments regarding how prevalent the use of the terminal funding method is among contractors. Commenters should also address whether a contractor should be permitted to elect to use the terminal funding method either at the time this proposed rule would first be applicable or even be permitted to later elect to use the terminal funding method.

(f) *Amortization of lump sum settlements and single premium payments:* For plans accounted for under the pay-as-you-go cost method, the proposed Standard is consistent with subparagraph 9904.412–

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40(b)(3)(iii) and paragraph 9904.412–50(b)(1). The proposed Standard requires that when a portion of the liability is liquidated prior to the periods in which benefit payments are expected to occur, such lump sum settlement or single premium payment shall be amortized. The Board further notes that such amortization is consistent with paragraph 52 of SFAS 106 requiring that costs of plans primarily attributable to retirees shall be attributed to the future life-expectancy of the retirees. Commenters are asked to provide any rationale for recognizing these single period settlements on an immediate basis rather than an amortized basis, especially if the contractor has not been using terminal funding for its post-retirement benefit plan.

(g) *Long-term expected rate of return:* The Board favored using the interest rate as determined by the Secretary of the Treasury pursuant to Public Law 92–41, 85 Stat. 97. to measure the interest equivalent on the accumulated value of unfunded accruals and accumulated value of prepayment credits. The Board is interested in comments regarding the appropriateness of the Treasury rate and whether commenters believe some other rate may be more appropriate.

4. Allocation of Post-Retirement Benefit Costs to Segments

(a) *Criteria for separate calculation of post-retirement benefit costs:* This proposal includes similar criteria to that found in CAS 9904.413 for determining when separate calculations are necessary. The Board seeks comments regarding whether there are additional conditions or events that may materially affect the determination of post-retirement benefit costs at the segment level which should require a separate calculation of post-retirement benefit costs for a segment.

(b) *Separate calculation as the only measurement for segment costs:* Because of the availability of computers and the availability of sophisticated actuarial valuation software, requiring separately calculated costs by segment no longer imposes the administrative burden that it would have in 1977. The Board asks for comments regarding a requirement that costs always be separately calculated for segments unless it can be reasonably demonstrated that a general allocation would provide materially similar results.

5. Allocation to Intermediate and Final Cost Objectives

Because the determination of certain adjustments will require an assessment of the Government's historical participation in post-retirement benefit costs, the Board considered including a record-keeping requirement regarding allocations of post-retirement benefit costs to contracts subject to this Standard. The Board is interested in whether contractor or Government representatives have experience or concerns about the necessary data being readily available regarding the Government's historical participation absent such a requirement.

6. Adjustments for Curtailments, Settlements, and Special Termination Benefits

The Board would appreciate any comments regarding any alternatives to the proposed ten-year amortization period that should be considered.

7. Adjustments for Segment Closings

(a) *Government's responsibility for future salary increases and health care trends:* The preamble to the March 30, 1995 amendments to CAS 9904.413 noted that existing and past Government contracts of the closed segment neither cause nor benefit from future salary increases. The Board is interested in any comments regarding whether the effect of such future salary levels should be excluded from the determination of a segment closing adjustment for post-retirement benefit costs.

(b) *Previous use of the pay-as-you-go cost method:* As proposed, this Standard would provide for the recognition of the unfunded nonforfeitable post-retirement benefit obligation for contractors using accrual accounting that had been using the pay-as-you-go cost method before this Standard was applicable. The Board seeks any comments regarding whether there should be a phase-in of such recognition.

(c) *"Homeless" inactives retained by a seller:* After a segment is sold, the seller may retain "inactive" plan participants that were formerly associated with the sold segment. Consequently, the seller (transferor) can no longer allocate accrued post-retirement benefit costs generated by these inactive participants to the sold segment for allocation to that segment's intermediate and final cost objectives. Accordingly, the Board considered allocating the assets to the inactive participants retained by the seller (transferor) before any assets are allocated to the active participants who go to the buyer (transferee). The Board is interested if there is any rationale for giving inactive participants such preferential funding when a segment is sold or ownership is otherwise transferred.

(d) *Recognition of retained liability:* The Board is aware that some hold the belief that when a segment is sold or ownership is otherwise transferred, the selling price or transfer agreement explicitly or implicitly reflects compensation to the seller for any future post-retirement benefit obligations retained by the seller. Conversely, the belief holds that there is an implicit credit to the buyer for any post-retirement benefit obligations assumed by the buyer. Based on this belief, it has been suggested that Government contractors utilizing the pay-as-you-go method to account for post-retirement benefit costs should separately identify any retained participants of the disposed segment. In such cases, the post-retirement benefit payments made for these inactive participants would not be included/recognized, after the sale or transfer, as allocable costs with respect to the seller's ongoing cost-based Government contracts.

The Board has not included such a provision in the Standard being proposed today, but is interested in any data or information that commenters can provide on alternative treatments of the liability and future payments for retained participants, for Government contract costing purposes in connection with a sale or ownership transfer.

8. Illustrations

The Board is interested in comments regarding whether displaying the accumulated post-retirement benefit obligation routinely as a debit, except when illustrating SFAS 106 disclosures, creates confusion.

**List of Subjects in 48 CFR 9904**

Government Procurement, Cost Accounting Standards.

**Richard C. Loeb,**

*Executive Secretary, Cost Accounting Standards Board.*

It is proposed to amend part 9904 as follows:

## PART 9904—COST ACCOUNTING STANDARDS

1. The authority citation for Part 9904 continues to read as follows:

**Authority:** Public Law 100–679, 102 Stat 4056, 41 U.S.C. 422.

2. Section 9904.416–50 is amended by revising paragraph (*a*)(*1*)(*v*) to read as follows:

**9904.416–50 Techniques for application.**

(a) * * *

(1) * * *

(v) If an objective of an insurance program is to provide insurance coverage on retired persons, then such program is subject to Cost Accounting Standard 9904.419 except as provided in 9904.419–40(b)(2).

* * * * *

**9904.416–60 [Amended]**

3. Section 9904.416–60 is amended by removing and reserving paragraphs (c), (d) and (e).

4. Sections 9904.419, 9904.419–20, 9904.419–30, 9904.419–40, 9904.419–50, 9904.419–60, 9904.419–62, 9904.419–63, 9904.419–64 are added to read as set forth below.

5. Section 9904.419–10 and 9904.419–61 are added and reserved to read as follows:

**9904.419 Cost accounting standard for measurement, assignment, allocation, and adjustment of post-retirement benefit cost.**

**9904.419–10 [Reserved]**

**9904.419–20 Purpose.**

(a) The purpose of this Standard is to provide criteria for measuring the costs of post-retirement benefit plans, assigning the measured costs to cost accounting periods, and allocating the assigned costs to segments of an organization. This Standard also provides the basis on which segments shall allocate assigned post-retirement benefit costs to their intermediate and final cost objectives. The provisions of this Cost Accounting Standard should enhance uniformity and consistency in accounting for post-retirement benefit costs and thereby increase the probability that those costs are allocated to segments and to cost objectives within segments in a uniform and consistent manner.

(b) This Standard provides for the adjustment of post-retirement benefit costs for the effect of a curtailment of a post-retirement benefit plan, a settlement of a post-retirement benefit obligation, a granting of termination benefits, a termination of a post-retirement benefit plan, or a segment closing.

(c) This Standard is applicable to the cost of all post-retirement benefit plans except for costs of pension plans and deferred compensation which are covered in other Cost Accounting Standards.

**9904.419–30 Definitions.**

(a) The following are definitions of terms which are prominent in this Standard. Other terms defined elsewhere in this chapter 99 shall have the meaning ascribed to them in those definitions unless paragraph (b) or (c) of this subsection requires otherwise.

(1) *Accumulated value of unfunded accruals* means the value, as of the measurement date, of post-retirement benefit costs that have been accrued but not funded, adjusted for imputed earnings and for benefits paid by the contractor.

(2) *Business unit* means any segment of an organization, or an entire business organization which is not divided into segments.

(3) *Captive insurer* means an insurance company that does business primarily with related entities. Related entities include, but are not limited to, companies that are owned by or under the control of the contractor, including affiliates, parents, subsidiaries, or controlling entities.

(4) *Fair value* means the amount that a plan could reasonably expect to receive for an investment in a current sale between a willing buyer and a willing seller, that is, other than a forced or liquidation sale.

(5) *Funded post-retirement benefit cost* means the portion of post-retirement benefit cost for a current or prior cost accounting period that has been paid to a funding agency.

(6) *Market-related value of plan assets* means a balance used to calculate the expected return on plan assets. Market-related value can be either fair value or a calculated value that recognizes changes in fair value in a systematic and rational manner over not more than five years. Different methods of calculating market-related value may be used for different classes of plan assets, but the manner of determining market-related value shall be applied consistently from year to year for each class of plan asset.

(7) *Nonforfeitable post-retirement benefit obligation* means the accumulated post-retirement benefit obligation for benefits, or that portion of benefits, for which the participant's eligibility to receive a present or future post-retirement benefit is no longer contingent on remaining in the service of the employer or attaining a specified age. The excess, if any, of the nonforfeitable post-retirement benefit obligation, including benefit eligibility as of the last day of the plan year, over the valuation assets is the unfunded nonforfeitable post-retirement benefit obligation. Any accumulated post-retirement benefit obligation in excess of the nonforfeitable post-retirement benefit obligation is the forfeitable post-retirement benefit obligation.

(8) *Pension plan* means a deferred compensation plan established and maintained by one or more employers to provide systematically for the payment of benefits to plan participants after their retirement, provided that the benefits are paid for life or are payable for life at the option of the employees. Additional benefits such as permanent and total disability and death payments, and survivorship payments to beneficiaries of deceased employees may be an integral part of a pension plan.

(9) *Post-retirement benefit plan* means an arrangement that is mutually understood by an employer and its employees, whereby an employer undertakes to provide its employees with post-retirement benefits after they retire in exchange for their services over a specified period of time, upon attaining a specified age while in service, or a combination of both. A post-retirement benefit plan may be written or it may be implied by a well-defined, although perhaps unwritten, practice of paying post-retirement benefits or by oral representations made to current or former employees.

(10) *Post-retirement benefit plan participant* means any employee or former employee of an employer, or any member or former member of an employee organization, who is or may become eligible to receive a benefit from a post-retirement benefit plan which covers employees of such employer or members of such organization who have satisfied the plan's participation requirements, or whose beneficiaries are receiving or may be eligible to receive any such benefit. A participant whose employment status with the employer has not been terminated is an active post-retirement benefit plan participant.

(11) *Post-retirement benefit plan termination* means an event in which the post-retirement benefit plan ceases to exist and all benefits are settled by the purchase of insurance contracts or by other means. The plan may or may not be replaced by another plan.

(12) *Post-retirement benefits* means all forms of benefits, other than retirement income, provided by an employer to retirees. Those benefits may be defined in terms of specified benefits, such as health care, tuition assistance, or legal services, that are provided to retirees as the need for those benefits arises, such as certain health care benefits, or they may be defined in terms of monetary amounts that become payable on the occurrence of a specified event, such as life insurance benefits not provided through a pension plan. Benefits provided in whole or in part by funds that are separately accounted for within the trust fund of a qualified pension plan shall be considered post-retirement benefits subject to this Standard.

(13) *Segment* means one of two or more divisions, product departments, plants, or other subdivisions of an organization reporting directly to a home office, usually identified with responsibility for profit and/or

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producing a product or service. The term includes Government-owned contractor-operated (GOCO) facilities, and joint ventures and subsidiaries (domestic and foreign) in which the organization has a majority ownership. The term also includes those joint ventures and subsidiaries (domestic and foreign) in which the organization has less than a majority ownership, but over which it exercises control.

(14) *Successor-in-interest* means an entity that assumes all obligations under the government contract or contracts of a contractor through a novation agreement. A novation agreement is one that is executed by a contractor (transferor), a successor-in-interest (transferee), and the Government, by which the transferor guarantees performance of the contract, the transferee assumes all obligations under the contract, and the Government recognizes the transfer of the contract and related assets.

(15) *Unfunded accumulated post-retirement benefit obligation* means the accumulated post-retirement benefit obligation in excess of the valuation assets. The excess of the valuation assets over the accumulated post-retirement benefit obligation is an actuarial post-retirement benefit surplus and is treated as a negative unfunded accumulated post-retirement benefit obligation.

(16) *Valuation assets* means the total value of assets used to determine post-retirement benefit cost. Valuation assets are the sum of the fair value of assets plus the accumulated value of unfunded accruals reduced by the accumulated value of prepayment credits.

(b) The following modifications of terms defined elsewhere in this Chapter 99 are applicable to this Standard:

(1) *Actuarial cost method* means a technique which uses assumptions to measure the present value of future post-retirement benefits and post-retirement benefit plan administrative expenses, and which assigns the cost of such benefits and expenses to cost accounting periods. The actuarial cost method includes the asset valuation method used to determine the market-related value of plan assets.

(2) *Funding agency* means an organization or individual which provides facilities to receive and accumulate assets to be used either for the payment of benefits under a post-retirement benefit plan, or for the purchase of such benefits, provided such accumulated assets form a part of a post-retirement benefit plan established for the exclusive benefit of the plan participants and their beneficiaries.

(3) *Nonforfeitable* means a right to a post-retirement benefit, either immediate or deferred, which arises from an employee's service, which is unconditional, and which is legally enforceable against the post-retirement benefit plan or the contractor. Rights to benefits that do not satisfy this definition are considered forfeitable. A right to a post-retirement benefit is not considered forfeitable solely because it may be affected by the employee's or beneficiary's death or disability. Nor is a right considered forfeitable because it can be affected by the unilateral actions of the employee.

(4) *Pay-as-you-go cost method* means a method of recognizing post-retirement benefit cost only when post-retirement benefits are paid to or on behalf of retired employees or their beneficiaries.

(5) *Prepayment credit* means the amount funded in excess of the post-retirement benefit cost assigned to a cost accounting period that is carried forward for future recognition.

(ii) *The accumulated value of prepayment credits* means the value, as of the measurement date, of the prepayment credits adjusted for imputed earnings and decreased for amounts used to fund post-retirement benefit costs or obligations, whether assignable or not.

(6) *Segment closing* means that a segment or business unit has been sold or ownership has been otherwise transferred, discontinued operations, or discontinued doing or actively seeking Government business under contracts subject to this Standard. Segment mergers or splits within the contractor's operations shall not be considered a segment closing for purposes of this Standard.

(c) Other terms used prominently in this Standard have the same meanings as in Statement of Financial Accounting Standards No. 106 "Employers' Accounting for Post-retirement Benefits Other Than Pensions' (SFAS 106), including subsequent amendments.

**9904.419–40 Fundamental requirements.**

(a) *Recognition of post-retirement benefit costs.* The commitment to provide post-retirement benefits in future periods shall be evidenced by a post-retirement benefit plan.

(1) The cost of a post-retirement benefit plan shall be accounted for using accrual accounting provided that:

(i) The right to a post-retirement benefit is communicated in writing to the participants, including notice of the right to legally enforce payment of such benefit.

(ii) The participant has an irrevocable right to any portion of a benefit for which the participant has attained eligibility.

(iii) If the contractor reserves rights to terminate or otherwise cancel, eliminate, or reduce the rights of employees to any portion of post-retirement benefits for which an employee has become eligible, the post-retirement benefit plan shall fail to meet the criteria set forth in paragraph (a)(1)(ii) of this section.

(iv) For defined-contribution post-retirement plans, the cost for a cost accounting period is the contribution required by the written provisions of the post-retirement benefit plan.

(v) For defined-benefit post-retirement plans, the cost for a cost accounting period is actuarially determined based upon the written provisions of the post-retirement benefit plan.

(2) The cost of any post-retirement benefit plan that fails to meet the criteria set forth in 9904.419–40(a)(1) shall be accounted for using the pay-as-you-go cost method.

(b) *Measurement and assignment of post-retirement benefit cost.*

(1) Except for costs assigned to future periods by 9904.419–40(b)(5)(iii), the amount of post-retirement benefit cost determined for a cost accounting period is assignable only to that period.

(2) To the extent that insurance contracts are purchased during the period to cover post-retirement benefits attributed to service in the current period:

(i) The cost of those benefits shall be accounted for in accordance with Cost Accounting Standard 9904.416, Accounting for Insurance Costs.

(ii) However, if the insurance is purchased from a captive insurer, the post-retirement benefit cost shall be determined in accordance with this Standard.

(iii) The costs of benefits attributed to current service in excess of benefits provided by such insurance contracts purchased during the current period shall be accounted for according to the provisions of this Standard applicable to plans not involving insurance contracts.

(iv) For purposes of 9904.419–40(b)(3)(ii) and 9904.419–50(e)(2)(i), the cost of purchasing contracts to irrevocably settle all obligations for post-retirement benefit obligations to a plan participant or participants shall be treated the same as any other settlement payment.

(3) For plans accounted for under the pay-as-you-go cost method, the components of post-retirement benefit cost for a cost accounting period are the contractor's share of:

(i) The net amount paid to or on behalf of retired employees or their beneficiaries for post-retirement benefits incurred during that period, and

(ii) An amortization installment, including an interest equivalent on the unamortized settlement amount, attributable to the net amount paid to irrevocably settle an obligation for post-retirement benefits of current and future cost accounting periods.

(4) For defined-contribution plans using accrual accounting, the post-retirement benefit cost for a cost accounting period is the net contribution required to be made to participants' accounts for that period, after taking into account dividends and other credits, where applicable.

(5) For defined-benefit plans using accrual accounting:

(i) The components of post-retirement benefit cost for a cost accounting period are:

(A) Service cost,

(B) Interest cost,

(C) Actual return on the fair value of plan assets, adjusted for interest equivalents on the accumulated value of unfunded accruals or prepayment credits,

(D) Amortization of unrecognized prior service cost, if any,

(E) The amortization of the unrecognized gain or loss as provided for in this Standard, and

(F) Amortization of any unrecognized transition obligation or asset.

(ii) The post-retirement benefit cost of a cost accounting period shall be determined by use of the same methods, assumptions, and asset values used for financial reporting purposes in accordance with SFAS 106, as amended, unless specified otherwise in this Standard.

(iii) The post-retirement benefit costs assigned to a period shall not exceed the assignable post-retirement benefit cost limitation. Any amount in excess of the assignable post-retirement benefit cost limitation shall be recognized in future periods as an actuarial loss in accordance with 9904.419–50(b)(2)(vii). The assignable post-retirement benefit cost limitation is measured as the sum of:

(A) The amount of benefits paid by the contractor for the cost accounting period, and,

(B) The unfunded nonforfeitable post-retirement benefit obligation, if any.

(iv) The post-retirement benefit cost of a cost accounting period is assignable only if the unfunded accumulated post-retirement benefit obligation equals the sum of the unrecognized net gain or loss (including any unrecognized amount determined in accordance with 9904.419–50(e)(2)(i)), unrecognized prior service cost, and the unrecognized transition obligation or transition asset.

(c) *Post-retirement benefit cost of segments.*

(1) Post-retirement benefit costs shall be directly or indirectly allocated to each segment having participants identified with the post-retirement benefit plan who generate cost under the cost accounting method in use. If a post-retirement benefit plan has plan participants in a home office, the home office shall be treated as a segment for purposes of allocating the cost of the post-retirement benefit plan.

(2) A separate calculation (direct allocation) of post-retirement benefit costs for a segment is required when any of the conditions set forth in 9904.419–50(c)(2) is present. When such conditions are not present, indirect allocations may be made by calculating a composite post-retirement benefit cost for two or more segments and allocating this cost to these segments.

(3) For defined-benefit plans using accrual accounting:

(i) Except where use of a different assumption or assumptions is required by 9904.419–50(c)(2)(iii), the same assumptions shall be used for all segments covered by a plan.

(ii) Contractors shall separately account for the assets and accumulated value of unfunded accruals of each segment whenever post-retirement benefit costs are separately calculated for the segment.

(d) *Allocation of post-retirement benefit cost to cost objectives.* The post-retirement benefit costs for a segment are allocable to that segment's intermediate and final cost objectives.

(e) *Adjustments for curtailments, settlements, and termination benefits.* In the event that a contractor curtails a post-retirement benefit plan, settles a post-retirement benefit obligation, or grants termination benefits:

(1) For plans accounted for under the pay-as-you-go cost method, no adjustment attributable to previously determined post-retirement benefit costs is permitted to be recorded. Existing contract prices or costs shall not be adjusted.

(2) For defined-contribution plans using accrual accounting, if the post-retirement benefit plan is terminated or the right to earn future vesting or retirement eligibility service is curtailed, the contractor must separately determine the financial effect of such event and record an adjustment for each affected segment. The adjustment shall be amortized over the current and future periods. Existing contract prices or costs shall not be adjusted.

(3) For defined-benefit plans using accrual accounting, the contractor must separately recognize the financial effect of such event by recording an adjustment for each affected segment. The adjustment shall be amortized over the current and future periods. Existing contract prices or costs shall not be adjusted.

(f) *Adjustments for segment closings.* If a segment is closed, the contractor shall determine the effect of such segment closing on the post-retirement benefit costs of each affected segment.

(1) For plans accounted for under the pay-as-you-go cost method, no segment closing adjustment attributable to previously determined post-retirement benefit costs is permitted.

(2) For defined-contribution plans using accrual accounting, the contractor shall determine a segment closing amount which represents an adjustment to previously determined post-retirement benefit costs that were recognized as incurred costs at the closed segment. The recorded amount shall give full recognition to any unrecognized portion of any credit for plan termination or curtailment of vesting or retirement eligibility service. Recovery or payment of the Government's share of such amount shall be made as an adjustment to contract price or cost or by other suitable techniques.

(3) For defined-benefit plans using accrual accounting, the contractor shall determine a segment closing amount which represents an adjustment to previously determined post-retirement benefit costs that were recognized as incurred costs at the closed segment. The recorded amount shall give full recognition to the nonforfeitable post-retirement benefit obligation and valuations assets, except to the extent the nonforfeitable post-retirement benefit obligation and valuations assets have been assumed by a successor-in-interest to the contracts of the closed segment. To the extent that the accumulated post-retirement benefit obligation, nonforfeitable post-retirement benefit obligation, valuations assets and associated unrecognized amounts have been so transferred, the effect of such transfer will be recognized in future accounting periods by the successor-in-interest. Recovery or payment of the Government's share of the segment closing amount shall be made as an adjustment to contract price or cost or by other suitable techniques.

**9904.419–50 Techniques for Application.**

(a) *Recognition of post-retirement benefit costs.*

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(1) Post-retirement benefit costs shall be determined separately for each post-retirement benefit plan by applying the provisions of this Standard to each such plan. Post-retirement benefit costs may be determined on an aggregate basis for two or more separate plans if those plans use the same cost accounting method, that is, accrual accounting or the pay-as-you-go method, and either:

(i) Those plans provide different benefits to the same group of plan participants, or

(ii) Those plans provide benefits that are similar in definition and amount to different groups of plan participants.

(2) If a post-retirement benefit plan provides two or more separately identifiable categories of benefits, *e.g.*, healthcare benefits and life insurance benefits, the contractor may treat each benefit as a separately identifiable post-retirement benefit plan. The costs of each such post-retirement benefit plan may be separately determined and accounted for.

(3) If a post-retirement benefit plan provides benefits to two or more mutually exclusive classes of plan participants, *e.g.*, those eligible for retirement before a specified date and those eligible after such date, the contractor may treat each such mutually exclusive class as a separately identifiable post-retirement benefit plan. The costs of post-retirement benefit plan may be separately determined and accounted for.

(4) If the substance of a post-retirement benefit plan having characteristics of both a defined-benefit post-retirement plan and a defined-contribution post-retirement plan is to provide a defined benefit, the costs of such plan shall be determined and accounted for in accordance with the provisions of this Standard applicable to defined-benefit post-retirement plans. Conversely, if the substance of a post-retirement benefit plan having characteristics of both a defined-benefit plan and a defined-contribution plan is to provide benefits determined by defined contributions, the costs of such plan shall be determined and accounted for in accordance with the provisions of this Standard applicable to defined-contribution post-retirement plans.

(5) A multiemployer post-retirement benefit plan established pursuant to the terms of a collective bargaining agreement shall be considered to be a defined-contribution post-retirement plan for purposes of this Standard.

(6) A post-retirement benefit plan applicable to a Federally-funded Research and Development Center (FFRDC) that is part of a State post-retirement benefit plan shall be considered to be a defined-contribution post-retirement plan for purposes of this Standard.

(7) Post-retirement benefits provided in whole or in part by funds that are separately accounted for within the trust fund of a qualified pension plan shall be accounted for as post-retirement benefits subject to this Standard.

(b) *Measurement and assignment of post-retirement benefit cost.*

(1) For plans accounted for under the pay-as-you-go cost method, any amount paid to irrevocably settle an obligation for post-retirement benefits payable in current and future cost accounting periods shall be amortized over a period of fifteen years in equal annual installments. Such amortization shall include an interest equivalent each period equal to the rate determined by the Secretary of the Treasury pursuant to Public Law 92–41, 85 Stat. 97 at the time of the settlement. If the amount paid to settle the obligation is not material, the full amount of the settlement may be assigned to the current period.

(2) For plans using accrual accounting:

(i) Post-retirement benefit cost shall be determined based on current active and inactive plan participants. This provision shall not preclude use of an assumption concerning future reemployments.

(ii) Post-retirement benefit cost shall be determined based on the written provisions of the post-retirement benefit plan. This shall not preclude contractors from making salary projections for plans whose benefits are based on salaries and wages, nor from considering benefit revisions for plans which provide that such revisions must be made.

(iii) The assumed health care trend rate may not exceed the assumed expected long-term rate of return on plan assets. If no assumption is made concerning the expected long-term rate of return on plan assets, the health care trend rate assumption shall not exceed the interest rate as determined by the Secretary of the Treasury pursuant to Public Law 92–41, 85 Stat. 97.

(iv) The actual return on the fair value of plan assets component of post-retirement benefit cost shall be increased by an interest equivalent on the accumulated value of unfunded accruals determined using the interest rate as determined by the Secretary of the Treasury pursuant to Public Law 92–41, 85 Stat. 97.

(v) The actual return on the fair value of plan assets component of post-retirement benefit cost shall be decreased by an interest equivalent on the accumulated value of prepayment credits determined using the interest rate as determined by the Secretary of the Treasury pursuant to Public Law 92–41, 85 Stat. 97.

(vi) The fair value and market-related value of plan assets shall not be adjusted for any fee, reserve charge, or other investment charge for withdrawals from or termination of an investment or insurance contract, trust agreement, or other funding arrangement, unless such fee is determined in an arm's length transaction, and actually is incurred and paid.

(vii) The gain or loss component of post-retirement benefit cost (excluding plan asset gains and losses not yet reflected in the market-related value of plan assets) that is determined for a cost accounting period shall be recognized as follows:

(A) The contractor shall amortize each gain or loss over the average remaining service period of active plan participants. If all or almost all of a plan's participants are inactive, the average remaining life expectancy of the inactive participants shall be used instead of the average remaining service period. If the gain or loss is not material, the entire gain or loss may be included as a component of the current or ensuing period's post-retirement benefit cost.

(B) Except as provided in 9904.419–50(e)(2)(i), the contractor shall establish and consistently follow a policy for amortizing gains and losses. Any amortization policy shall include criteria for selecting specific amortization periods and may give consideration to factors such as the size and nature of the gain or loss. Once the amortization period for a gain or loss is selected, the amortization process shall continue to completion unless full recognition is required by 9904.419–50(f)(3)(i).

(viii) Any tax assessed pursuant to a law or regulation because of excess, inadequate, or delayed funding of a post-retirement benefit plan shall be excluded from the assigned post-retirement benefit cost and from the tax expense reflected in the actual return on the fair value of plan assets component of post-retirement benefit costs.

(c) *Post-retirement benefit cost of segments.*

(1) Contractors who calculate a composite post-retirement benefit cost covering plan participants in two or more segments shall allocate such composite costs to segments as follows:

(i) For plans accounted for under the pay-as-you-go cost method, the contractor shall allocate post-retirement benefit costs to a segment to the extent that such costs can be identified with that segment. Any post-retirement benefit costs remaining after such allocation shall be categorized as a residual expense of the home office or home offices most immediately identified with the post-retirement benefit plan. The allocation of post-retirement benefit costs shall give consideration to any refund, rebate, or other credit, that is disproportionately attributable to individual segments.

(ii) For plans using accrual accounting, contractors shall indirectly allocate or separately calculate post-retirement benefit costs for each segment having active or inactive participants of the post-retirement benefit plan. Any allocation base selected shall be representative of the factors used to calculate the post-retirement benefit cost, such as headcount or salary.

(2) For plans using accrual accounting, post-retirement benefit costs shall be separately calculated for a segment (including an aggregation of segments) whenever any of the following conditions exist for that segment, provided that such condition(s) materially affect the amount of post-retirement benefit cost allocated to the segment:

(i) The cost of benefits, level of benefits, eligibility for benefits, or plan demographics are materially different for the segment than for the average of all segments; or

(ii) There is a refund, credit, or other gain or loss from one or more sources that is disproportionately attributable to the segment. If such refund, credit, gain or loss is expected to be non-recurring, separate calculations are not required unless required by other conditions of this paragraph. In that case, there shall be a special direct allocation of only the non-recurring amount which shall be accounted for and amortized at the segment level.

(iii) For defined-benefit plans, any appropriate assumption or assumptions are materially different for the segment than for the average of all segments.

(iv) For defined-benefit plans, a contractor follows a practice of funding post-retirement benefit costs disproportionately for segments subject to this Standard.

(v) For defined-benefit plans,

(A) If the post-retirement benefit plan for a segment becomes merged with the plan of another segment, or the post-retirement benefit plan is divided into two or more post-retirement benefit plans, and in either case,

(B) The ratios of valuation assets to the accumulated post-retirement benefit obligation for each of the merged or separated plans are materially different from one another after applying the benefits in effect after the post-retirement benefit plan merger or post-retirement benefit plan division.

(3) For plans using accrual accounting, notwithstanding the provisions of paragraph (c)(2) of this subsection, contractors may elect to calculate post-retirement benefit costs separately for each segment having participants in a post-retirement benefit plan.

(4) For segments whose post-retirement benefit costs are calculated separately pursuant to paragraphs (c)(2) or (3) of this subsection, such calculations shall be prospective only; post-retirement benefit costs shall not be redetermined for prior years.

(5) Funding of post-retirement benefit cost for a cost accounting period shall be considered to have taken place within such period if it is accomplished by the corporate tax filing date for such period, including any permissible extensions thereto.

(6) For defined-benefit plans using accrual accounting, whenever pension cost for a segment is calculated separately pursuant to paragraphs (c)(2) or (3) of this subsection:

(i) When post-retirement benefit costs are first separately calculated for a segment, there shall be an initial allocation of a share in the undivided fair value of plan assets and the undivided accumulated value of unfunded accruals to segments. This division shall be made in accordance with 9904.419–50(c)(6)(viii) based upon the nonforfeitable post-retirement benefit obligation and nonforfeitable post-retirement benefit obligation, except as otherwise provided for in this subparagraph. Prior to this initial allocation of assets, the accumulated value of prepayment credits, if any, shall be deducted from the undivided fair value of plan assets and separately identified.

(A) If a contractor has separately identified the fair value of plan assets in accordance with 9904.419–64(f), such fair value of plan assets and all other values previously allocated to those segments as of the date of such determination shall not be changed.

(B) If a contractor has been determining the accrual for post-retirement benefit costs on a composite basis and allocating such costs to segments, the initial allocation of the valuation assets shall reflect such prior cost determinations and allocations made pursuant to this Standard. If the necessary data are readily determinable, the fair value of plan assets to be allocated to each segment shall be the amount contributed by, or on behalf of, the segment, increased by income received on such assets, and decreased by benefits and expenses paid from such assets.

(C) If the necessary data are not readily determinable for certain prior periods, the fair value of plan assets net of any separately identified accumulated value of prepayment credits shall be allocated to segments based on the ratio of the accumulated post-retirement benefit obligation of each segment to that of the plan as a whole. The accumulated value of unfunded accruals shall be allocated to segments in the same proportions as such net fair value of plan assets.

(D) Thereafter, the fair value of plan assets allocable to each segment shall be brought forward as described in paragraph (c)(6)(iii) of this subsection. The accumulated value of unfunded accruals allocated to each segment shall be brought forward in accordance with paragraph (c)(6)(v) of this subsection and the definition at 9904.419–30(a)(1).

(ii) When post-retirement benefit costs are first separately calculated for a segment, there shall be an initial allocation of the undivided values of unrecognized prior service cost, unrecognized transition obligation, and unrecognized gains and losses (including any gains or losses from curtailments, settlements, or granting termination benefits). Such values shall be allocated to the segment based on the ratio of the unfunded accumulated post-retirement benefit obligation of the segment to that of the plan as a whole. These unrecognized amounts shall be brought forward in accordance with the separately calculated post-retirement benefit cost of the segment.

(iii) After the initial allocation of the fair value of plan assets, the contractor shall maintain a record of the portion of subsequent contributions, income, benefit payments, and expenses attributable to segments and paid from the plan assets.

(A) Amounts deposited to a funding agency shall be apportioned to segments in proportion to the post-retirement benefit costs allocated to or separately calculated for the individual segments. However, if a contractor consistently follows a practice of separately calculating post-retirement benefit costs for segments, the contractor may first apportion amounts funded to segments in proportion to the post-retirement benefit cost of such segments subject to this Standard. Any portion of the amount deposited remaining after apportioning funding to segments whose costs are subject to this Standard, shall then be apportioned to other segments. No prepayment credit shall be

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measured until the post-retirement benefit cost of all segments is funded.

(B) Income and expenses shall include a portion of any investment gains and losses attributable to the plan assets. Income and expenses attributable to plan assets shall be allocated to segments in the same proportion that the average value of plan assets allocated to each segment bears to the average value of total plan assets for the period for which income and expenses are being allocated.

(iv) Once the fair value of plan assets has been determined for segments in accordance with paragraphs (c)(6)(i) or (iii) of this subsection each year, the market-related value of plan assets shall be allocated to each segment in the same proportion as the fair value of plan assets.

(v) Any portion of post-retirement benefit cost of a segment for a cost accounting period that is not funded within such period shall be accounted for as an unfunded accrual and carried forward to future accounting periods. The contractor may elect to fund portions of, and thereby reduce, the accumulated value of unfunded accruals. Such funding shall not be recognized for purposes of paragraph (c)(5) of this subsection.

(vi) Amounts funded in excess of the total post-retirement benefit cost of a segment for a cost accounting period shall be accounted for as a prepayment credit and carried forward to future accounting periods. The accumulated value of prepayment credits shall be reduced for portions of the accumulated value of prepayment credits used to fund post-retirement benefit costs or to fund portions of the accumulated value of unfunded accruals.

(vii) Any benefit payments to or on behalf of a segment's plan participants which are made by the contractor from a source other than the plan assets shall be treated as funding in accordance with paragraph (c)(5) of this subsection. The accumulated value of unfunded accruals shall be reduced by any such benefit payments that exceed the assigned post-retirement benefit cost for cost accounting period.

(viii) (A) If plan participants transfer among segments or if a segment is split into two or more segments, the contractor shall transfer fair value of plan assets, accumulated value of unfunded accruals, and accumulated value of prepayment credits as follows:

(*1*) The contractor shall first allocate fair value of plan assets, accumulated value of unfunded accruals, and accumulated value of prepayment credits to the nonforfeitable post-retirement benefit obligation based on the ratio of the nonforfeitable post-retirement benefit obligation to the valuation assets. Such ratio shall not exceed one (1). Allocate any remaining fair value of plan assets, accumulated value of unfunded accruals, and accumulated value of prepayment credits to the forfeitable post-retirement benefit obligation.

(*2*) The contractor shall then transfer fair value of plan assets, accumulated value of unfunded accruals, and accumulated value of prepayment credits allocated to the nonforfeitable post-retirement benefit obligation in proportion to the nonforfeitable post-retirement benefit obligation transferred.

(*3*) Finally, the contractor shall transfer fair value of plan assets, accumulated value of unfunded accruals, and accumulated value of prepayment credits allocated to the forfeitable post-retirement benefit obligation in proportion to the forfeitable post-retirement benefit obligation transferred.

(B) In addition, a portion of each unrecognized prior service cost, unrecognized transition obligation, and unrecognized gain or loss (including any gains or losses from curtailments, settlements, or granting termination benefits) shall be transferred in proportion to the unfunded accumulated post-retirement obligation transferred. The contractor may follow a consistent practice which deems that all transfers occur at the end of the period. The undivided market-related value of plan assets shall be allocated in proportion to the fair value of plan assets of each segment after the transfer. Contractors need not transfer assets and other values if the net amount of transfers is immaterial.

(d) *Allocation of post-retirement benefit cost to cost objectives.* The allocation of post-retirement benefit cost of segments to intermediate and final cost objectives shall be made in accordance with applicable Standards.

(e) *Adjustments for curtailments, settlements, and termination benefits.*

(1) For defined-contribution plans using accrual accounting, in the event a contractor terminates a post-retirement benefit plan or curtails vesting or retirement eligibility service, then the contractor shall determine the amount of nonvested account balances subject to forfeiture. Such amount shall be determined as of the date of such plan termination or curtailment of vesting or retirement eligibility service. The amount of the credit shall be amortized and assigned over a period of ten (10) years beginning with the period in which the event occurs.

(2) For defined-benefit plans using accrual accounting:

(i) In the event a contractor curtails a post-retirement benefit plan, settles a post-retirement benefit obligation, or grants termination benefits, then the contractor shall measure the gain or loss caused by such event separately from the annual gain or loss determined for purposes of 9904.419–50(b)(2)(vii). In measuring such amount, the contractor shall apply the methods and techniques prescribed in SFAS 106. Any such gain or loss remaining after offsetting any portion of unrecognized prior service costs, prior gains and losses, or transition obligation shall be amortized and assigned over a period of ten (10) years beginning with the period in which the event occurs.

(ii) If a post-retirement benefit plan is terminated, the contracting parties may agree to establish a single plan termination amount by aggregating the net sum of any unrecognized gain or loss adjustments for curtailments, settlements, or granting of termination benefits determined in accordance with this subsection plus any remaining unrecognized net gain or loss determined in accordance with 9904.419–50(b)(2)(vii). Such plan termination amount shall be amortized and assigned over a period of ten (10) years beginning with the period in which the plan termination occurred.

(iii) If the contractor has not already allocated the fair value of plan assets and other relevant values to the segment, such an allocation shall be made in accordance with the requirements of 9904.419–50(c)(6)(i) and (ii).

(f) *Adjustments for segment closings.* If a segment is closed, the contractor shall determine a segment closing amount which represents an adjustment to previously determined post-retirement benefit costs as follows:

(1) For plans accounted for under the pay-as-you-go cost method:

(i) The contractor shall not adjust previously determined post-retirement benefit costs. Contract price or cost adjustments are not permitted.

(ii) If the segment discontinues operations, is sold, or ownership is otherwise transferred, all remaining inactive plan participants shall be transferred to the closed segment's immediate home office.

(2) For defined-contribution plans using accrual accounting, the segment closing amount shall be measured as the unrecognized portion of the plan termination or curtailment of vesting or retirement eligibility service credit determined in accordance with 9904.419–50(e)(1).



(3) For defined-benefit plans using accrual accounting:

(i) The segment closing amount shall be measured as the difference between the nonforfeitable post-retirement benefit obligation and the valuation assets.

(ii) The contractor's methods and assumptions used to determine the segment closing amount shall be consistent with those used in the measurement of post-retirement benefit costs prior to the segment closing.

(iii) If the segment discontinues operations, all remaining inactive plan participants shall be transferred to the closed segment's immediate home office, along with the accumulated post-retirement benefit obligation, fair value of plan assets and all other values attributable to such transferred inactive participants.

(iv) If the segment is sold, or ownership is otherwise transferred, and the contractor retains some or all of the accumulated post-retirement benefit obligation, the fair value of plan assets and all other values shall be split between the contractor and the buyer in accordance with 9904.419–50(c)(6)(viii) based upon the accumulated post-retirement benefit obligation retained by the contractor and the balance of the accumulated post-retirement benefit obligation which is transferred to the buyer. The accumulated post-retirement benefit obligation, fair value of plan assets and all other values retained by the contractor shall be transferred to the closed segment's immediate home office.

(v) If the segment is sold or ownership is otherwise transferred and such sale or transfer of ownership is to a successor-in-interest then:

(A) If the entire accumulated post-retirement benefit obligation, fair value of plan assets, accumulated value of unfunded accruals, and accumulated value of prepayment credits are transferred to the successor contractor, there shall be no adjustment to previously determined post-retirement benefit costs.

(B) If the contractor retains some or all of the accumulated post-retirement benefit obligation, the accumulated post-retirement benefit obligation and all other values shall be allocated between the contractor and the successor-in-interest in accordance with paragraph (f)(3)(iv) of this section. The segment closing amount shall be determined based on such retained values.

(C) The contractor's methods and assumptions are deemed to be adopted by the successor-in-interest so that the effect of the segment's transferred assets and liabilities is carried forward and recognized in the accounting for post-retirement benefit cost at the successor contractor. Any changes in methods or assumptions shall be deemed to occur immediately after such transfer.

(vi) Once determined, any adjustment credit shall be first used to reduce the accumulated value of unfunded accruals. After the accumulated value of unfunded accruals has been reduced, any remaining adjustment amount shall be accounted for as a prepayment credit. Any adjustment charge shall be accounted for as an unfunded accrual to the extent that funds are not added to the fair value of assets.

(4) The Government's share of the segment closing amount (charge or credit) shall be the product of the total segment closing amount determined in accordance with paragraphs (f)(2) or (3) of this subsection and a fraction. The numerator of such fraction shall be the sum of the post-retirement benefit plan costs allocated to all contracts and subcontracts (including Foreign Military Sales) subject to this Standard during a period of years representative of the Government's participation in the post-retirement benefit plan costs on an accrual basis. The denominator of such fraction shall be the total post-retirement benefit plan costs assigned to cost accounting periods during the same period. The contracting parties shall recognize the Government's share of the segment closing amount that is applicable to the segment's contracts that are subject to this Standard by adjusting contract prices, target costs or cost ceilings, or, by any other suitable technique acceptable to the cognizant Federal agency official.

(5) For purposes of this subsection and paragraph (e) of this section, if the date of the event is not readily determinable, or if its use can result in an inequitable calculation, the contracting parties shall agree on an appropriate date.

**9904.419–60 Illustrations.**

These illustrations presume that the contractor's post-retirement benefit plan, cost methods, and actuarial assumptions meet the requirements of this Standard except as noted in the particular illustration.

(a) *Recognition of post-retirement benefit costs.*

(1) The written terms of Contractor A's defined-contribution post-retirement plan require that the contractor make contributions of a specified percentage of each employee's base salary to individual accounts held by an organization that satisfies the 9904.419–30(b)(2) definition of a funding agency. Upon retirement each employee's accumulated account balance is annuitized and used to pay a portion of the annual premium on the retiree's "Medigap" health insurance policy purchased from an non-captive insurance carrier. Pursuant to 9904.419–40(a)(1)(iv), the contractor determines the cost of its defined-contribution plan for each cost accounting period as the sum of the required net contributions deposited into the individual participants' accounts held by the funding agency.

(2) Contractor B sponsors a defined-benefit retiree health plan which historically has been amended every three (3) years to increase the amounts of the annual deductible and copayment. This post-retirement benefit plan meets the criteria for accrual accounting set forth in 9904.419–40(a)(1). Pursuant to 9904.419–40(a)(1)(v), the contractor must actuarially determine the cost of its post-retirement benefit plan for the current period based upon the deductible and copayment amounts specified in the current written plan document. Pursuant to 9904.419–50(b)(2)(ii), the actuarial gain attributable to any future amendment increasing the deductible and copayment can not be recognized until such amendment is adopted.

(3) Contractor C has historically paid a percentage of the health insurance premiums for its retirees. Each year the contractor has renewed its intent to continue this program for the upcoming year in a letter to its retirees. Although active employees are occasionally informally told of this program, especially as they prepare to retire, the program is not mentioned in the employee handbook nor any other employee communication. However, the letter was not sent to all plan participants, did not include a notice of the right to legally enforce payment of the benefit, and did not provide an irrevocable right to the benefit once participants had attained eligibility. In accordance with 9904.419–40(a)(2), the cost of this post-retirement health plan must be accounted for using the pay-as-you-go cost method because the criteria set forth at 9904.419–40(a)(1)(i) and (ii) were not met.

(4) Contractor D sponsors a retiree life insurance program that provides a death benefit equal to 35% of an employee's final earnings, subject to a minimum death benefit of $10,000. This defined-benefit post-retirement plan meets the criteria set forth in 9904.419–40(a)(1). The contractor pays an annual premium to an non-captive insurer to provide a $10,000 participating life insurance

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policy for all employees at retirement. Pursuant to 9904.416–50(a)(1)(i) of Cost Accounting Standard 9904.416, the contractor's established practice is to adjust the annual insurance premium for any refunds, dividends, additional assessments, or other credits or charges, in the cost accounting period in which such credit or charge is received or receivable. The cost for the projected benefit that exceeds $10,000 must be accounted for as a defined-benefit plan using accrual accounting in accordance with 9904.419–40(b)(2)(iii). Pursuant to 9904.419–40(b)(2), the cost for a cost accounting period is the premium paid to provide the basic $10,000 death benefit, adjusted in accordance to 9904.416–50(a)(1)(i), plus the annual amount determined in accordance with the accrual accounting provisions of this Standard relating to defined-benefit post-retirement benefit plans. If the insurance had been obtained from a captive insurer as defined by 9904.419–30(a)(3), the entire cost of the plan would have been subject to this Standard in accordance with 9904.419–40(b)(2)(ii).

(5) Contractor E sponsors two post-retirement benefit plans which each have a separate plan document. One plan provides retiree health benefits for all employees of the contractor. The other plan provides retiree dental and vision benefits for the same employees. Neither plan meets the criteria specified at 9904.419–40(a)(1) and therefore, are required to be accounted for using the pay-as-you-go method in accordance with 9904.419–50(a)(2). Pursuant to 9904.419–50(a)(1)(i), the contractor may elect to determine the cost of the two plans on an aggregate basis.

(6) Contractor F sponsors two defined-benefit post-retirement plans which each have a separate plan document. One plan provides health benefits to all retired salaried employees. The other plan provides the same health benefits to all retired bargaining unit employees. Because both plans satisfy the criteria of 9904.419–50(a)(1), both are required to use accrual accounting. Pursuant to 9904.419–50(a)(1)(ii), the contractor may elect to determine the cost of the two plans on an aggregate basis.

(7) Contractor G sponsors a single post-retirement benefit plan that provides health benefits and life insurance benefits. The contractor has retained the right to terminate the health benefits for all but those employees who are retired or have attained eligibility for benefits. The contractor pays level annual premiums to an non-captive insurance carrier designed to provide paid-up participating life insurance contracts by the time an employee reaches retirement and the employees have an irrevocable right to the current value of the insurance contracts. The contractor's established practice is to adjust the annual participating insurance premium by the amount of estimated refunds and dividends in accordance with 9904.416–50(a)(1)(vi) of Cost Accounting Standard 9904.416, and therefore such adjusted level annual premiums satisfy the requirements of 9904.419–40(b)(2)(i). Because the plan satisfies the criteria set forth at 9904.419–40(a)(1), the contractor must account for the cost of the benefits not provided through insurance contracts using accrual accounting as required by 9904.419–50(b)(2)(iii). Alternatively, 9904.419–40(a)(2) permits the contractor to separately identify and account for the cost of the life insurance benefit as if it were a separate post-retirement benefit plan.

(8) Contractor H has a single defined-benefit post-retirement plan. The plan provides one set of benefits to retirees and employees who were eligible to retire on or before December 31, 1995 (the "protected group"). Under the terms of the post-retirement benefit plan, the contractor has no right to reduce these benefits. Employees eligible for retirement on or after January 1, 1996 are provided a less generous set of benefits and the contractor retains the right to terminate the plan or reduce benefits even after eligibility is attained. Because the plan does not fully satisfy the criteria set forth at 9904.419–40(a)(1), the pay-as-you-go method must be used to account for the cost of the plan. Pursuant to 9904.419–50(a)(3), the contractor may identify the benefits provided to the two groups as being provided by separate post-retirement benefit plans. In that case, because the costs for the "protected group" plan meet the requirements of 9904.419–40(a)(1), the "protected group" plan must be actuarially determined and accounted for using accrual accounting. In accordance with 9904.419–40(a)(2), the contractor must account for the benefits of the plan for the post-1995 retirees using the pay-as-you-go cost method because that separately identified plan fails the criteria of 9904.419–40(a)(1).

(9) Contractor I sponsors a post-retirement benefit plan that provides a life insurance benefit of two-times final salary for all employees. The program also provides that the contractor will deposit 1% of each employee's pay into individual accounts held by a funding agency. At retirement, the accumulated value of the individual account is used to purchase a paid-up life insurance policy. If the funds in the individual account is insufficient to purchase the full life insurance benefit, the contractor pays the additional cost directly from general corporate resources. This program has features of both a defined-benefit and a defined-contribution post-retirement plan. Since the substance of the plan is to provide a defined-benefit life insurance of two-times final salary, then pursuant to 9904.419–50(a)(4), the annual cost must be determined in accordance with the provisions of this Standard relating to defined-benefit post-retirement plans.

(b) *Measurement and assignment of post-retirement benefit cost.*

(1) Contractor J uses the pay-as-you-go cost method to determine the cost of its retiree life insurance program. During the current period, the contractor paid $200,000 in death benefits directly to the named beneficiaries of deceased plan participants which is the pay-as-you-go cost for current benefits in accordance with 9904.419–40(b)(3)(i). On the first day of the current period, the contractor also paid $180,000 in premiums to purchase paid-up insurance policies from an non-captive insurer for certain employees as they retired during the current year. The prevailing rate determined by the Secretary of the Treasury pursuant to Public Law 92–41, 85 Stat. 97 for the current period is 7.25%. Pursuant to 9904.419–40(b)(2)(iv) and 9904.419–40(b)(3)(ii) and 9904.419–50(b)(1), the contractor determines the current period cost of the paid-up insurance policies as $18,719, which is the annual amount required to amortize the $180,000 in fifteen (15) equal annual payments at 7.25%. The contractor determines the total cost for the current period as $218,719 ($200,000 + $18,719).

(2) Contractor K sponsors a defined-contribution post-retirement plan which satisfies the criteria set forth at 9904.419–40(a)(1). The plan is funded through a dedicated trust that qualifies as a funding agency. The plan document provides that each year the contractor will credit to the individual accounts of the plan participants an amount equal to 5% of each employee's base salary less that employee's share of any nonvested account balances forfeited by terminating employees. The annual contribution amount so determined constitutes the post-retirement benefit cost in accordance with 9904.419–40(b)(4). Any amount not funded by a deposit to the funding agency must be identified as an unfunded accrual in accordance with 9904.419–50(c)(6)(v).

(3) Conversely, assume that the plan sponsored by Contractor K in illustration 9904.419–60(b)(2) fails the criteria set-forth at 9904.419–40(a)(1). Also assume that the contractor maintains memorandum records of the participants' account balances, rather than fund this defined-contribution plan. At retirement the contractor pays the employees the value of account balances recorded in these memorandum records as a lump sum settlement of the account balance. In this case the contractor shall use the pay-as-you-go cost method in accordance with 9904.419–40(a)(2). In accordance with 9904.419–40(b)(3), the cost shall be based upon the lump sum settlements paid to the plan participants and amortized in accordance with 9904.419–40(b)(3)(ii). If prior to becoming subject to this Standard, the contractor had accounted for the costs of its post-retirement benefit plan using terminal funding, the contractor could continue to use terminal funding as its cost accounting practice as permitted by 9904.419–64(d). In that case, no amortization would be required.

(4) Contractor L sponsors a post-retirement benefit plan for its collective bargaining employees which satisfy the requirements of 9904.419–40(a)(1). The contractor uses the projected unit credit actuarial cost method and a discount rate of 7.5% to determine the net periodic post-retirement benefit cost for SFAS 106 purposes, and therefore, 9904.419–50(a)(1)(i) requires that the contractor use the projected unit credit actuarial cost method and 7.5% discount rate assumption for contract cost accounting purposes. The contractor funds the plan through a combination of an Internal Revenue Code (IRC) section 401(h) account, whose assets are separately accounted for within a qualified defined-benefit pension trust, plus an IRC section 501(c)(9) voluntary employee benefit trust, otherwise known as a VEBA. The contractor determines the annual deposit for the IRC 401(h) account using the aggregate actuarial cost method, and for the VEBA using the projected unit credit actuarial cost method. Both of these deposit determinations are based on an assumption of 7% for the discount rate. The deposits to the IRC 401(h) account and the VEBA are used to determine the funded portion of the post-retirement benefit cost for purposes of 9904.419-50(c)(5), but not the contract cost. To the extent that the deposits in any cost accounting period differ from the post-retirement benefit cost determined pursuant to this Standard, the shortfall or excess shall be identified as either an unfunded accrual or a prepayment credit in accordance with 9904.419–50(c)(6)(v) and (vi), respectively.

(5)(i) The actuarial valuation report prepared for SFAS 106 purposes gives the following information reconciling the funded status of the defined-benefit post-retirement plan sponsored by Contractor M:

| | Value as of 12/31 |
|---|---|
| Accumulated post-retirement benefit obligation | ($257,000) |
| Fair value of plan assets | 69,000 |
| Funded status | (188,000) |
| Unrecognized net gain | (44,000) |
| Unrecognized prior service cost | 33,000 |
| Unrecognized transition obligation | 195,000 |
| Net pre-paid (accrued) post-retirement benefit cost | (4,000) |

(ii) The terms of the plans satisfy the requirements of 9904.419–40(a)(1). Three years ago the contractor did not fund all of its assigned post-retirement benefit cost for the period and has separately identified and maintained an accumulated value of unfunded accruals which is currently valued at $6,000 in accordance with definition 9904.419–30(a)(1) and 9904.419–50(c)(6)(v). Two years ago, the contractor funded an amount greater than its assigned post-retirement benefit cost for the period and has separately identified and accounted for the excess as the accumulated value of prepayment credits which is currently valued at $2,000 in accordance with definition 9904.419–30(b)(5) and 9904.419–50(c)(6)(vi). During all other years the contractor exactly funded its post-retirement benefit cost. In accordance with the definition at 9904.419–30(a)(15), the contractor determines the unfunded accumulated post-retirement benefit obligation for contract cost accounting purposes as $184,000, which is the $257,000 accumulated post-retirement benefit obligation less the sum of $69,000 of fair value of plan assets and $6,000 of accumulated unfunded accruals plus the $2,000 accumulated value of prepayment credits. The contractor determines that the sum of the unrecognized net gain, unrecognized prior service cost and unrecognized transition obligation is $184,000 ($(44,000) + $33,000 + $195,000). Pursuant to 9904.419–40(b)(5)(iv), the cost determined for the current period is assignable to the period because the unfunded accumulated post-retirement benefit obligation equals the sum of the unrecognized amounts as shown below:

| | Value as of 12/31 |
|---|---|
| Accumulated post-retirement benefit obligation: | |
| Retirees receiving benefits | $82,000 |
| Actives—Currently eligible for benefits | 19,000 |
| Nonforfeitable post-retirement benefit obligation | 101,000 |
| Actives—Not yet eligible for benefits | 156,000 |
| Total | 257,000 |
| Valuation Assets: | |
| Fair value of plan assets | (69,000) |

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| | Value as of 12/31 |
|---|---|
| Accumulated value of unfunded accruals | (6,000) |
| Accumulated value of prepayment credits | 2,000 |
| Total | (73,000) |
| Unfunded accumulated post-retirement benefit obligation | 184,000 |
| Unrecognized net gain | (44,000) |
| Unrecognized prior service cost | 33,000 |
| Unrecognized transition obligation | 195,000 |
| Sum of unrecognized amounts | 184,000 |
| Result of 9904.419–40(b)(5)(iv) balance test | Passes |

(6) Contractor M in illustration 9904.419–60(b)(5) determines that during the following year the actual return on the fair value of plan assets of $69,000 is $7,200 for SFAS 106 purposes. The current interest rate determined by the Secretary of the Treasury pursuant to Public Law 92–41, 85 Stat. 97 is 9.5%. Pursuant to 9904.419–50(b)(2)(iv), the contractor increases the $7,200 actual return on the fair value of plan assets by the interest imputed on the accumulated value of unfunded accruals which is 9.5% of $6,000 or $570. Pursuant to 9904.419–50(b)(2)(v), the contractor reduces the actual return on the fair value of plan assets by the interest imputed on the accumulated value of prepayment credits which is 9.5% of $2,000 or $190. For contract cost purposes, the contractor determines the actual return on the fair value of plan assets as $7,580 ($7,200 + $570–$190).

(7) Assume that Contractor M in Illustration 9904.419–60(b)(5) determines that the sum of the components of post-retirement benefit cost, as described in 9904.419–40(b)(5), is $55,000. The contractor also pays $15,000 for benefits incurred by current retirees during the period which can be considered funding in accordance with 9904.419–50(c)(6)(vii). Furthermore, as shown in Illustration 9904.419–60(b)(5), the nonforfeitable post-retirement benefit obligation, as defined at 9904.419–30(a)(7), is $101,000. Therefore, the unfunded nonforfeitable post-retirement benefit obligation is $28,000 (nonforfeitable post-retirement benefit obligation of $101,000 minus valuation assets of $73,000.) In accordance with 9904.419–40(b)(5)(iii) the amount of post-retirement benefit cost assignable to the current period is limited to $43,000 ($15,000 benefit payments plus $28,000 unfunded post-retirement benefit obligation.) Furthermore, the $12,000 of post-retirement benefit cost that is not assignable to the current period ($55,000–43,000) shall be recognized in future periods as an experience loss.

(8) Assume that Contractor M in illustration 9904.419–60(b)(7) makes a deposit of $26,000 into a dedicated trust fund that satisfies the definition of a funding agency found at 9904.419–30(b)(2). Section 9904.419–50(c)(6)(vi) permits the $2,000 accumulated value of prepayment credits to be applied toward the $43,000 cost so that the full current period cost is funded for purposes of 9904.419–0(c)(6)(v). Therefore, the total amount available towards funding the cost assigned to the current period is $43,000 ($26,000 deposit + $15,000 benefit payments + $2,000 prepayment credit). The accumulated value of prepayment credits must be reduced by the amount applied towards the current year's cost in accordance with 9904.419–50(c)(6)(v) and definition 9904.419–30(b)(3).

(9) If in illustration 9904.419–60(b)(7), Contractor M had only deposited $23,000 into the dedicated trust fund, the total amount available towards funding the cost assigned to the current period would be $40,000 ($23,000 + $15,000 + $2,000). The accumulated value of unfunded accruals would increase by $3,000 to $9,000 in accordance with 9904.419–50(c)(6)(v) and definition 9904.419–30(a)(1).

(10) If in illustration 9904.419–60(b)(7), Contractor M had deposited $28,750 into the dedicated trust fund, the total amount available towards funding the cost assigned to the current period would be $45,750 ($28,750 + $15,000 + $2,000). The accumulated value of prepayment credits would increase by a net of $750 ($2,750 excess funding less $2,000 prepayment used) to $2,750 in accordance with 9904.419–50(c)(6)(vi)and definition 9904.419–30(b)(5).

(c) *Post-retirement benefit cost of segments.*

(1) Contractor N sponsors a retiree medical plan that covers employees who retired before January 1, 1997. All active employees and subsequent retirees are covered in a separate post-retirement benefit plan. The contractor determines the costs of the pre-1997 plan using the pay-as-you-go cost method. The plan covers retired participants from 12 segments. The contractor maintains a record of how many years each retiree worked in each segment which is used to allocate the total cost to segments. This method is acceptable under 9904.419–50(c)(1)(i).

(2) Contractor N in illustration 9904.419–60(c)(1) maintains a record of the segment where each retiree was last employed and, in accordance with 9904.419–50(c)(1)(i), uses these records to allocate the total post-retirement benefit cost to segments. Assume that two of the twelve segments associated with current retirees ceased to exist because the segments either discontinued operations or were abandoned. Pursuant to 9904.419–50(f)(1)(ii), the inactive participants of the two defunct segments have been moved to their immediate home office to which the segment had reported. The cost associated with these inactive participants must be allocated to the immediate home office for those segments and then allocated as a residual cost of that home office following the methodology of Cost Accounting Standard 9904.403.

(3) Assume Contractor N's in illustration 9904.419–60(c)(2) merges together two of the 12 segments. After the merger, the contractor uses the combined records of the two segments and treats the retirees as if they were last employed in the newly merged segment. And, in accordance with 9904.419–50(c)(1)(i), uses these records to allocate the total post-retirement benefit cost to segments. This method is acceptable under 9904.419–50(c)(1)(i).



(4) Contractor O sponsors a post-retirement benefit plan providing medical and life insurance benefits for its active employees. The accrual accounting cost of the medical benefit is actuarially determined by each participant's age and gender. The actuarially determined cost of the life insurance benefit is based upon the employee's expected final salary and age group. As permitted by 9904.419–50(a)(2), the contractor determines the costs of the medical and life benefits as if they were provided through two separate plans. Pursuant to 9904.419–40(c)(1), each home office that has plan participants is treated as a segment. None of the conditions set forth in 9904.419–50(c)(2) exists so the contractor calculates a composite post-retirement benefit cost for each benefit. In accordance with 9904.419–40(c)(2), the contractor indirectly allocates the costs of each benefit to segments. In accordance with 9904.419–50(c)(1)(ii), the cost of the medical benefit is allocated using the number of active plan participants in each segment, including home offices. The cost of the life insurance benefit, which is dependent upon each participant's final salary, is allocated to each segment, including home offices, using the salaries of active plan participants.

(5) Contractor P uses the pay-as-you-go cost method for its post-retirement medical program for employees of several segments each of which is in a different state. While the benefits are similar, the payments vary significantly by type of contract and geographical region. Pursuant to 9904.419–50(c)(1)(i) the contractor must allocate the post-retirement benefit cost for each segment based upon the benefit payments that are identifiable with each of the segments. Furthermore, any material gain or loss attributable to the plan participants of a particular segment, must also be directly allocated to that segment only in accordance with 9904.419–50(c)(1)(i).

(6) Contractor Q uses accrual accounting to calculate the composite costs for each of two different defined-benefit plans. Only one of the two plans covers the employees of any one segment. Pursuant to 9904.419–40(c)(1), the composite cost of each distinct plan is allocated only to those segments having participants in that plan. In the past Plan I has covered the employees of Segment G. As part of an internal reorganization, the post-retirement benefit plans were amended so that benefits for employees of Segment G will now be provided through Plan II. For government contract cost accounting purposes, the assets that move with Segment G from Plan I to Plan II are the assets initially allocated to Segment G in accordance with 9904.419–50(c)(6)(i). The ratio of accumulated post-retirement benefit obligation to the valuation assets, as defined at 9904.419–30(a)(16), for segment G is X%, which materially differs from such ratio for the other segments covered by Plan II. In accordance with 9904.419–50(c)(2)(v), the contractor will have to begin separately calculating post-retirement benefit costs for Segment G. The contractor may continue to determine post-retirement benefit costs for the original Plan II segments in the aggregate as long as none of the conditions of 9904.419–50(c)(2) exists for any of these segments.

(7) Assume Contractor R has five segments directed by one home office. One segment, Segment A, does a majority (85%) of its work under Government contracts. Segment B provides support services to the other four segments. The other three segments, Segments C, D, and E perform only commercial-type work. The post-retirement benefit plans meets the criteria set forth at 9904.419–40(a)(1) and the contractor uses accrual accounting to separately calculate post-retirement benefit costs for the home office and each of the five segments in accordance with 9904.419–40(c)(1) and 9904.419–50(c)(1)(ii). Pursuant to 9904.419–50(c)(6)(iii)(A), the contractor may ascribe funding to the costs allocated to the home office, Segment A, and Segment B before ascribing any funding to the three commercial segments. The separate accounting records of each segment which are maintained in accordance with 9904.419–50(c)(6)(iii) must reflect that the funding was first apportioned to the home office, Segment A and Segment B which allocate post-retirement benefit costs to contracts subject to this Standard.

(8)(i) Contractor R in Illustration 9904.419–60(c)(7) transfers 50 active plan participants in its defined-benefit plan from Segment A to Segment D as part of adjusting its staffing to match its workload. The accumulated post-retirement benefit obligation for these 50 participants is $250,000 of which $50,000 is attributable to active participants who are fully eligible for benefits and $200,000 is attributable to active participants who are not currently eligible for benefits. The segment accounting for Segments A and D immediately before the transfer is:

| | Segment A | Segment D |
|---|---|---|
| Accumulated post-retirement benefit obligation: | | |
| Retirees receiving benefits | $750,000 | 225,000 |
| Actives—Currently eligible | 250,000 | 175,000 |
| Nonforfeitable post-retirement benefit obligation | 1,000,000 | 400,000 |
| Actives—Not yet eligible | 2,000,000 | 1,600,000 |
| Total | 3,000,000 | 2,000,000 |
| Valuation Assets: | | |
| Fair value of plan assets [1] | (1,000,000) | |
| Accumulated value of unfunded accruals | (200,000) | (750,000) |
| Accumulated value of prepayment credits [2] | | |
| Total | (1,200,000) | (750,000) |
| Unfunded accumulated post-retirement benefit obligation | 1,800,000 | 1,250,000 |
| Unrecognized transition obligation | 2,000,000 | 1,400,000 |
| Unrecognized prior service cost | 100,000 | 50,000 |
| Unrecognized (gain) or loss | (300,000) | (200,000) |
| Sum of unrecognized amounts | 1,800,000 | 1,250,000 |

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| | Segment A | Segment D |
|---|---|---|
| Results of 9904.419–40(b)(5)(iv) balance test | Passes | Passes |

[1] In accordance with 9904.419–50(c)(6)(i), the fair value of plan assets allocated to segments excludes the accumulated value of prepayment credits.
[2] In accordance with 9904.419–50(c)(6)(i), the accumulated value of prepayment credits were separately identified and were not allocated to segments.

(ii) The contractor must first allocate fair value of plan assets, accumulated value of unfunded accruals, and accumulated value of prepayment credits to the nonforfeitable post-retirement benefit obligation in accordance with 9904.419–50(c)(6)(viii)(A). The ratio of the nonforfeitable post-retirement benefit obligation to the sum of the fair value of plan assets, accumulated value of unfunded accruals, and accumulated value of prepayment credits is 0.833333 ($1,000,000 divided by $1,200,000). Therefore the contractor allocates $833,333 (83.3333% of $1,000,000) of the fair value of plan assets, $166,667 (83.3333% of $200,000) of accumulated value of unfunded accruals. (In accordance 9904.419–50(c)(6)(i), the accumulated value of prepayment credits were separately identified and were not allocated to segments.) The balance of the fair value of plan assets ($166,667) and accumulated value of unfunded accruals ($33,333) are allocated to the forfeitable post-retirement benefit obligation.

(iii) Then, because 5% ($50,000 of $1,000,000) of the nonforfeitable post-retirement benefit obligation was transferred to Segment D, the contractor transfers $41,667 (5% of $833,333) of the fair value of plan assets and $8,333 (5% of $166,667) of accumulated value of unfunded accruals allocated to the nonforfeitable post-retirement benefit obligation to Segment D in accordance with 9904.419–50(c)(6)(viii)(B).

(iv) Finally, because 10% ($200,000 of $2,000,000) of the forfeitable post-retirement benefit obligation was transferred to Segment D, $16,667 (10% of $166,667) of the fair value of plan assets and $3,333 (10% of $33,333) of accumulated value of unfunded accruals allocated to the forfeitable post-retirement benefit obligation is transferred to segment D in accordance with 9904.419–50(c)(6)(viii)(C).

(v) The unfunded nonforfeitable post-retirement benefit obligation transferred to Segment D is $180,000, which is 10% of the original unfunded accumulated post-retirement benefit obligation for Segment A. The contractor transfers 10% of the unrecognized transition obligation, unrecognized prior service cost, and unrecognized gains and losses from Segment A to Segment D in accordance with 9904.419–50(c)(6)(viii).

(vi) The segment accounting for Segment A for the transfer is shown below:

| | Segment A | | |
|---|---|---|---|
| | Before transfer | Transfer to segment D | After transfer |
| Accumulated post-retirement benefit obligation: | | | |
| Retirees receiving benefits | $750,000 | | $750,000 |
| Actives—Currently eligible | 250,000 | $(50,000) | 200,000 |
| Nonforfeitable post-retirement benefit obligation | 1,000,000 | (50,000) | 950,000 |
| Actives—Not yet eligible | 2,000,000 | (200,000) | 1,800,000 |
| Total | 3,000,000 | (250,000) | 2,750,000 |
| Valuation Assets: | | | |
| Fair value of plan assets | (1,000,000) | 58,334 | (941,666) |
| Accumulated value of unfunded accruals | (200,000) | 11,666 | (188,334) |
| Accumulated value prepayment credits | | | |
| Total | (1,200,000) | 70,000 | (1,130,000) |
| Unfunded accumulated post-retirement benefit obligation | 1,800,000 | (180,000) | 1,620,000 |
| Unrecognized transition obligation | 2,000,000 | (200,000) | 1,800,000 |
| Unrecognized prior service cost | 100,000 | (10,000) | 90,000 |
| Unrecognized (gain) or loss | (300,000) | 30,000 | (270,000) |
| Sum of unrecognized amounts | 1,800,000 | (180,000) | 1,620,000 |
| Results of 9904.419–40(b)(5)(iv) balance test | Passes | Passes | Passes |

(vii) And the segment accounting for Segment D for the transfer is:

| | Segment D | | |
|---|---|---|---|
| | Before transfer | Transfer from segment A | After transfer |
| Accumulated post-retirement benefit obligation: | | | |
| Retirees receiving benefits | $225,000 | | $225,000 |



| | Segment D | | |
|---|---|---|---|
| | Before transfer | Transfer from segment A | After transfer |
| Actives—Currently eligible | 175,000 | $50,000 | 225,000 |
| Nonforfeitable post-retirement benefit obligation | 400,000 | 50,000 | 450,000 |
| Actives—Not yet eligible | 1,600,000 | 200,000 | 1,800,000 |
| Total | 2,000,000 | 250,000 | 2,250,000 |
| Valuation Assets: | | | |
| Fair value of plan assets | | (58,334) | (58,334) |
| Accumulated value of unfunded accruals | (750,000) | (11,666) | (761,666) |
| Accumulated value prepayment credits | | | |
| Total | (750,000) | (70,000) | (820,000) |
| Unfunded accumulated post-retirement benefit obligation | 1,250,000 | 180,000 | 1,430,000 |
| Unrecognized transition obligation | 1,400,000 | 200,000 | 1,600,000 |
| Unrecognized prior service cost | 50,000 | 10,000 | 60,000 |
| Unrecognized (gain) or loss | (200,000) | (30,000) | (230,000) |
| Sum of unrecognized amounts | 1,250,000 | 180,000 | 1,430,000 |
| Results of 9904.419–40(b)(5)(iv) balance test | Passes | Passes | Passes |

(viii) The $180,000 increase in the unfunded accumulated post-retirement benefit obligation for Segment D will be reflected in future post-retirement benefits costs of Segment D through the increases in the unrecognized portions of transition obligation, prior to service costs, and gains and losses.

(9) Assume that the post-retirement benefit plan of Contractor R in illustration 9904.419–60(c)(8) that covers employees of Segment A and D provides more generous benefits to employees of Segment D. Accordingly, the contractor separately calculates post-retirement benefit costs for each segment pursuant to 9904.419–50(c)(2)(i) and 9904.419–40(c)(3)(ii). After the 50 plan participants are transferred from Segment A to Segment D, these employees are then eligible for the more generous benefits afforded to employees of Segment D. Based on the benefits of Segment A, the accumulated post-retirement benefit obligation for the 50 participants was $250,000. The accumulated post-retirement benefit obligation for these employees will be $283,000 based on the benefits for Segment D. After completing the transfer of accumulated post-retirement benefit obligation, fair value of plan assets and other values as shown in illustration 9904.419–60(c)(8) in accordance with 9904.419–50(c)(6)(viii), the contractor shall recognize the $33,000 increase in the accumulated post-retirement benefit obligation as an experience loss for Segment D. This experience loss shall be assigned to cost accounting periods in accordance with 9904.419–50(b)(2)(vii).

(10) Contractor S calculates a composite post-retirement benefit cost of $200,000 for its defined-benefit plan for the current cost accounting period, which the contractor then allocates to segments. The plan's benefit is not related to salary and the actuarial valuation of the post-retirement benefit liability is performed on a per-capita basis. Segment A contains 30% of all the active and inactive plan participants of the post-retirement benefit plan, and therefore Segment A is allocated $60,000 of the cost pursuant to 9904.419–50(c)(1)(ii). The $60,000 of post-retirement benefit cost allocated to Segment A is allocable to the intermediate and final cost objectives of Segment A pursuant to 9904.419–40(d). The allocation to segments is summarized as follows:

| | Allocation of composite cost | | | | |
|---|---|---|---|---|---|
| | Composite cost | Home office | Segment A | Segment B [1] | Commercial segments [2] |
| *Plan Participants:* | | | | | |
| Actives | 1,794 | 90 | 535 | 181 | 988 |
| | 206 | 10 | 65 | 19 | 112 |
| Inactives | 2,000 | 100 | 600 | 200 | 1,100 |
| Total. | | | | | |
| *Allocation to Segments:* | | | | | |
| Assigned post-retirement benefit cost | $200,000 | $10,000 | $60,000 | $20,000 | $110,000 |
| Contribution | 200,000 | 10,000 | 60,000 | 20,000 | 110,000 |
| Unfunded Accrual | | | | | |

(11) Assume that Contractor S in illustration 9904.419–60(c)(10) separately calculates post-retirement benefit costs for each segment which total $200,000 for plan as a whole for the current period. The separately calculated cost is $10,000 for the Home Office, $60,000 for Segment A, and $20,000 for Segment B. Pursuant to 9904.419–50(c)(6)(iii)(A), the contractor follows its established practice and funds $90,000 which is the total cost for

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the home office and two segments that allocate costs to contracts subject to this Standard. The contractor funds none of the assigned post-retirement benefit cost separately computed for the commercial segments. In this case, the $90,000 of funded post-retirement benefit cost is allocated to the Home Office, Segment A, and Segment B. Because no funding was allocated to the commercial segments, an unfunded accrual of $110,000 shall be identified as the unfunded portion of post-retirement benefit costs allocated to the commercial segments in accordance with 9904.419–50(c)(6)(v). The allocation to segments is summarized as follows:

| | Allocation separately calculated costs | | | | |
|---|---|---|---|---|---|
| | Totals | Home office | Segment A | Segment B | Commercial segments |
| *Allocation to Segments:* | | | | | |
| Separately calculated post-retirement benefit cost | $200,000 | $10,000 | $60,000 | $20,000 | $110,000 |
| less: Contribution | 90,000 | 10,000 | 60,000 | 20,000 | |
| | $110,000 | | | | 110,000 |
| Unfunded accrual | | | | | |

(12) Assume that Contractor S in illustration 9904.419–60(c)(11) funds only $81,000 which is less than the separately calculated post-retirement benefit costs for the Home Office, Segment A, and Segment B. Pursuant to 9904.419–50(c)(6)(iii)(A), the contractor follows its established practice and proportionately allocates the $81,000 to only these three segments that allocate costs to contracts subject to this Standard. No funding is allocated to the commercial segments. The $81,000 is identified as the funded portion of post-retirement benefit cost for the Home Office, Segment A, and Segment B. An unfunded accrual of $9,000 is established in accordance with 9904.419–50(c)(6)(v) and allocated to these three segments. The allocation to segments is summarized as follows:

| | Allocation of separately calculated costs | | | | |
|---|---|---|---|---|---|
| | Composite cost | Home office | Segment A | Segment B | Commercial segments |
| *Allocation to Segments:* | | | | | |
| Separately calculated post-retirement benefit cost | $200,000 | 10,000 | 60,000 | 20,000 | 110,000 |
| | 81,000 | 9,000 | 54,000 | 18,000 | |
| less: Contribution | 119,000 | 1,000 | 6,000 | 2,000 | 110,000 |
| Unfunded accrual | | | | | |

(13) Assume that Contractor S in illustration 9904.419–60(c)(11) funds $108,000, which is more than the separately calculated post-retirement benefit costs for the Home Office, Segment A, and Segment B. Pursuant to 9904.419–50(c)(6)(iii)(A), the contractor follows its established practice and first allocates $90,000 of the funding to the three segments that allocate costs to contracts subject to this Standard. The contractor then allocates the remaining $18,000 of funding to the commercial segments. The $92,000 unfunded portion of post-retirement benefit cost separately calculated for the commercial segments shall be identified as an unfunded accrual of $92,000 must be established in accordance with 9904.419–50(c)(6)(v). The allocation to segments is summarized as follows:

| | Allocation of separately calculated costs | | | | |
|---|---|---|---|---|---|
| | Composite cost | Home office | Segment A | Segment B | Commercial segments |
| *Allocation to Segments:* | | | | | |
| Net post-retirement benefit cost | $200,000 | $10,000 | $60,000 | $20,000 | $110,000 |
| | 108,000 | 10,000 | 60,000 | 20,000 | 18,000 |
| less: Contribution | 92,000 | 0 | 0 | 0 | 92,000 |
| Unfunded accrual | | | | | |

(d) *Allocation of post-retirement benefit cost to cost objectives.* [Reserved]

(e) *Adjustments for curtailments, settlements, and termination benefits.*

(1)(i) Assume that Contractor M in illustration 9904.419–60(b)(5) announces that it will reduce its operations by terminating a significant number of employees at the end of the current period. Pursuant to SFAS 106, the contractor recognizes that a curtailment of benefits has occurred because the termination of the employees causes a reduction in the remaining years of expected service associated with those terminating employees. The termination of employees also causes a reduction in the accumulated post-retirement benefit obligation because some of the terminated plan participants will not accrue the future service necessary for benefits eligibility. Also assume that because of the work-force reduction, a certain class of the terminated employees becomes eligible for special termination benefits which increase the accumulated post-retirement benefit obligation by $14,000. For SFAS 106 purposes the contractor determines the special termination benefit loss and the curtailment gain as follows:



| | SFAS 106 accounting as of December 31 | | | |
|---|---|---|---|---|
| | Before curtailment | Special termination benefits | Curtailment gain | After curtailment |
| Accumulated post-retirement benefit obligation | $(257,000) | [1]$(14,000) | [2]$68,000 | $(203,000) |
| Fair value of plan assets | 69,000 | | | 69,000 |
| Funded status | (188,000) | (14,000) | 68,000 | (134,000) |
| Unrecognized net gain | (44,000) | | | (44,000) |
| Unrecognized prior service cost | 33,000 | | [3](5,940) | 27,060 |
| Unrecognized transition obligation | 195,000 | | [4](42,900) | 152,100 |
| Pre-paid (accrued) post-retirement benefit cost | [5](4,000) | (14,000) | 19,160 | 1,160 |

[1] Increase in accumulated post-retirement benefit obligation attributable to the additional benefits granted under special termination provisions of the post-retirement benefit plan.
[2] Gain due to decrease in accumulated post-retirement benefit obligation because terminated participants will not become eligible for full benefits.
[3] Portion of unrecognized prior service cost associated with future years of service associated with terminated participants.
[4] Portion of unrecognized transition obligation associated with future years of service associated with terminated participants.
[5] The accrued post-retirement cost equals the net of an accumulated value of unfunded accruals of $(6,000) and an accumulated value of prepayment credits of $2,000.

Pursuant to SFAS 106, the $14,000 for granting special termination would be recognized as an expense of the current period. For contract costing purposes, the $14,000 must be amortized over a period of 10 years in accordance with 9904.419–50(e)(2)(i). The curtailment gain for contract costing purposes is $19,160, which is the remaining amount of the curtailment gain not offset against unrecognized prior service cost and unrecognized transition obligation using SFAS 106 methodology, in accordance with 9904.419–50(e)(2)(i). For SFAS 106 purposes, the $19,160 curtailment gain would be recognized as income for the current period. For contract cost purposes, the $19,160 curtailment gain must be amortized over a period of 10 years in accordance with 9904.419–50(e)(2)(i).

(iii) After considering the effects of the special termination benefit loss and the curtailment gain, the contractor demonstrates that its accounting for post-retirement benefit costs is still in balance as required by 9904.419–40(b)(5)(iv) as follows:

| | Contract cost accounting as of December 31 | | | |
|---|---|---|---|---|
| | Before curtailment | Special termination benefits | Curtailment gain | After curtailment |
| Accumulated post-retirement benefit obligation | $257,000 | $14,000 | $(68,000) | $203,000 |
| Fair value of plan assets | (69,000) | | | (69,000) |
| Accumulated value of unfunded accruals | (6,000) | | | (6,000) |
| Accumulated value of prepayment credits | 2,000 | | | 2,000 |
| Unfunded accumulated post-retirement benefit obligation | 184,000 | 14,000 | (68,000) | 130,000 |
| Unrecognized net gain | (44,000) | | | (44,000) |
| Unrecognized prior service cost | 33,000 | | (5,940) | 27,060 |
| Unrecognized transition obligation | 195,000 | | (42,900) | 152,100 |
| Unrecognized special termination benefit loss | | 14,000 | | 14,000 |
| Unrecognized curtailment gain | | | (19,160) | (19,160) |
| Sum of unrecognized amounts | 184,000 | 14,000 | (68,000) | 130,000 |
| Results of 9904.419–40(b)(5)(iv) balance test | Passes | Passes | Passes | Passes |

(2)(i) Assume that immediately after the curtailment of benefits, Contractor M in illustration 9904.419–60(e)(1) purchases insurance from an non-captive insurer at a price of $58,000 to unconditionally settle its obligation for certain post-retirement benefits. The purchase of this insurance reduces the accumulated post-retirement benefit obligation by $50,000 measured using the contractor's established methods and assumptions. Pursuant to SFAS 106, the contractor recognizes that a loss from the settlement of benefits has occurred. For SFAS 106 purposes the

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contractor determines the settlement loss as follows:

| | SFAS 106 accounting as of December 31 | | |
|---|---|---|---|
| | Before settlement | Settlement loss | After settlement |
| Accumulated post-retirement benefit obligation | $(203,000) | $50,000 | $(153,000) |
| Fair value of plan assets | 69,000 | (58,000) | 11,000 |
| Funded Status | (134,000) | [1] (8,000) | (142,000) |
| Unrecognized net gain | (44,000) | [2] 10,837 | (33,163) |
| Unrecognized prior service cost | 27,060 | | 27,060 |
| Unrecognized transition obligation | 152,100 | [3](10,837) | 141,263 |
| Pre-paid (accrued) post-retirement benefit cost | 1,160 | (8,000) | (6,840) |

[1] Loss due to cost of settlement in excess of accumulated post-retirement benefit obligation.
[2] Portion of unrecognized transition obligation eliminated by settlement.
[3] Loss due to immediate recognition of a portion of the unrecognized transition obligation.

(ii) Pursuant to 9904.419–50(e)(2)(i), the settlement loss for contract costing purposes is $8,000 using SFAS 106 methodology. For SFAS 106 purposes, the contractor recognizes a current period expense of $8,000 for the settlement loss. For contract cost purposes, the $8,000 settlement loss must be amortized over the next 10 years in accordance with 9904.419–50(e)(2)(i).

(iii) After considering the effects of the settlement, the contractor demonstrates that its accounting for post-retirement benefit costs is still in balance as required by 9904.419–40(b)(5)(iv) as follows:

| | Contract cost accounting as of December 31 | | |
|---|---|---|---|
| | Before settlement | Settlement loss | After settlement |
| Accumulated post-retirement benefit obligation | $203,000 | $(50,000) | $153,000 |
| Fair value of plan assets | (69,000) | 58,000 | (11,000) |
| Accumulated value of unfunded accruals | (6,000) | | (6,000) |
| Accumulated value of prepayment credits | 2,000 | | 2,000 |
| Unfunded accumulated post-retirement benefit obligation | 130,000 | 8,000 | 138,000 |
| Unrecognized prior net gain | (44,000) | 10,837 | (33,163) |
| Unrecognized prior service cost | 27,060 | | 27,060 |
| Unrecognized transition obligation | 152,100 | (10,837) | 141,263 |
| Unrecognized special termination benefit loss | 14,000 | | 14,000 |
| Unrecognized curtailment gain | (19,160) | | (19,160) |
| Unrecognized settlement loss | | 8,000 | 8,000 |
| Sum of unrecognized amounts | 130,000 | 8,000 | 138,000 |
| Results of 9904.419–40(b)(5)(iv) balance test | Passes | Passes | Passes |

(3) Assume that as part of the work force reduction by Contractor M in illustration 9904.419–60(e)(1), a disproportionate share of the employee terminations is attributable to one of its segments. In that case, the contractor must determine the termination benefit loss separately for each segment in accordance with 9904.419–50(c)(2)(i) and 9904.419–50(c)(2)(ii). On the other hand, if the effect is evenly dispersed across some, but not all, of the segments, the contractor may determine the termination benefit loss for the affected segments in the aggregate and allocate the loss among the affected segments by use of an appropriate base such as the number of employees terminated in each segment as part of the workforce reduction.

*(f) Adjustments for segment closings.*

(1) (i) Contractor T has been performing Government contracts subject to this Standard. Upon completion of its current Government contracts, the contractor does not actively seek nor receive any new Government contracts subject to this Standard and therefore a segment closing, as defined by 9904.419–30(b)(6)(iii), has occurred. The accounting of the liabilities and assets for the post-retirement benefits of Segment A for government contract costing purposes immediately before the segment closing is summarized as follows:

| | Value as of 12/31 |
|---|---|
| Accumulated post-retirement benefit obligation: | |
| Retirees receiving benefits | $250,000 |
| Actives—Currently eligible for benefits | 100,00 |



| | Value as of 12/31 |
|---|---|
| Nonforfeitable post-retirement benefit obligation | 350,000 |
| Actives—Not yet eligible for benefits | 400,000 |
| Total | 750,000 |
| Valuation assets: | |
| Fair value of plan assets[1] | (270,000) |
| Accumulated value of unfunded accruals | (150,000) |
| Accumulated value of prepayment credits[2] | |
| Total | 420,000 |
| Unfunded accumulated post-retirement benefit obligation | 330,000 |
| Unfunded nonforfeitable post-retirement benefit obligation[3] | (70,000) |
| Unrecognized net gain | (150,000) |
| Unrecognized prior service cost | 405,000 |
| Unrecognized transition obligation | 75,000 |
| Sum of unrecognized amounts | 330,000 |
| Result of 9904.419–40(b)(5)(iv) balance test | Passes |

[1] In accordance with 9904.419–50(c)(6)(i), the fair value of plan assets allocated to segments exclude the accumulated value of prepayment credits.
[2] In accordance with 9904.419–50(c)(6)(i), the accumulated value of prepayment credits were separately identified and were not allocated to segments.
[3] Nonforfeitable post-retirement benefit obligation of $350,000 less valuation assets of $420,000.

(ii) The contractor must fully recognize a segment closing credit of $70,000, which is measured as the difference of the nonforfeitable post-retirement benefit obligation ($350,000) and the valuation assets ($420,000). The segment closing adjustment credit of $70,000 represents an adjustment to previously determined post-retirement benefit costs in accordance with 9904.419–50(f)(3)(i). The Government's share of the $70,000 must be effected by adjusting contract prices, target costs, or cost ceilings, or by any other suitable technique in accordance with 9904.419–50(f)(4). One way the adjustment could be effected is by a check or other funds transfer from the contractor to the Government.

(2) If Contractor T in illustration 9904.419–60(f)(1) discontinues its operations at Segment W and abandons the facility, a segment closing as defined by 9904.419–30(b)(6)(ii) has occurred. Alternatively, if the operations of Segment W continue but the facility is sold to a third party who is not a successor-in-interest, then a segment closing as defined by 9904.419–30(b)(6)(i) has occurred. In either case, the government's share of the $70,000 credit shall be determined, as outlined in illustration 9904.419–60(f)(1), and credited to the government in accordance with 9904.419–50(f)(4).

(3) Assume that Contractor T in Illustration 9904.419–60(f)(1) sells Segment A to Contractor U, who is a successor-in-interest in the segment's government contracts through a novation agreement of the segment's government contracts. A segment closing as defined by 9904.419–30(b)(6)(i) has occurred. The entire accumulated post-retirement benefit obligation of $750,000 for both active and retired plan participants and all other post-retirement benefit plan values are transferred to the successor-in-interest as part of a sales agreement. Pursuant to 9904.419–50(f)(3)(v)(A), no segment closing adjustment is required. The accounting of the liabilities and assets for the post-retirement benefits of Segment A for government contract costing purposes is summarized immediately before and after the sale as follows:

| | | After | |
|---|---|---|---|
| Before | Original contractor | Original contractor | Successor contractor |
| Accumulated post-retirement benefit obligation: | | | |
| Retirees receiving benefits | $250,000 | | $250,000 |
| Actives—Currently eligible | 100,000 | | 100,000 |
| Nonforfeitable post-retirement benefit obligation | 350,000 | | 350,000 |
| Actives—Not yet eligible | 400,000 | | 400,000 |
| Total | 750,000 | | 750,000 |
| Valuation assets: | | | |
| Fair value of plan assets[1] | (270,000) | | (270,000) |
| Accumulated value of unfunded accruals | (150,000) | | (150,000) |
| Accumulated value of prepayment credits[2] | | | |
| Total | (420,000) | | (420,000) |
| Unfunded accumulated post-retirement benefit obligation | 330,000 | | 330,000 |

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| | Before | After | |
|---|---|---|---|
| | Original contractor | Original contractor | Successor contractor |
| Unfunded Nonforfeitable post-retirement benefit obligation [3] | (70,000) | | (70,000) |
| Unrecognized transition obligation | (150,000) | | (150,000) |
| Unrecognized prior service cost | 405,000 | | 405,000 |
| Unrecognized (gain) or loss | 75,000 | | 75,000 |
| Sum of unrecognized amounts | 330,000 | | 330,000 |
| Results of 9904.419–40(b)(5)(iv) balance test | Passes | Passes | Passes |

[1] In accordance with 9904.419–50(c)(6)(i), the fair value of plan assets allocated to segments exclude the accumulated value of prepayment credits.
[2] In accordance with 9904.419–50(c)(6)(i), the accumulated value of prepayment credits were separately identified and were not allocated to segments.
[3] Nonforfeitable post-retirement benefit obligation of $350,000 less valuation assets of $420,000.

(4) (i) Assume that Contractor V transfers only the accumulated post-retirement benefit obligation of $500,000 attributable to active plan participants to Contractor W, the successor-in-interest. The contractor retains the accumulated post-retirement benefit obligation of $250,000 for the retired participants. Pursuant to 9904.419–50(f)(3)(iv) and 9904.419–50(f)(3)(v)(B), the contractor transfers a portion of the fair value of plan assets, accumulated value of unfunded accruals, and accumulated value of prepayment credits to the successor contractor in accordance with 9904.419–50(c)(6)(viii).

(ii) Because the sum of the fair value of plan assets and accumulated value of unfunded accruals is less than the nonforfeitable post-retirement benefit obligation, the full amount of the fair value of plan assets and accumulated value of unfunded accruals is allocated to the nonforfeitable post-retirement benefit obligation. (Note that the accumulated value of prepayment credits is $0.) There is no remaining balance of fair value of plan assets and accumulated value of unfunded accruals to be allocated to the forfeitable post-retirement benefit obligation.

(iii) The contractor transferred 28.5714% ($100,000 ÷ $350,000) of the nonforfeitable post-retirement benefit obligation to the successor contractor and therefore transfers to the successor contractor 28.5714% of the fair value of plan assets ($25,714) and accumulated value of unfunded accruals ($35,714) allocated to the nonforfeitable post-retirement benefit obligation.

(iv) Although the entire forfeitable post-retirement benefit obligation was transferred to the successor contractor, no fair value of plan assets nor accumulated value of unfunded accruals were allocated to the forfeitable post-retirement benefit obligation. Therefore no additional fair value of plan assets nor accumulated value of unfunded accruals is transferred to the successor contractor.

(v) The unfunded accumulated post-retirement benefit obligation transferred to the successor contractor is $438,572, which is 81.9761% ($438,572 +$535,000) of the original unfunded accumulated post-retirement benefit obligation. According, the contractor transfers 81.9761% of the unrecognized transition obligation, unrecognized prior service cost, and unrecognized gains and losses to the successor contractor.

(vi)(A) The accounting of the obligations and assets for the post-retirement benefits of Segment A for government contract costing purposes is summarized immediately before and after the sale as follows:

| | Before | After | |
|---|---|---|---|
| | Original contractor | Original contractor | Successor contractor |
| Accumulated post-retirement benefit obligation: | | | |
| Retirees receiving benefits | $250,000 | $250,000 | |
| Actives—Currently eligible | 100,000 | | $100,000 |
| Nonforfeitable post-retirement benefit obligation | 350,000 | 250,000 | 100,000 |
| Actives—Not yet eligible | 400,000 | | 400,000 |
| Total | 750,000 | 250,000 | 500,000 |
| Valuation assets: | | | |
| Fair value of plan assets [1] | (90,000) | (64,286) | (25,714) |
| Accumulated value of unfunded accruals | (125,000) | 89,286) | 35,714) |
| Accumulated value of prepayment credits [2] | | | |
| Total | (215,000) | 153,572 | (61,428) |
| Unfunded accumulated post-retirement benefit obligation | 535,000 | 96,428 | 438,572 |
| Unfunded Nonforfeitable post-retirement benefit obligation [3] | 135,000 | 96,428 | 38,572 |
| Unrecognized transition obligation | (50,000) | (9,012) | (40,988) |
| Unrecognized prior service cost | 410,000 | 73,898 | 336,102 |
| Unrecognized (gain) or loss | 175,000 | 31,542 | 143,458 |



| | Before | After | |
|---|---|---|---|
| | Original contractor | Original contractor | Successor contractor |
| Sum of unrecognized amounts | 535,000 | 96,428 | 438,572 |
| Results of 9904.419–40(b)(5)(iv) balance test | Passes | Passes | Passes |

[1] In accordance with 9904.419–50(c)(6)(i), the fair value of plan assets allocated to segments excludes the accumulated value of prepayment credits.
[2] In accordance with 9904.419–50(c)(6)(i), the accumulated value of prepayment credits were separately identified and were not allocated to segments.
[3] In the "Before" column, this is the nonforfeitable post-retirement benefit obligation of $350,000 less valuation assets of $215,000. Amounts shown under "After" columns were similarly derived.

(B) The contractor then determines a segment closing adjustment charge of $96,428, which is measured as the difference of the nonforfeitable post-retirement benefit obligation of $250,000 and $153,572, which is the sum of the fair value of assets ($64,286) and the accumulated value of unfunded accruals ($89,286) less any accumulated value of prepayment credits ($0.) The segment closing adjustment charge of $96,428 represents an adjustment to previously determined post-retirement benefit costs in accordance with 9904.419–50(f)(3)(i). The Government's share of the $96,428 must be effected by adjusting contract prices, target costs, or cost ceilings, or by any other suitable technique in accordance with 9904.419–50(f)(4). One way the adjustment could be effected is by a check or other funds transfer from the Government to the contractor. The contractor must also reflect that segment closing adjustment has been effected by increasing the accumulated value of unfunded accruals by $96,428 in accordance with 9904.419–50(f)(3)(vi).

(5) Contractor W in illustration 9904.419–60(f)(4), after completing the transfer to the successor-in-interest, transfers the retained retired participants, and the retained accumulated post-retirement benefit obligation, fair value of plan assets, and all other values attributable to the retained retired participants, to the closed segment's former home office in accordance with 9904.419–50(f)(3)(iii). For government contract costing purposes, the accumulated post-retirement benefit obligation, fair value of plan assets, and all other values attributable to the retained inactive (retired) participants are combined with the records of the home office as follows:

| | Home office | | |
|---|---|---|---|
| | Retained retired participants | Home office participants | Totals |
| Accumulated post-retirement benefit obligation: | | | |
| Retirees receiving benefits | $250,000 | $100,000 | $350,000 |
| Actives—Currently eligible | | 235,000 | 235,000 |
| Nonforfeitable post-retirement benefit obligation | 250,000 | 335,000 | 585,000 |
| Actives—Not yet eligible | | 410,000 | 410,000 |
| Total | 250,000 | 745,000 | 995,000 |
| Valuation assets: | | | |
| Fair value of plan assets [1] | (64,286) | (268,000) | (332,286) |
| Accumulated value of unfunded accruals [2] | (185,714) | (151,000) | (336,714) |
| Accumulated value of prepayment credits [3] | | | |
| Total | (250,000) | (419,000) | (669,000) |
| Unfunded accumulated post-retirement benefit obligation | | 326,000 | 326,000 |
| Unfunded Nonforfeitable post-retirement benefit obligation [4] | | (84,000) | (84,000) |
| Unrecognized transition obligation [5] | | (147,000) | (147,000) |
| Unrecognized prior service cost [6] | | 396,000 | 396,000 |
| Unrecognized (gain) or loss [7] | | 77,000 | 77,000 |
| Sum of unrecognized amounts | | 326,000 | 326,000 |
| Results of 9904.419–40(b)(5)(iv) balance test | Passes | Passes | Passes |

[1] In accordance with subparagraph 9904.419–50(c)(6)(i), the fair value of plan assets allocated to segments excludes the accumulated value of prepayment credits.
[2] The segment closing adjustment charge is effected by increasing the accumulated value of unfunded accruals of $89,286 by the segment closing adjustment of $96,428 in accordance with subparagraph 9904.419-50(f)(3)(vi).
[3] In accordance with 9904.419–50(c)(6)(i), the accumulated value of prepayment credits were separately identified and were not allocated to segments.
[4] In the "Home Office Participants" column, this is the nonforfeitable post-retirement benefit obligation of $335,000 less valuation assets of $419,000. Amounts shown under "Retained Retired Participants" and "Total" columns were similarly derived.
[5] Unrecognized gains and losses for the retained participants have already been fully recognized by the segment closing adjustment.
[6] Unrecognized transition obligation for the retained participants have already been fully recognized by the segment closing adjustment.
[7] Unrecognized past service cost for the retained participants have already been fully recognized by the segment closing adjustment.

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(6) Contractor X, after acquiring Segment A as successor-in-interest to Contractor T in illustration 9904.419–60(f)(4), decreases the discount rate assumption from 8.5% to 8.0% to match the discount rate assumption used for its other post-retirement benefit plans. This decrease in the assumed discount rate causes the accumulated post-retirement benefit obligation to increase by $43,000 from $500,000 to $543,000. In accordance with 9904.419–50(f)(3)(v)(C), the $43,000 actuarial loss attributable to the change in the discount rate assumption is recognized by the successor contractor immediately after the acquisition of the segment. An annual gain or loss component of the successor-in-interest's post-retirement benefit cost shall be recognized in accordance with 9904.419–50(b)(2)(vi). There is no other adjustment in the values and records used by the original contractor for government contract costing purposes.

**9904.419–61 Interpretation. [Reserved]**

**9904.419–62 Exemptions.**

None for this Standard.

**9904.419–63 Effective date.**

(a) This Standard is effective as of [90 days after date of publication of the final rule in the **Federal Register**].

(b) This Standard shall be followed by each contractor on or after the start of its next cost accounting period beginning after the receipt of a contract or subcontract to which this Standard is applicable.

**9904.419–64 Transition method.**

(a) *General.* In complying with this Standard 9904.419, contractors must follow the equitable principle that post-retirement benefit costs which have been previously provided for, shall not be redundantly provided for under this Standard. Conversely, post-retirement benefit costs that have not previously been provided for, shall be provided for in accordance with this Standard. The method, or methods, employed to achieve an equitable transition shall be consistent with the provisions of this Standard and shall be approved by the cognizant Federal agency official.

(b) *Change to pay-as-you-go method.* If a contractor, who for Government contracting purposes had accounted for costs of a defined-benefit post-retirement plan on an accrual basis prior to the date this Standard becomes applicable, changes to the pay-as-you-go cost method, the contractor shall account for any unfunded post-retirement benefit costs of prior periods by establishing an accumulated value of unfunded accruals in accordance with 9904.419–50(c)(6)(v). Post-retirement benefit costs calculated under the pay-as-you-go cost method shall be charged against any fair value of plan assets and such accumulated value of unfunded accruals before any post-retirement benefit costs may be allocated to intermediate or final cost objectives.

(c) *Change to accrual accounting.* If a contractor, who for Government contracting purposes had accounted for the costs of a defined-benefit post-retirement plan using the pay-as-you-go cost method prior to the date this Standard becomes applicable, changes to accrual accounting, the contractor shall account for any portion of prior post-retirement benefit costs that are not included in the unrecognized prior service costs, unrecognized gains and losses, or unrecognized transition obligation when this Standard is first applicable to the contractor. Such prior post-retirement benefit costs shall be accounted for as either a supplemental transition obligation or as part of a "fresh start" transition obligation, and shall be amortized as specified in paragraph (c)(3) of this subsection:

(1) For each period subsequent to adoption of accrual accounting for SFAS 106, but prior to the date this Standard becomes applicable to the contractor, that the contractor used the pay-as-you-go cost method for Government contracting purposes, the contractor shall establish a supplemental transition obligation. This supplemental transition obligation shall be the accumulated value of such prior post-retirement benefit cost accruals minus the costs determined using the pay-as-you-go cost method. The net result shall be increased at the interest rate as determined by the Secretary of the Treasury pursuant to Public Law 92–41, 85 Stat. 97 during such periods. The supplemental transition obligation shall be subject to the same accounting treatment under this Standard as the transition obligation; or,

(2) Alternatively, if for every period subsequent to adoption of accrual accounting for SFAS 106, but prior to the date this Standard becomes applicable to the contractor, the contractor had used the pay-as-you-go cost method for Government contracting purposes, the contractor may adopt a "fresh start" determination of the transition obligation as of the first valuation date after this Standard becomes applicable. In this case, the transition obligation shall equal the accumulated post-retirement benefit obligation less the fair value of plan assets. If the contractor elects to use the "fresh start" method, any unrecognized prior service costs or unrecognized gains and losses are subsumed into such redetermined transition obligation.

(3) The supplemental transition obligation or the "fresh start" redetermined transition obligation shall be amortized on a straight-line basis over the average remaining service period of active plan participants, except that if all or almost all of the plan participants are inactive, the employer shall use the average remaining life expectancy period of those plan participants.

(d) *Terminal funding.* If a contractor has established, disclosed, and consistently followed a practice of determining and accounting for post-retirement benefit costs in accordance with the terminal funding provisions of 9904.416–50(a)(1)(v)(C), the contractor may continue that practice. Terminal funding shall be treated in the same manner as the pay-as-you-go cost method except that the amortization provisions of 9904.419–40(b)(3)(ii) and 9904.419–50(b)(1) shall not apply.

(e) *Certain inactive participants.* If at the time the contractor first becomes subject to this Standard, the contractor cannot associate some of its inactive plan participants with existing segments (because the segment has been sold, the segment no longer exists, or the necessary data are not readily available), the contractor shall associate such inactive plan participants with the appropriate corporate home office, intermediate home office, or segment in accordance with the contractor's previous cost accounting practice used for Government contract accounting.

(f) *Prior segment accounting.* If prior to the time a contractor is required to use this Standard, the contractor has been calculating post-retirement benefit cost for contract cost purposes using the same accrual accounting methods used for SFAS 106, then:

(1) For a contractor that has been calculating post-retirement benefit cost separately for individual segments, the fair value of plan assets and all other values previously allocated to those segments shall not be changed, or

(2) For a contractor that has been determining the accrual for post-retirement benefit costs on a composite basis and allocating such costs to segments, if an initial allocation of the fair value of plan assets is required by 9904.419–50(c)(6)(i), such initial allocation shall reflect such prior cost determinations and allocations. If the necessary data are readily determinable, the fair value of plan assets to be allocated to each segment shall be the amount contributed by, or on behalf of, the segment, increased by income received on such assets, and decreased by benefits and expenses paid from such assets. If the data are not readily determinable for certain prior periods, the contractor shall follow the initial asset allocation provisions of 9904.419–50(c)(6)(i)(C) as of the earliest date such data is available.



(g) *Transition illustrations.* Unless otherwise noted, paragraphs (g)(1) through (6) of this subsection address post-retirement benefit costs and transition amounts determined for the first cost accounting period beginning on or after the date this Standard becomes applicable to a contractor. For purposes of these illustrations an expected long-term rate of return of 8% is presumed to be in effect for all periods. The contractors identified for purposes of these illustrations are unrelated to the contractors identified for illustration purposes in 9904.419–60.

(1) Since December 31, 1993 Contractor A has calculated, assigned, and allocated post-retirement benefit costs to its cost-based negotiated Government contracts on an accrual basis. In determining the unfunded accruals for these prior periods pursuant to 9904.419–50(c)(6)(v), the only funding the contractor can recognize is for benefit payments in accordance with 9904.419–50(c)(6)(vii). The value of these past unfunded accruals, increased for interest and decreased for benefits paid by the contractor, is equal to $2 million as of the beginning of the current period. Assume that the contractor must begin using the pay-as-you-go cost method, because the plan fails to meet the criteria set forth at 9904.419–40(a)(1), to account for current and future post-retirement benefit costs. Plan participants receive $500,000 in benefits on the last day of the current period. Using the transition method of paragraph (b) of this section to ensure prior costs are not redundantly provided for, the contractor shall establish an accumulated value of unfunded accruals of $2 million. Since the $2 million is sufficient to provide for the current benefit payments, no post-retirement benefit costs can be allocated to this period. The accumulated value of unfunded accruals shall be carried forward to the next period by adding $160,000 (8% x $2 million) of imputed interest, and subtracting the $500,000 of benefit payments made by the contractor. The accumulated value of unfunded accruals for the next period equals $1,660,000 ($2 million + $160,000 − $500,000).

(2) Prior to becoming subject to this Standard, Contractor B has accounted for its defined-benefit post-retirement plan which meets the requirements of 9904.419–40(a)(1) using the pay-as-you-go cost method for government contract costing purposes. For the first period the contractor becomes subject to this Standard, the contractor must begin to accrue the costs of its post-retirement benefit plan as specified in this Standard. Pursuant to 9904.419–64(c)(1), the contractor may identify any post-retirement benefit cost accruals which have previously been unrecognized in the costs allocated to its cost-based negotiated Government contracts as a supplemental transition obligation.

(i) A comparison of the contractor's SFAS 106 accounting with its contract cost accounting as of the date the contractor first becomes subject to this Standard is as follows:

| | SFAS 106 accounting | Contract cost accounting |
|---|---|---|
| Accumulated post-retirement benefit obligation | ($2,000,000 | ($2,000,000) |
| Fair value of plan assets | | |
| Funded status | (2,000,000) | (2,000,000) |
| Unrecognized net gain | (196,000) | (196,000) |
| Unrecognized prior service cost | 38,600 | 38,600 |
| Unrecognized transition obligation | 1,557,000 | 1,557,000 |
| Unrecognized supplemental transition obligation | | [1] 600,000 |
| Accrued post-retirement benefit cost | (600,000) | |

[1] The supplemental transition obligation is amortized over 17 years which is the average remaining service period of active plan participants of this post-retirement benefit plan.

(ii) Note that if the contractor had cost-based negotiated Government contracts only for some of the prior periods since adopting SFAS 106 for financial statement purposes, only prior accruals for those periods when it did have such contracts can be used to establish the initial amount of the supplemental transition obligation in accordance with 9904.419–64(c)(1).

(3) Assume that Contractor B in illustration 9904.419–64(g)(2) had cost-based negotiated Government contracts for every period since adopting SFAS 106 and had used the pay-as-you-go cost method. The contractor could elect to redetermine the transition obligation using the so-called "fresh start" alternative in accordance with 9904.419–64(c)(2).

(i) In this case, a comparison of the contractor's SFAS 106 accounting with its contract cost accounting as of the date the contractor first becomes subject to this Standard is as follows:

| | SFAS 106 accounting | Contract cost accounting |
|---|---|---|
| Accumulated post-retirement benefit obligation | ($2,000,000 | ($2,000,000) |
| Fair value of plan assets | | |
| Funded status | (2,000,000) | (2,000,000) |
| Unrecognized net gain | (196,000) | n/a |
| Unrecognized prior service cost | 38,600 | n/a |
| Unrecognized transition obligation | 1,557,000 | [1] 2,000,000 |

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| | SFAS 106 accounting | Contract cost accounting |
|---|---|---|
| Accrued post-retirement benefit cost | (600,000) | |

[1] The "fresh-start" transition obligation is amortized over 17 years which is the average remaining service period of active plan participants of this post-retirement benefit plan.

(ii) Note that if the contractor did not have cost-based negotiated Government contracts for all prior periods since adopting SFAS 106 for financial statement purposes, the contractor could not have elected to use the "fresh start" approach of 9904.419–64(c)(2). Also note that the $2 million fresh start transition obligation equals the sum of the SFAS 106 $38,600 unrecognized prior service cost, $1,557,400 unrecognized transition obligation, and the $600,000 accrued post-retirement benefit cost less the $196,000 unrecognized net gain.

(4) Since 1983, Contractor C has had an established practice of terminal funding for determining the costs of its post-retirement benefit plan in accordance with 9904.416–50(a)(1)(v)(C). During the first period the contractor is subject to this Standard, the contractor pays a $235,000 net single premium for non-participating insurance contracts to irrevocably settle its obligation to provide life insurance for its retiring plan participants. Pursuant to paragraph (d) of this section, the contractor may continue its established practice of terminal funding and assign the entire $235,000 lump sum settlement payment as the post-retirement benefit cost for the period. Conversely, if the contractor had not established terminal funding as its cost accounting practice prior to becoming subject to this Standard, the $235,000 single premium payment would have to be amortized over a period of 15 years for purposes of assigning the cost to periods in accordance with 9904.419–40(b)(3)(ii) and 9904.419–50(b)(1).

(5) When Contractor D became subject to this Standard, the contractor reviewed its personnel and benefits records to determine in which segment each inactive plan participant was last employed. Of the contractor's 600 inactive plan participants, 98 had been employed in and retired from a commercial segment under Division A that had been shut down and abandoned several years before. There were another 23 inactive plan participants who could not be associated with an existing segment because their employment and benefit records did not provide sufficient information. Pursuant to paragraph (e) of this section, after the contractor associated the remaining 479 inactive participants with existing segments, the 98 who were employed in the segment that had been discontinued were associated with the home office for Division A. Likewise, the contractor associated the other 23 inactives, who could not be associated with any segment, with the corporate home office. Alternatively, if the contractor had an established practice of associating the costs all inactive plan participants no longer associated with operational segments to the corporate home office, the contractor could continue that established practice in accordance with paragraph (e) of this section.

(6) Since 1993, Contractor E has measured and assigned post-retirement benefit costs in accordance with SFAS 106 for both financial accounting and contract cost accounting purposes. The contractor elected to amortize the transition obligation using the delayed recognition provisions of paragraphs 112 and 113 of SFAS 106. Since 1993, the contractor has funded its assigned post-retirement benefit costs in accordance with relevant Federal regulations. The post-retirement benefit cost was measured for the corporation as a whole and allocated to segments in accordance with Cost Accounting Standard 9904.403. Funding agency records and actuarial valuation reports are available for all years. However, reliable records of benefit payments by segment are available only for 1995 and later years. Pursuant to paragraph (f)(2) of this section, the contractor shall initially allocate a share of the undivided fair value of plan assets to each of its segments based on the accumulated post-retirement benefit obligation of each segment starting in 1995 in accordance with 9904.419–50(c)(6)(i)(C). The fair value of plan assets of each segment shall then be brought forward based on contributions, benefit payments, and investment earnings and expenses in accordance with 9904.419–50(c)(6)(i)(D).

[FR Doc. 00–24801 Filed 10–4–00; 8:45 am]
BILLING CODE 3110–01–P

Federal Register

Thursday,
October 5, 2000

Part III

# Department of Energy

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

**Energy Conservation Program for Consumer Products: Clothes Washer Energy Conservation Standards; Proposed Rule**

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**DEPARTMENT OF ENERGY**

**Office of Energy Efficiency and Renewable Energy**

**10 CFR Part 430**

**[Docket No. EE–RM–94–403]**

**RIN 1904–AA67**

## Energy Conservation Program for Consumer Products: Clothes Washer Energy Conservation Standards

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Notice of proposed rulemaking and public hearing.

**SUMMARY:** The Energy Policy and Conservation Act, as amended (hereinafter referred to as EPCA or the Act), prescribes energy conservation standards for certain major household appliances, and requires the Department of Energy (DOE, Department, or we) to administer an energy conservation program for these products. We conducted several analyses regarding the energy savings, benefits and burdens of amended energy conservation standards for clothes washers and have shared the results of these analyses with all stakeholders. Based on these analyses, several of the major stakeholders, including clothes washer manufacturers and energy efficiency advocates, submitted to the Department a joint proposal for the highest standard level which they believed to be technically feasible and economically justified. Based on our review of this proposal, we found the proposed standards technically feasible and economically justified. Therefore, today we propose to amend the energy conservation standard for clothes washers for residential applications as recommended in the joint proposal and announce a public hearing.

As part of this rulemaking in response to the joint proposal by the clothes washer manufacturers and energy efficiency advocates, we have also included revisions to the test procedure based on issues found during this rulemaking dealing with the energy test cloth, remaining moisture content (RMC), extractor testing and the correction factor. In addition, we incorporated minor editorial changes to help clarify both Appendix J and J1 of the test procedure based on the joint proposal by stakeholders. These changes have been included in their entirety in this rulemaking pertaining to the test procedure.

**DATES:** If you wish to submit comments on the proposed rule, they must be received on or before December 4, 2000 to Ms. Brenda Edwards-Jones at the address listed below. We request 10 copies of the written comments and, if possible, a computer disk. Oral views, data, and arguments may be presented at the public hearing. We will hold a Public Hearing on November 15, 2000, beginning at 9:00 a.m.

If you wish to speak at the hearing, requests must be received by the Department no later than 4:00 p.m., November 6, 2000. Copies of statements to be given at the public hearing must be received by the Department no later than 4:00 p.m., November 6, 2000. We will read the statements in advance of the hearing and would appreciate the oral presentations to be limited to a summary of the statement. The length of each oral presentation is limited to 5 minutes.

**ADDRESSES:** The hearing will be at the U.S. Department of Energy, Forrestal Building, Room 6E–069, 1000 Independence Avenue, SW., Washington, DC 20585. Written comments, oral statements, and requests to speak at the hearing are to be submitted to Ms. Brenda Edwards-Jones, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Energy Conservation Program for Consumer Products: Clothes Washers Energy Conservation Standards, Docket No. EE–RM–94–403, 1000 Independence Avenue, SW., Washington, DC 20585–0121.

Copies of the public comments received, the Technical Support Document (TSD) and the transcript of the public hearing may be read at the DOE Freedom of Information Reading Room, U.S. Department of Energy, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–3142, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. Copies of the TSD may be obtained from: U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mail Station EE–41, 1000 Independence Avenue, SW., Washington, DC 20585–0121. (202) 586–9127. Copies of the analysis can also be found on the Codes and Standards Internet site at: http://www.eren.doe.gov/buildings/codes_standards/applbrf/clwasher.html

For more information concerning public participation in this rulemaking proceeding see Section VII, "Public Comment Procedures," of this Notice.

**FOR FURTHER INFORMATION CONTACT:** Bryan Berringer, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mail Station EE–41, 1000 Independence Avenue, SW, Washington, DC 20585–0121, (202) 586–0371, E-mail: Bryan.Berringer@EE.DOE.GOV, or Eugene Margolis, U.S. Department of Energy, Office of General Counsel, Forrestal Building, Mail Station GC–72, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–9526, E-mail: Eugene.Margolis@HQ.DOE.GOV.

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## I. Summary of the Proposed Rule

The EPCA, as amended, specifies that any new or amended energy conservation standard the Department prescribes shall be designed to "achieve the maximum improvement in energy efficiency * * * which the Secretary determines is technologically feasible and economically justified." Section 325(o)(2)(A), 42 U.S.C. 6295(o)(2)(A). Furthermore, the amended standard must "result in significant conservation of energy." Section 325(o)(2(B)(3)(B), 42 U.S.C. 6295(o)(2)(B)(3)(B).

In accordance with the statutory criteria discussed in this notice, we are proposing to amend the clothes washer energy efficiency standards. The proposed standards are based on a Joint Stakeholders Comment recommendation submitted to the Department by clothes washer manufacturers and energy conservation advocates. (Joint Comment, No. 204). The Joint Stakeholders consist of the following: Alliance Laundry Systems LLC; Amana Appliances; Asko Incorporated; Frigidaire Home Products; General Electric Appliances (GEA), Maytag Corporation; Miele, Inc.; Fisher & Paykel Ltd; Whirlpool Corporation; Alliance to Save Energy; American Council for an Energy Efficient Economy (ACEEE); Appliance Standards Awareness Project; California Energy Commission (CEC); City of Austin, Texas; Natural Resources Defense Council (NRDC); Northwest Power Planning Council; and Pacific Gas and Electric (PG&E). The proposal as submitted in the Joint Stakeholders Comment consists of four parts as follows:

*"Clothes Washer Energy Standard.* The clothes washer energy standards for standard class clothes washers shall be 1.04 modified energy factor (MEF) in 1/1/2004 and 1.26 MEF in 1/1/2007. The energy test procedure will be revised to ensure that variability between test cloths will not significantly affect remaining moisture content (RMC) results. Additional clarifications will also be made to test procedure.

*Energy Star Labeling Program.* Energy Star levels shall be set as follows: Standard Class Clothes Washers—1.26 MEF in 2001; 1.42 MEF in 2004; Refrigerator/Freezers—10% better than the 2001 standard in 2001; change to 15% better than the 2001 in 2004.

*Tax Credit for the Production of Energy Efficient Clothes Washers and Refrigerator-Freezers.* The credit shall provide for two energy efficiency tiers, each with separately designated funds. There is $30 million in each designated fund per company per efficiency tier. Cap of $60 million per company for the two funds or yearly cap with carry forward. Annual total tax credit cannot exceed in any taxable year 2% of corporate gross revenues as determined by average of 3 prior years.

Standard Class Clothes Washers: Two tiers coterminous 2001–2006; $50 per unit for products manufactured with a 1.26 MEF and $100 per unit for products manufactured with a 1.42 MEF, increasing to 1.5 MEF in 2004. Includes residential-style "coin-operated" washers.

Refrigerators: First tier effective in 2001. $50 per unit for products manufactured 10% above 2001 minimum efficiency standard. Credit runs through 2004. Second tier also effective in 2001 and runs through 2006. It is $100 for products manufactured 15% above the 2001 minimum efficiency standard. Credits apply to automatic defrost refrigerator-freezers only, at 16.5 cubic feet internal volume and above.

*Voluntary Industry Water Program.* Water factor reporting shall be part of a voluntary industry sponsored program. AHAM members agree to publicly disclose through AHAM, water factors for each model that meets Energy Star/Tax Credit MEF levels, starting sometime in calendar year 2001. In calendar year 2002 and each year thereafter, industry-wide shipment weighted average water factors for units shipped in the previous year shall be reported by AHAM. Water factor calculations will use Appendix J water factor through 2003 and will use Appendix J1 thereafter. Starting in 2007, AHAM members agree to report water factor for all models. AHAM will sponsor water conference." (Joint Comment, No. 204).

This rulemaking only addresses the clothes washer energy standards of this agreement. The above proposed standard, based on this agreement would go into effect in stages, with the first level going into effect on January 1, 2004, and the second level going into effect on January 1, 2007. The initial standard is a 22 percent (%) reduction in energy consumption over the current standard or a MEF of 1.04, and can be attained with current vertical-axis (V-axis) clothes washer designs. The later, more stringent standard, is a 35 percent reduction in energy consumption over the current standard or a MEF of 1.26. While both vertical- and horizontal-axis (H-axis) design clothes washers are currently available in retail appliance stores at these levels, they represent less than nine percent of the washers sold per year.

The Department's analyses indicates that the proposed standards, trial standard level of a 1.04 MEF in 2004 and a 1.26 MEF in 2007 saves an estimated 5.52 quads of energy over 27 years (2004–2030), a significant amount. This amount is more than the primary energy used for heating water in all U.S. buildings (residential, commercial and industrial) in 1997 (3.82 quads). The economic impacts on consumers (*i.e.*, the average life-cycle cost (LCC) savings) are positive.

The national NPV of trial standard level of a 1.04 MEF in 2004 and a 1.26 MEF in 2007 is $15.3 billion from 2004–2030 in 1997 dollars. This is the estimated total value of future savings discounted to 1997 minus the estimated increased equipment costs also discounted to 1997. The clothes washer industry net present value (INPV) today is estimated to be $1,452 million. If we adopt trial standard level proposed, we expect manufacturers may lose between 28.6–36.0% of the INPV, which is approximately $411.0–$518.3 million. With the present value of future energy savings for the U.S. of $15.3 billion, this would exceed industry losses due to energy efficiency standards by about 30 times. Additionally, based on our interviews with the five major manufacturers, we do not expect any plant closings or loss of employment because the manufacturers stated that they would stay in business.

The proposed standard has significant environmental benefits, reducing greenhouse gas emissions and air pollution. This proposed standard level would result in cumulative greenhouse gas emission reductions of 95.1 million

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metric tons (Mt) of carbon dioxide ($CO_2$ equivalent. Additionally, air pollution would be reduced by the elimination of 253.5 thousand metric tons of nitrous oxides ($NO_X$) and 28.1 thousand metric tons of sulfur dioxide ($SO_2$) from 2004–2030. The $NO_X$ reduction are derived from the power sector and household emissions, whereas the $SO_2$ reductions are derived only from household emission.

The proposed standard also saves a significant quantity of water, which amounts to 11.59 trillion gallons through the period 2004–2030.

Therefore, DOE has determined that the benefits (energy and water savings, consumer life cycle cost savings, national net present value increase, job creation and emission reductions) to the nation outweigh the burdens (loss of manufacturer net present value and consumer life cycle cost increases for some users of clothes washers). We conclude that the proposed standard of a 1.04 MEF in 2004 and a 1.26 MEF in 2007 is economically justified. Furthermore, DOE has determined this standard level is technologically feasible. Clothes washers reaching this standard level already are commercially available in both V- and H-axis models.

## II. Introduction

### *A. Consumer Overview*

The Energy Policy and Conservation Act, as amended, specifies that the Department must consider, for amended standards, those standards that "achieve the maximum improvement in energy efficiency which the Secretary determines is technologically feasible and economically justified" and which will "result in significant conservation of energy." Accordingly, today's proposed rule would be amending the energy conservation standard for residential clothes washers.

We are currently establishing a new energy efficiency standard for clothes washers that will amend the standard set in 1994. When today's proposed standards go into effect, they will essentially require more efficient Standard class clothes washers. The efficiency levels can be met by either top or front loading machines. The major stakeholders, including manufacturers and energy efficiency advocates, have jointly submitted a proposed clothes washer efficiency standard to the Department that they both feel is technically feasible and economically justified. The proposed standard would go into effect in two stages. The first stage would begin January 1, 2004, and require that all new residential clothes washers be 22 percent more efficient than today's baseline clothes washer. The second stage would begin January 1, 2007, and require that all new residential clothes washers be 35 percent more efficient than today's baseline clothes washer.

The Department has reviewed this proposal and its analyses, and agrees that the standard they proposed is technically feasible and economically justified. The Department therefore proposes to amend the energy conservation standard for Standard class clothes washers for residential applications as recommended in the joint stakeholders proposal and announce a public hearing.

As a result of today's proposed rule, clothes water efficiency standard will provide significant energy savings and water savings to the nation. The Department's analyses indicates that the proposed standards would save an estimated 5.52 quads of energy over 27 years (2004 to 2030). That is equivalent to saving enough electricity to light 16 million U.S. homes for 25 years, while cutting greenhouse gas emissions by an amount equal to that produced by three million cars every year. This proposed standard level would result in cumulative greenhouse gas emission reductions of 95.1 million metric tons (Mt) of carbon dioxide ($CO_2$) equivalent. Additionally, air pollution would be reduced by the elimination of 253.5 thousand metric tons of nitrous oxides ($NO_X$) and 28.1 thousand metric tons of sulfur dioxide ($SO_2$) from 2004 to 2030. The $NO_X$ reductions are derived from the power sector and household emissions. The $SO_2$ reductions are derived only from household emissions and is a result of less home heating oil and LPG being used in oil-fired and LPG-fired water heaters for water heating.[1] DOE is seeking comment on what will be the likely impact of EPA rules, such as its proposed rule to reduce sulfur levels in highway diesel fuel, on home heating oil sulfur levels and household $SO_2$ emissions. In 2020, the standards will save the amount of electricity generated by 15 large, 400 megawatt, power plants.[2] The standards will save enough water to supply the needs of 6.6 million households for 25 years. The water savings will reach up to 11 trillion gallons, meaning less water needs to be pumped from America's aquifers and rivers, and less strain on many of the nation's overtaxed water and sewer systems. In total, we estimated the net present value (NPV) to the nation of this standard to be $15.3 billion from 2004 to 2030.

The proposed clothes washer energy efficiency standard will not impact clothes washer features valued by consumers. For instance, consumers will still be able to purchase either a top loading clothes washer or a front loading machine, whichever they prefer. The energy and water savings will result primarily from a variety of design changes, such as higher spin speeds, more efficient use of hot water, more sensitive clothes load technologies, more efficient motors, and the increased use of spray rinse cycles. The Department does not expect the cleaning ability or reliability of washing machines to be compromised by the design changes anticipated under the proposed clothes washer standard.

The Department expects the purchase price of the high efficiency clothes washers (*i.e.*, 35 percent efficiency increase) to be approximately $200 higher than the average price of clothes washers today. Although the purchase cost is expected to increase, the energy and water efficiency gains will result in lower washer-related energy costs and water costs, saving consumers $30 a year on their utility bills and 18 gallons of water for every load of wash. As such, the life cycle cost analysis estimates that the payback period for the high efficiency machines will be approximately 7 years. In other words, the energy and water cost savings will enable the average consumer to recoup the additional $200 he/she had to spend on the purchase of the high efficiency machine in 7 years through the energy and water cost savings. When these savings are summed over the lifetime of the high efficiency machine, consumers will save $260, on average, compared to today's baseline clothes washing machines.

### *B. Authority*

Part B of Title III of the Energy Policy and Conservation Act, Pub. L. 94–163, as amended by the National Energy Conservation Policy Act, Pub. L. 95–619, by the National Appliance Energy Conservation Act, Pub. L. 100–12, by the National Appliance Energy Conservation Amendments of 1988, Pub. L. 100–357, and the Energy Policy Act of 1992, Pub. L. 102–486[3] (the Act or EPCA) created the Energy Conservation Program for Consumer Products other than Automobiles. The consumer products subject to this program (often referred to hereafter as "covered products") include clothes washers.

Under the Act, the program consists essentially of three parts: testing, labeling, and Federal energy conservation standards. The Department, in consultation with the National Institute of Standards and Technology, amends or establishes new test procedures for each of the covered products. Section 323. The test procedures measure the energy efficiency, energy use, or estimated annual operating cost of a covered product during a representative average use cycle or period of use. They must not be unduly burdensome to conduct. Section 323(b)(3). A test procedure is not required if DOE determines by rule that one cannot be developed. Section 323(d)(1). Test procedures appear at 10 CFR Part 430, Subpart B.

A test procedure promulgated under Section 323 of the Act must be reasonably designed to produce test results which measure energy efficiency, energy use, water use (in the case of shower heads, faucets, water closets and urinals), or estimated annual operating cost of a covered product during a representative average use cycle or period of use, and must not be unduly burdensome to conduct. EPCA, Section 323(b)(3). A test procedure is not required if DOE determines by rule that one cannot be developed. EPCA, Section 323(d)(1). One hundred and eighty days after a test procedure for a product is adopted, no manufacturer may make representations with respect to energy use, efficiency or water use of such product, or the cost of energy consumed by such product, except as reflected in tests conducted according to the DOE procedure. EPCA, Section 323(c)(2). This 180-day period may be extended for up to an additional 180 days if the Secretary determines that the requirements of Section 323(c)(2) would impose undue burden. EPCA, Section 323(c)(3).

Section 323(e) of the Act requires DOE to determine to what extent, if any, a proposed test procedure would alter the measured energy efficiency, measured energy use or measured water use of any covered product as determined under the existing test procedure. If DOE determines that an amended test procedure would alter the measured efficiency or measured use of a covered product, DOE is required to amend the applicable energy conservation standard accordingly. EPCA, Section 323(e)(2).

The Federal Trade Commission (FTC) prescribes rules governing the labeling of covered products after DOE publishes test procedures. Section 324(a). The FTC labels indicate the annual operating cost for the particular model and the range of estimated annual operating costs for other models of that product. Section 324(c)(1). Disclosure of estimated operating cost is not required if the FTC determines that such disclosure is not likely to assist consumers in making purchasing decisions, or is not economically feasible. In such a case, the FTC must require a different useful measure of energy consumption. Section 324(c). At the present time, there are Federal Trade Commission rules requiring labels for the following products: room air conditioners, furnaces, clothes washers, dishwashers, water heaters, refrigerators, refrigerator-freezers and freezers, central air conditioners and central air conditioning heat pumps, and fluorescent lamp ballasts.

The National Appliance Energy Conservation Act of 1987 amended the Act to impose prescriptive standards (design feature requirements) for clothes washers as part of the energy conservation program for consumer products. EPCA, § 325(g), 42 U.S.C. 6295(g). The design feature requirement that clothes washers shall have an unheated rinse option was effective for appliances manufactured on or after January 1, 1988. The Act required the Department to conduct a rulemaking by January 1, 1990, to determine if the above mentioned standards should be amended. The Act provided that any amendment to the standards would apply to products manufactured three years after the rulemaking. The Final Rule was issued on May 14, 1991, and is effective for products manufactured on or after May 14, 1994, (hereinafter referred to as the May 1991 Final Rule) which required top loading compact clothes washers (less than 1.6 cubic feet capacity) to have an energy factor (EF) of 0.90 cubic feet/kilowatt-hours/cycle (cu.ft/Kwh/cycle) and top loading standard clothes washers (1.6 cu. ft. or greater capacity) to have an EF of 1.18 cu. ft./Kwh/cycle). 56 FR 22279. The Act also requires the Department to conduct a subsequent rulemaking no later than five years after the date of publication of the previous final rule.

Any new or amended standard must be designed so as to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. Section 325(o)(2)(A).

Section 325(o)(2)(B)(i) provides that before DOE determines whether a standard is economically justified, it must first solicit comments on a proposed standard. After reviewing comments on the proposal, DOE must then determine that the benefits of the standard exceed its burdens, based, to the greatest extent practicable, on a weighing of the following seven factors:

(1) The economic impact of the standard on the manufacturers and on the consumers;

(2) The savings in operating costs throughout the estimated average life of the covered product in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses;

(3) The total projected amount of energy, or as applicable, water, savings likely to result directly from the standard;

(4) Any lessening of the utility or the performance of the covered products likely to result from the standard;

(5) The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the standard;

(6) The need for national energy and water conservation; and

(7) Other factors the Secretary considers relevant.

In addition, Section 325(o)(2)(B)(iii), 42 U.S.C. 6295(o)(2)(b)(iii), establishes a rebuttable presumption of economic justification in instances where the Secretary determines that "the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy, and as applicable, water, savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure. * * *" The rebuttable presumption test is an alternative path to establishing economic justification.

Section 327 of the Act addresses the effect of Federal rules on State laws or regulations concerning testing, labeling, and standards. Generally, all such State laws or regulations are superseded by the Act unless specifically exempted in Section 327. The Department can grant a waiver of preemption in accordance with the procedures and other provisions of Section 327(d) of the Act. 42 U.S.C. 6297(d).

[1] The Department recognizes that the Environmental Protection Agency is considering regulations which could affect the amount of sulfur in home heating oil.

[2] DOE estimates that standards will result in 5 coal-fired and 11 gas-fired power plants avoided.

[3] Part B of Title III of the Energy Policy and Conservation Act, as amended by the National Energy Conservation Policy Act, the National Appliance Energy Conservation Act, the National Appliance Energy Conservation Amendments of 1988, and the Energy Policy Act of 1992, is referred to in this notice as the "Act." Part B of Title III is codified at 42 U.S.C. 6291 *et seq.* Part B of Title III of the Energy Policy and Conservation Act, as amended by the National Energy Conservation Policy Act only, is referred to in this notice as the National Energy Conservation Policy Act.

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*C. Background*

1. Current Standards

The existing clothes washer efficiency standards have been in effect since 1994. Energy efficiency for a clothes washer is measured in terms of an energy factor (EF), which measures overall clothes washer efficiency, in terms of cubic feet per kilowatt-hour per cycle, and is determined by the DOE test procedure. 10 CFR Part 430, Subpart B, Appendix J. The current clothes washer efficiency standards are as follows:

- Top loading, compact (less than 1.6 cubic feet capacity), EF = 0.90.
- Top loading, standard (1.6 cubic feet or greater capacity), EF = 1.18.
- Top loading, semi-automatic, must have an unheated rinse option.
- Front loading, must have an unheated rinse option.
- Suds saving, must have an unheated rinse option.

2. History of Previous Rulemakings

On November 14, 1994 DOE published an Advance Notice of Proposed Rulemaking (ANOPR). 59 FR 56423. On November 19, 1998, DOE published a Supplemental ANOPR. (Hereafter referred to as the 1998 Supplemental ANOPR.) 63 FR 64344. In the 1998 Supplemental ANOPR, we provided interested persons an opportunity to comment on:

(1) The product classes that we propose to analyze;

(2) The analytical framework, models (*e.g.*, the Government Regulatory Impact Model (GRIM)), and tools (*e.g.*, a Monte Carlo sampling methodology, and life-cycle-cost (LCC) and national energy savings (NES) spreadsheets) that we plan to use in performing analyses of the impacts of standards; and

(3) The results of preliminary analyses for LCC, payback and national energy savings contained in the Preliminary Technical Support Document: Energy Efficiency Standards for Consumer Products: Clothes Washers (TSD) dated October 1998 and summarized in the 1998 Supplemental ANOPR.

3. Process Improvement

The fiscal year (FY) 1996 appropriations legislation imposed a moratorium on proposed or final rules for appliance efficiency standards for FY 1996. Public Law 104–134. During the moratorium, the Department examined the appliance standards program and how it was working. Congress advised DOE to correct the standards-setting process and to bring together stakeholders (such as manufacturers and environmentalists) for assistance. We consulted with energy efficiency groups, manufacturers, trade associations, state agencies, utilities and other interested parties to provide input to the process used to develop appliance efficiency standards. As a result, on July 15, 1996, the Department published a Final Rule: Procedures for Consideration of New or Revised Energy Conservation Standards for Consumer Products (referred to as the Process Rule) (61 FR 36974), codified at 10 CFR Part 430, Subpart C, Appendix A. DOE completed this review and decided to use the Process Rule, to the extent possible, in the development of the revised clothes washer standards.

We developed an analytical framework for the clothes washer standards rulemaking for our stakeholders. The analytical framework described the different analyses (e.g., LCC, payback and manufacturing impact analyses (MIA)) to be conducted, the method for conducting them, the use of new LCC and national energy savings (NES) spreadsheets, and the relationship between the various analyses. We have conducted several meetings, workshops and discussions regarding energy efficiency standards for clothes washers. These workshops included discussions on proposed design options and a preliminary engineering analysis on November 15, 1996; development of an analytical framework for appliance standards rulemaking on July 23, 1997; and development of two new spreadsheet tools for LCC and NES on March 11, 1998. We conducted public hearings on December 15, 1998, to receive additional comments on the 1998 Supplemental ANOPR and on July 22, 1999, to discuss the process, analytical tools and uncertainties with the test procedures.

In this rulemaking we incorporated the recommendations made by the Advisory Committee on Appliance Energy Efficiency Standards on April 21, 1998. (Advisory Committee, No. 96). These recommendations relate to using the full range of consumer marginal energy prices (CMEP) in the LCC analysis (replacing the use of national average energy prices), defining a range of energy price futures for each fuel used in the economic analyses and defining a range of primary energy conversion factors and associated emission reductions, based on the generation displaced by energy efficiency standards for each rulemaking. We discuss how these recommendations have been incorporated in the discussions on methodology (Section IV). Marginal energy prices are used in the LCC, payback and NES analyses. Because the NES results are inputs to the analyses for utility, emissions and employment; these analyses are also impacted by using marginal rates.

4. Test Procedures

Federal test procedures for clothes washers were first established in 1977. Simultaneous with the rulemaking for clothes washer standards, the Department was also in the process of revising the clothes washer test procedure. The Department needed to address a number of innovative technologies for which there were no test procedures. A number of proposals were published, one on December 22, 1993, (58 FR 67710) and another on March 23, 1995. 60 FR 15330. In its comments to the March, 1995 proposed rule, AHAM requested that DOE adopt an additional new test procedure, based on current consumer habits, which would be used in considering the revision of the clothes washer energy conservation standards, and would go into effect upon issuance of standards.

On April 22, 1996, the Department issued a supplemental Notice of Proposed Rulemaking proposing such a new test procedure, Appendix J1, as well as certain additional revisions to the currently applicable test procedure in Appendix J to Subpart B of 10 CFR Part 430. 61 FR 17589. The supplemental notice was published to seek comments on whether DOE should adopt the AHAM recommended test procedure with certain changes. The Final Rule, published on August 27, 1997, adopted this recommendation. 62 FR 45484. Appendix J is the current applicable test procedure. Appendix J1 is informational and will not become mandatory until the energy conservation standards of this rule become effective. Appendix J1 includes a modified energy factor (MEF) which replaces the EF. Contrasting with the previous EF (energy factor) descriptor, the MEF descriptor incorporates clothes dryer energy by consideration of the remaining moisture content (RMC) of clothes leaving the clothes washer. Other substantive differences between the test procedures include using different water temperatures for testing and using cloth loads in J1 and not in J. The issuance of the Final Rule was a major step in accelerating the development of clothes washer standards because it provided the basis upon which the energy and water consumption, as well as the manufacturing costs would be submitted.



**III. General Discussion**

*A. Test Procedure*

As part of the July 15, 1996, Process Rule (61 FR 36974), we stated that a final modified *test procedure* would be issued prior to the notice of proposed rulemaking on standards. The process described in this rule provides for greatly enhanced opportunities for public input, improved analytical approaches, and encouragement of consensus-based standards. Section 7, *Test Procedures*, of the Process Rule provides that modifications in test procedures will be proposed before revised standards are proposed. Today's proposed revisions to the clothes washer test procedures follows the process in the Process Rule in that the Final Rule for test procedures was published on August 27, 1997, with the exception of today's proposed revisions to the test procedure language as recommended by clothes washer manufacturers and energy conservation advocates. (Joint Comment, No. 204)

During this standards rulemaking, it was discovered that the test cloth to be used for determining the RMC was giving inconsistent results. Over the approximately 20 year period that the original clothes washer and clothes dryer test procedures have been used, no variations or inconsistency of washer or dryer test results had been attributed to variations in the test cloths. A significant inconsistency in RMC test results under the new Appendix J1 procedure was noted by Alliance Laundry Systems LLC and was brought to the Department of Energy's attention in a letter dated June 7, 1999. (Alliance Laundry Systems, No. 179). In the tests referred to in this letter, which were run at Intertek Testing Services (ITS), the RMC values that were obtained in one machine with two different lots of energy test cloths differed by over 11 percentage points (67.9% versus 56.0%). When these two lots of energy test cloth were run through a second machine, a similar difference in RMC occurred.

The effect of RMC on MEF can be substantial, particularly for washers which are more efficient with respect to electrical consumption and use of hot water. The following scenario illustrates: For a high efficiency horizontal axis washer, an 18% increase in RMC (54.5%–64.5%) will result in a 13% decrease in MEF (1.52–1.33). For a lower efficiency washer, a 17% increase in RMC (57.7%–67.7%) will result in only a 6% decrease in MEF (0.82–0.77).

The Department investigated possible causes for the inconsistent test results, and results are summarized in the DOE report, "Development of a Standardized Energy Test Cloth for Measuring Remaining Moisture Content in a Residential Clothes Washer," May 2000. (DOE, No. 200). As part of our investigation into the cause of these discrepancies, we found that various lots of test cloth will yield inconsistent RMC results. To understand the effects of operating variables and cloth specifications, it was necessary to conduct laboratory tests to determine RMC. To insure that test results would not be influenced or biased by any manufacturer's product (clothes washer), we used an extractor to remove moisture content. An extractor is a centrifuge—basically a rotating basket that has a controllable speed to produce a variety of centrifugal forces. The speed was varied to impose different centripetal accelerations on the test load. These accelerations are reported in terms of gravitational acceleration (g). We also soak the cloth in a tub at controlled temperature rather than use the agitated soak cycle provided by a typical washer. The RMC tests closely resembles those specified in the energy test procedure.

An extractor based test has been established to examine RMC values at different gravitational forces (g-forces). A correction factor is derived by which the deviation between a new production batch of test cloth and a standard reference test cloth is measured. This deviation is measured as the root mean square between the set of measured RMC values and the set of standard RMC values. If this absolute deviation is below 2%, then no correction factors are needed in MEF tests using that batch of cloth. If the absolute root-mean-square (RMS) difference between the cloth RMC values and standard RMC values is above 2%, then correction factors may be applied when using the cloth to test the MEF of a clothes washer.

As part of this rulemaking, we have included revisions to the test procedure based on our proposed language addressed in the May 2000 report dealing with the energy test cloth, RMC, extractor testing and the correction factor and Joint Stakeholders Comment. (Joint Comment No. 204). In addition, we incorporated AHAM's comments and Joint Stakeholders Comment requesting minor editorial changes to help clarify both Appendix J and J1. (AHAM , Nos. 197 and 199, and Joint Comment No. 204). These changes have been included in their entirety in this rulemaking pertaining to the test procedure.

*B. Technological Feasibility*

1. General

There are or have been clothes washers in the market at all of the efficiency levels analyzed in today's notice. Therefore, the Department believes all of the efficiency levels discussed in today's notice are technologically feasible.

2. Maximum Technologically Feasible Levels

Under the guidelines in the Process Rule, DOE will eliminate from consideration, early in the process, any design option which is not practicable to manufacture, install, or service, will eliminate product utility features or for which there are safety concerns that can not be resolved. In order to conduct the screening analysis, the Department gathers information regarding all current technology options and prototype designs. In consultation with interested parties, the Department develops a list of design options for consideration in the rulemaking. All technologically feasible design options are candidates in this initial assessment. We did not reject any design options from consideration in this rulemaking.

The Department considers design options technologically feasible if they are already in use by the respective industry or research has progressed to the development of a working prototype. The Process Rule sets forth a definition of technological feasibility as follows: "Technologies incorporated in commercially available products or in working prototypes will be considered technologically feasible." 10 CFR 430, Subpart C, Appendix A(4)(a)(4)(I).

When we amend or consider new standards, we must consider those that "shall be designed to achieve the maximum improvement in energy efficiency which the Secretary determines is technologically feasible and economically justified." (Section 325 (l)(2)(A)). For this clothes washer rulemaking, the Department determined that a 50% reduction in the energy use of the baseline model (corresponding to an MEF of 1.634) is the maximum technologically feasible level for the Standard class (1.6 ft.$^3$ or greater capacity). This determination was based on information relative to existing technology options and prototype designs. In consultation with interested parties, the Department developed a list of design options for consideration. All technologically feasible design options were candidates in this initial assessment. Furthermore, the clothes washer rulemaking analysis was originally performed using the design

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option approach. Using this approach, information was gathered on all possible energy saving design options. The Department gathered design option information from previous clothes washer analyses, trade publications, industry research organizations, product brochures from domestic and foreign manufacturers, and appliance conferences, including the International Appliance Technical Conference (IATC). The "Draft Report on Design Options for Clothes Washers" and "Draft Report on the Preliminary Engineering Analysis for Clothes Washers" provide details on the potential technologies. (Clothes Washer Public Workshop, No. 55B and 55C).

3. Product Classes

DOE divides clothes washers into classes based on the size and features, *e.g.*, suds saving. For the existing standards, DOE defines residential clothes washers in the following classes:

- Top loading, compact (less than 1.6 cubic feet capacity);
- Top loading, standard (1.6 cubic feet or greater capacity);
- Top loading, semi-automatic;
- Front loading; and
- Suds saving.

The Department is proposing to maintain the current definitions for all these product classes. For this rulemaking, the Department is proposing to maintain the current requirements for the Semi-Automatic Top-Loading and Suds Saving classes. In the May 1991 Final Rule, these classes were not subject to minimum energy conservation standards because they represented a small portion of the market, and due to a lack of adequate information to analyze them. The standard for these classes will continue to be "not applicable," except for the 1988 requirement of an unheated rinse water option.

*C. Energy Savings*

1. Determination of Savings

The Department forecasted energy savings through the use of a national energy savings (NES) spreadsheet, which forecasted energy savings over the period of analysis for candidate standards relative to the base case. The Department quantified the energy savings that would be attributable to a standard as the difference in energy consumption between the candidate standards case and the base case. The base case represents the forecast of energy consumption in the absence of amended mandatory efficiency standards.

The NES spreadsheet model is described in Section IV.e of this notice, *infra*, and in Chapters 9 and 10 of the TSD. The NES spreadsheet model first calculates the energy savings in site energy. The energy savings to the nation is expressed in quads, that is, quadrillions of British thermal units (Btus).

2. Significance of Savings

Under Section 325(o)(3)(B) of the Act, the Department is prohibited from adopting a standard for a product if that standard would not result in "significant" energy savings. While the term "significant" has never been defined in the Act, the U.S. Court of Appeals, in 768 F.2d 1355, 1373 (D.C. Cir. 1985), concluded that Congressional intent in using the word "significant" was to mean "non-trivial."

*D. Rebuttable Presumption*

The National Appliance Energy Conservation Act established new criteria for determining whether a standard level is economically justified. Section 325(o)(2)(B)(iii) states:

> "If the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy * * * savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure, there shall be a rebuttable presumption that such standard level is economically justified. A determination by the Secretary that such criterion is not met shall not be taken into consideration in the Secretary's determination of whether a standard is economically justified."

If the increase in initial price of an appliance due to a conservation standard would repay itself to the consumer in energy savings in less than three years, then we presume that such standard is economically justified.[4] This presumption of economic justification can be rebutted upon a proper showing.

*E. Economic Justification*

As noted earlier, Section 325(o)(2)(B)(i) of the Act provides seven factors to be evaluated in determining whether a conservation standard is economically justified.

1. Economic Impact on Manufacturers and Consumers

The July 1996 Process Improvement Rule established procedures, interpretations and policies to guide the Department in the consideration of new or revised appliance efficiency standards (Procedures for Consideration of New or Revised Energy Conservation Standards for Consumer products). 61 FR 36974 (July 15, 1996). Key objectives of the rule have direct bearing on the implementation of manufacturer impact analyses. First, the Department will utilize an annual cash flow approach in determining the quantitative impacts on manufacturers. This includes a short-term assessment based on the cost and capital requirements during the period between the announcement of a regulation and the time when the regulation comes into effect, and a long-term assessment. Impacts analyzed include industry net present value, cash flows by year, changes in revenue and income, and other measures of impact, as appropriate. Second, the Department will analyze and report the impacts on different types of manufacturers, with particular attention to impacts on small manufacturers. Third, the Department will consider the impact of standards on domestic manufacturer employment, manufacturing capacity, plant closures and loss of capital investment. Finally, the Department will take into account cumulative impacts of different DOE regulations on manufacturers.

For consumers, measures of economic impact are the changes in purchase price and annual energy expense. The purchase price and annual energy expense, i.e., life-cycle cost, of each standard level are presented in Chapter 7 of the TSD. Under Section 325 of the Act, the life-cycle cost analysis is a separate factor to be considered in determining economic justification.

2. Life-Cycle Cost (LCC)

One measure of the effect of proposed standards on consumers is the change in operating expense as compared to the change in purchase price, both resulting from standards. This is quantified by the difference in the LCC between the baseline and the more efficient technologies for the clothes washers analyzed. The LCC is the sum of the purchase price and the operating expense, including installation and maintenance expenditures, discounted over the lifetime of the appliance.

For each clothes washer, we calculated the life-cycle costs for six efficiency levels: 20, 25, 35, 40, and 50% reduction in the energy use of the baseline model. In addition, a two-step standard as proposed by the Joint Stakeholders Comment was analyzed. A distribution of discount rates averaging 6.1% was used in the calculations. The consumer is assumed to purchase a clothes washer in 2004 or 2007 (for step 2 of the Joint Stakeholders Comment).

[4] For this calculation, the Department calculated cost-of-operation based on the DOE test procedures with assumed usage shown in Chapter 7 of the TSD. Consumers that use the clothes washer less will experience a longer payback while those that use them more will have a shorter payback.



Price forecasts are taken from the 1999 *Annual Energy Outlook* of the Energy Information Administration (DOE/EIA–0383). Chapter 7 of the TSD contains the details of the life-cycle cost calculations including those considered under factor seven below, *infra*.

3. Energy Savings

While significant conservation of energy is a separate statutory requirement for imposing an energy conservation standard, the Act requires DOE, in determining the economic justification of a standard, to consider the total projected energy savings that are expected to result directly from revised standards. The Department used the NES spreadsheet results, discussed earlier, in its consideration of total projected savings. The savings are provided in Section V of today's notice.

4. Lessening of Utility or Performance of Products

This factor cannot be quantified. In establishing classes of products the Department tries to eliminate any degradation of utility or performance in the products under consideration in this rulemaking.

An issue of utility that was considered in this rule concerns the consumer utility of V-axis and H-axis machines. We conducted consumer focus groups and a conjoint analysis study to address this issue.

5. Impact of Lessening of Competition

It is important to note that this factor has two parts; on the one hand, it assumes that there could be some lessening of competition as a result of standards; and on the other hand, it directs the Attorney General to gauge the impact, if any, of that effect.

In order to assist the Attorney General in making such a determination, the Department will provide the Attorney General with copies of this notice and the Technical Support Document for review.

6. Need of the Nation To Conserve Energy

Most of the non-monetary benefits of the proposed standard are likely to be reflected in improvements to the environment, rather than in the security or reliability of the Nation's energy system. We report the environmental effects in Section V of today's notice.

7. Other Factors

This provision allows the Secretary of Energy, in determining whether a standard is economically justified, to consider any other factors that the Secretary deems to be relevant. Section 325(o)(2)(B)(i)(VI), 42 U.S.C. 6295(o)(2)(B)(i)(VI).

Under this factor, we considered the water savings from each standard level. The Department received numerous comments asking for the inclusion of a water factor standard in addition to the MEF standard. (City of Austin, No. 105 at 1; City of Bellingham, Washington, Department of Public Works, No. 106 at 1; Lower Colorado River Authority (LRCA), No. 109 at 1; Amy Vicker and Associates, Inc., No. 110 at 1; City of San Diego, No. 123 at 1; City of Santa Barbara, Public Works Department, No. 125 at 1; City of Seattle, No. 126 at 2; Santa Clara Valley Water District, No. 127 at 1; American Water Works Association, No. 149 at 1; City of Redmond, Office of the Mayor, No. 153 at 1; Massachusetts Water Resources Authority, No. 152 at 4; State of New Mexico, Office of the State Engineer, No. 158 at 1). As stated previously, the Department is considering water savings as a factor in determining the economic justification of the clothes washer standard level. However, the Department does not have the authority to prescribe a minimum water factor standard.

Another factor that the Department considered is the life-cycle cost impacts on those subgroups of consumers who, if forced by standards to purchase more efficient washers, would choose to repair their existing machines.

## IV. Methodology

The methodology to be used in this rulemaking was described in the 1998 Supplemental ANOPR and accompanying TSD. In this section we will discuss comments and changes in the methodology. These changes were performed because new data was obtained or in response to comments received after publication of the 1998 Supplemental ANOPR.

In general, when information is based on periodic forecasts and surveys such as the Annual Energy Outlook (AEO) forecasts of energy prices and the Residential Energy Consumption Survey, both from the Energy Information Administration (EIA), we try to use the latest available information. The analysis in support of this proposed rule was performed using RECS93 and AEO 1999 data. Just prior to publication of this proposed rule both RECS97 and AEO2000 data became available. Although we do not expect a significant difference in results by updating to RECS97 and AEO2000, we intend to use this updated information for the final rule. We seek comment on the use of the most current RECS and AEO data.

*A. Product Classes*

The Supplemental ANOPR contained three proposals regarding clothes washer product classes. The first proposal suggested eliminating the Semi-Automatic Top-Loading, Front-Loading and Suds Saving classes identified in the May 1991 Final Rule. In its second proposal, the Department proposed to increase the compact class to include all clothes washers with a volume less than 2.0 cubic feet. The third proposal was to not establish separate classes for Horizontal and Vertical-axis clothes washers.

The Department received no comments on its proposal to eliminate the Semi-Automatic Top-Loading and Suds Saving classes. In the May 1991 Final Rule, these classes were not subject to minimum energy conservation standards because they represented a small portion of the market, and due to a lack of adequate information to analyze them. However, the 1988 standard requiring an unheated rise option is still applicable to these classes. Given the continued absence of information available to analyze these classes and ensure that they could meet the proposed standard levels, the Department is proposing to maintain these product classes but not to subject them to minimum energy conservation standards. However, the unheated rise water option is still applicable to these classes.

DOE received several comments regarding changing the definition of the compact clothes washers class maximum capacity, from 1.6 cubic feet to 2.0 cubic feet. Whirlpool believes that this re-definition for the compact class would better reflect the actual product offerings that exist in the marketplace which range from 1.6 to 1.96 cubic feet. (Whirlpool, No. 141 at 3). Amana Appliances is not opposed to the change. (Amana, No. 146 at 1). ACEEE and American Water Works Association (AWWA) also find this proposal acceptable. (ACEEE, No. 150 at 4 and AWWA, No. 149 at 4). Maytag is concerned that a clothes washer at 2.0 cubic feet, if not subjected to the same standard as full size washers will become a relatively larger volume seller. This would result in a reduction in the potential national energy and water savings of the standard and may place some manufacturers that have complied with more stringent standards at a competitive disadvantage. Accordingly, Maytag recommends that the Department develops safeguards as retail market share or product sales volume limits which, if exceeded, would require the product to meet the

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same energy standards as full-size washers. (Maytag, No. 137 at 4–5). PG&E supported changing the "compact" size to 2.0 cubic feet, up from 1.6 cubic feet under the condition that the "compact" washers are required to at least meet the 25 percent more efficient standard level. (PG&E, No. 189 at 1).

We received several comments in support of maintaining the current limit of 1.6 cubic feet for the compact class. (Northwest Energy Efficiency Alliance, No. 131 at 3; the Northwest Power Planning Council, No. 135 at 2; Bosch, No. 142 at 1; and Miele, No. 156 at 1). GEA opposed the change in definition because it believed there is substantial room for these products to increase their efficiency. (GEA, No. 143 at 11). The Oregon Office of Energy commented that the new 2.0 cu. ft. definition puts a significantly greater number of more efficient machines in the compact class. For this reason it will insist that the Department conduct enough of an analysis on this class of products to justify raising the standard for this class. (Oregon, No. 162 at 2).

Staber Industries proposed removing tub size as a factor in determining both capacity and energy efficiency and proposed instead classifying washers by loading capacity. (Staber, Nos. 185 and 187).

The Department agrees that the increasing the compact class size to 2.0 cu. ft. will increase the number of washers in this class and possibly incorporate products currently already more efficient than compact models of 1.6 cu. ft. The Department has not been provided any information in order to conduct such an analysis. For this notice the Department is maintaining the existing 1.6 cu. ft. definition of the compact product class and given the small size of this market (less than one percent) is proposing not to change the minimum efficiency levels. However given the new test procedure (Appendix J1) and the change in descriptor it is necessary to translate the current standard of EF of 0.9 into an MEF value. Since no mathematical translation is possible, we have estimated this value using engineering calculations and assumptions which are detailed in the TSD. This value is estimated to be an MEF of 0.65.

For the Final Rule, the Department will consider changes to the definition and efficiency standards for the top loading compact class. A new definition could have different capacity requirements (such as less than 2.0 cu. ft.) and additional requirements for the maximum external dimensions (such as a width not to exceed 22.5 inches). The Department will also consider any new information on the efficiency of current models under Appendix J1. The Department seeks comment on these issues.

The Department's ANOPR proposal to eliminate the Front-Loading product class also received no negative comments. NRDC commented that the existence of a top-loading horizontal-axis washer clearly dispels the notion that the location of a washer's port of access (Top or Front) is synonymous with axis of rotation (Vertical and Horizontal). Amana notes that because of technological differences it would be more appropriate to refer to the current "Front-Loading" and "Top-Loading" product classes as Horizontal-Axis and Vertical-Axis (Amana, No. 146 at 1). Elimination of the Front-Loader class is invariably linked by many comments with the need to establish separate classes for V- and H-axis washers.

The Department received numerous comments on the proposal not to establish separate classes for V- and H-axis clothes washers. Comments supportive of the Department's proposal were received from Maytag, Whirlpool, Bosch, Staber, Miele, NRDC, the Alliance to Save Energy, ACEEE, and approximately fifteen state or city agencies and utilities. (Maytag, No. 137 at 2; Whirlpool, No. 141 at 7; Bosch , No. 142 at 1; Staber, Nos. 185 and 187; Miele, No. 156 at 1; NRDC, No. 138 at 5; the Alliance to Save Energy, No. 148 at 2; and ACEEE, No. 150 at 5).

GEA, Alliance Laundry and Amana opposed the Department's proposal. GEA commented that the unique characteristic and energy performance of H- and V-axis washers require two-product classes with separate minimum energy efficiency standards for each. H-axis are less convenient and potentially less reliable with different systems or features for loading clothes and adding clothes during the wash cycle, longer cycle times, smaller capacities, more expensive detergents, and availability of deep pre-soak which are important to consumers. (GEA, No. 143 at 2). Alliance Laundry commented that the V- and H-axis product classifications would ignore relevant consumer utility differences and would combine two distinct products which do not compete in the market for energy comparison purposes. (Alliance Laundry, No. 145 at 3). Amana commented that the machines differ in cost/price, utility, energy efficiency, performance, and ergonomics. The integration of these two categories into one will increase rather than decrease confusion in the marketplace with consumers. (Amana, No. 146 at 2). These concerns, DOE believes, are superceded by the Joint Comment in which the same standard was agreed to for V- and H-axis products.

The Alliance to Save Energy commented that recent technology development shows that various axis types can meet relatively stringent performance criteria. (Alliance to Save Energy, No. 148 at 2). The Department agrees with this view. Recent product introductions by Whirlpool Corporation and Fisher & Paykel of high-efficiency V-axis washers have positively demonstrated that V-axis designs are available for the same range of efficiencies as H-axis washers. Since both H-axis and V-axis washers can achieve the same range of efficiency, there is no basis for separate efficiency standards based on axis of rotation or orientation of loading. Additionally the existence of a Top Loading horizontal-axis washers dispels the notion that orientation of loading is necessarily associated with efficiency. Therefore, in today's proposal the Department is maintaining the Front Loading product class but is proposing a single efficiency standard for both the Front Loading and the Top Loading, Standard class washers.

*B. Engineering Analysis*

The engineering analysis develops cost-efficiency relationships to show the manufacturer costs of achieving increased efficiency. Three methodologies can be used to generate the manufacturing costs needed for the engineering analysis. These methods include: (1) The design-option approach, reporting the incremental costs of adding design options to a baseline model; (2) the efficiency-level approach, reporting relative costs of achieving energy efficiency improvements; and/or (3) the cost-assessment approach which requires a "bottoms-up" manufacturing cost assessment based on a detailed bill of materials.

As summarized in the Supplemental ANOPR, the engineering analysis was conducted using the efficiency-level approach. The cost-assessment approach was also used to supplement the efficiency-level approach because of the existence of a proprietary technology for which no data was available. The objective of the manufacturing cost assessment was to quantify the differential manufacturing costs of producing high efficiency clothes washers based on (1) a Whirlpool proprietary V-axis design, and (2) commercially available V- and H-axis designs.



*C. Life-Cycle Cost (LCC) Analysis*

The effect of standards on individual consumers includes a change in operating expense (usually decreased) and a change in purchase price (usually increased). The life-cycle cost (LCC) spread sheet is used to analyze the economic impacts of possible standards on individual consumers. This section describes modifications to the LCC spreadsheet model and revisions to data inputs as a result to new data or recommendations from comments received after the publication of the 1998 Supplemental ANOPR. 63 FR 64353 (November 19, 1998).

Table 1 summarizes the assumptions used in the LCC analysis for the 1998 Supplemental ANOPR analysis and the changes made for this proposed rule analysis than followed by a written discussion of these changes.

TABLE 1.—ASSUMPTIONS IN THE LCC ANALYSIS [1]

| Parameter | Supplemental ANOPR | Proposed rule |
|---|---|---|
| Energy Price | average prices | marginal prices. |
| Variation in Household Energy Prices, Energy Use, and Water Heater Shares. | 1993 RECS data | Marginal prices derived from 1993 RECS data and adjusted to 1997 prices. |
| Energy Price Projections | AEO 1998 reference case to the year 2020, with extrapolations to the year 2030. | AEO 1999 reference, high & low cases to the year 2020, with extrapolations to the year 2030; used FEMP methodology for extrapolations. |
| Water and Sewer Prices | Urban ($0.00 to $7.84 per 1000 gallons) | Urban 0–$7.97. |
| | Ave. price = $3.18 per 1000 gals | Rural 0–$7.97. |
| | | Rural (no sewer) 0–$3.53. |
| | | Individual well 2.61 kWh/1000 gals. |
| | | Ave. price = $2.48 per 1000 gals. |
| Annual Real Change in Water and Sewer Cost (Water Price Projections). | 0 percent | Urban = 3.01% (high 5.41%, low 0.53%). |
| | | Rural = 3.01% (high 5.41%, low 0.53%). |
| | | Rural with septic = 0.64% (high 2.93%, low −2.89%). |
| | | Individual well (electricity price escalation). |
| Manufacturer Cost | AHAM | No change. |
| Manufacturer Mark-ups | Min. 1.000 | Range: varies with standard level. |
| | Mean 1.175 | Distribution: uniform. |
| | Max. 1.350 | |
| | Distribution: triangular | |
| Retail Mark-up | 1.4 | No change. |
| Detergent Savings | not an input parameter | allowed as an input (detergent savings = zero). |
| Discount Rate | Distribution (0–15 percent) | No change. |
| Lifetime | Distribution (12–17 years) | No change. |
| Cycles Per Year | Distribution from RECS database (207–645) | No change. |
| Start Year (Effective Date of Standard) | 2003 | 2004 (and 2007 if a second tier). |

[1] All prices and costs are shown in 1997 dollars.

*Energy Prices.* For the Supplemental ANOPR the LCC spreadsheet model sampled the individual prices paid by households in the 1993 version of the Residential Energy Consumption Survey (RECS). These prices were updated (scaled up or down based on AEO 1998 national prices) and converted to 1997 dollars. The Advisory Committee recommended DOE use the full range of consumer marginal energy prices instead of national average energy prices. Marginal energy prices are those prices consumers pay (or save) for their last units of energy used (or saved). The Department agreed that marginal energy prices would improve the accuracy of the LCC analysis and estimated marginal rates for electricity and natural gas from the 1993 RECS database.

In accordance with the Advisory Committee's recommendation, the Department elected to substitute marginal energy prices for average prices for calculating LCC and NPV. EIA gathered monthly energy bills and energy consumption data for the RECS public use data. It did not gather information on rate schedules, fixed charges, or marginal prices. DOE estimated consumer marginal electricity and natural gas prices directly from household data in the 1993 RECS public use data survey as the change in household monthly energy bills divided by the change in monthly energy consumption for each fuel, referred to as the change in monthly bill method. This provides a precise marginal energy rate based on actual household bills.

Households for which marginal energy prices could not be calculated were eliminated, resulting in a reduction of approximately 10% of the households used from the RECS. Although electricity rates were calculated separately for four summer months (June–September) and, separately for winter (October–May) months, unlike other appliances, the usage of clothes washers for summer and winter months is on average, approximately constant.

In order to understand and characterize regional variations in pricing and distribution of fuel oil and LPG, we collected information relating to pricing and distribution of fuel oil and LPG. We learned that bills paid by residential consumers for both fuel oil and LPG are essentially volume-driven, with a single block rate. We interpreted the average prices inherent in those bills, as reported in the RECS public use data, as being equivalent to marginal prices for the purposes of the LCC price analysis. A detailed description of the methodology used to determine marginal energy rates is contained in the report entitled "Marginal Energy Prices Final Report, July, 1999," which can be obtained at the website address: http://www.eren.doe.gov/buildings/codes_standards/applbrf/clwasher.html.

As an enhancement to the LCC analysis for the proposed rule, Liquid

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Petroleum Gas (LPG or propane) was added as a water heater fuel type.

*Variation in Household Energy Prices, Energy Use, and Water Heater Shares.* In addition to determining energy prices RECS data is used to determine the market share, *i.e.*, percentage of water heaters and dryers, that are electric, gas, liquefied petroleum gas (LPG) or oil. The current analysis was based on Residential Energy Consumption Survey 1993 (RECS93) and Annual Energy Outlook 1999 (AEO99). Although demographic information, price and equipment types change from survey to survey, we do not expect that the differences are significant enough to change the outcome of this rulemaking.

*Energy Price Projections.* For the proposed rule, the Annual Energy Outlook 1999 (AEO99) forecasts replaced AEO98 energy price forecasts for electricity, gas and oil. Given the uncertainty of projections of future energy prices, DOE used scenario analysis to examine the robustness of proposed energy efficiency standards under different energy price conditions. The LCC calculations use these scenarios. Each scenario provides a self-consistent projection, integrating energy supply and demand. The scenarios differ from each other in the energy prices that result. The Advisory Committee suggested the use of three scenarios. While many scenarios can be envisioned, specification of three scenarios should be sufficient to bound the range of energy prices.

The AEO 1999 reference case provides a well-defined middle scenario. DOE also used AEO fuel price forecasts under assumptions of high and low economic growth. The future trend in energy prices assumed in each of the three scenarios is clearly labeled and accessible in the LCC spreadsheet. The Gas Research Institute (GRI) reference case fuel price forecast is another choice available in the LCC spreadsheet. Stakeholders can easily substitute alternative assumptions in the LCC spreadsheet to examine additional scenarios as needed.

Another modification for the proposed rule analysis concerns the extrapolation method used to project the AEO energy prices from 2020 to 2030. (The AEO contains energy prices projections to the year 2020.) For the ANOPR the price of electricity was extrapolated based on the trend of the last five years of the scenario used. For gas and oil, prices values were kept constant from the year at which the extrapolation was necessary.

For the proposed rule we are now using the approach EIA uses to forecast fuel prices for the Federal Energy Management Program (FEMP). This was done to be consistent with the rest of the energy forecasting also done by EIA.

*Water and Sewer Prices.* For the Supplemental ANOPR the main source of data on water and sewer prices was from a 1994 survey of water prices in major metropolitan areas by Ernst & Young. The Ernst and Young data was adjusted for service population, base utility charges and average household use by Al Dietemann of Seattle Water.

The Department received several comments on this issue. Denver Water suggested replacing the 1994 Rates Study done by Ernst and Young and using the 1998 Raftelis Study. (Denver Water, No. 107 at 20). The American Water Works Association (AWWA) commented that an average water price of $3.18 per thousand gallons as used was too high. (AWWA, No. 108 at 64360). Energy Market and Policy Analysis, Inc. observed that the data was limited to certain metropolitan areas and probably would overstate water and sewer costs in non-metropolitan areas. Therefore, use of the data would probably overstate potential water and sewer cost savings that might be achieved by using a washer that uses less water. (Energy Market and Policy Analysis, Inc., No. 144 at 8).

In response to comments received and for the proposed rule analysis, 1998 prices and projected escalation rates were added for rural water and wastewater to the previous estimates for urban customers. The revised analysis, based on the 1998 Raftelis Study, divided water use into categories of urban, rural with water and wastewater utilities, rural with water utility service and septic tank, and individual well with septic tank. The range of prices used for each category is: for urban areas 0–$7.97, rural areas 0–$7.97, rural areas (no sewer) 0–$3.53, individual well 2.61 kWh/1000 gals. The resulting average price is $2.48 per 1,000 gallons.

*Water Price Projections.* As of the time of publication of the Supplemental ANOPR, the Department had found no national level water price forecasts and thus the Supplemental ANOPR assumed that future water prices would remain constant. In the Supplemental ANOPR the Department agreed that future water prices should not be assumed to be constant and described an approach to establish marginal water prices and escalation rates. See Chapter 7 of the TSD for details on how these marginal water prices and escalation rates where determined.

At a workshop held on December 15, 1998, DOE detailed its proposal for water prices and escalation rates. Support for this proposal was given by ACEEE, the Oregon Office of Energy, NRDC, the Northwest Energy Efficiency Alliance, PG&E, and the City of Seattle, Seattle Public Utilities. (ACEEE, No. 150 at 1; Oregon Office of Energy, No. 162 at 7; NRDC, No. 138 at 14; Northwest Energy Efficiency Alliance, No. 131 at 2; PG&E, No. 130 at 2; and the City of Seattle, Seattle Public Utilities, No. 126 at 2). In contrast, the Edison Electric Institute (EEI) commented that the escalation rate of 3.1% real will probably overstate the change in water and wastewater prices. (EEI, No. 122 at 6).

For the proposed rule, escalation rates were specified for urban and rural water and wastewater customers. The average escalation rates used are: for urban areas, 3.01% (high 5.41%, low 0.53%), rural areas, 3.01% (high 5.41%, low 0.53%), rural areas with septic 0.64% (high 2.93%, low −2.89%). Finally for areas with individual wells, the electricity price escalation rates were used.

*Manufacturing Cost.* The cost data used was provided by manufacturers. It was then compiled and reported to the Department by AHAM as a range of costs at each efficiency level. NRDC observed that the Department's engineering analysis weights incremental costs submitted by AHAM manufacturers by their 1997 market shares. In its opinion the real impact on consumers will be weighted not by 1997 market shares but by the market shares following the introduction of the standards. The argument is based not on a lack of credibility of the AHAM data but on the assumption that the market share of the very expensive machines will go down. As a consequence, NRDC believes the Department should weight the outlier points at the high cost end of the cost distribution curve minimally, if at all, in doing its analysis. (NRDC, No. 138 at 6 and 14).

The Department agrees that a wide variation in costs exists in the AHAM data. This variation in incremental costs are driven in part by the variability in cost structures of the various manufacturers (production volume, current technology) and in part by the variability in designs. Additionally, given the lack of experience manufacturing some of these technologies, uncertainty contributes to the range in costs. The Department believes the mean values of the distribution are the most appropriate for consideration in the LCC analysis and will weight analysis results for values surrounding the mean more heavily. However it will continue to incorporate the full range of costs as it represents a probability-weighted distribution of costs based on the full spectrum of possible costs.



*Manufacturer Mark-ups.* In the Preliminary TSD for the ANOPR, the Department used a manufacturer mark-up over the full production costs with a maximum value of 1.35, which maintains industry (manufacturer) cost structure, and a minimum value of 1.00, which represents a pass-through of full production costs. This was modeled as a triangular distribution with a minimum value of 1.00, a most likely value of 1.175, and a maximum value of 1.35. For the proposed rule, a uniform distribution was used. The range of the mark-up is dependent on the standard level and obtained from the GRIM model.

Alliance Laundry believes that the low end of 1.00 for the manufacturing mark-up should not be used at all. It commented that history suggests manufacturing mark-up is within the 1.27 to 1.35 range. (Alliance Laundry, No. 164 at 10). The Oregon Office of Energy commented that manufacturer mark-ups are not static over time. Nor are they typically the same for products at the lower end of the product line as they are for the upper end. It further recommended that DOE find a way to model a variable mark-up pattern for each manufacturer—a pattern that is appropriate for each and responsive to market conditions as they evolve. (Oregon Office of Energy, No. 162 at 8). As suggested, the Department worked with each manufacturer to forecast its future mark-ups at the various standards levels factoring anticipated market dynamics. These market dynamics include: the technology status of existing product offerings as it relates to the cost-efficiency relationship; the status of manufacturing technology, including an assessment of conversion and restructuring costs; likely product offerings at each efficiency level (*e.g.*, V-axis, H-axis), consumer demand for product features and its implications for trade-offs between manufacturing cost and consumer utility; patent restrictions on design options; brand equity; availability of technical and financial resources; manufacturing versus sourcing strategies; and company cost structure and ability to pass on fixed (and sometimes even variable) costs. Individual mark-up forecasts were aggregated to characterize the industry and the resulting range of mark-ups was used in both the industry GRIM and LCC analysis.

*Retail Mark-up.* In the Preliminary TSD for the ANOPR, the Department used a fixed retail mark-up of 1.40, and a fixed mark-up of 1.052 to cover the sales tax. There was no change made for the proposed rule. ACEEE commented that the retail mark-up of 40% is too high. It proposed that the Department use an average retail mark-up based on the last five years of available data. (ACEEE, No. 150 at 4). In response to this comment, the Department did examine more recent data from the same data sources originally used (Dealerscope Merchandising's Annual Statistics Surveys, Bureau of Census—Current Industrial Report (CIR), Bureau of Labor Statistics—Consumer Expenditure Survey (CES), INTELECT—Elrick & Lavidge Computerized Audit Program (ELCAP) price database, AHAM Fact Book) and found no significant cause to alter its earlier estimate.

*Detergent Savings.* In the Supplemental ANOPR we did not include any possible detergent savings into the LCC analysis. The Northwest Power Planning Council, Oregon Office of Energy, ACEEE, Northwest Energy Efficiency Alliance, and PG&E commented that the Department should consider detergent cost savings as a benefit of H-axis clothes washers. (Northwest Power Planning Council, No. 135 at 1; Oregon Office of Energy, No. 162 at 6; ACEEE, No. 150 at 4; Northwest Energy Efficiency Alliance, No. 131 at 2&3; and PG&E, No. 189 at 2). These comments did not have specific recommendations as to appropriate values to use for detergent cost savings in the LCC.

Alliance Laundry System LLC commented that detergent cost savings associated with horizontal axis machines are unlikely. In fact, detergent costs may even be higher due to the fact that higher priced specially formulated detergent may have to be used for optimal cleaning performance. (Alliance Laundry, No. 145 at 11). Maytag believes that the detergent and dosage recommended by the detergent manufacturer will produce the best washing performance and that detergent use will not be a significant factor in consumer operating cost savings. (Maytag, No. 137 at 7).

The Department believes there is no conclusive evidence that detergent costs will change due to new standards. We believe results of the Bern Study (Bern Clothes Washer Study Final Report; ORNL/M–6382; prepared by Oak Ridge National Laboratory for the U.S. DOE, dated March 1998) do not show any significant difference in cost savings related to detergent use. Patterns of detergent use will change as detergent specially formulated for H-axis machines become more available. In addition, comments by major detergent manufacturers state that savings based on less detergent use will not occur (Procter & Gamble, No. 9 at 1) and using a lessor amount of detergent produced inferior cleaning performance (Lever Brothers, No. 51 at 2). In consideration of the previous evidence detergent savings were not included in the analysis. However, the LCC spread sheet does include the capability to input detergent costs, at the users' option.

*Cycles per year.* The EEI commented that the number of washer cycles appeared to be on the high side, especially for one and two person households. (EEI, No. 122 at 3). The Department used the most current information available to estimate the cycles per year. The Department adjusted the number of cycles per year based on the number of occupants for each RECS household. The cycles per week are based on a Procter and Gamble survey and adjusted using the RECS data, so the overall average cycles per year agree with the test procedure assumption of an overall average of 392 cycles per year.

*Discount Rate.* The LCC spreadsheet uses a distribution for discount rates ranging from 0 to 15%. These represent the variability in financing methods consumers use in purchasing appliances. The average discount rate from this distribution is 6.1% real.

Four comments suggested that the discount rate used in the consumer analysis was likely too high. Comments stated that DOE should take into account such factors as: declining bank card rates, the substantial fraction of card users who pay off monthly credit card balances, the substantial number of buyers who use lower-cost credit such as home equity credit lines, and bank card default rates. Future interest rates on credit cards are not expected to rise, so future inflation will yield lower real interest rates. (Alliance to Save Energy, No. 148 at 3; ACEEE, No. 150 at 4; Oregon Office of Energy, No. 162 at 7; and NRDC, No. 138 at 6). Three comments suggested that the discount rate may be too low. (Energy Market and Policy Analysis, Inc., No. 144 at 8; Consumer Alert, No. 155 at 4; and EEI, No. 122 at 6). Opportunity costs are higher and EIA uses higher rates for forecasting residential purchase decisions. DOE policy is to base discount rates on average financing costs (or opportunity cost of reduced savings).

In the Process Rule, DOE committed to using real (adjusted for federal taxes) discount rates for residential consumers by considering a range of three different real discount rates: credit card financing rate, a rate based on consumers having substantial savings, and a mid-range

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rate. The mid-range discount rate will represent DOE's approximation of the average financing cost (or opportunity cost of reduced savings) experienced by typical consumers.

Based on the guidelines from the Process Rule, we derived a distribution of discount rates to reflect the variability in financing methods consumers can use in purchasing clothes washers. The real interest rate associated with financing an appliance purchase is a good indicator of the additional costs incurred by consumers who pay a higher first cost, but enjoy future savings, although it is not the only indicator of such costs. While the method used to derive this distribution relies on a number of uncertain assumptions regarding the financing methods used by consumers, DOE believes the resulting distribution of discount rates encompasses the full range of discount rates that are appropriate to consider in evaluating the impacts of standards on consumers (*i.e.*, values represented by the mid-range financing cost, consumers with no savings, and consumers with substantial savings), as well as all the discount rates that fall between the high and low extreme values.

DOE assumes the method of purchase used by consumers is indicative of the source of the funds and the type of financing used, although DOE is not aware of detailed research into this relationship. Whirlpool Corporation indicated that approximately 40% of white goods are purchased in cash, 35% with credit cards, and 25% with retailer loans. (1994 Eight Product Notice of Proposed Rulemaking, 59 FR 10464, March 4, 1994.) Whirlpool also indicated that 25% of appliance purchases are for new homes. However, we know consumers purchase 20% of clothes washers with new homes, *i.e.*, in mortgages, and 80% as replacements for existing clothes washers in separate retail purchases. Consumers pay for retail purchases by cash, credit cards, or loans. In order to derive a full distribution of discount rates, DOE estimated a range of interest rates, based on historical data and judgments of future trends, for different types of consumer savings or financing.

For new housing, the estimated nominal mortgage rate ranges from 5–8%, the derived after-tax rate is based on a tax of 28%, and a 2% inflation rate is subtracted from the total. The result is a range of real mortgage rates from 1.60%–3.76%. Example: 5%*(100%–28%)–2%=1.6%.

For cash, the minimum interest rate is 0%. This rate applies to consumers making cash purchases without withdrawing from savings accounts or interest bearing checking accounts. For the maximum rate, the opportunity cost is the interest that could have been earned in a savings account or mutual fund. Historic savings rate ranged from 4.5–5.5% from 1970–1986 (real rates of −8.27 to +3.58%). We believe the current maximum is the opportunity cost represented by the interest earned in a typical mutual fund (assumed to be 6% real). DOE selected a real rate of 3% as the mean.

DOE assumed the interest rates for retail loans and credit cards have the same range. The minimum credit card rate is 6% real. Introductory rates on some credit cards today are 5.9% nominal, but after the introductory period (often six months), the rate can increase sharply. Maximum rates are more than 20% nominal. However, if the consumer pays with a credit card and the balance is paid in less than the life of the clothes washer, then the effective interest rate is lower than the nominal credit card rate. The current assumption is a range of 6–15% real.

Combining the assumed shares of each financing method, the above real interest rates result in a weighted-average (mean) value of 6% and a distribution that varies from 0–15%. Sensitivity studies show that while the LCC results are sensitive to the value chosen for the mean discount rate, the LCC results are not sensitive to the distribution of discount rates.

DOE believes the methods described above are valid for establishing a distribution of discount rates relevant to most purchasers of the products covered by this rulemaking. However, the Department acknowledges that different assumptions could be made about likely interest, inflation and marginal tax rates, or about consumer financing methods, and that different approaches to identifying consumer discount rates might also be valid. For example, it is possible to base consumer discount rates on the average real rates of return on consumer investment or other measures of the opportunity costs incurred by consumers who purchase the covered products. DOE does not believe, however, such alternative assumptions or alternative approaches would significantly alter the range of discount rates used by the Department or the conclusions drawn from the LCC analyses conducted using these discount rates.

The Department is seeking any information that would support significant alterations in the range or distribution of the discount rates derived from its analysis. Alternatively, DOE is soliciting comment on the possible use of a standardized distribution of discount rates ranging from approximately 4–12%, with a mean of 6%. The use of such a standardized distribution would explicitly recognize the many uncertainties associated with DOE's current analysis and, based on sensitivity analyses already performed by DOE, such a standardized distribution would not significantly alter the conclusions of DOE's life cycle cost analyses.

*Lifetime.* The ANOPR analysis assumes that the period of time a clothes washer will provide service ranges from 12 to 16 years with an average of 14.2 years. One comment asked the Department to explain the assumptions used to determine the lifetime of a clothes washer. Since few consumers who purchase a clothes washer own it for the full lifetime of the appliance, using this value in the LCC may overstate the benefits to the original purchaser. (Energy Market and Policy Analysis, Inc., No. 119 at 4). For the national energy savings, calculating the benefits requires consideration of the full lifetime of the product. In response, DOE believes that the requirements of the statute are to analyze the savings in operating costs throughout the estimated average life of the covered product even if there is more than one owner during this lifetime for the LCC analysis.

*Start Year.* This is the year the new standard is expected to become effective. The Joint Stakeholder Comment proposes a two-step standard in which the first standard level is effective in 2004 and the second high standard level becomes effective in 2007. (Joint Comment No. 204).

*Maintenance and Repair Costs.* The ANOPR analysis assumed no change in maintenance and repair costs as a result of new clothes washer standards. The Department received a comment expressing the need to account for maintenance, repair and warranty costs in the LCC analysis. (Energy Market and Policy Analysis, Inc., No. 119 at 3). Staber Industries also requested that the Department consider maintenance in the LCC analysis since H-axis have no transmissions and it is more reliable than V-axis. (Staber, Nos. 185 and 187). In response, the Department's analysis does not consider changes in the maintenance and repair cost as we do not have any data to indicate the costs to be different for more efficient products for the proposed rule.

*Request for Comment.* DOE requests comments on the LCC analysis, particularly the range of values used as input to the analysis. For example,



RECS does not measure usage so we used the Proctor & Gamble survey data for national average usage values and then adjusted those values based on RECS-reported household size. DOE would like comment both on the Proctor & Gamble and RECS data as well as the method DOE used to develop the range of usage.

*D. Payback Period Analysis*

The payback period measures the amount of time needed to recover the additional consumer investment in increased efficiency through lower operating costs. The payback period is the ratio of the increase in purchase price to the decrease in annual operating expenditures from replacing the baseline clothes washer with a more efficient washer. We express payback periods in years.

*Rebuttable Payback.* In accordance with EPCA, DOE calculated payback based on the values specified by the DOE test procedure, Appendix J1. This includes the Appendix J1 test procedure assumption of an electric water heater and an electric dryer. Today's amendments to Appendix J1 have no effect on these results. This payback, however, does take into account that a distribution of clothes washer efficiencies exists in the current and future stock. This distribution is approximated by assuming that the efficiency of the stock of washers is a combination of baseline and H-axis efficiency washers. Table 2 shows the changes in assumptions since the ANOPR for the base case.

TABLE 2.—CHANGES IN REBUTTABLE PAYBACK ASSUMPTIONS

| Parameter | Supplemental ANOPR | Proposed rule |
|---|---|---|
| H-axis sales | 3.0% in 1998 | 6.25% in 1998. |
| Escalation of H-axis sales | 0.5% annual (linear) | 0.5% of sales not already H-axis. |

Changes in assumptions outlined in Table 1 that also apply to rebuttable payback include:

- Water price;
- Energy price;
- Energy and water price escalation only to the year 2004; and
- Manufacturer mark-up (average of range is used).

*Basecase Assumptions.* The Department received comments on the assumptions made concerning the existing saturation of higher efficiency washers and their expected increase in sales over time. We received comments stating that we had either overestimated or underestimated the penetration of H-axis washers, and we either overestimated or underestimated the future escalation of H-axis sales. EEI, Whirlpool, NRDC, City of Seattle, Seattle Public Utilities, Alliance Laundry System, Northwest Power Planning Council, ACEEE, and Amana believes that the projections for sale of high efficiency units is too low. (EEI, No. 122 at 3; Whirlpool, No. 141 at 12; NRDC, No. 138 at 8; City of Seattle, Seattle Public Utilities, No. 126 at 2; Alliance Laundry, No. 145 at 20; Northwest Power Planning Council, No. 135 at 1; ACEEE, No. 150 at 7; and Amana, No. 146 at 2). Northwest Energy Efficiency Alliance, Oregon Office of Energy and the Alliance to Save Energy believe DOE overestimated sales in the absence of standards because many incentive programs are ending. (Northwest Energy Efficiency Alliance, No. 131 at 4; Oregon Office of Energy, No. 162 at 2; and Alliance to Save Energy, No.148 at 3–4).

Based on additional updated data, we revised the estimated H-axis sales in 1998 from 3.0% to 6.25%. Previously the annual escalation rate of H-axis washer sales market were assumed to capture an additional 0.5% per year of all clothes washer sales but now the annual sales of H-axis clothes washers is determined by an amount equal to 0.5% of the previous year's V-axis sales. Additional sensitivity analyses were performed at escalation rates of 0.25% and 0.75% with minimal effect on rebuttable payback (less than half a year payback difference from the reference case). Base case assumptions are addressed in greater detail in the National Impact Analysis, *infra.*

*E. National Impact Analyses*

The national energy savings is determined in two steps using the integrated NES/Shipments spreadsheet model. First the shipments are determined before and after a new standard; and then the shipments are used to calculate energy savings and national economic benefits (net present value of the higher standards). Chapters 9 and 10 of the TSD contains a detail explanation of the NES/Shipments spreadsheet model.

The basic outputs from the National Impact Analysis are shipments forecasts, energy and water consumption, and the Net Present Value (NPV) for baseline and standards scenarios. The shipments forecasts are an input into the National Energy Savings model as well as an input for the Manufacturing Impact Analysis. The cumulative savings for energy and water are determined for the nation to the year 2030. Finally, the net present values (NPVs) are determined for each standard level based average data for the nation. See results in Section V of this notice.

1. National Energy Savings (NES) Spreadsheet Model

*Historical Background.* The development of the NES and shipments model consisted of three phases: (1) Supplemental ANOPR and preliminary TSD analysis, (2) analysis presented at the July 1999 Workshop, and (3) proposed rule and TSD analysis.

At the time of the supplemental ANOPR the shipment model was a work in progress. We asked for comment on a general accounting methodology that included price, operating cost and income elasticities. Since the shipments model was not fully developed at the time of the supplemental ANOPR, a placeholder set of shipments were used as input to the NES spreadsheet in order to produce a preliminary analysis on the national impacts.

At the July 1999 Workshop, we presented a fully developed shipment model that included a decision tree. The decision tree allows the consumer to choose between not buying a washer, buying a new washer, repairing a washer or buying a used washer. It also allows consumers to decide to replace a washer before it was necessary (see TSD Chapter 9 for details). This model also incorporated results from the consumer conjoint analysis along with fitting parameters to historical data.

After presenting this shipment model at the July 1999 Workshop, we received comments regarding specific parameters of the model, sources of data used in the model and whether or not the results forecasted seemed reasonable. We received comments agreeing that the general approach of the Shipment and NES models were appropriate, however, comments included suggestions to modify parts of the models. (Oregon Office of Energy, No. 162 at 8 and

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ACEEE, No.188 at 3). Details of the Shipment and NES models are discussed in the sections on elasticity below. After the Workshop we carefully looked at the comments and began to make improvements to the model. These improvements included refinements that were not necessarily suggested by stakeholders but were based on using more data and detail. In addition, suggestions contributed by a renowned economist were carefully considered. (Assessment of DOE Shipments Model for Forecasting the Impacts of Clothes Washer Standards, Kenneth Train, Comment No. 194 at 13). After all of the revisions, the shipment model forecasted had significantly different results. The two changes made that had the greatest effect on results were using a longer historical time period to fit forecasting equations to and accounting for new appliance sales due to all changes in residence, not just purchases of new housing.

The following section describes the modifications to the NES and Shipment spreadsheets as recommended in comments received after the publication of the 1998 Supplemental ANOPR. 63 FR 64347, 64359 (November 19, 1998).

The modifications to the NES Model follows the three phase development from the Supplemental ANOPR analysis to the July 1999 Workshop analysis to the proposed rulemaking analysis. The changes to the Shipment Model as incorporated into the NES are summarized in Table 3. Discussions of these changes and of comments received which prompted these changes are also discussed after the table.

TABLE 3.—MODIFICATIONS TO THE NES MODEL, INCLUDING SHIPMENTS MODEL

| Parameter | Supplemental ANOPR | July 1999 workshop | Proposed rule |
|---|---|---|---|
| Shipment Model | accounting model recommended—fixed shipment values were used as a placeholder. | accounting with decision tree | accounting with decision tree. |
| Shipment Elasticities | price<br>operating cost<br>income<br>*(These were used in analysis prior to the Supplemental ANOPR.).* | price<br>operating savings<br>top/front access feature | price.<br>operating savings.<br>top/front access feature.<br>price/income.<br>income.<br>interest rate elasticities. |
| Source of Elasticities | In previous analyses the three input variables below were used.<br>*Price Elasticity (PE)*—from Oak Ridge equation.<br>*Operating Cost (OC) elasticity*—derived from implicit discount rate.<br>*Income Elasticity*—from Oak Ridge model.<br>*(For the ANOPR, a shipment analysis had not been performed yet and shipments were kept constant as a placeholder pending future analysis.).* | *Operating savings*—derived from the WashWise Intercept Survey.<br>*Features elasticity*—based on conjoint analysis.<br>*Price elasticity*—with other parameters set, determined by calibrating to 1981–1996 historical data. | *Operating savings*—derived from the WashWise Intercept Survey.<br>*Features elasticity*—based on conjoint analysis.<br>*Price elasticity*—with other parameters set, determined by calibrating to 1970–1996 historical data. |
| Market Segments | new housing starts<br>existing homes (replacement washers). | New housing starts<br>early replacement market<br>regular replacement market<br>extra repair market<br>homes without a clothes washer | New housing completions & moves.<br>early replacement market.<br>regular replacement market.<br>extra repair market.<br>homes without a clothes washer. |
| Houses that Drop Out of Washer Market. | not applicable | energy accounted for—assumes laundry done at Laundromat or elsewhere. | energy accounted for—assumes laundry done at Laundromat or elsewhere. |
| Cost of Repairs and Used Washers. | None | The model factored in the price of a new washer into the Replace or buy Used versus buy new decision without subtracting the cost of repairing or buying a used washer. | Allows input on the cost of repairs and used washers relative to buying a new washer. Changed the net washer price in the Used vs. New decision model and the Replace decision model. The net washer price is the price of a new washer minus the price of either the used washer or the repair, where the used washer and the repair are assumed to scale with new washer price. |
| Residence-Change-Induced Purchase. | None, however in prior analysis new housing starts were accounted for and this approach was recommended in the Supplemental ANOPR TSD. | Assumes New Housing Market is determined by net housing increase. Ignores AHAM data on the number of washers purchased due to a change of residence. | A small market of purchases induced by changes of residence is included. Assumed that new sales from changes in residence are correlated with new housing completions. The volume of sales induced by change of residence is calibrated with AHAM NFO data on washers purchased due to a move. |
| Implied Discount Rate Used in Historical Fit. | None—consumer discount rate had not been established at this point. | 75%—from WashWise intercept survey. | 75%—from WashWise intercept survey. |



TABLE 3.—MODIFICATIONS TO THE NES MODEL, INCLUDING SHIPMENTS MODEL—Continued

| Parameter | Supplemental ANOPR | July 1999 workshop | Proposed rule |
|---|---|---|---|
| Historical Fit | None | Historical fit made to 1981 to 1996 period. | Model projected back to 1951. Fit made to 1970 to 1996 data. |
| Operating Cost Scaling | None | Assumed operating cost scaled with electricity price changes. | Disaggregates operating cost and estimates operating cost back to 1951 using Electricity, Gas, Water, Oil, and LPG price indices. |
| Stock Accounting | Uses historical sales and saturation data as input to clothes washers household stock accounting due to lack of model estimates prior to 1980. | Uses historical sales and saturation data as input to clothes washers household stock accounting due to lack of model estimates prior to 1980. | Model is more independent of historical data inputs. It uses model estimates of annual sales as the input into stock accounting after 1951. |
| Housing Start Data | Recommended using AEO 1996 Housing Starts Projection. | Uses AEO 1996 Housing Starts Projection. | Uses AEO 1999 projections adjusted to reflect housing completions. |
| Initial Stock Assumption | Pre-1957 clothes washer stock initialized as zero. | Pre-1957 clothes washer stock initialized as zero. | 1951 automatic washer stock initialized at 1.63 million (1950 sales) for one-year age washers decreasing linearly to 1.03 million at 13-year vintage and zero thereafter. |
| Operation Cost Comparison | None—no shipments model yet For NES incremental cost from the baseline washer. | Measured operating cost savings relative to the real operating cost in 1997 of a 1997 base case machine (MEF=0.817). | Measures savings in current year relative to a baseline machine (MEF=0.817) with current fuel costs. |
| Fuel Site-to-Source Conversion. | constant value | conversion varies yearly and is generated by EIA's NEMS–BRS[1] program. | conversion varies yearly and is generated by EIA's NEMS–BRS[1] program. |
| Fuel Prices | average from RECS 93 | average of marginal prices determined from RECS93. | average of marginal prices determined from RECS93. |
| Escalation of Fuel Prices | AEO98 | AEO98 | AEO99. |
| Fuel Price Extrapolation from 2020 to 2030. | LBNL method | method used by EIA, consistent with new LCC methodology. | method used by EIA, consistent with new LCC methodology. |
| Water Heater Fuels | electricity, gas, oil | electricity, gas, oil | added LPG. |
| Water & Wastewater Prices | urban rates: $3.18 per 1000 gallons | average rates: $2.66 per 1000 gallons in 1998. | updated average for urban & rural: avg.=$2.48 per 1000 gals. (1998) (see LCC). |
| Water & Wastewater Price Escalation. | 0% | 2.96% an average from LCC—a weighting of 3.01% and 0.64% (see LCC). | 2.96% an average from LCC—a weighting of 3.01% and 0.64% (see LCC). |
| Base Case: H-axis Escalation Rates. | 0.5% | 0.5% | 0.5%. |
| Base Case: H-axis Sales | 3% in 1998 | 6.25% in 1998 | 6.25% in 1998. |
| Discount Rate | 7% | 7% | 7%. |
| Manufacturer Mark-ups | Min. 1.000<br>Mean 1.175<br>Max. 1.350<br>Distribution: triangular | Min. 1.000<br>Mean 1.175<br>Max. 1.350<br>Distribution: triangular | Range: varies with standard level.<br>Distribution: uniform. |

[1] EIA approves use of the names NEMS (National Energy Modeling System) only to describe an AEO version of the model with out any modification to code or data. Since, in this work, there will be some minor code modifications, DOE proposes use of the name NEMS–BRS for the model as used here.

*Shipments Model.* In the Supplemental ANOPR, we examined several different approaches to forecasting washer sales. The investigated models included an Auto-Regressive Moving Average Model (ARIMA), a Multi-Variate Time Series Fit, a Saturation/Lifetime Model, and an Accounting Model with elasticity. Of the different approaches, we selected the Accounting Model because it was the most full-featured model which included price and operating cost elasticities. At the July 1999 Workshop we described the revised accounting model for projecting annual clothes washer shipments. After stakeholder comment the Shipment model was further revised and integrated into a single spreadsheet called the NES/Shipment spreadsheet. It includes the following features:

- Combined effects of price, operating cost, and features on annual U.S. shipments
- Market segments (e.g., new housing, replacement decisions, non-owner adding a washer)
- Decisions to repair rather than replace
- Purchases of used washers
- Age categories of clothes washers

The NES/Shipment spreadsheet now incorporates information from the DOE Consumer Analysis. Since the Supplemental ANOPR, DOE has gathered additional information about features of clothes washers that influence consumers' purchase decisions, and analyzed consumer's stated preferences. This new information also has been calibrated with updated information about historical purchases. Details of the consumer analysis and shipment

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spreadsheet are explained in Chapters 8 (Consumer Analysis) and 9 (Shipments) of the TSD.

*Shipment Elasticities.* The Department received many comments concerning which elasticities need to be considered in the shipments model. Whirlpool notes that combining the impacts of the purchase behavior of discretionary buyers with the postponement and repair decisions or "forced purchase" consumers, and assuming energy reduction regulation of 35% (a $250 retail price increase), it is reasonable to expect shipment decreases in excess of 10%. (Whirlpool, No. 141 at 10). Amana states that the elasticity of price and sales needs to be considered. (Amana, No. 146 at 3). Both ACEEE and the Alliance to Save Energy stated that the only market for which there is likely to be an elasticity of demand is the early replacement market, since homeowners expect to have access to a clothes washer and will continue to purchase them even if the cost is higher. (ACEEE, No. 150 at 6 and Alliance to Save Energy, No. 148 at 3). The Oregon Office of Energy and ACEEE recommended reconstructing the shipments model without a price-based elasticity variable but including variables for disposable income, credit availability, usable washer capacity, and average washer cleaning ability (Oregon Office of Energy, No. 190 at 11 and ACEEE, No. 188 at 5).

In consideration of the comments received, the Department elected to use elasticity values for the following factors: clothes washer price, operating savings, top/front access feature, clothes washer price/income. In addition, income elasticities, and interest rate elasticities were added as input options to the spreadsheet. Details of how elasticities were derived are explained in Chapter 9 (Shipments) of the TSD.

*Source of Elasticities.* After we presented the shipments model at the July 1999 Workshop, we received several comments relating to how the value of elasticities are determined. The Oregon Office of Energy took issue with the methodologies used to derive price elasticities, especially the use of the consumer conjoint analysis. (Oregon Office of Energy, Nos.162 at 8 and No. 190 at 4–9). Several comments also question whether price elasticities derived from past declining prices would apply in a future market of increased prices due to a standard. (ACEEE, No.188 at 3; Oregon Office of Energy, No.190 at 8; and PG&E, No. 189 at 2–3). PG&E also questions the use of the consumer research survey to calibrate elasticity variables. It states that instead of asking questions about a 10-year-old washer, the questions should have been posed for a series of washer ages. It also believes that the likely repair cost of a washer is likely to exceed the $150 value used in the questionnaire. (PG&E, No. 189 at 2).

Many enhancements were made to the shipment model to address the stakeholder comments listed above. The purpose of these model enhancements is to provide the best possible estimates of the impacts of standards, consistent with the recent history of washer shipments, clothes washer market structure and consumer preferences. These enhancements are: (1) Calibration of the model over a longer historical period. (2) more detailed and accurate calculation of operating costs and savings (3) inclusion of additional user specified explanatory macroeconomic variables (4) inclusion of consumer responsiveness to price and operating costs as calibrated to historical clothes washer shipments. (5) calibration of the relative size of the features response, and estimation of the rate at which clothes washer owners might drop out of the market using the results from the Clothes Washer Consumer Analysis. (6) use of NFO Research Incorporated data from a 1996 survey (prepared for AHAM) to estimate the proportion of early (discretionary) replacements, and the proportion of new versus used purchases. (7) consideration of AHAM historical shipments and statistics on the recent (post 1994 standard) changes in mean clothes washer efficiency. (8) inclusion of *Consumer Reports* data on repair rates during the first five years of the clothes washer lifetime. These enhancements are described in more detail below.

*Market Segments.* Shipment models used prior to the supplemental ANOPR accounted for the new clothes washer and the replacement markets which assumed that a washer was replaced by a new machine when it broke down. The new shipment model presented at the July 1999 Workshop provides a more detailed accounting of different market segments, washer ownership categories and accounts for a variety of other market dynamics including new versus used shipments, changes in repair behavior and life extension of machines through extra repairs.

*Houses That Drop Out of Washer Market.* Houses that drop out of the washer market are where the laundry is done at Laundromats or elsewhere and were not accounted for in analyses presented prior to the July 1999 Workshop. One stakeholder commented that the analysis will be incomplete and not useful without an assessment of the used appliance market, and participation in that market on the part of low income consumers. (Oregon Office of Energy, No. 162 at 11). Another comment emphasized that low income consumers will find it increasingly difficult to purchase clothes washers at more stringent standard levels, and may simply not be able to buy a new machine. Thus DOE should expect an increase in used/repaired clothes washer sales and a relative decrease in shipments of new high efficiency models. (Whirlpool, No. 141 at 15). In response to the previous comments, the revised shipments model takes in account the households that drop out of the washer market, and assumes that they wash their clothes at a Laundromat or elsewhere.

*Cost of Repair and Used Washers.* The shipment model presented at the July 1999 Workshop incorporated changes in the prices of new washers, but not changes in the prices of used washers or the price of repairing an existing washer. The Department received a comment which asked that the model incorporate the higher price of used washers and repair services resulting from increased demand as consumers delay the purchase of new washers in response to higher prices. (Assessment of DOE Shipments Model for Forecasting the Impacts of Clothes Washer Standards, Kenneth Train, Comment No. 194 at 13). The proposed rule Shipment/NES model now gives an input option for the cost ratios of repairing a washer and of buying a used washer instead of buying a new washer. This option is now an input in terms of the ratio between these options and buying a new washer. See TSD Chapter 9 on Shipments.

*Residence-Change-Induced Purchase.* The versions of the Shipment model presented at the July 22 Workshop only considered residence changes for those purchasing new housing. The model now includes purchases of washers for change of residences for new and existing housing. This improvement to the model has a significant effect on forecasted shipments.

*Implied Discount Rate Used in Historical Fit.* The implied discount rate is a value that describes how important energy cost savings are to consumers relative to increases in price. This is different from the 7% discount rate used in the analysis that describes the time value of money in order to convert dollar costs and savings (first price and operating savings) to the same year in order to determine the LCC. Ken Train commented that both a 20% implied discount rate which was derived from the conjoint analysis and a 75% implied discount rate which was derived from



the WashWise survey are consistent with historical shipments data. (Ken Train, Comment No. 194 at 4 and 13). A lower implied discount rate would place greater value on future operating cost savings and result in a lower drop in shipments as compared to the higher implied discount rate. We agree that several values for the implied discount rate can be used to fit a curve to historical data. We derived an implied discount rate by two methods: (1) The relationship of price and efficiency for current models (based on the engineering analysis) is consistent with an implied discount rate of 50–100%; (2) while stated preference surveys are often unreliable indicators of revealed preferences, we analyzed. We believe the WashWise intercept survey results are a more accurate measurement of the implied discount rate because its sole intent was specific to recent washer purchases, designed to measure price savings and interviewed consumers at the point of purchase. In contrast, the conjoint analysis provided a limited set of choices for implied discount rate and was conducted in a setting removed from purchase decision. See TSD Chapter 9. Both derivations (engineering analysis and WashWise) are consistent with an implied discount rate of 75%. This value is higher than found from studies of other appliances, perhaps in part because consumers are unaware of how much water costs contribute to operating expense. The Department is interested in comments.

*Historical Fit; Operating Cost Scaling; Stock Accounting; Housing Start Data; Initial Stock Assumption; and Operation Cost Comparison.* These parameters were refined, after the July 1999 Workshop, to reflect updated data or longer historical time periods. These changes were not prompted by any specific stakeholder comments.

*Fuel Site-to-Source Conversion.* The Appliance Energy Efficiency Standards Advisory Committee recommended (letter dated April 21, 1998) that we define a range of energy conversion factors and associated emission reductions based on generation displaced by standards. In the supplemental ANOPR, a constant conversion factor was used. EEI commented that the value shown for electric conversion (heat rates) on the NES spreadsheet is overstated by at least 11% because AEO 98 (authored by EIA) assigns the same factor for fossil fuel power plant heat rates to hydro-electric and other renewable forms of electric generation. This results in overstating primary energy savings from reductions in electricity usage. (EEI, No.122 at 7). We have addressed this issue by using a year-by-year conversion rate that is calculated based on displaced generation using NES.

*Fuel Prices.* As discussed in the LCC methodology section, after the supplemental ANOPR, marginal gas and electric prices were used, whereas previously average prices were used. The marginal price is the price paid for the last increment of fuel used. Refer to Section C. *Life-Cycle Cost (LCC) Analysis* for a description of these changes.

*Escalation of Fuel Prices.* The Alliance to Save Energy, ACEEE and the Oregon Office of Energy believe that assumptions of residential price declines are overstated. (Alliance to Save Energy, No. 148 at 1–2; ACEEE, No. 150 at 4; and Oregon Office of Energy, No. 162 at 6). The Alliance to Save Energy recommends that DOE analyze at least one case with flat residential energy prices. (Alliance to Save Energy, No. 148 at 1–2). ACEEE believes EIA estimates of residential energy price declines remain too high. It cites its April 1998 comments in which it referred to a survey by the Association of Energy Service Professionals of its members projected on average that residential bills will increase 4.9% with restructuring while commercial and industrial bills will decrease an average of 5.8 to 8.6%. Based on this information, ACEEE believes EIA's projections of future residential electricity prices are higher in the 1999 Annual Energy Outlook than in the 1998. ACEEE recommends that DOE conduct a sensitivity analysis with smaller price declines, such as the EIA high use forecast. (ACEEE, No. 150 at 4). Similarly, the Oregon Office of Energy believes residential rates will remain flat or rise somewhat. (Oregon Office of Energy, No.162 at 6).

While we generally agree that future energy prices are uncertain, we are relying on the EIA and its forecasts for the analysis. To account for the uncertainty, we have included the high and low fuel and electricity forecasts, i.e., AEO low & high economic growth scenarios in the analysis.

*Fuel Price Extrapolation from 2020 to 2030.* Refer to Section C. *Life-Cycle Cost (LCC) Analysis*for a description of this change.

*Water Heater Fuels.* LPG was added as a fuel type.

*Water and Wastewater Prices; and Water and Wastewater Price Escalation. Refer to Section C. Life-Cycle Cost (LCC) Analysis* for a description of these changes.

*Base Case H-axis Escalation Rates; and Base Case H-axis Sales.* These issues concern the estimated initial percentage of sales that are H-axis and the estimated escalation of H-axis sales. EEI, Whirlpool, NRDC, City of Seattle, Seattle Public Utilities, Alliance Laundry System LLC, Northwest Power Planning Council, ACEEE, and Amana believe that the projections for sale of high efficient units is too low. (EEI, No. 122 at 3; Whirlpool, No. 141 at 12; NRDC, No. 138 at 8; City of Seattle, Seattle Public Utilities, No. 126 at 2; Alliance Laundry, No. 145 at 20; Northwest Power Planning Council, No. 135 at 1; ACEEE, No. 150 at 7; and Amana, No. 146 at 2). Northwest Energy Efficiency Alliance, Oregon Office of Energy and the Alliance to Save Energy believe DOE overestimated sale in the absence of standards because many incentive programs are ending. (Northwest Energy Efficiency Alliance, No. 131 at 4; Oregon Office of Energy, No. 162 at 2; and Alliance to Save Energy, No. 148 at 3–4).

NRDC commented that the Supplemental ANOPR proposal to use a single basecase forecast with a known gradually increasing penetration of high efficiency clothes washers is incorrect. (NRDC, No. 138 at 8). Whirlpool, Amana, and Alliance Laundry System LLC provide estimates of the growth of H-axis clothes washers. Whirlpool commented that the forecasts presented in the TSD of 0.5% per year growth in market penetration is significantly low based on actual trends. (Whirlpool, No. 141 at 12). Amana commented that the assumption of 1.5% H-axis washers in 1995 with a 0.5% yearly increase has proved to be a conservative assumption and that its competitive information indicates a 6% market share of H-axis machines is a more appropriate number to use at this time. (Amana, No. 146 at 2). Alliance Laundry System LLC commented that it does not believe that front load washing penetration will actually shrink 20% in the next 24 months, as the DOE spreadsheet analysis presumes. (See TSD at page 8–16, Table 8.3). It believes that a more realistic projection would show front load washing machines gaining in acceptance for those consumers who choose energy and water savings over other features such as ergonomics or far lower purchase price. (Alliance Laundry, No. 145 at 20). With regard to the assumptions concerning sales in absence of standards, ACEEE believes the DOE forecast seems conservative in early years. Saturation are currently running higher than DOE's forecast. But, without a standard, we'd expect a leveling off at around 15% saturation (based on levels achieved in the North-

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West, even with heavy promotion). (ACEEE, No. 150 at 7).

The Northwest Energy Efficiency Alliance believes that the baseline forecast of resource-efficient clothes washers (RECWs) should begin with a current (1998) market penetration rate of 5–6%. It should then assume an annual increase of .75% every year until 2030 (i.e., 28% market share by 2030). This forecast would place the market share of RECWs at approximately 10% in 2030. This value represents the conservative end of the range of estimates provided by manufacturers participating in the Northwest Energy Efficiency Alliance's interviews, (Market Progress Evaluation Report: WashWise No. 2, publication No. E98–012.). (Northwest Energy Efficiency Alliance, No. 131 at 4.) Oregon Office of Energy believes DOE has potentially overestimated the base case share of high efficiency clothes washers defined by DOE, based on AHAM data, to be 35% more efficient than the minimum efficiency required of today's machines in future shipments. There is not a lot of expectation that this share will grow significantly, now or in the near term, as organized efficiency programs are seriously on the wane. (Oregon Office of Energy, No. 162, at 2).

DOE agrees the market share of the more efficient clothes washers is greater than estimated. Based on the comments, DOE has updated the estimate of the H-axis sales to assume in 1998 that 6.25% of clothes washers are H-axis, escalating at 0.5% a year.

*Discount Rate.* The NES analysis assumes a fixed discount rate of 7%. This is used in determining the savings and costs due to a new standard and for calculating the NPV. This is unchanged from the ANOPR.

*Manufacturer Mark-ups.* For the Supplemental ANOPR the shipment weighted average was used for the manufacturing mark-up. One value was used for all standard levels. For the proposed rule, a range of manufacturer mark-ups were calculated for each standard level. The average of the range was used.

2. Net National Employment

The Process Rule includes national employment impacts among the factors DOE considers in selecting a proposed standard. The Department estimates the impacts of standards on employment for appliance manufacturers, relevant service industries, energy suppliers, and the economy in general. We estimate two employment impacts: total and direct impacts. Total impacts—or net national employment impacts—are impacts on the national economy, including the manufacturing sector being regulated. Direct employment impacts would result if standards led to a change in the number of employees at manufacturing plants and related supply and service firms. The MIA only discusses the direct employment impacts.

Net national employment impacts from clothes washer standards are defined as net jobs created or eliminated in the general economy as a consequence of: (1) reduced spending by end users on energy (electricity, gas including LPG, and oil) and water; (2) reduced spending on new energy supply by the utility industry; (3) increased spending on the purchase price of new clothes washers; and (4) the associated indirect effects of those three factors throughout the national economy. The resulting net savings are expected to be redirected to other forms of economic activity. We expect these shifts in spending and economic activity to affect the demand for labor, but there is no generally accepted method for estimating these effects.

One method to assess the possible effects on the demand for labor of such shifts in economic activity is to compare sectoral employment statistics developed by the Labor Department's Bureau of Labor Statistics (BLS). The BLS regularly publishes its estimates of the number of jobs per million dollars of economic activity in different sectors of the economy, as well as the jobs created elsewhere in the economy by this same economic activity. BLS data indicates that expenditures in the electric sector generally create fewer jobs (both directly and indirectly) than expenditures in other sectors of the economy. There are many reasons for these differences, including the capital-intensity of the utility sector and wage differences. Based on the BLS data alone, we believe net national employment will increase due to shifts in economic activity resulting from the clothes washer standards.

In developing this proposed rule, the Department attempted a more precise analysis of national employment impacts using an input/output model of the U.S. economy. The model, ImBuild, was developed by the Office of Building Technology, State and Community Programs, DOE. ImBuild is a PC-based economic analysis model that characterizes the interconnections among 35 sectors as national input/output structural matrices. It can be applied to future time periods. ImBuild calculates the total effect on employment, including job creation or deletion in the manufacturing sector. Inputs to the ImBuild model are outputs of the NES/Shipment spreadsheet. Since the electric utility sector is more capital-intensive and less labor-intensive than other sectors (see Bureau of Economic Analysis, *Regional Multipliers: A User Handbook for the Regional Input-Output Modeling System (RIMS II)*, Washington, DC., U.S. Department of Commerce, 1992), a shift in spending away from energy bills into other sectors would be expected to increase overall employment. For more details on the net national employment analysis, please see Chapter 13 in the TSD.

Because this is a new analysis for an energy conservation standard rulemaking, we are requesting public comments on the validity of the analytical methods used and the appropriate interpretation and use of the results of this analysis.

*F. Consumer Analysis*

In determining whether a standard is economically justified, we consider any other factors that the Secretary deems to be relevant. Under this factor, the Department is considering the life-cycle cost impacts on those subgroups of consumers who, if forced by standards to purchase H-axis machines, would choose to repair their existing machines.

*Consumer Sub-Groups*

The consumer analysis evaluates impacts to any identifiable groups, such as consumers of different income levels, who may be disproportionately affected by any national energy efficiency standard level. The impact on consumer sub-groups is determined using the LCC spreadsheet model for low income households and for household where the head of the household was a senior.

*G. Manufacturer Impact Analysis*

The manufacturer analysis estimates the financial impact of standards on manufacturers and calculates impacts on employment and manufacturing capacity.

Prior to initiating the detailed MIA for the clothes washer rulemaking, the Department prepared a document titled "Clothes Washer Manufacturer Impact Analysis" which outlines procedural steps and identifies issues for consideration in the MIA. This document was presented at a public workshop held on December 14–15, 1998. It was based on the general framework for the MIA presented by the Department at a workshop in March 1997 and was modified for its application to the clothes washer rule.

As proposed in the approach document, the MIA was conducted in three phases. Phase 1, "Industry Profile," consisted of the preparation of



an industry characterization. Phase 2, "Preliminary Industry Cash Flow," had as its focus the larger industry. In this phase, the Government Regulatory Impact Model (GRIM) was used to prepare a preliminary industry cash flow analysis. Here, the Department used publicly available information developed in Phase 1 to adapt the GRIM structure to facilitate the analysis of new clothes washer standards. In Phase 3, "Sub-Group Impact Analysis," the Department discussed fully the results of the Preliminary Industry Cash Flow analysis with each manufacturer and identified manufacturer-specific variances.

Phase 3 also entailed documenting additional impacts on employment and manufacturing capacity through a structured interview process.

*Phase 1, Industry Profile.* Phase 1 of the MIA consisted of preparing an Industry Profile. Prior to initiating the detailed impact studies, DOE received input on the present and past structure and market characteristics of the clothes washer industry. This activity involved both quantitative and qualitative efforts to assess the industry and products to be analyzed. Issues addressed included manufacturer market shares and characteristics, trends in the number of firms, the financial situation of manufacturers, and trends in clothes washer characteristics and markets.

The industry profile included a top-down cost analysis of the appliance industry that was used to estimate the disaggregated costs of a baseline clothes washer. The cost structure was used to derive cost and financial inputs for the GRIM—e.g., material, labor, overhead, depreciation, Sales General & Administration (SG&A), and Research & Development (R&D). The profile was also instrumental in estimating the manufacturer and retail mark-ups that were used in the Life-Cycle Cost Analysis.

Publicly-available quantitative data published by the U.S. Bureau of Census with regards to the clothes washer industry was included in Chapter 3 of the preliminary Technical Support Document (TSD) dated October 1998 accompanying the clothes washer Supplemental ANOPR dated November 19, 1998. These reports include such statistics as the number of companies, manufacturing establishments, employment, payroll, value added, cost of materials consumed, capital expenditures, product shipments, and concentration ratios.

The Department also utilized additional sources of information to further characterize the clothes washer industry. These included company Securities and Exchange Commission (SEC) 10K and annual reports, Moody's company data reports, Standard & Poor's (S&P) stock reports, value line industry composites, and Dow Jones Financial Services.

*Phase 2, Preliminary Industry Cash Flow.* Phase 2 of the MIA had as its focus the "larger" industry. The analytical tool used for calculating the financial impacts of standards on manufacturers is the GRIM. In Phase 2, the GRIM was used to perform a preliminary industry cash flow analysis.

For the Preliminary Industry Cash Flow Analysis, DOE prepared a list of financial values to be used in the GRIM industry analysis. These were calculated by studying publicly-available financial statements of clothes washer manufacturers. A detailed definition of financial inputs and their values for a "prototypical" clothes washer manufacturer was presented in Chapter 9 of the preliminary TSD. Values for currently sold "Base Case" prices were derived from the Bureau of Census's Current Industrial Reports (CIRs). The dollar value of clothes washer shipments from factories is divided by the quantity of clothes washers shipped to arrive at the per-unit manufacturer price. In order to estimate manufacturing costs—labor, materials, depreciation/tooling, etc.—from the average manufacturer prices obtained from the CIRs, a typical clothes washer industry cost structure was developed using publicly-available information from the Census of Manufacturers (CMs) and from industry statistics obtained from the SEC–10K reports. Finally, in preparing the Preliminary Industry Cash Flow Analysis, DOE used the same clothes washer shipment scenarios developed for the National Energy Savings (NES) spreadsheet.

The Department received a comment accurately signaling an error in the Preliminary Industry Cash Flow Analysis calculation of the cost of capital. (NRDC, No. 138, at 12–13). The suggested change was made and its impact is the reduction of the discount factor from 7.25% to 6.65%. Another comment received concerned DOE's assumption of a 10.5% working capital requirement. Given ValueLine's estimate of just under 7%, a more detailed explanation for the Department's assumption was requested. (Oregon Office of Energy, No. 162 at 8). The Department recognizes that there exists considerable variability in the working capital requirements of various firms based on information obtained from SEC 10–K reports. Discussions with appliance industry analysts indicated that working capital requirements are in the 7–14%, thus the ANOPR input assumption. This assumption was subsequently verified through interviews with six clothes washer manufacturers and found to be accurate.

*Phase 3, Sub-Group Impact Analysis.* DOE conducted detailed interviews with clothes washer manufacturers representing over 99% of domestic clothes washer sales to gain insight into the potential impacts of standards. During these interviews, the Department solicited the information necessary to validate industry cash flows and to assess employment and capacity impacts.

The interview process played a key role in the MIA, since it allowed manufacturers to privately express their views on important issues and provide confidential information needed to assess financial, employment, and other business impacts. To verify the assumptions used to derive the Preliminary Industry Cash Flow, an interview guide solicited information on the possible impacts of new standards on manufacturing costs, product prices, and sales.

Each manufacturer was provided a version of the GRIM that included discrete manufacturer costs for all percentiles reported by the AHAM. In preparation for the interview, each manufacturer could, if desired, input its own data and assumptions to develop its own expected cash flow. Alternatively, manufacturers could select the percentile values that best represented their costs at different efficiency levels.

The evaluation of the possible impacts on direct employment and manufacturing assets also drew heavily on the information gathered during the interviews. The interview guide solicited both qualitative and quantitative information. Supporting documentation was requested whenever applicable. Interview participants were asked to identify all confidential information provided in writing or orally as such. Approximately two weeks following the interview, an interview summary was provided to give manufacturers the opportunity to confirm the accuracy and protect the confidentiality of all collected information.

*Small Manufacturer Sub-Group.* We received a comment following the publication of the preliminary TSD indicating that smaller manufacturers of clothes washers could be negatively affected more than other manufacturers by any proposed standard. (Amana, No. 146 at 3). To assess the potential impacts of possible washer standards on

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smaller manufacturers, Arthur D. Little (ADL) conducted preliminary interviews with the three smallest clothes washer manufacturers (by market share) and held discussions on possible approaches to performing the MIA for smaller manufacturers. ADL and the manufacturers discussed how a small-manufacturer GRIM could be constructed and contrasted with the industry cash flow analysis. Foremost in the discussions were issues surrounding data collection and aggregation and the ensuing confidentiality concerns given the small group of manufacturers and their unbalanced size.

All of the smaller manufacturers worked with ADL to develop a company-specific GRIM analysis for their firms. Even within the small manufacturer sub-group, ADL found significant differences in financial structure for the firms depending on their business models (*e.g.*, original equipment manufacturer (OEM) vs. retail emphasis, product market niche). ADL found that from a financial standpoint the common characteristic of this group, in contrast with the overall industry, was its need to spread fixed costs over smaller production volumes. During the interviews, small manufacturers demonstrated that several of the key costs necessary to meet any new regulation are largely independent of the product volume produced. The most apparent are the costs necessary to design a new product meeting the proposed energy standards. Other costs, such as plant engineering, some tooling, and other capital costs, have significant portions that are independent of final production volumes.

To assess the "differential" potential impacts of possible washer standards on smaller manufacturers without revealing individual manufacturers' proprietary information, ADL prepared a cash flow analysis of the potential effects on a "prototypical" smaller manufacturer. The basic approach to analyzing the economic effects on a smaller manufacturer involved determining the smaller company's fixed cost structure relative to the industry average and the likely ability of the smaller company to recover its full costs and investments after implementation of a new standard.

*Dryer Analysis:* An important consideration regarding new efficiency standards that came to light during the course of the manufacturer interviews, was the pull-through effect of clothes washers on the clothes dryer market. The majority of manufacturers indicated that stringent standards on clothes washers would have an effect on dryers since dryer sales are highly correlated to washer sales as people frequently buy these appliances as a set. A separate GRIM (referred to as the Dryer GRIM) was prepared in an effort to model the financial impact of these considerations on the dryer business.

*Impact on Clothes Washer Repair Industry:* Should an increase in energy efficiency standards result in higher prices for new clothes washers, consumers may be influenced to repair old units rather than purchase new ones at the higher price. The Oregon Office of Energy strongly believes the parts side of the manufacturers' businesses should be included in the manufacturer impact analysis and urges the Department to gather the data necessary. (Oregon Office of Energy, No. 190, at 10). The Department agrees that the repair business should be considered. Based on the forecast of clothes washer repairs in the LBNL shipments model, the Department estimated the impact of a change in clothes washer repair revenues on the NPV of the clothes washer manufacturers' repair parts business.

### H. Utility Analysis

The utility analysis estimates the effects of the reduced energy consumption due to improved appliance efficiency on the utility industry. Because electric utility restructuring is well underway, it is no longer valid to assume a cost recovery mechanism under public utility regulation, which was the basis of previous utility impact analyses. Therefore, this utility analysis consists of a comparison between forecast results for a case comparable to the AEO99 Reference Case and forecasts for policy cases incorporating each of the clothes washer trial standard levels.

Table 4 lists the major assumptions DOE used in the clothes washer utility analysis. We discuss each of these assumptions briefly in this section. For more details on the utility analysis, see Chapter 12 in the TSD.

TABLE 4.—ASSUMPTIONS USED IN THE UTILITY IMPACT ANALYSIS

| Description | Assumption |
|---|---|
| Energy Prices | AEO99. |
| Energy Savings | From the NES spreadsheet as site energy savings. |
| Interpolation of Scaling Factors. | Linear. |

The Department uses a variant of EIA's widely recognized National Energy Modeling System (NEMS) called the National Energy Modeling System-Building Research and Standards (NEMS–BRS) for the utility analysis, together with some scaling and interpolation calculations.[5] EIA uses NEMS primarily for the purpose of preparing the Annual Energy Outlook. Using NEMS, EIA produces a baseline forecast for the U.S. energy economy through 2020. The NEMS–BRS model used for this analysis is based on the AEO99 version of NEMS with minor modifications.

NEMS–BRS has several advantages that have led to its adoption as the source for basic forecasting in the appliance energy efficiency analyses. NEMS–BRS relies on the AEO99 assumptions, which are well-known and accepted due to the exposure and scrutiny each AEO receives. In addition, the comprehensiveness of NEMS–BRS permits the modeling of interactions among the various energy supply and demand sectors and the economy as a whole, so it produces a sophisticated picture of the effects of appliance standards. Perhaps most importantly, because it explicitly simulates the impact on the industry, NEMS–BRS provides an accurate estimate of marginal effects, which yield better indicators of actual effects than estimates based on industry-wide average values. Marginal rates show only the effects of standards. Average rates show the effects of standards as well as what is happening in the market.

To analyze the effects of standards, we evaluate the trial standard levels by entering the changes in electricity, gas, LPG, and oil consumption values into the NEMS–BRS Residential Demand Module. We took the energy savings input from the NES spreadsheet, applied it to the clothes washer, water heater, and clothes dryer end uses, and allocated it appropriately among census divisions. In the TSD, we report results for several key industry parameters, notably residential energy sales, generation, and installed capacity, including the fuel mix that is used for generation. See Chapter 12 of the TSD for more details.

### I. Environmental Analysis

The Department determines the environmental impacts of each standard level as required in Section

[5] For more information on NEMS, please refer to the National Energy Modeling System: An Overview 1998. DOE/EIA–0581 (98), February, 1998. DOE/EIA approves use of the name NEMS to describe only an official version of the model without any modification to code or data. Because our analysis entails some minor code modifications and the model is run under various policy scenarios that are variations on DOE/EIA assumptions, the name NEMS–BRS refers to the model as used here. BRS is DOE's Building Research and Standards office.



325(o)(2)(B)(i)(VI), 42 U.S.C. 6295(o)(2)(B)(i)(VI). Specifically, DOE calculates the reduction in carbon from carbon dioxide ($CO_2$) and nitrogen oxides ($NO_X$) emissions with the NEMS–BRS computer model, together with external calculations. DOE also calculated the reduction in sulfur dioxide ($SO_2$) household emissions which are not covered by NEMS–BRS.

Table 5 lists the major assumptions DOE used in the clothes washer environmental analysis. We discuss each of these assumptions briefly in this section. For more details on the environmental analysis, please see the Environmental Assessment which is published with the TSD.

TABLE 5.—ASSUMPTIONS USED IN THE ENVIRONMENTAL ANALYSIS

| Description | Assumption |
|---|---|
| Energy Prices | AEO99. |
| Energy Savings | From the NES spreadsheet as site energy savings. |
| Interpolation of Scaling Factors. | Linear. |
| Household Emissions | C, $NO_X$ & $SO_2$ estimated from general factors. |

We analyze the environmental effects of proposed clothes washer energy-efficiency standards using NEMS–BRS plus some scaling and interpolation calculations. Inputs to NEMS–BRS are similar to those used for the AEO99 reference case, except residential energy usage for clothes washer, water heaters, and clothes dryers is reduced by the amount of energy (gas, oil, LPG, and electricity) saved due to the clothes washer trial standard levels.

The environmental analysis considers two pollutants, $SO_2$ and $NO_X$, and one emission, carbon. NEMS–BRS has an algorithm for estimating $NO_X$ emissions from power generation. Since we use the AEO99 version of NES, the May 25, 1999, EPA rule (64 FR 28249) on trading of $NO_X$ is fully incorporated in our analysis. However, NEMS–BRS estimates of $NO_X$ emissions are incomplete because NEMS–BRS does not estimate household emissions. Household emissions result from the combustion of fossil fuels, primarily natural gas, within individual homes. Because households that use natural gas, fuel oil, or LPG contribute to $NO_X$ emissions, DOE's analysis includes a separate household $NO_X$ emissions estimation, based on simple emissions factors derived from the general literature. NEMS–BRS tracks carbon emissions based on the total of fuels consumed. NEMS–BRS also produces comprehensive estimates of the benefits of the trial standard levels, so no additional analysis is necessary. Because $SO_2$ emissions from power plants are capped by clean air legislation, physical emissions of this pollutant from electricity generation will be only minimally affected by possible clothes washer standards. Therefore, we do not consider power plant $SO_2$ emissions here, although we report household emissions savings using a method similar to that described for $NO_X$. See Appendix EA–1 in the TSD for a description of the methodology used to derive emission factors for residential combustion.

The NES spreadsheet provides the input of energy savings for NEMS–BRS, which then produces the emissions forecast. We calculate the net benefits of the standard as the difference between emissions estimated by the reference case version of NEMS–BRS and the emissions estimated with the trial clothes washer standard in place. See the Environmental Assessment (EA) which is published with the TSD for details.

## V. Analytical Results

### A. Trial Standard Levels

In selecting trial standard levels, we followed the guidance set forth in the Process Rule. We identified and selected candidate standard levels at the lowest LCC (Trial Standard Levels 4 and 5), a three year or less payback period (Trial Standard Levels 1 and 2), and the most energy efficient achievable design (Trial Standard Level 6). Additionally, we selected as a trial standard level the efficiency levels proposed in the joint recommendation submitted to the Department by clothes washer manufacturers and energy conservation advocates (Trial Standard Level 3). The Joint Stakeholders Comment levels would go into effect in stages, with the first level going into effect on January 1, 2004, and the second level going into effect on January 1, 2007. The initial standard will achieve a modified energy factor (MEF) of 1.04 (approximately a 22 percent reduction in energy consumption over the current standard). The later standard will achieve a MEF of 1.26 (approximately 35 percent reduction in energy consumption over the current standard).

We have examined six trial standard levels. Table 6 presents the baseline and trial standard levels, the associated MEF values and the percentage reduction in energy use, from the baseline, achieved at the trial standard level. Trial Standard Level 3 is the combination of standards proposed in the Joint Stakeholders Comment. (Joint Comment No. 204). In addition, Table 6 presents the retail price and incremental price from the baseline. For the clothes washer rulemaking the method we used to generate the manufacturing costs needed for the engineering analysis was the efficiency level approach, reporting relative costs of achieving energy efficiency improvements (represented here as the percentage reduction in energy use).

TABLE 6.— TRIAL STANDARD LEVELS FOR CLOTHES WASHERS

| Trial standard level | MEF | Percent reduction in energy use | Retail price | Incremental price from baseline |
|---|---|---|---|---|
| Baseline | 0.817 | 0 | $421 | |
| 1 | 1.021 | 20 | 450 | $29 |
| 2 | 1.089 | 25 | 534 | 113 |
| 3 | 1.04 in 2004 | 22 in 2004 | 474 | 53 |
| | 1.26 in 2007 | 35 in 2007 | 661 | 240 |
| 4 | 1.257 | 35% | 661 | 240 |
| 5 | 1.362 | 40% | 664 | 243 |
| 6 | 1.634 | 50% | 775 | 354 |

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1. Economic Impact on Consumers

a. *Life-Cycle-Cost.* To evaluate the economic impact on consumers, we conducted a LCC analysis for each of the trial standard levels as well as the proposed standards. LCC results are presented as differences in the LCC relative to the baseline clothes washer design. Life-cycle cost was determined for three scenarios: low, reference and high growth. The reference growth scenario assumes the average fuel price forecast found in the Energy Information Administration's (EIA) Annual Energy Outlook 1999 (AEO99) and expected water price escalations based on earlier DOE analysis, which can be found in Section 7.2 of the TSD. The high growth scenario assumes high economic growth will increase the demand for fuel, and therefore increase the price of fuel. The high growth scenario also assumes a high water price and wastewater escalation rate. The reference case is assumed by AEO the most likely case and is bounded by the high and low growth scenarios. In Table 7 we present results for the reference case. Results for the high and low growth scenarios can be found in Section 7.2.3 of the TSD.

Table 7 shows the average LCC savings and the percentage of households benefitting for each of the trial standard levels. The average LCC savings for each of the trial standards and the joint comment proposed standards are positive. The convention is used whereby all values in parentheses are negative. A negative change in LCC means that the LCC after standards is lower than without standards, and implies positive LCC savings. Note that washers purchased under stage 1 and stage 2 of joint comment proposal have different LCC savings. The LCC analysis indicates that 89% of households purchasing a clothes washer at the 1.04 MEF level would benefit, in comparison to the LCC of a baseline clothes washer. Starting in 2007, the LCC analysis indicates that 80% of households will benefit from the joint comments standard level, in comparison to the LCC of a baseline clothes washer.

TABLE 7.—SUMMARY OF LCC RESULTS FOR THE REFERENCE CASE

| Trial standard level | MEF | Mean change in LCC from baseline [1] | Percent with LCC less than baseline [2] |
|---|---|---|---|
| 1 | 1.021 | (61) | 84 |
| 2 | 1.089 | (211) | 87 |
| 3 | 1.04 in 2004 | (103) | 89 |
| | 1.26 in 2007 | (260) | 80 |
| 4 | 1.257 | (242) | 79 |
| 5 | 1.362 | (243) | 80 |
| 6 | 1.634 | (176) | 69 |

[1] The baseline LCC, based on the shipment weighted average of the most likely costs, is $1633.
[2] For a sample of 10,000 households.

b. *Payback Period.* As part of the LCC analysis is the payback analysis. We report the median payback for the reference case from the distribution of paybacks for each trial standard level in Table 8. The median payback is the median number of years required to recover, in energy savings, the increased costs of the efficiency improvements. The mean or average payback period is also reported. Results for the high and low growth scenarios can be found in Section 7.2.3 of the TSD.

TABLE 8.—SUMMARY OF PAYBACK PERIOD RESULTS—AEO REFERENCE

| Trial standard level | MEF | Median [1] payback | Mean [1] payback |
|---|---|---|---|
| 1 | 1.021 | 0.6 | 4.4 |
| 2 | 1.089 | 4.0 | 5.0 |
| 3 | 1.04 in 2004 | 3.5 | 4.6 |
| | 1.26 in 2007 | 5.0 | 6.8 |
| 4 | 1.257 | 5.1 | 7.0 |
| 5 | 1.362 | 5.1 | 7.0 |
| 6 | 1.634 | 7.0 | 8.7 |

[1] For a sample of 10,000 households.

c. *Rebuttable Presumption Payback.* The Act states that if the Department determines that the payback period of a standard is less than three years as calculated under the test procedure, there shall be a rebuttable presumption that such trial standard level is economically justified. The Act further states that if this three year payback is not met, this determination shall not be taken into consideration in deciding whether a standard is economically justified. Section 325(o)(2)(B)(iii), 42 U.S.C. 6295(o)(2)(B)(iii). Rebuttable Presumption Paybacks (PBPs) are presented in order to provide the established rebuttable presumption that a energy efficiency standard is economically justified if the additional product costs attributed to the standard are less than three times the value of the first year energy cost savings. Rather than using distributions for input values, the Rebuttable PBP is based on discrete values and is based on the DOE clothes washer test procedure assumptions. These values (including cycles per year, electric fuel source, etc.) correspond to those outlined in the DOE test procedure, found in 10 CFR 10, Volume 3, Part 430, Subpart B, Appendix J1. The result is a single payback value and not a distribution of PBPs.

Payback periods are calculated at the new standard level for all efficiency levels of product sold in the basecase. For this analysis the Department has assumed two efficiency levels in the basecase: baseline units (MEF=.817) and units at a 35% reduction in the energy use of the baseline model (MEF=1.26) to represent the H-axis market segment. With the presently available data, the baseline efficiency level is weighted with a market share of 91% and the horizontal axis market share is weighted at 9%.



The payback periods are calculated for the expected effective year of the standard ( 2004 or 2007) and are presented in Table 9.

TABLE 9.—REBUTTABLE PRESUMPTION PAYBACK IN YEARS

| Trial standard level | MEF | Payback for baseline to standard level | Payback for 35% efficiency level to standard level | Market share weighted payback period |
|---|---|---|---|---|
| | | Market share = 91% | Market share = 9% | |
| 1 | 1.021 | 2.1 | NA | 2.1 |
| 2 | 1.089 | 2.9 | NA | 2.9 |
| 3 | 1.04 in 2004 | 2.5 | NA | 2.5. |
| | 1.26 in 2007 | 4.1 | 19.8 | 5.5 |
| 4 | 1.257 | 4.2 | NA | 4.2 |
| 5 | 1.362 | 4.3 | 19.6 | 5.7 |
| 6 | 1.634 | 5.7 | 23.2 | 7.3 |

**Note:** NA = not applicable.

The results in Table 9 are based on an increase of H-axis sales per year of 0.5%. Previously the annual escalation rate of H-axis washer sales market were assumed to capture an additional 0.5% per year of all clothes washer sales but now the annual sales of H-axis clothes washers is determined by an amount equal to 0.5% of the previous year's V-axis sales. The negotiated scenario of a two-tier standard with MEF levels of 1.04 becoming effective in the year 2004 and a MEF level of 1.26 becoming effective in the year 2007 is also represented. The values shown for the second tier were calculated for the year 2007. All other calculations are based on the year 2004. The effective year does not have a great impact on the payback period because only the fuel and water price are different for different years.

As can be seen from Table 9, Trial Standard Levels 1, 2 and the first level of 3 satisfy the rebuttable presumption test.

*d. Consumer Sub-Group Analysis.* As part of the consumer analysis we evaluated the impact to any identifiable groups or consumers, such as households of different income levels, who may be disproportionately affected by any national energy efficiency standard level. This analysis examines the economic impacts on different groups of consumers by estimating the average change in LCC and by calculating the fraction of households that would benefit. We analyzed the potential effect of standards for households with low income levels and senior households, two consumer subgroups of interest identified by DOE and supported by stakeholders. Seniors is defined as having a head of household over 65. Low income is defined as at 100% of poverty level. (Inputs to the spreadsheet used in determining life-cycle-cost and payback periods are explained in detail in Chapter 7 of the TSD). We present the results of the analysis in Table 10.

TABLE 10.—CONSUMER SUBGROUP LCC SAVINGS AND PERCENT OF HOUSEHOLDS BENEFITTING

| Trial std levels | MEF | Sample households benefitting (%) | | | Average LCC savings ($) | | |
|---|---|---|---|---|---|---|---|
| | | Total | Senior | Low income | Total | Senior | Low income |
| 1 | 1.021 | 84 | 79 | 85 | 61 | 41 | 69 |
| 2 | 1.089 | 87 | 80 | 88 | 211 | 137 | 243 |
| 3 | 1.04 in 2004 | 90 | 84 | 90 | 103 | 68 | 118 |
| | 1.26 in 2007 | 81 | 72 | 81 | 260 | 147 | 310 |
| 4 | 1.257 | 79 | 71 | 81 | 242 | 132 | 289 |
| 5 | 1.362 | 80 | 70 | 80 | 243 | 130 | 287 |
| 6 | 1.634 | 69 | 55 | 71 | 176 | 61 | 227 |

The two consumer subgroups show the same trend in average LCC savings and percent of sample households benefitting as the total sample of households.

For the low-income subgroup the percentage of households benefitting from standards is either the same or greater than for the general population. This can be explained by looking at the cycles per year (i.e., washer loads) used in determining the LCC. This number is estimated from the number of occupants in a household. Our RECS sample of low income households showed a greater number of people per household and we calculated 410 cycles per year, greater than the 392 used for the general population.

The senior household subgroup had less people per household, and therefore had less wash loads per year (on average 299 wash loads per year or 24% less wash loads). Therefore, seniors benefitted from standards somewhat less.

Other differences that could explain changes in LCC and the percentage in a subgroup benefitting from standards are other factors that determine the amount spent on fuel. Fuel costs are higher if electric water heaters and dryers are used instead of gas. The geographic location of these populations and the price they pay for fuel also affect the number of households in a subgroup

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benefitting. These differences were small when compared to the differences in LCC due to the cycles per year between the subgroups and the total sample population.

An analysis on the effects on payback period by subgroup are shown in Table 11. In agreement with the LCC results, the payback periods for the low income subgroup were somewhat shorter than that for the overall population, while the payback periods were somewhat longer for the senior subgroup. The primary reason for the differences in payback period is the same as for the LCC analysis; the differences in wash loads per year.

TABLE 11.—CONSUMER SUBGROUP PAYBACK PERIOD COMPARISONS

| Trial Std levels | MEF | Average payback period in years | | |
|---|---|---|---|---|
| | | Total RECS sample | Senior | Low income |
| 1 | 1.021 | 4.4 | 5.4 | 4.4 |
| 2 | 1.089 | 5.0 | 6.4 | 4.9 |
| 3 | 1.04 in 2004 | 4.6 | 5.7 | 4.5. |
| | 1.26 in 2007 | 6.8 | 8.4 | 6.5 |
| 4 | 1.257 | 7.0 | 8.7 | 6.8 |
| 5 | 1.362 | 7.0 | 8.8 | 6.9 |
| 6 | 1.634 | 8.7 | 10.9 | 8.4 |

2. Economic Impact on Manufacturers

We performed a Manufacturer Impact Analysis (MIA) to determine the impact of standards on manufacturers. The complete analysis is Chapter 11 of the TSD. In conducting the analysis, we conducted detailed interviews with six clothes washer manufacturers that together supply more than 99% of the domestic clothes washer market. The interviews provided valuable information used to evaluate the impacts of a new standard on manufacturers' cash flows, manufacturing capacities and employment levels.

*Definition of Shipments Scenarios.* The Manufacturer Impact Analysis was conducted using three shipment scenarios: High Price Elasticity Scenario, Medium Price Elasticity Scenario, and Medium Price/Income Elasticity Scenario. The High Price Elasticity scenario most closely resembles the original shipments forecast which was presented at the July 1999 workshop and used during the interviews. The results presented in this notice are for the Medium Price Elasticity Scenario—the reference case—which forecasts a reduction in clothes washer shipments approximately half way between the other two scenarios. Additional parameters used in forecasting shipments are summarized in Table 17. Results for the High Price Elasticity and Medium Price/Income Elasticity Scenarios are shown in Chapter 11 of the TSD.

*Definition of Business Scenarios.* During the interviews, several manufacturers stated that they would possibly exit the clothes washer manufacturing business if the standard exceeded certain improvement levels. To capture this uncertainty in future industry dynamics, ADL evaluated the industry financial impacts using two different business scenarios. In the first scenario, the "no consolidation scenario," it is assumed that all current manufacturers continue to manufacture clothes washers and maintain their market share, even if they believe they will be unable to recuperate their incremental costs. This could result in a negative Standard Case industry net present value (INPV) for some manufacturers. In the second scenario, the "industry consolidation scenario," it is assumed that some manufacturers would exit the industry or lose significant market share. In this scenario, their volumes are redistributed among the remaining and more profitable players in the industry.

*Industry Cash Flow Results.* The Department used the interviews to understand each manufacturer's incremental costs and its ability to pass through these costs at the various standard levels. Some manufacturers provided their cash flow analysis using the GRIM spreadsheet while others provided information on mark-ups, cost pass-through assumptions, prices, and expected shipments which were used by DOE to develop individual company cashflows. Individual company cashflow results were aggregated to calculate standard induced changes in Industry NPV (INPV) at each of the potential standard levels.

The aggregated industry Standard Case INPV for the "No Consolidation" scenario and the Medium Price Elasticity Shipment Scenario is presented in Table 12. Results for both business scenarios and the three shipment scenarios are presented in Chapter 11 of the TSD. Not all manufacturers provided information at the 50% level (MEF=1.634) and hence the cash flows at this level were extrapolated from the available information. Similarly, the Department extrapolated data submitted at the 20% and 25% efficiency levels to estimate the impacts of a two step standard with a reduction in the energy use of the baseline model of approximately 22% (MEF=1.04) in 2004 followed by a second step at 35% in 2007.

TABLE 12.—INDUSTRY CASH FLOW RESULTS FOR THE "NO CONSOLIDATION" SCENARIO—MEDIUM PRICE ELASTICITY

| Trial standard level | MEF | Base case INPV (million) | Standard case INPV ($million) | Change in INPV ($million) | % Change in INPV | Standard deviation % NPV |
|---|---|---|---|---|---|---|
| 1 | 1.021 | 1,439.1 | 1,420.4–1,349.5 | (18.7)–(89.6) | (1.3)–(6.2) | 11.5 |
| 2 | 1.089 | 1,439.1 | 1,033.8–877.2 | (405.2)–(561.9) | (28.2)–(39.0) | 11.4 |
| 3 | 1.04 in 2004, 1.26 in 2007 | 1,439.1 | 1,028.0–920.8 | (411.0)–(518.3) | (28.6)–(36.0) | 15.8 |
| 4 | 1.257 | 1,439.1 | 944.7–842.3 | (494.4)–(596.8) | (34.4)–(41.5) | 17.7 |
| 5 | 1.362 | 1,439.1 | 1,002.1–929.9 | (437.0)–(509.2) | (30.4)–(35.4) | 27.7 |



TABLE 12.—INDUSTRY CASH FLOW RESULTS FOR THE "NO CONSOLIDATION" SCENARIO—MEDIUM PRICE ELASTICITY—Continued

| Trial standard level | MEF | Base case INPV (million) | Standard case INPV ($million) | Change in INPV ($million) | % Change in INPV | Standard deviation % NPV |
|---|---|---|---|---|---|---|
| 6 | 1.634 | 1,439.1 | 989.7–815.2 | (449.4)–(623.8) | (31.2)–(43.3) | 27.7 |

From Table 12, we note that energy efficiency standards could result in losses of INPV between $411.0 and $518.3 million (28.6–36%) for the consensus proposal (Trial Standard Level 3). Although the impacts of the consensus proposal approach those of Trial Standard Levels 5 and 6, the Department found the impacts of Trial Standard Levels 5 and 6 to be much more unevenly distributed between firms. This large variability of impacts is attributed to the presence of existing product at these levels (H-axis designs) for some firms which may gain a competitive advantage over firms that do not have product.

The standard deviation (SD)[6] values reported in Table 12 provide a measure of how widely individual companies' percentage NPV changes are dispersed from the industry percentage change in value (% change in INPV). Calculating the SD of individual company % value change at each efficiency level from the industry INPV % change yields the following results: at Trial Standard Level 1 the SD is 11.5%; at Trial Standard Level 2 the SD is 11.4%; at Trial Standard Level 3 the SD is 15.8%, at Trial Standard Level 4 the SD is 17.7%; and at Trial Standard Levels 5 and 6 the SD leaps to 27.7%. This is significant because the greater the difference in impacts between manufactures, the greater the risk of industry consolidation. Several manufacturers believe that setting the standard at Trial Standard Level 5 or more would result in industry consolidation and the exit of two or three firms.

Compared with Trial Standard Level 4 (MEF=1.26 in 2004), the industry impacts of the consensus proposal (Trial Standard Level 3) are lower and more evenly distributed among the manufacturers. A potential factor lessening the impact of the consensus proposal from the impacts shown is the possible effect of technological innovation. Delaying the standard implementation date to 2007 for the more stringent level (MEF=1.26) gives manufacturers more time to research and develop lower-cost solutions to achieving higher standards.

*Impact on Clothes Dryer Business.* The majority of manufacturers indicated that stringent standards on clothes washers would have a corresponding effect on clothes dryers. Dryer sales are highly correlated to washer sales as people frequently buy these appliances as a set. From the manufacturers' data, it is estimated that approximately 45% to 55% of washers are sold in pairs with dryers. Therefore, any change in washer volumes will impact a significant portion of the dryer business. A separate GRIM was run in an effort to model the financial impact of these considerations on the dryer business. Table 13 presents the Base and Standard Case INPV for the Medium Price Elasticity Shipment Scenario. The loss of value is significant for standard levels 2 and greater.

TABLE 13.—STANDARD CASE NPV FOR DRYER BUSINESS—MEDIUM PRICE ELASTICITY SCENARIO

| Trial standard level | MEF | Base case INPV ($million) | Standard case INPV ($million) | Change in INPV ($million) | % Change in INPV |
|---|---|---|---|---|---|
| 1 | 1.021 | 665.1 | 664.5 | (0.6) | (0.1) |
| 2 | 1.089 | 665.1 | 660.6 | (4.48) | (0.7) |
| 3 | 1.04 in 2004, 1.26 in 2007 | 665.1 | 654.1 | (11.0) | (1.7) |
| 4 | 1.257 | 665.1 | 648.3 | (16.84) | (2.5) |
| 5 | 1.362 | 665.1 | 647.9 | (17.2) | (3.9) |
| 6 | 1.634 | 665.1 | 638.3 | (26.8) | (4.0) |

At the more stringent standard levels, manufacturers expect that they will redesign and retool their clothes washer platforms and these changes will dictate a change to the dryer platform as well. Manufacturers estimate that, at the more stringent standard levels of 25% and above, total industry conversion costs for dryers could be in the range of $25 million to $75 million. The Dryer GRIM does not consider any conversion costs (capital and design) that might be required to upgrade the dryer platforms at the more stringent standard levels. Any such investments will increase the negative impact on the INPV of the dryer industry over and above those presented in Table 13.

In addition, based on data gained from manufacturers, a decline in washer-related dryer sales will result in a decline in employment related to dryer production. The greatest impact is at and above a 35 percent reduction in the energy use of the baseline model, when shipments are expected to decline substantially, resulting in a similar impact on related employment levels. Table 14 summarizes the potential impact of new clothes washer standards on dryer industry employment. As shown Trial Standard Level 3 and above will result in a loss of more than 200 jobs in the dryer industry.

[6] Refer to Chapter 11 of the TSD for details of how the standard deviation was calculated.

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TABLE 14.—IMPACT OF STANDARDS ON DRYER SHIPMENTS ON DRYER INDUSTRY EMPLOYMENT—MEDIUM PRICE ELASTICITY SCENARIO

| Trial standard level | MEF | 1999 dryer employment | Forecast 2004 dryer employment | Impact relative to 2004 base case |
|---|---|---|---|---|
| Basecase | Base Case | 2,544 | 2,594 | |
| 1 | 1.021 | 2,544 | 2,578 | (16) |
| 2 | 1.089 | 2,544 | 2,520 | (74) |
| 3 | 1.04 in 2004<br>1.26 in 2007 | 2,544 | 2,506/2,488 | [1](88)/(147) |
| 4 | 1.257 | 2,544 | 2,352 | (241) |
| 5 | 1.362 | 2,544 | 2,348 | (245) |
| 6 | 1.634 | 2,544 | 2,226 | (368) |

[1] Reduction on top of first standard reduction, not cumulative.

*Impact on Clothes Washer Repair Industry.* Should an increase in energy efficiency standards result in higher prices for new clothes washers, consumers may be influenced to repair old units rather than purchase new ones at the higher price. Based on the forecast of clothes washer repairs in the shipments model, we estimated the impact of a change in clothes washer repair revenues on the INPV of the clothes washer manufacturers' repair parts business. The INPV of the estimated additional profit stream is presented in Table 15. As may be observed the increase in NPV for the repair industry is one order of magnitude lower than the loss of value of the dryer industry. For instance for Trial Standard Level 3 the net present value of increases in OEM revenue is .9 million compared to a loss of 11 million for the dryer business.

TABLE 15.—NET PRESENT VALUE OF OEM REPAIR REVENUES

[$ millions]

| Trial standard level | MEF | Medium price elasticity |
|---|---|---|
| 1 | 1.021 | 0.1 |
| 2 | 1.089 | 0.2 |
| 3 | 1.04 in 2004<br>1.26 in 2007 | 0.9 |
| 4 | 1.257 | 1.1 |
| 5 | 1.362 | 1.1 |
| 6 | 1.634 | 1.7 |

*Impacts on Small Manufacturers.* Converting from a company's current basic product line involves creating a new design, testing it and moving it into production with associated capital investments. Small manufacturers of clothes washers, because of their need to spread fixed costs over smaller production volumes, could be affected more negatively than large manufacturers by a proposed standard. The Department conducted a separate GRIM analysis for small manufacturers which are presented in Table 16. The changes in value due to a standard for a small company compared to a large company illustrates the effects of capital and engineering costs that are fixed with respect to production volume.

As shown in Table 16, a small manufacturer (4.2% market share) producing 331,000 clothes washers absent standards in 2004 sees its value reduced by 78.9–89.9% for Trial Standard Level 2. A small manufacturer (2.1% market share) producing 165,000 clothes washers in 2004 will lose all of its value (143.1–153.9%) since it is above 100% for Trial Standard Level 2. This compares to the loss of 28.2–39.0% for a large manufacturer (20% market share) producing 1,578,000 clothes washers in 2004 for Trial Standard Level 2.

At the time of the manufacturer interviews, the U.S. washer industry had one manufacturer of washers with a production volume of approximately 300,000 units (Alliance Laundry Systems, LLC), most of whose production was supplied to another relatively small appliance company (Amana Appliances) under the terms of a private label supply agreement entered into when the two companies were sold by Raytheon. This agreement ended in September 1999, and Amana announced that it would produce its own vertical-axis washers instead of sourcing them from Alliance. Amana and Alliance both report that any standard that requires a 25 percent or higher improvement (for Trial Standard Level 2 and above) in energy efficiency would certainly require major investments and the development of a horizontal-axis machine. At this time, neither Amana nor Alliance believes they have a functioning horizontal-axis washer capable of cost-competitively participating in the mass consumer marketplace.

The decision by either of the smaller producers, or any other washer manufacturer, to exit washer production would require an assessment of the linkages with their dryer business and with other appliances. Manufacturers and their retail partners generally perceive some value in being a full-line producer and greater value in producing both washers and dryers. If a manufacturer perceived significant value in its dryer businesses and if the total product line generated acceptable rates of return, it might continue to produce washers, even in the face of declining company values due to investment in new washer technology. Based on the major loss in company value associated with meeting a more stringent standard above Trial Standard Level 2 as seen in Table 16, it is likely that one or both of the two smaller companies would cease to produce washers covered by the standard and might also cease to market them.



TABLE 16.—CHANGE IN VALUE OF SMALL MANUFACTURERS, RESULTS FOR THE "NO CONSOLIDATION" SCENARIO—MEDIUM PRICE ELASTICITY SCENARIO (%)

| Trial standard level | MEF | Large manufacturer (20% market share) | Small manufacturer (4.2% market share) | Small manufacturer (2.1% market share) |
|---|---|---|---|---|
| 1 | 1.021 | (1.3)–(6.2) | (17.4)–(22.4) | (37.9)–(42.8). |
| 2 | 1.089 | (28.2)–(39.0) | (78.9)–(89.8) | (143.1)–(153.9). |
| 3 | 1.04 in 2004<br>1.26 in 2007 | (28.6)–(36.0) | (83.1)–(90.6) | (152.2)–(159.6). |
| 4 | 1.257 | (34.4)–(41.5) | (91.8)–(98.9) | (164.4)–(171.6). |
| 5 | 1.362 | (30.4)–(35.4) | (87.7)–(92.7) | (160.3)–(165.3). |
| 6 | 1.634 | (31.2)–(43.3) | (90.7)–(102.8) | (166.0)–(178.1). |

*Impacts on Employment.* The weight of available evidence does not support a conclusive assessment of the impact that new energy efficiency standards would have on employment levels in the clothes washer industry. The data that is available is extremely variable and the true extent of the impact will be largely dependent on whether manufacturers choose to exit the industry or move to non-domestic production facilities.

Manufacturers stated that any decrease in shipments will have a similar effect on employment, as employment levels tend to track production levels. However, while reductions in shipments may lead to reductions in employment at various manufacturers due to plant closures, this could be matched by increased employment in United States plants at those firms picking up the additional market share and corresponding volumes. In addition, the manufacturers' data supplied to the AHAM indicates that incremental labor-related costs are expected to increase at the higher efficiency levels (by up to 50 percent at the 40 percent reduction in the energy use of the baseline model level), due to the increased complexity of production and assembly of more efficient machines. Tracking employment levels by shipments using this data actually indicates total industry employment could increase as the change in labor expense for higher efficiency machines is greater than the change in labor resulting from the decline in shipments.

*B. Significance of Energy Savings*

The Act requires a standard to result in "significant" energy savings. Section 325(o)(3)(B), 42 U.S.C. 6295(o)(3)(B). While the term "significant" is not defined in the Act, the U.S. Court of Appeals, in *Natural Resources Defense Council* v. *Herrington*, 768 F.2d 1355, 1373 (D.C. Cir. 1985), stated that Congress intended "significant" energy savings to be savings that were not "genuinely trivial." The energy savings for all of the trial standard levels considered in this rulemaking are non-trivial and therefore we consider them "significant" within the meaning of Section 325 of the Act.

All efficiency levels for which we have engineering data were analyzed. Each efficiency level was analyzed for three scenarios. Some of the parameters that were varied are inputs to the shipment-model and some are inputs to the NES spreadsheet model. Since shipments have an effect on the national energy savings, changes to the shipment inputs have a direct effect on the national energy savings. Changes in the input parameter affect the base case results as well as the standards case results. Table 17 outlines the input parameters used to generate the high and low bound sensitivities. Three scenarios are run: (1) reference case, (2) lower bound and (3) upper bound. The lower bound is defined as having medium price/income elasticity. The upper bound is defined as the price elasticity being high. All other parameters are unchanged from the reference case.

TABLE 17.—NES SPREADSHEET MODEL SHIPMENTS SENSITIVITIES

| Parameter | Reference case | Lower bound (least drop in shipments after standard) | Upper bound (greatest drop in shipments after standards) |
|---|---|---|---|
| AEO growth | AEO99 reference | AEO99 reference | AEO99 reference. |
| Water Escalation Rate | medium | medium | medium. |
| H-axis base case escalation | 0.5% | 0.5% | 0.5%. |
| Price Elasticity | medium | none | high. |
| Price/Income Elasticity | none | medium | none. |
| Top-loading Elasticity | medium | medium | medium. |
| Manufacturer incremental price mark-up | medium | medium | medium. |
| Year of standard | 2004 | 2004 | 2004. |

The Lower Bound Scenario results in the greatest energy savings. This scenario used price/income data to fit an equation to historical data. This resulted in a greater number of shipments and greater savings in energy than the reference case forecasted. The Upper Bound Scenario resulted in the least energy savings. This scenario assumed a high price elasticity. This resulted in lower shipments and energy savings. The Reference Case Scenario used medium or average values as parameter inputs and is bounded on both sides by the other scenarios described above. This is considered the most likely scenario.

The national energy savings and net present value results from the NES spreadsheet for the reference case are shown in Tables 18 and 19, respectively. More detailed results are also available in Appendix N of the TSD. Results are cumulative to 2030 and are shown as absolute energy and water savings and as the discounted value of

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these savings in dollar terms. Table 20 shows the water savings for different standard levels. It can be seen that while the two-tier standard is a combination or hybrid of Trial Standard Levels 1 and 4, it is estimated to attain nearly the same energy, water, and national cost savings as a pure Trial Standard Level 4.

All of the trial standard levels considered in this rulemaking have significant energy savings, ranging from 2.12 quads to 7.53 quads, depending on the trial standard level.

TABLE 18.—REFERENCE CASE—ALL PARAMETERS SET TO MEDIUM OR AVERAGE

| Trial standard level | MEF | Energy savings quads |
|---|---|---|
| 1 | 1.021 | 2.12 |
| 2 | 1.089 | 4.04 |
| 3 | 1.04 in 2004 .. 1.26 in 2007 .. | 5.52 |
| 4 | 1.257 | 5.99 |
| 5 | 1.362 | 6.03 |
| 6 | 1.634 | 7.53 |

*C. Lessening of Utility or Performance of Products*

This section summarizes the results of the department's consumer utility analysis. Preferences of low-income and elder populations are also addressed.

The focus group and conjoint results indicate that price is the most important attribute when consumers are purchasing a new clothes washer, although in each case another attribute is virtually tied with price in terms of importance. In the focus groups, 83% of the respondents included price in their top ten list of important clothes washer attributes, while 81% included wash tub capacity in that same list. In the conjoint analysis, price had the highest relative importance score (26%), followed closely by the availability of a wash load size option on the control panel (25%). Of the six attributes included in the conjoint analysis survey, door placement was the fifth most important attribute with a relative importance score of 11% (for further information, see Chapter 8 and Appendix J of the TSD).

In the likelihood of purchase scenarios, the purchase probabilities were more sensitive to price than any of the other washer attributes.[7] While the shift from a standard to a high efficiency machine resulted in a drop in the estimated purchase probability, this was due to the change in price rather than to changes in the other attributes. When price was held constant at the standard efficiency level and the other attributes were allowed to change to reflect a high efficiency machine, the likelihood of purchase increased. This is due to the fact that consumers value energy savings more than top load door placement.

The purchase probability findings indicate that low-income consumers and elderly consumers were slightly more likely to purchase a high efficiency, front-load washing machine than the total group of consumers. When the analysis focused exclusively on the impacts of clothes washer prices increasing, the data indicated that a smaller percentage of low-income consumers would be willing or able to purchase machines in the $650 price level, when compared to the total group of consumers. There was no statistical difference between elderly consumers and the full sample at the $650 level. While the data from the price impact questions indicate that low-income consumers are more adversely affected by higher clothes washer prices than the sample as a whole, the Department is unable to determine the magnitude of the impact on future clothes washer purchases using the survey data. For instance, the consumer analysis survey found that approximately half of the low-income respondents currently do not own a clothes washer, while more than three-quarters of the respondents making more than $25,000 annually own a washing machine. The Department is unable to determine if this ratio would change with a price increase due to the proposed standards. The fact that the survey found low-income consumers are more likely to use store financing plans, such as no interest for one year, to purchase a clothes washing machine than the sample as a whole further clouds the magnitude of the new standards' impact on low-income consumers because store financing encourages consumers to purchase high price products by allowing payments to be paid over a number of months.

The Department concludes that none of the trial standard levels reduces the performance of clothes washers. The Department conducted extensive consumer research to understand the product features that consumers value in clothes washers. Generally the trial standard levels increase clothes washer price and reduce operating cost but do not affect other product offerings. A significant issue raised during the rulemaking concerns the relative consumer utility of V-axis and H-axis washers. Some stakeholders believed that higher standard levels would require H-axis designs and this would result in eliminating the top loading V-axis machines thereby reducing utility for some consumers who prefer that option. Recent product offerings of high efficiency V-axis washers show that the axis-efficiency relationship is untenable.

*D. Impact of Lessening of Competition*

The Act directs the Department to consider any lessening of competition that is likely to result from standards. It further directs the Attorney General to determine the impact, if any, of competition likely to result from such standard and transmit such determination, not later than 60 days after the publication of a proposed rule to the Secretary, together with an analysis of the nature and extent of such impact. Section 325(o)(2)(B)(i)(V), 42 U.S.C. 6295(o)(2)(B)(i)(V).

In order to assist the Attorney General in making such a determination, the Department has provided the Department of Justice (DOJ) with copies of this notice and the TSD for review. At DOE's request, the DOJ reviewed the manufacturer impact analysis interview questionnaire to ensure that it would provide insight concerning any lessening of competition due to any proposed trial standard levels.

*E. Need of the Nation To Save Energy and Net National Employment*

1. National Net Present Value

Table 19 lists the National NPV for the trial standard levels. The NPV considers the combined discounted energy savings less the increased consumer costs of a particular trial standard level. We base this calculation on all expenses and savings occurring between 2004 and 2030.

The national NPV is positive for all the trial standard levels. In this analysis, a positive NPV means that the estimated energy savings are greater than the increased costs due to standards. It can be observed that the National NPV of Trial Standard Levels 2 through 5 are in the range of 14 to 17 billion dollars. Trial Standard Level 6 however has a lower NPV of 10 Billion due to the higher first cost of a clothes washer at this efficiency level.

[7] Purchase probabilities indicate the likelihood a consumer will purchase a particular clothes washer, assuming (s)he has made the decision to buy a new clothes washer.



TABLE 19.—REFERENCE CASE—ALL PARAMETERS SET TO MEDIUM OR AVERAGE

| Trial standard level | MEF | Net present value (NPV) (billion 1997$) (discounted to 1999) |
|---|---|---|
| 1 | 1.021 | 3.66 |
| 2 | 1.089 | 14.29 |
| 3 | 1.04 in 2004 .. 1.26 in 2007 .. | 15.30 |
| 4 | 1.257 | 16.88 |
| 5 | 1.362 | 16.73 |
| 6 | 1.634 | 10.79 |

2. National Water Savings

Table 20 presents the estimated energy water savings. The savings is positive for all of the trial standard levels.

TABLE 20.—REFERENCE CASE—ALL PARAMETERS SET TO MEDIUM OR AVERAGE

| Trial standard level | MEF | Water savings trillion gallons |
|---|---|---|
| 1 | 1.021 | 0.53 |
| 2 | 1.089 | 9.09 |
| 3 | 1.04 in 2004 .. 1.26 in 2007 .. | 11.59 |
| 4 | 1.257 | 12.94 |
| 5 | 1.362 | 12.94 |
| 6 | 1.634 | 10.85 |

3. Environmental Impacts

Enhanced energy efficiency improves the Nation's energy security, strengthens the economy and reduces the environmental impacts of energy production. The energy savings from clothes washer standards result in reduced emissions of $CO_2$, $SO_2$ and $NO_X$ and aid in addressing global climate change and reducing air pollution. Depending on the standard level chosen, the cumulative emission reductions to 2030 range from 38–135 Mt for carbon equivalent, 115–364 thousand metric tons (kt) for $NO_X$, and 28–31 kt for $SO_2$. Cumulative emissions savings for the power and households sectors through the year 2030 are presented in Table 21.

TABLE 21.—CUMULATIVE EMISSIONS REDUCTIONS THROUGH 2030: HOUSEHOLD AND POWER SECTORS

| Emission | Trial standard level emission reductions and MEF | | | | | |
|---|---|---|---|---|---|---|
| | 1 0.817 | 2 1.089 | 3 1.04 in 2004, 1.26 in 2007 | 4 1.257 | 5 1.362 | 6 1.634 |
| Carbon(Mt) | 38.1 | 70.9 | 95.1 | 106.2 | 107.3 | 135 |
| $NO_X$ (kt) | 115.6 | 193.6 | 253.5 | 280.6 | 283.1 | 364 |
| $SO_2$ (kt) | [1] 31.4 | [1] 30.3 | [1] 28.1 | [1] 30.3 | [1] 30.3 | [1] 31.4 |

[1] Results include only household emissions reductions because the power sector emissions cap implies that savings from electricity generation will be negligible.

4. Net National Employment

Net national employment impacts from clothes washer standards are defined as net jobs created or eliminated in the general economy as a consequence of: (1) Reduced spending by end users on energy (electricity, gas including LPG, and oil) and water; (2) reduced spending on new energy supply by the utility industry; (3) increased spending on the purchase price of new clothes washers; and (4) the associated indirect effects of those three factors throughout the national economy. Jobs are created when a clothes washer standard results in operating cost savings that more than offset the greater capital required to buy a more efficient clothes washer. More information on how these impacts are estimated is presented in the Net National Employment in Chapter 13 of the TSD.

The model used to estimate net national employment impacts suggests that the greatest number of jobs would be created by the standard level calling for a 35% reduction in clothes washer energy use. For this standard level, the model estimates that there would be 142,800 more jobs in 2030 than if there were no new efficiency standard implemented. However, it is unlikely that net employment would increase to this extent if the economy was continuing to perform at levels comparable those experienced during 2000. Taking into consideration these legitimate concerns regarding the interpretation and use of the employment impacts analysis, the Department concludes only that the proposed clothes washer standards are likely to produce employment benefits that are sufficient to offset fully any

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adverse impacts on employment in the clothes washer or energy industries.

*F. Conclusion*

The Act specifies that any new or amended energy conservation standard for any type (or class) of covered product shall be designed to achieve the maximum improvement in energy efficiency which the Secretary determines is technologically feasible and economically justified. Section 325(o)(2)(A), 42 U.S.C. 6295(o)(2)(A). In determining whether a standard is economically justified, the Secretary must determine whether the benefits of the standard exceed its burdens. Section 325(o)(2)(B)(i), 42 U.S.C. 6295(o)(2)(B)(i). The amended standard must "result in significant conservation of energy." Section 325(o)(2)(B)(3)(B), 42 U.S.C. 6295(o)(B)(3)(B).

We consider the impacts of standards at each of six trial standard levels, beginning with the most efficient level. We have included a summary of the analysis results in Table 22 to aid the reader in the discussion of the benefits and burdens for the different trial standard levels.

TABLE 22.—SUMMARY ANALYSIS RESULTS

| Trial standard level | 1 | 2 | 3 | 4 | 5 | 6 |
|---|---|---|---|---|---|---|
| MEF | 1.02 | 1.09 | 1.04 in 2004, 1.26 in 2007 | 1.26 | 1.36 | 1.63 |
| Total Energy Saved (Quads) | 2.12 | 4.04 | 5.52 | 5.99 | 6.03 | 7.53 |
| Water Savings (trillion gallons) | 0.53 | 9.09 | 11.59 | 12.94 | 12.94 | 10.85 |
| NPV (Billion $) | 3.66 | 14.29 | 15.3 | 16.88 | 16.73 | 10.79 |
| **Emissions** | | | | | | |
| Carbon Equivalent (Mt) | 38.1 | 70.9 | 95.1 | 106.2 | 107.3 | 134.6 |
| $NO_x$ (kt) | 115.6 | 193.6 | 253.5 | 280.6 | 283.1 | 364 |
| $SO_2$ (kt) [1] | 131.41 | 30.31 | 28.11 | 30.31 | 30.31 | 31.41 |
| **Manufacturer Impacts** | | | | | | |
| Cumulative Loss in Industry NPV ($ Million) [2] | 19.2–90.1 | 409.9–566.2 | 421.1–528.4 | 510.1–612.5 | 453.1–524.9 | 474.5–648.9 |
| % Change in INPV | (1.3)–(6.3) | (28.5)–(39.3) | (29.2)–(36.7) | (35.4)–(42.5) | (31.7–36.5) | (33.0)–(45.2) |
| Standard Deviation % NPV | 11.5 | 11.4 | 15.8 | 17.7 | 27.7 | 27.7 |
| **Life Cycle Cost ($)** | | | | | | |
| Mean Savings ($) | 61 | 211 | 103/260 | 242 | 243 | 176 |
| Percent Households LCC Less than Baseline | 84 | 87 | 89/80 | 79 | 80 | 69. |
| Payback (years) | 4.4 | 5 | 4.6/6.8 | 7 | 7 | 8.7 |

[1] Results only include household $SO_2$ emissions reductions because $SO_2$ emissions from power plants are capped by clean air legislation. Thus, $SO_2$ emissions will only be negligibly affected by possible water heater standards.
[2] Includes impacts on dryer and repair business.

Trial Standard Level 6—MEF 1.63

First, we considered the most efficient level (max tech), MEF 1.63, which saves a total of 7.53 quads of energy through 2030. This is a significant amount of energy. The cumulative water savings through 2030 would be 10.85 trillion gallons. The emissions reductions through 2030 would total 134.6 Mt of carbon equivalent, 364 kt of $NO_x$, and 31.41 kt of $SO_2$, which are significant. At this level, consumers experience a considerable savings in life cycle cost of $176, with a payback of 8.7 years.

At Trial Standard Level 6, the clothes washer industry would experience a cumulative INPV loss of between $474.5–648.9 million which represents between 33.0 and 45.2% of the clothes washer industry value absent standards ($1,439.1 million—basecase). This impact is not evenly distributed among the six major manufactures.[8] This large variability of impacts is attributed to the presence of existing product for some manufacturers at this efficiency level which means that some firms may gain a competitive advantage. This variability is measured by the standard deviation of individual companies' changes in NPV.[9] At this level the standard deviation in individual companies' percentage change in NPV is 27.7%. Given the high industry impacts and the uneven burden on individual firms, there exists a significant risk of industry consolidation.

Based on the major loss in company value associated with meeting this trial standard level (90.7 to 102.8% assuming a 2.1% market share and 166 to 178.1% assuming a 4.2% market share) as shown in Table 16, it is likely that one or both of the two smaller manufacturers[10] would cease to produce clothes washers covered by the standard and might also cease to market commercial clothes washers.

The Department concludes that the burdens of Trial Standard Level 6 outweigh the benefits. Consequently, the Department concludes Trial Standard Level 6 is not economically justified.

Trial Standard Level 5—MEF 1.36

Next, we considered a 1.36 MEF, which saves a total of 6.03 quads of energy through 2030, also a significant amount. The cumulative water savings through 2030 for this trial standard level would be 12.94 trillion gallons. The emissions reductions through 2030 would total 107.3 Mt of carbon equivalent, 283.1 kt of $NO_x$, and 30.31 kt of $SO_2$, which are significant. At this level, consumer experience a considerable savings in life cycle cost of $243, with a 7 year payback.

The clothes washer industry would experience a cumulative INPV loss of between $453.1–524.9 million. This represents between 31.7 and 36.5% of industry value absent standards ($1,439.1 million—basecase). For the same reason in Trial Standard Level 6, this impact is not evenly distributed among the six major manufactures. At this level the standard deviation in individual companies' percentage change in NPV is 27.7%. Refer to Chapter 11 of the TSD for a description of the calculation method for standard deviation. Given the high industry impacts and the uneven burden on individual firms, there exists a significant risk of industry consolidation.

Once again based on the major loss in company value associated with meeting this standard level (87.7 to 92.7% assuming a 2.1% market share and 160.3 to 165.3% assuming a 4.2% market share), as shown in Table 16, it is likely that one or both of the two smaller manufacturers would cease to produce washers covered by the standard and might also cease to market commercial clothes washers.

The Department concludes that the burdens of Trial Standard Level 5 outweigh the benefits. Consequently, the Department concludes Trial Standard Level 5 is not economically justified.

Trial Standard Level 4—MEF 1.26

Next, we considered a 1.26 MEF, which saves a total of 5.99 quads of energy through 2030, a significant amount. Just as in the case of the 1.36 MEF, the cumulative water savings through 2030 would equal 12.94 trillion gallons. The cumulative emissions reductions through 2030, however, are slightly lower for the 1.26 MEF because the cumulative energy savings is lower for this standard level than the 1.36 MEF. The 1.26 MEF level would save 106.2 Mt of carbon equivalent, 280.6 kt of $NO_x$, and 30.31 kt of $SO_2$, which are significant. At this level, consumers experience a considerable savings in life cycle cost of $242 with a payback of 7 years.

Under a 1.26 MEF standard, the clothes washer industry would experience a cumulative INPV loss of between $510.1–612.5 million. This represents between 35.4 and 42.5% of industry value absent standards ($1,439.1 million—basecase). Compared to Trial Standard Levels 5 and 6, this impact is more evenly distributed amongst the six major manufactures as represented by a standard deviation in individual companies' NPV of 17.7%, and thus there exists less risk of industry consolidation. Refer to Chapter 11 of the TSD for a description of the calculation method for standard deviation. This lower standard deviation reflects the greater diversity of designs, approaches and engineering flexibility to meet this efficiency level compared to Trial Standard Levels 5 and 6. However, given the high level of investment required to meet this efficiency level and an inability to spread fixed costs over large volumes, small manufacturers are particularly vulnerable. Based on the major loss in company value associated with meeting this standard level (91.8 to 98.9% assuming a 2.1% market share and 164.4 to 171.6% assuming a 4.2% market share), as shown in Table 16, it is likely that one or both of the two smaller manufacturers would cease to produce washers covered by the standard and might also cease to market commercial clothes washers.

The Department concludes that the burdens of Trial Standard Level 4 outweigh the benefits. Consequently, the Department concludes Trial Standard Level 4 is not economically justified.

Trial Standard Level 3—MEF 1.04/1.26

Next, we considered the two step 1.04/1.26 MEF efficiency level, which had been proposed in the Joint Stakeholders Comment. (Joint Comment, No. 204). This trial standard level, Trial Standard Level 3, had energy savings of 5.52 quads through 2030, a significant amount. The cumulative water savings through 2030 would equal 11.59 trillion gallons. The emissions reductions through 2030 would total 95.1 Mt of carbon equivalent, 253.5 kt of $NO_x$, and 28.11 kt of $SO_2$, which are significant. At the 1.04 MEF level, consumers would experience a savings in life cycle cost of $103, while they would experience a LCC savings of $260 at the 1.26 MEF level that would go into effect in 2007. The payback for the 1.04 MEF level is 4.6 years, and 6.8 years for the 1.26 MEF. The clothes washer industry would experience a cumulative NPV loss of between $421.1–528.4 million representing between 29.2 and 36.7% of basecase industry value.

Compared to a single step standard level of a 1.26 MEF implemented in 2004, the Joint Stakeholders Comment proposal reduces the impacts of the standards on manufacturers by delaying the effective date three years for the 1.26 MEF level. This allows clothes washer manufacturers more time to depreciate their current assets and plan a more orderly transition of their production facilities. Delaying the standard implementation date for the higher efficiency level gives manufacturers more time to research and develop lower-cost solutions to achieve higher standards.

Since the MIA shows that small manufacturers suffer the greatest impact, the Department takes into consideration that the consensus proposal was developed in consultation with, and supported by small manufacturers.

Furthermore, we consider that the Joint Stakeholders Comment specifically states that the proposal is not expected to eliminate any competitors. (Joint Comment No. 204).

Based on the manufacturers' statement in the Joint Stakeholders Comment, we believe that these impacts from the proposal are mitigated and is sufficient to conclude that, given the benefits, the standards submitted in the Joint Stakeholders Comment are economically justified. (Joint Comment No. 204).

After carefully considering the analysis and comments, the Department proposes to amend the energy conservation standards for clothes washers as proposed by the Joint Stakeholders Comment. (Joint Comment No. 204). The Department concludes this standard saves a significant amount of energy and is technologically feasible and economically justified. In determining economic justification, the Department finds that the benefits of energy and water savings, consumer life cycle cost savings, national net present value increase, job creation and emission reductions resulting from the standard outweigh the burdens of the loss of manufacturer net present value, and consumer life cycle cost increases for some users of clothes washers covered by today's notice. Therefore, the Department today proposes to adopt the energy conservation standards for clothes washers at Trial Standard Level 3.

## VI. Procedural Issues and Regulatory Review

*A. Review Under the National Environmental Policy Act of 1969*

The Department is preparing an Environmental Assessment of the impacts of the proposed rule and DOE anticipates completing a Finding of No Significant Impact (FONSI) before publishing the final rule on Energy Conservation Standards for Clothes Washers, pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), the regulations of the Council on

[8] Alliance Laundry Systems LLC, Amana Appliances, Frigidaire Home Products, General Electric Appliances (GEA), Maytag Corporation, and Whirlpool Corporation.

[9] The standard deviation is a measure of how widely individual companies' percentage NPV changes are dispersed from the industry percentage change in value. Refer to Chapter 11 of the TSD for a description of the calculation method.

[10] Alliance Laundry Systems LLC and Amana Appliances.

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Environmental Quality (40 CFR parts 1500–1508), and the Department's regulations for compliance with NEPA (10 CFR part 1021).

*B. Review Under Executive Order 12866, "Regulatory Planning and Review"*

Today's regulatory action has been determined to be an "economically significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review." (58 FR 51735, October 4, 1993). Accordingly, today's action was subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB).

The draft rule submitted to OIRA and other documents submitted to OIRA for review have been made a part of the rulemaking record and are available for public review in the Department's Freedom of Information Reading Room (1E–190), 1000 Independence Avenue, SW, Washington, DC 20585, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, telephone (202) 586–3142.

The following summary of the Regulatory Impact Analysis (RIA) focuses on the major alternatives considered in arriving at the proposed approach to improving the energy efficiency of consumer products. The reader is referred to the complete draft "Regulatory Impact Analysis," which is contained in the TSD, available as indicated at the beginning of this proposed rule. It consists of: (1) A statement of the problem addressed by this regulation, and the mandate for government action; (2) a description and analysis of the feasible policy alternatives to this regulation; (3) a quantitative comparison of the impacts of the alternatives; and (4) the national economic impacts of the proposed standard.

Each alternative has been evaluated in terms of its ability to achieve significant energy savings at reasonable costs, and has been compared to the effectiveness of the proposed rule. These alternatives were analyzed with the NES/Shipments model modified to allow inputs for voluntary measures, as explained in the RIA attached to the TSD.

The RIA calculates the effects of feasible policy alternatives to clothes washer energy efficiency standards, and provides a quantitative comparison of the impacts of the alternatives. We evaluate each alternative in terms of its ability to achieve significant energy savings at reasonable costs, and we compare it to the effectiveness of the proposed rule.

We created the RIA using a series of alternative scenarios (with various assumptions), which we used as input to the NES/Shipments model for clothes washers.

We identified the following seven major policy alternatives for achieving consumer product energy efficiency. These alternatives include:

- No New Regulatory Action
- Enhanced Public Education & Information
- Financial Incentives

—Tax credits

—Rebates

—Low income and seniors subsidy

- Voluntary Energy Efficiency Targets (5 Years, 10 Years)
- Mass Government Purchases
- Early Replacement Program to existing standard levels
- Early Replacement Program to high-efficiency clothes washers (defined as having an MEF of 1.257, a 35% energy reduction level)
- The Proposed Approach (Performance Standards)

We have evaluated each alternative in terms of its ability to achieve significant energy savings at reasonable costs (See Table 23), and have compared it to the effectiveness of the proposed rule.

TABLE 23.—ALTERNATIVES CONSIDERED

| Policy alternatives | Energy savings quads | Water savings trillion gallons | NPV $ in billions |
|---|---|---|---|
| Enhanced Public Education & Information | 0.026 | 0.054 | 0.074 |
| Consumer Tax Credits | 0.410 | 0.085 | 0.117 |
| Consumer Rebates High Efficiency | 0.072 | 0.150 | 0.205 |
| Low Income and Seniors Subsidy | 0.031 | 0.065 | 0.089 |
| Manufacturer Tax Credits | 0.153–0.330 | 0.299–0.666 | 0.203–0.707 |
| Voluntary Efficiency Target (5 year delay) | 4.550 | 9.970 | 11.570 |
| Voluntary Efficiency Target (10 year delay) | 3.090 | 6.810 | 7.980 |
| Mass Government Purchases | ..... | 0.013 | ..... |
| Early Replacement Program (w/Current Eff.) | 0.004 | 0.006 | 0.024 |
| Early Replacement Program (w/H-axis) | 0.078 | 0.161 | 0.223 |
| Proposed Negotiated Performance Standard | 5.520 | 11.590 | 14.330 |

NPV=Net Present Value (2004–2030, in billion 1997 $).
Savings=Energy Savings (Source Quads).

The Net Present Value amounts shown in Table 23 refer to the NPV for consumers. Rebates or tax credits are not included as an expense since on average consumers are both paying for and receiving benefits of the payments.

The case in which no regulatory action is taken with regard to clothes washer efficiency constitutes the "base case" (or "No Action") scenario. In this case, between the years 2004 and 2030, clothes washers are expected to use 21.76 Quads (22.94 Exajoules (EJ)) of primary energy. Since this is the base case, energy savings and NPV are zero by definition.

A short description of each alternative is provided below:

*Enhanced Public Education and Information.* This would make the public more aware of energy savings available for more efficient clothes washers (examples would be Energy Star labeling, web sites with efficiency information and advertising). To model this possibility, we assumed that the effective market discount rates change from 75% to 47% for purchasers of clothes washers. This would have the same effect as a $39 discount on high efficiency washer prices. This program is assumed to continue through 2030.

*Consumer Tax Credits.* We assume tax credits equal to 15% of the cost of high-efficiency models (MEF of 1.257) and that 60% of consumers buying a clothes washer would take advantage of the tax credit. We assume this program is in place for six years.

*Manufacturer Tax Credits.* We assume that a manufacturer tax credit of $50 or $100 per machine with a cap on the number of washers per manufacturer (based on the proposed tax credit). The tax credits are capped at $30 million per manufacturer per Tier, or $60 million per manufacturer. This program is assumed to be in place in six years between 2004 to 2010.

*Consumer Rebates.* We assume a rebate of 15% of the retail price of high-efficiency models for a period of 6 years. This is modeled by reducing the price of a washer with a MEF of 1.257 (a 35% reduction in energy use from the baseline model) by 15%.

*Low Income and Seniors Subsidy.* Based on the RECS survey for households owning a clothes washer and dryer, 28% of households qualify as low-income or senior households. We assumed a subsidy program would provide an amount equivalent to 25% of the price of a high efficiency clothes washer. This program was assumed to be in effect for 6 years.

*Voluntary efficiency target (5 & 10 year delays).* Assume a 1.26 MEF washer efficiency level but taking place 5 and 10 years after 2007.

*Mass Government Purchases.* This alternative assumes a Government agency such as the U.S. Department of Housing and Urban Development (HUD) purchases high efficiency washers for low income housing. We assume a program in which 25% of the 1.3 million households in public housing would participate in the program. We also assume that only washers reaching the end of their lifetime of 14 years would be replaced. Over a 6 year program period, this would result in a replacement of 138,000 clothes washers.

*Early Replacement Programs.* The purpose of this program would be to remove older, presumably less efficient models from the clothes washer stock with either existing base case efficiency washers or with high efficiency (MEF of 1.257, 35% energy reduction) washers. We model this by assuming a 15% increase in the size of the early replacement market segment. This program like the others is assumed to have a duration of 6 years.

*Performance Standards.* The proposed standard (proposed standard level 3).

Lastly, all of these alternatives must be gauged against the performance standards we are proposing in this proposed rule. Such performance standards would result in energy savings of 5.52 Quads (5.82 EJ), and the NPV would be an expected $14.33 billion.

As indicated in the paragraphs above, none of the alternatives we examined would save as much energy as the proposed rule. Also, several of the alternative would require new enabling legislation, since authority to carry out those alternatives does not presently exist.

*C. Review Under the Regulatory Flexibility Act of 1980*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, requires an assessment of the impact of regulations on small businesses. Small businesses are defined as those firms within an industry that are privately owned and less dominant in the market.

To be categorized as a "small" clothes washer manufacturer, a firm must employ no more than 1,000 employees. The clothes washer industry is characterized by six firms accounting for nearly 99% of sales. By this definition none of the six major U.S. manufacturers of clothes washers are considered "small." The Department is aware of one small domestic manufacturer of clothes washer, Staber Industries, that produces a top loading horizontal-axis clothes washer. The energy efficiency of this product already exceeds the proposed standard level.

The Department prepared a manufacturing impact analysis which was made public and available to all the clothes washer manufacturers. This analysis considered the effects on small manufacturers with a minimum annual production of 165,000 units (representing a 2.1% market share). The Department did not receive any information or comments indicating that even smaller manufacturers of clothes washers would be impacted differentially from those included in the small manufacturer analysis performed.

In view of the foregoing, the Department has determined and hereby certifies pursuant to Section 605(b) of the Regulatory Flexibility Act that, for this particular industry, the proposed standard levels in today's proposed rule will not "have a significant economic impact on a substantial number of small entities," and it is not necessary to prepare a regulatory flexibility analysis.

*D. Review Under the Paperwork Reduction Act*

No new information or record keeping requirements are imposed by this rulemaking. Accordingly, no Office of Management and Budget clearance is required under the Paperwork Reduction Act. 44 U.S.C. 3501 *et seq.*

*E. Review Under Executive Order 12988, "Civil Justice Reform"*

With respect to the review of existing regulations and the promulgation of new regulations, Section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction.

With regard to the review required by Section 3(a), Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in Section 3(a) and Section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE reviewed today's proposed rule under the standards of Section 3 of the Executive Order and determined that, to the extent permitted by law, the proposed regulations meet the relevant standards.

*F. "Takings" Assessment Review*

It has been determined pursuant to Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights," 52 FR 8859 (March 18, 1988), that this regulation would not result in any takings that might require compensation under the Fifth Amendment to the United States Constitution.

*G. Review Under Executive Order 13132, "Federalism"*

Executive Order 13132 (64 FR 43255, August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. Agencies also must provide State and local officials an opportunity for meaningful and timely input in the development of regulatory proposals that have federalism implications. DOE published a notice of

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its intergovernmental consultation policy on March 14, 2000. (65 FR 13735).

DOE has examined today's proposed rule and has determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. State regulations that may have existed on the products that are the subject of today's proposed rule were preempted by the Federal standards established in the National Appliance Energy Conservation Amendments of 1988. States can petition the Department for exemption from such preemption based on criteria set forth in EPCA.

*H. Review Under the Unfunded Mandates Reform Act of 1995*

With respect to a proposed regulatory action that may result in the expenditure by the private sector of $100 million or more (adjusted annually for inflation), Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires a Federal agency to publish estimates of the resulting costs, benefits and other effects on the national economy. 2 U.S.C. 1532(a), (b). Section 202 of UMRA authorizes an agency to respond to the content requirements of UMRA in any other statement or analysis that accompanies the proposed rule. 2 U.S.C. 1532(c).

The content requirements of Section 202(b) of UMRA relevant to a private sector mandate substantially overlap the economic analysis requirements that apply under Section 325(o) of EPCA and Executive Order 12866. The **SUPPLEMENTARY INFORMATION** section of the Notice of Proposed Rulemaking and "Regulatory Impact Analysis" section of the TSD for this proposed rule responds to those requirements.

Under Section 205 of UMRA, we are obligated to identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a written statement under Section 202 is required. We are required to select from those alternatives the most cost-effective and least burdensome alternative that achieves the objectives of the rule unless DOE publishes an explanation for doing otherwise or the selection of such an alternative is inconsistent with law. As required by Section 325(o) of the Energy Policy and Conservation Act (42 U.S.C. 6295(o)), this proposed rule would establish energy conservation standards for clothes washers that are designed to achieve the maximum improvement in energy efficiency that DOE has determined to be both technologically feasible and economically justified. DOE may not adopt an alternative that does not meet EPCA's substantive standard. A full discussion of the alternatives considered by DOE is presented in the "Regulatory Impact Analysis" section of the TSD for this proposed rule.

*I. Review Under the Treasury and General Government Appropriations Act of 1999*

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. No. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule or policy that may affect family well-being. Today's proposal would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

*J. Review Under the Plain Language Directives*

Section 1(b)(12) of Executive Order 12866 requires that each agency draft its regulations to be simple and easy to understand, with the goal of minimizing the potential for uncertainty and litigation arising from such uncertainty. Similarly, the Presidential memorandum of June 1, 1998 (63 FR 31883) directs the heads of executive departments and agencies to use plain language in all proposed and final rulemaking documents published in the **Federal Register**.

Today's proposed rule uses the following general techniques to abide by Section 1(b)(12) of Executive Order 12866 and the Presidential memorandum of June 1, 1998 (63 FR 31883):

- Organization of the material to serve the needs of the readers (stakeholders).
- Use of common, everyday words in short sentences.
- Shorter sentences and sections.

We invite your comments on how to make this proposed rule easier to understand.

## VII. Public Comment Procedures

*A. Written Comment Procedures*

The Department invites interested persons to participate in the rulemaking by submitting data, comments, or information with respect to the proposed issues set forth in today's proposed rule to Ms. Brenda Edwards-Jones, at the address indicated at the beginning of this notice. We will consider all submittals received by the date specified at the beginning of this notice in developing the final rule.

According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit one complete copy of the document and ten (10) copies, if possible, from which the information believed to be confidential has been deleted. The Department of Energy will make its own determination with regard to the confidential status of the information and treat it according to its determination.

Factors of interest to the Department when evaluating requests to treat as confidential information that has been submitted include: (1) A description of the items; (2) an indication as to whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) an indication as to when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

*B. Public Workshop (Hearing)*

1. Procedures for Submitting Requests To Speak

You will find the time and place of the public workshop (hearing) listed at the beginning of this notice of proposed rulemaking. The Department invites any person who has an interest in today's notice of proposed rulemaking, or who is a representative of a group or class of persons that has an interest in these proposed issues, to make a request for an opportunity to make an oral presentation. If you would like to attend the public workshop, please notify Ms. Brenda Edwards-Jones at (202) 586–2945. You may hand deliver requests to speak to the address indicated at the beginning of this notice between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays, or send them by mail.

The person making the request should state why he or she, either individually or as a representative of a group or class of persons, is an appropriate spokesperson, briefly describe the nature of the interest in the rulemaking, and provide a telephone number for contact.



The Department requests each person wishing to speak to submit an advance copy of his or her statement at least ten days prior to the date of this workshop as indicated at the beginning of this notice. The Department, at its discretion, may permit any person wishing to speak who cannot meet this requirement to participate if that person has made alternative arrangements with the Office of Building Research and Standards in advance. The letter making a request to give an oral presentation must ask for such alternative arrangements.

2. Conduct of Workshop (Hearing)

The workshop (hearing) will be conducted in an informal, conference style. The Department may use a professional facilitator to facilitate discussion, and a court reporter will be present to record the transcript of the meeting. We will present summaries of major topics contained in the comments received before the workshop, allow time for presentations by workshop participants, and encourage all interested parties to share their views on issues affecting this rulemaking. Following the workshop, there is provided an additional comment period, during which time interested parties will have an opportunity to comment on the proceedings at the workshop, as well as on any aspect of the rulemaking proceeding.

The Department reserves the right to select the persons to be heard at the hearing, to schedule the respective presentations, and to establish the procedures governing the conduct of the hearing. The length of each presentation is limited to 5 minutes.

A DOE official will be designated to preside at the hearing. The hearing will not be a judicial or an evidentiary-type hearing, but will be conducted in accordance with 5 U.S.C. 533 and Section 336 of the Act. At the conclusion of all initial oral statements at each day of the hearing, each person who has made an oral statement will be given the opportunity to make a rebuttal statement, subject to time limitations. The rebuttal statement will be given in the order in which the initial statements were made. The official conducting the hearing will accept additional comments or questions from those attending, as time permits. Any interested person may submit, to the presiding official, written questions to be asked of any person making a statement at the hearing. The presiding official will determine whether the question is relevant, and whether time limitations permit it to be presented for answer.

Further questioning of speakers will be permitted by DOE. The presiding official will afford any interested person an opportunity to question other interested persons who made oral presentations, and employees of the United States who have made written or oral presentations with respect to disputed issues of material fact relating to the proposed rule. This opportunity will be afforded after any rebuttal statements, to the extent that the presiding official determines that such questioning is likely to result in a more timely and effective resolution of such issues. If the time provided is insufficient, DOE will consider affording an additional opportunity for questioning at a mutually convenient time. Persons interested in making use of this opportunity must submit their request to the presiding official no later than shortly after the completion of any rebuttal statements and be prepared to state specific justification, including why the issue is one of disputed fact and how the proposed questions would expedite their resolution.

Any further procedural rules regarding proper conduct of the hearing will be announced by the presiding official.

The Department will arrange for a transcript of the workshop and will make the entire record of this rulemaking, including the transcript, available for inspection in the Department's Freedom of Information Reading Room as provided at the beginning of this notice. Any person may purchase a copy of the transcript from the transcribing reporter. You can also download the TSD and other analyses from the Internet at: http://www.eren.doe.gov/buildings/codes_standards/applbrf/clwasher.html

**List of Subjects in 10 CFR Part 430**

Administrative practice and procedure, Energy conservation, Household appliances.

Issued in Washington, DC., September 26, 2000.

**Dan W. Reicher,**

*Assistant Secretary, Energy Efficiency and Renewable Energy.*

For the reasons set forth in the preamble Part 430 of Chapter II of Title 10, Code of Federal Regulations, is proposed to be amended as set forth below.

## PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

1. The authority citation for part 430 continues to read as follows:

**Authority:** 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

2. Appendix J to subpart B of part 430 is amended by adding, in section 2, paragraphs 2.3.1, 2.3.2, and by revising paragraphs 2.10, 2.11 and 2.11.1 to read as follows:

**Appendix J to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Automatic and Semi-Automatic Clothes Washers**

* * * * *

2. TESTING CONDITIONS

* * * * *

2.3 *Supply water.* * * *

2.3.1 *Supply water requirements for water and energy consumption testing.* For nonwater-heating clothes washers not equipped with thermostatically controlled water valves, the temperature of the hot and cold water supply shall be maintained at 100° ±10°F (37.8°C ±5.5°C). For nonwater-heating clothes washers equipped with thermostatically controlled water valves, the temperature of the hot water supply shall be maintained at 140°F ±5°F (60.0°C ±2.8°C) and the cold water supply shall be maintained at 60°F ±5F° (15.6°C ±2.8°C). For water-heating clothes washers, the temperature of the hot water supply shall be maintained at 140°F ±5°F (60.0°C ±2.8°C) and the cold water supply shall not exceed 60°F (15.6°C). Water meters shall be installed in both the hot and cold water lines to measure water consumption.

2.3.2 *Supply water requirements for remaining moisture content testing.* For nonwater-heating clothes washers not equipped with thermostatically controlled water valves, the temperature of the hot water supply shall be maintained at 140°F ±5°F and the cold water supply shall be maintained at 60°F ±5°F. All other clothes washers shall be connected to water supply temperatures as stated in section 2.3.1.

* * * * *

2.10 *Wash time (period of agitation or tumble) setting.* If the maximum available wash time in the normal cycle is greater than 9.75 minutes, the wash time shall be not less than 9.75 minutes. If the maximum available wash time in the normal cycle is less than 9.75 minutes, the wash time shall be the maximum available wash time.

* * * * *

2.11 *Agitation speed and spin speed settings.* Where controls are provided for agitation speed and spin speed selections, set them as follows:

2.11.1 *For energy and water consumption tests, set at the normal cycle settings.* If settings at the normal cycle are not offered, set the control settings to the maximum speed permitted on the clothes washer.

3. Appendix J to subpart B of part 430 is amended, in section 3, by revising paragraph 3.3.1 to read as follows:

3. TEST MEASUREMENTS

* * * * *

3.3.1 The wash temperature shall be the same as the rinse temperature for all testing. Cold rinse is the coldest rinse temperature

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available on the machine. Warm rinse is the hottest rinse temperature available on the machine.

* * * * *

4. Appendix J1 to Subpart B of part 430 is amended, in section 1, by adding paragraphs 1.22 and 1.23 to read as follows:

**Appendix J1 to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Automatic and Semi-Automatic Clothes Washers**

* * * * *

1. DEFINITIONS AND SYMBOLS

1.22 *Cold rinse* means the coldest rinse temperature available on the machine (and should be the same rinse temperature selection tested in section 3.7).

1.23 *Warm rinse* means the hottest rinse temperature available on the machine (and should be the same rinse temperature selection

5. Appendix J1 to subpart B of part 430 is amended in section 2 by revising paragraphs 2.6.1, 2.6.2, and adding paragraphs 2.6.3 through 2.6,7.2, to read as follows:

2. TESTING CONDITIONS

* * * * *

2.6.1 *Energy Test Cloth.* The energy test cloth shall be made from energy test cloth material, as specified in 2.6.4, that is 24 inches by 36 inches (61.0 cm by 91.4 cm) and has been hemmed to 22 inches by 34 inches (55.9 cm by 86.4 cm) before washing. The energy test cloth shall be clean and shall not be used for more than 60 test runs (after preconditioning as specified in section 2.6.3). Mixed lots of material shall not be used for testing the clothes washers.

* * * * *

2.6.2 *Energy Stuffer Cloth.* The energy stuffer cloth shall be made from energy test cloth material, as specified in 2.6.4, and shall consist of pieces of material that are 12 inches by 12 inches (30.5 cm by 30.5 cm) and have been hemmed to 10 inches by 10 inches (25.4 cm by 25.4 cm) before washing. The energy stuffer cloth shall be clean and shall not be used for more than 60 test runs (after preconditioning as specified in section 2.6.3). Mixed lots of material shall not be used for testing the clothes washers.

2.6.3 *Preconditioning of Test Cloths.* The new test cloths, including energy test cloths and energy stuffer cloths, shall be pre-conditioned in a clothes washer in the following manner:

2.6.3.1 Perform 5 complete normal wash-rinse-spin cycles, the first two with AHAM Standard detergent 2A and the last three without detergent. Place the test cloth in a clothes washer set at the maximum water level. Wash the load for ten minutes in soft water (17 ppm hardness or less) using 6.0 grams per gallon of water of AHAM Standard detergent 2A. The wash temperature is to be controlled to 135°F ±5°F (57.2°C ±2.8C) and the rinse temperature is to be controlled to 60°F ±5°F (15.6°C ±2.8°C). Repeat the cycle with detergent and then repeat the cycle three additional times without detergent, bone drying the load between cycles (total of five wash and rinse cycles).

2.6.4 *Energy test cloth material.* The energy test cloths and energy stuffer cloths shall be made from fabric meeting the following specifications. The material should come from a roll of material with a width of approximately 63 inches and approximately 500 yards per roll, however, other sizes maybe used if they fall within the specifications.

2.6.4.1 *Nominal fabric type.* Pure finished bleached cloth, made with a momie or granite weave, which is nominally 50 percent cotton and 50 percent polyester.

2.6.4.2 The fabric weight shall be 5.60 ounces per square yard (190.0 g/m$^2$), ±5 percent.

2.6.4.3 The thread count shall be 61 x 54 per inch (warp x fill), ±2 percent.

2.6.4.4 The warp yarn and filling yarn shall each have fiber content of 50 percent ±4 percent cotton, with the balance being polyester, and be open end spun, 15/1 ±5 percent cotton count blended yarn.

2.6.4.5 Water repellent finishes, such as fluoropolymer stain resistant finishes shall not be applied to the test cloth. The absence of such finishes shall be verified by:

2.6.4.5.1 AATCC–118 Oil Repellency Test (DuPont or 3M version) of each new lot of test cloth (when purchased from the mill) to confirm the absence of Scotchguard or other water repellent finish (required scores of "D" across the board).

2.6.4.5.2 AATCC–79 Drop Absorbency Test of each new lot of test cloth (when purchased from the mill) to confirm the absence of Scotchguard © or other water repellent finish (time to absorb one drop should be on the order of 1 second).

2.6.4.6 The moisture absorption and retention shall be evaluated for each new lot of test cloth by the Standard Extractor Remaining Moisture Content (RMC) Test specified in section 2.6.5.

2.6.4.6.1 Repeat the Standard Extractor RMC Test in section 2.6.5 three times.

2.6.4.6.2 An RMC correction curve shall be calculated as specified in section 2.6.6.

2.6.5 *Standard Extractor RMC Test Procedure.* The following procedure is used to evaluate the moisture absorption and retention characteristics of a lot of test cloth by measuring the RMC in a standard extractor at a specified set of conditions. Table 2.6.5 is the matrix of test conditions. The 500g requirement will only be used if a clothes washer design can achieve spin speeds in the 500g range. When this matrix is repeated 3 times, a total of 48 extractor RMC test runs are required. For the purpose of the extractor RMC test, the test cloths may be used for up to 60 test runs (after preconditioning as specified in section 2.6.3).

TABLE 2.6.5.—MATRIX OF EXTRACTOR RMC TEST CONDITIONS

| "g" Force | Warm soak | | Cold soak | |
|---|---|---|---|---|
| | 15 min. spin | 4 min. spin | 15 min. spin | 4 min. spin |
| 50 | | | | |
| 200 | | | | |
| 350 | | | | |
| 500 | | | | |

2.6.5.1 The standard extractor RMC tests shall be run in a Bock Model 215 extractor (having a basket diameter of 19.5 inches, length of 12 inches, and volume of 2.1 ft$^3$), with a variable speed drive [Bock Engineered Products, P.O. Box 5127, Toledo, OH 43611] or an equivalent extractor with same basket design (*i.e.* diameter, length, volume, and hole configuration) and variable speed drive.

2.6.5.2 *Test Load.* Test cloths shall be preconditioned in accordance with 2.6.3. The load size shall be 8.4 lbs., consistent with section 3.8.1.

2.6.5.3 *Procedure.*

2.6.5.3.1 Record the "bone-dry" weight of the test load (WI).

2.6.5.3.2 Soak the test load for 20 minutes in 10 gallons of soft (< 17 ppm) water. The entire test load shall be submerged. The water temperature shall be 100°F ±5°F.

2.6.5.3.3 Remove the test load and allow water to gravity drain off of the test cloths. Then manually place the test cloths in the basket of the extractor, distributing them evenly by eye. Spin the load at a fixed speed corresponding to the intended centripetal acceleration level (measured in units of the acceleration of gravity, g) ±1 g for the intended time period ±5 seconds.

2.6.5.3.4 Record the weight of the test load immediately after the completion of the extractor spin cycle (WC).

2.6.5.3.5 Calculate the RMC as (WC–WI)/WI.

2.6.5.3.6 The RMC of the test load shall be measured at three (3) g levels: 50g; 200g; and 350g, using two different spin times at each g level: 4 minutes; and 15 minutes. If a clothes washer design can achieve spin speeds in the 500g range than the RMC of the test load shall be measured at four (4) g levels: 50g; 200g; 350g; and 500g, using two different spin times at each g level: 4 minutes; and 15 minutes.



2.6.5.4 Repeat 2.6.5.3 using soft (<17 ppm) water at 60°F ±5°F.

2.6.6 *Calculation of RMC correction curve.*

2.6.6.1 Average the values of 3 test runs and fill in Table 2.6.5. Perform a linear least-squares fit to relate the standard RMC ($RMC_{standard}$) values (shown in Table 2.6.6.1) to the values measured in 2.6.5 ($RMC_{cloth}$):

$RMC_{standard} = A * RMC_{cloth} + B$

Where A and B are coefficients of the linear least squares fit.

TABLE 2.6.6.1.—STANDARD RMC VALUES ($RMC_{standard}$)

| G | RMC percent | | | |
|---|---|---|---|---|
| | Warm soak | | Cold soak | |
| | 15 min. spin | 4 min. spin | 15 min. spin | 4 min. spin |
| 50 | 50.4 | 55.7 | 52.8 | 59.0 |
| 200 | 35.6 | 40.4 | 37.9 | 43.1 |
| 350 | 29.6 | 33.1 | 30.6 | 35.8 |
| 500 | 24.2 | 28.7 | 25.5 | 30.0 |

2.6.6.2 Check accuracy of linear least squares fit using the following method:

The root mean square value of

$$\left(\sum_{i=1}^{12}\frac{\left(RMC_{standard_i}-RMC_{corr_i}\right)^2}{10}\right)^{1/2}$$

shall be less than 2 percent, where a sum is taken over all of the different tests, where $RMC_{standard_i}$ is the RMC standard value measured for the I-th test, and $RMC_{corr3_i}$ is the corrected RMC value for the I-th cloth test. This equation is valid only for the use with three (3) g force values therefore when using the 500g requirement; replace the 500g value instead of the 350g value.

2.6.7 *Application of RMC correction curve.*

2.6.7.1 Using the coefficients, A and B calculated in section 2.6.6.1:

$RMC_{corr} = A * RMC + B$

2.6.7.2 Substitute $RMC_{corr}$ values in calculations in section 3.8.

* * * * *

6. Appendix J1 to subpart B of part 430 is amended, in section 4.1.5, by revising the definition of "$ER_x$, $ER_a$, $ER_n$" to read as follows:

4. CALCULATION OF DERIVED RESULTS FROM TEST MEASUREMENTS

* * * * *

4.1.5 * * * $ER_x$, $ER_a$, $ER_n$, are reported electrical energy consumption values, in kilowatt-hours per cycle, at maximum, average, and minimum test loads, respectively, for the warm rinse cycle per definitions in section 3.7.2.

* * * * *

7. Section 430.32 of subpart C, 10 CFR part 430 is amended by revising paragraph (g) to read as follows:

**§ 430.32 Energy and water conservation standards and effective dates.**

* * * * *

(g) *Clothes washers.*

(1) Clothes washers manufactured before January 1, 2004, shall have an energy factor no less than:

| Product class | Energy factor (cu.ft./Kwh/cycle) as of January 1, 1988 | Energy factor (cu.ft./Kwh/cycle) as of May 14, 1988 |
|---|---|---|
| i. Top Loading, Compact (less than 1.6 ft.$^3$ capacity). | Not Applicable.[1] | 0.9. |
| ii. Top Loading, Standard (1.6 ft.$^3$ or greater capacity). | Not Applicable.[1] | 1.18. |
| iii. Top Loading, Semi-Automatic | Not Applicable.[1] | Not Applicable.[1] |
| iv. Front Loading | Not Applicable.[1] | Not Applicable.[1] |
| v. Suds saving | Not Applicable.[1] | Not Applicable.[1] |

[1] Must have an unheated rinse water option.

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(2) Clothes washers manufactured after January 1, 2004, shall have amodified energy factor no less than:

| Product Class | Modified Energy factor (cu.ft./Kwh/cycle) as of January 1, 2004 | Modified Energy factor (cu.ft./Kwh/cycle) as of January 1, 2007 |
|---|---|---|
| i. Top Loading, Compact (less than 1.6 ft.$^3$ capacity).. | 0.65 | 0.65. |
| ii. Standard (1.6 ft.$^3$ or greater capacity. | 1.04 | 1.26. |
| iii. Top Loading, Semi-Automatic | Not Applicable.[1] | Not Applicable.[1] |
| iv. Front Loading | 1.04 | 1.26. |
| v. Suds saving | Not Applicable.[1] | Not Applicable.[1] |

[1] Must have an unheated rinse water option.

* * * * *

[FR Doc. 00–25335 Filed 9–29–00; 9:42 am]
BILLING CODE 6450–01–P




Federal Register

Thursday,
October 5, 2000

Part IV

# Department of Energy

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

Energy Conservation Program for Consumer Products: Central Air Conditioners and Heat Pumps Energy Conservation Standards; Proposed Rule

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DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

[Docket Number EE–RM–97–500]

RIN: 1904–AA77

## Energy Conservation Program for Consumer Products: Central Air Conditioners and Heat Pumps Energy Conservation Standards

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Notice of proposed rulemaking and public hearing.

**SUMMARY:** Pursuant to the Energy Policy and Conservation Act, as amended, the Department of Energy (DOE, Department, or we) is proposing to amend the energy conservation standards for residential central air conditioners and heat pumps to require them to be more energy efficient, and is announcing a public hearing on the proposal.

**DATES:** Comments must be received on or before December 4, 2000. DOE is requesting a signed original, a computer diskette (WordPerfect 8) and 10 copies of the written comments. The Department will also accept e-mailed comments, but you must send a signed original. Oral views, data, and arguments may be presented at the public hearing (workshop) in Washington, DC beginning at 9 a.m. on November 16, 2000.

The Department must receive requests to speak at the public hearing and a copy of your statements no later than 4 p.m., November 1, 2000, and we request that you provide a computer diskette (WordPerfect 8) of each statement at that time.

**ADDRESSES:** Please submit written comments, oral statements, and requests to speak at the public hearing to: Brenda Edwards-Jones, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Energy Conservation Program for Consumer Products: Central Air Conditioners and Heat Pumps, Docket No. EE-RM/STD–97–500, 1000 Independence Avenue, SW., Washington, DC 20585–0121. You may send emails to: brenda.edwards-jones@ee.doe.gov.

The hearing will begin at 9 a.m., in Room 1E–245 at the U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue, SW., Washington DC. You can find more information concerning public participation in this rulemaking proceeding in Section VIII, "Public Comment Procedures," of this notice of proposed rulemaking.

You may read copies of the public comments, the Technical Support Document for Energy Efficiency Standards for Consumer Products: Central Air Conditioners and Heat Pumps (TSD), the transcript of the public hearing, and previous workshop transcripts in this proceeding at the DOE Freedom of Information (FOI) Reading Room, U.S. Department of Energy, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW., Washington, DC 20585, (202–586-3142, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may obtain copies of the TSD and analysis spreadsheets from the Office of Energy Efficiency and Renewable Energy's (EERE) web site at: http://www.eren.doe.gov/buildings/codes_standards/applbrf/central_air_conditioner.html.

**FOR FURTHER INFORMATION CONTACT:** Dr. Michael E. McCabe, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, EE–41, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–0854, e-mail: michael.e.mccabe@ee.doe.gov, or Edward Levy, Esq., U.S. Department of Energy, Office of General Counsel, Forrestal Building, GC–72, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9507, e-mail: edward.levy@hq.doe.gov.

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## I. Summary of Proposed Rule

The Department is proposing to raise the energy efficiency standards for residential air conditioners and central air conditioning heat pumps (heat pumps) to 12 SEER [1] for air conditioners and to 13 SEER/7.7 HSPF [2] for heat pumps. The proposed standards would apply to all covered products offered for sale in the United States, effective on January 1, 2006. The proposed standard for split system air conditioners, the most common type of residential air conditioning equipment represents a 20% improvement in energy efficiency. For split system heat pumps, the new standards would represent a 30% improvement in cooling efficiency and a 13% improvement in heating efficiency. The proposed standards would also increase the efficiency of packaged air conditioners and packaged heat pumps by 24% and 17%, respectively. Finally, the Department is proposing provisions for some special products to ensure that more efficient versions remain available for niche applications.

The proposed standards would save a significant amount of energy and, as a result of less electricity being produced, result in a cleaner environment. In the 25-year period after the new standards become effective, the nation would save over 3.4 Quads [3] of primary energy, equivalent to all the energy consumed by nearly 18 million American households in a single year. These energy savings would also significantly reduce the emissions of air pollutants and greenhouse gases associated with electricity production, by avoiding the emission of 56 million tons (Mt) of Carbon and 52 thousand tons (kt) nitrogen oxides ($NO_X$). Also, the standards are expected to eliminate the need for the construction of approximately 31 (4 coal-fired and 27 natural gas-fired) new large, 400 megaWatt (MW), power plants in 2020.

In addition to the increase proposed in SEER and HSPF, we are proposing and requesting public comments on a proposal to adopt a standard for steady-state cooling efficiency, EER.[4] A requirement on EER would ensure more efficient operation at high outdoor temperature, during periods when electricity use by air conditioners is at its peak. This would help to further alleviate the need for new electric power plants and reduce the demands placed on the electric transmission and distribution systems during periods of high usage, thereby, improving system reliability.

Finally, consumers would see benefits from the proposed standards. For example, while the initial cost of a typical central air conditioner would increase by $122 to $153 or about 10–12%, the higher efficiency equipment would save enough over its life to pay for the increase in the price of the equipment plus an extra $45. Many consumers, especially air conditioner owners in warmer parts of the country and heat pump owners, would save even more.

While the higher efficiency units are widely available today and promoted through the Department of Energy and the Environmental Protection Agency (EPA) Energy Star® program, as well as utility rebate programs, manufacturers would be redesigning their product line to meet the efficiency standards. At the same time they would be redesigning their products to respond to the phase-out hydrochloroflourocarbons (HCFC's) refrigerants required by EPA. By making both changes at once, *i.e.*, efficiency and HCFC refrigerants, manufacturers will be able to plan and apply their resources in a cost-effective manner, resulting in lower burdens and costs.

[1] SEER, Seasonal Energy Efficiency Ratio, is the Department's measure of energy efficiency for the seasonal cooling performance of central air conditioners and heat pumps.

[2] HSPF, Heating Seasonal Performance Factor, is the Department's measure of energy efficiency for the seasonal heating performance of heat pumps.

[3] Quad, means quadrillion ($10^{15}$ Btus).

[4] EER, Energy Efficiency Ratio, is a steady-state measure of energy efficiency which measures efficiency at a prescribed outdoor temperature (95°F), and is one of the test conditions in the Department's test procedure used to develop the SEER.

## II. Introduction

### A. Authority

Part B of Title III of the Energy Policy and Conservation Act (EPCA), Pub. L. 94–163, as amended by the National Energy Conservation Policy Act of 1978, Pub. L. 95–619, the National Appliance Energy Conservation Act, Pub. L. 100–12, the National Appliance Energy Conservation Amendments of 1988, Pub. L. 100–357, and the Energy Policy Act of 1992, Pub. L. 102–486 [5] created the Energy Conservation Program for Consumer Products other than Automobiles. The consumer products subject to this program (often referred to hereafter as "covered products") include central air conditioners and heat pumps. EPCA section 322(a)(4), 42 U.S.C. 6292(a)(4).

Under the Act, the program consists essentially of four parts: testing, labeling, Federal energy conservation standards, and certification and enforcement procedures. The Federal Trade Commission is responsible for labeling, and DOE implements the remainder of the program. Section 323 of the Act authorizes the Department, with assistance from the National Institute of Standards and Technology (NIST) and subject to certain criteria and conditions, to develop test procedures to measure the energy efficiency, energy use, or estimated annual operating cost of each covered product. 42 U.S.C. 6293. The central air conditioners and heat pump test procedures appear at title 10 Code of Federal Regulations (CFR) part 430, subpart B, Appendix M.

The Act prescribes initial Federal energy conservation standards for each of the listed covered products, except television sets. EPCA section 325 (b)–(k), 42 U.S.C. 6295 (b)–(k). For central air conditioners and heat pumps, EPCA section 325(d)(3)(A) specifies that the

[5] Part B of Title III of the Energy Policy and Conservation Act, as amended by the National Energy Conservation Policy Act, the National Appliance Energy Conservation Act, the National Appliance Energy Conservation Amendments of 1988, and the Energy Policy Act of 1992, is referred to in this notice as the "Act," or "EPCA." Part B of Title III is codified at 42 U.S.C. 6291 *et seq.* Part B of Title III of the Energy Policy and Conservation Act, as amended by the National Energy Conservation Policy Act only, is referred to in this notice as the National Energy Conservation Policy Act.

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standards are to be reviewed by the Department no later than January 1, 1994. 42 U.S.C. 6295(d)(3)(A).

Any new or amended standard must be designed so as to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. EPCA section 325(o)(2)(A), 42 U.S.C. 6295(o)(2)(A). Moreover, the Department may not prescribe a standard for: (1) Certain products, including central air conditioners and heat pumps, if no test procedure has been established for the product, or (2) any product, if DOE determines by rule that a standard for the product either would not result in significant conservation of energy, or is not technologically feasible or economically justified. EPCA section 325(o)(3), 42 U.S.C. 6295(o)(3).

Section 325(o)(2)(B)(i), 42 U.S.C. 6295(o)(2)(B)(i) provides that DOE must determine whether a standard is economically justified, after receiving comments on the proposed standard, and whether the benefits of the standard exceed its burdens, based, to the greatest extent practicable, on a weighing of the following seven factors:

"(1) The economic impact of the standard on the manufacturers and the consumers of the products subject to such standard;

(2) The savings in operating costs throughout the estimated average life of the covered product in the type (or class) compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered products which are likely to result from the imposition of the standard;

(3) The total projected amount of energy * * * savings likely to result directly from the imposition of the standard;

(4) Any lessening of the utility or the performance of the covered products likely to result from the imposition of the standard;

(5) The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the imposition of the standard;

(6) The need for national energy conservation; and

(7) Other factors the Secretary considers relevant."

In addition, Section 325(o)(2)(B)(iii) of the Act, 42 U.S.C. 6295(o)(2)(B)(iii), establishes a rebuttable presumption that a standard is economically justified if the Secretary finds that "the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy * * * savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure * * * " The rebuttable presumption test is an alternative path to establishing economic justification.

Section 327 of the Act, 42 U.S.C. 6297, provides that generally the Federal energy efficiency requirements supersede State laws or regulations concerning energy conservation testing, labeling, and standards, and specifies limited exceptions to this general rule. EPCA Section 327(a) through (c), 42 U.S.C. 6297 (a) through (c). The Department can grant a waiver of preemption in accordance with the procedures and other provisions of Section 327(d) of the Act. 42 U.S.C. 6297(d).

*B. Background*

1. Current Standards

The existing standards for residential central air conditioners and heat pumps have been in effect since 1992. Energy efficiency for air conditioner and heat pump cooling has been defined by the descriptor SEER. Energy efficiency for heat pumps has been defined by the descriptor, Heating Seasonal Performance Factor (HSPF) while operating during the heating season and by SEER while operating during the cooling season. The current central air conditioners and heat pumps efficiency standards are as follows:

—Split system air conditioners and heat pumps—10 SEER/6.8 HSPF

—Single package air conditioners and heat pumps—9.7 SEER/6.6 HSPF

2. History of Previous Rulemakings

On September 8, 1993, DOE published an Advance Notice of Proposed Rulemaking (ANOPR) announcing the Department's intention to revise the existing central air conditioner and heat pump efficiency standard. (58 FR 47326). On November 24, 1999, DOE published a Supplemental ANOPR (hereinafter referred to as the Supplemental ANOPR). 64 FR 66306. In the Supplemental ANOPR and during the December 9, 1999, public workshop, we provided interested persons an opportunity to comment on several issues, including:

(1) The product classes that the Department planned to analyze;

(2) The analytical framework, models (*e.g.*, the Government Regulatory Impact Model (GRIM)), and tools (*e.g.*, a Monte Carlo sampling methodology, and the life-cycle cost (LCC) and national energy savings (NES) spreadsheets) that the Department was using in performing analyses of the impacts of energy conservation standards;

(3) The results of preliminary analyses for the engineering, LCC, payback and NES; and

(4) The candidate energy conservation standard levels that the Department had developed from these analyses.

3. Process Improvement

The fiscal year (FY) 1996 appropriations legislation imposed a moratorium on proposed or final rules for appliance efficiency standards for FY 1996. Pub. L. 104–134. During the moratorium, the Department examined the appliance standards program and how it was working. Congress advised DOE to correct the standards-setting process and to bring together stakeholders (such as manufacturers and environmentalists) for assistance. Therefore, we consulted with energy efficiency groups, manufacturers, trade associations, state agencies, utilities and other interested parties to provide input to the process used to develop appliance efficiency standards. As a result, on July 15, 1996, the Department published a final rule: Procedures for Consideration of New or Revised Energy Conservation Standards for Consumer Products (referred to as the Process Rule) (61 FR 36974), codified at 10 CFR part 430, subpart C, Appendix A.

The Process Rule states that for products, such as central air conditioners and heat pumps, for which DOE issued a proposed rule prior to August 14, 1996, DOE would conduct a review to decide whether any of the analytical or procedural steps already completed should be repeated. (61 FR 36982). DOE completed this review and decided to use the Process Rule, to the extent possible, in the development of the revised central air conditioners and heat pumps standards.

We developed an analytical framework for the central air conditioners and heat pumps standards rulemaking for our stakeholders, which we presented during a workshop on June 30, 1998. The analytical framework described the different analyses (*e.g.*, LCC, payback and manufacturing impact analyses (MIA)) to be conducted, the method for conducting them, the use of new LCC and NES spreadsheets, and the relationship of the various analyses.

## III. General Discussion

*A. Test Procedures*

Section 7(b) of the Process Rule states that necessary modifications to test procedures concerning efficiency standards will be proposed before issuance of a proposed rule. Section 7(c) of the Process Rule states that a final modified test procedure will be issued



prior to issuing a proposed rule regarding energy conservation standards. The residential central air conditioner and heat pump test procedure is being revised to improve its organization and ease of use, with a proposed rule to be published. This revision of the test procedure is not expected to alter the measured efficiencies as determined under the existing test procedure. Therefore, the revised test procedure would not affect development of revised efficiency standards. For these reasons, revisions to the test procedure are not a "necessary modification" as that term is used in the Process Rule, but rather a routine update, and hence need not be finalized before issuance of the proposed rule for these standards.

*B. Technological Feasibility*

1. General

There are central air conditioners and heat pumps in the market at all of the efficiency levels analyzed in today's notice. The Department, therefore, believes all of the efficiency levels discussed in today's notice are technologically feasible.

2. Maximum Technologically Feasible Levels

The Act requires the Department, in a proposed rule that sets forth new or amended standards, to "determine the maximum improvement in energy efficiency * * * that is technologically feasible for each type (or class) of covered products." EPCA section 325 (p)(2), 42 U.S.C. 6295(p)(2). Accordingly, for each class of product under consideration in this rulemaking, a maximum technologically feasible (Max Tech) level was identified.

As previously stated in Section II.B, residential central air conditioner and heat pump cooling efficiency is expressed as a SEER. Heating efficiency is expressed as a HSPF. The most efficient technology presently available is a 3-ton 18 SEER central air conditioner. The Department has determined that at this time 18 SEER is the Max Tech level for cooling efficiency for all product classes and capacities in this analysis. The Max Tech level for heating efficiency, corresponding to the 18 SEER level, is 9.4 HSPF which is the highest HSPF rating currently available in residential heat pumps.

*C. Energy Savings*

1. Determination of Savings

The Department estimated energy savings through the use of the NES spreadsheet, which forecasted energy savings over the period of analysis for candidate standards relative to the base case. The Department quantified the energy savings that would be attributable to a standard as the difference in energy consumption between the candidate standards case and the base case. The base case represents the forecast of energy consumption in the absence of amended mandatory efficiency standards.

The NES spreadsheet model is described in Section IV.B of this notice, Appendix of the Technical Support Document and also in the Supplemental ANOPR. (64 FR 66306). The NES spreadsheet model calculates the energy savings in site energy or kilowatt-hours (kWh). Site energy is the energy directly consumed at building sites by the central air conditioner or heat pump. National energy savings are expressed in terms of the source energy savings which is the savings in energy used to generate and transmit the electricity consumed at the site. Chapter 7 of the TSD contains a table of factors used to convert kWh to Btu. These conversion factors, which change with time, are derived from DOE's Energy Information Administration's (EIA) Annual Energy Outlook 2000 (AEO2000).

2. Significance of Savings

The Act prohibits the Department from adopting a standard for a product if that standard would not result in "significant" energy savings. EPCA section 325(o)(3)(B), 42 U.S.C. 6295(o)(3)(B). While the term "significant" is not defined in the Act, the U.S. Court of Appeals, in *Natural Resources Defense Council* v. *Herrington*, 768 F.2d 1355, 1373 (D.C. Cir. 1985), indicated that Congress intended "significant" energy savings in this context to be savings that were not "genuinely trivial." The energy savings for all of the trial standard levels considered in this rulemaking are non-trivial and therefore we consider them "significant" within the meaning of section 325 of the Act.

*D. Rebuttable Presumption*

The National Appliance Energy Conservation Act established new criteria for determining whether a standard level is economically justified. EPCA section 325(o)(2)(B)(iii) states:

"If the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy * * * savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure, there shall be a rebuttable presumption that such standard level is economically justified. A determination by the Secretary that such criterion is not met shall not be taken into consideration in the Secretary's determination of whether a standard is economically justified."

If the increase in initial price of an appliance due to a conservation standard would repay itself to the consumer in energy savings in less than three years, then we presume that such standard is economically justified.[6] This presumption of economic justification can be rebutted upon a proper showing.

*E. Economic Justification*

As noted earlier, section 325(o)(2)(B)(i) of the Act provides seven factors to be evaluated in determining whether a conservation standard is economically justified.

1. Economic Impact on Manufacturers and Consumers

The Process Rule established procedures, interpretations and policies to guide the Department in the consideration of new or revised appliance efficiency standards. The provisions of the rule have direct bearing on the implementation of manufacturer impact analyses. First, the Department will use an annual cash flow approach in determining the quantitative impacts on manufacturers. This includes a short-term assessment based on the cost and capital requirements during the period between the announcement of a regulation and the time when the regulation comes into effect, and a long-term assessment. Impacts analyzed include industry net present value, cash flows by year, changes in revenue and income, and other measures of impact, as appropriate. Second, the Department will analyze and report the impacts on different types of manufacturers, with particular attention to impacts on small manufacturers. Third, the Department will consider the impact of standards on domestic manufacturer employment, manufacturing capacity, plant closures and loss of capital investment. Finally, the Department will take into account cumulative impacts of different DOE regulations on manufacturers.

For consumers, measures of economic impact are the changes in installed cost and annual operating costs, *i.e.*, LCC. The life-cycle cost of the product at each standard level are presented in Chapter

[6] For this calculation, the Department calculated cost-of-operation based on the DOE test procedure, with the test procedure assumed annual hours of operation. Consumers that use the central air conditioner or heat pump fewer hours will experience a longer payback while those that use them more will have a shorter payback.

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5 of the TSD. Under section 325 of the Act, the life-cycle cost analysis is a separate factor to be considered in determining economic justification.

2. Life-Cycle Costs

The life-cycle cost is the sum of the purchase price, including the installation, and the operating expense, including operating energy, maintenance, and repair expenditures, discounted over the lifetime of the appliance.

For each central air conditioner and heat pump product class, we calculated both life-cycle costs and life cycle cost savings for the following space-cooling efficiency levels: 11, 12, 13, and 18 SEER. For heat pumps, the following space-heating efficiency levels correspond to the above SEER values: 7.1, 7.4, 7.7, and 8.8 HSPF, respectively. The calculated life-cycle cost savings is given as a distribution, with a mean value and a range. We used a distribution of real discount rates ranging from 0.1 to 18% for the calculations. The assumption is that the consumer purchases the central air conditioner and/or heat pump in 2006. For the probability-based LCC analysis, a building-by-building analysis is performed for purposes of generating a distribution of life-cycle costs for each efficiency level analyzed. The building stock is composed of both residential and commercial buildings under the assumption that 90% of single-phase central air conditioners and heat pumps are utilized in residential buildings with the remaining 10% in commercial buildings. The 1997 Residential Energy Consumption Survey (RECS) is used to represent the residential building stock while 77 commercial buildings are used to represent the commercial building stock based on assumptions consistent with those used in the process to update ASHRAE Standard 90.1–1999. Annual energy costs are based on marginal electricity prices which are developed for each residential and commercial building. Electricity price forecasts are taken from the AEO2000 (DOE/EIA–0383). The LCC calculations include markup structures developed for both the new construction and replacement/retrofit markets. Chapter 5 of the TSD contains the details of the LCC calculations including those considered under factor seven below.

3. Energy Savings

While significant conservation of energy is a separate statutory requirement for imposing an energy conservation standard, the Act requires DOE, in determining the economic justification of a standard, to consider the total projected energy savings that are expected to result directly from revised standards. The Department used the NES spreadsheet results, discussed earlier, in its consideration of total projected savings. The savings are provided in section V of this notice.

4. Lessening, if Any, of Utility or Performance of Products

This factor cannot be quantified. In establishing classes of products, and in evaluating design options and the impact of potential standard levels, the Department tried to eliminate any degradation of utility or performance in the products under consideration in this rulemaking. None of the proposed trial standard levels reduces the performance of central air conditioners and heat pumps.

5. Impact of Any Lessening of Competition

The Act directs the Department to consider any lessening of competition that is likely to result from standards. It further directs the Attorney General to determine the impact, if any, of any lessening of competition likely to result from a proposed standard and transmit such determination to the Secretary, not later than 60 days after the publication of a proposed rule, together with an analysis of the nature and extent of such impact. Section 325(o)(2)(B)(i)(V) and (B)(ii), 42 U.S.C. 6295(o)(2)(B)(i)(V) and (B)(ii).

In order to assist the Attorney General in making such a determination, the Department has provided the Attorney General with copies of this notice and the Technical Support Document for review.

6. Need of the Nation To Conserve Energy

We report the environmental effects from each standard level for each product under this factor in Section VI of this notice.

7. Other Factors

During the extreme periods of heat and humidity that took place in the summer of 1999, electric power outages and other system disturbances disrupted the lives of millions of people and thousands of businesses in various regions of our country. In response to public concerns about this problem, the Secretary of Energy formed a team of experts to investigate the problem and to recommend actions that the Federal government can take to help avoid future power outages by improving the reliability of the U.S. electric power system. One of the actions proposed by the Secretary at that time was to accelerate the rulemaking process and advance the publication of a final rule for central air conditioners by six months.

The Final Report[7] by the team of experts, issued in March, 2000, included the recommendation to increase the energy efficiency of central air conditioners as one means for enhancing reliability. The report stated, "Technologies and practices that reduce loads during times of peak demand, such as high-efficiency air conditioning and lighting equipment, are especially valuable." This was based on the finding that in several of the affected regions "Retail customers have limited mechanisms and incentives to conserve energy or resort to alternatives during electricity shortages." Included in the federal activities that promote energy efficiency recommended to the Secretary was to promulgate standards for more efficient technologies.

As an additional element to consider under this factor, the Secretary has decided to evaluate the life-cycle cost impacts on those subgroups of consumers who are at or below the poverty line (*e.g.*, for a family of four, this constitutes a household income of less than $16,036).

## IV. Methodology

The Process Rule outlines the procedural improvements identified by the interested parties. 61 FR 36974. The process improvement effort also included a review of the: (1) Economic models; (2) analytical tools; (3) methodologies; (4) non-regulatory approaches; and (5) prioritization of future rules.

The Department continues to use two spreadsheet tools to meet the objectives of the Process Rule. The first spreadsheet calculates life-cycle-costs and payback periods of potential new energy conservation standards. The second conducts shipments forecasts and then calculates national energy savings and net present value impacts of potential new energy conservation standards. The Department also completely revised the methodology used in assessing manufacturer impacts including the adoption of the GRIM.

Additionally, DOE has estimated the impacts of central air conditioner and heat pump energy efficiency standards on electric utilities and the environment. The Department used a version of EIA's National Energy Modeling System (NEMS) for the utility

[7] "Report of the U.S. Department of Energy's Power Outage Study Team: Findiogs and Recommendations to Enhance Reliability from the Summer of 1999", March 2000.



and environmental analyses. NEMS simulates the energy economy of the U.S. and has been developed over several years by the EIA primarily for the purpose of preparing the AEO. NEMS produces a widely-known baseline forecast for the U.S. through 2020 that is available in the public domain. The version of NEMS used for appliance standards analysis is called NEMS–BRS,[8] and is based on the AEO2000 version with minor modifications. NEMS offers a sophisticated picture of the effect of standards since its scope allows it to measure the interactions between the various energy supply and demand sectors and the economy as a whole.

*A. Life-Cycle Cost and Payback Period Analysis*

This section describes the LCC and payback period analysis and the spreadsheet model used for analyzing the economic impacts of possible standards on individual residential and commercial consumers. Details of the spreadsheet model can be found in Chapters 5 in the TSD. We conduct the LCC and payback period analysis with a spreadsheet model developed in Microsoft Excel for Windows 95 or above. When combined with Crystal Ball (a commercially available software program), the LCC and payback period generates a Monte Carlo simulation to perform the analysis by incorporating uncertainty and variability considerations.

The LCC is the total consumer expense over the life of the appliance, including purchase expense and operating costs (including energy expenditures). Future operating costs are discounted to the time of purchase and summed over the lifetime of the appliance. The payback period is the change in purchase expense due to an increased efficiency standard divided by the change in annual operating cost that results from the standard. For today's proposed rule, both the LCC and payback period are based on a building-by-building analysis of a nationally representative set of residential and commercial buildings.

The set of residential buildings are taken from those households in the 1997 RECS equipped with either a central air conditioner or heat pump. Of the 5,900 households surveyed in the 1997 RECS, 2,003 households representing 37.6% of the housing population have a central air conditioner while 579 households representing 11.1% of the housing population have heat pumps.[9] RECS specifies the annual space-cooling energy consumption and, in the case of heat pumps, the annual space-heating energy consumption associated with the space-conditioning equipment. Also provided is the age of the space-conditioning equipment which, when coupled with historical equipment efficiency data provided by the Air-Conditioning and Refrigeration Institute (ARI), allows for the imputation of the household's space-conditioning equipment efficiency (*i.e.*, the SEER and, in the case of heat pumps, the HSPF). With both the annual energy use and the efficiency of the central air conditioner or heat pump specified, the annual energy use associated with equipment at higher efficiency levels is simply determined by multiplying the household's existing annual energy use by the ratio of the existing equipment efficiency divided by the efficiency of the more efficient equipment. Household utility billing data in RECS allows for the determination of average and marginal electricity prices. The electricity price data along with the annual energy use data allows for the determination of annual electricity cost savings for any efficiency level.

The set of commercial buildings are based on assumptions consistent with those used to develop the American Society of Heating, Refrigerating, and Air-Conditioning Engineers' (ASHRAE) Standard 90.1–1999. The commercial building data set consists of seven building types located in eleven different geographic regions yielding a total of 77 buildings. An hourly simulation program is used to calculate the annual full-load equivalent operating hours (FLEOH) of the space-cooling and space-heating equipment in each building. The FLEOHs are used with the Department of Energy's test procedure equations for central air conditioners and heat pumps to obtain each building's annual space-cooling and space-heating energy consumption. Similar to the analysis for residential buildings, the energy use associated with equipment at higher efficiency levels is simply determined by multiplying the building's simulated annual energy use by the ratio of the building's assumed equipment efficiency (*i.e.*, 10 SEER) divided by the efficiency of the more efficient equipment. Average and marginal electricity prices for each commercial building are determined by applying a national sample of electric utility tariffs to the simulated load and demand. The electricity price data along with the annual energy use data allows for the determination of annual electricity cost savings for any efficiency level for each commercial building.

The probability-based LCC and payback period analysis samples buildings from the residential and commercial building data set in order to produce a distribution of LCC results for a given standard level. The LCC and payback period analysis takes 10,000 samples to create a distribution of results based on the assumption that 90% of the single-phase central air conditioning and heat pump equipment stock are in residential buildings with the remaining 10% in commercial buildings.

The spreadsheet model is organized so that ranges or distributions can be entered for each input variable needed to perform the calculations. The LCC and payback period output can be either a point value when we use the average value of the inputs or a distribution when we use distributions for some or all of the inputs. Inputs for determining the total installed cost include: Baseline manufacturer costs, manufacturer cost multipliers for each efficiency level, manufacturer markups, distributor or wholesaler markups, dealer or contractor markups, builder markups, sales taxes, and installation costs. Of the above total installed cost inputs, the manufacturer, dealer, distributor, and builder markups, as well as the sales tax and installation price are described with distributions. Inputs for determining operating expenses include: Annual energy consumption, average electricity prices, marginal electricity prices, electricity price projections, repair costs, maintenance costs, equipment lifetime, discount rates, and the year standards take effect. Of the above operating expense inputs, the discount rate and equipment lifetime are described with distributions (note that neither the discount rate nor lifetime are needed to determine the payback period). Operating expense, annual

[8] EIA approves use of the name NEMS to describe only an AEO version of the model without any modification to code or data. Because our analysis entails some minor code modifications and the model is run under various policy scenarios that deviate from AEO assumptions, the name NEMS–BRS refers to the model as used here. For more information on NEMS, please refer to the National Energy Modeling System: An Overview 1998. DOE/EIA–0581 (98), February, 1998. BRS is DOE's Office of Building Research and Standards.

[9] The number of households actually used in the central air conditioner and heat pump LCC and Payback period analyses were 1218 and 308, respectively. Some central air-conditioned households were dropped from the analysis for one or more of the following reasons: (1) The central air conditioner was not used, (2) a room air conditioner was present and used, or (3) marginal energy prices could not be determined for the household. With regard to households with heat pumps, they were dropped from the analysis for one or more of the following reasons: (1) The heat pump was not used or (2) marginal energy prices could not be determined for the household.

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energy use and electricity prices, although represented by point-values for each residential and commercial building, are highly variable when looking at the entire building data set. Chapter 5 of the TSD contains the details of all the inputs to the LCC and payback period analysis.

In addition to determining payback periods with the spreadsheet model, the Act requires us to determine a rebuttable payback period. The Act requires the Department to examine payback periods to determine if the three year rebuttable presumption of economic justification applies. As prescribed by the Act, the rebuttable payback period is "calculated under the applicable test procedure, * * * ."

The annual space-cooling and space-heating energy consumption calculated based on the Department's test procedure are on the order of 50% greater than the weighted-average values from the LCC analysis (*i.e.*, analyses based on the 1997 RECS for residential buildings and hourly simulations for commercial buildings). As will be shown in Section VI (Analytical Results), the payback value calculated from the Department's test procedure equations will be significantly lower than the average payback value calculated from the LCC analysis, for any standard level.

*B. National Energy Savings and Net Present Value Analysis*

In order to make the analysis more accessible and transparent to all stakeholders, we continue to use an Excel spreadsheet model to calculate the energy savings and the national economic costs and savings from new standards. Various input quantities within the spreadsheet can be changed. Unlike the LCC analysis, the NES spreadsheet does not use distributions for inputs or outputs. We conduct sensitivities by running different scenarios.

DOE uses the NES spreadsheet to perform calculations of energy savings and net present value (NPV) based on user inputs similar to those for the LCC spreadsheet. The energy savings, energy cost savings, equipment costs, and NPV of benefits for several product classes are forecast from the chosen start year through 2030. The forecasts provide annual and cumulative values for all four output parameters.

The Department calculates the national energy savings by subtracting energy use under a standards scenario from energy use in a base case (no new standards scenario). Energy use is reduced when the baseline central air conditioner or heat pump (*i.e*, 10 SEER) is replaced by a more efficient piece of equipment. Unit energy savings for each product class are the same weighted-average values as calculated in the LCC and Payback period spreadsheet. Additional information about the NES spreadsheet can be found in Chapter 7 of the TSD.

User inputs include: (1) A choice from among several electricity price projections: (2) effective date of the central air conditioners and heat pumps standard; (3) discount rate and discount year; (4) a standards case efficiency level; (5) an equipment price; (6) an equipment price and housing projection; and (7) an efficiency scenario. Additionally, we use a time series of conversion factors to change from site to source energy.

The efficiency scenario specifies the equipment efficiency distribution after new standards would take effect. Three efficiency scenarios were used to forecast the impact new standards would have after they take effect: (1) National Appliance Energy Conservation Act (NAECA) scenario,[10] (2) Roll-up scenario,[11] and (3) Shift scenario.[12] As opposed to the Supplemental ANOPR where weighted-average equipment efficiencies were forecasted, an actual distribution of efficiencies (*i.e.*, the percentage of shipments which occur in incremental SEER bins over the range from the minimum standard to 18 SEER) were used in the analysis for the proposed rule.

One of the more important components of any estimate of future impact is shipments. Forecasts of shipments for the base case and standards case are determined within the NES spreadsheet. The shipments portion of the spreadsheet forecasts central air conditioner and heat pump shipments from 2000 to 2030. Shipments forecasts are developed by accounting for: (1) The combined effects of equipment price, operating cost, and household income; (2) different market segments (*e.g.*, new housing, replacement decisions, and non-owners adding a central air conditioner or heat pump); (3) decisions to repair rather than replace; and (4) different equipment age categories. Additional details on the various shipments forecasts are provided in Chapter 6 of the TSD.

*C. Manufacturer Impact Analysis*

The MIA estimates the financial impact of standards on manufacturers and calculates impacts on employment and manufacturing capacity.

The Department published the proposed MIA approach as part of the **Federal Register** publication of the Supplemental ANOPR, and received no comments suggesting substantive changes in the methodology. As proposed, the MIA was conducted in three phases. Phase 1, "Industry Profile," consisted of the preparation of an industry characterization. Phase 2, "Industry Cash Flow," focused on the industry as a whole, including both major and niche-product manufacturers. The GRIM was used to prepare an industry cash flow analysis. The Department used publicly available information developed in Phase 1 to adapt the GRIM structure to facilitate the analysis of new central air conditioner and central air conditioning heat pump standards.

In Phase 3, "Sub-Group Impact Analysis," the Department conducted interviews with several niche-product manufacturers to determine the financial impacts of revised standards. Phase 3 also entailed documenting additional impacts on employment and manufacturing capacity through a structured interview process.

1. Phase 1, Industry Profile

Phase 1 of the MIA consisted of preparing an Industry Profile. Prior to initiating the detailed impact studies, DOE collected information on the present and past structure and market characteristics of the central air conditioning industry. This activity involved both quantitative and qualitative efforts to assess the industry and products to be analyzed. The information collected included manufacturer market shares and characteristics and financial information, market trends, and product characteristics.

[10] Under the NAECA scenario, equipment efficiencies after the adoption of new standards are forecasted to change in the same pattern as the efficiency changes that occurred in 1992 when minimum efficiency standards first took effect. This results in weighted average equipment efficiencies, based on minimum efficiency standards of 11, 12, and 13 SEER, of 11.6 SEER, 12.4 SEER, and 13.4 SEER, respectively.

[11] Under the Roll-up scenario, equipment that in the base case were forecast to be less efficient than the trial standard level are assumed to move up to the standard level, and equipment forecasted in the base case to be at or above the trial standard level are assumed not to increase in efficiency. This results in weighted-average equipment efficiencies, based on minimum efficiency standards of 11, 12, and 13 SEER, of 11.5 SEER, 12.3 SEER, and 13.3 SEER, respectively.

[12] Under the Shift scenario, equipment efficiencies after the adoption of new standards are forecast to have the same pattern, at and above the standard levels, as the current distribution of efficiencies. This results in weighted-average equipment efficiencies, based on minimum efficiency standards of 11, 12, and 13 SEER, of 11.7 SEER, 12.7 SEER, and 13.7 SEER, respectively.



The industry profile included a top-down cost analysis of the central air conditioner manufacturing industry that was used to derive cost and financial inputs for the GRIM, *e.g.*, revenues, and material, labor, overhead, depreciation, Sales General & Administration (SG&A), and Research & Development (R&D) expenses. The Department also utilized additional sources of information to further characterize the industry. These included company Securities and Exchange Commission (SEC) 10–K reports, Moody's company data reports, Standard & Poor's (S&P) stock reports, Value Line industry composites, and Dow Jones Financial Services.

2. Phase 2, Industry Cash Flow Analysis

Phase 2 of the MIA focused on the financial impacts of new standards on the industry as a whole. The analytical tool used for calculating the financial impacts of standards on manufacturers is the GRIM. As part of the analysis, DOE interviewed several of the major manufacturers. For the Industry Cash Flow Analysis, DOE used the financial values determined during Phase 1 and the shipment scenarios used in the LCC and NES analyses.

3. Phase 3, Sub-Group Impact Analysis

The Department has received many comments during workshops and interviews, and in writing, suggesting that manufacturers of niche products, representing less than 3% of industry shipments, could be more negatively impacted by new standards than major manufacturers. To assess the differential impacts, the Department interviewed two manufacturers of niche products, in addition to those conducted during the Engineering Analysis. The focus of the interviews was to determine which GRIM parameters differed for niche manufacturers by virtue of their smaller revenue base and more limited markets.

From a financial standpoint, the common distinguishing characteristic of niche product manufacturers was their need to spread the costs of converting to new standards over smaller production volumes, as well as the product size constraints identified during the Engineering Analysis which make their shipments more sensitive to increases in product size. During the interviews, small manufacturers demonstrated that several of the costs necessary to meet any new regulation are largely independent of the product volume produced. The most apparent are the costs necessary to design a new product meeting the proposed energy standards. Other costs, such as plant engineering, some tooling, and other capital costs, have significant portions that are independent of final production volumes.

4. GRIM Analysis

An increase in standards affects a manufacturer's cash flow in three distinct ways: (1) Increased investment; (2) higher production costs per unit; and (3) altered revenue by virtue of higher per unit prices and changes in sales volumes. As mentioned, the Department uses the GRIM to quantify the changes in cash flow that result in a higher or lower industry value.

The GRIM analysis uses a number of inputs—annual shipments; prices; manufacturer costs such as materials and labor, selling and general administration costs, taxes, and capital expenditures—to arrive at a series of annual net cash flows beginning today and continuing ten years past the implementation of new standards. This information was collected from a number of sources, including publically available data, as well as interviews with of the major manufacturers and two specialty manufacturers. Industry net present values are calculated by discounting and summing the annual net cash flows. Additional information about the GRIM spreadsheet can be found in Chapter 8 of the TSD.

*D. NEMS Environmental Analysis*

The environmental analysis provides estimates of changes in emissions of nitrogen oxides ($NO_X$) and carbon from carbon dioxide ($CO_2$). The Department used NEMS–BRS for central air conditioner and heat pump analyses (as well as the utility analyses). NEMS–BRS is run similar to the AEO2000 NEMS except that central air conditioner and heat pump energy usages are reduced by the amount of energy (electricity) saved due to the proposed trial standard levels. The input of energy savings are obtained from the NES spreadsheet. For the environmental analysis, the output is the forecasted physical emissions. The net benefits of the standard is the difference between emissions estimated by NEM–BRS and the AEO2000 Reference Case.

The environmental analysis is relatively straightforward from NEMS–BRS. Carbon emissions are tracked in NEMS–BRS using a detailed carbon module that provides robust results because of its broad coverage of all sectors and inclusion of interactive effects. The only form of carbon tracked by NEMS–BRS is $CO_2$. However, in this report the carbon savings are reported as elemental carbon.

The two airborne pollutant emissions that have been reported in past analyses, sulfur dioxide ($SO_2$) and $NO_X$, are reported by NEMS–BRS. $NO_X$ results are based on forecasts of compliance with existing legislation. In the case of $SO_2$, the Clean Air Act Amendments of 1990 set an emissions cap on all power generation. The attainment of this target, however, is flexible among generators and is enforced by applying market forces, through the use of emissions allowances and tradable permits. As a result, accurate simulation of $SO_2$ trading tends to imply that physical emissions effects will be zero because emissions will always be at, or near, the ceiling. This fact has caused considerable confusion in the past. There is virtually no real possible $SO_2$ environmental benefit from electricity savings as long as there is enforcement of the emission ceilings. See the TSD, Environmental Assessment, for a discussion of this issue.

Alternative price forecasts corresponding to the high and low economic growth side cases found in AEO 2000 have also been generated for use by NEMS–BRS, and were used as alternative scenarios, and are presented in the TSD. (See TSD, Environmental Assessment.)

**V. Discussion of Comments**

As noted above, DOE published the Supplemental ANOPR regarding central air conditioners and heat pumps on November 24, 1999, and conducted a public workshop to present the analyses and to solicit comments on December 9, 1999. The Department requested comments on the following twelve issues:

1. Differences between the industry and the reverse engineering cost data:
2. The incorporation of emerging technologies into the Engineering Analysis;
3. The assessment of the impacts on steady-state efficiency, *i.e.* EER, due to increases in the SEER;
4. For heat pump systems, the relationship between SEER and HSPF;
5. Additional product classes based on system capacity;
6. Niche product classes
   (a) Ductless split
   (b) High-velocity, small-duct
   (c) Vertical-package, wall-mounted
   (d) Split, through-the-wall-condenser;
7. The impact of alternative refrigerants for HCFC–22;
8. Data on retail mark-up assumptions;
9. Information relating to the determination of price and operating cost elasticities in conducting shipment forecasts;
10. Data on the possible adverse affects of standards on identifiable groups of consumers that experience below-average utility or usage rates;

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11. Information on what non-regulatory alternatives to standards need to be reviewed; and

12. Comments on the candidate standard levels and the alternative standard scenarios.

Based on responses and comments received since that workshop, we provide the following discussion.

*A. Engineering Cost Data*

1. Reverse Engineering Cost Estimates

The Department's reverse engineering analysis prepared as a basis for the Supplemental ANOPR received a broad range of comments, both supportive and critical. ARI and the Natural Resources Defense Council (NRDC) commented on the apparent accuracy of the split air conditioner cost estimates and the ease with which the results are able to be scrutinized by outside parties. (Wethje, ARI, Transcript, p. 42; ARI, No. 11 at 1; Goldstein, NRDC, Transcript, p. 94).

The Department also received comments criticizing the reverse engineering results for split heat pumps and for packaged air conditioners and heat pumps, noting the lack of design detail and the aggregation of the results into an efficiency level-based analysis. (Hodges, ARI, Transcript, p. 85; Madera, York International (York), Transcript, pp. 90, 91, 93; Goldstein, NRDC, Transcript p. 96 and California Energy Commission (CEC) No. 47 at 7). The comments observed that the relative cost results for split heat pumps and packaged equipment differed significantly from those of split air conditioners, and that those analyses were less rigorous than the split air conditioner analysis. They also noted that the split heat pump and packaged equipment analysis was based on fewer equipment samples; did not include a detailed tear-down of a 10 SEER split heat pump or packaged air conditioner; and was based on questionable production volume assumptions.

The Department agreed that those deficiencies were likely to cause some of the differences between the ARI cost and the reverse engineering cost estimates, and revised its analysis of split heat pumps and packaged equipment.

In responding to the comment on sample size for split heat pumps and packaged equipment, the Department took guidance from a review of the engineering analysis performed by DOE consultant, Joseph Pietsch. Mr. Pietsch presented five guidelines for comparing the production cost of equipment for different product classes. (Pietsch, No 36 at 2–5).

- At each cooling capacity and SEER level, the same outside unit will likely be used for split air conditioners (fancoil) and split air conditioners (cased coil);
- At each cooling capacity and SEER level, the same fancoil will likely be used for split air conditioners (fancoil) and split heat pumps;
- At each cooling capacity and SEER level, the same cabinet will likely be used for packaged air conditioners and packaged heat pumps;
- There should be some degree of consistency in the cost to "convert" an air conditioner into a heat pump; and
- Split systems with fan coils and single package units at the same cooling capacity and SEER level should have nearly identical costs for the major functional components.

Based on the above guidelines, DOE revised the analysis of split heat pumps and packaged equipment. Table V.1 provides the original and the revised production dollar cost estimates resulting from this new approach. Table V.2 provides the same information, but in terms of relative costs. Revised production costs are generally lower than the original costs, particularly at the baseline 10 SEER level. The most significant change is that the new analysis includes nine additional estimates that were not presented originally.

TABLE V.1.—ENGINEERING PRODUCTION COST ESTIMATES FOR 3-TON UNITARY EQUIPMENT

| Efficiency level (SEER) | Split air conditioner (cased coil) | | Split air conditioner (fancoil) | | Split heat pump | | Packaged air conditioner | | Packaged heat pump | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Original | Revised | Original | Revised | Original | Revised | Original | Revised | Original | Revised |
| 10 | $367 | $367 | $456 | $449 | $622 | $572 | $552 | $511 | $643 | $593 |
| 11 | 412 | 412 | 550 | 519 | ..... | 602 | ..... | 555 | ..... | 638 |
| 12 | 468 | 468 | ..... | 563 | 690 | 648 | 627 | 595 | 708 | 668 |
| 13 | 529 | 529 | 756 | 637 | 840 | 743 | 809 | 730 | ..... | 820 |
| 14 | 588 | 588 | 802 | 815 | 1,011 | 1,023 | ..... | 889 | ..... | 1,029 |
| 15 | ..... | ..... | 893 | 893 | 1,147 | 1,107 | ..... | 955 | ..... | 1,100 |

The only significant departures are found in split air conditioners with fancoils, where the new estimates are lower, and in 14 SEER and 15 SEER equipment where the new results are higher.

TABLE V.2.—REVISED REVERSE ENGINEERING PRODUCTION

| Efficiency leval (SEER) | Split air conditioner (cased coil) | | Split air conditioner (fancoil) | | Split heat pump | | Packaged air conditioner | | Packaged heat pump | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Original | Revised | Original | Revised | Original | Revised | Original | Revised | Original | Revised |
| 10 | 1.00 | 1.00 | 1.00 | 1.00 | 1.00 | 1.00 | 1.00 | 1.00 | 1.00 | 1.00 |
| 11 | 1.12 | 1.12 | 1.21 | 1.16 | ..... | 1.05 | ..... | 1.09 | ..... | 1.08 |
| 12 | 1.28 | 1.28 | ..... | 1.25 | 1.11 | 1.13 | 1.14 | 1.16 | 1.10 | 1.13 |
| 13 | 1.44 | 1.44 | 1.66 | 1.42 | 1.35 | 1.30 | 1.47 | 1.43 | ..... | 1.38 |
| 14 | 1.60 | 1.60 | 1.76 | 1.82 | 1.63 | 1.79 | ..... | 1.74 | ..... | 1.74 |
| 15 | ..... | ..... | 1.96 | 1.99 | 1.84 | 1.94 | ..... | 1.87 | ..... | 1.86 |

In response to comments on its production volume assumptions prior to the publication of the Supplemental ANOPR, the Department had reduced its heat pump production volume from 125,000 units per year to 25,000 units per year. However, since heat pumps and air conditioners are typically produced with the same plant equipment, reducing the production volume significantly increases the overhead allocated to each heat pump produced. The higher overhead allocation raises the cost of the baseline heat pump, lowering the relative cost of producing equipment at higher efficiency levels. To compensate for this overestimate of overhead allocation, we set the split heat pump overhead allocation equal to that of the split air conditioner at each efficiency level.

The Department believes that the revisions to the split heat pump and packaged equipment production costs have improved the cost estimates for those product classes and that no additional equipment samples need to be subjected to tear-down or reverse engineering analysis. The revised reverse engineering cost estimates were used in the analysis for today's proposed rule.



2. Productivity Efficiency Improvements

According to the American Council for an Energy Efficient Economy (ACEEE), Census Bureau Current Industrial Report (CIR) data suggest that the unit price of equipment shipments below 65,000 Btu/hr fell in real terms between 1992 and 1997. (ACEEE, No. 43 at 4). ACEEE suggested that the Department apply an annual deflator of 1.7% to projected prices to account for this apparent productivity improvement.

For other rulemakings, the Department has used production input costs and production technologies based on the best information available at the time. DOE has not made any assumptions about productivity improvements and material cost changes over time. The Department does not believe historical price trends for unitary air conditioners, or other products, can be applied to forecast equipment costs where there are no data to indicate the trends will continue. Therefore, without specific data on the likely costs to manufacture a product, the Department will not apply a productivity improvement factor in this rulemaking or other rulemakings.

3. Emerging Technologies

Emerging technologies that are not established in the residential central air conditioning market have the potential to lower the cost of achieving higher efficiency. In the Supplemental ANOPR, we considered advances in variable speed and variable capacity compressors, and reductions in the cost of variable speed fan motors and parallel-flow, microchannel heat exchangers to be potentially viable methods for increasing the efficiency of equipment at a lower cost than currently established methods.

Bard Manufacturing (Bard), Unico, Inc. (Unico) and NRDC disagreed with this approach, questioning whether some of the technologies considered were commercially and technically viable, but proposed no other technologies for consideration. (Bard Manufacturing, No. 28 at 4; Unico, No. 34 at 1; NRDC No. 35 at 11–12). ARI stated that they considered some compressor and motor advances but not microchannel heat exchangers in their relative production cost data. (ARI No. 48 at 3). The Trane Company (Trane) and Edison Electric Institute (EEI) also expressed concern over some apparent inconsistencies in the emerging technologies analysis presented in Table 4.16 and the use and calculation of the Carnot efficiency on page 4–27 of the Supplemental ANOPR TSD. (Trane, No. 23 at 2; and EEI No. 20 at 3).

Pacific Gas and Electric (PG&E) voiced concern that new technologies, such as the Bristol modulating compressor, could reduce costs to the point that manufacturers may use them at lower SEER levels resulting in a negative impact on peak loads and electrical system reliability. (PG&E, No. 31 at 3).

The emerging technology analysis based on reverse engineering information seems to confirm that, of the technologies considered, only variable capacity compressors and variable speed fan motors have the potential to be cost options for providing additional efficiency compared to today's established technologies. This provides evidence that ARI is justified in not considering the potential benefits of microchannel heat exchangers as part of its relative cost data submission. Therefore, we will apply emerging technologies only to the reverse engineering results and consider the ARI relative cost multipliers to already include the effects of emerging technologies.

We do not believe our original emerging technology analysis was inconsistent, as expressed by Trane and EEI above, although we do recognize that combining the effects of component efficiency improvements does not necessarily lead to a cumulative improvement in the system. The intent of the analysis is not to provide a definitive estimate of the impact of any or all emerging technologies on system cost. It is to provide evidence as to the extent to which reverse engineering overestimates the cost of higher efficiency equipment by neglecting emerging technologies. Therefore, the method used previously for portraying and combining the potential effects of emerging technologies on system costs is carried forward into today's rule. Chapter 2 of the TSD provides the details of the revised emerging technologies analysis.

4. HFC-Based Engineering Analysis

ARI and Trane supported the Department's decision not to explicitly examine the effects of the HCFC phaseout on equipment cost and efficiency. (Wethje, ARI, Transcript p. 145; Crawford, Trane, Transcript p. 143). The Oregon Energy Office (OEO) and NRDC urged the Department to reconsider, given that a large fraction of the equipment sold under the new efficiency standard will likely use a refrigerant other than HCFC–22, even prior to the 2010 phaseout date. (Stevens, OEO, Transcript, p. 144; NRDC, No. 35 at 11–12).

To date, no data presented to the Department indicate that the incremental cost for increasing the efficiency of equipment using either HFC–407c or HFC–410a refrigerants will differ significantly from the incremental cost of increasing efficiency using HCFC–22 equipment. Although the base cost may differ somewhat, the incremental cost determines the life-cycle-cost savings. Furthermore, the Department continues to receive information that much of the market is changing to HFC–410a and that HFC–410a offers little, if any, efficiency benefit over HCFC–22 at the same equipment cost.

For these reasons, the Department will not perform additional engineering analysis related to alternate refrigerants. The costs to manufacturers related to their conversion to the new refrigerant will be considered in the Manufacturer Impact Analysis.

*B. Life-Cycle-Cost Parameters*

1. Extended Warranty and Service Costs

Energy Market and Policy Analysis, Inc. (EMPA) noted that the Life Cycle Cost analysis did not explicitly address extended warranty and service costs and asserted that they should be taken into account. (Schleede, EMPA, Transcript, p. 221). The Alliance to Save Energy (ASE) stated that the inclusion of extended warranty and service costs would have the impact of reducing repair and maintenance costs. (Prindle, ASE, Transcript, p. 222). Industry consultant Joseph Pietsch stated that manufacturers may provide longer-term warranties for high efficiency systems that cover a wider range of components, to alleviate customer concerns regarding possible future repair cost of the more

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complex systems. (Pietsch, No. 36 at 22).

Air conditioner manufacturers warranty their equipment against defects, and contractors typically guarantee performance and installation. Manufacturer warranties typically cover parts and labor for one year, with longer warranties applying to the compressor. Mr. Pietsch noted that compared to low-SEER products, high-SEER products have more components, many of which have a relatively short history. Reliability patterns of these new components are less known, so warranty accruals may be significantly higher for these products. (Pietsch, No. 36 at 22). Dealers also may offer extended warranties which are usually underwritten by the manufacturer or a third party.

A product that is less reliable or contains more expensive components will have a higher cost of repair over its lifetime. Either the consumer or the warranty provider will bear that added cost directly through more frequent service calls or higher repair costs. If the cost is covered by warranty, however, the warranty provider passes it back to future warranty holders in the form of slightly higher warranty prices. DOE believes the incremental increase in the price of the warranty is equal to, or just slightly higher, than the discounted present value of the incremental repair costs over the life of the warranty. Over the long term then, the average consumer always incurs the cost of higher repair costs, either directly or through higher warranty prices. Since our analysis considers the present value of consumer life cycle costs on the average consumer, incremental repair costs and incremental warranty costs are the same, and interchangeable.

Since consideration of repair costs is satisfied by considering either repair costs or extended warranties, we limited our consideration to repair costs, which are slightly easier to estimate, communicate, and incorporate into the analysis. Considering them both would require a much more rigorous analysis of service costs since we would have to estimate the service cost incurred on a year-by-year basis. That additional analysis would likely not produce significantly different results. Comments are welcome as to whether explicit consideration of extended warranties would produce significantly different results from those based on service costs alone which we have assumed rise in proportion to the price of the equipment. Since more efficient equipment is also more expensive, we have included the higher cost of repair, or equivalently, the higher warranty cost associated with more efficient equipment, as part of the lifecycle cost analysis.

2. Residential Energy Consumption Survey (RECS)

Both NRDC and EMPA asserted that RECS" method for estimating end-use energy consumption (*i.e.*, conditional demand analysis) yields unreliable and flawed results. NRDC added that conditional demand analysis methods inherently underestimate central air conditioner energy use due to its treatment of internal loads. EMPA stated that the RECS household sample size is too small to be used in the manner in which it is being treated in the life-cycle cost analysis. (NRDC, No. 35 at 6–7; EMPA, No. 33 at 4–6; Schleede, EMPA, Transcript, pp. 160–161). Virginia Power, EEI, and EMPA all requested that the analysis be updated to use RECS 1997 data rather than RECS 1993 data. EEI added that actual submetered end-use data should be used if possible rather than the end-use data in RECS. (Virgina Power, No. 27 at 2; EEI, No. 20 at 5, Schleede, EMPA, Transcript, pp. 160–161).

As part of the process to improve the new energy efficiency standards analysis, we are committed to use sensitivity analysis tools to evaluate the potential distribution of impacts among different subgroups of consumers. The Department believes that RECS provides a nationally representative household data set which is suited for conducting the type of sensitivity analyses suggested by the Process Rule. Limiting the RECS households to those equipped with either central air conditioners or heat pumps, the LCC analysis performs a household-by-household analysis that predicts the percentage of households that will incur net life-cycle cost savings or costs from an increased efficiency standard.

End-use energy consumption data from past RECS surveys have been compared to submetered end-use data for purposes of validating their conditional demand analysis estimates. Central air conditioning and space-heating energy data from the 1990 RECS were shown to differ by 5% to 22% compared to submetered end-use data from five utility service areas. The Department believes that this range of difference is acceptable considering that the conditional demand analysis utilized by RECS is fully capable of estimating the energy consumption of equipment throughout the nation. Because RECS is a very well suited source of data for performing the analyses suggested by the Process Rule and RECS has been shown to provide reasonable estimates of end-use energy consumption, we will continue to rely on RECS for providing the annual energy consumption data necessary for conducting the life-cycle cost analysis.

The analysis conducted in support of this proposed rule has been revised based on data from the 1997 RECS rather than the 1993 RECS.

3. Equipment Lifetime

Virginia Power, EEI, ARI, Unico, Rheem Co., and Trane commented that the average equipment lifetime of 18.4 years assumed in the Supplemental ANOPR was incorrect, and suggested an actual lifetime between 12 and 15 years. (Virginia Power, No. 27 at 2; EEI, No. 20 at 10; ARI, No. 48 at 3; Unico, No. 34 at 3; Lux, Rheem Co., Transcript, p. 165; Foster, EEI, Transcript, p. 170; Crawford, Trane, Transcript, p. 191; Wethje, ARI, Transcript, p. 193). EMPA asserted that the length of first ownership should be used as the basis for equipment lifetime. (EMPA, No. 33 at 3, Schleede, EMPA, Transcript, p. 162).

NRDC, ACEEE, and the Vermont Energy Investment Corporation (VEIC) all believed that the 18.4 year equipment lifetime was reasonable. They reasoned that a shorter or longer average equipment lifetime would result in less accurate estimates of historical shipments. ACEEE added that unless manufacturers can provide new data, the 18.4 year average lifetime should be retained. (NRDC, No. 35 at 7–8; ACEEE, No. 43 at 6–7; VEIC, No. 32 at 7).

The Department notes that the basis of the 18.4 year equipment lifetime was a survey conducted on more than 2,100 heat pumps in a seven state region of the U.S.[13] The survey determined not only the lifetime of a complete heat pump system, but the life of the original compressor as well. Although the system lifetime is on average over 18 years, the survey also showed that the original compressor lifetime was, on average, 14 years. Thus, the survey indicated that essentially all heat pump owners replaced their original compressor once in the lifetime of system.

In the LCC analysis conducted for the Supplemental ANOPR, we did not include any repair costs associated with replacing the compressor. But since the heat pump survey clearly indicates that the original compressor is replaced once in a system's life, the analysis was revised to include a repair cost for the compressor. Conducting the analysis in this manner retains the average system lifetime of 18.4 years but explicitly addresses the replacement cost of the compressor, which is the most expensive component of a system. As indicated by the survey data, the compressor was assumed to be replaced in the 14th year of the system's life. In addition, because more efficient systems tend to use more efficient and, thus, more expensive compressors, the compressor replacement cost was assumed to vary with system efficiency.

Although the revised LCC analysis assumed an 18.4 year average equipment life and one compressor replacement, a shorter equipment lifetime was investigated as an alternative scenario. In this alternative scenario, a retirement function yielding an average lifetime of 14 years was used and compressor replacement costs were not considered. The shorter equipment lifetime is plausible assuming that most, if not all, consumers when faced with replacing a failed compressor would choose to replace the entire system rather than replace the compressor in a relatively old system. LCC results based on both the 18.4 year and 14 year average equipment lifetimes are provided in Section VI as well as Chapter 5 of the TSD.

4. Commercial Applications

NRDC, ACEEE, VEIC, CEC, and the Northwest Power Planning Council (NPPC) commented that DOE should analyze the application of residential central air conditioners and heat pumps (*i.e.*, single-phase equipment) in commercial buildings. All stated that there is a significant portion of this type equipment being used in small commercial buildings. They argued that since the energy use patterns in commercial buildings are distinctly different than those in households, the analysis should include residential equipment use in commercial applications. (NRDC, No. 35 at 12–13; ACEEE, No. 43 at 2; VEIC, No. 32 at 6–7; CEC, No. 47 at 8; Tom Eckman, NPPC, Transcript, p. 166).

EEI requested clarification as to how the commercial application analysis was conducted for the Department's January 14, 2000, LCC Sensitivity Analysis. (EEI, No. 20 at 10).

For today's proposed rule, the use of residential equipment in commercial buildings was analyzed assuming that 10% of all central air conditioners and heat pumps are used in commercial applications. This figure is based on ARI's estimate that approximately 10% of single-phase air conditioning and heat pump shipments are used in commercial buildings. The annual energy consumption of commercially applied air-conditioning and heat pump equipment was based on the simulation of 77 nationally representative commercial buildings consistent with the approach and assumptions utilized to develop the American Society of Heating, Refrigerating and Air-Conditioning Engineers' (ASHRAE) Standard 90.1–1999. Both average and marginal electricity rates were developed by matching a set of commercial electric utility tariffs to the above simulated building loads and demands.

The LCC spreadsheet models were modified so that commercial buildings with their corresponding annual energy consumption and marginal and average electricity costs represent 10% of the entire residential and commercial building population. Complete details on the procedure to incorporate commercial applications are included in Chapter 5 of the TSD.

5. Marginal Electricity Prices

NRDC, ACEEE, CEC, PG&E, NPCC, and ASE commented that the Supplemental ANOPR analysis underestimated future marginal electricity prices. Several of the comments stated the belief that deregulation of the electric utility industry would result in greater volatility of electricity pricing that eventually would translate into higher electricity prices during peak power periods. (Goldstein, NRDC, Transcript, p. 175; ACEEE, No. 43 at 6; CEC, No. 47 at 8; PG&E, No. 31 at 6–7; Eckman, NPPC, Transcript, pp. 167–168; Prindle, ASE, Transcript, p. 168).

ARI and EEI were not convinced that a deregulated electric utility industry would result in higher electricity prices in the future. ARI noted that under a peak pricing scenario consumers may decline to operate their air-conditioning equipment to avoid incurring high electricity bills. EEI added that currently, there is no mechanism to capture utility capital costs for providing peak power in residential pricing. (Wethje, ARI, Transcript, pp. 168–169; Foster, EEI, Transcript, pp. 169, 175–176).

The current method for establishing marginal electricity prices only allows for defining marginal prices for those years in which data are available. In the case of residential pricing, the data for establishing marginal prices (the 1997 RECS) was taken from the year 1997. The same can be said for commercial buildings. The utility tariffs used to establish marginal prices (as described earlier) were collected in the year 1997. On average, residential marginal prices for households with central air conditioners are 3% lower than average rates while for households with heat pumps marginal prices are 7% lower. Space-cooling marginal prices in commercial buildings are on average 2% greater than average commercial rates. Future marginal prices were in turn based upon the Reference Case electricity price forecast from the AEO2000. The Reference Case forecasts declining electricity rates through the year 2020. Although it is certainly possible that future electricity rates may increase in a deregulated climate, the evidence to date (i.e., residential marginal prices are actually lower than average rates and AEO 2000 forecasts project declining electricity rates) convinces us that our current methods for establishing marginal prices are reasonable. To state that future prices may decrease or increase is speculative. Even in the case of commercial buildings where demand pricing already exists, marginal prices are only 2% greater than average electricity rates. This reenforces our conviction to keep our current methodology for establishing marginal prices. However, the Department seeks comments on its methodology and data for determining the appropriate marginal energy costs to use in future analysis.

6. Forecast of Future Electricity Prices

EMPA asserted that the EIA's forecast of electricity prices as found in the Annual Energy Outlook underestimates the future drop in electricity rates. (EMPA, No. 33 at 2–3; Schleede, EMPA, Transcript, p. 185). Don Dasher stated that any forecast of electricity prices should capture the future use of renewable energy and emerging technologies for generating power. (Dasher, Transcript, pp. 192–193).

Future marginal prices are based upon the Reference Case electricity price forecast from the AEO 2000. The Reference Case forecasts declining electricity rates through the year 2020. Although it is certainly possible that future electricity rates may increase in a deregulated climate, the evidence to date (*i.e.*, residential marginal prices are actually lower than average rates and current AEO forecasts project declining electricity rates) leads us to believe that our current methods for establishing future marginal prices are reasonable.

In addition to the Reference Case, DOE analyzed the effects of two other energy price forecasts, the AEO 2000 High Growth and Low Growth cases. (See TSD, Chapter 5.)

[13] "Bucher, M.E., Grastataro, C.M., and Coleman, W.R., "Heat Pump Life and Compressor Longevity in Diverse Climates." ASHRAE Transactions, 1990. 96(1): p. 1567–1571.

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7. Discount Rates

NRDC, ACEEE, VEIC, PG&E, and CEC believe that the discount rate used in the Supplemental ANOPR analysis was too high. Their primary criticism pertained to the breakdown of finance methods which were assumed for establishing the discount rate. The Supplemental ANOPR analysis assumed that 35% of consumers purchasing a central air conditioner or heat pump used a credit card to finance their purchase. The comments argued for a much lower percentage and cited a recent PG&E survey that demonstrated that only 5% of consumers used credit cards. VEIC also cited a survey by Potomac Electric Power Company (PEPCO) that reported lower purchases with credit cards. (NRDC, No. 35 at 10–11; ACEEE, No. 43 at 3; VEIC, No. 32 at 3–4; Neme, VEIC, Transcript, pp. 186–187; PG&E, No. 31 at 7; CEC, No. 47 at 7). Counter to the above assertion, Trane maintained that the Supplemental ANOPR's assumption regarding the percentage of consumers using credit cards to purchase equipment was correct, based on the number of consumers in the U.S. that carry credit card debt. (Crawford, Trane, Transcript, p. 191–192). EEI commented that the interest rates associated with credit card and cash purchases needed to be revisited. (EEI, No. 20 at 6). EMPA asserted that with higher cost air conditioners, consumers' after tax income would be reduced, requiring them to forego the purchase of various household necessities such as food, clothing, and shelter. (EMPA, No. 33 at 3).

The Department performed an extensive review and revision to the methodology that determines consumer discount rate. The Supplemental ANOPR established the share of various finance methods used for purchasing air-conditioning equipment and determined the associated interest rates for each of the finance methods. For equipment obtained through the purchase of a new home, second mortgage, or home equity lines of credit, this approach is reasonable. But for purchases made to replace old or failed equipment where cash or some form of credit is used to finance the acquisition, we determined it more appropriate to establish how the purchase affects a consumer's overall household financial situation. For example, even though the purchase might be financed through a dealer loan or some other low interest financing vehicle, the more probable effect of the purchase is to either cause the consumer to incur additional credit card debt or forego their investment in some type of savings-related asset. Cash that was once available to either pay for household necessities or to invest in an asset like the stock market or a simple savings account now must be earmarked to pay off the equipment purchase loan, thus, either causing the consumer to incur additional credit card debt or to lose the opportunity to earn income from their assets. For today's proposed rule, we have decided to use the above methodology for defining the discount rate for central air conditioner and heat pump purchases. The 1998 Survey of Consumer Finances (SCF) was used to estimate the percentage of households that used second mortgages to finance their equipment purchase as well as those households that either would incur more credit card debt or be forced to forgo their normal course of investing. Data from the Air Conditioning, Heating, and Refrigeration News (December 12, 1998) established the percentage of shipment going to new homes.

After establishing the share captured by each finance method, the range of interest rates due to each method were developed. The 1998 SCF established the range of interest rates for new home mortgages, second mortgages, and credit cards. Rates of return on certificates of deposit, savings bonds, and bonds were based on historical interest rates. A weighted-average discount rate of 5.6% is calculated from the mean interest rates for each finance method. A more detailed discussion of the data sources and how the interest rates were derived is found in Chapter 5 of the TSD.

8. Percentage of Households With LCC Savings

For the Supplemental ANOPR, all consumers having an LCC increase resulting from the standard were considered to be adversely impacted. Several comments expressed concern on how we would use this information on adverse consumer impacts in selecting minimum efficiency standards. ARI, Unico and EMPA asserted that a majority of households would need to benefit from the standard in order to justify its selection. (ARI, No. 48 at 5; Unico, No. 34 at 3; EMPA, No. 33 at 2). NRDC stated that the percentage of households with LCC savings or costs relative to the baseline level should not be a criterion in basing a standard's economic justification. NRDC stated that variations in electricity pricing make it nearly impossible to determine consumer costs on a disaggregated level. (NRDC, No. 35 at 12–15). PG&E commented that the percentage of households at any particular standard level with net LCC costs actually overstates the significance of the negative LCC impacts. Most consumers experience LCC increases of only a few dollars over the life of the equipment. (PG&E, No. 31 at 8).

The Department agrees with PG&E's comment and in formulating today's proposed rule, DOE has redefined the criteria for determining negative impacts. Noting that the baseline LCC is approximately $5,000 for central air conditioners and $10,000 for heat pumps, previously all consumers incurring an LCC increase as small as $10 were considered to be adversely impacted by an increase in the standard. In the revised LCC analysis, the Department defines consumers impacts as follows: consumers who achieve significant net LCC savings (*i.e.*, LCC savings greater than 2% of the baseline LCC), consumers who are impacted in an insignificant manner by having either a small reduction or small increase in LCC (*i.e.*, within ±2% of the baseline LCC), or consumers who achieve a significant net LCC increase (*i.e.*, an LCC increase exceeding 2% of the baseline LCC). Consequently, only consumers (both residential and commercial) having an LCC increase greater than 2% of the baseline are considered to be negatively impacted.

9. Regional Analysis

At the December 9, 1999, public workshop, NRDC and CEC requested further information on regional distributions of households with net LCC savings or costs relative to the regional baseline level. (Goldstein, NRDC, Transcript, pp. 188–189; Martin, CEC, Transcript, p. 274). The Department responded by conducting additional analysis, which was posted to our web site on January 14, 2000, and included LCC analysis disaggregated by region into census divisions. From this regional analysis it could be determined how different parts of the country would be impacted by an increase in the minimum efficiency standard.

10. Rebuttable Payback

EEI asked why the rebuttable payback period is not determined with annual energy use data from RECS. They also requested clarification as to how rebuttable payback periods will factor into the decision to select a new minimum efficiency standard. (EEI, No. 20 at 7–8).

As prescribed by section 325(o)(2)(B)(iii) of EPCA, the rebuttable payback period is calculated under the applicable test procedure. Thus, all rebuttable payback periods are based on an annual energy consumption that is determined through the current Department of Energy test procedure for central air conditioners and heat pumps. The resulting annual energy use as determined by the test procedure is significantly greater than what is indicated by RECS. Thus, the rebuttable payback periods are significantly shorter than those based on the RECS annual energy consumption data.

The rebuttable presumption test does not consider the full range of impacts of standards, including manufacturer impacts and energy savings. Therefore, the Department bases its decision primarily on the seven factors specified in section 325(o) of the Act.

11. Sensitivity Analyses

ACEEE recommended that several sensitivity analyses be conducted to determine how the LCC varies with changes in certain input variables. (Nadel, ACEEE, Transcript, pp. 233–236; ACEEE, No. 43 at 10). NRDC also requested some of the sensitivity analyses described by ACEEE. (NRDC, No. 35 at 12–13). Trane went on the record as not endorsing all of ACEEE's requested sensitivities. (Crawford, Trane, Transcript, p. 237).

We conducted several of the requested LCC sensitivity analyses, as well as the previously described regional analyses, and posted the results to our web site on January 14, 2000. The sensitivities examined how the LCCs for central air conditioners and heat pumps were impacted by changes in the following: dealer markups, builder markups, repair costs, lifetime, emerging technologies, and the use of single-phase central air conditioning and heat pump equipment in commercial applications. Of the sensitivities examined, the assumption of fixed margins (*i.e.*, no variation in the difference between the equipment price to the consumer and the cost to manufacture with increased efficiency) had the largest impact on the LCC results. Changes in the lifetime had a noticeable affect but not the same order of magnitude as the fixed margin assumption. All other sensitivities had only minor impacts on the LCC results.

In preparing the sensitivity analyses, we found reason to revise our assumptions regarding markups, compressor replacement, and commercial applications. Those revisions are incorporated into the analysis that supports today's proposed rule and are discussed elsewhere in this Section.



*C. Shipments Analysis*

1. Forecasted Housing Shifts

Both the OEO and NPPC stated that there will likely be significant shifts in regional housing populations. For example, future housing shifts may result in more housing in warmer weather climates where central air conditioning is more prevalent and used more often, thus, impacting the nation's future space-conditioning energy use. Since the Shipment Analysis does not account for regional housing shifts, OEO and NPPC request that it be accounted for in the analysis. (Stephens, OEO, Transcript, pp. 171–172; and Eckman, NPPC, Transcript, pp. 216–217).

Preliminary analysis of regional housing shifts has been examined and determined to have a relatively small effect (*i.e.*, a maximum change of 2% in the cumulative amount of monetary energy savings). This is primarily due to the large size of the housing stock and the fact that changes in the housing stock occur over a long time scale resulting in slow changes in regional housing shifts. A preliminary analysis of historical housing data coupled with worst case forecasts of regional housing and air-conditioning market share shifts demonstrated the small impact on national NPV due to changes in regional housing.

New housing starts are only about 2% of existing housing stock and this is forecast to decrease to about 1% of housing stock by 2030. Historical data over the period from 1980 to 1990 showed the shift in regional shares of housing stock changed by less than 2% (decreased by 1.2% and 1.7% in the Northeast and Midwest, respectively, and increased by 1.7% and 1.2% in the South and West, respectively). If these changes continue at a steady rate, the housing share of the Northeast will decrease another 3.6% over three decades. This translates to a relative decrease of 17% in the Northeast's air-conditioning market share. If the entire loss in the Northeast's market share goes to that portion of the South with the highest annual energy use (Census Region 7), the absolute market share of this region would increase from 15.7% to 17.7%. The result of this change is that the dollar value of energy savings at a 12 SEER standard level would increase from $5.73 billion to $5.85 billion, or about a 2% increase in the dollar energy savings. The actual impact on dollar savings would likely be less than half of this because the above housing shift was assumed to be immediate and to the highest energy use area of the South. As a result, the actual impact would likely be less than 1% on the dollar value of the energy savings. For these reasons, the Department has not revised its Shipments Analysis to account for shifts in regional housing populations.

2. Elasticities

Both ACEEE and NRDC note that the purchase price elasticities are based on data from the 1970s and are likely no longer applicable to current market conditions. Both stated that price elasticities should be developed from more recent data. (ACEEE, No. 43 at 10; Nadel, ACEEE, Transcript, p. 211; Goldstein, NRDC, Transcript, pp.211–212).

This has been corrected for in the analysis underlying today's proposed rule. We have calibrated elasticity for price relative to household income, with historical data from 1970 to 1996. It is worth noting that for forecasting future shipments, consumer purchase decisions are based upon sensitivities to changes in product life-cycle cost relative to income. Life-cycle cost changes are dependent on the purchase price and the present worth of operating cost savings. Operating cost savings are in turn dependent on electricity prices. As electricity prices are forecasted to decrease over time (based on the Annual Energy Outlook 2000), operating cost savings due to a particular increase in equipment efficiency will in turn decrease over time and have less of an impact on consumer purchase decisions.

Usage elasticity expresses how changes in equipment efficiency resulting from higher standards changes consumer behavior regarding air conditioners and heat pumps usage. Because of lower operating costs, consumers may change thermostat settings and/or operate the systems for longer hours to achieve greater comfort. Direct evidence of the magnitude of this effect is limited and the Department is interested in receiving comments. One study [14] indicated that in summer months consumers may take 1–2% of the cooling energy savings back in increased usage, and 9–13% in winter months. Usage elasticity has not been considered in the current analysis but will be considered in the Final Rule.

3. Equipment Efficiency

Several comments received questioned the use of a weighted-average equipment efficiency equaling the SEER of the standard level for

[14] Jeffrey A. Dubin, Allen K. Miedema, and Ram V. Chandran, 1986. "Price effects of energy-efficient technologies: a study of residential demand for heating and cooling," Rand Journal of Economics, Vol 17, No. 3, Autumn, pp 310–324.

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forecasting shipments and national energy savings. All asserted that in the event of an increase in the minimum efficiency standard, the actual weighted-average efficiency of equipment in the marketplace would be greater than the minimum efficiency standard. For example, if a 12 SEER standard was set as the new minimum, the weighted-average efficiency would be equal to a value which was greater than 12 SEER. (Neme, VEIC, Transcript, pp. 214, 226–227; Nadel, ACEEE, Transcript, p. 228; NRDC, No. 35 at 8–9; PG&E, No. 31 at 6–7).

The Department has modified several assumptions with regard to future equipment efficiencies. The Shipments Model no longer simply forecasts a weighted-average equipment efficiency, but rather, an actual distribution of efficiencies *i.e.*, the percentage of shipments which occur in incremental SEER bins over the range of the minimum standard 10 to 18 SEER). Also, as discussed in Section IV, three efficiency scenarios are provided to model future equipment efficiencies. The impact of the three different scenarios on national energy savings and national net present values are discussed in Section VI.

EEI asked the reason for assuming the weighted-average efficiency remains fixed at the same SEER level from the year 1997 to the assumed effective date of standard (2006). (EEI, No. 20 at 7–8). Historical data from the years 1994 through 1997 indicate that shipment-weighted efficiencies have remained essentially flat. As a result, weighted-average efficiencies were assumed to remain constant from 1997 through 2006.

4. Fuel Switching

EEI, York, Virginia Power and Southern Company stated that shipment forecasts must account for any fuel switching that might occur as a result of increased heat pump prices to the consumer. The concern is that an increase in the total installed price of a heat pump would cause some consumers to choose a gas-space heating appliance rather than an electric heat pump. (Foster, EEI, Transcript, p.263; Madera, York, Transcript, p.264; Virginia Power, No.27 at 2–3; Southern Company, No. 29 at 1–2). ACEEE stated that any incorporation of fuel switching into the Shipments Model must account for future changes in gas-fired space-heating minimum efficiency standards. (Nadel, ACEEE, Transcript, p.266).

Our examination of the historical data tends to indicate that the relative installed price of heat pumps is not the primary driver in heat pump vs. gas furnace purchase decisions. The more important factor in these decisions seems to be the availability of gas service. In the middle 1980's, there was a large peak in gas prices relative to electricity, but only a small, delayed increase in the relative market share of heat pumps. Besides this one historical event, the relative market share of heat pumps has been relatively constant from 1977 to the present.

*D. National Energy Savings Analysis*

Changes to the LCC assumptions impact the NES and the National Net Present Value (NPV) analyses directly as the NES analysis uses the same basic data as the LCC analysis for the energy use and cost of the central air-conditioning and heat pump equipment.

As previously mentioned, estimates of NES and NPV also depend on the distribution of product efficiencies among units sold after a standard takes effect in the marketplace. For the Supplemental ANOPR, the assumed product efficiency distribution was based on a weighted-average equipment efficiency equal to the SEER of the new standard level.

1. Uncertainty in NES Results

EEI believes that due to the uncertainty in the electric utility industry and its impact on future electricity prices it is more appropriate to represent the NES results with some degree of uncertainty. (EEI, No. 20 at 8).

Although NES results presented in the Supplemental ANOPR were based only on electricity price estimates from the Reference Case forecast from the 1999 Annual Energy Outlook, our NES spreadsheets have provided users with five different options for estimating future electricity prices; 1999 AEO Reference Case forecast, 1999 AEO High Growth Case forecast, 1999 AEO Low Growth Case forecast, 1998 Gas Research Institute (GRI) forecasts, and constant electricity prices. Providing a number of options for forecasting future prices recognizes the uncertainty in the electric utility industry and how that uncertainty can impact the NES results. The NES uses single point values rather than ranges as used in LCC; consequently, NES provided single point results rather than a range. However, in order to account for the uncertainty in electricity price forecasts, DOE evaluated three energy price scenarios in the NES. The NES Spreadsheets have been made available to all interested parties via our web site to facilitate analysis of sensitivities for assumptions different than those for the Supplemental ANOPR. For today's proposed rule, we continue to provide the same options for forecasting future electricity prices with the exception that AEO 1999 forecasts have been replaced with those from the AEO 2000 as well as the five options for energy prices as described above.

2. Site-to-Source Conversion

Both the Southern Company and EEI questioned the validity of the site-to-source conversions used in the NES spreadsheet model. The Southern Company and EEI asserted that hydroelectric power and renewable forms of electric energy are assigned fossil fuel-fired power plant heat rates. (Southern Company, No. 29 at 4–5; EEI, No. 20 at 7).

We estimated the effects of proposed central air conditioner and heat pump standard levels on both the gas and electric utility industries using a variant of DOE/EIA's NEMS–BRS, together with some exogenous calculations.[15] NEMS–BRS is used to determine site-to-source conversion factors and does not assign fossil-fuel-fired power plant heat rates to hydroelectric or renewable power plants. The site-to-source conversion factors used in the Supplemental ANOPR are average annual values for the residential sector. The average conversion factors are based on all forms of electricity generation with their corresponding heat rates (*e.g.*, heat rates are assigned to fossil-fuel fired power plants which are much different than those assigned to other types of power plants). As a result, the site-to-source conversion factors are significantly lower than if all power plants were assigned the heat rates associated with fossil fuel-fired power plants. For today's proposed rule, site-to-source conversion factors are based on recommendations of the Advisory Committee on Appliance Energy Efficiency Standards. In this analysis, heat rates are based on determining how a deviation in national energy consumption due to standards impacts the type of electricity generation. In other words, heat rates are based on those power plants which are avoided as a result of the standard.

[15] For more information on NEMS, please refer to the U.S. Department of Energy, Energy Information Administration documentation. A useful summary is National Energy Modeling System: An Overview 1998, DOE/EIA–0581(98), February, 1998. DOE/EIA approves use of the name NEMS to describe only an official version of the model without any modification to code or data. Because our analysis entails some minor code modifications and the model is run under various policy scenarios that are variations on DOE/EIA assumptions, the name NEMS-BRS refers to the model as used here (BRS is DOE's Building Research and Standards office, under whose aegis this work has been performed).



*E. Consumer Sub-Group Analysis-Low Income Renters*

NRDC stated that impacts on low-income renters should be investigated, because such renters do not purchase their space-conditioning equipment and they have no choice as to the efficiency of the equipment which is used to space-condition their home. (NRDC, No. 35 at 9).

We have investigated the economic impact of standards on low-income households, and have included such impacts in section VI.D.7 of today's proposed rule and in Chapter 10 of the TSD. But we have not investigated the impacts on low-income renters separately. Renters at each income level are considered to have the same choice in efficiency as new home purchasers at the same level. Regardless of whether a household is occupied by an owner or a renter, we implicitly assume that the occupant incurs all costs of ownership, either directly or through rent payments. Therefore, we believe that our consideration of low income households generally applies to renters as well as owners.

*F. Utility and Environmental Analysis*

1. Peak Power Impacts—Reliability

The CEC raised concerns over peak power by stating that the western region of the U.S. will soon face a capacity shortfall which will necessitate reductions in peak demand (CEC, No. 47 at 2–4). Leon Neal, Advanced Energy Corporation (AEC), stated that because of a relationship between SEER, EER, and equipment capacity which is not captured by using only the "nominal 3 ton" unit and SEER analyses, there were important factors not addressed in the DOE analysis. They argued that with larger capacity units at higher SEER, it is economic for manufacturers to use multi-compressor units and multi-speed compressor units, which results in a penalty in EER. They noted major national trends, *i.e.*, increasing average size of residential dwellings, the tendency to sell bigger systems to increase profits and compensate for poor installations, and the distrust of contractors for higher efficiency equipment. (AEC, No. 17 at 1). EEI stated that the consideration of peak power impacts in setting new efficiency standards departs from the Department's statutory mandate. (Foster, EEI, Transcript, p. 176).

With regard to AEC's concern that an increase in the efficiency standard would be accompanied by an increased air-conditioning power demand, we are not convinced that this situation would occur. Over the last 20 years, while shipment-weighted efficiency has continually increased, usage has remained relatively constant. Therefore, we see no reason that a significant jump in system usage would occur in conjunction with higher efficiency standards.

Regarding EEI's claim that the consideration of peak power impacts departs from the Department's statutory mandate, section 325(o)(2)(B)(i)(VII) of the Act, 42 U.S.C. 6295(o)(2)(B)(i)(VII), allows the Secretary to consider other factors deemed relevant for updating minimum efficiency standards, including peak power impacts.

2. Quantitative Assessment of Impacts on Peak Demand

For purposes of estimating peak demand impacts from an increase in the central air conditioner and heat pump energy efficiency standard, we are using a version of the NEMS, called NEMS–BRS. NEMS–BRS is run similar to the AEO2000 NEMS except that central air conditioner and heat pump energy usages are reduced by the amount of energy (electricity) saved due to the proposed trial standard levels. The input of energy savings are obtained from the NES spreadsheet.

NEMS estimates peak power impacts by determining the reduction in installed generation capacity due to an increase in the minimum efficiency standard. For central air conditioners and heat pumps, NEMS uses a single nationally representative end-use load shape to estimate peak power impacts. The overall end-use load shape is reduced in proportion to the amount of energy savings achieved through an increase in the standard. The reduction in power demand achieved by shaving the end-use load shape is extrapolated to a national scale to come up with nationally representative peak power impacts. Thus, NEMS does not use the equipment's EER performance, per se, to estimate peak power impacts. Rather, because the load shape is shaved in proportion to the energy savings, the EER is implicitly assumed to increase in proportion to the SEER.

The forecasted peak impacts using NEMS–BRS are presented in Section VI of today's proposed rule.

3. Qualitative Assessment of Air Conditioning Standards Impact on Power System Reliability

We also recognize that reducing growth in electricity demand during peak periods may improve the reliability of the U.S. electric power system. But there are number of factors with the electric power system itself that may overwhelm any effect that an improvement in residential air conditioning efficiency might offer. First, investment in system expansion has fallen behind demand growth, and future development may be limited by siting constraints. Second, industry restructuring requires the development of new technologies, operating procedures, and regulatory structures to meet peak demands. And third, the strong demand expansion of recent years may well continue into the future. Within this environment, the potential benefits of a central air conditioner and heat pump standard that could lower growth in peak demand could be desirable. But, due to the existing problems with the electric power system described above, it is difficult to assess, in quantitative terms, the impact of an air conditioner standard on system reliability. Thus, in addition to the planned activities to improve NEMS to forecast more credible peak demand impacts, we plan to assess the reliability of the U.S. electric system to determine what connection exists between end-use peak demand reductions and system reliability. The assessment will focus on three areas: (1) Defining reliability, (2) historic performance of the utility system, and (3) analyzing near- and long-term utility changes and how they might impact reliability. In defining reliability, we will use typical threats (*e.g.*, weather, tree falls, excess load, and inaccurate demand forecasts) to put system reliability into context. In addition, industry indices for the frequency of failures and the number of customers affected will be used. With regard to historic performance, we will attempt to analyze the history of system disturbances and estimate their economic consequences. Finally, we will look at the changes occurring in the utility industry such as restructuring and increasing demand growth to determine to try and assess how these future changes might impact reliability.

4. Competitive Residential Market

EEI asked whether NEMS, the model which is used for forecasting utility and environmental impacts, will be adapted to model more accurately the deregulated electric utility industry. As part of the deregulated industry, EEI stated that consumers will have choice of electricity providers. In addition, the industry will likely build more merchant power plants. (EEI, No. 20 at 9).

Although we recognize that NEMS may not be entirely accurate in its modeling of the changing electric utility industry, we believe it is still the best tool for forecasting the impacts due to increased central air conditioner and

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heat pump standards. We also recognize the difficulty for any model or tool to forecast changes in the utility industry. Thus, the results from NEMS are used to provide a gross picture of the impacts that can be expected from the imposition of new efficiency standards for central air conditioners and heat pumps. Sensitivities are conducted with the AEO High Growth and Low Growth cases to capture the variability that could arise from changes in the electric utility industry.

*G. Manufacturer Impact Analysis—Low Volume Manufacturers*

First Company (First Co.) and National Comfort Products commented that the assumptions used in the engineering analysis were not applicable for low volume manufacturers and urged the Department to consider the situations of all firms in the industry. (First Co., No. 40 at 10; National Comfort Products, No. 30 at 1).

Since the engineering analysis is used to assess the impacts on consumers and the nation, it is more appropriate to rely on assumptions reflective of larger manufacturers who control more than 95% of the market. However, we did consider the special circumstances of lower volume manufacturers as part of the manufacturer impact analysis. We interviewed the major manufacturers as well as two smaller manufacturers, and based on this information, estimated the impact of standards on both large and small manufacturers separately.

*H. Markups*

The Supplemental ANOPR's engineering analysis estimated the cost of producing baseline air conditioners and heat pumps and also estimated the series of markups on that product cost that yield the price of the equipment to the consumer. Four markups were applied: Manufacturer markup (1.18), distributor/wholesaler markup (1.37), dealer/contractor markup (1.54), and sales tax (1.07). In general, these were based on financial reports for each group on a national basis.

NRDC, ACEEE and VEIC commented that instead of applying average markups to the incremental increase in costs resulting from new standards, it was more reasonable to apply a lower markup to those incremental costs. Otherwise, companies would receive a windfall from the new standard, which would surely not be the case in a competitive industry such as heating, ventilation; and air conditioning. (NRDC, No. 35 at 6, ACEEE, No. 43 at 2, VEIC, No. 32 at 2). NRDC also advocated the use of a fixed gross margin in dollars rather than a fixed percentage (NRDC, No. 35 at 6), while EEI stated that the fixed percentage assumption is unreasonable. (EEI, No. 20 at 10). ARI supported the markups the Department used. (ARI, No. 48 at 4).

Department consultant Joseph Pietsch stated that at the distributor level, since no labor is involved to modify the product, the markup is applied to a well-documented material cost. However, the distributor's markup percentage may vary by product type. If the distributor's mark-up prices to the installing trade are not competitive in the market served, the distributor might have to seek price adjustments from the manufacturer. Further, installing contractors typically use a markup procedure for labor that is most likely be at a different percentage than a markup for materials. (Pietsch, No. 36 at 23). Finally, prompted by comments we received, we now distinguish markups based on whether products are sold into new homes or as replacements or retrofits. (Nadel, ACEEE, Transcript pp. 122–123; and Eckman, NPPC, Transcript p. 152–153; CEC, No. 47 at 7).

After reviewing the comments and publishing an interim analysis with fixed dollar margin, the Department undertook a thorough review of its markup assumptions and made one minor and one major revision.

First, at the manufacturer level, the markups were raised slightly (from 1.18 to 1.24) partially to reflect new financial data for a manufacturer who recently completed an initial public offering, and partially to incorporate results from the MIA. The MIA suggests that firms accrue a higher profit margin on baseline equipment than the conservative 1% assumed for the Supplemental ANOPR's Engineering Analysis.

Second, at the distributor and dealer levels, analysis of U.S. Census Bureau data and recent industry financial reports suggest that markups on changes in the unit price of equipment are less than the average markups for those industries. In light of these new findings, the markups for the distributors and dealers on the incremental increase in equipment cost were lowered from 1.37 to 1.09 and 1.54 to 1.27, respectively. For the distributor, the markup on the portion of equipment cost equal to the cost of the baseline equipment remains at 1.37. For the dealer, the 1.27 markup is applied to the total cost. The original 1.54 assumption included the markup on the labor portion of installation, which is not appropriately applied to equipment. We increased our estimate of the markup on installation labor slightly to compensate for the lower markup on equipment price, keeping the overall installed price the same. The Department's pricing information indicates that the total installed price of baseline equipment is accurate as published in the Supplemental ANOPR. The overall effect of these changes is to slightly decrease distributor and dealer equipment markups as the standard level rises.

We introduced a new builder markup of 1.27 for new construction markets only and applied the sales tax rate of 1.07 in only replacement/retrofit markets.

Table V.3 summarizes the changes in markups. The Technical Support Document (Chapter 5) provides more details on the derivation of these new estimates.

TABLE V.3.—COMPARISON OF REVISED MARKUPS AND SUPPLEMENTAL ANOPR MARKUPS

| Type | Revised analysis markup | Supplemental ANOPR markup |
|---|---|---|
| Manufacturer Markup | 1.23 | 1.18 |
| Wholesaler/Distributor Markups: | | |
| 10 SEER | 1.37 | 1.37 |
| 11 SEER | 1.33 | |
| 12 SEER | 1.30 | |
| 13 SEER | 1.26 | |
| Dealer/Contractor: | | |
| Equipment Markup | 1.27 | 1.55 |
| Installation Labor: [a] | | |
| Air Conditioner | $1,279/$1,367 | $1,190 |
| Heat Pump | $2,280/$2,160 | $2,035 |



TABLE V.3.—COMPARISON OF REVISED MARKUPS AND SUPPLEMENTAL ANOPR MARKUPS—Continued

| Type | Revised analysis markup | Supplemental ANOPR markup |
|---|---|---|
| Builder Markup | [b] 1.09 | [c] 1.00 |
| Sales Tax | [b] 1.04 | [d] 1.07 |
| Overall Markup: | | |
| 10 SEER | 2.42 | 2.68 |
| 11 SEER | 2.35 | 2.68 |
| 12 SEER | 2.30 | 2.68 |
| 13 SEER | 2.23 | 2.68 |

[a] For revised analysis, first value pertains to split systems and second value pertains to single package systems.
[b] Weighted-average markups representing both the new construction and replacement markets.
[c] For the SANOPR, builder markups were not considered.
[d] For the Supplemental ANOPR, sales taxes representing only the replacement market were used.

*I. EER-Based Efficiency Standard*

The Department received numerous comments on the relationship of steady state efficiency (EER) to increases in SEER. NRDC, ACEEE, VEIC, PG&E, CEC, OEO, Unico and Southern Company support the establishment of minimum efficiency standards based on EER at an outdoor temperature of 95°F, (EER(95°F)) in lieu of, or in addition to, SEER, which is based largely on an outdoor temperature of 82°F. (NRDC, No. 35 at 15–16; ACEEE, No. 43 at 8–9; VEIC, No. 32 at 5; PG&E, No. 31 at 1–4; CEC, No. 47 at 5; OEO, No. 46 at 10–12; Unico, No. 34 at 2; Southern Company, No. 29 at 3).

Their concern is that an increase in SEER does not necessarily correspond to an increase in EER, and that a 95°F rating condition better represents the performance of an air conditioner on hot days when electricity demand is at its highest. They believe that residential air conditioners contribute significantly to this peak demand, particularly in warmer regions of the country. Since electricity generation, transmission, and distribution capacity is determined by the electrical load served during these peak demand times, products that demonstrate improved efficiency under peak conditions can reduce the need for added electrical system capacity. They also believe that reducing peak demand is an important component of any integrated plan to improve the reliability of the nation's electrical system. Recently there have been several well-publicized blackouts and brownouts following, or in the midst of, hot periods. Advocates of an EER-based standard believe that a SEER-only standard does not guarantee the desired improvement in peak-period performance.

1. Current Relationship Between SEER and EER

It is certainly true that SEER is not an ideal indicator of system efficiency in very hot weather, and SEER may not be the best indicator of the seasonal efficiency for equipment operating in the warmest regions of the country. However, the relationship between efficiency at 82°F and at 95°F is fairly close for single-speed, single-capacity equipment, which represents the vast majority of unitary equipment in the marketplace. For other equipment, including variable or multi-speed equipment or equipment with modulating capacity, the 82°F test point is given a great deal of weight in determining the SEER rating. In these cases, the relationship between SEER and EER(95°F) is less certain, and manufacturers have some flexibility and incentive to improve SEER without improving EER(95°F).

The SEER test, representing equipment performance over the entire cooling season, encourages manufacturers to design equipment that consumes less energy throughout the cooling season for the average user. The EER(95°F) test, which is a measure of steady-state performance under only one set of climatic conditions, cannot provide insight into cyclical performance or cooling efficiency at cooler temperatures which represent the bulk of the cooling season nationwide. The Department, therefore, maintains that a SEER-based standard is essential to its effort to reduce national energy consumption. Further, we assume that peak demand savings would accompany any seasonal energy savings resulting from an increase in the required SEER level, because of the relationship between SEER and EER(95°F), and the costs of increasing EER(95°F) are already incorporated into the analysis.

However, the Department is particularly interested in ensuring that the current relationship between EER(95°F) and SEER will remain intact under new efficiency standards, resulting in reduction in growth of peak demand. This additional reduction in peak demand growth would benefit utilities through an eventual and incremental reduction in the need for new capacity. Maintaining higher EER(95°F) would also benefit consumers. Since the cost of electricity is highest during periods of peak demand, any decrease in electricity consumption during peak-periods, could reduce the user's annual electricity bill, particularly if the user pays time-of-day or seasonal rates.

2. Options for Possible EER Standards

The Department has at least four options for ensuring that EER(95°F) performance is maintained under new SEER standards. First, the Department could rely on the physical relationship between EER(95°F) and SEER to ensure that an increase in SEER would result in a corresponding increase in EER. The Department is not aware of any modulating, multi-speed, or variable speed air conditioners (hereafter referred to collectively as modulating equipment) being offered below 13 SEER, and very few of the available 13 SEER products are modulating equipment. Therefore, SEER and EER are closely related in equipment currently available at the efficiency levels that, as discussed below, the Department is proposing today to adopt as minimum levels—12 SEER for air conditioners and 13 SEER for heat pumps. Assuming that relationship holds under such new standards, EER would increase as SEER increases.

The second option would be to establish an EER(95°F) floor that must be met by modulating equipment only or, alternately, all equipment.

The third option would be to establish a minimum EER requirement at each SEER level, even for products exceeding the minimum SEER level. Again, this could be established for modulating equipment only or for all equipment.

The fourth option would be to alter the SEER test procedure to rely more on 95°F performance and less on performance at cooler temperatures. This would provide incentive for

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manufacturers to optimize their designs to favor the warmer part of the cooling season and warmer regions of the country.

We consider the second and third options to be the most attractive. While we believe that the first option, relying on the current relationship between EER and SEER, would satisfy our concerns in the foreseeable future, this option provides no assurance that manufacturers would not develop and promote equipment in the long term that would seriously reduce EER ratings. The fourth option, altering the SEER test procedure to favor higher temperatures, would require us to embark on a new rulemaking to establish those new procedures and then to redo this rule to incorporate the new SEER values. We would prefer to avoid those delays and the design uncertainty associated with altering the procedures.

Both the second and third options, mandating minimum EER ratings, would guarantee that products under new standards would achieve the same EER ratings as they do today without altering the test procedures. The third option is more aggressive since it would require that products of higher SEER ratings must also meet increasingly stringent EER ratings.

Within the second and third options, we could establish EER requirements of varying degrees of stringency. For example, we could select EER levels equivalent to the ratings of the minimum EER rating of available equipment today at the proposed standard level, the median EER rating, anywhere in between, or even higher.

We prefer the second option, establishing an EER floor equal to the median EER ratings of equipment currently available at each standard level. That would result in a substantial improvement in the EER ratings of the typical product sold while still providing manufacturers with the flexibility to raise SEER ratings through modulation rather than EER improvements in higher efficiency products.

The concern that prevents us from fully endorsing the third option is that it would discourage the development and sale of modulating capacity and variable speed equipment. Modulating equipment realizes a benefit in the SEER test, allowing manufacturers to reduce the cost of the core components compared to non-modulating equipment. This cost reduction partially offsets the cost of the modulation, making modulating equipment more affordable for consumers. Being required to meet the same EER standards as non-modulating equipment would negate this cost benefit.

The Department wishes to encourage, not discourage, the development and sale of modulating equipment. Consumers value the added benefits of modulation, and manufacturers realize this value in the form of higher revenues. For consumers and the nation, modulation mitigates the inefficiencies caused by oversizing the system during installation. Oversizing is a widespread problem that causes frequent equipment cycling, increasing energy consumption. Furthermore, oversizing arguably contributes more to peak power demand than does any reduction in EER associated with modulating equipment.

For DOE to require products to meet median EER values rather than less stringent EER values would also raise some concerns. First, the cost-efficiency relationships used in our analysis may underestimate costs of manufacturing such products, since we did not include the costs of a minimum EER. Second, if an EER standard increases product cost, it would discourage the development and sale of modulating equipment at the baseline levels. We expect any cost increases required to meet median EER levels, however, would be slight and would not significantly alter our analysis.

To determine what the appropriate EER(95°F) requirement might be, the Department assessed ARI performance data on residential unitary equipment certified as of February 1998. The median EERs available for each product class at the minimum SEER levels DOE proposes today, are identified in Table V.4 as the "Median Available EER at Proposed Minimum SEER." In addition to the minimum SEER proposal contained in this notice, the Department is inclined to adopt in the Final Rule minimum EER(95°F) requirements equal to these values. However, since there are very few packaged heat pumps available from which to draw a conclusion concerning EER, DOE believes the minimum EER requirement for packaged heat pumps should be the same as split heat pumps less the 0.3 EER offset seen between packaged and split air conditioners.

TABLE V.4.—MEDIAN AVAILABLE ENERGY EFFICIENCY RATINGS (EER) AND PROPOSED MINIMUM EERS IN RESIDENTIAL UNITARY EQUIPMENT (1998)

| Product class | Proposed minimum SEER | Lowest available EER at proposed minimum SEER | 10th percentile available EER at proposed minimum SEER | Median available EER at proposed minimum SEER | Proposed minimum EER |
|---|---|---|---|---|---|
| Split Air Conditioners | 12.0 | 10.1 | 10.5 | 10.8 | 10.8 |
| Packaged Air Conditioners | 12.0 | 10.1 | 10.3 | 10.5 | 10.5 |
| Split Heat Pumps | 13.0 | 10.8 | 11.1 | 11.9 | 11.9 |
| Packaged Heat Pumps | 13.0 | 11.0 | 11.0 | 11.0 | 11.6 |

We encourage comments regarding the burdens and benefits that would result from including an EER requirement in the final rule. Of particular interest are comments regarding burdens on manufacturers and benefits regarding reduction in peak electricity demand, including the effect of an EER minimum on costs, on availability and sales of modulating equipment, and on electrical system reliability. In addition, comments are welcome to discuss the pros and cons of any of the other options described above.

*J. Niche Products*

Several types of central air conditioners and heat pumps are used in particular or unusual applications and have features that differ from those of the vast majority of products available in the marketplace. We refer to these as "niche products." Included are single package units that are designed to be mounted within or immediately adjacent to a fixed-size opening in an outside wall of the structure and split systems where the outdoor unit is designed to be mounted in the same manner. This would be comparable to the classes that have been established for room air conditioners that are defined as "without louvered sides." Also included are non-ducted mini-split air conditioners and heat pumps, and high-velocity, small-duct systems. Typical applications for of niche products may include: existing single family buildings without air ducts and multi-family buildings with fixed-area wall openings and both new and existing manufactured homes.



Several manufacturers have claimed that certain niche products would not be viable if required to meet higher efficiency standards, and have asked the Department to establish new classes for these products, with efficiency standards maintained at current levels. All these products serve relatively small niche markets and as such, the efficiency standards established for these products will have little effect on national energy savings. Further, each is a product with some unique utility. Earlier in this rulemaking the Department sought information on whether higher standards would eliminate these products from the marketplace because of the severity of their constraints.

1. Ductless Split Air Conditioners and Heat Pumps

Ductless split systems, or mini-splits as they are commonly known, consist of a single outdoor unit and one or more indoor fan coil units, each located in the conditioned space. Since consumers may consider the interior units to be more intrusive than a ducted system, manufacturers strive to make them as compact as possible. This cabinet size constraint combined with efficiency losses due to heat transfer between refrigerant lines puts pressure on equipment efficiency.

Mitsubishi and EnviroMaster International (EMI), manufacturers of ductless split systems, commented that ductless products should be assigned a separate product class with a lower standard. (Mitsubishi, No. 18 at 1 and EMI, No. 26 at 1). Their arguments for a separate class are:

- Ductless units are operated like room air conditioners, because the "compressor delivering air conditioning to a particular room operates only when necessary rather than when a central thermostat calls for cooling in another area;'
- Ductless units do not have the duct losses of a central air conditioning system, and so have greater installed system efficiency. Mitsubishi claims that: "a 10 SEER ductless unit may be virtually equivalent or even higher in efficiency than a 12 SEER ducted unit';
- The overwhelming portion of the market of ductless mini-splits is in capacities of 18,000 Btu/hr and less. Making significant increases in the efficiency of motors and compressors used in these small units is difficult;
- Ductless air conditioners frequently employ variable speed control of the compressor motors. Mitsubishi claims: "Controlling the speed of the compressor by inverter will not benefit the 100% capacity rating but it has a tremendous benefit when the compressor begins slowing down. During 50% capacity operation the SEER level would be several points above the 100% capacity SEER. This results in more energy savings, quieter operation, less peak load demands." Mitsubishi also argued that an EER rating, like a room air conditioner, would be more appropriate because of the inverter driven system's low cyclic losses; and
- Per ton, (of cooling capacity) a ductless air conditioning system is one of the most expensive HVAC systems in the U.S. today. Some of the reasons for high production costs are: low volumes in the United States, the indoor unit is a "finished" product fully visible to the customer so it requires additional cosmetic expenses, and the unit must be small, so complex design of coils is necessary.

After review of the available information, the Department does not believe a separate class is warranted for these products. The evidence presented in the comments does not convince us that these products would not be able to meet the proposed standard level. The constraints on increasing the size of the indoor fan coil units are primarily esthetic, and the Department is unaware of technological limitations to increasing minimum efficiency standards for these products. The esthetic disadvantage of larger cabinet size would be compensated by higher efficiency and lower cost of operation. While the claim that the small capacities make increased efficiencies difficult is a reasonable one, the Department is aware that systems with capacities of up to 44,000 Btu/h are available and believes that providing an exemption for all systems because of difficulty with smaller systems is not justified.

2. Small Duct High Velocity Air Conditioners

Small-duct, high-velocity (SDHV) systems target primarily the retrofit market, where they are installed in attic or closet spaces and distribute conditioned pressurized air through round ducts small enough to fit inside stud walls. Compared with conventional air conditioners and heat pumps that use large ducts, the indoor coil section of an SDHV system is compactly designed to facilitate retrofit installation in tight spaces, resulting in smaller face area and more rows of tubing than conventional systems. The compact fan coil design and small ducts contribute to high static pressure loss that must be overcome by the blower, requiring greater fan power. Manufacturers claim the greater energy consumption of these blower motors and the limited space for installing the fan coils makes it more difficult for SDHV systems to increase energy efficiency. To mitigate the burden on the blowers, designers reduce the required air volume by cooling it more than a conventional air conditioner, which offers an associated benefit of enhanced humidity removal but increases cost. In order to meet the current 10 SEER standard, manufacturers of SDHV systems typically pair the fan coil with high efficiency condensing units (typically 13—14 SEER).

Unico described a number of alternatives to increase system efficiency for their product, including a larger heat exchanger, an improved blower design and a more efficient blower motor, and concluded that the burden of increased initial cost would outweigh the benefits of increased system efficiency. (Unico, No.60 at 5). Unico asked the Department to either: (1) Exempt them from any increase in standards; (2) allow a 15% SEER credit for reduced duct losses associated with their type of system; or (3) allow their system to be tested as a coil only (without a blower) at a conventional airflow, using the test procedure's default fan power to establish a SEER rating but allow them to install systems with a high pressure blower. (Unico, No. 61 at 3).

SpacePak, another major manufacturer of this type of product, commented that they have made the investment to produce more efficient systems. (SpacePak, No. 39 at 1). SpacePak also provided ARI directory data indicating the higher efficiency of their designs. SpacePak claimed to offer many equipment combinations in the 11 to 12 SEER range, with only 17% of their ARI listings at the 10 SEER minimum. (Space Pak, No. 52 at 1).

After review of the available information, the Department does not believe a separate class with an efficiency standard below 12 SEER or a 15% SEER credit, is warranted for these products. Regarding Unico's third

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alternative, i.e., revise the DOE test procedure to allow SDHV systems to be tested as coil-only products, the Department believes that such a change would recognize the improvements in delivered efficiency of the SDHV system because of reduced duct losses. We are therefore proposing to modify the DOE test procedure to allow small-duct high velocity system manufacturers to test their products as coil only products. We estimate that the impact of this allowance will be 1 to 2.5 SEER points; *i.e.*, a 10 SEER system would become an 11 to 12.5 SEER system. The Department seeks comments on whether the test procedure revision or other proposed changes are needed to maintain the viability of the small-duct, high-velocity systems in the market place.

3. Vertical Packaged, Wall Mounted

These products are factory-assembled single packaged vertical air-conditioners and heat pumps using single phase power but intended for use in commercial and industrial heating and cooling applications. The difficult air flow configuration (each of the condenser and evaporator compartments takes air in and exhausts it through the same face) combined with the attempt to minimize size constrains the ability of these units to attain higher SEERs.

The Department understands that single-package vertical air-conditioners and heat pumps are not distributed for personal use or consumption by individuals, and therefore believes that at present they are commercial products covered by EPACT and not by residential energy efficiency standards. Accordingly, vertical packaged, wall mounted equipment would not be covered by today's proposed rule for residential products.

4. Through-the-Wall Condensers

Through-the-wall (TTW) condensers were popular in new multistory residential construction in the 1960s and 1970s. Major manufacturers have since abandoned the replacement market, providing an opportunity for lower volume manufacturers. Most equipment is in the 1½ to 2½ ton capacity range. These systems take in air through only one face and exhaust air through the same face resulting in reduced efficiency because of increased fan power consumption. Some short-circuiting of exhaust air into the intake may also occur.

Replacements for through-the-wall condensers must fit within the same wall opening as the original units, even though original units may be half as efficient as the new units. Residents or building owners are particularly sensitive to any increase in price or to the cost of enlarging the wall opening to accommodate a larger condenser. Since repair is the only other cost effective alternative to replacement, a new standard that increases cabinet size or results in a significant price increase could be counterproductive, preventing the turnover of old, inefficient equipment.

According to submitted data, 10 SEER TTW split condensing air-conditioners with fan coils (when scaled up to 3-tons) are $206 more expensive (manufacturer price) than 10 SEER pad-mounted split systems. Under a 12 SEER standard for pad-mounted split air conditioners, the $206 differential would be maintained if TTW Condenser systems had to meet an 11 SEER rating (also based on submitted data). This differential increases when wall modifications are necessary. DOE believes 11 SEER is technologically feasible at this time for most configurations of TTW split equipment. TTW condensers come in three sizes (height × weight exterior to the building): 32″ × 24″ (768 sq. in.); 28″ × 26″ (721 sq. in.); and 23″ × 30″ (679 sq. in.). First Co. commented that imposing higher efficiency standards would eliminate through-the-wall products from the marketplace because of the significant increase in the price with a correspondingly small operating cost savings. (First Co., No. 40 at 1).

TTW packaged systems are intended for both new construction and retrofit. First Co's dimensions (new construction) are 43″ × 28″ (1,204 sq. in.). Skymark's retrofit unit is 15″ × 55″ (825 sq. in.). TTW packaged equipment for new construction, which is not severely size-constrained, should be able to reach 12 SEER in its current configuration with component upgrades. The current manufacturer price differential (First Co.) between TTW packaged and conventional packaged equipment (scaled to 3-tons) is $430. According to First Co. data, that differential would be maintained under an 11 SEER standard for TTW packaged with a 12 SEER for conventional packaged.

The Department proposes to establish a separate class for TTW equipment (including packaged and split, cooling only and heat pump) based on a maximum combined surface area of the air inlet and outlet of the condenser of 830 square inches, and a maximum capacity of 30,000 Btu/hr. The purpose of the maximum capacity requirement is to ensure that if new technology reduces the size of the condenser, manufacturers will not offer 3-ton equipment that fits the definition but is intended for use in conventional applications. To maintain the price differential between this new class and conventional equipment, we propose a standard of 11 SEER. Because electric strip heat is popular in TTW equipment, the 11 SEER standard would also apply to TTW heat pumps.

5. Non-Weatherized Single-Package Unit, Mounted Entirely Within the Structure

Another niche product, which was not discussed in the Supplemental ANOPR, is a non-weatherized single-package unit, mounted entirely within the structure (in an attic, basement, or closet), with outdoor air ducted to and from the unit. This unit is used in high-rise and garden apartments, manufactured homes, and other residential applications where locations for placement of outdoor units may be unavailable or too remote, where architectural aesthetics may be compromised by visible outdoor units, where vandalism or theft of outdoor units is a potential problem, or where compliance with local sound ordinances restricts the placement of outdoor air conditioning equipment.

Consolidated Technologies, Inc., manufacturer of the INSIDER, commented, "For the INSIDER to be used in Manufactured Housing and Modular housing it is important to have the smallest footprint possible." (Consolidated Technologies, Inc., No. 42 at 2).

The Department recognizes that this product has space constraints, albeit not as severe as products that must fit a wall opening. Products at the 12 SEER level (the proposed air conditioning standard level) are currently on the market. A very difficult obstacle to establishing a separate class for this product is a definition that could not be used as a loophole to use its lower standard for conventional products. Its salient feature is its indoor location; product class definitions should be based on physical characteristics, and it is nearly impossible to define physical characteristics that would ensure products be installed in a particular location. No separate class is proposed for this product.

6. Request for Comments Regarding Niche Product Standards

The Department encourages comments regarding whether the proposed standards concerning high-velocity, vertically-packaged wall-mounted equipment, and through-the-wall equipment provide a significant advantage to those products versus



competing products, whether they are sufficient to preserve the unique features of those products, and whether improvements in the definitions are needed to prevent loopholes. For ductless split equipment and non-weatherized vertical packaged equipment, additional comment is welcome on the impacts that meeting the new standards would have on the availability of those products.

*K. Thermostatic Expansion Valves*

VEIC, NRDC, ACEEE, and CEC requested that a design standard requiring the use of thermostatic expansion valves (TXVs) be adopted to ensure that energy savings expected from an increase in the minimum efficiency standard are realized in the field. Several of the comments cited studies which demonstrate that TXVs can mitigate adverse effects on efficiency due to field installation problems such as inadequate evaporator airflow and improper refrigerant charge. CEC suggested that separate classes be established for systems with and without TXVs and that more stringent minimum efficiency standards be established for classes not utilizing TXVs, and VEIC suggested mandating the use of TXVs in all new equipment. (VEIC, No. 32 at 4–5; Neme, VEIC, Transcript, pp. 187–189; NRDC, No. 35 at 11–12; ACEEE, No. 43 at 5–6; CEC, No. 47 at 5–6).

At least two regulatory options exist for encouraging the use of TXVs. The first is to require that all equipment contain TXVs, hereafter called TXV requirement. The second is to establish a separate product class for TXV-bearing equipment and to reduce the minimum SEER requirements for those classes from the levels in today's proposed rule.

The EPCA allows the Department to issue a requirement such as mandating the use of TXVs if the Secretary determines that such a requirement is necessary to ensure that the product meets its performance-based standard. In the case of TXVs, the Department's current opinion is that products can meet the proposed SEER requirements without TXVs. This is certainly true in the laboratory. In the field, although many installations could undoubtedly benefit from TXVs, it is unclear whether we could find that TXVs are needed for those systems to perform at their rated efficiencies.

Regarding the second option, EPCA requires the Department to establish separate product classes for products based on a performance related feature (such as a TXV) if the Secretary determines that a higher or lower efficiency standard is justified for those products. Evidence indicates that TXVs maintain system efficiency better than do fixed orifices or capillary tube expansion devices in cases where split system equipment is over- or under-charged with refrigerant. This apparently includes most installations. To encourage the use of TXVs we could consider establishing lower SEER standards for products containing TXVs.

While the evidence of the potential energy-saving benefits of TXVs is certainly persuasive, the current SEER test procedures already encourage their use. For rating a manufacturer's condenser with the evaporator of a different manufacturer, the SEER determination procedures provide a credit for systems that incorporate TXVs. For matched systems, the use of TXVs typically lowers the degradation coefficient, resulting in higher SEER results.

We hesitate to provide stronger support for TXV-bearing equipment than that which is already granted through the test procedures. Unlike fixed orifices, TXVs are mechanical components. Some manufacturers avoid their usage because of reliability concerns, and the additional repair costs incurred by consumers could outweigh their energy-saving benefits. Furthermore, contractors are able to adjust the factory-set TXV in the field, and it is possible that alleviating problems due to over- or under-charging by encouraging the use of TXVs could create another problem—improperly set TXVs. Also, it is not clear that TXVs are the only, or even the best, option for maintaining equipment efficiency in the field. For example, technologies that could mitigate dirty coils or prevent improper charging and airflow may be more attractive options, and we would not want to discourage their development or use by mandating the use of TXVs.

In any case, manufacturers may well find that the SEER benefits offered by TXVs are compelling enough under the new efficiency standards that they would offer TXVs in a substantial amount of baseline equipment without further encouragement by the Department. The Engineering Analysis suggests that manufacturers are currently more likely to incorporate TXVs into their 12 SEER and 13 SEER products than in their 10 SEER products. We would expect, therefore, that TXV use would be much more prevalent under higher efficiency standards.

For these reasons, the Department feels that the current test procedure provides the proper encouragement for manufacturers to incorporate TXVs into their products, and that neither a TXV requirement nor a lower standard for TXV-bearing products are justified at this time. We welcome additional comments on this issue, particularly regarding whether our concerns regarding the perceived reliability problems and potential misuses associated with widespread use of TXVs are valid.

*L. Other Comments*

1. Latent Heat Removal

The Southern Company, Virginia Power, and R.B. Stotz insisted that increased equipment efficiency impacts the equipment's ability to properly dehumidify (i.e., remove latent heat). Virginia Power specifically wants assurances that any increase in the standard will maintain current humidity control capabilities. In addition, it asserts that the costs of maintaining humidity control should be included in the analysis. (Virginia Power, No. 27 at 2). The Southern Company claims that higher SEER values will lead to larger indoor coils which in turn will result in higher air temperatures leaving the indoor coil. The higher the air temperature, the less dehumidification occurs. They also claim that while more efficient systems may dehumidify properly at rated test conditions, their ability to dehumidify under high indoor humidity conditions are worse than less efficient equipment. (Southern Company, No. 29 at 3–4; R.B. Stotz, No. 24 at 1). Trane counters the claims made by the Southern Company and Virginia Power by stating that there is absolutely no evidence to support the claim that more efficient equipment has less latent heat removal capability. (Crawford, Trane, Transcript, pp. 272–273).

Trane's claim that there is no relationship between equipment efficiency and its ability to dehumidify is substantiated by research conducted by ARI. From this research, ARI demonstrated for hundreds of systems that latent heat removal is not obviously impacted by increases in equipment efficiency at rated conditions (*i.e.*, 95°F outdoor temperature).[16] Not to dismiss the concerns of Virginia Power and the Southern Company, we recognize the humidity control problems that exist in the southern region of the U.S. For the excessive humidity conditions commonly experienced in the South, the equipment may very likely not provide adequate dehumidification. But rather than focusing on the equipment efficiency as the source of the problem,

[16] D. Godwin. 1998. "Latent Capacity of Unitary Equipment." ASHRAE Transactions 98(2).

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proper installation and maintenance practices also likely play a large role in the equipment's performance. Other factors to consider are the duct system as well as the building shell characteristics. All these factors play a role in how a system dehumidifies. To lay blame only on the efficiency of the equipment ignores how other factors contribute to the system's ability to properly dehumidify.

2. 3-Phase Equipment

ACEEE asserted that if an identical standard is to be set for both single-phase and 3-phase central air conditioners and heat pumps under 65,000 Btu/hr, then 3-phase equipment should be incorporated into the rulemaking analysis. Alternatively, if 3-phase equipment is excluded from the analysis, it should be made clear that a new standard on 3-phase equipment will be set based on a new analysis covering 3-phase equipment.

EPACT provides for DOE to amend the standards for these products when ASHRAE amends the standards found in ASHRAE Standard 90.1. When ASHRAE has completed its consideration of standards for these products, DOE will analyze 3-phase equipment under a separate rulemaking pertaining to commercial air-conditioning and heat pump equipment.

3. SEER–HSPF Relationship

ARI supported the Department's HSPF–SEER standard pairings proposed in the Supplemental ANOPR. (ARI No. 48 at 4). Pietsch proposed maintaining the current minimum requirements for HSPF at 6.8 for future levels of minimum SEER, which would allow manufacturers to continue to place more emphasis on improving SEER. He based this recommendation on the strong competition that heat pumps face in the market place with electric resistance heat, noting that the increased first-cost of heat pumps that have higher minimum HSPFs makes it more difficult for heat pumps to compete against the much lower first-cost of electric resistance heating systems. (Pietsch No. 36 at 41). ACEEE, VEIC, and PG&E noted that the Department's definition of HSPF–SEER pairing for the standard levels it analyzed seemed arbitrary or too lenient and preferred that the Department establish higher HSPF levels. (ACEEE, No. 43 at 5; VEIC, No. 32 at 6; PG&E, No. 31 at 4).

The Department plotted the relationship between HSPF and SEER for all 3-ton split heat pumps listed in the Spring 1998 ARI Directory of Certified Unitary Equipment. At 10 SEER, the difference between the minimum HSPF (6.8) and the median (7.1) was 0.3 HSPF. The Department then determined the equation of the line that ran generally parallel with the median HSPF at each SEER level, while passing through the 10 SEER, 6.8 HSPF point. Table V.5 reviews the derivation of the SEER–HSPF pairings.

TABLE V.5.—COMPARISON OF PROPOSED HSPF STANDARD LEVELS WITH MEDIAN HSPFS OF EQUIPMENT LISTED IN THE ARI UNITARY DIRECTORY

| Cooling efficiency (SEER) | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 |
|---|---|---|---|---|---|---|---|---|
| Median Heating Efficiency (HSPF) | 7.1 | 7.4 | 7.9 | 7.9 | 7.9 | 8.9 | 8.2 | 8.4 |
| Recommended Heating Efficiency Standard (HSPF) | 6.8 | 7.1 | 7.4 | 7.7 | 8.0 | 8.2 | 8.4 | 8.6 |
| Offset from Median (HSPF) | −0.3 | −0.3 | −0.5 | −0.2 | +0.1 | −0.7 | +0.2 | +0.2 |

Even though the Department does not have information on the distribution of heat pump sales by HSPF at each SEER level, it is apparent that the market currently favors products that exceed the minimum allowable HSPF level. This is due both to the natural relationship between HSPF and SEER and the preference in the market for high HSPF heat pumps in cooler climates. The Department believes that establishing an HSPF standard equal to the current median at a given SEER level would impose an undue design constraint on manufacturers, adding to the cost and burden of designing, producing, testing, and qualifying the product without resulting in a significant increase in the average HSPF of equipment sold. Also, the Department does not want to encourage substitution of electric resistance heating systems for heat pumps. Without further information on the cost of attaining higher HSPFs or the shipments of heat pumps by HSPF level, the Department has no basis for modifying its current HSPF–SEER standard combinations.

4. Max Tech

The Supplemental ANOPR analysis proposed a Max Tech level of 20 SEER. ARI, Trane, and York commented that a prototype hasn't been built that has exceeded 18 SEER. (Wethje, ARI, Transcript p. 66; Crawford, Trane, Transcript p. 69; and Madera, York, Transcript p. 71). The Department also understands that 18 SEER is the highest efficiency level currently available for sale.

While the Department believes improvements to the 18 SEER design are certainly possible, it agrees with the industry that any analysis based on a design higher than 18 SEER would be pure speculation. Therefore, the Department considers 18 SEER to be the Max Tech at this time for cooling performance. The Max Tech level for heating efficiency is 9.4 HSPF, which is the highest HSPF rating currently available in residential heat pumps. Any parties possessing knowledge of prototype central air conditioners or heat pumps that exceed 18 SEER or 9.4 HSPF levels are encourage to provide such information in comment on today's proposed rule.

DOE does not have relative cost data for 18 SEER units as ARI did not provide the Department data for equipment exceeding 15 SEER. In lieu of performing a reverse engineering analysis on an 18 SEER design, the Department is proceeding as if the 18 SEER equipment cost and price were equal to those of the 15 SEER equipment. DOE believes the 18 SEER cost would be higher because the product is more complex.

## VI. Analytical Results

### A. Trial Standard Levels

Table VI.1 presents the trial standards levels analyzed for today's proposed rule and the corresponding efficiency level for each class of product. Trial standard level 5 is the max tech level for each class of product.



TABLE VI.1.—TRIAL STANDARDS LEVELS FOR CENTRAL AIR CONDITIONERS AND HEAT PUMPS (SEER)

| Trial standard level | Split air conditioners | Packaged air conditioners | Split heat pumps | Packaged heat pumps |
|---|---|---|---|---|
| 1 | 11 | 11 | 11 | 11 |
| 2 | 12 | 12 | 12 | 12 |
| 3 | 12 | 12 | 13 | 13 |
| 4 | 13 | 13 | 13 | 13 |
| 5 | 18 | 18 | 18 | 18 |

### B. Significance of Energy Savings

To estimate the energy savings through 2030 due to revised standards, we compared the energy consumption of central air conditioners and heat pumps under the base case to energy consumption of central air conditioners and heat pumps under the revised standard. We examined five standard levels. For each trial standard examined, several different scenarios were analyzed consisting of variations on: (1) Electricity price and housing projections; (2) equipment efficiency distributions; (3) manufacturer cost estimates; (4) equipment lifetime; and (5) societal discount rate. Electricity price and housing projections were based on three different AEO 2000 forecasts: (1) Reference Case, (2) High Growth Case, and (3) Low Growth Case.

We analyzed three efficiency scenarios, each of which assumed a different efficiency distribution after new standards would take effect: (1) NAECA scenario, (2) Roll-up scenario, and (3) Shift scenario. Manufacturer costs were based on ARI-provided mean cost data. Since several comments suggested that the industry-provided cost estimates were overstated, cost data from the reverse engineering analysis were analyzed as an alternative scenario. Equipment lifetime was based on a retirement function with an 18.4 year average lifetime coupled with the inclusion of compressor replacement costs. However, since several comments suggested that the equipment life is actually shorter, a retirement function yielding an average lifetime of 14 years without the inclusion of compressor replacement costs was analyzed as an alternative scenario.

For calculating NPV, a societal discount rate of 7% was assumed. However, a 3% value was investigated as an alternative scenario in accordance with the Office of Management and Budget's (OMB) Guidelines to Standardize Measures of Costs and Benefits and the Format of Accounting Statements.

Table VI.2 shows the range of energy savings for each of the three shipments scenarios for each trial standard level based on varying electricity and housing projections. The energy savings assume the ARI mean manufacturer cost estimate, an 18.4-year average lifetime with compressor replacement and a 7% societal discount rate. The electricity scenarios are the AEO 2000 Reference, High Growth, and Low Growth cases.

TABLE VI.2.—ENERGY SAVINGS BASED ON ARI MEAN MANUFACTURER COSTS, 18.4 YEAR RETIREMENT FUNCTION WITH COMPRESSOR REPLACEMENT, AND A 7% DISCOUNT RATE

[Energy savings for units sold from 2006 to 2030]

| Trial standard level | Energy savings (quads) | | |
|---|---|---|---|
| | NAECA | Roll-up | Shift |
| 1 | 1.7 to 1.8 | 1.5 to 1.6 | 1.9 to 2.0 |
| 2 | 2.9 to 3.2 | 2.8 to 3.0 | 3.4 to 3.6 |
| 3 | 3.4 to 3.6 | 3.3 to 3.5 | 3.8 to 4.1 |
| 4 | 4.2 to 4.5 | 4.1 to 4.4 | 4.6 to 4.9 |
| 5 | 8.1 to 8.7 | 8.1 to 8.7 | 8.1 to 8.7 |

Table VI.3 shows how each of the three scenarios described above (reverse engineering costs, 14 year average life, and 3% discount rate) impact the energy savings. The three scenarios were investigated only for the NAECA efficiency scenario and the AEO 2000 Reference Case electricity price and housing projection.

TABLE VI.3.—ENERGY SAVINGS BASED ON THE NAECA EFFICIENCY SCENARIO AND AEO REFERENCE CASE

[Energy savings for units sold from 2006 to 2030]

| Trial standard level | Energy savings (quads) | | |
|---|---|---|---|
| | Reverse engineering manufacturing cost | 14 year lifetime | 3% discount rate |
| 1 | 1.7 | 1.7 | 1.7 |
| 2 | 3.0 | 2.9 | 3.0 |
| 3 | 3.5 | 3.4 | 3.5 |
| 4 | 4.3 | 4.2 | 4.3 |
| 5 | 8.7 | 8.2 | 8.3 |

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*C. Payback Period*

As discussed above, the Act requires the Department to examine payback periods to determine if the three year rebuttable presumption of economic justification applies. As prescribed by the Act, the rebuttable payback period is "calculated under the applicable test procedure, * * *".

The annual space-cooling and space-heating energy consumption calculated based on the hours of use in the test procedure are on the order of 50% greater than the weighted-average values from the LCC analysis (*i.e.*, analyses based on the 1997 RECS for residential buildings and hourly simulations for commercial buildings). This means that, for any given standard level, the payback period calculated from the test procedure will be significantly shorter than the average payback value calculated from the LCC analysis which was based on the 1997 RECS data.

In Table VI.4a, we list the median payback periods for product classes and efficiency levels according to the methods employed by the LCC analysis. Table VI.4b is the rebuttable presumption payback period based on the Department of Energy's test procedure.

TABLE VI.4A.—SUMMARY OF LCC PAYBACK MEDIAN PERIOD

| Product class | Efficiency level | ARI mean manufacturing cost [1] | Reverse engineering manufacturing cost scenario [1] | 14-year lifetime scenario/ARI mean manufacturing cost |
|---|---|---|---|---|
| Split System Central Air Conditioner | 11 | 10.6 | 7.8 | 10.5 |
| | 12 | 12.6 | 9.8 | 12.8 |
| | 13 | 16.0 | 11.3 | 16.2 |
| | 18 | 36.0 | 19.6 | 50.4 |
| Split System Heat Pump | 11 | 5.5 | 2.7 | 5.5 |
| | 12 | 7.2 | 3.9 | 7.3 |
| | 13 | 9.3 | 6.4 | 9.5 |
| | 18 | 17.3 | 14.0 | 19.9 |
| Single Package Air Conditioner | 11 | 6.1 | 7.7 | 16.6 |
| | 12 | 14.0 | 7.5 | 14.2 |
| | 13 | 21.8 | 14.5 | 21.8 |
| | 18 | 48.8 | 25.1 | 88.1 |
| Single Package Heat Pump | 11 | 8.1 | 4.6 | 8.1 |
| | 12 | 8.7 | 4.0 | 8.7 |
| | 13 | 13.2 | 8.4 | 13.4 |
| | 18 | 19.4 | 12.8 | 23.1 |

[1] Assumes a 18.4-year lifetime with a compressor replacement at 14 years.

TABLE VI.4B.—SUMMARY OF REBUTTABLE PAYBACK PERIOD

| Product class | Efficiency level | ARI mean manufacturing cost [1] |
|---|---|---|
| Split System Central Air Conditioner | 11 | 4.7 |
| | 12 | 5.8 |
| | 13 | 7.6 |
| | 18 | 11.3 |
| Split System Heat Pump | 11 | 2.5 |
| | 12 | 3.3 |
| | 13 | 4.5 |
| | 18 | 6.8 |
| Single Package Air Conditioner | 11 | 7.3 |
| | 12 | 6.2 |
| | 13 | 9.8 |
| | 18 | 13.3 |
| Single Package Heat Pump | 11 | 3.7 |
| | 12 | 4.0 |
| | 13 | 6.5 |
| | 18 | 7.2 |

[1] Assumes a 18.4-year lifetime with a compressor replacement at 14 years.

*D. Economic Justification*

1. Economic Impact on Manufacturers

*a. Background.* We performed a Manufacturer Impact Analysis (MIA) to estimate the impact of higher efficiency standards on air conditioner manufacturers. The TSD explains the analysis in further detail. As part of the MIA, we discussed potential impacts with six major manufacturers responsible for approximately 90% of the residential air conditioner and heat pump sales. We also interviewed two niche manufacturers to understand how their financial situation differs from that of their larger counterparts. These interviews are in addition to those we conducted as part of the Supplemental ANOPR. The interviews provided valuable information used to evaluate the impacts of a new standard on manufacturers' cash flows, manufacturing capacities and employment levels.

The MIA has both quantitative and qualitative aspects. Quantitative analysis primarily relies on the GRIM, an industry cash flow model customized for this rulemaking. The GRIM inputs



are assumptions regarding the industry cost structure, shipments, and revenues. The key output is the industry net present value (INPV). Different sets of assumptions (scenarios) produce different results as described below.

In the GRIM we evaluated each of the shipment scenarios, *i.e.*, "NAECA", "Rollup", and "Shift". Changes in efficiency mix by efficiency standard level are a key driver of manufacturer finances since costs and revenues are both tied to shipments.

Two cost scenarios, "Industry Relative Cost" and "Reverse-Engineering Relative Cost", were also examined. These relative costs are also used as the basis for deriving the production costs of equipment above the minimum efficiency level. The "Reverse-Engineering Relative Cost" scenario was applied only to the "NAECA" product mix scenario in order to determine the effects of lower production costs on the MIA results.

The equipment lifetime scenarios assumptions, "18-year life" and "14-year life", were considered. The "14-year life" assumption applied only to the "NAECA" and "Industry Relative Cost" scenarios to isolate the effects of a shorter product life on the results.

The interviews revealed that manufacturers use different pricing strategies and place different levels of emphasis on the sale of higher efficiency products. Manufacturers fall into two basic groups in this regard. The first group has lower operating and production costs than its competitors and targets such price-sensitive consumers as new home builders. This focus on low price limits the ability and desire of these manufacturers to sell premium equipment. Because they have a cost advantage over their competitors, the lower cost manufacturers can achieve a higher operating profit margin on their baseline equipment and still maintain a price advantage. They then apply a fairly consistent markup across efficiency levels.

The higher cost manufacturers typically place more of an emphasis on marketing, service, and research than do their lower cost competitors. Faced with stiff price competition from the lower cost manufacturers in price-sensitive markets, the higher cost manufacturers are forced to reduce their price (and markup) on their baseline equipment to the minimum level sustainable. They then target less price sensitive customers by offering products with premium features and higher efficiency. These products carry higher markups.

Since higher efficiency standards will affect each group of manufacturers differently, we set up two versions of the GRIM to model each group independently. To represent the lower cost manufacturers, we reduced the operating expense ratio and research and development expense ratio to below the industry averages. We also assumed that a single markup applies to products across all efficiency levels. To model higher cost manufacturers, we raised the operating expense ratio and research and development ratios to above the industry average. We then assumed that markups increase roughly linearly as the efficiency level increases. This represents two effects: selling a greater fraction of higher margin premium product as efficiency level rises, and being able to secure a higher profit margin on products by virtue of the higher efficiency.

To represent the industry in aggregate, we combined the results of the two GRIM versions, giving 25% weight to the results of the lower-operating-cost group and 75% weight to the results of the higher-operating-cost group. This ratio reflects the prevalence of each strategy in the marketplace. Many companies may pursue both strategies simultaneously through different brands and divisions.

*b. Industry Cash Flow Analysis Results.* Tables VI.5 through VI.7 present the GRIM results for the unitary air conditioning industry for the three shipment scenarios based on the industry provided mean cost multipliers and an 18-year product life. The corporate discount rate used in the analysis is 6.2% based on an estimate of the weighted average cost of capital for the industry over a five-year period. Results assume that manufacturers with lower operating costs control 25% of the market and those with higher operating costs control 75%. Since we did not collect information regarding the cost or investments involved in manufacturing product at 18 SEER, we did not assess impacts under Max Tech.

TABLE VI.5.—CHANGES IN INDUSTRY NET PRESENT VALUE—INDUSTRY RELATIVE COST, 18 YEAR LIFE, NAECA EFFICIENCY MIX

| Standard level | Industry net present value ($ million) | Change in INPV from base case | |
|---|---|---|---|
| | | $ million | Percent |
| Base | 1,603 | | |
| 1 | 1,566 | (37) | −2 |
| 2 | 1,417 | (186) | −12 |
| 3 | 1,406 | (197) | −12 |
| 4 | 1,420 | (183) | −11 |

TABLE VI.6.—CHANGES IN INDUSTRY NET PRESENT VALUE—INDUSTRY RELATIVE COST, 18 YEAR LIFE, ROLL-UP EFFICIENCY MIX

| Standard level | Industry net present value ($ million) | Change in INPV from base case | |
|---|---|---|---|
| | | $ million | Percent |
| Base | 1,603 | | |
| 1 | 1,422 | (181) | −11 |
| 2 | 1,241 | (362) | −23 |
| 3 | 1,236 | (367) | −23 |
| 4 | 1,268 | (335) | −21 |

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TABLE VI.7.—CHANGES IN INDUSTRY NET PRESENT VALUE—INDUSTRY RELATIVE COST, 18 YEAR LIFE, SHIFT EFFICIENCY MIX

| Standard level | Industry net present value ($ million) | Change in INPV from base case | |
|---|---|---|---|
| | | $ million | Percent |
| Base | $1,603 | | |
| 1 | 1,740 | $137 | 9 |
| 2 | 1,825 | 222 | 14 |
| 3 | 1,854 | 251 | 16 |
| 4 | 1,914 | 311 | 19 |

The NAECA and Roll-up scenarios reduce INPV while the Shift scenario increases INPV. This result occurs because we assume the higher-operating cost manufacturers accrue much of their profits from the sale of higher efficiency equipment. As the standard level increases, they earn lower profit margins on that equipment. The loss in profits can be offset by the combination of more sales and more expensive equipment. The Shift scenario provides a much more favorable projection of high-efficiency equipment sales than do the NAECA and Rollup scenarios.

Tables VI.8 and VI.9 present the results for the 14-year life assumption and the Reverse Engineering Relative Cost scenario with the NAECA Efficiency Mix scenario.

TABLE VI.8.—CHANGES IN INDUSTRY NET PRESENT VALUE—INDUSTRY RELATIVE COST, 14 YEAR LIFE, NAECA EFFICIENCY MIX

| Standard level | Industry net present value ($ million) | Change in INPV from base case | |
|---|---|---|---|
| | | $ million | Percent |
| Base | $1,726 | | |
| 1 | 1,701 | $ (25) | −1 |
| 2 | 1,558 | (168) | −10 |
| 3 | 1,555 | (171) | −10 |
| 4 | 1,598 | (128) | −7 |

TABLE VI.9.—CHANGES IN INDUSTRY NET PRESENT VALUE—REVERSE ENGINEERING RELATIVE COST, 18 YEAR LIFE, NAECA EFFICIENCY MIX

| Standard level | Industry net present value ($ million) | Change in INPV from base case | |
|---|---|---|---|
| | | $ million | Percent |
| Base | $1,539 | | |
| 1 | 1,509 | $ (30) | −2 |
| 2 | 1,380 | (159) | −10 |
| 3 | 1,368 | (171) | −11 |
| 4 | 1,370 | (169) | −11 |

Table VI.10 presents the differential impacts between the groups of manufacturers with lower and higher operating costs. The lower operating cost manufacturers benefit under all scenarios and trial standard levels, and the higher operating cost manufacturers benefit only under the Shift scenario. The reason, again, is that we assume that lower operating cost manufacturers accrue the same profit margin regardless of the efficiency level, so as the cost of the product increases, profits also increase. The higher operating cost manufacturers, on the other hand, lose profits as the standard level rises and the products face pricing pressure from the lower cost manufacturers.

TABLE VI.10.—CHANGE IN INDUSTRY NET PRESENT VALUE (%) RELATIVE TO BASE—COMPARISON BETWEEN LOWER AND HIGHER COST MANUFACTURERS

| Standard level | Industry relative cost [1] | | | | | | | | Reverse engineering relative cost | |
|---|---|---|---|---|---|---|---|---|---|---|
| | NAECA | | NAECA—14 year life | | Roll-up | | Shift | | NAECA | |
| | Lower cost | Higher cost | Lower cost | Higher cost | Lower cost | Higher cost | Lower cost | Higher cost | Lower cost | Higher cost |
| 1 | 5 | −5 | 6 | −4 | 3 | −16 | 7 | 9 | 5 | −4 |
| 2 | 7 | −17 | 9 | −16 | 5 | −31 | 12 | 14 | 7 | −16 |



TABLE VI.10.—CHANGE IN INDUSTRY NET PRESENT VALUE (%) RELATIVE TO BASE—COMPARISON BETWEEN LOWER AND HIGHER COST MANUFACTURERS—Continued

| Standard level | Industry relative cost [1] | | | | | | | | Reverse engineering relative cost | |
|---|---|---|---|---|---|---|---|---|---|---|
| | NAECA | | NAECA—14 year life | | Roll-up | | Shift | | NAECA | |
| | Lower cost | Higher cost | Lower cost | Higher cost | Lower cost | Higher cost | Lower cost | Higher cost | Lower cost | Higher cost |
| 3 | 9 | −19 | 11 | −16 | 6 | −32 | 14 | 16 | 8 | −17 |
| 4 | 15 | −19 | 19 | −16 | 13 | −31 | 21 | 19 | 12 | −18 |

[1] 18-year lifetime unless otherwise noted.

For the group most negatively impacted, *i.e.*, the higher cost group, Table VI.11 presents the Return on Invested Capital (ROIC) associated with the base case, and with each new standard level for the NAECA and Roll-up efficiency mix scenarios, for industry relative costs and an 18-year lifetime. A reduction in ROIC increases the likelihood that the company will choose to exit the market or sell its assets rather than to make the investments required to move to the new efficiency level.

TABLE VI.11.—RETURN ON INVESTED CAPITAL (ROIC) IN 2011 FOR HIGHER COST MANUFACTURERS

| Standard level | NAECA (in percent) | Roll-up (in percent) |
|---|---|---|
| Base | 13.3 | 13.3 |
| 1 | 12.3 | 10.7 |
| 2 | 10.2 | 8.4 |
| 3 | 10.0 | 8.3 |
| 4 | 9.6 | 8.3 |

Table VI.12 provides a summary of the total investment required for each trial standard level. Product conversion expenses include mostly product development and testing costs. Capital investments include new equipment, tooling, and floor space. Since these investments occur in the years leading up to the effective date of the new standard, larger investments equate to a more serious strain on cash flows in the near-term.

TABLE VI.12.—MANUFACTURER EXPENDITURES RELATED TO NEW EFFICIENCY STANDARDS (MILLION 1999 $)

| Trial standard level | Product conversion expenses | Capital investments | Total investment |
|---|---|---|---|
| Base | | | |
| 1 | $ 31 | $ 54 | $ 85 |
| 2 | 93 | 109 | 202 |
| 3 | 110 | 138 | 248 |
| 4 | 157 | 167 | 324 |

The TSD which accompanies today's proposed rule provides more details on the MIA assumptions, methodology, results, and conclusions, including the assessments of impacts on lower volume equipment manufacturers and compressor manufacturers, which we estimate to be similar in proportion to the impacts described above.

*c. Impacts on Employment.* Manufacturers stated uniformly that labor requirements track materials costs. Since a new standard will increase the amount and cost of material in each product, labor requirements are expected to rise proportionally. However, the industry has recently been experiencing rapid growth in sales volume and is now faced with production capacity constraints. Since new efficiency standards will increase the product's size and complexity, many manufacturers will need to add additional capacity to accommodate the new products and retain their sales volumes. It is possible that those companies will choose to add the new capacity outside of the United States. This effect could keep domestic employment levels flat or result in employment loss if companies choose to shift current production to new facilities in other countries.

*d. Impacts on Manufacturing Capacity.* It is likely that a central air conditioner and heat pump standard would increase central air conditioner and heat pump production capacity in the United States. Since more efficient conventional heat exchangers are also larger, plants that now face capacity constraints will be unable to produce as many heat exchangers as they can under existing standards. Five of the six manufacturers we interviewed identified capacity constraints during peak production periods.

*e. Impact on Lower Volume Manufacturers.* Converting from a company's current basic product line involves creating, testing, and moving a new design into production. These tasks have associated capital investments. Manufacturers of niche products and those who produce only coils and fancoils, because of their need to spread these investments over smaller

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production volumes, may be affected more negatively than major manufacturers by an increase in efficiency standards. This is particularly true for those manufacturers that compete head-to-head with major manufacturers in some product lines, and less true for coil-only manufacturers. These results occur separately from any technical considerations related to the manufacturer's ability to modify its products to bring them into compliance with a new standard. Technical considerations are typically more important for niche manufacturers than for major manufacturers and have more severe consequences related to increased production costs or loss of sales volume due to increased price. Overall, if provisions are made in the standard for niche products that face severe technological constraints, we would not expect the impacts on lower-volume manufacturers as a group to be disproportionate with those of the industry as a whole.

2. Life-Cycle Cost

More efficient central air conditioners and heat pumps would affect consumers in two ways: Annual operating expense would decrease and purchase price would increase. We analyzed the net effect by calculating the LCC. Inputs required for calculating LCC include total installed costs (*i.e.*, equipment price plus installation costs), annual energy savings, average and marginal electricity rates, electricity price trends, repair costs, maintenance costs, equipment lifetime, and discount rates.

The output of the LCC model is a mean LCC savings for each product class as well as a probability distribution or likelihood of LCC reduction or increase. The LCC analysis for today's proposed rule introduces a new concept with regard to the percentage of consumers (both residential and commercial) that are negatively impacted by an increase in the minimum efficiency standard. (For the Supplemental ANOPR, all consumers that would incur an LCC increase were considered to be adversely impacted by an increase in the standard. This included even consumers that would incur a relatively small LCC increase *e.g.*, as small as $10, as compared to a relatively large baseline level total LCC. Note that the baseline LCC is approximately $5,000 for central air conditioners and $10,000 for heat pumps.)

The revised analysis defines negative impacts by including in this category only those consumers which incur LCC increases greater than 2% of the baseline LCC. For central air conditioners, this translates to an LCC increase of approximately $100 or an annual expense of approximately $5 over the lifetime of the system. Table VI.13 summarizes the baseline LCCs for split system and single package central air conditioners and heat pumps and also provides the 2% threshold at which consumers are considered to be adversely impacted.

TABLE VI.13.—BASELINE LIFE-CYCLE COSTS AND THRESHOLD FOR ADVERSE IMPACTS

| Product class | Baseline life-cycle cost | Threshold for adverse impacts: 2% of Baseline LCC |
|---|---|---|
| Split Air Conditioners | $5,170 | $103 |
| Split Heat Pumps | 9,679 | 194 |
| Single Package Air Conditioners | 5,629 | 113 |
| Single Package Heat Pumps | 9,626 | 193 |

Table VI.14 depicts the LCC results for split system and single package central air conditioners and heat pumps. The table shows the average LCC values for the baseline and each Trial Standard Level. Since manufacturer cost data were not available for the 18 SEER efficiency levels, 15 SEER cost data were used for all 18 SEER calculations resulting in 18 SEER LCC results which underestimate their true cost level.

Table VI.14 also provides for each product class the difference in LCC at each efficiency level relative to the baseline. The differences represent either an LCC savings or an LCC cost increase. In addition, the table shows the subset of consumers (both residential and commercial) at each efficiency level who are impacted in one of three ways: Consumers who achieve significant net LCC savings (*i.e.*, LCC savings greater than 2% of the baseline LCC), consumers who are impacted in an insignificant manner by having either a small reduction or small increase in LCC (*i.e.*, within ±2% of the baseline LCC), or consumers who achieve a significant net LCC increase (*i.e.*, an LCC increase exceeding 2% of the baseline LCC).

TABLE VI.14.—SUMMARY OF LCC RESULTS BASED ON ARI MEAN MANUFACTURER COSTS AND A 18.4 YEAR AVERAGE LIFETIME

| Product class | Efficiency level | Average LCC | Average LCC (savings) costs | Percent of consumers with | | |
|---|---|---|---|---|---|---|
| | | | | Net savings (>2%) | No significant impact | Net costs (>2%) |
| Split System Central Air Conditioner | 10 | $5,170 | | | | |
| | 11 | 5,126 | ($44) | 23 | 68 | 9 |
| | 12 | 5,125 | (45) | 27 | 34 | 39 |
| | 13 | 5,199 | 29 | 25 | 17 | 58 |
| | 18 | 5,725 | 555 | 15 | 4 | 81 |
| Split System Heat Pump | 10 | 9,679 | | | | |
| | 11 | 9,529 | (150) | 30 | 70 | 0 |
| | 12 | 9,437 | (242) | 42 | 55 | 3 |
| | 13 | 9,464 | (215) | 39 | 39 | 22 |
| | 18 | 9,955 | 276 | 23 | 11 | 66 |



TABLE VI.14.—SUMMARY OF LCC RESULTS BASED ON ARI MEAN MANUFACTURER COSTS AND A 18.4 YEAR AVERAGE LIFETIME—Continued

| Product class | Efficiency level | Average LCC | Average LCC (savings) costs | Percent of consumers with | | |
|---|---|---|---|---|---|---|
| | | | | Net savings (>2%) | No significant impact | Net costs (>2%) |
| Single Package Air Conditioner | 10 | 5,629 | | | | |
| | 11 | 5,649 | 20 | 16 | 47 | 37 |
| | 12 | 5,600 | (29) | 26 | 30 | 44 |
| | 13 | 5,804 | 175 | 18 | 11 | 71 |
| | 18 | 6,370 | 741 | 12 | 4 | 84 |
| Single Package Heat Pump | 10 | 9,626 | | | | |
| | 11 | 9,492 | (134) | 28 | 72 | 0 |
| | 12 | 9,372 | (254) | 44 | 49 | 7 |
| | 13 | 9,514 | (112) | 33 | 31 | 36 |
| | 18 | 9,922 | 296 | 24 | 10 | 66 |

As discussed previously for the presentation of energy savings and payback period results, we have investigated two scenarios where lower estimates of the manufacturer costs (reverse engineering) and system lifetime (retirement function with 14 year average lifetime without compressor replacement costs) were analyzed. Table VI.15 presents the results for the manufacturer cost scenario while Table VI.16 presents the results for the lifetime scenario.

TABLE VI.15.—SUMMARY OF LCC RESULTS BASED ON REVERSE ENGINEERING MANUFACTURER COSTS

| Product class | Efficiency level | Average LCC | Average LCC (savings) costs | Percent of consumers with | | |
|---|---|---|---|---|---|---|
| | | | | Net savings (>2%) | No significant impact | Net costs (>2%) |
| Split System Central Air Conditioner | 10 | $5,170 | | | | |
| | 11 | 5,095 | ($75) | 28 | 70 | 2 |
| | 12 | 5,057 | (113) | 35 | 40 | 25 |
| | 13 | 5,057 | (113) | 34 | 27 | 39 |
| | 18 | 5,307 | 137 | 25 | 7 | 68 |
| Split System Heat Pump | 10 | 9,679 | | | | |
| | 11 | 9,470 | (209) | 40 | 60 | 0 |
| | 12 | 9,314 | (365) | 58 | 42 | 0 |
| | 13 | 9,307 | (372) | 52 | 42 | 6 |
| | 18 | 9,720 | 41 | 28 | 15 | 57 |
| Single Package Air Conditioner | 10 | 5,629 | | | | |
| | 11 | 5,551 | (78) | 27 | 72 | 1 |
| | 12 | 5,466 | (163) | 40 | 51 | 9 |
| | 13 | 5,600 | (29) | 28 | 20 | 52 |
| | 18 | 5,905 | 276 | 21 | 6 | 73 |
| Single Package Heat Pump | 10 | 9,626 | | | | |
| | 11 | 9,419 | (207) | 39 | 61 | 0 |
| | 12 | 9,205 | (421) | 66 | 34 | 0 |
| | 13 | 9,273 | (353) | 50 | 38 | 12 |
| | 18 | 9,460 | (166) | 37 | 15 | 48 |

TABLE VI.16.—SUMMARY OF LCC RESULTS BASED ON ARI MEAN MANUFACTURER COST AND 14-YEAR AVERAGE LIFETIME

| Product class | Efficiency level | Average LCC | Average LCC (savings) costs (in dollars) | Percent of consumers with | | |
|---|---|---|---|---|---|---|
| | | | | Net savings (>2%) | No significant impact | Net costs (>2%) |
| Split System Central Air Conditioner | 10 | $4,682 | | | | |
| | 11 | 4,650 | $(32) | 22 | 69 | 9 |
| | 12 | 4,672 | (10) | 24 | 31 | 45 |
| | 13 | 4,769 | 87 | 21 | 15 | 64 |
| | 18 | 5,336 | 654 | 12 | 3 | 85 |
| Split System Heat Pump | 10 | 8,747 | | | | |
| | 11 | 8,623 | (124) | 27 | 73 | 0 |
| | 12 | 8,587 | (160) | 35 | 58 | 7 |
| | 13 | 8,630 | (117) | 33 | 37 | 30 |
| | 18 | 9,184 | 437 | 18 | 9 | 73 |
| Single Package Air Conditioner | 10 | 5,150 | | | | |
| | 11 | 5,182 | 32 | 14 | 46 | 40 |

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TABLE VI.16.—SUMMARY OF LCC RESULTS BASED ON ARI MEAN MANUFACTURER COST AND 14-YEAR AVERAGE LIFETIME

| Product class | Efficiency level | Average LCC | Average LCC (savings) costs (in dollars) | Percent of consumers with | | |
|---|---|---|---|---|---|---|
| | | | | Net savings (>2%) | No significant impact | Net costs (>2%) |
| Single Package Heat Pump | 12 | 5,157 | 7 | 22 | 29 | 49 |
| | 13 | 5,378 | 228 | 14 | 10 | 76 |
| | 18 | 6,011 | 861 | 9 | 3 | 88 |
| | 10 | 8,747 | ..... | ..... | ..... | ..... |
| | 11 | 8,623 | (124) | 27 | 73 | 0 |
| | 12 | 8,587 | (160) | 35 | 58 | 7 |
| | 13 | 8,630 | (117) | 33 | 37 | 30 |
| | 18 | 9,184 | 437 | 18 | 9 | 73 |

3. Net Present Value and Net National Employment

The net present value analysis is a measure of the cumulative benefit or cost to the Nation of standards. As with the determination of national energy savings, five different scenarios were analyzed for each trial standard level consisting of variations on: (1) Electricity price and housing projections; (2) equipment efficiency distributions; (3) manufacturer cost estimates; (4) equipment lifetime; and (5) societal discount rate. Electricity price and housing projections were based on three different AEO 2000 forecasts: (1) Reference Case, (2) High Growth Case, and (3) Low Growth Case. Three efficiency scenarios were analyzed which forecast the equipment efficiency distribution after new standards were assumed to take effect: (1) NAECA scenario, (2) Roll-up scenario, and (3) Shift scenario. Manufacturer costs were based on ARI mean cost estimates. Equipment lifetime was assumed to be 18.4 years, coupled with the inclusion of compressor replacement costs. A societal discount rate of 7 was assumed. The range of NPVs are reported in Table VI.17.

TABLE VI.17.—NET PRESENT VALUE VARIATION WITH ELECTRICITY PRICE AND HOUSING PROJECTIONS

| Trial standard level | Net present value for units sold from 2006 to 2030 (billion 98$) [1] | | |
|---|---|---|---|
| | NAECA | Roll-up | Shift |
| 1 | 0 | 1 | 0 to –1. |
| 2 | –1 | 0 to 1 | –3 to –4. |
| 3 | –1 to –2 | 0 to –1 | –5. |
| 4 | –5 to –6 | –4 | –10. |
| 5 | –22 | –22 | –22. |

[1] Based on ARI mean manufacturer costs, 18.4-year retirement function with compressor replacement, and a 7% discount rate.

In order to show the significance of the NPVs in Table V.17 to the various input assumptions, Tables VI.18 through VI.21 report the range of NPV results for a range of assumptions and scenarios relative to the total national equipment and operating costs for all central air-conditioning and heat pump equipment under the base case (i.e., in the absence of new efficiency standards). The results in Table VI.18 are based on the AEO 2000 Reference Case forecast of electricity prices and housing. The total costs are presented for the base case and each Trial Standard Level. In addition, the NPV (the difference in total costs between the base case and trial standard level), as well as the NPV as a percentage of the "Base Case Total Costs," are calculated for each trial standard level.

TABLE VI.18.—NET PRESENT VALUES RELATIVE TO BASE CASE TOTAL EQUIPMENT AND OPERATING COSTS [1]

| TSL | Base case total costs (billion 98$) | Efficiency scenario | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | NAECA | | | Roll-up | | | Shift | | |
| | | Total costs (billion 98$) | NPV | | Total costs (billion 98$) | NPV | | Total costs (billion 98$) | NPV | |
| | | | (billion 98$) | as percent of base case total | | (billion 98$) | as percent of base case total | | (billion 98$) | as percent of base case total |
| 1 | 381 | 381 | 0 | 0.0 | 381 | 1 | 0.2 | 385 | 0 | –0.1 |
| 2 | 381 | 382 | –1 | –0.3 | 381 | 0 | 0.0 | 388 | –3 | –0.9 |
| 3 | 381 | 383 | –2 | –0.5 | 382 | –1 | –0.2 | 390 | –5 | –1.4 |
| 4 | 381 | 387 | –5 | –1.4 | 386 | –4 | –1.1 | 395 | –10 | –2.5 |
| 5 | 381 | 403 | –22 | –5.8 | 403 | –22 | –5.8 | 407 | –22 | –5.8 |

[1] Based on AEO 2000 Reference Case, ARI mean manufacturer costs, 18.4-year retirement function with compressor replacement, and a 7% discount rate. Values rounded to the nearest $1 billion.



Tables VI.19 through VI.21 show how the three scenarios, *i.e.*, reverse engineering costs, 14-year average life, and 3% discount rate,[17] impact the net present value. The three scenarios were investigated only for the NAECA efficiency scenario and the AEO Reference Case electricity price and housing projection.

TABLE V.19.—NET PRESENT VALUES RESULTS BASED ON REVERSE ENGINEERING MANUFACTURER COSTS [1]

| Trial standard level | Base case total costs (billion 98$) | Trial standard level | | |
|---|---|---|---|---|
| | | Total cost (billion 98$) | Net present value (billion 98$) | As percent of base case total costs |
| 1 | 379 | 378 | 2 | 0.4 |
| 2 | 379 | 377 | 2 | 0.5 |
| 3 | 379 | 378 | 1 | 0.4 |
| 4 | 379 | 379 | 0 | 0.0 |
| 5 | 379 | 390 | –10 | –2.7 |

[1] Based on AEO 2000 Reference Case, NAECA efficiency scenario, 18.4-year retirement function with compressor replacement, and a 7% discount rate. Values rounded to the nearest $1 billion.

TABLE V1.20.—NET PRESENT VALUES RESULTS BASED ON 14-YEAR AVERAGE LIFETIME [1]

| Trial standard level | Base case total costs (billion 98$) | Trial standard level | | |
|---|---|---|---|---|
| | | Total cost (billion 98$) | Net present value (billion 98$) | As percent of base case total costs |
| 1 | 363 | 364 | 0 | 0.0 |
| 2 | 363 | 365 | –2 | –0.5 |
| 3 | 363 | 366 | –3 | –0.8 |
| 4 | 363 | 370 | –7 | –1.9 |
| 5 | 363 | 389 | –25 | –6.9 |

[1] Based on AEO 2000 Reference Case, NAECA efficiency scenrio, ARI mean manufacturer costs, and a 7% discount rate. Values rounded to the nearest $1 billion.

TABLE VI.21.—NET PRESENT VALUES RESULTS BASED ON 3% DISCOUNT RATE [1]

| Trial standard level | Base case total costs (billion 98$) | Trial standard level | | |
|---|---|---|---|---|
| | | Total cost (billion 98$) | Net present value (billion 98$) | As percent of base case total costs |
| 1 | 712 | 708 | 3 | 0.5 |
| 2 | 712 | 708 | 4 | 0.5 |
| 3 | 712 | 708 | 3 | 0.4 |
| 4 | 712 | 714 | –3 | –0.4 |
| 5 | 712 | 746 | –35 | –4.9 |

[1] Based on AEO 2000 Reference Case, NAECA efficiency scenario, ARI mean manufacturer costs, and 18.4-year retirement function with compressor replacement. Values rounded to the nearest $1 billion.

The Department committed in its 1996 Process Improvement Rule to develop estimates of the employment impacts of proposed standards in the economy in general. 61 FR 36983.

As discussed above, energy efficiency standards for central air conditioners and heat pumps are expected to reduce electricity bills for residential and commercial consumers. The resulting net savings are expected to be redirected to other forms of economic activity. These shifts in spending and economic activity are expected to affect the demand for labor, but there is no generally accepted method for estimating these effects.

One method to assess the possible effects on the demand for labor of such shifts in economic activity is to compare sectoral employment statistics developed by the Labor Department's Bureau of Labor Statistics (BLS). The BLS regularly publishes its estimates of the number of jobs per million dollars of economic activity in different sectors of the economy, as well as the jobs created elsewhere in the economy by this same economic activity. BLS data indicate that expenditures in the electric sector generally are associated with fewer jobs (both directly and indirectly) than expenditures in other sectors of the economy. There are many reasons for these differences, including the capital-intensity of the utility sector and wage differences.

In developing this proposed rule, the Department attempted a more precise analysis of the impacts on national labor demand using an input/output model of the U.S. economy. The model characterizes the interconnections among 35 economic sectors using the data from the Bureau of Labor Statistics. Since the electric utility sector is more capital-intensive and less labor-intensive than other sectors (see Bureau of Economic Analysis, Regional Multipliers: A User Handbook for the

[17] A societal discount rate of 3% value was investigated as a scenario in accordance with the Office of Management and Budget's (OMB) Guidelines to Standardize Measures of Costs and Benefits and the Format of Accounting Statements.

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Regional Input-Output Modeling System (RIMS II), Washington, D.C., U.S. Department of Commerce, 1992), a shift in spending away from energy bills into other sectors would be expected to increase overall employment. But for this analysis, since the increased manufacturing costs to the nation of meeting a new efficiency standard are relatively large, there is an overall decrease in national employment. The results of the Department's analysis are shown in Chapter 12 of the TSD.

While this input/output model suggests the proposed central air conditioner and heat pump standards are likely to decrease the net demand for labor in the economy, the losses would most likely be very small relative to total national employment. For several reasons, however, even these modest losses are in doubt:

- Unemployment is now at the lowest rate in 30 years. If unemployment remains very low during the period when the proposed standards are put into effect, it is unlikely that the standards alone could result in any net decrease in national employment levels.
- Neither the BLS data nor the input-output model used by DOE include the quality or wage level of the jobs. One reason that the demand for labor decreases in the model may be that the jobs expected to be created pay more than the jobs being lost. The losses from any potential employment reduction would be offset if job quality and pay are increased.
- The net benefits from potential employment changes are a result of the estimated net present value of benefits or losses likely to result from the proposed standards. It may not be appropriate to separately identify and consider any employment impacts beyond the calculation of net present value.

Taking into consideration these concerns regarding the interpretation and use of the employment impacts analysis, the Department concludes only that the proposed central air conditioner and heat pump standards are likely to result in no appreciable job losses to the nation.

Public comments are solicited on the validity of the analytical methods used and the appropriate interpretation and use of the results of this analysis.

4. Impact on Utility or Performance of Products

As detailed in Section V, in establishing classes of products we have tried to eliminate any degradation of utility or performance in the products under consideration in this rulemaking.

5. Impact of Any Lessening of Competition

The Act directs the Department to consider any lessening of competition that is likely to result from standards. It further directs the Attorney General to determine the impact, if any, of any lessening of competition likely to result from a proposed standard and transmit such determination to the Secretary, not later than 60 days after the publication of a proposed rule, together with an analysis of the nature and extent of such impact. EPCA section 325(o)(2)(B)(i)(V) and (B)(ii), 42 U.S.C. 6295(o)(2)(B)(i)(V) and (B)(ii).

In order to assist the Attorney General in making such a determination, the Department has provided the Department of Justice (DOJ) with copies of this notice and the TSD for review. At DOE's request, the DOJ reviewed the manufacturer impact analysis interview questionnaire to ensure that it would provide insight concerning any lessening of competition due to any proposed trial standard levels.

6. Need of the Nation to Save Energy

Enhanced energy efficiency improves the nation's energy security, and reduces the environmental impacts of energy production. Improved efficiency of central air conditioners and heat pumps is also likely to improve the reliability of the nation's electric system. The energy savings from central air conditioner and heat pump standards result in reduced emissions of carbon and $NO_X$. Cumulative emissions savings over the 16-year period modeled are shown in Table VI.22. Emission savings are based on the use of: (1) The ARI mean manufacturer cost data and (2) an 18.4–year average lifetime. The results presented in Table VI.22 are based only on the AEO 2000 Reference Case for electricity price and housing projections and the NAECA efficiency scenario.

TABLE VI.22.—CUMULATIVE EMISSIONS REDUCTIONS BASED ON AEO 2000 REFERENCE CASE AND NAECA EFFICIENCY SCENARIO (2006–2020)

| Trial standard level | Emissions reductions | |
|---|---|---|
| | Carbon (Mt) | $NO_X$ (kt) |
| 1 | 13.4 | 37.2 |
| 2 | 23.7 | 67.9 |
| 3 | 27.4 | 78.8 |
| 4 | 33.6 | 102.5 |
| 5 | 63.7 | 193.7 |

The impact of varying electricity price and housing projections (*i.e.*, different AEO cases) as well as different efficiency scenarios were considered only for the Trial Standard Level 3. Table VI.23 shows how carbon and $NO_X$ emissions are impacted by the different projections and scenarios.

TABLE VI.23.—CUMULATIVE EMISSIONS REDUCTIONS FOR PROPOSED STANDARD (2006–2020) AND THE IMPACT OF DIFFERENT ELECTRICITY PRICE/HOUSING PROJECTIONS AND EFFICIENCY SCENARIOS

| Electricity price and housing projection | Efficiency scenario | Emission | |
|---|---|---|---|
| | | Carbon (Mt) | $NO_X$ (kt) |
| AEO Reference Case | NAECA | 27.4 | 78.8 |
| AEO Reference Case | Roll-up | 26.2 | 77.8 |
| AEO Reference Case | Shift | 30.2 | 89.3 |
| AEO Low Growth Case | NAECA | 23.4 | 80.8 |
| AEO High Growth Case | NAECA | 34.1 | 75.8 |



The annual carbon emission reductions range up to 6.6 Mt in 2020 and the $NO_X$ emissions reductions up to 24.5 kt in 2015.;[18][19] Total carbon and $NO_X$ emissions for each trial standard level are reported in the Environmental Assessment, in the TSD.

7. Other Factors

This provision allows the Secretary of Energy, in determining whether a standard is economically justified, to consider any other factors that the Secretary deems to be relevant. EPCA Section 325(o)(2)(B)(i)(VI), 42 U.S.C. 6295(o)(2)(B)(i)(VI). The Secretary has decided that the impacts of the proposed standards on peak power requirements and electric utility system reliability, the impacts of proposed standards on those subgroups of consumers who are at or below the poverty line, and the impacts of proposed standards on consumers and manufacturers which might be required by proposed environmental regulations to incorporate ozone reduction technologies in air conditioning and heat pump equipment, are relevant to the economic justification of the standards, and has decided to consider such impacts in this rulemaking.

Peak power impacts are determined as part of the analysis to estimate impacts on electric utilities from increases in the central air conditioner and heat pump standard. NEMS–BRS is used to estimate peak power impacts by calculating the reduction in installed generation capacity due to an increase in the minimum efficiency standard. Table VI.24 shows the estimated reductions in installed generation capacity, in giga-watts (GW), in the year 2020 due to each of the trial standard levels. Of the installed generating capacity avoided, 13% would have been provided by coal power plants. The remaining percentage (87%) would have been supplied by either gas-fired, oil-fired, or dual-fired power plants. The results presented in Table VI.24 are based only on the AEO 2000 Reference Case for electricity price and housing projections and the NAECA efficiency scenario.

TABLE VI.24.—INSTALLED GENERATION CAPACITY REDUCTIONS IN THE YEAR 2020 BASED ON AEO 2000 REFERENCE CASE AND NAECA EFFICIENCY SCENARIO

| Trial standard level | Installed generating capacity reduction (GW) |
|---|---|
| 1 | 6.4 |
| 2 | 10.6 |
| 3 | 12.3 |
| 4 | 15.4 |
| 5 | 28.6 |

The impact of varying electricity price and housing projections (*i.e.*, different AEO cases) as well as different efficiency scenarios were considered only for the proposed standard (trial standard level 3). Table VI.25 shows how installed generation capacity is impacted by the different projections and scenarios.

TABLE VI.25.—INSTALLED GENERATION CAPACITY REDUCTIONS IN THE YEAR 2020 FOR TRIAL STANDARD LEVEL 3 AND THE IMPACT OF DIFFERENT ELECTRICITY PRICE/HOUSING PROJECTIONS AND EFFICIENCY SCENARIOS

| Electricity price and housing projection | Efficiency scenario | Installed generating capacity reduction (GW) |
|---|---|---|
| AEO Reference Case | NAECA | 12.3 |
| AEO Reference Case | Roll-up | 11.9 |
| AEO Reference Case | Shift | 13.6 |
| AEO Low Growth Case | NAECA | 11.4 |
| AEO High Growth Case | NAECA | 12.5 |

As discussed above, the impact of the peak power requirements of any single end-use on electric utility system reliability is highly uncertain. Thus, we plan on conducting further research to determine what connection, if any, exists between end-use peak demand reductions and system reliability. If such research is completed and applicable to this rulemaking, we will make it available for public review during the comment period on today's proposed rule.

Consumer subgroup impacts have been estimated by determining the LCC impacts of the trial standard levels on those consumers who are at or below the poverty line (*e.g.*, for a family of four, this constitutes a household income of less than $16,036). To perform this calculation, we used the subset of RECS 97 data for households that are considered low-income.[20] Table VI.26 summarizes the LCC impacts on those low-income consumers who utilize central air conditioners and heat pumps. The results in Table VI.26 are based on ARI mean manufacturer costs and an 18.4-year average lifetime.

TABLE VI.26.—SUMMARY OF LCC RESULTS ON LOW-INCOME CONSUMERS BASED ON ARI MEAN MANUFACTURER COSTS AND AN 18.4-YEAR AVERAGE LIFETIME

| Product class | Efficiency level | Average LCC | Average LCC (savings) costs | Percent of consumers with | | |
|---|---|---|---|---|---|---|
| | | | | Net savings (>2 %) | No significant impact | Net costs (>2 %) |
| Split System Central Air Conditioner | 10 | $4,906 | | | | |
| | 11 | 4,887 | (19) | 17 | 66 | 17 |
| | 12 | 4,903 | (3) | 20 | 29 | 51 |
| | 13 | 5,007 | 101 | 17 | 14 | 69 |
| | 18 | 5,598 | 692 | 10 | 2 | 88 |
| Split System Heat Pump | 10 | 8,965 | | | | |

[18] Million metric tons (Mt).
[19] Thousand metric tons (kt).

[20] Approximately 7% of the RECS 97 households with central air conditioners and 9% of the households with heat pumps met this criteria.

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TABLE VI.26.—SUMMARY OF LCC RESULTS ON LOW-INCOME CONSUMERS BASED ON ARI MEAN MANUFACTURER COSTS AND AN 18.4-YEAR AVERAGE LIFETIME—Continued

| Product class | Efficiency level | Average LCC | Average LCC (savings) costs | Percent of consumers with | | |
|---|---|---|---|---|---|---|
| | | | | Net savings (>2 %) | No significant impact | Net costs (>2 %) |
| | 11 | 8,890 | (75) | 16 | 84 | 0 |
| | 12 | 8,862 | (103) | 27 | 64 | 9 |
| | 13 | 8,948 | (17) | 25 | 40 | 35 |
| | 18 | 9,610 | 645 | 11 | 8 | 81 |
| Single Package Air Conditioner | 10 | 5,327 | | | | |
| | 11 | 5,283 | (44) | 11 | 42 | 47 |
| | 12 | 5,313 | (14) | 20 | 27 | 53 |
| | 13 | 5,568 | 241 | 12 | 9 | 79 |
| | 18 | 6,158 | 831 | 10 | 2 | 88 |
| Single Package Heat Pump | 10 | 9,149 | | | | |
| | 11 | 9,057 | (92) | 21 | 78 | 1 |
| | 12 | 8,973 | (176) | 35 | 53 | 12 |
| | 13 | 9,145 | (4) | 25 | 27 | 48 |
| | 18 | 9,619 | 470 | 18 | 8 | 74 |

In comparing the LCC results on the subgroup of consumers who are low-income (Table V.26) versus all central air conditioner and heat pump consumers (Table V.14), it appears that low-income consumers have lower savings at the different trial standard levels than the general population of central air conditioner and heat pump consumers. Table V.27 directly compares the LCC impacts of the proposed standard on low-income and all consumers.

TABLE VI.27.—COMPARISON OF LCC IMPACTS OF THE PROPOSED STANDARD ON ALL CONSUMERS VS. LOW-INCOME CONSUMERS

| Product class | Efficiency level | Average LCC (savings) costs | | Percent of consumers with net costs (>2 % of baseline LCC) | |
|---|---|---|---|---|---|
| | | All consumers | Low-income | All consumers | Low-income |
| Split System Central Air Conditioner | 12 | ($45) | ($3) | 39 | 51 |
| Split System Heat Pump | 13 | (215) | (17) | 22 | 35 |
| Single Package Air Conditioner | 12 | (29) | (14) | 44 | 53 |
| Single Package Heat Pump | 13 | (112) | (4) | 36 | 48 |

The U.S. Environmental Protection Agency (EPA) requires states to develop a state implementation plan (SIP) for most areas that are not in compliance with the National Ambient Air Quality Standards (NAAQS), or classified as nonattainment. In Texas, four areas are in nonattainment of the EPA's one-hour NAAQS for ozone: Beaumont-Port Arthur, El Paso, Dallas-Fort Worth, and Houston-Galveston. On August 9, 2000, The Texas Natural Resource Conservation Commission (TNRCC), the lead environmental agency for the state of Texas, approved for publication and public hearing proposed revisions to the state implementation plan (SIP), in order to reduce ground-level ozone in the Houston/Galveston (HGA), Dallas/Fort Worth (DFW), and Beaumont/Port Arthur (BPA) ozone nonattainment areas, as well as in the 95-county central and eastern Texas. The proposed rules consist of 23 separate requirements applying to various regions of the state. One of the proposals mandates the use of a technology in the affected areas that will reduce ozone from ambient air that is drawn across the external heat exchanger units of air-cooled air conditioning units, including heat pumps. The proposed rule would require, after January 1, 2002, that all central air conditioners sold in the specified areas of Texas have ozone reduction technology installed.

The ozone reduction technology is a proprietary catalyst called PremAir, manufactured by the Engelhard Corporation. The catalyst is incorporated in air conditioners in two ways: by coating the condenser coils, or by installing an insert next to the condenser coil. The Department is required, by the Process Rule, to understand the costs and benefits of standards, and the distribution of those costs among consumers, manufacturers and others, and the uncertainty associated with these costs and benefits. Any adverse impacts on significant subgroups and uncertainty concerning adverse impacts must be fully considered in selecting a standard. If the introduction of this technology in Texas, and possibly other jurisdictions, would create new consumer subgroups or would significantly change the ability of equipment manufacturers to meet the new efficiency standard or the cost required to do so, the Department would factor that information into its decision making for this rule.

This technology has the potential for affecting the price and efficiency of central air conditioners. For example, DOE is aware of a range of estimates of what this technology would add to the cost of central air conditioners. The costs of this technology are estimated to range between $42 and $446 per 12,000 Btu/hr of air conditioner capacity. As to possible effects of the technology on the efficiency of central air conditioners, DOE understands several designs of catalyst-treated air conditioners have been tested by Intertek Testing Services (ITS). DOE understands the test results show no impact on efficiency for coated condenser coils, and a roughly 2% reduction in efficiency for the catalyst insert.

Manufacturers could also be affected by the ozone reduction requirement. The higher purchase costs of new air conditioners could alter consumers' decisions on repairing or replacing equipment, which would affect air conditioner sales and impact manufacturers. If the effect applies to a significant fraction of units sold each year, the Department's current manufacturer impact analysis may underestimate the impact on manufacturers.

After reviewing the available information, DOE is not certain as to the impacts of any ozone reduction requirements that the TNRCC may adopt. The proposal is one of 23 requirements TNRCC may adopt and it is uncertain whether this requirement will be included in their final rule. Even if the requirement is adopted, it is unclear what, if any, effect the requirement would have on efficiency. Finally, DOE believes such a requirement may have an impact on manufacturers. DOE estimates a potential impact on 800,000 central air conditioner shipments per year covered by the TNRCC proposal, or approximately 13% of total shipments. This potential requirement was not included in today's proposed rule because of uncertainty about whether the TNRCC will include the catalyst requirement in their SIP. DOE invites comments on the status of the TNRCC deliberations and whether this potential requirement should be considered.

*E. Conclusion*

Section 325(o)(2)(A) of the Act, 42 U.S.C. 6295(o)(2)(A), specifies that any new or amended energy conservation standard for any type (or class) of covered product shall be designed to achieve the maximum improvement in energy efficiency which the Secretary determines is technologically feasible and economically justified. In determining whether a standard is economically justified, the Secretary must determine whether the benefits of the standard exceed its burdens. EPCA section 325(o)(2)(B)(i), 42 U.S.C. 6295(o)(2)(B)(i). The amended standard must "result in significant conservation of energy." EPCA section 325(o)(3)(B), 42 U.S.C. 6295(o)(3)(B).

We consider the impacts of standards at each of five trial standards levels, beginning with the Max Tech Level, *i.e.*, Trial Standard Level 5. We then consider less efficient levels. Trial Standard Level 3 is a combination of different efficiency levels for the different classes. It combines the SEER values for air conditioners from Trial Standard Level 2 (12 SEER) with the SEER values for heat pumps from Trial Standard Level 4 (13 SEER). By combining efficiency levels in this way, the Department is able to evaluate the impacts of different combinations of standard levels to make an informed decision on the merits of different efficiency combinations.

To aid the reader as we discuss the benefits or burdens of the trial levels, we have included a summary of the analysis results in Tables VI.28 and VI.29.[21] Table VI.28 presents a summary of analysis results based on ARI mean manufacturing costs, NAECA and Roll-up efficiency scenarios and 7% and 3% societal discount rate scenarios. Table VI.29 presents a summary of analysis results based on manufacturing costs obtained from the reverse engineering analysis for the NAECA efficiency scenario and 7% and 3% societal discount rate scenario. Both tables assume an 18.4-year equipment lifetime, including one compressor replacement. The reverse engineering scenario results in Table VI.29 are limited to single scenarios which highlight the impact of manufacturing costs on the consumer, manufacturers, national energy savings, and NPV.



TABLE VI.28.—SUMMARY OF ANALYSIS RESULTS BASED ON ARI MEAN MANUFACTURER COSTS [1]

| | Trial std 1 | Trial std 2 | Trial std 3 | Trial std 4 | Trial std 5 |
|---|---|---|---|---|---|
| Total Quads Saved [2] | 1.7–1.8 | 2.9–3.2 | 3.4–3.6 | 4.2–4.5 | 8.1–8.7 |
| Generation Capacity Offset (GW) [3] | 6.4 | 10.6 | 12.3 | 15.4 | 28.6 |
| NPV ($billion): [4] | | | | | |
| 7% Discount Rate | 0 | −1 | −1 to −2 | −5 to −6 | −22 |
| 3% Discount Rate | 3 | 4 | 3 | −3 | −35 |
| Emissions: [5] | | | | | |
| Carbon Equivalent (Mt) | 13.4 | 23.7 | 27.4 | 33.6 | 63.7 |
| $NO_X$ (kt) | 37.2 | 67.9 | 78.8 | 102.5 | 193.7 |
| Cumulative Change in INPV ($ million): [6] | | | | | |
| NAECA | (37) | (186) | (197) | (183) | |
| Roll-up | (181) | (362) | (367) | (335) | |
| Life Cycle Cost ($): | | | | | |
| Split AC | ($44) | ($45) | ($45) | $29 | $555 |
| Packaged AC | $20 | ($29) | ($29) | $175 | $741 |
| Split HP | ($150) | ($242) | ($215) | ($215) | $276 |
| Packaged HP | ($134) | ($254) | ($112) | ($112) | $296 |
| Payback (years): | | | | | |
| Split AC | 10.6 | 12.6 | 12.6 | 16 | 36 |
| Packaged AC | 16.1 | 14 | 14 | 21.8 | 48.8 |
| Split HP | 5.5 | 7.2 | 9.3 | 9.3 | 17.3 |
| Packaged Heat Pump | 8.1 | 8.7 | 13.2 | 13.2 | 19.4 |

[1] Estimates are based on 18.4-year lifetime.
[2] Based on AEO 2000 reference, high and low growth cases, and NAECA efficiency distributions.
[3] Reductions in installed generation capacity in the year 2020, based on AEO 2000 reference case, NAECA efficiency scenario.
[4] Based on NAECA efficiency distribution and 7 % discount rate. Range reflects AEO 2000 reference, high and low growth cases.
[5] Based on AEO 2000 reference case, NAECA efficiency scenario, and ARI mean manufacturing costs.
[6] Not calculated at Trial Standard Level 5.

[21] All cumulative effects that are not monetary are not discounted. Monetary effects are discounted to 1998 dollars.

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TABLE VI.29.—SUMMARY OF ANALYSIS RESULTS BASED ON REVERSE ENGINEERING MANUFACTURING COSTS) [1]

| | Trial std 1 | Trial std 2 | Trial std 3 | Trial std 4 | Trial std 5 |
|---|---|---|---|---|---|
| Total Quads Saved [2] | 1.7–1.8 | 2.9–3.2 | 3.4–3.7 | 4.3–4.6 | 8.4–9.0 |
| Generation Capacity Offset (GW) [3] | 6.4 | 10.6 | 12.3 | 15.4 | 28.6 |
| NPV ($billion): | | | | | |
| 7% Discount Rate [2] | 1 to 2 | 2 | 1 to 2 | 0 to 1 | −10 to −11 |
| 3% Discount Rate | 6 | 10 | 10 | 9 | −8 |
| Emissions: [3] | | | | | |
| Carbon Equivalent (Mt) | 13.4 | 23.7 | 27.4 | 33.6 | 63.7 |
| $NO_X$ (kt) | 37.2 | 67.9 | 78.8 | 102.5 | 193.7 |
| Cumulative Change in INPV ($ million): | | | | | |
| NAECA | (30) | (159) | (171) | (169) | |
| Roll-up [3] | (181) | (362) | (367) | (335) | |
| Life Cycle Cost ($): | | | | | |
| Split AC | ($75) | ($113) | ($113) | ($113) | $137 |
| Packaged AC | ($78) | ($163) | ($163) | ($29) | $276 |
| Split HP | ($209) | ($365) | ($372) | ($372) | $41 |
| Packaged HP | ($207) | ($421) | ($353) | ($353) | ($166) |
| Payback (years): | | | | | |
| Split AC | 7.8 | 9.8 | 11.3 | 11.3 | 19.6 |
| Packaged AC | 7.7 | 7.5 | 7.5 | 14.5 | 25.1 |
| Split HP | 2.7 | 3.9 | 6.4 | 6.4 | 14.0 |
| Packaged Heat Pump | 4.6 | 4.0 | 8.4 | 8.4 | 12.81 |

[1] Based on 18 year lifetime, NAECA efficiency scenario and AEO 2000 reference case.
[2] Variation based on AEO 2000 reference, low and high growth case.
[3] Based on ARI mean manufacturer costs as reported in Table VI.28.

First we considered Trial Standard Level 5, the most efficient level for each of four classes, representing uniform 18 SEER requirements. Trial Standard Level 5 saves between 8.1 and 8.7 Quads of energy, a significant amount. The estimated reduction in installed generating capacity is 28.6 GW, or roughly 73 large, 400 megawatt, power plants.[22] The forecasted reduction in generating capacity is approximately 3.7% of current installed generating capacity and more than 13% of the anticipated growth in capacity needed by 2020. The emissions reductions of 63.7 Mt of carbon equivalent and 193.7 kt of $NO_X$ are also significant. However, at this level, the vast majority of consumers would experience an increase in LCC costs. Purchasers of split central air-conditioners, the predominate class of central air conditioner with 65% of the sales of central air conditioners and heat pumps, would lose $555 over the life of their appliance.[23] Purchasers of split heat pumps, the predominate class of heat pump, would lose $276.[24] Moreover, the Department believes these LCC results overstate the benefits of this trial standard level. Because we did not have equipment cost estimates at this level, we used instead the costs of 15 SEER equipment. DOE believes the costs of 18 SEER equipment would be higher than the 15 SEER costs and that, as a result, the increase in life-cycle-costs would actually be greater than our LCC analysis indicates. For the nation as a whole Trial Standard Level 5 would have a net cost 22 billion dollars in NPV.[25] The Department did not calculate manufacturer impacts at this trial standard level. The Department concludes that at this trial standard level, the benefits of energy savings, generating capacity reductions and emission reductions would be outweighed by the negative economic impacts to the nation, to the vast majority of consumers and to the manufacturers. Consequently, the Department concludes Trial Standard Level 5, the Max Tech Level, is not economically justified.

Next, we considered Trial Standard Level 4. This level specifies 13 SEER equipment for all product classes and would save between 4.2 and 4.5 Quads of energy, a significant amount. The estimated reduction in installed generating capacity is 15.4 GW, or roughly 39 large, 400 megawatt, power plants.[26] The forecasted reduction in generating capacity is approximately 2% of current installed generating capacity and more than 7% of the anticipated growth in capacity needed in 2020. The emissions reductions would also be significant: 33.6 Mt of carbon equivalent and 102.5 kt of $NO_X$. The NPV of Trial Standard Level 4 would have a net cost of between 5 and 6 billion dollars.[27] The average LCC savings for consumers with split heat pumps would be $215, based on ARI equipment costs.[28] Owners of split air conditioners could see their LCC increase by $29, based on ARI costs.[29]

Under Trial Standard Level 4, the air conditioning industry would experience a NPV loss of between 169 and 335 million dollars. The range of impacts is driven primarily by the assumption regarding the distribution of air conditioner and heat pump efficiencies in the market after implementation of the standard (NAECA or Roll-up). The Department recognizes that the ability to maintain a full product line is more difficult at higher standard levels and therefore places more weight on the Roll-up scenario at Trial Standard Level 4. The Department concludes that at Trial Standard Level 4 the benefits of energy savings, generating capacity

[22] DOE estimates 9 coal-fired power plants and 64 gas-fired power plants can be avoided. See TSD, Chapter 11 and Appendix H.

[23] Consumers would experience a $137 increase in life-cycle-costs based on the Department's reverse engineering manufacturing costs.

[24] Consumers would experience a $41 increase in life-cycle-costs based on the Department's reverse engineering manufacturing costs.

[25] At the 3% societal discount rate scenario, the nation would have a net cost of 35 billion dollars. With the reverse engineering equipment cost, the NPV is a net cost of 10 to 11 billion dollars at the 7% discount rate and 8 billion dollars at 3%.

[26] DOE estimates 5 coal-fired power plants and 34 gas-fired power plants can be avoided. See TSD, Chapter 11 and Appendix H.

[27] At the 3% societal discount rate scenario, the nation would have a net cost of 3 billion dollars. With the reverse engineering equipment cost, the NPV has a no net cost at the 7% discount rate and a savings of 9 billion dollars at 3%.

[28] Consumers would experience a $372 savings in life-cycle-costs based on the Department's reverse engineering costs.

[29] Consumers would experience a $133 savings in life-cycle-costs based on the Department's reverse engineering manufacturing costs.



reductions and emission reductions and the reduction in LCC for some consumers are outweighed by the negative economic impacts on the nation, increase in LCC for most consumers and manufacturer loss in NPV. Consequently, the Department concludes Trial Standard Level 4 is not economically justified.

Next, we considered Trial Standard Level 3. This level specifies 12 SEER for air conditioners and 13 SEER for heat pumps. The energy savings are estimated to be between 3.4 and 3.6 quads, a significant amount. The estimated reduction in installed generating capacity is 12.3 GW, or roughly 31 large, 400 megawatt, power plants.[30] The forecasted reduction in generating capacity is approximately 1.6% of current installed generating capacity and more than 5% of the anticipated growth in capacity needed in 2020. The emissions reductions would also be significant: 27.4 Mt of carbon equivalent and 78.8 kt of $NO_X$. The national NPV of this trial standard level has a range of net costs from 1 to 2 billion dollars, using ARI costs.[31] [32] All classes of product would have mean LCC savings. The average LCC savings for consumers with split air conditioners would be $45, using ARI costs.[33] The average LCC savings for consumers with split heat pumps would be $215, using ARI costs.[34] As an additional LCC analysis, DOE considered the effect of standards on low-income consumers. DOE expects low-income consumers will experience less savings than the population as a whole. (See TSD, Chapter 10). Under this trial standard level, the air conditioning industry would experience a NPV loss of between 171 and 367 million dollars depending on whether the Roll-up or NAECA efficiency distribution scenario is considered.

Given the benefits and burdens of Trial Standard Level 3 as discussed above, and observing the reduction in NPV compared to Trial Standard Level 2, the Department compared the benefits and burdens of the two trial standard levels. Adopting Trial Standard Level 3, instead of Trial Level 2, would save the nation an additional 0.5 Quads of energy, and further reduce installed generating capacity by 1.7 GW, or roughly 5 large, 400 megawatt, power plants.[35] The incremental emission reductions of carbon equivalent and $NO_X$ are 3.7 Mt and 10.9 kt, respectively. Trial Standard Level 3 would, however, reduce the national NPV by up to 1 billion dollars, depending on the cost estimates used.[36] [37] The consumer LCC savings are not changed for central air conditioners, but are reduced by $27 for split heat pumps using ARI costs.[38]

In determining the economic justification of Trial Standard Level 3, the Department has weighed the benefits of energy savings, generating capacity reductions, reduced average consumer LCC, and emissions reductions against the burdens of a loss in manufacturer net present value, consumer LCC increases for some households and the potential loss in national NPV. We find the benefits to be substantial. Although the loss in manufacturer net present value is also substantial, the projected LCC increases and loss in national NPV are relatively small, and these burdens of Trial Standard Level 3 would be outweighed by its benefits. Moreover, in light of the reverse engineering analysis, we believe the equipment costs will be lower than the ARI estimates on which we have relied and that the loss in national NPV would be less than estimated.

Comparing Trial Standard Level 3 to Trial Standard Level 2, DOE found the potential decrease in national NPV is outweighed by other factors not included in the national NPV calculations. For example, the national NPV calculation does not include quantitative estimates for the value of emission reductions.[39] Furthermore, as an added benefit, the standard may improve the reliability of the electric distribution system. The Department finds that, compared with Trial Standard Level 2, the incremental benefits of generating capacity reductions and emission reductions of Trial Standard Level 3 to be greater than the potential loss in national NPV and increase in life-cycle-costs to some consumers, including a relatively small number of low-income consumers.

After considering the benefits and burdens of Trial Standard Level 3 and comparing the impacts of Trial Standard Levels 2 and 3, the Department finds Trial Standard Level 3 to be maximum improvement in efficiency that is technologically feasible and economically justified. Therefore, the Department today proposes to adopt the energy conservation standards for air conditioners and heat pumps at Trial Standard Level 3.

## VII. Procedural Issues and Regulatory Review

### *A. Review Under the National Environmental Policy Act*

The Department is preparing an Environmental Assessment of the impacts of the proposed rule and DOE anticipates completing a Finding of No Significant Impact (FONSI) before publishing the final rule on Energy Conservation Standards for central air conditioners and heat pumps, pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), the regulations of the Council on Environmental Quality (40 CFR Parts 1500–1508), and the Department's regulations for compliance with NEPA (10 CFR Part 1021).

### *B. Review under Executive Order 12866, "Regulatory Planning and Review"*

The Department has determined today's regulatory action is a significant regulatory action within the scope of section 3(f)(1) of Executive Order 12866, "Regulatory Planning and Review." (58 FR 51735, October 4, 1993). Therefore, this proposal requires a regulatory analysis. Such an analysis presents major alternatives to the proposed regulation that could achieve substantially the same goal, as well as a description of the cost and benefits

[30] DOE estimates 4 coal-fired power plants and 27 gas-fired power plants can be avoided. See TSD, Chapter 11 and Appendix H.

[31] At the 3% societal discount rate scenario, the nation would have a net savings of 3 billion dollars. With the reverse engineering equipment cost, the NPV has a net savings of 1 billion dollars at the 7% discount rate and 10 billion dollars at 3%.

[32] DOE observes that the average LCC savings for all classes at this trial standard level are positive and at the same time the NPV is negative. This is a counterintuitive result since the NPV can be described as a sum of individual consumer LCCs. The negative NPV is caused by a number of factors, including the assumption in the NES that some consumers will purchase more efficient products than is required by the standard, *e.g.*, 14 SEER. Since the NES uses average usage rates and average marginal energy prices for these consumers, it may overstate the life-cycle-costs for consumers that voluntarily purchase products which, based on average values, would seem not to be cost-effective. Furthermore, the NES does not consider factors such as utility rebate programs which would have a effect on total discounted costs.

[33] Consumers would experience a $113 savings in life-cycle-costs based on the Department's reverse engineering costs.

[34] Consumers would experience a $372 increase in life-cycle-costs based on the Department's reverse engineering costs.

[35] DOE estimates one coal-fired power plants and four gas-fired power plants can be avoided.

[36] At the 3% societal discount rate, the national NPV is reduced by 1 billion dollars. With the reverse engineering equipment cost, the NPV is not changed.

[37] The total national discounted cost of owning and operating central air conditioners and heat pumps at this Trial Standard Level 3 is 382 billion dollars.

[38] Using the reverse engineering costs the savings are increased by $7.

[39] It is possible the NPV does not include the value of avoided power plants. It should be

[36] At the 3% societal discount rate, the national NPV is reduced by 1 billion dollars. With the reverse engineering equipment cost, the NPV is not changed.

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(including potential net benefits) of the proposed rule. Accordingly, the Office of Information and Regulatory Affairs (OIRA) reviewed today's action under the Executive Order.

There were no substantive changes between the draft we submitted to OIRA and today's action. The draft and other documents we submitted to OIRA for review are a part of the rulemaking record and are available for public review in the Department's Freedom of Information Reading Room, 1000 Independence Avenue, SW., Washington, DC 20585, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays, telephone (202) 586–3142.

The following summary of the Regulatory Impact Analysis (RIA) focuses on the major alternatives considered in arriving at the proposed approach to improving the energy efficiency of consumer products. The reader is referred to the complete RIA, which is contained in the TSD, available as indicated at the beginning of today's proposed rule. The RIA consists of: (1) A statement of the problem addressed by this regulation, and the mandate for government action; (2) a description and analysis of the feasible policy alternatives to this regulation; (3) a quantitative comparison of the impacts of the alternatives; and (4) the economic impact of the proposed standard.

The RIA calculates the effects of feasible policy alternatives to central air conditioner and heat pump energy efficiency standards, and provides a quantitative comparison of the impacts of the alternatives. We evaluate each alternative in terms of its ability to achieve significant energy savings at reasonable costs, and we compare it to the effectiveness of the proposed rule.

We created the RIA using a series of regulatory scenarios (with various assumptions), which we used as input to the shipments model for central air conditioners and heat pumps. We used the results from the shipments model as inputs to the NES spreadsheet calculations.

DOE identified the following seven major policy alternatives for achieving consumer product energy efficiency. These alternatives include:

- No New Regulatory Action
- Informational Action
  - —Product Labeling
  - —Consumer Education
- Prescriptive Standards
- Financial Incentives
  - —Tax credits
  - —Rebates
  - —Low income and seniors subsidy
- Voluntary Energy Efficiency Targets (5 Years, 10 Years)
- Mass Government Purchases
- The Proposed Approach (Performance Standards)

We have evaluated each alternative in terms of its ability to achieve significant energy savings at reasonable costs (Table VII.1), and have compared it to the effectiveness of the proposed rule. All of the results below have been determined with the AEO Reference Case and the NAECA efficiency scenario.

TABLE VII.1.—ALTERNATIVES CONSIDERED

| Policy alternatives | NPV (billions 98$) | Energy Savings (Quads) |
|---|---|---|
| Consumer Product Labeling | 0 | 0.1 |
| Consumer Education | 0 | 0.1 |
| Prescriptive Standards | 0 | 1.1 |
| Consumer Tax Credits | 0 | 0.1 |
| Consumer Rebates | 0 | 0.2 |
| Manufacturer Tax Credits | 0 | 0.0 |
| Voluntary Efficiency Target (5 year delay) | −1 | 3.1 |
| Voluntary Efficiency Target (10 year delay) | −1 | 1.9 |
| Low Income Subsidy | 0 | 0.1 |
| Mass Government Purchases | 0 | 0 |
| Performance Standards | −2 | 4.4 |

NPV = Net Present Value (2006–2030, in billion 1998$) (does not include government expenses).
Savings = Energy Savings (Source Quads).

If we imposed no new regulatory action, then we would implement no new standards for this product. This is essentially the "base case" for central air conditioners and heat pumps. In this case, between the years 2006 and 2030, there would be an expected energy use of 39 Quads of primary energy, with no energy savings and a zero NPV.

We grouped several alternatives to the base case under the heading of informational action. They include consumer product labeling and DOE public education and information programs. Both of these alternatives are already mandated by, and are being implemented under EPCA sections 324 and 337, 42 U.S.C. 6294, 6297. One base case alternative would be to estimate the energy conservation potential of enhancing consumer product labeling. To model this possibility, the Department estimated that 5% of the consumers purchasing 10 SEER equipment and 5% of the consumers purchasing 12 SEER equipment would change their decisions and purchase 12 SEER and 13 SEER systems, respectively. It is assumed that the program would last six years and upon its expiration consumers would revert back to their prior purchase decisions. The consumer product labeling alternative resulted in 0.1 Quad of energy savings with no impact on the NPV.

Another approach, called consumer education, is to consider an Energy Star® program for 12 SEER and 13 SEER central air conditioners and heat pumps. We assume, under this program, there would be a 20% increase in the sales of both 12 SEER and 13 SEER systems. As with the consumer product labeling program, it is assumed that the education program would last six years and upon its expiration sales would drop back to their market share levels prior to the program's implementation. This consumer education program results in energy savings equal to 0.1 Quad with no impact on the NPV.

Another method of setting standards would entail requiring that certain design options be used on each product, *i.e.*, for DOE to impose prescriptive standards. For this approach, we assume that a prescriptive standard is implemented to ensure that all central air conditioners and heat pumps are equipped with thermostatic expansion valves (TXVs). The resulting efficiency increase is 0.5 SEER. That is, the baseline efficiency of 10 SEER is assumed to increase to 10.5 SEER as a result of the prescriptive standard. Manufacturer costs associated with this standard were arrived by linearly interpolating between those costs associated with the baseline (*i.e.*, 10 SEER) and 11 SEER efficiency levels. This resulted in energy savings of 1.1 Quad and no impact on the NPV.

We tested various financial incentive alternatives. These included tax credits and rebates to consumers, as well as tax credits to manufacturers. We assumed the tax credits to consumers were 50% of the incremental purchase price for higher energy-efficiency equipment. The incremental price is based on the difference between the 2006 baseline price and the price of 12 SEER equipment. We estimate the impact of this policy would be to move 5% of the market share from the 2006 baseline to 12 SEER models. These tax credits would start in 2006 and run for six years. We assume people stop buying these more efficient and more expensive central air conditioners and heat pumps when the tax credits stop. The tax credits to consumers showed a change from the base case, saving 0.1 Quad with no impact to the NPV.

To estimate the impact of consumer rebates, we assumed rebates of 35% of the incremental retail prices for higher energy-efficiency equipment. The incremental cost is based on the difference between the 2006 baseline cost and the cost of 12 SEER equipment. We estimate the impact of this policy would be to move 10% of market share from the 2006 baseline to the 12 SEER models. These rebates would start in 2006 and run for six years. We assume people stop buying these more efficient and more expensive central air conditioners and heat pumps when the rebates stop. The rebates to consumers showed a change from the base case, would save 0.2 Quad with no impact to the NPV.

Another financial incentive we considered was a tax credit to manufacturers for the production of energy-efficient models of central air conditioners and heat pumps. We assumed an investment tax credit of 20%, applicable to the tooling and machinery costs of the manufacturers. These are tooling costs as they relate to producing 12 SEER central air conditioners and heat pumps. We estimate the impact of this policy would be to move 1% of the market share from the 2006 baseline to the 12 SEER models. These tax credits would start in 2006 and run for six years. We assume no persistence in the market once they stop. Tax credits to manufacturers would save no energy and have no impact on the NPV. The impact of this scenario would be negligible because the investment tax credit was applicable only to the tooling and machinery costs of the firms. The firms' fixed costs and some of the design improvements that would likely be adopted to manufacture more efficient versions of this product would involve purchased parts. Expenses for purchased parts would not be eligible for an investment tax credit.

We examined two scenarios of voluntary energy efficiency targets. In the first one, we assumed all the relevant manufacturers voluntarily adopted the proposed energy conservation standards in five years. In the second scenario, we assumed the proposed standards were adopted in 10 years. In these scenarios, voluntary improvements having a five-year delay, compared to implementation of mandatory standards, would result in energy savings of 3.1 Quads and −$1 billion NPV; voluntary improvements having a 10-year delay would result in 1.9 Quads being saved and −$1 billion NPV. These scenarios assume that there would be universal voluntary adoption of the energy conservation standards by these appliance manufacturers, an assumption for which there is no assurance.

One of the market barriers to higher efficiency central air conditioners and heat pumps is the expense to upgrading to a more efficient system. Since these expenses can be a particular burden on low income households, we considered a low income subsidy of $500 to make higher efficiency central air-conditioning and heat pump equipment available and cost effective for these households. We determined the number of low income households with central air-conditioning from the RECS public use data. We assumed that half of these households would take advantage of the program. The program would start in 2006 and run for six years. This subsidy would save 0.1 Quad with no impact to the NPV.

Another policy alternative we reviewed was that of large purchases of high efficiency central air conditioners and heat pumps by Federal, State, and local governments. We modeled this policy by assuming these governmental entities (*e.g.*, U.S. Department of Housing and Urban Development at the Federal level) purchased 12 SEER equipment for 5% of the low income, rented housing stock utilizing central air-conditioning and heat pump equipment. This policy alternative resulted in no energy savings with no impact to the NPV.

Lastly, all of these alternatives must be gauged against the performance standards we are proposing in today's proposed rule. Such performance standards would result in energy savings under the AEO Reference Case and NAECA efficiency scenario of 3.5 Quads, and the NPV estimates range from an increase of $3 billion to a cost of $2 billion.

As indicated in the paragraphs above, none of the alternatives we examined for these products would save as much energy as today's proposed rule. Also, several of the alternatives would require new enabling legislation, since authority to carry out those alternatives does not presently exist.

*C. Review Under the Regulatory Flexibility Act*

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires an assessment of the impact of regulations on small businesses. For air conditioning and warm air heating equipment manufacturing, a "firm" is defined by the Small Business Administration as a small business if it (including affiliates) has 750 or fewer employees.

The residential air-conditioner industry is characterized by seven firms accounting for nearly 95% of sales. DOE understands that each of these firms, including its affiliates, has more than 750 employees. Smaller businesses and firms, which make specialty air-conditioning products and supply niche markets, share 5% of the market.

In this industry, average production cost is inversely related to firm size. The industry displays economies of scale, and large firms (to the extent that their facilities are modernized) have lower average production costs than small firms. This fact, coupled with increasing competitiveness of the national market, probably accounts for the consolidation that has occurred for several decades. The fact that the consolidation has been producing larger firms strongly corroborates the finding that large firms have a cost advantage.

A principal implication of consolidation is that the smaller of the firms will be, on average, more vulnerable to the financial impacts of higher efficiency standards. Any decrease in average profitability is more likely to mean the difference between success and failure for a smaller firm.

The impact of higher efficiency standards on small firms is likely to be mixed. Those firms that face a large technological challenge in meeting the new standards may face a disproportionate burden, because smaller firms have more limited research and development capabilities

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than their larger competitors. Some smaller manufacturers indicated the potential for a negative economic impact of any higher standard level on their firms. However, since these concerns apply primarily to small manufacturers of niche products, they benefit from the provisions proposed by the Department to somewhat protect those products from the new standards. For example, a separate product class is being proposed for through-the-wall equipment, many of which are manufactured by small manufacturers. Also, the Department has acknowledged that small manufacturers of high velocity distribution systems may potentially be adversely affected by the proposed standard level. The Department is considering modifications to the SEER test procedure, which would grant these manufacturers some relief. Vertical-packaged, wall-mounted equipment is another product manufactured by small firms, and, as stated in Section V.J.3 of this notice, the Department intends to consider those to be commercial products under EPACT. These provisions should eliminate any potential for significant economic impact on small manufacturers related to the proposed standard level.

Many small manufacturers produce coils only. Since there are no intensive incremental technological or capital requirements for these companies to increase the efficiency of their products, we do not expect them to face any incremental burden as a result of the new standards.

In view of these conclusions, the Department has determined and hereby certifies pursuant to section 605(b) of the Regulatory Flexibility Act that, for this particular industry, the proposed standard levels in today's proposed rule will not "have a significant economic impact on a substantial number of small entities," and it is not necessary to prepare a regulatory flexibility analysis.

*D. Review Under the Paperwork Reduction Act*

No new information or record keeping requirements are proposed in this rulemaking. Accordingly, no Office of Management and Budget clearance is required under the Paperwork Reduction Act. 44 U.S.C. 3501 *et seq.*

*E. Review Under Executive Order 12988, "Civil Justice Reform"*

With respect to the review of existing regulations and the promulgation of new regulations, Section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by Section 3(a), Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in Section 3(a) and Section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE reviewed today's proposed rule under the standards of Section 3 of the Executive Order and determined that, to the extent permitted by law, the regulations meet the relevant standards.

*F. "Takings" Assessment Review*

The Department has determined pursuant to Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights," 53 FR 8859 (March 18, 1988), that this regulation would not result in any takings that might require compensation under the Fifth Amendment to the United States Constitution.

*G. Review Under Executive Order 13132*

Executive Order 13132 (64 FR 43255, August 4, 1999) requires agencies to develop an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have "federalism implications." Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined today's proposed rule and has determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. State regulations that may have existed on the products that are the subject of today's proposed rule were preempted by the Federal standards established in NAECA 1987. States can petition the Department for exemption from such preemption based on criteria set forth in EPCA. No further action is required by Executive Order 13132.

*H. Review Under the Unfunded Mandates Reform Act*

With respect to a proposed regulatory action that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year, section 202(a) of the Unfunded Mandates Reform Action of 1995 (UMRA), 2 U.S.C. 1531 *et seq.* requires a Federal agency to publish a written statement concerning estimates of the resulting costs, benefits and other effects on the national economy. 2 U.S.C. 1532(a),(b). DOE estimates that the proposed standards, if adopted, would not result in the expenditure by the private sector of $100 million or more in a year, with the possible exception of one year in which industry expenditures could total approximately $110 million.

Section 202 of UMRA authorizes an agency to respond to the content requirements of UMRA in any other statement or analysis that accompanies the proposed rule. 2 U.S.C. 1532(c). The content requirements of section 202(b) of UMRA relevant to a private sector mandate substantially overlap the economic analysis requirements that apply under section 325(o) of EPCA and Executive Order 12866. The Supplementary Information section of the Notice of Proposed Rulemaking and "Regulatory Impact Analysis" section of the TSD for today's proposed rule responds to those requirements.

DOE is obligated by Section 205 of UMRA, 2 U.S.C. 1535, to identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a written statement under section 202 is required. From those alternatives, DOE must select the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule, unless DOE publishes an explanation of why a different alternative is selected. As required by section 325(o) of the Energy Policy and Conservation Act (42 U.S.C. 6295(o)), this proposed rule would establish energy conservation standards for central air conditioners and heat pumps that are designed to achieve the maximum improvement in energy efficiency that DOE has determined to be both technologically feasible and economically justified. A full discussion of the alternatives considered by DOE is presented in the "Regulatory Impact Analysis" section of the TSD for this notice.



*I. Review Under the Treasury and General Government Appropriations Act of 1999*

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. No. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule or policy that may affect family well-being. Today's proposal would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

*J. Review Under the Plain Language Directives*

Section 1(b)(12) of Executive Order 12866 requires that each agency draft its regulations to be simple and easy to understand, with the goal of minimizing the potential for uncertainty and litigation arising from such uncertainty. Similarly, the Presidential memorandum of June 1, 1998 (63 FR 31883) directs the heads of executive departments and agencies to use, by January 1, 1999, plain language in all proposed and final rulemaking documents published in the **Federal Register**, unless the rule was proposed before that date.

Today's proposed rule uses the following general techniques to abide by section 1(b)(12) of Executive Order 12866 and the Presidential memorandum of June 1, 1998 (63 FR 31883):

- Organization of the material to serve the needs of the readers (stakeholders).
- Use of common, everyday words in short sentences.
- Shorter sentences and sections.

We invite your comments on how to make this proposed rule easier to understand.

## VIII. Public Comment

*A. Written Comment Procedures*

The Department invites interested persons to participate in the proposed rulemaking by submitting data, comments, or information with respect to the proposed issues set forth in today's proposed rule to Ms. Brenda Edwards-Jones, at the address indicated at the beginning of this notice. We will consider all submittals received by the date specified at the beginning of this notice in developing the final rule.

According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit one complete copy of the document and ten (10) copies, if possible, from which the information believed to be confidential has been deleted. The Department of Energy will make its own determination with regard to the confidential status of the information and treat it according to its determination.

Factors of interest to the Department when evaluating requests to treat as confidential information that has been submitted include: (1) A description of the items; (2) an indication as to whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) an indication as to when such information might lose its confidential character due to the passage of time; and (7) whether disclosure of the information would be contrary to the public interest.

*B. Public Workshop/Hearing*

1. Procedure for Submitting Requests To Speak

You will find the time and place of the public hearing listed at the beginning of this notice. We invite any person who has an interest in today's notice, or who is a representative of a group or class of persons that has an interest in these issues, to request an opportunity to make an oral presentation. If you would like to attend the public hearing, please notify Ms. Brenda Edwards-Jones at (202) 586–2945. You may hand deliver requests to speak to the address indicated at the beginning of this notice between the hours of 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send them by mail or E-mail to brenda.edwards-jones@ee.doe.gov.

The person making the request should state why he or she, either individually or as a representative of a group or class of persons, is an appropriate spokesperson, briefly describe the nature of the interest in the rulemaking, and provide a telephone number for contact. We request each person selected to be heard to submit an advance copy of his or her statement at least two weeks prior to the date of this hearing as indicated at the beginning of this notice. At our discretion, we may permit any person who cannot do this to participate if that person has made alternative arrangements with the Office of Building Research and Standards in advance. The request to give an oral presentation should ask for such alternative arrangements.

2. Conduct of Hearing

The Department will designate a Department official to preside at the workshop and we may also use a professional facilitator to facilitate discussion. The workshop will not be a judicial or evidentiary-type hearing, but the Department will conduct it in accordance with 5 U.S.C. 553 and Section 336 of the Act and a court reporter will be present to record the transcript of the workshop. We reserve the right to schedule the presentations by workshop participants, and to establish the procedures governing the conduct of the workshop.

The Department will permit each participant to make a prepared general statement, limited to five (5) minutes, prior to the discussion of specific topics. The general statement should not address these specific topics, but may cover any other issues pertinent to this rulemaking. The Department will permit other participants to briefly comment on any general statements. We will divide the remainder of the hearing into segments, with each segment consisting of one or more of the following specific topics covered by this notice:

- Engineering analysis, including mark-up;
- Life-Cycle-Cost and payback analysis;
- National Energy Savings and Net Present Value;
- Manufacturer impacts;
- Utility impacts;
- Proposed standards, including an EER-based standard and TXV considerations; and
- Other issues.

The Department will introduce each topic with a brief summary of the relevant parts of our analysis and of the proposed rule, and the significant issues involved. We will then permit participants in the hearing to make a prepared statement limited to five (5) minutes on that topic. At the end of all prepared statements on a topic, the Department will permit each participant to briefly clarify his or her statement and comment on statements made by

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others. Participants should be prepared to answer questions by us and by other participants concerning these issues. Our representatives may also ask questions of participants concerning other matters relevant to the hearing. The total cumulative amount of time allowed for each participant to make prepared statements will be 20 minutes.

The official conducting the hearing will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules, or modification of the above procedures, needed for the proper conduct of the hearing.

We will make the entire record of this rulemaking, including the transcript, available for inspection in the Department's Freedom of Information Reading Room. Any person may purchase a copy of the transcript from the transcribing reporter.

*C. Issues for Which DOE Seeks Comment*

The Department is particularly interested in receiving comments and views of interested parties concerning:

(1) Whether explicit consideration of extended warranties would produce significantly different results from those based on service costs alone;

(2) The Department's methodology and data for determining the appropriate marginal energy costs;

(3) The burdens and benefits that would result from including an EER requirement in the final rule. Of particular interest are comments regarding burdens on manufacturers, benefits regarding reduction in peak electricity demand, the effect of more stringent standards on the cost and availability of modulating equipment, and the effect that an EER floor would have on electrical system reliability. In addition, comments are welcome to discuss the pros and cons of any of the options described in Section V.I.2 above, as well as other approaches;

(4) Whether the proposed standards concerning high-velocity, vertically-packaged wall-mounted equipment, and through-the-wall equipment provide a significant advantage to those products versus competing products and are sufficient to preserve the unique features of those products, and whether improvements in the definitions are needed to prevent loopholes. For ductless split equipment and non-weatherized vertical packaged equipment, additional comment is welcome on the impacts that meeting the new standards would have on the availability of those products;

(5) The issue of thermal expansion valves (TXV), particularly whether our concerns regarding the perceived reliability problems and potential misuses associated with widespread use of TXVs are valid;

(6) The validity of the analytical methods used and the appropriate interpretation and use of the results of this analysis;

(7) The Draft Environmental Assessment, which is printed within the TSD prepared for today's proposed rule; and

(8) The impacts on manufacturers and consumers if the levels in today's proposed rule were applied to commercial three-phase unitary air conditioners less than 65K Btu/hr as well.

**List of Subjects in 10 CFR Part 430**

Administrative practice and procedure, Energy conservation, Household appliances.

Issued in Washington, DC, on September 27, 2000.

**Dan W. Reicher,**

*Assistant Secretary, Energy Efficiency and Renewable Energy.*

For the reasons set forth in the preamble Part 430 of Chapter II of Title 10, Code of Federal Regulations, is proposed to be amended as set forth below.

## PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

1. The authority citation for Part 430 continues to read as follows:

**Authority:** 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

2. Section 430.2 is amended by adding a definition for "through-the-wall air conditioner and heat pump" in alphabetical order to read as follows:

**§ 430.2 Definitions.**

* * * * *

*Through-the-wall air conditioner and heat pump* means a central air conditioner or heat pump, having a rated capacity between 18,000 Btu/hr and 30,000 Btu/hr that is:

(1) Designed to be installed partially within, or mounted against, a fixed-size opening in an exterior wall; and

(2) Designed so that air for the outdoor coil is taken in and discharged at the same surface.

* * * * *

3. Section 430.32 of Subpart C is amended by revising paragraph (c) to read as follows:

**§ 430.32 Energy and water conservation standards and effective dates.**

* * * * *

(c) *Central air conditioners and central air conditioning heat pumps.* (1) Split system central air conditioners and central air conditioning heat pumps manufactured after January 1, 1992, and before January 1, 2006, and single package central air conditioners and central air conditioning heat pumps manufactured after January 1, 1993, and before January 1, 2006, shall have Seasonal Energy Efficiency Ratio and Heating Seasonal Performance Factor no less than:

| Product class | Seasonal energy efficiency ratio | Heating seasonal performance factor |
|---|---|---|
| 1. Split systems | 10.0 | 6.8 |
| 2. Single package systems .. | 9.7 | 6.6 |

(2) Central air conditioners and central air conditioning heat pumps manufactured on or after January 1, 2006, shall have Seasonal Energy Efficiency Ratio and Heating Seasonal Performance Factor no less than:

| Product class | Seasonal energy efficiency ratio (SEER) | Heating seasonal performance factor (HSPF) |
|---|---|---|
| 1. Split system air conditioners ..... | 12 | ..... |
| 2. Split system heat pumps ... | 13 | 7.7 |
| 3. Single package air conditioners ..... | 12 | ..... |
| 4. Single package heat pumps ..... | 13 | 7.7 |
| 5. Through the wall air conditioners and heat pumps ... | 11 | 7.1 |

* * * * *

[FR Doc. 00–25336 Filed 9–29–00; 9:42 am]

BILLING CODE 6450–01–P

Federal Register

Thursday,
October 5, 2000

Part V

# Department of Transportation

**Federal Aviation Administration**

**14 CFR Part 36**

**Noise Certification Regulations for Helicopters; Proposed Rule**

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 36**

**[Docket No. FAA–2000–7958; Notice No. 00–11]**

**RIN 2120–AH10**

## Noise Certification Regulations for Helicopters

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of Proposed Rulemaking (NPRM).

**SUMMARY:** The Federal Aviation Administration (FAA) is proposing changes to the noise certification regulations for helicopters. These proposed changes are based on a joint effort by the FAA, the European Joint Aviation Authorities (JAA), and Aviation Rulemaking Advisory Committee (ARAC), to harmonize the U.S. noise certification regulations and the European Joint Aviation Requirements (JAR) for helicopters. These proposed changes would provide nearly uniform noise certification standards for helicopters certificated in the United States, the JAA countries, and other countries that have adopted as their national regulation either the United States regulations, the JAA regulations, or the International Civil Aviation Organization (ICAO) standards. The harmonization of the noise certification standards would simplify airworthiness approvals for import and export purposes.

**DATES:** Comments must be received on or before January 4, 2001.

**ADDRESSES:** Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2000–7958 at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to http://dms.dot.gov. You may review the public docket containing comments to these proposed regulations in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at http://dms.dot.gov.

**FOR FURTHER INFORMATION CONTACT:** Sandy Liu, AEE–100, Office of Environment and Energy (AEE), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 493–4864; facsimile (202) 267–5594; or email at sandy.liu@faa.gov.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in this rulemaking by submitting written comments, data, views, or arguments. Comments on the possible environmental, economic, federalism, or energy-related impact of the adoption of this proposal are welcomed. Comments concerning the proposed implementation and effective date of the rule are also specifically requested.

Comments should carry the regulatory docket or notice number and should be submitted in triplicate to the Rules Docket address specified above. All comments received and a report summarizing any substantive public contact with FAA personnel on this rulemaking will be filed in the docket. The docket is available for public inspection both before and after the closing date for receiving comments.

Before taking any final action on this proposal, the Administrator will consider the comments made on or before the closing date for comments, and the proposal may be changed in light of the comments received.

The FAA will acknowledge receipt of comments if commenters include a self-addressed, stamped postcard with the comments. The postcards should be marked "Comments to Docket No. FAA–2000-7958." When the comments are received by the FAA, the postcards will be dated, time stamped, and returned to the commenters.

### Availability of Rulemaking Documents

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) web page (http://dms.dot.gov/search).

(2) On the search page type in the last four digits of the Docket number shown at the beginning of this notice. Click on "search."

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the document number of the item you wish to view.

You can also get an electronic copy using the Internet through FAA's web page at http://www.faa.gov/avr/arm/nprm/nprm.htm or the Federal Register's web page at http://www.access.gpo.gov/su_docs/aces/aces140.html.

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number, notice number, or amendment number of this rulemaking.

### Background

*Statement of the Problem*

Various governmental bodies have developed noise certification regulations to control noise emissions from helicopters. The International Civil Aviation Organization (ICAO) issues ongoing prototypical sets of aircraft noise standards which member States, including the United States, are encouraged to adopt into their respective national regulations. Many ICAO member States have adopted the ICAO standards verbatim. The United States has adopted into 14 CFR part 36 noise certification regulations that, although similar to the ICAO standard, differ substantively with the ICAO version. A third body, the Joint Aviation Authorities (JAA), is developing its own version of the ICAO standards with JAA member States in Europe. Thus, from a practical standpoint, three sets of helicopter noise certification requirements exist, each controlled by an independent political entity.

Helicopter manufacturers must demonstrate compliance with at least one, and often all three, of the sets of noise certification regulations when a helicopter is exported beyond its country of manufacture and certification. It has become apparent to the manufacturers that the differences among the three versions of the helicopter noise standards are an undesirable burden. The manufacturers have requested that the regulating agencies harmonize the three sets of regulations in order to minimize the costs for demonstrating compliance.

These same aviation certification authorities, United States, JAA and ICAO, have previously recognized the value of harmonizing civil aircraft certification and operating regulations. The Administrator of the FAA supports harmonization and has committed the FAA to support the harmonization of the FAA regulations with those of the JAA and ICAO.



*Current United States Helicopter Noise Certification Regulations*

Under 49 U.S.C. 44715, the Administrator of the Federal Aviation Administration is directed to prescribe "standards to measure aircraft noise and sonic boom * * * and regulations to control and abate aircraft noise and sonic boom." Part 36 of title 14 of the Code of Federal Regulations (14 CFR) contains the FAA's noise standards and regulations that apply to the issuance of type certificates, changes in type design, and airworthiness certificates for specified classes and categories of aircraft. Subpart H and appendices H and J of part 36 contain the requirements and standards that apply to helicopters. Appendices H and J of part 36 specify the test conditions, procedures, and noise levels required to demonstrate compliance with certification requirements for helicopters. The original helicopter noise certification standards and regulations, including appendix H, were issued on February 5, 1988 (53 FR 3534). On September 16, 1992 (57 FR 42846), the FAA published an alternative noise certification procedure, appendix J, for helicopters that do not exceed 6,000 pounds maximum takeoff weight.

*ICAO Helicopter Noise Certification Standards*

The International Civil Aviation Organization (ICAO) has also adopted a set of Standards and Recommended Practices for aircraft noise certification. These ICAO standards are similar to the United States regulations. The ICAO Annex 16 standards, which have no legal standing of their own, are intended to be prototypical regulations upon which the Contracting States to ICAO may base their own national regulations. For helicopters, Chapter 8 of Annex 16 is the approximate equivalent of part 36, appendix H; Chapter 11 of Annex 16 is the approximate ICAO equivalent to part 36, appendix J. The ICAO standards are issued as International Standards and Recommended Practices, Environmental Protection, Annex 16 to the Convention on International Civil Aviation, Volume 1, Aircraft Noise.

*Joint Aviation Authorities Helicopter Noise Certification Standards*

The civil aviation authorities of certain European countries have agreed to common comprehensive and detailed airworthiness and operating requirements; these are known as the Joint Aviation Requirements (JARs). The JARs are intended to minimize type certification differences on multi-national European ventures and to facilitate the export and import of aviation products between European nations. Aviation authorities of participating countries recognize the JARs as an acceptable basis for showing compliance with their national aviation codes. The JAA added aircraft noise certification (JAR 36), including the helicopter requirements of Subsection D to the JARs effective May 23, 1997. The JAA's JAR 36 study group is tasked with the technical responsibilities for overseeing the noise certification standards. Another group, Abatement of Nuisances Caused by Air Transport (ANCAT), created under the auspices of the European Civil Aviation Conference (ECAC), oversees the policy interests for the JAA. The ANCAT previously decided that the JAR aircraft noise certification standards does mirror the standards adopted by ICAO.

*Aviation Rulemaking Advisory Committee (ARAC)*

In January 1991, the FAA established the Aviation Rulemaking Advisory Committee (ARAC) to serve as a forum for the FAA to obtain input from outside the government on major regulatory issues. The FAA has tasked ARAC with several noise certification issues. These issues involve the harmonization of part 36 with JAR 36, the harmonization of associated guidance material including equivalent procedures, and interpretations of the regulations. On May 3, 1994, the ARAC established the FAR/JAR Harmonization Working Group for Helicopters (59 FR 22883). The Helicopter Harmonization Working Group (HHWG) is comprised of helicopter noise certification experts, and is responsible for addressing tasks assigned by ARAC. The United States and European interests are represented in the HHWG, which includes representatives of the helicopter manufacturers and aviation authority representatives from the FAA and the JAA/ANCAT. The HHWG is co-chaired by industry representatives from the United States and Europe, and meetings are held alternately in the United States and Europe.

The HHWG reviewed the helicopter noise certification provisions of 14 CFR part 36, subparts A and H, and appendices H and J, and the corresponding applicable provisions of JAR 36 and ICAO Annex 16. Differences between the regulations were identified and discussed. The goal of the HHWG is to harmonize the regulations by modifying or deleting conflicting requirements. The HHWG is not authorized to make recommendations for the creation of new requirements or the removal of existing requirements that are common among the different sets of regulations. Methods for resolving the differences were agreed to and forwarded to each regulatory body for approval. A recommendation for amending part 36 was forwarded to the ARAC. After due consideration including a meeting open to the public on August 23, 2000, ARAC agreed to this recommendation and forwarded, in the form of a draft NPRM, to the FAA for consideration.

The overall structure for harmonizing the Federal Aviation Regulations and the Joint Aviation Regulations is described in the JAA/FAA Harmonization Work Program.

Under the Harmonization Work Program, the FAA and JAA agreed to form a Harmonization Working Group to harmonize the aircraft noise certification requirements of 14 CFR part 36 and JAR 36. The Working Group serves under the auspices of both ARAC and the JAA's JAR 36 Study Group. The JAA has adopted the ICAO noise certification standards; any recommended changes to the JARs resulting from a harmonization process, must first be acted on and approved by ICAO before they are considered by the JAA.

### Synopsis of the Proposal

Part 36 of the Federal Aviation Regulations (14 CFR) contains noise standards for aircraft type and airworthiness certification. Subpart H of part 36 and its related appendices H, and J prescribe noise levels and test procedures used for certification of civil helicopters in the normal, transport, restricted, or primary category, including rules governing the issuance of original, amended, or supplemental type certificates for helicopters for which application is made on or after March 6, 1986.

The FAA is proposing to amend some of the technical specifications included in appendices H and J, and proposes a new definition under § 36.1. No changes to the applicability of part 36 are proposed. The proposed changes would not substantively alter the prescribed noise limits nor change the relative stringency of the regulations, i.e., the relationship between the noise level limits and the measured noise level of a given helicopter. These proposed changes may be categorized as (a) replacing an existing specification with a similar ICAO specification; (b) adding an existing ICAO specification to part 36 where a corresponding part 36 specification does not presently exist; or (c) removing an existing part 36

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specification where there is no corresponding ICAO specification.

The FAA has examined the helicopter noise certification process and analyzed how the proposed changes would have affected previous helicopter noise certification projects. The cumulative effect of the proposed changes on a single certification would not typically exceed ± 0.1 decibels and would not be expected to exceed ± 0.3 decibels under a worst-case combination of conditions. The FAA has determined that the proposed changes would not substantively alter the noise certification levels or the finding of compliance of helicopters currently certificated under either appendix H or appendix J. Accordingly, the FAA has determined that these proposed changes are consistent with the statutory criteria for amending aircraft noise abatement regulations.

**Section-by-Section Discussion**

The following is a section-by-section discussion of the proposed amendment.

*Section 36.1 Applicability and Definitions.*

The FAA is proposing the addition of a new definition to § 36.1(h)(5) for "maximum normal operating RPM." This would be defined as "the highest rotor speed for each reference procedure corresponding to the airworthiness limit imposed by the manufacturer and approved by the FAA." This term would cover instances where a tolerance on the highest rotor speed is specified and where the rotor speed is automatically linked with flight condition or can be changed by pilot action. As shown to apply to reference section H36.107(b)(5) and J36.105(c)(2).

*Section 36.11 Acoustical Change: Helicopters.*

The proposed change would increase the maximum takeoff weight limit for appendix J applicability from 6,000 pounds to 7,000 pounds. The proposed change reflects a new requirement in the 14 CFR part 27 airworthiness standards for normal category rotorcraft. The part 27 revision, adopted in Amendment 27–37 and effective on October 18, 1999, increases the passenger seat limitation to nine, update of safety standards and consequential weight growth.

*Subpart H—Helicopters*

The proposed change to Subpart H regarding compliance with appendix J, is being made to conform to the weight change described above in the discussion of § 36.11. The same reasons for adoption apply to this change.

*Subpart O—Operating Limitations and Information*

Subpart O of part 36 specifies requirements for documentation of noise levels in an airplane flight manual or rotorcraft flight manual. The FAA is proposing to add the word "Documentation" as the first word of the subpart title to more specifically identify the subject matter of subpart O.

Proposed section 36.1581(a)(2) would be amended by changing the reference from appendix F to appendix G. The noise certification requirement for propeller-driven small airplanes were moved to appendix G in Amendment 36–16 (53 FR 47394, November 22, 1988), and this reference was overlooked.

A new proposed section 36.1581(a)(3) would be added to require that helicopter noise levels be included in the rotorcraft flight manual. This change specifies the noise certification documentation requirements; these would be similar to requirements for other types of aircraft. This would provide uniform noise level documentation requirements for each aircraft category and would standardize documentation procedures. This amendment is intended to improve certification tracking and documentation referencing.

*Section H36.3 Reference Test Conditions*

Proposed section H36.3(a)(1) would add sea level pressure in metric units in addition to English units already specified. This would prevent possible variations in measured data that could result from differing conversion factors by applicants using metric units.

Proposed section H36.3(c)(2) would remove a redundant designation regarding FAA approval. No substantive change in the approval process is intended.

Proposed section H36.3(d) would delete the reference to rotor speed because it is an unnecessary parameter in describing a flight profile. This reference was included in error.

Proposed section H36.3(d) would add two new criteria for reference airspeeds: $0.9V_{NE}$ and $0.45V_{NE}$+65 knots. Currently, the reference airspeeds specified are limited to either $0.9V_H$ or $0.45V_H$+65 knots, whichever is less.

[Note: $V_{NE}$ is the never-exceed airspeed, an airworthiness limitation, imposed by the manufacturer and approved by the FAA.] The advent of more powerful engines and improved gearboxes have resulted in helicopters that can have a $V_H$ airspeed in excess of the power-on $V_{NE}$ airspeed. Therefore, new noise certification airspeed criteria are necessary to be consistent with technological advances and still accommodate the airworthiness limitations imposed for safety. These two new reference airspeed criteria would serve to satisfy these advances.

Section H36.3(d) would be amended as follows:

1. Specifically, change the symbol "D" to be replaced by "Dr" and the symbol "J" to be replaced by "Jr".

1. Deleting the reference to rotor speed; it is unnecessary for definition of flight profile.

2. Adding the word "reference" prior to the words "airspeed" and "rotor speed" to indicate that the specifications are for reference flight conditions.

Proposed section H36.3(f)(1)(i) would be amended by changing the approach profile reference from "EK" to "ErKr", and changing the angle measure "6° ± 0.5 °" to "6°," respectively. For a reference situation, no such tolerances are necessary.

Proposed section H36.3(f)(1)(ii) would add test approach angle tolerance limits between 5.5° and 6.5° that were removed from section H36.3(f)(1)(i). This is the appropriate paragraph for these tolerances.

*Section H36.5 Symbols and Units*

Proposed section H36.5 would remove the symbols S, $S_r$, T, and $T_r$ and their descriptions in the Flight Profile Identification-Positions table and remove the symbols $AS_r$, AT, and $AT_r$ and their meanings in the Flight Profile Distances table. The typographical errors; Alr and Anr would be corrected to $AL_r$ and $AN_r$. In addition, the three new symbols and their descriptions would be added to the Flight Profile Identification-Positions table of this section as follows:

$F_r$—Position on reference takeoff path directly above noise measuring Station A.
$G_r$—Position on reference flyover path directly above noise measuring Station A.
$H_r$—Position on reference approach path directly above noise measuring Station A.

These changes and corrections will make these tables consistent with amended Figures H1 and H3 (reference section H36.205 for proposed changes.

*Section H36.101 Noise Certification Test and Measurement Conditions*

Proposed section H36.101(b)(6)(iii) would remove the paragraph for additional flight test data to determine the variation of EPNL with weight for the takeoff condition. In takeoff, noise generation is a function of torque (power) to the rotor systems, not weight, making the current requirement unnecessary.

Proposed section H36.101(b)(8)(ii) would require approach tests to be conducted between 90 percent and 105 percent of the rotorcraft's maximum certification weight. This change is needed to make this section consistent with section H36.101(b)(6)(ii), and simplifies the rules for the three conditions. (See §§ H36.101(b)(6)(ii) for takeoff and flyover).



Proposed section H36.101(b)(8)(iii) removes the paragraph for additional flight test data that is used to determine the variation of EPNL with weight for the approach condition. In approach, noise generation is predominantly a function of complex aeroacoustic sources associated with main rotor blade vortex interaction, not weight, making the current requirement unnecessary. This would further harmonize measurement procedures and streamline certification testing.

Proposed section H36.101(b)(6) requires at least one flight at, or above, the noise certification weight for each of the three flight procedures. The proposal also removes the requirement for correction of off-reference weight for the takeoff and approach procedures. This paragraph is also being removed from section H36.205.

Proposed section H36.101(c)(2) would change the minimum test temperature from 36°F (2.2°C) to 14°F (−10°C). The current 36°F (2.2°C) temperature limit is unnecessarily restrictive, given that no higher levels of atmospheric absorption could be encountered by lowering the test day temperature. Although there is a revised minimum test air temperature limit, the limit for the noise measuring equipment is unchanged.

Proposed section 36.101(c)(2) would also specify that the temperature test window be based on the 10-meter temperature values and that the 10-meter temperature and relative humidity values be used to adjust the sound propagation path for propagation path absorption. Noise certification data collected to date has demonstrated that EPNL values corrected using atmospheric data measured at 10 meters are acoustically identical to those corrected using averaged temperature and relative humidity data. The proposed changes would replace historically unreliable temperature data collection.

Proposed section H36.101(c)(3) would specify allowing the use of only the relative humidity and ambient temperature values of the 10-meter measurement station for allowable sound attenuation in the one-third octave band centered at 8 kHz and no longer require the use of aircraft relative humidity and ambient temperature measurements. This change is supported by years of noise certification data demonstrating that atmospheric measurements at 10-meters satisfies both the sound attenuation and relative humidity range requirements. Helicopter noise certification test experience has shown that relative humidity measurements at the helicopter position is difficult and subject to error given the available instrumentation and procedures. Analysis has indicated minimal differences between humidity measured at the helicopter position and the 10-meter measurement position. Corrections have been no greater than 0.1 dB except under extreme conditions that otherwise would be considered an anomalous meteorological condition.

Proposed section H36.101(c)(5) would specify that tests not be conducted under anomalous wind or anomalous meteorological conditions. If these conditions exist at test sites in a desert environment, temperature and relative humidity must be established using FAA-approved procedures.

Proposed section H36.101(d) would specify that the helicopter height and lateral position is determined relative to the reference flight track, not the centerline or runway. The differential global positioning system is acceptable as an independent method of determining the position of the helicopter.

*Section H36.103 Takeoff Test Conditions*

Proposed section H36.103(b)(1) would specify that the takeoff procedure airspeed be established prior to entering the 10dB-down time interval of the climbout as opposed to the current requirement that the takeoff procedure airspeed must be established during the horizontal portion of the takeoff test procedure. This change more clearly specifies that the portion of the takeoff at which the required airspeed must be maintained; this procedure allows the pilot to establish and stabilize required power settings at the time the climb is started. This proposal would simplify the pilot workload by requiring one less parameter (power) that must be stabilized at the time the climb is stated. This method is only satisfactory if the initial 10 dB-down time interval occurs during the climb portion of the profile.

Proposed section H36.103(b)(3) would more clearly define gearbox torque limit. It also adds the alternate of maximum take-off power. The lower of the two is used for specifying required takeoff condition. This change more closely aligns part 36 with JAR 36 without any substantive change. This section will no longer contain paragraphs (i) and (ii); the material is included in the text of (b)(3) as described.

Proposed section H36.103(b)(4)would clarify that portion of the takeoff at which the required best rate of climb airspeed, or the lowest airworthiness approved takeoff speed must be maintained. This section will no longer contain paragraphs (i) and (ii); the material is included in the text of (b)(3) as described. This change more closely aligns part 36 with JAR 36 without any substantive change.

Proposed section H36.103(b)(5) would define the highest rotor speed used in takeoff. It also states that the rotor's average rpm, rather than instantaneous rpm is required to be within ±1.0 percent during the 10 dB-down time interval.

Proposed section H36.103(b)(6) would add a new alternate allowable altitude criteria of a wider zenith tolerance in meters for low altitudes near the start point. The criteria retains the current permitted zenith tolerance defined in degrees throughout the 10 dB-down time interval. This change more closely aligns part 36 with JAR 36 without any substantive change.

Proposed section H36.103 (b)(7) would add a new paragraph that requires that a constant takeoff configuration be maintained, and that the landing gear may be retracted when establishing the best rate-of-climb and corresponding speed as required by the U.S. airworthiness standards.

*Section H36.105 Flyover Test Conditions*

Proposed section H36.105(b) would specify in detail that an even number of flights (6 or more) is required to assure balanced measurement of any directional effects that may be related to flight path orientation.

Proposed section H36.105(b)(1) would add the term "cruise configuration" in requiring that a constant cruise configuration be maintained. This change adopts a commonly understood term and will minimize misinterpretation of allowance for unsteady, variable speed operations during flyover test conditions.

Proposed section H36.105(c)(1) would add two alternative flyover airspeed criteria to the current requirement of continuous power ($V_H$). The proposed additional level flyover reference airspeeds are 90 percent of the never-exceed airspeed, $V_{NE}$, and 45 percent of the never-exceed airspeed plus 65 knots; the least of the three is the required airspeed. As explained above in section H36.3(d), the advent of more powerful engines and improved gearboxes have resulted in helicopters that can have a

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$V_H$ airspeed in excess of the power-on $V_{NE}$ airspeed. Therefore, new noise certification airspeed criteria are necessary to be consistent with technological advances but still accommodate the airworthiness limitations imposed for safety. These two new reference airspeed criteria would serve to satisfy these advances. This change more closely aligns part 36 with JAR 36 without any substantive change.

Proposed section H36.105(c)(2) would define the highest rotor speed used in flyover. It also states that the rotor's average rpm, rather than instantaneous rpm, is required to be within ± 1.0 percent during the 10 dB-down time interval.

*Section H36.107 Approach Test Conditions*

Proposed section H36.107(b)(3) would add a new alternate allowable altitude criteria of a wider zenith tolerance in meters for low altitudes near the end point of the approach. The criteria retains the current permitted zenith tolerance defined in degrees throughout the 10 dB-down time interval. This change more closely aligns part 36 with JAR 36 without any substantive change.

Proposed section H36.107(b)(5) defines the highest rotor speed to be used in approach. It also states that the rotor's average rpm, rather than instantaneous rpm, is required to be within ±1.0 percent during the 10 dB-down time interval. Thus, each noise certification condition will be tested at the highest operating rotor RPM as specified in the Flight Manual. These amendments are intended to more closely replicate actual operating rotor speed when conducting noise certification tests.

Proposed section H36.107(b)(6) would add a new paragraph that requires that a constant takeoff configuration be maintained, and that the landing gear may be retracted when establishing the best rate-of-climb and corresponding speed as required by the airworthiness standards.

*Section H36.109 Measurement of Helicopter Noise Received on the Ground*

Under this proposal, section H36.109 would be revised to reference section B36.3.

**Note:** The jet noise harmonization proposed rule (65 FR 42796, July 11, 2000) includes a proposal for amending the values in section B36.3. The proposed change would also apply to helicopter noise and tests.

*Section H36.111 Reporting and Correcting Measured Data*

Proposed section H36.111(c)(2) would add a permissible EPNL correction for takeoff flight condition only. The amount of this allowable correction is limited. Corrections for duration are described in sections H36.205(f)(1) and H36.205(g)(1)(i). This change will reduce the number of takeoff flights during testing.

Paragraphs (c)(2)(i) through (iv) are being re-designated. Paragraph (c)(2)(i) contains a minor editorial correction. Paragraph (c)(2)(ii) is revised to include only the difference between actual and reference flight paths. This change eliminates specific application that have become obsolete by recent technology. The text of current paragraph (c)(2)(iii) is deleted; it is no longer needed if the previous changes are made. The text of current paragraph (c)(2)(iv) is re-designated (c)(2)(iii) and is revised by retaining only the reference to H36.205.

Proposed section H36.111(c)(3) changes the aircraft noise level threshold that must exceed the background level in each ⅓ octave band from 5dB to 3dB. This change would bring appendix H in line with appendix B for transport category and turbojet powered airplanes.

*Section H36.113 Atmospheric Attenuation of Sound*

Proposed section H36.113(b) would amend the current external reference to the revised section B36.7 proposed in the NPRM for subsonic jet, large airplanes and subsonic transports. Section B36.7 describes the method to calculate atmospheric attenuation rates and completely documents them within the regulation under part 36. Documenting this section within U.S. regulations follows a similar ICAO practice and builds the harmonization between regulations.

Proposed section H36.113(c)(1)(iii) is revised to specify that the 10-meter temperature and relative humidity measurement values be used to adjust for the sound propagation path absorption. Noise certification data collected to date has demonstrated that EPNL values corrected using atmospheric data measured at 10 meters are acoustically identical to those corrected using averaged temperature and relative humidity data. There is no loss in accuracy by avoiding inherent aircraft measurement inaccuracies.

*Section H36.205 Detailed Data Correction Procedures*

Proposed section H36.205(a)(1) is revised to allow negative value corrections. Such corrections are appropriate to accurately account for any difference between reference and test conditions. Currently, negative corrections resulted in no correction (essentially setting the value to zero). This change will consider all influences, whether negative or positive.

Proposed sections H36.205(a)(1)(i) and H36.205(a)(ii) are revised to specify corrections based on "differences" from reference rather than conditions "greater than" or "higher than" reference. This change clarifies the requirement.

Proposed section H36.205(a)(1)(iii) eliminates the correction to the EPNL calculated from measured data if the test weight is less than maximum certification weight. Based on past test data, such weight effects are difficult to isolate from other dominant parameters. Such corrections are unnecessary.

Under this proposal, section H36.205(a)(2) is deleted. This material is no longer necessary given the allowance of negative correction values described in section H36.205(a)(1).

Proposed section H36.205(a)(3)(iii) redefines in more accurate descriptive terms the distances applied for duration corrections. Instead of "minimum" distances, the existing rule requires that distances be based on the PNLTM (maximum PNLT) distance. This is a more accurate method for correcting for noise impact since it is based on the actual noise characteristics (peak PNLT) rather than a minimum distance along the flight path.

Proposed section H36.205(a)(3)(iv) would replace the use of rotor rpm and test speed with the acoustically accurate term of Mach number that accounts for both rpm and test speed effects. This is a more concise and accurate variable to apply when addressing the acoustical effects of cumulative speed.

Proposed section H36.205(b)(ii)(2) simplifies the takeoff airspeed range by designating as the minimal boundary the slowest climb speed allowed under the airworthiness requirements. The proposed language also removes the reference to rotor speed, since rotor speed is not needed in describing a flight profile for data correction purposes. This reference was included in error.

Proposed section H36.205(b)(3) removes the minimal distance description from the paragraph. This description is no longer needed given the proposed change to section H36.205(a)(3)(iii).

Proposed section H36.205(c)(1) removes text that describes speed criteria. It is not appropriate in a section describing data correction because the criteria are included elsewhere in part 36. The proposed language also removes a reference to rotor speed, since rotor speed is not needed in describing a flight profile for data correction purposes.



Proposed section H36.205(d)(2) would eliminate the requirement that the test approach procedure be included in the Flight Manual. Such a procedure is never used in approach , and if included in the Flight Manual, could be confused with approved airworthiness approach procedures. The proposal also explains the term "10 dB down period" with "10 dB-down time interval" as the accepted nomenclature for this specific time segment. This "harmonized" term is being adopted in the regulations for jets, large turboprop, small airplanes, and helicopters.

Proposed section H36.205(d)(3) removes the minimal distance description from the reference to figure H3. This description is no longer needed given the proposed change to section H36.205(a)(3)(iii).

Proposed section H36.205(e)(1) removes the requirement that only the advancing blade tip Mach number be used when making source noise adjustments. It also adds an alternate procedure for off-reference tip Mach number adjustments. The proposal allows use of a more appropriate source noise adjustment parameter which would give results identical to that of the more complex current procedure while substantially reducing the amount of additional flyover passes necessary to generate statistically valid source noise sensitivity curves.

Proposed section H36.205(f)(1)(i) corrects designations of measured takeoff sound propagation path and length, "$L_sA$" to "AL" and "LrA" to "ALr" , respectively.

Proposed section H36.205(f)(2) replaces incorrect designations of takeoff distances for measured and reference paths, "AM" to "AN" and AMr" to "ANr" , respectively, and add "i" to the alpha in the second term.

Proposed section H36.205(f)(3) removes the "o" and "+" symbol from the equation; they are incorrect.

Proposed corrections for the designator "K" by flight condition are as follows: "Ln" to "Lr", "M" to "N", "Mn" to "Nr", and "N" to "M", "Nr" to "Mr", respectively, within the paragraph text. This change also corrects a typographical error.

Proposed section H36.205(f)(4) replaces incorrect designations of flyover distances for measured and reference paths, "AN" to "AM" and "ANr" to "AMr" , respectively, and adds a subscript "i" to the first alpha in the second term.

Proposed sections H36.205(g)(1)(i), through (iv) correct the constant value "−10" to "−7.5" in front of the log term in each of the $\Delta_2$ equations.

Proposed section H36.205(g)(1)(i) corrects the term for measured and reference lengths, "AT" to "AL" and "ATr" to "ALr", respectively within the $\Delta_2$ equation and paragraph text.

Proposed section H36.205(g)(1)(ii) corrects the terms used for measured and reference lengths, "AS" to "AN" and "ASr" to "ANr", respectively, within the $\Delta_2$ equation and paragraph text.

Proposed section H36.205(g)(1)(iii) corrects the terms used for measured and reference lengths at each of the flight condition, "T" to "L" , "Tr" to "Lr" , "S" to "N", "Sr" to "Nr", and "G" to "M", "Gr" to "Mr", respectively, within the paragraph text.

Proposed section H36.205(g)(1)(iv) corrects the terms used for measured and reference lengths, "AG" to "AM" and "AGr" to "AMr", respectively within the $\Delta_2$ equation and paragraph text. All of the corrections in section H36.205(g)(1) are of previous errors. No substantive changes are intended.

*Figures H1, H2 and H3*

Proposed revision to Figure H1 deletes the designation of Positions Tr since the minimal distance designation is no longer needed and includes the height above measurement point in metric units; see the text of proposed section H36.205(b)(3) regarding the takeoff condition.

Proposed revision to Figure H2 repositions the bullet-marker that's incorrectly positioned near label G due to a typographical error. The marker is repositioned in the proposed revised graphic image at the intersection of line Dr–Jr and line A–G.

Proposed revision to Figure H3 deletes the designations of Positions S and Sr since the minimal distance designation is no longer needed and includes the height above measurement point in metric units; see the text of section H36.205(d)(3) regarding the approach condition.

In proposed Figures H1, H2, and H3 the titles of the figures are changed to reflect the language of this proposal. The word "reference" would replace the word "corrected" in each title.

*Section H36.305 Noise Levels*

Proposed sections H36.305(a)(2)(i) through (iii) would revise the values for the noise/weight reduction rate, from "3.01" to "3.0". The proposed text also removes the phrase "for maximum weight of 1,764 pounds or less" from the end of each paragraph and replaces it with the phrase "after which the limit is constant." The existing text was found to be confusing; this proposed change would enhance clarity. No substantive change in the requirements is intended.

*Section J36.1 General*

Proposed section J36.1 would increase the maximum takeoff weight requirement of appendix J from 6,000 pounds to 7,000 pounds. As explained previously, Part 27 was amended to increase the allowable passenger seat limit to nine; accordingly the weight limit was increased to 7,000 lbs. This proposal makes the corresponding changes in appendix J.

*Section J36.3 Reference Test Conditions.*

Proposed section J36.3(c) would clarify that the stabilized airspeed be maintained throughout the measured portion of the flyover. Stabilized airspeed will insure the highest quality noise data by avoiding variability of advancing tip Mach number that effectively impacts noise.

Proposed section J36.3(c)(1) would add the requirement airspeed $V_{NE}$ that must be included in the approved Flight Manual. These changes standardize the languages used in appendices H and J without substantive change.

*Section J36.101 Noise Certification and Measurement Conditions*

Proposed section J36.101(c)(4) revises the location where meteorological data is measured. This change would harmonize this proposal with the JAR and adds flexibility without substantive change. It also makes the language of this section compatible with J36.101(c)(6).

Proposed section J36.101(c)(6):

1. Specifies that the physical location of meteorological instruments be representative of the atmospheric conditions existing near the surface over the geographical area where the helicopter noise measurements are made.

2. Provides that a fixed meteorological station, such as those found at airports, may be used to meet the location requirement.

3. Adds the requirement that a fixed meteorological station must be within 2,000 meters of the noise measurement area. The 2,000-meter distance limitation is a reasonable allowance when using a "fixed meteorological station."

These proposed changes harmonize this proposal with the JAR and add flexibility without substantive change since part 36 requirements specify that

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the meteorological measurements be made "at the noise monitoring station," while JAR requirements specify that if the measurement site is within 2,000 meters of an aerodrome thermometer, the aerodrome reported temperature be used.

*Section J36.109 Measurement of Helicopter Noise Received on the Ground*

Under this proposal, three references to section H36.109 are being changed to section B36.3. Section H36.109 was removed because the data appears in section B36.3. Note: The jet noise harmonization proposed rule (65 FR 42796, July 11, 2000) includes a proposal for amending the values in section B36.3. The proposed change would also apply to helicopter noise and tests but the proposal is not repeated in this NPRM to avoid confusion.

Proposed section J36.305(a) would have the same correction as made in section H36.305(a) above.

Proposed section J36.305(a) increases the upper weight limit from 6,000 pounds to 7,000 pounds maximum gross weight. This is a conforming change for reasons already described.

**Paperwork Reduction Act**

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. We have determined that there are no new information collection requirements associated with this proposed rule.

**International Compatibility**

In keeping with the U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified the following two differences with these proposed regulations. These two differences are applicability provisions that already exist and do not represent substantive changes. If this proposal is adopted, the FAA will file these differences with ICAO.

(1) Sections 36.11 and H36.305 of part 36 allow for higher than Stage 2 noise limits for helicopter changes in the type design of certain (Stage 1) helicopters certified before the "grandfather" clause date of March 6, 1986; and

(2) Section 36.805(c) allows for higher than Stage 2 noise limits for helicopter changes in the type design of certain (Stage 1) helicopters that the FAA recognizes as the first civil version that was designed, constructed for and accepted for operational use by an Armed Force of the United States.

**Economic Evaluation**

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency propose or adopt a regulation only upon a determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. section 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act also requires agencies to consider international standards and, where appropriate, use them as the basis of U.S. standards. And fourth, the Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation.)

In conducting these analyses, FAA has determined this rule (1) has benefits which do justify its costs, is not a "significant regulatory action" as defined in the Executive Order and is not "significant" as defined in DOT's Regulatory Policies and Procedures; (2) will not have a significant impact on a substantial number of small entities; (3) reduces barriers to international trade; and (4) does not impose an unfunded mandate on state, local, or tribal governments, or on the private sector. These analyses, available in the docket, are summarized below.

This notice of proposed rulemaking would provide nearly uniform noise certification standards for helicopters certificated in the United States, the JAA countries, and any other countries that have adopted as their national regulation either the United States regulation, the JAA regulation, or the ICAO standard.

The proposals would more closely harmonize the flight test conditions, procedures, and reporting requirements mandated by the provisions of Subpart A and appendices H, and J of 14 CFR part 36 with the corresponding applicable provisions of the Joint Aviation Regulations (JAR) 36 and the International Civil Aviation Organization (ICAO) Annex 16. Specifically, the proposal would amend some of the technical specifications of appendices H and J and add a new definition to Subpart A of part 36.

The FAA concludes that the proposed rule would be cost beneficial. The proposed rule would require fewer flyover passes, takeoffs, and microphone systems, would eliminate humidity and wind speed measurements and the requirements to process test data twice and issue separate reports for FAA and ICAO methods, and would extend the gross weight upper limit for the appendix J certification test procedure. The cost savings of the proposed rule are estimated to be $17.31 million ($12.16 million, discounted) over a 10 year period. The one-time cost of this proposed rule would be $40,800 ($33,305 discounted) and would accrue to those manufacturers that need to obtain ICAO/JAA certification.

**Initial Regulatory Flexibility Determination**

The Regulatory Flexibility Act of 1980 (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

Small entities are firms employing 1,500 employees or less based on Small Business Administration guidelines. Enactment of this proposal would impose a one-time cost of $10,200 per small entity, which would be incurred by two small helicopter manufacturers that met the criterion of small entity. The yearly cost-savings per small entity would be $265,000. In view of the substantial net cost-savings per small entity, the FAA has determined that this proposed rule would not have a significant adverse economic impact on a substantial number of small entities; therefore, a regulatory flexibility analysis is not required under the terms of the RFA. The FAA solicits comments with respect to this finding and determination and requests that all comments be accompanied by clear documentation.



**International Trade Impact Assessment**

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be used as the basis for U.S. standards. In addition, consistent with this Administration's belief in the general superiority and desirability of free trade, it is the policy of this Administration to remove or diminish to the extent feasible, barriers to international trade, including both barriers affecting the export of American goods and services to foreign countries and barriers affecting the import of foreign goods and services into the United States.

This proposed rule is a direct action to respond to this policy by increasing the harmonization of the U.S. Federal regulations with the European Joint Aviation Requirements. The results would facilitate international trade.

**Unfunded Mandated Assessment**

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104–4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action."

This proposed rule does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

**Executive Order 13132, Federalism**

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. The FAA has determined that this action would not have substantial direct effects on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the FAA has determined that this notice of proposed rulemaking would not have federalism implications.

**Environmental Assessment**

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental assessment (EA) or environmental impact statement (EIS). In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), regulations, standards, and exemptions (excluding those, which if implemented may cause a significant impact on the human environment) qualify for a categorical exclusion. The FAA has determined that this rule qualifies for a categorical exclusion because no significant impacts to the environment are expected to result from its finalization or implementation.

**Energy Impact**

The energy impact of the notice has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Public Law 94–163, as amended (42 U.S.C. 6362) and FAA Order 1053.1. It has been determined that the notice is not a major regulatory action under the provisions of the EPCA.

**List of Subjects in 14 CFR Part 36**

Aircraft, Noise control.

**The Proposed Amendment**

In consideration of the foregoing the Federal Aviation Administration proposes to amend 14 CFR part 36, as follows:

## PART 36—NOISE STANDARDS: AIRCRAFT TYPE AND AIRWORTHINESS CERTIFICATION

1. The authority citation for part 36 continues to read as follows:

**Authority:** 42 U.S.C. 4321 *et seq.*; 49 U.S.C. 106(g), 40113, 44701–44702, 44704, 44715; sec. 305, Pub. L. 96–193, 94 Stat. 50, 57; E.O. 11514, 35 FR 4247, 3 CFR, 1966–1970 Comp., p. 902.

2. Section 36.1 is amended by adding a new paragraph (h)(5) to read as follows:

**§ 36.1 Applicability and definitions.**

* * * * *

(h) * * *

(5) *Maximum normal operating RPM* means the highest rotor speed for each reference procedure corresponding to the airworthiness limit imposed by the manufacturer and approved by the FAA. Where a tolerance on the highest rotor speed is specified, the maximum normal operating rotor speed is the highest rotor speed for which that tolerance is given. If the rotor speed is automatically linked with flight condition, the maximum normal operating rotor speed corresponding with that flight condition must be used during the noise certification procedure. If rotor speed can be changed by pilot action, the highest normal operating rotor speed specified in the flight manual limitation section for power-on conditions must be used during the noise certification procedure.

3.–4. Section 36.11 is amended by revising the introductory text and by removing "6,000" and adding "7,000" in its place in paragraph (a)(1) to read as follows:

**§ 36.11 Acoustical change: Helicopters.**

This section applies to all helicopters in the primary, normal, transport, and restricted categories for which an acoustical change approval is applied for under § 21.93(b) of this chapter on or after March 6, 1986. Compliance with the requirements of this section must be demonstrated under appendix H of this part, or, for helicopters having a maximum certificated takeoff weight of not more than 7,000 pounds, compliance with this section may be demonstrated under appendix J of this part.

**§ 36.801 [Amended]**

5. Section 36.801 is revised by removing the term "6,000" in the second sentence and adding the term "7,000" in its place.

**Subpart O—Documentation, Operating Limitations and Information**

6. Revise the heading of Subpart O to read as set forth above:

7. In § 36.1581 paragraph (a)(2) is revised and paragraph (a)(3) is added to read as follows:

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**§36.1581 Manuals, markings, and placards.**

* * * * *

(2) For propeller driven small airplanes the noise level information must be one value for takeoff as defined and required by appendix G of this part, along with the maximum takeoff weight and configuration.

(3) For rotorcraft the noise level information must be one value for each takeoff, flyover, and approach as defined and required by appendix H of this part or one value for flyover as defined and required by appendix J of this part along with the maximum takeoff weight, maximum landing weight (for appendix H), and configuration.

* * * * *

**Appendix H [Amended]**

8. In appendix H, section H36.3 is amended by revising paragraphs (a)(1), (c)(2), (d), (e), (f)(1)(i), and (f)(1)(ii) to read as follows:

Section H36.3 *Reference test conditions.*

(a) * * *

(1) Sea level pressure of 2,116 psf (76 cm mercury, 1,013.25 hPa).

(c) * * *

(2) The reference flight path is defined as a straight line segment inclined from the starting point (1,640 feet prior to the center microphone location at 65 feet above ground level) at an constant climb angle β defined by the certificated best rate of climb and $V_y$ for minimum engine performance. The constant climb angle β is derived from the manufacturer's data (approved by the FAA) to define the flight profile for the reference conditions. The constant climb angle β is drawn through $C_r$ and continues, crossing over station A, to the position corresponding to the end of the type certification takeoff path represented by position $I_r$.

(d) *Level flyover reference profile.* The beginning of the level flyover reference profile is represented by helicopter position Dr (Figure H2). The helicopter approaches position Dr in level flight 492 feet above ground level as measured at Station A. Reference airspeed must be either $0.9V_H$; $0.9V_{NE}$; $0.45V_H$+65 kts ($0.45V_H$+120km/h); or $0.45V_{NE}$+65kts ($0.45V_{NE}$+120 km/h), whichever of the four speeds is least. The helicopter crosses directly overhead station A in level flight and proceeds to position Jr.

(e) For noise certification purposes, $V_H$ is defined as the airspeed in level flight obtained using the minimum specification engine torque corresponding to maximum continuous power available for sea level, 25°C ambient conditions at the relevant maximum certificated weight. $V_{NE}$ is the never-exceed airspeed. The value of $V_H$ and $V_{NE}$ used for noise certification must be included in the approved Flight Manual.

(f) * * *

(1) * * *

(i) The beginning of the approach profile is represented by helicopter position E. The position of the helicopter is recorded for a sufficient distance (EK) to ensure recording of the entire interval during which the measured helicopter noise level is within 10 dB of Maximum Tone Corrected Perceived Noise Level (PNLTM), as required. ErKr represents a stable flight condition in terms of torque, rpm, indicated airspeed, and rate of descent resulting in a 6° approach angle.

(ii) The test approach profile is defined by the approach angle η passing directly over the station A at a height of AH, to position K, which terminates the approach noise certification profile. The test approach angle η must be between 5.5° and 6.5°.

* * * * *

9. In appendix H, section H36.5, the Flight Profile Identification-Positions table is amended by removing the symbols S, $S_r$, T and $T_r$ and their descriptions; the Flight Profile Distances table is amended by removing the symbols $AS_r$, AT, and $AT_r$ and their meanings. The Flight Profile Identification-Positions table is revised by adding three new symbols and their descriptions in alphabetical order to read as follows:

Section H36.5 *Symbols and units.*

$F_r$—Position on reference takeoff path directly above noise measuring Station A.

$G_r$—Position on reference flyover path directly above noise measuring Station A.

$H_r$—Position on reference approach path directly above noise measuring Station A.

10. In appendix H, Section H36.101 is revised by removing paragraphs (b)(6)(iii) and (b)(8)(iii); by redesignating paragraph (b)(9) as (d)(4); and by revising paragraphs (b)(8)(ii), (c)(2), (c)(3), (c)(5), (d)(2), (d)(3) and newly redesignated paragraph (d)(4) to read as follows:

Section H36.101 *Noise certification test and measurement conditions.*

(b) * * *

(8) * * *

(ii) Each test weight must be within +5 percent and −10 percent of the maximum certification weight.

(c) * * *

(2) Ambient air temperature between 14°F and 95°F (−10°C and 35°C), inclusively, at a point 10 meters above the ground at the noise measuring station. The temperature and relative humidity measured at a point 10 meters above the ground at the noise measuring station must be used to adjust for propagation path absorption.

(3) Relative humidity and ambient temperature at a point 10 meters above the ground at the noise measuring station is such that the sound attenuation in the one-third octave band centered at 8 kHz is not greater than 12 dB/100 meters and the relative humidity is between 20 percent and 95 percent, inclusively.

* * * * *

(5) No anomalous meteorological conditions (including turbulence) that will significantly affect the noise level of the aircraft when the noise is recorded at each noise measuring station.

* * * * *

(d) * * *

(2) The helicopter height and lateral position relative to the reference flight track (which passes through the flight track noise measuring station) must be determined using an FAA-approved method. The equipment used to make the determination must be independent of normal flight instrumentation, such as radar tracking, theodolite triangulation, laser trajectography, photo scaling, or differential global positioning system.

(3) The helicopter position along the flight path must be related to the noise recorded at the noise measuring stations by means of synchronizing signals at an approved sampling rate. The position of the helicopter must be recorded relative to the reference flight track during the entire time interval in which the recorded signal is within 10 dB of PNLTM. Measuring and sampling equipment must be approved by the FAA.

(4) Aircraft performance data sufficient to make the corrections required under section H36.205 of this appendix must be recorded at an FAA-approved sampling rate using FAA approved equipment.

11. In appendix H, Section H36.103 is amended by revising paragraphs (b)(1), (b)(3), (b)(4), (b)(5), and (b)(6), and by adding new paragraph (b)(7) to read as follows:

Section H36.103 *Takeoff test conditions.*

* * * * *

(b) * * *

(1) An airspeed of either $V_y$ ±5 knots or the lowest approved speed ±5 knots for the climb after takeoff, whichever speed is greater, must be established and maintained throughout the 10 dB-down time interval.

(2) * * *

(3) Upon reaching a point 1,640 feet (500 meters) from the noise measuring station, the helicopter must be stabilized at the maximum take-off power that corresponds to minimum installed engine(s) specification power available for the reference ambient conditions or gearbox torque limit, whichever is lower.

(4) The helicopter must be maintained throughout the 10 dB-down time interval at the best rate of climb speed $V_y$ ±5 knots, or the lowest approved speed for climb after takeoff, whichever is greater, for an ambient temperature at sea level of 25°C.

(5) The average rotor speed must not vary from the maximum normal operating rotor RPM by more than ±1.0 percent during the 10 dB-down time interval.

(6) The helicopter must stay within ±10° or ±20 m, whichever is greater, from the vertical above the reference track throughout the 10dB-down time interval.

(7) A constant takeoff configuration selected by the applicant must be maintained throughout the takeoff reference procedure with the landing gear position consistent with the airworthiness certification tests for establishing Best Rate-of-Climb and Speed for Best Rate-of-Climb.



12. In appendix H, Section H36.105 is amended by revising paragraphs (b), introductory text, (b)(1), (b)(3), (c)(1), and (c)(2) to read as follows:

Section H36.105 *Flyover test conditions.*

* * * * *

(b) A test series must consist of at least six flights with an equal number of runs in each direction, over the flight-track noise measuring station (with simultaneous measurements at all three noise measuring stations)—

(1) In level flight cruise configuration;

(2) * * *

(3) The helicopter must stay within ±10° or ±20 m, whichever is greater, from the vertical above the reference track throughout the 10 dB-down time interval.

(c) * * *

(1) At a speed of $0.9V_H$; $0.9V_{NE}$; $0.45V_H$ + 65 kts ($0.45V_H$ + 120 km/h); or $0.45V_{NE}$ + 65 kts ($0.45V_{NE}$ + 120 km/h), whichever speed is less, maintained throughout the measured portion of the flyover;

(2) At average rotor speed which must not vary from the maximum normal operating rotor RPM by more than ±1.0 percent during the 10 dB-down time interval.

* * * * *

13. In appendix H, Section H36.107 is amended by revising paragraphs (b)(3) and (b)(5) and adding new paragraph (b)(6) to read as follows:

Section H36.107 *Approach test conditions.*

* * * * *

(b) * * *

(3) The helicopter must stay within ±10° or ±20 m, whichever is greater, from the vertical above the reference track throughout the 10 dB-down time interval;

* * * * *

(4) * * *

(5) At average rotor speed which must not vary from the maximum normal operating rotor RPM by more than ±1.0 percent during the 10 dB-down time interval; and

(6) A constant approach configuration used in airworthiness certification tests, with the landing gear extended, must be maintained throughout the approach reference procedure.

* * * * *

14. In appendix H, Section H36.109 is revised to read as follows:

Section H36.109 *Measurement of helicopter noise received on the ground.*

The measurement system and the measurement, calibration and general analysis procedures to be used are provided in Appendix A, section A36.3 of this part.

15. In appendix H, Section H36.111 is amended by revising paragraph (c)(2), by removing paragraph (c)(2)(iv) and the undesignated text following (c)(2)(iv), by revising paragraphs (c)(2)(i), (c)(2)(ii) and (c)(2)(iii), and by revising paragraph (c)(3) to read as follows:

Section H36.111 *Reporting and correcting measured data.*

* * * * *

(c) * * *

(2) The measured flight path must be corrected by an amount equal to the difference between the applicant's predicted flight path for the certification reference conditions and the measured flight path at the test conditions. Necessary corrections relating to aircraft flight path or performance may be derived from FAA-approved data for the difference between measured and reference engine conditions, together with appropriate allowances for sound attenuation with distance. The Effective Perceived Noise Level (EPNL) correction must be less than 2.0 EPNdB except for take-off flight condition, where the correction must not exceed 4.0 EPNdB, of which the arithmetic sum of $\Delta_1$ (described in section H36.205(f)(1)) and the term $-7.5 \log (AL/AL_r)$ from $\Delta_2$ term (described in section H36.205(g)(1)(i)) must not exceed 2.0 EPNdB, for any combination of the following:

(i) The aircraft is not passing vertically above the measuring station.

(ii) Any difference between the reference flight track and the actual test flight track.

(iii) Detailed correction requirements prescribed in section H36.205 of this appendix.

(3) Aircraft sound pressure levels within the 10 dB-down time interval must exceed the mean background sound pressure levels determined under section B36.3.9.11 by at least 3 dB in each one-third octave band or be corrected under an FAA approved method to be included in the computation of the overall noise level of the aircraft. An EPNL may not be computed or reported from data from which more than four one-third octave bands in any spectrum within the 10 dB-down time interval have been excluded under this paragraph.

* * * * *

16. Section H36.113 is amended by revising paragraphs (b) and (c)(1)(iii) to read as follows:

Section H36.113 *Atmospheric attenuation of sound.*

* * * * *

(b) *Attenuation rates.* The procedure for determining the atmospheric attenuation rates of sound with distance for each one-third octave bands must be in accordance with Society of Automotive Engineering (SAE) ARP 866A included in section A36.7.

(c) * * *

(1) * * *

(iii) The temperature and relative humidity measured at 10 meters above the ground must be used to adjust for propagation path absorption.

* * * * *

17. In appendix H, Section H36.205 is amended by removing paragraphs (a)(1)(iii), (a)(2), and (a)(3)(v); removing the last two sentences in paragraph (b)(3) and (d)(3); by revising paragraphs (a)(1)(i), (a)(1)(ii), (a)(3)(iii), (a)(3)(iv), (b)(2), (c)(1), (d)(2), (e), (f)(1)(i), (f)(2)(i), (f)(3), (f)(4), and (g)(1)–(i)–(iv), and by revising Figures H1, H2, and H3 to read as follows:

Section H36.205 *Detailed data correction procedures.*

* * * * *

(a) * * *

(1) If a positive or negative value results from any difference between reference and test conditions, an appropriate correction must be made to the EPNL calculated from the measured noise data. Conditions that can result in a different value include:

(i) Atmospheric absorption of sound under test conditions that are different than the reference; or

(ii) Test flight path at an altitude that is different than the reference

(3) * * *

(iii) The distances for which PNLTM is observed from both the test and reference profiles to the noise measuring station must be calculated and used to determine a noise duration correction due to any change in the altitude of aircraft flyover. The duration correction must be added algebraically to the EPNL calculated from the measured noise data.

(iv) For aircraft flyover, from FAA-approved data in the form of curves or tables giving the variation of EPNL with Mach Number, source noise corrections are determined and must be added to the EPNL, to account for noise level changes due to differences between test conditions and reference conditions.

(b) * * *

(2) For the actual takeoff, the helicopter approaches position C in level flight at 65 feet (20 meters) above ground level at the flight track noise measuring station and at either $V_y$ ±5 knots or the lowest approved speed for the climb after takeoff, whichever speed is greater.

* * * * *

*(c) Level flyover profiles.* (1) The noise type certification level flyover profile is shown in Figure H2. Airspeed must be stabilized within ±5 knots of the reference airspeed given in section H36.3(d). If the test requirements are otherwise met, flight direction may be reversed for each subsequent flyover, to obtain three test runs in each direction.

* * * * *

(d) * * *

(2) The helicopter approaches position H along a 6° (±0.5°) average approach slope throughout the 10dB-down time interval. The approach procedure must be acceptable to the FAA.

* * * * *

(e) *Correction of noise at source during level flyover.* (1) For level overflight, if any combination of the following factors, airspeed deviations from reference, rotor speed deviations from reference, and temperature deviations from reference, results in a noise

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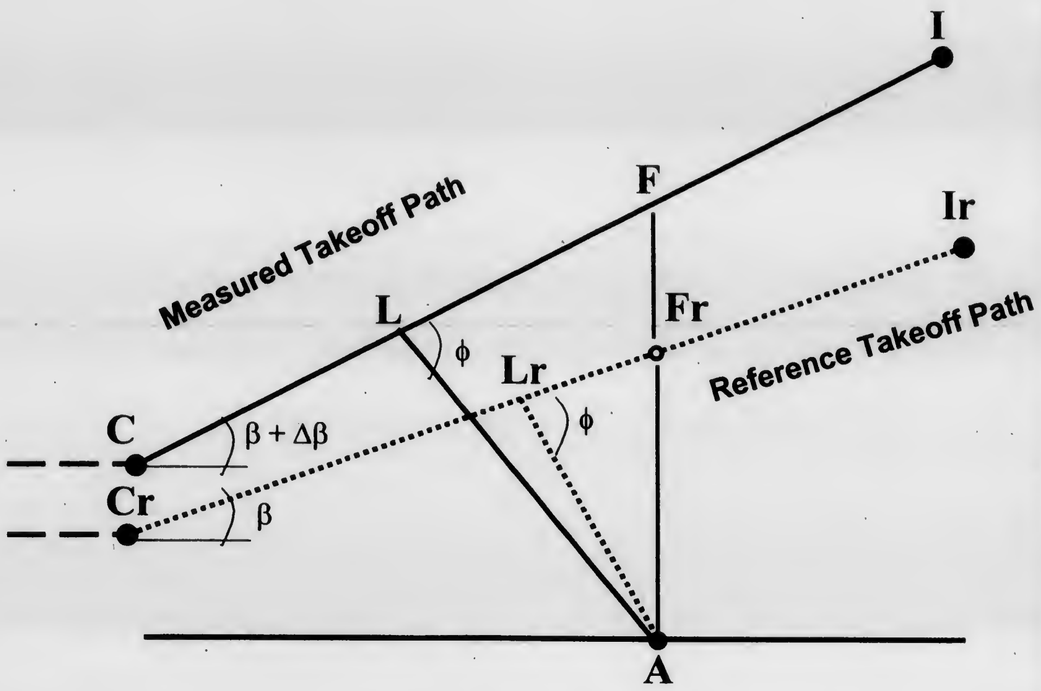



**Figure H1.**
**Comparison of Measured and Reference Takeoff Profiles**



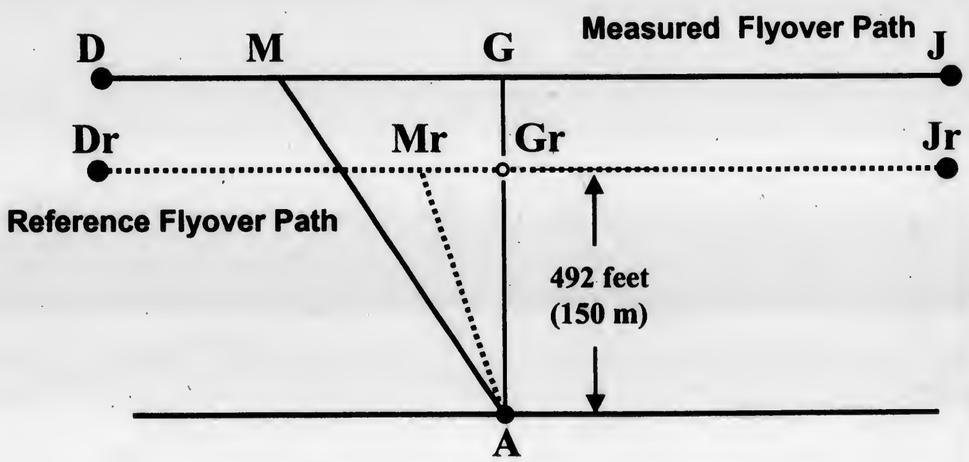



**Figure H2.**
**Comparison of Measured and Reference Flyover Profiles**

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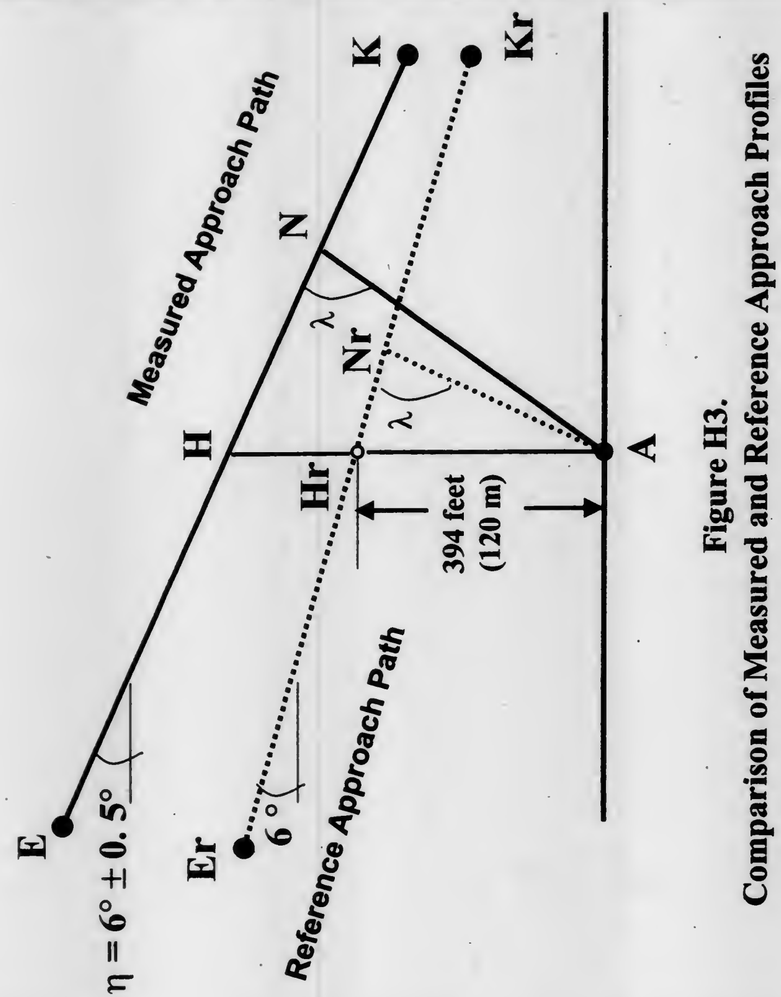



Figure H3. Comparison of Measured and Reference Approach Profiles

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correlating parameter whose value deviates from the reference value of this parameter, then source noise adjustments must be determined from the manufacturer's data approved by the FAA.

(f) * * *

(1) * * *

(i) Step 1. A set of corrected values are then computed as follows:

SPLic = SPLi + (α i—α io) (AL'– ALr) + 20 log (AL/ALr)

where SPLi and SPLic are the measured and corrected sound pressure levels, respectively, in the -ith one-third octave band. The first correction term accounts for the effects of change in atmospheric sound absorption where αi and αio are the sound absorption coefficients for the test and reference atmospheric conditions, respectively, for the -ith one-third octave band, and AL is the measured takeoff sound propagation path. The second correction term accounts for the effects of atmospheric sound absorption on the change in the sound propagation path length where ALr is the corrected takeoff sound propagation path. The third correction term accounts for the effects of the inverse square law on the change in the sound propagation path length.

* * * * *

(2) *Approach flight path.* (i) The procedure described in paragraph (f)(1) of this section for takeoff flight paths is also used for the approach flight path, except that the value for SPLic relate to the approach sound propagation paths shown in Figure H3 as follows:

SPLic = SPLi + (α i—α io) AN + α io (AN – ANr) + 20 log (AN/ANr)



where the lines AN and ANr are the measured and reference approach sound propagation paths, respectively.

* * * * *

(3) *Sideline microphones.* The procedure prescribed in paragraph (f)(1) of this section for takeoff flight paths is also used for the propagation to the sideline microphones, except that the values of SPLic relate only in the measured sideline sound propagation path as follows:

SPLic = SPLi + (α i – α io)KX + α io (KX – KXr) + 20 log (KX/KXr)

K is the sideline measuring station where:

X = L and Xr = Lr for takeoff
X = M and Xr = Mr for flyover
X = N and Xr = Nr for approach

(4) *Level flyover flight path.* The procedure described in paragraph (f)(1) of this section for takeoff flight paths is also used for the level flyover flight path, except that the values of SPLic relate only to the flyover sound propagation paths as follows:

SPLic = SPLi + (α i – α io)AM + α io (AM – AMr) + 20 log (AM/AMr)

(g) * * *

(1) * * *

(i) *Takeoff flight poth.* For the takeoff flight path shown in Figure H1, the correction term is calculated using the formula—

$\Delta_2 = -7.5 \log (AL/ALr) + 10 \log (V/Vr)$

which represents the correction that must be added algebraically to the EPNL calculated from the measured data. The lengths AL and ALr are the measured and corrected takeoff distances from the noise measuring station A to the measured and the corrected flight paths, respectively. A negative sign indicates that, for the particular case of a duration correction, the EPNL calculated from the measured data must be reduced if the measured flight path is at greater altitude than the corrected flight path.

(ii) *Approach flight path.* For the approach flight path shown in Figure H3, the correction term is calculated using the formula—

$\Delta_2 = -7.5 \log (AN/ANr) + 10 \log (V/Vr)$

where AN is the measured approach distance from the noise measuring station A to the measured flight path and 394 feet is the overhead distance from station A to the reference flight path.

(iii) *Sideline microphones.* For the sideline flight path, the correction term is calculated using the formula—

$\Delta_2 = -7.5 \log (KX/KXr) + 10 \log (V/Vr)$

K is the sideline measuring station
where X = L and Xr = Lr for takeoff
where X = M and Xr = Mr for flyover
where X = N and Xr = Nr for approach

(iv) *Level flyover flight paths.* For the level flyover flight path, the correction term is calculated using the formula—

$\Delta_2 = -7.5 \log (AM/AMr) + 10 \log (V/Vr)$

where AM is the measured flyover distance from the noise measuring station A to the measured flight path and 492 feet is the overhead distance from station A to the reference flight path.

* * * * *

18. I appendix H, Section H36.305(a)(2) is revised to read as follows:

Section H36.305 *Noise levels.*

(a) * * *

(2) *Stage 2* noise limits are as follows:

(i) *For takeoff calculated noise levels*—109 EPNdB for maximum takeoff weights of 176,370 pounds or more, reduced by 3.0 EPNdB per halving of the weight down to 89 EPNdB, after which the limit is constant.

(ii) *For flyover calculated noise levels*—108 EPNdB for maximum weights of 176,370 pounds or more, reduced by 3.0 EPNdB per halving of the weight down to 88 EPNdB, after which the limit is constant.

(iii) *For approach calculated noise levels*—110 EPNdB for maximum weights of 176,370 pounds or more, reduced by 3.0 EPNdB per halving of the weight down to 90 EPNdB, after which the limit is constant.

* * * * *

**Appendix J [Amended]**

19. Amend the title of Appendix J and section J36.1 introductory text by removing the reference "6,000" and adding "7,000" in its place

20. In appendix J, Section J36.3 is amended by revising paragraph (c) introductory text and paragraph (c)(1) to read as follows:

Section J36.3 *Reference test conditions.*

* * * * *

(c) *Level flyover reference profile.* The reference flyover profile is a level flight 492 feet (150 meters) above ground level as measured at the noise measuring station. The reference flyover profile has a linear flight track and passes directly over the noise monitoring station. Airspeed is stabilized at $0.9V_H$; $0.9V_{NE}$; $0.45V_H$ + 65 kts ($0.45V_H$ + 120 km/h); or $0.45V_{NE}$ + 65 kts ($0.45V_{NE}$ + 120 km/h), whichever of the four airspeeds is least, and maintained throughout the measured portion of the flyover. Rotor speed is stabilized at the power on maximum normal operating RPM throughout the 10 dB-down time interval.

(1) For noise certification purposes, $V_H$ is defined as the airspeed in level flight obtained using the minimum specification engine power corresponding to maximum continuous power available for sea level, 77°F (25°C) ambient conditions at the relevant maximum certificated weight. The value of $V_H$ and $V_{NE}$ used for noise certification must be included in the Flight Manual.

* * * * *

21. In appendix J, Section J36.101 is amended by revising paragraph (c)(4) and (c)(6) to read as follows:

Section J36.101 *Noise certification test and measurement conditions.*

* * * * *

(c) * * *

(4) Measurements of ambient temperature, relative humidity, wind speed, and wind direction must be made between 4 feet (1.2 meters) and 33 feet (10 meters). Unless otherwise approved by the FAA, ambient temperature and relative humidity must be measured at the same height above the ground.

* * * * *

(6) If the measurement site is within 2,000 meters of an airport's weather measurement equipment, the airport reported temperature, relative humidity and wind velocity may be used. A fixed meteorological station (such as those found at airports or other facilities), within 2,000 meters of the noise measuring station, may meet this requirement.

* * * * *

22. In appendix J, Section J36.109 is amended by revising paragraphs (d)(1)(ii) and (e)(1) by removing the reference to "section H36.109(c)(3) of appendix H" and adding the reference "section A36.3.6 of appendix B" in its place and revising paragraph (c)(4) to read as follows:

Section J36.109 *Measurement of helicopter noise received on the ground*

* * * * *

(c)(4) Procedures for calibration and checking of system used must follow those described in Section A36.3.9.

* * * * *

23. Section J36.305 is amended by revising paragraph (a) to read as follows:

Section J36.305 *Noise Limits.*

(a) For primary, normal, transport, and restricted category helicopters having a maximum certificated takeoff weight of not more than 7,000 pounds and noise tested under this appendix, the Stage 2 noise limit is 82 decibels SEL for helicopters up to 1,737 pounds maximum certificated takeoff weight at which the noise certification is requested, and increasing at a rate of 3.0 decibels per doubling of weight thereafter. The limit may be calculated by the equation: $L_{AE}$ (limit) = 82 + 3.0 [$\log_{10}$ (MTOW/1737)/$\log_{10}$(2)] dB, where MTOW is the maximum takeoff weight, in pounds, for which certification under this appendix is requested.

Issued in Washington, DC, on September 19, 2000.

**James D. Erickson,**

*Director of Environment and Energy.*

[FR Doc. 00–24634 Filed 10–4–00; 8:45 am]

BILLING CODE 4910–13–P

VOL
65
ISS
194
OC
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2000
UMI

Federal Register

Thursday,
October 5, 2000

Part VI

# Department of the Treasury

## Customs Service

19 CFR Parts 10 and 163
United States-Caribbean Basin Trade Partnership Act and Caribbean Basin Initiative; Final Rule

VOL 65 ISS 194 OCT 5 2000 UMI



**DEPARTMENT OF THE TREASURY**

**Customs Service**

**19 CFR Parts 10 AND 163**

**[T.D. 00–68]**

**RIN 1515–AC76**

## United States-Caribbean Basin Trade Partnership Act and Caribbean Basin Initiative

**AGENCY:** U.S. Customs Service, Department of the Treasury.

**ACTION:** Interim regulations; solicitation of comments.

**SUMMARY:** This document sets forth interim amendments to the Customs Regulations to implement the trade benefit provisions for Caribbean Basin countries contained in Title II of the Trade and Development Act of 2000. The trade benefits under Title II, also referred to as the United States-Caribbean Basin Trade Partnership Act (the CBTPA), apply to Caribbean Basin countries designated by the President and involve the entry of specific textile and apparel articles free of duty and free of any quantitative restrictions, limitations, or consultation levels and the extension of NAFTA duty treatment standards to non-textile articles that are excluded from duty-free treatment under the Caribbean Basin Initiative (CBI) program. The regulatory amendments contained in this document reflect and clarify the statutory standards for the trade benefits under the CBTPA and also include specific documentary, procedural and other related requirements that must be met in order to obtain those benefits. Finally, this document also includes some interim amendments to the existing Customs Regulations implementing the CBI to conform those regulations to previous amendments to the CBI statute.

**DATES:** Interim rule effective October 1, 2000; comments must be submitted by December 4, 2000.

**ADDRESSES:** Written comments may be addressed to, and inspected at, the Regulations Branch, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., 3rd Floor, Washington, DC 20229.

**FOR FURTHER INFORMATION CONTACT:** Operational issues: Cathy Sauceda, Office of Field Operations (202–927–4198).

Legal issues regarding textiles: Cynthia Reese, Office of Regulations and Rulings (202–927–1361).

Other legal issues: Craig Walker, Office of Regulations and Rulings (202–927–1116).

**SUPPLEMENTARY INFORMATION:**

### Background

### United States-Caribbean Basin Trade Partnership Act

On May 18, 2000, President Clinton signed into law the Trade and Development Act of 2000 (the "Act"), Public Law 106–200, 114 Stat. 251. Title II of the Act concerns trade benefits for the Caribbean Basin and is referred to in the Act as the "United States-Caribbean Basin Trade Partnership Act" (the "CBTPA").

Subtitle A of Title II of the Act concerns trade policy for Caribbean Basin countries and consists of section 201 (short title), section 202 (findings and policy), and section 203 (definitions). Subtitle B of Title II of the Act addresses trade benefits for Caribbean Basin countries and consists of section 211 (temporary provisions to provide additional trade benefits to certain beneficiary countries), section 212 (duty-free treatment for certain beverages made with Caribbean rum), and section 213 (meetings of trade ministers and USTR). This document specifically concerns the additional trade benefit provisions of section 211.

Subsection (a) of section 211 of the Act revises section 213(b) of the Caribbean Basin Economic Recovery Act (the CBERA, also referred to as the Caribbean Basin Initiative, or CBI, statute codified at 19 U.S.C. 2701–2707). The CBI is a duty preference program that applies to exports from those Caribbean Basin countries that have been designated by the President as program beneficiaries. Although the origin and related rules for eligibility for duty-free treatment under the CBI are similar to those under the older Generalized System of Preferences duty-free program (the GSP, Title V of the Trade Act of 1974, codified at 19 U.S.C. 2461–2467), the CBI differs from the GSP in a number of respects, including the fact that under the CBI all articles are eligible for duty-free treatment (that is, they do not have to be specially designated as eligible by the President) except those that are specifically excluded under the statute. Prior to the amendment effected by subsection (a) of section 211 of the Act, section 213(b) of the CBI statute was headed "articles to which duty-free treatment does not apply" and consisted only of a list of specific types of products excluded from CBI duty-free treatment.

As a result of the amendment made by subsection (a) of section 211 of the Act, section 213(b) of the CBI statute now is headed "import-sensitive articles" and consists of five principal paragraphs. These five paragraphs are summarized below.

Paragraph (1) of amended section 213(b) provides that, subject to paragraphs (2) through (5), the duty-free treatment provided under the CBI does not apply to the following:

1. Textile and apparel articles which were not eligible articles for purposes of the CBI on January 1, 1994, as the CBI was in effect on that date [subparagraph (A)];
2. Footwear not designated at the time of the effective date of the CBI (that is, August 5, 1983) as eligible articles for the purpose of the GSP [subparagraph (B)];
3. Tuna, prepared or preserved in any manner, in airtight containers [subparagraph (C)];
4. Petroleum, or any product derived from petroleum, provided for in headings 2709 and 2710 of the Harmonized Tariff Schedule of the United States (HTSUS) [subparagraph (D)];
5. Watches and watch parts (including cases, bracelets, and straps), of whatever type including, but not limited to, mechanical, quartz digital or quartz analog, if those watches or watch parts contain any material which is the product of any country with respect to which HTSUS column 2 rates of duty apply [subparagraph (E)]; or
6. Articles to which reduced rates of duty apply under section 213(h) (that is, handbags, luggage, flat goods, work gloves, and leather wearing apparel that are a product of a CBI beneficiary country and that were not designated on August 5, 1983, as eligible articles for purposes of the GSP) [subparagraph (F)].

The content of this new paragraph (1) corresponds to that of entire former section 213(b) but with some minor wording changes. Therefore, paragraphs (2) through (5) of amended section 213(b), as discussed below, are entirely new provisions.

Paragraph (2) of amended section 213(b) concerns textile and apparel products. Paragraph (2)(A) provides, during the "transition period," for the application of preferential treatment described in paragraph (2)(B) to specific textile and apparel articles. Under paragraph (2)(B), "preferential treatment" means, except where the President takes bilateral emergency action under paragraph (2)(E), that the articles in question may enter the United States free of duty and free of any quantitative restrictions, limitations, or consultation levels. Section 213(b)(5)(D) defines "transition period" for purposes of section 213(b) as meaning, with respect to a CBTPA beneficiary country, the period that



begins on October 1, 2000, and ends on the earlier of September 30, 2008, or the date on which a free trade agreement enters into force with respect to the United States and the CBTPA beneficiary country. Section 213(b)(5)(B) defines "CBTPA beneficiary country" for purposes of section 213(b) as meaning any "beneficiary country" as defined in section 212(a)(1)(A) of the CBI statute (19 U.S.C. 2702(a)(1)(A)) which the President designates as a CBTPA beneficiary country, taking into account the designation criteria specified in sections 212(b) and (c) and other appropriate designation criteria including those specified under section 213(b)(5)(B). The textile and apparel articles under paragraph (2)(A) of section 213(b) to which the preferential treatment applies are as follows:

1. Apparel articles assembled in one or more CBTPA beneficiary countries from fabrics wholly formed and cut in the United States, from yarns wholly formed in the United States, (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are wholly formed and cut in the United States) that are entered under subheading 9802.00.80 of the HTSUS [paragraph (2)(A)(i)(I)];
2. Apparel articles assembled in one or more CBTPA beneficiary countries from fabrics wholly formed and cut in the United States, from yarns wholly formed in the United States, (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are wholly formed and cut in the United States) that are entered under Chapter 61 or 62 of the HTSUS, if, after that assembly, the articles would have qualified for entry under subheading 9802.00.80 of the HTSUS but for the fact that the articles were embroidered or subjected to stone-washing, enzyme-washing, acid washing, perma-pressing, oven-baking, bleaching, garment-dyeing, screen printing, or other similar processes [paragraph (2)(A)(i)(II)];
3. Apparel articles cut in one or more CBTPA beneficiary countries from fabric wholly formed in the United States from yarns wholly formed in the United States (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are wholly formed in the United States), if those articles are assembled in one or more of those countries with thread formed in the United States [paragraph (2)(A)(ii)];
4. Apparel articles knit to shape (other than socks provided for in heading 6115 of the HTSUS) in a CBTPA beneficiary country from yarns wholly formed in the United States, and knit apparel articles (other than non-underwear t-shirts) cut and wholly assembled in one or more CBTPA beneficiary countries from fabric formed in one or more CBTPA beneficiary countries or the United States from yarns wholly formed in the United States (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are formed in one or more CBTPA beneficiary countries), but subject to the application of annual quantitative limits expressed in square meter equivalents during the 8-year transition period and with percentage increases of those limits in each of the first four years [paragraph (2)(A)(iii)(I)];
5. Non-underwear t-shirts, classifiable under subheadings 6109.10.00 and 6109.90.10 of the HTSUS, made in one or more CBTPA beneficiary countries from fabric formed in one or more CBTPA beneficiary countries from yarns wholly formed in the United States, but subject to the application of annual quantitative limits expressed in dozens and with percentage increases of those limits in each of the first four years and with application of a set quantitative limit for each year after the fourth year [paragraph (2)(A)(iii)(III)];
6. Brassieres classifiable under subheading 6212.10 of the HTSUS, if both cut and sewn or otherwise assembled in the United States, or one or more CBTPA beneficiary countries, or both, but subject to a requirement that, in each of seven 1-year periods starting on October 1, 2001, at least 75 percent of the value of the fabric contained in the articles in the preceding year was attributed to fabric components formed in the United States (the 75 percent standard rises to 85 percent for a producer found by Customs to have not met the 75 percent standard in the preceding year) [paragraph (2)(A)(iv)];
7. Apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more CBTPA beneficiary countries, from fabrics or yarn that is not formed in the United States or in one or more CBTPA beneficiary countries, to the extent that apparel articles of those fabrics or yarn would be eligible for preferential treatment, without regard to the source of the fabrics or yarn, under Annex 401 of the North American Free Trade Agreement (NAFTA). (This CBTPA provision in effect applies to apparel articles which are originating goods, and thus are entitled to preferential duty treatment, under the NAFTA tariff shift and related rules based on the fact that the fabrics or yarns used to produce them were determined to be in short supply in the context of the NAFTA. The fabrics and yarns in question include fine count cotton knitted fabrics for certain apparel, linen, silk, cotton velveteen, fine wale corduroy, Harris Tweed, certain woven fabrics made with animal hairs, certain lightweight, high thread count poly-cotton woven fabrics, and certain lightweight, high thread count broadwoven fabrics used in the production of men's and boys' shirts—see House Report 106–606, 106th Congress, 2d Session, at page 77, which explains a substantively identical provision of the African Growth and Opportunity Act that is contained in Title I of the Act.) [paragraph (2)(A)(v)(I)];
8. Apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more CBTPA beneficiary countries, from fabrics or yarn that is not formed in the United States or in one or more CBTPA beneficiary countries and that is not described in paragraph (2)(A)(v)(I), to the extent that the President has determined that the fabric or yarn cannot be supplied by the domestic industry in commercial quantities in a timely manner and has proclaimed the treatment provided under paragraph (2)(A)(v)(I) [paragraph (2)(A)(v)(II)];
9. A handloomed, handmade, or folklore textile or apparel article of a CBTPA beneficiary country that the President and representatives of the CBTPA beneficiary country concerned mutually agree upon as being a handloomed, handmade, or folklore good of a kind described in section 2.3(a), (b), or (c) or Appendix 3.1.B.11 of Annex 300-B of the NAFTA and that is certified as such by the competent authority of the beneficiary country [paragraphs (2)(A)(vi) and (2)(C)];
10. Textile luggage assembled in a CBTPA beneficiary country from fabric wholly formed and cut in the United States, from yarns wholly formed in the United States, that is entered under subheading 9802.00.80 of the HTSUS [paragraph (2)(A)(viii)(I)]; and
11. Textile luggage assembled from fabric cut in a CBTPA beneficiary country from fabric wholly formed in the United States from yarns wholly formed in the United States [paragraph (2)(A)(viii)(II)].

In addition, paragraph (2)(A)(vii) sets forth special rules that apply for purposes of determining the eligibility of articles for preferential treatment under paragraph (2). These special rules are as follows:

1. Paragraph (2)(A)(vii)(I) sets forth a rule regarding the treatment of findings and trimmings. It provides that an article otherwise eligible for preferential

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treatment under paragraph (2) will not be ineligible for that treatment because the article contains findings or trimmings of foreign origin, if those findings and trimmings do not exceed 25 percent of the cost of the components of the assembled product. This provision specifies the following as examples of findings and trimmings: Sewing thread, hooks and eyes, snaps, buttons, "bow buds," decorative lace trim, elastic strips (but only if they are each less than 1 inch in width and are used in the production of brassieres), zippers (including zipper tapes), and labels. However, this provision also provides that sewing thread will not be treated as findings or trimmings in the case of an article described in paragraph (2)(A)(ii) (because that paragraph specifies that the thread used in the assembly of the article must be formed in the United States and thus cannot be of "foreign" origin).

2. Paragraph (2)(A)(vii)(II) sets forth a rule regarding the treatment of specific interlinings, that is, a chest type plate, "hymo" piece, or "sleeve header," of woven or weft-inserted warp knit construction and of coarse animal hair or man-made filaments. Under this rule, an article otherwise eligible for preferential treatment under paragraph (2) will not be ineligible for that treatment because the article contains interlinings of foreign origin, if the value of those interlinings (and any findings and trimmings) does not exceed 25 percent of the cost of the components of the assembled article. This provision also provides for the termination of this treatment of interlinings if the President makes a determination that United States manufacturers are producing those interlinings in the United States in commercial quantities.

3. Paragraph (2)(A)(vii)(III) sets forth a *de minimis* rule which provides that an article that would otherwise be ineligible for preferential treatment under paragraph (2) because the article contains fibers or yarns not wholly formed in the United States or in one or more CBTPA beneficiary countries will not be ineligible for that treatment if the total weight of all those fibers and yarns is not more than 7 percent of the total weight of the good. However, this provision also states that, notwithstanding the foregoing rule, an apparel article containing elastomeric yarns will be eligible for preferential treatment under paragraph (2) only if those yarns are wholly formed in the United States.

4. Finally, paragraph (2)(A)(vii)(IV) sets forth a special origin rule that provides that an article otherwise eligible for preferential treatment under paragraph (2)(A)(i) or paragraph (2)(A)(ii) will not be ineligible for that treatment because the article contains nylon filament yarn (other than elastomeric yarn) that is classifiable under subheading 5402.10.30, 5402.10.60, 5402.31.30, 5402.31.60, 5402.32.30, 5402.32.60, 5402.41.10, 5402.41.90, 5402.51.00, or 5402.61.00 of the HTSUS duty-free from a country that is a party to an agreement with the United States establishing a free trade area, which entered into force before January 1, 1995.

Paragraph (3) of amended section 213(b) is entitled "transition period treatment of certain other articles originating in beneficiary countries." Paragraph (3)(A) provides that, except in the case of any article accorded duty-free treatment under U.S. Note 2(b) to Subchapter II of Chapter 98 of the HTSUS (that is, certain articles assembled or processed in a CBI beneficiary country in whole of components or ingredients that are a product of the United States), the tariff treatment accorded at any time during the transition period to any article referred to in any of subparagraphs (B) through (F) of paragraph (1) that is a "CBTPA originating good" will be identical to the tariff treatment that is accorded at that time under Annex 302.2 of the NAFTA to an article described in the same 8-digit subheading of the HTSUS that is a good of Mexico and is imported into the United States. Section 213(b)(5)(C)(i) defines "CBTPA originating good" for purposes of section 213(b) as meaning a good that meets the rules of origin for a good set forth in Chapter 4 of the NAFTA as implemented pursuant to United States law. Section 213(b)(5)(C)(ii) sets forth the following rules for applying Chapter 4 of the NAFTA with respect to a CBTPA beneficiary country for purposes of section 213(b): (1) Only the United States and a CBTPA beneficiary country may be treated as being a party to the NAFTA; (2) any reference to trade between the United States and Mexico will be deemed to refer to trade between the United States and a CBTPA beneficiary country; (3) any reference to a party will be deemed to refer to a CBTPA beneficiary country or the United States; and (4) any reference to parties will be deemed to refer to any combination of CBTPA beneficiary countries or to the United States and one or more CBTPA beneficiary countries (or any combination of those countries). In the case of handbags, luggage, flat goods, work gloves, and leather wearing apparel to which reduced rates of duty apply under section 213(h), paragraph (3)(B) of section 213(b) provides that, in implementing the provisions of paragraph (3)(A), the rate of duty under section 213(h) will apply if it is lower than the rate of duty resulting under paragraph (3)(A).

The effect of paragraph (3) of section 213(b) is to provide for the application of NAFTA tariff treatment to goods excluded from the CBI, except for textile and apparel articles (some of which are separately addressed under paragraph (2) of section 213(b) as discussed above). Thus, imports of footwear, canned tuna, petroleum and petroleum products, watches and watch parts, handbags, luggage, flat goods, work gloves, and leather wearing apparel would be eligible for a reduction in duty equal to the preference Mexican products enjoy in accordance with the staged duty-rate reductions set forth in Annex 302.2 of the NAFTA, provided that the merchandise in question meets the origin rules for a "NAFTA originating good" (in other words, it must meet the NAFTA rules of origin set forth in General Note 12 of the HTSUS and in the Appendix to Part 181 of the Customs Regulations (19 CFR Part 181)).

Paragraph (4) of amended section 213(b) is entitled "Customs procedures" and sets forth regulatory standards for purposes of preferential treatment under paragraph (2) or (3). It includes provisions relating to import procedures, prescribes a specific factual determination that the President must make regarding the implementation of certain procedures and requirements by each CBTPA beneficiary country, and sets forth responsibilities of Customs and the United States Trade Representative regarding the study of, and reporting to Congress on, cooperative and other actions taken by each CBTPA beneficiary country to prevent transshipment and circumvention in the case of textile and apparel goods. The specific provisions under paragraph (4) that require regulatory treatment in this document are the following:

1. Paragraph (4)(A)(i) provides that any importer that claims preferential treatment under paragraph (2) or (3) must comply with customs procedures similar in all material respects to the requirements of Article 502(1) of the NAFTA as implemented pursuant to United States law, in accordance with regulations promulgated by the Secretary of the Treasury. The NAFTA provision referred to in paragraph (4)(A)(i) concerns the use of a Certificate of Origin and specifically requires that the importer (1) make a written declaration, based on a valid Certificate of Origin, that the imported good qualifies as an originating good, (2) have the Certificate in its possession at the time the declaration is made, (3) provide the Certificate to Customs on request, and (4) promptly make a corrected declaration and pay any duties owing where the importer has reason to believe that a Certificate on which a declaration was based contains information that is not correct.

2. Paragraph (4)(B) provides that the Certificate of Origin that otherwise would be required pursuant to the provisions of paragraph (4)(A)(i) will not be required in the case of an article imported under paragraph (2) or (3) if that Certificate of Origin would not be required under Article 503 of the NAFTA (as implemented pursuant to United States law), if the article were imported from Mexico. Article 503 of the NAFTA sets forth, with one general exception, three specific circumstances in which a NAFTA country may not require a Certificate of Origin.



**Other Changes to the CBI Program**

Section 235 of the Trade and Tariff Act of 1984 (Public Law 98–573, 98 Stat. 2948) amended section 213(a) of the CBI statute (19 U.S.C. 2703(a)) by adding at the end a new paragraph (a)(3) (now paragraph (a)(4)). This provision provides that (1) notwithstanding 19 U.S.C. 1311, the products of a beneficiary country which are imported directly from any beneficiary country into Puerto Rico may be entered under bond for processing or use in manufacturing in Puerto Rico, and (2) no duty will be imposed on the withdrawal from warehouse of the product of that processing or manufacturing if, at the time of that withdrawal, the product meets the requirements of section 213(a)(1)(B) (that is, the CBI 35 percent value-content requirement). In connection with the publication of the final CBI implementing regulations (see T.D. 84–237, published in the **Federal Register** at 49 FR 47986 on December 7, 1984), Customs noted that this amendment of the CBI statute was intended to allow processing or manufacturing in a Customs bonded manufacturing warehouse in Puerto Rico at the tail end of the manufacturing process so as to enable a product from a CBI beneficiary country to meet the 35 percent value-content requirement. Customs further noted in T.D. 84–237 that the amendment resulted in a significant change in the CBI rules of origin since an article could be substantially transformed in the Puerto Rican warehouse so as to lose its status as a product of a beneficiary country but would still be entitled to duty-free treatment upon withdrawal from the warehouse provided that (1) the article entered in the warehouse was a product of, and was imported directly from, a beneficiary country, and (2) the article withdrawn from the warehouse meets the 35 percent value-content requirement. Although no change was made to the CBI regulatory texts at that time in response to this statutory amendment, Customs now believes that it would be preferable for purposes of transparency to reflect this aspect of the CBI statute within the existing CBI regulatory structure. This document therefore includes a conforming amendment to the CBI regulations to accomplish this.

Section 212 of the Customs and Trade Act of 1990 (Public Law 101–382, 104 Stat. 629) amended section 213 of the CBI statute (1) by adding a new subsection (h) which requires the President to proclaim specified reductions in the rates of duty on handbags, luggage, flat goods, work gloves, and leather wearing apparel that are the product of a beneficiary country and that were not designated on August 5, 1983, as eligible articles for purposes of the GSP, and (2) by making consequential conforming changes to subsection (b) which, as indicated above, at that time consisted only of a list of products excluded from duty-free treatment under the CBI. Although some of these changes made by section 212 of the 1990 Act have been superseded by the changes made by subsection (a) of section 211 of the Act as discussed above, the basic reduced duty principle reflected in section 213(h) of the CBI statute remains intact and warrants regulatory treatment. Accordingly, regulatory amendments are included in this document for this purpose.

Finally, section 215 of the Customs and Trade Act of 1990 amended section 213(a) of the CBI statute by adding a new paragraph (5) which provides that the duty-free treatment provided for under the CBI will apply to an article (other than an article listed in section 213(b)) which is the growth, product, or manufacture of the Commonwealth of Puerto Rico if (1) the article is imported directly from the beneficiary country into the customs territory of the United States, (2) the article was by any means advanced in value or improved in condition in a beneficiary country, and (3) if any materials are added to the article in a beneficiary country, those materials are a product of a beneficiary country or the United States. This amendment was intended to ensure that a product made in Puerto Rico which is sent to a CBI beneficiary country for a minimal amount of processing would be eligible for duty-free treatment under the CBI when imported into the United States even though the article has not been substantially transformed in the CBI beneficiary country (see House Report 101–650, 101st Congress, 2d Session, at 131). This document includes an amendment to the Customs Regulations to prescribe standards for the application of this provision.

In addition, this document includes a number of editorial changes to the CBI regulatory texts to conform those texts to the statutory changes discussed above.

**Section-by-Section Discussion of Interim Amendments**

*Section 10.191*

The amendments to this section involve the definitions in paragraph (b) and include changing various cross-references to "§ 10.198" to reflect the addition of new §§ 10.198a and 10.198b as discussed below. In addition, paragraphs (b)(2)(i) and (b)(2)(ii) are revised, and a new paragraph (b)(2)(vi) is added, to reflect subparagraphs (1)(A), (B), and (F) of section 213(b) of the CBI statute as amended by subsection (a) of section 211 of the Act.

*Sections 10.192 and 10.193*

The amendments to these sections involve cross-reference changes similar to those made in § 10.191.

*Section 10.195*

The amendment to this section involves a revision of paragraph (b) (which concerns the addition of value in the U.S. Virgin Islands and in the Commonwealth of Puerto Rico) to accommodate the amendment to the CBI statute made by section 235 of the Trade and Tariff Act of 1984. The amendment consists of the designation of the existing regulatory text as paragraph (b)(1) and the addition of a new paragraph (b)(2) to cover manufacturing in a bonded warehouse in Puerto Rico after final exportation of an article from a beneficiary country. The paragraph (b)(2) text clarifies the statutory reference to "products of" a beneficiary country as meaning products that meet the "grown, produced, or manufactured" standard set forth in § 10.195(a), because the term "product of" has been consistently interpreted by Customs to refer to products that meet that standard and, since Congress is presumed to have known about that interpretation when it drafted the statute, Customs believes that this result

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would be consistent with Congressional intent. For the same reason, the paragraph (b)(2) text clarifies the meaning of "imported directly" with reference to the provisions of § 10.193.

*New § 10.198a*

This section covers the basic duty reduction principle of section 213(h) of the CBI statute as added by section 212 of the Customs and Trade Act of 1990. The exception clause at the beginning of this new section has been included because of the potential effect that paragraph (3) of amended section 213(b) would have on the application of reduced duty rates under section 213(h)-see new § 10.233 discussed and set forth below. Although the relevant legislative history is silent on the question of what origin and preference rules should apply beyond the "product of" language of section 213(h), Customs does not believe that Congress intended that less stringent rules should apply for these import-sensitive products than would apply to other products that are eligible for full CBI duty-free treatment. Accordingly, this new § 10.198a incorporates by reference the "imported directly" and "grown, produced, or manufactured" and 35 percent value-content requirements of §§ 10.193 and 10.195.

*New § 10.198b*

This section covers the amendment of section 213(a) of the CBI statute made by section 215 of the Customs and Trade Act of 1990. Contrary to the approach taken in new § 10.198a and except as regards the "imported directly" requirement, the § 10.198b text does not incorporate by reference the normal CBI origin and preference regulatory standards because their application here would in some cases be inconsistent with the clear wording of the statutory provision in question.

*New §§ 10.221 Through 10.227*

These new sections are intended to implement those textile and apparel preferential treatment provisions within paragraphs (2), (4) and (5) of amended section 213(b) of the CBI statute that relate to U.S. import procedures and thus are appropriate for treatment in the Customs Regulations.

Section 10.221 outlines the statutory context for the new sections and is self-explanatory.

Section 10.222 sets forth definitions for various terms used in the new regulatory provisions. The following points are noted regarding these definitions:

1. The definition of "apparel articles," by referring to goods classifiable in Chapters 61 and 62 and headings 6501, 6502, 6503, and 6504 and subheadings 6406.99 and 6505.90 of the HTSUS, is intended to reflect the scope of apparel under the Agreement on Textiles and Clothing annexed to the WTO Agreement and referred to in 19 U.S.C. 3511(d)(4).

2. The definition of "assembled in one or more CBTPA beneficiary countries" is based in part on the definition of "wholly assembled" in § 102.21(b)(6) of the Customs Regulations (19 CFR 102.21(b)(6)) but also adds a reference to thread as a material that is not considered to be a component for purposes of the definition. In addition, the definition is intended to allow a prior partial assembly in the United States, consistent with the overall structure of the CBTPA as reflected in the types of operations allowed under the program.

3. The definition of "CBTPA beneficiary country" is an adaptation of, and for purposes of this context is consistent with, the definition contained in section 213(b)(5)(B).

4. The definition of "cut in one or more CBTPA beneficiary countries" precludes any cutting operation performed in a country other than a CBTPA beneficiary country in accordance with the clear language of the statute.

5. The definition of "knit-to-shape" follows the definition in § 102.21(b)(3) of the Customs Regulations (19 CFR 102.21(b)(3)).

6. The definition of "made in one or more CBTPA beneficiary countries" refers specifically to non-underwear t-shirts because the defined expression appears only in paragraph (2)(A)(iii)(III) of amended section 213(b) which applies only to non-underwear t-shirts. Neither the statute nor the legislative history provides any explanation for the use of the words "made in" in this context. Since the statutory text requires that the articles be made in the CBTPA region from regionally-formed fabric, and in view of the fact that the production of t-shirts from fabric invariably involves both cutting of the fabric and assembly of the cut components, Customs interprets "made in" to refer to cutting and complete assembly.

7. The definition of "major parts" is taken from the definition in § 102.21(b)(4) of the Customs Regulations (19 CFR 102.21(b)(4)).

8. The definition of "NAFTA" is the same as that used in section 112(e)(3) under Title I of the Act and is appropriate for the present context because a distinction is made under the statute between the original Agreement signed by the United States, Canada, and Mexico (which this definition reflects) and the implementation of that Agreement under U.S. law.

9. The definition of "preferential treatment" reflects the terms of paragraph (2)(B) of amended section 213(b).

10. The definition of "wholly assembled in one or more CBTPA beneficiary countries" is intended to ensure, consistent with the wording of the statute and the clear meaning of "wholly" in this context, that all assembly operations (including any initial partial assembly or any tail-end assembly operation) will be performed in the countries that are the intended beneficiaries of the CBTPA program.

11. The definition of "wholly formed" relies in part on the definition of "fabric-making process" in § 102.21(b)(2) of the Customs Regulations (19 CFR 102.21(b)(2)) and also uses a similar approach for yarns and thread because the statute uses these terms with reference to fabrics, yarns, and thread. The definition is intended to ensure that all processes essential for yarn or thread or fabric formation are performed in the United States or CBTPA beneficiary countries.

Section 10.223 identifies the articles to which preferential treatment applies under paragraph (2) of amended section 213(b). Paragraph (a) identifies the various groups of textile and apparel articles described under paragraph (2)(A) of the statute and includes in the introductory text an "imported directly" requirement, consistent with the terms of the implementing Presidential Proclamation. Paragraph (b) covers the special rules contained in paragraph (2)(A)(vii) of the statute regarding: findings and trimmings; interlinings; the *de minimis* rule; and the rule for nylon filament yarn. Paragraph (c) explains what is meant by "imported directly." The following specific points are noted regarding these regulatory texts:

1. With regard to paragraph (a)(2), which corresponds to paragraph (2)(A)(i)(II) of the statute, Customs notes that the statutory provision does not address the issue of whether the embroidery or stone-washing and other processes mentioned in that provision (which are principally finishing operations normally done after assembly) must be done in beneficiary countries. The relevant legislative history does not address the issue. The statute could be read to allow these processes to be done in a country that is not a CBTPA beneficiary country provided that, after these processes are completed, the article is returned to a CBTPA beneficiary country for direct importation into the United States. However, Customs believes that this interpretation would not be compatible with the Congressional finding in section 202 of the Act that offering temporary benefits to Caribbean Basin countries will, among other things, promote the growth of free enterprise and economic opportunity in those neighboring countries, because it could have the effect of diverting those finishing operations to third countries and thus away from the intended beneficiaries under the Act. Customs has determined that limiting the performance of those processes to CBTPA beneficiary countries would be in accord with the findings of Congress and would be more consistent with the intent of the CBTPA program. Accordingly, in paragraph (a)(2) of the regulatory text, the words "in a CBTPA beneficiary country" have been added at the end after "processes."

2. In paragraphs (a)(4) and (a)(5) which correspond to paragraphs (2)(A)(iii)(I) and (2)(A)(iii)(III) of the statute, respectively, the parenthetical cross-reference and the t-shirt reference have been replaced by a reference to "non-underwear t-shirts" in order to simplify the text and clarify the relationship between the two provisions in this regard.

3. In paragraph (a)(6) which corresponds to paragraph (2)(A)(iv) of the statute, specific reference is made to "brassieres" in order to explain the coverage of the HTSUS provision referred to in the statute.

4. In paragraph (a)(8), which corresponds to paragraph (2)(A)(v)(II) of the statute, no reference has been made at the end to treatment provided "for fabrics and yarn" because treatment in this context must be read in the context of paragraph (2)(A)(v)(I) of the statute and therefore can only have reference to articles made from fabrics and yarn.

5. Paragraph (a)(12) reflects the terms of new HTSUS subheading 9820.11.18 which is set forth in the Annex to the implementing Proclamation referred to above.

6. Paragraph (b)(1) is divided into two parts: Paragraph (b)(1)(i) reflects the basic findings, trimmings, interlinings, and *de minimis* rules of paragraphs (2)(A)(vii)(I)–(III) of the statute; and paragraph (b)(1)(ii) is intended to clarify the relationship between findings and trimmings on the one hand and fibers and yarns on the other hand for purposes of applying the 25 percent by value and 7 percent by weight limitations under the statute. As regards paragraph (b)(1)(ii), Customs believes that some clarification is appropriate in this context because sometimes a fiber or yarn may be used in an article as a finding or trimming. The statute is ambiguous as to whether an article is ineligible if the total weight of all foreign fibers or yarns exceeds the 7 percent limit but the value of all foreign findings and trimmings does not exceed the 25 percent limit. Thus, the question arises as to which limitation should apply. In the absence of any guidance on this point in the relevant legislative history, Customs has concluded that the best approach is to give precedence to the findings and trimmings limitation. Thus, under paragraph (b)(1)(ii) a foreign yarn, for example, that is used in an article as a trimming would be subject to the 25 percent by value limitation rather than the 7 percent by weight limitation. In addition, the following points are noted regarding the paragraph (b)(1) texts:

a. In the first sentence of paragraph (b)(1)(i)(A), the words "the value of" have been added after the word "if" to clarify that it is the value of the findings and trimmings that must not exceed the 25 percent level. In addition, in the second sentence of paragraph (b)(1)(i)(A), the comma appearing in the statutory text between "decorative lace" and "trim" has been removed to clarify what Customs believes to be the intent (see section 112(d)(1)(A) of the Act which is essentially identical to paragraph (2)(A)(vii)(I) of the statute but employs the expression "decorative lace trim"). Also in the second sentence of paragraph (b)(1)(i)(A), the words "zippers, including zipper tapes and labels" in paragraph (2)(A)(vii)(I) of the statute have been replaced with the words "zippers (including zipper tapes), labels" because there is no such thing as a "zipper label" and to ensure proper treatment of labels as findings and trimmings in their own right. Customs believes that the wording of these regulatory texts in these regards is consistent with the intent of Congress as reflected in the explanation of the provision in the relevant legislative history (see House Report 106–606, 106th Congress, 2d Session, at page 79);

b. A separate paragraph (b)(1)(i)(C) has been included to allow a combination of findings and trimmings and interlinings up to a total of 25 percent of the cost of the components of the assembled article, because Customs believes that was the result intended by Congress by the inclusion of the words "(and any findings and trimmings)" in paragraph (2)(A)(vii)(II)(aa) of the statute; and

c. The second sentence of paragraph (2)(A)(vii)(III) of the statute regarding elastomeric yarns has been included in the regulatory text as an exception at the end of paragraph (b)(1)(i)(D), which sets forth the *de minimis* rule, because Customs believes that both the placement and the wording of the elastomeric yarn provision in the statute support the conclusion that it is intended to operate only as an exception to the *de minimis* rule. The regulatory text refers specifically to any apparel article described in "paragraph (a)(1) through (a)(5)" because those are the only apparel article provisions under § 10.223 that specify "yarns wholly formed in the United States."

7. In paragraph (b)(2), which sets forth the special rule for nylon filament yarn of paragraph (2)(A)(vii)(IV) of the statute, specific reference is made to Canada, Mexico, and Israel because those are the only countries with which the United States had a free trade agreement that entered into force before January 1, 1995.

8. The explanation of "imported directly" in paragraph (c) follows the text used in § 10.193 of the CBI implementing regulations (19 CFR 10.193) but incorporates editorial changes to reflect a CBTPA context.

Section 10.224 prescribes the use of a Certificate of Origin and thus reflects the regulatory mandate contained in paragraph (4)(A)(i) of the statute. Paragraph (a) of the regulatory text contains a general statement regarding the purpose and preparation of the Certificate of Origin and is based in part on § 181.11 of the implementing NAFTA regulations (19 CFR 181.11). Paragraph (b) sets forth the form for the Certificate of Origin, which is directed toward the specific groups of articles described under paragraph (2)(A) of the statute and thus bears no substantive relationship to the Certificate of Origin used under the NAFTA (which involves different country of origin standards for preferential duty treatment). Paragraph (c) sets forth instructions for preparation of this Certificate of Origin. It should be noted that the Certificate of Origin prescribed under this section has no effect on the textile declaration prescribed under § 12.130 of the Customs Regulations (19 CFR 12.130) which still must be submitted to Customs in accordance with that section even in the case of textile products that are entitled to preferential treatment under the CBTPA program.

Section 10.225 sets forth the procedures for filing a claim for preferential treatment. Consistent with the mandate in paragraph (4)(A)(i) of the statute for procedures "similar in all material respects to the requirements of Article 502(1) of the NAFTA," this regulatory text is based on the NAFTA regulatory text contained in 19 CFR

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181.21, but includes appropriate changes to conform to the current context. However, contrary to the NAFTA regulatory text, paragraph (a) of § 10.225 does not allow for a declaration based on a copy of an original Certificate of Origin.

Section 10.226 concerns the maintenance of records and submission of the Certificate of Origin by the importer and follows the NAFTA regulatory text contained in 19 CFR 181.22 but, again, with appropriate changes to conform to the current context. The following points are noted regarding the regulatory text:

1. In paragraph (a) which concerns the maintenance of records, specific reference is made to "the provisions of part 163" which sets forth the basic Customs recordkeeping requirements that apply to importers and other persons involved in customs transactions. The effect is the same as that under the NAFTA § 181.22 text.

2. Paragraph (b) concerns submission of the Certificate of Origin to Customs and thus also relates directly to a requirement contained in Article 502(1) of the NAFTA. The text is based on the NAFTA regulatory text contained in 19 CFR 181.22(b) but differs from the NAFTA text by not specifying a 4-year period for acceptance of the Certificate by Customs, because that 4-year period is only relevant in a NAFTA context.

3. Paragraph (c) concerns the correction of defective Certificates of Origin and the nonacceptance of blanket Certificates in certain circumstances. The text is based on the NAFTA regulatory text contained in 19 CFR 181.22(c) but is simplified and does not include any reference to NAFTA-type origin verifications which do not apply for CBTPA purposes.

4. Paragraph (d) sets forth the circumstances in which a Certificate of Origin is not required. Consistent with the terms of paragraph (4)(B) of the statute, this regulatory text follows the terms of Article 503 of the NAFTA and the NAFTA regulatory text contained in 19 CFR 181.22(d).

Finally, section 10.227 concerns the verification and justification of claims for preferential treatment. Paragraph (a) concerns the verification of claims by Customs and paragraph (b) prescribes steps that a U.S. importer should take in order to support a claim for preferential treatment. Although paragraph (a) is derived from provisions contained in the GSP regulations (19 CFR 10.173(c)) and in the CBI regulations (19 CFR 10.198(c)), the text expands on the GSP/CBI approach in the following respects:

1. In paragraph (a)(1), specific reference is made to the review of import-related documents required to be made, kept, and made available by importers and other persons under Part 163 of the regulations.

2. Paragraph (a)(2) sets forth examples of documents and information relating to production in a CBTPA beneficiary country that Customs may need to review for purposes of verifying a claim for preferential treatment.

3. Finally, paragraph (a)(3) refers to evidence in a CBTPA beneficiary country to document the use of U.S. materials in an article produced in the CBTPA beneficiary country, because the presence of U.S. materials is a key element for many of the articles to which preferential treatment applies under the CBTPA. Accordingly, U.S. importers must be aware of the fact that their ability to successfully claim preferential treatment on their imports may be a function of the nature of the records maintained by the CBTPA beneficiary country producer not only with regard to the production process but also with regard to the source of the materials used in that production.

*New §§ 10.231 Through 10.237*

These new sections are intended to implement those non-textile preferential tariff treatment provisions within paragraphs (3), (4) and (5) of amended section 213(b) of the CBI statute that relate to U.S. import procedures and thus are appropriate for treatment in the Customs Regulations. In view of the similarities between paragraphs (2) and (3) under the statute, in particular as regards the use of a Certificate of Origin and related Customs procedures, the structure and content of new §§ 10.231 through 10.237 are based on the structure and content used in this document for the textile provisions of new §§ 10.221 through 10.227, but with appropriate changes or variations to reflect the paragraph (3) statutory context. The following particular points are noted regarding the texts of new §§ 10.231 through 10.237:

1. The term "preferential tariff treatment" is used throughout (rather than "preferential treatment") in order to reflect the use of the word "tariff" as a modifier of "treatment" in paragraph (3) of the statute. The definition of this term in § 10.232 is based primarily on paragraph (3)(A)(i) of the statute.

2. The definition of "CBTPA originating good" in § 10.232 reflects the terms of paragraph (5)(C)(i) of the statute but refers specifically to provisions within the HTSUS and the NAFTA regulations to clarify the meaning of the reference in the statute to Chapter 4 of the NAFTA "as implemented pursuant to United States law."

3. In § 10.233(a) which identifies the articles eligible for preferential tariff treatment under paragraph (3) of the statute, an "imported directly" requirement has been included for the same reason stated above in regard to new § 10.223. The remainder of § 10.233(a) reflects the terms of paragraphs (3)(A)(i) and (ii) of the statute.

4. Section 10.233(b) sets forth standards for applying the NAFTA rules of origin for purposes of determining whether an article qualifies as a CBTPA originating good. The regulatory text follows paragraph (5)(C)(ii) of the statute.

5. Section 10.233(c) concerns leather-related goods to which duty reductions apply under section 213(h) of the CBERA and specifically reflects the terms of paragraph (3)(B) of the statute regarding application of the lower rate of duty.

6. Section 10.234 sets forth the basic NAFTA Certificate of Origin requirement. In view of the applicability of the NAFTA rules of origin in this context, Customs has determined that the appropriate procedure would be to use a modified version of the separate Customs Form used for the NAFTA. Accordingly, the § 10.234 text is considerably shorter than the text of new § 10.224 because it does not contain the text of the Certificate and the instructions for its completion.

*Appendix to Part 163*

Finally, this document amends Part 163 of the Customs Regulations (19 CFR Part 163) by adding to the list of entry records in the Appendix (the interim "(a)(1)(A) list") references to the CBTPA Textile Certificate of Origin and supporting documentation prescribed under new § 10.226 and to the CBTPA Non-textile Certificate of Origin and supporting documentation prescribed under new § 10.236.

**Comments**

Before adopting these interim regulations as a final rule, consideration will be given to any written comments timely submitted to Customs, including comments on the clarity of this interim rule and how it may be made easier to understand. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., 3rd Floor, Washington, DC.



**Inapplicability of Notice and Delayed Effective Date Requirements and the Regulatory Flexibility Act**

Pursuant to the provisions of 5 U.S.C. 553(b)(B), Customs has determined that prior public notice and comment procedures on these regulations are unnecessary and contrary to the public interest. The regulatory changes provide trade benefits to the importing public, in some cases implement direct statutory mandates, and are necessary to carry out the preferential treatment proclaimed by the President under the United States-Caribbean Basin Trade Partnership Act. For the same reasons, pursuant to the provisions of 5 U.S.C. 553(d)(1) and (3), Customs finds that there is good cause for dispensing with a delayed effective date. Because no notice of proposed rulemaking is required for interim regulations, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

**Executive Order 12866**

This document does not meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

**Paperwork Reduction Act**

This regulation is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in this regulation has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1515–0226.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The collection of information in these interim regulations is in §§ 10.224, 10.225, 10.226, 10.234, 10.235, and 10.236. This information conforms to requirements in 19 U.S.C. 2703 and is used by Customs to determine whether textile and apparel articles and other products imported from designated beneficiary countries are entitled to duty-free entry under the United States-Caribbean Basin Trade Partnership Act. The likely respondents are business organizations including importers, exporters, and manufacturers.

*Estimated annual reporting and/or recordkeeping burden:* 18,720 hours.

*Estimated average annual burden per respondent/recordkeeper:* 440 hours.

*Estimated number of respondents and/or recordkeepers:* 42.

*Estimated annual frequency of responses:* on occasion.

Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer of the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503. A copy should also be sent to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, DC 20229. Comments should be submitted within the time frame that comments are due regarding the substance of the interim regulations.

*Comments are invited on:* (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or startup costs and costs of operations, maintenance, and purchase of services to provide information.

**Drafting Information**

The principal author of this document was Francis W. Foote, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

**List of Subjects**

*19 CFR Part 10*

Assembly, Bonds, Caribbean Basin Initiative, Customs duties and inspection, Exports, Imports, Preference programs, Reporting and recordkeeping requirements, Trade agreements.

*19 CFR Part 163*

Administrative practice and procedure, Customs duties and inspection, Imports, Reporting and recordkeeping requirements.

**Amendments to the Regulations**

For the reasons set forth in the preamble, Parts 10 and 163, Customs Regulations (19 CFR Parts 10 and 163), are amended as set forth below.

**PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.**

1. The general authority citation for Part 10 continues to read, the specific authority citation for §§ 10.191 through 10.198 is revised to read, and a new specific authority citation for §§ 10.221 through 10.227 and §§ 10.231 through 10.237 is added to read, as follows:

**Authority:** 19 U.S.C. 66, 1202 (General Note 22, Harmonized Tariff Schedule of the United States (HTSUS)), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314;

* * * * *

Sections 10.191 through 10.198b also issued under 19 U.S.C. 2701 *et seq.*;

* * * * *

Sections 10.221 through 10.227 and §§ 10.231 through 10.237 also issued under 19 U.S.C. 2701 *et seq.*;

* * * * *

2. The authority citation under the center heading "CARIBBEAN BASIN INITIATIVE" is removed.

3. In § 10.191:

a. Paragraph (b)(1) is amended by removing the reference "§ 10.198" and adding, in its place, the reference "§ 10.198b";

b. In the introductory text of paragraph (b)(2), the first sentence is amended by adding at the end before the period the words "or in § 10.198b";

c. Paragraphs (b)(2)(i) and (b)(2)(ii) are revised;

d. Paragraph (b)(2)(iv) is amended by removing the reference "Chapter 27" and adding in its place the reference "headings 2709 and 2710";

e. Paragraphs (b)(2)(vi) through (b)(2)(viii) are redesignated as paragraphs (b)(2)(vii) through (b)(2)(ix)

f. A new paragraph (b)(2)(vi) is added;

g. Paragraph (b)(3) is amended by removing the reference "§ 10.198" and adding, in its place, the reference "§ 10.198a"; and

h. Paragraph (b)(4) is amended by removing the reference "§ 10.198" and adding, in its place, the reference "§ 10.198b".

The revisions and addition read as follows:

**§ 10.191 General.**

* * * * *

(b) * * *

(2) * * *

(i) Textile and apparel articles which were not eligible articles for purposes of the CBI on January 1, 1994, as the CBI was in effect on that date.

(ii) Footwear not designated on August 5, 1983, as eligible articles for the purpose of the Generalized System of Preferences under Title V, Trade Act

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of 1974, as amended (19 U.S.C. 2461 through 2467).

* * * * *

(vi) Articles to which reduced rates of duty apply under § 10.198a.

* * * * *

4. In § 10.192, the first sentence is amended by removing the reference "§ 10.198" and adding, in its place, the reference "§ 10.198b".

5. In § 10.193, the introductory text is amended by removing the reference § 10.198" and adding, in its place, the reference "§ 10.198b".

6. In § 10.195, paragraph (b) is revised to read as follows:

**§ 10.195 Country of origin criteria.**

* * * * *

(b) *Commonwealth of Puerto Rico and U.S. Virgin Islands*—(1) *General.* For purposes of determining the percentage referred to in paragraph (a) of this section, the term "beneficiary country" includes the Commonwealth of Puerto Rico and the U.S. Virgin Islands. Any cost or value of materials or direct costs of processing operations attributable to the U.S. Virgin Islands must be included in the article prior to its final exportation from a beneficiary country to the United States.

(2) *Manufacture in the Commonwealth of Puerto Rico after final exportation.* Notwithstanding the provisions of 19 U.S.C. 1311, if an article from a beneficiary country is entered under bond for processing or use in manufacturing in the Commonwealth of Puerto Rico, no duty will be imposed on the withdrawal from warehouse for consumption of the product of that processing or manufacturing provided that:

(i) The article entered in the warehouse in the Commonwealth of Puerto Rico was grown, produced, or manufactured in a beneficiary country within the meaning of paragraph (a) of this section and was imported directly from a beneficiary country within the meaning of § 10.193; and

(ii) At the time of its withdrawal from the warehouse, the product of the processing or manufacturing in the Commonwealth of Puerto Rico meets the 35 percent value-content requirement prescribed in paragraph (a) of this section.

* * * * *

7. New §§ 10.198a and 10.198b are added under the center heading "CARIBBEAN BASIN INITIATIVE" to read as follows:

**§ 10.198a Duty reduction for certain leather-related articles.**

Except as otherwise provided in § 10.233, reduced rates of duty as proclaimed by the President will apply to handbags, luggage, flat goods, work gloves, and leather wearing apparel that were not designated on August 5, 1983, as eligible articles for purposes of the Generalized System of Preferences under Title V, Trade Act of 1974, as amended (19 U.S.C. 2461 through 2467), provided that the article in question at the time it is entered:

(a) Was grown, produced, or manufactured in a beneficiary country within the meaning of § 10.195;

(b) Meets the 35 percent value-content requirement prescribed in § 10.195; and

(c) Was imported directly from a beneficiary country within the meaning of § 10.193.

**§ 10.198b Products of Puerto Rico processed in a beneficiary country.**

Except in the case of any article described in § 10.191(b)(2)(i) through (vi), the duty-free treatment provided for under the CBI will apply to an article that is the growth, product, or manufacture of the Commonwealth of Puerto Rico and that is by any means advanced in value or improved in condition in a beneficiary country, provided that:

(a) If any materials are added to the article in the beneficiary country, those materials consist only of materials that are a product of a beneficiary country or the United States; and

(b) The article is imported directly from the beneficiary country into the customs territory of the United States within the meaning of § 10.193.

8. Part 10 is amended by adding a new center heading followed by new §§ 10.221 through 10.227 to read as follows:

**Textile and Apparel Articles Under the United States-Caribbean Basin Trade Partnership Act**

Sec.

10.221 Applicability.
10.222 Definitions.
10.223 Articles eligible for preferential treatment.
10.224 Certificate of Origin.
10.225 Filing of claim for preferential treatment.
10.226 Maintenance of records and submission of Certificate by importer.
10.227 Verification and justification of claim for preferential treatment.

**Textile and Apparel Articles Under the United States-Caribbean Basin Trade Partnership Act**

**§ 10.221 Applicability.**

Title II of Public Law 106–200 (114 Stat. 251), entitled the United States-Caribbean Trade Partnership Act (CBTPA), amended section 213(b) of the Caribbean Basin Economic Recovery Act (the CBERA, 19 U.S.C. 2701–2707) to authorize the President to extend additional trade benefits to countries that have been designated as beneficiary countries under the CBERA. Section 213(b)(2) of the CBERA (19 U.S.C. 2703(b)(2)) provides for the preferential treatment of certain textile and apparel articles from CBERA beneficiary countries. The provisions of §§ 10.221–10.227 of this part set forth the legal requirements and procedures that apply for purposes of obtaining preferential treatment pursuant to CBERA section 213(b)(2).

**§ 10.222 Definitions.**

When used in §§ 10.221 through 10.227, the following terms have the meanings indicated:

*Apparel articles.* "Apparel articles" means goods classifiable in Chapters 61 and 62 and headings 6501, 6502, 6503, and 6504 and subheadings 6406.99 and 6505.90 of the HTSUS.

*Assembled in one or more CBTPA beneficiary countries.* "Assembled in one or more CBTPA beneficiary countries" when used in the context of a textile or apparel article has reference to a joining together of two or more components (other than thread, decorative embellishments, buttons, zippers, or similar components) that occurred in one or more beneficiary countries, whether or not a prior joining operation was performed on the article or any of its components in the United States.

*CBERA.* "CBERA" means the Caribbean Basin Economic Recovery Act, 19 U.S.C. 2701–2707.

*CBTPA beneficiary country.* "CBTPA beneficiary country" means a beneficiary country" as defined in § 10.191(b)(1) for purposes of the CBERA which the President also has designated as a beneficiary country for purposes of preferential treatment of textile and apparel articles under 19 U.S.C. 2703(b)(2).

*Cut in one or more CBTPA beneficiary countries.* "Cut in one or more CBTPA beneficiary countries" when used with reference to apparel articles means that all fabric components used in the assembly of the article were cut from fabric in one or more CBTPA beneficiary countries.



*Foreign.* "Foreign" means of a country other than the United States or a CBTPA beneficiary country.

*HTSUS.* "HTSUS" means the Harmonized Tariff Schedule of the United States.

*Knit-to-shape.* The term "knit-to-shape" applies to any apparel article of which 50 percent or more of the exterior surface area is formed by major parts that have been knitted or crocheted directly to the shape used in the apparel article, with no consideration being given to patch pockets, appliques, or the like. Minor cutting, trimming, or sewing of those major parts will not affect the determination of whether an apparel article is "knit-to-shape.".

*Made in one or more CBTPA beneficiary countries.* "Made in one or more CBTPA beneficiary countries" when used with reference to non-underwear t-shirts means cut in one or more CBTPA beneficiary countries and wholly assembled in one or more CBTPA beneficiary countries.

*Major parts.* "Major parts" means integral components of an apparel article but does not include collars, cuffs, waistbands, plackets, pockets, linings, paddings, trim, accessories, or similar parts or components.

*NAFTA.* "NAFTA" means the North American Free Trade Agreement entered into by the United States, Canada, and Mexico on December 17, 1992.

*Preferential treatment.* "Preferential treatment" means entry, or withdrawal from warehouse for consumption, in the customs territory of the United States free of duty and free of any quantitative restrictions, limitations, or consultation levels as provided in 19 U.S.C. 2703(b)(2).

*Wholly assembled in one or more CBTPA beneficiary countries.* "Wholly assembled in one or more CBTPA beneficiary countries" when used in the context of a textile or apparel article has reference to a joining together of all components (including thread, decorative embellishments, buttons, zippers, or similar components) that occurred only in one or more CBTPA beneficiary countries.

*Wholly formed.* "Wholly formed," when used with reference to yarns or thread, means that all of the production processes, starting with the extrusion of filament or the spinning of all fibers into yarn or both and ending with a yarn or plied yarn, took place in a single country, and, when used with reference to fabric(s), means that all of the production processes, starting with polymers, fibers, filaments, textile strips, yarns, twine, cordage, rope, or strips of fabric and ending with a fabric by a weaving, knitting, needling, tufting, felting, entangling or other process, took place in a single country.

**§ 10.223 Articles eligible for preferential treatment.**

(a) *General.* The preferential treatment referred to in § 10.221 applies to the following textile and apparel articles that are imported directly into the customs territory of the United States from a CBTPA beneficiary country:

(1) Apparel articles assembled in one or more CBTPA beneficiary countries from fabrics wholly formed and cut in the United States, from yarns wholly formed in the United States, (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are wholly formed and cut in the United States) that are entered under subheading 9802.00.80 of the HTSUS;

(2) Apparel articles assembled in one or more CBTPA beneficiary countries from fabrics wholly formed and cut in the United States, from yarns wholly formed in the United States, (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are wholly formed and cut in the United States) that are entered under Chapter 61 or 62 of the HTSUS, if, after that assembly, the articles would have qualified for entry under subheading 9802.00.80 of the HTSUS but for the fact that the articles were embroidered or subjected to stone-washing, enzyme-washing, acid washing, perma-pressing, oven-baking, bleaching, garment-dyeing, screen printing, or other similar processes in a CBTPA beneficiary country;

(3) Apparel articles (other than articles described in paragraph (a)(12) of this section) cut in one or more CBTPA beneficiary countries from fabric wholly formed in the United States from yarns wholly formed in the United States (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are wholly formed in the United States), if those articles are assembled in one or more CBTPA beneficiary countries with thread formed in the United States;

(4) Apparel articles knit to shape (other than socks provided for in heading 6115 of the HTSUS) in a CBTPA beneficiary country from yarns wholly formed in the United States, and knit apparel articles (other than non-underwear t-shirts) cut and wholly assembled in one or more CBTPA beneficiary countries from fabric formed in one or more CBTPA beneficiary countries or the United States from yarns wholly formed in the United States (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are formed in one or more CBTPA beneficiary countries);

(5) Non-underwear t-shirts, classifiable under subheadings 6109.10.00 and 6109.90.10 of the HTSUS, made in one or more CBTPA beneficiary countries from fabric formed in one or more CBTPA beneficiary countries from yarns wholly formed in the United States;

(6) Brassieres classifiable under subheading 6212.10 of the HTSUS, cut and sewn or otherwise assembled in the United States, or one or more CBTPA beneficiary countries, or both;

(7) Apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more CBTPA beneficiary countries, from fabrics or yarn that is not formed in the United States or in one or more CBTPA beneficiary countries, to the extent that apparel articles of those fabrics or yarn would be eligible for preferential treatment, without regard to the source of the fabrics or yarn, under Annex 401 of the NAFTA;

(8) Apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more CBTPA beneficiary countries, from fabrics or yarn that is not formed in the United States or in one or more CBTPA beneficiary countries and that is not described in paragraph (a)(7) of this section, to the extent that the President has determined that the fabrics or yarn cannot be supplied by the domestic industry in commercial quantities in a timely manner and has proclaimed the preferential treatment provided under paragraph (a)(7) of this section;

(9) A handloomed, handmade, or folklore textile or apparel article of a CBTPA beneficiary country that the President and representatives of the CBTPA beneficiary country mutually agree is a handloomed, handmade, or folklore article and that is certified as a handloomed, handmade, or folklore article by the competent authority of the CBTPA beneficiary country;

(10) Textile luggage assembled in a CBTPA beneficiary country from fabric wholly formed and cut in the United States, from yarns wholly formed in the United States, that is entered under subheading 9802.00.80 of the HTSUS;

(11) Textile luggage assembled from fabric cut in a CBTPA beneficiary country from fabric wholly formed in the United States from yarns wholly formed in the United States; and

(12) Knitted or crocheted apparel articles (other than non-underwear t-

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shirts described in paragraph (a)(5) of this section) cut and wholly assembled in one or more CBTPA beneficiary countries or the United States from fabrics wholly formed in the United States from yarns wholly formed in the United States (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are wholly formed in the United States), provided that the assembly is with thread formed in the United States.

(b) *Special rules for certain component materials*—(1) *Foreign findings, trimmings, interlinings, fibers and yarns*—(i) *General.* An article otherwise described under paragraph (a) of this section will not be ineligible for the preferential treatment referred to in § 10.221 because the article contains:

(A) Findings and trimmings of foreign origin, if the value of those findings and trimmings does not exceed 25 percent of the cost of the components of the assembled article. For purposes of this section "findings and trimmings" include, but are not limited to, hooks and eyes, snaps, buttons, "bow buds," decorative lace trim, elastic strips (but only if they are each less than 1 inch in width and are used in the production of brassieres), zippers (including zipper tapes), labels, and sewing thread except in the case of an article described in paragraph (a)(3) of this section;

(B) Interlinings of foreign origin, if the value of those interlinings does not exceed 25 percent of the cost of the components of the assembled article. For purposes of this section "interlinings" include only a chest type plate, a "hymo" piece, or "sleeve header," of woven or weft-inserted warp knit construction and of coarse animal hair or man-made filaments;

(C) Any combination of findings and trimmings of foreign origin and interlinings of foreign origin, if the total value of those findings and trimmings and interlinings does not exceed 25 percent of the cost of the components of the assembled article; or

(D) Fibers or yarns not wholly formed in the United States or in one or more CBTPA beneficiary countries if the total weight of all those fibers and yarns is not more than 7 percent of the total weight of the article, except in the case of any apparel article described in paragraph (a)(1) through (a)(5) of this section containing elastomeric yarns which will be eligible for preferential treatment only if those yarns are wholly formed in the United States.

(ii) *Treatment of fibers and yarns as findings or trimmings.* If any fibers or yarns not wholly formed in the United States or one or more beneficiary countries are used in an article as a finding or trimming described in paragraph (b)(1)(i)(A) of this section, the fibers or yarns will be considered to be a finding or trimming for purposes of paragraph (b)(1)(i) of this section.

(2) *Special rule for nylon filament yarn.* An article otherwise described under paragraph (a)(1), (a)(2) or (a)(3) of this section will not be ineligible for the preferential treatment referred to in § 10.221 because the article contains nylon filament yarn (other than elastomeric yarn) that is classifiable under subheading 5402.10.30, 5402.10.60, 5402.31.30, 5402.31.60, 5402.32.30, 5402.32.60, 5402.41.10, 5402.41.90, 5402.51.00, or 5402.61.00 of the HTSUS duty-free from Canada, Mexico or Israel.

(c) *Imported directly defined.* For purposes of paragraph (a) of this section, the words "imported directly" mean:

(1) Direct shipment from any CBTPA beneficiary country to the United States without passing through the territory of any country that is not a CBTPA beneficiary country;

(2) If the shipment is from any CBTPA beneficiary country to the United States through the territory of any country that is not a CBTPA beneficiary country, the articles in the shipment do not enter into the commerce of any country that is not a CBTPA beneficiary country while en route to the United States and the invoices, bills of lading, and other shipping documents show the United States as the final destination; or

(3) If the shipment is from any CBTPA beneficiary country to the United States through the territory of any country that is not a CBTPA beneficiary country, and the invoices and other documents do not show the United States as the final destination, the articles in the shipment upon arrival in the United States are imported directly only if they:

(i) Remained under the control of the customs authority of the intermediate country;

(ii) Did not enter into the commerce of the intermediate country except for the purpose of sale other than at retail, and the port director is satisfied that the importation results from the original commercial transaction between the importer and the producer or the producer's sales agent; and

(iii) Were not subjected to operations other than loading or unloading, and other activities necessary to preserve the articles in good condition.

**§ 10.224 Certificate of Origin.**

(a) *General.* A Certificate of Origin must be employed to certify that a textile or apparel article being exported from a CBTPA beneficiary country to the United States qualifies for the preferential treatment referred to in § 10.221. The Certificate of Origin must be prepared by the exporter in the CBTPA beneficiary country in the form specified in paragraph (b) of this section. Where the CBTPA beneficiary country exporter is not the producer of the article, that exporter may complete and sign a Certificate of Origin on the basis of:

(1) Its reasonable reliance on the producer's written representation that the article qualifies for preferential treatment; or

(2) A completed and signed Certificate of Origin for the article voluntarily provided to the exporter by the producer.

(b) *Form of Certificate.* The Certificate of Origin referred to in paragraph (a) of this section must be in the following format:

BILLING CODE 4820–02–P



**Caribbean Basin Trade Partnership Act**
**Textile Certificate of Origin**

| | | |
|---|---|---|
| 1. Exporter Name & Address | | 2. Producer Name & Address |
| 3. Importer Name & Address | | 6.U.S./Caribbean Fabric Producer Name & Address |
| 4. Description of Article | 5. Preference Group | 7. U.S./Caribbean Yarn Producer Name & Address |
| | | 8. U.S. Thread Producer Name & Address |
| | | 9. Name of Handloomed, Handmade, or Folklore Article |
| 10. Name of Preference Group G Fabric or Yarn: | | |

Preference Groups:

A: Apparel assembled from U.S.-formed and cut fabric from U.S. yarn [19 CFR 10.223(a)(1)].
B: Apparel assembled and further processed from U.S.-formed and cut fabric from U.S. yarn [19 CFR 10.223(a)(2)].
C: Non-knit apparel cut and assembled from U.S. fabric from U.S. yarn and thread. [19 CFR 10.223(a)(3)].
D: Apparel knit to shape from U.S. yarn and knit apparel cut and assembled from regional or U.S. fabric from U.S. yarn [19 CFR 10.223(a)(4)].
E: Non-underwear t-shirts made of regional fabric from U.S. yarn [19 CFR 10.223(a)(5)].
F: Brassieres cut and assembled in the United States and/or one or more CBTPA beneficiary countries [19 CFR 10.223(a)(6)].
G: Apparel cut and assembled in one or more CBTPA beneficiary countries from fabrics or yarn not formed in the United States or one or more CBTPA beneficiary countries (as identified in NAFTA) or designated as not available in commercial quantities in the United States [19 CFR 10.223(a)(7) or (a)(8)].
H: Handloomed, handmade, or folklore articles [19 CFR 10.223(a)(9)].
I: Luggage assembled from U.S.-formed and cut fabric from U.S. yarn. [19 CFR 10.223(a)(10)].
J: Luggage cut and assembled from U.S. fabric from U.S. yarn [19 CFR 10.223(a)(11)].
K: Knitted or crocheted apparel cut and assembled from U.S. fabric from U.S. yarn and thread. [19 CFR 10.223(a)(12)].

I certify that the information on this document is complete and accurate and I assume the responsibility for proving such representations. I understand that I am liable for any false statements or material omissions made on or in connection with this document.
I agree to maintain, and present upon request, documentation necessary to support this certificate.

| | | |
|---|---|---|
| 12. Authorized Signature | | 13. Company |
| 14. Name (Print or Type) | | 15. Title |
| 16a.Date(DD/MM/YY) | 16b.Blanket Period From: To: | 17. Telephone Number Facsimile Number |

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(c) *Preparation of Certificate.* The following rules will apply for purposes of completing the Certificate of Origin set forth in paragraph (b) of this section:

(1) Blocks 1 through 5 pertain only to the final article exported to the United States for which preferential treatment may be claimed;

(2) Block 1 should state the legal name and address (including country) of the exporter;

(3) Block 2 should state the legal name and address (including country) of the producer. If there is more than one producer, attach a list stating the legal name and address (including country) of all additional producers. If this information is confidential, it is acceptable to state "available to Customs upon request" in block 2. If the

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producer and the exporter are the same, state "same" in block 2;

(4) Block 3 should state the legal name and address (including country) of the importer;

(5) Block 4 should provide a full description of each article. The description should be sufficient to relate it to the invoice description and to the description of the article in the international Harmonized System. Include the invoice number as shown on the commercial invoice or, if the invoice number is not known, include another unique reference number such as the shipping order number;

(6) In block 5, insert the letter that designates the preference group which applies to the article according to the description contained in the CFR provision cited on the Certificate for that group;

(7) Blocks 6 through 10 must be completed only when the block in question calls for information that is relevant to the preference group identified in block 5;

(8) Block 6 should state the legal name and address (including country) of the fabric producer;

(9) Block 7 should state the legal name and address (including country) of the yarn producer;

(10) Block 8 should state the legal name and address (including country) of the thread producer;

(11) Block 9 should state the name of the folklore article or should state that the article is handloomed or handmade;

(12) Block 10, which should be completed only when preference group "G" is inserted in block 5, should state the name of the fabric or yarn that is not formed in the United States or a CBTPA beneficiary country or that is not available in commercial quantities in the United States;

(13) Block 16a should reflect the date on which the Certificate was completed and signed;

(14) Block 16b should be completed if the Certificate is intended to cover multiple shipments of identical articles as described in block 4 that are imported into the United States during a specified period of up to one year (see § 10.226(b)(4)(ii)). The "from" date is the date on which the Certificate became applicable to the article covered by the blanket Certificate (this date may be prior to the date reflected in block 16a). The "to" date is the date on which the blanket period expires; and

(15) The Certificate may be printed and reproduced locally. If more space is needed to complete the Certificate, attach a continuation sheet.

**§ 10.225 Filing of claim for preferential treatment.**

(a) *Declaration.* In connection with a claim for preferential treatment for a textile or apparel article described in § 10.223, the importer must make a written declaration that the article qualifies for that treatment. In the case of an article described in § 10.223(a)(1) or (a)(10), the written declaration should be made by including on the entry summary, or equivalent documentation, the symbol "R" as a prefix to the subheading within Chapter 98 of the HTSUS under which the article is classified, and, in the case of any article described in § 10.223(a)(2) through (a)(9) and (a)(11), the inclusion on the entry summary, or equivalent documentation, of the subheading within Chapter 98 of the HTSUS under which the article is classified will constitute the written declaration. Except in any of the circumstances described in § 10.226(d)(1), the declaration required under this paragraph must be based on an original Certificate of Origin that has been completed and properly executed in accordance with § 10.224, that covers the article being imported, and that is in the possession of the importer.

(b) *Corrected declaration.* If, after making the declaration required under paragraph (a) of this section, the importer has reason to believe that a Certificate of Origin on which a declaration was based contains information that is not correct, the importer must within 30 calendar days after the date of discovery of the error make a corrected declaration and pay any duties that may be due. A corrected declaration will be effected by submission of a letter or other written statement to the Customs port where the declaration was originally filed.

**§ 10.226 Maintenance of records and submission of Certificate by importer.**

(a) *Maintenance of records.* Each importer claiming preferential treatment for an article under § 10.225 must maintain in the United States, in accordance with the provisions of part 163 of this chapter, all records relating to the importation of the article. Those records must include the original Certificate of Origin referred to in § 10.225(a) and any other relevant documents or other records as specified in § 163.1(a) of this chapter.

(b) *Submission of Certificate.* An importer who claims preferential treatment on a textile or apparel article under § 10.225(a) must provide, at the request of the port director, a copy of the Certificate of Origin pertaining to the article. A Certificate of Origin submitted to Customs under this paragraph:

(1) Must be in writing or must be transmitted electronically pursuant to any electronic data interchange system authorized by Customs for that purpose;

(2) Must be signed by the exporter or by the exporter's authorized agent having knowledge of the relevant facts;

(3) Must be completed either in the English language or in the language of the country from which the article is exported. If the Certificate is completed in a language other than English, the importer must provide to Customs upon request a written English translation of the Certificate; and

(4) May be applicable to:

(i) A single importation of an article into the United States, including a single shipment that results in the filing of one or more entries and a series of shipments that results in the filing of one entry; or

(ii) Multiple importations of identical articles into the United States that occur within a specified blanket period, not to exceed 12 months, set out in the Certificate by the exporter. For purposes of this paragraph and § 10.224(c)(14), "identical articles" means articles that are the same in all material respects, including physical characteristics, quality, and reputation.

(c) *Correction and nonacceptance of Certificate.* If the port director determines that a Certificate of Origin is illegible or defective or has not been completed in accordance with paragraph (b) of this section, the importer will be given a period of not less than five working days to submit a corrected Certificate. A Certificate will not be accepted in connection with subsequent importations during a period referred to in paragraph (b)(4)(ii) of this section if the port director determined that a previously imported identical article covered by the Certificate did not qualify for preferential treatment.

(d) *Certificate not required*—(1) *General.* Except as otherwise provided in paragraph (d)(2) of this section, an importer is not required to have a Certificate of Origin in his possession for:

(i) An importation of an article for which the port director has in writing waived the requirement for a Certificate of Origin because the port director is otherwise satisfied that the article qualifies for preferential treatment;

(ii) A non-commercial importation of an article; or

(iii) A commercial importation of an article whose value does not exceed US $2,500, provided that, unless waived by the port director, the producer, exporter,



importer or authorized agent includes on, or attaches to, the invoice or other document accompanying the shipment the following signed statement:

I hereby certify that the article covered by this shipment qualifies for preferential treatment under the CBTPA.

Check One:

( ) Producer
( ) Exporter
( ) Importer
( ) Agent

Name

Title

Address

Signature and Date

(2) *Exception.* If the port director determines that an importation described in paragraph (d)(1) of this section forms part of a series of importations that may reasonably be considered to have been undertaken or arranged for the purpose of avoiding a Certificate of Origin requirement under §§ 10.224 through 10.226, the port director will notify the importer in writing that for that importation the importer must have in his possession a valid Certificate of Origin to support the claim for preferential treatment. The importer will have 30 calendar days from the date of the written notice to obtain a valid Certificate of Origin, and a failure to timely obtain the Certificate of Origin will result in denial of the claim for preferential treatment. For purposes of this paragraph, a "series of importations" means two or more entries covering articles arriving on the same day from the same exporter and consigned to the same person.

**§ 10.227 Verification and justification of claim for preferential treatment.**

(a) *Verification by Customs.* A claim for preferential treatment made under § 10.225, including any statements or other information contained on a Certificate of Origin submitted to Customs under § 10.226, will be subject to whatever verification the port director deems necessary. In the event that the port director for any reason is prevented from verifying the claim, the port director may deny the claim for preferential treatment. A verification of a claim for preferential treatment may involve, but need not be limited to, a review of:

(1) All records required to be made, kept, and made available to Customs by the importer or any other person under part 163 of this chapter;

(2) Documentation and other information in a CBTPA beneficiary country regarding the country of origin of an article and its constituent materials, including, but not limited to, production records, information relating to the place of production, the number and identification of the types of machinery used in production, and the number of workers employed in production; and

(3) Evidence in a CBTPA beneficiary country to document the use of U.S. materials in the production of the article in question, such as purchase orders, invoices, bills of lading and other shipping documents, and customs import and clearance documents.

(b) *Importer requirements.* In order to make a claim for preferential treatment under § 10.225, the importer:

(1) Must have records that explain how the importer came to the conclusion that the textile or apparel article qualifies for preferential treatment. Those records must include documents that support a claim that the article in question qualifies for preferential treatment because it is specifically described in one of the provisions under § 10.223(a). If the importer is claiming that the article incorporates fabric or yarn that was wholly formed in the United States, the importer must have records that identify the U.S. producer of the fabric or yarn. A properly completed Certificate of Origin in the form set forth in § 10.224(b) is a record that would serve these purposes;

(2) Must establish and implement internal controls which provide for the periodic review of the accuracy of the Certificates of Origin or other records referred to in paragraph (b)(1) of this section;

(3) Must have shipping papers that show how the article moved from the CBTPA beneficiary country to the United States. If the imported article was shipped through a country other than a CBTPA beneficiary country and the invoices and other documents from the CBTPA beneficiary country do not show the United States as the final destination, the importer also must have documentation that demonstrates that the conditions set forth in § 10.223(c)(3)(i) through (iii) were met; and

(4) Must be prepared to explain, upon request from Customs, how the records and internal controls referred to in paragraphs (b)(1) through (b)(3) of this section justify the importer's claim for preferential treatment.

9. Part 10 is amended by adding a new center heading followed by new §§ 10.231 through 10.237 to read as follows:

**Non-Textile Articles Under the United States-Caribbean Basin Trade Partnership Act**

Sec.

10.231 Applicability.
10.232 Definitions.
10.233 Articles eligible for preferential tariff treatment.
10.234 Certificate of Origin.
10.235 Filing of claim for preferential tariff treatment.
10.236 Maintenance of records and submission of Certificate by importer.
10.237 Verification and justification of claim for preferential tariff treatment.

**Non-Textile Articles Under the United States-Caribbean Basin Trade Partnership Act**

**§ 10.231 Applicability.**

Title II of Public Law 106–200 (114 Stat. 251), entitled the United States-Caribbean Trade Partnership Act (CBTPA), amended section 213(b) of the Caribbean Basin Economic Recovery Act (the CBERA, 19 U.S.C. 2701–2707) to authorize the President to extend additional trade benefits to countries that have been designated as beneficiary countries under the CBERA. Section 213(b)(3) of the CBERA (19 U.S.C. 2703(b)(3)) provides for special preferential tariff treatment of certain non-textile articles that are otherwise excluded from duty-free treatment under the CBERA. The provisions of §§ 10.231–10.237 of this part set forth the legal requirements and procedures that apply for purposes of obtaining preferential tariff treatment pursuant to CBERA section 213(b)(3).

**§ 10.232 Definitions.**

When used in §§ 10.231 through 10.237, the following terms have the meanings indicated:

*CBERA.* "CBERA" means the Caribbean Basin Economic Recovery Act, 19 U.S.C. 2701–2707.

*CBTPA beneficiary country.* "CBTPA beneficiary country" means a beneficiary country" as defined in § 10.191(b)(1) for purposes of the CBERA which the President also has designated as a beneficiary country for purposes of preferential duty treatment of articles under 19 U.S.C. 2703(b)(3).

*CBTPA originating good.* "CBTPA originating good" means a good that meets the rules of origin for a good as set forth in General Note 12, HTSUS, and in the appendix to part 181 of this chapter and as applied under § 10.233(b).

*HTSUS.* "HTSUS" means the Harmonized Tariff Schedule of the United States.

*NAFTA.* "NAFTA" means the North American Free Trade Agreement

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entered into by the United States, Canada, and Mexico on December 17, 1992.

*Preferential tariff treatment.* "Preferential tariff treatment" when used with reference to an imported article means entry, or withdrawal from warehouse for consumption, in the customs territory of the United States with duty and other tariff treatment that is identical to the tariff treatment that would be accorded at that time under Annex 302.2 of the NAFTA to an imported article described in the same 8-digit subheading of the HTSUS that is a good of Mexico.

**§ 10.233 Articles eligible for preferential tariff treatment.**

(a) *General.* The preferential tariff treatment referred to in § 10.231 applies to any of the following articles, provided that the article in question is a CBTPA originating good, is imported directly into the customs territory of the United States from a CBTPA beneficiary country, and is not accorded duty-free treatment under U.S. Note 2(b), Subchapter II, Chapter 98, HTSUS (see § 10.26):

(1) Footwear not designated on August 5, 1983, as eligible articles for the purpose of the Generalized System of Preferences under Title V, Trade Act of 1974, as amended (19 U.S.C. 2461 through 2467);

(2) Tuna, prepared or preserved in any manner, in airtight containers;

(3) Petroleum, or any product derived from petroleum, provided for in headings 2709 and 2710 of the HTSUS;

(4) Watches and watch parts (including cases, bracelets, and straps), of whatever type including, but not limited to, mechanical, quartz digital or quartz analog, if those watches or watch parts contain any material which is the product of any country with respect to which HTSUS column 2 rates of duty apply; and

(5) Articles to which reduced rates of duty apply under § 10.198a, except as otherwise provided in paragraph (c) of this section.

(b) *Application of NAFTA rules of origin.* In determining whether an article is a CBTPA originating good for purposes of paragraph (a) of this section, application of the provisions of General Note 12 of the HTSUS and the appendix to part 181 of this chapter will be subject to the following rules:

(1) No country other than the United States and a CBTPA beneficiary country may be treated as being a party to the NAFTA;

(2) Any reference to trade between the United States and Mexico will be deemed to refer to trade between the United States and a CBTPA beneficiary country;

(3) Any reference to a party will be deemed to refer to a CBTPA beneficiary country or the United States; and

(4) Any reference to parties will be deemed to refer to any combination of CBTPA beneficiary countries or to the United States and one or more CBTPA beneficiary countries (or any combination involving the United States and CBTPA beneficiary countries).

(c) *Duty reductions for leather-related articles.* If, after it is determined that an article described in paragraph (a)(5) of this section qualifies as a CBTPA originating good and is eligible for preferential tariff treatment under this section, it is determined that the article in question also would otherwise qualify for a reduced rate of duty under § 10.198a and that reduced rate of duty is lower than the rate of duty that would apply under this section, that lower rate of duty will apply to the article for purposes of preferential tariff treatment under this section.

(d) *Imported directly defined.* For purposes of paragraph (a) of this section, the words "imported directly" mean:

(1) Direct shipment from any CBTPA beneficiary country to the United States without passing through the territory of any country that is not a CBTPA beneficiary country;

(2) If the shipment is from any CBTPA beneficiary country to the United States through the territory of any country that is not a CBTPA beneficiary country, the articles in the shipment do not enter into the commerce of any country that is not a CBTPA beneficiary country while en route to the United States and the invoices, bills of lading, and other shipping documents show the United States as the final destination; or

(3) If the shipment is from any CBTPA beneficiary country to the United States through the territory of any country that is not a CBTPA beneficiary country, and the invoices and other documents do not show the United States as the final destination, the articles in the shipment upon arrival in the United States are imported directly only if they:

(i) Remained under the control of the customs authority of the intermediate country;

(ii) Did not enter into the commerce of the intermediate country except for the purpose of sale other than at retail, and the port director is satisfied that the importation results from the original commercial transaction between the importer and the producer or the producer's sales agent; and

(iii) Were not subjected to operations other than loading or unloading, and other activities necessary to preserve the articles in good condition.

**§ 10.234 Certificate of Origin.**

A Certificate of Origin as specified in § 10.236 must be employed to certify that an article described in § 10.233(a)(1) through (5) being exported from a CBTPA beneficiary country to the United States qualifies for the preferential tariff treatment referred to in § 10.231. The Certificate of Origin must be prepared by the exporter in the CBTPA beneficiary country. Where the CBTPA beneficiary country exporter is not the producer of the article, that exporter may complete and sign a Certificate of Origin on the basis of:

(a) Its reasonable reliance on the producer's written representation that the article qualifies for preferential tariff treatment; or

(b) A completed and signed Certificate of Origin for the article voluntarily provided to the exporter by the producer.

**§ 10.235 Filing of claim for preferential tariff treatment.**

(a) *Declaration.* In connection with a claim for preferential tariff treatment for an article described in § 10.233(a)(1) through (5), the importer must make a written declaration that the article qualifies for that treatment. The written declaration should be made by including on the entry summary, or equivalent documentation, the symbol "R" as a prefix to the subheading of the HTSUS under which the article in question is classified. Except in any of the circumstances described in § 10.236(d)(1), the declaration required under this paragraph must be based on a complete and properly executed original Certificate of Origin that covers the article being imported and that is in the possession of the importer.

(b) *Corrected declaration.* If, after making the declaration required under paragraph (a) of this section, the importer has reason to believe that a Certificate of Origin on which a declaration was based contains information that is not correct, the importer must within 30 calendar days after the date of discovery of the error make a corrected declaration and pay any duties that may be due. A corrected declaration will be effected by submission of a letter or other written statement to the Customs port where the declaration was originally filed.

**§ 10.236 Maintenance of records and submission of Certificate by importer.**

(a) *Maintenance of records.* Each importer claiming preferential tariff treatment for an article under § 10.235 must maintain in the United States, in accordance with the provisions of part 163 of this chapter, all records relating to the importation of the article. Those records must include the original Certificate of Origin referred to in § 10.235(a) and any other relevant documents or other records as specified in § 163.1(a) of this chapter.

(b) *Submission of Certificate.* An importer who claims preferential tariff treatment on an article under § 10.235(a) must provide, at the request of the port director, a copy of the Certificate of Origin pertaining to the article. A Certificate of Origin submitted to Customs under this paragraph:

(1) Must be on Customs Form 450, including privately-printed copies of that Form, or, as an alternative to Customs Form 450, in an approved computerized format or other medium or format as is approved by the Office of Field Operations, U.S. Customs Service, Washington, DC 20229. An alternative format must contain the same information and certification set forth on Customs Form 450;

(2) Must be signed by the exporter or by the exporter's authorized agent having knowledge of the relevant facts;

(3) Must be completed either in the English language or in the language of the country from which the article is exported. If the Certificate is completed in a language other than English, the importer must provide to Customs upon request a written English translation of the Certificate; and

(4) May be applicable to:

(i) A single importation of an article into the United States, including a single shipment that results in the filing of one or more entries and a series of shipments that results in the filing of one entry; or

(ii) Multiple importations of identical articles into the United States that occur within a specified period, not to exceed 12 months, set out in the Certificate by the exporter.

(c) *Correction and nonacceptance of Certificate.* If the port director determines that a Certificate of Origin is illegible or defective or has not been completed in accordance with paragraph (b) of this section, the importer will be given a period of not less than five working days to submit a corrected Certificate. A Certificate will not be accepted in connection with subsequent importations during a period referred to in paragraph (b)(4)(ii) of this section if the port director determined that a previously imported identical article covered by the Certificate did not qualify for preferential treatment.



(d) *Certificate not required—*(1) *General.* Except as otherwise provided in paragraph (d)(2) of this section, an importer is not required to have a Certificate of Origin in his possession for:

(i) An importation of an article for which the port director has in writing waived the requirement for a Certificate of Origin because the port director is otherwise satisfied that the article qualifies for preferential tariff treatment;

(ii) A non-commercial importation of an article; or

(iii) A commercial importation of an article whose value does not exceed US$2,500, provided that, unless waived by the port director, the producer, exporter, importer or authorized agent includes on, or attaches to, the invoice or other document accompanying the shipment the following signed statement:

I hereby certify that the article covered by this shipment qualifies for preferential tariff treatment under the CBTPA.

Check One:
( ) Producer
( ) Exporter
( ) Importer
( ) Agent

Name

Title

Address

Signature and Date

(2) *Exception.* If the port director determines that an importation described in paragraph (d)(1) of this section forms part of a series of importations that may reasonably be considered to have been undertaken or arranged for the purpose of avoiding a Certificate of Origin requirement under §§ 10.234 through 10.236, the port director will notify the importer in writing that for that importation the importer must have in his possession a valid Certificate of Origin to support the claim for preferential tariff treatment. The importer will have 30 calendar days from the date of the written notice to obtain a valid Certificate of Origin, and a failure to timely obtain the Certificate of Origin will result in denial of the claim for preferential tariff treatment. For purposes of this paragraph, a "series of importations" means two or more entries covering articles arriving on the same day from the same exporter and consigned to the same person.

**§ 10.237 Verification and justification of claim for preferential tariff treatment.**

(a) *Verification by Customs.* A claim for preferential tariff treatment made under § 10.235, including any statements or other information contained on a Certificate of Origin submitted to Customs under § 10.236, will be subject to whatever verification the port director deems necessary. In the event that the port director for any reason is prevented from verifying the claim, the port director may deny the claim for preferential tariff treatment. A verification of a claim for preferential tariff treatment may involve, but need not be limited to, a review of:

(1) All records required to be made, kept, and made available to Customs by the importer or any other person under part 163 of this chapter;

(2) Documentation and other information in a CBTPA beneficiary country regarding the country of origin of an article and its constituent materials, including, but not limited to, production records, information relating to the place of production, the number and identification of the types of machinery used in production, and the number of workers employed in production; and

(3) Evidence in a CBTPA beneficiary country to document the use of U.S. materials in the production of the article in question, such as purchase orders, invoices, bills of lading and other shipping documents, and customs import and clearance documents.

(b) *Importer requirements.* In order to make a claim for preferential tariff treatment under § 10.235, the importer:

(1) Must have records that explain how the importer came to the conclusion that the article qualifies for preferential tariff treatment. Those records must include documents that support a claim that the article in question qualifies for preferential tariff treatment because it meets the applicable rule of origin set forth in General Note 12, HTSUS, and in the appendix to part 181 of this chapter. A properly completed Certificate of Origin in the form prescribed in § 10.236(b) is a record that would serve this purpose;

(2) Must establish and implement internal controls which provide for the periodic review of the accuracy of the Certificate of Origin or other records referred to in paragraph (b)(1) of this section;

(3) Must have shipping papers that show how the article moved from the CBTPA beneficiary country to the United States. If the imported article was shipped through a country other than a CBTPA beneficiary country and the invoices and other documents from the CBTPA beneficiary country do not show the United States as the final destination, the importer also must have documentation that demonstrates that the conditions set forth in

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§ 10.233(d)(3)(i) through (iii) were met; and

(4) Must be prepared to explain, upon request from Customs, how the records and internal controls referred to in paragraphs (b)(1) through (b)(3) of this section justify the importer's claim for preferential tariff treatment.

**PART 163—RECORDKEEPING**

1. The authority citation for Part 163 continues to read as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 66, 1484, 1508, 1509, 1510, 1624.

2. The Appendix to Part 163 is amended by adding two new listings under section IV in numerical order to read as follows:

**Appendix to Part 163—Interim (a)(1)(A) List**

* * * * *

IV. * * *

**§ 10.226 CBTPA Textile Certificate of Origin and supporting records**

**§ 10.236 CBTPA Non-textile Certificate of Origin and supporting records**

* * * * *

**Raymond W. Kelly,**

*Commissioner of Customs.*

Approved: September 29, 2000.

**Timothy E. Skud,**

*Acting Deputy Assistant Secretary of the Treasury.*

[FR Doc. 00–25517 Filed 10–2–00; 8:45 am]

BILLING CODE 4820–02–P

Federal Register

Thursday,
October 5, 2000

Part VII

# Department of the Treasury

**Customs Service**

**19 CFR Parts 10 and 163**

**African Growth and Opportunity Act and Generalized System of Preferences; Final Rule**

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**DEPARTMENT OF THE TREASURY**

**Customs Service**

**19 CFR Parts 10 and 163**

**[T.D. 00–67]**

**RIN 1515–AC72**

# African Growth and Opportunity Act and Generalized System of Preferences

**AGENCY:** U.S. Customs Service, Department of the Treasury.

**ACTION:** Interim regulations; solicitation of comments.

**SUMMARY:** This document sets forth interim amendments to the Customs Regulations to implement the trade benefit provisions for sub-Saharan Africa contained in Title I of the Trade and Development Act of 2000. The trade benefits under Title I, also referred to as the African Growth and Opportunity Act (the AGOA), apply to sub-Saharan African countries designated by the President and involve: The extension of duty-free treatment under the Generalized System of Preferences (GSP) to non-textile articles normally excluded from GSP duty-free treatment that are not import-sensitive; and the entry of specific textile and apparel articles free of duty and free of any quantitative limits. The regulatory amendments contained in this document reflect and clarify the statutory standards for preferential treatment under the AGOA and also include specific documentary, procedural and other related requirements that must be met in order to obtain that treatment. Finally, this document also includes some interim amendments to the existing Customs Regulations implementing the GSP to conform those regulations to previous amendments to the GSP statute.

**DATES:** Interim rule effective October 1, 2000; comments must be submitted by December 4, 2000.

**ADDRESSES:** Written comments may be addressed to, and inspected at, the Regulations Branch, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., 3rd Floor, Washington, DC 20229.

**FOR FURTHER INFORMATION CONTACT:**

Operational issues: Cathy Sauceda, Office of Field Operations (202–927–4198).

Legal issues regarding textiles: Cynthia Reese, Office of Regulations and Rulings (202–927–1361).

Other legal issues: Craig Walker, Office of Regulations and Rulings (202–927–1116).

**SUPPLEMENTARY INFORMATION:**

## Background

### African Growth and Opportunity Act

On May 18, 2000, President Clinton signed into law the Trade and Development Act of 2000 (the "Act"), Public Law 106–200, 114 Stat. 251. Title I of the Act concerns the extension of certain trade benefits to sub-Saharan Africa and is referred to in the Act as the "African Growth and Opportunity Act" (the "AGOA").

Subtitle A of Title I of the Act concerns trade policy for sub-Saharan Africa. Subtitle A is codified at 19 U.S.C. 3701–3706 and includes section 104 (19 U.S.C. 3703) which (1) authorizes the President to designate a sub-Saharan African country as an "eligible" sub-Saharan African country if the President determines that the country meets specified eligibility requirements and (2) requires that the President terminate a designation if the President determines that an eligible country is not making continual progress in meeting those requirements. Subtitle A also includes section 107 (19 U.S.C. 3706) which, for purposes of Title I, defines the terms "sub-Saharan Africa" and "sub-Saharan African country" and variations of those terms with reference to 48 listed countries.

Subtitle B of Title I of the Act concerns trade benefits under the AGOA. The provisions within Subtitle B to which this document relates are sections 111, 112 and 113.

*Section 111*

Subsection (a) of section 111 of the Act amends Title V of the Trade Act of 1974 (the Generalized System of Preferences, or GSP, statute which previously consisted of sections 501–507, codified at 19 U.S.C. 2461–2467) by inserting after section 506 a new section 506A entitled "Designation of sub-Saharan African countries for certain benefits" and codified at 19 U.S.C. 2466a.

Subsection (a) of new section 506A authorizes the President, subject to referenced eligibility requirements and criteria, to designate a country listed in section 107 of the Act as a beneficiary sub-Saharan African country eligible for the benefits described in subsection (b). This subsection (a) also requires that the President terminate a designation if the President determines that a beneficiary sub-Saharan African country is not making continual progress in meeting the requirements for designation.

Subsection (b) of new section 506A concerns preferential tariff treatment for certain articles and consists of the following two paragraphs:

1. Paragraph (1) authorizes the President to provide duty-free treatment for any article described in section 503(b)(1) (B) through (G) of the GSP statute that is the growth, product, or manufacture of a beneficiary sub-Saharan African country. A beneficiary sub-Saharan African country is a country listed in section 107 of the Act that has been designated by the President as eligible under subsection (a) of new section 506A. The President is authorized to provide duty-free treatment for an article if, after receiving the advice of the International Trade Commission in accordance with section 503(e) of the GSP statute, the President determines that the article is not import-sensitive in the context of imports from beneficiary sub-Saharan African countries. The articles described in section 503(b)(1) (B) through (G) of the GSP statute are those that are normally excluded from duty-free treatment under the GSP and consist of the following:

a. Watches, except those watches entered after June 30, 1989, that the President specifically determines, after public notice and comment, will not cause material injury to watch or watch band, strap, or bracelet manufacturing and assembly operations in the United States or the United States insular possessions;

b. Import-sensitive electronic articles;

c. Import-sensitive steel articles;

d. Footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel which were not eligible articles for purposes of the GSP on January 1, 1995, as the GSP was in effect on that date;

e. Import-sensitive semimanufactured and manufactured glass products; and

f. Any other articles which the President determines to be import-sensitive in the context of the GSP.

2. Paragraph (2) provides that the duty-free treatment under paragraph (1) will apply to any article described in that paragraph that meets the requirements of section 503(a)(2) (that is, the basic GSP origin and related rules). Paragraph (2) also makes application of those basic rules in this context subject to the following two additional rules:

a. If the cost or value of materials produced in the customs territory of the United States is included with respect to that article, an amount not to exceed 15 percent of the appraised value of the article at the time it is entered that is attributed to that United States cost or value may be applied toward determining the percentage referred to in subparagraph (A) of section 503(a)(2); and



b. The cost or value of the materials included with respect to that article that are produced in one or more beneficiary sub-Saharan African countries shall be applied in determining that percentage.

Thus, in order for an article described in paragraph (1) to receive duty-free treatment, that article must meet the basic origin and related rules that apply to all eligible articles from any GSP-eligible country, but subject to two additional rules. In other words, (1) the article must have become the growth, product, or manufacture of a beneficiary sub-Saharan African country by some process other than a simple combining or packaging operation or the mere dilution with water or the mere dilution with another substance that does not materially alter the characteristics of the article, (2) the article must be imported directly from a beneficiary sub-Saharan African country into the customs territory of the United States, (3) the article must have at least 35 percent of its appraised value attributed to the sum of the direct costs of processing operations performed in the beneficiary sub-Saharan African country or in any two or more beneficiary sub-Saharan African countries that are members of the same association of countries and are treated as one country under section 507(2) of the GSP statute, plus the cost or value of the materials produced in the beneficiary sub-Saharan African country or in any two or more beneficiary sub-Saharan African countries, and (4) as variations from the general GSP 35 percent value-content rule (the two additional rules): the cumulation of the cost or value of materials from different beneficiary countries is not dependent on those beneficiaries being members of an association of countries; and the cost or value of materials produced in the customs territory of the United States (the 50 States and the District of Columbia and Puerto Rico) may be counted toward the 35 percent requirement to a maximum of 15 percent of the article's appraised value.

Subsection (c) of new section 506A defines the terms "beneficiary sub-Saharan African country" and "beneficiary sub-Saharan African countries" for purposes of the AGOA as a country or countries listed in section 107 of the Act that the President has determined is eligible under subsection (a) of new section 506A.

Subsection (b) of section 111 of the Act revises section 503(c)(2)(D) of the GSP statute in order to accommodate inclusion of a reference to "any beneficiary sub-Saharan African country." The effect of this amendment is to preclude the withdrawal of GSP duty-free treatment from a beneficiary sub-Saharan African country by application of the GSP competitive need limitation provisions. This amendment is not addressed in the regulatory changes set forth in this document.

It is noted that section 114 of the Act also amends the GSP statute by inserting after new section 506A another new section 506B (codified at 19 U.S.C. 2466b and entitled "Termination of benefits for sub-Saharan African countries") which provides for continuation of GSP duty-free treatment through September 30, 2008, in the case of a beneficiary sub-Saharan African country as defined in section 506A(c).

*Section 112*

Section 112 of the Act sets forth new rules that provide for the preferential treatment of certain textile and apparel products. These rules are codified at 19 U.S.C. 3721 and thus are outside the GSP statutory framework. Moreover, these rules in effect operate as an exception to the approach under the GSP because section 503(b)(1)(A) of the GSP statute excludes most textile and apparel articles from preferential (that is, duty-free) treatment under the GSP.

Subsection (a) of section 112 contains the basic preferential treatment statement. It provides that textile and apparel articles described in subsection (b) that are imported directly into the customs territory of the United States from a beneficiary sub-Saharan African country described in section 506A(c) of the GSP statute shall enter the United States free of duty and free of any quantitative limitations in accordance with the provisions set forth in subsection (b), if the country has satisfied the requirements set forth in section 113 of the Act.

Subsection (b) of section 112 lists the specific textile and apparel products to which the preferential treatment described in subsection (a) applies. These products are as follows:

1. Apparel articles assembled in one or more beneficiary sub-Saharan African countries from fabrics wholly formed and cut in the United States, from yarns wholly formed in the United States, (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the Harmonized Tariff Schedule of the United States (HTSUS) and are wholly formed and cut in the United States) that are entered under subheading 9802.00.80 of the HTSUS [paragraph (b)(1)(A)];

2. Apparel articles assembled in one or more beneficiary sub-Saharan African countries from fabrics wholly formed and cut in the United States, from yarns wholly formed in the United States, (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are wholly formed and cut in the United States) that are entered under Chapter 61 or 62 of the HTSUS, if, after that assembly, the articles would have qualified for entry under subheading 9802.00.80 of the HTSUS but for the fact that the articles were embroidered or subjected to stone-washing, enzyme-washing, acid washing, perma-pressing, oven-baking, bleaching, garment-dyeing, screen printing, or other similar processes [paragraph (b)(1)(B)];

3. Apparel articles cut in one or more beneficiary sub-Saharan African countries from fabric wholly formed in the United States from yarns wholly formed in the United States, (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are wholly formed in the United States) if those articles are assembled in one or more beneficiary sub-Saharan African countries with thread formed in the United States [paragraph (b)(2)];

4. Apparel articles wholly assembled in one or more beneficiary sub-Saharan African countries from fabric wholly formed in one or more beneficiary sub-Saharan African countries from yarn originating either in the United States or one or more beneficiary sub-Saharan African countries (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are wholly formed and cut in one or more beneficiary sub-Saharan African countries), subject to rules or conditions involving (1) application of quantitative limits on preferential treatment (in effect, tariff rate quotas) for each of eight 1-year periods beginning on October 1, 2000, with a percentage increase in each year, (2) subject to those tariff rate quota provisions and until September 30, 2004, application of preferential treatment to apparel articles wholly assembled in one or more lesser developed beneficiary sub-Saharan African countries regardless of the country of origin of the fabric used to make the articles, and (3) application of an import surge safeguard mechanism that could lead to suspension by the President of duty-free treatment for an article if increased imports of that article cause serious damage, or the threat of serious damage, to a domestic industry producing a like or directly competitive article [paragraph (b)(3)];

5. Cashmere sweaters, that is, sweaters in chief weight of cashmere, knit-to-shape in one or more beneficiary

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sub-Saharan African countries and classifiable under subheading 6110.10 of the HTSUS [paragraph (b)(4)(A)];

6. Wool sweaters containing 50 percent or more by weight of wool measuring 18.5 microns in diameter or finer, knit-to-shape in one or more beneficiary sub-Saharan African countries [paragraph (b)(4)(B)];

7. Apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more beneficiary sub-Saharan African countries, from fabric or yarn that is not formed in the United States or a beneficiary sub-Saharan African country, to the extent that apparel articles of those fabrics or yarns would be eligible for preferential treatment, without regard to the source of the fabric or yarn, under Annex 401 to the North American Free Trade Agreement (NAFTA). (This AGOA provision in effect applies to apparel articles which are originating goods, and thus are entitled to preferential duty treatment, under the NAFTA tariff shift and related rules based on the fact that the fabrics or yarns used to produce them were determined to be in short supply in the context of the NAFTA. The subject fabrics and yarns include fine count cotton knitted fabrics for certain apparel, linen, silk, cotton velveteen, fine wale corduroy, Harris Tweed, certain woven fabrics made with animal hairs, certain lightweight, high thread count poly-cotton woven fabrics, and certain lightweight, high thread count broadwoven fabrics used in the production of men's and boys' shirts—see House Report 106–606, 106th Congress, 2d Session, at page 77.) [paragraph (b)(5)(A)];

8. Apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more beneficiary sub-Saharan African countries, from fabric or yarn that is not formed in the United States or a beneficiary sub-Saharan African country and that is not described in paragraph (b)(5)(A), to the extent that the President has determined that the fabric or yarn cannot be supplied by the domestic industry in commercial quantities in a timely manner and has proclaimed the treatment provided under paragraph (b)(5)(A) [paragraph (b)(5)(B)]; and

9. A handloomed, handmade, or folklore article of a beneficiary sub-Saharan African country or countries that is certified as such by the competent authority of the beneficiary country or countries, subject to a determination by the President regarding which, if any, particular textile and apparel goods of the country or countries will be treated as being handloomed, handmade, or folklore articles [paragraph (b)(6)].

Subsection (c) of section 112 concerns the elimination of existing quotas on textile and apparel articles imported into the United States from Kenya and Mauritius. This provision is not addressed in the regulatory changes set forth in this document.

Subsection (d) of section 112 sets forth special rules that apply for purposes of determining the eligibility of articles for preferential treatment under section 112. These special rules are as follows:

1. Paragraph (d)(1)(A) sets forth a general rule regarding the treatment of findings and trimmings. It provides that an article otherwise eligible for preferential treatment under section 112 will not be ineligible for that treatment because the article contains findings or trimmings of foreign origin, if the value of those foreign findings and trimmings does not exceed 25 percent of the cost of the components of the assembled article. This provision specifies the following as examples of findings and trimmings: sewing thread, hooks and eyes, snaps, buttons, "bow buds," decorative lace trim, elastic strips (but only if they are each less than 1 inch in width and used in the production of brassieres), zippers (including zipper tapes), and labels. However, as an exception to the paragraph (d)(1)(A) general rule, paragraph (d)(1)(C) provides that sewing thread will not be treated as findings or trimmings in the case of an article described in paragraph (b)(2) of section 112 (because that paragraph specifies that the thread used in the assembly of the article must be formed in the United States and thus cannot be of "foreign" origin).

2. Paragraph (d)(1)(B) sets forth a general rule regarding the treatment of specific interlinings, that is, a chest type plate, a "hymo" piece, or "sleeve header," of woven or weft-inserted warp knit construction and of coarse animal hair or man-made filaments. Under this rule, an article otherwise eligible for preferential treatment under section 112 will not be ineligible for that treatment because the article contains interlinings of foreign origin, if the value of those interlinings (and any findings and trimmings) does not exceed 25 percent of the cost of the components of the assembled article. The paragraph also provides for the termination of this treatment of interlinings if the President makes a determination that United States manufacturers are producing those interlinings in the United States in commercial quantities.

3. Finally, paragraph (d)(2) sets forth a *de minimis* rule which provides that an article otherwise eligible for preferential treatment under section 112 will not be ineligible for that treatment because the article contains fibers or yarns not wholly formed in the United States or one or more beneficiary sub-Saharan African countries if the total weight of all those fibers and yarns is not more than 7 percent of the total weight of the article.

Subsection (e) of section 112 defines certain terms for purposes of sections 112 and 113 of the Act and, in paragraph (e)(2), states that the terms "beneficiary sub-Saharan African country" and "beneficiary sub-Saharan African countries" have the same meaning as those terms have under new section 506A(c) discussed above.

Finally, subsection (f) of section 112 provides that section 112 takes effect on October 1, 2000, and will remain in effect through September 30, 2008.

*Section 113*

Section 113 of the Act sets forth standards and conditions for the designation of beneficiary sub-Saharan African countries and for the granting of preferential treatment to textile and apparel articles under section 112. These provisions are primarily intended to avoid transshipment situations and thus ensure that preferential treatment is applied to goods as intended by Congress.

Subsection (a) of section 113 sets forth various terms and conditions that a potential beneficiary sub-Saharan African country must meet for purposes of preferential treatment under section 112. These terms and conditions involve enforcement and related actions to be taken by, and within, those potential beneficiary sub-Saharan African countries and thus, except in the case of paragraphs (a)(1)(F) and (a)(2), do not relate to matters that require regulatory action in this document. Paragraph (a)(1)(F) requires a country to agree to report, on a timely basis, at the request of the U.S. Customs Service, documentation establishing the country of origin of covered articles as used by that country in implementing an effective visa system. For purposes of paragraph (a)(1)(F), paragraph (a)(2) states that documentation regarding the country of origin of the covered articles includes documentation such as production records, information relating to the place of production, the number and identification of the types of machinery used in production, the number of workers employed in production, and certification from both the manufacturer and the exporter.

Subsection (b) of section 113 sets forth regulatory standards for purposes of preferential treatment under section 112, prescribes a specific factual determination that the President must make regarding the implementation of certain procedures and requirements by each beneficiary sub-Saharan African country, prescribes a penalty that the President must impose on an exporter if the President determines that the exporter has engaged in transshipment, specifies when "transshipment" occurs for purposes of the subsection, and sets forth responsibilities of Customs regarding monitoring and reporting to Congress on actions taken by countries in sub-Saharan Africa. The specific provisions under subsection (b) that require regulatory treatment in this document are the following:

1. Paragraph (b)(1)(A) provides that any importer that claims preferential treatment under section 112 must comply with customs procedures similar in all material respects to the requirements of Article 502(1) of the NAFTA as implemented pursuant to United States law, in accordance with regulations promulgated by the Secretary of the Treasury. The NAFTA provision referred to in paragraph (b)(1)(A) concerns the use of a Certificate of Origin and specifically requires that the importer (1) make a written declaration, based on a valid Certificate of Origin, that the imported good qualifies as an originating good, (2) have the Certificate in its possession at the time the declaration is made, (3) provide the Certificate to Customs on request, and (4) promptly make a corrected declaration and pay any duties owing where the importer has reason to believe that a Certificate on which a declaration was based contains information that is not correct.

2. Paragraph (b)(2) provides that the Certificate of Origin that otherwise would be required pursuant to the provisions of paragraph (b)(1)(A) will not be required in the case of an article imported under section 112 if that Certificate of Origin would not be required under Article 503 of the NAFTA (as implemented pursuant to United States law), if the article were imported from Mexico. Article 503 of the NAFTA sets forth, with one general exception, three specific circumstances in which a NAFTA country may not require a Certificate of Origin.

Finally, subsection (c) of section 113 requires Customs to provide technical assistance to the beneficiary sub-Saharan African countries and to send production verification teams to at least four beneficiary sub-Saharan African countries each year, and subsection (d) of section 113 contains an appropriation authorization to carry out these duties. These provisions are not addressed in the regulatory changes set forth in this document.



**Other Changes to the GSP Program**

Section 226 of the Customs and Trade Act of 1990 (Pub. L. 101–382, 104 Stat. 660) amended section 503 of the GSP statute (19 U.S.C. 2463) in order to include explicit country of origin language in the statutory text. The amendments involved (1) inclusion of a reference to an eligible article which is "the growth, product, or manufacture" of a beneficiary developing country, (2) inclusion of a requirement that the implementing regulations promulgated by the Secretary of the Treasury provide that, in order to be eligible for duty-free treatment, an article must be "wholly the growth, product, or manufacture of a beneficiary developing country, or must be a new or different article of commerce which has been grown, produced, or manufactured in the beneficiary developing country," and (3) inclusion of a limitation on the conferring of origin for purposes of duty-free treatment in the case of simple combining or packaging operations or the mere dilution with water or the mere dilution with another substance that does not materially alter the characteristics of the article. The Customs Regulations implementing the GSP were originally published in 1975 and were never amended to reflect the 1990 statutory amendments. This document therefore sets forth conforming regulatory amendments for this purpose.

In addition, in Proclamation 6942 of October 17, 1996 (published in the **Federal Register** at 61 FR 54719 on October 21, 1996), President Clinton amended the GSP in a number of respects. One of those changes involved the termination of the designation of Malaysia both as a beneficiary developing country for purposes of the GSP and as a member of the Association of South East Asian Nations for purposes of the GSP. Section 10.175 of the Customs Regulations (19 CFR 10.175) sets forth standards for the GSP direct importation requirement and, in paragraph (e)(1), permits shipment, with some restrictions, from a member of an association designated for GSP purposes through a former beneficiary developing country whose designation as a member of that same association for GSP purposes was terminated by the President; paragraph (e)(2) of that section lists three former beneficiary developing countries whose designation was terminated as described in paragraph (e)(1). This document adds Malaysia to that paragraph (e)(2) list.

Finally, Customs notes that §§ 10.171(a), 10.175(e), and 10.176(c) of the Customs Regulations contain out-of-date references to various GSP statutory provisions. This document conforms those references to the current GSP statute.

**Section-by-Section Discussion of Interim Amendments**

*Section 10.171*

The amendment of this section involves an amendment of the first sentence of paragraph (a) to reflect the correct codification of the GSP statute.

*Section 10.175*

The amendments of this section involve (1) corrections to various GSP statutory citations in paragraphs (e)(1) and (e)(2), and (2) the addition of Malaysia to the list of countries in paragraph (e)(2) to reflect the action taken by the President in Proclamation 6942 as discussed above.

*Section 10.176*

The amendments to this section include the revision of paragraph (a) to reflect the changes to the GSP statute previously made by section 226 of the Customs and Trade Act of 1990 as discussed above. It is noted that the amended GSP statutory text regarding the basic rules of origin closely follows the wording of the corresponding Caribbean Basin Initiative (CBI) statutory text (section 213(a)(1) and (2) of the Caribbean Basin Economic Recovery Act (CBERA), codified at 19 U.S.C. 2703(a)(1) and (2)), and the legislative history relating to section 226 clearly indicates that the CBI statute was the model for this change to the GSP statute (see House Report 101–650, 101st Congress, 2d Session, at page 137). Accordingly, revised paragraph (a) of § 10.176 as set forth in this document follows the corresponding CBI regulatory provision (§ 10.195(a) of the Customs Regulations, 19 CFR 10.195(a)) but with appropriate textual variations to reflect a GSP context. It should also be noted that in the revised GSP text (1) reference is no longer made to merchandise which is the "assembly" of a beneficiary developing country because, similar to the CBI, that term is not used in the statute and in any event is covered by the phrase "growth, product, or manufacture," and (2) the reference to the "imported directly" requirement has not been retained because that requirement is already separately and adequately addressed in § 10.175 (this does not modify the GSP imported directly requirement).

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In addition, paragraph (c) of this section is amended to correct an out-of-date reference to a provision within the GSP statute.

*New § 10.178a*

This section is intended to cover the preferential tariff treatment provisions of subsection (b) of new section 506A of the GSP statute.

Paragraphs (a) and (b) of the regulatory text reflect the terms of section 506A(b)(1). Paragraph (a) sets the statutory context for the section and paragraph (b) describes the designation authority of the President and lists the articles that may be designated for duty-free treatment.

Paragraph (c) specifies the manner in which a claim for duty-free treatment under the section should be made. It follows the procedure specified in § 10.172 of the GSP regulations but provides for use of the symbol "D" (rather than "A") as the special program indicator on the entry.

Paragraph (d) of the regulatory text reflects the rules of origin principles contained in section 506A(b)(2). In order to avoid unnecessary duplication of regulatory text, and in consideration of the fact that the statute provides for application of the GSP origin and related rules in this context (subject to two exceptions in the case of the 35 percent value content requirement), paragraph (d) provides for application of the relevant existing GSP regulatory provisions (that is, §§ 10.171, 10.173, and 10.175 through 10.178) but with certain specified exceptions or variations to conform to the AGOA context.

*New §§ 10.211 Through 10.217*

These new sections are intended to implement those textile and apparel preferential treatment provisions within sections 112 and 113 of the Act that relate to U.S. import procedures and thus are appropriate for treatment in the Customs Regulations.

Section 10.211 outlines the statutory context for the new sections and is self-explanatory.

Section 10.212 sets forth definitions for various terms used in the new regulatory provisions. The following points are noted regarding these definitions:

1. The definition of "apparel articles," by referring to goods classifiable in Chapters 61 and 62 and headings 6501, 6502, 6503, and 6504 and subheadings 6406.99 and 6505.90 of the HTSUS, is intended to reflect the scope of apparel under the Agreement on Textiles and Clothing annexed to the WTO Agreement and referred to in 19 U.S.C. 3511(d)(4).

2. The definition of "assembled in one or more beneficiary countries" is based in part on the definition of "wholly assembled" in § 102.21(b)(6) of the Customs Regulations (19 CFR 102.21(b)(6)) but also adds a reference to thread as a material that is not considered to be a component for purposes of the definition. In addition, the definition is intended to allow a prior partial assembly in the United States, consistent with the overall structure of the AGOA as reflected in the types of operations allowed under the program.

3. The definition of "cut in one or more beneficiary countries" precludes any cutting operation performed in a country other than a beneficiary country in accordance with the clear language of the statute.

4. The definition of "knit-to-shape" follows the definition in § 102.21(b)(3) of the Customs Regulations (19 CFR 102.21(b)(3)).

5. The definition of "major parts" is taken from the definition in § 102.21(b)(4) of the Customs Regulations (19 CFR 102.21(b)(4)).

6. The definition of "NAFTA" reflects the definition contained in section 112(e)(3) of the Act.

7. The definition of "originating" refers to the Customs Regulations that implement section 334 of the Uruguay Round Agreements Act and therefore is consistent with the intent of Congress (see House Report 106–606, 106th Congress, 2d Session, at page 77).

8. The definition of "wholly assembled in" is intended to ensure, consistent with the wording of the statute and the clear meaning of "wholly" in this context, that all assembly operations (including any initial partial assembly or any tail-end assembly operation) will be performed in the countries that are the intended beneficiaries of the AGOA program.

9. The definition of "wholly formed" relies in part on the definition of "fabric-making process" in § 102.21(b)(2) of the Customs Regulations (19 CFR 102.21(b)(2)) and also uses a similar approach for yarns and thread because the Act uses these terms with reference to fabrics, yarns, and thread. The definition is intended to ensure that all processes essential for yarn or thread or fabric formation are performed in the United States or beneficiary countries.

Section 10.213 identifies the specific articles to which preferential treatment applies under section 112 of the Act. Paragraph (a) repeats the "imported directly" requirement of section 112(a) of the Act and identifies the various types of articles described within sections 112(b)(1)–(6) of the Act. Paragraph (b) covers the special rules for findings, trimmings, and interlinings and the *de minimis* rule contained in section 112(d) of the Act. Paragraph (c) explains what is meant by "imported directly." The following specific points are noted regarding these regulatory texts:

1. With regard to paragraph (a)(2), which corresponds to section 112(b)(1)(B) of the Act, Customs notes that the statutory provision does not address the issue of whether the embroidery or stone-washing and other processes mentioned in that provision (which are principally finishing operations normally done after assembly) must be done in beneficiary countries. The relevant legislative history does not address the issue. The statute could be read to allow these processes to be done in a non-beneficiary country provided that, after these processes are completed, the article is returned to a beneficiary country for direct importation into the United States. However, Customs believes that this interpretation would lead to a result that is contrary to the Congressional statement of policy set forth in section 103 of the Act which mentions, among other things, the encouragement of increased trade and investment between the United States and sub-Saharan Africa and the strengthening and expansion of the private sector in sub-Saharan Africa, because it could have the effect of diverting those finishing operations to third countries and thus away from the intended beneficiaries under the Act. Customs has determined that limiting the performance of those processes to beneficiary countries would further the stated policy of Congress and would be more consistent with the intent of the Act. Accordingly, in paragraph (a)(2) of the regulatory text, the words "in a beneficiary country" have been added at the end after "processes."

2. In paragraph (a)(3), which corresponds to section 112(b)(2) of the Act, no comma has been included before the parenthetical expression and a comma has been added after that parenthetical expression, in order to correct an apparent inadvertent drafting or printing error and thus ensure proper grammatical sense (this makes the regulatory text consistent with a corresponding statutory text set forth under section 211 of the Act, which is not the subject of this document).

3. In paragraph (a)(7), which corresponds to section 112(b)(4)(B) of the Act, no mention is made of "merino" wool because, notwithstanding the use of this word in the heading of the statutory provision, Customs interprets the statutory language as reflecting the intent of Congress to set a maximum (18.5 micron) diameter limitation without regard to the type of animal from which the wool was obtained.

4. In paragraph (a)(9), which corresponds to section 112(b)(5)(B) of the Act, no reference has been made at the end to treatment provided "for yarns or fabrics" because treatment in this context must be read in the context of section 112(b)(5)(A) of the Act and therefore can only have reference to articles made from yarns or fabric.

5. Paragraph (b) is divided into two parts: Paragraph (b)(1) reflects the basic rules of section 112(d) of the Act and paragraph (b)(2) is intended to clarify the relationship between findings and trimmings on the one hand and fibers and yarns on the other hand for purposes of applying the 25 percent by value and 7 percent by weight limitations under section 112(d). As regards paragraph (b)(2), Customs believes that some clarification is appropriate in this context because sometimes a fiber or yarn may be used in an article as a finding or trimming. The statute is ambiguous as to whether an article is ineligible if the total weight of all foreign fibers or yarns exceeds the 7 percent limit but the value of all foreign findings and trimmings does not exceed the 25 percent limit. Thus, the question arises as to which limitation should apply. In the absence of any guidance on this point in the relevant legislative history, Customs has concluded that the best approach is to give precedence to the findings and trimmings limitation. Thus, under paragraph (b)(2) a foreign yarn, for example, that is used in an article as a trimming would be subject to the 25 percent by value limitation rather than the 7 percent by weight limitation. In addition, the following is noted regarding the paragraph (b) texts:

a. In paragraph (b)(1)(i) the words "and zippers, including zipper tapes and labels" in section 112(d)(1)(A) of the Act have been replaced with the words "zippers (including zipper tapes), labels" because there is no such thing as a "zipper label" and to ensure proper treatment of labels as findings and trimmings in their own right. Customs believes that this wording of the regulatory text is consistent with the intent of Congress as reflected in the explanation of the provision in the relevant legislative history (see House Report 106–606, 106th Congress, 2d Session, at page 79); and

b. A separate paragraph (b)(1)(iii) has been included to allow a combination of findings and trimmings and interlinings up to a total of 25 percent of the cost of the components of the assembled article, because Customs believes that was the result intended by Congress by the inclusion of the words "(and any findings and trimmings)" in section 112(d)(1)(B)(i) of the Act.

6. The explanation of "imported directly" in paragraph (c) is consistent with current regulatory practice. The text follows that used in the Caribbean Basin Initiative (CBI) implementing regulations (see 19 CFR 10.193) rather than the text used in the corresponding GSP regulation (19 CFR 10.175) because the CBI text allows for contributions from multiple beneficiary countries without affecting compliance with the imported directly requirement and thus is more appropriate for the production scenarios permitted under section 112(b) of the Act.

Section 10.214 prescribes the use of a Certificate of Origin and thus reflects the regulatory mandate contained in section 113(b)(1)(A) of the Act. Paragraph (a) contains a general statement regarding the purpose and preparation of the Certificate of Origin and is based in part on § 181.11 of the implementing NAFTA regulations (19 CFR 181.11). Paragraph (b) sets forth the form for the Certificate of Origin, which is directed toward the specific articles described in section 112(b) of the Act and thus bears no substantive relationship to the Certificate of Origin used under the NAFTA which involves different country of origin standards for preferential duty treatment. Paragraph (c) sets forth instructions for preparation of the Certificate of Origin. It should be noted that the Certificate of Origin prescribed under this section has no effect on the textile declaration prescribed under § 12.130 of the Customs Regulations (19 CFR 12.130) which still must be submitted to Customs in accordance with that section even in the case of textile products that are entitled to preferential treatment under the AGOA program.

Section 10.215 sets forth the procedures for filing a claim for preferential treatment. Consistent with the mandate in section 113(b)(1)(A) of the Act for procedures "similar in all material respects to the requirements of Article 502(1) of the NAFTA," this regulatory text is based on the NAFTA regulatory text contained in 19 CFR 181.21, but includes appropriate changes to conform to the current context. However, contrary to the NAFTA regulatory text, paragraph (a) of § 10.215 does not allow for a declaration based on a copy of an original Certificate of Origin.

Section 10.216 concerns the maintenance of records and submission of the Certificate of Origin by the importer and follows the NAFTA regulatory text contained in 19 CFR 181.22 but, again, with appropriate changes to conform to the current context. The following points are noted regarding the regulatory text:

1. In paragraph (a) which concerns the maintenance of records, specific reference is made to "the provisions of part 163" which sets forth the basic Customs recordkeeping requirements that apply to importers and other persons involved in customs transactions. The effect is the same as that under the NAFTA § 181.22 text.

2. Paragraph (b) concerns submission of the Certificate of Origin to Customs and thus also relates directly to a requirement contained in Article 502(1) of the NAFTA. The text is based on the NAFTA regulatory text contained in 19 CFR 181.22(b) but differs from the NAFTA text by not specifying a 4-year period for acceptance of the Certificate by Customs, because that 4-year period is only relevant in a NAFTA context.

3. Paragraph (c) concerns the correction of defective Certificates of Origin and the nonacceptance of blanket Certificates in certain circumstances. The text is based on the NAFTA regulatory text contained in 19 CFR 181.22(c) but is simplified and does not include any reference to NAFTA-type origin verifications which do not apply for AGOA purposes.

4. Paragraph (d) sets forth the circumstances in which a Certificate of Origin is not required. Consistent with the terms of section 113(b)(2) of the Act, this regulatory text follows the terms of Article 503 of the NAFTA and the NAFTA regulatory text contained in 19 CFR 181.22(d).

Finally, section 10.217 concerns the verification and justification of claims for preferential treatment. Paragraph (a) concerns the verification of claims by Customs and paragraph (b) prescribes steps that a U.S. importer should take in order to support a claim for preferential treatment. Although paragraph (a) is derived from provisions contained in the GSP regulations (19 CFR 10.173(c)) and in the CBI regulations (19 CFR 10.198(c)), the text expands on the GSP/CBI approach in the following respects:

1. In paragraph (a)(1), specific reference is made to the review of import-related documents required to be made, kept, and made available by importers and other persons under Part 163 of the Customs Regulations.

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2. Paragraph (a)(2) sets forth examples of documents and information relating to production in a beneficiary country that Customs may need to review for purposes of verifying a claim for preferential treatment. This paragraph is based on the specifics regarding country of origin documentation contained in section 113(a)(2) of the Act.

3. Finally, paragraph (a)(3) refers to evidence in a beneficiary country to document the use of U.S. materials in an article produced in the beneficiary country, because the presence of U.S. materials is a key element for many of the articles to which preferential treatment applies under the AGOA. Accordingly, U.S. importers must be aware of the fact that their ability to successfully claim preferential treatment on their imports may be a function of the nature of the records maintained by the beneficiary country producer not only with regard to the production process but also with regard to the source of the materials used in that production.

*Appendix to Part 163*

Finally, this document amends Part 163 of the Customs Regulations (19 CFR Part 163) by adding to the list of entry records in the Appendix (the interim "(a)(1)(A) list") a reference to the Certificate of Origin and supporting documentation prescribed under new § 10.216.

**Comments**

Before adopting this interim regulation as a final rule, consideration will be given to any written comments timely submitted to Customs, including comments on the clarity of this interim rule and how it may be made easier to understand. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., 3rd Floor, Washington, DC.

**Inapplicability of Notice and Delayed Effective Date Requirements and the Regulatory Flexibility Act**

Pursuant to the provisions of 5 U.S.C. 553(b)(B), Customs has determined that prior public notice and comment procedures on these regulations are unnecessary and contrary to the public interest. The regulatory changes provide trade benefits to the importing public, in some cases implement direct statutory mandates, and are necessary to carry out the preferential treatment proclaimed by the President under the African Growth and Opportunity Act. For the same reasons, pursuant to the provisions of 5 U.S.C. 553(d)(1) and (3), Customs finds that there is good cause for dispensing with a delayed effective date. Because no notice of proposed rulemaking is required for interim regulations, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

**Executive Order 12866**

This document does not meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

**Paperwork Reduction Act**

This regulation is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in this regulation has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1515–0224.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The collection of information in these interim regulations is in §§ 10.214, 10.215, and 10.216. This information conforms to requirements in 19 U.S.C. 3722(b)(1)(A) and is used by Customs to determine whether textile and apparel articles imported from designated beneficiary sub-Saharan African countries are entitled to duty-free entry under the African Growth and Opportunity Act. The likely respondents are business organizations including importers, exporters, and manufacturers.

*Estimated annual reporting and/or recordkeeping burden:* 10,400 hours.

*Estimated average annual burden per respondent/recordkeeper:* 23 hours.

*Estimated number of respondents and/or recordkeepers:* 440.

*Estimated annual frequency of responses:* On occasion.

Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer of the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503. A copy should also be sent to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, DC 20229. Comments should be submitted within the time frame that comments are due regarding the substance of the interim regulations.

*Comments are invited on:* (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or startup costs and costs of operations, maintenance, and purchase of services to provide information.

**Drafting Information**

The principal author of this document was Francis W. Foote, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

**List of Subjects**

*19 CFR Part 10*

Assembly, Bonds, Caribbean Basin Initiative, Customs duties and inspection, Exports, Generalized System of Preferences, Imports, Preference programs, Reporting and recordkeeping requirements, Trade agreements.

*19 CFR Part 163*

Administrative practice and procedure, Customs duties and inspection, Imports, Reporting and recordkeeping requirements.

**Amendments to the Regulations**

For the reasons set forth in the preamble, Parts 10 and 163, Customs Regulations (19 CFR Parts 10 and 163), are amended as set forth below.

## PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority citation for Part 10 continues to read, the specific authority citation for §§ 10.171 through 10.178 is revised to read, and a new specific authority citation for §§ 10.211 through 10.217 is added to read, as follows:

**Authority:** 19 U.S.C. 66, 1202 (General Note 22, Harmonized Tariff Schedule of the United States (HTSUS)), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314;



Sections 10.171 through 10.178a also issued under 19 U.S.C. 2461 *et seq.*;

* * * * *

Sections 10.211 through 10.217 also issued under 19 U.S.C. 3721;

* * * * *

2. In § 10.171, the first sentence of paragraph (a) is amended by removing the reference "(19 U.S.C. 2461–2465)" and adding, in its place, the reference "(19 U.S.C. 2461–2467)".

3. In § 10.175:

a. Paragraph (e)(1) is amended by removing the words "section 502(a)(3), Trade Act of 1974, as amended (19 U.S.C. 2462(a)(3))" and adding, in their place, the words "section 507(2), Trade Act of 1974, as amended (19 U.S.C. 2467(2))" and by removing the words "section 504, Trade Act of 1974, as amended (19 U.S.C. 2464)" and adding, in their place, the words "section 502(d), Trade Act of 1974, as amended (19 U.S.C. 2462(d))"; and

b. Paragraph (e)(2) is amended by removing the words "section 504 of the Trade Act of 1974 (19 U.S.C. 2464)" and adding, in their place, the words "section 502(d) of the Trade Act of 1974 (19 U.S.C. 2462(d))" and by adding "Malaysia" in appropriate alphabetical order in the list of countries at the end of the paragraph.

4. In § 10.176, paragraph (a) is revised, and paragraph (c) is amended by removing the words "section 502(a)(3) of the Trade Act of 1974 as amended (19 U.S.C. 2462(a)(3))" and adding, in their place, the words "section 507(2) of the Trade Act of 1974 (19 U.S.C. 2467(2))". The revision of paragraph (a) reads as follows:

**§ 10.176 Country of origin criteria.**

(a) *Merchandise produced in a beneficiary developing country or any two or more countries which are members of the same association of countries*—(1) *General.* Except as otherwise provided in this section, any article which either is wholly the growth, product, or manufacture of, or is a new or different article of commerce that has been grown, produced, or manufactured in, a beneficiary developing country may qualify for duty-free entry under the Generalized System of Preferences (GSP). No article will be considered to have been grown, produced, or manufactured in a beneficiary developing country by virtue of having merely undergone simple (as opposed to complex or meaningful) combining or packaging operations or mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the article. Duty-free entry under the GSP may be accorded to an article only if the sum of the cost or value of the materials produced in the beneficiary developing country or any two or more countries that are members of the same association of countries and are treated as one country under section 507(2) of the Trade Act of 1974, as amended (19 U.S.C. 2467(2)), plus the direct costs of processing operations performed in the beneficiary developing country or member countries, is not less than 35 percent of the appraised value of the article at the time it is entered.

(2) *Combining, packaging, and diluting operations.* No article which has undergone only a simple combining or packaging operation or a mere dilution in a beneficiary developing country within the meaning of paragraph (a)(1) of this section will be entitled to duty-free treatment even though the processing operation causes the article to meet the value requirement set forth in that paragraph. For purposes of this section:

(i) Simple combining or packaging operations and mere dilution include, but are not limited to, the following:

(A) The addition of batteries to devices;

(B) Fitting together a small number of components by bolting, glueing, soldering, *etc.*;

(C) Blending foreign and beneficiary developing country tobacco;

(D) The addition of substances such as anticaking agents, preservatives, wetting agents, etc.;

(E) Repacking or packaging components together;

(F) Reconstituting orange juice by adding water to orange juice concentrate; and

(G) Diluting chemicals with inert ingredients to bring them to standard degrees of strength;

(ii) Simple combining or packaging operations and mere dilution will not be taken to include processes such as the following:

(A) The assembly of a large number of discrete components onto a printed circuit board;

(B) The mixing together of two bulk medicinal substances followed by the packaging of the mixed product into individual doses for retail sale;

(C) The addition of water or another substance to a chemical compound under pressure which results in a reaction creating a new chemical compound; and

(D) A simple combining or packaging operation or mere dilution coupled with any other type of processing such as testing or fabrication (for example, a simple assembly of a small number of components, one of which was fabricated in the beneficiary developing country where the assembly took place); and

(iii) The fact that an article has undergone more than a simple combining or packaging operation or mere dilution is not necessarily dispositive of the question of whether that processing constitutes a substantial transformation for purposes of determining the country of origin of the article.

* * * * *

5. A new § 10.178a is added to read as follows:

**§ 10.178a Special duty-free treatment for sub-Saharan African countries.**

(a) *General.* Section 506A of the Trade Act of 1974 (19 U.S.C. 2466a) authorizes the President to provide duty-free treatment for certain articles otherwise excluded from duty-free treatment under the Generalized System of Preferences (GSP) pursuant to section 503(b)(1)(B) through (G) of the Trade Act of 1974 (19 U.S.C. 2463(b)(1)(B) through (G)) and authorizes the President to designate a country listed in section 107 of the African Growth and Opportunity Act (19 U.S.C. 3706) as an eligible beneficiary sub-Saharan African country for purposes of that duty-free treatment.

(b) *Eligible articles.* The duty-free treatment referred to in paragraph (a) of this section will apply to any article within any of the following classes of articles, provided that the article in question has been designated by the President for that purpose and is the growth, product, or manufacture of an eligible beneficiary sub-Saharan African country and meets the requirements specified or referred to in paragraph (d) of this section:

(1) Watches, except those watches entered after June 30, 1989, that the President specifically determines, after public notice and comment, will not cause material injury to watch or watch band, strap, or bracelet manufacturing and assembly operations in the United States or the United States insular possessions;

(2) Certain electronic articles;

(3) Certain steel articles;

(4) Footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel which were not eligible articles for purposes of the GSP on January 1, 1995, as the GSP was in effect on that date;

(5) Certain semimanufactured and manufactured glass products; and

(6) Any other articles which the President determines to be import-sensitive in the context of the GSP.

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(c) *Claim for duty-free treatment.* A claim for the duty-free treatment referred to in paragraph (a) of this section must be made by placing on the entry document the symbol "D" as a prefix to the subheading of the Harmonized Tariff Schedule of the United States for each article for which duty-free treatment is claimed;

(d) *Origin and related rules.* The provisions of §§ 10.171, 10.173, and 10.175 through 10.178 will apply for purposes of duty-free treatment under this section. However, application of those provisions in the context of this section will be subject to the following rules:

(1) The term "beneficiary developing country," wherever it appears, means "beneficiary sub-Saharan African country;'

(2) In the GSP declaration set forth in § 10.173(a)(1)(i), the column heading "Materials produced in a beneficiary developing country or members of the same association" should read "Material produced in a beneficiary sub-Saharan African country or in the U.S.;"

(3) The provisions of § 10.175(c) will not apply; and

(4) For purposes of determining compliance with the 35 percent value content requirement set forth in § 10.176(a):

(i) An amount not to exceed 15 percent of the appraised value of the article at the time it is entered may be attributed to the cost or value of materials produced in the customs territory of the United States, and the provisions of § 10.177 will apply for purposes of identifying materials produced in the customs territory of the United States and the cost or value of those materials; and

(ii) The cost or value of materials included in the article that are produced in more than one beneficiary sub-Saharan African country may be applied without regard to whether those countries are members of the same association of countries.

(e) *Importer requirements.* In order to make a claim for duty-free treatment under this section, the importer:

(1) Must have records that explain how the importer came to the conclusion that the article qualifies for duty-free treatment;

(2) Must have records that demonstrate that the importer is claiming that the article qualifies for duty-free treatment because it is the growth of a beneficiary sub-Saharan African country or because it is the product of a beneficiary sub-Saharan African country or because it is the manufacture of a beneficiary sub-Saharan African country. If the importer is claiming that the article is the growth of a beneficiary sub-Saharan African country, the importer must have records that indicate that the product was grown in that country, such as a record of receipt from a farmer whose crops are grown in that country. If the importer is claiming that the article is the product of, or the manufacture of, a beneficiary sub-Saharan African country, the importer must have records that indicate that the manufacturing or processing operations reflected in or applied to the article meet the country of origin rules set forth in § 10.176(a) and paragraph (d) of this section. A properly completed GSP declaration in the form set forth in § 10.173(a)(1) is one example of a record that would serve this purpose;

(3) Must establish and implement internal controls which provide for the periodic review of the accuracy of the declarations or other records referred to in paragraph (e)(2) of this section;

(4) Must have shipping papers that show how the article moved from the beneficiary sub-Saharan African country to the United States. If the imported article was shipped through a country other than a beneficiary sub-Saharan African country and the invoices and other documents from the beneficiary sub-Saharan African country do not show the United States as the final destination, the importer also must have documentation that demonstrates that the conditions set forth in § 10.175(d)(1) through (3) were met;

(5) Must have records that demonstrate the cost or value of the materials produced in the United States and the cost or value of the materials produced in a beneficiary sub-Saharan African country or countries and the direct costs of processing operations incurred in the beneficiary sub-Saharan African country that were relied upon by the importer to determine that the article met the 35 percent value content requirement set forth in § 10.176(a) and paragraph (c) of this section. A properly completed GSP declaration in the form set forth in § 10.173(a)(1) is one example of a record that would serve this purpose; and

(6) Must be prepared to produce the records referred to in paragraphs (e)(1), (e)(2), (e)(4), and (e)(5) of this section within 30 days of a request from Customs and must be prepared to explain how those records and the internal controls referred to in paragraph (e)(3) of this section justify the importer's claim for duty-free treatment.

6. Part 10 is amended by adding a new center heading followed by new §§ 10.211 through 10.217 to read as follows:

**Textile and Apparel Articles Under the African Growth and Opportunity Act**

Sec.
10.211 Applicability.
10.212 Definitions.
10.213 Articles eligible for preferential treatment.
10.214 Certificate of Origin.
10.215 Filing of claim for preferential treatment.
10.216 Maintenance of records and submission of Certificate by importer.
10.217 Verification and justification of claim for preferential treatment.

**Textile and Apparel Articles Under the African Growth and Opportunity Act**

**§ 10.211 Applicability.**

Title I of Public Law 106–200 (114 Stat. 251), entitled the African Growth and Opportunity Act (AGOA), authorizes the President to extend certain trade benefits to designated countries in sub-Saharan Africa. Section 112 of the AGOA, codified at 19 U.S.C. 3721, provides for the preferential treatment of certain textile and apparel articles from beneficiary countries. The provisions of §§ 10.211–10.217 of this part set forth the legal requirements and procedures that apply for purposes of obtaining preferential treatment pursuant to section 112.

**§ 10.212 Definitions.**

When used in §§ 10.211 through 10.217, the following terms have the meanings indicated:

*Apparel articles.* "Apparel articles" means goods classifiable in Chapters 61 and 62 and headings 6501, 6502, 6503, and 6504 and subheadings 6406.99 and 6505.90 of the HTSUS.

*Assembled in one or more beneficiary countries.* "Assembled in one or more beneficiary countries" when used in the context of a textile or apparel article has reference to a joining together of two or more components (other than thread, decorative embellishments, buttons, zippers, or similar components) that occurred in one or more beneficiary countries, whether or not a prior joining operation was performed on the article or any of its components in the United States.

*Beneficiary country.* "Beneficiary country" means a country listed in section 107 of the African Growth and Opportunity Act (19 U.S.C. 3706) which has been the subject of a finding by the President, published in the **Federal Register**, that the country has satisfied the requirements of section 113 of the African Growth and Opportunity Act (19 U.S.C. 3722) and which the President has designated as a



beneficiary sub-Saharan African country under section 506A of the Trade Act of 1974 (19 U.S.C. 2466a).

*Cut in one or more beneficiary countries.* "Cut in one or more beneficiary countries" when used with reference to apparel articles means that all fabric components used in the assembly of the article were cut from fabric in one or more beneficiary countries.

*Foreign.* "Foreign" means of a country other than the United States or a beneficiary country.

*HTSUS.* "HTSUS" means the Harmonized Tariff Schedule of the United States.

*Knit-to-shape.* The term "knit-to-shape" applies to any apparel article of which 50 percent or more of the exterior surface area is formed by major parts that have been knitted or crocheted directly to the shape used in the apparel article, with no consideration being given to patch pockets, appliques, or the like. Minor cutting, trimming, or sewing of those major parts will not affect the determination of whether an apparel article is "knit-to-shape."

*Major parts.* "Major parts" means integral components of an apparel article but does not include collars, cuffs, waistbands, plackets, pockets, linings, paddings, trim, accessories, or similar parts or components.

*NAFTA.* "NAFTA" means the North American Free Trade Agreement entered into by the United States, Canada, and Mexico on December 17, 1992.

*Originating.* "Originating" means having the country of origin determined by application of the provisions of § 102.21 of this chapter.

*Preferential treatment.* "Preferential treatment" means entry, or withdrawal from warehouse for consumption, in the customs territory of the United States free of duty and free of any quantitative limitations as provided in 19 U.S.C. 3721.

*Wholly assembled in.* When used with reference to a textile or apparel article in the context of one or more beneficiary countries or one or more lesser developed beneficiary countries, the expression "wholly assembled in" means that all of the components of the textile or apparel article (including thread, decorative embellishments, buttons, zippers, or similar components) were joined together in one or more beneficiary countries or one or more lesser developed beneficiary countries.

*Wholly formed.* "Wholly formed," when used with reference to yarns or thread, means that all of the production processes, starting with the extrusion of filament or the spinning of all fibers into yarn or both and ending with a yarn or plied yarn, took place in a single country, and, when used with reference to fabric(s), means that all of the production processes, starting with polymers, fibers, filaments, textile strips, yarns, twine, cordage, rope, or strips of fabric and ending with a fabric by a weaving, knitting, needling, tufting, felting, entangling or other process, took place in a single country.

**§ 10.213 Articles eligible for preferential treatment.**

(a) *General.* The preferential treatment referred to in § 10.211 applies to the following textile and apparel articles that are imported directly into the customs territory of the United States from a beneficiary country:

(1) Apparel articles assembled in one or more beneficiary countries from fabrics wholly formed and cut in the United States, from yarns wholly formed in the United States, (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are wholly formed and cut in the United States) that are entered under subheading 9802.00.80 of the HTSUS;

(2) Apparel articles assembled in one or more beneficiary countries from fabrics wholly formed and cut in the United States, from yarns wholly formed in the United States, (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are wholly formed and cut in the United States) that are entered under Chapter 61 or 62 of the HTSUS, if, after that assembly, the articles would have qualified for entry under subheading 9802.00.80 of the HTSUS but for the fact that the articles were embroidered or subjected to stone-washing, enzyme-washing, acid washing, perma-pressing, oven-baking, bleaching, garment-dyeing, screen printing, or other similar processes in a beneficiary country;

(3) Apparel articles cut in one or more beneficiary countries from fabric wholly formed in the United States from yarns wholly formed in the United States (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are wholly formed in the United States), if those articles are assembled in one or more beneficiary countries with thread formed in the United States;

(4) Apparel articles wholly assembled in one or more beneficiary countries from fabric wholly formed in one or more beneficiary countries from yarn originating either in the United States or one or more beneficiary countries (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are wholly formed and cut in one or more beneficiary countries);

(5) Apparel articles wholly assembled in one or more lesser developed beneficiary countries regardless of the country of origin of the fabric used to make the articles;

(6) Sweaters, in chief weight of cashmere, knit-to-shape in one or more beneficiary countries and classifiable under subheading 6110.10 of the HTSUS;

(7) Sweaters, containing 50 percent or more by weight of wool measuring 18.5 microns in diameter or finer, knit-to-shape in one or more beneficiary countries;

(8) Apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more beneficiary countries, from fabric or yarn that is not formed in the United States or a beneficiary country, to the extent that apparel articles of those fabrics or yarns would be eligible for preferential treatment, without regard to the source of the fabric or yarn, under Annex 401 to the NAFTA;

(9) Apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more beneficiary countries, from fabric or yarn that is not formed in the United States or a beneficiary country and that is not described in paragraph (a)(8) of this section, to the extent that the President has determined that the fabric or yarn cannot be supplied by the domestic industry in commercial quantities in a timely manner and has proclaimed the preferential treatment provided under paragraph (a)(8) of this section; and

(10) A handloomed, handmade, or folklore article of a beneficiary country or countries that is certified as a handloomed, handmade, or folklore article by the competent authority of the beneficiary country or countries, provided that the President has determined that the article in question will be treated as being a handloomed, handmade, or folklore article.

(b) *Special rules for certain component materials*—(1) *General.* An article otherwise described under paragraph (a) of this section will not be ineligible for the preferential treatment referred to in § 10.211 because the article contains:

(i) Findings and trimmings of foreign origin, if the value of those findings and trimmings does not exceed 25 percent of the cost of the components of the assembled article. For purposes of this section "findings and trimmings" include, but are not limited to, hooks

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and eyes, snaps, buttons, "bow buds," decorative lace trim, elastic strips (but only if they are each less than 1 inch in width and are used in the production of brassieres), zippers (including zipper tapes), labels, and sewing thread except in the case of an article described in paragraph (a)(3) of this section;

(ii) Interlinings of foreign origin, if the value of those interlinings does not exceed 25 percent of the cost of the components of the assembled article. For purposes of this section "interlinings" include only a chest type plate, a "hymo" piece, or "sleeve header," of woven or weft-inserted warp knit construction and of coarse animal hair or man-made filaments;

(iii) Any combination of findings and trimmings of foreign origin and interlinings of foreign origin, if the total value of those findings and trimmings and interlinings does not exceed 25 percent of the cost of the components of the assembled article; or

(iv) Fibers or yarns not wholly formed in the United States or one or more beneficiary countries if the total weight of all those fibers and yarns is not more than 7 percent of the total weight of the article.

(2) *Treatment of fibers and yarns as findings or trimmings.* If any fibers or yarns not wholly formed in the United States or one or more beneficiary countries are used in an article as a finding or trimming described in paragraph (b)(1)(i) of this section, the fibers or yarns will be considered to be a finding or trimming for purposes of paragraph (b)(1) of this section.

(c) *Imported directly defined.* For purposes of paragraph (a) of this section, the words "imported directly" mean:

(1) Direct shipment from any beneficiary country to the United States without passing through the territory of any non-beneficiary country;

(2) If the shipment is from any beneficiary country to the United States through the territory of any non-beneficiary country, the articles in the shipment do not enter into the commerce of any non-beneficiary country while en route to the United States and the invoices, bills of lading, and other shipping documents show the United States as the final destination; or

(3) If the shipment is from any beneficiary country to the United States through the territory of any non-beneficiary country, and the invoices and other documents do not show the United States as the final destination, the articles in the shipment upon arrival in the United States are imported directly only if they:

(i) Remained under the control of the customs authority of the intermediate country;

(ii) Did not enter into the commerce of the intermediate country except for the purpose of sale other than at retail, and the port director is satisfied that the importation results from the original commercial transaction between the importer and the producer or the producer's sales agent; and

(iii) Were not subjected to operations other than loading or unloading, and other activities necessary to preserve the articles in good condition.

**§ 10.214 Certificate of Origin.**

(a) *General:* A Certificate of Origin must be employed to certify that a textile or apparel article being exported from a beneficiary country to the United States qualifies for the preferential treatment referred to in § 10.211. The Certificate of Origin must be prepared by the exporter in the beneficiary country in the form specified in paragraph (b) of this section. Where the beneficiary country exporter is not the producer of the article, that exporter may complete and sign a Certificate of Origin on the basis of:

(1) Its reasonable reliance on the producer's written representation that the article qualifies for preferential treatment; or

(2) A completed and signed Certificate of Origin for the article voluntarily provided to the exporter by the producer.

(b) *Form of Certificate.* The Certificate of Origin referred to in paragraph (a) of this section must be in the following format:

BILLING CODE 4820-02-P



African Growth and Opportunity Act
Textile Certificate of Origin

| | | |
|---|---|---|
| 1. Exporter Name & Address | | 2. Producer Name & Address |
| 3. Importer Name & Address | | 6. U.S./ African Fabric Producer Name & Address |
| 4. Description of Article | 5. Preference Group | 7. U.S./ African Yarn Producer Name & Address |
| | | 8. U.S. Thread Producer Name & Address |
| | | 9.Name of Handloomed, Handmade or Folklore Article |
| 10. Name of Preference Group H Fabric or Yarn: | | |

Preference Groups:
A: Apparel assembled from U.S.-formed and cut fabric from U.S. yarn [19 CFR 10.213(a)(1)].
B: Apparel assembled and further processed from U.S.-formed and cut fabric from U.S. yarn [19 CFR 10.213(a)(2)].
C: Apparel cut and assembled from U.S. fabric from U.S. yarn and thread [19 CFR 10.213(a)(3)].
D: Apparel assembled from regional fabric from yarn originating in the U.S. or one or more beneficiary countries [19 CFR 10.213(a)(4)].
E: Apparel assembled in one or more lesser developed beneficiary countries [19 CFR 10.213(a)(5)].
F: Sweaters knit to shape in chief weight of cashmere [19 CFR 10.213(a)(6)].
G: Sweaters knit to shape with 50 percent or more by weight of fine wool [19 CFR 10.213(a)(7)].
H: Apparel cut and assembled in one or more beneficiary countries from fabrics or yarn not formed in the United States or a beneficiary country (as identified in NAFTA) or designated as not available in commercial quantities in the United States [19 CFR 10.213(a)(8) or (a)(9)].
I: Handloomed, handmade or folklore articles [19 CFR 10.213(a)(10)].

I certify that the information on this document is complete and accurate and I assume the responsibility for proving such representations. I understand that I am liable for any false statements or material omissions made on or in connection with this document.

I agree to maintain, and present upon request, documentation necessary to support this certificate.

| | | |
|---|---|---|
| 12.Authorized Signature | | 13. Company |
| 14. Name (Print or Type) | | 15. Title |
| 16a.Date(DD/MM/YY) | 16b.Blanket Period From: To: | 17. Telephone Number Facsimile Number |

BILLING CODE 4820-02-C

(c) *Preparation of Certificate.* The following rules will apply for purposes of completing the Certificate of Origin set forth in paragraph (b) of this section:

(1) Blocks 1 through 5 pertain only to the final article exported to the United States for which preferential treatment may be claimed;

(2) Block 1 should state the legal name and address (including country) of the exporter;

(3) Block 2 should state the legal name and address (including country) of the producer. If there is more than one producer, attach a list stating the legal name and address (including country) of all additional producers. If this information is confidential, it is acceptable to state "available to Customs upon request" in block 2. If the producer and the exporter are the same, state "same" in block 2;

(4) Block 3 should state the legal name and address (including country) of the importer;

(5) Block 4 should provide a full description of each article. The description should be sufficient to relate

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it to the invoice description and to the description of the article in the international Harmonized System. Include the invoice number as shown on the commercial invoice or, if the invoice number is not known, include another unique reference number such as the shipping order number;

(6) In block 5, insert the letter that designates the preference group which applies to the article according to the description contained in the CFR provision cited on the Certificate for that group;

(7) Blocks 6 through 10 must be completed only when the block in question calls for information that is relevant to the preference group identified in block 5;

(8) Block 6 should state the legal name and address (including country) of the fabric producer;

(9) Block 7 should state the legal name and address (including country) of the yarn producer;

(10) Block 8 should state the legal name and address (including country) of the thread producer;

(11) Block 9 should state the name of the folklore article or should state that the article is handloomed or handmade;

(12) Block 10, which should be completed only when preference group "H" is inserted in block 5, should state the name of the fabric or yarn that is not formed in the United States or a beneficiary country or that is not available in commercial quantities in the United States;

(13) Block 16a should reflect the date on which the Certificate was completed and signed;

(14) Block 16b should be completed if the Certificate is intended to cover multiple shipments of identical articles as described in block 4 that are imported into the United States during a specified period of up to one year (see § 10.216(b)(4)(ii)). The "from" date is the date on which the Certificate became applicable to the article covered by the blanket Certificate (this date may be prior to the date reflected in block 16a). The "to" date is the date on which the blanket period expires; and

(15) The Certificate may be printed and reproduced locally. If more space is needed to complete the Certificate, attach a continuation sheet.

**§ 10.215 Filing of claim for preferential treatment.**

(a) *Declaration.* In connection with a claim for preferential treatment for a textile or apparel article described in § 10.213, the importer must make a written declaration that the article qualifies for that treatment. In the case of an article described in § 10.213(a)(1), the written declaration should be made by including on the entry summary, or equivalent documentation, the symbol "D" as a prefix to the subheading within Chapter 98 of the HTSUS under which the article is classified, and, in the case of any article described in § 10.213(a)(2) through (a)(10), the inclusion on the entry summary, or equivalent documentation, of the subheading within Chapter 98 of the HTSUS under which the article is classified will constitute the written declaration. Except in any of the circumstances described in § 10.216(d)(1), the declaration required under this paragraph must be based on an original Certificate of Origin that has been completed and properly executed in accordance with § 10.214, that covers the article being imported, and that is in the possession of the importer.

(b) *Corrected declaration.* If, after making the declaration required under paragraph (a) of this section, the importer has reason to believe that a Certificate of Origin on which a declaration was based contains information that is not correct, the importer must within 30 calendar days after the date of discovery of the error make a corrected declaration and pay any duties that may be due. A corrected declaration will be effected by submission of a letter or other written statement to the Customs port where the declaration was originally filed.

**§ 10.216 Maintenance of records and submission of Certificate by importer.**

(a) *Maintenance of records.* Each importer claiming preferential treatment for an article under § 10.215 must maintain in the United States, in accordance with the provisions of part 163 of this chapter, all records relating to the importation of the article. Those records must include the original Certificate of Origin referred to in § 10.215(a) and any other relevant documents or other records as specified in § 163.1(a) of this chapter.

(b) *Submission of Certificate.* An importer who claims preferential treatment on a textile or apparel article under § 10.215(a) must provide, at the request of the port director, a copy of the Certificate of Origin pertaining to the article. A Certificate of Origin submitted to Customs under this paragraph:

(1) Must be in writing or must be transmitted electronically pursuant to any electronic data interchange system authorized by Customs for that purpose;

(2) Must be signed by the exporter or by the exporter's authorized agent having knowledge of the relevant facts;

(3) Must be completed either in the English language or in the language of the country from which the article is exported. If the Certificate is completed in a language other than English, the importer must provide to Customs upon request a written English translation of the Certificate; and

(4) May be applicable to:

(i) A single importation of an article into the United States, including a single shipment that results in the filing of one or more entries and a series of shipments that results in the filing of one entry; or

(ii) Multiple importations of identical articles into the United States that occur within a specified blanket period, not to exceed 12 months, set out in the Certificate by the exporter. For purposes of this paragraph and § 10.214(c)(14), "identical articles" means articles that are the same in all material respects, including physical characteristics, quality, and reputation.

(c) *Correction and nonacceptance of Certificate.* If the port director determines that a Certificate of Origin is illegible or defective or has not been completed in accordance with paragraph (b) of this section, the importer will be given a period of not less than five working days to submit a corrected Certificate. A Certificate will not be accepted in connection with subsequent importations during a period referred to in paragraph (b)(4)(ii) of this section if the port director determined that a previously imported identical article covered by the Certificate did not qualify for preferential treatment.

(d) *Certificate not required*—(1) *General.* Except as otherwise provided in paragraph (d)(2) of this section, an importer is not required to have a Certificate of Origin in his possession for:

(i) An importation of an article for which the port director has in writing waived the requirement for a Certificate of Origin because the port director is otherwise satisfied that the article qualifies for preferential treatment;

(ii) A non-commercial importation of an article; or

(iii) A commercial importation of an article whose value does not exceed US$2,500, provided that, unless waived by the port director, the producer, exporter, importer or authorized agent includes on, or attaches to, the invoice or other document accompanying the shipment the following signed statement:



I hereby certify that the article covered by this shipment qualifies for preferential treatment under the AGOA.

Check One:
( ) Producer
( ) Exporter
( ) Importer
( ) Agent

Name

Title

Address

Signature and Date

(2) *Exception.* If the port director determines that an importation described in paragraph (d)(1) of this section forms part of a series of importations that may reasonably be considered to have been undertaken or arranged for the purpose of avoiding a Certificate of Origin requirement under §§ 10.214 through 10.216, the port director will notify the importer in writing that for that importation the importer must have in his possession a valid Certificate of Origin to support the claim for preferential treatment. The importer will have 30 calendar days from the date of the written notice to obtain a valid Certificate of Origin, and a failure to timely obtain the Certificate of Origin will result in denial of the claim for preferential treatment. For purposes of this paragraph, a "series of importations" means two or more entries covering articles arriving on the same day from the same exporter and consigned to the same person.

**§ 10.217 Verification and justification of claim for preferential treatment.**

(a) *Verification by Customs.* A claim for preferential treatment made under § 10.215, including any statements or other information contained on a Certificate of Origin submitted to Customs under § 10.216, will be subject to whatever verification the port director deems necessary. In the event that the port director for any reason is prevented from verifying the claim, the port director may deny the claim for preferential treatment. A verification of a claim for preferential treatment may involve, but need not be limited to, a review of:

(1) All records required to be made, kept, and made available to Customs by the importer or any other person under part 163 of this chapter;

(2) Documentation and other information in a beneficiary country regarding the country of origin of an article and its constituent materials, including, but not limited to, production records, information relating to the place of production, the number and identification of the types of machinery used in production, and the number of workers employed in production; and

(3) Evidence in a beneficiary country to document the use of U.S. materials in the production of the article in question, such as purchase orders, invoices, bills of lading and other shipping documents, and customs import and clearance documents.

(b) *Importer requirements.* In order to make a claim for preferential treatment under § 10.215, the importer:

(1) Must have records that explain how the importer came to the conclusion that the textile or apparel article qualifies for preferential treatment. Those records must include documents that support a claim that the article in question qualifies for preferential treatment because it is specifically described in one of the provisions under § 10.213(a). If the importer is claiming that the article incorporates fabric or yarn that originated or was wholly formed in the United States, the importer must have records that identify the U.S. producer of the fabric or yarn. A properly completed Certificate of Origin in the form set forth in § 10.214(b) is a record that would serve these purposes;

(2) Must establish and implement internal controls which provide for the periodic review of the accuracy of the Certificate of Origin or other records referred to in paragraph (b)(1) of this section;

(3) Must have shipping papers that show how the article moved from the beneficiary country to the United States. If the imported article was shipped through a country other than a beneficiary country and the invoices and other documents from the beneficiary country do not show the United States as the final destination, the importer also must have documentation that demonstrates that the conditions set forth in § 10.213(c)(3)(i) through (iii) were met; and

(4) Must be prepared to explain, upon request from Customs, how the records and internal controls referred to in paragraphs (b)(1) through (b)(3) of this section justify the importer's claim for preferential treatment.

**PART 163—RECORDKEEPING**

1. The authority citation for Part 163 continues to read as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 66, 1484, 1508, 1509, 1510, 1624.

2. The Appendix to Part 163 is amended by adding a new listing under section IV in numerical order to read as follows:

**Appendix to Part 163—Interim (a)(1)(A) List**

* * * * *

**§ 10.216 AGOA Textile Certificate of Origin and supporting records**

* * * * *

**Raymond W. Kelly,**
*Commissioner of Customs.*

Approved: September 29, 2000.

**Timothy E. Skud,**
*Acting Deputy Assistant Secretary of the Treasury.*

[FR Doc. 00–25518 Filed 10–2–00; 8:45 am]
BILLING CODE 4820–02–P

VOL
65
ISS
194
OC
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UMI

Federal Register

Thursday,
October 5, 2000

Part VIII

# Department of Labor

**Veterans' Employment and Training**

**41 CFR Part 61–250**
**Annual Report From Federal Contractors; Proposed Rule**

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**DEPARTMENT OF LABOR**

**Veterans' Employment and Training**

**41 CFR Part 61–250**

**RIN 1293–AA07**

## Annual Report From Federal Contractors

**AGENCY:** Veterans' Employment and Training, Labor.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This proposed rule would amend regulations to implement certain provisions of the Veterans Employment Opportunity Act of 1998 ("VEOA"). Under the current version of that part, pursuant to the Vietnam Era Veterans' Readjustment Act of 1974, as amended ("VEVRAA"), all contractors and subcontractors with Federal contracts in excess of $10,000 are required to use the Federal Contractor Veterans' Employment Report VETS–100 form ("VETS–100 Report") to report their efforts toward the hiring of qualified veterans in two specified categories. Section 7 of VEOA raised the reporting threshold from $10,000 to $25,000, and added a third category of veterans to the required reports. This rule would implement those changes, along with other changes that either are required by VEOA or will improve the administration of the related veterans' programs.

**DATES:** To be assured of consideration, comments must be received on or before December 4, 2000.

**ADDRESSES:** Comments should be sent to Robert Wilson, Chief, Compliance Programs, VETS, by regular mail at the U.S. Department of Labor, Room S–1316, 200 Constitution Avenue, NW, Washington, D.C. 20210, or by e-mail at Wilson-Robert@ dol.gov. Written comments limited to 10 pages or fewer also may be transmitted by facsimile (FAX) at (202) 693–4755. Receipt of submissions, whether by U.S. mail, e-mail or FAX transmittal, will not be acknowledged; however, the sender may request confirmation that a submission has been received, by telephoning VETS at (202) 693–4717(VOICE) or 1(877)670–7008 (TTY/TDD).

Comments will be available for public inspection during normal business hours at the above address. Persons who need assistance to review the comments will be provided with appropriate aids such as readers or print magnifiers. Copies of this Notice of Proposed Rulemaking ("NPRM") will be made available in the following formats: large print, electronic file on computer disk, and audio tape. To schedule an appointment to review the comments and/or to obtain the Notice of Proposed Rulemaking in an alternate format, contact VETS at the telephone numbers and addresses listed above.

**FOR FURTHER INFORMATION CONTACT:** Robert Wilson, Chief, Compliance Programs, VETS, at the addresses and telephone numbers listed above.

**SUPPLEMENTARY INFORMATION:** The preamble to this NPRM is organized as follows:

I. Background—provides a brief description of the development of these proposed regulations.

II. Authority—cites the statutory provisions supporting these regulations and Departmental redelegation authority.

III. Section-by-Section Review of the Rule—summarizes pertinent aspects of the regulatory text and describes its purposes and application.

IV. Regulatory Procedure—sets forth the applicable regulatory requirements.

### I. Background

President Clinton signed VEOA into law in October 1998. The statute extended the affirmative action and reporting responsibilities of Federal contractors and subcontractors, which previously protected veterans of the Vietnam era and special disabled veterans, to include any other U.S. veterans who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized. VEOA raised the reporting threshold for Federal contractors and subcontractors from $10,000 to $25,000. VEOA also added the requirement that contractors and subcontractors report to the Secretary of Labor the maximum number and the minimum number of persons they employed during the reporting period.

In addition, in 1998, VETS changed the annual deadline for submission of the VETS–100 Report from March 31 to September 30. This change was intended to conform the VETS–100 reporting cycle to that of the EEO–1 Report, and thereby reduce the reporting burden on contractors.

The proposed rule would incorporate both these substantive changes and additional stylistic and/or phrasing changes. The latter changes were prompted by the June 1, 1998, Presidential Memorandum on Plain Language, which instructed Federal Departments and Agencies to write regulations in language understandable to most people. Accordingly, VETS has reworded subsection topic header statements into the form of questions; replaced the term "shall" with "must" (to indicate an obligation) or "will" (to indicate a future action), as appropriate; and altered the wording of the regulations in other ways, as described below in Section III, "Section-by-Section Review of the Rule." These changes are intended to enhance the readability and usefulness of the regulations.

### II. Authority

*A. Statutory Authority*

The statutory authorities for this NPRM are Sections 7 and 8 of VEOA (38 U.S.C. § 4212(d)); VEVRAA, as amended, 38 U.S.C. 101 *et seq.*, Pub. L. 93–508, 88 Stat. 1578; and the Veterans' Benefits Improvements Act of 1996 ("VBIA"), 38 U.S.C. 101(29), Pub. L. 104–275, 110 Stat. 3322.

*B. Departmental Authorization*

Secretary's Order 1–83, Section 3(a), authorized the Assistant Secretary of Labor for Veterans' Employment and Training to develop and implement policies required to administer and enforce statutes dealing with veterans' reemployment, including VEVRAA. Secretary's Order 4–83 redesignated the Office of the Assistant Secretary of Labor for Veterans' Employment and Training as the Veterans' Employment and Training Service, or VETS.

### III. Section-by-Section Review of the Rule

Throughout the rule, minor language changes have been made to comply with the Presidential Memorandum on Plain Language by clarifying the wording of the regulations. Unless specified below, none of these changes are intended to alter the substantive meaning of the regulations.

In addition, throughout the rule, references to the U.S. Code have been corrected to reflect the numbering changes effected by VEOA and the Veterans' Benefit Improvement Act of 1996 (VBIA); similarly, references to the regulations promulgated by the Office of Federal Contract Compliance Programs ("OFCCP") have been amended to reflect changes to those regulations, including new section numbers, that took effect on January 4, 1999. See Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Special Disabled Veterans and Vietnam Era Veterans; Final Rule, 63 FR 59630 *et seq.* (November 4, 1998). Finally, the former Veterans' Administration ("VA") has been upgraded to a Cabinet-level agency; therefore, references to the VA throughout the rule have been changed to use the agency's new name, the Department of Veterans' Affairs.

Sections or paragraphs of the rule that are not discussed in this preamble have not been changed in any substantive way from the previous version of the regulations.

*Section 250.1 What Are the Purpose And Scope of This Part?*

This section would outline the purpose and scope of the regulations. Paragraph (a) would correct the regulations' citation to the U.S. Code, as amended by VEOA; would reflect the new reporting threshold; and would indicate which contractors would be required to file reports under the regulations. Paragraph (d) would direct readers to the OFCCP regulations that govern the affirmative action obligations of contractors and subcontractors toward protected veterans.

*Section 250.2 What Definitions Apply to This Part?*

This section would provide the definitions that would apply to this part. Paragraph (b)(1) would update the reference to the Standard Industrial Classification Manual from the 1972 edition to the 1987 edition, and would add the acronym for the Employer Identification Number (EIN). Paragraph (b)(4), the definition of "special disabled veteran," would be amended to clarify that in order to be protected, veterans must have served in the military, ground, naval, or air service of the United States, and not of any other nation. The definition of "veteran of the Vietnam era" in paragraph (b)(5) would be amended to add a similar clarification, and also to conform to the statutory definition of the term at 38 U.S.C. 101(29), which was altered by VBIA. Paragraph (b)(6) would be amended to define "other veterans," as required by VEOA. Paragraphs (b)(9) and (b)(10) would add definitions for the terms "states" and "eligibility period," respectively.

*Section 250.10 What Reporting Requirements Apply to Federal Contractors and Subcontractors, and What Specific Wording Must the Reporting Requirements Contract Clause Contain?*

This section would continue the requirement that covered Federal contractors and subcontractors submit reports at least annually regarding their hiring and continued employment of veterans in the three categories defined in the proposed Section 250.2. It also would amend the required language for the contract clause that must be included in each covered Federal contract and subcontract. Paragraphs (a)(1) and (a)(2) of the amended clause would add the requirement that contractors and subcontractors report on their employment of "other veterans," as defined in Section 250.2; paragraph (a)(3) would require contractors and subcontractors to report the maximum number and minimum number of persons employed during the reporting period. Both of these changes are required by VEOA.

Paragraph (c) of the amended clause would change the annual deadline for submitting the VETS–100 Report from March 31 to September 30, to conform with the EEO–1 reporting date, as explained in the "Background" section above. The same paragraph would define the eligibility period for the report. Paragraph (d) would amend the definition of the reporting period. Contractors and subcontractors would still be able to select an ending date for the period; however, the range of permissible dates would be changed. The previous version of the clause permitted ending dates between January 1 and March 1; the amended version would permit ending dates between July 1 and August 31.

Paragraph (e) would be revised to indicate that both contractors and subcontractors must comply with the voluntary disclosure requirements, pursuant to OFCCP regulations at 41 CFR 60–250.42.

*Section 61–250.11 On What Form Must the Data Required Above Be Submitted?*

This section would amend the proposed form and instructions for completing the VETS-100 Report, and provide new avenues for submission of the report.

Paragraph (a): This paragraph of the proposed section would provide a copy of the amended form and the text of the amended instructions. The introduction to the instructions would be amended to clarify that a separate report must be completed for each hiring location in all States, as those two terms would be defined under the proposed Section 250.2. The term "supplemental" would be deleted to emphasize that the obligation to complete and submit the VETS–100 Report is separate from the obligation to complete and submit the EEO–1 Report.

Instructions: The section of the instructions entitled "How to Prepare Form" would be amended to insert an explanation of the meaning of shaded areas on the form, as well as instructions for determining the reporting period by selecting an ending date for the report. The latter information is not new; under the proposed rule, it would be moved from a different section of the instructions in order to emphasize that the reporting period applies to the entire report.

The section of the instructions entitled "Company Identification" would be revised to require reporting of the contractor's Standard Industrial Code (SIC) and Dun and Bradstreet I.D. number (DUNS), if available, in addition to the EIN that is already required. These changes will assist VETS in identifying Federal contractors and subcontractors.

The section entitled "Information on Employees," previously called "Information on Veterans," would be revised in a number of ways. The paragraph "Counting veterans" would be added, in response to numerous questions from contractors, to clarify how contractors must count veterans who fall into more than one category. The paragraph "Data on Current Employees" would amend a currently untitled paragraph to explain which payroll period should be used to provide the data, which full-time and part-time employees must be included in the data, and which data are optional, and to comply with VEOA by expanding the categories of veterans who must be included. The paragraph "Data on New Hires" (titled "New Hires Data" in the current regulation) would be amended to explain which data in this sectien are optional, and to delete the explanation of how to select the reporting period; this explanation, as noted above, would be moved to the section headed "How to Prepare Form." The new paragraph "Maximum and minimum number of employees" would comply with VEOA by requiring contractors and subcontractors to report the maximum and minimum number of persons employed during the reporting period.

In the "Definitions" section, the definitions of the terms "special disabled veteran" and "veteran of the Vietnam era" would be amended, and a definition of "other veterans" would be added, in the same ways, and for the same reasons, as the definitions of the same terms in 41 CFR 61–250.2, as described above. The section "Legal Basis for Reporting Requirements" would be amended as required by VEOA.

Paragraph (b): This paragraph would require most contractors and subcontractors who submit computer-generated output to do so in the form of an electronic file. This requirement is intended to reduce the cost of submitting the VETS–100 form for contractors and of tallying the

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information on the form for the Federal government.

Paragraph (c): This paragraph would be added to provide small business the opportunity to submit the VETS–100 Report via the Internet and to obtain a company number via e-mail.

Paragraph (e): This paragraph would be revised to change the filing deadline to September 30, as explained above, and to include an Internet address to obtain VETS–100 information.

*Section 61–250.12 What Invitation to Self-Identify Must a Contractor Offer to Veterans?*

This section would be revised in minor ways. The phrase "and subcontractors" would be added to the first sentence, to clarify that covered subcontractors, as well as covered contractors, must invite veterans to self-identify, and must comply with the voluntary disclosure requirements when issuing that invitation. "Other veterans," as defined in Section 61–250.2, would be added to the categories of veterans who must receive the invitation, pursuant to VEOA.

*Section 61–250.20 How Will DOL Determine Whether a Contractor or Subcontractor is Complying With the Requirements of This Part?*

The language of this section would be amended to clarify that during the course of a compliance evaluation, OFCCP may determine whether a contractor or subcontractor has submitted the reports required by this part.

*Section 61–250.99 What are the OMB Control Numbers for This Part?*

This section would be updated to reflect the most recent regulations implementing the Paperwork Reduction Act.

**IV. Regulatory Procedures**

*Paperwork Reduction Act Approval*

This proposed rule contains information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. The proposed rule would revise regulations which contain information collection requirements which are currently approved under OMB No. 293–0005. The proposal includes new data reporting requirements. We estimate the collection burden to be 30 minutes per respondent. A description of the information to be collected is shown below.

Contractors and subcontractors will be required to collect data on a new category of veterans, "other veterans." Additionally, contractors and subcontractors must report the maximum and minimum number of persons employed during the reporting period. Both of these changes are required by VEOA. Company identification information is revised to request the submission of a contractor's Standard Industrial Code (SIC) and require the Dun and Bradstreet I.D. number (DUNS), if available.

VETS invites the public to comment on whether each of the proposed collections of information: (1) Ensures that the collection of information is necessary to the proper performance of the agency, including whether the information will have practical utility; (2) estimates the projected burden, including the validity of the methodology and assumptions used, accurately; (3) enhances the quality, utility, and clarity of the information to be collected; and (4) minimizes the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submission of responses).

*Executive Order 12866, Regulatory Planning and Review*

The Department of Labor has determined that this Proposed Rule is not a "significant regulatory action" under Executive Order 12866 because this action will not: (1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency, or otherwise interfere, with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866. Therefore, no regulatory impact analysis is required.

*Unfunded Mandates*

Executive Order 12875—This rule will not create an unfunded Federal Mandate upon any State, local, or tribal government. Unfunded Mandate Reform Act of 1995—This rule will not include any Federal mandate that may result in increased expenditures by State, local and tribal governments in the aggregate of $100 million or more, or increased expenditures by the private sector of $100 million or more.

*Executive Order 13132, Federalism*

This Notice of Proposed Rule Making will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the requirements of section 6 of Executive Order 13132 do not apply to this rule.

*Regulatory Flexibility Act*

This Notice of Proposed Rulemaking does not substantially change the existing obligation of Federal contractors or subcontractors. The Department of Labor certifies that the proposed rule will not have a significant economic impact on a substantial number of small business entities. Therefore, no regulatory flexibility analysis is required.

*Clarity of This Regulation*

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. The Department invites comments on how to make this proposed rule easier to understand. For example:

—Have we organized the material to suit your needs?

—Are the requirements in the rule clearly stated?

—Does the rule contain technical language or jargon that isn't clear?

—Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?

—Would more (but shorter) sections be better?

—Could we improve clarity by adding tables, lists, or diagrams?

—What else could we do to make the rule easier to understand?

**List of Subjects in 41 CFR Part 61–250**

Government contracts, Reporting and recordkeeping requirements, Veterans.

Signed at Washington, D.C., this 26th day of September 2000.

**Alexis M. Herman,**

*Secretary of Labor.*

Accordingly, title 41, part 61–250 of the Code of Federal Regulations is proposed to be revised to read as follows:



## PART 61–250—ANNUAL REPORT FROM FEDERAL CONTRACTORS

Sec.

61–250.1 What are the purpose and scope of this part?
61–250.2 What definitions apply to this part?
61–250.10 What reporting requirements apply to Federal contractors and subcontractors, and what specific wording must the reporting requirements contract clause contain?
61–250.11 On what form must the data required by this part be submitted?
61–250.12 What invitation to self-identify must a contractor offer to veterans?
61–250.20 How will DOL determine whether a contractor or subcontractor is complying with the requirements of this part?
61–250.99 What are the OMB control numbers for this part?

**Authority:** 38 U.S.C. 4212(d).

### § 61–250.1 What are the purpose and scope of this part?

(a) This part 61–250 implements 38 U.S.C. 4212(d). Each contractor or subcontractor who enters into a contract in the amount of $25,000 or more with any department or agency of the United States for the procurement of personal property and non-personal services (including construction), and who is subject to 38 U.S.C. 4212(a) and the Office of Federal Contract Compliance Programs (OFCCP) regulations at 41 CFR part 60–250, must submit a report according to the requirements of § 61–250.10 of this part.

(b) Except as noted in § 61–250.10 of this part, the regulations at 41 CFR part 60–250, administered by OFCCP, continue to apply to contractors' and subcontractors' affirmative action obligations regarding veterans.

(c) Reporting requirements of this part regarding veterans will be deemed waived in those instances in which the Deputy Assistant Secretary, OFCCP, has granted a waiver under 41 CFR 60–250.4(b)(1), or has concurred in granting a waiver under 41 CFR 60–250.4(b)(2), from compliance with all the terms of the equal opportunity clause for those establishments not involved in government contract work. Where OFCCP grants only a partial waiver, compliance with these reporting requirements regarding veterans will be required.

(d) 41 CFR 60–250.42 and Appendix B to part 60–250 provide guidance concerning the affirmative action obligations of Federal contractors and subcontractors toward applicants for employment who are special disabled veterans, veterans of the Vietnam era, or other veterans as defined in this part.

### § 61–250.2 What definitions apply to this part?

(a) For purposes of this part, and unless otherwise indicated in paragraph (b) of this section, the terms set forth in this part have the same meaning as set forth in 41 CFR part 60–250.

(b) For purposes of this part:

(1) *Hiring location* (identical to *establishment* as defined by the instructions for completing Standard Form 100, Equal Employment Opportunity Employer Information Report EEO–1) means an economic unit which produces goods or services; such as a factory, office, store, or mine. In most instances the establishment is at a single physical location and is engaged in one, or predominantly one, type of economic activity (definition adapted from the 1987 Standard Industrial Classification Manual). Units at different locations, even though engaged in the same kind of business operation, should be reported as separate establishments. For locations involving construction, transportation, communications, electric, gas, and sanitary services, oil and gas fields, and similar types of physically dispersed industrial activities, however, it is not necessary to list separately each individual site, project, field, line, etc., unless it is treated by the contractor as a separate legal entity with a separate Employer Identification Number (EIN). For these physically dispersed activities, list as establishments only those relatively permanent main or branch offices, terminals, stations, etc., which are either:

(i) Directly responsible for supervising such dispersed activities, or

(ii) The base from which personnel and equipment operate to carry out these activities. (Where these dispersed activities cross State lines, at least one such establishment should be listed for each State involved.)

(2) *Employee* means any individual on the payroll of an employer who is an employee for purposes of the employer's withholding of Social Security taxes except insurance salespersons who are considered to be employees for such purposes solely because of the provisions of section 3121(d)(3)(B) of the Internal Revenue Code (26 U.S.C.). The term employee does not include persons who are hired on a casual basis for a specified time, or for the duration of a specified job, and who work on remote or scattered sites or locations where it is not practical or feasible for the employer to make a visual survey of the work force within the report period; for example, persons at a construction site whose employment relationship is expected to terminate with the end of the employees' work at the site; persons temporarily employed in any industry other than construction, such as mariners, stevedores, waiters/waitresses, movie extras, agricultural laborers, lumber yard workers, etc., who are obtained through a hiring hall or other referral arrangement, through an employee contractor or agent, or by some individual hiring arrangement; or persons on the payroll of a temporary service agency who are referred by such agency for work to be performed on the premises of another employer under that employer's direction and control.

(3) *Job category* means any of the following: Officials and managers, professionals, technicians, sales workers, office and clerical, craft workers (skilled), operatives (semiskilled), laborers (unskilled), service workers, as required by Standard Form 100, Equal Employment Opportunity Employer Information Report EEO–1, as defined as follows:

(i) *Officials and managers* means occupations requiring administrative and managerial personnel who set broad policies, exercise overall responsibility for execution of these policies, and direct individual departments or special phases of a firm's operation. Includes: Officials, executives, middle management, plant managers, department managers and superintendents, salaried supervisors who are members of management, purchasing agents and buyers, railroad conductors and yard masters, ship captains and mates (except fishing boats), farm operators and managers, and kindred workers.

(ii) *Professionals* means occupations requiring either college graduation or experience of such kind and amount as to provide a background comparable to college education. Includes: Accountants and auditors, airplane pilots and navigators, architects, artists, chemists, designers, dietitians, editors, engineers, lawyers, librarians, mathematicians, natural scientists, registered professional nurses, personnel and labor relations specialists, physical scientists, physicians, social scientists, surveyors, teachers, and kindred workers.

(iii) *Technicians* means occupations requiring a combination of basic scientific knowledge and manual skill which can be obtained through about 2 years of post-high school education, such as is offered in many technical institutes and junior colleges, or through equivalent on-the-job training. Includes: Computer programmers and operators, drafters, engineering aides, junior engineers, mathematical aides, licensed, practical or vocational nurses,

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photographers, radio operators, scientific assistants, technical illustrators, technicians (medical, dental, electronic, physical science), and kindred workers.

(iv) *Sales* means occupations engaging wholly or primarily in direct selling. Includes: Advertising agents and sales workers, insurance agents and brokers, real estate agents and brokers, stock and bond sales workers, demonstrators, sales workers and sales clerks, grocery clerks and cashier-checkers, and kindred workers.

(v) *Office and clerical* includes all clerical-type work regardless of level of difficulty, where the activities are predominantly non-manual though some manual work not directly involved with altering or transporting the products is included. Includes bookkeepers, cashiers, collectors (bills and accounts), messengers and office helpers, office machine operators, shipping and receiving clerks, stenographers, typists and secretaries, telegraph and telephone operators, legal assistants, and kindred workers.

(vi) *Craft Workers (skilled)* means manual workers of relatively high skill level having a thorough and comprehensive knowledge of the processes involved in their work. These workers exercise considerable independent judgment and usually receive an extensive period of training. Includes: The building trades, hourly paid supervisors and lead operators who are not members of management, mechanics and repairers, skilled machining occupations, compositors and typesetters, electricians, engravers, job setters (metal), motion picture projectionists, pattern and model makers, stationary engineers, tailors, arts occupations, hand painters, coaters, decorative workers, and kindred workers.

(vii) *Operatives (semiskilled)* means workers who operate machine or processing equipment or perform other factory-type duties of intermediate skill level which can be mastered in a few weeks and require only limited training. Includes: Apprentices (auto mechanics, plumbers, bricklayers, carpenters, electricians, machinists, mechanics, building trades, metalworking trades, printing trades, etc.), operatives, attendants (auto service and parking), blasters, chauffeurs, delivery workers, dressmakers and sewers (except factory), dryers, furnace workers, heaters (metal), laundry and dry cleaning operatives, milliners, mine operatives and laborers, motor operators, oilers and greasers (except auto), painters (except construction and maintenance), photographic process workers, stationary firefighters, truck and tractor drivers, weavers (textile), welders and flamecutters, electrical and electronic equipment assemblers, butchers and meat cutters, inspectors, testers and graders, handpackers and packagers, and kindred workers.

(viii) *Laborers (unskilled)* means workers in manual occupations which generally require no special training to perform elementary duties that may be learned in a few days and require the application of little or no independent judgment. Includes: Garage laborers, car washers and greasers, gardeners (except farm) and grounds keepers, stevedores, wood choppers, laborers performing lifting, digging, mixing, loading and pulling operations, and kindred workers.

(ix) *Service Workers* means workers in both protective and non-protective service occupations. Includes: Attendants (hospital and other institutions, professional and personal service, including nurses aides and orderlies), barbers, charworkers and cleaners, cooks (except household), counter and fountain workers, elevator operators, firefighters and fire protection workers, guards, doorkeepers, stewards, janitors, police officers and detectives, porters, servers, amusement and recreation facilities attendants, guides, ushers, public transportation attendants, and kindred workers.

(4) *Special disabled veteran* means—

(i) A veteran of the U.S. military, ground, naval or air service who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Department of Veterans Affairs for a disability:

(A) Rated at 30 percent or more, or

(B) Rated at 10 or 20 percent in the case of a veteran who has been determined under section 38 U.S.C. 3106 to have a serious employment handicap; or

(ii) A person who was discharged or released from active duty because of a service-connected disability.

(5) *Veteran of the Vietnam era* means a veteran:

(i) Who served on active duty in the U.S. military, ground, naval or air service for a period of more than 180 days, and who was discharged or released therefrom with other than a dishonorable discharge, if any part of such active duty was performed:

(A) In the Republic of Vietnam between February 28, 1961, and May 7, 1975, or

(B) Between August 5, 1964 and May 7, 1975 in any other location; or

(ii) Who was discharged or released from active duty in the U.S. military, ground, naval or air service for a service-connected disability, if any part of such active duty was performed:

(A) In the Republic of Vietnam between February 28, 1961, and May 7, 1975; or

(B) Between August 5, 1964, and May 7, 1975, in any other location.

(6) *Other veterans* means any other veterans who served on active duty in the U.S. military, ground, naval or air service during a war or in a campaign or expedition for which a campaign badge has been authorized.

(7) *OFCCP* means the Office of Federal Contract Compliance Programs, Employment Standards Administration, U.S. Department of Labor.

(8) *OASVET* means the Office of the Assistant Secretary for Veterans' Employment and Training, U.S. Department of Labor.

(9) *States* means the individual states of the United States, the Distict of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, and Palau.

(10) *Eligibility period* means the calendar year (January 1 through December 31) preceding the year in which the report must be filed. This calendar year is the same year in which the contractor received the Federal contract.

**§ 61–250.10 What reporting requirements apply to Federal contractors and subcontractors, and what specific wording must the reporting requirements contract clause contain?**

Each contractor or subcontractor described in § 61–250.1 of this part must submit reports in accordance with the following reporting clause, which must be included in each of its covered government contracts or subcontracts (and modifications, renewals, or extensions thereof if not included in the original contract). Such clause is considered as an addition to the equal opportunity action clause required by 41 CFR 60–250.5. The reporting requirements clause is as follows:

**EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER VETERANS**

(a) The contractor or subcontractor agrees to report at least annually, as required by the Secretary of Labor, on:

(1) The number of current employees in each job category and at each hiring location who are special disabled veterans, the number who are veterans of the Vietnam era, and the number who are other veterans who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized;

(2) The total number of new employees hired during the period covered by the report, and of that total, the number who are special disabled veterans, the number who are veterans of the Vietnam era, and the number who are other veterans as defined above; and

(3) The maximum number and minimum number of employees of such contractor at each hiring location during the period covered by the report.

(b) The above items must be reported by completing the form entitled "Federal Contractor Veterans' Employment Report VETS–100."

(c) VETS–100 reports must be submitted no later than September 30 of each year beginning September 30, 2000. The eligibility period (the period during which an employer received a Federal contract) for this report and all subsequent reports is the calendar year (January 1 through December 31) that precedes the year in which the report is submitted.

(d) The employment activity report required by paragraphs (a)(2) and (a)(3) of this section must reflect total new hires and maximum and minimum number of employees during the 12-month period preceding the ending date that the contractor selects for the current employment report required by paragraph (a)(1) of this section. Contractors may select an ending date: (1) As of the end of any pay period during the period July 1 through August 31 of the year the report is due; or (2) as of December 31, if the contractor has previous written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO–1 (Standard Form 100).

(e) The number of veterans reported according to paragraph (a) above must be based on voluntary disclosure. Each contractor and subcontractor subject to the reporting requirements at 38 U.S.C. 4212(d) must invite all applicants for employment who are veterans who fall into one of the categories in paragraph (a)(1) above, and who wish to benefit under the affirmative action program at 38 U.S.C. 4212, to identify themselves to the contractor. The invitation must state that the information is voluntarily provided, that the information will be kept confidential, that disclosure or refusal to provide the information will not subject the applicant to any adverse treatment, and that the information will be used only in accordance with the regulations promulgated under 38 U.S.C. 4212. Nothing in this paragraph (e) precludes an employee from informing a contractor or subcontractor at a future time of his or her desire to benefit from this program. Nothing in this paragraph (e) relieves a contractor from liability for discrimination under 38 U.S.C. 4212.

**§ 61–250.11 On what form must the data required by this part be submitted?**

(a) Data items required in paragraph (a) of the contract clause set forth in § 61–250.10 must be reported for each hiring location on the VETS–100 form. This form is mailed annually to those employers who are included in the VETS–100 data base. The form, and instructions for preparing it, are also set forth as follows:

**THE VETS–100 REPORT FORM IS REPRINTED AS APPENDIX A TO 41 CFR PART 61–250**

This report is to be completed by all nonexempt contractors and subcontractors with contracts (or subcontracts) for the furnishing of supplies and services or the use of real or personal property (including construction) for $25,000 or more. Reports must be completed for each hiring location in any State, as defined in 41 CFR 61–250.2(b). All multi-establishment employers, i.e., those doing business at more than one hiring location, must file: (1) a report covering the principal or headquarters office; (2) a separate report for each hiring location employing 50 or more persons; and (3) either (i) a separate report for each hiring location employing fewer than 50 persons, or (ii) consolidated reports, by State, covering the hiring locations within the State that have fewer than 50 employees. Each consolidated report must also list the names and addresses of all hiring locations covered by the report.

HOW TO PREPARE FORM

Shaded areas designate optional information. Answers to questions in all other areas of the form are mandatory. Contractors should determine the period covered by the report ("the reporting period") by selecting an ending date for the report. The ending date may fall either: (1) At the end of any pay period during the period July 1 through August 31 of the year the report is due; or (2) On December 31, if the contractor has previous written approval from the Equal Employment Opportunity Commission to use that date for purposes of submitting the Employer Information Report EEO–1 (Standard Form 100). The report must cover the twelve consecutive months preceding the selected ending date.

COMPANY IDENTIFICATION

*Parent Company.* Please provide the company name, address, and employer identification number (EIN) of the headquarters office of the multi-hiring location company that owns the hiring location for which this report is filed. The EIN is mandatory; the Dun and Bradstreet I.D. number (DUNS) is mandatory if available; and the Standard Industrial Code (SIC) should also be reported if available.

*Hiring Location for Which This Report Is Filed.* Please provide the name, address, and EIN for each hiring location for which this report is filed. The EIN is mandatory; the SIC and the DUNS should also be reported if available.

INFORMATION ON EMPLOYEES

(Veterans and non-veterans)

*Counting veterans:* Some veterans will fall into more than one of the targeted veteran categories. For example, a veteran may be both a special disabled veteran and a Vietnam era veteran. In such cases, the veteran must be counted in both categories.

*Data on Current Employees:* The payroll period for this data is the period that ends on the date the contractor selects as the ending date for the entire report, according to the instructions above in "How to Prepare Form." The data must include all permanent full-time and part-time employees who were employed as of the ending date of the selected payroll period, except those employees specifically excluded as indicated in 41 CFR 61–250.2(b)(2). Employees must be counted by veteran status (columns L, M, and N—special disabled veterans, Vietnam-era, or other veterans as defined below) for each of the nine occupational categories. Entries in the Total line of columns L, M, and N are optional.

*Data on New Hires:* Report on the Total line in columns O through R the number of regular full-time and part-time employees, by veteran status (columns O, P, and Q) and total employees (column R), who were included in the payroll for the first time during the reporting period. Entries in lines 1 through 9 (shaded area) of columns O through R are optional.

*Maximum and minimum number of employees:* The contractor must report the maximum and minimum number of persons it employed during the reporting period.

DEFINITIONS

Hiring location means an establishment as defined at 41 CFR 61–250.2(b).

*Special disabled veteran* means:

(i) A veteran of the U.S. military, ground, naval or air service who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Department of Veterans Affairs for a disability:

(A) Rated at 30 percent or more, or

(B) Rated at 10 or 20 percent in the case of a veteran who has been determined under section 38 U.S.C. 3106 to have a serious employment handicap; or

(ii) A person who was discharged or released from active duty because of a service-connected disability.

*Veteran of the Vietnam era* means a veteran:

(i) who served on active duty in the U.S. military, ground, naval or air service for a period of more than 180 days, and who was discharged or released therefrom with other than a dishonorable discharge, if any part of such active duty was performed:

(A) in the Republic of Vietnam between February 28, 1961, and May 7, 1975, or

(B) between August 5, 1964 and May 7, 1975 in any other location; or

(ii) who was discharged or released from active duty in the U.S. military, ground, naval or air service for a service-connected disability, if any part of such active duty was performed:

(A) in the Republic of Vietnam between February 28, 1961, and May 7, 1975; or

(B) between August 5, 1964, and May 7, 1975, in any other location.

*Other veterans* means any other veterans who served on active duty in the U.S. military, ground, naval or air service during a war or in a campaign or expedition for which a campaign badge has been authorized.

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LEGAL BASIS FOR REPORTING REQUIREMENTS

Title 38, United States Code, Section 4212(d), requires that Federal contractors and subcontractors report at least annually on the number of current employees in each job category and at each hiring location who are special disabled veterans, the number who are veterans of the Vietnam era, and the number who are other veterans who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized. Also required are the total number of new hires during the reporting period, the number of new hires who fall into each of the three categories of veterans listed above, and the maximum and minimum number of persons employed during the reporting period. The regulations implementing these statutory provisions are found at 41 CFR 61–250.

DESCRIPTION OF JOB CATEGORIES

*Officials and managers* means occupations requiring administrative and managerial personnel who set broad policies, exercise overall responsibility for execution of these policies, and direct individual departments or special phases of a firm's operation. Includes: Officials, executives, middle management, plant managers, department managers and superintendents, salaried supervisors who are members of management, purchasing agents and buyers, railroad conductors and yard masters, ship captains and mates (except fishing boats), farm operators and managers, and kindred workers.

*Professionals* means occupations requiring either college graduation or experience of such kind and amount as to provide a background comparable to college education. Includes: Accountants and auditors, airplane pilots and navigators, architects, artists, chemists, designers, dietitians, editors, engineers, lawyers, librarians, mathematicians, natural scientists, registered professional nurses, personnel and labor relations specialists, physical scientists, physicians, social scientists, surveyors, teachers, and kindred workers.

*Technicians* means occupations requiring a combination of basic scientific knowledge and manual skill which can be obtained through about 2 years of post-high school education, such as is offered in many technical institutes and junior colleges, or through equivalent on-the-job training. Includes: Computer programmers and operators, drafters, engineering aides, junior engineers, mathematical aides, licensed, practical or vocational nurses, photographers, radio operators, scientific assistants, technical illustrators, technicians (medical, dental, electronic, physical science), and kindred workers.

*Sales* means occupations engaging wholly or primarily in direct selling. Includes: Advertising agents and sales workers, insurance agents and brokers, real estate agents and brokers, stock and bond sales workers, demonstrators, sales workers and sales clerks, grocery clerks and cashier-checkers, and kindred workers.

*Office and clerical* includes all clerical-type work regardless of level of difficulty, where the activities are predominantly non-manual though some manual work not directly involved with altering or transporting the products is included. Includes bookkeepers, cashiers, collectors (bills and accounts), messengers and office helpers, office machine operators, shipping and receiving clerks, stenographers, typists and secretaries, telegraph and telephone operators, legal assistants, and kindred workers.

*Craft Workers (skilled)* means manual workers of relatively high skill level having a thorough and comprehensive knowledge of the processes involved in their work. These workers exercise considerable independent judgment and usually receive an extensive period of training. Includes: The building trades, hourly paid supervisors and lead operators who are not members of management, mechanics and repairers, skilled machining occupations, compositors and typesetters, electricians, engravers, job setters (metal), motion picture projectionists, pattern and model makers, stationary engineers, tailors, arts occupations, hand painters, coaters, decorative workers, and kindred workers.

*Operatives (semiskilled)* means workers who operate machine or processing equipment or perform other factory-type duties of intermediate skill level which can be mastered in a few weeks and require only limited training. Includes: Apprentices (auto mechanics, plumbers, bricklayers, carpenters, electricians, machinists, mechanics, building trades, metalworking trades, printing trades, etc.), operatives, attendants (auto service and parking), blasters, chauffeurs, delivery workers, dressmakers and sewers (except factory), dryers, furnace workers, heaters (metal), laundry and dry cleaning operatives, milliners, mine operatives and laborers, motor operators, oilers and greasers (except auto), painters (except construction and maintenance), photographic process workers, stationary firefighters, truck and tractor drivers, weavers (textile), welders and flamecutters, electrical and electronic equipment assemblers, butchers and meat cutters, inspectors, testers and graders, handpackers and packagers, and kindred workers.

*Laborers (unskilled)* means workers in manual occupations which generally require no special training to perform elementary duties that may be learned in a few days and require the application of little or no independent judgment. Includes: garage laborers, car washers and greasers, gardeners (except farm) and grounds keepers, stevedores, wood choppers, laborers performing lifting, digging, mixing, loading and pulling operations, and kindred workers.

*Service Workers* means workers in both protective and non-protective service occupations. Includes: Attendants (hospital and other institutions, professional and personal service, including nurses aides and orderlies), barbers, charworkers and cleaners, cooks (except household), counter and fountain workers, elevator operators, firefighters and fire protection workers, guards, doorkeepers, stewards, janitors, police officers and detectives, porters, servers, amusement and recreation facilities attendants, guides, ushers, public transportation attendants, and kindred workers.

(b) Contractors and subcontractors that submit computer-generated output to satisfy their VETS–100 reporting obligations must submit the output in the form of an electronic file. This file must comply with current Department of Labor specifications for the layout of these records, along with any other specifications established by the Department for the applicable reporting year. Contractors and subcontractors that submit VETS–100 Reports for ten locations or less are exempt from this requirement, but are strongly encouraged to submit an electronic file. In these cases, state consolidated reports count as one location each.

(c) Small companies may wish to submit the VETS–100 Report via the Internet. The Internet address for the site is http://nvti.cudenver.edu/vets/vets100login.htm. A company number is required to access this site. The number is provided to employers on the VETS–100 Report form that is mailed annually to those employers who are included in the VETS–100 database. Other employers may obtain a company number by e-mailing their request to newcompany@vets100.com, or by calling the VETS–100 Reporting System at (703) 461–2460.

(d) OASVET or its designee will use all available information to distribute the required forms to contractors identified as subject to the requirements of this part.

(e) It is the responsibility of each contractor or subcontractor to obtain necessary supplies of the VETS–100 Report form before the annual September 30 filing deadline. Contractors and subcontractors who do not receive forms should request them in time to meet the deadline. Requests for the VETS–100 Report form may be made by mail by contacting: Office of the Assistant Secretary for Veterans' Employment and Training, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210, Attn: VETS–100 Report Form Request or on the Internet at http://nvti.cudenver.edu/vets/vets100.asp

**§ 61–250.12 What invitation to self-identify must a contractor offer to veterans?**

Each contractor and subcontractor subject to the reporting requirements at 38 U.S.C. 4212(d) must invite all applicants for employment who are special disabled veterans, veterans of the Vietnam era, or other veterans as defined in § 61–250.2, and who wish to benefit under the affirmative action program at 38 U.S.C. 4212, to identify



themselves to the contractor. The invitation must state that the information is voluntarily provided, that the information will be kept confidential, that disclosure or refusal to provide the information will not subject the applicant to any adverse treatment, and that the information will be used only in accordance with the regulations implemented under 38 U.S.C. 4212. Nothing in this section precludes an employee from informing a contractor or subcontractor at a future time of his or her desire to benefit from this program. Nothing in this section relieves a contractor from liability for discrimination under 38 U.S.C. 4212.

**§ 61–250.20 How will DOL determine whether a contractor or subcontractor is complying with the requirements of this part?**

During the course of a compliance evaluation, OFCCP may determine whether a contractor or subcontractor has submitted its report as required by this part.

**§ 61–250.99 What are the OMB control numbers for this part?**

Pursuant to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and its implementing regulations at 5 CFR part 1320, the Office of Management and Budget has assigned Control No. 1293–0005 to the information collection requirements of this part.

BILLING CODE 4510–79–P

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**Appendix A to Part 61–250**

## FEDERAL CONTRACTOR VETERANS' EMPLOYMENT REPORT VETS-100

OMB NO:1293-0005
Expires 01-31-2001

Persons are not required to respond to this collection of information unless it displays a valid OMB number

**RETURN COMPLETED REPORT TO:**
U.S. DEPARTMENT OF LABOR
VETERANS' EMPLOYMENT AND TRAINING SERVICE
VETS-100 REPORTING
6101 STEVENSON AVE
ALEXANDRIA, VA 22304

| TYPE OF CONTRACTOR (Check one or both as applicable) | TYPE OF FORM (Check only one) |
|---|---|
| ☐ Prime Contractor<br>☐ Subcontractor | ☐ Single Establishment<br>☐ Multiple Establishment-Headquarters<br>☐ Multiple Establishment-Hiring Location<br>☐ Multiple Establishment-State Consolidated (specify number of locations) _____(MSC) |

**COMPANY IDENTIFICATION INFORMATION** (Omit if items preprinted above)

| | | | |
|---|---|---|---|
| COMPANY No: | TWELVE MONTH PERIOD ENDING M M D D Y Y Y Y | | |
| NAME OF PARENT COMPANY: | ADDRESS (NUMBER AND STREET): | | |
| CITY: | COUNTY: | STATE: | ZIP CODE: |
| NAME OF HIRING LOCATION: | ADDRESS (NUMBER AND STREET): | | |
| CITY: | COUNTY: | STATE: | ZIP CODE: |
| SIC: | DUNS: – – | EMPLOYER I.D. No. (IRS TAX No.) – | |

**INFORMATION ON VETERANS**

REPORT ALL REGULAR FULL-TIME OR PART-TIME EMPLOYEES AND NEW HIRES WHO ARE VETERANS, AS DEFINED ON REVERSE. DATA ON NUMBER OF EMPLOYEES ARE TO BE ENTERED IN COLUMN L, M, AND N. DATA ON NEW HIRES ARE TO BE ENTERED IN COLUMNS O, P, Q, AND R. ENTRIES IN COLUMNS O THROUGH R, LINES 1 THROUGH 9, AND COLUMNS L, M, AND N, LINE 10 (GRAY SHADED AREAS) ARE OPTIONAL. **ENTRIES IN COLUMN N, LINES 1-9; COLUMN Q, LINE 10 AND THE MAXIMUM AND MINIMUM NUMBER OF EMPLOYEES (AREAS SHADED LIGHT GRAY) ARE OPTIONAL FOR 2000 ONLY AND WILL BE REQUIRED FOR THE 2001 REPORTING CYCLE.** DETAILED INSTRUCTIONS ARE FOUND ON THE REVERSE OF THIS FORM.

| JOB CATEGORIES | | NUMBER OF EMPLOYEES | | | NEW HIRES (PREVIOUS 12 MONTHS) | | | |
|---|---|---|---|---|---|---|---|---|
| | | SPECIAL DISABLED VETERANS (L) | VIETNAM ERA VETERANS (M) | OTHER VETERANS (N) | SPECIAL DISABLED VETERANS (O) | VIETNAM ERA VETERANS (P) | OTHER VETERANS (Q) | TOTAL NEW HIRES, BOTH VETERANS AND NON-VETERANS (R) |
| OFFICIALS AND MANAGERS | 1 | | | | | | | |
| PROFESSIONALS | 2 | | | | | | | |
| TECHNICIANS | 3 | | | | | | | |
| SALES WORKERS | 4 | | | | | | | |
| OFFICE AND CLERICAL | 5 | | | | | | | |
| CRAFT WORKERS (SKILLED) | 6 | | | | | | | |
| OPERATIVE (SEMI-SKILLED) | 7 | | | | | | | |
| LABORERS | 8 | | | | | | | |
| SERVICE WORKERS | 9 | | | | | | | |
| TOTAL | 10 | | | | | | | |

Report the total maximum and minimum number of regular employees on board during the period covered by this report.

Maximum Number | Minimum Number



## FEDERAL CONTRACTOR VETERANS' EMPLOYMENT REPORT (VETS-100)

### WHO MUST FILE

The Vets-100 report is to be completed by all nonexempt federal contractors and subcontractors with contracts or subcontracts for the furnishing of supplies and services or the use of real or personal property for $25,000 or more. Services include but are not limited to the following services: Utility, construction, transportation, research, insurance, and fund depository, irrespective of whether the government is the purchaser or seller. The existence of $25,000 or more in federal contracts or subcontracts during a given calendar year establishes the requirement to file a VETS-100 Report during the following calendar year.

### WHEN TO FILE

This annual report must be filed no later than September 30. Mail to the address pre-printed on the front of the form.

### LEGAL BASIS FOR REPORTING REQUIREMENTS

Title 38, United States Code, Section 4212(d) and PL 105-339, require that federal contractors report at least annually the numbers of: 1) special disabled veterans, 2) veterans of the Vietnam era, and 3) other veterans who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized who are in their workforce. Reporting is required by hiring location and includes both the number employed and the number of new hires, within the three categories listed above. The number of veterans employed within these categories is to be broken out by job category and maximum and minimum total employment is to be reported as well.

### HOW TO SUBMIT THE VETS-100 REPORTS

Single-establishment employers must file one completed form. All multi-establishment employers, i.e., those doing business at more than one hiring location, must file (A) one form covering the principal or headquarters office; (B) a separate form for each hiring location employing 50 or more persons: and (C) EITHER, (i) a separate form for each hiring location employing fewer than 50 persons, OR (ii) consolidated reports that cover hiring locations within one State that have fewer than 50 employees. Each state consolidated report must also list the name and address of the hiring locations covered by the report. Company consolidated reports such as those required by EEO-1 reporting procedures are NOT required for the VETS-100 report. Completed reports for the headquarters location and all other hiring locations for each company should be mailed in one package to the address indicated on the front of the form.

### RECORD KEEPING

Employers must keep copies of the completed annual VETS-100 report submitted to DOL for a period of two years.

### HOW TO PREPARE THE FORMS

As VETS only sends one copy of the VETS-100 Reporting form to each headquarters location, multi-establishment employers submitting hard copy reports should produce facsimile copies of the headquarters form for reporting data on each location.

Type of Contractor Indicate the type of contractual relationship (prime contractor or subcontractor) that the organization has with the Federal Government. If the organization serves as both a prime contractor and a subcontractor on various federal contracts, check both boxes.

Type of Form If a reporting organization submits only one VETS-100 Report form for a single location, check the Single Establishment box. If the reporting organization submits more than one form, only one form should be checked as Multiple Establishment-Headquarters. The remaining forms should be checked as either Multiple Establishment-Hiring Location or Multiple Establishment-State Consolidated. For state consolidated forms, the number of hiring locations included in that report should be entered in the space provided. For each form, only one box should be checked within this block.

### COMPANY IDENTIFICATION INFORMATION

Company Number Do not change the Company Number that is printed on the form. If there are any questions regarding your Company Number, please call the VETS-100 staff at (703) 461-2460 or e-mail HELPDESK@VETS100.COM.

Twelve Month Period Ending Enter the end date for the twelve month reporting period used as the basis for filing the VETS-100 Report. To determine this period, select a date in the current year between July 1 and August 31 that represents the end of a payroll period. That payroll period will be the basis for reporting Number of Employees, as described below. Then the twelve month period preceding the end date of that payroll period will be your twelve month period covered. This period is the basis for reporting New Hires, as described below. Any federal contractor or subcontractor who has written approval from the Equal Employment Opportunity Commission to use December 31 as the ending date for the EEO-1 Report may also use that date as the ending date for the payroll period selected for the VETS-100 Report.

Name and Address for Single Establishment Employers COMPLETE the identifying information under the Parent Company name and address section. LEAVE BLANK all of the identifying information for the Hiring Location.

Name and Address for Multi Establishment Employers For parent company headquarters location, COMPLETE the name and address for the parent company headquarters, LEAVE BLANK the name and address of the Hiring Location. For hiring locations of a parent company, COMPLETE the name and address for the Parent Company location, COMPLETE the name and address for the Hiring Location.

SIC Code, DUNS Number, and Employer ID Number Single Establishment and Multi Establishment Employers should COMPLETE the SIC Code, DUNS Number, and Employer ID Number as described below.

SIC Code Enter the four (4) digit SIC Code applicable to the hiring location for which the report is filed. If there is not a separate SIC Code for the hiring location, enter the SIC Code for the parent company.

Dun and Bradstreet I.D. Number (DUNS) If the company or any of its establishments has a Dun and Bradstreet Identification Number, please enter the nine (9) digit number in the space provided. If there is a specific DUNS Number applicable to the hiring location for which the report is filed, enter that DUNS Number. Otherwise, enter the DUNS number for the parent company.

Employer I.D. Number (EIN) Enter the nine (9) digit numbers assigned by the I.R.S. to the contractor. If there is a specific EIN applicable to the hiring location for which the report is filed, enter that EIN. Otherwise, enter the EIN for the parent company.

### INFORMATION ON VETERANS

Number of Employees Select any payroll period ending between July 1 and August 31 of the current year. Provide all data for regular full-time and part-time employees who were special disabled veterans, Vietnam-era veterans, or other veterans employed as of the ending date of the selected payroll period. Do not include employees specifically excluded as indicated in 41 CFR 61-250.2(b)(2). Employees must be counted by veteran status for each of the nine occupational categories (Lines 1-9) in columns L and M. Blank spaces will be considered zeros.

New Hires Report the number of regular full-time and part-time employees by veteran status who were hired (both veterans and non-veterans) and who were included in the payroll for the first time during the 12-month period ending between July 1 through August 31 of the current year. The totals in columns O, P and R (Line 10) are required. Enter all applicable numbers, including zeros.

Maximum/Minimum Employees Report the maximum and minimum number of regular employees on board during the period covered as indicated by PL 105-339.

### DEFINITIONS:

'Hiring location' means an establishment as defined in 41 CFR 61 250.2(b).

'Special Disabled Veteran' means (A) a veteran who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Department of Veterans' Affairs for a disability (I) rated at 30 percent or more, or (ii) rated at 10 or 20 percent in the case of a veteran who has been determined under Section 3106 of Title 38, U.S.C. to have a serious employment handicap or (B) a person who was discharged or released from active duty because of a service-connected disability.

'Veteran of the Vietnam-era' means a person who: (A) served in the military, ground, naval or air service of the United States on active duty for a period of more than 180 days, and was discharged or released therefrom with other than a dishonorable discharge, if any part of such active duty occurred: (I) in the Republic of Vietnam between February 28, 1961, and May 7, 1975; or (ii) between August 5, 1964, and May 7, 1975, in all other cases; or (B) was discharged or released from active duty for a service-connected disability if any part of such active duty was performed (I) in the Republic of Vietnam between February 28, 1961, and May 7, 1975; or (ii) between August 5, 1964, and May 7, 1975, in all other cases.

Other Veterans means veterans who served in the military, ground, naval or air service of the United States on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized. To identify the campaigns or expeditions that meet this criterion, contact the Office of Personnel Management (OPM) and ask for the OPM VETS Guide, Appendix A. A local OPM telephone number may be found in the telephone book under Federal Government or consult Directory Assistance for your area code for the nearest OPM location. For those with Internet access, the information required to make this determination also is available at http://www.opm.gov/veterans/html/vgmedal2.htm.

Public reporting burden for this collection is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data source, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden to the Department of Labor, Office of Information Management, Room N-1301, 200 Constitution Avenue, NW, Washington D.C. 20210. All completed VETS-100 Reports should be sent to the address indicated on the front of the form.

[FR Doc. 00–25446 Filed 10–4–00; 8:45 am]
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**H.J. Res. 109/P.L. 106–275**
Making continuing appropriations for the fiscal year 2001, and for other purposes. (Sept. 29, 2000; 114 Stat. 808)

**S. 1638/P.L. 106–276**
To amend the Omnibus Crime Control and Safe Streets Act of 1968 to extend the retroactive eligibility dates for financial assistance for higher education for spouses and dependent children of Federal, State, and local law enforcement officers who are killed in the line of duty. (Oct. 2, 2000; 114 Stat. 812)

**S. 2460/P.L. 106–277**
To authorize the payment of rewards to individuals furnishing information relating to persons subject to indictment for serious violations of international humanitarian law in Rwanda, and for other purposes. (Oct. 2, 2000; 114 Stat. 813)

**Last List September 28, 2000**

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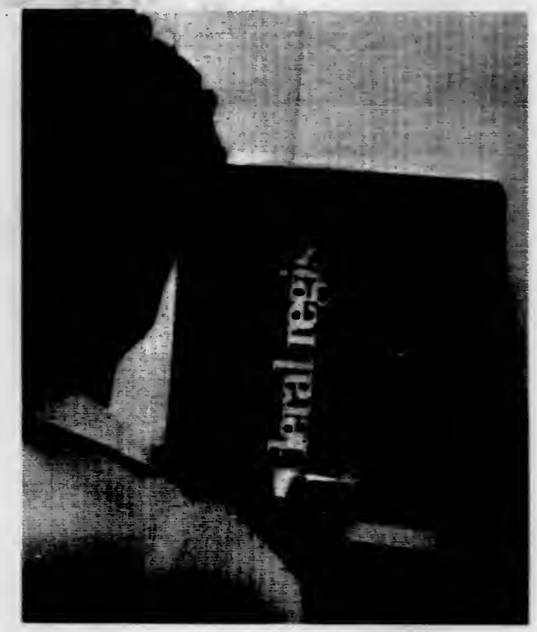
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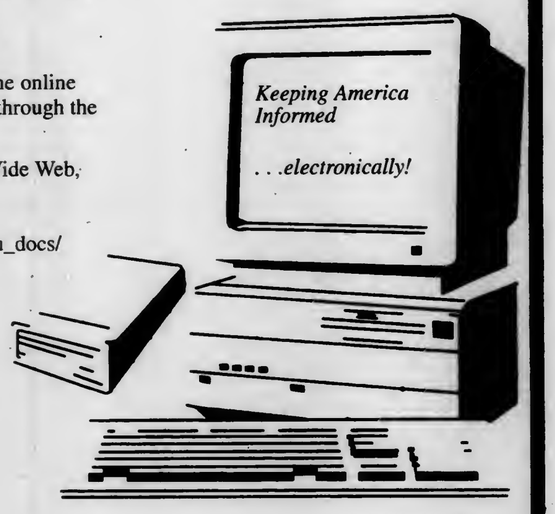
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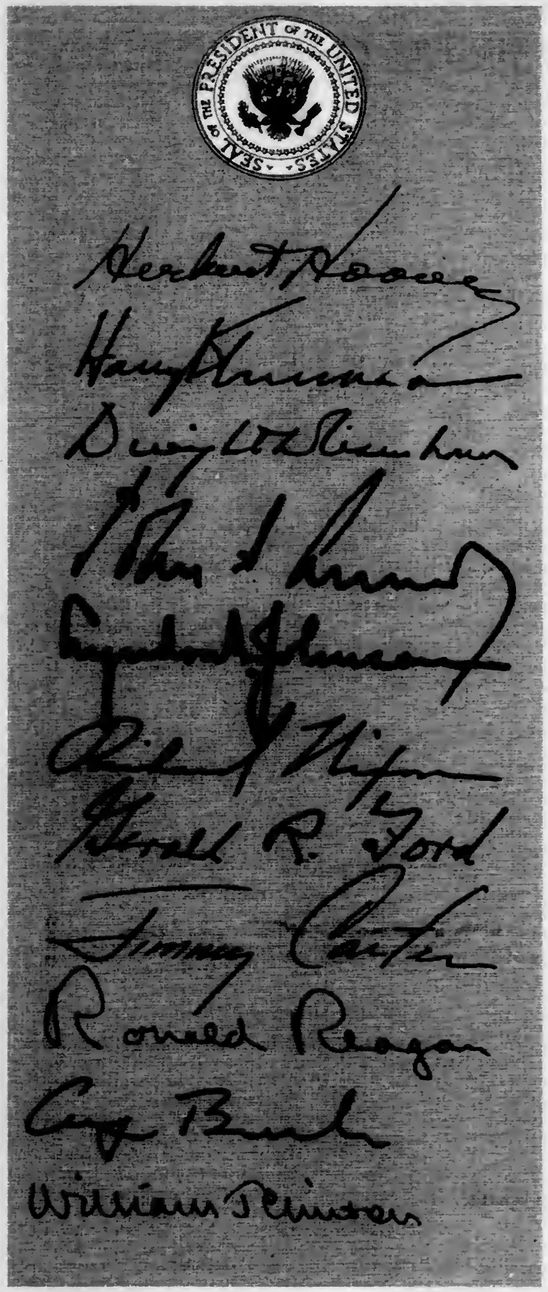
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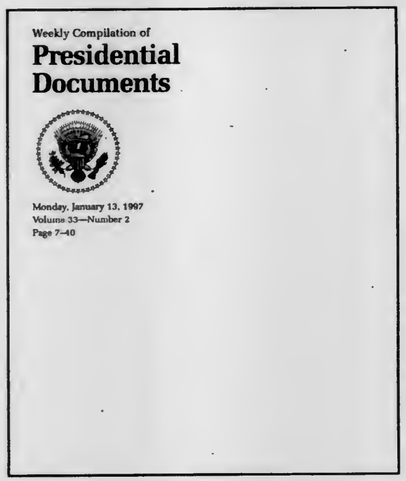
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# Presidential Documents

Title 3—

The President

**Presidential Determination No. 2000–31 of September 28, 2000**

## Transfer of Economic Support Funds, Peacekeeping Operations Funds, and Foreign Military Financing Funds to the International Organizations and Programs Account and Use of Funds to Provide a U.S. Contribution of $29,407,000 to the Korean Peninsula Energy Development Organization (KEDO)

**Memorandum for the Secretary of State**

Pursuant to the authority vested in me by section 610(a) of the Foreign Assistance Act of 1961, as amended (the "Act"), I hereby determine that it is necessary for the purposes of the Act that:

- $2.466 million in funds made available pursuant to chapter 6 of part II of the Act for fiscal year 2000;
- $2 million in funds made available pursuant to chapter 4 of part II of the Act for prior fiscal years; and
- $1.534 million in funds made available pursuant to section 23 of the Arms Export Control Act, as amended, for fiscal year 2000,

be transferred to, and consolidated with, funds made available for chapter 3 of part I of the Act.

In addition, pursuant to the authority vested in me by section 614(a)(1) of the Act, I hereby determine that it is important to the security interests of the United States to furnish up to:

- $20,307,000 in funds made available under the title II (Nonproliferation, Anti-Terrorism, Demining, and Related Programs) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2000, as enacted in Public Law 106–113; and
- $9.1 million in funds made available pursuant to chapter 3 of part I of the Act for fiscal year 2000, comprised of $6 million in funds transferred pursuant to this determination and $3.1 million in funds otherwise available pursuant to chapter 3 of part I of the Act,

for assistance to KEDO without regard to any provision of law within the scope of section 614(a)(1) of the Act. I hereby authorize the furnishing of this assistance.

You are hereby authorized and directed to transmit this determination to the Congress and to arrange for its publication in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
*Washington, September 28, 2000.*

[FR Doc. 00–25959
Filed 10–5–00; 8:45 am]
Billing code 4710–10–M

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## Presidential Documents

**Presidential Determination No. 2000–32 of September 29, 2000**

### Presidential Determination on FY 2001 Refugee Admissions Numbers and Authorizations of In-Country Refugee Status Pursuant to Sections 207 and 101(a)(42), Respectively, of the Immigration and Nationality Act, and Determination Pursuant to Section 2(b)(2) of the Migration and Refugee Assistance Act, as Amended

**Memorandum for the Secretary of State**

In accordance with section 207 of the Immigration and Nationality Act (the "Act") (8 U.S.C. 1157), as amended, and after appropriate consultation with the Congress, I hereby make the following determinations and authorize the following actions:

The admission of up to 80,000 refugees to the United States during FY 2001 is justified by humanitarian concerns or is otherwise in the national interest; provided, however, that this number shall be understood as including persons admitted to the United States during FY 2001 with Federal refugee resettlement assistance under the Amerasian immigrant admissions program, as provided below.

The 80,000 admissions numbers shall be allocated among refugees of special humanitarian concern to the United States in accordance with the following regional allocations; provided, however, that the number allocated to the East Asia region shall include persons admitted to the United States during FY 2001 with Federal refugee resettlement assistance under section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1988, as contained in section 101(e) of Public Law 100–202 (Amerasian immigrants and their family members); provided further that the number allocated to the former Soviet Union shall include persons admitted who were nationals of the former Soviet Union, or in the case of persons having no nationality, who were habitual residents of the former Soviet Union, prior to September 2, 1991:

| | |
|---|---|
| Africa | 20,000 |
| East Asia | 6,000 |
| Eastern Europe | 20,000 |
| Former Soviet Union | 17,000 |
| Latin America/Caribbean | 3,000 |
| Near East/South Asia | 10,000 |
| Unallocated | 4,000 |

The 4,000 unallocated numbers shall be allocated as needed to regional ceilings where shortfalls develop. Unused admissions numbers allocated to a particular region may be transferred to one or more other regions if there is an overriding need for greater numbers for the region or regions to which the numbers are being transferred. You are hereby authorized and directed to consult with the Judiciary Committees of the Congress prior to any such use of the unallocated numbers or reallocation of numbers from one region to another.

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Pursuant to section 2(b)(2) of the Migration and Refugee Assistance Act of 1962, as amended, 22 U.S.C. 2601(b)(2), I hereby determine that assistance to or on behalf of persons applying for admission to the United States as part of the overseas refugee admissions program will contribute to the foreign policy interests of the United States and designate such persons for this purpose.

An additional 10,000 refugee admissions numbers shall be made available during FY 2001 for the adjustment to permanent resident status under section 209(b) of the Immigration and Nationality Act (8 U.S.C. 1159(b)) of aliens who have been granted asylum in the United States under section 208 of the Act (8 U.S.C. 1158), as this is justified by humanitarian concerns or is otherwise in the national interest.

In accordance with section 101(a)(42) of the Act (8 U.S.C. 1101(a)(42)) and after appropriate consultation with the Congress, I also specify that, for FY 2001, the following persons may, if otherwise qualified, be considered refugees for the purpose of admission to the United States within their countries of nationality or habitual residence:

a. Persons in Vietnam

b. Persons in Cuba

c. Persons in the former Soviet Union

You are authorized and directed to report this determination to the Congress immediately and to publish it in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
*Washington, September 29, 2000.*

[FR Doc. 00–25960
Filed 10–5–00; 8:45 am]
Billing code 4710–10–M



## Presidential Documents

**Presidential Determination No. 2000–33 of September 29, 2000**

### Military Drawdown for Tunisia

**Memorandum for the Secretary of State [and] the Secretary of Defense**

Pursuant to the authority vested in me by the Constitution and laws of the United States, including Title III (Foreign Military Financing) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2000, as enacted in Public Law 106–113 (Title III), I hereby direct the drawdown of defense articles from the stocks of the Department of Defense, and military education and training of the aggregate value of $4 million for Tunisia, consistent with the authority provided under Title III, for the purposes of part II of the Foreign Assistance Act of 1961.

The Secretary of State is authorized and directed to report this determination to the Congress and to publish it in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
*Washington, September 29, 2000.*

[FR Doc. 00–25961
Filed 10–5–00; 8:45 am]
Billing code 4710–10–M

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# Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. 98–NM–135–AD; Amendment 39–11919; AD 2000–20–08]**

**RIN 2120–AA64**

## Airworthiness Directives; McDonnell Douglas Model DC–8 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–8 series airplanes, that requires, for certain airplanes, inspection(s) to detect cracks of the doorjamb corners and follow-on actions. For certain other airplanes, this AD requires installation of a preventative modification; an inspection to detect cracks at the corners of the doorjambs of the passenger and service doors; and follow-on actions. This amendment is prompted by reports indicating that fatigue cracks were found in the fuselage skin and doublers at the corners of the doorjambs of the passenger and service doors. The actions specified by this AD are intended to detect and correct such fatigue cracking, which could result in rapid decompression of the fuselage and consequent reduced structural integrity of the airplane.

**DATES:** Effective November 13, 2000. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 13, 2000.

**ADDRESSES:** The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Greg DiLibero, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5231; fax (562) 627–5210.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–8 series airplanes was published in the **Federal Register** on November 4, 1999 (64 FR 60134). For certain airplanes, that action proposed to require inspection(s) to detect cracks of the doorjamb corners and follow-on actions. For certain other airplanes, that AD also proposed to require installation of a preventative modification; an inspection to detect cracks at the corners of the doorjambs of the passenger and service doors; and follow-on actions.

### Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

### Support for Proposed AD

One commenter supports the proposed AD.

### Request to Revise a Certain Compliance Time

One commenter requests that paragraph (e) of the proposed AD be revised to include an inspection threshold that can be scheduled from the effective date of this AD. The commenter states that such a threshold would accommodate Group 4 airplanes that have unknown cycles accumulated since accomplishment of the modification.

The FAA does not concur. In developing an appropriate compliance time for this action, the FAA considered the safety implications and normal maintenance schedules for timely accomplishment of the inspection. In addition, the compliance time of "within 17,000 landings following accomplishment of the modification specified in the service bulletin" is based on a damage tolerance assessment of the affected structure. Because the reported cracking was caused by fatigue related stress (as discussed in the preamble of the proposed AD), the FAA finds that airplanes that have accumulated unknown hours on the modification must be inspected at the earliest possible time to ensure no cracks have initiated since installation of the modification, which may have been accomplished more than 17,000 flight hours ago. In consideration of these items, the FAA has determined that 17,000 landings following accomplishment of the modification specified in the service bulletin represents an appropriate interval of time allowable wherein the inspection can be accomplished during scheduled maintenance intervals for the majority of affected operators, and an acceptable level of safety can be maintained. However, under the provisions of paragraph (g) of the final rule, the FAA may approve requests for adjustments to the compliance time if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety.

### Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

### Cost Impact

There are approximately 294 Model DC–8 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 251 airplanes of U.S. registry will be affected by this AD.

Should an operator be required to accomplish the inspection(s), it will take 48 (Group 1 airplanes) and 74 (all other groups of airplanes) work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact

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of the inspection(s) required by this AD on U.S. operators is estimated to be $2,880 (Group 1 airplanes) and $4,440 (all other groups of airplanes) per airplane, per inspection cycle.

Should an operator be required or elect to accomplish the preventative modification, it will take approximately 1,440 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $2,000 per airplane. Based on these figures, the cost impact of the preventative modification by this AD on U.S. operators is estimated to be $88,400 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

**Regulatory Impact**

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**2000–20–08 McDonnell Douglas:** Amendment 39–11919. Docket 98–NM–135–AD.

*Applicability:* Model DC–8 series airplanes, as listed in McDonnell Douglas Service Bulletin DC8–53–075, dated August 17, 1995; certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking in the fuselage skin and doublers at the corners of the doorjambs of the passenger and service doors, which could result in rapid decompression of the fuselage and consequent reduced structural integrity of the airplane, accomplish the following:

**Note 2:** Where there are differences between the service bulletin and the AD, the AD prevails.

**Note 3:** The words "repair" and "modify/modification" in this AD and in the referenced service bulletin are used interchangeably.

**Note 4:** This AD is related to AD 93–01–15, amendment 39–8469, and will affect Principal Structural Elements (PSE) 53.08.038, 53.08.039, 53.08.040, and 53.08.041 of the DC–8 Supplemental Inspection Document (SID), Report L26–011, Volume I, Revision 3, dated March 1991.

**Group 1 Airplanes: Initial Inspection and Follow-on or Corrective Actions**

(a) For airplanes identified as Group 1 in McDonnell Douglas Service Bulletin DC8–53–075, dated August 17, 1995: Within 2,000 landings or 3 years after the effective date of this AD, whichever occurs first, perform the applicable inspection(s) to detect cracks of the doorjamb corners in accordance with the service bulletin.

(1) If no crack is detected during any inspection required by paragraph (a) of this AD, repeat the applicable inspection(s) required by paragraph (a) of this AD thereafter at intervals specified for Group 1 airplanes in paragraph 1.E. of the service bulletin; or accomplish the preventative modification in accordance with the service bulletin. Accomplishment of the preventative modification constitutes terminating action for the repetitive inspection requirements of this paragraph.

(2) If any crack is detected during any inspection required by paragraph (a) of this AD, prior to further flight, repair in accordance with the service bulletin, except as provided by paragraph (f) of this AD.

**Group 1 Airplanes: Actions Following Accomplishment of Preventative Modification or Repair**

(b) Within 17,000 landings following accomplishment of the modification/repair required by either paragraph (a)(1) or (a)(2) of this AD, perform an inspection to detect cracks of the doorjamb corners, in accordance with McDonnell Douglas Service Bulletin DC8–53–075, dated August 17, 1995.

(1) If no crack is detected, repeat the inspection thereafter at intervals not to exceed 4,400 landings.

(2) If any crack is detected, prior to further flight, repair in accordance with the service bulletin, except as provided by paragraph (f) of this AD.

**Group 2 Airplanes: Preventative Modification, Inspection(s), and Repair, If Necessary**

(c) For airplanes identified as Group 2 in McDonnell Douglas Service Bulletin DC8–53–075, dated August 17, 1995: Within 2,000 landings or 3 years after the effective date of this AD, whichever occurs first, accomplish the preventative modification in accordance with the service bulletin. Within 17,000 landings following accomplishment of the preventative modification, perform an inspection to detect cracks of the doorjamb corners, in accordance with the service bulletin.

(1) If no crack is detected during any inspection required by paragraph (c) of this AD, repeat the inspection thereafter at intervals not to exceed 4,400 landings.

(2) If any crack is detected during any inspection required by paragraph (c) of this AD, prior to further flight, repair it in accordance the service bulletin, except as provided by paragraph (f) of this AD.

**Group 3 Airplanes: Revision of Maintenance or Inspection Program**

(d) For airplanes identified as Group 3 in McDonnell Douglas Service Bulletin DC8–53–075, dated August 17, 1995: Within 6 years following accomplishment of the permanent repair or within 3 years after the effective date of this AD, whichever occurs later, revise the FAA-approved maintenance or inspection program to include an inspection program for the doorjamb corners identified in the service bulletin. The new inspection program shall be approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA.

**Note 5:** Requests for approval of inspection procedures of the permanent repairs that are proposed for inclusion in the FAA-approved maintenance or inspection program, as required by this AD, should include a damage tolerance assessment.

**Group 4 Airplanes: Inspection(s) and Repair, If Necessary**

(e) For airplanes identified as Group 4 in McDonnell Douglas Service Bulletin DC8–53–075, dated August 17, 1995: Within 17,000 landings following accomplishment of the modification specified in the service bulletin, perform an inspection to detect cracks of the doorjamb corners, in accordance with the service bulletin.

(1) If no crack is detected during any inspection required paragraph (e) of this AD, repeat the inspection thereafter at intervals not to exceed 4,400 landings.

(2) If any crack is detected during any inspection required by paragraph (e) of this AD, prior to further flight, repair in accordance with the service bulletin, except as provided by paragraph (f) of this AD.

**Exception to Procedures Specified in the Referenced Service Bulletin**

(f) Where McDonnell Douglas Service Bulletin DC8–53–075, dated August 17, 1995, specifies that the manufacturer may be contacted for disposition of certain repair conditions, this AD requires the repair of those conditions to be accomplished in accordance with a method approved by the Manager, Los Angeles ACO.

**Alternative Methods of Compliance**

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

**Note 6:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

**Special Flight Permits**

(h) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

**Incorporation by Reference**

(i) Except as provided by paragraphs (d) and (f) of this AD, the actions shall be done in accordance with McDonnell Douglas Service Bulletin DC8–53–075, dated August 17, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Effective Date**

(j) This amendment becomes effective on November 13, 2000.

Issued in Renton, Washington, on September 28, 2000.

**Donald L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–25432 Filed 10–5–00; 8:45 am]

BILLING CODE 4910–13–U



## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 99–NM–308–AD; Amendment 39–11920; AD 2000–20–09]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 757 Series Airplanes Powered by Pratt & Whitney Engines

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes, that requires modification of the nacelle strut and wing structure. This amendment is prompted by reports indicating that the actual operational loads applied to the nacelle are higher than the analytical loads that were used during the initial design. Such an increase in loading can lead to fatigue cracking in primary strut structure prior to an airplane reaching its design service objective. The actions specified by this AD are intended to prevent fatigue cracking in primary strut structure and consequent reduced structural integrity of the strut.

**DATES:** Effective November 13, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 13, 2000.

**ADDRESSES:** The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Dennis Stremick, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2776; fax (425) 227–1181.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 757 series airplanes was published in the **Federal Register** on June 7, 2000 (65 FR 36095). That action proposed to require modification of the nacelle strut and wing structure.

**Comments**

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposed rule.

One commenter states that it does not operate Boeing Model 757 series airplanes powered by Pratt & Whitney engines and is not affected by the proposed rule.

**Contact Manufacturer for Approval of Repairs**

One commenter states that the instructions specified in paragraph (c) of the proposal do not clearly identify who should be contacted if any damage to the airplane structure is found during accomplishment of the modification referenced in the proposal. The commenter states that, based on instructions in Boeing Service Bulletin 757–54–0034, and the fact that the manufacturer is more knowledgeable about the modifications necessary; paragraph (c) should be revised to include contacting the manufacturer for repair of any damage.

The FAA concurs with the commenter's request, however, although Boeing Service Bulletin 757–54–0034 specifies that the manufacturer may be contacted for disposition of certain damage conditions, this AD requires the repair of those conditions to be accomplished in accordance with a method approved by the Manager, Seattle Aircraft Certification Office

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(ACO), FAA, or data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the FAA to make such findings. Paragraph (c) of this final rule has been revised to add Boeing DER approval for repairs.

**Conclusion**

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

**Cost Impact**

There are approximately 317 airplanes of the affected design in the worldwide fleet. The FAA estimates that 278 airplanes of U.S. registry will be affected by this AD.

It will take approximately 800 work hours per airplane to accomplish the required modification of the nacelle strut and wing structure described in Boeing Service Bulletin 757–54–0034, at an average labor rate of $60 per work hour. Required parts will be provided at no cost by the airplane manufacturer. Based on these figures, the cost impact of this required modification on U.S. operators is estimated to be $13,344,000, or $48,000 per airplane.

It will take approximately 26 work hours per airplane to accomplish the actions described in Boeing Service Bulletin 757–54–0027, Revision 1, at an average labor rate of $60 per work hour. Required parts will be provided at no cost by the airplane manufacturer. Based on these figures, the cost impact of these required actions on U.S. operators is estimated to be $433,680, or $1,560 per airplane.

It will take approximately 90 work hours per airplane to accomplish the actions described in Boeing Service Bulletin 757–54–0036, at an average labor rate of $60 per work hour. Required parts will be provided at no cost by the airplane manufacturer. Based on these figures, the cost impact of these required actions on U.S. operators is estimated to be $1,501,200, or $5,400 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

**Regulatory Impact**

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**2000–20–09 Boeing:** Amendment 39–11920. Docket 99–NM–308–AD.

*Applicability:* Model 757 series airplanes powered by Pratt & Whitney engines, line numbers 1 through 735 inclusive, certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent fatigue cracking in primary strut structure and consequent reduced structural integrity of the strut, accomplish the following:

**Modifications**

(a) Modify the nacelle strut and wing structure on both the left and right sides of the airplane, in accordance with Boeing Service Bulletin 757–54–0034, dated May 14, 1998, at the later of the times specified in paragraph (a)(1) or (a)(2) of this AD.

(1) Prior to the accumulation of 37,500 total flight cycles, or within 20 years since the date of manufacture, whichever occurs first. Use of the optional threshold formula described in paragraph I.D. of the service bulletin is an acceptable alternative to the 20-year threshold.

(2) Within 3,000 flight cycles after the effective date of this AD.

(b) Prior to or concurrently with the accomplishment of the modification of the nacelle strut and wing structure required by paragraph (a) of this AD; as specified in paragraph I.D., Table I, "Strut Improvement Bulletins," on page 5 of Boeing Service Bulletin 757–54–0034, dated May 14, 1998; accomplish the actions specified in Boeing Service Bulletin 757–54–0027, Revision 1, dated October 27, 1994, and Boeing Service Bulletin 757–54–0036, dated May 14, 1998, as applicable, in accordance with those service bulletins.

**Repair**

(c) If any damage to airplane structure is found during the accomplishment of the modification required by paragraph (a) of this AD; and the service bulletin specifies to contact Boeing for appropriate action: Prior to further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the approval letter must specifically reference this AD.

**Alternative Methods of Compliance**

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

**Special Flight Permits**

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

**Incorporation by Reference**

(f) Except as provided by paragraph (c) of this AD, the actions shall be done in accordance with Boeing Service Bulletin 757–54–0034, dated May 14, 1998; Boeing Service Bulletin 757–54–0027, Revision 1, dated October 27, 1994; and Boeing Service Bulletin 757–54–0036, dated May 14, 1998; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Effective Date**

(g) This amendment becomes effective on November 13, 2000.

Issued in Renton, Washington, on September 28, 2000.

**Donald L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–25433 Filed 10–5–00; 8:45 am]

BILLING CODE 4910–13–U



## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2000–CE–29–AD; Amendment 39–11918; AD 2000–20–07]**

**RIN 2120–AA64**

## Airworthiness Directives; Raytheon Aircraft Company Beech Models 1900, 1900C, and 1900D Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that applies to certain Raytheon Aircraft Company (Raytheon) Beech Models 1900, 1900C, and 1900D airplanes. This AD requires you to modify the cockpit voice recorder (CVR) system. This AD is the result of instances where the recording quality of the CVR in the affected airplanes was so poor that the information was practically unrecoverable. The actions specified by this AD are intended to correct substandard quality cockpit voice recordings caused by the configuration of the present CVR system, which could affect air safety if important information that the CVR provides is not available after an accident. This information helps determine the probable cause of an accident and aids in developing necessary corrective action or design changes to prevent future accidents.

**DATES:** This AD becomes effective on November 22, 2000.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation as of November 22, 2000.

**ADDRESSES:** You may get the service information referenced in this AD from the Raytheon Aircraft Company, PO Box 85, Wichita, Kansas 67201–0085; telephone: (800) 625–7043 or (316) 676–4556.

You may examine this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–29–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Harvey E. Nero, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4137; facsimile: (316) 946–4407.

**SUPPLEMENTARY INFORMATION:**

**Discussion**

*What caused this AD?* The FAA has received reports of six instances where the recording quality of the cockpit voice recorder (CVR) system in Raytheon Beech Models 1900, 1900C, and 1900D airplanes was so poor that the information was practically unrecoverable.

*Has FAA taken any action to this point?* We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Raytheon Beech Models 1900, 1900C, and 1900D. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on June 14, 2000 (65 FR 37311). The NPRM proposed to require you to modify the cockpit voice recorder (CVR) system.

Accomplishment of the proposed action as specified in the NPRM would be required in accordance with Raytheon Recommended Service Bulletin SB 23–3094, Issued: November, 1999.

*What is the potential impact if FAA took no action?* This condition, if not corrected, could affect air safety if important information that the CVR provides is not available after an accident. This information helps determine the probable cause of an accident and aids in developing necessary corrective action or design changes to prevent future accidents.

*Was the public invited to comment?* The FAA encouraged interested persons to participate in the making of this amendment. The following presents the concerns received on the proposal and FAA's response to these concerns:

**Comment Disposition**

*What is the commenter's concerns?* The commenter requests that FAA:

- Clearly define in the AD that the CVR must be installed and not just the incorporation of a kit; and
- Identify all affected CVR's by manufacturer or model number.

The commenter operates several of the affected airplanes in a configuration of freight-only, single pilot. These airplanes incorporate supplemental type certificates that allow operation with nine or fewer passengers and freight conversions. Under section 135.151 of the Federal Aviation Regulations (14 CFR 135.151), this operator does not have to operate with a CVR. The commenter believes that FAA could eliminate confusion as to whether the AD applied if the Applicability of the AD was written to specify that the CVR must be installed. Then, if you installed the CVR in the future, you would have to comply with the AD.

The commenter believes that identifying the CVR by manufacturer or model number would also clarify the Applicability of the AD.

*What is FAA's Response to the Concerns?* We concur that specifying that the CVR must be installed would clarify the Applicability of the AD. We have changed the wording in the final rule accordingly.

We do not concur with including the manufacturer or model number of the CVR in the Applicability of the AD. The intent of the AD is to modify the configuration of the CVR system, which includes the wiring and audio amplifier.

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The AD applies regardless of the CVR unit make and model that is installed.

**The FAA's Determination**

*What is FAA's final determination on this issue?* We carefully reviewed all available information related to the subject presented above and determined that air safety and the public interest require the adoption of the rule as proposed except for the change discussed above and minor editorial changes. These changes provide the intent that was proposed in the NPRM for correcting the unsafe condition and do not impose any additional burden than what was intended in the NPRM.

**Compliance Time of This AD**

*What is the compliance time of this AD?* The compliance time of this AD is "within 12 months after the effective date of this AD."

*Why is the compliance in calendar time instead of hours time-in-service (TIS)?* The unsafe condition defined in this document is not a result of the number of times the airplane is operated, rather is a result of the present configuration of the CVR system. The chance of this situation occurring is the same for an airplane with 100 hours time-in-service (TIS) as it is for an airplane with 1,000 hours TIS. For this reason, FAA has determined that a compliance based on calendar time should be utilized in this AD in order to assure that the unsafe condition is addressed on all airplanes in a reasonable time period.

**Cost Impact**

*What is the cost impact of this AD on owners/operators of the affected airplanes?* The following chart provides estimates of the cost this AD would impose upon the public:

| Action | No. of airplanes affected | Labor costs | Parts cost | Cost impact |
|---|---|---|---|---|
| Replacement/Incorporation of Modification kit. | 119 | 8 workhours at $60 per hour=$480 per airplane. | $1,728 | $262,752, or $2,208 per airplane. |
| Audio Amplifier Modification and Electrical Wiring Changes. | 377 | 8 workhours at $60 per hour=$480 per airplane. | 679 | $436,943, or $1,159 per airplane. |

**Regulatory Impact**

*Does this AD impact various entities?* The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

*Does this AD involve a significant rule or regulatory action?* For the reasons discussed above, I certify that this action: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

**Adoption of the Amendment**

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

**PART 39—AIRWORTHINESS DIRECTIVES**

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

**2000–20–07 Raytheon Aircraft Company** (The Beech Aircraft Corporation previously held Type Certificate No. A24CE): Amendment 39–11918; Docket No. 2000–CE–29–AD.

(a) *What airplanes are affected by this AD?* The following airplane models and serial numbers that are certificated in any category and are required to have a cockpit voice recorder (CVR) installed:

| Models | Serial No. |
|---|---|
| 1900 and 1900C | All serial number airplanes with the applicable Raytheon Aircraft Company (RAC) Kit No. 114–3020 variation (−1, −3, −7, or −9) incorporated. |
| 1900 and 1900C | All serial number airplanes with RAC Kit No. 114–3032–1 incorporated. |
| 1900 and 1900C | All serial number airplanes with RAC Kit No. 114–3008–1 incorporated. |
| 1900 and 1900C | All serial number airplanes where RAC installed the CVR. |
| 1900D | UE–1 through UE–376. |

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes on the U.S. Register must comply with this AD.

(c) *What problem does this AD address?* The actions specified in this document are intended to correct substandard quality cockpit voice recordings caused by the configuration of the present CVR system, which could affect air safety if important information that the CVR provides is not available after an accident. This information helps determine the probable cause of an accident and aids in developing necessary corrective action or design changes to prevent future accidents.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:



| Action | Compliance time | Procedures |
|---|---|---|
| (1) Accomplish the CVR system modifications specified in Raytheon Recommended Servcie Bulletin SB 23–3094, Issued: November, 1999. | Within 12 months after the effective date of this AD. | Do the modifications in accordance with procedures in the ACCOMPLISHMENT INSTRUCTIONS section of Raytheon Recommended Service bulletin SB 23–3094, Issued: November, 1999. |
| (2) Do not install a CVR on any of the affected airplanes without incorporating the modifications required by paragraph (d)(1) of this AD. | As of the effective date of this AD. | Not Applicable. |

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Wichita Aircraft Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

**Note:** This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* You may contact Harvey Nero, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4137; facsimile: (316) 946–4407.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Raytheon Recommended Service Bulletin SB 23–3094, Issued: November, 1999. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from the Raytheon Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. You can look at copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(i) *When does this amendment become effective?* This amendment becomes effective on November 22, 2000.

Issued in Kansas City, Missouri, on September 26, 2000.

**Michael K. Dahl,**

*Acting Manager, Small Airplane Directorate,, Aircraft Certification Service.*

[FR Doc. 00–25148 Filed 10–5–00; 8:45 am]

BILLING CODE 4910–13–P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. 99–NM–329–AD; Amendment 39–11915; AD 2000–20–04]**

**RIN 2120–AA64**

## Airworthiness Directives; McDonnell Douglas Model MD–90–30 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; correction.

**SUMMARY:** This document supersedes an existing airworthiness directive (AD) that applies to certain McDonnell Douglas Model MD–90–30 series airplanes. That AD currently requires replacement of certain ground block screws with new screws; and retermination of the circuit ground wires of the electrical power control unit (EPCU) to separate grounding points. The actions specified in that AD are intended to prevent a loose electrical ground block of the circuit ground wires of the EPCU, which could result in complete loss of the primary electrical power of an airplane during flight. This amendment is prompted by the Federal Aviation Administration's determination that the existing AD must be revised to ensure that the requirements apply to the appropriate airplane groups.

**DATES:** Effective November 13, 2000.

The incorporation by reference of McDonnell Douglas Service Bulletin MD90–24–062, dated February 3, 2000, as listed in the regulations, is approved by the Director of the Federal Register as of November 13, 2000.

The incorporation by reference of McDonnell Douglas Alert Service Bulletin MD90–24A060, Revision 01, dated September 2, 1999, as listed in the regulations, was approved previously by the Director of the Federal Register as of September 19, 2000 (65 FR 49728, August 15, 2000).

**FOR FURTHER INFORMATION CONTACT:** George Mabuni, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5341; fax (562) 627–5210.

**SUPPLEMENTARY INFORMATION:** On August 3, 2000, the Federal Aviation Administration (FAA) issued AD 2000–16–01, amendment 39–11855 (65 FR 49728, August 15, 2000), which applies to certain McDonnell Douglas Model MD–90–30 series airplanes. That AD requires replacement of certain ground block screws with new screws; and retermination of the circuit ground wires of the electrical power control unit (EPCU) to separate grounding points. That AD was prompted by reports of complete loss of the primary electrical power on an airplane during flight. The actions required by that AD are intended to prevent a loose electrical ground block of the circuit ground wires of the EPCU, which could result in complete loss of the primary electrical power of an airplane during flight.

**Need for the Correction**

In the preamble of AD 2000–16–01, the FAA indicated that a supplemental notice of proposed rulemaking (NPRM) was published in the **Federal Register** on June 12, 2000 (65 FR 36799). After careful review of the available data, including the comments received from the public, the FAA determined that air safety and the public interest required the adoption of the rule as proposed in the supplemental NPRM. However, the FAA inadvertently included the requirements from the original NPRM (64 FR 68302, December 7, 1999) in the final rule, rather than the requirements specified in paragraphs (a) and (b) of the supplemental NPRM. The effect of this error is that operators of certain airplanes are not required to accomplish actions that apply to those airplanes,

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and that certain actions are to be accomplished in accordance with a method approved by the FAA, rather than a specific service bulletin. Therefore, consistent with the FAA's intent in the supplemental NPRM, this correction is necessary to require operators of specific airplanes to replace certain ground block screws with new screws and to reterminate the circuit ground wires of the EPCU to separate grounding points.

These actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin MD90–24A060, Revision 01, dated September 2, 1999; and McDonnell Douglas Service Bulletin MD90–24–062, dated February 3, 2000; as applicable. The FAA inadventently omitted McDonnell Douglas Service Bulletin MD90–24–062 from the incorporation by reference paragraph and is incorporating by reference that service bulletin in this final rule.

**Correction of Publication**

Action is taken herein to correct these inadvertent errors in AD 2000–16–01 and to correctly add this AD as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13). The AD is reprinted in its entirety for the convenience of affected operators.

Since this action only corrects current requirements, it has no adverse economic impact and imposes no additional burden on any person. Therefore, the FAA has determined that notice and public procedures are unnecessary.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

**Adoption of the Correction**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

**PART 39—AIRWORTHINESS DIRECTIVES**

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by removing amendment 39–11855 (65 FR 49728, August 15, 2000), and by adding a new airworthiness directive (AD), amendment 39-, to read as follows:

**2000–20–04 McDonnell Douglas:** Amendment 39–11915. Docket 99–NM–329–AD. Supersedes AD 2000–16–01, Amendment 39–11855.

*Applicability:* Model MD–90–30 series airplanes, as listed in McDonnell Douglas Alert Service Bulletin MD90–24A060, Revision 01, dated September 2, 1999, and McDonnell Douglas Service Bulletin MD90–24–062, dated February 3, 2000; certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent a loose electrical ground block of the circuit ground wires of the electrical power control unit (EPCU), accomplish the following:

**Replacement**

(a) For airplanes listed in McDonnell Douglas Alert Service Bulletin MD90–24A060, Revision 01, dated September 2, 1999: Within 30 days after the effective of this AD, replace the electrical ground block screws with new screws in accordance with McDonnell Douglas Alert Service Bulletin MD90–24A060, Revision 01, dated September 2, 1999.

**Note 2:** Accomplishment of the replacement of electrical ground block screws prior to the effective date of this AD in accordance with McDonnell Douglas Alert Service Bulletin MD90–24A060, dated July 28, 1999, is acceptable for compliance with the requirements of paragraph (a) of this AD.

**Modification of the Electrical Power Control Unit**

(b) For airplanes listed in McDonnell Douglas Service Bulletin MD90–24–062, dated February 3, 2000: Within 12 months after the effective date of this AD, reterminate the circuit ground wires of the EPCU to separate grounding points to ensure that a single point failure does not occur, in accordance with McDonnell Douglas Service Bulletin MD90–24–062, dated February 3, 2000.

**Alternative Methods of Compliance**

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

**Incorporation by Reference**

(d) The actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin MD90–24A060, Revision 01, dated September 2, 1999; and McDonnell Douglas Service Bulletin MD90–24–062, dated February 3, 2000; as applicable.

(1) The incorporation by reference of McDonnell Douglas Service Bulletin MD90–24–062, dated February 3, 2000, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of McDonnell Douglas Alert Service Bulletin MD90–24A060, Revision 01, dated September 2, 1999, was approved previously by the Director of the Federal Register as of September 19, 2000 (65 FR 49728, August 15, 2000).

(3) Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles ACO, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Effective Date**

(e) This amendment becomes effective on November 13, 2000.

Issued in Renton, Washington, on September 26, 2000.

**Donald L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–25149 Filed 10–5–00; 8:45 am]

BILLING CODE 4910–13–P

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. 99–NM–356–AD; Amendment 39–11916; AD 2000–20–05]**

**RIN 2120–AA64**

## Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–120 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain EMBRAER Model EMB–120 series airplanes, that requires revising the Airplane Flight Manual (AFM), and either installing hydraulic tube assemblies incorporating a check valve, or visually inspecting the check valve if already installed and corrective action, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent the landing gear doors from becoming blocked from opening during application of emergency procedures in the event of a loss of hydraulics.

**DATES:** Effective November 13, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 13, 2000.

**ADDRESSES:** The service information referenced in this AD may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Robert Capezzuto, Aerospace Engineer, Systems and Flight Test Branch, ACE–116A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6071; fax (770) 703–6097.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain EMBRAER Model EMB–120 series airplanes was published in the **Federal Register** on April 17, 2000 (65 FR 20388). That action proposed to require revising the Airplane Flight Manual (AFM), and either installing hydraulic tube assemblies incorporating a check valve, or visually inspecting the check valve if already installed and corrective action, if necessary.

**Comments**

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

**Change Made to the Final Rule**

Since the issuance of the proposed AD, the FAA has determined that the installation required by paragraph (c) must be accomplished only in accordance with EMBRAER Service Bulletin 120–32–0077, Change 02, dated December 23, 1997, after the effective date of this AD. (EMBRAER Service Bulletin 120–32–0077, Change 01, dated September 25, 1997; and EMBRAER Service Bulletin 120–32–0077, Change 02, dated December 23, 1997, were cited as the appropriate sources of service information in the proposed AD.) The final rule has been changed accordingly, and a new Note 2 has been added to give credit for accomplishment of the installation in paragraph (c) prior to the effective date of this AD in accordance with EMBRAER Service Bulletin 120–32–0077, Change 01, dated September 25, 1997.

**Conclusion**

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

**Cost Impact**

The FAA estimates that 213 airplanes of U.S. registry will be affected by this AD.

It will take approximately 1 work hour per airplane to incorporate the applicable AFM revision, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AFM revision required by this Ad on U.S. operators is estimated to be $12,780, or $60 per airplane.

It will take approximately 1 work hour per airplane to perform the visual inspection of the check valve, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $60 per airplane.

It will take approximately 2 work hours per airplane to install the hydraulic tube assemblies incorporating a check valve, and that the average labor rate is $60 per work hour. Required parts will cost approximately $2,021 per airplane. Based on these figures, the cost impact of the installation required by this AD on U.S. operators is estimated to be $2,141 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

**Regulatory Impact**

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

**PART 39—AIRWORTHINESS DIRECTIVES**

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

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**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**2000–20–05 Empresa Brasileira de Aeronautica S.A. (EMBRAER):** Amendment 39–11916. Docket 99–NM–356–AD.

*Applicability:* Model EMB–120 series airplanes as listed in EMBRAER Service Bulletin 120–32–0077, Change 02, dated December 23, 1997; certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent the landing gear doors from becoming blocked from opening during application of emergency procedures in the event of a loss of hydraulics, accomplish the following:

**Airplane Flight Manual (AFM) Revision**

(a) Within 10 flight hours after the effective date of this AD, revise the "Emergency Procedures" and "Abnormal Procedures" sections of the FAA-approved AFM by inserting into the AFM a copy of EMB–120 AFM 120/794, Revision 45, dated October 14, 1996.

(b) For airplanes on which the check valve has been installed in accordance with EMBRAER Service Bulletin 120–32–0077, dated February 7, 1997: Within 100 hours after the effective date of this AD, conduct a visual inspection to detect the check valve flow direction in accordance with Service Bulletin 120–32–0077, Change 02, dated December 23, 1997. If the check valve is installed incorrectly, prior to further flight, reinstall the check valve in the proper position in accordance with Change 02 of the service bulletin.

(c) For airplanes on which the check valve has not been installed in accordance with EMBRAER Service Bulletin 120–32–0077, dated February 7, 1997; or Change 01, dated September 25, 1997; or Change 02, dated December 23, 1997: Within 2,000 flight hours after the effective date of this AD, install hydraulic tube assemblies incorporating a check valve in accordance with Service Bulletin 120–32–0077, Change 02, dated December 23, 1997.

**Note 2:** Accomplishment of the installation in accordance with EMBRAER Service Bulletin 120–32–0077, Change 01, dated September 25, 1997, prior to the effective date of this AD, is acceptable for compliance with this paragraph.

**Alternative Methods of Compliance**

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

**Special Flight Permits**

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

**Incorporation by Reference**

(f) Except as provided by paragraph (a) of this AD, the actions shall be done in accordance with EMBRAER Service Bulletin 120–32–0077, Change 02, dated December 23, 1997. EMBRAER Service Bulletin 120–32–0077, Change 02, dated December 23, 1997 contains the following list of effective pages:

| Page No. | Revision level shown on page | Date shown on page |
|---|---|---|
| 1, 2, 11, 12 | 02 | December 23, 1997. |
| 3–10 | 01 | September 25, 1997. |

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Note 4:** The subject of this AD is addressed in Brazilian airworthiness directive 97–05–03R2, dated March 16, 1998.

**Effective Date**

(g) This amendment becomes effective on November 13, 2000.

Issued in Renton, Washington, on September 26, 2000.

**Donald L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–25150 Filed 10–5–00; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 99–NM–26–AD; Amendment 39–11902; AD 2000–19–01]**

**RIN 2120–AA64**

## Airworthiness Directives; Bombardier Model CL–600–1A11 (CL–600) and CL–600–2A12 (CL–601) Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; correction.

**SUMMARY:** This document corrects a typographical error that appeared in airworthiness directive (AD) AD 2000–19–01 that was published in the **Federal Register** on September 20, 2000 (65 FR 56780). The typographical error resulted in failure to reference an acceptable method of compliance for a certain requirement. This AD is applicable to certain Bombardier Model CL–600–1A11 (CL–600) and CL–600–2A12 (CL–601) series airplanes. This AD requires modification of the main landing gear (MLG) brake units and inboard MLG wheels; and a revision to the Airplane Flight Manual (AFM) to include the increased cooling times for the modified brakes. This AD allows, for certain cases, removal of the inboard and/or outboard wheel discs by installation of a placard to limit airplane operation on the ground and a revision to the AFM to include information for operating the airplane with the wheel discs removed. Additionally, this AD provides for an acceptable method of compliance that involves installation of a new revision to the AFM.

**DATES:** Effective October 25, 2000.

**FOR FURTHER INFORMATION CONTACT:** James E. Delisio, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7521; fax (516) 568–2716.

**SUPPLEMENTARY INFORMATION:** Airworthiness Directive (AD) 2000–19–01, amendment 39–11902, applicable to certain Bombardier Model CL–600–1A11 (CL–600) and CL–600–2A12 (CL–601) series airplanes, was published in the **Federal Register** on September 20, 2000 (65 FR 56780). That AD requires modification of the main landing gear (MLG) brake units and inboard MLG wheels; and a revision to the Airplane Flight Manual (AFM) to include the increased cooling times for the modified brakes. That AD allows, for certain cases, removal of the inboard and/or outboard wheel discs by installation of a placard to limit airplane operation on the ground and a revision to the AFM to include information for operating the airplane with the wheel discs removed. Additionally, that AD provides for an acceptable method of compliance that involves installation of a new revision to the AFM.

As published, paragraph (d) of the existing AD specifies that installation of a specific AFM revision is acceptable for compliance with the requirements of paragraphs (a) and (b) of that AD. The FAA inadvertently did not specify that installation of a specific AFM revision is also acceptable for compliance with the requirements of paragraph (c) of that AD.

Since no other part of the regulatory information has been changed, the final rule is not being republished.

The effective date of this AD remains October 25, 2000.

**§ 39.13 [Corrected]**

On page 56782, in the second column, paragraph (d) of AD 2000–19–01 is corrected to read as follows:

* * * * *

(d) For all airplanes: Installation of the AFM revision specified in either paragraph (d)(1) or (d)(2) of this AD, as applicable, is acceptable for compliance with the requirements of paragraphs (a), (b), and (c) of this AD, as applicable.

(1) Bombardier Model CL–600–1A11 (CL–600) AFM Revisions A84 and 76, both dated February 7, 2000; or

(2) Bombardier Model CL600–2A12 (CL–601) AFM Revisions 45, 48, 50, and 86, all dated February 7, 2000.

* * * * *

Issued in Renton, Washington, on October 2, 2000.

**Donald L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–25684 Filed 10–5–00; 8:45 am]

BILLING CODE 4910–13–P



## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 00–ASO–28]**

## Amendment of Class E Airspace; Picayune, MS

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action amends Class E airspace at Picayune, MS. Picayune—Pearl River County Airport has closed and a new airport has been established approximately 3.5 miles southeast of the Picayune—Pearl River County Airport site. The name of the new airport is Picayune Municipal Airport. Area Navigation (RNAV) Runway (RWY) 18 and RWY 36 Standard Instrument Approach Procedures (SIAPs) have been developed for Picayune Municipal Airport. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAPs at Picayune Municipal Airport. This action also changes the name of the airport in the airspace description from Picayune—Pearl River County to Picayune Municipal Airport.

**EFFECTIVE DATE:** 0901 UTC, January 25, 2001.

**FOR FURTHER INFORMATION CONTACT:** Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

**SUPPLEMENTARY INFORMATION:**

**History**

On August 18, 2000, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by amending Class E airspace at Picayune, MS, (65 FR 50470) to contain the RNAV RWY 18 and 39 SIAPs developed for the Picayune Municipal Airport. Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9H, dated September 1, 2000, and effective September 16, 2000, which is incorporated by reference in 15 CFR 71.1, dated September 1, 1999. The Class E airspace designations listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

**The Rule**

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) amends Class E airspace at Picayune, MS. This action also changes the name of the airport in the airspace description from Picayune—Pearl River County to Picayune Municipal Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**Adoption of the Amendment**

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g); 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation

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Administration Order 7400.9H, Airspace Designations and Reporting Points, dated September 1, 2000, and effective September 16, 2000, is amended as follows:

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

* * * * *

**ASO MS E5 Picayune, MS [Revised]**

Picayune Municipal Airport, MS
(Lat. 30°29′15″ N, long. 89°39′04″ W)

That airspace extending upward from 700 feet or more above the surface within a 6.5-mile radius of the Picayune Municipal Airport.

* * * * *

Issued in College Park, Georgia, on September 26, 2000.

**Wade T. Carpenter,**

*Acting Manager, Air Traffic Division, Southern Region.*

[FR Doc. 00–25695 Filed 10–5–00; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Airspace Docket No. 00–AGL–14]**

### Modification of Class E Airspace; Harbor Springs, MI

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action modifies Class E airspace at Harbor Springs, MI. An Area Navigation (RNAV) Standard Instrument Approach Procedure (SIAP) to Runway 10, and an RNAV SIAP to Rwy 28, have been developed for Harbor Springs Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing these approaches. This action increases the radius of the existing controlled airspace extending upward from 1,200 feet for Harbor Springs Airport.

**EFFECTIVE DATE:** 0901 UTC, November 30, 2000.

**FOR FURTHER INFORMATION CONTACT:** Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018; telephone (847) 294–7568.

**SUPPLEMENTARY INFORMATION:**

**History**

On Tuesday, May 2, 2000, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Harbor Springs, MI (65 FR 25457). The proposal was to modify controlled airspace extending upward from the 700 feet above the surface to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. The City of Harbor Springs, MI, requested additional information on the impact of the proposal on the local community. Subsequent communication between the city manager of Harbor Springs, MI, and the Chicago Flight Procedures Office, AVN–140B, satisfactorily provided that information. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9H dated September 1, 2000, and effective September 16, 2000, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

**The Rule**

This amendment to 14 CFR part 72 modifies Class E airspace at Harbor Springs, MI, to accommodate aircraft executing instrument flight procedures into and out of Harbor Springs Airport. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR PART 71**

Airspace, Incorporation by reference, Navigation (air).

**Adoption of the Amendment**

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

**PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS**

1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

**§71.1 [Amended]**

2. The incorporation by references in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9H, Airspace Designations and Reporting Points, dated September 1, 2000, and effective September 16, 2000, is amended as follows:

* * * * *

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

* * * * *

**AGL MI E5 Harbor Springs, MI [Revised]**

Harbor Springs Airport, MI
(Lat. 45°25′32″ N., long. 84°54′48″ W).
Pellston VORTAC
(Lat. 45°37′50″ N., long. 84°39′51″ W).
Sault Ste Marie, Chippewa County International Airport, MI
(Lat. 46°15′03″ N., long. 84°28′21″ W).

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of the Harbor Springs Airport and the airspace extending upward from 1,200 feet above the surface within an area bounded on the north by latitude 46° 03′ 00″ N, on the northeast by the 22-mile radius of the Chippewa County International Airport, on the southeast by the 16.6-mile radius of the Pellston VORTAC, on the south by latitude 45°45′00″ N, and on the west by longitude 85°56′00″ W, excluding that airspace within V78, and the Manistique, MI, Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois on September 21, 2000.

**Douglas F. Powers,**

*Acting Manager, Air Traffic Division.*

[FR Doc. 00–25639 Filed 10–5–00; 8:45 am]

**BILLING CODE 4910–13–M**



## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 187

**[Docket No. FAA–00–7018; Amendment No. 187–11]**

**RIN 2120–AG17**

### Fees for FAA Services for Certain Flights; Extension of Comment Period

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Interim final rule; extension of comment period.

**SUMMARY:** On June 6, 2000, the FAA published an Interim Final Rule (IFR) establishing fees for FAA air traffic and related services for certain aircraft that transit U.S.-controlled airspace but neither take off from, nor land in, the United States and invited comments for a 120-day period. The IFR went into effect on August 1, 2000, and the comment period was originally scheduled to close on October 4, 2000. However, the FAA is extending the comment period to October 27, 2000, to ensure that affected entities( mostly foreign) have sufficient time to comment on the contents of the docket.

**DATES:** Comments must be received on or before October 27, 2000.

**ADDRESSES:** Address your comments to the Docket Management System (DMS), U.S. Department of Transportation, Room Plaza Level 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number "FAA–00–7018" at the beginning of your comments, and you should submit two copies of your comments.

You may also submit comments through the Internet to http://dms.dot.gov.

You may review the public docket containing comments to this interim rule in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at http://dms.dot.gov.

**FOR FURTHER INFORMATION CONTACT:** Randall Fiertz, Office of Performance Management, (APF–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, 20591; telephone (202) 267–7140; fax (202) 493–4191.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to comment on the interim rule submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the interim rule are also invited. Substantive comments should be accompanied by cost estimates. Comments must identify the regulatory docket or notice number and be submitted in duplicate to the Rules Docket address specified above.

All comments received, as well as a report summarizing each substantive public contact with FAA personnel on this interim rule will be filed in the docket. The docket is available for public inspection before and after the comment closing date.

The Administrator will consider all comments received on or before the closing date. Late-filed comments will be considered to the extent practicable. The Interim Final Rule, as well as the Final Rule, may be changed in light of the comments received.

Commenters wishing the FAA to acknowledge receipt of their comments must include a pre-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–00–7018." The postcard will be date-stamped and mailed to the commenter.

**Availability of Interim Final Rule**

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) web page (http://dms.dot.gov/search).

(2) On the search page type in the last four digits of the Docket number shown at the beginning of this notice. Click on "search."

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the document number for the item you wish to view.

You can also get an electronic copy using the Internet through FAA's web page at http://www.faa.gov/avr/arm/nprm/nprm.htm or the **Federal Register's** web page at http://www.access.gpo.gov/su_docs/aces/aces140.html.

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number of this rulemaking.

**Extension of Comment Period**

On June 6, 2000, the FAA published Amendment No. 187–11, Fees for FAA Services for Certain Flights (65 FR 36002). The FAA requested that comments to that document be submitted on or before October 4, 2000. The FAA has received and reviewed approximately 70 comments. In response to the extreme significance and international implications of this IFR, as expressed in the comments, FAA is extending the comment period to give affected entities (mostly foreign) additional time to comment on the contents of the docket. Also, the first billing under this rule has recently occurred and entities that may not have commented to date may desire to comment. This action provides the opportunity.

The FAA determines that extending the comment period is in the public interest and that good cause exists for taking this action. Accordingly, the comment period for Amendment No. 187–11 is extended until October 27, 2000. If possible, any comments received after this date will be considered by the FAA prior to any further action in this rulemaking.

Issued in Washington, DC, September 29, 2000.

**Donna McLean,**

*Assistant Administrator for Financial Services.*

[FR Doc. 00–25633 Filed 10–3–00; 2:42 pm]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF COMMERCE

### Bureau of the Census

### 15 CFR Part 101

**[Docket No.: 000609172–0268–02]**

**RIN: 0607–AA33**

### Report of Tabulations of Population to States and Localities Pursuant to 13 U.S.C. 141(c) and Availability of Other Population Information

**AGENCY:** Department of Commerce.

**ACTION:** Final rule.

**SUMMARY:** The Department of Commerce is issuing a final rule setting forth how the Bureau of the Census will carry out its responsibilities to report tabulations of population to States and localities pursuant to 13 U.S.C. 141(c) and in making available certain other population information.

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**DATES:** This rule is effective November 6, 2000.

**FOR FURTHER INFORMATION CONTACT:** John H. Thompson, (301) 457–3946.

**SUPPLEMENTARY INFORMATION:** Through the Census Act, which is codified in title 13 of the United States Code, Congress has delegated to the Secretary of Commerce its broad constitutional authority over the decennial census (see U.S. Constitution Art. I, Sec. 2, Cl.3). On June 13, the Commerce Department issued a proposed rule that would set forth how the Bureau of the Census will carry out its responsibilities to report tabulations of population to States and localities pursuant to the Census Act. *See* 65 FR 38370 (June 20, 2000). The proposed rule would establish a process for the release of data to the States and codify the process by which a committee of senior career officials of the Census Bureau would advise the Director of the Census. In addition, the proposed rule contained a delegation of authority from the Secretary to the Director of the Census to make a determination regarding the methodology to be used in calculating the tabulations of population to be reported to States and localities pursuant to 13 U.S.C. 141(c). While the background and basis for the entire proposal were included in the June 20 publication and are not repeated here, this delegation of authority to the Director, in particular, was included in the proposed rule because the decision turns entirely on operational and methodological implementation within the scientific expertise of the Bureau of the Census, and it is important to avoid even the appearance that considerations other than those relating to statistical science are being taken into account.

**Comments and Responses**

*Comments in Support of the Proposed Rule*

The Department received 17 letters in support of the proposed rule. There were a total of 243 signatories to these letters. Comments included one letter signed by four former Directors of the Census Bureau; five letters with six signatories from statistical, social science, and survey research organizations; three letters with six signatories from universities or university-based research institutions; two letters signed by 69 Members of Congress; three letters with 15 signatories from national associations and organizations; two letters with two signatories from state or local government officials; and one letter with 141 signatories from a public interest organization.

Comment

Common to the letters in support of the proposed rule were the following two comments: (1) The decision on the use of statistically corrected redistricting and other non-apportionment data from Census 2000 is a technical/scientific decision that should be made by the Director of the Census upon the recommendation of his or her professional staff, and (2) the rule ensures that other, irrelevant considerations, especially those that are political in nature, do not affect the decision-making process. A number of comments stated agreement with the intent to ensure that politics do not dictate what should be a scientific decision. Others said the proposed rule sets forth a fair and unbiased procedure for making a vital decision on the release of statistically corrected redistricting and other non-apportionment data. Others viewed the release of the recommendation of the Executive Steering Committee for Accuracy and Coverage Evaluation (A.C.E.) Policy (ESCAP) to the public at the same time that it is delivered to the Director as helpful in ensuring that the proposed decision-making process is an open and transparent one.

Response

The Department notes the support for the proposal stated in these comments.

*Comments in Opposition to the Proposed Rule*

The Department received seven letters in opposition to the proposed rule. There were a total of 12 signatories to these letters. Two of these letters were signed by university officials; one letter was signed by six Members of Congress; two letters with two signatories from state government officials; one letter with one signatory from a non-profit legal organization; and one letter from a private individual.

Comment

Several of those commenting viewed the contents of the "Accuracy and Coverage Evaluation—Statement on the Feasibility of Using Statistical Methods to Improve the Accuracy of Census 2000," 65 FR 38373–38398 (hereinafter, the Feasibility Statement), as evidence that the Census Bureau pre-judged the superior accuracy of the sampling-based counts.

Response

We regret this concern. To date, no decision has been reached. The Census Bureau has stated that it expects the statistically corrected data to be more accurate for non-apportionment uses of the data, including redistricting and for this reason it is implementing the Accuracy and Coverage Evaluation (A.C.E.) (see the Feasibility Statement). However, the Census Bureau will not determine whether it is appropriate to release statistically corrected redistricting data until it has brought its technical judgment to bear in assessing the available data to verify that its expectations have been met. The Census Bureau will consider operational data to validate the successful conduct of the A.C.E., assess whether the A.C.E. measurements of undercount are consistent with historical patterns of undercount and independent Demographic Analysis benchmarks, and review measures of quality. If the Census Bureau determines that incorporating the results of the survey would not improve the accuracy of the initial census counts, then the data without statistical correction would be released to meet the requirements of Pub.L. 94–171.

Comment

Several letters raised technical concerns regarding the use of statistical methods to correct the census and challenged the arguments set forth in the Feasibility Statement.

Response

These concerns or issues are beyond the scope of the rulemaking and will not be addressed specifically. However, as part of the evaluation process described in the proposed rule, these and other technical issues will be considered. Also, this fall, at a public meeting with outside statistical experts and other interested parties, the Census Bureau will provide additional information regarding the detailed analyses it plans to conduct as part of its decision-making process.

Comment

Two letters questioned the expertise of the National Academy of Sciences (NAS) panels that have been convened over this decade to review the planning and conduct of Census 2000. One questioned the expertise of the Secretary of Commerce's and the Census Bureau's advisory committees in their work relating to Census 2000.

Response

The NAS panels and the various advisory committees are composed of professionals with excellent credentials to review and provide advice on the planning and conduct of the decennial census. In particular, the NAS panel members are carefully selected from among the country's leading experts in a wide variety of research fields, including statistical and survey methodology. The NAS has a long and distinguished history of advising the federal government on scientific and technical matters. With regard to the selection of advisory committee members, both the Secretary of Commerce and the Census Bureau went to great lengths to ensure that the committees possess well-documented expertise in a wide range of areas relating to the conduct of the decennial census, including, but not limited to, statistical and survey methodology.



Comment

Several letters indicated that the Census Bureau professional staff have a vested interest in the acceptance and use of the statistically derived counts. One stated that past Census Bureau judgments on adjustment issues lead one to question the agency's ability to reach the correct decision. In addition, one letter stated that the lack of review or input from independent scientific experts biases the decision making process.

Response

The senior professional officials who serve on the Executive Steering Committee for A.C.E. Policy (ESCAP) are distinguished, objective, career civil servants whose only interest is in producing the most reliable and accurate census data possible. Many of these individuals have been recognized by leading statistical organizations for their significant contributions in the areas of survey methodology and statistics in general. Based on their years of experience and expertise, these officials are best suited to bring their professional judgment and integrity to bear in reviewing all the available data and directing a comprehensive, scientifically-defensible analysis in making a recommendation on their findings to the Director regarding the use of the statistically corrected census data. The ESCAP's recommendation will be released publicly, at the same time that it is delivered to the Director, to demonstrate the thoroughness and integrity of the process for all interested parties.

Comment

One comment acknowledged that the Census Bureau committed itself to achieving an open and transparent planning and decision process, however, the writer considered Census Bureau reports and documentation, including the A.C.E. documentation, on statistical adjustment to be difficult to access because they were not catalogued to facilitate external access.

Response

The Census 2000 A.C.E. methodology has been pre-specified and documentation regarding the methodology has been disseminated through a variety of forums including the Census Bureau's website, public meetings, two public workshops sponsored by the National Academy of Sciences (October 6, 1999, and February 2–3, 2000), and at a May 19, 2000, hearing before the House Subcommittee on the Census. The Census Bureau will continue to make documentation relating to Census 2000 publicly available and available upon request.

Comment

One comment questioned whether the Secretary's proposed delegation of authority to the Director of the Census for making certain determinations concerning the census amounted to a divestiture of obligations vested in the Secretary by the Congress. The comment expressed three key concerns: (1) That the delegation of authority is, in fact, a "divestiture" of authority because the Secretary is seeking to escape responsibility for the decision of the Census Director by stating that the Secretary will not review or reverse that decision, (2) that by issuing a regulation that allegedly divests the Secretary of his statutory responsibility, the Secretary is attempting to supersede the statutory scheme passed by the Congress, and (3) that if "the Commerce Secretary believes he cannot, or should not, be responsible for the final release of adjusted numbers, then he should ask that Congress remove the Census Bureau entirely from the Commerce Department and make it a separate agency."

Response

The Department of Commerce considers Section 4 of Title 13, United States Code to clearly provide the Secretary authority to issue the proposed rule and to include in that proposal the delegation of authority at issue. That section provides that:

> The Secretary shall perform the functions and duties imposed upon him by this title, *may issue such rules and regulations as he deems necessary* to carry out such functions and duties, and *may delegate the performance of such functions and duties* and the authority to issue such rules and regulations to such officers and employees of the Department of Commerce as he may designate. (Emphasis added.)

This statutory language provides the Secretary with broad authority to take the steps he deems appropriate to carry out his responsibilities under the law, and that language does not establish limitations on the Secretary's ability to delegate the performance of his functions and duties under the Census Act. As such, the Secretary may delegate the authority to determine the methodology to be used in calculating the tabulations of population reported to States and localities pursuant to 13 U.S.C. 141(c).

The delegation of authority contained in the Department's proposed rule is not an unlawful divestiture of the Secretary's statutory responsibility or authority because the delegation, if adopted in a final rule, would not be irrevocable. Thus, the current or any future Secretary of Commerce could revoke that delegation by issuing another final rule doing so. It is unassailable that a rule revoking the delegation would be effective, if it satisfied the requirements of the Administrative Procedure Act and other applicable legal standards. Further, the fact that the rule seeks to authorize the Director of the Census to make a determination under the Census Act, and states that the Director's decision would not be subject to review or reconsideration by the Secretary, does not mean the Secretary would escape responsibility for that determination. By establishing this delegation of authority by regulation, the Secretary is merely creating a transparent process for allowing a scientific determination to be made by scientists. However, the decision is being made on behalf of the Secretary. Inherent in the delegation of authority is the notion that the Secretary is responsible for the determination made by the head of the scientific bureau in which the particular knowledge and experience for making that determination lies. Nevertheless, in order to erase any doubt that the delegation of authority is not a divestiture of obligations or responsibility by the Secretary, text has been added to 15 CFR 101.1(a) that explicitly states that nothing in the rule diminishes the authority of the Secretary of Commerce to revoke this delegation of authority or relieves the Secretary of Commerce of responsibility for any decision made by the Director of the Census pursuant to this delegation, and that this rule shall remain in effect unless or until amended or revoked by the Secretary of Commerce.

Comment

One letter provided the Memorandum of Law in a case currently proceeding in the U.S. District Court for the District of Columbia (*Commonwealth of Virginia* v. *United States of America*, Case No.

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1:00CV00751) stating that the memorandum demonstrates the rulemaking provides no real opportunity to provide meaningful comments.

Response

The Department considers the notice and comment associated with this rulemaking to be an appropriate venue for meaningful comment. With respect to the Memorandum of Law, the Department is not party to the case and, therefore, does not believe it appropriate to make any statement on the arguments presented.

**Administrative Law Requirements**

*Executive Order 12866*

This final rule has been determined to be not significant under section 3(f) of Executive Order 12866.

*Paperwork Reduction Act*

This final rule contains no new information collection requests subject to the Paperwork Reduction Act.

*Regulatory Flexibility Act*

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. No comments were received regarding this certification. Thus, the factual basis for the certification has not changed. As such, a final regulatory flexibility analysis is not required, and none has been prepared.

*Unfunded Mandate Reform Act of 1995*

This rule contains no Federal mandates, as that term is defined in the Unfunded Mandates Reform Act, on State, local and tribal governments or the private sector.

*Executive Order 12630*

This rule does not contain policies that have takings implications.

**List of Subjects in 15 CFR Part 101**

Administrative practice and procedure, Census data.

Dated: September 28, 2000.

**Norman Y. Mineta,**

*Secretary of Commerce.*

For the reasons set out in the preamble, 15 CFR Part 101 is added to read as follows:

## PART 101—RELEASE OF DECENNIAL CENSUS POPULATION INFORMATION

101.1 Report of tabulations of population to states and localities pursuant to 13 U.S.C. 141(c).
101.2 Availability of other population information.

**Authority:** 5 U.S.C. 301; 13 U.S.C. 4, 141, 195; 15 U.S.C. 1512.

## PART 101—RELEASE OF DECENNIAL CENSUS POPULATION INFORMATION

### § 101.1 Report of tabulations of population to states and localities pursuant to 13 U.S.C. 141(c).

(a)(1) The Director of the Census shall make the final determination regarding the methodology to be used in calculating the tabulations of population reported to States and localities pursuant to 13 U.S.C. 141(c). The determination of the Director will be published in the **Federal Register**.

(2) All relevant authority of the Secretary of Commerce under 13 U.S.C. 141(c) and other applicable provisions of title 13 of the U.S. Code with respect to the decision to be made pursuant to paragraph (a)(1) of this section is hereby conferred upon the Director of the Census.

(3) The Director of the Census shall not make the determination specified in paragraph (a)(1) of this section until after he or she receives the recommendation of the Executive Steering Committee for A.C.E. Policy (ESCAP) in accordance with paragraph (b)(1) of this section.

(4) The determination of the Director of the Census shall not be subject to review, reconsideration, or reversal by the Secretary of Commerce.

(5) Nothing in this section diminishes the authority of the Secretary of Commerce to revoke or amend this delegation of authority or relieves the Secretary of Commerce of responsibility for any decision made by the Director of the Census pursuant to this delegation. This section shall remain in effect unless or until amended or revoked by the Secretary of Commerce.

(b)(1) The Executive Steering Committee for A.C.E. Policy shall prepare a written report to the Director of the Census recommending the methodology to be used in making the tabulations of population reported to States and localities pursuant to 13 U.S.C. 141(c).

(2) The report of the Executive Steering Committee for A.C.E. Policy described in paragraph (b)(1) of this section shall be released to the public at the same time it is delivered to the Director of the Census. This release to the public shall include, but is not limited to, posting of the report on the Bureau of the Census website and publication of the report in the **Federal Register**.

(3) The "Executive Steering Committee for A.C.E. Policy" (ESCAP) is composed of the following employees of the Bureau of the Census:

(i) Deputy Director and Chief Operating Officer;

(ii) Principal Associate Director and Chief Financial Officer;

(iii) Principal Associate Director for Programs;

(iv) Associate Director for Decennial Census (Chair);

(v) Assistant Director for Decennial Census;

(vi) Associate Director for Demographic Programs;

(vii) Associate Director for Methodology and Standards;

(viii) Chief; Planning, Research, and Evaluation Division;

(ix) Chief; Decennial Management Division;

(x) Chief; Decennial Statistical Studies Division;

(xi) Chief; Population Division; and

(xii) Senior Mathematical Statistician.

### § 101.2 Availability of Other Population Information.

(a) When the Director of the Census determines pursuant to § 101.1(a)(1) of this part to use methodologies including the statistical method known as "sampling" to produce the tabulations of population to report to States and localities pursuant to 13 U.S.C. 141(c), data prepared without the use of such statistical method shall be made available to the public in accordance with the standards set forth in section 209(j) of Public Law 105–119, 111 Stat. 2440, simultaneously with the issuance of the report to States.

(b) When the Director of the Census determines pursuant to § 101.1(a)(1) of this part to produce tabulations of population without the use of methodologies including the statistical method known as sampling, for reporting to States and localities pursuant to 13 U.S.C. 141(c) notwithstanding a recommendation by the Executive Steering Committee for A.C.E. Policy to use sampling, data prepared with the use of such statistical method shall be made available to the public in accordance with the standards set forth in section 209(j) of Public Law 105–119, 111 Stat. 2440, for the release of data prepared without the use of such statistical method, simultaneously with the issuance of the report to States.

[FR Doc. 00–25501 Filed 10–5–00; 8:45 am]
BILLING CODE 3510–07–U



## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 73

**[Docket No. 97C–0415]**

### Listing of Color Additives Exempt From Certification; Luminescent Zinc Sulfide; Confirmation of Effective Date

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule; confirmation of effective date.

**SUMMARY:** The Food and Drug Administration (FDA) is confirming the effective date of September 8, 2000, for the final rule that appeared in the **Federal Register** of August 8, 2000 (65 FR 48375). The final rule amended the color additive regulations to provide for the safe use of luminescent zinc sulfide as a color additive in certain externally applied cosmetics.

**DATES:** Effective date confirmed: September 8, 2000.

**FOR FURTHER INFORMATION CONTACT:** Aydin Örstan, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3076.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of August 8, 2000 (65 FR 48375), FDA amended the color additive regulations to add § 73.2995 *Luminescent zinc sulfide* (21 CFR 73.2995) to provide for the safe use of luminescent zinc sulfide as a color additive in certain externally applied cosmetics.

FDA gave interested persons until September 7, 2000, to file objections or requests for a hearing. The agency received no objections or requests for a hearing on the final rule. Therefore, FDA finds that the effective date of the final rule that published in the **Federal Register** of August 8, 2000, should be confirmed.

**List of Subjects in 21 CFR Part 73**

Color additives, Cosmetics, Drugs, Foods, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), notice is given that no objections or requests for a hearing were filed in response to the August 8, 2000, final rule. Accordingly, the amendments issued thereby became effective September 8, 2000.

Dated: September 29, 2000.

**Margaret M. Dotzel,**

*Associate Commissioner for Policy.*

[FR Doc. 00–25697 Filed 10–5–00; 8:45 am]
BILLING CODE 4160–01–F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 73

**[Docket No. 97C–0466]**

### Listing of Color Additives Exempt From Certification; Phaffia Yeast; Confirmation of Effective Date

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule; confirmation of effective date.

**SUMMARY:** The Food and Drug Administration (FDA) is confirming the effective date of August 8, 2000, for the final rule that appeared in the **Federal Register** of July 6, 2000 (65 FR 41584), and that amended the color additive regulations to provide for the safe use of phaffia yeast as a color additive in the feed of salmonid fish to enhance the color of their flesh.

**DATES:** Effective date confirmed: August 8, 2000.

**FOR FURTHER INFORMATION CONTACT:** Aydin Örstan, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3076.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of July 6, 2000 (65 FR 41584), FDA amended the color additive regulations to add new § 73.355 *Phaffia yeast* (21 CFR 73.355) to provide for the safe use of phaffia yeast as a color additive in the feed of salmonid fish to enhance the color of their flesh.

FDA gave interested persons until August 7, 2000, to file objections or requests for a hearing. The agency received no objections or requests for a hearing on the final rule. Therefore, FDA finds that the effective date of the final rule that published in the **Federal Register** of July 6, 2000, should be confirmed.

**List of Subjects in 21 CFR Part 73**

Color additives, Cosmetics, Drugs, Foods, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), notice is given that no objections or requests for a hearing were filed in response to the July 6, 2000, final rule. Accordingly, the amendments issued thereby became effective August 8, 2000.

Dated: September 29, 2000.

**Margret M. Dotzel,**

*Associate Commissioner for Policy.*

[FR Doc. 00–25704 Filed 10–5–00; 8:45 am]
BILLING CODE 4160–01–F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 73

**[Docket No. 98C–0212]**

### Listing of Color Additives Exempt From Certification; Haematococcus Algae Meal; Confirmation of Effective Date

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule; confirmation of effective date.

**SUMMARY:** The Food and Drug Administration (FDA) is confirming the effective date of August 8, 2000, for the final rule that appeared in the **Federal Register** of July 6, 2000 (65 FR 41581), and that amended the color additive regulations to provide for the safe use of haematococcus algae meal as a color additive in the feed of salmonid fish to enhance the color of their flesh.

**DATES:** Effective date confirmed: August 8, 2000.

**FOR FURTHER INFORMATION CONTACT:** Aydin Örstan, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3076.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of July 6, 2000 (65 FR 41581), FDA amended the color additive regulations to add § 73.185 *Haematococcus algae meal* (21 CFR 73.185) to provide for the safe use of haematococcus algae meal as a color additive in the feed of salmonid fish to enhance the color of their flesh.

FDA gave interested persons until August 7, 2000, to file objections or requests for a hearing. The agency received no objections or requests for a hearing on the final rule. Therefore, FDA finds that the effective date of the final rule that published in the **Federal Register** of July 6, 2000, should be confirmed.

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**List of Subjects in 21 CFR Part 73**

Color additives, Cosmetics, Drugs, Foods, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), notice is given that no objections or requests for a hearing were filed in response to the July 6, 2000, final rule. Accordingly, the amendments issued thereby became effective August 8, 2000.

Dated: September 29, 2000.

**Margaret M. Dotzel,**

*Associate Commissioner for Policy.*

[FR Doc. 00–25703 Filed 10–5–00; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 601

**[Docket No. 97N–0165]**

## Regulations Requiring Manufacturers to Assess the Safety and Effectiveness of New Drugs and Biological Products in Pediatric Patients; Technical Amendment

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule; technical amendment.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the biologics regulations to reincorporate a regulation that was inadvertently omitted. This action is being taken to improve the accuracy of the regulations.

**DATES:** This rule is effective October 6, 2000.

**FOR FURTHER INFORMATION CONTACT:** Stephen M. Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

**SUPPLEMENTARY INFORMATION:** FDA has discovered that an error has caused an omission in the agency's codified regulations for part 601 (21 CFR part 601). In the **Federal Register** of May 17, 1999 (64 FR 26657), FDA published a final rule that inadvertently omitted § 601.37 when subpart D was revised. Accordingly, § 601.37, which was added in the **Federal Register** of December 2, 1998 (63 FR 66672), is being reincorporated into the regulations and redesignated as § 601.28. In addition, FDA is removing subpart B and reorganizing subpart C in part 601. Accordingly, current § 601.28 is redesignated as § 601.15. This document corrects those errors. Publication of this document constitutes final action under the Administrative Procedure Act (5 U.S.C. 553). FDA has determined that notice and public comment are unnecessary because this amendment is nonsubstantive.

**List of Subjects in 21 CFR Part 601**

Administrative practice and procedure, Biologics, Confidential business information.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 601 is amended as follows:

## PART 601—LICENSING

1. The authority citation for 21 CFR part 601 continues to read as follows:

**Authority:** 15 U.S.C. 1451–1561; 21 U.S.C. 321, 351, 352, 353, 355, 360, 360c–360f, 360h–360j, 371, 374, 379e, 381; 42 U.S.C. 216, 241, 262, 263; sec. 122, Pub. L. 105–115, 111 Stat. 2322 (21 U.S.C. 355 note).

**§ 601.12 [Redesignated to subpart C]**

2. Section 601.12 *Changes to an approved application* is redesignated from subpart B to subpart C.

**Subpart B [Removed and Reserved]**

3. Subpart B is removed and reserved.

**Subpart C—Biologics Licensing**

4. The heading for subpart C is revised to read as set forth above.

**§ 601.28 [Redesignated as § 601.15]**

5. Section 601.28 is redesignated as § 601.15 in subpart C, and a new § 601.28 is added to subpart C to read as follows:

**§ 601.28 Annual reports of postmarketing pediatric studies.**

Sponsors of licensed biological products shall submit the following information each year within 60 days of the anniversary date of approval of the license to the Director, Center for Biologics Evaluation and Research:

(a) *Summary.* A brief summary stating whether labeling supplements for pediatric use have been submitted and whether new studies in the pediatric population to support appropriate labeling for the pediatric population have been initiated. Where possible, an estimate of patient exposure to the drug product, with special reference to the pediatric population (neonates, infants, children, and adolescents) shall be provided, including dosage form.

(b) *Clinical data.* Analysis of available safety and efficacy data in the pediatric population and changes proposed in the labeling based on this information. An assessment of data needed to ensure appropriate labeling for the pediatric population shall be included.

(c) *Status reports.* A statement on the current status of any postmarketing studies in the pediatric population performed by, or on behalf of, the applicant. The statement shall include whether postmarketing clinical studies in pediatric populations were required or agreed to, and if so, the status of these studies, e.g., to be initiated, ongoing (with projected completion date), completed (including date), completed and results submitted to the biologics license application (including date).

Dated: September 29, 2000.

**William K. Hubbard,**

*Senior Associate Commissioner for Policy, Planning, and Legislation.*

[FR Doc. 00–25705 Filed 10–5–00; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF THE TREASURY

### Bureau of Alcohol, Tobacco and Firearms

### 27 CFR Part 4

**[T.D. ATF–431; Ref: Notice Nos. 890 and 895]**

**RIN: 1512–AB86**

## Labeling of Flavored Wine Products (98R–317P)

**AGENCY:** Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

**ACTION:** Final rule, Treasury decision.

**SUMMARY:** The Bureau of Alcohol, Tobacco and Firearms (ATF) is amending the regulations to prohibit the use of any varietal designation, type designation of varietal significance, semi-generic geographic type designation, or geographic distinctive designation in statements of composition for flavored wines and other wine specialty products. The regulations are also being amended to provide that references on labels to such designations in the brand name, product name, or fanciful name are limited to standard grape wines. ATF believes that the final regulations will ensure that consumers are not misled as to the identity of the products they purchase.



ATF's proposal to amend the existing definition of "brand label" for wine will be addressed separately in the near future.

**DATES:** This rule is effective January 1, 2001.

**FOR FURTHER INFORMATION CONTACT:** James P. Ficaretta, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202) 927–8210.

**SUPPLEMENTARY INFORMATION:**

### I. Background

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), vests broad authority in the Director of ATF, as the delegate of the Secretary of the Treasury, to prescribe regulations with respect to the bottling, packaging, and labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations shall prevent deception of the consumer and provide the consumer with adequate information as to the identity and quality of the product. Regulations that implement the provisions of section 105(e), as they relate to wine, are set forth in title 27, Code of Federal Regulations (CFR), part 4.

The regulations require that all wines sold, shipped, or otherwise introduced into interstate commerce bear labels that contain certain mandatory information. Section 4.32(a)(2) provides that, among other things, wine labels must contain a statement relating to the class, type, or other designation of the wine. If the class of wine is not defined by the regulations, section 4.34(a) requires that a truthful and adequate statement of composition appear on the brand label in lieu of the class designation.

Subpart C of part 4 sets forth the standards of identity for the several classes and types of wine. Section 4.21(a) defines "grape wine" as wine produced by the normal alcoholic fermentation of the juice of sound, ripe grapes. Pure condensed grape must and wine spirits may be added to grape wine. Section 4.21(a) also provides limitations on the amelioration of grape wine. Over-ameliorated grape wine may not be designated as "grape wine." Rather, section 4.21(h) requires that such wine be designated as "substandard wine" or "other than standard wine."

In the case of still grape wine there may appear, in lieu of the class designation, any varietal (grape type) designation (*e.g.*, Chardonnay), type designation of varietal significance (*e.g.*, Muscatel), semi-generic geographic type designation (e.g., Chablis), or geographic distinctive designation (*e.g.*, Bordeaux). In general, section 4.23 provides that the name of a grape variety may be used as the type designation of a grape wine only if the wine is also labeled with an appellation of origin (*e.g.*, "California Chardonnay") and if not less than 75 percent of the finished wine is derived from grapes of the named variety.

In the case of still grape wine there may also appear, in lieu of the class designation, a type designation of varietal significance. This applies to American wines only. Section 4.28 provides several examples of type designations of varietal significance, such as Muscatel and Scuppernong.

As specified in section 4.24(b), a semi-generic designation is a name of geographic significance that is also the designation of a class or type of wine determined by the Director to be semi-generic. Semi-generic designations are also established by the Internal Revenue Code of 1986 (IRC), 26 U.S.C. 5388(c). Examples of semi-generic names that are also type designations for grape wines are Burgundy, Chablis, and Champagne. A semi-generic name of geographic significance may be used to designate wines of an origin other than that indicated by such name only if there appears in direct conjunction therewith an appropriate appellation of origin disclosing the true place of origin of the wine (*e.g.*, "California Burgundy"), and if the wine so designated conforms to the standard of identity for the product or, if there is no such standard, to the trade understanding of such class or type.

Under section 4.24(b), a geographic distinctive designation is a name of geographic significance that has not been found by the Director to be generic or semi-generic and may be used only to designate wines of the origin indicated by such name. Examples of such nongeneric names which are also distinctive designations of specific grape wines are Bordeaux and Graves.

In addition, grape wine may be vintage dated if it is made in accordance with the standards prescribed in section 4.27(a). Vintage wine is wine labeled with the year of harvest of the grapes, and made in accordance with classes 1, 2, or 3 of section 4.21.

Section 4.21 does not allow for the addition of flavoring material(s) to wines with a standard of identity under subpart C of part 4. For example, a class 1, grape wine containing added flavoring material(s) is not entitled to a standard grape wine designation, appellation of origin, or vintage date since these statements only apply to a "standard" grape wine. Likewise, "substandard wine" or "other than standard wine" under section 4.21(h)(2) does not specifically include wine to which flavoring material(s) have been added. Substandard wine or other than standard wine includes any wine to which has been added sugar and water solution in an amount that is in excess of the limitations prescribed in the standards of identity for these products.

It has been ATF's long-standing policy that wines to which flavoring material(s) are added do not fall within any of the current standards of identity set forth in the wine regulations. As such, a truthful and adequate statement of composition is required on the brand label for such flavored wine products, pursuant to section 4.34(a).

### II. Flavored Wine Products

Flavored wine products are composed differently from wines made in accordance with the standards of identity in subpart C. Flavored wines may be derived from grape wine or other wines, including citrus wine (e.g., orange wine, grapefruit wine), fruit wine (e.g., apple wine, berry wine, pear wine) or other agricultural products (e.g., carrot wine, dandelion wine, honey wine). Such flavored wine products contain the addition of flavoring material(s) and may contain coloring material(s). Flavored wine products may also contain sugar and water in excess of that allowed in standard wine.

As stated above, wines to which flavoring materials are added do not fall within any of the current standards of identity set forth in the wine regulations. As such, a truthful and adequate statement of composition is required on the brand label for such flavored products. The labels on these products have traditionally displayed statements of composition such as "Grape Wine With Natural Flavors" to describe to consumers the composition of these products.

Recently, some domestic wineries have begun using varietal and semi-generic names in the statement of composition on their product labels to describe the base wine portion of their flavored wine products. These flavored wine products most often have an appellation of origin such as California" in conjunction with the grape varietal or semi-generic name in the statement of composition (e.g., "California Chardonnay (or Chablis) With Natural Flavors"). We are aware that the recent appearance of these grape varietal and semi-generic names on flavored wine products has caused a great deal of discussion within the wine industry. On February 26, 1998, we wrote to the Wine Institute, a national trade association

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representing over 500 California winery and associate members, to respond to their concerns about this matter. Soon after the letter was sent to the Wine Institute, it was placed on our internet website as public information.

**III. Consumer Survey**

In view of our concerns about the labeling of flavored wine products, we commissioned a consumer survey in July of 1998 to determine consumer interpretations of varietal and semi-generic claims on labels of flavored wine products. Among other things, the survey was designed to assess whether wine consumers distinguish between grape wine and flavored wine products based on information provided on product labels. The survey involved obtaining consumer reactions to examples of two flavored wine products: one product was portrayed as containing a grape wine base that qualified as a varietal wine and another was portrayed as a product containing a grape wine base that qualified as a semi-generic wine. Both products chosen for the survey were depicted in "bag-in-box" containers. Consumers were shown labels bearing only varietal or semi-generic designations and labels bearing a varietal or semi-generic type designation as part of a statement of composition including the term "With Natural Flavors." Consumers were shown boxes bearing the statement of composition on the side panel only, and other boxes with the statement of composition prominently displayed on the front label. None of the labels was identical to the labels of wines currently marketed. The brand names, package designs, and label information were selected by the contractor, U.S. Research Company, in order to best measure consumer perceptions about the overall label presentations and were chosen in order to ensure that the results were not specific to any one particular product or brand of wine.

The survey revealed that even when the "With Natural Flavors" disclosure was prominently displayed on the front panel of the product, a large majority (80%) of the respondents failed to distinguish between grape wine and flavored wine products. The survey also revealed that placing the term "With Natural Flavors" on the label had no impact on consumer understanding of the amount of varietal or semi-generic wine in the product. This is important because over fifty-five percent of the consumers surveyed believed that all or almost the entire product was composed of the varietal or semi-generic wine. Moreover, when asked to interpret the "With Natural Flavors" disclosure, more than one-third of the consumers surveyed perceived it to convey a positive "no chemicals or additives" message. Seventeen percent indicated that they thought the "With Natural Flavors" disclosure meant that the product was "natural," and only fourteen percent suggested that it indicated that flavors had been added to the product.

**IV. Petition—California Association of Winegrape Growers**

ATF received a petition, dated September 15, 1999, filed on behalf of the California Association of Winegrape Growers (CAWG), requesting an amendment of the regulations to prohibit the use of any varietal, semi-generic, or geographic name as part of a statement of composition on wine specialty products. Specifically, CAWG requested an amendment of section 4.34(a). This section states that if the class of wine is not defined in the standards of identity in subpart C of part 4, "a truthful and adequate statement of composition shall appear upon the brand label of the product in lieu of a class designation." The petitioner requested that the regulation be amended to add the following wording:

> A statement of composition shall include the standard of identity (class and type designation) of the wine used in the product, but shall not be permitted to include, in lieu of the class designation for the wine used in the product, any varietal (grape type) designation, type designation of varietal significance, or semigeneric geographic type designation, or geographic distinctive designation, to which the wine used in the product may otherwise be entitled.

The petitioner contended that the manner in which flavored wine products are labeled, packaged, and marketed deceives consumers into thinking they are consuming varietal wine rather than flavored wine. As stated in the petition,

> Varietal-based specialty products appear on retailers' shelves next to or intermingled with traditional still wines, in packaging similar to traditional still wines [750 milliliter or 1.5 liter glass bottles sealed with a cork, or 5 liter "bag-in-box" containers] and with a varietal designation and an appellation of origin traditionally associated with still wines prominently displayed.

The petitioner asserted that over the last 20 years, American wine producers and grape growers have developed an important consumer market for still grape wines with varietal designations and appellations of origin. According to the petitioner, these wines represent a large volume of the domestic wine sold in the United States (64 percent for the 52 week period ending July 18, 1999). As stated in the petition, "[v]arietal designations and appellations of origin have earned an important place in the wine consumer marketplace as indications of quality wines with certain distinctive tastes and styles."

In support of its petition, CAWG commissioned a survey to study consumers' understanding of the current labeling of flavored wine products that include a varietal name with an appellation of origin in the statement of composition. A total of 800 telephone interviews were conducted. According to CAWG, the results of the survey showed that most respondents believe that wine labels accurately reflect what is in the container and that label information is important to their buying decisions. A little more than 48 percent of the respondents stated that they expected products containing labels with such statements as "California Cabernet Sauvignon with natural flavors" and "California Chardonnay with natural flavors" to be standard grape wines that contain 75 percent wine made from grapes of that variety. The petitioner noted that flavored wine products that include a varietal name in the statement of composition have no minimum varietal content requirement.

CAWG stated that the results of its survey clearly show that the labeling of flavored wine products that include a variety name along with an appellation of origin in the statement of composition is misleading to consumers. The petitioner believes that its proposed amendment "is targeted directly at the misleading nature of current statements of composition on varietal-based specialty products." By prohibiting varietal and semi-generic designations and appellations of origin in the statement of composition, the petitioner contends that consumers will not be misled as to the actual identity of the product. Flavored wine products that have a varietal wine base would have statements of composition in the form "grape wine with natural flavors" or "white wine with natural flavors."

ATF did not propose the amendment requested by CAWG. However, we did solicit comments on the petition. This will be addressed further in the section titled "Notice No. 890."

**V. Significance of Wine Labeling Terms**

ATF believes that consumers have learned to attach significance to varietal/semi-generic designations, appellations of origin, and vintage dates on grape wines. This belief is based on the fact that for many years the grape wine industry has heavily utilized varietal/semi-generic designations, appellations of origin, and vintage dating in the marketing of grape wines. Additionally, we have conducted rulemaking projects spanning nearly 14 years identifying American grape variety names (See Treasury Decision ATF–370, 61 FR 522, January 8, 1996). Similarly, Congress has recently amended the IRC to recognize semi-generic names as being distinctive grape wine designations. 26 U.S.C. 5388(c), as added by Public Law 105–34, section 910(a). These efforts illustrate the importance of varietal and semi-generic grape wine designations to both the wine industry and to wine consumers. This was also addressed in the CAWG petition.

ATF believes that consumers are confused about the distinction between an existing standard of identity wine and flavored wine products, especially when grape varietal or semi-generic terms appear on the labels of flavored wine products. Flavored wine products are often located next to varietal wines or semi-generic wines on the shelves of grocery and liquor stores. Also, the promotional and advertising materials accompanying these flavored wine products frequently feature or highlight the varietal or semi-generic component of the finished wine product, even though the finished flavored wine product is not entitled to the varietal or semi-generic designation. We concluded that current statements of composition that include varietal or semi-generic names do not provide consumers with adequate information about the identity and quality of the flavored wine product and are likely to mislead consumers to believe that flavored wine products are the same as wines that meet the requirements for a varietal or semi-generic designation. We also believe that the consumer survey we commissioned and the CAWG consumer survey support that conclusion.

Furthermore, examination of this issue caused us to review our policy relating to statements of composition for all flavored wine products, including those that do not include varietal or semi-generic names, such as those that state "Grape Wine With Natural Flavors," since the finished products are no longer "Grape Wine" but are "Flavored Wine Products" because of the presence of flavors.

**VI. Notice No. 890**

On December 28, 1999, we published a notice of proposed rulemaking in the **Federal Register** concerning the labeling of flavored wine products (Notice No. 890, 64 FR 72612). We proposed to establish a new class designation, "Flavored Wine Product." Under this designation, a flavored wine product would be a wine-based alcohol beverage that does not qualify for any of the class or type designations listed in the existing wine regulations because of the addition of flavoring material(s).

As stated in Notice No. 890, we believe that all flavored wine products need to be labeled to indicate to consumers that such products are composed differently from wines entitled to be labeled with a standard of identity under subpart C. We, therefore, proposed to add a Class 10 to the standards of identity for wine to be called "Flavored Wine Product." As proposed, such product would be required to be designated on labels as "flavored wine product," together with a truthful and adequate statement of composition, all of which would be required to appear in the same size, style, and color typeface on the brand label.

At a minimum, we proposed that the statement of composition for flavored wine products must meet the following requirements:

*1. Identify Class and/or Type*

We proposed to require that the class and/or type of each wine used in the flavored wine product (*e.g.*, "grape wine," "table wine," "peach wine," "honey wine") be identified. A single grape variety, type designation of varietal significance, or semi-generic name could be used if such named grape variety, type designation of varietal significance, or semi-generic name appeared together with an appellation of origin no smaller than a country and the named grape variety, type designation of varietal significance, or sem-generic wine constituted not less than 75 percent by volume of the finished flavored wine product. For *Vitis labrusca* varieties, we proposed that the named grape variety must constitute not less than 51 percent by volume of the finished flavored wine product. Under our proposal, an appellation of origin would not otherwise appear on the label of a product of this class. Similar provisions were proposed for specialty products that do not contain any flavor(s) (§ 4.34(c)).

*2. Identify Added Flavoring Material(s)*

We proposed to require that if one flavoring material is used in the production of the flavored wine product, the flavoring material must be specifically identified (*e.g.*, "strawberry flavor"). If two or more flavoring materials are used in the production of the flavored wine product, we proposed that each flavoring material may be specifically identified (*e.g.*, peach flavor," "kiwi flavor," or "peach and kiwi flavors") or the characterizing flavor must be specifically identified and the remaining flavoring material(s) must be generally referenced as "other flavor(s)."

With regard to the term "natural" as used on alcohol beverage labels to describe a flavor, *e.g.*, "With Natural Flavors," we stated in the notice that it is our belief that there is no consensus among consumers as to a meaning for the term "natural." This belief is based upon our experience in regulating the wine industry and on the consumer survey noted above. An example indicated in the survey reflects that fully one-third of respondents considered the term "natural" to indicate that no additives or chemicals are present in the product. This conclusion is clearly erroneous. Therefore, to avoid consumer deception concerning the identity of flavored wine products, we proposed that the term "natural" may not be used anywhere on the flavored wine product labels to describe flavoring materials. When artificial flavoring material(s) are used, they would be so described (*e.g.*, "artificial raspberry flavor").

*3. Identify Added Coloring Material(s)*

We proposed to require that coloring materials(s) be disclosed in the statement of composition, whether added directly or through flavoring material(s). The coloring materials would be identified specifically (*e.g.*, "caramel," "certified color," "annato," etc.) or as a general statement, such as "artificially colored," to indicate the presence of any one or a combination of coloring material(s). However, FD&C Yellow No. 5 requires specific disclosure in accordance with 27 CFR 4.32(c).

*4. Include a Reference to Sugar*

We proposed to require that sugar be listed in the statement of composition if sugar is used in the production of the flavored wine product (not including its use in the production of the base wine within the range authorized by the regulations).

*5. Include a Reference to Water*

We proposed to require that water be listed in the statement of composition, if the water addition, whether added directly to the flavored wine product or by the addition of flavoring material(s), exceeds 5 percent by volume of the finished flavored wine product.

*6. Include a Reference to Wine Spirits*

We proposed to require, except for flavored wine products made from a

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base of a class 6 wine and imported flavored wine products, a reference to the addition of wine spirits in the statement of composition, whether such wine spirits are added in the production of the wine component of the flavored wine product or added in the production of the finished flavored wine product, if the wine spirits are not derived from the same kind of fruit from which the wine component was fermented. Section 4.39(a)(7) prohibits the appearance on a wine label of any statement that the wine contains distilled spirits with one exception. Accordingly, we proposed to amend the exception to cover the reference to distilled spirits in the statements of composition for flavored wine products.

Although in Notice No. 890 we solicited comments on the CAWG petition, we did not propose the amendment requested by the petitioner. We believed that the regulation change proposed by CAWG was more restrictive than ATF's proposals and did not provide the industry with flexibility in labeling their flavored wine products.

Miscellaneous—Amended Definition of "Brand Label"

In Notice No. 890, we also proposed to revise the definition of the term "brand label." As defined in section 4.10, the "brand label" is the label carrying, in the usual distinctive design, the brand name of the wine. Pursuant to section 4.32, certain mandatory information is required to appear on the brand label, including the brand name, the class, type, or other designation of the product, and the alcohol content.

We believe that the existing definition of the term "brand label" allows certain of the mandatory information to be placed on the container in such a way that it is not readily visible to consumers. We also believe consumers are having difficulty locating important mandatory product label information necessary to be adequately informed as to the identity and quality of wine products, including bag-in-boxes and other new wine containers. In addition, the popularity of flavored wine products and the potential for consumer confusion between such products and other wines that fit specific class designations necessitates a more specific definition of "brand label."

Accordingly, in Notice No. 890 we proposed to amend the definition of "brand label" to mean the principal display panel that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale, and any other label appearing on the same side of the container as the principal display panel. The brand label appearing on a cylindrical surface is that 40 percent of the circumference which is most likely to be displayed, presented, shown or examined under normal and customary conditions of display for retail sale.

The proposed definition is based on the definition of "brand label" that is currently in the distilled spirits regulations and is consistent with the principal display panel approach of the Fair Packaging and Labeling Act.

The comment period for Notice No. 890, initially scheduled to close on March 29, 2000, was extended until May 5, 2000, pursuant to Notice No. 895 (65 FR 17839, April 5, 2000).

## VII. Analysis of Comments

In response to Notice No. 890, ATF received 152 comments, representing 186 signatures. Comments were submitted by members of Congress, consumers, representatives of State government, members of the industry (representing both domestic and foreign interests), and various organizations (*e.g.*, California Association of Winegrape Growers, the Presidents' Forum, the Wine Institute, the National Association of Beverage Importers, Inc., the Flavor and Extract Manufacturers' Association of the U.S., the American Vintners Association, and the French Wine and Spirits Exporters Federation).

One commenter requested an amendment of the regulations (section 4.39(a)(7)) to allow references to distilled spirits on labels of standard wine if such references are true. The amendment requested by the commenter is beyond the scope of this rulemaking. However, it may be included as part of a future rulemaking proceeding.

Six commenters either supported the proposed regulations or expressed support for specific proposals. For example, two commenters supported ATF's proposal to prohibit the term "natural" from appearing on labels of flavored wine products when describing flavoring materials. One of the commenters also supported our proposal to establish a new standard of identity for flavored wine products (*i.e.*, "flavored wine product"). Two commenters supported ATF's proposal to allow a single grape variety, type designation of varietal significance, or semi-generic name in the statement of composition for a wine specialty product, provided the named grape variety, type designation of varietal significance, or semi-generic wine constitutes not less than 75 percent (51 percent for *Vitis labrusca* varieties) by volume of the finished wine specialty product.

Of the 141 comments that addressed the labeling of flavored wine products, 136 (97 percent) opposed ATF's proposed regulations. Most commenters agreed with ATF's finding that current statements of composition on flavored wines that include a varietal or semi-generic name are likely to mislead the consumer and do not provide the consumer with adequate information as to the identity and quality of the product. Examples were provided in the comments that support this conclusion. However, the commenters believe that it is not necessary to establish a new standard of identity for flavored wine products in order to resolve the problem. Rather, they support the CAWG petition or a similar proposal that would prohibit the use of varietal and semi-generic names in statements of composition for wine specialty products. Approximately 75 commenters contend that ATF's proposed regulations are too broad, too complex, and would affect the labeling of all wine specialty products. They argue that there is no documented evidence of consumer confusion for many of these products. As one commenter stated:

> [We have] been producing and bottling plum wine with natural flavors and grape wines with natural flavors since 1984 with no apparent confusion on the part of our consumers with regard to the product that they are buying.

In addition, many commenters object to ATF's proposal that would allow the use of varietal and semi-generic names as part of the statement of composition on both the new class of flavored wine products and other wine specialty products that are not 100 percent standard grape wine. They maintain that varietal and semi-generic names and related appellations of origin should only be used on products that are 100 percent standard grape wine. With respect to the use of varietal names on wine labels, many commenters stated the following:

> The standard for varietal content was carefully developed to maintain the varietal character of the wine, and in the context of products which are 100% grape wine. Therefore, varietal terms should only be used on products which are 100% grape wine.

Three comments objected to the proposed designation of the new standard of identity. They argue that the term "flavored wine product" implies that the product is "lesser than, or subordinate to grape wine," and "both degrades and cheapens everything that we put in to them."



Several commenters contend that ATF's proposed regulations are not cost effective and would impose an undue burden on the industry. According to one commenter, the massive relabeling of products required by the proposed regulations will result in substantial costs for the domestic and international wine trade without improving consumers' understanding of wine labeling. Another commenter provided specific information—

> [Our] line alone includes eight (8) items, all well established as a result of extensive marketing efforts, which would become non-conforming were the proposed regulatory changes to be enacted. Collectively these eight (8) items represented nearly one quarter (25%) of our sales volume last year, calendar [year] 1999. In addition to the tens of thousands of dollars of investment in artwork, design and marketing, * * * [we have] well over one hundred thousand dollars ($100,000) invested in labels, silk screened bottles and point-of-sale materials for these eight (8) items.

Several commenters objected to ATF's proposals concerning the statement of composition for flavored wine products. One commenter stated that the proposed regulations are excessive and burdensome and "turn a truthful and adequate statement of composition into a version of ingredient labeling without providing adequate justification for the change." Other commenters shared this view.

Many commenters objected specifically to ATF's proposal to prohibit the use of the term "natural" in the statement of composition for flavored wines and other wine specialty products. They maintain that ATF has had a long-standing policy of allowing wine producers to identify a flavor as being "natural" or "artificial," provided it was a truthful characterization of the flavoring. According to one commenter, adopting the proposed regulation "would reverse that long standing policy, cause thousands of labels to change, and would be totally inconsistent with all other food labeling without justification." Another commenter stated that prohibiting the term "natural" to describe a flavor is significantly different from ATF's policy regarding statements of composition as discussed in its publication "Compliance Matters 97–1." In addition, one commenter indicated that if ATF believes there is confusion among consumers as to a meaning for the term "natural," the term should also be prohibited from appearing in statements of composition for flavored malt beverages and distilled spirits specialty products.

One commenter who expressed opposition to the proposed regulations questioned the methodology used with respect to ATF's consumer survey and the validity of the results of the survey. Based, in part, on the consumer survey, ATF concluded that current statements of composition on labels of flavored wines that include varietal or semi-generic names do not provide consumers with adequate information as to the identity and quality of the product and are likely to mislead consumers to believe that flavored wine products are the same as wines that meet the requirements for a varietal or semi-generic designation. In contrast, the commenter refers to the results of its own consumer survey that "clearly shows that consumers are neither confused nor deceived by Flavored Wines labeled in accordance with BATF's current regulations." ATF maintains that statements of composition on flavored wines that include a varietal or semi-generic name are likely to mislead consumers and do not provide consumers with adequate information as to the identity and quality of the product. ATF further believes that its consumer survey, the consumer survey conducted by the petitioner, and the comments received in response to the notice of proposed rulemaking support this conclusion.

## VIII. Amended Definition of "Brand Label"

Thirty comments addressed our proposal to amend the definition of "brand label" for wine. The commenters expressed several concerns with respect to the proposed definition that we believe warrant further study and analysis. However, we do not wish to delay a final decision concerning the labeling of flavored wine products. Therefore, we will address the "brand label" issue separately in the near future.

## IX. Final Rule

Based on the comments received in response to Notice No. 890, we have re-examined the proposed regulations concerning the labeling of flavored wines and other wine specialty products. It is clear that most commenters agree with our conclusion that current statements of composition on flavored wines that include a varietal or semi-generic name are likely to mislead consumers and do not provide consumers with adequate information as to the identity and quality of the product. It is equally clear that most commenters do not believe ATF's proposal to create a new class designation is the best solution to the problem.

ATF is particularly concerned about the financial burden that would be placed on the industry, both domestic and foreign, if the proposed regulations were to be adopted as final. As pointed out in the comments, the proposed regulations would affect all wine specialty products, including those that have been in the marketplace for a long time and do not use a varietal or semi-generic name in the statement of composition. In addition, under the proposed regulations, flavored wines and other wine specialty products would still be able to use varietal and semi-generic names in the statements of composition, provided minimum percentage requirements are met. Based on the comments, we are concerned that consumers seeing these designations on such products may perceive these products to be standard grape wines even if the products were labeled as we proposed.

The purpose of the labeling provisions of the FAA Act is to prevent deception of the consumer and to provide the consumer with adequate information as to the identity and quality of the product. In prescribing regulations, ATF has the responsibility to ensure that the statutory goals are met. However, ATF does not believe that the regulations should be more restrictive than is necessary to meet the statutory goal. On the contrary, ATF believes that we should regulate only where necessary and to the extent required to avoid consumer deception or provide the consumer with adequate information about the product.

Accordingly, ATF is not adopting the regulations as proposed in Notice No. 890. We are, however, amending the regulations in section 4.34(a) to prohibit the use of any varietal designation, type designation of varietal significance, semi-generic geographic type designation, or geographic distinctive designation in statements of composition for flavored wines and other wine specialty products. This amendment is similar to that proposed in the CAWG petition.

In Notice No. 890, we proposed that in addition to the statement of composition portion of the mandatory designation for a flavored wine product, additional statements regarding the components of such a product could appear on a back or side label, but not the brand label. Such statements would have to reference all components listed in the mandatory statement of composition and must include the percentage of each component totaling 100 percent. Furthermore, such

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additional statements must be truthful, accurate and specific, within the meaning of section 4.38(f). Many commenters disagreed with our proposal, maintaining that varietal and semi-generic names should only be used on products that are 100 percent standard grape wine. For example, one commenter stated the following:

> [T]here should be no provision for showing a varietal designation or a semi generic designation (and related appellation of origin) in any way, including in a statement of composition, anywhere on a label of any wine product that is not a standard grape wine. That includes, of course, any other-than-standard wine, substandard wine and/or flavored wine product.

Another commenter stated that "[v]arietal, semi-generic names and appellations of origin should only be used on Class I, Class II and Class III wines. They should not be used on any other class of wine, nor on any 'wine specialty products.' " Another comment, representing three Washington State wine organizations, maintained that "[p]ermitting the use of varietal or semi-generic names on products that are not in fact 100% [standard grape] wine will simply add to consumer confusion."

Accordingly, we are amending the regulations to provide that wine labels may not contain any varietal name, type designation of varietal significance, semi-generic name, or geographic distinctive designation in the brand name, product name, or distinctive or fanciful name, unless the wine is made in accordance with the standards prescribed in classes 1, 2, or 3 (i.e., grape wine, sparkling grape wine, or carbonated grape wine). Any other use of such a designation on other than a class 1, 2, or 3 wine is presumed misleading. This amendment is similar to one proposed by the Wine Institute in its comment on the proposed regulations. The Wine Institute represents over 500 California winery and associate members. We believe this amendment is necessary to ensure that consumers are adequately informed as to the identity and quality of the wine, and to prevent consumer deception.

**X. Applications for and Certification of Label Approval**

Upon the effective date of this Treasury decision, i.e., January 1, 2001, applications for certificates of label approval must be in compliance with the regulations. In accordance with the provisions of 27 CFR 13.51 and 13.72(a)(2), upon the effective date of this Treasury decision, certificates of label approval that are not in compliance with the regulations will be revoked by operation of regulation. Certificate holders must voluntarily surrender all certificates that are no longer in compliance and submit applications for new certificates that are in compliance with the new requirements.

**How This Document Complies With the Federal Administrative Requirements for Rulemaking**

*A. Executive Order 12866*

We have determined that this final rule is not a significant regulatory action as defined in E.O. 12866. Therefore, a regulatory assessment is not required.

*B. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small government jurisdictions. We hereby certify that this final rule will not have a significant economic impact on a substantial number of small entities. Since producers routinely make changes to their labels, we do not believe that the final regulation will result in any additional burdens on the industry. Accordingly, a regulatory flexibility analysis is not required.

*C. Paperwork Reduction Act*

The provisions of the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because no requirement to collect information is imposed.

**Disclosure**

Copies of the notice of proposed rulemaking, all written comments, and this final rule will be available for public inspection during normal business hours at: ATF Public Reading Room, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC.

**Drafting Information**

The author of this document is James P. Ficaretta, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

**List of Subjects in 27 CFR Part 4**

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Packaging and containers, Wine.

**Authority and Issuance**

For the reasons discussed in the preamble, ATF amends 27 CFR part 4 as follows:

**PART 4—LABELING AND ADVERTISING OF WINE**

**Paragraph 1.** The authority citation for part 4 continues to read as follows:

**Authority:** 27 U.S.C. 205.

**Par. 2.** Section 4.34(a) is amended by adding a sentence after the seventh sentence to read as follows:

**§ 4.34 Class and type.**

(a) * * * The statement of composition will not include any reference to a varietal (grape type) designation, type designation of varietal significance, semi-generic geographic type designation, or geographic distinctive designation. * * *

* * * * *

**Par. 3.** Section 4.39 is amended by adding a new paragraph (n) to read as follows:

**§ 4.39 Prohibited practices.**

(n) *Use of a varietal name, type designation of varietal significance, semi-generic name, or geographic distinctive designation.* Labels that contain in the brand name, product name, or distinctive or fanciful name, any varietal (grape type) designation, type designation of varietal significance, semi-generic geographic type designation, or geographic distinctive designation, are misleading unless the wine is made in accordance with the standards prescribed in classes 1, 2, or 3 of § 4.21. Any other use of such a designation on other than a class 1, 2, or 3 wine is presumed misleading.

Signed: August 4, 2000.

**Bradley A. Buckles,**

*Director.*

Approved: September 5, 2000.

**John P. Simpson,**

*Deputy Assistant Secretary, (Regulatory, Tariff and Trade Enforcement).*

[FR Doc. 00–25706 Filed 10–5–00; 8:45 am]

BILLING CODE 4810–31–P

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**DEPARTMENT OF JUSTICE**

**Bureau of Prisons**

**28 CFR Part 541**

**[BOP–1083–F]**

**RIN 1120–AA78**

## Inmate Discipline: Prohibited Acts

**AGENCY:** Bureau of Prisons, Justice.



**ACTION:** Final Rule.

**SUMMARY:** In this document the Bureau of Prisons amends its regulations on inmate discipline regarding violations of the telephone and smoking policies. The amendment establishes a greatest severity category prohibited act for use of the telephone to further criminal activity and a high severity and moderate category prohibited act for use of the telephone for abuses other than criminal activity. Other minor telephone infractions remain covered by the existing low moderate severity level category prohibited act. The amendment also elevates violations of the smoking policy to a moderate category prohibited act. The amendment is intended to address the seriousness of certain types of telephone abuse and deter criminal activity and protect the security and good order of the institution. The amendment is also intended to promote a clean air environment and to protect the health and safety of staff and inmates.

**EFFECTIVE DATE:** November 6, 2000.

**ADDRESSES:** Rules Unit, Office of, General Counsel, Bureau of Prisons, HOLC Room 739, 320 First Street, NW., Washington, DC 20534.

**FOR FURTHER INFORMATION CONTACT:** Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202) 514–6655.

**SUPPLEMENTARY INFORMATION:** The Bureau of Prisons (Bureau) finalizes this amendment to its regulations in 28 CFR part 541, subpart B on inmate discipline regarding misuse of the telephone and smoking where prohibited. We published the proposed rule in the **Federal Register** on February 25, 1999 (64 FR 9432). We received comments from five respondents, all current federal inmates.

One commenter believes the current severity level for smoking where prohibited is adequate and does not believe elevating the severity level is necessary. The commenter believes the Bureau did not provide an adequate explanation supporting an increase in the severity level for smoking where prohibited. This commenter also states that nicotine addiction should be recognized as a serious medical condition requiring treatment and therapy and that smoking cessation programs and nicotine patches should be offered to assist those inmates who wish to quit smoking instead of elevating the severity level of the offense.

In a separate rulemaking, we proposed revisions to its policy on smoking which limits smoking in Bureau facilities to visibly designated outdoor locations, unless an indoor area has been designated as a smoking area to be used exclusively for authorized religious activity. The proposed revisions also permit the Warden, with the concurrence of the Regional Director, not to designate smoking areas for general use. We believe that elevating the severity level for smoking where prohibited will assist in emphasizing the importance of limiting exposure to tobacco smoke to the designated areas. To assist those who wish to quit smoking, we plan to expand smoking cessation programs available to inmates and to make nicotine patches available at inmate expense through commissary purchase.

Two commenters state the Bureau currently has the ability to detect improper use of the telephone, with one commenter stating that any criminal activity taking place on the telephone should be punished in the court system. The purpose of the amendment is to address the seriousness of inmate use of the telephone to further criminal activity and other serious abuses of the telephone privilege which could threaten the security of the institution or public. Upgrading administrative sanctions for various forms of telephone abuse does not preclude subsequent criminal prosecution.

Two commenters believe that the current severity level for misuse of the telephone is sufficient in that an inmate may be charged in terms of greater severity according to the nature of the unauthorized use. The existing low moderate severity level prohibited act concerning unauthorized use of the telephone does not adequately address the more serious problem of inmates engaging in or continuing criminal activity and other serious abuses of their telephone privileges. Since the current policy was implemented, there have been significant technological advances in telephone communication capability which afford inmates with the opportunity to circumvent telephone regulations without staff knowledge. Also, the sanctions available under the existing low severity prohibited act are simply too low to deter inmates from abusing their telephone privileges. Establishing a greatest severity category and high severity category for criminal use of the telephone and other serious abuses of telephone privileges offers staff more significant sanctions which the Bureau believes will act as a deterrent. The Bureau's goal is to ensure that inmates, once incarcerated, do not use telephones to continue criminal activity. As noted below, the Bureau has chosen to add a moderate category prohibited act covering some of the abuses listed in the high category prohibited act in order to give staff flexibility in assessing the seriousness of the violations.

Four commenters challenge the raising in severity level for three-way calls, call forwarding, and emergency telephone calls via another inmate's PIN number. One commenter states that because there is no "criminal intent" these types of calls should only be classified as minor offenses. Third-party calling, conference calling, possession and/or use of another inmate's PIN number are methods used by inmates to attempt to avoid the Bureau's telephone monitoring detection devices and can be a means to engage in further criminal activity and other more serious abuses of the telephone. Current telephone regulations prohibit an inmate from possessing another inmate's telephone access code number. Third party billing and electronic transfer of a call to a third party are also prohibited. We acknowledge that there may be differences in the seriousness of these violations. Accordingly, in this final rule, we add a moderate category prohibited act for such abuses in order to give staff flexibility in assessing the seriousness of the violations.

Two of these commenters suggest that inmates resort to conference calls and third-party calls in order to reach family members who have been taken to a hospital or in order to reach attorneys or court officials. The telephone regulations provide that the Warden may allow a call to be made under compelling circumstances such as when an inmate has lost contact with his family or has a family emergency. Unit staff are available to assist an inmate in making a telephone call during an emergency. Inmates may also communicate with family and friends through normal correspondence procedures. Requests for unmonitored telephone calls to attorneys are always handled separately through staff in order to confirm the legal nature of the telephone call.

The current low moderate severity level prohibited act remains for minor telephone infractions such as talking beyond the 15-minute time period and using the telephone in an unauthorized area. For administrative management reasons, the Bureau is separating unauthorized use of mail from unauthorized use of the telephone in its low moderate severity level. Unauthorized use of mail remains in Code 406 while unauthorized use of the telephone is now in new Code 497.

We also received a tort claim from one inmate alleging the regulations are

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vague. While this claim is being processed under the procedures for tort claims, we are also treating it as a comment on the proposed regulation. This commenter claims, among other things, that the prohibited act of "Killing" (Code 100) is "unconstitutionally vague, ambiguous and imprecise, because the rule provides no definition of what behavior and conduct constitutes "Killing." A person could be charged with a violation of the rule arbitrarily for simply killing time." The commenter, however, does not specifically address the proposed changes to the telephone and smoking prohibited acts. We are concerned with the clarity of our regulations and believe the wording of the prohibited acts is sufficiently clear. Even so, in keeping with plain language initiatives, we intend to issue a complete "Plain Language" revision of the discipline policy for public comment.

**Executive Order 12866**

This rule falls within a category of actions that the Office of Management and Budget (OMB) has determined not to constitute "significant regulatory actions" under section 3(f) of Executive Order 12866 and, accordingly, it was not reviewed by OMB.

**Executive Order 13132**

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

**Regulatory Flexibility Act**

The Director of the Bureau of Prisons, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact upon a substantial number of small entities for the following reasons: This rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

**Unfunded Mandates Reform Act of 1995**

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

**Small Business Regulatory Enforcement Fairness Act of 1996**

This rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

**Plain Language Instructions**

We try to write clearly. If you can suggest how to improve the clarity of these regulations, call or write Sarah Qureshi, Rules Unit, Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534, 202–514–6655.

Members of the public may submit comments concerning this rule by writing to the previously cited address. These comments will be considered but will receive no response in the **Federal Register**.

**List of Subjects in 28 CFR Part 541**

Prisoners.

**Kathleen Hawk Sawyer,**
*Director, Bureau of Prisons.*

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), we amend part 541 in subchapter C of 28 CFR, chapter V as follows.

**SUBCHAPTER C—INSTITUTIONAL MANAGEMENT**

## PART 541—INMATE DISCIPLINE AND SPECIAL HOUSING UNITS

1. The authority citation for 28 CFR part 541 continues to read as follows:

**Authority:** 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4161–4166 (Repealed as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

**§ 541.13 [Amended]**

2. In § 541.13, Table 3 is amended by:

A. Adding a new code 197 under the greatest category prohibited act,

B. Adding a new code 297 under the high category prohibited act,

C. Adding new codes 332 and 397 under the moderate category prohibited act,

D. Revising the word "belong" in code 400 as "belonging", and

E. Revising codes 403 and 406 and adding code 497 under the low moderate category prohibited act.

**§ 541.13 Prohibited acts and disciplinary severity scale.**

TABLE 3.—PROHIBITED ACTS AND DISCIPLINARY SEVERITY SCALE

| Code | Prohibited acts | Sanctions |
|---|---|---|
| | **GREATEST CATEGORY** | |
| 197 | Use of the telephone to further criminal activity. | |
| | **HIGH CATEGORY** | |



TABLE 3.—PROHIBITED ACTS AND DISCIPLINARY SEVERITY SCALE—Continued

| Code | Prohibited acts | Sanctions |
|---|---|---|
| 297 | Use of the telephone for abuses other than criminal activity (*e.g.*, circumventing telephone monitoring procedures, possession and/or use of another inmate's PIN number; third-party calling; third-party billing; using credit card numbers to place telephone calls, conference calling; talking in code). | |
| | **MODERATE CATEGORY** | |
| 332 | Smoking where prohibited. | |
| 397 | Use of the telephone for abuses other than criminal activity (*e.g.*, conference calling, possession and/or use of another inmate's PIN number, three-way calling, providing false information for preparation of a telephone list). | |
| | **LOW MODERATE CATEGORY** | |
| 403 | (Not to be used). | |
| 406 | Unauthorized use of mail (Restriction, or loss for a specific period of time, of these privileges may often be an appropriate sanction G) (May be categorized and charged in terms of greater severity, according to the nature of the unauthorized use; *e.g.*, the mail is used for planning, facilitating, committing an armed assault on the institution's secure perimeter, would be charged as a Code 101 Assault). | |
| 497 | Use of the telephone for abuses other than criminal activity (*e.g.*, exceeding the 15-minute time limit for telephone calls; using the telephone in an unauthorized area; placing of an unauthorized individual on the telephone list). | |

[FR Doc. 00–25729 Filed 10–5–00; 8:45 am]
BILLING CODE 4410–05–P

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[VA088–5051a; FRL–6880–8]**

**Approval and Promulgation of Air Quality Implementation Plans; Virginia; Revised 15% Plan for Northern Virginia Portion of the Metropolitan Washington, DC Ozone Nonattainment Area**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is converting its conditional interim approval of a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia (the "Commonwealth") to a full approval. This revision satisfies the 15 percent rate of progress (ROP) plan (the 15% plan) requirements of the Clean Air Act (the Act) for the Northern Virginia portion of the Metropolitan Washington, DC ozone nonattainment area (the Washington area). The intended effect of this action is to convert the conditional interim approval to a full approval because the Commonwealth has fulfilled the conditions listed in EPA's conditional interim approval of the original 15% plan for the Northern Virginia portion of the Washington area.

**DATES:** This direct final rule is effective on November 20, 2000 without further notice, unless EPA receives adverse comment by November 6, 2000. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Comments may be mailed to David L. Arnold, Chief, Ozone and Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency—Region III, 1650 Arch Street, Philadelphia, Pennsylvania, 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at:

Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103;

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and

Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, 23219.

Persons interested in examining these documents should schedule an appointment with the contact person (listed below) at least 24 hours before the visiting day.

**FOR FURTHER INFORMATION CONTACT:** Janice Lewis, (215) 814–2185, at the

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EPA Region III address above, or by e-mail at lewis.janice@epa.gov. Please note that while questions may be submitted via e-mail, any comments on the rulemaking action must be submitted, in writing, to the address listed above.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On April 14, 1998, the Virginia Department of the Environmental Quality (DEQ) submitted a revision to its SIP for the Washington area. The revision consists of an amended plan to achieve a 15% reduction from 1990 base year levels in volatile organic compound (VOC) emissions. On June 24, 1997 (62 FR 33999), EPA granted conditional interim approval of Virginia's original 15% plan for the Northern Virginia portion of the Washington area. Virginia's revisions to its 15% plan were made to satisfy the conditions imposed by EPA in the June 24, 1997 conditional interim approval. The interim part of the June 24, 1997 (62 FR 33999) conditional interim approval was related to the implementation of Virginia's Enhanced I/M program. On September 1, 1999 (64 FR 47670), EPA published a direct final rule converting its May 15, 1997 (62 FR 26745) final conditional interim approval of the Virginia Enhanced I/M program to a full approval, thus removing the interim status. This was done because EPA determined that all of the conditions of its May 15, 1997 conditional interim approval of the Enhanced I/M SIP had been satisfied by the Commonwealth.

The Metropolitan Washington D.C. ozone nonattainment area consists of the District of Columbia, five counties in Maryland, and in Northern Virginia, the counties of Arlington, Fairfax, Loudoun, Prince William and Stafford and the cities of Alexandria, Falls Church, Manassas, Manassas Park and Fairfax.

The Commonwealth of Virginia, State of Maryland and the District of Columbia in conjunction with municipal planning organizations collaborated on a coordinated 15% plan for the entire Washington area (regional 15% plan). This was done under the auspices of the regional air quality planning committee, the Metropolitan Washington Air Quality Committee (MWAQC), and with the assistance of the local municipal planning organization, the Metropolitan Washington Council of Governments (MWCOG), to ensure coordination of air quality and transportation planning. Although the plan was developed by a regional approach, each jurisdiction is required to submit the 15% plan to EPA for approval as a revision to its SIP. Because the reasonable further progress requirements such as the 15% plan affect transportation improvement plans, municipal planning organizations have historically been heavily involved in air quality planning in the Washington area.

As explained in further detail below, the regional 15% plan determined the regional target level, regional projections of growth and finally the total amount of creditable reductions required to meet the 15% reasonable further progress requirement for the entire Washington area. Maryland, Virginia and the District agreed to apportion this total amount of required creditable reductions among the three jurisdictions. EPA is taking action today only on Virginia's revised 15% plan submittal for the Washington area, having already granted full approvals of both the District's and Maryland's 15% plans for their portions of the Washington area on August 5, 1999 (64 FR 42600) and July 19, 2000 (65 FR 44686), respectively. This rulemaking is being taken to convert the June 24, 1997 conditional interim approval of Virginia's 15% plan for the Washington area to a full approval based upon EPA's determination that the Commonwealth has fulfilled the conditions imposed in that conditional interim approval.

*A. Base Year Emission Inventory*

The baseline from which states must determine the required reductions for 15% planning is the 1990 base year emission inventory. The inventory is broken down into several emissions source categories: stationary point, area, on-road mobile sources, and off-road mobile sources. The base year inventory includes emissions of all sources within the nonattainment area and certain large point sources within twenty-five miles of the boundary. A subset of the 1990 base year inventory is the 1990 rate-of-progress (ROP) inventory which includes only anthropogenic (man-made) emissions actually within the nonattainment area boundaries. EPA approved this base year inventory SIP revision for the entire Washington area on July 8, 1998 (63 FR 36854).

*B. Growth in Emissions Between 1990 and 1996*

EPA has interpreted the Act to require that reasonable further progress towards attainment of the ozone standard must be obtained after offsetting any growth expected to occur over that period. Therefore, to meet the 15% reasonable further progress requirement, a state must enact measures achieving sufficient emissions reductions to offset projected growth in VOC emissions, in addition to a 15% reduction of VOC emissions. A detailed description of the growth methodologies used by the Commonwealth is provided in EPA's conditional interim approval of Virginia's 15% plan (62 FR 33999, June 24, 1997) and in the Technical Support Document (TSD) prepared for that action.

The one area of concern relating to growth projections in the original 15% plan was related to the point source inventory. Condition 1 of the June 24, 1997 (62 FR 33999) conditional interim approval required that Virginia revise its plan to properly account for growth in point sources between 1990 and 1996. EPA's analysis of the revised 15% plan supports removal of this condition, since Virginia used the appropriate methodology in reappraising its point source inventory growth between 1990 and 1996. EPA here notes that the revised 15% plan has a point source inventory number that differs from Virginia's SIP approved inventory—8.1 tons per day (tpd) in the revised 15% plan submittal versus 8.3 tpd in the approved inventory. EPA is not revising the SIP approved inventory by this action. The 8.1 tpd number is acceptable for use in the revised 15% plan, as the discrepancy serves to lower the 15% plan's target level, thus making the plan's VOC reductions more restrictive than required if one were to use the approved inventory numbers. EPA is approving the Commonwealth of Virginia's 1990–1996 emissions growth projections in its revised 15% plan.

*C. Enhanced Vehicle Inspection and Maintenance (I/M) Program*

Condition 2 of EPA's conditional interim approval of the original 15% plan required the Commonwealth to meet the conditions EPA imposed in its May 15, 1997 conditional interim approval of Virginia's enhanced motor vehicle inspection and maintenance (I/M) program. Virginia was also required to remodel the I/M benefits claimed in the 15% plan using the following two EPA guidance memoranda: *Date by which States Need to Achieve all the Reductions Needed for the 15 Percent Plan from I/M and Guidance for Recalculation,* from John Seitz and Margo Oge dated August 13, 1996, and *Modelin., 15% VOC Reductions from I/M in 1999—Supplemental Guidance,* from Gay MacGregor and Sally Shaver dated December 23, 1996.

The Commonwealth has remedied condition 2 imposed in the conditional interim approval of its original 15% plan. On September 1, 1999 (64 FR 47670), EPA published a direct final



rule converting its May 15, 1997 (62 FR 26745) final conditional interim approval of the Virginia enhanced I/M SIP revision to a full approval. This was done because EPA determined that all of the conditions of the May 15, 1997 conditional interim approval of the enhanced I/M SIP had been satisfied by the Commonwealth. Further, EPA has determined that Virginia appropriately remodeled the I/M benefits of the program, and that there are no adverse affects on the 15% plan due to this remodeling.

*D. Target Level Emissions/Emission Reductions Needs*

As part of the conditional interim approval of its original 15% plan, Virginia was also required to remodel to determine affirmatively the creditable reductions from reformulated gasoline (RFG) and the Tier 1 Federal Motor Vehicle Control Program (FMVCP) in accordance with EPA guidance. Virginia was required to remodel the benefits of enhanced I/M, RFG and Tier 1 under the revised plan to compare the mobile source target level in 1999 versus the target level for mobile sources which was determined for the original plan.

EPA concurs with the remodeling demonstration submitted as part of the revised 15% plan, and with the revised mobile source target level calculation. Virginia's portion of the corrected target level is 163.8 tpd.

The regional 15% plan calculates a target level of emissions to meet the 15% reasonable further progress requirement over the entire nonattainment area. The regional 15% plan contains a projection of emissions growth from 1990 to 1996 and, in effect, apportions among Virginia, Maryland and the District of Columbia (the three jurisdictions) the amount of creditable emission reductions that each jurisdiction must achieve in order for the entire nonattainment area to achieve a 15% reduction in VOC emissions net of growth. Each jurisdiction then adopted the regional plan, which identified the amount of creditable emission reductions which that jurisdiction must achieve for the regional plan to get a 15% reduction accounting for any growth. The regional plan calculated the "target level" of 1996 VOC emissions, in accordance with applicable EPA guidance.

EPA has interpreted section 182(b) of the Act to require that the base year VOC emission inventory be adjusted to account for reductions in VOC emissions that would have occurred from the pre-1990 FMVCP and Reed Vapor Pressure (RVP) programs. To meet EPA's applicable guidance on this requirement, the regional plan contains a calculation of the reductions occurring between 1990 and 1996 from the pre-1990 Tier 0 FMVCP and RVP programs and the result of subtracting these reductions from the 1990 ROP inventory. The net result of this calculation yielded the "1990 base year inventory adjusted to 1996".

Virginia's 15% plan relies upon reductions from its revised enhanced I/M program to achieve the required 15% level as soon after November 15, 1996 as practicable, but not later than 1999. Under EPA's applicable guidance for 15% plans that rely upon reductions from enhanced I/M after 1996, the target level must also take into account the effects of the pre-1990 Tier 0 FMVCP on 1990 emissions due to turnover in vehicles between 1996 and 1999. Therefore, to meet EPA's applicable guidance for this requirement, Virginia's 15% plan contains a calculation of the non-creditable reductions from the pre-1990 Tier 0 FMVCP and RVP programs between 1990 and 1999 and the result of subtracting these reductions from the 1990 ROP inventory. The result of this calculation yielded the "1990 base year inventory adjusted to 1999." Virginia's 15% plan clearly identifies the difference between the "1990 base year inventory adjusted to 1996" and "1990 base year inventory adjusted to 1999" as the "fleet turnover correction" (FTC) necessary to meet EPA's guidance.

In its plan, Virginia calculates a "base" 1996 VOC target level as 85% of the "1990 adjusted base year inventory for 1996." In accordance with EPA's guidance, as discussed above, Virginia subtracts the FTC from the "base" 1996 VOC target level to yield a "final" 1996 VOC target level for the 15% plan. In Table 1 below, we have provided a summary of the calculations for the 1996 VOC target level for the entire Washington area.

TABLE 1.—REQUIRED REDUCTIONS FOR THE METROPOLITAN WASHINGTON, DC NONATTAINMENT AREA 15% PLAN

[Tons per day]

| Metropolitan Washington, DC nonattainment area target level calculation | | | | | |
|---|---|---|---|---|---|
| | Item | District of Columbia | Maryland | Virginia | Washington D.C. Area Totals |
| 1 | 1990 ROP Inventory | 60.3 | 241.7 | 226.5 | 528.5 |
| 2 | 1990 Adjusted Base Year Inventory adjusted to 1996 | 51.2 | 215.1 | 196.8 | 463.1 |
| 3 | 1990 Adjusted Base Year Inventory adjusted to 1999 | 49.9 | 210.9 | 193.3 | 454.1 |
| 4 | FTC Adjustment (Line 2 minus Line 3) | 1.3 | 4.2 | 3.5 | 9.0 |
| 5 | Base 1996 target Level = 85% of Line 2 (0.85 × Line 2) | 43.5 | 182.8 | 167.3 | 393.6 |
| 6 | Final 1996 Regional Target Level (Line 5 minus Line 4) | 42.2 | 178.6 | 163.8 | 384.6 |
| 7 | Projected 1996 Uncontrolled Emissions | 48.5 | 234.7 | 219.4 | 502.4 |
| 8 | Required Regional Emission Reductions (Line 8 minus Line 7)* | ..... | ..... | ..... | 117.8 |
| 9 | Apportioned State Emission Reductions* | 8.5 | 57.5 | 51.8 | 117.8 |

*The small discrepancy between values is due to rounding the apportioned emission reductions to the nearest tenth.

The emission reductions required to meet the 15% reasonable further progress requirement equals the difference between the projected 1996 emissions under the current control strategy (the 1996 uncontrolled emissions) and the target level. This amount of emission reductions reflects a 15% reduction from the adjusted base year inventory and any reductions necessary to offset emissions growth projected to occur between 1990 and 1996. The Washington area's regional VOC target level is 384.6 tpd. EPA has determined that this regional target level and the emission reduction needed for the Washington area have been properly calculated in accordance with EPA guidance.

The three Washington area jurisdictions agreed to apportion the amount of emission reductions needed for the entire area to achieve the 15% reduction among themselves. This

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apportionment is also shown in Table 1 above. Virginia's share is 51.8 tpd.

*E. Reasonable Further Progress*

The final condition for full approval of the 15% plan was for Virginia to demonstrate, using appropriate documentation methodologies and credit calculations, that it had satisfied the 15% plan requirement for the Washington area. As part of the revised 15% plan, recalculations to the inventory, target level and 15% reduction amounts were adjusted. Under the new plan, Virginia's portion of the 15% plan requirement decreased from 54.5 tpd to 51.8 tpd.

EPA agrees with the credit calculation methodology used in the revised plan to justify this number. As demonstrated in Chapter 5 of the revised plan SIP submittal, appropriate assumptions and calculation methodologies were employed, as per EPA guidance, in calculating the new figures. EPA therefore concurs that Virginia must achieve at least 51.8 tpd in creditable emission reductions to demonstrate that Virginia has met its 15% VOC reduction requirement for the Washington, DC area.

EPA believes that in its revised 15% plan the Commonwealth has made all the necessary corrections to establish the creditability of sufficient control measures to met the 15% VOC reduction requirement. Virginia has demonstrated there are sufficient creditable measures in the revised 15% plan to achieve at least 54.85 tpd of reductions. This 54.85 tpd reduction results from either rules promulgated by EPA or measures contained in the approved Virginia SIP. Table 2 below summarizes the creditable measures from Virginia's 15% plan for the Washington area.

TABLE 2.—CREDITABLE VOC REDUCTIONS IN VIRGINIA'S 15% PLAN FOR THE METROPOLITAN WASHINGTON, DC NONATTAINMENT AREA

[Tons per day]

| Creditable reductions | |
|---|---|
| Enhanced Inspection and Maintenance | 19.50 |
| Tier 1 FMVCP | 6.10 |
| Landfill Controls | 0.27 |
| Stage II Recovery Nozzles | 6.80 |
| Reformulated Gasoline (on/off road) | 9.10 |
| Auto Refinishing | 2.51 |
| AIM—Reformulated Surface Coating | 5.30 |
| Reformulated Consumer/Commercial Products | 1.80 |
| Stage I Enhancement | 0.30 |
| VOC RACT > 50 tpy Sources | 0.40 |

TABLE 2.—CREDITABLE VOC REDUCTIONS IN VIRGINIA'S 15% PLAN FOR THE METROPOLITAN WASHINGTON, DC NONATTAINMENT AREA—Continued

[Tons per day]

| Creditable reductions | |
|---|---|
| Point Sources Controls > 25 tpy Sources | 0.03 |
| Seasonal Open Burning Ban | 2.60 |
| Total Fully Creditable Reductions | 54.85 |

*F. Transportation Conformity Budgets*

As is the case with any ROP plan, Virginia's 15% plan for the Washington, DC area contains a mobile budget for VOC emissions. By approving Virginia's 15% plan, EPA is granting a de facto approval of the budget in this plan. However, EPA wishes to clarify that the budget in Virginia's 15% plan will not be the applicable budget for any future conformity determinations because there are mobile budgets for both VOC and nitrogen oxides ($NO_X$) that have been found adequate for the Washington, DC area that apply in 1999 and all subsequent years. To verify which budgets apply in the Washington, DC area, please contact the EPA Regional office listed in the **ADDRESSES** section or consult EPA's "Adequacy Review of SIP Submissions for Conformity" web page at http://www.epa.gov/oms/transp/conform/adequacy.htm.

EPA's review of this material indicates that Virginia's revised 15% plan SIP revision meets the requirements of the Act and applicable EPA guidance. EPA is therefore converting its conditional interim approval of Virginia's 15% plan to a full approval.

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) "privilege" for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations.

Virginia's Voluntary Environmental Assessment Privilege law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The privilege does not extend to documents or information that are: (1) Generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1997, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law precludes granting a privilege to documents and information "required by law," including documents and information "required by federal law to maintain program delegation, authorization or approval," since Virginia must "enforce federally authorized environmental programs in a manner that is no less stringent than their federal counterparts. * * * " Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that "[t]o the extent consistent with requirements imposed by Federal law," any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty.

The Attorney General's January 12, 1997 opinion states that the quoted language renders this statute inapplicable to enforcement of any federally authorized programs, since "no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with federal law, which is one of the criteria for immunity." Thus, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the federal requirements.

EPA is converting its conditional interim approval of Virginia's 15% plan to a full approval by this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to convert the conditional interim approval to a full approval should adverse or critical comments be filed. This rule will be effective November 20, 2000 without further notice unless the Agency receives adverse comments by November 6, 2000. If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on the proposed rule. Parties interested in commenting on this action converting the conditional approval of the Commonwealth's 15% plan to a full approval should do so at this time. If no such comments are received, the public is advised that this rule will be effective on November 20, 2000 and no further action will be taken on the proposed rule.



## II. Final Action

EPA is converting its conditional interim approval of Virginia's 15% plan for its portion of the Metropolitan Washington, DC ozone nonattainment area to a full approval based upon the evaluation of the SIP revision submittal made by Virginia on April 14, 1998 consisting of the revised 15% plan for its portion of the Metropolitan Washington, DC ozone nonattainment area.

## III. Administrative Requirements

*A. General Requirements*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998).

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order.

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

*B. Submission to Congress and the Comptroller General*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

*C. Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 20, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action converting EPA's conditional interim approval of Virginia's 15% plan for Metropolitan Washington, D.C. ozone nonattainment area to a full approval may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: September 25, 2000.

**Bradley M. Campbell,**

*Regional Administrator, Region III.*

40 CFR part 52 of chapter I, title 40 is amended as follows:

## PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

## Subpart VV—Virginia

2. Section 52.2428 is amended by designating the existing text as paragraph (a) and adding paragraph (b) to read as follows:

**§ 52.2428 Control strategy: Carbon monoxide and ozone.**

(a) * * *

(b) EPA approves the Commonwealth's 15 Percent Rate of Progress Plan for the Virginia portion of the Metropolitan Washington, D.C. ozone nonattainment area, submitted by

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the Acting Director of the Virginia Department of the Environmental Quality on April 14, 1998.

**§ 52.2450 [Amended]**

3. Section 52.2450 is amended by removing and reserving paragraph (e).

[FR Doc. 00–25470 Filed 10–5–00; 8:45 am]
BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 132

[FRL–6881–9]

## Identification of Approved and Disapproved Elements of the Great Lakes Guidance Submission From the State of New York, and Final Rule

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA published the final Water Quality Guidance for the Great Lakes System (the Guidance) on March 23, 1995. Section 118(c) of the Clean Water Act (CWA) requires the Great Lakes States of Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania and Wisconsin to adopt within two years of publication of the final Guidance (*i.e.*, March 23, 1997) minimum water quality standards, antidegradation policies and implementation procedures that are consistent with the Guidance, and to submit them to EPA for review and approval. Each of the Great Lakes States made those submissions.

Today, EPA is taking final action on the Guidance submission of the State of New York. EPA's final action consists of approving those elements of the State's submission that are consistent with the Guidance, disapproving those elements that are not consistent with the Guidance, and specifying in a final rule the elements of the Guidance that apply in the portion of New York State within the Great Lakes System where the State either failed to adopt required elements or adopted elements that are inconsistent with the Guidance.

**EFFECTIVE DATE:** November 6, 2000.

**ADDRESSES:** The public docket for EPA's final actions with respect to the Guidance submission of the State of New York is available for inspection and copying at U.S. EPA Region 2, 290 Broadway, New York, N.Y. 10007 by appointment only. Appointments may be made by calling Wayne Jackson (telephone 212–637–3807).

**FOR FURTHER INFORMATION CONTACT:** Mark Morris (4301), U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20460 (202–260–0312); or Wayne Jackson, U.S. EPA Region 2, 290 Broadway, New York, N.Y. 10007 (212–637–3807).

**SUPPLEMENTARY INFORMATION:**

### I. Discussion

*A. Potentially Affected Entities*

Entities potentially affected by today's action are those discharging pollutants to waters of the United States in the Great Lakes System in the State of New York. Potentially affected categories and entities include:

| Category | Examples of Potentially Affected Entities |
|---|---|
| Industry | Industries discharging to waters within the Great Lakes System as defined in 40 CFR 132.2 in New York State. |
| Municipalities | Publicly-owned treatment works discharging to waters within the Great Lakes System as defined in 40 CFR 132.2. in New York State. |

This table is not intended to be exhaustive, but rather provides a guide for readers regarding regulated entities likely to be affected by these final actions. This table lists the types of regulated entities that EPA believes could be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your facility may be affected by this final action, you should examine the definition of "Great Lakes System" in 40 CFR 132.2 and examine 40 CFR 132.2 which describes the part 132 regulations. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

*B. Background*

On March 23, 1995, EPA published the Guidance. *See* 60 FR 15366; 40 CFR part 132. The Guidance establishes minimum water quality standards, antidegradation policies, and implementation procedures for the waters of the Great Lakes System in the States of Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania and Wisconsin. Specifically, the Guidance specifies numeric criteria for selected pollutants to protect aquatic life, wildlife and human health within the Great Lakes System and provides methodologies to derive numeric criteria for additional pollutants discharged to these waters. The Guidance also contains minimum implementation procedures and an antidegradation policy.

Soon after being published, the Guidance was challenged in the U.S. Court of Appeals for the District of Columbia Circuit. On June 6, 1997, the Court issued a decision upholding virtually all of the provisions contained in the 1995 Guidance. *American Iron and Steel Institute, et al.* v. *EPA (AISI),* 115 F.3d 979 (D.C. Cir. 1997). The Court vacated the human health criterion for polychlorinated biphenyls (PCBs) and the acute aquatic life criterion for selenium, and the provisions of the Guidance "insofar as it would eliminate mixing zones for (bioaccumulative chemicals of concern (BCCs)) and impose (water quality-based effluent limitations (WQBELs)) upon internal facility waste streams." 115 F.3d at 985. On October 9, 1997, EPA published a document revoking the PCB human health criteria pursuant to the Court's decision. 62 FR 52922. On April 23, 1998, EPA published a second notice amending the 1995 Guidance to remove the BCC mixing zone provisions from 40 CFR part 132 (found in procedure 3.C. of appendix F) and to remove language in the Pollutant Minimization Program provisions (procedure 8.D. of appendix F) that might imply that permitting authorities are required to impose WQBELs on internal waste streams or to specify control measures to meet WQBELs. 63 FR 20107. On June 2, 2000, EPA published a third document withdrawing the acute criteria for selenium. 65 FR 35283.

40 CFR 132.4 requires the Great Lakes States to adopt water quality standards, antidegradation policies, and implementation procedures for waters within the Great Lakes System consistent with the Guidance or be subject to EPA promulgation. 40 CFR 132.5(d) provides that, where a State makes no submission to EPA, the Guidance shall apply to discharges to waters in that State upon EPA's publication of a final rule indicating the effective date of the part 132 requirements in that jurisdiction.

On July 1, 1997, the National Wildlife Federation filed suit alleging that EPA had a non-discretionary duty to promulgate the Guidance for any State that failed to adopt standards, policies and procedures consistent with the Guidance. *National Wildlife Federation* v. *Browner,* Civ. No. 97–1504–HHK (D.D.C.). EPA negotiated a consent decree providing that the EPA Administrator must sign, by February 27, 1998, a **Federal Register** document making part 132 effective in any State in the Great Lakes Basin that failed to make a submission to EPA by that date under 40 CFR part 132. However, all of the Great Lakes States made complete submissions to EPA on or before the February deadline. On March 2, April 14, April 20 and April 28, 1998, EPA published in the **Federal Register** documents of its receipt of each of the States' Great Lakes Guidance submissions and a solicitation of public comment on the National Pollutant Discharge Elimination System (NPDES) portions of those submissions. 63 FR 10221; 63 FR 18195; 63 FR 19490; 63 FR 23285.



40 CFR 132.5(f) provides that, once EPA completes its review of a State's submission, it must either publish notice of approval of the State's submission in the **Federal Register** or issue a letter notifying the State that EPA has determined that all or part of its submission is inconsistent with the CWA or the Guidance, and identify any changes needed to obtain EPA approval. If EPA issues a letter to the State making findings of inconsistencies, the State then has 90 days to make the necessary changes. If the State fails to make the necessary changes, EPA must publish a document in the **Federal Register** identifying the approved and disapproved elements of the submission and a final rule identifying the provisions of the Guidance that will apply to discharges within the State.

On November 15, 1999, the National Wildlife Federation and the Lake Michigan Federation filed suit alleging that EPA had a non-discretionary duty to take action on the Great Lakes States' Guidance submissions. *National Wildlife Federation* v. *Browner,* Civ. No. 99–3025–HHK (D.D.C.). EPA negotiated a consent decree providing that EPA must sign a **Federal Register** Notice by July 31, 2000, taking the action required by 40 CFR 132.5 on the Guidance submissions of the States of Illinois, Indiana, Michigan, Minnesota, Ohio and Pennsylvania; and **Federal Register** Notices by September 29, and October 31, 2000, taking the action required by 40 CFR 132.5 on the Guidance submissions of the States of New York and Wisconsin, respectively. Today's **Federal Register** Notice fulfills EPA's obligations under that Consent Decree with respect to the State of New York. EPA has completed its final actions with respect to the States of Michigan, Ohio, Indiana, Illinois, Minnesota, and Pennsylvania, and will separately take final action with respect to Wisconsin. EPA notes that the States' Guidance submissions may contain provisions that revise its NPDES program or water quality standards in areas or with respect to regulated entities not covered by the Guidance. EPA is not taking action at this time to either approve or disapprove any such provisions.

EPA has conducted its review of the State of New York's submission in accordance with the requirements of section 118(c)(2) of the CWA and 40 CFR part 132. Section 118 requires that States adopt policies, standards and procedures that are "consistent with" the Guidance. EPA has interpreted the statutory term "consistent with" to mean "as protective as" the corresponding requirements of the Guidance. Thus, the Guidance gives States the flexibility to adopt requirements that are not the same as the Guidance, provided that the State's provisions afford at least as stringent a level of environmental protection as that provided by the corresponding provision of the Guidance. In making its evaluation, EPA has considered the language of each State's standards, policies and procedures, as well as any additional information provided by the State clarifying how it interprets or will implement its provisions.

Where EPA has promulgated a final rule that identifies a provision of the Guidance that shall apply in New York, EPA explains below its reasons for concluding that New York failed to adopt requirements that are consistent with the Guidance. Additional explanation of EPA's conclusions are contained in EPA's correspondence with New York State (identified in relevant sections below) where EPA initially identified inconsistencies in the State's submission. Notice of the availability of this letter was published in the **Federal Register** and EPA has considered all public comments received regarding any conclusions as to whether New York State had adopted provisions consistent with the Guidance.

In this proceeding, EPA has reviewed the State's submission to determine its consistency with 40 CFR part 132. EPA has not reopened part 132 in any respect, and today's action does not affect, alter or amend in any way the substantive provisions of part 132. To the extent any members of the public commented during this proceeding that any provision of part 132 is unjustified as a matter of law, science or policy, those comments are outside the scope of this proceeding.

With regard to those elements of the State submission being approved by EPA, EPA is approving those provisions as amendments to New York State's NPDES permitting program under section 402 of the CWA and as revisions to New York State's water quality standards under section 303 of the CWA. Today's notice identifies those approved elements. Additional explanations of EPA's review of and conclusions regarding New York State's submission, including the specific State provisions that EPA is approving, are contained in the administrative record for today's actions in documents prepared for New York State entitled, "New York State Provisions Being Approved as Being Consistent With the Guidance," "Analysis of Whether New York State Has Adopted Requirements Consistent With the Guidance" and "Analysis of Steps Taken By New York State in Response to EPA's 90-Day Letter."

*A. Today's Final Action*

On April 11, 2000, EPA issued a letter notifying the New York State Department of Environmental Conservation (NYSDEC) that, while the State of New York had generally adopted requirements consistent with the Guidance, EPA concluded that portions of the standards, policies and procedures adopted by the State were not consistent with corresponding provisions of the Guidance. On April 28, 2000, EPA published in the **Federal Register** a notice of and solicitation of public comment on its April 11, 2000 letter. 65 FR 24957. EPA has completed its review of all public comments on the April 11, 2000, letter and has determined that, with two exceptions described below, New York State has adopted requirements consistent with all aspects of the Guidance. Specifically, New York State has adopted requirements consistent with, and EPA is therefore approving those elements of the State's submissions which correspond to: The definitions in 40 CFR 132.2; the water quality criteria for the protection of aquatic life, human health and wildlife in tables 1–4 of part 132, with two exceptions as described below; the methodologies for development of aquatic life criteria and values, bioaccumulation factors, human health criteria and values and wildlife criteria in appendices B–D; the antidegradation policy in Appendix E; and the implementation procedures in appendix F. As explained more fully below, New York State has not adopted requirements consistent with (1) the chronic numeric aquatic life criteria in Table 2 of part 132 for Class D waters in the Great Lakes Basin, and (2) the wildlife criterion for mercury in Table 4 of part 132.

EPA's April 11, 2000, letter concluded that some of the provisions that EPA is now approving authorized the State to act consistent with the Guidance, but

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provided inadequate assurance that the State would exercise its discretion consistent with the Guidance. To provide this assurance, EPA and NYSDEC have worked together to develop an amendment to the National Pollutant Discharge Elimination System (NPDES) Memorandum of Agreement (MOA) between EPA Region II and NYSDEC. By this amendment NYSDEC has committed to always exercise its discretion under the MOA provisions in a manner consistent with the Guidance. Pursuant to 40 CFR 123.44(c)(3) and 123.63(a)(4), the State is required to comply with commitments made in its MOA or risk EPA objection to permits and even program withdrawal. This MOA has demonstrated to EPA that the State will implement the approved provisions consistent with the Guidance. The specific provisions that EPA is approving, and EPA's full rationale for approving these provisions, are set forth in the documents entitled "New York State Provisions Approved as Being Consistent With the Guidance," "Analysis of Whether New York State Has Adopted Requirements Consistent With the Guidance" and "Analysis of Steps Taken By New York State in Response to EPA's 90-Day Letter" included in the record for this action.

EPA has determined that the failure of New York State to apply the chronic aquatic life criteria in section 703.5 of Title 6 of the New York State Codes, Rules and Regulations (NYCRR) to waters in the Great Lakes Basin classified as "Class D" surface waters under 6NYCRR 701.9 is inconsistent with 40 CFR 132.3(b) and 132.4(d)(2). These provisions of the Guidance require States to adopt and apply both acute and chronic numeric aquatic life criteria to all waters in the Great Lakes System. In the past, NYSDEC's classification system for the 3,312 waterbody segments contained in the New York State portion of the Great Lakes System has been based on the use of a single aquatic life-based criterion for all classified waters in the State: (1) Classes A–C, waters designated for fish propagation, were assigned chronic criteria only; and, (2) Class D, waters designated for fish survival, were assigned acute criteria only.

NYSDEC has added acute criteria to all Class A–C waters in the State. However, the State has not included chronic criteria for Class D waters. Rather, New York is in the process of completing a statewide reclassification effort which will result in the upgrade of the vast majority of segments in the Great Lakes System to classifications which include both acute and chronic aquatic life criteria. For the remaining Class D waters, use attainability analyses (UAAs) will be completed, consistent with the site-specific modification procedure described in the Guidance, to justify a decision to impose no chronic criteria at a site where it is shown that there is no reason to apply such criteria—that no organisms "occur at the site" for time periods long enough to suffer chronic effects.

While the State is currently in the process of completing its reclassification effort, there are 940 waterbody segments in the New York State portion of the Great Lakes System which have not yet been addressed through the State's process and currently lack chronic water quality criteria to protect aquatic life. Consequently, EPA finds that New York State's failure to apply chronic aquatic life criteria to these waters is not consistent with 40 CFR 132.3(b) and 132.4(d)(2). EPA, therefore, disapproves 6NYCRR 703.5 and 701.9 insofar as these provisions fail to apply chronic water quality criteria for the protection of aquatic life to "Class D" waters and has determined that 40 CFR 132.4(d)(2) shall apply to waters which are currently classified as "Class D" in the Great Lakes System in the State of New York.

40 CFR 132.4(d) states: "The water quality criteria and values adopted or developed pursuant to [the Guidance criteria methodologies] shall apply as follows: * * * (2) The chronic water quality criteria and values for the protection of aquatic life or site-specific modifications thereof shall apply to all waters of the Great Lakes System." By making this section applicable to "Class D" waters in the Great Lakes System in New York, today's rule has the effect of making the chronic aquatic life criteria or values adopted or developed by New York contained in 6NYCRR 703.5, or site-specific modifications of the criteria, applicable to such waters. As explained in the record for today's action, EPA has concluded that the chronic aquatic life criteria adopted by New York, the State's methodologies for developing aquatic life criteria and values, and the State's procedure for site-specific modifications to such criteria, are all consistent with the Guidance. Under today's rule, those criteria, as well as any new criteria, values and site-specific criteria adopted or developed by the State pursuant to its approved methodologies and procedures, and approved by EPA, will also apply to Class D waters.

EPA understands that New York State is in the process of completing the necessary rulemaking to revise its regulations to upgrade the vast majority of segments in the Great Lakes System to classifications which include both acute and chronic aquatic life criteria, or to perform the necessary UAAs (consistent with the State's approved site-specific criteria methodology) to show that chronic aquatic life criteria for certain Class D waters are not needed. EPA will work closely with NYSDEC to insure that its revised regulations will be consistent with the Guidance. NYSDEC will then submit its UAAs and revised regulations to EPA for review pursuant to section 303(c) of the Clean Water Act as a revision to its water quality standards regulations. Because today's rule only applies to Class D waters in the Great Lakes System in the State, a water segment that is upgraded to a higher classification (to which the State's chronic criteria apply under the State's standards) will remove the water segment from the coverage of today's rule. Also, under today's rule, if the State submits, and EPA approves, an analysis that demonstrates, consistent with the State's procedure for site-specific modifications to criteria, that application of the chronic criteria is not needed, such a site-specific modification to the criteria will apply to that water segment.

EPA has also determined that New York State's mercury criterion for the protection of wildlife in the waters of the Great Lakes System at 6NYCRR 703.5 is inconsistent with 40 CFR 132.3(d), and Table 4 of 40 CFR part 132. States are required to adopt criteria for the protection of wildlife which are as protective as the numeric criteria included in Table 4 of 40 CFR part 132. NYSDEC has adopted a wildlife criterion for mercury, which is expressed as the dissolved form of the metal. This criterion has been calculated based upon the use of an alternative percent of methyl mercury using New York State-specific data. The State's wildlife criterion is 2.6 ng/L (dissolved); EPA's criterion is 1.3 ng/L (total recoverable). New York State used EPA's conversion factor of 0.85 in its derivation of the dissolved-based wildlife criterion. Based on the application of EPA's conversion factor of 0.85, New York State's dissolved-based wildlife criterion for mercury equates to 3.06 ng/L total recoverable for wildlife (compared to the Guidance wildlife criterion of 1.3 ng/L). Based upon the comparison of State's wildlife criterion to the wildlife criterion in the Guidance on a total recoverable basis, EPA has determined that the New York State wildlife criterion for mercury is not as protective as the wildlife criterion in the Guidance.



Based upon the above, EPA finds that New York State has failed to adopt a wildlife criterion for mercury that is consistent with Table 4 of part 132, as required by 40 CFR 132.3(c). EPA, therefore, disapproves the State's wildlife criterion for mercury in the waters of the Great Lakes System at 6NYCRR 703.5, and has determined that the wildlife criterion for mercury contained in Table 4 to 40 CFR part 132 shall apply to the waters of the Great Lakes System in the State of New York. As discussed above, NYSDEC has adopted human health and aquatic life criteria for mercury that are as protective as the mercury criteria in Tables 2 and 3 of part 132. EPA notes that under certain conditions New York State's human health criterion as implemented may be as protective of wildlife as the mercury wildlife criterion in the Guidance in Table 4, however, this is not always the case.

EPA understands that New York State is in the process of completing the necessary rulemaking to adopt the Guidance wildlife criterion of 1.3 ng/L (total recoverable) for mercury, which will be applicable to the waters of the Great Lakes System in the State of New York. EPA will work closely with NYSDEC to insure that this criterion will be consistent with the Guidance. NYSDEC will then submit its criterion to EPA for review pursuant to section 303(c) of the Clean Water Act, and, if EPA approves those revisions, EPA will revise its regulations so that the mercury wildlife criterion in Table 4 of 40 CFR part 132 will no longer apply to the waters within the Great Lakes System in the State of New York.

*A. Public Comments*

EPA received two comments in response to its **Federal Register** document of its receipt of the substantial NPDES program modification component of the State's Guidance submission. These commenters stated general support for approval of the State's submission. EPA received one comment on the **Federal Register** notice of the availability of EPA's April 11, 2000 letter to the State of New York. EPA has responded to that commenter in a document entitled "Response to Comments Received on EPA's April 11, 2000 Letter to the New York State Department of Environmental Conservation (NYSDEC) on New York State's Great Lakes Initiative Submission" that has been included as part of the record in this matter. The following is a summary of EPA's responses to the significant points of these comments.

*Comment:* The commenter asserted that EPA's regulatory determinations are being made without affected parties having any chance to review the Agency's reasoning or to raise issues as to the validity of that reasoning, in violation of the Administrative Procedure Act and EPA's public participation regulations at 40 CFR part 25.

*Response:* The final rule being promulgated today makes certain provisions of 40 CFR part 132 applicable to discharges in New York State within the Great Lakes System. Those provisions were adopted after publication of a proposed rule for public comment. See 58 FR 20802 (April 16, 1993). EPA is not modifying those provisions, but merely making them effective in accordance with 40 CFR 132.5(f)(2). Therefore, the public had a full opportunity to comment on the contents of today's rule. Moreover, public comment was also received regarding EPA's review of the New York State submission. EPA provided public notice of the availability of, and solicited comment on, the NPDES portions of the New York State Guidance submission in a **Federal Register** document (63 FR 19490) dated April 20, 1998. In a **Federal Register** document (65 FR 24957) dated April 28, 2000, EPA subsequently provided notice of the availability of a letter to the State of New York in which EPA provided (a) detailed explanations of the bases for its findings that the State had not adopted provisions consistent with certain provisions of the Great Lakes Guidance and (b) its preliminary conclusions that, with the exception of those findings, the State had adopted provisions consistent with the Guidance. EPA also solicited comment on all aspects of this letter, and has considered and responded to all comments received before taking today's final action. Consequently, EPA has complied with all applicable public participation requirements.

*Comment:* The commenter has indicated that both EPA and New York State must commit to holding public comment periods on the draft of the addendum to the NPDES Memorandum of Agreement (MOA) that the agencies intend to enter into for the purpose of implementing certain Great Lakes Initiative (GLI) requirements in New York.

*Response:* Under 40 CFR 123.62(b)(2) and 132.5(e), whenever EPA determines that a proposed revision to a State NPDES program is substantial, EPA must provide notice and allow public comment on the proposed revisions. On April 20, 1998, EPA published notice in the **Federal Register** (63 FR 19490) "Notice of Proposed Revisions to the Approved Program to Administer the National Pollutant Discharge Elimination System Permitting Program in New York Resulting In Part From Adoption of the Water Quality Guidance for the Great Lakes System." In that document EPA sought public comment concerning whether EPA should approve the GLI-related revisions to New York's NPDES program because, as stated in the document, EPA believes that it is appropriate to consider the NPDES component of New York's submission to be a substantial program modification. The only comments received in response to the notice were two recommendations in support of the EPA approving these revisions.

On April 28, 2000, the public was provided with a second opportunity to comment on EPA's review of the GLI-related provisions of New York's NPDES program when EPA published a **Federal Register** document (65 FR 24957) soliciting public comment on its April 11, 2000, letter (i.e., 90-day letter) to NYSDEC commenting on New York's GLI submission. The 90-day letter provided a detailed explanation of EPA's views regarding New York's revisions to its NPDES program. The commenter seems to imply that, not only is EPA required to solicit public comment on the substantial program modification submitted by New York, but that EPA must also solicit public comment because the revisions to the NPDES MOA itself constitutes a substantial program modification. EPA disagrees. The revisions to the MOA do not substantially modify New York's NPDES program for they do not enact any new authorities, or substantially modify the State's program submitted by the State to EPA in February 1998 and made available for public comment at that time. Rather, the revisions to the MOA simply clarify the manner in which New York intends to implement its existing authorities to address the concerns raised in EPA's 90-day letter, which itself was also subject to notice and comment. The revisions to the MOA ensure that New York will administer its existing NPDES program consistent with the requirements of the Guidance and simply set forth how New York's existing authorities for administering the NPDES program will be implemented in the context of the Guidance. Therefore, the MOA is not itself a substantial program modification requiring public comment.

*Comment:* The commenter states that EPA's analysis regarding many of these provisions focuses on whether New

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York's GLI rules are written in a substantially similar way as the Federal GLI guidance. However, the proper focus on whether New York's GLI rules are consistent with (as protective as) the Federal GLI rules should be on environmental results. As such, EPA's evaluation should be based on whether the State rules achieve or exceed the level of protection provided in the Federal guidance, and should not involve a strict accounting of whether the language of the Federal GLI rules was incorporated into the State rules.

*Response:* EPA agrees with the commenter's characterization of the nature of EPA's evaluation. The Guidance gives States the flexibility to adopt requirements that are not the same as the Guidance provided that the State's provisions afford at least as stringent a level of environmental protection as that provided by the corresponding provision of the Guidance. In making these evaluations, EPA is also mindful that a major goal of the Guidance and section 118(c) of the CWA was to achieve more consistency in the level of protection across the entire Great Lakes Basin. To achieve this goal requires not only a comparable level of protection as defined by the water quality standards, but also implementation procedures that are as protective as each corresponding procedure in the Guidance. EPA has carefully reviewed New York State's water quality standards, antidegradation policies and implementation procedures for consistency with the Guidance, taking into account this flexibility, and has not required the State to incorporate the Guidance as written, provided the State's procedures can be expected to achieve the same level of protection as the Guidance. With two exceptions, EPA has found New York State's submission to be consistent with 40 CFR part 132. EPA's review was not based upon a verbatim comparison of New York's submission with the Guidance. In most instances EPA has concluded that New York State's water quality standards, antidegradation policies and implementation procedures are as protective as the Guidance's requirements. In addition, where appropriate EPA and New York State have agreed to facilitate the approval process by entering into an Amendment to their Memorandum of Agreement regarding the State's approved NPDES program by which New York commits to exercise its discretion consistent with the Guidance.

*Comment:* The commenter states that in explaining its disapproval of New York's wildlife water quality criterion for mercury, EPA stated that 40 CFR 132.4(d) requires that States adopt aquatic life, human health, and wildlife criteria, and that each type of criteria must be as protective as the corresponding Federal criteria. The commenter states that he believes that EPA's interpretation of this provision of the Federal GLI rule is incorrect. 40 CFR 132.4(d) requires States to apply criteria adopted pursuant to the methodologies or site-specific modification procedures for aquatic life, human health, and wildlife, to all waters of the Great Lakes System. The commenter argues that New York State has complied with this requirement, as its wildlife criterion for mercury does apply to all State waters within the Great Lakes System. The commenter further states that this provision does not require States to adopt all types of criteria, of which each type must be at least as stringent as the criteria in Tables 1 through 4 of 40 CFR part 132.

The commenter also states that because New York's human health criterion for mercury is more protective than EPA's wildlife criterion for mercury, EPA should not require New York to adopt EPA's wildlife criterion for mercury.

*Response:* EPA disagrees with the commenter's position regarding the requirements in the Guidance, which address State adoption of aquatic life, human health, and wildlife criteria. While, as the commenter states, 40 CFR 132.4(d) requires States to apply criteria adopted pursuant to the methodologies or site-specific modification procedures for aquatic life, human health, and wildlife, to all waters of the Great Lakes System, 40 CFR 132.5(g)(1) requires that for pollutants in Tables 1, 2, 3 and 4 of this part, States must adopt numeric criteria which are as protective as "*each*" of the numeric criteria in Tables 1, 2, 3 and 4 of this part taking into account any site-specific modifications in accordance with Procedure 1 of Appendix F of the Guidance. New York State's wildlife criterion for mercury of 2.6 ng/L (dissolved) is less stringent than the criterion of 1.3 ng/L (total recoverable) found in Table 4 of the Guidance. Using EPA's conversion factor of 0.85 to convert New York State's dissolved-based wildlife criterion for mercury to a total recoverable criterion results in total recoverable-based wildlife criterion for mercury of 3.06 ng/L compared to the Guidance wildlife criterion of 1.3 ng/L. Based upon the above comparison of the State's wildlife criterion to the wildlife criterion in the Guidance on a total recoverable basis, EPA has determined that the New York State wildlife criterion for mercury is not as protective as the wildlife criterion in Table 4 of the Guidance. Therefore, EPA found that New York State's wildlife criterion for mercury was not consistent with the requirements of 40 CFR 132.5(g)(1). As such, EPA disapproves of New York State's wildlife criterion for mercury at 6NYCRR 703.5, and has determined that the wildlife criterion for mercury contained in Table 4 to 40 CFR part 132 shall apply for discharges into the Great Lakes System in the State of New York.

EPA disagrees that the State's adoption of a human health criterion for mercury obviates the requirement for the State to adopt a wildlife criterion as protective as the Guidance. While, under some circumstances, the State's human health criterion for mercury may result in controls on permitted discharges that are as stringent as would be developed using EPA's wildlife criterion, EPA has concluded that this would not necessarily be true in all cases, depending on site-specific conditions, in particular the amount of total suspended solids in the receiving water. Moreover, to approve the State's mercury human health criteria as consistent with EPA's wildlife criterion, EPA would have to assume that the State would always implement its human health criteria in such a way as to ensure protection of wildlife as well. Because exposure scenarios for human health and wildlife differ, however, States have flexibility to adopt differing approaches in implementing these two types of criteria. See, *e.g.*, 40 CFR part 132, appendix F, procedure 3.E.1 (describing different stream design assumptions for different kinds of criteria). Moreover, while New York's human health criteria currently apply to all waters, the State has flexibility under the Guidance to apply less stringent criteria to specific waters where justified by local rates of fish-consumption and bioaccumulation factors (see 40 CFR part 132, appendix F, procedure 1.A.4.b.). EPA believes that applying the Federal mercury wildlife criterion to waters in the Great Lakes System will ensure the protection of wildlife without inappropriately limiting the State's discretion as to how it implements its human health criteria or burdening EPA with overseeing the State's application of its human health criteria to ensure that wildlife will be protected as well.

*Comment:* In the case of several State implementation procedures for which EPA had identified concerns in the April 11, 2000 letter, the commenter stated that EPA should approve these State implementation procedures as being as protective as the Federal procedures.



*Response:* The State of New York has entered into an amendment to the MOA with EPA regarding the State's National Pollutant Discharge Elimination System program. This MOA addresses each of EPA's concerns regarding the State's implementation procedures. Therefore, EPA is approving the State's implementation procedures.

EPA has responded to the specific comments on each of the individual State implementation procedures in a document entitled "Response to Comments Received on EPA's April 11, 2000 Letter to the New York State Department of Environmental Conservation (NYSDEC) on New York State's Great Lakes Initiative Submission" that has been included as part of the record in this matter.

*B. Consequences of Today's Action*

As a result of today's action, the Guidance provisions specified in today's rule apply in the Great Lakes System in New York State until such time as the State adopts requirements consistent with the specific Guidance provisions at issue, and EPA approves those State requirements and revises the rule so that the provisions no longer apply in New York State.

## II. "Good Cause" Under the Administrative Procedure Act

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553 (b)(3)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA finds it unnecessary and contrary to the public interest. Today's rule does not promulgate any new regulatory provisions. Rather, in accordance with the procedures in 40 CFR 132.5(f), today's rule identifies the provisions of part 132 promulgated previously by EPA that shall apply to discharges in New York State within the Great Lakes System. Those provisions have already been subject to a notice of proposed rulemaking, and publication of a new proposed rule is therefore unnecessary. See 58 FR 20802 (April 16, 1993). In addition, while EPA's approval/disapproval decisions described in this notice do not constitute rulemaking, EPA has nonetheless received substantial public comment on these decisions. See 63 FR 19490 (April 20, 1998) (notice of receipt of State Guidance submission and request for comment); 65 FR 24957 (April 28, 2000) (notice of letter identifying inconsistencies and request for comment). EPA also believes the public interest is best served by fulfilling the CWA's requirements without further delay and publication of a notice of proposed rulemaking therefore would be contrary to the public interest. Thus, notice and public procedure are unnecessary. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

## III. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. Because the agency has made a "good cause" finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, as described in section II, above, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). In addition, because this action does not promulgate any new requirements, but only makes certain existing provisions of 40 CFR part 132 effective in New York State, it does not impose any new costs. The costs of part 132 were considered by EPA when it promulgated that regulation. Therefore, today's rule does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA, or significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the State, on the relationship between the national government and the State, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This action does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by Section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a major rule as defined by 5 U.S.C. 804(2). This rule will be effective November 6, 2000.

**List of Subjects in 40 CFR Part 132**

Environmental protection, Administrative practice and procedure, Great Lakes, Indian-lands, Intergovernmental relations, Reporting and recordkeeping requirements, Water pollution control.

Dated: September 29, 2000.

**Carol M. Browner,**

*Administrator.*

For the reasons set forth in the preamble, EPA amends 40 CFR part 132 as follows:

## PART 132—WATER QUALITY GUIDANCE FOR THE GREAT LAKES SYSTEM

1. The authority citation for part 132 continues to read as follows:

**Authority:** 33 U.S.C. 1251 *et seq.*

2. Section 132.6 is amended by adding paragraphs (d) and (e) to read as follows:

**§ 132.6 Application of part 132 requirements in Great Lakes States and Tribes.**

* * * * *

(d) Effective November 6, 2000, § 132.4(d)(2) shall apply to waters designated as "Class D" under section 701.9 of Title 6 of the New York State Codes, Rules and Regulations within the

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Great Lakes System in the State of New York. For purposes of this paragraph, chronic water quality criteria and values for the protection of aquatic life adopted or developed pursuant to § 132.4(a) through (c) are the criteria and values adopted or developed by New York State Department of Environmental Conservation (see section 703.5 of Title 6 of the New York State Codes, Rules and Regulations) and approved by EPA under section 303(c) of the Clean Water Act.

(e) Effective November 6, 2000, the criteria for mercury contained in Table 4 of this Part shall apply to waters within the Great Lakes System in the State of New York.

[FR Doc. 00–25747 Filed 10–5–00; 8:45 am]
BILLING CODE 6560–50–U

## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Part 403**

**[FRL–6882–9]**

## Community XL (XLC) Site-Specific Rulemaking for Steele County, MN

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) will implement a project under the Project XLC program for certain facilities in Steele County, Minnesota. The terms of the project are defined in a Final Project Agreement (FPA) which was made available for public review and comment through a **Federal Register** notice on December 29, 1999 (64 FR 73047) and signed on May 31, 2000. In addition, EPA is promulgating a site-specific rule, applicable only to the Steele County Sponsors who are Participating Industrial Users, to facilitate implementation of the project. This site-specific rule provides regulatory changes under the Clean Water Act (CWA or the Act) to implement the Community-XL project, which will result in superior environmental performance. The site-specific rule changes some of the requirements which apply to the Sponsors who are Participating Industrial Users to promote a reduction in the discharge of four priority metals, a reduction in water usage, and the development of an Environmental Management System. An incentive-based monitoring approach will be implemented, such that as discharge reduction goals are met, monitoring frequency may be reduced, mass-based limits will replace certain concentration limits, and an alternative Significant Noncompliance (SNC) publication approach will be tested. Monitoring reductions for pollutants determined not to be present in an industry's wastestream will also be authorized.

**DATES:** This final rule is effective October 6, 2000. For judicial review purposes, this rule is promulgated as of 1 p.m. (Eastern Daylight Time) on October 6, 2000.

**ADDRESSES:** A docket containing the rule, Final Project Agreement, and supporting materials is available for public inspection and copying at U.S. EPA, Region V, Water Division, Room Number 15046, 77 West Jackson Boulevard, Chicago, IL 60604–3507. The Office is open from 9 a.m. to 4 p.m. Monday through Friday, excluding federal holidays. The public is encouraged to phone in advance to review docket materials. Appointments can be scheduled by phoning Abeer Hashem at (312) 886–1331. Refer to the Docket for the Steele County Site-Specific Rulemaking. The public may copy a maximum of 100 pages at no charge. Additional copies cost 15 cents per page. Project materials are also available on the World Wide Web at: http://www.epa.gov/projectxl/.

Supporting materials are also available for inspection and copying at U.S. EPA, Headquarters, 401 M Street, SW., Room 445, West Tower, Washington, DC 20460 during normal business hours. Persons wishing to view the materials at the Washington, DC location are encouraged to contact Ms. Kristina Heinemann in advance by telephoning (202) 260–5355. In addition supporting materials are available at the Owatonna, MN Public Library, 105 Elm Avenue, North, Owatonna, MN 55060. The phone number for the library is 507–444–2460, TDD 507–444–2480.

**FOR FURTHER INFORMATION CONTACT:** Ms. Abeer Hashem or Mr. Matthew Gluckman, U.S. Environmental Protection Agency, Region V, Water Division, WC–15J or WN–16J, 77 West Jackson Boulevard, Chicago, IL 60604–3507. Ms. Hashem can be reached at (312) 886–1331 and Mr. Gluckman can be reached at (312) 886–6089. Further information on today's action may also be obtained on the world wide web at: http://www.epa.gov/projectxl/.

**SUPPLEMENTARY INFORMATION:** On May 8, 2000, the Environmental Protection Agency proposed a site-specific rule (65 FR 26550) that set forth the mechanism through which the Sponsors will attempt to reach discharge reduction goals for chromium, copper, nickel, and zinc; reach water use reduction goals; and commit to arrange and participate in training for the development of an Environmental Management System (EMS), as outlined in the Steele County Project XLC FPA (the document that embodies the parties' intent to implement this project). Today's final rule promulgates regulations that are identical to the proposed rule and that include the final group of Participating Industrial Users among those named in the May 8, 2000 proposal. Today's rule will facilitate implementation of the FPA that has been developed by the Steele County Project Sponsors, EPA, the Steele County Community Advisory Committee (CAC), the Minnesota Pollution Control Agency (MPCA), the Owatonna Waste Water Treatment Facility (OWWTF), the Blooming Prairie Waste Water Treatment Facility (BPWWTF), and other stakeholders. The FPA is available in the docket for today's action and on the world wide web at http://www.epa.gov/projectxl/. The FPA addresses the nine Project XLC criteria, and the expectation of EPA that this XLC project will meet those criteria. Those criteria are: (1) Environmental results superior to what would be achieved through compliance with current and reasonably anticipated future regulations; (2) economic opportunity; (3) stakeholder involvement, support and capacity for community participation; (4) test of innovative, multi-media, pollution prevention strategies for achieving environmental results; (5) approaches that could be evaluated for future broader application (transferability); (6) technical and administrative feasibility; (7) mechanisms for monitoring, reporting, and evaluation; (8) consistency with Executive Order 12898 on Environmental Justice (avoidance of shifting of risk burden); and (9) community planning. The FPA specifically addresses the manner in which the project is expected to produce superior environmental benefits.

Today's rule will implement the provisions of this Project XLC initiative that require regulatory changes. However, Minnesota has had an approved State National Pollutant Discharge Elimination System (NPDES) program since June 30, 1974, and an approved State pretreatment program since July 16, 1979. Therefore, the requirements outlined in today's rule will not take effect until Minnesota revises the Owatonna pretreatment program as incorporated in the Owatonna NPDES permit. EPA will not be the primary regulatory agency responsible for implementing the requirements of this rule. In addition, for the sake of simplicity, the remainder of this preamble refers to the effects of this rule, although it will be the corresponding State and local law and corresponding NPDES and Industrial User permits by which the remaining implementation of this XL project will be achieved.



### Outline of Today's Document

The information presented in this preamble is organized as follows:

I. Authority
II. Background
A. Overview of Project XL and XLC
B. Overview of the Steele County XLC Project
1. Description of the Steele County Community XL Project
2. What Are the Environmental Benefits of the Project?
3. What are the Economic Benefits and Paperwork Reduction Deriving from the Project?
4. Stakeholder Involvement
5. What is the Project Duration and Completion Date?
6. How Will EPA Ensure That Only Appropriate Sponsors Continue To Receive Flexibility Under This Rule?
7. How May the Project be Terminated?
III. Rule Description
A. Clean Water Act Requirements, Pretreatment Streamlining Proposal and Summary of Regulatory Requirements for the Steele County XL Project
B. Changes to the Proposed Rule
IV. Response to Significant Public Comments
V. What Is the Effective Date of this Rule?
VI. Additional Information
A. How Does This Rule Comply with Executive Order 12866?
B. Is a Regulatory Flexibility Analysis Required?
C. Is EPA Required to Submit a Rule Report Under the Congressional Review Act?
D. Is an Information Collection Request Required for This Rule Under the Paperwork Reduction Act?
E. Does This Rule Trigger the Requirements of the Unfunded Mandates Reform Act?
F. How Does This Rule Comply With Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks?
G. How Does This Rule Comply with Executive Order 13132 on Federalism?
H. How Does This Rule Comply with Executive Order 13084: Consultation and Coordination With Indian Tribal Governments?
I. Does This Rule Comply with the National Technology Transfer and Advancement Act of 1995 ("NTTAA")?

## I. Authority

EPA is promulgating this regulation under the authority of sections 307, 308, and 501 of the CWA, 33 U.S.C. 1317, 1318, 1361.

## II. Background

### A. Overview of Project XL and XLC

Each Project XL pilot— "eXcellence and Leadership" is described in a Final Project Agreement (FPA). For this Project XL for Communities (XLC), the FPA sets forth the intentions of EPA, the Minnesota Pollution Control Agency (MPCA) and the Steele County Community with regard to a project developed under Project XLC, an EPA initiative to allow regulated entities to achieve better environmental results using common sense, cost effective strategies. This regulation will enable implementation of the project. Project XL was announced on March 16, 1995, as a central part of the National Performance Review and the EPA's effort to reinvent environmental protection. See 60 FR 27282 (May 23, 1995). Project XL provides a limited number of private and public regulated entities an opportunity to develop their own pilot projects to provide regulatory flexibility that will result in environmental protection that is superior to that which would be achieved through compliance with current and future regulations. These efforts are crucial to EPA's ability to test new strategies that reduce the regulatory burden and promote economic growth while achieving better environmental and public health protection. EPA intends to evaluate the results of this and other XL projects to determine which specific elements of the project(s), if any, should be more broadly applied to other regulated entities for the benefit of both the economy and the environment.

Under Project XL, participants in four categories—facilities, industry sectors, governmental agencies and communities—are offered the flexibility to develop common sense, cost-effective strategies that will replace or modify specific regulatory requirements on the condition that they produce and demonstrate superior environmental performance. Project XLC, excellence and leadership for communities, was developed to focus on communities and local governments or regional organizations that are interested in creating an XL project. See 60 FR 55569 (November 1, 1995). Project XLC encourages potential sponsors to come forward with new approaches to demonstrate community-designed and directed strategies for achieving greater environmental quality consistent with community economic goals. To participate in Project XLC, applicants must develop alternative pollution reduction strategies pursuant to nine criteria: superior environmental results; stakeholder involvement, support, and capacity for community participation; economic opportunity; test of an innovative multi-media strategy; transferability; feasibility; community planning; identification of monitoring, reporting and evaluation methods; and equitable distribution of environmental risks. Projects must have the full support of affected federal, state and tribal agencies to be selected.

For more information about the XL and XLC criteria, readers should refer to the three descriptive documents published in the **Federal Register** (60 FR 27282, May 23, 1995; 60 FR 55569, November 1, 1995; and 62 FR 19872, April 23, 1997). For further discussion as to how the Steele County XL Communities project addresses the XLC criteria, readers should refer to the Final Project Agreement and fact sheet that are available from the docket for this action (see **ADDRESSES** section of today's preamble).

Project XL is intended to allow the EPA to experiment with untried, potentially promising regulatory approaches, both to assess whether they provide benefits at the specific facility affected, and whether they should be considered for wider application. Such pilot projects allow the EPA to proceed more quickly than would be possible when undertaking changes on a nationwide basis. EPA may modify rules, on a site- or State-specific basis, that represent one of several possible policy approaches within a more general statutory directive, so long as the alternative being used is permissible under the statute. Adoption of such alternative approaches or interpretations in the context of a given XL project does not, however, signal EPA's willingness to adopt that interpretation as a general matter, or even in the context of other XL projects. It would be inconsistent with the forward-looking nature of these pilot projects to adopt such innovative approaches prematurely on a widespread basis without first determining whether or not they are viable in practice and successful for the particular projects that embody them. Depending on the results in these projects, EPA may or may not be willing to consider adopting the alternative approach or interpretation again, either generally or for other specific facilities.

EPA believes that adopting alternative policy approaches and/or interpretations, on a limited, site- or State-specific basis and in connection with a carefully selected pilot project, is consistent with the expectations of Congress about EPA's role in implementing the environmental statutes (so long as EPA acts within the

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discretion allowed by the statute). Congress' recognition that there is a need for experimentation and research, as well as ongoing reevaluation of environmental programs, is reflected in a variety of statutory provisions, *e.g.*, section 104 of the CWA (33 U.S.C. 1254).

*B. Overview of the Steele County XLC Project*

1. Description of the Steele County Community XL Project Community-Based Environmental Regulation

The Steele County XLC pilot project will test the effectiveness of a community-based approach to industrial regulated wastewater effluent reductions and water use reduction controls designed to: (1) Result in pollution prevention; (2) meet the objectives of the CWA regulatory program; and (3) be at least as protective of human health and the environment as the current system. This project will pilot a community-based approach to environmental regulation with the goal of achieving a reduction in the discharge of certain metals to the OWWTF, and Biological Oxygen Demand (BOD), Total Suspended Solids (TSS) and Total Kjeldahl Nitrogen (TKN) to the BPWWTF. Other aspects of the pilot program will include water usage reduction, the development and implementation of a storm water and sewer water separation and education plan, and the development of a training and assessment program of an Environmental Management System. If this first phase of the project is considered by the parties to be successful, a Phase II, consisting in general outline of a multi-media approach to environmental permitting based on overall community performance in the areas of air emissions, solid waste, hazardous waste, chemical storage, and community sustainability may be considered. Today's rule does not cover or commit to a second phase of this project.

For the purposes of today's rule the group of Owatonna Sponsors who are Participating Industrial Users, includes the following Industrial Users (IUs) in the City of Owatonna: Crown Cork and Seal Company, Inc.; Cybex International Inc.; Josten's Inc.-Southtown Facility; SPx Corporation, Service Solutions Division; Truth Hardware Corporation; and Uber Tanning Company. Two facilities included in the Owatonna Sponsor group, Viracon-Marcon, Inc. and the Wenger Corporation and one Sponsor located in Blooming Prairie, Minnesota, ATOFINA Chemicals, Inc. (formerly Elf Atochem), are not receiving regulatory flexibility under today's rule and are therefore not included as Participating Industrial Users.

To achieve the objectives of Phase 1 of the Project, part of this project will pilot an incentive-based approach to reduced monitoring requirements. As the Owatonna Sponsors who are Participating Industrial Users, as a group meet certain discharge reduction goals, the City may reduce the required frequency of monitoring for any of the Participating Industrial Users. Other aspects of this pilot program include: (1) Pollutant monitoring may be eliminated where a pollutant is not discharged; (2) in order to encourage water use reduction compliance with a concentration-based Pretreatment Standard may be demonstrated by compliance with an equivalent mass-based limit (as discussed in section III. A.1. of this preamble); and (3) an alternative publication process for Significant Noncompliance (SNC) may be put in place. Finally, Sponsors may seek "No Exposure Certification for Exclusion from NPDES Storm Water Permitting", which is available under existing regulations (40 CFR 122.26(g), pursuant to a change in the regulations found at 64 FR 68722 (December 8, 1999)), and does not require flexibility under today's rule. Each of the elements of the pilot program that require regulatory flexibility are explained in the following sections of this preamble.

To achieve the objectives of this project the Participating Industrial Users have committed to utilize their best efforts to reach certain discharge reduction goals. Only if these goals are met will regulatory flexibility regarding lesser monitoring requirements than currently required under 40 CFR 403.12(e)(1) be granted. Specifically, the Participating Industrial Users located in Owatonna (or the "City") commit to a 20% reduction goal in the amount of nickel, chromium, copper, and zinc (by mass) they discharge to the OWWTF. These reduction goals are for each individual pollutant. If the first 20% reduction goal is met, a further 20% reduction goal may be set for the remaining project term. If the initial 20% reduction goal is met for all pollutants, the City may, at its discretion, reduce the self-monitoring frequency of Owatonna Sponsors who are Participating Industrial Users to once per year. If a second metal reduction goal is set, it need not be achieved in order for the minimum monitoring frequency to remain at once per year and no additional regulatory relief is available upon meeting this second goal; accordingly, today's rule does not address this second goal. In exercising the discretion provided in today's rule, the OWWTF will be required to consider the Participating Industrial User's previous three years of compliance data, and may not reduce monitoring for pollutants where there is a reasonable potential of violating Pretreatment Standards.

This project focuses on the four metals slated for 20% release reductions because they are the metals determined to be discharged at the highest levels to the Owatonna wastewater treatment system relative to applicable water quality and biosolids criteria. In addition, the participants are regulated for these pollutants under categorical Pretreatment Standards and influence the loading of these pollutants to the Owatonna wastewater treatment system. Specific reductions of other categorically-regulated metals are not being pursued under this project because they are released in small quantities relative to applicable environmental criteria. Because certain of these other metals may be present at some of the participant facilities, these metals may not qualify for the elimination of monitoring due to no releases. In such cases, the Publically-Owned Treatment Works (POTW) will need to require continued monitoring of these metals. Through this rule the POTW will be given the discretion to reduce monitoring frequencies for the other categorically-regulated metals to the same extent it is being authorized to consider reduced monitoring for the four metals subject to the 20% reduction goals.

This project will also authorize the City to allow a Sponsor Participating Industrial User subject to categorical Pretreatment Standards to not sample for a pollutant, if it is not expected to be present in its wastestream at levels greater than background levels in its water supply. For such pollutants, the OWWTF will only be required to conduct sampling and analysis once during the term of the Participating Industrial User's permit. The Participating Industrial User will still be subject to the categorical Pretreatment Standards for pollutants determined not to be present, and will need to resume monitoring if sampling indicates that a pollutant is present at above-background levels, or at any time at the discretion of the OWWTF.

If the POTW determines that one or more pollutants are not expected to be present at a Participating Industrial User, it may modify the IU's permit to reduce or eliminate the monitoring requirements for the pollutant(s). The Participating Industrial User permit will also require the User to submit, as part of its regular semi-annual monitoring reports, certification that there has been no increase of the pollutant in its wastewater due to its activities. The POTW will sample the Participating Industrial User's effluent for all pollutants in the applicable categorical Pretreatment Standard at least once during the term of the IU's permit.



One of the goals of this pilot project will be to facilitate water conservation measures at the Sponsors' facilities. The total flow to the OWWTF from the six Owatonna Sponsors who are Participating Industrial Users is 415,000 gallons per day. The Owatonna Sponsors commit to a goal in the FPA of reducing this flow by 10%. To facilitate meeting this goal this rule allows the OWWTF to set equivalent mass limits as an alternative to concentration limits to meet concentration-based categorical Pretreatment Standards. Under the proposed rule entitled "Streamlining the General Pretreatment Regulations for Existing and New Sources of Pollution" (Pretreatment Streamlining Proposal), which was published on July 22, 1999 (64 FR 39564), Control Authorities would be allowed to establish alternative mass limits if an Industrial User has installed Best Available Technology Economically Achievable (BAT), or equivalent to BAT treatment, and the Industrial User is employing water conservation methods and technologies that substantially reduce water use (Control Authority is defined at 40 CFR 403.12 (a) and is a broad term that can mean a POTW with an approved pretreatment program or the Approval Authority (defined at 40 CFR 403.3 (c)) where the POTW does not have an approved pretreatment program. The City of Owatonna has an approved pretreatment program.). While all of the conditions for receiving mass limits laid out in EPA's Streamlining Proposal are not being required for this site-specific rule (see discussion regarding Today's Rule in Equivalent Mass Limits for Concentration Limits section of III.A), EPA is interested in determining whether providing mass limits prior to full adoption of water conservation practices will encourage more widespread adoption of such practices. To ensure the continued appropriateness of the specific mass limits, Sponsor industries who are Participating Industrial Users will also be required to notify the City in the event production rates are expected to vary by more than 20 percent from a baseline production rate determined by Owatonna when it establishes a Participating Industrial User's initial mass limits. The Participating Industrial Users will be required to continue operation of at least the same level of treatment as at the outset of the project. Upon notification of a revised production rate, the City will reassess the appropriateness of the mass limit. Sponsor ATOFINA Chemicals discharges 16,900 gallons per day to the BPWWTF and commits in the FPA to a reduction goal of 10% of this amount. Because ATOFINA Chemicals is currently required to comply with mass-based limits, no change to its limits are required to facilitate water conservation measures.

EPA is today promulgating a site-specific alternative procedure for publishing Significant Noncompliance for Participating Industrial Users. SNC is defined in 40 CFR 403.8(f)(2)(vii) as including violations by an Industrial User which meet one or more of eight specific criteria. Currently, POTWs are required to publish in the largest daily newspaper in the municipality in which the POTW is located a list of Industrial Users who have been in SNC at any time during the previous twelve months. The SNC publication requirement serves at least two important functions: (1) A deterrent effect on Industrial Users to avoid noncompliance generally, and SNC specifically, and (2) notice to the public of Significant Noncompliance. One result of this approach is that, if the POTW publishes the notice for a particular SNC violation after the end of the twelve month period, the publication may not occur close in time to the violation, resulting in a delay between the violation and the notice to the public.

The intent of the alternative procedure promulgated today is to require website notice of all SNC violations, and reserve additional newspaper publication for cases where this format is needed for its potentially greater effect. The Sponsors also intend to promote prompt and appropriate assistance for identifying and correcting violations through a unique community-based approach. Pursuant to the Steele County FPA, an Owatonna Peer Review Committee will be established. This Committee will consist of at least two Owatonna Sponsors not connected to the noncompliance event being reviewed and any stakeholders that wish to participate. The Peer Review Committee will investigate all instances of noncompliance by an Owatonna Sponsor who is a Participating Industrial User and provide recommendations and assistance to expedite a return to compliance. The Peer Review Committee will make recommendations to the City regarding whether or not publication in a newspaper should occur, in addition to the website publication described below. All recommendations by the Peer Review Committee will be non-binding on the City, and the City must continue to implement its State-approved Enforcement Response Plan. Under the Steele County FPA, the Sponsors will take steps to conduct public outreach on the information available regarding Significant and other noncompliance by the Sponsors, including a description of the Peer Review Committee and its functions, a Committee contact person and telephone number, and notice of Peer Review Committee meetings. Such outreach will include, but not be limited to, periodic (at least annual) mailings to the identified Steele County XL community stakeholders, and notice in the public library.

Any violation which is not corrected within thirty (30) calendar days or which results in pass through (as defined at 40 CFR 403.3(n)) or interference (as defined at 40 CFR 403.3(i)) will continue to be published in a newspaper as currently required in Part 403. All SNC violations, whether published in a newspaper or not, will be published as soon as is practicable on the MPCA web site. The website must contain an explanation of how SNC is determined. A contact name and phone number for information regarding all other violations must also be listed on the MPCA website.

2. What Are the Environmental Benefits of the Project?

This XLC project is expected to achieve superior environmental performance beyond that which is achieved under the current CWA regulatory system by encouraging the Sponsors to work together in a coordinated manner to efficiently reduce their discharges to the OWWTF. As has been described, the Owatonna Sponsors who are Participating Industrial Users have committed to 20% discharge reduction goals for nickel, chromium, copper, and zinc. Although not receiving regulatory flexibility under today's proposal, ATOFINA Chemicals has committed to analogous discharge reduction goals for BOD, TSS, and TKN to the BPWWTF. The Participating Industrial Users and the Blooming Prairie Sponsor have additionally committed to a goal of at least a 10% reduction in water usage. Besides the direct environmental benefits of these reductions, the Sponsors have agreed to conduct an Environmental Management System (EMS) assessment within eighteen

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months of the effective date of the project. In the first year of the project, the Sponsors commit to arrange and participate in training for the development of the EMS. The Sponsors will utilize the information from the EMS assessment to reach the discharge reduction goals as well as to examine their facilities for other possible environmental improvements. The Sponsors have agreed to report to EPA and the MPCA the results of the assessment and the suggestions which have been adopted by each facility. Additionally, the City has identified storm water infiltration into the collection system during wet weather events as a major problem. The Owatonna Sponsors have agreed to work with the City to help alleviate this problem through the development of educational materials which will be distributed to Sponsor employees as well as to the community at large. The Owatonna Sponsors have also committed in the FPA to develop a plan to minimize storm water infiltration into the sewer system at each participating facility.

One unique aspect of this pilot project is the desire of the Sponsor facilities to work together to reach common goals. It is hoped that this cooperation will go beyond the specific goals of this project and result in presently unforseen environmental benefits.

3. What Are the Economic Benefits and Paperwork Reduction Deriving From the Project?

This XLC Project will encourage the Sponsors to reduce water consumption at their facilities. This may result in reduced water costs for the facilities, without diminishing the level of environmental protection. Assuming the Sponsors discharge lower levels of pollutants to the OWWTF and the BPWWTF, these POTWs may benefit from lower treatment costs. To the extent monitoring and reporting frequencies are reduced under this project, reduced expenditures may result. The EMS assessments may identify further environmental and economic benefits.

4. Stakeholder Involvement

Stakeholder involvement and participation is vital to the success of the Steele County XLC project. The participants have worked through a Community Advisory Committee, established by the Steele County Project Sponsors, to ensure that the general public has had an opportunity to be involved throughout the development of this project. The participants will continue to work to foster full and open communication between the general public and the project Sponsors.

In addition, the Peer Review Committee will continue to provide opportunities for input from the community on important compliance issues. For example, if a Sponsor is in noncompliance, the Peer Review Committee will provide input to bring the Sponsor back into compliance. Sponsors will continue outreach work with all stakeholders using the strategies and tactics contained in their Proposed Stakeholder Involvement Plan (June 1999). MPCA, the Steele County Sponsors, Owatonna, Blooming Prairie, and EPA have been involved in the development of this project, and support it. From the beginning of the Steele County XLC process, there has been a high priority on providing opportunity for diverse stakeholder input and review. Public meetings were held in the city of Owatonna on June 9, July 27, and September 23, 1999.

5. What Is the Project Duration and Completion Date?

As with all XL projects testing alternative environmental protection strategies, the term of the Steele County Community XL project is one of limited duration. The duration of the regulatory relief provided by this rule is anticipated to be five (5) years from October 6, 2000 or until October 6, 2005. However, the project may be terminated or suspended at any time for failure to comply with any of the requirements of the rule. If the parties renew the Steele County Community XL Final Project Agreement beyond its initial five year period, then it may be necessary to extend this site-specific rule for an additional period of time.

6. How Will EPA Ensure That Only Appropriate Sponsors Continue To Receive Flexibility Under This Rule?

If EPA determines that it is appropriate to terminate Project participation of one or more Sponsors who are Participating Industrial Users, so that they will no longer be eligible to receive the regulatory flexibility provided in today's rule, EPA will coordinate with the POTW and State to make the necessary changes to the Participating Industrial User's permit. EPA retains its enforcement authority under the CWA to enforce Pretreatment Standards whether or not the POTW or State make such changes to the Participating Industrial User's permit.

7. How May the Project Be Terminated?

When the State modifies Owatonna's NPDES permit to incorporate the flexibility in today's rule, it has agreed to include a reopener provision enabling the State to eliminate this flexibility. The State has agreed to use this reopener provision if the Project is terminated. In the event of early Project termination, EPA will also eliminate the provisions of proposed section 403.19 in advance of its October 6, 2005 expiration date.

## III. Rule Description

*A. Clean Water Act Requirements, Pretreatment Streamlining Proposal and Summary of Regulatory Requirements for the Steele County XL Project*

Equivalent Mass Limits for Concentration Limits (40 CFR 403.19(b))

*1. Existing Requirements (40 CFR 403.6(c)).* National categorical Pretreatment Standards establish limits on pollutants discharged to POTWs by facilities in specific industrial categories. The Pretreatment Standards establish pollutant limitations in different ways for different categories. EPA has established categorical Pretreatment Standards that are: (1) Concentration-based standards that are implemented directly as concentration limits; (2) mass limits based on production rates; (3) both concentration-based and production-based limits; and (4) mass limits based on a concentration standard multiplied by a facility's process wastewater flow. The current regulations do not allow a mass limit to substitute for a concentration limit when the applicable standard is expressed in terms of concentration. While 40 CFR 403.6(d) allows the Control Authority to develop equivalent mass limits for concentration-based standards in order to prevent dilution, the equivalent limit applies in addition to the concentration limit. Today's rule allows a Participating Industrial User who qualifies for flexibility under the rule to demonstrate compliance with the categorical Pretreatment Standard by demonstrating compliance with an equivalent mass-based limit alone.

*2. The Pretreatment Streamlining Proposal.* In its proposed rule entitled Streamlining the General Pretreatment Regulations for Existing and New Sources of Pollution (64 FR 39564, July 22, 1999) (Pretreatment Streamlining Proposal), EPA proposed to allow Control Authorities to set equivalent mass limits as an alternative to concentration limits to meet concentration-based categorical Pretreatment Standards in cases where an Industrial User has installed model treatment technology or a treatment technology that yields optimum removal efficiencies, and the Industrial User is employing water conservation methods and technologies that substantially reduce water use. The Agency, however, solicited comments on whether mass limits would be appropriate in other situations. EPA proposed that 40 CFR 403.6(c) be revised to clarify that equivalent mass limits may be authorized by the Control Authority in lieu of concentration-based limits for Industrial Users. The Control Authority would be required to document how the mass limits were derived and make this information publicly available.



The July 22, 1999, proposed rule also specifically referenced the Steele County XL Community Project and indicated that, if this project were ready to proceed before EPA finalized the complete Pretreatment Streamlining proposal, EPA may promulgate, based on that proposal and comments received, a separate site-specific rule to allow the industries involved in the Steele County XLC project to use, at the discretion of the Control Authority, the change proposed for 40 CFR 403.6(c).

*3. Today's Rule.* To facilitate water use reduction by industries involved in the Steele County XLC Project, EPA is allowing the City of Owatonna, which is the Control Authority for the Owatonna Sponsor industries, the Participating Industrial Users, to set equivalent mass limits as an alternative to concentration limits to meet concentration-based categorical Pretreatment Standards. For this site-specific rule, EPA will not require Approval Authority review of equivalent mass-based limits in addition to POTW approval because EPA believes that existing Approval Authority oversight is sufficient to ensure that equivalent mass-limits are properly calculated and applied. EPA expects that the experience with Steele County on this element of today's rule may well inform whether Approval Authority review should be required in the Pretreatment Streamlining Proposal. Mass limits must be established by multiplying the five year, long term average process flows of the Participating Industrial Users (or a shorter period if production has significantly increased or decreased during the five year period) by the concentration-based categorical Pretreatment Standards. In general, flows used to establish mass-based limits must be appropriate in relation to current production or known future production, and will be determined based on consultation between the industry and the City of Owatonna. EPA's "Guidance Manual for the Use of Production-Based Pretreatment Standards and the Combined Wastestream Formula", EPA833–B–85–201, September 1985 provides additional guidance on establishing appropriate long-term average flows.

Importantly, today's rule will not affect the applicability of categorical Pretreatment Standards. Section 307(d) of the Clean Water Act prohibits the owner or operator of any source from operating in violation of any Pretreatment Standard. See 33 U.S.C. 1317(d). Today's rule will simply allow a Participating Industrial User to demonstrate compliance with a concentration-based Pretreatment Standard by meeting a properly-calculated, mass-based equivalent. Today's rule does not affect the underlying categorical Pretreatment Standard and, therefore, does not improperly transfer standard-setting authority to the City of Owatonna. Compliance with a mass-based limit may be used to demonstrate compliance with a categorical Pretreatment Standard only to the extent that the mass-based equivalent is properly calculated. In any event, EPA retains its authority to oversee POTW implementation of categorical Pretreatment Standards, including the authority to ensure that equivalent mass-based limits correctly interpret and apply concentration-based Pretreatment Standards. EPA notes that these provisions are similar to the existing authority to allocate equivalent mass limits or concentration limits for production-based standards. See 40 CFR 403.6(c)(2).

In return for this flexibility, the Sponsor industries, the Participating Industrial Users, are committing as a group to reduce water usage by 10 percent over the initial five-year project period. In this site-specific rule EPA is not conditioning the availability of mass-based limits on the use of water conservation methods and technologies (as it would in the Pretreatment Streamlining Rule) because EPA wishes to determine whether the structure of today's rule would result in the desired reduction in water use without imposing preconditions that may limit more widespread participation. For the same reason, EPA is not requiring that Participating Industrial Users generate complex technical studies to demonstrate the necessity of equivalent mass-based limits. In addition, this rule will not require that Participating Industrial Users utilize model treatment technologies that serve as the basis for the applicable Pretreatment Standards. Instead, EPA is interested in determining whether or not it would be sufficient to prevent facilities from complying with the applicable Standards, in the event of production decreases, by requiring that the facility maintain at least the same level of treatment as at the time an equivalent mass limit is established. To ensure the continued appropriateness of the specific mass limits, the Participating Industrial Users will also be required to notify the City in the event production rates are expected to vary by more than 20 percent from the previous year's average. Upon notification, the City will reassess the appropriateness of the mass limit.

In addition to EPA's rulemaking action, MPCA will need to issue a revised NPDES permit to the OWWTF, and the City will need to revise IU permits issued to Participating Industrial Users to enable it to establish alternative mass limits. The City will also need to evaluate its sewer use ordinance to determine if revisions are necessary to implement the changes promulgated today.

Sampling for Pollutants Not Present (40 CFR 403.19(c))

*1. Existing Requirements (40 CFR 403.12(e), 403.8(f)(2)(v)).* Currently, 40 CFR 403.12(e)(1) requires Industrial Users subject to categorical Pretreatment Standards to submit reports to the Control Authority at least twice a year, indicating the nature and concentration of all pollutants in their effluent that are limited by the Standards. 40 CFR 403.8(f)(2)(v) requires Control Authorities to sample these Industrial Users at least annually. Sampling is currently required for all pollutants limited by a categorical Pretreatment Standard, even if certain pollutants regulated by the Standard are not reasonably expected to be present.

*2. The Pretreatment Streamlining Proposal.* The July 22, 1999 Pretreatment Streamlining proposal would authorize a Control Authority to allow an Industrial User subject to categorical Pretreatment Standards to not sample for a pollutant if the pollutant is not expected to be present in its wastestream in a quantity greater than the background level present in its water supply, with no increase in the pollutant due to the regulated process. The Agency also proposed a reduced sampling requirement for the POTW, to once per permit term, once it had determined that a pollutant was not expected to be present.

The Pretreatment Streamlining proposal would require the Control Authority's decision to waive sampling to be based upon both sampling and other technical data, such as the raw materials, industrial processes, and potential by-products. EPA did not propose that a specific amount of

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sampling data be required but solicited comment on that issue.

*3. Today's Rule.* For purposes of this project, and as specified in Attachment C of the FPA, the City will be authorized to allow a Sponsor Participating Industrial User subject to categorical Pretreatment Standards to reduce the required sampling to less than twice per year, or to not sample for a pollutant, if it is not expected to be present in its wastestream at levels greater than background levels in its water supply, with no increase in the pollutant due to the regulated process. For such pollutants, the POTW will only be required to conduct sampling and analysis once during the term of the Participating Industrial User's permit. The Participating Industrial User will still be subject to the categorical Pretreatment Standards for pollutants determined not to be present, and will be in violation of the limit and will need to resume the required sampling if existing sampling indicates the User has violated the limit.

Consistent with the Pretreatment Streamlining Proposal, for purposes of this project, determinations by the City of Owatonna to either waive or reduce Participating Industrial User sampling to less than twice per year will be based on both sampling and other technical data, such as raw material usage, industrial processes, and potential by-products. Existing data on pollutant concentrations of the local public water supply will be used to characterize background concentrations; where a Participating Industrial User uses an alternative water supply, representative influent sampling will need to be provided. At least three years of Participating Industrial User effluent data will then be compared to the background data in making the determination that a given pollutant is not expected to be present. In addition, the city will need to make its determination based on its knowledge of the raw materials used and the facility's processes and potential by-products, but will not consider capability and efficiency of the User's pretreatment system. Where it believes it is necessary to make a determination, the City may require a Participating Industrial User to provide representative data on its untreated effluent.

Once the POTW determines that one or more pollutants are not expected to be present at a Participating Industrial User, it may modify the Participating Industrial User's permit to reduce or eliminate the monitoring requirements for the pollutant(s). The IU permit must also require the Participating Industrial User to submit, as part of its regular semi-annual monitoring reports, certification that there has been no increase in the pollutant in its wastewater due to its activities. The POTW must sample the Participating Industrial User's effluent for all pollutants in the applicable categorical Pretreatment Standard at least once during the term of the Participating Industrial User's permit.

In addition to EPA's rulemaking action, MPCA will need to issue a revised NPDES permit to the OWWTF, and the City will need to revise Participating Industrial User permits issued to Sponsor facilities to enable it to eliminate monitoring for pollutants not present. The City will also need to evaluate its sewer use ordinance to determine if revisions are necessary to implement the changes promulgated today.

Monitoring Frequency Reductions (40 CFR 403.19(e))

*1. Existing Requirements (40 CFR 403.12(e)).* As discussed above, 40 CFR 403.12(e)(1) currently requires Industrial Users subject to categorical Pretreatment Standards to submit reports to the Control Authority twice a year, or more frequently if required by the Pretreatment Standard or the POTW, indicating the nature and concentration of all pollutants in their effluent that are limited by the Pretreatment Standards. The City of Owatonna generally requires its significant IUs to monitor and report on a quarterly basis.

*2. Today's Rule.* Upon initiation of this project, the City will evaluate the recent performance of Sponsor Participating Industrial Users, and may reduce monitoring requirements to twice per year for facilities with satisfactory compliance records. After the first metal reduction goal of 20% is met, the City will be authorized, at its discretion, to reduce the self-monitoring frequency of Participating Industrial Users for any regulated pollutant to once per year. EPA believes that this mechanism will provide an incentive for Participating Industrial Users to reduce their contribution of the specified metals. In exercising this discretion, the OWWTF will be required to consider the Participating Industrial User's previous three years of compliance data, and cannot reduce monitoring for pollutants where there is a reasonable potential of violating Pretreatment Standards.

The loading values that were specified in the proposed rule have been adjusted in today's rule based on a 20 percent reduction from the baseline loadings from the final group of Owatonna Participating Industrial Users.

In addition to EPA's rulemaking action, MPCA will need to issue a revised NPDES permit to the OWWTF, and the City will need to revise Participating Industrial User permits issued to Sponsor facilities to reduce monitoring frequencies for regulated pollutants. The City will also need to evaluate its sewer use ordinance to determine if revisions are necessary to implement the changes promulgated today.

Significant Noncompliance Criteria (40 CFR 403.19(f))

*1. Existing Requirements (40 CFR 403.8(f)(2)(vii)).* "Significant Noncompliance" (SNC) is defined in 40 CFR 403.8(f)(2)(vii) to include violations that meet one or more of eight criteria. The criteria are: (1) Chronic violations of discharge limits (where 66 percent of all measurements taken during a six-month period exceed the daily maximum limit or the average limit for the same pollutant parameter); (2) technical review criteria (TRC) violations (where 33 percent or more of all measurements for each pollutant parameter taken during a six-month period equal or exceed the product of the daily maximum limit or the average limit multiplied by the applicable TRC (TRC equals 1.4 for BOD, TSS, fats, oil and grease and 1.2 for all other pollutants except pH)); (3) any other violation of a pretreatment effluent limit that the Control Authority determines has caused, alone or in combination with other discharges, interference or pass through; (4) any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the Control Authority's exercise of its emergency authority to halt or prevent such a discharge; (5) failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in a local control mechanism or enforcement order for certain activities; (6) failure to provide required reports within 30 days after the due date; (7) failure to accurately report Noncompliance; and (8) any other violation or group of violations which the Control Authority determines will adversely affect the operation or implementation of the local Pretreatment Program.

On July 24, 1990, EPA modified 40 CFR 403.8(f)(2)(vii) to include the existing definition of SNC (55 FR 30082). The purpose of this modification was to provide some certainty and consistency among Control Authorities for publishing their lists of Industrial Users in Noncompliance. Under this provision, Control Authorities are required to annually publish a list of Industrial Users in SNC at any time during the previous twelve months. The Control Authority must publish this list in the largest daily newspaper published in the municipality in which the POTW is located. Independent of this publication requirement, Control Authorities are required to develop and implement Enforcement Response Plans, which describe the range of enforcement responses they will use in addressing various types of IU Noncompliance. Where an IU is identified as being in SNC, EPA guidance recommends that the Control Authority respond with some type of formal enforcement action such as an enforceable order ("Guidance for Developing Control Authority Enforcement Response Plans," EPA 832–B–89–102, September 1989.)

*2. The Pretreatment Streamlining Proposal.* EPA did not propose to amend the entire provision on SNC, or even seek comment on all of it. Instead, the Agency proposed limited changes and sought comment on a number of options for a few specific provisions. With respect to publication, the primary purposes of which are to notify the public of violations and provide a disincentive for violating, EPA proposed to amend 40 CFR 403.8(f)(2)(vii) to allow publication of the SNC list in any paper of general circulation within the jurisdiction served by the POTW that provides meaningful public notice. EPA also proposed to amend the SNC criteria so that they must only be applied to Significant Industrial Users, and to address more than just daily maximum and monthly average limits. The Agency also sought comments on whether to revise the Technical Review Criteria, whether to revise the SNC criteria for late reports, and whether to codify the rolling quarters approach to determining SNC or adopt some other approach.

*3. Today's Rule.* Under today's site-specific rule, the City will have the discretion to not publish certain instances of SNC by Sponsor Participating Industrial Users in a newspaper. EPA believes that this change will provide faster public notice of SNC and will reserve additional newspaper publication of SNC for cases where this format is needed for its potentially greater effect. The City will continue to be required to provide newspaper publication of any violation which is not corrected within thirty (30) calendar days, or which results in pass through or interference. All SNC violations, whether published in a newspaper or not will be published as soon as is practicable, on the MPCA web site. The web site will contain an explanation of how SNC is determined, as well as a contact name and phone number for information regarding all other violations. The Owatonna Peer Review Committee system contemplated in the Steele County FPA will not be specified expressly in the rule, but rather is a voluntary agreement on the part of the Sponsors.

In addition to EPA's rulemaking action, MPCA will need to issue a revised NPDES permit to the OWWTF. The City will also need to evaluate its sewer use ordinance to determine if revisions are necessary to implement the changes promulgated today.

*B. Changes to the Proposed Rule*

EPA received no public comments on the proposed rule. EPA has made only one change to the proposed rule. The final rule includes the final list of Participating Industrial Users and adjusts the average daily loadings for chromium, copper, nickel and zinc in § 403.19(e) of the proposal to reflect participation of the final group of Participating Industrial Users.

## IV. Response to Significant Public Comments

EPA received no public comments on the proposed rule.

## V. What Is the Effective Date of This Rule?

Pursuant to 5 U.S.C. 553(d)(1), EPA is making this rule effective immediately upon publication because it relieves a restriction in that it reduces monitoring requirements and as such has the effect of reducing regulatory requirements for the Participating Industrial Users. In addition, pursuant to 5 U.S.C. 553(d)(3), EPA finds that good cause exists to make this rule effective immediately. The Owatonna Wastewater Treatment Plant and six Participating Industrial User facilities are the only regulated entities affected by this rule. The Owatonna Wastewater Treatment Facility and the Participating Industrial Users have had full notice of this site-specific rule. Making the rule immediately effective will allow the MPCA to issue a revised NPDES permit to the Owatonna Wastewater Treatment Facility sooner.

## VI. Additional Information

*A. How Does This Rule Comply With Executive Order 12866?*

Under Executive Order 12866 (58 FR 51735, October 4, 1993) EPA must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety in State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Because the annualized cost of this rule will be significantly less than $100 million and will not meet any of the other criteria specified in the Executive Order and because this rule affects only six specific private sector facilities and a single Publically-Owned Treatment Works (POTW), it is not a rule of general applicability or a "significant regulatory action" and therefore not subject to OMB review and Executive Order 12866.

Further today's rule does not affect the POTW or the facilities unless they choose on a voluntary basis to participate in the XL project. Finally, OMB has agreed that review of site-specific rules under Project XL is not necessary.

*B. Is a Regulatory Flexibility Analysis Required?*

Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*

The RFA generally requires an agency to prepare a Regulatory Flexibility Analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Under section 605(b) of the RFA, however, if the head of an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, the statute does not require the agency to prepare a Regulatory Flexibility Analysis. Pursuant to section 605(b), the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities for the reasons explained below.

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Consequently, EPA has not prepared a Regulatory Flexibility Analysis.

Small entities include small businesses, small organizations and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business according to RFA default definitions for small business (based on SBA size standards); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

Today's rule amends EPA's General Pretreatment Regulations to modify on a site-specific basis the requirements for pretreatment programs. The rule authorizes the Owatonna, Minnesota Waste Water Treatment Facility, in its discretion, to reduce the required frequency of monitoring for Participating Industrial Users. Only one POTW is subject to this rule and grant of the relief authorized by the rule will reduce costs to the Owatonna Wastewater Treatment Facility's Participating Industrial Users, including any Industrial User that is a small business. Under these circumstances, EPA has concluded that the rule will not have a significant economic impact on a substantial number of small entities.

*C. Is EPA Required To Submit a Rule Report Under the Congressional Review Act?*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. Section 804, however, exempts from section 801 the following types of rules: Rules of particular applicability, rules relating to agency management or personnel, and rules of agency organization, procedure, or practice that do not substantially effect the rights or obligations of non-agency parties. 5 U.S.C. 804 (3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability affecting just six private sector facilities and one POTW.

*D. Is an Information Collection Request Required for This Rule Under the Paperwork Reduction Act?*

This action applies to six companies and a single POTW and therefore requires no information collection activities subject to the Paperwork Reduction Act, and therefore no Information Collection Request (ICR) was submitted to the Office of Management and Budget (OMB) for review in compliance with the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

E. Does This Rule Trigger the Requirements of the Unfunded Mandates Reform Act?

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of why the alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

As noted above, this rule is limited to the OWWTF and certain sponsoring industries. This rule will create no federal mandate because EPA is imposing no new enforceable duties. EPA has also determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. Nevertheless, in developing this rule, EPA worked closely with MPCA and the OWWTF and received meaningful and timely input in the development of this rule.

*F. How Does This Rule Comply With Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks?*

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant," as defined under Executive Order 12866; and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866. This rule does not impose any new or amended standards for discharged wastewater resulting from treatment by a POTW. With respect to the effects on children, the collection, treatment and disposal of wastewater occurs in a restricted system (*e.g.*, buried sewer lines and fenced wastewater treatment plants) that children are unlikely to come in contact with on a routine basis. This rule has no identifiable direct impact upon the health and/or safety risks to children and adoption of the regulatory changes will not disproportionately affect children. This rulemaking is thus in compliance with the intent and requirements of the Executive Order.



*G. How Does This Rule Comply With Executive Order 13132 on Federalism?*

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The requirements outlined in today's rule will not take effect unless Minnesota chooses to adopt equivalent requirements through revisions to Owatonna's NPDES permit and Owatonna chooses to take the steps to implement the rule and make revisions to any local law and Industrial User permits. Thus, the requirements of section 6 of the Executive Order do not apply to this rule. Although section 6 of Executive Order 13132 does not apply to this rule, EPA did fully coordinate and consult with State and local officials in developing this rule.

*H. How Does This Rule Comply With Executive Order 13084: Consultation and Coordination With Indian Tribal Governments?*

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities". Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. There are no communities of Indian tribal governments located in the vicinity of Steele County. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

*I. Does This Rule Comply With the National Technology Transfer and Advancement Act of 1995 "NTTAA"]?*

Section 12(d) of NTTAA, Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary standards. This rulemaking sets equivalent means of expressing the same technical standards, and of determining compliance with those standards. It also uses voluntary goals to achieve pollutant reductions beyond those required by the technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

**List of Subjects in 40 CFR Part 403**

Environmental protection, Confidential business, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

Dated: September 29, 2000.

**Carol M. Browner,**

*Administrator.*

For the reasons set out in the preamble, part 403, title 40, chapter I of the Code of Federal Regulations is amended as follows:

## PART 403—GENERAL PRETREATMENT REGULATIONS FOR EXISTING AND NEW SOURCES OF POLLUTION

1. The authority citation for part 403 continues to read as follows:

**Authority:** 33 U.S.C. 1251 *et seq.*

2. Section 403.19 is added to read as follows:

**§ 403.19 Provisions of specific applicability to the Owatonna Waste Water Treatment Facility.**

(a) For the purposes of this section, the term "Participating Industrial Users" includes the following Industrial Users in the City of Owatonna, Minnesota: Crown Cork and Seal Company, Inc.; Cybex International Inc.; Josten's Inc.—Southtown Facility; SPx Corporation, Service Solutions Division; Truth Hardware Corporation; and Uber Tanning Company.

(b) For a Participating Industrial User discharging to the Owatonna Waste Water Treatment Facility in Owatonna, Minnesota, when a categorical Pretreatment Standard is expressed in terms of pollutant concentration the City of Owatonna may convert the limit to a mass limit by multiplying the five-year, long-term average process flows of the Participating Industrial User (or a shorter period if production has significantly increased or decreased during the five year period) by the concentration-based categorical Pretreatment Standard. Participating Industrial Users must notify the City in the event production rates are expected to vary by more than 20 percent from a baseline production rate determined by Owatonna when it establishes a Participating Industrial User's initial mass limit. To remain eligible to receive equivalent mass limits the Participating Industrial User must maintain at least the same level of treatment as at the time the equivalent mass limit is established. Upon notification of a revised production rate from a Participating Industrial User, the City will reassess the appropriateness of the mass limit. Owatonna shall reestablish the concentration-based limit if a Participating Industrial User does not

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maintain at least the same level of treatment as when the equivalent mass limit was established.

(c) If a categorical Participating Industrial User of the Owatonna Waste Water Treatment Facility has demonstrated through sampling and other technical factors, including a comparison of three years of effluent data with background data, that pollutants regulated through categorical Pretreatment Standards, other than 40 CFR part 414, are not expected to be present in quantities greater than the background influent concentration to the industrial process, the City of Owatonna may reduce the sampling frequency specified in § 403.8(f)(2)(v) to once during the term of the categorical Participating Industrial User's permit.

(d) If a Participating Industrial User is discharging to the Owatonna Waste Water Treatment Facility in Owatonna, Minnesota and is subject to a categorical Pretreatment Standard other than one codified at 40 CFR part 414, the City of Owatonna may authorize the Participating Industrial User to forego sampling of a pollutant if the Participating Industrial User has demonstrated through sampling and other technical factors, including a comparison of three years of effluent data with background data, that the pollutant is not expected to be present in quantities greater than the background influent concentration to the industrial process, and the Participating Industrial User certifies on each report, with the following statement, that there has been no increase in the pollutant in its wastestream due to activities of the Participating Industrial User. The following statement is to be included as a comment to the periodic reports required by § 403.12(e):

"Based on my inquiry of the person or persons directly responsible for managing compliance with the pretreatment standard for 40 CFR _____, I certify that, to the best of my knowledge and belief, the raw materials, industrial processes, and potential by-products have not contributed this pollutant to the wastewaters since filing of the last periodic report under 40 CFR 403.12(e)."

(e) If the average daily loading from the Participating Industrial Users to the Owatonna Waste Water Treatment Facility is equal to or less than 0.68 pounds per day of chromium, 0.25 pounds per day of copper, 1.17 pounds per day of nickel, and 1.01 pounds per day of zinc, Owatonna may authorize a categorical Participating Industrial User to satisfy the reporting requirements of § 403.12(e) with an annual report provided on a date specified by Owatonna, provided that the Participating Industrial User has no reasonable potential to violate a Pretreatment Standard for any pollutant for which reduced monitoring is being allowed, and has not been in Significant Noncompliance within the previous three years.

(f) The Owatonna Waste Water Treatment Facility in Owatonna, Minnesota shall post public notice of all Significant Noncompliance subject to the publication requirement in § 403.8(f)(2)(vii) at the Minnesota Pollution Control Agency website for a period of one year, as soon as practicable upon identifying the violations. In addition, the Owatonna Waste Water Treatment Facility shall post an explanation of how Significant Noncompliance is determined, and a contact name and phone number for information regarding other, non-Significant Noncompliance violations. If a violation is not corrected within thirty (30) calendar days or results in pass through or interference at the Owatonna Waste Water Treatment Facility, publication must also be made in the format specified in § 403.8(f)(2)(vii).

(g) The provisions of this section shall expire on October 6, 2005.

[FR Doc. 00–25746 Filed 10–5–00; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

### 42 CFR Parts 412, 413 and 489

[HCFA–1005–CN2]

RIN 0938–AI56

### Medicare Program; Prospective Payment System for Hospital Outpatient Services; Delay of Effective Date

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

**ACTION:** Correction.

**SUMMARY:** This document corrects several typographical errors that appeared in the notice of delay of effective date for the final rule with comment period published in the **Federal Register** on June 30, 2000, entitled "Medicare Program; Prospective Payment System for Hospital Outpatient Services; Delay of Effective Date."

**EFFECTIVE DATE:** August 1, 2000.

**FOR FURTHER INFORMATION CONTACT:** Janet Wellham, (410) 786–4510.

**SUPPLEMENTARY INFORMATION:**

### Background

In FR Doc. 00–16586 of June 30, 2000 (65 FR 40535), there were several typographical errors. The provisions in this correction notice are effective as if they had been included in the document published in the **Federal Register** on June 30, 2000.

### Correction of Errors

In FR Doc. 00–16586 on June 30, 2000, make the following corrections:

1. On page 40535, column three, in the **DATES** section, "§ 412.24" is corrected to read "§ 413.24", and § 489.24(h) is corrected to read "§ 489.24."

2. On page 40537, column one, the third full paragraph, line two, "§ 412.24" is corrected to read "§ 413.24", and "§ 489.24(h)" is corrected to read "§ 489.24."

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: September 21, 2000.

**Brian P. Burns,**

*Deputy Assistant Secretary for Information Resources Management.*

[FR Doc. 00–25498 Filed 10–5–00; 8:45 am]

BILLING CODE 4120–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

### 42 CFR Part 422

[HCFA–1030–CN2]

RIN 0938–AI29

### Medicare Program; Establishment of the Medicare+Choice Program; Correction

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

**ACTION:** Final rule with comment period; Correction.

**SUMMARY:** On June 29, 2000, we published in the **Federal Register**, at 65 FR 40170, a final rule with comment period that responded to comments on the June 26, 1998 interim final rule that implemented the Medicare+Choice (M+C) program and made revisions to those regulations where warranted. We also made revisions to the regulations that were necessary to reflect the changes to the M+C program resulting from the Balanced Budget Refinement Act of 1999. This document corrects omissions made in the June 29, 2000 document regarding deeming status.

**EFFECTIVE DATE:** July 31, 2000.



**FOR FURTHER INFORMATION CONTACT:** Trisha Kurtz, (410) 786–4670.

**SUPPLEMENTARY INFORMATION:** In our final rule published June 29, 2000 (65 FR 40170), on page 40232 of the preamble, we responded to public comments that addressed our authority under § 422.156 (Compliance deemed on the basis of accreditation), paragraph (e)(1), to remove deemed status on the basis of a review of accreditation results. In the preamble, we clarified that we do not intend to overrule an accreditation organization's survey decision without conducting our own investigation. We also noted that if our own investigation reveals that a condition is not met, we reserve the right to remove the MCO's deemed status even when the accreditation organization has not removed accreditation with respect to that condition. In order to clarify the distinction between: (1) A removal of deemed status by HCFA, based on HCFA's own survey; and (2) a removal based on a determination of noncompliance by an accreditation organization as a result of its accreditation survey, we stated that we would revise § 422.156(e)(1). However, we inadvertently omitted making this change in the regulations text. This document corrects that omission by revising § 422.156(e)(1).

In addition, on pages 40233 through 40234 of the preamble, we responded to a commenter's concern regarding removal of an accreditation organization's approval, regardless of the "rate of disparity" between certification by the accreditation organization and certification by HCFA or our agent, by adding another reporting requirement in § 422.157 (Accreditation organizations), paragraph (c)(6). This change requires that accreditation organizations provide us annually with summary data relating to their accreditation activities and observed trends. These data will assist us in making a comprehensive assessment of accreditation organizations' performance, and will help ensure that our oversight decisions are well-informed and appropriate. However, this change was inadvertently omitted in the final regulations text. This document corrects that omission by adding § 422.157(c)(6).

### Correction of Errors

### Regulations Text

#### § 422.156 [Corrected]

1. On page 40323, in column 2, amendatory instruction number 29 is corrected to read "Revise paragraphs (a), (b), and (e)(1) in § 422.156 to read as follows:" and corrected paragraph (e)(1) is added:

**§ 422.156 Compliance deemed on the basis of accreditation.**

* * * * *

(e) * * *

(1) HCFA determines, on the basis of its own investigation, that the M+C organization does not meet the Medicare requirements for which deemed status was granted.

* * * * *

#### § 422.157 [Corrected]

1. On page 40323, in column 3, amendatory instruction number 30 is corrected to read "Section 422.157 is amended by republishing the introductory text for paragraph (a), revising paragraphs (a)(3) and (b)(1), and adding new paragraph (c)(6) to read as follows:" and new paragraph (c)(6) is added:

**§ 422.157 Accreditation organizations.**

* * * * *

(c) * * *

(6) Provide, on an annual basis, summary data specified by HCFA that relate to the past year's accreditation activities and trends.

* * * * *

(Authority: Sections 1851 through 1859 of the Social Security Act (42 U.S.C. 1395w–21 through 1395w–28))

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93–774, Medicare—Supplementary Medical Insurance Program)

Dated: September 28, 2000.

**Brian P. Burns,**

*Deputy Assistant Secretary for Information Resources Management.*

[FR Doc. 00–25499 Filed 10–5–00; 8:45 am]

BILLING CODE 4120–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 25

[IB Docket No. 00–91; FCC 00–340]

### Availability of Intelsat Space Segment Capacity

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Federal Communications Commission has determined that users and service providers do not have sufficient opportunity to access INTELSAT space segment capacity directly from INTELSAT to meet their service and capacity requirements. The Commission also has required Comsat to enter into commercial negotiations with direct access customers to attempt to resolve satellite capacity allocation issues.

**DATES:** Effective October 6, 2000 written comments by the public on the new information collections are due December 5, 2000.

**ADDRESSES:** Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, SW, Washington, DC, 20554. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (May 1, 1998). Comments filed through the ECFS can be sent via the Internet to http://www.fcc.gov/e-file/ecfs.html. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption proceeding, however, commenters must transmit one copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form@your e-mail address." A sample form and directions will be sent in reply.

A copy of any comments on the information collection requirements should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, DC, 20554, or via the Internet to jboley@fcc.gov.

**FOR FURTHER INFORMATION CONTACT:** James Ball, International Bureau, (202) 418–0427; Steven Spaeth, Satellite Policy Branch, Satellite and Radiocommunication Division, International Bureau, (202) 418–1539. A copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to jboley@fcc.gov.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, adopted September 13, 2000, and released September 19, 2000. The full text of this Commission decision is available for inspection and copying

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during normal business hours in the FCC Reference Information Center, Room CY–A257, 445 12th St., SW, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, 1231 20th St., NW, Washington, DC 20036.

The Commission is required to conduct this rulemaking pursuant to the recently enacted Open-Market Reorganization for the Betterment of International Telecommunications Act (ORBIT Act). Section 641(b) of the Communications Satellite Act of 1962, as amended by the ORBIT Act, requires the Commission to determine whether "sufficient opportunity" exists for users and service providers "to access INTELSAT space segment capacity directly from INTELSAT to meet their service and capacity requirements." If the Commission finds that "sufficient opportunity" does not exist, the Commission is required to "take appropriate action to facilitate direct access," and otherwise "to take such steps as may be necessary to prevent circumvention of the intent" of this section. Section 641(c) states that "nothing in this section shall be construed to permit the modification or abrogation of any contract."

In 1999, the Commission permitted users and service providers in the United States to obtain Level 3 direct access to INTELSAT space segment capacity. Direct Access to the INTELSAT System, Report and Order, 64 FR 54561 (October 7, 1999). Level 3 direct access permits non-Signatory users and service providers to enter into contractual agreements with INTELSAT for space segment capacity at the same rates that INTELSAT charges its Signatories. The subsequently enacted ORBIT Act mandates that users and providers of telecommunications services shall be permitted to obtain Level 3 direct access to INTELSAT and requires the Commission to conduct this rulemaking.

The Commission issued a Notice of Proposed Rulemaking in this proceeding. Availability of INTELSAT Space Segment Capacity to Users and Service Providers Seeking to Access INTELSAT Directly, Notice of Proposed Rulemaking, 65 FR 35312 (June 2, 2000). The Commission concludes that users and service providers currently do not have sufficient opportunity for direct access. This is because most of INTELSAT's current U.S.-accessible capacity is subject to Comsat control, or is committed to other INTELSAT Signatories. In addition, a significant portion of INTELSAT's uncommitted capacity is fragmented into small amounts of bandwidth, and therefore may not be useful for many purposes.

Although INTELSAT plans to launch new satellites and to redeploy existing satellites to make more capacity available by 2003, the Commission cannot determine whether there will be sufficient opportunity for direct access in the future. Most of the new capacity will be concentrated at three orbital locations. It is not clear from the record in this proceeding whether capacity at those locations will meet the needs of direct access users. Furthermore, Comsat can renew the contracts covering the capacity currently under its control, so that there is no way to determine how much of that capacity will become available for direct access in the future.

The Commission also concludes that the "appropriate action" the Commission should adopt is a "commercial solution." In other words, the Commission requires the parties to attempt to negotiate mutually agreeable arrangements, and to report back by March 13, 2001 on the progress of those negotiations. Finally, the Commission concludes that the Commission may adopt a "regulatory solution" if "commercial solutions" are unavailable. The draft does not foreclose any regulatory option at this time.

This Report & Order contains new information collections subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collections contained in this proceeding.

**Paperwork Reduction Act**

This Report and Order contains new information collections. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collections contained in this R&O as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due December 5, 2000. Comments should address: (a) Whether the new or modified collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

*OMB Control Number:* 3060–XXXX (new collection).

*Title:* Availability of INTELSAT Space Segment Capacity to Users and Service Providers Seeking to Access INTELSAT Directly.

*Type of Review:* New collection.

*Respondents:* Business or other for-profit entities.

*Number of Respondents:* 10.

*Estimated Time per Response:* Two hours.

*Frequency of Response:* One time only.

*Total Annual Burden:* 20 hours.

*Total Annual Costs:* $3000.

*Needs and Uses:* This data collection is necessary to enable the Commission to evaluate the decisions made in this Report and Order.

*Regulatory Flexibility Analysis:* As required by the Regulatory Flexibility Act (RFA),[1] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice. The Commission then sought written public comment in that proceeding, including comments on the IRFA. No party filed comments in response to the IRFA. Further, this Report and Order promulgates no new rules and our action here does not affect the previous analysis in the Notice.

**Ordering Clauses**

Accordingly, pursuant to Sections 102(c), 210(c)(2), 201(c)(11), and 641 of the Communications Satellite Act of 1962, as amended, 47 U.S.C. 721(c), 741(c)(2), 741(c)(11), 765, and Sections 1, 2, 4(c), 201, 202, 214, 301, 303, 307, 308, and 309 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(c), 201, 202, 214, 301, 303, 307, 308, and 309, that the requirements and policies are adopted.

Comsat Corporation shall file the report discussed in this Order on or before March 13, 2001.

Authority is delegated to the Chief, International Bureau, as specified herein, to effect the decisions set forth above.

The Motion for Extension of Time filed by Comsat Corporation on July 24, 2000, is granted.

[1] See 5 U.S.C. 603. The RFA, see 5 U.S.C. 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) ("CWAAA"). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA").



Federal Communications Commission.

**William F. Caton,**

*Deputy Secretary.*

[FR Doc. 00–25740 Filed 10–5–00; 8:45 am]

BILLING CODE 6712–01–U

## FEDERAL COMMUNICATIONS COMMISSION

**47 CFR Part 73**

**[MM Docket No. 87–267; FCC 00–291]**

### Implementation of the AM Expanded Band Allotment Plan

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; on remand from U.S. Court of Appeals for D.C. Circuit; record supplemented.

**SUMMARY:** After undertaking a hypothetical computer re-analysis of the allotment plan for the migration of AM radio stations to the expanded band, *i.e.*, 1605–1705 kHz, deleting protections for federal Traveler Information Service ("TIS"), the Federal Communications Commission ("FCC") concluded that WGNY(AM), Newburgh, New York, would not have been granted an AM expanded band allotment even if TIS station protection was deleted. This action was taken in response to WGNY's argument that it would have been granted an expanded band allotment if the expanded band plan did not include TIS protections. The FCC also declined to consider WGNY's objections to several fundamental aspects of the allotment methodology which were resolved earlier in this proceeding but about which WGNY did not object previously.

**DATES:** Effective August 10, 2000.

**FOR FURTHER INFORMATION CONTACT:** Peter H. Doyle, Audio Services Division, Mass Media Bureau (202) 418–2789.

**SUPPLEMENTARY INFORMATION:** In Implementation of the AM Expanded Band Allotment Plan, MM Bureau Docket No. 87–267, FCC 00–291, adopted August 3, 2000, released August 10, 2000 ("Memorandum Opinion and Order"), on remand from the U.S. Court of Appeals for the District of Columbia Circuit (the "Court"), the Federal Communications Commission concluded that a computer reanalysis performed by the FCC staff establishes that Station WGNY(AM), Newburgh, New York, would not receive an AM expanded band allotment even if the FCC were to adopt the technical change to the allotment methodology that the licensee of WGNY(AM) advocated. On June 25, 1997, Sunrise Broadcasting of New York, Inc., sought review by the Court of the FCC's March 17, 1997 Order in Implementation of the AM Expanded Band Allotment Plan, FCC 97–68, 12 FCC Rcd 3361, 62 FR 23176 (Apr. 29, 1997) ("Order"), which had denied, *inter alia*, Sunrise's Petition for Reconsideration of Non-Inclusion in Expanded AM Band Allotment Plan. Note: 62 FR 23176 inadvertently omitted the Final Regulatory Flexibility Analysis for the Order, FCC 97–68; that analysis is located at 62 FR 28369 (May 23, 1997). Also on March 17, 1997, the Mass Media Bureau issued a Public Notice, Mass Media Bureau Announces Revised AM Expanded Band Allotment Plan and Filing Window for Eligible Stations, 12 FCC Rcd 3185 (MM Bureau 1997) ("Third Allotment Plan") which did not include an expanded band allotment for WGNY. Sunrise argued to the Court of Appeals that the staff's granting certain Traveler Information Service ("TIS") stations co-primary status (thus according them some interference protection) was an unexplained change of agency policy and resulted in WGNY being precluded from obtaining an expanded band allotment. The Mass Media Bureau responded to the Court with a computer analysis that eliminated TIS Station consideration but still resulted in WGNY not having an allotment. After the Court remanded the matter to the FCC on this point, on March 31, 1998, the Mass Media Bureau supplemented the record with the computer re-analysis. On October 19, 1998, Sunrise conceded this point, but in Comments filed with the FCC it sought consideration, for the first time, of issues not previously raised in this proceeding. Specifically, Sunrise objected to the 1995 FCC decision to change the co-channel distance separation requirements for AM expanded band stations from 400 to 800 kilometers (see Reconsideration of Implementation of the AM Expanded Band Allotment Plan, 10 FCC Rcd 12143, 12149 (1995)), and to the calculation of the improvement factors for two of the 710 potential expanded band stations listed in a 1996 Mass Media Bureau Public Notice (see Public Notice, Mass Media Bureau Announces Revised Experimental AM Broadcast Band Implementation Factors and Allotment Plan, 11 FCC Rcd 11419 (MMB 1996). In the Memorandum Opinion and Order, the FCC denied as untimely Sunrise's request to reexamine any aspects of the AM expanded band proceeding other than those relating directly to the interference protection afforded TIS stations, and ordered that the Mass Media Bureau's computer re-analysis be made a part of the record in this proceeding. The full text of the Memorandum Opinion and Order issued in Implementation of the AM Expanded Band Allotment Plan, FCC 00–291, adopted August 3, 2000 and released on August 10, 2000 is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room TW–A306), 445 12th Street, SW, Washington, D.C. The complete text of this MO&O may also be purchased from the FCC's copy contractor, International Transcription Services (202) 857–3800, 1231 20th Street, NW, Washington, D.C.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**William F. Caton,**

*Deputy Secretary.*

[FR Doc. 00–25734 Filed 10–5–00; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

**47 CFR Part 73**

**[DA 00–2148; MM Docket No. 99–75; RM–9446]**

### Radio Broadcasting Services; Grants, Milan, NM

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of Don Davis, former licensee of Station KQEO(FM), now Station KXXQ(FM), Grants, New Mexico, reallots Channel 264A from Grants to Milan, New Mexico as the community's second local aural transmisson service. *See* 64 FR 14423 (March 25, 1999). Channel 264A at Grants was downgraded from 264C2 by one-step application (File No. BMPH–19960226IB) granted on June 13, 1996. Channel 264A can be allotted to Milan in compliance with the Commission's minimum distance separation requirements, with respect to domestic allotments, at petitioner's site 5.7 kilometers (3.6 miles) south, at coordinates 35–07–09 North Latitude and 107–54–08 West Longitude.

**DATES:** Effective November 6, 2000.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Victoria M. McCauley, Mass Media Bureau, (202) 418–2180.

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**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 99–75, adopted September 13, 2000, and released September 22, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

**PART 73—[AMENDED]**

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334. 336.

2. Section 73.202(b) the FM Table of Allotments under New Mexico is amended by removing Channel 264C2 at Grants and adding Milan, Channel 264A.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 00–25735 Filed 10–5–00; 8:45 am]

**BILLING CODE 6712–01–P**

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Parts 600 and 660**

**[Docket No. 991223347-9347; I.D. 092800C]**

## Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Trip Limit Adjustments

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Fishing restrictions; request for comments.

**SUMMARY:** NMFS announces changes to the limited entry and open access trip limits in the Pacific coast groundfish fishery. This document also announces the last cumulative trip limit period in 2000 for the "B" platoon, those limited entry trawl vessels designated to take their cumulative trip limits 2 weeks out of phase with the rest of the fleet. These actions, which are authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP,) are intended to help the fisheries achieve optimum yield (OY) while still protecting overfished and depleted stocks.

**DATES:** Changes to management measures are effective 0001 hours (local time) October 2, 2000, unless modified, superseded, or rescinded. These changes are effective until the effective date of the 2001 annual specifications and management measures for the Pacific coast groundfish fishery, which will be published in the **Federal Register**. Comments on this rule will be accepted through October 23, 2000.

**ADDRESSES:** Submit comments to Donna Darm, Acting Administrator, Northwest Region (Regional Administrator), NMFS, 7600 Sand Point Way N.E., BIN C15700, Bldg. 1, Seattle, WA 98115-0070; or Rebecca Lent, Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213.

**FOR FURTHER INFORMATION CONTACT:** Yvonne deReynier or Becky Renko (Northwest Region, NMFS) 206-526-6140.

**SUPPLEMENTARY INFORMATION:** The following changes to current management measures were recommended by the Pacific Fishery Management Council (Council,) in consultation with the States of Washington, Oregon, and California, at its September 11-15, 2000, meeting in Sacramento, CA. Pacific coast groundfish landings will be monitored throughout the year, and further adjustments to the trip limits will be made as necessary to stay within the OYs and allocations announced in the 2000 annual specifications and management measures for the groundfish fishery (65 FR 221, January 4, 2000, as amended at 65 FR 4169, January 26, 2000; 65 FR 17805, April 5, 2000; 65 FR 25881, May 4, 2000; 65 FR 31283, May 17, 2000; 65 FR 33423, May 23, 2000; and 65 FR 45308, July 21, 2000).

### Yellowtail Rockfish Taken in Limited Entry Trawl Fisheries for Flatfish; Yellowtail Rockfish, Arrowtooth Flounder, and Other Flatfish in Limited Entry Trawl Fisheries

During the winter months, yellowtail rockfish tend to move to rockier habitats and are not as closely associated with flatfish as they are during the summer months. To make yellowtail rockfish and flatfish management more consistent with natural catch association patterns, and to reduce discards of yellowtail rockfish taken with small footrope bottom trawl gear by vessels fishing for flatfish, per-trip limits for yellowtail rockfish taken with small footrope bottom trawl gear were introduced in July (65 FR 45308, July 21, 2000). At its September meeting, the Council recommended maintaining a per-trip limit for yellowtail rockfish taken with small footrope bottom trawl gear through the November to December period. The per-trip limit during the July to October period is equivalent to the sum of 33 percent (by weight) of all flatfish except arrowtooth flounder, plus 10 percent (by weight) of arrowtooth flounder, not to exceed 7,500 lb (3,402 kg). During the November to December cumulative trip limit period, the flatfish fishery is concentrated in depths that have less association with yellowtail rockfish; therefore, the Council recommended decreasing the per-trip limit to the sum of 33 percent (by weight) of all flatfish except arrowtooth flounder, plus 10 percent (by weight) of arrowtooth flounder, not to exceed 2,500 lb (1,134 kg).

Through August 31, 2000, only 21.1 percent of the OY for yellowtail rockfish set aside for the limited entry fishery north of Cape Mendocino (40° 10' N. lat.) had been landed. To allow fishers access to these stocks without exceeding 2000 OYs, the Council recommended increasing the yellowtail rockfish 2-month cumulative limit for the November to December period from the previously established 10,000 lb (4,536 kg) to 30,000 lb (13,608 kg). Yellowtail rockfish taken in the flatfish fisheries and subject to the 2,500 lb per-trip limit would also be subject to the 2-month cumulative limit.

The Council also recommended increasing the per-trip limit for arrowtooth flounder taken with large or small footrope bottom trawl from the prior recommended 10,000 lb (4,536 kg) to 20,000 lb (9,072 kg) per trip. Because arrowtooth flounder are not a high-value species, this limit is not expected to increase targeted effort on that species.

To allow fishers access to "other flatfish" without exceeding 2000 OYs, the Council recommended increasing the limit for other flatfish taken with large footrope bottom trawl from 400 lb (181 kg) per trip to 1,000 lb (454 kg) per trip for the November-December period. Other flatfish means all flatfish listed at 50 CFR 660.302 except those with species-specific trip limits and rex sole.

### Limited Entry Trawl and Fixed Gear, and Open Access Minor Slope Rockfish South of 40°10' N. lat.

Throughout 2000, minor slope rockfish landings south of 40°10' N. lat. have been slow. The best available information at the September Council meeting indicated that limited entry fisheries south of 40°10' N. lat. had landed 11.6 percent of slope rockfish set aside for those fisheries in 2000, and that open access fisheries had landed only 4.4 percent of its minor slope rockfish allocation, through the end of August 2000. Given these low landings rates, the Council recommended increasing cumulative landings limits to levels that would allow higher landings without jeopardizing overfished and depleted stocks. The Council recommended increasing the limited entry minor slope rockfish 2-month cumulative landings limit for both trawl and fixed gear south of 40°10' N. lat. from 7,000 lb (3,175 kg) to 20,000 lb (9,072 kg) for the September to October trip limit period. For the November to December period the Council recommended setting the limited entry cumulative limit previously announced for minor slope rockfish south of 40°10' N. lat. from 1,500 lb per month (680 kg) to 10,000 per month (4,536 kg) for the trawl fishery and from 1,500 lb (680 kg) per month to 20,000 lb (9,072 kg) 2-month period for the fixed gear fleet. The open access, minor slope rockfish 2-month cumulative limit south of 40°10' N. lat. are increased from 1,000 lb (454 kg) (454 kg) to 3,000 lb (1,361 kg) for the September to October period and from 500 lb (227 kg) to 3,000 lb (1,361 kg) for the November to December period.

### Limited Entry Trawl Fishery for Sablefish; Limited Entry, Fixed Gear and Open Access Daily Trip Limit Fisheries for Sablefish North of 36° N. lat.

The best available information through August 31, 2000, indicates that the landings of sablefish in the limited entry trawl fishery were at 42.0 percent of the 2000 allocation for that fishery. To allow limited entry trawl fishers access to sablefish without exceeding 2000 OYs, the Council recommended increasing the 2-month cumulative limit from 10,000 lb (4,536 kg) (4,536 kg) to 12,000 lb (5,443 kg) for the September to October period and increasing the previously announced 1-month limit of 3,500 lb (1,588 kg) to 6,000 lb (2,722 kg) for the November to December period.

Sablefish in the southern areas tend to be smaller than those in the northern areas. To reduce the discard of small fish that are otherwise marketable, fishers requested that the Council remove the per-trip limit of 500 lb (227 kg) for sablefish smaller that 22 inches (56 cm). In response to this request, the council recommended removing the length requirement for the remainder of 2000.

Similarly, daily trip limit sablefish landings in both the 2000 limited entry fixed gear and open access fisheries have been relatively low through the spring and summer months. The best available information at the September Council meeting indicated that limited entry fixed gear fisheries through July, had landed 21.1 percent of the sablefish set aside for daily landings, and that the open access fisheries through August, had landed 14.5 percent of their sablefish allocation. The limited entry and open access daily trip limit fisheries for sablefish north of 36° N. lat. are restricted by a 300-lb (136-kg) per day limit in combination with a 2-month cumulative limit. For the limited entry fixed gear fishery, the Council recommended increasing the daily limit from 300 lb (136 kg) per day to 400 lb (181 kg) per day and adding an option which allows fishers instead to opt to make one landing per week above 400 lb (181 kg) and not to exceed 1,000 lb (454 kg). Under either option the fishery is not to exceed the 2-month cumulative limit. The 2-month cumulative limit was increased from 3,330 lb (1,497 kg) to 8,000 lb (3,629 kg) for the September to October period and increased from the prior recommended 2,400 lb 2-month limit to 8,000 lb (3,629 kg) for the November to December period. As announced in the annual specifications and management measures (65 FR 221, January 4, 2000), 1 week means 7 consecutive days, Sunday through Saturday.

For the open access fixed gear fishery, the Council recommended keeping the daily limit at 300 lb (136 kg) per day, but also included an option which allows fishers to make one weekly landing above 300 lb (136 kg), but not to exceed 1,200 lb (544 kg). To allow the open access fishery a chance to harvest their sablefish allocation without exceeding 2000 OYs, the Council recommended removing the cumulative limits for the remainder of 2000.

### Limited Entry Fixed Gear and Open Access Fisheries for Minor Nearshore Rockfish North and South

Minor nearshore rockfish landings in the limited entry and open access fisheries have been low throughout 2000. The best available information at the September Council meeting indicated that limited entry fisheries had landed 10.3 percent of the allocation for that fishery north of 40°10' N. lat., and 8.8 percent of the allocation for that fishery south of 40°10' N. lat., through August 31, 2000. Similarly, the best available information at that meeting indicated that open access fisheries had landed 36.9 percent of the allocation for that fishery north of 40°10' N. lat., and 16.3 percent of the allocation for that fishery south of 40°10' N. lat. To allow fishers access to these stocks without exceeding 2000 OYs, the Council recommended significant increases to the minor nearshore rockfish landings limits for both the limited entry fixed gear and open access fisheries.

North of 40°10' N. lat. and starting October 2, 2000, the Council recommended increasing the limited entry minor nearshore rockfish fixed gear limit for the September to October period from 5,000 lb (2,268 kg) to 10,000 lb (4,536 kg) per 2-month period, with the sublimit for minor nearshore rockfish other than blue or black rockfish increasing from 1,800 lb(816 kg) to 4,000 lb (1,814 kg) per 2-month period. The previously recommended 3,000 lb (1,361 kg) per 2-month period for the November to December period will also be increased to 10,000 lb (4,536 kg) with the sublimit for minor nearshore rockfish other than blue or black rockfish increasing from the previously recommended 1,400 lb(635 kg) to 4,000 lb (1,814 kg) per 2-month period.

The 2-month cumulative limit for the open access fishery of minor nearshore rockfish north of 40°10' N. lat. starting October 2, 2000, increases from 3,000 lb (1,361 kg) to 6,000 lb (2,722 kg)), with the sublimit for minor nearshore rockfish other than blue or black rockfish increasing from 900 lb (408 kg) to 2,000 lb (907 kg). For the November to December period the 2-month cumulative limit increases from the previously recommended 1,000 lb (454 kg) to 6,000 lb (2,722 kg), with the sublimit for minor nearshore rockfish other than blue or black rockfish increasing from the previously recommended 500 lb (227 kg) to 2,000 lb (907 kg).

Lingcod and rockfish are taken in the recreational fishery in waters (0-3 nm) managed by the State of California. To ensure the pre-season estimates for overfished species off California (bocaccio, lingcod, canary rockfish, cowcod) are not exceeded, the State may take actions to prohibit recreational landings in State waters. Recreational fishery closures south of Point Conception (34°27' N. lat.) are likely to occur in late 2000. The State of California Fish and Game Commission is scheduled to meet in October, during which time they will review the best available landings data and make recommendations on recreational fishery management in California

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waters. The Council asked NMFS to coordinate with the State of California to implement consistent changes in Federal waters (3-200 nm offshore) to prevent OYs of rockfish and lingcod from being exceeded.

Actions that may be taken by the State of California, and recommended by NMFS, to prevent excess harvest may include prohibiting further taking, retaining, possessing or landing of minor nearshore rockfish in the limited entry and open access fixed gear fisheries south of 34°27' N. lat. during the November to December period. Any such actions will be published in the **Federal Register**. To allow commercial harvest in the nearshore rockfish fisheries, with the least impact on overfished species, the Council recommended establishing separate cumulative trip limits for the area between 40°10' N. lat. and 34°27' N. lat., and the area south of 34°27' N. lat. Beginning, October 2, 2000, in the limited entry fixed gear fishery for minor nearshore rockfish between 40°10' N. lat. and 34°7' N. lat., the 2-month cumulative trip limit for increases from 2,000 lb (907 kg)) to 6,000 lb (2,722 kg), continuing through December replacing the previously recommend 2-month limit of 1,300 (590 kg) for the November to December period. The open access minor nearshore rockfish 2-month cumulative limit for the fishery between of 40°10' N. lat. and 34° 27' N. lat. increases from 1,600 lb (726 kg) to 4,000 lb (1,814 kg) per 2-month period beginning October 1, and continues through December. This replaces the previously recommend 2-month limit of 800 lb (363 kg) for the November to December period.

The limited entry fixed gear minor nearshore rockfish 2-month cumulative limit for the fishery south of 34°27' N. lat. will be increased from 2,000 lb (907 kg) to 9,000 lb (4,082 kg) for the September to October period, and from 1,300 lb (590 kg) to 3,000 lb (1,361 kg) for the November to December period. The open access (fixed gear) minor nearshore rockfish 2-month cumulative limit for the area south of 34°27' N. lat. will be increased from 1,600 lb (726 kg) to 6,000 lb (2,722 kg) for the September to October period, and from 800 lb (363 kg) to 2,000 lb (907 kg) for the November to December period.

**Final Period for the "B" Platoon**

NMFS also announces the last cumulative trip limit period in 2000 for the "B" platoon i.e., those limited entry trawl vessels designated (on their limited entry permit) to take their cumulative trip limits 2 weeks out of phase with the rest of the fleet. For vessels in the "B" platoon, the final cumulative trip limit period will be from November 16, 2000, through December 31, 2000. At any time during this period, each vessel in the "B" platoon is allowed to take and retain, possess, or land the equivalent of two 1-month cumulative limits (the November and December cumulative trip limits). For species for which there are 2-month cumulative limits, the vessels in the "B" platoon must take the final 2-month cumulative limit during the final period from November 16, 2000, through December 31, 2000.

**NMFS Actions**

For the reasons stated here, NMFS concurs with the Council's recommendations and announces the following changes to the 2000 annual management measures (65 FR 221, January 4, 2000, as amended at 65 FR 4169, January 26, 2000; 65 FR 17805, April 5, 2000; 65 FR 25881, May 4, 2000; 65 FR 31283, May 17, 2000; 65 FR 33423, May 23, 2000; and at 65 FR 45308, July 21, 2000) as follows:

In Section IV, under B. Limited Entry Fishery, Tables 3 and 4 are revised, and under C. Trip Limits in the Open Access Fishery, Table 5 is revised to read as follows:

**IV. NMFS Actions**

*B. Limited Entry Fishery*

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Table 3. 2000 Trip Limits 1/ and Gear Requirements 2/ for Limited Entry Trawl Gear

*Read Section IV. A. NMFS Actions before using this table.*

| line | Species/groups | JAN-FEB | MAR-APR | MAY-JUN | JUL-AUG | SEP-OCT | NOV-DEC |
|---|---|---|---|---|---|---|---|
| 1 | Minor slope rockfish | | | | | | |
| 2 | North | 3,000 lb / 2 months | | 5,000 lb / 2 months | | | 1,500 lb / month |
| 3 | South | 3,000 lb / 2 months | | May-Jun, 5,000 lb / 2 months | Jul-Aug, 7,000 lb / 2 months | Sep-Oct, 20,000 lb / 2 months | 10,000 lb / month |
| 4 | Splitnose-South | 8,500 lb / 2 months | | 14,000 lb / 2 months | | | 4,000 lb / month |
| 5 | POP-North | 500 / month | | 2,500 lb / month | | | 500 lb / month |
| 6 | Sablefish | 7,000 lb / 2 months; 22-inch size limit 3/ | | May-Aug, 10,000 lb / 2 months; 22-inch size limit 3/, Sep-Oct 12,000 lb/2 months no size limit | | | 6,000 lb / month no size limit |
| 7 | Longspine thornyhead | 12,000 lb / 2 months | | 4,000 lb / 2 months | | | 6,000 lb / month |
| 8 | Shortspine thornyhead | 3,000 lb / 2 months | | 1,000 lb / 2 months | | | 1,500 lb / month |
| 9 | Dover sole | 55,000 lb / 2 months | | 20,000 lb / 2 months | | | 20,000 lb/ month |
| 10 | Arrowtooth flounder | 10,000 lb / trip | | Small footrope: May-Oct, no pound limit 2/, Large footrope: May-Jun, in "other flatfish" limit; Jul-Oct, 5,000 lb/trip | | | 20,000 lb / trip |
| 11 | Petrale sole | No restriction | Small footrope required | Small footrope–No pound limit; Large footrope–included in "other flatfish" trip limit 2/ | | | No restriction |
| 12 | Rex sole | No limit | | | | | |
| 13 | Other flatfish 4/ | Jan- Dec, Small footrope–No pound limit; Jan-Oct, Large footrope–400 lb per trip; Nov-Dec Large footrope–1,000 lb per trip 2/ | | | | | |
| 14 | Whiting shoreside 5/ | 20,000 lb / trip before primary season | | Primary season | | | 20,000 lb / trip after primary season |
| 15 | | | | | | | |
| 16 | Use of small footrope bottom trawl or midwater trawl required for landing all the following species: 6/ | | | | | | |
| 17 | Minor Shelf rockfish | | | | | | |
| 18 | North | 300 lb / month | | 1,000 lb / month | | | 300 lb / month |
| 19 | South | 500 lb / month | | May-Jul, 1,000 lb / month; Aug-Oct, 500 lb / month | | | 500 lb / month |
| 20 | Canary rockfish | 100 lb / month | | 300 lb / month | | | 100 lb / month |
| 21 | Widow rockfish | | | | | | |
| 22 | mid-water trawl | 30,000 lb / 2 months | | 30,000 lb / 2 months | | | 30,000 lb / 2 months |
| 23 | small footrope trawl | 1,000 lb / month | | 1,000 lb / month | | | 1,000 lb / month |
| 24 | Yellowtail-North 7/ | | | | | | |
| 25 | mid-water trawl | 10,000 lb / 2 months | | 30,000 lb / 2 months | | | 30,000 lb / 2 months |
| | small footrope trawl | 1,500 lb / month | | May-Jun, 1,500 lb / month. Jul-Oct, per trip limit is sum of 33 percent (by weight) of all flatfish except arrowtooth flounder, plus 10 percent (by weight) of arrowtooth flounder; not to exceed 7,500 lb/trip, and 30,000 lb/2 months. Yellowtail rockfish may not be landed without flatfish. | | | Per trip limit is sum of 33 percent (by weight) of all flatfish except arrowtooth flounder, plus 10 percent (by weight) of arrowtooth flounder; not to exceed 2,500 lb/trip, and 30,000 lb/2 months. Yellowtail rockfish may not be landed without flatfish. |
| 26 | | | | | | | |
| 27 | Bocaccio-South 7/ | 300 lb / month | | 500 lb / month | | | 300 lb / month |
| 28 | Chilipepper-South 7/ | | | | | | |
| 29 | mid-water trawl | 25,000 lb / 2 months | | 25,000 lb / 2 months | | | 25,000 lb / 2 months |
| 30 | small footrope trawl | 7,500 lb / 2 months | | 7,500 lb / 2 months | | | 7,500 lb / 2 months |
| 31 | Cowcod - South 7/ | 1 fish per landing | | 1 fish per landing | | | 1 fish per landing |
| 32 | Minor Nearshore rockfish | | | | | | |
| 33 | North and South | 200 lb / month | | 200 lb / month | | | 200 lb / month |
| 34 | Lingcod | CLOSED | | 400 lb / month; 24-inch size limit 8/ | | | CLOSED |

1/ Trip limits apply coastwide unless otherwise specified. North means 40°10' N lat. to the US-Canada border. "South" means 40°10' N.lat. to the US-Mexico border. 40°10' N.lat. is about 20 nm south of Cape Mendocino CA.

2/ Gear requirements and prohibitions are explained at paragraph IV.A.(14).

3/ No more than 500 lb/trip of sablefish smaller than 22 inches (56 cm) total length, which counts toward cumulative limit.

4/ Other flatfish means all flatfish at 50 CFR 660.302 except those in this Table 3 with a trip limit (excludes rex sole and arrowtooth flounder.)

5/ The whiting "per trip" limit in the Eureka area inside 100 fm is 10,000 lb / trip throughout the year (See IV.B.(3)(c)).

6/ Small footrope trawl means a bottom trawl net with a footrope no larger than 8 inches (20 cm) in diameter. Midwater gear also may be used; the footrope must be bare. See paragraph IV.A.(14).

7/ Yellowtail rockfish and POP in the south and bocaccio, chilipepper, and cowcod rockfishes in the north are included in the trip limits for minor shelf rockfish in the appropriate area (Table 2).

8/ Lingcod must be greater than or equal to 24 inches (61 cm) total length. See IV.A.(6).

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

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Table 4. 2000 Trip Limits 1/ for Limited Entry Fixed Gear

*Read Section IV. A. NMFS Actions before using this table.*

| line | Species/groups | JAN-FEB | MAR-APR | MAY-JUN | JULY-AUG | SEP-OCT | NOV-DEC |
|---|---|---|---|---|---|---|---|
| 1 | Minor slope rockfish | | | | | | |
| 2 | North | 3,000 lb / 2 months | | 5,000 lb / 2 months | | | 1,500 lb / month |
| 3 | South | 3,000 lb / 2 months) | | May-Jun, 5,000 lb / 2 months; | Jul-Aug, 7,000 lb / 2 months; | Sep-Oct, 20,000 lb / 2 months | 20,000 lb / 2 months |
| 4 | Splitnose-South | 8,500 lb / 2 mo. | | 14,000 lb / 2 months | | | 4,000 lb / month |
| 5 | POP-North | 500 lb / month | | 2,500 lb / month | | | 500 lb / month |
| 6 | Sablefish (daily trip limit fishery) 2/ | | | | | | |
| 7 | North of 36° N. lat. | 300 lb/day, 2,100 lb/2 mo OR 1 landing between 300 lb and 600 lb/ week, less than 1,800 lb/2 mo | | May-Jun, 300 lb / day, 2,400 lb / 2 mo; | Jul-Aug, 300 lb / day, 3,300 lb / 2 mo; | Sep-Oct, 400 lb / day or 1,000 lb per week, with less than 8,000 lb / 2 months | 400 lb/day or 1,000 lb per week, with less than 8,000 lb / 2 months |
| 8 | South of 36° N. lat. | 350 lb/day or 1 landing above 350 lb/week, up to 1,050 lb | | | | | |
| 9 | Longspine thornyhead | 12,000 lb / 2 months | | 4,000 lb / 2 months | | | 6,000 lb / month |
| 10 | Shortspine thornyhead | 1,000 lb / month | | 1,000 lb / month | | | 1,000 lb / month |
| 11 | Dover sole | 55,000 lb / 2 months | | 20,000 lb / 2 months | | | 20,000 / month |
| 12 | Arrowtooth flounder | 10,000 lb / trip | | No restriction | | | 10,000 lb / trip |
| 13 | Petrale sole | No restriction | | No restriction | | | No restriction |
| 14 | Rex sole | No restriction | | No restriction | | | No restriction |
| 15 | Other flatfish 3/ | No restriction | | No restriction | | | No restriction |
| 16 | Shoreside whiting 4/ | 20,000 lb / trip | | Open | | | 20,000 lb / trip |
| 17 | Minor shelf rockfish | | | | | | |
| 18 | North | 300 lb / month | | 1,000 lb / month | | | 300 lb / month |
| 19 | South | 500 lb / month 5/ | | May-Jul, 1,000 lb/month; Aug-Oct, 500 lb/month | | | 500 lb / month |
| 20 | Canary-Coastwide | | | | | | |
| 21 | North | 100 lb / month | | 300 lb / month | | | 100 lb / month |
| 22 | South | 100 lb / month 5/ | | 300 lb / month | | | 100 lb / month |
| 23 | Widow rockfish-Coastwide: | | | | | | |
| 24 | North | 3,000 lb / month | | 3,000 lb / month | | | 3,000 lb / month |
| 25 | South | 3,000 lb/month 5/ | | 3,000 lb / month | | | 3,000 lb / month |
| 26 | Yellowtail-North 6/ | 1,500 lb / month | | 1,500 lb / month | | | 1,500 lb / month |
| 27 | Bocaccio-South 6/ | 300 lb/ month 5/ | | 500 lb / month | | | 300 lb / month |
| 28 | Chilipepper-South 6/ | 2,000 lb /month 5/ | | 2,000 lb / month | | | 2,000 lb / month |
| 29 | Cowcod - South 6/ | 1 fish per landing 5/ | | | | | |
| 30 | Minor nearshore rockfish | | | | | | |
| 31 | North 7/ 8/ | 2,400 lb/2 months, of which no more than 1,200 lb may be species other than black or blue rockfish' | | May-Jun, 3,000 lb/2 months, of which no more than 1,400 lb may be species other than black or blue rockfish; | Jul- Aug, 5,000 lb/2 months of which no more than 1,800 lb may be species other than black or blue rockfish; | Sep-Oct, 10,000 lb/2 months of which no more than 4,000 lb may be species other than black or blue rockfish | 10,000 lb/2 months, of which no more than 4,000 lb may be species other than black or blue rockfish |
| 32 | South | 1,000 lb / 2 months 5/ | | May-Jun, 1,300 lb/2 months | Jul-Aug, 2,000 lb / 2 months | Sep-Oct, 6,000 lb / 2 months from 40° 10' N.lat. to 34° 27' N.lat. 9,000 lb / 2 months south of 34° 27' N.lat. | 6,000 lb / 2 months from 40° 10' N.lat. to 34° 27'; 3,000 lb / 2 months south o 34° 27' N.lat. |
| 33 | | | | | | | |
| 34 | Lingcod 8/ | CLOSED | | 400 lb / month | | | CLOSED |

1/ Trip limits apply coastwide unless otherwise specified. North means 40°10' N.lat. to the US-Canada border.
South means 40 10' N. lat. to the US-Mexico border.
2/ The sablefish size limit applies only during the "regular" and "mop-up" seasons north of 36° N. lat. See IV.B.(2).
3/ Other flatfish means all flatfish listed at 50 CFR 660.302 except those in this Table 4 with a trip limit.
4/ The whiting "per trip" limit in the Eureka area for catch inside 100 fathoms is 10,000 lb / trip throughout the year.
5/ South of 40°10' N. lat., minor shelf and minor nearshore rockfish, as well as canary, widow, bocaccio, chilipepper, and cowcod were managed with area closures in Jan-Apr. In Jan-Feb, limited entry fixed gear fisheries for these species were closed south of 36° N. lat., yet open with limits shown between 40°10' N. lat. and 36° N. lat. In Mar-Apr, these fisheries were closed between 40°10' N. lat and 36° N. lat., yet open with limits shown in waters south of 36° N. lat. "Closed" means it is prohibited to take and retain, possess, or land the designated species in the time or area indicated (see IV.A.(7)).'
6/ Yellowtail rockfish and POP in the south and bocaccio, chilipepper, and cowcod rockfishes in the north are included in trip limits for minor shelf rockfish (Table 2).
7/ The "per trip" limit for black rockfish off Washington also applies. See paragraph IV.B.(4).
8/ The size limit for lingcod is 24 inches (61 cm) in the north and 26 inches (66 cm) in the south, total length.
To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.



*C. Trip Limits in the Open Access Fishery*

Table 5. 2000 Trip Limits 1/ for All Open Access Gear except Exempted Trawl Gear Engaged in Fishing for Pink Shrimp

*Read Section IV. A. NMFS Actions before using this table.*

| line | Species/groups | JAN-FEB | MAR-APR | MAY-JUN | JULY-AUG | SEP-OCT | NOV | DEC |
|---|---|---|---|---|---|---|---|---|
| 1 | Minor slope rockfish | | | | | | | |
| 2 | North | 500 lb / 2 months | | 500 lb / 2 months | | | 500 lb / 2 months | |
| 3 | South | 500 lb / 2 months | | May-Jun, 500 lb / 2 months | Jul-Aug, 1,000 lb / 2 months | Sep-Oct, 3,000 lb / 2 months | 3,000 lb / 2 months | |
| 4 | Splitnose-South | 200 lb / month | | 200 lb / month | | | 200 lb / month | |
| 5 | POP--North | 100 lb / month | | 100 lb / month | | | 100 lb / month | |
| 6 | Sablefish 2/ | | | | | | | |
| 7 | North of 36° | 300 lb / day, but no more than 2,100 lb / 2 months | | May-Jun, 300 lb / day, 2,400 lb 2 months; | Jul-Aug, 300 lb / day, 3,300 lb / 2 months; | Sep-Oct, 300 lb perday, or 1,200 lb per week, no cumulative limit | 300 lb / day or 1,200 lb / week, no cumulative limit | |
| 8 | | | | | | | | |
| 9 | South of 36° | 350 lb / day | | 350 lb / day | | | 350 lb / day | |
| 10 | Thornyheads (longspine and shortspine combined) | | | | | | | |
| 11 | North of Pt. Conception | CLOSED 3/ | | CLOSED | | | CLOSED | |
| 12 | South of Pt. Conception | 50 lb / day | | 50 lb / day | | | 50 lb / day | |
| 13 | Arrowtooth | 200 lb / month | | 200 lb / month | | | 200 lb / month | |
| 14 | Dover sole | (included in "other" flatfish limit) | | | | | | |
| 15 | Petrale sole | (included in "other" flatfish limit) | | | | | | |
| 16 | Nearshore flatfish | (included in "other" flatfish limit) | | | | | | |
| 17 | "Other" flatfish 4/ | 300 lb / month | | 300 lb / month | | | 300 lb / month | |
| 18 | Shoreside whiting | 300 lb / month | | 300 lb / month | | | 300 lb / month | |
| 19 | Minor shelf rockfish | | | | | | | |
| 20 | North | 100 lb / month | | 100 lb / month | | | 100 lb / month | |
| 21 | South | 200 lb/ month 5/ | | 200 lb / month | | | 200 lb / month | |
| 22 | Canary | | | | | | | |
| 23 | North | 50 lb / month | | 50 lb / month | | | 50 lb / month | |
| 24 | South | 50 lb / month 5/ | | 50 lb / month | | | 50 lb / month | |
| 25 | Widow | | | | | | | |
| 26 | North | 3,000 lb / month | | 3,000 lb / month | | | 3,000 lb / month | |
| 27 | South | 3,000 lb / month 5/ | | 3,000 lb / month | | | 3,000 lb / month | |
| 28 | Yellowtail-North 6/ | 100 lb / month | | 100 lb / month | | | 100 lb / month | |
| 29 | Bocaccio - South 6/ | 200 lb / month 5/ | | 200 lb / month | | | 200 lb / month | |
| 30 | Chilipepper-South 6/ | 2,000 lb / month 5/ | | 2,000 lb / month | | | 2,000 lb / month | |
| 31 | Cowcod - South 6/ | 1 fish per landing 5/ | | 1 fish per landing | | | 1 fish per landing | |
| 32 | Minor nearshore rockfish | | | | | | | |
| 33 | North 7/8/ | 1,000 lb / 2 months, of which no more than 500 lb may be species other thanblack or blue rockfish | | May-Jun, 1,500 lb / 2 mo, of which no more than 700 lb may be species other than black or blue rockfish; 2,500 lb/2 mo; | Jul-Aug, 3,000 lb / 2 mo, of which no more than 900 lb may be species other than black or blue rockfish; | Sep-Oct, 6,000 lb / 2 mo, of which no more than 2,000 lb may be species other than black or blue rockfish | 6,000 lb / 2 mo, of which no more than 2,000 lb may be species other than black or blue rockfish | |
| 34 | South | 550 lb / 2 months 5/ | | May-Jun, 800 lb/2 months | Jul-Aug, 1,600 lb / 2 months | Sep-Oct, 4,000 lb/2 month from 40° 10' N. lat. to 34° 27' N. lat 6,000 lb / 2 months south of 34° 27' N. lat | 4,000 lb / 2 months from 40° 10' N. lat. to 34° 27' N. lat.; 2,000 lb/ 2 months south of 34° 27' N. lat. | |
| 35 | | | | | | | | |
| 36 | Lingcod 9/ | CLOSED | | May-Jul, 400 lb/month; Aug-Oct, CLOSED. | | | CLOSED | |

1/ Trip limits apply coastwide unless otherwise specified. North means 40°10' N. lat. to the US-Canada border.
"South" means 40°10' N. lat. to the US-Mexico border.
2/ There is no size limit for sablefish taken and retained with nontrawl gear in the open access fishery. See IV.B.2.
3/ Closed means it is prohibited to take and retain, possess, or land the species in the time or area indicated (see IV.A.(7)).
4/ Other flatfish means all flatfish listed at 50 CFR 660.302 except those in this Table 5 with a trip limit.
5/ South of 40° 10' N. lat., minor shelf and nearshore rockfish, as well as canary, widow, bocaccio, chilipepper, and cowcod were managed with area closures in Jan-Apr. In Jan/Feb, open access fisheries for these species were closed south of 36° N. lat., yet open with limits shown between 40° 10' N. lat. and 36° N. lat. In Mar/Apr these fisheries were closed between 40° 10' N. lat. and 36° N. lat., and open with limits shown in waters south of 36° N. lat. (see IV.A.(7)).
6/ Yellowtail rockfish and POP in the south and bocaccio, chilipepper, and cowcod rockfishes in the north are included in the trip limits for minor shelf rockfish in the appropriate area (Table 2).
7/ The "per trip" limit for black rockfish off Washington also applies. See paragraph IV.B.(4).
8/ Provisions for landing groundfish in Pacific City, OR are found at paragraph IV.C.(4).
9/ The size limit for lingcod is 24 inches (61 cm) in the north and 26 inches (66 cm) in the south, total length (May through July.)
To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

BILLING CODE 3510-22-C

## Classification

These actions are authorized by the regulations implementing the FMP and the annual specifications and management measures and emergency rule published at 65 FR 221 (January 4, 2000) and are based on the most recent data available. The aggregate data upon which these actions are based are available for public inspection at the office of the Administrator, Northwest Region, NMFS (see **ADDRESSES**) during business hours.

The Assistant Administrator for Fisheries NOAA (AA) finds good cause to waive the requirement to provide prior notice and comment on this action pursuant to 5 U.S.C. 553(b)(B) because providing prior notice and opportunity for comment would be impracticable. It

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would be impracticable because the current 2-month cumulative limit period began on September 1, 2000, and affording additional advance notice and opportunity for public comment would drastically reduce the amount of time the fishers have to take the increased September to October limit. The increases to trip limits relieve burdens on the public as the trip limits provide for an increase in fishing opportunities. In addition, the affected public had the opportunity to comment on these actions at the September 11-15, 2000, Council meeting. This action should be implemented as soon as possible to provide fishers the opportunity to achieve the increased trip limits.

Since this action increases trip limits, it relieves a restriction and therefore, the AA find, under 5 U.S.C. 553(d)(1), it is unnecessary to delay for 30 days the effective date of this action.

These actions are taken under the authority of 50 CFR 660.323(b)(1), and are exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 1301 *et seq.*

Dated: October 2, 2000.

**Clarence Pautzke,**

*Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 00–25631 Filed 10–2–00; 4:30 pm]

BILLING CODE 3510–22–S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 648

**[Docket No. 000119014–0137–02; I.D. 100200C]**

### Fisheries of the Northeastern United States; Summer Flounder Fishery; Commercial Quota Harvested for New Jersey

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Commercial quota harvest.

**SUMMARY:** NMFS announces that the summer flounder commercial quota available to the State of New Jersey has been harvested. Vessels issued a commercial Federal fisheries permit for the summer flounder fishery may not land summer flounder in New Jersey for the remainder of calendar year 2000, unless additional quota becomes available through a transfer. Regulations governing the summer flounder fishery require publication of this notification to advise the State of New Jersey that the quota has been harvested and to advise vessel permit holders and dealer permit holders that no commercial quota is available for landing summer flounder in New Jersey..

**DATES:** Effective 0001 hours, October 10, 2000, through 2400 hours, December 31, 2000.

**FOR FURTHER INFORMATION CONTACT:** Paul H. Jones, Fishery Policy Analyst, (978) 281–9273.

**SUPPLEMENTARY INFORMATION:**

Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned on a percentage basis among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.100.

The initial total commercial quota for summer flounder for the 2000 calendar year was set equal to 11,109,214 lb (5,039,055 kg)(65 FR 33486, May 24, 2000). The percent allocated to vessels landing summer flounder in New Jersey is 16.72499 percent, or 1,858,346 lb (842,931 kg).

Section 648.100(e)(4) stipulates that any overages of commercial quota landed in any state be deducted from that state's annual quota for the following year. In the calendar year 1999, a total of 1,897,952 lb (860,897 kg) were landed in New Jersey, creating a 44,026 lb (19,970 kg) overage that was deducted from the amount allocated for landings in the State during 2000 (65 FR 33486, May 24, 2000). The resulting 2000 quota for New Jersey is 1,814,320 lb (822,962 kg).

Section 648.101(b) requires the Administrator, Northeast Region, NMFS (Regional Administrator) to monitor state commercial quotas and to determine when a state's commercial quota is harvested. The Regional Administrator is further required to publish a notification in the **Federal Register** advising a state and notifying Federal vessel and dealer permit holders that, effective upon a specific date, the state's commercial quota has been harvested and no commercial quota is available for landing summer flounder in that state. The Regional Administrator has determined, based upon dealer reports and other available information, that the State of New Jersey has attained its quota for 2000.

The regulations at § 648.4(b) provide that Federal permit holders agree as a condition of the permit not to land summer flounder in any state that the Regional Administrator has determined no longer has commercial quota available. Therefore, effective 0001 hours, October 10, 2000, further landings of summer flounder in New Jersey by vessels holding summer flounder commercial Federal fisheries permits are prohibited for the remainder of the 2000 calendar year, unless additional quota becomes available through a transfer and is announced in the **Federal Register**. Effective 0001 hours, October 10, 2000, federally permitted dealers are also advised that they may not purchase summer flounder from federally permitted vessels that land in New Jersey for the remainder of the calendar year, or until additional quota becomes available through a transfer.

### Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: October 2, 2000.

**Richard W. Surdi,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 00–25776 Filed 10–5–00; 8:45 am]

BILLING CODE 3210–22–F



# Proposed Rules

Federal Register
Vol. 65, No. 195
Friday, October 6, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Commodity Credit Corporation

### 7 CFR Part 1412

**RIN 0560–AF79**

### Contract Violations and Diminution in Payments: Fruits and Vegetable Planting Payment Reduction

**AGENCY:** Commodity Credit Corporation, USDA.

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** Federal Agriculture Improvement and Reform Act of 1996 (1996 Act) prohibited, with exceptions, the planting of fruits or vegetables on land enrolled in a Production Flexibility Contract (PFC). If a producer planted fruits or vegetables on acreage covered by a PFC and one of the exceptions in the 1996 Act did not apply, the producer violated the PFC. If the degree of the violation did not warrant termination of the contract, future PFC payments were reduced in accordance with the respective regulations. The Commodity Credit Corporation (CCC) published an advance notice of proposed rulemaking in May of 1999, seeking public comment on this issue. This proposed rule seeks additional public comment on the payment reductions applicable to a PFC when there has been a violation due to the planting of fruits or vegetables.

**DATES:** Comments must be received by November 6, 2000 to be assured consideration.

**ADDRESSES:** Submit comments to: Rebecca Davis, Production, Emergencies and Compliance Division (PECD), Farm Service Agency (FSA), USDA, STOP 0517, 1400 Independence Avenue, SW., Washington, DC 20250–0517, telephone (202) 720–9882, e-mail Rebecca_Davis @wdc.fsa.usda.gov.

**FOR FURTHER INFORMATION CONTACT:** Rebecca Davis at (202) 720–9882.

**SUPPLEMENTARY INFORMATION:**

### Executive Order 12866

This proposed rule has been determined to be significant and was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

### Regulatory Flexibility Act

It has been determined that Regulatory Flexibility Act is not applicable to this proposed rule because FSA is not required by 5 U.S.C. 553 or any other provisions of the law to publish a notice of proposed rule making.

### Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

### Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988. The provisions of this proposed rule preempt State laws to the extent such laws are inconsistent with the provisions of this rule. The provisions of this rule are retroactive.

### Executive Order 12372

This activity is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

### Unfunded Mandates Reform Act of 1995

This rule contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

### Paperwork Reduction Act

Information collected in this rule has been approved by OMB and assigned OMB Control Number 0560–0092. This rule does not contain any new information collection requirements.

### Executive Order 12612

It has been determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of Government.

### Discussion of the Proposed Rule

The Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act) provided producers the opportunity to enter into a Production Flexibility Contract (PFC) but generally prohibited the planting of fruits or vegetables on PFC acreage except as provided by three specific exceptions in the Statute. See 7 U.S.C. 7218. Two of the exceptions in the 1996 Act require that the PFC payment applicable to an acre to be reduced for each acre on which fruits or vegetables were planted.

When the exceptions do not apply, the planting of a fruit or vegetable on PFC acreage is a violation of the PFC. In such cases, the 1996 Act provides that the PFC shall be terminated on each farm in which that producer has an interest, except that if the Secretary, through designated representatives, determines that termination of the contract is not warranted, reductions in PFC payments may be applied in lieu of termination. Regulations addressing those reductions are found at 7 CFR 1412.401.

Under the current regulations, if the Farm Service Agency (FSA) county committee determines that a planting violation involving fruits or vegetables does not warrant termination of the PFC, a reduction may be made in the current or future PFC payments equal to the market value of the fruits or vegetables planted on contract acreage. This reduction is in addition to an acre-for-acre payment reduction for each acre of fruits or vegetables planted on contract acres. Acre-for-acre reductions are calculated starting with the contract commodity with the lowest contract payment rate per acre and proceeding to the contract commodity with the next lowest contract payment rate per acre until the PFC payment has been reduced for each acre of fruits or vegetables planted on contract acres. The planting violation payment reduction is applied

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to current PFC payments and any future PFC payments for the farm on which the violation occurred and any other farm in which the producers who share in PFC payments on the violating farm have an interest.

A producer who violates this provision can simply, instead, accept the termination remedy, in which case the producer must refund with interest all payments otherwise payable at the time of the violation and forfeit all future payments. Nonetheless, the non-termination and payment reduction now allowed is viewed by some to be out of proportion to the severity of the fruit or vegetable planting violation. In the past, some producers have accepted the payment reduction in lieu of termination, while others have chosen to terminate their PFC.

In the interim, a conference report accompanying the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1999 (Pub. L. 105–277), addressed this issue and "urged [the Secretary] to exercise reasonable treatment of producers to avoid harmful consequences." 144 Cong. Rec. H 11301 (daily ed. Oct. 19, 1998).

Because of this concern and in order to provide a full discussion of this issue, advance notices of proposed rule making were published in the **Federal Register** on May 5, 1999 (64 FR 24091), and June 25, 1999 (64 FR 34154), seeking comments on the fruits and vegetables payment reduction provisions. More than 100 responses were received within the comment periods. Based on a review of the comments received, CCC has decided to proceed with the proposed rule set out in this notice and to seek additional public comment. This proposed rule, if adopted, would amend 7 CFR 1412.401 to change the payment reduction for both prior and future violations. Under the proposed rule, where termination is determined not to be warranted, in addition to the acre-for-acre payment reduction, the reduction for the planting violation would be calculated as follows: (1) For the initial offense for the producer, twice the payment rate for each acre on which the violation occurred, not to exceed the market value the producer could have expected to receive when planting the fruits or vegetables on the acreage; and (2) For subsequent violations, the expected market value of the fruits or vegetables planted on each contract acre. Generally, the result for first-time violators is that the payment reduction will be three times the lowest payment rates applicable to the number of acres in violation. The result for subsequent violations is that the payment reduction will be the loss of the lowest payment rates applicable to the number of acres in violation and the expected market value of the fruit or vegetable planted in violation of the contract. The rationale for this provision is that in all cases where a producer plants fruits or vegetables on contract acreage, the contract acreage should not earn a contract payment. The 1996 Act provides that in permissive cases of planting fruits or vegetables there is an acre-for-acre payment reduction, such that, at a minimum, contract violators should have the acre-for-acre payment reduction apply in all circumstances so as to not end up in a better position than permissive planters. Because some producers qualify for PFC payments based on different historical rates, the acres with the lowest payment rates will be used in determining the payment reduction.

This rule should, for first offenses involving fruits or vegetables, result in a lower payment reduction because the total impact of the violation on the producer would now be no greater than three times the applicable per-acre PFC payment rate, whereas under the current rule the loss can be equal to the per-acre payment plus the total expected value of the crop. This will allow for a uniform and less onerous payment reduction. At the same time, the payment reduction will be significant enough to avoid the possibility that the leniency would be an invitation to attempt to circumvent the policy of the PFC to the detriment of traditional producers of fruits or vegetables whose interests are protected by the limitation.

Producers have an obligation to make themselves aware of program restrictions and to abide by those restrictions. For second offenses, and additional offenses that might occur, where the seriousness of the matter would be beyond doubt and where a misunderstanding would not appear plausible, the sanction under the proposed rule would be the same as it is now—namely, the full value of the crop would be taken into account, as well as eliminating a payment amount on the land equal to the payment rate for the lowest contract commodity.

In order to provide even greater uniformity in the administration of the sanctions, the proposed rule would allow refunds, or claim reductions, to those producers who on their first offenses had the current payment reduction applied. To the extent that a refund will be paid, however, no interest will be paid on such sums as the original charge was valid (given that the producer was, in fact, in violation of the contract). Any payments earned due to this recalculation are not payments for a past-due debt, but simply reflect a change in policy.

Likewise, the rule only addresses changes in the monetary implications for fruit and vegetables violations. Farmers with prior violations who chose to terminate the contract will not be allowed to re-enroll the land in the program. Compliance cannot be performed retroactively and, as to future performance, re-enrollment of the property is contrary to the very limited enrollment window allowed by the 1996 Act. Furthermore, while those farmers who did opt for termination might have, in some cases, been influenced by the size of the alternative payment reduction sanction for their violation, determining the significance of that factor would be very difficult. In any event, those producers choose to cease participation in this program in which their production would have been limited over the life of the full PFC period. Accordingly, those producers did achieve a flexibility which those that remained in PFC did not have and which is not consistent with the long-term commitments except for continued benefits under the program.

Refunds made under the rule, if adopted, would not count against the producer's payment limitations for the current year, but will be applied to the program year for which the original payment was reduced. These payments, moreover, will have only a limited effect on current payments to other producers as the amounts involved are small; moreover, those reductions that were made in payments in prior years for fruit or vegetable violations were added into the PFC payments made in subsequent years to other producers. Accordingly, overall, there is no net effect on other farmers involved with the PFC program though the results with individual producers could be impacted in a very minor way.

**List of Subjects in 7 CFR Part 1412**

Contract acreage, Contract payments, Cotton, Feed grains, Price support programs, Rice, Wheat.

## PART 1412—PRODUCTION FLEXIBILITY CONTRACTS FOR WHEAT, FEED GRAINS, RICE, AND UPLAND COTTON.

1. The authority citation for part 1412 continues to read as follows:

**Authority:** 7 U.S.C. 7201 *et seq*; 15 U.S.C. 714b, 714c; Sec. 734, Pub. L. 105–86; Pub. L. 105–228; Sec 727, Pub. L. 105–277; Secs. 727, 811, Pub. L. 106–78, 113 Stat. 1181.



2. Revise § 1412.401 to read as follows:

**§ 1412.401 Contract violations.**

(a) Except as provided further in this section, if a producer subject to a contract violates a requirement of the contract the Deputy Administrator shall terminate the contract with respect to the producer on each farm in which the producer has an interest. Upon such termination, the producer shall forfeit all rights to receive future contract payments on each farm in which the producer has an interest and shall refund all contract payments received by the producer during the period of violation, plus interest with respect to the contract payments as determined in accordance with part 1403 of this chapter.

(b) Except for violations of § 1412.206, if the county committee determines that a violation is not serious enough to warrant termination of the contract, the county committee may in lieu of termination allow the contract to continue subject to a reduction in contract payments for the period of the violation.

(c) If there is a violation of § 1412.206, and the county committee determines that the violation is not serious enough to warrant termination of the contract the County Committee may in lieu of termination allow the contract to continue but reduce the contract payments as set forth below.

(1) For the initial violation for the producer, the contract payment will be reduced by an amount that is twice the payment rate on the acre or acres found to be in violation, but not to exceed the market value the producer could have expected to receive when planting the fruits or vegetables on the acreage, as determined by the State committee.

(2) For subsequent violations for the producer, the contract payment will be reduced by an amount that is equal to the market value the producer could have expected to receive when planting the fruits or vegetables on the acreage, as determined by the State committee.

(d) The standard rule applicable to acreage planted to fruits or vegetables which provides for an acre-for-acre reduction will apply in addition to the payment reductions in paragraph (c) of this section.

(e) If the county committee determines not to terminate the contract, the producer shall be required as a condition of contract continuance to refund to CCC that part of the contract payment received by the producer during the period of the violation, plus interest determined in accordance with part 1403 of this chapter.

(f) Payment reductions will be applied in ascending order beginning with the acreage with the lowest contract payment rate.

(g) For producers who violated § 1412.206 in 1997, 1998, 1999, or 2000, and had their payments reduced under § 1412.401(b) in effect on January 1, 2000, payment reductions will be calculated under the new formula now provided in § 1412.401. Refunds will be issued to those producers as appropriate but without the payment of interest or other fees. Acreage affected by any contract termination cannot be re-enrolled in the program.

(h) Refunds made under the rule would not count against the producer's payment limitations for the current year, but rather will be applied to the program year for which the original payment was reduced.

(i) Producers who do not plant a crop on contract acreage must protect any such land from weeds and erosion, including providing sufficient cover if determined necessary by the county committee. The first violation of this provision by a producer will result in a reduction in the producer's payment for the farm by an amount equal to three times the cost of maintenance of the acreage, but not to exceed 50 percent of the payment for the farm for that fiscal year. The second violation of this provision will result in a reduction in the payment for the farm by an amount equal to three times the cost of maintenance of the acreage, not to exceed the payment for the farm for that fiscal year.

Signed at Washington, D.C., on October 2, 2000.

**Keith Kelly,**

*Executive Vice President, Commodity Credit Corporation.*

[FR Doc. 00–25665 Filed 10–5–00; 8:45 am]

BILLING CODE 3410–05–P

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## DEPARTMENT OF ENERGY

### Office of Energy Efficiency and Renewable Energy

### 10 CFR Part 430

**[Docket Number EE–RM/STD–00–550]**

**RIN 1904–AB08**

### Energy Conservation Standards for Distribution Transformers

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Notice of public workshop and availability of the Framework Document for Distribution Transformer Efficiency Standards.

**SUMMARY:** The Department of Energy (DOE or Department) will hold an informal public workshop to discuss and receive comments on issues it will address and the process it will follow in considering the adoption of energy conservation standards for electric distribution transformers. The Department also encourages written comments on these subjects. To facilitate this process, the Department prepared a Framework Document, a draft of which was made available on October 2, 2000.

**DATES:** The public workshop will be held on Wednesday, November 1, 2000, from 9:00 a.m. to 5:00 p.m. Written comments should be submitted by December 1, 2000.

**ADDRESSES:** The workshop will be held at the U.S. Department of Energy, Forrestal Building, Room 1E–245, 1000 Independence Avenue, SW., Washington, DC 20585. (Please note that foreign nationals visiting DOE Headquarters are subject to advance security screening procedures. If you are a foreign national and wish to participate in the workshop, please inform DOE of this fact as soon as possible by contacting Ms. Brenda Edwards-Jones at (202) 586–2945 so that the necessary procedures can be completed.)

On October 2, 2000, the draft Framework Document was placed on the DOE website at: http://www.eren.doe.gov/buildings/codes_standards/applbrf/dist_transformer.html.

Written comments are welcome, especially following the workshop. Please submit written comments to: Ms. Brenda Edwards-Jones, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, "Energy Conservation Program for Consumer Products: Energy Conservation Standards for Distribution Transformers, Docket No. EE–RM/STD–00–550", EE–41, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–2945; Telefax: (202) 586–4617. You should label comments both on the envelope and on the documents, and submit them for DOE receipt by December 1, 2000. Please submit one signed copy and a computer diskette (WordPerfect 8) or 10 copies (no telefacsimiles). The Department will also accept electronically-mailed comments, e-mail to Brenda.Edwards-Jones@ee.doe.gov,

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but you must supplement such comments with a signed hard copy.

Copies of the transcript of the public workshop, public comments received, the Framework Document, and this notice may be read at the Freedom of Information Reading Room, U.S. Department of Energy, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–3142, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Carl Adams, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE–41, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–9142, email: carl.adams@ee.doe.gov, or Edward Levy, Esq., U.S. Department of Energy, Office of General Counsel, GC–72, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9507, email: Edward.Levy@hq.doe.gov.

**SUPPLEMENTARY INFORMATION:** On October 22, 1997, the Secretary determined, based on the best information currently available, that it appears energy conservation standards for electric distribution transformers would be technologically feasible and economically justified, and would result in a significant energy savings. This determination initiated the process of establishing, by notice and comment rulemaking, test procedures and energy conservation standards for this product. Today's notice and the subject Framework Document and workshop mark the initial steps in the process for considering the energy conservation standards.

The Department has prepared the Framework Document to explain and discuss the process, analyses, and issues concerning the development of such standards. For many of the issues and analyses, the Framework Document sets forth approaches that the Department is considering.

The main focus of the workshop will be to discuss the analyses and issues contained in Sections 3 and 4 of the Framework Document. For each item listed, the Department will make a presentation with a discussion to follow. In addition, the Department will also make a brief presentation on the rulemaking process for distribution transformers contained in Section 2. The Department encourages those who wish to participate in the workshop to obtain the Framework Document and be prepared to discuss the contents. However, workshop participants need not limit their discussions to these topics. The Department is also interested in receiving views concerning other issues that participants believe would affect energy conservation standards for distribution transformers. The Department also welcomes all interested parties, whether or not they participate in the workshop, to submit in writing by December 1, 2000, comments and information on the matters addressed in the Framework Document and on other matters relevant to consideration of standards for distribution transformers.

The workshop will be conducted in an informal, conference style. A court reporter will be present to record the minutes of the meeting. There shall be no discussion of proprietary information, costs or prices, market shares, or other commercial matters regulated by antitrust law.

After the workshop and expiration of the period for submitting written statements, the Department will begin collecting data and conducting the analyses as discussed at the workshop and in consideration of the comments received.

If you would like to participate in the workshop, receive workshop materials, or be added to the DOE mailing list to receive future notices and information regarding distribution transformers, please contact Ms. Brenda Edwards-Jones at (202) 586–2945.

Issued in Washington, DC, on October 2, 2000.

**Dan W. Reicher,**

*Assistant Secretary, Energy Efficiency and Renewable Energy.*

[FR Doc. 00–25770 Filed 10–5–00; 8:45 am]

**BILLING CODE 6450–01–P**

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Airspace Docket No. 00–AGL–24]**

### Proposed Modification of Class E Airspace; Youngstown, OH

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This action proposes to modify Class E airspace at Youngstown, OH. An VHF Omnidirectional Range–A (VOR–A) Standard Instrument Approach Procedure (SIAP) has been developed for Youngstown-Warren Regional Airport. Controlled airspace extending upward from 700 feet above the surface is needed to contain aircraft executing this approach. This action would increase the width of the northerly extension and increase the radius of the existing Class E airspace for Youngstown, OH.

**DATES:** Comments must be received on or before November 20, 2000.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Regional Counsel, AGL–7, Rules Docket No. 00–AGL–24, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

**FOR FURTHER INFORMATION CONTACT:** Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

**SUPPLEMENTARY INFORMATION:**

#### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 00–AGL–24." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contract with FAA personnel concerned with this rulemaking will be filed in the docket.

#### Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

#### The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Youngstown, OH, by increasing the width of the northerly extension and increasing the radius of the existing Class E airspace for Youngstown-Warren Regional Airport. Controlled airspace extending upward from 700 feet above the surface is needed to contain aircraft executing instrument approach procedures. The area would be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9H dated September 1, 2000, and effective September 16, 2000, which is incorporated by reference in 14 CFR 71.1. The Class E designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an establishment body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

#### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

#### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120, E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9H, Airspace Designations and Reporting Points, dated September 1, 2000, and effective September 16, 2000, is amended as follows:

* * * * *

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

* * * * *

**AGL OH E5 Youngstown-Warren Regional Airport, OH [Revised]**

Youngstown-Warren Regional Airport
(Lat. 41°15′39″ N, long. 80°40′45″ W)
Youngstown, Lansdowne Airport, OH
(Lat. 41°07′50″ N, long. 80°37′10″ W)
Youngstown VORTAC
(Lat. 41°19′52″ N, long. 80°40′29″ W)

That airspace extending upward from 700 feet above the surface within a 7.0-mile radius of the Youngstown-Warren Regional Airport, and within 3.6 miles each side of the Youngstown VORTAC 360° radial extending from the 6.9-mile radius to 10.0 miles north of the VORTAC, and within a 6.2-mile radius of the Lansdowne Airport.

* * * * *

Dated: September 21, 2000.

**Douglas F. Powers,**

*Acting Manager, Air Traffic Division, Great Lakes Region.*

[FR Doc. 00–25636 Filed 10–5–00; 8:45 am]

**BILLING CODE 4910–13–M**

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Airspace Docket No. 00–AGL–25]**

### Proposed Modification of Class E Airspace; Hazen, ND

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This action proposes to modify Class E airspace at Hazen, ND. An Area Navigation (RNAV) Standard Instrument Approach Procedure (SIAP) to Runway 14, and an RNAV SIAP to Rwy 32, have been developed for Mercer County Regional Airport. Controlled airspace extending upward from 700 feet above the surface is needed to contain aircraft executing these approaches. This action would increases the size of the existing Class E airspace for Hazen, ND.

**DATES:** Comments must be received on or before November 20, 2000.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Regional Counsel, AGL–7, Rules Docket No. 00–AGL–25, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

**FOR FURTHER INFORMATION CONTACT:** Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

**SUPPLEMENTARY INFORMATION:**

#### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the

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airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 00–AGL–25." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRM's**

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Hazen, ND, by increasing the size of the existing Class E airspace for Mercer County Regional Airport. Controlled airspace extending upward from 700 feet above the surface is needed to contain aircraft executing instrument approach procedures. The area would be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9H dated September 1, 2000, and effective September 16, 2000, which is incorporated by reference in 14 CFR 71.1. The Class E designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an establishment body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

**PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS**

1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9H, Airspace Designations and Reporting Points, dated September 1, 2000, and effective September 16, 2000, is amended as follows:

* * * * *

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

* * * * *

**AGL ND E5 Haze, ND [Revised]**

Hazen, Mercer County Regional Airport
(Lat. 47°17′24″ N, long. 101°34′51″ W)
Dickinson VORTAC
(Lat. 46°51′36″ N, long. 102°46′25″ W)
Williston VORTAC
(Lat. 48°15′12″ N, long. 103°45′02″ W)

That airspace extending upward from 700 feet above the surface within a 10.0-mile radius of the Mercer County Regional Airport, and that airspace extending upward from 1200 feet above the surface bounded on the northwest by a line beginning at V439, thence counterclockwise along the Williston VORTAC 60.0-mile radius to V71, thence northwest along V71 to the Williston VORTAC 39.2-mile radius, thence counterclockwise along the Williston VORTAC 39.2-mile radius to the 48°00′00″ N. latitude, on the north by the lat. 48°00′00″ N., on the east by the long. 100°44′ 02″W., on the southeast by V169, on the south by lat. 46°10′ 00″ N., on the southwest by a line from 46°10′00″ N., long. 102°34′00″ W. to lat. 46°20′00″ N., long. 102°44′ 00″ W., on the west by V491, thence east along V2 to the Dickinson VORTAC 25.2-mile radius, thence counterclockwise along the Dickinson VORTAC 25.2-mile radius to V439, thence to the point of beginning, excluding that airspace within the Minot AFB, ND, Dickinson, ND, and Bismarck, ND, Class E airspace areas, and excluding all Federal Airways.

* * * * *

Issued in Des Plaines, Illinois on September 21, 2000.

**Douglas F. Powers,**

*Acting Manager, Air Traffic Division, Great Lakes Region.*

[FR Doc. 00–25637 Filed 10–5–00; 8:45 am]

BILLING CODE 4910–13–M

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 71**

**[Airspace Docket No. 00–AGL–23]**

**Proposed Modification of Class E Airspace; Cleveland, OH; Modification of Class E Airspace; Medina, OH; and Revocation of Class E Airspace; Elyria, OH**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This action proposes to modify Class E airspace at Cleveland, OH; modify Class E airspace at Medina, OH; and remove Class E airspace at Elyria, OH. An Instrument Landing System (ILS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 28 has been developed for Cleveland-Hopkins International Airport. Controlled airspace extending upward from 700 feet above the surface is needed to contain aircraft executing this approach. This action would increase the existing Class E airspace for Cleveland-Hopkins International Airport and at the same time simplify the extremely complicated existing Class E airspace legal description. Redefining the Class E airspace for Cleveland, OH, would then include the Class E airspace for Elyria, OH. This action would remove the existing Class E airspace for Elyria, OH. Finally, this action would modify the Class E airspace legal description for Medina, OH.

**DATES:** Comments must be received on or before November 20, 2000.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Regional Counsel, AGL–7, Rules Docket No. 00–AGL–23, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

**FOR FURTHER INFORMATION CONTACT:** Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 00–AGL–23." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the rules Docket, FAA, Great Lakes Region, Office of the Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRM's**

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Cleveland, OH, modify Class E airspace at Medina, OH, and remove Class E airspace at Elyria, OH. Controlled airspace extending upward from 700 feet above the surface is needed to contain aircraft executing instrument approach procedures. The area would be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9H dated September 1, 2000, and effective September 16, 2000, which is incorporated by reference in 14 CFR 71.1. The Class E designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an establishment body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

**PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS**

1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g). 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9H, Airspace Designations and Reporting Points, dated September 1, 2000, and effective September 16, 2000, is amended as follows:

* * * * *

*Paragraph 6005 Class E airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.*

* * * * *

**AGL OH E5 Cleveland, OH [Revised]**

That airspace extending upward from 700 feet above the surface bounded by a line beginning at lat. 41°25′00″ N, long. 82°23′00″ W; to lat. 41°56′00″ N, long. 81°22′00; to lat. 41°48″00″ N, long. 81°02′00″ W; to lat. 41°32′00″ N, long. 81°03′00″ W; to lat. 41°11′00″ N, long. 81°48′00″ W; to lat. 41°11″00″ N, long. 82°21′00″ W; thennce to the point of beginning.

* * * * *

**AGL OH E5 Medina, OH [Revised]**

Medina Municipal Airport
(Lat. 41°07′53″ N, long. 81°45″54″ W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Medina Municipal Airport, excluding that airspace within the Cleveland, OH, Class E airspace area.

* * * * *

**AGL OH E5 Elyria, OH [Removed]**

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Issued in Des Plaines, Illinois on September 21, 2000.

**Douglas F. Powers,**

*Acting Manager, Air Traffic Division, Great Lakes Region.*

[FR Doc. 00–25638 Filed 10–5–00; 8:45 am]

BILLING CODE 4910–13–M

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## FEDERAL TRADE COMMISSION

**16 CFR Part 313**

**Privacy of Customer Financial Information—Security**

**AGENCY:** Federal Trade Commission.

**ACTION:** Notice of extension of comment period.

**SUMMARY:** The Federal Trade Commission ("Commission" or "FTC") has extended the time for submitting comments on developing the information safeguards rule that the Commission must issue under section 501(b) of the Gramm-Leach-Bliley Act (the "G–L–B Act" or "Act").

**DATES:** Comments must be received on or before October 24, 2000.

**ADDRESSES:** Written comments should be addressed to: Secretary, Federal Trade Commission, Room H–159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. The Commission requests that commenters submit the original plus five copies, if feasible. Comments should also be submitted, if possible, in electronic form, on either a 5¼ or a 3½ computer disk, with a disk label stating the name of the commenter and the name version of the word processing program used to create the document. (Programs based on DOS or Windows are preferred. Files from other operating systems should be submitted in ASCII format.) Alternatively, the Commission will accept comments submitted to the following e-mail address: *GLB501Rule@ftc.gov*. Those commenters submitting comments by e-mail are advised to confirm receipt by consulting the postings on the Commission's website at www.ftc.gov. In addition, commenters submitting comments by e-mail are requested to indicate whether they are also providing their comments in other formats. Individuals needs not submit multiple copies or comments in electronic form. All submissions should be captioned "G–L–B Act Privacy Safeguards Rule Comment."

**FOR FURTHER INFORMATION CONTACT:** Laura Berger, Attorney, Division of Financial Practices, Federal Trade Commission, Washington, DC 20580, 202–326–3224.

**SUPPLEMENTARY INFORMATION:** On September 7, 2000, the FTC sought comment on developing the rule that Section 501(b) of the G–L–B Act requires it to establish for financial institutions subject to its jurisdiction. The Rule will establish standards pertaining to administrative, technical, and physical safeguards for nonpublic customer records and information. ("Safeguard Rule"). 65 FR 54186. As required by the G–L–B Act, the Safeguards Rule will seek to bolster the security and confidentiality of customer records and information, to protect against any anticipated threats or hazards to their security or integrity, and to protect against unauthorized access to or use of such records or information which could result in substantial harm or inconvenience to any customer. The comment period is currently scheduled to close on October 10, 2000.

The National Association for Attorneys General has asked that the comment period be extended to enable the Association to consult its members and complete a comment on the Safeguards Rule. The Commission is mindful of the need to develop a proposed Safeguards Rule expeditiously. However, the Commission also is aware that the issues raised are complex and believes that the additional comments that may result justify a short extension of the comment period.

Accordingly, the Commission has decided to extend the comment period to October 24, 2000.

By Direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 00–25660 Filed 10–5–00; 8:45 am]

BILLING CODE 6750–01–M

## SECURITIES AND EXCHANGE COMMISSION

**17 CFR Part 240**

**[Release No. 34–43401; File No. S7–18–00]**

**RIN 3235–AH94**

**Processing Requirements for Cancelled Security Certificates**

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Proposed rulemaking.

**SUMMARY:** The Commission is publishing for comment proposed rules to improve the processing of securities certificates by transfer agents. Proposed Rule 17Ad–19 under the Securities Exchange Act of 1934 would require every transfer agent to establish and implement written procedures for the cancellation, storage, transportation, and destruction of securities certificates. The rule would also require transfer agents to: Mark each cancelled securities certificate with the word "cancelled"; maintain a secure storage area for cancelled certificates; have specific procedures for the destruction of cancelled certificates, and maintain an electronic database of all of its cancelled certificates. Additionally, the Commission proposes to codify that Rules 17f–1 (the lost and stolen securities rule) and 17Ad–12 (the transfer agent safekeeping rule) apply to cancelled certificates.

**DATES:** Comments should be received on or before December 5, 2000.

**ADDRESSES:** Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comment letters should refer to File No. S7–18–00. All comment letters received will be made available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549–0102. Comments also may be submitted electronically at the following E-mail address: *rule_comments@sec.gov*. All comment letters should refer to File Number S7–18–00, this file number should be included on the subject line if E-mail is used. Comment letters will be available for inspection and copying in the public reference room at the same address. Electronically submitted comment letters will be posted on the Commission's Internet web site (http://www.sec.gov).

**FOR FURTHER INFORMATION CONTACT:** Jerry W. Carpenter, Assistant Director, or Thomas C. Etter, Jr., Special Counsel, at (202) 942–4187, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–1001.

**SUPPLEMENTARY INFORMATION**

### I. Introduction

In this release, we propose rules to require transfer agents to establish written procedures for the cancellation, storage, transportation, and destruction of securities certificates. Additionally, we propose to require the tracking of securities in transit between reporting institutions; to set a time frame for making inquiries about possible lost, stolen, missing, or counterfeit securities certificates; and to define related terms in the transfer agent rules. The amendments would clarify that cancelled certificates fall within the Commission's Lost and Stolen Securities Program and that they must be safeguarded.[1]

[1] In a separate release, we have proposed to allow registered transfer agents to use electronic media and microfiche for recordkeeping purposes. By providing more flexibility for the storage of cancelled certificates, transfer agents could destroy certificates at the time they are cancelled thereby



These proposals promote several fundamental Commission goals: (1) Improving the safety and efficiency of securities processing and transfer; (2) reducing the physical movement of securities certificates; and (3) reducing the potential for fraudulent use of cancelled securities certificates. The proposals primarily relate to problems and costs associated with cancelled securities certificates. In particular, we address the problem that, until properly destroyed, cancelled securities certificates can resurface in the market place and can be used to defraud members of the public or financial institutions. Better procedures for processing and destroying cancelled certificates would reduce this potential for harm.

### II. Background

When a security certificate is retired, such as when a bond is redeemed or ownership of stock is transferred, it is cancelled by the transfer agent. Cancellation normally involves both an accounting entry on the books of the transfer agent and an alteration of the certificate itself. Any registered cancelled certificate must then be stored for not less than six years under the record retention rules[2] of the Securities Exchange Act of 1934 ("Exchange Act").[3] Thereafter, the certificate may be destroyed.[4] In recent years, many corporate bond issues have been called for redemption decades before their maturities.[5] These bond redemptions and an active stock market have generated vast amounts of cancelled securities certificates that must be shipped, stored, safeguarded, and tracked.

Certificate processing can involve significant warehousing costs and risks. The following examples illustrate some of these risks.

In a 1992 case, approximately $111 billion face amount of cancelled bond certificates disappeared after being delivered from a transfer agent's warehouse to a certificate destruction vendor. The certificates, representing many well-known public companies, later began to resurface worldwide. A number of banks and brokers as well as individuals were defrauded through sales of the cancelled certificates for cash or through use of the cancelled certificates as loan collateral. The bulk of these cancelled certificates still remain unaccounted for and continue to resurface in the marketplace.[6]

In a similar 1994 case, approximately $6 billion face amount of cancelled bond certificates disappeared after being delivered from a transfer agent's record center to two certificate destruction vendors. The cancelled certificates, which represented well-known companies, later began to circulate worldwide. Again, the bulk of these cancelled certificates remain unaccounted for and continue to resurface in the marketplace.[7]

In another instance, cancelled certificates were stolen from a transfer agent's shipping bags while in transit. The transfer agent regularly shipped cancelled certificates from the West Coast to a New York bank for processing. The transfer agent, however, did not record the contents of its shipments and, in effect, relied on its processing agent to do its bookkeeping. When the shipping bags were stolen, neither the transfer agent nor its processing agent realized that the certificates were missing. A number of the certificates resurfaced more than a month after the theft in off-market sales.[8]

Other instances have involved bulk thefts of cancelled certificates from warehouses. In some cases, the records of the certificate numbers also were stolen because they were stored with the certificates. Even in cases where certificate records for stolen securities were available, they generally were of limited value in identifying the stolen securities because the records were manual, rather than electronic, and they were organized chronologically by cancellation dates rather than by certificate numbers. As a result, the necessary information was not easily retrievable from the records.

In many cases, the stolen certificates reentered the marketplace either through sales or as collateral for loans, resulting in substantial fraud on public investors, public companies, creditors, broker-dealers, and transfer agents. Not only do situations such as these present potential liability for the transfer agents responsible, but they consume the resources of regulatory and criminal law enforcement agencies.

A common transfer agent practice contributed to this problem. In physically cancelling certificates, many transfer agents marked the certificates only with pin-hole sized perforations. These tiny perforations were used to avoid defacing the certificates and impairing their usefulness as records. The pinholes, however, which usually formed the cancellation date and the initials of the transfer agent, often were barely noticeable. In some cases, they have been mistaken for notary or authentication markings. Even more problematic was the practice by some transfer agents of not marking certificates at all to indicate that the certificates had been cancelled.

Although neither the text nor the legislative history of Sections 17(f) and

reducing costs and the potential for theft and misuse. Securities Exchange Act Release No. 41442 (May 25, 1999), 64 FR 29608.

[2] 17 CFR 240.17Ad–6(c) and 240.17Ad–7(d). The term "registered" as used in 17 CFR 240.17Ad.6(c) with reference to cancelled certificates means certificates registered in the name of an owner, as distinct from bearer certificates which were in wide circulation when this rule was promulgated in 1997.

[3] 48 Stat. 881 (1934), 15 U.S.C. 78a *et seq.*

[4] It has been suggested that the Commission mandate the destruction of cancelled certificates within thirty days of their cancellation. While current practices are changing and some transfer agents may select alternative means to satisfy the recordkeeping requirements for cancelled certificates (*see supra* note 5), many transfer agents satisfy these recordkeeping requirements by maintaining the physical certificates themselves. In this regard, issuers and transfer agents are often called upon by courts and investors to produce records that validate transfer instructions, transfer authorizations, and for other evidence best available from cancelled certificates or acceptable images or copies thereof. Accordingly, we do not believe that a uniform destruction requirement is necessary or appropriate at this time. Commenters are invited to address this issue.

[5] Among the reasons for these bond redemptions has been the decline in long-term interest rates since the early 1980s.

[6] In 1992, the commission brought an action against a transfer agent for its failure to report stolen certificates pursuant to Rule 17f–1, 17 CFR 240.17f–1, and for its failure to safeguard securities in its possession pursuant to Rule 17Ad–12, 17 CFR 240.17Ad–12. The transfer agent agreed to pay a civil penalty of $750,000 and to cease and desist from future violations of sections 17(f)(1) and 17A of the Exchange Act and Rules 17f–1 and 17Ad–12 thereunder. *See SEC* v. *Citibank, N.A.*, Civil Action No. 92–2833 (USDC, DC, 1992). Securities Exchange Act Release No. 31612 (December 17, 1992), 53 SEC Docket 224.

[7] In 1994, the Commission and the Comptroller of the Currency brought a joint action against a transfer agent for its failure to report stolen cancelled certificates pursuant to Rule 17f–1 and its failure to safeguard securities in its possession pursuant to Rule 17Ad–12. The transfer agent agreed to pay a civil penalty of $100,000 and to cease and desist from future violation of sections 17(f)(1) and 17A of the Exchange Act and Rules 17f–1 and 17Ad–12 thereunder. As remedial measures, the transfer agent also agreed to make cancelled certificates with the word "cancelled" and to adopt other safeguards. *See The Chase Manhattan Bank*, Administrative Proceeding No. 3–8518, Securities Exchange Act Release No. 34784 (October 4, 1994), 57 SEC Docket 2195.

[8] In 1994, the Commission and the Office of the Comptroller of the Currency brought a joint enforcement action against a transfer agent and found that the transfer agent had violated section 17(f)(1) of the Exchange Act and Rule 17f–1 thereunder for failing to report the missing securities to the Commission's Lost and Stolen Securities Program. The transfer agent agreed to cease and desist from any further violations of section 17(f)(1) and Rule 17f–1 thereunder and agreed to pay a $75,000 civil penalty. *See Seattle-First National Bank*, Securities Exchange Act Release No. 34293 (July 1, 1994), 57 SEC Docket 146.

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17A of the Exchange Act[9] expressly discusses cancelled certificates, these provisions provide the Commission with ample authority and responsibility to protect investors and securities industry participants from the dangers associated with the fraudulent use of cancelled certificates. Section 17(f)(1),[10] in fact, is designed to curtail the profitability of and the unlawful trafficking in lost and stolen securities certificates.[11] Moreover, section 17A, among other things, requires adequate safeguarding of funds and securities within a transfer agent's custody or control or for which it is responsible.[12] The Commission has broad discretion in carrying out this mandate.[13]

We believe that most situations where cancelled securities certificates resurfaced in the market place have resulted from a lack of good internal control systems for the processing, storage, transportation, or destruction of the certificates. The rules that we propose today are intended to provide for more efficient and secure certificate processing, particularly of cancelled certificates. Moreover, the proposed amendments would promote several fundamental Commission mandates: (1) Improving the safety and efficiency of securities transfers; (2) reducing the physical movement of securities certificates; and (3) reducing the potential for fraudulent use of cancelled securities certificates.[14]

## III. Proposed Rules

### *A. Proposed Rule 17Ad–19: Processing of Cancelled Certificates*

The processing of cancelled certificates is largely governed by trade practices. For example, in 1994, the Securities Transfer Association ("STA"), the largest transfer agent trade association, adopted guidelines for its members which, among other things, call for marking cancelled certificates with the word "cancelled" and for greater security measures in certificate storage and destruction.[15] Because cancellation is the critical first step in the processing of retired securities certificates, we believe that rulemaking is necessary to strengthen and standardize this process.[16]

Proposed Rule 17Ad–19[17] would require each transfer agent to: (1) Have a written statement setting forth its procedures for the cancellation, storage, transportation, and destruction of securities certificates; (2) clearly apply to the face of each cancelled certificate the word "cancelled" unless the transfer agent's procedures will cause the certificate to be destroyed in accordance with other Commission rules within 72 hours of its cancellation; (3) transport cancelled certificates in a secure manner with a record of the certificates in transit; (4) witness and document the destruction of certificates; and (5) keep a retrievable electronic record of each cancelled certificate with identifying data.[18] The rule would authorize the Commission to provide exemptions from these provisions in appropriate cases upon written request or upon its own motion, such as where a transfer agent lacks any automated capability or where a transfer agent uses electronic storage media to image certificates and then immediately destroys the certificates pursuant to Exchange Act rules.[19] Under Rule 17Ad–7(i), as amended, transfer agents would have to maintain records to demonstrate compliance with these requirements of Rule 17Ad–19 for not less than three years, the first year in an easily accessible place.[20]

We believe that if the word "cancelled" were clearly imprinted onto or perforated into each cancelled certificate, it would help protect the public and industry participants from certain forms of securities fraud. Therefore, we have included such a requirement in the proposed rule. We welcome comments on whether we should prescribe standards for this requirement, such as the size of the word "cancelled" and where it should be placed on a certificate.

### *B. Rule 17f–1: Lost and Stolen Securities Program*

#### 1. Background

Section 17(f)(1) of the Exchange Act requires the Commission to operate a Lost and Stolen Securities Program ("LSSP" or "Program"). Congress directed the establishment of the Program in 1975 to curtail trafficking in lost, stolen, missing, and counterfeit securities certificates.

Rule 17f–1 under the Exchange Act governs LSSP. The Program consists mainly of a data base for securities that are reported lost, stolen, missing, or counterfeit. Operationally, the Program has two essential parts: "reports" and "inquiries." Most financial institutions (including banks, brokers, and transfer agents) are required to participate in the Program and must "report" any certificates that they discover to be lost, stolen, missing, or counterfeit.[21] Financial institutions also must "inquire" about any securities certificate valued at $10,000 or more that comes into their possession or keeping.[22] Additionally, these financial institutions may, on a permissive basis, report or inquire about other certificates.[23] The Program was designed with the belief that economic realities would cause financial institutions to inquire in a timely manner in connection with any securities certificates in substantial amounts that came into their possession.[24]

The Program is operated under contract with the Commission by the Securities Information Center, located in Boston, Massachusetts. As of December 31, 1999, the Program's data base contained reported securities with a value of approximately $385 billion. Subscribing institutions participating in the Program totalled 25,569, consisting of 13,982 banks, 10,664 securities organizations,[25] and 923 non-bank transfer agents. During 1999, reports were made on 1,438,305 certificates (an average of 5,708 certificates per business day); inquiries were made on 7,993,148 certificates (an average of 31,719 certificates per business day); and matches or "hits" resulting from inquiries were made on 301,420 certificates, which had a value of approximately $6.9 billion.[26] The hits essentially warned the inquirers that reports had been filed with the Program against the certificates inquired about. This meant that the certificates had been reported as lost, stolen, missing, or counterfeit, and that they were not eligible for transfer.

#### 2. Rule 17f–1 Definitions

a. "*Securities Certificate*". We propose to amend Rule 17f–1(a) to add a definition of "securities certificate" to clarify that the scope of Rule 17f–1 covers a certificate from the time it is printed by the issuer or the issuer's agents until the time it is destroyed. Accordingly, it would cover: certificates that have been printed but never issued, certificates that have been issued and remain outstanding, certificates that are held by the issuer as treasury securities or held by the issuer or its agents in any other capacity, and certificates that have been cancelled.

b. "*Missing*" *Securities Certificates.* The term "missing" is used in section 17(f)(1) of the Exchange Act and in Rule 17f–1 thereunder, but it is not defined.[27] The term missing has been used to describe certificates that cannot be located, such as certificates that are not found during a count or audit, but that are thought to be misfiled rather than lost or stolen.[28]

There are other circumstances, however, where a transfer agent believes it knows what happened to a cancelled certificate but cannot be certain. For example, if cancelled certificates are stored by a transfer agent in a warehouse that is destroyed by a fire, the transfer agent may believe but cannot necessarily be confident (*i.e.*, to the point of providing a guarantee) that all of the stored certificates were destroyed.[29] In such a situation, a risk exists that some of the certificates will resurface in the marketplace. These certificates might be described as lost but also could be described as missing.

The Commission believes it would be in the public interest to define the term "missing" for purposes of Rule 17f–1 to mean: (1) Any certificate that cannot be located but which is not believed to be lost or stolen; and (2) any certificate that the transfer agent believes was destroyed, but was not destroyed according to the certificate destruction procedures required by proposed Rule 17Ad–19(c). Transfer agents would be required to report these types of missing certificates to LSSP. Then, if the certificates resurfaced, there would be a high degree of likelihood that they would be identified through LSSP.

#### 3. Rule 17f–1: LSSP Reporting

Rule 17f–1 governs the operations of LSSP, including that Program's data base for securities certificates that are lost, stolen, missing, or counterfeit. The Commission has brought enforcement actions for violations of Rules 17f–1 where cancelled securities certificates that were lost or stolen were not reported to LSSP.[30] Nevertheless, there appears to be uncertainty about whether this rule applies to cancelled certificates.[31]

In our view, cancelled certificates come within the meaning and purpose of Rules 17f–1. Like counterfeit certificates, cancelled certificates have no intrinsic value, but they can be used to defraud the public.[32] Therefore, in the interest of safety and soundness in certificate processing, we propose to amend Rule 17f–1 by adding to the rule subparagraph (a)(6) which would define "securities certificates" as expressly including cancelled certificates.

#### 4. Rule 17f–1(d)(3): LSSP Inquiries

In Rule 17f–1, paragraph (c) governs "reports" about lost, stolen, missing, and counterfeit securities, and paragraph (d) governs "inquiries" about lost, stolen, missing, and counterfeit securities. While the rule currently specifies time frames for making reports, it specifies no time frames for making inquiries. Proposed Rule 17f–1(d)(3) would address time frames for inquiries under LSSP.[33]

In 1976, when the rule was adopted, the absence of a time frame for making inquiries was meant to accommodate various business practices and to avoid commercial disruptions.[34] However, since the 1970s business conditions have changed substantially, in large part due to improvements in automation and communications. Inquiries by financial institutions to LSSP have become quite routine and systematic; a standard for inquiries can no longer be viewed as potentially disruptive to commerce. Second, we note that the lack of any time limit for making required inquiries has made compliance with the rule difficult to monitor.[35] Accordingly, we propose to add paragraph (d)(3) to Rule 17f–1 providing that inquiries must be made by the end of the fifth business day after a certificate comes into the possession or keeping of a reporting institution, provided that such inquiries shall be made before the certificate is

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[9] 48 Stat. 881 (1934), 15 U.S.C. 78q(f) and 78q–1.

[10] 15 U.S.C. 78q(f)(1).

[11] *See* Lost and Stolen Securities Program, Hearings before the Permanent Subcommittee on Investigations of the Senate Committee on Government Operations, 93d Cong., 1st Ses. (1973), 2d Sess. (1974). S.249, which became the Securities Acts Amendments of 1975, was amended on the floor of the Senate to add legislation concerning lost, stolen, missing, and counterfeit securities. 121 Cong. Rec. 6186 (April 17, 1975). *See also* Conference Report to Accompany S.249, 94th Cong., 1st Sess. 103–104 (1975).

[12] *See* Securities Acts Amendments of 1975, Comm. on Banking, Housing and Urban Affairs, Sen. Rep. No. 75 to Accompany S. 249, 56–58 (1975).

[13] "The Commission is empowered with broad rulemaking authority over all aspects of a transfer agent's activities as a transfer agent." Id. at 56–57. For example, cancelled securities certificates already are expressly covered by the Exchange Act's recordkeeping rules that apply to transfer agents. Rule 17Ad–6(c), 17 CFR 240.17Ad–6(c).

[14] *See*, generally, Exchange Act, section 17A(a), (e), and (f).

[15] Rules of the STA, Section 1.26 (Recommended Procedures for Cancelled Securities).

[16] STA has over 400 members, the majority of whom are registered transfer agents. For STA's website, *see* www.stai.org. There is no self-regulatory organization for transfer agents.

[17] 17 CFR 240.17Ad–19.

[18] Required certificate detail would be: CUSIP number, certificate number including prefix or suffix, denomination, registration, issue date, and cancellation date. *Cf.*, Exchange Act Rules 17Ad–9(a) and 17f–1(c)(6), 17 CFR 240.17Ad–9(a) and 240.17f–1(c)(6).

[19] *See* Securities Exchange Act Rule 0–12, 17 CFR 240.0–12 regarding existing exemption provisions.

[20] This recordkeeping requirement for Rule 17Ad–19 would have no effect on the recordkeeping requirements of Rule 17Ad–6(c) which applies to certificates themselves.

[21] Rule 17f–1(c) and (d), 17 CFR 240.17f–1(c) and (d).

[22] *See* Rule 17f–1(d)(iv), 17 CFR 240.17f–1(d)(iv). The inquiry requirement applies to any securities certificate received as part of a transaction whose aggregate value (face value in the case of debt or market value in the case of stocks) exceeds $10,000. Required inquiries under existing Rule 17f–1(d) would not be changed by this rule proposal.

[23] *E.g.*, inquiries on securities certificates valued at less than $10,000. *See* Paragraph (e) of Exchange Act Rule 17f–1, 17 CFR 240.17f–1(e).

[24] *See* "Inquiry Requirements," Securities Exchange Act Release No. 13832 (August 5, 1977), 42 FR 41022.

[25] While parallel terms (lost, stolen, and counterfeit) also are not defined by the statute or the rule, we believe that their meanings are clear from the context.

[26] *See, e.g.*, Rule 17f–1(c)(2)(ii) concerning certificates considered "missing" as the result of a securities count or verification during, for example, an internal audit.

[27] On March 19, 1997, a major warehouse fire apparently destroyed a large number of cancelled securities certificates held in storage by a transfer agent, and the fire reportedly was caused by arson. *See* "A Burning Question: How Safe Are Your Records," *Business Week*, June 23, 1997, at page 130E4.

[28] *See, e.g., SEC* v. *Citibank, N.A., supra* note 9.

[29] On March 19, 1997, a major warehouse fire apparently destroyed a large number of cancelled securities certificates held in storage by a transfer agent, and the fire reportedly was caused by arson. *See* "A Burning Question: How Safe Are Your Records," *Business Week*, June 23, 1997, at page 130E4.

[30] *See, e.g., SEC* v. *Citibank, N.A., supra* note 9.

[31] For example, one court has found that because "cancelled securities" are not expressly included in Rule 17f–1, they are not subject to the reporting requirements of that rule. *A.G. Edwards & Sons, Inc.* v. *Centocor, Inc.*, Civil Action No. 91–6133 (E.D. PA, 1992).

[32] In *United States* v. *Jackson*, 576 F.2d. 749, 757 (8th Cir. 1978), the court recognized that stolen blank stock certificates have no intrinsic value as investments but that they have a "thieves' market value" as demonstrated by an FBI undercover operation, which was part of the case, where the certificates were purchased at 40% of their apparent market value.

[33] For description of "inquiries," *see supra* notes 23–28 and accompanying text.

[34] When enacting the underlying statute, Congress stated that the Commission should carefully weigh the benefits of mandating inquiries against the costs and effects on efficient business practices. Conference Report on S. 249, Securities Acts Amendments of 1975, 94th Cong., 1st Sess. 104 (1975). In 1976, the Commission observed that the system for inquiries should avoid undue disruptions to commercial transactions and chose not to set time limits for inquiries. *See* Securities Exchange Act Release No. 12030 (January 20, 1976), 41 FR 04834. In 1979, when the Commission asked for comments from the industry, reporting institutions said they favored a policy of leaving to their own business judgment the time frames for valuing and inquiring of LSSP about securities that came into their possession. The Commission accepted that position. *See* "inquiry Time Frames," Securities Exchange Act Release No. 15683 (March 29, 1979), 44 FR 20614

[35] The Seventh Circuit Court of Appeals observed that the addition of a precise time frame for making required inquiries would improve the operation of the rule. *First National Bank of Cicero* v. *Lewco Securities Corp.*, 860 F.2d 1407, 1416, n. 14 (7th Cir. 1988). The court also said that whether an institution meets the test of "good faith" required for bona fide purchaser status with respect to securities certificates may depend on whether it has met the inquiry requirements of Rule 17f–1. *Id.* at 1413–1415. *See also* Yadley and Ilkson, "Bona Fide Purchasers of Lost and Stolen Securities: Meeting the 'Good Faith,' and 'Notice' Requirements," 5 George Mason U.L. Rev. 101, 127–133 (1982).

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sold, used as collateral, or sent to another reporting institution.

5. Rule 17f–1(c)(2): Securities Shipments

We are proposing to add to Rule 17f–1(c)(2)(i) language that would require transfer agents to track shipments of securities certificates, including cancelled certificates, between reporting institutions.[36] When such a shipment becomes unaccounted for (for example, where the delivering institution fails to receive notice of its receipt), the delivering institution would be required to timely investigate and take reasonable steps to determine the facts. If the certificates cannot be located, the delivering institution must report to LSSP that the certificates are missing, stolen, or lost and must do so within a reasonable time not exceeding ten business days after the shipment was sent.

*C. Rule 17Ad–12: Safeguarding of Funds and Securities*

Rule 17Ad–12 governs the safekeeping of funds and securities by transfer agents. It requires that securities be handled in a manner that is reasonably free from the risk of destruction, theft, or other loss. The proposed amendment to Rule 17Ad–12 is intended to generally improve safety and soundness in certificate processing and, specifically, to clarify that cancelled certificates come within the meaning and purpose of Rule 17Ad–12. As we observed earlier, a cancelled certificate has no intrinsic value, but like a counterfeit certificate, it can be used to defraud the public. Moreover, we have brought enforcement actions for violations of Rule 17Ad–12 that involved cancelled securities certificates.[37] Therefore, we propose to amend Rule 17Ad–12 to state that it applies to "securities certificates," a term that we have proposed to define to include cancelled certificates.[38]

**IV. Request for Public Comment**

Any person wishing to submit comments on the above proposals or related matters is invited to do so. We specifically solicit comments on whether the proposed procedures for the cancellation, storage, and destruction of securities certificates would help prevent the theft and fraudulent resale or collateralization of cancelled securities. If the proposed rules do not appear to do so, commenters are requested to suggest other provisions that would ensure the safekeeping of cancelled securities and avoid the risks that cancelled certificates currently pose to the marketplace.

We also are requesting cost data for implementation of the proposals requiring procedures for the cancellation, storage, transportation, and destruction of securities certificates. We are soliciting comments on the proposed time frame for inquiries under Rule 17f–1 and about any undue burdens to commerce that might result from the proposed rules.

We welcome comments on whether proposed Rule 17Ad–19 should apply to all of approximately 1,050 registered transfer agents or only to the approximately 825 registered transfer agents that maintain security holder records for one or more securities issues. The difference of approximately 225 includes "named transfer agents," which refer their transfer agent business to transfer agent service companies,[39] and includes other transfer agents that conduct a specialty business or are inactive.

Members of the securities industry have advised the Commission about a practice of using hand stamps on securities certificates that state "cancelled in error" or similar language to avoid the expense of destroying certificates that are marked "cancelled" by mistake. They have recommended that the Commission prohibit this practice and require that certificates that are mistakenly marked "cancelled" be destroyed. Do you believe we should adopt such a rule? We welcome any comments on this matter.

We welcome comments on how much "certificate data" should be retained and indexed for cancelled certificates, destroyed certificates, and certificates that are in transit.[40] Finally, for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, the Commission is also requesting information regarding the potential impact of the proposed rule on the economy on an annual basis. Commentators should provide empirical data to support their views.

**V. Costs and Benefits of Proposed Amendments**

The Commission is considering the costs and benefits of proposed Rule 17Ad–19 and the proposed amendments to Rules 17f–1 and 17Ad–12. The Commission has identified certain costs and benefits relating to the proposals, which are discussed below, and we encourage commenters to discuss any additional costs or benefits. In particular, we request comment on the potential costs for any necessary modifications to information gathering, management, and record-keeping systems or procedures, as well as any potential benefits resulting from the proposals for issuers, transfer agents, banks, brokers, regulators, or others. Commenters should provide analysis and data to support their views on the cost and benefits associated with the proposals.

*A. Benefits*

The proposals should provide specific benefits to U.S. investors, issuers, transfer agents, and other financial intermediaries. These benefits are not readily quantifiable in terms of dollar value. Nevertheless, the proposals are designed to reduce the fraudulent use of securities certificates, particularly cancelled certificates, by requiring improved safeguarding and recordkeeping by transfer agents. In recent years, the fraudulent resale and fraudulent collateralization of cancelled certificates (certificates with no investment value) have cost private individuals and financial institutions many millions of dollars. Such costs could be substantially reduced or even eliminated by adequate safeguarding and recordkeeping of these certificates by transfer agents. Moreover, the proposals should provide the added benefit of increasing compliance with securities certificate recordkeeping and safeguarding rules (by, among other things, clarifying that cancelled certificates are subject to these rules), while decreasing instances of fraud on investors.

The Commission does not have data to quantify the value of the benefits described above. We are seeking comment on how we may quantify these benefits and any other benefits, not already identified, that may result from the adoption of the proposed amendments.

*B. Costs*

The proposals require transfer agents to have written procedures for the cancellation, storage, transportation, and destruction of securities certificates; to mark cancelled securities certificates as "cancelled"; to witness and document the destruction of certificates; and to keep a retrievable electronic record of each cancelled certificate. The preparation of these written procedures requested by the new rules would be a cost to transfer agents.

Regarding the proposed use of the word "cancelled" on cancelled certificates, we understand that, with the encouragement of the Securities Transfer Association's published guidelines,[41] most transfer agents already are marking their cancelled certificates with the word "cancelled" to designate their cancelled status.[42] We believe that the proposed requirement to use the word "cancelled" would to a large extent codify good business practices with little additional cost to the industry.

The proposed requirements to witness and record the destruction of certificates and to keep retrievable electronic records of the cancelled certificate would mean additional costs to many transfer agents. However, existing Exchange Act rules already require transfer agents to maintain "appropriate certificate detail," and this includes records of cancelled certificates,[43] and these requirements would apply only on a going forward basis, *i.e.*, transfer agents will not have to create electronic records for old cancelled certificates. Moreover, the proposed recordkeeping requirements, to a substantial degree, would clarify requirements and encode recordkeeping practices already in place, and we are unable to quantify the extent of such incremental costs. We would welcome the submission of detailed information on the subject.

**VI. Effects on Competition, Efficiency, and Capital Formation**

In adopting rules under the Exchange Act, section 23(a)(2) requires the Commission to consider the impact any rule would have on competition. Further, the law requires that the Commission not adopt any rule that would impose a burden on competition not necessary or appropriate in furtherance of the Exchange Act. Section 3(f) of the Exchange Act requires the Commission, when engaged in rulemaking, and when considering the public interest, to consider whether the action would promote efficiency, competition, and capital formation.

The proposed amendments should improve market efficiency by reducing a source of fraud and its associated costs and inefficiencies (*i.e.*, the fraudulent introduction of cancelled and worthless securities into the marketplace). In addition, the proposed amendments should have no material anticompetitive effects because they would apply equally to all transfer agents and should have no material effect on capital formation.

To evaluate more fully the effects on competition of the proposed amendments, we are requesting commenters to provide their views and specific empirical data as to any effects their adoption would have on competition. We also request comments on what effect the proposals, if adopted, would have on efficiency and capital formation.

**VII. Summary of Regulatory Flexibility Analysis**

The Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA"), in accordance with the provisions of the Regulatory Flexibility Act,[44] regarding proposed Rule 17Ad–19 and the amendments to Rules 17f–1 and 17Ad–12 under the Exchange Act. The IRFA states that the purpose of the proposal is to establish uniform procedures for the cancellation, storage, and destruction of securities certificates.

The IRFA sets forth the statutory authority for the proposal. The IRFA also discusses the effect of the proposal on transfer agents that are small entities pursuant to Rule 0–10 under the Exchange Act.[45] A transfer agent is a small entity if it: (1) Received less than 500 items for transfer and less than 500 items for processing during the preceding six months (or in the time that it has been in business, if shorter); (2) maintained master shareholder files that in the aggregate contained less than 1,000 shareholder accounts or was the named transfer agent for less than 1,000 shareholder accounts at all times during the preceding fiscal year (or in the time that it has been in business, if shorter); and (3) is not affiliated with any person (other than a natural person) that is not a small business or small organization under Rule 0–10. Approximately 470 registered transfer agents qualify as "small entities" for purposes of the RFA and would be subject to the requirements of proposed Rule 17Ad–19.

Proposed Rule 17Ad–19 would require all transfer agents to establish and implement written procedures for the cancellation, storage, transportation, and destruction of securities certificates. Such written procedures and the implementation thereof shall be subject to examination by the transfer agent's appropriate regulatory agency. Additionally, amendments to Rules 17f–1 and 17Ad–12 would clarify that these two rules apply broadly to securities certificates, including cancelled securities certificates.

The IRFA states that the Commission considered whether viable alternatives to the proposed rulemaking exist that accomplish the stated objectives of applicable statutes that minimize any significant economic impact of proposed rules on small entities. More specifically, the Commission considered the following alternatives: (1) The establishment of different procedures that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the proposed rules insofar as they affect small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

As explained further in the IRFA, the Commission has considered significant alternatives to the proposed rules that would adequately address the problem posed by cancelled securities certificates. The Commission believes that the establishment of different requirements for small entities is neither necessary nor practical because the proposal is designed to provide general standards that would protect the public and members of the financial community from certain types of securities fraud, and the proposal would include an exemption procedure that would be available to small entities on a case by case basis. Moreover, the IRFA concludes that the Commission believes that the proposal, if adopted, would not adversely affect small entities. Finally, the IRFA addresses each of the other requirements set forth under 5 U.S.C. 603.

The Commission encourages the submission of written comments with respect to any aspect of the IRFA. Those comments should specify costs of compliance with the proposed rule, and suggest alternatives that would accomplish the objective of proposed Rule 17Ad–19. A copy of the IRFA may be obtained by contacting Thomas C. Etter, Jr., Division of Market Regulation, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–1001, telephone no. (202) 942–4895.

[36] The term "reporting institution" would have the meaning set forth in 17 CFR 240.17f–1(a)(1).

[37] *See, e.g., SEC* v. *Citibank, N.A., supra* at note 9.

[38] *See, supra*, Section III.B.2.a. for discussion of definition of securities certificate.

[39] *See* Rule 17Ad–9(j) and (k), 17 CFR 240.17Ad–9(j) and (k).

[40] For the term "certificate data," *see supra* note 20.

[41] *See supra*, note 18.

[42] We believe that most transfer agents are properly marking their retired certificates with the word "cancelled," as STA has recommended. However, because doing so is not a Commission requirement, it is not a part of the Commission's examination module for transfer agents. Thus, our data on the subject is anecdotal, rather than systematic.

[43] *See* Securities Exchange Act Rules 17Ad–6(c) and 17Ad–9(a); 17 CFR 17Ad–6(c) and 17Ad–9(a).

[44] 5 U.S.C. 603.

[45] 17 CFR 240.0–10.

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**VIII. Paperwork Reduction Act**

Certain provisions of the proposed amendments contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA"),[46] and the Commission has submitted them to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title for the collection of information is: "Record Retention Requirements for Registered Transfer Agents." The OMB control number for the current collection of information is 3235–0136. The collection requirements are necessary to ensure the integrity of transfer agents' records and the safeguarding of securities certificates.

Proposed Rule 17Ad–19 contains collection of information requirements that are intended to ensure the integrity and completeness of transfer agents' records regarding physical securities certificates, in particular cancelled securities certificates. Rule 17Ad–19 would require each registered transfer agent to: (1) Have a written statement setting forth its procedures for the cancellation, storage, transportation, and destruction of securities certificates; (2) mark each cancelled certificate with the word "cancelled" on the face of the certificate; (3) witness and document the destruction of certificates; and (4) keep a retrievable electronic record of each cancelled certificate with identifying certificate data. The proposed amendments to Rules 17f–1 and 17Ad–12 would involve no additional paperwork requirements.

Proposed Rule 17Ad–19 would incorporate the three year record retention requirement of Rule 17Ad–7(i), but the proposed amendments to Rules 17f–1 and 17Ad–12 would add not any retention periods for recordkeeping requirements. The maintenance of written procedures by transfer agents under Rule 17Ad–19 would be mandatory. The written procedures would be confidential and not available to the public, although they would be subject to examination by the Commission or other appropriate regulatory agencies. We note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Approximately 1,100 transfer agents are registered with the Commission. The Commission estimates that the average amount of time per transfer agent needed to comply with the collection of information requirements of proposed Rule 17Ad–19 would be 40 hours per transfer agent for developing the written procedures. The Commission further estimates that the average amount of time per transfer agent per year to comply with the collection of information associated with recording and tracking cancelled securities certificates would be 50 hours per transfer agent per year, a figure that would vary greatly depending on the size of an entity and the volume of its business. Thus, assuming 1,100 registered transfer agents, the start-up collection of information requirements would require about 44,000 hours (40 × 1,100), and the annual collection of information requirements would be about 55,000 hours (50 × 1,100). Thus, the combined total during the first year would be about 99,000 hours.

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collections of information;

(3) Enhance the quality, utility, and clarity of the information to be collected;

(4) Minimize the burden of the collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Person desiring to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should also send a copy of their comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, with reference to File No. S7–18–00. Requests for materials submitted to OMB by the Commission with regard to this collection of information should be in writing, should refer to File No. S7–18–00, and be submitted to the Securities and Exchange Commission, Office of Filings and Information. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, so a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

[46] 44 U.S.C. 3501 *et seq.*

**IX. Statutory Basis and Text of Proposed Amendments**

*Statutory Basis*

Pursuant to the Securities Exchange Act of 1934 and particularly Sections 17(a), 17A(d), and 23(a) thereof, 15 U.S.C. 78q–1(d) and 78w(a), the Commission proposes to adopt § 240.17Ad–19 of Title 17 of the Code of Federal Regulation in the manner set forth below.

**List of Subjects in 17 CFR Part 240**

Reporting and recordkeeping requirements; Securities.

**Text of Proposed Rules**

In accordance with the foregoing, the Commission proposes to amend Part 240 of Chapter II of Title 17 of the Code of Federal Regulations as follows:

## PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read in part as follows:

**Authority:** 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*(d), 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

2. Section 240.17f–1 is amended by:

a. Adding paragraphs (a)(6), (a)(7) and (a)(8);

b. Revising the phrase "lost in transit" to read "lost, missing, or stolen while in transit" in paragraph (c)(2)(i);

c. Redesignating paragraphs (c)(2)(ii) and (c)(2)(iii) as paragraphs (c)(2)(iii) and (c)(2)(iv);

d. Adding new paragraph (c)(2)(ii); and

e. Adding paragraph (d)(3) to read as follows:

**§ 240.17f–1 Requirements for reporting and inquiry with respect to missing, lost, counterfeit or stolen securities.**

(a) * * *

(6) The term *securities certificate* means any physical instrument that represents or purports to represent ownership in a security that was printed by or on behalf of the issuer thereof and shall include any such instrument that is or was:

(i) Printed but not issued;

(ii) Issued and outstanding including treasury securities;

(iii) Cancelled, which for this purpose means either or both of the procedures set forth in § 240.17Ad–19(a)(1); or



(iv) Counterfeit or reasonably believed to be counterfeit.

(7) The term *issuer* shall include an issuer's:

(i) Transfer agent(s), paying agent(s), tender agent(s), and person(s) providing similar services; and

(ii) Corporate predecessor(s) and successor(s).

(8) The term *missing* shall include any securities certificate that:

(i) Cannot be located or accounted for, but is not believed to be lost or stolen; or

(ii) A transfer agent claims or believes was destroyed in any manner other than by the transfer agent's own certificate destruction procedures as provided in §§ 240.17Ad–19(b) and (c).

* * * * *

(c) * * *

(2) * * *

(ii) Where a shipment of securities certificates is in transit between any transfer agents, banks, brokers, dealers, or other reporting institutions, relationship between such entities, and the delivering institution fails to receive notice of receipt or non-receipt of the certificates, the delivering institution shall act to determine the facts. In the event of non-delivery where the certificates are not recovered by the delivering institution, the delivering institution shall report the certificates as lost, stolen, or missing to the Commission or its designee within a reasonable time under the circumstances but in any event within ten business days from the date of shipment.

* * * * *

(d) * * *

(3) A reporting institution shall make required inquiries by the end of the fifth business day after a securities certificate comes into its possession or keeping, provided that such inquiries shall be made before the certificate is sold, used as collateral, or sent to another reporting institution.

* * * * *

3. Section 240.17Ad–7, paragraph (i), is amended by revising the phrase "§ 240.17Ad–17(c)" to read "§§ 240.17Ad–17(c) and 240.17Ad–19(c)".

4. Amend § 240.17Ad–12, paragraph (a)(1), by revising the phrase "risk of destruction, theft or other loss;" to read "risk of theft, loss or destruction (other than by a transfer agent's certificate destruction procedures pursuant to § 240.17Ad–19);" and adding paragraph (b) to read as follows:

**§ 240.17Ad–12 Safeguarding of funds and securities.**

* * * * *

(b) For purposes of this section, the term securities shall include the term *securities certificate* as defined in § 240.17f–1(a)(6).

5. Section 240.17Ad–19 is added to read as follows:

**§ 240.17Ad–19 Requirements for cancellation, storage, and destruction of securities certificates.**

(a) *Definitions.* For purposes of this section:

(1) The terms *cancelled* or *cancellation* means the process in which a securities certificate:

(i) Is physically marked to clearly indicate that it no longer represents a claim against the issuer; and

(ii) Is voided on the records of the transfer agent.

(2) The term *cancelled certificate facility* means any location where securities certificates are cancelled, stored, or destroyed.

(3) The term *certificate number* means a unique identification or serial number that is assigned and affixed by an issuer or transfer agent to each securities certificate.

(4) The term *controlled access* means the practice of permitting the entry of only authorized personnel to areas where cancelled securities certificates are processed, stored, or destroyed.

(5) The term *CUSIP number* means the unique identification number that is assigned to each securities issue. The same CUSIP number appears on the face of each securities certificate of the same securities issue.

(6) The term *destruction* means the physical ruination of a securities certificate by a transfer agent as part of the certificate destruction procedures that make the reconstruction of the certificate impossible.

(7) The term *securities certificate* has the same meaning that it has in § 240.17f–1(a)(6).

(b) *Required procedures for the cancellation, storage, transportation, and destruction of securities certificates.* Every transfer agent involved in the keeping, handling, or processing of securities certificates shall establish and implement written procedures that describe the transfer agent's procedures for the cancellation, storage, transportation, and destruction of such securities certificates. This requirement applies to any agent that the transfer agent uses to perform any of these activities.

(c) *Written procedures.* The written procedures required by paragraph (b) of this section at a minimum, shall:

(1) Provide controlled access to any cancelled certificate facility;

(2) Unless existing procedures will cause the destruction of cancelled certificates within 72 hours of their cancellation, provide that each cancelled certificate is clearly marked with the word "CANCELLED" by stamp or perforation on the face of the certificate;

(3) Require a retrievable electronic record containing the CUSIP number, certificate number with any prefix or suffix, denomination, registration, issue date, and cancellation date of each cancelled certificate within the transfer agent's possession or control;

(4) Require, pursuant to a certificate destruction procedure, a retrievable electronic record of each destroyed securities certificate; the records must contain for each destroyed certificate the CUSIP number, certificate number with any prefix or suffix, denomination, registration, issue date, and cancellation date;

(5) Require that the physical transportation of cancelled certificates be made in a secure manner and that the transfer agent maintain a record of the CUSIP number and certificate number of each certificate in transit;

(6) Require, pursuant to a certificate destruction procedure, that authorized personnel of the transfer agent or its designee supervise and witness the intentional destruction of any cancelled certificate and retain copies of all records relating to certificates which were destroyed; and

(7) Provide for the reporting to the Lost and Stolen Securities Program in a timely and complete manner, pursuant to § 240.17f–1, any cancelled certificate that is lost, stolen, missing, or counterfeit.

(d) *Recordkeeping.* Every transfer agent subject to this section shall maintain records which demonstrate compliance with the requirements set forth in this section and which describe the transfer agent's methodology for complying with this section.

(e) *Exemptive authority.* Upon written application or upon its own motion, the Commission may grant an exemption from the provisions of this section, either unconditionally or on specific terms and conditions, to any transfer agent or any class of transfer agents and to any securities certificate or any class of securities certificates.

By the Commission.

Dated: October 2, 2000.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–25773 Filed 10–5–00; 8:45 am]

BILLING CODE 8010–01–U

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**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 1**

**[REG–114697–00]**

**RIN 1545–AY36**

## Nondiscrimination Requirements for Certain Defined Contribution Retirement Plans

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking and notice of public hearing.

**SUMMARY:** This document contains proposed regulations that would prescribe conditions under which certain defined contribution retirement plans (sometimes referred to as "new comparability" plans) are permitted to demonstrate compliance with applicable nondiscrimination requirements based on plan benefits rather than plan contributions. This document also provides notice of a public hearing on these proposed regulations.

**DATES:** Written comments, requests to speak and outlines of oral comments to be discussed at the public hearing scheduled for January 25, 2001, at 10 a.m., must be received by January 5, 2001.

**ADDRESSES:** Send submissions to: CC:M&SP:RU (REG–114697–00) room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:M&SP:RU (REG–114697–00), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option of the IRS Home Page, or by submitting comments directly to the IRS Internet site at: http://www.irs.gov/tax_regs/reglist.html. The public hearing will be held in the IRS Auditorium (7th Floor), Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Concerning the regulations, John T. Ricotta, 202–622–6060 or Linda S. F. Marshall, 202–622–6090; concerning submissions and the hearing, and/or to be placed on the building access list to attend the hearing, Sonya Cruse, 202–622–7180 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

### Background

This document contains proposed amendments to 26 CFR part 1 under section 401(a)(4) of the Internal Revenue Code of 1986 (Code).

Section 401(a)(4) provides that a plan or trust forming part of a stock bonus, pension or profit-sharing plan of an employer shall not constitute a qualified plan under section 401(a) of the Code unless the contributions or benefits provided under the plan do not discriminate in favor of highly compensated employees (HCEs) (within the meaning of section 414(q)). Whether a plan satisfies this requirement depends on the form of the plan and its effect in operation.

Section 415(b)(6)(A) provides that the computation of benefits under a defined contribution plan, for purposes of section 401(a)(4), shall not be made on a basis inconsistent with regulations prescribed by the Secretary. The legislative history of this provision explains that, in the case of target benefit and other defined contribution plans, "regulations may establish reasonable earnings assumptions and other factors for these plans to prevent discrimination." Conf. Rep. No. 1280, 93d Cong., 2d Sess. 277 (1974).

Under the section 401(a)(4) regulations, a plan can demonstrate that either the contributions or the benefits provided under the plan are nondiscriminatory in amount. Defined contribution plans generally satisfy the regulations by demonstrating that contributions are nondiscriminatory in amount, through certain safe harbors provided for under the regulations or through general testing.

A defined contribution plan (other than an ESOP) may, however, satisfy the regulations on the basis of benefits by using "cross-testing" pursuant to rules provided in § 1.401(a)(4)–8 of the regulations. Under this cross-testing method, contributions are converted to equivalent benefits payable at normal retirement age and tested on the basis of these equivalent benefits. The conversion is done by making an actuarial projection of the benefits payable at normal retirement age that are attributable to the contributions. Thus, this cross-testing method effectively permits nonelective employer contributions under a defined contribution plan to be tested on the basis of the benefits attributable to those contributions, in a manner similar to the testing of employer-provided benefits under a defined benefit plan.

In Notice 2000–14 (2000–10 I.R.B. 737), released February 24, 2000, the IRS and the Treasury Department initiated a review of issues related to use of the cross-testing method by so-called "new comparability plans" and requested public comments on this plan design from plan sponsors, plan participants and other interested parties. In general, new comparability plans are defined contribution plans that have built-in disparities between the allocation rates for classifications of participants consisting entirely or predominately of HCEs and the allocation rates for other employees.

In a typical new comparability plan, HCEs receive high allocation rates, while nonhighly compensated employees (NHCEs), regardless of their age or years of service, receive comparatively low allocation rates. For example, HCEs in such a plan might receive allocations of 18 or 20% of compensation, while NHCEs might receive allocations of 3% of compensation. A similar plan design, sometimes known as a "super-integrated" plan, provides for an additional allocation rate that applies only to compensation in excess of a specified threshold, but the specified threshold (*e.g.*, $100,000) or the additional allocation rate (*e.g.*, 10%) is higher than the maximum threshold and rate allowed under the permitted disparity rules of section 401(l).

These new comparability and similar plans rely on the cross-testing method to demonstrate compliance with the nondiscrimination rules by comparing the actuarially projected value of the employer contributions for the younger NHCEs with the actuarial projections of the larger contributions (as a percentage of compensation) for the older HCEs. As a result, these plans are able generally to provide higher rates of employer contributions to HCEs, while NHCEs are not allowed to earn the higher allocation rates as they work additional years for the employer or grow older. Notwithstanding the analytical underpinnings of cross-testing, the IRS and the Treasury Department are concerned whether new comparability and similar plans are consistent with the basic purpose of the nondiscrimination rules under section 401(a)(4).

A variety of public comments were submitted in response to Notice 2000–14. Some comments expressed the view that changes in the application of the nondiscrimination rules to new comparability plans are unnecessary. These comments noted that in some cases such plans are adopted by employers that previously had no retirement plan for their employees. At the same time, many of these comments advanced suggestions as to the types of conditions that might be imposed on new comparability plans if changes in the rules are in fact proposed.



Other comments expressed the view that the rules need to be changed to increase the contributions made for NHCEs in new comparability plans and similar tax-qualified plan designs. These comments suggested various methods for ensuring that NHCEs receive larger allocations of employer contributions under new comparability plans, including imposing a maximum ratio of the allocation rates for HCEs to those for NHCEs or requiring a minimum allocation rate for the NHCEs.

Still other comments questioned the policy justification for permitting new comparability plans under the nondiscrimination rules governing tax-qualified plans because new comparability plan designs often provide such an overwhelming percentage of total plan allocations to HCEs, with only a modest percentage of the plan allocations going to the NHCEs. Some of these comments expressed concern that new comparability plans in some instances have been marketed as a technique for limiting most employees to lower allocation rates than they would receive under other defined contribution plan designs (such as salary ratio or age-weighted) and allocating the difference to one or more HCEs. They noted that, in some cases, the percentage of total plan allocations provided to the HCEs can exceed 90%.

After consideration of the comments received, the IRS and Treasury are issuing these proposed regulations, which would prescribe conditions that new comparability and similar plans must satisfy if they are to use the cross-testing method. The proposed regulations preserve the existing cross-testing rules of the section 401(a)(4) regulations, and would not affect cross-tested defined contribution plans that provide broadly available allocation rates, as defined in the proposed regulations. The definition of broadly available allocation rates includes plans that base allocations or allocation rates on age or service. In contrast to new comparability plans, these plans provide an opportunity for participants to "grow into" higher allocation rates as they age or accumulate additional service.

These proposed regulations would continue to permit new comparability plans. As suggested in various comments, the proposed regulations would set forth a minimum allocation "gateway" that would constrain the plan designs with the greatest disparity in favor of HCEs, while leaving many new comparability plan designs unchanged. A new comparability plan that satisfies the minimum allocation gateway could continue to use the existing cross-testing rules of the section 401(a)(4) regulations.

The proposed regulations also would prevent circumvention of the minimum allocation gateway by aggregating (for purposes of satisfying the nondiscrimination rules) a new comparability defined contribution plan with a defined benefit plan that provides only minimal benefits or covers only a relatively small number of the employees, or by aggregating a defined contribution plan with a defined benefit plan that benefits primarily HCEs. However, an aggregated defined contribution and defined benefit plan that is primarily defined benefit in character (as defined in the proposed regulations) could test for nondiscrimination on the basis of benefits in the same manner as under current law. Similarly, the ability to test for nondiscrimination on a benefits basis as under current law would be unrestricted if each of the defined contribution and defined benefit portions of the aggregated plan is a broadly available separate plan (as defined in the proposed regulations).

The proposed regulations would not affect defined benefit plans except where a defined contribution plan is aggregated with a defined benefit plan for nondiscrimination purposes and thus is a part of a DB/DC plan (as defined in § 1.401(a)(4)–9). The proposed regulations would not apply merely because a plan sponsor maintains both a defined contribution plan and a defined benefit plan. The proposed regulations would not require aggregation of a defined contribution plan with a defined benefit plan or otherwise modify the existing rules regarding when plans are required or permitted to be aggregated.

### Explanation of Provisions

#### *A. Overview*

The basic structure of the proposed regulations permits defined contribution plans with broadly available allocation rates to test on a benefits basis ("cross-test") in the same manner as under current law, and permits other defined contribution plans to cross-test once they pass a gateway that prescribes minimum allocation rates for NHCEs. Similarly, the proposed regulations permit a DB/DC plan to test on a benefits basis in the same manner as under current law if the DB/DC plan either is primarily defined benefit in character or consists of broadly available separate plans. Other DB/DC plans are permitted to test on a benefits basis once they pass a corresponding gateway prescribing minimum aggregate normal allocation rates for NHCEs.

#### *B. Gateway for Cross-Testing of New Comparability and Similar Plans*

The proposed regulations would require that a defined contribution plan that does not provide broadly available allocation rates (as defined in these proposed regulations) satisfy a gateway in order to be eligible to use the cross-testing rules to meet the nondiscrimination requirements of section 401(a)(4). A plan would satisfy this minimum allocation gateway if each NHCE in the plan has an allocation rate that is at least one third of the allocation rate of the HCE with the highest allocation rate;[1] however, a plan would be deemed to satisfy this minimum allocation gateway if each NHCE received an allocation of at least 5% of the NHCE's compensation (within the meaning of section 415(c)(3)).

The proposed regulations would not change the general rule prohibiting aggregation of a 401(k) plan or 401(m) plan with a plan providing nonelective contributions. Accordingly, elective contributions and matching contributions would not be taken into account for purposes of the gateway. If an employer also provides a 401(k) plan, however, then to the extent the HCEs are electing contributions under that plan, the highest HCE allocation rate may be lower than it otherwise would be, which, in turn would lower the minimum required allocation for the NHCEs under the gateway. Further, if the employer sponsors a safe harbor 401(k) plan that provides for 3% nonelective contributions, then, as noted in Notice 98–52 (1998–2 C.B. 634), those nonelective contributions may be taken into account in determining the allocation rates for the NHCEs under section 401(a)(4), including the minimum allocation gateway.

#### *C. Plans With Broadly Available Allocation Rates*

As suggested in Notice 2000–14, a plan that has broadly available allocation rates would not need to satisfy the minimum allocation gateway and may continue to be tested for nondiscrimination on the basis of benefits as under current law. In order to be broadly available, each allocation rate under the plan must be currently available to a group of employees that

[1] For example, if any HCE had an allocation of 12% of compensation, all NHCEs in the plan would be required to have an allocation of at least 4% of compensation.

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satisfies section 410(b) (without regard to the average benefit percentage test). Thus, for example, if within one plan an employer provides different allocation rates for nondiscriminatory groups of employees at different locations or different profit centers, the plan would not need to satisfy the minimum allocation gateway in order to use cross testing.

In addition, a plan that provides allocation rates that increase as an employee ages or accumulates additional service would be treated as having broadly available allocation rates, if the schedule of allocation rates satisfies certain conditions that permit participants to "grow into" higher allocation rates. The conditions are that the same schedule of allocation rates is available to all employees in the plan and that the schedule provides for smoothly increasing allocation rates at regular intervals of age or service.

The proposed regulation would provide that in order for a schedule of allocation rates to increase smoothly, the allocation rate for each age or service band cannot be more than 5 percentage points higher than the allocation rate for the immediately preceding band and cannot be more than twice that allocation rate. For example, if the allocation rate for an age or service band were 6%, the allocation rate for the next higher age or service band could not exceed 11% (*i.e.*, the lesser of 11% (6% plus 5%) and 12% (2 times 6%)).

Further, in order for a schedule of allocation rates to be considered to be increasing smoothly, the ratio of the allocation rate for any age or service band to the allocation rate for the immediately preceding band cannot exceed the ratio of the allocation rates between the two immediately preceding bands. The proposed regulations would provide that the intervals for the age or service bands are regular if they are all of the same length (although this requirement generally would not apply to the first and last bands).

The definition of broadly available allocation rates is designed to be sufficiently flexible to accommodate a wide variety of age- and service-based plans (including age-weighted profit-sharing plans that provide for allocations that result in the same equivalent accrual rate for all employees).

The conditions described above relating to a plan's schedule of age-based or service-based allocation rates are intended to exempt from the minimum allocation gateway those plans in which NHCEs actually receive the benefit of higher rates as they attain higher ages or complete additional years of service. Without conditions such as these, plans can be designed to backload allocation rates excessively, providing for lengthy plateau periods in which rates increase little if at all, followed by sharp increases.

Comments are invited on whether there are plans using schedules of allocation rates (such as schedules of rates based on points or otherwise combining age and service) that would fall outside the definition of broadly available allocation rates but that do afford sufficient opportunity for NHCEs to "grow into" higher allocation rates.

*D. Application to Defined Contribution Plans That Are Combined With Defined Benefit Plans*

The proposed regulations would prescribe rules for testing defined contribution plans that are aggregated with defined benefit plans for purposes of sections 401(a)(4) and 410(b). These rules would apply in situations in which the employer aggregates the plans because one of the plans does not satisfy sections 401(a)(4) and 410(b) standing alone.

1. Gateway for Benefits Testing of Combined Plans

Under the proposed regulations, the combination of a defined contribution plan and a defined benefit plan may demonstrate nondiscrimination on the basis of benefits if the combined plan is primarily defined benefit in character, consists of broadly available separate plans (as these terms are defined in the proposed regulations), or satisfies a gateway requirement. This minimum aggregate allocation gateway is generally similar to the minimum allocation gateway for defined contribution plans that are not combined with a defined benefit plan. To apply this minimum aggregate allocation gateway, the employee's aggregate normal allocation rate is determined by adding the employee's allocation under the defined contribution plan to the employee's equivalent allocation under the defined benefit plan. The use of aggregation would allow an employer that provides both a defined contribution and a defined benefit plan to the NHCEs to take both plans into account in determining whether the minimum aggregate allocation gateway is met.

Under the gateway, if the aggregate normal allocation rate of the HCE with the highest aggregate normal allocation rate under the plan (HCE rate) is less than 15%, the aggregate normal allocation rate for all NHCEs must be at least ⅓ of the HCE rate. If the HCE rate is between 15% and 25%, the aggregate normal allocation rate for all NHCEs must be at least 5%. If the HCE rate exceeds 25%, then the aggregate normal allocation rate for each NHCE must be at least 5% plus one percentage point for each 5-percentage-point increment (or portion thereof) by which the HCE rate exceeds 25% (e.g., the NHCE minimum is 6% for an HCE rate that exceeds 25% but not 30%, and 7% for an HCE rate that exceeds 30% but not 35%, etc.).

In addition, in determining the equivalent allocation rate for an NHCE under a defined benefit plan, a plan is permitted to treat each NHCE who benefits under the defined benefit plan as having an equivalent allocation rate equal to the average of the equivalent allocation rates under the defined benefit plan for all NHCEs benefitting under that plan. This averaging rule recognizes the "grow-in" feature inherent in traditional defined benefit plans (i.e., the defined benefit plan provides higher equivalent allocation rates at higher ages).

Comments are invited on possible special situations involving DB/DC plans, such as situations arising as a result of a merger or acquisition or a situation in which some HCEs in a DB/DC plan have unusually high equivalent normal allocation rates for reasons other than the design of the plan. Comments are invited as to whether the regulations should address such special circumstances and, if so, how (*e.g.*, through a maximum required rate for NHCEs under a DB/DC plan or other approaches).

2. Primarily Defined Benefit in Character

A combined plan that is primarily defined benefit in character would not be subject to the gateway requirement and may continue to be tested for nondiscrimination on the basis of benefits as under current law. A combined plan would be primarily defined benefit in character if, for more than 50% of the NHCEs benefitting under the plan, the normal accrual rate attributable to benefits provided under defined benefit plans for the NHCE exceeds the equivalent accrual rate attributable to contributions under defined contribution plans for the NHCE. For example, a DB/DC plan would be primarily defined benefit in character where the defined contribution plan covers only salaried employees, the defined benefit plan covers only hourly employees, and more than half of the NHCEs participating in the DB/DC plan are hourly employees participating only in the defined benefit plan.



3. Broadly Available Separate Plans

A combined plan that consists of broadly available separate plans would not be subject to the gateway requirement and may continue to be tested for nondiscrimination on the basis of benefits as under current law. A DB/DC plan consists of broadly available separate plans if the defined contribution plan and the defined benefit plan each would satisfy the requirements of section 410(b) and the nondiscrimination in amount requirement of § 1.401(a)(4)–1(b)(2) if each plan were tested separately, assuming satisfaction of the average benefit percentage test of § 1.410(b)–5. Thus, the defined contribution plan must separately satisfy the nondiscrimination requirements (taking into account these proposed regulations as applicable), but for this purpose assuming satisfaction of the average benefit percentage test. Similarly, the defined benefit plan must separately satisfy the nondiscrimination requirements, assuming for this purpose satisfaction of the average benefit percentage test. In conducting the required separate testing, all plans of a single type (defined contribution or defined benefit) within the DB/DC plan are aggregated, but those plans are tested without regard to plans of the other type.

This alternative would be useful, for example, where an employer maintains a defined contribution plan that provides a uniform allocation rate for all covered employees at one business unit and a safe harbor defined benefit plan for all covered employees at another unit, where the group of employees covered by each plan is a group that satisfies the nondiscriminatory classification requirement of section 410(b). Because the employer provides broadly available separate plans, it may continue to aggregate the plans and test for nondiscrimination on the basis of benefits, as an alternative to using the qualified separate line of business rules or demonstrating satisfaction of the average benefit percentage test.

*E. Use of Component Plans and Permitted Disparity*

Component plans under the restructuring rules cannot be used for the determination of whether a defined contribution plan provides broadly available allocation rates or satisfies the minimum allocation gateway, or the determination of whether a DB/DC plan satisfies the minimum aggregate allocation gateway, is primarily defined benefit in character, or consists of broadly available separate plans. For purposes of the two gateways and determining whether a DB/DC plan is primarily defined benefit in character, allocation rates and equivalent allocation rates are determined without the use of permitted disparity. For purposes of determining whether a DB/DC plan consists of broadly available separate plans, permitted disparity may be used in the defined contribution plan or the defined benefit plan but not in both plans with respect to each employee who participates in both.

**Proposed Effective Date**

The regulations are proposed to be applicable for plan years beginning on or after January 1, 2002.

**Special Analyses**

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, these proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

**Comments and Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic or written comments (preferably a signed original and eight (8) copies) that are submitted timely to the IRS. In addition to the other requests for comments set forth in this document, the IRS and Treasury also request comments on the clarity of the proposed rule and how it may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for January 25, 2001, at 10 a.m. in the IRS Auditorium (7th Floor), Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Due to building security procedures, visitors must enter at the 10th street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons who wish to present oral comments at the hearing must submit written comments and submit an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by January 5, 2001.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

**Drafting Information**

The principal authors of these regulations are John T. Ricotta and Linda S. F. Marshall of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury participated in their development.

**List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

**Proposed Amendments to the Regulations**

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

**PART 1—INCOME TAXES**

**Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 * * *

**Par. 2.** In § 1.401(a)(4)–8, paragraph (b)(1) is revised to read as follows:

**§ 1.401(a)(4)–8 Cross-testing.**

* * * * *

(b) *Nondiscrimination in amount of benefits provided under a defined contribution plan*—(1) *General rule and gateway*—(i) *General rule.* Equivalent benefits under a defined contribution plan (other than an ESOP) are nondiscriminatory in amount for a plan year if—

(A) The plan would satisfy § 1.401(a)(4)–2(c)(1) for the plan year if an equivalent accrual rate, as determined under paragraph (b)(2) of this section, were substituted for each employee's allocation rate in the determination of rate groups; and

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(B) For plan years beginning on or after January 1, 2002, if the plan does not have broadly available allocation rates (within the meaning of paragraph (b)(1)(iii) of this section) for the plan year, the plan satisfies the minimum allocation gateway of paragraph (b)(1)(iv) of this section for the plan year.

(ii) *Allocations after testing age.* A plan does not fail to satisfy paragraph (b)(1)(i)(A) of this section merely because allocations are made at the same rate for employees who are older than their testing age (determined without regard to the current-age rule in paragraph (4) of the definition of *testing age* in § 1.401(a)(4)–12), as they are made for employees who are at that age.

(iii) *Broadly available allocation rates*—(A) *In general.* A plan has broadly available allocation rates for the plan year if each allocation rate under the plan is currently available during the plan year (within the meaning of § 1.401(a)(4)–4(b)(2)), to a group of employees that satisfies section 410(b) (without regard to the average benefit percentage test of § 1.410(b)–5). For this purpose, the disregard of age and service conditions described in § 1.401(a)(4)–4(b)(2)(ii)(A) applies only if the plan provides an allocation formula under which the allocation rates for all employees benefitting under the plan are determined using a single schedule of rates that are based solely on either age or service, and only if the allocation rates under the schedule increase smoothly at regular intervals, within the meaning of paragraphs (b)(1)(iii)(B) and (C) of this section. A plan does not fail to provide broadly available allocation rates merely because it provides the minimum benefit described in section 416(c)(2).

(B) *Smoothly increasing schedule of allocation rates.* A plan uses a single schedule of allocation rates that are based solely on age or service if it uses a single schedule of allocation rates that consists of a series of either age or service bands under which the same allocation rate applies to all employees whose age is within each age band or whose years of service are within each service band. A schedule of allocation rates increases smoothly if the allocation rate for each age or service band within the schedule is greater than the allocation rate for the immediately preceding band (*i.e.*, the age or service band with the next lower number of years of age or service) but by no more than 5 percentage points. However, a schedule of allocation rates will not be treated as increasing smoothly if the ratio of the allocation rate for any age or service band to the rate for the immediately preceding band is more than 2.0 or if it exceeds the ratio of allocation rates between the two immediately preceding bands.

(C) *Regular intervals.* A schedule of allocation rates has regular intervals of age or service if each age or service band, other than the band associated with the highest age or years of service, is the same length. For this purpose, if the schedule is based on age, the first age band will be deemed to be of the same length as the other bands if it ends at or before age 25. If the first age band ends after age 25, then, in determining whether the length of the first band is the same as the length of other bands, the starting age for the first age band is permitted to be treated as age 25 or any age earlier than 25.

(iv) *Minimum allocation gateway.* A plan satisfies the minimum allocation gateway of this paragraph (b)(1)(iv) if each NHCE has an allocation rate that is at least one third of the allocation rate of the HCE with the highest allocation rate. However, a plan is deemed to satisfy this minimum allocation gateway if each NHCE receives an allocation of at least 5% of the NHCE's compensation within the meaning of section 415(c)(3).

(v) *Determination of allocation rates.* For purposes of this paragraph (b)(1), allocations and allocation rates are determined under § 1.401(a)(4)–2(c)(2), but without taking into account the imputation of permitted disparity under § 1.401(a)(4)–7 in applying the minimum allocation gateway of paragraph (b)(1)(iv) of this section.

(vi) *Examples.* The following examples illustrate the rules in this paragraph (b)(1):

*Example 1.* (i) Plan M is a defined contribution plan that provides an allocation formula under which allocations are provided to all employees according to the following schedule:

| Years of service | Allocation rate (percent) | Ratio of allocation rate for band to allocation rate for immediately preceding band |
|---|---|---|
| 0–5 | 3.0 | N/A |
| 6–10 | 4.5 | 1.50 |
| 11–15 | 6.5 | 1.44 |
| 16–20 | 8.5 | 1.31 |
| 21–25 | 10.0 | 1.18 |
| 26 or more | 11.5 | 1.15 |

(ii) Because Plan M provides that allocation rates for all employees are determined using a single schedule based solely on service, the plan is permitted to disregard the service requirement in determining whether the allocation rates are broadly available (within the meaning of paragraph (b)(1)(iii) of this section), if the allocation rates under the schedule increase smoothly at regular intervals.

(iii) The schedule of allocation rates under Plan M does not increase by more than 5 percentage points between adjacent bands and the ratio of the allocation rate for any band to the allocation rate for the immediately preceding band is never more than 2.0 and does not increase. Therefore, the allocation rates increase smoothly. In addition, the bands (other than the highest band) are all 5 years long, so the increases occur at regular intervals. Accordingly, the service requirement is disregarded and each allocation rate is broadly available within the meaning of paragraph (b)(1)(iii) of this section, as each allocation rate is currently available to all employees in the Plan.

(iv) Under paragraph (b)(1)(i) of this section, Plan M satisfies the nondiscrimination in amount requirement of § 1.401(a)(4)–1(b)(2) on the basis of benefits if it satisfies paragraph (b)(1)(i)(A) of this section, regardless of whether it satisfies the minimum allocation gateway of paragraph (b)(1)(iv) of this section.

*Example 2.* (i) Plan N is a defined contribution plan that provides an allocation formula under which allocations are provided to all employees according to the following schedule:

| Age | Allocation rate (percent) | Ratio of allocation rate for band to allocation rate for immediately preceding band |
|---|---|---|
| under 25 | 3.0 | N/A |
| 25–34 | 6.0 | 2.00 |
| 35–44 | 9.0 | 1.50 |
| 45–54 | 12.0 | 1.33 |
| 55–64 | 16.0 | 1.33 |
| 65 or older | 21.0 | 1.31 |

(ii) Because Plan N provides that allocation rates for all employees are determined using a single schedule based solely on age, the plan is permitted to disregard the age requirement in determining whether the allocation rates are broadly available (within the meaning of paragraph (b)(1)(iii) of this section), if the allocation rates under the schedule increase smoothly at regular intervals.

(iii) The schedule of allocation rates under Plan N does not increase by more than 5 percentage points between adjacent bands and the ratio of the allocation rate for any band to the allocation rate for the immediately preceding band is never more than 2.0 and does not increase. Therefore, the allocation rates increase smoothly. In addition, the bands are all 10 years long (other than the highest band and the first band, which is deemed to be the same length as the other bands because it ends prior to age 25), so the increases occur at regular intervals. Accordingly, the age requirement is disregarded and each allocation rate is broadly available within the meaning of paragraph (b)(1)(iii) of this section, as each allocation rate is currently available to all employees in the Plan.

(iv) Under paragraph (b)(1)(i) of this section, Plan N satisfies the nondiscrimination in amount requirement of § 1.401(a)(4)–1(b)(2) on the basis of benefits if it satisfies paragraph (b)(1)(i)(A) of this section, regardless of whether it satisfies the minimum allocation gateway of paragraph (b)(1)(iv) of this section.

*Example 3.* (i) Plan O is a profit-sharing plan maintained by Employer A that covers all of Employer A's employees, consisting of two HCEs, X and Y, and 7 NHCEs. Employee X's compensation is $170,000 and Employee Y's compensation is $150,000. The allocation for Employees X and Y is $30,000 each, resulting in an allocation rate of 17.6% for Employee X and 20% for Employee Y. Under Plan O, each NHCE receives an allocation of 5% of compensation within the meaning of section 415(c)(3).

(ii) Because the allocation rate for X is not currently available to any NHCE, Plan O does not have broadly available allocation rates and must satisfy the minimum allocation gateway of paragraph (b)(1)(iv) of this section.

(iii) The highest allocation rate for any HCE under Plan O is 20%. Accordingly, Plan O would satisfy the minimum allocation gateway of paragraph (b)(1)(iv) of this section if all NHCEs have an allocation rate of at least 6.67%, or if all NHCEs receive an allocation of at least 5% of compensation within the meaning of section 415(c)(3).

(iv) Under Plan O, each NHCE receives an allocation of 5% of compensation within the meaning of section 415(c)(3). Accordingly, Plan O satisfies the minimum allocation gateway of paragraph (b)(1)(iv) of this section.

(v) Under paragraph (b)(1)(i) of this section, Plan O satisfies the nondiscrimination in amount requirement of § 1.401(a)(4)–1(b)(2) on the basis of benefits if it satisfies paragraph (b)(1)(i)(A) of this section.

* * * * *

**Par. 3.** Section 1.401(a)(4)–9 is amended by adding paragraph (b)(2)(v) and revising paragraph (c)(3)(ii) to read as follows:

**§ 1.401(a)(4)–9 Plan aggregation and restructuring.**

* * * * *

(b) * * *

(2) * * *

(v) *Eligibility for testing on a benefits basis*—(A) *General rule.* For plan years beginning on or after January 1, 2002, unless, for the plan year, a DB/DC plan is primarily defined benefit in character (within the meaning of paragraph (b)(2)(v)(B) of this section) or consists of broadly available separate plans (within the meaning of paragraph (b)(2)(v)(C) of this section), the DB/DC plan must satisfy the minimum aggregate allocation gateway of paragraph (b)(2)(v)(D) of this section for the plan year in order to be permitted to demonstrate satisfaction of the nondiscrimination in amount requirement of § 1.401(a)(4)–1(b)(2) on the basis of benefits.

(B) *Primarily defined benefit in character.* A DB/DC plan is primarily defined benefit in character if, for more than 50% of the NHCEs benefitting under the plan, the normal accrual rate for the NHCE attributable to benefits provided under defined benefit plans that are part of the DB/DC plan exceeds the equivalent accrual rate for the NHCE attributable to contributions under defined contribution plans that are part of the DB/DC plan.

(C) *Broadly available separate plans.* A DB/DC plan consists of broadly available separate plans if the defined contribution plan and the defined benefit plan that are part of the DB/DC plan each would satisfy the requirements of section 410(b) and the nondiscrimination in amount requirement of § 1.401(a)(4)–1(b)(2) if each plan were tested separately and assuming that the average benefit percentage test of § 1.410(b)–5 were satisfied. For this purpose, all defined contribution plans that are part of the DB/DC plan are treated as a single defined contribution plan and all defined benefit plans that are part of the DB/DC plan are treated as a single defined benefit plan. In addition, if permitted disparity is used for an employee for purposes of satisfying the separate testing requirement of this paragraph (b)(2)(v)(C) for plans of one type, it may not be used in satisfying the separate testing requirement for plans of the other type for the employee.

(D) *Minimum aggregate allocation gateway.* A DB/DC plan satisfies the minimum aggregate allocation gateway of this paragraph (b)(2)(v)(D) if each NHCE has an aggregate normal allocation rate that is at least one third of the aggregate normal allocation rate of the HCE with the highest such rate (HCE rate), or, if less, 5% of the NHCE's compensation, provided that the HCE rate does not exceed 25% of compensation. If the HCE rate exceeds 25% of compensation, then the aggregate normal allocation rate for each NHCE must be 5% increased by one percentage point for each 5-percentage-point increment (or portion thereof) by which the HCE rate exceeds 25% (*e.g.*, the NHCE minimum is 6% for an HCE rate that exceeds 25% but not 30%, and 7% for an HCE rate that exceeds 30% but not 35%). For purposes of this paragraph (b)(2)(v)(D), a plan is permitted to treat each NHCE who benefits under the defined benefit plan as having an equivalent normal allocation rate equal to the average of the equivalent normal allocation rates under the defined benefit plan for all NHCEs benefitting under that plan.

(E) *Determination of rates.* For purposes of this paragraph (b)(2)(v), the normal accrual rate and the equivalent normal allocation rate attributable to defined benefit plans, the equivalent accrual rate attributable to defined contribution plans and the aggregate normal allocation rate are determined under paragraph (b)(2)(ii) of this section, but without taking into account the imputation of permitted disparity under § 1.401(a)(4)–7, except as otherwise permitted under paragraph (b)(2)(v)(C) of this section.

(F) *Examples.* The following examples illustrate the application of this paragraph (b)(2)(v):

*Example 1.* (i) Employer A maintains Plan M, a defined benefit plan, and Plan N, a defined contribution plan. All HCEs of Employer A are covered by Plan M (at a 1% accrual rate), but not covered by Plan N. All NHCEs of Employer A are covered by Plan N (at a 3% allocation rate), but not covered by Plan M. Because Plan M does not satisfy section 410(b) standing alone, Plans M and N are aggregated for purposes of satisfying sections 410(b) and 401(a)(4).

(ii) Because none of the NHCEs participate in the defined benefit plan, the aggregated DB/DC plan is not primarily defined benefit in character within the meaning of paragraph (b)(2)(v)(B) of this section nor does it consist of broadly available separate plans within the meaning of paragraph (b)(2)(v)(C) of this section. Accordingly, the aggregated Plan M and Plan N must satisfy the minimum aggregate allocation gateway of paragraph (b)(2)(v)(D) of this section in order to satisfy the nondiscrimination in amount requirement of § 1.401(a)(4)–1(b)(2) on the basis of benefits.

*Example 2.* (i) Employer B maintains Plan O, a defined benefit plan, and Plan P, a defined contribution plan. All of the six employees of Employer B are covered under both Plan O and Plan P. Under Plan O, all employees have a uniform normal accrual rate of 1% of compensation. Under Plan P, Employees A and B, who are HCEs, receive an allocation rate of 15%, and participants C, D, E and F, who are NHCEs, receive an allocation rate of 3%. Employer B aggregates Plans O and P for purposes of satisfying sections 410(b) and 401(a)(4). The equivalent normal allocation and normal accrual rates under Plans O and P are as follows:

| Employee | Equivalent normal allocation rates for the 1% accrual under Plan O (defined benefit plan) percent | Equivalent normal accrual rates for the 15%/3% allocations under Plan P (defined contribution plan) percent |
|---|---|---|
| HCE A (age 55) | 3.93 | 3.82 |
| HCE B (age 50) | 2.61 | 5.74 |

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| Employee | Equivalent normal allocation rates for the 1% accrual under Plan O (defined benefit plan) percent | Equivalent normal accrual rates for the 15%/3% allocations under Plan P (defined contribution plan) percent |
|---|---|---|
| C (age 60) ..... | 5.91 | .51 |
| D (age 45) ..... | 1.73 | 1.73 |
| E (age 35) ..... | .77 | 3.90 |
| F (age 25) ..... | .34 | 8.82 |

(ii) Although all of the NHCEs benefit under the Plan O (the defined benefit plan), the aggregated DB/DC plan is not primarily defined benefit in character because the normal accrual rate attributable to defined benefit plans (which is 1% for all the NHCEs) is greater than the equivalent accrual rate under defined contribution plans only for Employee C. In addition, because the 15% allocation rate is only available to HCEs, the defined contribution plan cannot satisfy the requirements of § 1.401(a)(4)–2 and does not have broadly available allocation rates within the meaning of § 1.401(a)(4)–8(b)(1)(iii). Further, the defined contribution plan does not satisfy the minimum allocation gateway of § 1.401(a)(4)–8(b)(1)(iv) (3% is less than ⅓ of the 15% HCE rate). Therefore, the defined contribution plan within the DB/DC plan cannot separately satisfy § 1.401(a)(4)–1(b)(2) and does not constitute a broadly available separate plan within the meaning of paragraph (b)(2)(v)(C) of this section. Accordingly, the aggregated plans can satisfy the nondiscrimination in amounts requirement of § 1.401(a)(4)–1(b)(2) on the basis of benefits only if the aggregated plans satisfy the minimum aggregate allocation gateway of paragraph (b)(2)(v)(D) of this section.

(iii) Employee A has an aggregate normal allocation rate of 18.93% under the aggregated plans (3.93% from Plan O plus 15% from Plan P), which is the highest aggregate normal allocation rate for any HCE under the plans. Employee F has an aggregate normal allocation rate of 3.34% under the aggregated plans (.34% from Plan O plus 3% from Plan P) which is less than the 5% aggregate normal allocation rate that Employee F would be required to have to satisfy the minimum aggregate allocation gateway of paragraph (b)(2)(v)(D) of this section.

(iv) However, for purposes of satisfying the minimum aggregate allocation gateway of paragraph (b)(2)(v)(D) of this section, Employer B is permitted to treat each NHCE who benefits under the Plan O (the defined benefit plan) as having an equivalent allocation rate equal to the average of the equivalent allocation rates under Plan O for all NHCEs benefitting under that plan. The average of the equivalent allocation rates for all the NHCEs under Plan O is 2.19% (the sum of 5.91%, 1.73%, .77%, and .34%, divided by 4). Accordingly, Employer B is permitted to treat all the NHCEs as having an equivalent allocation rate attributable to Plan O equal to 2.19%. Thus, all NHCEs can be treated as having an aggregate normal allocation rate of 5.19% for this purpose (3% from the defined contribution plan and 2.19% from the defined benefit plan) and the aggregated DB/DC plan satisfies the minimum aggregate allocation gateway of paragraph (b)(2)(v)(D) of this section.

* * * * *

(c) * * *

(3) * * *

(ii) *Restructuring not available for certain testing purposes.* The safe harbor in § 1.401(a)(4)–2(b)(3) for plans with uniform points allocation formulas is not available in testing (and thus cannot be satisfied by) contributions under a component plan. Similarly, component plans cannot be used for purposes of determining whether a plan provides broadly available allocation rates (as defined in § 1.401(a)(4)–8(b)(1)(iii)), or determining whether a plan is primarily defined benefit in character or consists of broadly available separate plans (as defined in paragraphs (b)(2)(v)(B) and (C) of this section). In addition, the minimum allocation gateway of § 1.401(a)(4)–8(b)(1)(iv) and the minimum aggregate allocation gateway of paragraph (b)(2)(v)(D) of this section cannot be satisfied on the basis of component plans. See §§ 1.401(k)–1(b)(3)(iii) and 1.401(m)–1(b)(3)(iii) for rules regarding the inapplicability of restructuring to section 401(k) plans and section 401(m) plans.

**David A. Mader,**

*Acting Deputy Commissioner of Internal Revenue.*

[FR Doc. 00–25652 Filed 10–5–00; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 117

**[CGD01–00–193]**

**RIN 2115–AE47**

## Drawbridge Operation Regulations; Kennebec River, ME

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to change the drawbridge operating regulations for the Carlton (U.S. 1) highway-railroad bridge, at mile 14.0, across the Kennebec River between Bath and Woolwich, Maine. This proposed rule will remove unnecessary operating restrictions from the regulations and provide relief to the bridge owner from the requirement to crew the bridge during periods when there have been few requests to open the bridge.

**DATES:** Comments must reach the Coast Guard on or before December 5, 2000.

**ADDRESSES:** You may mail comments to Commander (obr), First Coast Guard District, Bridge Branch, at 408 Atlantic Avenue, Boston, MA 02110–3350, or deliver them to the same address between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (617) 223–8364. The First Coast Guard District, Bridge Branch, maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the First Coast Guard District, Bridge Branch, 7 a.m. to 3 p.m., Monday through Friday, except, Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** John McDonald, Project Officer, First Coast Guard District, (617) 223–8364.

**SUPPLEMENTARY INFORMATION:**

### Request for Comments

We encourage you to participate in this rulemaking by submitting comments or related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01–00–193), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know if they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

### Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the First Coast Guard District, Bridge Branch, at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

### Background and Purpose

The Carlton (U.S. 1) highway-railroad bridge, at mile 14.0, across the Kennebec River has a vertical clearance in the closed position of 10 feet at mean high water and 16 feet at mean low water. The existing drawbridge operating regulations are listed at 33 CFR 117.525. Vehicular traffic no longer travels over the Carlton Bridge because a new fixed highway bridge has been constructed upstream. The bridge will continue to operate as a railroad bridge only.



The bridge owner, Maine Department of Transportation (MDOT), asked the Coast Guard to remove the unnecessary restrictions from the regulations and to add several time periods during which the bridge will open on an on call basis. The bridge presently is allowed to remain closed to navigation from 6 a.m. to 7:30 a.m. and from 3:15 p.m. to 5:30 p.m., Monday through Friday, excluding holidays. These closed periods were added to the regulations to prevent vehicular traffic congestion in Bath during the shift changes at the Bath Iron Works. These closed periods are no longer necessary and will be removed by this rule.

The bridge owner has also requested relief from crewing the bridge from 5 p.m. to 8 a.m., daily, and all day on Saturdays and Sundays from October 1 through May 14. The bridge opening log data submitted by MDOT indicates a relatively low number of requests to open the bridge during the time periods the bridge owner has requested that the bridge shall operate on an on call basis. The greater amount of bridge openings in 1999, are attributed to construction vessel traffic during the building of the new highway bridge upstream from the Carlton Bridge.

BRIDGE OPENINGS BETWEEN 5 P.M. AND 8 A.M.

| | Jan | Feb | Mar | Apr | May | Jun | Jul | Aug | Sep | Oct | Nov | Dec |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1997 ..... | 0 | 0 | 0 | 0 | 9 | 6 | 7 | 13 | 5 | 12 | 0 | 0 |
| 1998 ..... | 0 | 2 | 1 | 2 | 1 | 6 | 4 | 6 | 3 | 10 | 7 | 6 |
| 1999 ..... | 2 | 7 | 2 | 4 | 21 | 24 | 36 | 5 | 10 | 20 | 29 | 12 |
| 2000 ..... | 0 | 0 | 4 | 0 | 12 | | | | | | | |

BRIDGE OPENINGS SATURDAYS/SUNDAYS, OCTOBER 1 THROUGH MAY 14

| | Oct | Nov | Dec | Jan | Feb | Mar | Apr | May |
|---|---|---|---|---|---|---|---|---|
| 1997 ..... | 9 | 0 | 0 | 0 | 0 | 0 | 0 | 2 |
| 1998 ..... | 10 | 7 | 3 | 0 | 2 | 0 | 0 | 0 |
| 1999 ..... | 11 | 13 | 4 | 1 | 5 | 2 | 2 | 1 |
| 2000 ..... | | | | 0 | 0 | 3 | 0 | 0 |

The Coast Guard believes that operating the Carlton Bridge on an advance notice basis from 5 p.m. to 8 a.m., daily, and all day on Saturdays and Sundays, from October 1 through May 14, is reasonable and will still meet the needs of navigation. This conclusion is based upon the low number of opening requests received over the past several years and the fact that the bridge will still open on signal after the advance notice is given.

### Discussion of Proposal

The Coast Guard proposes to revise the operating regulations listed at 33 CFR 117.525 for the Carlton (U.S. 1) highway-railroad bridge.

The bridge will no longer be called the Carlton (U.S. 1) highway-railroad bridge in the regulations. It will simply be called the Carlton Bridge.

Paragraph (a)(1), which requires the bridge to open for emergency situations, will be removed because it is now listed at 33 CFR 117.31.

Paragraph (a)(2) will be removed because the bridge no longer carries vehicular traffic.

Paragraph (a)(3) will be removed because train traffic is so infrequent that regulation to prevent conflicts between vessel and train traffic is no longer necessary.

Paragraphs (a)(4) through (a)(7) will be removed and replaced as simply paragraph (a)(1) through (a)(2) indicating the new operating regulations for the Carlton Bridge.

Paragraph (b) for the Route 197 Bridge, mile 27.1, between Richmond and Dresden, Maine, will remain unchanged.

The proposed new operating hours for the Carlton Bridge would require that from May 15 through September 30, the draw would open on signal; except that, from 5 p.m. to 8 a.m., the draw would open on signal if at least a two-hour advance notice is given.

From October 1 through May 14, the draw would open on signal; except that, from 5 p.m. to 8 a.m., the draw would open on signal after a twenty-four hours advance notice is given and from 8 a.m. to 5 p.m., on Saturday and Sunday, the draw would open on signal after an eight-hour notice is given.

### Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, Feb. 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation, under paragraph 10e of the regulatory policies and procedures of DOT, is unnecessary. This conclusion is based on the fact that the bridge will still open for marine traffic at all times provided the advance notice is given.

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under section 5 U.S.C. 605(b), that this proposed rule would not have a significant economic impact on a substantial number of small entities. This conclusion is based upon the fact that the bridge will still open for all vessel traffic at all times after the advance notice is given.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it

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qualifies and how and to what degree this rule would economically affect it.

**Collection of Information**

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

**Federalism**

We have analyzed this proposed rule under E.O. 13132 and have determined that this rule does not have implications for federalism under that Order.

**Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed rule would not impose an unfunded mandate.

**Taking of Private Property**

This proposed rule would not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

**Civil Justice Reform**

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

**Protection of Children**

We have analyzed this proposed rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

**Environment**

We considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.1C, this proposed rule is categorically excluded from further environmental documentation because promulgation of drawbridge regulations have been found not to have a significant effect on the environment. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

**List of Subjects in 33 CFR Part 117**

Bridges.

**Regulations**

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.525(a) is revised to read as follows:

**§ 117.525 Kennebec River**

(a) The draw of the Carlton Bridge, mile 14.0, between Bath and Woolwich shall operate as follows:

(1) From May 15 through September 30 the draw shall open on signal; except that, from 5 p.m. to 8 a.m., the draw shall open on signal if a two-hour notice is given by calling the number posted at the bridge.

(2) From October 1 through May 14 the draw shall open on signal; except that, from 5 p.m. to 8 a.m., the draw shall open on signal after a twenty-four hour advance notice is given and on Saturdays and Sundays from 8 a.m. to 5 p.m. the draw shall open on signal after an eight-hour advance notice is given by calling the number posted at the bridge.

* * * * *

Dated: September 13, 2000.

**G.N. Naccara,**

*U.S. Coast Guard, Commander, First Coast Guard District.*

[FR Doc. 00–25755 Filed 10–5–00; 8:45 am]

BILLING CODE 4910–15–P

## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Part 52**

**[VA088–5051b; FRL–6880–7]**

**Approval and Promulgation of Air Quality Implementation Plans; Virginia; 15 Percent Plan for Northern Virginia Portion of the Metropolitan Washington, DC Ozone Nonattainment Area**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to convert our conditional interim approval of the State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia for the Northern Virginia portion of the Metropolitan Washington, D.C. ozone nonattainment area to achieve a 15 percent reduction in volatile organic compound emissions (the 15% plan) to a full approval. In the "Rules and Regulations" section of this **Federal Register**, we are converting our conditional interim approval of Virginia's 15% plan SIP revision to a full approval as a direct final rule because we view this as a noncontroversial amendment and because we anticipate no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If we receive no adverse comments, we will not undertake further action on this proposed rule. If we receive adverse comments, we will withdraw the direct final rule, and it will not take effect. We will address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Anyone interested in providing comments on this action should do so at this time.

**DATES:** Comments must be received in writing by November 6, 2000.

**ADDRESSES:** Written comments should be addressed to David L. Arnold, Chief, Ozone and Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

**FOR FURTHER INFORMATION CONTACT:** Janice Lewis, (215) 814–2185, at the EPA Region III address above, or by e-mail at lewis.janice@epa.gov.

**SUPPLEMENTARY INFORMATION:** For further information, please see the direct final rule, with the same title, located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: September 25, 2000.

**Bradley M. Campbell,**

*Regional Administrator, Region III.*

[FR Doc. 00–25471 Filed 10–5–00; 8:45 am]

BILLING CODE 6560–50–P



## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Part 82**

**[FRL–6881–8]**

**RIN 2060–AJ33**

**Protection of Stratospheric Ozone: Allocation of Essential Use Allowances for Calendar Year 2001**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** With this action, EPA is proposing to allocate essential-use allowances for stratospheric ozone depleting substances for the year 2001 control period. EPA allocates essential use allowances to an applicant for exempted production or import of a specific quantity of class I ozone depleting substances (ODS) solely for the designated essential purpose. Essential use allowances permit a person to obtain controlled ODS as an exemption to the January 1, 1996 regulatory phase-out of production and import of these substances. Today, EPA is proposing essential-use allowances (EUAs) for the production and/or import of ODSs for use in medical devices and for use in the Space Shuttle Rockets and Titan Rockets for calendar year 2001. EPA is also proposing a regulatory change which would allow EUAs for CFCs to be transferred among essential use recipients.

**DATES:** Written comments on this proposed rule must be received on or before November 6, 2000, unless a public hearing is requested. Comments must then be received on or before 30 days following the public hearing. Any party requesting a public hearing must notify the Stratospheric Ozone Protection Hotline listed below by 5 p.m. Eastern Standard Time on October 16, 2000. If a hearing is held, EPA will publish a document in the **Federal Register** announcing the hearing information. Inquiries regarding a public hearing should be directed to the Stratospheric Ozone Protection Hotline at 1–800–269–1996.

**ADDRESSES:** Comments on this rulemaking should be submitted to: Erin Birgfeld, Essential Use Program Manager, U.S. Environmental Protection Agency (6205J), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. All comments will be filed in EPA Air docket number A–93–39. Comments that contain business confidential information should be submitted in two versions, one clearly marked "Public" to be filed in the docket, and the other marked "Confidential" to be reviewed by authorized government personnel only.

Materials relevant to this rulemaking are contained in Docket No. A–93–39. The Docket is located in Waterside Mall Room M–1500, 401 M Street, SW., Washington, DC 20460. The materials may be inspected from 8 a.m. until 4 p.m. Monday through Friday. A reasonable fee may be charged by EPA for copying docket materials.

**FOR FURTHER INFORMATION CONTACT:** The Stratospheric Ozone Protection Hotline at 1–800–296–1996 or Erin Birgfeld, U.S. Environmental Protection Agency, Stratospheric Protection Division, Office of Atmospheric Programs, 6205J, 1200 Pennsylvania Avenue, Washington, DC 20460; 202–564–9079.

**SUPPLEMENTARY INFORMATION:**

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III. Allocation of Essential Use Allowances for Calendar Year 2001
IV. Proposed Changes to 82.12 Allowing Transfer of EUAs for CFCs Among Essential Use Allowance Holders
V. Administrative Requirements

## I. Background

The Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol) is the international agreement to reduce and eventually eliminate production and consumption of all stratospheric ozone depleting substances. ("Consumption" is defined as the amount of a substance produced in the United States, plus the amount imported, minus the amount exported to Parties to the Montreal Protocol.) The elimination of production and consumption is accomplished through adherence to phase-out schedules for the production and consumption of specific ODSs including chlorofluorocarbons (CFCs), halons, carbon tetrachloride, methyl chloroform, hydrochlorofluorocarbons, and methyl bromide. As of January 1996, production and import of class I ODSs were phased out in all developed countries, including the United States. However, the Protocol and the Clean Air Act (CAA or Act) provide exemptions which allow for the continued import and/or production of class I ODS for specific uses. Under the Montreal Protocol, exemptions are granted for uses that are determined by the Parties to be "essential." Decision IV/25, taken in 1992, established criteria for determining whether a specific use should be approved as essential, and set forth the international process for making determinations of essentiality. The criteria for an essential use as set forth in Decision IV/25 are the following:

"(1) that a use of a controlled substance should qualify as 'essential' only if:

(i) it is necessary for the health, safety or is critical for the functioning of society (encompassing cultural and intellectual aspects); and

(ii) there are no available technically and economically feasible alternatives or substitutes that are acceptable from the standpoint of environment and health;

(2) that production and consumption, if any, of a controlled substance for essential uses should be permitted only if:

(i) all economically feasible steps have been taken to minimize the essential use and any associated emission of the controlled substance; and

(ii) the controlled substance is not available in sufficient quantity and quality from existing stocks of banked or recycled controlled substances, also bearing in mind the developing countries' need for controlled substances."

The procedure set out by Decision IV/25 first calls for individual Parties to nominate essential uses. The Protocol's Technology and Economic Assessment Panel (TEAP or the Panel) evaluates the nominated essential uses and makes recommendations to the Protocol Parties. The Parties make the final decisions on essential use nominations at their annual meeting.

The CAA provides exemptions to the phase-out of class I ODSs for which these controlled substances may continue to be produced and/or imported. EPA is responsible for allocating essential use allowances at the domestic level through rulemaking in accordance with provisions in the CAA. Today's action proposes to allocate essential use allowances for the use of CFCs in metered dose inhalers (MDIs), and methyl chloroform for use in the Space Shuttle and Titan Rocket solid rocket motor assemblies for calendar year 2001. Today's action also proposes changes to regulations at 40 CFR 82.12 which would allow transfer of CFC allowances among MDI manufacturers that hold EUAs.

*What Was the International Procedure for Approving Essential Use Exemptions for the Year 2001?*

The international process for nominating and approving essential use allowances for the year 2001 occurred in the same way as in prior years. The companies in Table III submitted

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applications either on their own or as a part of the International Pharmaceutical Aerosol Consortium (IPAC) requesting class I controlled substances for essential uses in response to the August 10,1998 **Federal Register** notice (63 FR 42629). Their applications requested exemptions for the production and import of specific quantities of certain class I controlled substances after the phase-out, and provided information in accordance with the criteria set forth in Decision IV/25 of the Protocol and the procedures outlined in the "1997 Handbook on Essential Use Nominations." EPA reviewed the applications and nominated these uses to the Protocol Secretariat for consideration by the Technical and Economic Assessment Panel (TEAP) and its Technical Options Committees (TOCs). MDI producers requested a total of 3,101 metric tons of CFCs for use in 2001. The Parties to the Montreal Protocol approved this amount as essential for the U.S. for 2001 at the Eleventh Meeting in 1999 (Decision XI/14). On September 15, 1999, EPA issued another notice requesting applications for essential use allowances for the year 2001 and beyond (64 FR 50083). No company requested a supplemental amount of CFCs for the year 2001 at that time.

*How Does the Clean Air Act Authorize Essential Use Allowances?*

The CAA provides standing exemptions to the phase-out of class I ODSs found at section 604(d) of the Act. With today's action, EPA is proposing to implement the exemption at 604(d)(2) of the Act which states that notwithstanding the phase-out, EPA shall, to the extent consistent with the Montreal Protocol, authorize production of limited quantities of class I ODSs for use in medical devices, if FDA, in consultation with EPA, determines that such production is necessary for use in medical devices. The term "medical device" is defined in section 601(8) of the Clean Air Act as follows:

> [A]ny device (as defined in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321)), diagnostic product, drug (as defined in the Federal Food, Drug, and Cosmetic Act), and drug delivery system—
>
> (A) if such device, product, drug, or drug delivery system utilizes a class I or class II substance for which no safe and effective alternative has been developed, and where necessary, approved by the Commissioner [of FDA]; and
>
> (B) if such device, product, drug, or drug delivery system, has, after notice and opportunity for public comment, been approved and determined to be essential by the Commissioner [of FDA] in consultation with the Administrator [of EPA].

The preamble to FDA's September 1, 1999, notice of proposed rulemaking on essential use determinations (64 FR 47735) discusses FDA's approach to determining whether "safe and effective alternative[s]" have been developed. It states that "A non-CFC product simply having the same active moiety as a CFC product is only one factor to be considered. Other factors, such as whether the non-CFC product has the same route of administration, the same indication, and can be used with approximately the same level of convenience, are important considerations. Additionally, FDA must consider whether patients who medically need the CFC product are adequately served by the non-CFC product. FDA's approval of a non-CFC product is a determination that the product is safe and effective, but it is not a determination that the product is a safe and effective alternative for any other product. That requires a separate and distinct analysis." Although FDA has approved one CFC-free MDI for market, it has not yet determined that any non-CFC product is a safe and effective alternative to any CFC MDI. Accordingly, part (A) of the definition of medical device has not affected today's proposed allocation.

With respect to part (B) of the definition of medical device (section 601(8)(B)), and in particular the use of the word "essential" in that part of the definition, EPA is relying on current FDA regulations (21 CFR 2.125) which contain a list of categories of CFC-containing medical devices, as that term is used in the CAA, that FDA, in consultation with EPA, has found to be essential. This list includes, among others, metered-dose steroids, metered-dose adrenergic bronchodilators, metered-dose cromolyn sodium, metered-dose ipratropium bromide, and metered-dose nedocromil sodium; all drugs for oral inhalation in humans for the treatment of asthma and chronic obstructive pulmonary disease. The companies for which EPA is proposing to grant essential use allowances produce CFC MDIs that fall within one of these categories. Thus, the products for which EPA is proposing to grant essential use allowances are "determined to be essential" by FDA.

Also with respect to part (B) of the definition of "medical device", EPA and FDA considered how to interpret the language regarding approval by FDA of the "device, product, drug, or drug delivery system." The complete phrase reads as follows: "if such device, product, drug, or drug delivery system, has, after notice and opportunity for public comment, been approved and determined to be essential by the Commissioner in consultation with the Administrator." EPA and FDA determined that in light of the surrounding language, this phrase refers to FDA's approval of an essential use, and not the approval of the specific product in question through approval of the New Drug Application (NDA) or Abbreviated New Drug Application (ANDA) for that product. Since approval of an NDA or ANDA under the Food, Drug, and Cosmetic Act (FDCA) involves unilateral action by FDA without notice-and-comment rulemaking or consultation with EPA, it is reasonable to conclude that section 601(8)(B) does not refer to approval of an NDA or ANDA under the FDCA. Therefore, FDA and EPA read section 601(8)(B) to refer to FDA's approval of an essential use which does require notice-and comment rulemaking in consultation with EPA. This means that an MDI is "approved and determined to be essential" if the MDI is included within the list of categories of CFC-MDIs on FDA's essential use list. All of the MDIs for which we are proposing to allocate CFCs today meet this qualification.

With this action EPA is also proposing to allocate methyl chloroform (MCF) for use in solid rocket motor assemblies. Because the original phase-out date of methyl chloroform is 2002, EPA is not required to implement the exemption at 604(d)(1) until that time. Instead, EPA is proposing to allocate methyl chloroform under the authority of the original phase-out schedule at section 604(a) which provides that MCF may be produced at up to 20 percent of the baseline. EPA is proposing to allocate a total of 60.1 metric tons of MCF, an amount well below 20% of the MCF baseline production allowance of 315,169 metric tons (defined at 40 CFR 82.6).

## II. Allocation Process for CFCs for Use in Medical Devices for the Year 2001

*How Were the Essential Use Allowances for Medical Devices Determined for the Year 2001?*

As explained above, section 604(d)(2) of the Act provides that EPA shall authorize production and import of limited quantities of class I substances for use in medical devices if FDA, in consultation with EPA, determines such authorization to be necessary. The following is a step-by-step list of actions EPA and FDA have taken thus far to implement the exemption for medical devices under the Act.

1. EPA worked closely with FDA to define what information would be required from companies in order that FDA in consultation with EPA could make a determination on the amount of CFCs necessary for use in MDIs. EPA and FDA determined that the following data were needed to make a decision on the amount of CFCs necessary for use in MDIs for 2001:

- The specific MDI products to be produced in 2001
- The number of units each product produced each year since 1996
- Number of units produced in the first quarter of 2000
- Number of units anticipated to be produced in 2001
- Gross target fill weight per unit (grams)
- Total amount of CFC to be contained in product for 2001 (metric tons)
- Additional amounts of CFCs necessary for production of MDIs
- Total CFC request per product for 2001

2. On May 24, 2000, EPA sent letters to MDI manufacturers requesting the information outlined in paragraph 1. EPA also requested information on the amount of CFCs held in inventory as of January 1, 2000. The letters that EPA sent each company are available for review in the docket. The company's responses however, are considered confidential business information and are not publicly available. Tables I and II are reproductions of the reporting forms EPA asked companies to fill out in response to our letters requesting information under section 114 of the Act (114 letters).



TABLE I.—YEAR 2001 ESSENTIAL USE ALLOCATION: CFC REPORTING FORM

| A Product | B Number of Units produced from 1/1/96 to 12/31/96 | C Number of Units produced from 1/1/97 to 12/31/97 | D Number of Units produced from 1/1/98 to 12/31/98 | E Number of Units produced from 1/1/99 to 12/31/99 | F Number of Units produced from 1/1/00 to 3/31/00 | G Number of Units anticipated to be produced in 2001 | H Gross Target fill weight per unit (grams) [1] | I Total CFC to be contained in product for 2001 (metric tons) [2] | J Additional amount necessary for production [3] | K Total request per product for 2001 [4] |
|---|---|---|---|---|---|---|---|---|---|---|
| Example Product | 1,112,569 | 1,010,526 | 1,215,452 | 1,327,456 | 352,101 | 1,500,000 | 22 | 30.42 | 5.20 | 35.62 |

[1] If significant numbers of different canister sizes are produced, this target fill number should either be the weighted average for that product (i.e., the sum of the gross target fill times the percentage of canisters produced in that size divided by the total number of canisters) or each size may be contained in a separate row of the report.
[2] Column I= (Column G) (Column H).
[3] Provide details regarding your additional amount needed, e.g., canisters produced but not distributed, CFCs lost in processing, CFCs remaining at end of batch run, CFCs used in line cleaning.
[4] Total request per product for 2001 (metric tons) = Sum of Columns I+J.

**Note:** The data presented in columns B through E will be compared to data provided in annual reports to FDA. Any significant differences in these numbers should be explained in detail.

TABLE II.—YEAR 2000 CFC STOCKPILE ANALYSIS

| Chemical | On 1/1/2000: Quantity (in metric tons) of chemical stored at your facility | On 1/1/2000: Total quantity (in metric tons) of chemical available to your company [5] | On January 1, 2000: Amount of chemical produced prior to January 1, 1996 [6] available to your company | Total quantity of chemical acquired using 1999 essential use allowances |
|---|---|---|---|---|
| CFC–11 | | | | |
| CFC–12 | | | | |
| CFC–114 | | | | |

[5] This includes amounts stored at your facility, other facilities, or an order with the chemical manufacturers.
[6] This amount refers to your company's stockpile (on 1/1/2000) of CFCs produced prior to the 1996 ban on import and production.

3. In a letter to FDA, dated August 3, 2000, Paul Stolpman, Director of EPA's Office of Atmospheric Programs, requested that FDA provide EPA with a determination regarding the amount of CFCs necessary for use in MDIs for calendar year 2001. We attached the information provided in response to 114 letters from MDI manufacturers for FDA's review. FDA verified the data against the annual reports companies file with FDA, and used the information from the companies' response to our section 114 letters as a basis for their determination.

4. On September 6, 2000, FDA Commissioner Jane Henney sent a letter to EPA with the FDA determination on the amount of CFCs necessary for use in MDIs for calendar year 2001. The quantity of CFCs to be allocated for production of MDIs in this proposed rule reflect FDA's determination made in consultation with EPA.

5. In accordance with the determinations made by FDA, in consultation with EPA, specified in their letter of September 6, 2000, today's proposal would allocate a total of 3098.67 metric tons of CFCs for use in MDIs for calendar year 2001.

6. EPA plans to issue a final allocation rule by the end of the calendar year to provide adequate time for companies to replenish their supply of CFCs for MDI production in the year 2001.

**How Were the Decisions on the Amounts of EUAs for CFCs for Each Company Made?**

FDA states in their letter to EPA that "* * * we have examined the information you obtained from individual sponsors regarding their historical and intended use of CFCs in specific products. We compared this information to the information filed with us by sponsors in previous annual reports. In listing the amounts we believe to be necessary for use in medical devices, we referred to this information, eliminated any double-counting we found, considered changes in the prevalence of asthma and COPD, and eliminated allocations for uses not

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considered essential by the parties to the Montreal Protocol, even if those uses are currently listed in our regulation at 21 CFR 2.125(e)."

In response to EPA's request for information under section 114 of the Act, two companies stated that they required CFCs to produce the same products leading to double counting and an inflated request of CFCs to manufacture these particular MDI products. This is because one company is a New Drug Application (NDA) holder who produces some of its own products, and the other is a contract filler for the NDA holder who produces the remainder of the NDA holder's products. At the time we gathered information via 114 letters, the companies had not reached an agreement on the amount of MDIs to be produced by the contract filler and the amount to be produced by the NDA holder. With this action, EPA is proposing to allocate CFCs to these two companies in the amount requested by the NDA holder. Because we are also proposing to allow EUAs to be transferrable, the NDA holder will have the opportunity to transfer some of its EUAs to the contract filler if necessary. This transfer can be accomplished by adhering to the requirements in the regulations at 40 CFR 82.12 which will be explained in detail in section IV. In the event that the change to 40 CFR 82.12 proposed in this rule which allow the transfer of EUAs is not finalized, EPA and FDA will consult with the both contract filler and the NDA holder to determine the proper allocation. Please note that EPA and FDA took into account that the contract filler also manufactures products for yet another company along with its own brand of MDIs and allocated the entire amount requested to manufacture these other MDI products.

*Can the Allocation Listed in This Proposed Rulemaking Be Changed in the Final Rule?*

The allocation amounts listed in this proposal are subject to additional review by EPA and FDA if new information demonstrates that the allocations are either too high or too low. Commenters requesting increases or decreases of EUAs should provide detailed information supporting their claim for additional or fewer CFCs. Any company that determines that they no longer need the full amount allocated under this proposal should notify EPA of the actual amount needed. Please note that EPA is only authorized to allocate a total of 3,101 metric tons of CFC, the amount requested by U.S. pharmaceutical companies and subsequently approved by the Parties to the Montreal Protocol for 2001.

### III. Allocation of Essential Use Allowances for Calendar Year 2001

*What Is EPA's Proposed Essential Use Allocation for Calendar Year 2001?*

EPA is proposing to allocate essential use allowances for the year 2001 control period to entities listed in Table III for exempted production or import of the specific quantity of class I controlled substances solely for the specified essential use. The proposed allocation of CFCs for use in MDIs reflects the determination on the amount of CFCs "necessary" as specified under section 604(d)(2) of the Act.

TABLE III.—ESSENTIAL USE ALLOCATION FOR CALENDAR YEAR 2000

| Company | Chemical | Quantity (metric tons) |
|---|---|---|
| **(i) Metered Dose Inhalers (for oral inhalation) for Treatment of Asthma and Chronic Obstructive Pulmonary Disease (in metric tons)** | | |
| Medeva, Armstrong Pharmaceuticals Inc. | CFC–11 or CFC–12 or CFC–114 | 189.00 |
| Boehringer Ingelheim Pharmaceuticals | CFC–11 or CFC–12 or CFC–114 | 258.00 |
| Glaxo Wellcome Inc. | CFC–11 or CFC–12 or CFC–114 | 858.10 |
| Aventis Pharmaceuticals (formerly RPR) | CFC–11 or CFC–12 or CFC–114 | 190.00 |
| 3M Pharmaceuticals | CFC–11 or CFC–12 or CFC–114 | 384.87 |
| Sidmak Laboratories/Medisol Laboratories, Inc. | CFC–11 or CFC–12 or CFC–114 | 192.20 |
| Schering Corporation | CFC–11 or CFC–12 or CFC–114 | 1025.20 |
| Sciarra Laboratories, Inc. | CFC–11 or CFC–12 or CFC–114 | 1.30 |
| **(ii) Cleaning, Bonding and Surface Activation Applications for the Space Shuttle Rockets and Titan Rockets** | | |
| National Aeronautics and Space Administration (NASA)/Thiokol Rocket | Methyl Chloroform | 56.7 |
| United States Air Force/Titan Rocket | Methyl Chloroform | 3.4 |

*Why Is EPA Allocating CFC–11, CFC–12, and CFC–114 in the Aggregate to Each Company?*

EPA is allocating essential-use allowances for CFC–11, CFC–12, and CFC–114 in the aggregate in accordance with Decision X/6 of the Parties to the Montreal Protocol which states that "the quantities approved under paragraph 2 above and all future approvals are for total CFC volumes with flexibility between CFCs within each group." Allocating CFCs for MDI manufacture in the aggregate instead of on a compound-by-compound basis adds flexibility to the regulation without causing additional damage to the stratospheric ozone layer since CFC–11, CFC–12 and CFC–114 all have the same ozone depleting potential of 1.0.

*Why Is EPA No Longer Allocating EUAs to the International Pharmaceutical Aerosol Consortium (IPAC) as a Whole, But Instead Allocating on a Company-by-Company Basis?*

In the past, EPA allocated EUAs to IPAC as a whole and then sent letters to each of its member companies notifying them of their particular allocation. This inevitably resulted in minor delays in informing IPAC member companies of their allocations. This year, EPA is allocating EUAs on a company-by-company basis in order to inform the IPAC member companies directly of their specific allocations. Thus it will be clear to each company, including the IPAC members, the quantities that are being proposed for each company allowing all companies opportunity to comment on their individual allocations.

*What Is EPA's Method for Allocating Methyl Chloroform (MCF) for Use in Solid Rocket Motors?*

With this action, EPA is proposing to allocate 60.1 metric tons of MCF for use in solid rocket motors, the same amount allocated in the years 1999 and 2000. Please note that with this action EPA is proposing to allocate MCF in an amount lower than would be consistent with Decision X/6 taken at the Tenth meeting of the Parties to the Protocol because EPA believes that doing so would allocate MCF in excess of the necessary amount.



Decision X/6 states that " * * * the remaining quantity of methyl chloroform authorized for the United States at previous meetings of the Parties be made available for use in manufacturing solid rocket motors until such time as the 1999–2001 quantity of 176.4 tons (17.6 ODP-weighted tons) allowance is depleted, or until such time as safe alternatives are implemented for remaining essential uses." According to the EPA tracking system, the total amount of MCF produced or imported by U.S. essential use recipients in 1999 was just 12 metric tons indicating that the transition away from MCF is progressing faster than anticipated, and that allocating the unused portion of MCF in its entirety would be excessive. EPA believes that allocating the same amount allocated in 2000, 60.1 metric tons of MCF, provides a sufficient amount for use in solid rocket motors for the year 2001. Please note that in future allocations essential use allowance holders for MCF will still have access to MCF until the 1999–2001 quantity of 176.4 metric tons is depleted or until this use is no longer considered essential.

In the event that commenters provide sufficient reasons as to why EPA should allocate MCF in an amount consistent with Decision X/6, for example, EPA would allocate MCF according to the following equation:

The amount of MCF approved by the Parties for essential uses for 1999–2001 − 2 × The amount of MCF imported or produced by U.S. essential use holders in 1999=Allocation for 2001 (*i.e.*, 176.4 metric tons − 2 × 12 metric tons=152.4 metric tons).

Since the amount of MCF acquired in the year 2000 is not yet known, the equation assumes that essential use holders will acquire the same amount of MCF in 2000 as they had in 1999 and provides the best possible approximation of the quantity of MCF that should be allocated if EPA is persuaded to allocate MCF in the amount consistent with Decision X/6.

*What Reporting Requirements Relate to the Essential Uses of Ozone Depleting Substances?*

Any person obtaining class I controlled substances after the phase-out under the essential use exemptions in today's action is subject to all the restrictions and requirements in other sections of 40 CFR part 82, subpart A. Holders of essential-use allowances or persons obtaining class I controlled substances under the essential-use exemptions must comply with the record keeping and reporting requirements in 40 CFR 82.13. Instructions and forms for reporting are found in the Guidance Document for the Stratospheric Ozone Protection Program after January 1, 1996. This document can be obtained by contacting the Stratospheric Ozone Protection Hotline at (800) 296–1996 between 10:00 am and 4:00 pm Eastern Standard Time.

It should be noted that under 40 CFR 82.3 and 82.4 (63 FR 41626, August 4, 1998), entities receiving essential-use allowances must be the importer of record for quantities of CFCs brought into the United States. This requires that the essential-use allowance holder be listed as the importer of record on Customs Form 7501. As a result, the essential-use allowance holder who imports quantities of class I controlled substances is responsible for submitting both an Importer Quarterly Report and an Essential-Use Holder Quarterly Report.

### IV. Proposed Changes to 82.12 Allowing Transfer of EUAs for CFCs Among Essential Use Allowance Holders

With this document EPA is proposing to add essential use allowances to the list of allowances that can be transferred under 40 CFR 82.12. This change will enable essential use holders to transfer EUAs for CFCs to other essential use holders for the production of essential MDIs. EPA believes that allowing EUAs to be transferred among essential use allowance holders incorporates flexibility into the current regulations without increasing the amount of ODSs allocated.

*Why Is EPA Proposing To Allow EUAs To Be Transferred Among EUA Holders?*

Each year EPA requests applications from pharmaceutical companies for essential use allowances for use in MDIs. EPA analyzes these applications and uses them as the basis for the U.S. nomination for essential use allowances at the Meeting of the Parties to the Montreal Protocol which occurs two years prior to the year in which EUAs are allocated to companies. Because it can be difficult to forecast the amount of CFCs required for MDI production two years in advance, the Parties provide an opportunity for countries to request a supplemental amount of essential use allowances in the year following the initial request. This system allows companies two opportunities to request essential use allowances for the same year, ensuring that if the initial request is not sufficient, there is a mechanism to increase the allocation for that year. Essential use applicants had the option of requesting supplemental CFCs for 2001 in September 15, 1999, in response to the EPA document (64 FR 50083). No applicant elected to supplement their request for the year 2001 at that time.

Even in the absence of applications for supplemental CFCs from pharmaceutical companies, EPA and FDA consulted in March of this year to determine whether the total allocation of 3,101 metric tons would be sufficient to produce MDIs for the U.S. market. EPA and FDA determined, based on the amount of CFCs used for MDI production in previous years, that 3,101 metric tons would be sufficient to supply the MDI market as a whole while accounting for the projected increase in demand for MDIs. However, EPA and FDA noted that individual companies may have increased market growth compared to others and would therefore need additional CFCs. Because of the inherent uncertainty in allocating specific amounts of CFCs to individual companies engaged in a dynamic market, EPA is proposing that EUAs for CFCs become transferable among EUA holders. This will ensure that companies have the opportunity to access CFCs beyond the amount allocated to them in the year 2001 and beyond, and can better respond to market shifts that may occur.

*Will I Be Able To Transfer EUAs for CFCs to Anyone I Want?*

No, EUAs for CFCs would only be transferable among those companies that have applied for and received EUAs for the year 2001. In addition, companies must certify in writing to EPA that the EUAs will only be used in the production of essential medical devices as defined in the Food, Drug and Cosmetic Act at 21 CFR 2.125 and considered essential by the Parties to the Protocol.

*If EUAs for CFCs Are Transferable, Can They Be Transferred From Year to Year?*

No, EUAs would not be transferable from year to year. Any EUAs for CFCs not expended in 2001 will expire at the end of 2001.

*Is There a Penalty for Transferring EUAs?*

Yes. The CAA at section 607(a) states that rules governing transfer of allowances for the production of class I and class II substances " * * * shall insure that the transactions under the

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authority of this section will result in greater total reductions in the production in each year of class I and class II substances than would occur in that year in the absence of such transactions." In compliance with this section, current regulations at 40 CFR 82.12 governing transfers of production and consumption allowances require one percent of the traded amount to be deducted from the transferor's unexpended allowances. EPA is proposing to amend the regulation so that in the case of EUA transfers, one tenth of one percent of the amount traded would be deducted from the transferor's account. EPA believes that given the relatively small amount of EUAs available for use in MDIs, and that providing sufficient EUAs for MDIs is critically important for protecting public health, deducting one percent of the amount of EUAs to be traded would be too high a penalty and may create a barrier against transferring EUAs freely. EPA believes that reducing the amount deducted from the transferor's account, would overcome this potential barrier. Therefore, with today's action EPA is proposing changes to regulations at § 82.12 to require that in the case of transferring EUAs, one tenth of one percent in excess of the amount traded would be deducted from the transferor's account.

*How Can I Transfer EUAs From My Company to Another?*

In order to complete a transfer of EUAs for CFCs from one essential use allowance holder to another, the transferor would have to submit to the Administrator a letter with the information requested in 40 CFR 82.12(a)(1). Under the regulations at 40 CFR 82.12 the transferor must submit to the Administrator a transfer claim with the following information:

1. The identities and addresses of the transferor and transferee.
2. The names and telephone numbers of contact persons for both the transferor and transferee.
3. The type of allowances being transferred, which in this case would always be essential use allowances.
4. The group of controlled substances being transferred, which would always be Group I.
5. The amount of allowances being transferred in kilograms.
6. The control period for which the allowances are being transferred (*e.g.* calendar year 2001).
7. The amount of unexpended essential use allowances for the current control period.
8. The amount of the 0.1% offset applied to the unweighted amount traded that will be deducted from the transferor's allowance balance.

Guidance documents and a sample letter which outlines the necessary information that a transferor must submit to EPA will be available through the Stratospheric Ozone Hotline at 1–800–296–1996.

As outlined in § 82.12, EPA will determine according to records maintained by the EPA ODS tracking system whether the transferor possesses as of the date of the transfer claim, unexpended allowances sufficient to cover the transfer claim (*i.e.*, the amount to be transferred plus one tenth of one percent of that amount). Within three working days of receiving a complete transfer claim, EPA will notify the transferor and transferee if the transferor has sufficient unexpended allowances to confer the transfer claim, and will issue a notice indicating that EPA does not object to the transfer. EPA will then reduce the transferor's balance of essential use allowances by the amount to be transferred plus one tenth of one percent of that amount. When EPA issues a no objection notice, the transferor and the transferee may proceed with the transfer.

If EPA's records show that the transferor has insufficient unexpended allowances to cover the transfer claim, or that the transferor has failed to respond to one or more Agency requests to supply information needed to make a determination, EPA will issue a notice disallowing the transfer. Within 10 working days after receipt of notifications, either party may file a notice of appeal, with supporting reasons, to EPA, in which case EPA may either affirm or vacate the disallowance. If no appeal is taken by the tenth working day after notification, the disallowance shall be final on that day. (The transferor and transferee will be held liable in accordance with Title I, section 113 of the Act for any violations that occur as a result of an improper transfer.) In the event that EPA does not respond to a transfer claim within three working days of receipt of the completed claim, the transferor and transferee may proceed with the transfer and EPA will reduce the transferor's balance accordingly.

## V. Administrative Requirements

*A. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector.

Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Section 204 of the UMRA requires the Agency to develop a process to allow elected state, local, and tribal government officials to provide input in the development of any proposal containing a significant Federal intergovernmental mandate.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. Because this rule imposes no enforceable duty on any State, local or tribal government it is not subject to the requirements of sections 202 and 205 of the UMRA. EPA has also determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments; therefore, EPA is not required to develop a plan with regard to small governments under section 203. Finally, because this rule does not contain a significant intergovernmental mandate, the Agency is not required to develop a process to obtain input from elected state, local, and tribal officials under section 204.



*B. Executive Order 12866*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this regulatory action is Significant and therefore subject to OMB review and the requirements of the Executive Order. The Order defines Significant regulatory action as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. It has been determined by OMB and EPA that this action is not a Significant regulatory action under the terms of Executive Order 12866 and is therefore not subject to OMB review under the Executive Order.

*C. Paperwork Reduction Act (PRA)*

This action does not impose any new information collection burden as defined by the PRA. The Office of Management and Budget's (OMB's) draft guidance on PRA states that a rule is exempt from OMB review if it "explicitly applies to nine or fewer persons". Since the reporting requirements in this rule are not of general applicability, and apply only to the eight entities receiving EUAs for CFCs only if a company decides to transfer EUAs to another essential use holder, we believe that this rule is exempt from the requirement of submitting an Information Collection Request and undergoing OMB review.

However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations at 40 CFR 82.12 which set forth the process for inter-company transfers of consumption allowances under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0170 (EPA ICR No.1432.17). Copies of the ICR document(s) may be obtained from Sandy Farmer, by mail at the Office of Environmental Information, Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Ave., NW, Washington, DC 20460, by email at farmer.sandy@epa.gov, or by calling (202) 260–2740. A copy may also be downloaded off the internet at http://www.epa.gov/icr. Include the ICR and/or OMB number in any correspondence.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

*D. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments*

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

*E. Regulatory Flexibility*

After considering the economic impacts of today's proposed rule on small entities, EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this rule. EPA has also determined that this action will not have a significant economic impact on a substantial number of small entities. This rule does not have a significant impact on a substantial number of small entities. The only entities that are directly affected by this allocation are those to which CFCs and other ODSs are being allocated. There are only ten entities which are affected by this rulemaking (see table 1 above). This rule does not have an adverse economic impact on any entity because it grants exceptions to a pre-existing ban.

*F. Applicability of Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks*

Executive Order 13045: "Protection of Children from Environmental Health risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866; and (2) concerns an environmental health and safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it implements the phase-out schedule and exemptions established by Congress in Title VI of the Clean Air Act.

*G. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus

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standards in this regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This rule does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

*H. Executive Order 13132 (Federalism)*

Executive Order 13132, entitled "Federalism" (64 FR 432255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and theat preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide the Office of Management and Budget (OMB), in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's prior consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, EPA must include a certification from the agency's Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner. This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule will affect only the ability of private entities and the national government to request production of controlled ozone-depleting substances. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

**List of Subjects in 40 CFR Part 82**

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Chlorofluorocarbons, Exports, Imports, Ozone layer, Reporting and recordkeeping requirements.

Dated: September 29, 2000.

**Carol M. Browner,**

*Administrator.*

40 CFR Part 82 is proposed to be amended as follows:

## PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

**Authority:** 42 U.S.C. 7414, 7601, 7671–7671q.

### Subpart A—Production and Consumption Controls

2. Section 82.4 is amended by revising the table in paragraph (t)(2) to read as follows:

**§ 82.4 Prohibitions.**

* * * * *

(t) * * *

(2) * * *

TABLE I.—ESSENTIAL USE ALLOCATION FOR CALENDAR YEAR 2000

| Company | Chemical | Quantity (metric tons) |
|---|---|---|
| **(i) Metered Dose Inhalers (for oral inhalation) for Treatment of Asthma and Chronic Obstructive Pulmonary Disease (in metric tons)** | | |
| Medeva Americas, Inc. | CFC–11 or CFC–12 or CFC–114 | 189.00 |
| Boehringer Ingelheim | CFC–11 or CFC–12 or CFC–114 | 258.00 |
| Glaxo Wellcome | CFC–11 or CFC–12 or CFC–114 | 858.10 |
| Aventis | CFC–11 or CFC–12 or CFC–114 | 190.00 |
| 3M Pharmaceuticals | CFC–11 or CFC–12 or CFC–114 | 384.87 |
| Sidmak Laboratories, Inc. | CFC–11 or CFC–12 or CFC–114 | 192.20 |
| Schering Corporation | CFC–11 or CFC–12 or CFC–114 | 1025.20 |
| Sciarra Laboratories, Inc. | CFC–11 or CFC–12 or CFC–114 | 1.3 |
| **(ii) Cleaning, Bonding and Surface Activation Applications for the Space Shuttle Rockets and Titan Rockets** | | |
| National Aeronautics and Space Administration (NASA)/Thiokol Rocket | Methyl Chloroform | 56.7 |
| United States Air Force/Titan Rocket | Methyl Chloroform | 3.4 |

**§ 82.12 [Amended]**

* * * * *

3. Section 82.12 is amended by revising paragraphs (a) (1) introductory text, (a)(1)(i)(H), (a)(1)(ii) introductory text, (a)(1)(ii)(A), and (a)(1)(iii) to read as follows:

**§ 82.12 Transfers.**

(a) * * *

(1) Until January 1, 1996, for all class I controlled substances, except for Group VI, and until January 1, 2001, for Group VI, any person ("transferor") may transfer to any other person ("transferee") any amount of the transferor's consumption allowances or production allowances, and effective January 1, 1995, for all class I controlled substances any person ("transferor") may transfer to any other person ("transferee") any amount of the transferor's Article 5 allowances, and after January 1, 2001 any essential use allowance holder ("transferor") may transfer essential use allowances for CFCs to any other essential use allowance holder for CFCs ("transferee") solely for the production of essential products (defined at 21 CFR 2.125) as follows:

(i) * * *

(H) The amount of the one percent offset applied to the unweighted amount traded that will be deducted from the transferor's production or consumption allowance balance (except for trades from transformers and destroyers to producers or importers for the purpose of allowance reimbursement) In the case of transferring essential use allowances, the amount of one tenth of one percent of the amount traded will be deducted from the transferor's allowance balance.

(ii) The Administrator will determine whether the records maintained by EPA, taking into account any previous transfers and any production, allowable imports and exports of controlled substances reported by the transferor, indicate that the transferor possesses, as of the date the transfer claim is processed, unexpended allowances sufficient to cover the transfer claim (*i.e.*, the amount to be transferred plus, in the case of transferors of essential use allowances, one tenth of one percent of that amount, and in the case of transferors of production or consumption allowances, one percent of that amount). Within three working days of receiving a complete transfer claim, the Administrator will take action to notify the transferor and transferee as follows:

(A) If EPA's records show that the transferor has sufficient unexpended allowances to cover the transfer claim, the Administrator will issue a notice indicating that EPA does not object to the transfer and will reduce the transferor's balance of unexpended allowances by the amount to be transferred plus, in the case of transfers of production or consumption allowances, one percent of that amount, or in the case of transfers of essential use allowances, one tenth of one percent of that amount. When EPA issues a no objection notice, the transferor and the transferee may proceed with the transfer. However, if EPA ultimately finds that the transferor did not have sufficient unexpended allowances to cover the claim, the transferor and transferee will be held liable for any violations of the regulations of this subpart that occur as a result of, or in conjunction with, the improper transfer.

* * * * *

(iii) In the event that the Administrator does not respond to a transfer claim within the three working days specified in paragraph (a)(1)(ii) of this section, the transferor and transferee may proceed with the transfer. EPA will reduce the transferor's balance of unexpended allowances by the amount to be transferred plus, in the case of transfers of production or consumption allowances, one percent of that amount, or in the case of essential use allowances, one tenth of one percent of that amount. However, if EPA ultimately finds that the transferor did not have sufficient unexpended allowances to cover the claim, the transferor and transferee will be held liable for any violations of the regulations of this subpart that occur as a result of, or in conjunction with, the improper transfer.

* * * * *

[FR Doc. 00–25745 Filed 10–5–00; 8:45 am]

BILLING CODE 6560–50–U



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 403

**[FRL–6883–1]**

**RIN 2090–AA16**

### Pretreatment Program Reinvention Pilot Projects Under Project XL

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** Today EPA is proposing changes to the National Pretreatment Program regulations to allow Publicly Owned Treatment Works (POTWs) that have completed the Project eXcellence and Leadership (Project XL) selection process, including Final Project Agreement (FPA) development, to modify their approved local Pretreatment Programs. These POTWs would be allowed to modify their programs following the procedures in 40 CFR 403.18, and implement the new local programs as described in their FPAs.

In today's proposed rule, EPA recognizes that many POTWs with approved Pretreatment Programs have mastered the administrative and procedural requirements of the National Pretreatment regulations (40 CFR Part 403). Several of these POTWs want the opportunity to implement local pretreatment programs with effectiveness measured against environmental results rather than strict adherence to programmatic and administrative measures. These POTWs have expressed an interest in Project XL to test new pilot ideas that focus resources on activities that they believe would provide greater environmental benefits than are achieved by complying with current regulatory requirements. This rule is intended to provide the regulatory flexibility that will enable these test programs to move forward. Currently, five POTWs are actively involved in this Project XL process.

**DATES:** Public Comments: All public comments on the proposed rule must be received on or before November 6, 2000. Comments provided electronically will be considered timely if they are submitted electronically by 11:59 p.m. (Eastern time) November 6, 2000.

**ADDRESSES:** Comments should be addressed to "Project XL/CWA Pretreatment," Water Docket MC–4101; United States Environmental Protection Agency, Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Commenters are also requested to submit an original and 3 copies of their written comments as well as an original and 3 copies of any attachments, enclosures, or other documents referenced in the comments. Commenters who would like EPA to acknowledge receipt of their comments should include a self-addressed, stamped envelope. No facsimiles (faxes) will be accepted.

EPA will also accept comments electronically. Comments should be addressed to the following Internet address: ow-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII, WordPerfect 5.1/6.1/8 format file and avoid the use of special characters or any form of encryption. Electronic comments will be transferred into a paper version for the official record. EPA will attempt to clarify electronic comments if there is an apparent error in transmission.

Supporting materials are also available for inspection and copying at U.S. EPA, Headquarters, 401 M Street, SW., Room 445 West Tower, Washington, DC 20460 during normal business hours. Persons wishing to view the materials at the Washington, DC location are encouraged to contact Mr. Chad Carbone in advance by telephoning (202) 260–4296.

**FOR FURTHER INFORMATION CONTACT:** Mr. Brian Frazer, (202) 260–0101, U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania

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Avenue, NW., (MC 4203), Washington, DC 20460.

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## I. Authority

This regulation is being proposed under the authority of sections 307, 402 and 501 of the CWA.

## II. Background

### *A. What Is Project XL?*

Project XL, which stands for "eXcellence and Leadership," is a national pilot program that tests innovative ways of achieving better and more cost-effective public health and environmental protection through site-specific agreements with project sponsors. Project XL was announced on March 16, 1995, as a central part of the National Performance Review and EPA's effort to reinvent environmental protection. See 60 FR 27282 (May 23, 1995) and 60 FR 55569 (November 1, 1995). The intent of Project XL is to allow EPA and regulated entities to experiment with pragmatic, potentially promising regulatory approaches, both to assess whether they provide superior environmental performance and other benefits at the specific facility affected, and whether they should be considered for wider application. Such pilot projects are intended to allow EPA to collect more data on a more focused basis prior to national rulemaking. Today's proposed regulation would enable implementation of specific XL projects. These efforts are crucial to EPA's ability to test new strategies that reduce the regulatory burden and promote economic growth while achieving better environmental and public health protection. EPA intends to evaluate the results of this and other XL projects to determine which specific elements of the project(s), if any, should be more broadly applied to other regulated entities for the benefit of both the economy and the environment.

### *B. What Is EPA Proposing?*

In the June 23, 1998, **Federal Register** (63 FR 6113–6), EPA requested proposals for XL projects from POTWs based on environmental performance measures for the pretreatment program. The process for reviewing and choosing acceptable pilot program candidates included input from POTWs, State and EPA Regional Pretreatment Coordinators, as well as opportunity for public participation. As discussed in more detail below, five POTWs have advanced to the final steps of the Project XL process. In today's proposal, EPA announces proposed revisions to the national pretreatment regulations at 40 CFR part 403 that would allow the selected Local Pilot Pretreatment Programs to be implemented. These POTWs will then need to submit revised pretreatment programs for approval and obtain modified permits to authorize the POTW to implement its pilot program instead of its current Approved POTW Pretreatment Program. In addition, the affected states may first need to revise their own regulations or statutes to authorize the pilot programs for pretreatment XL project sponsors before this rule can be implemented in their jurisdictions.

### *C. Stakeholder Involvement in the XL Process*

EPA believes stakeholder involvement in developing Local Pilot Pretreatment Programs is crucial to the success of the programs, therefore, as part of the Project XL proposal, a POTW must clearly explain its process for involving stakeholders in the design of the pilot program. This process should be based upon the guidance set out in the April 23, 1997, **Federal Register** notice. The support of parties that have a stake in the program is very important. Once EPA has accepted a candidate based on its detailed proposal, the POTW, EPA, the State and local stakeholders typically finalize a Final Project Agreement (FPA). The FPA is a non-binding agreement that describes the intentions and commitments of the implementing parties. Stakeholders may include communities near the project, local or state governments, businesses, environmental and other public interest groups, or other similar entities. Stakeholders will also have formal opportunities to comment on provisions of the FPA that are incorporated in the POTW's revised pretreatment program under the procedures established at 40 CFR 403.18 and this proposal.

### *D. What Is the National Pretreatment Program?*

The National Pretreatment Program is part of the Clean Water Act's (CWA's) water pollution control program. The program is a joint regulatory effort by local, State, and federal authorities that requires the control of industrial and commercial sources of pollutants discharged to municipal wastewater plants (called "publicly owned treatment works" or "POTWs"). Control of pollutants prior to discharge of wastewater to the municipal sewer system minimizes the possibility of pollutants interfering with the operation of the POTW and reduces the levels of toxic pollutants in wastewater discharges from the POTW and in the sludge resulting from municipal wastewater treatment.

### *E. What Are the Current Pretreatment Program Requirements?*

The minimum requirements for an Approved POTW Pretreatment Program currently are published at 40 CFR 403.8(f). POTWs with Approved Pretreatment Programs must maintain adequate legal authority, identify industrial users, designate which industrial users (IUs) are "Significant Industrial Users" (SIUs) (under 40 CFR 403.3(t)) and perform required monitoring, permitting and enforcement. Other sections of part 403 require POTWs with Approved Pretreatment Programs to sample and apply nationally applicable pretreatment standards to the industrial users discharging pollutants to the POTW collection system. POTWs are also required to develop local limits in accordance with 40 CFR 403.5. As proposed today, EPA would allow Approval Authorities to require a POTW to meet requirements in an environmental performance-based pilot program instead of certain administrative programmatic requirements currently required in a POTW's Approved Pretreatment Program under 40 CFR part 403.



### *F. How Do the Current Requirements Relate to Environmental Objectives?*

As described in 40 CFR 403.2, the general pretreatment regulations promote three objectives:

(a) To prevent the introduction of pollutants into POTWs which will interfere with the operation of POTWs, including interference with the use or disposal of municipal sludge;

(b) To prevent the introduction of pollutants into POTWs which will pass through the treatment works or otherwise be incompatible with such works; and

(c) To improve opportunities to recycle and reclaim municipal and industrial wastewaters and sludges.

These objectives require local programs to be designed so they are preventative in nature, and therefore, any pilot program also would need to maintain this preventative approach. The specific requirements for an Approved POTW Pretreatment Program are intended to achieve these objectives. Individual pretreatment programs, however, are not routinely required to report on the achievement of environmental measures.

The 1991 National Pretreatment Program Report to Congress provides extensive data related to the sources and amounts of pollutants discharged to POTWs, the removal of pollutants by secondary treatment technology, and the general effectiveness of the pretreatment program. The 1991 Report did, however, point to a serious lack of comprehensive environmental data with which to fully assess the effectiveness of both the national and local pretreatment programs. These project XL pilots would help to provide data for this purpose.

### *G. Why Is EPA Considering Allowing POTW Local Pilot Pretreatment Programs at this Time?*

Some POTWs have mastered the administrative aspects of the pretreatment program (identifying industrial users, permitting, monitoring, *etc.*) and want to move into more environmental performance-based processes. These POTWs have expressed an interest in focusing their resources on activities that they believe would provide greater environmental benefit than is achieved by complying with the current requirements. Some POTWs want to be able to make decisions on allocating resources based on the risk associated with the industrial contributions they receive or other factors. Others want to be able to focus more resources on ambient monitoring in their receiving waters and/or to integrate their pretreatment programs with their storm water monitoring programs. In general, these POTWs want the opportunity to redirect limited resources away from currently required activities that they do not believe are benefitting the environment and toward activities that may achieve measurable improvements in the environment.

EPA developed the Project XL program to provide regulated entities the flexibility to conduct innovative pilot projects. Today's proposed rule represents an attempt to spur innovation in the pretreatment program to increase environmental benefits and, in conjunction with the streamlining proposal, (see 64 FR 39564) to determine if further streamlining of the program is needed, how streamlining can achieve environmental improvements and in what direction those future streamlining efforts should be directed.

### *H. Are There Any POTWs Currently Going Through Project XL Approval Process?*

In order to implement the pretreatment XL projects, EPA is proposing a rule that would provide regulatory flexibility under the Clean Water Act. Currently, five (5) POTWs have requested flexibility through the Project XL FPA approval process. The POTWs are: The Narragansett Bay Commission (NBC) in Rhode Island; the Jeffersontown Wastewater Treatment Plant (WWTP), owned and operated by the Louisville and Jefferson County Metropolitan Sewer District (MSD) in Kentucky; the Metropolitan Water Reclamation District of Greater Chicago (Chicago) in Illinois; the City of Albuquerque (Albuquerque), New Mexico; and the City of Denton (Denton), Texas. The FPA for NBC lays out the following flexibilities: (1) Reduced self-monitoring requirements for ten (10) categorical industrial users (CIUs) for tier 1 facilities, (2) reduced inspection frequency for ten (10) CIUs tier 1 facilities from once every year to once every two years and, (3) allow participating CIUs tier 1 facilities to not sample for pollutants not expected to be present. Under the FPA for MSD, the POTW is requesting flexibility to (1) use an alternative definition for significant industrial user (SIU), (2) allow participating CIUs to not sample for pollutants not expected to be present and (3) use an alternative definition of significant noncompliance (SNC). The Chicago FPA describes flexibility that includes (1) use of an alternative (in relation to the pretreatment streamlining proposal) definition for de minimis categorical industrial user (CIU) and (2) reduced self-monitoring and self-reporting requirements for participating CIUs and (3) use alternative monitoring methods. The Albuquerque FPA lays out flexibility to (1) use an alternative definition of SIU, (2) use an alternative definition of SNC, (3) reduce permitting requirements for participating IUs, (4) use alternative monitoring methods and (5) reduce reporting requirements for participating IUs. The Denton FPA lays out flexibility to (1) reduce its monitoring of participating IUs and (2) reduce its inspection of participating IUs. In exchange for these flexibilities, each individual POTW would need to commit to produce certain proportional amounts of superior environment performance as laid out in the FPA and maintain all legal and preventative environmental health and safety standards. Complete project site-specific descriptions can be found on the web at: http://www.epa.gov/projectxl/.

### *I. What Are the Environmental Benefits Anticipated Through Project XL?*

These XL projects are expected to achieve superior environmental performance beyond that which is achieved under the current CWA regulatory system by allowing local agencies the ability to identify environmental goals and allocate the necessary resources on a site specific local basis. Specifically, these projects are expected to produce additional benefits by (i) reducing pollutant loadings to the environment or some other environmental benefit beyond that currently achieved through the existing pretreatment program (including collecting environmental performance data and data related to environmental impacts in order to measure the environmental benefit), (ii) reduced or optimized costs related to implementation of the pretreatment program with the savings used to attain environmental benefits elsewhere in the watershed in any media, and (iii) providing EPA with information on how the pretreatment program might be better oriented towards the achievement of measures of environmental performance. These objectives are consistent with the principles of the National Performance Review.

EPA's intent is to allow Local Pilot Pretreatment Programs to be administered by those POTWs that best further those objectives. Each pilot program's method of achieving the environmental benefit should be transferable so that other programs may be able to implement the method and also achieve increased environmental benefits.

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*J. What Is the Project Duration and Completion Date?*

Under Project XL, local Pilot Pretreatment Programs may be approved to operate for the term expressed in the FPA. Prior to the end of the FPA approval period (at least 180 days), the POTW may apply for a renewal or extension of the project period in accordance with the terms of the FPA. If a POTW is not able to meet the performance goals of its Local Pilot Pretreatment Program, the Pretreatment Approval Authority (either EPA or the authorized State) could allow the performance measures to be adjusted if the primary objectives of the Local Pilot Pretreatment Program would be met. The revised Local Pilot Pretreatment Program would need to be approved in accordance with the FPA and the procedures in 40 CFR 403.18.

If the primary objectives of the proposal are not being met, the Approval Authority would direct the POTW to discontinue implementing the Local Pilot Pretreatment Program and resume implementation of its previously approved pretreatment program. The Pretreatment Approval Authority would need to ensure that the POTW's NPDES permit includes a reopener clause to implement this procedure.

The results of the pilots, including recommendations in POTW reports, may be used to determine the direction of future Pretreatment Program streamlining and/or reinvention.

*K. How Could the Project Be Terminated?*

Either the Approval Authority or the POTW may terminate a project earlier than the final project agreement's (FPA) anticipated end date. Parties will follow procedures set out in the FPA. The implementing permits will also reflect the possibility of early termination. When the NPDES permitting agency modifies the POTW's NPDES permit to incorporate the flexibility allowed by today's rule, it must include a 'reopener' provision that requires the POTW to return to compliance with current pretreatment requirements at the expiration or termination of the FPA, including an interim compliance period, if needed. Additional details are available in the site-specific FPAs.

**III. Rule Description**

Today's proposed rule will modify 40 CFR part 403 to allow Pretreatment Approval Authorities (EPA or State) to grant regulatory flexibility to selected Project XL POTWs with approved FPAs. The regulatory flexibility would allow these specific POTWs to implement Pretreatment Programs that include legal authorities and requirements that are different than the administrative requirements in 40 CFR part 403. The POTW would need to submit any such alternative requirements as a substantial program modification in accordance with the procedures outlined in 40 CFR 403.18. The approved modified program would need to be incorporated as an enforceable part of the POTW's NPDES permit. The Approval Authority would approve or disapprove the pilot program using the procedures in 40 CFR 403.18.

For example, the POTW would work through the Project XL process as described above. The POTW either would or has already developed the necessary FPA with stakeholder participation (local interest groups, State representatives, EPA, any other interested parties). The POTW would use the FPA as the blueprint when developing a revision of the POTW's approved local pretreatment program. The POTW would submit the revised program to its Approval Authority (State or EPA region) requesting a substantial program modification using the procedures outlined in 40 CFR 403.18. The Approval Authority would review the program modification request to determine that it contains the provisions of the blue-print FPA and makes a determination to approve or deny the request. The proposal for modification is publicly noticed following the procedures in 40 CFR 403.11 and 40 CFR 403.18. After the close of the public comment period, the Approval Authority will consider and respond to public comments and revise the POTW's pretreatment program accordingly. Then the POTWs NPDES permit will be modified by adding the modified pretreatment program as an enforceable part of the permit.

**IV. Request for Public Comments**

The Agency requests public comments on today's Rule.

**V. Additional Information**

*A. Executive Order 12866*

Under Executive Order 12866 (58 FR 51735, October 4, 1993) the Agency must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety in State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs of the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Because the annualized cost of this final rule will be significantly less than $100 million and will not meet any of the other criteria specified in the Executive Order, it has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866, and is therefore not subject to OMB review.

Executive Order 12866 also encourages agencies to provide a meaningful public comment period, and suggests that in most cases the comment period should be 60 days. In consideration of the very limited scope of today's rulemaking and the considerable public involvement in the development of the proposed Final Project Agreements subject to today's rule, EPA considers 30 days to be sufficient in providing a meaningful public comment period for today's action.

*B. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This rule will not have a significant impact on a substantial number of small entities because the modifications to the pretreatment regulations EPA is allowing would reduce the regulatory costs to POTWs and industrial users of complying with the pretreatment requirements and affect a small number of dischargers. Therefore, EPA certifies that this action will not have a significant economic impact on a substantial number of small entities.

*C. Paperwork Reduction Act*

An Information Collection Request (ICR) document is currently being prepared by EPA.The ICR will be submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

The proposed rule provides regulatory flexibility to participating sponsors. The changes in information collection requirements as a consequence of the rule allow participating facilities to satisfy the reporting requirements with a single yearly report and provide certification in lieu of not sampling for pollutants not present if certain conditions are met. Also, this regulatory change can result in decreased reporting and recordkeeping burdens for participating facilities.

*D. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, because this rule contains no regulatory requirements that might significantly or uniquely affect small governments, it is not subject to UMRA section 203.

*E. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks*

The Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant," as defined under Executive Order 12866; and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it is not an economically significant rule, as defined by Executive Order 12866, and because it does not involve decisions based on environmental health or safety risks.

*F. Executive Order 13132: Federalism*

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the regulation. EPA may also not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with the State and local officials early in the process of developing the regulation.

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule. Although section 6 of Executive Order 13132 does not apply to this rule, EPA did fully coordinate and consult with the affected state and local officials in developing this rule.

*G. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments*

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities. Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. There are no communities of Indian tribal governments located in the vicinity of the affected facility. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

*H. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law

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104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standard. This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards. EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

Dated: September 29, 2000.

**Carol M. Browner,**

*Administrator.*

For the reasons set forth in the preamble, part 403, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

## PART 403—GENERAL PRETREATMENT REGULATIONS FOR EXISTING AND NEW SOURCES OF POLLUTION

1. The authority for Part 403 continues to read as follows:

**Authority:** 33 U.S.C. 1251 *et seq.*

2. Section 403.20 is added to read as follows:

**§ 403.20 Pretreatment Program Reinvention Pilot Projects Under Project XL.**

The Approval Authority may allow any publicly owned treatment works (POTW) that has a final "Project XL" agreement to implement a Pretreatment Program that includes legal authorities and requirements that are different than the administrative requirements otherwise applicable under this part. The POTW must submit any such alternative requirements as a substantial program modification in accordance with the procedures outlined in § 403.18. The approved modified program must be incorporated as an enforceable part of the POTW's NPDES permit. The Approval Authority must include a reopener clause in the POTW's NPDES permit that directs the POTW to discontinue implementing the approved alternative requirements and resume implementation of its previously approved pretreatment program if the primary objectives of the Local Pilot Pretreatment Program are not met or the "Project XL" agreement expires or is otherwise terminated.

[FR Doc. 00–25750 Filed 10–5–00; 8:45 am]

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[DA 00–2215, MM Docket No. 00–184, RM–9955]**

### Digital Television Broadcast Service; Sheridan, WY

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by Duhamel Broadcasting Enterprises, licensee of Station KSGW–TV, NTSC Channel 12, Sheridan, Wyoming, proposing the substitution of DTV Channel 13 for Station KSGW–TV's assigned DTV Channel 21. DTV Channel 21 can be allotted to Sheridan, Wyoming, in compliance with the principle community coverage requirements of section 73.625(a) at reference coordinates (44–37–20 N. and 107–06–57 W.). As requested, we propose to allot DTV Channel 13 to Sheridan with a power of 50 and a height above average terrain (HAAT) of 372 meters.

**DATES:** Comments must be filed on or before November 27, 2000, and reply comments on or before December 12, 2000.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Richard R. Zaragoza, Colette M. Capretz, Shaw Pittman, 2300 N Street, NW, Washington, DC 20037–1128 (Counsel for Duhamel Broadcasting Enterprises).

**FOR FURTHER INFORMATION CONTACT:** Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–184, adopted October 3, 2000, and released October 4, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

Federal Communications Commission.

**Barbara A. Kreisman,**

*Chief, Video Services Division, Mass Media Bureau.*

[FR Doc. 00–25736 Filed 10–5–00; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[DA 00–2213, MM Docket No. 00–182, RM–9957]**

### Digital Television Broadcast Service; Sumter, SC

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by McLaughlin Broadcasting, Inc., licensee of Station WQHG–TV, NTSC Channel 63, Sumter, South Carolina, proposing the substitution of DTV Channel 39 for Station WQHB–TV's assigned DTV Channel 38. DTV Channel 39 can be allotted to Sumter, South Carolina, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates (34–06–33N. and 80–44–35 W.). As requested, we propose to allot DTV Channel 39 to Sumter with a power of 500 and a height above average terrain (HAAT) of 269 meters.

**DATES:** Comments must be filed on or before November 27, 2000, and reply comments on or before December 12, 2000.



**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW, Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Gene A.-Bechtel, Bechtel and Cole, Chartered, Suite 250, 1901 L Street, NW, Washington, DC 20036 (Counsel for McLaughlin Broadcasting, Inc.).

**FOR FURTHER INFORMATION CONTACT:** Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–182, adopted October 3, 2000, and released October 4, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

Federal Communications Commission.

**Barbara A. Kreisman,**

*Chief, Video Services Division, Mass Media Bureau.*

[FR Doc. 00–25737 Filed 10–5–00; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[DA 00–2212, MM Docket No. 00–181, RM–9933]**

### Digital Television Broadcast Service; Henderson, NV

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by KVVU Broadcasting Corporation, licensee of station KVVU–TV, NTSC Channel 5, Henderson, Nevada, requesting the substitution of DTV Channel 9 for station KVVU–TV's assigned DTV Channel 24. DTV Channel 9 can be allotted to Henderson, Nevada, in compliance with the principle community coverage requirements of section 73.625(a) at reference coordinates (36–00–28 N. and 115–00–24 W.). As requested, we propose to allot DTV Channel 9 to Henderson with a power of 85.6 and a height above average terrain (HAAT) of 407 meters.

**DATES:** Comments must be filed on or before November 27, 2000, and reply comments on or before December 12, 2000.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John Wells Kings, Haley, Bader & Potts, 4350 North Fairfax Drive, Suite 900, Arlington, Virginia 22203–1633 (Counsel for KVVU Broadcasting Corporation).

**FOR FURTHER INFORMATION CONTACT:** Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–181, adopted October 3, 2000, and released October 4, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

Federal Communications Commission.

**Barbara A. Kreisman,**

*Chief, Video Services Division, Mass Media Bureau.*

[FR Doc. 00–25738 Filed 10–5–00; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[DA 00–2214, MM Docket No. 00–183, RM–9959]**

### Digital Television Broadcast Service; Albany, NY

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by Hubbard Broadcasting, Inc., licensee of WNYT(TV), NTSC Channel 13, Albany, New York, proposing the substitution of DTV Channel 12 for Station WNYT(TV)'s assigned DTV Channel 15. DTV Channel 12 can be allotted to Albany, New York, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates (42–37–37 N. and 74–00–49 W.). However, since the community of Albany is located within 400 kilometers of the U.S.-Canadian border, concurrence by the Canadian government must be obtained for this proposal. As requested, we propose to allot DTV Channel 12 to Albany with a power of 10 and a height above average terrain (HAAT) of 421 meters.

**DATES:** Comments must be filed on or before November 27, 2000, and reply comments on or before December 12, 2000.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Marvin Rosenberg, David A. O'Connor, Holland & Knight, LLP, 2100 Pennsylvania Avenue, NW., Suite 400 Washington, DC 20037–3202 (Counsel for Hubbard Broadcasting, Inc.).

**FOR FURTHER INFORMATION CONTACT:** Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–183, adopted October 3, 2000, and released October 4, 2000. The full text of this Commission decision is available

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for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

Federal Communications Commission.

**Barbara A. Kreisman,**

*Chief, Video Services Division, Mass Media Bureau.*

[FR Doc. 00–25739 Filed 10–5–00; 8:45 am]

BILLING CODE 6712–01–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 17

RIN 1018—AG38

## Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the Spruce-fir Moss Spider

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), propose to designate critical habitat for the spruce-fir moss spider (*Microhexura montivaga*) under the Endangered Species Act of 1973, as amended (Act). The proposed designation of critical habitat for the spruce-fir moss spider includes—(1) Areas at and above 1,646 meters (m) (5,400 feet (ft)) in elevation in the Great Smoky Mountains National Park (GSMNP) on and/or in the vicinity of Mount LeConte in Sevier County, Tennessee, and Mount Collins, Clingmans Dome, and Mount Buckley in Swain County, North Carolina, and Sevier County, Tennessee; (2) areas at and above 1,646 m (5,400 ft) in elevation at Grandfather Mountain in Avery, Caldwell, and Watauga Counties, North Carolina; and (3) portions at and above 1,646 m (5,400 ft) in elevation at Roan Mountain, Avery and Mitchell Counties, North Carolina, and Carter County, Tennessee. All of the areas on or in the vicinity of Mount LeConte, Mount Collins, Clingmans Dome, and Mount Buckley that are proposed for critical habitat designation are within the boundaries of the GSMNP; all of the areas of Roan Mountain that are proposed for critical habitat designation are within the boundaries of the Pisgah National Forest in North Carolina and the Cherokee National Forest in Tennessee; and the areas of Grandfather Mountain that are proposed for critical habitat designation are privately owned.

If this proposal is made final, section 7(a)(2) of the Act requires that Federal agencies ensure that actions they fund, authorize, or carry out are not likely to result in the destruction or adverse modification of critical habitat. The regulatory impact of critical habitat designation does not extend beyond those activities funded, permitted, or carried out by Federal agencies. State or private actions, with no Federal involvement, are not affected.

Section 4 of the Act requires us to consider the economic and other relevant impacts of specifying any particular area as critical habitat. We solicit data and comments from the public on all aspects of this proposal, including data on the economic and other impacts of the designation. We may revise this proposal to incorporate or address comments and other information received during the comment period.

**DATES:** We will consider comments received by December 5, 2000. We must receive requests for public hearings, in writing, at the address shown in the **ADDRESSES** section by November 20, 2000.

**ADDRESSES:** If you wish to comment, you may submit your comments by any one of several methods:

1. You may submit written comments and information to the State Supervisor, Asheville Field Office, U.S. Fish and Wildlife Service, 160 Zillicoa Street, Asheville, North Carolina 28801.

2. You may hand-deliver written comments to our Asheville Field Office, at the above address or fax your comments to 828/258–5330.

3. You may send comments by electronic mail (e-mail) to john_fridell@fws.gov. For directions on how to submit electronic filing of comments, see the "Public Comments Solicited" section.

Comments and materials received, as well as supporting documentation used in preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** John A. Fridell, Fish and Wildlife Biologist (see **ADDRESSES** section).

**SUPPLEMENTARY INFORMATION:**

### Background

*Taxonomy and Description*

The spruce-fir moss spider *Microhexura montivaga*) was originally described by Crosby and Bishop (1925) based on collections made in 1923 from Mount Mitchell in western North Carolina, the highest point in eastern North America. Only a few specimens were taken, and little was known about the species until its "rediscovery" on Mount Mitchell, approximately 50 years later by Dr. Frederick Coyle (Western Carolina University) and Dr. William Shear (Hampden-Sydney College) (Coyle 1981). The subsequent work (Coyle 1981, 1985, 1997, 1999; Harp 1991, 1992) represents the bulk of what is presently known of the biology, habitat, behavior, range of, and threats to, the spider.

The spruce-fir moss spider belongs to the genus *Microhexura* in the family Dipluridae. Diplurids are in the primitive spider suborder Mygalomorphae, which are often referred to as "tarantulas" due to the inclusion of the large, hairy spiders of the family Theraphosidae. Only two genera of Dipluridae, *Euagrus* and *Microhexura,* are found in the United States. Species in the genus *Euagrus* are medium to large spiders that build their silk sheets and funnels in rocky situations in the arid Southwest. The genus *Microhexura* is the northernmost representative of the family Dipluridae, and contains only two species—the spruce-fir moss spider (*M. montivaga*) and one with no common name (*M. idahoana*) (Chamberlin and Ivie). The two are distinguished by geographic distribution and by features of the male genitalia (Coyle 1981). Otherwise, they appear to be similar in both appearance and habits (Service 1998). *Microhexura idahoana* is found in conifer forests in the Pacific Northwest (Coyle 1981). The spruce-fir moss spider (*M. montivaga*) is known only from conifer forests in the mountains of North Carolina and Tennessee (Coyle 1981, 1997, 1999; Harp 1991, 1992; Service 1995, 1998).

The spruce-fir moss spider is the smallest of the mygalomorph spiders, with adults measuring only 2.5 to 3.8 millimeters (0.10 to 0.15 inch) in length (Coyle 1981, Service 1995). The species' coloration ranges from light brown to a darker reddish brown, and there are no markings on the abdomen (Harp 1992). The carapace (hard covering over the front part of the body) is generally yellowish brown (Harp 1992). The most reliable field identification characteristics for the species are chelicerae (fangs) that project forward well beyond the anterior (front) edge of the carapace, a pair of very long posterior spinnerets (organ for producing threads of silk), and the presence of a second pair of book lungs that appear as light patches posterior to the genital furrow (Harp 1992; Coyle, *in litt.* 1994; Service 1995).



*Distribution, Habitat, and Life History*

*Microhexura montivaga* is known from only the highest mountain peaks (at and above 1,646 m (5,400 ft) in elevation) in the Southern Appalachian Mountains of North Carolina and Tennessee. It has been recorded from Mount Mitchell, Yancey County, North Carolina; Grandfather Mountain, Watauga, Avery, and Caldwell Counties, North Carolina; Mount Collins, Swain County, North Carolina; Clingmans Dome, Swain County, North Carolina; Roan Mountain, Avery and Mitchell Counties, North Carolina, and Carter County, Tennessee; Mount Buckley, Sevier County, Tennessee; and Mount LeConte, Sevier County, Tennessee.

Recent and ongoing surveys funded by the National Park Service (NPS), U.S. Forest Service (USFS), and us indicate that reproducing populations of the spruce-fir moss spider still survive on Grandfather Mountain in North Carolina (Harp 1992; pers. observation 1995; Jane Thompson, The Nature Conservancy, pers. comm. 1997); Mount LeConte in Tennessee (Coyle 1997); and Mount Buckley (Coyle, pers. comm. 2000) and Roan Mountain in North Carolina and Tennessee (Coyle 1999). The Mount Mitchell population is believed to be extirpated (Harp 1992), and both the Mount Collins and Clingmans Dome populations, if still present, are extremely small, with only one spruce-fir moss spider having been found at each of these two sites in recent years (Harp 1991, 1992). The occurrences of the species on Mount LeConte, Mount Collins, Clingmans Dome, and Mount Buckley are all within the boundaries of the GSMNP, administered by the NPS. The sites supporting the species on Roan Mountain are within the boundaries of the Pisgah National Forest in North Carolina and the Cherokee National Forest in Tennessee, and are managed by the USFS. The area on Grandfather Mountain that still supports the spruce-fir moss spider is privately owned and is managed by The Nature Conservancy through an agreement with the landowner.

Recent work by Coyle (1997) indicates that Mount LeConte currently supports the healthiest of the surviving populations of the spruce-fir moss spider. In his study of the species on Mount LeConte, Coyle (1997) recorded the species from four small, separate areas of rock outcrop (approximately 0.10 hectare [0.25 acre], 0.15 hectare [0.38 acre], 0.25 hectare [0.63 acre], and 0.50 hectare [1.25 acres] in size) and estimated that the largest three of these areas support a population of approximately 5,000 individuals. He estimated that the 0.25-hectare site provided a total of approximately 12 square meters ($m^2$) (roughly 133 square feet) of suitable microhabitat, and the 0.15-hectare site provided approximately 7 $m^2$ (78 square feet) of suitable microhabitat for the spruce-fir moss spider. Measurements of likely suitable microhabitat have not yet been made at the other two sites on Mount LeConte.

The typical microhabitat of the spruce-fir moss spider appears to be associated with moderately thick and humid, but well-drained, moss and liverwort mats growing in sheltered spots on surfaces of rock outcrops and boulders in mature high-elevation forests dominated by Fraser fir (*Abies fraseri*) (Coyle 1981, 1997, 1999; Harp 1991, 1992; Service 1998). The portions of the moss mats supporting the spruce-fir moss spider are generally from 1 to 4 centimeters (cm) thick (roughly 0.5 to 1.25 inches) and are well-shaded (Coyle 1981, 1997, 1999; Harp 1991, 1992; Service 1998). They cannot be too dry, because the spider is quite sensitive to desiccation (drying out), nor can they be too wet (Coyle 1997, 1998; Harp 1991, 1992). The humidity levels required by the spruce-fir moss spider have yet to be determined. In a study of the spruce-fir moss spider on the Roan Mountain, Coyle (1999) reported that the moss/liverwort mats in which spruce-fir moss spiders were found were—(1) sheltered from the sun and the rain; (2) typically not far above either the ground or a horizontal ledge with accumulated soil; (3) included a thin layer of humid soil and/or humus (decayed vegetation and other organic material) between the moss and rock surface; (4) moderately thick (1 to 3 centimeters (0.5 to 1 inch); and (5) humid but not wet. He reported that, clearly, most rock outcrop surfaces, even those covered by bryophytes (mosses, liverworts, etc.), do not meet these microhabitat requirements and do not support the spruce-fir moss spider.

Population and microhabitat estimates are not available for the Grandfather Mountain, Mount Buckley, or Roan Mountain populations of the spruce-fir moss spider. However, existing data indicate that the Grandfather Mountain population is restricted to small patches of suitable microhabitat occurring on a single rock outcrop and a nearby boulder (Harp 1992; pers. observation 1995). The Mount Buckley population is restricted to scattered patches of suitable microhabitat on separate rock outcrop sites within an area roughly 0.20 hectare (0.5 acre) in size. On Roan Mountain, Coyle (1999) recorded scattered occurrences of the spruce-fir moss spider at 12 small, separate rock outcrop sites but found more than two spiders living in the same discrete patch of moss/liverwort on only three occasions. He found four spiders in an 800 square centimeters (sq cm) (approximately 1.0 square feet (sq ft)) patch of liverwort at one site, five spiders in a 900 sq cm (1.2 sq ft) patch of moss at another site, and four spiders in a 900 sq cm (1.2 sq ft) patch of moss at the third site. He reported that, at none of these three sites, nor at any other sites on Roan Mountain where he found the spider, were they able to find additional spiders with ease and that the spruce-fir moss spider population densities on Roan Mountain were clearly not as high as those observed at some of the sites on Mount LeConte. As stated above, individual spruce-fir moss spiders (one each) have been observed in recent years on Mount Collins and on Clingmans Dome, indicating extremely low population levels. Coyle (*in litt.* 1991) reported that the spruce-fir moss spider was common at a site on Clingmans Dome as late as 1983 but was extremely rare by 1988, which he suspected was largely due to deterioration of the forest canopy at the site.

The moss species associated with occurrences of the spruce-fir moss spider have been identified by David K. Smith, Botany Department, University of Tennessee at Knoxville, as *Polytrichum pallidesetum* Funck (Harp 1991, 1992), *Dicranodontium denudatum* (Brid.) E. G. Britt ex Williams (Harp 1992; Coyle 1997, 1999), and *D. asperulum* (Mitt.) Broth. (Coyle 1997, 1999). In addition, Coyle (1999) reported finding the spruce-fir moss spider on two occasions in liverwort mats (species was not identified) on rock outcrops. However, on both Mount LeConte and Roan Mountain, Coyle (1997, 1999 respectively) found the spruce-fir moss spider most often in

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association with mosses in the genus *Dicranodontium*. Though Harp (1991, 1992) reported finding the spruce-fir moss spider on Mount LeConte in mosses identified as *Polytrichum pallidesetum*, Coyle was unable to find the spider on either Mount LeConte or Roan Mountain in mosses in this genus. The association between the spruce-fir moss spider and mosses in the genus *Dicranodontium* is noteworthy, because mosses in this genus are much less common than many other rock surface mosses (Coyle 1999).

While humid, well-drained moss/liverwort mats on inclined, well-shaded surfaces of rock outcrops and boulders appear to be the optimal microhabitat for the spruce-fir moss spider, it has also, on occasion, been found: (1) Under moss and litter mats at the base of rock outcrops (Coyle 1981); (2) under moss on loose rock at the base of rock outcrops; (3) in litter/humus under flat rocks lying on the ground in well-shaded situations in the vicinity of rock outcrops; and (4) on well-drained, well-shaded ground in or under needle and/or heath litter and moss in the vicinity of rock outcrops (Coyle 1997).

The species has also rarely been found in moss mats on tree trunks (Coyle 1981) and moss mats on logs (Harp 1992), though Coyle has been unable to find the species in either of these habitat types in his recent surveys for the species (Coyle, 1997, 1999; pers. comm. 2000).

An ongoing study of spiders of the GSMNP by Coyle and recent surveys of the spruce-fir moss spider on Mount LeConte (Coyle 1997) and Roan Mountain (Coyle 1999) support earlier findings (Coyle 1981; Harp 1991, 1992) that the microhabitat of the spruce-fir moss spider is virtually restricted to certain areas of rock outcrops and boulders in Fraser fir and/or fir-dominated spruce-fir forests. The Fraser fir is the only species of fir native to the Southeastern United States (Burns and Honkala 1990). In his study of the population of the spruce-fir moss spider on Mount LeConte, Coyle (1997) reported finding the species "only in stands containing many old (well over 25 years of age) fir trees and in areas where patches of fir containing old fir trees interface with heath communities." In both situations he found the species only on or in the vicinity of rock outcrops. In his work on Roan Mountain, Coyle (1999) found the species only on rock outcrops in fir forests or fir-dominated areas of spruce-fir forests. Searches for the spruce-fir moss spider in other habitat types have failed to locate occurrences of the species (Coyle, *in litt.*, 1991; Coyle 1997, 1999).

Coyle (1981, 1997) describes the webs of the spruce-fir moss spider as silk tubes sandwiched between the interface of the moss mat and boulder surface. The tubes are thin-walled and are typically broad and flattened, with short side branches. Some of the tubes occasionally extend into crevices in the rock or litter (Coyle 1997) or the vegetative interior of the moss mat (Harp 1991, 1992).

The spruce-fir moss spider has not been observed taking prey in the wild, nor is there any record of prey having been found in spruce-fir moss spider webs. The abundant springtails (small wingless insects in the order Collembola) found in moss mats with the spiders provide the most likely source of food. The spiders have been observed to take springtails in captivity (David Hodge, Louisville Zoological Park, pers. comm. 1992).

Mating behavior has been described in detail (Coyle 1985). Females of the spruce-fir moss spider are known to lay eggs in June (Coyle 1981). The egg sac of the species is thin-walled, nearly transparent, and generally contains only 7 to 9 eggs (Coyle 1981). The female remains with the egg sac and, when disturbed, will carry the sac with her fangs. Coyle (1997) hypothesized that the ability of the female to move the egg sac may be useful not only in protecting the eggs from predators but also in repositioning the egg sac to protect it from microhabitat changes within the web. Development and evaporative water loss by early instar (a stage between molts) spiderlings within the egg sac are likely dependent on temperature and humidity levels. The spiderlings emerge during September (Coyle 1981). It has been estimated that it may take at least two to three years for spruce-fir moss spiders to reach maturity (Coyle 1985). The life span of the spruce-fir moss spider is currently unknown. Many species of spiders live for only one season. But, like other "tarantulas," spruce-fir moss spiders molt (shed their skin) continuously through life, which means they can keep growing and can live for several years.

Modes of dispersal of spiderlings from the parental moss mats are unknown. Ballooning is a possibility since males of *M. idahoana* have been collected as "windblown fallout" on snow fields on Mt. Rainier (Coyle 1981). Ballooning spiders use a sheet of silk played out into a wind current as a kite to carry them into the air. Ballooning spruce-fir moss spiders have not been collected. If they do balloon, they would be capable of an effective mode of dispersal over long distances. Even short-range dispersal between moss mats has not been documented for this species. Pit fall trap and Berlese funnel sampling done in the area of the Mount LeConte population did not yield any specimens of the spruce-fir moss spider (Lambden *et al.* 1994).

Possible predators and competitors of the spruce-fir moss spider include pseudoscorpions, centipedes, carabid beetles, and other spiders. A number of other species of spiders are commonly found in the same moss as the spruce-fir moss spider (Service 1998).

*Threats*

The majority of the high-elevation spruce-fir forests of the Southeast have suffered extensive changes and declines in size and/or vigor during the past century, likely as a result of a number of factors, including storm damage, site deterioration due to the logging and burning practices of early 1900s (Peart *et al.* 1992), atmospheric pollution (Johnson *et al.* 1992), exposure shock (Nicholas *et al.* 1992), climate changes, and other factors not yet fully understood. However, the primary threat to, and reason for, the recent decline of the spruce-fir moss spider at all of the sites from which it has been recorded appears to be associated with the loss of suitable moss habitat, due primarily to the loss of mature Fraser firs (Coyle, *in litt.*, 1991, 1999; Harp 1991, 1992; Service 1998). The spruce-fir moss spider appears to be very sensitive to desiccation and requires situations of high and constant humidity. The loss of mature Fraser firs, the dominate canopy species in the forest stands where the spider has been found, leading to increased light and temperature and decreased moisture on the forest floor (resulting in drying out of the moss mats), appears to be the major cause for the loss of the spruce-fir moss spider on Mount Mitchell and the recent decline of the Mount Collins, Clingmans Dome, and a portion of the Mount LeConte populations (Harp 1991, 1992). It is also likely the major factor limiting the species' distribution on Roan Mountain, Grandfather Mountain, and Mount Buckley. Mature Fraser firs on all of these mountains have suffered extensive mortality in the last few decades, primarily due to infestation by the balsam wooly adelgid (*Adelges picea* (Ratzeburg) (Homoptera, Adelgidae)). The balsam wooly adelgid is a nonnative insect pest believed to have been introduced into the Northeastern United States from Europe around 1900 (Kotinsky 1916, Eagar 1984). The adelgid was first detected in North Carolina on Mount Mitchell (the type locality for the spruce-fir moss spider) in 1957 (Speers 1958), though it was likely established at that site as early 1940. From Mount Mitchell, the adelgid spread to the Fraser fir stands throughout the Southern Appalachians (Eagar 1984). All ages of fir trees are attacked by the adelgid, but damage is generally minimal until the trees reach maturity, at around 30 years of age (Hoffard *et al.* 1990). Most mature Fraser firs are easily killed by the adelgid (Amman and Speers 1965), with death occurring within 2 to 7 years of the initial infestation (Eagar 1984). The death of the fir trees and the resultant opening of the forest canopy causes the remaining trees to be more susceptible to wind and other storm damage. The adelgid is transported and spread primarily by the wind but may also be spread by contaminated nursery stock; on the fur or feathers of animals; or by humans on contaminated clothes, equipment, or vehicles (Eagar 1984). All efforts to control the spread of the adelgid have failed thus far.

All existing data (Coyle 1981, 1997, 1999; Harp 1991, 1992) indicate that suitable habitat for the spruce-fir moss spider is extremely limited and restricted to small areas of rock outcrops occurring in forest stands dominated by fir trees, providing the shelter and organic substrata required by the spider. This restricted range of each of the surviving populations of the spruce-fir moss spider also makes it extremely vulnerable to extirpation from a single event or activity, such as a severe storm, wildfire, land-clearing or timber operation, pesticide/herbicide application, etc. In addition, the spider and the moss mats it inhabits are very fragile and easily destroyed by human trampling or other disturbance. Many of the high-elevation areas where the spider occurs are frequented by tens of thousands of visitors each year. Coyle (1999) suggested that boulder climbing by visitors may have been one of the factors contributing to the scarcity of suitable moss habitat for the spider in areas on Roan Mountain. Because of their small size, disturbance of the moss mats or damage to the surrounding vegetation shading the mats could result in the extirpation of entire spruce-fir moss spider populations and/or population fragments.

**Previous Federal Actions**

On December 31, 1992, we notified (in writing) appropriate Federal, State, and local government agencies, landowners, and individuals knowledgeable about this or similar species that a status review was being conducted and that the species might be proposed for Federal listing. We received ten written comments. The NPS, the North Carolina Division of Parks and Recreation, and three private individuals (including the owner of the site containing the Avery/Caldwell County, North Carolina, population) expressed strong support for the potential listing of the spruce-fir moss spider as an endangered species. The U.S. Soil Conservation Service, Tennessee Wildlife Resources Agency, Tennessee Department of Environment and Conservation, Tennessee Valley Authority, and the North Carolina Department of Agriculture stated that they had no new or additional information on the species or threats to its continued existence. We received no comments opposing the potential listing of the spruce-fir moss spider.

On August 30, 1993, we classified the spruce-fir moss spider as a category 1 candidate based on the results of status surveys, funded by the NPS and us, documenting significant habitat loss and increased threats to the species throughout its range (Harp 1991, 1992). At that time, category 1 represented those species for which we had substantial information on biological vulnerability and threats to support proposals to list them as endangered or threatened species.

On January 27, 1994, we published in the **Federal Register** (59 FR 3825) a proposal to list the spruce-fir moss spider as an endangered species without designating critical habitat. The proposal provided information on the species' range, biology, status, and threats to its continued existence and a proposed determination that designation of critical habitat was not prudent for the species because such designation would not be beneficial and could further threaten the spruce-fir moss spider. Through associated notifications, we invited comments on the proposal and factual reports or information that might contribute to the development of a final rule. We contacted and requested comments from appropriate Federal and State agencies, county governments, scientific organizations, individuals knowledgeable about the species or its habitat, and other interested parties. We published a legal notice, which invited general public comment, in the following newspapers: The *Avery Journal*, Newland, North Carolina, February 10, 1994; the *News-Topic*, Lenoir, North Carolina, February 10, 1994; the *Watauga Democrat*, Boone, North Carolina, February 16, 1994; the *Smoky Mountain Times*, Bryson City, North Carolina, February 10, 1994; and the *Mountain Press*, Sevierville, Tennessee, February 11, 1994. We received ten written comments. Six of them expressed strong support for the findings presented in the proposed rule and listing of the species as proposed; three either expressed concurrence with the data presented in the proposed rule and/or provided additional information but expressed neither support for nor opposition to the listing; and one comment opposed the listing, stating that the "scientific community, and the Service in particular, needs to recognize that extinction has always been a continuing process and will continue to be so."

Following our review of all the comments and information received throughout the listing process, by final rule (60 FR 6968) dated February 6, 1995, we listed the spruce-fir moss spider as endangered. We addressed all the comments received throughout the listing process and/or incorporated changes into the final rule as appropriate. That decision included a determination that the designation of critical habitat was not prudent for the spruce-fir moss spider because, after a review of all the available information, we determined that such designation would not be beneficial to the species and that designation of critical habitat could further threaten the spider (see "Prudency Determination" section).

On June 30, 1999, the Southern Appalachian Biodiversity Project and the Foundation for Global Sustainability filed a lawsuit in United States District Court for the District of Columbia against the Service, the Director of the Service, and the Secretary of the Department of the Interior, challenging the not prudent critical habitat determinations for four species in North Carolina—the spruce-fir moss spider, Appalachian elktoe (*Alasmidonta raveneliana*), Carolina heelsplitter (*Lasmigona decorata*), and rock gnome lichen (*Gymnoderma lineare*). On February 29, 2000, the U.S. Department of Justice entered into a settlement agreement with the plaintiffs in which we agreed to reexamine our prudency determination and submit to the **Federal Register**, by October 1, 2000, if appropriate, withdrawal of the existing not prudent determination, together with a new proposed critical habitat determination. If, upon consideration of all available information and comments, we determine that designating critical habitat is not prudent for the spruce-fir moss spider, we have agreed to submit a notice of that finding to the **Federal Register** by April 1, 2001. If we determine that designation of critical habitat is prudent for the spruce-fir moss spider, we have agreed to send a

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final rule of this finding to the **Federal Register** by July 1, 2001.

This proposal is the product of our reexamination of our prudency determination for the spruce-fir moss spider and reflects our interpretation of the recent judicial opinions on critical habitat designation and the standards placed on us for making a "not prudent" determination. If additional information becomes available on the species' biology and distribution and threats to the species, we may reevaluate this proposal to designate critical habitat, including proposing additional critical habitat, proposing the deletion or boundary refinement of existing proposed critical habitat, or withdrawing our proposal to designate critical habitat.

**Prudency Determination**

Section 4(a)(3) of the Act and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, we designate critical habitat at the time a species is determined to be endangered or threatened. Regulations under 50 CFR 424.12(a)(1) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) The species is threatened by taking or other activity and the identification of critical habitat can be expected to increase the degree of threat to the species or (2) such designation of critical habitat would not be beneficial to the species. In our February 6, 1995, final rule, we determined that both situations applied to the spruce-fir moss spider.

A critical habitat designation has no effect on situations where a Federal agency is not involved. The regulations that provide protection for critical habitat come into play through section 7 of the Act. Requirements under section 7 of the Act apply only to Federal actions and activities. They require Federal agencies to ensure, in consultation with us, that activities they fund, authorize, or carry out are not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of designated critical habitat. Regulations for the implementation of section 7 of the Act (50 CFR 402.2) provide for both a "jeopardy" standard and an "adverse modification or destruction of critical habitat" standard. 50 CFR 402.2 defines "jeopardize the continued existence of" as meaning to engage in an action that would reasonably be expected, directly or indirectly, to appreciably reduce the likelihood of both the "survival and recovery" of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species. "Destruction or adverse modification" is defined as a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the "survival and recovery" of a listed species. These regulations require that the adverse modification or destruction of critical habitat analysis, like the jeopardy analysis, consider the detrimental effects of a proposed Federal action to both the survival and recovery of the listed species. Because of the extremely restricted range and limited amount of suitable habitat available to the spruce-fir moss spider, we determined in the February 6, 1995, final rule that any action that would likely result in the destruction or adverse modification of the species' habitat would also likely jeopardize the species' continued existence. Since Federal actions resulting in jeopardy are also prohibited by section 7, we determined that designation of critical habitat would not provide any additional protection benefitting the species beyond that provided by the jeopardy standard.

Further, although we had no documented evidence of collecting or other human disturbance (prior to publication of the proposed rule to list this tiny tarantula as endangered, the species was largely unknown to the general public), we were concerned that the rarity and uniqueness of this spider could generate interest in the species. The low numbers, slow reproductive rate, and restricted range of the spruce-fir moss spider make it unlikely that its populations could withstand even moderate collecting pressure (adapted from Harp 1992) or the habitat disturbance that would result from people visiting its habitat. Accordingly, in the 1995 final rule, we determined that the designation of critical habitat, and the associated publication of maps and descriptions of critical habitat, could increase the vulnerability of the species to collecting or other disturbance.

However, in the past few years, several of our determinations that the designation of critical habitat would not be prudent have been overturned by court decisions. For instance, in *Conservation Council for Hawaii* v. *Babbitt*, the United States District Court for the District of Hawaii ruled that the Service could not rely on the "increased threat" rationale for a "not prudent" determination without specific evidence of the threat to the species at issue 2 F. Supp. 2d 1280 (D. Hawaii 1998)). And in *Natural Resources Defense Council* v. *U.S. Department of the Interior*, the United States Court of Appeals for the Ninth Circuit ruled that the Service must balance, in order to invoke the "increased threat rationale," the threat against the benefit to the species of designating critical habitat 113 F. 3d 1121, 1125 (9th Cir. 1997).

We continue to be concerned that the spruce-fir moss spider is extremely vulnerable to unrestricted collection or disturbance of its habitat and that these threats might be increased by the publication of critical habitat maps and further dissemination of location and habitat information. However, at this time we do not have specific evidence of taking, collection, trade, or other unauthorized human disturbance of the spruce-fir moss spider or any similarly situated species. Furthermore, we acknowledge that some educational or informational benefit may derive from designation. Consequently, we hereby propose to withdraw our previous determination that the identification of critical habitat can be expected to increase the degree of threat to the species.

Courts also have ruled that, in the absence of a finding that the designation of critical habitat would increase threats to a species, the existence of another type of protection besides designation, even if it offers potentially greater protection to the species, does not justify a not prudent finding *Conservation Council for Hawaii* v. *Babbitt* 2 F. Supp. 2d 1280. Accordingly, we withdraw our previous determination that designation of critical habitat will not benefit the spruce-fir moss spider. It is true that we are already working with the NPS, USFS, the owner of Grandfather Mountain, and others in carrying out research and conservation activities for the spruce-fir moss spider, and these entities are fully aware of the species' location and habitat requirements, as currently known. However, as stated above, some educational or informational benefit may result from designating critical habitat. Therefore, we propose that designation of critical habitat is prudent for the spruce-fir moss spider.

**Critical Habitat**

Critical habitat is defined in section 3(5)(A) of the Act as (i) the specific areas within the geographic area occupied by the species on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas



are essential for the conservation of the species. Areas outside the geographic area currently occupied by the species shall be designated as critical habitat only when a designation limited to its present range would be inadequate to ensure the conservation of the species. "Conservation" is defined in section 3(3) of the Act as the use of all methods and procedures necessary to bring endangered or threatened species to the point at which listing under the Act is no longer necessary. Regulations (50 CFR 424.02 (j)) define "special management considerations or protection" to mean any methods or procedures useful in protecting physical and biological features of the environment for the conservation of listed species.

Section 4(b)(2) of the Act requires that we base critical habitat designations on the best scientific and commercial data available, after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude areas from critical habitat designation when the benefits of excluding those areas outweigh the benefits of including the areas within the critical habitat, provided the exclusion will not result in the extinction of the species.

**Methods**

The proposed areas of critical habitat described below constitute our best assessment of the areas needed for the conservation and recovery of the spruce-fir moss spider in accordance with the goals outlined in our recovery plan for the species (Service 1998), and are based on the best scientific and commercial information currently available to us concerning the species' known present and historic range, habitat, biology, and threats. All of the areas we propose to designate as critical habitat are within what we believe to be the geographic area occupied by the spruce-fir moss spider and include all known surviving occurrences of the species. Despite extensive surveys and ongoing research, we currently are not aware of any areas outside the geographical area occupied by the spruce-fir moss spider that are essential for the conservation of the spider. To the extent feasible, we will continue, with the assistance of other Federal, State, and private researchers, to conduct surveys and research on the species and its habitat. If new information becomes available that indicates that other areas within the spruce-fir moss spider's historic range that are essential to the conservation of the species, we will revise the proposed critical habitat or designated critical habitat for the spruce-fir moss spider accordingly.

**Primary Constituent Elements**

In accordance with section 3(5)(A)(i) of the Act and the regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we are required to base critical habitat determinations on the best scientific and commercial data available and to consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species and that may require special management considerations and protection. Such requirements include, but are not limited to: space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction and rearing of offspring; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

When considering areas for designation as critical habitat, we are required to focus on the principal biological or physical constituent elements within the defined area that are essential to the conservation of the species (50 CFR 424.12(b)). Although additional information is needed to better define the habitat requirements of the species, particularly the microhabitat requirements, based on the best available information, the primary constituent elements essential for the conservation of the spruce-fir moss spider are:

1. Fraser fir or fir-dominated spruce-fir forests at and above 1,646 m (5,400 ft) in elevation.

2. Moderately thick and humid, but not wet, moss (species in the genus *Dicranodontium*, and possibly *Polytrichum*) and/or liverwort mats on rock surfaces that are adequately sheltered from the sun and rain (by overhang and aspect) and include a thin layer of humid soil and/or humus between the moss and rock surface.

As a result of the massive Fraser fir die-offs and associated loss of moss habitat for the spruce-fir moss spider, the remaining areas of suitable habitat for the spider exist only in scattered patches, ranging from a single rock outcrop to scattered rock outcrop sites (see "Background" section). Due to the patchiness and small size of the areas providing suitable habitat for the spruce-fir moss spider, we have elected to propose an inclusive area on each of the mountain peaks still providing habitat for the species as critical habitat rather than attempt to identify each individual site separately.

Regulations at 50 CFR 424.12(c) require that we define the specific limits of critical habitat by using reference points and lines as found on standard topographic maps of the area(s). Because of the small size and limited number of suitable habitat patches and for ease of reference, we did not map critical habitat in sufficient detail to exclude lands unlikely to contain all of the primary constituent elements essential for conservation of the spruce-fir moss spider. Consequently, the areas we are proposing as critical habitat include areas of unsuitable habitat, for example, fir or fir-dominated forests without rock outcrops, rock outcrops without suitable moss or liverwort mats, spruce or hardwood forests with or without rock outcrops, areas dominated by early herbaceous vegetation, and other habitat types that do not provide the habitat or microhabitat required by the spider. Federal actions limited to these other habitat types, therefore, would not trigger a section 7 consultation. Please note, however, that any activity authorized, funded, or carried out by a Federal agency that has a potential to affect the constituent elements of designated critical habitat or to destroy or adversely modify areas proposed as critical habitat, regardless of the activity's location in relation to designated or proposed critical habitat, will require a consultation or conference, respectively, with us, as required under the provisions of section 7 of the Act (see "Effects of Critical Habitat Designation" section).

**Proposed Critical Habitat Designation**

Proposed critical habitat includes spruce-fir moss spider habitat throughout the species' existing range in the United States. Lands proposed are under private and Federal ownership. Lands proposed as critical habitat have been divided into four critical habitat units. Areas proposed for designation as critical habitat and their ownership are described below.

*Unit 1: Swain County, North Carolina, and Sevier County, Tennessee*

Unit 1 encompasses all portions of the GSMNP bounded to the north and to the south of the North Carolina/Tennessee State line (State line) by the 1,646-m (5,400-ft) contour, from the intersection of the 1,646-m (5,400-ft) contour with the State line, south of Mingus Lead, Tennessee, southwest and then west to the intersection of the 1,646-m (5,400-ft) contour with the State line, east of The

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Narrows and west of Jenkins Knob, North Carolina, and Tennessee.

*Unit 2: Sevier County, Tennessee*

Unit 2 encompasses all portions of the GSMNP at and above the 1,646-m (5,400-ft) contour, bounded on the southwest side by the North Carolina/Tennessee State line from the intersection of the State line with the 1,646-m (5,400-ft) contour near Dry Sluice Gap, southeast to the intersection of the State line with the 1,646-m (5,400-ft) contour at the head of Minnie Ball Branch, North Carolina, northwest of Newfound Gap, North Carolina, and Tennessee.

*Unit 3: Avery and Mitchell Counties, North Carolina, and Carter County, Tennessee*

Unit 3 encompasses all portions of the Pisgah National Forest in North Carolina and the Cherokee National Forest in Tennessee, bounded to the north and to the south of the North Carolina/Tennessee State line by the 1,646-m (5,400-ft) contour, from the intersection of the 1,646-m (5,400-ft) contour with the State line north of Elk Hollow Branch, Avery County, North Carolina, and southwest of Yellow Mountain, Carter County, Tennessee, west to the 1,646-m (5,400-ft) contour at Eagle Cliff, Mitchell County, North Carolina.

Unit 4: Avery, Caldwell, and Watauga Counties, North Carolina.

Unit 4 encompasses all areas of privately owned Grandfather Mountain at and above the 1,646-m (5,400-ft) contour.

**Effects of Critical Habitat Designation**

Designating critical habitat does not, in itself, lead to the recovery of a listed species. The designation does not establish a reserve, create a management plan, establish numerical population goals, prescribe specific management practices (inside or outside of critical habitat), or directly affect areas not designated as critical habitat. Specific management recommendations for areas designated as critical habitat are most appropriately addressed in recovery and management plans and through section 7 consultation and section 10 permits.

Critical habitat receives regulatory protection only under section 7 of the Act through the prohibition against destruction or adverse modification of designated critical habitat by actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences on Federal actions that are likely to result in the adverse modification or destruction of proposed critical habitat. Aside from the protection that may be provided under section 7, the Act does not provide other forms of protection to land designated as critical habitat. Because consultation under section 7 of the Act does not apply to activities on private or other non-Federal land that do not involve a Federal action, critical habitat designation would not afford any protection under the Act against such activities. Accordingly, the designation of critical habitat on Grandfather Mountain will not have any regulatory effect on private or State activities in these areas unless those activities require a Federal permit, authorization, or funding.

Section 7(a)(4) of the Act and regulations at 50 CFR 402.10 require Federal agencies to confer with us on any action that is likely to result in the destruction or adverse modification of proposed critical habitat. "Destruction or adverse modification" is defined as a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of the listed species for which critical habitat was designated. These conferences, which consist of informal discussions, are intended to assist responsible agencies and the applicant, if applicable, in identifying and resolving potential conflicts. Conference reports resulting from these discussions provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory. We may issue a formal conference report if requested by a Federal agency. Formal conference reports on proposed critical habitat are prepared according to 50 CFR 402.14 as if critical habitat were designated. We may adopt the formal conference report as a biological opinion if the critical habitat is designated, if no significant new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)).

If this proposal is finalized, activities on Federal land, activities on private or State land carried out by a Federal agency, or activities receiving funding or requiring a permit from a Federal agency that may affect designated critical habitat of the spruce-fir moss spider will require consultation under section 7 of the Act. However, section 7 of the Act also requires Federal agencies to ensure that actions they authorize, fund, or carry out do not jeopardize the continued existence of listed species and to consult with us on any action that may affect a listed species. Activities that jeopardize listed species are defined as actions that "directly or indirectly, reduce appreciably the likelihood of both the survival and recovery of a listed species' (50 CFR 402.02). Federal agencies are prohibited from jeopardizing listed species through their actions, regardless of whether critical habitat has been designated for the species. Where critical habitat is designated, section 7 requires Federal agencies also to ensure that activities they authorize, fund, or carry out do not result in the destruction or adverse modification of designated critical habitat. Activities that destroy or adversely modify critical habitat are defined as those actions that "appreciably diminish the value of critical habitat for both the survival and recovery of the species"(50 CFR 402.02). Common to the definitions of both "jeopardy" and "destruction or adverse modification of critical habitat" is the concept that the likelihood of both survival and recovery of the species are appreciably reduced by the action. Because of the small size of surviving populations of the spruce-fir moss spider, the species' restricted range, and the limited amount of suitable habitat available to the species, actions that are likely to destroy or adversely modify critical habitat are also likely to jeopardize the species. Accordingly, even though Federal agencies will be required to evaluate the potential effects of their actions on any habitat that is designated as critical habitat for the spruce-fir moss spider, this designation would not be likely to change the outcome of section 7 consultations.

Section 4(b)(8) of the Act requires us to briefly evaluate, in any proposed or final regulation that designates critical habitat, those activities that may adversely modify such habitat or may be affected by such designation. Activities that may destroy or adversely modify critical habitat are, as discussed above, those that alter the primary constituent elements to the extent that the value of critical habitat for both the survival and recovery of the spruce-fir moss spider is appreciably diminished. We note that such activities may also jeopardize the continued existence of the species. Such activities may include, but are not limited to, the carrying out or issuance of permits for construction, recreation, and development; pesticide/herbicide applications for the control of noxious insects or weeds; controlled burns; timber activities; and other activities that could result in the removal or damage of high-elevation fir forest canopy that is sheltering moss mats or damage to the moss mats themselves.

Requests for copies of the regulations on listed wildlife and inquiries about prohibitions and permits, or questions regarding whether specific activities will constitute adverse modification of critical habitat, may be addressed to the U.S. Fish and Wildlife Service, Asheville Field Office, 160 Zillicoa Street, Asheville, North Carolina 28801.



**Economic Analysis**

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas as critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. However, we cannot exclude areas from critical habitat when the exclusion will result in the extinction of the species. We will conduct an analysis of the economic impacts of designating these areas identified above as critical habitat prior to a final determination. When a draft of the economic analysis is completed, we will announce its availability with a notice in the **Federal Register**, and we will open a 30-day comment period at that time.

**Secretarial Order 3206: American Indian Tribal Rights, Federal-Tribal Trust Responsibilities and the Endangered Species Act**

In accordance with the Presidential Memorandum of April 29, 1994, we are required to assess the effects of critical habitat designations on tribal land and tribal trust resources. We did not propose any tribal land for designation as critical habitat, and we do not anticipate any effects on tribal trust resources if this proposal is made final.

**Public Comments Solicited**

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, Native American tribes, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

1. The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefits of designation will outweigh any benefits of exclusion;

2. Specific information on the numbers and distribution of the spruce-fir moss spider and what habitat is essential to the conservation of the species and why;

3. Information on specific characteristics of habitat essential to the conservation of the spruce-fir moss spider;

4. Land use practices and current or planned activities in the subject areas and their possible effects on proposed critical habitat;

5. Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, in particular, any impacts on small entities or families;

6. Economic and other values associated with designating critical habitat for the spruce-fir moss spider, such as those derived from nonconsumptive uses (*e.g.*, hiking, camping, bird watching, enhanced watershed protection, improved air quality, "existence values," and reductions in administrative costs); and

7. Potential adverse effects to the spruce-fir moss spider and/or its habitat associated with designating critical habitat for the species; *e.g.*, increased risk to species from collecting or the destruction of its habitat.

Please submit comments as an ASCII file format and avoid the use of special characters and encryption. Please also include "Attn: [RIN number]" and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Asheville Field Office (see "Addresses" section).

Our practice is to make all comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

**Peer Review**

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure that listing decisions are based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designation of critical habitat.

We will consider all comments and information received during the 60-day comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

**Public Hearings**

The Act provides for one or more public hearings on this proposal, if requested. Requests must be filed within 45 days of the date of this proposal. Such requests must be made in writing and should be addressed to the State Supervisor, Asheville Field Office (see Addresses section). Written comments submitted during the comment period receive equal consideration with those comments presented at a public hearing.

**Clarity of the Rule**

Executive Order 12866 requires each agency to write regulations/notices that are easy to understand. We invite your comments on how to make this document easier to understand, including answers to questions such as the following: (1) Are the requirements in the document clearly stated? (2) Does the document contain unnecessary technical language or jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the notice in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the notice? (5) What else could we do to make the notice easier to understand?

Send a copy of any comments that concern how we could make this notice easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW, Washington, DC 20240. You may e-mail your comments to this address: Execsec@ios.doi.gov.

**Required Determinations**

*Regulatory Planning and Review*

In accordance with the criteria in Executive Order 12866, this rule is a significant regulatory action and has been reviewed by the Office of Management and Budget (OMB).

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(a) This rule will not have an annual economic effect of $100 million or more, or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. The spruce-fir moss spider was listed as an endangered species in 1995. Since that time, we have conducted, and will continue to conduct, formal and informal section 7 consultations with other Federal agencies to ensure that their actions would not jeopardize the continued existence of the spruce-fir moss spider.

Under the Act, critical habitat may not be adversely modified by a Federal agency action; critical habitat does not impose any restrictions on non-Federal persons unless they are conducting activities funded or otherwise sponsored or permitted by a Federal agency (see Table 1 below). Section 7 requires Federal agencies to ensure that they do not jeopardize the continued existence of the species. Based upon our experience with the species and its needs, we believe that any Federal action or authorized action that could potentially cause an adverse modification of the proposed critical habitat would currently be considered as "jeopardy" to the species under the Act.

Accordingly, we do not expect the designation of areas as critical habitat within the geographical range occupied by the species to have any incremental impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons that receive Federal authorization or funding. Non-Federal persons who do not have a Federal "sponsorship" of their actions are not restricted by the designation of critical habitat (however, they continue to be bound by the provisions of the Act concerning "take" of the species).

(b) This rule will not create inconsistencies with other agencies' actions. Federal agencies have been required to ensure that their actions do not jeopardize the continued existence of the spruce-fir moss spider since the listing in 1995. As shown in Table 1 (below), no additional effects on agency actions are anticipated to result from critical habitat designation. Because of the potential for impacts on other Federal agency actions, we will continue to review this proposed action for any inconsistencies with other Federal agency actions.

TABLE 1.—IMPACTS OF SPRUCE-FIR MOSS SPIDER LISTING AND CRITICAL HABITAT DESIGNATION

| Categories of activities | Activities potentially affected by species listing only [1] | Additional activities potentially affected by critical habitat designation [2] |
|---|---|---|
| Federal Activities Potentially Affected [3] | Activities such as carrying out, or issuing permits, authorization or funding for, utility construction; construction of recreational facilities; development activities; pesticide/herbicide applications; logging activities; or other activities that could result in damage to the moss mats or removal or damage to the high-elevation fir forest canopy that is sheltering moss mats providing habitat for the species. | None. |
| Private and other non-Federal Activities Potentially Affected [4] | Activities occurring on Federal lands or that require a Federal action (permit, authorization, or funding) and that involve such activities as damaging or destroying spruce-fir spider habitat, whether by mechanical or other means (scientific or other collecting, timber harvest, right-of-way access across Federal land, etc.). | None. |

[1] This column represents the activities potentially affected by listing the spruce-fir moss spider as an endangered species (February 6, 1995; 60 FR 6968) under the Endangered Species Act.
[2] This column represents the effects on activities resulting from critical habitat designation beyond the effects attributable to the listing of the species.
[3] Activities initiated by a Federal agency.
[4] Activities initiated by a private or other non-Federal entity that may need Federal authorization or funding.

(c) The proposed rule, if made final, will not significantly impact entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Federal agencies currently are required to ensure that their activities do not jeopardize the continued existence of the species and we do not anticipate that the adverse modification prohibition (resulting from critical habitat designation) will have any incremental effects in areas of proposed critical habitat.

(d) This rule will not raise novel legal or policy issues. The proposed rule follows the requirements for determining critical habitat contained in the Act.

*Regulatory Flexibility Act (5 U.S.C. 601 et seq.)*

In the draft economic analysis (under section 4 of the Act), we will determine whether designation of critical habitat will have a significant effect on a substantial number of small entities. As discussed under Regulatory Planning and Review above, this rule is not expected to result in any restrictions in addition to those currently in existence for areas of proposed critical habitat.

*Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))*

In the economic analysis, we will determine whether designation of critical habitat will cause (a) any effect on the economy of $100 million or more, (b) any increases in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions, or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. As discussed above, we anticipate that the designation of critical habitat will not have any additional effects on these activities in areas of critical habitat within the geographical range occupied by the species.

*Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)*

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

a. This rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. Small governments will not be affected unless they propose an action requiring Federal funds, permits, or other authorization. Any such activity will require that the involved Federal agency ensure that the action will not adversely modify or destroy designated critical habitat.

b. This rule will not produce a Federal mandate on State, local, or tribal governments or the private sector of $100 million or greater in any year; that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments.



*Takings*

In accordance with Executive Order 12630, this rule does not have significant takings implications, and a takings implication assessment is not required. This proposed rule, if made final, will not "take" private property. The designation of critical habitat affects only Federal agency actions. Federal actions on private land could be affected by critical habitat designation; however, we expect no regulatory effect from this designation since all proposed areas are considered to be within the geographical range occupied by the species and would be reviewed under both the jeopardy and adverse modification standards under section 7 of the Act.

The rule will not increase or decrease the current restrictions on private property concerning taking of the spruce-fir moss spider as defined in section 9 of the Act and its implementing regulations (50 FR 17.31). Additionally, critical habitat designation does not preclude the development of habitat conservation plans and the issuance of incidental take permits. Any landowners in areas that are included in the designated critical habitat will continue to have opportunity to utilize their property in ways consistent with the survival of the spruce-fir moss spider.

*Federalism*

In accordance with Executive Order 13132, the rule does not have significant federalism effects. A Federalism Assessment is not required. In keeping with Department of the Interior policy, we requested information from, and coordinated the development of this critical habitat proposal with, appropriate State resources agencies in North Carolina and Tennessee. We will continue to coordinate any future designation of critical habitat for the spruce-fir moss spider with the appropriate State agencies. The designation of critical habitat for the spruce-fir moss spider imposes few, if any, additional restrictions to those currently in place and therefore has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas essential to the conservation of the species are more clearly defined and, to the extent currently feasible, the primary constituent elements of the habitat necessary to the survival of the species are specifically identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, doing so may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

*Civil Justice Reform*

In accordance with Executive Order 12988, the Department of the Interior's Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. The Office of the Solicitor will review the final determination for this proposal. We will make every effort to ensure that the final determination contains no drafting errors, provides clear standards, simplifies procedures, reduces burden, and is clearly written such that litigation risk is minimized.

*Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)*

This rule does not contain any new collections of information that require approval by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.* This rule will not impose new record-keeping or reporting requirements on State or local governments, individuals, businesses, or organizations.

*National Environmental Policy Act*

We have determined that we do not need to prepare an Environmental Assessment or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

**References Cited**

A complete list of all references cited in this proposed rule is available upon request from the Asheville Field Office (see **ADDRESSES** section).

**Author**

The primary author of this document is John Fridell (see **ADDRESSES** section).

**List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

**Proposed Regulation Promulgation**

For the reasons given in the preamble, we propose to amend 50 CFR part 17 as set forth below:

**PART 17—[AMENDED]**

1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.11(h) revise the entry for the "Spider, spruce-fir moss" under "ARACHNIDS" to read as follows:

**§ 17.11 Endangered and threatened wildlife.**

* * * * *

(h) * * *

| Species | | Historic range | Vertebrate population where endangered or threatened | Status | When listed | Critical habitat | Special rules |
|---|---|---|---|---|---|---|---|
| Common name | Scientific name | | | | | | |
| • | • | • | • | • | • | • | |
| ARACHNIDS | | | | | | | |
| • | • | • | • | • | • | • | |
| Spider, spruce-fir moss. | *Microhexura montivaga.* | U.S.A. (NC, TN) | NA | E | 576 | 17.95 (g) | NA |
| • | • | • | • | • | • | • | |

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3. Amend § 17.95 by adding paragraph (g) to read as follows:

**§ 17.95 Critical habitat-fish and wildlife.**

* * * * *

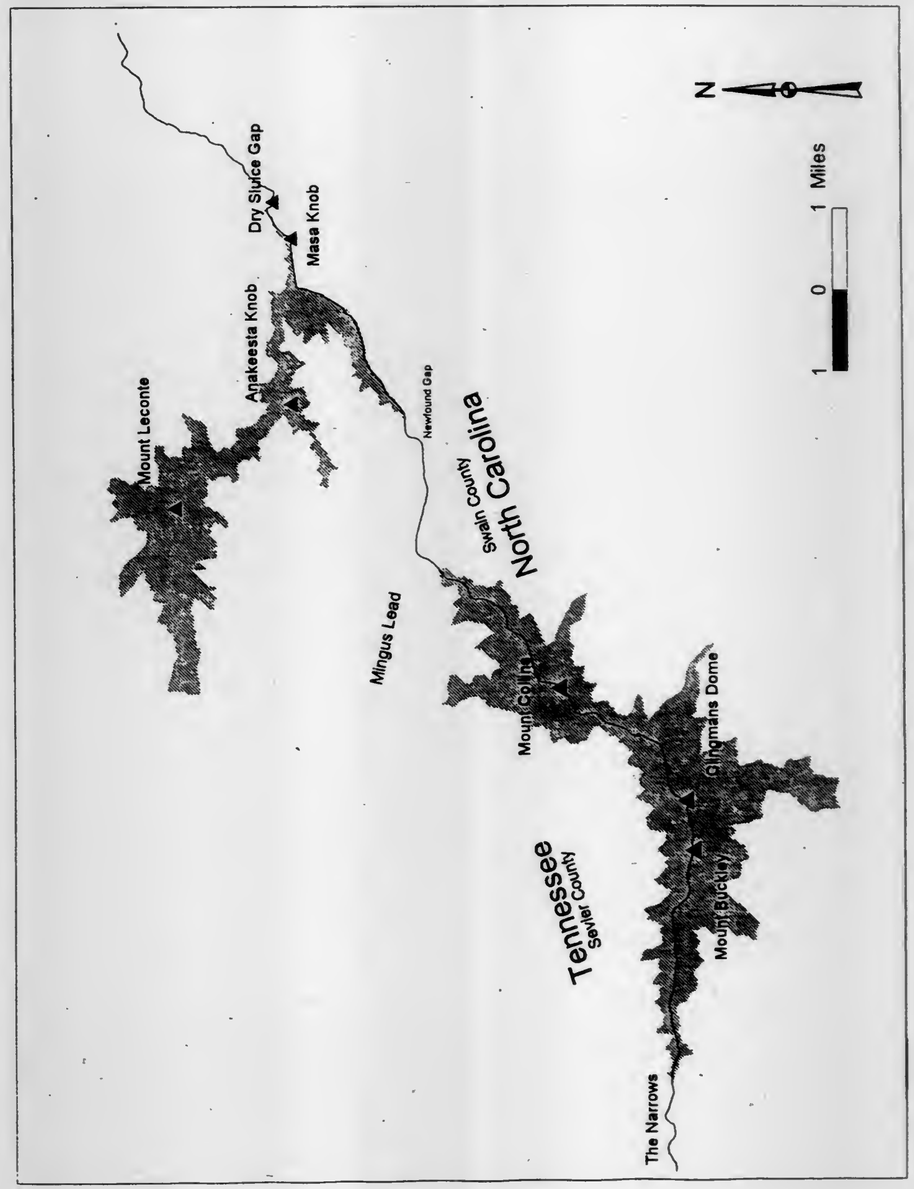
(g) *Arachnids.*

Spruce-fir moss spider (*Microhexura montivaga*)

1. Critical habitat units proposed for designation as critical habitat and their ownership are described below and depicted in the following maps.

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Unit 1: Swain County, North Carolina, and Sevier County, Tennessee—all portions of the GSMNP bounded to the north and to the south of the North Carolina/Tennessee State line (State line) by the 1,646-m (5,400-ft) contour,

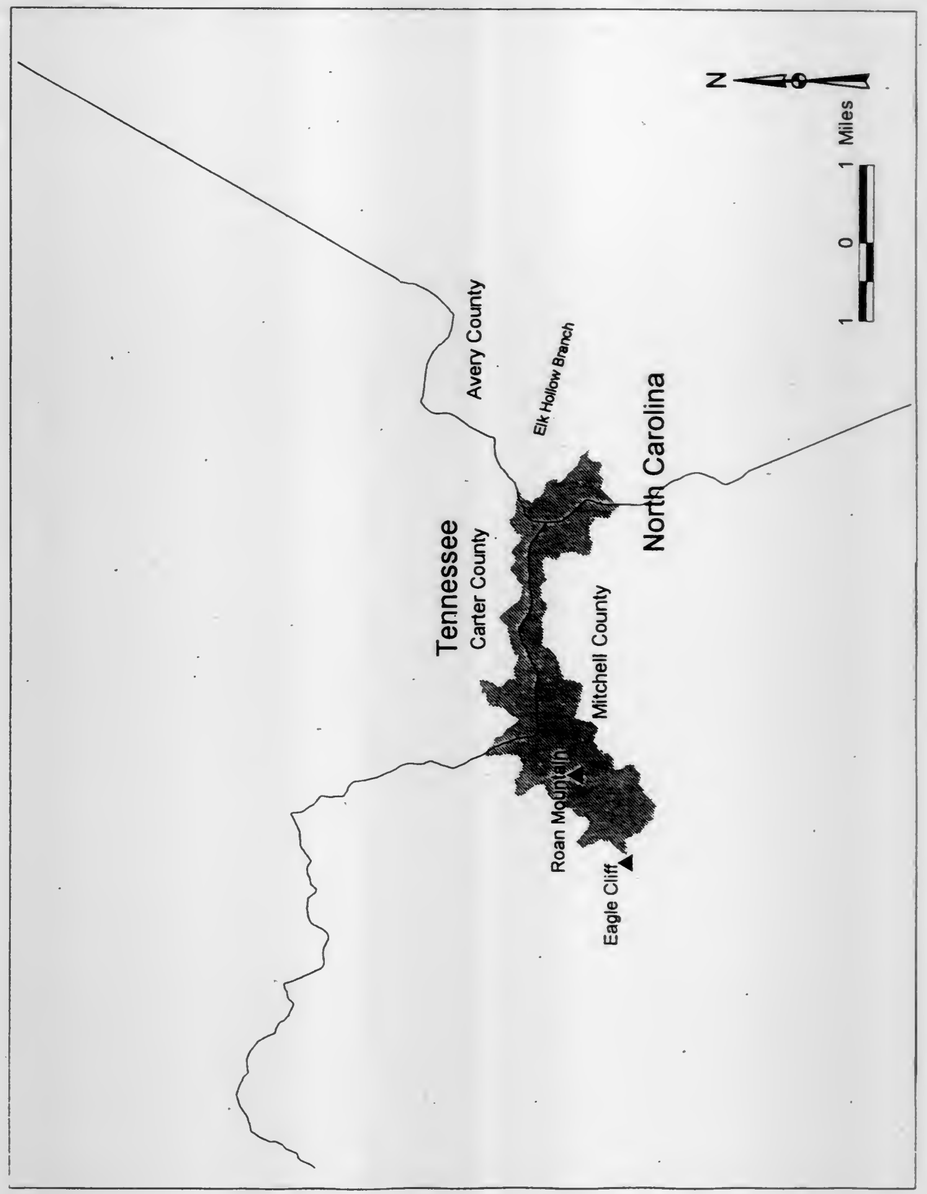
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from the intersection of the 1,646-m (5,400-ft) contour with the State line, south of Mingus Lead, Tennessee, southwest and then west to the intersection of the 1,646-m (5,400-ft) contour with the State line, east of The Narrows and west of Jenkins Knob, North Carolina, and Tennessee.

Unit 2: Sevier County, Tennessee—all portions of the GSMNP at and above the 1,646-m (5,400-ft) contour, bounded on the southwest side by the North Carolina/Tennessee State line from the intersection of the State line with the 1,646-m (5,400-ft) contour near Dry Sluice Gap, southeast to the intersection of the State line with the 1,646-m (5,400-ft) contour at the head of Minnie Ball Branch, North Carolina, northwest of Newfound Gap, North Carolina, and Tennessee.





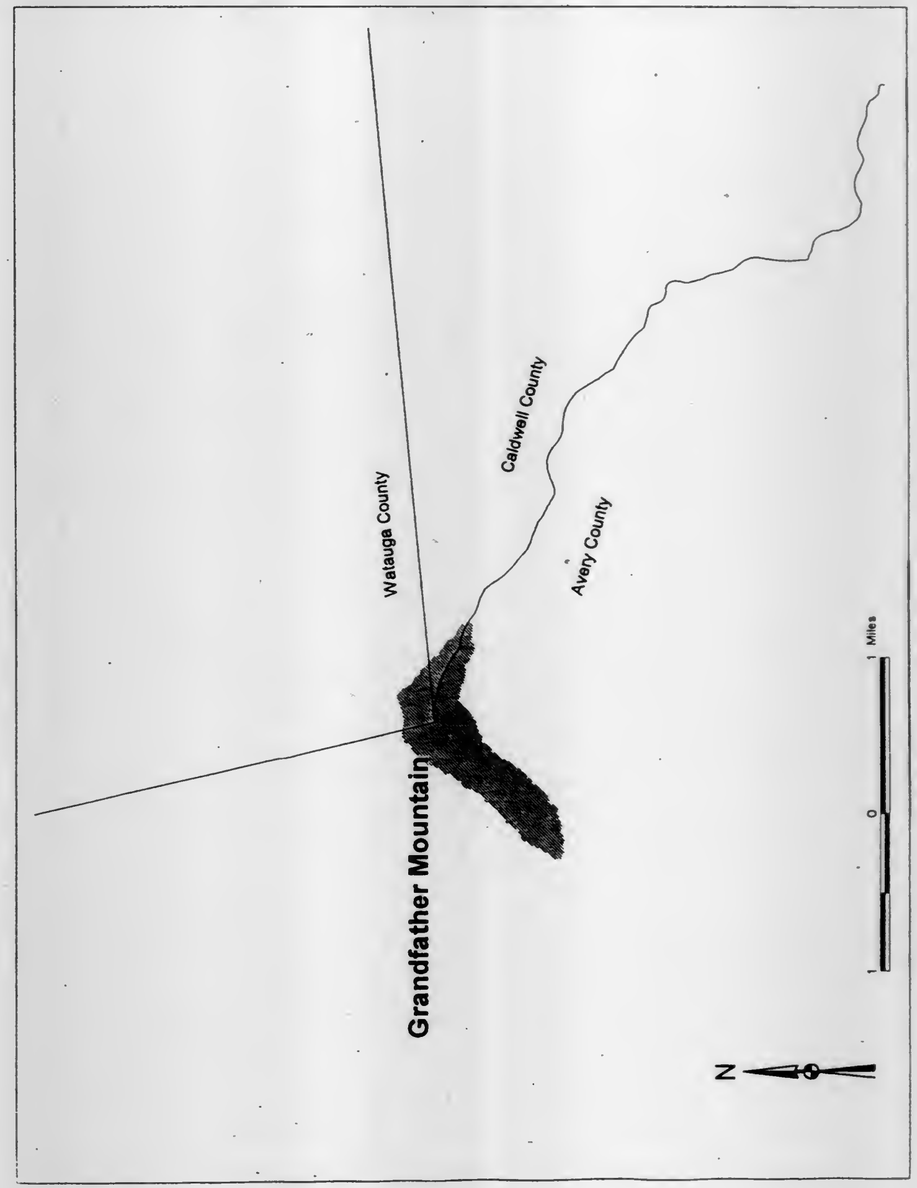

Unit 3: Avery and Mitchell Counties, North Carolina, and Carter County, Tennessee—all portions of the Pisgah National Forest in North Carolina and the Cherokee National Forest in Tennessee, bounded to the north and to

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the south of the North Carolina/Tennessee State line by the 1,646-m (5,400-ft) contour, from the intersection of the 1,646-m (5,400-ft) contour with the State line north of Elk Hollow Branch, Avery County, North Carolina, and southwest of Yellow Mountain, Carter County, Tennessee, west to the 1,646-m (5,400-ft) contour at Eagle Cliff, Mitchell County, North Carolina.






Unit 4: Avery, Caldwell, and Watauga Counties, North Carolina—all areas of Grandfather Mountain at and above the 1,646-m (5,400-ft) contour.

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2. Within these areas, the primary constituent elements include:

i) Fraser fir or fir-dominated spruce-fir forests at and above 1,646-m (5,400-ft) in elevation; and

ii) Moderately thick and humid, but not wet, moss (species in the genus *Dicranodontium*, and possibly *Polytrichum*) and/or liverwort mats on rock surfaces that are adequately sheltered from the sun and rain (by overhang and aspect) and include a thin layer of humid soil and/or humus between the moss and rock surface.

3. Existing human structures and other features not containing all of the primary constituent elements are not considered critical habitat.

Dated: September 28, 2000.

**Kenneth L. Smith,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 00–25671 Filed 10–5–00; 8:45 am]

**BILLING CODE 4310–55–C**

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 660**

**[Docket No. 000927275-0275-01; I.D. 082800F]**

**RIN 0648-AO31**

## Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Amendment 12

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS is proposing a rule to implement portions of Amendment 12 to the Pacific Coast Groundfish Fishery Management Plan (FMP). The Pacific Fishery Management Council (Council) prepared Amendment 12 to provide procedures for developing rebuilding plans for overfished species, for setting guidelines for contents of rebuilding plans, and for sending rebuilding plans to NMFS for review and approval/disapproval. Amendment 12 would also declare all Pacific coast groundfish to be fully utilized by domestic harvesters and processors. This action would remove references to foreign and joint venture fishing in the groundfish regulations, and is intended to update the FMP and its implementing regulations to reflect the current status of the fishery.

**DATES:** Comments must be submitted in writing by November 20, 2000.

**ADDRESSES:** Send comments to Donna Darm,, Acting Administrator, Northwest Region, (Regional Administrator) NMFS, 7600 Sand Point Way NE., Seattle, WA 98115; or Rebecca Lent, Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213. Copies of Amendment 12 to the Pacific Coast Groundfish FMP, and the Environmental Assessment/Regulatory Impact Review (EA/RIR) are available from Donald McIsaac, Executive Director, Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201. Send comments regarding any ambiguity or unnecessary complexity arising from the language used in this rule to William Stelle, Jr. or Rebecca Lent.

**FOR FURTHER INFORMATION CONTACT:** William Robinson at: phone, 206-526-6140; fax, 206-526-6736, and email, *bill.robinson@noaa.gov* Svein Fougner at: phone, 562-980-4000; fax, 562-980-4047; and email, *svein.fougner@noaa.gov*

*Electronic Access*: This **Federal Register** document is also accessible via the internet at the website of the Office of the Federal Register: <<http://www.access.gpo.gov/su-docs/aces/aces140.html.≤≤

**SUPPLEMENTARY INFORMATION:** NMFS is proposing this rule to implement the portions of Amendment 12 that declare the West Coast groundfish resource fully utilized by domestic harvesting and processing entities. Minor regulatory changes would be needed to make the regulations at 50 CFR part 660 consistent with Amendment 12. This proposed rule is based on the Council's recommendations, under the authority of the Pacific Coast Groundfish FMP and the Magnuson Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The background and rationale for the Council's recommendations are summarized here; further details appear in the EA/RIR prepared by the Council for Amendment 12.

### Background

In September 1998, the Council adopted Amendment 11 to the FMP to make the FMP consistent with revisions to the Magnuson-Stevens Act. Among other things, Amendment 11 set control rules to define rates of "overfishing" and set defined levels at which managed stocks are considered "overfished." Amendment 11 was approved and incorporated into the FMP in March 1999.

While implementing Amendment 11 provisions for rebuilding overfished stocks, the Council determined that it needed to set procedures within the groundfish FMP for developing overfished species rebuilding plans and for providing NMFS with the opportunity to review and approve/disapprove those plans. Amendment 12 provides a process by which the Council will develop overfished species rebuilding plans during its annual specifications and management measures process.

During the Council's two-meeting process for setting annual specifications and management measures (usually September and November,) the Council would make overfished species rebuilding plans available for public review, and would incorporate measures to implement those plans within the annual specifications and management measures. Rebuilding plan contents are defined in the FMP and rely upon the Council's annual stock assessment and review process. Once the Council approves a new rebuilding plan, it would submit that plan for NMFS review and approval/disapproval, generally at the same time that it submits its annual specifications package for review and approval/disapproval. This process would ensure that rebuilding efforts are incorporated into fishery management measures as quickly and efficiently as practicable, and that they are consistent with management measures for other groundfish species.

Procedural matters developed in Amendment 12 for overfished species rebuilding plans provide the Council with direction for future activities, are not regulatory in nature, and so do not result in any change to regulations. However, Amendment 12 also announces that the Pacific Coast groundfish resource is fully utilized by domestic harvesting and processing interests and provides an opportunity for NMFS to update its regulations to recognize this fully utilized status.



*Foreign Fisheries and Pacific Coast Underutilized Groundfish Species*

When the FMP was first implemented in 1982, most of the vessels were foreign and joint venture vessels and these vessels were primarily targeting Pacific whiting. In 1983, about 60 percent of the whiting optimum yield (OY) was reserved for domestic harvest, and about 3 percent of the OY was reserved for domestic processing. "Americanization" happened slowly for the Pacific whiting resource; the whiting OY was not fully utilized by domestic harvesters until 1989, and not fully utilized by domestic processors until 1991. In addition to whiting, there were minor joint venture processing opportunities for shortbelly rockfish and jack mackerel. Those species were considered fully utilized by the domestic fleet by 1992.

In 1991, Amendment 6 to the FMP created a limited entry program and specifically addressed domestic underutilization of the groundfish resource with "designated species B" permits. These permits were made available to fishing vessels that had not qualified for limited entry "A" permits, to encourage those vessels to fish specifically for Pacific whiting, jack mackerel, and shortbelly rockfish. By the time that the limited entry permit program was implemented in 1994, foreign harvest and processing of the three underutilized species were no longer an issue.

Although the West Coast groundfish fishery has been fully Americanized for almost a decade, the Council had not amended the FMP to reflect the full and expected long-term domestic utilization of the resource until Amendment 12. Amendment 12 still leaves open the possibility of future foreign harvest of West Coast groundfish should domestic utilization decline, but requires an FMP amendment to re-open the fisheries to foreign access. The primary effect of declaring the West Coast groundfish resource fully utilized by domestic fisheries would be to modestly reduce NMFS' and Council's workload associated with the annual specifications and management measures process.

Regulatory changes to implement Amendment 12 would simply remove references within the regulations at 50 CFR 660 to foreign and joint venture fishing. These changes would have neither biological nor socio-economic effects on the environment.

### Classification

At this time, NMFS has not determined whether Amendment 12 that this rule would implement is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The full effect of this proposed rule would be to remove outdated regulatory language at 50 CFR 660 that refers to foreign and joint venture fishing. There have been no foreign or joint venture fisheries for West Coast groundfish since 1992. These regulatory changes would have no effect on any U.S. businesses, small or otherwise. As a result, a regulatory flexibility analysis was not prepared.

The President has directed Federal agencies to use plain language in their communications with the public, including regulations. To comply with this directive, we seek public comment on any ambiguity or unnecessary complexity arising from the language used in this rule (see **ADDRESSES**).

### List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: October 3, 2000.

**Penelope D. Dalton,**

*Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 660 is proposed to be amended as follows:

## PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

1. The authority citation for part 660 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

2. In § 660.302, the definitions for "Reserve" and "Specification" are revised to read as follows:

**§ 660.302 Definitions.**

* * * * *

*Reserve* means a portion of the harvest guideline or quota set aside at the beginning of the year to allow for uncertainties in preseason estimates.

* * * * *

*Specification* is a numerical or descriptive designation of a management objective, including, but not limited to: ABC; optimum yield; harvest guideline; quota; limited entry or open access allocation; a set aside or allocation for a recreational or treaty Indian fishery; an apportionment of the above to an area, gear, season, fishery, or other subdivision.

* * * * *

3. In § 660.303, paragraph (a) is revised to read as follows:

**§ 660.303 Reporting and recordkeeping.**

(a) This subpart recognizes that catch and effort data necessary for implementing the PCGFMP are collected by the States of Washington, Oregon, and California under existing state data collection requirements. Telephone surveys of the domestic industry may be conducted by NMFS to determine amounts of whiting that may be available for reallocation under 50 CFR 660.323 (a)(4(v). No Federal reports are required of fishermen or processors, so long as the data collection and reporting systems operated by state agencies continue to provide NMFS with statistical information adequate for management.

* * * * *

[FR Doc. 00–25777 Filed 10–5–00; 8:45 am]

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# Notices

Federal Register
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This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

October 2, 2000.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 *and* to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, D.C. 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

- **Food and Nutrition Service**

*Title:* Form FNS–388, State Issuance and Participation Estimates.

*OMB Control Number:* 0584–0081.

*Summary of Collection:* Section 18(b) of the Food Stamp Act of 1977, as amended, requires that "In any fiscal year, the Secretary shall limit the value of those allotments issued (under the Food Stamp Program) to an amount not in excess of the appropriation for such fiscal year." Timely State monthly issuance estimates are necessary for the Food and Nutrition Service (FNS) to ensure that it remains within the appropriation and will have a direct effect upon the manner in which allotments would be reduced when necessary. FNS uses the FNS–388 report to obtain monthly Statewide estimated or actual issuance and participation data for the current and previous months, and the actual participation data for the second preceding month.

*Need and Use of the Information:* The FNS–388 report provides the necessary data for an early warning system to enable the Department to fulfill the requirements of Section 18(b) of the Food Stamp Act. In addition, the data is used to: (1) Validate the Annual Food Stamp Household Characteristic Survey; (2) to compile a Statistical Summary Report which is used for special studies and in response to Congressional and other inquiries; and (3) to compare against the coupon issuance points' FNS–250 (which reports issuances from inventory) and reconciliation points' FNS–46 issuance data (which reports issuances for coupons, electronic benefit transfer, and cash-out) for indications of accountability problems.

*Description of Respondents:* State, Local, or Tribal Government.

*Number of Respondents:* 53.

*Frequency of Responses:* Reporting: Monthly; Semi-annually.

*Total Burden Hours:* 4,542.

- **Rural Housing Service**

*Title:* Notice of Funds Availability (NOFA) Inviting Applications for the Rural Community Development Initiative (RCDI).

*OMB Control Number:* 0575–0180.

*Summary of Collection:* The Rural Community Development Initiative (RCDI) was created by Congress in Fiscal Year 2000 with an appropriation of $6 million under the Rural Community Advancement Program. The Rural Housing Service (RHS) will administer the grant program. The grants will be made to qualified intermediary organizations that will provide technical assistance to recipients to increase their capacity and ability in the areas of housing, community facilities, and community and economic development in rural areas. Eligible recipients are private, nonprofit community/based housing and community development organizations and low-income rural communities.

*Need and Use of the Information:* RHS will collect information to determine applicant/grantee eligibility, project feasibility, and to ensure that grantees operate on a sound basis and use grant funds for authorized purposes. Failure to collect this information could result in improper use of Federal funds.

*Description of Respondents:* Not-for profit institutions; State, Local or Tribal Government.

*Number of Respondents:* 100.

*Frequency of Responses:* Recordkeeping; Reporting: Quarterly; Annually

*Total Burden Hours:* 1,702.

- **Agricultural Marketing Service**

*Title:* Tart Cherries Grown in the states of MI, NY, PA, OR, UT, WA, and WI.

*OMB Control Number :* 0581–0177.

*Summary of Collection:* Marketing Order No. 930 (7 CFR part 930) regulates the handling of tart cherries grown in the states of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin. The Agricultural Marketing Agreement Act of 1937 was designed to permit regulation of certain agricultural commodities for the purpose of providing orderly marketing conditions in inter and intrastate commerce and improving returns to growers. The primary objective of the Order is to stabilize the supply of tart cherries. Only tart cherries that will be canned or frozen will be regulated. The Order is administered by a 18 member Board comprised of producers, handlers and one public member with each member serving for a three-year term office.

*Need and Use of the Information:* Various forms are used to collect information necessary to effectively carry out the requirements of the Order.



The information gathered is used to ensure compliance, verify eligibility, and vote on amendments, monitor and record grower's information. Authorized Board employees and the industry are the primary users of the information.

*Description of Respondents:* Business or other for profit; arms.

*Number of Respondents:* 943.

*Frequency of Responses:* Reporting: On occasion.

*Total Burden Hours:* 852.

- **Food and Nutrition Service**

*Title:* Worksheet for Food Stamp Program Quality Control Reviews, FNS–380.

*OMB Control Number:* 0584–0074.

*Summary of Collection:* State agencies are required to perform Quality Control reviews for the Food Stamp Program in conjunction with Section 16 of the Food Stamp Act of 1977. The Food Stamp Worksheet provides a systematic means of aiding the State agency's quality control reviewer in analyzing household case records; planning and carrying out the field investigations; and gathering, comparing, analyzing and evaluating the review data. The Food and Nutrition Service (FNS) has traditionally used the FNS–380 as a hardcopy worksheet; however, recent efforts to automate the form have been completed. FNS would like to implement an automated version of the form at the beginning of FY 2001.

*Need and Use of the Information:* FNS will use the hardcopy and automated versions of the FNS–380 to document and evaluate each step of the field investigation process to determine eligibility and payment amounts under FNS approved State practices.

*Description of Respondents:* State, Local, or Tribal Government; Federal Government.

*Number of Respondents:* 53.

*Frequency of Responses:* Recordkeeping; Reporting: On occasion; Annually.

*Total Burden Hours:* 491,967.

- **Rural Business—Cooperative Service**

*Title:* Research on Rural Cooperative Opportunities and Problems.

*OMB Control Number:* 0570–0028.

*Summary of Collection:* The Department of Agriculture Reorganization Act of 1994, Public Law 103–350, established the Rural Business-Cooperative Service (RBS). RBS' mission is to improve the quality of life in rural America by financing community facilities and businesses, providing technical assistance and creating effective strategies for rural development. The primary objective of this funding is to encourage research through cooperative agreements on critical issues vital to the development and sustainability of cooperatives as a means of improving the quality of life in America's rural communities. RBS will collect information through research proposals prepared by applicants, who may be public or private colleges or universities, research foundations maintained, by a college or university, or private nonprofit organizations.

*Need and Use of the Information:* RBS will collect information from applicants to determine: (1) Eligibility; (2) the specific purpose for which the funds will be utilized; (3) time frames or dates by which activities surrounding the use of funds will be accomplished; (4) feasibility of the project; (5) applicants' experience in managing similar activities; and (6) the effectiveness and innovation used to address critical issues vital to the development and sustainability of cooperatives as a means of improving the quality of life in America's rural communities. Without the collection of information, there would be no basis on which to award funds or monitor project progress.

*Description of Respondents:* Not-for-profit institutions.

*Number of Respondents:* 50.

*Frequency of Responses:* Recordkeeping; Reporting: On occasion, Quarterly.

*Total Burden Hours:* 1,140.

- **Economic Research Service**

*Title:* Study of Program Access and Declining Food Stamp Participation.

*OMB Control Number:* 0536–NEW.

*Summary of Collection:* The Economic Research Service (ERS) of the Department of Agriculture (USDA) has the responsibility to provide social and economic intelligence on consumer, food marketing, and rural issues, including: domestic food assistance programs; low-income assistance programs; food security status of the poor; food consumption determinants and trends; consumer demand for food quality, safety, and nutrition; food market competition and coordination; and food safety regulations. The Food Stamp Program (FSP) is the cornerstone of the Nation's nutrition safety net for low-income Americans. The program's intent is to eliminate hunger and enable eligible low-income persons to obtain a more nutritionally adequate diet by providing food stamp coupons (or other forms of payment) redeemable at many retail food stores. USDA is concerned about the declines in Food Stamp Program participation that have occurred since 1994, and whether or not the program is reaching all those in need. In an effort to better understand the factors affecting Food Stamp Program participants, the ERS will launch a study. The evaluation is being performed pursuant to Public Law 95–73, which authorizes USDA to undertake research in this area.

*Need and Use of the Information:* ERS will collect information to describe the policies and practices in local food stamp offices, particularly those instituted since welfare reform, that may affect accessibility to the FSP; to examine how local policies and practices affect households' decisions to apply for food stamps and their decisions to continue to receive food stamps; and to examine the reason eligible households do not participate in the FSP. If the information is not collected, FNS would be severely limited in its ability to make appropriate policy decisions regarding the FSP.

*Description of Respondents:* Individuals; State, Local, or Tribal Government.

*Number of Respondents:* 37,278.

*Frequency of Responses:* Reporting: Other (one time).

*Total Burden Hours:* 5,110.5.

- Rural Housing Service

*Title:* 7 CFR 3570–B, Community Facilities Grant Program.

*OMB Control Number:* 0575–0173.

*Summary of Collection:* The Consolidated Farm and Rural Development Act (7 U.S.C. 1926) authorizes the Rural Housing Service (RHS) to make grants to public agencies, nonprofit corporations, and Indian tribes to develop essential community facilities and services for public use in rural areas. These facilities include schools, libraries, childcare, hospitals, clinics, assisted-living facilities, fire and rescuer stations, police stations, community centers, public buildings, and transportation. The Department of Agriculture through its Community Programs strives to ensure that facilities are readily available to all rural communities.

*Need and Use of the Information:* Rural Development field offices will collect information from applicant/borrowers and consultants. This information is used to determine applicant/borrower eligibility, project feasibility, and to ensure borrowers operate on a sound basis and use loan and grant funds for authorized purposes. Failure to collect information could have an adverse impact on effectively carrying out the mission, administration, processing, and program requirements.

*Description of Respondents:* Not-for-profit institutions: State, Local, or Tribal Government.

*Number of Respondents:* 294.

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*Frequency of Responses:* Reporting: On occasion.

*Total Burden Hours:* 1,078.

• **Agricultural Marketing Service**

*Title:* Vegetable and Specialty Crops.

*OMB Control Number:* 0581–0178.

*Summary of Collection:* The Agricultural Marketing Agreement Act of 1937 was designed to permit regulation of certain agricultural commodities for the purpose of providing orderly marketing conditions in inter and intrastate commerce and improving returns to growers. The Order and agreements are administered by committees/board comprised of producers/growers, handlers and in some cases, a member representing the public. The marketing order programs provide an opportunity for producers of fresh fruit, vegetables, and specialty crops, in specified production areas to work together to solve marketing problems that cannot be solved individually.

*Need and Use of the Information:* Various forms are used to collect information necessary to effectively carry out the requirements of the Act and the Order/Agreement. Information collected is used to formulate market policy, track current inventory and statistical data for market development programs, ensure compliance, and verify eligibility, monitor and record grower's information. The Committees/Boards periodically review the forms to avoid unnecessary duplication by industry and public sector agencies. If information were not collected, it would eliminate data needed to keep the industry and the Secretary abreast of changes at the State and local level.

*Description of Respondents:* Business or other for profit; Farms; Federal Government; Individuals or households; Not-for-profit institutions.

*Number of Respondents:* 17,463.

*Frequency of Responses:* Reporting: On occasion, Quarterly, Biennially, Weekly, Semi-annually, Monthly, Annually and Recordkeeping.

*Total Burden Hours:* 9,102.

• **National Agricultural Statistics Service**

*Title:* Nursery and Greenhouse Production Survey and Nursery and Floriculture Chemical Use Survey.

*OMB Control Number:* 0535–NEW.

*Summary of Collection:* In February 1997, the Secretary of Agriculture issued the report of the Civil Rights Action Team entitled "Civil Rights at the Department of Agriculture." Civil Rights teams were formed to implement the report recommendations. One of the recommendations that was a direct outcome of the evaluation was the condition of farm workers. The team recognized the need for reliable pesticide use information about enterprises that involve farm workers and requested that the National Agricultural Statistics Service (NASS) obtain pesticide use information for commodities which require intensive farm labor. Congress appropriated funds for the collection of pesticide use data on nursery and flouriculture operations. NASS will incorporate biennial nursery production statistics into the NASS estimating program to measure the nursery industry's growing significance to the agriculture economy and also provide a link to the collection of chemical use data. The data will be collected under the authority of 7 U.S.C. 2204(a). NASS will collect information using surveys.

*Need and Use of the Information:* NASS will collect information to assess the environmental and economic impact of various programs, policies, and procedures on nursery and flouriculture operators and their workers. The basic chemical use and farm practices information will be used to enhance the national chemical use database maintained by NASS. The information will also aid in determining the needs of growers, such as appropriation of research funds to target pests and diseases.

*Description of Respondents:* Farms; Business or other for-profit.

*Number of Respondents:* 9,834.

*Frequency of Responses:* Reporting: Biennially.

*Total Burden Hours:* 5,098.

**Nancy B. Sternberg,**

*Departmental Clearance Officer.*

[FR Doc. 00–25727 Filed 10–5–00; 8:45 am]

BILLING CODE 3410–01–M

## DEPARTMENT OF AGRICULTURE

### Foreign Agricultural Service

### Notice of Public Meeting on U.S. Participation in the 17th Annual Meeting of the International Consultative Group on Food Irradiation

**AGENCY:** Foreign Agricultural Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** FAS is informing the public of a meeting to be held Friday, October 20, 2000, at the U.S. Department of Agriculture (USDA) in Washington, DC. The purpose of this meeting is to solicit public comment on U.S. participation in the 17th annual meeting of the International Consultative Group on Food Irradiation (ICGFI), November 1–3, 2000, in Geneva, Switzerland, including future activities (Plan of Work), U.S. level of contributions (funding), and ICGFI's role. It is also to seek public input in identifying any new issues of concern that should be considered.

Representatives from past delegations will also be present to apprise the public of the background of ICGFI, its mandate, past contributions and to respond to questions. ICGFI was established under the joint aegis of the Food and Agriculture Organization of the United Nations (FAO), the International Atomic Energy Agency (IAEA) and the World Health Organization (WHO).

The functions of ICGFI are:

1. To evaluate global developments in the field of food irradiation;
2. To provide a focal point of advice on the application of food irradiation to Member States and the three Organizations; and
3. To furnish information, as required, through the Organizations, to the Joint FAO/IAEA/WHO Expert Committee on the Wholesomeness of Irradiated Food and the Codex Alimentarius Commission.

**DATES:** The public meeting date is Friday, October 20, 2000, 9 a.m. to 11 a.m., Washington, DC in the back of the cafeteria, South Building. Written comments should be submitted by October 17, 2000. All visitors should enter at Wing 2 on the C Street side of the South Building.

**FOR FURTHER INFORMATION CONTACT:** Foreign Agricultural Service, International Trade Policy, Food Safety and Technical Services Division, Room 5545, South Building, 1400 Independence Avenue, SW., Washington, DC 20250; (202) 720–1301; or e-mail ofsts@fas.usda.gov.

**SUPPLEMENTARY INFORMATION:**

**Topics To Be Discussed at the Public Meeting Include the Following:**

Should the United States continue to support ICGFI financially?

Should United States government funding for ICGFI continue at the same level, increase, or decrease?

Should contributions continue to come only from the Government, or should industry contribute as well (or in place of the Government)?

Should the proposed "Programme of Work and Budget for 2001" be approved?

| Programme of work | Estimated budget (US$) |
|---|---|
| **1. International Trade** | |
| (a) Food Irradiation Process Control School (FIPCOS) for Food Inspectors | 25,000 |



| Programme of work | Estimated budget (US$) |
|---|---|
| (b) Workshop on Food Safety/Trade in Irradiated Food With the SU | 10,000 |
| (c) Workshop on Certification of Food Irradiation Process in Latin America | 25,000 |
| (d) Establishing an Irradiation Promotion Council E-Commerce to Facilitate Trade in Irradiated Food | 15,000 |
| **2. Codification** | |
| (a) Amendments to Codex General Standard for Irradiated Foods and its Code of Practice (through the Codex Committee on Food Additives and Contaminants) | 5,000 |
| (b) Amendment to the Labeling Provisions on Irradiated Foods (through the Codex Committee on Food Labelling) | 5,000 |
| (c) Publication of Revised Code of Good Irradiation Practice | in-kind |
| **3. Information Transfer** | |
| (a) Publication of Brochure on Application of "High-Dose Irradiation of Food" | in-kind |
| (b) ICGFI/IUFoST Symposium on Food Irradiation | 10,000 |
| (c) Preparation of Education Materials on Food Irradiation | 5,000 |
| (d) Publication of Brochure on "Irradiation Food Safety" | in-kind |
| **4. Database** | |
| (a) Maintain database on list of clearance of irradiated food | no-cost |
| (b) Update current databases: national regulations, authorized food irradiation facilities, authorized packaging, materials, etc. | no-cost |
| **5. Administration** | |
| (a) One professional staff (part-time) | 45,000 |
| (b) One support staff (full time) | 60,000 |
| (c) Travel | 10,000 |
| (d) Miscellaneous (telephone, shipping, etc.) | 5,000 |
| Total (cash) | 220,000 |

What is the appropriate role for industry and consumer groups?

Should industry participate as delegates?

Are there any other topics we think ICGFI should address?

**Background Information on ICGFI**

*What Is ICGFI?*

An independent body composed of government-designat experts on food irradiation.

*How Was ICGFI Formed?*

In 1982, the Directors General of FAO, IAEA and WHO invited Member States to consider forming a consultative group to focus in international co-operation in food irradiation. Upon receipt of a favorable response from 44 Member States, those present at a meeting in 1983 drafted a Declaration establishing the International Consultative Group on Food Irradiation (ICGFI). ICGFI, composed of experts or other participants designated by each government, was established in 1984 for an initial period of 5 years.

*How Is ICGFI Organized?*

FAO, IAEA and WHO, through the Joint FAO/IAEA Division of Nuclear Techniques in Food and Agriculture based at the IAEA, Vienna, serve as ICGFI's Secretariat.

*What Are the Functions of ICGFI?*

1. To evaluate global developments in the field of food irradiation;

2. To provide a focal point of advice on the application of food irradiation to Member States and the three Organizations; and

3. To furnish information, as required, through the Organizations, to the Joint FAO/IAEA/WHO Expert Committee on the Wholesomeness of Irradiated Food and the Codex Alimentarius Commission.

*Who Determines the Priorities?*

ICGFI funds and operates its own programs, focusing on developing policy guidelines related to the safety assurance of the process, legislation, public information, economic feasibility, food safety, and international trade.

*How Does ICGFI Acquire Funding?*

Member State governments pledge, or arrange for participants to pledge to make voluntary contributions in cash or in kind, for carrying out the activities of the Consultative Group. The Consultative Group may accept voluntary contributions in cash or in kind from Non-Member State governments and from organizations whose objectives are consistent with those of the Consultative Group.

*What Are the Guidelines for Donations to ICGFI?*

1. IAEA rules govern the acceptance of gifts of services, equipment, facilities and money.

2. Voluntary contributions may be offered to the Agency by: United Nations Member State governments, intergovernmental organizations and non-governmental sources.

3. Contributions may not exceed US $100,000 or its equivalent per year.

*How Much Does the United States Contribute?*

For the past 2 years, various Departments and Agencies have together contributed $20,000 to ICGFI each year.

*How Frequently Does ICGFI Meet?*

ICGFI convenes annual meetings to develop technical recommendations and to consider its program of work and budget. At the 10th Annual Meeting held at WHO Headquarters in Geneva from November 2–4, 1993, the group's experts recommended that the ICGFI mandate be extended for a further 5 years until May 1999.

*How Much Longer Does ICGFI's Mandate Last?*

Many of the activities set out for ICGFI in the original mandate have been accomplished. However, a Task Force identified six areas of activity in which further work is needed. In October 1998 at the 15th Annual Meeting, the mandate of the ICGFI was extended to another 3 years, *i.e.*, May 1999 to May 2002. The ICGFI program will be coordinated by a Management Committee and will be refocused, putting emphasis on international trade, information exchange, high dose irrigation and seminars/training.

*What Kind of Training is ICGF Involved With?*

One example is the FAO/IAEA/WHO International Conference on Irradiation to Ensure the Safety and Quality of Food, in Antalya, Turkey, October 19–22, 1999. This Conference reviewed achievements on food irradiation during the 20th century and examine the rule of irradiation to ensure the safety and quality of food in trade. Irradiation is increasingly accepted and applied as a sanitary and phytosanitary treatment of food in trade. Currently, some 50 countries have approved one or more irradiated foods items or classes of food for consumption and over 30 countries are actually applying the technology in practice. The number of irradiation facilities available for treating food has increased in recent years with many more under construction or planned. Consumers are getting accurate information and are beginning to appreciate the benefit of irradiated food.

Another example is the Trade Opportunities for Irradiated Food in Hawaii; 22–24 May 2000 to inform representatives of the food industry and trade in Asia and the Pacific and the USA of the role of irradiation as a sanitary and phytosanitary treatment in order to expedite international trade in food and agricultural commodities.

*Who Belongs to ICGFI?*

The group is currently composed of the following 47 Member States, more than half of which are developing countries: Argentina, Australia, Bangladesh, Belgium, Brazil, Bulgaria,

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Canada, Chile, People's Republic of China, Costa Rica, Cote D'Ivoire, Croatia, Cuba, Czech Republic, Ecuador, Egypt, France, Germany, Ghana, Greece, Hungary, India, Indonesia, Iraq, Israel, Italy, Republic of Korea, Malaysia, Mexico, Morocco, Netherlands, New Zealand, Pakistan, Peru, Philippines, Poland, Portugal, South Africa, Syrian Arab Republic, Thailand, Tunisia, Turkey, Ukraine, United Kingdom, USA, Vietnam, and Yugoslavia.

*Do Only Government Representatives Attend ICGFI Meetings?*

Meetings are attended by designated experts from ICGFI member governments, and representatives of other interested governments, international organizations and non-governmental organizations are invited by ICGFI to attend as observers.

*Where Is the Secretariat Located?*

Food & Environmental Protection Section, Joint FAO/IAEA Division of Nuclear Techniques in Food and Agriculture, International Atomic Energy Agency, Wagramerstrasse 5, P.O. Box 100, A–1400 Vienna, Austria. Phone: (43–1) 2600 extension 21638 or 21639; Facsimile: (43–1) 26007; e-mail: Official.Mail@iaea.org

*How Does ICGFI Communicate With All the Countries?*

There is an ICGFI National Contact Point for each Member State.

*What Are the Responsibilities of ICGFI Contact Points?*

1. Distribution within the country of documents, working papers and other information material emanating from ICGFI or its Secretariat;
2. Co-ordinating the preparation for transmission to the Secretariat of technical comments/information requested;
3. Taking follow-up action on particular matters, in collaboration with the expert(s) attending the particular ICGFI meeting;
4. Providing information, as available, to the Secretariat on the status of food irradiation technology, its regulatory control and other related topics of interest to ICGFI; and
5. Ensuring that information made available by the ICGFI Secretariat is disseminated to the interested national entities/individuals.

**Public Meeting**

The public meeting will take place at the U.S. Department of Agriculture, 1400 Independence Ave., SW., Washington, DC, back of the cafeteria, South Building. To accommodate all public forum participants, we request that individuals planning to attend should so inform the Department in advance by contacting: Foreign Agricultural Service, International Trade Policy, Food Safety and Technical Services Division, Room 5545, South Building, 1400 Independence Avenue, SW., Washington, DC 20250; (202) 720–1301; or e-mail ofsts@fas.usda.gov. Please indicate the organization represented, if any, including the names and titles of individuals attending.

*Written Comments*

Those persons wishing to submit written comments should provide five (5) typed copies to Foreign Agricultural Service, International Trade Policy, Food Safety and Technical Services Division, Stop Code 1027, Room 5545, South Building, 1400 Independence Avenue, SW., Washington, DC 20250.

If the submission contains business confidential information, five copies of a non-confidential version must also be submitted. A justification as to why the information contained in the submission should be treated confidentially must be included in the submission. In addition, any submissions containing business confidential information must be clearly marked "Confidential" at the top and bottom of the cover page (or letter) and of each succeeding page of the submission. The version that does not contain confidential information should also be clearly marked, at the top and bottom of each page, "public version" or "nonconfidential."

Written comments submitted in connection with this request, except for information deemed "business confidential" by FAS will be available for public inspection in the USDA Reading Room, Room 1141, USDA South Building, 1400 Independence Avenue, SW., Washington, DC. Normal Reading Room hours are from 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. Please call (202) 690–2817 to assure that assistance will be available in the Reading Room.

Dated: October 2, 2000.

**Timothy J. Galvin,**

*Administrator, Foreign Agricultural Service.*

[FR Doc. 00–25726 Filed 10–5–00; 8:45 am].

**BILLING CODE 3410–10–M**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### California Coast Provincial Advisory Committee (PAC)

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The California Coast Provincial Advisory Committee (PAC) will meet on October 25 and 26, 2000, at the Best Western El Grande Banquet Room in Clearlake, California. The meeting will be held from 1 p.m. until 5 p.m. on Wednesday, October 25, and from 8 a.m. to 3:15 p.m. on Thursday, October 26. The Best Western El Grande is located at 15135 Lakeshore Drive in Clearlake.

Agenda items to be covered include: (1) Panel on State and Federal Watershed Analyses/restoration programs; (2) Panel discussion on the issue of restoring native fish populations and their habitat on federal lands in the Province; (3) Presentation on demographics of northern spotted owls in Marin County; (4) Regional Ecosystem Office (REO) update; (5) Videotape presentation of Redwood National Park road program; (6) Megram Fire Update; (7) IAC/PAC/REIC communication; (8) Draft action plan for the Province comprehensive road work/fisheries and watershed restoration plan; and (9) open public comment. All California Coast Provincial Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend.

**FOR FURTHER INFORMATION CONTACT:** Direct questions regarding this meeting to James Fenwood, Forest Supervisor, or Phebe Brown, Province Coordinator, USDA, Mendocino National Forest, 825 N. Humboldt Avenue, Willows, CA 95988; (530) 934–3316.

Dated: September 19, 2000.

**James D. Fenwood,**

*Forest Supervisor.*

[FR Doc. 00–25711 Filed 10–5–00; 8:45 am]

**BILLING CODE 3410–11–M**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Lake Tahoe Basin Federal Advisory Committee; Meeting

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Lake Tahoe Basin Federal Advisory Committee will hold a meeting October 17, 2000, at the Tahoe City Public Utility District Board Room, 221 Fairway Drive, Tahoe City, California 96145. This committee, established by the Secretary of Agriculture June 23, 2000 (65 FR 44519), is chartered to provide advice to the Secretary on implementing the terms of the Federal Interagency Partnership at Lake Tahoe and on other matters raised by the Secretary.



**DATES AND TIME:** The meeting will be held October 17, 2000, beginning at 9 a.m. and ending at 4 p.m. Public comment period is scheduled for 2 p.m.

**ADDRESSES:** The meeting will be held at the Tahoe City Public Utility District Board Room, 221 Fairway Drive, Tahoe City, California 96145.

**FOR FURTHER INFORMATION CONTACT:** Maribeth Gustafson or Sue Fitzgerald, Lake Tahoe Basin Management Unit, Forest Service, 870 Emerald Bay Road, Suite 1, South Lake Tahoe, CA 96150; (530) 573–2773.

**SUPPLEMENTARY INFORMATION:** Items to be covered on the agenda include:

(1) Agenda Review
(2) Budget Subcommittee Report
(3) Legislative Update
(4) Update on the Federal Partnership Actions Progress Report
(5) Update on the U.S. Fish & Wildlife Service's proposal to list the Tahoe Yellow Cress As an Endangered Species
(6) Update on the Environmental Improvement Program
(7) Discussion on the need for a communications subcommittee
(8) Discussion on possible amendments to the Lake Tahoe Basin Federal Advisory Committee consensus process
(9) Public comment.

All Lake Tahoe Basin Federal Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend. Issues may be brought to the attention of the committee during the open public comment period at the meeting or by filing written statements with the secretary for committee before or after the meeting. Please refer any written comments to the Lake Tahoe Basin Management Unit at the contact address above.

*Late Notice:* Owing to staff transition and shortages at the Lake Tahoe Basin related to this year's extremely heavy fire season in the western states, this notice is being filed under the usual 15-day notification period.

Dated: October 2, 2000.

**Maribeth Gustafson,**

*Forest Supervisor.*

[FR Doc. 00–25690 Filed 10–5–00; 8:45 am]

**BILLING CODE 3410–11–M**

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List; Proposed Additions and Deletion

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Proposed additions to and deletion from the Procurement List.

**SUMMARY:** The Committee has received proposals to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete a commodity previously furnished by such agencies.

*Comments Must Be Received on or Before:* November 6, 2000.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, VA 22202–3259.

**FOR FURTHER INFORMATION CONTACT:** Louis R. Bartalot, (703) 603–7740.

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

**Additions**

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.
2. The action will result in authorizing small entities to furnish the services to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

*Administrative Support Services (Recreational Aide)*

Building 156, Altus Air Force Base, Oklahoma
NPA: Oklahoma County Council for Mentally Retarded Citizens, Inc., Oklahoma City, Oklahoma

*Janitorial/Grounds Maintenance*

Portsmouth Federal Building, 431 Crawford Street, Portsmouth, Virginia
NPA: Portco, Inc., Portsmouth, Virginia

**Deletion**

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.
2. The action will result in authorizing small entities to furnish the commodity to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity proposed for deletion from the Procurement List.

The following commodity has been proposed for deletion from the Procurement List:

Ribbon, Typewriter
7510–01–233–0033

**Rita L. Wells,**

*Deputy Executive Director.*

[FR Doc. 00–25785 Filed 10–5–00; 8:45 am]

**BILLING CODE 6353–01–P**

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List; Additions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Additions to the Procurement List.

**SUMMARY:** This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

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**EFFECTIVE DATE:** November 6, 2000.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, VA 22202–3259.

**FOR FURTHER INFORMATION CONTACT:** Louis R. Bartalot, (703) 603–7740.

**SUPPLEMENTARY INFORMATION:** On June 30, August 11, and 18, 2000 the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (65 FR 40607, 49217 and 50499) of proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will not have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Accordingly, the following services are hereby added to the Procurement List:

*Base Supply Center, Operation of Individual Equipment Element Store and HAZMART*

MacDill Air Force Base, Florida

*Janitorial/Custodial*

Defense Systems Management College (DSMC), 9820 Belvoir Road, Fort Belvoir, Virginia

*Wheelchair Maintenance*

Veterans Affairs Medical Center, 800 Zorn Avenue, Louisville, Kentucky

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

**Rita L. Wells,**

*Deputy Executive Director.*

[FR Doc. 00–25786 Filed 10–5–00; 8:45 am]

**BILLING CODE 6353–01–P**

## COMMISSION ON CIVIL RIGHTS

### Sunshine Act Meeting

**AGENCY:** U.S. Commission on Civil Rights.

**DATE AND TIME:** Friday, October 13, 2000, 9:30 a.m.

**PLACE:** U.S. Commission on Civil rights, 624 Ninth Street, NW., Room 540, Washington, DC 20425.

**STATUS:**

Agenda

I. Approval of Agenda
II. Approval of Minutes of September 15, 2000 Meeting
III. Announcements
IV. Staff Director's Report
V. Mississippi Delta Hearing Report
VI. Supreme Court Project
VII. State Advisory Committee Reports
- The Decision to Prosecute Drug Offenses and Homicides in Marion County, Indiana (Indiana)
- Limited-English-Proficient Students in Maine: An Assessment of Equal Educational Opportunities (Maine)
- The Status of Equal Opportunity Minorities in Moorhead, Minnesota (Minnesota)
- Community Forum on Race Relations in Racine County, Wisconsin (Wisconsin)

VIII. Future Agenda Items

**CONTACT PERSON FOR FURTHER INFORMATION:** David Aronson, Press and Communications (202) 376–8312.

**Edward A. Hailes, JR.**

*Acting General Counsel.*

[FR Doc. 00–25979 Filed 10–4–00; 2:58 pm]

**BILLING CODE 6335–0–M**

## DEPARTMENT OF COMMERCE

### Bureau of the Census

### Census Advisory Committee on the American Indian and Alaska Native Populations

**AGENCY:** Bureau of the Census, Commerce.

**ACTION:** Notice of public meeting.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463 as amended by Pub. L. 94–409, Pub. L. 96–523, and Pub. L. 97–375), the Bureau of the Census (Census Bureau) is giving notice of a meeting of the Census Advisory Committee on the American Indian and Alaska Native Populations. The meeting will focus on data and geographic products affecting American Indians and Alaska Native Populations. We are still finalizing the details of the meeting's agenda.

**DATES:** November 1, 2000. The meeting will begin at 12:30 p.m. and end at approximately 5:15 p.m.

**ADDRESSES:** The meeting will take place at the Hilton Alexandria Mark Center, 5000 Seminary Road, Alexandria, VA 22311.

**FOR FURTHER INFORMATION CONTACT:** Maxine Anderson-Brown, Committee Liaison Officer, Census Bureau, Department of Commerce, Room 1647, Federal Building 3, Washington, DC 20233, telephone 301–457–2308, TDD 301–457–2540.

**SUPPLEMENTARY INFORMATION:** The Committee is composed of nine members appointed by the Secretary of Commerce. The Committee provides a channel of communication between the representative communities and the Census Bureau. It assists the Census Bureau in its efforts to reduce the differential undercount for American Indian and Alaska Native Populations and advises on ways that decennial census data can best be disseminated to communities and other users. It provides advice and recommendations for the Census Bureau to consider in planning the 2010 census and the American Community Survey.

The meeting is open to the public, and a brief period is set aside during the closing session for public comment and questions. Those persons with extensive questions or statements must submit them in writing to the Census Bureau Committee Liaison Officer, named above, at least three days before the meeting.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Census Bureau Committee Liaison Officer at least three days prior to the meeting.

Dated: October 3, 2000.

**Kenneth Prewitt,**

*Director, Bureau of the Census.*

[FR Doc. 00–25730 Filed 10–5–00; 8:45 am]

**BILLING CODE 3510–07–P**



## DEPARTMENT OF COMMERCE

### Bureau of the Census

### Census Advisory Committees on the American Indian and Alaska Native Populations, the African American Population, the Asian Population, the Native Hawaiian and Other Pacific Islander Populations, and the Hispanic Population

**AGENCY:** Bureau of the Census, Commerce.

**ACTION:** Notice of Public Meeting.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463 as amended by Pub. L. 94–409, Pub. L. 96–523, and Pub. L. 97–375), the Bureau of the Census (Census Bureau) is giving notice of a joint meeting followed by separate and concurrently held meetings of the Census Advisory Committees (CACs) on the American Indian and Alaska Native Populations, the African American Population, the Asian Population, the Native Hawaiian and Other Pacific Islander Populations, and the Hispanic Population.

**DATES:** November 2–3, 2000. The November 2 meeting will begin at 9 a.m. and end at 5 p.m. The November 3 meeting will begin at 8:30 a.m. and end at 3:30 p.m.

**ADDRESSES:** The meeting will take place at the Hilton Alexandria Mark Center, 5000 Seminary Road, Alexandria, VA 22311.

**FOR FURTHER INFORMATION CONTACT:** Maxine Anderson-Brown, Committee Liaison Officer, Census Bureau, Department of Commerce, Room 1647, Federal Building 3, Washington, DC 20233, telephone 301–457–2308, TDD 301–457–2540.

**SUPPLEMENTARY INFORMATION:** The agenda for the November 2 and 3 meetings will include discussions on the American Community Survey, Census 2000 update, early evaluation results, and other census information. We are still finalizing the details of the meeting's agenda.

The CACs on the American Indian and Alaska Native Populations, the African American Population, the Asian Population, the Native Hawaiian and Other Pacific Islander Populations, and the Hispanic Population are composed of nine members each. The Secretary of Commerce appoints the members. The Committees provide an organized and continuing channel of communication between the representative communities and the Census Bureau. They assist the Census Bureau in its efforts to reduce the differential undercount for Census 2000 and advise on ways that census data can best be disseminated to communities and other users. They provide advice and recommendations for the Census Bureau to consider in planning the 2010 census and the American Community Survey.

All meetings are open to the public, and a brief period will be set aside on November 3 for public comment and questions. Individuals with extensive questions or statements must submit them in writing to the Committee Liaison Officer, named above, at least three days before the meeting.

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Committee Liaison Officer at least three days prior to the meeting.

Dated: October 3, 2000.

**Kenneth Prewitt,**

*Director, Bureau of the Census.*

[FR Doc. 00–25731 Filed 10–5–00; 8:45 am]

**BILLING CODE 3510–07–P**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[Docket 56–2000]**

### Foreign-Trade Zone 70—Detroit, Michigan Area, Application for Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board), by the Greater Detroit Foreign-Trade Zone, Inc., grantee of Foreign-Trade Zone 70, requesting authority to expand its zone to include an additional site in the Detroit, Michigan area, within the Detroit Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on September 29, 2000.

FTZ 70 was approved on July 21, 1981 (Board Order 176, 46 FR 38941, 7/30/81) and expanded on April 15, 1985 (Board Order 299, 50 FR 16119, 4/24/85); November 27, 1989 (Board Order 453, 54 FR 50258, 12/5/89); April 20, 1990 (Board Order 471, 55 FR 17775, 4/27/90); February 20, 1996 (Board Order 802, 61 FR 7237, 2/27/96); and, August 26, 1996 (Board Order 843, 61 FR 46763, 9/5/96). The general-purpose zone project currently consists of 15 sites (some 300 acres) for warehousing/storage operations in the Detroit, Michigan area. An application is currently pending for an additional site at the Buske Lines logistics complex in Brownstown Township (FTZ Doc. 42–2000).

The applicant is now requesting authority to expand the general-purpose zone to include an additional site *Proposed Site 17* (593 acres)—within the 1,265 acre Pinnacle Aeropark of Wayne County, located at the southern end of Detroit Metropolitan Airport, east of I–275 and south of Eureka Road. The site encompasses a portion of Huron Township and the City of Romulus. It is owned by Wayne County and will be operated by W. F. Whelan Company. No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is December 5, 2000. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to December 20, 2000.

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce, Export Assistance Center, 211 W. Fort Street, Suite 2220, Detroit, MI 48226

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 4008, U.S. Department of Commerce 14th & Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: September 29, 2000.

**Dennis Puccinelli,**

*Executive Secretary.*

[FR Doc. 00–25792 Filed 10–5–00; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–580–809]**

### Circular Welded Non-Alloy Steel Pipe From the Republic of Korea: Notice of Extension of Time Limit for Preliminary Results of Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

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**ACTION:** Notice of extension of time limit for preliminary results of antidumping duty administrative review.

**EFFECTIVE DATE:** October 6, 2000.

**FOR FURTHER INFORMATION CONTACT:** Jarrod Goldfeder or Greg Campbell at (202) 482–0189 and (202) 482–2239, respectively, Office of AD/CVD Enforcement I, Group I, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW, Washington, DC 20230.

**Time Limits**

*Statutory Time Limits*

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order/finding for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend these deadlines to a maximum of 365 days and 180 days, respectively.

**Background**

On December 28, 1999, the Department published a notice of initiation of administrative review of the antidumping duty order on circular welded non-alloy steel pipe from the Republic of Korea, covering the period November 1, 1998, through October 31, 1999 (64 FR 72644). On July 18, 2000, the Department extended the time limit for completion of the preliminary results by 66 days, or until no later than October 6, 2000. *See Circular Welded Non-Alloy Steel Pipe From the Republic of Korea; Notice of Extension of Time Limit for Preliminary Results and Partial Rescission of Antidumping Administrative Review,* (65 FR 44521).

**Extension of Preliminary Results of Review**

We determine that due to limited administrative resources and complex issues present in this review (*e.g.*, date of sale, level of trade, and CEP offset), it is not practicable to complete the preliminary results of this review within the previously extended time limit. Therefore, the Department is further extending the time limits for completion of the preliminary results by an additional 28 days, or until no later than November 3, 2000.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: October 2, 2000.

**Richard W. Moreland,**

*Deputy Assistant Secretary, Import Administration, Group I.*

[FR Doc. 00–25793 Filed 10–5–00; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–803]**

### Heavy Forged Hand Tools From the People's Republic of China: Initiation of New Shipper Antidumping Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of initiation of New Shipper Antidumping Administrative Review.

**SUMMARY:** The Department of Commerce ("the Department") has received a request from Shandong Jinma Industrial Group Co., Ltd. ("Jinma") to conduct a new shipper administrative review of the antidumping duty order on hammers/sledges, one of the four classes or kinds of subject merchandise covered by the antidumping duty orders on heavy forged hand tools ("HFHTs") from the People's Republic of China ("PRC"). In accordance with 19 CFR 351.214(d) of the Department's regulations, we are initiating this administrative review.

**EFFECTIVE DATE:** October 6, 2000.

**FOR FURTHER INFORMATION CONTACT:** Frank Thomson or Howard Smith, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4793 or (202) 482–5193 respectively.

**The Applicable Statute and Regulations**

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, codified at 19 CFR Part 351 (1999).

**Background**

On July 20, 2000, the Department received a timely request, in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214(c), for a new shipper review of the antidumping duty order on hammers/sledges. The antidumping duty orders on HFHTs from the PRC have a February anniversary month and an August semiannual anniversary month. *See Antidumping Duty Orders: Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles From the People's Republic of China,* 56 FR 6622 (February 19, 1991).

Pursuant to 19 CFR 351.214(b)(2)(i) and 19 CFR 351.214(b)(2)(iii)(A), Jinma's July 20, 2000 request for review certified that it did not export the subject merchandise to the United States during the period of investigation ("POI") and that it is not affiliated with any company which exported subject merchandise to the United States during the POI. Pursuant to 19 CFR 351.214(b)(2)(iii)(B), Jinma's request certified that its export activities are not controlled by the central government of the PRC.

In addition, pursuant to 19 CFR 351.214(b)(2)(iv), Jinma's request contained documentation establishing: the date after the POI on which Jinma first shipped the subject merchandise for export to the United States, the volume of that shipment, and the date of the first sale to an unaffiliated customer in the United States.

It is the Department's usual practice in cases involving non-market economies to require that a company seeking to establish eligibility for an antidumping duty rate separate from the country-wide rate provide *de jure* and *de facto* evidence of an absence of government control over the company's export activities. *See Certain Preserved Mushrooms from the People's Republic of China: Initiation of New Shipper Antidumping Duty Review,* 65 FR 17257 (March 31, 2000). Accordingly, we will issue a separate rates questionnaire to the above-named respondent. If respondent Jinma provides sufficient evidence that it is not subject to either *de jure* or *de facto* government control with respect to its exports of HFHTs, this review will proceed. If, on the other hand, Jinma does not meet its burden to demonstrate its eligibility for a separate rate, then Jinma will be deemed to be affiliated with other companies that exported during the POI and that did not establish entitlement to a separate rate. This review will then be terminated due to failure of the exporter or producer to meet the requirements of section 751(a)(2)(B)(i)(II) of the Act and 19 CFR 351.214(iii)(B).



**Initiation of Review**

In accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214(d), we are initiating a new shipper review of the antidumping duty order on hammers/sledges from the PRC. Therefore, we intend to issue the preliminary results of this review not later than 180 days after the date on which the review is initiated.

Pursuant to 19 CFR 351.214(g)(1)(i)(B) of the Department's regulations, the period of review ("POR") for a new shipper review initiated in the month immediately following the semiannual anniversary month will be the six-month period immediately preceding the semiannual anniversary month. Therefore, the POR for this new shipper is:

| Antidumping duty proceeding | Period to be reviewed |
|---|---|
| HFHTs from the PRC, A–570–803: Shandong Jinma Industrial Group Co., Ltd | 2/1/00–7/31/00 |

Subject to receipt of an adequate separate rates questionnaire response from the respondent, we will instruct the U.S. Customs Service to suspend liquidation of unliquidated entries of subject merchandise from the above company and allow, at the option of the importer, the posting of a bond or security in lieu of a cash deposit for each entry of the merchandise exported by the companies listed above, until the completion of the review.

Interested parties must submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.214.

Dated: September 28, 2000.

**Holly A. Kuga,**

*Acting Deputy Assistant Secretary For Import Administration.*

[FR Doc. 00–25791 Filed 10–5–00; 8:45 am]

BILLING CODE 3510–DS–P

## COMMODITY FUTURES TRADING COMMISSION

### New York Board of Trade; Proposed Amendments to the Coffee "C" Futures Contract

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice of availability of proposed amendments to contract terms and conditions.

**SUMMARY:** The New York Board of Trade (Exchange) has proposed amendments to the Exchange's coffee "C" futures contract. The proposed amendments would specify the conditions under which deliverers, receivers and operators of regular warehouses are liable for the repair of torn coffee bags, require that Exchange-licensed warehouses maintain a log of the required weekly inspections of futures delivery coffee, and establish an expedited arbitration procedure to be used in the case of controversies concerning liability for torn bags. The proposed amendments were submitted under the Commission's 45-day Fast Track procedures which provide that, absent any contrary action by the Commission, the proposed amendments may be deemed approved on October 30, 2000—45 days after the Commission's receipt of the proposals. The Acting Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposed amendments is in the public interest and will assist the Commission in considering the views of interested persons.

**DATES:** Comments must be received on or before October 23, 2000.

**ADDRESSES:** Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street, NW, Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to secretary @cftc.gov. Reference should be made to the proposed amendments to the New York Board of Trade coffee "C" futures contract regarding torn coffee bags.

**FOR FURTHER INFORMATION, CONTACT:** Please contact John Bird of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street NW, Washington, DC 20581, telephone (202) 418–5274. Facsimile number: (202) 418–5527. Electronic mail: jbird@cftc.gov

**SUPPLEMENTARY INFORMATION:** The coffee 'C' futures contract currently calls for the delivery of specified growths of washed arabica coffee packaged in bags and held in storage at Exchange-licensed warehouses located in New York, New Orleans and Miami. The duties and obligations of licensed warehouse operators are specified in Coffee 'C' Resolution No. 2 Under Part (IV)(2) of Resolution No. 2, Exchange-licensed warehouse operators are required to maintain coffee bags in store in accordance with Exchange standards, including keeping the stored coffee bags and coffee clean, undamaged, and free from any and all foreign matter which could be detrimental to the delivery of the coffee. Licensed warehouse operators also are required to conduct weekly inspections of each lot of Exchange coffee in store to determine the condition and conformity with Exchange standards.

Part (IV)(3) of Resolution No. 2 currently requires that licensed warehouse operators are required to promptly repair any coffee bags that are torn, bags from which coffee beans are sifting, or bags that are in peril of having coffee beans spilled therefrom. Part (IV)(4) further provides that, with the exception of coffee bags that exhibit the aforementioned conditions, the licensed warehouse operator must notify the owner of the coffee of any further maintenance to be performed on the bags and provide the owner five business days to respond. If no response is received within five business days, the owner is deemed to have authorized the maintenance and to have agreed to pay all costs associated with said maintenance. The resolution also currently specifies that the licensed warehouse operator may notify the Exchange if the warehouse operator believes that the response received from the owners is insufficient to bring the coffee bags into compliance with Exchange standards.

The proposed amendments would implement new provisions clarifying the responsibilities of deliverers, receivers and licensed warehouse operators with regard to the repair of torn bags. The proposed amendments would provide, in part, that, if the licensed warehouse operator has given written notice to the deliverer prior to delivery that one or more of the bags containing the delivery coffee are torn, the deliverer of the coffee is responsible for the repair of the torn bag(s). Alternatively, if the warehouse has met its obligations as provided in Coffee "C" Resolution No. 2(IV)(2) and the receiver has failed to inspect the coffee during the seven business days between the issuance of the delivery notice and the delivery date, the receiver is responsible for repair of the bag(s). The proposed amendments will further specify that, in order for the warehouse to demonstrate that it is conducting the weekly inspections of the coffee as required in

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Coffee "C" Resolution No. 2(IV)(2), the warehouse will be required to keep a log of the weekly inspections. The log will be required to contain specific information including the location of the warehouse, the name of the individual who conducted the inspection, and the Exchange application and lot numbers of the bags found to require maintenance work.

The proposed amendments also would provide, in part, that a dispute between any member and a licensed warehouse operator concerning the liability for a torn bag during the delivery period may be settled by arbitration before a Special Arbitration Committee consisting of three disinterested members of the Exchange's Warehouse and License Committee, who must be appointed by the Committee's Chairman within one business day after the Exchange's receipt of a written notice of the dispute. If members of the Warehouse and License Committee have an interest in the dispute, the Chairman may appoint other persons who are associated with coffee warehousing and storage. However, at least one member of the Special Arbitration Committee must be a member of the Exchange's Warehouse and License Committee. The proposed amendments also would change the fee a claimant must pay for filing a notice of dispute with the Exchange to $375 *for each lot* of coffee covered by a notice of dispute, in place of the current requirement that a single fee of $375 per notice by paid.

The Exchange intends to make the proposed amendments effective upon Commission approval for all existing and newly listed contract months.

According to the Exchange, the proposed amendments concerning the liability for repair of torn coffee bags essentially will provide that, as long as the warehouse is doing its job as required by Resolution No. 2, then either the delivery or the receiver is responsible for repair of the bags.

The Division is requesting comments on the proposed amendments.

Copies of the proposed amendments will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street NW, Washington, DC 20581. Copies of the proposed amendments can be obtained through the Office of the Secretariat by mail at the above address, by phone at (202) 418–5100, or via the Internet at secretary@cftc.gov.

Other materials submitted by the Exchange in support of the proposal may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed amendments, or with respect to other materials submitted by the Exchange, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street NW, Washington, DC 20581 by the specified date.

Issued in Washington, DC, on October 3,2000.

**Richard Shilts,**

*Acting Director.*

[FR Doc. 00–25924 Filed 10–5–00; 8:45 am]

BILLING CODE 6351–01–M

## CONSUMER PRODUCT SAFETY COMMISSION

**[CPSC Docket No. 01–C00001]**

### Crawford Textile Corporation, a Corporation, Provisional Acceptance of a Settlement Agreement and Order

**AGENCY:** Consumer Profice Safety Commission.

**ACTION:** Notice.

**SUMMARY:** It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the Federal Register in accordance with the terms of 16 CFR 1118.20(f). Published below is a provisionally-accepted Settlement Agreement with Crawford Textile Corporation, a corporation, containing a civil penalty of $150,000.

**DATES:** Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by October 23, 2000.

**ADDRESSES:** Persons wishing to commment on this Settlement Agreement should send written comments to the Comment 01–C0001, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

**FOR FURTHER INFORMATION CONTACT:** Dennis C. Kacoyanis, Trial Attorney, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0226, 1346.

**SUPPLEMENTARY INFORMATION:** The text of the Agreement and Order appears below.

Dated: October 2, 2000.

**Todd A. Stevenson,**

*Deputy Secretary.*

**Settlement Agreement and Order**

1. This Settlement Agreement and Order, entered into between Crawford Textile Corporation (hereinafter, "Crawford" or "Respondent"), a corporation, and the staff of the Consumer Product Safety Commission (hereinafter, "Staff"), pursuant to the procedures set forth in 16 CFR 1118.20, is a compromise resolution of the matter described herein, without a hearing or determination of issues of law and fact.

**I. The Parties**

2. The "staff" is the staff of the Consumer Product Safety Commission (hereinafter, "Commission"), an independent federal regulatory commission of the United States government established pursuant to section 4 of the Consumer Product Safety Act (CPSA), as amended, 15 U.S.C. 2053.

3. Respondent Crawford Textile Corporation is a corporation organized and existing under the laws of the State of North Carolina. Its office is located at 319–A South Westgate Drive, Greensboro, NC 27407. Respondent is a converter of circular knitted fabrics.

**II. Allegations of the Staff**

*A. Violation of the Flammable Fabrics Act*

4. On August 27, 1998, Respondent entered into a contract with Milano Express, Inc. (hereinafter, "Milano") whereby Respondent agreed to manufacture for sale approximately 25,000 yards of weathered blue sherpa fabric, style number 11012, 80% cotton/20% polyester (hereinafter, "fabric").

5. In September 1998, Respondent manufactured for sale approximately 22,570 yards of fabric for Milano.

6. Respondent sold, caused to be transported, and delivered after a sale, in commerce, approximately 22,570 yards of fabric to Milano in September 1998.

7. The fabric is subject to the Standard for the Flammability of Clothing Textiles (hereinafter, "Clothing Standard"), 16 CFR Part 1610, issued under section 4 of the Flammable Fabrics Act (FFA), 15 U.S.C. 1193.

8. After Respondent had shipped and distributed all of the fabric to Milano, Respondent received flammability test reports for the fabric on October 7 and 9, 1998. The test results showed that several lots of the fabric did not comply with the Clothing Standard and, therefore, were dangerously flammable and unsuitable to be made into clothing because of their rapid and intense burning.

9. Respondent never informed Milano that several lots of the fabric did not comply with the Clothing Standard. As a result, Milano distributed to a retailer between 3,300 to 4,000 sweatshirts made from fabric that violated the Clothing Standard.

10. On February 2, 1999, the staff learned an 80 year old woman suffered third degree burns to 18% of her body when the blue pullover Milano sweatshirt she was wearing caught fire when she struck a book match to light her cigarette and a burning fragment of the match head landed on it.

11. After receiving this report, the staff sampled a Milano blue pullover sweatshirt from a retailer. The staff tested the sweatshirt. The test results showed the sweatshirt violated the Clothing Standard and, therefore, was dangerously flammable and unsuitable for clothing because it was susceptible to rapid and intense burning when exposed to an ignition source. Respondent manufactured the blue sherpa fabric used by Milano to manufacture the sweatshirt that the staff tested.

12. On March 17, 1999, the staff notified Milano that the sweatshirt failed to comply with the Clothing Standard.

13. After receipt of this information, Milano tested sweatshirts made from fabric manufactured by Respondent. The test results confirmed the sweatshirts violated the Clothing Standard.

14. Respondent knowingly manufactured for sale, sold, caused to be transported, and delivered after a sale, in commerce, fabric that violated the Clothing Standard, as the term "knowingly" is defined in section 5(e)(4) of the FFA, 15 U.S.C. 1194(e)(4), in violation of section 3 of the FFA, 15 U.S.C. 1192, and subjects Respondent to civil penalties pursuant to section 5(e)(1) of the FFA, 15 U.S.C. 1194(e)(1).

*B. Violation of the Consumer Product Safety Act*

15. The allegations contained in paragraphs 4 through 14 above are repeated and realleged, as applicable.

16. The fabric is a "consumer product" and Respondent Crawford Textile Corporation is a "manufacturer" of a "consumer product" which is "distributed in commerce" as those terms are defined in sections 3(a)(1), (4), and (11) of the CPSA, 15 U.S.C. 2052(a)(1), (4), and (11).

17. Upon receipt of failing flammability test results in October 1998, Respondent had sufficient information to conclude that several lots of the fabric contained a defect which could create a substantial product hazard or created an unreasonable risk of serious injury or death. Specifically, the fabric presented a flammability risk.

18. Respondent also had sufficient information to foresee that its fabric could cause severe burn injuries or death.

19. Respondent did not notify Milano or the Commission of its failing test results, or of the risk presented by garments manufactured with its fabric.

20. On or about March 25, 1999, Respondent learned from Milano that the Commission had sampled and tested a sweatshirt made from fabric manufactured by Respondent and found it was dangerously flammable and unsuitable for clothing because of its rapid and intense burning.

21. On or about March 29, 1999, Milano faxed to Respondent the Commission's and its own flammability test reports for sweatshirts made from fabric manufactured by Respondent. The test results showed that sweatshirts made from that fabric violated the Clothing Standard.

22. Only after receiving all of this evidence and knowing the Commission was already aware of the hazard did Respondent notify the Commission about its hazardous fabric pursuant to section 15(b) of the CPSA.

23. By October 1998, Respondent had obtained sufficient information to reasonably support the conclusion that the fabric contained a defect which could create a substantial product hazard or created an unreasonable risk of serious injury or death. Respondent failed to report such information in a timely manner as required by section 15(b) of the CPSA. A failure to report under section 15(b) is a prohibited act under section 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(4). By knowingly failing to report, Respondent is subject to civil penalties under section 20 of the CPSA, 15 U.S.C. 2069.

**III. Response of Respondent**

24. Respondent denies the staff's allegations set forth in paragraphs 4 through 23 above.

25. Respondent denies that it knowingly violated either the Flammable Fabrics Act or the Consumer Product Safety Act.

**IV. Agreement of the Parties**

26. The Commission has jurisdiction over Respondent and the subject matter of this Settlement Agreement and Order under the Consumer Product Safety Act (CPSA), 15 U.S.C. 2051 *et seq.*; the Flammable Fabrics Act (FFA), 15 U.S.C. 1191 *et seq.*; and the Federal Trade Commission Act (FTCA), 15 U.S.C. 41 *et seq.*

27. This Agreement is entered into for settlement purposes only and does not constitute an admission by Respondent or a determination by the Commission that Respondent knowingly violated the FFA's Clothing Standard and/or the CPSA's Reporting Requirement.

28. Upon provisional acceptance of this Settlement Agreement and Order by the Commission, this Settlement Agreement and Order shall be placed on the public record and shall be published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1118.20(f). If the Commission does not receive any written request not to accept the Settlement Agreement and Order within 15 days, the Settlement Agreement and Order will be deemed to be finally accepted on the 16th day after the date it is published in the **Federal Register**.

29. Upon final acceptance of this Settlement Agreement by the Commission and issuance of the Final Order, Respondent knowingly, voluntarily, and completely waives any rights it may have in this matter (1) to an administrative or judicial hearing, (2) to judicial review or other challenge or contest of the validity of the Commission's actions, (3) to a determination by the Commission as to whether Respondent failed to comply with the FFA, as alleged, or the CPSA, as alleged, (4) to a statement of findings of facts and conclusions of law, and (5) to any claims under the Equal Access to Justice Act.

30. In settlement of the staff's allegations, Respondent agrees to pay a $150,000.00 civil penalty as set forth in the incorporated Order.

31. The Commission may publicize the terms of the Settlement Agreement and Order.

32. Upon final acceptance by the Commission of this Settlement Agreement and Order, the Commission shall issue the attached Order incorporated herein by reference.

33. A violation of the attached Order shall subject Respondent to appropriate legal action.

34. Agreement, understandings, representations, or interpretations made outside this Settlement Agreement and Order may not be used to vary or contradict its terms.

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35. The provisions of this Settlement Agreement and Order shall apply to Respondent and each of its successors and assigns.

Respondent Crawford Textile Corporation

Dated: August 30, 2000

John C. McCuiston,
*President, Crawford Textile Corporation, 319–A South Westgate Drive, Greensboro, NC 27407.*

Commission Staff

Alan H. Schoem,
*Assistant Executive Director, Consumer Product Safety Commission, Office of Compliance, Washington, D.C. 20207–0001.*

Eric L. Stone,
*Director, Legal Division, Office of Compliance.*

Dated: August 31, 2000

Dennis C. Kacoyanis,
*Trial Attorney, Legal Division, Office of Compliance.*

**Order**

Upon consideration of the Settlement Agreement entered into between Respondent Crawford Textile Corporation (hereinafter, "Respondent"), a corporation, and the staff of the Consumer Product Safety Commission ("Commission"); and the Commission having jurisdiction over the subject matter and Respondent; and it appearing that the Settlement Agreement and Order is in the public interest. IT IS

*Ordered*, that the Settlement Agreement be and hereby is accepted, and it is

*Further ordered*, that upon final acceptance of the Settlement Agreement and Order, Respondent Crawford Textile Corporation shall pay to the United States Treasury a civil penalty in the amount of *One Hundred Fifty Thousand and 00/100 Dollars* ($150,000,000) in three (3) payments each. The first payment of *Fifty Thousand and 00/100 Dollars* ($50,000) shall be paid within twenty (20) days after service of the Final Order of the Commission (hereinafter, "the anniversary date"). The second payment of *Fifty Thousand and 00/100 Dollars* ($50,000.00) shall be paid within one (1) year of the anniversary date. The third payment shall be paid within two (2) years of the anniversary date. Upon the failure of Respondent Crawford Textile Corporation to make a payment or upon the making of a late payment by Respondent Crawford Textile Corporation (a) the entire amount of the civil penalty shall be due and payable, and (b) interest on the outstanding balance shall accrue and be paid at the federal legal rate of interest under the provisions of 28 U.S.C. 1961(a) and (b).

Provisionally accepted and provisioned Order issued on the 2nd day of October, 2000.

By Order of the Commission.

**Todd A. Stevenson,**
*Deputy Secretary, Consumer Product Safety Commission.*

[FR Doc. 00–25659 Filed 10–5–00; 8:45 am]
BILLING CODE 6355–01–M

## DEPARTMENT OF DEFENSE

### Department of the Army

### Army Science Board; Notice of Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting.

*Name of Committee:* Army Science Board (ASB).

*Date of Meeting:* October 30, 2000—November 1, 2000.

*Time of Meeting:* 0730—1700.

*Place:* Fort Benning, Georgia (Classroom Six in the Infantry Hall).

*Agenda:* The Army Science Board's (ASB) will hold their annual Fall Membership meeting at Fort Benning. This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. For further information, please contact Mr. Everett R. Gooch at (703) 604–7479.

**Wayne Joyner,**
*Program Support Specialist, Army Science Board.*

[FR Doc. 00–25759 Filed 10–5–00; 8:45 am]
BILLING CODE 3710–08–M

## DEPARTMENT OF DEFENSE

### Department of the Army

### Board of Visitors, United States Military Academy

**AGENCY:** United States Military Academy, Army, DoD.

**ACTION:** Notice of open meeting.

**SUMMARY:** In accordance with section 10 (a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following meeting:

*Name of Committee:* Board of Visitors, United States Military Academy.

*Date of Meeting:* 17 November 2000.

*Place of Meeting:* Superintendent's Conference Room, Taylor Hall, United States Military Academy, West Point, New York.

*Start Time of Meeting:* Approximately 1 p.m.

**FOR FURTHER INFORMATION CONTACT:** For further information, contact Lieutenant Colonel John L. Pothin, United States Military Academy, West Point, NY 10996–5000, (914) 938–4200.

**SUPPLEMENTARY INFORMATION:**

*Proposed Agenda:* Review of the Academic, Military and Physical Programs, Bicentennial Campaign, Athletic Program, Admissions at USMA and USMAPS Program update. All proceedings are open.

**Gregory D. Showalter,**
*Army Federal Register Liaison Officer.*

[FR Doc. 00–25657 Filed 10–5–00; 8:45 am]
BILLING CODE 3710–08–M

## DEPARTMENT OF DEFENSE

### Department of the Army, Corps of Engineers

### Withdrawal of Notice of Intent To Prepare a Draft Environmental Impact Statement for the Whitney Point Lake Project Modification, Susquehanna River Basin Water Management Feasibility Study, Broome County, NY

**AGENCY:** U.S. Army Corps of Engineers, DoD.

**ACTION:** Notice of withdrawal.

**SUMMARY:** The U.S. Army Corps of Engineers, Baltimore District, is withdrawing its intent to prepare a Draft Environmental Impact Statement (DEIS) for modification of the Whitney Point Lake, Broome County, New York. The Corps' environmental analyses have not identified any significant adverse impacts associated with the proposed action; therefore, intent to prepare a DEIS is hereby terminated. The Corps is preparing an Environmental Assessment (EA) for the proposed project modification. The draft EA evaluates the elimination of the 7-foot annual winter drawdown and the release of water from the lake for low flow augmentation (drought conditions) for the enhancement of aquatic habitat downstream of the lake, in the Otselic, Tioughnioga, and Chenango River reaches. The Susquehanna River Basin Commission is the non-Federal, cost-sharing partner and is participating in the feasibility study and draft EA development. The goal of this project is to provide for low flow augmentation during drought conditions and reduce the stress upon the aquatic ecosystem. Formulation of the restoration measures focus on examining existing conditions, maximizing potential benefits to the in-lake and downstream aquatic resources, and minimizing impacts to in-lake resources and recreational facilities due to lake drawdowns resulting from low flow augmentation releases. The draft feasibility report and integrated EA is scheduled to be released for a 30-day public review and comment period in October 2000.

**FOR FURTHER INFORMATION CONTACT:** Questions about the termination of the DEIS can be addressed to Ms. Maria E. de la Torre, Study Manager, Baltimore District, U.S. Army Corps of Engineers, ATTN: CENAB–PL–P, P.O. Box 1715, Baltimore, Maryland 21203–1715. E-mail address: maria.e.delatorre@usace.army.mil.

**SUPPLEMENTARY INFORMATION:** None.

**Gregory D. Showalter,**
*Army Federal Register Liaison Officer.*

[FR Doc. 00–25658 Filed 10–5–00; 8:45 am]
BILLING CODE 3710–41–M



## DEPARTMENT OF DEFENSE

### Department of the Navy

### Notice of Intent To Prepare an Environmental Impact Statement for Establishment of New and/or Modification of Existing Military Operations Areas Near Marine Corps Air Station Cherry Point, NC

**AGENCY:** Department of the Navy, DOD.

**SUMMARY:** Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, as implemented by the Council on Environmental Quality regulations (40 CFR Parts 1500–1508), the Department of the Navy announces its intent to prepare an Environmental Impact Statement (EIS) to evaluate the potential environmental consequences of the establishment of new and/or modification of existing Military Operations Areas (MOAs) near Marine Corps Air Station (MCAS) Cherry Point, North Carolina. The Federal Aviation Administration (FAA) will serve as a cooperating agency on this EIS.

**DATES:** All written scoping comments should be postmarked by November 20, 2000. Public scoping open houses will be held to receive oral and/or written comments on environmental concerns that should be addressed in the EIS on October 23, 2000, from 5:30 pm to 8:30 pm, in the Cape Hatteras High School, Highway 12, Buxton, North Carolina; October 24, 2000, from 5:30 pm to 8:30 pm, in the Northside High School, 7860 Free Union Church Road, Pinetown, North Carolina; October 25, 2000, from 5:30 pm to 8:30 pm, in the East Carteret High School, 3263 Highway 70, Beaufort, North Carolina; and October 26, 2000, from 5:30 pm to 8:30 pm, in the New Bern Riverfront Convention Center, 203 South Front Street, New Bern, North Carolina.

**ADDRESSES:** Written comments, statements and/or questions regarding scoping issues should be addressed to: Atlantic Division, Naval Facilities Engineering Command, (Code BD33KK), 1510 Gilbert Street, Norfolk, Virginia, 23511.

**FOR FURTHER INFORMATION CONTACT:** Ms. Kelly Knight, telephone (757) 322–4886, fax (757) 322–4894.

**SUPPLEMENTARY INFORMATION:** Establishment of new and/or modification of existing MOAs is required to provide military aviators with more realistic training opportunities. The purpose of this action is to eliminate required administrative airspeed reductions so that aircraft can maintain tactical flight profiles, and create additional SUA in order to optimize existing aviation training. Military aviators using existing SUA in the MCAS Cherry Point area are required to reduce airspeed to 250 knots or less prior to entering non-SUA below 10,000 feet mean sea level (MSL) and when transiting from one non-contiguous SUA to another. This airspeed reduction requires aircrews to initiate speed reduction prior to departing existing SUA, thereby terminating their tactical profile. This greatly diminishes training value due to decreased realism in tactical flight profiles and restricted tactical approach options, which require the repetition of non-tactical maneuvers during training. Second, expansion of SUA over land is desired to accommodate critical aircrew training requirements that do not require the use of restricted airspace such as air combat maneuvers, formation flight, air intercepts, staging and packaging of multiple aircraft strikes, and a larger acquisition area for simulated weapon systems delivery. These objectives cannot be met through non-SUA actions due to the space requirements to accommodate such operations and restrictive procedures inherent in Airspace for Special Use development and utilization.

Seven MOA alternatives have been identified so far, four individual MOA alternatives and three combination MOA alternatives, for consideration in the EIS. The individual MOA alternatives include: (1) Establishment of the Core MOA at a proposed location east of MCAS Cherry Point and extending from Cape Lookout north to Portsmouth Island and overlying the Cape Lookout National Seashore; (2) establishment of the Mattamuskeet MOA at a proposed location located northeast of MCAS Cherry Point and overlying portions of Pamlico, Beaufort, Hyde, Tyrrell, and Washington counties and the Lake Mattamuskeet and Swanquarter National Wildlife Refuges; (3) establishment of the Cherry MOA at a proposed location northwest of MCAS Cherry Point and overlying portions of Craven, Pamlico, Beaufort and Hyde counties; and (4) modification of the Pamlico B MOA located northeast of MCAS Cherry Point and overlying the Pamlico Sound and portions of Carteret, Hyde and Dare counties. Unlike the first three proposed MOAs, Pamlico B is an existing MOA the use of which would be modified by lowering its base altitude from 8,000 feet mean sea level (MSL) to 3,000 feet MSL. All other existing dimensions would remain unchanged. The proposed floor for any MOA alternative under consideration is 3,000 feet above ground level. In addition to these four individual MOA alternatives, three combination MOA alternatives have been identified. They include: (1) Core and Mattamuskeet MOAs, (2) Core and Cherry MOAs, and (3) Core and Pamlico B MOAs. The No Action Alternative, which would neither establish new nor modify existing MOAS, will also be analyzed in this EIS.

Environmental issues to be addressed in the EIS include, but are not limited to, the effects on wildlife and threatened and endangered species, public lands and waters, civilian aviation, public health and safety, recreation, and community noise.

The Marine Corps will initiate a scoping process for the purpose of determining the extent of issues to be addressed, and identifying significant issues related to this action. Public scoping meetings will be held as noted in the Dates section of this notice. These meetings will be advertised in area newspapers.

Marine Corps representatives will be available at these meetings to receive comments from the public regarding issues of concern to the public. Federal, state and local agencies, and interested individuals are encouraged to take this opportunity to identify environmental concerns that should be addressed during the preparation of the EIS. Agencies and the public are also invited and encouraged to provide written comment on scoping issues in addition to, or in lieu of, oral comments at the public meeting. To be most helpful, scoping comments should clearly describe specific issues or topics that the commentor believes the EIS should address. Written statements and/or questions regarding the scoping process should be mailed by November 20, 2000 to: Commander, Atlantic Division (Attn: Code BD33KK), Naval Facilities Engineering Command, 1510 Gilbert Street, Norfolk, Virginia 23511.

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Dated: September 25, 2000.

**Elsie L. Munsell,**

*Deputy Assistant Secretary of the Navy, (Environment and Safety).*

[FR Doc. 00–25655 Filed 10–5–00; 8:45 am]

BILLING CODE 3810–FF–P

## DEPARTMENT OF DEFENSE

### Department of the Navy

### Notice of Intent To Prepare an Environmental Impact Statement for the West Coast Introduction of the MV–22 Tilt-Rotor Aircraft to Third and Fourth Marine Aircraft Wings

**AGENCY:** Department of the Navy, DOD.

**ACTION:** Notice.

**SUMMARY:** Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969, as implemented by the Council on Environmental Quality regulations (40 CFR Parts 1500–1508), the Department of the Navy intends to prepare an Environmental Impact Statement (EIS) to evaluate the potential environmental effects of the West Coast introduction of the MV–22 tilt-rotor aircraft to the Third and Fourth Marine Aircraft Wings.

**DATES:** All written comments must be postmarked no later than December 1, 2000.

**ADDRESSES:** Seven public scoping meetings will be held to receive oral and/or written comments from agencies and interested individuals on environmental concerns that should be addressed in the EIS.

1. October 25, 2000, from 6:00 pm to 10:00 pm at The Desert Inn, 44219 Sierra Highway, Lancaster, California;
2. November 1, 2000, from 6:00 pm to 10:00 pm at the County Administrative Center, 940 Main Street, Room 211, El Centro, California;
3. November 2, 2000, from 6:00 pm to 9:00 pm at Yuma Main Library, Auditorium, 350 Third Avenue, Yuma, Arizona;
4. November 6, 2000, from 6:00 pm to 10:00 pm at Torrey Pines High School, Lecture Hall, 3710 Del Mar Heights Road, San Diego, California;
5. November 7, 2000, from 6:00 pm to 10:00 pm at San Clemente High School, Little Triton Theater, 700 Avenida Pico, San Clemente, California;
6. November 8, 2000, from 6:00 pm to 10:00 pm at Mira Mesa High School, Auditorium, 10510 Reagan Road, San Diego, California;
7. November 9, 2000, from 6:00 pm to 10:00 pm at the Fallbrook Community Center, 341 Heald Lane, Fallbrook, California.

**FOR FURTHER INFORMATION CONTACT:** Mr. Doug Gilkey, Southwest Division, Naval Facilities Engineering Command, 1220 Pacific Highway, San Diego, CA 92132–5190; telephone 619–532–3348, fax 619–532–2469, email *gilkeyde@efdsw.navfac.navy.mil.*

**SUPPLEMENTARY INFORMATION:** The MV–22 aircraft, known as the Osprey, represents a new technology in military aviation. This aircraft utilizes tilt-rotary technology to enable it to operate like a rotary-wing aircraft and a fixed-wing aircraft. The MV–22 will replace the aging CH–46 and CH–53 rotary-wing aircraft. In December 1999, the Department of the Navy completed an EIS for introduction of the MV–22 to the Second Marine Aircraft Wing supporting Fleet Marine Force training and operations at Marine Corps Base (MCB) Camp Lejeune, North Carolina.

The proposal being evaluated in this EIS is the basing and operation of seven squadrons of MV–22 aircraft in the Third Marine Aircraft Wing and two squadrons of MV–22 aircraft in the Fourth Marine Aircraft Wing. The primary mission of the MV–22 in the Third and Fourth Marine Aircraft Wings will be to support Fleet Marine Force training and operations at MCB Camp Pendleton; accordingly, alternatives to be considered in the EIS are all aviation facilities within the operational radius of the MV–22 from MCB Camp Pendleton.

This proposal includes construction and/or renovation of facilities to accommodate the aircraft, and associated equipment and personnel. Also, the proposal includes the use of existing and potentially new outlying fields and other landing areas, as well as existing and potentially new airspace for military aircraft in support of both military training and operations.

The Marine Corps is currently evaluating all DoD West Coast installations to develop reasonable MV–22 siting alternatives. To date, five installations have been identified as potential receiving sites: Marine Corps Air Station (MCAS) Camp Pendleton, MCAS Miramar, MCAS Yuma, Naval Air Facility El Centro, and Edwards Air Force Base. Application of screening criteria will identify a range of reasonable alternatives that will be evaluated in the EIS and other siting alternatives may be considered as appropriate.

Environmental issues to be addressed in the EIS include: geological resources, biological resources, water resources, noise, air quality, land use compatibility, cultural resources, socioeconomics, environmental justice, public health and safety, transportation/circulation, aesthetics, utilities, hazardous materials and solid waste.

The Marine Corps will initiate a scoping process for the purpose of determining the extent of issues to be addressed, and identifying the significant issues related to this action. The Marine Corps will hold public scoping meetings as noted in the Addresses Section of this notice. These meetings will be advertised in area newspapers.

Marine Corps representatives will be available at these meetings to receive comments from the public regarding issues of concern to the public. Federal, state and local agencies, and interested individuals are encouraged to take this opportunity to identify environmental concerns that should be addressed during the preparation of the EIS. Agencies and the public are also invited and encouraged to provide written comments on scoping issues in addition to, or in lieu of, oral comments at the public meeting. To be most helpful, scoping comments should clearly describe specific issues or topics that the commentor believes the EIS should address.

Written comments must be postmarked no later than December 1, 2000, and mailed to: Commander, Southwest Division, Naval Facilities Engineering Command, 1220 Pacific Highway, San Diego, CA 92132–5190 (Attn: Mr. Doug Gilkey).

Dated: September 30, 2000.

**Duncan Holaday,**

*Deputy Assistant Secretary of the Navy, (Installations and Facilities).*

[FR Doc. 00–25656 Filed 10–5–00; 8:45 am]

BILLING CODE 3810–FF–P

## DEPARTMENT OF EDUCATION

### Submission for OMB Review; Comment Request

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before November 6, 2000.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address Lauren_Wittenberg@omb.eop.gov.



**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: October 2, 2000.

**John Tressler,**

*Leader, Regulatory Information Management, Office of the Chief Information Officer.*

**Office of the Undersecretary**

*Type of Review:* New.

*Title:* Evaluation of the Public Charter Schools Program, Data Collection Clearance Package: Year 2 and Year 3 Submission.

*Frequency:* Annually.

*Affected Public:* State, Local, or Tribal Gov't, SEAs or LEAs; Federal Government.

*Reporting and Recordkeeping Hour Burden:*

Responses: 3,590

Burden Hours: 2,390.

*Abstract:* The evaluation of the Public Charter Schools Program (PCSP) is the first national study of federal support for charter schools. The contractor, SRI International, will gather data on charter school policies and practices at the state, charter school authorizer, and charter school levels. The study examines the use of PCSP funds at these levels, assesses the impact of flexibility provisions in states' charter school legislation, and assesses the effect of charter schools on student performance. Respondents include federal PCSP staff, state charter school coordinators, representatives of charter school authorizing agencies, charter schools, and parents.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346.

**Please Specify the Complete Title of the Information Collection When Making Your Request.**

Comments regarding burden and/or the collection activity requirements should be directed to Jacqueline Montague at (202) 708–5359 or via her internet address Jackie_Montague@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–25672 Filed 10–5–00; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF ENERGY

### Office of Science; Office of Science Financial Assistance Program Notice 01–02; Plasma Physics Junior Faculty Development Program

**AGENCY:** U.S. Department of Energy (DOE).

**ACTION:** Notice inviting grant applications.

**SUMMARY:** The Office of Fusion Energy Sciences (OFES) of the Office of Science (SC), U.S. Department of Energy hereby announces its interest in receiving grant applications for support under its Plasma Physics Junior Faculty Development Program. Applications should be from tenure-track faculty investigators who are currently involved in experimental or theoretical plasma physics research and should be submitted through a U.S. academic institution. The purpose of this program is to support the development of the individual research programs of exceptionally talented scientists and engineers early in their careers.

**DATES:** To permit timely consideration for awards in FY 2001, formal applications in response to this notice should be received on or before February 7, 2001.

**ADDRESSES:** Completed formal applications referencing Program Notice 01–02 should be forwarded to: U.S. Department of Energy, Office of Science, Grants and Contracts Division, SC–64, 19901 Germantown Road, Germantown, Maryland 20874–1290, ATTN: Program Notice 01–02. The above address must also be used when submitting applications by U.S. Postal Service Express, any other commercial mail delivery service or when hand carried by the applicant.

**FOR FURTHER INFORMATION CONTACT:** Dr. Ronald McKnight, U.S. Department of Energy, Office of Fusion Energy Sciences, Science Division, SC–55 (GTN), 19901 Germantown Road, Germantown, Maryland 20874–1290. Telephone: (301) 903–4597. E-mail: ronald.mcknight@science.doe.gov

**SUPPLEMENTARY INFORMATION:** The Plasma Physics Junior Faculty Development Program was started in FY 1997. A principal goal of this program is to identify exceptionally talented plasma faculty members early in their careers and assist and facilitate the development of their research programs. Eligibility for awards under this notice is, therefore, restricted to tenure-track regular academic faculty investigators who are conducting experimental or theoretical plasma physics research. Applications from Junior Faculty involved in any areas of plasma physics research, not only magnetic fusion, are welcomed and encouraged. Emphasis is to be placed on basic plasma science research. For applications to be considered for funding, certification of the status of the applicant as a tenure-track regular academic faculty member by the head of the applicant's academic department or other university/college certifying official will be required before the grant is awarded. Awards made under this program will help to maintain the vitality of university plasma physics research and assure continued excellence in the teaching of plasma physics and related disciplines.

It is anticipated that annual funding levels up to $150,000 per award may be made available for grants under this notice during FY 2001, contingent upon the availability of appropriated funds. Funding for equipment above this level will be considered on a case-by-case basis. The number of awards during FY 2001 will depend on the number of meritorious applications and the availability of appropriated funds. Multiple year funding of grant awards is expected, with funding provided on an annual basis subject to availability of funds. The usual duration of these grants is three years and they will not

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normally be renewed after the project period is completed. It is anticipated that at the end of the grant period, grantees will submit new grant applications to continue their research to the Department of Energy or other Federal funding agencies. For the Office of Science, these applications should follow the usual application process. Applications will be subjected to scientific merit review and will be evaluated against the following criteria, which are listed in descending order of importance as set forth in 10 CFR part 605:

1. Scientific and/or technical merit of the project;
2. Appropriateness of the proposed method or approach;
3. Competency of applicant's personnel and adequacy of proposed resources; and
4. Reasonableness and appropriateness of the proposed budget.

An additional review criteria will address educational aspects of the proposed work including the involvement of graduate and undergraduate students. These aspects should be discussed in the application.

General information about development and submission of applications, eligibility, limitations, evaluations and selection processes, and other policies and procedures are contained in the Application Guide for the Office of Science Financial Assistance Program and 10 CFR part 605 which is available on the World Wide Web at: http://www.science.doe.gov/production/grants/grants.html

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR Part 605.

Issued in Washington, DC on September 20, 2000.

**John Rodney Clark,**

*Associate Director of Science for Resource Management.*

[FR Doc. 00–25778 Filed 10–5–00; 8:45 am]

BILLING CODE 6450–01–U

## DEPARTMENT OF ENERGY

### Secretary of Energy Advisory Board; Notice of Open Teleconference Meeting

**AGENCY:** Department of Energy.

**SUMMARY:** This notice announces a open teleconference meeting of the Secretary of Energy Advisory Board's National Ignition Facility Laser System Task Force. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), requires that agencies publish these notices in the **Federal Register** to allow for public participation. The purpose of the teleconference is to discuss the draft final findings and recommendations of the National Ignition Facility Laser System Task Force. **Note:** Copies of the draft final report of the National Ignition Facility Laser System Task Force may be obtained from the following internet address http://www.hr.doe.seab or by contacting the Office of the Secretary of Energy Advisory Board at (202) 586–7092.

**NAME:** Secretary of Energy Advisory Board—National Ignition Facility Laser System Task Force.

**DATES:** Thursday, October 19, 2000, 1:30 p.m.—3 p.m., Eastern Time.

**ADDRESSES:** Participants may call the Office of the Secretary of Energy Advisory Board at (202) 586–7092 to reserve a teleconference line and receive a call-in number. Public participation is welcomed. However, the number of teleconference lines are limited and are available on a first come basis.

**FOR FURTHER INFORMATION CONTACT:** Mary Louise Wagner, Executive Director, or Richard Burrow, Deputy Director, Secretary of Energy Advisory Board (AB–1), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–7092 or (202) 586–6279 (fax).

**SUPPLEMENTARY INFORMATION:** The purpose of the NIF Task Force is to provide independent external advice and recommendations to the Secretary of Energy Advisory Board on the options to complete the National Ignition Facility (NIF) Project; to recommend the best technical course of action; and to review and assess the risks of successfully completing the NIF Project. The NIF Task Force will focus on the engineering and management aspects of the proposed method for accomplishing the assembly and installation of the NIF laser system. The Task Force's review will cover the full scope of assembly and installation and the ability, within the proposed approach, to achieve the cleanliness requirements established for the operation of the laser. The review will also address: (1) The engineering viability of the proposed assembly and activation method; (2) the assembly and installation cleanliness protocols; (3) the management structure; and (4) the adequacy of the cost estimating methodology.

**Tentative Agenda**

Thursday, October 19, 2000

1:30 p.m.—1:40 p.m. Welcome & Opening Remarks—Dr. John McTague, NIF Task Force Chairman

1:40 p.m.—2:00 p.m. Overview of the National Ignition Facility Laser System Task Force's Interim Findings and Recommendations—Dr. John McTague, NIF Task Force Chairman

2:00 p.m.—2:30 p.m. Public Comment Period

2:30 p.m.—3:00 p.m. NIF Task Force Review & Comment and Action—Dr. John McTague, NIF Task Force Chairman

3:00 p.m. Adjourn

This tentative agenda is subject to change.

*Public Participation:* In keeping with procedures, members of the public are welcome to observe the business of the NIF Task Force and submit written comments or comment during the scheduled public comment period. The Chairman of the Task Force is empowered to conduct the meeting in a fashion that will, in the Chairman's judgment, facilitate the orderly conduct of business. During its open teleconference meeting, the Task Force welcomes public comment. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. The Task Force will make every effort to hear the views of all interested parties. You may submit written comments to Mary Louise Wagner, Executive Director, Secretary of Energy Advisory Board, AB–1, US Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that had to be resolved.

*Minutes:* A copy of the minutes and a transcript of the open teleconference meeting will be made available for public review and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW, Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday except Federal holidays. Further information on the Secretary of Energy Advisory Board and its subcommittees may be found at the Board's web site, located at http://www.hr.doe.gov/seab.

Issued at Washington, DC, on October 3, 2000.

**Rachel M. Samuel,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 00–25769 Filed 10–5–00; 8:45 am]

BILLING CODE 6450–01–P



## DEPARTMENT OF ENERGY

### Office of Energy Efficiency and Renewable Energy

### Federal Energy Management Advisory Committee; Open Meeting

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces an open meeting of the Federal Energy Management Advisory Committee. The Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), requires that agencies publish these notices in the **Federal Register** to allow for public participation. This notice announces the first meeting of the Federal Energy Management Advisory Committee (FEMAC) under Executive Order 13123—"Greening the Government through Efficient Energy Management."

**DATES:** Monday, October 23, 2000; 1:30 p.m. to 5:00 p.m.; Tuesday, October 24, 2000; 9:00 a.m. to 4:00 p.m.

**ADDRESS:** Loews L'Enfant Plaza Hotel, 480 L'Enfant Plaza, SW., Washington, DC 20024.

**FOR FURTHER INFORMATION CONTACT:** Steven Huff, Designated Federal Officer for the Committee, Office of Federal Energy Management Programs, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; (202) 586–3507.

**SUPPLEMENTARY INFORMATION:**

*Purpose of Meeting:* To provide advice and guidance on the Federal Energy Management.

*Tentative Agenda:* Agenda will include discussions on the following:

Monday, October 23, 2000 and Tuesday October 24, 2000

- Energy-Savings Performance Contracts
- Utility energy-efficiency service contracts
- Procurement of ENERGY STAR (Registered Trademark) and other energy efficient products
- Building design
- Process energy use
- Applications of efficient and renewable energy technologies (including clean energy technologies) at Federal Facilities
- Public Comment

*Public Participation:* In keeping with procedures, members of the public are welcome to observe the business of the Federal Energy Management Advisory Committee. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of these items on the agenda, you should contact Steven Huff at (202) 586–3507 or *Steven.Huff@ee.doe.gov* (e-mail). You must make your request for an oral statement at least 5 business days before the meeting. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chair of the Committee will make every effort to hear the views of all interested parties. The Chair will conduct the meeting to facilitate the orderly conduct of business.

*Minutes:* The minutes of the meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room; Room 1E–190; Forrestal Building; 1000 Independence Avenue, SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on October 3, 2000.

**Rachel M. Samuel,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 00–25768 Filed 10–5–00; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ID–2932–001]**

### James R. Lientz, Jr; Order Granting Interventions, Dismissing Rehearing As Moot, and Directing Notification of Change in Status

Issued October 2, 2000.

Before Commissioners: James J. Hoecker, Chairman; William L. Massey, Linda Breathitt, and Curt Hébert, Jr.

In this order, the Commission dismisses as moot a request for rehearing, in light of subsequent and superseding Congressional action, of a letter order issued in this proceeding on August 13, 1998, that concluded that James R. Lientz, Jr. could only conditionally hold interlocking positions as Director of Georgia Power Company (Georgia Power) and President and Director of NationsBank of Georgia, N.A. (NationsBank Georgia).[1]

In addition, the Commission directs other individuals who have been granted authorization to hold an interlock and who believe they are affected by the above Congressional action to provide notice to us.

**Background**

On January 3, 1996, Mr. Lientz filed an application pursuant to section 305(b) of the Federal Power Act (FPA)[2] for Commission authorization to hold interlocking positions as Director of Georgia Power and President and Director of NationsBank Georgia. As explained in the August 13 Order, Georgia Power is a public utility for the purpose of section 305(b).[3] While neither NationsBank Georgia nor its parent may directly underwrite or participate in the marketing of the securities of a public utility, two affiliates of NationsBank Georgia may underwrite or participate in the marketing of the securities of public utilities. The Commission has found that these securities underwriting and marketing authorizations are attributed to NationsBank Georgia, and as a consequence, the proposed interlocking positions were found to be jurisdictional pursuant to section 305(b).[4]

In the August 13 Letter Order, the Director, Division of Opinions and Corporate Applications, Office of Electric Power Regulation, pursuant to delegated authority, explained.

[T]he Commission has observed that a senior executive or corporate officer has the ability to substantially influence company policies in such a manner as to jeopardize the best interests of the utility, its investors, and the consuming public. Accordingly, the Commission has held that this type of interlock requires the imposition of certain safeguards to prevent "opportunities for undue influence, failures in arms length bargaining, or other potential improprieties."

After consideration, it is concluded that the conditioned holding of the positions identified will not adversely affect public or private interests. Authorization to hold them is hereby granted subject to the condition that NationsBank Georgia (and its subsidiaries and affiliates) refrain from underwriting or participating in the marketing of securities (other than dealing in the secondary securities market) of Georgia Power (and its subsidiaries and affiliates) during the period Mr. Lientz holds any of the authorized interlocking positions.[5]

On rehearing, Mr. Lientz requests that the Commission no longer impose the underwriting ban as a condition of his interlock authorization. Mr. Lientz asserts that the underwriting ban "is no longer justified or necessary to protect the public interest,"[6] and that changed circumstances warrant the Commission

[1] James R. Lientz, Jr., 84 FERC ¶ 62,143 (1998) (August 13 Letter Order).

[2] 16 U.S.C. 825d(b) (1994).

[3] 84 FERC at 64,226.

[4] *See id.* at 64,226 & n.3.

[5] *Id.* at 64,226 (footnotes omitted).

[6] Request for Rehearing at 2.

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ceasing to impose the underwriting ban as a condition of approving the type of interlock at issue in this proceeding.

Mr. Lientz also requests that, in lieu of the underwriting ban, the Commission consider the use of two alternative, and less onerous, conditions when approving an interlock between a public utility and an underwriting firm. Specifically, that:

(i) the applicant would refrain from participating, directly, or indirectly, as director or officer of the public utility or the affected underwriting firm (or such underwriting firm's parent), in any decisions regarding the financing of the public utility (or its affiliate(s)) by such underwriting firm; or

(ii) the applicant would prove, to the satisfaction of a majority of the disinterested directors of the public utility and the affected underwriting firm, respectively, that the proposed transactions(s) between the public utility and the underwriting firm are fair and reasonable to the utility's shareholders and ratepayers, such proof to be evidenced by a vote of the disinterested directors of the public utility and the affected underwriting firm.[7]

On September 14, 1998, Georgia Power filed an untimely motion to intervene and a brief in support of Mr. Lientz's request for rehearing. On April 20, 1999, first Union Corporation (First Union) filed an untimely motion to intervene and an amicus brief in support of granting rehearing to reconsider whether the Commission's current policy on interlocks between banks and public utilities should be continued.

**Subsequent and Superseding Congressional Action**

On November 12, 1999, the President signed into law the Gramm-Leach-Bliley Financial Modernization Act (Financial Modernization Act).[8] Among other things, this legislation amends section 305(b) to include four conditions, and if any one of these were met, they would remove from our jurisdiction a person seeking to hold an interlocking directorate.[9] On November 18, 1999, First Union filed a motion to lodge the Financial Modernization Act.

**Discussion**

Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, we will grant the untimely motions to intervene of Georgia Power and First Union, given the unique circumstances present here, their interest in the outcome of this proceeding, and the absence of any prejudice or delay.[10]

We will dismiss as moot the request for rehearing. As noted above, subsequent to the August 13 Letter Order and Mr. Lientz's request for rehearing, Congress amended section 305(b). Section 305(b)(2)(B) now provides, in relevant part, that the section 305(b) ban on holding interlocking directorates, absent Commission authorization, does not apply if the person holding the interlock:

(i) does not participate in any deliberations or decisions of the public utility regarding the selection of a bank, trust company, banking association, or firm to underwrite or participate in the marketing of securities of the public utility, if the person serves as an officer or director of a bank, trust company, banking association, or firm that is under consideration in the deliberation process;

(ii) the bank, trust company, banking association, or firm of which the person is an officer or director does not engage in the underwriting of, or participate in the marketing of, securities of the public utility of which the person holds the position of officer or director;

(iii) the public utility for which the person serves or proposes to serve as an officer or director selects underwriters by competitive procedures; or

(iv) the issuance of securities of the public utility for which the person serves or proposes to serve as an officer or director has been approved by all Federal and State regulatory agencies having jurisdiction over the issuance.[11]

Thus, in amending section 305(b)(2), Congress has eliminated, in certain circumstances, the need for the holder of the interlocks to obtain Commission authorization for such interlocks. These circumstances include, as relevant here, where the underwriting firm[12] involved in an interlock is under consideration to underwrite the securities of the public utility involved in the interlock and where persons who would hold the interlocks do not themselves participate in the public utility's selection of the underwriting firm.[13]

As noted above, in his request for rehearing, Mr. Lientz proposed that as a condition for Commission approval of an interlock, "the applicant would refrain from participating, directly, or indirectly, as director or officer of the public utility or the affected underwriting firm (or such underwriting firm's parent), in any decisions affecting the financing of the public utility (or its affiliate(s)) by such underwriting firm."[14] We interpret Mr. Lientz' proposed condition as effectively agreeing to the first condition of section 305(b)(2)(B), and we direct Mr. Lientz to notify the Commission within 30 days if he believes that further Commission action is required.

In light of the new legislation pertaining to section 305(b)(2)(B)(i) and our understanding that Mr. Lientz meets at least one of the conditions of section 305(b)(2)(B), he no longer needs Commission authorization to hold the interlocking directorate. Thus, we will dismiss as moot Mr. Lientz's request for rehearing.

We also take this opportunity to state that if there are other individuals who have been granted authorization to hold interlocking directorates, but believe that they now do not need such Commission authorization because of section 305(b)(2)(B), they should notify the Commission of this within 30 days of the date of publication in the **Federal Register**, pursuant to section 45.5(b) of the Commission's regulations.[15]

*The Commission orders:*

(A) Georgia Power's and First Union's untimely motions to intervene are hereby granted.

(B) Mr. Lientz's request for rehearing of the August 13 Order is hereby dismissed as moot, as discussed in the body of this order.

(C) Any individual who has been granted authorization to hold an interlock who believes he is affected by the Financial Modernization Act is hereby directed to so notify the Commission, within thirty (30) days of the date of publication of this order in the **Federal Register**, as discussed in the body of this order.

(D) The Secretary is hereby directed to publish this order in the **Federal Register**.

By the Commission.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–25664 Filed 10–5–00; 8:45 am]

BILLING CODE 6712–01–M

## ENVIRONMENTAL PROTECTION AGENCY

**[ER–FRL–6611–5]**

**Environmental Impact Statements; Notice of Availability**

*Responsible Agency:* Office of Federal Activities, General Information (202) 564–7167 or www.epa.gov/oeca/ofa

Weekly receipt of Environmental Impact Statements

Filed September 25, 2000 Through September 29, 2000

Pursuant to 40 CFR 1506.9.

*EIS No. 000335, Final EIS, FHW, WI, WI–113* Wisconsin River Crossing at Merrimac, Improvements, US Coast Guard and COE Section 10 and 404 Permits, Columbia and Sauk Counties, WI, Due: November 06, 2000, Contact: Peter Garcia (608) 829–7513.

*EIS No. 000336, Draft EIS, BLM, MA,* New Bedford Whaling National Historical Park, General Management Plan, Implementation, Bristol County, MA , Due: December 01, 2000, Contact: John Piltzecker (508) 996–4095.

*EIS No. 000337, Draft Supplement, IBR, CA,* East Bay Municipal Utility District Supplemental Water Supply Project and Water Service Contract Amendment, New and Additional Information on Alternatives, American River Division of the Central Valley Project (CVP), Sacramento County, CA, Due: November 20, 2000, Contact: Rob Schroeder (916) 988–1707.

*EIS No. 000338, Draft EIS, STB, SD, WY, MN,* Powder River Basin Expansion Project, Construction of New Rail Facilities, Finance Docket No. 33407 Dakota, Minnesota and Eastern Railroad, SD, WY and MN, Due: November 20, 2000, Contact: Victoria Rutson (202) 565–1545.

*EIS No. 000339, Final EIS, AFS, KY,* Daniel Boone National Forest, Implementation, Salvage Harvest Due to 1998 Storm Damage Timber, McCreary and Pulaske County, KY, Due: November 06, 2000, Contact: Benjamin T. Washington (606) 679–2018.

*EIS No. 000340, Final EIS, AFS, ID,* Warm Springs Ridge Vegetation Management Project, Improve Forest Condition, Boise National Forest, Cascade Resource Area, Boise County, ID, Due: November 06, 2000, Contact: Kathy Ramirez (208) 392–6681.

*EIS No. 000341, Final Supplement, COE, CA,* Port of Los Angeles Channel Deepening Project, To Improve Navigation and Disposal of Dredge Material for the Inner Harbor Channels, Los Angeles County, CA, Due: November 06, 2000, Contact: Larry Smith (213) 452–3846.

*EIS No. 000342, Draft EIS, NOA, AK,* Cook Inlet Beluga Whale Stock, Federal Actions Associated with the Management and Recovery, Implementation, Cook Inlet, AK, Due: November 20, 2000, Contact: P. Michael Payne (907) 586–2735.

*EIS No. 000343, Draft EIS, UAF, TX,* Brooks City Base Project, To Improve Mission Effectiveness and Reduce Cost of Quality Installation Support, Implementation, Brooks Air Force Base, Bexar County, TX, Due: November 20, 2000, Contact: Jonathan D. Farthing (210) 536–3668.

*EIS No. 000344, Draft EIS, BLM, UT,* 3R Minerals Coal Bed Canyon Mine Plan, Approval, Grand Staircase-Escalante National Monument, Garfield County, UT, Due: December 04, 2000, Contact: Paul Chapman (435) 644–4309.

**Amended Notices**

*EIS No. 000196, Draft EIS, NPS, MN,* Voyageurs National Park General Management, Visitor Use and Facilities Plans, Implementation, Koochiching and St. Louis Counties, MN, Due: October 23, 2000, Contact: Kathleen Przybylski (218) 283–9821. Revision of FR notice published on 06/23/2000: CEQ Comment Date has been Extended from 09–22–2000 to 10/23/2000.

Dated: October 2, 2000.

**Joseph C. Montgomery,**

*Director, NEPA Compliance Division, Office of Federal Activities.*

[FR Doc. 00–25787 Filed 10–5–00; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[ER–FRL–6611–6]**

**Environmental Impact Statements and Regulations; Availability of EPA Comments**

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 14, 2000 (65 FR 20157).

**Draft EISs**

*ERP No. D–AFS–K65359–00 Rating EC2,* Northern Sierra Amendment to the Toiyabe Land and Resource Management, To Unify and Revise Management Direction, Humboldt-Toiyabe National Forest, Carson Ranger District, Stanislaus National Forest, Lake Tahoe Basin Management Unit, Douglas and Washoe Counties, NV and Alpine and Toulomne Counties, CA.

*Summary:* EPA expressed concerns related to purpose and need and the timing of the plan amendment in advance of the 15 year deadline for Forest Plan revision set for June 23, 2001. Specific concerns were expressed regarding the lack of standards and guidelines promoting road decommissioning pursuant to the Chief's Natural Resource Agenda and the Clean Water Action Plan.

*ERP No. D–AFS–L65362–ID Rating EC2,* West Mountain North Project, Timber Harvest, Road Construction and Reconstruction), Boise National Forest, Cascade Ranger District, Valley County, ID.

*Summary:* EPA expressed environmental concerns over water and air quality. EPA requested that further information on these concerns be provided in the final EIS.

*ERP No. D–COE–E30041–NC Rating EC2,* Dare County Beaches (Bodie Island Portion) Hurricane Wave Protection and Beach Erosion Control, The towns of Nags Head, Kill Devil Hills, Kitty Hawk, Dare County, NC.

*Summary:* EPA expressed environmental concerns due to the open-ended loss of biotic stability along the project shoreline which was not mitigated by the incremental gain in sea turtle nesting habitat.

*ERP No. D–FRC–F03008–00 Rating EO2,* Guardian Pipeline Project, Proposal to Construct and Operate an Interstate Natural Gas Pipeline that would extend from Joliet (Will County), IL and Ixonia (Jefferson County), WI.

*Summary:* EIS raised objections and identified several issues that were not adequately addressed in the Draft EIS, including the cumulative impacts analysis, mitigation measures, and the definition of the project purpose and need.

*ERP No. D–IBR–K29000–AZ Rating EC2,* Central Arizona Project (CAP), Allocation of Water Supply and Long-Term Contract Execution, Maricopa, Pinal and Pima Counties, AZ.

*Summary:* EPA expressed concern that there was minimal discussion and commitment to available tools for enhancing water management flexibility/reliability and providing long-term sustainable use of the allocated water. EPA also had concerns regarding the potential impacts to soil salinity, land subsidence, sustainable groundwater yields, and the specifics of the long-term water supply contracts. EPA did express strong support for the underlying goal of a long-term sustainable water supply by achieving a balance between water use/demand and available water resources EPA also urged Reclamation to take a role beyond

[7] *Id.* at 43.

[8] Pub. L. 106–102, 113 Stat. 1338 (1999).

[9] 16 U.S.C.A. 825d(b)(2) (West Supp. 2000).

[10] 18 CFR 385.214(d)(2000).

[11] 18 U.S.C.A. 825d(b)(2)(B) (West Supp. 2000).

[12] We use the phrase "underwriting firm" as a short-hand description of the longer, statutory "bank, trust company, banking association, or firm."

[13] *See* 16 U.S.C.A. 825d(b)(2)(B)(i) (West Supp. 2000).

[14] Request for Rehearing at 43.

[15] 18 CFR 45.5(b) (2000).

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just mere allocation of CAP water and to promote efficient, equitable and sustainable use of the allocated water as part of this Federal action.

**Final EISs**

*ERP No. F–AFS–J65315–UT,* Monroe Mountain Ecosystem Restoration Project, Implementation, Fishlake National Forest, Richfield Ranger District, Sevier and Piute Counties, UT.

*Summary:* EPA has no objection to the proposed action, as this document adequately responded to EPA's previous comments on the draft EIS.

*ERP No. F–AFS–L65322–AK,* Luck Lake Timber Sales Project, Implementation, Tongass National Forest, Thorne Bay Ranger District, Prince of Wales Island, AK.

*Summary:* No formal comment letter was sent to the preparing agency.

*ERP No. F–AFS–L65356–ID,* Box Canyon Timber Sale, Vegetative Management, Implementation, Palisades Ranger District, Caribou-Targhee National Forest, Bonneville County, ID.

*Summary:* No formal comment letter was sent to the preparing agency.

*ERP No. F–FHW–G40155–TX,* TX–45 Highway Project, Extending from Anderson Mill Road just west of US 183 to Farm-to-Market Road 685 (FM–685) east of IH–35, Funding, Williamson and Travis Counties, TX.

*Summary:* EPA has no objection to the action as proposed.

*ERP No. F–NPS–J26002–MT,* Lake McDonald/Park Headquarters Wastewater Treatment System Rehabilitation, Implementation, COE Section 404 Permit, Glacier National Park, A Portion of Waterton-Glacier International Peace Park, Flathead and Glacier Counties, MT.

*Summary:* EPA supports the preferred alternatives, but recommends that the site location of the ultimate wastewater treatment plant sludge disposal be evaluated and established. The information is needed to fully assess and mitigate all potential environmental impacts of the management actions.

*ERP No. F–SFW–L65334–WA,* Simpson Washington Timberlands Forest Management and Timber Harvesting Project, Proposed Issuing of a Multiple Species Incidental Take Permit, Mason, Thurston and Gray Harbor Counties, WA.

*Summary:* No formal comment letter was sent to the preparing agency.

Dated: October 3, 2000.

**Joseph C. Montgomery,**

*Director, NEPA, Office of Federal Activities.*

[FR Doc. 00–25788 Filed 10–5–00; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

[FRL–6883–3]

### Open Meeting of the Industrial Non-Hazardous Waste Stakeholders Focus Group

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of open meeting of the Industrial Non-Hazardous Waste Stakeholders Focus Group.

**SUMMARY:** As required by section 10 (a)(2) of the Federal Advisory Committee Act (Public Law 92–463), EPA is giving notice of the seventh meeting of the Industrial Non-Hazardous Waste Policy Dialogue Committee, also known as the Industrial Non-Hazardous Waste Stakeholders Focus Group. The purpose of this Committee is to advise EPA and ASTSWMO (the Association of State and Territorial Solid Waste Management Officials) in developing voluntary guidance for the management of industrial non-hazardous waste in new landfills, waste piles, surface impoundments, and land application units. The Focus Group facilitates the exchange of information and ideas among the interested parties relating to the development of the final "Guide for Industrial Waste Management." The purpose of the seventh meeting will be to review and discuss issues associated with the public comments received on the "Draft Guide for Industrial Waste Management." Major areas of discussion will include the public comments on the draft air tool (IWAIR) and the draft ground-water tool (IWEM), as well as suggested changes to the individual chapters of the Guide. In addition, there will be an opportunity for limited public comment at the end of each day of the meeting.

**DATES:** The committee will meet on November 1 and 2, 2000, from 9:00 a.m. to 5:00 p.m. on November 1, and from 8:30 a.m. to 12:00 p.m. on November 2.

**ADDRESSES:** The location of the meeting is the Governor's House, 1615 Rhode Island Ave., NW, Washington, D.C. 20001. The phone number is 202–296–2100. The seating capacity of the room is approximately 75 people, and seating will be on a first-come basis. Supporting materials are available for viewing at Docket F–1999–IDWA–FFFFF in the RCRA Information Center (RIC), located at Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington, VA. The RIC is open from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding federal holidays. To review docket materials, the public must make an appointment by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $.15/page. Most of the material to be discussed at the November Focus Group meeting will be available for viewing in the above docket on and after October 17, 2000. For general information, contact the RCRA Hotline at 1–800–424–9346 or TDD 1–800–553–7672 (hearing impaired). In the Washington metropolitan area, call 703–412–9610 or TDD 703–412–3323.

**FOR FURTHER INFORMATION CONTACT:** Persons needing further information on the committee should contact John Sager, Municipal and Industrial Solid Waste Division, Office of Solid Waste, at (703) 308–7256.

**SUPPLEMENTARY INFORMATION:**

**Background**

EPA and ASTSWMO formed a State/EPA Steering Committee in 1996 to jointly develop voluntary facility guidance regarding the management of industrial nonhazardous waste in new land-based disposal units. The purpose of the guidance document is to provide a guide to facility managers, State and Tribal environmental staff, and members of the general public so that safe industrial waste management can be achieved. The current draft Guide addresses such topics as appropriate controls for ground-water protection, liner designs, air emissions, run-on/run-off, public participation, daily operating practices, monitoring and corrective action, and closure and post-closure considerations. In addition, the draft Guide addresses such topics as waste characterization, pollution prevention, and building partnerships.

The draft Guide and the CD–ROM, on which the Guide and modeling tools were placed, were noticed in the *FR* in June 1999. The public comment period ended in January 2000. The State/EPA Steering Committee will continue to convene this Stakeholders Focus Group in order to obtain recommendations from those individuals who represent a broad spectrum of public interest groups and affected industries. All recommendations from Focus Group participants are forwarded to the State/EPA Steering Committee for consideration, as the Stakeholders Focus Group does not strive for a consensus.

Copies of the minutes of the past six Stakeholder Focus Group meetings have previously been made available through the original docket for this project (F–96–INHA–FFFFF) at the RCRA Information Center. The past six Focus Group meetings were held on April 11–12, 1996, September 11–12, 1996, February 19–20, 1997, May 20–21, 1997, October 8–9, 1997, and March 18–19, 1998.

Dated: September 26, 2000.

**Elizabeth A. Cotsworth,**

*Director, Office of Solid Waste.*

[FR Doc. 00–25744 Filed 10–5–00; 8:45 am]

BILLING CODE 6560–50–P



## ENVIRONMENTAL PROTECTION AGENCY

[OPP–00439E; FRL–6748–7]

### Pesticide Program Dialogue Committee (PPDC): Inert Disclosure Stakeholder Workgroup; Open Meeting

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of meeting.

**SUMMARY:** This notice announces a conference call meeting of the Inert Disclosure Stakeholder Workgroup. The workgroup was established to advise the Pesticide Program Dialogue Committee on ways of making information on inert ingredients more available to the public while working within the mandates of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and related Confidential Business Information concerns.

**DATES:** The meeting will be held by conference call on Tuesday, October 17, 2000 from 12:00 pm to 3:00 pm EST.

**ADDRESSES:** Members of the public may listen to the meeting discussions on site at: Crystal Mall #2 (CM #2), 1921 Jefferson Davis Highway, Arlington, VA; conference Room 1123. Seating is limited and will be available on a first come first serve basis.

**FOR FURTHER INFORMATION CONTACT:** By mail: Cameo Smoot, Office of Pesticide Programs (7506C), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, telephone: (703) 305–5454. Office locations: 11th floor, CM #2, 1921 Jefferson Davis Highway, Arlington, VA. E-mail smoot.cameo@epa.gov.

**SUPPLEMENTARY INFORMATION:** The Inert Disclosure Stakeholder Workgroup is composed of a participants from the following sectors: environmental/public interest and consumer groups; industry and pesticide users; Federal, State and local governments; the general public; academia and public health organizations.

The Inert Disclosure Stakeholder Workgroup, will advise the EPA through the Pesticide Program Dialogue Committee (PPDC), on potential measures to increase the availability to the public of information about inert ingredients (also called "other ingredients") under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Among the factors the workgroup has been asked to consider in preparing its recommendations are: existing law regarding inert ingredients and Confidential Business Information (CBI); current Agency processes and policies for disseminating inert ingredient information to the public, including procedures for the protection of CBI; informational needs for a variety of stakeholders; and business reasons for limiting the disclosure of inert ingredient information.

The Inert Disclosure Stakeholder Workgroup meeting is open to the public. Written public statements are welcome and should be submitted to the OPP administrative docket OPP–00439A. Any person who wishes to file a written statement can do so before or after the conference call. These statements will become part of the permanent file and will be provided to the Workgroup members for their information.

**How and to Whom Do I Submit the Comments?**

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00439A in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments and/or data electronically by e-mail to: *"opp-docket@epa.gov,"* or you can submit a computer disk as described above in paragraphs 1. and 2. of this section. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–00439A. Electronic comments may also be filed online at many Federal Depository Libraries.

**List of Subjects**

Environmental protection. pesticides, inerts, PPDC.

Dated: September 29, 2000.

**Marcia E. Mulkey,**

*Director, Office of Pesticide Programs.*

[FR Doc. 00–25752 Filed 10–5–00; 8:45 am]

BILLING CODE 6560–50–S

## ENVIRONMENTAL PROTECTION AGENCY

[FRL–6882–8]

### Policy on Alternative Dispute Resolution

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice.

**SUMMARY:** This document publishes the draft final policy of the United States Environmental Protection Agency (EPA) regarding the use of alternative dispute resolution ("ADR"). The Agency is requesting public comment on this draft document. This document replaces the Interim Statement of Policy on Alternative Dispute Resolution (65 FR 13383) which was issued on March 13, 2000.

The draft final policy is published in the **Federal Register** to affirm EPA's commitment to the use of ADR in Agency activities. The draft final policy discusses the types of situations in which ADR should be considered, how EPA is organized to support ADR, confidentiality of information in ADR processes, efforts to promote a commitment to and awareness of ADR within the Agency, and how the success of ADR will be measured. Nothing in this document creates any right or benefit by a party against the United States.

**DATES:** Comments must be submitted on or before December 5, 2000.

**ADDRESSES:** Please address comments to W. Robert Ward, Dispute Resolution Specialist, by mail at Conflict Prevention and Resolution Center, U.S. EPA, Ariel Rios Building, 1200

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Pennsylvania Avenue, NW., (MC 2310A), Washington, DC 20460. Comments sent by overnight delivery services or by courier should be addressed to W. Robert Ward, Conflict Prevention and Resolution Center, U.S. EPA, Ariel Rios Building, Room 6330F, 1200 Pennsylvania Avenue, N.W. 20004. Comments may also be submitted by fax at (202) 501–1715, or by e-mail at *ward.robert@epa.gov.*

**FOR FURTHER INFORMATION CONTACT:** W. Robert Ward, Dispute Resolution Specialist, U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., (MC 2310A), Washington, DC 20460; (202) 564–2922; *ward.robert@epa.gov.*

**SUPPLEMENTARY INFORMATION:** This draft final policy is consistent with the Administrative Dispute Resolution Act of 1996 (Pub. L. 104–320, Oct. 19, 1996, 5 U.S.C. 571–583), which requires, in part, that each federal agency adopt a policy that addresses the use of ADR. It is also consistent with provisions of the Civil Justice Reform Act (Pub. L. 101–650, Dec. 1, 1990, 28 U.S.C. 471–482), the Alternative Dispute Resolution Act of 1998 (Pub. L. 105–315, Oct. 30, 1998, 28 U.S.C. 651–658), the Regulatory Negotiation Act of 1996 (Pub. L. 104–320, Oct. 19, 1996, 5 U.S.C. 561–570); the Federal Acquisition Streamlining Act (Pub. L. 103–355, Oct. 13, 1994, 41 U.S.C. 405); the Contracts Disputes Act (41 U.S.C. 601–613); Executive Order 12988, "Civil Justice Reform," February 5, 1996; Executive Order 12979, "Agency Procurement Protests," October 25, 1995; the Federal Acquisition Regulation (48 CFR 33.204); Equal Employment Opportunity Commission regulations (29 CFR part 1614); Presidential Memorandum, "Designation of Interagency Committees to Facilitate and Encourage Use of Alternative Means of Dispute Resolution and Negotiated Rulemaking," May 1, 1998; and the Report of the National Performance Review, "Creating a Government that Works Better and Costs Less," September 7, 1993.

On March 13, 2000, EPA published an Interim Statement of Policy on Alternative Dispute Resolution in the **Federal Register.** The document published today supercedes and replaces the Interim Statement of Policy. EPA requested public comment on the Interim Statement of Policy as input for the development of this draft final policy. The Agency received one comment in response to the Interim Statement of Policy. The comment was generally supportive of the application of ADR in the environmental arena. It included suggestions regarding the qualifications for neutral third parties selected to assist in resolving complex environmental disputes. It also supported the concept of flexible ADR techniques, including the use of minitrials in appropriate circumstances. The draft final policy does not address neutral third party qualification criteria explicitly, although the Agency recognizes that the success of an ADR proceeding often depends upon the selection of a neutral third party with the correct combination of background, skills, and experience for the particular matter. The Agency chose not to establish neutral third party qualification criteria in the context of the draft final policy because this policy is intended to apply to a wide range of ADR activities. The Agency believes that desirable qualification criteria may differ based on the type of dispute, the participating parties, and the type of ADR technique being used. With regard to the use of minitrials and other flexible ADR techniques, the draft final policy explicitly authorizes the use of minitrials among a variety of ADR techniques.

## EPA Policy on Alternative Dispute Resolution

*Purpose*

The U.S. Environmental Protection Agency (EPA or the Agency) strongly supports the use of alternative dispute resolution (ADR) to deal with disputes and potential conflicts. ADR refers to voluntary techniques for preventing and resolving conflict with the help of neutral third parties. Experience within this Agency and elsewhere shows that ADR techniques for preventing and resolving conflicts can have many benefits including:

- Faster resolution of issues;
- More creative, satisfying and enduring solutions;
- Reduced transaction costs;
- Fostering a culture of respect and trust among EPA, its stakeholders, and its employees;
- Improved working relationships;
- Increased likelihood of compliance with environmental laws and regulation;
- Broader stakeholder support for agency programs; and
- Better environmental outcomes.

ADR techniques can be effective in both internal Agency disagreements and external conflicts. ADR allows the Agency to have a more productive work environment and to work better with State, Tribal, and local governments, the regulated community, environmental and public health organizations, and the public. This policy is intended to be flexible enough to respond to the full range of disputes EPA faces, and to achieve these objectives:

- Promote understanding of ADR techniques;
- Encourage routine consideration of ADR approaches to anticipate, prevent, and resolve disputes;
- Increase the use of ADR in EPA business;
- Highlight the importance of addressing confidentiality concerns in ADR processes;
- Promote systematic evaluation and reporting on ADR at EPA; and
- Further the Agency's overall mission through ADR program development.

*What Does EPA Mean by the Term "ADR"?*

EPA adopts the definition of ADR in the Administrative Dispute Resolution Act of 1996 (ADRA): "Any procedure that is used to resolve issues in controversy, including but not limited to, conciliation, facilitation, mediation, fact finding, minitrials, arbitration, and use of ombuds, or any combination thereof." 5 USC 571(3). All these techniques involve a neutral third party. Depending on the circumstances of a particular dispute, neutrals may be Agency employees or may come from outside EPA. Typically, all aspects of ADR are voluntary, including the decision to participate, the type of process used, and the content of any final agreement.

*In What Types of Situations Does EPA Encourage the Use of ADR?*

EPA encourages the use of ADR techniques to prevent and resolve disputes with external parties in many contexts, including adjudications, rulemaking, policy development, administrative and civil judicial enforcement actions, permit issuance, protests of contract awards, administration of contracts and grants, stakeholder involvement, negotiations, and litigation. In addition, EPA encourages the use of ADR techniques to prevent and resolve internal disputes such as workplace grievances and equal employment opportunity complaints, and to improve labor-management partnerships.

While ADR may be appropriate in any of these contexts, the decision to use an ADR technique in a particular matter must reflect an assessment of the specific parties, issues, and other factors. Considerations relevant to the appropriateness of ADR for any particular matter include, at a minimum, the guidelines in section 572 of the ADRA and any applicable Agency guidance on particular ADR techniques or ADR use in specific types of disputes. ADR program staff at EPA headquarters and in the Regions can help the parties assess whether and which form of ADR should be used in a particular matter.



*How Is EPA Organized To Support ADR?*

EPA's Conflict Prevention and Resolution Center (CPRC) in the Office of General Counsel (OGC) provides ADR services to the entire Agency. The Agency's Dispute Resolution Specialist, designated under the ADRA, is the head of the CPRC. Because the Dispute Resolution Specialist's responsibilities include development and implementation of all Agency ADR policy, Headquarters Offices and Regions are expected to coordinate with the CPRC from the earliest stages in developing any program-specific ADR guidance and in addressing issues during ADR policy implementation. The CPRC also will administer Agency-wide ADR programs, coordinate case management and evaluation, and provide support to program-specific ADR activities. Building on existing ADR efforts at EPA, the CPRC assists other Agency offices in developing effective ways to anticipate, prevent, and resolve disputes, and makes neutral third parties more readily available for those purposes.

Other EPA offices, including the Office of Enforcement and Compliance Assurance, and the Office of Administrative Law Judges, are using ADR to resolve conflicts between the Agency and regulated entities. The Office of Policy, Economics and Innovation and the Office of Cooperative Environmental Management, in partnership with many EPA program offices, use ADR to provide opportunities for stakeholders to contribute to the design of Agency actions that affect them.

EPA Regions have ADR programs that meet their particular needs. For example, in some cases, EPA Regions have identified staff experts to coordinate workplace, enforcement, and other ADR activities. EPA Regions have also used internal and external neutral third parties to foster stakeholder involvement, resolve workplace disputes, help in organizational problem-solving, and mediate enforcement cases. The CPRC will continue to provide support to existing Regional ADR programs and is available to help in developing new ADR efforts.

Anyone interested in exploring the possibility of ADR in an EPA matter can contact the CPRC, a Regional ADR program, or a program office with an established ADR function for information and assistance regarding mechanics, process design, or advice on what to expect from an ADR process.

*How Should Confidentiality Be Handled in ADR Processes?*

A thorough discussion of confidentiality is often critical to success in ADR. It is EPA's policy to maintain confidentiality in ADR processes consistent with the ADRA and other applicable law. Section 574 of the ADRA reflects a balancing of the need for confidentiality in ADR with the dual goals of open government and effective law enforcement. Other federal laws may impact the confidentiality of information in specific cases, potentially compelling disclosure or enhancing protection against disclosure (*e.g.*, Inspector General Act, Freedom of Information Act, Privacy Act). The CPRC can provide further information on authorities that may impact confidentiality in a federal ADR process.

The confidentiality needs and concerns of the parties must be discussed early in every ADR process. EPA staff, the parties, and the neutral third party should be aware of how confidentiality operates in the context of federal ADR. Within this context, the parties and the neutral third party should work together to establish a common understanding of how confidentiality protections apply in a specific process. In most cases, this understanding should be recorded in a written confidentiality agreement. This initial work will benefit all parties by clarifying expectations regarding confidentiality before full initiation of the ADR process.

*How Will EPA Promote Commitment to and Awareness of ADR Within the Agency?*

Information Sources

The CPRC, in consultation with Agency program offices and Regions, will compile existing information and develop additional information on ADR practice at EPA and will make this information available to EPA personnel through a website and through the CPRC. Information may include model agreements to mediate, case selection criteria, descriptions of ADR processes, mechanisms for accessing external neutral third parties, case studies, guidance on confidentiality and evaluating ADR processes, directories of EPA ADR contacts, bibliographies, and links to external sources of information.

Training

The Agency strongly encourages all EPA personnel to learn about ADR. Training is crucial not only for those selected to serve as in-house neutrals, but also for negotiators and others who need to understand how ADR can enhance negotiation and agency decision making. The Dispute Resolution Specialist will identify and recommend relevant ADR training. Training sources may include existing EPA training programs, training sponsored by other agencies, newly developed courses, and commercially available training.

This policy affirms a goal of EPA's Labor/Management Partnership Strategic Plan (Spring 2000) to train line managers, first line supervisors, Federal union representatives and other employees in consensual methods of dispute resolution such as ADR and interest-based negotiation. Finally, the Agency will add skills in negotiation and alternative dispute resolution to its inventory of desirable management characteristics used to prepare and select managers for the Senior Executive Service.

Mentoring

The Agency encourages those with ADR experience to share their expertise with other Agency personnel. Mentoring and apprenticing can strengthen EPA's ADR program by expanding the number of staff with ADR skills, increasing opportunities to practice ADR techniques, and providing for exchange between more and less experienced ADR professionals.

Funding

Costs associated with ADR processes, including fees for external neutral third parties, are typically paid in whole or in part by the sponsoring EPA office. Depending on the circumstances, other parties or offices also contribute. The Agency expects each program office at Headquarters and each Region to demonstrate a commitment to ADR by making funds available for ADR processes.

*How Will EPA Measure the Success of Its ADR Programs?*

Many federal agencies have shown significant time and money savings from the use of ADR and have received intangible benefits such as improved relationships and broader stakeholder support for their programs. Evaluation is an important way to identify these savings and benefits and is key to systematic improvement of ADR programs. Through evaluation, EPA is committed to measuring the success of

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its ADR programs and continually improving them to better meet the needs of EPA offices, Regions, and external stakeholders.

Several EPA offices and Regions have already evaluated their ADR efforts. To build on these evaluations and to strengthen the evaluation component of ADR practice across the Agency, the CPRC, consulting with internal and external stakeholders, will develop an evaluation system for ADR at EPA. The evaluation system will include goals and both qualitative and quantitative measures of success.

*Where Can I Get Additional Information or Help With ADR at EPA?*

Additional information on ADR contacts within EPA, topics covered in this policy, and others, may be obtained from the CPRC at (202) 564–2922.

*What Is the Legal Authority for this Policy?*

This policy satisfies the requirement of the Administrative Dispute Resolution Act of 1996, 5 U.S.C. 571–583, that each federal agency adopt a policy that addresses the use of ADR. The policy is also consistent with the following federal statutes, regulations, and orders:

- Regulatory Negotiation Act of 1996, 5 U.S.C. 561–570
- Civil Justice Reform Act, 28 U.S.C. 471–482
- Alternative Dispute Resolution Act of 1998, 28 U.S.C. 651–658
- Federal Acquisition Streamlining Act, 41 U.S.C. 405
- Contracts Disputes Act, 41 U.S.C. 601–613
- Federal Acquisition Regulation, 48 CFR 33.103 & 33.204
- Federal Sector Equal Employment Opportunity Regulations, 29 CFR part 1614
- Civil Justice Reform, Executive Order 12988, 61 FR 4729 (Feb. 5, 1996)
- Agency Procurement Protests, Executive Order 12979, 60 FR 55171 (Oct. 27, 1995)
- Presidential Memorandum, "Designation of Interagency Committees to Facilitate and Encourage Use of Alternative Means of Dispute Resolution and Negotiated Rulemaking," May 1, 1998

**Request for Public Comment**

The Environmental Protection Agency invites public comment on this draft document. Comments should be received by December 5, 2000.

Dated: September 29, 2000.

**Carol Browner,**

*Administrator.*

[FR Doc. 00–25749 Filed 10–5–00; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6883–2]**

### Draft EPA Guidelines for Management of Onsite/Decentralized Wastewater Systems and Guidance Manual Outline

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of availability for comment.

**SUMMARY:** The U.S. Environmental Protection Agency (EPA) is making available for review and comment a draft of its Guidelines for Management of Onsite/Decentralized Wastewater Systems and an outline for a guidance manual that will be developed to supplement the guidelines. The purpose of the guidelines is to raise the level of performance of onsite/decentralized wastewater systems through improved management programs. Onsite/decentralized wastewater treatment systems include individual onsite or cluster wastewater systems (commonly referred to as septic systems, private sewage systems, individual sewage systems, etc.) used to treat and dispose of relatively small volumes of wastewater, generally from individual dwellings, or groups of dwellings and businesses which are located relatively close together. EPA is proposing the voluntary national guidelines in order to raise the quality of management programs, establish minimum levels of activity, and institutionalize the concept of management. Implementation of the guidelines will provide a greater range of options for cost-effectively meeting wastewater needs and meeting water quality and public health goals.

The guidelines contain a set of model programs, based on a comprehensive approach that relies on coordinating the responsibilities and actions among the state, tribal or local regulatory agency, the management entity or service provider and the system owner(s). These model programs are structured to reflect a need for more comprehensive management as the sensitivity of the environment and/or the degree of technological complexity increases. A program's designation increases progressively from Model Program 1 through Model Program 5, reflecting the increased level of management activities needed to achieve water quality and public health goals. Adoption of the guidelines is voluntary and EPA encourages that communities to consider the guidelines as a basis for their onsite/decentralized wastewater management program.

The guidelines apply to both existing communities and to areas of new development that use onsite/decentralized systems of any size for residential and commercial wastewater treatment and disposal.

**DATES:** Email or written comments are requested by December 5, 2000.

**ADDRESSES:** Comments can be submitted online at http://www.epa.gov/owm/smallc/guidelines.htm, emailed to decentralized@epa.gov, via U.S. mail to Joyce Hudson, US EPA, Office of Wastewater Management (4204), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, or faxed to (202) 260–0116.

**FOR FURTHER INFORMATION CONTACT:** Any questions regarding the content of EPA's Guidelines for Management of Onsite/Decentralized Wastewater Systems can be addressed to Joyce Hudson by email at *hudson.joyce@epa.gov*. Additional copies of the documents may be obtained by calling Melanie Montalvo, the EPA contractor, at (703) 934–2323 or by downloading the documents at http://www.epa.gov/owm/smallc/guidelines.htm

**SUPPLEMENTARY INFORMATION:** In April, 1997, EPA prepared a "Response to Congress on the Use of Decentralized Wastewater Treatment Systems." The report concluded that alternative treatment technologies offer a cost-effective, long term wastewater solution for many communities. However, the report emphasized that these "decentralized" (onsite and small cluster) technologies must be implemented in the context of a responsible management program to consistently achieve water quality and public health goals. The report identified the current lack of management as a barrier to successfully applying these otherwise promising technologies.

The development of management standards for decentralized wastewater treatment systems was therefore included in the Clean Water Action Plan (CWAP) as Action Item 77B . In fulfillment of this action item, EPA prepared a concept paper in the spring of 1999, which was gradually developed into a set of voluntary national guidelines for the management of onsite and decentralized wastewater systems. The guidelines which we are proposing for formal public comment have been developed with considerable input from various stakeholders, including other Federal agencies, State health agencies, environmental groups, trade associations and public interest groups. Based on comments received, a detailed outline was developed and comments were once again solicited, which led to the draft document in this notice.

Onsite/decentralized systems currently serve about 25 percent of the U.S. population and approximately 40 percent of new development. The vast majority of these systems are conventional onsite wastewater systems (septic systems). States report that these wastewater systems have failed because of inappropriate siting or design or inadequate long-term maintenance and that septic tank systems constitute the third most common source of ground water contamination.

The final guidelines will be accompanied by a guidance manual. An outline of this guidance manual is also available for review and comment. The final manual will provide details on assessing, developing, implementing, and sustaining a viable management program. The guidelines for management and the accompanying guidance manual are scheduled for completion in the Summer of 2001. Prior to completion, EPA will reach out to interested parties, primarily through discussions with national and State-level organizations to gain input.

Dated: September 27, 2000.

**J. Charles Fox,**

*Assistant Administrator for Office of Solid Waste and Emergency Response.*

[FR Doc. 00–25743 Filed 10–5–00; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6882–1]**

### Public Water System Supervision Program Revision for the State of Florida

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of tentative approval.

**SUMMARY:** Notice is hereby given that the State of Florida is revising its approved Public Water System Supervision Program. Florida has adopted drinking water regulations requiring consumer confidence reports from all community water systems. EPA has determined that these revisions are no less stringent than the corresponding federal regulations. Therefore, EPA intends on approving this State program revision.

All interested parties may request a public hearing. A request for a public hearing must be submitted by November 6, 2000 to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by November 6, 2000, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become final and effective on November 6, 2000. Any request for a public hearing shall include the following information: (1) The name, address, and telephone number of the individual organization, or other entity requesting a hearing; (2) A brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement of the information that the requesting person intends to submit at such hearing; (3) The signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

**ADDRESSES:** All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices: Florida Department of Environmental Protection, 2600 Blairstone Road, Tallahassee, Florida 32399 or at the Environmental Protection Agency, Region 4, Drinking Water Section, 61 Forsyth Street Southwest, Atlanta, Georgia 30303.

**FOR FURTHER INFORMATION CONTACT:** Bonita Johnson, EPA Region 4, Drinking Water Section at the Atlanta address given above or by telephone at (404) 562–9442.

**Authority:** (Section 1420 of the Safe Drinking Water Act, as amended (1996), and 40 CFR part 142 of the National Primary Drinking Water Regulations)

**A. Stanley Meiburg,**

*Acting Regional Administrator, Region 4.*

[FR Doc. 00–25748 Filed 10–5–00; 8:45 am]

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## FEDERAL COMMUNICATIONS COMMISSION

**[DA 00–2171 and DA 00–2232]**

### Comment Sought on Reserve Prices or Minimum Opening Bids and Other Auction Procedural Issues; Auction of Additional FM Broadcast Construction Permits To Be Included in Auction No. 37 Scheduled for February 21, 2001

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** This document announces the auction of certain FM broadcast construction permits to commence February 21, 2001.

**DATES:** Comments regarding the vacant FM allotments listed in Attachment A of DA 00–2171 (*"Auction No. 37 Comment Public Notice"*) are due on or before October 9, 2000. Comments regarding the eight additional vacant FM allotments listed in DA 00–2232 (*"Addendum Public Notice"*) are due on or before October 13, 2000. All reply comments are due on or before October 23, 2000.

**ADDRESSES:** To file formally, parties must submit an original and four copies to the Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, SW, TW–A325, Washington, DC 20054. In addition, parties must submit one copy to Louis Sigalos, Deputy Division Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, 445 Twelfth Street, SW, Suite 4–A668, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Kathy Garland, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, at (717) 338–2888; Kenneth Burnley, Legal Branch, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, at (202) 418–0660; or Lisa Scanlan, Audio Services Division, Mass Media Bureau at (202) 418–2700.

**SUPPLEMENTARY INFORMATION:** This is a summary of two Public Notices, DA 00–2171 (*"Auction No. 37 Comment Public Notice"*) and DA 00–2232 (*"Addendum Public Notice"*), released September 25, 2000 and September 29, 2000 respectively. The complete text of the public notices, including attachments, is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW, Washington, DC. It may also be purchased from the Commission's copy contractor, International Transcription Services, Inc. (ITS, Inc.) 1231 20th Street, NW,

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Washington, DC 20036, (202) 857–3800. It is also available on the Commission's web site at *http://www.fcc.gov*.

1. By these Public Notices, the Wireless Telecommunications Bureau (the "Bureau") and the Mass Media Bureau (collectively referred to as the "Bureaus") announce the auction of certain FM broadcast construction permits to commence February 21, 2001. As discussed in greater detail herein, the Bureaus propose that Auction No. 37 be composed of 359 construction permits in the FM Broadcast service as listed in Attachment A of DA 00–2232 ("*Addendum Public Notice*").

2. Specifically, Attachment A of DA 00–2171 ("*Auction No. 37 Comment Public Notice*") lists 351 vacant FM allotments, reflecting FM channels assigned to the Table of FM Allotments, 47 CFR 73.202(b), pursuant to the Commission's established rulemaking procedures, designated for use in the indicated community. Attachment A of the *Addendum Public Notice* adds eight additional vacant FM allotments not listed in the *Auction No. 37 Comment Public Notice*, and lists *all* vacant FM allotments that will be included in Auction No. 37. The eight additional vacant FM allotments of the *Addendum Public Notice* have been inserted into Attachment A alphabetically by state and the market numbers identified in the attachment to the *Auction 37 Comment Public Notice* have been revised to reflect the addition of these eight vacant FM allotments. Both Public Notices seek comment on procedural issues related to the auctioning of FM broadcast construction permits in Auction No. 37.

3. As stated in the *Broadcast First Report and Order*, 63 FR 48615 (September 11, 1998), applicants may apply for any vacant FM allotment, as specified in Attachment A of the *Addendum Public Notice*; applicants specifying the same FM allotment will be considered mutually exclusive and, thus, the construction permit for the FM allotment will be awarded by competitive bidding procedures. The reference coordinates for each vacant FM allotment are also listed in Attachment A of the *Addendum Public Notice*.

4. The Balanced Budget Act of 1997 requires the Commission to "ensure that, in the scheduling of any competitive bidding under this subsection, an adequate period is allowed * * * before issuance of bidding rules, to permit notice and comment on proposed auction procedures * * *." Consistent with the provisions of the Balanced Budget Act and to ensure that potential bidders have adequate time to familiarize themselves with the specific rules that will govern the day-to-day conduct of an auction, the Commission directed the Bureau, under its existing delegated authority, to seek comment on a variety of auction-specific procedures prior to the start of each auction. We therefore seek comment on the following issues relating to Auction No. 37.

## I. Auction Structure

### *A. Simultaneous Multiple Round Auction Design*

5. We propose to award these FM construction permits in a single stage, simultaneous multiple-round auction. As described further, this methodology offers every FM construction permit for bid at the same time in successive rounds of bidding. We seek comment on this proposal.

### *B. Upfront Payments and Initial Maximum Eligibility for Each Bidder*

6. The Bureaus have delegated authority and discretion to determine an appropriate upfront payment for the FM construction permits being auctioned taking into account such factors as the efficiency of the auction process and the potential value of spectrum. As described further, the upfront payment is a refundable deposit made by each bidder to determine and establish eligibility to bid on the FM construction permits. Upfront payments related to the specific spectrum subject to auction protects against frivolous or insincere bidding and provides the Commission with a source of funds from which to collect payments owed at the close of the auction. With these guidelines in mind, we propose the schedule of upfront payments contained in Attachment A to the Public Notice. We seek comment on this proposal.

7. We further propose that the amount of the upfront payment submitted by a bidder will determine the initial maximum eligibility (as measured in bidding units) for each bidder. Upfront payments will not be attributed to specific construction permits, but instead will be translated into bidding units to define a bidder's initial maximum eligibility, which cannot be increased during the auction. Thus, in calculating the upfront payment amount, an applicant must determine the *maximum* number of bidding units it may wish to bid on (or hold high bids on) in any single round, and submit an upfront payment covering that number of bidding units. We seek comment on this proposal.

### *C. Activity Rules*

8. In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to either place a valid bid and/or be the standing high bidder during each round of the auction rather than waiting until the end to participate. A bidder that does not satisfy the activity rule will either use an activity rule waiver, if any remain, or lose bidding eligibility in the auction.

9. We propose a single stage auction with the following activity requirement: In each round of the auction, a bidder desiring to maintain its eligibility to participate in the auction is required to be active on one hundred (100) percent of its bidding eligibility. Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain, or a reduction in the bidder's bidding eligibility, thus eliminating the bidder from the auction. We seek comment on this proposal.

### *D. Activity Rule Waivers*

10. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required minimum level. An activity rule waiver applies to an entire round of bidding and not to a particular construction permit. Activity waivers are principally a mechanism for auction participants to avoid the loss of auction eligibility in the event that exigent circumstances prevent them from placing a bid in a particular round.

11. The FCC auction system assumes that bidders with insufficient activity would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver (known as an "automatic waiver") at the end of any bidding period where a bidder's activity level is below the minimum required, unless (i) there are no more activity rule waivers available; or (ii) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirements.

12. We propose that a bidder with insufficient activity that wants to reduce its bidding eligibility rather than use an activity rule waiver, must affirmatively override the automatic waiver mechanism during the bidding period by using the reduce eligibility function in the software. In this case, the bidder's eligibility would be permanently reduced to bring the bidder into compliance with the activity rules. Once eligibility has been reduced, a bidder would not be permitted to regain its lost bidding eligibility.

13. We propose that a bidder may proactively use an activity rule waiver as a means to keep the auction open without placing a bid. If a bidder submits a proactive waiver (using the proactive waiver function in the bidding software) during a bidding period in which no bids are submitted, the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver invoked in a round in which there are no new valid bids will not keep the auction open, under the simultaneous stopping rule. The submission of a proactive waiver cannot occur after a bid has been submitted in a round and will preclude a bidder from placing any bids later in that round.

14. We propose that each bidder in Auction No. 37 be provided with five activity rule waivers that may be used in any round during the course of the auction. We seek comment on this proposal.

### *E. Information Relating to Auction Delay, Suspension or Cancellation*

15. For Auction No. 37, we propose that, by public notice or by announcement during the auction, the Bureau may delay, suspend or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding. In such cases, the Bureau, in its sole discretion, may elect to: resume the auction starting from the beginning of the current round; resume the auction starting from some previous round; or cancel the auction in its entirety. Network interruption may cause the Bureau to delay or suspend the auction. We emphasize that exercise of this authority is solely within the discretion of the Bureau, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers. We seek comment on this proposal.

## II. Bidding Procedures

### *A. Round Structure*

16. The Commission will use its Automated Auction System to conduct the electronic simultaneous multiple round auction format for Auction No. 37. The initial bidding schedule will be announced in a public notice to be released at least one week before the start of the auction, and will be included in the registration mailings. The simultaneous multiple round format will consist of sequential bidding rounds, each followed by the release of round results. Details regarding the location and format of round results will be included in the same public notice.

17. The Bureau has discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results. The Bureau may increase or decrease the amount of time for the bidding rounds and review periods, or the number of rounds per day, depending upon the bidding activity level and other factors. We seek comment on this proposal.

### *B. Reserve Price or Minimum Opening Bid*

18. The Balanced Budget Act calls upon the Commission to prescribe methods by which a reasonable reserve price will be required or a minimum opening bid established when FCC licenses or construction permits are subject to auction (*i.e.*, because the Commission has accepted mutually exclusive applications for those licenses), unless the Commission determines that a reserve price or minimum bid is not in the public interest. Consistent with this mandate, the Commission has directed the Bureaus to seek comment on the use of minimum opening bids and/or reserve price prior to the start of each auction of broadcast construction permits.

19. Normally, a reserve price is an absolute minimum price below which an item will not be sold in a given auction. Reserve prices can be either published or unpublished. A minimum opening bid, on the other hand, is the minimum bid price set at the beginning of the auction below which *no bids* are accepted. It is generally used to accelerate the competitive bidding process. Also, in a minimum opening bid scenario, the auctioneer generally has the discretion to lower the amount later in the auction. It is also possible for the minimum opening bid and the reserve price to be the same amount.

20. In light of the Balanced Budget Act, the Bureaus propose to establish minimum opening bids for Auction No. 37. The Bureaus believe a minimum opening bid, which has been utilized in other broadcast auctions, is an effective bidding tool. A minimum opening bid, rather than a reserve price, will help to regulate the pace of the auction and provides flexibility.

21. For Auction No. 37, the proposed minimum opening bid for each FM allotment, as listed in Attachment A of the Public Notice, was determined by taking into account various factors related to the efficiency of the auction and the potential value of the spectrum, including the type of service and class of facility offered, market size, population covered by the proposed FM broadcast facility, industry cash flow data and recent broadcast transactions. We seek comment on this proposal.

22. If commenters believe that these minimum opening bids will result in unsold construction permits, or are not reasonable amounts, or should instead operate as reserve prices, they should explain why this is so, and comment on the desirability of an alternative approach. Commenters are advised to support their claim with valuation analyses and suggested reserve prices or minimum opening bid levels or formulas. Alternatively, comment is sought on whether, consistent with the Balanced Budget Act, the public interest would be served by having no minimum opening bids or reserve prices.

### *C. Minimum Accepted Bids and Bid Increments*

23. Once there is a standing high bid on a construction permit, a bid increment will be applied to that permit to establish a minimum acceptable bid for the following round. For Auction No. 37, we propose to set a minimum 10 percent increment. This means that a new bid placed by a bidder must be at least 10 percent greater than the previous bid received on the construction permit. The Bureau retains the discretion to change the methodology for determining the minimum bid increment if they determine the circumstances so dictate. Advanced notice of the Bureau's decision to do so will be announced via the Automated Auction System.

24. Bidders will enter their bid as multiples of the bid increment (*i.e.*, with a 10 percent bid increment, a bid of 1 increment will place a bid 10 percent above the previous high bid, a bid of 2 increments will place a bid 20 percent above the previous high bid). We seek comment on this proposal.

### *D. Information Regarding Bid Withdrawal and Bid Removal*

25. For Auction No. 37, we propose the following bid removal and bid withdrawal procedures. Before the close of a bidding period, a bidder has the option of removing any bid placed in that round. By using the remove bid function in the software, a bidder may effectively "unsubmit" any bid placed within that round. A bidder removing a bid placed in the same round is not subject to a withdrawal payment.

26. Once a round closes, a bidder may no longer remove a bid. However, in the next round, a bidder may withdraw

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standing high bids from previous rounds using the withdraw bid function. A high bidder that withdraws its standing high bid from a previous round is subject to the bid withdrawal payment provisions. We seek comment on these bid removal and bid withdrawal procedures.

27. In the *Part 1 Third Report and Order*, 63 FR 770 (January 7, 1998), the Commission explained that allowing bid withdrawals facilitates efficient aggregation of licenses and the pursuit of efficient backup strategies as information becomes available during the course of an auction. The Commission noted, however, that in some instances bidders may seek to withdraw bids for improper reasons, including to delay the close of the auction for strategic purposes. The Bureau, therefore, has discretion, in managing the auction, to limit the number of withdrawals to prevent strategic delay of the close of the auction or other abuses. The Commission stated that the Bureau should assertively exercise its discretion, consider limiting the number of rounds in which bidders may withdraw bids, and prevent bidders from bidding on a particular market it finds that a bidder is abusing the Commission's bid withdrawal procedures.

28. Applying this reasoning, we propose to limit each bidder in Auction No. 37 to withdraw standing high bids in no more than two rounds during the course of the auction. To permit a bidder to withdraw bids in more than two rounds would likely encourage insincere bidding or the use of withdrawals for anti-competitive strategic purposes. The two rounds in which withdrawals are utilized will be at the bidder's discretion; withdrawals otherwise must be in accordance with the Commission's rules. There is no limit on the number of standing high bids that may be withdrawn in either of the rounds in which withdrawals are utilized. Withdrawals will remain subject to the bid withdrawal payment provisions specified in the Commission's rules. We seek comment on these proposals.

*E. Stopping Rule*

29. For Auction No. 37, the Bureau proposes to employ a simultaneous stopping rule approach. The Bureau has discretion "to establish stopping rules before or during multiple round auctions in order to terminate the auction within a reasonable time." A simultaneous stopping rule means that all construction permits remain open until the first round in which no new acceptable bids, proactive waivers or withdrawals are received. After the first such round, bidding closes simultaneously on all construction permits. Thus, unless circumstances dictate otherwise, bidding would remain open on all construction permits until bidding stops on every permit.

30. The Bureau seeks comment on a modified version of the simultaneous stopping rule. The modified stopping rule would close the auction for all construction permits after the first round in which no bidder submits a proactive waiver, a withdrawal, or a new bid on any construction permit on which it is not the standing high bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a construction permit for which it is the standing high bidder would not keep the auction open under this modified stopping rule. The Bureau further seeks comment on whether this modified stopping rule should be utilized.

31. We propose that the Bureau retains the discretion to keep an auction open even if no new acceptable bids or proactive waivers are submitted and no previous high bids are withdrawn. In this event, the effect will be the same as if a bidder had submitted a proactive waiver. The activity rule, therefore, will apply as usual and a bidder with insufficient activity will either lose bidding eligibility or use a remaining activity rule waiver.

32. Finally, we propose that the Bureau reserve the right to declare that the auction will end after a specified number of additional rounds ("special stopping rule"). If the Bureau invokes this special stopping rule, they will accept bids in the final round(s) only for construction permits on which the high bid increased in at least one of the preceding specified number of rounds. The Bureau proposes to exercise this option only in certain circumstances, such as, for example, where the auction is proceeding very slowly, there is minimal overall bidding activity, or it appears likely that the auction will not close within a reasonable period of time. Before exercising this option, the Bureau is likely to attempt to increase the pace of the auction by, for example, increasing the number of bidding rounds per day, and/or increasing the amount of the minimum bid increments for the limited number of construction permits where there is still a high level of bidding activity. We seek comment on these proposals.

Federal Communications Commission.

**Margaret Wiener,**

*Deputy Chief, Auctions and Industry Analysis Division.*

[FR Doc. 00–25741 Filed 10–5–00; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL RESERVE SYSTEM

### Change In Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 20, 2000.

**A. Federal Reserve Bank of Chicago** (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

*1. John Mark DeCook*, Pella, Iowa, and Martin "Bruce" Heerema, Pella, Iowa; each to retain voting shares of Vermeer Investment Company, Pella, Iowa, and thereby indirectly retain voting shares of Marion County State Bank, Pella, Iowa.

*2. Raymond James Schirmer*, and Robert Lawrence Foust, both of Strawberry Point, Iowa; to acquire additional voting shares of Munter Agency, Inc., Strawberry Point, Iowa, and thereby indirectly acquire additional voting shares of Union Bank and Trust Company, Strawberry Point, Iowa.

Board of Governors of the Federal Reserve System, October 2, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00–25667 Filed 10–5–00; 8:45 am]

BILLING CODE 6210–01–P

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 30, 2000.

**A. Federal Reserve Bank of Chicago** (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

*1. eZCB Bancorp, Inc.*, Grand Rapids, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of eZCommunityBank.Com (in organization), Grand Rapids, Michigan.

*2. Spectrum Bancorporation, Inc.*, Omaha, Nebraska; to merge with Great Western Securities, Inc., Omaha, Nebraska, and thereby indirectly acquire Great Western Bank, Omaha, Nebraska.

Board of Governors of the Federal Reserve System, October 2, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00–25668 Filed 10–5–00; 8:45 am]

BILLING CODE 6210–01–P



## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 00–24690) published on pages 57815 and 57816 of the issue for September 26, 2000.

Under the Federal Reserve Bank of Kansas City heading, the entry for Grace Investment Company, Inc., Alva, Oklahoma, is revised to read as follows:

**A. Federal Reserve Bank of Kansas City** (D. Michael Manies, Assistant Vice President), 925 Grand Avenue, Kansas City, Missouri 64198–0001:

*1. Grace Investment Company, Inc.*, Alva, Oklahoma; to become a bank holding company by acquiring 93.87 percent of the voting shares, for a total of 100 percent of the voting shares of The First National Bank in Okeene, Okeene, Oklahoma.

In connection with this application, applicant also has applied to engage in lending activities, pursuant to § 225.28(b)(1) of Regulation Y.

Comments on this application must be received by October 20, 2000.

Board of Governors of the Federal Reserve System; October 3, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00–25772 Filed 10–5–00; 8:45 am]

BILLING CODE 6210–01–P

## FEDERAL RESERVE SYSTEM

### Notice of Proposals to Engage in Permissible Nonbanking Activities or To Acquire Companies That are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 20, 2000.

**A. Federal Reserve Bank of New York** (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045–0001:

*1. Bank Hapoalim B.M.*, Tel Aviv, Israel; Zohar Hashemesh Le'Hashkaot Ltd., Tel Aviv, Israel; Hapoalim U.S.A. Holding Company, Inc., New York, New York; Shareholder Consortium of Bank Hapoalim B.M., Tel Aviv, Israel; Arison Holdings (1988) Ltd., Tel Aviv, Israel; and Israel Salt Industries Ltd., Atlit, Israel; to engage *de novo* through their subsidiary, Signature Securities Group Corporation, in financial and investment advisory services, pursuant to § 225.28(b)(6) of Regulation Y, and in agency transactional services for customer investments, pursuant to § 225.28(b)(7) of Regulation Y.

Board of Governors of the Federal Reserve System, October 2, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00–25669 Filed 10–5–00; 8:45 am]

BILLING CODE 6210–01–P

## FEDERAL RESERVE SYSTEM

### Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of

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Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 3, 2000.

**A. Federal Reserve Bank of Richmond** (A. Linwood Gill, III, Vice President), 701 East Byrd Street, Richmond, Virginia 23261–4528:

*1. FNB Corporation*, Christiansburg, Virginia; to acquire SWVA Bancshares, Inc., Roanoke, Virginia, and thereby indirectly acquire Southwest Virginia Savings Bank, FSB, Roanoke, Virginia, and thereby engage in operating a savings association, pursuant to § 225.28 (b)(4)(ii) of Regulation Y, and Southwest Virginia Service Corporation, Inc., Roanoke, Virginia, and thereby engage in acting as an agent in the sale of credit related insurance, pursuant to § 225.28(b)(11)(i) of Regulation Y.

Board of Governors of the Federal Reserve System, October 3, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00–25771 Filed 10–5–00; 8:45 am]

BILLING CODE 6210–01–P

## FEDERAL RESERVE

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Board of Governors of the Federal Reserve System.

**TIME AND DATE:** 10:00 a.m., Wednesday, October 11, 2000.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Lynn S. Fox, Assistant to the Board; 202–452–3204.

**SUPPLEMENTARY INFORMATION:** You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: October 4, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00–25910 Filed 10–4–00; 10:36 am]

BILLING CODE 6210–01–P

## FEDERAL TRADE COMMISSION

**[File No. 001 0098]**

### Manheim Auctions, Inc., Cox Enterprises, Inc., ADT Automotive Holdings, Inc., and Tyco International, Ltd.; Analysis to Aid Public Comment

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement.

**SUMMARY:** The consent agreement in this matter settles alleged violated of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order embodied in the consent agreement that would settle these allegations.

**DATES:** Comments must be received on or before October 31, 2000.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** John B. Kirkwood, FTC Northwest Region, 915 Second Avenue, Suite 2896, Seattle, Washington 98174, (206) 220–4484.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for October 2, 2000), on the World Wide Web, at "http://www.ftc.gov/os/2000/09/index.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

### Analysis of the Complaint and Proposed Consent Order To Aid Public Comment

*I. Introduction*

The Federal Trade Commission ("Commission") has accepted for public comment an Agreement Containing Consent Order ("proposed order") with Manheim Auctions, Inc. ("Manheim"), Tyco International, Ltd. ("Tyco"), ADT Automotive Holdings, Inc. ("ADT"), and Cox Enterprises, Inc. ("Cox") (collectively "Proposed Respondents"). The proposed order seeks to remedy the anticompetitive effects of Manheim's proposed acquisition of ADT's wholesale motor vehicle auctions by requiring Manheim to divest eight of the acquired ADT auctions in locations where Manheim already owns auctions and its ownership of these acquired auctions would likely injure competition. Moreover, the proposed order seeks to remedy the anticompetitive effects of Manheim's 1996 acquisition of an auction in the Phoenix, Arizona area by requiring Manheim to divest one of its Phoenix-area auctions.

*II. Description of the Parties and the Proposed Acquisition*

Manheim, a Delaware corporation, is a wholly-owned subsidiary of Cox and is the largest auto auction company in the United States. Manheim operates 65 auctions nationwide and reported sales of 4.1 million vehicles in 1999. Manheim has acquired 55 auctions in the last 10 years. ADT, a Delaware corporation, is a wholly owned subsidiary of Tyco and is the third-largest auction company in the United States. ADT operates 28 auctions nationwide and reported sales of 1.3 million automobiles in 1999.



By the terms of a Stock Purchase Agreement dated January 13, 2000, Manheim will acquire all of ADT's outstanding voting stock for approximately $1 billion.

In a separate transaction that occurred in 1996, Manheim acquired JM Family Enterprises, Inc., its sole competitor in the provision of wholesale motor vehicle auction services in the greater metropolitan area of Phoenix, Arizona.

*III. The Proposed Complaint*

The proposed complaint alleges that the relevant line of commerce (*i.e.*, the product market) in which to analyze this transaction is the provision of wholesale motor vehicle auction services ("WMVA services") by major vehicle auctioneers. These services include marshaling motor vehicles before auctions, preparing condition reports, reconditioning the motor vehicles, promoting and marketing auctions to potential buyers, auctioning motor vehicles, and reporting the results of those auctions.

Major wholesale auctions serve automakers and large institutional lessors that sell large quantities of used motor vehicles. They are equipped with advanced computer systems and technology that allow them to deal with larger customers than the smaller wholesale auto auctions can handle. Moreover, this technological sophistication and the resulting benefits and services simultaneously attract a large number of buyers and sellers to each auction. These attributes distinguish major wholesale auction services from the broader market, which consists of services provided by small, independent wholesale auctions that serve regional customers. Typically, major wholesale auctions serve a trade area consisting of a large city and the surrounding metropolitan area.

The proposed complaint further alleges that Manheim's proposed acquisition of ADT, if consummated, may substantially lessen competition in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, in the following trade areas (*i.e.*, the geographic markets): (a) The greater metropolitan area of Kansas City, Missouri; (b) the Colorado Front Range, which includes the greater metropolitan areas of Denver and Colorado Springs; (c) the greater metropolitan area of Atlanta, Georgia; (d) the greater metropolitan area of San Francisco, California; (e) the greater metropolitan area of Seattle, Washington; and (f) the I–4 Corridor of Florida, which includes the greater metropolitan areas of Tampa, Orlando, and Daytona Beach. The acquisition would substantially increase concentration and create a monopoly in the provision of WMVA services, as evidenced by post-acquisition Herfindahl-Hirschman Indices ("HHIs") of 10,000 in each of these geographic markets. After the proposed acquisition, Manheim would have the ability to unilaterally increase prices charged for WMVA services and to substantially decrease the quality and range of services offered to auction customers in these areas.

The proposed complaint also alleges that in 1996 Manheim acquired JM Family Enterprises, Inc., its sole competitor in the provision of WMVA services in the greater Phoenix, Arizona area. The effect of that acquisition, which also resulted in an HHI of 10,000, may have been to substantially lessen competition and create a monopoly in violation of Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act. Manheim may have both unilaterally increased prices charged for WMVA services and reduced the quality and range of services offered to auction customers in the greater Phoenix area.

The proposed complaint further alleges that new entry into the relevant geographic markets will not likely, timely or sufficient to prevent or counteract these anticompetitive effects. Building an auction requires substantial amounts of capital and entails significant assumption of risk. Other companies have recently required more than two years to complete construction of major auctions. Moreover, even if built, a competing auction would not likely provide significant competition to an existing firm. Because of the large capital investment required, major auctions must sell a high volume of motor vehicles to be profitable, while sellers are reluctant to use the services of an auction that does not have an existing base of strong buyers and buyers are reluctant to attend an auction that does not have a significant number of participating sellers. Consequently, existing auctions possess a considerable first-mover advantage over new entrants. Thus, even if a competitor entered the market, it might not attract enough business to restore competition. In the Phoenix area, no new competitors have entered since 1996.

*IV. Terms of the Agreement Containing Consent Order*

The proposed order is designed to remedy the alleged anticompetitive effects of the proposed acquisition. Under the terms of the proposed order, the Proposed Respondents must divest to ADESA eight of the acquired ADT auctions and one Manheim auction that currently operate in the geographic markets described above.

The Commission's goal in evaluating possible purchasers of divested assets is to maintain the competitive environment that existed prior to the acquisition. A proposed buyer of divested assets must not itself present competitive problems.

The Commission is satisfied that ADESA is a well-qualified acquirer of the divested assets. Based in Indianapolis, Indiana, ADESA is a large chain with 30 auction sites throughout the United States. ADESA possesses the necessary industry expertise to replace the competition that existed prior to the proposed acquisition in the divestiture markets. Furthermore, ADESA poses no separate competitive issues as the acquirer of the divested assets.

The proposed order requires that Proposed Respondents divest the nine auctions to ADESA, in accordance with an agreement between Manheim and ADESA, within 3 months after Manheim acquires ADT. If, at the time the Commission decides to make the proposed order final, the Commission notifies the Proposed Respondents that ADESA is not an acceptable acquirer, or that the agreement with ADESA is not an acceptable manner of divestiture, then Proposed Respondents must immediately rescind the transaction and divest the auction, within 6 months after the proposed order becomes final, to an acquirer approved by the Commission.

The proposed order also includes a provision requiring Proposed Respondents to use their best efforts to maintain the auctions as they would in the ordinary course of business until the divestiture occurs. Moreover, the proposed order prohibits Proposed Respondents from soliciting and hiring employees away from the divested auctions for a period of one year after the divestitures occur.

Additionally, for a period of 10 years after the proposed order becomes final, Proposed Respondents must provide written notice to the Commission prior to acquiring any interest in any wholesale auction facility. Furthermore, Proposed Respondents must provide the Commission with a report of compliance with the proposed order within 30 days after the proposed order becomes final and every 30 days thereafter until they have complied with their divestiture obligations. Respondents are also required to provide annual reports during the term

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of the proposed order. For Manheim and Cox, the term of the proposed order is 10 years; for ADT and Tyco, the term ends when the eight ADT auctions are transferred to Manheim.

In the event that Proposed Respondents fail to divest the required auctions within the time allotted, the proposed order enables the Commission to appoint a trustee to divest any assets necessary to satisfy the requirements of the proposed order. Appointment of a trustee is in addition to civil penalties and other relief available from Proposed Respondents for non-compliance with any provision of the proposed order.

*V. Opportunity for Public Comment*

The proposed order has been placed on the public record for 30 days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the proposed order and the comments received and will decide whether it should withdraw from the proposed order of make it final. By accepting the proposed order subject to final approval, the Commission anticipates that the competitive problems alleged in the proposed complaint will be resolved. The purpose of this analysis is to invite public comment on the proposed order, including the proposed divestitures, to aid the Commission in its determination of whether to make the proposed order final. This analysis is not intended to constitute an official interpretation of the proposed order, nor is it intended to modify the terms of the proposed order in any way.

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 00–25661 Filed 10–5–00; 8:45 am]

BILLING CODE 6750–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

### Findings of Scientific Misconduct

**AGENCY:** Office of the Secretary, HHS.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the Office of Research Integrity (ORI) and the Assistant Secretary for Health have taken final action in the following case:

*Caroline E. Garey, Boston College:* Based on the Report and Addendum of the Boston College Research Misconduct Investigation Committee and additional analysis conducted by ORI in its oversight review, the U.S. Public Health Service (PHS) finds that Ms. Caroline E. Garey, former doctoral student, Boston College, engaged in scientific misconduct by falsifying research supported by National Institute of Neurological Disorders and Strokes (NINDS), National Institutes of Health (NIH), grant R01 NS23355.

Specifically, as a graduate student at Boston College, Ms. Garey falsified restriction fragment length polymorphism (RFLP) data for ABP and DBA backcross mice DNA samples by misrepresenting results from multiple assays of identical backcross ABP DNA samples as being from different animals and misrepresenting the autoradiograms of backcross ABP DNA samples as the results from experiments on backcross DBA mice. Ms. Garey reported this falsified data in her doctoral dissertation, "Defect in the ceruloplasmin gene associated with epilepsy in the EL mouse," and in an article in Nature Genetics 6:426–431, 1994. She caused her falsified data to be reported by her laboratory director in NINDS, NIH, grant application 2 R01 NS23355–08A1 and at an international workshop on epilepsy on September 24, 1994. Ms. Garey also fabricated a translation table that she used to assign falsified RFLP data to individual backcross DBA mice. As a result of falsifying these assays over a minimum of two and one-half years, none of Ms. Garey's research can be considered reliable and the Nature Genetics publication has been retracted. These actions adversely and materially affected the laboratory's ongoing research on the genetic causes of epilepsy.

Ms. Garey also has engaged in a pattern of dishonest conduct that indicates that she is not presently responsible to be a steward of Federal funds. This pattern of behavior includes (1) a history of falsely claiming that she has performed scientific experiments when she has not, and (2) repeated instances in which she has misrepresented her credentials to prospective employers, colleagues, customers, and the general public as including a Ph.D. degree even though Boston College refused to grant her a doctoral degree because of her scientific misconduct.

The publication affected is:

• Garey, C.E., Schwarzman, A.L., Rise, M.L., & Seyfried, T.N. "Ceruloplasmin gene defect associated with epilepsy in EL mice." Nature Genetics 6:426–431, 1994 (retracted in Nature Genetics 11:104, 1995).

While Ms. Garey does not admit to the allegations of scientific misconduct, she has entered into a Voluntary Exclusion Agreement with PHS in which she has voluntarily agreed for a period of five (5) years, beginning on September 25, 2000:

(1) To exclude herself from any contracting or subcontracting with any agency of the United States Government and from eligibility for, or involvement in, nonprocurement transactions (e.g., grants and cooperative agreements) of the United States Government as defined in 45 CFR part 76 (Debarment Regulations);

(2) To exclude herself from serving in any advisory capacity to PHS, including but not limited to service on any PHS advisory committee, board, and/or peer review committee.

**FOR FURTHER INFORMATION CONTACT:** Director, Division of Investigative Oversight, Office of Research Integrity, 5515 Security Lane, Suite 700, Rockville, MD 20852, (301) 443–5330.

**Chris Pascal,**

*Director, Office of Research Integrity.*

[FR Doc. 00–25568 Filed 10–5–00; 8:45 am]

BILLING CODE 4160–17–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Ethics Subcommittee of the Advisory Committee to the Director, Centers for Disease Control and Prevention; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following subcommittee meeting.

*Name:* Ethics Subcommittee of the Advisory Committee to the Director, CDC.

*Time and Date:* 9:30 a.m.–5 p.m., October 16, 2000.

*Place:* Centers for Disease Control and Prevention, 1600 Clifton Road, NE, Building 16, Room 5126, Atlanta, Georgia 30333.

*Status:* Open to the public, limited only by the space available. The meeting room accommodates approximately 25 people.

*Purpose:* This subcommittee will anticipate, identify, and propose solutions to strategic and broad ethical issues facing CDC.

*Matters To Be Discussed:* Agenda items will include updates from the Associate director for Science, Dixie E. Snider, M.D., M.P.H.; a discussion on ethical considerations of studies to evaluate the risk of transmission of Human Herpes virus (HHV–8) in international settings; and anticipating issues involved in future decisions regarding this issue.



Agenda items are subject to change as priorities dictate.

*Contact Person for More Information:* Kathy Cahill, Executive Secretary, Advisory Committee to the Director, CDC, 1600 Clifton Road, NE., M/S/ D–24, Atlanta, Georgia 30333. Telephone 404/639–7060.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: September 28, 2000.

**Carolyn J. Russell,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 00–25710 Filed 10–5–00; 8:45 am]

BILLING CODE 4163–18–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Healthcare Infection Control Practices Advisory Committee (HICPAC): Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

*Name:* Healthcare Infection Control Practices Advisory Committee (Formerly Hospital Infection Control Practices Advisory Committee).

*Times and Dates:* 8:30 a.m.–5 p.m., November 6, 2000; 8:30 a.m.–4 p.m., November 7, 2000.

*Place:* Atlanta Marriott Century Center, 2000 Century Boulevard, NE, Atlanta, Georgia 30345.

*Status:* Open to the public, limited only by the space available.

*Purpose:* The Committee is charged with providing advice and guidance to the Secretary, the Assistant Secretary for Health, the Director, CDC, and the Director, National Center for Infectious Diseases (NCID), regarding (1) the practice of hospital infection control; (2) strategies for surveillance, prevention, and control of infections (*e.g.*, nosocomial infections), antimicrobial resistance, and related events in settings where healthcare is provided; and (3) periodic updating of guidelines and other policy statements regarding prevention of healthcare associated infections and healthcare-related conditions.

*Matters to be Discussed:* Agenda items will include a review of proposed revisions to the Guideline for Prevention of Healthcare-associated Pneumonia, the Guideline for Isolation Precautions in Hospitals, the Guideline for Prevention of Intravascular Device-related Infections, the Guideline for Sterilization and Disinfection, the Guideline for Hand Hygiene, and the Guideline for Environmental Controls in Healthcare Settings; a discussion of the status of Staphylococcus aureus with Reduced Susceptibility to Vancomycin (VISA) in the United States; and updates on CDC activities of interest to the committee, including nosocomial tuberculosis control, the Federal Action Plan for Antimicrobial Resistance, and bioterrorism response in healthcare facilities.

Agenda items are subject to change as priorities dictate.

*Contact Person for More Information:* Michele L. Pearson, M.D., Executive Secretary, HICPAC, Hospital Infections Program, NCID, CDC, 1600 Clifton Road, NE, M/S A–07, Atlanta, Georgia 30333, telephone 404/639–6439.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: September 28, 2000.

**Carolyn J. Russell,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 00–25685 Filed 10–5–00; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Interagency Committee on Smoking and Health: Meeting

The National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP) of the Centers for Disease Control and Prevention (CDC) announces the following meeting.

*Name:* Interagency Committee on Smoking and Health.

*Date and Time:* 9 a.m.–1 p.m. October 26, 2000.

*Place:* Secretary's Conference Room (Stonehenge) Hubert H. Humphrey Building, 200 Independence Avenue, SW, 6th Floor, Washington, DC 20201.

*Status:* Open to the public, limited only by the space available. Those who wish to attend are encouraged to register with the contact person listed below. If you will require a sign language interpreter, or have other special needs, please notify the contact person by 4:30 E.S.T. on October 20, 2000.

*Purpose:* The Interagency Committee on Smoking and Health advises the Secretary, Department of Health and Human Services, and the Assistant Secretary for Health in the: (a) Coordination of all research and education programs and other activities within the Department and with other federal, state, local and private agencies, and (b) establishment and maintenance of liaison with appropriate private entities, federal agencies, and state and local public health agencies with respect to smoking and health activities.

*Matters to be Discussed:* The agenda will focus on the Framework Convention on Tobacco Control.

*Contact Person for More Information:* Substantive program information as well as summaries of the meeting and roster of committee members may be obtained from the Internet *(www.cdc.gov/tobacco)* in mid-November or from Ms. Monica L. Swann, Interagency Committee on Smoking and Health, Office on Smoking and Health, NCCDPHP, CDC, 200 Independence Avenue, SW, Room 317B, Washington, DC, 20201, telephone (202) 205–8500.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: September 28, 2000.

**Carolyn J. Russell,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 00–25689 Filed 10–5–00; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 00N–1534]**

### Agency Information Collection Activities; Proposed Collection; Comment Request; Year 2000 Continuation of National Surveys of Prescription Drug Information Provided to Patients

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on a national tracking survey, conducted every 2 years, of prescription drug information received by patients.

**DATES:** Submit written or electronic comments on the collection of information by December 5, 2000.

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**ADDRESSES:** Submit electronic comments on the collection of information to http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm. Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

**Year 2000 Continuation of National Surveys of Prescription Drug Information Provided to Patients**

FDA implements the provisions of the Federal Food, Drug, and Cosmetic Act (the act) designed to ensure the adequate labeling of prescription (Rx) drugs. Under section 502(a) of the act (21 U.S.C. 352(a)), a drug product is misbranded if its labeling is false or misleading in any particular, and under section 201(n) of the act (21 U.S.C. 321(n)), a drug's labeling is misleading if its labeling or advertising fails to reveal material facts. FDA also has the authority to collect this information under Title VI of Public Law 104–180 (Related Agencies and Food and Drug Administration) section 601 (Effective Medication Guides), which directs the development of "a mechanism to assess periodically * * * the frequency with which the [oral and written prescription] information is provided to consumers."

To ensure that Rx drugs are not misbranded, FDA has historically asserted that adequate labeling requires certain information be provided to patients. In 1982, when FDA revoked a planned initiative to require mandatory patient package inserts for all Rx drugs in favor of private sector initiatives, the agency indicated that it will periodically conduct surveys to evaluate the availability of adequate patient information on a nationwide basis. In addition, FDA has been responsible for setting and tracking Healthy People 2000 goals and now for Healthy People 2010 goals for the receipt of medication information by patients.

Surveys of consumers about their receipt of Rx drug information were carried out in 1982, 1984, 1992, 1994, 1996, and 1998. This notice is in regard to conducting the survey in the year 2000.

The survey is conducted by telephone on a national random sample of adults who received a new prescription for themselves or a household member within the past 4 weeks. The interview assesses the extent to which oral and written information were received from the doctor, the pharmacist, and other sources. Survey respondents are also asked attitudinal questions, and demographic and other background characteristics are obtained. The survey enables FDA to determine the frequency with which such information is provided to consumers. Without this information, the agency would be unable to assess the degree to which adequate patient information and counseling about Rx drugs is provided.

Respondents to this collection of information are adults (18 years or older) in the continental United States who have obtained a new (nonrefill) prescription at a pharmacy for themselves or a member of their household in the last 4 weeks.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN:[1] SCREENER

| Year | No. of Respondents | Annual Frequency per Response | Total Annual Responses | Hours per Response | Total Hours |
|---|---|---|---|---|---|
| 2000 | 9,643 | 1 | 9,643 | .03 | 289 |

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ANNUAL REPORTING BURDEN:[1] SURVEY

| Year | No. of Respondents | Annual Frequency per Response | Total Annual Responses | Hours per Response | Total Hours |
|---|---|---|---|---|---|
| 2000 | 1,000 | 1 | 1,000 | .32 | 320 |

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.



This total estimate of 609 total annual burden hours is based on the 1998 survey administration, in which 9,643 potential respondents were contacted to obtain 1,000 interviews.

Dated: October 2, 2000.

**Margaret M. Dotzel,**

*Associate Commissioner for Policy.*

[FR Doc. 00–25701 Filed 10–5–00; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 00N–1353]**

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Current Good Manufacturing Practices and Related Regulations for Blood and Blood Components

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

**DATES:** Submit written comments on the collection of information by November 6, 2000.

**ADDRESSES:** Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Wendy Taylor, Desk Officer for FDA.

**FOR FURTHER INFORMATION CONTACT:** JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

**Current Good Manufacturing Practices (CGMP) and Related Regulations for Blood and Blood Components (OMB Number 0910–0116)—Extension**

Under the statutory requirements contained in the Public Health Service Act (42 U.S.C. 262), no blood, blood component, or derivative may move in interstate commerce unless: (1) It is propagated or manufactured and prepared at an establishment holding an unsuspended and unrevoked license; (2) the product complies with regulatory standards designed to ensure safety, purity, and potency; and (3) it bears a label plainly marked with the product's proper name, manufacturer, and expiration date. The CGMP and related regulations implement FDA's statutory authority to ensure the safety, purity, and potency of blood and blood components. The information collection requirements in the CGMP regulations provide FDA with the necessary information to perform its duty to ensure the safety, purity, and potency of blood and blood components and enable FDA to perform meaningful inspections. The recordkeeping requirements serve preventative and remedial purposes. The disclosure requirements identify the various blood and blood components and important properties of the product, demonstrate that the CGMP requirements have been met, and facilitate the tracing of a product back to its original source. The reporting requirements inform FDA of any deviations that occur and that may require immediate corrective action.

Section 606.100(b) (21 CFR 606.100(b)) requires that written standard operating procedures (SOP's) be maintained for the collection, processing, compatibility testing, storage, and distribution of blood and blood components used for transfusion and manufacturing purposes. Section 606.100(c) requires the review of all pertinent records to a lot or unit of blood prior to release of the lot or unit. Any unexplained discrepancy or failure of a lot or unit of final product to meet any of its specifications must be thoroughly investigated, and the investigation, including conclusions and followup, must be recorded. Section 606.110(a) (21 CFR 606.110(a)) requires a physician to certify in writing that the donor's health permits plateletpheresis or leukapheresis if a variance from additional regulatory standards for a specific product is used when obtaining the product from a specific donor for a specific recipient. Section 606.110(b) requires establishments to request prior Center for Biologics Evaluation and Research (CBER) approval for plasmapheresis of donors who do not meet donor requirements. The regulation in 21 CFR 606.151(e) requires that records of expedited transfusions in life-threatening emergencies be maintained. So that all steps in the collection, processing, compatibility testing, storage and distribution, quality control, and transfusion reaction reports and complaints for each unit of blood and blood components can be clearly traced, 21 CFR 606.160 requires that legible and indelible contemporaneous records of each significant step be made and maintained for no less than 5 years. The regulations in 21 CFR 606.165 require that distribution and receipt records be maintained to facilitate recalls, if necessary. Section 606.170(a) (21 CFR 606.170(a)) requires records to be maintained of any reports of complaints of adverse reactions as a result of blood collection or transfusion. Each such report must be thoroughly investigated, and a written report, including conclusions and followup, must be prepared and maintained. Section 606.170(b) requires that fatal complications of blood collections and transfusions be reported to FDA as soon as possible and that a written report shall be submitted within 7 days.

In addition to the CGMP's in part 606 (21 CFR part 606), there are regulations in part 640 (21 CFR part 640) that require additional standards for blood and blood components as follows: Sections 640.2(f); 640.3(a); 640.4(a); 640.25(b)(4) and (c)(1); 640.27(b); 640.31(b); 640.33(b); 640.51(b); 640.53(c); 640.56(b) and (d); 640.61; 640.63(b)(3), (e)(1), and (e)(3); 640.65(b)(2); 640.66; 640.71(b)(1); 640.72, 640.73; and 640.76(a) and (b). The information collection requirements and estimated burdens for these regulations are included in the part 606 burden estimates, as described below. Respondents to this collection of information are licensed and unlicensed blood establishments inspected by FDA, and other transfusion services inspected by the Health Care Financing Administration (HCFA). Based on FDA's registration system, there are an estimated 3,032 registered blood establishments inspected by FDA of which 1,349 perform pheresis. Based on information provided by HCFA, there are an estimated 3,400 transfusion services inspected by HCFA. An estimated 27 million units of whole blood and blood components are collected annually. The recordkeeping chart reflects the estimate that 95 percent of the recordkeepers, which collect 98 percent of the blood supply, had developed SOP's as part of their customary and usual business practice. Establishments may minimize burdens associated with the CGMP and related regulations by using model SOP's developed by industries' accreditation

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organizations. These accreditation organizations represent almost all registered blood establishments. The total annual responses in the reporting chart for fatality reporting are based on an annual average of fatality reports submitted to FDA. The annual frequency of recordkeeping and total annual records, and the estimated reporting and recordkeeping burden hours are based on information provided by industry, and FDA's experience. Under § 606.110(b), licensed establishments submit supplements to their biologics license applications to request prior CBER approval of plasmapheresis donors who do not meet donor requirements. The information collection requirements for § 606.110(b) are reported under OMB control number 0910–0315.

In the **Federal Register** of July 6, 2000 (65 FR 41674), the agency requested comments on the proposed collections of information. No significant comments were received.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

| 21 CFR Section[2] | No. of Respondents | Annual Frequency per Response | Total Annual Responses | Hours per Response | Total Hours |
|---|---|---|---|---|---|
| 606.170(b) | 75 | 1 | 75 | 20 | 1,500 |

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.
[2]The reporting requirement in § 640.73, which addresses the reporting of fatal donor reactions, is included in the estimate for § 606.170(b).

TABLE 2.—ESTIMATED ANNUAL REPORTING BURDEN[1]

| 21 CFR Section[2] | No. of Respondents | Annual Frequency per Response | Total Annual Responses | Hours per Response | Total Hours |
|---|---|---|---|---|---|
| 606.100(b) | 322[3] | 1 | 322 | 24 | 7,728 |
| 606.100(c) | 152[4] | 26 | 4,000 | 1 | 4,000 |
| 606.110(a) | 68[5] | 5 | 340 | 0.5 | 170 |
| 606.151(e) | 322[3] | 12 | 3,864 | 0.083 | 321 |
| 606.160 | 322[3] | 1,677 | 540,000 | 0.5 | 270,000 |
| 606.165 | 152[4] | 3,553 | 540,000 | 0.083 | 44,820 |
| 606.170(a) | 322[3] | 12 | 3,864 | 1 | 3,864 |
| Total | | | | | 330,903 |

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.
[2]The recordkeeping requirements in §§ 640.3(a)(1), 640.4(a)(1), and 640.66, which address the maintenance of SOP's, are included in the estimate for § 606.100(b); the recordkeeping requirements in § 640.27(b), which address the maintenance of donor health records for plateletpheresis, are included in the estimate for § 606.110(a); and the recordkeeping requirements in §§ 640.2(f), 640.3(a)(2), 640.3(f), 640.4(a)(2), 640.25(b)(4) and (c)(1), 640.31(b), 640.33(b), 640.51(b), 640.53(c), 640.53(c), 640.56(b) and (d), 640.61, 640.63(b)(3), (e)(1), and (e)(3), 640.65(b)(2), 640.71(b)(1), 640.72, and 640.76(a) and (b), which address the maintenance of various records, are included in the estimate for § 606.160.
[3]5 percent of HCFA and FDA-registered blood establishments (0.05 X (3,400+3,032))
[4]5 percent of FDA-registered establishments (3,032)
[5]5 percent of pheresis establishments (1,349)

Dated: October 2, 2000.

**Margaret M. Dotzel,**

*Associate Commissioner for Policy.*

[FR Doc. 00–25698 Filed 10–5–00; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 00N–1395]**

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Medicated Feed Mill License

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

**DATES:** Submit written comments on the collection of information by November 6, 2000.

**ADDRESSES:** Submit written comments on the collection of information to Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attention: Desk Officer for FDA.

**FOR FURTHER INFORMATION CONTACT:** Denver Presley, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

**SUPPLEMENTARY INFORMATION:** In compliance with section 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

**Medicated Feed Mill License 21 CFR Part 515—(OMB Control Number 0910–0337)—Extension**

*Description:* This rule sets forth the information to be included in a medicated feed mill license application and subsequent supplemental applications. In addition, it provides criteria for the approval and nonapproval of a medicated feed mill license application and the criteria for the revocation and/or suspension of a license. More specifically, § 515.10(b) specifies requirements for submitting a completed medicated feed mill license application, using Form FDA 3448. Section 515.11(b) specifies requirements for supplemental medicated feed applications for a change in ownership and/or a change in mailing address for the facility cite, using Form FDA 3448. Section 515.23 sets forth written requirements for voluntary revocation of a medicated feed mill license by a sponsor on the grounds that the facility no longer manufacture any animal feed. Section 515.30(c) details requirements for filing a request for a hearing by a sponsor to give reasons why a medicated feed mill license application should not be refused or revoked and § 510.305(b) (21 CFR 510.305 (b)), requires maintenance of approved labeling for each Type B and/or Type C medicated feed being manufactured on the premises of the manufacturing establishment or the facility where the feed labels are generated.

*Description of Respondents:* Respondents to this collection of information are individuals or firms that manufacture medicated animal feed. In the **Federal Register** of July 26, 2000 (65 FR 45987), FDA published a 60-day notice concerning the proposed extension of this collection of information and requested comments. In response to this notice, no comments were received on the estimated annual reporting and recordkeeping burden. We therefore believe that the total burden estimate of 72 hours for the annual reporting and recordkeeping burden should remain unchanged.

FDA estimates the burden of this collection of information as follows:



TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

| 21 CFR Section | No. of Respondents | Annual Frequency per Response | Total Annual Responses | Hours per Response | Total Hours |
|---|---|---|---|---|---|
| 515.10(b) | 100 | 1 | 100 | 0.25 | 25 |
| 515.11(b) | 25 | 1 | 25 | 0.25 | 6.25 |
| 515.23 | 50 | 1 | 50 | 0.25 | 12.25 |
| 515.30(c) | 0.15 | 1 | 0.15 | 24 | 3.6 |
| Total burden hours | | | | | 47.10 |

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

| 21 CFR Section | No. of Recordkeepers | Annual Frequency per Recordkeeping | Total Annual Records | Hours per Recordkeeper | Total Hours |
|---|---|---|---|---|---|
| 510.305(b) | 100 | 1 | 100 | .25 | 25 |

[1]There are no capital cost or operating and maintenance cost associated with this collection of information.

The estimate for the number of respondents is derived from agency data, i.e. the number of medicated feed manufacturers entering the market each year, change in ownership or address, requests for voluntary revocation of a medicated feed mill license, revocation and/or suspension of a license. The estimate of the time required for the reporting and recordkeeping requirements is based on the agency communication with industry.

Dated: October 2, 2000.

**Margaret M. Dotzel,**

*Associate Commissioner for Policy.*

[FR Doc. 00–25699 Filed 10–5–00; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 00D–1309]**

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Suggested Documentation for Demonstrating Compliance With the Channels of Trade Provision

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

**DATES:** Submit written comments on the collection of information by November 6, 2000.

**ADDRESSES:** Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Wendy Taylor, Desk Officer for FDA.

**FOR FURTHER INFORMATION CONTACT:** Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

**Suggested Documentation for Demonstrating Compliance With the Channels of Trade Provision**

*Description:* Under the pesticide tolerance reassessment process that the Environmental Protection Agency (EPA) was mandated to carry out under the Food Quality Protection Act (FQPA), EPA has proposed to revoke the tolerances for the pesticide chemical methyl parathion on several food commodities. The FQPA includes a provision in section 408(l)(5) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 346a(l)(5)), referred to as the "channels of trade provision," that addresses the circumstances under which a food is not unsafe solely due to the presence of a residue from a pesticide chemical whose tolerance has been revoked, suspended, or modified by EPA. These circumstances are met if the party responsible for the food can demonstrate to FDA that the residue in the food resulted from application of the pesticide chemical to the food commodity at a time and in a manner that was lawful under the Federal Insecticide Fungicide and Rodenticide Act (FIFRA).

In general, FDA anticipates that the party responsible for food found to contain methyl parathion residues (within the former tolerance) after the

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tolerance for the pesticide chemical has been revoked, will be able to demonstrate that the residue resulted from a lawful application under FIFRA by providing appropriate documentation to the agency showing that such food was packed or processed on or prior to December 31, 2000, as discussed in the draft guidance that was announced in a notice that FDA published in the **Federal Register** of June 2, 2000 (65 FR 35376) (the June notice). FDA is not suggesting that firms maintain a certain set list of documents where anything less or different would likely be considered unacceptable. Rather, the agency is leaving it to each firm's discretion to maintain appropriate documentation to demonstrate that the food was so packed or processed.

Examples of documentation that FDA anticipates will serve this purpose include but are not limited to packing codes, batch records, and inventory records; it is anticipated that most food processors routinely generate this documentation as part of their basic food-production operations.

*Description of Respondents:* The likely respondents to this collection of information are firms in the produce and food-processing industries who handle food products that may contain residues of methyl parathion after the tolerances for this pesticide chemical in those foods have been revoked.

In the June notice, the agency requested comments on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

| No. of Respondents | Annual Frequency per Response | Total Annual Responses | Hours per Response | Total Hours |
|---|---|---|---|---|
| 67 | 1 | 67 | 3 | 201 |

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

| No. of Recordkeepers | Annual Frequency per Recordkeeping | Total Annual Records | Hours per Recordkeeper | Total Hours | Total Capital Costs |
|---|---|---|---|---|---|
| 83 | 1 | 83 | 16 | 1,328 | $500 |

[1]There are no operating and maintenance costs associated with this collection of information.

Estimates for the annual reporting burden were determined by using the maximum number of samples collected throughout a year that FDA believes may be found to contain methyl parathion residues. Because all residues are expected to have dissipated from nonfrozen foods by the time FDA intends to question firms about when a food product was packed or processed (i.e., after December 31, 2000), FDA included only frozen food in its estimate (i.e., processors of foods stored under refrigerated and ambient conditions were excluded). Although residues within the former tolerance resulting from legal application of methyl parathion are not expected to be found in nonfrozen foods after December 31, 2000, under the channels of trade provision, firms will have an opportunity to make a showing that any such food was packed or processed on or before this date.

Considering the variation in and effects of food handling, particularly with regard to the time between pesticide application and freezing, FDA estimated that potentially half of all frozen food products sampled may contain methyl parathion residues, and therefore, the responsible party, under the approach set forth in this guidance, would be subject to the reporting requirement since it would be the burden of the responsible party to demonstrate that food found to contain methyl parathion residues within the former tolerance was packed or processed on or before December 31, 2000.

When determining the annual recordkeeping burden, importers and domestic processors of frozen food commodities affected by the revocation of the pesticide chemical methyl parathion were considered. FDA estimated that most firms (at least 90 percent) maintain (or maintain access to) documentation such as packing codes, batch records, and inventory records as part of their basic food production and/or import operations. Therefore, the recordkeeping burden was calculated as the time required for the 10 percent of firms which may not currently be maintaining this documentation, to develop and maintain (or maintain access to) documentation such as batch records and inventory records. It was estimated that with $500 or less, the necessary software and/or hard copy filing systems could be obtained to implement a system.

Because all residues are expected to have dissipated from nonfrozen foods by the time FDA intends to ask for a showing under section 408(l)(5) of the act (i.e., after December 31, 2000), FDA used the number of frozen food processors when determining the annual recordkeeping burden. In the June notice, this burden was originally determined to be 6,600 hours. However, due to revisions that FDA will include in the final guidance document, the proposed information collection was refined, and the annual recordkeeping burden decreased to 1,328 hours. The "Category II Documentation," which consisted of documentation relating to the institution of auditing programs and supplier verification, will be removed from the final guidance as suggested documentation to be provided to demonstrate compliance with the channels of trade provision.

As with the annual reporting burden estimate, although nonfrozen food processors are entitled to make a showing under the channels of trade provision, they were excluded from this estimate because based upon residue dissipation estimates provided by EPA, methyl parathion residues within the former tolerance resulting from legal application are not expected to be found in nonfrozen commodities after December 31, 2000.



Dated: October 2, 2000.

**Margaret M. Dotzel,**

*Associate Commissioner for Policy.*

[FR Doc. 00–25700 Filed 10–5–00; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket Nos. 91N–0101, 91N–0098, 91N–0103, and 91N–100H]**

### Food Labeling; Health Claims and Label Statements for Dietary Supplements; Update to Strategy for Implementation of Pearson Court Decision

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** :Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is updating its strategy for implementation of the court of appeals decision in *Pearson* v. *Shalala* (*Pearson*). The updated implementation strategy includes an interim enforcement strategy for dietary supplement health claims that do not meet the "significant scientific agreement" standard of evidence by which the health claims regulations require FDA to evaluate the scientific validity of claims. It also includes changes in the process that will be used for reconsidering the four *Pearson* health claims and for responding to future petitions for dietary supplement health claims. The agency is taking this action to inform interested persons of the latest developments in FDA's plans for implementation of *Pearson*.

**FOR FURTHER INFORMATION CONTACT:** James E. Hoadley, Center for Food Safety and Applied Nutrition (HFS–832), 200 C St. SW., Washington, DC 20204, 202–205–5372.

**SUPPLEMENTARY INFORMATION:**

## I. Background

After the enactment of the Nutrition Labeling and Education Act of 1990 (the NLEA) and the Dietary Supplement Act of 1992, FDA issued regulations applying the general requirements for health claims for conventional foods to dietary supplements (59 FR 395, January 4, 1994). Under these regulations, a health claim is authorized for use only if FDA determines that there is significant scientific agreement, among experts qualified by scientific training and experience to evaluate such claims, that the claim is supported by the totality of publicly available scientific evidence, including evidence from well-designed studies conducted in a manner that is consistent with generally recognized scientific procedures and principles § 101.14 (21 CFR 101.14). FDA also undertook rulemaking to consider specific health claims, including the four health claims at issue in the *Pearson* case.

In *Pearson*, the plaintiffs challenged FDA's general health claims regulation for dietary supplements and FDA's decision not to authorize health claims for four specific substance/disease relationships: Dietary fiber and cancer, antioxidant vitamins and cancer, omega-3 fatty acids and coronary heart disease, and the comparative claim that 0.8 milligram of folate[1] in dietary supplement form is more effective in reducing the risk of neural tube defects[2] than a lower amount in conventional food form. Although the district court ruled for FDA in all respects (14 F. Supp. 2d 10 (D.D.C. 1998)), the U.S. Court of Appeals for the D.C. Circuit reversed the lower court's decision (164 F.3d 650 (D.C. Cir. 1999)). The appeals court held that, on the administrative record compiled in the challenged rulemakings, the First Amendment does not permit FDA to reject health claims that the agency determines to be potentially misleading unless the agency also reasonably determines that no disclaimer would eliminate the potential deception. Accordingly, the court invalidated the regulations codifying FDA's decision not to authorize the four health claims listed above and directed the agency to reconsider the four claims. The court further held that the Administrative Procedure Act requires FDA to clarify the "significant scientific agreement" standard for authorizing health claims, either by issuing a regulatory definition of significant scientific agreement or by defining it on a case-by-case basis.

On March 1, 1999, the Government filed a petition for rehearing *en banc* (reconsideration by the full court of appeals). The U.S. Court of Appeals for the D.C. Circuit denied the petition for rehearing on April 2, 1999 (172 F.3d 72 (D.C. Cir. 1999)).

[1]In its original health claim evaluation, FDA used the term "folic acid" to describe this B vitamin. Later, the agency decided that the broader term "folate" was more scientifically accurate because that term encompasses both synthetic and naturally occurring forms of the vitamin, whereas folic acid refers only to the synthetic form (see 58 FR 53254 at 53257–58, and 53280, October 14, 1993). Accordingly, this notice uses the term "folete." The two terms may be used interchangeably in food labeling.

[2]Neural tube defects are birth defects of the brain or spinal cord. Spinebifida and anencephaly are the most common types of neural tube defects.

## II. Strategy for Implementation of the Pearson Court Decision

### *A. The December 1999 Implementation Strategy Notice*

In the **Federal Register** of December 1, 1999 (64 FR 67289), FDA published a notice entitled "Food Labeling: Health Claims and Label Statements for Dietary Supplements; Strategy for Implementation of *Pearson* Court Decision" to inform the public of the steps FDA planned to follow to carry out the *Pearson* decision. The strategy included five components: (1) Update the scientific evidence on the four claims at issue in *Pearson*; (2) issue guidance clarifying the "significant scientific agreement" standard; (3) hold a public meeting to solicit input on what changes to FDA's general health claim regulations for dietary supplements may be warranted in light of the *Pearson* decision; (4) conduct a rulemaking to reconsider the general health claims regulations for dietary supplements in light of the *Pearson* decision; and (5) conduct rulemakings on the four *Pearson* health claims. In addition, the implementation strategy notice stated that, until the rulemaking to reconsider the general health claims regulations for dietary supplements was complete, FDA would deny, without prejudice, any petition for a dietary supplement health claim that does not meet the significant scientific agreement standard in § 101.14(c). The notice further explained that, once the rulemaking was complete, the agency would, on its own initiative, reconsider any petitions denied during the interim period.

Since the December 1999 **Federal Register** notice was published, FDA has completed the first three steps in the implementation strategy. The agency entered into contracts with two nongovernment firms to conduct a literature review for the four claims to identify relevant scientific information that became available after the agency's initial 1991 to 1993 review of these claims. FDA also published a notice in the **Federal Register** of September 8, 1999 (64 FR 48841), requesting that interested persons submit any available scientific data concerning the substance-disease relationships that are the subject of the four claims.

In December 1999, FDA issued a guidance clarifying the significant scientific agreement standard. A notice of availability of the guidance was published in the **Federal Register** of December 22, 1999 (64 FR 71794). The guidance is available on the Internet at http://vm.cfsan.fda.gov/~dms/ssaguide.html.

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In response to a request from several of the *Pearson* plaintiffs, the agency agreed to reopen the comment period for scientific data on the four claims after the agency issued its guidance on the significant scientific agreement standard. Accordingly, in the **Federal Register** of January 26, 2000 (65 FR 4252), FDA reopened the comment period for an additional 75 days, until April 3, 2000.

On April 4, 2000, FDA completed the third step in the *Pearson* implementation strategy by convening a public meeting to solicit input on changes to the general health claims regulations for dietary supplements in light of the *Pearson* decision. Information on the public meeting, including the agenda and transcripts, are available on the Internet at http://vm.cfsan.fda.gov/dms/ds-0400.html.

*B. Modifications to the December 1999 Implementation Strategy*

1. Interim Enforcement Strategy for Dietary Supplement Health Claims

In the NLEA, Congress made health claims for dietary supplements subject to a procedure and standard to be established by FDA (see section 403(r)(5)(D) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 343(r)(5)(D)). By regulation, FDA adopted the same procedure and standard for health claims in dietary supplement labeling that Congress had prescribed in the NLEA for health claims in the labeling of conventional foods (see section 403(r)(3) and (r)(4) of the act). The procedure requires the evidence supporting a health claim to be presented to FDA for review before the claim may appear in labeling (§§ 101.14(d) and (e), and 101.70 (21 CFR 101.70)). The standard requires a finding of "significant scientific agreement" before FDA may authorize a health claim by regulation (§ 101.14(c)). Unless and until FDA adopts a regulation authorizing use of the claim, a dietary supplement bearing the claim is subject to regulatory action as a misbranded food (see section 403(r)(1)(B) of the act), a misbranded drug (see section 502(f)(1) of the act (21 U.S.C. 352(f)(1))), and as an unapproved new drug (see section 505(a) of the act (21 U.S.C. 355(a))). Under FDA's current general health claim regulations, the agency cannot authorize use of a health claim that does not meet the significant scientific agreement standard.

Pending reconsideration of the general health claim regulations in response to *Pearson*, FDA is modifying its approach to processing new health claim petitions for dietary supplements. Absent this modification, FDA would have to deny all petitions that do not meet the significant scientific standard pending completion of the general rulemaking. Such an approach could lead to additional First Amendment challenges prior to completion of the rulemaking process.

Rather than denying all petitions that do not meet the significant scientific agreement standard pending completion of the general rulemaking, FDA intends to exercise enforcement discretion in appropriate circumstances. Specifically, the agency will consider exercising enforcement discretion for a dietary supplement health claim when the following conditions are met: (1) The claim is the subject of a health claim petition that meets the requirements of § 101.70; (2) the scientific evidence in support of the claim outweighs the scientific evidence against the claim, the claim is appropriately qualified, and all statements in the claim are consistent with the weight of the scientific evidence; (3) consumer health and safety are not threatened; and (4) the claim meets the general requirements for health claims in § 101.14, except for the requirement that the evidence supporting the claim meet the significant scientific agreement standard and the requirement that the claim be made in accordance with an authorizing regulation.

To the extent possible, FDA will consider these criteria while it is evaluating the petition and will state its conclusions in a letter to the petitioner; however, some criteria will have to be evaluated after-the-fact, because they involve information or circumstances that cannot be determined from the petition. For example, FDA will not be able to determine whether the entire claim appears in one place without intervening material, as required by § 101.14(d)(2)(iv), until it actually sees the claim on products in the marketplace. Some provisions of § 101.14 may not be relevant to a particular claim. The agency intends to identify any such provisions in its letter to the petitioner.

As discussed below, FDA will consider exercising enforcement discretion only if a petition to authorize the health claim has been submitted; the agency has filed the petition; the agency has completed its scientific evaluation of the claim and communicated that evaluation by letter to the petitioner; and the conditions previously described, as well as any others stated in the letter to the petitioner, are met.

2. Interim Process for Responding to New Dietary Supplement Health Claim Petitions and Reconsidering the Four *Pearson* Health Claims

FDA intends to respond to the four health claims at issue in the *Pearson* case and, pending rulemaking to implement *Pearson*, to new dietary supplement health claim petitions that have been filed for comprehensive review (see § 101.70(j)(2)) in one of the following three ways:

(1) If FDA determines that the significant scientific agreement standard is met, the agency will propose to authorize the health claim. FDA will consider using its interim final rule authority under section 403(r)(7)(A)(iii) of the act to allow use of the health claim immediately upon publication of the proposal.

(2) If FDA determines that the significant scientific agreement standard is not met, but that the scientific evidence in support of the claim outweighs the scientific evidence against the claim and the other threshold criteria listed above are met, FDA will consider exercising enforcement discretion with regard to dietary supplements that bear the health claim with appropriate qualifying language. The petitioner will be notified in writing of this intention. The letter to the petitioner will outline the agency's rationale for its determination that the evidence does not meet the significant scientific agreement standard set forth in § 101.14(c) and then state the conditions under which the agency would ordinarily expect to exercise enforcement discretion for the claim.

(3) If FDA determines that the significant scientific agreement standard is not met and that the evidence supporting the claim is outweighed by evidence against the claim (either qualitatively or quantitatively), or the substance poses a threat to health, or that any of the other criteria listed in section II.B.1 of this document are not met, FDA intends to deny the petition. The denial letter to the petitioner will: (1) Outline the agency's rationale for its determination that the evidence does not meet the significant scientific agreement standard set forth in § 101.14(c); and (2) explain why FDA believes that the scientific evidence for the claim is outweighed by the evidence against the claim, that the claim would be otherwise misleading even if qualified, or that authorizing a health claim would pose a threat to consumer health or safety.

This process is consistent with case law holding that FDA has wide latitude in matters of enforcement discretion.



(See, e.g., *Heckler* v. *Chaney*, 470 U.S. 821 (1985); *Schering* v. *Heckler*, 779 F.2d 683 (D.C. Cir. 1985).) It is also consistent with the *Pearson* decision, which described several circumstances in which FDA might be justified in banning certain health claims outright —e.g., where consumer health and safety are threatened, or where FDA can demonstrate that a health claim would be misleading even if qualified (see *Pearson*, 164 F.3d at 650, 657–60). For example, the court said that FDA could prohibit a health claim where the evidence in support of the claim is outweighed by evidence against the claim, either quantitatively or qualitatively (164 F.3d at 659 & n.10). The agency is adopting this modified process on an interim basis to minimize any burden on speech pending consumer research and rulemaking to complete the implementation of the *Pearson* decision.

3. Timing of FDA's Decisions on Health Claims for Dietary Supplements

FDA will complete its reconsideration of the four *Pearson* claims and issue a final decision on each of the claims within 190 days after the close of the comment period seeking scientific data on the claims, i.e., by October 10, 2000. For new health claim petitions for dietary supplements, FDA will continue to follow the applicable deadlines in § 101.70(j), as with past health claim petitions.

Dated: October 2, 2000.

**Margaret M. Dotzel,**

*Associate Commissioner for Policy.*

[FR Doc. 00–25702 Filed 10–3–00; 4:29 pm]

BILLING CODE 4160–01–F

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**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Health Care Financing Administration**

**[Document Identifier: HCFA–10011]**

**Agency Information Collection Activities: Proposed Collection; Comment Request**

**AGENCY:** Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

*Type of Information Collection Request:* New Collection;

*Title of Information Collection:* Stages of Change Survey for Informed Choice in the Medicare Population;

*Form No.:* HCFA–10011 (OMB# 0938–NEW);

*Use:* This is a survey of Medicare beneficiaries in the first step in the application the Transtheoretical Model (the "stage model") to informed choice in the Medicare population. The Transtheoretical Model has been applied and proven effective in facilitating behavior change in a wide range of health behaviors including smoking cessation, mammography screening, and safe sex. This work will yield psychometrically sound and externally valid measures of beneficiaries' readiness to make informed choices about health plans, and provide information to HCFA to assist with its national educational campaign to inform beneficiaries about their choices. Stages of Change measures will be administered to 560 Medicare beneficiaries and initial enrollees. This survey research will yield psychometrically sound measures of beneficiaries' readiness to make informed choices about health plans, and provide information to guide HCFA's National Medicare Education Program (NMEP);

*Frequency:* Other: One-time survey;

*Affected Public:* Individuals or Households;

*Number of Respondents:* 560;

*Total Annual Responses:* 560;

*Total Annual Hours:* 327.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Melissa Musotto, HCFA–10011, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: September 26, 2000.

**John P. Burke III,**

*HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.*

[FR Doc. 00–25761 Filed 10–5–00; 8:45 am]

BILLING CODE 4120–03–P

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**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Health Care Financing Administration**

**[Document Identifier: HCFA–9044]**

**Agency Information Collection Activities: Proposed Collection; Comment Request**

**AGENCY:** Health Care Financing Administration, OHHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

*Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Provider Reimbursement Manual, Part 1—Chapter 27, Section 2721, 2722 and 2725, Request for Exception to ESRD Composite Rates and Supporting Regulations in 42 CFR 413.170 and 413.184; *Form No.:* HCFA–9044 (OMB# 0938–0296); *Use:* Sections 2721, 2722 and 2525 of the Provider Reimbursement Manual describe the information ESRD facilities must submit

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in justifying an exception request to their composite rate for outpatient dialysis services.; *Frequency:* On occasion; *Affected Public:* Business or other for-profit, Not-for-profit institutions and Federal Government; *Number of Respondents:* 291; *Total Annual Responses:* 291; *Total Annual Hours:* 14,000.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Melissa Musotto, HCFA–9044 Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: September 28, 2000.

**John P. Burke III,**

*HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards*

[FR Doc. 00–25762 Filed 10–5–00; 8:45 am]

BILLING CODE 4120–03–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

**[Document Identifiers: HCFA–R–296 (OMB # 0938–0781)]**

### Notice of Extension of Emergency Office of Management and Budget Clearance of Agency Information Collection Activities

**AGENCY:** Health Care Financing Administration, DHHS.

The Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing this Notice to inform the public that the Office of Management and Budget (OMB) has approved our request for an extension of the OMB clearance on model advance beneficiary notices (ABNs), for which we first requested emergency clearance by **Federal Register** notice dated September 22, 1999 (HCFA–R–296, OMB # 0938–0781). Clearance of these model ABNs (referred to as HHABNs) for use by home health agencies (HHAs) has been extended through January 31, 2001. These model notices, together with the instructions in Program Memorandum Transmittals A–99–52 and A–99–54, remain in effect following the implementation of the prospective payment system (PPS) for home health agencies on October 1, 2000. HCFA also has published a **Federal Register** notice on September 26, 2000, 65 FR 57821, seeking emergency OMB clearance, pursuant to the Paperwork Reduction Act, of a revised uniform Home Health Advance Beneficiary Notice (HHABN), which we expect to make mandatory in January 2001.

*Use:* The purpose of this Notice is to clarify, for Medicare beneficiaries, for HHAs, and for other interested members of the public that existing requirements regarding notice and demand bills, as set forth in Program Memorandum Transmittals A–99–52 and A–99–54, and as reflected in the model notices for which OMB has extended the emergency clearance, remain in effect following the implementation of the prospective payment system for HHAs on October 1, 2000. Thus, in accordance with the instructions in PMs A–99–52 and A–99–54, HHAs continue to be responsible for providing proper ABNs and for submitting demand bills to Regional Home Health Intermediaries (RHHIs) when requested to do so by a beneficiary or by a person acting on the beneficiary's behalf. Moreover, the transition to PPS does not change HHAs' responsibility to follow ABN and demand bill procedures for plans of care in which the physician's order spans the transition.

HHAs must give a Medicare beneficiary a proper ABN before reducing or terminating home health care the beneficiary already is receiving, if the physician's order for such care would still continue the care, and an HHA believes that the services do not meet Medicare coverage criteria. In instances where care has not yet been initiated and an HHA believes services ordered by the physician do not meet Medicare coverage criteria, it must also provide a proper ABN. Currently, HHAs may use the model HHABNs designed by HCFA (Form No. HCFA–R–0296) or forms of the HHA's own design to meet the beneficiary notification requirement.

*Continued Use of Demand Billing Procedures and Meaning of "Prompt" Submission Under HHA PPS*

With respect to the instructions regarding demand bills in Transmittals A–99–52 and A–99–54, we want to emphasize that the demand bill process remains in effect following the implementation of HHA PPS, and must be used by HHAs to ensure continuation of beneficiary rights to obtain an official Medicare initial determination. Beginning in June, HCFA has been assessing the operational feasibility and impact of options for integrating the initial determination process into HHA PPS. In the HHA PPS final rule published on July 3, 2000, we stated, in response to public comment, that HCFA was reviewing demand billing procedures to determine whether they must be modified to account for the differences between HHA reasonable cost billing and HHA PPS. 65 FR 41128, 41169 (July 3, 2000) (Medicare Program; Prospective Payment System for Home Health Agencies, Final Rule). As a result of our assessment of the feasibility of various options, HCFA decided to continue to use the demand bill process as the mechanism by which Medicare beneficiaries obtain an official Medicare initial determination when an HHA believes, under HHA PPS, that Medicare will not, or will no longer, cover services ordered by a physician.

When a beneficiary agrees to be fully and personally responsible for payment for the services if Medicare decides the services are not covered, and has requested that a claim be submitted to Medicare, HHAs must "promptly" submit a claim to the RHHI and report, on the claim submitted, condition code 20 (demand-beneficiary requested billing) to indicate the beneficiary believes the services are covered (*see* PM A–99–52 sec. I–2A). Under HHA PPS, HHAs may submit only one claim for payment at the end of each episode of care. *See* 65 FR at 41141. Thus, under HHA PPS, "prompt submission" of a claim with the demand bill code requires that the claim (*i.e.*, the demand bill) be submitted at the end of the episode in question, at the same time the claim for final payment for the episode is submitted. Pursuant to the HHA PPS Final Rule, where an HHA has received a "request for anticipated payment" (RAP) for an episode, the RAP will be canceled and recovered unless the claim for the episode (with the condition code 20 to indicate that the claim is a demand bill when requested by the beneficiary in the circumstances described in PM A–99–52) is submitted within the greater of 60 days from the end of the episode or 60 days from the issuance of the anticipated payment. 65 FR at 41141.

*Future Plans*

As noted above, on September 26, 2000, HCFA published a **Federal Register** notice seeking emergency OMB clearance, pursuant to the Paperwork Reduction Act, of a revised uniform mandatory Home Health Advance Beneficiary Notice (HHABN). (The **Federal Register** notice, which includes procedures for submitting comments on the revised HHABN, the revised uniform HHABN and related documents, including a Supporting Statement, are posted on HCFA's website at *http://www.hcfa.gov/regs/prdact95htm*, and are also available via an e-mail request sent to Paperwork@hcfa.gov). HCFA has requested that OMB issue an emergency clearance of the proposed uniform HHABN by October 12, 2000, and HCFA intends to make mandatory the use of the HHABN not later than 90 days following OMB approval. (See the Supporting Statement for HCFA–R–0296). The instructions and requirements of PMs A–99–52 and A–99–54 will remain in effect until a further instruction with a new mandatory implementation date is issued. HCFA expects to issue these instructions as soon as it receives emergency approval by the Office of Management and Budget (OMB). HCFA strongly advises that HHAs use the new notice (the HHABN) once it is approved and instructions are issued, rather than waiting until its use becomes mandatory in January 2001.

Dated: October 4, 2000.

**John P. Burke III,**

*HCFA Reports Clearance Officer, HCFA, Office of Information Services Security and Standards Group Division of HCFA Enterprise Standards.*

[FR Doc. 00–25936 Filed 10–6–00; 8:45 am]

BILLING CODE 4120–03–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

**[Document Identifier: HCFA–R–64]**

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

*Type of Information Collection Request:* Extension of a currently approved collection;

*Title of Information Collection:* Indirect Medical Education (IME) and Supporting Regulations in 42 CFR 412.105;

*Form No.:* HCFA–R–64 (OMB# 0938–0456);

*Use:* This collection of information on interns and residents (IR) is needed to properly calculate Medicare program payments to hospitals that incur indirect costs for medical education. The agency's Intern and Resident Information System uses the information for producing automated reports of duplicate full-time equivalent IRs for IME. The reports provide contractors with information to ensure that hospitals are properly reimbursed for IME, and help eliminate duplicate reporting of IR counts which inflate payments. The collection of this information affects 1,350 hospitals which participate in approved medical education programs.;

*Frequency:* Annually;

*Affected Public:* Not-for-profit institutions, and Business or other for-profit;

*Number of Respondents:* 1,350;

*Total Annual Responses:* 1,350;

*Total Annual Hours:* 2,700.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's Web Site Address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: September 11, 2000.

**John P. Burke III,**

*HCFA Reports Clearance Officer, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.*

[FR Doc. 00–25760 Filed 10–5–00; 8:45 am]

BILLING CODE 4120–03–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

*Comments are invited on:* (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

*Proposed Project:* Obligated Service for Mental Health Traineeships: Regulations (42 CFR part 62a) and Forms—(Extension, no change; OMB No. 0930–0074)—SAMHSA's Center for Mental Health Services (CMHS) awards grants to institutions for training instruction and traineeships in mental health and related disciplines. Graduate student recipients of these clinical traineeships must perform service, as determined by the Secretary to be appropriate in terms of the individual's training and experience, for a length of time equal to the period of support. The clinical trainees are required to submit SAMHSA Form SMA 111, a payback agreement, SAMHSA Form 111–1, which ensures agency receipt of a termination notice prior to the end of support, and the SAMHSA Form SMA

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111–2, which is an annual report on employment status and any changes in name and/or address, to SAMHSA. The burden estimate is provided below.

| 42 CFR citation and associated forms | Number of respondents | Responses per respondent | Average burden per response (hrs.) | Annual burden (hrs.) |
|---|---|---|---|---|
| *64a.104* SMA 111,111–1 | 50 | 1 | .10 | 5 |
| *64a.105(b)(2)* SMA 111–2 | 500 | 1 | .18 | 90 |
| Total | 550 | | | 95 |

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: September 29, 2000.

**Richard Kopanda,**

*Executive Officer, SAMHSA.*

[FR Doc. 00–25686 Filed 10–5–00; 8:45 am]

BILLING CODE 4162–20–P

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4561–N–62]**

### Notice of Submission of Proposed Information Collection to OMB; Resident Opportunities Self-Sufficiency (ROSS) Program: Application Requirements, Evaluation, Assessment, Certifications

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** *Comments Due Date:* November 6, 2000.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2577–0229) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail Wayne_Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the pubic will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

*Title of Proposal:* Resident Opportunities Self-Sufficiency (ROSS).

*Program:* Application requirements, evaluation, assessment, certifications.

*OMB Approval Number:* 2577–0229.

*Form Numbers:* None.

*Description of the Need for the Information and Its Proposed Use:* Public Housing Entities, Intermediary Resident Organizations, if eligible, will submit applications for Resident Opportunities Self-Sufficiency Program funding categories: Resident Management and Business Development, Capacity Building and Conflict Resolution, Resident Services Delivery Models and Service Coordinators to HUD. HUD will review and approve or disapprove applications for grant funds.

*Respondents:* Individuals or Households, Not-For Profit Institutions State, Local or Tribal Government.

*Frequency of Submission:* Annually.

| | Number of respondents | × | Frequency of responses | × | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|---|
| Reporting Burden | 850 | | 1 | | 52.7 | | 44,800 |

*Total Estimated Burden Hours:* 44,800.

*Status:* Reinstatement, without change.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: September 29, 2000.

**Wayne Eddins,**

*Departmental Reports Management Officer, Office of the Chief Information Officer.*

[FR Doc. 00–25670 Filed 10–5–00; 8:45 am]

BILLING CODE 4210–01–M



## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Arthur R. Marshall Loxahatchee National Wildlife Refuge; Comprehensive Conservation Plan, Environmental Assessment and Finding of No Significant Impact

**ACTION:** Notice of Availability.

**SUMMARY:** The Fish and Wildlife Service has published a Comprehensive Conservation Plan, Environmental Assessment, and a Finding of No Significant Impact for the Arthur R. Marshall Loxahatchee National Wildlife Refuge. This refuge, located seven miles west of Boynton Beach, Florida, consists of 221 square miles of the last remaining northern Everglades. The plan describes how the Fish and Wildlife Service intends to manage the refuge for the next 15 years.

**ADDRESSES:** A copy of the above documents will be available on October 6, 2000, and may be obtained by writing to Mark J. Musaus, Refuge Manager, Arthur R. Marshall Loxahatchee National Wildlife Refuge, U.S. Fish and Wildlife Service, 10216 Lee Road, Boynton Beach, Florida 33437–4796. In the meantime, a copy of the Comprehensive Conservation Plan and Environmental Assessment can be obtained from the following website address: http://loxahatchee.fws.gov

**SUMMARY INFORMATION:** The plan provides a clear statement regarding the future management of the refuge; ensures that the refuge's management actions are consistent with refuge purposes and mandates of the National Wildlife Refuge System; and addresses the issues regarding the renewal (planned by January 1, 2002) of the refuge's license agreement with the South Florida Water Management District, including issues relating to modifying the agreement and management capabilities and responsibilities. The major issues addressed in the plan include invasive exotic species; biological diversity; water quality, quantity, timing, and delivery; land use changes; habitat and wildlife protection; appropriate and compatible wildlife-dependent public recreational opportunities and access; environmental education and interpretation; and partnerships.

Dated: September 19, 2000.

**Steven P. Thompson,**

*Acting Regional Director.*

[FR Doc. 00–25712 Filed 10–5–00; 8:45 am]

BILLING CODE 4310–55–M

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Notice of Intent To Prepare Comprehensive Conservation Plans, and Conduct Biological, Public Use, and Wilderness Reviews for the Central Mississippi National Wildlife Refuge Complex. The Complex Includes Yazoo Refuge in Washington County; Panther Swamp Refuge in Yazoo County; Hillside and Morgan Brake Refuges in Holmes County; and Mathews Brake Refuge in Leflore County

**SUMMARY:** This notice advises the public that the Fish and Wildlife Service, Southeast Region, intends to gather information necessary to prepare a comprehensive conservation plan and associated environmental documents pursuant to the National Environmental Policy Act and implementing regulations to achieve the following:

(1) Advise other agencies and the public of our intentions, and

(2) To obtain suggestions and information on the scope of issues to include in the environmental documents.

**DATES:** Written comments should be received within 60 days of this publication.

**ADDRESSES:** Address comments and requests for more information to the following:

Ms. Laura Reid, Natural Resource Planner, U.S. Fish and Wildlife Service, 728 Yazoo Refuge Road, Hollandale, Mississippi 38748, (662) 839–2638.

If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to the above address. You may also comment via the Internet to the following address: Laura_Reidfws.gov. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at the above address. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also my be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

**SUPPLEMENTARY INFORMATION:** By Federal law, all lands within the National Wildlife Refuge System are to be managed in accordance with an approved comprehensive conservation plan. These plans will guide management decisions and identify refuge goals, long-range objectives, and strategies for achieving refuge purposes. The planning process will consider many elements, including habitat and wildlife management, habitat protection and acquisition, public use, and cultural resources. Public input into this planning process is essential. The plan will provide other agencies and the public with a clear understanding of the desired conditions for the refuge and how the Service will implement management strategies.

The Service will solicit information from the public via open houses, meetings, and written comments. Special mailings, newspaper articles, and announcements will inform people in the general refuge area of the time and place of such opportunities for public involvement. Review of this project will be conducted in accordance with the requirements of the National Environmental Policy act of 1969, as amended (42 U.S.C. 4321 *et seq.*), National Environmental Policy Act Regulations (40 CFR 1500–1508), other appropriate Federal laws and regulations, including the National Wildlife Refuge System Improvement Act of 1997, Executive Order 12996, and Service policies and procedures for compliance with those regulations.

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We estimate that the draft environmental documents will be available in January 2003.

Dated: September 28, 2000

**H. Dale Hall,**

*Acting Regional Director.*

[FR Doc. 00–25680 Filed 10–05–00; 8:45 am]

BILLING CODE 4310–55–M

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Notice of Intent To Prepare Comprehensive Conservation Plans for Reelfoot, Lake Isom, Chickasaw, Lower Hatchie, and Hatchie National Wildlife Refuges, and Sunk Lake Public Use Natural Area in Tennessee

**SUMMARY:** This notice advises the public that the Fish and Wildlife Service, Southeast Region, intends to gather information necessary to prepare comprehensive conservation plans and associated environmental documents pursuant to the Service's Comprehensive Conservation Planning Policy and the National Environmental Policy Act and implementing regulations to achieve the following:

(1) Advise other agencies and the public of our intentions, and

(2) Obtain suggestions and information on the scope of issues to include in the environmental documents.

Public scoping meetings will be held as follows:

Lower Hatchie National Wildlife Refuge, Sunk Lake Public Use Natural Area, Thursday, October 26, 2000, 7 P.M., Community Conference Room, Baptist Memorial Hospital, 1995 Highway 51 South, Covington, Tennessee 38019.

Chickasaw National Wildlife Refuge, Thursday, November 2, 2000, 7 P.M., Multi-Purpose Room, Tennessee Technology Center, 127 Industrial Drive, Ripley, Tennessee 38063.

Hatchie National Wildlife Refuge, Monday, November 6, 2000, 7 P.M., Brownsville-Haywood County Chamber of Commerce, 121 West Main, Brownsville, Tennessee 38012.

Reelfoot and Lakes Isom National Wildlife Refugees, Tuesday, November 14, 2000, 7 P.M., Ellington Center, Route 1, Box 2345, Tiptonville, Tennessee 38079, (Located on Highway 21–22, approximately 2 miles east of Tiptonville at the State Park Visitor Center.)

**DATES:** Written comments should be received within 60 days of this publication.

**ADDRESSES:** Address comments and requests for more information to the following: Rob Martin, U.S. Fish and Wildlife Service, 309 N. Church Street, Room 201, Dyersburg, Tennessee 38024, (901) 287–0650, (901) 286–0468 (Fax).

If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to the above address. You may also comment via the Internet to the following address: Rob_Martin@fws.gov. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at the above address. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

**SUPPLEMENTARY INFORMATION:** By Federal law, all lands within the National Wildlife Refuge System are to be managed in accordance with an approved comprehensive conservation plan. These plans will guide management decisions and identify refuge goals, long-range objectives, and strategies for achieving refuge purposes. The planning process will consider many elements, including public use management, habitat management, wildlife population management, and cultural resource identification and protection. Alternatives that address the issues and management strategies associated with these topics will be included in the environmental documents.

Pre-planning for each of the above stated national wildlife refuges, as well as the public use natural area, began in January 2000. Reelfoot Refuge was established in 1941 under terms of a 75-year cooperative agreement with the State of Tennessee. Lake Isom Refuge was established by a Presidential Proclamation in 1938. Chickasaw Refuge was established August 5, 1985, by the Migratory Bird Conservation Commission, as was Lower Hatchie Refuge in 1980, and Hatchie Refuge in 1964. Sunk Lake Public Use Natural Area was purchased in 1986 by the Natural and Cultural Areas Acquisition Fund. Reelfoot, Lake Isom, Chicasaw, and Lower Hatchie Refuges were established for use as inviolate sanctuaries, or for any other management purpose, for migratory birds. Hatchie Refuge was established to provide habitat for wintering and migrating waterfowl, particularly dabbling ducks. The Fish and Wildlife Service manages the Sunk Lake Public Use Natural Area in accordance with State Natural Area rules of the Tennessee Department of Conservation.

Dated: September 28, 2000.

**H. Dale Hall,**

*Acting Regional Director.*

[FR Doc. 00–25681 Filed 10–5–00; 8:45 am]

BILLING CODE 4310–55–M

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Notice of Intent To Prepare a Comprehensive Conservation Plan for St. Vincent National Wildlife Refuge in Franklin County, FL

**SUMMARY:** This notice advises the public that the Fish and Wildlife Service, Southeast Region, intends to gather information necessary to prepare a comprehensive conservation plan and associated environmental documents pursuant to the National Environmental Policy Act and implementing regulations to achieve the following:

(1) Advise other agencies and the public of our intentions, and

(2) To obtain suggestions and information on the scope of issues to include in the environmental documents.

**DATES:** Written comments should be received on or before December 5, 2000.

**ADDRESSES:** Address comments and requests for more information to the following:

Mr. Steve Ovenden, Natural Resource Planner, U.S. Fish and Wildlife Service, 7298 Coastal Highway, Crawfordville, Florida 32327, (850) 925–1497.

If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to the above address. You may also comment via the Internet to the following address: Steven_Ovenden@fws.gov. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at the above address. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individuals respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

**SUPPLEMENTARY INFORMATION:** By Federal law, all lands within the National Wildlife Refuge System are to be managed in accordance with an approved comprehensive conservation plan. These plans will guide management decisions and identify refuge goals, long-range objectives, and strategies for achieving refuge purposes. The planning process will consider many elements, including habitat and wildlife management, habitat protection and acquisition, public use, and cultural resources. Public input into this planning process is essential. The plan will provide other agencies and the public with a clear understanding of the desired conditions for the refuge and how the Service will implement management strategies.

The Service will solicit information from the public via open houses, meetings, and written comments. Special mailings, newspaper articles, and announcements will inform people in the general refuge area of the time and place of such opportunities for public involvement. Review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), National Environmental Policy Act Regulations (40 C.F.R. 1500–1508), other appropriate Federal laws and regulations, including the National Wildlife Refuge System Improvement Act of 1997, Executive Order 12996, and Service policies and procedures for compliance with those regulations.

We estimate that the draft environmental documents will be available in January 2002.

Dated: September 28, 2000.

**H. Dale Hall,**

*Acting Regional Director.*

[FR Doc. 00–25682 Filed 10–5–00; 8:45 am]

BILLING CODE 4310–55–M



## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Availability of an Environmental Assessment and Receipt of an Application for an Incidental Take Permit for the Granite Homes, Inc. Development in Riverside County, CA

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability and receipt of application.

**SUMMARY:** Granite Homes, Incorporated (the Applicant) has applied to the Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended. Granite Homes is a managing member of the Elsinore 98, Limited Liability Company. The Service is considering issuance of a 2-year permit to the Applicant that would authorize take of the threatened coastal California gnatcatcher (*Polioptila californica californica,* (gnatcatcher)) incidental to otherwise lawful activities.

Such take would occur during the construction of 99 homes on a previously graded site in the City of Lake Elsinore, in Riverside County, California. This project would permanently eliminate 14 acres of Riversidean sage scrub habitat, resulting in incidental take of three pairs of gnatcatchers. The Applicant proposes to reduce deleterious effects from the proposed construction and to conserve 24 acres of Riversidean sage scrub habitat within an adjacent 80-acre parcel of open space to the north of the project site.

We request comments from the public on the permit application, and an Environmental Assessment, both of which are available for review. The permit application includes the proposed Habitat Conservation Plan (Plan) and an accompanying Implementing Agreement. The Plan describes the proposed action and the measures that the Applicant would undertake to minimize and mitigate take of the gnatcatcher.

**DATES:** We must receive your written comments on or before December 5, 2000.

**ADDRESSES:** Please address written comments to Mr. Ken Berg, Field Supervisor, U.S. Fish and Wildlife Service, 2730, Loker Avenue West, Carlsbad, California 92008. You also may send comments by facsimile to (760) 431–5902.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jim Bartel, Assistant Field Supervisor, at the above address or call (760) 431–9440.

**SUPPLEMENTARY INFORMATION:**

#### Availability of Documents

You may obtain copies of these documents for review by contacting the above office. Documents also will be available for public inspection, by appointment, during normal business hours at the above address and at the Lake Elsinore City Library located at 600 West Graham Street, Lake Elsinore, California.

#### Background

Section 9 of the Endangered Species Act (Act) and Federal regulations prohibit the "take" of fish or wildlife species listed as endangered or threatened. Take of listed fish or wildlife is defined under the Act to include "harass, harm, pursue, hunt, shot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." The Service may, under limited circumstances, issue permits to authorize incidental take (*i.e.* take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity). Regulations governing incidental take permits for threatened and endangered species are found in 50 CFR 17.32 and 17.22.

The Applicant has proposed development of 99 high-density single family homes on 61 acres. The planning area is located within the city of Lake Elsinore, immediately northeast of Interstate 15 at Railroad Canyon Road. Land uses in the area include a graded industrial lot immediately adjacent to Interstate 15 to the southwest, a residential and light commercial district at Railroad Canyon road to the south and southeast, Summerhill Drive to the east, the Tuscany Homes residential community to the northeast, and extensive undeveloped foothills to the north.

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Biologists surveyed the project site for the gnatcatcher and other biological resources between 1998–2000. Based on the survey results, the Service concluded that implementation of the proposed project would result in take of three gnatcatcher pairs through the permanent removal of 14 acres of Riversidean sage scrub. Indirect effects addressed in the Plan and Environmental Assessment include: (1) A reduced dispersal corridor of Riversidean sage scrub in the northeast section of the project site that connects high gnatcatcher population densities to the north with large areas of open space to the south; (2) increased nest predation from introduced domestic cats; (3) brown-headed cowbird (*Molothrus ater*) parasitism; (4) increased off-road vehicle use of the conserved areas, and (5) increased numbers of predators associated with backyard night-lighting and garbage surrounding constructed homes.

The Applicant proposes to implement the following measures to mitigate and minimize take of the gnatcatcher: (1) Purchase 24 acres of gnatcatcher-occupied Riversidean sage scrub from an adjacent 80-acre conservation parcel to the north that is contiguous with 29 acres previously conserved by the Applicant; (2) enhance the reduced gnatcatcher dispersal corridor in the northeastern section of the project site by removing non-native plants on the back of Lot 187 to allow regeneration of sage scrub and by leaving 2 acres on either side of this lot undeveloped through a conservation easement; (3) place fencing on the rear portion of lots adjacent to conserved areas in order to minimize predation by domestic cats; (4) implement a brown-headed cowbird trapping program if monitoring determines that trapping is necessary; (5) place deed restrictions pertaining to pets, lighting, and trash disposal on lots adjacent to open space; (5) encourage protection of the conserved areas by distributing an educational brochure to home buyers; and (6) implement an adaptive management plan for the conserved areas. The Applicant proposes to endow the long-term management of the 24 acres of Riversidean sage scrub off-site mitigation at a cost of $3,211 per acre. The conserved area would be managed by the Center for Natural Lands Management as part of a 109-acre managed open-space area.

The Environmental Assessment considers the environmental consequences of three alternatives including the Proposed Action. The Proposed Action consists of the issuance of an incidental take permit and implementation of the Plan and its Implementing Agreement, which include measures to minimize and mitigate impacts of the project to the gnatcatcher. Under the "No Action" alternative, the Service would not issue a permit. Under this alternative, the Applicant could retain the property or sell it to somebody else who may choose to develop it. In either case, in the short-term the previously graded Riversidean sage scrub habitat onsite would continue to revegetate naturally with a mixture of native and non-native plants. This sage scrub habitat would continue to be fragmented by intrusions of existing paved streets and there would be no mechanism for prohibiting off-road vehicle use and illegal dumping of trash on the property. Under the "Project Redesign" alternative, 55 of the 99 lots would be developed and the remaining 44 lots would be conserved. These two alternatives to the Proposed Action would result in less habitat value for the gnatcatcher than the off-site mitigation and minimization measures under the Proposed Action.

This notice is provided pursuant to section 10(a) of the Endangered Species Act and the regulations of the National Environmental Policy Act of 1969 (40 CFR 1506.6). All comments that we receive, including names and addresses, will become part of the official administrative record and may be made available to the public. We will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of the National Environmental Policy Act regulations and section 10(a) of the Endangered Species Act. If we determine that those requirements are met, we will issue a permit to the Applicant for the incidental take of the California gnatcatcher. We will make our final permit decision no sooner than 60 days from the date of this notice.

Dated: September 28, 2000.

**Elizabeth H. Stevens,**

*Deputy Manager, California/Nevada Operations Office, Sacramento, California.*

[FR Doc. 00–25780 Filed 10–05–00; 8:45 am]

BILLING CODE 4310–55–M

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

### Rincon Alcohol Control Ordinance No. 99–01 of the Rincon, San Luiseño Band of Mission Indians, Valley Center, CA

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice publishes the Rincon Alcohol Control Ordinance No. 99–01. The Ordinance regulates the control of, the possession of, and the sale of liquor on the Rincon, San Luiseño Band of Mission Indians' trust lands, and is in conformity with the laws of the State of California, where applicable and necessary. Although the Ordinance was adopted on June 13, 2000, it does not become effective until published in the **Federal Register** because the failure to comply with the ordinance may result in criminal charges.

**DATES:** This Ordinance is effective on October 6, 2000.

**FOR FURTHER INFORMATION CONTACT:** Kaye Armstrong, Office of Tribal Services, 1849 C Street, NW, MS–4631–MIB, Washington, DC 20240–4001; telephone (202) 208–4400.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Act of August 15, 1953, Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner*, 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transaction in Indian country. The Rincon Alcohol Control Ordinance No. 99–01 was duly adopted by the Rincon, San Luiseño Band of Mission Indians General Membership on June 13, 2000. The Rincon, San Luiseño Band of Mission Indians, in furtherance of its economic and social goals, has taken positive steps to regulate retail sales of alcohol and use revenues to combat alcohol abuse and its debilitating effects among individuals and family members within the Rincon, San Luiseño Band of Mission Indians.

This notice is being published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary-Indian Affairs by 209 Departmental Manual 8.

I certify that by Resolution No. 2000–04, the Rincon Alcohol Control Ordinance No. 99–01 was duly adopted by the Rincon, San Luiseño Band of Mission Indians General Membership on June 13, 2000.

Dated: September 29, 2000.

**Kevin Gover,**

*Assistant Secretary-Indian Affairs.*

The Rincon Alcohol Control Ordinance No. 99–01 reads as follows:



**Rincon Alcohol Control Ordinance No. 99–01**

*Section 200.01. Title*

This ordinance shall be known as the Rincon Ordinance Regulating and Controlling the Manufacture, Introduction, Sale or Possession of Alcoholic Beverages within the boundaries of the Rincon Indian Reservation. The short title of this Ordinance shall be "Rincon Alcohol Control Ordinance."

*Section 200.02. Authority*

This Ordinance is enacted pursuant to federal law, specifically the Act of August 15, 1953, Public Law 83–277, 67 Stat. 588, 18 U.S.C. 1161, and the Articles of Association, Governing Procedures for Administering the Affairs of The Rincon, San Luiseño Band of Mission Indians, California.

*Section 200.03. Purpose*

The purpose of this Ordinance is to regulate and control the possession and sale of alcohol within the exterior boundaries of the Rincon Indian Reservation, and to permit alcohol sales by tribally owned, controlled or operated enterprises, and at tribally approved special events, for the purpose of the economic development of the Rincon Band. The enactment of a tribal ordinance governing alcohol possession and sales within the exterior boundaries of the Rincon Indian Reservation increases the ability of the Rincon Tribal Government to control reservation alcohol distribution and possession, and will provide an important source of revenue for the continued operation and strengthening of the tribal government and the economic viability of tribal government services. This Rincon Alcohol Control Ordinance is in conformity with the laws of the State of California as required by 18 U.S.C. 1161, and with all applicable federal laws.

*Section 200.04. Manufacture of Alcohol*

The manufacture of alcoholic beverages by business enterprises owned by or subject to the control of the Rincon Band shall be lawful within the exterior boundaries of the Rincon Indian Reservation; provided that such manufacture is in conformity with the laws of the State of California as required by federal law.

*Section 200.05. Possession of Alcohol*

The introduction or possession of alcoholic beverages shall be lawful within the exterior boundaries of the Rincon Indian Reservation; provided that such introduction or possession is in conformity with the laws of the State of California as required by federal law.

*Section 200.06. Sales of Alcohol*

(a) The sale of alcoholic beverages by business enterprises owned or operated by, or subject to the control of, the Rincon Band shall be lawful within the exterior boundaries of the Rincon Indian Reservation; provided that such sale is in conformity with the laws of the State of California as required by federal law.

(b) The sale of alcoholic beverages by the drink at special events authorized by the Rincon Band shall be lawful within the exterior boundaries of the Rincon Indian Reservation; provided that such sales are in conformity with the laws of the State of California as required by federal law and with prior approval by Resolution of the Tribal Council of the Rincon Band.

*Section 200.07. Age Limits*

(a) The drinking age within the exterior boundaries of the Rincon Indian Reservation shall be the same as that of the State of California as required by federal law. No person under such age shall purchase, possess or consume any alcoholic beverage within the exterior boundaries of the Rincon Indian Reservation.

(b) The State of California sets the drinking age within California under California Business and Professions Code § 25658. California's drinking age is 21 at the time of the enactment of this Ordinance.

(c) At such time, if any, as California Business and Professions Code § 25658 is repealed or amended to raise or lower the drinking age within California, subsection (b) above shall automatically become null and void, and the Tribal Council shall be empowered to enact a new subsection to reference the appropriate provision of the state law, such amendment to become effective upon publication in the **Federal Register** by the Secretary of the Interior.

*Section 200.08. Civil Penalties*

The Rincon Band, through its Tribal Council and duly authorized security personnel, shall have the authority to enforce this Ordinance by confiscating any alcohol manufactured, introduced, sold or possessed in violation hereof. The Tribal Council shall be empowered to sell such confiscated alcohol for the benefit of the Rincon Band, and to develop and approve such regulations as may become necessary for enforcement of this Ordinance.

*Section 200.09. Severability*

If any provision of this Ordinance is determined by review to be invalid, such adjudication shall not be held to render ineffectual the remaining portions of this Ordinance or to render such provisions inapplicable to other persons or circumstances.

*Section 200.10. Prior Enactments*

Any and all prior enactments of the Rincon Band which are inconsistent with the provisions of this Ordinance are hereby rescinded.

*Section 200.11. Conformance With California Laws*

All acts and transactions under this Ordinance shall be in conformity with the laws of the State of California as the term is used in 18 U.S.C. 1161.

*Section 200.12. Effective Date*

This Ordinance shall be effective on October 6, 2000.

*Section 200.13. Amendment*

This Ordinance may be amended only by a majority vote of the Rincon General Council.

*Section 200.14. Sovereign Immunity*

Nothing contained in this Ordinance is intended to, nor does, in any way, limit, alter, restrict, or waive the Tribe's sovereign immunity from unconsented suit or action.

[FR Doc. 00–25799 Filed 10–5–00; 8:45 am]

BILLING CODE 4310–02–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[OR–084–6333–00; GPO–0006]**

### Notice of Seasonal Closure of Public Lands; Baker County, OR

**AGENCY:** Bureau of Land Management, Vale District, Baker Field Office, Oregon.

**ACTION:** A seasonal closure to motorized vehicle use and public entry on public lands administered by the Bureau of Land Management (BLM), Vale District, Baker Resource Area, Oregon.

**SUMMARY:** This closure is part of the Cooperative Management Agreement between the BLM and the Oregon Department of Fish and Wildlife, dated September 18, 1985. This closure meets specific objectives stated in the Agreement to control vehicular traffic on the land during the period each year between December 1st and May 1st.

The closed area is the Elk winter feeding stations on Elk and Salmon Creek, section 8, Township 9 South, Range 39 East of the Willamette Meridian. All entry will be restricted

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during this seasonal closure to protect sensitive wildlife from disturbance by motor vehicles and public traffic. Wintering bald eagles also occupy the area during the closure dates.

Closure signs will be posed at main entry points to this area. Maps of the closure area and information may be obtained from the Baker Field Office, 3165 10th Street, Baker City, Oregon.

**DATES:** This closure will take effect October 6, 2000.

**FOR FURTHER INFORMATION CONTACT:** Penelope Dunn Woods, Bureau of Land Management, Baker Field Manager, 3165 10th Street, Baker City, OR 97814, Telephone (541) 523–1256.

**Discussion of the Rules**

Under 43 CFR 8364.1, the Bureau of Land Management will enforce the following rule on public lands within the closed area. You must follow this rule: You must not enter the closed area between December 1st and May 1st.

*Exemptions*

Persons who are exempt from these rules include:

1. Any Federal, State, or local officer or employee in the scope of their duties, members of any organized rescue or fire-fighting force in performance of an official duty, and any person authorized in writing by the Bureau of Land Management.

2. Any person traveling on the Salmon Creek Road (road numbers 9180 and 9180010) west of the locked gate located in the southeast ¼ of section 8, Township 9 South, Range 39 East.

3. Owners or lessees of private land accessible by the Salmon Creek Road.

*Penalties*

The authority for this closure is found under section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)) and 43 CFR 8360.0–7. Any person who violates this closure may be tried before a United States Magistrate and fined no more than $1,000 or imprisoned for no more than 12 months, or both. Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571.

**Penelope Dunn Woods,**

*Field Manager, Baker Resource Area.*

[FR Doc. 00–25713 Filed 10–5–00; 8:45 am]

BILLING CODE 4310–33–M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[UT–030–00–1220–EN]**

### Notice of Availability of Draft Environmental Impact Statement for 3R Minerals Coal Bed Canyon Mine

**AGENCY:** Bureau of Land Management, Utah State Office, DOI.

**ACTION:** Notice of Availability of Draft Environmental Impact Statement.

**SUMMARY:** In accordance with section 102 of the National Environmental Policy Act of 1969, a draft environmental impact statement (DEIS) for 3R Minerals Coal Bed Canyon Mine proposal on lands within Grand Staircase-Escalante National Monument, has been prepared and is available for review and comment. This DEIS is prepared in response to the Notice of Intent to Revise Mining Operations filed by 3R Minerals in June 1999. It analyzes the anticipated impacts of 3R Minerals' proposed action and three alternatives to the proposal.

**ADDRESSES:** Copies of the DEIS may be obtained from the following Bureau of Land Management Locations: Grand Staircase-Escalante National Monument Headquarters, 180 West 300 North, Kanab, Utah 84741; Grand Staircase-Escalante National Monument Escalante Field Station, 755 West Main, Escalante, Utah; Utah State Office, 324 South State Street, Suite 301, Salt Lake City, Utah. Copies may be obtained by mail by contacting the Monument Headquarters at the above address or telephoning 435–644–4300.

**DATES:** Comments must be received by Grand Staircase-Escalante National Monument Headquarters, 180 West 300 North, Kanab, Utah 84741 by December 4, 2000. An open house will be held at the Conference Center at Ruby's Inn, located on Highway 63 near the entrance to Bryce Canyon National Park, on November 6, 2000 from 5:00 pm to 8:00 pm. The purpose of the open house is to clarify information in the DEIS. *IT IS NOT INTENDED TO BE A PUBLIC HEARING.*

**FOR FURTHER INFORMATION CONTACT:** Paul Chapman, Grand Staircase-Escalante National Monument Headquarters, 435–644–4309, or Kate Cannon, Monument Manager, Grand Staircase-Escalante National Monument Headquarters, 435–644–4330.

**SUPPLEMENTARY INFORMATION:** The DEIS analyzes four alternatives summarized as follows: Alternative A is the Proposed Action as submitted by 3R Minerals; Alternative B is the BLM Preferred Alternative which is to approve 3R Minerals proposed action with certain conditions of approval; Alternative C is the No Action Alternative which would be denial of 3R Minerals' Notice of Intent to Revise Mining Operations in which case 3R Minerals would continue to mine in accordance with the approvals from the State of Utah; and Alternative D, the No Mining alternative where 3R Minerals could not mine. Since mining under the approvals granted by the State of Utah is a valid existing right, the BLM has no statutory authority to select Alternative D but the alternative is presented as baseline with which to compare the other alternatives. Mining activity is based on a mineral lease issued by the Utah State Institutional Trust Lands Administration when the site was still State land. Although the lease was issued after the Monument was established, it occurred on State lands which were not affected by the Presidential Proclamation. 3R Minerals was granted approval to mine by appropriate State agencies and has been conducting limited mining activity on the site. Ownership of the land was exchanged to the Federal Government via the Utah Schools and Lands Exchange Act of 1998. Language in that act preserved 3R Minerals' existing right to mine as approved by the State. Therefore, the decision to be made in this EIS is not whether mining should be allowed, but rather whether the Notice of Intent to Revise Mining Operations should be approved, approved with certain conditions, or denied.

**Sally Wisely,**

*State Director.*

[FR Doc. 00–25109 Filed 10–5–00; 8:45 am]

BILLING CODE 4310–DQ–U

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[ES–960–1910–BJ–4489] ES–50828, Group 30, Illinois**

### Notice of Filing of Plat of Survey; Illinois

The plat of the survey of the subdivision of the Lock and Dam No. 26 and the Locks and Dam No. 26 Replacement acquisition boundaries, in Township 5 North, Ranges 9 and 10 West of the 3rd Principal Meridian, Illinois, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on November 9, 2000.

The survey was requested by the U.S. Army Corps of Engineers.



All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m., November 9, 2000.

Copies of the plat will be made available upon request and prepayment of the appropriate fees.

Dated: September 25, 2000

**Stephen G. Kopach,**

*Chief Cadastral Surveyor.*

[FR Doc. 00–25763 Filed 10–5–00; 8:45 am]

BILLING CODE 4310–GJ–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[ES–960–1910–BJ–4489] ES–50827, Group 23, Illinois**

### Notice of Filing of Plat of Survey; Illinois

The plat of the survey of the subdivision of section 3 with an amended portion of the Rend Lake acquisition boundary, in Township 6 South, Range 2 East of the 3rd Principal Meridian, Illinois, will be officially filed in Eastern States, Springfield, VA at 7:30 a.m., on November 9, 2000.

The survey was requested by the U.S. Army Corps of Engineers.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, VA 22153, prior to 7:30 a.m., November 9, 2000.

Copies of the plat will be made available upon request and prepayment of the appropriate fee.

Dated: September 25, 2000.

**Stephen G. Kopach,**

*Chief Cadastral Surveyor.*

[FR Doc. 00–25764 Filed 10–5–00; 8:45 am]

BILLING CODE 4310–GJ–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[NV–030–1920–ET–4132; NVN–37171]**

### Legal Description of Naval Air Station Fallon Ranges—Range Safety and Training Withdrawal; Nevada

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice provides official publication of the legal description for the Department of the Navy's Range Safety and Training Withdrawal as required by sec. 3012 of Pub. L. 106–65, enacted October 5, 1999.

**EFFECTIVE DATE:** October 5, 1999.

**FOR FURTHER INFORMATION CONTACT:** Dennis J. Samuelson, BLM Nevada State Office, P.O. Box 12000, Reno, Nevada 89520, (775)–861–6532.

**SUPPLEMENTARY INFORMATION:** Pub. L. 106–65 withdrew 201,933 acres in Churchill County, Nevada for the Naval Air Station Fallon Range Safety and Training Withdrawal. The legal description for this withdrawal is as follows:

**Mount Diablo Meridian**

B–16

T. 17 N., R. 27 E.,
Secs. 1 to 3, inclusive;
Sec. 11, E½;
Secs. 12 and 13;
Sec. 14, E½;
Secs. 23 to 26, inclusive;
Secs. 35 and 36.
T. 18 N., 27 E.,
Secs. 25 and 26;
Sec. 35, E½;
Sec. 36.
T. 16 N., R. 28 E.,
Sec. 3, lots 2 to 4, inclusive, SW¼NE¼, and S½NW¼;
Sec. 4, lots 1 to 4, inclusive, and S½N½;
T. 17 N., R. 28 E.,
Secs. 4 to 9, inclusive;
Secs. 16 to 21, inclusive;
Sec. 22, W½NE¼, NW¼, and S½;
Secs. 27 to 34, inclusive;
T. 18 N., R. 28 E.,
Sec. 28, W½E½ and W½;
Secs. 29 to 32, inclusive;
Sec. 33, W½E½ and W½.

The area described for B–16 contains 27,252.76 acres in Churchill County.

B–17

T. 15 N., R. 33 E.,
Secs. 1 to 5, inclusive;
Sec. 6, that portion east of the easterly right-of-boundary for State Route 839;
Sec. 7, that portion east of the easterly right-of-boundary for State Route 839;
Secs. 8 to 17, inclusive;
Sec. 18, that portion east of the easterly right-of-boundary for State Route 839;
Sec. 19, that portion east of the easterly right-of-boundary for State Route 839;
Secs. 20 to 28, inclusive,
Secs. 35 and 36.
T. 16 N., R. 33 E.,
Sec. 1, that portion south of the southerly right-of-boundary for U.S. Highway 50;
Sec. 2, that portion south of the southerly right-of-boundary for U.S. Highway 50;
Sec. 3, those portions of the S½NE¼, SW¼NW¼, S½, south of the southerly right-of-way boundary for U.S. Highway 50;
Sec. 4, that portion south of the southerly right-of-boundary for U.S. Highway 50;
Sec. 5, that portion south of the southerly right-of-way boundary for U.S. Highway 50 and east of the easterly right-of-way boundary for State Route 839;
Sec. 8, that portion east of the easterly right-of-boundary for State Route 839;
Sec. 9 to 16, inclusive;
Sec. 17, that portion east of the easterly right-of-boundary for State Route 839;
Sec. 18, that portion east of the easterly right-of-boundary for State Route 839;
Sec. 19, that portion east of the easterly right-of-boundary for State Route 839;
Secs. 20 to 29, inclusive;
Sec. 30, that portion east of the easterly right-of-boundary for State Route 839;
Sec. 31, that portion east of the easterly right-of-boundary for State Route 839;
Sec. 32, that portion east of the easterly right-of-boundary for State Route 839;
Secs. 33 to 36, inclusive.
T. 15 N., R. 34 E., (partially surveyed)
Sec. 4, lot 4 and W½SW¼;
Secs. 5 and 6;
Sec. 7, except patented lands;
Sec. 8;
Sec. 9, W½W½;
Sec. 16, W½W½;
Sec. 17;
Sec. 18, except patented lands;
Secs. 19 and 20.
Sec. 21, W½NW¼ and NW¼SW¼;
Secs. 29 to 31, inclusive.
T. 16 N., R. 33½ E, (unsurveyed)
Secs. 1, that portion south of the southerly right-of-boundary for U.S. Highway 50;
Secs. 12, 13, 24, 25, and 36.
T. 16 N., R. 34 E., (partially surveyed)
Sec. 4, lots 4, 6, 7, 8, 13, 14, and SW¼;
Sec. 5, that portion south of the southerly right-of-boundary for U.S. Highway 50;
Sec. 6, that portion south of the southerly right-of-boundary for U.S. Highway 50;
Sec. 7, except patented lands;
Sec. 8;
Sec. 9, W½ except patented lands;
Sec. 16, W½ except patented lands;
Sec. 17, lots 1 to 16, inclusive;
Sec. 18, except patented lands;
Sec. 19, except patented lands;
Sec. 20, except patented lands;
Sec. 21, W½ except patented lands;
Sec. 28, W½;
Secs. 29 to 32, inclusive;
Sec. 33, W½.

The area described for B–17 contains 52,830.35 acres in Churchill County.

B–19

T. 15 N., R. 29 E.,
Secs. 1 to 3, inclusive;
Sec. 4, those portions of lot 1, S½NE¼, E½SE¼ east of the easterly right-of-way boundary for U.S. Highway 95;
Sec. 9, that portion of the E½E½ east of the easterly right-of-way boundary for U.S. Highway 95;
Secs. 10 to 15, inclusive;
Sec. 16, that portion of the E½E½ east of the easterly right-of-way boundary for U.S. Highway 95;
Sec. 21, that portion east of the easterly right-of-way boundary for U.S. Highway 95;
Secs 22 to 24, inclusive.
T. 15 N., R. 30 E.,
Secs. 1 to 24, inclusive;
T. 16 N., R. 30 E.,
Sec. 32, SE¼;
Sec. 33, S½;

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Sec. 34, S½;
Sec. 35, S½.
T. 15 N., R. 31 E.,
Secs. 5 to 8, inclusive;
Secs. 17 to 20, inclusive.
The area describe for B–19 contains 29,276.40 acres in Churchill County.

B–20

T. 23 N., R. 32 E.,
Sec. 2, 4, 6, 8, 10, 12, 14, 16, 18 20, 22, 24, 26, 28, and 30.
T. 24 N., R. 32 E.,
Secs. 20, 22, 24, 26, 28, 30, 32, 34, and 36.
T. 23 N., R. 33 E.,
Secs. 6 and 8;
Sec. 17, SE¼;
Sec. 18;
Sec. 19, lots 3 and 4, E½SW¼, and SE¼;
Secs. 20 and 29;
Sec. 30, lots 1 to 4, E½, and E½W½.
T. 24 N., R. 33 E.,
Secs. 20, 30, and 32.
The area described for B–20 contains 21,577 acres in Churchill County.

**Shoal Site**

T. 15 N., R. 32 E.,
Secs. 4 and 5;
Sec. 8, N½;
Sec. 9, N½.
T. 16 N., R. 32 E.,
Secs. 33 and 34.
The area described for Shoal Site contains 2,560 acres in Churchill County.

The areas B–16, B–17, B–19, B–20, and Shoal Site aggregate 133,496.51 acres. Portions of these lands are unsurveyed and the acres were based on protraction diagrams. Pursuant to section 3011(a)(1) of Public Law 106–65, dated October 5, 1999, these areas were withdrawn from all forms of appropriation under the public land laws, including the mining laws, and the mineral leasing and geothermal leasing laws.

**Dixie Valley Training Area**

T. 16 N., R. 33 E.,
Sec. 1, that portion lying north of the northerly right-of-way boundary for U.S. Highway 50;
Sec. 2, that portion lying north of the northerly right-of-way boundary for U.S. Highway 50;
Sec. 3, that portion lying north of the northerly right-of-way boundary for U.S. Highway 50;
Sec. 4, that portion lying north of the northerly right-of-way boundary for U.S. Highway 50;
Sec. 5, that portion lying north of the northerly right-of-way boundary for U.S. Highway 50.
T. 17 N., R. 33 E.,
Secs. 1 to 5, inclusive;
Secs. 8 to 17, inclusive;
Secs. 20 to 29, inclusive;
Secs. 32 to 36, inclusive.
T. 18 N., R. 33 E.,
Sec. 9, E½;
Sec. 10, that portion south of Elevenmile Canyon Wash;
Sec. 13, that portion south of Elevenmile Canyon Wash;
Sec. 14, that portion south of Elevenmile Canyon Wash;
Sec. 15,
Sec. 16, E½;
Secs. 21 to 28, inclusive;
Sec. 29, E½;
Secs. 32 to 36.
T. 16 N., R. 33½ E.,
Sec. 1, that portion north of the northerly right-of-way boundary for U.S. Highway 50.
T. 17 N., R. 33½ E.,
Secs. 1, 12, 13, 24, 25, and 36;
T. 18 N., R. 33½ E.,
Sec. 13, those portions of lot 4 and the E½SW¼ south of Elevenmile Canyon Wash;
Sec. 24, lots 1 to 4, inclusive, E½SW¼, SE¼, and those portions of the E½NW¼ and the NE¼ south of Elevenmile Canyon Wash;
Secs. 25 and 36.
T. 16 N., R. 34 E.,
Sec. 4, lots 3 and 5;
Sec. 5, that portion north of the northerly right-of-way boundary for U.S. Highway 50;
Sec. 6, that portion north of the northerly right-of-way boundary for U.S. Highway 50.
T. 17 N., R. 34 E.,
Sec. 3, lots 3 and 4, S½NW¼, and SW¼;
Secs. 4 to 9, inclusive;
Sec. 10, W½;
Sec. 15, W½;
Secs. 16 to 21, inclusive;
Sec. 22, W½;
Sec. 27, W½;
Secs. 28 to 33, inclusive;
Sec. 34, W½.
T. 18 N., R. 34 E.,
Sec. 3;
Sec. 4, lot 1, SE¼NE¼, E½SE¼, and those portions of lot 2, SW¼NE¼, W½SE¼, lying east of the easterly right-of-way boundary for State Route 121 (Dixie Valley Road);
Sec. 9, E½E½, and that portion of the W½E½ lying east of the easterly right-of-way boundary for State Route 121 (Dixie Valley Road);
Secs. 10 and 15;
Sec. 16, E½E½, and that portion of the W½E½ lying east of the easterly right-of-way boundary for State Route 121 (Dixie Valley Road);
Sec. 19, lots 2 to 4, inclusive, E½SW¼, SE¼, and those portions of the S½NE¼ and SE¼NW¼ lying south of Elevenmile Canyon Wash;
Sec. 20, that portion lying south of Elevenmile Canyon Wash;
Sec. 21, E½, and that portion of the E½W½ lying east of the easterly right-of-way boundary for State Route 121 (Dixie Valley Road), and that portion of W½SW¼ lying south of Elevenmile Canyon Wash;
Sec. 22;
Secs. 27 to 34.
T. 19 N., R. 34 E.,
Sec. 3;
Sec. 4, those portions of lot 1, SE¼NE¼, E½SE¼, lying east of the easterly right-of-way boundary for State Route 121 (DixieValley Road);
Sec. 9, that portion of E½ lying east of the easterly right-of-way boundary for State Route 121 (Dixie Valley Road);
Secs. 10 and 15;
Sec. 16, that portion of E½ lying east of the easterly right-of-way boundary for State Route 121 (Dixie Valley Road);
Sec. 21, that portion of E½ lying east of the easterly right-of-way boundary for State Route 121 (Dixie Valley Road);
Secs. 22 and 27;
Sec. 28, that portion of E½ lying east of the easterly right-of-way boundary for State Route 121 (Dixie Valley Road);
Sec. 33, that portion of E½ lying east of the easterly right-of-way boundary for State Route 121 (Dixie Valley Road);
Sec. 34.
T. 20 N., R. 34 E.,
Sec. 2, lots 2 to 4, inclusive, SE¼NE¼, S½NW¼, SW¼, and W½SE¼;
Sec. 3, lot 1, SE¼NE¼, and E½SE¼;
Sec. 10, E½E½;
Sec. 11, W½E½ and W½;
Sec. 26, W½E½ and W½;
Sec. 27;
Sec. 28, that portion of the E½E½ lying east of the easterly right-of-way boundary for State Route 121 (Dixie Valley Road);
Sec. 33, that portion of the E½E½ lying east of the easterly right-of-way boundary for State Route 121 (Dixie Valley Road);
Sec. 34.
T. 21 N., R. 34 E.,
Sec. 25, lots 1 and 2, W½NE¼, and NW¼.
T. 21 N., R. 35 E.,
Sec. 17, W½;
Sec. 18, lots 5 to 11, inclusive, and E½SE¼SE¼NE¼.

The Dixie Valley Training Area contains 68,437 acres in Churchill County. Portions of these lands are unsurveyed and acres are based on protraction diagrams. Pursuant to Section 3011(a)(1) of Public Law 106–65, dated October 5, 1999, these areas were withdrawn from all forms of appropriation under the public land laws, including the mining laws, and the geothermal leasing laws, but not the mineral leasing laws.

A copy of the legal description and the map depicting the withdrawn lands are available for public inspection at the following offices:

Director (350), BLM, 1620 L Street, NW., Room 1000, Washington, DC 20036
State Director, BLM, Nevada State Office, 1430 Financial Blvd., Reno, Nevada, 89502
Field Manager, BLM Carson City Field Office, 5665 Morgan Hill Rd., Carson City, Nevada, 89701.
Commanding Officer, Naval Air Station Fallon, 4755 Pasture Road, Fallon, Nevada 89496–5000
Commanding Officer, Engineering Field Activity Northwest, Naval Facilities Engineering Command, 19917 7th Ave. NE, Poulsbo, Washington 98370

Dated: September 29, 2000.

**Margaret L. Jensen,**

*Deputy State Director, Natural Resources, Lands, and Planning.*

[FR Doc. 00–25688 Filed 10–5–00; 8:45 am]

BILLING CODE 4310–HC–P



## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

### Notice on Outer Continental Shelf Oil and Gas Lease Sales

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** List of restricted joint bidders.

**SUMMARY:** Pursuant to the authority vested in the Director of the Minerals Management Service by the joint bidding provisions of 30 CFR 256.41, each entity within one of the following groups shall be restricted from bidding with any entity in any other of the following groups at Outer Continental Shelf oil and gas lease sales to be held during the bidding period November 1, 2000, through April 30, 2001. The List of Restricted Joint Bidders published March 30, 2000, in the **Federal Register** at 65 FR 16957 covered the period May 1, 2000, through October 31, 2000.

*Group I.* Exxon Mobil Corporation; and ExxonMobil Exploration Company

*Group II.* Shell Oil Co.; Shell Offshore Inc.; SWEPILP; Shell Frontier Oil & Gas Inc.; Shell Consolidated Energy Resources Inc.; Shell Land & Energy Company; Shell Onshore Ventures Inc.; Shell Deepwater Development Inc.; Shell Deepwater Production Inc.; and Shell Offshore Properties and Capital II, Inc.

*Group III.* BP Exploration & Oil Inc.; BP Exploration (Alaska) Inc.; Amoco Production Company; Vastar Offshore Inc.; and Vastar Resources Inc.

*Group IV.* Elf Exploration, Inc.; Elf Aquitaine Oil Programs, Inc.; TOTAL Exploration Production USA, Inc.; and PetroFina Delaware, Inc.

Dated: October 2, 2000.

**Walt Rosenbusch,**

*Director, Minerals Management Service.*

[FR Doc. 00–25794 Filed 10–5–00; 8:45 am]

BILLING CODE 4310–MR–M

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Notice of Intent To Prepare an Environmental Impact Statement for the General Management Plan for Chattahoochee River National Recreation Area, Georgia

**SUMMARY:** In accordance with the National Environmental Policy Act of 1969 (Public Law 91–190, as amended), the National Park Service (NPS) is preparing an Environmental Impact Statement to assess the impacts of alternative management concepts that would be implemented under a revised General Management Plan for the Chattahoochee River National Recreation Area. the purpose of the General Management Plan is to establish the basic management philosophy for the park and provide strategies for addressing issues and achieving identified management objectives. The General Management Plan/Environmental Impact Statement (GMP/EIS) will evaluate the environmental impacts of a range of alternatives to address distinct management issues such as resource protection and visitor use. As a conceptual framework for formulating these alternatives, the Chattahoochee River National Recreation Area's purpose, significant resources, and management goals will first be identified. The GMP/EIS will conform to Director's Order—2, the planning guidance for National Park Service units, effective May 27, 1998.

**DATES:** Public scoping meetings will be scheduled this fall, and additional public meetings will be scheduled upon release of the Draft GMP/EIS. Time and place of the public meetings will be publicized in area newspapers.

Persons who may be interested in or affected by the proposed GMP/EIS are invited to participate in the scoping process by responding to this notice with written comments. We will accept comments through December 15, 2000. A Draft GMP/EIS will be available for review in the fall of 2001.

**SUPPLEMENTARY INFORMATION:** Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

The Draft and Final GMP/EIS will be made available to known interested parties and appropriate agencies. Full public participation by Federal, State, and local agencies as well as other concerned organizations and private citizens is invited throughout the preparation process of this document.

**ADDRESSES:** Written comments concerning the GMP/EIS should be sent to Mr. Kevin Cheri, Superintendent, Chattahoochee River National Recreation Area, 1978 Island Ford Parkway, Atlanta, GA 30350–3400, telephone (770) 399–8070.

Dated: September 29, 2000.

**Charlie Powell,**

*Acting Regional Director, Southeast Region.*

[FR Doc. 00–25677 Filed 10–5–00; 8:45 am]

BILLING CODE 4310–70–M

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Glacier Bay National Park and Preserve; Alaska; Glacier Bay Compensation Program

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice of Availability of the draft Glacier Bay Compensation Program Plan.

**SUMMARY:** Section 123(c) of the Omnibus Consolidated and Emergency Supplemental Appropriations Act for FY 1999 ("the Act"), as amended by section 501 of the 1999 Emergency Supplemental Appropriations Act, Public Law 106–31 (05/21/99), authorizes compensation for fish processors, fishing vessel crewmembers, communities and others negatively affected by congressionally directed restrictions and closures on commercial fishing in the marine waters of Glacier Bay National Park. The National Park Service (NPS) and the State of Alaska have been working to develop and implement the compensation program as broadly envisioned by Congress in the Act. The first step in this process was the August 1, 2000, release of the Final Economics Assessment Report which quantified the financial impacts resulting from the commercial fishing restrictions and closures. The draft plan was available for public review on September 29, 2000.

**DATES:** Comments on the draft Glacier Bay Compensation Program Plan will be accepted through November 30, 2000. If individuals submitting comments request that their name or/and address be withheld from public disclosure, it

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will be honored to the extent allowable by law. Such requests must be stated prominently in the beginning of the comments. There also may be circumstances wherein the NPS will withhold a respondent's identity as allowable by law. NPS will make available to public inspection all submissions from organizations or businesses and from persons identifying themselves as representatives or officials of organizations and businesses; and, anonymous comments may not be considered.

**ADDRESSES:** Comments on the draft Glacier Bay Compensation Program Plan should be submitted to Clark Millett, Compensation Program Manager, Glacier Bay National Park and Preserve, 2770 Sherwood Lane, Suite I, Juneau, Alaska 99801. Phone (907) 586–7047.

**FOR FURTHER INFORMATION CONTACT:** A copy of the draft Compensation Program Plan can be viewed and downloaded at http://www.nps.gov/learn/preserve/issues/fish/. Copies of the draft Glacier Bay Compensation Program Plan are available from: Clark Millett, Compensation Program Manager, Glacier Bay National Park and Preserve, 2770 Sherwood Lane, Suite I. Juneau, Alaska 99801. Phone (907) 586–7047.

Dated: September 26, 2000.

**Thomas Ferranti,**

*Acting Regional Director, Alaska Region.*

[FR Doc. 00–25678 Filed 10–5–00; 8:45 am]

BILLING CODE 4310–70–M

## DEPARTMENT OF THE INTERIOR

### National Park Service

### National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before September 23, 2000. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by October 23, 2000.

**Carol D. Shull,**

*Keeper of the National Register.*

**CALIFORNIA**

**Ventura County**

Pratt, Charles M., House, 1330 Foothill Rd., Ojai, 00001227

**FLORIDA**

**Hillsborough County**

Union Depot Hotel, Old, 858 E. Zack St., Tampa, 00001228

**LOUISIANA**

**St. Mary Parish**

Alice C Planation House, 10736 LA 182, Franklin, 00001229

**NEW MEXICO**

Eddy County Last Chance Canyon Apache—Cavalry Battle Site, Address Restricted, Queen, 00001230

**NEW YORK**

Rensselaer County

Osgood, J.C., Firehouse, 316–324 Third St., Troy, 00001231

**NORTH CAROLINA**

Edgecombe County

Quigless Clinic, 99 Main St., Tarboro, 00001232

**SOUTH CAROLINA**

**Hampton County**

American Legion Hut, Jct. of Hoover St. and Jackson Ave., Hampton, 00001235

**Jasper County**

White Hall Plantation House Ruins and Oak Avenue, Address Restricted, Ridgeland, 00001233

**Spartanburg County**

Fremont School, 600 Magnolia St., Spartanburg, 00001234

**WISCONSIN**

**Calumet County**

Chilton Post Office, (United States Post Office Construction in Wisconsin MPS) 57 E. Main St., Chilton, 00001249

**Clark County**

Neillsville Post Office, (United States Post Office Construction in Wisconsin MPS) 619 Hewett St., Neillsville, 00001257

**Columbia County**

Columbus Post Office, (United States Post Office Construction in Wisconsin MPS) 211 S. Dickason Blvd., Columbus, 00001250

**Crawford County**

Prairie Du Chien Post Office, (United States Post Office Construction in Wisconsin MPS) 120 S. Beaumont Rd., Prairie du Chien, 00001263

**Door County**

Sturgeon Bay Post Office, (United States Post Office Construction in Wisconsin MPS) 359 Louisiana Ave., Sturgeon Bay, 00001237

**Fond Du Lac County**

Waupun Post Office, (United States Post Office Construction in Wisconsin MPS) 400 E. Franklin St., Waupun, 00001262

**Grant County**

Lancaster Post Office, (United States Post Office Construction in Wisconsin MPS) 236 W. Maple St., Lancaster, 00001245

**Green Lake County**

Berlin Post Office, (United States Post Office Construction in Wisconsin MPS) 122 S. Pearl St., Berlin, 00001248

**Kewaunee County**

Kewaunee Post Office, (United States Post Office Construction in Wisconsin MPS) 119 Ellis St., Kewaunee, 00001247

**Langlade County**

Antigo Post Office, (United States Post Office Construction in Wisconsin MPS) 501 Clermont St., Antigo, 00001255

**Lincoln County**

Merill Post Office, (United States Post Office Construction in Wisconsin MPS) 430 E. Second St., Merrill, 00001258

**Manitowoc County**

Two Rivers Post Office, (United States Post Office Construction in Wisconsin MPS) 1516 Eighteenth St., Two Rivers, 00001246

**Milwaukee County**

South Milwaukee Post Office, (United States Post Office Construction in Wisconsin MPS) 2210 Tenth Ave., South Milwaukee, 00001251

**Ozaukee County**

O'Brien—Peuschel Farmstead, 12520 N. Wauwatosa Rd., Mequon, 00001236

**Price County**

Park Falls Post Office, (United States Post Office Construction in Wisconsin MPS) 109 First St. N, Park Falls, 00001238

**Rock County**

Edgerton Post Office, (United States Post Office Construction in Wisconsin MPS) 104 N. Swift St., Edgerton, 00001239

**Sauk County**

Reedsburg Post Office, (United States Post Office Construction in Wisconsin MPS) 215 N. Walnut St., Reedsburg, 00001240

**Shawano County**

Shawano Post Office, (United States Post Office Construction in Wisconsin MPS) 235 S. Main St., Shawano, 00001241

**Sheboygan County**

Sheboygan Post Office, (United States Post Office Construction in Wisconsin MPS) 522 N. Ninth St., Sheboygan, 00001261

**Taylor County**

Medford Post Office, (United States Post Office Construction in Wisconsin MPS) 304 S. Main St., Medford, 00001244

Plymouth Post Office, (United States Post Office Construction in Wisconsin MPS) 302 E. Main St., Plymouth, 00001242

**Walworth County**

Delavan Post Office, (United States Post Office Construction in Wisconsin MPS) 335 E. Walworth Ave., Delavan, 00001260



Elkhorn Post Office, (United States Post Office Construction in Wisconsin MPS) 102 E. Walworth St., Elkhorn, 00001259

Whitewater Post Office, (United States Post Office Construction in Wisconsin MPS) 213 Center St., Whitewater, 00001256

**Washington County**

West Bend Post Office, (United States Post Office Construction in Wisconsin MPS) 607 Elm St., West Bend, 00001254

**WISCONSIN**

**Waupaca County**

Clintonville Post Office, (United States Post Office Construction in Wisconsin MPS) 2 N. Main St., Clintonville, 00001253

Waupaca Post Office, (United States Post Office Construction in Wisconsin MPS) 306 S. Main St., Waupaca, 00001252

**Wood County**

Marshfield Post Office, (United States Post Office Construction in Wisconsin MPS) 202 S. Chestnut Ave., Marschfield, 00001243

[FR Doc. 00–25779 Filed 10–5–00; 8:45 am]

BILLING CODE 4310–70–P

## INTERNATIONAL TRADE COMMISSION

**[Investigations Nos. 701–TA–402 and 731–TA–892–893 (Preliminary)]**

### Honey From Argentina and China

**AGENCY:** United States International Trade Commission.

**ACTION:** Institution of countervailing and antidumping duty investigations and scheduling of preliminary phase investigations.

**SUMMARY:** The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase countervailing and antidumping duty investigations Nos. 701–TA–402 and 731–TA–892–893 (Preliminary) under sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Argentina and China of honey, provided for in subheadings 0409.00.00, 1702.90, and 2106.90.99 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value, and by reason of imports from Argentina of honey, provided for in subheadings 0409.00.00, 1702.90, and 2106.90.99 of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by the Government of Argentina. Unless the Department of Commerce extends the time for initiation pursuant to section 702(c)(1)(B) and 732(c)(1)(B) of the Act (19 U.S.C. 1671a(c)(1)(B) and 1673a(c)(1)(B)), the Commission must reach preliminary determinations in countervailing duty and antidumping duty investigations in 45 days, or in this case by November 13, 2000. The Commission's views are due at the Department of Commerce within five business days thereafter, or by November 20, 2000.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

**EFFECTIVE DATE:** September 29, 2000.

**FOR FURTHER INFORMATION CONTACT:** Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

**SUPPLEMENTARY INFORMATION:**

*Background.*—These investigations are being instituted in response to a petition filed on September 29, 2000, by the American Honey Producers Association (AHPA), Bruce, South Dakota, and the Sioux Honey Association (SHA), Sioux City, Iowa.

*Participation in the investigations and public service list.*—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission countervailing duty and antidumping duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

*Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.*—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

*Conference.*—The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on October 20, 2000, at the U.S. International Trade Commission Building, 500 E Street SW, Washington, DC. Parties wishing to participate in the conference should contact Mary Messer (202–205–3193) not later than October 17, 2000, to arrange for their appearance. Parties in support of the imposition of countervailing and antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

*Written submissions.*—As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before October 25, 2000, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a

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document for filing without a certificate of service.

**Authority:** These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.12 of the Commission's rules.

Issued: October 2, 2000.

By order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 00–25732 Filed 10–5–00; 8:45 am]

BILLING CODE 7020–02–U

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

Notice is hereby given that on September 27, 2000 a proposed Consent Decree ("Decree") in *United States* v. *AAI Corporation, et al.*, Civil Action No. 00–WM–1909 was lodged with the United States District Court for the District of Colorado. The United States filed this action pursuant to section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9607(a), to recover response costs incurred by the United States Environmental Protection Agency ("EPA") in conducting response actions taken at or in connection with the release or threatened release of hazardous substances at or from the RAMP Industries Site located at 1127 and 1107 West 46th Avenue, and 1031 West 46th Avenue, Denver, Colorado (the "Site").

The Decree provides for the reimbursement to EPA of $4,753,149.05 by 316 persons ("generators") within the class of persons defined by section 107(a)(3) of CERCLA, 42 U.S.C. 9607(a)(3) on a volumetric, pro rata basis. A total of $3,179,615.36 will be paid by 274 non-federal settling parties and $1,573,533.69 will be paid by 42 settling federal agencies. Each of the settling parties' potential liability at the Site under sections 106 or 107 of CERCLA, 42 U.S.C. 9606 and 9607, and section 7003 of RCRA, 42 U.S.C. 6973, is resolved subject to statutory reopeners.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *AAI Corp. et al*, D.J. Ref. 90–11–2–1290/2. If requested, the United States will provide an opportunity for a public meeting on the proposed settlement in Denver, Colorado prior to the final entry of the Decree.

The Decree may be examined at the offices of the U.S. EPA Region VIII, 999 18th Street, Suite 500 South Tower, Denver, Colorado and at the Office of the United States Attorney, District of Colorado, 1961 Stout Street, 11th Floor, Denver, CO 80294. A copy of the proposed consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 either with or without the multiple signature pages and attachments. In requesting a copy of the proposed consent decree, please enclose a check payable to the Consent Decree Library for $155.00 for a complete copy with all signature pages and attachments or $4.75 for a copy of the decree without signature pages and attachments (25 cents per page reproduction cost).

**Walker Smith,**

*Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 00–25716 Filed 10–5–00; 8:45 am]

BILLING CODE 4410–15–M

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR § 50.7, 38 FR 19029, and 42 U.S.C. 9622(d), notice is hereby given that on September 6, 2000, a proposed consent decree in *United States* v. *Alcoa, Inc. et al.*, Civil Action No. 83–CV–1623 (N.D.N.Y.), was lodged with the United States District Court for the Northern District of New York. The proposed consent decree resolves the claims of the United States against Alcoa, Inc. ("Alcoa") and twenty-one other potentially responsible parties listed below ("collectively the Settling Parties") at the York Oil Superfund Site located in Moira, New York ("Site"), under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9601 *et seq.* Pursuant to the proposed settlement, the Settling Parties shall reimburse the United States for certain past and future response costs; implement the remedial measures, including any contingent remedies, selected in the Record of Decision for the Second Operable Unit at the Site. The consent decree includes a covenant not to sue by the United States under Sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, and under section 7003 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6973. The total value of the settlement is estimated at approximately $4.4–7.5 million, depending upon whether the contingent remedy is implemented at the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *Alcoa*, Civil Action No. 83–CV–1623 (N.D.N.Y.), D.J. Ref. 90–5–2–1–585/1. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA, 42 U.S.C. 6973(d).

The proposed consent decree may be examined at EPA Region II, Office of the Environmental Protection Agency, 290 Broadway, New York, New York 10007–1866. A copy of the consent decree may also be obtained in person or by mail (without attachments) from the Department of Justice Consent Decree Library, 13th floor, 1425 New York Avenue, NW, Washington, DC 20005. In requesting a copy of the consent decree (without attachments), please enclose a check in the amount of $27.00 (25 cents per page reproduction cost) payable to the Consent Decree Library.

**Bruce Gelber,**

*Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 00–25717 Filed 10–5–00; 8:45 am]

BILLING CODE 4410–15–M

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Pursuant to The Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a Consent Decree in *United States* v. *The Berkley Products Company*, Civil Action. No. 00–CV–4628, was lodged on September 12, 2000, with the United States District Court for the Eastern District of Pennsylvania. The Consent Decree resolves the claims of the United States under sections 106(a), 107(a), and 113(g)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), for reimbursement of response costs incurred at the Berkley Products Superfund Site located in West Cocalico Township, Lancaster County, Pennsylvania, and for declaratory judgment as to liability that will be binding in actions to recover further response costs related to the Site. The Consent Decree obligates The Berkley Products Company to pay $30,000 in reimbursement of response costs incurred and to be incurred by EPA in responding to contamination at the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC, 20530, and should refer to *United States* v. *The Berkley Products Company*, DOJ Ref. #90–11–3–06947.

The Consent Decree may be examined at the office of the United States Attorney, 615 Chestnut Street, Philadelphia, Pennsylvania, 19106; the Region III Office of the Environmental Protection Agency, 1650 Arch Street, Philadelphia, Pennsylvania, 19103; and by mail from the Consent Decree Library, Department of Justice, P.O. Box 7611, Washington, DC 20044–7611. In requesting a copy from the Consent Decree Library, please refer to the referenced case and enclose a check in the amount of $8.00 (25 cents per page reproduction cost), payable to the U.S. Treasury.

**Walker Smith,**

*Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 00–25715 Filed 10–5–00; 8:45 am]

BILLING CODE 4410–15–M

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, and section 122 of CERCLA, 42 U.S.C. 9622, notice is hereby given that on September 27, 2000, a proposed Consent Decree in *United States* v. *BF Goodrich Company, et al.*, C.A. No. C2–97–366 was lodged with the United States District Court for the Southern District of Ohio.

In this action the United States sought recovery of the past costs it incurred in connection with addressing the release or threatened release of contaminants at the Vandale Junkyard Superfund Site in Marietta, Washington County, Ohio. The Consent Decree resolves the United States' claims under section 107(a) of CERCLA, 42 U.S.C. 9607(a), for response costs incurred at the Vandale Superfund Site against six Defendants: (1) B.F. Goodrich Co., Inc.; (2) Cytec Industries, Inc.; (3) Kardex Systems, Inc.; (4) Lockheed Martin Corp.; (5) Exxon Mobil Corp.; and (6) Unisys Corporation. The proposed past cost Consent Decree provides that, in addition to their previous payments of $317,953.96, the Defendants will pay to the United States $1,975,000 for its unreimbursed past response costs and prejudgment interest incurred in connection with the Site prior to December 5, 1999. The Defendants will also reimburse all EPA and DOJ costs incurred after December 5, 1999 for overseeing implementation of the remedial design/remedial action, and for overseeing and enforcing the proposed Consent Decree, to the extent that those costs exceed $190,000.

The United States covenants not to sue Defendants for past response costs and oversight costs. The United States, however, reserves its ability to seek penalties for non-compliance with any orders issued by the Environmental Protection Agency. Similarly, Defendants agree not to sue the United States with respect to past response costs, oversight costs or this Consent Decree and Defendants waive their right to seek contribution with respect to any claims relating to past costs and oversight costs, except where another person first asserts a claim against the Defendants.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *BF Goodrich Company, et al.*, C.A. No. C2–97–366 (S.D. Ohio), D.J. Ref. 90–11–2–962.

The Consent Decree may be examined at the Office of the United States Attorney for the Southern District of Ohio, 280 North High Street, Fourth Floor, Columbus, Ohio 43215, and the Region 5 Office of the Environmental Protection Agency, 77 West Jackson Street, Chicago, Illinois 60604–3590. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. In requesting a copy, please enclosure a check in the amount of $8 (25 cents per page reproduction cost) payable to the Consent Decree Library.

**Walker Smith,**

*Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 00–25714 Filed 10–5–00; 8:45 am]

BILLING CODE 4410–15–M

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under the Clean Air Act; 42 U.S.C. 7401, et seq.

Notice is hereby given that on September 14, 2000, a proposed Consent Decree ("Decree") in *United States* v. *Philips Petroleum Company*, Civil Action No. 1: 97–CV–0144–B, was lodged with the United States District Court for the District of Utah. The United States filed this action pursuant to Section 113 of the Clean Air Act, 42 U.S.C. 7413, seeking injunctive relief and civil penalties for the Defendant's discharge of sulfur dioxide to the atmosphere in excess of the levels permitted by the Utah State Implementation Plan ("SIP"). The violations occurred at the Phillips Petroleum Company's Woods Cross, Utah refinery.

The proposed Consent Decree requires the Defendants to operate its sulfur recovery unit within the interim limitations established by the Consent Decree until such time as the State of Utah revises its State Implementation Plan requirements. In addition, the Decree requires that Philips pay a civil penalty in the amount of $375,000 for its past violations of the Act and the Utah SIP.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decree. Comments should be addressed to the Assistant Attorney General of the Environmental and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to, *United States* v. *Phillips Petroleum Company*, Civil Action No. 1: 97–CV–0144–B, and D.J. Ref. # 90–5–2–1–2194.

The Decree may be examined at the United States Department of Justice, Environment and Natural Resources Division, Denver Field Office, 999 18th

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Street, North Tower Suite 945, Denver, Colorado, 80202 and the U.S. EPA Region VIII, 999 18th Street. A copy of the Decree may be obtained by mail from the Consent Decree Library, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044–7611. In requesting a copy, please enclose a check in the amount of $5.00 for the Decree (25 cents per page reproduction cost) payable to the Consent Decree Library.

**Walker B. Smith,**

*Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 00–25718 Filed 10–5–00; 8:45 am]

BILLING CODE 4410–15–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993; Defense Sustainment Corporation ("DSC")

Notice is hereby given that, on August 31, 2000, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Advanced Technology Institute has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) The identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are the Advanced Technology Institute, Charleston, SC; Dimensions International, Inc., Washington, DC; Caterpillar, Mossville IL; ERIM, Ann Arbor, MI; Rockwell Collins, Milwaukee, WI; Radian, Washington, DC; AMSEC, Virginia Beach, VA; Sarnoff Corporation, Princeton, NJ; Arthur D. Little, Inc., Cambridge, MA and United Defense, Washington, DC. The nature and objectives of the venture are to substantially reduce the cost of support for aging weapon systems. The DSC will meet this objective by conducting pilot projects that focus on five thrust areas: (1) Effective supply partnerships, (2) streamlining maintenance processes, (3) significant improvement in quality of and access to technical data, (4) effective upgrade strategies, and (5) innovative training for sustainment.

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 00–25719 Filed 10–5–00; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—HDP User Group International, Inc.

Notice is hereby given that, on August 30, 2000, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), HDP User Group International, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Agilent Technologies, Santa Clara, CA and NEC Corporation, Yokohama, JAPAN have been added as parties to this venture. Also, Abpac Inc., Phoenix, AZ has been dropped as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and HDP User Group International, Inc. intends to file additional written notification disclosing all changes in membership.

On September 14, 1994, HDP User Group International, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 23, 1995 (60 FR 15306).

The last notification was filed with the Department on March 1, 2000. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on August 17, 2000 (65 FR 50217).

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 00–25723 Filed 10–5–00; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993; Inter Company Collaboration for AIDS Drug Development

Notice is hereby given that, on August 30, 2000, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Inter Company Collaboration for AIDS Drug Development has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Collaboration member Pfizer Inc., New York, NY, has acquired Warner-Lambert Co., Morris Plains, NJ by way of a merger. The combined company is called Pfizer Inc.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Inter Company Collaboration for AIDS Drug Development intends to file additional written notification disclosing all changes in membership.

On May 27, 1993, Inter Company Collaboration for AIDS Drug Development filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on July 6, 1993 (58 FR 36223).

The last notification was filed with the Department on May 26, 2000. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on September 13, 2000 (65 FR 55283).

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 00–25724 Filed 10–5–00; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993; Multiservice Switching Forum

Notice is hereby given that, on June 29, 2000, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Multiservice Switching Forum ("MSF") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Accelerated Networks, Moorpark, CA; Oki Electric, Chiba, Japan; and Swisscom AG, Berne, Switzerland have been added as parties to this venture. Vertex Networks, San Jose, CA has been dropped as a party to this venture. Also, the following parties have changed their names: Hewlett Packard, Edinburgh, Scotland, United Kingdom is now Agilent, Edinburgh, Scotland, United Kingdom; Harris & Jeffries, Dedham, MA is now NetPlane, Dedham, MA; and MCIWorldCom, Richardson, TX is now WorldCom, Richardson, TX.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and MSF intends to file additional written notifications disclosing all changes in membership.

On January 22, 1999, MSF filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on May 26, 1999 (64 FR 28519).

The last notification was filed with the Department on April 6, 2000. A notice for this filing has not yet been published in the **Federal Register.**

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 00–25720 Filed 10–5–00; 8:45 am]

BILLING CODE 4410–11–M



## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993; Petroleum Environmental Research Forum ("PERF")

Notice is hereby given that, on August 18, 2000, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Petroleum Environmental Research Forum ("PERF") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, BOC Gases Technology, Murray Hill, NJ has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and the Petroleum Environmental Research Forum ("PERF") intends to file additional written notification disclosing all changes in membership.

On February 10, 1986, the Petroleum Environmental Research Forum ("PERF") filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 14, 1986 (51 FR 8903).

The last notification was filed with the Department on June 6, 2000. A notice has not yet been published in the **Federal Register.**

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 00–25721 Filed 10–5–00; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—SchoolTone Alliance, Inc.

Notice is hereby given that, on July 25, 2000, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), SchoolTone Alliance, Inc. ("SchoolTone") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are SchoolTone Alliance, Inc., San Francisco, CA; AboveNet, San Jose, CA; ACTV, New York, NY; BigChalk, Bellingham, WA; Blackboard, Inc., Washington, DC; Britannica, San Francisco, CA; Callisto Media Systems, Hull, Quebec, CANADA; Computer Curriculum Corporation, Sunnyvale, CA; Exodus Communications, Santa Clara, CA; HighWired.com, Watertown, MA; I-Mind Education Systems, Inc., Corte Madera, CA; Isis Communications Limited, Melbourne, Victoria, AUSTRALIA; Jason Project, Waltham, MA; Lucent Technologies, Warren, NJ; Open School/Open Learning, Victoria, British Columbia, CANADA; Power School, Folsom, CA; RiverDeep Interactive Learning, Cambridge, MA; Simplexis, San Francisco, CA; SRI International, Menlo Park, CA; Sun Microsystems, Inc., Palo Alto, CA; Timecruiser Computing Corporation, Fairfield, NJ; and USA Video Interactive, Mystic, CT.

The nature and objectives of the venture are to improve the quality and effectiveness of kindergarten through 12th grade ("K–12"education by creating a global association of technology and service companies to promote collaboration among companies in providing "anytime, anywhere learning" over the web; to create and promote the offering of high-quality portals that provide affordable and easy-to-access Internet content and communication tools and applications for K–12 schools; to promote the development of web-based educational materials, portal technologies, applications and services which can be deployed through educational service providers to K–12 schools worldwide, and be a forum for the suppliers of such materials, portal technologies, applications and services; to evaluate grant proposals and recommend the selection of specific K–12 schools as grant recipients for computer hardware, software and related technologies to be donated free of charge or below cost by for-profit corporations; and to promote to schools the availability of on-line academic resources free or at an affordable cost. The corporation shall not engage in commercial sales of products or services. In furtherance of the above stated specific purpose, SchoolTone may, among other things, engage in theoretical analysis; experimentation; systematic study research; development; testing; the extension of investigative findings or theory of a scientific or technical nature into practical application; the collection, exchange and analysis of research or production information; and any combination of the foregoing.

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 00–25722 Filed 10–5–00; 8:45 am]

BILLING CODE 4410–11–M

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## DEPARTMENT OF LABOR

### Employment Standards Administration

### Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified herein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210

### Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis—Bacon And Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

*Volume I*

Connecticut
- CT000001 (Feb. 11, 2000)
- CT000003 (Feb. 11, 2000)
- CT000004 (Feb. 11, 2000)

Maine
- ME000005 (Feb. 11, 2000)
- ME000007 (Feb. 11, 2000)
- ME000010 (Feb. 11, 2000)
- ME000019 (Feb. 11, 2000)
- ME000022 (Feb. 11, 2000)
- ME000026 (Feb. 11, 2000)
- ME000037 (Feb. 11, 2000)

New Jersey
- NJ000001 (Feb. 11, 2000)
- NJ000002 (Feb. 11, 2000)
- NJ000003 (Feb. 11, 2000)
- NJ000005 (Feb. 11, 2000)

*Volume II*

Maryland
- MD000009 (Feb. 11, 2000)
- MD000012 (Feb. 11, 2000)
- MD000021 (Feb. 11, 2000)
- MD000026 (Feb. 11, 2000)
- MD000030 (Feb. 11, 2000)
- MD000037 (Feb. 11, 2000)
- MD000039 (Feb. 11, 2000)
- MD000047 (Feb. 11, 2000)
- MD000050 (Feb. 11, 2000)
- MD000053 (Feb. 11, 2000)
- MD000058 (Feb. 11, 2000)

Pennsylvania
- PA000007 (Feb. 11, 2000)
- PA000028 (Feb. 11, 2000)
- PA000052 (Feb. 11, 2000)
- PA000054 (Feb. 11, 2000)
- PA000060 (Feb. 11, 2000)

Virginia
- VA000003 (Feb. 11, 2000)
- VA000014 (Feb. 11, 2000)
- VA000015 (Feb. 11, 2000)
- VA000048 (Feb. 11, 2000)

*Volume III*

Alabama
- AL000001 (Feb. 11, 2000)
- AL000034 (Feb. 11, 2000)

Florida
- FL000001 (Feb. 11, 2000)
- FL000017 (Feb. 11, 2000)
- FL000032 (Feb. 11, 2000)

Kentucky
- KY000001 (Feb. 11, 2000)
- KY000003 (Feb. 11, 2000)
- KY000006 (Feb. 11, 2000)
- KY000007 (Feb. 11, 2000)
- KY000025 (Feb. 11, 2000)
- KY000027 (Feb. 11, 2000)
- KY000029 (Feb. 11, 2000)

*Volume IV*

Illinois
- IL000001 (Feb. 11, 2000)
- IL000002 (Feb. 11, 2000)
- IL000005 (Feb. 11, 2000)
- IL000006 (Feb. 11, 2000)
- IL000007 (Feb. 11, 2000)
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Indiana
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Michigan
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Ohio
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- OH000013 (Feb. 11, 2000)
- OH000028 (Feb. 11, 2000)
- OH000029 (Feb. 11, 2000)

*Volume V*

Kansas
- KS000008 (Feb. 11, 2000)
- KS000016 (Feb. 11, 2000)
- KS000018 (Feb. 11, 2000)
- KS000019 (Feb. 11, 2000)
- KS000020 (Feb. 11, 2000)
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- KS000022 (Feb. 11, 2000)
- KS000023 (Feb. 11, 2000)
- KS000069 (Feb. 11, 2000)
- KS000070 (Feb. 11, 2000)

Missouri
- MO000001 (Feb. 11, 2000)
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- MO000042 (Feb. 11, 2000)
- MO000050 (Feb. 11, 2000)
- MO000054 (Feb. 11, 2000)
- MO000058 (Feb. 11, 2000)

Nebraska
- NE000009 (Feb. 11, 2000)

Texas
- TX000007 (Feb. 11, 2000)
- TX000011 (Feb. 11, 2000)
- TX000012 (Feb. 11, 2000)
- TX000014 (Feb. 11, 2000)
- TX000016 (Feb. 11, 2000)

*Volume VI*

North Dakota
- ND000002 (Feb. 11, 2000)
- ND000004 (Feb. 11, 2000)

*Volume VII*

None

### General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and may of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC This 28th Day of September 2000.

**Carl J. Poleskey,**

*Chief, Branch of Construction Wage Determinations.*

[FR Doc. 00–25445 Filed 10–5–00; 8:45 am]

BILLING CODE 4510–27–M



## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

### Agency Information Collection Activities; Announcement of OMB Approval; Correction

**AGENCY:** Pension and Welfare Benefits Administration, Department of Labor.

**ACTION:** Correction.

**SUMMARY:** In document 00–25231 on page 58822 in the issue of Monday, October 2, 2000, make the following correction:

In the first column in the third paragraph, the approval expires on March 3, 2000. It should be changed to read on March 31, 2000.

Dated: October 3, 2000.

**Gerald B. Lindrew,**

*Deputy Director, Office of Policy and Research, Pension and Welfare Benefits Administration, Department of Labor.*

[FR Doc. 00–25775 Filed 10–5–00; 8:45 am]

BILLING CODE 4510–29–M

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### Records Schedules; Availability and Request for Comments

**AGENCY:** National Archives and Records Administration (NARA).

**ACTION:** Notice of availability of proposed records schedules; request for comments.

**SUMMARY:** The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

**DATES:** Requests for copies must be received in writing on or before November 20, 2000. Once the appraisal

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of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

**ADDRESSES:** To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–713–6852 or by e-mail to records.mgt@arch2.nara.gov. Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

**FOR FURTHER INFORMATION CONTACT:** Marie Allen, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: (301) 713–7110. E-mail: records.mgt@arch2.nara.gov.

**SUPPLEMENTARY INFORMATION:** Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

**Schedules Pending**

1. Department of the Air Force, Office of the Air Staff (N1–341–00–1, 9 items, 4 temporary items). Older records accumulated between 1951 and 1983 relating to medical research and experiments and to routine construction projects. Proposed for permanent retention are records documenting such subjects as significant military base construction projects, aircraft and equipment modifications, intelligence reporting, and expenditures relating to civilian injuries in Laos and U.S. operations in the Congo and Berlin.

2. Department of the Army, U.S. Army Security Affairs Command (N1–AU–00–18, 2 items, 2 temporary items). Case files pertaining to international logistics programs for materiel and services. Included are documents relating to individual foreign country requirements, fiscal records, and copies of programs, offers, and acceptances. Also included are electronic copies of documents created using electronic mail and word processing.

3. Department of Health and Human Services, Health Care Financing Administration (N1–440–00–01, 5 items, 5 temporary items). Paper and electronic copies of questionnaires completed by newly enrolled Medicare beneficiaries containing information concerning the individual's coverage under a primary insurance plan, including the name, address, and identifying number of the plan. Also included are electronic copies of documents created using electronic mail and word processing.

4. Department of the Interior, Bureau of Land Management (N1–49–00–4, 6 items, 6 temporary items). Records relating to Computer Century Conversion (Y2K) activities. Included are policy and planning documents, administrative records, and files summarizing the actions taken for specific systems. Also included are electronic copies of documents created using electronic mail and word processing.

5. Department of Justice, Federal Bureau of Investigation (N1–65–00–6, 8 items, 8 temporary items). Year 2000 (Y2K) conversion records. Included are such records as plans, lists of applications or systems, testing documentation, reviews of Y2K programs, contracts, correspondence with vendors, and correspondence with Congress, the Office of Management and Budget, and the General Accounting Office. Also included are electronic copies of documents created using electronic mail and word processing.

6. Department of Justice, Bureau of Prisons (N1–129–99–12, 34 items, 21 temporary items). Files accumulated by component offices of the Information, Policy, and Public Affairs Division. Included are such records as chronological and subject files, files on proposed legislation and other aspects of congressional relations, research proposals, background materials compiled for tours of facilities, files on media contacts, and electronic copies of documents created using electronic mail and word processing. Recordkeeping copies of files documenting overall Bureau activities and programs are proposed for permanent retention, including briefing books, newsletters, publications, photographs, videotapes, speeches and directives.

7. Department of Justice, Bureau of Prisons (N1–129–00–8, 6 items, 6 temporary items). Records of correctional facilities relating to inmate education programs. Included are such files as attendance records, general equivalency diploma test scores, lesson plans, certificates, and minutes of vocational training advisory committees. Also included are electronic copies of documents created using electronic mail and word processing.

8. Department of Justice, Federal Bureau of Prisons (N1–129–00–28, 4 items, 4 temporary items). Records of the Trust Fund, which handles commissaries, telephone systems, and warehouse and clothing operations. Included are records relating to such matters as daily operations, financial management reviews, funding of overtime, position descriptions, and annual reports. Also included are electronic copies of documents created using electronic mail and word processing.

9. Department of Justice, Federal Bureau of Prisons (N1–129–00–29, 3 items, 3 temporary items). Records of the Budget Development Branch, including the agency's official budget files, subject files, and electronic copies of documents created using electronic mail and word processing.

10. Department of Justice, Federal Bureau of Prisons (N1–129–00–31, 5 items, 5 temporary items). Records of the Budget Execution Branch, including such files as budget execution correspondence, financial reports, forms and other records relating to personnel positions within the agency, and reports that identify operating costs for individual facilities on a per-capita basis. Also included are electronic copies of documents created using electronic mail and word processing.

11. Department of Justice, Federal Bureau of Prisons (N1–129–00–32, 5 items, 5 temporary items). Records of the Capacity Planning Branch. Included are such files as requests for data, statistical summaries, subject files relating to population projections and capacity planning, and daily printouts of statistical data by institution. Also included are electronic copies of documents created using electronic mail and word processing.

12. Department of Justice, Federal Bureau of Prisons (N1–129–00–33, 2 items, 2 temporary items). Records of the Facilities Management Branch. Records relate to such subjects as the cleanup of polluted sites, violations of the Clean Water Act, and the identification of environmental hazards and the procedures for their removal. Also included are electronic copies of documents created using electronic mail and word processing.

13. Department of Justice, Federal Bureau of Prisons (N1–129–00–34, 2 items, 2 temporary items). Records of the Finance Branch consisting of financial statements and related records as well as electronic copies of documents created using electronic mail and word processing.

14. Department of Justice, Federal Bureau of Prisons (N1–129–00–35, 5 items, 5 temporary items). Records of the Procurement and Property Branch, including Branch copies of controlled correspondence, agreements with other agencies and with state and local governments, and electronic copies of documents created using electronic mail and word processing.

15. Department of State (N1–59–00–3, 16 items, 16 temporary items). Files identified as lacking historical value during the review of office files with terminal dates from 1967 through 1975. Included are subject files, country files, and other files that either are fragmentary, duplicative of records included in series previously approved for permanent retention, deal with housekeeping matters, or were maintained for convenience of reference. Records were accumulated by the Bureau of Administration, the Bureau of Inter-American Affairs, the Bureau of African Affairs, the Bureau of East Asian and Pacific Affairs, the Bureau of Economic and Business Affairs, the Bureau of European Affairs, the Inspector General of the Foreign Service, the Bureau of Intelligence and Research, the Bureau of International Organization Affairs, the Office of the Legal Adviser, the Deputy Under Secretary of State for Administration/Management, the Bureau of Near Eastern and South Asian Affairs, the Bureau of Oceans and International Environmental and Scientific Affairs, the Bureau of Security and Consular Affairs, the Executive Secretariat, and the Bureau of International Scientific and Technological Affairs.

16. Department of State, Moscow Embassy Control Office (N1–59–00–20, 20 items, 15 temporary items). Records of the Moscow Embassy Control Office, including shipping files, contractor files, security logs and videotapes, and outdated copies of design drawings. Also included are electronic copies of documents created using electronic mail and word processing. Recordkeeping copies of subject files, special studies, counter-intelligence files, slides, videotapes, and photographs are proposed for permanent retention.

17. Federal Aviation Administration, Office of the Chief Counsel (N1–237–00–1, 6 items, 6 temporary items). Civil penalty hearing docket records pertaining to alleged violations of Federal Aviation Regulations. Files include such documents as complaints, transcripts of hearings, decisions and opinions, and materials submitted as evidence. Also included are electronic copies of documents created using electronic mail and word processing. Recordkeeping copies of most docket records dated after December 1, 1997, are maintained on optical disks. The agency will submit separate schedules for any files that may warrant permanent retention for appraisal on a case-by-case basis.

18. National Archives and Records Administration, Agency-wide (N1–64–00–9, 4 items, 4 temporary items). Records relating to projects to provide records management assistance to Federal agencies and to public comments submitted to the National Archives and Records Administration as a result of the publication in the **Federal Register** of notices of pending disposition schedules. Electronic copies of documents created using electronic mail and word processing are included.

19. U.S. Tax Court, Agency-wide (N1–308–97–1, 206 items, 188 temporary items). Paper, electronic, microform, and photographic records relating to the resolution of disputed tax deficiencies. Included are such records as petitions, findings of fact and opinions, calendars, case files, depositions, files relating to attorney admissions to practice, and logs and tracking systems. Also included are records relating to agency personnel, building maintenance, and other administrative and housekeeping matters. Records proposed for permanent retention include rules of practice and procedure, published opinions, administrative orders, transcripts and other records of judicial conferences, statistical reports, press releases, and photographs.

Dated: September 28, 2000.

**Michael J. Kurtz,**

*Assistant Archivist for Record Services—Washington, DC.*

[FR Doc. 00–25662 Filed 10–5–00; 8:45 am]

BILLING CODE 7515–01–P



## NATIONAL SCIENCE FOUNDATION

### Notice of Intent To Seek Approval To Extend an Information Collection

**AGENCY:** National Science Foundation.

**ACTION:** Submission for OMB Review; Comment Request.

**SUMMARY:** The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. This is the second notice for public comment; the first was published in the **Federal Register** at 64 FR 61370 (November 10, 1999), and no comments were received. NSF is forwarding the proposed renewal submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice.

*Comments:* Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and

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assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725 17th Street, N.W. Room 10235, Washington, D.C. 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send email to splimpto@nsf.gov.

**DATES:** Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling 703–292–7556.

**FOR FURTHER INFORMATION CONTACT:** Suzanne H. Plimpton, NSF Reports Clearance Officer at 703–292–7556 or send email to splimpto@nsf.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

**SUPPLEMENTARY INFORMATION:**

*Title of Collection:* Evaluation of the NSF Summer Programs in Japan, the NSF Postdoctoral Research Fellowships in Japan, and the NSF–CGP Science Fellowships Program.

*OMB Number:* 3145–New.

*Expiration Date of Approval:* Not applicable.

*Type of Request:* Intent to seek approval to carry out a new information collection for one year.

*Abstract:* "Evaluation of the NSF Summer Programs in Japan, the NSF Postdoctoral Research Fellowships in Japan, and the NSF–CGP Science Fellowships Program."

*Proposed Project:* The National Science Foundation (NSF), through its East Asia and Pacific Program within the Division of International Programs, manages a suite of programs designed to encourage and provide international research experiences for American scientists and engineers with Japanese colleagues. This suite of programs includes the NSF–CGP Science Fellowships and the Postdoctoral Research Fellowships in Japan for Ph.D.—holding scientists, and the Summer Institute in Japan and the Monbusho Summer Program for U.S. Graduate Students in Science and Engineering.

These Programs provide opportunities for improvements in cultural sensitivity and in the knowledge of foreign scientific community infrastructure. The international collaborative experiences provided through the Programs may be "catalytic" by bringing scientists from a larger global pool together in "discovery" and "connection," and by the American participants' sharing their newly-acquired knowledge, experiences and impressions with the domestic scientific community.

The purpose of the proposed program evaluation is to assess the Programs within the context of both their individually-stated objectives and the greater NSF-wide objectives. The tenth anniversary this year of the Summer Institute in Japan marks an appropriate time for a longitudinal study of program effectiveness and success, particularly with regard to the effect of an early international experience on developing research careers. The JSPS and STA Postdoctoral Fellowships and the NSF–CGP Science Fellowships have a long history (more than a decade) by which their impact on both individual careers and the scientific community can be assessed.

*Use of the Information:* The information will be used by NSF to assess the extent to which these approaches to developing international collaborations among young and experienced US and Asian researchers are achieving the intended programmatic goals and are consistent with the specific outcome goals defined in the context of the current NSF Strategic Plan required by the Government Performance and Results Act (GPRA) of 1993. Among NSF's outcome goals, the most relevant to its investments in developing collaborations with Asian researchers are: Promoting discoveries at and across the frontier of science and engineering; facilitating connections between discoveries and their use in service to society; developing a diverse, globally oriented workforce of scientists and engineers.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 30 minutes per response.

*Respondents:* Individuals.

*Estimated Number of Responses per Form:* 1040.

*Estimated Total Annual Burden on Respondents:* 520 hours—1040 respondents at 1/2 hour per response.

*Frequency of Responses:* One time.

Dated: October 2, 2000.

**Suzanne H. Plimpton,**

*Reports Clearance Officer.*

[FR Doc. 00–25728 Filed 10–5–00; 8:45 am]

**BILLING CODE 7555–01–M**

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 122nd meeting on October 17–19, 2000, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The schedule for this meeting is as follows:

**Tuesday, October 17, 2000**

A. *8:30–10:45 A.M.: Opening Statement/Planning and Procedures* (Open)—The Chairman will open the meeting with brief opening remarks. The Committee will then review items under consideration at this meeting and consider topics proposed for future consideration by the full Committee.

B. *11:00–12:30 P.M.: Discussion of Updated Site Suitability and License Application (LA) Task Action Plan* (TAP) (Open)—The Committee will discuss the revised LA TAP.

C. *1:30–3:00 P.M.: West Valley License Termination Report* (Open)—The Committee will be briefed by the NRC staff on the results of its evaluation of comments and proposed final approach to West Valley decommissioning criteria.

D. *3:15–5:30 P.M.: Discussion of Proposed ACNW Reports* (Open)—The Committee will discuss proposed ACNW Reports on matters considered during this meeting.

**Wednesday, October 18, 2000**

E. *8:30–12:00 Noon: Corrosion Resistance of Alloy-22* (Open)—The Committee will discuss recent tests to explore the specific aspects of the corrosion resistance of Alloy-22 material.

F. *1:00–2:00 P.M.: Entombment Option for Decommissioning Power Reactors* (Open)—The Committee will hear a presentation from the staff on its rulemaking plan addressing the entombment option for power reactors.

G. *2:00–3:15 P.M.: Consultant/Member Reports* (Open)—The Committee will hear comments from consultants and members on recent relevant activities.

H. *3:30–5:30 P.M.: Discussion of Proposed ACNW Reports* (Open)—The Committee will continue its discussion of proposed ACNW reports.

**Thursday, October 19, 2000**

I. *8:30–10:00 A.M.: Part 40 LLW Source Material and Improvement of Control of Regulated Source Material* (Open)—The Committee will receive an information briefing by the NRC staff on its progress in developing a more risk-informed and coherent set of requirements for licensing source material.

J. *10:00–2:00 P.M.: Discussion of Proposed ACNW Reports* (Open)—The Committee will continue its discussion of proposed ACNW reports.

K. *2:00–3:00 P.M.: Miscellaneous* (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on September 28, 1999 (64 FR 52352). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify Howard J. Larson, ACNW, as far in advance as practicable so that appropriate arrangements can be made to schedule the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting will be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for taking pictures may be obtained by contacting the ACNW office, prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should notify Mr. Larson as to their particular needs.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by contacting Mr. Howard J. Larson, ACNW (Telephone 301/415–6805), between 8:00 am and 5:00 pm EDT.

ACNW meeting notices, meeting transcripts, and letter reports are now available for downloading or reviewing on the internet at http://www.nrc.gov/ACRSACNW.

Videoteleconferencing service is available for observing open sessions of ACNW meetings. Those wishing to use this service for observing ACNW meetings should contact Mr. Theron Brown, ACNW Audiovisual Technician (301/415–8066), between 7:30 a.m. and 3:45 p.m. EDT at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the videoteleconferencing link. The availability of videoteleconferencing services is not guaranteed.

Dated: October 2, 2000.

**Andrew L. Bates,**

*Advisory Committee Management Officer.*

[FR Doc. 00–25691 Filed 10–5–00; 8:45 am]

**BILLING CODE 7590–01–P**

## RAILROAD RETIREMENT BOARD

### Computer Matching and Privacy Protection Act of 1988; Notice of RRB Records Used in Computer Matching

**AGENCY:** Railroad Retirement Board (RRB).

**ACTION:** Notice of Records Used in Computer Matching Programs; Notification to individuals who are beneficiaries under the Railroad Retirement Act.

**SUMMARY:** As required by the Computer Matching and Privacy Protection Act of 1988, RRB is issuing public notice of its use and intent to use, in ongoing computer matching programs, civil service benefit and payment information obtained from the Office of Personnel Management (OPM).

The purpose of this notice is to advise individuals applying for or receiving benefits under the Railroad Retirement Act of the use made by RRM of this information obtained from OPM by means of a computer match.

**ADDRESSES:** Interested parties may comment on this publication by writing to Ms. Beatrice Ezerski, Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

**FOR FURTHER INFORMATION CONTACT:** Mr. LeRoy Blommaert, Privacy Act Officer, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092, telephone number (312) 751–4548.

**SUPPLEMENTARY INFORMATION:** The Computer Matching and Privacy Protection Act of 1988, Pub. L. 100–503, requires a Federal agency participating in a computer matching program to publish a notice regarding the establishment of a matching program.

**Name of Participating Agencies**

Office of Personnel Management and Railroad Retirement Board.

**Purpose of the Match**

The purpose of the match is to enable the RRM to (1) Identify affected RRB annuitants who are in receipt of a Federal public pension benefit but who have not reported receipt of this benefit to the RRB and (2) receive needed Federal public pension benefit information for affected RRB annuitants more timely and accurately. Previously the RRB relied on the affected annuitant to report adjustments in the amounts of such public pension benefits.

**Authority for Conducting the Match**

Sections 3(a)(1), 4(a)(1) and 4(f)(1) of the Railroad Retirement Act require that the RRB reduce the Railroad Retirement benefits of certain beneficiaries entitled to Railroad Retirement employee and/or spouse/widow benefits who are also entitled to a government pension based on their own noncovered earnings. This reduction is referred to as Public Service Pension offset. Section 224 of the Social Security Act provides for the reduction of disability benefits when the disabled worker is also entitled to a public disability benefit (PDB). This reduction is referred to as PDB offset. A civil service disability benefit is considered a PDB. Section 224(h)(1) requires any Federal agency to provide RRB with information in its possession that RRB may require for the purposes of making a timely determination of the amount of reduction under section 224 of the Social Security Act. Pursuant to 5 U.S.C. Section 552a(b)(3) OPM has established routine uses to disclose the subject information to RRB.

**Categories of RECORDS and Individuals Covered**

The records to be used in the match and the roles of the matching participants are described as follows:

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OPM will provide RRB with a magnetic tape file extracted from its annuity and survivor master file of its Civil Service Retirement and Insurance Records. The Privacy Act System of Records designation is OPM/Central-1. The following information from this OPM Privacy Act System of Records will be transmitted to RRB for the approximately 2.3 million records in the system: name, social security number, date of birth, civil service claim number, first potential month and year of eligibility for civil service benefits, first month, day, year of entitlement to civil service benefits, amount of gross civil service benefits, and effective date (month, day, year) of civil service amount, and where applicable, civil service disability indicator, civil service FICA covered month indicator, and civil service total service months. The RRB will match the Social Security number, name, and date of birth contained in the OPM file against the same fields in its Master Benefit File. The Privacy Act System of Records designations for this file is: RRB–26, "Payment, Rate and Entitlement History File" For records that are matched, the RRB will extract the civil service payment information.

**Inclusive Dates of the Matching Program**

The matching program will become effective 40 days after a copy of the agreement, as approved by the Data Integrity Board of each agency, is sent to Congress and the Office of Management and Budget, or 30 days after publication of this notice in the **Federal Register,** whichever date is later. The matching program will continue for 18 months after the effective date and may be extended for an additional 12 months, if the conditions specified in 5 U.S.C. 552a(o)(2)(D) have been met.

The notice we are giving here is in addition to any individual notice.

A copy of this notice has been or will be furnished to both House of Congress and the Office of Management and Budget.

Dated: September 29, 2000.

By Authority of the Board.

**Beatrice Ezerski,**

*Secretary to the Board.*

[FR Doc. 00–25766 Filed 10–5–00; 8:45 am]

BILLING CODE 7905–01–M

## SMALL BUSINESS ADMINISTRATION

**[Declaration of Disaster #3300]**

### State of Florida; and Contiguous Counties in Georgia

Leon County and the contiguous counties of Gadsden, Jefferson, Liberty, and Wakulla in the State of Florida, and Grady and Thomas Counties in the State of Georgia constitute a disaster area due to damages from heavy rains and flooding caused by Tropical Storm Helene that occurred September 22–24, 2000. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on November 27, 2000 and for economic injury until the close of business on June 28, 2001 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300,Atlanta, GA 30308.

The interest rates are:

| | Percent |
|---|---|
| For Physical Damage: | |
| Homeowners with credit available elsewhere | 7.375 |
| Homeowners without credit available elsewhere | 3.687 |
| Businesses with credit available elsewhere | 8.000 |
| Businesses and non-profit organizations without credit available elsewhere | 4.000 |
| Others (including non-profit organizations) with credit available elsewhere | 6.750 |
| For Economic Injury: | |
| Businesses and small agricultural cooperatives without credit available elsewhere | 4.000 |

The numbers assigned to this disaster for physical damages are 330006 for Florida and 330106 for Georgia. For economic injury the numbers are 9J1600 for Florida and 9J1700 for Georgia.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 28, 2000.

**Aida Alvarez,**

*Administrator.*

[FR Doc. 00–25797 Filed 10–5–00; 8:45 am]

BILLING CODE 8025–01–U

## SMALL BUSINESS ADMINISTRATION

**[Declaration of Disaster #3299]**

### State of Ohio

As a result of the President's major disaster declaration on September 26, 2000, I find that Greene County, Ohio constitutes a disaster area due to damages caused by severe storms and a tornado that occurred on September 20, 2000. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on November 25, 2000 and for economic injury until the close of business on June 26, 2001 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Clark, Clinton, Fayette, Madison, Montgomery, and Warren in the State of Ohio may be filed until the specified date at the above location.

The interest rates are:

| | Percent |
|---|---|
| For Physical Damage: | |
| Homeowners with credit available elsewhere | 7.375 |
| Homeowners - without credit available elsewhere | 3.687 |
| Businesses with credit available elsewhere | 8.000 |
| Businesses and non-profit organizations without credit available elsewhere | 4.000 |
| Others (including non-profit organizations) with credit Available elsewhere | 6.750 |
| For Economic Injury: | |
| Businesses and small agricultural cooperatives without credit available elsewhere | 4.000 |

The numbers assigned to this disaster are 329911 for physical damage and 9J1500 for economic injury.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 28, 2000.

**Herbert L. Mitchell,**

*Acting Associate Administrator for Disaster Assistance.*

[FR Doc. 00–25796 Filed 10–5–00; 8:45 am]

BILLING CODE 8025–01–U

## SMALL BUSINESS ADMINISTRATION

### Interest Rates; Quarterly Notice

The Small Business Administration publishes an interest rate called the optional "peg" rate (13 CFR 120.214) on a quarterly basis. This rate is a weighted average cost of money to the government for maturities similar to the average SBA direct loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. This rate will be 6.125 (6⅛) percent for the October—December quarter of FY 2001.

**LeAnn M. Oliver,**

*Deputy Associate Administrator for Financial Assistance.*

[FR Doc. 00–25798 Filed 10–5–00; 8:45 am]

BILLING CODE 8025–01–U



## SMALL BUSINESS ADMINISTRATION

### Washington, DC District Advisory Council; Public Meeting

The U.S. Small Business Administration Washington, DC District Advisory Council, located in the metropolitan area of Washington, DC, will hold a public meeting from 9 a.m.–11 a.m., Wednesday, October 11, 2000, at The Washington Times, 3600 New York Avenue, NE., Washington, DC, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Anita L. Irving, Public Information Officer, U.S. Small Business Administration, 1110 Vermont Avenue, NW., Suite 900, (P.O. Box 34500), Washington, DC 20043–4500; telephone 202–606–4000, ext. 275.

**Bettie Baca,**

*Counselor to the Administrator/Public Liaison.*

[FR Doc. 00–25795 Filed 10–5–00; 8:45 am]

BILLING CODE 8025–01–U

## DEPARTMENT OF STATE

**[Public Notice 3430]**

### Culturally Significant Objects Imported for Exhibition Determinations: "Painting Revolution: Kandinsky, Malevich and the Russian Avant-Garde"

**AGENCY:** United States Department of State.

**ACTION:** Amendment.

**SUMMARY:** On July 25, 2000, Notice was published on page 45814 of the **Federal Register** (Volume 65, Number 143) by the Department of State pursuant to Pub. L 3370 relating to the exhibit "Painting Revolution: Kandinsky, Malevich and the Russian Avant-Garde." The referenced Notice is amended as follows. Replace "July 9, 2001" with "July 29, 2001."

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of exhibit objects, contact Jacqueline Caldwell, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/619–6982). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: September 27, 2000.

**William B. Bader,**

*Assistant Secretary for Educational and Cultural Affairs, United States Department of State.*

[FR Doc. 00–25783 Filed 10–5–00; 8:45 am]

BILLING CODE 4710–08–P

## DEPARTMENT OF STATE

**[Public Notice 3439]**

### Culturally Significant Objects Imported for Exhibition Determinations: "Dresden Green Diamond"

**AGENCY:** U.S. Department of State.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the Dresden Green Diamond, imported from abroad for the temporary exhibition without profit within the United States, is of cultural significance. The object is imported pursuant to loan agreements with the foreign lender. I also determine that the exhibition or display of the object at the Harry Winston Research Foundation, Inc., New York, New York, on October 11, 2000, and at the National Museum of Natural History, Smithsonian Institution, Washington, DC, from on or about October 12, 2000, to on or about January 15, 2001, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register.**

**FOR FURTHER INFORMATION CONTACT:** For further information, contact Lorie J. Nierenberg, Assistant Legal Adviser for Public Diplomacy and Public Affairs, U.S. Department of State (telephone: 202/619–5078). The address is U.S. Department of State, SA–44, 301–4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: October 3, 2000.

**William B. Bader,**

*Assistant Secretary for Educational and Cultural Affairs, U.S. Department of State.*

[FR Doc. 00–25975 Filed 10–5–00; 8:45 am]

BILLING CODE 4710–08–P

## DEPARTMENT OF STATE

**[Public Notice 3431]**

### Bureau of European Affairs; U.S. Bilateral Assistance to Bosnia and Serbia

The Secretary of State issued on March 15, 2000, a waiver of restrictions under Section 566 of the Foreign Operations, Export Financing and Related Programs Appropriations Act, 2000, for bilateral assistance to the Republika Srpska (RS) and Serbia (excluding Kosovo), as follows:

(1) In the Republika Srpska:— support for civilian police restructuring; USAID and State public diplomacy programs promoting democratization, reconciliation, and free and independent media; the Community Reintegration and Stabilization Project of USAID, as well as its Bosnia Business Development, Economic Reform and Democratic Reform Programs; OSCE-supervised elections and human rights activities; and Trade and Development Agency (TDA) activities designed to assist U.S. businesses in Bosnia. The municipalities of Foca, Pale, and Prijedor are excluded from this waiver, because competent authorities have failed to take necessary and significant steps to apprehend and transfer war crimes indictees to the International Criminal Tribunal for the Former Yugoslavia. These municipalities will not be eligible for new U.S. assistance.

(2) In Serbia: State public diplomacy and USAID programs to support democratic reform, including free and independent media and labor; economic reform and other advisory assistance to the democratic FRY opposition; developing programs with NGOs for the delivery of humanitarian assistance through new distribution mechanisms that are independent of Belgrade regime control; and technical assistance, training grants, and exchanges designed to benefit opposition-controlled municipalities.

The Secretary noted that, " Our bilateral assistance promotes Dayton and an integrated Bosnia. Recipients of U.S. assistance must state in writing their support for Dayton and then act accordingly. Our assistance has promoted the growth of pro-Dayton parties in the RS, development of independent media, minority returns, privatization and market-oriented reform, increased minority representation in the RS police force, and efforts to investigate corruption and curb police abuse.

The promotion of independent media and pro-democracy NGOs has a special significance in the aftermath of the Kosovo conflict. The Milosevic regime in Belgrade has an interest in ensuring that no pro-Western governments can survive in areas of predominantly Serb population. RS authorities have demonstrated their readiness to ensure freedom of movement for members of opposition political parties and the

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independent media from Serbia. The response from the Belgrade regime has been to curb dissemination of democratically-oriented media from the RS into Serbia and to issue threats against representatives of the RS government.

Section 566 requires publication of a listing and justification of any assistance that is obligated for any country, entity, or canton to which assistance restrictions apply, including a description of the purpose of the assistance project and its location, by municipality.

The following data are for funds obligated during April–July 2000. Locality data are provided where feasible. However, U.S. assistance in Bosnia, including Republika Srpska has largely shifted from physical reconstruction projects to provision of technical assistance and promotion of political and economic reform. As indicated below, assistance in Serbia is geared toward increasing capabilities of political opposition parties and the independent media. U.S. bilateral aid implementers apply strict screening procedures to ensure that aid beneficiaries, whether of business credits or technical assistance, are firms or organizations in which war crimes indictees have no material influence or interest.

**USAID: Bosnia/Republika SRPSKA**

The following list gives, in order, Date of Obligation, Amount of Obligation, Project Number , Project Title, Description of Activity, Justification of Assistance, Location.

4/04/00. $549,916. 180–0021. Political and Social Process. Voter Education Assistance.Throughout Bosnia-Herzegovina (includes RS)

4/04/00. $109,000. 180–0021. Political and Social Process. Electoral polling in support of April municipal elections. Throughout Bosnia-Herzegovina (includes RS)

4/19/00. $65,000. 180–0021. Political and Social Process. Support political resource center to service candidates and parties. Visegrad (RS).

5/2/00. $2,721,834. 180–0056. Bosnia Reconstruction Finance. Technical assistance to the business development program, to support loan program to private enterprises. Throughout RS, with emphasis on US SFOR AOR.

5/4/00. $3,501,249. 180–0014. Privatization & Enterprise Restructuring. Provide service delivery and management at selected banks. Supports development of private sector economy. Primarily Western RS in US—SFOR AOR.

5/12/00. $244,117. 180–0021. Political and Social Process. Grant with ABA/CEELI. Improve management of court system. RS wide.

5/17/00. $3,000,000. 180–0014. Privatization & Enterprise Restructuring. Provide technical assistance and training in international accounting and audit standards. Supports development of private sector economy. Primarily Western RS in US—SFOR AOR.

5/25/00. $400,000. 180–0014. Privatization & Enterprise Restructuring. Conducting financial verification of payments bureaus. Supports international community priority of shutting down payments bureau system by December 2000 and restructuring BiH financial system along Western lines. Throughout RS.

5/25/00. $489,957. 180–0019. Democratic Governance. Provision of technical assistance to managers and administrators. Supporting democratization. Throughout RS.

5/31/00. $4,643,917. 180–0022. Media Training. Technical assistance to independent electronic and print media. Federation and RS.

6/6/00. $502,193. 180–0032. NGO Development. Strengthen civil society by facilitating NGO development through training and technical assistance. Federation and RS.

**USAID: Serbia**

5/1/00. $995,556. 180–0021. Political and Social Process. Political party development. Economic program development; for use in opposition election campaigns and to guide polices once the political opposition is elected to office.

5/10/00. $990,131. 180–0021. Political and Social Process. Political party development; increase cohesiveness and electoral outreach capabilities of democratic opposition parties.

5/15/00. $227,820. 180–0021. Political and Social Process. Political party development. Aims to increase cohesiveness and electoral outreach capabilities of democratic opposition parties.

5/24/00. $822,470. 180–0021. Political and Social Process. Political party development; increase cohesiveness and electoral outreach capabilities of democratic opposition parties.

6/5/00. $500,000. 180–0020. Rule of Law. Work with legal community toward a more democratic legal framework. Goal: improve legal system that sustains democratic process.

6/22/00. $1,100,000. 180–0021 and 180–0032. Political and Social Process; NGO Development. Political campaign training and vote mobilization activities; develop social and political advocacy capabilities of NGOs. Goals: Increase electoral capabilities of opposition parties; strengthen NGO role in democratic process.

6/29/00. $1,000,000. 180–0021. Political and Social Process. Elections Program: Increase electoral capabilities of opposition parties through more effective civil society training and advocacy.

7/11/00. $629,460. 180–0032. NGO Development. Use telecottage concept to facilitate information sharing. Goal: Strengthen advocacy capabilities of civil society.

7/14/00. $7,767,480. 180–0022. Independent Media. Training and direct material assistance to improve capabilities of independent media.

**FOR FURTHER INFORMATION CONTACT:** Office of the SEED Coordinator, Department of State, 2101 C St NW, Washington, DC 20521, 202–647–0853.

Dated: October 5, 2000.

**Larry C. Napper,**

*Coordinator for East European Assistance, U.S. Department of State.*

[FR Doc. 00–25784 Filed 10–5–00; 8:45 am]

**BILLING CODE 4710–23–P**

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

**[USCG 2000–8032]**

### Collection of Information Under Review by Office of Management and Budget (OMB): OMB Control Numbers 2115–0617 and 2115–0016

**AGENCY:** Coast Guard, DOT.

**ACTION:** Request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, the Coast Guard intends to seek the approval of OMB for the renewal of two Information Collection Requests (ICRs). The ICRs comprise (1) Direct Users' Fees for Inspection or Examination of U.S. and Foreign Commercial Vessels, and (2) Characteristics of Liquid Chemicals Proposed for Movement in Bulk by Water. Before submitting the ICRs to OMB, the Coast Guard is requesting comments on the items described below.



**DATES:** Comments must reach the Coast Guard on or before December 5, 2000.

**ADDRESSES:** You may mail comments to the Docket Management System (DMS) [USCG 2000–8032], U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001, or deliver them to room PL–401, located on the Plaza Level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

The DMS maintains the public docket for these request. Comments will become part of this docket and will be available for inspection or copying in room PL–401, located on the Plaza Level of the Nassif Building at the above address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also access this docket on the Internet at http://dms.dot.gov.

Copies of the complete ICRs are available through this docket on the Internet at http://dms.dot.gov and also from Commandant (G–CIM–2), U.S. Coast Guard Headquarters, room 6106 (Attn: Barbara Davis), 2100 Second Street SW., Washington, DC 20593–0001. The telephone number is 202–267–2326.

**FOR FURTHER INFORMATION CONTACT:** Barbara Davis, Office of Information Management, 202–267–2326, for questions on these documents; Dorothy Beard, Chief, Documentary Services Division, U.S. Department of Transportation, 202–366–9330, for questions on the docket.

**Request for Comments**

The Coast Guard encourages interested persons to submit written comments. Persons submitting comments should include their names and addresses, identify this document [USCG 2000–8032], and give the reason for the comments. Please submit all comments and attachments in an unbound format no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

**Information Collection Request**

1. *Title:* Direct Users' Fees for Inspection or Examination of U.S. and Foreign Commercial Vessels.

*OMB Control Number:* 2115–0617.

*Summary:* This collection requires the submission of identifying information such as vessels' names and identification numbers. A written request to the Coast Guard is necessary.

*Need:* The Omnibus Reconciliation Act of 1990, which amended 46 U.S.C. 2110, requires the Coast Guard to collect users' fees from inspected vessels. To properly collect and manage these fees, the Coast Guard must have current information on identification. This collection helps to ensure that we collect and manage these fees efficiently.

*Respondents:* Owners of vessels.

*Frequency:* Annually.

*Burden Estimate:* The estimated burden is 4,648 hours annually.

2. *Title:* Characteristics of Liquid Chemicals Proposed for Movement in Bulk by Water.

*OMB No.* 2115–0016.

*Summary:* The Coast Guard requires manufacturers of new chemicals to submit data on the chemicals. From these data, the Coast Guard determines the appropriate precautions to take.

*Need:* Under 46 CFR parts 30 to 40, 151, 153, and 154, the Coast Guard regulates the transportation of hazardous materials. Because of its nature, the chemical industry is always producing new chemicals, which it must ship. Each of these has unique characteristics that entail special attention to its mode of shipment.

*Respondents:* Manufacturers of chemicals.

*Frequency:* On occasion.

*Burden Estimate:* The estimated burden is 129 hours annually.

Dated: September 27, 2000.

**V.S. Crea,**

*Director of Information and Technology.*

[FR Doc. 00–25754 Filed 10–5–00; 8:45 am]

**BILLING CODE 4910–15–U**

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

**[USCG–2000–8047]**

### National Boating Safety Activities: Funding for National Nonprofit Public Service Organizations

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of availability.

**SUMMARY:** The Coast Guard seeks applications for grants and cooperative agreements from national, nongovernmental, nonprofit, public service organizations. These grants and cooperative agreements would be used to fund projects on various subjects promoting boating safety on the national level. This notice provides information about the grant and cooperative agreement application process and some of the subjects of particular interest to the Coast Guard.

**DATES:** Application packages may be obtained on or after October 10, 2000. Proposals for the fiscal year 2001 grant cycle must be received before 4:30 p.m. eastern time, January 12, 2001.

**ADDRESSES:** Application packages may be obtained by calling the Coast Guard Infoline at 800–368–5647. Submit proposals to: Commandant (G–OPB–1), U.S. Coast Guard Headquarters, 2100 Second Street SW., Room 3100, Washington, DC 20593–0001. This notice is available from the Coast Guard Infoline and on the Internet at *http://dms.dot.gov* or at the Web Site for the Office of Boating Safety at http://www.uscgboating.org.

**FOR FURTHER INFORMATION CONTACT:** Mr. Albert Marmo or Ms. Vickie Hartberger, Office of Boating Safety, U.S. Coast Guard (G–OPB–1/room 3100), 2100 Second Street, SW., Washington, DC 20593–0001; 202–267–0950 or 202–267–0974.

**SUPPLEMENTARY INFORMATION:** Title 26, United States Code, section 9504, establishes the Boat Safety Account of the Aquatic Resources Trust Fund. From this trust fund, the majority of funds are allocated to the States, and up to 5% of these funds may be distributed by the Coast Guard for grants and cooperative agreements to national, nonprofit, public service organizations for national boating safety activities. It is anticipated that $2,950,000 will be available for fiscal year 2001. Twenty four awards totaling $2,948,343 were made in fiscal year 2000 ranging from $5,000 to $436,200. Nothing in this announcement should be construed as committing the Coast Guard to dividing available funds among qualified applicants or awarding any specified amount.

It is anticipated that several awards will be made by the Director of Operations Policy, U.S. Coast Guard. Applicants must be national, nongovernmental, nonprofit, public service organizations and must establish that their activities are, in fact, national in scope. An application package may be obtained by writing or calling the point of contact listed in **ADDRESSES** on or after October 10, 2000. The application package contains all necessary forms, an explanation of how the grant program is administered, and a checklist for submitting a grant application. Specific information on organization eligibility, proposal requirements, award procedures, and financial administration procedures may be obtained by contacting the person listed in **FOR FURTHER INFORMATION CONTACT.**

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Prospective grantees may propose up to a five-year grant with twelve-month (fiscal year) increments. In effect, an award would be made for the first year and thereafter renewal is optional. Each annual increment would not be guaranteed. Under a continuation (multi-year) grant type of award the Coast Guard agrees to support a grant project at a specific level of effort for a specified period of time, with a statement of intention to provide certain additional future support, provided funds become available, the achieved results warrant further support, and are in support of the needs of the government. Award of continuation grants will be made on a strict case by case basis to assist planning certain large scale projects and ensure continuity. Procedures also provide for awarding noncompetitive grants or cooperative agreements on a case by case basis. This authority is judiciously used to fund recurring annual projects or events which can only be carried out by one organization, and projects that present targets of opportunity for timely action on new or emerging program requirements or issues. The following list includes items of specific interest to the Coast Guard, however, potential applicants should not be constrained by the list. We welcome any initiative that supports the organizational objectives of the Recreational Boating Safety Program to save lives, reduce the number of boating accidents, injuries and property damage, and lower associated health care costs. We have a high interest in initiatives that focus on recreational anglers, canoeists, kayakers, and/or personal watercraft operators. Some project areas of continuing and particular interest for grant funding include the following:

1. *Develop and Conduct a National Annual Safe Boating Campaign.* The Coast Guard seeks a grantee to develop and conduct the year 2002 National Annual Safe Boating Campaign that targets specific boater market segments and recreational boating safety topics. This year-round campaign must support the organizational objectives of the Recreational Boating Safety Program, as well as support the nationwide grassroots activity of the many volunteer groups who coordinate local media events, education programs, and public awareness activities. The major focus of the campaign will be to affect the behavior of all boaters with special emphasis on paddlers, hunters and anglers, and users of personal watercraft. Efforts will also be coordinated, year-round, with other national transportation safety activities and special media events. Point of Contact: Ms. Jo Calkin, 202–267–0994.

2. *Develop and Conduct a National Recreational Boating Safety Outreach and Awareness Conference.* The Coast Guard seeks a grantee to plan, implement, and conduct a National Recreational Boating Safety Outreach and Awareness Conference that supports the organizational objectives of the Recreational Boating Safety Program. The overall conference focus should have promotional strategies which address the following specific targeted audiences: Paddlers, anglers and hunters, and personal watercraft users. Point of Contact: Ms. Jo Calkin, 202–267–0994.

3. *State/Federal/Boating Organizations Cooperative Partnering Efforts.* The Coast Guard seeks a grantee to provide programs to encourage greater participation and uniformity in boating safety efforts. Applicants would provide a forum to encourage greater uniformity of boating laws and regulations, reciprocity among jurisdictions, and closer cooperation and assistance in developing, administering, and enforcing Federal and State laws and regulations pertaining to boating safety. Point of Contact: Ms. Sandy Brown, 202–267–6010.

4. *Voluntary Standards Development Support.* The Coast Guard seeks a grantee to carry out a program to encourage active participation by members of the public and other qualified persons in the development of technically sound voluntary safety standards for boats and associated equipment. Point of Contact: Mr. Peter Eikenberry, 202–267–6984.

5. *Develop and Conduct Boating Accident Seminars.* The Coast Guard seeks a grantee to develop, provide instructional material, and conduct training courses nationwide for boating accident investigators, including three courses at the U.S. Coast Guard Reserve Training Center in Yorktown, Virginia. Point of Contact: Mr. Rick Gipe, 202–267–0985.

6. *National Estimate of Personal Flotation Devices (PFDs) Wear Rate.* The Coast Guard seeks a grantee to develop a statistically valid national estimate and evaluation of wear rates of PFDs by recreational boaters. Wear rate should be determined by actual observation of boaters rather than other means such as surveys. Point of Contact: Mr. Peter Eikenberry, 202–267–6894.

7. *Risk Analysis.* The Coast Guard seeks a grantee to apply risk analysis and risk management techniques to validate a speed versus proposed intervention matrix for the operation of recreational boats. Point of Contact: Mr. Philip Cappel, 202–267–0988.

8. *Recreational Boating Safety Needs Assessment.* The Coast Guard seeks a grantee to perform a comprehensive assessment of funding needs for State recreational boating safety programs. Point of Contact: Ms. Jeanne Timmons, 202–267–0857.

9. *Develop a State-by-State Boater Risk Exposure Study.* The Coast Guard seeks a grantee to perform an analysis of national boater survey and accident data to provide a better understanding of the relative risk boaters face as a function of the amount of time actually spent on the water. The study would provide insights regarding State-to-State comparisons of boaters' relative risk, highlighting differences based on boaters' relative exposure time. Point of Contact: Mr. Bruce Schmidt, 202–267–0955.

10. *Reference Guide to State Boating Education Laws and Regulations.* The Coast Guard seeks a grantee to collect, compile and effectively disseminate State specific boating safety education laws and regulations to the boating community to encourage uniformity and reciprocity across and between States. The project will include a survey of the State authorities to ascertain the common elements contained in State boating education laws and will present these elements in a standardized, easy-to-use format. The data will be published both in printed and electronic formats to facilitate online access. Point of Contact: Mr. Vann Burgess, 202–267–6717.

11. *Uniform Implementation of National Boating Education Standards.* The Coast Guard seeks a grantee to develop and conduct seminars to train State personnel in the accurate and effective use and interpretation of the National Boating Education Standards to better provide course review and enhance the approval process. Point of Contact: Mr. Vann Burgess, 202–267–6717.

12. *Establish Boat Operator Knowledge Exam Quality Criteria.* The Coast Guard seeks a grantee to develop nationally recognized and accepted final written boating safety education examination criteria. Criteria elements should address all core elements as presented in the National Boating Education Standards. Identifiable elements should include such items, but not limited to: total number of questions, number of questions per educational segment, types/style of questions to be used, test validity, and educational efficacy. Point of Contact: Mr. Vann Burgess, 202–267–6717.

13. *Global Maritime Distress and Safety System (GMDSS) Education.* The Coast Guard seeks a grantee to develop a training aid to educate the recreational boating public on GMDSS, including information on GMDSS history, component systems, GMDSS Sea Areas, carriage requirements, potential difficulties non-GMDSS equipped recreational boat may encounter in trying to communicate with SOLAS-class vessels, Digital Selective Calling, and system implementation time frame. Point of Contact: CWO Michael Wedda, 202–267–1263.

14. *Boating Safety Problem-Specific Awareness.* The Coast Guard seeks a grantee to develop an informational package dealing with several safety issues, including carbon monoxide dangers, propeller injury prevention, off throttle steering properties and others to be specified. The information would be reproducible in pamphlet form as well as in format for inclusion on the Office of Boating Safety Web site. Elements must support the year-round national campaign. Point of Contact: Ms. Diane Schneider, 202–267–1196.

15. *Navigation Light Glare Minimization.* The Coast Guard seeks a grantee to investigate the aspects of recreational boat navigation light glare, especially with regard to the use of the "all around" white light, and determine what technologies or methodologies, if any, might eliminate or minimize the negative effects of glare on the vision of the operator. Point of Contact: Mr. Randolph J. Doubt, 202–267–6810.

16. *Flotation Foam Study.* The Coast Guard seeks a grantee to perform testing and analysis of current flotation foams used in recreational vessels to determine degree of water absorption, effects of temperature variations, effects of vibration, and effects of aging. Study shall include both in-situ and as-installed testing. Point of Contact: Mr. Gary Larimer, 202–267–0986.

17. *Carbon Monoxide Study.* The Coast Guard seeks a grantee to perform testing on current and emerging technologies for detection of carbon monoxide in a marine environment. Grantee shall also perform an analysis of in-use carbon monoxide detection equipment. Point of Contact: Mr. Randolph J. Doubt, 202–267–6810.

18. *Carbon Monoxide Build-up Relative to Vessel Configurations Study.* The Coast Guard seeks a grantee to investigate levels of carbon monoxide build-up on recreational vessels relative to particular vessel design and equipment configuration. Point of Contact: Mr. Randolph J. Doubt, 202–267–6810.

19. *Revise, Reprint and Produce On-line the Guide for Multiple Use Waterways Management.* The Coast Guard seeks a grantee to revise and update "A Guide for Multiple Use Waterway Management" produced under a prior Coast Guard grant, providing new management tools and techniques that have been developed or modified since the publication's initial release. In addition to providing the Guide in a printed format to satisfy current and anticipated future demand, this project would also format the Guide for availability and dissemination through the Internet. Point of Contact: CWO Michael Wedda, 202–267–1263.

20. *Disseminate Personal Watercraft (PWC) Renter Orientation Checklist.* The Coast Guard seeks a grantee to package and disseminate printed copies of a newly developed two-part PWC Renter Orientation Checklist for broad distribution to PWC livery operators and others nationwide. The Checklist would also be made available online via the Internet. Point of Contact: Mr. Vann Burgess, 202–267–6717. Potential grantees should focus on partnership, *i.e.*, exploring other sources, linkages, in-kind contributions, cost sharing, and partnering with other organizations or corporations. You may obtain a more detailed discussion of specific projects of interest to the Coast Guard by contacting the Coast Guard Infoline at 800–368–5647 and requesting a copy of a specific proposal. We also encourage proposals addressing other boating safety concerns.

The Boating Safety Financial Assistance Program is listed in section 20.005 of the Catalog of Federal Domestic Assistance.

Dated: October 3, 2000.

**Kenneth T. Venuto,**

*Rear Admiral, Coast Guard, Director of Operations Policy.*

[FR Doc. 00–25753 Filed 10–5–00; 8:45 am]

BILLING CODE 4910–15–U



## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Docket No. FAA–2000–8046; Notice No. 00–12]**

### Exemption Reconsideration

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Reconsideration of certain exemptions.

**SUMMARY:** This notice contains a summary of existing exemptions that provide relief from regulations and permit the use of electronic records and electronic signatures. The Federal Aviation Administration (FAA) will review these exemptions to determine if they are appropriate candidates for supersedure because of recent legislative and internal actions.

**DATES:** Comments on this proposed action must be received by October 26, 2000.

**ADDRESSES:** Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2000–8046 at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the internet to http://dms.dot.gov. You may review the public docket containing comments to these proposed actions in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at http://dms.dot.gov.

**FOR FURTHER INFORMATION CONTACT:** Thomas Penland, Flight Standards Service (AFS–200), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; Telephone (202) 267–3764.

**SUPPLEMENTARY INFORMATION:**

In the past the FAA was contained by practical considerations to limit the reading of the language of certain regulations in a manner that was not conducive to the current electronic environment. The language of these regulations, while general, could only be implemented by requiring nonelectronic methods. This decision was necessary because of the limited technology available to the FAA at that time. In addition, the FAA did not have procedures in place to permit the agency to provide for the general acceptance of electronic data. Exemptions from certain regulations provided limited relief to permit the use of electronic means of compliance.

The FAA recently developed internal procedures to implement the requirements of the Government Paperwork Elimination Act (GPEA), Public Law 105–277, 44 U.S.C. 3504, which became law on October 21, 1998. The GPEA requires federal agencies to provide for (1) the option of electronic maintenance, submission, or disclosure of information, when practicable as a substitute for paper; and (2) the use and acceptance of electronic

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signatures, when practicable. The GPEA also states:

"Electronic records submitted or maintained in accordance with procedures developed under this Act, or electronic signatures or other forms of electronic authentication used in accordance with such procedures, shall not be denied legal effect, validity, or enforceability because such records are in electronic form."

As part of its efforts to comply with the GPEA and based on Office of Management and Budget (OMB) guidance (65 FR 25508; May 2, 2000), the FAA has developed procedures that would permit the acceptance of electronic records and electronic signatures. In addition, the FAA not has the technical capability to operate in an electronic environment. Therefore, the FAA has undertaken a review of exemptions issued by the agency allowing the use of electronic signatures and records to determine if they are superseded by the provisions of the GPEA and acceptable under FAA's internal procedures.

This notice lists the exemptions that will be reviewed. Commenters, including the listed exemptions holders, should submit their comments and concerns to the FAA by the close of the comment period.

The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any exemption.

Issued in Washington, DC on October 2, 2000.

**Donald P. Byrne,**

*Assistant Chief Council for Regulations, AGC–200.*

**Summary of Existing Exemptions**

*Docket No.:* 25336.
*Petitioner:* United Airlines, Inc. (United).
*Section of 14 CFR Affected:* 14 CFR 121.697(a)(3), (b), (c), and (d) and 121.709)b)(3).
*Description of Relief:* Permits United to use computerized signatures to satisfy the airworthiness release signature requirements of part 121 in lieu of physical signatures.
*Exemption No. 5121F.*

*Docket No.:* 27674.
*Petitioner:* International Business Machines Corporation Flight Operations (IBM Flight Operations).
*Section of 14 CFR Affected:* 14 CFR 43.9(a), 43.11(a)(3), 91.407(a)(2), 145.57(a).
*Description of Relief:* Permits IBM Flight Operations to use computerized personal identification codes in lieu of the physical signatures required to issue an airworthiness release and/or approval for return to service for the aircraft operated by IBM Flight Operations and the aeronautical products that IBM Flight Operations maintains for its repair station customers.
*Exemption No. 6176A.*

*Docket No.:* 28557.
*Petitioner:* Chromalloy Gas Turbine Corporation (Chromalloy).
*Section of 14 CFR Affected:* 14 CFR 43.9(a)(4), 43.11(a)(3), and 145.57(a).
*Description of Relief:* Permits Chromalloy and other persons holding return-to-service authority under the relevant, respective inspection procedures manuals (IPM) to use electronic signatures in lieu of physical signatures to satisfy the signature requirements of FAA Form 8130–3, Airworthiness Approval Tag.
*Exemption No. 6513A.*

*Docket No.:* 28445.
*Petitioner:* Aircraft Braking Systems Corporation (ABSC).
*Section of 14 CFR Affected:* 14 CFR 43.9(a)(4) and 43.11(a)(3), appendix B to part 43, and § 145.57(a).
*Description of Relief:* Permits ABSC to use computer-generated electronic signatures in lieu of physical signatures to satisfy approval for return-to-service signature requirements.
*Exemption No. 6542B.*

*Docket No.:* 28225.
*Petitioner:* Northwest Airlines, Inc. (Northwest).
*Section of 14 CFR Affected:* 14 CFR 121.709(b)(3).
*Description of Relief:* Permits Northwest to use electronic signatures generated by its SCEPTRE electronic recordkeeping system in lieu of a physical signature to satisfy the airworthiness release or aircraft log entry signature requirements of § 121.709(b)(3).
*Exemption No. 6575A.*

*Docket No.:* 28708.
*Petitioner:* Empire Airlines, Inc. (Empire).
*Section of 14 CFR Affected:* 14 CFR 43.9 and 121.709(b)(3).
*Description of Relief:* Permits Empire to use electronic signatures in lieu of physical signatures to satisfy airworthiness release or aircraft log entry signature requirements of § 43.9 for operations conducted under 14 CFR part 135 and § 121.709(b)(3) for operations conducted under part 121.
*Exemption No. 6668B.*

*Docket No.:* 29349.
*Petitioner:* Texas Aero Engine Services, L.L.C. (TAESL).
*Section of 14 CFR Affected:* 14 CFR 43.9(a)(4).
*Description of Relief:* Permits TAESL to use computerized personal identification codes in lieu of physical signatures required to issue airworthiness releases and approvals for return to service of aeronautical products it maintains for its repair station customers.
*Exemption No. 6890.*

*Docket No.:* 29419.
*Petitioner:* Aviation Component Service Center (ACSC).
*Section of 14 CFR Affected:* 14 CFR 43.9(a)(4), § 43.11(a)(3), appendix B to part 43, and § 145.57(a).
*Description of Relief:* Permits ACSC to use computer-generated electronic signatures in lieu of physical signatures to satisfy approval for return-to-service signature requirements.
*Exemption No. 6926.*

*Docket No.:* 28634.
*Petitioner:* Parker Hannifin Corporation (Parker).
*Section of 14 CFR Affected:* 14 CFR 43.9(a)(4), § 43.11(a)(3), appendix B to part 43, and § 145.57(a).
*Description of Relief:* Permits Parker to use computer-generated electronic signatures in lieu of physical signatures to satisfy the signature requirements of FAA Form 8130–3, Airworthiness Approval Tag, when the form is used as approval for return to service.
*Exemption No. 7096.*

*Docket No.:* 29422.
*Petitioner:* Gulfstream Aerospace Corporation (Gulfstream).
*Section of 14 CFR Affected:* 14 CFR 43.9(a)(4), 43.11(a)(3), appendix B to part 43, and 145.57(a).
*Description of Relief:* Permits Gulfstream qualified technicians and inspection personnel to use electronic signatures in lieu of physical signatures to satisfy approval for return-to-service signature requirements for the completion processes for Gulfstream aircraft.
*Exemption No. 7163.*

*Docket No.:* 17145.
*Petitioner:* United Airlines, Inc.
*Section of 14 CFR Affected:* 14 CFR 121.665 and 121.697(a) and (b).
*Description of Relief:* Permits United to use computerized load manifests that bear the printed name and position of the person responsible for loading the aircraft, instead of that person's signature.
*Exemption No. 2466K.*

*Docket No.:* 28545.
*Petitoner:* United Airlines, Inc.
*Section of 14 CFR Affected:* 14 CFR 121.135(a)(3).
*Description of Relief:* Permits United to use electronic digital technology to



document the revision level in lieu of printing the last revision date on each page of the manual.
*Exemption No. 6612A.*

[FR Doc. 00–25694 Filed 10–5–00; 8:45 am]
BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Environmental Impact Statement: Butler County, OH

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of Intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that an Environmental Impact Statement may be prepared for a proposed transportation project in Butler County, Ohio.

**FOR FURTHER INFORMATION CONTACT:** Mark L. Vonder Embse, Urban Programs Engineer, Federal Highway Administration, 200 North High Street, Room 328, Columbus, Ohio 43215, Telephone: (614) 280–6854.

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the Ohio Department of Transportation, will prepare an Environmental Impact Statement (EIS) for a proposed improvement in the vicinity of Trenton, Ohio. The project termini are approximately US–127, north of the Village of Seven Mile, and the SR–63/SR–4 interchange. The study area is approximately 9 miles in length.

The purpose and need of the project are to address travel demand and capacity, access and safety deficiencies. Alternatives under consideration include: (1) Taking no action; (2) Constructing a new highway on new location; (3) Upgrading existing facilities. FHWA, ODOT, and local agencies will be invited to participate in defining the alternatives to be evaluated in the EIS, and any significant social, economic, or environmental issues related to the alternatives.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A series of public meetings will be held in the project area. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing. Scoping activities will be conducted.

To ensure that the full range of issues related to this proposed action are identified and addressed, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action should be sent to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: September 26, 2000.

**Mark L. Vonder Embse,**

*Urban Programs Engineer, Federal Highway Administration, Columbus, Ohio.*

[FR Doc. 00–25767 Filed 10–5–00; 8:45 am]
BILLING CODE 4910–22–P

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA–2000–7965]**

### Notice of Receipt of Petition for Decision That Nonconforming 1999–2000 Porsche 911 GT3 Passenger Cars Are Eligible for Importation

**AGENCY:** National Highway Traffic Safety Administration, DOT.

**ACTION:** Notice of receipt of petition for decision that nonconforming 1999–2000 Porsche 911 GT3 passenger cars are eligible for importation.

**SUMMARY:** This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1999–2000 Porsche 911 GT3 passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

**DATES:** The closing date for comments on the petition is November 6, 2000.

**ADDRESS:** Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm].

**FOR FURTHER INFORMATION CONTACT:** George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

**SUPPLEMENTARY INFORMATION:**

**Background**

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Wallace Environmental Testing Laboratories, Inc. of Houston, Texas ("WETL")(Registered Importer 90–005) has petitioned NHTSA to decide whether 1999–2000 Porsche 911 GT3 passenger cars are eligible for importation into the United States. The vehicles which WETL believes are substantially similar are 1999–2000 Porsche 911 passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1999–2000 Porsche 911 GT3 passenger cars to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

WETL submitted information with its petition intended to demonstrate that non-U.S. certified 1999–2000 Porsche 911 GT3 passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified

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counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1999–2000 Porsche 911 GT3 passenger cars are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence * * **, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 118 *Power Window Systems*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials*.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays*: installation of a brake warning indicator if the vehicles are not already so equipped. The petitioner states that the vehicles are equipped with a digital speedometer which is capable of providing readings in kilometers or miles per hours. Although this unit is not identical to the one installed on U.S.-certified models, the petitioner contends that it meets the requirements of the standard.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment*: (a) Replacement of the taillight lenses with lenses that conform to the standard; (b) installation of left and right sidemarker lights. The petitioner states that the vehicles are equipped with headlight assemblies which bear DOT markings certifying that they meet the standard, even thought those assemblies are not identical to the ones installed on U.S. certified models. The petitioner also states that the vehicles are equipped at the factory with a high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims*: installation of a tire information placard.

Standard No. 111 *Rearview Mirror*: replacement of the passenger side rearview mirror with a U.S.-model component on vehicles that are not already so equipped.

Standard No. 114 *Theft Protection*: installation of a warning buzzer and a warning buzzer microswitch in the steering lock assembly.

Standard No. 208 *Occupant Crash Protection*: (a) Replacement of the driver's seat belt latch and installation of a safety belt warning buzzer; (b) replacement of the driver's and passenger's side air bag system and knee bolsters with U.S.-model components on vehicles that are not already so equipped. The petitioner states that the vehicles are equipped at the front outboard seating positions with Type II seat belts.

Standard No. 214 *Side Impact Protection*: The petitioner states that the vehicles have a lower ride height than U.S. certified models, with the approximate front bumper clearance height being 4 9/16 inches, as opposed to 8 inches on U.S. certified models, and the rear bumper clearance height being 9 inches, as opposed to 10 inches on U.S. certified models. The petitioner states that either the vehicles' coil springs will be replaced with ones identical to those found on U.S. certified models, or spring spacers will be added so that the vehicles have the same ride height as their U.S. certified counterparts.

Standard No. 301 *Fuel System Integrity*: installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister on vehicles that are not already so equipped.

Additionally, the petitioner states that front and rear bumper shocks and rear bumper pads will be installed on non-U.S. certified 1999–2000 Porsche 911 GT3 passenger cars so that they comply with the Bumper Standard found in 49 CFR part 581. The petitioner states that ride height issues will be resolved through modifications made to conform the vehicles to Standard No. 214.

The petitioner also states that a vehicle identification number plate must be affixed to the vehicle to meet the requirements of 49 CFR part 565.

Additionally, the petitioner states that all vehicles will be inspected prior to importation to ensure that they are equipped with U.S.-model anti-theft devices, and that all vehicles that are not so equipped will be modified to comply with the Theft Prevention Standard at 49 CFR part 541.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm]. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

**Authority:** 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: October 2, 2000.

**Marilynne Jacobs,**

*Director, Office of Vehicle Safety Compliance.*

[FR Doc. 00–25696 Filed 10–5–00; 8:45 am]

BILLING CODE 4910–59–P

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Finance Docket No. 33926 (Sub-No. 1)]**

### The Burlington Northern and Santa Fe Railway Co.—Trackage Rights Exemption—Union Pacific Railroad Co.

**AGENCY:** Surface Transportation Board.

**ACTION:** Notice of exemption.

**SUMMARY:** The Board, under 49 U.S.C. 10502, exempts the trackage rights described in STB Finance Docket No. 33926 [1] to permit the trackage rights to expire, as they relate to the operations between East Portland, OR, and Chemult, OR, on November 11, 2000.

**DATES:** This exemption is effective on November 5, 2000. Petitions to reopen must be filed by October 26, 2000.

**ADDRESSES:** An original and 10 copies of all pleadings referring to STB Finance Docket No. 33926 (Sub-No. 1) must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of all pleadings must be served on petitioners' representatives, Yolanda Grimes Brown, Esq., The Burlington Northern and Santa Fe Railway Company, P.O. Box 961039, Fort Worth, TX 76161–0039, and Robert Opal, Esq., Union Pacific Railroad Company 1416 Dodge Street, Room 830, Omaha, NE 68179.

**FOR FURTHER INFORMATION CONTACT:** Joseph H. Dettmar, (202) 565–1600. [TDD for the hearing impaired: 1 (800) 877–8339.]

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Da to Da Office Solutions, Suite 405, 1925 K Street, NW., Washington, DC 20006. Telephone: (202) 466–5530. [Assistance for the hearing impaired is available through TDD services 1 (800) 877–8339.]

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: September 27, 2000.

By the Board, Chairman Morgan, Vice Chairman Burkes, and Commissioner Clyburn.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 00–25475 Filed 10–5–00; 8:45 am]

BILLING CODE 4915–00–P

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Docket No. AB–570 (Sub-No. 1X)]**

### Palouse River & Coulee City Railroad, Inc.—Abandonment Exemption—In Latah County, ID

Palouse River & Coulee City Railroad Inc. (PRCC) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 26-mile portion of its rail line between milepost 21.0 at Harvard and milepost 47.0 at Bovill, in Latah County, ID. The line traverses United States Postal Service Zip Codes 83834, 83823, and 83806.

PRCC has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on November 7, 2000, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by October 16, 2000. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by October 26, 2000, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Karl Morell, Ball Janik LLP, 1455 F St., NW., Suite 225, Washington, DC 20005.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

PRCC has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by October 11, 2000. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), PRCC shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by PRCC's filing of a notice of consummation by October 6, 2001, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Decided: September 27, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 00–25474 Filed 10–5–00; 8:45 am]

BILLING CODE 4915–00–P

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Docket No. AB–471 (Sub–No. 4X)]**

### South Kansas and Oklahoma Railroad Co.—Abandonment Exemption—In Crawford, Wilson, Elk and Greenwood Counties, KS, and Osage and Tulsa Counties, OK

South Kansas and Oklahoma Railroad Company (SKO) has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon: (1) a 35-mile line of railroad between milepost 153.0 near Tulsa and milepost 188.0 near Barnsdall, in Osage and Tulsa Counties, OK; (2) a 6-mile line of railroad between milepost 359.0 at Pittsburg and milepost 365.0 at Cherokee, in Crawford County, KS; and (3) a 23.5-mile line of railroad between milepost 438.5 at Severy and milepost 415.0 at Fredonia, in Wilson, Elk and Greenwood Counties, KS. The line traverses United States Postal Service Zip Codes 74126, 74073, 74070, 74001, 74002, 66762, 66724, 67137, 67047, 66759 and 66736.

SKO has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or

[1] On September 6, 2000, BNSF filed a notice of exemption under the Board's class exemption procedures at 49 CFR 1180.2(d)(7). The notice covered the agreement by UP to grant temporary overhead trackage rights to BNSF over approximately 245 miles of UP's lines as follows: (1) Between East Portland, OR, in the vicinity of UP's milepost 770.34, and Oakridge, OR, in the vicinity of UP's milepost 580.5 (UP's Brooklyn Subdivision); and (2) between Oakridge, in the vicinity of UP's milepost 580.5 and Chemult, OR, in the vicinity of UP's milepost 502.9 (UP's Cascade Subdivision). *See The Burlington Northern and Santa Fe Railway Company—Trackage Rights Exemption—Union Pacific Railroad Company*, STB Finance Docket No. 33926 (STB served Sept. 15, 2000). The trackage rights agreement is scheduled to expire on November 11, 2000. The trackage rights operations under the exemption were scheduled to be consummated on September 15, 2000.

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1000. *See* 49 CFR 1002.2(f)(25).

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with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on November 7, 2000, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by October 16, 2000. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by October 26, 2000, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Karl Morell, Ball Janik LLP, 1455 F St., NW, Suite 225, Washington, DC 20005.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

SKO has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by October 11, 2000. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), SKO shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by SKO's filing of a notice of consummation by October 6, 2001, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Decided: September 29, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 00–25756 Filed 10–5–00; 8:45 am]

BILLING CODE 4915–00–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1000. *See* 49 CFR 1002.2(f)(25).

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Docket No. AB–303 (Sub–No. 25X)]**

### Wisconsin Central Ltd.—Abandonment Exemption—In Langlade, Menominee and Shawano Counties, WI

On September 19, 2000, Wisconsin Central Ltd. (WCL) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903–05 [1] to abandon a line of railroad known as the White Lake-Shawano Line, between milepost 280 north of White Lake and milepost 314.3 north of Shawano, in Langlade, Menominee, and Shawano Counties, WI, a distance of 34.3 miles. The line traverses U.S. Postal Service Zip Codes 54491, 54150, 54128, and 54166, and includes stations at White Lake (milepost 282.8), Neopit (milepost 296.8), Gresham (milepost 306.6), and Thornton (milepost 312.6).

The line does contain federally granted rights-of-way. Any documentation in WCL's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by January 5, 2001.

Any OFA under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $1,000 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than October 26, 2000. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–303 (Sub-No. 25X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001; and (2) Michael J. Barron, Jr., P.O. Box 5062, Rosemont, IL 60017–5062. Replies to the WCL petition are due on or before October 26, 2000.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the hearing impaired is available at 1–800–877–8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

[1] WCL's petition states that it seeks exemption from the provisions of 49 U.S.C. 10903–05, thus evidently including exemption from the offer of financial assistance (OFA) requirements of 49 U.S.C. 10904 and the public use requirements of 49 U.S.C. 10905. WCL has not submitted evidence to establish that the proposed exemptions from sections 10904 and 10905 meet the criteria of 49 U.S.C. 10502. Therefore, its request as to those two provisions will not be considered.



Decided: September 26, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 00–25247 Filed 10–5–00; 8:45 am]

BILLING CODE 4915–00–P

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

September 28, 2000.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

**DATES:** Written comments should be received on or before November 6, 2000. to be assured of consideration.

**Customs Service (CUS)**

*OMB Number:* 1515–002.
*Form Number:* Customs Form 4315.
*Type of Review:* Extension.
*Title:* Application for Allowance in Duties.
*Description:* This collection is required by the Customs Service in instances of claims of damaged or defective merchandise on which an allowance in duty is made in the liquidation of the entry. The information is used to substantiate importers claims for such duty allowances.
*Respondents:* Business or other for-profit, Individuals or households, Not-for-profit institutions.
*Estimated Number of Respondents:* 12,000.
*Estimated Burden Hours Per Respondent:* 8 minutes.
*Frequency of Response:* On occasion.
*Estimated Total Reporting Burden:* 1,600 hours.
*Clearance Officer:* J. Edgar Nichols (202) 927–1426, U.S. Customs Service, Information Services Branch, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW., Room 3.2.C, Washington, DC 20229.
*OMB Reviewer:* Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports Management Officer.*

[FR Doc. 00–25666 Filed 10–5–00; 8:45 am]

BILLING CODE 4820–02–U

## DEPARTMENT OF THE TREASURY

### Office of the Secretary

### List of Countries Requiring Cooperation With an International Boycott

In order to comply with the mandate of section 999(a)(3) of the Internal Revenue Code of 1986, the Department of the Treasury is publishing a current list of countries which may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

On the basis of the best information currently available to the Department of the Treasury, the following countries may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986): Bahrain, Iraz, Kuwait, Lebanon, Libya, Oman, Qatar, Saudi Arabia, Syria, United Arab Emirates, Republic of Yemen.

Dated: September 29, 2000.

**Philip West,**

*International Tax Counsel (Tax Policy).*

[FR Doc. 00–25758 Filed 10–5–00; 8:45 am]

BILLING CODE 4810–25–M

## DEPARTMENT OF THE TREASURY

### Customs Service

### Performance Review Board—Appointment of Members

**AGENCY:** U.S. Customs Service, Department of the Treasury.

**ACTION:** General Notice.

**SUMMARY:** This notice announces the appointment of the members of the United States Customs Service Performance Review Boards (PRB's) in accordance with 5 U.S.C. 4314(c)(4). The purpose of the PRB's is to review senior executives' performance appraisals and to make recommendations regarding performance appraisals and performance awards.

**EFFECTIVE DATE:** October 1, 2000.

**FOR FURTHER INFORMATION CONTACT:** Robert M. Smith, Assistant Commissioner, Human Resources Management, United States Customs Service, 1300 Pennsylvania Avenue, NW, Room 2.4–A, Washington, DC 20229; Telephone (202) 927–1250.

*Background*

There are two (2) PRB's in the U.S. Customs Service.

*Performance Review Board 1*

The purpose of this Board is to review the performance appraisals of senior executives rated by the Commissioner of Customs. The members are:

Donnie Carter, Deputy Assistant Director, Criminal Enforcement Field Operations, East, Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury

Anna Fay Dixon, Director, Office of Finance and Administration, Office of the Under Secretary for Enforcement, Department of the Treasury

Jane Sullivan, Director, Office of Information Resources Management, Department of the Treasury

Kenneth Papaj, Deputy Commissioner, Financial Management Service, Department of the Treasury

Jackquelyn Fletcher, Associate Director/CIO, U.S. Mint, Department of the Treasury

*Performance Review Board 2*

The purpose of this Board is to review the performance appraisals of all senior executives except those rated by the Commissioner of Customs. The members are:

William F. Riley, Director, Office of Planning, Office of the Commissioner

Assistant Commissioners:

Douglas M. Browning, International Affairs

Marjorie L. Budd, Training and Development

S.W. Hall, Information and Technology/CIO

C. Wayne Hamilton, Finance/CFO

William A. Keefer, Internal Affairs

Stuart P. Seidel, Regulations and Rulings

Robert M. Smith, Human Resources Management

Lance S. Statler, Congressional Affairs

Bonni G. Tischler, Field Operations

Dated: October 2, 2000.

**Raymond W. Kelly,**

*Commissioner of Customs.*

[FR Doc. 00–25663 Filed 10–5–00; 8:45 am]

BILLING CODE 4820–02–P

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# Corrections

Federal Register
Vol. 65, No. 195
Friday, October 6, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Parts 9 and 63**

**[FRL–6864–6]**

**RIN 2060–AG60**

### Hazardous Air Pollutants: Amendments to the Approval of State Programs and Delegation of Federal Authorities

*Correction*

In rule document 00–22968 beginning on page 55810 in the issue of Thursday, September 14, 2000, make the following correction:

**§9.1 [Corrected]**

On page 55835, in the first column, in Part 63, the designation for footnote 3 located in the first amendatory instruction should be removed and included in §9.1, to read as follows: "National Emission Standards for Hazardous Air Pollutants for Source Categories[3]".

[FR Doc. C0–22968 Filed 10–5–00; 8:45 am]

BILLING CODE 1505–01–D

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Establishment of the Advisory Committee on Organ Transplantation and Solicitation of Nominations for Membership

*Correction*

In notice document 00–25000 beginning on page 58279 in the issue of Thursday, September 28, 2000, make the following correction:

The corrected heading, subagency and subject appear as set forth above.

[FR Doc. C0–25000 Filed 10–5–00; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Friday,
October 6, 2000

Part II

# Environmental Protection Agency

**40 CFR Parts 85 and 86**
**Emissions Control, Air Pollution From 2004 and Later Model Year Heavy-Duty Highway Engines and Vehicles; Light-Duty On-Board Diagnostics Requirements, Revision; Final Rule**

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 85 and 86**

**[AMS–FRL–6846–4]**

**RIN 2060–AI12**

## Control of Emissions of Air Pollution from 2004 and Later Model Year Heavy-Duty Highway Engines and Vehicles; Revision of Light-Duty On-Board Diagnostics Requirements

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** Today's action finalizes a major new program to reduce emissions from on-highway heavy-duty engines and vehicles. These reductions will provide for cleaner air and greater public health protection, primarily by reducing ozone pollution. This program is the first phase of a multi-phase strategy to reduce emissions from heavy-duty engines and vehicles.

A key element of this action is a reaffirmation of the technical and economic feasibility of the non-methane hydrocarbon plus nitrogen oxide ($NMHC+NO_X$) standard promulgated in October, 1997 for diesel heavy-duty engines. This previously-codified standard will therefore remain unchanged and effective starting with the 2004 model year for heavy-duty diesel engines. This standard represents about a 50 percent reduction in emissions of nitrogen oxides, as well as reductions in hydrocarbons, from diesel trucks and buses. Heavy-duty diesel engines and vehicles will also be subject to new test procedures and associated requirements beginning in the 2007 model year that will ensure that emission standards are met across a broad range of engine operating conditions.

In addition, this action puts in place new more stringent emission standards and related provisions for heavy-duty Otto-cycle (e.g., gasoline-fueled) engines and vehicles, beginning in the 2005 model year or sooner under two optional programs finalized today. Vehicles in this category include large full size pick-up trucks and the largest cargo and passenger vans. Today's action does not affect vehicles classified as Medium-duty Passenger Vehicles (generally, large SUVs and vans), which are subject to the recently finalized Tier 2 program standards. For heavy-duty Otto-cycle engines and vehicles affected by today's action, emission standards for oxides of nitrogen and hydrocarbons are reduced by approximately 75 percent from current standards.

We are also finalizing requirements for on-board diagnostics systems for all heavy-duty vehicles and engines at or below 14,000 pounds gross vehicle weight rating (GVWR), as well as revising the on-board diagnostics requirements for diesel light-duty vehicles and trucks.

The requirements promulgated or reaffirmed in today's action will result in lower emissions of oxides of nitrogen and hydrocarbons, as well as lower particulate matter due to reductions in secondary particulate formation (secondary particulate matter is not emitted directly from the engine, but is formed when emissions of oxides of nitrogen react with ammonia in the atmosphere to produce ammonium nitrate particulates) and will assist states and regions facing ozone air quality problems that are causing a range of adverse health effects, particularly respiratory impairment and related illnesses. For example, we project a reduction in oxides of nitrogen emissions of 1,028,000 tons per year by 2010, the time frame when all states will have had to demonstrate compliance with air quality standards. In addition, the program will reduce the contribution of the on-highway heavy-duty category to other serious public health and environmental problems, including volatile organic compounds (VOC), secondary particulate matter (PM), and toxic air pollutants.

Furthermore, we project that the significant environmental benefits of this program would come at an average projected long-term cost increase of less than $400 per vehicle for heavy-duty diesel engines (less than approximately $800 in the near-term) and less than $300 per vehicle for heavy-duty gasoline vehicles and engines in both the long-term and near-term.

**DATES:** This rule is effective December 5, 2000. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 5, 2000.

**ADDRESSES:** All comments and materials relevant to today's action have been placed in Public Docket No. A–98–32 at the following address: U.S. Environmental Protection Agency (EPA), Air Docket (6102), Room M–1500, 401 M Street, S.W., Washington, D.C. 20460. EPA's Air Docket makes materials related to this rulemaking available for review at the above address (on the ground floor in Waterside Mall) from 8:00 a.m. to 5:30 p.m., Monday through Friday, except on government holidays. You can reach the Air Docket by telephone at (202) 260–7548 and by facsimile at (202) 260–4400. We may charge a reasonable fee for copying docket materials, as provided in 40 CFR Part 2.

**FOR FURTHER INFORMATION CONTACT:** Margaret Borushko, U.S. Environmental Protection Agency, Assessment and Standards Division, 2000 Traverwood Drive, Ann Arbor, MI, 48105–2498. Telephone (734) 214–4334; Fax (734) 214–4816; e-mail borushko.margaret@epa.gov.

**SUPPLEMENTARY INFORMATION:**

### Regulated Entities

This regulation will affect you if you manufacture and sell new heavy-duty motor vehicles, new heavy-duty engines, or new diesel light-duty motor vehicles in the United States. The table below gives some examples of entities that may have to comply with the regulations. But because these are only examples, you should carefully examine these and existing regulations in 40 CFR part 86. If you have questions, call the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

| Category | Examples of regulated entities |
|---|---|
| Industry | Manufacturers of new heavy-duty motor vehicles and engines. Manufacturers of new diesel light-duty motor vehicles and engines. |

### Internet Access to Rulemaking Documents

Today's action is available electronically on the day of publication from the Internet Web site listed below. Electronic copies of this preamble and regulatory language as well as the Response to Comments document, the Regulatory Impact Analysis and other documents associated with today's final rule are available from the EPA Office of Transportation and Air Quality Web site listed below shortly after the rule is signed by the Administrator. This service is free of charge, except any cost that you already incur for connecting to the Internet.

EPA Web Site: http://www.epa.gov/docs/fedrgstr/epa-air/

Either select a desired date or use the Search feature.)

Office of Transportation and Air Quality (OTAQ) Web Site: http://www.epa.gov/oms/

(Look in "What's New" or under the "Trucks/Buses" or "Highway Heavy-Duty Vehicles" topics.)



Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, changes in format, page length, etc., may occur.

### Outline of This Preamble

I. Introduction
A. How Does This Action Relate to the Statement of Principles and Other Rulemakings?
B. What Is the "1999 Technology Review"?
C. How Does This Action Relate to the Consent Decrees With Heavy-Duty Diesel Engine Manufacturers?
D. How Does This Action Relate to the Light-Duty Tier 2 Program?
E. What Are the Basic Components of the Program?
1. What Applies to Diesel Engines and Vehicles?
2. What Applies to Otto-cycle Engines and Vehicles?
II. Is the Program Needed, and How Much Effect Will It Have on Emissions?
A. Environmental Need
1. Need for Additional $NO_X$ and NMHC Reductions
a. $NO_X$ and NMHC Cause Adverse Health and Welfare Effects
b. Standards for 2004 HD Diesels Are a Key Part of State Air Pollution Control Plans
c. New Standards for 2005 HD Gasoline Engines and Vehicles Are Important for States in Meeting Their Air Quality Goals
d. HD Diesel and Gasoline Engines Contribute to Total $NO_X$ and VOC Emissions
2. Need for Particulate Matter Reductions
a. PM Emissions Cause Adverse Health and Welfare Effects
b. Current and Future Compliance with the $PM_{10}$ NAAQS
c. Contribution of HD Diesel and Gasoline Vehicles to Particulate Matter
3. Air Toxics From HD Engines and Vehicles
B. Today's Action Will Result in Large Emission Reductions
1. Reductions Due to Emission Standards for Heavy-duty Diesel Engines
2. Reductions Due to Emission Standards for Heavy-duty Gasoline Vehicles and Engines
C. Benefits of the Supplemental Requirements and In-Use Control Measures of Today's Action
III. Content of the Final Rule
A. What Are the Requirements for Heavy-duty Diesel Engines?
1. Review of 2004 $NMHC+NO_X$ Standard
2. New Requirements
a. Not-to-Exceed Test under Expanded Conditions
b. Deficiencies for NTE Emission Standards
c. Supplemental Steady State Test
d. Maximum Allowable Emission Limits
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## I. Introduction

Under EPA's classification system, heavy-duty vehicles are those with a gross vehicle weight rating (GVWR) of 8,500 pounds or more.[1] The State of California classifies the lighter end of this class—up to 14,000 pounds GVWR—as "medium-duty vehicles," and recent EPA regulations define certain vehicles from 8,500 to 10,000 pounds GVWR and designed primarily for passenger transportation as "medium-duty passenger vehicles" (MDPVs) subject to the recently finalized Tier 2 standards. (*See* 65 FR 6698, February 10, 2000). Heavy-duty engines (HDEs) are engines used in heavy-duty vehicles. Heavy-duty engines and vehicles are used in a wide range of applications, from large full size pick-up trucks to the largest commercial trucks. Because one type of heavy-duty engine may be used in many different applications, EPA emission standards for the heavy-duty class of vehicles have generally been based on the emissions performance of the engine

[1] The Clean Air Act defines heavy-duty vehicles as those with a GVWR of greater than 6,000 pounds. However, EPA has classified vehicles between 6,000 and 8,500 pounds GVWR as light-duty vehicles, while treating them as heavy-duty for statutory purposes. Vehicles weighing between 6,000 and 8,500 pounds GVWR are not addressed generally in this final rulemaking. Gross Vehicle Weight Rating (GVWR) is defined by federal regulation in 40 CFR 86.082–2 as "The value specified by the manufacturer as the maximum design loaded weight of a single vehicle." In other words, it is the weight of the vehicle completely loaded with the maximum load that the manufacturer states the vehicle is capable of carrying.

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(and any associated aftertreatment devices) as tested separately from the vehicle chassis.

Highway HDEs are categorized into diesel-cycle (compression-ignited) and Otto-cycle (spark-ignited) engines. Most diesel-cycle engines are fueled by diesel fuel, but heavy-duty diesel-cycle engines can also be fueled by methanol or natural gas. The heavy-duty diesel engine (HDDE) class is further subdivided by EPA into three subclassifications or "primary intended service classes"; light, medium, and heavy HDDEs (*see* 40 CFR 86.090–2).[2] HDDEs are categorized into one of the three subclasses depending on the GVWR of the vehicles for which they are intended, the usage of the vehicles, the engine horsepower rating, and other factors. The subclassifications allow EPA to more effectively set requirements that are appropriate for the wide range of sizes and uses of HDDEs.

Most highway heavy-duty Otto-cycle vehicles and engines are gasoline-fueled, but may also be fueled with alternative fuels including methanol and gaseous fuels such as natural gas. Heavy-duty Otto-cycle vehicles and engines include large full size pick-up trucks, full size cargo and passenger vans, and the largest sport utility vehicles. Approximately 75 percent of heavy-duty Otto-cycle vehicles are in the 8,500–10,000 pound GVWR range, and the vast majority of these are sold as "complete" vehicles.[3] The majority of heavy-duty Otto-cycle vehicles above 10,000 pounds GVWR are sold as "incomplete" vehicles, meaning that they are manufactured without their primary cargo carrying container or device attached. These incomplete vehicles (basically the engine plus a chassis) are then manufactured into a variety of vehicles, including recreational vehicles, panel trucks, tow trucks, and dump trucks.

EPA's $NO_X$ standard for 1998 to 2003 model year diesel and Otto-cycle heavy-duty engines is 4.0 grams per brake horsepower-hour (g/bhp-hr). The hydrocarbon standards for 1998 to 2003 model year Otto-cycle engines are 1.1 g/bhp-hr for engines used in lighter vehicles (8500 to 14,000 pounds GVWR) and 1.9 g/bhp-hr for engines used in heavier vehicles (greater than 14,000 pounds GVWR), and the 1998 to 2003 model year hydrocarbon standard for HDDEs is 1.3 g/bhp-hr. EPA currently requires testing of the engine (with emissions control systems in place) rather than the entire vehicle. Thus, the standards are in units of g/bhp-hr (*i.e.*, grams of emissions per unit of work the engine performs over the test cycle), rather than the grams-per-mile unit used for testing passenger cars and light-duty trucks.

Today's action is the continuation of a rulemaking process for heavy-duty engines which began in 1995 with an Advanced Notice of Proposed Rulemaking (ANPRM) (60 FR 45580, August 31, 1995). As discussed below, a 1996 Notice of Proposed Rulemaking proposed the same NMHC+$NO_X$ standards for both Otto-cycle and diesel-cycle engines (61 FR 33421, June 27, 1996). However, EPA did not finalize the proposed NMHC+$NO_X$ standard for Otto-cycle engines in the final rule published in October 1997 (62 FR 54694, October 21, 1997). EPA did finalize a new NMHC+$NO_X$ emission standard for HDDEs, starting with the 2004 model year, but committed to review the appropriateness of this standard in 1999. Today's final action thus addresses two broad issues that remain from earlier rulemaking efforts—a reaffirmation of the NMHC+$NO_X$ standard for diesel engines and new emission standards for heavy-duty Otto-cycle engines and vehicles. The previous rulemaking documents, and the documents referenced therein (*see* EPA Air Docket No. A–95–27), contain extensive background on the engines and vehicles, the affected industry, and the need for lower emissions standards.

Section I of this preamble provides some background information and the regulatory context of today's action, as well as a brief overview of the program. Section II details the air quality need for and the benefits of the program. Subsequent sections provide a detailed description of the specifics of the program and expand on the technological feasibility and economic impacts of the program. A public participation section reviews the process we followed in soliciting and responding to public comment. The final sections deal with several administrative requirements. You may also want to review our Final Regulatory Impact Analysis (RIA) and our Response to Comments document, both of which are found in the docket and on the Agency's website. They provide additional analyses and discussions of many topics raised in this preamble.

*A. How Does This Action Relate to the Statement of Principles and Other Rulemakings?*

In July of 1995, EPA, the California Air Resources Board, and heavy-duty engine manufacturers representing over 90 percent of annual nationwide engine sales signed a Statement of Principles (SOP) that established a framework for a proposed rulemaking to address concerns regarding the growing contribution of heavy-duty engines to air pollution problems. The SOP contained levels for a new proposed standard for NMHC+$NO_X$ that would become effective in model year 2004. The SOP also contained several key provisions in addition to the standards. The SOP discusses the need to review in 1999 the technological feasibility of the NMHC+$NO_X$ standard and its appropriateness under the Clean Air Act. Also, the SOP outlines a plan for developing technology with the goal of reducing $NO_X$ emissions to 1.0 g/bhp-hr and particulate matter to 0.05 g/bhp-hr while maintaining performance, reliability, and efficiency of the engines. EPA sought early comment on the general regulatory framework laid out in the SOP in an ANPRM on August 31, 1995 (60 FR 45580), then subsequently issued an NPRM on June 27, 1996 (61 FR 33421).

On October 21, 1997, EPA issued a final rule (62 FR 54694). The centerpiece of the final rule was a new $NO_X$+NMHC standard of 2.4 g/bhp-hr (or 2.5 g/bhp-hr with a 0.5 g/bhp-hr NMHC cap) for 2004 and later model year heavy-duty diesel-cycle engines. The rule also adopted other related compliance provisions for diesel-cycle heavy-duty engines beginning with the 2004 model year, as well as revisions to the useful life for the heavy heavy-duty diesel engine service class.

In the June 27, 1996, NPRM, EPA proposed the same NMHC+$NO_X$ standard for diesel and Otto-cycle heavy-duty engines. During the comment period several commenters urged the Agency to reconsider its proposal for Otto-cycle engines. The commenters argued that the proposal ignored the true low emissions capability of gasoline-powered vehicles equipped with advanced three way catalysts. Environmental groups provided comments highlighting manufacturers' certification data for the 1996 model year, which included some engine families with emission levels considerably below the standards proposed for the 2004 model year. One commenter recommended that the proposed standard be phased in earlier than 2004 for Otto-cycle engines since the emissions control technology capable of meeting the NMHC+$NO_X$ standard was more advanced for Otto-cycle engines than for diesel engines. On the basis of these comments, EPA determined to reexamine the proposed standards for Otto-cycle engines and no new NMHC+$NO_X$ standards were finalized for on-highway heavy-duty Otto-cycle engines in the October 21, 1997, final rule.



Lastly, on October 29, 1999, EPA published an NPRM that proposed, among other things, to reaffirm the technical and economic feasibility of the 2004 model year diesel $NO_X$+NMHC standard and to add appropriate emission standards for heavy-duty Otto-cycle vehicles and engines. (*See* 64 FR 58472, October 29, 1999. ) Today's final rule is the conclusion of the first phase of EPA's strategy to achieve substantial emission reductions from heavy-duty vehicles and engines. The second phase, affecting the 2007 and later model years, is addressed in a proposal published on June 2, 2000 (65 FR 35430).

*B. What Is the "1999 Technology Review"?*

In addition to the elements of the 1997 final rule described above, EPA finalized a regulatory provision providing for a 1999 review of the new NMHC+$NO_X$ emission standard for HDDEs. EPA committed to "reassess the appropriateness of the standards under the Clean Air Act, including the need for and technical and economic feasibility of the standards based on information available in 1999" (*See* 62 FR 54699, October 21, 1997). This provision was put in place because the technologies required to meet the 2004 NMHC+$NO_X$ standard for HDDEs were, at the time the standard was finalized, not yet fully developed and proven. This commitment was spelled out in regulatory language in the final rule in 40 CFR 86.004–11, paragraph (a)(1)(i)(E), which reads:

"No later than December 31, 1999, the Administrator shall review the emissions standards set forth in paragraph (a)(1)(i) of this section and determine whether these standards continue to be appropriate under the Act."

While this specific regulatory provision is limited to the NMHC+$NO_X$ standard for review in 1999, in the preamble to the final rule EPA committed to investigating or seeking comment on several other issues in the context of the 1999 review. Our October 29, 1999 NPRM proposed to make certain findings regarding these issues and sought comment. Today's action presents our final findings regarding these issues. These additional issues include:

- An evaluation of whether the appropriateness and technical feasibility of the 2004 standards depend upon changes to diesel fuel.
- A review of the appropriateness of the 2004 NMHC+$NO_X$ standard in the context of the current PM standard.

*C. How Does This Action Relate to the Consent Decrees With Heavy-duty Diesel Engine Manufacturers?*

The Department of Justice and EPA completed consent decrees with seven of the largest heavy-duty diesel engine manufacturers in the U.S. in order to resolve the problems uncovered from current and past heavy-duty diesel engines which the government does not believe meet existing standards and defeat device rules. In these consent decrees with the Federal Government six of the manufacturers are required, among other things, to meet a 2.5 g/bhp-hr limit on NMHC+$NO_X$ no later than October 1, 2002. The majority of these engine manufacturers have also agreed to produce engines by October 1, 2002 that meet a not-to-exceed limit, a Euro III limit (on which the Agency's finalized supplemental steady-state cycle is based), and to test engines over and eventually comply with a load response test and emission limits.[4] The fact that these engine manufacturers have agreed to meet the 2004 standards in 2002 gives the Agency additional confidence that the NMHC+$NO_X$ standard reviewed in today's action is appropriate for the 2004 model year. However, these Consent Decrees are not the basis for the Agency's factual finding that the standards contained in today's final rule are appropriate under the Clean Air Act. Other elements of these consent decrees that are carried over to today's final rule include the addition of a new steady state certification test and a new "not-to-exceed" (NTE) approach to assure in-use compliance. In addition, under the consent decrees the manufacturers are required to invest considerable resources to evaluate instrumentation and methodologies for on-road testing.

The Agency believes these consent decrees will partially address the emission problems from previously produced engines. However, we do not believe that relying on the current compliance program and the use of enforcement actions in the future is the most appropriate long term method to assure in-use compliance of heavy-duty engines under all operating conditions. We estimate that the more than one million engines at issue in these consent decrees produced since 1988 will have resulted in excess $NO_X$ emissions of more than 15 million tons over the lifetime of the engines, with an estimated 1.3 million excess tons of $NO_X$ being emitted in 1998 alone. To put this in perspective, the Agency's National Air Pollutant Emission Trends report for 1900–1996 estimates the total U.S. emission inventory for annual $NO_X$ emissions was 23.3 million tons. These estimates do not include the previously unknown excess $NO_X$ emissions from on-highway heavy-duty diesels. Assuming the total 1998 national $NO_X$ emissions are similar to 1996, the 1.3 million tons excess $NO_X$ emissions from heavy-duty diesels in 1998 represent approximately five percent of the national total. The new compliance requirements contained in this final rule assure that the public's health and welfare will be better protected from these types of excess emissions in the future.

*D. How Does This Action Relate to the Light-duty Tier 2 Program?*

In December of 1999 we finalized a major, comprehensive program designed to reduce emission standards for passenger cars, light trucks, and large passenger vehicles (including sport-utility vehicles, minivans, vans, and pickup trucks) and to reduce the sulfur content of gasoline (see 65 FR 6698, February 10, 2000). Under the program, automakers will produce vehicles designed to have very low emissions when operated on low-sulfur gasoline, and oil refiners will provide such cleaner gasoline nationwide. This comprehensive program is referred to in this preamble as the "Tier 2/Gasoline Sulfur program," or simply the "Tier 2 program."

The proposal for the Tier 2/Gasoline Sulfur program (64 FR 26004, May 13, 1999) raised specific issues relating to vehicles over 8,500 pounds GVWR, and thus classified as heavy-duty vehicles. We requested comment in the Tier 2 NPRM on several potential options that would have applied more stringent standards to vehicles over 8,500 pounds GVWR, including the possibility of extending the GVWR limits that define light-duty trucks. Specifically, we requested comment in the Tier 2 NPRM on, among other options, requiring "all complete trucks in the 8,500–10,000 pound GVWR range to meet light-duty standards "(64 FR 26089).

We subsequently proposed to include all personal use passenger vehicles (including gasoline and diesel fueled)

[4] The Consent Decrees establish target limits for a load response test of 1.3 times the federal test procedure (FTP) standard for NMHC+$NO_X$ and 1.7 times the FTP standard for PM. These limits would take effect for affected manufacturers after October 1, 2002. However, the Consent Decrees establish a process to determine whether these limits should be modified to ensure that they are the lowest achievable given the technology available at the time. Under this process, manufacturers would submit load response test data with their certification applications starting with the 1999 model year, and by October 1, 2000, the parties to the Consent Decrees would review these data to determine appropriate emission limits.

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between 8,500 and 10,000 pounds GVWR in the Tier 2 program. This group of vehicles would include large SUVs and passenger vans and may include other types of "crossover" multipurpose vehicles in the future, depending on new vehicle designs. We proposed this change in our NPRM concerning emissions standards for 2004 and later heavy-duty vehicles and engines (64 FR 58472, October 29, 1999).

Tier 2 standards for these passenger vehicles above 8,500 pounds GVWR were finalized in the Tier 2 final rule (65 FR 6698, February 10, 2000). These vehicles are included in the Tier 2 program beginning in 2004 and are required to meet the final Tier 2 standards in 2009 and later. To effect this, we created a new category of heavy-duty vehicles termed "medium-duty passenger vehicles" (MDPVs). We define medium-duty passenger vehicles as any complete heavy-duty vehicle less than 10,000 pounds GVWR designed primarily for the transportation of persons including conversion vans (*i.e.*, vans that are intended to be converted to vans primarily intended for the transportation of persons).[5] We do not include any vehicle that (1) has a capacity of more than 12 persons total or, (2) that is designed to accommodate more than 9 persons in seating rearward of the driver's seat or, (3) has a cargo box (*e.g.*, a pick-up box or bed) of six feet or more in interior length. MDPVs will generally be grouped with heavy light-duty trucks (HLDTs) in the Tier 2 program.

Today's final rule does not, therefore, include provisions for those vehicles that meet the new definition of medium-duty passenger vehicle. The provisions in this final rule applicable to complete heavy-duty vehicles are applicable to (1) vehicles under 10,000 pounds GVWR that are not captured in the medium-duty passenger vehicle definition (*e.g.*, large pick-up trucks, 15-passenger vans), or (2) vehicles over 10,000 pounds GVWR. For more information on the new medium-duty passenger vehicle category see the Tier 2 final rule. (See 65 FR 6698, February 10, 2000.)

*E. What Are the Basic Components of the Program?*

Today's action contains requirements that can generally be separated into those that apply to diesel engines and vehicles and those that apply to Otto-cycle engines and vehicles. Some elements of the program harmonize EPA's regulatory program with California's Medium-duty vehicle (MDV) program (*e.g.*, vehicle-based standards for complete Otto-cycle heavy-duty vehicles below 14,000 pounds GVWR), while others may differ from California's current requirements. (Also, as noted above, some complete gasoline and diesel-fueled heavy-duty vehicles from 8,500 to 10,000 pounds GVWR are incorporated into the Tier 2 program, and are thus are not subject to the requirements in today's action (*See* 65 FR 6698, February 10, 2000).) The details of these requirements are found in section III of this preamble.

Due to lead time requirements in the Clean Air Act (CAA, or "the Act"),[6] we are not able to finalize some of the new provisions described below to be in effect in time to apply to the 2004 model year as we originally proposed.[7] We are therefore not finalizing some of the heavy-duty diesel provisions until the 2007 model year, which avoids uncertainties regarding lead time and stability issues. New standards for heavy-duty Otto-cycle vehicles and engines can not be implemented earlier than the 2005 model year due to the lead time provisions in the Act. However, manufacturers of these vehicles and engines are given two optional compliance programs that they may select in lieu of the 2005 program, one that starts in 2003 (referred to as "Option 1" in the remainder of this preamble) and one that starts in 2004 (Option 2). The 2003 and 2004 implementation options offer some incentives relative to the 2005 program to encourage adoption by manufacturers. The two early-introduction options would result in greater emission reductions than the 2005 program.

This final rule therefore allows heavy-duty manufacturers to retain the statutorily-allowed four year lead time and begin implementation of the new provisions in a time frame that provides enough lead time under the Clean Air Act. However, this final rule also allows manufacturers to meet some new requirements early. Manufacturers electing to comply early would be essentially waiving the four years of lead time that the Clean Air Act allows. Manufacturers that participate in these programs and introduce cleaner technologies early are to be commended for taking positive steps towards protection of the environment. These early introduction options are described further under section III below and also in the Response to Comments document.

1. What Applies to Diesel Engines and Vehicles?

Today's action finalizes our finding that the 2004 NMHC+$NO_X$ standard for heavy-duty diesel engines (HDDEs) is technologically feasible, cost-effective, and appropriate under the Clean Air Act, in the context of the current PM standard. This includes a finding that a change in diesel fuel formulation is not required to make the 2004 model year NMHC+$NO_X$ standards technologically feasible and appropriate under the CAA.

In addition, this action finalizes a new set of supplemental test procedures to more closely represent the range of real world driving conditions of heavy-duty diesel engines. These elements are specifically designed to provide additional certainty that the standards will be met under a wide range of operating conditions. These elements apply to all heavy-duty diesel engines, except those in Medium-duty Passenger Vehicles, which are subject to the Tier 2 program. First, we are adding a steady-state test requirement to the current Federal test procedures (FTP) for HD diesel engines. Emission results from this test must meet the numerical standards for the pre-existing Federal test procedure (*i.e.*, the NMHC+$NO_X$ standards noted above, a CO standard of 15.5 g/bhp-hr, and a PM standard of 0.10 g/bhp-hr). This steady-state test requirement becomes effective starting with the 2007 model year. Second, we are also finalizing Not-to-Exceed (NTE) test procedures for testing of in-use engines. These NTE procedures apply under any conditions that could reasonably be expected to be seen in normal vehicle operation and use, including an expanded range of ambient conditions. Emission results from this test procedure must be less than or equal to 1.25 times the pre-existing Federal test procedure standards noted above. The NTE test and associated emission limits are effective starting with the 2007 model year. Third, we are finalizing a Load Response Test (LRT) certification data submittal requirement for heavy-duty diesel engines, effective starting with the 2004 model year.

We are also finalizing on-board diagnostic (OBD) requirements applicable to heavy-duty diesel vehicles and engines up to 14,000 pounds GVWR. Heavy-duty diesel vehicles and engines must be equipped with an OBD system capable of detecting and alerting the driver of certain emission-related malfunctions or deterioration. These requirements are phased in from the 2005 through 2007 model years.

Lastly, we are finalizing the proposed provisions that require engine manufacturers to provide, to EPA, documentation necessary to read and interpret information broadcast by engine on-board computers and ECM's which relate to emission control devices and auxiliary emission control devices (AECDs). As explained in section III.A.6, these provisions are finalized with minor revisions based on public comment.

2. What Applies to Otto-cycle Engines and Vehicles?

Today's action finalizes new, more stringent emission standards for all Otto-cycle heavy-duty engines and vehicles (except, as already noted, those vehicles defined as MDPVs and covered by the Tier 2 program). We are also finalizing a major change to the structure of the regulatory program for Otto-cycle heavy-duty vehicles and engines and the way in which it applies to the different categories of vehicles. Currently, EPA has an engine-based regulatory program for all heavy-duty vehicles, in that the engine alone is tested and must currently meet engine-based standards.[8] Engine testing currently applies to all diesel-cycle and Otto-cycle heavy-duty vehicles. One of the key elements of today's action is to begin regulating a subset of heavy-duty vehicles using chassis-based requirements. The heavy-duty vehicles that are subject to chassis-based requirements are complete Otto-cycle heavy-duty vehicles with a gross vehicle weight rating (GVWR) up to 14,000 pounds.[9] We are retaining an engine-based approach for engines used in incomplete Otto-cycle vehicles up to 14,000 pounds GVWR and all Otto-cycle vehicles above 14,000 pounds GVWR (and optionally, for Otto-cycle complete vehicles, under Option 1, for the 2003 through 2006 model years). As noted earlier, manufacturers have the choice of three options, one that provides the lead time that we must allow by statute (Option 3), and two others that allow earlier introduction of cleaner technologies (Options 1 and 2).

For the primary engine-based program, we are finalizing a new NMHC+$NO_X$ standard of 1.0 g/bhp-hr that will start in the 2005 model year and remain in place at least through the 2007 model year (Option 3). As an alternative, manufacturers may select a standard of 1.5 g/bhp-hr NMHC+$NO_X$ that would apply to the 2004 through 2007 model years, then change to a 1.0 g/bhp-hr NMHC+$NO_X$ standard in the 2008 model year (Option 2).[10] Further, if a manufacturer desires some additional flexibility beyond that provided by Option 2, they may certify their Otto-cycle complete vehicles to engine-based standards (rather than to the California LEV–I chassis-based standards that would apply under Option 2) through the 2006 model year, provided that they implement these new standards for engines and vehicles starting with the 2003 model year (Option 1). Like Option 2, the engine-based standard in Option 1 transitions from 1.5 g/bhp-hr to 1.0 g/bhp-hr in the 2008 model year. We believe that manufacturers are capable of meeting the requirements under any of these options, and we encourage them to take advantage of the opportunity to introduce cleaner Otto-cycle heavy-duty vehicles sooner rather than later.

For the vehicle-based program, we are harmonizing federal standards with the California Medium-duty Vehicle (MDV) Low Emission Vehicle I (LEV–I) standards. These standards, shown in the table below, would apply to Otto-cycle complete vehicles in the weight categories shown. The standards are for emissions over the FTP and vehicles will be tested at adjusted loaded vehicle weight (ALVW), also known as test weight (TW).[11] The standards apply at a useful life of 120,000 miles. We are also finalizing an averaging, banking, and trading (ABT) program tied specifically to this vehicle-based program. Under Option 3, these standards would begin with the 2005 model year. Under Option 2, these standards would apply starting with the 2004 model year. Under Option 1, Otto-cycle complete vehicles could be certified to these standards or to the engine-based standards through the 2006 model year, as noted earlier, starting with the 2003 model year.

TABLE 1.—FULL-LIFE EMISSION STANDARDS FOR OTTO-CYCLE COMPLETE VEHICLES

[Grams per mile]

| Vehicle weight category (GVWR) | Non-methane organic gas (NMOG) | $NO_X$ | CO |
|---|---|---|---|
| 8,500–10,000 lbs[1] | 0.28 | 0.9 | 7.3 |
| 10,001–14,000 lbs | 0.33 | 1.0 | 8.1 |

[1] Excluding medium-duty passenger vehicles, which are covered by the Tier 2 program.

In addition, the Otto-cycle vehicle-based program includes the chassis-based enhanced evaporative emission test procedures. We are also requiring onboard refueling and vapor recovery (ORVR) controls on all complete Otto-cycle heavy-duty vehicles up to 10,000 pounds GVWR. These requirements are phased from 2004 to 2006 under Options 1 and 2, and from 2005 to 2006 under Option 3.

As with diesel heavy-duty vehicles, we are finalizing OBD requirements applicable to heavy-duty Otto-cycle vehicles and engines up to 14,000 pounds GVWR. Heavy-duty Otto-cycle vehicles and engines must be equipped with an OBD system capable of detecting and alerting the driver of certain emission-related malfunctions or deterioration. These requirements are phased in from 2004 to 2007 under Options 1 and 2, and from 2005 to 2007 under Option 3.

Lastly, as with diesel heavy-duty engines, we are finalizing the proposed provisions that require engine manufacturers to provide, to EPA, documentation necessary to read and interpret information broadcast by engine on-board computers and ECM's which relate to emission control devices and auxiliary emission control devices (AECDs). As explained in section

[5] The conversion from cargo to passenger use usually includes the installation of rear seating, windows, carpet, and other amenities.

[6] Clean Air Act Section 202(a)(3)(C) requires that "Any standard promulgated or revised under this paragraph and applicable to classes or categories of heavy duty vehicles or engines shall apply for a period of no less than 3 model years beginning no earlier than the model year commencing 4 years after such revised standard is promulgated.".

[7] An exception is the 2004 NMHC+$NO_X$ standard for heavy-duty diesel engines, which was finalized in a 1997 rulemaking. We did not revise or reconsider this standard in this final rule.

[8] Engine-based standards are expressed in terms of emissions per unit of work per unit of time, whereas chassis-based (or vehicle-based) standards are expressed in terms of amount of emissions per mile driven by the vehicle.

[9] "Complete" vehicles are those that are manufactured with their primary cargo carrying container or device attached, whereas "incomplete" vehicles are those that are manufactured without the primary cargo carrying container or device attached. Incomplete vehicles (basically the engine plus a chassis) are then manufactured into a variety of vehicles, such as recreational vehicles, panel trucks, dump trucks, fire trucks, and tow trucks.

[10] It is very important that readers note the recent EPA proposal (65 FR 35430, June 2, 2000) regarding the second phase of our strategy to reduce emissions from heavy-duty vehicles. This second phase will include more stringent emission standards for heavy-duty vehicles and engines (diesel and Otto-cycle) in the 2007/2008 time frame. EPA's recent proposal proposed standards for heavy-duty Otto-cycle engines that would take effect in the 2008 model year. The recent proposal gives manufacturers notice of the stringency of future standards being sought by the Agency, and in fact, these future standards may be finalized before manufacturers have to ultimately commit to Option 1 or Option 2. Consequently, the 2008 standard of 1.0 g/bhp-hr in today's final rule is intended to be a placeholder for tighter standards that will result from future final action by EPA prior to 2004; it is not intended to represent the standard that the Agency believes to be ultimately feasible or appropriate in that time frame.

[11] ALVW or TW is the actual weight of the vehicle, known as curb weight, plus half pay load. It is also the average of the curb weight and GVWR, or (CW + GVWR)/2.

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III.A.6, these provisions are finalized with minor revisions based on public comment.

As noted above, to address statutory lead time requirements we are offering three options for manufacturers of Otto-cycle heavy-duty engines and vehicles, one that starts with the 2003 model year, one that starts with the 2004 model year, and one that starts with the 2005 model year. A manufacturer must select one option for its entire heavy-duty Otto-cycle product line. (Manufacturers may not select one option for some engine families and another option for other engine families, or one option for engines and another for vehicles. The selected option must apply to all HD Otto-cycle vehicles and engines sold by the manufacturer, for the time prescribed under the regulations that describe the options.) These options, summarized briefly below, are described in greater detail in section III of this preamble.

*Option 1 (2003 implementation)*[*]

- Engine-based standard of 1.5 g/bhp-hr for the 2003—2007 model years.
- Engine-based standard of 1.0 g/bhp-hr starting with the 2008 model year.[12]
- Chassis-based standards shown in Table 1.
- Option to certify Otto-cycle complete vehicles to chassis-based or engine-based standards for 2003—2006 model years.
- OBD phased in from 2004 to 2007, for 8,500 to 14,000 lbs GVWR.
- ORVR phased in from 2004 to 2006, for 8,500 to 10,000 lbs GVWR.

*Option 2 (2004 implementation)*

- Engine-based standard of 1.5 g/bhp-hr for the 2004—2007 model years.
- Engine-based standard of 1.0 g/bhp-hr starting with the 2008 model year.[13]
- Chassis-based standards shown in Table 1; 100% compliance in 2004 model year.
- OBD phased in from 2004 to 2007, for 8,500 to 14,000 lbs GVWR.
- ORVR phased in from 2004 to 2006, for 8,500 to 10,000 lbs GVWR.

*Option 3 (2005 implementation)*[14]

- Engine-based standard of 1.0 g/bhp-hr starting in 2005 model year.[15]
- Chassis-based standards shown in Table 1; 100% compliance in 2005 model year.
- OBD phased in from 2005 to 2007, for 8,500 to 14,000 lbs GVWR.
- ORVR phased in from 2005 to 2006, for 8,500 to 10,000 lbs GVWR.

**II. Is the Program Needed, and How Much Effect Will It Have on Emissions?**

*A. Environmental Need*

This section presents information on the health and environmental impacts caused by air pollution from heavy-duty (HD) engines and vehicles (diesel and gasoline[16]), as well as EPA's assessment of the continuing need for additional emission reductions from HD engines and vehicles in order to meet the air quality needs of the U.S. This section also reviews our projections of the emission reductions that will result from today's action.

When we published the original 1997 final rule for the 2004 standards, we included a detailed analysis and explanation of the health impacts and air quality need for the program. Recently, as a part of our October 29, 1999 proposal of today's program mentioned above, we reassessed and updated our evaluation of the air quality need for the original program, as well as for the new provisions we proposed in the October proposal. Today, after performing further analysis and with the benefit of a range of comments from the public, we present our conclusions. As explained below and in the Regulatory Impact Analysis, our most recent analyses confirm our earlier assessments that the nationwide emission reductions from the original 1997 program, as well as the additional reductions that will occur from today's new requirements, are significant and will help many areas to comply with the health-based ambient air quality standards.

1. Need for Additional $NO_X$ and NMHC Reductions

a. $NO_X$ and NMHC Cause Adverse Health and Welfare Effects

Oxides of nitrogen ($NO_X$) and volatile organic compounds (VOC) are precursors in the photochemical reaction which forms tropospheric ozone. VOC emissions from mobile sources consist mostly of nonmethane hydrocarbons (NMHC). There is a large body of evidence showing that ozone can cause harmful respiratory effects including chest pain, coughing, and shortness of breath, most severely affecting people with compromised respiratory systems, children, and outdoor workers. In addition, $NO_X$ and VOCs can both harm human health directly. Beyond their human health effects, other negative environmental effects are also associated with ozone, $NO_X$, and VOCs. Ozone reduces crop yields and forestry yields and harms ornamental plants. $NO_X$, and in some cases VOCs, contribute to the secondary formation of particulate matter (PM), acid deposition, and the overgrowth of algae in coastal estuaries. These environmental effects, as well as the health effects noted above, are described in the Regulatory Impact Analysis.

b. Standards for 2004 HD Diesels Are a Key Part of State Air Pollution Control Plans

Since we published the final rule establishing the 2004 HD diesel emission standards in 1997, states have considered the projected emission reductions from these engines to be an important component of their overall State Implementation Plans (SIPs). The $NO_X$ and NMHC nationwide emission reductions that will result from these standards beginning in the 2004 model year will help states to attain the ozone NAAQS. States have incorporated the beneficial effects of the 2004 HD diesel standards into their air quality modeling and they continue to count on the emission reductions from this program to meet their air quality goals.

c. New Standards for 2005 HD Gasoline Engines and Vehicles Are Important for States in Meeting Their Air Quality Goals

Today, many states are finding it difficult to show how they can meet or maintain compliance with the current National Ambient Air Quality Standard (NAAQS) for ozone by the deadlines established in the Clean Air Act. In December, 1999, 92 million people (1990 population) lived in 32 metropolitan areas designated

[12] A recent EPA proposal would replace the 2008 standards finalized today by more stringent standards. See 65 FR 35430, June 2, 2000.

[13] *Ibid.*

[14] 2005 model year engines or vehicles whose model year begins prior to 4 years from the date of signature of this final rule may be exempted from the 2005 model year requirements under this option. Exempted engines or vehicles would comply with requirements otherwise applicable to the 2004 model year.

[15] A recent EPA proposal would introduce more stringent standards starting in the 2008 model year. See 65 FR 35430, June 2, 2000.

[16] We will use the terms "otto-cycle engine" and "gasoline engine" interchangeably in this document. Most otto-cycle engines today are powered by gasoline, but some alternative fuel technologies also operate as otto-cycle engines.



nonattainment under the 1-hour ozone NAAQS.[17]

There is a very clear risk that there will be elevated levels of ground-level ozone above the 1-hour NAAQS during the time period when the heavy-duty gasoline vehicle standards of this rulemaking will take effect. The reductions in oxides of nitrogen ($NO_X$) and volatile organic compounds (VOCs) projected from the proposed new standards will benefit public health and welfare by reducing ozone levels. This assessment is based upon our recent and extensive ozone air quality modeling and analysis performed for the Tier 2/ Gasoline Sulfur rulemaking, which predicts that a significant number of areas across the nation are at risk of failing to meet the 1-hour ozone NAAQS even with Tier 2 and other controls currently in place. Because ozone concentrations causing violations of the 1-hour ozone standard are well established to endanger public health and welfare, we conclude that today's new standards for 2005 and later gasoline heavy-duty vehicles are warranted.

*Projected Air Quality Problems Remain After Tier 2/Gasoline Sulfur Program Is in Place*

In conjunction with our Tier 2/ Gasoline Sulfur rulemaking efforts, we performed ozone air quality modeling for nearly the entire eastern U.S. covering metropolitan areas from Texas to the Northeast, and for a western U.S. modeling domain. This modeling predicted that without further emission reductions, a significant number of areas now experiencing ozone exceedances across the nation are at risk of failing to meet the 1-hour ozone NAAQS in 2004 and beyond, even with the Tier 2/ Gasoline Sulfur program and other controls currently in place.

The general pattern that the ozone modeling shows is a broad reduction between 1996 and 2007 in the geographic extent of ozone concentrations above the 1-hour NAAQS, and in the frequency and severity of exceedances. In the absence of additional controls beyond those that will be achieved by current control programs—including the Tier 2/ Gasoline Sulfur program—we expect there will be a slight decrease below 2007 ozone concentrations and frequencies of exceedances in 2030. However, the general trends and modeling results show that many of the areas we modeled may have exceedances continuously throughout the period from 2007 to 2030 without further reductions in emissions. Others may briefly attain and then return to nonattainment by 2030 or earlier. Although for practical reasons we limited our modeling of ozone concentrations to 1996, 2007, and 2030, we expect that concentrations between 2007 and 2030 will generally track the national emissions trend, showing a period of improvement after 2007 followed by a reversal of the trend and deterioration back towards the 2007 levels. Because individual areas' emissions trends differ, we expect that the air quality of individual areas will also vary from this general pattern.

We believe that there is a risk that future air quality in each of these areas would exceed the ozone standard during the time period when this rule will take effect. This belief is based on three factors: (1) Recent exceedances in 1995–1997 or 1996–1998, (2) predicted exceedances in 2007 or 2030 after accounting for reductions from Tier 2 and other local or regional controls currently in place or required, and (3) our assessment of the magnitude of recent exceedances, the variability of meteorological conditions, transport from areas with later attainment dates, and other variables involved in predicting future attainment such as the potential for some areas to experience unexpectedly high economic growth rates, growth in vehicle miles traveled, varying population growth from area to area, and differences in vehicle choice.

Based on the Tier 2 modeling analyses and information from recently-submitted SIPs, we have determined that over 71 million people (1996 population) in 21 metropolitan areas are likely to be exposed to unhealthy levels of ground level ozone at some point in time between 2004 and 2030 without significant additional controls. These 21 areas are those that currently violate 1-hour ozone NAAQS and are predicted by the best ozone modeling we have available to be likely to exceed the 1-hour ozone standard without significant new controls. This analysis accounts for the expected benefits from the Tier 2 program and other control programs already in place.[18] It does not include additional control measures that states would need to implement to meet their requirements under the recently proposed SIP findings. We list these metropolitan areas and discuss how we conducted the analysis in the RIA for this final rule.

There are 14 additional metropolitan areas, with another 35 million people in 1996, for which the available ozone modeling and other evidence is less clear regarding the need for additional reductions. The RIA lists the areas we put in this second category. Our Tier 2 ozone modeling predicted these 14 areas to need further reductions to avoid exceedances during the period when the standards are effective. For all of these areas, recent air quality monitoring data indicate that exceedances may occur in 2007 or 2030. Eight areas have recent exceedances, but local ozone modeling and other evidence indicates attainment in 2007. Based on this evidence, we have kept these areas separate from the previous set of 21 areas. However, we still consider there to be some risk of future exceedances for these eight areas.

For the other six of the 14 areas, the air quality monitoring data shows current attainment but with less than a 10 percent margin below the NAAQS. This suggests that these areas may remain without exceedances for some time, but that there is still a risk of future exceedance of the NAAQS due, for example, to meteorological conditions that may be more severe in the future.

There is significant risk that at least some of these 35 areas will violate the NAAQS in 2004 or thereafter without additional reductions. We consider the situation in these areas to support our belief that, overall, additional reductions are needed.

*Today's Program Will Help Areas Meet Their Attainment and Maintenance Requirements*

The HD gasoline vehicle standards finalized today, and the HD diesel standards reviewed today, will help all of the areas discussed above to either meet their attainment deadlines, to maintain attainment in the future, or both. The new program will be very important to each of the areas with deadlines in 2005 and later that will require (or may require) additional emission reductions (2005 is the year that new gasoline HD vehicles will begin to enter the fleet). As Table 2 shows, there are 10 such areas with almost 66 million people. The following table lists these areas and their expected attainment dates:

[17] Memorandum to the Docket, Drew Kodjak, EPA, January 12, 2000 (found in the docket for this rule as well). Information on ozone nonattainment areas and population as of December 13, 1999.

[18] Air quality modeling shows that improvements in ozone levels can be expected to occur throughout the country because of the Tier 2/Gasoline Sulfur program. EPA found that the program significantly lowers the model-predicted number of exceedances of the ozone standard by one tenth in 2007, and by almost one-third in 2030 (Tier 2/Gasoline Sulfur Final RIA, Docket A–97–10, Document Number V–B–1).

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| Metropolitan area | Attainment deadline | Modeling predictions | Population (millions) |
|---|---|---|---|
| Baltimore | 2005 | VOC Shortfall | 2.6 |
| Philadelphia | 2005 | $NO_X$ and VOC Shortfall | 6.0 |
| Greater Connecticut (Hartford and other MSAs). | 2007 (requested extension) | Contingent on New York Attainment | 2.4 |
| New York City, NY–NJ–CT | 2007 | VOC and $NO_X$ Shortfall | 19.9 |
| Houston, TX | 2007 | $NO_X$ Shortfall | 4.3 |
| Chicago, IL–IN | 2007 | Regional modeling to analyze existence of shortfall is underway. | 8.6 |
| Milwaukee, WI | 2007 | Regional modeling to analyze existence of shortfall is underway. | 1.6 |
| Dallas, TX | 2007 (requested extension) | Local modeling shows nonattainment in 2007. | 4.6 |
| Beaumont-Port Arthur, TX | 2007 (requested extension) | Local modeling shows nonattainment in 2007. | 0.4 |
| Los Angeles (South Coast Air Basin), CA | 2010 | Approved SIP with commitments for unspecified additional controls. | 15.5 |
| | | | 65.9 |

All of the areas in Table 2 with 2005 or later attainment deadlines will be able to take credit in their attainment demonstrations (or in revisions to their demonstrations) for the expected reductions from both the preexisting standards for HD diesel engines and from today's new standards for HD gasoline engines and vehicles. (EPA has not approved deadline extensions for Dallas and Beaumont/Port Arthur at this time; if their requested extensions (to 2007) are approved, these areas, too, could take credit for today's program). The ability to take credit for the new HD gasoline vehicle standards will be especially important for the several areas with emission "shortfalls" (*i.e.*, those for which we have made our proposal to approve their attainment demonstrations contingent on their adoption of new measures for further emission reductions).

In addition to helping 8 areas from Table 2 meet their attainment deadlines (plus Dallas and Beaumont/Port Arthur if they receive a deadline extension to 2005 or later), the new program will help these and all other areas with current or potential future ozone problems to maintain their attainment into the future. This includes at least the 37 areas we expressed concern about earlier. In effect, the emission reductions of this program will reduce the risk that these areas that today are in or approaching attainment will fall back into nonattainment as they face economic development and growth in vehicle travel.

*The Program Will Help States Avoid More Costly Measures*

In general, the task of states to reach and maintain attainment will be easier and the economic impact on their industries and citizens will be lighter if, as a result of today's new gasoline HD vehicle standards, they are able to forego other, less cost effective programs. Following implementation of the Regional Ozone Transport Rule, states will have already adopted emission reduction requirements for nearly all large sources of VOC and $NO_X$ for which cost-effective control technologies are known and for which they have authority to control. Those that remain in nonattainment therefore will have to consider their remaining alternatives.

Thus, the emission reductions from the standards we are proposing today will ease the need for states to find first-time reductions from the mostly smaller sources that have not yet been controlled, including area sources that are closely related to individual and small business activities. The emission reductions from today's standards will also reduce the need for states to seek even deeper reductions from large and small sources that have previously implemented emission controls.

*Conclusion*

In summary, the best air quality modeling available shows that, in the absence of further emission controls, many metropolitan areas totaling over 100 million people are at risk of failing to meet the 1-hour ozone NAAQS during the period when these standards will be implemented. Further, as we discussed earlier, ozone concentrations exceeding the 1-hour ozone NAAQS have clearly been shown to endanger public health and welfare. We conclude, therefore, that, given the concentrations of ozone during the time period when this rule will take effect, further control of ozone-forming $NO_X$ and hydrocarbons is justified under the Act.

Today's new national standards for HD gasoline vehicles will result in significant reductions in these pollutants. Thus, this program will be an important part of many states' strategies for meeting their air quality requirements and maintaining attainment into the future, including at least 8–10 of these areas that, as discussed above, will be directly assisted in meeting their upcoming attainment deadlines. At the same time, this program will allow states to avoid less attractive measures that would generally provide less emission reduction at a higher cost.

d. HD Diesel and Gasoline Engines Contribute to Total $NO_X$ and VOC Emissions

HD engines and vehicles are major contributors to nationwide emissions of $NO_X$ and they are moderate contributors to nationwide emissions of VOC (estimates of a geographic area's emissions are called "emission inventories"). The RIA for this rule describes in detail recent emission inventory modeling completed by EPA for this rule. Table 3 summarizes EPA's current estimates for national $NO_X$ and VOC contributions from major mobile source categories.



TABLE 3.—ESTIMATED 2000 NATIONAL $NO_X$ AND VOC EMISSIONS
[Thousand short tons per year]

| Emission source | $NO_X$ | $NO_X$ (percent) | VOC | VOC (percent) |
|---|---|---|---|---|
| Light-Duty Vehicles | 4,420 | 18 | 4,098 | 25 |
| Heavy-Duty Vehicles | 3,759 | 15 | 355 | 2 |
| Nonroad Engines and Vehicles | 5,343 | 22 | 2,485 | 15 |
| Other (Stationary Point and Area Sources) | 10,656 | 44 | 9,567 | 58 |
| Total Nationwide Emissions | 24,178 | | 16,505 | |

Table 3 indicates that HD gasoline and diesel vehicles currently represent about 15 percent of national $NO_X$ emissions and two percent of national VOC emissions. Moreover, as described in more detail in the RIA, the local heavy-duty vehicle $NO_X$ contributions are higher than the national average in many important urban areas.

The RIA also contains updated emission inventory modeling for HD vehicles in future years. The results show that without additional HD $NO_X$ control beyond the 1998 standards, national $NO_X$ emissions from HD vehicles would decline for the next few years but that this trend would reverse around 2006. After that, without additional emission controls, $NO_X$ emissions from the HD vehicle fleet would again increase as a result of future growth in the HD vehicle market. A similar trend is seen for national NMHC emissions from HD vehicles—we project that NMHC emissions will decrease until around 2009, after which growth in numbers of vehicles will offset emission reductions and NMHC emissions from HD vehicles will increase (see Chapters 6 and 7 of the RIA).[19]

2. Need for Particulate Matter Reductions

a. PM Emissions Cause Adverse Health and Welfare Effects

Particulate matter is the general term for the mixture of solid particles and liquid droplets found in the air.

Particulate matter includes dust, dirt, soot, smoke, and liquid droplets that are directly emitted into the air from natural and manmade sources, such as windblown dust, motor vehicles, construction sites, factories, and fires. Particles are also formed in the atmosphere by condensation or the transformation of emitted gases such as sulfur dioxide, nitrogen oxides, and volatile organic compounds. Motor vehicle particle emissions and the particles formed by the transformation of motor vehicle gaseous emissions (secondary particles) tend to be in the fine particle range. Fine particles (those less than 2.5 micrometers in diameter) are a health concern because they easily reach the deepest recesses of the lungs.

Scientific studies suggest that airborne particles likely play a causal role in a range of serious respiratory health problems. The key health effects categories associated with particulate matter include premature mortality, aggravation of respiratory and cardiovascular disease (as indicated by increased hospital admissions and emergency room visits, school absences, work loss days, and restricted activity days), aggravated asthma, acute respiratory symptoms (*e.g.*, coughing, difficult or painful breathing, chronic bronchitis, and shortness of breath). Exposure to fine particles is associated with such health effects as premature mortality or hospital admissions for cardiopulmonary disease. PM also causes damage to materials and soiling and is a major cause of substantial visibility impairment in many parts of the U.S.

These health and environmental effects are discussed further in the RIA, and additional information may be found in EPA's Air Quality Criteria Document for particulate matter.[20] In addition to the harmful health effects that are linked to particulate matter, diesel exhaust as a whole is also suspected of causing serious health effects. (See Section II.A.3. below)

b. Current and Future Compliance With the $PM_{10}$ NAAQS

Compliance with the current $PM_{10}$ standard continues to be a problem. The most recent $PM_{10}$ monitoring data indicates that 15 counties designated $PM_{10}$ nonattainment counties, with a population of 8.6 million in 1996, violated the $PM_{10}$ NAAQS in the period 1996–1998. The RIA lists these 15 counties. The recent PM modeling analysis we performed for the Tier 2 rulemaking predicts that without additional controls, 8 of these areas, comprising a population of 7.8 million, are at high risk of failing to meet or maintain the $PM_{10}$ NAAQS even with Tier 2 and other controls currently in place. An additional 5 areas, with a population of almost 17 million, are at significant risk of failing to maintain the NAAQS without further reductions in $PM_{10}$.[21]

c. Contribution of HD Diesel and Gasoline Vehicles to Particulate Matter

Because we are not changing the particulate matter emission standards for HD vehicles in this rule, the effect of this rule on PM results primarily from reductions in $NO_X$ emissions and in turn reductions in the secondary formation of nitrate particles in the atmosphere. Most available modeling of PM emissions, however, focuses only on direct (primary) emissions of PM.

We have not attempted to quantify the contribution of HD vehicles to the secondary nitrate particles formed from the large $NO_X$ emissions of these vehicles in this final rule. We are convinced that this contribution is substantial, especially in regions of the country where ammonia levels in the air are relatively high ($NO_X$ reacts with ammonia to form ammonium nitrate particles). Similarly, we believe that the very significant $NO_X$ reductions from HD diesel and gasoline vehicles that will result from the 2004 standards will also result in important reductions in the HD contribution to nitrate PM.

3. Air Toxics From HD Engines and Vehicles

In addition to contributing to the health and welfare problems associated with exceedances of the National Ambient Air Quality Standards for ozone and $PM_{10}$, emissions from HD diesel and gasoline vehicles include a

[19] The emission inventory modeling we performed for this rule includes the excess emissions that occurred as a result of certain HD diesel engines manufactured between 1988 and 1998. These engines were at issue in the "consent decrees" involving certain HD diesel engine manufacturers, as discussed in Section I.C. above.

[20] U.S. EPA, 1996, Air Quality Criteria for Particulate Matter, EPA/600/P–95/001aF.

[21] See the Regulatory Impact Analysis for the Tier 2/Gasoline Sulfur final rule, which is available in the docket for this rule and through the Office of Transportation and Air Quality web page at www.epa.gov/oms.

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number of air pollutants that increase the risk of cancer or have other negative health effects. These air pollutants include benzene, formaldehyde, acetaldehyde, 1,3-butadiene, and diesel exhaust. For several of these pollutants, motor vehicle emissions are believed to account for a significant proportion of total nation-wide emissions. All of these compounds are products of combustion; benzene is also found in nonexhaust emissions from gasoline-fueled vehicles. The reductions in hydrocarbon emissions from HD vehicles resulting from today's program will further reduce the potential cancer risk and other health risks from these air toxics because many of these pollutants are themselves VOCs. Diesel engine exhaust is also a potential concern because of its possible carcinogenic and mutagenic effects on people.

We are addressing the issues raised by air toxics from motor vehicles and their fuels in a separate rulemaking, pursuant to section 202(l)(2) of the Act. Our proposed rule, which was signed July 14, 2000, proposes a list of 21 mobile source air toxics as well as standards to limit on the amount of benzene in gasoline. It also sets out a Technical Analysis Plan whereby EPA will continue to conduct research and analysis and to revisit the need for and appropriateness of additional controls on toxic emissions from motor vehicles and fuels in a 2004 rulemaking.

*B. Today's Action Will Result in Large Emission Reductions*

1. Reductions Due to Emission Standards for Heavy-Duty Diesel Engines

We have made several improvements in our analysis of HDDE emissions since our earlier analyses (in the original 1997 rulemaking and in the 1999 proposal). Chapter 6 of the RIA provides a detailed explanation of the methodology we used to estimate the emission reductions that will result from the requirements for heavy-duty diesel engines associated with today's action. The primary improvement is to include the previously unknown excess emissions from many engines between 1988 and 1998. These engines were at issue in the "consent decrees" involving certain HD diesel engine manufacturers, as discussed in Section I.C. above ("How Does This Action Relate to the Consent Decrees?"). As result of this modeling change, our estimates of the contribution of the emissions of pre-1999 engines rose significantly relative to those in the proposal, which did not include these excess emissions.

The other important improvement in the modeling resulted from a better understanding of the likely balance manufacturers will make in their efforts to control both $NO_X$ and NMHC in order to meet the combined $NO_X$ + NMHC standard. Since some current engines are already able to meet very low NMHC levels, we expect that manufacturers will generally be able to design for $NO_X$ levels slightly less stringent than we had originally expected and still meet the combined standard. Our modeling for the final rule thus results in slightly less $NO_X$ control as well as somewhat more NMHC control than did our analysis for the proposed rule.

Table 4 and Figures 1 and 2 show our projections of total national $NO_X$ and NMHC emissions and the estimated emission reductions from HD engine controls in future years. The projected emissions decline over the next several years, due to implementation of stricter controls, but then, unless there are additional controls (including the HD diesel $NO_X$ controls reaffirmed in this rule), they begin to rise due to growth in the number of vehicle miles traveled. Without additional emission controls, by the 2005–2010 time frame, the $NO_X$ and NMHC emissions from HD diesels will be on an accelerating rise into the future. With the diesel engine emission controls reaffirmed in today's action, we believe that NMHC emissions from these engines will not return to the 2005 "without-control" levels until after 2020, and that $NO_X$ emissions will not return to the 2005 "without-control" levels until after 2030.

TABLE 4.—ESTIMATED NATIONAL $NO_X$ AND NMHC EMISSIONS AND EMISSION REDUCTIONS FROM HEAVY-DUTY DIESEL VEHICLES

[Thousand short tons per year]

| Year | $NO_X$ | | | NMHC | | |
|---|---|---|---|---|---|---|
| | Without new controls | With new controls | Emission reduction | Without new controls | With new controls | Emission reduction |
| 2005 | 2,450 | 2,260 | 186 | 178 | 168 | 10 |
| 2010 | 2,460 | 1,820 | 635 | 177 | 142 | 35 |
| 2015 | 2,700 | 1,750 | 949 | 208 | 156 | 52 |
| 2020 | 2,990 | 1,810 | 1,180 | 238 | 173 | 65 |
| 2030 | 3,610 | 2,090 | 1,520 | 286 | 203 | 84 |



Figure 1 – Projected National Exhaust NOx Emissions from HDDEs.

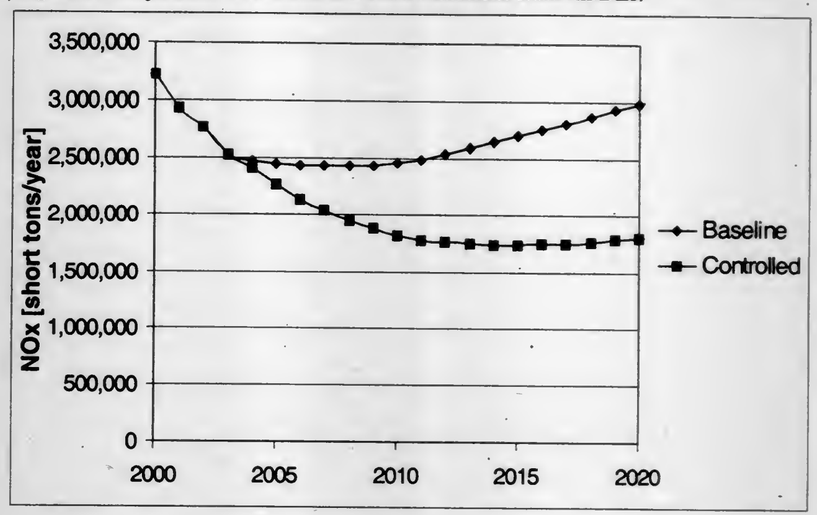
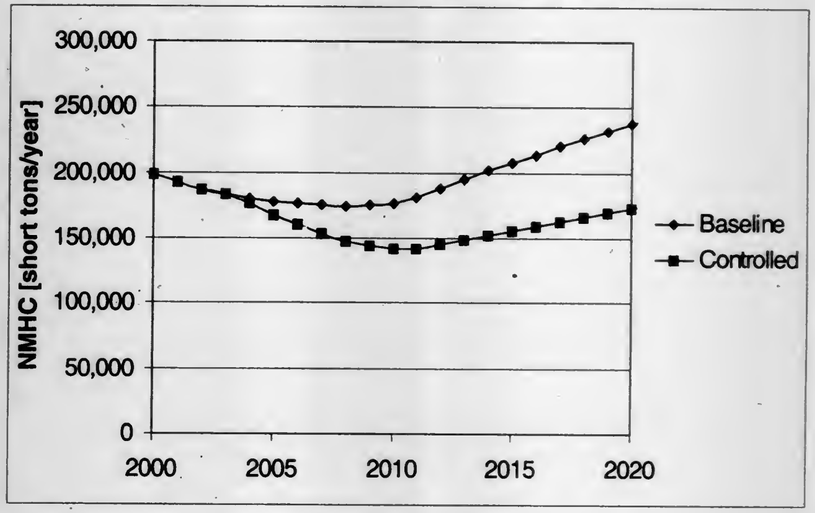



Figure 2 – Projected National Exhaust NMHC Emissions from HDDEs




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Although this rule does not require reductions in direct PM emissions, the standards are expected to result in significant reductions in the concentrations of secondary PM. Secondary PM is formed when $NO_X$ reacts with ammonia in the atmosphere to yield fine particles in the form of ammonium nitrate. The chemistry governing the conversion of $NO_X$ to secondary PM is very complex and varies from region to region. As a result, we do not present an estimate of the tons of PM reduction that can be expected from this program. However, because of the large $NO_X$ reductions that this program will cause, we believe that the reductions in $NO_X$-related PM will also be significant.

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The term "hydrocarbons" includes many different chemical compounds. Analysis of hydrocarbons in the ambient air shows that many of these compounds can be classified as toxic air emissions including benzene, formaldehyde, acetaldehyde, and 1,3-butadiene. Hydrocarbons from HD diesel engines include approximately 1.1 percent benzene, 7.8 percent formaldehyde, 2.9 percent acetaldehyde, and 0.6 percent 1,3-butadiene. Therefore, the 117,000 tons per year reduction in NMHC we project for 2030 would result in about a 14,000 tons per year reduction in air toxics. These issues are discussed in more detail in the RIA.

EPA also believes the regulations in today's action will tend to reduce noise. One important source of noise in diesel combustion is the sound associated with the combustion event itself. When a premixed charge of air and fuel ignites, the very rapid combustion leads to a sharp increase-in pressure, which is easily heard and recognized as the characteristic sound of a diesel engine. The conditions that lead to high noise levels also cause high levels of $NO_X$ formation. Fuel injection changes and other $NO_X$ control strategies we expect manufacturers to pursue in meeting HD diesel standards should generally have the effect of reducing engine noise.

2. Reductions Due to Emission Standards for Heavy-Duty Gasoline Vehicles and Engines

In evaluating the environmental impact of today's heavy-duty gasoline engine and vehicle standards for 2005 and later, we developed estimates of exhaust $NO_X$ and NMHC emissions from HDGVs (excluding California) both with and without the effect of the standards. The analysis performed to estimate the emission reductions from HD gasoline vehicles and engines in this final rule is identical to the analysis performed for the Agency's recently announced proposal to reduce emissions from HD gasoline engines in the 2007 time frame (published on June 2, 2000 (65 FR 35430)). This analysis is different than the analysis we performed for the proposed rulemaking. In the proposal we used the EPA MOBILE5 emission model, with in-use adjustment factors developed specifically for the proposal. As discussed in the RIA, the draft MOBILE6 emission rates for HD gasoline engines and vehicles have been completed, so we use those emission rates in this final rule. Because MOBILE6 is not complete, we used the updated emission rates from MOBILE6 in MOBILE5 for our analysis. The EPA report in which these emission rates are reported has gone through an external stakeholder review.[22] For this final rule we use zero-mile deterioration rates for 1988 and later model year HD gasoline exhaust emissions developed for the draft MOBILE6 emission model. The impact of this change on this final rule, as compared to the proposal, was to decrease the estimated in-use emission rates, for both the baseline and controlled scenarios, for 1998 and later model year HD gasoline engines. Full details of the environmental impact analysis can be found in Chapter 7 of the RIA. The following paragraphs summarize the key results.

Table 5 and Figures 3 and 4 show our projections of exhaust NMHC+$NO_X$ emissions from HD gasoline vehicles both with and without the standards established today. As the table and figures show, without further controls we project that $NO_X$ emissions will increase from current levels without further controls. With implementation of the standards, we expect that $NO_X$ emissions from HDGVs will begin decreasing immediately in 2005 and will continue to decrease far into the future. In the case of exhaust NMHC emissions, we project that in the absence of new controls, they will decline over the next several years but then begin to increase beginning around 2010. With implementation of the standards, we expect the exhaust NMHC emissions from HDGVs to decrease significantly from "without control" emissions. Although we project that these emissions will level off and gradually begin to rise again after 2020, the level of emissions will remain well below "without control" emissions well past 2030.

TABLE 5.—ESTIMATED NATIONAL $NO_X$ AND NMHC EMISSIONS AND EMISSION REDUCTIONS FROM HEAVY-DUTY GASOLINE VEHICLES

[Thousand tons per year]

| Year | $NO_X$ | | | NMHC | | |
|---|---|---|---|---|---|---|
| | Without controls | With controls | Emission reduction | Without controls | With controls | Emission reduction |
| 2005 | 378 | 362 | 16 | 70 | 69 | 1 |
| 2010 | 409 | 258 | 151 | 61 | 48 | 13 |
| 2015 | 441 | 199 | 242 | 62 | 41 | 21 |
| 2020 | 476 | 172 | 304 | 68 | 40 | 28 |
| 2030 | 539 | 152 | 387 | 80 | 43 | 37 |

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[22] "Update of Heavy-Duty Emission Levels (Model Years 1988-2004+) for use in MOBILE6", EPA document EPA–420–R–99–010.



Figure 3 – Projected Exhaust NOx Emissions from HDGVs

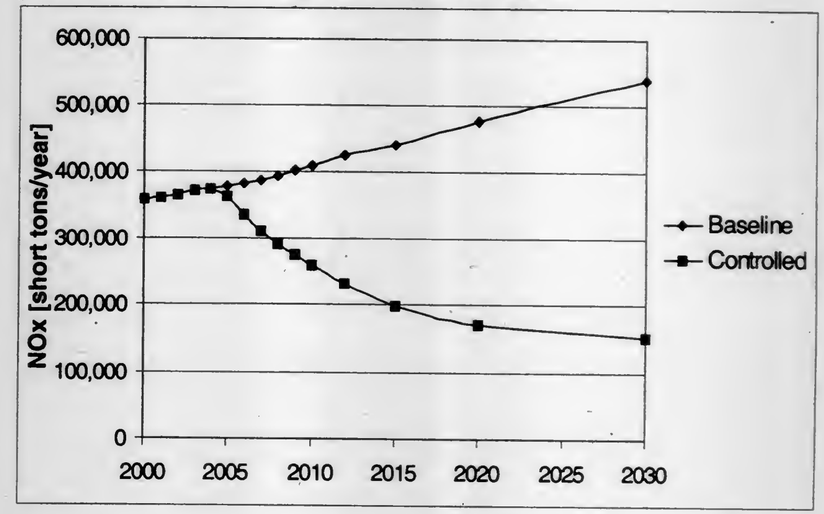
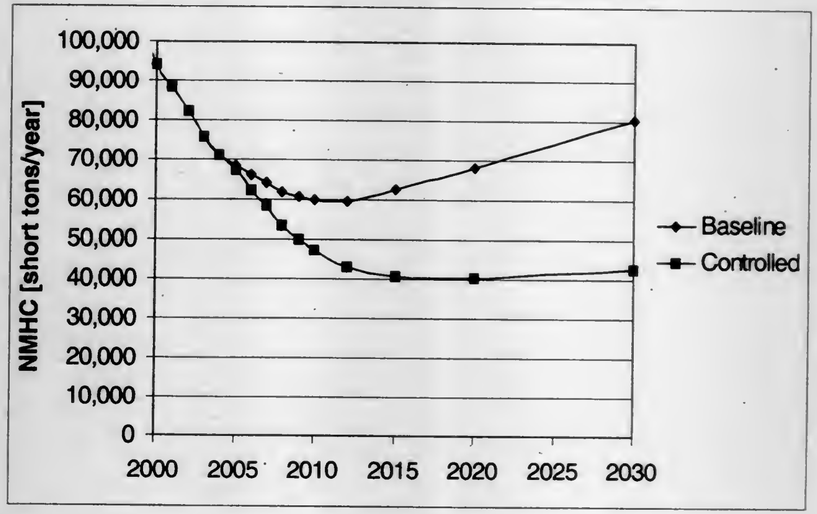



Figure 4 – Projected 49-State Exhaust NMHC Emissions from HDGVs




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As with HD diesel engines, we believe that the $NO_X$ reductions that will result from these standards will result in a corresponding reduction in secondary nitrate PM formed from $NO_X$. Similarly, we believe that the NMHC reductions will result in corresponding reductions in several toxic air pollutants.

*C. Benefits of the Supplemental Requirements and In-Use Control Measures of Today's Action*

We consider that the supplemental test procedure and in-use control measures of today's action will play a vital role in achieving the full emission

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reductions expected from the diesel and gasoline engine standards promulgated or reviewed today. As described elsewhere in this preamble, these measures include the following:

- new supplemental test procedure requirements for diesel engines,
- onboard diagnostics (OBD) requirements for vehicles (and engines intended for vehicles) rated at less than 14,000 lbs GVWR, and
- the "CAP–2000" in-use testing requirements for gasoline vehicles below 14,000 lbs GVWR.

The new supplemental test procedure requirements will ensure that engines are designed to meet the appropriate standards under a broad range of operating conditions. The in-use testing requirements will ensure that engines meet the appropriate standards throughout their useful lives. Finally, the OBD requirements will help ensure that engines in-use continue to operate according to design intent and that designs are durable and robust in the field. If vehicles and engines malfunction or deteriorate in ways that are not noticed by the driver, emissions may be far above the design intent of the engine or vehicle for thousands, if not tens of thousands of miles. On-board diagnostic systems are uniquely suited to identify such malfunctions. Such identification is a very important part of ensuring that the engines and vehicles continue to operate as they were designed and thus continue to provide the air quality benefits envisioned by this program.

For example, we expect that use of EGR will become increasingly widespread as manufacturers comply with the 2004 diesel standards. The EGR systems will likely cut engine-out emissions by as much as one-half. Should an EGR system malfunction in the absence of OBD provisions, the emissions could double without the driver becoming aware of the malfunction (since a non-functional EGR system may not change the performance of the vehicle, depending upon the nature of the specific malfunction). A similar situation exists for gasoline (Otto-cycle) vehicles and engines, which depend on catalytic converters and evaporative emission control systems. A failed or deteriorated catalyst, or a defective evaporative leak detection monitor, can result in a large increase in emissions. Without the OBD system, those emissions may never be identified and the malfunctions would probably never be repaired.

Benefits such as those described above are not easily quantified but are critical to the success of our program as a whole. Without any one of these compliance and in-use control measures, the benefits of today's action will undoubtedly be diminished, and perhaps to a very significant degree.

As we discussed in the proposal, we are also very concerned that additional factors may jeopardize the large emission reductions estimated in today's rule: the lack of OBD systems for HD vehicles rated at greater than 14,000 lbs GVWR; the lack of an effective in-use program for all HD engines and vehicles; and the lack of supplemental test procedures for HD gasoline engines similar to those being finalized today for diesels. As we discuss in the Response to Comments document, and in the proposal, we received broad support from states, environmental organizations, and industry to move forward with developing a proposal to address these important issues through a subsequent rulemaking process.

## III. Content of the Final Rule

The following is a description of the regulations being adopted in this final rule, with any changes from the proposal also noted. A summary of the requirements is contained in preamble Section I., above. A full description of our analysis of comments received on the proposal, and our rationale for our response to those comments and any subsequent change to the final rule from the proposal, are contained in the Response to Comments for the rule.

### *A. What Are the Requirements for Heavy-duty Diesel Engines?*

This section summarizes those actions which are being finalized in today's rule which will effect heavy-duty diesel engines.

#### 1. Review of 2004 NMHC+$NO_X$ Standard

One of the principal components of today's final action is the decision that the 2004 NMHC+$NO_X$ standards for HDDE continue to be appropriate under the Clean Air Act. In our 1997 final rule (62 FR 54694) which established the 2.4 g/bhp-hr NMHC+$NO_X$ standards (or optionally a 2.5 g/bhp-hr NMHC+$NO_X$ with a limit of 0.5 g/bhp-hr NMHC) we agreed to perform a technological review of the standards to review the standards' appropriateness. Based on the information presented in our NPRM, as well as our analysis of comments received on the proposal and the technological feasibility and cost discussions below, we have determined these standards continue to be appropriate for the 2004 model year. As part of the reaffirmation process, EPA also examined the relationship between on-highway diesel fuel quality and the 2004 emission standards. Based on the data presented in the proposal, and our analysis of the comments received on the NPRM, no changes in on-highway diesel fuel quality are necessary or will be provided for the 2004 model year. Therefore, we have decided not to reconsider or revise these standards.

#### 2. New Requirements

The October 29, 1999 NPRM for HDDEs contained a proposal for a new set of supplemental test requirements which would take effect in model year 2004 concurrent with the existing 2004 FTP standards (NMHC+$NO_X$ standard of 2.5g/bhp-hr, PM standard of 0.10 g/bhp-hr for all HDDEs except urban buses, etc.). The proposed supplemental tests included the NTE, the supplemental steady-state test, and additional requirements. In the NPRM, we expressed concern regarding our ability to provide HDDE manufacturers with the four years of lead time required by the Clean Air Act for the implementation of the supplemental requirements in model year 2004 considering our compressed rulemaking schedule (See 64 FR 58475). Clean Air Act Section 202(a)(3)(C) requires that "Any standard promulgated or revised under this paragraph and applicable to classes or categories of heavy duty vehicles or engines shall apply for a period of no less than 3 model years beginning no earlier than the model year commencing 4 years after such revised standard is promulgated." Due to this CAA requirement and the timing of this final rule, the Agency is not able to promulgate a mandatory supplemental program with a model year 2004 implementation. Due to stability concerns raised by engine manufacturers, EPA will implement the supplemental requirements beginning in 2007. In the time frame from 2004 through 2006, the Agency has existing regulatory and enforcement authority, and policy guidelines which we are confident will ensure the majority of the environmental benefits of the supplemental test procedures will be met. As discussed below this includes the existing CAA prohibition on the use of defeat devices, and our existing guidance policy on the use of AECDs and defeat devices. With these policies and agreements in place, the Agency sees no need to establish a voluntary program which would implement the supplemental test procedures for the time frame prior to 2007. The following is a detailed discussion of the tools available to the Agency to ensure that the anticipated environmental benefits of the supplemental test procedures will occur prior to model year 2007.



Section I.C. of this preamble provides background information on the HD Consent Decrees (CD) which the Agency established with a number of HDDE manufacturers in 1998. The great majority of heavy-duty diesel engines are manufactured by companies covered by a CD—approximately 90 percent of the estimated model year 1999 total HDDE U.S. production, and greater than 95 percent of heavy-heavy duty diesel engines which power the line-haul truck application. The heavy heavy-duty diesel engines are the largest on-highway engines and accumulate the most miles of usage, therefore the engines manufactured by CD companies represent the vast majority of HDDE emissions.

The majority of the engines subject to the CDs must meet a not-to-exceed emission limit of 1.25 times the 2004 HDDE standards, as well as a number of additional supplemental requirements, no later than October 1, 2002 (these are sometimes referred to as "pull-ahead" engines). The CD manufacturers must produce these pull-ahead engines for two years from the date they are in full compliance with all requirements of the Consent Decrees. Therefore, the pull-ahead engines will be manufactured for what is essentially model years 2003 and 2004, and possibly beyond, depending on whether the engines produced by October 2002 are in full compliance with the Consent Decrees. During the rulemaking process, several of the CD companies made public statements that they were having difficulty in preparing to meet all the CD requirements for pull-ahead engines. If these companies cannot manufacturer engines meeting all the CD requirements by October, 2002, the Agency believes that under the terms of the Consent Decrees, the noncomplying companies will be required to manufacturer pull-ahead engines beyond model year 2004 until they are in full compliance for two straight years.

For engines which meet all of the Consent Decree requirements as of October 2002 and therefore would no longer be subject to these requirements for engines produced after October of 2004, EPA would not expect manufacturers to change their designs in ways that would noticeably increase emissions and will closely scrutinize designs and use our defeat device prohibition and guidance policy to assure this does not happen.[23]

Therefore, regardless of whether the CD provisions terminate after model year 2004, the Agency believes the CD manufacturers will continue to manufacture engines for model years 2005 and 2006 which demonstrate compliance with the 2004 standards and satisfy the emission performance provisions of the Consent Decrees.

There are a number of HDDE companies not covered by a CD, and not all engines covered by a CD must meet a pull-ahead requirement which includes supplemental test procedure limits at the 2.5g/bhp-hr NMHC+$NO_X$ level. These engines are concentrated in the light-heavy and medium-heavy-duty diesel market, therefore their overall emission impact is relatively small—less than 25 percent of the emissions from a given year's total HDDE production based on recent certification estimates. However, we will continue to apply our existing statutory authority, regulatory authority, and policy guidance to those engines not covered by a consent decree between model years 2004 and 2006 to ensure that these engines comply with all applicable 2004 emission standards and control emissions over the wide range of anticipated operating conditions.

In October of 1998, EPA issued guidance policy on AECDs and the defeat device prohibition for HDDEs. This guidance document includes the recommended use of the not-to-exceed test procedure and the Euro-3 steady state test (on which the 2007 supplemental steady state test is based) as screening tools for the manufacturers to use to provide the Agency additional assurance they are meeting all applicable regulatory requirements. One company not covered by a Consent Decree has already voluntarily submitted documentation and test data for their 2000 model year HDDE engine family as requested in the Agency's October 1998 guidance regarding emissions during the Euro-3 steady state test and not-to-exceed emission performance, including a voluntary statement of compliance with NTE and Euro-3 emission limits.[24] The Agency anticipates engine manufacturers will submit the requested information for model years up to 2006, after which the NTE and supplemental steady state test procedures will be mandatory certification requirements.

As noted above, we are adding two supplemental sets of requirements for HDDEs: (1) A supplemental steady-state test (SSS); and (2) Not-To-Exceed requirements (NTE). Like current emission requirements, these new requirements apply to certification, production line testing, and vehicles in actual use. These supplemental requirements will take effect with the 2007 model year. All existing compliance provisions (*e.g.*, warranty, certification, production line testing, recall) are applicable to these new requirements as well, except as noted in the regulations. The supplemental requirements establish new emission standards for HDDEs, and these new standards will be enforced in the same manner as the preexisting FTP standard. The new SSS will become part of the Agency's existing selective enforcement audit (SEA) program; however, as discussed in the Response to Comments document, the NTE, as well as the MAEL and EPA selected steady-state "mystery points" discussed below have been excluded from the SEA regulations. In addition, we are finalizing a third supplemental test procedure for heavy-duty diesel engines—a Load Response Test—as a data submittal requirement only, which will take effect with the 2004 model year. These supplemental requirements will provide assurance that engines are designed to achieve the expected level of in-use emissions control over all expected operating regimes in-use. These procedures are described in greater detail in the following sections.

#### a. Not-to-Exceed Test Under Expanded Conditions

We are finalizing a Not-To-Exceed (NTE) requirement applicable to HDDEs. The NTE approach establishes an area (the "NTE control area") under the torque curve of an engine where emissions must not exceed a specified value for any of the regulated pollutants.[25] The NTE requirement would apply under any engine operation conditions that could reasonably be expected to be seen by that engine in normal vehicle operation and use, as well as a wide range of real ambient conditions. The NTE control area, emissions requirements, and ambient conditions and test procedures for HDDEs are described below. These requirements would take effect starting in the 2007 model year and would apply to new engines as well as in use throughout the useful life of the engine.

[23] See "Heavy-duty Diesel Engines Controlled by Onboard Computers: Guidance on Reporting and Evaluating Auxiliary Emission Control Devices and the Defeat Device Prohibition of the Clean Air Act", October 15, 1998. Document available in EPA Air Docket A–98–32.

[24] See—Statement of Compliance for Engine Family YNDXH04.6FAB, available in EPA Air Docket A–98–32.

[25] Torque is a measure of rotational force. The torque curve for an engine is determined by an engine "mapping" procedure specified in the Code of Federal Regulations. The intent of the mapping procedure is to determine the maximum available torque at all engine speeds. The torque curve is merely a graphical representation of the maximum torque across all engine speeds.

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At the time of certification manufacturers would have to submit a statement that its engines will comply with these requirements under all conditions which may reasonably be expected to occur in normal vehicle operation and use. The manufacturer must provide a detailed description of all testing, engineering analysis, and other information that forms the basis for the statement. This certification statement must be based on testing and/or research reasonably necessary to support such a statement. This supporting information must be submitted to EPA at certification upon request; manufacturers are not necessarily required to submit NTE test data during certification. Start up conditions are excluded from NTE testing.

The NTE test procedure can be run in a vehicle on the road or in an emissions testing laboratory using an appropriate dynamometer. The test itself does not involve a specific driving cycle of any specific length (mileage or time), rather it involves driving of any type which could reasonably be expected to occur in normal vehicle operation that could occur within the bounds of the NTE control area. The vehicle (or engine) is operated under conditions that may reasonably be expected to be encountered in normal vehicle operation and use, including operation under steady-state or transient conditions and under varying ambient conditions. Emissions are averaged over a minimum time of thirty seconds and then compared to the applicable emission limits. The applicable ambient conditions and the methodology for correcting emissions results for temperature and/or humidity are described in the following section. The test procedure can be found in § 86.1370–2007 of the regulations.

Examples of the NTE control area are illustrated in Figures 5 and 6. With the exception of two limited regions under the torque curve (described below), the NTE control area for diesels includes all engine operation at or above 30 percent of the maximum torque value of the engine and all engine operation at or above a specific engine speed calculated based on the maximum power of the engine.[26] Two small regions are excluded (or "carved out") from the NTE control area. As described in the proposed rule, these regions are excluded due to the technical challenges associated with controlling emissions in these areas, as well as the fact that engines do not tend to spend a lot time operating in these regions. The combination of the NTE control area and the emission limits within the zone effectively accomplish the Agency's goals of ensuring that emissions are controlled over a wide range of in-use operation. First, we exclude the area under the torque curve that falls below the curve representing 30 percent of the maximum power value of the engine (as distinguished from maximum torque). This region is carved out for all pollutants. Second, a PM-specific region is "carved out" of the NTE control area. The PM-specific area of exclusion is generally in the area under the torque curve where engine speeds are high and engine torque is low, and can vary in shape depending upon several speed-related criteria and calculations detailed in the regulations.

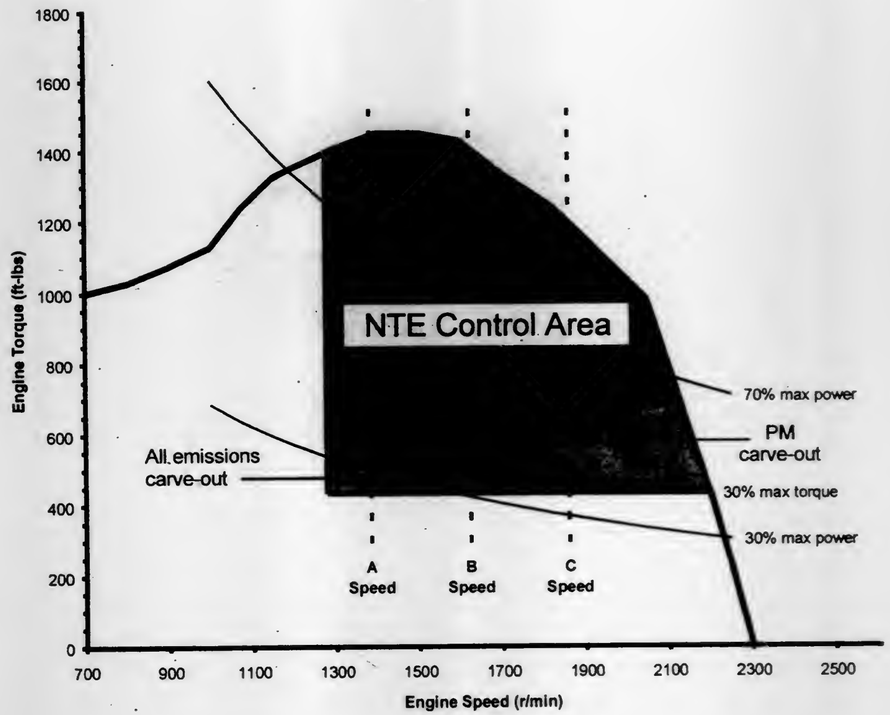
Examples of the NTE control area, including the areas excluded from the zone, are shown below in Figures 5 and 6. The A, B, and C engine speeds are the same as those defined for the supplemental steady state test and described in the regulations. Note that there are two possible constructions of the PM "carve-out" detailed in the regulatory language. The example in Figure 5 shows the PM carve-out as it would look if the C speed is below 2400 revolutions per minute (rpm), while Figure 6 shows the construct of the PM carve-out if the C speed is above 2400 rpm.

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[26] The maximum torque value and maximum power of the engine are derived as part of the engine mapping procedures specified in 40 CFR 86.1332.



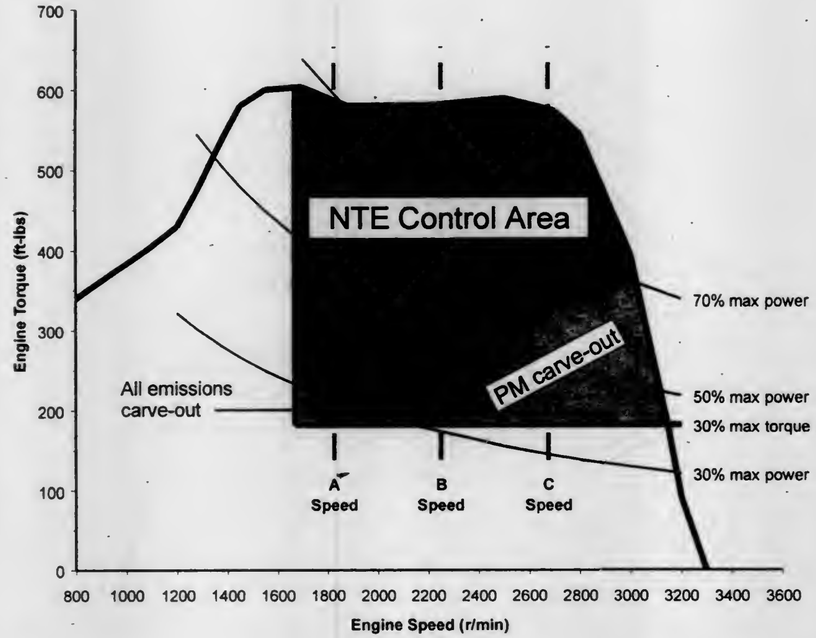
Figure 5 – Example NTE Control Area for Heavy-Duty Diesel Engines – C Speed < 2400 rpm



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Figure 6 – Example NTE Control Area for Heavy-Duty Diesel Engines – C Speed > 2400 rpm




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Within the NTE control area, emissions of each of the regulated pollutants (NMHC + $NO_X$, CO, PM), when averaged over a minimum time of 30 seconds, must not exceed 1.25 times the applicable FTP standards (or FEL if ABT is used). In addition, manufacturers must meet either a smoke limit or an opacity limit within the NTE control area. The filter smoke limit is 1.0 on the Bosch smoke number scale. The alternative opacity limits is a thirty second average smoke opacity of four percent for a five inch path for transient testing and a ten second average smoke opacity of four percent for a five inch path for steady state testing.

b. Deficiencies for NTE Emission Standards

Today's action establishes NTE deficiency provisions for HDDEs similar to the deficiency provisions that apply to OBD systems. This will allow the Administrator to accept a HDDE as compliant with the NTE standards even though some specific requirements are not fully met. We are finalizing these NTE deficiency provisions because we believe that, despite the best efforts of manufacturers, for the first few model years it is possible some manufacturers may have technical problems that are limited in nature but cannot be remedied in time to meet production schedules. This provision will be available for manufacturers through model year 2009. The NTE deficiency provision will only be considered for failures to meet the NTE requirements. EPA will not consider an application for a deficiency for failure to meet the FTP or Supplemental Steady State standards.

The NTE requirements are a new regulatory provision HDDE manufacturers have not been required to meet in the past. The NTE, in combination with the expanded conditions requirements, require compliance with the standard over a wide range of engine operating conditions. Given the complexity of designing, producing, and installing the components and systems that are needed to comply with the emission standards, a number of HDDE manufacturers have expressed concern with their ability to comply with all aspects of the NTE. In particular, manufacturers have expressed concern regarding compliance at the higher ambient temperature and altitude conditions that are covered by the NTE test for higher engine family horsepower ratings under high load operation. While we believe that full compliance can and in most cases will be achieved by model year 2007 given other changes in the NTE standards we have made to address these issues, we also believe that some level of relief may be needed to allow for certification of some engines that, despite the best efforts of the manufacturers, are deficient in their ability to achieve the NTE emission requirements.

As discussed elsewhere in this final rule, manufacturers have identified a number of technical issues which they anticipate manufacturers having difficulties overcoming. These include the availability of sensors and actuators with the necessary accuracy, precision, and repeatability to control engine and emission control hardware to the degree necessary to meet the NTE requirements under high load conditions during elevated temperatures and altitudes. Another example raised by some engine manufacturers was concerns with the limitation of current generation turbochargers, including compressor exit temperature limits and turbine wheel speed limits. While EPA projects that improvements in sensors, actuators and turbocharger materials will reduce these limitations in the future, manufacturers are concerned improvements may not be sufficient or may not occur early enough to allow the NTE requirements to be met for all engine families under certain operating conditions by 2007. These issues are discussed in more detail in the Response to Comments document and in the docket for this rulemaking.[27] The NTE deficiency provision will provide additional lead time to manufacturers to resolve those technical compliance issues, if such lead time is needed.

NTE deficiencies will be granted only if compliance would be infeasible or unreasonable considering such factors as, but not limited to: technical feasibility of the given hardware, need for more lead time, or production cycles including phase-in or phase-out of engine designs.

Specific NTE deficiencies should not be carried over from the previous model year except where unreasonable hardware or software modifications would be necessary to correct the deficiency, and the manufacturer has demonstrated an acceptable level of effort toward compliance as determined by the Administrator. Furthermore, EPA will not accept any NTE deficiency requests that result from the complete failure of a major emission control component or system to operate ("major" emission control components being those for exhaust aftertreatment devices, exhaust gas recirculation system components, turbo-machinery components, other emission control hardware, or other sensor or actuator hardware).

An NTE deficiency request must include a description of all AECDs which would be used by the engine to comply with the deficiency being requested, if applicable. In addition, the NTE deficiency request must include a description of the control system the manufacturer will use to maintain regulated NTE emissions to the lowest practical level.

The EPA NTE deficiency allowance should only be seen as an allowance for minor deviations from the NTE requirements. The NTE deficiency provisions contained in this final rule would allow a manufacturer to apply for relief from the NTE emission requirements under limited conditions. EPA expects that manufacturers should have the necessary functioning emission control hardware in place to comply with the NTE, especially given the lead time afforded to the NTE requirements in this final rule. Nonetheless, we recognize that there may be situations where a deficiency(ies) is necessary and appropriate. Deficiencies will be approved on an engine model basis, for a single model year, though a manufacturer may request a deficiency for all models and/or horsepower ratings within an engine family, if appropriate. These limitations are intended to prevent a manufacturer from using the deficiency allowance as a means to avoid compliance or delay implementation of any emission control hardware or to compromise the overall effectiveness of the NTE emission requirements.

In the past, EPA has sometimes established non-conformance penalties (NCPs) as an available alternative for manufacturers who want to sell engines which do not meet an emission standard. Once an NCP is established for an emission standard, the NCP is available to all engine manufacturers, *i.e.*, no approval from EPA is required. The NTE deficiency provisions established in today's rule are significantly different from NCPs. First, the deficiency provision are for minor deviations from the NTE requirements, such as the failure to meet the NTE emission limit under specific engine operation, during limited regions of the engine map, and during limited temperature and/or altitude conditions, for reasons such as lead time or technological feasibility. NCPs apply under all conditions covered by the applicable FTP, the manufacturer determines the level by which they will fail to meet the applicable standard, and they then calculate the per-engine penalty to be paid. Second, the manufacturer must apply for the deficiency, and EPA must then decide whether or not to grant such a deficiency. Once established, NCP's are available to all manufacturers, *i.e.*, EPA cannot deny an NCP request. The fact that we are establishing an NTE deficiency provision in today's action does not foreclose the Agency's ability to establish NCPs for the NTE emission requirements in the future. As discussed in the Response to Comments Document, the Agency will continually monitor the status of technological development towards compliance with the NTE requirements and we will establish appropriate NCPs for the NTE emission standards should the criteria for establishing NCPs be met.

c. Supplemental Steady State Test

We are adding a steady-state test cycle to the current Federal test procedures for HD diesel engines. This steady-state test cycle is consistent with the test cycle found in the European's "EURO III ESC Test"; however not all aspects are identical to the EURO III ESC Test.[28] Manufacturers are required to meet the standards under this test cycle as well as the standards using the current test procedure (including the current transient test cycle) in 40 CFR part 86, subpart N. This test takes effect starting with the 2007 model year.

The supplemental steady-state test cycle consists of 13 modes of speed and power, primarily covering the typical highway cruise operating range of heavy-duty diesel engines. The cycle concentrates on the engine speed range bounded by 50 percent and 70 percent of rated power. This speed range is then divided into bands (engine speeds A, B and C, as defined in § 86.1360–2007(c)). The "control area" is defined by the area between engine speeds A and C, and between 25 to 100 percent load. During the test cycle, the engine is initially run at idle speed, then through a defined sequence of 12 modes at various speeds and engine loads of 25, 50, 75 and 100 percent. Each mode (except idle) is run for two minutes. During each mode of operation, the concentration of the gaseous pollutants is measured and weighted (according to the weighting factors in § 86.1360–2007(b)(1)). The weighted average emissions for each pollutant, as

[27] See "Summary of Conference Call between U.S. EPA and Honeywell Turbocharging Systems on December 22, 1999 regarding 2004 On-highway Heavy-duty Diesel Proposal", "Summary of CBI Information regarding proposed HD Supplemental Test Requirements", both available in EPA Air Docket A–98–32.

[28] "Draft Proposal for a Directive of the European Parliament and the Council Amending Directive 88/77/EEC of 3 December 1987 on the Approximation of the Laws of the Member States Relating to the Measures to be Taken Against the Emission of Gaseous and Particulate Pollutants from Diesel Engines for Use in Vehicles", a proposal adopted by the Commission of the European Union on 3 December 1997, for presentation to the European Council and Parliament.

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calculated according to this steady-state test procedure, must not be greater than the applicable FTP emission standards. (*See* § 86.005–11(a)(3).) A single, time weighted PM measurement is made for the entire 13 mode test, as specified in § 86.1360–2007(e)(3).

Manufacturers will perform the supplemental steady-state test in the laboratory following all applicable test procedures in 40 CFR part 86, subpart N (*e.g.*, procedures for engine warm-up and exhaust emissions measurement). The test must be conducted with all emission-related engine control variables in the maximum $NO_X$ producing condition which could be encountered for a 30 second or longer averaging period at the given test point.

In addition to the 13 modes of the test cycle, EPA has the opportunity to select an additional three test points as a check to ensure the effectiveness of the engine's gaseous emission controls within the control area (*e.g.*, ensuring that emissions do not "peak" outside of the 13-mode test points). During the test, the regulated gaseous pollutants would be measured at each of these EPA-selected test points. PM emissions do not need to be measured during the measurement of emissions for the EPA selected points. The manufacturer also will determine an interpolated value of gaseous pollutant emissions at each EPA-selected test point, using the measured emissions of the closest four adjacent test points. See the illustration in Figure 2 of § 86.1360–2007(g). We are finalizing a four-point linear interpolation procedure that is consistent with that of the European's "EURO III", referenced above. (See § 86.1360–2007(g)(2).) The measured emissions value is then compared to the interpolated emissions value. The measured pollutant value must not exceed the interpolated pollutant value by more than ten percent.

d. Maximum Allowable Emission Limits

The emission levels at the 12 non-idle test points and the calculated emissions values from the four-point interpolation procedure for intermediate test points described in the previous section establish an emissions "surface" of Maximum Allowable Emission Limits (MAELs), as illustrated in Figure 1 of § 86.1360–2007(f). This surface will limit gaseous emissions levels during all normal steady-state engine operations that occur within the control area defined above, there is no MAEL surface for PM.

Based on comments received and on further analysis of the MAEL concept, we have modified the final regulations such that the MAEL surface is applicable only to steady-state engine operation, and only during standard FTP laboratory conditions. The MAEL is specific to the test engine, and each engine must comply with it's MAEL surface. Each point on this surface will have a MAEL associated with it.[29] The MAEL for each point is calculated using the same four-point linear interpolation procedure used to determine the emission value for the EPA test points discussed above. The MAEL applies throughout the regulatory useful life of the engines.

At certification, manufacturers would be responsible for testing the MAELs by performing the "check" described above for the three EPA-selected test points. To determine compliance, test results from operation within the control area must comply with the MAEL generated from running the 12 non-idle points of the supplemental steady state test for the specific test engine. These requirements are effective starting with the 2007 model year.

3. Altitude Requirements and Expanded Temperature and Humidity Conditions for NTE Testing

The FTP, Supplemental Steady State, and MAEL tests are laboratory-based test procedures that would be conducted under standard laboratory conditions defined in the regulations, with emission results corrected according to existing regulations regarding laboratory testing procedures.[30] The NTE could be conducted in the laboratory or during on-the-road driving, and the standards associated with these tests, where applicable, apply under a wide range of conditions. The manufacturer must choose between two options for the range of conditions over which the engine must comply with the NTE requirements. We will briefly outline here these two options, an additional discussion is contained in the Response to Comments document under Issue 8.8.

First, manufacturers can choose to comply with the NTE limits at all altitudes less than or equal to 5,500 feet above sea level, under all temperature conditions. For temperatures outside a range of 55–95 deg. Fahrenheit (F), a correction factor for $NO_X$ and PM is allowed. Inside the 55–95 deg. F range no correction factor for temperature is allowed.

Under option two, a manufacturer can choose to comply with the NTE limits at all altitudes less than or equal to 5,500 feet above sea level, for all temperatures less than a specified temperature at each altitude. The upper temperature limit under option two is 100 deg. F at sea-level and 86 deg. F at 5,500 feet above sea-level, with a linear interpolation for altitudes in between. Temperature correction factors for PM and $NO_X$ are allowed for temperatures less than 55 deg. F. However, unlike option one, under option two NTE limits do not apply above the upper temperature limits defined in the regulations. However, the prohibition against defeat devices would apply above the high temperature limits.

Under either operating condition option, emissions of $NO_X$ can be corrected for humidity outside a range from 50 to 75 grains of water per pound of dry air (7.14 to 10.71 grams of water per kilogram of dry air).

Within the specific altitude, temperature and humidity ranges, emissions from heavy-duty diesel engines must meet the requirements described above, without corrections for temperature and humidity. For situations within the specified altitude limits in which the temperature and humidity conditions are outside these ranges, $NO_X$ is corrected for humidity and both $NO_X$ and PM are corrected for temperature. Corrections are to the end of the specified temperature or humidity range nearest the actual conditions. Good engineering judgment is to be used when correcting for humidity and temperature outside of the specified ranges, as specified in the regulations.

4. On-board Diagnostics for Heavy-duty Diesel Engines

Today's final rule "establishes" new on-board diagnostic requirements for HD diesel engines used in the 8,500 to 14,000 pound GVWR category. In general, the OBD system must monitor emission-related engine components for deterioration or malfunction causing emissions to exceed 1.5 times the applicable standards. Upon detecting a malfunction, a dashboard malfunction indicator light (MIL) must be illuminated informing the driver of the need for repair. To assist the repair technician in diagnosing and repairing the malfunction, the OBD system must also incorporate standardization features (*e.g.*, the diagnostic data link connector; computer communication protocols; etc.) the intent of which is to allow the technician to diagnose and repair any OBD compliant truck or engine through the use of a "generic" hand-held OBD scan tool. We received

[29] The emissions surface would include all points in the Supplemental Steady-State control area, as defined above.

[30] The acceptable temperature range for FTP testing is defined by regulation as 68–86 degrees Fahrenheit. There is no specified humidity range in the regulations, but $NO_X$ emission results are to be corrected to 75 grains of water per pound of dry air.



a number of comments on the proposed OBD requirements and have incorporated those recommendations that we deemed to be appropriate. The summarized comments and our responses can be reviewed in the Response to Comments Document. The following is a summary of the requirements for HD diesel engines between 8,500 and 14,000 pounds GVWR.

a. OBD Malfunction Thresholds and Monitoring Requirements

This final rule requires that, beginning in the 2005 model year, heavy-duty diesel engines used in vehicles less than 14,000 pounds must be equipped with an OBD system capable of detecting and alerting the driver of the following emission-related malfunctions or deterioration as evaluated over the appropriate certification test procedure: [31]

(i) Catalyst deterioration or malfunction—before it results in exhaust emissions exceeding 1.5 times the applicable standard or FEL for NMHC+$NO_X$. This monitoring would not need to be done if the manufacturer can demonstrate that deterioration or malfunction of the system will not result in exceedance of the threshold. The above requirement only applies to reduction catalysts; oxidation catalysts are not required to be monitored.

(ii) Particulate trap malfunction—any particulate trap whose complete failure results in exhaust emissions exceeding 1.5 times the applicable standard or FEL for NMHC+$NO_X$ or PM must be monitored. Particulate trap monitoring must be capable of detecting a catastrophic failure of the device. Monitoring to the precise 1.5 threshold is not necessary. This monitoring would not need to be done if the manufacturer can demonstrate that a catastrophic failure of the system will not result in exceedance of the threshold.

(iii) Engine misfire—lack of combustion must be monitored.

(iv) If the vehicle or engine contains an oxygen sensor, then oxygen sensor deterioration or malfunction before it results in an exhaust emission exceedance of 1.5 times the applicable standard or FEL for NMHC+$NO_X$ or CO.

(v) If the vehicle or engine contains an evaporative emission control system, then any vapor leak in the evaporative and/or refueling system (excluding the tubing and connections between the purge valve and the intake manifold) greater than or equal in magnitude to a leak caused by a 0.040 inch diameter orifice; an absence of evaporative purge air flow from the complete evaporative emission control system. On vehicles with fuel tank capacity greater than 25 gallons, the Administrator would be required to revise the size of the orifice to the feasibility limit, based on test data, if the most reliable monitoring method available was unable to reliably detect a system leak equal to a 0.040 inch diameter orifice.

(vi) Any deterioration or malfunction occurring in an engine system or component directly intended to control emissions, including but not necessarily limited to, the EGR system, if equipped, the secondary air system, if equipped, and the fuel control system, singularly resulting in exhaust emissions exceeding 1.5 times the applicable emission standard or FEL for NMHC+$NO_X$, PM, or CO. For vehicles equipped with a secondary air system, a functional check, as described in paragraph (f) below, may satisfy the requirements of this paragraph provided the manufacturer can demonstrate that deterioration of the flow distribution system is unlikely. This demonstration would be subject to Administrator approval and, if the demonstration and associated functional check are approved, the diagnostic system would be required to indicate a malfunction when some degree of secondary airflow is not detectable in the exhaust system during the check.

(vii) Any other deterioration or malfunction occurring in an electronic emission-related engine system or component not otherwise described above that either provides input to or receives commands from the on-board computer and has a measurable impact on emissions; monitoring of components required by this paragraph would be satisfied by employing electrical circuit continuity checks and, wherever feasible, rationality checks for computer input components (input values within manufacturer specified ranges based on other available operating parameters), and functionality checks for computer output components (proper functional response to computer commands); malfunctions would be defined as a failure of the system or component to meet the electrical circuit continuity checks or the rationality or functionality checks.

Upon detection of a malfunction, the MIL would be required to illuminate and a fault code stored no later than the end of the next driving cycle during which monitoring occurs provided the malfunction is again detected. Alternatively, upon Administrator approval, a manufacturer would be allowed to use a diagnostic strategy that employs statistical algorithms for malfunction determination. Manufacturers would be required to determine the appropriate operating conditions for diagnostic system monitoring with the limitation that monitoring conditions are encountered at least once during the applicable certification test procedure or a similar test cycle as approved by the Administrator. This is not meant to suggest that monitors be designed to operate only under test procedure conditions, as such a design would not encompass the complete operating range required for OBD malfunction detection.

As an option to the above requirements, EPA will allow compliance demonstration according to the California OBDII requirements for HD diesel with one exception. This option allows manufacturers to concentrate on one set of OBD requirements for nationwide implementation (although federal OBD emission malfunction thresholds and monitoring requirements are essentially equivalent to those of the California OBDII regulation) and provides the highest level of OBD system effectiveness toward meeting nationwide clean air goals. However, the exception to this option is the requirement for catalyst and particulate trap monitoring. CARB does not require catalyst or aftertreatment monitoring, but as described above, this final rule does. Therefore, if a manufacturer chooses the California OBDII compliance option for a diesel engine, that manufacturer would still be required to satisfy the catalyst or particulate trap OBD monitoring requirements established in today's final rule.

b. Standardization Requirements

The light-duty OBD regulations contain requirements for standardization of certain critical aspects of the OBD system. These critical aspects include the design of the data link connector, protocols for on-board to off-board computer communication, formats for diagnostic trouble codes, and types of test modes the on-board system and the off-board scan tool must be capable of supporting. Today's action contains similar standards for heavy-duty OBD systems, as detailed in the regulatory requirements under section § 86.1806–05.

c. Deficiency Provisions

Today's action also establishes the same deficiency provisions for heavy-duty diesel OBD systems as currently apply to light-duty OBD systems. This would allow the Administrator to accept an OBD system as compliant even though specific requirements are not fully met. The deficiency provisions were first introduced on March 23, 1995 (60 FR 15242), and were recently revised on December 22, 1998 (63 FR 70681).

[31] The FTP minus the Supplemental FTP for chassis certified systems; the engine certification test procedure minus any supplemental test procedures for engine certified systems. While malfunction thresholds are based on certification test procedure emissions, this does not mean that OBD monitors need operate only during the test procedure. All OBD monitors that operate continuously during the test procedure should operate in a similar manner during non-test procedure conditions. The prohibition against defeat devices in § 86.004–16 applies to these OBD requirements.

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To clarify our deficiency provisions, EPA does not expect to certify vehicles with federal OBD systems that have more than one OBD system deficiency, or to allow carryover of any deficiency to the following model year unless it can be demonstrated that correction of the deficiency requires hardware and/or software modifications that cannot be accomplished in the time available, as determined by the Administrator. Nonetheless, we recognize that there may be situations where more than one deficiency is necessary and appropriate, or where carry-over of a deficiency(ies) for more than one year is necessary and appropriate. In such situations, more than one deficiency, or carry-over for more than one year, may be approved, provided the manufacturer has demonstrated an acceptable level of effort toward OBD compliance. These deficiency provisions cannot be used as a means to avoid compliance or delay implementation of any OBD monitors or as a means to compromise the overall effectiveness of the OBD program.

d. Applicability and Waivers

Today's federal HD diesel OBD requirements would be implemented beginning with the 2005 model year. OBD requirements for diesel heavy-duty engines used in vehicles up to 14,000 pounds GVWR would be phased in over a three year period, from 2005 until 2007. The percentage phase-in schedule will be 60/80/100 for the 2005/06/07 model years, respectively, based on projected sales. For those manufacturers with a single heavy-duty engine family (including otto-cycle and diesel), implementation of OBD requirements would not have to occur until the 2007 model year. As discussed in Section II(B)(6) and III(C)(4), this final rule establishes OBD requirements for heavy-duty Otto-cycle engines and vehicles up to 14,000 pounds GVWR which are similar to the requirements for HD diesel, including an identical phase-in schedule. For Otto-cycle manufacturers who choose options 1 or 2, the phase-in schedule is 40/60/80/100 percent for the 2004/05/06/07 model years, respectively. HD manufacturers will be allowed to meet the OBD phase-in requirements by combining their projected sales of HD Otto-cycle and HD diesel engines to meet a combined diesel and Otto-cycle phase-in, at their option.

For heavy-duty vehicles and engines up to 14,000 pounds GVWR operating on alternative fuel, EPA would grant OBD waivers during alternative fuel operation through the 2006 model year to the extent that manufacturers can justify the inability to fully comply with any of today's proposed OBD requirements.[32] Such inability would have to be based upon technological infeasibility, not resource reasons. Further, any heavy-duty vehicles and engines that are subsequently converted for operation on alternative fuel would not be expected to comply with the OBD requirements if the non-converted vehicle or engine does not comply. In other words, if the vehicle or engine never completes any assembly stage in OBD compliance, it need not comply with the OBD requirements while operating on the alternative fuel. If the vehicle or engine does complete any assembly stage with a compliant OBD system, it would have to comply with the OBD requirements while operating on the fuel of original intent and, to the extent feasible, while operating on the alternative fuel. For these latter situations, EPA could grant waivers through the 2006 model year if the manufacturer can show it is infeasible to meet the requirements. Beginning in the 2007 model year, all heavy-duty alternative fueled vehicles and engines up to 14,000 pounds GVWR will have to be fully compliant during both operation on the fuel of original intent and alternative fuel.

e. Certification Provisions

The OBD certification information requirements of today's rule are consistent with the existing requirements for light-duty vehicles. The manufacturers application for certification must include, for each OBD system: a description of the functional operating characteristics of the diagnostic system; the method of detecting malfunctions for each emission-related engine component; and a description of any deficiencies including resolution plans and schedules. Anything certified to the California OBDII regulations would be required to comply with California ARB information requirements. EPA may consider abbreviating the OBD information requirements through rulemaking if it gains confidence that manufacturers are designing OBD systems that are fully compliant with all applicable regulations.

During EPA certification of engines optionally certified to the California OBDII regulation, EPA may conduct audit and confirmatory testing consistent with the provisions of the California OBDII requirements. Therefore, while the Agency will consider California certification in determining whether to grant a federal certificate, EPA may also elect to conduct its own evaluation of that OBDII system. While it is unlikely, EPA may make a compliance determination that is not identical to that of the California Air Resources Board.

Further, the final rule provisions allow for a "drop-in" demonstration. This provision allows engine certified and engine demonstrated OBD system to fulfill the demonstration requirements of a chassis certified OBD system, however, the chassis certified system would have to incorporate transmission diagnostics even though the "dropped-in" engine system may not have been certified with transmission diagnostics. The drop-in provision also allows a chassis certified and chassis demonstrated OBD system to fulfill any demonstration requirements of an engine certified OBD system. The drop-in provision discussed here requires the manufacturer to rigorously demonstrate its OBD concept and approach on one engine or model, but allows the manufacturer to apply that demonstration via engineering judgement to the different engine and powertrain calibrations used across its fleet. The Agency will accept such a demonstration provided sound engineering judgement is employed.

5. Submission of Load Response Test Data

We are finalizing a new data submission requirement for HD diesel engine manufacturers. Within 180 days after submission of the application for certification, manufacturers of HD diesel engines for the 2004 model year will need to submit laboratory certification data generated during a test procedure referred to as the Load Response Test (LRT). This data submission requirement will remain through model year 2007. This test procedure is intended to provide the Agency with needed information regarding the emission impacts of very short, rapid engine loadings on new emission control technology. We have finalized a LRT data submittal requirement similar to that which was proposed, with minor modifications to reflect our response to the technical test procedure comments received during the comment period. In addition, we have finalized certification data submission requirements which would allow manufacturers to carry across LRT data from one model year to future model years for the same engine family, and we have finalized requirements which will allow manufacturers to carry-across LRT data from one engine family to other engine families which utilize similar emission control hardware. The use of carry-over and carry-across provisions will provide the Agency with important information on new control technologies, while minimizing the testing and reporting requirements for the manufacturers.

As discussed in more detail in the Response to Comments document, the Load Response Test represents operation not adequately represented by the current FTP or the supplemental test procedures (NTE and SSS), and could eventually be used to ensure effective control of $NO_X$ and PM during this type of operation. We believe that establishing a future Load Response Test with appropriate emission limits may be a valuable addition to EPA's compliance program, and when the process of evaluating the available data is complete we intend to evaluate the addition of specific Load Response Test emission limits to EPA's compliance program in a future proposal. The data submittal requirement will enable a better understanding of the emissions that occur under this type of operation and would ensure that EPA establishes well supported standards in a future action, if we determine it is appropriate to do so. We have established this data submission requirement for a four year period, from model years 2004 through 2007. In this time period the on-highway HD diesel engine industry will be utilizing a range of new emission control technology not previously used on these engines. As discussed throughout this document, in the 2004 time frame all manufacturers will likely be applying cooled EGR and advanced turbochargers in order to comply with the 2004 emission standards. As discussed in the Response to Comments document, the application of EGR systems has the potential to result in high emission rates of PM and $NO_X$ under the type of operation conditions simulated by the LRT. In a recent Agency proposal (June 2, 2000, 65 FR 35430), the Agency proposed to establish new emission standards based on advanced aftertreatment for HD diesel engines in model year 2007. We believe it is important to collect LRT emission data on these new technologies in order for the Agency to make an informed decision regarding the need for a new emission standard based on the LRT.

The four years worth of LRT data should provide the Agency with sufficient information on which to make a determination regarding the appropriateness of establishing an emission standard based on the LRT.

6. *EPA Policy and Regulations Regarding Defeat Devices and Auxiliary Emission Control Devices*

The NPRM for this final rule proposed to modify the existing defeat device definition for HD diesel engines and vehicles. The NPRM proposed to modify the current definition of defeat device contained in § 86.094–2 by explicitly stating that AECD's which operate under conditions substantially included in the proposed NTE and MAEL test procedures would not be excluded from consideration for a possible defeat device. We discussed in the NPRM our rationale for this proposed change, *i.e.*, the range of vehicle operation covered by the NTE and MAEL procedures is very broad compared to the existing FTP and covers much of the operation which is encountered by many engines.

A number of engine manufacturers expressed concern in their comments with the proposed definition. Some manufacturers commented the proposed definition is unclear and has the potential to be interpreted too broadly.[33] A detailed discussion of these comments and our response is contained in the Response to Comments for this final rule. In light of our further analysis of how best to control for defeat devices, we have decided in this final rule to retain the existing definition of defeat device contained in § 86.094–2, with only a minor change to clarify that the applicable heavy-duty diesel federal emission test procedure includes the supplemental steady-state and not-to-exceed test procedures beginning in model year 2007.

As with the current definition of a defeat device, use of a control strategy during conditions which are substantially included in the existing FTP, the supplemental steady state test, or the not-to-exceed test, would not be considered a defeat device, even where it otherwise would be considered to reduce the effectiveness of the emissions control system during such operation. For example, use of such an AECD during the appropriate FTP, steady state supplemental, or NTE test procedure is not a violation of the defeat device prohibition. However, the engine still must comply with the applicable emission standards. For example, operation of the AECD within the NTE control zone during operation which is applicable to the NTE standard must never cause the engine to exceed 1.25 times any applicable existing FTP standard, except where EPA has approved a manufacturers request for an NTE deficiency under 40 CFR 86.007–11(a)(4)(iv). The fact that operation of the AECD during such condition is not a violation of the defeat device prohibition does not change the obligation to also comply with the applicable emissions standard. The two obligations are separate and distinct, and both must be met. An engine may not have a defeat device and it also must comply with the applicable emissions standards. When an AECD operates under conditions which are not substantially included in the existing FTP, steady state supplemental test, or the NTE test procedure, then the AECD will be considered a defeat device if it reduces the effectiveness of the emissions control system under operations which could reasonably be expected to occur in normal vehicle operation and use, unless it meets one of the other exceptions to the defeat device definition (such as engine start up). EPA will continue to interpret this provision as it has in the past, focusing on changes to the emissions control system that cause emissions to increase above what they would be without the change.

The Agency recognizes that emission control strategies which are employed during the existing FTP and the supplemental test procedures (NTE and supplemental steady state) require the manufacturer to control a complex system of engine hardware. This includes the modulation of engine sub-systems (*e.g.*, EGR temperature, EGR flow rate, turbocharger boost, fuel injection timing and pressure) to maintain emissions performance and also achieve engine performance, with the potential to increase or decrease $NO_X$, PM and/or other regulated pollutants while keeping all pollutants at or below all applicable emission standards. The Agency's prohibition of the use of defeat devices will continue to protect against the use of illegal emission control strategies, including but not limited to timers or "cycle sensors", whose purpose or result is to reduce the effectiveness of the emission control system during conditions which are not substantially included in the applicable federal emission test procedures, and do not meet the other exemptions in the defeat device definition. Strategies that "reduce effectiveness" of the emission control system would include those that change the way the emission control system operates during off-cycle conditions and increase emissions from the engine

[32] Note that this provision currently exists for light-duty vehicles and trucks operating on alternative fuel through the 2004 model year; that existing provision does not change with today's proposal.

[33] See EPA Air Docket A–98–32, comments from Navistar International, item IV–D–29; comments from Caterpillar Inc., item IV–D–37; comments from Detroit Diesel Corp., item IV–D–28; and comments from the Engine Manufacturers Association, item IV–D–05.

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above what they would be without the change. For example, if a manufacturer operates an EGR system during on-cycle conditions in order to comply with applicable emission standards, it must operate the EGR system in a similar manner during off-cycle conditions, unless, for one of the allowable reasons set forth in the definition of defeat device, it cannot do so.

Moreover, while the definition of defeat device allows as exception strategies needed to protect the engine against accident or damage, EPA intends to continue its policy of closely reviewing the use of this exception. In determining whether a reduction in emissions control effectiveness is "needed" for engine protection, EPA would closely evaluate the actual technology employed on the engine family, as well as the use and availability of other emission control technologies across the industry, taking into consideration how widespread the use is, including its use in similar applications.

For example, as discussed throughout this final rule, in the context of the HD diesel 2004 standards we expect to see wide-spread use across all HD applications of advanced electronic fuel injection systems (such as common-rail or second generation unit injectors), advanced turbocharging systems (such as VGT systems), and cooled EGR systems. If, for example, a manufacturer uses hot EGR instead of cooled EGR, and seeks approval to reduce the emissions control system effectiveness to protect against engine damage during operation not substantially included in the FTP, EPA will closely review the request and intends among other things to evaluate the feasibility of cooled EGR in determining whether the reduction in emissions control effectiveness is in fact "needed" and appropriate. Under appropriate circumstances, EPA could determine that a reduction in emissions control effectiveness was not needed to protect the engine, based on a choice of a certain technology in the context of the widespread use in similar application of a different technology without the same need for protection.

Manufacturers must continue to comply with the existing certification requirement to fully disclose and describe all AECDs in their certification applications. The Agency will continue to review all AECDs, in particular those which impact emission performance during conditions not substantially included in testing under the applicable federal emission test procedures, including beginning in model year 2007, the supplemental steady-state and not-to-exceed test procedures.

The revised definition of defeat device, in addition to the Agency's existing policy and guidance documents concerning defeat devices, provide engine manufacturers with appropriate guidance on the requirements they need to design and manufacturer their engines to meet, as well as provide the Agency and the environment with the appropriate protection from the use of defeat devices on on-highway HD diesel engines.

*B. What Are the Requirements of the Heavy-duty Otto-cycle Vehicle-based Program?*

1. Emission Standards

EPA is adopting vehicle-based standards and test procedures for complete Otto-cycle vehicles between 8,500 and 14,000 pounds GVWR. As in the California MDV program, these complete vehicles will be tested on the federal light-duty vehicle and light-duty truck test procedure.[34] We are finalizing as proposed the chassis-based standards contained in Table 6 below. The standards apply to complete vehicles in the weight categories shown. The standards are for emissions over the FTP and vehicles will be tested at adjusted loaded vehicle weight (ALVW), also known as test weight (TW).[35] Manufacturers have some flexibility in meeting these standards with the ABT program applicable to heavy-duty Otto-cycle vehicles contained in today's final rule and described in a subsequent section of this preamble.

Vehicles must meet these standards starting with the 2007 model year under Option 1, the 2004 model year under Option 2, or with the 2005 model year under Option 3, as described in section I of this preamble. As noted in section I of this preamble, manufacturers selecting Option 1 may optionally meet these standards *or* an engine-based standard for the 2003 through 2006 model years.

TABLE 6.—FULL USEFUL LIFE EMISSION STANDARDS FOR OTTO-CYCLE COMPLETE VEHICLES

[Grams per mile]

| Vehicle weight category (GVWR) | Nonmethane organic gas (NMOG) | $NO_x$ | CO |
|---|---|---|---|
| 8,500—10,000 lbs* | 0.28 | 0.9 | 7.3 |
| 10,001—14,000 lbs | 0.33 | 1.0 | 8.1 |

* Excluding Medium-duty Passenger Vehicles covered by the Tier 2 program.

EPA is finalizing a hydrocarbon standard in the form of nonmethane organic gas (NMOG), which is consistent with California's MDV standards. We will also accept hydrocarbon emissions data in the form of NMHC or total hydrocarbons (THC) in lieu of NMOG, which are forms of hydrocarbon standards typically used by EPA under the heavy-duty Otto-cycle control program. Accepting emissions data in these various forms provides manufacturers with additional flexibility since establishing NMOG levels can be more complex than NMHC or total hydrocarbon levels. Manufacturers submitting California certification data would submit NMOG emissions data under the California requirements.

The vehicle manufacturer is responsible for determining whether a vehicle is a complete vehicle and subject to the vehicle-based standards or an incomplete vehicle and subject to engine-based standards. The manufacturer shall make this determination based on the definition of incomplete vehicle described above and in the regulations. The vehicle manufacturer may request a determination from EPA when the status of a specific vehicle model is unclear. Manufacturers of complete vehicles are responsible for vehicle emissions certification, as is the case

[34] Test procedures contained in 40 CFR Part 86 Subpart B, excluding the Supplemental FTP.

[35] ALVW or TW is the actual weight of the vehicle, known as curb weight, plus half pay load. Its also the average of the curb weight the GVWR, which is curb weight plus full pay load.



currently in EPA light-duty vehicle programs.

2. Revision to Vehicle Useful Life

Currently, the useful life mileage interval for Otto-cycle HD engines is 8 years or 110,000 miles, whichever occurs first. The useful life for these vehicles in the California MDV program is 120,000 miles, which is also the useful life of heavy light-duty trucks. We proposed to adopt the useful life mileage interval of 120,000 miles for the HD Otto-cycle vehicles program. This approach allows consistency across the programs and is consistent with the use of the vehicles. No adverse comments were received on this provision, and it is being finalized as proposed.

3. Averaging, Banking, and Trading Provisions

a. Background

An ABT program is an important factor that EPA takes into consideration in setting emission standards that are appropriate under section 202 of the Clean Air Act. ABT allows us to consider a lower emissions standard, or one that otherwise results in greater emissions reductions, compared to a standard that might otherwise be appropriate under section 202(a)(3) of the CAA, since ABT reduces the cost and improves the technological feasibility of achieving the standard. ABT enhances the technological feasibility and cost effectiveness of the proposed standard and allows the standard to be attainable earlier than might otherwise be possible. ABT provides manufacturers with additional product planning flexibility and the opportunity for a more cost effective introduction of product lines. ABT creates incentive for early introduction of new technology, allowing certain engine families to act as trail blazers for new technology.

We view the ABT provisions in today's rule as environmentally neutral because the use of credits by some vehicles is offset by credits generated by other vehicles. However, when coupled with the new standards, ABT will have environmental benefits because it allows the new standards to be implemented earlier than would otherwise be appropriate.

Manufacturers are able to bank credits by certifying some engine families to emissions levels lower than applicable standards. The credits may be banked and then used to certify other engine families to levels higher than the emissions standards. For HD Otto-cycle engines, ABT is available for meeting $NO_x$ standards. Under the current ABT program, banked credits are discounted by 20 percent and have a three year life, after which they expire.[36]

The CAA requires that EPA set emission standards with appropriate consideration to feasibility and cost. EPA is finalizing separate averaging, banking, and trading programs for vehicles certified to the vehicle-based standards and engines certified to the engine-based standards. The engine-based ABT program is discussed in section III.C.3., below. We believe that the ABT programs in today's final rule are appropriate in the context of the technical feasibility and the cost of the emission standards.

b. Final ABT Program for Vehicle-Based Standards

This section addresses the ABT program for the vehicle-based standards. We are finalizing the vehicle-based ABT program as proposed. We are also finalizing options that allow manufacturers to transfer credits between the vehicles and the engines ABT programs. This is discussed below in the following section.

For the vehicles ABT program, we are finalizing the following provisions:

- Beginning in 2000, manufacturers may bank vehicle-based credits by choosing to certify vehicles rather than engines.
- Manufacturers will earn $NO_x$ credits up to the 0.9 g/mile $NO_x$ standard by establishing an FEL below the 0.9 g/mile standard.
- Vehicles with FELs at or below 0.6 g/mile $NO_x$ will earn undiscounted credits, engines with FELs above 0.6 g/mile will earn credits discounted by 10 percent.
- Vehicles using credits may not exceed a $NO_x$ level of 1.53 g/mile.
- Heavy-duty vehicles equipped with Otto-cycle engines and certified to the vehicle-based standards will be a single grouping or averaging set.

The ABT program can help manufacturers certify especially difficult or low volume applications and help manufacturers comply across their full product line without having to restrict vehicle offerings. The Agency believes the above program offers sufficient flexibility in light of the technology and cost requirements associated with the final vehicle standards. Based on current certification data and technological capabilities we believe manufacturers will have opportunities to generate credits to help with meeting the standards in the 2004 time frame. Moreover, because these standards are required in California for several model years prior to 2004, EPA does not expect feasibility issues with the vast majority of vehicle models.

[36] With ABT, manufacturers are able to establish a Family Emissions Limit (FEL) for an engine family which becomes the standard for that family. Manufacturers earn or use credits based on the difference between the FEL and the applicable standard. A full overview of the ABT program is contained in EPA's 1996 NPRM, 61 FR 33451.

c. Exchanging Credits Between the Vehicle-Based and the Engine-Based ABT Programs

In the proposal, we requested comment on credit exchanges between the separate engine and vehicle-based ABT programs. As described below, we are finalizing provisions allowing manufacturers to transfer credits between the vehicles and the engines program as part of Options 1 and 2 (full 2003 or 2004 model year implementation). We believe that allowing credit transfers under these options provides significant incentive for manufacturers to choose one of these optional programs. Therefore, the provision enhances the likelihood that significantly cleaner technology will be introduced sooner (2003 or 2004) than would otherwise occur. We also believe this temporary flexibility will help address any feasibility concerns manufacturers may have with the shorter lead time associated with the optional programs. However, because this is the first ABT program to allow such credit exchanges, we are proceeding conservatively and constraining the transfer of credits in several respects. However, early implementation of Options 1 and 2 provide clear emission reduction benefits compared to Option 3 and we believe it is appropriate to provide additional incentives to manufacturers to select one of these options. Therefore, we are allowing credit transfers between the vehicles and engines programs as part of Option 1 and Option 2 for a limited time. This flexibility, in addition to the somewhat higher standards, should provide incentive for manufacturers to select one of these early implementation options. To the extent that manufacturers select Options 1 and 2, technology will be introduced earlier (2003 or 2004) than would otherwise occur (2005). The experience gained by EPA in implementing Options 1 and 2, including the development of appropriate credit conversion factors by the manufacturers, will provide a valuable source of information for the Agency in evaluating whether to extend this flexibility more generally in a future rule. Additional discussion can be found in the Response to Comments document.

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Manufacturers selecting Option 3 will not have the option of transferring credits between the vehicles and the engines ABT programs. For Option 3, manufacturers must use credits within the same averaging set in which they are generated. Providing the additional flexibility only to manufacturers selecting Options 1 or 2 provides further incentive to manufacturers to select one of the early implementation options. We believe the ABT programs provide sufficient flexibility to meet the standards without the ability to transfer credits.

We recognize that under Option 1, vehicle-based certification remains optional through the 2006 model year. While the option to transfer credits during the years preceding 2007 might not be particularly useful under Option 1, we do not believe it is necessary to restrict its use prior to 2007. Manufacturers may choose to voluntarily phase-in chassis-certified vehicles early for product planning reasons.

Manufacturers argued for allowing the transfer of credits between the programs. They were concerned about the stringency of the proposed engine standard and their ability to generate credits with the low volume of engine families that will be subject to the engine-based standards. The pool of engine families is likely to be very small because the majority of Otto-cycle vehicles would be certified to vehicle-based standards. We believe that the structure of the final program, which includes the flexibility of three options and a longer lead time for Option 3 (1.0 g/bhp-hr standard in 2005), addresses feasibility concerns. For Options 1 and 2, the somewhat higher standard of 1.5 g/bhp-hr diminishes the feasibility concerns for the 2003 and 2004 model years. However, there may also be a diminished opportunity for early banking under these early implementation options which the additional flexibility of credit transfers could help offset.

Manufacturers choosing Options 1 or 2 may transfer credits between the vehicle and engine ABT programs for compliance during model years 2003 or 2004, whichever is applicable, through the 2007 model year. We continue to believe that the ability to trade credits between the vehicle and engine-based ABT programs prior to the implementation of the new standards would unnecessarily complicate the ABT programs. Prior to the implementation of the new standards, EPA emission standards for heavy-duty Otto-cycle vehicles are engine-based standards. Absent any credit exchange provisions, manufacturers could still generate vehicle-based credits by voluntarily certifying engines to the vehicle-based program. These provisions already provide the flexibility for manufacturers to decide how many engine-based and vehicle-based credits to generate. Therefore, we are not allowing the transfer of any pre-2004 (or 2003 under Option 1) model year credits between the programs.

We requested comment on several specific concerns, including the derivation of engine and vehicle-specific conversion factors. The chassis-based ABT program is based on emissions in units of grams per mile (g/mi) and the engine ABT program is based on emissions in units of grams per brake horsepower-hour (g/bhp-hr). Consequently, trading credits between the two programs requires a conversion factor. Although the Agency uses conversion factors to estimate g/mi emissions based on g/bhp-hr emissions rates for purposes of emissions inventory modeling, these conversion factors are estimates of a fleet average, not an engine-or vehicle-specific conversion factor. There is considerable variation in the conversion factors from vehicle to vehicle. Also, conversion factors that have been previously derived don't necessarily predict emissions over the specific test cycles. Both the emission standards and the ABT credits are based on emissions over specific test cycles. Conversion factors developed for specific engines and vehicles on specific test cycles could vary widely from an "average" conversion factor. EPA believes that vehicle and engine test cycle specific conversion factors would be needed in order to allow transfers of credits between the two Otto-cycle ABT programs.

EMA recommended that we allow individual manufacturers to submit plans prior to the model year for converting credits and that the plans be subject to EPA approval on a case-by-case basis. In general, we are adopting the approach for establishing the conversion factor suggested by the commenter. Manufacturers requesting to transfer credits must submit plans to convert credits between the vehicle-based program and the engine-based program and the plan must be approved by EPA prior to any exchange of credits. Manufacturer plans must include data that supports the specific conversion factor for the vehicle families and engine families involved. Although manufacturers would design their test programs using good engineering judgement, each conversion factor would likely have to be based upon a number of engine and vehicle tests to provide reasonable accuracy. The conversion factors must be developed by testing engines and vehicles expected to generate "worst-case" emissions.

The transferred credits must be earned in model year 2004 (or 2003 under Option 1) or later and must be used during the same year in which they are transferred (no banking after transfer). This provision is needed to ensure that vehicle credits that are transferred to the engines program are not used after 2007.

Another issue for credit exchanges in the 2003 or 2004 and later model years is that vehicle credits will be based on $NO_X$ only emissions and the engine credits will be based on NMHC+$NO_X$ emissions. We believe that the NMHC portion of engine emissions compared to $NO_X$ emissions is about 15 percent of total emissions, or between 0.1 and 0.2 g/bhp-hr. We requested comment on allowing credit exchanges without regard to this difference in the standards, or alternatively, requiring the use of an appropriate factor (*e.g.*, the 15 percent factor noted above) to apply to exchanges of $NO_X$-only and NMHC+$NO_X$ credits. We did not receive any comment on this issue. We do not believe there is a significant difference with regard to air quality from either approach due to the relatively small number of engines likely to be involved in the program. Therefore, in order to simplify the transfer of credits, we will allow the $NO_X$ credits from the vehicles program and $NO_X$ plus NMHC engine-based credits to be exchanged without adjustments to account for NMHC.

4. CAP 2000

On May 4, 1999, we adopted a new compliance assurance program for light-duty vehicles and light-duty trucks known as "CAP 2000" (*see* 64 FR 23906, May 4, 1999). In brief, as compared with our traditional chassis-based compliance program, CAP 2000 is designed to redirect manufacturer and Agency efforts towards in-use compliance and give manufacturers more control of certification timing, and yet maintain the integrity of the compliance assurance program. Aspects of the CAP 2000 program include streamlined certification and manufacturer in-use testing.

In today's action, we are requiring that the CAP 2000 program be the compliance assurance program for heavy-duty vehicles certified to chassis-based standards (hereafter referred to as "chassis-based HDVs"). We are including modifications to Part 86, Subpart S, that would extend the applicability of CAP 2000 to chassis-based HDVs. Key aspects of the CAP 2000 program as it will apply to chassis-based HDVs are described below.



For the certification process, manufacturers will divide their product lines into new units called "durability groups", determined according to common emission deterioration elements. A vehicle with the "worst case" durability will be chosen from the durability group to establish the rate of emission deterioration expected from that group. The procedures used to determine durability will be developed by the manufacturer, with our approval. Durability groups will then be subdivided into "test groups", and a vehicle representative of each test group will be tested to show emission compliance. Once compliance has been demonstrated, certification can proceed. The CAP 2000 program provisions for information collection are streamlined from the traditional light-duty chassis-based compliance regulations. The timing of information submittal has been optimized to provide some flexibility for manufacturers, and the amount of information has been reduced, without compromising our information needs for future compliance or enforcement issues.

A second element of the chassis-based HDV CAP 2000 requirements is manufacturer in-use testing. There are two parts to the program. Part one requires manufacturers to perform in-use emission testing on privately owned vehicles in an "as-received" state. This "in-use verification testing" will occur on low mileage and high mileage test fleets. The size of the low and high mileage fleets will be dictated by sales categories. Small volume manufacturers and small volume test groups will have little or no testing, depending on sales limits. In-use verification testing data will be used by the manufacturer to improve the predictive quality of its durability program, and by us to target vehicle testing for a recall program. Manufacturers are required to conduct additional testing of a test group when the in-use verification program data for the test group equals or exceeds a mean of 1.3 times the standard, with a 50 percent or greater failure rate for the test group sample at either the low or high mileage test point. The second level of in-use testing, known as "in-use confirmatory testing", will be performed on "properly maintained and used" vehicles and could be used to determine the need for recall.

The "heavy-as-light" provision in the current regulations (*see* 40 CFR 86.001–01(b) and 40 CFR 86.1801(c)(1)) will be available through the 2004 model year; starting with the 2005 model year, the "heavy-as-light" provision will no longer be available. For manufacturers choosing the 2003 or 2004 compliance option (Option 1 or 2) discussed previously, the "heavy-as light" provision will only be available through the 2002 or 2003 model year, respectively. Our "heavy-as-light" provision permits a manufacturer to certify a HDV of 14,000 pounds GVWR or less in accordance with the light-duty truck provisions. In effect, this provision allows manufacturers to certify these HDVs on a chassis dynamometer rather than on an engine dynamometer, as long as the HDVs comply with the more stringent light-duty truck standards. Today's action obviates the "heavy-as-light" provision after the 2003 or 2004 model year. We are including in today's action a provision allowing manufacturers to certify incomplete HDVs under the chassis-based HDV program. This provision is similar to the current "heavy-as light" provision.

We are including provisions to allow manufacturers to request that vehicles from different weight categories be grouped together in the same test group, as long as the vehicles are then subject to the most stringent standards that would be applicable to any vehicles within that grouping. Voluntary certification to the more stringent emission standards means that the manufacturer would be subject to enforcement against the more stringent standards.

Manufacturers have expressed concerns about potential difficulties in procuring vehicles for testing given the commercial use of many of these vehicles. Thus, if any manufacturer believes it is unable to procure the test vehicles necessary to test the required number of vehicles in a test group, the manufacturer may request a smaller sample size for any test group, subject to our advance approval (*see* 40 CFR 86.1845–01(c)(3)).

The "AMA" cycle will not be automatically available as a durability procedure for chassis-based HDVs. (The CAP 2000 program likewise disallows the AMA durability procedure for light-duty, but does allow for the carryover of AMA-based deterioration factors.) Although the AMA cycle will not be automatically available as a durability procedure for chassis-based HDVs, a manufacturer may be able to obtain approval for it. As in the light-duty CAP 2000 program, to obtain approval for a durability process, we will require that manufacturers provide data showing that the aging procedures would predict the deterioration of the significant majority of in-use vehicles over the breadth of their product line that would ultimately be covered by this procedure. This demonstration would be more than simply matching the average in-use deterioration; manufacturers will need to demonstrate to our satisfaction that their durability processes will result in the same or more deterioration than is reflected by the in-use data for a significant majority of their vehicles. This approval process is the same as that already established for our first phase of the light-duty revised durability program (RDP–I).[37]

In order to provide a transition to the in-use confirmatory testing requirements over a period of years, as was available in the light-duty vehicle CAP 2000 program, we are delaying the in-use confirmatory testing requirements in order to allow manufacturers to gain experience with chassis-based certification and in-use verification testing for chassis-based HDVs. Thus, the in-use confirmatory requirements will be applicable to vehicles produced starting with the 2007 model year. While manufacturers will not be required to conduct in-use confirmatory testing for vehicles produced prior to the 2007 model year, we will be fully prepared to investigate any high emissions indicated through manufacturer in-use verification testing or any other means.

Finally, certain aspects of the light-duty CAP 2000 program, as contained in 40 CFR part 86, subpart S, will not apply to chassis-based HDVs, since we are not including requirements for HDVs in these areas at this time. These areas include provisions relating to intermediate useful lives, certification short test, cold temperature CO requirements, fuel economy programs, and supplemental FTP requirements.

In summary, we are extending the light-duty CAP 2000 program to chassis-based HDVs, with the following minor modifications. First, the option to certify HDVs under "heavy-as-light" provisions would no longer be available after the 2004 model year (2003 model year if a manufacturer elects the 2004 compliance option, or 2002 model year if a manufacturer elects the 2003 compliance option); instead, manufacturers can request to certify incomplete HDVs under the chassis-based HDV program. Second, manufacturers can request to group vehicles from different weight categories or subject to different standards into the

[37] In RDP–I manufacturers have typically shown that their durability programs cover ninety percent or higher of the distribution of deterioration rates experienced by vehicles in actual use. See EPA's guidance letter CD–94–13 dated July 29, 1994, available for review in the public docket.

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same test group, provided that they meet the most stringent standards applicable to vehicles within that test group. Third, the AMA cycle will not automatically be available for HDVs as a durability procedure. Fourth, the in-use confirmatory testing requirement will be delayed for HDVs until the 2007 model year. Fifth, certain elements of the CAP 2000 program will not apply to chassis-based HDVs.

5. Evaporative Emissions and Onboard Refueling Vapor Recovery

a. Enhanced Evaporative Emissions

In 1993, EPA adopted enhanced evaporative test procedures for LDVs, LDTs and HDVs to be phased in beginning with the 1996 model year, with full compliance required by the 1999 model year (*see* 55 FR 16002, March 24, 1993). Under the enhanced evaporative requirements adopted in 1993 the provisions for LDVs and LDTs are essentially the same as those for HDVs with two main differences. The first difference is that the actual levels of the emission limits are higher for HDVs due to their typically larger fuel tanks. The second difference is in the driving cycles used in the test sequence, as described in the next paragraph. We are not making any changes to the levels of the HDV evaporative standards in today's action.

The urban dynamometer driving schedule (UDDS) currently used for HDVs is somewhat shorter than that used for light-duty, both in terms of mileage covered and minutes. What this means in practical terms is that, while the light-duty and heavy-duty procedures generally parallel each other, under the heavy-duty procedure there is considerably less driving time than under the light-duty procedure. This results in considerably less time for canister purge under the heavy-duty procedure than under the light-duty procedure.

We recognize this discrepancy between our light-duty and heavy-duty programs, and have routinely provided waivers under the enhanced evaporative program which allow the use of the light-duty procedures for heavy-duty certification testing. In today's action we are formally adopting this approach for all complete vehicles that are certified according to the provisions of the chassis-based program discussed elsewhere in this notice. Thus, we are not making any changes to the CAP 2000 regulations intended to maintain the heavy-duty UDDS for HDV evaporative testing. Rather, the light-duty UDDS currently in the CAP 2000 regulations will apply to all light-duty and heavy-duty vehicles and trucks certified according to the provisions of CAP 2000. Additionally, we are extending the application of the light-duty UDDS to all heavy-duty evaporative emissions testing upon the effective date of this rule.

b. Onboard Refueling Vapor Recovery

Onboard refueling vapor recovery (ORVR) systems prevent the fuel vapors that are displaced from a vehicle's fuel tank during refueling from entering the atmosphere. Typically, the displaced fuel vapors are routed to a charcoal canister where they are subsequently routed to the engine to be burned as fuel. We previously adopted ORVR requirements applicable to light-duty vehicles and light-duty trucks (*see* 59 FR 16262, April 6, 1994). These requirements are being phased in beginning with the 1998 model year for LDVs, the 2001 model year for light LDTs (6,000 lb and under GVWR), and 2004 for heavy LDTs (6,001 through 8,500 lb GVWR).

We are today requiring ORVR controls on all complete HDVs up to 10,000 lb GVWR in the same manner and generally on the same schedule as heavy LDTs. Thus, complete HDVs will be required to meet a refueling emission standard of 0.20 grams per gallon of fuel dispensed. For purposes of ORVR applicability, complete vehicle means a vehicle that leaves the primary manufacturer's control with its primary load carrying device or container attached.

The ORVR standard will be phased in with 80 percent compliance in the 2005 model year and 100 percent compliance in the 2006 model year. This phase-in is the same as that currently in place for heavy LDTs except that no compliance is required in the 2004 model year. For those manufacturers choosing the 2003 or 2004 compliance option discussed previously (Option 1 or 2), the ORVR standard will be phased in with 40 percent compliance required in the 2004 model year, 80 percent compliance in the 2005 model year, and 100 percent compliance in the 2006 model year. Heavy LDTs and HDVs will be considered a single category for the purposes of the phase in. In other words, the percent compliance requirements for a given model year apply to heavy LDTs and HDVs as a single group, rather than to each group separately. We are including an exception to this phase-in approach to allow additional lead time for complete HDVs that do not have light-duty counterparts and those whose fuel tank capacity is greater than 35 gallons. Thus, for those complete HDVs up to 10,000 lb GVWR that do not share an identical fuel system with a light-duty counterpart, and for those whose fuel tank(s) have a total capacity of more than 35 gallons, the ORVR requirements take effect with the 2006 model year. This additional lead time is appropriate for these vehicles because ORVR systems will have to be developed specifically for them, whereas for those heavy-duty vehicles that have light-duty counterparts the required ORVR development work is already underway in order to comply with the heavy light-duty truck ORVR requirements.

Currently, in the review of certification applications for ORVR-equipped LDVs and LDTs, we study the design of the vehicle's ORVR system, its on-vehicle configuration and operation, and consult directly with the National Highway Traffic Safety Administration (NHTSA) on these applications. We will extend this practice of consulting with NHTSA in the review of certification applications for ORVR-equipped HDVs as well.

6. On-board Diagnostics Requirements for Otto-cycle Vehicles

Today's final rule establishes new on-board diagnostic requirements for complete HD Otto-cycle vehicles in the 8,500 to 14,000 pound GVWR category. The new OBD requirements for heavy-duty Otto-cycle vehicles are identical to those already in place for light-duty Otto-cycle vehicles and trucks. In general, the OBD system must monitor emission-related powertrain components for deterioration or malfunction causing emissions to exceed 1.5 times the applicable standards. Upon detecting a malfunction, a dashboard MIL must be illuminated informing the driver of the need for repair. To assist the repair technician in diagnosing and repairing the malfunction, the OBD system must also incorporate standardization features (*e.g.*, the diagnostic data link connector; computer communication protocols; etc.) the intent of which is to allow the technician to diagnose and repair any OBD compliant truck or engine through the use of a "generic" hand-held OBD scan tool. The following is a summary of the requirements for HD Otto-cycle vehicles.

a. Federal OBD Malfunction Thresholds and Monitoring Requirements

This final rule requires that, beginning in the 2005 model year (or 2004 under Option 1), complete heavy-duty Otto-cycle vehicles must be equipped with an OBD system capable of detecting and alerting the driver of the following emission-related malfunctions or deterioration as evaluated over the appropriate certification test procedure:[38]

(i) Catalyst deterioration or malfunction before it results in an increase in NMHC[39] emissions equal to or greater than 1.5 times the NMHC standard or FEL, as compared to the NMHC emission level measured using a representative 4,000 mile catalyst system.

(ii) Engine misfire before it results in an exhaust emission exceedance of 1.5 times the applicable standard or FEL for NMHC, CO or $NO_X$.

(iii) If the vehicle or engine contains an oxygen sensor, then oxygen sensor deterioration or malfunction before it results in an exhaust emission exceedance of 1.5 times the applicable standard or FEL for NMHC, CO or $NO_X$.

(iv) If the vehicle or engine contains an evaporative emission control system, then any vapor leak in the evaporative and/or refueling system (excluding the tubing and connections between the purge valve and the intake manifold) greater than or equal in magnitude to a leak caused by a 0.040 inch diameter orifice; an absence of evaporative purge air flow from the complete evaporative emission control system. On vehicles with fuel tank capacity greater than 25 gallons, the Administrator will revise the size of the orifice to the feasibility limit, based on test data, if the most reliable monitoring method available is unable to reliably detect a system leak equal to a 0.040 inch diameter orifice.

(v) Any deterioration or malfunction occurring in a powertrain system or component directly intended to control emissions, including but not necessarily limited to, the EGR system, if equipped, the secondary air system, if equipped, and the fuel control system, singularly resulting in exhaust emissions exceeding 1.5 times the applicable emission standard or FEL for NMHC, CO, $NO_X$. For vehicles equipped with a secondary air system, a functional check, as described in paragraph (vi) below, may satisfy the requirements of this paragraph provided the manufacturer demonstrates that deterioration of the flow distribution system is unlikely. This demonstration is subject to Administrator approval and, if the demonstration and associated functional check are approved, the diagnostic system is required to indicate a malfunction when some degree of secondary airflow is not detectable in the exhaust system during the check.

(vi ) Any other deterioration or malfunction occurring in an electronic emission-related powertrain system or component not otherwise described above that either provides input to or receives commands from the on-board computer and has a measurable impact on emisslons; monitoring of components required by this paragraph may be satisfied by employing electrical circuit continuity checks and, wherever feasible, rationality checks for computer input components (input values within manufacturer specified ranges based on other available operating parameters), and functionality checks for computer output components (proper functional response to computer commands); malfunctions are defined as a failure of the system or component to meet the electrical circuit continuity checks or the rationality or functionality checks.

Upon detection of a malfunction, the MIL is required to illuminate and a fault code stored no later than the end of the next driving cycle during which monitoring occurs provided the malfunction is again detected. Alternatively, upon EPA approval, a manufacturer is allowed to use a diagnostic strategy that employs statistical algorithms for malfunction determination. Manufacturers are required to determine the appropriate operating conditions for diagnostic system monitoring with the limitation that monitoring conditions are encountered at least once during the applicable certification test procedure or a similar test cycle as approved by EPA. This is not meant to suggest that monitors be designed to operate only under test procedure conditions, as such a design would not encompass the complete operating range required for OBD malfunction detection.

As an option to the above requirements, EPA will allow compliance demonstration according to the California OBDII requirements for HD Otto-cycle vehicles. This option allows manufacturers to concentrate on one set of OBD requirements for nationwide implementation (although federal OBD emission malfunction thresholds and monitoring requirements are essentially equivalent to those of the California OBDII regulation) and provides the highest level of OBD system effectiveness toward meeting nationwide clean air goals.

b. Standardization Requirements

The light-duty OBD regulations contain requirements for standardization of certain critical aspects of the OBD system. These critical aspects include the design of the data link connector, protocols for on-board to off-board computer communication, formats for diagnostic trouble codes, and types of test modes the on-board system and the off-board scan tool must be capable of supporting. Today's action contains similar standards for heavy-duty OBD systems, as detailed in the regulatory requirements under section § 86.1806–05.

c. Deficiency Provisions

Today's action also establishes the same deficiency provisions for HD Otto-cycle vehicle OBD systems as currently apply to light-duty OBD systems. This will allow the Administrator to accept an OBD system as compliant even though specific requirements are not fully met. The deficiency provisions were first introduced on March 23, 1995 (60 FR 15242), and were revised on December 22, 1998 (63 FR 70681).

To clarify our deficiency provisions, EPA does not expect to certify vehicles with federal OBD systems that have more than one OBD system deficiency, or to allow carryover of any deficiency to the following model year unless it can be demonstrated that correction of the deficiency requires hardware and/or software modifications that cannot be accomplished in the time available, as determined by the Administrator. Nonetheless, we recognize that there may be situations where more than one deficiency is necessary and appropriate, or where carry-over of a deficiency(ies) for more than one year is necessary and appropriate. EPA may approve such deficiencies provided the manufacturer has demonstrated an acceptable level of effort toward OBD compliance. These deficiency provisions cannot be used as a means to avoid compliance or delay implementation of any OBD monitors or as a means to compromise the overall effectiveness of the OBD program.

d. Applicability and Waivers

The federal HD Otto-cycle vehicle OBD requirements finalized in today's action will be implemented beginning with the 2005 model year. OBD requirements for HD Otto-cycle vehicles up to 14,000 pounds GVWR will be phased in over a three year period, from 2005 until 2007. The percentage phase-in schedule will be 60/80/100 for the 2005/06/07 model years, respectively, based on projected sales. For those manufacturers who choose the optional 2003 or 2004 compliance path for HD Otto-cycle engines and vehicles (Option 1 or 2), the OBD phase-in schedule will be 40/60/80/100 percent for the 2004/05/06/07 model years respectively. For those manufacturers with a single heavy-duty engine family (including otto-cycle and diesel), implementation of OBD requirements would not have to occur until the 2007 model year. As discussed in Section III.A.4 and III.C.4,

[38] The FTP minus the Supplemental FTP for chassis certified systems; the engine certification test procedure minus any supplemental test procedures for engine certified systems. While malfunction thresholds are based on certification test procedure emissions, this does not mean that OBD monitors need operate only during the test procedure. All OBD monitors that operate continuously during the test procedure should operate in a similar manner during non-test procedure conditions. The prohibition against defeat devices in § 86.004–16 applies to these OBD requirements.

[39] As a point of clarification, federal emissions standards are expressed in terms of NMHC. Therefore, in order to remain consistent, all references to HC will be referred to as NMHC.

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this final rule also establishes OBD requirements for heavy-duty diesel engines used in vehicles up to 14,000 pounds GVWR, and for HD Otto-cycle engines used in incomplete vehicles up to 14,000 pounds GVWR that are similar to the requirements for HD complete Otto-cycle vehicles, including an identical phase-in schedule. HD manufacturers will be allowed to meet the OBD phase-in requirements by combining their projected sales of HD Otto-cycle engines and vehicles and HD diesel engines to meet a combined diesel and Otto-cycle phase-in, at their option.

For heavy-duty vehicles and engines up to 14,000 pounds GVWR operating on alternative fuel, EPA may grant OBD waivers during alternative fuel operation through the 2006 model year to the extent that manufacturers can justify the inability to fully comply with any of the OBD requirements.[40] Such inability must be based upon technological infeasibility, not resource reasons. Further, any heavy-duty vehicles and engines that are subsequently converted for operation on alternative fuel are not expected to comply with these OBD requirements if the non-converted vehicle or engine does not comply. In other words, if the vehicle or engine never completes any assembly stage in OBD compliance, it need not comply with the OBD requirements while operating on the alternative fuel. If the vehicle or engine does complete any assembly stage with a compliant OBD system, it must comply with the OBD requirements while operating on the fuel of original intent and, to the extent feasible, while operating on the alternative fuel. For these latter situations, EPA may grant waivers through the 2006 model year if the manufacturer shows it is infeasible to meet the requirements. Beginning in the 2007 model year, all heavy-duty alternative fueled vehicles and engines up to 14,000 pounds GVWR must be fully compliant during both operation on the original fuel and the alternative fuel.

e. Certification Provisions

The OBD certification information requirements of today's action are consistent with the Compliance Assurance Programs 2000 (CAP 2000) rulemaking discussed above. The Part 1 Application must include, for each OBD system: a description of the functional operating characteristics of the diagnostic system; the method of detecting malfunctions for each emission-related powertrain component; and a description of any deficiencies including resolution plans and schedules. Anything certified to the California OBDII regulations is required to comply with California ARB information requirements. EPA may consider abbreviating the OBD information requirements through rulemaking if it gains confidence that manufacturers are designing OBD systems that are fully compliant with all applicable regulations.

During EPA certification of vehicles optionally certified to the California OBDII regulation, EPA may conduct audit and confirmatory testing consistent with the provisions of the California OBDII requirements. Therefore, while the Agency will consider California certification in determining whether to grant a federal certificate, EPA may also elect to conduct its own evaluation of that OBDII system. While it is unlikely, EPA may make a compliance determination that is not identical to that of the California Air Resources Board.

Further, this final rule establishes "drop-in" demonstration provisions for HD Otto-cycle OBD systems similar to those discussed under the HD diesel OBD requirements. This provision allows engine-certified and engine-demonstrated OBD system to fulfill the demonstration requirements of a chassis-certified OBD system, however, the chassis-certified system would have to incorporate transmission diagnostics even though the "dropped-in" engine system may not have been certified with transmission diagnostics. The drop-in provision also allows a chassis-certified and chassis-demonstrated OBD system to fulfill any demonstration requirements of an engine-certified OBD system. The drop-in provision discussed here requires the manufacturer to rigorously demonstrate its OBD concept and approach on one engine or model, but allows the manufacturer to apply that demonstration via engineering judgement to the different engine and powertrain calibrations used across its fleet. The Agency will accept such a demonstration provided sound engineering judgement is employed.

*C. What Are the Requirements of the Heavy-duty Otto-cycle Engine-based Program?*

1. Emission Standards

We are finalizing an NMHC+$NO_X$ standard for Otto-cycle engines, applicable to engines used in vehicles over 14,000 pounds GVWR and in incomplete vehicles, of 1.0 g/bhp-hr.[41] Existing CO standards for these engines and vehicles will continue to remain in place. This approach is consistent with California which allows engine-based testing for these vehicles in its Medium-duty Vehicle program. This standard will take effect starting with the 2005 model year. As discussed in the proposal, and after consideration of comments received on the proposal, we continue to believe that this standard, implemented in the 2005 model year, represents the most stringent standard reasonably achievable for these engines, in keeping with the requirements of the CAA (including the four-year lead time requirement). We also believe that the ABT program for engines (described below) provides manufacturers with desirable flexibility to meet the new standard as their product lines become subject to the new engine standards. However, as noted earlier, we are also providing options to allow manufacturers to achieve lower levels of emissions starting with the 2003 or 2004 model year. Under these options (Options 1 and 2 for the 2003 and 2004 model years, respectively), manufacturers have to meet an engine-based standard of 1.5 g/bhp-hr until the 2008 model year, when the standard becomes 1.0 g/bhp-hr. (As noted earlier, EPA has recently proposed new standards for on-highway heavy-duty vehicles and engines. Thus, the 2008 standard finalized in today's rule serves only as a "placeholder" for standards resulting from future EPA action affecting the 2007, 2008, and later model years. The standards in EPA's recent proposal would supercede the standards finalized in today's action. See EPA's recent proposal at 65 FR 35430, June 2, 2000.) Option 1 provides more flexibility than Option 2 by allowing manufacturers to choose chassis-based or engine-based standards for their complete vehicles for the 2003 through 2006 model years.

2. Durability Procedures

Under the current certification regulations, manufacturers develop deterioration factors based on testing of development engines and emissions control systems. Because emissions control efficiency generally decreases with the accumulation of service on the engine, the regulations require that a deterioration factor (DF) be used in conjunction with engine test results as the basis for determining compliance with the standards. The regulations require that the manufacturer develop an appropriate DF, which is then subject to review by EPA in the certification process. These deterioration factors are applied to low mileage emissions levels of certification engines in order to predict emissions at the end of the engines' useful life. The emissions level after the deterioration factor is applied is the engine certification level, which must be below the standard for the engine to be certified. For engines equipped with aftertreatment (*e.g.*, catalysts), the DF must be "multiplicative" (*i.e.*, a factor that can be multiplied by the low mileage emissions level of the certification engine to project emissions at the end of the engine useful life). For engines lacking aftertreatment (*e.g.*, most current diesels), the DF must be "additive" (*i.e.*, a factor that can be added to the low mileage emissions level of the certification engine to project emissions at the end of the engine useful life).

Manufacturers provided comments indicating that their current deterioration factors are based on 50th percentile in-use deterioration rates, or average in-use deterioration. They also commented that they account for more severe deterioration than average by certifying with certification levels well below the standards.

EPA believes that the manufacturer's durability process should result in the same or greater level of deterioration than is observed in-use for a significant majority of their vehicles, rather than simply matching the average in-use deterioration. This is especially important considering that incomplete vehicles and vehicles over 14,000 pounds GVWR are more likely to be work vehicles and operated under more severe conditions a greater percentage of their useful lives. EPA believes that it is important for certification levels (emissions tests adjusted by the DF) to represent anticipated in-use emissions levels of a significant majority of in-use engines. As the standards are reduced, this will continue to be a key aspect of EPA's compliance programs. Deterioration factors are also used during production line testing to verify the emissions performance of production engines. Finally, the ABT program relies on certification data as the basis for determining credits. Although Otto-cycle engine manufacturers have not made wide use of the ABT program to date, EPA expects more use of the program in future years due to the new more stringent emissions standards and new ABT flexibilities.

EPA is finalizing today, as proposed, that the compliance provisions for heavy-duty engines contained in 40 CFR part 86, subpart A would continue to apply to HDVs subject to the engine-based standards, with modifications designed to ensure that the durability demonstration procedures used by manufacturers in the certification process, and deterioration factors calculated by means of these procedures, predict the emission deterioration of a significant majority of in-use engines to be covered by the procedure.

The deterioration factor determination procedures in the regulations are modified to specify that emission control component aging procedures will predict the deterioration of the significant majority of in-use engines over the breadth of their product line that would ultimately be covered by this procedure (manufacturers would be expected to show that their durability programs cover on the order of ninety percent or higher of the distribution of deterioration rates experienced by vehicles in actual use). In addition, manufacturers are required to calculate multiplicative DFs by dividing high mileage exhaust emissions by the low milage exhaust emissions (*e.g.*, emissions at the useful life mileage by exhaust emissions at 4,000 miles).[42] This change only adds specificity to the regulations so that DFs are calculated using a consistent and credible methodology. These modifications to the engine-based HDV compliance procedures would also be effective for any engine family generating ABT credits prior to the 2004 model year.

Manufacturers commented that multiplicative deterioration factors are becoming less accurate and reliable as low mileage emissions durability levels become very low resulting in increased test-to-test variability.[43] The low mileage levels, when divided into the 120,000 mile emissions level, produce DFs that are highly variable and inaccurate. Manufacturers recommended allowing the optional use of additive deterioration factors for engines equipped with aftertreatment. We have analyzed this issue and believe that in some cases additive DFs may be appropriate. Consequently, we have included a provision in this final rule that enables manufacturers to use additive DFs under certain conditions. Manufacturers need prior approval from EPA to use an additive deterioration factor and would be required to conduct in-use verification testing to ensure that the additive DF reasonably predicted in-use emissions performance.

3. Averaging, Banking, and Trading for Otto-Cycle Engines

As part of finalizing more stringent engine-based standards, EPA is finalizing a modified ABT program for these engines. The program is similar in design to the program adopted for diesel engines. EPA is finalizing ABT modifications to allow more flexibility within the ABT framework to help meet the more stringent standards. ABT credits can help manufacturers with engine configurations that are more difficult to modify, where more time would help reduce costs. Credits can also allow manufacturers to continue with product plans that might call for the retirement of an engine family at some point shortly after the implementation of the new standards. By banking credits manufacturers can also reduce the uncertainty or risk associated with the new standards. EPA believes that the modified ABT program contained in this rule will not decrease emissions reductions associated with the new standards.

For the 1999 model year, the ABT program was used for only one Otto-cycle engine family to meet the current 4.0 g/bhp-hr $NO_X$ standard which went into effect in the 1998 model year. For the 2000 model year, no engine families were certified using the ABT program. Advances in catalyst technology and engine/fuel system improvements have allowed manufacturers to meet the standard across their product line. Most engine families have certification levels of less than half the standard. However, with the new more stringent engine-based standards, EPA expects that ABT may become a more important tool for Otto-cycle engine manufacturers.

An ABT program allows the Agency to consider lower emissions standard, or one that otherwise results in greater emissions reductions, compared to a standard that might otherwise be appropriate under section 202(a)(3) of the CAA, since ABT reduces the cost and improves the technological feasibility of achieving the standard. EPA is finalizing changes to the ABT program with the intent that the changes would enhance the technological feasibility and cost-effectiveness of the new standard, and thereby help to ensure the new standard would be attainable earlier than would otherwise be possible. The changes would provide

[40] Note that this provision currently exists for light-duty vehicles and trucks operating on alternative fuel through the 2004 model year; that existing provision does not change with today's rule.

[41] Incomplete vehicles less than 14,000 lbs GVWR could optionally certify to the new vehicle-based standards, as discussed in a later section.

[42] Manufacturers are not required to accumulate actual mileage on vehicles or engines in order to determine a deterioration rate. In many cases, the accumulation of mileage (or "service") is simulated by various "bench aging" techniques that allow the process to consume less time and resources than accumulating actual mileage.

[43] High mileage emissions levels are divided by the low mileage emissions levels to calculate the multiplicative deterioration factor.

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manufacturers with additional product planning flexibility and the opportunity for a more cost effective introduction of product lines meeting the new standard. Also, EPA believes that ABT creates an incentive for early introduction of new technology, which allows certain engine families to act as trail blazers for new technology. This can help provide valuable information to manufacturers on the technology prior to manufacturers applying the technology throughout their product line. This further improves the feasibility of achieving the standard. This early introduction can also provide valuable information for use in other regulatory programs that may benefit from similar technologies (*e.g.*, nonroad programs). EPA views the effect of the ABT program itself as environmentally neutral because the use of credits by some engines is offset by the generation of credits by other engines. However, when coupled with the new standards, the ABT program would be environmentally beneficial because it would allow the new standards to be implemented earlier than would otherwise be appropriate under the Act.

EPA is finalizing the following provisions for the modified ABT program for Otto-cycle engines. The provisions are being finalized essentially as proposed except for minor adjustments to account for the three program options.

*Early Credits*

- Manufacturers may bank $NO_X$ credits beginning in MY 2000 for use in meeting the more stringent standards (MYs 2003/2004/2005 and later).
- Early credits may be earned up to a $NO_X$ level of 2.0 g/bhp-hr.
- Early credits will be discounted by 10 percent for engine families with FELs above the 1.0 g/bhp-hr NMHC+$NO_X$ level and undiscounted for engine families with FELs at or below the 1.0 g cut point.
- Engine families generating credits must meet the revised requirements for deterioration factors contained in this rule (See Section 2 above)
- Early $NO_X$ credits may be used to meet the new combined NMHC+$NO_X$ standard

*Regular Credits*

For credits earned after the implementation of the new standard (2003/2004/2005, as applicable):

- Credits will be earned on a $NO_X$ plus NMHC basis
- Engine families with FELs above 0.5 g/bhp-hr NMHC+$NO_X$ will be discounted by 10 percent. Engine families with FELs at or below 0.5 g/bhp-hr will earn undiscounted credits.
- Credits will be earned up to the level of the standard (1.5 g/bhp-hr or 1.0 g/bhp-hr, as applicable)

*Credit Use*

- Credits banked under the modified program have unlimited credit life
- Engine families using credits may not exceed the previous $NO_X$ standard of 4.0 g/bhp-hr
- Credits generated under the modified program may not be used to meet the current 4.0 g/bhp-hr standard

Manufacturers may continue to use the current ABT program for engines certified to the current 4.0 g/bhphr $NO_X$ standard. The current program will not be available for engines certified to the new $NO_X$ plus NMHC standards finalized in this rule. Credits generated in the current program cannot be used to meet the new standards. The modified program outlined above is effective for these engines. Therefore, the current program will be phased out in 2003, 2004, or 2005 depending on the option chosen by the manufacturer. EPA is ending the current program because of concern that manufacturers could generate enough credits under the current program to significantly delay the new standards. The current program allows manufacturers to earn credits up to the current $NO_X$ standard of 4.0 g/bhp-hr. With most engines currently certified with $NO_X$ levels below 2.0 g/bhp-hr, there is potential for substantial credit generation without the application of improved technology under the current ABT program. If manufacturers were to bank these credits, they could potentially use them to delay the introduction of engines meeting the new standards for a large majority of their sales for up to three years.

EPA received comments from manufacturers that the ceiling of 2.0 g/bhp-hr for early credit generation is too restrictive because manufacturers must account for compliance margin and more severe deterioration when establishing FELs and therefore would not set FELs at their certification level. Manufacturers recommended a ceiling of 3.0 g/bhp-hr. EPA is concerned that even after accounting for more severe deterioration and compliance cushion manufacturers would still have the ability to generate a large pool of credits prior to the implementation of the new standards if the ceiling were revised to 3.0 g/bhp-hr. EPA's concerns are increased with Option 3 which allows an additional model year (2004 model year) for early banking.

The 2.0 g/bhp-hr ceiling for credit generation in the modified program provides opportunity for manufacturers to earn credits through the use of emissions controls that are superior to the average controls currently being used. It helps ensure that the credits represent a pull-ahead of technology and are not windfall credits. The changes to credit life and discounting in the modified program provide manufacturers with more flexibility in the way they use those credits once they are earned. EPA believes this approach is consistent with the goals of ABT. For these reasons, we are finalizing the 2.0 g/bhp-hr ceiling for credit generation, as well as the changes to credit life and discounting (discussed below), as proposed.

EPA is finalizing the requirement that engines families generating early credits for use in the modified program be certified using the revised durability procedures described above in section III.C.2. These new procedures are necessary to ensure that the certification level reflects a significant majority of in-use engines within the engine family. The revised procedures are important for the ABT program because the program allows manufacturers to establish their FEL at the certification level for purposes of generating or using credits. As discussed in the Response to Comments document, the requirement to use revised durability procedures also helps address windfall credits issues with regard to the program.

We received comments that we should not require revised durability procedures for engines generating early credits because it will take manufacturer's up to three years to develop the new DFs, thus delaying their ability to generate early credits. While we anticipate some time being needed to generate new deterioration factors, we do not expect a long delay due to the new requirements in most cases. Comments from manufacturers that they currently consider more severe deterioration during the certification process suggest that the manufacturers have data on more severe deterioration. Also, there are accelerated aging methods available for use in deriving deterioration factors that can significantly decrease the amount of time required to derive new deterioration factors. These available methods generally require less than a year to carry out.

Nevertheless, in cases where manufacturers do not currently have adequate data on which to base a revised deterioration factor, the generation of new data will take time and may delay the manufacturer's ability to generate credits in the earliest years of the ABT program. There will, however, still be at least a few years for manufacturers to generate and bank early credits even if new data must be generated, especially for Option 3 (1.0 g/bhp-hr in MY 2005). Options 1 and 2 do not provide as much lead time for early credit generation but they contain a somewhat less stringent standard so early credits may be less important for manufacturers selecting one of these options. Also, Options 1 and 2 contain provisions within the ABT program for manufacturers to exchange credits between the vehicles and engines programs. For these reasons, we do not expect the requirements for using a revised DF to significantly impact the feasibility of the standards.

The changes to credit life and discounting being finalized for Otto-cycle engines are conceptually consistent with the modifications finalized for diesel engines. We are finalizing our proposal to discount credits by 10 percent if the engine has an FEL above a certain value or cut-point. We adopted cut points in the diesel program in order to identify the introduction of new technology as opposed to recalibrating or enhancing existing technology. We believe that adoption of cut points in the HD Otto-cycle engine program will provide similar technology forcing incentives. We selected cut-point levels which represent a clear step in emissions control rather than a marginal emissions reduction. The 10 percent discount selected for the HD Otto-cycle engine ABT program is consistent with the program finalized for diesel engines. In that final rule, we noted that a 10 percent discount strikes a balance between zero (which significantly reduces the incentive to develop and implement significantly cleaner technology) and 20 percent (which manufacturers indicated in comments was far too large and would create a disincentive for the introduction of cleaner technology). (*See* 62 FR 54708, October 21, 1997.)

For diesels, EPA removed the three year credit life limit that allows manufacturers to earn credits to be used in 2004 and later as early as the 1998 model year. For Otto-cycle engines, MY 2000 will be the earliest model year that the rule would be effective due to the timing of the rulemaking. Removing the credit life limit will provide an additional year of potential credit banking and allows manufacturers to retain credits after 2004 rather than having them expire after a certain year. We believe that having credits expire would simply encourage manufacturers to use the credits rather than save them; thus, removing the credit-life limit should provide a net environmental benefit.[44]

We believe the program effectively balances the manufacturer's needs for flexibility given the stringency of the standards being adopted with the environmental goals of the ABT program. We believe that our ABT program detailed above will encourage the early use of cleaner technologies and provide manufacturers with valuable flexibility in transitioning to more stringent standards. EPA is finalizing the modification to the ABT program in conjunction with the engine-based standards to provide the flexibility necessary to enable manufacturers to meet the standard across their product line.

4. On-Board Diagnostics for Otto-Cycle Engines

Today's final rule establishes new on-board diagnostic requirements for HD Otto-cycle engines used in incomplete vehicles in the 8,500 to 14,000 pound GVWR category. The new OBD requirements for heavy-duty Otto-cycle engines are essentially identical to those already in place for light-duty Otto-cycle vehicles and trucks. In general, the OBD system must monitor emission-related engine components for deterioration or malfunction causing emissions to exceed 1.5 times the applicable standards. Upon detecting a malfunction, a dashboard MIL must be illuminated informing the driver of the need for repair. To assist the repair technician in diagnosing and repairing the malfunction, the OBD system must also incorporate standardization features (*e.g.*, the diagnostic data link connector; computer communication protocols; etc.) the intent of which is to allow the technician to diagnose and repair any OBD compliant truck or engine through the use of a "generic" hand-held OBD scan tool.

The provisions for HD Otto-cycle engines used in incomplete vehicles are identical to the provisions discussed in Section III.B.6 in almost every respect. The differences for the HD Otto-cycle engines used in incomplete vehicles, as specified in the regulatory language, are: (1) Engine emission related components must be monitored, not powertrain related components, and (2) NMHC+$NO_X$ thresholds must be monitored, not $NO_X$ and NMHC separately. In all other respects the regulatory requirements for HD Otto-cycle engines used in incomplete vehicles are the same as those for complete HD Otto-cycle vehicles.

5. Evaporative Emissions Test Procedures

We are not making any changes to the levels of the HD Otto-cycle engine evaporative emission standards in today's action. However, we are allowing, upon the effective date of this rule, manufacturers to use the light-duty urban dynamometer driving schedule (UDDS) in place of the heavy-duty UDDS for evaporative testing of HD Otto-cycle engines. A more complete discussion of this issue can be found in section III.B.5.a.

*D. What Are the New On-Board Diagnostics Requirements for Light-Duty Diesel Vehicles?*

Today's final rule establishes new on-board diagnostic requirements for LD diesel vehicles. OBD requirements for LD diesel vehicles have existed for many years. However, LD diesel vehicles have not been required to monitor aftertreatment devices, such as diesel oxidation catalysts or particulate traps. Similar to the new requirements for HD diesel OBD aftertreatment monitoring, today's action requires LD diesel vehicles to monitor aftertreatment devices. We received a number of comments on the proposed OBD requirements and have incorporated those recommendations that we deemed to be appropriate. The summarized comments and our responses can be reviewed in the Summary and Analysis of Comments Document. The following is a summary of the new requirements for LD diesel vehicles.

1. Federal OBD Malfunction Thresholds and Monitoring Requirements

This final rule requires that, beginning in the 2004 model year for LD diesel vehicles less than 6,000 pounds GVWR, and the 2005 model year for LD diesel vehicles between 6,000 pounds and 8,500 pounds GVWR must be equipped with an OBD system capable of detecting and alerting the driver of the following emission-related malfunctions or deterioration as evaluated over the appropriate certification test procedure: [45]

[44] EPA presented a detailed analysis of its ABT program in the Response to Comments for the Diesel Final Rule, Docket A–95–27, document no. V–C–01.

[45] The FTP minus the Supplemental FTP. While malfunction thresholds are based on certification test procedure emissions, this does not mean that OBD monitors need operate only during the test procedure. All OBD monitors that operate continuously during the test procedure should operate in a similar manner during non-test procedure conditions. The prohibition against

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(i) Catalyst deterioration or malfunction—before it results in exhaust emissions exceeding 1.5 times the applicable standard or FEL for $NO_X$ or PM, as compared to the $NO_X$ or PM emission level measured using a representative 4,000 mile catalyst system. The above requirement only applies to reduction catalysts; oxidation catalysts are not required to be monitored.

(ii) Particulate trap malfunction—any particulate trap whose complete failure results in exhaust emissions exceeding 1.5 times the applicable standard or FEL for $NO_X$ or PM, as compared to the $NO_X$ or PM emission level measured using a representative 4,000 mile particulate trap system must be monitored. Particulate trap monitoring must be capable of detecting a catastrophic failure of the device, monitoring to the precise 1.5 threshold is not necessary. This monitoring would not need to be done if the manufacturer can demonstrate that a catastrophic failure of the system will not result in exceedance of the threshold.

2. Applicability and Waivers

The federal LD diesel vehicle OBD requirements finalized in today's action would be fully implemented (100%) in the 2004 model year for vehicles less than 6,000 pounds GVWR . The federal OBD requirements for LD diesel vehicles between 6,000 pounds and 8,500 pounds GVWR and diesel MDPVs would be fully implemented (100%) in the 2005 model year.

*E. Access to On-Board Computer Information*

We are finalizing the proposed requirement that manufacturers be required to provide to us information and hardware that we request to read and interpret emission control information broadcast by an engine's electronic control module. Specifically, we proposed:

> Upon request from EPA, a manufacturer must provide to EPA hardware (including scan tools), passwords, and/or documentation necessary for EPA to read and interpret (in engineering units if applicable) any information broadcast by an engine's on-board computers and electronic control modules which relates in anyway to emission control devices and auxiliary emission control devices. Passwords include any information necessary to enable generic scan tools or personal computers access to proprietary emission related information broadcast by an engine's on-board computer, if such passwords exist. This requirement includes access by EPA to any proprietary code information which may be broadcast by an engine's on-board computer and electronic control modules. Information which is confidential business information must be marked as such. Engineering units refers to the ability to read and interpret information in commonly understood engineering units, for example, engine speed in revolutions per minute or per second, injection timing parameters such as start of injection in degree's before top-dead center, fueling rates in cubic centimeters per stroke, vehicle speed in miles per hour or kilometers per hour.

In response to a comment that manufacturers should not be required to provide EPA with a commercially available scantool, we are revising this language to clarify that manufacturers are not required to provide hardware that is otherwise commercially available. This new regulatory requirement is not intended to limit our authority under section 208 of the Clean Air Act to require manufacturers to provide us with commercially available tools and other information.

We believe that this requirement is necessary to ensure in-use compliance. We recognize manufacturers' concern regarding the potential burden of this requirement; however, it should be noted that this requirement does not mean that manufacturers will need to submit all of this information with each application for certification. We intend to require this information only to the extent that is necessary. Moreover, we are willing to work with the manufacturers in implementing this regulatory provision to find ways to minimize the burden while enabling us to ensure in-use compliance. Thus, we may revise this provision in a later rulemaking. This section is not intended to limit our authority under section 208 of the Clean Air Act to require manufacturers to provide us with commercially available tools and other information.

## IV. The Heavy-Duty Requirements Are Technologically Feasible

*A. Emission Standards for Heavy-Duty Diesel Engines*

Today's final rule contains a reaffirmation of the 2004 NMHC+$NO_X$ standards as well as several supplemental standards and test cycles for 2007 model year HDDE;

—2004—2.4 g/bhp-hr NMHC + $NO_X$ or 2.5 g/bhp NMHC + $NO_X$ with a limit of 0.5 g/bhp-hr on NMHC on the existing Federal Test Procedure

—2007—Emission requirements of 1.0 times the FTP standards on the new Supplemental Steady-State Test cycle and compliance under steady-state conditions with Maximum Allowable Emission Limits

—2007—Emission requirements of 1.25 times the FTP standards under the new Not-to-Exceed test zone

EPA has determined these standards and new test procedures are feasible in this time frame based on a number of factors. First, as detailed in the proposal and in the final rule, enormous progress has been made in the last few years regarding HD diesel emission control technology, principally in the areas of: Second generation full authority fuel injection systems; cooled EGR for HD diesels, advanced turbocharging systems (such as VGT), and advanced electronic control systems. Second, data published in the scientific literature has shown that individually and in combination, these emission control technologies can produce substantial emission reductions in $NO_X$, PM and hydrocarbons, over a broad range of engine operating conditions. As detailed in the RIA for this final rule, emission reductions on the order of 50 to 90 percent from current generation HD diesel engines have been demonstrated using combinations of these technologies. Third, with respect to the new supplemental requirements, a number of manufacturers have requested and received certificates of conformity for a large number of HD diesel engine families which meet NTE limits, Supplemental Steady-state limits, and MAEL limits using existing HD diesel engine technology (*i.e.*, engines certified to the 4.0g/bhp-hr $NO_X$ standard, the 0.10 g/bhp-hr PM standard (0.05 for urban buses), and the 0.13 g/bhp-hr HC standard). These engine families are certified to NTE limits between 1.25 and 1.75 times the current $NO_X$ standard of 4.0 g/bhp-hr. In addition, they have certified to Supplemental Steady-state (SSS) limits between 1.0 and 1.5 times the current $NO_X$ standard, and 1.0 times the current standard for all other regulated emissions, including THC, PM, CO. While these engine families are not certified to the 2004 standards, they have used existing technology (*i.e.*, without the use of cooled EGR, VGT or Second generation electronic fuel injection systems) to meet NTE and SSS requirements similar to the requirements for 2007 HDDEs. As discussed previously, the application of cooled EGR systems (in combination with advanced fuel injection, turbomachinery, and electronic controls), can produce substantial emission reductions on current technology HD diesel engines over a broad range of operating conditions and therefore can be used to bring future engines into compliance with the supplemental requirements.

Fourth, in response to EPA's proposal, several manufacturers provided EPA with confidential business information (CBI) data regarding testing and development work they have performed in their attempt to meet the NTE at the standard levels contained in today's final rule. This CBI information has been summarized by EPA, and the summary information can be found in a technical memorandum to the docket.[46] This technical memorandum shows that some HD diesel engine manufacturers have been able to achieve the 2007 NTE limit over a broad range of the NTE control area, and over a range of temperatures and altitudes, though not over the entire expanded conditions established in today's action. The memorandum also highlights a number of technical issues manufacturers have encountered in their attempts to meet NTE limits at the levels contained in today's final rule over the entire NTE control area, and at the limits of the expanded conditions. The RIA and the Response to Comments document for this final rule contains EPA's analysis of these issues, including our assessment of the technologies which manufacturers will be able to use to overcome the technical issues they have encountered within the time frame provided by the rule.

In addition, we have determined the 2004 NMHC+$NO_X$ standard, and the 2007 supplemental requirements, are appropriate and feasible without changes in current on-highway diesel fuel formulation. The RIA for this final rule contains the information we have analyzed in making this decision, and the Response to Comments document contains our analysis of the comments we received on this issue. Only a brief summary will be presented here. The most detailed and relevant test program which examined the impact of diesel fuel formulation on 2004 technology engines was discussed in our proposal, and is repeated in the final RIA. The test program, a joint program sponsored by EPA, the American Petroleum Institute, and the Engine Manufacturers Association, showed that large changes in several key fuel parameters resulted in only modest improvements in NMHC+$NO_X$ emissions from a 2004 technology HD diesel engine. In addition, as discussed above, engine control technology alone can result in NMHC+$NO_X$ emission reductions sufficient to meet the 2004 and 2007 requirements. In response to our proposal, a number of engine manufacturers raised engine durability issues associated with the level of the proposed standards and current diesel fuel sulfur levels. As discussed in the RIA and the Response to Comments document, we believe these durability issues can be resolved thru cooled EGR temperature management combined with the selection of corrosive resistant material and bonding processes for the cooled EGR system.

*B. Emission Standards for Heavy-Duty Otto-cycle Vehicles and Engines*

We believe that the new standards contained in this final rule are the most stringent standards technologically feasible in the 2004/2005 time frame. We are finalizing three program options for Otto-cycle engines and vehicles, increasing the flexibility of the program and further enhancing program feasibility. Manufacturers may select the option that best fits with their product line and product planning.

This section discusses the current technologies being used by manufacturers and the key technology changes we believe will be available to meet the new vehicle and engine emission standards. Technological feasibility of the exhaust emission standards is presented first, followed by analyses for ORVR controls. Manufacturers will ultimately decide what is best for their individual product lines. It is likely, however, that manufacturers will employ technologies developed first for light-duty vehicles such as improved catalysts. Further information on the various available technologies and EPA's technological feasibility assessment is contained in the Technological Feasibility section of the Regulatory Impact Analysis and the Response to Comments.

1. Current Technologies

Gasoline engine manufacturers are already producing heavy-duty engines that achieve a level of emission control better than the control required by current standards. Table 7 provides a list of some key technologies currently being used for HD engine emissions control. Manufacturers have introduced improved systems as they have introduced new or revised engine models. These systems can provide very good emissions control and many engines are being certified to levels of less than half the current standards. Many of the technologies have been carried over from light-duty applications.

TABLE 7.—KEY TECHNOLOGIES FOR CURRENT HEAVY-DUTY OTTO-CYCLE ENGINES

| |
|---|
| Sequential fuel injection/electronic control |
| 3 way catalyst |
| pre and post catalyst heated oxygen sensors |
| Electronic EGR |

TABLE 7.—KEY TECHNOLOGIES FOR CURRENT HEAVY-DUTY OTTO-CYCLE ENGINES—Continued

| |
|---|
| Secondary air injection |
| Improved electronic control modules |

Improving fuel injection has been proven to be an effective and durable strategy for controlling emissions and reducing fuel consumption from gasoline engines. Improved fuel injection will result in better fuel atomization and a more homogeneous charge with less cylinder-to-cylinder and cycle-to-cycle variation of the air-fuel ratio. These engine performance benefits will increase as technology advances allow fuel to be injected with better atomization. Increased atomization of fuel promotes more rapid evaporation by increasing the surface area to mass ratio of the injected fuel. This results in a more homogeneous charge to the combustion chamber and more complete combustion. Currently, sequential multi-port fuel injection (SFI) is used in most, if not all, applications under the new standards because of its proven effectiveness.

One of the most effective means of reducing engine-out $NO_X$ emissions is EGR. By recirculating spent exhaust gases into the combustion chamber, the overall air-fuel mixture is diluted, lowering peak combustion temperatures and reducing $NO_X$. Exhaust gas recirculation is currently used on heavy-duty Otto-cycle engines as a $NO_X$ control strategy. Many manufacturers now use electronic EGR in place of mechanical back-pressure designs. By using electronic solenoids to open and close the EGR valve, the flow of EGR can be more precisely controlled.

EPA believes that the most promising overall emission control strategy for heavy-duty Otto-cycle engines is the combination of a three-way catalyst and closed loop electronic control of the air-fuel ratio. Control of the air-fuel ratio is important because the three-way catalyst is effective only if the air-fuel ratio is at a narrow band near stoichiometry. For example, for an 80 percent conversion efficiency of HC, CO, and $NO_X$ with a typical three-way catalyst, the air-fuel ratio must be maintained within a fraction of one percent of stoichiometry. During transient operation, this minimal variation cannot be maintained with open-loop control. For closed-loop control, the air-fuel ratio in the exhaust is measured by an oxygen sensor and used in a feedback loop. The throttle position, fuel injection, and spark timing can then be adjusted for given operating conditions to result in the

defeat devices in § 86.004–16 applies to these OBD requirements.

[46] Memorandum to EPA Air Docket A–98–32, "Summary of CBI Information regarding proposed HD Supplemental Test Requirements"

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proper air-fuel ratio in the exhaust. Most if not all engines have already been equipped with closed loop controls. Some engines have been equipped with catalysts that achieve efficiencies in excess of 90 percent. This is one key reason engine and vehicle certification levels are very low. In addition, electronic control can be used to adjust the air-fuel ratio and spark timing to adapt to lower engine temperatures, therefore controlling HC emissions during cold start operation.

All HD Otto-cycle engines are already equipped with three-way catalysts. Engines may be equipped with a variety of different catalyst sizes and configurations. Manufacturers choose catalysts to fit their needs for particular vehicles. Typically, catalyst systems are a single converter or two converters in series or in parallel. A converter is constructed of a substrate, washcoat, and catalytic material. The substrate may be metallic or ceramic with a flow-through design similar to a honeycomb. A high surface area coating, or washcoat, is used to provide a suitable surface for the catalytic material. Under high temperatures, the catalytic material will increase the rate of chemical reaction of the exhaust gas constituents.

Significant changes in catalyst formulation have been made in recent years and additional advances in these areas are still possible. Platinum, Palladium and Rhodium (Pt, Pd, and Rh) are the precious metals typically used in catalysts. Historically, platinum has been widely used. Today, palladium is being used much more widely due to its ability to withstand very high exhaust temperatures. In fact, some HD vehicles currently are equipped with palladium-only catalysts. Other catalysts contain all three metals or contain both palladium and rhodium. Some manufacturers have suggested that they will use Pd/Rh in lieu of tri-metal or conventional Pt/Rh catalysts for underfloor applications. Improvements in substrate and washcoat materials and technology have also significantly improved catalyst performance.

2. Chassis-Based Standards

We are finalizing standards that effectively extend nationwide the California LEV–I MDV standards in place prior to 2004. California began requiring some vehicles to meet LEV standards in 1998 and the phase-in will be complete in 2001. The technological feasibility assessment and technology projections are based primarily on the mix of technologies being used to achieve California LEV emission levels.

Of the anticipated changes, enhancements to the catalyst systems are expected to be most critical. Catalyst configurations are likely to continue to vary widely among the manufacturers because manufacturers must design the catalyst configurations to fit the vehicles. One potential change is that manufacturers may move the catalyst closer to the engine (close-coupled) or may place a small catalyst close to the engine followed by a larger underfloor catalyst. These designs provide lower cold start emissions because the catalyst is closer to the engine and warms up more quickly. Typically, the catalyst systems used in HD applications have a large total volume but with lower precious metal content per liter compared to light-duty catalyst systems. To meet the chassis-based standards, EPA projects an increase in overall catalyst system precious metal loading with no expected significant increases in total catalyst volume.

Calibration changes will also be important. The engine and catalyst systems must be calibrated to optimize the performance of the systems as a whole. Post catalyst oxygen sensors will allow further air fuel control. Manufacturers are moving to more powerful computer systems and EPA expects this trend to continue. Other technologies such as insulated exhaust systems may also be used in some cases to reduce cold start emissions.

HD vehicles in California have typically been certified with full life emission levels in the 0.3–0.5 g/mile range for $NO_X$ and the 0.1–0.3 g/mile range for NMOG. These levels are well within the LEV standards and provide manufacturers with a compliance cushion. EPA expects manufacturers to sell these vehicles or very similar vehicles nationwide to meet the new vehicle standards.

3. Engine-Based Standards

EPA believes that the engine standards contained in the three options are appropriate standards for HD Otto-cycle engines in the 2003–2005 time frame. Manufacturers may select the option that is the best fit for their product line and planning. Certification levels below 1.0 g/bhp-hr NMHC+$NO_X$ have been achieved on recently introduced engines of varied sizes. EPA believes that the standards being adopted are feasible and provide sufficient opportunity for manufacturers to maintain a reasonable compliance margin. Options 1 and 2 contain a standard of 1.5 g/bhp-hr which we believe is reasonably achievable in the 2003/2004 time frame. With the lead-time available for Option 3 (1.0 g/bhp-hr in 2005), we believe manufacturers will be able to modify systems to improve their performance and durability so that manufacturers can retain necessary compliance margins.

Currently, most engine families are certified with emission levels of less than half the standard. Manufacturers have begun to apply advanced system designs to their heavy-duty applications. Recently introduced engine families have been certified with emission levels below 1.0 g/bhp-hr combined NMHC+$NO_X$. These engines and systems feature precise air/fuel control and superior catalyst designs comparable to the catalyst systems being used in the California LEV I program. Based on industry input, we believe that manufacturers will continue the process of replacing their old engine families with advanced engines over the next several years. As new and more advanced engines and catalyst systems are introduced, EPA anticipates that they will be capable of achieving the engine standards finalized today.

Manufacturers commented that their current certification data represents average deterioration and therefore EPA cannot base the level of the new standards on current certification data. Manufacturers have stated on several occasions that they target emission certification levels of about half the standard, due to the potential for in-use deterioration of catalysts and oxygen sensors. Catalysts experience wide variations in exhaust temperature due to the wide and varied usage of vehicles in the field. Some vehicles may experience more severe in-use operation than is represented by the durability testing currently conducted for engine certification. Manufacturers have argued that EPA should not set new standards based on certification data because certification levels do not account for severe in-use deterioration.

We proposed standards not at the lowest current certification levels but at twice the lowest current certification levels in order to accommodate the need for compliance margins. EPA continues to believe that with the lead-time available (2005 model year implementation for Option 3, 2008 model year implementation for Options 1 and 2) and the flexibility provided by the ABT program manufacturers will be able to meet the 1.0 g/bhp-hr standard cost effectively. We understand that manufacturers in many cases will have to modify their emission control systems to provide necessary system durability and compliance margins. We believe the technologies are available and can be incorporated into current emission control systems in the time available. The RIA and Response to Comments document provide detailed information about Technological Feasibility.



We are finalizing early implementation options (Options 1 and 2) which allow manufacturers to meet an engine standard of 1.5 g/bhp-hr standard through model year 2007 if they sign up to meet the standard starting in either model year 2003 or 2004 (Manufacturers also must meet the vehicle-based standards for complete vehicles starting in 2004 model year under Option 2. These vehicle-based standards are optional under Option 1). We proposed a standard of 1.0 g/bhp-hr to begin in the 2004 model year but are not finalizing the 1.0 g/bhp-hr standards for the 2004 model year due to the lead time requirements of the Clean Air Act. We expected that the 1.0 g/bhp-hr standard would be technologically feasible for the 2004 model year for the reasons described in the proposed rule. Therefore, we also believe the optional 1.5 g/bhp-hr standard will be feasible in the 2004 model year. Any potential feasibility concerns for the 2004 model year are diminished relative to the proposal by the higher level of the standard (1.5 g compared to 1.0 g) and the potential opportunities for credit transfers from the vehicles to the engine ABT programs. Also, the 1.5 g/bhp-hr standard level is consistent with the recommendations of two manufacturers (Ford and Daimler Chrysler) providing comments on the rule. For these reasons, we expect that Option 2 is technologically feasible and that manufacturers will consider selecting the option.

Option 1 provides incentive for further acceleration of the new standards to the 2003 model year. We believe manufacturers may find this attractive for product planning reasons. The option provides further flexibility for manufacturers to choose between engine and chassis-based testing for the initial years of the program. Based on certification data and the availability of advanced technology, we believe Option 1 would be within reach for manufacturers even though manufacturers would have less lead time if they chose this option.

Catalyst systems with increased precious metal loading will be a critical hardware change for meeting the new engine standards. Optimizing and calibrating the catalyst and engine systems as a whole will also be important in achieving the standards. Increased use of air injection to control cold start emissions may also be needed, especially to reduce NMHC emissions during cold start operation. Also, improved EGR systems and retarded spark timing may be needed to reduce engine out $NO_X$ emission levels.

Catalyst system durability is a key issue in the feasibility of the standards. Historically, catalysts have deteriorated when exposed to very high temperatures and this has long been a concern for heavy-duty work vehicles. Manufacturers have often taken steps to protect catalysts by ensuring exhaust temperatures remain in an acceptable range. Catalyst technologies in use currently are much improved over the catalysts used only a few years ago. The improvements have come with the use of palladium, which has superior thermal stability, and through much improved washcoat technology. The catalysts have been shown to withstand temperatures typically experienced in HD applications. Manufacturers also continue to limit exhaust temperature extremes not only to protect catalyst systems but also to protect the engine.

To help address phase in concerns that could arise for manufacturers, EPA is finalizing a modified ABT program for engines, as described above. The ABT program can be an important tool for manufacturers in implementing a new standard. The program allows manufacturers to comply with the more stringent standards by introducing emission controls over a longer period of time, as opposed to during a single model year. Manufacturers plan their product introductions well in advance. With ABT, manufacturers can better manage their product lines so that the new standards don't interrupt their product introduction plans. Also, the program allows manufacturers to focus on higher sales volume vehicles first and use credits for low sales volume vehicles. EPA believes manufacturers have significant opportunity to earn credits in the pre-2004 (pre-2005 for Option 2) time frame.

We are finalizing three options that we believe will be viable for manufacturers to choose among. The three options provide a range of choices and offer manufacturers flexibility to fit the program with their product planning. As manufacturers continue with normal product plans between now and the start of the new standards, improved engines will continue to replace older models. The ABT program is available for manufacturers who have not completely changed over to new engine models by 2003/2004/2005. ABT provides manufacturers with the opportunity to earn credits prior to implementation and use the credits to continue to offer older engine models that have not yet been redesigned or retired by the start of the program.

4. Onboard Refueling Vapor Recovery

We believe that today's ORVR requirements are technologically feasible. In our previous ORVR rulemaking, we elected to apply ORVR requirements only to LDVs and LDTs (*see* 59 FR 16262, April 6, 1994). We chose at the time of the original rulemaking not to apply ORVR to HDVs because of concerns over secondary manufacturers, different fuel tank designs for larger HDVs than for LDVs and LDTs, and the fact that HDVs are certified under an engine-based testing program. These three issues are addressed in today's requirements by limiting ORVR to complete vehicles under 10,000 lbs GVWR. In the original ORVR rule we analyzed the potential application of ORVR to all HDVs. In that analysis we concluded that ORVR is technologically feasible for application to HDVs. We concluded that the systems which would be required for the covered subset of HDVs would be essentially the same as those for LDVs and LDTs. Such systems have already been successfully implemented on a portion of the LDV fleet. We are aware of no information on fundamental changes to HDV fuel system design which would cause it to believe that the original analysis is no longer valid.

ORVR systems must meet certain basic requirements in order to be effective at controlling refueling emissions. In general, they must provide for the routing of displaced vapors from the fuel tank to the engine rather than allowing them to escape uncontrolled to the atmosphere. This will likely be accomplished through the use of (1) a fillneck seal which prevents the vapors from escaping out the fillneck, (2) a fuel tank vent mechanism, to allow for the controlled routing of the vapors from the fuel tank, (3) vapor lines for transporting vapors, (4) a canister containing activated carbon to temporarily store the vapors, and 5) a purge system to regenerate the canister and route the vapors to the engine.

The major components of an ORVR system are already in place on HDVs in response to EPA's enhanced evaporative emission requirements (*see* 58 FR 16002, March 24, 1993). The primary differences between an enhanced evaporative control system and an ORVR system lie in the need to prevent vapors from escaping via the fillneck during a refueling event, and the fact that the vapor flow rates out of the fuel tank are much higher during refueling than during vehicle operation and diurnal events that enhanced evaporative systems are designed to control.

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*C. On-Board Diagnostics*

For Otto-cycle vehicles and engines, the most difficult monitors to implement are those for the catalyst system, the evaporative emission control system, and engine misfire. While each of these monitors poses technological challenges, none of them pose technological feasibility concerns. Rather than concerns over technological feasibility, EPA expects concerns, where today's rule applies to Otto-cycle vehicles and engines, over resource constraints for OBD calibration and associated verification testing.

EPA does not consider resource constraints a feasibility issue, nor does EPA believe the manufacturers will be constrained by today's OBD provisions. EPA believes this is true for both the Otto-cycle and the diesel OBD requirements. Since the 1996 model year, manufacturers have been equipping their vehicles and engines with OBD systems essentially identical to those being finalized today. This is true federally for all vehicles below 8500 pounds GVWR, and in California for all vehicles and engines below 14,000 pounds GVWR. The Agency believes that the four year lead time within today's final rulemaking matched with the OBD phase-in of 60/80/100 or 40/60/80/100 for the optional 2005 path, provides adequate lead time to apply the real world tested OBD system technology to their new sales fleet below 14,000 pounds GVWR without resource difficulties.

The transmission represents an area of potential concern for engine certified as opposed to chassis certified Otto-cycle and diesel engines. Typically, the engine manufacturer certifies and sells its engine, without an associated transmission, to a chassis manufacturer. The chassis manufacturer then "mates" the engine to a transmission purchased from a transmission manufacturer representing a third industry party. The final regulations require that chassis certified systems employ transmission diagnostics, but would not require that engine certified systems employ transmission diagnostics.

EPA believes that it is reasonable to expect that electronically controlled transmissions will be designed with some level of diagnostics to ensure proper operation. In addition, the Agency expects that those transmissions will utilize industry standard communication protocols allowing the transmission and the engine control computers to communicate, and allowing any transmission-related OBD codes to be downloaded via the standard diagnostic data link connector without engine manufacturer involvement.

Specific to diesel vehicles and engines, the Agency believes there are three areas of concern associated with technological feasibility: EGR monitoring; misfire monitoring; and, aftertreatment monitoring. With respect to EGR monitoring, the primary concern is expected to be the cooling componentry of a cooled EGR system. Other aspects of the EGR system, such as activation of the EGR valve, verification of proper flow, etc., can be accomplished as is already being done on Otto-cycle and diesel vehicles and engines under 14,000 pounds GVWR.[47] However, the cooling system presents a new challenge. The Agency believes monitoring of the cooling system is feasible by employing temperature sensors to ensure proper EGR cooling (heat transfer) given existing engine conditions, and coolant flow. If the cooling system becomes fouled, its ability to transfer heat from the exhaust gases to the coolant will be diminished and a resultant temperature inconsistency should be observed. Likewise, if coolant ceases to flow through the cooling system, a resultant temperature inconsistency should be observed. In fact, EPA believes that manufacturers will monitor EGR cooling system performance absent a requirement to do so. As discussed in Chapter 3 of the Regulatory Impact Analysis for today's final rule, manufacturers will be designing their EGR systems to cool the EGR to specific design targets to optimize engine performance and to minimize condensation of sulfuric acid. The only way to ensure that engine performance is being optimized is to monitor the performance of the EGR system and compare it to the specific design targets.

As for diesel misfire monitoring, the Agency believes that the final requirement is technologically feasible. In fact, manufacturers are certifying compliant diesel misfire monitors for sale in California on vehicles and engines under 14,000 pounds GVWR. We believe, like CARB, that diesel misfire is an air quality concern. Also, we believe that most users of diesel vehicles and engines under 14,000 pounds GVWR, particularly vehicles and engines less than 10,000 pounds GVWR, will not notice or may ignore diesel misfires. In contrast, we believe that most users of engines above 14,000 pounds GVWR will notice and not ignore misfires. We believe this is true because most of these engines are driven by professionals for whom minimizing fuel consumption and maximizing engine performance is a primary business concern. Conversely, most vehicles and engines under 14,000 pounds GVWR, particularly vehicles and engines under 10,000 pounds GVWR, are driven by individuals as personal transportation or for small business use. Such drivers are probably less familiar with the day-to-day operating characteristics of their engines and are probably less concerned with fuel consumption and engine performance.

With respect to diesel catalyst monitoring, we stated in the NPRM that we expected such monitoring to be conducted using temperature sensing devices to detect an exotherm within the aftertreatment device. We received several comments stating that diesel catalyst monitoring, especially for oxidation catalysts, is less critical to ensuring in-use compliance than monitoring of otto-cycle catalysts. They stated that diesel catalysts are relied upon to reduce emissions much less than their otto-cycle counterparts. They also stated that diesel catalysts have much lower conversion efficiencies and even complete failure of the catalyst is unlikely to result in emission levels in excess of the emissions threshold. They point out that diesel catalysts encounter much lower exhaust temperatures than otto-cycle engines and, as a result diesel catalysts are very durable, exhibiting very good catalyst performance at and beyond useful life. Limited data presented to the Agency from an engine manufacturer[48] supports these comments. The data suggests that for diesel oxidation catalysts, there is essentially no deterioration up to 120,000 miles. Therefore, in light of these comments and the above mentioned data, we feel it is appropriate at this time to not require diesel oxidation catalysts to be monitored.

There was also several comments expressing concern about the ability to monitor diesel reduction catalysts by the 2004 model year. We believe that diesel reduction catalysts may play an important role for future light-duty vehicle applications, especially in meeting Tier 2 emission standards. Information from catalyst technology literature[49] indicates that diesel

[47] Current EGR monitoring systems may use the existing intake air temperature sensor—opening the EGR valve should result in an increased intake air temperature. Systems may also use an intake air pressure sensor—opening the EGR valve will change the intake air pressure.

[48] Memo to EPA Air Docket A–98–32 from William Charmley dated October 12, 1999. A–98–32, II–B–06.

[49] Discussion on diesel lean $NO_X$ catalysts from www.DieselNet.com.



reduction catalysts are not nearly as durable as diesel oxidation catalysts. Thus, if a manufacturer were to rely on a reduction catalyst to meet today's final standards, it is imperative that they be monitored. We disagree with comments suggesting that technology needed to monitor diesel reduction catalysts will not be ready by the 2004 model year. We believe that manufacturers will be capable of monitoring diesel reduction catalysts to the required emissions threshold by using $NO_X$ sensor technology. Direct emission measurement has been identified as an important technology to achieve diesel engine closed-loop feedback control and to achieve after-treatment OBD. Researchers already have achieved promising results on a compact $NO_X$ sensor that is capable of measuring real-time $NO_X$ within 10% accuracy of laboratory-grade instruments under a wide range of operating conditions, including the temperature, pressure, and oxygen concentration typical of diesel engine exhaust. This breakthrough technology could be used for closed-loop control, and, because it can accurately measure $NO_X$ in the 100 ppm range, it would enable monitoring of $NO_X$ aftertreatment technologies.[50] The most recent of these papers (Kato *et al.*, 1999) provides an in depth discussion of the accuracy, repeatability, and durability of an on-board $NO_X$ sensor, as well as strategies for using the sensor for closed loop control and OBD monitoring of an active lean $NO_X$ absorber.

We also received several comments on the feasibility of monitoring diesel particulate traps. All of the commenters agreed that the sensor technology needed to measure PM concentrations in particulate traps does not exist. They also stated that back-pressure measurement is not capable of monitoring to an emissions threshold. However, it was generally agreed that back-pressure measurement could be used to determine significant failures in the trap, such as a crack. We believe these comments to be reasonable and have decided that for the final rule, manufacturers will not be required to monitor the particulate trap to an emission threshold, rather they must monitor for the complete failure of the device. We define complete failure as a sudden drop in exhaust back-pressure below that of a clean or unloaded trap under monitoring conditions specified by the manufacturer.

Note that, for diesel vehicles and engines, the Agency considers the EGR system to be the primary emission control system that will be used to meet the 2004 standards. This makes the EGR system somewhat analogous to the catalyst in an Otto-cycle emission control system. Because the Otto-cycle catalyst is responsible for roughly 90 percent of emission control, the Agency considers it imperative that the catalyst be monitored via OBD to ensure its continued performance. Likewise, the diesel EGR system is expected to account for roughly 50 percent of the emission control, making it perhaps the single largest contributor to emission control on a diesel engine. Therefore, the Agency considers it imperative that the EGR system be monitored on a diesel vehicle or engine. This is especially true given what the Agency considers to be a rather low cost associated with the requirement in this rule for monitoring this critical emission control system.[51] The Agency fully expects that manufacturers will employ OBD techniques on their diesel EGR systems to ensure satisfactory engine performance for their customers. Today's final rule simply ensures that the monitoring will occur, and it ensures that the monitoring will consider not only engine performance, but also emission performance.

## V. What Is the Economic Impact and Cost-Effectiveness for These Requirements?

*A. Emission Standards for Heavy-Duty Diesel Engines*

1. Expected Technologies

In assessing the economic impact of the 2004 emission standards and the 2007 supplemental requirements (including the standards finalized in 1997 and the standards finalized today), EPA has used a current best judgement of the combination of technologies that an engine manufacturer might use to meet the new standards at an acceptable cost. Full details of EPA's cost analysis, including information not presented here, can be found in the Regulatory Impact Analysis in the public docket. The costs presented here were developed assuming that heavy-duty diesel engines would need high-flow cooled EGR, combustion chamber optimization, improved electronic fuel injection, and variable geometry turbochargers (except for light heavy-duty engines). The costs also include testing costs necessary to comply with the OBD and not-to-exceed requirements. As was done in the proposal, EPA is projecting costs assuming that this testing to be completed in time for the 2004 model, even though the new requirements will not be mandatory until the 2007 model year. We believe that many manufacturers will choose (as a convenience) to incorporate the calibration changes necessary to comply with these requirements during the 2004 model year, rather than to modify their 2004 designs for the 2007 model year. Since this assumption means that manufacturers would incur the testing costs three years earlier than required, it results in a slight increase in the net present value of the costs, and is thus somewhat conservative.

The analysis also assumes that manufacturers would introduce the improved electronic fuel injection systems and variable geometry turbochargers for some engine models even without the more stringent standard in 2004. Both of these technologies will provide significant performance benefits both directly, and by allowing manufacturers to reduce the use of injection timing retard to comply with the current 4.0 g/bhp–hr $NO_X$ standard. The Agency believes that manufacturers may draw similar conclusions for using EGR on some of these same engines, however, as a conservative assumption, EPA is assuming that no EGR would be used to comply with the current 4.0 g/bhp-hr $NO_X$ standard. For this analysis EPA is also assuming that only 50 percent of the costs for the improved electronic fuel injection and the use of variable geometry turbochargers are attributable to emission control. This is because EPA believes that manufacturers would make these improvements for many of their engines, even in the absence of these emission standards, to reduce fuel consumption and improve engine performance, a similar approach was used in the 1997 final rule. The docket for this rulemaking contains additional information on this aspect of the Agency's cost analysis, including a cost sensitivity analysis regarding the fifty percent assumption.[52] In addition, the RIA contains an estimate of the impact this 50 percent assumption has on the

[50] *See* Kato N., H. Kurachi, Y. Hamedo: "Thick Film ZrO2 $NO_X$ Sensor for the Measurement of Low $NO_X$ Concentration", SAE paper 980170, pp. 76–77, 1998, and Kato N., N. Kokune, B. Lemire, T. Walde: "Long term stable $NO_X$ sensor with integrated in-connector control electronics", SAE paper 1999–01–0202, also see memorandum from Mr. Linc Wehrly to EPA Air Docket A–98–32 summarizing this paper.

[51] The Agency estimates $3 to $7 per vehicle/engine for the OBD requirements in today's rule, primarily for development and demonstration testing given that most of the diesel monitoring will be done by the manufacturer absent any requirement to do so.

[52] See EPA Air Docket A–98–32, "Analysis of Costs and Benefits of VGT and Improved Fuel Injection", EPA Memorandum from Charles Moulis

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HD diesel cost-effectiveness. We recognize this 50 percent assumption is not a precise approach to characterizing the costs which could otherwise be attributed to our baseline assumptions. However, developing a more precise estimate is problematic due to the complexity of market demand as well as other uncertainties.

2. Per Engine Costs

Estimated per engine cost increases are broken into purchase price and total life-cycle operating costs. The incremental purchase price for new engines is comprised of variable costs (for hardware and assembly time) and fixed costs (for R&D, retooling, and certification). Total operating costs include expected increases in maintenance. Cost estimates based on these projected technology packages represent an expected incremental cost of engines in the 2004 model year. Costs in subsequent years would be reduced by several factors, as described below. Separate projected costs were derived for engines used in three service classes of heavy-duty diesel engines. All costs are presented in 1999 dollars. Life-cycle costs have been discounted to the year of sale.

For the long term, EPA has identified various factors that would cause cost impacts to decrease over time. First, the analysis incorporates the expectation that manufacturers will apply ongoing research to making emission controls more effective and less costly over time. This expectation is similar to manufacturers' stated goal of decreasing their reliance on catalysts to meet emission standards in the future. Second, research in the costs of manufacturing has consistently shown that as manufacturers gain experience in production, they are able to apply innovations to simplify machining and assembly operations, use lower cost materials, and reduce the number or complexity of component parts. The analysis incorporates the effects of this learning curve by projecting that the variable costs of producing the low-emitting engines decreases by 20 percent starting with the third year of production (2006 model year) and by reducing variable costs again by 20 percent starting with the sixth year of production. Chapter 4, Section III in the RIA for this rule, as well as Chapter V, Section IV of the final RIA for the 1997 final rulemaking (*see* Docket A–95–27, Docket Item # V–B–01) contain additional discussion of the application of this learning curve. The 2004 HD diesel standards will require a fundamental change in technology for the engine manufacturers. Considering this change, we believe the learning curve concept is appropriate for this rulemaking.

Finally, since fixed costs (excluding in-use testing costs) are assumed to be recovered over a five-year period, these costs are not included in the analysis after the first five model years. Table 8 lists the projected schedule of costs for each category of vehicle over time.

TABLE 8.—PROJECTED DIESEL ENGINE COST AND PRICE INCREASES

[1999 dollars discounted to year of sale]

| Vehicle class | Model year | Purchase price increase | Life-cycle operating cost |
|---|---|---|---|
| Light heavy-duty | 2004 | $ 485 | $ 8 |
| | 2009 and later | 241 | 8 |
| Medium heavy-duty | 2004 | 657 | 49 |
| | 2009 and later | 275 | 49 |
| Heavy heavy-duty | 2004 | 803 | 104 |
| | 2009 and later | 368 | 104 |

3. Aggregate Costs to Society

The above analysis develops per-vehicle cost estimates for each vehicle class. Using current data for the size and characteristics of the heavy-duty vehicle fleet and making projections for the future, these costs can be used to estimate the total cost to the nation for the new emission standards in any year. The result of this analysis is a projected total cost starting at $479 million in 2004. Per-vehicle costs savings over time reduce projected costs to a minimum value of $248 million in 2009, after which the growth in truck population leads to an increase in costs to $325 million in 2020. Total costs for these years are presented by vehicle class in Table 9. The calculated total costs represent a combined estimate of fixed costs as they are allocated over fleet sales, variable costs assessed at the point of sale, and operating costs as they are incurred in each calendar year. Future sales are projected for years beyond 1995, sales are projected to increase each year by a constant value equal to 2 percent of the number of engines sold in 1995.

TABLE 9.—ESTIMATED ANNUAL COSTS FOR IMPROVED HEAVY-DUTY VEHICLES

[Millions of dollars]

| Category | 2004 | 2009 | 2020 |
|---|---|---|---|
| Light heavy-duty | 161 | 89 | 105 |
| Medium heavy-duty | 109 | 50 | 67 |
| Heavy heavy-duty | 210 | 110 | 153 |
| Total | 479 | 248 | 325 |

4. Cost-Effectiveness

EPA has estimated the per-vehicle cost-effectiveness (*i.e.*, the cost per ton of emission reduction) of the model year 2004 NMHC+$NO_X$ standards over the typical lifetime of heavy-duty diesel vehicles covered by today's rule. The RIA contains a more detailed discussion of the cost-effectiveness analyses. As described above in the cost section, the cost of complying with the standards will vary by model year. Therefore, the cost-effectiveness will also vary from model year to model year. For comparison purposes, the discounted costs, emission reductions and cost-effectiveness of the standards are shown in Table 10 for the same model years discussed above in the cost section. The cost-effectiveness results contained in Table 10 present the range in cost-effectiveness resulting from the two cost-effectiveness scenarios described above.



TABLE 10.—DISCOUNTED PER-VEHICLE COSTS, EMISSION REDUCTIONS AND COST-EFFECTIVENESS OF THE NMHC+$NO_X$ STANDARD

| Vehicle class | Model year | Discounted lifecycle costs | Discounted lifetime reductions (tons) | | Discounted cost effectiveness ($/ton) |
|---|---|---|---|---|---|
| | | | $NO_X$ | NMHC | |
| Light Heavy-Duty Diesel vehicles | 2004 | $493 | 0.232 | 0.018 | $1969 |
| | 2009 and later | 249 | | | 995 |
| Medium Heavy-Duty Diesel vehicles | 2004 | 706 | 0.764 | 0.067 | 849 |
| | 2009 and later | 323 | | | 389 |
| Heavy Heavy-Duty Diesel Vehicles | 2004 | 907 | 3.189 | 0.151 | 272 |
| | 2009 and later | 472 | | | 141 |
| Overall (For All Heavy-Duty Diesel Vehicles) | 2004 | | | | 474 |
| | 2009 and later | | | | 238 |

In addition to the benefits of reducing ozone within and transported into urban ozone nonattainment areas, the $NO_X$ reductions from the new engine standards are expected to have beneficial impacts with respect to crop damage, secondary particulate, acid deposition, eutrophication, visibility, and forest health. Due to the difficulty in accurately quantifying the monetary value of these societal benefits, the cost-effectiveness values presented do not assign any numerical value to these additional benefits.

*B. Emission Standards for Heavy-duty Otto-Cycle Vehicles and Engines*

This section contains a summary of our comprehensive analyses of the economic impacts of today's regulations for heavy-duty Otto-cycle vehicles and engines. The following separate factors are analyzed: (1) The technologies expected to be used and their projected rates of application; (2) the costs of these technology packages incremental to today's vehicle designs (presented on a per-vehicle basis separately for chassis and engine certified configurations); (3) the aggregate cost to society of the requirements and; (4) the cost-effectiveness of the regulations. More information on these analyses can be found in the Regulatory Impact Analysis contained in the docket for this rule.

1. Expected Technologies

The various technologies that could be used to comply with today's regulations were previously discussed in the section on technological feasibility. In developing costs for the associated technologies we looked at the current technology used on HDVs and compared that to the technology expected to be used to meet these regulations. The incremental costs difference was then calculated based on the differences between the current (*i.e.*, baseline) technology packages and those expected to be used in 2005. Table 11 shows both the current baseline and expected technologies for complete vehicles. Table 12 shows the current baseline and expected technologies for the engine-based standards. These tables only show the technologies which are expected to change in some way from their current design or be applied to different percentages of the fleet than they are currently. Technologies such as sequential multi-port fuel injection and EGR, while important to meeting the standards in this rule, are not expected to be fundamentally changed in their design, or be utilized in different percentages of the fleet than they currently are. Thus, such technologies are not included in these tables. However, in some cases the cost of optimizing such technologies is included in the cost estimates.

TABLE 11.—CURRENT AND EXPECTED TECHNOLOGY PACKAGES FOR COMPLETE VEHICLE STANDARDS

| Technology | Baseline Federal | Estimated 2005 |
|---|---|---|
| Catalysts | 60% single underfloor<br>40% dual underfloor | 13% single enhanced underfloor.<br>50% dual enhanced underfloor.<br>37% dual close-coupled and dual enhanced underfloor. |
| Oxygen sensors | 70% dual heated<br>10% triple heated<br>20% quadruple heated | 13% dual heated.<br>87% quadruple heated. |
| ECM | 50% 32 bit computers<br>50% 16 bit computers | 100% 32 bit computers. |
| Adaptive learning | 0% | 80%. |
| Individual cylinder A/F control | 0% | 10%. |
| Leak free exhaust | 90% | 100%. |
| Insulated exhaust | 0% | 40%. |
| Secondary air injection | 20% | 30%. |

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TABLE 11.—CURRENT AND EXPECTED TECHNOLOGY PACKAGES FOR COMPLETE VEHICLE STANDARDS—Continued

| Technology | Baseline Federal | Estimated 2005 |
|---|---|---|
| ORVR | 0% | 100%.[1] |

[1] ORVR only applies to complete vehicles 10,000 lbs GVWR and under, and is phased in, with 100% application to those vehicles in 2006.

TABLE 12.—CURRENT AND EXPECTED TECHNOLOGY PACKAGES FOR ENGINE-BASED STANDARDS

| Technology | Baseline Federal | Estimated 2005 |
|---|---|---|
| Catalysts | 60% single underfloor<br>40% dual underfloor | 13% single enhanced underfloor.<br>87% dual enhanced underfloor. |
| Oxygen sensors[1] | 70% dual heated<br>10% triple heated<br>20% four heated | 13% triple heated.<br>87% quadruple heated. |
| ECM | 50% 32 bit computers<br>50% 16 bit computers | 100% 32 bit computers. |
| Improved fuel control | 50% | 100%. |
| Secondary air injection | 20% | 50%. |

[1] OBD only applies to HDGEs under 14,000 lbs GVWR (approximately 60 percent of HDGEs).

2. Per Vehicle Costs

The costs of the projected technologies presented in the previous section are itemized and discussed in detail in the RIA. On a per-vehicle basis these costs are summarized in Table 13 They are presented in two components: Purchase price and operating cost. The operating costs only apply to ORVR-equipped vehicles and include the combined effects of a small fuel economy penalty due to the increased weight of the ORVR hardware, and a larger fuel economy benefit resulting from the vehicle being able to utilize fuel vapors that would otherwise escape to the atmosphere in the absence of ORVR.

We believe that the manufacturers will recover the fixed costs associated with research and development, tooling and certification over the first five years of production. Thus, these fixed costs are not included in the analysis after the first five model years. The fixed costs associated with the in-use testing programs will continue indefinitely. The projected per vehicle costs impacts are summarized in Table 13.

TABLE 13.—PROJECTED HDV PRICE AND OPERATING COST INCREASES

| Class | Model year | Purchase price increase | Lifetime operating cost |
|---|---|---|---|
| Complete Vehicles | 2005[1] | $285 | − $6 |
| | 2010 and later | 281 | − 6 |
| Engines | 2005[2] | 296 | |
| | 2010 and later | 256 | |

[1] This cost includes both ORVR and OBD, which are phased in, but which are not required on all complete vehicles until the 2006 model year for ORVR and the 2007 model year for OBD.
[2] This cost includes an OBD hardware cost. OBD requirements are phased in, but are not required on all engines under 14,000 lbs GVWR until the 2007 model year.

3. Aggregate Costs to Society

In addition to the per vehicle costs just described, we also calculated the aggregate cost to society. This was done by combining the per vehicle costs with assumed future sales of HDVs. The results of this analysis are summarized in Table 14. The recovery of most fixed costs results in slightly reduced costs beginning in 2010, after which costs begin to rise in accordance with projected increased sales. The aggregate costs represent a combined estimate of the fixed costs for research and development, tooling and certification as they are allocated over the first five years of sales, variable costs assessed at the point of sale, and operating costs (primarily in the form of fuel cost savings) for ORVR-equipped vehicles (calculated to net present value and applied at the point of sale). Future sales are projected for years beyond 1996, sales are projected to increase each year by a constant value equal to 2 percent of the number of engines sold in 1996.

TABLE 14.—AGGREGATE COST TO SOCIETY OF THE HEAVY-DUTY OTTO-CYCLE REQUIREMENTS

| Year | Cost ($million) |
|---|---|
| 2005 | $110 |
| 2010 | 124 |
| 2020 | 146 |

4. Cost-effectiveness

We estimated the per-vehicle cost-effectiveness (i.e., the cost per ton of emission reduction) of the NMHC plus $NO_X$ exhaust emission standards over the lifetime of typical heavy-duty gasoline vehicles. The RIA contains a more detailed discussion of the cost-effectiveness analysis.

The cost of complying with the standards will vary by vehicle category (*i.e.*, a complete Class 2b heavy-duty gasoline vehicle, a complete Class 3 heavy-duty gasoline vehicle, or an incomplete heavy-duty gasoline vehicle) and model year. Therefore, the lifetime cost-effectiveness of the standards will vary by model year. For comparison purposes, the discounted lifetime costs, emission reductions (in short tons), and cost-effectiveness of the standards are shown in Table 15 for the same model years discussed in the per vehicle costs section. This table does not contain the costs and benefits of the ORVR requirements, which are analyzed separately.



TABLE 15.—COST-EFFECTIVENESS OF THE STANDARDS FOR HEAVY-DUTY GASOLINE VEHICLES

| HDGV | Year of production | Discounted lifetime cost | Discounted lifetime NMHC+$NO_X$ reduction | Discounted lifetime cost-effectiveness |
|---|---|---|---|---|
| Class 2B Complete | 1 | $274 | 0.43 tons | $635/ton |
| | 6 and later | 273 | | 633/ton |
| Class 3 Complete | 1 | 274 | 0.46 tons | 596/ton |
| | 6 and later | 273 | | 594/ton |
| Incomplete HDGV | 1 | 296 | 0.52 tons | 565/ton |
| | 6 and later | 256 | | 489/ton |
| All HDGVs | 1 | 280 | 0.46 tons | 612/ton |
| | 6 and later | 268 | | 586/ton |

We also separately estimated the cost-effectiveness of the ORVR requirements for Class 2B heavy-duty gasoline vehicles. Table 16 contains the discounted lifetime cost-effectiveness of the ORVR requirements.

TABLE 16.—DISCOUNTED, LIFETIME COST-EFFECTIVENESS OF THE ORVR REQUIREMENTS FOR CLASS 2B HEAVY-DUTY GASOLINE VEHICLES

| Year of production | Discounted lifetime cost | Discounted lifetime NMHC + $NO_X$ emission reductions | Discounted lifetime cost-effectiveness |
|---|---|---|---|
| 1 | $5 | 0.035 tons | $141/ton |
| 6 | 2 | 0.035 tons | 56/ton |

In addition to the benefits of reducing ozone within and transported into urban ozone nonattainment areas, the $NO_X$ emission reductions from the heavy-duty gasoline vehicle and engine standards are expected to have beneficial impacts with respect to crop damage, secondary particulate, acid deposition, eutrophication, visibility, and forest health. The cost-effectiveness values presented above do not assign any numerical value to these additional benefits. Based on existing studies that have estimated the value of such benefits in the past, we believe that the actual monetary value of the multiple environmental and public health benefits that would be produced by the $NO_X$ reductions under this rule will be greater than the estimated compliance costs.

**VI. How Has EPA Responded to Input From the Public?**

A wide variety of interested parties participated in the rulemaking process that culminates with this final rule. The formal comment period and public hearing associated with the NPRM provided additional opportunities for public input. EPA also met with a variety of stakeholders, including environmental and public health organizations, auto and heavy-duty engine and vehicle company representatives, emission control equipment manufacturers, and states at various points in the process.

We have prepared a detailed Response to Comments document that describes the comments received on the NPRM and presents our response to each of these comments. The Response to Comments document is available in the docket for this rule and from the Office of Mobile Sources internet home page. Comments and our responses are also included throughout this preamble for several key issues where relevant to the discussion of the final rule provisions.

**VII. What Administrative Requirements Apply to This Final Rule?**

*A. Compliance With Executive Order 12866*

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency is required to determine whether this regulatory action would be "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The order defines a "significant regulatory action" as any regulatory action that is likely to result in a rule that may:

- Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or,
- Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, EPA has determined that this final rule is a "significant regulatory action" because the engine and vehicle standards, supplemental test requirements, on-board diagnostic requirements, and other regulatory provisions, if implemented, would have an annual effect on the economy in excess of $100 million. Accordingly, a Final Regulatory Impact Analysis (RIA) has been prepared and is available in the docket for this rulemaking and at the internet address listed under **ADDRESSES** above. This action was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12866. Any written comments from OMB on today's action and any responses from EPA to OMB comments are in the public docket for this rulemaking.

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*B. Compliance With the Regulatory Flexibility Act: Impact on Small Entities*

The Regulatory Flexibility Act (5 U.S.C. 601) requires federal agencies to consider potential impacts of federal regulations upon small entities. If a preliminary analysis indicates that a regulation would have a significant adverse economic impact on a substantial number of small entities, then EPA must prepare a regulatory flexibility analysis.

The Agency has determined that this action would not have a significant adverse impact on a substantial number of small entities, and thus it is not necessary to prepare a regulatory flexibility analysis in connection with this rule. Only two small entities are known to be affected by this rule. The entities are small businesses that certify alternative fuel engines or vehicles, either newly manufactured or modified from previously certified gasoline versions. EPA contacted these businesses and discussed the proposed rule with them, identifying their concerns. The concerns they expressed prompted revisions to the rule, which are addressed elsewhere in the preamble. Rule revisions finalized by EPA are intended to minimize adverse impacts on the small entities affected by the rule.

*C. Compliance With the Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "federal mandates" that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more for any single year. Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative that is not the least costly, most cost-effective, or least burdensome alternative if EPA provides an explanation in the final rule of why such an alternative was adopted.

Before we establish any regulatory requirement that may significantly or uniquely affect small governments, including tribal governments, we must develop a small government plan pursuant to section 203 of the UMRA. Such a plan must provide for notifying potentially affected small governments, and enabling officials of affected small governments to have meaningful and timely input in the development of our regulatory proposals with significant federal intergovernmental mandates. The plan must also provide for informing, educating, and advising small governments on compliance with the regulatory requirements.

This rule contains no federal mandates for state, local, or tribal governments as defined by the provisions of Title II of the UMRA. The rule imposes no enforceable duties on any of these governmental entities. Nothing in the rule would significantly or uniquely affect small governments.

EPA has determined that this rule contains federal mandates that may result in expenditures of more than $100 million to the private sector in any single year. EPA believes that today's final rule represents the least costly, most cost-effective approach to achieve the air quality goals of the rule. The cost-benefit analysis required by the UMRA is discussed in Section IV.D, above and in the Draft RIA. See the "Compliance with Executive Order 12866" section in today's preamble (VII.A) for further information regarding these analyses.

As explained in section III.A.1 of this preamble, the 2004 heavy-duty diesel FTP standards reaffirmed in this final rule were established in the Agency's 1997 final rulemaking for heavy-duty diesels, and the 1997 rulemaking laid the ground work for this proposal. Today's final rule for HD diesel engines is simply a review of the appropriateness under the Clean Air Act of the standard finalized in 1997, including the need for and technical and economic feasibility of the standard based on information available in 1999. Therefore, today's final rule does not contain any further analysis of other, alternative FTP standards for heavy-duty diesel engines. The reader is directed to the rulemaking record for the 1997 rule, contained in EPA Air Docket A–95–27, for information on alternatives the Agency considered during that rulemaking.

The goal of EPA's heavy-duty compliance program is to ensure real-world emissions control over a broad range of in-use conditions, rather than just controlling emissions under certain laboratory conditions. The 1997 final rule that put new standards in place for heavy-duty diesel engines was based on the expectation that emission benefits would accrue from a broad range of driving conditions. The 1997 rule's projected emissions benefit, expected control technology, cost, and cost-effectiveness were derived with the belief that the engines would be meeting the standards in-use under typical operating conditions. Since 1997 it has become clear that manufacturers have substantially increased emissions during operation outside the bounds of the current federal test procedure.

In order to adequately control these "off-cycle" emissions, EPA evaluated whether new standards and test procedures were necessary or whether such emissions could be adequately addressed by continued reliance on the defeat device prohibition in addition to the FTP to ensure the emission reductions predicted by the standards are met during actual in-use operation. We evaluate in this final rule the necessity of the new supplemental requirements and explain the many significant drawbacks to relying wholly on the defeat device definition. In addition, given the level of emissions from heavy-duty diesel emissions prior to the consent decrees, the supplemental requirements achieve very large emission reductions and are very cost-effective requirements.

In addition, we considered and requested comment on alternatives for several aspects of the supplemental requirements, and in response to comments we have made a number of changes in this rule. For example, we requested comment on the appropriate ambient conditions (temperature, humidity, altitude) which should apply to the supplemental requirements, and in this rule we establish more limited conditions than were proposed.

Section 202(a)(3) of the Clean Air Act requires that EPA must set emission standards for heavy-duty engines to reflect the greatest degree of emission reduction achievable through the application of technology which EPA determines will be available for the model year to which the standards apply, giving appropriate consideration to cost, energy, and safety factors associated with the application of such technology. As indicated above, EPA believes the standards reflect the greatest degree of emission reduction achievable by HD Otto-cycle engines in the 2004 model year and are cost-effective. EPA requested comment on the standards and alternatives.



The proposed rule included an analysis of alternative standards for HD Otto-cycle engines. We requested comment on a range of standards for HD Otto-cycle engines, and described in detail the alternative standard proposed by the engine manufacturers (see Chapter 3, Section III(H) of the RIA). As a consequence of discussions with engine manufacturers the final rule contains several options that manufacturers may select from, based on their own corporate requirements and issues. These options allow greater emission reductions to be achieved while providing a menu of emission reduction programs, thus allowing each manufacturer to select the least costly set of requirements based on their own individualized set of needs.

*D. Compliance With the Paperwork Reduction Act*

The information collection requirements in this final rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1851.02) and a copy may be obtained from Sandy Farmer by mail at U.S. Environmental Protection Agency (2822), Office of Environmental Information, Collection Strategies Division, 1200 Pennsylvania Avenue, NW, Washington, DC 20460, by email at farmer.sandy@epamail.epa.gov, or by calling (202) 260–2740. A copy may also be downloaded off the internet at *http://www.epa.gov/icr*. The following ICR document has been prepared by EPA:

| | |
|---|---|
| EPA ICR # 1851.02. | Title: Non-road Compression-Ignition Engine At or Above 50 Kilowatts and On-road Heavy Duty Engine Application for Emission Certification, and Participation in the Averaging, Banking and Trading Program |

The Agency will collect information related to certification results. This information will be used to ensure compliance with and enforce the provisions in this rule. Responses will be mandatory in order to complete the certification process. Section 208(a) of the Clean Air Act requires that manufacturers provide information the Administrator may reasonably require to determine compliance with the regulations; submission of the information is therefore mandatory. EPA will consider confidential all information meeting the requirements of section 208(c) of the Clean Air Act.

This collection of information affects an estimated 66 respondents with a total of 459 responses per year and a total hour burden of 65,859 hours, for an estimated 143 hours per response, with estimated total annualized costs of $1,599,684 per year. The hours and annual cost of information collection activities by a given manufacturer depends on manufacturer-specific variables, such as the number of engine families, production changes, emissions defects, and so forth. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, Collection Strategies Division, Office of Environmental Information, U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Ave., NW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW., Washington, DC 20503, marked "Attention: Desk Officer for EPA." Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after October 6, 2000, a comment to OMB is best assured of having its full effect if OMB receives it by November 6, 2000.

*E. Compliance With Executive Order 13045: Children's Health Protection*

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. Today's final rule falls into that category only in part: risk considerations may be taken into account only to the extent the Agency may consider the inherent toxicity of a regulated pollutant, and any differential impacts such a pollutant may have on children's health, in deciding how to take cost and other relevant factors into consideration.

This rulemaking will achieve important reductions of various emissions from heavy-duty trucks, primarily emissions of $NO_X$. The rulemaking also addresses NMHC and PM. These pollutants raise concerns about a disproportionately greater effect on children's health, such as impacts from ozone, PM, and certain toxic air pollutants. See section II of this rule and the RIA for a further discussion of these issues.

The effects of ozone and PM on children's health was addressed in detail in EPA's rulemaking to establish these NAAQS, and we are not revisiting those issues here. We also believe the emissions reductions from the strategies in today's rule will reduce air toxics and the related impacts on children's health. We are addressing the issues raised by air toxics from motor vehicles and their fuels in a separate rulemaking, pursuant to section 202(l)(2) of the Act. Our proposed rule, which was signed July 14, 2000, proposes a list of 21 mobile source air toxics as well as standards to limit the amount of benzene in gasoline. It also sets out a Technical Analysis Plan whereby EPA will continue to conduct research and analysis and to revisit the need for and appropriateness of additional controls on toxic emissions from motor vehicles and fuels in a 2004 rulemaking.

In this final rule we have evaluated several regulatory strategies for reductions in these emissions from heavy-duty engines. For the reasons

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described in this preamble, we believe that the strategies in today's rule are preferable under the Clean Air Act to other potentially effective and reasonably feasible alternatives considered by the Agency, for purposes of reducing emissions from these sources as a way of helping areas achieve and maintain the NAAQS for ozone and PM. Moreover, consistent with the Clean Air Act, the levels of control in today's rule are designed to achieve the greatest degree of reduction of emissions of these pollutants achievable through technology that will be available, taking cost and other factors into consideration.

*F. Compliance With Executive Order 13084: Consultation and Coordination With Indian Tribal Governments*

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian Tribal governments, and that imposes substantial direct compliance costs on those communities, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian Tribal governments. The engine and vehicle standards, supplemental test requirements, on-board diagnostic requirements, and other related requirements for private businesses in today's rule would have national applicability, and thus would not uniquely affect the communities of Indian Tribal Governments. Further, no circumstances specific to such communities exist that would cause an impact on these communities beyond those discussed in the other sections of today's document. Thus, EPA's conclusions regarding the impacts from the implementation of today's rule discussed in the other sections of this preamble are equally applicable to the communities of Indian Tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

*G. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Section 12(d) of Public Law 104–113, directs EPA to use voluntary consensus standards in its regulatory activities unless it would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rule references technical standards adopted by the Agency through previous rulemakings. No new technical standards are established in today's rule. The standards referenced in today's rule involve the measurement of gasoline fuel parameters and motor vehicle emissions. The measurement standards for gasoline fuel parameters referenced in today's rule are all voluntary consensus standards. The motor vehicle emissions measurement standards referenced in today's rule are government-unique standards that were developed by the Agency through previous rulemakings. These standards have served the Agency's emissions control goals well since their implementation and have been well accepted by industry. EPA is not aware of any voluntary consensus standards for the measurement of motor vehicle emissions. Therefore, the Agency is using the existing EPA-developed standards found in 40 CFR Part 86 for the measurement of motor vehicle emissions.

*H. Compliance With Executive Order 13132 (Federalism)*

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under Section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

Section 4 of the Executive Order contains additional requirements for rules that preempt State or local law, even if those rules do not have federalism implications (*i.e.*, the rules will not have substantial direct effects on the States, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government). Those requirements include providing all affected State and local officials notice and an opportunity for appropriate participation in the development of the regulation. If the preemption is not based on express or implied statutory authority, EPA also must consult, to the extent practicable, with appropriate State and local officials regarding the conflict between State law and Federally protected interests within the agency's area of regulatory responsibility.

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule adopts national emissions standards for certain categories of motor vehicles. The requirements of the rule will be enforced by the federal government at the national level. Thus, the requirements of section 6 of the Executive Order do not apply to this rule. Although section 6 of Executive Order 13132 does not apply to this rule, EPA did consult with State and local officials in developing this rule. In addition, EPA provided state and local officials an opportunity to comment on the proposed regulations. A summary of concerns raised by commenters, including state and local commenters, and EPA's response to those concerns, is found in the Response to Comments document for this rulemaking.

Although this rule was proposed before the November 2, 1999 effective date of Executive Order 13132, EPA provided State and local officials notice and an opportunity for appropriate participation when it published the proposed rule, as described above. Thus, EPA has complied with the requirements of section 4 of the Executive Order.

*I. Compliance With the Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is a "major rule" as defined by 5 U.S.C. 804(2).

## VIII. What Is EPA's Statutory Authority for This Action?

Section 202(a)(3) authorizes EPA to establish emission standards for heavy duty vehicles and engines.[53] These standards are to reflect the greatest degree of emission reduction achievable through the application of technology which EPA determines will be available for the model year to which the standards apply. EPA is to give appropriate consideration to cost, energy, and safety factors associated with the application of such technology. EPA may revise such regulations on the basis of information concerning the effects of emissions from these engines and vehicles and from other sources of mobile source related pollutants on the public health and welfare. Section 202(a)(3)(C) requires that promulgated standards apply for no less than three years and go into effect no less than 4 years after promulgation. Section 202(m) authorizes regulations requiring installation of on-board diagnostics systems for light-duty and heavy-duty vehicles and engines. Pursuant to sections 202(a)(1) and 202(d), these emission standards must be met throughout the entire useful life of the engine or vehicle as determined by EPA's regulations. If the Administrator determines that a substantial number of vehicles do not conform to emission standards when in actual use throughout their useful lives, section 207(c) of the Act requires EPA to make a determination of nonconformity. Section 208 of the Act requires manufacturers to perform tests (where not otherwise reasonably available), make reports and provide information the Administrator may reasonably require to determine whether the manufacturer is acting in compliance with the Act and regulations thereunder. The remainder of section 202, as well as sections 203, 206, 207, 208, and 301, provide additional authority for promulgation of these regulations.

[53] 42 U.S.C. 7521(a)(3).

**List of Subjects**

*40 CFR Part 85*

Environmental projection, Administrative practice and procedure, Confidential business information, Imports, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements, Research, Warranties.

*40 CFR Part 86*

Administrative practice and procedure, Confidential business information, Incorporation by reference, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: July 31, 2000.

**Carol M. Browner,**

*Administrator.*

For the reasons set forth in the preamble, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

## PART 85—CONTROL OF AIR POLLUTION FROM MOBILE SOURCES

1. The authority citation for part 85 is revised to read as follows:

**Authority:** 42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7543, 7547, 7554, and 7601(a).

**Subpart F—[Amended]**

2. Section 85.501 is revised to read as follows:

**§ 85.501 General applicability.**

(a) Sections 85.502 through 85.505 are applicable to aftermarket conversion systems for which an enforcement exemption is sought from the tampering prohibitions contained in section 203 of the Act.

(b) References in this subpart to engine families and emission control systems shall be deemed to apply to durability groups and test groups as applicable for manufacturers certifying new light-duty vehicles, light-duty trucks, and Otto-cycle complete heavy-duty vehicles under the provisions of 40 CFR part 86, subpart S.

**Subpart P—[Amended]**

3. Section 85.1501 is amended by revising paragraph (c), to read as follows:

**§ 85.1501 Applicability.**

* * * * *

(c) References in this subpart to engine families and emission control systems shall be deemed to apply to durability groups and test groups as applicable for manufacturers certifying new light-duty vehicles, light-duty trucks, and Otto-cycle complete heavy-duty vehicles under the provisions of 40 CFR part 86, subpart S.

**Subpart R—[Amended]**

4. Section 85.1701 is amended by revising paragraph (c), to read as follows:

**§ 85.1701 General applicability.**

* * * * *

(c) References in this subpart to engine families and emission control systems shall be deemed to apply to durability groups and test groups as applicable for manufacturers certifying new light-duty vehicles, light-duty trucks, and Otto-cycle complete heavy-duty vehicles under the provisions of 40 CFR part 86, subpart S.

## PART 86—CONTROL OF EMISSIONS FROM NEW AND IN-USE HIGHWAY VEHICLES AND ENGINES

5. The authority citation for part 86 continues to read as follows:

**Authority:** 42 U.S.C. 7401–7671q.

6. Section 86.1 is amended by adding entries in alphanumeric order to the table in paragraphs (b)(2) and (b)(5), to read as follows:

**§ 86.1 Reference materials.**

* * * * *

(b) * * *

(2) * * *

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| Document No. and name | 40 CFR part 86 reference |
|---|---|
| . . . . . | . |
| SAE J1939–11, December 1994, Physical Layer-250K bits/s, Shielded Twisted Pair | 86.005–17; 86.1806–05 |
| SAE J1939–13, July 1999, Off-Board Diagnostic Connector | 86.005–17; 86.1806–05 |
| SAE J1939–21, July 1994, Data Link Layer | 86.005–17; 86.1806–05 |
| . . . . . | . |
| SAE J1939–31, December 1997, Network Layer | 86.005–17; 86.1806–05 |
| SAE J1939–71, May 1996, Vehicle Application Layer | 86.005–17; 86.1806–05 |
| SAE J1939–73, February 1996, Application Layer-Diagnostics | 86.005–17; 86.1806–05 |
| . . . . . | . |
| SAE J1939–81, July 1997, Recommended Practice for Serial Control and Communications Vehicle Network—Part 81—Network Management. | 86.005–17; 86.1806–05 |
| . . . . . | . |

(5) * * *

| Document No. and name | 40 CFR part 86 reference |
|---|---|
| . . . . . | . |
| ISO 14230–4:2000(E), June 1, 2000 Road Vehicles—Diagnostic Systems—Keyword Protocol 2000—Part 4: Requirements for emission-related systems. | 86.005–17; 86.1806–05 |

**Subpart A—[Amended]**

7. A new § 86.000–15 is added to subpart A to read as follows:

**§ 86.000–15 $NO_X$ and particulate averaging, trading, and banking for heavy-duty engines.**

Section 86.000–15 includes text that specifies requirements that differ from § 86.094–15 or § 86.098–15. Where a paragraph in § 86.094–15 or § 86.098–15 is identical and applicable to § 86.000–15, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.094–15." or "[Reserved]. For guidance see § 86.098–15.".

(a)(1) Heavy-duty engines eligible for $NO_X$ and particulate averaging, trading and banking programs are described in the applicable emission standards sections in this subpart. All heavy-duty engine families which include any engines labeled for use in clean-fuel vehicles as specified in 40 CFR part 88 are not eligible for these programs. For manufacturers selecting Option 1 Otto-cycle engine standards contained in § 86.005–10(f)(1), the ABT program requirements in § 86.004–15 apply for 2003 model year Otto-cycle engines, rather than the provisions contained in this § 86.000–15. Participation in these programs is voluntary.

(a)(2) through (b) [Reserved] For guidance see § 86.094–15.

(c) [Reserved] For guidance see § 86.098–15.

(d) through (i) [Reserved] For guidance see § 86.094–15.

(j) *Optional program for early banking for diesel engines.* Provisions set forth in §§ 86.094–15 (a), (b), (d) through (i), and 86.098–15 (c) apply except as specifically stated otherwise in § 86.098–15 (j)(1) through (j)(3)(iii).

(j)(1) through (j)(3)(iii) [Reserved] For guidance see § 86.098–15.

(k) *Optional program for early banking for Otto-cycle engines.* Provisions set forth in §§ 86.094–15(a), (b), (d) through (i), and 86.098–15(c) apply except as specifically stated otherwise in this paragraph (k).

(1) To be eligible for the optional program described in this paragraph (k), the following must apply:

(i) Credits are generated from Otto-cycle heavy-duty engines which have been certified using certification durability demonstration procedures which meet the criteria contained in § 86.004–26 and with deterioration factors calculated in accordance with § 86.004–28.

(ii) During certification, the manufacturer shall declare its intent to include specific engine families in the program described in this paragraph. Separate declarations are required for each program and no engine families may be included in both programs in the same model year.

(2) *Credit generation and use.* (i) Credits shall only be generated by 2000 and later model year engine families.

(ii) Except as provided in paragraph (k)(2)(iii) of this section, credits generated under this paragraph (k) may only be used for 2003 and later model year heavy-duty Otto-cycle engines subject to $NO_X$ or $NO_X$ plus NMHC standards more stringent than 4.0 g/bhp-hr. When used with 2003 and later model year engines, $NO_X$ credits may be used to meet an applicable $NO_X$ plus NMHC standard, except as otherwise provided in § 86.004–10(a)(1)(i)(C).

(iii) If a manufacturer chooses to use credits generated under this paragraph (k) for engine families subject to the $NO_X$ standard contained in § 86.098–10 (4.0 g/bhp-hr) the averaging, trading, and banking of such credits shall be governed by the program provided in §§ 86.094–15(a), (b), (d) through (i) and 86.098–15(c) and shall be subject to all discounting, credit life limits and all other provisions contained in §§ 86.094–15(a), (b), (d) through (i) and 86.098–15(c). In the case where the manufacturer can demonstrate that the credits were discounted under the program provided in this paragraph (k), that discount may be accounted for in the calculation of credits described in § 86.098–15(c).

(iv) For $NO_X$ credits generated under this paragraph (k), a Std value of 2.0 grams per brake horsepower-hour shall be used in place of the current and applicable $NO_X$ standard in the credit availability equation in § 86.098–15(c)(1).



(3) *Program flexibilities.* (i) $NO_X$ credits that are banked under this paragraph (k) and not used as provided by paragraph (k)(2)(iii) of this section may be used without being forfeited due to credit age. The requirement in this paragraph (k)(3) applies instead of the requirements in § 86.094–15(f)(2)(i).

(ii) There are no regional category restraints for averaging, trading, and banking of credits generated under the program described in this paragraph (k) except if they are used under paragraph (k)(2)(iii) of this section. This applies instead of the regional category provisions described in the introductory text of § 86.094–15(d) and (e).

(iii) *Credit discounting.* (A) For $NO_X$ credits generated under this paragraph (k) from engine families with $NO_X$ FELs greater than 1.0 grams per brake horsepower-hour for oxides of nitrogen, a Discount value of 0.9 shall be used instead of 0.8 in the credit availability equation in § 86.098–15(c)(1).

(B) For $NO_X$ credits generated under this paragraph (k) from engine families with $NO_X$ FELs less than or equal to 1.0 grams per brake horsepower-hour for oxides of nitrogen, a Discount value of 1.0 shall be used in place of 0.8 in the credit availability equation in § 86.098–15 (c)(1).

(4) *2003 model year.* Manufacturers selecting Option 1, described in § 86.005–10(f)(1), may not generate or bank early credits under this paragraph (k) for the 2003 model year. Credit generation and banking provisions contained in § 86.004–15 apply for the 2003 model year.

(l) *Credit apportionment.* At the manufacturer's option, credits generated under the provisions described in paragraph (j) or (k) of this section may be sold to or otherwise provided to another party for use in programs other than the averaging, trading and banking program described in this section.

(1) The manufacturer shall pre-identify two emission levels per engine family for the purposes of credit apportionment. One emission level shall be the FEL and the other shall be the level of the standard that the engine family is required to certify to under § 86.098–10 or § 86.098–11, as applicable. For each engine family, the manufacturer may report engine sales in two categories, "ABT-only credits" and "non-manufacturer-owned credits."

(i) For engine sales reported as "ABT-only credits", the credits generated must be used solely in the ABT program described in this section.

(ii) The engine manufacturer may declare a portion of engine sales "non-manufacturer-owned credits" and this portion of the credits generated between the standard and the FEL, based on the calculation in § 86.098–15(c)(1), would belong to another party. For ABT, the manufacturer may not generate any credits for the engine sales reported as "non-manufacturer-owned credits." Engines reported as "non-manufacturer-owned credits" shall comply with the FEL and the requirements of the ABT program in all other respects.

(2) Only manufacturer-owned credits reported as "ABT-only credits" shall be used in the averaging, trading, and banking provisions described in this section.

(3) Credits shall not be double-counted. Credits used in the ABT program may not be provided to an engine purchaser for use in another program.

(4) Manufacturers shall determine and state the number of engines sold as "ABT-only credits" and "non-manufacturer-owned credits" in the end-of-model year reports required under § 86.098–23.

8. Section 86.000–16 is amended by removing paragraphs (a) through (d) introductory text, adding paragraphs (a), (b), (c), and (d) introductory text, and revising paragraph (d)(1), to read as follows:

**§ 86.000–16 Prohibition of defeat devices.**

* * * * *

(a) No new light-duty vehicle, light-duty truck, heavy-duty vehicle, or heavy-duty engine shall be equipped with a defeat device.

(b) The Administrator may test or require testing on any vehicle or engine at a designated location, using driving cycles and conditions which may reasonably be expected to be encountered in normal operation and use, for the purpose of investigating a potential defeat device.

(c) [Reserved]. For guidance see § 86.094–16.

(d) For vehicle and engine designs designated by the Administrator to be investigated for possible defeat devices:

(1) The manufacturer must show to the satisfaction of the Administrator that the vehicle or engine design does not incorporate strategies that unnecessarily reduce emission control effectiveness exhibited during the Federal emissions test procedure when the vehicle or engine is operated under conditions which may reasonably be expected to be encountered in normal operation and use.

* * * * *

9. Section 86.001–1 is amended by revising paragraph (b) to read as follows:

**§ 86.001–1 General applicability.**

* * * * *

(b) *Optional applicability.* (1) A manufacturer may request to certify any heavy-duty vehicle of 14,000 pounds Gross Vehicle Weight Rating or less in accordance with the light-duty truck provisions located in subpart S of this part through the 2004 model year (through the 2003 model year for manufacturers choosing Otto-cycle HDE Option 2 in § 86.005–1(c)(2), or through the 2002 model year for manufacturers choosing Otto-cycle HDE Option 1 in § 86.005–1(c)(1)). Heavy-duty engine or vehicle provisions of this subpart A do not apply to such a vehicle.

(2) Beginning with the 2000 model year, a manufacturer may certify any Otto-cycle heavy-duty vehicle of 14,000 pounds Gross Vehicle Weight Rating or less in accordance with the provisions for Otto-cycle complete heavy-duty vehicles located in subpart S of this part for purposes of generating credits in the heavy-duty vehicle averaging, banking, and trading program contained in § 86.1817–05. Heavy-duty engine or heavy-duty vehicle provisions of this subpart A do not apply to such a vehicle.

* * * * *

10. Section 86.004–2 is amended by adding a new definition in alphabetical order, to read as follows:

**§ 86.004–2 Definitions.**

* * * * *

*Defeat device* means an auxiliary emission control device (AECD) that reduces the effectiveness of the emission control system under conditions which may reasonably be expected to be encountered in normal vehicle operation and use, unless:

(1) Such conditions are substantially included in the applicable Federal emission test procedure for heavy-duty vehicles and heavy-duty engines described in subpart N of this part;

(2) The need for the AECD is justified in terms of protecting the vehicle against damage or accident; or

(3) The AECD does not go beyond the requirements of engine starting.

* * * * *

11. Section 86.004–11 is amended by adding introductory text, removing and reserving paragraph (a)(1)(i)(E), and revising paragraph (d), to read as follows:

**§ 86.004–11 Emission standards for 2004 and later model year diesel heavy-duty engines and vehicles.**

This section applies to 2004 and later model year diesel HDEs.

(a) * * *

(1) * * *

(i) * * *

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(E) [Reserved]

* * * * *

(d) Every manufacturer of new motor vehicle engines subject to the standards prescribed in this section shall, prior to taking any of the actions specified in section 203(a)(1) of the Act, test or cause to be tested motor vehicle engines in accordance with applicable procedures in subpart I or N of this part to ascertain that such test engines meet the requirements of this section.

* * * * *

12. Section 86.004–15 is amended by:

a. Revising the section heading

b. Revising paragraph (a)(1).

c. Removing paragraph (a)(2)(iii).

d. Revising paragraphs (b) introductory text, (b)(1)(i), and (b)(1)(ii).

e. Revising paragraphs (c)(1) introductory text and (c)(1)(iii).

f. Revising paragraphs (d) heading, (d) introductory text and (d)(1).

g. Revising the heading for paragraph (f), and revising paragraphs (f)(1)(i), (f)(2)(i), (f)(2)(ii), (f)(3)(ii), and (f)(3)(iii).

h. Adding paragraph (f)(3)(iv).

i. Revising paragraphs (g)(1), (g)(2), and(g)(4).

j. Revising paragraphs (j) introductory text and (j)(1) introductory text.

k. Revising the heading and introductory text of paragraph (k).

l. Adding paragraph (l).

The revisions and additions read as follows:

**§ 86.004–15 $NO_x$ plus NMHC and particulate averaging, trading, and banking for heavy-duty engines.**

(a)(1) Heavy-duty engines eligible for $NO_x$ plus NMHC and particulate averaging, trading and banking programs are described in the applicable emission standards sections in this subpart. All heavy-duty engine families which include any engines labeled for use in clean-fuel vehicles as specified in 40 CFR part 88 are not eligible for these programs. For manufacturers not selecting Options 1 or 2 contained in § 86.005–10(f), the ABT program requirements contained in § 86.000–15 apply for 2004 model year Otto-cycle engines, rather than the provisions contained in this § 86.004–15. Participation in these programs is voluntary.

* * * * *

(b) Participation in the $NO_x$ plus NMHC and/or particulate averaging, trading, and banking programs shall be done as follows:

(1) * * *

(i) Declare its intent to include specific engine families in the averaging, trading and/or banking programs. Separate declarations are required for each program and for each pollutant (*i.e.*, $NO_x$ plus NMHC, and particulate).

(ii) Declare an FEL for each engine family participating in one or more of these two programs.

(A) The FEL must be to the same level of significant digits as the emission standard (one-tenth of a gram per brake horsepower-hour for $NO_x$ plus NMHC emissions and one-hundredth of a gram per brake horsepower-hour for particulate emissions).

(B) In no case may the FEL exceed the upper limit prescribed in the section concerning the applicable heavy-duty engine $NO_x$ plus NMHC and particulate emission standards.

* * * * *

(c)(1) For each participating engine family, $NO_x$ plus NMHC, and particulate emission credits (positive or negative) are to be calculated according to one of the following equations and rounded, in accordance with ASTM E29–93a (incorporated by reference at § 86.1), to the nearest one-tenth of a Megagram (Mg). Consistent units are to be used throughout the equation.

* * * * *

(iii) For purposes of the equation in paragraphs (c)(1)(i) and (ii) of this section:

Std = the current and applicable heavy-duty engine $NO_x$ plus NMHC or particulate emission standard in grams per brake horsepower hour or grams per Megajoule.

FEL = the $NO_x$ plus NMHC, or particulate family emission limit for the engine family in grams per brake horsepower hour or grams per Megajoule.

CF = a transient cycle conversion factor in BHP-hr/mi or MJ/mi, as given in paragraph (c)(2) of this section.

UL = the useful life described in § 86.004–2, or alternative life as described in § 86.004–21(f), for the given engine family in miles.

Production = the number of engines produced for U.S. sales within the given engine family during the model year. Quarterly production projections are used for initial certification. Actual production is used for end-of-year compliance determination.

Discount = a one-time discount applied to all credits to be banked or traded within the model year generated. Except as otherwise allowed in paragraphs (k) and (l) of this section, the discount applied here is 0.9. Banked credits traded in a subsequent model year will not be subject to an additional discount. Banked credits used in a subsequent model year's averaging program will not have the discount restored.

* * * * *

(d) *Averaging sets for $NO_x$ plus NMHC emission credits.* The averaging and trading of $NO_x$ plus NMHC emission credits will only be allowed between heavy-duty engine families in the same averaging set. The averaging sets for the averaging and trading of $NO_x$ plus NMHC emission credits for heavy-duty engines are defined as follows:

(1) For $NO_x$+NMHC credits from Otto-cycle heavy-duty engines:

(i) Otto-cycle heavy-duty engines constitute an averaging set. Averaging and trading among all Otto-cycle heavy-duty engine families is allowed. There are no subclass restrictions.

(ii) Otto-cycle heavy-duty vehicles certified under the chassis-based provisions of Subpart S of this Part may not average or trade with heavy-duty Otto-cycle engines except as allowed in § 86.1817–05(o).

* * * * *

(f) *Banking of $NO_x$ plus NMHC, and particulate emission credits.* (1) * * *

(i) $NO_x$ plus NMHC, and particulate emission credits may be banked from engine families produced in any model year.

* * * * *

(2) * * * (i) $NO_x$ plus NMHC and particulate credits generated in 2004 and later model years do not expire. $NO_x$ plus NMHC credits generated by Otto-cycle engines in the 2003 model year for manufacturers selecting Option 1 contained in § 86.005–10(f)(1) also do not expire.

(ii) Manufacturers withdrawing banked $NO_x$ plus NMHC, and/or particulate credits shall indicate so during certification and in their credit reports, as described in § 86.091–23.

(3) * * *

(ii) Banked credits may not be used for $NO_x$ plus NMHC or particulate averaging and trading to offset emissions that exceed an FEL. Banked credits may not be used to remedy an in-use nonconformity determined by a Selective Enforcement Audit or by recall testing. However, banked credits may be used for subsequent production of the engine family if the manufacturer elects to recertify to a higher FEL.

(iii) $NO_x$ credits banked under paragraph § 86.098–15(j) or § 86.000–15(k) may be used in place of $NO_x$ plus NMHC credits in 2004 and later model years provided that they are used in the correct averaging set. $NO_x$ credits banked under paragraph § 86.000–15(k) may also be used in place of $NO_x$ plus NMHC credits in the 2003 model year for manufacturers selecting Option 1 contained in § 86.005–10(f)(1), provided that they are used in the correct averaging set.

(iv) Except for early credits banked under § 86.000–15(k), $NO_x$ credits



banked in accordance with § 86.000–15 may not be used to meet the Otto-cycle engine standards contained in § 86.005–10.

(g)(1) This paragraph (g) assumes $NO_x$ plus NMHC, and particulate nonconformance penalties (NCPs) will be available for the 2004 and later model year HDEs.

(2) Engine families using $NO_x$ plus NMHC and/or particulate NCPs but not involved in averaging:

(i) May not generate $NO_x$ plus NMHC or particulate credits for banking and trading.

(ii) May not use $NO_x$ plus NMHC or particulate credits from banking and trading.

* * * * *

(4) If a manufacturer has any engine family in a given averaging set which is using $NO_x$ plus NMHC and/or particulate NCPs, none of that manufacturer's engine families in that averaging set may generate credits for banking and trading.

* * * * *

(j) *Credit apportionment.* At the manufacturer's option, credits generated under the provisions described in this section may be sold to or otherwise provided to another party for use in programs other than the averaging, trading and banking program described in this section.

(1) The manufacturer shall pre-identify two emission levels per engine family for the purposes of credit apportionment. One emission level shall be the FEL and the other shall be the level of the standard that the engine family is required to certify to under § 86.005–10 or § 86.004–11. For each engine family, the manufacturer may report engine sales in two categories, "ABT-only credits" and "nonmanufacturer-owned credits".

* * * * *

(k) *Additional flexibility for diesel-cycle engines.* If a diesel-cycle engine family meets the conditions of either paragraph (k)(1) or (2) of this section, a Discount of 1.0 may be used in the trading and banking calculation, for both $NO_x$ plus NMHC and for particulate, described in paragraph (c)(1) of this section.

* * * * *

(l) *Additional flexibility for Otto-cycle engines.* If an Otto-cycle engine family meets the conditions of paragraph (l)(1) or (2) of this section, a discount of 1.0 may be used in the trading and banking credits calculation for $NO_x$ plus NMHC described in paragraph (c)(1) of this section, as follows:

(1) The engine family has a FEL of 0.5 g/bhp-hr $NO_x$ plus NMHC or lower;

(2) All of the following conditions are met:

(i) For first three consecutive model years that the engine family is certified to a $NO_x$ plus NMHC standard contained in § 86.005–10;

(ii) The engine family is certified using carry-over data from an engine family which was used to generate early $NO_x$ credits per § 86.000–15(k) where the sum of the $NO_x$ FEL plus the HC (or hydrocarbon equivalent where applicable) certification level is below 1.0 g/bhp–hr.

13. Section 86.004–16 is added to subpart A to read as follows:

**§ 86.004–16 Prohibition of defeat devices.**

(a) No new heavy-duty vehicle or heavy-duty engine shall be equipped with a defeat device.

(b) The Administrator may test or require testing on any vehicle or engine at a designated location, using driving cycles and conditions which may reasonably be expected to be encountered in normal operation and use, for the purpose of investigating a potential defeat device.

(c) [Reserved].

(d) For vehicle and engine designs designated by the Administrator to be investigated for possible defeat devices:

(1) *General.* The manufacturer must show to the satisfaction of the Administrator that the vehicle or engine design does not incorporate strategies that reduce emission control effectiveness exhibited during the Federal emissions test procedures, described in subpart N of this part, when the vehicle or engine is operated under conditions which may reasonably be expected to be encountered in normal operation and use, unless one of the specific exceptions set forth in the definition of "defeat device" in § 86.004–2 has been met.

(2) *Information submissions required.* The manufacturer will provide an explanation containing detailed information (including information which the Administrator may request to be submitted) regarding test programs, engineering evaluations, design specifications, calibrations, on-board computer algorithms, and design strategies incorporated for operation both during and outside of the Federal emission test procedure described in subpart N of this part.

14. Section 86.004–21 is amended by adding paragraphs (m) and (n), to read as follows:

**§ 86.004–21 Application for certification.**

* * * * *

(m) For model years 2004 through 2007, within 180 days after submission of the application for certification of a heavy-duty diesel engine, the manufacturer must provide emission test results from the Load Response Test conducted according to § 86.1380–2004, including, at a minimum, test results conducted at each of the speeds identified in § 86.1380–2004. Load Response Test data submissions are not necessary for carry-over engine families for which Load Response Test data has been previously submitted. In addition, upon approval of the Administrator, manufacturers may carry Load Response Test data across from one engine family to other engine families, provided that the carry-across engine families use similar emission control technology hardware which would be expected to result in the generation of similar emission data when run over the Load Response Test.

(n) Upon request from EPA, a manufacturer must provide to EPA any hardware (including scan tools), passwords, and/or documentation necessary for EPA to read, interpret, and store (in engineering units if applicable) any information broadcast by an engine's on-board computers and electronic control modules which relates in any way to emission control devices and auxiliary emission control devices, provided that such hardware, passwords, or documentation exists and is not otherwise commercially available. Passwords include any information necessary to enable generic scan tools or personal computers access to proprietary emission related information broadcast by an engine's on-board computer, if such passwords exist. This requirement includes access by EPA to any proprietary code information which may be broadcast by an engine's on-board computer and electronic control modules. Information which is confidential business information must be marked as such. Engineering units refers to the ability to read, interpret, and store information in commonly understood engineering units, for example, engine speed in revolutions per minute or per second, injection timing parameters such as start of injection in degree's before top-dead center, fueling rates in cubic centimeters per stroke, vehicle speed in miles per hour or kilometers per hour. This paragraph (n) does not restrict EPA authority to take any action authorized by section 208 of the Clean Air Act.

15. A new § 86.004–26 is added to Subpart A, to read as follows:

**§ 86.004–26 Mileage and service accumulation; emission measurements.**

Section 86.004–26 includes text that specifies requirements that differ from

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§ 86.094–26, § 86.095–26, § 86.096–26, § 86.098–26, § 86.000–26, or § 86.001–26. Where a paragraph in § 86.094–26, § 86.095–26, § 86.096–26, § 86.098–26, § 86.000–26 or § 86.001–26 is identical and applicable to § 86.004–26, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.094–26." or [Reserved]. For guidance see § 86.095–26." or "[Reserved]. For guidance see § 86.096–26." or "[Reserved]. For guidance see § 86.098–26." or "[Reserved]. For guidance see § 86.000–26." or "[Reserved]. For guidance see § 86.001–26.".

(a)(1) [Reserved]. For guidance see § 86.094–26.

(a)(2) through (a)(3)(i)(A) [Reserved]. For guidance see § 86.000–26.

(a)(3)(i)(B) [Reserved]. For guidance see § 86.094–26.

(a)(3)(i)(C) [Reserved]. For guidance see § 86.098–26.

(a)(3)(i)(D) through (a)(3)(ii)(B) [Reserved]. For guidance see § 86.094–26.

(a)(3)(ii)(C) [Reserved]. For guidance see § 86.098–26.

(a)(3)(ii)(D) through (a)(4)(i)(B)(*4*) [Reserved]. For guidance see § 86.094–26.

(a)(4)(i)(C) [Reserved]. For guidance see § 86.000–26.

(a)(4)(i)(D) through (a)(6)(ii) [Reserved]. For guidance see § 86.094–26.

(a)(6)(iii) [Reserved]. For guidance see § 86.000–26.

(a)(7) through (a)(9)(i) [Reserved]. For guidance see § 86.094–26.

(a)(9)(ii) [Reserved]. For guidance see § 86.000–26.

(a)(9)(iii) through (b)(2) introductory text [Reserved]. For guidance see § 86.094–26.

(b)(2)(i) through (b)(2)(ii) [Reserved]. For guidance see § 86.000–26.

(b)(2)(iii) [Reserved]. For guidance see § 86.094–26.

(b)(2)(iv) [Reserved]. For guidance see § 86.001–26.

(b)(3) through (b)(4)(i)(B) [Reserved]. For guidance see § 86.094–26.

(b)(4)(i)(C) [Reserved]. For guidance see § 86.001–26.

(b)(4)(i)(D) through (b)(4)(ii)(B) [Reserved]. For guidance see § 86.095–26.

(b)(4)(ii)(C) [Reserved]. For guidance see § 86.001–26.

(b)(4)(ii)(D) [Reserved]. For guidance see § 86.095–26.

(b)(4)(iii) [Reserved]

(b)(4)(iv) [Reserved]. For guidance see § 86.094–26.

(c)(1) Paragraph (c) of this section applies to heavy-duty engines.

(2) Two types of service accumulation are applicable to heavy-duty engines, as described in paragraphs (c)(2)(i) and (ii) of this section. For Otto-cycle heavy-duty engines exhaust emissions, the service accumulation method used by a manufacturer must be designed to effectively predict the deterioration of emissions in actual use over the full useful life of the of the candidate in-use vehicles and must cover the breadth of the manufacturer's product line that will be covered by the durability procedure. Manufacturers not selecting Options 1 or 2 described in § 86.005–10(f) may certify Otto-cycle engines using the provisions contained in § 86.094–26(c)(2) rather than those contained in this paragraph (c)(2) for 2004 model year engine families certified using carry-over durability data, except for those engines used for early credit banking as allowed in § 86.000–15(k).

(i) Service accumulation on engines, subsystems, or components selected by the manufacturer under § 86.094–24(c)(3)(i). The manufacturer determines the form and extent of this service accumulation, consistent with good engineering practice, and describes it in the application for certification.

(ii) Dynamometer service accumulation on emission data engines selected under § 86.094–24(b)(2) or (3). The manufacturer determines the engine operating schedule to be used for dynamometer service accumulation, consistent with good engineering practice. A single engine operating schedule shall be used for all engines in an engine family-control system combination. Operating schedules may be different for different combinations.

(3) Exhaust emission deterioration factors will be determined on the basis of the service accumulation described in § 86.000–26(b)(2)(i) and related testing, according to the manufacturer's procedures.

(c)(4) [Reserved]. For guidance see § 86.096–26.

(d)(1) through (d)(2)(i) [Reserved]. For guidance see § 86.094–26.

(d)(2)(ii) [Reserved]. For guidance see § 86.000–26.

(d)(3) [Reserved]. For guidance see § 86.094–26.

(d)(4) and (5) [Reserved].

(d)(6) [Reserved]. For guidance see § 86.094–26.

16. Section 86.004–28 is amended by revising paragraph (c)(4)(iii)(A)(*2*) and adding paragraph (c)(4)(iii)(A)(*3*) to read as follows:

**§ 86.004–28 Compliance with emissions standards.**

* * * * *

(c) * * *

(4) * * *

(iii) * * *

(A) * * *

(*2*) Otto-cycle HDEs utilizing aftertreatment technology (*e.g.*, catalytic converters). For transient NMHC (NMHCE), CO, $NO_X$, and for idle CO, the official exhaust emission results for each emission data engine at the selected test point shall be adjusted by multiplication by the appropriate deterioration factor, except as otherwise provided in paragraph (c)(4)(iii)(A)(*3*) of this section. The deterioration factor must be calculated by dividing the exhaust emissions at full useful life by the stabilized mileage emission level (reference § 86.096–26(c)(4), *e.g.*, 125 hours). However, if the deterioration factor supplied by the manufacturer is less than one, it shall be one for purposes of this paragraph (c)(4)(iii)(A)(*2*).

(*3*) An Otto-cycle heavy-duty engine manufacturer who believes that a deterioration factor derived using the calculation methodology described in paragraph (c)(4)(iii)(4)(A)(*2*) of this section are significantly unrepresentative for one or more engine families (either too high or too low) may petition the Administrator to allow for the use of an additive rather than a multiplicative deterioration factor. This petition must include full rationale behind the request together with any supporting data or other evidence. Based on this or other information the Administration may allow for an alternative procedure. Any petition should be submitted in a timely manner, to allow adequate time for a thorough evaluation. Manufacturers using an additive deterioration factor under this paragraph (c)(4)(iii)(A)(*3*) must perform in-use verification testing to determine if the additive deterioration factor reasonably predicts actual in-use emissions. The plan for the in-use verification testing must be approved by the Administrator as part of the approval process described in this paragraph (c)(4)(iii)(4)(A)(*3*) prior to the use of the additive deterioration factor. The Administrator may consider the results of the in-use verification testing both in certification and in-use compliance programs.

* * * * *

17. Section 86.004–30 is amended by removing paragraphs (f) introductory text through (f)(3) and (f)(4) and by adding new paragraph (f), to read as follows:

**§ 86.004–30 Certification.**

* * * * *

(f) For engine families required to have an OBD system, certification will not be granted if, for any test vehicle approved by the Administrator in consultation with the manufacturer, the malfunction indicator light does not illuminate under any of the following circumstances, unless the manufacturer can demonstrate that any identified OBD problems discovered during the Administrator's evaluation will be corrected on production vehicles.

(1)(i) *Otto-cycle.* A catalyst is replaced with a deteriorated or defective catalyst, or an electronic simulation of such, resulting in an increase of 1.5 times the $NMHC+NO_X$ standard or FEL above the $NMHC+NO_X$ emission level measured using a representative 4000 mile catalyst system.

(ii) *Diesel.* (A) If monitored for emissions performance—a catalyst is replaced with a deteriorated or defective catalyst, or an electronic simulation of such, resulting in exhaust emissions exceeding 1.5 times the applicable standard or FEL for $NMHC+NO_X$ or PM.

(B) If monitored for performance—a particulate trap is replaced with a trap that has catastrophically failed, or an electronic simulation of such.

(2)(i) *Otto-cycle.* An engine misfire condition is induced resulting in exhaust emissions exceeding 1.5 times the applicable standards or FEL for $NMHC+NO_X$ or CO.

(ii) *Diesel.* An engine misfire condition is induced and is not detected.

(3) If so equipped, any oxygen sensor is replaced with a deteriorated or defective oxygen sensor, or an electronic simulation of such, resulting in exhaust emissions exceeding 1.5 times the applicable standard or FEL for $NMHC+NO_X$ or CO.

(4) If so equipped, a vapor leak is introduced in the evaporative and/or refueling system (excluding the tubing and connections between the purge valve and the intake manifold) greater than or equal in magnitude to a leak caused by a 0.040 inch diameter orifice, or the evaporative purge air flow is blocked or otherwise eliminated from the complete evaporative emission control system.

(5) A malfunction condition is induced in any emission-related engine system or component, including but not necessarily limited to, the exhaust gas recirculation (EGR) system, if equipped, the secondary air system, if equipped, and the fuel control system, singularly resulting in exhaust emissions exceeding 1.5 times the applicable emission standard or FEL for $NMHC+NO_X$, CO or PM.

(6) A malfunction condition is induced in an electronic emission-related engine system or component not otherwise described above that either provides input to or receives commands from the on-board computer resulting in a measurable impact on emissions.

18. A new § 86.005–1 is added to subpart A to read as follows:

**§ 86.005–1 General applicability.**

Section 86.005–1 includes text that specifies requirements that differ from § 86.001–1. Where a paragraph in § 86.001–1 is identical and applicable to § 86.005–1, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.001–1.".

(a) *Applicability.* The provisions of this subpart generally apply to 2005 and later model year new Otto-cycle heavy-duty engines used in incomplete vehicles and vehicles above 14,000 pounds GVWR and 2005 and later model year new diesel-cycle heavy-duty engines. In cases where a provision applies only to a certain vehicle group based on its model year, vehicle class, motor fuel, engine type, or other distinguishing characteristics, the limited applicability is cited in the appropriate section or paragraph. The provisions of this subpart continue to generally apply to 2000 and earlier model year new Otto-cycle and diesel-cycle light-duty vehicles, 2000 and earlier model year new Otto-cycle and diesel-cycle light-duty trucks, and 2004 and earlier model year new Otto-cycle complete heavy-duty vehicles at or below 14,000 pounds GVWR. Provisions generally applicable to 2001 and later model year new Otto-cycle and diesel-cycle light-duty vehicles, 2001 and later model year new Otto-cycle and diesel-cycle light-duty trucks, and 2005 and later model year Otto-cycle complete heavy-duty vehicles at or below 14,000 pounds GVWR are located in subpart S of this part.

(b) *Optional applicability.* (1) A manufacturer may request to certify any 2003 or 2004 model year heavy-duty vehicle of 14,000 pounds Gross Vehicle Weight Rating or less in accordance with the light-duty truck provisions located in subpart S of this part. Heavy-duty engine or vehicle provisions of this subpart A do not apply to such a vehicle. This option is not available in the 2003 model year for manufacturers choosing Otto-cycle HDE option 1 in paragraph (c)(1) of this section, or in the 2004 model year for manufacturers choosing Otto-cycle HDE option 2 in paragraph (c)(2) of this section.

(2) For 2005 and later model years, a manufacturer may request to certify any incomplete Otto-cycle heavy-duty vehicle of 14,000 pounds Gross Vehicle Weight Rating or less in accordance with the provisions for Otto-cycle complete heavy-duty vehicles located in subpart S of this part. Heavy-duty engine or heavy-duty vehicle provisions of this subpart A do not apply to such a vehicle. This option is available starting with the 2003 model year to manufacturers choosing Otto-cycle HDE option 1 in paragraph (c)(1) of this section. This option is available starting with the 2004 model year to manufacturers choosing Otto-cycle HDE option 2 in paragraph (c)(1) of this section.

(c) *Otto-cycle heavy-duty engines and vehicles.* The manufacturer must select one of the three options for Otto-cycle heavy-duty engines and vehicles in paragraphs (c)(1) through (c)(3) of this section. The emission standards and other requirements that apply under a given option shall apply to all Otto-cycle heavy-duty engines and vehicles certified by the manufacturer (*e.g.*, a manufacturer may not select one option for certain engine families and the other option for other engine families). The requirements under each option shall remain effective, once selected, for subsequent model years, until superceded or otherwise revised by the Administrator (*e.g.*, a manufacturer may not select one option prior to the 2004 model year and change to another option in the 2006 model year). The complete requirements under each option are contained in subparts A and S of this part.

(1) *Otto-cycle HDE Option 1.* The following requirements apply to Otto-cycle heavy-duty engines and vehicles certified by manufacturers selecting this option:

(i) Emission standards for 2003 and later model year Otto-cycle heavy-duty engines, according to the provisions of § 86.005–10(f)(1).

(ii) Emission standards for 2003 and later model year Otto-cycle complete heavy-duty vehicles, according to the provisions of § 86.1816–05, except that, for 2003 through 2006 model year Otto-cycle complete heavy-duty vehicles, manufacturers may optionally comply with the standards in either 86.005–10 or 86.1816–05.

(iii) Averaging, banking, and trading provisions that allow transfer of credits between a manufacturer's complete vehicle averaging set and their heavy-duty Otto-cycle engine averaging set, according to the provisions of § 86.1817–05(o).

(iv) On-board diagnostics requirements effective starting with the 2004 model year for Otto-cycle engines and complete vehicles, according to the provisions of §§ 86.005–17 and 86.1806–05.

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(v) Refueling emissions requirements effective starting with the 2004 model year for Otto-cycle complete vehicles, according to the provisions of §§ 86.1810–01 and 86.1816–05.

(2) *Otto-cycle HDE Option 2.* The following requirements apply to Otto-cycle heavy-duty engines and vehicles certified by manufacturers selecting this option:

(i) Emission standards for 2004 and later model year Otto-cycle heavy-duty engines, according to the provisions of § 86.005–10(f)(2).

(ii) Emission standards for 2004 and later model year Otto-cycle complete heavy-duty vehicles, according to the provisions of § 86.1816–05.

(iii) Averaging, banking, and trading provisions that allow transfer of credits between a manufacturer's complete vehicle averaging set and their heavy-duty Otto-cycle engine averaging set, according to the provisions of § 86.1817–05(o).

(iv) On-board diagnostics requirements effective starting with the 2004 model year for Otto-cycle engines and complete vehicles, according to the provisions of §§ 86.005–17 and 86.1806–05.

(v) Refueling emissions requirements effective starting with the 2004 model year for Otto-cycle complete vehicles, according to the provisions of §§ 86.1810–01 and 86.1816–05.

(3) *Otto-cycle HDE Option 3.* The following requirements apply to Otto-cycle heavy-duty engines and vehicles certified by manufacturers that do not select one of the options for 2003 or 2004 model year compliance in paragraph (c)(1) or (c)(2) of this section:

(i) Emission standards for 2005 and later model year Otto-cycle heavy-duty engines, according to the provisions of § 86.005–10.

(ii) Emission standards for 2005 and later model year Otto-cycle complete heavy-duty vehicles, according to the provisions of § 86.1816–05.

(iii) On-board diagnostics requirements effective starting with the 2005 model year for Otto-cycle engines and complete vehicles, according to the provisions of §§ 86.005–17 and 86.1806–05.

(iv) Refueling emissions requirements effective starting with the 2005 model year for Otto-cycle complete vehicles, according to the provisions of §§ 86.1810–01 and 86.1816–05.

(v) Manufacturers selecting this option may exempt 2005 model year Otto-cycle heavy-duty engines and vehicles whose model year commences before July 31, 2004 from the requirements in paragraphs (c)(3)(i) through (iv) of this section.

(vi) For 2005 model year engines or vehicles exempted under paragraph (c)(3)(v) of this section, a manufacturer shall certify such Otto-cycle heavy-duty engines and vehicles to all requirements in this subpart applicable to 2004 model year Otto-cycle heavy-duty engines. The averaging, banking, and trading provisions contained in § 86.000–15 remain effective for these engines.

(d) [Reserved].

(e) through (f) [Reserved]. For guidance see § 86.001–1.

19. A new § 86.005–10 is added to subpart A to read as follows:

**§ 86.005–10 Emission standards for 2005 and later model year Otto-cycle heavy-duty engines and vehicles.**

Section 86.005–10 includes text that specifies requirements that differ from § 86.098–10 or § 86.099–10. Where a paragraph in § 86.098–10 or § 86.099–10 is identical and applicable to § 86.005–10, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.098–10." or "[Reserved]. For guidance see § 86.099–10.".

(a)(1) Exhaust emissions from new 2005 and later model year Otto-cycle HDEs, except for Otto-cycle HDEs subject to the alternative standards in paragraph (f) of this section, shall not exceed:

(i)(A) *Oxides of Nitrogen plus Non-methane Hydrocarbons ($NO_X$ + NMHC) for engines fueled with either gasoline, natural gas, or liquefied petroleum gas.* 1.0 grams per brake horsepower-hour (0.37 grams per megajoule).

(B) *Oxides of Nitrogen plus Non-methane HydrocarbonEquivalent ($NO_X$ + NMHCE) for engines fueled with methanol.* 1.0 grams per brake horsepower-hour (0.37 grams per megajoule).

(C) A manufacturer may elect to include any or all of its Otto-cycle HDE families in any or all of the emissions ABT programs for HDEs, within the restrictions described in § 86.098–15. If the manufacturer elects to include engine families in any of these programs, the $NO_X$ plus NMHC (or $NO_X$ plus NMHCE for methanol-fueled engines) FELs may not exceed 4.5 grams per brake horsepower-hour (1.7 grams per megajoule). This ceiling value applies whether credits for the family are derived from averaging, banking, or trading programs.

(ii)(A) *Carbon monoxide for engines intended for use in all vehicles, except as provided in paragraph (a)(3) of this section.* 14.4 grams per brake horsepower-hour (5.36 grams per megajoule), as measured under transient operating conditions.

(B) *Carbon monoxide for engines intended for use only in vehicles with a Gross Vehicle Weight Rating of greater than 14,000 pounds.* 37.1 grams per brake horsepower-hour (13.8 grams per megajoule), as measured under transient operating conditions.

(C) *Idle carbon monoxide.* For all Otto-cycle HDEs utilizing aftertreatment technology: 0.50 percent of exhaust gas flow at curb idle.

(2) The standards set forth in paragraphs (a)(1) and (f) of this section refer to the exhaust emitted over the operating schedule set forth in paragraph (f)(1) of appendix I to this part, and measured and calculated in accordance with the procedures set forth in subpart N or P of this part.

(3)(i) A manufacturer may certify one or more Otto-cycle HDE configurations intended for use in all vehicles to the emission standard set forth in paragraph (a)(1)(ii)(B) of this section: Provided, that the total model year sales of such configuration(s), segregated by fuel type, being certified to the emission standard in paragraph (a)(1)(ii)(B) of this section represent no more than five percent of total model year sales of each fuel type Otto-cycle HDE intended for use in vehicles with a Gross Vehicle Weight Rating of up to 14,000 pounds by the manufacturer.

(ii) The configurations certified to the emission standards of paragraph (a)(1)(ii)(B) of this section under the provisions of paragraph (a)(3)(i) of this section shall still be required to meet the evaporative emission standards set forth in § 86.099–10(b)(1)(i), (b)(2)(i) and (b)(3)(i).

(4) The manufacturer may exempt 2005 model year HDE engine families whose model year begins before July, 31, 2004 from the requirements in this paragraph (a). Exempted engine families shall be subject to the requirements in § 86.099–10.

(b) [Reserved]. For guidance see § 86.099–10.

(c) [Reserved]. For guidance see § 86.098–10.

(d) Every manufacturer of new motor vehicle engines subject to the standards prescribed in this section shall, prior to taking any of the actions specified in section 203(a)(1) of the Act, test or cause to be tested motor vehicle engines in accordance with applicable procedures in subpart N or P of this part to ascertain that such test engines meet the requirements of this section.

(e) [Reserved]. For guidance see § 86.099–10.

(f) *Alternative exhaust emission standards.* In lieu of the exhaust emission standards in paragraph (a)(1)(i)(A) or (B) of this section, the manufacturer may select the standards and provisions in either paragraph (f)(1) or (f)(2) of this section.

(1) *Otto-cycle HDE Option 1.* The alternative exhaust emission standards in this paragraph (f)(1) shall apply to new 2003 through 2007 model year Otto-cycle HDEs and, at the manufacturers option, to new 2003 through 2006 model year Otto-cycle complete heavy-duty vehicles less than or equal to 14,000 pounds GVWR.

(i) *Oxides of Nitrogen plus Non-methane Hydrocarbons ($NO_X$ + NMHC) for engines fueled with either gasoline, natural gas, or liquefied petroleum gas.* 1.5 grams per brake horsepower-hour (0.55 grams per megajoule).

(ii) *Oxides of Nitrogen plus Non-methane Hydrocarbon Equivalent ($NO_X$ + NMHCE) for engines fueled with methanol.* 1.5 grams per brake horsepower-hour (0.55 grams per megajoule).

(2) *Otto-cycle HDE Option 2.* The alternative exhaust emission standards in this paragraph (f)(2) shall apply to new 2004 through 2007 model year Otto-cycle HDEs.

(i) *Oxides of Nitrogen plus Non-methane Hydrocarbons ($NO_X$ + NMHC) for engines fueled with either gasoline, natural gas, or liquefied petroleum gas.* 1.5 grams per brake horsepower-hour (0.55 grams per megajoule).

(ii) *Oxides of Nitrogen plus Non-methane Hydrocarbon Equivalent ($NO_X$ + NMHCE) for engines fueled with methanol.* 1.5 grams per brake horsepower-hour (0.55 grams per megajoule).

20. Section 86.005–17 is added to subpart A, to read as follows:

**§ 86.005–17 On-board diagnostics.**

(a) *General.* (1) All heavy-duty engines intended for use in a heavy-duty vehicle weighing 14,000 pounds GVWR or less must be equipped with an on-board diagnostic (OBD) system capable of monitoring all emission-related engine systems or components during the applicable useful life. Heavy-duty engines intended for use in a heavy-duty vehicle weighing 14,000 pounds GVWR or less must meet the OBD requirements of this section according to the phase-in schedule in paragraph (k) of this section. All monitored systems and components must be evaluated periodically, but no less frequently than once per applicable certification test cycle as defined in Appendix I, paragraph (f), of this part, or similar trip as approved by the Administrator.

(2) An OBD system demonstrated to fully meet the requirements in § 86.1806–05 may be used to meet the requirements of this section, provided that the Administrator finds that a manufacturer's decision to use the flexibility in this paragraph (a)(2) is based on good engineering judgement.

(b) *Malfunction descriptions.* The OBD system must detect and identify malfunctions in all monitored emission-related engine systems or components according to the following malfunction definitions as measured and calculated in accordance with test procedures set forth in subpart N of this part (engine-based test procedures) excluding the test procedure referred to as the "Supplemental steady-state test; test cycle and procedures" contained in § 86.1360–2007, and excluding the test procedure referred to as the "Not-To-Exceed Test Procedure" contained in § 86.1370–2007, and excluding the test procedure referred to as the "Load Response Test" contained in § 86.1380–2004.

(1) *Catalysts and particulate traps.* (i) *Otto-cycle.* Catalyst deterioration or malfunction before it results in an increase in NMHC emissions 1.5 times the NMHC+$NO_X$ standard or FEL, as compared to the NMHC+$NO_X$ emission level measured using a representative 4000 mile catalyst system.

(ii) *Diesel.* (A) If equipped, catalyst deterioration or malfunction before it results in exhaust emissions exceeding 1.5 times the applicable standard or FEL for NMHC+$NO_X$ or PM. This requirement applies only to reduction catalysts; monitoring of oxidation catalysts is not required. This monitoring need not be done if the manufacturer can demonstrate that deterioration or malfunction of the system will not result in exceedance of the threshold.

(B) If equipped with a particulate trap, catastrophic failure of the device must be detected. Any particulate trap whose complete failure results in exhaust emissions exceeding 1.5 times the applicable standard or FEL for NMHC+$NO_X$ or PM must be monitored. This monitoring need not be done if the manufacturer can demonstrate that a catastrophic failure of the system will not result in exceedance of the threshold.

(2) *Engine Misfire.* (i) *Otto-cycle.* Engine misfire resulting in exhaust emissions exceeding 1.5 times the applicable standard or FEL for NMHC+$NO_X$ or CO; and any misfire capable of damaging the catalytic converter.

(ii) *Diesel.* Lack of cylinder combustion must be detected.

(3) *Oxygen sensors.* If equipped, oxygen sensor deterioration or malfunction resulting in exhaust emissions exceeding 1.5 times the applicable standard or FEL for NMHC+$NO_X$ or CO.

(4) *Evaporative leaks.* If equipped, any vapor leak in the evaporative and/or refueling system (excluding the tubing and connections between the purge valve and the intake manifold) greater than or equal in magnitude to a leak caused by a 0.040 inch diameter orifice; an absence of evaporative purge air flow from the complete evaporative emission control system. Where fuel tank capacity is greater than 25 gallons, the Administrator may, following a request from the manufacturer, revise the size of the orifice to the smallest orifice feasible, based on test data, if the most reliable monitoring method available cannot reliably detect a system leak equal to a 0.040 inch diameter orifice.

(5) *Other emission control systems.* Any deterioration or malfunction occurring in an engine system or component directly intended to control emissions, including but not necessarily limited to, the exhaust gas recirculation (EGR) system, if equipped, the secondary air system, if equipped, and the fuel control system, singularly resulting in exhaust emissions exceeding 1.5 times the applicable emission standard or FEL for NMHC+$NO_X$, CO or diesel PM. For engines equipped with a secondary air system, a functional check, as described in paragraph (b)(6) of this section, may satisfy the requirements of this paragraph (b)(5) provided the manufacturer can demonstrate that deterioration of the flow distribution system is unlikely. This demonstration is subject to Administrator approval and, if the demonstration and associated functional check are approved, the diagnostic system must indicate a malfunction when some degree of secondary airflow is not detectable in the exhaust system during the check. For engines equipped with positive crankcase ventilation (PCV), monitoring of the PCV system is not necessary provided the manufacturer can demonstrate to the Administrator's satisfaction that the PCV system is unlikely to fail.

(6) *Other emission-related engine components.* Any other deterioration or malfunction occurring in an electronic emission-related engine system or component not otherwise described above that either provides input to or receives commands from the on-board computer and has a measurable impact on emissions; monitoring of components required by this paragraph (b)(6) must be satisfied by employing electrical circuit continuity checks and rationality checks for computer input

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components (input values within manufacturer specified ranges based on other available operating parameters), and functionality checks for computer output components (proper functional response to computer commands) except that the Administrator may waive such a rationality or functionality check where the manufacturer has demonstrated infeasibility. Malfunctions are defined as a failure of the system or component to meet the electrical circuit continuity checks or the rationality or functionality checks.

(7) *Performance of OBD functions.* Oxygen sensor or any other component deterioration or malfunction which renders that sensor or component incapable of performing its function as part of the OBD system must be detected and identified on vehicles so equipped.

(c) *Malfunction indicator light (MIL).* The OBD system must incorporate a malfunction indicator light (MIL) readily visible to the vehicle operator. When illuminated, the MIL must display "Check Engine," "Service Engine Soon," a universally recognizable engine symbol, or a similar phrase or symbol approved by the Administrator. More than one general purpose malfunction indicator light for emission-related problems should not be used; separate specific purpose warning lights (*e.g.*, brake system, fasten seat belt, oil pressure, *etc.*) are permitted. The use of red for the OBD-related malfunction indicator light is prohibited.

(d) *MIL illumination.* The MIL must illuminate and remain illuminated when any of the conditions specified in paragraph (b) of this section are detected and verified, or whenever the engine control enters a default or secondary mode of operation considered abnormal for the given engine operating conditions. The MIL must blink once per second under any period of operation during which engine misfire is occurring and catalyst damage is imminent. If such misfire is detected again during the following driving cycle (*i.e.*, operation consisting of, at a minimum, engine start-up and engine shut-off) or the next driving cycle in which similar conditions are encountered, the MIL must maintain a steady illumination when the misfire is not occurring and then remain illuminated until the MIL extinguishing criteria of this section are satisfied. The MIL must also illuminate when the vehicle's ignition is in the "key-on" position before engine starting or cranking and extinguish after engine starting if no malfunction has previously been detected. If a fuel system or engine misfire malfunction has previously been detected, the MIL may be extinguished if the malfunction does not reoccur during three subsequent sequential trips during which similar conditions are encountered and no new malfunctions have been detected. Similar conditions are defined as engine speed within 375 rpm, engine load within 20 percent, and engine warm-up status equivalent to that under which the malfunction was first detected. If any malfunction other than a fuel system or engine misfire malfunction has been detected, the MIL may be extinguished if the malfunction does not reoccur during three subsequent sequential trips during which the monitoring system responsible for illuminating the MIL functions without detecting the malfunction, and no new malfunctions have been detected. Upon Administrator approval, statistical MIL illumination protocols may be employed, provided they result in comparable timeliness in detecting a malfunction and evaluating system performance, *i.e.*, three to six driving cycles would be considered acceptable.

(e) *Storing of computer codes.* The OBD system shall record and store in computer memory diagnostic trouble codes and diagnostic readiness codes indicating the status of the emission control system. These codes shall be available through the standardized data link connector per specifications as referenced in paragraph (h) of this section.

(1) A diagnostic trouble code must be stored for any detected and verified malfunction causing MIL illumination. The stored diagnostic trouble code must identify the malfunctioning system or component as uniquely as possible. At the manufacturer's discretion, a diagnostic trouble code may be stored for conditions not causing MIL illumination. Regardless, a separate code should be stored indicating the expected MIL illumination status (*i.e.*, MIL commanded "ON," MIL commanded "OFF").

(2) For a single misfiring cylinder, the diagnostic trouble code(s) must uniquely identify the cylinder, unless the manufacturer submits data and/or engineering evaluations which adequately demonstrate that the misfiring cylinder cannot be reliably identified under certain operating conditions. For diesel engines only, the specific cylinder for which combustion cannot be detected need not be identified if new hardware would be required to do so. The diagnostic trouble code must identify multiple misfiring cylinder conditions; under multiple misfire conditions, the misfiring cylinders need not be uniquely identified if a distinct multiple misfire diagnostic trouble code is stored.

(3) The diagnostic system may erase a diagnostic trouble code if the same code is not re-registered in at least 40 engine warm-up cycles, and the malfunction indicator light is not illuminated for that code.

(4) Separate status codes, or readiness codes, must be stored in computer memory to identify correctly functioning emission control systems and those emission control systems which require further engine operation to complete proper diagnostic evaluation. A readiness code need not be stored for those monitors that can be considered continuously operating monitors (*e.g.*, misfire monitor, fuel system monitor, etc.). Readiness codes should never be set to "not ready" status upon key-on or key-off; intentional setting of readiness codes to "not ready" status via service procedures must apply to all such codes, rather than applying to individual codes. Subject to Administrator approval, if monitoring is disabled for a multiple number of driving cycles (*i.e.*, more than one) due to the continued presence of extreme operating conditions (*e.g.*, ambient temperatures below 40 °F, or altitudes above 8000 feet), readiness for the subject monitoring system may be set to "ready" status without monitoring having been completed. Administrator approval shall be based on the conditions for monitoring system disablement, and the number of driving cycles specified without completion of monitoring before readiness is indicated.

(f) *Available diagnostic data.* (1) Upon determination of the first malfunction of any component or system, "freeze frame" engine conditions present at the time must be stored in computer memory. Should a subsequent fuel system or misfire malfunction occur, any previously stored freeze frame conditions must be replaced by the fuel system or misfire conditions (whichever occurs first). Stored engine conditions must include, but are not limited to: engine speed, open or closed loop operation, fuel system commands, coolant temperature, calculated load value, fuel pressure, vehicle speed, air flow rate, and intake manifold pressure if the information needed to determine these conditions is available to the computer. For freeze frame storage, the manufacturer must include the most appropriate set of conditions to facilitate effective repairs. If the diagnostic trouble code causing the conditions to be stored is erased in accordance with paragraph (d) of this section, the stored engine conditions may also be erased.

(2) The following data in addition to the required freeze frame information must be made available on demand through the serial port on the standardized data link connector, if the information is available to the on-board computer or can be determined using information available to the on-board computer: Diagnostic trouble codes, engine coolant temperature, fuel control system status (closed loop, open loop, other), fuel trim, ignition timing advance, intake air temperature, manifold air pressure, air flow rate, engine RPM, throttle position sensor output value, secondary air status (upstream, downstream, or atmosphere), calculated load value, vehicle speed, and fuel pressure. The signals must be provided in standard units based on SAE specifications incorporated by reference in paragraph (h) of this section. Actual signals must be clearly identified separately from default value or limp home signals.

(3) For all OBD systems for which specific on-board evaluation tests are conducted (catalyst, oxygen sensor, etc.), the results of the most recent test performed by the vehicle, and the limits to which the system is compared must be available through the standardized data link connector per the appropriate standardized specifications as referenced in paragraph (h) of this section.

(4) Access to the data required to be made available under this section shall be unrestricted and shall not require any access codes or devices that are only available from the manufacturer.

(g) *Exceptions.* The OBD system is not required to evaluate systems or components during malfunction conditions if such evaluation would result in a risk to safety or failure of systems or components. Additionally, the OBD system is not required to evaluate systems or components during operation of a power take-off unit such as a dump bed, snow plow blade, or aerial bucket, etc.

(h) *Reference materials.* The OBD system shall provide for standardized access and conform with the following Society of Automotive Engineers (SAE) standards and/or the following International Standards Organization (ISO) standards. The following documents are incorporated by reference (see § 86.1):

(1) *SAE material.* Copies of these materials may be obtained from the Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, PA 15096–0001.

(i) SAE J1850 "Class B Data Communication Network Interface," (July 1995) shall be used as the on-board to off-board communications protocol. All emission related messages sent to the scan tool over a J1850 data link shall use the Cyclic Redundancy Check and the three byte header, and shall not use inter-byte separation or checksums.

(ii) Basic diagnostic data (as specified in §§ 86.094–17(e) and (f)) shall be provided in the format and units in SAE J1979 "E/E Diagnostic Test Modes," (July 1996).

(iii) Diagnostic trouble codes shall be consistent with SAE J2012 "Recommended Practices for Diagnostic Trouble Code Definitions," (July 1996).

(iv) The connection interface between the OBD system and test equipment and diagnostic tools shall meet the functional requirements of SAE J1962 "Diagnostic Connector," (January 1995).

(v) As an alternative to the above standards, heavy-duty engines may conform to the specifications of the SAE J1939 series of standards (SAE J1939–11, J1939–13, J1939–21, J1939–31, J1939–71, J1939–73, J1939–81).

(2) *ISO materials.* Copies of these materials may be obtained from the International Organization for Standardization, Case Postale 56, CH–1211 Geneva 20, Switzerland.

(i) ISO 9141–2 "Road vehicles—Diagnostic systems—Part 2: CARB requirements for interchange of digital information," (February 1994) may be used as an alternative to SAE J1850 as the on-board to off-board communications protocol.

(ii) ISO 14230–4 "Road vehicles—Diagnostic systems—Keyword Protocol 2000—Part 4: Requirements for emission-related systems" may also be used as an alternative to SAE J1850.

(i) *Deficiencies and alternate fueled engines.* Upon application by the manufacturer, the Administrator may accept an OBD system as compliant even though specific requirements are not fully met. Such compliances without meeting specific requirements, or deficiencies, will be granted only if compliance would be infeasible or unreasonable considering such factors as, but not limited to: technical feasibility of the given monitor and lead time and production cycles including phase-in or phase-out of engines or vehicle designs and programmed upgrades of computers. Unmet requirements should not be carried over from the previous model year except where unreasonable hardware or software modifications would be necessary to correct the deficiency, and the manufacturer has demonstrated an acceptable level of effort toward compliance as determined by the Administrator. Furthermore, EPA will not accept any deficiency requests that include the complete lack of a major diagnostic monitor ("major" diagnostic monitors being those for exhaust aftertreatment devices, oxygen sensor, engine misfire, evaporative leaks, and diesel EGR, if equipped), with the possible exception of the special provisions for alternate fueled engines. For alternate fueled heavy-duty engines (*e.g.* natural gas, liquefied petroleum gas, methanol, ethanol), beginning with the model year for which alternate fuel emission standards are applicable and extending through the 2006 model year, manufacturers may request the Administrator to waive specific monitoring requirements of this section for which monitoring may not be reliable with respect to the use of the alternate fuel. At a minimum, alternate fuel engines must be equipped with an OBD system meeting OBD requirements to the extent feasible as approved by the Administrator.

(j) *California OBD II compliance option.* For heavy-duty engines at or below 14,000 pounds GVWR, demonstration of compliance with California OBD II requirements (Title 13 California Code section 1968.1), as modified pursuant to California Mail Out #97–24 (December 9, 1997), shall satisfy the requirements of this section, except that the exemption to the catalyst monitoring provisions of California Code section 1968.1(b)(1.1.2) for diesel engines does not apply, and compliance with California Code sections 1968.1(b)(4.2.2), pertaining to 0.02 inch evaporative leak detection, and 1968.1(d), pertaining to tampering protection, are not required to satisfy the requirements of this section. Also, the deficiency fine provisions of California Code sections 1968.1(m)(6.1) and (6.2) do not apply.

(k) *Phase-in for heavy-duty engines.* Manufacturers of heavy-duty engines must comply with the OBD requirements in this section according to the phase-in schedule in this paragraph (k), based on the percentage of projected engine sales within each category. The 2004 model year requirements in the phase-in schedule in this paragraph (k) are applicable only to heavy-duty Otto-cycle engines where the manufacturer has selected Otto-cycle Option 1 for alternative 2004 compliance according to § 86.005–1 (c)(2). The 2005 through 2007 requirements in the phase-in schedule in this paragraph (k) apply to all heavy-duty engines intended for use in a heavy-duty vehicle weighing 14,000 pounds GVWR or less. Manufacturers

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may exempt 2005 model year diesel heavy-duty engines and 2005 model year Otto-cycle heavy-duty engines and vehicles if the manufacturer has selected Otto-cycle Option 3 whose model year commences before July 31, 2004 from the requirements of this section. For the purposes of calculating compliance with the phase-in provisions of this paragraph (k), heavy-duty engines may be combined with heavy-duty vehicles subject to the phase-in requirements of paragraph § 86.1806–04(l). The phase-in schedule follows:

OBD COMPLIANCE PHASE-IN FOR HEAVY-DUTY ENGINES INTENDED FOR USE IN A HEAVY-DUTY VEHICLE WEIGHING 14,000 POUNDS GVWR OR LESS

| Model year | Phase-in based on projected sales |
|---|---|
| 2004 MY ..... | —applicable only to Otto-cycle engines complying with Options 1 or 2.<br>—40% compliance.<br>—alternative fuel waivers available. |
| 2005 MY ..... | —60% compliance.<br>—alternative fuel waivers available. |
| 2006 MY ..... | —80% compliance.<br>—alternative fuel waivers available. |
| 2007 + MY .. | —100% compliance. |

21. A new § 86.007–11 is added to subpart A, to read as follows:

**§ 86.007–11 Emission standards and supplemental requirements for 2007 and later model year diesel heavy-duty engines and vehicles.**

This section applies to new 2007 and later model year diesel HDEs. Section 86.007–11 includes text that specifies requirements that differ from § 86.004–11. Where a paragraph in § 86.004–11 is identical and applicable to § 86.007–11, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.004–11.".

(a) through (a)(2) [Reserved]. For guidance see § 86.004–11.

(a)(3)(i) The weighted average exhaust emissions, as determined under § 86.1360–2007(e)(5) pertaining to the supplemental steady-state test cycle, for each regulated pollutant shall not exceed 1.0 times the applicable emission standards or FELs specified in § 86.004–11(a)(1).

(ii) Gaseous exhaust emissions shall not exceed the steady-state interpolated values determined by the Maximum Allowable Emission Limits (for the corresponding speed and load), as determined under § 86.1360–2007(f), when the engine is operated in the steady-state control area defined under § 86.1360–2007(d), during steady-state engine operation.

(4)(i) The brake-specific exhaust emissions in grams/bhp-hr, as determined under § 86.1370–2007 pertaining to the not-to-exceed test procedures, for each regulated pollutant shall not exceed 1.25 times the applicable emission standards or FELs specified in § 86.004–11(a)(1) during engine and vehicle operation specified in paragraph (a)(4)(ii) of this section, except as noted in paragraph (a)(4)(iii) of this section.

(ii) For each engine family, the not-to-exceed emission limits must apply during one of the following two ambient operating regions:

(A) The not-to-exceed limits apply for all altitudes less than or equal to 5,500 feet above sea-level, during all ambient conditions (temperature and humidity). Temperature and humidity ranges for which correction factors are allowed are specified in § 86.1370–2007(e); or

(B)(*1*) The not-to-exceed emission limits apply at all altitudes less than or equal to 5,500 feet above sea-level, for temperatures less than or equal to the temperature determined by the following equation at the specified altitude:

$T = -0.00254 \times A + 100$

Where:

T = ambient air temperature in degrees Fahrenheit.

A = altitude in feet above sea-level (A is negative for altitudes below sea-level).

(*2*) Temperature and humidity ranges for which correction factors are allowed are specified in § 86.1370–2007(e);

(iii) For engines equipped with exhaust gas recirculation, the not-to-exceed emission limits specified in paragraph (a)(4)(i) of this section do not apply to engine or vehicle operation during cold operating conditions as specified in § 86.1370–2007(f).

(iv) *Deficiencies for NTE emission standards.* (A) For model years 2007 through 2009, upon application by the manufacturer, the Administrator may accept a HDDE as compliant with the NTE standards even though specific requirements are not fully met. Such compliances without meeting specific requirements, or deficiencies, will be granted only if compliance would be infeasible or unreasonable considering such factors as, but not limited to: Technical feasibility of the given hardware and lead time and production cycles including phase-in or phase-out of engines or vehicle designs and programmed upgrades of computers. Deficiencies will be approved on a engine model and/or horsepower rating basis within an engine family, and each approval is applicable for a single model year. A manufacturer's application must include a description of the auxiliary emission control device(s) which will be used to maintain emissions to the lowest practical level, considering the deficiency being requested, if applicable. An application for a deficiency must be made during the certification process; no deficiency will be granted to retroactively cover engines already certified.

(B) Unmet requirements should not be carried over from the previous model year except where unreasonable hardware or software modifications would be necessary to correct the deficiency, and the manufacturer has demonstrated an acceptable level of effort toward compliance as determined by the Administrator. The NTE deficiency should only be seen as an allowance for minor deviations from the NTE requirements. The NTE deficiency provisions allow a manufacturer to apply for relief from the NTE emission requirements under limited conditions. EPA expects that manufacturers should have the necessary functioning emission control hardware in place to comply with the NTE.

(b)(1) introductory text through (b)(1)(iii) [Reserved]. For guidance see § 86.004–11.

(b)(1)(iv) Operation within the NTE zone (defined in § 86.1370–2007) must comply with a filter smoke number of 1.0 under steady-state operation, or the following alternate opacity limits:

(A) A 30 second transient test average opacity limit of 4% for a 5 inch path; and

(B) A 10 second steady state test average opacity limit of 4% for a 5 inch path.

(2)(i) The standards set forth in § 86.004–11 (b)(1)(i) through (iii) refer to exhaust smoke emissions generated under the conditions set forth in subpart I of this part and measured and calculated in accordance with those procedures.

(ii) The standards set forth in paragraph (b)(1)(iv) of this section refer to exhaust smoke emissions generated under the conditions set forth in § 86.1370–2007 and calculated in accordance with the procedures set forth in § 86.1372–2007.

(b)(3) through (d) [Reserved]. For guidance see § 86.004–11.

22. A new § 86.007–21 is added to Subpart A, to read as follows:

**§ 86.007–21 Application for certification.**

Section 86.007–21 includes text that specifies requirements that differ from § 86.004–21, 86.094–21 or 86.096–21. Where a paragraph in § 86.004–21, 86.094–21 or 86.096–21 is identical and applicable to § 86.007–21, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.004–21.", "[Reserved]. For guidance see § 86.094–21.", or "[Reserved]. For guidance see § 86.096–21.".

(a) through (b)(3) [Reserved]. For guidance see § 86.094–21.

(b)(4)(i) [Reserved]. For guidance see § 86.004–21.

(b)(4)(ii) through (b)(5)(iv) [Reserved]. For guidance see § 86.094–21.

(b)(5)(v) through (b)(6) [Reserved]. For guidance see § 86.004–21.

(b)(7) and (b)(8) [Reserved]. For guidance see § 86.094–21.

(b)(9) and (b)(10) [Reserved]. For guidance see § 86.004–21.

(c) through (j) [Reserved]. For guidance see § 86.094–21.

(k) and (l) [Reserved]. For guidance see § 86.096–21.

(m) and (n) [Reserved]. For guidance see § 86.004–21.

(o) For diesel heavy-duty engines, the manufacturer must provide the following additional information pertaining to the supplemental steady-state test conducted under § 86.1360–2007:

(1) Weighted brake-specific emissions data (*i.e.*, in units of g/bhp-hr), calculated according to § 86.1360–2007(e)(5), for all pollutants for which an emission standard is established in § 86.004–11(a);

(2) Brake specific gaseous emission data for each of the 13 test points (identified under § 86.1360–2007(b)(1)) and the 3 EPA-selected test points (identified under § 86.1360–2007(b)(2));

(3) Concentrations and mass flow rates of all regulated gaseous emissions plus carbon dioxide;

(4) Values of all emission-related engine control variables at each test point;

(5) Weighted break-specific particulate matter (*i.e.*, in units of g/bhp-hr);

(6) A statement that the test results correspond to the maximum $NO_x$ producing condition specified in § 86.1360–2007(e)(4). The manufacturer also must maintain records at the manufacturer's facility which contain all test data, engineering analyses, and other information which provides the basis for this statement, where such information exists. The manufacturer must provide such information to the Administrator upon request;

(7) A statement that the engines will comply with the weighted average emissions standard and interpolated values comply with the Maximum Allowable Emission Limits specified in § 86.007–11(a)(3) for the useful life of the engine. The manufacturer also must maintain records at the manufacturer's facility which contain a detailed description of all test data, engineering analyses, and other information which provides the basis for this statement, where such information exists. The manufacturer must provide such information to the Administrator upon request.

(p)(1) The manufacturer must provide a statement in the application for certification that the diesel heavy-duty engine for which certification is being requested will comply with the applicable Not-To-Exceed Limits specified in § 86.007–11(a)(4) when operated under all conditions which may reasonably be expected to be encountered in normal vehicle operation and use. The manufacturer also must maintain records at the manufacturers facility which contain all test data, engineering analyses, and other information which provides the basis for this statement, where such information exists. The manufacturer must provide such information to the Administrator upon request.

(2) For engines equipped with exhaust gas recirculation, the manufacturer must provide a detailed description of the control system the engine will use to comply with the requirements of § 86.007–11(a)(4)(iii) and § 86.1370–2007(f) for NTE cold temperature operating exclusion, including but not limited to the method the manufacturer will use to access this exclusion during normal vehicle operation.

(3) For each engine model and/or horsepower rating within an engine family for which a manufacturer is applying for an NTE deficiency(ies) under the provisions of § 86.007–11(a)(4)(iv), the manufacturer's application for an NTE deficiency(ies) must include a complete description of the deficiency, including but not limited to: the specific description of the deficiency; what pollutant the deficiency is being applied for, all engineering efforts the manufacturer has made to overcome the deficiency, what specific operating conditions the deficiency is being requested for (i.e., temperature ranges, humidity ranges, altitude ranges, etc.), a full description of the auxiliary emission control device(s) which will be used to maintain emissions to the lowest practical level; and what the lowest practical emission level will be.

23. A new § 86.008–10 is added to subpart A to read as follows:

**§ 86.008–10 Emission standards for 2008 and later model year Otto-cycle heavy-duty engines and vehicles.**

Section 86.008–10 includes text that specifies requirements that differ from § 86.098–10, § 86.099–10, § 86.005–10. Where a paragraph in § 86.098–10, § 86.099–10, or § 86.005–10 is identical and applicable to § 86.008–10, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.098–10.", "[Reserved]. For guidance see § 86.099–10.", or "[Reserved]. For guidance see § 86.005–10.".

(a)(1) Exhaust emissions from new 2008 and later model year Otto-cycle HDEs shall not exceed:

(i)(A) *Oxides of Nitrogen plus Non-methane Hydrocarbons ($NO_x$ + NMHC) for engines fueled with either gasoline, natural gas, or liquefied petroleum gas.* 1.0 grams per brake horsepower-hour (0.37 grams per megajoule).

(B) *Oxides of Nitrogen plus Non-methane Hydrocarbon Equivalent ($NO_x$ + NMHCE) for engines fueled with methanol.* 1.0 grams per brake horsepower-hour (0.37 grams per megajoule).

(a)(1)(i)(C) through (a)(3)(ii) [Reserved]. For guidance see § 86.005–10.

(4) [Reserved]

(b) [Reserved]. For guidance see § 86.099–10.

(c) [Reserved]. For guidance see § 86.098–10.

(d) [Reserved]. For guidance see § 86.005–10.

(e) [Reserved]. For guidance see § 86.099–10.

(f) [Reserved]

24. Section 86.098–10 is amended by revising paragraph (a)(1) introductory text, to read as follows:

**§ 86.098–10 Emission standards for 1998 and later model year Otto-cycle heavy-duty engines and vehicles.**

* * * * *

(a)(1) Except as provided for 2003 and 2004 model years in §§ 86.005–10(f) and 86.1816–05, exhaust emissions from new 1998 and later model year Otto-cycle heavy-duty engines shall not exceed:

* * * * * *

25. Subpart B is amended by revising the heading of the subpart, to read as follows:

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**Subpart B—Emission Regulations for 1977 and Later Model Year New Light-Duty Vehicles and New Light-Duty Trucks and New Otto-Cycle Complete Heavy-Duty Vehicles; Test Procedures**

26. Section 86.101 is amended by revising paragraphs (a) introductory text, (a)(3) and (d), and by adding paragraph (e) to read as follows:

**§ 86.101 General applicability.**

(a) The provisions of this subpart are applicable to 1977 and later model year new light-duty vehicles and light duty trucks, and 2001 and later model year new Otto-cycle heavy-duty vehicles and engines certified under the provisions of subpart S of this part.

* * * * *

(3) Sections 86.150 through 86.157 describe the refueling test procedures for light-duty vehicles and light duty trucks and apply for model years 1998 and later. They also describe the refueling test procedures for 2004 and later model year Otto-cycle complete heavy-duty vehicles that must meet the ORVR standards under the provisions of subpart S of this part.

* * * * *

(d) References in this subpart to engine families and emission control systems shall be deemed to apply to durability groups and test groups as applicable for manufacturers certifying new light-duty vehicles, light-duty trucks, and heavy-duty vehicles under the provisions of subpart S of this part.

(e) References in this subpart to light-duty vehicles or light-duty trucks shall be deemed to apply to light-duty vehicles, light-duty trucks, or heavy-duty vehicles and engines as applicable for manufacturers certifying new light-duty vehicles, light-duty trucks, and heavy-duty vehicles and engines under the provisions of subpart S of this part.

27. Section 86.129–94 is amended by revising paragraph (a) to read as follows:

**§ 86.129–94 Road load power, test weight, inertia weight class determination, and fuel temperature profile.**

* * * * *

(a) Flywheels, electrical, or other means of simulating test weight as shown in the following table shall be used. If the equivalent test weight specified is not available on the dynamometer being used, the next higher equivalent test weight (not to exceed 250 pounds) available shall be used:

| Road load power at 50 mi/hour—light duty trucks [1 2 3] | Test weight basis [4 5] | Test equivalent test weight (pounds) | Inertia weight class (pounds) |
|---|---|---|---|
| | Up to 1062 | 1,000 | 1,000 |
| | 1063 to 1187 | 1,125 | 1,000 |
| | 1188 to 1312 | 1,250 | 1,250 |
| | 1313 to 1437 | 1,375 | 1,250 |
| | 1438 to 1562 | 1,500 | 1,500 |
| | 1563 to 1687 | 1,625 | 1,500 |
| | 1688 to 1812 | 1,750 | 1,750 |
| | 1813 to 1937 | 1,875 | 1,750 |
| | 1938 to 2062 | 2,000 | 2,000 |
| | 2063 to 2187 | 2,125 | 2,000 |
| | 2188 to 2312 | 2,250 | 2,250 |
| | 2313 to 2437 | 2,375 | 2,250 |
| | 2438 to 2562 | 2,500 | 2,500 |
| | 2563 to 2687 | 2,625 | 2,500 |
| | 2688 to 2812 | 2,750 | 2,750 |
| | 2813 to 2937 | 2,875 | 2,750 |
| | 2938 to 3062 | 3,000 | 3,000 |
| | 3063 to 3187 | 3,125 | 3,000 |
| | 3188 to 3312 | 3,250 | 3,000 |
| | 3313 to 3437 | 3,375 | 3,500 |
| | 3438 to 3562 | 3,500 | 3,500 |
| | 3563 to 3687 | 3,625 | 3,500 |
| | 3688 to 3812 | 3,750 | 3,500 |
| | 3813 to 3937 | 3,875 | 4,000 |
| | 3938 to 4125 | 4,000 | 4,000 |
| | 4126 to 4375 | 4,250 | 4,000 |
| | 4376 to 4625 | 4,500 | 4,500 |
| | 4626 to 4875 | 4,750 | 4,500 |
| | 4876 to 5125 | 5,000 | 5,000 |
| | 5126 to 5375 | 5,250 | 5,000 |
| | 5376 to 5750 | 5,500 | 5,500 |
| | 5751 to 6250 | 6,000 | 6,000 |
| | 6251 to 6750 | 6,500 | 6,500 |
| | 6751 to 7250 | 7,000 | 7,000 |
| | 7251 to 7750 | 7,500 | 7,500 |
| | 7751 to 8250 | 8,000 | 8,000 |
| | 8251 to 8750 | 8,500 | 8,500 |
| | 8751 to 9250 | 9,000 | 9,000 |
| | 9251 to 9750 | 9,500 | 9,500 |
| | 9751 to 10250 | 10,000 | 10,000 |
| | 10251 to 10750 | 10,500 | 10,500 |
| | 10751 to 11250 | 11,000 | 11,000 |
| | 11251 to 11750 | 11,500 | 11,500 |
| | 11751 to 12250 | 12,000 | 12,000 |
| | 12251 to 12750 | 12,500 | 12,500 |
| | 12751 to 13250 | 13,000 | 13,000 |
| | 13251 to 13750 | 13,500 | 13,500 |
| | 13751 to 14000 | 14,000 | 14,000 |

[1] For all light-duty trucks except vans, and for heavy-duty vehicles optionally certified as light-duty trucks, and for complete heavy-duty vehicles, the road load power (horsepower) at 50 mi/h shall be 0.58 times B (defined in footnote 3 of this table) rounded to the nearest ½ horsepower.

[2] For vans, the road load power at 50 mi/h (horsepower) shall be 0.50 times B (defined in footnote 3 of this table) rounded to the nearest ½ horsepower.

[3] B is the basic vehicle frontal area (square foot) plus the additional frontal area (square foot) of mirrors and optional equipment exceeding 0.1 ft² which are anticipated to be sold on more than 33 percent of the car line. Frontal area measurements shall be computed to the nearest 10th of a square foot using a method approved in advance by the Administrator.

[4] For model year 1994 and later heavy light-duty trucks not subject to the Tier 0 standards of § 86.094–9, test weight basis is as follows: for emissions tests, the basis shall be adjusted loaded vehicle weight, as defined in § 86.094–2; and for fuel economy tests, the basis shall be loaded vehicle weight, as defined in § 86.082–2, or, at the manufacturer's option, adjusted loaded vehicle weight as defined in § 86.094–2. For all other vehicles, test weight basis shall be loaded vehicle weight, as defined in § 86.082–2.

[5] Light-duty vehicles over 5,750 lb. loaded vehicle weight shall be tested at a 5,500 lb. equivalent test weight.



* * * * *

**Subpart H—[Amended]**

28. Section 86.701–94 is revised to read as follows:

**§ 86.701–94 General applicability.**

(a) The provisions of this subpart apply to: 1994 and later model year Otto-cycle and diesel light-duty vehicles; 1994 and later model year Otto-cycle and diesel light-duty trucks; and 1994 and later model year Otto-cycle and diesel heavy-duty engines; and 2001 and later model year Otto-cycle heavy-duty vehicles and engines certified under the provisions of subpart S of this part. The provisions of subpart B of this part apply to this subpart.

(b) References in this subpart to engine families and emission control systems shall be deemed to apply to durability groups and test groups as applicable for manufacturers certifying new light-duty vehicles, light-duty trucks, and Otto-cycle heavy-duty vehicles and engines under the provisions of subpart S of this part.

**Subpart K—[Amended]**

29. Section 86.1001–84 is amended by revising paragraph (b), to read as follows:

**§ 86.1001–84 Applicability.**

* * * * *

(b) References in this subpart to engine families and emission control systems shall be deemed to apply to durability groups and test groups as applicable for manufacturers certifying new light-duty vehicles, light-duty trucks, and Otto-cycle complete heavy-duty vehicles under the provisions of subpart S of this part.

30. A new § 86.1008–2004 is added to subpart K, to read as follows:

**§ 86.1008–2004 Test procedures.**

Section 86.1008–2004 includes text that specifies requirements that differ from § 86.1008–2001. Where a paragraph in § 86.1008–2001 is identical and applicable to § 86.1008–2004, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.1008–2001.".

(a)(1)(i) For heavy-duty engines, the prescribed test procedure is the Federal Test Procedure as described in subparts N, I, and P of this part, except that 2004 and later model year engines shall not be subject to the test procedures specified in § 86.1380, and 2007 and later model year engines shall not be subject to the test procedures specified in §§ 86.1360(b)(2), 86.1360(f), 86.1370, and 86.1372. The Administrator may, on the basis of a written application by a manufacturer, approve optional test procedures other than those in subparts N, I, and P of this part for any heavy-duty vehicle which is not susceptible to satisfactory testing using the procedures in subparts N, I, and P of this part.

(a)(1)(ii) through (i) [Reserved]. For guidance see § 86.1008–2001.

**Subpart L—[Amended]**

31. Section 86.1101–87 is revised to read as follows:

**§ 86.1101–87 Applicability.**

(a) The provisions of this subpart are applicable for 1987 and later model year gasoline-fueled and diesel heavy-duty engines and heavy-duty vehicles. These vehicles include light-duty trucks rated in excess of 6,000 pounds gross vehicle weight.

(b) References in this subpart to engine families and emission control systems shall be deemed to apply to durability groups and test groups as applicable for manufacturers certifying new light-duty trucks and Otto-cycle complete heavy-duty vehicles under the provisions of subpart S of this part.

**Subpart M—[Amended]**

32. Section 86.1206–96 is amended by revising the last sentence of paragraph (b), to read as follows:

**§ 86.1206–96 Equipment required; overview.**

* * * * *

(b) * * * The driving cycle is specified in § 86.1215.

33. Section 86.1215–85 is amended by redesignating paragraph (a) as paragraph (a)(1) and adding a new paragraph (a)(2), to read as follows:

**§ 86.1215–85 EPA heavy-duty vehicle (HDV) urban dynamometer driving schedule.**

(a)(1) * * *

(2) For evaporative emission testing of heavy-duty vehicles a manufacturer may optionally use the dynamometer driving schedule for light-duty vehicles and light-duty trucks specified in appendix I(a) of this part. This driving schedule may not be used for exhaust emissions testing of heavy-duty vehicles. If the manufacturer chooses to use this option, the Administrator will use this driving schedule when conducting evaporative emission tests, as described in § 86.1230–96.

* * * * *

34. Section 86.1229–85 is amended by revising paragraph (d)(5)(vi), to read as follows:

**§ 86.1229–85 Dynamometer load determination and fuel temperature profile.**

* * * * *

(d) * * *

(5) * * *

(vi) Time of initiation of the first driving cycle;

* * * * *

35. Section 86.1232–96 is amended by revising the third sentence in paragraph (c), to read as follows:

**§ 86.1232–96 Vehicle preconditioning.**

* * * * *

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(c) * * * Following this soak period, the test vehicle shall be placed, either by being driven or pushed, on a dynamometer and operated through one driving schedule, specified in § 86.1215 and appendix I of this part. * * *

* * * * *

36. Section 86.1234–96 is amended by revising paragraph (b), to read as follows:

**§ 86.1234–96 Running loss test.**

* * * * *

(b) *Driving schedule.* Conduct the running loss test by operating the test vehicle through three driving schedules (see § 86.1215 and appendix I of this part). Fifteen seconds after the engine starts, place the transmission in gear. Twenty seconds after the engine starts, begin the initial vehicle acceleration of the driving schedule. The transmission shall be operated according to the specifications of § 86.1228 during the driving cycles.

* * * * *

37. Section 86.1235–96 is amended by revising the first sentence of paragraph (a), to read as follows:

**§ 86.1235–96 Dynamometer procedure.**

* * * * *

(a) The dynamometer run consists of one dynamometer driving schedule cycle (see § 86.1215 and appendix I of this part) starting not less than 12 nor more than 36 hours after completion of the drive specified in § 86.1232–96.

* * *

* * * * *

38. Section 86.1246–96 is amended by revising paragraph (e), to read as follows:

**§ 86.1246–96 Fuel dispensing spitback procedure.**

* * * * *

(e) The vehicle shall be soaked at 80±6 °F (27±3 °C) for a minimum of six hours, then placed, either by being driven or pushed, on a dynamometer and operated through one dynamometer driving schedule (specified in § 86.1215 and appendix I of this part). The test vehicle may not be used to set the dynamometer horsepower.

* * * * *

**Subpart N—[Amended]**

39. Section 86.1304–90 is revised to read as follows:

**§ 86.1304–90 Section numbering; construction.**

(a) *Section numbering.* The model year of initial applicability is indicated by the section number. The two digits following the hyphen designate the first model year for which a section is applicable. The section continues to apply to subsequent model years unless a later model year section is adopted.

Example: Section 86.13xx–2004 applies to the 2004 and subsequent model years. If a § 86.13xx–2007 is promulgated it would apply beginning with the 2007 model year; § 86.13xx–2004 would apply to model years 2004 through 2006.

(b) A section reference without a model year suffix refers to the section applicable for the appropriate model year.

40. A new § 86.1305–2004 is added to subpart N, to read as follows:

**§ 86.1305–2004 Introduction; structure of subpart.**

(a) This subpart describes the equipment required and the procedures to follow in order to perform exhaust emissions tests on Otto-cycle and diesel-cycle heavy duty engines. Subpart A of this part sets forth the emission standards and general testing requirements to comply with EPA certification procedures.

(b) This subpart contains five key sets of requirements, as follows: specifications and equipment needs (§§ 86.1306 through 86.1314); calibration methods and frequencies (§§ 86.1316 through 86.1326); test procedures (§§ 86.1327 through 86.1341 and §§ 86.1360 through 86.1380); calculation formulas (§§ 86.1342 and 86.1343); and data requirements (§ 86.1344).

41. A new § 86.1360–2007 is added to subpart N to read as follows:

**§ 86.1360–2007 Supplemental steady-state test; test cycle and procedures.**

(a) *Applicability.* This section applies to 2007 and later diesel heavy duty engines.

(b) *Test cycle.* (1) The following 13-mode cycle must be followed in dynamometer operation on the test engine:

| Mode No. | Engine speed | Percent load | Weighting factor | Mode length (minutes) |
|---|---|---|---|---|
| 1 | Idle | NA | 0.15 | 4 |
| 2 | A | 100 | 0.08 | 2 |
| 3 | B | 50 | 0.10 | 2 |
| 4 | B | 75 | 0.10 | 2 |
| 5 | A | 50 | 0.05 | 2 |
| 6 | A | 75 | 0.05 | 2 |
| 7 | A | 25 | 0.05 | 2 |
| 8 | B | 100 | 0.09 | 2 |
| 9 | B | 25 | 0.10 | 2 |
| 10 | C | 100 | 0.08 | 2 |
| 11 | C | 25 | 0.05 | 2 |
| 12 | C | 75 | 0.05 | 2 |
| 13 | C | 50 | 0.05 | 2 |

(2) In addition to the 13 test points identified in paragraph (b)(1) of this section, EPA may select, and require the manufacturer to conduct the test using, up to 3 additional test points within the control area (as defined in paragraph (d) of this section). EPA will notify the manufacturer of these supplemental test points in writing in a timely manner before the test. Emissions sampling for the additional test modes must include all regulated gaseous pollutants. Particulate matter does not need to be measured.

(c) *Determining engine speeds.* (1) The engine speeds A, B and C, referenced in the table in paragraph (b)(1) of this section, and speeds D and E, referenced in § 86.1380, must be determined as follows:

Speed A = $n_{lo} + 0.25 \times (n_{hi} - n_{lo})$

Speed B = $n_{lo} + 0.50 \times (n_{hi} - n_{lo})$

Speed C = $n_{lo} + 0.75 \times (n_{hi} - n_{lo})$

Speed D = $n_{hi}$

Speed E = $n_{lo} + 0.15 \times (n_{hi} - n_{lo})$

Where:

$n_{hi}$ = High speed as determined by calculating 70% of the maximum power. The highest engine speed where this power value occurs on the power curve is defined as $n_{hi}$.

$n_{lo}$ = Low speed as determined by calculating 50% of the maximum power. The lowest engine speed where this power value occurs on the power curve is defined as $n_{lo}$.

Maximum power = the maximum observed power calculated according to the engine mapping procedures defined in § 86.1332.

(d) *Determining the control area.* The control area extends from the engine speed A to C, as defined in paragraph (c) of this section, and extends from 25 to 100 percent load.

(e) *Test requirements*—(1) *Engine warm-up.* Prior to beginning the test sequence, the engine must be warmed-up according to the procedures in § 86.1332–90(d)(3)(i) through (iv).

(2) *Test sequence.* The test must be performed in the order of the mode numbers in paragraph (b)(1) of this section. The EPA-selected test points identified under paragraph (b)(2) of this section must be performed immediately upon completion of mode 13. The engine must be operated for the prescribed time in each mode, completing engine speed and load changes in the first 20 seconds of each mode. The specified speed must be held to within <plus-minus>50 rpm and the specified torque must be held to within plus or minus two percent of the maximum torque at the test speed.

(3) *Particulate sampling.* One pair of filters (primary and back-up) shall be used for sampling PM over the 13-mode test procedure. The modal weighting factors specified in paragraph (b)(1) of this section shall be taken into account by taking a sample proportional to the exhaust mass flow during each individual mode of the cycle. This can be achieved by adjusting sample flow rate, sampling time, and/or dilution ratio, accordingly, so that the criterion for the effective weighting factors is met. The sampling time per mode must be at least 4 seconds per 0.01 weighting factor. Sampling must be conducted as late as possible within each mode. Particulate sampling shall be completed no earlier than 5 seconds before the end of each mode.

(4) The test must be conducted with all emission-related engine control variables in the highest brake-specific $NO_X$ emissions state which could be encountered for a 30 second or longer averaging period at the given test point and for the conditions under which the engine is being tested.

(5) *Exhaust emissions measurements and calculations.* Manufacturers must follow the exhaust emissions sample analysis procedures under § 86.1340, and the calculation formulas and procedures under § 86.1342, for the 13-mode cycle and the 3 EPA-selected test points as applicable for steady-state testing, including the $NO_X$ correction factor for humidity.

(6) *Calculating the weighted average emissions.* (i) For each regulated gaseous pollutant, the weighted average emissions must be calculated as follows:

$$A_{WA} = \frac{\sum_{i=1}^{n}[A_{Mi} \times WF_i]}{\sum_{i=2}^{n}[A_{Pi} \times WF_i]}$$

Where:

$A_{WA}$ = Weighted average emissions for each regulated gaseous pollutant, in grams per brake horse-power hour.

$A_M$ = Modal average mass emissions level, in grams per hour. Mass emissions must be calculated as described in § 86.1342.

$A_P$ = Modal average power, in brake horse-power. Any power measured during the idle mode (mode 1) is not included in this calculation.

$W_F$ = Weighting factor corresponding to each mode of the steady-state test cycle, as defined in paragraph (b)(1) of this section.

i = The modes of the steady-state test cycle, as defined in paragraph (b)(1) of this section.

n = 13, corresponding to the 13 modes of the steady-state test cycle, as defined in paragraph (b)(1) of this section.

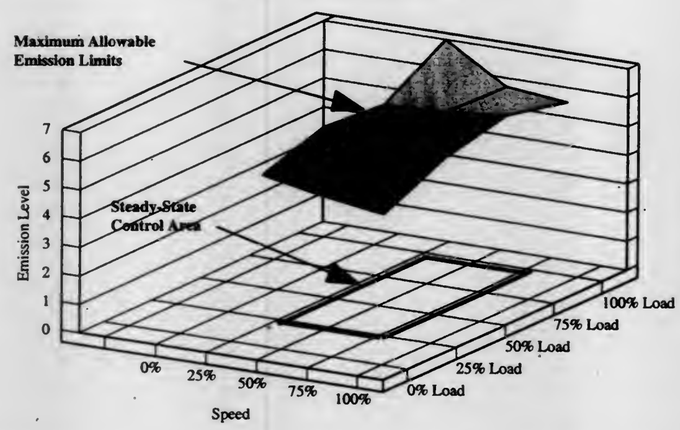
(ii) For PM measurements, a single pair of filters must be used to measure PM over the 13 modes. The brake-specific PM emission level for the test must be calculated as described for a transient hot start test in § 86.1343. Only the power measured during the sampling period shall be used in the calculation.

(f) *Maximum allowable emission limits.* (1) For gaseous emissions, the 12 non-idle test point results and the four-point linear interpolation procedure specified in paragraph (g) of this section for intermediate conditions, shall define Maximum Allowable Emission Limits for purposes of § 86.007–11(a)(3) except as modified under paragraph (f)(3) of this section. Each engine shall have it's own Maximum Allowable Emission Limits generated from the 12 non-idle supplemental steady state test points from that engine. The control area extends from the 25% to the 75% engine speeds, at engine loads of 25% to 100%, as defined in paragraph (d) of this section. Figure 1 of this paragraph (f)(1) depicts a sample Maximum Allowable Emission Limit curve, for illustration purposes only, as follows:

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**Figure 1**




(2) If the weighted average emissions, calculated according to paragraph (e)(6) of this section, for any gaseous pollutant is equal to or lower than required by § 86.007–11(a)(3), each of the 13 test values for that pollutant shall first be multiplied by the ratio of the applicable emission standard (under § 86.007–11(a)(3)) to the weighted average emissions value, and then by 1.10 for interpolation allowance, before determining the Maximum Allowable Emission Limits under paragraph (f)(1) of this section.

(3) If the Maximum Allowable Emission Limit for any point, as calculated under paragraphs (f)(1) and (2) of this section, is greater than the applicable Not-to-Exceed limit (if within the Not-to-Exceed control area defined in § 86.1370–2007(b)), then the Maximum Allowable Emission Limit for that point shall be defined as the applicable Not-to-Exceed limit.

(g) *Calculating intermediate test points.* (1) For the three test points selected by EPA under paragraph (b)(2) of this section, the emissions must be measured and calculated as described in paragraph (e)(6)(i) of this section (except that n = 1 and WF = 1). The measured values then must be compared to the interpolated values according to paragraph (g)(3) of this section. The interpolated values are determined from the modes of the test cycle closest to the respective test point according to paragraph (g)(2) of this section.

(2) Interpolating emission values from the test cycle. The gaseous emissions for each regulated pollutant for each of the control points (Z) must be interpolated from the four closest modes of the test cycle that envelop the selected control point Z as shown in Figure 2 of this paragraph (g)(2).

(i) For these modes (R, S, T, U), the following definitions apply:

(A) Speed (R) = Speed(T) = $n_{RT}$.

(B) Speed (S) = Speed(U) = $n_{SU}$.

(C) Per cent load (R) = Per cent load (S).

(D) Per cent load (T) = Per cent load (U).

(ii) The interpolated value of the brake specific gaseous emissions of the selected control point Z(EZ) must be calculated as follows:

$E_Z = E_{RS} + (E_{TU} - E_{RS}) * (M_Z - M_{RS}) / (M_{TU} - M_{RS})$

$E_{TU} = E_T + (E_U - E_T) * (n_Z - n_{RT}) / (n_{SU} - n_{RT})$

$E_{RS} = E_R + (E_S - E_R) * (n_Z - n_{RT}) / (n_{SU} - n_{RT})$

$M_{TU} = M_T + (M_U - M_T) * (n_Z - n_{RT}) / (n_{SU} - n_{RT})$

$M_{RS} = M_R + (M_S - M_R) * (n_Z - n_{RT}) / (n_{SU} - n_{RT})$

Where:

$E_R$, $E_S$, $E_T$, $E_U$ = for each regulated pollutant, brake specific gaseous emissions of the enveloping modes adjusted according to the factors in(f)(2).

$M_R$, $M_S$, $M_T$, $M_U$ = engine torque of the enveloping modes.

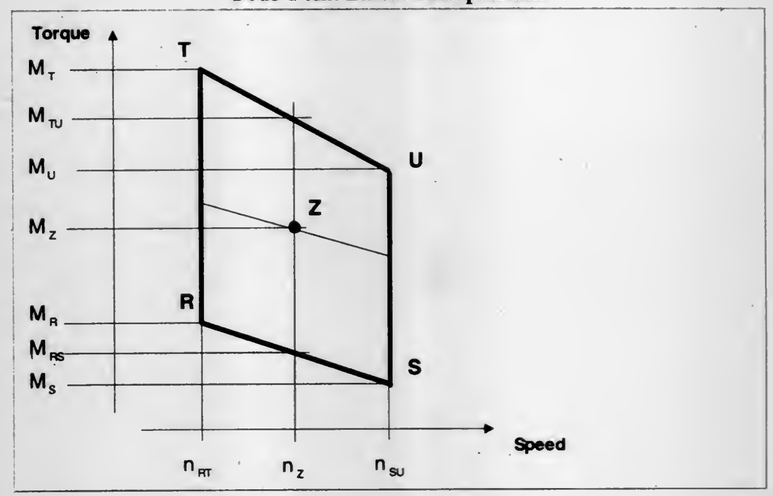
$M_Z$ = engine torque of the selected control point Z.

$n_Z$ = engine speed of the selected control point Z.

(iii) Figure 2 follows:



**Figure 2**
**Four-Point Linear Interpolation**




(3) *Comparing calculated and interpolated emission values.* The measured brake specific gaseous emissions of the control point Z ($X_Z$) must be less than or equal to the interpolated value ($E_Z$).

(h) *Test fuel specifications.* The test fuel used for supplemental steady-state testing under this section must meet the requirements of § 86.1313.

(i) *General requirements.* Ambient conditions, charge cooling specifications, and intake and exhaust restrictions for supplemental steady-state testing and maximum allowable emission limit testing under this section must meet the requirements of § 86.1330.

42. A new § 86.1370–2007 is added to subpart N, to read as follows:

**§ 86.1370–2007 Not-To-Exceed test procedures.**

(a) *General.* The purpose of this test procedure is to measure in-use emissions of heavy-duty diesel engines while operating within a broad range of speed and load points (the Not-To-Exceed Control Area) and under conditions which can reasonably be expected to be encountered in normal vehicle operation and use. Emission results from this test procedure are to be compared to the Not-To-Exceed Limits specified in § 86.007–11 (a)(4).

(b) *Not-to-exceed control area for diesel heavy-duty engines.* The Not-To-Exceed Control Area for diesel heavy-duty engines consists of the following engine speed and load points:

(1) All operating speeds greater than the speed calculated using the following formula, where $n_{hi}$ and $n_{lo}$ are determined according to the provisions in § 86.1360(c):

$n_{lo}+0.15\times(n_{hi}-n_{lo})$

(2) All engine load points greater than or equal to 30% or more of the maximum torque value produced by the engine.

(3) Notwithstanding the provisions of paragraphs (b)(1) and (b)(2) of this section, all operating speed and load points with brake specific fuel consumption (BSFC) values within 5% of the minimum BSFC value of the engine. For the purposes of this requirement, BFSC must be calculated under the general test cell conditions specified in § 86.1330. The manufacturer may petition the Administrator at certification to exclude such points if the manufacturer can demonstrate that the engine is not expected to operate at such points in normal vehicle operation and use. Engines equipped with drivelines with multi-speed manual transmissions or automatic transmissions with a finite number of gears are not subject to the requirements of this paragraph (b)(3).

(4) Notwithstanding the provisions of paragraphs (b)(1) through (b)(3) of this section, speed and load points below 30% of the maximum power value produced by the engine shall be excluded from the Not-To-Exceed Control Area for all emissions.

(5) For particulate matter only, speed and load points determined by one of the following methods, whichever is applicable, shall be excluded from the Not-To-Exceed Control Area. B and C engine speeds shall be determined according to the provisions of § 86.1360 (c):

(i) If the C speed is below 2400 rpm, the speed and load points to the right of or below the line formed by connecting the following two points:

(A) 30% of maximum torque or 30% of maximum power, whichever is greater, at the B speed;

(B) 70% of maximum power at 100% speed ($n_{hi}$);

(ii) If the C speed is above 2400 rpm, the speed and load points to the right of the line formed by connecting the two points in paragraphs (b)(5)(ii)(A) and (B) of this section and below the line formed by connecting the two points in paragraphs (b)(5)(ii)(B) and (C) of this section:

(A) 30% of maximum torque or 30% of maximum power, whichever is greater, at the B speed;

(B) 50% of maximum power at 2400 rpm;

(C) 70% of maximum power at 100% speed ($n_{hi}$).

(6) For natural gas and other non-diesel fueled diesel cycle engines, the manufacturer may petition the

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Administrator at certification to exclude operating points from the Not-to-Exceed Control Area defined in § 86.1370(b)(1) through (5) if the manufacturer can demonstrate that the engine is not expected to operate at such points in normal vehicle operation and use.

(c) [Reserved]

(d) *Not-to-exceed control area limits.* (1) When operated within the Not-To-Exceed Control Area defined in paragraph (b) of this section, diesel engine emissions shall not exceed the applicable Not-To-Exceed Limits specified in § 86.007–11(a)(4) when averaged over any period of time greater than or equal to 30 seconds.

(2) [Reserved]

(e) *Ambient corrections.* The measured data shall be corrected based on the ambient conditions under which it was taken, as specified in this section.

(1) For engines operating within the ambient conditions specified in § 86.007–11(a)(4)(ii)(a):

(i) $NO_X$ emissions shall be corrected for ambient air humidity to a standard humidity level of 50 grains (7.14 g/kg) if the humidity of the intake air was below 50 grains, or to 75 grains (10.71 g/kg) if above 75 grains.

(ii) $NO_X$ and PM emissions shall be corrected for ambient air temperature to a temperature of 55 degrees F (12.8 degrees C) for ambient air temperatures below 55 degrees F or to 95 degrees F (35.0 degrees C) if the ambient air temperature is above 95 degrees F.

(iii) No ambient air temperature or humidity correction factors shall be used within the ranges of 50–75 grains or 55–95 degrees F.

(iv) Where test conditions require such correction factors, the manufacturer must use good engineering judgement and generally accepted engineering practice to determine the appropriate correction factors, subject to EPA review.

(2) For engines operating within the ambient conditions specified in § 86.007–11(a)(4)(ii)(b):

(i) $NO_X$ emissions shall be corrected for ambient air humidity to a standard humidity level of 50 grains (7.14 g/kg) if the humidity of the intake air was below 50 grains, or to 75 grains (10.71 g/kg) if above 75 grains.

(ii) $NO_X$ and PM emissions shall be corrected for ambient air temperature to a temperature of 55 degrees F (12.8 degrees C) for ambient air temperatures below 55 degrees F.

(iii) No ambient air temperature or humidity correction factors shall be used within the ranges of 50–75 grains or for temperatures greater than or equal to 55 degrees F.

(iv) Where test conditions require such correction factors, the manufacturer must use good engineering judgement and generally accepted engineering practice to determine the appropriate correction factors, subject to EPA review.

(f) *NTE cold temperature operating exclusion.* Engines equipped with exhaust gas recirculation (EGR) whose operation within the NTE control area specified in § 86.1370(b) when operating during cold temperature conditions as specified in paragraph (f)(1) of this section are not subject to the NTE emission limits during the specified cold temperature operation conditions.

(1) Cold temperature operation is defined as engine operating conditions meeting either of the following two criteria:

(i) Intake manifold temperature (IMT) less than or equal to the temperature defined by the following relationship between IMT and absolute intake manifold pressure (IMP) for the corresponding IMP:

$$P = 0.0875 \times IMT - 7.75 \quad \text{Equation (1)}$$

Where:

P = absolute intake manifold pressure in bars.
IMT = intake manifold temperature in degrees Fahrenheit.

(ii) Engine coolant temperature (ECT) less than or equal to the temperature defined by the following relationship between ECT and absolute intake manifold pressure (IMP) for the corresponding IMP:

$$P = 0.0778 \times ECT - 9.8889 \quad \text{Equation (2)}$$

Where:

P = absolute intake manifold pressure in bars.
ECT = engine coolant temperature in degrees Fahrenheit.

(2) [Reserved]

43. A new § 86.1372–2007 is added to subpart N, to read as follows:

**§ 86.1372–2007 Measuring smoke emissions within the NTE zone.**

This section contains the measurement techniques to be used for determining compliance with the filter smoke limit or opacity limits in § 86.007–11(b)(1)(iv).

(a) For steady-state or transient smoke testing using full-flow opacimeters, equipment meeting the requirements of subpart I of this part or ISO/DIS–11614 "Reciprocating internal combustion compression-ignition engines—Apparatus for measurement of the opacity and for determination of the light absorption coefficient of exhaust gas" is required. This document is incorporated by reference (see § 86.1).

(1) All full-flow opacimeter measurements shall be reported as the equivalent percent opacity for a five inch effective optical path length using the Beer-Lambert relationship.

(2) Zero and full-scale (100 percent opacity) span shall be adjusted prior to testing.

(3) Post test zero and full scale span checks shall be performed. For valid tests, zero and span drift between the pre-test and post-test checks shall be less than two percent of full-scale.

(4) Opacimeter calibration and linearity checks shall be performed using manufacturer's recommendations or good engineering practice.

(b) For steady-state testing using a filter-type smokemeter, equipment meeting the requirements of ISO/FDIS–10054 "Internal combustion compression-ignition engines—Measurement apparatus for smoke from engines operating under steady-state conditions—Filter-type smokemeter" is recommended. Other equipment may be used provided it is approved in advance by the Administrator.

(1) All filter-type smokemeter results shall be reported as a filter smoke number (FSN) that is similar to the Bosch smoke number (BSN) scale.

(2) Filter-type smokemeters shall be calibrated every 90 days using manufacturer's recommended practices or good engineering practice.

(c) For steady-state testing using a partial-flow opacimeter, equipment meeting the requirements of ISO–8178–3 and ISO/DIS–11614 is recommended. Other equipment may be used provided it is approved in advance by the Administrator.

(1) All partial-flow opacimeter measurements shall be reported as the equivalent percent opacity for a five inch effective optical path length using the Beer-Lambert relationship.

(2) Zero and full scale (100 percent opacity) span shall be adjusted prior to testing.

(3) Post-test zero and full scale span checks shall be performed. For valid tests, zero and span drift between the pre-test and post-test checks shall be less than two percent of full scale.

(4) Opacimeter calibration and linearity checks shall be performed using manufacturer's recommendations or good engineering practice.

(d) Replicate smoke tests may be run to improve confidence in a single test or stabilization. If replicate tests are run, three additional tests which confirm to this section shall be run, and the final reported test results must be the average of all the valid tests.



(e) A minimum of thirty seconds sampling time shall be used for average transient smoke measurements. The opacity values used for this averaging must be collected at a minimum rate of 1 data point per second, and all data points used in the averaging must be equally spaced in time.

44. A new § 86.1380–2004 is added to subpart N, to read as follows:

**§ 86.1380–2004 Load response test.**

(a) *General.* This section applies to 2004 through 2007 model year heavy-duty diesel engines. The purpose of this test procedure is to measure the brake-specific gaseous and particulate emissions from a heavy-duty diesel engine as it is suddenly loaded, with its fueling lever, at a given engine operating speed. The results of this test procedure are not compared to emission standards, and this test is not considered part of the Federal Test Procedure. This procedure shall be conducted on a dynamometer.

(b) *Test conditions and equipment.* All laboratory conditions, laboratory equipment, engine set-up procedures, test fuel, and testing conditions specified in this subpart for transient testing shall apply to the Load Response Test where applicable.

(c) *Test sequence.* (1) The test has 5 separate measurement segments, each identified by a specific engine speed. At each of the following speeds, beginning with the lowest torque point at that engine speed within the NTE control area for NMHC+$NO_X$, the engine fuel control shall be moved suddenly to the full fuel position and held at that point for four seconds, while the specified speed is maintained constant within the tolerances of the test facility. After the four second full fuel position, the load should be immediately brought back to the minimum NTE control area load for the specified engine speed for a period of 6 seconds. Prior to the beginning of each measurement segment, the engine shall be warmed up at the supplemental steady-state Mode 4 conditions (75% engine load, Speed B as specified in § 86.1360) until engine oil temperature has stabilized.

(i) Speed A as determined in § 86.1360(c);

(ii) Speed B as determined in § 86.1360(c);

(iii) Speed C as determined in § 86.1360(c);

(iv) Speed D as determined in § 86.1360(c);

(v) Speed E as determined in § 86.1360(c).

(2) The test sequence at each engine speed may be repeated, without pause between repeats, if it is necessary to obtain sufficient particulate matter sample amount for analysis.

(3) The exhaust emissions sample shall be analyzed using the applicable procedures under § 86.1340, and the exhaust emission shall be calculated using the applicable procedures under § 86.1342, for each measurement segment. Sampling rates for engine speed, engine load, and gaseous emissions shall performed a minium rate of 10 Hz. Emissions for all regulated pollutants must be calculated and reported for each test speed condition in terms of g/bhp-hr.

(4) Data must be collected beginning with the start of the transition from the minimum NTE control area load to the full fuel position. Data must be collected until the end of the (final if repeated) 6 second operational period at the minimum NTE control area load described in paragraph (c)(1) of this section. Good engineering practice must be used to ensure that the sampling time is properly aligned with the engine operation.

**Subpart P—[Amended]**

45. Section 86.1501–94 is revised to read as follows:

**§ 86.1501–94 Scope; applicability.**

(a) This subpart contains gaseous emission idle test procedures for light-duty trucks and heavy-duty engines for which idle CO standards apply. It applies to 1994 and later model years. The idle test procedures are optionally applicable to 1994 through 1996 model year natural gas-fueled and liquified petroleum gas-fueled light-duty trucks and heavy-duty engines.

(b) References in this subpart to engine families and emission control systems shall be deemed to apply to durability groups and test groups as applicable for manufacturers certifying new light-duty trucks and Otto-cycle complete heavy-duty vehicles under the provisions of subpart S of this part.

**Subpart Q—[Amended]**

46. Section 86.1601 is amended by revising paragraph (d), to read as follows:

**§ 86.1601 General applicability.**

* * * * *

(d) References in this subpart to engine families and emission control systems shall be deemed to apply to durability groups and test groups as applicable for manufacturers certifying new light-duty vehicles, light-duty trucks, and Otto-cycle complete heavy-duty vehicles under the provisions of subpart S of this part.

47. Subpart S is amended by revising the subpart heading to read as follows:

**Subpart S—General Compliance Provisions for Control of Air Pollution From New and In-Use Light-Duty Vehicles, Light-Duty Trucks, and Complete Otto-Cycle Heavy-Duty Vehicles**

47. Section 86.1801–01 is amended by revising paragraphs (a), (b), (c), the last sentence of paragraph (d), and paragraph (h), to read as follows:

**§ 86.1801–01 Applicability.**

(a) *Applicability.* Except as otherwise indicated, the provisions of this subpart apply to new 2001 and later model year Otto-cycle and diesel cycle light-duty vehicles, light-duty trucks, medium-duty passenger vehicles, and 2005 and later model year Otto-cycle complete heavy-duty vehicles (2003 or 2004 model year for manufacturers choosing Otto-cycle HDE option 1 or 2, respectively, in § 86.005–1(c)) including multi-fueled, alternative fueled, hybrid electric, and zero emission vehicles. These provisions also apply to 2001 model year and later new incomplete light-duty trucks below 8,500 Gross Vehicle Weight Rating, and to 2001 and later model year Otto-cycle complete heavy-duty vehicles participating in the provisions of the averaging, trading, and banking program under the provisions of § 86.1817–05(n). In cases where a provision applies only to a certain vehicle group based on its model year, vehicle class, motor fuel, engine type, or other distinguishing characteristics, the limited applicability is cited in the appropriate section of this subpart.

(b) *Aftermarket conversions.* The provisions of this subpart apply to aftermarket conversions of all model year Otto-cycle and diesel-cycle light-duty vehicles, light-duty trucks, and complete Otto-cycle heavy-duty vehicles as defined in 40 CFR 85.502.

(c) *Optional applicability.* (1) A manufacturer may request to certify any Otto-cycle heavy-duty vehicle of 14,000 pounds Gross Vehicle Weight Rating or less in accordance with the light-duty truck provisions through the 2004 model year (2002 model year for manufacturers choosing Otto-cycle HDE option 1 in § 86.005–1(c) or 2003 model year for manufacturers choosing Otto-cycle HDE option 2 in § 86.005–1(c)). Heavy-duty engine or heavy-duty vehicle provisions of subpart A of this part do not apply to such a vehicle. A 2004 model year heavy-duty vehicle optionally certified as a light-duty truck under this provision must comply with all provisions applicable to MDPVs

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including exhaust and evaporative emission standards, test procedures, on-board diagnostics, refueling standards, phase-in requirements and fleet average standards under 40 CFR part 85 and this part.

(2) Beginning with the 2001 model year, a manufacturer may request to certify any incomplete Otto-cycle heavy-duty vehicle of 14,000 pounds Gross Vehicle Weight Rating or less in accordance with the provisions for complete heavy-duty vehicles. Heavy-duty engine or heavy-duty vehicle provisions of subpart A of this part do not apply to such a vehicle.

(3) A manufacturer may optionally use the provisions of this subpart in lieu of the provisions of subpart A beginning with the 2000 model year for light-duty vehicles and light-duty trucks. Manufacturers choosing this option must comply with all provisions of this subpart. Manufacturers may elect this provision for either all or a portion of their product line.

(4) Upon preapproval by the Administrator, a manufacturer may optionally certify an aftermarket conversion of a complete heavy-duty vehicle greater than 10,000 pounds Gross Vehicle Weight Rating and of 14,000 pounds Gross Vehicle Weight Rating or less under the heavy-duty engine or heavy-duty vehicle provisions of subpart A of this part. Such preapproval will be granted only upon demonstration that chassis-based certification would be infeasible or unreasonable for the manufacturer to perform.

(5) A manufacturer may optionally certify an aftermarket conversion of a complete heavy-duty vehicle greater than 10,000 pounds Gross Vehicle Weight Rating and of 14,000 pounds Gross Vehicle Weight Rating or less under the heavy-duty engine or heavy-duty vehicle provisions of subpart A of this part without advance approval from the Administrator if the vehicle was originally certified to the heavy-duty engine or heavy-duty vehicle provisions of subpart A of this part.

(d) * * * The small volume manufacturer's light-duty vehicle, light-duty truck and complete heavy-duty vehicle certification procedures are described in § 86.1838–01.

* * * * *

(h) *Applicability of provisions of this subpart to LDVs, LDTs, MDPVs and HDVs.* Numerous sections in this subpart provide requirements or procedures applicable to a "vehicle" or "vehicles." Unless otherwise specified or otherwise determined by the Administrator, the term "vehicle" or "vehicles" in those provisions apply equally to LDVs, LDTs, MDPVs and HDVs.

48. Section 86.1803–01 is amended by revising the definitions for "Car line," "Curb-idle," "Durability useful life," and "Van," and by adding new definitions in alphabetical order, to read as follows:

**§ 86.1803–01 Definitions.**

* * * * *

*Averaging for chassis-bases heavy-duty vehicles* means the exchange of $NO_X$ emission credits among test groups within a given manufacturer's product line.

*Averaging set* means a subcategory of complete heavy-duty vehicles within which test groups can average and trade emission credits with one another.

* * * * *

*Banking* means the retention of $NO_X$ emission credits for complete heavy-duty vehicles by the manufacturer generating the emission credits, for use in future model year certification programs as permitted by regulation.

* * * * *

*Car line* means a name denoting a group of vehicles within a make or car division which has a degree of commonality in construction (*e.g.*, body, chassis). Car line does not consider any level of decor or opulence and is not generally distinguished by characteristics as roofline, number of doors, seats, or windows except for station wagons or light-duty trucks. Station wagons, light-duty trucks, and complete heavy-duty vehicles are considered to be different car lines than passenger cars.

* * * * *

*Complete heavy-duty vehicle* means any Otto-cycle heavy-duty vehicle of 14,000 pounds Gross Vehicle Weight Rating or less that has the primary load carrying device or container attached at the time the vehicle leaves the control of the manufacturer of the engine.

* * * * *

*Curb-idle* means, for manual transmission code motor vehicles, the engine speed with the transmission in neutral or with the clutch disengaged and with the air conditioning system, if present, turned off. For automatic transmission code motor vehicles, curb-idle means the engine speed with the automatic transmission in the park position (or neutral position if there is no park position), and with the air conditioning system, if present, turned off.

* * * * *

*Durability useful life* means the highest useful life mileage out of the set of all useful life mileages that apply to a given vehicle. The durability useful life determines the duration of service accumulation on a durability data vehicle. The determination of durability useful life shall reflect any light-duty truck or complete heavy-duty vehicle alternative useful life periods approved by the Administrator under § 86.1805–01(c). The determination of durability useful life shall exclude any standard and related useful life mileage for which the manufacturer has obtained a waiver of emission data submission requirements under § 86.1829–01.

* * * * *

*Emission credits* mean the amount of emission reductions or exceedances, by a complete heavy-duty vehicle test group, below or above the emission standard, respectively. Emission credits below the standard are considered as "positive credits," while emission credits above the standard are considered as "negative credits." In addition, "projected credits" refer to emission credits based on the projected U.S. production volume of the test group. "Reserved credits" are emission credits generated within a model year waiting to be reported to EPA at the end of the model year. "Actual credits" refer to emission credits based on actual U.S. production volumes as contained in the end-of-year reports submitted to EPA. Some or all of these credits may be revoked if EPA review of the end of year reports or any subsequent audit actions uncover problems or errors.

* * * * *

*Family emission limit (FEL)* means an emission level declared by the manufacturer which serves in lieu of an emission standard for certification purposes in the averaging, trading and banking program. FELs must be expressed to the same number of decimal places as the applicable emission standard.

* * * * *

*Incomplete heavy-duty vehicle* means any heavy-duty vehicle which does not have the primary load carrying device or container attached.

* * * * *

*Trading* means the exchange of complete heavy-duty vehicle $NO_X$ emission credits between manufacturers.

* * * * *

*Van* means a light-duty truck or complete heavy-duty vehicle having an integral enclosure, fully enclosing the driver compartment and load carrying device, and having no body sections protruding more than 30 inches ahead of the leading edge of the windshield.

* * * * *



49. Section 86.1804–01 is amended by adding "FEL" and "HDV" as new abbreviations in alphabetical order, to read as follows:

**§ 86.1804–01 Acronyms and abbreviations.**

* * * * *

FEL—Family Emission Limit.

* * * * *

HDV—Heavy-duty vehicle.

* * * * *

50. Section 86.1805–01 is amended by:

a. Revising paragraph (a).

b. Adding paragraph (b)(3).

c. Revising the first and last sentences of paragraph (c).

The revisions and addition read as follows:

**§ 86.1805–01 Useful life.**

(a) For light-duty vehicles and light-duty trucks, intermediate useful life is a period of use of 5 years or 50,000 miles, whichever occurs first.

(b) * * *

(3) For complete heavy-duty vehicles, the full useful life is a period of use of 11 years or 120,000 miles, which ever occurs first.

(c) Manufacturers may petition the Administrator to provide alternative useful life periods for light-duty trucks or complete heavy-duty vehicles when they believe that the useful life periods are significantly unrepresentative for one or more test groups (either too long or too short). * * * For light-duty trucks, alternative useful life periods will be granted only for THC, THCE, and idle CO requirements.

51. Section 86.1805–04 is amended by revising paragraph (a), to read as follows:

**§ 86.1805–04 Useful life.**

(a) Except as required under paragraph (b) of this section or permitted under paragraphs (d), (e) and (f) of this section, the full useful life for all LDVs, LDT1s and LDT2s is a period of use of 10 years or 120,000 miles, whichever occurs first. For all HLDTs, MDPVs, and complete heavy-duty vehicles full useful life is a period of 11 years or 120,000 miles, whichever occurs first. This full useful life applies to all exhaust, evaporative and refueling emission requirements except for standards which are specified to only be applicable at the time of certification.

* * * * *

52. A new § 86.1806–05 is added to subpart S, to read as follows:

**§ 86.1806–05 On-board diagnostics.**

(a) *General.* (1) Except as provided by paragraph (a)(2) of this section, all light-duty vehicles, light-duty trucks and complete heavy-duty vehicles weighing 14,000 pounds GVWR or less (including MDPVs) must be equipped with an onboard diagnostic (OBD) system capable of monitoring all emission-related powertrain systems or components during the applicable useful life of the vehicle. All systems and components required to be monitored by these regulations must be evaluated periodically, but no less frequently than once per applicable certification test cycle as defined in paragraphs (a) and (d) of Appendix I of this part, or similar trip as approved by the Administrator.

(2) Diesel fueled MDPVs and heavy-duty vehicles weighing 14,000 pounds GVWR or less that are not MDPVs must meet the OBD requirements of this section according to the phase-in schedule in paragraph (l) of this section. Paragraph (l) of this section does not apply to Otto-cycle MDPVs.

(3) An OBD system demonstrated to fully meet the requirements in § 86.004–17 may be used to meet the requirements of this section, provided that such an OBD system also incorporates appropriate transmission diagnostics as may be required under this section, and provided that the Administrator finds that a manufacturer's decision to use the flexibility in this paragraph (a)(3) is based on good engineering judgement.

(b) *Malfunction descriptions.* The OBD system must detect and identify malfunctions in all monitored emission-related powertrain systems or components according to the following malfunction definitions as measured and calculated in accordance with test procedures set forth in subpart B of this part (chassis-based test procedures), excluding those test procedures defined as "Supplemental" test procedures in § 86.004–2 and codified in §§ 86.158, 86.159, and 86.160.

(1) *Catalysts and particulate traps.* (i) *Otto-cycle.* Catalyst deterioration or malfunction before it results in an increase in NMHC emissions 1.5 times the NMHC+$NO_X$ standard or FEL, as compared to the NMHC+$NO_X$ emission level measured using a representative 4000 mile catalyst system.

(ii) *Diesel.* (A) If equipped, catalyst deterioration or malfunction before it results in exhaust emissions exceeding 1.5 times the applicable standard or FEL for NMHC+$NO_X$ or PM. This requirement applies only to reduction catalysts; monitoring of oxidation catalysts is not required. This monitoring need not be done if the manufacturer can demonstrate that deterioration or malfunction of the system will not result in exceedance of the threshold.

(B) If equipped with a particulate trap, catastrophic failure of the device must be detected. Any particulate trap whose complete failure results in exhaust emissions exceeding 1.5 times the applicable standard or FEL for NMHC+$NO_X$ or PM must be monitored. This monitoring need not be done if the manufacturer can demonstrate that a catastrophic failure of the system will not result in exceedance of the threshold.

(2) *Engine misfire.* (i) *Otto-cycle.* Engine misfire resulting in exhaust emissions exceeding 1.5 times the applicable standard or FEL for NMHC, CO or $NO_X$; and any misfire capable of damaging the catalytic converter.

(ii) *Diesel.* Lack of cylinder combustion must be detected.

(3) *Oxygen sensors.* If equipped, oxygen sensor deterioration or malfunction resulting in exhaust emissions exceeding 1.5 times the applicable standard or FEL for NMHC, CO or $NO_X$.

(4) *Evaporative leaks.* If equipped, any vapor leak in the evaporative and/or refueling system (excluding the tubing and connections between the purge valve and the intake manifold) greater than or equal in magnitude to a leak caused by a 0.040 inch diameter orifice; an absence of evaporative purge air flow from the complete evaporative emission control system. On vehicles with fuel tank capacity greater than 25 gallons, the Administrator may, following a request from the manufacturer, revise the size of the orifice to the smallest orifice feasible, based on test data, if the most reliable monitoring method available cannot reliably detect a system leak equal to a 0.040 inch diameter orifice.

(5) *Other emission control systems.* Any deterioration or malfunction occurring in a powertrain system or component directly intended to control emissions, including but not necessarily limited to, the exhaust gas recirculation (EGR) system, if equipped, the secondary air system, if equipped, and the fuel control system, singularly resulting in exhaust emissions exceeding 1.5 times the applicable emission standard or FEL for NMHC, CO, $NO_X$, or diesel PM. For vehicles equipped with a secondary air system, a functional check, as described in paragraph (b)(6) of this section, may satisfy the requirements of this paragraph provided the manufacturer can demonstrate that deterioration of the flow distribution system is unlikely. This demonstration is subject to Administrator approval and, if the

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demonstration and associated functional check are approved, the diagnostic system must indicate a malfunction when some degree of secondary airflow is not detectable in the exhaust system during the check. For vehicles equipped with positive crankcase ventilation (PCV), monitoring of the PCV system is not necessary provided the manufacturer can demonstrate to the Administrator's satisfaction that the PCV system is unlikely to fail.

(6) *Other emission-related powertrain components.* Any other deterioration or malfunction occurring in an electronic emission-related powertrain system or component not otherwise described in paragraphs (b)(1) through (b)(5) of this section that either provides input to or receives commands from the on-board computer and has a measurable impact on emissions; monitoring of components required by this paragraph (b)(6) must be satisfied by employing electrical circuit continuity checks and rationality checks for computer input components (input values within manufacturer specified ranges based on other available operating parameters), and functionality checks for computer output components (proper functional response to computer commands) except that the Administrator may waive such a rationality or functionality check where the manufacturer has demonstrated infeasibility. Malfunctions are defined as a failure of the system or component to meet the electrical circuit continuity checks or the rationality or functionality checks.

(7) *Performance of OBD functions.* Oxygen sensor or any other component deterioration or malfunction which renders that sensor or component incapable of performing its function as part of the OBD system must be detected and identified on vehicles so equipped.

(8) *Hybrid electric vehicles.* For Tier 2 and interim non-Tier 2 hybrid electric vehicles (HEVs) only. Unless added to HEVs in compliance with other requirements of this section, or unless otherwise approved by the Administrator:

(i) The manufacturer must equip each HEV with a maintenance indicator consisting of a light that must activate automatically by illuminating the first time the minimum performance level is observed for each battery system component. Possible battery system components requiring monitoring are: battery water level, temperature control, pressure control, and other parameters critical for determining battery condition.

(ii) The manufacturer must equip "off-vehicle charge capable HEVs" with a useful life indicator for the battery system consisting of a light that must illuminate the first time the battery system is unable to achieve an all-electric operating range (starting from a full state-of-charge) which is at least 75 percent of the range determined for the vehicle in the Urban Driving Schedule portion of the All-Electric Range Test (see the California Exhaust Emission Standards and Test Procedures for 2003 and Subsequent Model Zero-Emission Vehicles, and 2001 and Subsequent Model Hybrid Electric Vehicles, in the Passenger Car, Light-Duty Truck and Medium-Duty Vehicle Classes. These requirements are incorporated by reference (see § 86.1).

(iii) The manufacturer must equip each HEV with a separate odometer or other device subject to the approval of the Administrator that can accurately measure the mileage accumulation on the engines used in these vehicles.

(c) *Malfunction indicator light (MIL).* The OBD system must incorporate a malfunction indicator light (MIL) readily visible to the vehicle operator. When illuminated, the MIL must display "Check Engine," "Service Engine Soon," a universally recognizable engine symbol, or a similar phrase or symbol approved by the Administrator. A vehicle should not be equipped with more than one general purpose malfunction indicator light for emission-related problems; separate specific purpose warning lights (e.g. brake system, fasten seat belt, oil pressure, etc.) are permitted. The use of red for the OBD-related malfunction indicator light is prohibited.

(d) *MIL illumination.* (1) The MIL must illuminate and remain illuminated when any of the conditions specified in paragraph (b) of this section are detected and verified, or whenever the engine control enters a default or secondary mode of operation considered abnormal for the given engine operating conditions. The MIL must blink once per second under any period of operation during which engine misfire is occurring and catalyst damage is imminent. If such misfire is detected again during the following driving cycle (*i.e.*, operation consisting of, at a minimum, engine start-up and engine shut-off) or the next driving cycle in which similar conditions are encountered, the MIL must maintain a steady illumination when the misfire is not occurring and then remain illuminated until the MIL extinguishing criteria of this section are satisfied. The MIL must also illuminate when the vehicle's ignition is in the "key-on" position before engine starting or cranking and extinguish after engine starting if no malfunction has previously been detected. If a fuel system or engine misfire malfunction has previously been detected, the MIL may be extinguished if the malfunction does not reoccur during three subsequent sequential trips during which similar conditions are encountered and no new malfunctions have been detected. Similar conditions are defined as engine speed within 375 rpm, engine load within 20 percent, and engine warm-up status equivalent to that under which the malfunction was first detected. If any malfunction other than a fuel system or engine misfire malfunction has been detected, the MIL may be extinguished if the malfunction does not reoccur during three subsequent sequential trips during which the monitoring system responsible for illuminating the MIL functions without detecting the malfunction, and no new malfunctions have been detected. Upon Administrator approval, statistical MIL illumination protocols may be employed, provided they result in comparable timeliness in detecting a malfunction and evaluating system performance, i.e., three to six driving cycles would be considered acceptable.

(2)(i) For interim non-Tier 2 and Tier 2 LDV/LLDTs and HLDT/MDPVs, vehicles produced through the 2007 model year, upon a manufacturer's written request, EPA will consider allowing the use of an on-board diagnostic system during the certification process, that functions properly on low-sulfur gasoline, but indicates sulfur-induced passes when exposed to high sulfur gasoline.

(ii) For interim non-Tier 2 and Tier 2 LDV/LLDTs and HLDT/MDPVs, if vehicles produced through the 2007 model year exhibit illuminations of the emission control diagnostic system malfunction indicator light due to high sulfur gasoline, EPA will consider, upon a manufacturer's written request, allowing modifications to such vehicles on a case-by-case basis so as to eliminate the sulfur induced illumination.

(e) *Storing of computer codes.* The OBD system shall record and store in computer memory diagnostic trouble codes and diagnostic readiness codes indicating the status of the emission control system. These codes shall be available through the standardized data link connector per specifications as referenced in paragraph (h) of this section.

(1) A diagnostic trouble code must be stored for any detected and verified malfunction causing MIL illumination. The stored diagnostic trouble code must identify the malfunctioning system or component as uniquely as possible. At the manufacturer's discretion, a diagnostic trouble code may be stored for conditions not causing MIL illumination. Regardless, a separate code should be stored indicating the expected MIL illumination status (*i.e.*, MIL commanded "ON," MIL commanded "OFF").

(2) For a single misfiring cylinder, the diagnostic trouble code(s) must uniquely identify the cylinder, unless the manufacturer submits data and/or engineering evaluations which adequately demonstrate that the misfiring cylinder cannot be reliably identified under certain operating conditions. For diesel vehicles only, the specific cylinder for which combustion cannot be detected need not be identified if new hardware would be required to do so. The diagnostic trouble code must identify multiple misfiring cylinder conditions; under multiple misfire conditions, the misfiring cylinders need not be uniquely identified if a distinct multiple misfire diagnostic trouble code is stored.

(3) The diagnostic system may erase a diagnostic trouble code if the same code is not re-registered in at least 40 engine warm-up cycles, and the malfunction indicator light is not illuminated for that code.

(4) Separate status codes, or readiness codes, must be stored in computer memory to identify correctly functioning emission control systems and those emission control systems which require further vehicle operation to complete proper diagnostic evaluation. A readiness code need not be stored for those monitors that can be considered continuously operating monitors (*e.g.*, misfire monitor, fuel system monitor, etc.). Readiness codes should never be set to "not ready" status upon key-on or key-off; intentional setting of readiness codes to "not ready" status via service procedures must apply to all such codes, rather than applying to individual codes. Subject to Administrator approval, if monitoring is disabled for a multiple number of driving cycles (*i.e.*, more than one) due to the continued presence of extreme operating conditions (*e.g.*, ambient temperatures below 40 °F, or altitudes above 8000 feet), readiness for the subject monitoring system may be set to "ready" status without monitoring having been completed. Administrator approval shall be based on the conditions for monitoring system disablement, and the number of driving cycles specified without completion of monitoring before readiness is indicated.



(f) *Available diagnostic data.* (1) Upon determination of the first malfunction of any component or system, "freeze frame" engine conditions present at the time must be stored in computer memory. Should a subsequent fuel system or misfire malfunction occur, any previously stored freeze frame conditions must be replaced by the fuel system or misfire conditions (whichever occurs first). Stored engine conditions must include, but are not limited to: engine speed, open or closed loop operation, fuel system commands, coolant temperature, calculated load value, fuel pressure, vehicle speed, air flow rate, and intake manifold pressure if the information needed to determine these conditions is available to the computer. For freeze frame storage, the manufacturer must include the most appropriate set of conditions to facilitate effective repairs. If the diagnostic trouble code causing the conditions to be stored is erased in accordance with paragraph (d) of this section, the stored engine conditions may also be erased.

(2) The following data in addition to the required freeze frame information must be made available on demand through the serial port on the standardized data link connector, if the information is available to the on-board computer or can be determined using information available to the on-board computer: Diagnostic trouble codes, engine coolant temperature, fuel control system status (closed loop, open loop, other), fuel trim, ignition timing advance, intake air temperature, manifold air pressure, air flow rate, engine RPM, throttle position sensor output value, secondary air status (upstream, downstream, or atmosphere), calculated load value, vehicle speed, and fuel pressure. The signals must be provided in standard units based on SAE specifications incorporated by reference in paragraph (h) of this section. Actual signals must be clearly identified separately from default value or limp home signals.

(3) For all OBD systems for which specific on-board evaluation tests are conducted (catalyst, oxygen sensor, etc.), the results of the most recent test performed by the vehicle, and the limits to which the system is compared must be available through the standardized data link connector per the appropriate standardized specifications as referenced in paragraph (h) of this section.

(4) Access to the data required to be made available under this section shall be unrestricted and shall not require any access codes or devices that are only available from the manufacturer.

(g) *Exceptions.* The OBD system is not required to evaluate systems or components during malfunction conditions if such evaluation would result in a risk to safety or failure of systems or components. Additionally, the OBD system is not required to evaluate systems or components during operation of a power take-off unit such as a dump bed, snow plow blade, or aerial bucket, etc.

(h) *Reference materials.* The OBD system shall provide for standardized access and conform with the following Society of Automotive Engineers (SAE) standards and/or the following International Standards Organization (ISO) standards. The following documents are incorporated by reference (see § 86.1):

(1) *SAE material.* Copies of these materials may be obtained from the Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, PA 15096–0001.

(i) SAE J1850 "Class B Data Communication Network Interface," (July 1995) shall be used as the on-board to off-board communications protocol. All emission related messages sent to the scan tool over a J1850 data link shall use the Cyclic Redundancy Check and the three byte header, and shall not use inter-byte separation or checksums.

(ii) Basic diagnostic data (as specified in §§ 86.094–17(e) and (f)) shall be provided in the format and units in SAE J1979 "E/E Diagnostic Test Modes,"(July 1996).

(iii) Diagnostic trouble codes shall be consistent with SAE J2012 "Recommended Practices for Diagnostic Trouble Code Definitions," (July 1996).

(iv) The connection interface between the OBD system and test equipment and diagnostic tools shall meet the functional requirements of SAE J1962 "Diagnostic Connector," (January 1995).

(v) As an alternative to the above standards, heavy-duty vehicles may conform to the specifications of the SAE J1939 series of standards (SAE J1939–11, J1939–13, J1939–21, J1939–31, J1939–71, J1939–73, J1939–81).

(2) *ISO materials.* Copies of these materials may be obtained from the International Organization for Standardization, Case Postale 56, CH–1211 Geneva 20, Switzerland.

(i) ISO 9141–2 "Road vehicles—Diagnostic systems—Part 2: CARB requirements for interchange of digital information," (February 1994) may be used as an alternative to SAE J1850 as the on-board to off-board communications protocol.

(ii) ISO 14230–4 "Road vehicles—Diagnostic systems—Keyword Protocol 2000—Part 4: Requirements for

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emission-related systems" may also be used as an alternative to SAE J1850.

(i) *Deficiencies and alternate fueled vehicles.* Upon application by the manufacturer, the Administrator may accept an OBD system as compliant even though specific requirements are not fully met. Such compliances without meeting specific requirements, or deficiencies, will be granted only if compliance would be infeasible or unreasonable considering such factors as, but not limited to: Technical feasibility of the given monitor and lead time and production cycles including phase-in or phase-out of engines or vehicle designs and programmed upgrades of computers. Unmet requirements should not be carried over from the previous model year except where unreasonable hardware or software modifications would be necessary to correct the deficiency, and the manufacturer has demonstrated an acceptable level of effort toward compliance as determined by the Administrator. Furthermore, EPA will not accept any deficiency requests that include the complete lack of a major diagnostic monitor ("major" diagnostic monitors being those for exhaust aftertreatment devices, oxygen sensor, engine misfire, evaporative leaks, and diesel EGR, if equipped), with the possible exception of the special provisions for alternate fueled vehicles. For alternate fueled vehicles (*e.g.* natural gas, liquefied petroleum gas, methanol, ethanol), beginning with the model year for which alternate fuel emission standards are applicable and extending through the 2004 model year, manufacturers may request the Administrator to waive specific monitoring requirements of this section for which monitoring may not be reliable with respect to the use of the alternate fuel; manufacturers may request this alternate fuel waiver for heavy-duty vehicles through the 2006 model year. At a minimum, alternate fuel vehicles must be equipped with an OBD system meeting OBD requirements to the extent feasible as approved by the Administrator.

(j) *California OBDII compliance option.* For light-duty vehicles, light-duty trucks, and heavy-duty vehicles at or below 14,000 pounds GVWR, demonstration of compliance with California OBD II requirements (Title 13 California Code section 1968.1), as modified pursuant to California Mail Out #97–24 (December 9, 1997), shall satisfy the requirements of this section, except that the exemption to the catalyst monitoring provisions of California Code section 1968.1(b)(1.1.2) for diesel vehicles does not apply, and compliance with California Code sections 1968.1(b)(4.2.2), pertaining to 0.02 inch evaporative leak detection, and 1968.1(d), pertaining to tampering protection, are not required to satisfy the requirements of this section. Also, the deficiency fine provisions of California Code section 1968.1(m)(6.1) and (6.2) do not apply.

(k) *Certification.* For test groups required to have an OBD system, certification will not be granted if, for any test vehicle approved by the Administrator in consultation with the manufacturer, the malfunction indicator light does not illuminate under any of the following circumstances, unless the manufacturer can demonstrate that any identified OBD problems discovered during the Administrator's evaluation will be corrected on production vehicles.

(1)(i) *Otto-cycle.* A catalyst is replaced with a deteriorated or defective catalyst, or an electronic simulation of such, resulting in an increase of 1.5 times the NMHC standard or FEL above the NMHC emission level measured using a representative 4000 mile catalyst system.

(ii) *Diesel.* (A) If monitored for emissions performance—a catalyst is replaced with a deteriorated or defective catalyst, or an electronic simulation of such, resulting in exhaust emissions exceeding 1.5 times the applicable standard or FEL for $NO_X$ or PM.

(B) If monitored for performance—a particulate trap is replaced with a trap that has catastrophically failed, or an electronic simulation of such.

(2)(i) *Otto-cycle.* An engine misfire condition is induced resulting in exhaust emissions exceeding 1.5 times the applicable standards or FEL for NMHC, CO or $NO_X$.

(ii) *Diesel.* An engine misfire condition is induced and is not detected.

(3) If so equipped, any oxygen sensor is replaced with a deteriorated or defective oxygen sensor, or an electronic simulation of such, resulting in exhaust emissions exceeding 1.5 times the applicable standard or FEL for NMHC, CO or $NO_X$.

(4) If so equipped, a vapor leak is introduced in the evaporative and/or refueling system (excluding the tubing and connections between the purge valve and the intake manifold) greater than or equal in magnitude to a leak caused by a 0.040 inch diameter orifice, or the evaporative purge air flow is blocked or otherwise eliminated from the complete evaporative emission control system.

(5) A malfunction condition is induced in any emission-related powertrain system or component, including but not necessarily limited to, the exhaust gas recirculation (EGR) system, if equipped, the secondary air system, if equipped, and the fuel control system, singularly resulting in exhaust emissions exceeding 1.5 times the applicable emission standard or FEL for NMHC, CO, $NO_X$ or PM.

(6) A malfunction condition is induced in an electronic emission-related powertrain system or component not otherwise described in this paragraph (k) that either provides input to or receives commands from the on-board computer resulting in a measurable impact on emissions.

(l) *Phase-in for complete heavy-duty vehicles.* Complete heavy-duty vehicles weighing 14,000 pounds GVWR or less that are not Otto-cycle MDPVs must meet the OBD requirements of this section according to the following phase-in schedule, based on the percentage of projected vehicle sales. The 2004 model year requirements in the following phase-in schedule are applicable only to heavy-duty Otto-cycle vehicles where the manufacturer has selected Otto-cycle Option 1 or 2 for alternative 2003 or 2004 compliance according to § 86.005–1(c)(1) or (c)(2). The 2005 through 2007 requirements in the following phase-in schedule apply to all heavy-duty vehicles weighing 14,000 pounds GVWR or less, excluding MDPVs. If the manufacturer has selected Otto-cycle Option 3 they may exempt 2005 model year complete heavy-duty engines and vehicles whose model year commences before July 31, 2004 from the requirements of this section. For the purposes of calculating compliance with the phase-in provisions of this paragraph (l), heavy-duty vehicles subject to the phase-in requirements of this section may be combined with heavy-duty vehicles subject to the phase-in requirements of paragraph § 86.004–17(k). The phase-in schedule follows:

OBD COMPLIANCE PHASE-IN FOR COMPLETE HEAVY-DUTY VEHICLES WEIGHING 14,000 POUNDS GVWR OR LESS

| Model year | Phase-in based on projected sales |
|---|---|
| 2004 MY ..... | —Applicable only to Otto-cycle engines complying with Options 1 or 2<br>—40% compliance<br>—Alternative fuel waivers available |
| 2005 MY ..... | —60% compliance<br>—Alternative fuel waivers available |
| 2006 MY ..... | —80% compliance |



OBD COMPLIANCE PHASE-IN FOR COMPLETE HEAVY-DUTY VEHICLES WEIGHING 14,000 POUNDS GVWR OR LESS—Continued

| Model year | Phase-in based on projected sales |
|---|---|
| 2007+ MY .... | —Alternative fuel waivers available<br>—100% compliance |

53. Section 86.1807–01 is amended by:

a. Revising paragraphs (a)(3)(v) and (a)(3)(vi).

b. Adding paragraph (c)(3).

c. Revising paragraphs (d), (e), and (f).

The revisions and addition read as follows:

**§ 86.1807–01 Vehicle labeling.**

(a) * * *

(3) * * *

(v) An unconditional statement of compliance with the appropriate model year U.S. EPA regulations which apply to light-duty vehicles, light-duty trucks, or complete heavy-duty vehicles;

(vi) The exhaust emission standards (or FEL, as applicable) to which the test group is certified, and for test groups having different in-use standards, the corresponding exhaust emission standards that the test group must meet in use. In lieu of this requirement, manufacturers may use the standardized test group name designated by EPA;

* * * * *

(c) * * *

(3) The manufacturer of any complete heavy-duty vehicle subject to the emission standards of this subpart shall add the information required by paragraph (c)(1)(iii) of this section to the label required by paragraph (a) of this section. The required information will be set forth in the manner prescribed by paragraph (c)(1)(iii) of this section.

(d)(1) Incomplete light-duty trucks shall have the following prominent statement printed on the label required by paragraph (a)(3)(v) of this section: "This vehicle conforms to U.S. EPA regulations applicable to 20xx Model year Light-Duty Trucks under the special provisions of 40 CFR 86.1801–01(c)(1) when it does not exceed XXX pounds in curb weight, XXX pounds in gross vehicle weight rating, and XXX square feet in frontal area."

(2) Incomplete heavy-duty vehicles optionally certified in accordance with the provisions for complete heavy-duty vehicles under the special provisions of § 86.1801–01(c)(2) shall have the following prominent statement printed on the label required by paragraph (a)(3)(v) of this section: "This vehicle conforms to U.S. EPA regulations applicable to 20xx Model year Complete Heavy-Duty Vehicles under the special provisions of 40 CFR 86.1801–01(c)(2) when it does not exceed XXX pounds in curb weight, XXX pounds in gross vehicle weight rating, and XXX square feet in frontal area."

(e) The manufacturer of any incomplete light-duty vehicle, light-duty truck, or heavy-duty vehicle shall notify the purchaser of such vehicle of any curb weight, frontal area, or gross vehicle weight rating limitations affecting the emission certificate applicable to that vehicle. This notification shall be transmitted in a manner consistent with National Highway Traffic Safety Administration safety notification requirements published in 49 CFR part 568.

(f) All light-duty vehicles, light-duty trucks, and complete heavy-duty vehicles shall comply with SAE Recommended Practices J1877 "Recommended Practice for Bar-Coded Vehicle Identification Number Label," (July 1994), and J1892 "Recommended Practice for Bar-Coded Vehicle Emission Configuration Label" (October 1993). SAE J1877 and J1892 are incorporated by reference (see § 86.1).

* * * * *

54. Section 86.1809–01 is amended by revising paragraph (a), to read as follows:

**§ 86.1809–01 Prohibition of defeat devices.**

(a) No new light-duty vehicle, light-duty truck, or complete heavy-duty vehicle shall be equipped with a defeat device.

* * * * *

55. Section 86.1810–01 is amended by:

a. Revising the introductory text.

b. Revising paragraphs (d) and (e).

c. Revising paragraphs (j)(1) and (j)(3).

d. Revising paragraphs (k)(1)(i) introductory text, and (k)(2).

e. Revising paragraph (l)(1) introductory text.

f. Revising paragraph (m)(1) introductory text.

The revisions read as follows:

**§ 86.1810–01 General standards; increase in emissions; unsafe conditions; waivers.**

This section applies to model year 2001 and later light-duty vehicles and light-duty trucks fueled by gasoline, diesel, methanol, natural gas and liquefied petroleum gas fuels. This section also applies to complete heavy-duty vehicles certified according to the provisions of this subpart. Multi-fueled vehicles (including dual-fueled and flexible-fueled vehicles) shall comply with all requirements established for each consumed fuel (or blend of fuels in the case of flexible fueled vehicles). The standards of this subpart apply to both certification and in-use vehicles unless otherwise indicated. For Tier 2 and interim non-Tier 2 vehicles, this section also applies to hybrid electric vehicles and zero emission vehicles. Unless otherwise specified, requirements and provisions of this subpart applicable to methanol fueled vehicles are also applicable to Tier 2 and interim non-Tier 2 ethanol fueled vehicles.

* * * * *

(d) *Crankcase emissions prohibited.* No crankcase emissions shall be discharged into the ambient atmosphere from any 2001 and later model year light-duty vehicle, light-duty truck, or complete heavy-duty vehicle certified according to the provisions of this subpart.

(e) *On-board diagnostics.* All light-duty vehicles, light-duty trucks and complete heavy-duty vehicles must have an on-board diagnostic system as described in § 86.1806–01 or § 86.1806–04, as applicable.

* * * * *

(j) * * * (1) The evaporative standards in §§ 86.1811–01(d), 86.1811–04(e), 86.1812–01(d), 86.1813–01(d), 86.1814–01(d), 86.1814–02(d), 86.1815–01(d), 1815–02(d) and 86.1816–04(d) apply equally to certification and in-use vehicles and trucks. The spitback standard also applies to newly assembled vehicles.

* * * * *

(3) All fuel vapor generated in a gasoline- or methanol-fueled light-duty vehicle, light-duty truck, or complete heavy-duty vehicle during in-use operation shall be routed exclusively to the evaporative control system (*e.g.*, either canister or engine purge.) The only exception to this requirement shall be for emergencies.

(k) * * * (1) * * * (i) Tables S01–3, S01–4, and S01–5 in this paragraph (k)(1)(i) give the minimum percentage of a manufacturer's sales of the applicable model year's gasoline- and methanol-fueled Otto-cycle and petroleum-fueled and methanol-fueled diesel-cycle light-duty vehicles, light-duty trucks and complete heavy-duty vehicles which shall be tested under the applicable procedures in subpart B of this part, and shall not exceed the standards described in §§ 86.1811–01(e), 86.1811–04(e)(3), 86.1812–01(e), 86.1813–01(e), and 86.1816–04(e). Vehicles waived from the emission standards under the provisions of paragraphs (m) and (n) of this section shall not be counted in the calculation of the percentage of compliance. Either manufacturer sales

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or actual production intended for sale in the United States may be used to determine combined volume, at the manufacturers option. Tables S01–3, S01–4, and S01–5 follow:

* * * * *

(2) *Determining sales percentages.* Sales percentages for the purposes of determining compliance with the applicable refueling emission standards light-duty vehicles, light-duty trucks, medium-duty passenger vehicles, and complete heavy-duty vehicles shall be based on total actual U.S. sales of heavy light-duty trucks and complete heavy-duty vehicles of the applicable model year by a manufacturer to a dealer, distributor, fleet operator, broker, or any other entity which comprises the point of first sale.

* * * * *

(l) * * * (1) Vehicles certified to the refueling emission standards set forth in §§ 86.1811–01(e), 86.1811–04(e)(3), 86.1812–01(e), 86.1813–01(e), and 86.1816–04(e) are not required to demonstrate compliance with the fuel dispensing spitback standard contained in that section provided that:

* * * * *

(m) * * *

(1) Vehicles using fuels/fuel systems inherently low in refueling emissions are not required to conduct testing to demonstrate compliance with the refueling emission standards set forth in §§ 86.1811–01(e), 86.1811–04(e)(3), 86.1812–01(e), 86.1813–01(e), and 86.1816–04(e), provided that:

* * * * *

56. Section 86.1811–01 is amended by adding paragraph (g), to read as follows:

**§ 86.1811–01 Emission standards for light-duty vehicles.**

* * * * *

(g) Manufacturers may request to group light-duty vehicles into the same test group as vehicles subject to more stringent standards, so long as those light-duty vehicles meet the most stringent standards applicable to any vehicle within that test group, as provided at § 86.1827(a)(5) and (d)(4).

57. Section 86.1811–04 is amended by adding a new paragraph (s), to read as follows:

**§ 86.1811–04 Emission standards for light-duty vehicles, light-duty trucks and medium-duty passenger vehicles.**

* * * * *

(s) Manufacturers may request to group heavy-duty vehicles into the same test group as other vehicles subject to more stringent standards, so long as all vehicles in the test group meet the most stringent standards applicable to any vehicle within that test group, as provided at § 86.1827–1(a)(5) and (d)(4).

58. Section 86.1812–01 is amended by adding paragraph (h), to read as follows:

**§ 86.1812–01 Emission standards for light-duty trucks 1.**

* * * * *

(h) Manufacturers may request to group light-duty truck 1's into the same test group as vehicles subject to more stringent standards, so long as those light-duty truck 1's meet the most stringent standards applicable to any vehicle within that test group, as provided at § 86.1827(a)(5) and (d)(4).

59. Section 86.1813–01 is amended by adding paragraph (h), to read as follows:

**§ 86.1813–01 Emission standards for light-duty trucks 2.**

* * * * *

(h) Manufacturers may request to group light-duty truck 2's into the same test group as vehicles subject to more stringent standards, so long as those light-duty truck 2's meet the most stringent standards applicable to any vehicle within that test group, as provided at § 86.1827(a)(5) and (d)(4).

60. Section 86.1814–01 is amended by adding paragraph (h), to read as follows:

**§ 86.1814–01 Emission standards for light-duty trucks 3.**

* * * * *

(h) Manufacturers may request to group light-duty truck 3's into the same test group as vehicles subject to more stringent standards, so long as those light-duty truck 3's meet the most stringent standards applicable to any vehicle within that test group, as provided at § 86.1827(a)(5) and (d)(4).

61. Section 86.1814–02 is amended by adding paragraph (h), to read as follows:

**§ 86.1814–02 Emission standards for light-duty trucks 3.**

* * * * *

(h) Manufacturers may request to group light-duty truck 3's into the same test group as vehicles subject to more stringent standards, so long as those light-duty truck 3's meet the most stringent standards applicable to any vehicle within that test group, as provided at § 86.1827(a)(5) and (d)(4).

62. Section 86.1815–01 is amended by adding paragraph (h), to read as follows:

**§ 86.1815–01 Emission standards for light-duty trucks 4.**

* * * * *

(h) Manufacturers may request to group light-duty truck 4's into the same test group as vehicles subject to more stringent standards, so long as those light-duty truck 4's meet the most stringent standards applicable to any vehicle within that test group, as provided at § 86.1827(a)(5) and (d)(4).

63. Section 86.1815–02 is amended by adding paragraph (h), to read as follows:

**§ 86.1815–02 Emission standards for light-duty trucks 4.**

* * * * *

(h) Manufacturers may request to group light-duty truck 4's into the same test group as vehicles subject to more stringent standards, so long as those light-duty truck 4's meet the most stringent standards applicable to any vehicle within that test group, as provided at § 86.1827(a)(5) and (d)(4).

64. A new section 86.1816–05 is added to subpart S, to read as follows:

**§ 86.1816–05 Emission standards for complete heavy-duty vehicles.**

This section applies to 2005 and later model year complete heavy-duty vehicles (2003 model year for manufacturers choosing Otto-cycle HDE option 1 in § 86.005–1(c)(1), or 2004 model year for manufacturers choosing Otto-cycle HDE option 2 in § 86.005–1(c)(2)) fueled by gasoline, methanol, natural gas and liquefied petroleum gas fuels except as noted. This section does not apply to Medium-duty Passenger Vehicles, which are covered under § 86.1811. This section also applies to 2000 and later model year complete heavy duty vehicles participating in the early banking provisions of the averaging, trading and banking program as specified in § 86.1817–05(n). Multi-fueled vehicles shall comply with all requirements established for each consumed fuel. For methanol fueled vehicles, references in this section to hydrocarbons or total hydrocarbons shall mean total hydrocarbon equivalents and references to non-methane hydrocarbons shall mean non-methane hydrocarbon equivalents.

(a) *Exhaust emission standards.* (1) Exhaust emissions from 2005 and later model year complete heavy-duty vehicles at and above 8,500 pounds Gross Vehicle Weight Rating but equal to or less than 10,000 Gross Vehicle Weight Rating pounds shall not exceed the following standards at full useful life:

(i) [Reserved]

(ii) *Non-methane organic gas.* 0.280 grams per mile; this requirement may be satisfied by measurement of non-methane hydrocarbons or total hydrocarbons, at the manufacturer's option.

(iii) *Carbon monoxide.* 7.3 grams per mile.

(iv) *Oxides of nitrogen.* 0.9 grams per mile.



(v) [Reserved]

(2) Exhaust emissions from 2005 and later model year complete heavy-duty vehicles above 10,000 pounds Gross Vehicle Weight Rating but less than 14,000 pounds Gross Vehicle Weight Rating shall not exceed the following standards at full useful life:

(i) [Reserved].

(ii) *Non-methane organic gas.* 0.330 grams per mile; this requirement may be satisfied by measurement of non-methane hydrocarbons or total hydrocarbons, at the manufacturer's option.

(iii) *Carbon monoxide.* 8.1 grams per mile.

(iv) *Oxides of nitrogen.* 1.0 grams per mile.

(v) [Reserved].

(b) [Reserved].

(c) [Reserved].

(d) *Evaporative emissions.* Evaporative hydrocarbon emissions from gasoline-fueled, natural gas-fueled, liquefied petroleum gas-fueled, and methanol-fueled complete heavy-duty vehicles shall not exceed the following standards. The standards apply equally to certification and in-use vehicles. The spitback standard also applies to newly assembled vehicles.

(1) Gasoline, natural gas, liquefied petroleum gas, and methanol fuel. For the full three-diurnal test sequence, diurnal plus hot soak measurements: 3.0 grams per test.

(2) *Gasoline and methanol fuel only.* For the supplemental two-diurnal test sequence, diurnal plus hot soak measurements: 3.5 grams per test.

(3) *Gasoline and methanol fuel only.* Running loss test: 0.05 grams per mile.

(4) *Gasoline and methanol fuel only.* Fuel dispensing spitback test: 1.0 grams per test.

(e) *Refueling emissions.* (1) *Standards.* Refueling emissions from Otto-cycle complete heavy-duty vehicles equal to or less than 10,000 pounds Gross Vehicle Weight Rating shall be phased in, in accordance with the schedule in Table S01–5 in § 86.1810–01 not to exceed the following emission standards:

(i) For gasoline-fueled and methanol-fueled vehicles: 0.20 grams hydrocarbon per gallon (0.053 gram per liter) of fuel dispensed.

(ii) For liquefied petroleum gas-fueled vehicles: 0.15 grams hydrocarbon per gallon (0.04 gram per liter) of fuel dispensed.

(2) *Phase-in.* Complete heavy-duty vehicles subject to refueling standards must comply with the phase-in requirements found in Table S01–5 in § 86.1810–01, and must be grouped with HLDTs and MDPVs to determine phase-in compliance.

(3) *Alternate timing.* (i) For manufacturers choosing Otto-cycle HDE option 3 under § 86.005–1(c)(3), the refueling emissions standards are optional for 2004 model year complete heavy-duty vehicles.

(ii) For manufacturers choosing Otto-cycle HDE option 3 under § 86.005–1(c)(3), the manufacturer may exempt 2005 model year HDE test groups whose model year begins before July 31, 2004. Only 2005 model year HDE test groups whose model year begins on or after July 31, 2004 shall be considered (together with all 2005 model year HLDTs and MDPVs) for purposes of calculating the sales percentage for phase-in as outlined in § 86.1810–01(k).

(iii) For complete heavy-duty vehicles which have total fuel tank capacity of greater than 35 gallons, or which do not share a common fuel system with a light-duty truck or medium-duty passenger vehicle configuration, the refueling emissions standards are optional for the 2004 and 2005 model years.

(4) *Exceptions.* The provisions of this § 86.1816–05(e) do not apply to incomplete heavy-duty vehicles optionally certified to complete heavy duty vehicle standards under the provisions of § 86.1801–01(c)(2).

(f) [Reserved]

(g) *Idle exhaust emission standards, complete heavy-duty vehicles.* Exhaust emissions of carbon monoxide from 2005 and later model year gasoline, methanol, natural gas-and liquefied petroleum gas-fueled complete heavy-duty vehicles shall not exceed 0.50 percent of exhaust gas flow at curb idle for a useful life of 11 years or 120,000 miles, whichever occurs first.

(h) *Alternate test groups.* Manufacturers may request to group complete heavy-duty vehicles into the same test group as vehicles subject to more stringent standards, so long as those complete heavy-duty vehicles meet the most stringent standards applicable to any vehicle within that test group, as provided at § 86.1827–(a)(5) and (d)(4).

65. A new section 86.1817–05 is added to subpart S, to read as follows:

**§ 86.1817–05 Complete heavy-duty vehicle averaging, trading, and banking program.**

(a) *General.* (1) Complete heavy-duty vehicles eligible for the $NO_X$ averaging, trading and banking program are described in the applicable emission standards section of this subpart. All heavy-duty vehicles which include an engine labeled for use in clean-fuel vehicles as specified in 40 CFR part 88 are not eligible for this program. Participation in this averaging, trading, and banking program is voluntary.

(2)(i) Test groups with a family emission limit (FEL) as defined in § 86.1803–01 exceeding the applicable standard shall obtain emission credits as defined in § 86.1803–01 in a mass amount sufficient to address the shortfall. Credits may be obtained from averaging, trading, or banking, as defined in § 86.1803–01 within the averaging set restrictions described in paragraph (d) of this section.

(ii) Test groups with an FEL below the applicable standard will have emission credits available to average, trade, bank or a combination thereof. Credits may not be used for averaging or trading to offset emissions that exceed an FEL. Credits may not be used to remedy an in-use nonconformity determined by a Selective Enforcement Audit or by recall testing. However, credits may be used to allow subsequent production of vehicles for the test group in question if the manufacturer elects to recertify to a higher FEL.

(b) *Participation.* Participation in the $NO_X$ averaging, trading, and banking program shall be done as follows:

(1) During certification, the manufacturer shall:

(i) Declare its intent to include specific test groups in the averaging, trading and banking program.

(ii) Declare an FEL for each test group participating in the program.

(A) The FEL must be to the same level of significant digits as the emission standard (one-hundredth of a gram per mile for $NO_X$ emissions).

(B) In no case may the FEL exceed the upper limit prescribed in the section concerning the applicable complete heavy-duty vehicle chassis-based $NO_X$ emission standard.

(iii) Calculate the projected $NO_X$ emission credits (positive or negative) as defined in § 86.1803–01 based on quarterly production projections for each participating test group, using the applicable equation in paragraph (c) of this section and the applicable factors for the specific test group.

(iv)(A) Determine and state the source of the needed credits according to quarterly projected production for test groups requiring credits for certification.

(B) State where the quarterly projected credits will be applied for test groups generating credits.

(C) Emission credits as defined in § 86.1803–01 may be obtained from or applied to only test groups within the same averaging set as defined in § 86.1803–01. Emission credits available for averaging, trading, or banking, may be applied exclusively to a given test

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group, or designated as reserved credits as defined in § 86.1803–01.

(2) Based on this information, each manufacturer's certification application must demonstrate:

(i) That at the end of model year production, each test group has a net emissions credit balance of zero or more using the methodology in paragraph (c) of this section with any credits obtained from averaging, trading or banking.

(ii) The source of the credits to be used to comply with the emission standard if the FEL exceeds the standard, or where credits will be applied if the FEL is less than the emission standard. In cases where credits are being obtained, each test group involved must state specifically the source (manufacturer/test group) of the credits being used. In cases where credits are being generated/supplied, each test group involved must state specifically the designated use (manufacturer/test group or reserved) of the credits involved. All such reports shall include all credits involved in averaging, trading or banking.

(3) During the model year, manufacturers must:

(i) Monitor projected versus actual production to be certain that compliance with the emission standards is achieved at the end of the model year.

(ii) Provide the end-of-year reports required under paragraph (i) of this section.

(iii) For manufacturers participating in emission credit trading, maintain the quarterly records required under paragraph (l) of this section.

(4) Projected credits based on information supplied in the certification application may be used to obtain a certificate of conformity. However, any such credits may be revoked based on review of end-of-model year reports, follow-up audits, and any other compliance measures deemed appropriate by the Administrator.

(5) Compliance under averaging, banking, and trading will be determined at the end of the model year. Test groups without an adequate amount of $NO_X$ emission credits will violate the conditions of the certificate of conformity. The certificates of conformity may be voided *ab initio* for test groups exceeding the emission standard.

(6) If EPA or the manufacturer determines that a reporting error occurred on an end-of-year report previously submitted to EPA under this section, the manufacturer's credits and credit calculations will be recalculated. Erroneous positive credits will be void. Erroneous negative balances may be adjusted by EPA for retroactive use.

(i) If EPA review of a manufacturer's end-of-year report indicates a credit shortfall, the manufacturer will be permitted to purchase the necessary credits to bring the credit balance for that test group to zero, at the ratio of 1.2 credits purchased for every credit needed to bring the balance to zero. If sufficient credits are not available to bring the credit balance for the test group in question to zero, EPA may void the certificate for that test group *ab initio*.

(ii) If within 180 days of receipt of the manufacturer's end-of-year report, EPA review determines a reporting error in the manufacturer's favor (*i.e.* resulting in a positive credit balance) or if the manufacturer discovers such an error within 180 days of EPA receipt of the end-of-year report, the credits will be restored for use by the manufacturer.

(c) *Calculations.* For each participating test group, $NO_X$ emission credits (positive or negative) are to be calculated according to one of the following equations and rounded, in accordance with ASTM E29–93a (incorporated by reference at § 86.1), to the nearest one-tenth of a Megagram (MG). Consistent units are to be used throughout the equation.

(1) For determining credit need for all test groups and credit availability for test groups generating credits for averaging only:

Emission credits=(Std-FEL) × (UL) × (Production) × ($10^{-6}$)

(2) For determining credit availability for test groups generating credits for trading or banking:

Emission credits=(Std-FEL) × (UL) × (Production) × ($10^{-6}$) (Discount)

(3) For purposes of the equations in paragraphs (c)(1) and (c)(2) of this section:

Std=the current and applicable complete heavy-duty vehicle $NO_X$ emission standard in grams per mile or grams per kilometer.

Std=0.9 grams per mile for heavy-duty vehicles at and above 8,500 pounds Gross Vehicle Weight Rating but equal to or less than 10,000 Gross Vehicle Weight Rating pounds and 1.0 grams per mile for heavy-duty vehicles above 10,000 pounds Gross Vehicle Weight Rating but less than 14,000 pounds Gross Vehicle Weight Rating for cases where certification to chassis-based standards is optional for purposes of early credit banking.

FEL=the $NO_X$ family emission limit for the test group in grams per mile or grams per kilometer.

UL=the useful life, or alternative life as described in paragraph (c) of § 86.1805–01, for the given test group in miles or kilometers.

Production=the number of vehicles produced for U.S. sales within the given test group during the model year. Quarterly production projections are used for initial certification. Actual production is used for end-of-year compliance determination.

Discount=a one-time discount applied to all credits to be banked or traded within the model year generated. Except as otherwise allowed in paragraph (m) of this section, the discount applied here is 0.9. Banked credits traded in a subsequent model year will not be subject to an additional discount. Banked credits used in a subsequent model year's averaging program will not have the discount restored.

(d) *Averaging sets.* The averaging and trading of $NO_X$ emission credits will be allowed between all test groups of heavy-duty vehicles subject to chassis-based standards excluding those vehicles produced for sale in California. Averaging, banking, and trading are not applicable to vehicles sold in California.

(e) *Banking of $NO_X$ emission credits*—(1) *Credit deposits.* (i) $NO_X$ emission credits may be banked from test groups produced in 2000 and later model years. Early banking is described in paragraph (n) of this section.

(ii) Manufacturers may bank credits only after the end of the model year and after actual credits have been reported to EPA in the end-of-year report. During the model year and before submittal of the end-of-year report, credits originally designated in the certification process for banking will be considered reserved and may be redesignated for trading or averaging.

(2) *Credit withdrawals.* (i) $NO_X$ credits do not expire, except as provided in paragraph (o)(2) of this section.

(ii) Manufacturers withdrawing banked emission credits shall indicate so during certification and in their credit reports, as described in paragraph (i) of this section.

(3) *Use of banked emission credits.* The use of banked credits shall be within the averaging set and geographic restrictions described in paragraph (d) of this section, and only for the following purposes:

(i) Banked credits may be used in averaging, or in trading, or in any combination thereof, during the certification period. Credits declared for banking from the previous model year but not reported to EPA may also be used. However, if EPA finds that the reported credits cannot be proven, they will be revoked and unavailable for use.

(ii) Banked credits may not be used for averaging and trading to offset emissions that exceed an FEL. Banked credits may not be used to remedy an in-use nonconformity determined by a Selective Enforcement Audit or by recall testing. However, banked credits may be used for subsequent production of the test group if the manufacturer elects to recertify to a higher FEL.



(f) *Negative credit balance.* In the event of a negative credit balance in a trading situation, both the buyer and the seller would be liable.

(g) *Fuel.* Certification fuel used for credit generation must be of a type that is both available in use and expected to be used by the vehicle purchaser. Therefore, upon request by the Administrator, the vehicle manufacturer must provide information acceptable to the Administrator that the designated fuel is readily available commercially and would be used in customer service.

(h) *Credit apportionment.* At the manufacturers option, credits generated from complete heavy-duty vehicles under the provisions described in this section may be sold to or otherwise provided to another party for use in programs other than the averaging, trading and banking program described in this section.

(1) The manufacturer shall pre-identify two emission levels per test group for the purposes of credit apportionment. One emission level shall be the FEL and the other shall be the level of the standard that the test group is required to certify under § 86.1816–04. For each test group, the manufacturer may report vehicle sales in two categories, "ABT-only credits" and "nonmanufacturer-owned credits".

(i) For vehicle sales reported as "ABT-only credits", the credits generated must be used solely in the averaging, trading and banking program described in this section.

(ii) The vehicle manufacturer may declare a portion of vehicle sales "nonmanufacturer-owned credits" and this portion of the credits generated between the standard and the FEL, based on the calculation in paragraph (c)(1) of this section, would belong to the vehicle purchaser. The manufacturer may not generate any credits for the vehicle sales reported as "nonmanufacturer-owned credits" for this averaging, trading and banking program. Vehicles reported as "nonmanufacturer-owned credits" shall comply with the FEL and the requirements of this averaging, trading and banking program in all other respects.

(2) Only manufacturer-owned credits reported as "ABT-only credits" shall be used in the averaging, trading, and banking provisions described in this section.

(3) Credits shall not be double-counted. Credits used in this averaging, trading and banking program may not be provided to a vehicle purchaser for use in another program.

(4) Manufacturers shall determine and state the number of vehicles sold as "ABT-only credits" and "nonmanufacturer-owned credits" in the end-of-model year reports required under paragraph (i) of this section.

(i) *Application for certification and end-of-year reports.* Manufacturers participating in the emissions averaging, trading and banking program, shall submit for each participating test group the items listed in paragraphs (i)(1) through (3) of this section.

(1) *Application for certification.* (i) The application for certification will include a statement that the vehicles for which certification is requested will not, to the best of the manufacturer's belief, when included in the averaging, trading and banking program, cause the applicable $NO_X$ emissions standard to be exceeded.

(ii) The application for certification will also include identification of the section of this subpart under which the test group is participating in the averaging, trading and banking program (*e.g.*, § 86.1817–05), the type ($NO_X$), and the projected number of credits generated/needed for this test group, the applicable averaging set, the projected U.S. production volumes (excluding vehicles produced for sale in California), by quarter, and the values required to calculate credits as given in the applicable averaging, trading and banking section. Manufacturers shall also submit how and where credit surpluses are to be dispersed and how and through what means credit deficits are to be met, as explained in the applicable averaging, trading and banking section. The application must project that each test group will be in compliance with the applicable emission standards based on the vehicle mass emissions and credits from averaging, trading and banking.

(2) [Reserved].

(3) *End-of-year report.* The manufacturer shall submit end-of-year reports for each test group participating in the averaging, trading and banking program, as described in paragraphs (i)(3)(i) through (iv) of this section.

(i) These reports shall be submitted within 90 days of the end of the model year to: Director, Engine Programs and Compliance Division (6405J), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

(ii) These reports shall indicate the test group, the averaging set, the actual U.S. production volume (excluding vehicles produced for sale in California), the values required to calculate credits as given in the applicable averaging, trading and banking section, and the resulting type and number of credits generated/required. Manufacturers shall also submit how and where credit surpluses were dispersed (or are to be banked) and how and through what means credit deficits were met. Copies of contracts related to credit trading must also be included or supplied by the broker if applicable. The report shall also include a calculation of credit balances to show that net mass emissions balances are within those allowed by the emission standards (equal to or greater than a zero credit balance). Any credit discount factor described in the applicable averaging, trading and banking section must be included as required.

(iii) The production counts for end-of-year reports shall be based on the location of the first point of retail sale (*e.g.*, customer, dealer, secondary manufacturer) by the manufacturer.

(iv) Errors discovered by EPA or the manufacturer in the end-of-year report, including changes in the production counts, may be corrected up to 180 days subsequent to submission of the end-of-year report. Errors discovered by EPA after 180 days shall be corrected if credits are reduced. Errors in the manufacturer's favor will not be corrected if discovered after the 180 day correction period allowed.

(j) *Failure to submit quarterly or end-of-year reports.* Failure by a manufacturer participating in the averaging, trading and banking program to submit any quarterly or end-of-year report (as applicable) in the specified time for all vehicles that are part of an averaging set is a violation of section 203(a)(1) of the Clean Air Act (42 U.S.C. 7522(a)(1)) for such vehicles.

(k) *Failure to submit end-of-year reports for banked credits.* Failure by a manufacturer generating credits for deposit only in the complete heavy-duty vehicle banking program to submit their end-of-year reports in the applicable specified time period (*i.e.*, 90 days after the end of the model year) shall result in the credits not being available for use until such reports are received and reviewed by EPA. Use of projected credits pending EPA review will not be permitted in these circumstances.

(l) *Quarterly records.* Any manufacturer producing a test group participating in trading using reserved credits, shall maintain the following records on a quarterly basis for each test group in the trading subclass:

(1) The test group;

(2) The averaging set;

(3) The actual quarterly and cumulative U.S. production volumes

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excluding vehicles produced for sale in California;

(4) The values required to calculate credits as given in paragraph (c) of this section;

(5) The resulting type and number of credits generated/required;

(6) How and where credit surpluses are dispersed; and

(7) How and through what means credit deficits are met.

(m) *Additional flexibility for complete heavy-duty vehicles.* If a complete heavy-duty vehicle has a $NO_X$ FEL of 0.6 grams per mile or lower, a discount of 1.0 may be used in the trading and banking credits calculation for $NO_X$ described in paragraph (c)(2) of this section.

(n) *Early banking for complete heavy-duty vehicles.* Provisions set forth in paragraphs (a) through (m) of this section apply except as specifically stated otherwise in this paragraph (n).

(1) *Early banking eligibility.* To be eligible for the early banking program described in this paragraph, the following must apply:

(i) Credits are generated from complete heavy-duty vehicles.

(ii) During certification, the manufacturer shall declare its intent to include specific test groups in the early banking program described in this paragraph (n).

(2) *Credit generation and use.* (i) Early credits may be generated by test groups starting in model year 2000.

(ii) Credits may only be used for complete heavy-duty vehicles subject to chassis-based standards, except as provided by paragraph (o) in this section, and all credits shall be subject to discounting and all other provisions contained in paragraphs (a) through (m) of this section.

(o) *Credit transfers.* A manufacturer that elects to comply with Option 1 or 2 contained in § 86.005–10(f) may transfer credits between its complete vehicle averaging set and its heavy-duty Otto-cycle engine averaging set as follows:

(1) Credits earned in model years 2004 (2003 for Option 1) through 2007 are eligible to be transferred.

(2) Transferred credits may not be banked for use in model years 2008 and later. Credits that are transferred but not used prior to model year 2008 must be forfeited.

(3) Prior to transferring credits, a manufacturer must develop a methodology to transfer the credits including a conversion factor that may be used to convert between chassis-based credits (derived on a grams per mile basis) and equivalent engine-based credits (derived on a grams per brake horsepower-hour basis). The methodology must be approved by EPA prior to the start of the model year in which the credits are to be transferred. The conversion factor must provide reasonable certainty that the credits are equivalent for the specific vehicle test group(s) and engine family(s) involved in the generation and use of the credits.

66. Section 86.1823–01 is amended by revising the introductory text, paragraph (c)(2) introductory text, and the first sentence of paragraph (h), to read as follows:

**§ 86.1823–01 Durability demonstration procedures for exhaust emissions.**

This section applies to light-duty vehicles, light-duty trucks, complete heavy-duty vehicles, and heavy-duty vehicles certified under the provisions of § 86.1801–01(c). Eligible small volume manufacturers or small volume test groups may optionally meet the requirements of §§ 86.1838–01 and 86.1826–01 in lieu of the requirements of this section. For model years 2001, 2002, and 2003 all manufacturers may elect to meet the provisions of paragraph (c)(2) of this section in lieu of these requirements for light-duty vehicles or light-duty trucks.

* * * * *

(c) * * *

(2) For the 2001, 2002, and 2003 model years, for light-duty vehicles and light-duty trucks the manufacturer may carry over exhaust emission DF's previously generated under the Standard AMA Durability Program described in § 86.094–13(c), the Alternate Service Accumulation Durability Program described in § 86.094–13(e) or the Standard Self-Approval Durability Program for light-duty trucks described in § 86.094–13(f) in lieu of complying with the durability provisions of paragraph (a)(1) of this section.

* * * * *

(h) The Administrator may withdraw approval to use a durability process or require modifications to a durability process based on the data collected under §§ 86.1845–01, 86.1846–01, and 86.1847–01 or other information if the Administrator determines that the durability processes have not been shown to accurately predict emission levels or compliance with the standards (or FEL, as applicable) in use on candidate vehicles (provided the inaccuracy could result in a lack of compliance with the standards for a test group covered by this durability process). * * *

* * * * *

67. Section 86.1824–01 is amended by revising the first sentence of the introductory text, to read as follows:

**§ 86.1824–01 Durability demonstration procedures for evaporative emissions.**

This section applies to gasoline-, methanol-, liquefied petroleum gas-, and natural gas-fueled LDV/Ts, MDPVs, complete heavy-duty vehicles, and heavy-duty vehicles certified under the provisions of § 86.1801–01(c). * * *

* * * * *

68. Section 86.1825–01 is amended by revising the first two sentences of introductory text to read as follows:

**§ 86.1825–01 Durability demonstration procedures for refueling emissions.**

This section applies to light-duty vehicles, light-duty trucks, and complete heavy-duty vehicles, and heavy-duty vehicles which are certified under light-duty rules as allowed under the provisions of § 86.1801–01(c) which are subject to refueling loss emission compliance. Refer to the provisions of §§ 86.1811–01, 86.1811–04, 86.1812–01, 86.1813–01, and 86.1816–04 to determine applicability of the refueling standards to different classes of vehicles for various model years. * * *

* * * * *

69. Section 86.1826–01 is amended by revising paragraphs (b)(2) introductory text and (b)(3) introductory text, to read as follows:

**§ 86.1826–01 Assigned deterioration factors for small volume manufacturers and small volume test groups.**

* * * * *

(b) * * *

(2) Manufacturers with aggregated sales from and including 301 through 14,999 motor vehicles and motor vehicle engines per year (determined under the provisions of § 86.1838–01(b)) certifying vehicles equipped with proven emission control systems shall conform to the following provisions:

* * * * *

(3) Manufacturers with aggregated sales from 301 through 14,999 motor vehicles and motor vehicle engines per year (determined under the provisions of § 86.1838–01(b)) certifying vehicles equipped with unproven emission control systems shall conform to the following provisions:

* * * * *

70. Section 86.1827–01 is amended by:

a. Revising paragraph (a)(5).

b. Removing "and" at the end of paragraph (d)(2).

c. Removing the period at the end of paragraph (d)(3) and adding "; and" in its place.

d. Adding paragraph (d)(4).

The revisions and additions read as follows:



**§ 86.1827–01 Test group determination.**

* * * * *

(a) * * *

(5) Subject to the same emission standards, except that a manufacturer may request to group vehicles into the same test group as vehicles subject to more stringent standards, so long as all the vehicles within the test group are certified to the most stringent standards applicable to any vehicle within that test group. Light-duty trucks which are subject to the same emission standards as light-duty vehicles with the exception of the light-duty truck idle CO standard and/or total HC standard may be included in the same test group.

* * * * *

(d) * * *

(4) A statement that all vehicles within a test group are certified to the most stringent standards applicable to any vehicle within that test group.

* * * * *

71. Section 86.1829–01 is amended by revising paragraphs (b)(1)(ii)(B), (b)(2)(ii)(B), and (b)(5), to read as follows:

**§ 86.1829–01 Durability and emission testing requirements; waivers.**

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(B) In lieu of testing vehicles according to the provisions of paragraph (b)(1)(ii)(A) of this section, a manufacturer may provide a statement in its application for certification that, based on the manufacturer's engineering evaluation of appropriate high-altitude emission testing, all light-duty vehicles, light-duty trucks, and complete heavy-duty vehicles comply with the emission standards at high altitude.

* * * * *

(2) * * *

(ii) * * *

(B) In lieu of testing vehicles according to the provisions of paragraph (b)(2)(ii)(A) of this section, a manufacturer may provide a statement in its application for certification that, based on the manufacturer's engineering evaluation of such high-altitude emission testing as the manufacturer deems appropriate, all light-duty vehicles, light-duty trucks, and complete heavy-duty vehicles comply with the emission standards at high altitude.

* * * * *

(5) *Idle CO testing.* To determine idle CO emission compliance for light-duty trucks and complete heavy-duty vehicles, the manufacturer shall follow one of the following two procedures:

(i) For test groups containing light-duty trucks and complete heavy-duty vehicles, each EDV shall be tested in accordance with the idle CO testing procedures of subpart B of this part; or

(ii) In lieu of testing light trucks and complete heavy-duty vehicles for idle CO emissions, a manufacturer may provide a statement in its application for certification that, based on the manufacturer's engineering evaluation of such idle CO testing as the manufacturer deems appropriate, all light-duty trucks and complete heavy-duty vehicles comply with the idle CO emission standards.

* * * * *

72. Section 86.1834–01 is amended by:

a. Revising paragraph (b)(3) introductory text.

b. Redesignating paragraph (b)(3)(i) as paragraph (b)(3)(i)(A), and adding paragraph (b)(3)(i)(B).

c. Revising paragraph (b)(3)(ii) introductory text.

d. Redesignating paragraphs (b)(3)(iii) and (b)(3)(iv) as paragraphs (b)(3)(iv) and (b)(3)(v).

e. Adding a new paragraph (b)(3)(iii).

f. Revising newly redesignated paragraphs (b)(3)(iv) and (b)(3)(v).

g. Adding a new paragraph (b)(3)(vi).

h. Redesignating paragraphs (b)(5) and (b)(6) as paragraphs (b)(6) and (b)(7); adding and reserving paragraph (b)(5).

i. Adding paragraph (b)(6)(i)(H).

j. Revising the first sentence of newly redesignated paragraph (b)(6)(iii), the seventh sentence of newly redesignated paragraph (b)(7)(ii), and the first sentence of newly redesignated paragraph (b)(7)(iii).

k. Revising the heading of paragraph (d).

The revisions and additions read as follows:

**§ 86.1834–01 Allowable maintenance.**

* * * * *

(b) * * *

(3) Emission-related maintenance in addition to, or at shorter intervals than, that listed in paragraphs (b)(3)(i) through (vi) of this section will not be accepted as technologically necessary, except as provided in paragraph (b)(7) of this section.

(i)(A) * * *

(B) The cleaning or replacement of complete heavy-duty vehicle spark plugs shall occur at 25,000 miles (or 750 hours) of use and at 30,000-mile (or 750 hour) intervals thereafter, for vehicles certified for use with unleaded fuel only.

(ii) For light-duty vehicles and light-duty trucks, the adjustment, cleaning, repair, or replacement of the following items shall occur at 50,000 miles of use and at 50,000-mile intervals thereafter:

* * * * *

(iii) For complete heavy-duty vehicles, the adjustment, cleaning, repair, or replacement of the following items shall occur at 50,000 miles (or 1,500 hours) of use and at 50,000-mile (1,500 hour) intervals thereafter:

(A) Positive crankcase ventilation valve.

(B) Emission-related hoses and tubes.

(C) Ignition wires.

(D) Idle mixture.

(E) Exhaust gas recirculation system related filters and coolers.

(iv) For light-duty trucks, light-duty vehicles, and complete heavy-duty vehicles, the adjustment, cleaning, repair, or replacement of the oxygen sensor shall occur at 80,000 miles (or 2,400 hours) of use and at 80,000-mile (or 2,400-hour) intervals thereafter.

(v) For light-duty trucks and light-duty vehicles, the adjustment, cleaning, repair, or replacement of the following items shall occur at 100,000 miles of use and at 100,000-mile intervals thereafter:

(A) Catalytic converter.

(B) Air injection system components.

(C) Fuel injectors.

(D) Electronic engine control unit and its associated sensors (except oxygen sensor) and actuators.

(E) Evaporative and/or refueling emission canister(s).

(F) Turbochargers.

(G) Carburetors.

(H) Superchargers.

(I) Exhaust gas recirculation system including all related filters and control valves.

(J) Mechanical fillpipe seals.

(vi) For complete heavy-duty vehicles, the adjustment, cleaning, repair, or replacement of the following items shall occur at 100,000 miles (or 3,000 hours) of use and at 100,000-mile (or 3,000 hour) intervals thereafter:

(A) Catalytic converter.

(B) Air injection system components.

(C) Fuel injectors.

(D) Electronic engine control unit and its associated sensors (except oxygen sensor) and actuators.

(E) Evaporative and/or refueling emission canister(s).

(F) Turbochargers.

(G) Carburetors.

(H) Exhaust gas recirculation system (including all related control valves and tubing) except as otherwise provided in paragraph (b)(3)(iii)(E) of this section.

(I) Mechanical fillpipe seals.

* * * * *

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(5) [Reserved].
(6) * * *
(i) * * *
(H) Any other add-on emissions-related component (*i.e.*, a component whose sole or primary purpose is to reduce emissions or whose failure will significantly degrade emissions control and whose function is not integral to the design and performance of the engine.)
* * * * *
(iii) Visible signal systems used under paragraph (b)(6)(ii)(C) of this section are considered an element of design of the emission control system. * * *
(7) * * *
(ii) * * * For maintenance items established as emission-related, the Administrator will further designate the maintenance as critical if the component which receives the maintenance is a critical component under paragraph (b)(6) of this section.
* * *
(iii) Any manufacturer may request a hearing on the Administrator's determinations in this paragraph (b)(7).
* * *
* * * * *
(d) *Unscheduled maintenance on durability data vehicles.* * * *
* * * * *

73. Section 86.1835–01 is amended by revising the third sentence of paragraph (a)(1)(i), paragraph (b)(1) introductory text, and paragraph (b)(3) introductory text, to read as follows:

**§ 86.1835–01 Confirmatory certification testing.**

(a) * * *
(1) * * *
(i) * * * The Administrator, in making or specifying such adjustments, will consider the effect of the deviation from the manufacturer's recommended setting on emissions performance characteristics as well as the likelihood that similar settings will occur on in-use light-duty vehicles, light-duty trucks, or complete heavy-duty vehicles. * * *
* * * * *
(b) * * * (1) If the Administrator determines not to conduct a confirmatory test under the provisions of paragraph (a) of this section, light-duty vehicle and light-duty truck manufacturers will conduct a confirmatory test at their facility after submitting the original test data to the Administrator whenever any of the conditions listed in paragraphs (b)(1)(i) through (v) of this section exist, and complete heavy-duty vehicles manufacturers will conduct a confirmatory test at their facility after submitting the original test data to the Administrator whenever the conditions listed in paragraph (b)(1)(i) or (b)(1)(ii) of this section exist, as follows:
* * * * *
(3) For light-duty vehicles, and light-duty trucks, the manufacturer shall conduct a retest of the FTP or highway test if the difference between the fuel economy of the confirmatory test and the original manufacturer's test equals or exceeds three percent (or such lower percentage to be applied consistently to all manufacturer conducted confirmatory testing as requested by the manufacturer and approved by the Administrator).
* * * * *

74. Section 86.1840–01 is revised to read as follows:

**§ 86.1840–01 Special test procedures.**

(a) The Administrator may, on the basis of written application by a manufacturer, prescribe test procedures, other than those set forth in this part, for any light-duty vehicle, light-duty truck, or complete heavy-duty vehicle which the Administrator determines is not susceptible to satisfactory testing by the procedures set forth in this part.
(b) If the manufacturer does not submit a written application for use of special test procedures but the Administrator determines that a light-duty vehicle, light-duty truck, or complete heavy-duty vehicle is not susceptible to satisfactory testing by the procedures set forth in this part, the Administrator shall notify the manufacturer in writing and set forth the reasons for such rejection in accordance with the provisions of § 86.1848(a)(2).
* * * * *

75. Section 86.1844–01 is amended by revising the fourth sentence of paragraph (d)(12), the fourth sentence of paragraph (e)(3), and paragraph (g)(5), and adding paragraph (g)(14) to read as follows:

**§ 86.1844–01 Information requirements: Application for certification and submittal of information upon request.**

* * * * *
(d) * * *
(12) * * * The description shall include, but is not limited to, information such as model name, vehicle classification (light-duty vehicle, light-duty truck, or complete heavy-duty vehicle), sales area, engine displacement, engine code, transmission type, tire size and parameters necessary to conduct exhaust emission tests such as equivalent test weight, curb and gross vehicle weight, test horsepower (with and without air conditioning adjustment), coast down time, shift schedules, cooling fan configuration, etc. and evaporative tests such as canister working capacity, canister bed volume and fuel temperature profile.
* * *
* * * * *
(e) * * *
(3) * * * The description shall include, but is not limited to, information such as model name, vehicle classification (light-duty vehicle, light-duty truck, or complete heavy-duty vehicle), sales area, engine displacement, engine code, transmission type, tire size and parameters necessary to conduct exhaust emission tests such as equivalent test weight, curb and gross vehicle weight, test horsepower (with and without air conditioning adjustment), coast down time, shift schedules, cooling fan configuration, etc and evaporative tests such as canister working capacity, canister bed volume and fuel temperature profile. * * *
* * * * *
(g) * * *
(5) Any information necessary to demonstrate that no defeat devices are present on any vehicles covered by a certificate including, but not limited to, a description of the technology employed to control CO emissions at intermediate temperatures, as applicable.
* * * * *
(14) For complete heavy-duty vehicles only, all hardware (including scan tools) and documentation necessary for EPA to read, interpret, and store (in engineering units if applicable) any information broadcast by an engine's on-board computers and electronic control modules which relates in anyway to emission control devices and auxiliary emission control devices, provided that such hardware, passwords, or documentation exists and is not otherwise commercially available. Passwords include any information necessary to enable generic scan tools or personal computers access to proprietary emission related information broadcast by an engine's on-board computer, if such passwords exist. This requirement includes access by EPA to any proprietary code information which may be broadcast by an engine's on-board computer and electronic control modules. Information which is confidential business information must be marked as such. Engineering units refers to the ability to read, interpret, and store information in commonly understood engineering units, for example, engine speed in revolutions per minute or per second, injection timing parameters such as start of injection in degree's before top-dead center, fueling rates in cubic centimeters per stroke, vehicle speed in milers per hour or per kilometer.
* * * * *



76. Section 86.1845–01 is amended by revising paragraph (a), to read as follows:

**§ 86.1845–01 Manufacturer in-use verification testing requirements.**

(a) *General requirements.* A manufacturer light-duty vehicles, light-duty trucks, and complete heavy-duty vehicles shall test, or cause to have tested a specified number of light-duty vehicles, light-duty trucks, and complete heavy-duty vehicles. Such testing shall be conducted in accordance with the provisions of this section. For purposes of this section, the term vehicle shall include light-duty vehicles, light-duty trucks, and complete heavy-duty vehicles.
* * * * *

77. Section 86.1845–04 is amended by revising paragraph (a)(1) and adding a new sentence to the end of paragraph (a)(3), to read as follows:

**§ 86.1845–04 Manufacturer in-use verification testing requirements.**

(a) * * * (1) A manufacturer of LDVs, LDTs, MDPVs and/or complete HDVs must test, or cause to have tested, a specified number of LDVs, LDTs, MDPVs and complete HDVs. Such testing must be conducted in accordance with the provisions of this section. For purposes of this section, the term vehicle includes light-duty vehicles, light-duty trucks and medium-duty vehicles.
* * * * *
(3) * * * Such procedures are not available for complete HDVs.
* * * * *

78. Section 86.1846–01 is amended by revising paragraphs (a)(1), (a)(3), (a)(4), (b) introductory text, (b)(1), (b)(2), (c), (g), (h), and (j), to read as follows:

**§ 86.1846–01 Manufacturer in-use confirmatory testing requirements.**

(a) * * * (1) A manufacturer of LDVs, LDTs and/or MDPVs must test, or cause testing to be conducted, under this section when the emission levels shown by a test group sample from testing under §§ 86.1845–01 or 86.1845–04, as applicable, exceeds the criteria specified in paragraph (b) of this section. The testing required under this section applies separately to each test group and at each test point (low and high mileage) that meets the specified criteria. The testing requirements apply separately for each model year starting with model year 2001. These provisions do not apply to heavy-duty vehicles or engines prior to the 2007 model year.
* * * * *
(3) For purposes of this section, the term vehicle includes light-duty vehicles, light-duty trucks, medium-duty vehicles and heavy-duty vehicles and engines, as applicable.
(4) Upon a manufacturer's written request, prior to in-use testing, that presents information to EPA regarding pre-conditioning procedures designed solely to remove the effects of high sulfur in gasoline from vehicles produced through the 2007 model year, EPA will consider allowing such procedures on a case-by-case basis. EPA's decision will apply to manufacturer in-use testing conducted under this section and to any in-use testing conducted by EPA. This provision does not apply to heavy-duty vehicles and engines.
(b) *Criteria for additional testing.* A manufacturer shall test a test group or a subset of a test group as described in paragraph (j) of this section when the results from testing conducted under §§ 86.1845–01 and 86.1845–04, as applicable, show mean emissions for that test group of any pollutant(s) to be equal to or greater than 1.30 times the applicable in-use standard and a failure rate, among the test group vehicles, for the corresponding pollutant(s) of fifty percent or greater.
(1) This requirement does not apply to Supplemental FTP testing conducted under § 86.1845–04(b)(5)(i) or evaporative/refueling testing conducted under § 86.1845–01 or § 86.1845–04. Testing conducted at high altitude under the requirements of §§ 86.1845–01 and 86.1845–04 will be included in determining if a test group meets the criteria triggering testing required under this section.
(2) The vehicle tested under the requirements of § 86.1845–01(c)(2) or § 86.1845–04(c)(2) with a minimum odometer miles of 75% of useful life will not be included in determining if a test group meets the triggering criteria.
* * * * *
(c) *Useful life.* Vehicles tested under the provisions of this section must be within the useful life specified for the emission standards which were exceeded in the testing under § 86.1845–01 or § 86.1845–04, as applicable. Testing should be within the useful life specified, subject to sections 207(c)(5) and (c)(6) of the Clean Air Act where applicable.
* * * * *
(g) *Testing.* Testing required under this section must commence within three months of completion of the testing under § 86.1845–01 or § 86.1845–04 which triggered the confirmatory testing and must be completed within seven months of the completion of the testing which triggered the confirmatory testing. Any industry review of the results obtained under § 86.1845–01 or § 86.1845–04 and any additional vehicle procurement and/or testing which takes place under the provisions of § 86.1845–01 or § 86.1845–04 which the industry believes may affect the triggering of required confirmatory testing must take place within the three month period. The data and the manufacturers reasoning for reconsideration of the data must be provided to the Agency within the three month period.
(h) *Limit on manufacturer conducted testing.* For each manufacturer, the maximum number of test group(s) (or Agency-designated subset(s)) of each model year for which testing under this section shall be required is limited to 50 percent of the total number of test groups of each model year required to be tested by each manufacturer as prescribed in § 86.1845–01 or § 86.1845–04 rounded to the next highest whole number where appropriate. For each manufacturer with only one test group under § 86.1845–01 or § 86.1845–04, as applicable, such manufacturer shall have a maximum potential testing requirement under this section of one test group (or Agency-designated subset) per model year.
* * * * *
(j) *Testing a subset.* EPA may designate a subset of the test group based on transmission type for testing under this section in lieu of testing the entire test group when the results for the entire test group from testing conducted under § 86.1845–01 or § 86.1845–04 show mean emissions and a failure rate which meet these criteria for additional testing.

79. Section 86.1848–01 is amended by revising paragraphs (c)(4) and the first sentence of paragraph (e) introductory text to read as follows:

**§ 86.1848–01 Certification.**

* * * * *
(c) * * *
(4) For incomplete light-duty trucks and incomplete heavy-duty vehicles, a certificate covers only those new motor vehicles which, when completed by having the primary load-carrying device or container attached, conform to the maximum curb weight and frontal area limitations described in the application for certification as required in § 86.1844–01.
* * * * *

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(e) A manufacturer of new light-duty vehicles, light-duty trucks, and complete heavy-duty vehicles must obtain a certificate of conformity covering such vehicles from the Administrator prior to selling, offering for sale, introducing into commerce, delivering for introduction into commerce, or importing into the United States the new vehicle. * * *

* * * * *

[FR Doc. 00–20144 Filed 10–5–00; 8:45 am]
BILLING CODE 6560–50–P




Federal Register

Friday,
October 6, 2000

Part III

# Department of Housing and Urban Development

**Federal Property Suitable as Facilities To Assist the Homeless; Notice**

VOL 65 ISS 195 OC 6 2000 UMI



## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4557–N–40]

### Federal Property Suitable as Facilities To Assist the Homeless

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

**FOR FURTHER INFORMATION CONTACT:** Clifford Taffet, room 7266, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

**SUPPLEMENTARY INFORMATION:** In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Clifford Taffet at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: NAVY: Mr. Charles C. Cocks, Director, Department of the Navy, Real Estate Policy Division, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE, Suite 1000, Washington, DC 20374–5065; (202) 685–9200; (These are not toll-free numbers).

Dated: September 28, 2000.

**John D. Garrity,**

*Director, Office of Special Needs Assistance Programs.*

**Title V, Federal Surplus Property Program Federal Register Report for 10/6/00**

**Suitable/Available Properties**

*Buildings (by State)*

California

Bldg. 301
Naval Support Activity
Monterey Co: CA 93943–
Landholding Agency: Navy
Property Number: 772000200041
Status: Excess
Comment: 18,608 sq. ft., presence of asbestos/lead paint, needs major rehab.

Bldg. 371
Naval Warfare Systems Center
San Diego Co: CA 92152–
Landholding Agency: Navy
Property Number: 77200020080
Status: Unutilized
Comment: 29,000 sq. ft., needs rehab, presence of asbestos/lead paint, off-site use only.

Bldg. 402
Naval Warfare Systems Center
San Diego Co: CA 92152–
Landholding Agency: Navy
Property Number: 77200020081
Status: Unutilized
Comment: presence of lead paint, most recent use—storage, off-site use only.

Bldg. 417
Naval Warfare Systems Center
San Diego Co: CA 92152–
Landholding Agency: Navy
Property Number: 77200020082
Status: Unutilized
Comment: 110 TR, needs rehab, presence of asbestos/lead paint, off-site use only.

Bldg. 418
Naval Warfare Systems Center
San Diego Co: CA 92152–
Landholding Agency: Navy
Property Number: 77200020083
Status: Unutilized
Comment: 288 sq. ft., presence of lead paint, most recent use—storage, off-site use only.

Bldg. 426
Naval Warfare Systems Center
San Diego Co: CA 92152–
Landholding Agency: Navy
Property Number: 77200020084
Status: Unutilized
Comment: presence of asbestos/lead asbestos/paint, off-site use only.

Bldg. 434
Naval Warfare Systems Center
San Diego Co: CA 92152–
Landholding Agency: Navy
Property Number: 77200020085
Status: Unutilized
Comment: 11,440 sq. ft., needs rehab, presence of asbestos/lead paint, off-site use only.

Bldg. 210
Naval Warfare Assessment Station
Corona Co: CA 91718–5000
Landholding Agency: Navy
Property Number: 77200020086



Status: Unutilized
Comment: 17,708 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—police station, off-site use only.

Bldg. 541
Naval Warfare Assessment Station
Corona Co: CA 91718–5000
Landholding Agency: Navy
Property Number: 77200020087
Status: Unutilized
Comment: 3857 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—lab, off-site use only.

Bldg. 804
Naval Warfare Assessment Station
Corona Co: CA 91718–5000
Landholding Agency: Navy
Property Number: 77200020088
Status: Unutilized
Comment: 3119 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—admin., off-site use only.

Bldg. 805
Naval Warfare Assessment Station
Corona Co: CA 91718–5000
Landholding Agency: Navy
Property Number: 77200020089
Status: Unutilized
Comment: 3732 sq ft., needs rehab, presence of asbetos/lead paint, most recent use—storage, off-site use only.

Bldg. 806
Naval Warfare Assessment Station
Corona Co: CA 91718–5000
Landholding Agency: Navy
Property Number: 77200020090
Status: Unutilized
Comment: 3110 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—office, off-site use only.

Bldg. 807
Naval Warfare Assessment Station
Corona Co: CA 91718–5000
Landholding Agency: Navy
Property Number: 77200020091
Status: Unutilized
Comment: 3110 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—office, off-site use only.

Hawaii

Bldg. S87, Radio Trans. Fac.
Lualualei, Naval Station, Eastern Pacific
Wahiawa Co: Honolulu HI 96786–3050
Landholding Agency: Navy
Property Number: 77199240011
Status: Unutilized
Comment: 7566 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only.

Bldg. 64, Radio Trans Facility
Naval Computer & Telecommunications Area
Wahiawa Co: Honolulu HI 96786–3050
Landholding Agency: Navy
Property Number: 77199310004
Status: Unutilized
Comment: 3612 sq. ft., 1 story, access restrictions, needs rehab, most recent use—storage, off-site use only.

Bldg. 442, Naval Station
Ford Island
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199630088
Status: Excess
Comment: 192 sq. ft., most recent use—storage, off-site use only.

Bldg. S180
Naval Station, Ford Island
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199640039
Status: Unutilized
Comment: 3412 sq. ft., 2-story, most recent use—bomb shelter, off-site use only, relocation may not be feasible.

Bldg. S181
Naval Station, Ford Island
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199640040
Status: Unutilized
Comment: 4258 sq.ft., 1-story, most recent use—bomb shelter, off-site use only, relocation may not be feasible.

Bldg. 219
Naval Station, Ford Island
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199640041
Status: Unutilized
Comment: 620 sq. ft., most recent use—damage control, off-site use only, relocation may not be feasible.

Bldg. 220
Naval Station, Ford Island
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199640042
Status: Unutilized
Comment: 620 sq. ft., most recent use—damage control, off-site use only, relocation may not be feasible.

Bldg. 160
Naval Station, Pearl Harbor
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199840002
Status: Excess
Comment: 6070 sq. ft., needs rehab, presence of lead paint, most recent use—storage/office, off-site use only.

Maine

Bldg. 4
Naval Air Station
Brunswick Co: ME 04011–
Landholding Agency: Navy
Property Number: 77199930005
Status: Excess
Comment: 16,644 sq. ft., presence of asbestos/lead paint, most recent use—headquarters building, off-site use only.

Bldg. 8
Naval Air Station
Brunswick Co: ME 04011–
Landholding Agency: Navy
Property Number: 77199930006
Status: Excess
Comment: 7413 sq. ft., presence of asbestos/lead paint, most recent use—public works building, off-site use only.

Bldg. 12
Naval Air Station
Brunswick Co: ME 04011–
Landholding Agency: Navy
Property Number: 77199930007
Status: Excess
Comment: 25,354 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only.

Bldg. 41
Naval Air Station
Brunswick Co: ME 04011–
Landholding Agency: Navy
Property Number: 77199930008
Status: Excess
Comment: 10,528 sq. ft., presence of asbestos/lead paint, most recent use—security building, off-site use only.

Maryland

Bldg. 139
Naval Surface Warfare Center
Carderock Division
West Bethesda Co: Montgomery MD 20817–5700
Landholding Agency: Navy
Property Number: 77200010032
Status: Unutilized
Comment: 4950 sq. ft., possible asbestos/lead paint, most recent use—wind tunnel, off-site use only.

New Hampshire

Bldg. 128
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199830015
Status: Excess
Comment: 10,900 sq. ft., needs rehab, presence of asbestos, most recent use—storage, off-site use only.

Bldg. 185
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199830016
Status: Excess
Comment: 2310 sq. ft., needs rehab, presence of asbestos, most recent use—office, off-site use only.

Bldg. 314
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199830017
Status: Excess
Comment: cement block bldg., needs rehab, presence of asbestos, most recent use—storage, off-site use only.

Bldg. 336
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199830018
Status: Excess
Comment: metal bldg w/cement block foundation, off-site use only

Bldg. 160
Portsmouth Naval Shipyard
Portsmouth Co: NH 03804–5000
Landholding Agency: Navy
Property Number: 77199910046
Status: Unutilized
Comment: 6080 sq. ft., possible asbestos, most recent use—storage, off-site use only.

Bldg. 179
Portsmouth Naval Shipyard
Portsmouth Co: NH 03804–5000
Landholding Agency: Navy
Property Number: 77200020099
Status: Excess
Comment: 1452 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—quarters, off-site use only.

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Bldg. 201
Portsmouth Naval Shipyard
Portsmouth Co: NH 03804–5000
Landholding Agency: Navy
Property Number: 77200020100
Status: Excess
Comment: 450 sq. ft., presence of asbestos/lead paint, office-site use only.

Bldg. 304
Portsmouth Naval Shipyard
Portsmouth Co: NH 03804–5000
Landholding Agency: Navy
Property Number: 77200020101
Status: Excess
Comment: 1320 sq. ft., presence of asbestos/lead paint, most recent use—garb. house, off-site use only.

New Jersey

Bldg. D1–A
Naval Weapons Station
Colts Neck Co: NJ 07722–
Landholding Agency: Navy
Property Number: 77199940024
Status: Unutilized
Comment: 1134 sq. ft., presence of lead paint, most recent use—smokehouse/lunchroom, off-site use only.

Bldg. HA–1A
Naval Weapons Station
Colts Neck Co: NJ 07722–
Landholding Agency: Navy
Property Number: 77199940025
Status: Unutilized
Comment; 120 sq. ft., most recent use—storage, off-site use only.

Bldg. C–16
Naval Weapons Station
Colts Neck Co: Earle NJ 07722–
Landholding Agency: Navy
Property Number: 77200010014
Status: Unutilized
Comment: 34,811 sq. ft., presence of asbestos/lead paint, off-site use only.

Bldg. C–25
Naval Weapons Station
Colts Neck Co: Earle NJ 07722–
Landholding Agency: Navy
Property Number: 77200010015
Status: Unutilized
Comment: 4,448 sq. ft., presence of asbestos/lead paint, off-site use only.

Bldg. C–40
Naval Weapons Station
Colts Neck Co: Earle NJ 07722–
Landholding Agency: Navy
Property Number: 77200010016
Status: Unutilized
Comment: 6,924 sq. ft., presence of asbestos/lead paint, off-site use only.

Bldg. 511
Naval Weapons Station
Colts Neck Co: Earle NJ 07722–
Landholding Agency: Navy
Property Number: 77200010017
Status: Unutilized
Comment: 1,871 sq. ft., presence of asbestos/lead paint, off-site use only.

Bldgs. 553, 554, 555
Naval Weapons Station
Colts Neck Co: Earle NJ 07722–
Landholding Agency: Navy
Property Number: 77200010018
Status: Unutilized
Comment: guard towers, off-site use only.

Bldg. 557
Naval Weapons Station
Colts Neck Co: Earle NJ 07722–
Landholding Agency: Navy
Property Number: 77200010019
Status: Unutilized
Comment: 9,670 sq. ft., presence of asbestos/lead paint, off-site use only.

Pennsylvania

Bldg. 38
Naval Support Activity
Philadelphia Co: PA 19111–5098
Landholding Agency: Navy
Property Number: 77200010020
Status: Unutilized
Comment: 6525 sq. ft., metal butler bldg., needs rehab, presence of asbestos/lead paint, off-site use only.

Rhode Island

Bldg. 1
Old Naval Hospital
One Riggs Road
Newport Co: RI 02841–
Landholding Agency: Navy
Property Number: 77200010022
Status: Unutilized
Comment: 49,189 sq. ft., presence of asbestos/lead paint, needs major repair, NEPA requirements, boiler plant which provides heat and hot water to bldg. will be shut down.

Bldg. K–61
Naval Station
Newport Co: RI 02841–
Landholding Agency: Navy
Property Number: 77200030079
Status: Unutilized
Comment: 32,836 sq. ft., presence of asbestos/lead paint, most recent use—office, off-site use only.

Rhode Island

Bldg. 685
Naval Station
Middletown Co: Newport RI 02842–
Landholding Agency: Navy
Property Number: 77200030080
Status: Unutilized
Comment: 25,090 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—navy lodge, off-site use only.

**Suitable/Unavailable Properties**

*Buildings (by State)*

Puerto Rico

Bldgs. 501 & 502
U.S. Naval Radio Transmitter Facility
State Road No. 2
Juana Diaz PR 00795–
Landholding Agency: Navy
Property Number: 77199530007
Status: Underutilized
Comment: Reinforced concrete structures, limited access, needs rehab, most recent use—transmitter and power house.

Virginia

Naval Medical Clinic
6500 Hampton Blvd.
Norfolk Co: Norfolk VA 23508–
Landholding Agency: Navy
Property Number: 77199010109
Status: Unutilized
Comment: 3665 sq ft., 1 story, possible asbestos, most recent use–laundry

*Land (by State)*

Virginia

Naval Base
Norfolk Co: Norfolk VA 23508–
Location:
Northeast corner of base, near Willoughby housing area.
Landholding Agency: Navy
Property Number: 77199010156
Status: Unutilized
Comment: 60 acres; most recent use—sandpit; secured area with alternate access.

Land—CD area
Naval Base Norfolk
Norfolk VA 23511–2797
Landholding Agency: Navy
Property Number: 77199830022
Status: Unutilized
Comment: 2 acres, open space.

**Suitable/To Be Excessed**

*Buildings (by State)*

Puerto Rico

Bldg. 561
Former Ramey AFB
Aguadilla PR 00604–
Landholding Agency: Navy
Property Number: 77199630001
Status: Unutilized
Comment: 102666 sq. ft. bldg. on 5.006 acres, most recent use—manufacturing, office and freight distribution center, presence of asbestos.

**Unsuitable Properties**

*Buildings (by State)*

California

Bldg. 210
Naval Station, San Diego
San Diego CA 92136–
Landholding Agency: Navy
Property Number: 77199830001
Status: Excess
Reason: Extensive deterioration.

Bldg. 444
Naval Station
San Diego CA 92136–5294
Landholding Agency: Navy
Property Number: 77199830122
Status: Excess
Reason: Extensive deterioration.

Bldg. 209
Naval Station, San Diego
San Diego CA 92136–5065
Landholding Agency: Navy
Property Number: 77199840001
Status: Excess
Reason: Extensive deterioration.

Bldgs. 20106, 20195
Naval Air Weapons Station
China Lake Co: CA 93555–
Landholding Agency: Navy
Property Number: 77199930001
Status: Excess
Reasons: Secured Area, Extensive deterioration.

Bldgs. 40, 62
Naval Air Station, North Island
Imperial Beach Co: CA 91932–
Landholding Agency: Navy



Property Number: 77199930024
Status: Excess
Reason: Extensive deterioration.

Bldg. 5UT4
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930081
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 5US4
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930082
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 127
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930083
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 5A6
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930084
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 5A7
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930085
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 5A8
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930086
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 5A9
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930087
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 5B6
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930088
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 5B7
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930089
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 5B8
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930090
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 5B9
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930091
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 5C6
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930092
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 5C7
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930093
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 5C8
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930094
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 5C9
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930095
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 5D1
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930096
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 5D2
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930097
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 5D3
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930098
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 5D4
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930099
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 5D5
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 771999300100
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 206
Naval Weapons Station Seal Beach
Seal Beach Co: CA 90740–5000
Landholding Agency: Navy
Property Number: 77199930105
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 432
Naval Weapons Station Seal Beach
Seal Beach Co: CA 90740–5000
Landholding Agency: Navy
Property Number: 77199930106
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 433
Naval Weapons Station Seal Beach
Seal Beach Co: CA 90740–5000
Landholding Agency: Navy
Property Number: 77199930107
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 435
Naval Weapons Station Seal Beach
Seal Beach Co: CA 90740–5000
Landholding Agency: Navy
Property Number: 77199930108
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 456
Naval Weapons Station Seal Beach
Seal Beach Co: CA 90740–5000
Landholding Agency: Navy
Property Number: 77199930109
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 921
Naval Weapons Station Seal
—Beach
Seal Beach Co: CA 90740–5000
Landholding Agency: Navy
Property Number: 77199930110
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 201
Naval Weapons Station
Fallbrook Co: CA 92028–3187
Landholding Agency: Navy
Property Number: 77199940002
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 205
Naval Weapons Station
Fallbrook Co: CA 92028–3187
Landholding Agency: Navy
Property Number: 77199940003
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 227
Naval Weapons Station
Fallbrook Co: CA 92028–3187
Landholding Agency: Navy
Property Number: 77199940004
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 230
Naval Weapons Station
Fallbrook Co: CA 92028–3187
Landholding Agency: Navy
Property Number: 77199940005
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 232
Naval Weapons Station
Fallbrook Co: CA 92028–3187
Landholding Agency: Navy
Property Number: 77199940006
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 337

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Naval Weapons Station
Fallbrook Co: CA 92028–3187
Landholding Agency: Navy
Property Number: 77199940007
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 338
Naval Weapons Station
Fallbrook Co: CA 92028–3187
Landholding Agency: Navy
Property Number: 77199940008
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 339
Naval Weapons Station
Fallbrook Co: CA 92028–3187
Landholding Agency: Navy
Property Number: 77199940009
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 349
Naval Weapons Station
Fallbrook Co: CA 92028–3187
Landholding Agency: Navy
Property Number: 77199940010
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 362
Naval Weapons Station
Fallbrook Co: CA 92028–3187
Landholding Agency: Navy
Property Number: 77199940011
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 363
Naval Weapons Station
Fallbrook Co: CA 92028–3187
Landholding Agency: Navy
Property Number: 77199940012
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 410
Naval Weapons Station
Fallbrook Co: CA 92028–3187
Landholding Agency: Navy
Property Number: 77199940013
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 438
Naval Weapons Station
Fallbrook Co: CA 92028–3187
Landholding Agency: Navy
Property Number: 77199940014
Status: Unutilized
Reason: Extensive deterioration.

Bldg. Q100
Naval Amphibious Base
Coronado Co: CA 92118–
Landholding Agency: Navy
Property Number: 77199940067
Status: Excess
Reason: Extensive deterioration.

Bldg. Q102
Naval Amphibious Base
Coronado Co: CA 92118–
Landholding Agency: Navy
Property Number: 77199940068
Status: Excess
Reason: Extensive deterioration.

Bldg. 106
Naval Amphibious Base
Coronado Co: CA 92118–
Landholding Agency: Navy
Property Number: 77199940069
Status: Excess
Reason: Extensive deterioration.

Bldg. 111
Naval Amphibious Base
Coronado Co: CA 92118–
Landholding Agency: Navy
Property Number: 77199940070
Status: Excess
Reason: Extensive deterioration.

Bldg. 112
Naval Amphibious Base
Coronado Co: CA 92118–
Landholding Agency: Navy
Property Number: 77199940071
Status: Excess
Reason: Extensive deterioration.

Bldg. 613
NAS, North Island
Coronado Co: CA 92118–
Landholding Agency: Navy
Property Number: 77199940072
Status: Excess
Reason: Extensive deterioration.

Bldg. 55
Naval Amphibious Base
Imperial Beach Co: CA 92118–
Landholding Agency: Navy
Property Number: 77199940073
Status: Excess
Reason: Extensive deterioration.

Bldg. 154
Naval Air Station
North Island Co: CA 92132–
Landholding Agency: Navy
Property Number: 77200010037
Status: Excess
Reason: Extensive deterioration.

Bldg. OT68
Space & Navy Warfare
Systems Center
San Diego Co: CA 92152–5001
Landholding Agency: Navy
Property Number: 77200010076
Status: Unutilized
Reason: Floodway.

Bldg. 1234
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010077
Status: Excess
Reason: Extensive deterioration.

Bldg. 1439
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010078
Status: Excess
Reason: Extensive deterioration.

Bldg. 1443
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010079
Status: Excess
Reason: Extensive deterioration.

Bldg. 2231
Marine Corps Base
Camp Pendleton CO: CA 92055–
Landholding Agency: Navy
Property Number: 77200010080
Status: Excess
Reason: Extensive deterioration.

Bldg. 2232
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010081
Status: Excess
Reason: Extensive deterioration.

Bldg. 2582
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010082
Status: Excess
Reason: Extensive deterioration.

Bldg. 2583
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010083
Status: Excess
Reason: Extensive deterioration.

Bldg. 21544
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010084
Status: Excess
Reason: Extensive deterioration.

Bldg. 21549
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010085
Status: Excess
Reason: Extensive deterioration.

Bldg. 25131
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010086
Status: Excess
Reason: Extensive deterioration.

Bldg. 32927
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010087
Status: Excess
Reason: Extensive deterioration.

Bldg. 130167
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010088
Status: Excess
Reason: Extensive deterioration.

Bldg. 130175
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010089
Status: Excess
Reason: Extensive deterioration.

Bldg. 201076
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010090
Status: Excess
Reason: Extensive deterioration.

Bldg. 201487
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010091
Status: Excess
Reason: Extensive deterioration.



Bldg. 1684
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010092
Status: Excess
Reason: Extensive deterioration.

Bldg. 16146
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010093
Status: Excess
Reason: Extensive deterioration.

Bldg. 43332
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010094
Status: Excess
Reason: Extensive deterioration.

Bldg. 43333
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010095
Status: Excess
Reason: Extensive deterioration.

Bldg. 43334
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010096
Status: Excess
Reason: Extensive deterioration.

Bldg. 43335
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010097
Status: Excess
Reason: Extensive deterioration.

Bldg. 43336
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010098
Status: Excess
Reason: Extensive deterioration.

Bldg. 43337
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010099
Status: Excess
Reason: Extensive deterioration.

Bldg. 52651
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010100
Status: Excess
Reason: Extensive deterioration.

Bldg. 17A
Marine Corps Logistics Base
Barstow Co: San Bernardino CA 92311–
Landholding Agency: Navy
Property Number: 77200020001
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

Bldg. 62327
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200020034
Status: Excess
Reason: Extensive deterioration.

Bldg. 3314
Marine Corps Air Station
Miramar Co: CA 94145–
Landholding Agency: Navy
Property Number: 77200020035
Status: Excess
Reason: Extensive deterioration.

Bldg. 5157, 5158
Construction Battalion
Center
Port Hueneme: CA 93043–4301
Landholding Agency: Navy
Property Number: 77200020045
Status: Unutilized
Reason: Secured Area.

Facility 13181
Camp Pendleton
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200020046
Status: Unutilized
Reasons: Secured Area Extensive deterioration.

Facility 14220
Camp Pendleton
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200020047
Status: Unutilized
Reasons: Secured Area Extensive deterioration.

Facility 24151
Camp Pendleton
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200020048
Status: Unutilized
Reasons: Secured Area Extensive deterioration.

Bldg. 22074
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200020092
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 62324
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200020093
Status: Unutilized
Reason: Extensive deterioration.

Bldg. H–62
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200020094
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 1442
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200020106
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 1651
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200020107
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 13162
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200020108
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 14100
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200020109
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 25131
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200020110
Status: Unutilized
Reason: Extensive deterioration.

Connecticut

DG1–DG8, DG10–DG–27
Dolphin Gardens
Naval Submarine Base New London
Groton Co: New London CT 06349–
Landholding Agency: Navy
Property Number: 77199930025
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 480
Naval Submarine Base
Groton Co: New London CT 06349–
Landholding Agency: Navy
Property Number: 77200010075
Status: Unutilized
Reason: Secured Area.

10 Bldgs./84.62 acres
Naval Weapons Ind. Rsv. Pl.
Bloomfield Co: Hartford CT 06002–0002
Landholding Agency: Navy
Property Number: 77200020096
Status: Unutilized
Reason: Secured Area.

Florida

Bldg. 648
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77199920087
Status: Unutilized
Reason: Secured Area.

Bldg. 1882
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77199920088
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

Bldg. 3228
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77199920089
Status: Unutilized
Reason: Secured Area.

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Bldg. 3604
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77199920090
Status: Unutilized
Reason: Secured Area.

Bldg. 3605
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77199920091
Status: Unutilized
Reason: Secured Area.

Bldg. 3626
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77199920092
Status: Unutilized
Reason: Secured Area.

Bldg. 3674
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77199920093
Status: Unutilized
Reason: Secured Area.

Bldg. A–146
Boca Chica Annex
Naval Air Station
Key West Co: Monroe FL 33040–
Landholding Agency: Navy
Property Number: 77199930027
Status: Unutilized
Reason: Extensive deterioration.

Bldg. A–232
Boca Chica Annex
Naval Air Station
Key West Co: Monroe FL 33040–
Landholding Agency: Navy
Property Number: 77199930028
Status: Unutilized
Reason: Extensive deterioration.

Bldg. A–4020
Boca Chica Annex
Naval Air Station
Key West Co: Monroe FL 33040–
Landholding Agency: Navy
Property Number: 77199930029
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 3451
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77199940066
Status: Unutilized
Reason: Secured Area.

Bldg. 1558
NAS Jacksonville
Jacksonville Co: Duval FL 32212–
Landholding Agency: Navy
Property Number: 77200010001
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 592
NAS Jacksonville
Jacksonville Co: Duval FL 32212–
Landholding Agency: Navy
Property Number: 77200010002
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 610
NAS Jacksonville
Jacksonville Co: Duval FL 32212–
Landholding Agency: Navy
Property Number: 77200010003
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 7L
NAS Jacksonville
Jacksonville Co: Duval FL 32212–
Landholding Agency: Navy
Property Number: 77200010004
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 7M
NAS Jacksonville
Jacksonville Co: Duval FL 32212–
Landholding Agency: Navy
Property Number: 77200010005
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 7N
NAS Jacksonville
Jacksonville Co: Duval FL 32212–
Landholding Agency: Navy
Property Number: 77200010006
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 70
NAS Jacksonville
Jacksonville Co: Duval FL 32212–
Landholding Agency: Navy
Property Number: 77200010007
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. A–952
Naval Air Station
Boca Chica
Key West Co: Monroe FL 33040–
Landholding Agency: Navy
Property Number: 77200010034
Status: Unutilized
Reason: Extensive deterioration.

Bldg. A–962
Naval Air Station
Boca Chica
Key West Co: Monroe FL 33040–
Landholding Agency: Navy
Property Number: 77200010035
Status: Unutilized
Reason: Extensive deterioration.

Bldg. A–1105
Naval Air Station
Boca Chica
Key West Co: Monroe FL 33040–
Landholding Agency: Navy
Property Number: 77200010036
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 44
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200010038
Status: Unutilized
Reason: Secured Area.

Bldg. 58
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200010039
Status: Unutilized
Reason: Secured Area.

Bldg. 365
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200010040
Status: Unutilized
Reason: Secured Area.

Bldg. 455
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200010041
Status: Unutilized
Reason: Secured Area.

Bldg. 467
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200010042
Status: Unutilized
Reason: Secured Area.

Bldg. 475
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200010043
Status: Unutilized
Reason: Secured Area.

Bldg. 605A
Naval Air Station
Pensacola Co: Escambia FL 43508–
Landholding Agency: Navy
Property Number: 77200010044
Status: Unutilized
Reason: Secured Area.

Bldg. 689
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200010045
Status: Unutilized
Reason: Secured Area.

Bldg. 802A
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200010046
Status: Unutilized
Reason: Secured Area.

Bldg. 835
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200010047
Status: Unutilized
Reason: Secured Area.

Bldg. 859B
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200010048
Status: Unutilized
Reason: Secured Area.

Bldg. 859C
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200010049
Status: Unutilized
Reason: Secured Area.



Bldg. 869
Naval Air Station
Pensacola Co: Escambia FL 32598–
Landholding Agency: Navy
Property Number: 77200010050
Status: Unutilized
Reason: Secured Area.

Bldg. 1713
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200010051
Status: Unutilized
Reason: Secured Area.

Bldg. 2437
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200010052
Status: Unutilized
Reason: Secured Area.

Bldg. 2462
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200010053
Status: Unutilized
Reason: Secured Area.

Bldg. 3446
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200010054
Status: Unutilized
Reason: Secured Area.

Bldg. 3478
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200010055
Status: Unutilized
Reason: Secured Area.

Bldg. 3878
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200010056
Status: Unutilized
Reason: Secured Area.

Bldg. 7H
Naval Air Station
Jacksonville Co: Duval FL 32212–
Landholding Agency: Navy
Property Number: 77200020064
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

Bldg. 7J
Naval Air Station
Jacksonville Co: Duval FL 32212–
Landholding Agency: Navy
Property Number: 77200020065
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

Bldg. 7K
Naval Air Station
Jacksonville Co: Duval FL 32212–
Landholding Agency: Navy
Property Number: 77200020066
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

Bldg. 106
Naval Air Station
Jacksonville Co: Duval FL 32212–
Landholding Agency: Navy
Property Number: 77200020067
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 135
Naval Air Station
Jacksonville Co: Duval FL 32212–
Landholding Agency: Navy
Property Number: 77200020068
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 142
Naval Air Station
Jacksonville Co: Duval FL 32212–
Landholding Agency: Navy
Property Number: 77200020069
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 584
Naval Air Station
Jacksonville Co: Duval FL 32212–
Landholding Agency: Navy
Property Number: 77200020070
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 610
Naval Air Station
Jacksonville Co: Duval FL 32212–
Landholding Agency: Navy
Property Number: 77200020071
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 702
Naval Air Station
Jacksonville Co: Duval FL 32212–
Landholding Agency: Navy
Property Number: 77200020072
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 703
Naval Air Station
Jacksonville Co: Duval FL 32212–
Landholding Agency: Navy
Property Number: 77200020073
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 725
Naval Air Station
Jacksonville Co: Duval FL 32212–
Landholding Agency: Navy
Property Number: 77200020074
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 740A
Naval Air Station
Jacksonville Co: Duval FL 32212–
Landholding Agency: Navy
Property Number: 77200020075
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 54
Naval Station
Mayport Co: Duval FL 32228–
Landholding Agency: Navy
Property Number: 77200020076
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 211
Naval Station
Mayport Co: Duval FL 32228–
Landholding Agency: Navy
Property Number: 77200020077
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 62
NAS Jacksonville
Altoona Co: Marion FL 32702–
Landholding Agency: Navy
Property Number: 77200020111
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 94
NAS Jacksonville
Altoona Co: Marion FL 32702–
Landholding Agency: Navy
Property Number: 77200020112
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Georgia

Bldg. 3012
Naval Submarine Base
Kings Bay Co: Camden GA 31547
Landholding Agency: Navy
Property Number: 77199910001
Status: Unutilized
Reason: Extensive deterioration.

Facility 5001
Naval Submarine Base
Kings Bay Co: Camden GA 31547–
Landholding Agency: Navy
Property Number: 77199940016
Status: Unutilized
Reason: Secured Area.

Facility 5002
Naval Submarine Base
Kings Bay Co: Camden GA 31547–
Landholding Agency: Navy
Property Number: 77199940017
Status: Unutilized
Reason: Secured Area.

Facility 5003
Naval Submarine Base
Kings Bay Co: Camden GA 31547–
Landholding Agency: Navy
Property Number: 77199940018
Status: Unutilized
Reason: Secured Area.

Facility 5935
Naval Submarine Base
Kings Bay Co: Camden GA 31547–
Landholding Agency: Navy
Property Number: 77199940019
Status: Unutilized
Reason: Secured Area.

Guam

Structures 312, 1792
COMNAVMARIANAS
Waterfront Annex Co: GU 96540–
Landholding Agency: Navy
Property Number: 77199930002
Status: Excess
Reason: Secured Area.

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Structures 2020, 2021
COMNAVMARIANAS
Waterfront Annex Co: GU 96540–
Landholding Agency: Navy
Property Number: 77199930003
Status: Excess
Reason: Secured Area.

Bldg. 3171
COMNAVMARIANAS
Waterfront Annex Co: GU 96540–
Landholding Agency: Navy
Property Number: 77199930004
Status: Excess
Reasons: Secured Area, Extensive deterioration.

Bldg. 264
U.S. Naval Forces
COMNAVMARIANAS
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77199930048
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material
Secured Area, Extensive deterioration.

Bldg. 4400
U.S. Naval Forces
COMNAVMARIANAS
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77199930057
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 4402
U.S. Naval Forces
COMNAVMARIANAS
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77199930058
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 4414
U.S. Naval Forces
COMNAVMARIANAS
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77199930059
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

Bldg. 4425
U.S. Naval Forces
COMNAVMARIANAS
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77199930060
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 4426d–4428
U.S. Naval Forces
COMNAVMARIANAS
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77199930061
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 26
U.S. Naval Forces, Marianas
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77200020049
Status: Unutilized
Reason: Secured Area.

Bldg. 264
U.S. Naval Forces, Marianas
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77200020050
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material
Secured Area, Extensive deterioration.

Bldg. 3112
U.S. Naval Forces, Marianas
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77200020051
Status: Unutilized
Reason: Secured Area.

Bldg. 3116
U.S. Naval Forces, Marianas
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77200020052
Status: Unutilized
Reason: Secured Area.

Bldg. 3117
U.S. Naval Forces, Marianas
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77200020053
Status: Unutilized
Reason: Secured Area.

Bldg. 3118
U.S. Naval Forces, Marianas
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77200020054
Status: Unutilized
Reason: Secured Area.

Bldg. 3120
U.S. Naval Forces, Marianas
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77200020055
Status: Unutilized
Reason: Secured Area.

Bldg. 3121
U.S. Naval Forces, Marianas
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77200020056
Status: Unutilized
Reason: Secured Area.

Bldg. 4400
U.S. Naval Forces, Marianas
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77200020057
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 4402
U.S. Naval Forces, Marianas
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77200020058
Status: Unutilized
Reason: Secured Area.

Bldg. 4414
U.S. Naval Forces, Marianas
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77200020059
Status: Unutilized
Reason: Secured Area.

Bldg. 4425
U.S. Naval Forces, Marianas
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77200020060
Status: Unutilized
Reason: Secured Area.

Bldgs. 4426, 4427, 4428
U.S. Naval Forces, Marianas
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77200020061
Status: Unutilized
Reason: Secured Area.

Hawaii

Bldg. 126, Naval Magazine
Waikele Branch
Lualualei Co: Oahu HI 96792–
Landholding Agency: Navy
Property Number: 77199230012
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Extensive Deterioration, Secured Area.

Bldg. Q75, Naval Magazine
Lualualei Branch
Lualualei Co: Oahu HI 96792–
Landholding Agency: Navy
Property Number: 77199230013
Status: Unutilized
Reasons: Extensive Deterioration, Secured Area.

Bldg. 7, Naval Magazine
Lualualei Branch
Lualualei Co: Oahu HI 96792–
Landholding Agency: Navy
Property Number: 77199230014
Status: Unutilized
Reasons: Extensive Deterioration, Secured Area.

Bldg. 6, Pearl Harbor
Richardson Recreation Area
Honolulu Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199410003
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 10, Pearl Harbor
Richardson Recreational Area
Honolulu Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199410004
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 9
Navy Public Works Center
Kolekole Road
Lualualei Co: Honolulu HI 96782–
Landholding Agency: Navy
Property Number: 77199530009
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material
Secured Area.

Bldg. X5
Nanumea Road
Pearl Harbor Co: Honolulu HI 96782–
Landholding Agency: Navy
Property Number: 77199530010
Status: Excess
Reason: Secured Area.

Bldg. SX30



Nanumea Road
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199530011
Status: Excess
Reason: Secured Area.

Bldg. 98
Pearl Harbor Naval Shipyard
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199620032
Status: Excess
Reason: Extensive deterioration.

Bldg. Q13
Naval Station, Ford Island
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199640035
Status: Unutilized
Reason: Extensive deterioration.

Bldg. Q14
Naval Station, Ford Island
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199640036
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 40
Naval Magazine Lualualei
Co: Oahu HI 96792–4301
Landholding Agency: Navy
Property Number: 77199830028
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 50
Naval Magazine Lualualei
Co: Oahu HI 96792–4301
Landholding Agency: Navy
Property Number: 77199830029
Status: Unutilized
Reason: Extensive deterioration.

Bldg. Q76
Naval Magazine Lualualei
Co: Oahu HI 96792–4301
Landholding Agency: Navy
Property Number: 77199830030
Status: Unutilized
Reason: Extensive deterioration.

Bldg. Q334
Naval Magazine Lualualei
Co: Oahu HI 96792–4301
Landholding Agency: Navy
Property Number: 77199830031
Status: Unutilized
Reason: Extensive deterioration.

Bldg. S380
Naval Magazine Lualualei
Co: Oahu HI 96792–4301
Landholding Agency: Navy
Property Number: 77199830032
Status: Unutilized
Reason: Extensive deterioration.

Bldg. S381
Naval Magazine Lualualei
Co: Oahu HI 96792–4301
Landholding Agency: Navy
Property Number: 77199830033
Status: Unutilized
Reason: Extensive deterioration.

Bldg. Q410
Naval Magazine Lualualei
Co: Oahu HI 96792–4301
Landholding Agency: Navy
Property Number: 77199830034
Status: Unutilized
Reason: Extensive deterioration.

Bldg. Q422
Naval Magazine Lualualei
Co: Oahu HI 96792–4301
Landholding Agency: Navy
Property Number: 77199830035
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 429
Naval Magazine Lualualei
Co: Oahu HI 96792–4301
Landholding Agency: Navy
Property Number: 77199830036
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 431
Naval Magazine Lualualei
Co: Oahu HI 96792–4301
Landholding Agency: Navy
Property Number: 77199830037
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 447
Naval Magazine Lualualei
Co: Oahu HI 96792–4301
Landholding Agency: Navy
Property Number: 77199830038
Status: Unutilized
Reason: Extensive deterioration.

Facility S–721
Naval Station
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199840042
Status: Excess
Reason: Secured Area.

Facility S–897
Naval Station
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199840043
Status: Excess
Reason: Secured Area.

Facility S–937
Naval Station
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199840044
Status: Excess
Reason: Secured Area.

Facility 19
Naval Station
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199840045
Status: Excess
Reason: Secured Area.

Facility 63
Naval Computer & Telecomm. Station
Wahiawa Co: HI 96786–
Landholding Agency: Navy
Property Number: 77199920013
Status: Excess
Reason: Extensive deterioration.

Facility SX30
Navy Public Works Center
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199920027
Status: Excess
Reasons: Secured Area, Extensive deterioration.

Coral Rose Navy Housing
Former Naval Air Station
Kapolei Co: HI 96707–
Landholding Agency: Navy
Property Number: 77200020097
Status: Unutilized
Reason: Extensive deterioration.

Illinois

Bldg. 415
Naval Training Center
201 N. Decatur Ave.
Great Lakes IL
Landholding Agency: Navy
Property Number: 77199840023
Status: Unutilized
Reason: Secured Area.

Bldg. 1015
Naval Training Center
201 N. Decatur Ave.
Great Lakes IL
Landholding Agency: Navy
Property Number: 77199840024
Status: Unutilized
Reason: Secured Area.

Bldg. 1016
Naval Training Center
201 N. Decatur Ave.
Great Lakes IL
Landholding Agency: Navy
Property Number: 77199840025
Status: Unutilized
Reason: Secured Area.

Bldg. 910
Naval Training Center
Great Lakes Co: IL 60088–5000
Landholding Agency: Navy
Property Number: 77199920055
Status: Unutilized
Reason: Secured Area.

Bldg. 800
Naval Training Center
Great Lakes Co: IL 60088–5000
Landholding Agency: Navy
Property Number: 77199920056
Status: Unutilized
Reason: Secured Area.

Bldg. 1000
Naval Training Center
Great Lakes Co: IL 60088–5000
Landholding Agency: Navy
Property Number: 77199920057
Status: Unutilized
Reason: Secured Area.

Bldg. 1200
Naval Training Center
Great Lakes Co: IL 60088–5000
Landholding Agency: Navy
Property Number: 77199920058
Status: Unutilized
Reason: Secured Area.

Bldg. 1400
Naval Training Center
Great Lakes Co: IL 60088–5000
Landholding Agency: Navy
Property Number: 77199920059
Status: Unutilized
Reason: Secured Area.

Bldg. 1600
Naval Training Center
Great Lakes Co: IL 60088–5000
Landholding Agency: Navy
Property Number: 77199920060
Status: Unutilized
Reason: Secured Area.

Bldg. 2600

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Naval Training Center
Great Lakes Co: IL 60088–5000
Landholding Agency: Navy
Property Number: 77199920061
Status: Unutilized
Reason: Secured Area.

Indiana

Bldg. 3
Naval Surface Warfare
Naval Investigation Ofc.
Crane Co: Lawrence IN 47522–
Landholding Agency: Navy
Property Number: 77200010057
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

3 Bldgs.
Naval Surface Warfare
157, 166, 171
Crane Co: Lawrence IN 47522–
Landholding Agency: Navy
Property Number: 77200010058
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

3 Bldgs.
Naval Surface Warfare
#22, 2792, 2794
Crane Co: Lawrence IN 47522–
Landholding Agency: Navy
Property Number: 77200010059
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

3 Bldgs.
Naval Surface Warfare
#158, 167, 172
Crane Co: Lawrence IN 47522–
Landholding Agency: Navy
Property Number: 77200010060
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldgs. 162, 163
Naval Surface Warfare
Crane Co: Lawrence IN 47522–
Landholding Agency: Navy
Property Number: 77200010061
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

3 Bldgs. 169D, 169E
Naval Surface Warfare
Crane Co: Lawrence IN 47522–
Landholding Agency: Navy
Property Number: 77200010062
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

4 Bldgs.
Naval Surface Warfare
#173, 2171, 2172, 2179
Crane Co: Lawrence IN 47522–
Landholding Agency: Navy
Property Number: 77200010063
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

5 Bldgs.
Naval Surface Warfare
2174, 2175, 2176, 2193, 2784
Crane Co: Lawrence IN 47522–
Landholding Agency: Navy
Property Number: 77200010064
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldgs. 2500, 2501
Naval Surface Warfare
Crane Co: Lawrence IN 47522–
Landholding Agency: Navy
Property Number: 77200010065
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

3 Bldgs.
Naval Surface Warfare
#2502, 2503, 2715
Crane Co: Lawrence IN 47522–
Landholding Agency: Navy
Property Number: 77200010066
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

10 Bldgs.
Naval Surface Warfare
#2803, 2855–2863
Crane Co: Lawrence IN 47522–
Landholding Agency: Navy
Property Number: 77200010067
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldgs. 2905, 3074
Naval Surface Warfare
Crane Co: Lawrence IN 47522–
Landholding Agency: Navy
Property Number: 77200010068
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Maine

Aircraft Hangar #2
Naval Air Station
Brunswick Co: Cumberland ME 04011–
Landholding Agency: Navy
Property Number: 77199810015
Status: Excess
Reason: Extensive deterioration.

Bldg. 13
Naval Air Station
Brunswick Co: Cumberland ME 04011–
Landholding Agency: Navy
Property Number: 77199840005
Status: Excess
Reason: Extensive deterioration.

Bldg. 15
Naval Air Station
Brunswick Co: Cumberland ME 04011–
Landholding Agency: Navy
Property Number: 77199840006
Status: Excess
Reason: Extensive deterioration.

Bldg. 16
Naval Air Station
Brunswick Co: Cumberland ME 04011–
Landholding Agency: Navy
Property Number: 77199840007
Status: Excess
Reason: Extensive deterioration.

Bldg. 90
Naval Security Group Activity
Winter Harbor Co: ME 00000–
Landholding Agency: Navy
Property Number: 77200020098
Status: Excess
Reason: Extensive deterioration.

Maryland

15 Bldgs.
Naval Air Warfare Center
Patuxent River Co: St. Mary's MD 20670–5304
Landholding Agency: Navy
Property Number: 77199730062
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 163
Naval Surface Warfare Center
Carderock Division
West Bethesda Co: Montgomery MD 20817–5700
Landholding Agency: Navy
Property Number: 77200010033
Status: Unutilized
Reason: Extensive deterioration.

Mississippi

Bldg. 78
Naval Construction Battalion Center
Gulfport Co: Harrison MS 39501–5001
Landholding Agency: Navy
Property Number: 77199830047
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 113
Naval Construction Battalion Center
Gulfport Co: Harrison MS 39501–5001
Landholding Agency: Navy
Property Number: 77199830048
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 147
Naval Construction Battalion Center
Gulfport Co: Harrison MS 39501–5001
Landholding Agency: Navy
Property Number: 77199830049
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 187
Naval Construction Battalion Center
Gulfport Co: Harrison MS 39501–5001
Landholding Agency: Navy
Property Number: 77199830050
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 7
Construction Battalion Center
Gulfport Co: Harrison MS 39501–
Landholding Agency: Navy
Property Number: 77199930010
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 75
Construction Battalion Center
Gulfport Co: Harrison MS 39501–
Landholding Agency: Navy
Property Number: 77199930011
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 179
Construction Battalion Center
Gulfport Co: Harrison MS 39501–
Landholding Agency: Navy
Property Number: 77199930012
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.



Structure 262
Construction Battalion Center
Gulfport Co: Harrison MS 39501–
Landholding Agency: Navy
Property Number: 77199930013
Status: Unutilized
Reason: Secured Area.

Bldg. 279
Construction Battalion Center
Gulfport Co: Harrison MS 39501–
Landholding Agency: Navy
Property Number: 77199930014
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 326
Construction Battalion Center
Gulfport Co: Harrison MS 39501–
Landholding Agency: Navy
Property Number: 77199930015
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 412
Construction Battalion Center
Gulfport Co: Harrison MS 39501–
Landholding Agency: Navy
Property Number: 77199930016
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 49
CBC Gulfport
Gulfport Co: Harrison MS 39501–
Landholding Agency: Navy
Property Number: 77200010024
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 130
CBC Gulfport
Gulfport Co: Harrison MS 39501–
Landholding Agency: Navy
Property Number: 77200010025
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 368
CBC Gulfport
Gulfport Co: Harrison MS 39501–
Landholding Agency: Navy
Property Number: 77200010026
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 390
CBC Gulfport
Gulfport Co: Harrison MS 39501–
Landholding Agency: Navy
Property Number: 77200010027
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 43
Construction Battalion Center
Gulfport Co: Harrison MS 39501–
Landholding Agency: Navy
Property Number: 77200030076
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 44
Construction Battalion Center
Gulfport Co: Harrison MS 39501–
Landholding Agency: Navy
Property Number: 77200030077
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 164
Construction Battalion Center
Gulfport Co: Harrison MS 39501–
Landholding Agency: Navy
Property Number: 77200030078
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

New Hampshire

Bldg. 89
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199830086
Status: Unutilized
Reason: Secured Area.

Bldg. 99
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199830088
Status: Unutilized
Reason: Secured Area.

Bldg. 115
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199830089
Status: Unutilized
Reason: Secured Area.

Bldg. 178
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199830090
Status: Unutilized
Reason: Secured Area.

Bldg. 298
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199830091
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. H–21
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199830092
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Dry Dock 1
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199840012
Status: Underutilized
Reasons: Secured Area.

Dry Dock 3
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199840013
Status: Underutilized
Reason: Secured Area.

Berth 2
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199840014
Status: Underutilized
Reason: Secured Area.

Berth 11
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199840015
Status: Underutilized
Reason: Secured Area.

Parcel #1
Portsmouth Naval Shipyard
Portsmouth Co: NH 03804–5000
Landholding Agency: Navy
Property Number: 77199910002
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Parcel #2
Portsmouth Naval Shipyard
Portsmouth Co: NH 03804–5000
Landholding Agency: Navy
Property Number: 77199910003
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Parcel #3
Portsmouth Naval Shipyard
Portsmouth Co: NH 03804–5000
Landholding Agency: Navy
Property Number: 77199910004
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material, Extensive deterioration.

Bldg. 55
Portsmouth Naval Shipyard
Portsmouth Co: NH 03804–5000
Landholding Agency: Navy
Property Number: 77199940020
Status: Unutilized
Reason: Secured Area.

Bldg. 150
Portsmouth Naval Shipyard
Portsmouth Co: NH 03804–5000
Landholding Agency: Navy
Property Number: 77199940021
Status: Unutilized
Reason: Secured Area.

New Jersey

Bldg. 188
Naval Air Engineering Station
Lakehurst Co: Ocean NJ 08733–5000
Landholding Agency: Navy
Property Number: 77199830065
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 473
Naval Air Engineering Station
Lakehurst Co: Ocean NJ 08733–5000
Landholding Agency: Navy
Property Number: 77199920024
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 474
Naval Air Engineering Station
Lakehurst Co: Ocean NJ 08733–5000
Landholding Agency: Navy
Property Number: 77199920025
Status: Unutilized
Reason: Extensive deterioration.

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Bldgs. 220, 234, 236
Naval Air Engineering Station
Lakehurst Co: Ocean NJ 08733–5000
Landholding Agency: Navy
Property Number: 77199930017
Status: Unutilized
Reason: Extensive deterioration.

28 Sheds
Naval Weapons Station
Colts Neck Co: Earle NJ 07722–
Landholding Agency: Navy
Property Number: 77199940026
Status: Unutilized
Reason: Extensive deterioration.

Bldg. FA–1
Naval Weapons Station
Colts Neck Co: Earle NJ 07722–
Landholding Agency: Navy
Property Number: 77200010008
Status: Unutilized
Reason: Extensive deterioration.

Bldg. GB–1
Naval Weapons Station
Colts Neck Co: Earle NJ 07722–
Landholding Agency: Navy
Property Number: 77200010009
Status: Unutilized
Reason: Extensive deterioration.

Bldg. R–18
Naval Weapons Station
Colts Neck Co: Earle NJ 07722–
Landholding Agency: Navy
Property Number: 77200010010
Status: Unutilized
Reason: Extensive deterioration.

Bldg. S–62
Naval Weapons Station
Colts Neck Co: Earle NJ 07722–
Landholding Agency: Navy
Property Number: 77200010011
Status: Unutilized
Reason: Extensive deterioration.

Bldg. S–412
Naval Weapons Station
Colts Neck Co: Earle NJ 07722–
Landholding Agency: Navy
Property Number: 77200010012
Status: Unutilized
Reason: Extensive deterioration.

Bldg. S–457
Naval Weapons Station
Colts Neck Co: Earle NJ 07722–
Landholding Agency: Navy
Property Number: 77200010013
Status: Unutilized
Reason: Extensive deterioration.

North Carolina

Bldg. 96
Marine Corps Air Station, Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 77199820111
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 97
Marine Corps Air Station, Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 77199820112
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 169
Marine Corps Air Station, Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 77199820113
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 196
Marine Corps Air Station, Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 77199820114
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 477
Marine Corps Air Station, Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 77199820115
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material Secured Area, Extensive deterioration.

Bldg. 3422
Marine Corps Air Station, Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 77199820116
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. TC–849
Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 77199920062
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. TC–852
Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 77199920063
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 2159
Marine Corps Air Station
Cherry Point
Havelock Co: Craven NC 28532–
Landholding Agency: Navy
Property Number: 77199920146
Status: Excess
Reasons: Secured Area, Extensive deterioration.

Structure 3758
Marine Corps Air Station
Cherry Point
Havelock Co: Craven NC 28532–
Landholding Agency: Navy
Property Number: 77199920147
Status: Excess
Reasons: Secured Area, Extensive deterioration.

Bldg. 8027
Marine Corps Air Station
Cherry Point
Bogue Co: NC 28584–
Landholding Agency: Navy
Property Number: 77199930043
Status: Excess
Reasons: Secured Area, Extensive deterioration.

Bldg. 8028
Marine Corps Air Station
Cherry Point
Bogue Co: NC 28584–
Landholding Agency: Navy
Property Number: 77199930044
Status: Excess
Reasons: Secured Area, Extensive deterioration.

Bldg. 1649
Marine Corps Air Station
Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 77199940022
Status: Excess
Reasons: Secured Area, Extensive deterioration.

Bldg. TC–817
Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 77200010101
Status: Excess
Reason: Extensive deterioration.

Bldg. BA114
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 77200020003
Status: Unutilized
Reason: Extensive deterioration.

Bldg. H16
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 77200020004
Status: Unutilized
Reason: Extensive deterioration.

Bldg. TC816
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 77200020005
Status: Unutilized
Reason: Extensive deterioration.

Bldg. TC818
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 77200020006
Status: Unutilized
Reason: Extensive deterioration.

Bldg. SM145
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 77200020007
Status: Unutilized
Reason: Extensive deterioration.

Bldg. BA113
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 77200020008
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 2067
Marine Corps Air Station
Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 77200020036
Status: Excess
Reasons: Secured Area, Extensive deterioration.

Bldg. 3146
Marine Corps Air Station
Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 77200020037
Status: Excess
Reasons: Secured Area, Extensive deterioration.

Pennsylvania

Bldg. 524
Naval Systems Engineering Station
Philadelphia PA 19112–
Landholding Agency: Navy
Property Number: 77199830023
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 152
Naval Air Station Willow Grove
Willow Grove Co: Montgomery PA 19113–
Landholding Agency: Navy
Property Number: 77199930018
Status: Excess
Reason: Extensive deterioration.

Bldg. 185
Naval Air Station Willow Grove
Willow Grove Co: Montgomery PA 19113–
Landholding Agency: Navy
Property Number: 77199930019
Status: Excess
Reason: Extensive deterioration.

Bldg. 603
Naval Support Station
Mechanicsburg Co: Cumberland PA 17055–0788
Landholding Agency: Navy
Property Number: 77199940015
Status: Unutilized
Reason: Extensive deterioration.

Facility 22
Naval Support Station
Philadelphia Co: PA 19111–5098
Landholding Agency: Navy
Property Number: 77199940060
Status: Excess
Reason: Extensive deterioration.

Bldg. 85
Naval Support Activity
Philadelphia Co: PA 19111–5098
Landholding Agency: Navy
Property Number: 77200010021
Status: Unutilized
Reason: Extensive deterioration.

**Puerto Rico**

Bldg. 433
Naval Station Roosevelt Roads
Ceiba PR 00735–
Landholding Agency: Navy
Property Number: 77199830066
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 434
Naval Station Roosevelt Roads
Ceiba PR 00735–
Landholding Agency: Navy
Property Number: 77199830067
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 464
Naval Station Roosevelt Roads
Ceiba PR 00735–
Landholding Agency: Navy
Property Number: 77199830068
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 762
Naval Station Roosevelt Roads
Ceiba PR 00735–
Landholding Agency: Navy
Property Number: 77199830069
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 763
Naval Station Roosevelt Roads
Ceiba PR 00735–
Landholding Agency: Navy
Property Number: 77199830070
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 1927
Naval Station Roosevelt Roads
Ceiba PR 00735–
Landholding Agency: Navy
Property Number: 77199830071
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 175
Naval Station Roosevelt Roads
Ceiba PR 00735–
Landholding Agency: Navy
Property Number: 77199830072
Status: Unutilized
Reason: Extensive deterioration.

Former No. 2091
Naval Station Roosevelt Roads
Ceiba PR 00735–
Landholding Agency: Navy
Property Number: 77199830073
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 261/1692
Naval Station Roosevelt Roads
Ceiba PR 00735–
Landholding Agency: Navy
Property Number: 77199830074
Status: Unutilized
Reason: Extensive deterioration.

B–38
Naval Station Roosevelt Roads
Ceiba PR 00735–
Landholding Agency: Navy
Property Number: 77199830075
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 781
Naval Base Roosevelt Roads
Ceiba Co: PR 00735–
Landholding Agency: Navy
Property Number: 77199910006
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 1740
Naval Base Roosevelt Roads
Ceiba Co: PR 00735–
Landholding Agency: Navy
Property Number: 77199910007
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 1933
Naval Base Roosevelt Roads
Ceiba Co: PR 00735–
Landholding Agency: Navy
Property Number: 77199910008
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 1934
Naval Base Roosevelt Roads
Ceiba Co: PR 00735–
Landholding Agency: Navy
Property Number: 77199910009
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 1976
Naval Base Roosevelt Roads
Ceiba Co: PR 00735–
Landholding Agency: Navy
Property Number: 77199910010
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 2001
Naval Base Roosevelt Roads
Ceiba Co: PR 00735–
Landholding Agency: Navy
Property Number: 77199910011
Status: Unutilized
Reason: Extensive deterioration.

4 Bldgs.
STOP 7½ Compound, Naval Reservation
San Juan Co: PR 34051–
Location: 440, 441, 442, 443
Landholding Agency: Navy
Property Number: 77199920120
Status: Underutilized
Reason: Secured Area.

Bldg. 444
STOP 7½ Compound, Naval Reservation
San Juan Co: PR 34051–
Landholding Agency: Navy
Property Number: 77199920121
Status: Underutilized
Reason: Secured Area.

Bldgs. 445–447
STOP 7½ Compound, Naval Reservation
San Juan Co: PR 34051–
Landholding Agency: Navy
Property Number: 77199920122
Status: Underutilized
Reason: Secured Area.

6 Bldgs.
STOP 7½ Compound, Naval Reservation
San Juan Co: PR 34051–
Location: 448, 449, 450, 451, 452, 455
Landholding Agency: Navy
Property Number: 77199920123
Status: Underutilized
Reason: Secured Area.

Bldg. 458
STOP 7½ Compound, Naval Reservation
San Juan Co: PR 34051–
Landholding Agency: Navy
Property Number: 77199920124
Status: Underutilized
Reason: Extensive deterioration.

Bldgs. 461, 2157
STOP 7½ Compound, Naval Reservation
San Juan Co: PR 34051–
Landholding Agency: Navy
Property Number: 77199920125
Status: Underutilized
Reason: Secured Area.

Bldgs. 28–29
STOP 7½ Compound, Naval Reservation
San Juan Co: PR 34051–
Landholding Agency: Navy
Property Number: 77199920126
Status: Unutilized
Reason: Extensive deterioration.

Bldgs. 30–31
STOP 7½ Compound, Naval Reservation

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San Juan Co: PR 34051–
Landholding Agency: Navy
Property Number: 77199920127
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 104
STOP 7½ Compound, Naval Reservation
San Juan Co: PR 34051–
Landholding Agency: Navy
Property Number: 77199920128
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 459
STOP 7½ Compound, Naval Reservation
San Juan Co: PR 34051–
Landholding Agency: Navy
Property Number: 77199920129
Status: Unutilized
Reason: Extensive deterioration.

Structure 460
STOP 7½ Compound Naval Reservation
San Juan Co: PR 34051–
Landholding Agency: Navy
Property Number: 77199920130
Status: Underutilized
Reason: Secured Area.

Rhode Island

Bldg. 52
Gould Island, Naval Station
Newport Co: RI 00000–
Landholding Agency: Navy
Property Number: 77199930020
Status: Excess
Reasons: Not accessible by road, Extensive deterioration.

South Carolina

Bldg. 49
Naval Public Works Center
Goose Creek Co: Berkeley SC 29445–
Landholding Agency: Navy
Property Number: 77200020062
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 38
Naval Air Station
Goose Creek Co: Berkeley SC 29445–
Landholding Agency: Navy
Property Number: 77200020105
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

4 Industrial Bldgs.
Naval Weapons Station
Charleston
88, 92, 94, 354
Goose Creek Co: Berkeley SC 29445–
Landholding Agency: Navy
Property Number: 77200020113
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material Secured Area.

4 Heat Plant Bldgs.
Naval Weapons Station
Charleston
89, 95, 355, 438
Goose Creek Co: Berkeley SC 29445–
Landholding Agency: Navy
Property Number: 77200020114
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material Secured Area.

8 Security Bldgs.
Naval Weapons Station
Charleston
313, 859, 860, 897, 918, 1654, 1655, 3217
Goose Creek Co: Berkeley SC 29445–
Landholding Agency: Navy
Property Number: 77200020115
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material Secured Area.

8 Storage Bldgs.
Naval Weapons Station
Charleston
307, 353, 799, 831, 861, 933, 984, 994
Goose Creek Co: Berkeley SC 29445–
Landholding Agency: Navy
Property Number: 77200020116
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material Secured Area.

6 Bldgs.
Naval Weapons Station
Charleston
183, 855, 868, 968, 3238, 408
Goose Creek Co: Berkeley SC 29945–
Landholding Agency: Navy
Property Number: 77200020117
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material Secured Area.

Tennessee

20 Bldgs.
Naval Support Activity
Millington Co: Shelby TN 38054–
Location: 766, 1597–1598, 5238, 435–446, S239, S75, 1211, 1379
Landholding Agency: Navy
Property Number: 77199940027
Status: Excess
Reasons: Secured Area, Extensive deterioration.

Texas

Bldgs. 1561, 1562, 1563
Naval Air Station Joint
Reserve Base
Ft. Worth Co: Tarrant TX 76127–6200
Landholding Agency: Navy
Property Number: 77199820050
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 1190
Naval Air Station Joint
Reserve Base
Ft. Worth Co: Tarrant TX 76127–6200
Landholding Agency: Navy
Property Number: 77199820053
Status: Unutilized
Reason: Secured Area.

Bldg. 1820
Naval Air Station Joint
Reserve Base
Ft. Worth Co: Tarrant TX 76127–6200
Landholding Agency: Navy
Property Number: 77199820054
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Facilities 105 and 105C
Naval Station
Corpus Christi Co: Nueces TX 78419–5021
Landholding Agency: Navy
Property Number: 77199910012
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 101
Naval Air Station
Corpus Christi Co: Nueces TX 78419–5021
Landholding Agency: Navy
Property Number: 77199940052
Status: Excess
Reason: Extensive deterioration.

Bldg. 198
Naval Air Station
Corpus Christi Co: Nueces TX 78419–5021
Landholding Agency: Navy
Property Number: 77199940053
Status: Excess
Reason: Extensive deterioration.

Bldg. 1104
Naval Air Station
Corpus Christi Co: Nueces TX 78419–5021
Landholding Agency: Navy
Property Number: 77199940054
Excess
Reason: Extensive deterioration.

Bldg. 1198
Naval Air Station
Corpus Christi Co: Nueces TX 78419–5021
Landholding Agency: Navy
Property Number: 77199940055
Status: Excess
Reason: Extensive deterioration.

Bldg. 1823
Naval Air Station
Corpus Christi Co: Nueces TX 78419–5021
Landholding Agency: Navy
Property Number: 77199940056
Status: Excess
Reason: Extensive deterioration.

Bldg. H–9
Naval Air Station
Corpus Christi Co: Nueces TX 78419–5021
Landholding Agency: Navy
Property Number: 77199940057
Status: Excess
Reason: Extensive deterioration.

Bldg. H–45
Naval Air Station
Corpus Christi Co: Nueces TX 78419–5021
Landholding Agency: Navy
Property Number: 77199940058
Status: Excess
Reason: Extensive deterioration.

Bldg. H–54
Naval Air Station
Corpus Christi Co: Nueces TX 78419–5021
Landholding Agency: Navy
Property Number: 77199940059
Status: Excess
Reason: Extensive deterioration.

Virginia

Bldg. 02
Naval Weapons Station
Yorktown Co: York VA 23691–
Landholding Agency: Navy
Property Number: 77199810073
Status: Excess
Reason: Extensive deterioration.

Bldg. 2208
Naval Medical Clinic
Quantico VA
Landholding Agency: Navy
Property Number: 77199820001
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 358, 359
Cheatham Annex



Williamsburg VA 23185–
Landholding Agency: Navy
Property Number: 77199820023
Status: Excess
Reason: Extensive deterioration.

Bldg. CAD–43
Cheatham Annex
Williamsburg VA 23185–
Landholding Agency: Navy
Property Number: 77199820024
Status: Excess
Reason: Extensive deterioration.

Bldg. CAD–102
Naval Air Station
Cheatham Annex
Williamsburg VA 23185–
Landholding Agency: Navy
Property Number: 77199820025
Status: Excess
Reason: Extensive deterioration.

Bldg. CAD–102A
Cheatham Annex
Williamsburg VA 23185–
Landholding Agency: Navy
Property Number: 77199820026
Status Excess
Reason: Extensive deterioration.

Bldg. CAD–127
Cheatham Annex
Williamsburg VA 23185–
Landholding Agency: Navy
Property Number: 77199820027
Status: Excess
Reason: Extensive deterioration.

CAD–40
Cheatham Annex
Williamsburg VA 23185–
Landholding Agency: Navy
Property Number: 77199830084
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 3074
Marine Corps Base
Quantico Co: VA 22134–
Landholding Agency: Navy
Property Number: 77199920026
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 449
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920068
Status: Excess
Reason: Extensive deterioration.

Bldg. 450
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920069
Status: Excess
Reason: Extensive deterioration.

Bldg. 451
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920070
Status: Excess
Reason: Extensive deterioration.

Bldg. 453
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920071
Status: Excess
Reason: Extensive deterioration.

Bldg. 454
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920072
Status: Excess
Reason: Extensive deterioration.

Bldg. 708
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920073
Status: Excess
Reason: Extensive deterioration.

Bldg. 709
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920074
Status: Excess
Reason: Extensive deterioration.

Bldg. 710
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920075
Status: Excess
Reason: Extensive deterioration.

Bldg. 711
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920076
Status: Excess
Reason: Extensive deterioration.

Bldg. 712
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920077
Status: Excess
Reason: Extensive deterioration.

Bldg. 713
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920078
Status: Excess
Reason: Extensive deterioration.

Bldg. 714
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920079
Status: Excess
Reason: Extensive deterioration.

Bldg. 715
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920080
Status: Excess
Reason: Extensive deterioration.

Bldg. 716
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920081
Status: Excess
Reason: Extensive deterioration.

Bldg. 717
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920082
Status: Excess
Reason: Extensive deterioration.

Bldg. 718
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920083
Status: Excess
Reason: Extensive deterioration.

Bldg. 1454
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920084
Status: Excess
Reason: Extensive deterioration.

Bldg. 3170
Marine Corps Base
Quantico Co: VA 22134–
Landholding Agency: Navy
Property Number: 77199940064
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 1252, 1277
Marine Corps Base
Quantico Co: VA 22134–
Landholding Agency: Navy
Property Number: 77199940065
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 7
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020009
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 12
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020010
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration.

Bldg. 24
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020011
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 34
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020012
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration.

Bldg. 108
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020013
Status: Unutilized

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Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration.

Bldg. 299
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020014
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration.

Bldg. 400
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020015
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration.

Bldg. 436
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020016
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration.

Bldgs. 442, 443
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020017
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration.

Bldg. 530
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020018
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration.

Bldg. 532
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020019
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration.

Bldg. 646–651
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020020
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration.

Bldgs. 758, 759
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020021
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration.

Bldg. 764
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020022
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration.

Bldg. 784
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020023
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration.

Bldg. 786
Naval Weapons Station
Yorktown
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020024
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration.

Bldg. 788
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020025
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration.

Bldg. 790
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020026
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration.

Bldg. 814
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020027
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration.

Bldgs. 1955–1957
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020028
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration.

Bldgs. 1960, 1961, 1964
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020029
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration.

Bldgs. 1980, 1981
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020030
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration.

Bldg. 160
Cheatham Annex
Williamsburg Co: VA 23185–5830
Landholding Agency: Navy
Property Number: 77200020031
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

CEP–12
Naval Station Norfolk
Norfolk Co: VA 23511–
Landholding Agency: Navy
Property Number: 77200020042
Status: Excess
Reason: Extensive deterioration.

CEP–62
Naval Station Norfolk
Norfolk Co: VA 23511–
Landholding Agency: Navy
Property Number: 77200020043
Status: Excess
Reason: Extensive deterioration.

CEP–206
Naval Station Norfolk
Norfolk Co: VA 23511–
Landholding Agency: Navy
Property Number: 77200020044
Status: Excess
Reason: Extensive deterioration.

Bldg. 1453
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–5000
Landholding Agency: Navy
Property Number: 77200020063
Status: Unutilized
Reason: Secured Area Extensive deterioration.

Bldg. SP–76
Naval Station
Norfolk Co: VA 23511–
Landholding Agency: Navy
Property Number: 77200020078
Status: Unutilized
Reason: Extensive deterioration.

Bldgs. 101, 239
Norfolk Station
St. Julien's Creek Annex
Portsmouth Co: VA 23511–
Landholding Agency: Navy
Property Number: 77200020102
Status: Unutilized
Reason: Extensive deterioration.

Facility 189
Norfolk Station
St. Julien's Creek Annex
Portsmouth Co: VA 23511–
Landholding Agency: Navy
Property Number: 77200020103
Status: Unutilized
Reason: Extensive deterioration.

Facility 190
Norfolk Station
St. Juliens Creek Annex
Portsmouth Co: VA 23511–
Landholding Agency: Navy
Property Number: 77200020104



Status: Unutilized
Reason: Extensive deterioration.

Washington

Bldg. 6661
Naval Submarine Base, Bangor
Silverdale Co: Kitsap WA 98315–6499
Landholding Agency: Navy
Property Number: 77199730039
Status: Unutilized
Reason: Secured Area.

Bldg. 604
Manchester Fuel Department
Port Orchard WA 98366–
Landholding Agency: Navy
Property Number: 77199810170
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 288
Fleet Industrial Supply Center
Bremerton WA 98314–5100
Landholding Agency: Navy
Property Number: 77199810171
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 47
Naval Radio Station T Jim Creek
Arlington Co: Snohomish WA 98223–
Landholding Agency: Navy
Property Number: 77199820056
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

Bldg. 48
Naval Radio Station T Jim Creek
Arlington Co: Snohomish WA 98223–
Landholding Agency: Navy
Property Number: 77199820057
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

Coal Handling Facilities
Puget Sound Naval Shipyard
#908, 919, 926–929
Bremerton WA 98314–5000
Landholding Agency: Navy
Property Number: 77199820142
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material.

Bldg. 193
Puget Sound Naval Shipyard
Bremerton WA 98310–
Landholding Agency: Navy
Property Number: 77199820143
Status: Unutilized
Reason: contamination.

Bldg. 202
Naval Air Station Whidbey Island
Oak Harbor WA 98278–
Landholding Agency: Navy
Property Number: 77199830019
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material.

Bldg. 2649
Naval Air Station Whidbey Island
Oak Harbor WA 98278–
Landholding Agency: Navy
Property Number: 77199830020
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Extensive deterioration.

Bldgs. 35, 36
Naval Radio Station T Jim Creek
Arlington Co: Snohomish WA 98223–
Landholding Agency: Navy
Property Number: 77199830076
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 918
Puget Sound Naval Shipyard
Bremerton WA 98314–5000
Landholding Agency: Navy
Property Number: 77199840020
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 894
Naval Undersea Warfare Center
Keyport Co: Kitsap WA 98345–7610
Landholding Agency: Navy
Property Number: 77199920085
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 73
Naval Undersea Warfare Center
Keyport Co: Kitsap WA 98345–
Landholding Agency: Navy
Property Number: 77199920152
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 210A
Naval Station Bremerton
Bremerton Co: WA 98314–
Landholding Agency: Navy
Property Number: 77199930021
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 511
Naval Station Bremerton
Bremerton Co: WA 98314–
Landholding Agency: Navy
Property Number: 77199930022
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration.

Bldg. 527
Naval Station Bremerton
Bremerton Co: WA 98314–
Landholding Agency: Navy
Property Number: 77199930023
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 97
Naval Air Station Whidbey Island
Oak Harbor Co: WA 98278–
Landholding Agency: Navy
Property Number: 77199930040
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 331
Naval Undersea Warfare Center
Keyport Co: Kitsap WA 98345–
Landholding Agency: Navy
Property Number: 77199930041
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 786
Naval Undersea Warfare Center
Keyport Co: Kitsap WA 98345–
Landholding Agency: Navy
Property Number: 77199930042
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 15
Naval Air Station, Whidbey Island
Oak Harbor Co: WA 98278–3500
Landholding Agency: Navy
Property Number: 77199930071
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 119
Naval Air Station, Whidbey Island
Oak Harbor Co: WA 98278–3500
Landholding Agency: Navy
Property Number: 77199930072
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 853
Naval Air Station, Whidbey Island
Oak Harbor Co: WA 98278–3500
Landholding Agency: Navy
Property Number: 77199930073
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 854
Naval Air Station, Whidbey Island
Oak Harbor Co: WA 98278–3500
Landholding Agency: Navy
Property Number: 77199930074
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 166
Puget Sound Naval Shipyard
Bremerton Co: WA 98314–5000
Landholding Agency: Navy
Property Number: 77199930101
Status: Excess
Reason: Secured Area.

Bldg. 287
Puget Sound Naval Shipyard
Bremerton Co: WA 98314–5000
Landholding Agency: Navy
Property Number: 77199930102
Status: Excess
Reason: Secured Area.

Bldg. 418
Puget Sound Naval Shipyard
Bremerton Co: WA 98314–5000
Landholding Agency: Navy
Property Number: 77199930103
Status: Excess
Reason: Secured Area.

Bldg. 858
Puget Sound Naval Shipyard
Bremerton Co: WA 98314–5000
Landholding Agency: Navy
Property Number: 77199930104
Status: Excess
Reason: Secured Area.

Bldg. 17
Naval Radio Station
Jim Creek
Arlington Co: WA 98223–8599
Landholding Agency: Navy
Property Number: 77200010073
Status: Excess
Reasons: Secured Area, Extensive deterioration.

Bldg. 47
Naval Undersea Warfare
Keyport Co: Kitsap WA 98345–7610
Landholding Agency: Navy

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Property Number: 77200010074
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive materials, Secured Area.

Whitney Point Complex
Brinnon Co: Jefferson WA 98320–9899
Landholding Agency: Navy
Property Number: 77200010102
Status: Excess
Reason: Extensive deterioration.

Bldg. 398
Naval Station
Bremerton Co: WA 98314–5000
Landholding Agency: Navy
Property Number: 77200020038
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive materials, Secured Area.

Bldg. 976
Naval Station
Bremerton Co: WA 98314–5020
Landholding Agency: Navy
Property Number: 77200020039
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration.

8 Bldgs.
Naval Station
902, 903, 905, 907, 909–911, 915
Bremerton Co: WA 98314–5020
Landholding Agency: Navy
Property Number: 77200020040
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

*Land (by State)*

California

Space Surv. Field Station
Portion/Off Heritage Road
San Diego CA 90012–1408
Landholding Agency: Navy
Property Number: 77199820049
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material.

Land
Naval Construction Battalion Center
Port Hueneme Co: Ventura CA 93043–4301
Landholding Agency: Navy
Property Number: 77199940001
Status: Underutilized
Reason: Secured Area.

PCL–4 (11.60 acres)
Construction Battalion Center
Port Hueneme Co: Ventura CA 93043–4301
Landholding Agency: Navy
Property Number: 77200020095
Status: Underutilized
Reason: Secured Area.

Maryland

6 Acres
Naval Air Station
Patuxent River Co: MD 20670–
Landholding Agency: Navy
Property Number: 77199940023
Status: Unutilized
Reason: Secured Area.

Land—5000 sq. ft.
Naval Air Station
Patuxent River Co: MD 20670–1603
Landholding Agency: Navy
Property Number: 77200010023
Status: Unutilized
Reason: Secured Area.

New Hampshire

Parcel #4
Portsmouth Naval Shipyard
Portsmouth Co: NH 03804–5000
Landholding Agency: Navy
Property Number: 77200010028
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Parcel #5
Portsmouth Naval Shipyard
Portsmouth Co: NH 03804–5000
Landholding Agency: Navy
Property Number: 77200010029
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Parcel #6
Portsmouth Naval Shipyard
Portsmouth Co: NH 03804–5000
Landholding Agency: Navy
Property Number: 77200010030
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Parcel #7
Portsmouth Naval Shipyard
Portsmouth Co: NH 03804–5000
Landholding Agency: Navy
Property Number: 77200010031
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

North Carolina

0.85 parcel of land
Marine Corps Air Station,
Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 77199740074
Status: Unutilized
Reason: Secured Area.

0.1291 acres
Camp Lejeune
off Dogwood
Camp Lejeune Co: Onslow NC 28542–
Landholding Agency: Navy
Property Number: 77200010069
Status: Unutilized
Reason: Secured Area.

0.1291 acres
Camp Lejeune
off Brewster Rd.
Camp Lejeune Co: Onslow NC 28542–
Landholding Agency: Navy
Property Number: 77200010070
Status: Unutilized
Reason: Secured Area.

Washington

Land-Port Hadlock Detachment
Naval Ordnance Center
Pacific Division
Port Hadlock Co: Jefferson WA 98339–
Landholding Agency: Navy
Property Number: 77199640019
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

[FR Doc. 00–25427 Filed 10–5–00; 8:45 am]

BILLING CODE 4210–29–M

Federal Register

Friday,
October 6, 2000

Part IV

# Department of Energy

**Office of Energy Efficiency and Renewable Energy**

**10 CFR Parts 434 and 435**

**Energy Code for New Federal Commercial and Multi-Family High Rise Residential Buildings; Final Rule**

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**DEPARTMENT OF ENERGY**

**Office of Energy Efficiency and Renewable Energy**

**10 CFR Parts 434 and 435**

**[Docket No. EE–RM–79–112–C]**

**RIN 1904–AA69**

# Energy Code for New Federal Commercial and Multi-Family High Rise Residential Buildings

**AGENCY:** Office of Energy Efficiency and Renewable Energy, DOE.

**ACTION:** Final rule.

**SUMMARY:** The Department of Energy today issues a rule that establishes building energy efficiency standards for new Federal commercial and multi-family high rise residential buildings pursuant to the requirements of the Energy Conservation and Production Act (ECPA). The final rule revises the current interim Federal standards to conform generally with the format of the current voluntary building energy codes. The final rule contains substantive changes from the interim rule in the areas of lighting, mechanical ventilation, motors, building envelopes, fenestration rating test procedures, and test procedures for heating and cooling equipment.

**DATES:** *Effective Date:* This regulation is effective October 8, 2001. The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register as of October 8, 2001.

**FOR FURTHER INFORMATION CONTACT:**

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## I. Introduction

### *A. Authority*

Section 305(a)(1) of the Energy Conservation and Production Act, as amended (ECPA), 42 U.S.C. 6834(a)(1), requires the Department of Energy ("Department or "DOE") to establish by rule energy standards for new Federal buildings. In developing this final rule, the Department is directed to consult with other Federal agencies as well as private and State associations and other appropriate persons.

Section 305(a)(1) requires that the rule contain energy efficiency measures that are technologically feasible and economically justified. Since ECPA establishes that the new standards meet, at a minimum, the requirements of the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc. (ASHRAE)/Illuminating Engineering Society of North America (IESNA) Standard 90.1–1989 (hereinafter Standard 90.1–1989) (Section 305(a)(2)(A), the Department is not required to establish the technological feasibility and economic justification for these minimum statutorily prescribed requirements (otherwise referred to as the "statutory baseline"). The Department is interpreting this minimum requirement to include those addenda to Standard 90.1–1989 which were in effect at the time the Energy Policy Act of 1992 (EPACT), which amended ECPA, was enacted. Since these addenda were part of Standard 90.1–1989 at the time EPACT was enacted, they are part of the baseline against which the final rule is compared for the purposes of assessing its energy and economic impacts.

Section 305(a)(2)(A) requires that the rule contain energy saving and renewable energy specifications that meet or exceed the energy saving and renewable energy specifications of Standard 90.1–1989 for commercial buildings and of the Model Energy Code (MEC), 1992, for residential buildings. MEC 1992 exempts multi-family high-rise residential buildings (over three stories in height above ground) which comply with Standard 90.1–1989. As a result, Standard 90.1–1989 is the applicable standard under section 305 of ECPA for high-rise residential buildings. The final rule complies with section 305(a)(2)(A).

The rule issued today is required to become effective no later than one year after it is issued. (Section 305(a)(1)). The effective date is October 8, 2001.

Section 305(a)(2)(B) requires that to the extent practicable, the new Federal building energy standards use the same format as the appropriate voluntary building energy code. The final rule revises the current interim Federal standards to conform generally with the format and language of the codified version of Standard 90.1–1989. The addenda to Standard 90.1–1989 included in the final rule are also generally incorporated in their codified form.

Section 305(a)(2)(C) further requires that the final rule be established in consultation with the Environmental Protection Agency (EPA) and other Federal agencies and, where appropriate, contain measures with regard to radon and other indoor air pollutants.

Section 305(c) states that the standards issued in the final rule be reviewed and, if appropriate, updated at not less than five year intervals.

Section 306 addresses Federal compliance. Section 306(a) provides that each Federal agency must adopt procedures to assure that new Federal buildings will meet or exceed the Federal building energy standards established by this rule. Section 306(b) bars the head of a Federal agency from expending Federal funds for the construction of a new Federal Building unless the building meets or exceeds the appropriate Federal building energy standards established under section 305. Under section 306, Federal agencies shall adopt procedures necessary to assure that new Federal buildings meet or exceed the Federal standard. For instance, a Federal agency might adopt a procedure allowing the use of local building codes that meet or exceed the Federal building standard in lieu of the Federal code. Or, if desired, the agency might adopt code inspection procedures to assure compliance with the Federal standard.

### *B. Background*

On January 30, 1989, the Department issued an interim standard (10 CFR part 435, subpart A) establishing energy conservation voluntary performance standards for the design of new commercial and multi-family high rise residential buildings; these standards are mandatory for Federal buildings. The Department's interim standards and Standard 90.1–1989 were developed in conjunction with one another and contain similar energy efficiency provisions. ASHRAE and IESNA are professional engineering societies which have undertaken the responsibility of sponsoring a voluntary industry consensus standard for the design of energy efficient commercial and multi-family high rise residential buildings.

The Department's interim standard and Standard 90.1–1989 followed a parallel development track. ASHRAE/IESNA provided technical expertise that ensured the practicality of the interim standards and Standard 90.1–1989. The Department contributed technical expertise and research results in the development of these two standards.

The Department, in 1993 requested ASHRAE to assist the Department in producing a version of Standard 90.1–1989 and its addenda in code format. This joint effort was undertaken to assist States in responding to section 304(b) of ECPA and to assist the Department in establishing Federal building energy efficiency standards. The resulting code, published by ASHRAE/IESNA in November 1993 is entitled "Energy Code for Commercial and High-Rise Residential Buildings" (hereinafter, the codified version). This code has been approved by the Council of American Building Officials (CABO) as the basis for its requirements for non-residential buildings in the MEC and some of the regional model codes.

ASHRAE/IESNA periodically modifies the current edition of their standard through an addenda process. ASHRAE/IESNA has approved several addenda to Standard 90.1–1989 since it was published in 1989. The addenda applicable to this rule are: Addenda b, c, d, e, f, g, and i.

ASHRAE/IESNA is currently working to produce a new standard that will replace ASHRAE/IESNA Standard 90.1. The Department is also working to produce a new standard that is more stringent than the parameters of today's final rule. It is targeted to be 30 percent more energy efficient overall than the results of the 1985 Economic Assessment for the current interim standard, published in 10 CFR part 435, or 20–30 percent more efficient than today's final rule. The Department's decision to promulgate today's final rule is based on a need for Federal buildings to be in full compliance with EPACT requirements and to adopt all applicable addenda from Standard 90.1–1989 that improve energy efficiency. Federal construction will benefit in energy savings from the updated standards while the Department continues its work on a new standard that is more stringent than today's final rule. In developing a new standard, the Department will consider the updated ASHRAE/IESNA Standard 90.1 as well as other improvements that may be economically justified and technologically feasible.

On August 6, 1996, the Department published a notice of proposed rulemaking in the **Federal Register**, "Energy Code for New Federal Commercial and Multi-Family High Rise Residential Buildings," 61 FR 40882, to establish building energy efficiency standards for new Federal commercial and multi-family high rise residential buildings pursuant to the requirements of ECPA, as amended. On September 4, 1996, a public hearing was held in Washington, DC, at which time two commenters made oral presentations. The comment period closed November 4, 1996. Fourteen commenters submitted a total of 50 written comments during the public comment period.

### *C. Description of the Final Rule*

The standards issued today specify a minimum level of energy efficiency for new Federal commercial and high-rise residential buildings based on Standard 90.1–1989. The final rule contains substantive changes from the interim standard in the areas of lighting, mechanical ventilation, motors, building envelopes, fenestration rating procedures, and heating and cooling equipment test procedures. It includes those addenda which were in effect at the time EPACT was enacted (Addendum 90.1b revising service water heating criteria and updating miscellaneous references to other standards, Addendum 90.1d addressing lighting controls, and Addendum 90.1e updating ventilation requirements).

The final rule also adopts a format that generally conforms to the format of the codified version of Standard 90.1–1989, providing provisions to the final rule that are similar to those being adopted by State and local jurisdictions. It does not address the design of residential single family or multi-family low rise buildings, currently addressed by subpart C of 10 CFR part 435. Such buildings will be addressed in a separate rulemaking.

The current interim standards for Federal commercial and multi-family high-rise residential buildings are found in subpart A of 10 CFR part 435. For clarity and ease of use, the Department is replacing subparts A and B of part 435 with the new 10 CFR part 434, containing the building energy efficiency requirements for new Federal commercial and multi-family high-rise residential buildings.

The final rule also includes several other addenda adopted by ASHRAE and IESNA after EPACT was enacted. These include Addenda g, i, and c, addressing building envelopes, heating and cooling equipment test procedures, motor efficiency, and procedures for calculating fenestration ratings, respectively.

The lighting standards in the final rule differ from both the interim standards and Standard 90.1–1989. Overall, the updated lighting provisions are more stringent than Standard 90.1–1989 and reflect new information concerning energy requirements needed to achieve adequate lighting levels.

The final rule provides minimum energy efficiency levels to be required in each new Federal commercial and high-rise residential building. The individual specifications for lighting, heating, ventilating and air-conditioning (HVAC)

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equipment, envelope, and other aspects of buildings found in subpart D of the final rule determine the minimum level of energy efficiency required for a particular building. This "prescriptive path" provides a simple means of ensuring that design specifications meet the compliance requirements of the final rule.

Flexibility is also a key feature of the final rule. While some of the specific design requirements of subpart D apply in all cases, this final rule provides for flexibility in many other areas if building designers can show that the overall building energy use or energy cost compares favorably to the baseline energy use or energy cost based on Subparts E or F of the final rule. Tradeoffs among lighting systems and among building shell components can be made using the Department's version of the Envelope Standard (ENVSTD) software. Building-wide trade-offs among energy efficient features, including features not explicitly addressed in Subpart D, such as passive and active renewable energy source features, can be made as well. Subpart E allows building-wide flexibility as long as the net result equals or is below an energy cost budget based on the prescriptive path. Subpart F allows these trade-offs to be made if predicted total building energy use is at or below the level expected using the "prescriptive path" for a reference building. These alternative paths are especially valuable as a means for building designers to take advantage of the energy savings potential of new technologies.

ASHRAE and IESNA have published Standard 90.1–1989 in a code format that is generally consistent with the standard itself. The Department has based its rule on the format of the codified version of Standard 90.1–1989, published by ASHRAE and IESNA in 1993, and has adopted verbatim significant portions of it.

The codified version is widely used by State and local code making bodies as they update their codes. The designers and builders of Federal buildings, who also design and construct State and private sector buildings, will be familiar with the provisions of the codified version, their importance, and how to meet them. Therefore, the consistency of the format of the final rule with industry-wide practices facilitates implementation by Federal agencies of the final rule.

## II. Discussion of Comments and Changes to the Proposed Rule

This section responds to significant comments and explains other changes to the proposed rule.

*A. General Comments*

(1) Incorporation By Reference

The Department proposed to include the entire Federal code in a new 10 CFR part 434, instead of incorporating provisions of Standard 90.1–1989 by reference. DOE invited comments as to whether Standard 90.1–1989, including appropriate addenda, should be incorporated by reference instead of publishing the rule in its entirety. One commenter (Society of Plastics Industry, Inc. (SPI), No. 6; 1) stated that it supported publishing the rule in its entirety so that all relevant requirements, including addenda, are together in one document. It stated that this would make the final rule more user-friendly. One commenter suggested that the Standard 90.1–1989 be incorporated by reference with appropriate addenda, and that the Department publish only the differences between the Standard 90.1–1989 and the final rule. Federal Interagency Energy Management Task Force (hereinafter New Space Working Group), (New Space Working Group, No. 14; 1).

The Department has concluded that there are a number of important substantive technical and administrative differences between Standard 90.1–1989 and the final rule which need to be included in one document for simplicity, ease, and availability. Administratively, these range from the scope of buildings and spaces covered (a number of Federal building types and space categories would not be covered if Standard 90.1–1989 were adopted by reference), to the terminology used in defining the relationship between owners, designers and code officials, as opposed to agencies and their design contractors. The differences range from significantly more stringent lighting criteria to the incorporation of metric units. It would be cumbersome and inefficient to require agencies to pull disparate elements from several sources and integrate them for use.

The Department believes that since 10 CFR part 434 is a code strictly for Federal commercial and high rise residential buildings, the entire code must be readily available to Federal managers who must comply with this code while designing and constructing new Federal facilities.

Publishing the document in its entirety will allow the complete code to be found in one location, in a unified form for easy access.

(2) Metric Units of Measurement

The proposed rule is stated only in English units of measurement. One commenter stated that the rule should reference metric as well as English units. (New Space Working Group, No. 14; 3)

The Department agrees with this comment. Executive Order 12770, "Metric Usage in Federal Government Programs," 56 FR 35801 (July 25, 1991), directs executive branch departments and agencies of the United States Government to take all appropriate measures to implement the metric system of measurement as the preferred system of weights and measures for United States trade and commerce. Therefore, in order to take a first step towards implementing this Executive Order, DOE has provided a soft metric conversion for the applicable tables throughout the final rule in order to increase understanding of the metric system and to support and encourage its use. The Department is also participating in the metric conversion of calculations, algorithms, formulas, and tables for the proposed revisions to the updated Standard 90.1–1989. All tables have not yet been converted, but the 90.1 Committee is working to reach consensus on a hard metric conversion for the entire updated Standard 90.1–1989. When this is complete, the Department will consider proposing inclusion in the Federal Code.

*B. Section-by-Section Comments*

(1) Compliance, Subpart A, Section 102

The Department received public comment on the application of Section 434.102 , "Compliance," to certain subparts within the rule. Section 434.102, requires that when the alternative requirements of subparts E and F are used to design and construct buildings, such designs shall be certified by a registered architect or engineer. This requirement does not apply to subpart D. One commenter stated that there should be a provision requiring certification by a registered architect or engineer for buildings that are designed and constructed to meet the prescriptive specifications of subpart D (New Space Working Group, No. 14; 3). This certification requirement is included in subparts E and F, and in equivalent parts of Standard 90.1–1989, and the subsequent codified version of the standard, because these latter subparts require a comparative energy analysis of the proposed design to a prototype or



reference building. DOE believes that such an analysis requires the services of a registered architect or engineer. To the contrary, subpart D requires no such analysis. Subpart D is composed of a set of prescriptive and component performance requirements, most of which are straight forward. Such designs can be readily checked by a code inspector or, by the responsible facility manager.

The Department continues to believe that it is inappropriate to establish a blanket requirement for certification by an architect or engineer for all buildings utilizing the prescriptive requirements of subpart D. In most cases, compliance can be readily determined without this certification. ECPA Section 306(a) explicitly directs the head of each Federal agency to adopt procedures necessary to assure that their buildings meet or exceed the rule adopted today. The Department recommends that agencies consider establishing a procedure for certification by a registered architect or engineer in those cases where compliance with subpart D cannot be readily established.

(2) Default Values for Unlabeled Fenestration Products, Subpart D, Section 402

One commenter requested that this rule follow the lead of the MEC and fully and explicitly incorporate all of the standard National Fenestration Rating Council (NFRC) procedures. The commenter provided suggested text that would replace sections 402.1.1.1 and 402.1.2.4, requiring that U-values, Solar Heat Gain Coefficients (SHGC) and Visible Light Transmittance (VLT) would be determined in accordance with the applicable NFRC procedures by independent labs, and be certified and labeled by manufacturers. (Anderson Windows, No. 5; 1–2) This suggested change would include eliminating the use of shading coefficients, as well as adding to the testing and certification procedures required by the proposed rule.

At present, the explicit use of NFRC procedures is permissible only for those fenestration products that are designed, constructed, and tested in a quality controlled environment such as a manufacturing plant and/or warehouse. In commercial construction, fenestration units and skylights that are site-built because of size, weight, and transporting difficulties (*i.e.* mall atriums), are not covered by NFRC procedures and cannot be certified or properly labeled under these guidelines. The NFRC test procedures are specifically for off-the-shelf fenestration products, and do not appropriately cover site-built products.

Because site-built fenestration units can represent a significant portion of the window and skylight requirements for new Federal commercial buildings, the Department has retained the language of sections 402.1.1.1 and 402.1.2.4 in the final rule. The Department is working with the NFRC to develop guidelines that will adequately cover all fenestration products that are site-built as well as pre-manufactured.

(3) Solar Heat Gain and Shading Coefficients, Subpart D, Section 201 and 402

In the proposed rule, the Department uses Shading Coefficient (SC) in the Alternate Component Package Tables (ACP). Two commenters suggested that the Department adopt the alternative Solar Heat Gain Coefficient in place of the SC because it provides a more accurate representation of the passive solar heat gain properties of fenestration products, than do SC values. (Anderson Windows, No. 5; 1; Pella Corporation, No. 3; 1).

The Department agrees that the SHGC is a more accurate measure of solar heat gain and, therefore, encourages its use. The SHGC is the proportion of solar radiation striking a unit of glazing or fenestration (such as a window) that enters the space through the unit. This heat gain represents both the heat gain transmitted directly into the space and that absorbed by the unit and re-emitted, reradiated, conducted, or convected into the space. The solar heat gain coefficient may be measured with the radiation striking the unit normal (perpendicular) to it or striking it at an angle (general at 40, 50, 60 or 70 degrees).

In contrast, the SC is a calculated (not tested) multiplier that was created to adjust the solar heat gain values for clear glass (which has well characterized properties) to a value for tinted glass. It works well for single pane and tinted glass with heat and light transmittance paths the same as those of single pane clear glass. However, it has been found to give incorrect results in two significant cases: (1) when the path along which heat and light are transmitted through the actual glazing differs substantially from that of the referenced glazing (as for multi-pane glazing when solar radiance strikes it at above 60 degrees); and (2) when the solar gain is primarily (more than 60 percent) due to absorption and the wind speed is not close to the speed at which the SC was determined (7.5 mph). These limitations can seriously affect the accuracy of calculated building peak heat loads. The SC can overpredict the solar heat gain through a window at a given hour by as much as 35 percent.

The Department will continue to allow the use of SC values because they are still being used in simplified energy analysis programs and by some window and glazing manufacturers as the fenestration industry converts to SHGC values. However, SHGC values have been added to all applicable tables in this final rule. Furthermore, the definition of SC has been modified for accuracy and a definition of SHGC has been added to section 201, "Definitions" of the final rule. The references to NFRC–100–91, which contains manufacturer spectral data, and NFRC–200, which establishes the equations and procedures for using this data to calculate SHGC's, have been added to the reference standard section of this final rule.

(4) Interior Lighting Power Allowances Subpart D, Section 401

One commenter took the position that the particular values in the proposed rule for the interior lighting power allowances for whole-building categories are not stringent enough and that all of the lighting values should be reconsidered or reassessed. No specific recommended lighting values were provided. (New Space Working Group, No. 14; 2).

As noted in the preamble to the proposed rule, the Unit Power Density (UPD) values (W per $ft^2$) included in the rule are based on a detailed analysis of the technical and economic performance of the 1993 UPD values found in the interim rule. These 1993 values are substantively more efficient than the values in Standard 90.1–1989. The Department found that in 25 space types, the Standard 90.1–1989 UPD value is the most appropriate one for this rule. For 40 space types, a value at or below the 1993 interim UPD value was found to be economically justified and technologically feasible, and these more energy efficient values are included in today's final rule. In the remaining space types, the UPD value incorporated in today's rule falls between the 1989 and 1993 values, or there was no difference in the two values.

Therefore, in every case the lighting provisions in this rule meets or exceeds the energy efficiency of the provisions contained in Standard 90.1–1989. These provisions reflect the results of the demonstration phase of the 1993 interim lighting numbers. These values reflect a goal of progressive energy-conserving practice without prohibiting the design of quality lighting in interior environments. Details of this analysis

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are found in the Technical Support Document (TSD).

The Department is aware that lighting technologies and design strategies are evolving rapidly. As the technical and economic justification for new UPD values are established, the Department will further update the code provisions for Federal buildings concerning lighting requirements. In addition, the Department through its Federal Energy Management Program is promoting highly efficient lighting design strategies for Federal buildings.

(5) Task Lighting Footnote, Subpart D, Section 401

One commenter recommended adding a footnote to one of the Building Space Activities entitled "Offices", in Table 401.3.2a. It was suggested that this footnote state "include task lighting." (New Space Working Group, No 14; 2). No further elabortation was offered by this commenter.

Task lighting is not included in the calculation of interior lighting power allowances for office space. Task lighting is generally brought to the building after construction is completed. It is plugged into wall and floor outlets and is usually not hard wired into the buildings electrical system. It is regularly changed without code approval or the assistance of an electrician. It is, therefore, almost impossible to regulate through buildings codes. The Department, therefore, will not add a footnote concerning task lighting to the final rule.

(6) Ventilation Requirements for Enclosed Parking Garages, Subpart D, Section 403

Section 403.2.4.2 entitled "Ventilation Controls for Enclosed Parking Garages," requires automatic control of fans that stage or modulate air volume as required to maintain carbon monoxide at or below the levels suggested in ASHRAE 62–1989. One commenter suggests that in addition to carbon monoxide control requirements, there should also be a requirement for automatic ventilation controls for nitrogen dioxide levels that exceed 5 parts per million where diesel-powered vehicles will be operated, parked and/or serviced in a building. (Virginia Electric and Power Co. (Vepco), No. 10; 1–2, 4). The commenter's proposed threshold exposure level is the same as the Occupational Safety and Health Administration's (OSHA's) regulatory standard codified at 29 CFR 1910.1000, subpart Z. Subpart Z sets forth the OSHA Permissible Exposure Levels (PELs). Table Z–1 contains limits for air contaminants, including nitrogen dioxide.

The OSHA Standard (29 CFR 1910.1000, subpart Z) is the applicable regulation for nitrogen dioxide exposure limits, and implicitly ventilation must be designed so that the exposure of nitrogen dioxide is no greater than 5 parts per million. If exposure levels of nitrogen dioxide exceed this permissible exposure limit, the OSHA standard, 29 CFR 1910.1000 (e) requires the employer to reduce exposures preferably using engineering controls (ventilation measures).

The commenter did not recommend particular ventilation controls or provide a basis for DOE prescribing such controls. Moreover, this subject was not discussed in DOE's Notice of Proposed Rulemaking. At this time, the Department has no basis to establish a requirement for nitrogen dioxide ventilation controls.

(7) Thermal Efficiency Requirements for Furnaces and Boilers, Subpart D, Section 403

Three commenters submitted remarks pertaining to the inclusion in Tables 403.1e, 403.1f and 404.1 of minimum efficiency requirements for furnaces and boilers operating at minimum capacity (Gas Appliance Manufacturers Association (GAMA), No. 8; 1–2; American Gas Association (AGA), No. 4; 4–5; Columbia Gas, No. 9; 3). One commenter objects to DOE's inclusion in this rule of minimum efficiency requirements for furnaces and boilers operating at minimum capacity and believes that the requirements in this rule should be identical to the standards for these products contained in the Energy Policy and Conservation Act (EPCA), as amended by EPACT. The commenter takes this position based on general language in the Preamble to the proposed rule that "the provisions of today's proposed rule (based on the codified version of Standard 90.1) would be similar to those being adopted by State and local jurisdictions and widely used in the private sector." (61 FR 40883, August 6, 1996) The commenter argues that "if DOE wants the Proposed Rule to be consistent with, or serve as a model for, updated State building codes, DOE should remember that State and local building codes must abide by the Federal preemption provisions of NAECA and EPACT." (GAMA, No. 8; 1–2) It argues that States cannot adopt requirements for the operation of furnaces and boilers at minimum capacity and, therefore, if consistency is a goal, the Federal Government should delete these minimum capacity requirements from its rule.

In addition, two other commenters took the position that DOE must review the minimum efficiency requirements in Tables 403.1e, 403.1f and 404 to assess whether or not they are cost effective, rather than rely upon their inclusion in ASHRAE 90.1–1989 as the basis for incorporation in the present rule. (AGA, No. 4; 4–5; Columbia Gas, No. 9; 3)

Concerning another subject, unit heaters and duct furnaces, both non-EPACT covered products, one commenter stated that the Department should delete the minimum capacity efficiency requirements from the proposed rule for this equipment because the requirements may discourage manufacturers from offering products that have more potential energy savings, such as products with modulating controls or two-stage operation. (GAMA, No. 8; 2)

The legislative requirements for this rule are contained in section 305 of ECPA, as amended, which clearly states that the rule for energy efficiency standards for new Federal buildings must meet or exceed ASHRAE Standard 90.1–1989. Section 305 of ECPA does not state that Federal building standards can be no more energy efficient than the provisions of section 342 of EPCA, or any other Federal minimum energy requirement. Nor does section 305 mention that the Federal requirements should be similar or identical to State and local building codes. Section 305 simply establishes that the new standards meet, at a minimum, the requirements of Standard 90.1–1989, thus establishing ASHRAE 90.1–1989 as the statutory baseline or minimum standard level. ASHRAE 90.1–1989 contains both minimum and maximum operating capacity efficiencies for furnaces and boilers. The minimum and maximum operating capacity efficiencies in this rule are identical to those found in Standard 90.1–1989. Accordingly, this rule meets the legislative requirements.

The Department's discussion in the Preamble concerning consistency between the proposed rule and industry-wide practices addressed generally the format and provisions of the proposed rule. It acknowledges that, in general, consistency with industry-wide practices would facilitate implementation by Federal agencies of the final rule. Consequently, the Department is adopting "verbatim significant portions" of the codified version of ASHRAE Standard 90.1–1989 and the format of the codified version. (61 FR 40884, August 6, 1996) The Department's statements, however, do not lead to the conclusion that the Department intends that Federal standards be identical in every respect to requirements adopted by the States or those used in the private sector.



As previously noted, this commenter suggests that the Department should adopt the same minimum efficiency standards for specified categories of furnaces and boilers with respect to their energy use at maximum rated capacity as provided for in section 342 of EPCA, as amended by section 122 of EPACT, "Energy Conservation Requirements for Certain Commercial and Industrial Equipment." These latter requirements specifically apply to manufacturers of such equipment. While the minimum efficiency requirements in section 342 restrict the types of equipment available in the market place, they do not purport to limit the ability of the Federal Government to establish additional requirements for equipment purchased for new Federal buildings. Furthermore, because the requirements of this final rule are for newly constructed Federal commercial and high-rise residential buildings only, they do not affect or alter the requirements of section 342 of EPCA pertaining to the manufacture of certain furnaces and boilers.

The Department also believes that the adoption of efficiency requirements for minimum operating capacities in today's rule represents sound policy. This rule addresses the purchase of equipment by Federal agencies, and takes into account the expected applications of this equipment in Federal facilities. Due to variations in weather, occupancy, and comfort requirements, these types of equipment are not generally operated at maximum capacity in Federal facilities. By establishing minimum performance requirements at both minimum and maximum operating capacity, this rule takes into account the full range of operating conditions expected in Federal facilities. These minimum efficiency levels at minimum capacity promote energy savings and cut operating costs for Federal agencies. The Federal Government has the responsibility to procure equipment that best serves its requirements, while minimizing the cost to taxpayers. The inclusion of minimum efficiency requirements for furnaces and boilers operating at minimum capacity in this rule serves that purpose.

Moreover, the Department has considered and rejected the two above-referenced comments that request DOE to establish the cost-effectiveness of the minimum efficiency requirements in Tables 403.1e, 403.1f, and 404, instead of relying on their inclusion in Standard 90.1–1989 as the basis for incorporation in the final rule. The Department has determined that a cost analysis is unnecessary in light of the fact that the above-referenced requirements included in this rule are identical to the statutory baseline, ASHRAE 90.1–1989, thus meeting the minimum required by statute.

Therefore, the Department will retain the minimum efficiency requirements of sections 403 and 404 in their entirety in the final rule. The requirements in sections 403 and 404 meet the legislative requirements of section 305 of ECPA, as amended. Moreover, section 342 of EPCA, as amended, does not curtail the legislative mandate of section 305.

Lastly, the Department has considered and rejected the request that it delete the minimum capacity efficiency requirements for unit heaters and duct furnaces, as suggested by one commenter. The requirements the Department has adopted for this equipment are identical to those in ASHRAE Standard 90.1–1989. As discussed previously, section 305 of ECPA, as amended, establishes ASHRAE Standard 90.1–1989 as the statutory baseline or minimum standard level. Therefore, by adopting these requirements, the rule meets the legislative requirements. Moreover, the commenter did not provide any explanation or information that would cause the Department to be concerned that adopting these requirements would impact the availability of more efficient equipment, such as products with modulating controls and two-stage operation mentioned by the commenter. As a matter of fact, this type of equipment is already generally available. Accordingly, the Department will retain the minimum capacity efficiency requirements for unit heaters and duct furnaces.

(8) Integrated Part-Load Values for Cooling Equipment Efficiency, Subpart D, Section 403

One commenter argues that the Department cannot use Integrated Part-Load Values (IPLV) ratings for unitary air conditioners, condensing units, applied heat pumps, and water chilling packages in its Federal building energy code, arguing that the energy descriptors for products cannot be expanded to include various other rating conditions or energy descriptors, i.e. IPLV ratings, due to Federal preemption of State regulations. It also argued that Congress specifically excluded multiple rating points on standards for the manufacture of these products at the request of the manufacturers. (American Refrigeration Institute (AGA), No. 15; 1–2)

Section 342 of EPCA, as amended by section 122 of EPACT, sets minimum standards for the manufacture of certain equipment, thereby prohibiting the production or import of equipment that does not meet the standards.

Today's final rule governs the design and construction of new Federal buildings, not the manufacture of equipment. This rule implements section 305 of ECPA as amended, which requires the establishment of Federal energy efficiency standards for the design and construction of new Federal buildings. Section 305 directs Federal agencies to meet or exceed ASHRAE Standard 90.1–1989 in developing its standards. This rule includes the same part-load values found in ASHRAE Standard 90.1–1989, thereby meeting the legislative requirements of Section 305 of ECPA, as amended.

DOE rejects the argument that the Federal rule cannot contain part-load criteria due to Federal preemption. The preemption provision in section 345 of EPCA, as amended, does not apply to the procurement of equipment used in new Federal buildings. The Federal Government is, therefore, not mandated to delete the part-load minimum requirements from its standard by virtue of the preemption provision.

Finally, Federal agencies fund both the building and operation of their facilities. As such, they have a significant interest in both the first cost and operating costs of building equipment. Motorized equipment in buildings run at part-load for the majority of their use and operation. For example, cooling equipment is rarely operated at a maximum load value in the spring, winter, and fall, or at night. Integrated part-load value criteria in building energy codes limits the inefficiency of equipment at part-load conditions. These criteria have been a formal part of this requirement for Federal buildings since January 1989 (10 CFR part 435) and have helped Federal agencies operate their buildings more efficiently and at less cost. These requirements improve the energy efficiency of Federal buildings.

Accordingly, the Department will retain integrated part-load value criteria as part of its final rule.

(9) Two-Tiered Code, Subpart D, Section 403

One commenter suggested that a two-tier approach to selecting energy efficient HVAC equipment, similar to that originally proposed for the updated version of ASHRAE 90.1–1989, be added to the final rule (New Space

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Working Group, No.14; 2). The Department recognizes that there are products on the market that have more efficient ratings than will be required by this final rule. This rule establishes minimum efficiency levels for HVAC equipment included in new Federal buildings.

Executive Order 12902, Energy Efficiency and Water Conservation at Federal Facilities, further directs agencies to purchase equipment that is in the upper 25 percent of energy efficiency for all similar products or at least 10 percent more efficient than the minimum level that meets Federal standards, if they are cost-effective and to the extent practicable (Section 507(a)(2)). In practice, Executive Order 12902 creates a second tier of efficiency levels for equipment purchased by Federal agencies. Therefore, the Department will not add a second tier of requirements to this rule.

(10) Equipment Absorption Cooling Requirements, Subpart D, Section 403

In the proposed rule, Table 403.1c contains absorption cooling minimum efficiency requirements. One commenter agrees that these efficiency requirements should be included in the rule, but argues they should be increased to reflect average fleet efficiencies. (Vepco, No. 10; 2,4).

An increase in the required minimum efficiency of these products would require an economic analysis indicating the cost-effectiveness of the higher standard to the Federal Government. While increased efficiencies might well be cost-effective, a reliable testing and rating procedure is required. The current rating method, RS–30, has been controversial and can lead to inaccurate results. The Department is working with industry to develop a rating method that would provide a reliable and verifiable measure of the energy performance of this equipment. The development of this method would allow the Department to determine the most cost-effective level of efficiency for this equipment.

The Department will retain the requirements in Table 403.1c for the absorption cooling minimum efficiency requirements.

(11) Heat Pump Supplementary Heat Operation, Subpart D, Section 403

Two commenters proposed deleting the Section 403.2.6.4 requirement that would prevent supplementary heat operation, when the heat pump alone is capable of handling the heating load (Edison Electric Institute (EEI), No. 11; 3–4, Vepco, No. 10; 3). The supplementary heat is usually electric resistance heat.

This requirement is included in Standard 90.1–1989 and has been in effect in 10 CFR part 435 since 1989. Under this provision, the supplemental heater operation is allowed during outdoor coil defrost cycles that do not exceed a running interval of fifteen minutes. Therefore, heat pumps with supplementary resistance heaters must have controls that prevent auxiliary heater operation when the heating load can be met by the heat pump alone. Contrary to the contention that this provision bans a class of products from the marketplace, the rule specifies performance requirements for these systems when purchased for use in new Federal buildings. If Section 403.2.6.4 were removed it would prevent the final rule from meeting the minimum requirements of Standard 90.1–1989, as required by EPACT. The Department will keep this provision in the final rule.

(12) Combined Water and Space Heating, Subpart D, Section 404

The proposed rule would allow use of a combination water and space heating unit when the energy input and the storage volume of the combination unit is less than twice the energy input or storage volumes of the smaller of the separate boilers or water heaters, or the input to the combined boiler is less than 150,000 Btu/h. Three commenters proposed that the limitation on combined water and space heating equipment, section 404.6, be deleted (Viessmann, No. 1; 1–2; AGA, No. 4; 4; Columbia Gas, No.9; 3). One of these commenters argued that this provision is not necessary and should be deleted to avoid confusion (Columbia Gas, No. 9; 3). Another believes that section 404.1 and section 404.6 appear to be working at cross purposes, the first setting requirements for combined water and space heating systems, while the latter restricts their use with exceptions (AGA, No. 4; 4). The third believes that the dual requirements opens a loophole leading to a reduction in fuel efficiency because boilers and water heaters are tested under quite different conditions. "A water heater's thermal efficiency starting with cold water is far easier to attain than is a boiler's steady state combustion efficiency which raises water temperature over a limited, higher range."(Viessmann, No. 1; 1–2). Finally, it was argued that, due to the lower price of water heaters relative to boilers, economic pressures will favor the less efficient equipment. It was stated that if a water heater that meets the minimum requirements of section 404.1 is used to supplant a boiler meeting the requirements of Table 403.1(f), then energy consumption will rise ($78\%E_t<80\%E_c$).

Section 404.1 requires that service water heating equipment used to produce additional functions of space heating as part of a combination (integrated) system shall satisfy all stated requirements for the service water heating equipment. Section 404.6 generally prohibits the use of combined service water heating and space heating equipment, but states the conditions when they can be used.

The Department believes that §§ 404.1 and 404.6 function together appropriately. The exceptions in § 404.6 were included in Standard 90.1–1989 to prevent inefficient use of such equipment. This means that the rated input capacity and the storage volume of the combined equipment will be such that neither the space heating nor the water heating loads dominate the other and are almost of equal magnitude, so that the combined equipment is likely to operate at least at 50% load or higher throughout the year. This prevents the equipment from operating at lower part-load conditions (with related very low efficiencies) during most of the non-heating months of the year. The exceptions in § 404.6 allow the use of combination service water heating and space heating equipment, if certain criteria are met. These have been incorporated into this rule to promote efficient use of such equipment. The separate efficiency requirements for a water heater in terms of a thermal efficiency (78%) and for a boiler, in terms of a combustion efficiency (80%), are virtually equivalent. This is because the thermal efficiency, by definition, is lower than the combustion efficiency by 2 or 3 percentage points (to account for the jacket losses) in most heating equipment. For these reasons, the Department does not adopt the commenters' view and will not require that combination equipment meet the separate efficiency requirements for both water heaters and boilers, and will retain the provisions of § 404.6 in the final rule.

(13) Lavatory Water Temperature, Subpart D, Section 404

In the proposed rule, the temperature for the lavatory outlet is specified at a maximum of 110 degrees F. A commenter suggested that the maximum level be revised to 120 degrees F due to the fact that "American consumers are accustomed to this pre-determined water temperature, and satisfaction levels would drop if and when anything less would be mandated." (Plumbing Manufacturers Institute (PMI), No. 12; 3). The same commenter also argued that the Legionella Pneumophila organism was capable of colonizing in hot water systems at 115 degrees F, and could even reproduce at 110 degrees F. (PMI, No. 12; 3)

The Department does not accept the suggestion to revise the outlet temperature to 120 degrees F. As stated in the 1995 ASHRAE Applications Handbook (RS–47, pp. 44–12), the Legionella bacteria are killed at temperatures above 140 degrees F. Therefore, the commenter's suggestion would not improve water conditions as they recommend.

But more importantly, the maximum outlet temperature for lavatories is specified at 110 degrees F in Standard 90.1–1989. Section 305 of ECPA requires the Department to meet or exceed the energy savings of that standard. Therefore, the Department will not raise the lavatory outlet temperature from 110 to 120 degrees F because that would result in greater energy use than Standard 90.1–1989.

With regard to the health and safety aspects of lavatory outlet temperatures, the 1995 ASHRAE Applications Handbook (RS–47, pp. 44–13) indicates that revising the temperatures to 120 degrees F would not kill Legionella bacteria. The Department is concerned however, that a temperature of 120 degrees F could scald users.

(14) Shower Heads and Lavatory Faucets, Subpart D, Section 404

Section 404.4, Water Conservation, provides that shower heads and lavatory faucets meet the requirements of 10 CFR 430.32. One commenter suggested aligning the water conservation section (Standard 404.4) with established consensus standards flow rate requirements already established by the American Society of Mechanical Engineers/American National Standards Institute (ASME/ANSI). It also suggested that rather than basing the criteria on whether the water system was circulating or noncirculating, it be based on whether a metering valve is used. Finally it was suggested that the criteria not restrict the use of hot water only. (PMI, No. 12; 3).

The Department published a final rule entitled "Energy Conservation Program for Consumer Products: Test Procedures and Certification and Enforcement Requirements for Plumbing Products; and Certification and Enforcement Requirements for Residential Appliances," 63 FR 13308 (March 18, 1998) (codified at 10 CFR Part 430). This rule codified the water conservation standards established in EPCA for showerheads, water closets and urinals. It also incorporated by reference the ASME/ANSI standards for these products which are identical to the statutory standards. For lavatory faucets, the Department incorporated by reference the revised ASME/ASNI faucet standard A112.181M–1996 which established a maximum flow rate of 2.2 gpm. For metering faucets, the rule also established a maximum flow rate of 0.25 gallons per cycle regardless of whether they are used in circulating or noncirculating systems and with hot or cold water.

The Department has changed the language of today's rule to clarify the appropriate water conservation standard that applies to showerheads and lavatory faucets, namely, 10 CFR 430.32. Moreover, since 10 CFR part 430 incorporates by reference the appropriate ASME/ANSI standards, DOE has aligned its rule with consensus standards flow rate/metering requirements as requested by the commenter. This language change in today's final rule conforms this rule to existing Federal requirements. Since this change addresses flow rate requirements for both hot and cold water, it effectively incorporates the commenter's suggestion to address both hot and cold water usage.

(15) Equipment for Prototype or Reference Buildings, Subpart E, Section 518

In the proposed rule, subpart E contains a building energy cost compliance alternative wherein the proposed design is compared to either a prototype building if the design is one of nine recognized building types, or a reference building if the building design is particularly unique. Subpart E, § 518.2, requires that a prototype or reference building use either an electric heat pump or natural gas for service water heating, unless electric resistance is preferable to the heat pump water heater (HPWH), pursuant to the criteria of section 404. One commenter pointed out that section 404 contained no such criteria and suggested that the final rule should include criteria for determining when electric resistance service water heating is preferable to an HPWH. (Vepco, No. 10; 3)

The Department agrees with the commenter that section 404 does not list the criteria that would allow the designer to determine if it is preferable to use electric resistance over the HPWH.

Standard 90.1–1989, Section 11.5.5, Additional Equipment Efficiency Measures, requires the designer to perform an economic analysis that compares the potential benefits of using one system type over the other. The results of the comparison allow for the determination of the more cost-effective system. This latter provision was omitted from the codified version of Standard 90.1–1989 (Section 404). Since, by statute, this rule uses Standard 90.1–1989 as the minimum baseline, the Department has added the language from Section 11.5.5 of Standard 90.1–1989 into the final rule so that users have the method to determine if it is preferable to use electric resistance over the HPWH.

(16) Determination of Energy Cost Budget (ECB), Subpart E, Section 501

Under subpart E, a building is in compliance with the rule if its annual energy costs or Energy Cost Budget (ECB) is equal to or less than what it would have been if built under subpart D. Subpart E compliance has two steps. Step one determines the ECB, assuming the equipment and energy types that would produce either (a) the lowest annual energy costs or (b) the lowest lifecycle costs if the building were built under subpart D. Fuel types are not actually chosen in this step. In step two, any desired building and equipment "trade-offs" are made, so long as the overall ECB does not exceed the level set in step one. These trade-offs can include changes in equipment and fuel type.

Subpart E is designed to ensure that buildings built under this subpart do not use more energy than would have been allowed under subpart D. Because different energy types are measured in different units, a common unit of measure is needed for ensuring that trade-offs do not result in increased energy usage. Subpart E uses energy costs as its common measure of energy usage.

Two commenters suggest that subpart E be revised to reflect greater reliance on building life cycle costs. (Vepco, No. 10; 1; EEI, No. 11; 2–3). One commenter (Vepco) proposes allowing only the use of life cycle costs, and not also annual energy costs, in the step one determination of the ECB. The other commenter (EEI) proposes using life cycle costs, rather than the ECB, as the basis for determining compliance with subpart E overall.

The Department agrees that life cycle cost is an essential component in the development and implementation of building codes. Life cycle cost analysis was used in the development of this rule. Moreover, Executive Order 12902 requires the use of life cycle cost analysis in making federal building energy choices. Subpart E, drawn from Standard 90.1–1989, explicitly provides

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for life cycle cost analysis in step one. Life cycle cost analysis can and should be used in making tradeoffs under step two. Indeed, the primary purpose of allowing trade-offs is to provide opportunities to utilize more cost-effective means of improving energy efficiency.

Although life cycle cost analysis could be the basis for determining the ECB in step one, removal of the energy cost approach would remove the most stringent option found in subpart E of Standard 90.1–1989. Therefore, life cycle cost analysis cannot be the basis for determining subpart E compliance with the energy requirements of the rule since this method does not ensure that energy usage under this subpart would not exceed that allowed in subpart D. Based on these considerations, the Department is retaining the energy cost budget (ECB) components of this subpart.

(17) Conversion Factors for Electricity, Subpart F, Section 601, 602

As is the case with subpart E, compliance with subpart F, the Building Energy Compliance Alternative, is a two-step process, although the components of each step are somewhat different. In step one of subpart F, life cycle cost analysis is used to select the energy sources and equipment types to be used in the building. The Energy Use Budget (EUB) is developed based on the amount of energy these energy sources and equipment types would require if the building were built according to subpart D requirements. In step two, any desired trade-offs are made so long as (a) the EUB is not exceeded and (b) the energy types utilized are not changed. The common unit of measure in making EUB trade-offs is the British thermal unit (Btu) content at the building site.

Two commenters suggested that the conversion factors used in this subpart take off-site energy losses into account and recommended a factor of 11,600 Btus per kWh for electricity, rather than the 3,412 Btu/kWh provided for in Table 602.2. These commenters support the source-based method as indicating the total amount of energy consumed in order to provide for the building's energy needs and to encourage environmentally preferable building choices. (AGA, No. 4; 1, 5; Columbia Gas, No. 9; 2). One commenter requested a study to determine the environmental impacts of the section 602 conversion factors (AGA, No. 4; 1–3).

The Department agrees that source-based conversion factors are generally more accurate in reflecting energy conservation potential. However, the limited provision in step two utilizing site-based conversion factors can have little or no discernable impact on the types of energy used since that choice is already made in step one. The conversion factor chosen can only have a limited impact on trade-offs involving interactions among subsystems employing different energy sources. The Subpart D equipment efficiency levels are already set at federal minimum standards. As a result, tradeoffs generally cannot be made among different types of equipment.

The Department recognizes that "site" fuel conversion factors are widely used by architects, engineers, and builders in heat flow and other calculations. Given this standard approach, and the limited potential impact of selecting site rather than source energy as the basis for conversion, the Department has retained the conversion factors set forth in Table 602.2.

*C. Other Changes*

DOE has made other changes to the proposed rule. It has added to § 434.201 the definition of building set forth in 42 U.S.C. 6832. This definition was inadvertently omitted in the proposed rule.

In addition, DOE has deleted section 101.2 and reworded section 101 to clarify the extent to which additions and renovations are covered by this rule consistent with the statutory provisions of section 305 of ECPA, as amended. Non-substantive changes, such as the renumbering of paragraphs, typographical errors, and minor language changes are not discussed.

**III. Consultation**

In developing today's rule, the Department consulted with outside parties, including State and local code officials, private sector representatives, and other Federal agencies, as required by section 305(a)(1) of ECPA.

**IV. Energy Impacts**

This rule applies only to the energy efficiency of new construction for Federal buildings, representing about 2 percent of all new commercial building construction. New Federal construction will constitute less than 1/2 of one percent of the total commercial building stock in 2010. Furthermore, this rule applies only to that portion of building energy use related to heating, cooling, ventilation, water heating, and lighting, or about 60% of the energy used in commercial buildings, or roughly 0.3% of expected commercial buildings energy use in 2010.

This rule saves about 5% of energy usage compared to Standard 90.1–1989 at the time EPACT was adopted. This additional energy savings is consistent with the legislative requirement that energy savings in the rule be "technologically feasible and economically justified." In addition, it reflects the requirement that DOE consider, in consultation with the Environmental Protection Agency and other Federal agencies, measures concerning indoor air pollutants and, where appropriate, adopt such measures. (Section 305(a)(2)(C).)

The additional 5% energy savings derives from the inclusion of addenda c, regarding motors, and the inclusion of lighting specifications that are not included in either Standard 90.1–1989 or any of its addenda. The Department estimates that Addendum c, addressing motor efficiency, provides 0.24 percent reduction in building energy use. This same reduction will be realized nationwide as the electric motor standards of section 342(b) of the EPCA, as amended, take effect. Also, the Department has determined that the lighting standards contained in the final rule will reduce total building energy use by about 4.7 percent compared to the statutory baseline. Finally, the Department has determined that other changes from the statutory baseline have no discernible impact on energy use. These other changes include ASHRAE addenda g, i, and f, previously discussed.

This rule retains the ventilation requirements of Standard 90.1–1989 intended to ensure adequate indoor air quality. The ventilation requirements found in Standard 90.1–1989 are the same as those found in ASHRAE Standard 62–1989 and reflect current industry practice. Ventilation requirements increase building energy use, both because energy is needed to operate the ventilation fans and other equipment, and because some additional heating and air conditioning is required for replacement air. Although removing these requirements could save energy in Federal buildings, it would not be consistent with current practices regarding protection of indoor air quality, nor would it be consistent with the legislative requirements in section 305 of ECPA.

Even though the final rule is more stringent that the statutory baseline, two components of the final rule technically increase allowed energy usage compared to the interim rule.

First, several lighting provisions found in the interim rule proved not to be technologically feasible. Second, the interim rule was never updated to include the indoor air quality ventilation requirements of ASHRAE Standard 62–1989. As a result, these aspects of the interim rule would not have met the legislative requirements for this final rule. Technically, these two changes from the interim rule allow about 10 to 15 percent more building energy use, largely due to the change in ventilation requirements. In practice, however, these changes from the interim rule are not likely to have a significant effect on Federal building energy use. The non-technologically feasible lighting specifications found in the interim rule have proven difficult or impossible to implement. In addition, most Federal buildings are already being built to meet ASHRAE Standard 62–1989 ventilation requirements .



The energy estimates reported here are based on the minimum specifications found in subpart D of the final rule. Additional cost-effective energy efficiency improvements in new Federal commercial buildings are facilitated by this rule through use of Subparts E and F, the alternative paths which provide a means of documenting the energy savings and cost-effectiveness of more energy efficient building designs. Federal agencies may choose to adopt building energy requirements that exceed those contained in this rule. The final rule is specifically designed to operate in conjunction with several existing programs and policies which facilitate additional energy savings in Federal buildings. In essence, this rule provides a "floor" or a minimum level of energy savings for new Federal buildings. Section 306(a) of Executive Order 12902 (59 FR 11463, March 8, 1994), "Executive Order on Energy Efficiency and Water Conservation at Federal Facilities," specifically requires that, "Each agency involved in the construction of a new facility * * * shall: (1) Design and construct such facility to minimize the life cycle cost of the facility by utilizing energy efficiency, water conservation, or solar or other renewable energy technologies." It also requires agencies to "ensure that the design and construction of facilities meet or exceed the energy performance standards applicable to Federal residential or commercial buildings as set forth in 10 CFR part 435, local building standards, or a Btu-per-gross square-foot ceiling * * * whichever will result in a lower life cycle cost over the life of the facilities." Section 306(a)(2). Finally, this Executive Order directs agencies to purchase equipment for buildings that are in the upper 25 percent of energy efficiency for all similar products or at least 10 percent more efficient than the minimum level that meets Federal standards if they are cost-effective and to the extent practicable. Section 507(a)(2). Furthermore, 10 CFR part 436 allows agencies to determine when even greater energy savings would be cost effective. Programs within the Department's Office of Codes and Standards (OCS) and the Federal Energy Management Program (FEMP) provide agencies with assistance in utilizing life-cycle cost analysis and in identifying and procuring energy efficient shell and equipment options for Federal buildings.

**V. Technological Feasibility and Economic Justification**

The standards issued today are technologically feasible and cost effective to the Federal Government as required by section 305(a)(1) of ECPA. Those provisions included in the statutory baseline have been part of recommended professional practice since at least October 1992. Addenda approved or issued by ASHRAE and IESNA since EPACT was enacted (Addenda 90.1c, f, g, and i addressing motors, fenestration, metal framing in the building envelope, and heating and cooling equipment test procedures, respectively) are addressed specifically to explain their technological feasibility and cost effectiveness.

Addendum 90.1c, regarding motors, was developed in cooperation with the National Electrical Manufacturers Association (NEMA) and is based on its standards. Motors covered by this criteria are currently being actively marketed by manufacturers and regularly incorporated as cost effective retrofit measures in utility demand side management programs. See the Technical Support Document, page 3. Section 342(b) of EPCA, 42 U.S.C. 6313(b), specifies motor efficiency requirements that are equivalent to those in Addendum 90.1c. These requirements became mandatory for equipment manufactured after October 1997. Discussions with manufacturers led the Department to believe that these products will be cost effective for all new Federal buildings at the time this rule becomes effective.

Addendum 90.1f modifies the method of calculating the thermal transmittance of fenestration assemblies based on the updated procedures given in the 1989 ASHRAE Fundamentals Handbook for determining fenestration thermal performance. The Department believes that use of the U-values specified in the final rule based on Addendum 90.1f would not change the types of windows from those required to meet Standard 90.1–1989. See the Technical Support Document, pages 10–11.

Addendum 90.1g expands Table 402.1.2.1b, Parallel Path Correction Factors, Metal Framed Walls with Studs 16 Gauge or Lighter, to include a larger variety of available types of metal studs, spacing of framing members and cavity insulation values which are being used for exterior walls. This was done in light of recent increased interest in metal stud construction. The final rule only permits the use of metal studs if the exterior wall is properly insulated; it does not require the use of this technology. The Department believes this technology will be used only in cases where the builder finds it is cost effective to do so. *See*, Technical Support Document, pages 8–9.

Addendum 90.1i updates the test procedures for heating and cooling equipment. Their adoption by equipment manufacturers demonstrates their technological feasibility. Furthermore, since these are established test procedures used by industry, the Department believes their inclusion in the final rule will have no impact on cost. In addition, there is an exception provided for zone control of variable air volume (VAV) systems. The Department believes this will not increase energy use beyond the statutory baseline since addendum e, already allowed this practice and was adopted prior to October 24, 1992. See the Technical Support Document, pages 12–14.

This rule adopts 32 lighting specifications from the 1993 values in the interim rule that proved to be both technologically feasible and economically justified. (See TSD). For an additional 8 space types, the TSD analysis indicated that UPD values lower than the 1993 values would be technologically feasible and economically justified, and these have been adopted as well. In 14 cases, the TSD analysis justified values between the 1989 and 1993 levels. Finally, in 25 of 79 space types for which there was a difference between 1989 and 1993 values, the TSD analysis resulted in the 1989 UPD value being identified as the most appropriate. In determining the cost-effectiveness of the lighting provisions, the TSD analysis reflects the estimated cost of electricity to the Federal Government.

**VI. Measures Concerning Radon and Other Indoor Air Pollutants**

Section 305(a)(2)(C) of ECPA, requires the Department to consider, where appropriate, measures with regard to radon and other indoor air pollutants. The Department has consulted with the Environmental Protection Agency and

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determined that there are no radon standards applicable to the types of buildings covered by this final rule.

Ventilation is the only change from the interim rule that has an effect on indoor air quality and thus, on habitability. The final rule, through its inclusion of Addendum 90.1e, adopts the minimum ventilation rates specified by ASHRAE Standard 62–1989, entitled "Ventilation for Acceptable Indoor Air Quality," effectively increasing ventilation in new Federal buildings. Improving building ventilation conditions by adjustments to mechanical systems is widely used as a generic mitigation practice for indoor air quality problems. It is widely assumed that such adjustments increase ventilation rates and as a consequence decrease contaminant concentrations, reduce dissatisfaction with air quality and reduce symptom prevalence. A range of experimental and epidemiological studies have been carried out to evaluate these relationships. However, these study results are in dispute. The Department will continue to monitor this issue and update the rule if there is sufficient justification for a change.

## VII. Procedural Determinations

### *A. Review Under Executive Order 13132, "Federalism"*

Executive Order 13132 (64 FR 43255, August 10, 1999) requires agencies to develop an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have "federalism implications." Policies that have federalism implications are defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, DOE may not issue a regulation that has federalism implications, that imposes substantial direct costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or DOE consults with State and local officials early in the process of the developing the proposed regulation. DOE also may not issue a regulation that has federalism implications and that preempts State law unless it consults with State and local officials early in the process of developing the proposed regulation.

DOE has examined today's rule and has determined that it does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

### *B. Review Under Executive Order 12988, "Civil Justice Reform"*

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on executive agencies the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of the Executive Order specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and reducing burdens; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of the Executive Order requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE reviewed today's rule under the standards of section 3 of the Executive Order and determined that, to the extent permitted by law, it meets the requirements of those standards.

### *C. Review Under Executive Order 12866, "Regulatory Planning and Review"*

This regulatory action has been determined to be a significant regulatory action under Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (October 4, 1993). Accordingly, the final rule was subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) and OIRA has completed its review.

### *D. Review Under the Regulatory Flexibility Act of 1980*

The Regulatory Flexibility Act, 5 U.S.C. 601–612, requires that an agency prepare an initial regulatory flexibility analysis for any rule, for which a general notice of proposed rulemaking is required, that would have a significant economic effect on small entities. A final regulatory flexibility analysis must be prepared and made available when a final rule is published. These requirements do not apply if the agency "certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." (5 U.S.C. 605).

In the notice of proposed rulemaking, DOE determined that this rule only would impose requirements on the Federal Government for the construction of new Federal commercial and multi-family high rise residential buildings. The rule imposes no requirements on the private sector. Therefore, the Department certified that the proposed rule would not, if promulgated, have a significant economic impact on a substantial number of small entities. The Department did not receive any comments on the certification.

### *E. Review Under the National Environmental Policy Act*

The Department prepared an Environmental Assessment (EA) of the 1989 interim standards for Federal commercial and multi-family high rise residential buildings. (Environmental Assessment In Support of Proposed Interim Energy Conservation Standards for New Commercial and Multi-Family High Rise Residential Buildings, November 1986, DOE/CE–0166). The EA concluded that the effect of the final standards on a building's habitability as well as on the outdoor environment, the economy and Federal institutions, would be very small. Thus, the environmental effects from the standards for a minimum level of energy efficiency for new Federal commercial and multi-family high rise residential buildings were determined not to be a major Federal action significantly affecting the quality of the human environment, under the meaning of the National Environmental Policy Act. A Finding of No Significant Impact (FONSI) was published with the proposed rule in 52 FR 17052, 17064 (May 6, 1987) and referenced in the interim rule in 54 FR 4551 (January 30, 1989).

The 1989 interim rule that established building energy efficiency standards



was mandatory for Federal buildings and voluntary for all others. Today's final rule addresses solely Federal commercial construction, which represents only 2 percent of total new construction nationwide, and does not include voluntary standards for non-Federal construction.

The final rule will change energy consumption as compared to the interim rule in the areas of lighting, motors, and HVAC equipment. In conducting the analysis that supports this final rule, the Department found that final changes to the lighting level requirements would produce a 4.7 percent reduction in building energy consumption compared to the 1989 lighting criteria in the interim rule. The final rule also is expected to produce a 0.24 percent reduction in building energy consumption due to the increased efficiency requirements of motors as compared to the interim rule. The final rule, however, could increase energy use by 10–15 percent, because of the additional ventilation requirements of Addendum 90.1e, as compared to the interim rule. The net result is an approximate 5–10 percent increase in total building energy use as compared to the interim rule with the 1989 lighting levels. Since Federal construction represents only 2 percent of the total new commercial and multi-family high-rise residential construction nationally, the increase in energy consumption (0.1 to 0.2 percent) nationally will be negligible.

The Department believes that minimal environmental impacts will result from this final rule. Further, such effects fall within the range of impacts that are analyzed in the interim rule's EA. These effects are determined not to be significant in the FONSI published in 1987. Accordingly, the Department determines that after all the environmental effects of the final rule are considered, this final rule is bounded by the analysis in the EA. Therefore, the preparation of a new EA or an environmental impact statement is not required.

### *F. Paperwork Reduction Act Review*

No new information or record keeping requirements are imposed by this rulemaking. Accordingly, no Office of Management and Budget clearance is required under the Paperwork Reduction Act. 44 U.S.C. 3501 *et seq.*

### *G. Review Under the Unfunded Mandates Reform Act of 1995*

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), 2 U.S.C. 1531 *et seq.*, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year.

The final rule establishes building energy efficiency standards for new Federal commercial and multi-family high rise residential buildings pursuant to section 305 of the ECPA, as amended. 42 U.S.C. 6834. It does not include any Federal requirements that would result in the expenditure of money by State, local, and tribal governments. Therefore, the requirements of the Act do not apply to this rulemaking.

### *H. Review Under Section 32 of the Federal Energy Administration Act of 1974*

Pursuant to section 301 of the Department of Energy Organization Act (Pub. L. 95–91), the Department of Energy is required to comply with section 32 of the Federal Energy Administration Act of 1974, 15 U.S.C. 788. The Department of Energy is required by section 32 to notify the public regarding the proposed use of commercial standards in a rulemaking and allow interested persons to make known their views regarding the appropriateness of the use of any particular commercial standard in a notice of proposed rulemaking.

The Department included an invitation for public comment in the notice of proposed rulemaking. Several commenters, covering professional organizations, manufacturers, Government agencies, and utilities, endorsed the appropriateness of the use of the codified version of Standard 90.1–1989. No adverse comments were received.

In addition, section 32(c) precludes the Department from incorporating any commercial standard into a rule unless it has consulted with the Attorney General and the Chairman of the Federal Trade Commission (FTC) as to the impact of such standard on competition. Pursuant to section 32(c), the Department advised these individuals of its intention to incorporate portions of the above-referenced standards into this final rule. Neither recommended against such incorporation.

### *I. "Takings" Assessment Review*

The Department has determined pursuant to Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights," 53 FR 8859 (March 18, 1988), that this regulation would not result in any takings which might require compensation under the Fifth Amendment to the U.S. Constitution.

### *J. Congressional Notification*

Consistent with Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801–808, the Department will submit to Congress a report regarding the issuance of today's final rule prior to the effective date set forth at the outset of this notice. The report will note the Office of Management and Budget's determination that this rule does not constitute a "major rule" under that Act. 5 U.S.C. 801, 804.

### *K. National Technology Transfer and Advancement Act*

The National Technology Transfer and Advancement Act of 1995, section 12(d), Pub. L. 104–113, requires Federal agencies to use technical standards that are developed or adopted by voluntary consensus standards bodies to carry out their policy objectives or activities. If use of such technical standards is inconsistent with applicable law or otherwise impractical, a Federal agency may elect to use technical standards that are not developed or adopted by voluntary consensus standards if the head of the agency transmits to the Office of Management and Budget (OMB) an explanation of the reasons for using such standards. If an agency issues or revises a regulation that contains a technical standard, the agency is required by OMB Circular A–119 to provide certain information about its choice of standard in the notices of proposed and final rulemaking. 63 FR 8546, 8557 (February 19, 1998). In a notice of final rulemaking, the agency must state if it is using a voluntary consensus standard and, if so, identify the standard and any alternative voluntary consensus standards that were identified. If a Government-unique standard is being used, the agency must explain why using a voluntary consensus standard would be inconsistent with applicable law or otherwise impractical.

This final rule closely parallels Standard 90.1–1989 and subsequent addenda to that voluntary consensus standard. Section 305(a)(2)(A) of ECPA, 42 U.S.C. 6834(a)(2)(A), requires DOE to establish commercial building standards for new Federal buildings that contain energy saving and renewable energy specifications that meet or exceed those in ASHRAE Standard 90.1–1989. Consistent with the statute, DOE did not consider alternative voluntary standards.

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**List of Subjects in 10 CFR Parts 434 and 435**

Buildings, Energy conservation, Engineers, Federal buildings and facilities, Incorporation by reference.

Issued in Washington, D.C., on June 30, 2000.

**Dan W. Reicher,**

*Assistant Secretary, Energy Efficiency and Renewable Energy.*

For the reasons set forth in the preamble, chapter II of title 10 of the Code of Federal Regulations is amended as set forth below:

## PART 435—ENERGY CONSERVATION VOLUNTARY PERFORMANCE STANDARDS FOR NEW BUILDINGS; MANDATORY FOR FEDERAL BUILDINGS

1. The authority citation for Part 435 is revised to read as follows:

**Authority:** 42 U.S.C. 6831–6832; 6834–6836; 42 U.S.C. 8253–54; 42 U.S.C. 7101 *et seq.*

**Subpart A [Removed and reserved]**

2. Subpart A (§§ 435.97 through 435.112) of part 435 is removed and reserved.

3. A new part 434 is added to chapter II of title 10 to read as follows:

## PART 434—ENERGY CODE FOR NEW FEDERAL COMMERCIAL AND MULTI-FAMILY HIGH RISE RESIDENTIAL BUILDINGS

Sec.


434.99 Explanation of numbering system for codes.

**Subpart A—Administration and Enforcement—General**

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434.101 Scope.
434.102 Compliance.
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434.105 Materials and equipment.

**Subpart B—Definitions**

434.201 Definitions.

**Subpart C—Design Conditions**

434.301 Design criteria.

**Subpart D—Building Design Requirements—Electric Systems and Equipment**

434.401 Electrical power and lighting systems.
434.402 Building envelope assemblies and materials.
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**Subpart E—Building Energy Cost Compliance Alternative**

434.501 General.
434.502 Determination of the annual energy cost budget.
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434.506 Use of the reference building to determine the energy cost budget.
434.507 Calculation procedure and simulation tool.
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434.517 HVAC systems and equipment.
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434.519 Controls.
434.520 Speculative buildings.
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**Subpart F—Building Energy Compliance Alternative**

434.601 General.
434.602 Determination of the annual energy budget.
434.603 Determination of the design energy use.
434.604 Compliance.
434.605 Standard calculation procedure.
434.606 Simulation tool.
434.607 Life cycle cost analysis criteria.

**Subpart G—Reference Standards**

434.701 General.


**Authority:** 42 U.S.C. 6831–6832, 6834–6836; 42 U.S.C. 8253–54; 42 U.S.C. 7101, *et seq.*

**§ 434.99 Explanation of numbering system for codes.**

(a) For purposes of this part, a derivative of two different numbering systems will be used.

(1) For the purpose of designating a section, the system employed in the Code of Federal Regulations (CFR) will be employed. The number "434" which signifies part 434 in chapter II of Title 10, Code of Federal Regulations, is used as a prefix for all section headings. The suffix is a two or three digit section number. For example the lighting section of the standards is designated § 434.401.

(2) Within each section, a numbering system common to many national voluntary consensus standards is used. A decimal system is used to denote paragraphs and subparagraphs within a section. For example, in § 434.401, "401.2.1" refers to subsection 401, paragraph 2, subparagraph 1.

(b) The hybrid numbering system is used for two purposes:

(1) The use of the Code of Federal Regulations' numbering system allows the researcher using the CFR easy access to the standards.

(2) The use of the second system allows the builder, designer, architect or engineer easy access because they are familiar to this system numbering. This system was chosen because of its commonality among the building industry.

**Subpart A—Administration and Enforcement—General**

**§ 434.100 Purpose.**

The provisions of this part provide minimum standards for energy efficiency for the design of new Federal commercial and multi-family high rise residential buildings. The performance standards are designed to achieve the maximum practicable improvements in energy efficiency and increases in the use of non-depletable sources of energy. This rule is based upon the ASHRAE/IESNA Standard 90.1–1989 and addenda b, c, d, e, f, g, and i. (This document is available from the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc., 1791 Tullie Circle NE, Atlanta, GA.) It is not incorporated by reference in this document, but is mentioned for informational purposes only.

**§ 434.101 Scope.**

101.1 This part provides design requirements for the building envelope, electrical distribution systems and equipment for electric power, lighting, heating, ventilating, air conditioning, service water heating and energy management. It applies to new Federal multi-family high rise residential buildings and new Federal commercial buildings.

101.1.1 (a) Except as provided by section 101.2, the provisions of this part apply if an agency is constructing:

(1) A building that has never been in service;

(2) An addition that adds new space with provision for a heating or cooling system, or both, or for a hot water system; or

(3) A substantial renovation of a building, involving replacement of a heating or cooling system, or both, or hot water system, that is either in service or has been in service.

101.2 The provisions of this part do not apply to:

101.2.1 Buildings, or portions thereof separated from the remainder of the building, that have a peak energy usage for space conditioning, service water heating, and lighting of less than 3.5 Btu/(h•ft$^2$ of gross floor area.

101.2.2 Buildings of less than 100 square feet of gross floor area.

101.2.3 Heating, cooling, ventilating, or service hot water requirements for



those spaces where processes occur for purposes other than occupant comfort and sanitation, and which impose thermal loads in excess of 5% of the loads that would otherwise be required for occupant comfort and sanitation without the process;

101.2.4 Envelope requirements for those spaces where heating or cooling requirements are excepted in subsection 101.2.3 of this section.

101.2.5 Lighting for tasks not listed or encompassed by areas or activities listed in Tables 401.3.2b, 401.3.2c and 401.3.2d.

101.2.6 Buildings that are composed entirely of spaces listed in subsections 101.2.4 and 101.2.5.

101.2.7 Individual components of a building under renovation, if the building components are not in the scope of a renovation as defined by the agency.

**§ 434.102 Compliance.**

102.1 A covered building must be designed and constructed consistent with the provisions of subpart D of this part.

102.2 Buildings designed and constructed to meet the alternative requirements of subparts E or F of this part shall be deemed to satisfy the requirements of this part. Such designs shall be certified by a registered architect or engineer stating that the estimated energy cost or energy use for the building as designed is no greater than the energy cost or energy use of a prototype building or reference building as determined pursuant to subparts E or F of this part.

**§ 434.103 Referenced standards (RS).**

103.1 The standards, technical handbooks, papers and regulations listed in § 434.701, shall be considered part of this part to the prescribed extent of such reference. Where differences occur between the provisions of this part and referenced standards, the provisions of this part shall apply. Whenever a reference is made in this part to an RS standard it refers to the standards listed in § 434.701.

**§ 434.105 Materials and equipment.**

105.1 Building materials and equipment shall be identified in designs in a manner that will allow for a determination of their compliance with the applicable provisions of this part.

**Subpart B—Definitions**

**§ 434.201 Definitions.**

For the purposes of this part, the following terms, phrases, and words shall be defined as provided:

*Accessible* (as applied to equipment): admitting close approach; not guarded by locked doors, elevations, or other effective means. (See also "readily accessible")

*Annual Fuel Utilization Efficiency (AFUE):* the ratio of annual output energy to annual input energy that includes any non-heating season pilot input loss.

*Area of the space (A):* the horizontal lighted area of a given space measured from the inside of the perimeter walls or partitions, at the height of the working surface.

*Automatic:* self-acting, operating by its own mechanism when actuated by some impersonal influence, such as a change in current strength, pressure, temperature, or mechanical configuration. (See also"manual")

*Automatic flue damper device:* an electrically operated device, in the flue outlet or in the inlet of or upstream of the draft hood of an individual automatically operated gas-fired appliance, which is designed to automatically open the flue outlet during appliance operation and to automatically close off the flue outlet when the appliance is in a standby condition.

*Automatic vent damper device:* a device intended for installation in the venting system, in the outlet of or downstream of the appliance draft hood, of an individual automatically operated gas-fired appliance, which is designed to automatically open the venting system when the appliance is in operation and to automatically close off the venting system when the appliance is in a standby or shutdown condition.

(1) *Electrically operated:* an automatic vent damper device that employs electrical energy to control the device.

(2) *Thermally actuated:* an automatic vent damper device dependent for operation exclusively upon the direct conversion of the thermal energy of the vent gases into mechanical energy.

*Boiler capacity:* the rated heat output of the boiler, in Btu/h, at the design inlet and outlet conditions and rated fuel or energy input.

*Building:* means any structure to be constructed which includes provision for a heating or cooling system, or both, or for a hot water system.

*Building code:* means a legal instrument which is in effect in a State or unit of general purpose local government, the provisions of which must be adhered to if a building is to be considered to be in conformance with law and suitable for occupancy and use.

*Building envelope:* the elements of a building that enclose conditioned spaces through which thermal energy may be transferred to or from the exterior or to or from unconditioned spaces.

*Check metering:* measurement instrumentation for the supplementary monitoring of energy consumption (electric, gas, oil, etc) to isolate the various categories of energy use to permit conservation and control, in addition to the revenue metering furnished by the utility.

*Coefficient of performance (COP)—Cooling:* the ratio of the rate of heat removal to the rate of energy input, in consistent units, for a complete cooling system or factory assembled equipment, as tested under a nationally recognized standard or designated operating conditions.

*Coefficient of performance (COP) heat pump—Heating:* the ratio of the rate of heat delivered to the rate of energy input, in consistent units, for a complete heat pump system under designated operating conditions.

*Commercial building:* a building other than a residential building, including any building developed for industrial or public purposes. Including but not limited to occupancies for assembly, business, education, institutions, food sales and service, merchants, and storage.

*Conditioned floor area:* the area of the conditioned space measured at floor level from the interior surfaces of the walls.

*Conditioned space:* a cooled space, heated space, or indirectly conditioned space.

*Cooled space:* an enclosed space within a building that is cooled by a cooling system whose sensible capacity:

(1) Exceeds 5 Btu/(h•ft$^2$); or

(2) Is capable of maintaining a space dry bulb temperature of 90°F or less at design cooling conditions.

*Daylight sensing control (DS):* a device that automatically regulates the power input to electric lighting near the fenestration to maintain the desired workplace illumination, thus taking advantage of direct or indirect sunlight.

*Daylighted space:* the space bounded by vertical planes rising from the boundaries of the daylighted area on the floor to the floor or roof above.

*Daylighted zone:*

(1) Under skylights: the area under each skylight whose horizontal dimension in each direction is equal to the skylight dimension in that direction plus either the floor-to-ceiling height or the dimension to an opaque partition, or one-half the distance to an adjacent skylight or vertical glazing, whichever is least.

(2) At vertical glazing: the area adjacent to vertical glazing that receives

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daylighting from the glazing. For purposes of this definition and unless more detailed daylighting analysis is provided, the daylighting zone depth is assumed to extend into the space a distance of 15 ft or to the nearest opaque partition, whichever is less. The daylighting zone width is assumed to be the width of the window plus either 2 ft on each side, the distance to an opaque partition, or one half the distance to an adjacent skylight or vertical glazing, whichever is least.

*Dead band (dead zone):* the range of values within which an input variable that can be varied without initiating any noticeable change in the output variable.

*Degree-day, cooling:* a unit, based upon temperature difference and time, used in estimating cooling energy consumption. For any one day, when the mean temperature is more than a reference temperature, typically 65°F, there are as many degree-days as degrees Fahrenheit temperature difference between the mean temperature for the day and the reference temperature. Annual cooling degree-days (CDD) are the sum of the degree-days over a calendar year.

*Degree-day, heating:* a unit, based upon temperature difference and time, used in estimating heating energy consumption. For any one day, when the mean temperature is less than a reference temperature, typically 65°F, there are as many degree-days as degrees Fahrenheit temperature difference between the mean temperature for the day and the reference temperature. Annual heating degree days (HDD) are the sum of the degree-days over a calendar year.

*Dwelling unit:* a single housekeeping unit comprised of one or more rooms providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation.

*Economizer, air:* a ducting arrangement and automatic control system that allows a cooling supply fan system to supply outdoor (outside) air to reduce or eliminate the need for mechanical refrigeration during mild or cold weather.

*Economizer, water:* a system by which the supply air of a cooling system is cooled directly or indirectly or both by evaporation of water or by other appropriate fluid in order to reduce or eliminate the need for mechanical refrigeration.

*Efficiency, HVAC system:* the ratio of the useful energy output, at the point of use to the energy input in consistent units, for a designated time period, expressed in percent.

*Emergency system (back-up system):* a system that exists for the purpose of operating in the event of failure of a primary system.

*Emergency use:* electrical and lighting systems required to supply power automatically for illumination and equipment in the event of a failure of the normal power supply.

*Energy efficiency ratio (EER):* the ratio of net equipment cooling capacity in Btu/h to total rate of electric input in watts under designated operating conditions. When consistent units are used, this ratio becomes equal to COP. (See also "coefficient of performance".)

*Fan system energy demand:* the sum of the demand of all fans that are required to operate at design conditions to supply air from the heating or cooling source to the conditioned space(s) and return it back to the source or exhaust it to the outdoors.

*Federal Agency:* means any department, agency, corporation, or other entity or instrumentality of the executive branch of the Federal Government, including the United States Postal Service, the Federal National Mortgage Association, and the Federal Home Loan Mortgage Corporation.

*Federal Building:* means any building to be constructed by, or for the use of, any Federal Agency which is not legally subject to State or local building codes or similar requirements.

*Fenestration:* any light-transmitting section in a building wall or roof. The fenestration includes glazing material (which may be glass or plastic), framing (mullions, muntins, and dividers), external shading devices, internal shading devices, and integral (between glass) shading devices.

*Fenestration area:* the total area of fenestration measured using the rough opening and including the glass or plastic, sash, and frame. For doors where the glazed vision area is less than 50% of the door area, the fenestration area is glazed vision area. For all other doors, the fenestration area is the door area.

*Flue damper:* a device, in the flue outlet or in the inlet of or upstream of the draft hood of an individual automatically operated gas-fired appliance, which is designed to automatically open the flue outlet during appliance operation and to automatically close off the flue outlet when the appliance is in a standby condition.

*Gross floor area:* the sum of the floor areas of the conditioned spaces within the building, including basements, mezzanine and intermediate-floor tiers, and penthouses of headroom height 7.5 ft or greater. It is measured from the exterior faces of exterior walls or from the centerline of walls separating buildings (excluding covered walkways, open roofed-over areas, porches and similar spaces, pipe trenches, exterior terraces or steps, chimneys, roof overhangs, and similar features).

*Gross lighted area (GLA):* the sum of the total lighted areas of a building measured from the inside of the perimeter walls for each floor of the building.

*Heat capacity (HC):* the amount of heat necessary to raise the temperature of a given mass 1°F. Numerically, the mass expressed per unit of wall surface multiplied by the specific heat Btu/($ft^2$•°F).

*Heat trap:* device or piping arrangement that effectively restricts the natural tendency of hot water to rise in vertical pipes during standby periods. Examples are the U-shaped arrangement of elbows or a 360-degree loop of tubing.

*Heated space:* an enclosed space within a building that is heated by a heating system whose output capacity

(1) Exceeds 10 Btu/($h•ft^2$), or

(2) Is capable of maintaining a space dry-bulb temperature of 50°F or more at design heating conditions.

*Heating seasonal performance factor (HSPF):* the total heating output of a heat pump during its normal annual usage period for heating, in Btu, divided by the total electric energy input during the same period, in watt-hours.

*High rise residential building:* hotels, motels, apartments, condominiums, dormitories, barracks, and other residential-type facilities that provide complete housekeeping or transient living quarters and are over three stories in height above grade.

*Humidistat:* an automatic control device responsive to changes in humidity.

*HVAC system:* the equipment, distribution network, and terminals that provide either collectively or individually the processes of heating, ventilating, or air conditioning to a building.

*Indirectly conditioned space:* an enclosed space within the building that is not a heated or cooled space, whose area-weighted heat transfer coefficient to heated or cooled spaces exceeds that to the outdoors or to unconditioned spaces; or through which air from heated or cooled spaces is transferred at a rate exceeding three air changes per hour. (See also "heated space", "cooled space", and "unconditioned space".)

*Infiltration:* the uncontrolled inward air leakage through cracks and crevices in any building element and around windows and doors of a building.



*Integrated part-load value (IPLV):* a single-number figure of merit based on part-load EER or COP expressing part-load efficiency for air-conditioning and heat pump equipment on the basis of weighted operation at various load capacities for the equipment.

*Lumen maintenance control:* a device that senses the illumination level and causes an increase or decrease of illuminance to maintain a preset illumination level.

*Manual:* action requiring personal intervention for its control. As applied to an electric controller, manual control does not necessarily imply a manual controller but only that personal intervention is necessary. (See automatic.)

*Marked rating:* the design load operating conditions of a device as shown by the manufacturer on the nameplate or otherwise marked on the device.

*Multi-family high rise residential:* a residential building containing three or more dwelling units and is designed to be 3 or more stories above grade.

*Occupancy sensor:* a device that detects the presence or absence of people within an area and causes any combination of lighting, equipment, or appliances to be adjusted accordingly.

*Opaque areas:* all exposed areas of a building envelope that enclose conditioned space except fenestration areas and building service openings such as vents and grilles.

*Orientation:* the directional placement of a building on a building site with reference to the building's longest horizontal axis or, if there is no longest horizontal axis, then with reference to the designated main entrance.

*Outdoor air:* air taken from the exterior of the building that has not been previously circulated through the building. (See "ventilation air")

*Ozone depletion factor:* a relative measure of the potency of chemicals in depleting stratospheric ozone. The ozone depletion factor potential depends upon the chlorine and the bromine content and atmospheric lifetime of the chemical. The depletion factor potential is normalized such that the factor for CFC–11 is set equal to unity and the factors for the other chemicals indicate their potential relative to CFC–11.

*Packaged terminal air conditioner (PTAC):* a factory-selected wall sleeve and separate unencased combination of heating and cooling components, assemblies, or sections (intended for mounting through the wall to serve a single room or zone). It includes heating capability by hot water, steam, or electricity.

*Packaged terminal heat pump:* a PTAC capable of using the refrigeration system in a reverse cycle or heat pump mode to provide heat.

*Plenum:* an enclosure that is part of the air-handling system and is distinguished by having a very low air velocity. A plenum often is formed in part or in total by portions of the building.

*Private driveways, walkways, and parking lots:* exterior transit areas that are associated with a commercial or residential building and intended for use solely by the employees or tenants and not by the general public.

*Process energy:* energy consumed in support of a manufacturing, industrial, or commercial process other than the maintenance of comfort and amenities for the occupants of a building.

*Process load:* the calculated or measured time-integrated load on a building resulting from the consumption or release of process energy.

*Programmable:* capable of being preset to certain conditions and having self-initiation to change to those conditions.

*Projection factor:* the exterior horizontal shading projection depth divided by the sum of the height of the fenestration and the distance from the top of the fenestration to the bottom of the external shading projection in units consistent with the projection depth.

*Prototype building:* a generic building design of the same size and occupancy type as the proposed design that complies with the prescriptive requirements of subpart D of this part and has prescribed assumptions used to generate the energy budget concerning shape, orientation, and HVAC and other system designs.

*Public driveways, walkways, and parking lots:* exterior transit areas that are intended for use by the general public.

*Public facility restroom:* a restroom used by the transient public.

*Readily accessible:* capable of being reached quickly for operation, renewal, or inspections without requiring those to whom ready access is requisite to climb over or remove obstacles or to resort to portable ladders, chairs, etc. (See also accessible.)

*Recooling:* lowering the temperature of air that has been previously heated by a heating system.

*Reference building:* a specific building design that has the same form, orientation, and basic systems as the prospective design that is to be evaluated for compliance and meets all the criteria listed in subsection 501.2 or subsection 601.2.

*Reheating:* raising the temperature of air that has been previously cooled either by refrigeration or an economizer system.

*Reset:* adjustment of the controller setpoint to a higher or lower value automatically or manually.

*Roof:* those portions of the building envelope, including all opaque surfaces, fenestration, doors, and hatches, that are above conditioned space and are horizontal or tilted at less than 60° from horizontal. (See also"walls")

*Room air conditioner:* an encased assembly designed as a unit to be mounted in a window or through a wall or as a console. It is designed primarily to provide free delivery of conditioned air to an enclosed space, room, or zone. It includes a prime source of refrigeration for cooling and dehumidification and means for circulating and cleaning air and may also include means for ventilating and heating.

*Seasonal energy efficiency ratio (SEER):* the total cooling output of an air conditioner during its normal annual usage period for cooling, in Btu, divided by the total electric energy input during the same period, in watt-hours.

*Service systems:* all energy-using or energy-distributing components in a building that are operated to support the occupant or process functions housed therein (including HVAC, service water heating, illumination, transportation, cooking or food preparation, laundering, or similar functions).

*Service water heating:* the supply of hot water for purposes other than comfort heating and process requirements.

*Shading coefficient (SC):* the ratio of solar heat gain through fenestration under a specific set of conditions, with or without integral shading devices, to that occurring through unshaded 3/32-in-thick clear double-strength glass under the same conditions.

*Shell Building:* a building for which the envelope is designed, constructed, or both prior to knowing the occupancy type. (See also "speculative building")

*Single-Line Diagram:* a simplified schematic drawing that shows the connection between two or more items. Common multiple connections are shown as one line.

*Skylight:* glazing that is horizontal or tilted less than 60° from horizontal.

*Solar energy source:* natural daylighting or thermal, chemical, or electrical energy derived from direct conversion of incident solar radiation at the building site.

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*Solar heat gain coefficient (SHGC):* the ratio of the solar heat gain entering the space through the fenestration area to the incident solar radiation. Solar heat gain includes directly transmitted solar heat and absorbed solar radiation, which is then reradiated, conducted, or convected into the space. (See fenestration area)

*Speculative building:* a building for which the envelope is designed, constructed, or both prior to the design of the lighting, HVAC systems, or both. A speculative building differs from a shell building in that the intended occupancy is known for the speculative building. (See also "shell building")

*System:* a combination of equipment and/or controls, accessories, interconnecting means, and terminal elements by which energy is transformed so as to perform a specific function, such as HVAC, service water heating, or illumination.

*Tandem wiring:* pairs of luminaries operating with lamps in each luminaire powered from a single ballast contained in one of the luminaires.

*Task lighting:* lighting that provides illumination for specific functions and is directed to a specific surface or area.

*Task location:* an area of the space where significant visual functions are performed and where lighting is required above and beyond that required for general ambient use.

*Terminal element:* a device by which the transformed energy from a system is finally delivered. Examples include registers, diffusers, lighting fixtures, and faucets.

*Thermal conductance (C):* the constant time rate of heat flow through the unit area of a body induced by a unit temperature difference between the surfaces, expressed in Btu/(h•ft²•°F). It is the reciprocal of thermal resistance. (See "thermal resistance")

*Thermal mass:* materials with mass heat capacity and surface area capable of affecting building loads by storing and releasing heat as the interior or exterior temperature and radiant conditions fluctuate. (See also "heat capacity" and "wall heat capacity")

*Thermal mass wall insulation position:*

(1) Exterior insulation position: a wall having all or nearly all of its mass exposed to the room air with the insulation on the exterior of that mass.

(2) Integral insulation position: a wall having mass exposed to both room and outside (outside) air with substantially equal amounts of mass on the inside and outside of the insulation layer.

(3) Interior insulation position: a wall not meeting either of the above definitions, particularly a wall having most of its mass external to an insulation layer.

*Thermal resistance (R):* the reciprocal of thermal conductance 1/C, 1/H, 1/U; expressed in (h•ft²·°F)/Btu.

*Thermal transmittance (U):* the overall coefficient of heat transfer from air to air. It is the time rate of heat flow per unit area under steady conditions from the fluid on the warm side of the barrier to the fluid on the cold side, per unit temperature difference between the two fluids, expressed in Btu/(h•ft²·°F).

*Thermal transmittance, overall* ($U_o$): the gross overall (area weighted average) coefficient of heat transfer from air to air for a gross area of the building envelope, Btu/(h•ft²·°F). The $U_o$ value applies to the combined effect of the time rate of heat flows through the various parallel paths, such as windows, doors, and opaque construction areas, composing the gross area of one or more building envelope components, such as walls, floors, and roof or ceiling.

*Thermostat:* an automatic control device responsive to temperature.

*Unconditioned space:* space within a building that is not a conditioned space. (See "conditioned space")

*Unitary cooling equipment:* one or more factory-made assemblies that normally include an evaporator or cooling coil, a compressor, and a condenser combination (and may also include a heating function).

*Unitary heat pump:* one or more factory-made assemblies that normally include an indoor conditioning coil, compressor(s), and outdoor coil or refrigerant-to-water heater exchanger, including means to provide both heating and cooling functions.

*Variable-air-volume (VAV) HVAC system:* HVAC systems that control the dry-bulb temperature within a space by varying the volume of heated or cooled supply air to the space.

*Vent damper:* a device intended for installation in the venting system, in the outlet of or downstream of the appliance draft hood, of an individual automatically operating gas-fired appliance, which is designed to automatically open the venting system when the appliance is in operation and to automatically close off the venting system when the appliance is in a standby or shutdown condition.

*Ventilation:* the process of supplying or removing air by natural or mechanical means to or from any space. Such air may or may not have been conditioned.

*Ventilation air:* that portion of supply air which comes from the outside, plus any recirculated air, to maintain the desired quality of air within a designated space. (See also "outdoor air")

*Visible light transmittance:* the fraction of solar radiation in the visible light spectrum that passes through the fenestration (window, clerestory, or skylight).

*Walls:* those portions of the building envelope enclosing conditioned space, including all opaque surfaces, fenestration, and doors, which are vertical or tilted at an angle of 60* from horizontal or greater. (See also "roof")

*Wall heat capacity:* the sum of the products of the mass of each individual material in the wall per unit area of wall surface times its individual specific heat, expressed in Btu/(ft²•°F). (See" thermal mass")

*Window to wall ratio (WWR):* the ratio of the wall fenestration area to the gross exterior wall area.

*Zone:* a space or group of spaces within a building with any combination of heating, cooling, or lighting requirements sufficiently similar so that desired conditions can be maintained throughout by a single controlling device.

## Subpart C—Design Conditions

### § 434.301 Design criteria.

301.1 The following design parameters shall be used for calculations required under subpart D of this part.

301.1.1 *Exterior Design Conditions.* Exterior Design Conditions shall be expressed in accordance with Table 301.1.

TABLE 301.1.—EXTERIOR DESIGN CONDITIONS

| | | |
|---|---|---|
| Winter Design Dry-Bulb (99%) | | Degrees F. |
| Summer Design Dry-Bulb (2.5%) | | Degrees F. |
| Mean Coincident Wet-Bulb (2.5%) | | Degrees F. |
| Degree-Days, Heating (Base 65) | | HDD Base 65° F. |
| Degree-Days, Cooling (Base 65) | | CDD Base 65°F. |



TABLE 301.1.—EXTERIOR DESIGN CONDITIONS—Continued

| | | |
|---|---|---|
| Annual Operting Hours, 8 a.m. to 4 p.m. when 55°F≤T≤69°F | | Hours. |

[The exterior design conditions shall be added to Table 301.1 from the city-specific Shading Coefficient table from Appendix A of RS–1 (incorporated by reference, see § 434.701). Copies of specific tables contained in Appendix A of RS–1 (incorporated by reference, see § 434.701). can be obtained from the Energy Code for Federal Commercial Buildings, Docket No. EE–RM–79–112–C, EE–43, Office of Building Research and Standards, U.S. Department of Energy, Room 1J–018, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9127. Adjustments may be made to reflect local climates which differ from the tabulated temperatures or local weather experience as determined by the building official. Where local building site climatic data are not available, climate data from a nearby location included in RS–1, Appendix C, (incorporated by reference, see § 434.701) and RS–4 Chapter 24, Table 1, (incorporated by reference, see § 434.701) shall be used as determined by the building official.]

301.2 *Indoor Design Conditions.* Indoor design temperature and humidity conditions shall be in accordance with the comfort criteria in RS–2 (incorporated by reference, see § 434.701), except that humidification and dehumidification are not required.

## Subpart D—Building Design Requirements—Electric Systems and Equipment

### § 434.401 Electrical power and lighting systems.

Electrical power and lighting systems, other than those systems or portions thereof required for emergency use only, shall meet these requirements.

401.1 *Electrical Distribution Systems.*

401.1.1 *Check Metering.* Single-tenant buildings with a service over 250 kVA and tenant spaces with a connected load over 100 kVA in multiple-tenant buildings shall have provisions for check metering of electrical consumption. The electrical power feeders for which provision for check metering is required shall be subdivided as follows:

401.1.1.1 Lighting and receptacle outlets

401.1.1.2 HVAC systems and equipment

401.1.1.3 Service water heating (SWH), elevators, and special occupant equipment or systems of more than 20 kW.

401.1.1.4 Exception to 401.1.1.1 through 401.1.1.3: 10 percent or less of the loads on a feeder may be from another usage or category.

401.1.2 Tenant-shared HVAC and service hot water systems in multiple tenant buildings shall have provision to be separately check metered.

401.1.3 Subdivided feeders shall contain provisions for portable or permanent check metering. The minimum acceptable arrangement for compliance shall provide a safe method for access by qualified persons to the enclosures through which feeder conductors pass and provide sufficient space to attach clamp-on or split core current transformers. These enclosures may be separate compartments or combined spaces with electrical cabinets serving another function. Dedicated enclosures so furnished shall be identified as to measuring function available.

401.1.4 *Electrical Schematic.* The person responsible for installing the electrical distribution system shall provide the Federal building manager a single-line diagram of the record drawing for the electrical distribution system, which includes the location of check metering access, schematic diagrams of non-HVAC electrical control systems, and electrical equipment manufacturer's operating and maintenance literature.

401.2 *Electric Motors.* All permanently wired polyphase motors of 1 hp or more shall meet these requirements:

401.2.1 *Efficiency.* NEMA design A & B squirrel-cage, foot-mounted, T-frame induction motors having synchronous speeds of 3600, 1800, 1200, and 900 rpm, expected to operate more than 1000 hours per year shall have a nominal full-load efficiency no less than that shown in Table 401.2.1 or shall be classified as an "energy efficient motor" in accordance with RS–3 (incorporated by reference, see § 434.701). The following are not covered:

(a) Multispeed motors used in systems designed to use more than one speed.

(b) Motors used as a component of the equipment meeting the minimum equipment efficiency requirements of subsection 403, provided that the motor input is included when determining the equipment efficiency.

TABLE 401.2.1.—MINIMUM ACCEPTABLE NOMINAL FULL-LOAD EFFICIENCY FOR SINGLE-SPEED POLYPHASE SQUIRREL-CAGE INDUCTION MOTORS HAVING SYNCHRONOUS SPEEDS OF 3600, 1800, 1200 AND 900 RPM [1]

| HP | 2-Pole | | 4-Pole | | 6-Pole | | 8-Pole | |
|---|---|---|---|---|---|---|---|---|
| | Nominal efficiency | Minimum efficiency | Nominal efficiency | Minimum efficiency | Nominal efficiency | Minimum efficiency | Nominal efficiency | Minimum efficiency |
| **Full-Load Efficiencies—Open Motors** | | | | | | | | |
| 1.0 | ..... | ..... | 82.5 | 81.5 | 80.0 | 78.5 | 74.0 | 72.0 |
| 1.5 | 82.5 | 81.5 | 84.0 | 82.5 | 84.0 | 82.5 | 75.5 | 74.0 |
| 2.0 | 84.0 | 82.5 | 84.0 | 82.5 | 85.5 | 84.0 | 85.5 | 84.0 |
| 3.0 | 84.0 | 82.5 | 86.5 | 85.5 | 86.5 | 85.5 | 86.5 | 85.5 |
| 5.0 | 85.5 | 84.0 | 87.5 | 86.5 | 87.5 | 86.5 | 87.5 | 86.0 |
| 7.5 | 87.5 | 86.5 | 88.5 | 87.5 | 88.5 | 87.5 | 88.5 | 87.5 |
| 10.0 | 88.5 | 87.5 | 89.5 | 88.5 | 90.2 | 89.5 | 89.5 | 88.5 |
| 15.0 | 89.5 | 88.5 | 91.0 | 90.2 | 90.2 | 89.5 | 89.5 | 88.5 |
| 20.0 | 90.2 | 89.5 | 91.0 | 90.2 | 91.0 | 90.2 | 90.2 | 89.5 |
| 25.0 | 91.0 | 90.2 | 91.7 | 91.0 | 91.7 | 91.0 | 90.2 | 89.5 |
| 30.0 | 91.0 | 90.2 | 92.4 | 91.7 | 92.4 | 91.7 | 91.7 | 90.2 |
| 40.0 | 91.7 | 91.0 | 93.0 | 92.4 | 93.0 | 92.4 | 91.0 | 90.2 |
| 50.0 | 92.4 | 91.7 | 93.0 | 92.4 | 93.0 | 92.4 | 91.7 | 91.0 |
| 60.0 | 93.0 | 92.4 | 93.6 | 93.0 | 93.6 | 93.0 | 92.4 | 91.7 |
| 75.0 | 93.0 | 92.4 | 94.1 | 93.6 | 93.6 | 93.0 | 93.6 | 93.0 |

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TABLE 401.2.1.—MINIMUM ACCEPTABLE NOMINAL FULL-LOAD EFFICIENCY FOR SINGLE-SPEED POLYPHASE SQUIRREL-CAGE INDUCTION MOTORS HAVING SYNCHRONOUS SPEEDS OF 3600, 1800, 1200 AND 900 RPM [1]—Continued

| HP | 2-Pole | | 4-Pole | | 6-Pole | | 8-Pole | |
|---|---|---|---|---|---|---|---|---|
| | Nominal efficiency | Minimum efficiency | Nominal efficiency | Minimum efficiency | Nominal efficiency | Minimum efficiency | Nominal efficiency | Minimum efficiency |
| 100.0 | 93.0 | 92.4 | 94.1 | 93.6 | 94.1 | 93.6 | 93.6 | 93.0 |
| 125.0 | 93.6 | 93.0 | 94.5 | 94.1 | 94.1 | 93.6 | 93.6 | 93.0 |
| 150.0 | 93.6 | 93.0 | 95.0 | 94.5 | 94.5 | 94.1 | 93.6 | 93.0 |
| 200.0 | 94.5 | 94.1 | 95.0 | 94.5 | 94.5 | 94.1 | 93.6 | 93.0 |
| **Full-Load Efficiencies—Enclosed Motors** | | | | | | | | |
| 1.0 | 75.5 | 74.5 | 82.5 | 81.5 | 80.0 | 78.5 | 74.0 | 72.0 |
| 1.5 | 82.5 | 81.5 | 84.0 | 82.5 | 85.5 | 84.0 | 77.0 | 75.5 |
| 2.0 | 84.0 | 82.5 | 84.5 | 82.5 | 86.5 | 85.5 | 82.5 | 81.5 |
| 3.0 | 85.5 | 84.0 | 87.5 | 86.5 | 87.5 | 86.5 | 84.0 | 82.5 |
| 5.0 | 87.5 | 86.5 | 87.5 | 86.5 | 87.5 | 86.5 | 85.5 | 84.0 |
| 7.5 | 88.5 | 87.5 | 89.5 | 88.5 | 89.5 | 88.5 | 85.5 | 84.0 |
| 10.0 | 89.5 | 88.5 | 89.5 | 88.5 | 89.5 | 88.5 | 88.5 | 87.5 |
| 15.0 | 90.2 | 89.5 | 91.0 | 90.2 | 90.2 | 89.5 | 88.5 | 87.5 |
| 20.0 | 90.2 | 89.5 | 91.0 | 90.2 | 90.2 | 89.5 | 89.5 | 88.5 |
| 25.0 | 91.0 | 90.2 | 92.4 | 91.7 | 91.7 | 91.0 | 89.5 | 88.5 |
| 30.0 | 91.0 | 90.2 | 92.4 | 91.7 | 91.7 | 91.0 | 91.0 | 90.2 |
| 40.0 | 91.7 | 91.0 | 93.0 | 92.4 | 93.0 | 92.4 | 91.0 | 90.2 |
| 50.0 | 92.4 | 91.7 | 93.0 | 92.4 | 93.0 | 92.4 | 91.7 | 91.0 |
| 60.0 | 93.0 | 92.4 | 93.6 | 93.0 | 93.6 | 93.0 | 91.7 | 91.0 |
| 75.0 | 93.0 | 92.4 | 94.1 | 93.6 | 93.6 | 93.0 | 93.0 | 92.4 |
| 100.0 | 93.6 | 93.0 | 94.5 | 94.1 | 94.1 | 93.6 | 93.0 | 92.4 |
| 125.0 | 94.5 | 94.1 | 94.5 | 94.1 | 94.1 | 93.6 | 93.6 | 93.0 |
| 150.0 | 94.5 | 94.1 | 95.0 | 94.5 | 94.5 | 94.1 | 94.1 | 93.0 |
| 200.0 | 95.0 | 94.5 | 95.0 | 94.5 | 95.0 | 94.5 | 94.1 | 93.6 |

[1] For many applications, efficiencies greater than those listed are likely to be cost-effective. Guidance for evaluating the cost effectiveness of energy efficient motor applications is given in RS–43 and RS–44 (incorporated by reference, see § 434.701).

*401.3 Lighting Power Allowance.* The lighting system shall meet the provisions of subsections 401.3.1 through 401.3.5.

*401.3.1 Building Exteriors.* The total connected exterior lighting power for the building, or a facility containing multiple buildings, shall not exceed the total exterior lighting power allowance, which is the sum of the individual allowances determined from Table 401.3.1. The individual allowances are determined by multiplying the specific area or length of each area description times the allowance for that area. Exceptions are as follows: Lighting for outdoor manufacturing or processing facilities, commercial greenhouses, outdoor athletic facilities, public monuments, designated high-risk security areas, signs, retail storefronts, exterior enclosed display windows, and lighting specifically required by local ordinances and regulations.

TABLE 401.3.1.—EXTERIOR LIGHTING POWER ALLOWANCE

| Area description | Allowance |
|---|---|
| Exit (with or without canopy) | 25 W/lin ft of door opening. |
| Entrance (without canopy) | 30 W/lin ft of door opening. |
| Entrance (with canopy): | |
| High Traffic (retail, hotel, airport, theater, etc.) | 10 W/ft$^2$ of canopied area. |
| Light Traffic (hospital, office, school, etc.) | 4 W/ft$^2$ of canopied area. |
| Loading area | 0.40 W/ft$^2$. |
| Loading door | 20 W/lin ft of door opening. |
| Building exterior surfaces/facades | 0.25 W/ft$^2$ of surface area to be illuminated. |
| Storage and non-manufacturing work areas | 0.20 W/ft$^2$. |
| Other activity areas for casual use such as picnic grounds, gardens, parks, and other landscaped areas. | 0.10 W/ft$^2$. |
| Private driveways/walkways | 0.10 W/ft$^2$. |
| Public driveways/walkways | 0.15 W/ft$^2$. |
| Private parking lots | 0.12 W/ft$^2$. |
| Public parking lots | 0.18 W/ft$^2$. |

401.3.1.1 Trade-offs of exterior lighting budgets among exterior areas shall be allowed provided the total connected lighting power of the exterior area does not exceed the exterior lighting power allowance. Trade-offs between interior lighting power allowances and exterior lighting power allowances shall not be allowed.

*401.3.2 Building interiors.* The total connected interior lighting power for a building, including adjustments in accordance with subsection 401.3.3, shall not exceed the total interior lighting power allowance explained in this paragraph. Using Table 401.3.2a, multiply the interior lighting power allowance value by the gross lighted area of the most appropriate building or space activity. For multi-use buildings, using Table 401.3.2a, select the interior power allowance value for each activity using the column for the gross lighted area of the whole building and multiply it by the associated gross area for that activity. The interior lighting power allowance is the sum of all the wattages for each area/activity. Using Table 401.3.2b, c, or d, multiply the interior lighting power allowance values of each individual area/activity by the area of the space and by the area factor from Figure 401.3.2e, based on the most appropriate area/activity provided. The interior lighting power allowance is the sum of the wattages for each individual space. When over 20% of the building's tasks or interior areas are undefined, the most appropriate value for that building from Table 401.3.2a shall be used for the undefined spaces. Exceptions are as follows:

(a) Lighting power that is an essential technical element for the function performed in theatrical, stage, broadcasting, and similar uses.

(b) Specialized medical, dental, and research lighting.

(c) Display lighting for exhibits in galleries, museums, and monuments.

(d) Lighting solely for indoor plant growth (between the hours of 10:00 pm and 6:00 am).

(e) Emergency lighting that is automatically off during normal building operation.

(f) High-risk security areas.

(g) Spaces specifically designed for the primary use by the physically impaired or aged.

(h) Lighting in dwelling units.

401.3.2.1 Trade-offs of the interior lighting power budgets among interior spaces shall be allowed provided the total connected lighting power within the building does not exceed the interior lighting power allowance. Trade-offs between interior lighting power allowances and exterior lighting power allowances shall not be allowed.

401.3.2.2 *Building/Space Activities.* Definitions of buildings/space activity as they apply to Table 401.3.2a are as follows. These definitions are necessary to characterize the activities for which lighting is provided. They are applicable only to Table 401.3.2a. They are not intended to be used elsewhere in place of building use group definitions provided in the Building Code. They are not included in § 434.201, "Definitions," to avoid confusion with "Occupancy Type Categories."

(a) *Food service, fast food, and cafeteria:* This group includes cafeterias, hamburger and sandwich stores, bakeries, ice cream parlors, cookie stores, and all other kinds of retail food service establishments in which customers are generally served at a counter and their direct selections are paid for and taken to a table or carried out.

(b) *Garages:* This category includes all types of parking garages, except for service or repair areas.

(c) *Leisure dining and bar:* This group includes cafes, diners, bars, lounges, and similar establishments where orders are placed with a wait person.

(d) *Mall concourse, multi-store service:* This group includes the interior of multifunctional public spaces, such as shopping center malls, airports, resort concourses and malls, entertainment facilities, and related types of buildings or spaces.

(e) *Offices:* This group includes all kinds of offices, including corporate and professional offices, office/laboratories, governmental offices, libraries, and similar facilities, where paperwork occurs.

(f) *Retail:* A retail store, including departments for the sale of accessories, clothing, dry goods, electronics, and toys, and other types of establishments that display objects for direct selection and purchase by consumers. Direct selection means literally removing an item from display and carrying it to the checkout or pick-up at a customer service facility.

(g) *Schools:* This category, subdivided by pre-school/elementary, junior high/high school, and technical/vocational, includes public and private educational institutions, for children or adults, and may also include community centers, college and university buildings, and business educational centers.

(h) *Service establishment:* A retail-like facility, such as watch repair, real estate offices, auto and tire service facilities, parts departments, travel agencies and similar facilities, in which the customer obtains services rather than the direct selection of goods.

(i) *Warehouse and storage:* This includes all types of support facilities, such as warehouses, barns, storage buildings, shipping/receiving buildings, boiler or mechanical buildings, electric power buildings, and similar buildings where the primary visual task is large items.

401.3.2—Tables and Figures

TABLE 401.3.2A.—INTERIOR LIGHTING POWER ALLOWANCE W/FT$^2$

| Building space activity [1] | Gross lighted area of total building | | | | | |
|---|---|---|---|---|---|---|
| | 0 to 2,000 ft$^2$ | 2,001 to 10,000 ft$^2$ | 10,001 to 25,000 ft$^2$ | 25,001 to 50,000 ft$^2$ | 50,001 to 250,000 ft$^2$ | 250,000 ft$^2$ |
| Food Service: | | | | | | |
| Fast Food/Cafeteria | 1.50 | 1.38 | 1.34 | 1.32 | 1.31 | 1.30 |
| Leisure Dining/Bar | 2.20 | 1.91 | 1.71 | 1.56 | 1.46 | 1.40 |
| Offices | 1.90 | 1.81 | 1.72 | 1.65 | 1.57 | 1.50 |
| Retail [3] | 3.30 | 3.08 | 2.83 | 2.50 | 2.28 | 2.10 |
| Mall Concourse Multi-store Service | 1.60 | 1.58 | 1.52 | 1.46 | 1.43 | 1.40 |
| Service Establishment | 2.70 | 2.37 | 2.08 | 1.92 | 1.80 | 1.70 |
| Garages | 0.30 | 0.28 | 0.24 | 0.22 | 0.21 | 0.20 |
| Schools: | | | | | | |
| Preschool/Elementary | 1.80 | 1.80 | 1.72 | 1.65 | 1.57 | 1.50 |
| Jr. High/High School | 1.90 | 1.90 | 1.88 | 1.83 | 1.76 | 1.70 |
| Technical/Vocational | 2.40 | 2.33 | 2.17 | 2.01 | 1.84 | 1.70 |
| Warehouse/Storage | 0.80 | 0.66 | 0.56 | 0.48 | 0.43 | 0.40 |

[1] If at least 10% of the building area is intended for multiple space activities, such as parking, retail, and storage in an office building, then calculate for each separate building type/space activity.

[2] The values in the categories are building wide allowances which include the listed activity and directly related facilities such as conference rooms, lobbies, corridors, restrooms, etc.

[3] Includes general, merchandising, and display lighting.

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TABLE 401.3.2B.—UNIT INTERIOR LIGHTING POWER ALLOWANCE

| Common area/activity [1] | UPD W/ft [2] |
|---|---|
| Auditorium [2] | 1.4 |
| Corridor [3] | 0.8 |
| Classroom/Lecture Hall | 2.0 |
| Electrical/Mechanical Equipment Room: | |
| General [3] | 0.7 |
| Control Rooms [3] | 1.5 |
| Food Service: | |
| Fast Food/Cafeteria | 1.3 |
| Leisure Dining [4] | 1.4 |
| Bar/Lounge [4] | 2.5 |
| Kitchen | 1.4 |
| Recreation/Lounge | 0.7 |
| Stair: | |
| Active Traffic | 0.6 |
| Emergency Exit | 0.4 |
| Toilet & Washroom | 0.8 |
| Garage: | |
| Auto & Pedestrian Circulation Area | 0.3 |
| Parking Area | 0.2 |
| Laboratory | 2.2 |
| Library: | |
| Audio Visual | 1.1 |
| Stack Area | 1.1 |
| Card File & Cataloging | 0.8 |
| Reading Area | 1.1 |
| Lobby (General): | |
| Reception & Waiting | 1.0 |
| Elevator Lobbies | 0.4 |
| Atrium (Multi-Story): | |
| First 3 Floors | 0.7 |
| Each Additional Floor | 0.2 |
| Locker Room & Shower | 0.8 |
| Office Category 1 | |
| Enclosed offices, all open plan offices w/o partitions or w/partitions [6] lower than 4.5 ft below the ceiling. [5] | |
| Reading, Typing and Filing | 1.5 |
| Drafting | 1.9 |
| Accounting | 1.6 |
| Office Category 2: | |
| Open plan offices 900 ft [2] or larger w/partitions | |
| 1 3.5 to 4.5 ft below the ceiling.. | |
| Offices less than 900 ft2 shall use category 1 [3] | |
| Reading, Typing and Filing | 1.5 |
| Drafting | 2.0 |
| Accounting | 1.8 |
| Office Category 3: | |
| Open plan offices 900 ft [2] or larger w/partitions [6] higher than 3.5 ft below the ceiling. | |
| Offices less than 900 ft/2 shall use category 1. [3] | |
| Reading, Typing and Filing | 1.7 |
| Drafting | 2.3 |
| Accounting | 1.9 |
| Common Activity Areas | |
| Conference/Meeting Room [2] | 1.3 |
| Computer/Office Equipment | 1.1 |
| Filing, Inactive | 1.0 |
| Mail Room | 1.8 |
| Shop (Non-Industrial): | |
| Machinery | 2.5 |
| Electrical/Electronic | 2.5 |
| Painting | 1.6 |
| Carpentry | 2.3 |
| Welding | 1.2 |
| Storage and Warehouse; | |
| Inactive Storage | 0.2 |
| Active Storage, Bulky | 0.3 |
| Active Storage, Fine | 0.9 |
| Material Handling | 1.0 |
| Unlisted Space | 0.2 |

[1] Use a weighted average UPD in rooms with multiple simultaneous activities, weighted in proportion to the area served.
[2] A 1.5 power adjustment factor is applicable for multi-function spaces when a supplementary system having independent controls is installed that has installed power ≤ 33% of the adjusted lighting power for that space.
[3] Area factor of 1.0 shall be used for these spaced.
[4] UPD includes lighting power required for clean-up purposes.



[5] Area factor shall not exceed 1.55.
[6] Not less than 90 percent of all work stations shall be individually enclosed with partitions of at least the height described.

TABLE 401.3.2C.—UNIT INTERIOR LIGHTING POWER ALLOWANCE

| Specific building area/activity [1] | UPD W/ft [2] |
|---|---|
| Airport, Bus and Rail Station: | |
| Baggage Area | 0.8 |
| Concourse/Main Thruway | 0.9 |
| Ticket Counter | 2.0 |
| Waiting & Lounge Area | 0.8 |
| Bank: | |
| Customer Area | 1.0 |
| Banking Activity Area | 2.2 |
| Barber & Beauty Parlor | 1.6 |
| Church, Synagogue, Chapel: | |
| Worship/Congregational | 1.7 |
| Preaching & Sermon/Choir | 1.8 |
| Dormitory: | |
| Bedroom | 1.0 |
| Bedroom w/Study | 1.3 |
| Study Hall | 1.2 |
| Fire & Police Department: | |
| Fire Engine Room | 0.7 |
| Jail Cell | 0.8 |
| Hospital/Nursing Home: | |
| Corridor [3] | 1.3 |
| Dental Suite/Examination/Treatment | 1.6 |
| Emergency | 2.0 |
| Laboratory | 1.7 |
| Lounge/Waiting Room | 0.9 |
| Medical Supplies | 2.4 |
| Nursery | 1.6 |
| Nurse Station | 1.8 |
| Occupational Therapy/Physical Therapy | 1.4 |
| Patient Room | 1.2 |
| Pharmacy | 1.5 |
| Radiology | 1.8 |
| Surgical & Obstetrics Suites: | |
| General Area | 1.8 |
| Operating Room | 6.0 |
| Recovery | 2.0 |
| Hotel/Conference Center: | |
| Banquet Room/Multipurpose [2] | 1.7 |
| Bathroom/Powder Room | 1.2 |
| Guest Room | 0.9 |
| Public Area | 1.0 |
| Exhibition Hall | 1.8 |
| Conference/Meeting [2] | 1.5 |
| Lobby | 1.5 |
| Reception Desk | 2.4 |
| Laundry: | |
| Washing | 0.9 |
| Ironing & Sorting | 1.3 |
| Museum & Gallery: | |
| General Exhibition | 1.9 |
| Inspection/Restoration | 3.0 |
| Storage (Artifacts): | |
| Inactive | 0.6 |
| Active | 0.7 |
| Post Office: | |
| Lobby | 1.1 |
| Sorting & Mailing | 2.1 |
| Service Station/Auto Repair | 0.8 |
| Theater: | |
| Performance Arts | 1.3 |
| Motion Picture | 1.0 |
| Lobby | 1.3 |
| Retail Establishments—Merchandising & Circulation Area (Applicable to all lighting, including accent and display lighting, installed in merchandising and circulation areas): | |
| Type 1: Jewelry merchandising, where minute examination of displayed merchandise is critical. | 5.6 |
| Type 2: Fine merchandising, such as fine apparel and accessories, china, crystal, and silver art galleries and where the detailed display and examination of merchandising is important. | 2.9 |
| Type 3: Mass merchandising, such as general apparel, variety goods, stationary, books, sporting goods, hobby materials, cameras, gifts, and luggage, displayed in a warehouse type of building, where focused display and detailed examination of merchandise is important. | 2.7 |

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TABLE 401.3.2C.—UNIT INTERIOR LIGHTING POWER ALLOWANCE—Continued

| Specific building area/activity [1] | UPD W/ft² |
|---|---|
| Type 4: General merchandising, such as general apparel, variety goods, stationary, books, sporting goods, hobby materials, cameras, gifts, and luggage, displayed in a department store type of building, where general display and examination of merchandise is adequate. | 2.3 |
| Type 5: Food and miscellaneous such as bakeries, hardware and housewares, grocery stores, appliance and furniture stores, where pleasant appearance is important. | 2.4 |
| Type 6: Service establishments, where functional performance is important. | 2.6 |
| Mall Concourse | 1.4 |
| Retail Support Areas | 2.1 |
| Tailoring | 1.1 |
| Dressing/Fitting Rooms | ..... |

[1] Use a weighted average UPD in rooms with multiple simultaneous activities, weighted in proportion to the area served.
[2] A 1.5 power adjustment factor is applicable for multi-function spaces when a supplementary system having independent controls is installed that has installed power ≤ 33% of the adjusted lighting power for that space.
[3] Area factor shall not exceed 1.55.

TABLE 401.3.2D.—UNIT INTERIOR LIGHTING POWER ALLOWANCE

| Indoor athletic area/activity [1 2] | UPD W/ft² |
|---|---|
| Seating Area, All Sports | 0.4 |
| Badminton: | |
| Club | 0.5 |
| Tournament | 0.8 |
| Basketball/Volleyball: | |
| Intramural | 0.8 |
| College | 1.3 |
| Professional | 1.9 |
| Bowling: | |
| Approach Area | 0.5 |
| Lanes | 1.1 |
| Boxing or Wrestling (platform): | |
| Amateur | 2.4 |
| Professional | 4.8 |
| Gymnasium: | |
| General Exercising and Recreation Only | 1.0 |
| Handball/Racquetball/Squash: | |
| Club | 1.3 |
| Tournament | 2.6 |
| Hockey, Ice: | |
| Amateur | 1.3 |
| College or Professional | 2.6 |
| Skating Rink: | |
| Recreational | 0.6 |
| Exhibition/Professional | 2.6 |
| Swimming: | |
| Recreational | 0.9 |
| Exhibition | 1.5 |
| Underwater | 1.0 |
| Tennis: | |
| Recreational (Class III) | 1.3 |
| Club/College (Class II) | 1.9 |
| Professional (Class I) | 2.6 |
| Tennis, Table: | |
| Club | 1.0 |
| Tournament | 1.6 |

[1] Area factor of 1.0 shall be used for these spaces.
[2] Consider as 10 ft. beyond playing boundaries but less than or equal to the total floor area of the sports space minus spectator seating area.

Figure 401.3.2e—Area Factor Formula

$$\text{where } n = \frac{10.21\ (CH - 2.5)}{\sqrt{A_r}} - 1$$

Area Factor Formula:

Area Factor (AF) = $0.2 + 0.8(1/0.9^n)$

Where:

AF = area factor,

CH = ceiling height (ft),

$A_r$ = space area (ft²).

If AF <1.0 use 1.0; if AF >1.8 use 1.8

401.3.3 *Lighting Power Control Credits.* The interior connected lighting power determined in accordance with § 434.401.3.2 can be decreased for luminaries that are automatically controlled for occupancy, daylight, lumen maintenance, or programmable timing. The adjusted interior connected lighting power shall be determined by subtracting the sum of all lighting power control credits from the interior connected lighting power. Using Table 401.3.3, the lighting power control credit equals the power adjustment factor times the connected lighting power of the controlled lighting. The lighting power adjustment shall be applied with the following limitations:

(a) It is limited to the specific area controlled by the automatic control device.

(b) Only one lighting power adjustment may be used for each building space or luminaire, and 50 percent or more of the controlled luminaire shall be within the applicable space.

(c) Controls shall be installed in series with the lights and in series with all manual switching devices.

(d) When sufficient daylight is available, daylight sensing controls shall be capable of reducing electrical power consumption for lighting (continuously or in steps) to 50 percent or less of maximum power consumption.

(e) Daylight sensing controls shall control all luminaires to which the adjustment is applied and that direct a minimum of 50 percent of their light output into the daylight zone.

(f) Programmable timing controls shall be able to program different schedules for occupied and unoccupied days, be readily accessible for temporary override with automatic return to the original-schedule, and keep time during power outages for at least four hours.



TABLE 401.3.3.—LIGHTING POWER ADJUSTMENT FACTORS

| Automatic control devices | PAF |
|---|---|
| (1) Daylight Sensing controls (DS), continuous dimming | 0.30 |
| (2) DS, multiple step dimming | 0.20 |
| (3) DS, ON/OFF | 0.10 |
| (4) DS continuous dimming and programmable timing | 0.35 |
| (5) DS multiple step dimming and programmable timing | 0.25 |
| (6) DS ON/OFF and programmable timing | 0.15 |
| (7) DS continuous dimming, programmable timing, and lumen maintenance | 0.40 |
| (8) DS multiple step dimming, programmable timing, and lumen maintenance | 0.30 |
| (9) DS ON/OFF, programmable timing, and lumen maintenance | 0.20 |
| (10) Lumen maintenance control | 0.10 |
| (11) Lumen maintenance and programmable timing control | 0.15 |
| (12) Programmable timing control | 0.15 |
| (13) Occupancy sensor (OS) | 0.30 |
| (14) OS and DS, continuous dimming | 0.40 |
| (15) OS and DS, multiple-step dimming | 0.35 |
| (16) OS and DS, ON/OFF | 0.35 |
| (17) OS, DS continuous dimming, and lumen maintenance | 0.45 |
| (18) OS, DS multiple-step dimming and lumen maintenance | 0.40 |
| (19) OS, DS ON/OFF, and lumen maintenance | 0.35 |
| (20) OS and lumen maintenance | 0.35 |
| (21) OS and programmable timing control | 0.35 |

401.3.4 *Lighting controls.*

401.3.4.1 *Type of Lighting Controls.* All lighting systems shall have controls, with the exception of emergency use or exit lighting.

401.3.4.2 *Number of Manual Controls.* Spaces enclosed by walls or ceiling-high partitions shall have a minimum of one manual control (on/off switch) for lighting in that space. Additional manual controls shall be provided for each task location or for each group of task locations within an area of 450 ft² or less. For spaces with only one lighting fixture or with a single ballast, one manual control is required. Exceptions are as follows:

401.3.4.2.1 Continuous lighting for security;

401.3.4.2.2 Systems in which occupancy sensors, local programmable timers, or three-level (including OFF) step controls or preset dimming controls are substituted for manual controls at the rate of one for every two required manual controls, providing at least one control is installed for every 1500 watts of power.

401.3.4.2.3 Systems in which four-level (including OFF) step controls or preset dimming controls or automatic or continuous dimming controls are substituted for manual controls at a rate of one for every three required manual controls, providing at least one control is installed for every 1500 watts of power.

401.3.4.2.4 Spaces that must be used as a whole, such as public lobbies, retail stores, warehouses, and storerooms.

401.3.4.3 *Multiple Location Controls.* Manual controls that operate the same load from multiple locations must be counted as one manual control.

401.3.4.4 *Control Accessibility.* Lighting controls shall be readily accessible from within the space controlled. Exceptions are as follows: Controls for spaces that are to be used as a whole, automatic controls, programmable controls, controls requiring trained operators, and controls for safety hazards and security.

401.3.4.5 *Hotel and Motel Guest Room Control.* Hotel and motel guest rooms and suites shall have at least one master switch at the main entry door that controls all permanently wired lighting fixtures and switched receptacles excluding bathrooms. The following exception applies: Where switches are provided at the entry to each room of a multiple-room suite.

401.3.4.6 *Switching of Exterior Lighting.* Exterior lighting not intended for 24-hour use shall be automatically switched by either timer or photocell or a combination of timer and photocell. When used, timers shall be capable of seven-day and seasonal daylight schedule adjustment and have power backup for at least four hours.

401.3.5 *Ballasts.*

401.3.5.1 *Tandem Wiring.* One-lamp or three-lamp fluorescent luminaries that are recess mounted within 10 ft center-to-center of each other, or pendant mounted, or surface mounted within 1 ft of each other, and within the same room, shall be tandem wired, unless three-lamp ballasts are used.

401.3.5.2 *Power Factor.* All ballasts shall have a power factor of at least 90%, with the exception of dimming ballasts, and ballasts for circline and compact fluorescent lamps and low wattage high intensity discharge (HID) lamps not over 100 W.

**434.402 Building envelope assemblies and materials.**

The building envelope and its associated assemblies and materials shall meet the provisions of this section.

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402.1 *Calculations and Supporting Information.*

402.1.1 *Material Properties.* Information on thermal properties, building envelope system performance, and component heat transfer shall be obtained from RS–4. When the information is not available from RS–4, (incorporated by reference, see § 434.701) the data shall be obtained from manufacturer's information or laboratory or field test measurements using RS–5, RS–6, RS–7, or RS–8 (incorporated by reference, see § 434.701).

402.1.1.1 The shading coefficient (SC) for fenestration shall be obtained from RS–4 (incorporated by reference, see § 434.701) or from manufacturer's test data. The shading coefficient of the fenestration, including both internal and external shading devices, is $SC_X$ and excludes the effect of external shading projections, which are calculated separately. The shading coefficient used for louvered shade screens shall be determined using a profile angle of 30 degrees as found in Table 41, Chapter 27 of RS–4 (incorporated by reference, see § 434.701).

402.1.2 *Thermal Performance Calculations.* The overall thermal transmittance of the building envelope shall be calculated in accordance with Equation 402.1.2:

$$U_o = \sum U_i A_i / A_o = (U_1A_1 + U_2A_2 + \ldots + U_nA_n)/A_o \qquad (402.1.2)$$

Where:

$U_o$ = the area-weighted average thermal transmittance of the gross area of the building envelope; *i.e.*, the exterior wall assembly including fenestration and doors, the roof and ceiling assembly, and the floor assembly, Btu/(h•ft²•°F)

$A_o$ = the gross area of the building envelope, ft²

$U_i$ = the thermal transmittance of each individual path of the building envelope, *i.e.*, the opaque portion or the fenestration, Btu/(h•ft²•°F)

$U_i = 1/R_i$ (where $R_i$ is the total resistance to heat flow of an individual path through the building envelope)

$A_i$ = the area of each individual element of the building envelope, ft²

The thermal transmittance of each component of the building envelope shall be determined with due consideration of all major series and parallel heat flow paths through the elements of the component and film coefficients and shall account for any compression of insulation. The thermal transmittance of opaque elements of assemblies shall be determined using a series path procedure with corrections for the presence of parallel paths within an element of the envelope assembly (such as wall cavities with parallel paths through insulation and studs). The thermal performance of adjacent ground in below-grade applications shall be excluded from all thermal calculations.

402.1.2.1 Envelope Assemblies Containing Metal Framing. The thermal transmittance of the envelope assembly containing metal framing shall be determined from one of three methods:

(a) Laboratory or field test measurements based on RS–5, RS–6, RS–7, or RS–8 (incorporated by reference, see § 434.701).

(b) The zone method described in Chapter 22 of RS–4 (incorporated by reference, see § 434.701) and the formulas on page 22.10.

(c) For metal roof trusses or metal studs covered by Tables 402.1.2.1a and b, the total resistance of the series path shall be calculated in accordance with the following Equations:

$$U_i = 1/R_t \qquad \text{Equation 402.1.2.1a}$$

$$R_t = R_i + R_e$$

Where:

$R_t$ = the total resistance of the envelope assembly

$R_i$ = the resistance of the series elements (for i = 1 to n) excluding the parallel path element(s)

$R_e$ = the equivalent resistance of the element containing the parallel path (R-value of insulation × $F_c$). Values for $F_c$ and equivalent resistances shall be taken from Tables 402.1.2.1a or b.

TABLE 402.1.2.1A.—PARALLEL PATH CORRECTION FACTORS—METAL ROOF TRUSSES SPACED 4 FT. O.C. OR GREATER THAT PENETRATE THE INSULATION

| Effective framing cavity R-values | Correction factor $F_c$ | Equivalent resistance $R_e$ [1] |
|---|---|---|
| R–0 | 1.00 | R–0 |
| R–5 | 0.96 | R–4.8 |
| R–10 | 0.92 | R–9.2 |
| R–15 | 0.88 | R–13.2 |
| R–20 | 0.85 | R–17.0 |
| R–25 | 0.81 | R–20.3 |
| R–30 | 0.79 | R–23.7 |
| R–35 | 0.76 | R–26.6 |
| R–40 | 0.73 | R–29.2 |
| R–45 | 0.71 | R–32.0 |
| R–50 | 0.69 | R–34.5 |
| R–55 | 0.67 | R–36.0 |

[1] Based on 0.66-inch-diameter cross members every one foot.

TABLE 402.1.2.1B.—PARALLEL PATH CORRECTION FACTORS—METAL FRAMED WALLS WITH STUDS 16 GA. OR LIGHTER

| Size of members | Spacing of framing, in. | Cavity insulation R-Value | Correction factor $F_c$ | Equivalent resistance $R_e$ |
|---|---|---|---|---|
| 2 × 4 | 16 O.C. | R–11 | 0.50 | R–5.5 |
| | | R–13 | 0.46 | R–6.0 |
| | | R–15 | 0.43 | R–6.4 |
| 2 × 4 | 24 O.C. | R–11 | 0.60 | R–6.6 |
| | | R–13 | 0.55 | R–7.2 |
| | | R–15 | 0.52 | R–7.8 |
| 2 × 6 | 16 O.C. | R–19 | 0.37 | R–7.1 |
| | | R–21 | 0.35 | R–7.4 |
| 2 × 6 | 24 O.C. | R–19 | 0.45 | R–8.6 |
| | | R–21 | 0.43 | R–9.0 |
| 2 × 8 | 16 O.C. | R–25 | 0.31 | R–7.8 |
| 2 × 8 | 24 O.C. | R–25 | 0.38 | R–9.6 |



402.1.2.2 *Envelope Assemblies Containing Nonmetal Framing.* The thermal transmittance of the envelope assembly shall be determined from laboratory or field test measurements based on RS–5, RS–6, RS–7, or RS–8 (incorporated by reference, see § 434.701) or from the series-parallel (isothermal planes) method provided in page 23.2 of Chapter 23 of RS–4 (incorporated be reference, see § 434.701).

402.1.2.3 *Metal Buildings.* For elements with internal metallic structures bonded on one or both sides to a metal skin or covering, the calculation procedure specified in RS–9 (incorporated by reference, see § 434.701) shall be used.

402.1.2.4 *Fenestration Assemblies.* Determine the overall thermal transmittance of fenestration assemblies in accordance with RS–18 and RS–19 (incorporated by reference, see § 434.701) or by calculation. Calculation of the overall thermal transmittance of fenestration assemblies shall consider the center-of-glass, edge-of-glass, and frame components.

(a) The following equation 402.1.2.4a shall be used.

$$U_{of} = \left[\sum_{i=1}^{n}\left(U_{cg,i} \times A_{cg,i} + U_{eg,i} \times A_{eg,i} + U_{f,i} \times A_{f,i}\right)\right] \Big/ \left[\sum_{i=1}^{n}\left(A_{cg,i} + A_{eg,i} + A_{f,i}\right)\right]$$

$$= \left(U_{cg,1} \times A_{cg,1} + U_{eg,1} \times A_{eg,1} + U_{f,1} \times A_{f,1} + U_{cg,2} \times A_{cg,2} + U_{eg,2} \times A_{eg,2} + U_{f,2} \times A_{f,2} + \ldots U_{cg,n} \times A_{cg,n} + U_{eg,n} \times A_{eg,n} + U_{f,n} \times A_{f,n}\right) \Big/ \left(A_{cg,1} + A_{eg,1} + A_{f,1} + A_{cg,2} + A_{eg,2} + A_{f,2} + \ldots A_{cg,n} + A_{eg,n} + A_{f,n}\right)$$

$$U_{of} = \left[\sum_{i=1}^{n}\left(U_{cg,i} \times A_{cg,i} + U_{eg,i} \times A_{eg,i} + U_{f,i} \times A_{f,i}\right)\right] \Big/ \left[\sum_{i=1}^{n}\left(A_{cg,i} + A_{eg,i} + A_{f,i}\right)\right] \qquad \text{Equation 402.1.2.4a}$$

$$= \left(U_{cg,1} \times A_{cg,1} + U_{eg,1} \times A_{eg,1} + U_{f,1} \times A_{f,1} + U_{cg,2} \times A_{cg,2} + U_{eg,2} \times A_{eg,2} + U_{f,2} \times A_{f,2} + \ldots U_{cg,n} \times A_{cg,n} + U_{eg,n} \times A_{eg,n} + U_{f,n} \times A_{f,n}\right) \Big/ \left(A_{cg,1} + A_{eg,1} + A_{f,1} + A_{cg,2} + A_{eg,2} + A_{f,2} + \ldots A_{cg,n} + A_{eg,n} + A_{f,n}\right)$$

Where:

$U_{of}$ = the overall thermal transmittance of the fenestration assemblies, including the center-of-glass, edge-of-glass, and frame components, Btu/(h·ft²·°F)

i = numerical subscript (1, 2, . . .n) refers to each of the various fenestration types present in the wall

n = the number of fenestration assemblies in the wall assembly

$U_{cg}$ = the thermal transmittance of the center-of-glass area, Btu/(h·ft²·°F)

$A_{cg}$ = the center of glass area, that is the overall visible glass area minus the edge-of-glass area, ft²

$U_{eg}$ = the thermal transmittance of the edge of the visible glass area including the effects of spacers in multiple glazed units, Btu/(h·ft²·°F)

$A_{eg}$ = the edge of the visible glass area, that is the 2.5 in. perimeter band adjacent to the frame, ft²

$U_f$ = the thermal transmittance of the frame area, Btu/(h·ft²·°F)

$A_f$ = the frame area that is the overall area of the entire glazing product minus the center-of-glass area and minus the edge-of-glass area, ft²

(b) Values of $U_{of}$ shall be based on one of the following methods:

(1) Results from laboratory test of center-of-glass, edge-of-glass, and frame assemblies tested as a unit at winter conditions. One of the procedures in Section 8.3.2 of RS–1 (incorporated by reference, see § 434.701) shall be used.

(2) Overall generic product C (commercial) in Table 13, Chapter 27, of the RS–4 (incorporated by reference, see § 434.701). The generic product C in Table 13, Chapter 27, is based on a product of 24 ft². Larger units will produce lower U-values and thus it is recommended to use the calculation procedure detailed in Equation 402.1.2.4a.

(3) Calculations based on the actual area for center-of-glass, edge-of-glass, and frame assemblies and on the thermal transmittance of components derived from 402.1.2.4a, 402.1.2.4b or a combination of the two.

402.1.3 *Gross Areas of Envelope Components.*

402.1.3.1 *Roof Assembly.* The gross area of a roof assembly shall consist of the total surface of the roof assembly exposed to outside air or unconditioned spaces and is measured from the exterior faces of exterior walls and centerline of walls separating buildings. The roof assembly includes all roof or ceiling components through which heat may flow between indoor and outdoor environments, including skylight surfaces but excluding service openings. For thermal transmittance purposes when return air ceiling plenums are employed, the roof or ceiling assembly shall not include the resistance of the ceiling or the plenum space as part of the total resistance of the assembly.

402.1.3.2 *Floor Assembly.* The gross area of a floor assembly over outside or unconditioned spaces shall consist of the total surface of the floor assembly exposed to outside air or unconditioned space and is measured from the exterior face of exterior walls and centerline of walls separating buildings. The floor assembly shall include all floor components through which heat may flow between indoor and outdoor or unconditioned space environments.

402.1.3.3 *Wall Assembly.* The gross area of exterior walls enclosing a heated or cooled space is measured on the exterior and consists of the opaque walls, including between-floor spandrels, peripheral edges of flooring, window areas (including sash), and door areas but excluding vents, grilles, and pipes.

402.2 *Air Leakage and Moisture Mitigation.* The requirements of this section shall apply only to those building components that separate interior building conditioned space from the outdoors or from unconditioned space or crawl spaces. Compliance with the criteria for air leakage through building components shall be determined by tests conducted in accordance with RS–10 (incorporated by reference, see § 434.701).

402.2.1 *Air Barrier System.* A barrier against leakage shall be installed to prevent the leakage of air through the

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building envelope according to the following requirements:

(a) The air barrier shall be continuous at all plumbing and heating penetrations of the building opaque wall.

(b) The air barrier shall be sealed at all penetrations of the opaque building wall for electrical and telecommunications equipment.

TABLE 402.2.1.—AIR LEAKAGE FOR FENESTRATION AND DOORS MAXIMUM ALLOWABLE INFILTRATION RATE

| Component | Reference standard | cfm/lin ft Sash crack or cfm/ft² of area |
|---|---|---|
| **Fenestration** | | |
| Aluminum: | | |
| Operable | RS–11* | 0.37 cfm/lin ft. |
| Jalousie | RS–11* | 1.50 cfm/ft². |
| Fixed | RS–11* | 0.15 cfm/ft². |
| Poly Vinyl Chloride (PVC): | | |
| Prime Windows | RS–12* | 0.37 cfm/ft². |
| Wood: | | |
| Residential | RS–13* | 0.37 cfm/ft². |
| Light Commercial | RS–13* | 0.25 cfm/ft². |
| Heavy Commercial | RS–13* | 0.15 cfm/ft². |
| Sliding Glass Doors: | | |
| Aluminum | RS–11* | 0.37 cfm/ft². |
| PVC | RS–12* | 0.37 cfm/lin ft. |
| Doors—Wood: | | |
| Residential | RS–14* | 0.34 cfm/ft². |
| Light Commercial | RS–14* | 0.25 cfm/ft². |
| Heavy Commercial | RS–14* | 0.10 cfm/ft². |
| Commercial Entrance Doors | RS–10* | 1.25 cfm/ft². |
| Residential Swinging Doors | RS–10* | 0.50 cfm/ft². |
| Wall Sections Aluminum | RS–10* | 0.06 cfm/ft². |

**Note:**
[The "Maximum Allowable Infiltration Rates" are from current standards to allow the use of available products.]
* Incorporated by reference, see § 434.701.

402.2.2 *Building Envelope.* The following areas of the building envelope shall be sealed, caulked, gasketed, or weatherstripped to limit air leakage:

(a) Intersections of the fenestration and door frames with the opaque wall sections.

(b) Openings between walls and foundations, between walls and roof and wall panels.

(c) Openings at penetrations of utility service through, roofs, walls, and floors.

(d) Site built fenestration and doors.

(e) All other openings in the building envelope.

Exceptions are as follows: Outside air intakes, exhaust outlets, relief outlets, stair shaft, elevator shaft smoke relief openings, and other similar elements shall comply with subsection 403.

402.2.2.1 Fenestration and Doors Fenestration and doors shall meet the requirements of Table 402.2.1.

402.2.2.2 *Building Assemblies Used as Ducts or Plenums.* Building assemblies used as ducts or plenums shall be sealed, caulked, and gasketed to limit air leakage.

402.2.2.3 *Vestibules.* A door that separates conditioned space from the exterior shall be equipped with an enclosed vestibule with all doors opening into and out of the vestibule equipped with self-closing devices. Vestibules shall be designed so that in passing through the vestibule, it is not necessary for the interior and exterior doors to open at the same time. Exceptions are as follows: Exterior doors need not be protected with a vestibule where:

(a) The door is a revolving door.

(b) The door is used primarily to facilitate vehicular movement or material handling.

(c) The door is not intended to be used as a general entrance door.

(d) The door opens directly from a dwelling unit.

(e) The door opens directly from a retail space less than 2,000 ft² in area, or from a space less than 1,500 ft² for other uses.

(f) In buildings less than three stories in building height in regions that have less than 6,300 heating degree days base 65°F.

402.2.2.4 *Compliance Testing.* All buildings shall be tested after completion using the methodology in RS–11, (incorporated by reference, see § 434.701) or an equivalent approved method to determine the envelope air leakage. A standard blower door test is an acceptable technique to pressurize the building if the building is 5,000 ft² or less in area. The buildings's air handling system can be used to pressurize the building if the building is larger than 5,000 ft². The following test conditions shall be:

(a) The measured envelope air leakage shall not exceed 1.57 pounds per square foot of wall area at a pressure difference of 0.3 inches water.

(b) At the time of testing, all windows and outside doors shall be installed and closed, all interior doors shall be open, and all air handlers and dampers shall be operable. The building shall be unoccupied.

(c) During the testing period, the average wind speed during the test shall be less than 6.6 feet per second, the average outside temperature greater than 59°F, and the average inside-outside temperature difference is less than 41°F.

402.2.2.5 *Moisture Migration.* The building envelope shall be designed to limit moisture migration that leads to deterioration in insulation or equipment performance as determined by the following construction practices:

(a) A vapor retarder shall be installed to retard, or slow down the rate of water vapor diffusion through the building envelope. The position of the vapor retarder shall be determined taking into account local climate and indoor humidity levels. The methodologies presented in Chapter 20 of RS–4 (incorporated by reference, see § 434.701) shall be used to determine temperature and water vapor profiles



through the envelope systems to assess the potential for condensation within the envelope and to determine the position of the vapor retarder within the envelope system.

(b) The vapor retarder shall be installed over the entire building envelope.

(c) The perm rating requirements of the vapor retarder shall be determined using the methodologies contained in Chapter 20 of RS–4, (incorporated by reference, see § 434.701) and shall take into account local climate and indoor humidity level. The vapor retarder shall have a performance rating of 1 perm or less.

402.3 *Thermal Performance Criteria.*

402.3.1 *Roofs; Floors and Walls Adjacent to Unconditioned Spaces.* The area weighted average thermal transmittance of roofs and also of floors and walls adjacent to unconditioned spaces shall not exceed the criteria in Table 402.3.1a. Exceptions are as follows: Skylights for which daylight credit is taken may be excluded from the calculations of the roof assembly $U_o$ if all of the following conditions are met:

(a) The opaque roof thermal transmittance is less than the criteria in Table 402.3.1b.

(b) Skylight areas, including framing, as a percentage of the roof area do not exceed the values specified in Table 402.3.1b. The maximum skylight area from Table 402.3.1b may be increased by 50% if a shading device is used that blocks over 50% of the solar gain during the peak cooling design condition. For shell buildings, the permitted skylight area shall be based on a light level of 30 foot candles and a lighting power density (LPD) of less than 1.0 w/ft². For speculative buildings, the permitted skylight area shall be based on the unit lighting power allowance from Table 401.3.2a and an illuminance level as follows: for LPD < 1.0, use 30 footcandles; for 1.0 < LPD < 2.5, use 50 footcandles; and for LPD ≥ 2.5, use 70 footcandles.

(c) All electric lighting fixtures within daylighted zones under skylights are controlled by automatic daylighting controls.

(d) The $U_o$ of the skylight assembly including framing does not exceed_____Btu/(h•ft²•°F) [Use 0.70 for ≤ 8000 HDD65 and 0.45 for >8000 HDD65 or both if the jurisdiction includes cities that are both below and above 8000 HDD65.]

(e) Skylight curb U-value does not exceed 0.21 Btu/(h•ft²•°F).

(f) The infiltration coefficient of the skylights does not exceed 0.05 cfm/ft².

402.3.2 *Below-Grade Walls and Slabs-on-Grade.* The thermal resistance (R-value) of insulation for slabs-on-grade, or the overall thermal resistance of walls in contact with the earth, shall be equal to or greater than the values in Table 402.3.2.

402.4 *Exterior Walls.* Exterior walls shall comply with either 402.4.1 or 402.4.2.

402.4.1 *Prescriptive Criteria.* (a) The exterior wall shall be designed in accordance with subsections 402.4.1.1 and 402.4.1.2. When the internal load density range is not known, the 0–1.50 W/ft² range shall be used for residential, hotel/motel guest rooms, or warehouse occupancies; the 3.01–3.50 w/ft² range shall be used for retail stores smaller than 2,000 ft² and technical and vocational schools smaller than 10,000 ft²; and the 1.51–3.00 W/ft² range shall be used for all other occupancies and building sizes. When the building envelope is designed or constructed prior to knowing the building occupancy type, an internal load density of _____ W/ft² shall be used. [Use 3.0 W/ft² for HDD65 <3000, 2.25 W/ft² for 3000 < HDD65 < 6000, and 1.5 W/ft² for HDD65 > 6000.]

(b) When more than one condition exists, area weighted averages shall be used. This requirement shall apply to all thermal transmittances, shading coefficients, projection factors, and internal load densities rounded to the same number of decimal places as shown in the respective table.

402.4.1.1 *Opaque Walls.* The weighted average thermal transmittance (U-value) of opaque wall elements shall be less than the values in Table 402.4.1.1. For mass walls (HC ≥ 5), criteria are presented for low and high window/wall ratios and the criteria shall be determined by interpolating between these values for the window/wall ratio of the building.

402.4.1.2 *Fenestration.* The design of the fenestration shall meet the criteria of Table 402.4.1.2. When the fenestration columns labeled "Perimeter Daylighting" are used, automatic daylighting controls shall be installed in the perimeter daylighted zones of the building. These daylighting controls shall be capable of reducing electric lighting power to at least 50% of full power. Only those shading or lighting controls for perimeter daylighting that are shown on the plans shall be considered. The column labeled "VLT > = SC" shall be used only when the shading coefficient of the glass is less than its visible light transmittance.

**Appendix A**

The example Alternate Component Package tables illustrate the requirements of subsections 434.301.1, 434.402.3.1, 434.402.3.2, 434.402.4.1.1 and 434.402.4.1.2. Copies of specific tables contained in this Appendix A can be obtained from the Energy Code for Federal Commercial Buildings, Docket No. EE–RM–79–112–C, EE–43, Office of Building Research and Standards, U.S. Department of Energy, Room 1J–018, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9127.

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TABLE 402.4.1.2 MAXIMUM WINDOW WALL RATIO (WWR)

| Internal Load Density (ILD) Range | Projection Factor (PF) Range | Shading Coefficient (SCx) Range | Fenestration U-Factor (Uof) Base Case 1.23 to 0.73 | Fenestration U-Factor (Uof) Base Case 0.72 to 0.00 | Fenestration U-Factor (Uof) Perimeter Daylighting 1.23 to 0.73 | Fenestration U-Factor (Uof) Perimeter Daylighting 0.72 to 0.00 | VLT>=SC 0.72 to 0.00 |
|---|---|---|---|---|---|---|---|
| 0.00 - 1.50 | 0.00 - 0.25 | 1.00 - 0.72 | 15 | 15 | 17 | 17 | 18 |
| | | 0.71 - 0.61 | 19 | 18 | 22 | 21 | 22 |
| | | 0.60 - 0.51 | 23 | 22 | 27 | 26 | 27 |
| | | 0.50 - 0.39 | 29 | 28 | 34 | 32 | 34 |
| | | 0.38 - 0.26 | 42 | 39 | 50 | 46 | 48 |
| | | 0.25 - 0.00 | 82 | 70 | 99 | 81 | 84 |
| | 0.26 - 0.50 | 1.00 - 0.72 | 22 | 21 | 26 | 25 | 26 |
| | | 0.71 - 0.61 | 29 | 27 | 34 | 32 | 33 |
| | | 0.60 - 0.51 | 36 | 34 | 43 | 40 | 41 |
| | | 0.50 - 0.39 | 46 | 42 | 56 | 50 | 52 |
| | | 0.38 - 0.00 | 71 | 62 | 86 | 73 | 75 |
| | 0.50 + | 1.00 - 0.72 | 31 | 30 | 37 | 35 | 36 |
| | | 0.71 - 0.61 | 41 | 38 | 49 | 45 | 47 |
| | | 0.60 - 0.51 | 53 | 48 | 64 | 57 | 58 |
| | | 0.50 - 0.00 | 71 | 62 | 86 | 73 | 75 |
| 1.51 - 3.00 | 0.00 - 0.25 | 1.00 - 0.72 | 12 | 12 | 20 | 19 | 21 |
| | | 0.71 - 0.61 | 16 | 15 | 26 | 25 | 27 |
| | | 0.60 - 0.51 | 19 | 19 | 32 | 30 | 33 |
| | | 0.50 - 0.39 | 24 | 23 | 41 | 38 | 41 |
| | | 0.38 - 0.26 | 34 | 32 | 62 | 54 | 57 |
| | | 0.25 - 0.00 | 66 | 57 | 99 | 90 | 99 |
| | 0.26 - 0.50 | 1.00 - 0.72 | 18 | 18 | 31 | 29 | 32 |
| | | 0.71 - 0.61 | 24 | 23 | 41 | 37 | 40 |
| | | 0.60 - 0.51 | 29 | 28 | 52 | 46 | 49 |
| | | 0.50 - 0.39 | 37 | 35 | 68 | 59 | 62 |
| | | 0.38 - 0.00 | 57 | 50 | 99 | 83 | 89 |
| | 0.50 + | 1.00 - 0.72 | 25 | 24 | 45 | 41 | 44 |
| | | 0.71 - 0.61 | 33 | 31 | 60 | 53 | 56 |
| | | 0.60 - 0.51 | 42 | 39 | 77 | 67 | 70 |
| | | 0.50 - 0.00 | 56 | 50 | 99 | 82 | 89 |
| 3.01 - 3.50 | 0.00 - 0.25 | 1.00 - 0.72 | 9 | 9 | 18 | 17 | 20 |
| | | 0.71 - 0.61 | 12 | 12 | 23 | 22 | 26 |
| | | 0.60 - 0.51 | 15 | 14 | 29 | 27 | 31 |
| | | 0.50 - 0.39 | 18 | 17 | 37 | 34 | 39 |
| | | 0.38 - 0.26 | 26 | 24 | 57 | 49 | 55 |
| | | 0.25 - 0.00 | 48 | 43 | 99 | 83 | 93 |
| | 0.26 - 0.50 | 1.00 - 0.72 | 14 | 13 | 28 | 26 | 30 |
| | | 0.71 - 0.61 | 18 | 17 | 37 | 34 | 38 |
| | | 0.60 - 0.51 | 22 | 21 | 47 | 42 | 47 |
| | | 0.50 - 0.39 | 28 | 26 | 63 | 54 | 60 |
| | | 0.38 - 0.00 | 42 | 38 | 92 | 77 | 85 |
| | 0.50 + | 1.00 - 0.72 | 19 | 18 | 41 | 37 | 41 |
| | | 0.71 - 0.61 | 25 | 24 | 55 | 49 | 54 |
| | | 0.60 - 0.51 | 31 | 29 | 71 | 62 | 67 |
| | | 0.50 - 0.00 | 41 | 37 | 92 | 76 | 84 |

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TABLE 301.1 EXTERIOR DESIGN CONDITIONS

| | |
|---|---|
| WINTER Design Dry Bulb: 44°F: | HDD65: 185 |
| SUMMER Design Dry Bulb: 90°F; Mean Coincident Wet Bulb: 77°F; | CDD65: 4045 |
| Annual Operating Hours, 8AM - 4PM when 55°F<=T<=69°F: 259 | |

TABLE 402.3.1(A) MAX. THERMAL TRANSMITTANCE (U)

| | |
|---|---|
| Roof | 0.075 |
| Wall adjacent to unconditioned space | 1.000 |
| Floor over unconditioned space | 0.400 |

TABLE 402.3.1(B) MAX. EXEMPT SKYLIGHT AREA AS % OF ROOF AREA

| Visible Light Transmittance (VLT) | Light level Ft. Candles | Range of Lighting Power Densities <1.00 | 1.00 - 1.50 | 1.51 - 2.00 | >2.00 |
|---|---|---|---|---|---|
| 0.75 | 30 | 2.3 | 3.1 | 3.9 | 4.7 |
| | 50 | 3.1 | 4.3 | 5.5 | 6.7 |
| | 70 | 4.3 | 5.5 | 6.7 | 7.9 |
| 0.50 | 30 | 3.6 | 4.8 | 6.0 | 7.2 |
| | 50 | 4.8 | 6.6 | 8.4 | 10.2 |
| | 70 | 6.6 | 8.4 | 10.2 | 12.0 |

TABLE 402.3.2 MINIMUM THERMAL RESISTANCE (R-VALUE)

| Slab on grade: Unheated / Heated: | 24 inches | 36 inches | 48 inches |
|---|---|---|---|
| Horizontal | R-0/R-2 | R-0/R-2 | R-0/R-2 |
| Vertical | R-0/R-2 | R-0/R-2 | R-0/R-2 |
| Wall below grade: | | R-0 | |

TABLE 402.4.1.1 MAX. WALL THERMAL TRANSMITTANCE (Uow)

| ILD Range | WWR | HC Range | Insulation Position Interior/Integral | Exterior |
|---|---|---|---|---|
| All | 0 to 100 | 0.0 - 4.9 | 1.000 | 1.000 |
| 0.00 to 1.50 | 15 | 5.0 - 9.9 | 1.000 | 1.000 |
| | | 10.0 - 14.9 | 1.000 | 1.000 |
| | | 15.0 + | 1.000 | 1.000 |
| | 99 | 5.0 - 9.9 | 1.000 | 1.000 |
| | | 10.0 - 14.9 | 1.000 | 1.000 |
| | | 15.0 + | 1.000 | 1.000 |
| 1.51 to 3.00 | 12 | 5.0 - 9.9 | 1.000 | 1.000 |
| | | 10.0 - 14.9 | 1.000 | 1.000 |
| | | 15.0 + | 1.000 | 1.000 |
| | 99 | 5.0 - 9.9 | 1.000 | 1.000 |
| | | 10.0 - 14.9 | 1.000 | 1.000 |
| | | 15.0 + | 1.000 | 1.000 |
| 3.01 to 3.50 | 9 | 5.0 - 9.9 | 1.000 | 1.000 |
| | | 10.0 - 14.9 | 1.000 | 1.000 |
| | | 15.0 + | 1.000 | 1.000 |
| | 93 | 5.0 - 9.9 | 1.000 | 1.000 |
| | | 10.0 - 14.9 | 1.000 | 1.000 |
| | | 15.0 + | 1.000 | 1.000 |

402.4.2 *System Performance Criteria.* The cumulative annual energy flux attributable to thermal transmittance and solar gains shall be less than the criteria determined using the ENVSTD24 computer program in Standard 90.1–1989, or the equations in RS–1, (incorporated by reference, see § 434.701) Attachment 8–B. The cumulative annual energy flux shall be calculated using the ENVSTD24 computer program or the equations in RS–1, (incorporated by reference, see § 434.701) Attachment 8–B.



TABLE 402.4.2.—EQUIP DEFAULT VALUES FOR ENVSTD24

| Occupancy | Default equipment power density [1] | Default occupant load adjustment [1] | Default adjusted equipment power density |
|---|---|---|---|
| Assembly | 0.25 | 0.75 | 1.00 |
| Health/Institutional | 1.00 | −0.26 | 0.74 |
| Hotel/Motel | 0.25 | −0.33 | 0.00 |
| Warehouse/Storage | 0.10 | −0.60 | 0.00 |
| Multi-Family High Rise | 0.75 | N/A | 0.00 |
| Office | 0.75 | −0.35 | 0.40 |
| Restaurant | 0.10 | 0.07 | 0.17 |
| Retail | 0.25 | −0.38 | 0.00 |
| School | 0.50 | 0.30 | 0.80 |

[1] Defaults as defined in Section 8.6.10.5, Table 8–4, and Sections 8.6.10.6 and 13.7.2.1, Table 13–2 from RS–1 (incorporated by reference, see § 434.701).

402.4.2.1 *Equipment Power Density (EQUIP).* The equipment power density used in the ENVSTD24 computer program shall use the actual equipment power density from the building plans and specifications or be taken from Table 402.4.2 using the column titled "Default Adjusted Equipment Power Density" or calculated for the building using the procedures of RS–1. (incorporated by reference, see § 434.701). The program limits consideration of the equipment power density to a maximum of 1 W/ft$^2$.

402.4.2.2 *Lighting Power Density (LIGHTS).* The lighting power density used in the ENVSTD24 computer program shall use the actual lighting power density from the building plans and specifications or the appropriate value from Tables 401.3.2a, b, c, or d.

402.4.2.3 *Daylighting Control Credit Fraction (DLCF).* When the daylighting control credit fraction is other than zero, automatic daylighting controls shall be installed in the appropriate perimeter zones(s) of the building to justify the credit.

**§ 434.403 Building mechanical systems and equipment.**

Mechanical systems and equipment used to provide heating, ventilating, and air conditioning functions as well as additional functions not related to space conditioning, such as, but not limited to, freeze protection in fire projection systems and water heating, shall meet the requirements of this section.

403.1 *Mechanical Equipment Efficiency.* When equipment shown in Tables 403.1a through 403.1f is used, it shall have a minimum performance at the specified rating conditions when tested in accordance with the specified reference standard. The reference standards listed in Tables 403.1a through 403.1f are incorporated by reference, see § 434.701. Omission of minimum performance requirements for equipment not listed in Tables 403.1a through 403.1f does not preclude use of such equipment.

TABLE 403.1A.—UNITARY AIR CONDITIONERS AND CONDENSING UNITS, ELECTRICALLY OPERATED, MINIMUM EFFICIENCY REQUIREMENTS

| Equipment type | Size category | Subcategory or rating condition | Minimum Efficiency [2] | Test procedure [1] |
|---|---|---|---|---|
| Air Conditioners, Air Cooled. | < 65,000 Btu/h | Split system | 10.0 SEER | ARI 210/240 |
| | | Single Package | 9.7 SEER | (RS–15)* |
| | ≥ 65,000 Btu/h and < 135,00 Btu/h | Split System and Single Package | 8.9 EER [3] | ARI 210/240 |
| | | | 8.3 IPLV [3] | (RS–15)* |
| | ≥ 135,000 Btu/h and < 240,000 Btu/h. | Split System and Single Package | 8.5 EER [3] | |
| | | | 7.5 IPLV [3] | |
| | ≥ 240,000 Btu/h and < 760,000 Btu/h. | Split System and Single Package | 8.5 EER [3] | ARI–340/360 |
| | | | 7.5 IPLV [3] | (RS–16)* |
| | ≥ 760,000 Btu/h | Split System and Package | 8.3 EER [3] | ARI–340/360 |
| | | | 7.5 IPLV [3] | (RS–16)* |
| Air Conditioners, Water and Evaporatively Cooled. | < 65,000 Btu/h | Split System and Single Package | 9.3 EER [3] | ARI 210/240 |
| | | | 8.4 IPLV [3] | (RS–15)* |
| | ≥ 65,000 Btu/h and < 135,000 Btu/h. | Split System and Single Package | 10.5 EER [c] | ARI 210/240 |
| | | | 9.7 IPLV [c] | (RS–15)* |
| | ≥ 135,000 Btu/h and < 240,000 Btu/h. | Split System and Single Package | 9.6 EER [c] | ARI–340/360 |
| | | | 9.0 IPLV [c] | (RS–16)* |
| | ≥ 240,000 Btu/h | Split System and Single Package | 9.6 EER [c] | ARI–340/360 |
| | | | 9.0 IPLV [c] | (RS–16)* |
| Condensing Units, Air Cooled. | 135,000 Btu/h | | 9.9 EER | ARI 365 |
| | | | 11.0 IPLV | (RS–29)* |

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TABLE 403.1A.—UNITARY AIR CONDITIONERS AND CONDENSING UNITS, ELECTRICALLY OPERATED, MINIMUM EFFICIENCY REQUIREMENTS—Continued

| Equipment type | Size category | Subcategory or rating condition | Minimum Efficiency[2] | Test procedure[1] |
|---|---|---|---|---|
| Condensing Units, Water or Evaporatively Cooled. | 135,000 Btu/h | | 12.9 EER<br>12.9 IPLV | ARI 365 (RS–29)* |

[1] See Subpart E for detailed references
[2] IPLVs are only applicable to equipment with capacity modulation.
[3] Deduct 0.2 from the required EERs and IPLVs for units that have a heating section.
* Incorporation by reference, see § 434.701

TABLE 403.1B.—UNITARY AND APPLIED HEAT PUMPS, ELECTRICALLY OPERATED, MINIMUM EFFICIENCY REQUIREMENTS

| Equipment type | Size category | Subcategory or rating condition | Minimum efficiency[2] | Test procedure[1] |
|---|---|---|---|---|
| Air Cooled (Cooling Mode). | <65,000 Btu/h | Split System | 10.0 SEER | ARI 210/240 |
| | | Single Package | 9.7 SEER | (RS–15)* |
| | ≥65,000 Btu/h and <135,000 Btu/h. | Split System and Single Package | 8.9 EER[3]<br>8.3 IPLV[3] | ARI 210/240 (RS–15)* |
| | ≥135,000 Btu/h and <240,000 Btu/h. | Split System and Single Package | 8.5 EER[3]<br>7.5 IPLV[3] | ARI–340/360 (RS–16)* |
| | ≥240,000 Btu/h | Split System and Single Package | 8.5 EER[3]<br>7.5 IPLV[3] | ARI–340/360 (RS–16)* |
| Water Source (Cooling Mode) | <65,000 Btu/h | 85 °F Entering Water | 9.3 EER | ARI–320 |
| | | 75 °F Entering Water | 10.2 EER | (RS–27)* |
| | ≥65,000 Btu/h and <135,000 Btu/h | 85 °F Entering Water | 10.5 EER | ARI–320 |
| | | 75 °F Entering Water | 11.0 EER | (RS–27)* |
| Groundwater-Source (Cooling Mode). | <135,000 Btu/h | 70 F Entering Water | 11.0 EER | ARI 325 |
| | | 50 F Entering Water | 11.5 EER | (RS–28)* |
| Ground Source (Cooling Mode). | <135,000 Btu/h | 77 F Entering Water | 10.0 EER | ARI 325 |
| | | 70 F Entering Water | 10.4 EER | (RS–28)* |
| Air Cooled (Heating Mode). | <65,000 Btu/h (Cooling Capacity) | Split System | 6.8 HSPF | ARI 210/240 |
| | | Single Package | 6.6 HSPF | (RS–15)* |
| | 65,000 Btu/h and <135,000 Btu/h (Cooling Capacity). | 47 F db/43 F wb Outdoor Air | 3.00 COP | ARI 210/240 |
| | | 17 F db/15 F wb Outdoor Air | 2.00 COP | (RS–15)* |
| | 135,000 Btu/h (Cooling Capacity) | 47 F db/43 F wb Outdoor Air | 2.90 COP | ARI–340/360 |
| | | 17 F db/15 F wb Outdoor | 2.00 COP | (RS–1/)* |
| Water-Source (Heating Mode). | <135,000 Btu/h (Cooling Capacity). | 70 F Entering Water | 3.80 COP | ARI–320 |
| | | 75 F Entering Water | 3.90 COP | (RS–27)* |
| Groundwater-Source (Heating Mode). | <135,000 Btu/h (Cooling Capacity). | 70 F Entering Water | 3.40 COP | ARI 325 |
| | | 50 F Entering Water | 3.00 COP | (RS–28)* |
| Ground Source (Heating Mode). | <135,000 Btu/h (Cooling Capacity). | 32 F Entering Water | 2.50 EER | ARI–330 |
| | | 41 F Entering Water | 2.70 EER | (RS–45)* |

[1] See Subpart E for detailed references.
[2] IPLVs are only applicable to equipment with capacity modulation.
[3] Deduct 0.2 from the required EERs and IPLVs for units that have a heating section.
* Incorporation by reference, see § 434.701.

TABLE 403.1C.—WATER CHILLING PACKAGES, MINIMUM EFFICIENCY REQUIREMENTS

| Equipment type | Size category | Subcategory or rating condition | Minimum efficiency[2] | Test procedure[1] |
|---|---|---|---|---|
| Air-Cooled, With Condenser, Electrically Operated. | <150 Tons | 2.70 COP | 2.50 COP | ARI 550 Centrifugal/Rotary Screw (RS–30)* or ARI 590 Reciprocating (RS–31)* |
| | ≥150 Tons | 2.80 IPLV | 2.50 IPLV | |
| Air-Cooled, Without Condenser, Electrically Operated. | All Capacities | | 3.10 COP<br>3.20 IPLV | |
| Water Cooled, Electrically Operated, Positive Displacement (Reciprocating). | All Capacities | | 3.80 COP<br>3.90 IPLV | |
| Water Cooled, Electrically Operated, Positive Displacement (Rotary Screw and Scroll). | <150 Tons | | 3.80 COP<br>3.90 IPLV | |
| | ≥150 Tons and <300 Tons. | | 4.20 COP<br>4.50 IPLV | |
| | ≥300 Tons | | 5.20 COP<br>5.30 IPLV | |



TABLE 403.1C.—WATER CHILLING PACKAGES, MINIMUM EFFICIENCY REQUIREMENTS—Continued

| Equipment type | Size category | Subcategory or rating condition | Minimum efficiency[2] | Test procedure[1] |
|---|---|---|---|---|
| Water-Cooled, Electrically Operated, Centrifugal. | <150 Tons | | 3.80 COP<br>3.90 IPLV | ARI 550 (RS–30)* |
| | 150 Tons and <300 Tons. | | 4.20 COP<br>4.50 IPLV | |
| | 300 Tons | | 5.20 COP<br>5.30 IPLV | |
| Absorption Single Effect | All Capacities | | 0.48 COP. | |
| Absorption Double Effect, Indirect-Fired. | All Capacities | | 0.95 COP<br>1.00 IPLV | ARI 560 (RS–46)* |
| Absorption Double-Effect, Direct-Fired. | All Capacities | | 0.95 COP<br>1.00 IPLV. | |

[1] See Subpart E for detailed references.
[2] Equipment must comply with all efficiencies when multiple efficiencies are indicated.
*Incorporation by reference, see § 434.701.

TABLE 403.1D.—PACKAGED TERMINAL AIR CONDITIONERS, PACKAGED TERMINAL HEAT PUMPS, ROOM AIR CONDITIONERS, AND ROOM AIR-CONDITIONER HEAT PUMPS ELECTRICALLY OPERATED, MINIMUM EFFICIENCY REQUIREMENTS

| Equipment type | Size category | Subcategory or rating condition | Minimum efficiency[2] | Test procedure[1] |
|---|---|---|---|---|
| PTAC (Cooling Mode) | All Capacities | 95°F db Outdoor Air | 10.0– (0.16 × Cap/1,000)[3]EER. | ARI 310/380 (RS–17)* |
| | | 82°F db Outdoor Air | 12.2–(0.20 × Cap/1,000)[3]EER. | ARI 310/380 (RS–17)* |
| PTHP (Cooling Mode) | All Capacities | 95°F db Outdoor Air | 10.0–(0.16 × Cap/1,000)[3] EER. | |
| | | 82°F db Outdoor Air | 12.2–(0.20 × Cap/1,000) EER. | |
| PTHP (Heating Mode) | All Capacities | | 2.90–(0.026 × CAP/1,000)[3] COP. | |
| Room Air Conditioners, With Louvered Sides. | <6,000 Btu/h | | 8.0 EER | ANSI/AHAM RAC–1 (RS–40)* |
| | ≥6,000 Btu/h and <8,000 Btu/h. | | 8.5 EER | |
| | ≥8,000 Btu/h and lt;14,000 Btu/h. | | 9.0 EER | |
| | ≥14,000 Btu/h and <20,000 Btu/h. | | 8.8 EER | |
| | ≥20,000 Btu/h | | 8.2 EER | |
| Room Air Conditioner, Without Louvered Sides. | <6,000 Btu/h | | 8.0 EER | ANSI/AHAM RAC–1 (RS–40)* |
| | ≥6,000 Btu/h and <20,000 Btu/h. | | 8.5 EER | |
| | ≥20,000 Btu/h | | 8.2 EER | |
| Room Air-Conditioner Heat Pumps With Louvered Sides. | All Capacities | | 8.5 EER | ANSI/AHAM RAC–1 (RS–40)* |
| Room Air-Conditioner Heat Pumps Without Louvered Sides. | All Capacities | | 8.0 EER | ANSI/AHAM RAC–1 (RS–40* |

[1] See Subpart E for detailed references.
[2] Equipment must comply with all efficiencies when multiple efficiencies are indicated. (Note products covered by the 1992 Energy Policy Act have no efficiency requirement for operation at other than standard rating conditions for products manufactured after 1/1/94).
[3] Cap means the rated capacity of the product in Btu/h. If the unit's capacity is less than 7,000 Btu/h, use 7,000 Btu/h in the calculation. If the unit's capacity is greater than 15,000 Btu/h, use 15,000 Btu/h in the calculation.
* Incorporation by reference, see § 434.701.

TABLE 403.1E.—WARM AIR FURNACES AND COMBINATION WARM AIR FURNACES/AIR CONDITIONING UNITS, WARM AIR DUCT FURNACES AND UNIT HEATERS, MINIMUM EFFICIENCY REQUIREMENTS

| Equipment type | Size category | Subcategory or rating condition | Minimum efficiency[b,e] | Test procedure[a] |
|---|---|---|---|---|
| Warm Air-Furnace, Gas-Fired | < 225,000 Btu/h | | 78% AFUE or 80% $E_t$ | DOE 10 CFR 430 Appendix N |
| | ≥ 225,000 Btu/h | Maximum Capacity[c] | 80% $E_t$ | ANSI Z21.47 |
| | | Minimum Capacity[c] | 78% $E_t$ | (RS–21)* |
| Warm Air-Furnace, Oil-Fired | < 225,000 Btu/h | | 78% AFUE or 80% $E_t$[d]. | DOE 10 CFR 430 Appendix N |
| | ≥ 225,000 But/h | Maximum Capacity[c] | 81% $E_t$ | U.L. 727 |
| | | Minimum Capacity | 81% $E_t$ | (RS–22)* |

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TABLE 403.1E.—WARM AIR FURNACES AND COMBINATION WARM AIR FURNACES/AIR CONDITIONING UNITS, WARM AIR DUCT FURNACES AND UNIT HEATERS, MINIMUM EFFICIENCY REQUIREMENTS—Continued

| Equipment type | Size category | Subcategory or rating condition | Minimum efficiency[b,a] | Test procedure[a] |
|---|---|---|---|---|
| Warm Air Duct Furnaces, Gas-Fired. | All Capacities | Maximum Capacity[c] | 78% $E_t$ | ANSI Z83.9 |
| | | Minimum Capacity | 75% $E_t$ | (RS–23) |
| Warm Air Unit Heaters, Gas Fired | All Capacities | Maximum Capacity[c] | 78% $E_t$ | ANSI Z83.8 |
| | | Minimum Capacity | 74% $E_t$ | (RS–24)* |
| Oil-Fired | All Capacities | Maximum Capacity[c] | 81% $E_t$ | U.L. 731 |
| | | Minimum Capacity | 81% $E_t$ | (RS–25)* |

[a] See Subpart E for detailed references.
[b] Minimum and maximum ratings as provided for and allowed by the unit's controls.
[c] Combination units not covered by NAECA (Three-phase power or cooling capacity ≥ 65,000 Btu/h) may comply with either rating.
[d] $E_t$ = thermal efficiency. See referenced document for detailed discussion.
[e] $E_c$ = combustion efficiency. Units must also include an IID and either power venting or a flue damper. For those furnaces where combustion air is drawn from the conditioned space, a vent damper may be substituted for a flue damper.
* Incorporation by reference, see § 434.701

TABLE 403.1F—BOILERS, GAS- AND OIL-FIRED, MINIMUM EFFICIENCY REQUIREMENTS[a,c]

| Equipment type | Size category | Subcategory or rating condition | Minimum efficiency[b] | Test procedure[a] |
|---|---|---|---|---|
| Boilers, Gas-Fired | <300,000 Btu/h | Hot Water | 80% AGUE | DOE 10 CFR 430 Appendix N |
| | | Steam | 75% AGUE | DOE 10 CFR 430 Appendix N |
| | <300,000 Btu/h | Maximum Capacity[c] | 80% $E_c$ | ANSI Z21.13 |
| | | Minimum Capacity | 80% $E_c$ | (RS–32)* |
| Boilers, Oil-Fired | <300,000 Btu/h | | 80% AGUE | DOE 10 CFR 430 (RS–20)* |
| | <300,000 Btu/h | Maximum Capacity[c] | 83% $E_c$ | U.L. 726 |
| | | Minimum Capacity | 83% $E_c$ | (RS–33)* |
| Oil-Fired (Residual) | <3000,000 Btu/h | Maximum Capacity[c] | 83% $E_c$ | |
| | | Minimum Capacity | 83% $E_c$. | |

[a] See Subpart E for detailed references.
[b] Minimum and maximum ratings as provided for and allowed by the unit's controls.
[c] $E_c$ = combustion efficiency (100% less flue losses). See reference document for detailed information.
* Incorporation by reference, see §434.701.

403.1.1 Where multiple rating conditions and/or performance requirements are provided, the equipment shall satisfy all stated requirements.

403.1.2 Equipment used to provide water heating functions as part of a combination integrated system shall satisfy all stated requirements for the appropriate space heating or cooling category.

403.1.3 The equipment efficiency shall be supported by data furnished by the manufacturer or shall be certified under a nationally recognized certification program or rating procedure.

403.1.4 Where components, such as indoor or outdoor coils, from different manufacturers are used, the system designer shall specify component efficiencies whose combined efficiency meets the standards herein.

403.2 *HVAC Systems.*

403.2.1 *Load Calculations.* Heating and cooling system design loads for the purpose of sizing systems and equipment shall be determined in accordance with the procedures described in RS–1 (incorporated by reference, see § 434.701) using the design parameters specified in subpart C of this part.

403.2.2 *Equipment and System Sizing.* Heating and cooling equipment and systems shall be sized to provide no more than the loads calculated in accordance with subsection 403.2.1. A single piece of equipment providing both heating and cooling must satisfy this provision for one function with the other function sized as small as possible to meet the load, within available equipment options. Exceptions are as follows:

(a) When the equipment selected is the smallest size needed to meet the load within available options of the desired equipment line.

(b) Standby equipment provided with controls and devices that allow such equipment to operate automatically only when the primary equipment is not operating.

(c) Multiple units of the same equipment type with combined capacities exceeding the design load and provided with controls that sequence or otherwise optimally control the operation of each unit based on load.

403.2.3 *Separate Air Distribution System.* Zones with special process temperature and/or humidity requirements shall be served by air distribution systems separate from those serving zones requiring only comfort conditions or shall include supplementary provisions so that the primary systems may be specifically controlled for comfort purposes only. Exceptions: Zones requiring only comfort heating or comfort cooling that are served by a system primarily used for process temperature and humidity control need not be served by a separate system if the total supply air to these comfort zones is no more than 25% of the total system supply air or the total conditioned floor area of the zones is less than 1000 ft2.

403.2.4 *Ventilation and Fan System Design.* Ventilation systems shall be designed to be capable of reducing the supply of outdoor air to the minimum ventilation rates required by Section 6.1.3 of RS–41 (incorporated by reference, see § 434.701) through the use of return ducts, manually or automatically operated control dampers, fan volume controls, or other devices. Exceptions are as follows: Minimum outdoor air rates may be greater if:

(a) Required to make up air exhausted for source control of contaminants such as in a fume hood.

(b) Required by process systems.

(c) Required to maintain a slightly positive building pressure. For this purpose, minimum outside air intake may be increased up to no greater than 0.30 air changes per hour in excess of exhaust quantities.

403.2.4.1 *Ventilation controls for variable or high occupancy areas.* Systems with design outside air capacities greater than 3,000 cfm serving areas having an average design occupancy density exceeding 100 people per 1,000 ft² shall include means to automatically reduce outside air intake to the minimum values required by RS–41 (incorporated by reference, see § 434.701) during unoccupied or low-occupancy periods. Outside air shall not be reduced below 0.14 cfm/ft². Outside air intake shall be controlled by one or more of the following:

(a) A clearly labeled, readily accessible bypass timer that may be used by occupants or operating personnel to temporarily increase minimum outside air flow up to design levels.

(b) A carbon dioxide ($CO_2$) control system having sensors located in the spaces served, or in the return air from the spaces served, capable of maintaining space $CO_2$ concentrations below levels recommended by the manufacturer, but no fewer than one sensor per 25,000 ft² of occupied space shall be provided.

(c) An automatic timeclock that can be programmed to maintain minimum outside air intake levels commensurate with scheduled occupancy levels.

(d) Spaces equipped with occupancy sensors.

403.2.4.2 *Ventilation Controls for enclosed parking garages.* Garage ventilation fan systems with a total design capacity greater than 30,000 cfm shall have automatic controls that stage fans or modulate fan volume as required to maintain carbon monoxide (CO) below levels recommended in RS–41.

403.2.4.3 *Ventilation and Fan Power.* The fan system energy demand of each HVAC system at design conditions shall not exceed 0.8 W/cfm of supply air for constant air volume systems and 1.25 W/cfm of supply air for variable-air-volume (VAV) systems. Fan system energy demand shall not include the additional power required by air treatment or filtering systems with pressure drops over 1 in. w.c. Individual VAV fans with motors 75 hp and larger shall include controls and devices necessary for the fan motor to demand no more than 30 percent of design wattage at 50 percent of design air volume, based on manufacturer's test data. Exceptions are as follows:

(a) Systems with total fan system motor horsepower of 10 hp or less.

(b) Unitary equipment for which the energy used by the fan is considered in the efficiency ratings of subsection 403.1.

403.2.5 *Pumping System Design.* HVAC pumping systems used for comfort heating and/or comfort air conditioning that serve control valves designed to modulate or step open and closed as a function of load shall be designed for variable fluid flow and capable of reducing system flow to 50 percent of design flow or less. Exceptions are as follows:

(a) Systems where a minimum flow greater than 50% of the design flow is required for the proper operation of equipment served by the system, such as chillers.

(b) Systems that serve no more than one control valve.

(c) Systems with a total pump system horse power ≤10 hp.

(d) Systems that comply with subsection 403.2.6.8 without exception.

403.2.6 *Temperature and Humidity Controls.*

403.2.6.1 *System Controls.* Each heating and cooling system shall include at least one temperature control device.

403.2.6.2 *Zone Controls.* The supply of heating and cooling energy to each zone shall be controlled by individual thermostatic controls responding to temperature within the zone. For the purposes of this section, a dwelling unit is considered a zone. Exceptions are as follows: Independent perimeter systems that are designed to offset building envelope heat losses or gains or both may serve one or more zones also served by an interior system when the perimeter system includes at least one thermostatic control zone for each building exposure having exterior walls facing only one orientation for at least 50 contiguous ft and the perimeter system heating and cooling supply is controlled by thermostat(s) located within the zone(s) served by the system.

403.2.6.3 *Zone Thermostatic Control Capabilities.* Where used to control comfort heating, zone thermostatic controls shall be capable of being set locally or remotely by adjustment or selection of sensors down to 55°F or lower. Where used to control comfort cooling, zone thermostatic controls shall be capable of being set locally or remotely by adjustment or selection of sensors up to 85°F or higher. Where used to control both comfort heating and cooling, zone thermostatic controls shall be capable of providing a temperature range or deadband of at least 5°F within which the supply of heating and cooling energy to the zone is shut off or reduced to a minimum. Exceptions are as follows:

(a) Special occupancy or special usage conditions approved by the building official or

(b) Thermostats that require manual changeover between heating and cooling modes.

403.2.6.4 *Heat Pump Auxiliary Heat.* Heat pumps having supplementary electric resistance heaters shall have controls that prevent heater operation when the heating load can be met by the heat pump. Supplemental heater operation is permitted during outdoor coil defrost cycles not exceeding 15 minutes.

403.2.6.5 *Humidistats.* Humidistats used for comfort purposes shall be capable of being set to prevent the use of fossil fuel or electricity to reduce relative humidity below 60% or increase relative humidity above 30%.

403.2.6.6 *Simultaneous Heating and Cooling.* Zone thermostatic and humidistatic controls shall be capable of operating in sequence the supply of heating and cooling energy to the zone. Such controls shall prevent: Reheating; recooling; mixing or simultaneous supply of air that has been previously mechanically heated and air that has been previously cooled, either by mechanical refrigeration or by economizer systems; and other simultaneous operation of heating and cooling systems to the same zone. Exceptions are as follows:

(a) Variable-air-volume systems that, during periods of occupancy, are designed to reduce the air supply to each zone to a minimum before heating, recooling, or mixing takes place. This minimum volume shall be no greater than the larger of 30% of the peak supply volume, the minimum required to meet minimum ventilation requirements of the Federal agency. (0.4 cfm/ft² of zone conditioned floor area, and 300 cfm).

(b) Zones where special pressurization relationships or cross-contamination requirements are such that variable-air-volume systems are impractical, such as isolation rooms, operating areas of hospitals and clean rooms.

(c) At least 75% of the energy for reheating or for providing warm air in mixing systems is provided from a site-recovered or site-solar energy source.

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(d) Zones where specified humidity levels are required to satisfy process needs, such as computer rooms and museums.

(e) Zones with a peak supply air quantity of 300 cfm or less.

403.2.6.7 *Temperature Reset for Air Systems.* Air systems supplying heated or cooled air to multiple zones shall include controls that automatically reset supply air temperatures by representative building loads or by outside air temperature. Temperature shall be reset by at least 25% of the design supply air to room air temperature difference. Zones that are expected to experience relatively constant loads, such as interior zones, shall be designed for the fully reset supply temperature. Exception are as follows: Systems that comply with subsection 403.2.6.6 without using exceptions (a) or (b).

403.2.6.8 *Temperature Reset for Hydronic Systems.* Hydronic systems of at least 600,000 Btu/hr design capacity supplying heated and/or chilled water to comfort conditioning systems shall include controls that automatically reset supply water temperatures by representative building loads (including return water temperature) or by outside air temperature. Temperature shall be reset by at least 25% of the design supply-to-return water temperature difference. Exceptions are as follows:

(a) Systems that comply with subsection 403.2.5 without exception or

(b) Where the design engineer certifies to the building official that supply temperature reset controls cannot be implemented without causing improper operation of heating, cooling, humidification, or dehumidification systems.

403.2.7 *Off Hour Controls.*

403.2.7.1 *Automatic Setback or Shutdown Controls.* HVAC systems shall be equipped with automatic controls capable of accomplishing a reduction of energy use through control setback or equipment shutdown. Exceptions are as follows:

(a) Systems serving areas expected to operate continuously or

(b) Equipment with full load demands not exceeding 2 kW controlled by readily accessible, manual off-hour controls.

403.2.7.2 *Shutoff Dampers.* Outdoor air supply and exhaust systems shall be provided with motorized or gravity dampers or other means of automatic volume shutoff or reduction. Exceptions are as follows:

(a) Systems serving areas expected to operate continuously.

(b) Individual systems which have a design airflow rate or 3000 cfm or less.

(c) Gravity and other non-electrical ventilation systems controlled by readily accessible, manual damper controls.

(d) Where restricted by health and life safety codes.

403.2.7.3 Zone Isolation systems that serve zones that can be expected to operate nonsimultaneously for more than 750 hours per year shall include isolation devices and controls to shut off or set back the supply of heating and cooling to each zone independently. Isolation is not required for zones expected to operate continuously or expected to be inoperative only when all other zones are inoperative. For buildings where occupancy patterns are not known at the time of system design, such as speculative buildings, the designer may predesignate isolation areas. The grouping of zones on one floor into a single isolation area shall be permitted when the total conditioned floor area does not exceed 25,000 ft$^2$ per group.

403.2.8 *Economizer Controls.*

403.2.8.1 Each fan system shall be designed and capable of being controlled to take advantage of favorable weather conditions to reduce mechanical cooling requirements. The system shall include either: A temperature or enthalpy air economizer system that is capable of automatically modulating outside air and return air dampers to provide up to 85% of the design supply air quantity as outside air, or a water economizer system that is capable of cooling supply air by direct and/or indirect evaporation and is capable of providing 100% of the expected system cooling load at outside air temperatures of 50°F dry-bulb/45°F wet-bulb and below. Exceptions are as follows:

(a) Individual fan-cooling units with a supply capacity of less than 3000 cfm or a total cooling capacity less than 90,000 Btu/h.

(b) Systems with air-cooled or evaporatively cooled condensers that include extensive filtering equipment provided in order to meet the requirements of RS–41 (incorporated by reference, see § 434.701).

(c) Systems with air-cooled or evaporatively cooled condensers where the design engineer certifies to the building official that use of outdoor air cooling affects the operation of other systems, such as humidification, dehumidification, and supermarket refrigeration systems, so as to increase overall energy usage.

(d) Systems that serve envelope-dominated spaces whose sensible cooling load at design conditions, excluding transmission and infiltration loads, is less than or equal to transmission and infiltration losses at an outdoor temperature of 60°F.

(e) Systems serving residential spaces and hotel or motel rooms.

(f) Systems for which at least 75% of the annual energy used for mechanical cooling is provided from a site-recovered or site-solar energy source.

(g) The zone(s) served by the system each have operable openings (windows, doors, etc.) with an openable area greater than 5% of the conditioned floor area. This applies only to spaces open to and within 20 ft of the operable openings. Automatic controls shall be provided that lock out system mechanical cooling to these zones when outdoor air temperatures are less than 60°F.

403.2.8.2 Economizer systems shall be capable of providing partial cooling even when additional mechanical cooling is required to meet the remainder of the cooling load. Exceptions are as follows:

(a) Direct-expansion systems may include controls to reduce the quantity of outdoor air as required to prevent coil frosting at the lowest step of compressor unloading. Individual direct-expansion units that have a cooling capacity of 180,000 Btu/h or less may use economizer controls that preclude economizer operation whenever mechanical cooling is required simultaneously.

(b)Systems in climates with less than 750 average operating hours per year between 8 a.m. and 4 p.m. when the ambient dry-bulb temperatures are between 55 °F and 69 °F inclusive.

403.2.8.3 System design and economizer controls shall be such that economizer operation does not increase the building heating energy use during normal operation.

403.2.9 *Distribution System Construction and Insulation.*

403.2.9.1 *Piping Insulation.* All HVAC system piping shall be thermally insulated in accordance with Table 403.2.9.1. Exceptions are as follows:

(a) Factory-installed piping within HVAC equipment tested and rated in accordance with subsection 403.1.

(b) Piping that conveys fluids that have a design operating temperature range between 55°F and 105°F.

(c) Piping that conveys fluids that have not been heated or cooled through the use of fossil fuels or electricity.



TABLE 403.2.9.1.—MINIMUM PIPE INSULATION (IN.) [a]

| Fluid Design Operating Temp. Range (F) | Insulation conductivity [a] | | Nominal pipe diameter (in.) | | | | |
|---|---|---|---|---|---|---|---|
| | Conductivity Range Btu in./(h ft$^2$ F) | Mean Temp. F | <1.0 | 1.0 to 1.25 | 1.5 to 3.0 | 4.0 to 6.0 | 8.0 |
| **Heating systems (Steam, Steam Condensate, and Hot Water) [b, c]** | | | | | | | |
| >350 | 0.32–0.34 | 250 | 1.0 | 1.5 | 1.5 | 2.0 | 2.5 |
| 251–350 | 0.29–0.32 | 200 | 1.0 | 1.0 | 1.5 | 2.0 | 2.0 |
| 201–250 | 0.27–0.30 | 150 | 1.0 | 1.0 | 1.0 | 1.5 | 1.5 |
| 141–200 | 0.25–0.29 | 125 | 1.0 | 1.0 | 1.0 | 1.5 | 1.5 |
| 105–140 | 0.22–0.28 | 100 | 0.5 | 0.5 | 0.75 | 1.0 | 1.0 |
| **Domestic and Service Hot Water Systems** | | | | | | | |
| 105 and Greater | 0.22–0.28 | 100 | 0.5 | 0.5 | 0.75 | 1.0 | 1.0 |
| **Cooling Systems (Chilled Water, Brine, and Refrigerant) [d]** | | | | | | | |
| 40–55 | 0.22–0.28 | 100 | 0.5 | 0.5 | 0.5 | 0.5 | 0.5 |
| Below 40 | 0.22–0.28 | 100 | 0.5 | 0.5 | 0.5 | 0.5 | 0.5 |

[a] For insulation outside the stated conductivity range, the minimum thickness (T) shall be determined as follows: $T=r\{(1+t/r)^{K/k}-1\}$

Where T = minimum insulation thickness (in), r = actual outside radius of pipe (in), t = insulation thickness listed in this table for applicable fluid temperature and pipe size, K = conductivity of alternate material at mean rating temperature indicated for the applicable fluid temperature (Btu in/h ft$^2$ F); and k = the upper value of the conductivity range listed in this table for the applicable fluid temperature.

[b] These thicknesses are based on energy efficiency considerations only. Safety issues, such as insulation surface temperatures, have not been considered.

[c] Piping insulation is not required between the control valve and coil on run-outs when the control valve is located within four feet of the coil and the pipe diameter is 1 inch or less.

[d] Note that the required minimum thickness does not take water vapor transmission and possible surface condensation into account.

TABLE 403.2.9.2.—MINIMUM DUCT INSULATION R-VALUE [a]

| Duct location | Cooling supply ducts | | | | Heating supply ducts | | | | Return ducts |
|---|---|---|---|---|---|---|---|---|---|
| | CDD65 ≤500 | 500< CDD65 ≤1,000 | 1,000< CDD65 ≤2,000 | CDD65 ≥2,000 | HDD65 ≤1,500 | 1,500< HDD65 ≤4,500 | 4,500< HDD65 ≤7,500 | HDD65 ≥7,500 | |
| Exterior of Building | R–3.3 .. | R–5.0 .. | R–6.5 | R–8.0 .. | R–3.3 .. | R–5.0 | R–6.5 | R–8.0 .. | R–5.0 |
| Ventilated Attic | R–3.3 .. | R–3.3 .. | R–3.3 | R–5.0 .. | R–5.0 .. | R–5.0 | R–5.0 | R–5.0 .. | R–3.3 |
| Unvented Attic | R–5.0 .. | R–5.0 .. | R–5.0 | R–5.0 .. | R–5.0 .. | R–5.0 | R–5.0 | R–5.0 .. | R–3.3 |
| Other Conditioned Spaces [b] | R–3.3 .. | R–3.3 .. | R–3.3 | R–3.3 .. | R–3.3 .. | R–3.3 | R–3.3 | R–3.3 .. | R–3.3 |
| Indirectly Conditioned Spaces [c] | none ... | R–3.3 .. | R–3.3 | R–3.3 .. | R–3.3 .. | R–3.3 | R–3.3 | R–3.3 .. | none |
| Buried | none ... | none ... | none ... | none ... | R–5.0 .. | R–5.0 | R–5.0 | R–5.0 .. | R–3.3 |

[a] Insulation R-values, measured in (h.ft$^2$.°F)/Btu, are for the insulation as installed and do not include film resistance. The required minimum thickness do not consider water vapor transmission and possible surface condensation. The required minimum thicknesses do not consider water vapor transmission and condensation. For ducts that are designed to convey both heated and cooled air, duct insulation shall be as required by the most restrictive condition. Where exterior walls are used as plenum walls, wall insulation shall be as required by the most restrictive condition of this section or subsection 402. Insulation resistance measured on a horizontal plane in accordance with RS–6 (incorporated by reference, see § 434.701) at a mean temperature of 75 °F. RS–6 is in incorporated by reference at § 434.701.

[b] Includes crawl spaces, both ventilated and non-ventilated.

[c] Includes return air plenums, with and without exposed roofs above.

403.2.9.2*Duct and Plenum Insulation.* All supply and return air ducts and plenums installed as part of an HVAC air distribution system shall be thermally insulated in accordance with Table 403.2.9.1. Exceptions are as follows:

(a) Factory-installed plenums, casings, or ductwork furnished as a part of the HVAC equipment tested and rated in accordance with subsection 403.1

(b) Ducts within the conditioned space that they serve. (incorporated by reference, see § 434.701)ca a06oc0.186

403.2.9.3 *Duct and Plenum Construction.* All air-handling ductwork and plenums shall be constructed and erected in accordance with RS–34, RS–35, and RS–36 (incorporated by reference, see § 434.701). Where supply ductwork and plenums designed to operate at static pressures from 0.25 in. wc to 2 in. wc, inclusive, are located outside of the conditioned space or in return plenums, joints shall be sealed in accordance with Seal Class C as defined in RS–34 (incorporated by reference, see § 434.701). Pressure sensitive tape shall not be used as the primary sealant where such ducts are designed to operate at static pressures of 1 in. wc, or greater.

403.2.9.3.1 Ductwork designed to operate at static pressures in excess of 3 in. wc shall be leak-tested in accordance with Section 5 of RS–35, (incorporated by reference, see § 434.701), or equivalent. Test reports shall be provided in accordance with Section 6 of RS–35, (incorporated by reference, see § 434.701)m or equivalent. The tested duct leakage class at a test pressure equal to the design duct pressure class rating shall be equal to or less than leakage Class 6 as defined in Section 4.1 of RS–35 (incorporated by reference, see § 434.701). Representative sections totaling at least 25% of the total installed duct area for the designated pressure class shall be tested.

403.2.10 *Completion.*

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403.2.10.1 *Manuals.* Construction documents shall require an operating and maintenance manual provided to the Federal Agency. The manual shall include, at a minimum, the following:

(a) Submittal data stating equipment size and selected options for each piece of equipment requiring maintenance, including assumptions used in outdoor design calculations.

(b) Operating and maintenance manuals for each piece of equipment requiring maintenance. Required maintenance activity shall be specified.

(c) Names and addresses of at least one qualified service agency to perform the required periodic maintenance shall be provided.

(d) HVAC controls systems maintenance and calibration information, including wiring diagrams, schematics, and control sequence descriptions. Desired or field determined setpoints shall be permanently recorded on control drawings, at control devices, or, for digital control systems, in programming comments.

(e) A complete narrative, prepared by the designer, of how each system is intended to operate shall be included with the construction documents.

403.2.10.2 *Drawings.* Construction documents shall require that within 30 days after the date of system acceptance, record drawings of the actual installation be provided to the Federal agency. The drawings shall include details of the air barrier installation in every envelope component, demonstrating continuity of the air barrier at all joints and penetrations.

403.2.10.3 *Air System Balancing.* Construction documents shall require that all HVAC systems be balanced in accordance with the industry accepted procedures (such as National Environmental Balancing Bureau (NEBB) Procedural Standards, Associated Air Balance Council (AABC) National Standards, or ANSI/ASHRAE Standard 111). Air and water flow rates shall be measured and adjusted to deliver final flow rates within 10% of design rates, except variable flow distribution systems need not be balanced upstream of the controlling device (VAV box or control valve).

403.2.10.3.1 Construction documents shall require a written balance report be provided to the Federal agency for HVAC systems serving zones with a total conditioned area exceeding 5,000 ft².

403.2.10.3.2 Air systems shall be balanced in a manner to first minimize throttling losses, then fan speed shall be adjusted to meet design flow conditions or equivalent procedures. Exceptions are as follows: Damper throttling may be used for air system balancing;

(a) With fan motors of 1 hp (0.746 kW) or less, or

(b) Of throttling results in no greater than ⅓ hp (0.248 kW) fan horsepower draw above that required if the fan speed were adjusted.

403.2.10.4 *Hydronic System Balancing.* Hydronic systems shall be balanced in a manner to first minimize throttling losses; then the pump impeller shall be trimmed or pump speed shall be adjusted to meet design flow conditions. Exceptions are as follows:

(a) Pumps with pump motors of 10 hp (7.46 kW) or less.

(b) If throttling results in no greater than 3 hp (2.23 kW) pump horsepower draw above that required if the impeller were trimmed.

(c) To reserve additional pump pressure capability in open circuit piping systems subject to fouling. Valve throttling pressure drop shall not exceed that expected for future fouling.

403.2.10.5 *Control System Testing.* HVAC control systems shall be tested to assure that control elements are calibrated, adjusted, and in proper working condition. For projects larger than 50,000 ft2 conditioned area, detailed instructions for commissioning HVAC systems shall be provided by the designer in plans and specifications.

**§ 434.404 Building service systems and equipment.**

404.1 *Service Water Heating Equipment Efficiency.* Equipment must satisfy the minimum performance efficiency specified in Table 404.1 when tested in accordance with RS–37, RS–38, or RS–39 (incorporated by reference, see § 434.701). Omission of equipment from Table 404.1 shall not preclude the use of such equipment. Service water heating equipment used to provide additional function of space heating as part of a combination (integrated) system shall satisfy all stated requirements for the service water heating equipment. All gas-fired storage water heaters that are not equipped with a flue damper and use indoor air for combustion or draft hood dilution and that are installed in a conditioned space, shall be equipped with a vent damper listed in accordance with RS–42 (incorporated by reference, see § 434.701). Unless the water heater has an available electrical supply, the installation of such a vent damper shall not require an electrical connection.

TABLE 404.1.—MINIMUM PERFORMANCE OF WATER HEATING EQUIPMENT

| Category | Type | Fuel | Input rating | $V_T$ | Input to $V_T$ ratio Btuh/gal | Test Method[a] | Energy factor | Thermal efficiency E,% | Standby loss %/HR |
|---|---|---|---|---|---|---|---|---|---|
| NAECA | all | electric | 12 kW | all[c] | | DOE Test | 0.93–0.00132V | | |
| Covered | storage | gas | 75,000 Btuh | all[c] | | Procedure 10 | 0.62–0.0019V | | |
| Water | instantaneous | gas | 200,000 | all | | CFR Part 430 | 0.62–0.0019V | | |
| Heating | storage | oil | Btuh[c] | all | | 430 | 0.59–0.0019V | | |
| Equipment[b] | instantaneous | oil | 105,000 Btuh | all | | Appendix E | 0.59–0.0019V | | |
| | pool heater | gas/oil | 210,000 Btuh all | all | | ANSI Z21.56 (RS–38)[a] | | 78 | |
| Other Water Heating equipment[d] | storage | electric | all | all | | ANSI Z21.10.3 (RS–39)[a] | | 78 | .030+27/$V_T$ |
| | storage/ instantaneous | gas/oil | 155m999 Btuh | all | <4,000 | | | 78 | 1.3+114//$V_T$ |
| | | | | all | <4,000 | | | 80 | 1.3+95/$V_T$ |
| | | | >155,000 Btuh | <10 | 4,000 | | | 77 | |
| | | | | 10 | 4,000 | | | | 2.3+67/$V_T$ |
| Unfired Storage Tanks | | | | | all | | | | 6.5 Btuh/ft² |



[a] For detailed references see Subpart E.
[b] Consistent with National Appliance Energy Conservation Act (NAECA) of 1987.
[c] DOE Test Procedures apply to electric and gas storage water heaters with rated volumes 20 gallons and gas instantaneous water heaters with input ratings of 50,000 to 200,000 Btuh.
[d] All except those water heaters covered by NAECA.
[e] Incorporated by reference, see § 434.701.

404.1.1 *Testing Electric and Oil Storage Water Heaters for Standby Loss.*

(a) When testing an electric storage water heater, the procedures of Z21.10.3–1990 (RS–39, incorporated by reference, see § 434.701), Section 2.9, shall be used. The electrical supply voltage shall be maintained with ±1% of the center of the voltage range specified on the water heater nameplate. Also, when needed for calculations, the thermal efficiency ($E_t$) shall be 98%. When testing an oil-fired water heater, the procedures of Z21.10.3–1990 (RS–39 incorporated by reference, see § 434.701), Sections 2.8 and 2.9, shall be used.

(b) The following modifications shall be made: A vertical length of flue pipe shall be connected to the flue gas outlet of sufficient height to establish the minimum draft specified in the manufacturer's installation instructions. All measurements of oil consumption shall be taken by instruments with an accuracy of ±1% or better. The burner rate shall be adjusted to achieve an hourly Btu input rate within ±2% of the manufacturer's specified input rate with the $CO_2$ reading as specified by the manufacturer with smoke no greater than 1 and the fuel pump pressure within ±1% of the manufacturer's specification.

404.1.2 *Unfired Storage Tanks.* The heat loss of the tank surface area Btu/(h•ft²) shall be based on an 80°F water-air temperature difference.

404.1.3 *Storage Volume Symbols in Table 404.1.* The symbol "V" is the rated storage volume in gallons as specified by the manufacturer. The symbol "$V_T$" is the storage volume in gallons as measured during the test to determine the standby loss. $V_T$ may differ from V, but it is within tolerances allowed by the applicable Z21 and Underwriters Laboratories standards. Accordingly, for the purpose of estimating the standby loss requirement using the rated volume shown on the rating plate, $V_T$ should be considered as no less than 0.95V for gas and oil water heaters and no less than 0.90V for electric water heaters.

404.1.4 *Electric Water Heaters.* In applications where water temperatures not greater than 145°F are required, an economic evaluation shall be made on the potential benefit of using an electric heat pump water heater(s) instead of an electric resistance water heater(s). The analysis shall compare the extra installed costs of the heat pump unit with the benefits in reduced energy costs (less increased maintenance costs) over the estimated service life of the heat pump water heater. Exceptions are as follows: Electric water heaters used in conjunction with site-recovered or site-solar energy sources that provide 50% or more of the water heating load or off-peak heating with thermal storage.

404.2 *Service Hot Water Piping Insulation.* Circulating system piping and noncirculating systems without heat traps, the first eight feet of outlet piping from a constant-temperature noncirculating storage system, and the inlet pipe between the storage tank and a heat trap in a noncirculating storage system shall meet the provisions of subsection 403.2.9.

404.2.1 Vertical risers serving storage water heaters not having an integral heat trap and serving a noncirculating system shall have heat traps on both the inlet and outlet piping as close as practical to the water heater.

404,3 *Service Water Heating System Controls.* Temperature controls that allow for storage temperature adjustment from 110°F to a temperature compatible with the intended use shall be provided in systems serving residential dwelling units and from 90°F for other systems. When designed to maintain usage temperatures in hot water pipes, such as circulating hot water systems or heat trace, the system shall be equipped with automatic time switches or other controls that can be set to turn off the system.

404.3.1 The outlet temperature of lavatory faucets in public facility restrooms shall be limited to 110°F.

404.4 *Water Conservation.* Showerheads and lavatory faucets must meet the requirements of 10 CFR 430.32 (o)-(p).

404.4.1 Lavatory faucets in public facility restrooms shall be equipped with a foot switch, occupancy sensor, or similar device or, in other than lavatories for physically handicapped persons, limit water delivery to 0.25 gal/cycle.

404.5 *Swimming Pools.* All pool heaters shall be equipped with a readily accessible on-off switch.

404.5.1 Time switches shall be installed on electric heaters and pumps. Exceptions are as follows:

(a) Pumps required to operate solar or heat recovery pool heating systems.

(b) Where public health requirements require 24-hour pump operation.

404.5.2 Heated swimming pools shall be equipped with pool covers. Exception: When over 70% of the annual energy for heating is obtained from a site-recovered or site-solar energy source.

404.6 *Combined Service Water Heating and Space Heating Equipment.* A single piece of equipment shall not be used to provide both space heating and service water heating. Exceptions are as follows:

(a) The energy input or storage volume of the combined boiler or water heater is less than twice the energy input or storage volume of the smaller of the separate boilers or water heaters otherwise required or

(b) The input to the combined boiler is less than 150,000 Btuh.

## Subpart E—Building Energy Cost Compliance Alternative

**§ 434.501 General.**

501.1 Subpart E permits the use of the Building Energy Cost Compliance Alternative as an alternative to many elements of subpart D. When this subpart is used, it must be used with subpart C and subpart D, 401.1, 401.2, 401.3.4 and in conjunction with the minimum requirements found in

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subsections 402.1, 402.2, and 402.3., 403.1, 403.2.1–7, 403.2.9 and 404.

501.2 *Compliance.* Compliance under this method requires detailed energy analyses of the entire Proposed Design, referred to as the Design Energy Consumption; an estimate of annual energy cost for the proposed design, referred to as the Design Energy Cost; and comparison against an Energy Cost Budget. Compliance is achieved when the estimated Design Energy Cost is less than or equal to the Energy Cost Budget. This subpart provides instructions for determining the Energy Cost Budget and for calculating the Design Energy Consumption and Design Energy Cost. The Energy Cost Budget shall be determined through the calculation of monthly energy consumption and energy cost of a Prototype or Reference Building design configured to meet the requirements of subsections 401 through 404.

501.3 Designers are encouraged to employ the Building Energy Cost Budget compliance method set forth in this section for evaluating proposed design alternatives to using the elements prescribed in subpart D. The Building Energy Cost Budget establishes the relative effectiveness of each design alternative in energy cost savings, providing an energy cost basis upon which the building owner and designer may select one design over another. This Energy Cost Budget is the highest allowable calculated energy cost for a specific building design. Other alternative designs are likely to have lower annual energy costs and life cycle costs than those used to minimally meet the Energy Cost Budget.

501.4 The Energy Cost Budget is a numerical reference for annual energy cost. It's purpose is to assure neutrality with respect to choices such as HVAC system type, architectural design and fuel choice by providing a fixed, repeatable budget that is independent of any of these choices wherever possible (*i.e.*, for the prototype buildings). The Energy Cost Budget for a given building size and type will vary only with climate, the number of stories, and the choice of simulation tool. The specifications of the prototypes are necessary to assure repeatability, but have no other significance. They are not necessarily recommended energy conserving practice, or even physically reasonable practice for some climates or buildings, but represent a reasonable worst case of energy cost resulting from compliance with the provisions of subsections 401 through 404.

**§ 434.502 Determination of the annual energy cost budget.**

502.1 The annual Energy Cost Budgets shall be determined in accordance with the Prototype Building Procedure in § 434.503 and § 434.504 or the Reference Building Procedure in § 434.505. Both methods calculate an annual Energy Cost by summing the 12 monthly Energy Cost Budgets. Each monthly Energy Cost Budget is the product of the monthly Building Energy Consumption of each type of energy used multiplied by the monthly Energy Cost per unit of energy for each type of energy used.

502.2 The Energy Cost Budget shall be determined in accordance with Equation 502.2.a as follows:

$$ECB = ECB_{jan} + \ldots ECB_{m} + \ldots + ECB_{dec} \qquad \text{(Equation 502.2. a)}$$

Based on:

$$ECB_{m} = BECON_{m1} 1 \times ECOS_{m1} + \ldots + BECON_{mi} \times ECOS_{mi} \qquad \text{(Equation 502.2. b)}$$

Where:
ECB=The annual Energy Cost Budget
$ECB_m$=The monthly Energy Cost Budget
$BECON_{mi}$=The monthly Budget Energy Consumption of the $i_{th}$ type of energy
$ECOS_{mi}$=The monthly Energy Cost, per unit of the $i_{th}$ type of energy

502.3 The monthly Energy Cost Budget shall be determined using current rate schedules or contract prices available at the building site for all types of energy purchased. These costs shall include demand charges, rate blocks, time of use rates, interruptible service rates, delivery charges, taxes, and all other applicable rates for the type, location, operation, and size of the proposed design. The monthly Budget Energy Consumption shall be calculated from the first day through the last day of each month, inclusive.

**§ 434.503 Prototype building procedure.**

503.1 The Prototype Building procedure shall be used for all building types listed below. For mixed-use buildings the Energy Cost Budget is derived by allocating the floor space of each building type within the floor space of the prototype building. For buildings not listed below, the Reference Building procedure of § 434.505 shall be used. Prototype buildings include:
(a) Assembly;
(b) Office (Business);
(c) Retail (Mercantile);
(d) Warehouse (Storage);
(e) School (Educational);
(f) Hotel/Motel;
(g) Restaurant;
(h) Health/Institutional; and
(i) Multi-Family.

**§ 434.504 Use of the prototype building to determine the energy cost budget.**

504.1 Determine the building type of the Proposed Design using the categories in subsection 503.1. Using the appropriate Prototype Building characteristics from all of the tables contained in Subpart E, the building shall be simulated using the same gross floor area and number of floors for the Prototype Building as in the Proposed Design.

504.2 The form, orientation, occupancy and use profiles for the Prototype Building shall be fixed as described in subsection 511. Envelope, lighting, other internal loads and HVAC systems and equipment shall meet the requirements of subsection 301, 401, 402, 403, and 404 and are standardized inputs.

**§ 434.505 Reference building method.**

505.1 The Reference Building procedure shall be used only when the Proposed Design cannot be represented by one or a combination of the Prototype Building listed in subsection 503.1 or the assumptions for the Prototype Building in Subsection 510, such as occupancy and use-profiles, do not reasonably represent the Proposed Design.

**§ 434.506 Use of the reference building to determine the energy cost budget.**

506.1 Each floor shall be oriented in the same manner for the Reference Building as in the Proposed Design. The form, gross and conditioned floor areas of each floor and the number of floors shall be the same as in the Proposed Design. All other characteristics, such as lighting, envelope and HVAC systems and equipment, shall meet the requirements of subsections 301, 401, 402, 403 and 404.



**§ 434.507 Calculation procedure and simulation tool.**

507.1 The Prototype or Reference Buildings shall be modeled using the criteria of subsections 510 and 521. The modeling shall use a climate data set appropriate for both the site and the complexity of the energy conserving features of the design. ASHRAE Weather Year for Energy Calculations (WYEC) data or bin weather data shall be used in the absence of other appropriate data.

**§ 434.508 Determination of the design energy consumption and design energy cost.**

508.1 The Design Energy Consumption shall be calculated by modeling the Proposed Design using the same methods, assumptions, climate data, and simulation tool as were used to establish the Energy Cost Budget, except as explicitly stated in 509 through 534. The Design Energy Cost shall be calculated per Equation 508.1.

**Equation 508.1**

$$DECOS = DECOS_{jan} + \ldots DECOS_{m} \cdot \ldots + DECOS_{dec} \qquad \text{Equation 508.1}$$

Based on:

$$DECOS_{m} = DECON_{m1} \times ECOS_{m1} + \ldots + DECON_{mi} \times ECOS_{mi} \qquad \text{(Equation 508.1.2)}$$

Where:
DECOS=The annual Design Energy Cost
$DECOS_m$=The monthly Design Energy Cost
$DECON_{mi}$=The monthly Design Energy Consumption of the $i_{th}$ type of energy
$ECOS_{mi}$=The monthly Energy Cost per unit of the $i_{th}$ type of energy

The $DECON_{mi}$ shall be calculated from the first day through the last day of the month, inclusive.

**§ 434.509 Compliance.**

509.1 If the Design Energy Cost is less than or equal to the Energy Cost Budget, and all of the minimum requirements of subsection 501.2 are met, the Proposed Design complies with the standards.

**§ 434.510 Standard calculation procedure.**

510.1 The Standard Calculation Procedure consists of methods and assumptions for calculating the Energy Cost Budget for the Prototype or Reference Building and the Design Energy Consumption and Design Energy Cost of the Proposed Design. In order to maintain consistency between the Energy Cost Budget and the Design Energy Cost, the input assumptions to be used are stated below. These inputs shall be used to determine the Energy Cost Budget and the Design Energy Consumption.

510.2 Prescribed assumptions shall be used without variation. Default assumptions shall be used unless the designer can demonstrate that a different assumption better characterizes the building's energy use over its expected life. The default assumptions shall be used in modeling both the Prototype or Reference Building and the Proposed Design, unless the designer demonstrates clear cause to modify these assumptions. Special procedures for speculative buildings are discussed in subsection 503. Shell buildings may not use subpart E.

**§ 434.511 Orientation and shape.**

511.1 The Prototype Building shall consist of the same number of stories, and gross and conditioned floor area as the Proposed Design, with equal area per story. The building shape shall be rectangular, with a 2.5:1 aspect ratio. The long dimensions of the building shall face East and West. The fenestration shall be uniformly distributed in proportion to exterior wall area. Floor-to-floor height for the Prototype Building shall be 13 ft. except for dwelling units in hotels/motels and multi-family high-rise residential buildings where floor-to-floor height shall be 9.5 ft.

511.2 The Reference Building shall consist of the same number of stories, and gross floor area for each story as the Proposed Design. Each floor shall be oriented in the same manner as the Proposed Design. The geometric form shall be the same as the Proposed Design.

**§ 434.512 Internal loads.**

512.1 The systems and types of energy specified in this section are provided only for purposes of calculating the Energy Cost Budget. They are not requirements for either systems or the type of energy to be used in the Proposed Design or for calculation of Design Energy Cost.

512.2 Internal loads for multi-family high-rise residential buildings are prescribed in Tables 512.2.a and b, Multi-Family High Rise Residential Building Schedules. Internal loads for other building types shall be modeled as noted in this subsection.

TABLE 512.2.A.— MULTI-FAMILY HIGH RISE RESIDENTIAL BUILDINGS SCHEDULES—ONE-ZONE DWELLING UNIT

[Internal loads per dwelling unit Btu/h]

| Hour | Occupants | | Lights | Equipment | |
|---|---|---|---|---|---|
| | Sensible | Latent | Sensible | Sensible | Latent |
| 1 | 300 | 260 | 0 | 750 | 110 |
| 2 | 300 | 260 | 0 | 750 | 110 |
| 3 | 300 | 260 | 0 | 750 | 110 |
| 4 | 300 | 260 | 0 | 750 | 110 |
| 5 | 300 | 260 | 0 | 750 | 110 |
| 6 | 300 | 260 | 0 | 750 | 110 |
| 7 | 300 | 260 | 0 | 750 | 110 |
| 8 | 210 | 260 | 980 | 1250 | 190 |

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TABLE 512.2.A.— MULTI-FAMILY HIGH RISE RESIDENTIAL BUILDINGS SCHEDULES—ONE-ZONE DWELLING UNIT—Continued

[Internal loads per dwelling unit Btu/h]

| Hour | Occupants | | Lights | Equipment | |
|---|---|---|---|---|---|
| | Sensible | Latent | Sensible | Sensible | Latent |
| 9 | 100 | 80 | 840 | 2600 | 420 |
| 10 | 100 | 80 | 0 | 1170 | 180 |
| 11 | 100 | 80 | 0 | 1270 | 190 |
| 12 | 100 | 80 | 0 | 2210 | 330 |
| 13 | 100 | 80 | 0 | 2210 | 330 |
| 14 | 100 | 80 | 0 | 1270 | 190 |
| 15 | 100 | 80 | 0 | 1270 | 190 |
| 16 | 100 | 80 | 0 | 1270 | 190 |
| 17 | 100 | 80 | 0 | 1270 | 190 |
| 18 | 300 | 260 | 0 | 3040 | 450 |
| 19 | 300 | 260 | 0 | 3360 | 500 |
| 20 | 300 | 260 | 960 | 1490 | 220 |
| 21 | 300 | 260 | 960 | 1490 | 220 |
| 22 | 300 | 260 | 960 | 1490 | 220 |
| 23 | 300 | 260 | 960 | 1060 | 160 |
| 24 | 300 | 260 | 960 | 1060 | 160 |

TABLE 512.2.B.—MULTI-FAMILY HIGH RISE RESIDENTIAL BUILDING SCHEDULES-TWO-ZONE DWELLING UNIT

[Internal loads per dwelling unit Btu/h]

| Hour | Bedrooms & bathrooms | | | | | Other rooms | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Occupants | | Lights | Equipment | | Occupants | | Lights | Equipment | |
| | Sensible | Latent | Sensible | Sensible | Latent | Sensible | Latent | Sensible | Sensible | Latent |
| 1 | 300 | 260 | 0 | 100 | 20 | 0 | 0 | 0 | 650 | 90 |
| 2 | 300 | 260 | 0 | 100 | 20 | 0 | 0 | 0 | 650 | 90 |
| 3 | 300 | 260 | 0 | 100 | 20 | 0 | 0 | 0 | 650 | 90 |
| 4 | 300 | 260 | 0 | 100 | 20 | 0 | 0 | 0 | 650 | 90 |
| 5 | 300 | 260 | 0 | 100 | 20 | 0 | 0 | 0 | 650 | 90 |
| 6 | 300 | 260 | 0 | 100 | 20 | 0 | 0 | 0 | 650 | 90 |
| 7 | 200 | 180 | 680 | 200 | 40 | 100 | 80 | 300 | 1050 | 150 |
| 8 | 110 | 120 | 240 | 200 | 40 | 100 | 80 | 600 | 2400 | 380 |
| 9 | 0 | 0 | 0 | 100 | 20 | 100 | 80 | 0 | 1070 | 160 |
| 0 | 0 | 0 | 0 | 100 | 20 | 100 | 80 | 0 | 1170 | 170 |
| 0 | 0 | 0 | 0 | 100 | 20 | 100 | 80 | 0 | 1170 | 170 |
| 0 | 0 | 0 | 0 | 100 | 20 | 100 | 80 | 0 | 2110 | 310 |
| 0 | 0 | 0 | 0 | 100 | 20 | 100 | 80 | 0 | 2110 | 310 |
| 14 | 0 | 0 | 0 | 100 | 20 | 100 | 80 | 0 | 1170 | 170 |
| 15 | 0 | 0 | 0 | 100 | 20 | 100 | 80 | 0 | 1170 | 170 |
| 16 | 0 | 0 | 0 | 100 | 20 | 100 | 80 | 0 | 1170 | 170 |
| 17 | 0 | 0 | 0 | 100 | 20 | 100 | 80 | 0 | 1170 | 170 |
| 18 | 0 | 0 | 0 | 100 | 20 | 300 | 260 | 0 | 2940 | 430 |
| 19 | 0 | 0 | 0 | 100 | 20 | 300 | 260 | 0 | 3260 | 480 |
| 20 | 100 | 80 | 320 | 300 | 60 | 200 | 180 | 640 | 1190 | 160 |
| 21 | 100 | 80 | 320 | 300 | 60 | 200 | 180 | 640 | 1190 | 160 |
| 22 | 150 | 130 | 480 | 700 | 90 | 150 | 130 | 480 | 790 | 130 |
| 23 | 300 | 260 | 640 | 410 | 70 | 0 | 0 | 320 | 650 | 90 |
| 24 | 300 | 260 | 640 | 410 | 70 | 0 | 0 | 320 | 650 | 90 |

**513.1 Occupancy.**

5131 Occupancy schedules are default assumptions. The same assumptions shall be made in computing Design Energy Consumption as were used in calculating the Energy Cost Budget.

513.2 Table 513.2.a, Occupancy Density, establishes the density, in ft² person of conditioned floor area, to be used for each building type. Table 513.2.b, Building Schedule Percentage Multipliers, establishes the percentage of total occupants in the building by hour of the day for each building type.

TABLE 513.2.A.—OCCUPANCY DENSITY

| Building type | Conditioned floor area Ft² person |
|---|---|
| Assembly | 50 |
| Office | 275 |
| Retail | 300 |
| Warehouse | 15000 |
| School | 75 |
| Hotel/Motel | 250 |
| Restaurant | 100 |
| Health/Institutional | 200 |
| Multi-family High-rise Residential | 2 per unit .[1] |

[1] Heat generation: Btu/h per person: 230 Btu/h per person sensible, and 190 Btu/h per person latent. See Tables 512.2 a and b.



TABLE 513.2.b
BUILDING SCHEDULE PERCENTAGE MULTIPLIERS

| | | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1. ASSEMBLY | | | | | | | | | | | | | | | | | | | | | | | | | |
| OCCUPANCY | WEEKDAY: | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 20 | 20 | 20 | 20 | 80 | 80 | 80 | 80 | 80 | 80 | 20 | 20 | 20 | 20 | 0 | 0 |
| | SATURDAY: | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 20 | 20 | 20 | 20 | 60 | 60 | 60 | 60 | 60 | 60 | 20 | 60 | 60 | 60 | 0 | 0 |
| | SUNDAY: | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 10 | 10 | 10 | 10 | 10 | 70 | 70 | 70 | 70 | 70 | 70 | 70 | 70 | 70 | 0 | 0 |
| ASSEMBLY | WEEKDAY: | 0 | 0 | 0 | 0 | 0 | 0 | 40 | 40 | 40 | 75 | 75 | 75 | 75 | 75 | 75 | 75 | 75 | 75 | 75 | 75 | 75 | 75 | 0 | 0 |
| LTNG & RECEP | SATURDAY: | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 30 | 30 | 50 | 50 | 50 | 50 | 50 | 50 | 50 | 50 | 50 | 50 | 50 | 50 | 50 | 0 | 0 |
| | SUNDAY: | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 30 | 30 | 30 | 30 | 30 | 50 | 65 | 65 | 65 | 65 | 65 | 65 | 65 | 65 | 65 | 0 | 0 |
| ASSEMBLY | WEEKDAY: | Off | Off | Off | Off | Off | On | On | On | On | On | On | On | On | On | On | On | On | On | On | On | On | On | Off | Off |
| HVAC | SATURDAY: | Off | Off | Off | Off | Off | On | On | On | On | On | On | On | On | On | On | On | On | On | On | On | On | On | Off | Off |
| | SUNDAY: | Off | Off | Off | Off | Off | On | On | On | On | On | On | On | On | On | On | On | On | On | On | On | On | On | Off | Off |
| ASSEMBLY | WEEKDAY: | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 5 | 5 | 35 | 5 | 5 | 5 | 5 | 5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| SWH | SATURDAY: | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 5 | 5 | 20 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 65 | 30 | 0 | 0 |
| | SUNDAY: | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 5 | 5 | 10 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 65 | 30 | 0 | 0 |
| 2. OFFICE | | | | | | | | | | | | | | | | | | | | | | | | | |
| OCCUPANCY | WEEKDAY: | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 10 | 20 | 95 | 95 | 45 | 45 | 95 | 95 | 95 | 95 | 95 | 30 | 10 | 10 | 10 | 0 | 0 |
| | SATURDAY: | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 10 | 10 | 30 | 30 | 30 | 30 | 10 | 10 | 10 | 10 | 10 | 0 | 0 | 0 | 0 | 0 | 0 |
| | SUNDAY: | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| OFFICE | WEEKDAY: | 0 | 0 | 0 | 0 | 0 | 0 | 40 | 40 | 90 | 90 | 90 | 80 | 90 | 90 | 90 | 90 | 90 | 90 | 30 | 30 | 30 | 20 | 0 | 0 |
| LTNG & RECEP | SATURDAY: | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 30 | 30 | 30 | 30 | 15 | 15 | 15 | 15 | 15 | 15 | 15 | 0 | 0 | 0 | 0 | 0 | 0 |
| | SUNDAY: | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 30 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| OFFICE | WEEKDAY: | Off | Off | Off | Off | Off | On | On | On | On | On | On | On | On | On | On | On | On | On | Off | Off | Off | Off | Off | Off |
| HVAC | SATURDAY: | Off | Off | Off | Off | Off | Off | On | On | On | On | On | On | On | Off | Off | Off | Off | Off | Off | Off | Off | Off | Off | Off |
| | SUNDAY: | Off | Off | Off | Off | Off | Off | On | On | On | On | On | On | On | On | On | On | On | On | On | On | On | On | Off | Off |
| OFFICE | WEEKDAY: | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 15 | 30 | 35 | 45 | 55 | 50 | 30 | 30 | 40 | 20 | 20 | 10 | 15 | 5 | 0 | 0 |
| SWH | SATURDAY: | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 10 | 20 | 15 | 15 | 15 | 10 | 10 | 10 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| | SUNDAY: | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

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**Table 513.2.b**
**BUILDING SCHEDULE PERCENTAGE MULTIPLIERS** (cont.)

| | | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **3. RETAIL** | | | | | | | | | | | | | | | | | | | | | | | | | |
| | WEEKDAY: | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 20 | 20 | 20 | 20 | 80 | 80 | 80 | 80 | 80 | 80 | 20 | 20 | 20 | 20 | 0 | 0 |
| OCCUPANCY | SATURDAY: | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 20 | 20 | 20 | 20 | 60 | 60 | 60 | 60 | 60 | 60 | 60 | 60 | 60 | 60 | 0 | 0 |
| | SUNDAY: | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 10 | 10 | 10 | 10 | 10 | 70 | 70 | 70 | 70 | 70 | 70 | 70 | 70 | 70 | 0 | 0 |
| RETAIL | WEEKDAY: | 0 | 0 | 0 | 0 | 0 | 0 | 40 | 40 | 40 | 75 | 75 | 75 | 75 | 75 | 75 | 75 | 75 | 75 | 75 | 75 | 75 | 75 | 0 | 0 |
| LTNG & RECEP | SATURDAY: | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 30 | 30 | 50 | 50 | 50 | 50 | 50 | 50 | 50 | 50 | 50 | 50 | 50 | 50 | 50 | 0 | 0 |
| | SUNDAY: | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 30 | 30 | 30 | 30 | 30 | 65 | 65 | 65 | 65 | 65 | 65 | 65 | 65 | 65 | 65 | 0 | 0 |
| RETAIL | WEEKDAY: | Off | Off | Off | Off | Off | Off | On | On | On | On | On | On | On | On | On | On | On | On | On | On | On | Off | Off | Off |
| HVAC | SATURDAY: | Off | Off | Off | Off | Off | Off | On | On | On | On | On | On | On | On | On | On | On | On | On | On | On | Off | Off | Off |
| | SUNDAY: | Off | Off | Off | Off | Off | Off | Off | Off | On | On | On | On | On | On | On | On | On | On | On | Off | Off | Off | Off | Off |
| RETAIL | WEEKDAY: | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 10 | 20 | 30 | 40 | 55 | 60 | 60 | 45 | 40 | 45 | 45 | 40 | 30 | 30 | 0 | 0 | 0 |
| SWH | SATURDAY: | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 15 | 20 | 25 | 40 | 50 | 55 | 55 | 45 | 45 | 45 | 45 | 40 | 35 | 25 | 20 | 0 | 0 |
| | SUNDAY: | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 10 | 25 | 30 | 35 | 35 | 30 | 30 | 35 | 30 | 20 | 0 | 0 | 0 | 0 | 0 |
| | WEEKDAY: | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 15 | 70 | 90 | 90 | 90 | 50 | 85 | 85 | 85 | 20 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| **4. WAREHOUSE** | | | | | | | | | | | | | | | | | | | | | | | | | |
| OCCUPANCY | SATURDAY: | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 20 | 20 | 20 | 20 | 10 | 10 | 10 | 10 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| | SUNDAY: | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| WAREHOUSE | WEEKDAY: | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 40 | 70 | 90 | 90 | 90 | 90 | 90 | 90 | 90 | 90 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| LTNG & RECEP | SATURDAY: | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 10 | 25 | 25 | 25 | 10 | 10 | 10 | 10 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| | SUNDAY: | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| WAREHOUSE | WEEKDAY: | Off | Off | Off | Off | Off | Off | Off | On | On | On | On | On | On | On | On | On | On | Off | Off | Off | Off | Off | Off | Off |
| HVAC | SATURDAY: | Off | Off | Off | Off | Off | Off | Off | Off | On | On | On | On | On | On | On | On | Off | Off | Off | Off | Off | Off | Off | Off |
| | SUNDAY: | Off | Off | Off | Off | Off | Off | Off | Off | Off | Off | Off | Off | Off | Off | Off | Off | Off | Off | Off | Off | Off | Off | Off | Off |
| WAREHOUSE | WEEKDAY: | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 5 | 25 | 35 | 35 | 45 | 55 | 50 | 35 | 50 | 15 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| SWH | SATURDAY: | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 10 | 10 | 15 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| | SUNDAY: | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |



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**Table 513.2.b**
**BUILDING SCHEDULE PERCENTAGE MULTIPLIERS** (cont.)

| | | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **5. SCHOOL** | | | | | | | | | | | | | | | | | | | | | | | | | |
| | WEEKDAY: | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 5 | 75 | 90 | 90 | 80 | 80 | 80 | 80 | 45 | 15 | 5 | 15 | 20 | 20 | 10 | 0 | 0 |
| OCCUPANCY | SATURDAY: | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 10 | 10 | 10 | 10 | 10 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| | SUNDAY: | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| SCHOOL | WEEKDAY: | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 30 | 85 | 95 | 95 | 95 | 80 | 80 | 80 | 70 | 50 | 50 | 35 | 35 | 35 | 30 | 0 | 0 |
| LTNG&RECEP | SATURDAY: | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 15 | 15 | 15 | 15 | 15 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| | SUNDAY: | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| SCHOOL | WEEKDAY: | Off | Off | Off | Off | Off | Off | Off | On | On | On | On | On | On | On | On | On | On | On | On | On | On | On | On | On |
| HVAC | SATURDAY: | Off | Off | Off | Off | Off | Off | Off | Off | On | On | On | On | On | On | On | On | On | On | On | On | On | On | On | On |
| | SUNDAY: | Off | Off | Off | Off | Off | Off | Off | Off | Off | Off | Off | On | On | On | On | On | On | On | On | On | On | On | On | On |
| SCHOOL | WEEKDAY: | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 5 | 30 | 55 | 60 | 70 | 75 | 80 | 60 | 60 | 5 | 5 | 15 | 20 | 20 | 20 | 20 | 0 |
| SWH | SATURDAY: | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| | SUNDAY: | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| | WEEKDAY: | 90 | 90 | 90 | 90 | 90 | 90 | 70 | 40 | 40 | 20 | 20 | 20 | 20 | 20 | 20 | 30 | 50 | 50 | 50 | 70 | 70 | 80 | 90 | 90 |
| **6. HOTEL/MOTEL** | | | | | | | | | | | | | | | | | | | | | | | | | |
| OCCUPANCY | SATURDAY | 90 | 90 | 90 | 90 | 90 | 90 | 70 | 50 | 50 | 30 | 30 | 30 | 30 | 30 | 30 | 30 | 30 | 50 | 60 | 60 | 60 | 70 | 70 | 70 |
| | SUNDAY: | 70 | 70 | 70 | 70 | 70 | 70 | 70 | 70 | 50 | 50 | 50 | 30 | 20 | 20 | 20 | 20 | 30 | 40 | 40 | 60 | 60 | 80 | 80 | 80 |
| HOTEL/MOTEL | WEEKDAY: | 20 | 15 | 10 | 10 | 10 | 20 | 40 | 50 | 40 | 40 | 25 | 25 | 25 | 25 | 25 | 25 | 25 | 25 | 60 | 80 | 90 | 80 | 60 | 30 |
| LTNG&RECEP | SATURDAY | 20 | 20 | 10 | 10 | 10 | 10 | 30 | 30 | 40 | 40 | 30 | 25 | 25 | 25 | 25 | 25 | 25 | 25 | 60 | 70 | 70 | 70 | 60 | 30 |
| | SUNDAY: | 30 | 30 | 20 | 20 | 20 | 20 | 30 | 40 | 40 | 30 | 30 | 30 | 30 | 20 | 20 | 20 | 20 | 20 | 50 | 70 | 80 | 60 | 50 | 30 |
| HOTEL/MOTEL | WEEKDAY: | On | On | On | On | On | On | On | On | On | On | On | On | On | On | On | On | On | On | On | On | On | On | On | On |
| HVAC | SATURDAY: | On | On | On | On | On | On | On | On | On | On | On | On | On | On | On | On | On | On | On | On | On | On | On | On |
| | SUNDAY: | On | On | On | On | On | On | On | On | On | On | On | On | On | On | On | On | On | On | On | On | On | On | On | On |
| HOTEL/MOTEL | WEEKDAY: | 20 | 15 | 15 | 15 | 20 | 25 | 50 | 60 | 55 | 45 | 40 | 45 | 40 | 35 | 30 | 30 | 30 | 40 | 55 | 60 | 50 | 55 | 45 | 25 |
| SWH | SATURDAY: | 20 | 15 | 15 | 15 | 20 | 25 | 40 | 50 | 50 | 50 | 45 | 50 | 50 | 45 | 40 | 40 | 34 | 40 | 55 | 55 | 50 | 55 | 40 | 25 |
| | SUNDAY: | 25 | 20 | 20 | 20 | 20 | 30 | 50 | 50 | 50 | 55 | 50 | 50 | 40 | 40 | 40 | 30 | 30 | 40 | 50 | 50 | 40 | 50 | 40 | 30 |



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**Table 513.2.b**
**BUILDING SCHEDULE PERCENTAGE MULTIPLIERS (cont.)**

| | | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **7. RESTAURANT** | | | | | | | | | | | | | | | | | | | | | | | | | |
| | WEEKDAY: | 15 | 15 | 5 | 0 | 0 | 0 | 0 | 5 | 5 | 5 | 20 | 50 | 80 | 70 | 40 | 20 | 25 | 50 | 80 | 80 | 80 | 50 | 35 | 20 |
| OCCUPANCY | SATURDAY: | 30 | 25 | 5 | 0 | 0 | 0 | 0 | 0 | 5 | 5 | 20 | 45 | 50 | 50 | 35 | 30 | 30 | 30 | 70 | 90 | 70 | 65 | 55 | 35 |
| | SUNDAY: | 20 | 20 | 5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 20 | 25 | 25 | 15 | 20 | 25 | 35 | 55 | 65 | 70 | 35 | 20 | 20 |
| RESTAURANT | WEEKDAY: | 15 | 15 | 15 | 15 | 15 | 20 | 40 | 40 | 60 | 60 | 90 | 90 | 90 | 90 | 90 | 90 | 90 | 90 | 90 | 90 | 90 | 90 | 50 | 30 |
| LTNG & RECEP | SATURDAY: | 20 | 15 | 15 | 15 | 15 | 15 | 30 | 30 | 60 | 60 | 80 | 80 | 80 | 80 | 80 | 80 | 80 | 90 | 90 | 90 | 90 | 90 | 50 | 30 |
| | SUNDAY: | 20 | 15 | 15 | 15 | 15 | 15 | 30 | 30 | 50 | 70 | 70 | 70 | 70 | 70 | 70 | 70 | 60 | 60 | 60 | 60 | 60 | 60 | 50 | 30 |
| RESTAURANT | WEEKDAY: | On | On | On | Off | Off | Off | Off | On | On | On | On | On | On | On | On | On | On | On | On | On | On | On | On | On |
| HVAC | SATURDAY: | On | On | On | Off | Off | Off | Off | Off | Off | On | On | On | On | On | On | On | On | On | On | On | On | On | On | On |
| | SUNDAY: | On | On | On | Off | Off | Off | Off | Off | Off | Off | On | On | On | On | On | On | On | On | On | On | On | On | On | On |
| RESTAURANT | WEEKDAY: | 20 | 15 | 15 | 0 | 0 | 0 | 0 | 60 | 55 | 45 | 40 | 45 | 40 | 35 | 30 | 30 | 30 | 40 | 55 | 60 | 50 | 55 | 45 | 25 |
| SWH | SATURDAY: | 20 | 15 | 15 | 0 | 0 | 0 | 0 | 0 | 0 | 50 | 45 | 50 | 50 | 45 | 40 | 40 | 35 | 40 | 55 | 55 | 50 | 55 | 40 | 30 |
| | SUNDAY: | 25 | 20 | 20 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 50 | 50 | 40 | 40 | 30 | 30 | 30 | 40 | 50 | 50 | 40 | 50 | 40 | 20 |
| | WEEKDAY: | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 10 | 50 | 80 | 80 | 80 | 80 | 80 | 80 | 80 | 80 | 50 | 30 | 30 | 20 | 20 | 0 | 0 |
| **8. HEALTH** | | | | | | | | | | | | | | | | | | | | | | | | | |
| OCCUPANCY | SATURDAY: | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 10 | 30 | 40 | 40 | 40 | 40 | 40 | 40 | 40 | 40 | 10 | 10 | 0 | 0 | 0 | 0 | 0 |
| | SUNDAY: | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| HEALTH | WEEKDAY: | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 50 | 90 | 90 | 90 | 90 | 90 | 90 | 90 | 90 | 90 | 30 | 30 | 30 | 30 | 30 | 0 | 0 |
| LTNG & RECEP | SATURDAY: | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 20 | 40 | 40 | 40 | 40 | 40 | 40 | 40 | 40 | 40 | 40 | 10 | 0 | 0 | 0 | 0 | 0 |
| | SUNDAY: | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 10 | 10 | 10 | 10 | 10 | 10 | 10 | 10 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| | WEEKDAY: | On | On | On | On | On | On | On | On | On | On | On | On | On | On | On | On | On | On | On | On | On | On | On | On |
| | SATURDAY: | On | On | On | On | On | On | On | On | On | On | On | On | On | On | On | On | On | On | On | On | On | On | On | On |
| | SUNDAY: | On | On | On | On | On | On | On | On | On | On | On | On | On | On | On | On | On | On | On | On | On | On | On | On |
| HEALTH | WEEKDAY: | 0 | 0 | 0 | 5 | 5 | 5 | 80 | 70 | 50 | 40 | 20 | 20 | 25 | 25 | 50 | 50 | 70 | 70 | 35 | 20 | 15 | 15 | 5 | 0 |
| SWH | SATURDAY: | 0 | 0 | 0 | 0 | 0 | 0 | 20 | 45 | 50 | 50 | 35 | 30 | 30 | 30 | 70 | 90 | 70 | 65 | 55 | 35 | 30 | 25 | 5 | 0 |
| | SUNDAY: | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 20 | 25 | 25 | 15 | 20 | 25 | 35 | 55 | 65 | 70 | 35 | 20 | 20 | 20 | 20 | 5 | 0 |



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**Table 513.2.b**
**BUILDING SCHEDULE PERCENTAGE MULTIPLIERS (cont.)**

NOTES FOR TABLE 513.2.b

(1) Reference: Recommendations for Energy Conservation Standards and Guidelines for New Commercial Buildings, Vol. III, App. A Pacific Northwest Laboratory, PNL-4870-8, 1983."

(2) Table 513.2.b contains multipliers for converting the nominal values for building occupancy (Table 515.2), receptacle power density (Table 516.2) service hot water (Table), and lighting energy (§434.515) into time series data for estimating building loads under the Standard Calculation Procedure."

(3) "For each standard building profile there are three series - one each for weekdays, Saturday and Sunday. There are 24 elements per series. These represent the multiplier that should be used to estimate building loads from 12 a.m. to 1 a.m. (series element #1) through 11 p.m. to 12 a.m. (series element #24). The estimated load for any hour is simply the multiplier from the appropriate standard profile multiplied by the appropriate value from the tables cited above."

(4) The Building HVAC System Schedule listed in Table 517.1.1 lists the hours when the HVAC system shall be considered "on" or "off" in accordance with §434.514."



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**§ 434.514 Lighting.**

514.1 Interior Lighting Power Allowance (ILPA), for calculating the Energy Cost Budget shall be determined from subsection 401.3.2. The lighting power used to calculate the Design Energy Consumption shall be the actual adjusted power for lighting in the Proposed Design. If the lighting controls in the Proposed Design are more effective at saving energy than those required by subsection 401.3.1 and 401.3.2, the actual installed lighting power shall be used along with the schedules reflecting the action of the controls to calculate the Design Energy Consumption. This actual installed lighting power shall not be adjusted by the Power Adjustment Factors listed in Table 514.1.

TABLE 514.1.—POWER ADJUSTMENT FACTOR (PAF)

| Automatic control device(s) | Standard PAF |
|---|---|
| (1) Occupancy Sensor | 0.30 |
| (2) Daylight Sensing Continuous Dimming | 0.30 |
| (3) Daylight Sensing Multiple Step Dimming | 0.20 |
| (4) Daylight Sensing On/Off | 0.10 |
| (5) Lumen Maintenance | 0.10 |

514.2 Table 513.2.b establishes default assumptions for the percentage of the lighting load switched-on in each Prototype or Reference Building by hour of the day. These default assumptions can be changed when calculating the Energy Cost Budget to provide, for example, a 12-hour rather than an 8-hour workday.

**§ 434.515 Receptacles.**

515.1 Receptacle loads and profiles are default assumptions. The same assumptions shall be made in calculating Design Energy Consumption as were used in calculating the Energy Cost Budget.

515.2 Receptacle loads include all general service loads that are typical in a building. These loads exclude any process electrical usage and HVAC primary or auxiliary electrical usage. Table 515.2, Receptacle Power Densities, establishes the density, in W/ft², to be used for each building type. The receptacle energy profiles shall be the same as the lighting energy profiles in Table 513.2.b. This profile establishes the percentage of the receptacle load that is switched on by hour of the day and by building type.

TABLE 515.2.—RECEPTACLE POWER DENSITIES

| Building type | W/ft² of conditioned floor area |
|---|---|
| Assembly | 0.25 |
| Office | 0.75 |
| Retail | 0.25 |
| Warehouse | 0.1 |
| School | 0.5 |
| Hotel/Motel | 0.25 |
| Restaurant | 0.1 |
| Health | 1.0 |
| Multi-family High Rise Residential | [1] |

[1] Included in Lights and Equipment portions of Tables 512.2 a and b.

**§ 434.516 Building exterior envelope.**

516.1 *Insulation and Glazing.* The insulation and glazing characteristics of the Prototype and Reference Building envelope shall be determined by using the first column under "Base Case", with no assumed overhangs, for the appropriate Alternate Component Tables (ACP) in Table 402.4.1.2, as defined by climate range. The insulation and glazing characteristics from this ACP are prescribed assumptions for Prototype and Reference Buildings for calculating the Energy Cost Budget. In calculating the Design Energy Consumption of the Proposed Design, the envelope characteristics of the Proposed Design shall be used.

516.2 *Infiltration.* For Prototype and Reference Buildings, the infiltration assumptions in subsection 516.2.1 shall be prescribed assumptions for calculating the Energy Cost Budget and default assumptions for the Design Energy Consumption. Infiltration shall impact perimeter zones only.

516.2.1 When the HVAC system is switched "on," no infiltration shall be assumed. When the HVAC system is switched "off," the infiltration rate for buildings with or without operable windows shall be assumed to be 0.038 cfm/ft² of gross exterior wall. Hotels/motels and multi-family high-rise residential buildings shall have infiltration rates of 0.038 cfm/ft² of gross exterior wall area at all times.

516.3 *Envelope and Ground Absorptivities.* For Prototype and Reference Buildings, absorptivity assumptions shall be prescribed assumptions for computing the Energy Cost Budget and default assumptions for computing the Design Energy Consumption. The solar absorptivity of opaque elements of the building envelope is assumed to be 70%. The solar absorptivity of ground surfaces is assumed to be 80% (20% reflectivity).

516.4 *Window Management.* For the Prototype and Reference Building, window management drapery assumptions shall be prescribed assumptions for setting the Energy Cost Budget. No draperies shall be the default assumption for computing the Design Energy Consumption. Glazing is assumed to be internally shaded by medium-weight draperies, closed one-half time. The draperies shall be modeled by assuming that one-half the area in each zone is draped and one-half is not. If manually-operated draperies, shades, or blinds are to be used in the Proposed Design, the Design Energy Consumption shall be calculated by assuming they are effective over one-half the glazing area in each zone.

516.5 *Shading.* For Prototype and Reference buildings and the Proposed Design, shading by permanent structures, terrain, and vegetation shall be taken into account for computing energy consumption, whether or not these features are located on the building site. A permanent fixture is one that is likely to remain for the life of the Proposed Design.

**§ 434.517 HVAC systems and equipment.**

517.1 The specifications and requirements for the HVAC systems of the Prototype and Reference Buildings shall be those in Table 517.1.1, HVAC Systems for Prototype and Reference Buildings. For the calculation of the Design Energy Consumption, the HVAC systems and equipment of the Proposed Design shall be used.

517.2 The systems and types of energy presented in Table 517.1.1 are assumptions for calculating the Energy Cost Budget. They are not requirements for either systems or the type of energy to be used in the Proposed Building or for the calculation of the Design Energy Cost.

TABLE 517.1.1.—HVAC SYSTEMS OF PROTOTYPE AND REFERENCE BUILDINGS [1,2]

| Building/space occupancy | System No. (Table 517.4.1) | Remarks (Table 517.4.1) |
|---|---|---|
| Assembly: | | |
| a. Churches (any size) | 1 | |



TABLE 517.1.1.—HVAC SYSTEMS OF PROTOTYPE AND REFERENCE BUILDINGS [1,2]—Continued

| Building/space occupancy | System No. (Table 517.4.1) | Remarks (Table 517.4.1) |
|---|---|---|
| b. ≤50,000 ft² or ≤3 floors | 1 or 3 | Note 1. |
| c. >50,000 ft² or >3 floors | 3 | |
| Office: | | |
| a. ≤20,000 ft² | 1 | |
| b. ≤50,000 ft² and either ≤3 floors or ≤75,000 ft² | 4 | |
| c. <75,000 ft² or >3 floors | 5 | |
| Retail: | | |
| a. ≤50,000 ft² | 1 or 3 | Note 1. |
| b. >50,000 ft² | 4 or 5 | Note 1. |
| Warehouse | 1 | Note 1. |
| School: | | |
| a. ≤75,000 ft² or ≤3 floors | 1 | |
| b. >75,000 ft² or >3 floors | 3 | |
| Hotel/Motel: | | |
| a. ≤3 stories | 2 or 7 | Note 5, 7. |
| b. >3 stories | 6 | Note 6. |
| Restaurant | 1 or 3 | Note 1. |
| Health: | | |
| a. Nursing Home (any size) | 2 or 7 | Note 7. |
| b. ≤15,000 ft² | 1 | |
| c. <15,000 ft² or ≤50,000 ft² | 4 | Note 2. |
| d. >50,000 ft² | 5 | Note 2, 3. |
| Multi-family High Rise Residential >3 stories | 7 | |

[1] Space and Service Water Heating budget calculations shall be made using both electricity and natural gas. The Energy Cost Budget shall be the lower of these two calculations. If natural gas is not available at the rate, electricity and #2 fuel oil shall be used for the budget calculations.

[2] The system and energy types presented in this Table are not intended as requirements or recommendations for the proposed design. Floor areas below are the total conditioned floor areas for the listed occupancy type in the building. The number of floors indicated below is the total number of occupied floors for the listed occupancy type.

517.3 *HVAC Zones.* HVAC zones for calculating the Energy Cost Budget of the Prototype or Reference Building shall consist of at least four perimeter and one interior zones per floor. Prototype Buildings shall have one perimeter zone facing each cardinal direction. The perimeter zones of Prototype and Reference Buildings shall be 15 ft in width, or one-third the narrow dimension of the building, when this dimension is between 30 ft and 45 ft inclusive, or one-half the narrow dimension of the building when this dimension is less than 30 ft. Zoning requirements shall be a default assumption for calculating the Energy Cost Budget. For multi-family high-rise residential buildings, the prototype building shall have one zone per dwelling unit. The proposed design shall have one zone per unit unless zonal thermostatic controls are provided within units; in this case, two zones per unit shall be modeled. Building types such as assembly or warehouse may be modeled as a single zone if there is only one space.

517.4 For calculating the Design Energy Consumption, no fewer zones shall be used than were in the Prototype and Reference Buildings. The zones in the simulation shall correspond to the zones provided by the controls in the Proposed Design. Thermally similar zones, such as those facing one orientation on different floors, may be grouped together for the purposes of either the Design Energy Consumption or Energy Cost Budget simulation.

TABLE 517.4.1.—HVAC SYSTEM DESCRIPTION FOR PROTOTYPE AND REFERENCE BUILDINGS [1,2]

| HVAC component | System #1 | System #2 | System #3 | System #4 |
|---|---|---|---|---|
| System Description | Packaged rooftop single room, one unit per zone. | Packaged terminal air conditioner with space heater or heat pump, one heating/cooling unit per zone. | Air handler per zone with central plant. | Packaged rooftop VAV w/ perimeter reheat. |
| Fan system—Design supply circulation rate. | Note 9 | Note 10 | Note 9 | Note 9. |
| Supply fan total static pressure. | 1.3 in. W.C | N/A | 2.0 in. W.C | 3.0 in. W.C. |
| Combined supply fan, motor, and drive efficiency. | 40% | N/A | 50% | 45%. |
| Supply fan control | Constant volume | Fan Cycles with call for heating or cooling. | Constant volume | VAV w/forward curved centrifugal fan and variable inlet vanes. |
| Return fan total static pressure. | N/A | N/A | 0.6 in. W.C. | 0.6 in. W.C. |
| Combined return fan, motor, and drive efficiency. | N/A | N/A | 25% | 25%. |

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TABLE 517.4.1.—HVAC SYSTEM DESCRIPTION FOR PROTOTYPE AND REFERENCE BUILDINGS [1, 2]—Continued

| HVAC component | System #1 | System #2 | System #3 | System #4 |
|---|---|---|---|---|
| Return fan control | N/A | N/A | Constant volume | VAV w/forward curved centrifugal fan and discharge dampers. |
| Cooling System | Direct expansion air cooled. | Direct expansion air cooled. | Chilled water (Note 1) | Direct expansion air cooled. |
| Heating System | Furnace, heat pump, or electric resistance (Note 8). | Heat pump w/electric resistance auxiliary or air conditioner w/space heater (Note 8). | Hot water (Note 8, 12) | Hot water (Note 12) or electric resistance (Note B). |
| Remarks | Dry bulb economizer per Section 7.4.3 (barometric relief). | No economizer | Dry bulb economizer per Section 434.514. | Dry bulb economizer per Section 434.514. Minimum VAV setting per 434.514 exception 1. Supply air reset by zone of greatest cooling demand. |

[1] The systems and energy types presented in this Table are not intended as requirements or recommendations for the proposed design.
[2] For numbered notes see end of Table 517.4.1.

TABLE 517.4.1.—HVAC SYSTEM DESCRIPTION FOR PROTOTYPE AND REFERENCE BUILDINGS [1]

| HVAC component | Systems #5 | System #6 | System #7 |
|---|---|---|---|
| System Description | Built-up central VAV with perimeter reheat. | Fourpipe fan coil per zone with central plant. | Water source heat pump |
| Fan system—Design supply circulation rate. | Note 9 | Note 9 | Note 10. |
| Supply fan total static pressure | 4.0 in W.C | 0.5 in W.C | 0.5 in. W.C. |
| Combined supply fan, motor, and drive efficiency. | 55% | 25A | 25%. |
| Supply fan control | VAV w/air-foil centrifugal fan and AC frequency variable speed drive. | Fan Cycles with call for heating or cooling. | Fan cycles w/call for heating or cooling. |
| Return fan total static pressure | 1.0 in W.C | N/A | N/A. |
| Combined return fan, motor, and drive efficiency. | 30% | N/A | N/A. |
| Return fan control | VAV with air-foil centrifugal fan and AC frequency variable speed drive. | N/A | N/A. |
| Cooling System | Chilled water (Note 11) | Chilled water (Note 11) | Closed circuit, centrifugal blower type cooling tower sized per Note 11. Circulating pump sized for 2.7 GPM per ton. |
| Heating System | Hot water (Note 12) or electric resistance (Note 8). | Hot water (Note 12) or electric resistance (Note 8). | Electric or natural draft fossil fuel boiler (Note 8). |
| Remarks | Dry bulb economizer per Section 7.4.3. Minimum VAV setting per Section 7.4.4.3. Supply air reset by zone of greatest cooling demand. | No economizer | Tower fans and boiler cycled to maintain circulating water temperature between 60 and design tower leaving water temperature. |

**Numbered Notes for Table 517.4.1**

*HVAC System Descriptions for Prototype and Reference Buildings*

**Notes:**

1. For occupancies such as restaurants, assembly and retail which are part of a mixed use building which, according to Table 517.4.1, includes a central chilled water plant (systems 3, 5, or 6), chilled water system type 3 or 5, as indicated in the Table, shall be used.

2. Constant volume may be used in zones where pressurization relationships must be maintained by code. VAV shall be used in all other areas, in accordance with § 517.4

3. Provide run-around heat recovery systems for all fan systems with minimum outside air intake greater than 75%. Recovery effectiveness shall be 0.60.

4. If a warehouse is not intended to be mechanically cooled, both the Energy Cost Budgets and Design Energy Costs, may be calculated assuming no mechanical cooling.

5. The system listed is for guest rooms only. Areas such as public areas and back-of-house areas shall be served by system 4. Other areas such as offices and retail shall be served by the systems listed in Table 517.4.1 for those occupancy types.

6. The system listed is for guest rooms only. Areas such as public areas and back-of-house areas shall be served by System 5. Other areas such as offices and retail shall be served by the systems listed in Table 517.4.1.1 for those occupancy types.

7. System 2 shall be used for Energy Cost Budget calculation except in areas with design heating outside air temperatures less than 10°F.

8. Prototype energy budget cost calculations shall be made using both electricity and natural gas. If natural gas is not available at the site, electricity and #2 fuel oil shall be used. The Energy Cost Budget shall be the lower of these results. Alternatively, the Energy Cost Budget may be based on the fuel source that minimizes total operating, maintenance, equipment, and installation costs for the prototype over the building lifetime. Equipment and installation cost estimates shall be prepared using professionally recognized cost estimating tools, guides, and techniques. The methods of analysis shall conform to those of Subpart A of 10 CFR part 436. Energy costs shall be based on actual costs to the building as defined in this Section.

9. Design supply air circulation rate shall be based on a supply air to room air temperature differences of 20°F. A higher supply air temperature may be used if required to maintain a minimum circulation rate of 4.5 air changes per hour or 15 cfm per person at design conditions to each zone served by the system. If return fans are specified, they shall be sized from the supply fan capacity less the required minimum ventilation with outside air, or 75% or the supply air capacity, whichever is larger. Except where noted, supply and return fans shall be operated continually during occupied hours.

10. Fan System Energy when included in the efficiency rating of the unit as defined in § 403.2.4.3 need not be modeled explicitly for this system. The fan shall cycle with calls for heating or cooling.

11. Chilled water systems shall be modeled using a reciprocating chiller for systems with total cooling capacities less than 175 tons, and centrifugal chillers for systems with cooling capacities of 175 tons or greater. For systems with cooling or 600 ton or more, the Energy Cost Budget shall be calculated using two centrifugal chillers lead/lag controlled. Chilled water pumps shall be sized using a 12°F temperature rise, from 44°F to 56°F operating at 65 feed of head and 65% combined impeller and motor efficiency. Condenser water pumps shall be sized using a 10°F temperature rise, operating at 60 feet of head and 60% combined impeller and motor efficiency. The cooling tower shall be an open circuit, centrifugal blower type sized for the larger of 85°F leaving water temperature or 10°F approach to design wet bulb temperature. The tower shall be controlled to provide a 65°F leaving water temperature whenever weather conditions permit, floating up to design leaving water temperature at design conditions. Chilled water supply temperature shall be reset in accordance with § 434.518.

12. Hot water system shall include a natural draft fossil fuel or electric boiler per Note 8. The hot water pump shall be sized based on a 30°F temperature drop, for 18°F to 150°F, operating at 60 feet of head and a combined impeller and motor efficiency of 60%. Hot water supply temperature shall be reset in accordance with § 434.518.

517.5 *Equipment Sizing and Redundant Equipment.* For calculating the Energy Cost Budget of Prototype or Reference Buildings, HVAC equipment shall be sized to meet the requirements of subsection 403.2.2, without using any of the exceptions. The size of equipment shall be that required for the building without process loads considered. Redundant or emergency equipment need not be simulated if it is controlled so that it will not be operated during normal operations of the building. The designer shall document the installation of process equipment and the size of process loads.



517.6 For calculating the Design Energy Consumption, actual air flow rates and installed equipment size shall be used in the simulation, except that excess capacity provided to meet process loads need not be modeled unless the process load was not modeled in setting Energy Cost Budget. Equipment sizing in the simulation of the Proposed Design shall correspond to the equipment actually selected for the design and the designer shall not use equipment sized automatically by the simulation tool.

517.6.1 Redundant or emergency equipment need not be simulated if it is controlled to not be operated during normal operations of the building.

**§ 434.518 Service water heating.**

518.1 The service water loads for Prototype and Reference Buildings are defined in terms of Btu/h per person in Table 518.1.1, Service Hot Water Quantities. The service water heating loads from Table 518.1.1 are prescribed assumptions for multi-family high-rise residential buildings and default assumptions for all other buildings. The same service water heating load assumptions shall be made in calculating Design Energy Consumption as were used in calculating the Energy Cost Budget.

TABLE 518.1.1.—SERVICE HOT WATER QUANTITIES

| Building type | Btu/person-hour[1] |
|---|---|
| Assembly | 215 |
| Office | 175 |
| Retail | 135 |
| Warehouse | 225 |
| School | 215 |
| Hotel/Motel | 1110 |
| Restaurant | 390 |
| Health | 135 |
| Multi-family High Rise Residential | [2] 1700 |

[1] This value is the number to be multiplied by the percentage multipliers of the Building Profile Schedules in Table 513.2.b. See Table 513.2.a for occupancy levels.
[2] Total hot water use per dwelling unit for each hour shall be 3,400 Btu/h times the multi-family high rise residential building SWH system multiplier from Table 513.2.b.

518.2 The service water heating system, including piping losses for the Prototype Building, shall be modeled using the methods of the RS–47 (incorporated by reference, see § 434.701) using a system that meets all requirements of subsection 404. The service water heating equipment for the Prototype or Reference Building shall be either an electric heat pump or natural gas, or if natural gas is not available at the site, #2 fuel oil. Exception: If electric resistance service water heating is preferable to an electric heat pump when analyzed according to the criteria of § 434.404.1.4 or when service water temperatures exceeding 145°F are required for a particular application, electric resistance water heating may be used.

**§ 434.519 Controls.**

519.1 All occupied conditioned spaces in the Prototype, Reference and Proposed Design Buildings in all climates shall be simulated as being both heated and cooled. The assumptions in this subsection are prescribed assumptions. If the Proposed Design does not include equipment for cooling or heating, the Design Energy Consumption shall be determined by the specifications for calculating the Energy Cost Budget as described in Table 517.4.1 HVAC System Description for Prototype and Reference Buildings. Exceptions to 519.1 are as follows:

519.1.1 If a building is to be provided with only heating or cooling, both the Prototype or Reference Building and the Proposed Design shall be simulated, using the same assumptions. Such an assumption cannot be made unless the building interior temperature meets the comfort criteria of RS–2 (incorporated by reference, see § 434.701) at least 98% of the occupied hours during the year.

519.1.2 If warehouses are not intended to be mechanically cooled, both the Energy Cost Budget and Design Energy Consumption shall be modeled assuming no mechanical cooling; and

519.1.3 In climates where winter design temperature (97.5% occurrence) is greater than 59°F, space heating need not be modeled.

519.2 Space temperature controls for the Prototype or Reference Building, except multi-family high-rise residential buildings, shall be set at 70°F for space heating and 75°F for space cooling with a deadband per subsection 403.2.6.3. The system shut off during off-hours shall be according to the schedule in Table 515.2, except that the heating system shall cycle on if any space should drop below the night setback setting of 55°F. There shall be no similar setpoint during the cooling season. Lesser deadband ranges may be used in calculating the Design Energy Consumption. Exceptions to 519.2 are as follows:

(a) Setback shall not be modeled in determining either the Energy Cost Budget or Design Energy Cost if setback is not realistic for the Proposed Design, such as 24-hour/day operations. Health facilities need not have night setback during the heating season; and

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(b) Hotel/motels and multi-family high-rise residential buildings shall have a night setback temperature of 60°F from 11:00 p.m. to 6:00 a.m. during the heating season; and

(c) If deadband controls are not to be installed, the Design Energy Cost shall be calculated with both heating and cooling thermostat setpoints set to the same value between 70°F and 75°F inclusive, assumed to be constant for the year.

519.2.1 For multi-family buildings, the thermostat schedule for the dwelling units shall be as in Table 519.1.2, Thermostat Settings for Multi-Family High-rise Buildings. The Prototype Building shall use the single zone schedule. The Proposed Design shall use the two-zone schedule only if zonal thermostatic controls are provided. For Proposed Designs that use heat pumps employing supplementary heat, the controls used to switch on the auxiliary heat source during morning warm-up periods shall be simulated accurately. The thermostat assumptions for multi-family high-rise buildings are prescribed assumptions.

519.3 When providing for outdoor air ventilation in calculating the Energy Cost Budget, controls shall be assumed to close the outside air intake to reduce the flow of outside air to 0 cfm during setback and unoccupied periods. Ventilation using inside air may still be required to maintain scheduled setback temperature. Outside air ventilation, during occupied periods, shall be as required by RS–41, (incorporated by reference, see § 434.701) or the Proposed Design, whichever is greater.

519.4 If humidification is to be used in the Proposed Design, the same level of humidification and system type shall be used in the Prototype or Reference Building. If dehumidification requires subcooling of supply air, then reheat for the Prototype or Reference Building shall be from recovered waste heat such as condenser waste heat.

TABLE 519.1.2.—THERMOSTAT SETTINGS FOR MULTI-FAMILY HIGH-RISE RESIDENTIAL BUILDINGS

| Time of day | Single zone dwelling unit | | Two zone dwelling unit | | | |
|---|---|---|---|---|---|---|
| | | | Bedrooms/bathrooms | | Other rooms | |
| | Heat | Cool | Heat | Cool | Heat | Cool |
| Midnight–6 a.m. ... | 60 | 78 | 60 | 78 | 60 | 85 |
| 6 a.m.–9 a.m. ..... | 70 | 78 | 70 | 78 | 70 | 78 |
| 9 a.m.–5 p.m. ..... | 70 | 78 | 60 | 85 | 70 | 78 |
| 5 p.m.–11 p.m. ..... | 70 | 78 | 70 | 78 | 70 | 78 |
| 11 p.m.–Midnight | 60 | 78 | 60 | 78 | 60 | 78 |

**§ 434.520 Speculative buildings.**

520.1 Lighting. The interior lighting power allowance (ILPA) for calculating the Energy Cost Budget shall be determined from Table 401.3.2a. The Design Energy Consumption may be based on an assumed adjusted lighting power for future lighting improvements.

520.2 The assumption about future lighting power used to calculate the Design Energy Consumption must be documented so that the future installed lighting systems may be in compliance with these standards. Documentation must be provided to enable future lighting systems to use either the Prescriptive method or the Systems Performance method of subsection 401.3.

520.3 Documentation for future lighting systems that use subsection 401.3 shall be stated as a maximum adjusted lighting power for the tenant spaces. The adjusted lighting power allowance for tenant spaces shall account for the lighting power provided for the common areas of the building.

520.4 Documentation for future lighting systems that use subsection 401.3 shall be stated as a required lighting adjustment. The required lighting adjustment is the whole building lighting power assumed in order to calculate the Design Energy Consumption minus the ILPA value from Table 401.3.2c that was used to calculate the Energy Cost Budget. When the required lighting adjustment is less than zero, a complete lighting design must be developed for one or more representative tenant spaces, demonstrating acceptable lighting within the limits of the assumed lighting power allowance.

520.5. HVAC Systems and Equipment. If the HVAC system is not completely specified in the plans, the Design Energy Consumption shall be based on reasonable assumptions about the construction of future HVAC systems and equipment. These assumptions shall be documented so that future HVAC systems and equipment may be in compliance with these standards.

**§ 434.521 The simulation tool.**

521.1 Annual energy consumption shall be simulated with a multi-zone, 8760 hours per year building energy model. The model shall account for:

521.1.1 The dynamic heat transfer of the building envelope such as solar and internal gains;

521.1.2 Equipment efficiencies as a function of load and climate;

521.1.3 Lighting and HVAC system controls and distribution systems by simulating the whole building;

521.1.4 The operating schedule of the building including night setback during various times of the year; and

521.1.5 Energy consumption information at a level necessary to determine the Energy Cost Budget and Design Energy Cost through the appropriate utility rate schedules.

521.1.6 While the simulation tool should simulate an entire year on an hour by hour basis (8760 hours), programs that approximate this dynamic analysis procedure and provide equivalent results are acceptable.

521.1.7 Simulation tools shall be selected for their ability to simulate accurately the relevant features of the building in question, as shown in the tool's documentation. For example, a single-zone model shall not be used to simulate a large, multi-zone building, and a steady-state model such as the degree-day method shall not be used to simulate buildings when equipment efficiency or performance is significantly affected by the dynamic patterns of weather, solar radiation, and occupancy. Relevant energy-related features shall be addressed by a model such as daylighting, atriums or sunspaces, night ventilation or thermal storage, chilled water storage or heat recovery, active or passive solar systems, zoning and controls of heating and cooling systems, and ground-coupled buildings. In addition, models shall be capable of translating the Design Energy Consumption into energy cost using actual utility rate schedules with the coincidental electrical demand of a building. Examples of public domain models capable of handling such complex building systems and energy cost translations available in the United States are DOE—2.1C and BLAST 3.0 and in Canada, Energy Systems Analysis Series.

521.1.8 All simulation tools shall use scientifically justifiable documented techniques and procedures for modeling building loads, systems, and equipment. The algorithms used in the program shall have been verified by comparison with experimental measurements, loads, systems, and equipment.



**Subpart F—Building Energy Compliance Alternative**

**§ 434.601 General.**

601.1 This subpart provides an alternative path for compliance with the standards that allow for greater flexibility in the design of energy efficient buildings using an annual energy use method. This path provides an opportunity for the use of innovative designs, materials, and equipment such as daylighting, passive solar heating, and heat recovery, that may not be adequately evaluated by methods found in Subpart D.

601.2 The Building Energy Compliance Alternative shall be used with subpart C and subpart D, 401.1, 401.2, 401.3.4 and in conjunction with the minimum requirements found in subsections 402.1, 402.2, and 402.3., 403.1, 403.2.1–7, 403.2.9 and 404.

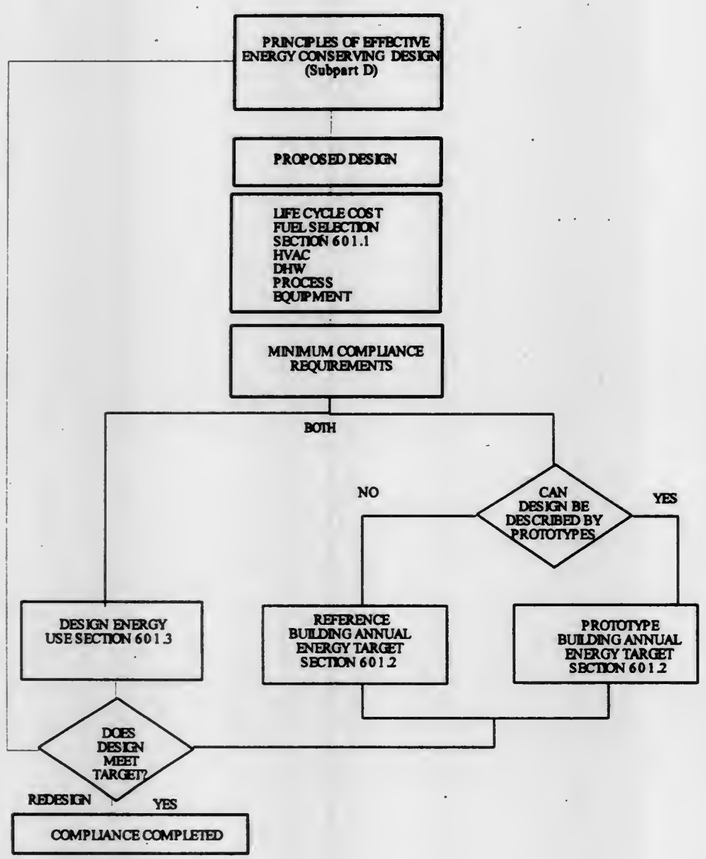
601.3 Compliance under this section is demonstrated by showing that the calculated annual energy usage for the Proposed Design is less than or equal to a calculated Energy Use Budget. (See Figure 601.3, Building Energy Compliance Alternative). The analytical procedures in this subpart are only for determining design compliance, and are not to be used either to predict, document or verify annual energy consumption.

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**Figure 601.3**

**Building Energy Compliance Alternative**






REVISED VERSION
September 14, 2000



601.4 Compliance under the Building Energy Use Budget method requires a detailed energy analysis, using a conventional simulation tool, of the Proposed Design. A life cycle cost analysis shall be used to select the fuel source for the HVAC systems, service hot water, and process loads from available alternatives. The Annual Energy Consumption of the Proposed Design with the life cycle cost-effective fuel selection is calculated to determine the modeled energy consumption, called the Design Energy Use.

601.5 The Design Energy Use is defined as the energy that is consumed within the five foot line of a proposed building per $ft^2$ over a 24-hour day, 365-day year period and specified operating hours. The calculated Design Energy Use is then compared to a calculated Energy Use Budget.

601.6 *Compliance.* The Energy Use Budget is determined by calculating the annual energy usage for a Reference or Prototype Building that is configured to comply with the provisions of Subpart E for such buildings, except that the fuel source(s) of the Prototype or Reference Building shall be the same life cycle cost-effective source(s) selected for the Proposed Design. If the Design Energy Use is less than or equal to the Energy Use Budget then the proposed design complies with these standards.

601.7 This section provides instructions for determining the Design Energy Use and for calculating the Energy Use Budget. The Energy Use Budget is the highest allowable calculated annual energy consumption for a specified building design. Designers are encouraged to design buildings whose Design Energy Use is lower than the Energy Use Budget.

**§ 434.602 Determination of the annual energy budget.**

602.1 The Energy Use Budget shall be calculated for the appropriate Prototype or Reference Building in accordance with the procedures prescribed in subsection 502 with the following exceptions: The Energy Use Budget shall be stated in units of $Btu/ft^2/yr$ and the simulation tool shall segregate the calculated energy consumption by fuel type producing an Energy Use Budget for each fuel (the fuel selections having been made by a life cycle cost analysis in determining the proposed design).

602.2 The Energy Use Budget is calculated similarly for the Reference or Prototype Building using equation 602.2.

$$EUB = EUB_1 xf_1 + EUB_2 xf_2 + \ldots . + EUB_i xf_i \quad \text{Equation 602.2}$$

Where $EUB_1$, $EUB_2$, $EUB_i$ are the calculated annual energy targets for each fuel used in the Reference or Prototype building and $f_1$, $f_2$, . . . $f_i$ are the energy conversion factors given in Table 602.2, Fuel Conversion Factors for Computing Design Annual Energy Uses. In lieu of case by case calculation of the Energy Use Budget, the designer may construct Energy Use Budget tables for the combinations of energy source(s) that may be considered in a set of project designs, such as electric heating, electric service water, and gas cooling or oil heating, gas service water and electric cooling. The values in such optional Energy Use Budget tables shall be equal to or less than the corresponding Energy Use Budgets calculated on a case by case basis according to this section. Energy Use Budget tables shall be constructed to correspond to the climatic regions and building types in accordance with provisions for Prototype or Reference Building models in subpart E of this part.

TABLE 602.2.—FUEL CONVERSION FACTORS, FOR COMPUTING DESIGN ANNUAL ENERGY USES

| Fuels | Conversion factor |
|---|---|
| Electricity | 3412 Btu/kilowatt hour. |
| Fuel Oil | 138,700 Btu/gallon. |
| Natural Gas | 1,031,000 Btu/1000 $ft^2$. |
| Liquified Petroleum (including Propane and Butane) | 95,5000 Btu/gallon. |
| Anthracite Coal | 28,300,000 Btu/short ton. |
| Bituminous Coal | 24,580,000 Btu/short ton. |
| Purchase Steam and Steam from Central Plants | 1,000 Btu/Pound. |
| High Temperature or Medium Temperature Water from Central Plants | Use the heat value based on the water actually delivered at the building five foot line. |

**Note:** At specific locations where the energy source Btu content varies significantly from the value presented above then the local fuel value may be used provided there is supporting documentation from the fuel source supplier stating this actual energy value and varifying that this value will remain consistent for the foreseeable future. The fuel content for fuels not given this table shall be determined from the best available source.

**§ 434.603 Determination of the design energy use.**

603.1 The Design Energy Use shall be calculated by modeling the Proposed Design using the same methods, assumptions, climate data, and simulation tool as were used to establish the Energy Use Budget, but with the design features that will be used in the final building design. The simulation tool used shall segregate the calculated energy consumption by fuel type giving an annual Design Energy Use for each fuel. The sum of the Design Energy Uses multiplied by the fuel conversion factors in Table 602.2 yields the Design Energy Use for the proposed design:

$$DEU = DEU_1 xf_1 + DEU_2 xf_2 + \ldots . + DEU_i xf_i \quad \text{Equation 603.1}$$

Where $f_1$, $f_2$, * * * $f_i$ are the fuel conversion factors in Table 602.2.

603.2 *Required Life Cycle Cost Analysis for Fuel Selection*

603.2.1 Fuel sources selected for the Proposed Design and Prototype or Reference buildings shall be determined

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by considering the energy cost and other costs and cost savings that occur during the expected economic life of the alternative.

603.2.2 The designer shall use the procedures set forth in subpart A of 10 CFR part 436 to make this determination. The fuel selection life cycle cost analysis shall include the following steps:

603.2.2.1 Determine the feasible alternatives for energy sources of the Proposed Design's HVAC systems, service hot water, and process loads.

603.2.2.2 Model the Proposed Design including the alternative HVAC and service water systems and conduct an annual energy analysis for each fuel source alternative using the simulation tool specified in this section. The annual energy analysis shall be computed on a monthly basis in conformance with subpart E with the exception that all process loads shall be included in the calculation. Separate the output of the analysis by fuel type.

603.2.2.3 Determine the unit price of each fuel using information from the utility or other reliable local source. During rapid changes in fuel prices it is recommended that an average fuel price for the previous twelve months be used in lieu of the current price. Calculate the annual energy cost of each energy source alternative in accordance with procedures in subpart E for the Design Energy Cost. Estimate the initial cost of the HVAC and service water systems and other initial costs such as energy distribution lines and service connection fees associated with each fuel source alternative. Estimate other costs and benefits for each alternative including, but not necessarily limited to, annual maintenance and repair, periodic and one time major repairs and replacements and salvage of the energy and service water systems. Cost estimates shall be prepared using professionally recognized cost estimating tools, guides and techniques.

603.2.2.4 Perform a life cycle cost analysis using the procedure specified in subsection 603.2.

603.2.2.5 Compare the total life cycle cost of each energy source alternative. The alternative with the lowest total life cycle cost shall be chosen as the energy source for the proposed design.

**§ 434.604 Compliance.**

604.1 Compliance with this section is demonstrated if the Design Energy Use is equal to or less than the Energy Use Budget.

$$DEU < EUB \qquad \text{Equation 604.1}$$

604.2 The energy consumption shall be measured at the building five foot line for all fuels. Energy consumed from non-depletable energy sources and heat recovery systems shall not be included in the Design Energy Use calculations. The thermal efficiency of fixtures, equipment, systems or plants in the proposed design shall be simulated by the selected calculation tool.

**§ 434.605 Standard Calculation Procedure.**

605.1 The Standard Calculation Procedure consists of methods and assumptions for calculating the Energy Use Budgets for Prototype and Reference Buildings and the Energy Use for the Proposed Design. In order to maintain consistency between the Energy Use Budgets and the Design Energy Use, the input assumptions stated in subsection 510.2 are to be used.

605.2 The terms Energy Cost Budget and Design Energy Cost or Design Energy Consumption used in subpart E of this part correlate to Energy Use Budget and Design Energy Use, respectively, in subpart F of this part.

**§ 434.606 Simulation tool.**

606.1 The criteria established in subsection 521 for the selection of a simulation tool shall be followed when using the compliance path prescribed in subpart F of this part.

**§ 434.607 Life cycle cost analysis criteria.**

607.1 The following life cycle cost criteria applies to the fuel selection requirements of this subpart and to option life cycle cost analyses performed to evaluate energy conservation design alternatives. The fuel source(s) selection shall be made in accordance with the requirements of subpart A of 10 CFR part 436. When performing optional life cycle cost analyses of energy conservation opportunities the designer may use the life cycle cost procedures of subpart A of 10 CFR part 436 or OMB Circular 1–94 or an equivalent procedure that meets the assumptions listed below:

607.1.1 The economic life of the Prototype Building and Proposed Design shall be 25 years. Anticipated replacements or renovations of energy related features and systems in the Prototype or Reference Building and Proposed Design during this period shall be included in their respective life cycle cost calculations.

607.1.2 The designer shall follow established professional cost estimating practices when determining the costs and benefits associated with the energy related features of the Prototype or Reference Building and Proposed Design.

607.1.3 All costs shall be expressed in current dollars. General inflation shall be disregarded. Differential escalation of prices (prices estimated to rise faster or slower than general inflation) for energy used in the life cycle cost calculations shall be those in effect at the time of the latest "Annual Energy Outlook" (DOE/EIA–0383) as published by the Department of Energy's Energy Information Administration.

607.1.4 The economic effects of taxes, depreciation and other factors not consistent with the practices of subpart A of 10 CFR part 436 shall not be included in the life cycle cost calculation.

## Subpart G—Reference Standards

**§ 434.701 General.**

701.1 *General.* The standards, technical handbooks, papers, regulations, and portions thereof, that are referred to in the sections and subsections in the following list are hereby incorporated by reference into this part 434. The following standards have been approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 522(a) and 1 CFR part 51. A notice of any change in these materials will be published in the **Federal Register**. The standards incorporated by reference are available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, DC and the U.S. Department of Energy, Office of Energy Efficiency, Hearings and Dockets, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585. The standards may be purchased at the addresses listed at the end of each standard. The following standards are incorporated by reference in this part:



| Ref. No. | Standard designation | CFR section |
|---|---|---|
| RS–1 | ANSI/ASHRAE/IESNA 90.1–1989, Energy Efficient Design of New Buildings Except Low-Rise Residential Buildings, and Addenda 90.1b–1992, 90.1c–1993, 90.1d–1992, 90.1e–1992, 90.1f–1995, 90.1g–1993, 90.1i–1993, American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc., ASHRAE 1791 Tullie Circle NE, Atlanta, GA 30329. | 434.301.1; 434.402.1.2.4; 434.402.4.2; 434.403.2.1. |
| RS–2 | ANSI/ASHRAE 55–1992 including addenda 55a–1995, Thermal Environmental Conditions for Human Occupancy, American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc., 1791 Tullie Circle NE, Atlanta, GA 30329. | 434.301.2; 434.519.1.1. |
| RS–3 | NEMA MG1–1993, "Motors and Generators," Revision No. 1, December 7, 1993, National Electrical Manufacturers Association, 1300 North 17th Street, Suite 1847, Rosslyn, VA 22209. | 434.401.2.1. |
| RS–4 | ASHRAE, Handbook, 1993 Fundamentals Volume, American Society of Heating, Refrigerating, and Air-Conditioning Engineers, Inc., 1791 Tullie Circle NE, Atlanta, GA 30329. | 434.402.1.1; 434.402.1.2.1; 434.402.1.2.2; 434.402.1.2.4; 434.402.2.2.5. |
| RS–5 | ASTM C 177–85 (Reapproved 1993), Test Method for Steady-State Heat Flux Measurements and Thermal Transmission Properties by Means of the Guarded-Hot-Plate Apparatus, American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103. | 434.402.1.1; 434.402.1.2.1; 434.402.1.2.2. |
| RS–6 | ASTM C 518–91, Test Method for Steady-State Heat Flux Measurements and Thermal Transmission Properties by Means of the Heat Flow Meter Apparatus, American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103. | 434.402.1.1; 434.402.1.2.1; Table 402.1.2.2; Table 403.2.9.2. |
| RS–7 | ASTM C 236–89 (Reapproved 1993), Test Method for Steady-State Thermal Performance of Building Assemblies by Means of a Guarded Hot Box, American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103. | 434.402.1.1; 434.402.1.2.1; 434.402.1.2.2. |
| RS–8 | ASTM C 976–90, Test Method for Thermal Performance of Building Assemblies by Means of a Calibrated Hot Box, American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103. | 434.402.1.1; 434.402.1.2.1; 434.402.1.2.2. |
| RS–9 | Report TVAHB–3007, 1981, "Thermal Bridges in Sheet Metal Construction" by Gudni Johannesson. Lund Institute of Technology, Lund, Sweden. | 434.402.1.2.3. |
| RS–10 | ASTM E 283–91, Test Method for Determining the Rate of Air Leakage Through Exterior Windows, Curtain Walls, and Doors Under Specified Pressure Difference Across the Specimen, American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103. | 434.402.2; 434.402.2.1. |
| RS–11 | ANSI/AAMA/NWWDA 101/I.S.2–97, Voluntary Specifications for Aluminum, Vinyl (PVC) and Wood Windows and Glass Doors, American Architectural Manufacturers Association, 1827 Walden Office Square, Suite 104, Schaumburg, IL 60173–4628. | 434.402.2.1; 434.402.2.2.4. |
| RS–12 | ASTM D 4099–95, Standard Specification for Poly (Vinyl Chloride) (PVC) Prime Windows/Sliding Glass Doors, American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103. | 434.402.2.1. |
| RS–13 | ANSI/AAMA/NWWDA 101/I.S.2–97, Voluntary Specifications for Aluminum, Vinyl (PVC) and Wood Windows and Glass Doors, National Wood Window and Door Association (formerly the National Woodwork Manufacturers Association), 1400 East Toughy Avenue, Suite 470, Des Plaines, IL 60018. | 434.402.2.1. |
| RS–14 | ANSI/NWWDA I.S.3–95, Wood Sliding Patio Doors, National Wood Window and Door Association (formerly the National Woodwork Manufacturers Association), 1400 East Toughy Avenue, Suite 470, Des Plaines, IL 60018. | 434.402.2.2.1. |
| RS–15 | ARI Standard 210/240–94, Unitary Air-Conditioning and Air-Source Heat Pump Equipment 1994. Air-Conditioning and Refrigeration Institute, 4301 North Fairfax Drive, Suite 425, Arlington, VA 22203. | 434.403.1. |
| RS–16 | ARI Standard 340/360–93, Commercial and Industrial Unitary Air-Conditioning and Heat Pump Equipment 1993 edition. Air-Conditioning and Refrigeration Institute, 4301 North Fairfax Drive, Suite 425, Arlington, VA 22203. | 434.403.1. |
| RS–17 | ARI 310/380–93, Packaged Terminal Air-Conditioners and Heat Pumps, 1993 edition. Air-Conditioning and Refrigeration Institute, 4301 North Fairfax Drive, Suite 425, Arlington, VA 22203. | 434.403.1. |
| RS–18 | NFRC 100–97, Procedure for Determining Fenestration Product Thermal Properties, National Fenestration Rating Council, Inc., 1300 Spring Street, Suite 500, Silver Spring, MD 20910. | 434.402.1.2.4. |
| RS–19 | NFRC 200—Procedure for Determining Fenestration Product Solar Heat Gain Coefficients at Normal Incidence (1995) National Fenestration Rating Council, Inc., 1300 Spring Street, Suite 500, Silver Spring, MD 20910. | 434.402.1.2.4. |

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| Ref. No. | Standard designation | CFR section |
|---|---|---|
| RS–20 | RESERVED. | |
| RS–21 | Z21.47–1993, Gas-Fired Central Furnaces, including addenda Z21.47a–1995, American Gas Association, 400 North Capitol Street, N.W. Washington, DC 20001. | 434.403.1. |
| RS–22 | U.L. 727, including addendum dated January 30, 1996, Oil-Fired Central Furnaces (Eighth Edition) 1994, available from: Global Documents, 15 Inverness Way East, Englewood, CO 80112–5704, Underwriters Laboratories, Northbrook, IL 60062, 1994.. | 434.403.1. |
| RS–23 | ANSI Z83.9–90, Including addenda Z83.9a–1992, Gas-Fired Duct Furnaces, 1990. (Addendum 90.1b) available from: Global Documents, 15 Inverness Way East, Englewood, CO 80112–5704. | 434.403.1. |
| RS–24 | ANSI Z83.8–96, Gas Unit Heater and Gas-Fired Duct Furnaces, American National Standards Institute, 11 West 42nd Street, New York, NY 10036. | 434.403.1. |
| RS–25 | U.L. 731, Oil-Fired Unit Heaters (Fifth Edition) 1995 available from: Global Documents, 15 Inverness Way East, Englewood, CO 80112–5704, Underwriters Laboratories, Northbrook, IL 60062. | 434.403.1. |
| RS–26 | CTI Standard–201, Standard for the Certification of Water-Cooling Towers Thermal Performance, November 1996, Cooling Tower Institute, P.O. Box 73383, Houston, TX 77273. | 434.403.1. |
| RS–27 | ARI Standard 320–93, Water-Source Heat Pumps, Air-Conditioning and Refrigeration Institute, 4301 North Fairfax Drive, Arlington, VA 22203. | 434.403.1. |
| RS–28 | ARI Standard 325–93, Ground Water-Source Heat Pumps, Air-Conditioning and Refrigeration Institute, 4301 North Fairfax Drive, Arlington, VA 22203. | 434.403.1. |
| RS–29 | ARI Standard 365–94, Commercial and Industrial Unitary Air-Conditioning Condensing Units, Air-Conditioning and Refrigeration Institute, 4301 North Fairfax Drive, Arlington, VA 22203. | 434.403.1. |
| RS–30 | ARI Standard 550–92, Centrifugal and Rotary Screw Water-Chilling Packages, Air-Conditioning and Refrigeration Institute, 4301 North Fairfax Drive, Arlington, VA 22203. | 434.403.1. |
| RS–31 | ARI Standard 590–92, Positive Displacement Compressor Water-Chilling Packages, Air-Conditioning and Refrigeration Institute, 4301 North Fairfax Drive, Arlington, VA 22203. | 434.403.1. |
| RS–32 | ANSI Z21.13–1991, including addenda Gas-Fired Low-Pressure Steam and Hot Water Boilers, Addenda Z21.13a–1993 and Z21–13b–1994, American National Standards Institute, 11 West 42nd Street, New York, NY 10036. | 434.403.1. |
| RS–33 | ANSI/U.L. 726 (7th edition, 1995), Oil-Fired Boiler Assemblies, available from: Global Documents, 15 Inverness Way East, Englewood, CO 80112–5704, Underwriters Laboratories, Northbrook, IL 60062. | 434.403.1. |
| RS–34 | HVAC Duct Construction Standards—Metal and Flexible, 2nd edition, 1995, Sheet Metal and Air-Conditioning Contractors' National Association, Inc., 4201 Lafayette Center Drive, Chantilly, VA 20151. | 434.403.2.9.3. |
| RS–35 | HVAC Air Duct Leakage Test Manual, 1st edition, 1985, Sheet Metal and Air-Conditioning Contractors' National Association, Inc., 4201 Lafayette Center Drive, Chantilly, VA 20151. | 434.403.2.9.3; 434.403.1. |
| RS–36 | Fibrous Glass Duct Construction Standards, 6th edition, 1992, Sheet Metal and Air-Conditioning Contractors National Association, Inc., 4201 Lafayette Center Drive, Chantilly, VA 20151. | 434.403.2.9.3. |
| RS–37 | RESERVED. | |
| RS–38 | ANSI Z21.56–1994, Gas-Fired Pool Heaters; Addenda Z21.56a–1996, American National Standards Institute, 11 West 42nd Street, New York, NY 10036; American Gas Association, 1515 Wilson Boulevard, Arlington, VA 22209. | Table 404.1. |
| RS–39 | ANSI Z21.10.3–1993, Gas Water Heaters, Volume III, Storage with Input Ratings above 75,000 Btu's per Hour, Circulating and Instantaneous Water Heaters, American National Standards Institute, 11 West 42nd Street, New York, NY 10036; American Gas Association, 1515 Wilson Boulevard; Arlington, VA 22209. | Table 404.1; 434.404.1.1. |
| RS–40 | ANSI/AHAM RAC–1–1992, Room Air Conditioners, Association of Home Appliance Manufacturers, 20 North Wacker Drive, Chicago, IL 60606. | 434.403.1. |
| RS–41 | ASHRAE Standard 62–1989, Ventilation for Acceptable Indoor Air Quality, American Society of Heating, Refrigerating and Air-Conditioning Engineers, 1791 Tulle Circle, Atlanta, GA 30329. | 434.403.2.4; 434.403.2.8; 434.519.3. |
| RS–42 | ANSI Z21.66–1996, Automatic Vent Damper Devices for Use with Gas-Fired Appliances, available from: Global Documents, 15 Inverness Way East, Englewood, CO 80112–5704.. | 434.404.1. |
| RS–43 | NEMA MG 10–1994, Energy Management Guide for Selection and Use of Polyphase Motors, National Electric Manufacturers Association, National Electrical Manufacturers Association, 1300 North 17th Street, Suite 1847, Rosslyn, VA 22209. | 434.401.2.1. |



| Ref. No. | Standard designation | CFR section |
|---|---|---|
| RS–44 | NEMA MG 11–1977 (Revised 1982, 1987, Energy Management Guide for Selection and Use of Single-Phase Motors, National Electrical Manufacturers Association, National Electrical Manufacturers Association, 1300 North 17th Street, Suite 1847, Rosslyn, VA 22209. | 434.401.2.1. |
| RS–45 | ARI Standard 330–93, Ground-Source Closed-Loop Heat Pumps, Air-Conditioning and Refrigeration Institute, 4301 North Fairfax Drive, Arlington, VA 22209. | 434.403.1. |
| RS–46 | ARI Standard 560–92, Absorption Water Chilling and Water Heating Packages, Air-Conditioning and Refrigeration Institute, 4301 North Fairfax Drive, Arlington, VA 22209. | 434.403.1. |
| RS–47 | ASHRAE, Handbook, HVAC Applications; I–P Edition, 1995, American Society of Heating, Refrigerating, and Air-Conditioning Engineers, Inc., 1791 Tullie Circle NE, Atlanta, GA 30329. | 434.518.2. |

[FR Doc. 00–17120 Filed 10–5–00; 8:45 am]
BILLING CODE 6450–01–P

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Federal Register

Friday,
October 6, 2000

Part V

# General Services Administration

41 CFR Parts 101–40 and 102–117
Transportation Management; Final Rule

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**GENERAL SERVICES ADMINISTRATION**

**41 CFR Parts 101–40 and 102–117**

**[FPMR Amendment G–116]**

**RIN 3090–AH16**

## Transportation Management

**AGENCY:** Office of Governmentwide Policy, GSA.

**ACTION:** Final rule.

**SUMMARY:** The General Services Administration (GSA) is revising the Federal Property Management Regulations (FPMR) by moving coverage on transportation and traffic management into the Federal Management Regulation (FMR). A cross-reference is added to the FPMR to direct readers to the coverage in the FMR. The FMR coverage is written in plain language to provide agencies with updated regulatory material that is easy to read and understand.

**DATES:** Effective October 6, 2000.

**FOR FURTHER INFORMATION CONTACT:** Ms. Elizabeth Allison, Program Analyst, Transportation Management Policy, Office of Governmentwide Policy, General Services Administration, at 202–219–1729, or Internet e-mail at elizabeth.allison@gsa.gov

**SUPPLEMENTARY INFORMATION:**

### A. Background

In response to President Clinton's mandate to Federal agencies to make communication with the public more understandable, General Services Administration (GSA) is revising and clarifying the transportation management policies by writing them in plain language and making other substantial changes. This rule adds a new part to the Federal Management Regulation (FMR) that will phase in the use of commercial transportation documents, such as bills of lading, and retire the corresponding Government transportation documents whenever possible.

The FMR is in the question and answer format. Question and answer format is an effective way to engage the reader and to break the information into manageable pieces. The FMR asks questions in the first person, as the user would. It then answers the questions in the second and third person. The FMR addresses the agency in the singular.

### B. Substantive Changes

This final rule clarifies existing transportation management requirements. We incorporate the Treasury, Postal and General Government Appropriations Act of 1994 (see Public Law 103–123; 107 Stat. 1226, 1247) that changed GSA to a nonmandatory source of transportation services. The focus shifts the transportation regulations away from how agencies should use GSA's household goods and freight shipment programs as mandatory sources of these services. Changes are included to:

(a) Provide broad policy for agencies to develop transportation programs that best suit their needs;

(b) Require that all contracts and rate tenders include the terms and conditions formerly annotated on the Government bills of lading. All transportation documents must reference the applicable contract or rate tender;

(c) Include general business rules a transportation manager will consider before buying transportation services. These rules give a broad range of guidelines to ensure compliance with other Governmental directives and compliance with all Federal, State and local laws;

(d) Eliminate the use of the Optional Forms 1103 and 1203, Government Bill of Lading, for domestic freight and household goods shipments by September 30, 2001;

(e) Expand the choices for acquiring transportation and transportation related services and incorporate the terms and conditions previously noted on the paper GBL in all contracts and agreements;

(f) Expand the use of charge cards as an alternative payment method for transportation services. Agencies must set up their own administrative rules covering accountability, exceptions and limits of the charge card;

(g) Introduce performance measures to help agencies determine how well they perform the transportation function and support the agency mission;

(h) Introduce a section on transportation service provider's performance defining what transportation managers should expect in the contractual agreement and what recourse is available for nonperformance;

(i) Add a requirement for reports. Reporting transportation costs will help agencies collect information for forecasting and planning; and

(j) Add a separate section on representation before regulatory bodies to clarify the authority granted to GSA and how an agency may request help.

A proposed rule was published on February 28, 2000, at 65 FR 8817. Comments were received from six agencies and one member of the public. All comments were considered in the formulation of the final rule and, as a result, a number of changes were made to the proposed rule.

### C. Executive Order 12866

GSA has determined that this final rule is not a significant regulatory action for the purposes of Executive Order 12866 of September 30, 1993.

### D. Regulatory Flexibility Act

This final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule only applies to internal agency management and will not have a significant effect on the public.

### E. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this final rule does not impose recordkeeping or information collection requirements, or the collection of information from contractors, or members of the public which require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 501–517.

### F. Small Business Regulatory Enforcement Fairness Act

This final rule is exempt from Congressional review under 5 U.S.C. 801 since it relates solely to agency management and personnel.

### List of Subjects in 41 CFR Parts 101–40 and 102–117

Freight, Government property management, Moving of household goods, Reporting and recordkeeping requirements, Transportation.

For the reasons set forth in the preamble, GSA amends 41 CFR chapters 101 and 102 as follows:

**CHAPTER 101—[AMENDED]**

1. Part 101–40 is revised to read as follows:

## PART 101–40—TRANSPORTATION AND TRAFFIC MANAGEMENT

**Authority:** 40 U.S.C. 486(c); Sec. 205(c), 63 Stat. 390.

**§101–40.000 Cross-reference to the Federal Management Regulation (FMR) (41 CFR chapter 102, parts 102–1 through 102–220).**

For information on transportation and traffic management previously contained in this part, see FMR part 117 (41 CFR part 102–117).

**CHAPTER 102—[AMENDED]**

2. Part 102–117 is added to subchapter D of chapter 102 to read as follows:



## PART 102–117—TRANSPORTATION MANAGEMENT

**Subpart A—General**

Sec.
102–117.5 What is transportation management?
102–117.10 What is the scope of this part?
102–117.15 To whom does this part apply?
102–117.20 Are any agencies exempt from this part?
102–117.25 What definitions apply to this part?

**Subpart B—Acquiring Transportation or Related Services**

102–117.30 What choices do I have when acquiring transportation or related services?
102–117.35 What are the advantages and disadvantages to using GSA's tender of service?
102–117.40 When is it advantageous for me to use another agency's contract or rate tender for transportation services?
102–117.45 What other factors must I consider when using another agency's contract or rate tender?
102–117.50 What are the advantages and disadvantages of contracting directly with a TSP under FAR?
102–117.55 What are the advantages and disadvantages of using a rate tender?
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**Authority:** 31 U.S.C. 3726; 40 U.S.C. 481, *et seq.*

**Subpart A—General**

**§ 102–117.5 What is transportation management?**

Transportation management is agency oversight of the physical movement of commodities, household goods (HHG) and other freight from one location to another by a transportation service provider (TSP).

**§ 102–117.10 What is the scope of this part?**

This part addresses shipping freight and household goods worldwide.

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Freight is property or goods transported as cargo. Household goods are not Government property, but are employees' personal property entrusted to the Government for shipment.

**§ 102–117.15 To whom does this part apply?**

This part applies to all agencies and wholly owned Government corporations as defined in 5 U.S.C. 101 *et seq.* and 31 U.S.C. 9101(3), except those indicated in § 102–117.20.

**§ 102–117.20 Are any agencies exempt from this part?**

(a) The Department of Defense is exempted from this part by an agreement under the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 481 *et seq.*), except for the rules to debar or suspend a TSP under the Federal Acquisition Regulation (48 CFR part 9, subpart 9.4).

(b) Subpart D of this part, covering household goods, does not apply to the uniformed service members, under Title 37 of the United States Code, "Pay and Allowances of the Uniformed Services," including the uniformed service members serving in civilian agencies such as the U.S. Coast Guard, National Oceanic and Atmospheric Administration and the Public Health Service.

**§ 102–117.25 What definitions apply to this part?**

The following definitions apply to this part:

*Accessorial charges* are charges for services other than line-haul charges. Examples of accessorial charges are:

(1) Inside delivery, redelivery, reconsignment, and demurrage or detention for freight; and

(2) Packing, unpacking, appliance servicing, blocking and bracing, and special handling for household goods.

*Agency* is any executive agency, but does not include:

(1) A Government Controlled Corporation;

(2) The Tennessee Valley Authority;

(3) The Virgin Islands Corporation;

(4) The Atomic Energy Commission;

(5) The Central Intelligence Agency;

(6) The Panama Canal Commission; and

(7) The National Security Agency, Department of Defense.

*Bill of lading,* sometimes referred to as a commercial bill of lading (but includes GBLs), is the document used as a receipt of goods and documentary evidence of title.

*Cargo preference* is the legal requirement for all, or a portion of all, ocean-borne cargo to be transported on U.S. flag vessels.

*Commuted rate system* is the system under which an agency may allow its employees to make their own household goods shipping arrangements, and apply for reimbursement.

*Consignee* is the person or agent to whom freight or household goods are delivered.

*Consignor* is the person or firm that ships freight or household goods to a consignee.

*Contract of carriage* is a contract between the TSP and the agency to transport freight or household goods.

*Debarment* is an action to exclude a TSP, for a period of time, from providing services under a rate tender or any contract under the Federal Acquisition Regulation (48 CFR part 9, subpart 9.406).

*Demurrage* is the penalty charge to an agency for delaying the agreed time to load or unload shipments by rail or ocean TSPs.

*Detention* is the penalty charge to an agency for delaying the agreed time to load or unload shipments by truck TSPs.

*Electronic commerce* is an electronic technique for carrying out business transactions (ordering and paying for goods and services), including electronic mail or messaging, Internet technology, electronic bulletin boards, charge cards, electronic funds transfers, and electronic data interchange.

*Foreign flag vessel* is any vessel of foreign registry including vessels owned by U.S. citizens but registered in a foreign country.

*Freight* is property or goods transported as cargo.

*Government bill of lading (GBL)* is the Optional Form 1103 or 1203, the transportation document used as a receipt of goods, evidence of title, and a contract of carriage.

*Governmentwide Transportation Policy Council (GTPC)* is an interagency forum to help GSA formulate policy. It provides agencies managing transportation programs a forum to exchange information and ideas to solve common problems. For further information on this council, see web site: *http://www.policyworks.gov/transportation.*

*Hazardous material* is a substance or material the Secretary of Transportation determines to be an unreasonable risk to health, safety, and property when transported in commerce, and labels as hazardous under section 5103 of the Federal Hazardous Materials Transportation Law (49 U.S.C. 5103 *et seq.*). When transported internationally hazardous material may be classified as "Dangerous Goods." All such freight must be marked in accordance with applicable regulations and the carrier must be notified in advance.

*Household goods (HHG)* are the personal effects of Government employees and their dependents.

*Line-Haul* is the movement of freight between cities excluding pickup and delivery service.

*Mode* is a method of transportation, such as rail, motor, air, water, or pipeline.

*Rate schedule* is a list of freight rates, taxes, and charges assessed against non-household goods cargo.

*Rate tender* is an offer a TSP sends to an agency, containing service rates and charges.

*Receipt* is a written or electronic acknowledgment by the consignee or TSP as to when and where a shipment was received.

*Release/declared value* is stated in dollars and is considered the assigned value of the cargo for reimbursement purposes, not necessarily the actual value of the cargo. Released value may be more or less than the actual value of the cargo. The released value is the maximum amount that could be recovered by the agency in the event of loss or damage for the shipments of freight and household goods. The statement of released value must be shown on any applicable tariff, tender, or other document covering the shipment.

*Reparation* is a payment to or from an agency to correct an improper transportation billing involving a TSP. Improper routing, overcharges or duplicate payments may cause such improper billing. This is different from a payment to settle a claim for loss and damage.

*Suspension* is an action taken by an agency to disqualify a TSP from receiving orders for certain services under a contract or rate tender (48 CFR part 9, subpart 9.407).

*Transportation document* is any executed agreement for transportation service, such as bill of lading, Government bill of lading (GBL), Government travel request (GTR) or transportation ticket.

*Transportation service provider (TSP)* is any party, person, agent or carrier that provides freight or passenger transportation and related services to an agency. For a freight shipment this would include packers, truckers and storers. For passenger transportation this would include airlines, travel agents and travel management centers.

*U.S. flag air carrier* is an air carrier holding a certificate issued by the United States under 49 U.S.C. 41102 (49 U.S.C. 40118, 48 CFR part 47, subpart 47.4).

*U.S. flag vessel* is a commercial vessel, registered and operated under the laws of the U.S., owned and operated by U.S. citizens, and used in commercial trade of the United States.



## Subpart B—Acquiring Transportation or Related Services

**§ 102–117.30 What choices do I have when acquiring transportation or related services?**

When you acquire transportation or related services you may:

(a) Use the GSA tender of service;

(b) Use another agency's contract or rate tender with a TSP only if allowed by the terms of that agreement or if the Administrator of General Services delegates authority to another agency to enter an agreement available to other Executive agencies;

(c) Contract directly with a TSP using the acquisition procedures under the Federal Acquisition Regulation (FAR) (48 CFR chapter 1); or

(d) Negotiate a rate tender under a Federal transportation procurement statute, 49 U.S.C. 10721 or 13712.

**§ 102–117.35 What are the advantages and disadvantages of using GSA's tender of service?**

(a) It is an advantage to use GSA's tender of service when you want to:

(1) Use GSA's authority to negotiate on behalf of the Federal Government and take advantage of the lower rates and optimum service that result from a larger volume of business;

(2) Use a uniform tender of service; and

(3) Obtain assistance with loss and damage claims.

(b) It is a disadvantage to use GSA's tender of service when:

(1) You want an agreement that is binding for a longer term than the GSA tender of service;

(2) You have sufficient time to follow FAR contracting procedures; and

(3) You do not want to pay for the GSA administrative service charge as a participant in the GSA rate tender programs.

**§ 102–117.40 When is it advantageous for me to use another agency's contract or rate tender for transportation services?**

It is advantageous to use another agency's contract or rate tender for transportation services when the contract or rate tender offers better or equal value than otherwise available to you.

**§ 102–117.45 What other factors must I consider when using another agency's contract or rate tender?**

When using another agency's contract or rate tender, you must:

(a) Assure that the contract or rate tender meets any special requirements unique to your agency;

(b) Pay any other charges imposed by the other agency for external use of their contract or rate tender; and

(c) Ensure the terms of the other agency's contract or rate tender allow you to use it.

**§ 102–117.50 What are the advantages and disadvantages of contracting directly with a TSP under the FAR?**

(a) The FAR is an advantage to use when:

(1) You ship consistent volumes in consistent traffic lanes;

(2) You have sufficient time to follow FAR contracting procedures; and

(3) Your contract office is able to handle the requirement.

(b) The FAR may be a disadvantage when you:

(1) Cannot prepare and execute a FAR contract within your time frame; or

(2) Have recurring shipments between designated places, but do not expect sufficient volume to obtain favorable rates.

**§ 102–117.55 What are the advantages and disadvantages of using a rate tender?**

(a) Using a rate tender is an advantage when you:

(1) Have a shipment that must be made within too short a time frame to identify or solicit for a suitable contract; or

(2) Have shipments recurring between designated places, but do not expect sufficient volume to obtain favorable rates.

(b) Using a rate tender may be a disadvantage when:

(1) You have sufficient time to use the FAR and this would achieve better results;

(2) You require transportation service for which no rate tender currently exists; or

(3) A TSP may revoke or terminate the tender on short notice.

**§ 102–117.60 What is the importance of terms and conditions in a rate tender or other transportation document?**

Terms and conditions are important to protect the Government's interest and establish the performance and standards expected of the TSP. It is important to remember that terms and conditions are:

(a) Negotiated between the agency and the TSP before movement of any item; and

(b) Included in all contracts and rate tenders listing the services the TSP is offering to perform at the cost presented in the rate tender or other transportation document.

**Note to § 102–117.60:** You must reference the negotiated contract or rate tender on all transportation documents. For further information see § 102–117.65.

**§ 102–117.65 What terms and conditions must all rate tenders or contracts include?**

All rate tenders and contracts must include, at a minimum, the following terms and conditions:

(a) Charges cannot be prepaid.

(b) Charges are not paid at time of delivery.

(c) Interest shall accrue from the voucher payment date on overcharges made and shall be paid at the same rate in effect on that date as published by the Secretary of the Treasury according to the Debt Collection Act of 1982, 31 U.S.C. 3717.

(d) To qualify for the rates specified in a rate tender filed under the provisions of the Federal transportation procurement statutes (49 U.S.C. 10721 or 13712), property must be shipped by or for the Government and the rate tender must indicate the Government is either the consignor or the consignee and include the following statement:

Transportation is for the (agency name) and the total charges paid to the transportation service provider by the consignor or consignee are for the benefit of the Government.

(e) When using a rate tender for transportation under a cost-reimbursable contract, include the following statement in the rate tender:

Transportation is for the (agency name), and the actual total transportation charges paid to the transportation service provider by the consignor or consignee are to be reimbursed by the Government pursuant to cost reimbursable contract (number). This may be confirmed by contacting the agency representative at (name, address and telephone number).

(f) Other terms and conditions that may be specific to your agency or the TSP such as specialized packaging requirements or HAZMAT. For further information see the "U.S. Government Freight Transportation Handbook," available by contacting:

General Services Administration
Federal Supply Service
Audit Division (FBA)
1800 F Street, NW.
Washington, DC 20405
http://www.fss.gsa.gov/transtrav

**§ 102–117.70 Where do I find more information on terms and conditions?**

You may find more information about terms and conditions in part 102–118 of this chapter, or the "U.S. Government

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Freight Transportation Handbook" (see § 102–117.65(f)).

**§ 102–117.75 How do I reference the rate tender on transportation documents?**

To ensure proper reference of a rate tender on all shipments, you must show the applicable rate tender number and carrier identification on all transportation documents, such as, section 13712 quotation, "ABC Transportation Company, Tender Number * * *".

**§ 102–117.80 How are rate tenders filed?**

(a) The TSP must file a written rate tender with your agency.

(b) You must send two copies of the rate tender to:

General Services Administration
Federal Supply Service, Audit Division (FBA)
1800 F Street, NW.
Washington, DC 20405
http://www.fss.gsa.gov/transtrav

**§ 102–117.85 What is the difference between a Government bill of lading (GBL) and a bill of lading?**

(a) A Government bill of lading (GBL), Optional Forms 1103 and 1203, is a controlled document that conveys specific terms and conditions to protect the Government interest and serves as the contract of carriage.

(b) A bill of lading, sometimes referred to as a commercial bill of lading, is the document used as a receipt of goods and documentary evidence of title.

(c) Use a bill of lading for Government shipments if the specific terms and conditions of a GBL are included in any contract or rate tender (see § 102–117.65) and the bill of lading makes reference to that contract or rate tender (see § 102–117.75 and the "U.S. Government Freight Transportation Handbook").

**§ 102–117.90 May I use U.S. Government bill of lading (GBL) (Optional Forms 1103 and 1203), to acquire freight, household goods or other related transportation services?**

You may use the GBL, Optional Forms 1103 or 1203, to acquire transportation services offered under a contract or rate tender until September 30, 2001. The GBL will completely phase out for domestic shipments on September 30, 2001, and be replaced by commercial bills of lading. After September 30, 2001, you may use the GBL only for international shipments (including domestic offshore shipments).

**§ 102–117.95 After the GBLs retire for domestic shipments, what transportation documents must I use to acquire freight, household goods or other transportation services?**

Bills of lading and purchase orders are the transportation documents you use to acquire freight, household goods and other transportation services after the GBLs retire for domestic shipments. Terms and conditions in § 102–117.65 and the "U.S. Government Freight Transportation Handbook" will still be required. For further information on payment methods, see part 102–118 of this chapter.

## Subpart C—Business Rules To Consider Before Shipping Freight or Household Goods

**§ 102–117.100 What business rules must I consider before acquiring transportation or related services?**

When acquiring transportation or related services you must:

(a) Use the mode or individual transportation service provider (TSP) that provides the overall best value to the agency. For more information, see §§ 102–117.105 through 102–117.130;

(b) Demonstrate no preferential treatment to any TSP when arranging for transportation services except on international shipments. Preference on international shipments must be given to United States registered commercial vessels and aircraft;

(c) Ensure that small businesses receive equal opportunity to compete for all business they can perform to the maximum extent possible, consistent with the agency's interest (see 48 CFR part 19);

(d) Encourage minority-owned businesses and women-owned businesses, to compete for all business they can perform to the maximum extent possible, consistent with the agency's interest (see 48 CFR part 19);

(e) Review the need for insurance. Generally, the Government is self-insured; however, there are instances when the Government will purchase insurance coverage for Government property. An example may be cargo insurance for international air cargo shipments to cover losses over those allowed under the International Air Transport Association (IATA) or for ocean freight shipments; and

(f) Consider the added requirements on international transportation found in subpart D of this part.

**§ 102–117.105 What does best value mean when routing a shipment?**

Best value to your agency when routing a shipment means using the mode or individual TSP providing the best combination of satisfactory service factors.

**§ 102–117.110 What is satisfactory service?**

You should consider the following factors in assessing whether a TSP offers satisfactory service:

(a) Availability and suitability of the TSP's equipment;

(b) Adequacy of shipping and receiving facilities at origin and destination;

(c) Adequacy of pickup and/or delivery service;

(d) Availability of accessorial and special services;

(e) Estimated time in transit;

(f) Record of past performance of the TSP including accuracy of billing;

(g) Capability of warehouse equipment and storage space; and

(h) Experience of company, management, and personnel to perform the requirements.

**§ 102–117.115 How do I calculate total delivery costs?**

You calculate total delivery costs for a shipment by considering all costs related to the shipping or receiving process, such as packing, blocking, bracing, drayage, loading and unloading, and transporting.

**§ 102–117.120 To what extent must I equally distribute orders for transportation and related services among TSPs?**

You must assure that small businesses, socially or economically disadvantaged and women-owned TSPs have equal opportunity to provide the transportation or related services.

**§ 102–117.125 How detailed must I describe property for shipment when communicating to a TSP?**

You must describe property in enough detail for the TSP to determine the type of equipment or any special precautions necessary to move the shipment. Details might include weight, volume, measurements, routing, hazardous cargo, or special handling designations.

**§ 102–117.130 Must I select TSPs who use alternative fuels?**

No, but, whenever possible, you are encouraged to select TSPs that use alternative fuel vehicles and equipment, under policy in the Clean Air Act Amendments of 1990 (42 U.S.C. 7612) or the Energy Policy Act of 1992 (42 U.S.C. 13212).



## Subpart D—Restrictions That Affect International Transportation of Freight and Household Goods

**§ 102–117.135 What are the international transportation restrictions?**

Several statutes mandate the use of U.S. flag carriers for international shipments (see 48 CFR part 47, subparts 47.4 and 47.5). For example:

(a) Arrangements for international air transportation services must follow the Fly America Act (International Air Transportation Fair Competitive Practices Act of 1974) (49 U.S.C. 40118); and

(b) International movement of property by water is subject to the cargo preference laws (see 46 CFR part 381 and 48 CFR part 47, subpart 47.5), which require the use of a U.S. flag carrier when service is available. The Maritime Administration (MARAD) monitors agency compliance of these laws. All Government shippers must send a rated copy of the ocean carrier's bill of lading to MARAD within 30 days of loading aboard a vessel to:

Department of Transportation
Maritime Commission
Office of Cargo Preference
400 7th Street, SW.
Washington, DC 20590
http://www.marad.dot.gov/
Tel. 1–800–9US-FLAG
E-mail: cargo@marad.dot.gov

**Note to § 102–117.135(b):** Non-vessel Operations Common Carrier (NVOCC) or freight forwarder bills of lading are not acceptable (see 48 CFR part 47).

**§ 102–117.140 What is cargo preference?**

Cargo preference is the statutory requirement that all, or a portion of all, ocean-borne cargo that moves internationally be transported on U.S. flag vessels. Deviations or waivers from the cargo preference laws must be approved by:

Department of Transportation
Maritime Administration
Office of Cargo Preference
400 7th Street, SW.
Washington, DC 20590
http://www.marad.dot.gov/
Tel. 1–800–9US-FLAG
e-mail: cargo@marad.dot.go

**§ 102–117.145 What are coastwise laws?**

Coastwise laws refer to laws governing shipment of freight, household goods and passengers by water between points in the United States or its territories. The purpose of these laws is to assure reliable shipping service and the existence of a maritime capability in times of war or national emergency (see section 27 of the Merchant Marine Act of 1920, 46 App. U.S.C. 883, 19 CFR 4.80).

**§ 102–117.150 What do I need to know about coastwise laws?**

You need to know that:

(a) Goods transported entirely or partly by water between U.S. points, either directly or via a foreign port, must travel in U.S. Maritime Administration (MARAD) authorized U.S. Flag vessels;

(b) There are exceptions and limits for the U.S. Island territories and possessions in the Atlantic and Pacific Oceans (see § 102–117.155); and

(c) The Secretary of the Treasury is empowered to impose monetary penalties against agencies that violate the coastwise laws.

**§ 102–117.155 Where do I go for further information about coastwise laws?**

You may refer to 46 App. U.S.C. 883, 19 CFR 4.80, DOT MARAD, the U.S. Coast Guard or U.S. Customs Service for further information on exceptions to the coastwise laws.

## Subpart E—Shipping Freight

**§ 102–117.160 What is freight?**

Freight is property or goods transported as cargo.

**§ 102–117.165 What shipping process must I use for freight?**

Use the following shipping process for freight:

(a) For domestic shipments you must:

(1) Identify what you are shipping;

(2) Decide if the cargo is HAZMAT, classified, or sensitive that may require special handling or placards;

(3) Decide mode;

(4) Check for applicable contracts or rate tenders within your agency or other agencies, including GSA;

(5) Select the most efficient and economical TSP that gives the best value;

(6) Prepare shipping documents; and

(7) Schedule pickup, declare released value and ensure prompt delivery with a fully executed receipt, and oversee shipment.

(b) For international shipments you must follow all the domestic procedures and, in addition, comply with the cargo preference laws. For specific information, see subpart D of this part.

**§ 102–117.170 What reference materials are available to ship freight?**

(a) The following is a partial list of handbooks and guides available from GSA:

(1) U.S. Government Freight Transportation Handbook;

(2) Limited Authority to Use Commercial Forms and Procedures;

(3) Submission of Transportation Documents; and

(4) Things to be Aware of When Routing or Receiving Freight Shipments.

(b) For the list in paragraph (a) of the section and other reference materials, contact:

(1) General Services Administration, Federal Supply Service, Audit Division (FBA), 1800 F Street, NW., Washington, DC 20405, http://www.fss.gsa.gov/transtrav; or

(2) General Services Administration, Federal Supply Service, 1500 Bannister Road, Kansas City, MO 64131, http://www.kc.gsa.gov/fsstt.

**§ 102–117.175 What factors do I consider to determine the mode of transportation?**

Your shipping urgency and any special handling requirements determine which mode of transportation you select. Each mode has unique requirements for documentation, liability, size, weight and delivery time. HAZMAT, radioactive, and other specialized cargo may require special permits and may limit your choices.

**§ 102–117.180 What transportation documents must I use to ship freight?**

To ship freight:

(a) By land (domestic shipments), use a bill of lading;

(b) By land (international shipments), use the GBL;

(c) By ocean, use an ocean bill of lading, when suitable, along with the GBL; and

(d) By air, use a bill of lading.

**§ 102–117.185 Where must I send a copy of the transportation documents?**

(a) You must forward an original copy of all transportation documents to:

General Services Administration
Federal Supply Service
Audit Division (FBA)
1800 F Street, NW.
Washington, DC 20405

(b) For all property shipments subject to the cargo preference laws (see § 102–117.140), a copy of the ocean carrier's bill of lading, showing all freight charges, must be sent to MARAD within 30 days of vessel loading.

**§ 102–117.190 Where do I file a claim for loss or damage to property?**

You must file a claim for loss or damage to property with the TSP.

**§ 102–117.195 Are there time limits affecting filing of a claim?**

Yes, several statutes limit the time for administrative or judicial action against a TSP. Refer to part 102–118 of this chapter for more information and the time limit tables.

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## Subpart F—Shipping Hazardous Material (HAZMAT)

### § 102–117.200 What is HAZMAT?

HAZMAT is a substance or material the Secretary of Transportation determines to be an unreasonable risk to health, safety and property when transported in commerce. Therefore, there are restrictions on transporting HAZMAT (49 U.S.C. 5103 *et seq.*).

### § 102–117.205 What are the restrictions for transporting HAZMAT?

Agencies that ship HAZMAT are subject to the Environmental Protection Agency and the Department of Transportation regulations, as well as applicable State and local government rules and regulations.

### § 102–117.210 Where can I get guidance on transporting HAZMAT?

The Secretary of Transportation prescribes regulations for the safe transportation of HAZMAT in intrastate, interstate, and foreign commerce in 49 CFR parts 171 through 180. The Environmental Protection Agency also prescribes regulations on transporting HAZMAT in 40 CFR parts 260 through 266. You may also call the HAZMAT information hotline at 1–800–467–4922 (Washington, DC area, call 202–366–4488).

## Subpart G—Shipping Household Goods

### § 102–117.215 What are household goods (HHG)?

Household goods (HHG) are the personal effects of Government employees and their dependents.

### § 102–117.220 What choices do I have to ship HHG?

(a) You may choose to ship HHG by:
(1) Using the commuted rate system;
(2) GSA's Centralized Household Goods Traffic Management Program (CHAMP);
(3) Contracting directly with a TSP, (including a relocation company that offers transportation services) using the acquisition procedures under the Federal Acquisition Regulation (FAR) (see § 102–117.35);
(4) Using another agency's contract with a TSP (see § § 102–117.40 and 102–117.45);
(5) Using a rate tender under the Federal transportation procurement statutes (49 U.S.C. 10721 or 13712) (see § 102–117.35).

(b) As an alternative to the choices in paragraph (a) of this section, you may request the Department of State to assist with shipments of HHG moving to, from, and between foreign countries or international shipments originating in the continental United States. The nearest U.S. Embassy or Consulate may assist with arrangements of movements originating abroad. For further information contact:

Department of State
Transportation Operations
2201 C Street, NW.
Washington, DC 20520

**Note to § –117.220:** Agencies must use the commuted rate system for civilian employees who transfer between points inside the continental United States unless it is evident from the cost comparison that the Government will incur a savings ($100 or more) using another choice listed. The use of household goods rate tenders is not authorized when household goods are shipped under the commuted rate system.

### § 102–117.225 What is the difference between a contract or a rate tender and a commuted rate system?

(a) Under a contract or a rate tender, the agency prepares the bill of lading and books the shipment. The agency is the shipper and pays the TSP the applicable charges. If loss or damage occurs, the agency may either file a claim on behalf of the employee directly with the TSP, or help the employee in filing a claim against the TSP.

(b) Under the commuted rate system an employee arranges for shipping HHG and is reimbursed by the agency for the resulting costs. Use this method only within the continental United States (not Hawaii or Alaska). The agency reimburses the employee according to the Commuted Rate Schedule published by the GSA. The Commuted Rate Schedule (without rate table) is available on the Internet at http://www.policyworks.gov.

(c) For rate table information or a subscription for the Commercial Relocation Tariff contact:

American Moving and Storage Association
1611 Duke Street
Alexandria, VA 22314–3482
Tel. 703–683–7410

(d) For further information or assistance, you may contact:

General Services Administration
National Customer Service Center
1500 Bannister Road
Kansas City, MO 64131
http://www.kc.gsa.gov/fsstt

### § 102–117.230 Must I compare costs between a contract or a rate tender and the commuted rate system before choosing which method to use?

Yes, you must compare the cost between a contract or a rate tender, and the commuted rate system before you make a decision.

### § 102–117.235 How do I get a cost comparison?

(a) You may calculate a cost comparison internally according to 41 CFR 302–8.3.

(b) You may request GSA to perform the cost comparison if you participate in the CHAMP program by sending GSA the following information as far in advance as possible (preferably 30 calendar days):
(1) Name of employee;
(2) Origin city, county and State;
(3) Destination city, county, and State;
(4) Date of household goods pick up;
(5) Estimated weight of shipments;
(6) Number of days storage-in-transit (if applicable); and
(7) Other relevant data.

(c) For more information on cost comparisons contact:

General Services Administration
Federal Supply Service
1500 Bannister Road
Kansas City, MO 64131
http://www.kc.gsa.gov/fsstt

**Note to § 102–117.235(c):** GSA may charge an administrative fee for agencies not participating in the CHAMP program.

### § 102–117.240 What is my agency's financial responsibility to an employee who chooses to move all or part of his/her HHG under the commuted rate system?

(a) Your agency is responsible for reimbursing the employee what it would cost the Government to ship the employee's HHG by the most cost-effective means available or the employee's actual moving expenses, whichever is less.

(b) The employee is liable for the additional cost when the cost of transportation arranged by the employee is more than what it would cost the Government.

**Note to § 102–117.240:** For more information on how to ship household goods, refer to 41 CFR 302–8.3.

### § 102–117.245 What is my responsibility in providing guidance to an employee who wishes to use the commuted rate system?

You must counsel employees that they may be liable for all costs above the amount reimbursed by the agency if they select a TSP that charges more than provided under the Commuted Rate Schedule.

### § 102–117.250 What are my responsibilities after shipping the household goods?

(a) Each agency should develop an evaluation survey for the employee to complete following the move.

(b) Under the CHAMP program, you must counsel employees to fill out their portion of the GSA Form 3080, Household Goods Carrier Evaluation Report. This form reports the quality of the TSP's performance. After completing the appropriate sections of this form, the employee must send it to the bill of lading issuing officer who in turn will complete the form and forward it to:

General Services Administration
National Customer Service Center
1500 Bannister Rd.
Kansas City, MO 64131
http://www.kc.gsa.gov.fss/fsstt



### § 102–117.255 What actions may I take if the TSP's performance is not satisfactory?

If the TSP's performance is not satisfactory, you may place a TSP in temporary nonuse, suspended status, or debarred status. For more information on doing this, see subpart I of this part and the FAR (48 CFR 9.406–3 and 9.407–3).

### § 102–117.260 What are my responsibilities to employees regarding the TSP's liability for loss or damage claims?

Regarding the TSP's liability for loss or damage claims, you must:

(a) Advise employees on the limits of the TSP's liability for loss of and damage to their HHG so the employee may evaluate the need for added insurance;

(b) Inform the employee about the procedures to file claims for loss and damage to HHG with the TSP; and

(c) Counsel employees, who have a loss or damage to their HHG that exceeds the amount recovered from a TSP, on procedures for filing a claim against the Government for the difference. Agencies may compensate employees up to $40,000 on claims for loss and damage under 31 U.S.C. 3721, 3723 (41 CFR 302–8.2(f)).

### § 102–117.265 Are there time limits that affect filing a claim with a TSP for loss or damage?

Yes, several statutes limit the time for filing claims or taking other administrative or judicial action against a TSP. Refer to part 102–118 of this chapter for information on claims.

## Subpart H—Performance Measures

### § 102–117.270 What are agency performance measures for transportation?

(a) Agency performance measures are indicators of how you are supporting your customers and doing your job. By tracking performance measures you can report specific accomplishments and your success in supporting the agency mission. The Government Performance and Results Act (GPRA) of 1993 (31 U.S.C. 1115) requires agencies to develop business plans and set up program performance measures.

(b) Examples of performance measurements in transportation would include how well you:
(1) Increase the use of electronic commerce;
(2) Adopt industry best practices and services to meet your agency requirements;
(3) Use TSPs with a track record of successful past performance or proven superior ability;
(4) Take advantage of competition in moving agency freight and household goods;
(5) Assure that delivery of freight and household goods is on time against measured criteria; and
(6) Create simplified procedures to be responsive and adaptive to the customer needs and concerns.

## Subpart I—Transportation Service Provider (TSP) Performance

### § 102–117.275 What performance must I expect from a TSP?

You must expect the TSP to provide consistent and satisfactory service to meet your agency transportation needs.

### § 102–117.280 What aspects of the TSP's performance are important to measure?

Important TSP performance measures may include, but are not limited to the:
(a) TSP's percentage of on-time deliveries;
(b) Percentage of shipments that include overcharges or undercharges;
(c) Percentage of claims received in a given period;
(d) Percentage of returns received on-time;
(e) Percentage of shipments rejected;
(f) Percentage of billing improprieties;
(g) Average response time on tracing shipments;
(h) TSP's safety record (accidents, losses, damages or misdirected shipments) as a percentage of all shipments;
(i) TSP's driving record (accidents, traffic tickets and driving complaints) as a percentage of shipments; and
(j) Percentage of customer satisfaction reports on carrier performance.

### § 102–117.285 What are my choices if a TSP's performance is not satisfactory?

You may choose to place a TSP in temporary nonuse, suspension, or debarment if performance is unsatisfactory.

### § 102–117.290 What is the difference between temporary nonuse, suspension and debarment?

(a) Temporary nonuse is limited to your agency and initiated by the agency transportation officers for a period not to exceed 90 days for:
(1) Willful violations of the terms of the rate tender;
(2) Persistent or willful failure to meet requested packing and pickup service;
(3) Failure to meet required delivery dates;
(4) Violation of Department of Transportation (DOT) hazardous material regulations;
(5) Mishandling of freight, damaged or missing transportation seals, improper loading, blocking, packing or bracing of property;
(6) Improper routing of property;
(7) Subjecting your shipments to unlawful seizure or detention by failing to pay debts;
(8) Operating without legal authority;
(9) Failure to settle claims according to Government regulations; or
(10) Repeated failure to comply with regulations of DOT, Surface Transportation Board, State or local governments or other Government agencies.

(b) Suspension is disqualifying a TSP from receiving orders for certain services under a contract or rate tender pending an investigation or legal proceeding. A TSP may be suspended on adequate evidence of:
(1) Fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a contract for transportation;
(2) Violation of Federal or State antitrust statutes;
(3) Embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; and
(4) Any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of the TSP as a transporter of the Government's property or the HHG of its employees relocated for the Government.

(c) Debarment means action taken to exclude a contractor from contracting with all Federal agencies. The seriousness of the TSP's acts or omissions and the mitigating factors must be considered in making any debarment decisions. A TSP may be debarred for the following reasons:
(1) Failure of a TSP to take the necessary corrective actions within the period of temporary nonuse; or
(2) Conviction of or civil judgment for any of the causes for suspension.

### § 102–117.295 Who makes the decisions on temporary nonuse, suspension and debarment?

(a) The transportation officer may place a TSP in temporary nonuse for a period not to exceed 90 days.

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(b) The serious nature of suspension and debarment requires that these sanctions be imposed only in the public interest for the Government's protection and not for purposes of punishment. Only the agency head or his/her designee may suspend or debar a TSP.

**§ 102–117.300 Do the decisions on temporary nonuse, suspension and debarment go beyond the agency?**

(a) Temporary nonuse does not go beyond the agency.

(b) GSA compiles and maintains a current list of all suspended or debarred TSPs and periodically distributes the list to all agencies and the General Accounting Office.

**§ 102–117.305 Where do I go for information on the process for suspending or debarring a TSP?**

Refer to the Federal Acquisition Regulation (48 CFR part 9, subpart 9.4) for policies and procedures governing suspension and debarment of a TSP.

**§ 102–117.310 What records must I keep on temporary nonuse, suspension or debarment of a TSP?**

(a) You must set up a program consistent with your agency's internal record retention procedures to document the placement of TSPs in a nonuse, suspended or debarred status.

(b) For temporary nonuse, your records must contain the following information:

(1) Name, address, and Standard Carrier Alpha Code and Taxpayer Identification Number of each TSP placed in temporary nonuse status;

(2) The duration of the temporary nonuse status;

(3) The cause for imposing temporary nonuse, and the facts showing the existence of such a cause;

(4) Information and arguments in opposition to the temporary nonuse period sent by the TSP or its representative; and

(5) The reviewing official's determination about keeping or removing temporary nonuse status.

(c) For suspended or debarred TSPs, your records must include the same information as paragraph (b) of this section and you must:

(1) Assure your agency does not award contracts to a suspended or debarred TSP; and

(2) Notify GSA (see § 102–117.315).

**§ 102–117.315 Who must I notify on suspension or debarment of a TSP?**

Agencies must report monthly any suspension or debarment actions to:

General Services Administration
Office of Acquisition Policy (MV)
1800 F Street, NW.
Washington, DC 20405
http://www.epls.arnet.gov;

## Subpart J—Representation Before Regulatory Body Proceedings

**§ 102–117.320 What is a transportation regulatory body proceeding?**

A transportation regulatory body proceeding is a hearing before a transportation governing entity, such as a State public utility commission, the Surface Transportation Board, or the Federal Maritime Commission. The proceeding may be at the Federal or State level depending on the activity regulated.

**§ 102–117.325 May my agency appear on its own behalf before a transportation regulatory body proceeding?**

Generally, no executive agency may appear on its own behalf in any proceeding before a transportation regulatory body, unless the Administrator of General Services delegates the authority to the agency. The statutory authority for the Administrator of General Services to participate in regulatory proceedings on behalf of all Federal agencies is in section 201(a)(4) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 481(a)(4)).

**§ 102–117.330 When, or under what circumstances, would GSA delegate authority to an agency to appear on its own behalf before a transportation regulatory body proceeding?**

GSA will delegate authority when it does not have the expertise, or when it is outside of GSA's purview, to make a determination on an issue such as a protest of rates, routings or excessive charges.

**§ 102–117.335 How does my agency ask for a delegation to represent itself in a regulatory body proceeding?**

You must send your request for delegation with enough detail to explain the circumstances surrounding the need for delegation of authority for representation to:

General Services Administration
Office of Transportation and Personal Property (MT)
1800 F Street, NW.
Washington, DC 20405

**§ 102–117.340 What other types of assistance may GSA provide agencies in dealing with regulatory bodies?**

(a) GSA has oversight of all public utilities used by the Federal Government including transportation. There are specific regulatory requirements a TSP must meet at the State level, such as the requirement to obtain a certificate of public convenience and necessity.

(b) GSA has a list of TSPs, which meet certain criteria regarding insurance and safety, approved by DOT. You must furnish GSA with an affidavit to determine if the TSP meets the basic qualification to protect the Government's interest. As an oversight mandate, GSA coordinates this function. For further information contact:

General Services Administration
Federal Supply Service
Office of Transportation and Property Management
Travel and Transportation Management Division (FBL)
Crystal Mall Bldg. #4, Room 814
Washington, DC 20406

## Subpart K—Reports

**§ 102–117.345 Is there a requirement for me to report to GSA on my transportation activities?**

(a) Currently, there is no requirement for reporting to GSA on your transportation activities. However, GSA will work with your agency and other agencies to develop reporting requirements and procedures. In particular, GSA will develop a Governmentwide transportation reporting system by October 1, 2002.

(b) Preliminary reporting requirements may include an electronic formatted report on the quantity shipped, locations (from and to) and cost of transportation. The following categories are examples:

(1) Dollar amount spent for transportation;

(2) Volume of weight shipped;

(3) Commodities shipped;

(4) HAZMAT shipped;

(5) Mode used for shipment;

(6) Location of items shipped (international or domestic); and

(7) Domestic subdivided by East and West (Interstate 85).

**§ 102–117.350 How will GSA use reports I submit?**

(a) Reporting on transportation and transportation related services will provide GSA with:

(1) The ability to assess the magnitude and key characteristics of transportation within the Government (*e.g.*, how much agencies spend; what type of commodity is shipped; *etc.*);

(2) Data to analyze and recommend changes to policies, standards, practices, and procedures to improve Government transportation; and

(3) A better understanding of how your activity relates to other agencies and your influence on the Governmentwide picture of transportation services.



(b) In addition, this information will assist you in showing your management the magnitude of your agency's transportation program and the effectiveness of your efforts to control cost and improve service.

## Subpart L—Governmentwide Transportation Policy Council (GTPC)

**§ 102–117.355 What is the Governmentwide Transportation Policy Council (GTPC)?**

The Office of Governmentwide Policy sponsors a Governmentwide Transportation Policy Council (GTPC) to help agencies establish, improve, and maintain effective transportation management policies, practices and procedures. The council:

(a) Collaborates with private and public stakeholders to develop valid performance measures and promote solutions that lead to effective results; and

(b) Provides assistance in developing the Governmentwide transportation reporting system (see § 102–117.345).

**§ 102–117.360 Where can I get more information about the GTPC?**

For more information about the GTPC, contact:

General Services Administration
Office of Transportation and Personal Property (MT)
1800 F Street, NW.
Washington, DC 20405
http://www.policyworks.gov/transportation

Dated: September 26, 2000.

**David J. Barram,**

*Administrator of General Services.*

[FR Doc. 00–25130 Filed 10–5–00; 8:45 am]

BILLING CODE 6820–24–P

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Federal Register

Friday,
October 6, 2000

Part VI

# Department of Health and Human Services

Health Care Financing Administration

Medicare Program; Hospice Wage Index; Notice

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**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Health Care Financing Administration**

**[HCFA–1135–N]**

**[RIN 0938–AK13]**

## Medicare Program; Hospice Wage Index

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

**ACTION:** Notice.

**SUMMARY:** This notice announces the annual update to the hospice wage index as required by statute. This update is effective October 1, 2000 through September 30, 2001. The wage index is used to reflect local differences in wage levels. The hospice wage index methodology and values are based on recommendations of a negotiated rulemaking advisory committee and were originally published in the **Federal Register** on August 8, 1997.

**EFFECTIVE DATE:** This notice is effective on October 1, 2000.

**FOR FURTHER INFORMATION CONTACT:** Carol Blackford, (410) 786–5909.

**SUPPLEMENTARY INFORMATION:**

### I. Background

*A. Statute and Regulations*

Hospice Care is an approach to treatment that recognizes that the impending death of an individual warrants a change in the focus from curative care to palliative care (relief of pain and other uncomfortable symptoms). The goal of hospice care is to help terminally ill individuals continue life with minimal disruption to normal activities while remaining primarily in the home environment. A hospice uses an interdisciplinary approach to deliver medical, social, psychological, emotional, and spiritual services through use of a broad spectrum of professional and other caregivers, with the goal of making the individual as physically and emotionally comfortable as possible. Counseling and respite services are available to the family of the hospice patient. Hospice programs consider both the patient and the family as a unit of care.

Section 1861(dd) of the Social Security Act (the Act) provides for coverage of hospice care for terminally ill Medicare beneficiaries who elect to receive care from a participating hospice. The statutory authority for payment to hospices participating in the Medicare program is contained in section 1814(i) of the Act.

Our existing regulations under 42 CFR part 418 (issued on December 16, 1983, effective for hospice services furnished on or after November 1, 1983) establish eligibility requirements and payment standards and procedures, define covered services, and delineate the conditions a hospice must meet to be approved for participation in the Medicare program. Subpart G of Part 418 provides for payment to hospices based on one of four prospectively determined rates for each day in which a qualified Medicare beneficiary is under the care of a hospice. The four rate categories are routine home care, continuous home care, inpatient respite care, and general inpatient care. Payment rates are established for each category.

The regulations at § 418.306(c), which require the rates to be adjusted by a wage index, were revised in the August 8, 1997 final rule (62 FR 42860). This rule implemented a new methodology for calculating the hospice wage index based on the recommendations of a negotiated rulemaking committee. The committee reached consensus on the methodology. We included the resulting committee statement, describing that consensus, as an appendix to the August 8, 1997 final rule (62 FR 42883). The provisions of the final hospice wage index rule are as follows:

- The revised hospice wage index will be calculated using the most current available hospital wage data.
- The revised hospice wage index was phased in over a 3-year transition period. For the first year of the transition period, October 1, 1997 through September 30, 1998, a blended index was calculated by adding two-thirds of the 1983 index value for an area to one-third of the revised wage index value for that area. During the second year of the transition period, October 1, 1998 through September 30, 1999, the calculation was similar, except that the blend was one-third of the 1983 index value and two-thirds of the revised wage index value for that area. We fully implemented the revised wage index during the third transition period, October 1, 1999 through September 30, 2000.
- All hospice wage index values of 0.8 or greater are subject to a budget-neutrality adjustment to ensure that we do not pay more in the aggregate than we would have paid under the original wage index. The budget-neutrality adjustment is calculated by multiplying the hospice wage index for a given area by the budget-neutrality adjustment factor. The budget-neutrality adjustment is to be applied annually, both during and after the transition period.
- All hospice wage index values below 0.8 receive the greater of the following adjustments: the wage index floor, a 15-percent increase, subject to a maximum wage index value of 0.8; or, the budget-neutrality adjustment.
- The wage index is to be updated annually, in the **Federal Register,** based on the most current available hospital wage data. These data will include any changes to the definitions of Metropolitan Statistical Areas (MSA).

Section 4441(a) of the Balanced Budget Act of 1997 (BBA) amended section 1814(i)(1)(C)(ii) of the Act to establish updates to hospice rates for fiscal years (FYs) 1998 through 2002. Hospice rates were to be updated by a factor equal to the market basket index, minus 1 percentage point. However, section 131(a) of the Balanced Budget Refinement Act of 1999 (BBRA) changed the payment rates for FYs 2001 and 2002 by increasing the FY 2001 rate by 0.5 percent and the FY 2002 rate by 0.75 percent. Section 131(b) of the BBRA states that any additional payments made under section 131(a) of the BBRA shall not be included in updating the hospice rates after those 2 years.

*B. Update to the Hospice Wage Index*

This annual update is effective October 1, 2000 through September 30, 2001. In accordance with the agreement signed by the Health Care Financing Administration (HCFA) and all other members of the Hospice Wage Index Negotiated Rulemaking Committee, we are using the most current HCFA hospital data available, including any changes to the definitions of MSAs. The FY 2000 hospital wage index was the most current hospital wage data available when the FY 2001 wage index values were calculated. We used the pre-reclassified and pre-floor hospital area wage index data.

All wage index values are adjusted by a budget-neutrality factor of 1.065425 and are subject to the wage index floor adjustment, if applicable. We have completed all of the calculations described above and included them in the wage index values reflected in both Tables A and B below. A detailed description of the method used to compute the hospice wage index is contained in both the September 4, 1996 proposed rule (61 FR 46579) and the August 8, 1997 final rule (62 FR 42860).

After the publication of the FY 2000 hospice wage index updates, we received a number of questions about the methodology used to calculate the hospice wage indices. We would like to take this opportunity to further explain the methodology used in determining the hospice wage indices.



1. Metropolitan Statistical Areas

As explained in the September 4, 1996 hospice wage index proposed rule, each hospice=s labor market area would be established by the MSA definitions issued by the Office of Management and Budget (OMB) on December 28, 1992 based on the 1990 census, and updated periodically by OMB. Any changes to the MSA definitions would be effective annually and announced in the final rule updating the hospice wage index.

2. MSA Wage Index Values Lower Than Rural Values

As explained above, any area not included in an MSA is considered to be nonurban and receives the statewide rural rate. We are aware that in the past, a number of MSAs have had wage index values that were lower than their rural statewide value. This difference is due to variations in local wage data as compared to national wage data. The hospice wage index is computed by dividing the hourly wage rate for an MSA or nonurban area by a national hourly wage rate. Nonurban areas could receive a higher wage index value than urban areas in the same state if the hourly wage rate in the nonurban area increased at a greater rate.

*C. Tables*

TABLE A.—HOSPICE WAGE INDEX FOR URBAN AREAS

| MSA code No. | Urban area (constituent counties or county equivalents) [1] | Wage index [2] |
|---|---|---|
| 0040 | Abilene, TX<br>Taylor, TX | 0.8715 |
| 0060 | Aguadilla, PR<br>Aguada, PR<br>Aguadilla, PR<br>Moca, PR | 0.4386 |
| 0080 | Akron, OH<br>Portage, OH<br>Summit, OH | 1.0829 |
| 0120 | Albany, GA<br>Dougherty, GA<br>Lee, GA | 1.1052 |
| 0160 | Albany-Schenectady-Troy, NY.<br>Albany, NY<br>Montgomery, NY<br>Rensselaer, NY<br>Saratoga, NY<br>Schenectady, NY<br>Schoharie, NY | 0.9328 |
| 0200 | Albuquerque, NM<br>Bernalillo, NM<br>Sandoval, NM<br>Valencia, NM | 0.9056 |
| 0220 | Alexandria, LA<br>Rapides, LA | 0.8385 |
| 0240 | Allentown-Bethlehem-Easton, PA.<br>Carbon, PA<br>Lehigh, PA<br>Northampton, PA | 1.0897 |
| 0280 | Altoona, PA<br>Blair, PA | 0.9954 |
| 0320 | Amarillo, TX<br>Potter, TX<br>Randall, TX | 0.8929 |
| 0380 | Anchorage, AK<br>Anchorage, AK | 1.3701 |
| 0440 | Ann Arbor, MI<br>Lenawee, MI<br>Livingston, MI<br>Washtenaw, MI | 1.2235 |
| 0450 | Anniston, AL<br>Calhoun, AL | 0.9017 |
| 0460 | Appleton-Oshkosh-Neenah, WI.<br>Calumet, WI<br>Outagamie, WI<br>Winnebago, WI | 0.9496 |
| 0470 | Arecibo, PR<br>Arecibo, PR<br>Camuy, PR<br>Hatillo, PR | 0.5537 |
| 0480 | Asheville, NC<br>Buncombe, NC<br>Madison, NC | 0.9466 |
| 0500 | Athens, GA<br>Clarke, GA<br>Madison, GA<br>Oconee, GA | 1.0340 |
| 0520 | Atlanta, GA<br>Barrow, GA<br>Bartow, GA<br>Carroll, GA<br>Cherokee, GA<br>Clayton, GA<br>Cobb, GA<br>Coweta, GA<br>DeKalb, GA<br>Douglas, GA<br>Fayette, GA<br>Forsyth, GA<br>Fulton, GA<br>Gwinnett, GA<br>Henry, GA<br>Newton, GA<br>Paulding, GA<br>Pickens, GA<br>Rockdale, GA<br>Spalding, GA<br>Walton, GA | 1.0709 |
| 0560 | Atlantic-Cape May, NJ<br>Atlantic, NJ<br>Cape May, NJ | 1.2051 |
| 0580 | Auburn-Opelika, AL<br>Lee, AL | 0.8256 |
| 0600 | Augusta-Aiken, GA–SC<br>Columbia, GA<br>McDuffie, GA<br>Richmond, GA<br>Aiken, SC<br>Edgefield, SC | 0.9603 |
| 0640 | Austin-San Marcos, TX<br>Bastrop, TX<br>Caldwell, TX<br>Hays, TX<br>Travis, TX<br>Williamson, TX | 0.9676 |
| 0680 | Bakersfield, CA<br>Kern, CA | 1.0248 |
| 0720 | Baltimore, MD<br>Anne Arundel, MD<br>Baltimore, MD<br>Baltimore City, MD<br>Carroll, MD<br>Harford, MD<br>Howard, MD<br>Queen Anne's, MD | 1.0539 |
| 0733 | Bangor, ME<br>Penobscot, ME | 1.0239 |
| 0743 | Barnstable-Yarmouth, MA.<br>Barnstable, MA | 1.4173 |
| 0760 | Baton Rouge, LA<br>Ascension, LA<br>East Baton Rouge, LA<br>Livingston, LA<br>West Baton Rouge, LA | 0.9278 |
| 0840 | Beaumont-Port Arthur, TX.<br>Hardin, TX<br>Jefferson, TX<br>Orange, TX | 0.9129 |
| 0860 | Bellingham, WA<br>Whatcom, WA | 1.2141 |
| 0870 | Benton Harbor, MI<br>Berrien, MI | 0.9011 |
| 0875 | Bergen-Passaic, NJ<br>Bergen, NJ<br>Passaic, NJ | 1.2816 |
| 0880 | Billings, MT<br>Yellowstone, MT | 1.0696 |
| 0920 | Biloxi-Gulfport-Pascagoula, MS.<br>Hancock, MS<br>Harrison, MS<br>Jackson, MS | 0.8383 |
| 0960 | Binghamton, NY<br>Broome, NY<br>Tioga, NY | 0.9324 |
| 1000 | Birmingham, AL<br>Blount, AL<br>Jefferson, AL<br>St. Clair, AL<br>Shelby, AL | 0.9584 |
| 1010 | Bismarck, ND<br>Burleigh, ND<br>Morton, ND | 0.8267 |
| 1020 | Bloomington, IN<br>Monroe, IN | 0.9155 |
| 1040 | Bloomington-Normal, IL<br>McLean, IL | 0.9582 |
| 1080 | Boise City, ID<br>Ada, ID<br>Canyon, ID | 0.9654 |
| 1123 | Boston-Worcester-Lawrence-Lowell-Brockton, MA–NH.<br>Bristol, MA<br>Essex, MA<br>Middlesex, MA<br>Norfolk, MA<br>Plymouth, MA<br>Suffolk, MA<br>Worcester, MA<br>Hillsborough, NH<br>Merrimack, NH<br>Rockingham, NH | 1.2102 |

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TABLE A.—HOSPICE WAGE INDEX FOR URBAN AREAS—Continued

| MSA code No. | Urban area (constituent counties or county equivalents) [1] | Wage index [2] |
|---|---|---|
| | Strafford, NH | |
| 1125 ..... | Boulder-Longmont, CO | 1.0596 |
| | Boulder, CO | |
| 1145 ..... | Brazoria, TX | 0.9074 |
| | Brazoria, TX | |
| 1150 ..... | Bremerton, WA | 1.1733 |
| | Kitsap, WA | |
| 1240 ..... | Brownsville-Harlingen-San Benito, TX. | 0.9816 |
| | Cameron, TX | |
| 1260 ..... | Bryan-College Station, TX. | 0.9057 |
| | Brazos, TX | |
| 1280 ..... | Buffalo-Niagara Falls, NY. | 1.0233 |
| | Erie, NY | |
| | Niagara, NY | |
| 1303 ..... | Burlington, VT | 1.1250 |
| | Chittenden, VT | |
| | Franklin, VT | |
| | Grand Isle, VT | |
| 1310 ..... | Caguas, PR | 0.5245 |
| | Caguas, PR | |
| | Cayey, PR | |
| | Cidra, PR | |
| | Gurabo, PR | |
| | San Lorenzo, PR | |
| 1320 ..... | Canton-Massillon, OH | 0.9346 |
| | Carroll, OH | |
| | Stark, OH | |
| 1350 ..... | Casper, WY | 0.9802 |
| | Natrona, WY | |
| 1360 ..... | Cedar Rapids, IA | 0.9609 |
| | Linn, IA | |
| 1400 ..... | Champaign-Urbana, IL | 0.9764 |
| | Champaign, IL | |
| 1440 ..... | Charleston-North Charleston, SC. | 0.9577 |
| | Berkeley, SC | |
| | Charleston, SC | |
| | Dorchester, SC | |
| 1480 ..... | Charleston, WV | 0.9691 |
| | Kanawha, WV | |
| | Putnam, WV | |
| 1520 ..... | Charlotte-Gastonia-Rock Hill, NC–SC. | 1.0051 |
| | Cabarrus, NC | |
| | Gaston, NC | |
| | Lincoln, NC | |
| | Mecklenburg, NC | |
| | Rowan, NC | |
| | Stanly, NC | |
| | Union, NC | |
| | York, SC | |
| 1540 ..... | Charlottesville, VA | 1.1267 |
| | Albemarle, VA | |
| | Charlottesville City, VA | |
| | Fluvanna, VA | |
| | Greene, VA | |
| 1560 ..... | Chattanooga, TN–GA | 1.0369 |
| | Catoosa, GA | |
| | Dade, GA | |
| | Walker, GA | |
| | Hamilton, TN | |
| | Marion, TN | |
| 1580 ..... | Cheyenne, WY | 0.8711 |
| | Laramie, WY | |
| 1600 ..... | Chicago, IL | 1.1585 |
| | Cook, IL | |
| | DeKalb, IL | |
| | Du Page, IL | |
| | Grundy, IL | |
| | Kane, IL | |
| | Kendall, IL | |
| | Lake, IL | |
| | McHenry, IL | |
| | Will, IL | |
| 1620 ..... | Chico-Paradise, CA | 1.1071 |
| | Butte, CA | |
| 1640 ..... | Cincinnati, OH–KY–IN | 1.0035 |
| | Brown, OH | |
| | Clermont, OH | |
| | Hamilton, OH | |
| | Warren, OH | |
| | Boone, KY | |
| | Campbell, KY | |
| | Gallatin, KY | |
| | Grant, KY | |
| | Kenton, KY | |
| | Pendleton, KY | |
| | Dearborn, IN | |
| | Ohio, IN | |
| 1660 ..... | Clarksville-Hopkinsville, TN–KY. | 0.8619 |
| | Christian, KY | |
| | Montgomery, TN | |
| 1680 ..... | Cleveland-Lorain-Elyria, OH. | 1.0323 |
| | Ashtabula, OH | |
| | Cuyahoga, OH | |
| | Geauga, OH | |
| | Lake, OH | |
| | Lorain, OH | |
| | Medina, OH | |
| 1720 ..... | Colorado Springs, CO | 0.9821 |
| | El Paso, CO | |
| 1740 ..... | Columbia, MO | 0.9488 |
| | Boone, MO | |
| 1760 ..... | Columbia, SC | 0.9970 |
| | Lexington, SC | |
| | Richland, SC | |
| 1800 ..... | Columbus, GA–AL | 0.9068 |
| | Chattahochee, GA | |
| | Harris, GA | |
| | Muscogee, GA | |
| | Russell, AL | |
| 1840 ..... | Columbus, OH | 1.0556 |
| | Delaware, OH | |
| | Fairfield, OH | |
| | Franklin, OH | |
| | Licking, OH | |
| | Madison, OH | |
| | Pickaway, OH | |
| 1880 ..... | Corpus Christi, TX | 0.9271 |
| | Nueces, TX | |
| | San Patricio, TX | |
| 1890 ..... | Corvallis, Oregon | 1.1813 |
| | Benton, OR | |
| 1900 ..... | Cumberland, MD–WV | 0.9378 |
| | Allegany, MD | |
| | Mineral, WV | |
| 1920 ..... | Dallas, TX | 1.0236 |
| | Collin, TX | |
| | Dallas, TX | |
| | Denton, TX | |
| | Ellis, TX | |
| | Henderson, TX | |
| | Hunt, TX | |
| | Kaufman, TX | |
| | Rockwall, TX | |
| 1950 ..... | Danville, VA | 0.9277 |
| | Danville City, VA | |
| | Pittsylvania, VA | |
| 1960 ..... | Davenport-Moline-Rock Island, IA–IL. | 1.0080 |
| | Scott, IA | |
| | Henry, IL | |
| | Rock Island, IL | |
| 2000 ..... | Dayton-Springfield, OH | 0.9576 |
| | Clark, OH | |
| | Greene, OH | |
| | Miami, OH | |
| | Montgomery, OH | |
| 2020 ..... | Daytona Beach, FL | 0.9248 |
| | Flagler, FL | |
| | Volusia, FL | |
| 2030 ..... | Decatur, AL | 0.9248 |
| | Lawrence, AL | |
| | Morgan, AL | |
| 2040 ..... | Decatur, IL | 0.8867 |
| | Macon, IL | |
| 2080 ..... | Denver, CO | 1.0857 |
| | Adams, CO | |
| | Arapahoe, CO | |
| | Denver, CO | |
| | Douglas, CO | |
| | Jefferson, CO | |
| 2120 ..... | Des Moines, IA | 0.9328 |
| | Dallas, IA | |
| | Polk, IA | |
| | Warren, IA | |
| 2160 ..... | Detroit, MI | 1.1104 |
| | Lapeer, MI | |
| | Macomb, MI | |
| | Monroe, MI | |
| | Oakland, MI | |
| | St. Clair, MI | |
| | Wayne, MI | |
| 2180 ..... | Dothan, AL | 0.8309 |
| | Dale, AL | |
| | Houston, AL | |
| 2190 ..... | Dover, DE | 0.9947 |
| | Kent, DE | |
| 2200 ..... | Dubuque, IA | 0.9079 |
| | Dubuque, IA | |
| 2240 ..... | Duluth-Superior, MN–WI. | 1.0831 |
| | St. Louis, MN | |
| | Douglas, WI | |
| 2281 ..... | Dutchess County, NY | 1.1243 |
| | Dutchess, NY | |
| 2290 ..... | Eau Claire, WI | 0.9544 |
| | Chippewa, WI | |
| | Eau Claire, WI | |
| 2320 ..... | El Paso, TX | 0.9533 |
| | El Paso, TX | |
| 2330 ..... | Elkhart-Goshen, IN | 0.9994 |
| | Elkhart, IN | |
| 2335 ..... | Elmira, NY | 0.9092 |
| | Chemung, NY | |
| 2340 ..... | Enid, OK | 0.8474 |
| | Garfield, OK | |
| 2360 ..... | Erie, PA | 0.9614 |
| | Erie, PA | |
| 2400 ..... | Eugene-Springfield, OR | 1.1298 |
| | Lane, OR | |



TABLE A.—HOSPICE WAGE INDEX FOR URBAN AREAS—Continued

| MSA code No. | Urban area (constituent counties or county equivalents) [1] | Wage index [2] |
|---|---|---|
| 2440 ..... | Evansville-Henderson, IN–KY. | 0.8847 |
| | Posey, IN | |
| | Vanderburgh, IN | |
| | Warrick, IN | |
| | Henderson, KY | |
| 2520 ..... | Fargo-Moorhead, ND–MN. | 0.9185 |
| | Clay, MN | |
| | Cass, ND | |
| 2560 ..... | Fayetteville, NC | 0.9051 |
| | Cumberland, NC | |
| 2580 ..... | Fayetteville-Springdale-Rogers, AR. | 0.8283 |
| | Benton, AR | |
| | Washington, AR | |
| 2620 ..... | Flagstaff, AZ–UT | 1.1026 |
| | Coconino, AZ | |
| | Kane, UT | |
| 2640 ..... | Flint, MI | 1.1742 |
| | Genesee, MI | |
| 2650 ..... | Florence, AL | 0.8447 |
| | Colbert, AL | |
| | Lauderdale, AL | |
| 2655 ..... | Florence, SC | 0.9183 |
| | Florence, SC | |
| 2670 ..... | Fort Collins-Loveland, CO. | 1.0977 |
| | Larimer, CO | |
| 2680 ..... | Ft. Lauderdale, FL | 1.0839 |
| | Broward, FL | |
| 2700 ..... | Fort Myers-Cape Coral, FL. | 0.9537 |
| | Lee, FL | |
| 2710 ..... | Fort Pierce-Port St. Lucie, FL. | 1.0653 |
| | Martin, FL | |
| | St. Lucie, FL | |
| 2720 ..... | Fort Smith, AR–OK | 0.8357 |
| | Crawford, AR | |
| | Sebastian, AR | |
| | Sequoyah, OK | |
| 2750 ..... | Fort Walton Beach, FL | 0.9284 |
| | Okaloosa, FL | |
| 2760 ..... | Fort Wayne, IN | 0.9692 |
| | Adams, IN | |
| | Allen, IN | |
| | De Kalb, IN | |
| | Huntington, IN | |
| | Wells, IN | |
| | Whitley, IN | |
| 2800 ..... | Fort Worth-Arlington, TX. | 1.0480 |
| | Hood, TX | |
| | Johnson, TX | |
| | Parker, TX | |
| | Tarrant, TX | |
| 2840 ..... | Fresno, CA | 1.0935 |
| | Fresno, CA | |
| | Madera, CA | |
| 2880 ..... | Gadsden, AL | 0.9258 |
| | Etowah, AL | |
| 2900 ..... | Gainesville, FL | 1.0764 |
| | Alachua, FL | |
| 2920 ..... | Galveston-Texas City, TX. | 1.0370 |
| | Galveston, TX | |
| 2960 ..... | Gary, IN | 1.0005 |
| | Lake, IN | |
| 2975 ..... | Glens Falls, NY | 0.9170 |
| | Warren, NY | |
| | Washington, NY | |
| 2980 ..... | Goldsboro, NC | 0.8879 |
| | Wayne, NC | |
| 2985 ..... | Grand Forks, ND–MN | 0.9693 |
| | Grand Forks, ND | |
| | Polk, MN | |
| 2995 ..... | Grand Junction, CO | 0.9790 |
| | Mesa, CO | |
| 3000 ..... | Grand Rapids-Muskegon-Holland, MI. | 1.0799 |
| | Allegan, MI | |
| | Kent, MI | |
| | Muskegon, MI | |
| | Ottawa, MI | |
| 3040 ..... | Great Falls, MT | 1.1144 |
| | Cascade, MT | |
| 3060 ..... | Greeley, CO | 1.0359 |
| | Weld, CO | |
| 3080 ..... | Green Bay, WI | 0.9731 |
| | Brown, WI | |
| 3120 ..... | Greensboro-Winston-Salem-High Point, NC. | 0.9629 |
| | Alamance, NC | |
| | Davidson, NC | |
| | Davie, NC | |
| | Forsyth, NC | |
| | Guilford, NC | |
| | Randolph, NC | |
| | Stokes, NC | |
| | Yadkin, NC | |
| 3150 ..... | Greenville, NC | 1.0123 |
| | Pitt, NC | |
| 3160 ..... | Greenville-Spartanburg-Anderson, SC. | 0.9790 |
| | Anderson, SC | |
| | Cherokee, SC | |
| | Greenville, SC | |
| | Pickens, SC | |
| | Spartanburg, SC | |
| 3180 ..... | Hagerstown, MD | 0.9422 |
| | Washington, MD | |
| 3200 ..... | Hamilton-Middletown, OH. | 0.9532 |
| | Butler, OH | |
| 3240 ..... | Harrisburg-Lebanon-Carlisle, PA. | 1.0567 |
| | Cumberland, PA | |
| | Dauphin, PA | |
| | Lebanon, PA | |
| | Perry, PA | |
| 3283 ..... | Hartford, CT | 1.2483 |
| | Hartford, CT | |
| | Litchfield, CT | |
| | Middlesex, CT | |
| | Tolland, CT | |
| 3285 ..... | Hattiesburg, MS | 0.8134 |
| | Forrest, MS | |
| | Lamar, MS | |
| 3290 ..... | Hickory-Morganton-Lenoir, NC. | 0.9709 |
| | Alexander, NC | |
| | Burke, NC | |
| | Caldwell, NC | |
| | Catawba, NC | |
| 3320 ..... | Honolulu, HI | 1.2228 |
| | Honolulu, HI | |
| 3350 ..... | Houma, LA | 0.8350 |
| | Lafourche, LA | |
| | Terrebonne, LA | |
| 3360 ..... | Houston, TX | 1.0002 |
| | Chambers, TX | |
| | Fort Bend, TX | |
| | Harris, TX | |
| | Liberty, TX | |
| | Montgomery, TX | |
| | Waller, TX | |
| 3400 ..... | Huntington-Ashland, WV–KY–OH. | 1.0396 |
| | Boyd, KY | |
| | Carter, KY | |
| | Greenup, KY | |
| | Lawrence, OH | |
| | Cabell, WV | |
| | Wayne, WV | |
| 3440 ..... | Huntsville, AL | 0.9400 |
| | Limestone, AL | |
| | Madison, AL | |
| 3480 ..... | Indianapolis, IN | 1.0434 |
| | Boone, IN | |
| | Hamilton, IN | |
| | Hancock, IN | |
| | Hendricks, IN | |
| | Johnson, IN | |
| | Madison, IN | |
| | Marion, IN | |
| | Morgan, IN | |
| | Shelby, IN | |
| 3500 ..... | Iowa City, IA | 1.0237 |
| | Johnson, IA | |
| 3520 ..... | Jackson, MI | 0.9419 |
| | Jackson, MI | |
| 3560 ..... | Jackson, MS | 0.8936 |
| | Hinds, MS | |
| | Madison, MS | |
| | Rankin, MS | |
| 3580 ..... | Jackson, TN | 0.9164 |
| | Madison, TN | |
| | Chester, TN | |
| 3600 ..... | Jacksonville, FL | 0.9544 |
| | Clay, FL | |
| | Duval, FL | |
| | Nassau, FL | |
| | St. Johns, FL | |
| 3605 ..... | Jacksonville, NC | 0.8367 |
| | Onslow, NC | |
| 3610 ..... | Jamestown, NY | 0.8372 |
| | Chautauqua, NY | |
| 3620 ..... | Janesville-Beloit, WI | 1.0289 |
| | Rock, WI | |
| 3640 ..... | Jersey City, NJ | 1.2440 |
| | Hudson, NJ | |
| 3660 ..... | Johnson City-Kingsport-Bristol, TN–VA. | 0.9433 |
| | Carter, TN | |
| | Hawkins, TN | |
| | Sullivan, TN | |
| | Unicoi, TN | |
| | Washington, TN | |
| | Bristol City, VA | |
| | Scott, VA | |
| | Washington, VA | |
| 3680 ..... | Johnstown, PA | 0.9206 |
| | Cambria, PA | |
| | Somerset, PA | |

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TABLE A.—HOSPICE WAGE INDEX FOR URBAN AREAS—Continued

| MSA code No. | Urban area (constituent counties or county equivalents) [1] | Wage index [2] |
|---|---|---|
| 3700 ..... | Jonesboro, AR | 0.8000 |
| | Craighead, AR | |
| 3710 ..... | Joplin, MO | 0.8181 |
| | Jasper, MO | |
| | Newton, MO | |
| 3720 ..... | Kalamazoo-Battlecreek, MI. | 1.0635 |
| | Calhoun, MI | |
| | Kalamazoo, MI | |
| | Van Buren, MI | |
| 3740 ..... | Kankakee, IL | 0.9162 |
| | Kankakee, IL | |
| 3760 ..... | Kansas City, KS–MO | 0.9932 |
| | Johnson, KS | |
| | Leavenworth, KS | |
| | Miami, KS | |
| | Wyandotte, KS | |
| | Cass, MO | |
| | Clay, MO | |
| | Clinton, MO | |
| | Jackson, MO | |
| | Lafayette, MO | |
| | Platte, MO | |
| | Ray, MO | |
| 3800 ..... | Kenosha, WI | 0.9625 |
| | Kenosha, WI | |
| 3810 ..... | Killeen-Temple, TX | 1.0583 |
| | Bell, TX | |
| | Coryell, TX | |
| 3840 ..... | Knoxville, TN | 0.9802 |
| | Anderson, TN | |
| | Blount, TN | |
| | Knox, TN | |
| | Loudon, TN | |
| | Sevier, TN | |
| | Union, TN | |
| 3850 ..... | Kokomo, IN | 0.9503 |
| | Howard, IN | |
| | Tipton, IN | |
| 3870 ..... | La Crosse, WI–MN | 0.9519 |
| | Houston, MN | |
| | La Crosse, WI | |
| 3880 ..... | Lafayette, LA | 0.8886 |
| | Acadia, LA | |
| | Lafayette, LA | |
| | St. Landry, LA | |
| | St. Martin, LA | |
| 3920 ..... | Lafayette, IN | 0.9386 |
| | Clinton, IN | |
| | Tippecanoe, IN | |
| 3960 ..... | Lake Charles, LA | 0.8488 |
| | Calcasieu, LA | |
| 3980 ..... | Lakeland-Winter Haven, FL. | 0.9393 |
| | Polk, FL | |
| 4000 ..... | Lancaster, PA | 0.9862 |
| | Lancaster, PA | |
| 4040 ..... | Lansing-East Lansing, MI. | 1.0631 |
| | Clinton, MI | |
| | Eaton, MI | |
| | Ingham, MI | |
| 4080 ..... | Laredo, TX | 0.8868 |
| | Webb, TX | |
| 4100 ..... | Las Cruces, NM | 0.9153 |
| | Dona Ana, NM | |
| 4120 ..... | Las Vegas, NV–AZ | 1.1996 |
| | Mohave, AZ | |
| | Clarke, NV | |
| | Nye, NV | |
| 4150 ..... | Lawrence, KS | 0.8761 |
| | Douglas, KS | |
| 4200 ..... | Lawton, OK | 1.0157 |
| | Comanche, OK | |
| 4243 ..... | Lewiston-Auburn, ME | 0.9482 |
| | Androscoggin, ME | |
| 4280 ..... | Lexington, KY | 0.9090 |
| | Bourbon, KY | |
| | Clark, KY | |
| | Fayette, KY | |
| | Jessamine, KY | |
| | Madison, KY | |
| | Scott, KY | |
| | Woodford, KY | |
| 4320 ..... | Lima, OH | 0.9489 |
| | Allen, OH | |
| | Auglaize, OH | |
| 4360 ..... | Lincoln, NE | 1.0304 |
| | Lancaster, NE | |
| 4400 ..... | Little Rock-North Little Rock, AR. | 0.9179 |
| | Faulkner, AR | |
| | Lonoke, AR | |
| | Pulaski, AR | |
| | Saline, AR | |
| 4420 ..... | Longview-Marshall, TX | 0.9311 |
| | Gregg, TX | |
| | Harrison, TX | ..... |
| | Upshur, TX | |
| 4480 ..... | Los Angeles-Long Beach, CA. | 1.2841 |
| | Los Angeles, CA | |
| 4520 ..... | Louisville, KY–IN | 0.9996 |
| | Clark, IN | |
| | Floyd, IN | ..... |
| | Harrison, IN | |
| | Scott, IN | |
| | Bullitt, KY | |
| | Jefferson, KY | |
| | Oldham, KY | |
| 4600 ..... | Lubbock, TX | 0.8962 |
| | Lubbock, TX | |
| 4640 ..... | Lynchburg, VA | 0.9392 |
| | Amherst, VA | |
| | Bedford, VA | |
| | Bedford City, VA | |
| | Campbell, VA | |
| | Lynchburg City, VA | |
| 4680 ..... | Macon, GA | 0.9089 |
| | Bibb, GA | |
| | Houston, GA | |
| | Jones, GA | |
| | Peach, GA | |
| | Twiggs, GA | |
| 4720 ..... | Madison, WI | 1.0367 |
| | Dane, WI | |
| 4800 ..... | Mansfield, OH | 0.9031 |
| | Crawford, OH | ..... |
| | Richland, OH | |
| 4840 ..... | Mayaguez, PR | 0.5376 |
| | Anasco, PR | |
| | Cabo Rojo, PR | |
| | Hormigueros, PR | |
| | Mayaguez, PR | |
| | Sabana Grande, PR | ..... |
| | San German, PR | ..... |
| 4880 ..... | McAllen-Edinburg-Mission, TX. | 0.8652 |
| 4890 ..... | Hidalgo, TX | |
| | Medford-Ashland, OR | 1.1180 |
| | Jackson, OR | |
| 4900 ..... | Melbourne-Titusville-Palm Bay, FL. | 0.9905 |
| | Brevard, Fl | |
| 4920 ..... | Memphis, TN–AR–MS | 0.8784 |
| | Crittenden, AR | |
| | DeSoto, MS | |
| | Fayette, TN | |
| | Shelby, TN | |
| | Tipton, TN | |
| 4940 ..... | Merced, CA | 1.0950 |
| | Merced, CA | |
| 5000 ..... | Miami, FL | 1.0904 |
| | Dade, FL | |
| 5015 ..... | Middlesex-Somerset-Hunterdon, NJ. | 1.1851 |
| | Hunterdon, NJ | |
| | Middlesex, NJ | |
| | Somerset, NJ | |
| 5080 ..... | Milwaukee-Waukesha, WI. | 1.0490 |
| | Milwaukee, WI | |
| | Ozaukee, WI | |
| | Washington, WI | |
| | Waukesha, WI | |
| 5120 ..... | Minneapolis-St. Paul, MN–WI. | 1.1645 |
| | Anoka, MN | |
| | Carver, MN | |
| | Chisago, MN Dakota, MN | |
| | Hennepin, MN | |
| | Isanti, MN | |
| | Ramsey, MN | |
| | Scott, MN | |
| | Sherbune, MN | |
| | Washington, MN | |
| | Wright, MN | |
| | Pierce, WI | |
| | St. Croix, WI | |
| 5140 ..... | Missoula, MT | 0.9681 |
| | Missoula, MT | |
| 5160 ..... | Mobile, AL | 0.8809 |
| | Baldwin, AL | |
| | Mobile, AL | |
| 5170 ..... | Modesto, CA | 1.0774 |
| | Stanislaus, CA | |
| 5190 ..... | Monmouth-Ocean, NJ | 1.1996 |
| | Monmouth, NJ | |
| | Ocean, NJ | |
| 5200 ..... | Monroe, LA | 0.8760 |
| | Ouachita, LA | |
| 5240 ..... | Montgomery, AL | 0.8208 |
| | Autauga, AL | |
| | Elmore, AL | |
| | Montgomery, AL | |
| 5280 ..... | Muncie, IN | 1.1544 |
| | Delaware, IN | |
| 5330 ..... | Myrtle Beach, SC | 0.9088 |
| | Horry, SC | |
| 5345 ..... | Naples, FL | 1.0484 |
| | Collier, FL | |
| 5360 ..... | Nashville, TN | 1.0068 |
| | Cheatham, TN | |
| | Davidson, TN | |
| | Dickson, TN | |
| | Robertson, TN | |
| | Rutherford TN | |
| | Sumner, TN | |
| | Williamson, TN | |
| | Wilson, TN | |
| 5380 ..... | Nassau-Suffolk, NY | 1.4997 |
| | Nassau, NY | |
| | Suffolk, NY | |
| 5483 ..... | New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT. | 1.3166 |
| | Fairfield, CT | |
| | New Haven, CT | |
| 5523 ..... | New London-Norwich, CT. | 1.3242 |
| | New London, CT | |
| 5560 ..... | New Orleans, LA | 0.9685 |
| | Jefferson, LA | |
| | Orleans, LA | |
| | Plaquemines, LA | |
| | St. Bernard, LA | |
| | St. Charles, LA | |
| | St. James, LA | |
| | St. John The Baptist, LA | |
| | St. Tammany, LA | |
| 5600 ..... | New York, NY | 1.5469 |
| | Bronx, NY | |
| | Kings, NY | |
| | New York, NY | |
| | Putnam, NY | |
| | Queens, NY | |
| | Richmond, NY | |
| | Rockland, NY | |
| | Westchester, NY | |
| 5640 ..... | Newark, NJ | 1.2409 |
| | Essex, NJ | |
| | Morris, NJ | |
| | Sussex, NJ | |
| | Union, NJ | |
| | Warren, NJ | |
| 5660 ..... | Newburgh, NY–PA | 1.1624 |
| | Orange, NY | |
| | Pike, PA | |
| 5720 ..... | Norfolk-Virginia Beach-Newport News, VA–NC. | 0.8993 |
| | Currituck, NC | |
| | Chesapeake City, VA | |
| | Gloucester, VA | |
| | Hampton City, VA | |
| | James City, VA | |
| | Isle of Wight, VA | |
| | Mathews, VA | |
| | Newport News City, VA | |
| | Norfolk City, VA | |
| | Poquoson City, VA | |
| | Portsmouth City, VA | |
| | Suffolk City, VA | |
| | Virginia Beach City VA | |
| | Williamsburg City, VA | |
| | York, VA | |
| 5775 ..... | Oakland, CA | 1.6044 |
| | Alameda, CA | |
| | Contra Costa, CA | |
| 5790 ..... | Ocala, FL | 1.0245 |
| | Marion, FL | |
| 5800 ..... | Odessa-Midland, TX | 0.9455 |
| | Ector, TX | |
| | Midland, TX | |



TABLE A.—HOSPICE WAGE INDEX FOR URBAN AREAS—Continued

| MSA code No. | Urban area (constituent counties or county equivalents) [1] | Wage index [2] |
|---|---|---|
| 5880 ..... | Oklahoma City, OK | 0.9150 |
| | Canadian, OK | |
| | Cleveland, OK | |
| | Logan, OK | |
| | McClain, OK | |
| | Oklahoma, OK | |
| | Pottawatomie, OK | |
| 5910 ..... | Olympia, WA | 1.1648 |
| | Thurston, WA | |
| 5920 ..... | Omaha, NE–IA | 1.1140 |
| | Pottawattamie, IA | |
| | Cass, NE | |
| | Douglas, NE | |
| | Sarpy, NE | |
| | Washington, NE | |
| 5945 ..... | Orange County, CA | 1.2349 |
| | Orange, CA | |
| 5960 ..... | Orlando, FL | 1.0437 |
| | Lake, FL | |
| | Orange, FL | |
| | Osceola, FL | |
| | Seminole, FL | |
| 5990 ..... | Owensboro, KY | 0.8635 |
| | Daviess, KY | |
| 6015 ..... | Panama City, FL | 0.9770 |
| | Bay, FL | |
| 6020 ..... | Parkersburg-Marietta, WV–OH. | 0.8896 |
| | Washington, OH | |
| | Wood, WV | |
| 6080 ..... | Pensacola, FL | 0.8995 |
| | Escambia, FL | |
| | Santa Rosa, FL | |
| 6120 ..... | Peoria-Pekin, IL | 0.8896 |
| | Peoria, IL | |
| | Tazewell, IL | |
| | Woodford, IL | |
| 6160 ..... | Philadelphia, PA–NJ | 1.1891 |
| | Burlington, NJ | |
| | Camden, NJ | |
| | Gloucester, NJ | |
| | Salem, NJ | |
| | Bucks, PA | |
| | Chester, PA | |
| | Delaware, PA | |
| | Montgomery, PA | |
| | Philadelphia, PA | |
| 6200 ..... | Phoenix-Mesa, AZ | 1.0084 |
| | Maricopa, AZ | |
| | Pinal, AZ | |
| 6240 ..... | Pine Bluff, AR | 0.8202 |
| | Jefferson, AR | |
| 6280 ..... | Pittsburgh, PA | 1.0265 |
| | Allegheny, PA | |
| | Beaver,PA | |
| | Butler, PA | |
| | Fayette, PA | |
| | Washington, PA | |
| | Westmoreland, PA | |
| 6323 ..... | Pittsfield, MA | 1.0927 |
| | Berkshire, MA | |
| 6340 ..... | Pocatello, ID | 0.9561 |
| | Bannock, ID | |
| 6360 ..... | Ponce, PR | 0.5717 |
| | Guayanilla, PR | |
| | Juana Diaz, PR | |
| | Penuelas, PR | |
| | Ponce, PR | |
| | Villalba, PR | |
| | Yauco, PR | |
| 6403 ..... | Portland, ME | 1.0096 |
| | Cumberland, ME | |
| | Sagadahoc, ME | |
| | York, ME | |
| 6440 ..... | Portland-Vancouver, OR–WA. | 1.1694 |
| | Clackamas, OR | |
| | Columbia, OR | |
| | Multnomah, OR | |
| | Washington, OR | |
| | Yamhill, OR | |
| | Clark, WA | |
| 6483 ..... | Providence-Warwick-Pawtucket, RI. | 1.1391 |
| | Bristol, RI | |
| | Kent, RI | |
| | Newport, RI | |
| | Providence, RI | |
| | Washington, RI | |
| 6520 ..... | Provo-Orem, UT | 1.0461 |
| | Utah, UT | |
| 6560 ..... | Pueblo, CO | 0.9433 |
| | Pueblo, CO | |
| 6580 ..... | Punta Gorda, FL | 0.9509 |
| | Charlotte, FL | |
| 6600 ..... | Racine, WI | 0.9820 |
| | Racine, WI | |
| 6640 ..... | Raleigh-Durham-Chapel Hill, NC. | 1.0170 |
| | Chatham, NC | |
| | Durham, NC | ..... |
| | Franklin, NC | |
| | Johnston, NC | |
| | Orange, NC | |
| | Wake, NC | |
| 6660 ..... | Rapid City, SD | 0.8911 |
| | Pennington, SD | |
| 6680 ..... | Reading, PA | 1.0054 |
| | Berks, PA | |
| 6690 ..... | Redding, CA | 1.2002 |
| | Shasta, CA | |
| 6720 ..... | Reno, NV | 1.1353 |
| | Washoe, NV | |
| 6740 ..... | Richland-Kennewick-Pasco, WA. | 1.1959 |
| | Benton, WA | |
| | Franklin, WA | |
| 6760 ..... | Richmond-Petersburg, VA. | 1.0171 |
| | Charles City County, VA | |
| | Chesterfield, VA | |
| | Colonial Heights City, VA | |
| | Dinwiddie, VA | |
| | Goochland, VA | |
| | Hanover, VA | |
| | Henrico, VA | |
| | Hopewell City, VA | |
| | New Kent, VA | |
| | Petersburg City, VA | |
| | Powhatan, VA | |
| | Prince George, VA | |
| | Richmond City, VA | |
| 6780 ..... | Riverside-San Bernardino, CA. | 1.1945 |
| | Riverside, CA | |
| | San Bernardino, CA | |

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TABLE A.—HOSPICE WAGE INDEX FOR URBAN AREAS—Continued

| MSA code No. | Urban area (constituent counties or county equivalents) [1] | Wage index [2] |
|---|---|---|
| 6800 ..... | Roanoke, VA ..... | 0.8672 |
| | Botetourt, VA | |
| | Roanoke, VA | |
| | Roanoke City, VA | |
| | Salem City, VA | |
| 6820 ..... | Rochester, MN ..... | 1.2178 |
| | Olmsted, MN | |
| 6840 ..... | Rochester, NY ..... | 0.9786 |
| | Genesee, NY | |
| | Livingston, NY | |
| | Monroe, NY | |
| | Ontario, NY | |
| | Orleans, NY | |
| | Wayne, NY | |
| 6880 ..... | Rockford, IL ..... | 0.9359 |
| | Boone, IL | |
| | Ogle, IL | |
| | Winnebago, IL | |
| 6895 ..... | Rocky Mount, NC ..... | 0.9307 |
| | Edgecombe, NC | |
| | Nash, NC | |
| 6920 ..... | Sacramento, CA ..... | 1.3089 |
| | El Dorado, CA | |
| | Placer, CA | |
| | Sacramento, CA | |
| 6960 ..... | Saginaw-Bay City-Midland, MI. | 0.9895 |
| | Bay, MI | |
| | Midland, MI | |
| | Saginaw, MI | |
| 6980 ..... | St. Cloud, MN ..... | 1.0038 |
| | Benton, MN | |
| | Stearns, MN | |
| 7000 ..... | St. Joseph, MO ..... | 0.9529 |
| | Andrew, MO | |
| | Buchanan, MO | |
| 7040 ..... | St. Louis, MO–IL ..... | 0.9645 |
| | Franklin, MO | |
| | Jefferson, MO | |
| | Lincoln, MO | |
| | St. Charles, MO | |
| | St. Louis, MO | |
| | St. Louis City, MO | |
| | Warren, MO | |
| | Clinton, IL | |
| | Jersey, IL | |
| | Madison, IL | |
| | Monroe, IL | |
| | St. Clair, IL | |
| 7080 ..... | Salem, OR ..... | 1.0601 |
| | Marion, OR | |
| | Polk, OR | |
| 7120 ..... | Salinas, CA ..... | 1.5674 |
| | Monterey, CA | |
| 7160 ..... | Salt Lake City-Ogden, UT. | 1.0500 |
| | Davis, UT | |
| | Salt Lake, UT | |
| | Weber, UT | |
| 7200 ..... | San Angelo, TX ..... | 0.8359 |
| | Tom Green, TX | |
| 7240 ..... | San Antonio, TX ..... | 0.8862 |
| | Bexar, TX | |
| | Comal, TX | |
| | Guadalupe, TX | |
| | Wilson, TX | |
| 7320 ..... | San Diego, CA ..... | 1.2712 |
| 7360 ..... | San Francisco, CA ..... | 1.4918 |
| | Marin, CA | |
| | San Francisco, CA | |
| | San Mateo, CA | |
| 7400 ..... | San Jose, CA ..... | 1.4500 |
| | Santa Clara, CA | |
| 7440 ..... | San Juan-Bayamon, PR | 0.5357 |
| | Aguas Buenas, PR | |
| | Barceloneta, PR | |
| | Bayamon, PR | |
| | Canovanas, PR | |
| | Carolina, PR | |
| | Catano, PR | |
| | Ceiba, PR | |
| | Comerio, PR | |
| | Corozal, PR | |
| | Dorado, PR | |
| | Fajardo, PR | |
| | Florida, PR | |
| | Guaynabo, PR | |
| | Humacao, PR | |
| | Juncos, PR | |
| | Los Piedras, PR | |
| | Loiza, PR | |
| | Luguillo, PR | |
| | Manati, PR | |
| | Morovis, PR | |
| | Naguabo, PR | |
| | Naranjito, PR | |
| | Rio Grande, PR | |
| | San Juan, PR | |
| | Toa Alta, PR | |
| | Toa Baja, PR | |
| | Trujillo Alto, PR | |
| | Vega Alta, PR | |
| | Vega Baja, PR | |
| | Yabucoa, PR | |
| 7460 ..... | San Luis Obispo-Atascadero-Paso Robles, CA. | 1.1156 |
| | San Luis Obispo, CA | |
| 7480 ..... | Santa Barbara-Santa Maria-Lompoc, CA. | 1.1528 |
| | Santa Barbara, CA | |
| 7485 ..... | Santa Cruz-Watsonville, CA. | 1.4840 |
| | Santa Cruz, CA | |
| 7490 ..... | Santa Fe, NM ..... | 1.1121 |
| | Los Alamos, NM | |
| | Santa Fe, NM | |
| 7500 ..... | Santa Rosa, CA ..... | 1.3852 |
| | Sonoma, CA | |
| 7510 ..... | Sarasota-Bradenton, FL | 1.0554 |
| | Manatee, FL | |
| | Sarasota, FL | |
| 7520 ..... | Savannah, GA ..... | 1.0605 |
| | Bryan, GA | |
| | Chatham, GA | |
| | Effingham, GA | |
| 7560 ..... | Scranton—Wilkes-Barre—Hazleton, PA. | 0.8921 |
| | Columbia, PA | |
| | Lackawanna, PA | |
| | Luzerne, PA | |
| | Wyoming, PA | |
| 7600 ..... | Seattle-Bellevue-Everett, WA. | 1.2030 |
| | Island, WA | |
| | King, WA | |
| | Snohomish, WA | |
| 7610 ..... | Sharon, PA ..... | 0.8826 |
| | Mercer, PA | |
| 7620 ..... | Sheboygan, WI ..... | 0.8740 |
| | Sheboygan, WI | |
| 7640 ..... | Sherman-Denison, TX .. | 0.9940 |
| | Grayson, TX | |
| 7680 ..... | Shreveport-Bossier City, LA. | 0.9642 |
| | Bossier, LA | |
| | Caddo, LA | |
| | Webster, LA | |
| 7720 ..... | Sioux City, IA–NE ..... | 0.9108 |
| | Woodbury, IA | |
| | Dakota, NE | |
| 7760 ..... | Sioux Falls, SD ..... | 0.9351 |
| | Lincoln, SD | |
| | Minnehaha, SD | |
| 7800 ..... | South Bend, IN ..... | 1.0435 |
| | St. Joseph, IN | |
| 7840 ..... | Spokane, WA ..... | 1.1507 |
| | Spokane, WA | |
| 7880 ..... | Springfield, IL ..... | 0.9252 |
| | Menard, IL | |
| | Sangamon, IL | |
| 7920 ..... | Springfield, MO ..... | 0.8515 |
| | Christian, MO | |
| | Greene, MO | |
| | Webster, MO | |
| 8003 ..... | Springfield, MA ..... | 1.1377 |
| | Hampden, MA | |
| | Hampshire, MA | |
| 8840 ..... | Washington, DC–MD–VA–WV. | 1.1778 |
| | District of Columbia, DC | |
| | Calvert, MD | |
| | Charles, MD | |
| | Frederick, MD | |
| | Montgomery, MD | |
| | Prince Georges, MD | |
| | Alexandria City, VA | |
| | Arlington, VA | |
| | Clarke, VA | |
| | Culpeper, VA | |
| | Fairfax, VA | |
| | Fairfax City, VA | |
| | Falls Church City, VA | |
| | Fauquier, VA | |
| | Fredericksburg City, VA | |
| | King George, VA | |
| | Loudoun, VA | |
| | Manassas City, VA | |
| | Manassas Park City, VA | |
| | Prince William, VA | |
| | Spotsylvania, VA | |
| | Stafford, VA | |
| | Warren, VA | |
| | Berkeley, WV | |
| | Jefferson, WV | |
| 8920 ..... | Waterloo-Cedar Falls, IA. | 0.9075 |
| | Black Hawk, IA | |
| 8940 ..... | Wausau, WI ..... | 1.0064 |
| | Marathon, WI | |
| 8960 ..... | West Palm Beach-Boca Raton, FL. | 1.0668 |
| | Palm Beach, FL | |
| 9000 ..... | Wheeling, WV–OH ..... | 0.8144 |
| | Belmont, OH | |
| | Marshall, WV | |
| | Ohio, WV | |
| 9040 ..... | Wichita, KS ..... | 1.0038 |
| | Butler, KS | |
| | Harvey, KS | |
| | Sedgwick, KS | |
| 9080 ..... | Wichita Falls, TX ..... | 0.8154 |
| | Archer, TX | |
| | Wichita, TX | |
| 8050 ..... | State College, PA ..... | 0.9737 |
| | Centre, PA | |
| 8080 ..... | Steubenville-Weirton, OH–WV. | 0.9179 |
| | Jefferson, OH | |
| | Brooke, WV | |
| | Hancock, WV | |
| 8120 ..... | Stockton-Lodi, CA ..... | 1.1207 |
| | San Joaquin, CA | |
| 8140 ..... | Sumter, SC ..... | 0.8778 |
| | Sumter, SC | |
| 8160 ..... | Syracuse, NY ..... | 1.1377 |
| | Cayuga, NY | |
| | Madison, NY | |
| | Onondaga, NY | |
| | Oswego, NY | |
| 8200 ..... | Tacoma, WA ..... | 1.2230 |
| | Pierce, WA | |
| 8240 ..... | Tallahassee, FL ..... | 0.9040 |
| | Gadsden, FL | |
| | Leon, FL | |
| 8280 ..... | Tampa-St. Petersburg-Clearwater, FL. | 0.9637 |
| | Hernando, FL | |
| | Hillsborough, FL | |
| | Pasco, FL | |
| | Pinellas, FL | |
| 8320 ..... | Terre Haute, IN ..... | 0.9132 |
| | Clay, IN | |
| | Vermillion, IN | |
| | Vigo, IN | |
| 8360 ..... | Texarkana, AR–Texarkana, TX. | 0.8668 |
| | Miller, AR | |
| | Bowie, TX | |
| 8400 ..... | Toledo, OH ..... | 1.0458 |
| | Fulton, OH | |
| | Lucas, OH | |
| | Wood, OH | |
| 8440 ..... | Topeka, KS ..... | 0.9937 |
| | Shawnee, KS | |
| 8480 ..... | Trenton, NJ ..... | 1.0764 |
| | Mercer, NJ | |
| 8520 ..... | Tucson, AZ ..... | 0.9315 |
| | Pima, AZ | |
| 8560 ..... | Tulsa, OK ..... | 0.8616 |
| | Creek, OK | |
| | Osage, OK | |
| | Rogers, OK | |
| | Tulsa, OK | |
| | Wagoner, OK | |
| 8600 ..... | Tuscaloosa, AL ..... | 0.8593 |
| | Tuscaloosa, AL | |
| 8640 ..... | Tyler, TX ..... | 0.9983 |
| | Smith | |
| 8680 ..... | Utica-Rome, NY ..... | 0.8842 |
| | Herkimer, NY | |
| | Oneida, NY | |
| 8720 ..... | Vallejo-Fairfield-Napa, CA. | 1.4220 |
| | Napa, CA | |
| | Solano, CA | |
| 8735 ..... | Ventura, CA ..... | 1.2206 |
| 8750 ..... | Victoria, TX ..... | 0.8927 |
| 8760 ..... | Vineland-Millville-Bridgeton, NJ. | 1.1206 |
| | Cumberland, NJ | |
| 8780 ..... | Visalia-Turlare-Portersville, CA. | 1.1093 |
| | Tulare, CA | |
| 8800 ..... | Waco, TX ..... | 0.8604 |
| | McLennan, TX | |
| 9140 ..... | Williamsport, PA ..... | 0.9003 |
| | Lycoming, PA | |
| 9160 ..... | Wilmington-Newark, DE–MD. | 1.2013 |
| | New Castle, DE | |
| | Cecil, MD | |
| 9200 ..... | Wilmington, NC ..... | 1.0343 |
| | Brunswick, NC | |
| | New Hanover, NC | |
| 9260 ..... | Yakima, WA ..... | 1.1009 |
| | Yakima, WA | |
| 9270 ..... | Yolo, CA ..... | 1.0356 |
| | Yolo, CA | |
| 9280 ..... | York, PA ..... | 0.9919 |
| | York, PA | |
| 9320 ..... | Youngstown-Warren, OH. | 1.0651 |
| | Columbiana, OH | |
| | Mahoning, OH | |
| | Trumbull, OH | |
| 9340 ..... | Yuba City, CA ..... | 1.1361 |
| | Sutter, CA | |
| | Yuba, CA | |
| 9360 ..... | Yuma, AZ ..... | 1.0574 |
| | Yuma, AZ | |

[1] This column lists each MSA area name (in italics) and each county, or county equivalent, in the MSA area. Counties not listed in this Table are considered to be Rural Areas. Wage Index values for these areas are found in Table B.

[2] Wage index values are based on FY 1996 hospital cost report data before reclassification. This wage index is further adjusted. Wage index values greater than 0.8 are subject to a budget-neutrality adjustment of 1.065425. Wage index values below 0.8 are adjusted to be the greater of a 15-percent increase, subject to a maximum wage index value of 0.8, or an adjustment by multiplying the hospital wage index value for a given area by the budget-neutrality adjustment. We have completed all of these adjustments and included them in the wage index values reflected in this table.

TABLE B.—WAGE INDEX FOR RURAL AREAS

| MSA code No. | Nonurban area | Wage index [1] |
|---|---|---|
| 9901 ..... | Alabama ..... | 0.8000 |
| 9902 ..... | Alaska ..... | 1.2847 |
| 9903 ..... | Arizona ..... | 0.9104 |
| 9904 ..... | Arkansas ..... | 0.8000 |
| 9905 ..... | California ..... | 1.0603 |
| 9906 ..... | Colorado ..... | 0.9391 |
| 9907 ..... | Connecticut ..... | 1.3226 |
| 9908 ..... | Delaware ..... | 0.9767 |
| 9910 ..... | Florida ..... | 0.9575 |
| 9911 ..... | Georgia ..... | 0.8625 |
| 9912 ..... | Hawaii ..... | 1.1430 |
| 9913 ..... | Idaho ..... | 0.9218 |
| 9914 ..... | Illinois ..... | 0.8575 |
| 9915 ..... | Indiana ..... | 0.8946 |
| 9916 ..... | Iowa ..... | 0.8446 |

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TABLE B.—WAGE INDEX FOR RURAL AREAS—Continued

| MSA code No. | Nonurban area | Wage index [1] |
|---|---|---|
| 9917 | Kansas | 0.8000 |
| 9918 | Kentucky | 0.8569 |
| 9919 | Louisiana | 0.8000 |
| 9920 | Maine | 0.9205 |
| 9921 | Maryland | 0.9197 |
| 9922 | Massachusetts | 1.2114 |
| 9923 | Michigan | 0.9392 |
| 9924 | Minnesota | 0.9237 |
| 9925 | Mississippi | 0.8000 |
| 9926 | Missouri | 0.8229 |
| 9927 | Montana | 0.8945 |
| 9928 | Nebraska | 0.8532 |
| 9929 | Nevada | 0.9693 |
| 9930 | New Hampshire | 1.0554 |
| 9931 | New Jersey [2] | ..... |
| 9932 | New Mexico | 0.8927 |
| 9933 | New York | 0.9202 |
| 9934 | North Carolina | 0.8832 |
| 9935 | North Dakota | 0.8148 |
| 9936 | Ohio | 0.9216 |
| 9937 | Oklahoma | 0.8000 |
| 9938 | Oregon | 1.0514 |
| 9939 | Pennsylvania | 0.9083 |
| 9940 | Puerto Rico | 0.4886 |
| 9941 | Rhode Island [2] | ..... |
| 9942 | South Carolina | 0.8805 |
| 9943 | South Dakota | 0.8073 |
| 9944 | Tennessee | 0.8152 |
| 9945 | Texas | 0.8000 |
| 9946 | Utah | 0.9490 |
| 9947 | Vermont | 1.0024 |
| 9948 | Virgin Islands | 0.7252 |
| 9949 | Virginia | 0.8421 |
| 9950 | Washington | 1.1131 |
| 9951 | West Virginia | 0.8597 |
| 9952 | Wisconsin | 0.9333 |
| 9953 | Wyoming | 0.9440 |
| 9965 | Guam | 1.0240 |

[1] Wage index values are based on FY 1996 hospital cost report data before reclassification. This wage index is further adjusted. Wage index values greater than 0.8 are subject to a budget-neutrality adjustment of 1.065425. Wage index values below 0.8 are adjusted to be the greater of a 15-percent increase, subject to a maximum wage index value of 0.8, or an adjustment by multiplying the hospital wage index value for a given area by the budget-neutrality adjustment. We have completed all of these adjustments and have included them in the wage index values reflected in this table.

[2] All counties within the State are classified as urban.

**II. Regulatory Impact Statement**

We have examined the impacts of this notice as required by Executive Order 12866, the Unfunded Mandate Reform Act, and the Regulatory Flexibility Act (RFA) (Pub. L. 96–354). In this notice, we identified an impact on hospices as a result of changes in the way we compute the hospice wage index. The change in the methodology for computing the wage index was determined through a negotiated rulemaking committee and implemented in the August 8, 1997 final rule (62 FR 42860). We recognize that the BBRA adjusted hospice payments upward by 0.5 percent; however, we did not do a separate analysis of the impact of this payment adjustment. We used the new rates adjusted by the BBRA when estimating the payments to be made under the new wage index and when calculating the budget-neutrality adjustment factor. Overall, we believe the changes included in this notice to be insignificant.

*1. Executive Order 12866 and RFA*

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). We have determined that this notice is not an economically significant rule under this Executive Order. The RFA requires agencies to analyze options for regulatory relief for small businesses. For purposes of the RFA, States and individuals are not considered small entities. However, most providers, physicians, and health care suppliers are small entities, either by nonprofit status or by having revenues of $5 million or less annually. Approximately 73 percent of Medicare certified hospices are identified as voluntary, government, or other agencies, and, therefore, are considered small entities. Because the National Hospice Organization estimates that approximately 70 percent of hospice patients are Medicare beneficiaries, we have not considered other sources of revenue in this analysis.

As discussed below, the estimated decreases in payment to hospices overall are very slight. The most significant change is an increase in estimated payments to rural areas in East and West South Central, at 4.8 and 9.1 percent, respectively. The effects of this notice on West South Central alone, indicate that 54 of the 85 hospices in urban West South Central can be considered small entities that will experience an 9.1-percent increase in Medicare payments. Therefore, we anticipate this notice will have a significant, albeit positive, impact on a substantial number of small entities. However, the methodology for the hospice wage index was previously determined by consensus through a negotiated rulemaking committee that included representatives of national hospice associations; rural, urban, large and small hospices; multi-site hospices; and consumer groups. Based on the options considered, the committee determined that the methodology described in the committee statement, and adopted into regulation in the August 8, 1997 final rule, was favorable for the hospice community as well as for beneficiaries. Therefore, we believe that mitigating any negative effects on small entities has been taken into consideration.

*2. Congressional Review*

Section 804(2) of Title 5, United States Code (U.S.C.) (as added by section 251 of Pub. L. 104–121), specifies that a "major rule" is any rule that the Office of Management and Budget finds is likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

We estimate that the impact of this notice will not be $100 million or more; therefore, this notice is not a major rule as defined in Title 5, United States Code, section 804(2) and is not being forwarded to the Congress for a 60-day review period.

*3. Unfunded Mandate*

The Unfunded Mandate Reform Act of 1995 also requires (in section 202) that agencies prepare an assessment of anticipated costs and benefits for any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. The notice has no consequential effect on State, local, or tribal governments. We believe the private sector costs of this notice fall below the threshold as well.

*4. Rural Hospital Impact*

Section 1102(b) of the Act requires us to prepare a regulatory impact analysis for any notice that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside an MSA and has fewer than 50 beds.

Because this notice has no direct impact on small hospitals, in accordance with 5 U.S.C. 604, the Secretary certifies that this notice will not have a significant impact on the operations of a substantial number of small rural hospitals.



*5. Federalism*

We have reviewed this notice under the threshold criteria of Executive Order 13132, Federalism, and have determined that this notice will not have any negative impact on the rights, roles, and responsibilities of State, local, or tribal governments.

A. Anticipated Effects

We have compared estimated payments using the FY 1983 hospice wage index to estimated payments using the FY 2001 wage index and determined the current hospice rates to be budget-neutral. As mentioned above, the negotiated rulemaking committee agreement required that we not pay more under the new wage index in the aggregate than we would have paid under the original wage index.

This impact analysis compares hospice payments under the FY 2000 hospice wage index to the estimated payments using the FY 2001 wage index. The data used in developing the quantitative analysis for this notice were obtained from the March 2000 update of the national claims history file of all bills submitted during FY 1999. We deleted bills from hospices that have since closed.

Table C demonstrates the results of our analysis. In Column 2 of Table C, we indicate the number of routine home care days that were included in our analysis, although the analysis was performed on all types of hospice care. Column 3 of Table C indicates payments that were made using the FY 2000 wage index. Column 4 of Table C is based on FY 1999 claims and estimates payments to be made to hospices using the FY 2001 wage index. The final column, which compares Columns 3 and 4, shows the percent change in estimated hospice payments made based on the category of the hospice.

Table C categorizes hospices by various geographic and provider characteristics. The first row displays the results of the impact analysis for all Medicare certified hospices. The second and third rows of the table categorize hospices according to their geographic location (urban and rural). Our analysis indicated that there are 1,351 hospices located in urban areas and 798 hospices located in rural areas. The next two groupings in the table indicate the number of hospices by census region, also broken down by urban and rural hospices. The sixth grouping shows the impact on hospices based on the size of the hospice's program. We determined that the majority of hospice payments are made at the routine home care rate. Therefore, we based the size of each individual hospice's program on the number of routine home care days provided in 1999. The next grouping shows the impact on hospices by type of ownership. The final grouping shows the impact on hospices defined by whether they are provider-based or freestanding.

The results of our analysis shows that the greatest increases in payment are for rural areas in the West and East South Central Regions, with a 9.1 percent and 4.8 percent increase, respectively. The greatest decreases in payment are for urban areas in the New England and Mountain regions, each with a 0.4 percent decrease, and for rural areas in the Middle Atlantic and Pacific regions, each with a 0.4 percent decrease.

The breakdown by size, type of ownership, and facility base showed an increase in payments to all hospice programs. Small hospice programs showed significant increases of about 10 percent, while larger programs experienced only a negligible increase. Government-owned hospices showed the greatest estimated increase of 2.7 percent, while payments to voluntary hospices are expected to increase by 0.4 percent. In terms of hospice base, freestanding hospices showed the greatest estimated payment increase while home health agencies showed the smallest amount of payment increase.

TABLE C.—IMPACT OF HOSPICE WAGE INDEX CHANGE

| | Number of hospices (1) | Number of routine home care days in thousands (2) | Payments using FY 2000 wage index in thousands (3) | Estimated payments using FY 2001 wage index in thousands (4) | Percent change in Hospice payments (5) |
|---|---|---|---|---|---|
| (By geographic location): | | | | | |
| All Hospices | 2,149 | 21,354 | 2,490,702 | 2,504,439 | 0.6 |
| Urban Hospices | 1,351 | 18,120 | 2,185,780 | 2,190,590 | 0.2 |
| Rural Hospices | 798 | 3,234 | 304,922 | 313,849 | 2.9 |
| By Region—Urban: | | | | | |
| New England | 94 | 642 | 89,447 | 89,051 | −0.4 |
| Middle Atlantic | 170 | 2,245 | 290,927 | 291,894 | 0.3 |
| South Atlantic | 185 | 4,030 | 509,079 | 511,583 | 0.5 |
| East North Central | 224 | 2,862 | 334,861 | 336,694 | 0.5 |
| East South Central | 94 | 1,169 | 123,023 | 123,530 | 0.4 |
| West North Central | 96 | 1,061 | 113,167 | 113,498 | 0.3 |
| West South Central | 188 | 2,408 | 261,632 | 261,287 | −0.1 |
| Mountain | 88 | 1,135 | 149,035 | 148,443 | −0.4 |
| Pacific | 183 | 2,325 | 298,138 | 298,086 | 0 |
| Puerto Rico | 29 | 243 | 16,470 | 16,524 | 0.3 |
| By Region—Rural: | | | | | |
| New England | 26 | 72 | 7,666 | 7,811 | 1.9 |
| Middle Atlantic | 35 | 168 | 17,282 | 17,214 | −0.4 |
| South Atlantic | 117 | 681 | 63,904 | 65,005 | 1.7 |
| East North Central | 136 | 561 | 53,801 | 54,541 | 1.4 |
| East South Central | 81 | 524 | 48,159 | 50,481 | 4.8 |
| West North Central | 174 | 409 | 37,622 | 38,969 | 3.6 |
| West South Central | 85 | 362 | 29.640 | 32.351 | 9.1 |
| Mountain | 87 | 217 | 21.359 | 22,048 | 3.2 |
| Pacific | 54 | 217 | 24,012 | 23,922 | −0.4 |

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TABLE C.—IMPACT OF HOSPICE WAGE INDEX CHANGE—Continued

| | Number of hospices (1) | Number of routine home care days in thousands (2) | Payments using FY 2000 wage index in thousands (3) | Estimated payments using FY 2001 wage index in thousands (4) | Percent change in Hospice payments (5) |
|---|---|---|---|---|---|
| Puerto Rico (Skilled) | 3 | 23 | 1,476 | 1,507 | 2.1 |
| Routine home care days: | | | | | |
| 0–1,754 days | 437 | 390 | 36,700 | 40,609 | 10.6 |
| 1,754–4,373 days | 502 | 1,504 | 150,829 | 154,399 | 2.4 |
| 4,373–9,681 days | 556 | 3,669 | 388,427 | 390,269 | 0.5 |
| 9,681 + days | 653 | 15,449 | 1,875,339 | 1,879,969 | 0.2 |
| Type of ownership: | | | | | |
| Voluntary | 1,351 | 13,975 | 1,638,339 | 1,644,677 | 0.4 |
| Proprietary | 573 | 6,714 | 784,488 | 790,194 | 0.7 |
| Government | 192 | 568 | 58,174 | 59,770 | 2.7 |
| Other | 33 | 97 | 9,701 | 9,797 | 1.0 |
| Hospice base: | | | | | |
| Freestanding | 874 | 12,368 | 1,451,898 | 1,461,421 | 0.7 |
| Home health agency | 716 | 5,357 | 625,165 | 627,440 | 0.4 |
| Hospital | 538 | 3,503 | 395,997 | 397,830 | 0.5 |
| Skilled nursing facility | 21 | 126 | 17,642 | 17,748 | 0.6 |

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

**Authority:** Section 1814(i) of the Social Security Act (42 U.S.C. 1395f (i)(1)).

(Catalog of Federal Domestic Assistance Program No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: August 21, 2000.

**Nancy-Ann Min DeParle,**

*Administrator, Health Care Financing Administration.*

Dated: September 22, 2000.

**Donna E. Shalala,**

*Secretary.*

[FR Doc. 00–25547 Filed 10–2–00; 12:23 pm]

BILLING CODE 4120–01–P

Federal Register

Friday,
October 6, 2000

Part VII

# Department of Housing and Urban Development

24 CFR Part 888

Fair Market Rents for Fiscal Year 2001 for Certain Areas; Proposed Rule

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**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**24 CFR Part 888**

**[Docket No. FR–4589–N–03]**

## Fair Market Rents for Fiscal Year 2001 for Certain Areas

**AGENCY:** Office of the Secretary, HUD.

**ACTION:** Notice of Proposed FMRs for Certain Areas.

**SUMMARY:** This notice proposes revised FMRs that reflect the 50th percentile rent levels for 39 areas, as determined by applying the criteria of HUD's interim rule amending its FMR regulations published on October 2, 2000, and trended to April 1, 2001.

**DATES:** *Comments Due Date:* November 6, 2000.

**ADDRESSES:** Interested persons are invited to submit comments regarding HUD's estimates of the FMRs as published in this Notice to the Office of the General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Communications should refer to the above docket number and title and should contain the information specified in the "Request for Comments" section. To ensure that the information is fully considered by all of the reviewers, each commenter is requested to submit two copies of its comments, one to the Rules Docket Clerk and the other to the Economic and Market Analysis Staff in the appropriate HUD Field Office. A copy of each communication submitted will be available for public inspection and copying during regular business hours (7:30 a.m.–5:30 p.m. Eastern Time) at the above address.

**FOR FURTHER INFORMATION CONTACT:** Gerald Benoit, Operations Division, Office of Rental Assistance, telephone (202) 708–0477. For technical information on the development of schedules for specific areas or the method used for the rent calculations, contact Lynn Rodgers, Economic and Market Analysis Division, Office of Economic Affairs, telephone (202) 708–0590, Extension 5735 (e-mail: lynn_a._rodgers@hud.gov). Hearing -or speech-impaired persons may use the Telecommunications Devices for the Deaf (TTY) by contacting the Federal Information Relay Service at 1–800–877–8339. (Other than the "800" TTY number, telephone numbers are not toll free.)

**SUPPLEMENTARY INFORMATION:**

Section 8(c)(1) of the United States Housing Act of 1937 (42 U.S.C. 1473f(c)) requires the Secretary to publish FMRs periodically, but not less than annually to be effective on October 1 of each year. FMRs are used (1) to establish payment standards for the Housing Choice Voucher program; (2) to determine initial contract rents in new commitments for Section 8 project-based assistance (*e.g.*, the project-based voucher program); (3) to determine whether comparability applies to adjustment of contracts rents for substantial rehabilitation and moderate rehabilitation programs; (4) as a limit on renewal rents for certain Section 8 projects (including mark-up-to-market projects); and (5) to determine maximum subsidy levels for HOME tenant-based rental assistance, and maximum rent levels in HOME multifamily rental housing. The FMRs also apply to any other programs requiring their use. Today's notice proposes revised FMRs that reflect the 50th percentile rent levels for 39 areas, as determined by applying the criteria of HUD's interim rule, published on October 2, 2000, and trended to April 1, 2001.

Raising FMRs for certain areas, which is part of HUD's new FMR policy, being implemented through HUD's interim rule, published on October 2, 2000, is designed to ensure that low-income families have access to a broad range of housing opportunities throughout a metropolitan area. FMRs will be increased to the 50th percentile in those metropolitan areas where a FMR increase is most needed to promote residential choice, help families move closer to areas of job growth, and deconcentrate poverty.

### Publication of FMRs

Section 8(c) of the U.S. Housing Act of 1937 requires the Secretary of HUD to publish FMRs periodically, but not less frequently than annually. HUD's regulations reflect this statutorily required process. Section 888.115 provides that HUD will publish FMRs at least annually. Section 888.115 also provides that HUD first publish proposed FMRs and that HUD provide a comment period for the proposed FMRs of at least 30 days. After evaluating the public comments, HUD will publish the final FMRs (see 24 CFR 888.115).

New paragraph (c) of § 888.113, as added by the interim rule, published on October 2, 2000, provides as follows:

(c) *Setting FMRs at the 50th percentile rent to provide a broad range of housing opportunities throughout a metropolitan area.*

(1) HUD will set the FMRs at the 50th percentile rent for all unit sizes in each metropolitan FMR area that meets all of the following criteria at the time of annual publication of the FMRs:

(i) The FMR area contains at least 100 census tracts;

(ii) 70 percent or fewer of the census tracts with at least 10 two bedroom rental units are census tracts in which at least 30 percent of the two bedroom rental units have gross rents at or below the two bedroom FMR set at the 40th percentile rent; and

(iii) 25 percent or more of the tenant-based rental program participants in the FMR area reside in the 5 percent of the census tracts within the FMR area that have the largest number of program participants.

(2) If the FMRs are set at the 50th percentile rent in accordance with paragraph (c)(1) of this section, HUD will set the FMRs at the 50th percentile rent for a total of three years.

(i) At the end of the three-year period, HUD will continue to set the FMRs at the 50th percentile rent only so long as the concentration measure for the current year is less than the concentration measure at the time the FMR area first received an FMR set at the 50th percentile rent. HUD will publish FMRs based on the 40th percentile rent for FMR areas that do not qualify for continued use of the 50th percentile rent.

(ii) For purposes of this section, the term "concentration measure" means the percentage of tenant-based rental program participants in the FMR area who reside in the 5 percent of the census tracts within the FMR area that have the largest number of program participants.

(iii) FMR areas that do not meet the test for continued use of FMRs set at the 50th percentile will be ineligible to use FMRs set at the 50th percentile for a period of three years.

(iv) A PHA whose jurisdiction includes one or more FMR areas that are no longer eligible to use FMRs set at the 50th percentile may be eligible for a higher payment standard under § 982.503(f).

Schedule B of this document lists 39 areas for which HUD is proposing to adopt 50th percentile FMRs for all unit sizes on the basis of the criteria specified in § 888.113(c).

### Method Used to Develop 50th Percentile FMRs

FMRs are estimates of rent plus the cost of utilities, except telephone. FMRs are housing market-wide estimates of rents that provide opportunities to rent standard quality housing throughout the area. The level at which FMRs are set is expressed as a percentile point within the rent distribution of standard quality rental housing units in the FMR area. FMRs are set at either the 40th or 50th percentile rent—the dollar amount below which the rent for 40 or 50 percent of standard quality rental housing units falls. The 40th or 50th percentile rent is drawn from the distribution of rents of all units that are occupied by recent movers. Adjustments are made to exclude public housing units, newly built units and substandard units.

Specifically, HUD is proposing to increase FMRs to the 50th percentile rent for all unit sizes in the 39 metropolitan FMR areas that HUD determined met the criteria in § 888.113(c) of the interim rule, published on October 2, 2000.



### Manufactured Home Space FMRs

FMRs for the rental of manufactured home spaces in the Housing Choice Voucher program are now 40 percent of the applicable Section 8 existing housing program FMRs for two-bedroom units. This is unchanged, except that the manufactured home space rental FMRs for the 39 areas now are based on the 50th percentile two-bedroom FMR rather than the 40th percentile FMR. HUD will consider public comments requesting modifications of manufactured home space rental FMRs where the 40 percent FMRs are thought to be inadequate. To be considered as a basis for revising the FMRs, comments must contain statistically valid survey data that show the 50th percentile manufactured home space rent (including the cost of utilities) for the entire FMR area. Manufactured home space FMR revisions are published as final FMRs in Schedule D of this document. Once approved, the revised manufactured home space FMRs establish new base year estimates that are updated annually using the same data used to update the other FMRs, until they are superseded by rising FMRs for other housing assisted under the housing choice voucher program.

### Request for Comments

Through this notice, HUD is proposing to set 50th percentile FMRs for 39 metropolitan FMR areas. HUD seeks public comments on revised FMR levels for the 39 areas. Comments on FMR levels must include sufficient information (including local data and a full description of the rental housing survey methodology used) to justify any proposed changes. Changes may be proposed in all or any one or more of the bedroom size categories on the schedule. Recommendations and supporting data must reflect the rent levels that exist within the entire FMR area.

HUD recommends the use of professionally-conducted Random Digit Dialing (RDD) telephone surveys to test the accuracy of FMRs for areas where there is a sufficient number of Section 8 units to justify the survey cost of $10,000–$12,000. Areas with 500 or more program units usually meet this cost criterion, and areas with fewer units may meet it if actual two-bedroom rents are significantly different from the FMRs proposed by HUD. In addition, HUD has developed a version of the RDD survey methodology for smaller, nonmetropolitan PHAs. This methodology is designed to be simple enough to be done by the PHA itself, rather than by professional survey organizations, at a cost of $5,000 or less.

PHAs that plan to use the RDD survey technique should obtain a copy of the survey guide entitled "Random Digit Dialing Surveys; A Guide to Assist Larger Public Housing Agencies in Preparing Fair Market Rent Comments." The guide is available from HUD USER on 1–800–245–2691, or from HUD's Worldwide Web site, in Microsoft Word or Adobe Acrobat format, at the following address: http://www.huduser.org/datasets/fmr.html.

HUD prefers, but does not mandate, the use of RDD telephone surveys, or the more traditional method described in the survey guide intended for small PHAs along with the simplified RDD methodology. Other survey methodologies are acceptable as long as the surveys submitted provide statistically reliable, unbiased estimates of the 50th percentile gross rent. Survey samples should preferably be randomly drawn from a complete list of rental units for the FMR area. If this is not feasible, the selected sample must be drawn so as to be statistically representative of the entire rental housing stock of the FMR area. In particular, surveys must include units of all rent levels and be representative by structure type (including single-family, duplex and other small rental properties), age of housing unit, and geographic location. The decennial Census should be used as a starting point and means to verify whether the sample is representative of the FMR area's rental housing stock.

Local rental housing surveys conducted with alternative methods must include the following documentation:

- Identification of the 50th percentile gross rent (gross rent is rent including the cost of utilities) and the actual distribution (or distributions, if more than one bedroom size is surveyed) of the surveyed units, rank-ordered by gross rent.
- An explanation of how the rental housing sample was drawn and a copy of the survey questionnaire, transmittal letter, and any publicity materials.
- An explanation of how the contract rents of the individual units surveyed were converted to gross rents. (For RDD-type surveys, HUD requires use of the Section 8 utility allowance schedule.)
- An explanation of how the survey excluded units built within two years prior to the survey date.
- The date the rent data were collected so that HUD can apply a trending factor to update the estimate to the midpoint of the applicable fiscal year. If the survey has already been trended to this date, the date the survey was conducted and a description of the trending factor used.
- Copies of all survey sheets.

Since FMRs are based on standard quality units and units occupied by recent movers, both of which are difficult to identify and survey, HUD will accept surveys of all rental units and apply appropriate adjustments.

Most surveys cover only one- and two-bedroom units, in which case HUD will make the adjustments for other size units consistent with the differentials established on the basis of the 1990 Census data for the FMR area. When three- and four-bedroom units are surveyed separately to determine FMRs for these unit size categories, the commenter should multiply the 50th percentile survey rents by 1.087 and 1.077, respectively, to determine the FMRs. The use of these factors will produce the same upward adjustments in the rent differentials as those used in the HUD methodology.

### Findings and Certifications

*Environmental Impact*

A Finding of No Significant Impact with respect to the environment as required by the National Environmental Policy Act (42 U.S.C. 4321–4374) is unnecessary, since the Housing Choice Voucher Program is categorically excluded from the Department's National Environmental Policy Act procedures under 24 CFR 50.19(c)(d).

*Regulatory Flexibility Act*

The undersigned, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) certifies that this notice would not have a significant economic impact on a substantial number of small entities because the proposed FMRs will not change the rent from that which would be charged if the rental unit were not in the housing choice voucher program.

*Catalog of Federal Domestic Assistance*

The Catalog of Federal Domestic Assistance program number is 14.156, Lower-Income Housing Assistance Program (section 8).

Accordingly, the Fair Market Rent Schedules, which will be codified in 24

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CFR part 888, are proposed to be amended as follows:

Dated: October 2, 2000.

**Andrew Cuomo,**

*Secretary.*

**Fair Market Rents for the Housing Choice Voucher Program Schedules B and D—General Explanatory Notes**

**1. Geographic Coverage**

a. Metropolitan Areas—FMRs are housing market-wide rent estimates that are intended to provide housing opportunities throughout the geographic area in which rental housing units are in direct competition. The FMRs shown in Schedule B incorporate OMB's most current definitions of metropolitan areas, with the exceptions discussed in paragraph (b). HUD uses the OMB Metropolitan Statistical Area (MSA) and Primary Metropolitan Statistical Area (PMSA) definitions for FMR areas because they closely correspond to housing market area definitions.

b. Exceptions to OMB Definitions—The exceptions are counties deleted from three large metropolitan areas whose revised OMB metropolitan area definitions were determined by HUD to be larger than the housing market areas. The FMRs for the following counties (shown by the metropolitan area) are calculated separately and are shown in Schedule B within their respective States under the "Metropolitan FMR Areas" listing:

*Metropolitan Area and Counties Deleted*

Chicago, IL—DeKalb, Grundy and Kendall Counties

Dallas, TX—Henderson County

Washington, DC–MD–VA–WV—Berkeley and Jefferson Counties in West Virginia; and Clarke, Culpeper, King George and Warren Counties in Virginia

**2. Bedroom Size Adjustments**

Schedule B shows the FMRs for 0-bedroom through 4-bedroom units. The FMRs for unit sizes larger than 4 bedrooms are calculated by adding 15 percent to the 4-bedroom FMR for each extra bedroom. For example, the FMR for a 5-bedroom unit is 1.15 times the 4-bedroom FMR, and the FMR for a 6-bedroom unit is 1.30 times the 4 bedroom FMR. FMRs for single-room-occupancy (SRO) units are 0.75 times the 0 bedroom FMR.

**3. FMRs for Manufactured Home Spaces**

FMRs for manufactured home spaces in the Housing Choice Voucher program are 40 percent of the two-bedroom Housing Choice Voucher program FMRs, with the exception of the areas listed in Schedule D whose manufactured home space FMRs have been modified on the basis of public comments. Once approved, the revised manufactured home space FMRs establish new base-year estimates that are updated annually using the same data used to estimate the Housing Choice Voucher program FMRs. The FMR area definitions used for the rental of manufactured home spaces are the same as the area definitions used for the other FMRs.

**4. Arrangement of FMR Areas and Identification of Constituent Parts**

The FMR areas in Schedule B are listed alphabetically by metropolitan FMR area and by nonmetropolitan county within each State. The exception FMRs for manufactured home spaces in Schedule D are listed alphabetically by State.

BILLING CODE 4210–32–P



SCHEDULE B - 50TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 1

| | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| **A R I Z O N A** | | | | | | |
| METROPOLITAN FMR AREAS | | | | | | |
| Las Vegas, NV-AZ MSA | 536 | 636 | 757 | 1054 | 1245 | Mohave |
| Phoenix-Mesa, AZ MSA | 449 | 544 | 683 | 950 | 1119 | Maricopa, Pinal |
| **C A L I F O R N I A** | | | | | | |
| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
| Oakland, CA PMSA | 761 | 921 | 1155 | 1583 | 1891 | Alameda, Contra Costa |
| Orange County, CA PMSA | 774 | 945 | 1045 | 1455 | 1819 | Orange |
| Sacramento, CA PMSA | 486 | 547 | 685 | 955 | 1120 | El Dorado, Placer, Sacramento |
| San Diego, CA MSA | 627 | 716 | 896 | 1247 | 1470 | San Diego |
| San Jose, CA PMSA | 1052 | 1199 | 1481 | 2030 | 2280 | Santa Clara |
| Ventura, CA PMSA | 672 | 773 | 978 | 1301 | 1516 | Ventura |
| **C O L O R A D O** | | | | | | |
| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
| Denver, CO PMSA | 523 | 625 | 832 | 1154 | 1363 | Adams, Arapahoe, Denver, Douglas, Jefferson |
| **D I S T . O F C O L U M B I A** | | | | | | |
| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
| Washington, DC-MD-VA | 680 | 773 | 907 | 1236 | 1491 | District of Columbia |
| **F L O R I D A** | | | | | | |
| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
| Fort Lauderdale, FL PMSA | 517 | 609 | 754 | 1049 | 1233 | Broward |
| Miami, FL PMSA | 490 | 616 | 768 | 1054 | 1222 | Dade |
| Tampa-St. Petersburg-Clearwater, FL MSA | 468 | 557 | 690 | 917 | 1111 | Hernando, Hillsborough, Pasco, Pinellas |
| West Palm Beach-Boca Raton, FL MSA | 538 | 628 | 777 | 1032 | 1278 | Palm Beach |
| **G E O R G I A** | | | | | | |
| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
| Atlanta, GA MSA | 647 | 720 | 839 | 1119 | 1353 | Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta Dekalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett Henry, Newton, Paulding, Pickens, Rockdale, Spalding Walton |

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

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SCHEDULE B - 50TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 2

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| **ILLINOIS** | | | | | | |
| Chicago, IL | 593 | 711 | 848 | 1060 | 1186 | Cook, Dupage, Kane, Lake, Mchenry, Will |
| St. Louis, MO-IL MSA | 352 | 429 | 556 | 724 | 800 | Clinton, Jersey, Madison, Monroe, St. Clair |
| **KANSAS** | | | | | | |
| Kansas City, MO-KS MSA | 418 | 526 | 633 | 875 | 970 | Johnson, Leavenworth, Miami, Wyandotte |
| Wichita, KS MSA | 353 | 424 | 567 | 767 | 829 | Butler, Harvey, Sedgwick |
| **LOUISIANA** | | | | | | |
| Baton Rouge, LA MSA | 326 | 404 | 502 | 696 | 822 | Ascension, East Baton Rouge, Livingston, West Baton Rouge |
| **MARYLAND** | | | | | | |
| Washington, DC-MD-VA | 680 | 773 | 907 | 1236 | 1491 | Calvert, Charles, Frederick, Montgomery, Prince George's |
| **MICHIGAN** | | | | | | |
| Detroit, MI PMSA | 441 | 598 | 723 | 904 | 1013 | Lapeer, Macomb, Monroe, Oakland, St. Clair, Wayne |
| Grand Rapids-Muskegon-Holland, MI MSA | 421 | 492 | 601 | 752 | 842 | Allegan, Kent, Muskegon, Ottawa |
| **MINNESOTA** | | | | | | |
| Minneapolis-St. Paul, MN-WI MSA | 451 | 580 | 742 | 1004 | 1137 | Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey Scott, Sherburne, Washington, Wright |
| **MISSOURI** | | | | | | |
| Kansas City, MO-KS MSA | 418 | 526 | 633 | 875 | 970 | Cass, Clay, Clinton, Jackson, Lafayette, Platte, Ray |
| St. Louis, MO-IL MSA | 352 | 429 | 556 | 724 | 800 | Crawford-Sullivan (part), Franklin, Jefferson, Lincoln St. Charles, St. Louis, Warren, St. Louis city |

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091400



SCHEDULE B - 50TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 3

| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| **NEVADA** | | | | | | |
| Las Vegas, NV-AZ MSA | 536 | 636 | 757 | 1054 | 1245 | Clark, Nye |
| **NEW JERSEY** | | | | | | |
| Bergen-Passaic, NJ PMSA | 702 | 856 | 1003 | 1336 | 1648 | Bergen, Passaic |
| Newark, NJ PMSA | 608 | 777 | 936 | 1179 | 1489 | Essex, Morris, Sussex, Union, Warren |
| Philadelphia, PA-NJ PMSA | 535 | 657 | 812 | 1016 | 1274 | Burlington, Camden, Gloucester, Salem |
| **NEW MEXICO** | | | | | | |
| Albuquerque, NM MSA | 424 | 505 | 632 | 871 | 1028 | Bernalillo, Sandoval, Valencia |
| **NEW YORK** | | | | | | |
| Buffalo-Niagara Falls, NY PMSA | 383 | 453 | 547 | 682 | 765 | Erie, Niagara |
| **NORTH CAROLINA** | | | | | | |
| Norfolk-Virginia Beach-Newport News, VA-NC MSA | 475 | 535 | 632 | 882 | 1036 | Currituck |
| **OHIO** | | | | | | |
| Cleveland-Lorain-Elyria, OH PMSA | 442 | 555 | 687 | 874 | 984 | Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina |
| **OKLAHOMA** | | | | | | |
| Oklahoma City, OK MSA | 388 | 422 | 547 | 760 | 850 | Canadian, Cleveland, Logan, Mcclain, Oklahoma Pottawatomie |
| Tulsa, OK MSA | 358 | 427 | 559 | 778 | 918 | Creek, Osage, Rogers, Tulsa, Wagoner |

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091400

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SCHEDULE B - 50TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 4

| | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
|---|---|---|---|---|---|---|
| PENNSYLVANIA | | | | | | |
| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
| Philadelphia, PA-NJ PMSA | 535 | 657 | 812 | 1016 | 1274 | Bucks, Chester, Delaware, Montgomery, Philadelphia |
| TEXAS | | | | | | |
| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
| Austin-San Marcos, TX MSA | 533 | 645 | 858 | 1192 | 1409 | Bastrop, Caldwell, Hays, Travis, Williamson |
| Dallas, TX | 562 | 647 | 830 | 1148 | 1358 | Collin, Dallas, Denton, Ellis, Hunt, Kaufman, Rockwall |
| Fort Worth-Arlington, TX PMSA | 479 | 521 | 675 | 943 | 1111 | Hood, Johnson, Parker, Tarrant |
| Houston, TX PMSA | 470 | 529 | 684 | 954 | 1124 | Chambers, Fort Bend, Harris, Liberty, Montgomery, Waller |
| San Antonio, TX MSA | 399 | 461 | 596 | 829 | 980 | Bexar, Comal, Guadalupe, Wilson |
| UTAH | | | | | | |
| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
| Salt Lake City-Ogden, UT MSA | 475 | 550 | 698 | 971 | 1138 | Davis, Salt Lake, Weber |
| VIRGINIA | | | | | | |
| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
| Norfolk-Virginia Beach-Newport News, VA-NC MSA | 475 | 535 | 632 | 882 | 1036 | Gloucester, Isle of Wight, James City, Mathews, York<br>Chesapeake city, Hampton city, Newport News city<br>Norfolk city, Poquoson city, Portsmouth city<br>Suffolk city, Virginia Beach city, Williamsburg city |
| Richmond-Petersburg, VA MSA | 509 | 576 | 671 | 933 | 1101 | Charles City, Chesterfield, Dinwiddie, Goochland, Hanover<br>Henrico, New Kent, Powhatan, Prince George<br>Colonial Heights city, Hopewell city, Petersburg city<br>Richmond city |
| Washington, DC-MD-VA | 680 | 773 | 907 | 1236 | 1491 | Arlington, Fairfax, Loudoun, Prince William, Spotsylvania<br>Stafford, Alexandria city, Fairfax city<br>Falls Church city, Fauquier, Fredericksburg city<br>Manassas city, Manassas Park city |
| WISCONSIN | | | | | | |
| METROPOLITAN FMR AREAS | 0 BR | 1 BR | 2 BR | 3 BR | 4 BR | Counties of FMR AREA within STATE |
| Minneapolis-St. Paul, MN-WI MSA | 451 | 580 | 742 | 1004 | 1137 | Pierce, St. Croix |

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.



**Schedule D: FY 2001 50th Percentile Fair Market Rents for Manufactured Home Spaces in the Section 8 Housing Choice Voucher Program**

| Area Name | Space Rent |
|---|---|
| California | |
| Orange County, CA | $479 |
| San Diego, CA | $441 |
| Colorado | |
| Denver, CO | $344 |

[FR Doc. 00–25679 Filed 10–5–00; 8:45 am]
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**H.J. Res. 109/P.L. 106–275**

Making continuing appropriations for the fiscal year 2001, and for other purposes. (Sept. 29, 2000; 114 Stat. 808)

**S. 1638/P.L. 106–276**

To amend the Omnibus Crime Control and Safe Streets Act of 1968 to extend the retroactive eligibility dates for financial assistance for higher education for spouses and dependent children of Federal, State, and local law enforcement officers who are killed in the line of duty. (Oct. 2, 2000; 114 Stat. 812)

**S. 2460/P.L. 106–277**

To authorize the payment of rewards to individuals furnishing information relating to persons subject to indictment for serious violations of international humanitarian law in Rwanda, and for other purposes. (Oct. 2, 2000; 114 Stat. 813)

**Last List September 28, 2000**

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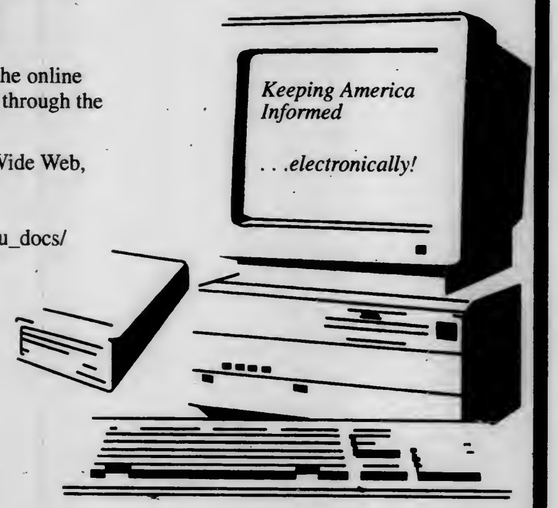
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**Reader Aids**
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# Rules and Regulations

Federal Register
Vol. 65, No. 196
Tuesday, October 10, 2000

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

**DEPARTMENT OF AGRICULTURE**

**Food Safety and Inspection Service**

**9 CFR Parts 391 and 590**

**[Docket No. 00–025F]**

**RIN 0583–AC74**

## Increases in Fees for Meat, Poultry, and Egg Products Inspection Services—Fiscal Year (FY) 2001

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Food Safety and Inspection Service (FSIS) is increasing the fees that it charges meat and poultry establishments, egg products plants, importers, and exporters for providing voluntary inspection services, overtime and holiday inspection services, identification services, certification services, and laboratory services. These increases in fees reflect the national and locality pay raise for Federal employees (proposed 3.7 percent effective January 2001) and inflation. The Agency will make the increases in fees effective October 8, 2000. At this time, FSIS is not proposing to amend the fee for the Accredited Laboratory Program.

**EFFECTIVE DATE:** October 8, 2000.

**FOR FURTHER INFORMATION CONTACT:** For information concerning policy issues, contact Daniel Engeljohn, Ph.D., Director, Regulations Development and Analysis Division, Office of Policy, Program Development, and Evaluation, FSIS, U.S. Department of Agriculture, Room 112, Cotton Annex, 300 12th Street, SW, Washington, DC 20250–3700, (202) 720–5627, fax number (202) 690–0486.

For information concerning fee development, contact Michael B. Zimmerer, Director, Financial Management Division, Office of Management, FSIS, U.S. Department of Agriculture, Room 2130–S, 1400 Independence Avenue, SW., Washington, DC 20250–3700, (202) 720–3552.

**SUPPLEMENTARY INFORMATION:**

### Background

The Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*), and the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031 *et seq.*) provide for mandatory Federal inspection of meat and poultry slaughter and processing at official establishments and of egg products at official plants. FSIS bears the cost of mandatory inspection. Establishments and plants pay for inspection services performed on holidays or on an overtime basis.

In addition, under the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*), FSIS provides a range of voluntary inspection, certification, and identification services to assist in the orderly marketing of various animal products and byproducts. These services include the certification of technical animal fats and the inspection of exotic animal products, such as antelope and elk. FSIS is required to recover the costs of voluntary inspection, certification, and identification services.

Under the Agricultural Marketing Act of 1946, FSIS also provides certain voluntary laboratory services that establishments and others may request the Agency to perform. Laboratory services are provided for four types of analytic testing: microbiological testing, residue chemistry tests, food composition tests, and pathology testing. FSIS must recover these costs.

Every year FSIS reviews the fees that it charges for providing overtime and holiday inspection services; voluntary inspection, identification, and certification services; and laboratory services. The Agency performs a cost analysis to determine whether the fees that it has established are adequate to recover the costs that it incurs in providing these services. In the Agency's analysis of projected costs for October 1, 2000 to September 30, 2001, the Agency has identified increases in the costs of these nonmandatory inspection services due specifically to the national and locality pay raise for Federal employees (proposed 3.7 percent effective January 2001) and inflation.

FSIS calculated the new fees by adding the projected increase in salaries and inflation for FY 2000 and FY 2001 to the actual cost of the services in FY 1999. The Agency calculated inflation to be 1.55% for FY 2000 and 1,90% for FY 2001. The Agency considered the costs that it will incur because of the pay raise in January 2001 and averaged its pay costs out over the entire FY 2001.

FSIS did not use the fees currently charged as a base for calculating the new fees for FY 2001 because the current fees are based on estimates of costs to the Agency for FY 1999 and FY 2000. The Agency now knows the actual cost of inspection services for FY 1999 and used the actual costs in calculating the new fees.

The current and new fees are listed by type of service in Table 1.

TABLE 1.—CURRENT AND NEW FEES—PER HOUR PER EMPLOYEE—BY TYPE OF SERVICE

| Service | Previous rate | New rate |
|---|---|---|
| Base time | $37.88 | $38.44 |
| Overtime & holiday | 39.76 | 41.00 |
| Laboratory | 58.52 | 60.04 |

The differing fee increase for each type of service is the result of the different amount that it costs FSIS to provide these three types of services. The differences in costs stem from various factors including different salary levels of the program employees who perform the services. See Table 2.

TABLE 2.—CALCULATIONS FOR THE DIFFERENT TYPES OF SERVICES

| | |
|---|---|
| Base Time: | |
| Actual FY 1999 cost | $35.52 |
| Inflation and salary increases | 2.91 |
| Adjustment for divisibility by quarter hours | .01 |
| Total | $38.44 |
| Overtime and Holiday Inspection Services: | |
| Actual FY 1999 cost | $37.88 |
| Inflation and salary increases | 3.10 |
| Adjustment for divisibility by quarter hours | .02 |
| Total | $41.00 |

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TABLE 2.—CALCULATIONS FOR THE DIFFERENT TYPES OF SERVICES—Continued

| | |
|---|---|
| Laboratory Services: | |
| Actual FY 1999 cost | $55.50 |
| Inflation and salary increases | 4.54 |
| Total | $60.04 |

An increase in fees for egg products overtime and holiday inspection services recently became effective on July 30, 2000. However, FSIS is publishing a new fee because the Agency has moved to a FY basis for reviewing fees and is charging the same fee for meat, poultry, and egg products overtime and holiday inspection services. FSIS calculated the new fees based on the presumption that they would become effective at the beginning of FY 2001.

FSIS is exploring the possibility of proposing a three to five year plan of fee rate adjustments based on estimates of cost escalation.

The Agency must recover the actual cost of voluntary inspection services covered by this rule. These fee increases are essential to continued sound financial management of the Agency's costs. FSIS announces in its July 24, 2000 proposed rule (65 FR 45545) that it intended to implement the fee increases provided for in this final rule effective October 8. The Agency believes adequate notice has been given to affected parties. Accordingly, the Administrator has determined that these amendments should be effective less than 30 days after publication in the **Federal Register**. Therefore, the increases in fees will be effective October 8, 2000.

**Proposed Rule and Comments**

On July 24, 2000 FSIS published a proposed rule (65 FR 45545) increase the fees it charges for meat, poultry, and egg products voluntary inspection services. FSIS provided 30 days for public comment, ending on August 23, 2000.

The Agency received two comments from industry organizations opposing the increase in fees. The Agency addresses their specific objections.

*Comment:* The commenter stated that the fees increases, though moderate, are unnecessary because just one year ago FSIS imposed a 12.5% increase in voluntary program base rates and a 9% increase in overtime and holiday inspection services rates. Furthermore, these new rates are being proposed at a time when FSIS appropriations are at a record high and HACCP—which is supposed to result in inspection cost savings—has been implemented.

*Response:* The Agency did increase inspection fees for meat and poultry in a final rule published last December 28, 1999 [64 FR 72492] and more recently for egg products overtime and holiday inspection services in a final rule published on July 20, 2000 [65 FR 44948]. The actual percentage of increases last December was 2.3% for base time meat and poultry voluntary inspection, 7.93% increase for meat and poultry overtime and holiday inspection services, and 15.02% increase for meat and poultry laboratory services. However, the new increase in fees represents the raise in inspection costs since the promulgation of the two previous fee increases.

FSIS appropriations do not cover voluntary inspection services or overtime and holiday inspection services. Any cost savings that might be realized through more effective use of inspection resources in HACCP do not translate into lower expenses for voluntary inspection services or overtime and holiday inspection services.

*Comment:* The commenter takes exception to FSIS exploring the possibility of proposing a three to five year plan of rate adjustments when the Agency should be realizing inspection cost savings.

*Response:* FSIS is merely announcing that it is exploring the possibility of proposing a three to five year plan of rate adjustments. The Agency would not introduce such a plan without formally proposing it through rulemaking procedures.

*Comment:* The commenter maintains that the Agency should reconsider its proposed increase in fees after addressing global issues like inspection resource allocation.

*Response:* The allocation of inspection resources does not have a direct effect on the cost of holiday and overtime inspection services or voluntary inspection services.

*Comment:* The commenter suggests that the Agency should provide a detailed explanation of its proposed fee increases to allow for meaningful comment.

*Response:* The agency believes that it has presented adequate information to explain how the new increases in fees were arrived at.

**Summary of the Final Rule**

FSIS is amending 9 CFR 391.2 to increase the base time fee for providing meat and poultry voluntary inspection, identification, and certification services from $37.88 per hour per employee to $38.44 per hour per program employee. FSIS is also amending §§ 391.3, 590.126, and 590.128(a) to increase the rate for providing meat, poultry, and egg products overtime and holiday inspection services from $39.76 per hour per employee to $41.00 per hour per employee. In addition, FSIS is amending § 391.4 to increase the rate for laboratory services from $58.52 per hour per employee to $60.04 per hour per employee.

**Executive Order 12866 and Regulatory Flexibility Act**

Because this final rule has been determined to be not significant, the Office of Management and Budget (OMB) did not review it under Executive Order 12866.

The Administrator, FSIS, has determined that this final rule would not have a significant economic impact, as defined by the Regulatory Flexibility Act (5 U.S.C. 601), on a substantial number of small entities.

Small establishments and plants should not be affected adversely by the increases in fees because the new fee increases provided for reflect only a small increase in the costs currently borne by those entities that choose to use certain inspection services. These inspection services are generally sought by larger establishments and plants because of larger production volume, greater complexity and diversity in the products they produce, and the need for on-time delivery of large volumes of product by their clients-generally large commercial or institutional establishments.

Moreover, smaller establishments and plants are unlikely to use a significant amount of overtime and holiday inspection services. Establishments and plants that seek FSIS services are likely to have calculated that the incremental costs of overtime and holiday inspection services would be less than the incremental expected benefits of additional revenues they would realize from additional production.

**Economic Effects**

Under the new fees, the Agency expects to collect an estimated $106.2 million in revenues for FY 2001, compared to $103 million under the current fee structure.

The costs that industry would experience by the raise in fees are similar to other increases the industry faces due to inflation and wage increases.

The total volume of meat and poultry slaughtered under Federal inspection in 1998 was about 81 billion pounds. The total volume of U.S. egg product production in 1998 was about 3.2 billion pounds. The increase in cost per pound of product associated with these proposed fees increases is $.00004. Even in competitive industries like meat, poultry, and egg products, this amount of increase in costs would have an insignificant impact on profits and prices.

The industry is likely to pass through a significant portion of the fee increase to consumers because of the inelastic nature of the demand curve facing these firms. Research has shown that consumers are unlikely to reduce demand significantly for meat and poultry products, including egg products, when prices increase. Huang estimates that demand would fall by .36 percent for a one percent increase in price (Haung, Kao S., A Complete System of U.S. Demand for Food. USDA/ERS Technical Bulletin No. 1821, 1993, p.24). Because of the inelastic nature of demand and the competitive nature of the industry, individual firms are not likely to experience any change in market share to response to an increase in inspection fees.

**Executive Order 12988**

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This final rule: (1) Preempts State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule. However, the administrative procedures specified in 9 CFR 306.5, 381.35, and 590.320 through 590.370, respectively, must be exhausted before any judicial challenge of the application of the provisions of this proposed rule, if the challenge involves any decision of an FSIS employee relating to inspection services provided under FMIA, PPIA, or EPIA.

**Additional Public Notification**

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this final rule, FSIS will announce and provide copies of this **Federal Register** publication in the *FSIS Constituent Update*. FSIS provides a weekly *FSIS Constituent Update* via fax to over 300 organizations and individuals. In addition, the update is available on line through the FSIS web page located at *http://www.fsis.usda.gov*. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience than would be otherwise possible. For more information or to be added to the constituent fax list, fax your request to the Congressional and Public Affairs Office, at (202) 720–5704.



**List of Subjects**

*9 CFR Part 391*

Fees and charges, Government employees, Meat inspection, Poultry products.

*9 CFR Part 590*

Eggs and egg products, Exports, Food labeling, Imports.

For the reasons set forth in the preamble, FSIS is amending 9 CFR chapter III as follows:

**PART 391—FEES AND CHARGES FOR INSPECTION AND LABORATORY ACCREDITATION**

1. The authority citation for part 391 continues to read as follows:

**Authority:** 7 U.S.C. 138f; 7 U.S.C. 394, 1622 and 1624; 21 U.S.C. 451 *et. seq.*; 21 U.S.C. 601–695; 7 CFR 2.18 and 2.53.

2. Sections 391.2, 391.3, and 391.4 are revised to read as follows:

**§ 391.2 Base time rate.**

The base time rate for inspection services provided pursuant to §§ 350.7, 351.8, 351.9, 352.5, 354.101, 355.12, and 362.5 is $38.44 per hour per program employee.

**§ 391.3 Overtime and holiday rate.**

The overtime and holiday rate for inspection services provided pursuant to §§ 307.5, 350.7, 351.8, 351.9, 352.5, 354.101, 355.12, 362.5 and 381.38 is $41.00 per hour per program employee.

**§ 391.4 Laboratory services rate.**

The rate for laboratory services provided pursuant to §§ 350.7, 351.9, 352.5, 354.101, 355.12, and 362.5 is $60.44 per hour per program employee.

**PART 590—INSPECTION OF EGGS AND EGG PRODUCTS (EGG PRODUCTS INSPECTION ACT)**

3. The authority citation for part 590 continues to read as follows:

**Authority:** 21 U.S.C. 1031–1056.

4. Section 590.126 is revised to read as follows:

**§ 590.126 Overtime inspection service.**

When operations in an official plant require the services of inspection personnel beyond their regularly assigned tour of duty on any day or on a day outside the established schedule, such services are considered as overtime work. The official plant must give reasonable advance notice to the inspector of any overtime service necessary and must pay the Agency for such overtime at an hourly rate of $41.00.

5. In § 590.128, paragraph (a) is revised to read as follows:

**§ 590.128 Holiday inspection service.**

(a) When an official plant requires inspection service on a holiday or a day designated in lieu of a holiday, such service is considered holiday work. The official plant must, in advance of such holiday work, request the inspector in charge to furnish inspection service during such period and must pay the Agency for such holiday work at an hourly rate of $41.00.

* * * * *

Done at Washington, DC, on: October 3, 2000.

**Thomas J. Billy,**

*Administrator.*

[FR Doc. 00–25945 Filed 10–4–00; 3:37 pm]

BILLING CODE 3410–DM–M

**DEPARTMENT OF THE TREASURY**

**Office of Thrift Supervision**

**12 CFR Parts 563b and 575**

**[No. 2000–56]**

**RIN 1550–AB24**

## Repurchases of Stock by Recently Converted Savings Associations, Mutual Holding Company Dividend Waivers, Gramm-Leach-Bliley Act Changes

**AGENCY:** Office of Thrift Supervision, Treasury.

**ACTION:** Interim final rule; extension of comment period.

**SUMMARY:** The Office of Thrift Supervision (OTS) is extending the

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comment period until November 9, 2000 for its interim rule with request for comments regarding repurchases of stock by recently converted savings associations, mutual holding company dividend waivers, and certain changes resulting from the passage of the Gramm-Leach-Bliley Act of 1999, published on July 12, 2000.

**DATES:** Comments must be received by November 9, 2000.

**ADDRESSES:** *Mail:* Send comments to Manager, Dissemination Branch, Information Management and Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention Docket No. 2000–56.

*Delivery:* Hand deliver comments to the Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9:00 a.m. to 4:00 p.m. on business days, Attention Docket No. 2000–56.

*Facsimiles:* Send facsimile transmissions to FAX Number (202) 906–7755, Attention Docket No. 2000–56; or (202) 906–6956 (if comments are over 25 pages).

*E-Mail:* Send e-mails to "public.info@ots.treas.gov", Attention Docket No. 2000–56, and include your name and telephone number.

*Public Inspection:* Interested persons may inspect comments at the Public Reference Room, 1700 G St. NW., from 10:00 a.m. until 4:00 p.m. on Tuesdays and Thursdays or obtain comments and/or an index of comments by facsimile by telephoning the Public Reference Room at (202) 906–5900 from 9:00 a.m. until 5:00 on business days. Comments and the related index will also be posted on the OTS Internet Site at "www.ots.treas.gov".

**FOR FURTHER INFORMATION CONTACT:** David A. Permut, Counsel (Business and Finance) (202) 906–7505, Business Transactions Division, Chief Counsel's Office; Timothy P. Leary, Counsel (Banking and Finance) (202) 906–7170, Regulations and Legislation Division, Chief Counsel's Office; Mary Jo Johnson, Project Manager, (202) 906–5739, Supervision Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

**SUPPLEMENTARY INFORMATION:** The proposed rule and interim final rule, published in the **Federal Register** on July 12, 2000 (65 FR 43092 and 43088), indicated that public comments were to be submitted to the OTS no later than October 10, 2000. OTS has received a request for an extension of the comment period to accommodate the views of a number of mutual institution managers who will be meeting in the next 30 days. In order to afford the public adequate time to comment, the OTS has determined to extend the comment period for 30 days to accommodate this request. Therefore, the comment period is hereby extended until November 9, 2000.

Dated: October 4, 2000.

By the Office of Thrift Supervision.

**Ellen Seidman,**

*Director.*

[FR Doc. 00–25944 Filed 10–6–00; 8:45 am]

**BILLING CODE 6720–01–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 15 CFR Part 922

**[Docket No. 970404078–0176—02; I.D. 091100G]**

**RIN 0638-AE41**

### Thunder Bay National Marine Sanctuary and Underwater Preserve Regulations; Correction and Announcement of Effective Date

**AGENCY:** Marine Sanctuaries Division (MSD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

**ACTION:** Correction to final regulations and announcement of effective date.

**SUMMARY:** This document corrects the final regulations that were published in the **Federal Register** on Thursday, June 22, 2000, (65 FR 39042), and announces an effective date for them of September 25, 2000. The regulations implement the designation of the Thunder Bay National Marine Sanctuary and Underwater Preserve which is located in western Lake Huron in State of Michigan waters.

**DATES:** The final regulations published at 65 FR 39042 (June 22, 2000) and the corrections made by this document are effective September 25, 2000.

**FOR FURTHER INFORMATION CONTACT:** Ms. Ellen Brody, (734) 741-2270.

**SUPPLEMENTARY INFORMATION:**

#### Background

This document corrects the final regulations implementing the designation of the Thunder Bay National Marine Sanctuary and Underwater Preserve, which encompasses an area of the State of Michigan waters over and surrounding Thunder Bay, and the submerged lands thereunder including the Bay, in western Lake Huron. The **Federal Register** document publishing those regulations also contained the Designation Document and summarized the final management plan for the Sanctuary. The Designation Document sets forth the geographic area included within the Sanctuary, the characteristics of the area that give it conservation, recreational, ecological, historical, research, educational, or esthetic value, and the type of activities subject to regulation. The management plan details the goals and objectives, management responsibilities, research activities, interpretive and educational programs, and enforcement activities of the area. As stated in the preamble to the final rule, the regulations become effective after the close of a review period of 45 days of continuous session of Congress beginning on the day on which the final rule was published unless the Governor of the State of Michigan certifies to the Secretary of Commerce that the designation or any of its terms is unacceptable, in which case the designation or any unacceptable terms shall not take effect. The Congressional review period ended on September 24, 2000, without the Governor of the State of Michigan certifying to the Secretary of Commerce that the designation or any of its terms is unacceptable. Accordingly, the designation of the Sanctuary and the regulations implementing that designation became effective on September 25, 2000. The Secretary of Commerce intends to sign the Designation Document for the Sanctuary on October 7, 2000. This **Federal Register** document announces the effective date of the designation and for the regulations implementing that designation as September 25, 2000. This document also corrects, effective September 25, 2000, two errors in those regulations.

#### Need For Correction

Because of the omission of asterisks when revising the term "Sanctuary resource" in § 922.3 of 15 CFR part 922, "Definitions", all terms were inadvertently deleted except for the revised term "Sanctuary resource". There is a need to restore the deleted terms. Also in § 922.50 of 15 CFR part 922, the first paragraph following paragraph (a)(1)(iii) was inadvertently designated as paragraph (b) instead of as paragraph (a)(2). This needs to be corrected.

#### Correction of Publication

Accordingly, the publication on June 22, 2000, of the final regulations implementing the designation of the Thunder Bay National Marine Sanctuary and Underwater Preserve, which were the subject of FR Doc. 00-15638, (65 FR 39042), is corrected as follows:



**§ 922.3 [Corrected]**

1. On page 39055, in the first column, amendatory instruction 3 is corrected to read as follows:

3. Section 922.3 is amended by revising the definition for "Sanctuary resource" to read as follows:

2. On page 39055, beginning in the first column, in § 922.3, add five asterisks before and after the definition of "Sanctuary resource".

**§ 922.50 [Corrected]**

3. On page 39056, in the third column, in § 922.50, correct the paragraph designation (b) to read (a)(2).

Dated: October 4, 2000.

**Margaret A. Davidson,**

*Acting Assistant Administrator for Ocean Services and Coastal Zone Management.*

[FR Doc. 00–25938 Filed 10–4–00; 1:57 pm]

**BILLING CODE 3510–08–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 510

### New Animal Drugs; Change of Sponsor Name and Address

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor name and address for Rhone-Poulenc, Inc.

**DATES:** This rule is effective October 10, 2000.

**FOR FURTHER INFORMATION CONTACT:** Norman J. Turner, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0214.

**SUPPLEMENTARY INFORMATION:** Rhone-Poulenc, Inc., P.O. Box 125, Black Horse Lane, Monmouth Junction, NJ 08852, has informed FDA of a change of sponsor name and address to Aventis Animal Nutrition, Inc., 3480 Preston Ridge Rd., suite 650, Alpharetta, GA 30005–8891. Accordingly, the agency is amending the regulations in 21 CFR 510.600(c) to reflect the change of sponsor name and address.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

**List of Subjects in 21 CFR Part 510**

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 510 is amended as follows:

**PART 510—NEW ANIMAL DRUGS**

1. The authority citation for 21 CFR part 510 continues to read as follows: **Authority:** 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

2. Section 510.600 is amended in the table in paragraph (c)(1) by removing the entry for "Rhone-Poulenc, Inc." and alphabetically adding an entry for "Aventis Animal Nutrition, Inc." and in the table in paragraph (c)(2) by revising the entry for "011526" to read as follows:

**§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.**

* * * * *

(c) * * *

(1) * * *

| Firm name and address | Drug labeler code |
|---|---|
| • • • • • • • | |
| Aventis Animal Nutrition, Inc., 3480 Preston Ridge Rd., suite 650, Alpharetta, GA 30005–8891 | 011526 |
| • • • • • • • | |

(2) * * *

| Drug labeler code | Firm name and address |
|---|---|
| • • • • • • • | |
| 011526 | Aventis Animal Nutrition, Inc., 3480 Preston Ridge Rd., suite 650, Alpharetta, GA 30005–8891 |
| • • • • • • • | |

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Dated: September 28, 2000.

**Claire M. Lathers,**

*Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.*

[FR Doc. 00–25965 Filed 10–6–00; 8:45 am]

BILLING CODE 4160–01–F

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**21 CFR Part 872**

**[Docket No. 98N–0753]**

## Dental Products Devices; Reclassification of Endosseous Dental Implant Accessories

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is reclassifying the manually powered drill bits, screwdrivers, countertorque devices, placement and removal tools, laboratory pieces used for fabrication of dental prosthetics, trial abutments, and other manually powered endosseous dental implant accessories from class III to class I. These devices are intended to aid in the placement or removal of endosseous dental implants and abutments, prepare the site for placement of endosseous dental implants or abutments, aid in the fitting of endosseous dental implants or abutments, aid in the fabrication of dental prosthetics, and be used as an accessory with endosseous dental implants when tissue contact will last less than an hour. FDA is also exempting these devices from premarket notification. This reclassification is on the Secretary of Health and Human Services' own initiative based on new information. This action is being taken under the Federal Food, Drug, and Cosmetic Act (the act), as amended by the Medical Device Amendments of 1976 (the 1976 amendments), the Safe Medical Devices Act of 1990 (the SMDA), and the Food and Drug Administration Modernization Act of 1997 (FDAMA).

**DATES:** This rule is effective November 9, 2000.

**FOR FURTHER INFORMATION CONTACT:** Angela Blackwell, Center for Devices and Radiological Health (HFZ–480), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–827–5283.

**SUPPLEMENTARY INFORMATION:**

### I. Background

The act (21 U.S.C. 301 *et seq.*), as amended by the 1976 amendments (Public Law 94–295), the SMDA (Public Law 101–629), and FDAMA (Public Law 105–115), established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) established three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Under section 513 of the act, devices that were in commercial distribution before May 28, 1976 (the date of enactment of the amendments), generally referred to as preamendments devices, are classified after FDA has: (1) Received a recommendation from a device classification panel (an FDA advisory committee); (2) published the panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) published a final regulation classifying the device. FDA has classified most preamendments devices under these procedures.

Devices that were not in commercial distribution prior to May 28, 1976, generally referred to as postamendments devices, are classified automatically by statute (section 513(f) of the act) into class III without any FDA rulemaking process. Those devices remain in class III and require premarket approval, unless and until: (1) The device is reclassified into class I or II; (2) FDA issues an order classifying the device into class I or II in accordance with section 513(f)(2) of the act, as amended by FDAMA; or (3) FDA issues an order finding the device to be substantially equivalent, under section 513(i) of the act, to a predicate device that does not require premarket approval. The agency determines whether new devices are substantially equivalent to previously offered devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and 21 CFR part 807 of the regulations.

A preamendments device that has been classified into class III may be marketed, by means of premarket notification procedures, without submission of a premarket approval application (PMA) until FDA issues a final regulation under section 515(b) of the act (21 U.S.C. 360e(b)) requiring premarket approval.

Reclassification of classified preamendments devices is governed by section 513(e) of the act. This section provides that FDA may, by rulemaking, reclassify a device (in a proceeding that parallels the initial classification proceeding) based upon "new information." The reclassification can be initiated by FDA or by the petition of an interested person. The term "new information," as used in section 513(e) of the act, includes information developed as a result of a reevaluation of the data before the agency when the device was originally classified, as well as information not presented, not available, or not developed at that time. (See, e.g., *Holland Rantos* v. *United States Department of Health, Education, and Welfare*, 587 F.2d 1173, 1174 n.1 (D.C. Cir. 1978); *Upjohn* v. *Finch*, 422 F.2d 944 (6th Cir. 1970); *Bell* v. *Goddard*, 366 F.2d 177 (7th Cir. 1966).)

Reevaluation of the data previously before the agency is an appropriate basis for subsequent regulatory action where the reevaluation is made in light of newly available regulatory authority (see *Bell* v. *Goddard*, supra, 366 F.2d at 181; *Ethicon, Inc.* v. *FDA*, 762 F. Supp. 382, 389–91 (D.D.C. 1991)), or in light of changes in "medical science." (See *Upjohn* v. *Finch*, supra, 422 F.2d at 951.) Regardless of whether data before the agency are past or new data, the "new information" on which any reclassification is based is required to consist of "valid scientific evidence," as defined in section 513(a)(3) of the act and 21 CFR 860.7(c)(2). (See, e.g., *General Medical Co.* v. *FDA*, 770 F.2d 214 (D.C. Cir. 1985); *Contact Lens Assoc.* v. *FDA*, 766 F.2d 592 (D.C. Cir.), *cert. denied*, 474 U.S. 1062 (1985). FDA relies upon "valid scientific evidence" in the classification process to determine the level of regulation for devices. For the purpose of reclassification, the valid scientific evidence upon which the agency relies must be publicly available. Publicly available information excludes trade secret and/or confidential commercial information, e.g., the contents of a pending PMA. (See section 520(c) of the act (21 U.S.C. 360j(c).)

FDAMA added a new section 510(l) to the act. New section 510(l) of the act provides that a class I device is exempt from the premarket notification requirements under section 510(k) of the act, unless the device is intended for a use which is of substantial importance in preventing impairment of human health or it presents a potential unreasonable risk of illness or injury. Hereafter, these are referred to as "reserved criteria." FDA has considered the endosseous dental implant accessories in accordance with the reserved criteria and determined that the devices do not require premarket notification. Such an exemption permits manufacturers to introduce into commercial distribution generic types of devices without first submitting a premarket notification to FDA.



### II. Regulatory History of the Device

In the **Federal Register** of October 7, 1998 (63 FR 53859), FDA proposed to reclassify the manually powered drill bits, screwdrivers, countertorque devices, placement and removal tools, laboratory pieces used for fabrication of dental prosthetics, trial abutments, and other manually powered endosseous dental implant accessories from class III to class I. These devices are intended to aid in the placement or removal of endosseous dental implants and abutments, prepare the site for placement of endosseous dental implants or abutments, aid in the fitting of endosseous dental implants or abutments, aid in the fabrication of dental prosthetics, and be used as an accessory with endosseous dental implants when tissue contact will last less than 1 hour. Interested persons were given until January 5, 1999, to comment on the proposed regulation. FDA received no comments on the proposed rule.

### III. Summary of Final Rule

FDA is reclassifying the manually powered drill bits, screwdrivers, countertorque devices, placement and removal tools, laboratory pieces used for fabrication of dental prosthetics, trial abutments, and other manually powered endosseous dental implant accessories from class III to class I. These devices are intended to aid in the placement or removal of endosseous dental implants and abutments, prepare the site for placement of endosseous dental implants or abutments, aid in the fitting of endosseous dental implants or abutments, aid in the fabrication of dental prosthetics, and be used as an accessory with endosseous dental implants when tissue contact will last less than 1 hour. These devices do not have a history of risks associated with them. FDA believes that the manufacturers' adherence to current good manufacturing practices in the quality system regulation will provide reasonable assurance of the safety and effectiveness of these devices. FDA, therefore, believes that class I would provide reasonable assurance of safety and effectiveness. FDA is also exempting the devices from the premarket notification requirements.

Therefore, under section 513 of the act, FDA is adopting the assessment of the risks to public health stated in the proposed rule published on October 7, 1998. Furthermore, FDA is issuing a final rule that revises part 872 (21 CFR part 872) in subpart D to add § 872.3980, thereby reclassifying the endosseous dental implant accessories, from class III into class I.

### IV. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

### V. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612 (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Public Law 104–121)), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the final rule reclassifying these devices from class III to class I will relieve all manufacturers of the devices of the cost of complying with the premarket approval requirements in section 513 of the act, it will impose no significant economic impact on any small entities, and it may permit small potential competitors to enter the marketplace by lowering their costs. The agency therefore certifies that the final rule will not have a significant economic impact on a substantial number of small entities. In addition, this final rule will not impose costs of $100 million or more on either the private sector or State, local, and tribal governments in the aggregate and, therefore, a summary statement of analysis under section 202(a) of the Unfunded Mandates Reform Act of 1995 is not required.

### VI. Paperwork Reduction Act of 1995

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

### VII. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the order and, consequently, a federalism summary impact statement is not required.

### List of Subjects in 21 CFR Part 872

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 872 in subpart D is amended as follows:

## PART 872—DENTAL DEVICES

1. The authority citation for 21 CFR part 872 continues to read as follows:

**Authority:** 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

2. Section 872.3980 is added to subpart D to read as follows:

**§ 872.3980 Endosseous dental implant accessories.**

(a) *Identification.* Endosseous dental implant accessories are manually powered devices intended to aid in the placement or removal of endosseous dental implants and abutments, prepare the site for placement of endosseous dental implants or abutments, aid in the fitting of endosseous dental implants or abutments, aid in the fabrication of dental prosthetics, and be used as an accessory with endosseous dental implants when tissue contact will last less than 1 hour. These devices include drill bits, screwdrivers, countertorque devices, placement and removal tools, laboratory pieces used for fabrication of dental prosthetics, and trial abutments.

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 872.9.

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Dated: September 26, 2000.

*Linda S. Kahan, Deputy Director for Regulations Policy center for Devices and Radiological Health.*

[FR Doc. 00–25811 Filed 10–6–00; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF JUSTICE

### 28 CFR Part 0

**[AG Order No. 2328–2000]**

### Delegation of Authority: Settlement Authority

**AGENCY:** Department of Justice

**ACTION:** Final rule.

**SUMMARY:** This rule delegates to the directors and commissioners of specified components of the Department of Justice authority to settle administrative claims presented pursuant to the Federal Tort claims Act (FTCA), where the amount of the settlement does not exceed $50,000. Currently, the directors and commissioners of the Bureau of Prisons, Federal Prison Industries, Immigration and Naturalization Service, Marshals Service, and the Drug Enforcement Administration have authority to settle FTCA claims not exceeding $10,000. This rule will alert the general public to the new authority of these officials and is being codified in the Code of Federal Regulations to provide a permanent record of this delegation.

**EFFECTIVE DATE:** October 10, 2000.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Axelrad, Director, Torts Branch, Civil Division, U.S. Department of Justice, P.O. Box 888, Benjamin Franklin Station, Washington, DC 20044, (202) 616–4400.

**SUPPLEMENTARY INFORMATION:** This rule has been issued to delegate settlement authority to various Department of Justice officials. It is a matter solely related to the division of responsibility within the Department of Justice. It relates to matters of agency policy, management, or personnel, and is therefore exempt from the usual requirements of prior notice and comment, and a 30-day delay in the effective date. See 5 U.S.C. 553(a)(2), (b)(A).

**Executive Order 12866**

This rule falls within a category of actions that the Office of Management and Budget (OMB) has determined do not constitute "significant regulatory actions" under section 3(f) of Executive Order 12866 and, accordingly, was not reviewed by OMB.

**Executive Order 13132**

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, the Department of Justice has determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

**Regulatory Flexibility Act**

The Attorney General, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this regulation and, by approving it, certifies that this regulation will not have a significant economic impact upon a substantial number of small entities.

**Unfunded Mandates Reform Act of 1995**

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

**Small Business Regulatory Enforcement Fairness Act of 1996**

This rule is not a major rule as defined section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804.

This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

**Plain Language Instructions**

We try to write clearly. If you can suggest how to improve the clarity of these regulations, call or write Jeffrey Axelrad at the address and telephone number given above.

**List of Subjects in 28 CFR Part 0**

Authority delegations (government agencies), Claims.

Accordingly, Part 0 of Title 28 of the Code of Federal Regulations is amended as follows:

### PART 0—ORGANIZATION OF THE DEPARTMENT

1. The authority citation for Part 0 continues to read as follows:

**Authority:** 5 U.S.C. 301; 28 U.S.C. 509, 510, 515–519.

2. Section 0.172 of Part 0, Subpart Y, is amended by revising paragraph (a) to read as follows:

**§ 0.172 Authority: Federal tort claims.**

(a) The Director of the Bureau of Prisons, the Commissioner of Federal Prison Industries, the Commissioner of the Immigration and Naturalization Service, the Director of the United States Marshals Service, and the Administrator of the Drug Enforcement Administration shall have authority to adjust, determine, compromise, and settle a claim involving the Bureau of Prisons, Federal Prison Industries, the Immigration and Naturalization Service, the United States Marshals Service, and the Drug Enforcement Administration, respectively, under section 2672 of title 28, United States Code, relating to the administrative settlement of Federal tort claims, if the amount of a proposed adjustment, compromise, settlement, or award does not exceed $50,000. When, in the opinion of one of those officials, such a claim pending before him presents a novel question of law or a question of policy, he shall obtain the advice of the Assistant Attorney General in charge of the Civil Division before taking action on the claim.

* * * * *

Dated: October 2, 2000.

**Janet Reno,**

*Attorney General.*

[FR Doc. 00–25904 Filed 10–6–00; 8:45 am]

BILLING CODE 4410–12–M

## SELECTIVE SERVICE SYSTEM

### 32 CFR Part 1615

### Additional Methods of Selective Service Registration

**AGENCY:** Selective Service System (SSS).

**ACTION:** Final rule; technical amendment.

**SUMMARY:** In accordance with Proclamation 7275 of February 22, 2000, this Final Rule amends the Administration of Registration rules by providing additional methods of registering with the Selective Service System. Proclamation 7275 amended Proclamation 4771 to allow for additional methods of registration. These methods include registration on the Selective Service Internet web site, telephonic registration, registration on approved Government forms, including the Selective Service reminder mailback card, and registration through school registrars. These amendments will reduce a burden on the public by informing it of the additional registration methods prescribed by the Director of Selective Service.

**DATES:** Effective November 9, 2000.

**FOR FURTHER INFORMATION CONTACT:** Rudy Sanchez, Office of the General Counsel, Selective Service System, 1515 Wilson Boulevard, Arlington, VA 22209–2425. Telephone (703) 605–4071.

**SUPPLEMENTARY INFORMATION:** The Military Selective Service Act (Act) requires that certain males register with the Selective Service System. 50 U.S.C. App. 451 *et seq.* The time, place and manner of registration is to be determined by proclamation of the President and by rules and regulations. 50 U.S.C. App. 453(a). The President is permitted to delegate the authority to issue rules and regulations under the Act. 50 U.S.C. App. 460(c). On October 12, 1971, E.O. 11623 was signed delegating the authority to issue rules and regulations under the Military Selective Service Act to the Director of the Selective Service System. Proclamation 4771 of July 2, 1980, provides for individuals to comply with the registration requirement of the Military Selective Service Act by completing a Registration Card at a classified Post Office.

This Proclamation was amended by Proclamation 7275, February 22, 2000 (65 FR 9199, February 24, 2000), to provide additional means to comply with the registration requirement. The rules are being amended to reflect additional registration methods prescribed by the Director of Selective Service as authorized by Proclamation 7275. The technical amendments to the rules on registration and the duty to register will inform the public about the various means to comply with the registration requirement.

The SSS considers this rule (32 CFR Part 1615) to be a procedural rule which is exempt from the notice and comment under 5 U.S.C. 533(b)(3)(A). This rule is not a significant rule for the purpose of Executive Order 12866 and has not been reviewed by the Office of Management and Budget. As required by the Regulatory Flexibility Act, SSS certifies that these regulatory amendments will not have a significant impact on small business entities.

**List of Subjects in 32 CFR Part 1615**

Selective Service System.



For the reason set forth in the preamble amend part 1615 of title 32 of the Code of Federal Regulations as follows:

### PART 1615—ADMINISTRATION OF REGISTRATION

1. The authority citation for part 1615 is revised to read as follows:

**Authority:** Military Selective Service Act, 50 U.S.C. App. 451 *et seq.*; E.O. 11623, 36 FR 19963, 3 CFR, 1971–1975 Comp., p. 614, as amended by E.O. 12608, 52 FR 34617, 3 CFR, 1987 Comp., p. 245.

2. Amend § 1615.1 to revise paragraph (a)(1), the first sentence of paragraph (a)(2), and the last sentence of paragraph (b), and to add paragraph (c) to read as follows:

**§ 1615.1 Registration.**

(a) * * *

(1) Completing a registration card or other method of registration prescribed by the Director of Selective Service by a person required to register; and

(2) The recording of the registration information furnished by the registrant in the records (master computer file ) of the Selective Service System. * * *

(b) * * * If the registrant does not receive the verification notice within 90 days after he completed a method of registration prescribed by the Director, he shall advise in writing the Selective Service System, P.O. Box 94638, Palatine, IL 60094–4638.

(c) The methods of registration prescribed by the Director include completing a Selective Service Registration Card at a classified Post Office, registration on the Selective Service Internet web site (http://www.sss.gov), telephonic registration, registration on approved Federal and State Government forms, registration through high school and college registrars, and Selective Service remainder mailback card.

3. Amend § 1615.4 to remove the period at the end of the introductory text and add a colon in its place and to revise paragraph (a) and the first sentence of paragraph (b) to read as follows:

**§ 1615.4 Duty of persons required to register.**

* * * * *

(a) To complete the registration process by a method prescribed by the Director of Selective Service and to record thereon his name, date of birth, sex, Social Security Account Number (SSAN), current mailing address, permanent residence, telephone number, date signed, and signature, if requested; and (b) To submit for inspection, upon request, evidence of his identity to a person authorized to accept the registration information.

* * * *

**Gil Coronado,**

*Director.*

[FR Doc. 00–25725 Filed 10–6–00; 8:45 am]

BILLING CODE 8015–01–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[NC–087–9939; FRL–6881–1]**

### Approval and Promulgation of State Plans—North Carolina: Approval of Revisions to the North Carolina State Implementation Plan; Technical Correction

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule; technical correction.

**SUMMARY:** The United States Environmental Protection Agency (EPA) published in the **Federal Register** on November 10, 1999, a document approving revisions to clarify rules for the control of particulate emissions, add requirements for expedited permit processing, revise the Division name and address, and amend case-by-case MACT language. The State of North Carolina, through the North Carolina Department of Environment and Natural Resources (NCDENR) submitted these miscellaneous revisions to the North Carolina State Implementation Plan (SIP). The revisions are being clarified and corrected to add and revise entries that were inadvertently excluded in the **Federal Register** document.

**EFFECTIVE DATE:** This correction is effective on October 10, 2000.

**FOR FURTHER INFORMATION CONTACT:** Gregory Crawford at (404) 562–9046, crawford.gregory@epa.gov.

**SUPPLEMENTARY INFORMATION:** The November 10, 1999 (64 FR 61213–61217) document included amendatory language in the third full paragraph of the third column on page 61215 that reads "Section 52.1770 (c) is amended by revising the entries for Sections 2D Air Pollution Control Requirements and 2Q Air Quality Permit Requirements." Entries .0105, .0540, .0312, .0313 and .0607 cannot be revised, but must be added to the table under Subchapters 2D Air Pollution Control Requirements and 2Q Air Quality Permit Requirements. Entries .0104, .0515, .0938, .0108, .0313, and .0607 were not

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displayed in the table and are being added under the headings Subchapters 2D Air Pollution Control Requirements and 2Q Air Quality Permit Requirements. This document corrects these deficiencies.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedures are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is such good cause for making today's rule final without prior proposal and opportunity for comment because we are merely correcting an incorrect citation in a previous action. Thus, notice and public procedure are unnecessary.

**Administrative Requirements**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule merely corrects an incorrect citation in a previous action, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely corrects a citation in a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act (CAA). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This technical correction action does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, we have taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the Executive Order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act (CRA), 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. As stated previously, we made such a good cause finding, including the reasons therefore and established an effective date of October 10, 2000. We will submit a report containing this rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This correction to the North Carolina SIP table is not a "major rule" as defined by 5 U.S.C. 804(2).

Dated: August 17, 2000.

**A. Stanley Meiburg,**

*Acting Regional Administrator, Region 4.*

Chapter I, title 40, *Code of Federal Regulations,* is amended as follows:

**PART 52—[CORRECTED]**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

**Subpart II—North Carolina [Corrected]**

2. Section 52.1770, the table in paragraph (c) is amended by:

A. Adding entries .0105, .0540 under the heading Subchapter 2D Air Pollution Control Requirements and entries .0312, .0313, .0607 under the heading Subchapter 2Q Air Quality Permit Requirements.

B. Revising entries .0101, .0104, .0202, .0302, .0506, .0507, .0508, .0509, .0510, .0511, .0513, .0514, .0515, .0521, .0531, .0914, .0927, .0938, .0953 (two entries), .1902, .1903 under the heading Subchapter 2D Air Pollution Control Requirements and .0101, .0103, .0108, .0207, .0306, .0307, .0805, .0806, .0807 under the heading Subchapter 2Q Air Quality Permit Requirements.

The additions and revisions read as follows:

**§ 52.1770 Identification of plan.**

* * * * *

(c) EPA approved regulations.

EPA APPROVED NORTH CAROLINA REGULATIONS

| State citation | Title/subject | State effective date | EPA approval date | Comments |
|---|---|---|---|---|
| **Subchapter 2D—Air Pollution Control Requirements** | | | | |
| * * * * * | | | | |
| Section .0101 | Definitions | 1/5 | | |
| * * * * * | | | | |
| Section .0104 | Incorporation by Reference | 1/15/98 | 11/10/99 | |
| Section .0105 | Mailing List | 1/15/98 | 11/10/99 | |
| * * * * * | | | | |
| Section .0202 | Registration of Air Pollution Sources | 1/15/98 | 11/10/99 | |



EPA APPROVED NORTH CAROLINA REGULATIONS—Continued

| State citation | Title/subject | State effective date | EPA approval date | Comments |
|---|---|---|---|---|
| * * * * * | | | | |
| Section .0302 | Episode Criteria | 1/15/98 | 11/10/99 | |
| * * * * * | | | | |
| Section .0506 | Particulates from Hot Mix Asphalt Plants | 3/20/98 | 11/10/99 | |
| Section .0507 | Particulates from Chemical Fertilizer | 3/20/98 | 11/10/99 | |
| Section .0508 | Particulates from Pulp and Paper Mills | 3/20/98 | 11/10/99 | |
| Section .0509 | Particulates from Mica or Feldspar Processing | 3/20/98 | 11/10/99 | |
| Section .0511 | Particulates from Lightweight Aggregate | 3/20/98 | 11/10/99 | |
| * * * * * | | | | |
| Section .0513 | Particulates from Portland Cement Plants | 3/20/98 | 11/10/99 | |
| Section .0514 | Particulates from Ferrous Jobbing Foundries | 3/20/98 | 11/10/99 | |
| Section .0515 | Particulates from Miscellaneous Industrial Processes. | 3/20/98 | 11/10/99 | |
| * * * * * | | | | |
| Section .0521 | Control of visible Emissions | 3/20/98 | 11/10/99 | |
| * * * * * | | | | |
| Section .0531 | Sources in Nonattainment Areas | 1/15/98 | 11/10/99 | |
| * * * * * | | | | |
| Section .0540 | Particulates from Fugitive Non-Process Dust Emission Sources. | 3/20/98 | 11/10/99 | |
| * * * * * | | | | |
| Section .0914 | Determination of VOC Emission Control System Efficiency. | 3/20/98 | 11/10/99 | |
| * * * * * | | | | |
| Section .0927 | Bulk Gasoline Terminals | 3/20/98 | 11/10/99 | |
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| Section .0938 | Perchloroethylene Dry Cleaning System | 3/20/98 | 11/10/99 | |
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| Section .0953 | Vapor Return Piping for Stage II Vapor Recovery | 1/15/98 | 11/10/99 | |
| Section .0953 | Vapor Return Piping for Stage II Vapor Recovery | 3/20/98 | 11/10/99 | |
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| Section .1902 | Definitions | 1/15/98 | 11/10/99 | |
| Section .1903 | Permissible Open Burning Without a Permit | Annual Emissions Reporting | 1/15/98 | 11/10/99 |
| **Subchapter 2Q— AirQuality Permits Requirements** | | | | |
| Section .0101 | Required Air Quality Permits | 3/20/98 | 11/10/99 | |
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| Section .0103 | Definitions | 1/15/98 | 11/10/99 | |
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| Section .0108 | Delegation of Authority | 3/15/98 | 11/10/99 | |
| Section .0207 | Annual Emissions Reporting | 1/15/98 | 11/10/99 | |
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| Secton .0306 | Permits Requiring Public Participation | 3/20/98 | 11/10/99 | |
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| Section .0312 | Application Processing Schedule | 3/20/98 | 11/10/99 | |
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| Section .0607 | Application Processing Schedule | 4/17/97 | 11/10/99 | |
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| Section .0805 | Grain Elevators | 1/15/98 | 11/10/99 | |
| Section .0806 | Cotton Gins | 1/15/98 | 11/10/99 | |
| Section .0807 | Emergency Generators | 1/15/98 | 11/10/99 | |

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[FR Doc. 00–25599 Filed 10–6–00; 8:45 am]
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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

### 42 CFR Part 413

[HCFA–1883–F2]

RIN 0938–AI80

## Medicare Program; Revision of the Procedures for Requesting Exceptions to Cost Limits for Skilled Nursing Facilities and Elimination of Reclassifications; Correction

**AGENCY:** Health Care Financing Administration (HCFA) HHS.

**ACTION:** Technical corrections.

**SUMMARY:** In the August 5, 1999 issue of the **Federal Register** (64 FR 42610), we published a final rule addressing the procedures for granting exceptions to the Medicare skilled nursing facility (SNF) routine service cost limits, and we removed the provision allowing for reclassification for SNFs and home health agencies. This document amends the regulations text to make technical corrections to those parts of the regulation unrelated to the SNF exception procedures that were inadvertently changed.

**EFFECTIVE DATE:** September 7, 1999.

**FOR FURTHER INFORMATION CONTACT:** Julie Stankivic, (410) 786–5725.

**SUPPLEMENTARY INFORMATION:**

### Background

In the August 5, 1999 final rule (64 FR 42610), we amended the regulations to allow the fiscal intermediaries to make final determinations on requests by skilled nursing facilities (SNFs) for exceptions to the Medicare routine service cost limits under 42 CFR § 413.30(f). In the preamble to both the proposed and final rules (63 FR 42797 and 64 FR 42610, respectively), we specifically stated that the changes are limited to our procedures regarding SNF exceptions. We did not intend to change the new provider exemption under § 413.30(e) or any other provision relating to home health agencies (HHAs). The changes in § 413.30 as set forth in the final rule, however, have raised questions as to whether policy changes had been made in these unrelated areas.

### The New Provider Exemption

The preamble to the proposed and final rules (63 FR 42797 and 64 FR 42610, respectively) discussed the three types of relief available to SNFs that exceed the SNF routine service cost limits found in § 413.30. In the preamble concerning § 413.30(c), we indicated that a provider may seek relief from the effects of applying the cost limits, either by requesting an exemption from its limits as a new provider of inpatient services, by requesting a reclassification of its provider status, or by requesting an exception to the cost limit. Of these three types of relief, the proposed and final rules focused solely on the exception process and our proposal to revise the approval process for granting exceptions to the cost limits for SNFs and to remove the provision for obtaining a reclassification for a SNF or an HHA. We did not make changes to the exemption requirements for a new provider. However, the recently promulgated changes to § 413.30(c)(2), with regard to the processing of SNF exception requests, may have created confusion with regard to the processing of new provider exemption requests. In addition, editorial changes to § 413.30(d), meant to clarify which provisions applied to which provider type may have created an impression that a policy change has occurred; no policy changes were intended. The only two provider types subject to the regulations found in § 413.30 at present are SNFs and HHAs. We did not propose any changes to our existing policies with regard to the new provider exemption provision or the processing of new provider exemption requests. The intermediary makes a recommendation to HCFA, and HCFA makes the final determination on requests by SNFs for a new provider exemption under § 413.30(d) as redesignated.

### Home Health Agencies

In the preamble to the proposed and final rules (63 FR 42797, 64 FR 42610), we clearly stated that we are retaining the current procedures for HHA exception requests and that these provisions would remain unchanged. We modified § 413.30 (in its entirety), in an attempt to clarify which provisions applied to which provider type. The only two provider types subject to § 413.30 at present are SNFs and HHAs. HHAs, however, have never been eligible to receive an exception for "areas with fluctuating populations," an impression that may have been created by these editorial changes.

### Provisions of the Rule

For the reasons discussed above, we are making the necessary technical corrections to restore the regulations to conform with our longstanding and unchanged policies for both the new provider exemption for SNFs, and the procedures for exceptions to the cost limits for HHAs.

### List of Subjects in 42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

Accordingly, 42 CFR part 413 is corrected by making the following correcting amendments:

## PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES; PROSPECTIVELY DETERMINED PAYMENT RATES FOR SKILLED NURSING FACILITIES

1. The authority citation for part 413 continues to read as follows:

**Authority:** Secs. 1102, 1812(d), 1814(b), 1815, 1833(a), (i), and (n), 1871, 1881, 1883, and 1886 of the Social Security Act (42 U.S.C. 1302, 1395f(b), 1395g, 13951, 13951(a), (i), and (n), 1395x(v), 1395hh, 1395rr, 1395tt, and 1395ww).

2. In § 413.30, the following changes are made:

**§ 413.30 [Corrected]**

A. In paragraph (a) introductory text, at the end of the second sentence after the word "situations", the phrase "of particular providers" is added.

B. In paragraph (a)(2), at the beginning of the first sentence, the words "Payable SNF and HHA" are removed, and the words "Reimbursable provider" are added in their place.

C. In paragraph (c) introductory text, in the last sentence, the words "intermediary's notice of program pay" are removed, and the words "intermediary's notice of program reimbursement" are added in their place.

D. In paragraph (c)(2), the heading is corrected to read "Skilled nursing facility exception"; and in the first sentence, the word "exception" is added between the words "SNFs" and "request".

E. In paragraph (d), add the sentence "The intermediary makes a recommendation on the provider's request to HCFA, which makes the decision." after the first sentence; and remove the words "the type of" from the first sentence and add the word "a" in their place.

F. In paragraph (e)(3) introductory text, the words "or HHA" are removed; and in paragraph (e)(3)(ii), the word "similar" is added before each occurrence of the word "services", and the words "or HHA" are removed.

(Catalog of Federal Domestic Assistance Program No. 93.773 Medicare—Hospital Insurance)

Dated: September 21, 2000.

**Brian P. Burns,**

*Deputy Assistant Secretary for Information Resources Management.*

[FR Doc. 00–25497 Filed 10–6–00; 8:45 am]
BILLING CODE 4120–01–P



## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

### 42 CFR Parts 440 and 441

[HCFA–2010–FC]

RIN 0938–AI67

## Medicaid Program; Home and Community-Based Services

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

**ACTION:** Final rule with comment period.

**SUMMARY:** This final rule with comment period expands State flexibility in providing prevocational, educational, and supported employment services under the Medicaid home and community-based services waiver provisions currently found in section 1915(c) of the Social Security Act (the Act); and incorporates the self-implementing provisions of section 4743 of the Balanced Budget Act of 1997 that amends section 1915(c)(5) of the Act to delete the requirement that an individual have prior institutionalization in a nursing facility or intermediate care facility for the mentally retarded before becoming eligible for the expanded habilitation services. In addition, we are making a number of technical changes to update or correct the regulations.

**DATES:** Effective date: October 1, 1997. We will consider written comments if we receive them at the appropriate address, as provided below, no later than 5 p.m. on or before December 11, 2000.

**ADDRESSES:** Mail written comments (one original and three copies) to the following address: Health Care Financing Administration, U.S. Department of Health and Human Services, P.O. Box 9010, Attention: HCFA–2010–FC, 7500 Security Boulevard, Baltimore, MD 21244–9010.

If you prefer, you may deliver your written comments (one original and three copies) to one of the following addresses:

Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or

Room C5–09–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Because of staffing and resource limitations, we cannot accept audio, visual, or facsimile (FAX) copies of comments. In commenting, please refer to file code HCFA–2010–FC. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in room 443–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

**FOR FURTHER INFORMATION CONTACT:** Mary Jean Duckett, (410) 786–3294.

**SUPPLEMENTARY INFORMATION:**

### I. Background

The Medicaid program is a Federally supported, State-administered program that provides medical assistance to individuals that meet eligibility criteria. It was established in 1965 as title XIX of the Social Security Act (the Act).

Section 1915(c) was added to title XIX of the Act by the Omnibus Budget Reconciliation Act of 1981 (OBRA 1981) (Public Law 97–35) to encourage the provision of cost-effective services to Medicaid recipients in noninstitutional settings. Before the enactment of OBRA 1981, the Medicaid program provided limited coverage for long-term care services in noninstitutional settings.

Section 1915(c) of the Act authorizes the Secretary to waive certain Medicaid statutory requirements to enable a State to cover a broad array of home and community-based services that are not otherwise available under a State's Medicaid program. These services must be furnished in accordance with an individually written plan of care that is subject to approval by the State Medicaid agency, and may be furnished only to persons who, but for the provision of the services, would otherwise require the level of care provided in a hospital, nursing facility (NF), or intermediate care facility for the mentally retarded (ICF/MR). Coverage of these services enables elderly, disabled, and chronically ill persons, who would otherwise be institutionalized, to live in the community.

Under section 1915(c) of the Act, a State could receive Federal financial participation (FFP) for the following services as home and community-based services: case management services, homemaker and home health aide services, personal care services, adult day health services, habilitation services, respite care, and "other" services as requested by the State and approved by HCFA. Section 9502(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99–272) revised section 1915(c) of the Act to explicitly include certain prevocational, educational, and supported employment services as expanded habilitation services under home and community-based services for those individuals who receive waiver services after discharge from an NF or ICF/MR. Section 1915(c)(4) of the Act authorizes the provision of habilitation services, and section 1915(c)(5) of the Act defines habilitation services as services to assist individuals in acquiring, retaining, and improving the self-help, socialization, and adaptive skills necessary to reside successfully in home and community-based settings.

Section 1915(c)(5) of the Act was further amended by section 4743(a) of the Balanced Budget Act of 1997 (BBA) (Public Law 105–33), which deleted the requirement that an individual have prior institutionalization in either an NF or ICF/MR before becoming eligible for habilitation services. The regulations at § 440.180(c)(1) applied this prior institutionalization requirement to expanded habilitation services. Thus, effective October 1, 1997, if a State chooses to provide these expanded habilitation services under its home and community-based waiver, it may provide these services to all individuals eligible for these services without regard to whether the individuals had a prior institutional stay in an NF or ICF/MR.

### II. Provisions of the Final Rule With Comment Period

Before the enactment of the BBA, section 1915(c)(5) of the Act specified that the term "habilitation services" applies to individuals who receive services after discharge from an NF or ICF/MR. Section 4743 of the BBA amended section 1915(c)(5) of the Act, effective October 1, 1997, to remove the requirement that an individual be institutionalized before receiving habilitation services.

To implement the provisions of section 4743 of the BBA, we are revising parts 440 and 441. We are also making a number of technical changes to update or correct the regulations.

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In § 440.180, "Home or community-based services," we are revising the heading for paragraph (c) by changing the effective date from April 7, 1986 to October 1, 1997, and in paragraph (c)(1) we are deleting the requirement that recipients must have been discharged from a Medicaid-certified NF or ICF/MR to receive the services.

In § 441.301, "Contents of request for a waiver," our current rules at paragraph (a)(2) state that requests for waivers of the requirements of the Act that concern statewide application of Medicaid, comparability of services, and income and resource rules are applicable to individuals with spouses living in the community. This requirement incorrectly limits the waiver of the requirements of section 1902(a)(10)(C)(i)(III) of the Act to individuals with spouses. We are correcting the requirement by deleting the phrase "with spouses" and adding "medically needy" before the word "individuals." This revision clarifies that the request for a waiver is not limited to medically needy individuals with spouses.

In § 441.302, "State assurances," we are making a number of changes. Section 441.302(c)(1)(i) incorrectly cites hospital regulations at § 440.40, rather than at § 440.10. We are making this technical change. Section 441.302(d) requires States to give assurance that when a recipient is determined to be likely to require the level of care provided in an SNF, ICF, or ICF/MR, the recipient or his or her legal representative will be informed of the alternatives available under the waiver and given the choice of either institutional or home and community-based services. We are updating the terminology in § 441.302(d) by removing the terms "SNF and ICF" and replacing them with "NF," and adding the term "hospital" as a conforming change to the regulations text. Section 441.302(i)(2) also requires State assurances that services are furnished only to individuals who have been deinstitutionalized, regardless of discharge date from a Medicaid-certified NF or ICF/MR. Therefore, to conform the regulation to the BBA changes, we are removing § 441.302(i)(2) and redesignating § 441.302(i)(3) as § 441.302(i)(2). In the redesignated § 441.302(i)(2), we are also removing the phrase "on or after April 7, 1986."

In § 441.307, "Notification of a waiver termination," our regulations at paragraph (a) require that if a State chooses to terminate its waiver before the 3-year period expires, it must notify HCFA in writing 30 days before terminating services to recipients. We are making a technical correction in paragraph (a) to state that waivers may be terminated during the initial 3-year period or 5-year renewal period.

In § 441.310, "Limits on Federal financial participation (FFP)," we are making a number of changes. Section 441.310(a)(3)(i) states that FFP is not available for prevocational, educational, or supported employment services, or any combination of these services, as part of habilitation services that are provided before April 7, 1986, and § 441.310(a)(3)(iii) requires that habilitation services must be provided to recipients who were never institutionalized in a Medicaid-certified NF or ICF/MR. Section 441.310(b) states that FFP is available for expenditures for expanded habilitation services if the services are included under a waiver or waiver amendment approved by HCFA on or after April 7, 1986. Again, as the BBA eliminated the April 1986 date and also makes services available to medically needy recipients who have not been institutionalized, we are revising § 441.310(a)(3)(i), § 441.310(a)(3)(iii), and § 441.310(b) to conform the regulations to the BBA changes.

## III. Collection of Information Requirements

This document does not impose any information collection and recordkeeping requirements subject to the Paperwork Reduction Act of 1995 (PRA). Consequently, it does not need to be reviewed by the Office of Management and Budget (OMB) under the authority of the PRA.

## IV. Response to Comments

Because of the large number of comments we receive in response to a **Federal Register** publication, we are not able to respond to them individually. We will, however, consider all comments that we receive by the date and time specified in the "DATES" section of this preamble, and, if we publish a subsequent document, we will respond to the comments in the preamble to that document.

## V. Waiver of Notice of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of the rule take effect. However, pursuant to 5 U.S.C. 553(b)(B), we may waive a notice of proposed rulemaking if we find good cause that notice and comment are impracticable, unnecessary, or contrary to the public interest. For good cause we find that it was unnecessary to undertake notice and comment procedures because these self-implementing changes merely conform the regulations to the statutory language or make technical corrections and do not involve any exercise of discretion.

Therefore, we believe it is unnecessary to publish a proposed rule and for good cause waive publication of a proposed regulation. We are, however, providing a 60-day period for public comment.

## VI. Waiver of Effective Date

Under section 553(d) of the Administrative Procedure Act, we ordinarily publish a substantive rule at least 30 days before its effective date, unless for good cause we find a delay is impracticable, unnecessary, or contrary to the public interest. For good cause we find it unnecessary to delay the effective date of this rule because the changes are self-implementing or merely reflect technical corrections. Therefore, we are waiving the 30-day delay of the effective date.

## VII. Regulatory Impact Analysis

We have examined the impact of this rule as required by Executive Order (E.O.) 12866 and the Regulatory Flexibility Act (RFA) (Public Law 96–354). E.O. 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits, including potential economic, environmental, public health and safety effects, distributive impacts, and equity.

The RFA (5 U.S.C. 601 through 612) requires agencies to analyze options for regulatory relief for small entities. Consistent with the RFA, we prepare a regulatory flexibility analysis unless we certify that a rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we treat most hospitals and most other providers, physicians, health care suppliers, carriers, and intermediaries as small entities, either by nonprofit status or by having revenues of $5 million or less annually. Individuals and States are not included in the definition of a small entity.

Also, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. That analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

We are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and we certify, that this rule will not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals. This rule primarily affects States and individuals by expanding State flexibility and individual eligibility regarding certain services under Medicaid home and community-based waivers. It does not impose any new, direct economic burdens on providers or other health care entities.

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare an assessment of anticipated costs and benefits for any rule that may result in an expenditure by State, local, or tribal governments in the aggregate, or by the private sector, of $100 million in any one year. This rule has no mandated consequential effect on State, local, or tribal governments, or the private sector, and will not create an unfunded mandate.

We do not believe publication of this rule will have a major impact on Medicaid waiver costs. According to States that have the expanded habilitation services under their waivers, individuals that currently are not receiving the expanded habilitation services because of no prior institutionalization are in day habilitation programs. This rule offers States greater flexibility. As stated above it should not significantly change how they do business because more individuals would shift from day habilitation to expanded habilitation programs.

In accordance with Executive Order 12866, this final rule with comment period was reviewed by OMB.

We have reviewed this rule under the threshold criteria of Executive Order 13132, Federalism. We have determined that this rule does not significantly affect the rights, roles, and responsibilities of States.

## List of Subjects

*42 CFR Part 440*

Grant programs-health, Health facilities, Health maintenance organizations (HMO), Medicaid, Medicare, Reporting and recordkeeping requirements.

*42 CFR Part 441*

Family planning, Grant programs-health, Infants and children, Medicaid, Penalties, Reporting and recordkeeping requirements.



42 CFR chapter IV is amended as set forth below:

## PART 440—SERVICES: GENERAL PROVISIONS

A. Part 440 is amended as follows:

1. The authority citation for part 440 continues to read as follows:

**Authority:** Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. In § 440.180, the heading for paragraph (c) and paragraph (c)(1) are revised to read as follows:

**§ 440.180 Home or community-based services.**

* * * * *

(c) *Expanded habilitation services, effective October 1, 1997*— (1) *General rule.* Expanded habilitation services are those services specified in paragraph (c)(2) of this section.

* * * * *

## PART 441—SERVICES: REQUIREMENTS AND LIMITS APPLICABLE TO SPECIFIC SERVICES

B. Part 441 is amended as follows:

1. The authority citation for part 441 continues to read as follows:

**Authority:** Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. In § 441.301, the introductory text of paragraph (a) is republished and paragraph (a)(2) is revised to read as follows:

**§ 441.301 Contents of request for a waiver.**

(a) A request for a waiver under this section must consist of the following:

* * * * *

(2) When applicable, requests for waivers of the requirements of section 1902(a)(1), section 1902(a)(10)(B), or section 1902(a)(10)(C)(i)(III) of the Act, which concern respectively, statewide application of Medicaid, comparability of services, and income and resource rules applicable to medically needy individuals living in the community.

* * * * *

**§ 441.302 [Amended]**

3. In § 441.302, the following changes are made:

a. Paragraph (c)(1)(i) is amended by removing the citation "§ 440.40" and adding "§ 440.10" in its place.

b. The introductory text of paragraph (d) is revised, paragraph (i)(2) is removed, and paragraph (i)(3) is redesignated as paragraph (i)(2) and revised to read as follows:

**§ 441.302 State assurances.**

* * * * *

(d) *Alternatives*—Assurance that when a recipient is determined to be likely to require the level of care provided in a hospital, NF, or ICF/MR, the recipient or his or her legal representative will be—

* * * * *

(i) * * *

(2) Furnished as part of expanded habilitation services, if the State has requested and received HCFA's approval under a waiver or an amendment to a waiver.

* * * * *

4. In § 441.307, paragraph (a) is revised to read as follows:

**§ 441.307 Notification of a waiver termination.**

(a) If a State chooses to terminate its waiver before the initial 3-year period or 5-year renewal period expires, it must notify HCFA in writing 30 days before terminating services to recipients.

* * * * *

5. In § 441.310, the introductory text of paragraph (a) is republished, and paragraphs (a)(3) and (b) are revised to read as follows:

**§ 441.310 Limits on Federal financial participation (FFP).**

(a) FFP for home and community-based services listed in § 440.180 of this chapter is not available in expenditures for the following:

* * * * *

(3) Prevocational, educational, or supported employment services, or any combination of these services, as part of habilitation services that are—

(i) Provided in approved waivers that include a definition of "habilitation services" but which have not included prevocational, educational, and supported employment services in that definition; or

(ii) Otherwise available to the recipient under either special education and related services as defined in section 602(16) and (17) of the Education of the Handicapped Act (20 U.S.C. 1401(16) and (17)) or vocational rehabilitation services available to the individual through a program funded under section 110 of the Rehabilitation Act of 1973 (29 U.S.C. 730).

* * * * *

(b) FFP is available for expenditures for expanded habilitation services, as described in § 440.180 of this chapter, if the services are included under a waiver or waiver amendment approved by HCFA.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program).

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Dated: December 28, 1999.
**Nancy-Ann DeParle,**
*Administrator, Health Care Financing Administration.*

Dated: March 28, 2000.
**Donna E. Shalala,**
*Secretary.*

**Editorial Note:** This document was received at the Office of the Federal Register September 29, 2000.

[FR Doc. 00–25496 Filed 10–6–00; 8:45 am]
BILLING CODE 4120–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 2 and 87

**[ET Docket No. 98–197; FCC 00–353]**

### Radionavigaton Service at 31.8–32.3 GHz

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document amends the Commission's Rules to delete the unused radionavigation service allocation from the band 31.8–32.3 GHz in the Non-Federal Government Table of Frequency Allocations and removes this band from the list of available frequencies set forth in the rules for the Aviation Services. This action will obviate concerns for interference to the reception of deep space radiocommunications in the band 31.8–32.3 GHz from co-channel, non-Federal Government radionavigation transmissions that could otherwise occur in the future.

**DATES:** Effective November 9, 2000.

**FOR FURTHER INFORMATION CONTACT:** Tom Mooring , Office of Engineering and Technology, (202) 418–2450.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Report and Order,* ET Docket No. 98–197, FCC 00–353, adopted September 22, 2000, and released September 26, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center, Room CY–A257, 445 12th Street, SW., Washington, DC, and also may be purchased from the Commission's duplication contractor, International Transcription Service, (202) 857–3800, 1231 20th Street, NW Washington, DC 20036.

### Summary of the Report and Order

1. This Report and Order amends part 2 of the Commission's Rules to delete the unused radionavigation service allocation from the band 31.8–32.3 GHz in the Non-Federal Government Table of Frequency Allocations. Consequently, we also amend part 87 to remove this sub-band from the list of available frequencies set forth in the rules for the Aviation Services. We take this action in response to a request from the National Telecommunications and Information Administration. This action will obviate concerns for interference to the reception of deep space radiocommunications in the band 31.8–32.3 GHz from co-channel, non-Federal Government radionavigation transmissions that could otherwise occur in the future. This action will also provide adequate spectrum for future applications of the non-Federal Government radionavigation service in the remaining 1.1 gigahertz at 32.3–33.4 GHz.

2. We adopt our proposal (63 FR 65726, November 30, 1998) to delete the non-Federal Government radionavigation service allocation from the band 31.8–32.3 GHz. This action reduces the amount of spectrum available to the non-Federal Government radionavigation service in this frequency range by approximately 30%. By limiting future non-Federal Government radionavigation services to the band 32.3–33.4 GHz, NASA's deep space operations in the band 31.8–32.3 GHz will be protected and sufficient spectrum will be available to accommodate such commercial and private radionavigation services as may develop in the future. As a consequence of this action, we also will delete the band 31.8–32.3 GHz from the list of frequencies that are available for use by the aeronautical radionavigation service under § 87.173 of the rules for the Aviation Services. Since the band 32.3–33.4 GHz has previously been added to the § 87.173, we are adding a rule part cross-reference to part 87 in the Table of Frequency Allocations.

3. *Final Regulatory Flexibility Certification.* The Regulatory Flexibility Act ("RFA")[1] requires that a regulatory flexibility analysis be prepared for notice-and-comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) Independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration ("SBA").

4. In the *Notice of Proposed Rulemaking,* we concluded that the proposed rules "[would] not have a significant economic impact on a substantial number of small entities." Although no separate comments were received concerning this certification, the only commenter to the proceeding, Mr. Lyman C. Welch, did express concern that this rule change would prohibit commercial use. In this *Report and Order,* we have clarified that commercial entities may continue to make use of the Federal Government's facility at Goldstone, and we therefore find that no small entities will be impacted by the rule change. Accordingly, we hereby certify that the deletion of the non-Federal Government radionavigation allocation at 31.8–32.3 GHz will not have a significant economic impact on a substantial number of small entities.

5. *Report to Congress:* The Commission will send a copy of this *Report and Order,* including this final certification, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, *see* 5 U.S.C. 801(a)(1)(A). In addition, the *Report and Order* and this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. 605(b).

6. Pursuant to the authority contained in Sections 4(i), 7(a), 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 157(a), 303(c), 303(f), 303(g), and 303(r), parts 2 and 87 of the Commission's Rules are amended; effective November 9, 2000.

### List of Subjects

*47 CFR Part 2*

Communications equipment, Radio.

*47 CFR Part 87*

Air transportation, Communications equipment, Radio.

[1] *5 U.S.C. 601 et seq.* The RFA has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) ("CWAAA"). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA").



Federal Communications Commission.
**William F. Caton,**
*Deputy Secretary.*

### Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 2 and 87 as follows:

## PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation for part 2 continues to read as follows:

**Authority:** 47 U.S.C. Sections 154, 302a, 303, and 336, unless otherwise noted.

2. Section 2.1(c) is amended by revising the definition for the "Inter-Satellite Service" as follows:

**§ 2.1 Terms and definitions.**

* * * * *

(c) * * *

*Inter-Satellite Service.* A radiocommunication service providing links between artificial satellites. (RR)

* * * * *

3. Section 2.106 is amended as follows:

a. Pages 74 and 75 of the Table of Frequency Allocations are revised.

b. Footnote US262 is revised.

The revision reads as follows:

**§ 2.106 Table of Frequency Allocations.**

* * * * *

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| | | | | | |
|---|---|---|---|---|---|
| 30-31<br>FIXED-SATELLITE (Earth-to-space)<br>MOBILE-SATELLITE (Earth-to-space)<br>Standard frequency and time signal-satellite (space-to-Earth)<br><br>S5.542 | | | 30-31<br>FIXED-SATELLITE (Earth-to-space)<br>MOBILE-SATELLITE (Earth-to-space)<br>Standard frequency and time signal-satellite (space-to-Earth)<br><br>G117 | 30-31<br>Standard frequency and time signal-satellite (space-to-Earth) | |
| 31-31.3<br>FIXED<br>MOBILE<br>Standard frequency and time signal-satellite (space-to-Earth)<br>Space research S5.544 S5.545<br><br>S5.149 | | | 31-31.3<br>Standard frequency and time signal-satellite (space-to-Earth)<br><br>S5.149 US211 | 31-31.3<br>FIXED<br>MOBILE<br>Standard frequency and time signal-satellite (space-to-Earth)<br><br>S5.149 US211 | Fixed Microwave (101) |
| 31.3-31.5<br>EARTH EXPLORATION-SATELLITE (passive)<br>RADIO ASTRONOMY<br>SPACE RESEARCH (passive)<br><br>S5.340 | | | 31.3-31.8<br>EARTH EXPLORATION-SATELLITE (passive)<br>RADIO ASTRONOMY US74<br>SPACE RESEARCH (passive) | | |
| 31.5-31.8<br>EARTH EXPLORATION-SATELLITE (passive)<br>RADIO ASTRONOMY<br>SPACE RESEARCH (passive)<br>Fixed<br>Mobile except aeronautical mobile<br><br>S5.149 S5.546 | 31.5-31.8<br>EARTH EXPLORATION-SATELLITE (passive)<br>RADIO ASTRONOMY<br>SPACE RESEARCH (passive)<br><br>S5.340 | 31.5-31.8<br>EARTH EXPLORATION-SATELLITE (passive)<br>RADIO ASTRONOMY<br>SPACE RESEARCH (passive)<br>Fixed<br>Mobile except aeronautical mobile<br><br>S5.149 | US246 | | |
| 31.8-32<br>FIXED S5.547A<br>RADIONAVIGATION<br>SPACE RESEARCH (deep space) (space-to-Earth)<br><br>S5.547 S5.547B S5.548 | | | 31.8-32<br>RADIONAVIGATION US69<br>SPACE RESEARCH (deep space) (space-to-Earth) US262<br><br>S5.548 US211 | 31.8-32<br>SPACE RESEARCH (deep space) (space-to-Earth) US262<br><br>S5.548 US211 | |





32-40 GHz (EHF)



| International Table | | | United States Table | | FCC Rule Part(s) |
|---|---|---|---|---|---|
| Region 1 | Region 2 | Region 3 | Federal Government | Non-Federal Government | |
| 32-32.3<br>FIXED S5.547A<br>INTER-SATELLITE<br>RADIONAVIGATION<br>SPACE RESEARCH (deep space) (space-to-Earth)<br><br>S5.547 S5.547C S5.548 | | | 32-32.3<br>INTER-SATELLITE US278<br>RADIONAVIGATION US69<br>SPACE RESEARCH (deep space) (space-to-Earth) US262<br><br>S5.548 | 32-32.3<br>INTER-SATELLITE US278<br>SPACE RESEARCH (deep space) (space-to-Earth) US262<br><br>S5.548 | |
| 32.3-33<br>FIXED S5.547A<br>INTER-SATELLITE<br>RADIONAVIGATION<br><br>S5.547 S5.547D S5.548 | | | 32.3-33<br>INTER-SATELLITE US278<br>RADIONAVIGATION US69<br><br>S5.548 | | Aviation (87) |
| 33-33.4<br>FIXED S5.547A<br>RADIONAVIGATION<br><br>S5.547 S5.547E | | | 33-33.4<br>RADIONAVIGATION US69 | | |
| 33.4-34.2<br>RADIOLOCATION<br><br>S5.549 | | | 33.4-36<br>RADIOLOCATION US110<br>G34 | 33.4-36<br>Radiolocation US110 | Private Land Mobile (90) |
| 34.2-34.7<br>RADIOLOCATION<br>SPACE RESEARCH (deep space) (Earth-to-space)<br><br>S5.549 | | | | | |
| 34.7-35.2<br>RADIOLOCATION<br>Space research S5.550<br><br>S5.549 | | | | | |
| 35.2-35.5<br>METEOROLOGICAL AIDS<br>RADIOLOCATION<br><br>S5.549 | | | | | |

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**United States (US) Footnotes**

* * * * *

US262 The use of the band 31.8–32.3 GHz by the space research service (deep space) (space-to-Earth) is limited to Goldstone, California.

* * * * *

## PART 87—AVIATION SERVICES

4. The authority citation for part 87 continues to read as follows:

**Authority:** 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, 307(e) unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–156, 301–609.

5. Section 87.173(b) is amended by removing the entry for "31800–33400 MHz" in the frequency table and adding a new entry in numerical order to read as follows:

**§ 87.173 Frequencies.**

* * * * *

(b) Frequency table:

| Frequency or frequency band | Subpart | Class of station | Remarks |
|---|---|---|---|
| . | . | . | . |
| 32300–33400 MHz | F, Q | MA, RL | Aeronautical radionavigation. |

[FR Doc. 00–25733 Filed 10–6–00; 8:45 am]

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## FEDERAL COMMUNICATIONS COMMISSION

**47 CFR Part 20**

**[CC Docket No. 94–54; FCC 00–307]**

### Interconnection and Resale Obligations in the Commercial Mobile Radio Services

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; petition for reconsideration.

**SUMMARY:** Through this document, the Commission denies a petition for reconsideration of previous Commission decisions in this proceeding. Petitioners request that we eliminate the exclusion of Commercial Mobile Radio Service (CMRS) from the Commission's resale rule and extend the sunset of the resale rule at least one full year beyond the successful conclusion of wireless local number portability implementation. This document responds to this petition.

**FOR FURTHER INFORMATION CONTACT:** Jane Phillips, 202–418–1310.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Order on Reconsideration of the Memorandum Opinion and Order on Reconsideration in CC Docket No. 94–54 (Order) (FCC 00–307), adopted August 17, 2000, and released August 22, 2000. The complete text of this MO&O is available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, SW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services (ITS, Inc.), CY–B400, 445 12th Street, SW., Washington, DC.

**Synopsis of the Order**

1. In this decision, the Commission denies a petition for reconsideration of decisions contained in the Memorandum Opinion and Order on Reconsideration, 64 FR 61022, November 9, 1999 (MO&O) in this proceeding. The wireless resale rule prohibits Commercial Mobile Radio Service (CMRS) providers from unreasonably restricting resale of their services.

2. The First Report and Order, 61 FR 38399, July 24, 1996 (First R&O) in this proceeding promulgated a rule prohibiting certain CMRS providers from restricting the resale of their services during a transitional period. The First R&O extended the resale rule, which previously had applied only to cellular providers, to providers of broadband personal communications services (PCS) and certain specialized mobile radio (SMR) services. Additionally, the First R&O sunset the resale rule five years after completion of its initial grant of broadband PCS licenses, *i.e.*, November 24, 2002.

3. The MO&O affirmed the 2002 sunset date, but modified the resale rule to exclude customer premises equipment (CPE) and CPE in bundled packages and to exclude from its scope certain C, D, E, and F block PCS licenses, as well as all CMRS providers of voice or data services that do not use in-network switching facilities.

4. MCI WorldCom filed a petition for further reconsideration requesting that the Commission eliminate the exclusion for CPE and extend the sunset at least one full year beyond the successful conclusion of wireless local number portability implementation.

5. As discussed in the full text of this Order, the Commission denies MCI WorldCom's petition for reconsideration and reaffirms its determinations to exclude CPE from the scope of the CMRS resale rule and to sunset the rule on November 24, 2002. With respect to the exclusion for certain C, D, E, and F block PCS licensees, the Order does not address what impact the Commission's ultimate decision regarding eligibility to participate in the reauction of C and F block licensees may have on the scope of the resale rule.

**Regulatory Flexibility Analysis**

6. The Commission has not prepared an additional Final Regulatory Flexibility Analysis of the possible impact on small entities of the Commission's decisions, as otherwise required by the Regulatory Flexibility Act, 5 U.S.C. 604, because no changes have been made in this Order to the Commission's rules or policies.

**Authority**

7. This action is taken pursuant to sections 1, 4(i), 4(j), 10, 201, 202, 303(r), 309, 332, and 403 of the Communications Act, 47 U.S.C. 1, 4(i), 4(j), 160, 201, 202, 303(r), 309, 332, 403.

**Ordering Clauses**

Accordingly, the Petition for Reconsideration filed by MCI WorldCom is denied.

Federal Communications Commission.

**William F. Caton,**

*Deputy Secretary.*

[FR Doc. 00–25807 Filed 10–6–00; 8:45 am]

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## FEDERAL COMMUNICATIONS COMMISSION

**47 CFR Part 27**

**[WT Docket No. 99–168]**

### Service Rules for the 746–764 and 776–794 MHz Bands; Correction

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; correction.



**SUMMARY:** This document makes clarifications and corrections to the service rules for the 746–764 and 776–794 MHz bands, as published at 65 FR 3139, January 20, 2000, and at 65 FR 17594, April 4, 2000.

**DATES:** Effective October 10, 2000.

**FOR FURTHER INFORMATION CONTACT:** Jane Phillips, 202–418–1310.

**SUPPLEMENTARY INFORMATION:** The Commission, in the final rules of the First Report and Order (65 FR 3139, January 20, 2000), and the Second Report and Order, (65 FR 17594, April 4, 2000) inadvertently failed to make specific reference to the definitional criterion for the Gulf of Mexico Economic Area presently set forth in § 27.6(a)(2).

In rule FR Doc. No. 00–8144 published on April 4, 2000 (65 FR 17594) make the following correction.

**§ 27.6 [Corrected]**

1. On page 17602, in the third column, in § 27.6(b)(1) correct "paragraph (a)(1)" to read "paragraphs (a)(1) and (a)(2)".

In rule FR Doc. No. 00–1332 published on January 20, 2000 (65 FR 3139) make the following correction.

2. On page 3145, in the third column, in § 27.6(b)(2), line 7, after the words "*See also*" add the phrase "paragraphs (a)(1) and (a)(2) of this section and".

Federal Communications Commission.

**William F. Caton,**

*Deputy Secretary.*

[FR Doc. 00–25808 Filed 10–6–00; 8:45 am]

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## FEDERAL COMMUNICATIONS COMMISSION

**47 CFR Part 63**

**[IB Docket No. 97–142, FCC 00–339]**

### Rules and Policies on Foreign Participation in the U.S. Telecommunications Market

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rules.

**SUMMARY:** This document addresses specific issues raised in petitions requesting clarification and reconsideration of the Commission's decisions in the initial Report and Order in this proceeding. This document also clarifies and revises certain aspects of the Commission's rules regarding prior notifications of foreign affiliations. This document also amends the rules to define "interlocking directorates" and to cross-reference the Commission's prior notification requirements. The final rules contain information collections subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It has been submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public and other Federal agencies are invited to comment on the information collections contained in the final rule.

**EFFECTIVE DATE:** Effective November 9, 2000 except for section 63.11 which contains modified information collections that have not been approved by the Office of Management and Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date of that section. Written comments by the public on the information collection requirements are due October 24, 2000. OMB must submit written comments on the information collection requirements on or before December 11, 2000.

**ADDRESSES:** All comments regarding the requests for approval of the information collection, both regular and emergency, should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to *jboley@fcc.gov;* phone 202–418–0214. In addition, comments on the emergency request for approval of the information collections should be submitted to Edward C. Springer, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW, Washington, DC 20503 or via the Internet to edward.springer@omb.eop.gov.

**FOR FURTHER INFORMATION CONTACT:** Lisa Choi, Policy and Facilities Branch, Telecommunications Division, International Bureau, (202) 418–1384. For additional information concerning the information collections contained in this document contact Judy Boley at (202) 418–0214, or email at *jboley@fcc.gov.*, and Edward C. Springer, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW, Washington, DC 20503 or via the Internet to edward.springer@omb.eop.gov.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Order on Reconsideration, FCC 00–339, adopted on September 12, 2000 and released on September 19, 2000. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257) of the Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554. The document is also available for download over the Internet at http://www.fcc.gov/Bureaus/International/Notices/2000/fcc00339.doc. The complete text of this document also may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20036, (202) 857–3800.

This document contains modified information collections subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. Implementation of any modified requirements will be subject to approval by the Office of Management and Budget (OMB) for review under the PRA's emergency processing provisions. OMB, the general public, and other Federal agencies are invited to comment on the proposed information collections contained in this proceeding.

**Summary of Order on Reconsideration**

1. On November 25, 1997, the Commission adopted a Report and Order and Order on Reconsideration (*Foreign Participation Order* (62 FR 64741. Dec. 9, 1997). The *Foreign Participation Order* established the Commission's procompetitive rules and policies regarding foreign participation in the U.S. telecommunications market. In light of the Word Trade Organization (WTO) basic Telecom Agreement and WTO Members' commitments to open markets, the Commission adopted rules to open further the U.S. market to competition from foreign companies. On September 12, 2000, the Commission adopted an Order on Reconsideration (Order) that addressed the petitions seeking clarification and reconsideration of the *Foreign Participation Order.* In this Order, the Commission found that its competitive safeguards and ability to attach additional conditions to grants of authority, in conjunction with the procompetitive commitments of WTO Members would reduce the danger of anticompetitive conduct resulting from entry of carriers from WTO Members into the U.S. Market.

2. Specifically, the Commission affirmed its prior conclusion that it is under no obligation to impose the same entry standard with regard to WTO Members' participation in the U.S. telecommunications market to Bell Operating Company (BOC) entry into in-region interLATA services markets pursuant to section 271. The Commission concluded that no new information or arguments were presented for it to revisit the initial conclusion that the public interest presumption established in the *Foreign*

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*Participation Order* does not apply with regard to BOC entry into in-region interLATA markets. The Commission also noted that it has separately addressed the nature of its public interest analysis in its evaluations of BOC applications filed pursuant to section 271.

3. The Commission affirmed, clarified, and revised the requirement for prior notification of controlling investments by U.S. carriers in foreign carriers and of controlling investments of greater than twenty-five percent capital stock investments by foreign carriers in U.S. carriers. Although the Commission rejected a request to eliminate the prior notification requirement for U.S. carrier controlling investments in foreign carriers, the Commission did clarify and revise § 63.11 to address more precisely the underlying purpose for the provision and to reduce unnecessary regulatory burdens.

4. Specifically, the Commission will continue to require prior notification of a U.S. carriers' controlling investment in a foreign carrier or a foreign carrier's controlling or greater than twenty-five percent investment in a U.S. carrier with the exception that prior notification is not required if one of the following is true for the foreign carrier: (1) the foreign carrier is one that the Commission has previously determined in an adjudication lacks market power in destination markets authorized to be served by the U.S. carrier; (2) the foreign carrier is a resale carrier in such markets; or (3) the destination markets in which the foreign carrier is authorized to operate are WTO Members and the authorized carrier either demonstrates that it should retain non-dominant classification on the newly-affiliated routes pursuant to § 63.10 or the authorized carrier agrees to comply with the Commission's dominant carrier safeguards on those routes.

5. Authorized carriers that intend to rely on one of the exceptions to the prior notification rule are required to submit a certification with the Commission as part of its notification indicating upon which exception it is rely and certifying as to the factual basis for the qualification. In addition, the Commission modified the prior notification requirement so that such prior notifications must be filed forty-five days rather than sixty days prior to the consummation of the acquisition in order to respond to carriers' concerns that that sixty days is overly burdensome.

6. In addition, the Commission revised the rules to provide U.S. carriers with the opportunity to file confidentially the information requested by the Commission as part of their prior notifications of affiliation. Carriers are permitted to request in an accompanying cover letter that the Commission maintain confidential treatment of the prior notification information for twenty days, after which date the carrier agrees to public treatment of such information. The Commission will then place the notification on pubic notice twenty-fives days prior to the planned consummation of the investment. The revised rule will provide ample opportunity for public comment while alleviating carriers' concerns about the time burden and difficulty of maintaining the confidentiality of sensitive transactions.

7. The Commission also amended § 63.11 to permit the Commission to classify an authorized carrier as dominant by a public notice, rather than by written order, in circumstances in which the authorized carrier agrees to abide by dominant carrier regulation on an affiliated route. This amendment will reduce further regulatory burdens on carriers and administrative burdens on the Commission.

8. The Commission also modified the content of notifications of affiliation to include a statement by an authorized carrier as to whether the notification is subject to prior notification (including the date of projected closing) or post notification (including the actual date of closing). In order to facilitate processing of notifications and transfer of control or assignment applications, authorized carriers are required to cross-reference their applications and foreign carrier affiliation notifications. Similarly, with respect to the content of post-notifications of affiliation, carriers may not notify the Commission of a proposed affiliation with a foreign carrier in the context of a transfer of control or initial § 63.18 application in order to discharge their notification obligations under § 63.11. The Commission revised the rules to clarify that carriers are responsible for the continuing accuracy of the contents of their prior notifications during the forty-five day notice period and are responsible on an on-going basis for complying with the requirement for notifying the Commission of their affiliations with foreign carriers.

9. In light of recent rule changes in other proceedings, the Commission narrowed the definition of "interlocking directorates" as those persons having any of the duties ordinarily performed by a director, president, vice president, secretary, treasurer, or other officer of the carrier. In addition, authorized carriers are required to identify only their interlocking directorates with the foreign carriers that are the subject of the notifications.

10. The Commission clarified and revised the provision in § 63.11(e)(2) prohibiting the consummation of an investment pending Commission approval. Authorized carriers that acquire affiliations subject to the revised § 63.11 with carriers in non-WTO Members are required to demonstrate that the foreign carrier lacks market power or is a resale carrier, or to make an ECO showing in order to continue to operate on the applicable route. Otherwise, an authorized carrier risks having its authorization revoked.

11. The Commission found moot a request to reconsider its decision regarding the "No Special Concessions" rule and discontinue its practice of placing a special condition on BOC affiliate section 214 authorizations with respect to "grooming arrangements" (arrangements to terminate traffic in particular geographic regions). The Commission stated that the rule changes adopted in the *ISP Reform Order* (64 FR 34734, June 29, 1999) addressed this issue.

12. The Commission also denied the request to reconsider the language in the *Foreign Participation Order* referring to the Commission's ability to designate cable operators as common carriers. The Commission found that this proceeding was not the appropriate forum to address this concern. Rather, the Commission noted that the regulatory distinction between common carrier and non-common carrier submarine cables is at issue in the *Submarine Cable Streamlining* proceeding (65 FR 411613, June 6, 2000).

13. The Commission also rejected a request to modify its rebuttable presumption regarding the market power of a foreign carrier from a WTO Member. The Commission concluded that it had fully considered and rejected a similar proposal in the *Foreign Participation Order*.

14. In addition, the Commission addressed issues regarding dominant carrier safeguards for foreign-affiliated U.S. carriers. First, the Commission declined to remove the dominant carrier safeguards that apply to each U.S. carrier having an affiliation with a carrier that possesses market power on the route. In the *Foreign Participation Order*, the Commission adopted a narrowly-tailored dominant carrier framework designed to address specific concerns of anticompetitive behavior while limiting the regulatory burden imposed generally on foreign-affiliated U.S. carriers. These policies and safeguards also were consistent with the United States' GATS obligations. The Commission found that no new arguments were presented for it to reconsider this issue. Second, the Commission reaffirmed its decision to continue to allow dominant foreign-affiliated carriers to file tariffs on one-day's notice and add or discontinue circuits on foreign-affiliated routes without prior approval. The Commission held that it had fully considered and dismissed these arguments in the *Foreign Participation Order*.

15. The Commission also denied a request to extend its deregulatory approach regarding section 310(b)(4) requests to the treatment of broadcast licenses. The Commission found that this matter was not at issue in the *Foreign Participation Order*, and therefore, this proceeding was not the proper forum to revisit this issue.

16. The Commission also rejected a request to broaden the application of the *Benchmarks Order* (62 FR 45758, August 29, 1997). Specifically, the Commission was asked to impose a condition on switched resale authorizations to serve foreign-affiliated markets on the foreign carrier offering U.S. authorized carriers a settlement rate for the affiliated route that is at or below the relevant benchmark rate. The Commission found that it had fully considered and reject this issue in the *Foreign Carrier Participation Order*. The Commission also noted that the *Benchmarks Reconsideration Order* (64 FR 47699, September 1, 1999) further narrowed the section 214 condition on facilities-based carriers so that it currently applies only to the provision of facilities-based switched and private line service to foreign-affiliated markets where the foreign affiliate possesses market power.

17. Finally, the Commission rejected the request that it reconsider that aeronautical enroute service is a basic telecommunications service. The Commission stated that although it has treated aeronautical enroute and fixed services as private services, they still fall within the class of services covered by U.S. commitments in the WTO. Thus, the Commission reaffirmed its conclusion that some aeronautical enroute and fixed services are basic telecommunications services under the WTO Basic Telecom Agreement.

**Procedural Matters**

18. *Final Regulatory Flexibility Certification.* The purposes of this proceeding are to adopt a liberalized standard for participation by foreign and foreign-affiliated entities in the U.S. telecommunications market, to eliminate some regulatory requirements, and to simplify and clarify other existing rules. The modifications do not impose any additional compliance burden on persons dealing with the Commission, including small entities. Any prospective carrier will continue to submit foreign carrier affiliation notifications. In most cases, the notifications will be filed after the consummation of the investment resulting in a foreign carrier affiliation. We anticipate that the revisions we adopt here will expand the ability of U.S. carriers to reap economic benefits by taking advantage of new opportunities in the international telecommunications marketplace.

19. The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires that an agency prepare a regulatory flexibility analysis for notice-and-comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." The rule changes adopted in this order only affect the timing of the submission of foreign carrier affiliation notifications. These changes do not impose additional compliance burdens on small entities nor do they alter the small entities possibly affected by the rules published in the *Foreign Participation Order*. The rules adopted in this order would not have a detrimental impact on small entities. In fact, we anticipate that the rule changes we adopt here will reduce regulatory and procedural burdens on small entities. Therefore, we certify, pursuant to section 605(b) of the RFA, that the rules adopted herein will not have a significant economic impact on a substantial number of small entities.

20. The Commission will send a copy of the Order on Reconsideration, including a copy of this final certification, in a report to congress pursuant to SBREFA (5 U.S.C. 801(a)(1)(A)). In addition, the Order on Reconsideration and this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration, and will be published in the **Federal Register**.

21. *Paperwork Reduction Act Analysis.* The Commission, as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be submit to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments on emergency request for approval of information collections are due on or before October 24, 2000. Public and agency comments on the regular request for approval of the information collections are due proposed and/or modified information collections are due on or before December 11, 2000.

Comments should address the following: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

*OMB Control Number:* 3060–0686.

*Title:* Streamlining the International Section 214 Authorization Process and Tariff Requirements.

*Form Number:* N/A.

*Type of Review:* Revisions to existing collection.

*Respondents:* Business and other for-profit entities.

*Number of Respondents:* 60.

*Number of Responses:* 1.

*Estimated Time Per Response:* 8 hours.

*Frequency of Response:* On Occasion.

*Total Annual Burden:* 480 hours (50% of burden estimated to be contracted to outside assistance).

*Total Annual Costs:* $36,000.

*Needs and Uses:* The information will be used by the Commission to assess the potential impact of a U.S. carrier's acquisition or affiliation with a foreign carrier. The information will enable the Commission to determine what safeguards may need to apply or what other Commission action may be necessary with regard to the authorized carrier's section 214 authorization to serve the affiliated route. The information collections are necessary for the Commission to protect the public interest from the harm and competitive distortion that could arise in the U.S. market from the presence of a new controlling foreign affiliation. In addition, the Commission must maintain records that accurately reflect a party or parties that control a carrier's operations, particularly for purposes of

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enforcing the Commission's rules and policies.

**Ordering Clauses**

22. Pursuant to Sections 1, 2, 4(i), 201, 203, 205, 214, 303(r), 309, and 310 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 201, 203, 205, 214, 303(r), 309, 310 and Parts 43 and 63 of the Commission's rules, 47 CFR 43, 63, that the Order on Reconsideration in IB Docket No. 97–142 is *adopted.*

23. 47 CFR Part 63 is amended as set forth in the rule changes, effective November 9, 2000 except for section 63.11 which contains modified information collections that have not been approved by the Office of Management and Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date of that section. Written comments by the public on the information collection requirements are due October 24, 2000. OMB must submit written comments on the information collection requirements on or before December 11, 2000.

24. The Petitions for Reconsideration filed by ARNIC, BellSouth, KDD, MCI, PanAmSat, SBC, and Sidak *are denied,* as described herein.

25. The Commission's Consumer Information Bureau, Reference Information Center, *shall send* a copy of this Order on Reconsideration, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

26. The policies, rules, and requirements, established in this decision shall take effect thirty days after publication in the **Federal Register** except for the rules in section 63.11 which contains modified information collections that have not been approved by the Office of Management and Budget (OMB).

**List of Subjects in 47 CFR Part 63.**

Communications common carriers, reporting and recordkeeping requirements,

Federal Communications Commission.

**William F. Caton,**

*Deputy Secretary.*

**Rule Changes**

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Part 63 as follows:

## PART 63—EXTENSION OF LINES, NEW LINES, AND DISCONTINUANCE, REDUCTION, OUTAGE AND IMPAIRMENT OF SERVICE B COMMON CARRIERS; AND GRANTS OF RECOGNIZED PRIVATE OPERATING AGENCY STATUS

1. The authority citation for part 63 continues to read as follows:

**Authority:** Section 1, 4(l), 4(j), 10, 11, 201–205, 214, 218, 403 and 651 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 160, 201–205, 214, 218, 403, and 571, unless otherwise noted.

2. Section 63.09 is amended by adding paragraph (g) to read as follows:

**§ 63.09 Definitions applicable to international Section 214 authorizations.**

* * * * *

(g) As used in this part, the term:

(1) *Interlocking directorates* shall mean persons or entities who perform the duties of "officer or director" in an authorized U.S. international carrier or an applicant for international Section 214 authorization who also performs such duties for any foreign carrier.

(2) *Officer or director* shall include the duties, or any of the duties, ordinarily performed by a director, president, vice president, secretary, treasurer, or other officer of a carrier.

* * * * *

3. Section 63.11 is revised to read as follows:

**§ 63.11 Notification by and prior approval for U.S. international carriers that are or propose to become affiliated with a foreign carrier.**

If a carrier is authorized by the Commission ("authorized carrier") to provide service between the United States and a particular foreign destination market and it becomes, or seeks to become, affiliated with a foreign carrier that is authorized to operate in that market, then its authorization to provide that international service is conditioned upon notifying the Commission of that affiliation.

(a) Affiliations requiring prior notification: Except as provided in paragraph (b) of this section, the authorized carrier must notify the Commission, pursuant to this section, forty-five days before consummation of either of the following types of transactions:

(1) Acquisition by the authorized carrier, or by any entity that controls the authorized carrier, or by any entity that directly or indirectly owns more than twenty-five percent of the capital stock of the authorized carrier, of a controlling interest in a foreign carrier that is authorized to operate in a market that the carrier is authorized to serve; or

(2) Acquisition of a direct or indirect interest greater than twenty-five percent, or of a controlling interest, in the capital stock of the authorized carrier by a foreign carrier that is authorized to operate in a market that the authorized carrier is authorized to serve, or by an entity that controls such a foreign carrier.

(b) Exceptions.

(1) Notwithstanding paragraph (a) of this section, the notification required by this section need not be filed before consummation, and may instead be filed pursuant to paragraph (c) of this section, if either of the following is true with respect to the named foreign carrier regardless of whether that foreign carrier is authorized to operate in a World Trade Organization (WTO) or non-WTO Member:

(i) The Commission has previously determined in an adjudication that the foreign carrier lacks market power in that destination market (for example, in an international section 214 application or a declaratory ruling proceeding); or

(ii) The foreign carrier owns no facilities in that destination market. For this purpose, a carrier is said to own facilities if it holds an ownership, indefeasible-right-of-user, or leasehold interest in bare capacity in international or domestic telecommunications facilities (excluding switches).

(2) In the event paragraph (b)(1) of this section cannot be satisfied, notwithstanding paragraph (a) of this section, the notification required by this section need not be filed before consummation, and may instead be filed pursuant to paragraph (c) of this section, if the authorized carrier certifies that the named foreign carrier is authorized to operate in a WTO Member and provides certification to satisfy either of the following:

(i) The authorized carrier demonstrates that it is entitled to retain non-dominant classification on its newly affiliated route pursuant to § 63.10; or

(ii) The authorized carrier agrees to comply with the dominant carrier safeguards contained in § 63.10 effective upon the acquisition of the affiliation. See § 63.10.

(c) Notification after consummation. Any authorized carrier that becomes affiliated with a foreign carrier and has not previously notified the Commission pursuant to this section shall notify the Commission within thirty days after consummation of the acquisition.

*Example 1 to paragraph (c).* Acquisition by an authorized carrier (or by any entity that directly or indirectly controls, is controlled by, or is under direct or indirect common control with the authorized carrier) of a direct or indirect interest in a foreign carrier that is greater than twenty-five percent but not controlling is subject to paragraph (c) but not to paragraph (a).

*Example 2 to paragraph (c).* Notification of an acquisition by an authorized carrier of a hundred percent interest in a foreign carrier may be made after consummation, pursuant to paragraph (c), if the foreign carrier operates only as a resale carrier.

*Example 3 to paragraph (c).* Notification of an acquisition by a foreign carrier from a WTO Member of a greater than twenty-five percent interest in the capital stock of an authorized carrier may be made after consummation, pursuant to paragraph (c) of this section, if the authorized carrier demonstrates in the post-notification that it qualifies for non-dominant classification on the affiliated route or agrees to comply with dominant carrier safeguards on the affiliated route effective upon the acquisition of the affiliation.

(d) Cross-Reference. In the event a transaction requiring a foreign carrier notification pursuant to this section also requires a transfer of control or assignment application pursuant to § 63.18(e)(3), the foreign carrier notification shall reference in the notification the transfer of control or assignment application and the date of its filing. See § 63.18(e)(3).

(e) Contents of notification. The notification shall certify the following information: (1) The name of the newly affiliated foreign carrier and the country or countries in which it is authorized to provide telecommunications services to the public;

(2) Which, if any, of those countries is a Member of the World Trade Organization;

(3) What services the authorized carrier is authorized to provide to each named country, and the FCC file numbers under which each such authorization was granted;

(4) Which, if any, of those countries the authorized carrier serves solely through the resale of the international switched services of unaffiliated U.S. facilities-based carriers;

(5) The name, address, citizenship, and principal business of any person or entity that directly or indirectly owns at least ten (10) percent of the equity of the authorized carrier, and the percentage of equity owned by each of those entities (to the nearest one percent);

(6) A certification that the authorized carrier has not agreed to and will not in the future agree to accept special concessions directly or indirectly from any foreign carrier with respect to any U.S. international route where the foreign carrier possesses market power on the foreign end of the route; and

(7) Interlocking directorates. The name of any interlocking directorates, as defined in § 63.09(g), with each foreign carrier named in the notification. See § 63.09(g).

(8) With respect to each foreign carrier named in the notification, a statement as to whether the notification is subject to paragraph (a) or (c) of this section. In the case of a notification subject to paragraph (a) of this section, the authorized carrier shall include the projected date of closing. In the case of a notification subject to paragraph (c) of this section, the authorized carrier shall include the actual date of closing.

(9) If an authorized carrier relies on an exception in paragraph (b) of this section, then a certification as to which exception the foreign carrier satisfies and a citation to any adjudication upon which the carrier is relying. Authorized carriers relying upon the exceptions in paragraph (b)(2) of this section must make the required certified demonstration in paragraph (b)(2)(i) of this section or the certified commitment to comply with dominant carrier safeguards in paragraph (b)(2)(ii) of this section in the notification required by paragraph (c) of this section.

(f) In order to retain non-dominant status on each newly affiliated route, the authorized carrier should demonstrate that it qualifies for non-dominant classification pursuant to § 63.10. See § 63.10.

(g) Procedure. After the Commission issues a public notice of the submissions made under this section, interested parties may file comments within fourteen days of the public notice.

(1) If the Commission deems it necessary at any time before or after the deadline for submission of public comments, the Commission may impose dominant carrier regulation on the authorized carrier for the affiliated routes based on the provisions of § 63.10. See § 63.10.

(2) In the case of a prior notification filed pursuant to paragraph (a) of this section in which the foreign carrier is authorized to operate in a non-WTO Member, the authorized carrier must demonstrate that it continues to serve the public interest for it to operate on the route for which it proposes to acquire an affiliation with the non-WTO foreign carrier by making the required showing in §§ 63.18(k)(2) or (3) to the Commission. If the authorized carrier is unable to make the required showing in §§ 63.18(k)(2) or (3) or is notified that the affiliation may otherwise harm the public interest pursuant to the Commission's policies and rules, then the Commission may impose conditions necessary to address any public interest harms or may proceed to an immediate authorization revocation hearing. See §§ 63.18(k)(2) and (3).

(h) All authorized carriers are responsible for the continuing accuracy of information provided pursuant to this section for a period of forty-five days after filing. During this period if the information furnished is no longer accurate, the authorized carrier shall as promptly as possible, and in any event within ten days, unless good cause is shown, file with the Secretary in duplicate a corrected notification referencing the FCC file numbers under which the original certification was provided, except that the carrier shall immediately inform the Commission if at any time, not limited to the forty-five days, the representations in the "special concessions" certification provided under paragraph (e)(6) of this section or § 63.18(n) are no longer true. See § 63.18(n).

(i) A carrier that files a prior notification pursuant to paragraph (a) of this section may request confidential treatment of its filing, pursuant to § 0.459 of this chapter, for the first twenty days after filing. Such a request must be made prominently in a cover letter accompanying the filing.

* * * * *

4. Section 63.18 is amended by adding two new sentences immediately preceding the last sentence of paragraph (e)(3) to read as follows:

**§ 63.18 Contents of applications for international common carriers.**

* * * * *

(e) * * *

(3) * * * In the event the transaction requiring a transfer of control or assignment application also requires the filing of a foreign carrier affiliation notification pursuant to § 63.11, the applicant shall reference in the application the foreign carrier affiliation notification and the date of its filing. See § 63.11. * * *

* * * * *

[FR Doc. 00–25980 Filed 10–06–00; 8:45 am]

BILLING CODE 6712–10–P

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 635**

**[I.D. 100300B]**

**Atlantic Highly Migratory Species Fisheries; Atlantic Bluefin Tuna**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Adjustment of General category daily retention limit on previously designated restricted fishing days.

**SUMMARY:** NMFS has determined that the Atlantic bluefin tuna (BFT) General category restricted fishing day (RFD) schedule should be adjusted; i.e., certain RFDs should be waived in order to allow for maximum utilization of the General category subquota for the October—December fishing period. Therefore, NMFS increases the daily retention limit from zero to one large medium or giant BFT on the following previously designated RFDs for 2000: October 7, 10, 14, and 15.

**DATES:** Effective October 4, 2000.

**FOR FURTHER INFORMATION CONTACT:** Pat Scida or Brad McHale, 978–281–9260.

**SUPPLEMENTARY INFORMATION:** Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. General category effort controls (including time-period subquotas and RFDs) are specified annually under 50 CFR 635.23(a) and 635.27(a). The 2000 General category effort controls were specified on July 7, 2000 (65 FR 42883, July 12, 2000).

**Adjustment of Daily Retention Limit for Selected Dates**

Under 50 CFR 635.23(a)(4), NMFS may increase or decrease the daily retention limit of large medium and giant BFT over a range from zero (on RFDs) to a maximum of three per vessel to allow for maximum utilization of the quota for BFT. Catch rates have continued to vary this season, and NMFS recognizes that at this time of year they can be very dependent on weather conditions. In addition, due to the temporal and geographical nature of the fishery, certain gear types and areas are more productive at various times during the fishery. Based on a review of dealer reports, daily landing trends, the availability of BFT on the fishing grounds, and weather conditions, NMFS has determined that adjustment to the RFD schedule, and, therefore, an increase of the daily retention limit for certain previously designated RFDs, is necessary. Therefore, NMFS adjusts the daily retention limit for October 7, 10, 14, and 15, 2000, to one large medium or giant BFT per vessel. NMFS has selected these days in order to give adequate advance notice to fishery participants and NMFS enforcement.

The intent of this adjustment is to allow for maximum utilization of the General category subquotas for the October—December fishing period (specified under 50 CFR 635.27(a)) by General category participants in order to help achieve optimum yield in the General category fishery, to collect a broad range of data for stock monitoring purposes, and to be consistent with the objectives of the Fishery Management Plan for Atlantic Tunas, Swordfish and Sharks. For these same reasons, NMFS has already adjusted the General category daily retention limit for ten previously scheduled RFDs in July and August (65 FR 46654, July 31, 2000), and six previously scheduled RFDs in September (65 FR 54970, September 12, 2000). The remaining previously scheduled RFD (which has not been waived) corresponds to a market closure in Japan, and could promote better ex-vessel prices.

**Classification**

This action is taken under 50 CFR 635.23(a)(4) and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: October 4, 2000.

**Bruce C. Morehead,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 00–25958 Filed 10–4–00; 4:45 pm]

**BILLING CODE: 3510–22–S**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

**[Docket No. 991228354–0078–02; I.D. 100300A]**

**RIN 0648-AM49**

**Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; 2000 Specifications Adjustment**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Inseason adjustment of Loligo squid annual specifications; announcement of a limited directed fishery and subsequent closure.

**SUMMARY:** NMFS announces that the Regional Administrator, Northeast Region, NMFS (Regional Administrator), is increasing the annual specifications for *Loligo* squid, including allowable biological catch (ABC), initial optimum yield (IOY), domestic annual harvest (DAH) and domestic annual processing (DAP), from 13,000 metric tons (mt) to 15,000 mt. The regulations governing the Atlantic mackerel, squid and butterfish fisheries require notice to provide interested parties the opportunity to comment on the adjustments. NMFS also announces that the Period III directed *Loligo* squid commercial fishery in the exclusive economic zone (EEZ) is reopened until 0001 hours October 26, 2000, as a result of this adjustment.

**DATES:** The Period III directed Loligo squid commercial fishery in the EEZ is reopened effective October 7, 2000, through October 25, 2000. Effective 0001 hours, October 26, 2000, the directed fishery for Loligo squid will close through December 31, 2000. Comments on the *Loligo* squid inseason adjustment notice must be received by November 9, 2000.

**ADDRESSES:** Comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark on the outside of the envelope "Comments on Adjustment of *Loligo* Squid Annual Specifications."

**FOR FURTHER INFORMATION CONTACT:** Paul H. Jones, Fishery Policy Analyst, 978–281–9273, fax 978–281–9135, e-mail paul.h.jones@noaa.gov.

**SUPPLEMENTARY INFORMATION:** On March 28, 2000, NMFS published final 2000 initial specifications for the Atlantic mackerel, squid, and butterfish fisheries at 65 FR 16341. The *Loligo* squid specifications were established as follows: 26,000 mt maximum optimum yield (Max OY); 13,000 mt ABC, IOY, DAH and DAP; 0 mt joint venture processing (JVP); and 0 mt total allowable level of foreign fishing (TALFF). The final rule also specified that the *Loligo* squid IOY of 13,000 mt be subdivided into three, 4-month quota periods (Period I (Jan-Apr)—5,460 mt, Period II (May-Aug)—2,340 mt, and Period III (Sep-Dec)—5,200 mt). This quota is made available to the directed fishery until 95 percent of the annual allocation is landed. When landings reach that level, the directed fishery is closed and incidental landings only are allowed, with a limit of 2,500 lb (1.13 mt) per trip.

The most recent assessment of the *Loligo* stock (29th Northeast Regional Stock Assessment Workshop, August 1999 (SAW–29)) concluded that the stock was approaching an overfished condition and overfishing was occurring. The control rule adopted in Amendment 8 to the FMP assumes a linear relationship between biomass levels and fishing mortality rate (F), and implies that, at the current biomass levels, F should be reduced to near zero. However, SAW–29 projections indicated that the control rule is overly conservative, and that, given the nature of the stock, the biomass can rebuild in a relatively short time, even at fishing mortality rates approaching FMSY. Consistent with this advice, the initial specifications for 2000 were set at 90 percent of FMSY, or 13,000 mt.

The most recent data from the NMFS research survey for *Loligo* squid indicate that abundance of this species has increased significantly since the most recent assessment was conducted (SAW–29). Estimates of biomass based on NMFS' Northeast Fisheries Science Center autumn 1999 and spring 2000 survey indices for *Loligo* squid indicate that the stock is currently at, or near, the biomass level that produces maximum sustainable yield (Bmsy).

Section 648.21(e) allows the Regional Administrator, in consultation with the Council, to recommend inseason adjustments to the annual specifications during the fishing year by publishing notification in the **Federal Register** and providing a 30-day public comment period. Accordingly, based on the new survey data, the Council requested that NMFS process an inseason action to adjust the annual specifications for *Loligo* squid, including ABC, IOY, DAH and DAP, from 13,000 mt to 15,000 mt. Given the short-lived nature of this species (1 year) and the most recent survey information, the 2,000-mt increase is justified. Quota Periods I and II are closed to directed fishing when 90 percent of each allocation is harvested, directed fishing for the remainder of the year is ended when 95 percent of the annual DAH is reached. Due to overages in Period I and II in 2000, only approximately 720 mt will be available for harvest by the directed fishery for the remainder of this fishing year, even with the 2,000-mt adjustment. However, the additional allocation will provide the industry with an additional fishing opportunity in Period III and keep vessels from fishing for other, less robust species. Max OY remains at 26,000 mt, and JVP and TALFF remain at 0 mt.

*2000 Final Specifications*

The following table contains the final adjusted specifications for the 2000 Atlantic mackerel, *Loligo* and *Illex* squids, and butterfish fisheries.



TABLE 1. FINAL ANNUAL SPECIFICATIONS FOR ATLANTIC MACKEREL, SQUID, AND BUTTERFISH FOR THE FISHING YEAR JANUARY 1 THROUGH DECEMBER 31, 2000.

Metric Tons (mt)

| Specifications | Squid | | Atlantic Mackerel | Butterfish |
|---|---|---|---|---|
| | Loligo | Illex | | |
| MAX OY | 26,000 | 24,000 | N/A[1] | 16,000 |
| ABC | 15,000 | 24,000 | 347,000 | 7,200 |
| IOY | 15,000 | 24,000 | 75,000[2] | 5,900 |
| DAH | 15,00 | 24,000 | 75,000[3] | 5,900 |
| DAP | 15,00 | 24,000 | 50,000 | 5,900 |
| JVP | 0 | 0 | 10,000[4] | 0 |
| TALFF | 0 | 0 | 0 | 0 |

[1]Not applicable.
[2]OY may be increased during the year, but the total ABC will not exceed 347,000 mt.
[3]Includes 15,000 mt of Atlantic mackerel recreational allocation.
[4]JVP may be increased up to 15,000 mt at discretion of the Regional Administrator.

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*Reopening of the Period III Loligo Squid Commercial Fishery*

Section 648.22 requires the closure of the directed Loligo squid fishery in the EEZ when 95 percent of the total annual DAH *Loligo* squid has been harvested. NMFS is further required to notify, in advance of the closure, the Executive Directors of the Mid-Atlantic, New England, and South Atlantic Fishery Management Councils; mail notification of the closure to all holders of *Loligo* squid permits at least 72 hours before the effective date of the closure; provide adequate notice of the closure to recreational participants in the fishery; and publish notification of the closure in the **Federal Register**.

NMFS issued a notification in the **Federal Register** on September 6, 2000 (65 FR 53940), announcing that the directed fishery for *Loligo* squid in the EEZ would close on September 7, 2000. This inseason adjustment will reopen the fishery effective 0001 hours, October 7, 2000. Based on the rate of fishing in the *Loligo* fishery in prior years, NMFS has determined that 95 percent of the total annual DAH for *Loligo* squid will be harvested by October 25, 2000. Therefore, vessels issued a commercial Federal fisheries permit for the *Loligo* squid fishery may land *Loligo* squid effective 0001 hours, October 7, 2000, through October 25, 2000. Effective 0001 hours, October 26, 2000, the directed fishery for *Loligo* squid will close and vessels issued Federal permits for *Loligo* squid may not retain or land more than 2,500 lb (1.13 mt) of *Loligo* per trip. The directed fishery will reopen effective 0001 hours, January 1, 2001, which is the beginning of the Period I quota for the 2001 fishing year.

**Classification**

This action is required by 50 CFR part 648 and is exempt from review under E.O. 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: October 3, 2000.

**Richard W. Surdi,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 00–25939 Filed 10–4–00; 4:45 pm]

BILLING CODE: 3510–22 –S



# Proposed Rules

Federal Register
Vol. 65, No. 196
Tuesday, October 10, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Parts 905 and 944

**[Docket No. FV99–905–5 PR]**

### Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida and Imported Grapefruit; Clarification of Inspection Requirements

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This rule would clarify inspection requirements for shipments of Florida citrus and imports of grapefruit. The handling of citrus grown in Florida is regulated under a marketing order administered locally by the Citrus Administrative Committee (Committee). Grapefruit imports are subject to an import regulation issued under section 8e of the Agricultural Marketing Agreement Act of 1937. This change would specify in the regulations undersize tolerances for Florida citrus and imported grapefruit that are currently applied by the inspection service, and would clarify the regulations. This change would also renumber citations in the domestic and import regulations to reflect revisions to the numbering of the United States Standards for Grades of Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida.

**DATES:** Comments must be received by December 11, 2000.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698; or E-mail: moab.docketclerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** William G. Pimental, Marketing Specialist, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883–2276; telephone: (863) 299–4770, Fax: (863) 299–5169; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

**SUPPLEMENTARY INFORMATION:** This proposed rule is issued under Marketing Agreement No. 84 and Marketing Order No. 905, both as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

This proposed rule is also issued under section 8e of the Act, which provides that whenever certain specified commodities, including grapefruit, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodities.

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

The order for Florida citrus provides for the establishment of minimum grade and size requirements with the concurrence of the Secretary. The minimum grade and size requirements are designed to provide fresh markets with fruit of acceptable quality and size, thereby maintaining consumer confidence for fresh Florida citrus. Maintaining confidence in the commodity shipped contributes to stable marketing conditions in the interest of growers, handlers, and consumers, and helps increase returns to Florida citrus growers.

Section 905.52 of the order, in part, authorizes the Committee to recommend minimum grade and size requirements to the Secretary. Section 905.306 specifies minimum grade and size requirements for different varieties of fresh Florida citrus. Such regulations may be modified, suspended, or terminated under § 905.52. Section 905.53 specifies that whenever the handling of a variety of a type of fruit is regulated pursuant to § 905.52, each handler who handles any such type of fruit shall, prior to such handling of any lot of such variety, cause the lot to be inspected by the Federal-State Inspection Service and certified as

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meeting all applicable requirements of that regulation.

This proposed rule would clarify inspection requirements for oranges, grapefruit, tangerines, and tangelos grown in Florida and imported grapefruit. Current inspection procedures allow undersize tolerances for domestic shipments of Florida citrus failing to meet minimum size regulations under the order. These procedures also allow undersize tolerances for imported grapefruit failing to meet minimum size requirements established under the grapefruit import regulation. Specifically, these procedures allow for a 10 percent tolerance for undersize fruit in each lot and a 15 percent tolerance for undersize fruit in any individual sample. Undersize tolerances allow for variations to proper sizing and reduce handler packing costs. This change would specify these inspection procedures in the order's rules and regulations and in the grapefruit import regulation. The Committee unanimously recommended specifying the undersize tolerances for Florida citrus in the regulations at a meeting on April 6, 1999.

Paragraph (c) of § 905.306 currently references sections of the United States Standards for Grades of Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida with the intention of providing tolerances for undersized fruit. However, the sections specified reference grade defects, not size tolerances. Therefore, specific undersize tolerances for Florida grown oranges, grapefruit, tangerines, and tangelos would be added to the text of the regulations.

Paragraph (c) of § 905.306 would be revised to allow for a 10 percent tolerance for undersized fruit in each lot and a 15 percent tolerance for undersized fruit in any individual sample. Additionally, paragraph (c) of § 944.106 of the grapefruit import regulation would also be revised to reference the undersize tolerances specified in paragraph (c) of § 905.306 to recognize current inspection procedures.

This rule would also renumber citations in the order to reflect the revised United States Standards for Grades of Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida. Effective August 1, 1996, the various grade standards for Florida citrus were amended. Some sections of the amended standards were renumbered. This action would renumber some section references to the U.S. grade standards in §§ 905.146 and 905.306 to bring them into conformity with the renumbered sections in the amended standards.

Similar changes also would be made in paragraph (c) of § 944.106 of the grapefruit import regulation issued under section 8e of the Act. That section provides that when certain domestically produced commodities, including grapefruit, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements. The grapefruit import regulation is based on the requirements issued under the marketing order for Florida citrus. Accordingly, a corresponding change to the grapefruit import regulation would be necessary.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the AMS has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility. Import regulations issued under the Act are based on those established under Federal marketing orders.

There are approximately 100 Florida citrus handlers subject to regulation under the marketing order, about 11,000 Florida citrus producers in the regulated area, and about 25 grapefruit importers. Small agricultural service firms, which include handlers and importers, have been defined by the Small Business Administration (13 CFR 121.201) as those whose annual receipts are less than $5,000,000, and small agricultural producers are defined as those whose annual receipts are less than $500,000.

Based on the Florida Agricultural Statistics Service and Committee data for the 1998–99 season, the average annual f.o.b. price for fresh Florida citrus during the 1998–99 season was $8.66 per ⅘ bushel carton for all shipments, and the total shipments for the 1998–99 season were 63.6 million cartons of citrus. Using information provided by the Committee, about 60 percent of citrus handlers could be considered small businesses under the SBA definition, and the Department believes that the majority of Florida citrus producers and grapefruit importers may be classified as small entities.

Section 905.52 of the order, in part, authorizes the Committee to recommend minimum grade and size requirements to the Secretary. Section 905.306 specifies minimum grade and size requirements for different varieties of fresh Florida citrus. Section 905.53 specifies that whenever the handling of a variety of a type of fruit is regulated pursuant to § 905.52, each handler who handles any such type of fruit shall, prior to such handling of any lot of such variety, cause the lot to be inspected by the Federal-State Inspection Service and certified as meeting all applicable requirements of that regulation.

This proposed rule would clarify inspection requirements for oranges, grapefruit, tangerines, and tangelos grown in Florida and imported grapefruit. Current inspection procedures allow for a 10 percent tolerance for undersize fruit in each lot and a 15 percent tolerance for undersize fruit in any individual sample for both domestic and import shipments. This action would add to undersize tolerances to the order's rules and regulations and in the import regulation for grapefruit. This change would also renumber citations in the order to reflect revisions in the United States Standards for Grades of Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida made in August 1996. Similar changes would also be made to the grapefruit import regulation issued under section 8e of the Act.

This rule would have a positive impact on affected entities. This action would enhance the understandability of the text of the regulations. The undersize tolerances allow for variations to proper sizing and reduce handler packing costs. Without such tolerances, more fruit would fail to meet minimum size requirements without reconditioning, and handler packing costs would increase accordingly. Thus, the tolerances help facilitate shipments of Florida citrus. The Committee unanimously recommended specifying the undersize tolerances for Florida citrus in the regulations at a meeting on April 6, 1999.

During the period January 1, 1999, through December 31, 1999, imports of grapefruit totaled 19,400,000 pounds (approximately 456,470 cartons). Recent yearly data indicate that imports from May through November are typically negligible. Future imports should not vary significantly from the 19,400,000 pounds. The Bahamas were the principal source of imported grapefruit, accounting for 93 percent of the total. Israel, Mexico, and Turkey supplied remaining imports. Most imported grapefruit enters the United States from November through May.

With regard to alternatives, this action offers the best alternative to achieve the intended purpose of clarifying the inspection requirements.

This rule would not impose any additional reporting or recordkeeping requirements on either small or large Florida citrus handlers and importers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors. In addition, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule. However, Florida citrus must meet the requirements specified in the U.S. standards for the various types of citrus grown in Florida issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 through 1627).

Further, the Committee's meeting was widely publicized throughout the Florida citrus industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the April 6, 1999, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and speciality crop marketing agreements and orders may be viewed at the following website: http://www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this proposed rule.

A 60-day comment period is provided to allow interested persons to respond to this proposal. All written comments timely received will be considered before a final determination is made on this matter.

**List of Subjects**

*7 CFR Part 905*

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

*7 CFR Part 944*

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, Oranges.

For the reasons set forth above, 7 CFR Parts 905 and 944 are proposed to be amended as follows:

## PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

1. The authority citation for 7 CFR Parts 905 and 944 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. In § 905.146, paragraph (c)(1) is revised to read as follows:

**§ 905.146 Special purpose shipments.**

* * * * *

(c) * * *

(1) Such fruit meets the requirements of U. S. No. 2 Russet grade and those requirements of U. S. No. 1 grade relating to shape (form), as such requirements are set forth in the revised U. S. Standards for Grades of Florida Oranges and Tangelos (7 CFR 51.1140 through 51.1179), the revised Standards for Florida Tangerines (7 CFR 51.1810 through 51.1837), or the revised U. S. Standards for Grades of Florida Grapefruit (7 CFR 51.750 through 51.784). Such fruit also meets applicable minimum size requirements in effect for domestic shipments of citrus fruits.

* * * * *

4. In § 905.306, paragraphs (c) and (d) are revised to read as follows:

**§ 905.306 Orange, Grapefruit, Tangerine and Tangelo Regulation.**

* * * * *

(c) *Size tolerances.* To allow for variations incident to proper sizing in the determination of minimum diameters as prescribed in Tables I and II, not more than 10 percent, by count, of the fruit in any lot of containers may fail to meet the minimum diameter size requirements, and not more than 15 percent, by count, in any individual sample may fail to meet the minimum diameter size requirements specified: *Provided,* That such tolerances for other than Navel and Temple oranges shall be based only on the oranges in the lot measuring 2-14/16 inches or smaller in diameter.

(d) Terms used in the marketing order including Improved No. 2 grade for grapefruit, when used herein, mean the same as is given to the terms in the order; Florida No. 1 grade for Honey tangerines means the same as provided in Rule No. 20–35.03 of the Regulations of the Florida Department of Citrus, and terms relating to grade, except Improved No. 2 grade for grapefruit and diameter, shall mean the same as is given to the terms in the revised U.S. Standards for Grades of Florida Oranges and Tangelos (7 CFR 51.1140–51.1179), the revised U.S. Standards for Florida Tangerines (7 CFR 51.1810–51.1837), or the revised U.S. Standards for Grades of Florida Grapefruit (7 CFR 51.750–51.784).

## PART 944—FRUITS; IMPORT REGULATIONS

5. In § 944.106, paragraph (c) is revised to read as follows:

**§ 944.106 Grapefruit import regulation.**

* * * * *

(c) Terms and tolerances pertaining to grade and size requirements, which are defined in the United States. Standards for Grades of Florida Grapefruit (7 CFR 51.750–51.784), and in Marketing Order No. 905 (7 CFR 905.18 and 905.306), shall be applicable herein.

* * * * *

Dated: October 3, 2000.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 00–25946 Filed 10–6–00; 8:45 am]

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**DEPARTMENT OF THE TREASURY**

**Office of Thrift Supervision**

**12 CFR Parts 563b and 575**

**[No. 2000–57]**

**RIN 1550–AB24**

## Mutual Savings Associations, Mutual Holding Company Reorganizations, Conversions From Mutual to Stock Form

**AGENCY:** Office of Thrift Supervision, Treasury.

**ACTION:** Proposed rule; extension of comment period.

**SUMMARY:** The Office of Thrift Supervision (OTS) is extending the comment period until November 9, 2000 for its proposed rule regarding mutual savings associations, mutual holding company reorganizations, and conversions from mutual to stock form published on July 12, 2000.

**DATES:** Comments must be received by November 9, 2000.

**ADDRESSES:**

*Mail:* Send comments to Manager, Dissemination Branch, Information Management and Services Division,

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Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention Docket No. 2000–57.

*Delivery:* Hand deliver comments to the Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9:00 a.m. to 4:00 p.m. on business days, Attention Docket No. 2000–57.

*Facsimiles:* Send facsimile transmissions to FAX Number (202) 906–7755, Attention Docket No. 2000–57; or (202) 906–6956 (if comments are over 25 pages).

*E-Mail:* Send e-mails to "public.info@ots.treas.gov", Attention Docket No. 2000–57, and include your name and telephone number.

*Public Inspection:* Interested persons may inspect comments at the Public Reference Room, 1700 G St. NW., from 10:00 a.m. until 4:00 p.m. on Tuesdays and Thursdays or obtain comments and/or an index of comments by facsimile by telephoning the Public Reference Room at (202) 906–5900 from 9:00 a.m. until 5:00 on business days. Comments and the related index will also be posted on the OTS Internet Site at "www.ots.treas.gov".

**FOR FURTHER INFORMATION CONTACT:** David A. Permut, Counsel (Business and Finance) (202) 906–7505, Business Transactions Division, Chief Counsel's Office; Timothy P. Leary, Counsel (Banking and Finance) (202) 906–7170, Regulations and Legislation Division, Chief Counsel's Office; Mary Jo Johnson, Project Manager, (202) 906–5739, Supervision Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

**SUPPLEMENTARY INFORMATION:** The proposed rule and interim final rule, published in the **Federal Register** on July 12, 2000 (65 FR 43092 and 43088), indicated that public comments were to be submitted to the OTS no later than October 10, 2000. OTS has received a request for an extension of the comment period to accommodate the views of a number of mutual institution managers who will be meeting in the next 30 days. In order to afford the public adequate time to comment, the OTS has determined to extend the comment period for 30 days to accommodate this request. Therefore, the comment period is hereby extended until November 9, 2000.

Dated: October 4, 2000.

By the Office of Thrift Supervision.

**Ellen Seidman,**

*Director.*

[FR Doc. 00–25943 Filed 10–6–00; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 2000–NM–157–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 767 Series Airplanes Powered by General Electric or Pratt & Whitney Engines

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 767 series airplanes powered by General Electric or Pratt & Whitney engines. This proposal would require repetitive inspections to detect discrepancies of the aft-most fastener holes in the horizontal tangs of the midspar fitting of the strut, and corrective actions, if necessary. This proposal also provides for optional terminating action for the repetitive inspections. This action is necessary to prevent fatigue cracking in primary strut structure and reduced structural integrity of the strut, which could result in separation of the strut and engine. This action is intended to address the identified unsafe condition.

**DATES:** Comments must be received by November 24, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–157–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–157–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** James Rehrl, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2783; fax (425) 227–1181.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–157–AD." The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–157–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.



### Discussion

The FAA has received a report indicating fatigue cracking of an inboard midspar fitting on the number two pylon of a Boeing Model 767 series airplane powered by General Electric engines. The crack was detected during replacement of a midspar fitting bushing, and the airplane had accumulated 21,375 total flight hours and 11,563 total flight cycles. A cracked midspar fitting could result in a fractured fitting and drooping of the strut at the strut-to-wing interface. Structural assessment indicates that the actual operational loads applied to the nacelle strut and wing structure are higher than the analytical loads that were used during the initial design. Subsequent analysis and service history, which includes numerous reports of fatigue cracking on certain strut and wing structure, indicate that fatigue cracking can occur on the primary strut structure before an airplane reaches its design service objective of 20 years or 50,000 total flight cycles. Analysis also indicates that such cracking, if it were to occur, would grow at a much greater rate than originally expected. This condition, if not corrected, could result in reduced structural integrity of the strut and separation of the strut and engine.

### Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 767–54A0101, Revision 1, dated February 3, 2000, which describes procedures for accomplishment of either repetitive detailed visual or high frequency eddy current inspections to detect discrepancies (cracking, incorrect fastener hole diameter), of the aft-most fastener holes in the horizontal tangs of the midspar fitting of the strut, and corrective actions. The corrective actions consist of rework of the aft-most fastener holes or replacement of the midspar fittings of the strut. The service bulletin references the strut improvement program (SIP) for accomplishment of the replacement. The service bulletin also specifies contacting the manufacturer for accomplishment of certain repairs. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

### Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

### Differences Between Proposed Rule and Service Bulletin

Operators should note that, although the service bulletin describes procedures for inspections of the two aft-most fastener holes of the midspar fitting to detect cracking, this proposed AD would require inspections of the four aft-most fastener holes of the midspar fitting. The FAA has determined that this is necessary due to the service history of cracking on the Model 747 series airplane midspar fittings, which are made of the same material as the midspar fittings on the Model 767 series airplane and are also subject to similar loading conditions.

Operators also should note that, although the service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions; this proposed AD would require the repair of those conditions to be accomplished in accordance with a method approved by the FAA, or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings.

This proposed AD also would allow operators the option, if cracking is detected, of either repair of the midspar fitting or replacement with a serviceable fitting in accordance with a method approved by the FAA. This is due to the fact that parts are not always readily available and operators required to accomplish the strut improvement program before further flight could have a problem obtaining these parts.

### Cost Impact

There are approximately 636 Model 767 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 235 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 1 work hour per airplane to accomplish the proposed detailed visual inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed inspection on U.S. operators is estimated to be $14,100, or $60 per airplane, per inspection cycle.

It would take approximately 3 work hours per airplane to accomplish the proposed eddy current inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed inspection on U.S. operators is estimated to be $42,300, or $180 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

### Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

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**§39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Boeing:** Docket 2000–NM–157–AD.

*Applicability:* Model 767 series airplanes, certificated in any category, as listed in Boeing Service Bulletin 767–54A0101, Revision 1, dated February 3, 2000.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent fatigue cracking in primary strut structure and reduced structural integrity of the strut, which could result in separation of the strut and engine, accomplish the following:

**Repetitive Inspections/Corrective Actions**

(a) Before the accumulation of 10,000 total flight cycles, or within 600 flight cycles after the effective date of this AD, whichever occurs later: Accomplish the inspections required by paragraph (a)(1) or (a)(2) of this AD, as applicable.

(1) Perform a detailed visual inspection of the four aft-most fastener holes in the horizontal tangs of the midspar fitting of the strut to detect cracking, in accordance with Part 1, "Detailed Visual Inspection," of the Accomplishment Instructions of Boeing Service Bulletin 767–54A0101, Revision 1, dated February 3, 2000. If no cracking is detected, repeat the inspection thereafter at the applicable intervals specified in Table 1, "Reinspection Intervals for Part 1—Detailed Visual Inspection" included in Figure 1 of the service bulletin.

**Note 2:** For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(2) Perform a high frequency eddy current inspection of the four aft-most fastener holes in the horizontal tangs of the midspar fitting of the strut to detect discrepancies (cracking, incorrect fastener hole diameter), in accordance with Part 2, "High Frequency Eddy Current (HFEC) Inspection," of the Accomplishment Instructions of the service bulletin. Accomplish the requirements specified in paragraph (a)(2)(i) or (a)(2)(ii) of this AD, as applicable; and repeat the inspection thereafter at the applicable intervals specified in Table 2, "Reinspection Intervals for Part 2—HFEC Inspection" included in Figure 1 of the service bulletin.

(i) If no cracking is detected and the fastener hole diameter is less than or equal to 0.5322 inch, rework the hole in accordance with Part 3 of the Accomplishment Instructions of the service bulletin.

(ii) If no cracking is detected and the fastener hole diameter is greater than 0.5322 inch, accomplish the requirements specified in either paragraph (b)(1) or (b)(2) of this AD.

(b) If any cracking is detected after accomplishment of any inspection required by paragraph (a) of this AD, before further flight, accomplish the requirements specified in either paragraph (b)(1) or (b)(2) of this AD.

(1) Accomplish the terminating action specified in Part 4 of the Accomplishment Instructions of Boeing Service Bulletin 767–54A0101, Revision 1, dated February 3, 2000. Accomplishment of this paragraph terminates the requirements of this AD.

(2) Replace the midspar fitting of the strut with a serviceable part, or repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Repeat the applicable inspection thereafter at the applicable time specified in paragraph (a)(1) or (a)(2) of this AD.

(c) If any discrepancies (cracking, incorrect fastener hole diameter) are detected after accomplishment of any inspection required by paragraph (a) of this AD, for which the service bulletin specifies that the manufacturer may be contacted for disposition of those repair conditions: Before further flight, accomplish the corrective actions (including fastener hole rework and/or midspar fitting replacement) in accordance with a method approved by the Manager, Seattle ACO; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings.

**Alternative Methods of Compliance**

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

**Special Flight Permit**

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on October 3, 2000.

**Donald L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–25968 Filed 10–6–00; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 99–NM–127–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 767 Series Airplanes Powered by General Electric Engines

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 767 series airplanes powered by General Electric engines. This proposal would require modification of the nacelle strut and wing structure. This proposal is prompted by reports indicating that the actual operational loads applied to the nacelle are higher than the analytical loads that were used during the initial design. Such an increase in loading can lead to fatigue cracking in the primary strut structure prior to an airplane reaching its design service objective. The actions specified by the proposed AD are intended to prevent fatigue cracking in the primary strut structure and consequent reduced structural integrity of the strut.

**DATES:** Comments must be received by November 24, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–127–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm–nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 99–NM–127–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.



The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** James G. Rehrl, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2783; fax (425) 227–1181.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–127–AD." The postcard will be date stamped and returned to the commenter.

**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–127–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

**Discussion**

The FAA has received reports indicating that the airplane manufacturer has accomplished a structural reassessment of the damage tolerance capabilities of the Boeing Model 767 series airplane powered by General Electric engines. This reassessment indicates that the actual operational loads applied to the nacelle strut and wing structure are higher than the analytical loads that were used during the initial design. Subsequent analysis and service history, which includes numerous reports of fatigue cracking on certain strut and wing structure, indicate that fatigue cracking can occur on the primary strut structure before an airplane reaches its design service objective of 20 years or 50,000 flight cycles. Analysis also indicates that such cracking, if it were to occur, would grow at a much greater rate than originally expected. Fatigue cracking in the primary strut structure would result in reduced structural integrity of the strut.

**Explanation of Relevant Service Information**

Boeing recently has developed a modification of the strut-to-wing attachment structure installed on Model 767 series airplanes powered by General Electric engines. This modification significantly improves the load-carrying capability and durability of the strut-to-wing attachments. Such improvements also will substantially reduce the possibility of fatigue cracking and corrosion developing in the attachment assembly.

The FAA has reviewed and approved Boeing Service Bulletin 767–54–0081, dated July 29, 1999, which describes procedures for modification of the nacelle strut and wing structure. The modification consists of replacing many of the significant load-bearing components of the strut and wing (e.g., the side link fittings, the midspar fittings, the side load fittings, certain fuse pins assemblies, etc.) with improved components.

The service bulletin contains a formula for calculating an optional compliance threshold for the specified modification. This formula is intended to be used as an alternative to the 20-year calendar threshold specified in the service bulletin.

In addition, Table 2 of the service bulletin also identifies six related service bulletin modifications that must be accomplished before or at the same time as the modification in Boeing Service Bulletin 767–54–0081:

- *Boeing Service Bulletin 767–29–0057:* The FAA has reviewed and approved Boeing Service Bulletin 767–29–0057, dated December 16, 1993, which describes procedures for modification of the electrical wiring support of the alternating current motor pump of the main hydraulic power system. The modification involves installing new band clamps and index-straps, and on certain airplanes, installing new wire support brackets on the strut bulkhead.
- *Boeing Service Bulletin 767–54–0069:* The FAA has reviewed and approved Boeing Service Bulletin 767–54–0069, Revision 1, dated January 29, 1998, which describes procedures for rework of the side load fitting and tension fasteners, as applicable, and replacement of midspar fuse pins with new, higher-strength midspar fuse pins. The rework involves increasing the size of the tension bolts of the inboard and outboard side load fittings. The replacement also involves installing new, higher-strength bolts and radius fillers in the side load fittings and backup support structure, and installing higher-strength fasteners common to the front spar and rib number 8 rib post.
- *Boeing Service Bulletin 767–54–0083:* The FAA has reviewed and approved Boeing Service Bulletin 767–54–0083, dated September 17, 1998, which describes procedures for replacement of the upper link with a new, improved part that will increase the strength and durability of the upper link installation. That service bulletin also describes procedures for modification of the wire support bracket attached to the upper link.
- *Boeing Service Bulletin 767–54–0088:* The FAA has reviewed and approved Boeing Service Bulletin 767–54–0088, Revision 1, dated July 29, 1999, which describes procedures for replacement of the upper link fuse pin and aft pin with new, improved pins that will increase the strength and durability of the upper link installation.
- *Boeing Service Bulletin 767–54A0094:* The FAA has previously reviewed and approved Boeing Service Bulletin 767–54A0094, Revision 1, dated September 16, 1999. This service bulletin is referenced as the appropriate service information for accomplishing the actions required in AD 2000–07–05, amendment 39–11659, which was issued March 31, 2000 (65 FR 18883, April 10, 2000). This service bulletin describes procedures for repetitive detailed visual inspections to detect cracking of the one-piece diagonal brace of the forward and aft lugs, and corrective actions, if necessary. The corrective actions involve installing a new, three-piece diagonal brace, which eliminates the need for the repetitive inspections. The service bulletin also describes procedures for rework of the three-piece diagonal brace, which

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increases the inspection intervals of the three-piece diagonal brace.

• *Boeing Service Bulletin 767–57–0053:* Boeing Service Bulletin 767–54–0081 lists Boeing Service Bulletin 767–57–0053, Revision 1, however, the FAA has previously reviewed and approved Boeing Service Bulletin 767–57–0053, Revision 2, dated September 23, 1999. This service bulletin is referenced as the appropriate source of service information for accomplishing the actions required in AD 2000–12–17, amendment 39–11795, which was issued June 9, 2000 (65 FR 37843, June 19, 2000). Revision 1 also is acceptable for compliance with the requirements in that AD. Revision 2 of the service bulletin describes procedures for repetitive ultrasonic and eddy current inspections of the pitch load fitting lugs of the wing front spar for cracking, and rework of the fitting, if necessary.

Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition.

**Explanation of Requirements of Proposed Rule**

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously, except as discussed below.

**Differences Between Proposed Rule and Service Bulletin**

Operators should note that, although Boeing Service Bulletin 767–54–0081 specifies that the manufacturer may be contacted for disposition of certain damage conditions that may be detected during accomplishment of the modification, this proposal would require the repair of those conditions to be accomplished in accordance with a method approved by the FAA.

**Cost Impact**

There are approximately 381 airplanes of the affected design in the worldwide fleet. The FAA estimates that 159 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1,006 work hours, including time for gaining access and closing up, per airplane to accomplish the proposed modification in Boeing Service Bulletin 767–54–0081, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $9,597,240, or $60,360 per airplane.

It would take approximately 16 work hours per airplane to accomplish the proposed actions described in Boeing Service Bulletin 767–29–0057, at an average labor rate of $60 per work hour. Required parts would be provided at no cost by the airplane manufacturer. Based on these figures, the cost impact of these proposed actions on U.S. operators is estimated to be $152,640, or $960 per airplane.

It would take approximately 106 work hours per airplane to accomplish the actions described in Boeing Service Bulletin 767–53–0069, Revision 1, at an average labor rate of $60 per work hour. Required parts would be provided at no cost by the airplane manufacturer. Based on these figures, the cost impact of these proposed actions on U.S. operators is estimated to be $1,011,240, or $6,360 per airplane.

It would take approximately 1 work hour per airplane to accomplish the actions described in Boeing Service Bulletin 767–54–0083, at an average labor rate of $60 per work hour. Required parts would be provided at no cost by the airplane manufacturer. Based on these figures, the cost impact of these proposed actions on U.S. operators is estimated to be $9,540, or $60 per airplane.

It would take approximately 4 work hours per airplane to accomplish the actions described in Boeing Service Bulletin 767–54–0088, Revision 1, at an average labor rate of $60 per work hour. Required parts would be provided at no cost by the airplane manufacturer. Based on these figures, the cost impact of these proposed actions on U.S. operators is estimated to be $38,160, or $240 per airplane.

It would take approximately 20 work hours per airplane to accomplish the proposed actions described in Boeing Service Bulletin 767–54A0094, Revision 1, at an average labor rate of $60 per work hour. Required parts would be provided at no cost by the airplane manufacturer. Based on these figures, the cost impact of these proposed actions on U.S. operators is estimated to be $190,800, or $1,200 per airplane. Because the actions described in this service bulletin are already required by another AD action, this proposed requirement would add no new costs for affected operators.

It would take approximately 5 work hours per airplane to accomplish the proposed actions described in Boeing Service Bulletin 767–57–0053, Revision 2, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of these proposed actions on U.S. operators is estimated to be $47,700, or $300 per airplane. Because the actions described in this service bulletin are already required by another AD action, this proposed requirement would add no new costs for affected operators.

Some operators may have accomplished certain modifications on some or all of the airplanes in their fleets, while other operators may not have accomplished any of the modifications on any of the airplanes in their fleets. As indicated earlier in this preamble, the FAA invites comments specifically on the overall economic aspects of this proposed rule.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

**Regulatory Impact**

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:



**PART 39—AIRWORTHINESS DIRECTIVES**

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Boeing:** Docket 99–NM–127–AD.

*Applicability:* Model 767 series airplanes powered by General Electric engines, line numbers 1 through 663 inclusive, certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent fatigue cracking in the primary strut structure and consequent reduced structural integrity of the strut, accomplish the following:

**Modification**

(a) Modify the nacelle strut and wing structure on both the left and right sides of the airplane, in accordance with Boeing Service Bulletin 767–54–0081, dated July 29, 1999, at the later of the times specified in paragraphs (a)(1) and (a)(2) of this AD.

(1) Prior to the accumulation of 37,500 total flight cycles, or within 20 years since date of manufacture, whichever occurs first. Use of the optional threshold formula described in Figure 1 on page 54 of the service bulletin is an acceptable alternative to the 20-year threshold provided that the conditions specified in Figure 1 of the service bulletin are met.

(2) Within 3,000 flight cycles after the effective date of this AD.

(b) Prior to or concurrently with the accomplishment of the modification of the nacelle strut and wing structure required by paragraph (a) of this AD; as specified in paragraph 1.D., Table 2, "Prior or Concurrent Service Bulletins," on page 8 of Boeing Service Bulletin 767–54–0081, dated July 29, 1999; accomplish the actions specified in Boeing Service Bulletin 767–29–0057, dated December 16, 1993; Boeing Service Bulletin 767–54–0069, Revision 1, dated January 29, 1998; Boeing Service Bulletin 767–54–0083, dated September 17, 1998; Boeing Service Bulletin 767–54–0088, Revision 1, dated July 29, 1999; Boeing Service Bulletin 767–54A0094, Revision 1, dated September 16, 1999; and Boeing Service Bulletin 767–57–0053, Revision 2, dated September 23, 1999; as applicable, in accordance with those service bulletins.

**Note 2:** AD 2000–12–17, amendment 39–11795, requires accomplishment of Boeing Service Bulletin 767–57–0053, Revision 2, dated September 23, 1999. However, inspections and rework accomplished in accordance with Boeing Service Bulletin 767–57–0053, Revision 1, dated October 31, 1996, are acceptable for compliance with the applicable actions required by paragraph (b) of this AD.

**Note 3:** AD 2000–07–05, amendment 39–11659, requires accomplishment of Boeing Service Bulletin 767–54A0094, dated May 22, 1998. However, inspections and rework accomplished in accordance with Boeing Service Bulletin 767–54A0094, dated May 22, 1998, are acceptable for compliance with the applicable actions required by paragraph (b) of this AD.

(c) If any damage to the airplane structure is found during the accomplishment of the modification required by paragraph (a) of this AD, and the service bulletin specifies to contact Boeing for appropriate action: Prior to further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, or a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

**Alternative Methods of Compliance**

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

**Note 4:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

**Special Flight Permits**

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on October 3, 2000.

**Donald L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–25967 Filed 10–6–00; 8:45 am]

BILLING CODE 4910–13–U

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. 2000–NM–184–AD]**

**RIN 2120–AA64**

**Airworthiness Directives; Boeing Model 757–200 Series Airplanes**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 757–200 series airplanes, that currently requires inspections to detect cracking on the free edge of the tang, if necessary, and of the fastener holes in the lower spar chord; and various follow-on actions. That AD also provides for an optional terminating action for the repetitive inspections. This action would add inspections to detect additional cracking of the fastener holes in the lower spar chord. This action also adds an optional terminating modification. This proposal is prompted by the issuance of new service information. The actions specified by the proposed AD are intended to detect and correct fatigue cracking in the lower spar chord, which could result in reduced structural integrity of the engine strut.

**DATES:** Comments must be received by November 24, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–184–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9–anm–nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–184–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington

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98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Dennis Stremick, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2776; fax (425) 227–1181.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000-NM–184-AD." The postcard will be date stamped and returned to the commenter.

**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–184–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

**Discussion**

On March 5, 1997, the FAA issued AD 97–06–04, amendment 39–9961 (62 FR 11760, March 13, 1997), applicable to certain Boeing Model 757–200 series airplanes, to require inspections to detect cracking on the free edge of the tang, if necessary, and of the fastener holes in the lower spar chord; and various follow-on actions. That AD also provides for optional terminating action for the repetitive inspections. That action was prompted by a report of fatigue cracking in the lower spar chord of two Model 757 series airplanes. The requirements of that AD are intended to detect and correct such fatigue cracking, which could result in reduced structural integrity of the engine strut.

**Related Rulemaking**

This proposed AD is related to AD 99–24–07, amendment 39–11431 (64 FR 66370, November 26, 1999), applicable to certain Boeing Model 757 series airplanes equipped with Rolls Royce RB211 engines, that requires modification of the nacelle strut and wing structure. In the preamble to AD 97–06–04, the FAA specified that the actions required by that AD were considered "interim action" and that the manufacturer was developing a modification to positively address the unsafe condition. The FAA indicated that it may consider further rulemaking action once the modification was developed, approved, and available. The manufacturer now has developed such a modification, and the FAA issued AD 99–24–07 to require accomplishment of that modification.

**Actions Since Issuance of Previous Rule**

Since the issuance of AD 97–06–04, the FAA has reviewed and approved Boeing Service Bulletin 757–54–0031, Revision 4, dated November 11, 1999, which describes procedures for additional bolt hole inspections to detect further cracking of the fastener holes that promulgated in a different direction in the lower spar chord than the area described in that AD. This inspection was added due to a report of a crack in the lower spar chord on a Model 757 series airplane with fewer flight cycles than the number of flight cycles stated in the threshold table of Boeing Service Bulletin 757–54–0031, Revision 2, dated December 19, 1996. Revision 2 was referenced as the appropriate source of service information for accomplishment of the actions required by AD 97–06–04, but did not include the lower spar chord area specified in Revision 4.

**Explanation of Requirements of Proposed Rule**

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 97–06–04 to continue to require inspections to detect cracking on the free edge of the tang, if necessary, and of the fastener holes in the lower spar chord; and various follow-on actions. This proposed AD also would continue to provide an optional terminating action for the repetitive inspections. This new action would add inspections to detect additional cracking of the fastener holes in the lower spar chord. This action also adds an optional terminating modification. The actions would be required to be accomplished in accordance with the service bulletin described previously, except as discussed below.

**Difference Between Service Bulletin and This AD**

Operators should note that, although the service bulletin referenced in this AD recommends accomplishment of the second eddy current inspection within 6,000 flight cycles after accomplishment of the first inspection, this AD adds a "grace period" of 60 days due to the length of time that has passed since the issuance of that AD. The FAA has been advised that a significant number of the affected Model 757 series airplanes have already accomplished the first inspection. In developing an appropriate compliance time for this action, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the manufacturer's recommendation as to an appropriate compliance time, parts availability, and the practical aspect of accomplishing the required inspection within an interval of time that parallels the normal scheduled maintenance for the majority of affected operators.

In light of this, the FAA has determined that, for operators that have already accomplished the first inspection, a "grace period" of 60 days is necessary to ensure that the affected airplanes are inspected in a timely manner and that an acceptable level of safety is maintained.

**Cost Impact**

There are approximately 418 Model 757–200 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 151 airplanes of U.S. registry would be affected by this proposed AD.

The inspections that are currently required by AD 97–06–04 take approximately 52 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $471,120, or $3,120 per airplane.

The new inspections that are proposed in this AD action would take approximately 4 work hours per inspection, per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be $36,240, or $240 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

**Regulatory Impact**

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.



**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by removing amendment 39–9961 (62 FR 11760, March 13, 1997), and by adding a new airworthiness directive (AD), to read as follows:

**Boeing:** Docket 2000-NM–184-AD. Supersedes AD 97–06–04, Amendment 39–9961.

*Applicability:* Model 757–200 series airplanes having line numbers 1 through 736 inclusive, powered by Rolls Royce engines, certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (n) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking of the lower spar chord, which could result in reduced structural integrity of the engine strut, accomplish the following:

**Restatement of Requirements of AD 97–06–04**

*Repetitive Inspections*

(a) Prior to the accumulation of 15,000 total flight cycles, or within 60 days after March 28, 1997 (the effective date of AD 97–06–04, amendment 39–9961), whichever occurs later: Perform an eddy current inspection to detect cracking on the free edge of the tang, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 757–54–0031, Revision 2, dated December 19, 1996, or Revision 4, dated November 11, 1999. Repeat this inspection thereafter at intervals not to exceed 3,000 flight cycles until the inspection required by paragraph (d) of this AD is accomplished.

**Note 2:** The inspection required by paragraph (a) of this AD need not be performed on airplanes on which the inspection required by paragraph (d) of this AD is performed prior to the compliance time specified in paragraph (a) of this AD.

*Follow-On Actions*

(b) If any cracking is found during the inspection required by paragraph (a) of this AD, and the cracking is within the limits specified in Boeing Service Bulletin 757–54–0031, Revision 2, dated December 19, 1996, or Revision 4, dated November 11, 1999: Prior to further flight, remove the midchord channels, stop-drill the cracking, and install a repair in accordance with the service bulletin. No further action is required by paragraph (a) of this AD.

(c) If any cracking is found, and the cracking is outside the limits specified in Boeing Service Bulletin 757–54–0031, Revision 2, dated December 19, 1996, or Revision 4, dated November 11, 1999: Prior to further flight, replace the lower spar chord with a new or serviceable chord in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA.

*Bolt Hole Inspection*

(d) Perform an eddy current inspection (bolt hole inspection) to detect cracking of the two fastener holes in the lower spar chord, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 757–54–0031, Revision 2, dated December 19, 1996, or Revision 4, dated November 11, 1999, at the time specified in paragraph (d)(1) and (d)(2) of this AD, as applicable. Accomplishment of this inspection terminates the inspections required by paragraph (a) of this AD.

(1) For airplanes on which the stiffening straps have been removed from the midchord in accordance with Boeing Service Bulletin 757–54–0028 prior to the effective date of this AD: Accomplish the inspection at the time specified in Paragraph 1.D. ("Description") of Boeing Service Bulletin 757–54–0031, Revision 2, dated December 19, 1996, or Revision 4, dated November 11, 1999.

(2) For airplanes other than those identified in paragraph (d)(1) of this AD: Accomplish the inspection prior to the accumulation of 18,000 total flight cycles, or within 60 days after March 28, 1997, whichever occurs later.

(e) Accomplish either paragraph (e)(1) or (e)(2) of this AD, as applicable, in accordance with Boeing Service Bulletin 757–54–0031, Revision 2, dated December 19, 1996, or Revision 4, dated November 11, 1999.

(1) If any fastener installed as a result of an inspection required by paragraph (d) of this AD has a diameter of 5/8-inch or greater: Install the repair prior to the accumulation of the number of flight cycles specified in the "Subsequent Inspection Interval" column of the Threshold Table included in Paragraph 1.E. ("Compliance") of Boeing Service Bulletin 757–54–0031, Revision 2, dated December 19, 1996, or Revision 4, dated November 11, 1999.

(2) If any fastener installed as a result of an inspection required by paragraph (d) of this AD has a diameter of less than 5/8-inch: Repeat the bolt hole inspection required by

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paragraph (d) of this AD prior to the accumulation of the number of flight cycles specified in the "Subsequent Inspection Interval" column of the Threshold Table included in Paragraph 1.E. ("Compliance") of the service bulletin until the repair specified in paragraph (h) of this AD is installed.

*Optional Terminoting Action*

(f) Installation of the repair in accordance with the Accomplishment Instructions of Boeing Service Bulletin 757–54–0031, Revision 2, dated December 19, 1996, or Revision 4, dated November 11, 1999, constitutes terminating action for the requirements in paragraphs (a) and (d) of this AD.

**New Requirements of This AD**

*Revised Service Information*

(g) Except as provided by paragraphs (c) and (l)(3) of this AD: As of the effective date of this new AD, Boeing Service Bulletin 757–54–0031, Revision 4, dated November 11, 1999, must be used for accomplishment of the actions required by this AD.

*Second Bolt Hole Inspection*

(h) Within 6,000 flight cycles after accomplishment of paragraph (d) of this AD, or within 60 days after the effective date of this AD, whichever occurs later: Perform a second eddy current inspection (bolt hole inspection) to detect cracking of the two fastener holes in the lower spar chord, in accordance with Part IV of the Accomplishment Instructions of Boeing Service Bulletin 757–54–0031, Revision 4, dated November 11, 1999. If no cracking is found during the inspection required by this paragraph, no further action is required by this paragraph.

*Third Bolt Hole Inspection*

(i) After accomplishment of the inspection required by paragraph (h) of this AD, when the airplane has reached the flight cycle threshold as defined by the flight cycle threshold formula on page 9, Paragraph 1.E. ("Compliance") of Boeing Service Bulletin 757–54–0031, Revision 4, dated November 11, 1999: Perform a third eddy current inspection (bolt hole inspection) to detect cracking of the two fastener holes in the lower spar chord, in accordance with Part II of the Accomplishment Instructions of the service bulletin.

*Fourth Bolt Hole Inspection*

(j) If, after accomplishment of the inspection required by paragraph (i) of this AD, paragraph (m) of this AD has not yet been accomplished: When the airplane has reached the flight cycle threshold as defined by the flight cycle threshold formula on page 9, Paragraph 1.E. ("Compliance") of Boeing Service Bulletin 757–54–0031, Revision 4, dated November 11, 1999; perform a fourth eddy current inspection (bolt hole inspection) to detect cracking of the two fastener holes in the lower spar chord, in accordance with Part II of the Accomplishment Instructions of the service bulletin.

*Follow-On Actions*

(k) If no cracking is found during any inspection required by paragraph (d), (i), or (j) of this AD, prior to further flight, increase the diameter of the holes by the dimensions specified in the Accomplishment Instructions of Boeing Service Bulletin 757–54–0031, Revision 2, dated December 19, 1996, or Revision 4, dated November 11, 1999, and install new fasteners in accordance with the service bulletin.

(l) If any cracking is found during any inspection required by paragraph (d), (h), (i), or (j) of this AD, prior to further flight, accomplish paragraph (l)(1), (l)(2), or (l)(3) of this AD, as applicable, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 757–54–0031, Revision 2, dated December 19, 1996, or Revision 4, dated November 11, 1999.

(1) If the cracking can be removed by increasing the diameter of the hole in accordance with the service bulletin: Increase the diameter of the hole by the dimensions specified in the Accomplishment Instructions of the service bulletin, and install new fasteners in accordance with the service bulletin.

(2) If the cracking cannot be removed by increasing the diameter of the hole in accordance with the Accomplishment Instructions of the service bulletin, but the cracking is within the limits specified in the service bulletin: Install the repair in accordance with the service bulletin. No further action is required by paragraph (d) of this AD.

(3) If the cracking is outside the limits specified in the service bulletin: Replace the lower spar chord with a new or serviceable chord in accordance with a method approved by the Manager, Seattle ACO.

*Optional Terminating Modification*

(m) Accomplishment of the modification of the nacelle strut and wing structure as required by AD 99–24–07, amendment 39–11431, constitutes terminating action for the requirements of this AD.

*Alternative Methods of Compliance*

(n) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

*Special Flight Permits*

(o) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on October 3, 2000.

**Donald L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–25969 Filed 10–6–00; 8:45 am]

BILLING CODE 4910–13–U

## DEPARTMENT OF STATE

### Bureau of Consular Affairs

### 22 CFR Part 51

**[Public Notice 3428]**

## Passport Procedures—Amendment to Requirements for Executing a Passport Application on Behalf of a Minor

**AGENCY:** Bureau of Consular Affairs, State.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule amends regulations on Passports. The amendments bring passport regulations into conformity with current practice and implement the requirements of Section 236 of the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act. That Section requires that both parents execute a passport application on behalf of a minor under age 14 or, if only one parent executes the application, such parent must establish his or her custodial status or the other parent's consent. It also provides for exceptions in exigent circumstances, such as those involving the health or welfare of the child, or when the Secretary of State determines that issuance of a passport is warranted by special family circumstances.

**DATES:** Written comments must be received no later than November 6, 2000.

**ADDRESSES:** Written comments should be addressed to: John Hotchner, Office of Passport Policy, Planning and Advisory Services, 2401 E. Street, N.W., Room 917, Washington, D.C. 20522–0907.

**FOR FURTHER INFORMATION CONTACT:** John Hotchner, Office of Passport Policy and Advisory Services, Bureau of Consular Affairs, Department of State, (202) 663–2427.

**SUPPLEMENTARY INFORMATION:** As a measure to prevent the use of the United States passport in international child abduction, Congress enacted Section 236 of the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Pub.L. 106–113. The Section affects the passport application process for minors under the age of 14 by requiring that both parents execute the passport application on behalf of the minor; if only one parent executes the application, that parent must establish sole authority to execute the application or the other parent's consent to the application. This law will directly affect the passport applications of about one million families each year. Although Section 236 places an additional burden on the parents of minor children under the age of 14, the statute clearly reflects a judgment that its value in reducing child abduction will be seen to outweigh the burden of establishing both parents' consent to passport applications for children.



**Present Passport Regulations To Assist in the Prevention of International Parental Child Abduction**

International parental child abduction is an ever more frequent phenomenon, reflecting in part the increasing number of international marriages and the ease with which persons can travel across international boundaries. In recent years, the Department of State, the Department of Justice, and the Congress of the United States have given cases of international parental child abduction greater attention and have sought new and more effective mechanisms for dealing with them. At present, both criminal and civil remedies can be invoked to deal with parental abductions after they occur. Such cases remain extremely difficult to resolve, however, and it is clear that preventing an abduction in the first instance is preferable.

Under the Department's existing regulation, 22 CFR 51.27, a parent may request that his or her minor child's name be placed in the Department's passport namecheck clearance system so that, if an application is received for the child, the objecting parent will be notified before issuance. The passport may be denied if the Department has on file an order from a court of competent jurisdiction granting the objecting parent sole or joint custody or prohibiting the child's travel outside the court's jurisdiction without the express permission of the court or of the other parent. The Department recommends that parents who have a specific concern about international child abduction make use of the existing program in addition to relying on Section 236. The public should note that the provisions of the existing regulation extend to all minor children under age 18. This program for children under age 18 will remain in place when the new regulations relating to children under 14 go into effect.

The Department recognizes that denying passport issuance may not prevent an abduction. Many U.S. citizen children acquire a second nationality at birth through a non-U.S. citizen parent or by birth outside the United States to a U.S. citizen parent. The inability to obtain a U.S. passport, therefore, does not prevent a child from obtaining and traveling on a foreign passport. Even an exit-control system, which the United States does not have, could not fully prevent all cases of dual-national children being wrongfully removed from the United States by an abducting parent. Nevertheless, limiting access to passports for minors may have some preventative effect. Consistent with this possibility, the Congress decided that the Department's long-standing passport-denial-to-minors program should be supplemented by a requirement that both parents sign a passport application for a minor child under age 14 except in situations specified by statute or regulation. This regulation implements the new statutory requirement in a way that the Department believes meets the requirements of the statute and appropriately provides for exceptions.

**Notice or Denial of a Passport at the Request of a Parent**

The proposed regulation amends subsection 51.27(d)(l)(i) to extend it to instances when court-ordered limitations on a child's travel are brought to the Department's attention in the course of a passport application rather than by an objecting parent. This change, for example, will preclude a parent with sole custody, ordinarily entitled to apply for a child's passport under the Act, from obtaining a passport if the custody order contains a limitation on the minor's ability to travel.

**General Requirement for Both Parents To Consent to a Passport for a Minor Child**

Under current passport regulations, either parent or the legal guardian, regardless of citizenship, may execute a passport application on behalf of a minor under 13 years of age; minors 13 years of age and over are expected to execute their own passport applications. To implement the statutory requirement that both parents must execute the passport application on behalf of a child under the age of 14, the proposed rule raises the age at which a minor should execute his or her own application to 14. The proposed rule adds the requirement that both parents execute a passport application on behalf of a minor under the age of 14.

When only one parent is available to execute the application, that parent must provide, under penalty of perjury, documentary evidence demonstrating that he or she has sole legal custody of the child or has the written consent of the other parent to the issuance of the passport. Documents supporting sole custody or the authority to obtain a passport include, but are not limited to: a birth certificate or other official birth registration which names only the applying parent; an adoption decree naming only the adopting parent; a court order granting sole custody to the applying parent if the order does not limit the minor's ability to travel; a court order specifically authorizing passport issuance, regardless of custodial arrangements; a declaration of incompetence of the non-applying parent by a court of competent jurisdiction; the non-applying parent's death certificate.

A written statement of a parent not executing the passport application giving consent to the issuance of the passport will also be accepted at the discretion of the adjudicating officer who will take into account the totality of the circumstances in deciding whether to issue the passport.

**Individuals Applying In Loco Parentis**

The Department has long recognized that there are instances when it is impossible for a parent to execute a passport application on behalf of a minor. Many children are in the physical custody of relatives or foster parents, as well as adoption agencies or child welfare agencies. In accepting applications executed on behalf of minors by individuals in loco parentis, it has been the Department's policy to require that those individuals provide a notarized statement or affidavit from a parent authorizing the applying person to execute the application.

The new regulation will require that the individual executing the passport application on behalf of a minor under age 14 in loco parentis present a notarized statement from both parents or from the parent exercising parental authority. In instances when only one parent grants in loco parentis, the same documentary evidence required when only one parent executes a passport application on behalf of a minor under age 14 to demonstrate that person's sole authority should accompany the application.

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**Exceptions to the Two Parent Signature Requirement**

The statute provides for two exceptions to the general requirement: (1) exigent circumstances involving the health and welfare of the child; or, (2) when the Secretary of State determines that issuance of a passport is warranted by special family circumstances.

*Exigent circumstances* are defined as time-sensitive circumstances when the inability of the minor to obtain a passport would jeopardize the health or welfare of the minor. The requirement of establishing the second parent's consent to issuance of the passport or formal documentation of the reason for the absence of the second parent may be waived in such circumstances.

Examples of exigent circumstances include, but are not limited to: instances when the minor must travel to receive emergency medical treatment; when a minor's passport is lost or stolen while traveling accompanied by only one parent or traveling unaccompanied with a school, church or other group; when the minor needs to travel because of the serious illness of a person in the minor's immediate family, or, when failure to issue would prevent the child from returning to the U.S. and there is insufficient time before travel is necessary to obtain the normally required documentation.

*Special family circumstances* are defined as circumstances when the minor's family situation prevents one or both of the parents from executing the passport application. As with the exigent circumstance exception, the requirement of establishing the second parent's consent or formal documentation of the reason for the absence of the second parent is waived. Examples of special family circumstances include, but are not limited to, instances when the second parent is unable to apply for the passport in person or to provide a statement authorizing the application and issuance of the passport because he or she has abandoned the family or is unavailable due to serious health problems. Individuals claiming a special family circumstance will be required to provide a statement, under penalty of perjury, explaining the special family circumstance.

Decisions to apply this exception will be made by the Deputy Assistant Secretary for Passport Services or a senior passport adjudicator within the United States, or by the Deputy Assistant Secretary for Overseas Citizens Services or a consular officer if abroad.

**Special Considerations for Passport Applications Executed Overseas**

While the great majority of passports are issued within the United States, a significant number are issued annually to U.S. citizens living and traveling overseas. We anticipate that parents overseas generally will comply fully with the requirements of the law in much the same manner as parents applying within the United States. Nonetheless, in proposing these regulations, the Department has sought to take into account, and provide for, certain differing circumstances that pertain in much greater measure to the issuance of U.S. passports overseas. For example, exigent circumstances would include instances when a delay in departure would pose a grave danger for the minor abroad. Civil unrest, natural disaster, war, or invasion may make imperative the urgent travel or evacuation of U.S. citizens, particularly minors, from such regions. In less dramatic fashion, exigent circumstances could encompass a situation when, for example, a child traveling with a school group loses his or her passport and would need a replacement to remain with the group in its ongoing travel. Despite the lack of time to procure documents or statements relating to parental consent, it is essential that a passport be issued quickly in both cases, and as the exigent circumstances exception in subsection (b) permits, to protect the health and welfare of the minor.

Circumstances overseas can differ in another respect. Specifically, the U.S. consular officer may have access to post registration records that relate to family situations. Particularly in smaller countries, an officer may have personal knowledge of a family situation, e.g., that the child is in the care of an individual in loco parentis or the fact that a parent is widowed, which would be relevant in a situation when documentary evidence was not available or could not be obtained in a timely fashion. Accordingly, the proposed rule will give the Department flexibility to utilize such information in this and other instances, consistent with the consular officer's exercise of good judgment, as allowed by the statute's reference to special family circumstances.

**Provisions To Harmonize Other Parts of the Regulations With the Two-Parent Requirement**

Section 51.1 is amended to provide a definition of "passport application". Section 51.21 is amended to incorporate the two-parent signature requirement to passport renewals by minors under the age of 14 and to provide for compliance with the two-parent signature requirement in mail-in applications abroad. Section 51.27 is amended to raise the age after which a minor should execute his or her own passport application from 13 to 14. Sections 51.40 and 51.41 are amended to bring them into conformity with current passport practice regarding individuals included in the passport and to comply with the requirements of the Act. Since 1981, U.S. passports have been issued to document only the bearer: they do not include any other person. The regulation is amended to reflect that change. Section 51.41 is also amended to require applicants under the age of 14, whether applying for their first passport or for a renewal, to present evidence of parentage in addition to evidence of nationality. This will assist in the adjudication not only of the citizenship of the minor under age 14, but in the determination of the parent(s) entitled to obtain a passport on the minor's behalf. The document should include the name, date and place of birth of the child and the name(s) of the parent(s).

**Regulatory Flexibility Act; Paperwork Reduction Act; Federalism Assessment; E.O. 12988**

These proposed changes to the regulations are not expected to have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act, 5 U.S.C. 605(b). They impose certain information collection requirements under the provisions of the Paperwork Reduction Act, 44 U.S.C. Chapter 35. These rules have no federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12988. These rules are exempt from review under E.O. 12988 but have been reviewed and found consistent with its objectives.

**List of Subjects in 22 CFR Part 51**

Administrative practice and procedure, Passports and visas, Reporting and recordkeeping requirements.

Accordingly, for the reasons set forth in the preamble, 22 CFR Part 51 is amended as follows:

**PART 51—PASSPORTS**

1. The authority citation for part 51 is revised to read as follows:

**Authority:** 22 U.S.C. 211a; 22 U.S.C. 2651a, 2671(d)(3), 2714 and 3926; 31 U.S.C. 9701; E.O. 11295, 3 CFR, 1966–1970 Comp., p 570; sec. 236, Pub. L.106–113, 113 Stat. 1937–422; 18 U.S.C 1621(a)(2).



In § 51.1, redesignate paragraphs (g) and (h) as paragraphs (h) and (i), respectively, and add a new paragraph (g) to read as follows:

* * * * *

**§ 51.1 Definitions.**

* * * * *

(g) Passport Application means the passport application form for a United States passport, filled in, subscribed and executed as prescribed by the Secretary pursuant to 22 U.S.C. 213, and all documents, photos and statements submitted with the form or thereafter in support of the application. The information provided in the passport application and supporting submissions, whether provided contemporaneously with the application form or at any time thereafter, is subject to the penalties of perjury under all applicable criminal statutes.

* * * * *

.3. Revise § 51.21(d)(4)(ii) to read as follows:

**§ 51.21 Execution of passport application.**

* * * * *

(d) * * *

(4) * * *

(ii) Mail applications abroad on behalf of minors under the age of 14 comply must with the requirements of § 51.27.

* * * * *

4. In § 51.27, revise paragraph (b) and paragraph (d)(1)(i) introductory text to read as follows:

**§ 51.27 Minors.**

* * * * *

(b) *Execution of the application for minors.*

(1) *Minors 14 years of age and above.* A minor aged 14 and above is required to execute an application on his or her own behalf unless in the judgment of the person before whom the application is executed it is not desirable for the minor to execute his or her own application. In such a case, it must be executed on behalf of the minor aged 14 and above by a parent or guardian of the minor or by a person in loco parentis.

(2) *Minors under the age of 14.*

(i) Both parents or each of the child's legal guardians, if any, must execute the application on behalf of a minor under age 14, under penalty of perjury, and provide documentary evidence demonstrating that they are the parents or guardian, except as specifically provided in this section.

(ii) A passport application may be executed on behalf of the minor under age 14 by just one parent or legal guardian if such person provides, under penalty of perjury—

(A) Documentary evidence that such person has sole custody of the child; or

(B) A written statement of consent from the non-applying parent or guardian, if applicable, to the issuance of the passport.

(iii) An individual may apply *in loco parentis* on behalf of a minor under age 14 by submitting a notarized written statement or an affidavit from both parents specifically authorizing the application. If only one parent provides the written statement or affidavit, documentary evidence that such parent has sole custody of the child must be presented.

(iv) Documentary evidence in support of an application executed on behalf of a minor under age 14 by one parent or person *in loco parentis* under paragraphs (b)(2)(ii) and (iii) of this section may include, but is not limited to, the following:

(A) A birth certificate providing the minor's name, date and place of birth and the name of the sole parent;

(B) A Consular Report of Birth Abroad of a Citizen of the United

States of America (FS–240) or a Certification of Report of Birth of a United States Citizen (DS–1350) providing the minor's name, date and place of birth and the name of the sole parent;

(C) An adoption decree showing only one adopting parent;

(D) An order of a court of competent jurisdiction granting sole custody to the applying parent or legal guardian and containing no travel restrictions inconsistent with issuance of the passport;

(E) A judicial declaration of incompetence of the non-applying parent;

(F) An order of a court of competent jurisdiction specifically permitting the applying parent's or guardian's travel with the child; or

(G) A death certificate for the non-applying parent,

(v) In instances when a parent submits a custody decree invoking the provisions of paragraph (d)(1) of this section, the judicial limitations on the minor's ability to travel contained in the custody decree will be given effect.

(vi) The requirements of paragraphs (b)(2)(i), (ii) and (iii) of this section may be waived in cases of exigent or special family circumstances, as determined by a Department official designated under paragraph (b)(2)(vi)(D) of this section.

(A) Exigent circumstances are defined as time sensitive circumstances when the inability of the minor to obtain a passport would jeopardize the health and safety, or welfare of the minor or would result in the child being separated from the traveling unit.

(B) Special family circumstances are circumstances when the minor's family situation makes it impossible for one or both of the parents to execute the passport application.

(C) Any person applying for a passport for a child under age 14 under this paragraph must submit with the application a written statement subscribed under penalty of perjury describing the exigent or special family circumstances to be taken into consideration in applying an exception.

(D) Determinations under this paragraph may be made by a senior passport adjudicator or the Deputy Assistant Secretary for Passport Services for an application filed within the United States. A consular officer or the Deputy Assistant Secretary for Overseas Citizens Services may make the determination for applications filed abroad.

(vii) Nothing contained in this section shall prohibit any Department official adjudicating a passport application on behalf of a minor from requiring an applicant to submit other documentary evidence deemed necessary to establish the applying adult's entitlement to obtain a passport on behalf of a minor under the age of 14 in accordance with the provisions of this section.

* * * * *

(d) * * *

(1)(i) When there is a dispute concerning the custody of a minor under age 18, a passport may be denied if the Department has on file, or is provided in the course of a passport application executed on behalf of a minor, a copy of a court order granted by a court of competent jurisdiction in the United States or abroad which:

* * * * *

5. Revise § 51.40 to read as follows:

**§ 51.40 Burden of proof.**

The applicant has the burden of proving that he or she is a national of the United States.

6. Revise § 51.41 to read as follows:

**§ 51.41 Documentary evidence.**

(a) Every application shall be accompanied by evidence of the U.S. nationality of the applicant.

(b) Minors under the age of 14, whether applying for a passport for the first time or for a renewal, must provide documentary evidence of U.S. nationality showing the minor's name, date and place of birth, and the names of the parent or parents.

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Dated: September 27, 2000.

**George C. Lannon,**

*Acting Assistant Secretary for Consular Affairs, U.S. Department of State.*

[FR Doc. 00–25782 Filed 10–6–00; 8:45 am]

BILLING CODE 4710–06–P

## DEPARTMENT OF THE TREASURY

**Internal Revenue Service**

**26 CFR Part 1**

**[REG–105235–99]**

**RIN 1545–AX28**

## Exclusion of Gain From Sale or Exchange of a Principal Residence

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking and notice of public hearing.

**SUMMARY:** This document contains proposed regulations relating to the exclusion of gain from the sale or exchange of a taxpayer's principal residence. These proposed regulations reflect changes to the law made by the Taxpayer Relief Act of 1997, as amended by the Internal Revenue Service Restructuring and Reform Act of 1998. These proposed regulations generally affect taxpayers who sell or exchange their principal residences.

**DATES:** Written or electronically generated comments must be received by January 8, 2001. Requests to speak (with outlines of oral comments) to be discussed at the public hearing scheduled for January 23, 2001 at 10 a.m., must be submitted by January 3, 2001.

**ADDRESSES:** Send submissions to: CC:M&SP:RU (REG–105235–99), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:M&SP:RU (REG–105235–99), Courier's Desk, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS internet site at http://www.irs.gov/tax_regs/regslist.html. The public hearing will be held in the IRS Auditorium, Seventh Floor, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Concerning the regulations, Sara P. Shepherd, (202) 622–4910; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, contact Treena Garrett, (202) 622–7180 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

### Background

*1. Section 121 Exclusion*

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 121 of the Internal Revenue Code relating to the exclusion of gain from the sale or exchange of a taxpayer's principal residence. These proposed regulations reflect changes to the law made by the Taxpayer Relief Act of 1997, Public Law 105–34 (111 Stat. 788 (TRA 1997)), as amended by the Internal Revenue Service Restructuring and Reform Act of 1998, Public Law 105–206 (112 Stat. 805 (RRA 1998)).

Prior to the repeal by TRA 1997, section 1034 provided that gain from the sale or exchange of a principal residence (old residence) was recognized only to the extent that the taxpayer's adjusted sales price of the old residence exceeded the taxpayer's cost of purchasing a new residence within the replacement period (generally 2 years before or after the date of sale).

Prior to amendment by TRA 1997, former section 121 provided that a taxpayer could make a one-time election to exclude up to $125,000 of gain from the sale or exchange of property. To qualify for the exclusion, the taxpayer must have: (1) Been age 55 or older on the date of the sale or exchange; and (2) owned and used the property as the taxpayer's principal residence for at least 3 years during the 5-year period ending on the date of the sale or exchange.

TRA 1997 amended section 121 and repealed section 1034 for sales and exchanges of principal residences after May 6, 1997 (except, at the election of the taxpayer, to a sale or exchange: (1) Made on or before August 5, 1997; (2) made pursuant to a binding contract in effect on August 5, 1997; or (3) that would qualify under section 1034 by reason of a new residence acquired on or before August 5, 1997 or pursuant to a binding contract in effect on August 5, 1997). Under section 121 as amended, a taxpayer generally excludes up to $250,000 ($500,000 for certain joint returns) of gain realized on the sale or exchange of property if the property was owned and used as the taxpayer's principal residence for at least 2 years during the 5-year period ending on the date of the sale or exchange. The exclusion applies regardless of the age of the taxpayer, and the full exclusion can be used only once every 2 years. A taxpayer who fails to meet these requirements by reason of a change in place of employment, health, or, to the extent provided in regulations, unforeseen circumstances may be entitled to a reduced exclusion.

RRA 1998 amended TRA 1997 to clarify that the reduced exclusion amount under section 121(c) is a portion of the maximum limitation amount ($250,000 or $500,000 for certain joint returns), not a portion of the realized gain. See H.R. Rep. No. 356, 105th Cong., 1st Sess. 17 (1997); S. Rep. No. 174, 105th Cong., 2d Sess. 150 (1998). In addition, the amendments provided that for married taxpayers filing jointly but failing to meet the ownership, use, or timing requirements of section 121(b)(2)(A), the maximum limitation amount will be the sum of each spouse's limitation amount determined on a separate basis as if they had not been married. S. Rep. No. 174, 105th Cong., 2d Sess. 151 (1998); H.R. Conf. Rep. No. 599, 105th Cong., 2d Sess. 337 (1998). Lastly, the amendments clarified that a taxpayer may elect to apply prior law under section 1034 or former section 121 to a sale or exchange occurring on as well as before the date of enactment, August 5, 1997. H.R. Rep. No. 356, 105th Cong., 1st Sess. 18 (1997); S. Rep. No. 174, 105th Cong., 2d Sess. 151 (1998).

*2. Section 121 Exclusion in Individuals' Title 11 Cases*

This document also contains proposed amendments to the Income Taxation Regulations (26 CFR part 1) under section 1398 of the Internal Revenue Code. Under the authority provided in section 1398(g)(8), the regulations add the section 121 exclusion to the list of tax attributes of the debtor that the bankruptcy estate of an individual in a chapter 7 or 11 bankruptcy case under title 11 of the United States Code succeeds to and takes into account in computing the taxable income of the estate. Although these regulations are proposed to be applicable on or after the date they are published as final regulations in the **Federal Register**, in view of the IRS's acquiescence in the case of *Internal Revenue Service* v. *Waldschmidt (In re Bradley)*, AOD CC–1999–009 (August 30, 1999), and Chief Counsel Notice (35)000–162 (August 10, 1999), the IRS will not challenge the position taken prior to the effective date of these regulations that a bankruptcy estate may use the section 121 exclusion if the debtor would otherwise satisfy the section 121 requirements.



### Explanation of Provisions

*1. Section 121 Exclusion*

Section 1.121–1(b) of the proposed regulations addresses the definition of principal residence. This section provides that whether or not property is the taxpayer's principal residence, and whether or not property is used by the taxpayer as the taxpayer's principal residence (in the case of a taxpayer using more than one property as a residence), depends upon all the facts and circumstances. If a taxpayer alternates between two properties, using each as a residence for successive periods of time, the property that the taxpayer uses a majority of the time during the year will ordinarily be considered the taxpayer's principal residence.

Section 1.121–1(c) of the proposed regulations addresses the use requirement under section 121(a). This section provides that, in order for a taxpayer to satisfy the use requirement under section 121(a), the taxpayer must occupy the residence (except for short temporary absences) for at least 2 years during the 5-year period ending on the date of the sale or exchange. See H.R. Rep. No. 148, 105th Cong., 1st Sess. at 348 (1997); S. Rep. No. 33, 105th Cong., 1st Sess. at 37 (1997); H.R. Conf. Rep. No. 220, 105th Cong., 1st Sess. at 386 (1997).

Section 1.121–1(d) provides that the section 121 exclusion does not apply to so much of the gain from the sale or exchange of property as does not exceed the portion of the depreciation adjustments (as defined in section 1250(b)(3)) attributable to periods after May 6, 1997, in respect of the property.

Section 1.121–1(e) of the proposed regulations provides that if a taxpayer satisfies the use requirement only with respect to a portion of the property sold or exchanged, section 121 will apply only to the gain from the sale or exchange allocable to that portion. Thus, if the residence was used partially for residential purposes and partially for business purposes, only that part of the gain allocable to the residential portion is excludable under section 121. Furthermore, the section 121 exclusion does not apply to the extent that depreciation attributable to periods after May 6, 1997, exceeds gain allocable to the business-use portion of the property.

Under section 121(c), a reduced exclusion is available for a taxpayer who sells or exchanges property used as the taxpayer's principal residence but fails to satisfy the ownership and use requirements described in section 121(a) or the 2-year limitation described in section 121(b)(3). Section 1.121–3(a)(1) of the proposed regulations provides that the reduced exclusion applies only if the sale or exchange is necessitated by a change in place of employment, health, or, to the extent provided in forms, instructions, or other appropriate guidance including regulations and letter rulings, unforeseen circumstances. The IRS and the Treasury Department request written comments regarding what should qualify as an unforeseen circumstance for purposes of determining whether a taxpayer is eligible to claim the reduced exclusion available under section 121(c).

Under section 121(d)(8), a taxpayer must make an election to have the section 121 exclusion apply to a sale or exchange of a remainder interest in the taxpayer's principal residence. Section 1.121–4(f)(3) provides that the taxpayer makes the election by filing a return for the taxable year of the sale or exchange that does not include the gain from the sale or exchange of the remainder interest in the taxpayer's gross income.

Under section 121(f), a taxpayer must make an election to have the section 121 exclusion not apply to a sale or exchange of the taxpayer's principal residence. Section 1.121–4(h) provides that the taxpayer makes the election by filing a return for the taxable year of the sale or exchange that includes the gain from the sale or exchange of the residence in the taxpayer's gross income.

*2. Section 121 Exclusion in Individuals' Title 11 Cases*

Section 1.1398–3 of the proposed regulations provides that the bankruptcy estate of an individual in a chapter 7 or 11 bankruptcy case under title 11 of the United States Code succeeds to and takes into account the debtor's section 121 exclusion if the taxpayer satisfies the requirements of section 121.

*3. Proposed Effective Date*

These regulations are proposed to be applicable for sales or exchanges that occur on or after the date they are published as final regulations in the **Federal Register.**

### Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

### Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic or written comments (a signed original and eight (8) copies of written comments) that are submitted timely (in the manner described in the **ADDRESSES** caption) to the IRS. The IRS and Treasury request comments on the clarity of the proposed rules and how they may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for January 23, 2001, beginning at 10 a.m. in the IRS Auditorium, Seventh Floor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of the preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by January 3, 2001. A period of 10 minutes will be allotted to each person making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

### Drafting Information

The principal author of these regulations is Sara P. Shepherd, Office of Assistant Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and the Treasury

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Department participated in the development of the regulations.

**List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

**Proposed Amendments to the Regulations**

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

**PART 1—INCOME TAXES**

**Paragraph 1.** The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

**Authority:** 26 U.S.C. 7805. * * * Section 1.1398–3 also issued under 26 U.S.C. 1398(g).

**Par. 2.** Sections 1.121–1, 1.121–2, 1.121–3 and 1.121–4 are revised to read as follows:

**§ 1.121–1 Exclusion of gain from sale or exchange of a principal residence.**

(a) *In general.* Section 121 provides that, under certain circumstances, gross income does not include gain realized on the sale or exchange of property that was owned and used by a taxpayer as the taxpayer's principal residence. Subject to the other provisions of section 121, a taxpayer will exclude gain only if, during the 5-year period ending on the date of the sale or exchange, the taxpayer owned and used the property as the taxpayer's principal residence for periods aggregating 2 years or more.

(b) *Principal residence.* Whether or not property is used by the taxpayer as the taxpayer's residence, and whether or not property is used by the taxpayer as the taxpayer's principal residence (in the case of a taxpayer using more than one property as a residence), depends upon all the facts and circumstances. If a taxpayer alternates between two properties, using each as a residence for successive periods of time, the property that the taxpayer uses a majority of the time during the year will ordinarily be considered the taxpayer's principal residence. A property used by the taxpayer as the taxpayer's principal residence may include a houseboat, a house trailer, or stock held by a tenant-stockholder in a cooperative housing corporation (as those terms are defined in section 216(b)(1) and (2)), if the dwelling that the taxpayer is entitled to occupy as a stockholder is used by the taxpayer as the taxpayer's principal residence. Property used by the taxpayer as the taxpayer's principal residence does not include personal property, that is not a fixture under local law.

(c) *Ownership and use requirements.* The requirements of ownership and use for periods aggregating 2 years or more may be satisfied by establishing ownership and use for 24 full months or for 730 days (365 × 2). The requirements of ownership and use may be satisfied during nonconcurrent periods if both the ownership and use tests are met during the 5-year period ending on the date of the sale or exchange. In establishing whether a taxpayer has satisfied the 2-year use requirement, occupancy of the residence is required. However, short temporary absences, such as for vacation or other seasonal absence (although accompanied with rental of the residence), are counted as periods of use.

(d) *Depreciation taken after May 6, 1997.* The section 121 exclusion does not apply to so much of the gain from the sale or exchange of property as does not exceed the portion of the depreciation adjustments (as defined in section 1250(b)(3)) attributable to periods after May 6, 1997, in respect of the property.

(e) *Property used in part as a principal residence.* If a taxpayer satisfies the use requirement only with respect to a portion of the property sold or exchanged, section 121 will apply only to the gain from the sale or exchange allocable to that portion. Thus, if the residence was used partially for residential purposes and partially for business purposes, only that part of the gain allocable to the residential portion is excludable under section 121. Furthermore, the section 121 exclusion does not apply to the extent that depreciation attributable to periods after May 6, 1997, exceeds gain allocable to the business-use portion of the property. See *Example 8* in paragraph (f) of this section.

(f) *Examples.* The provisions of paragraphs (a) through (e) of this section are illustrated by the following examples:

*Example 1.* Taxpayer A has owned and used his house as his principal residence since 1986. On January 1, 1998, A moves to another state. A leases his house from that date until April 18, 2000, when he sells it. A is eligible for the section 121 exclusion because he has owned and used the house as his principal residence for at least 2 years out of the 5 years preceding the sale.

*Example 2.* Taxpayer B owned and used a house as her principal residence from 1986 to the end of 1997. On January 1, 1998, B moved to another state and ceases to use the house. B's move was not necessitated by a change in place of employment, health, or unforeseen circumstances. B's son moved into the house in March 1999 and used the residence until it was sold on July 1, 2001. Taxpayer B may not exclude gain from the sale under section 121 because she did not use the property as her principal residence for at least 2 years out of the 5 years preceding the sale.

*Example 3.* Taxpayer C lived in a townhouse that he rented from 1993 through 1997. On January 1, 1998, he purchased this townhouse. On February 1, 1998, C moved into his daughter's home. On March 1, 2000, while still living in his daughter's home, C sold his townhouse. The section 121 exclusion will apply to gain from the sale because C owned the townhouse for at least 2 years out of the 5 years preceding the sale (from January 1, 1998 until March 1, 2000) and he used the townhouse as his principal residence for at least 2 years during the 5-year period preceding the sale (from March 1, 1995 until February 1, 1998).

*Example 4.* Taxpayer D, a college professor, purchased and moved into a house on May 1, 1997. He used the house as his principal residence continuously until September 1, 1998, when he went abroad for a 1-year sabbatical leave. On October 1, 1999, 1 month after returning from the leave, D sold the house. Because his leave is not considered to be a short temporary absence for purposes of section 121 (see paragraph (c) of this section), the period of the leave may not be included in determining whether D used the house for periods aggregating 2 years during the 5-year period ending on the date of the sale. Consequently, D is not entitled to exclude gain under section 121 because he did not use the residence for the requisite period.

*Example 5.* Taxpayer E purchased a house on February 1, 1998, that he used as his principal residence. During 1998 and 1999, E left his residence for a 2-month summer vacation. E sold the house on March 1, 2000. Although, in the 5-year period preceding the date of sale, the total time E used his residence is less than 2 years (21 months), the section 121 exclusion will apply to gain from the sale of the residence because the 2-month vacations are short temporary absences and are counted as periods of use in determining whether E used the residence for the requisite period.

*Example 6.* On July 1, 1999, Taxpayer F moves into a house that he owns and had rented to tenants since July 1, 1997. F took depreciation deductions totaling $14,000 for the period that he rented the property. After using the residence as his principal residence for 2 full years, F sells the property on August 1, 2001. F's gain realized from the sale is $40,000. F had no capital losses for 2001. Only $26,000 ($40,000 gain realized—$14,000 depreciation deductions) may be excluded under section 121. The $14,000 of gain recognized by F is unrecaptured section 1250 gain within the meaning of section 1(h).

*Example 7.* Taxpayer G, an attorney, uses a portion of her principal residence as a law office for a period in excess of 3 years out of the 5 years preceding the sale of the property. Because G did not use the law office portion of the property as her residence, the section 121 exclusion does not apply to the gain from the sale that is allocable to the law office portion of the property.

*Example 8.* Taxpayer H buys a house in 1998. For 5 years, H uses a portion of the property as his principal residence and a portion of the property for business purposes. H claims depreciation deductions of $20,000 for the business use of the property. H sells the property in 2003, realizing a gain of $50,000. H had no other section 1231 or capital gains or losses for 2003. H determines that $15,000 of the gain is allocable to the business-use portion of the property and that $35,000 of the gain is allocable to the portion of the property used as his residence. H must recognize $15,000 of the gain allocable to the business-use portion of the property. This $15,000 of gain is unrecaptured section 1250 gain within the meaning of section 1(h). In addition, the section 121 exclusion does not apply to the extent that H's post-May 6, 1997 depreciation ($20,000) exceeds the gain allocable to the business-use portion of the property ($15,000). Therefore, H may exclude $30,000 of the gain from the sale of the property. The remaining $5,000 of gain is recognized by H as unrecaptured section 1250 gain within the meaning of section 1(h).

*Example 9.* Taxpayer J buys a house in 1998. For 5 years, J uses a portion of the property as her principal residence and a portion of the property for business purposes. J claims depreciation deductions of $10,000 for the business use of the property. J sells the property in 2003, realizing a gain of $50,000. J had no other section 1231 or capital gains or losses for 2003. J determines that $15,000 of the gain is allocable to the business-use portion of the property and that $35,000 of the gain is allocable to the portion of the property used as her residence. J must recognize the $15,000 of gain allocable to the business-use portion of the property ($10,000 of which is unrecaptured section 1250 gain within the meaning of section 1(h), and $5,000 of which adjusted net capital gain). J may exclude $35,000 of the gain from the sale of the property.

*Example 10.* Taxpayer K owns two residences, one in New York and one in Florida. From 1999 through 2003, K lives in the New York residence for 7 months and the Florida residence for 5 months. Thus, K used the New York residence a majority of the time in each year from 1999 through 2003. Therefore, in the absence of facts and circumstances indicating otherwise, the New York residence is K's principal residence, and only the New York residence would be eligible for the 121 exclusion if it were sold at the end of 2003.

*Example 11.* Taxpayer L owns two residences, one in Virginia and one in Maine. During 1999 and 2000, L lives in the Virginia residence. During 2001 and 2002, L lives in the Maine residence. During 2003, L lives in the Virginia residence. L's principal residence during 1999, 2000, and 2003 is the Virginia residence. L's principal residence during 2001 and 2002 is the Maine residence. Either residence would be eligible for the 121 exclusion if it were sold during 2003.

(g) *Effective date.* This section and §§ 1.121–2 through 1.121–4 are applicable for sales and exchanges that occur on or after the date these regulations are published as final regulations in the **Federal Register**.



**§ 1.121–2 Limitations.**

(a) *Dollar limitations.* A taxpayer may exclude from gross income up to $250,000 of gain from the sale or exchange of the taxpayer's principal residence. If taxpayers jointly own a principal residence but file separate returns, each taxpayer will exclude from gross income up to $250,000 of gain that is attributable to each taxpayer's interest in the property, if the requirements of section 121 have otherwise been met.

(b) *Special rules for joint returns*—(1) *In general.* A husband and wife who make a joint return for the year of the sale or exchange may exclude up to $500,000 of gain if—

(i) Either spouse meets the 2-year ownership requirements of § 1.121–1(a);

(ii) Both spouses meet the 2-year use requirements of § 1.121–1(a); and

(iii) Neither spouse excluded gain from a prior sale or exchange of property under section 121 within the last 2 years (as determined under paragraph (c) of this section).

(2) *Other joint returns.* For taxpayers filing jointly, if the spouses fail to meet the requirements of paragraph (b)(1) of this section, the maximum limitation amount to be claimed by the couple will be the sum of each spouse's limitation amount determined on a separate basis as if they had not been married.

For this purpose, each spouse will be treated as owning the property during the period that either spouse owned the property.

(3) *Examples.* The provisions of this paragraph (b) are illustrated by the following examples:

*Example 1.* Married taxpayers H and W sell their residence and the gain realized from the sale is $256,000. A and B meet the requirements of section 121 and file a joint return for the year of the sale. The entire amount of gain from the sale of their principal residence is excluded from gross income because the gain realized from the sale does not exceed the limitation amount of $500,000 available to taxpayers filing a joint return.

*Example 2.* During 1999, married taxpayers H and W each sell a residence that each had separately owned and used as a principal residence before their marriage. Each spouse meets the ownership and use tests for his or her respective residence. Neither spouse meets the use requirement for the other spouse's residence. H and W file a joint return for the year of the sales. The gain realized from the sale of H's residence is $200,000. The gain realized from the sale of W's residence is $300,000. Because the ownership and use requirements are met for each residence by each respective spouse, H and W are eligible to exclude up to $250,000 of gain from the sale of each of their residences. However, W may not use H's unused exclusion to exclude gain in excess of her exclusion amount. Therefore, H and W must recognize $50,000 of the gain realized on the sale of W's residence.

*Example 3.* Married taxpayers H and W sell their residence and file a joint return for the year of the sale. Section 1.121–3 (relating to the reduced exclusion) does not apply to the sale of their residence. W, but not H, satisfies the requirements of section 121. They are eligible to exclude up to $250,000 of the gain from the sale of the residence because that is the sum of each spouse's dollar limitation amount determined on a separate basis as if they had not been married ($0 for H, $250,000 for W).

*Example 4.* Married taxpayers H and W have owned and used their principal residence since 1998. On February 16, 2001, H dies. On September 21, 2001, W sells the residence and realizes a gain of $350,000. Pursuant to section 6013(a)(3), W and H's executor make a joint return for 2001. All $350,000 may be excluded.

*Example 5.* Assume the same facts as *Example 4* except that W does not sell the residence until January 15, 2002. Because W's filing status for the taxable year of the sale is single, the special rules for joint returns under paragraph (b) of this section do not apply and W may exclude only $250,000 of the gain.

(c) *Application of section 121 to only 1 sale or exchange every 2 years*—(1) *In general.* Except as otherwise provided in § 1.121–3 (relating to the reduced exclusion), a taxpayer may not exclude from gross income gain from the sale or exchange of a principal residence if, during the 2-year period ending on the date of the sale or exchange, the taxpayer sold or exchanged other property for which gain was excluded under section 121. For purposes of this paragraph (c)(1), any sale or exchange before May 7, 1997 is disregarded.

(2) *Example.* The following example illustrates the rules of this paragraph (c):

*Example.* Taxpayer A owned a townhouse that he used as his principal residence for two full years, 1998 and 1999. A then bought a house in 2000 that he owned and used as his principal residence. A sells the townhouse in 2002 and excludes gain realized on its sale under section 121. A sells the house in the next year, 2003. Section 1.121–3 (relating to the reduced exclusion) does not apply to the sale of the house. Although A meets the 2-year ownership and use requirements of section 121, A is not eligible to exclude gain from the sale of the house because A excluded gain within the last 2 years under section 121 from the sale of the townhouse.

**§ 1.121–3 Reduced exclusion.**

(a) *Reduced exclusion for taxpayers failing to meet certain requirements; in general.* A reduced exclusion is available for a taxpayer who sells or exchanges property used as the taxpayer's principal residence but fails to satisfy the ownership and use requirements described in § 1.121–1(a)

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or the 2-year limitation described in § 1.121–2(c). This reduced exclusion applies only if the sale or exchange is necessitated by a change in place of employment, health, or, to the extent provided in forms, instructions, or other appropriate guidance including regulations and letter rulings, unforeseen circumstances. The reduced exclusion is computed by multiplying the maximum dollar limitation of $250,000 ($500,000 for certain joint filers) by a fraction. The numerator of the fraction is the shortest of the period of time that the taxpayer owned the property as the taxpayer's principal residence during the 5-year period ending on the date of the sale or exchange; the period of time that the taxpayer used the property during the 5-year period ending on the date of the sale or exchange; or the period of time between the date of a prior sale or exchange of property for which the taxpayer excluded gain under section 121 and the date of the current sale or exchange. The numerator of the fraction may be expressed in days or months. The denominator of the fraction is 730 days or 24 months (depending on the measure of time used in the numerator).

(b) *Examples.* The following examples illustrate the rules of this section:

*Example 1.* Taxpayer A purchases a house that she uses as her principal residence. Twelve months after the purchase, A sells the house due to a change in place of her employment. A has not excluded gain under section 121 on a prior sale or exchange of property within the last 2 years. A is eligible to exclude up to $125,000 of the gain from the sale of her house ($^{12}/_{24} \times \$250,000$).

*Example 2.* (i) Taxpayer H owned a house that he used as his principal residence since 1996. On January 15, 1999, H and W marry and W begins to use H's house as her principal residence. On January 15, 2000, H sells the house due to a change in H's and W's place of employment. Neither H nor W has excluded gain under section 121 on a prior sale or exchange of property within the last 2 years.

(ii) Because H and W have not both used the house as their principal residence for at least 2 years during the 5-year period preceding its sale, the maximum dollar limitation amount that may be claimed by H and W will not be $500,000, but the sum of each spouse's limitation amount determined on a separate basis as if they had not been married. (See § 1.121–2(b)(2).)

(iii) H is eligible to exclude up to $250,000 of gain because he meets the requirements of section 121. W is not eligible to exclude the maximum dollar limitation amount. Instead, W is eligible to claim a reduced exclusion. Because the sale of the house is due to a change in place of employment, W is eligible to exclude up to $125,000 of the gain ($365/730 \times \$250,000$). Therefore, H and W are eligible to exclude up to $375,000 of gain ($250,000 + $125,000) from the sale of the house.

**§ 1.121–4 Special rules.**

(a) *Property of deceased spouse*—(1) *In general.* For purposes of satisfying the ownership and use requirements of section 121, a taxpayer is treated as owning and using property as the taxpayer's principal residence during any period that the taxpayer's deceased spouse owned and used the property as a principal residence before death if—

(i) The taxpayer's spouse is deceased on the date of the sale or exchange of the property; and

(ii) The taxpayer has not remarried at the time of the sale or exchange of the property.

(2) *Example.* The provisions of this paragraph (a) are illustrated by the following example:

*Example.* Taxpayer H has owned and used a house as his principal residence since January 1, 1987. H and W marry on January 1, 1999 and from that date they use H's house as their principal residence. H dies on January 15, 2000, and W inherits the property and continues to use the property as her principal residence. W sells the property on August 31, 2000, at which time she has not remarried. Although W has owned and used the house for less than 2 years, W will be considered to have satisfied the ownership and use requirements of section 121 because W's period of ownership and use includes the period that H owned and used the property before death.

(b) *Property owned by spouse or former spouse*—(1) *Property transferred to individual from spouse or former spouse.* If a taxpayer obtains property from a spouse or former spouse in a transaction described in section 1041(a), the period that the taxpayer owns the property will include the period that the spouse or former spouse owned the property.

(2) *Property used by spouse or former spouse.* A taxpayer is treated as using property as the taxpayer's principal residence for any period that the taxpayer has an ownership interest in the property and the taxpayer's spouse or former spouse is granted use of the property under a divorce or separation instrument (as defined in section 71(b)(2)), provided that the spouse or former spouse uses the property as a principal residence.

(c) *Tenant-stockholder in cooperative housing corporation.* A taxpayer who holds stock as a tenant-stockholder in a cooperative housing corporation (as those terms are defined in section 216(b)(1) and (2)) may be eligible to exclude gain under section 121 on the sale or exchange of the stock. In determining whether the taxpayer meets the requirements of section 121, the ownership requirements are applied to the holding of the stock and the use requirements are applied to the house or apartment that the taxpayer was entitled to occupy by reason of the taxpayer's stock ownership.

(d) *Involuntary conversions*—(1) *In general.* For purposes of section 121, the destruction, theft, seizure, requisition, or condemnation of property is treated as a sale of the property.

(2) *Application of section 1033.* In applying section 1033 (relating to involuntary conversions), the amount realized from the sale or exchange of property used as the taxpayer's principal residence is treated as being the amount determined without regard to section 121, reduced by the amount of gain excluded from the taxpayer's gross income under section 121.

(3) *Property acquired after involuntary conversion.* If the basis of the property acquired as a result of an involuntary conversion is determined (in whole or in part) under section 1033(b) (relating to the basis of property acquired through involuntary conversion), then for purposes of satisfying the requirements of section 121, the taxpayer will be treated as owning and using the acquired property as the taxpayer's principal residence during any period of time that the taxpayer owned and used the converted property as the taxpayer's principal residence.

(4) *Example.* The provisions of this paragraph (d) are illustrated by the following example:

*Example.* (i) On February 18, 1999, fire destroys Taxpayer A's house that had an adjusted basis of $80,000. A had owned and used this property as her principal residence for 20 years prior to its destruction. A's insurance company paid A $400,000 for the house. Thus, A realized a gain of $320,000 ($400,000 − $80,000). On August 27, 1999, A purchases a new house at a cost of $100,000.

(ii) Because the destruction of the house is treated as a sale for purposes of section 121, A will exclude $250,000 of the realized gain from A's gross income. For purposes of section 1033, the amount realized is then treated as being $150,000 ($400,000 − $250,000) and the gain realized is $70,000 ($150,000 amount realized − $80,000 basis). A elects under section 1033 to recognize only $50,000 of the gain ($150,000 amount realized − $100,000 cost of new house). The remaining $20,000 of gain is deferred and A's basis in the new house is $80,000 ($100,000 cost − $20,000 gain not recognized).

(iii) A will be treated as owning and using the new house as A's principal residence during the 20-year period that A owned and used the destroyed house.



(e) *Determination of use during periods of out-of-residence care.* If a taxpayer has become physically or mentally incapable of self-care and the taxpayer sells or exchanges property that the taxpayer owned and used as the taxpayer's principal residence for a period aggregating at least 1 year during the 5-year period preceding the sale or exchange, the taxpayer is treated as using the property as the taxpayer's principal residence for any period of time during the 5-year period in which the taxpayer owns the property and resides in any facility (including a nursing home) licensed by a State or political subdivision to care for an individual in the taxpayer's condition.

(f) *Sales of remainder interests*—(1) *In general.* A taxpayer may elect to have the section 121 exclusion apply to gain from the sale or exchange of a remainder interest in the taxpayer's principal residence.

(2) *Limitations*—(i) Sale or exchange of any other interest. If a taxpayer elects to exclude gain from the sale or exchange of a remainder interest in the taxpayer's principal residence, the section 121 exclusion will not apply to a sale or exchange of any other interest in the residence that is sold or exchanged separately.

(ii) *Sales to related parties.* Paragraph (f)(1) of this section will not apply to a sale or exchange by any person who bears a relationship to the taxpayer which is described in section 267(b) or 707(b).

(3) *Election.* The taxpayer makes the election under this paragraph (f) by filing a return for the taxable year of the sale or exchange that does not include the gain from the sale or exchange of the remainder interest in the taxpayer's gross income.

(g) *No exclusion for expatriates.* The section 121 exclusion will not apply to any sale or exchange by an individual if the treatment provided by section 877(a)(1) (relating to the treatment of expatriates) applies to the individual.

(h) *Election to have section not apply.* A taxpayer may elect to have the section 121 exclusion not apply to a sale or exchange of property. The taxpayer makes the election by filing a return for the taxable year of the sale or exchange that includes the gain from the sale or exchange of the taxpayer's principal residence in the taxpayer's gross income.

(i) *Residences acquired in rollovers under section 1034.* If a taxpayer acquires property (section 121 property) in a transaction that qualifies under section 1034 for the nonrecognition of gain realized on the sale or exchange of another property (section 1034 property) and later sells or exchanges the section 121 property, in determining the period of the taxpayer's ownership and use of the sold or exchanged section 121 property, the taxpayer may include the periods that the taxpayer owned and used the section 1034 property as the taxpayer's principal residence (and each prior residence taken into account under section 1223(7) in determining the holding period of the 1034 property).

**§ 1.121–5 [Removed]**

**Par. 3.** Section 1.121–5 is removed.

**Par. 4.** Section 1.1398–3 is added to read as follows:

**§ 1.1398–3 Treatment of section 121 exclusion in individuals' title 11 cases.**

(a) *Scope.* This section applies to cases under chapter 7 or chapter 11 of title 11 of the United States Code, but only if the debtor is an individual.

(b) *Definition and rules of general application.* For purposes of this section, section 121 exclusion means the exclusion of gain from the sale or exchange of a debtor's principal residence available under section 121.

(c) *Estate succeeds to exclusion upon commencement of case.* The bankruptcy estate succeeds to and takes into account the section 121 exclusion with respect to the property transferred into the estate.

(d) *Effective date.* This section is applicable for sales or exchanges that occur on or after the date these regulations are published as final regulations in the **Federal Register**.

**Robert E. Wenzel,**

*Deputy Commissioner of Internal Revenue.*

[FR Doc. 00–25482 Filed 10–6–00; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[VA 4053; FRL–6883–5]**

### Approval and Promulgation of Air Quality Implementation Plans; Virginia; Approval of VOC and $NO_x$ RACT Determinations

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve revisions to the Commonwealth of Virginia's State Implementation Plan (SIP) which would establish reasonably available control technology (RACT) requirements for 16 major sources of volatile organic compound (VOC) and/or nitrogen oxide ($NO_x$)emissions.

**DATES:** Written comments must be received on or before November 9, 2000.

**ADDRESSES:** Written comments may be mailed to Makeba Morris, Chief, Permits and Technical Assessment Branch, Mailcode 3AP11, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103 and at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

**FOR FURTHER INFORMATION CONTACT:** Ray Chalmers, at (215) 814–2061, or by e-mail at chalmers.ray@epa.gov. Please note that while questions and requests for the Technical Support Document (TSD) prepared in support of this rulemaking may be submitted via e-mail, any comments on the proposed action must be submitted, in writing, to the Region III address as indicated above.

**SUPPLEMENTARY INFORMATION:**

**I. Background Information Regarding RACT Requirements**

Pursuant to sections 182 and 184 of the Clean Air Act (CAA), States are required to implement RACT for major sources of volatile organic compounds (VOCs) and/or nitrogen oxides ($NO_x$) emissions which are: (1) Located in those areas which have not attained the National Ambient Air Quality Standard for ozone (ozone nonattainment areas) which are designated in 40 CFR part 81 as having moderate or above nonattainment problems; or (2) located in the ozone transport region (OTR), which was established by section 184 of the CAA. A source is defined as major if its VOC and/or $NO_x$ emissions exceed specified levels, defined in sections 182 and 184 of the CAA, which vary depending upon the ozone air quality designation of the area where the source is located, and on whether or not the source is located in the OTR.

Pursuant to the CAA's requirements, the Commonwealth of Virginia (the Commonwealth) submitted revisions to its SIP consisting of regulations pertaining to RACT requirements for major $NO_x$ and VOC sources located in ozone nonattainment areas and in its portion of the OTR. The Commonwealth's regulation pertaining to RACT requirements for major $NO_x$ sources, for which EPA granted

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conditional limited approval on April 28, 1999 (64 FR 22789), provides that sources with steam generating units, process heaters, or gas turbines either accept specified RACT limits for these units or request case-by-case RACT determinations for them. The regulation also provides that sources with other types of emission units must obtain case-by-case RACT determinations for those units.

The Commonwealth's regulation pertaining to RACT requirements for major VOC sources, which EPA approved on March 12, 1997 (62 FR 11332), provides that subject sources obtain case-by-case RACT determinations.

When EPA granted conditional limited approval of the Commonwealth's RACT regulation applying to major $NO_X$ sources, EPA established the condition that the Commonwealth was required to submit its case-by-case RACT determinations for $NO_X$ sources to EPA for incorporation into the Commonwealth's SIP.

## II. Description of the Commonwealth's RACT SIP Submittals

The Commonwealth established case-by-case RACT requirements for sources which had requested RACT determinations pursuant to the provisions of the Commonwealth's RACT regulations. This proposed rulemaking action pertains to the Commonwealth's request that EPA revise the Commonwealth's SIP to include the Commonwealth's case-by-case RACT SIP submittals for 16 sources. The Commonwealth's submittals consist of operating permits and/or consent agreements which contain the RACT requirements for each source, as well as supporting documentation.

The 16 sources for which the Commonwealth submitted case-by-case RACT determinations, their types and locations, the pollutants they emit for which RACT requirements are established, and the dates of the Commonwealth's RACT SIP submittals for them are listed in the table found in Section III below, entitled, "Proposed RACT SIP Revision Approvals." The emission limitations and other RACT requirements for each of these sources are discussed in the TSD prepared by EPA in support of this proposed action. The TSD is included in the administrative record for this rulemaking action, and is available upon request from the EPA Region III office listed in the **ADDRESSES** section of this document.

## III. Proposed RACT SIP Revision Approvals

EPA is proposing to approve the Commonwealth of Virginia's RACT SIP revisions for the sources listed in the table, below:

VIRGINIA—VOC AND $NO_X$ RACT DETERMINATIONS FOR INDIVIDUAL SOURCES

| Source | County | Date of submittal | Source type | Major source pollutant |
|---|---|---|---|---|
| Cellofoam North America, Inc.—Falmouth Plant. | Stafford | 9/22/98 | Polystyrene Insulation Production Plant. | $NO_X$ |
| CNG Transmission Corp.—Leesburg Compressor Station. | Loudoun | 5/23/00 | Natural Gas Compressor Station. | $NO_X$ and VOC |
| Columbia Gas Transmission Corporation—Loudoun County Compressor Station. | Loudoun | 5/24/00 | Natural Gas Compressor Station. | |
| District of Columbia's Department of Corrections— Lorton Prison. | Fairfax | 4/20/00 | Prison | $NO_X$ and VOC |
| Michigan Cogeneration Systems, Inc.—Fairfax County I–95 Landfill Facility. | Fairfax | 5/12/00 | Landfill Gas Fired Electric Power Generation. | $NO_X$ and VOC |
| Metropolitan Washington Airports Authority—Ronald Reagan Washington National Airport. | Arlington | 5/22/00 | Airport | $NO_X$ |
| Nomen M. Cole, Jr., Pollution Control Plant | Fairfax | 4/27/00 | Wastewater Treatment Plant with Sewage Sludge Incinerators. | $NO_X$ |
| Ogden Martin Systems of Alexandria/Arlington, Inc. | Arlington | 9/14/98 | Municipal Waste Combustion Plant. | $NO_X$ |
| Ogden Martin Systems of Fairfax, Inc | Fairfax | 8/31/98 | Municipal Waste Combustion Plant. | $NO_X$ |
| US Department of Defense—Pentagon Reservation. | Arlington | 5/19/00 | Pentagon Office Building | $NO_X$ |
| Potomac Electric Power Company—Potomac River Generating Station. | Alexandria | 9/3/98 ($NO_X$)<br>5/9/00 (VOC) | Electric Power Plant | $NO_X$ and VOC |
| United States Marine Corps.—Quantico Base. | Prince William and Stafford. | 5/25/00 | Marine Corps Base | $NO_X$ |
| Transcontinental Gas Pipe Line Corporation—Compressor Station # 185. | Prince William County. | 5/5/97 | Natural Gas Compressor Station. | $NO_X$ |
| U.S. Army Garrison—Fort Belvoir | Fairfax | 5/17/00 | Fort Belvoir Army Base | $NO_X$ |
| Virginia Power—Possum Point Plant | Prince William County. | 8/31/00 ($NO_X$)<br>4/2/96 (VOC) | Electric Power Plant | $NO_X$ and VOC |
| Washington Gas Light Company——Springfield Operations Center. | Fairfax | 5/20/98 | Natural Gas Fired Cogeneration Plant. | $NO_X$ |

## IV. General Information Pertaining to SIP Submittals From the Commonwealth

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) "privilege" for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations.

Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Section 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information: (1) That are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1997, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Section 10.1–1198, precludes granting a privilege to documents and information "required by law," including documents and information "required by federal law to maintain program delegation, authorization or approval," since Virginia must "enforce federally authorized environmental programs in a manner that is no less stringent than their federal counterparts. * * *" The opinion concludes that "[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by federal law to maintain program delegation, authorization or approval."

Virginia's Immunity law, Va. Code Section 10.1–1199, provides that "[t]o the extent consistent with requirements imposed by Federal law," any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1997 opinion states that the quoted language renders this statute inapplicable to enforcement of any federally authorized programs, since "no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with federal law, which is one of the criteria for immunity." Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the federal requirements.

In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on federal enforcement authorities, EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by this, or any, state audit privilege or immunity law.

## V. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This proposed action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this proposed rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998).

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings' issued under the executive order.

This proposed rule pertaining to RACT SIP revisions for 16 sources in Virginia does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: September 29, 2000.

**Bradley M. Campbell,**

*Regional Administrator, Region III.*

[FR Doc. 00–25931 Filed 10–6–00; 8:45 am]

BILLING CODE 6560–50–P

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[MT–001–0024, MT–001–0025, MT–001–0026; FRL–6883–6]**

## Clean Air Act Approval and Promulgation of Air Quality Implementation Plan; Montana; East Helena Lead State Implementation Plan

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The EPA is proposing to partially approve and partially disapprove the East Helena Lead (Pb) State Implementation Plan (SIP) revisions submitted by the Governor of Montana on August 16, 1995, July 2, 1996, and October 20, 1998. The EPA is proposing to grant a simultaneous partial approval and partial disapproval of these SIP revisions because, while they strengthen the SIP, they also do not fully meet the Act provisions regarding plan requirements for nonattainment areas. The intended effect of this action is to make federally enforceable those provisions that EPA is proposing to partially approve, and to not make federally enforceable those provisions that EPA is proposing to partially disapprove. The EPA is taking this action under sections 110, 179, and 301 of the Clean Air Act (Act).

**DATES:** Written comments must be received by November 9, 2000.

**ADDRESSES:** Written comments may be mailed to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P-AR, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado, 80202. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado, 80202–2466. Copies of the State documents relevant to this action are available for public inspection at the Air and Waste Management Bureau, Montana Department of Environmental Quality, 1520 E. 6th Avenue, Helena, Montana, 59620–0901.

**FOR FURTHER INFORMATION CONTACT:** Kerri Fiedler, EPA Region VIII, (303) 312–6493 or Laurie Ostrand, EPA, Region VIII, (303) 312–6437.

**SUPPLEMENTARY INFORMATION:** Throughout this document, wherever "we", "our", or "us" is used, we mean EPA.

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## I. Background

On October 5, 1978, we promulgated primary and secondary National Ambient Air Quality Standards (NAAQS) for Pb and its compounds, measured as elemental Pb (40 CFR 50.12). The primary and secondary standards were set at 1.5 micrograms per cubic meter ($\mu g/m^3$), maximum arithmetic mean, averaged over a calendar quarter. On July 9, 1984, we approved a revision to the Montana SIP which set forth a Pb control strategy to provide for attainment and maintenance of the Pb NAAQS in East Helena. In response to continuing violations of the Pb NAAQS following implementation of the July 9, 1984 SIP, on October 1, 1988, we sent a letter to the Governor of Montana, providing notification that the Pb SIP for East Helena was inadequate to attain and maintain the Pb NAAQS. We published this notification on December 2, 1988 in 53 FR 48642. Pursuant to the new authority in the 1990 amendments to the Act, on November 6, 1991, we designated the East Helena area as a nonattainment area for Pb. This designation was effective on January 6, 1992 and required the State to submit a Part D SIP by July 6, 1993. The SIP must provide for attainment of the Pb NAAQS as expeditiously as practicable, but no later than January 6, 1997.

The Montana Department of Environmental Quality (MDEQ) developed the Pb SIP for East Helena in consultation with the ASARCO primary Pb smelter, the major Pb source in East Helena, and American Chemet, a paint pigment plant. The State's efforts have been coordinated with us to ensure compliance with SIP requirements. On August 16, 1995, the Governor of Montana submitted the first Pb SIP revision. This submittal consists of (1) a Montana Board of Environmental Review (MBER) approved order which adopted the stipulation between MDEQ and ASARCO, as well as controlled emissions on some of the streets of East Helena, and (2) a MBER approved order which adopted the stipulation between MDEQ and American Chemet. On July 2, 1996, the Governor of Montana submitted the second Pb SIP revision. This submittal consists of MBER orders and stipulations, between MDEQ and ASARCO, approved on April 12, 1996 and June 21, 1996. The Governor of Montana submitted the third Pb SIP revision on October 20, 1998 which included an August 28, 1998 board order adopting the stipulation between MDEQ and ASARCO. The third Pb SIP revision, dated October 20, 1998, was submitted to make the SIP consistent with permit conditions in Montana Air Quality Permits #2557–08, dated January 3, 1997, and #2557–09, dated April 6, 1998. On April 28, 2000, MDEQ submitted a formatting revision to the SIP correcting a typographical error in the footnotes of the SIP.

## II. Criteria for Approval

These Pb SIP revisions were reviewed using the criteria established by the Act. The requirements for all SIPs are contained in section 110(a)(2) of the Act. Section 172(c) of the Act specifies the provisions applicable to areas designated as nonattainment for any of the NAAQS. Further guidance and criteria are set forth in the "State Implementation Plans for Lead Nonattainment Areas; Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990" (58 FR 67748).

## III. Evaluation of the State's Submittal

Our Technical Support Document (TSD) for this action discusses our criteria for deciding whether to approve or disapprove the East Helena Pb SIP and whether or not the State of Montana's submittals satisfy those criteria. The TSD also discusses most of the issues we raised on various drafts and final submittals of the East Helena Pb SIP revisions and how the State of Montana addressed these issues. See the TSD for a more detailed review of the Pb SIP and how it satisfies the Act's requirements.



### *A. Why Is EPA Proposing To Partially Approve the State of Montana's Plan?*

We are proposing to partially approve the East Helena Pb SIP revisions, submitted by the Governor of Montana on August 16, 1995, July 2, 1996, and October 20, 1998. Except for those provisions that we are proposing to partially disapprove, we believe the submitted plans satisfy the Act's requirements for Pb nonattainment areas.

1. August 16, 1995 SIP Revision

On August 16, 1995, the Governor of Montana submitted the first Pb SIP revision. This submittal consists of (1) a MBER approved order which adopted the stipulation between MDEQ and ASARCO to limit Pb emissions from ASARCO's Pb smelting operations as well as controlled emissions on some of the streets of East Helena, and (2) a MBER approved order which adopted the stipulation between MDEQ and American Chemet to limit Pb emissions from the #1 Copper Furnace Baghouse Stack.

2. July 2, 1996 SIP Revision

On July 2, 1996, the Governor of Montana submitted the second Pb SIP revision. This submittal contains a series of orders approved by the MBER adopting stipulations between MDEQ and ASARCO. An April 12, 1996 board order and stipulation allows ASARCO operational flexibility, while still assuring attainment and maintenance of the NAAQS for Pb in the East Helena area. A June 21, 1996 board order and stipulation revises ASARCO's method for handling furnace Pb based on safety and engineering concerns.

On March 24, 1998, we sent MDEQ comments on this Pb SIP revision asking for clarification on emission limits and inventory, air modeling, ambient data, department discretion, and other general issues. Based on the November 16, 1999 response from MDEQ, we have determined the SIP revision is acceptable, except for the department discretion issues and enforceability concerns with two test methods. We are proposing to grant a partial disapproval due to the department discretion issues and enforceability concerns with two test methods in the East Helena Pb SIP.

3. October 20, 1998 SIP Revision

On October 20, 1998, the Governor of Montana submitted the third Pb SIP revision which included a June 12, 1998 board order adopting the stipulation between MDEQ and ASARCO. These modifications allow ASARCO to change the emission control and ventilation system for a specific operation. These changes to the emission control system will not result in any changes in emission limitations at the ASARCO facility. On April 28, 2000, MDEQ submitted a formatting revision to the SIP correcting a typographical error in the footnotes of the SIP.

On September 9, 1998, the MDEQ responded to our comments on the draft version of this Pb SIP revision. We were concerned the proposed changes contravened our stack height rules, and questioned ASARCO's possible use of dispersion techniques, such as changes in volumetric flow rate and final exhaust gas plume rise. The MDEQ adequately documented its basis for concluding that the proposed changes do not constitute prohibited dispersion techniques and assured us that the proposed changes comply with the stack height rules. We have concluded, based on the information MDEQ provided, that these revisions result in a negligible change in volumetric flow rate and final exhaust gas plume rise, and result in no change in the operation of specific equipment or other parameters that might affect the exhaust gas stream. Therefore, we agree that the changes at ASARCO do not contravene section 123 of the Act or our stack height rules.

Section 110(k) of the Act addresses our actions on submissions of SIP revisions. The Act also requires States to observe certain procedures in developing SIP revisions. Section 110(a)(2) of the Act requires that each SIP revision be adopted after reasonable notice and public hearing. We have evaluated the State's submissions and determined that the necessary procedures were followed.

### *B. Why Is EPA Proposing To Partially Disapprove The State of Montana's Plan?*

We are proposing to partially disapprove this SIP revision, because it does not fully meet the Act provisions regarding plan submissions and requirements for nonattainment areas. The current version of East Helena's Pb SIP does not conform to the requirement of section 110(a)(2) of the Act that SIP limits must be enforecable nor to the requirement of section 110(i) that the SIP can only be modified through the SIP revision process. In our March 24, 1998 letter to MDEQ, we raised concerns about places in the stipulation where MDEQ has the discretion to modify existing provisions, or add future documents or compliance monitoring methods to the Pb SIP. The stipulations were not clear whether any of these changes would be submitted as SIP revisions or by any other process for us to review and approve. We indicated in places where the stipulation allowed MDEQ to exercise discretion, the words "and EPA" must be added. The State did not revise the SIP to address our concern and in its November 16, 1999 response, MDEQ indicated that the department discretion issues would be addressed at a later date. We are proposing to partially disapprove the SIP because of the provisions which allow department discretion and two provisions which contain enforceability issues related to the test method.

### *C. What Happens When EPA Partially Approves and Partially Disapproves the State of Montana's Plan?*

By partially approving the SIP, we are making those portions of the State's submittal federally enforceable (and enforceable by citizens under the Act). These portions of the SIP that we partially disapprove are not made federally enforceable. We believe that the proposed partial approval of the East Helena Pb SIP, except for those provisions that we are proposing to partially disapprove, satisfy the Act's criteria for Pb nonattainment SIPs. Even though we are proposing to partially disapprove portions of the SIP, the State is not required to revise the SIP to fully meet the Act's Pb nonattainment requirements. Therefore, because the State is not required to complete any further SIP revisions as a result of the partial disapproval, sanctions and Federal Implementation Plan clocks (FIP) under sections 179(a) and 110(c), repsectively, will not be started if we finalize our proposal to partially disapprove the East Helena Pb SIP.

### *D. Emission Inventory*

Section 172(c)(3) of the Act requires that nonattainment plan provisions include a comprehensive, accurate, current inventory of actual emissions from all sources of relevant pollutants in the nonattainment area. The MDEQ identified three major sources of Pb in the East Helena area: the ASARCO Smelter complex; re-entrained dust from the roads of East Helena; and the American Chemet copper oxide manufacturing facility.

1. ASARCO

The North American Weather Consultants (NAWC) conducted a detailed Pb emission inventory of the ASARCO smelter facility in the summer and fall of 1990. The NAWC developed a complete testing protocol describing test locations and actual test methods. The final emission inventory is located

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in the "ASARCO East Helena Primary Lead Smelter Task 5 Summary Report Volumes 1–5," NAWC, May 1992. We reviewed the testing protocol and emissions inventory in detail and provided numerous comments to the State. The State and ASARCO responded to most of our comments. We believe the report provides, for the most part, a complete and accurate Pb emission inventory of the entire facility for use in dispersion modeling studies.

2. East Helena Area

The MDEQ conducted a base year Pb emission inventory of the town of East Helena. The final report is entitled "East Helena Lead Emission Inventory" and dated February 1992. This effort focused mainly on the Pb emissions from re-entrained road dust but also included Pb emission estimates from automobile exhaust, wind erosion of barren ground, and agricultural tillage. The base year selected for this study ran from July 1, 1990 through June 30, 1991. Results of the study show that re-entrained road dust accounts for 93.6% of the total annual Pb emissions, while automobile tailpipe emissions contribute 3.8%. The remaining 2.6% of the total Pb emissions comes from parking lots, unpaved roads, wind erosion, and agricultural sources.[1]

3. American Chemet

The MDEQ conducted an emissions inventory of the American Chemet facility between July 1, 1990 and June 30, 1991. The MDEQ used historical testing data, along with a log of actual hours of operation, and material processed, to estimate Pb emissions during the study period. The MDEQ inventoried a total of 16 point sources, including scrubber and baghouse exhausts, during the study period. A supplemental report prepared by the Department, entitled "American Chemet Corporation 1990 Emission Inventory," contains complete details of the emission inventory for American Chemet.

Results of the emission inventory showed that only one point source, the #1 Copper Furnace Baghouse Stack (previously referred to as the pyrometallurgical process baghouse stack), had Pb emissions significant enough to be considered in the Pb SIP revision for East Helena. None of the other sources at this facility were considered further in the Pb SIP. We support the emission inventories prepared for the sources in the Pb nonattainment area because they appear to be accurate and MDEQ has addressed our previously identified concerns.

*E. Reasonably Available Control Measures (RACM)/Reasonably Available Control Technology (RACT)*

Section 172(c)(1) of the Act mandates that SIPs provide for the implementation of RACM as expeditiously as practicable, including RACT. Our Addendum to the General Preamble for the implementation of Title I of the Act defines RACT for Pb as a control technology which is necessary to achieve the NAAQS (58 FR 67750, December 22, 1993). The same document provides that RACM for Pb should be determined by evaluating the available control measures for reasonableness, considering their technological feasibility, and the cost of control in the area to which the SIP applies. In determining what is reasonably available (for RACM), our guidance indicates that areas should evaluate all the measures contained in Appendix 1 to the Lead Addendum to the General Preamble, and provide a reasoned justification for rejection of any available control measure. Based on our comparison of the available control measures (identified in Appendix 1) and those incorporated into this Pb SIP, we find that, for the most part, ASARCO is implementing most of the available measures. Therefore, we believe the State has demonstrated that the control measures applied to ASARCO, American Chemet, and the streets of East Helena are reasonable and will maintain the Pb NAAQS.

*F. Emission Limit Requirements*

The control strategy for the Pb SIP requires ASARCO to enclose various buildings or areas, install baghouses, develop a new technology for handling furnace Pb, capture fugitive emissions, build dust conveying and handling systems, and eliminate some emission sources. In addition, there are emission limitations on various emission points, process weight limitations, time-of-day restrictions and wind speed limitations on material handling, minimum ventilation requirements on building ventilation systems, and property access restrictions. There is also a five percent visible emission limitation on the paved and unpaved roads and areas within the ASARCO facility, and a requirement to treat the unpaved areas and sweep the paved areas to reduce fugitive Pb emissions.

The MDEQ has offered American Chemet two options as part of the control strategy. If American Chemet chooses not to build a new stack, it is subject to a more stringent emission limit on its existing stack. If it chooses to build a higher stack, it has a less stringent emission limit on the new stack. Regardless of the option chosen, modeling has shown that the area will continue to attain the Pb NAAQS. Finally, American Chemet will also adopt a limit on the Pb content of its plant feed material.

With respect to the East Helena road dust, MDEQ requires ASARCO to sample road dust on paved public streets and roads, and maintain the streets so that they meet the quarterly average Pb loading limits.

*G. Enforceability*

All measures and other elements in this Pb SIP revision must be enforceable by the State and us (see sections 172(c)(6), 110(a)(2)(A), and 57 FR 13556). The ASARCO and American Chemet stipulations explicitly provide for applicability of the regulations, compliance dates, compliance periods, recordkeeping requirements, test methods, and malfunction provisions. In our judgement, these provisions are sufficiently clear and prescriptive to meet reasonable standards of enforceability, with two exceptions. The current version of East Helena's Pb SIP does not conform to requirements of the Act nor our policy with respect to department discretion and enforceability. In our March 24, 1998 letter to MDEQ, we raised concerns about places in the stipulation where MDEQ has the discretion to modify existing provisions or add future documents or compliance monitoring methods to the Pb SIP. The stipulations were not clear whether any of these changes would be submitted as SIP revisions or by any other process for us to review and approve. We indicated in places where the stipulation allowed MDEQ to exercise discretion, the words "and EPA" must be added. The provisions containing department discretion are discussed in Table 1 below:

[1] In responding to our March 24, 1998 letter, MDEQ could not find documentation of the methods utilized to calculate the East Helena area values in the attainment demonstration. The MDEQ recalculated the post-control emissions (attainment demonstration) for the paved roads and parking lots in East Helena. In the recalculation, MDEQ found that the sector-specific emission rates are less than the corresponding values used in the attainment demonstration, except for sector #49. Although sector #49 emission rates are now calculated to be higher (20 percent higher by one method, one percent higher by another method) than those used in the attainment demonstration, MDEQ does not believe they are so much higher that the attainment demonstration is invalid. We believe that the recalculated values are acceptable and that any future modeling for East Helena should rely on the recalculated emission inventory for the East Helena paved roads and parking lots.



TABLE 1.—DEPARTMENT DISCRETION

| Provision No. | Description |
|---|---|
| ASARCO Stipulation Provision 15 and American Chemet Stipulation Provision 20. | Indicates that stipulations may be modified when sufficient grounds exist. For example, if the State demonstrates through modeling or other means that an alternative plan could still meet the NAAQS, the plan could be modified. Although our March 24, 1998 letter may have indicated that these provisions would be acceptable if MDEQ could confirm our interpretations, we now believe these provisions need to be revised in the same way that the State revised similar in stipulations in the Billings SIP. |
| ASARCO Stipulation Provision 16. | Indicates that revisions to attachments of the stipulation can occur, once approved by MDEQ. The stipulation is not clear as to whether MDEQ approval means the revised attachments will be deemed incorporated into the SIP. We believe that since the attachments are a part of the SIP and pertain mostly to enforceability provisions, any revision to an attachment should be evaluated for significance[2] and if determined to be significant, the revision must be approved as a SIP revision or approved through the Title V process.[3] We suggested to MDEQ that where the "Department" appears in the stipulations "and EPA" should be added. |
| ASARCO Exhibit A, Section 6. | References Attachment 6 Quality Assurance/Quality Control (QA/QC) and Standard Operating Procedures (SOP) for Continuous Opacity Monitoring Systems. Any revision to an attachment and provision should be evaluated for significance,[4] and if determined to be significant, the revision must be approved as a SIP revision or approved through the Title V process. EPA has suggested to MDEQ that where the "Department" appears in the stipulations "and EPA" should be added. |
| ASARCO Exhibit A, Section 7(A)(2). | Indicates certain test methods are to be used or other methods approved by MDEQ. Any revision to a testing method or provision should be evaluated for significance,[5] and if determined to be significant, the revision must be approved as a SIP revision or approved through the Title V process. EPA has suggested to MDEQ that where the "Department" appears in the stipulations "and EPA" should be added. |
| ASARCO Exhibit A, Section 11(C). | Indicates if the Baghouse Maintenance Plan, Attachment 7, is revised it needs to be reviewed and approved by MDEQ. Any revision to an attachment should be evaluated for significance,[6] and if determined to be significant, the revision must be approved as a SIP revision or approved through the Title V process. EPA has suggested to MDEQ that where the "Department" appears in the stipulations "and EPA" should be added. |
| ASARCO Exhibit A, Section 12(A)(7). | Indicates the Baghouse Maintenance Plan, Attachment 7, will need further revisions. Once revised, it will be reviewed and approved by MDEQ. Any revision to an attachment should be evaluated for significance,[7] and if determined to be significant, the revision must be approved as a SIP revision or approved through the Title V process. EPA has suggested to MDEQ that where the "Department" appears in the stipulations "and EPA" should be added. |
| ASARCO Exhibit A, Section 12(B). | Indicates if attachments are revised they need to be reviewed and approved by MDEQ. Any revision to an attachment should be evaluated for significance,[8] and if determined to be significant, the revision must be approved as a SIP revision or approved through the Title V process. EPA has suggested to MDEQ that where the "Department" appears in the stipulations "and EPA" should be added. |

In addition to the department discretion issues, we believe that sections 2(A)(22) and 2(A)(28), of ASARCO Exhibit A, contain enforceability problems. These sections, which discuss how moisture content and silt content will be determined, indicate that sampling will be performed by specified methods or equivalent methods. The definition is not clear who will determine that the equivalent methods are acceptable. Any revision to a testing method or provision should be evaluated for significance and if determined to be significant, the revision must be approved as a SIP revision or approved through the Title V process. (See footnote 2 above.)

Because these provisions could allow changes in requirements without EPA and public review or EPA approval, and could allow use of test methods not accepted by us, the East Helena Pb SIP revisions present Federal enforceability issues and thus fail to comply with the general enforceability provisions of section 172(c)(6) of the Act. Therefore, we are proposing to partially approve and partially disapprove the Pb SIP revision under section 110(k)(3) of the Act. With this partial approval and partial disapproval, we are incorporating into the federally approved SIP all provisions of the stipulation, exhibits, and attachments except those provisions that allow the Department or sources to modify the SIP without seeking SIP approval through us. (Please see the proposed regulatory text at the end of this notice for the exact provisions we are proposing to partially disapprove.) We note that portions of the SIP we are proposing to partially approve indicate that under certain circumstances ASARCO may need to revise attachments to Exhibit A. Since we are not proposing to approve the Department's discretion to allow these revisions unilaterally, we interpret these provisions to mean that revisions in Attachment B II. This White Pager (section II.A and Attachment A) discuss the streamlining provess that must be followed in order to revise SIP's through the Title V permit. Note, however, that until the sate is actucally using Title V permits for these sources, a source-specicfic SIP revision would be necessary.

[2] We interpret "evaluated for significance" to mean that the State must submit to us all modifications to SIP text (including minor and clerical corrections or modifications) and all MDEQ approvals of alternative requirements and methodologies. If the modification to text or alternative requirement or methodology is proposed as a "minor modification" (or clerical correction) we will inform the State within 45 days from the date of submittal of our determination whether the modification or alternative is major or minor, and if it is minor, of our determination within 45 days does not mean that the modification or alternative is minor and is approved.) If we do not approve the modification of text or alternative requirement or mentodology as minor, the State must adopt the modification as a SIP revision in accordance with section 110(a)(2) of the Act and submit it to us for approval. We will then act on the SIP revision rulemaking under the Administrative Procedure Act.

[3] As indicated in our March 24, 1998 letter, to use the Title V approach, the stipulation or SIP document should contain enabling language that would allow the SIP to be revised through the Title V permit process. Our march 5, 1996 memorandum, "White Paper Number 2 for Improved Implementation of the Part 70 Operating Permits Program," (White Pager) suggests enabling language

[4] See footnote 2 above.

[5] See footnote 2 above.

[6] See footnote 2 above.

[7] See footnote 2 above.

[8] See footnote 2 above.

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to the attachments for Exhibit A will be adopted at the State level and submitted as a SIP revision to us for approval. Additionally, we do not believe that our proposed partial disapproval of the above-mentioned provisions would render the SIP more stringent than the State of Montana intends, since our action does not change the stringency of any of the substantive requirements the State of Montana has imposed and is currently able to enforce under the SIP.

*H. Reasonable Further Progress (RFP)*

The Pb SIP must provide for RFP, defined in section 172(c)(2) of the Act as such reductions in emissions of the relevant air pollutant as are required by Part D, or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable NAAQS by the applicable date. As discussed in the Lead Addendum to the General Preamble, we construe RFP as "adherence to an ambitious compliance schedule" which is expected to periodically yield significant emission reductions, and, as necessary, linear progress. The Pb SIP provides for an ambitious compliance schedule but does not quantify the achievable emission reductions for each measure, since most of the measures should be implemented by the attainment date and not on a staggered schedule before the attainment date. However, since the attainment date of January 6, 1997 has passed and all evidence indicates that the area is attaining the Pb NAAQS, we conclude this Pb SIP has met the RFP requirements.

*I. Contingency Measures*

As provided in section 172(c)(9) of the Act, all nonattainment area SIPs must include contingency measures. Contingency measures should consist of other available measures that are not part of the area's control strategy for attaining the NAAQS. These measures must take effect without further action by the state or us, upon a determination that the area has failed to meet RFP or attain the Pb NAAQS by the applicable statutory deadline. The MDEQ will implement the contingency measures for the East Helena Pb SIP following a Pb NAAQS violation after the first calendar quarter of 1997, or if there is a lack of RFP. The contingency measures consist of two tiers, Tier I and Tier II. The MDEQ has designed the two-tier approach to address possible multiple violations, and to target any significant additional sources of Pb as predicted by the model.

Tier I contingency measures contain measures such as reducing outdoor storage of sinter material, ceasing operation during the night shift, imposing a more stringent Pb loading limit on the East Helena paved roads, paving or treating some unpaved streets in East Helena, and reducing spills on East Helena streets. The Tier II contingency measures contain measures such as imposing an even more stringent Pb loading limit on the East Helena paved roads, eliminating all storage and handling of sinter outdoors, and paving or covering 50,000 square feet of surface area within the ASARCO facility. If ASARCO implements these measures as a result of a failure to make RFP, once the RFP deficiency has been corrected, the contingency measures will be lifted. If these measures are implemented due to a violation of the Pb NAAQS, the measures will remain in effect until the Board approves a revised Pb SIP. We believe the Pb SIP meets the contingency measures requirements.

*J. Attainment of the Pb NAAQS*

Section 192(a) of the Act requires that SIPs must provide for attainment of the Pb NAAQS as expeditiously as practicable but not later than five years from the date of an area's nonattainmnet designation. Through modeling, the State has demonstrated that the emission points (at ASARCO and American Chemet), and the area emissions from the streets of East Helena, at their allowable limits, will protect the Pb NAAQS, *i.e.*, there will be no violations of the Pb NAAQS. Subsequent to the initial modeled attainment demonstration, there have been a few changes to the control strategy, but we believe they will not cause or contribute to a violation of the NAAQS. First, ASARCO increased the percent Pb per pot processed which correlates to an increase in the Pb emission limit at the Laboratory Assay Stacks. In our March 24, 1998 letter to MDEQ, we requested that MDEQ provide us with the modeling diskettes. In its November 16, 1999 response, MDEQ indicated there are no diskettes because it did not rerun the model, but simply extracted the values from the previous model, and scaled up the predicted concentrations. We have determined this to be sufficient because: (1) The emission point is one of the smaller sources, (2) there is a linear relationship between the percent Pb per pot processed and the Pb emission limit, (when percent Pb per pot processed increases, the Pb emission limit increases at the same rate) and (3) when the limit is scaled up, there was not an exceedance of the Pb NAAQS.

Secondly, American Chemet may elect to raise its stack. The American Chemet stipulation allows American Chemet to choose between one of two emission limits depending on the stack height (20 meters (m) or 8.8 m). The July 1995 air modeling report shows the American Chemet Copper Furnace stack was only modeled at 20 m. In our March 24, 1998 letter to MDEQ, we questioned if the American Chemet Copper Furnace stack was modeled at the 8.8 m stack height. In its November 16, 1999 response, MDEQ indicated the stack was modeled at its current height of 8.8 m in the 1993 modeling effort. The 1993 modeling report and diskettes were forwarded to us in 1994. We have evaluated the modeled ambient impacts from the 8.8 m stack in conjunction with the 1995 modeled ambient impacts and believe the attainment modeling demonstration is sufficient and satisfies our concerns. The 1993 study showed that the Pb NAAQS could be attained when the American Chemet stack is modeled at 8.8 m. There is very little difference in total predicted Pb concentrations between an 8.8 m stack height and a 20 m stack height, because this source represents less than 0.5 percent of the emissions that were modeled in the attainment demonstration. The difference in modeled concentration is negligible.

Finally, in its November 16, 1999 letter, MDEQ indicated it recalculated the East Helena area emissions because it could not recreate how the control emission inventory (attainment inventory) was generated in the past. Except for one road segment, all other East Helena paved roads and parking lots were recalculated to have fewer emissions than those used in the attainment demonstration. We accept the recalculation and do not think it is necessary to remodel for that one road segment, because it appears likely that the emission increases on the road section would be more than offset in the modeling results by the emission decreases from the parking lots and other road sections. The net result would likely be slightly lower predicted Pb concentrations at the highest concentration receptor sites. With these changes, the attainment modeling shows the SIP will protect the Pb NAAQS. The most sensitive receptor in the modeling domain was modeled at 1.47 $\mu g/m^3$ of Pb, demonstrating compliance with the Pb NAAQS of 1.50 $\mu g/m^3$. However, any future permit or SIP action that involves modeling must fully incorporate all the revisions mentioned above. [9]

[9] In addition, any future permit or SIP ection must assure that emissions from the Acid Dust Bin Baghouse Stack (17P) must be modeled as an independent source and at a stack height equal to 65 meters. Please see TSD for further discussion.



Under section 179(c)(1), we have the responsibility for determining whether a nonattainment area has attained the Pb NAAQS. We must make an attainment determination as expeditiously as practicable, but no later than 6 months after the attainment date for the area. The attainment date for East Helena was January 6, 1997. We will make the attainment determination for a nonattainment area based solely on an area's air quality data. Based on the air quality data currently in the AIRS database and pursuant to section 179(c)(1) of the Act, we have determined that the East Helena Pb nonattainment area has attainined the Pb NAAQS through calendar year 1999.

While we may determine that an area's air quality data indicate the area may be meeting the Pb NAAQS for a specified period of time, this does not eliminate the State's responsibility under the Act to continue to implement the requirements under the approved Pb SIP. Even if we determine that an area has attained the standard, the area will remain designated as nonattainment until the State has requested, and we approve the State's request, for re-designation to attainment. In order for an area to be re-designated to attainment, the State must comply with the requirements listed under sections 107(d)(3)(E) and 172(a) of the Act.

**IV. Request for Public Comment**

We are soliciting public comment on all aspects of this proposed SIP rulemaking action. Send your comments in duplicate to the address listed above in the front of this Notice. We'll consider your comments in deciding our final action if your letter is received before November 9, 2000.

**V. Administrative Requirements**

*A. Executive Order 12866*

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

*B. Executive Order 13045*

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

*C. Executive Order 13084*

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

*D. Executive Order 13132*

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

*E. Regulatory Flexibility*

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This proposed partial approval will not have a significant impact on a substantial number of small entities because SIP approvals under sections 110 and 301 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action.

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The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

This proposed partial disapproval rule will not have a significant impact on substantial number of small entities because this partial disapproval only affects two sources, ASARCO and American Chemet. Only a limited number of sources are impacted by this action. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities. Furthermore, as explained in this notice, the submission does not meet the requirements of the Clean Air Act and EPA cannot approve the submission. EPA has no option but to partially disapprove the submittal. The limited approval will not affect any existing State requirements applicable to small entities. Federal disapproval of a State submittal does not affect its State enforceability.

*F. Unfunded Mandates*

Under sections 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action proposes approval of pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Intergovernmental relations, Lead, Reporting and recordkeeping requirements.

Dated: September 28, 2000.

**Jack W. McGraw,**

*Acting Regional Administrator, Region VIII.*

Part 52, Chapter I, title 40 of the Code of Federal Regulations is proposed to be amended as follows:

**PART 52—[AMENDED]**

1. The authority citation for Part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

**Subpart BB—Montana**

2. Section 52.1370 is proposed to be amended by adding paragraph (c)(51) to read as follows:

**§ 52.1370 Identification of plan.**

* * * * *

(c) * * *

(51) The Governor of Montana submitted the East Helena Lead SIP revisions with letters dated August 16, 1995, July 2, 1996, and October 20, 1998. The revisions address regulating lead emissions from ASARCO, American Chemet, and re-entrained road dust from the streets of East Helena.

(i) Incorporation by reference.

(A) Board order issued on August 28, 1998, by the Montana Board of Environmental Review adopting and incorporating the stipulation of the Montana Department of Environmental Quality and ASARCO including exhibit A and attachments to the stipulation, excluding the following:

(*1*) The words, "or an equivalent procedure" in the second and third sentences in section 2(A)(22) of exhibit A;

(*2*) The words, "or an equivalent procedure" in the second and third sentences in section 2(A)(28) of exhibit A;

(*3*) The sentence, "Any revised documents are subject to review and approval by the Department as described in section 12," from section 6(E) of exhibit A;

(*4*) The words, "or a method approved by the Department in accordance with the Montana Source Testing Protocol and Procedures Manual shall be used to measure the volumetric flow rate at each location identified," in section 7(A)(2) of exhibit A;

(*5*) The sentence, "Such a revised document shall be subject to review and approval by the Department as described in section 12," in section 11(C) of exhibit A;

(*6*) The sentences, "This revised Attachment shall be subject to the review and approval procedures outlined in Section 12(B). The Baghouse Maintenance Plan shall be effective only upon full approval of the plan, as revised. This approval shall be obtained from the Department by January 6, 1997. This deadline shall be extended to the extent that the Department has exceeded the time allowed in Section 12(B) for its review and approval of the revised document," in section 12(A)(7) of exhibit A;

(*7*) Section 12(B) of exhibit A.

(B) June 21, 1996 stipulation of the Montana Department of Environmental Quality and ASARCO including exhibit A and attachments to the stipulation, excluding paragraphs 15 and 16 of the stipulation.

(C) Board order issued on August 4, 1995, by the Montana Board of Environmental Review adopting and incorporating the stipulation of the Montana Department of Environmental Quality and American Chemet including exhibit A to the stipulation, excluding paragraph 20 of the stipulation.

(ii) Additional Material.

(A) All portions of the August 16, 1995 East Helena Pb SIP submitted other than the orders, stipulations and exhibit A's and attachments to the stipulations.

(B) All portions of the July 2, 1996 East Helena Pb SIP submitted other than the orders, stipulations and exhibit A's and attachments to the stipulations.

(C) All portions of the October 20, 1998 East Helena Pb SIP submitted other than the orders, stipulations and exhibit A's and attachments to the stipulations.

(D) Montana Air Quality Permit #2557–08, dated January 3, 1997.

(E) Montana Air Quality Permit #2557–09, dated April 6, 1998.

(F) November 16, 1999 letter from Art Compton, Division Administrator, Planning, Prevention and Assistance Division, Montana Department of Environmental Quality, to Richard R. Long, Director, Air and Radiation Program, EPA Region VIII.

(G) September 9, 1998 letter from Richard A. Southwick, Point Source SIP Coordinator, Montana Department of Environmental Quality, to Richard R. Long, Director, Air and Radiation Program, EPA Region VIII.

[FR Doc. 00–25929 Filed 10–6–00; 8:45 am]

BILLING CODE 6560–50–D



**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Health Care Financing Administration**

**42 CFR Part 447**

**[HCFA–2071–P]**

**RIN 0938–AK12**

## Medicaid Program; Revision to Medicaid Upper Payment Limit Requirements for Hospital Services, Nursing Facility Services, Intermediate Care Facility Services for the Mentally Retarded, and Clinic Services

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would modify Medicaid upper payment limits for inpatient hospital services, outpatient hospital services, nursing facility services, intermediate care facility services for the mentally retarded, and clinic services. For each type of Medicaid inpatient service, current regulations place an upper limit on overall aggregate payments to all facilities and a separate aggregate upper limit on payments made to State-operated facilities. This proposed rule would establish a third aggregate upper limit that would apply to payments made to all other types of government facilities that are not State-owned or operated facilities.

With respect to outpatient hospital and clinic services, current regulations place a single upper limit on aggregate payments made to all facilities. For these services, this proposed rule would establish a separate aggregate upper limit on payments made to State-owned or operated facilities and an aggregate upper limit on payments made to all other government-owned or operated facilities.

These proposed upper limits are necessary to ensure State Medicaid payment systems promote economy and efficiency, while recognizing the higher cost of inpatient and outpatient services in public hospitals. In addition, to ensure continued access to care and the ability to adjust to proposed changes, the proposed rule includes a transition for States with approved State plan amendments.

**DATES:** We will consider comments if we receive them at the appropriate address, as provided below, no later than 5 p.m. on November 9, 2000.

**ADDRESSES:** Mail written comments (1 original and 3 copies) to the following address ONLY: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–2071–P, P.O. Box 8010, Baltimore, MD 21244–8010.

Because comments must be *received* by the date specified above, please allow sufficient time for mailed comments to be timely received in the event of delivery delays.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses: Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Comments mailed to the two above addresses may be delayed and received too late to be considered.

**FOR FURTHER INFORMATION CONTACT:** Robert Weaver, (410) 786–5914—Nursing facility services and intermediate care facility services for the mentally retarded.

Larry Reed, (410) 786–3325—Inpatient and outpatient hospital services and clinic services.

**SUPPLEMENTARY INFORMATION:** Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–2071–P. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 443–G of the Department's office at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 to 5 p.m. (phone: (202) 690–7890).

This **Federal Register** document is also available from the **Federal Register** online database through GPO Access, a service of the U.S. Government Printing Office. The Website address is: http://www.access.gpo.gov/nara/index.html.

### I. Statutory and Regulatory Framework

Title XIX of the Social Security Act (the Act) authorizes Federal grants to States for Medicaid programs that provide medical assistance to low-income families, elderly and persons with disabilities. Each State Medicaid program is administered by the State in accordance with an approved State plan. While the State has considerable flexibility in designing its State plan and operating its Medicaid program, it must comply with Federal requirements specified in the Medicaid statute, regulation and program guidance. Additionally, the plan must be approved by the Secretary, who has delegated this authority to HCFA.

Section 1902(a)(30) of the Act requires a State plan to meet certain requirements in setting payment amounts to obtain Medicaid care and services. One of these requirements is that payment for care and services under an approved State Medicaid plan be consistent with efficiency, economy, and quality of care. This provision provides authority for specific upper payment limits (UPL) set forth in Federal regulations in 42 CFR part 447 relating to different types of Medicaid covered services. With respect to inpatient hospital services, nursing facility (NF) services and intermediate care facility services for the mentally retarded (ICF/MR), upper payment limits are set forth in regulations at § 447.272, "Application of upper payment limits." This provision limits overall aggregate State payments and aggregate payments to State-operated providers. With respect to outpatient hospital services and clinic services, upper payment limits are set forth in regulations at § 447.321, "Outpatient hospital services and clinic services: Upper limits of payment."

These regulations stipulate that aggregate State payments for services provided by each group of health care facilities, that is, inpatient hospital and outpatient hospital services, NF services, ICF/MR services, and clinic services may not exceed a reasonable estimate of the amount the State would have paid under Medicare payment principles. Under §§ 447.257, "FFP: Conditions relating to institutional reimbursement," and 447.304, "Adherence to upper limits; FFP, paragraph (c)," FFP is not available for State expenditures that exceed the applicable upper payment limit.

The statute also permits States some flexibility to use local government resources. Under section 1902(a)(2) of the Act, States may fund up to 60 percent of the non-Federal share of Medicaid expenditures with local government funds. Section 1903(w)(6) of the Act specifically limits the Secretary's ability to place restrictions on a State's use of certain funds transferred to it from a local unit of government subject to the requirements in section 1902(a)(2) of the Act.

### II. Background

Before 1981, States were required to pay rates for hospital and long term care services that were directly related to cost reimbursement. To obtain approval from HCFA, many States set rates using Medicare reasonable cost payment principles.

In 1980 and 1981, the Congress enacted legislation, at section 962 of the Omnibus Reconciliation Act of 1980 (OBRA '80), Pub. L. 96–499 and section

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2173 of the Omnibus Budget Reconciliation Act of 1981 (OBRA '81), Pub. L. 97–35, collectively known as the "Boren Amendment" that amended section 1902(a)(13) of the Act to give States flexibility to deviate from Medicare's cost payment principles in setting payment rates for hospital and long term care services.

The Boren Amendment was primarily considered a floor on State spending because it required States to set rates that would meet the costs incurred by efficiently and economically operated facilities. However, the Boren Amendment also supported upper payment limits on overall rates. In legislative history, the Congress directed the Secretary to maintain ceiling requirements that limited State payments in the aggregate from exceeding Medicare payment levels. The Senate Finance Committee report on the legislation states that "the Secretary would be expected to continue to apply current regulations that require that payments made under State plans do not exceed amounts that would be determined under Medicare principles of reimbursement." S. Rep. No. 96–471, 96 Cong., 1st Sess. 1979.

In 1986, the Congress affirmed the use of upper limits on payments for inpatient hospital services, NF services and intermediate care facility (ICF) (now ICF/MR) services. Section 9433 of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509) titled "A Clarification of State Flexibility for State Medicaid Payment Systems for Inpatient Services" precluded the Secretary from placing limits on State disproportionate share hospital (DSH) payments but maintained the application of limits on regular inpatient payment rates.

The current upper limits were last changed in a final rule in the **Federal Register** (52 FR 28141) on July 28, 1987 that addressed the application of the upper payment limit to States that had multiple payment rates for the same class of services. This rule addressed the differential rate issue in the context of State-operated facilities because several audits had revealed that the circumstances of State-operated facilities resulted in a lack of incentives to curb excessive payments. A high volume of uninsured patients will increase the costs of providing services in State-owned or operated facilities. These costs, in turn, are passed on to the State. To offset those higher costs, States established payment methodologies which paid State-owned or operated facilities at a higher rate than privately-operated facilities. Higher Medicaid payments to State-owned or operated facilities allowed States to obtain additional Federal Medicaid dollars to cover costs formerly met entirely by State dollars. To ensure payments to State-operated facilities would be consistent with efficiency and economy, the final rule applied the Medicare upper limit test to State-operated facilities separate from other facilities. However, the final rule did not create a separate upper payment limit for other government facilities, allowing their payments to count toward the same aggregate upper payment limit as private facilities.

Section 4711 of the Balanced Budget Act of 1997 (BBA)(Pub. L. 105–33) amended section 1902(a)(13) of the Act to increase State flexibility in rate setting by replacing the substantive requirements of the Boren amendment with a new public process. Under section 4711 of the BBA, States have flexibility to target rate increases to particular types of facilities so long as the rates are established in accordance with the new public process requirements.

## III. Provisions of the Proposed Regulations

### *A. Description of the Problem*

It has become apparent that the current regulation creates a financial incentive for States to overpay non-State-operated government facilities because States, counties, cities and/or public providers can, through this practice, lower current State or local spending and/or gain extra Federal matching payments. This practice is not consistent with Medicaid statute and has contributed to rapidly growing Medicaid spending.

The incentive and ability for States to pay excessive rates to non-State government-owned or operated Medicaid providers can be explained as follows. As stated previously, the current aggregate upper payment limit is applied to both private and non-State government-owned or operated facilities. By developing a payment methodology that sets rates for proprietary and nonprofit facilities at lower levels, States can set rates for county or city facilities at substantially higher levels and still comply with the current aggregate upper payment limit. The Federal government matches these higher payment rates to public facilities. Because these facilities are public entities, funds to cover the State share may be transferred from those facilities (or the local government units that operate them) to the State, thus generating increased Federal funding with no net increase in State expenditures. This is not consistent with the intent of statutory requirements that Medicaid payments be economical and efficient.

On July 26, 2000, the Director of the Center for Medicaid and State Operations sent a letter to all State Medicaid Directors notifying them that "the Administration is developing a proposal to ensure that Medicaid payments meet the statutory definition of efficiency and economy" and that we would issue a proposed rule to address this problem. The Office of the Inspector General (OIG) and the General Accounting Office (GAO) have begun to monitor States with State plans that permit these types of payments. Both the GAO and OIG testified on the scope of the financing practices, their impact on State and Federal spending, and on the resultant uses of increased Federal funds. Preliminary results of OIG's work to date are described below.

To date, the OIG has substantially completed reviews in three States and is continuing reviews in three additional States. Although the specifics of the enhanced payment programs and associated financing mechanisms differed somewhat in the three States they have reviewed thus far, they have found that the payment programs share some common characteristics. These similarities are included below:

- The States did not base the enhanced payments on the actual cost of providing services or increasing the quality of care to the Medicaid residents of the targeted nursing facilities.
- The counties involved in the enhanced payment process used little or none of the enhanced payments to provide services to Medicaid residents. Instead, the counties returned these funds to their original source. That is, the funds were returned to the State's general funds or used to repay loans that were made to initiate the transaction, or both.
- The States were clear winners in that they were able to reduce their share of Medicaid costs and cause the Federal government to pay significantly more than it should for the same volume and level of Medicaid services. The Federal share of the enhanced funding went into State accounts and, in some cases, could be used for any purpose.
- Some States effectively recycled the Federal funds received from these enhanced payments to generate additional Federal matching funds.

Similarly, the GAO testified that current arrangements violate the basic integrity of Medicaid as a joint Federal/State program. By taking advantage of a technicality, these financing schemes allow States, in effect, to replace State Medicaid dollars with Federal Medicaid dollars.



### *B. Application of the Upper Payment Limit*

To address these problems, we are proposing to revise the regulations at §§ 447.272, "Application of upper payment limits," and 447.321, "Outpatient hospital services and clinic services: Upper limits of payment," to establish separate upper payment limits for non-State government-owned or operated facilities. This approach is consistent with the last regulatory change which created separate upper payment limits for State-operated facilities. While the proposal would still allow for flexibility in payment methodologies, it prevents States from setting rates to public facilities well in excess of the average upper payment limit and the actual cost of providing Medicaid covered services to eligible individuals. This change is necessary to ensure that the Medicaid regulations conform to Medicaid statutory requirements that promote efficiency and economy.

The upper payment limit requirements for Medicaid inpatient hospital services, NF services and ICF/MR services are set forth in regulations at § 447.272. Paragraph (a) of this section provides that aggregate payments by an agency to each group of health care facilities (that is, hospitals, nursing facilities and ICFs for the mentally retarded (ICFs/MR)), may not exceed a reasonable estimate of what would have been paid for those services under Medicare payment principles. Paragraph (a) provides an exception to specify that disproportionate share hospital payments are not counted toward the general limit. We would amend paragraph (a) to specify that an exception also applies for payments made to non-State-owned or operated public hospitals under paragraph (b)(2) of this section.

Paragraph (b) of this section currently limits aggregate payment to State-operated facilities in each class of service. We would revise § 447.272(b) to establish an additional upper payment limit that would apply to payments made to all other types of government facilities. To establish this new upper payment limit, we propose to make the following changes to § 447.272(b).

Specifically, we propose to revise paragraph (b) of this section to specify that payments made to each type of government-owned or operated health care facility (that is, inpatient hospital, NF, ICF/MR) may not exceed the specified allowable limits. Proposed paragraph (b)(1) would continue the limitation on aggregate payments made to State-owned or operated facilities from exceeding a reasonable estimate of what would have been paid using Medicare payment principles. In addition, we propose to add a new paragraph (b)(2) that would impose an aggregate upper limit restriction on payments for services furnished by all other government-owned or operated facilities (other than Indian Health Service (IHS) facilities and tribal facilities funded through Pub. L. 93–638) that are not State-owned or operated. (Although we invite specific comments, we excluded IHS facilities because we believe there is little incentive for States to pay enhanced rates to these facilities. Rates to these facilities are generally set by the State in accordance with rates published by the Federal government.) Under paragraph (b)(2), we would specify that aggregate payments to NFs IFCs/MR may not exceed a reasonable estimate of what would have been paid for those services under Medicare payment principles. We would also specify that aggregate payment to non-State-owned or operated public hospitals may not exceed 150 percent of a reasonable estimate of what would have been paid for those services under Medicare payment principles.

We are proposing a higher upper payment limit for services in non-State-owned or operated public hospitals operated by governmental entities other than the State itself because we believe that allowing higher Medicaid payments will fully reflect the value of public hospitals' services to Medicaid and the populations it serves. Public hospitals are established to ensure access to needed care in underserved areas, and often provide a range of care not readily available in the community, including expensive specialized services, such as trauma and burn care and outpatient tuberculosis services. They also provide a significant proportion of the uncompensated care in the nation.

The size and scale of public hospitals create extreme stresses and uncertainties, especially given their dependence on public funding sources. We are concerned that these stresses may threaten the ability of these public hospitals to fulfill their mission and fully serve the Medicaid population. As such, we are proposing a higher UPL for these facilities. Specifically, this higher aggregate UPL would allow States to pay non-State-owned or operated public hospitals up to 150 percent of the amount that would have been paid for inpatient and outpatient services using Medicare payment principles.

We also recognize that, in some instances, these public hospitals may be required by State or local governments to transfer back a portion of payments that they receive under Medicaid. This practice raises serious concerns about whether the purposes of the higher payment limits being proposed for public hospitals will be met. To ensure that higher payment levels will assist in ensuring the stability of public hospitals as a vital link in the resources available for care to Medicaid beneficiaries, we intend to require in our final rule that payments made to public hospitals under this provision be separately identified and reported to HCFA. We request comment on the most suitable ways of reporting and accounting for these payments. In addition, we are soliciting comments on whether the 150 percent limit is appropriate.

For outpatient hospital services and clinic services, the current upper payment limit is in regulations at § 447.321. This limit precludes FFP on aggregate payments for outpatient hospital services and clinic services that exceed the amount that would be payable to all providers (State-owned or operated, other government-owned or operated, and private) under comparable circumstances under Medicare. Unlike other classes of services subject to the upper payment limit, there is no separate limit for State-owned or operated facilities. We propose to amend § 447.321 to establish additional upper payment limits that would apply to aggregate payments for Medicaid services furnished by State-owned or operated and all other government-owned or operated facilities.

We propose to move the current provisions under paragraph (a) of this section, as discussed below, to § 447.304 and add a new paragraph (a) to conform the language in this section to the language in § 447.272, for purposes of consistency within the Medicaid regulations. We would provide in § 447.321(a) that aggregate payments by an agency to each group of health care facilities (that is, outpatient hospitals and clinics) may not exceed a reasonable estimate of what would have been paid for each of those services under Medicare payment principles. We would also specify that an exception applies for payments made to non-State-owned or operated public hospitals under paragraph (b)(2) of this section. Consistent with the changes to § 447.272, we propose to establish separate upper payment limits for Medicaid services furnished by—(1) State-owned or operated facilities; and (2) all other government-owned or

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operated facilities that are not State-owned or operated. In § 447.321, proposed paragraph (b)(1) would establish the upper payment limit for Medicaid services furnished by State-owned or operated facilities. Like the current UPL for inpatient hospital services, aggregate Medicaid payments for outpatient services or clinic services furnished by State facilities would be limited to a reasonable estimate of what would have been paid under Medicare reimbursement principles.

Proposed paragraph (b)(2) would establish a similar aggregate upper limit restriction for Medicaid services furnished by all other government providers that are not State-owned or operated except that the payment maximum for outpatient services would be set at 150 percent of what would have been paid using Medicare payment principles. See the earlier discussion of our rationale for the higher limit to these public hospitals. Under the proposed limits in §§ 447.272 and 447.321, States would have flexibility to consider either Medicare principles of reasonable cost reimbursement or a Medicare prospective payment system if available, to estimate the Medicare payment amount for Medicaid services.

In addition, we are moving the language regarding prohibition for FFP currently found in § 447.321(a) to § 447.304, "Adherence to upper limits; FFP," paragraph (c). The provision in § 447.304(c) currently specifies that FFP is available for State expenditures that do not exceed upper limits. We propose to revise this section to specify that FFP is not available for payment that exceeds the upper limits specified in subpart F. This revision would conform to our approach in § 447.257.

*C. Transition Periods for States That Have Approved Rate Enhancement Payment Arrangements*

We recognize that the new upper payment limits we are proposing may disrupt State budget arrangements for States with approved enhanced plan amendments. Therefore, we are proposing a transition policy for States with approved rate enhancement amendments that would be affected by the proposed UPLs. We refer to these amendments as noncompliant because they result in payments that exceed the maximum amount allowable under the new UPLs. We are proposing two transition periods and are soliciting comments on the material elements of these transition periods, including the starting point for the phase-out, the percentage reduction each year, and whether a longer or shorter period would be appropriate.

1. Transition period for noncompliant approved State plan amendments effective on or after October 1, 1999.

For noncompliant approved State plan amendments with an effective date on or after October 1,1999, we are proposing a transition period that would end on September 30, 2002. Because these programs are relatively new (in fact, some may be deemed approved during the comment period for this proposed rule), States are not likely to have developed the same level of reliance on the enhanced payments addressed in this proposed rule as States with older programs. Additionally, during the review period for these amendments, we have been informing States of our intent to curtail this practice and advising them not to rely on the continuation of this funding. For these reasons, we believe a short transition period is appropriate.

2. Transition period for noncompliant approved State plan amendments effective before October 1, 1999.

For noncompliant approved State plan amendments with an effective date before October 1, 1999, we are proposing a 3-year transition period beginning in the State FY that begins calendar year 2002.

We propose to implement the reductions on a State Fiscal Year (FY) basis starting with the first full State FY that begins in calendar year 2002. Specifically, the transition generally consists of reducing aggregate payments with the proposed classes to the proposed UPLs in increments, with the proposed UPL becoming fully effective in the first State FY beginning in Calendar Year 2005. In the first year of implementation, States would have to reduce the aggregate payments above the new UPL by 25 percent. In the second year, the amount of excess aggregate payments must be reduced by 50 percent and in the third year by 75 percent. By the first day of the fourth year, State payments would have to be in compliance with the new UPL policy.

We are proposing to use State FY 2000 as the base period to determine the excess payment that must be phased down. To compute the dollar amount of the excess, States would be required to compare State FY 2000 payments paid to the current class of providers to the maximum aggregate payments for its new class of providers (that is, State-owned or operated and other government-owned or operated) under the proposed UPL for State FY 2000. The difference is considered the excess payment that must be phased out over the transition period.

The table below illustrates the transition policy. In this example, State FY 2000 payments for nursing facility services provided by other government-owned or operated providers are $300 million and new UPL is $100 million. The amount in excess of the upper payment limit, $200 million, must be reduced in successive State FYs by 25 percent, 50 percent and 75 percent respectively. The steps to calculate the maximum allowable payment during this transition period are as follows:

- Subtract the amount that would have been allowed under the new UPL for State FY 2000 services from the State FY 2000 payment.
- Multiply that difference by the phase down rate.
- Add to that result, the new UPL for Medicaid services furnished on or after State FY 2000.

At the end of the transition period, State payments would have to be in full compliance with the new upper payment limit.



TABLE—ILLUSTRATIVE EXAMPLE OF TRANSITION [1] OTHER GOVERNMENT-OWNED OR OPERATED NURSING HOME PROVIDERS

[Dollars in millions]

| | SFY 2003* | SFY 2004 | SFY 2005 | SFY 2006 |
|---|---|---|---|---|
| Excess Payment in SFY 2000 [2] | 200 | 200 | 200 | 200 |
| Phase-out rate (in percent) | 25% | 50% | 75% | 100% |
| Maximum allowable excess | 150 | 100 | 50 | 0 |
| New UPL [3] | 105 | 110 | 115 | 120 |
| Transition UPL | 255 | 210 | 165 | 120 |

* Assumes that the SFY 2003 begins on July 1, 2002.

[1] State FY 2001 and State FY 2002 payments would not be subject to this proposed rule because it assumes that the transition period begins in State FY 2003.

[2] The $200 million excess payment is derived by subtracting the new aggregate UPL for State FY 2000 services provided by other government-owned or operated providers from the actual FY 2000 payment made to these providers.

[3] Assumes $5 million annual growth in the program.

To implement these provisions, we propose to make further revisions to §§ 447.272 and 447.321 to include regulations that establish transition periods for States that will be affected by the new upper payment limits that we are proposing.

Specifically, § 447.272 sets forth the rules regarding the application of the upper payment limit requirements for Medicaid inpatient hospital services, NF services and ICF/MR services. We propose to revise § 447.272(b) to establish a shorter-term transition period and a 3-year transition period. Specifically, proposed paragraph (b)(2)(i) of this section would specify that noncompliant State plan amendments effective on or after October 1, 1999 and approved before the effective date of the final rule have until September 30, 2002 to come into compliance with the requirements of the new upper payment limits. Proposed paragraph (b)(2)(ii) of this section would specify that noncompliant approved State plan amendments effective before October 1, 1999 are allowed a 3-year transition period beginning in the State FY that begins in calendar year 2002. Paragraph (b)(2) of this section refers to payments made to those other government-owned or operated facilities that are not State-owned or operated.

Section 447.321 sets forth rules regarding the application of the upper payment limit requirements for Medicaid outpatient hospital services and clinic services. We are proposing similar revisions to § 447.321(b) to include our proposed transition periods. We apply these transition periods to States for payments made to State-owned or operated facilities and other government-owned or operated facilities described in proposed paragraphs (b)(1) and (b)(2) of this section. Specifically, proposed paragraphs (b)(1)(i) and (b)(1)(ii) of this section would specify the requirements for the short-term and the 3-year transition periods for State-owned or operated facilities. Proposed paragraphs (b)(2)(i) and (b)(2)(ii) of this section would set forth the short-term and the 3-year transition periods for all other government-owned or operated facilities.

To the extent this regulation alters allowable Medicaid expenditures in a State with a section 1115 title XIX waiver, the estimates of the expected cost to the Federal government without the waiver will be adjusted (upward or downward) to accurately reflect these changes in allowable Medicaid expenditures. These adjustments are consistent with current section 1115 waiver budget neutrality policy.

## IV. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the major comments in the preamble to that document.

## V. Regulatory Impact Analysis

*A. Introduction*

We have examined the impact of this rule as required by Executive Order (EO) 12866, the Unfunded Mandates Act of 1995, and the Regulatory Flexibility Act (RFA) (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any one year).

*B. Overall Impact*

We are unable to provide a specific dollar estimate of the economic impact this proposed regulation will have on State and local governments and Medicaid participating health care facilities due to data limitations and State behavioral responses. This proposed regulation does not reduce the overall aggregate amount States can spend on Medicaid services or place a fixed ceiling on the amount of State spending that will be eligible for Federal matching dollars. Under the proposed limitations, States will be able to set reasonable rates as determined under Medicare payment principles for Medicaid services furnished by public providers to eligible individuals. The amount of spending permitted under the proposed limits will vary directly with the amount of Medicaid services furnished by public providers to eligible individuals. While the proposed regulation does not affect the overall aggregate amount States can spend, by setting an upper payment limit for government providers, it may impact how States distribute available funding to participating health care facilities.

We have identified 28 States with approved and/or pending rate proposals that target enhanced Medicaid payments to hospital and nursing service providers that are owned or operated by county or local governments. There are 17 States with approved State plan amendments or waivers and 7 States with pending plan amendments. In addition, there are 4 States that have both approved and pending plan amendments. We estimate that these proposals currently account for approximately $3.7 billion in Federal spending annually. This estimate is based on State reported Federal fiscal information submitted with State plan amendments and State expenditure

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information where available. It may be understated or overstated to the degree that actual State expenditures would vary from the estimates included with State plan submissions. For example, a State could include a provision in its State Medicaid plan that would enable it to spend up to allowable amounts by making additional payments to designated providers. Under this scenario, if the upper payment limitation permitted the State to spend an additional $200 million, the actual annual expenditure could vary from zero to $200 million depending upon the State's willingness to finance its share of the payment. In the final rule, we may revise our estimate of $3.7 billion in Federal spending to reflect findings reported by the OIG and the GAO.

Of this $3.7 billion in spending, we do not have sufficient information to permit us to quantify accurately the amount of payments to State and local government providers that may exceed the proposed upper payment limits. In addition, because some States may be using the Federal share of enhanced payments in a manner that allows some funds to be re-invested in Medicaid (and thereby drawing down additional FFP), the potential impact may extend to other Medicaid services not reflected in the above spending. Because we believe that the potential impact will exceed $100 million, we consider this proposed rule to be a major rule.

We are seeking information to help us quantify the impact of this proposed rule. We invite comments on how the proposed rule may affect State Medicaid programs and other State programs. In particular, we seek information to help us quantify the fiscal impact of this proposed rule (also taking into account the proposed transition periods and higher UPLs for non-State-owned or operated public hospitals) on State Medicaid programs and other State programs.

*C. Impact on Small Entities and Rural Hospitals*

The Regulatory Flexibility Act requires agencies to analyze options for regulatory relief of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $5 million or less annually. For purposes of the RFA, all hospitals, nursing facilities, intermediate care facilities for the mentally retarded, and clinics are considered to be small entities. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

The chart below indicates the type and number of providers potentially affected by this regulation in all 50 States and the District of Columbia. We included facilities in all 50 States because although every State is not currently making enhanced payments to government non-State-owned or operated facilities, this rule will prevent new proposals from all States in the future. We do not believe any States have payment arrangements with providers of ICF/MR services or clinic services that will be affected by this regulation and therefore we did not include those providers in the chart below.

POTENTIALLY AFFECTED PROVIDERS BY NUMBER AND TYPE

| Provider type | Government state-owned or operated | Government non-state-owned or operated | Total |
|---|---|---|---|
| Nursing Facilities | [1] N/A | 892 | 892 |
| Hospitals | 254 | 1,275 | 1,529 |

[1] These facilities are already subject to a separate aggregate UPL and will not be affected by the final rule.

As explained earlier in the preamble, it is very difficult to predict how States will respond to the proposed rule and consequently how State decisions will impact Medicaid providers. Each State makes its own budgetary and rate setting decisions. Since we do not collect information about the specific services that providers use Medicaid payments to support, we cannot determine how potential payment rate adjustments will affect providers or the patients they serve. Under the proposed UPLs, States would continue to be able to set rates that provide fair compensation for Medicaid services furnished to Medicaid patients. Hospitals that are owned or operated by local governments may benefit from the higher UPLs we are proposing for inpatient and outpatient services. Additionally, if these hospitals furnish services to indigent patients, they may qualify as a DSH and qualify for funding under a State's program. With respect to small entities that are not government-owned or operated, the proposed UPLs do not apply to them and therefore, they should not be impacted.

With respect to the impact on small rural hospitals, we do not believe the proposed rule will have a significant overall impact on rural hospitals. With respect to Medicaid services furnished by rural hospitals, the proposed upper payment limits do not interfere with States setting rates that result in fair compensation. Additionally, rural hospitals that are owned or operated by local governments should be able to benefit from the higher UPLs we are proposing for inpatient and outpatient hospital services. Finally, if a rural hospital provides services to indigent patients, they may qualify as a DSH and qualify for funding under a State's DSH payment program.

We invite public comment on the possible effects this proposed rule may have on small entities in general and on small rural hospitals in particular.

*D. Alternatives Considered*

Section 1902(a)(30) of the Act requires in part that Medicaid service payments be consistent with efficiency and economy. In addition to the interpretation we are proposing in this proposed rule, we considered several other alternatives to ensure Medicaid service payments are consistent with economy and efficiency. In this section, we will explain these other alternatives and why we did not select them.

*1. Facility-Specific Upper Payment Limit.* Under this option, Medicaid spending would be limited on a provider-specific application of Medicare payment principles. FFP would not be available on the amount of Medicaid service payment in excess of what a provider would have been paid using Medicare payment principles.

These limits would be applied to all institutions, or just to public institutions where the incentives for over-payment are significant. While a facility-specific limitation may be the most effective method to ensure State service payments are consistent with economy and efficiency, when balanced against the additional administrative requirements on States and the congressional intent for States to have flexibility in rate setting, we are not sure that the increased amount of cost efficiency, if any, justifies this approach as a viable option.

*2. Government-owned or Operated Upper Payment Limit.* This proposal would limit, in the aggregate, the amount of payment States can make to public providers. Under this proposal, State and local government providers would be grouped together and payments to them as a group could not exceed an aggregate limit. The aggregate limit would continue to be based on Medicare payment principles. This option, relative to upper payment limitations we are proposing, would have allowed States to exercise more flexibility granted to them in the rate setting process. While this option permits more flexibility, we believe the aggregation of Medicaid service payments by all types of government providers would have the unintended consequence of reopening differential rate issues between State facilities and other types of government facilities.

*3. Intergovernmental Transfers (IGTs).* Because in many cases we believe there is a connection between excessive payments and IGTs, we gave consideration to formulating policy with respect to them. Generally, States have genuine incentive to set Medicaid service rates at levels consistent with economy and efficiency since they share the financial burden with the Federal government. As explained in section III of the preamble, the use of IGTs to move funds between government entities makes it possible to generate enhanced Federal matching payment. However, we did not pursue this alternative because we recognize that States, counties, and cities have developed their own unique arrangements for sharing in Medicaid costs. Furthermore, there are statutory limitations placed on the Secretary which limit the authority to place restrictions on IGTs.

*4. "Grandfathering" existing arrangement.* Under this proposal, we would not approve any new plan amendments after the effective date of the final rule. This would permit States that are currently making excessive payments to local government facilities to continue making such payments indefinitely. Allowing some States to permanently continue making excessive payments solely because they were approved before this rule is published and effective appears to be arbitrary, capricious, and inconsistent with our administrative authority.

We invite comment on these alternatives we considered and on other possible approaches for achieving our objective to ensure Medicaid service payments are consistent with efficiency and economy. We specifically invite comment on alternative means of setting the maximum amount that may be paid to public hospitals that have traditionally provided "safety-net" care and services to underserved communities and individuals who are uninsured. We request information regarding the mechanisms used to finance these hospitals under current regulations, as well as proposals for a means of curbing excessive payments while allowing States the flexibility to recognize higher costs faced by these hospitals.

*E. The Unfunded Mandates Act*

The Unfunded Mandates Reform Act of 1995 also requires (in section 202) that agencies perform an assessment of anticipated costs and benefits before proposing any rule that may result in a mandated expenditure in any one year by State, local, or Tribal governments, in the aggregate, or by the private sector, of $100 million. Absent FFP, we do not believe States will continue to set excessive payment rates for Medicaid services furnished by government providers. Generally, discontinuing an expenditure should not result in new costs, unless the State has to fund the portion of the expenditure that is no longer Federally funded with all State and local dollars. There are no Federal requirements under the Medicaid statute that mandate States to make these type of payments to Medicaid public providers and therefore we do not believe the proposed limits have any unfunded mandate implications.

*F. Federalism*

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct compliance costs on State and local governments, preempts State law, or otherwise has Federalism implications.

In developing the interpretative policies set forth in this proposed rule, we met with interested parties and listened to their ideas and concerns. These discussions were held with members of Congress and their staff. We also met with various associations representing State and local governments including the National Governors' Association, the National Conference of State Legislatures, and the National Association of State Medicaid Directors. In addition, we met with many hospital associations, advocacy groups, labor organizations, and numerous other interested parties. We do not believe this proposed rule in any way imposes substantial direct compliance costs on State and local governments or preempts or supersedes State or local law.

The financial implications of this proposed rule are highly uncertain for the reasons we have previously indicated. We anticipate that many State Medicaid programs will be unaffected by the upper payment limits we are proposing. With respect to affected States, to some degree we will be limiting flexibility in the management of their Medicaid programs. If these States wish to continue to make payments in excess of the proposed limits, they will have to fund the amount in excess with only State and local resources. In the absence of FFP, we anticipate States will reinvest these resources to support other Medicaid activities to take advantage of and maintain Federal resources. Should States realign their payment systems or divert State matching dollars to support other Medicaid activities, the total amount of available Federal funds should remain unchanged.

*G. Executive Order 12866*

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

**List of Subjects in 42 CFR Part 447**

Accounting, Administrative practice and procedure, Drugs, Grant programs—health, Health facilities, Health professions, Medicaid, Reporting and recordkeeping requirements, Rural areas.

For the reasons set forth in the preamble, 42 CFR part 447 is proposed to be amended as follows:

**PART 447—PAYMENTS FOR SERVICES**

1. The authority citation for part 447 continues to read as follows:

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**Authority:** Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. In § 447.272 revise paragraphs (a) and (b) to read as follows:

**§ 447.272 Application of upper payment limits.**

(a) *General rule.* Except as provided in paragraphs (b)(2) and (c) of this section, aggregate payments by an agency to each group of health care facilities (that is, hospitals, nursing facilities and ICFs for the mentally retarded (ICFs/MR)), may not exceed a reasonable estimate of what would have been paid for those services under Medicare payment principles.

(b) *Government-owned or operated facilities.* In addition to being subject to the requirements in paragraph (a) of this section, payments by an agency to each group of government-owned or operated health care facilities (that is, hospitals, nursing facilities and ICFs for the mentally retarded (ICFs/MR)), may not exceed the limits specified in paragraph (b)(1) or (b)(2) of this section.

(1) *State-owned or operated facilities.* Aggregate payments to State-owned or operated facilities may not exceed a reasonable estimate of what would have been paid for those services under Medicare payment principles.

(2) *Other government-owned or operated facilities.* Except for public hospitals, aggregate payments to all other government-owned or operated facilities (other than Indian Health Services facilities (IHS) and tribal facilities funded through Pub. L. 93–638) may not exceed a reasonable estimate of what would have been paid for those services under Medicare payment principles. Payment to non-State-owned or operated public hospitals may not exceed 150 percent of a reasonable estimate of what would have been paid for those services under Medicare payment principles, except as provided below.

(i) *Transition period for noncompliant State plan amendments effective on or after October 1, 1999 and approved before the effective date of the final rule.* Enhanced payment arrangements with an effective date on or after October 1, 1999 and approved before the effective date of the final rule must come into compliance by September 30, 2002.

(ii) *Transition period for noncompliant approved State plan amendments effective before October 1, 1999.* A 3-year transition period applies to approved State payment arrangements with an effective date before October 1, 1999. During the 3 successive State fiscal years beginning in State FY 2003, State payments must comply with the excessive payment phase down payment reduction schedule.

(iii) State payments may not exceed the lower of the base State FY 2000 payments or the following limits:

State FY 2003 UPL + .75x
State FY 2004 UPL + .50x
State FY 2005 UPL + .25x
UPL = Upper Payment Limit.
X = Payments to local government providers less the UPL described in § 447.272(b)(2) for services furnished in State FY 2000.

3. In § 447.304, revise paragraph (c) and remove the note to read as follows:

**§ 447.304 Adherence to upper limits; FFP.**

* * * * *

(c) FFP is not available for a State's expenditures for services that are in excess of the amounts allowable under this subpart.

4. Section 447.321 is revised to read as follows:

**§ 447.321 Outpatient hospital services or clinic services: Application of upper payment limits.**

(a) *General rule.* Except as provided in paragraph (b)(2) of this section, aggregate payments by an agency to each group of health care facilities, (that is, outpatient hospitals or clinics) may not exceed a reasonable estimate of what would have been paid for each of those services under Medicare payment principles.

(b) *Government-owned or operated facilities.* In addition to being subject to the requirements in paragraph (a) of this section, payments by an agency to each group of government-owned or operated health care facilities, (that is, outpatient hospitals or clinics) may not exceed the limits specified in paragraph (b)(1) or (b)(2) of this section.

(1) *State-owned or operated facilities.* Aggregate payments to State-owned or operated facilities may not exceed a reasonable estimate of what would have been paid for those services under Medicare payment principles, except as provided below.

(i) *Transition period for noncompliant State plan amendments effective on or after October 1, 1999 and approved before the effective date of the final rule.* Enhanced payment arrangements with an effective date on or after October 1, 1999 and approved before the effective date of the final rule must come into compliance by September 30, 2002.

(ii) *Three-year phase down transition period for noncompliant approved State plan amendments effective before October 1, 1999.* A 3-year transition period applies to approved State payment arrangements with an effective date before October 1, 1999. During the 3 successive State fiscal years beginning in State FY 2003, State payments must comply with the excessive payment phase down payment reduction schedule.

(iii) State payments may not exceed the lower of the base State FY 2000 payments or the following limits:

State FY 2003 UPL + .75X
State FY 2004 UPL + .50x
State FY 2005 UPL + .25x
State FY 2006 UPL
UPL = Upper Payment Limit
X = Payments to local government providers and State-owned or operated providers less the applicable UPL described in § 447.321(b) for services furnished in State FY 2000.

(2) *Other government-owned or operated facilities.* Except for public hospitals, aggregate payments to all other government-owned or operated facilities (other than Indian Health Services facilities (IHS) and tribal facilities funded through Pub. L. 93–638) may not exceed a reasonable estimate of what would have been paid for those services under Medicare payment principles. Payment to non-State-owned or operated public hospitals may not exceed 150 percent of a reasonable estimate of what would have been paid for those services under Medicare payment principles, except as provided below.

(i) *Transition period for noncompliant State plan amendments effective on or after October 1, 1999 and approved before the effective date of the final rule.* Enhanced payment arrangements with an effective date on or after October 1, 1999 and approved before the effective date of the final rule must come into compliance by September 30, 2002.

(ii) *Three-year phase down transition period for noncompliant approved State plan amendments effective before October 1, 1999.* A 3-year transition period applies to approved State payment arrangements with an effective date before October 1, 1999. During the 3 successive State fiscal years beginning in State FY 2003, State payments must comply with the excessive payment phase down payment reduction schedule.

(iii) State payments may not exceed the lower of the base State FY 2000 payments or the following limits:

State FY 2003 UPL + .75X
State FY 2004 UPL + .50x
State FY 2005 UPL + .25x
State FY 2006 UPL
UPL = Upper Payment Limit
X = Payments to local government providers and State-owned or operated providers less the applicable UPL described in § 447.321(b)(1) for services furnished in State FY 2000.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)



Dated: October 3, 2000.

**Michael M. Hash,**

*Acting, Administrator, Health Care Financing Administration.*

Approved: October 4, 2000.

**Donna E. Shalala,**

*Secretary.*

[FR Doc. 00–25935 Filed 10–5–00; 1:00 pm]

BILLING CODE 4120–01–P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### 44 CFR Part 65

**RIN 3067–AD13**

## National Flood Insurance Program (NFIP); Letter of Map Revision Based on Fill Requests

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Proposed rule.

**SUMMARY:** We, FEMA, propose to amend our procedures for issuing Letters of Map Revision Based on Fill (also referred to as LOMR–F) under the criteria of 44 CFR 65. We use the criteria established in § 65.5 to determine whether we can issue a LOMR–F to remove unimproved land or land with structures from the Special Flood Hazard Area (SFHA) by raising ground elevations using engineered earthen fill.

**DATES:** We invite your comments on this proposed rule. Please send any comments on or before November 9, 2000.

**ADDRESSES:** Please send written comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street, SW., room 840, Washington, DC 20472, (facsimile) 202–646–4536, or (email) *rules@fema.gov.*

**FOR FURTHER INFORMATION CONTACT:** Matthew B. Miller, P.E., Chief, Hazards Study Branch, Technical Services Division, Mitigation Directorate, at (202) 646–3461, or (email) *matt.miller@fema.gov.*

**SUPPLEMENTARY INFORMATION:**

### Background

Congress created the National Flood Insurance Program (NFIP) in 1968 to provide federally supported flood insurance coverage, which generally had not been available through private insurance companies. The program is based on an agreement between the Federal Government and each community that chooses to participate in the program. We make flood insurance available to property owners within a community provided that the community adopts and enforces floodplain management regulations that meet or exceed the minimum requirements of the NFIP set forth in part 60 of the NFIP Floodplain Management Regulations (44 CFR 60).

*Identifying and mapping flood hazards.* FEMA identifies and maps flood hazard areas by conducting flood hazard studies and publishing Flood Insurance Rate Maps (FIRMs). These flood hazard areas, referred to as Special Flood Hazard Areas (SFHAs), are based on a flood that would have a 1-percent chance of being equaled or exceeded in any given year (the 100-year flood or base flood). We determine the 1-percent annual chance flood, shown on the FIRMs as A Zones or V Zones, from information that we obtain through consultation with the community, floodplain topographic surveys, and detailed hydrologic and hydraulic analyses.

*Floodplain management requirements.* The NFIP minimum building and development regulations require that new or substantially improved buildings in A Zones have their lowest floor (including basement) elevated to or above the Base Flood Elevation (BFE) (the elevation of the 1-percent annual chance flood). Non-residential buildings in A Zones can either be dry floodproofed or elevated to the BFE. In V Zones, the bottom of the lowest horizontal structural member of the lowest floor of all new or substantially improved buildings must be elevated to or above the BFE. We have designed the NFIP floodplain management requirements at 44 CFR 60.3 to protect buildings constructed in floodplains from flood damages.

*Freeboard and Floodplain Storage.* Freeboard, generally expressed in terms of feet above a flood level for purposes of floodplain management, proves to be a successful method for reducing damage due to flooding and acts to compensate for the many uncertain factors that contribute to flood heights greater than the base flood. We recognize communities that incorporate the concept of freeboard in their permitting and planning processes through the Community Rating System, Project Impact, and insurance rating in general.

Local officials, developers, and the public at large should understand that the placement of fill in the SFHA could result in an increase in the base flood elevation by reducing the ability of the floodplain to convey and store floodwaters. Communities may want to consider prohibiting or limiting fill in floodplains, or requiring compensatory storage, and zero rise floodways as extra protection. Furthermore, development outside the SFHA but within the watershed can further increase the flood hazard by aggravating downstream flooding conditions. Therefore, FEMA will continue to encourage local officials, planners, design professionals, and developers to consider the long term benefits of elevating above the published base flood elevation when constructing projects in and near the SFHA.

*Local responsibility.* When a community joins the NFIP, it must initially adopt a resolution or ordinance that expresses a commitment to recognize and evaluate flood hazards in all official actions and to take such other official action as reasonably necessary to carry out the objectives of the program [44 CFR 59.22(a)(8)]. This is in addition to the general requirement that the community take into account flood hazards to the extent that they are known in all official actions relating to land management and use [44 CFR 60.1(c)]. Furthermore, all communities participating in the NFIP must "determine whether proposed building sites will be reasonably safe from flooding" [44 CFR 60.3(a)(3)]. This proposed rule emphasizes the role and responsibility of the community in permitting development and ensuring that areas within their jurisdiction are reasonably safe from flood hazards.

*Flood insurance.* The National Flood Insurance Act of 1968 requires that we charge full actuarial rates reflecting the complete flood risk to buildings built or substantially improved on or after the effective date of the initial FIRM for the community or after December 31, 1974, whichever is later, so that the risks associated with buildings in flood prone areas are borne by those located in such areas and not by the taxpayers at large. We refer to these buildings as Post-FIRM. The NFIP bases flood insurance rates for new construction on the degree of the flood risk reflected by the flood risk zone on the FIRM. Flood insurance rates also take into account a number of other factors including the elevation of the lowest floor above or below the BFE, type of building, and the existence of a basement or an enclosure.

*Mandatory purchase of insurance.* The Flood Disaster Protection Act of 1973 and the National Flood Insurance Reform Act of 1994 mandate the purchase of flood insurance as a condition of Federal or federally-related financial assistance for acquisition or construction of buildings in SFHAs of any community. The two Acts prohibit Federal agency lenders, such as the Small Business Administration, United

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States Department of Agriculture's Rural Housing Service, and Government-Sponsored Enterprises for Housing (Freddie Mac and Fannie Mae) from making, guaranteeing, or purchasing a loan secured by improved real estate or mobile home(s) in an SFHA of a participating community, unless flood insurance has been purchased and maintained during the term of the loan. The Acts also prohibit federally-regulated lenders from making, extending, or renewing any loan secured by improved real estate located in the SFHA in a participating community unless the secured property and any personal property securing the loan is covered by flood insurance. Federal financial assistance may not be provided in the SFHAs of non-participating communities.

**Need for Proposed Rule**

We revise NFIP flood maps for a number of reasons, such as the availability of improved techniques for assessing the flood risk, changes in the physical condition of the floodplain or watershed, or as additional data become available to improve the identification of flood hazards. The requirements for revising the FIRMs are established in the NFIP Regulations at 44 CFR Part 65, Identification and Mapping of Special Hazard Areas. We can also revise a FIRM when property owners, whose land is in a SFHA and the elevation is below the BFE, request a map change as a result of grading and filling their site to raise the level of the land above the 1-percent annual chance flood level. The criteria for determining whether to remove unimproved land or land with structures from the SFHA by raising ground elevations using engineered earthen fill are established in section 65.5. If the criteria under section 65.5 are met, we will issue a Letter of Map Revision Based on Fill (also referred to as a LOMR–F).

Specifically, unimproved land (land without a structure) can be removed from the SFHA under 44 CFR 65.5(a)(3) if the ground elevations of the entire legally defined parcel of land are at or above the elevation of the base flood. Land that is removed under paragraph 65.5(a)(3) is no longer subject to the NFIP floodplain management requirements at 44 CFR 60.3, which includes the requirement that the lowest floor (including basement) be elevated to or above the BFE. In addition, future structures placed on this unimproved land would not be subject to the mandatory flood insurance purchase requirement of the NFIP.

When a structure is involved (see 64 FR 47813, September 1, 1999), we previously determined whether it could be removed from the SFHA under 44 CFR 65.5(a)(4) by comparing the elevation of the lowest floor (including basement) and the elevation of the lowest adjacent grade with the elevation of the base flood. If the entire structure and the lowest adjacent grade were at or above the elevation of the base flood, the structure was removed from the SFHA. Once we issue a LOMR–F, the NFIP floodplain management requirements at 44 CFR 60.3 and the mandatory flood insurance purchase requirement of the NFIP no longer apply. However, if the structure involved did not meet the lowest floor and lowest adjacent grade criteria, the structure was not removed from the SFHA, thus it remained subject to the NFIP floodplain management requirements and the mandatory flood insurance purchase requirement.

These regulations have caused confusion for State and local floodplain managers and permitting officials. This confusion stems from the fact that buildings constructed on fill in areas removed from the SFHA under paragraph 65.5(a)(3) are not required to have their lowest floor (including basement) elevated above the BFE. However, buildings constructed on fill in areas not previously removed from the SFHA under paragraph 65.5(a)(3) must have their lowest floors elevated to or above the base flood before they can be removed from the SFHA as outlined in paragraph 65.5(a)(4).

We are concerned that this confusion may lead to unwise construction near floodplains and that structures built on land removed from the SFHA under section 65.5(a)(3) may be subject to residual flood damages during the base flood. The risk to structures built in these areas will vary depending the soil conditions at the site, the location of the structure relative to the flooding source, and whether the structure has a basement below the BFE. Therefore, to eliminate this confusion, we propose to revise portions of 44 CFR 65.2, 65.5, and 65.6(a) to reinforce the existing requirements of 44 CFR 60.3 and to ensure land and structures removed from the SFHA based on fill are reasonably safe from flooding during the base flood.

**Proposed Revised Procedures**

We would process all LOMR–F requests received after the date of the final rule as follows (these procedures would apply to single and multi-lot LOMR–F requests, which may involve one structure or multiple structures):

- Paragraph 65.5(a)(3) would apply to requests to remove from the SFHA land that is elevated by placement of engineered fill, whether structures exist or not.
- We would delete paragraph 65.5(a)(4) and in its place would require that a local official assure that the land or structure to be removed from the SFHA is "reasonably safe from flooding" as currently required in section 60.3(a).
- A local community's determination that land or a structure is "reasonably safe from flooding" must consider best engineering practices, and analyses that demonstrate that risk from the base flood would be mitigated must support the determination. Depending on the circumstances, communities may wish to require that the applicant perform these analyses and that a registered design professional must certify the analyses, particularly for construction below the base flood elevation.
- The Director may request supporting documentation regarding the decision process leading to the conclusion that the land or structure to be removed from the SFHA is reasonably safe from flooding.
- We would provide technical guidance to local officials regarding standard fill placement and building practices when avoiding development in the floodplain is unavoidable. The guidance would give local officials the ability to require that all fill be adequately protected from the forces of erosion, scour, or differential settlement. It would also encourage local officials to require elevation above the base flood. In addition to existing guidance, we propose to publish a Technical Bulletin (FIA–TB–10), entitled "Ensuring that Structures Built in or Near Special Flood Hazard Areas Are Reasonably Safe From Flooding" to provide further guidance to communities and design professionals in the implementation of this proposed rule. A copy of proposed TB #10 can be obtained either by downloading it from FEMA's web site at *www.fema.gov/mit/techbul.htm* or by contacting FEMA's publication distribution facility at 1–800–480–2520 and requesting a copy.
- If we learn that the community has not met the minimum floodplain management requirements of section 60.3, we could take action to remedy the violation and we could hold the request to revise the map in abeyance. This includes the requirement that residential structures in mapped SFHAs be built with their lowest floors (including basement) above the base flood.
- We would not actively review previously issued determinations under section 65.5 for conformity with these revised procedures. We would, however, review previously denied applications for a LOMR–F processed under paragraph 65.5(a)(4) upon written request.
- New LOMR–F requests and requests for LOMR–F redeterminations would be subject to the current fee schedule established in 44 CFR part 72.
- We would monitor the effectiveness of this rule change. Factors considered would include: ease of implementation, appropriateness of supporting engineering analyses, impact on floodplain management practices at the State and local level, and effectiveness in mitigating against flood loses. Within one year after we publish the final rule, we plan to re-evaluate this decision to determine whether changes to these or other related rules are warranted.



**Comment Period Exception**

Under 44 CFR 1.4(e) it is our normal policy to afford the public at least 60 days to submit comments on a proposed rule, unless the Director makes an exception and explains the reasons for the exception. The Director makes an exception to the 60-day comment policy for this proposed rule on the grounds that the rule is a clarification of existing policy and that it is in the public interest of remove the confusion and inconsistency that exists in the current rule, to remove the rule's adverse impact on property owners, and to enhance the ability of local officials to make sound floodplain management decisions as soon as possible consistent with the requirements of the Administrative Procedure Act.

**National Environmental Policy Act**

FEMA will not prepare an environmental analysis under NEPA since this rule would address an apparent administrative inconsistency that has no bearing on building practices or on the built or natural environment. This proposed rule would remove the current distinction between fill placed in an SFHA containing structures and fill placed in an SFHA without structures, both of which are allowable under current laws and regulations governing participation in the National Flood Insurance Program. Removing this distinction would resolve an apparent inconsistency in the floodprone status of a subset of structures built on fill within the SFHA. These apparent inconsistencies result from differences in the administrative processes followed by communities that permit development in floodplains rather than from physical differences in the built environment. We will continue to permit earthen fill and other types of development within the SFHA when applicable, and we will continue to require residential structures built in identified flood hazard areas to have their lowest floor (including basement) elevated to or above the base flood.

**Regulatory Planning and Review**

We have prepared and reviewed this proposed rule under the provisions of E.O. 12866, Regulatory Planning and Review. Under Executive Order 12866, 58 FR 51735, October 4, 1993, a significant regulatory action is subject to OMB review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This proposed rule would change the criteria that we would use to determine whether we can issue a LOMR–F to remove unimproved land or land with structures from the Special Flood Hazard Area (SFHA) by raising ground elevations using engineered earthen fill. We know of no conditions that would qualify the rule as a "significant regulatory action" within the definition of section 3(f) of the Executive Order. To the extent possible this proposed rule adheres to the principles of regulation as set forth in Executive Order 12866. This proposed rule has been reviewed by the Office of Management and Budget under the provisions of Executive Order 12866.

**Paperwork Reduction Act**

In accordance with the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*, the Office of Management and Budget (OMB) approved the collections of information applicable to this proposed rule: OMB Number 3067–0147, Report to Submit Technical or Scientific Data to Correct Mapping Deficiencies Unrelated to Community-Wide Elevation Determinations (Amendments & Revisions to National Flood Insurance Program Map).

Following is a summary of how each form will be used:

(a) *FEMA Form 81–87. Property Information.* This form describes the location of the property, what is being requested, and what data are required to support the request.

(b) *FEMA Form 81–87E. Credit Card Information.* This form outlines the information needed to process a request when the requester is paying by credit card.

(c) *FEMA Form 82–87A. Elevation Information.* This form indicates what the Base Flood (100-year) Elevation (BFE) for the property is, how the BFE was determined, the lowest ground elevation on the property, and/or the elevation of the lowest adjacent grade to any structures on the property. This information is required for FEMA to determine whether the property that is being requested to be removed from the SFHA is above the BFE.

(d) *FEMA Form 81–87C. Community Acknowledgment of Requests Involving Fill.* 44 CFR 65.5(a)(6) requires that if fill is placed to remove an area from the SFHA then the community must acknowledge the request. This form ensures that the requester fulfills this requirement before submitting the request to FEMA.

(e) *FEMA Form 81–87D. Summary of Elevations—Individual Lot Breakdown.* This form is used in conjunction with the Elevation Information Form for requests involving multiple lots or structures. It provides a table to allow the required submitted data to be presented in a manner for quick and efficient review.

The estimated burden on individual property owners is:

| | *Hours* |
|---|---|
| Property Information | 1.63 |
| Credit Care Form | 0.6 |
| Elevation Information | 0.63 |
| Community Acknowledgment of Requests Involving Fill | 0.88 |
| Summary of Elevations—Individual Lot Breakdown | 0.67 |

The number of requesters will vary from year to year, as we have no control over the number of people who will seek to have determinations made for their properties. For the purposes of this rule we estimate the following annual burdens:

| | |
|---|---|
| Requesters | 2,500 |
| Hours per response | 4.22 |
| Total hours | 10,550 |
| Total costs @ $50/hour | $527,500 |

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**Regulatory Flexibility Act, 5 U.S.C. 601**

Under the Regulatory Flexibility Act agencies must consider the impact of their rulemakings on "small entities" (small businesses, small organizations and local governments). When an agency is required by 5 U.S.C. 553 to publish a notice of proposed rulemaking, a regulatory flexibility analysis is required for both the notice and the final rule if the rulemaking could "have a significant economic impact on a substantial number of small entities." The Act also provides that if a regulatory flexibility analysis is not required, the agency must certify in the rulemaking document that the rulemaking will not "have a significant economic impact on a substantial number of small entities."

For the reasons that follow, I certify that a regulatory flexibility analysis is not required for this rule because it would not have a significant economic impact on a substantial number of small entities. This proposed rule is a clarification of existing policy and we propose the rule to remove the confusion and inconsistency that exists in the current rule. We expect that the proposed rule would remove the current rule's adverse impact on property owners, including small entities. This proposed rule would remove apparent inconsistencies in the current rule and would provide a single, uniform set of floodplain management criteria applicable to all applicable structures, regardless of when an area is removed from the SFHA. We expect the proposed rule to enhance the ability of local officials to make sound floodplain management decisions more readily than under the current rule. We also expect that the proposed rule will reduce the administrative burden on property owners, including small entities. We further expect that the rule may reduce certain building costs, without increasing the risks of flooding either to the owners or to the National Flood Insurance Program.

**Executive Order 12612, Federalism**

Executive Order 13132, Federalism, dated August 4, 1999, sets forth principles and criteria that agencies must adhere to in formulating and implementing policies that have federalism implications, that is, regulations that have substantial direct effects on the States, or on the distribution of power and responsibilities among the various levels of government. Federal agencies must closely examine the statutory authority supporting any action that would limit the policymaking discretion of the States, and to the extent practicable, must consult with State and local officials before implementing any such action.

We have reviewed this proposed rule under E.O.13132 and have concluded that the rule does not have federalism implications as defined by the Executive Order. As noted under Regulatory Planning and Review, this proposed rule would change the criteria that we would use to determine whether we can issue a LOMR–F to remove unimproved land or land with structures from the Special Flood Hazard Area (SFHA) by raising ground elevations using engineered earthen fill. We know of no substantial direct effects on the States, or on the distribution of power and responsibilities among the various levels of government that would result from this proposed rule.

The Office of Management and Budget has reviewed this rule under the provisions of Executive Order 13132.

**List of Subjects in 44 CFR Part 65**

Flood insurance, Flood insurance rate maps, Reporting and recordkeeping requirements.

Accordingly, we propose to amend Part 65 of Chapter I, Subchapter B, of Title 44 of the Code of Federal . Regulations as follows:

## PART 65—IDENTIFICATION AND MAPPING OF SPECIAL HAZARD AREAS

1. The authority citation for part 65 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

2. Section 65.2 is amended by adding paragraph (c) to read as follows:

**§ 65.2 Definitions**

* * * * *

(c) For the purposes of this part, "reasonably safe from flooding" means flood waters will not inundate the land and structures to be removed from the SFHA during the occurrence of the base flood and that any subsurface waters related to the base flood will not damage or inundate existing or proposed buildings and infrastructure.

3. Section 65.5 is revised to read as follows:

**§ 65.5 Revision to special hazard area boundaries with no change to base flood elevation determinations.**

(a) *Data requirements for topographic changes.* In many areas of special flood hazard (excluding V zones and floodways) it may be feasible to elevate areas with earth fill above the base flood elevation. Scientific and technical information to support a request to gain exclusion from an area of special flood hazard of a structure or parcel of land that has been elevated by the placement of fill will include the following:

(1) A copy of the recorded deed indicating the legal description of the property and the official recordation information (deed book volume and page number) and bearing the seal of the appropriate recordation official (*e.g.*, County Clerk or Recorder of Deeds).

(2) If the property is recorded on a plat map, a copy of the recorded plat indicating both the location of the property and the official recordation information (plat book volume and page number) and bearing the seal of the appropriate recordation official. If the property is not recorded on a plat map, FEMA requires copies of the tax map or other suitable maps to help in locating the property accurately.

(3) If a legally defined parcel of land and/or a structure is involved, a topographic map indicating present ground elevations, and date of fill. FEMA will base its determination that a legally defined parcel of land or a structure is to be excluded from the area of special flood hazard upon a comparison of the base flood to the ground elevations of the parcel or the lowest adjacent grade to the structure. If the ground elevations of the entire legally defined parcel of land or the lowest adjacent grade to the structure are at or above the elevation of the base flood, FEMA may exclude the parcel and/or structure from the area of special flood hazard.

(4) Written assurance by the participating community that they have complied with the appropriate minimum floodplain management requirements outlined in § 60.3 of this chapter. This includes the requirements that:

(i) Residential structures built in the SFHA have their lowest floor elevated to or above the base flood;

(ii) The community has determined through best engineering practices that the land or structures to be removed from the SFHA are "reasonably safe from flooding", and that the community maintains on file all supporting engineering analyses that it used to make that determination; and

(iii) The community has issued all necessary permits for development within the SFHA.

(5) Data to substantiate the base flood elevation. If FEMA has completed a Flood Insurance Study (FIS), FEMA will use those data to substantiate the base flood. Otherwise, data provided by an authoritative source, such as the U.S. Army Corps of Engineers, U.S. Geological Survey, Natural Resources Conservation Service, State and local water resource departments, or technical data prepared and certified by a registered professional engineer may be submitted. If base flood elevations have not previously been established, hydraulic calculations may also be requested.

(6) A revision of flood plain delineations based on fill must demonstrate that any such fill does not result in a floodway encroachment.

(b) *New topographic data.* The procedures described in paragraphs (a)(1) through (5) of this section may be also followed to request a map revision when no physical changes have occurred in the area of special flood hazard, when no fill has been placed, and when the natural ground elevations, as evidenced by new topographic maps, more detailed or more accurate than those used to prepare the map to be revised, are shown to be above the elevation of the base flood.

(c) *Certification requirements.* A registered professional engineer or licensed land surveyor must certify the items required in paragraphs (a)(3) and (b) of this section. Such certifications are subject to the provisions of § 65.2.

(d) *Submission procedures.* Submit all requests to the appropriate FEMA Regional Office servicing the community's geographic area or to the FEMA Headquarters Office in Washington, DC, and submit the appropriate payment with the requests, in accordance with 44 CFR part 72.

4. Paragraph 65.6 is amended by adding paragraph (a)(14) to read as follows:

**§ 65.6 Revision of base flood elevation determinations.**

(a) * * *

(14) Written assurance by the participating community that they have complied with the appropriate minimum floodplain management requirements outlined in § 60.3 of this chapter. This includes the requirements that:

(i) Residential structures built in the SFHA have their lowest floor elevated to or above the base flood;

(ii) The community has determined through best engineering practices that the land or structures to be removed from the SFHA are "reasonably safe from flooding", and that the community maintains on file all supporting engineering analyses that it used to make that determination; and

(iii) The community has issued all necessary permits for development within the SFHA.

* * * * *

Dated: October 3, 2000.

**Michael Armstrong,**

*Associate Director for Mitigation.*

[FR Doc. 00–25834 Filed 10–6–00; 8:45 am]

BILLING CODE 6718–04–P



## FEDERAL COMMUNICATIONS COMMISSION

**47 CFR Part 73**

**[DA 00–2244, MM Docket No. 00–188, RM–9969]**

**Digital Television Broadcast Service; New Orleans, LA**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by WWL–TV, Inc., licensee of station WWL–TV, NTSC channel 4, New Orleans, Louisiana, requesting the substitution of DTV channel 36 for station WWL–TV's assigned DTV channel 30. DTV Channel 36 can be allotted to New Orleans, Louisiana, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates (29–54–23 N. and 90–02–23 W.). As requested, we propose to allot DTV Channel 36 to New Orleans with a power of 1000 and a height above average terrain (HAAT) of 305 meters.

**DATES:** Comments must be filed on or before November 27, 2000, and reply comments on or before December 12, 2000.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW, Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John M. Burgett, Wiley, Rein & Fielding, 1776 K Street, NW, Washington, DC 20006 (Counsel for WWL–TV, Inc.).

**FOR FURTHER INFORMATION CONTACT:** Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–188, adopted September 29, 2000, and released December 12, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

Federal Communications Commission.

**Barbara A. Kreisman,**

*Chief, Video Services Division, Mass Media Bureau.*

[FR Doc. 00–25809 Filed 10–6–00; 8:45 am]

BILLING CODE 6712–01–P

## DEPARTMENT OF COMMERCE

**National Oceanic and Atmospheric Administration**

**50 CFR Part 622**

**[I.D. 092200A]**

**Gulf of Mexico Fishery Management Council; Public Hearings**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Public hearings; request for comments.

**SUMMARY:** The Gulf of Mexico Fishery Management Council (Council) will convene public hearings on draft Amendment 7 to the Fishery Management Plan for the Stone Crab Fishery of the Gulf of Mexico. Amendment 7 proposes to create a Federal trap certificate program for the commercial stone crab fishery in Federal waters (exclusive economic zone (EEZ)) off Florida. This program would be similar to the trap certificate program adopted by the State of Florida. In addition, public testimony on Amendment 7 will be accepted at the Gulf Council meeting in November 2000. A separate **Federal Register** notice will give details about that meeting.

**DATES:** The Council will accept written comments through November 3, 2000.

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The public hearings will be held in October 2000. See **SUPPLEMENTARY INFORMATION** for specific dates and times of the public hearings.

**ADDRESSES:** Written comments should be sent to Mr. Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301, North, Suite 1000, Tampa, FL 33619. Copies of draft Amendment 7 are available from Mr. Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301, North, Suite 1000, Tampa, FL 33619; telephone: 813-228-2815; fax: 813-769-4520. The public hearings will be held in Marathon and Crystal River, FL (For specific locations, see **SUPPLEMENTARY INFORMATION**).

**FOR FURTHER INFORMATION CONTACT:** Mr. Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301, North, Suite 1000, Tampa, FL 33619; telephone: 813-228-2815.

**SUPPLEMENTARY INFORMATION:** The public hearings will be convened to take public comment on draft Amendment 7. Draft Amendment 7 would create a Federal trap certificate program for the commercial stone crab fishery in the EEZ off Florida. This program would be similar to the trap certificate program adopted by the State of Florida.

A summary of the proposed Amendment 7 Federal stone crab trap certificate program follows:

1. The Federal program would recognize the Florida stone crab license and tags for use in the EEZ but would not require them.

2. Persons who could not obtain or chose not to obtain the state license/tags could apply for a Federal vessel permit, trap certificate, and trap tags.

3. The same qualifying criteria would apply for obtaining the Federal vessel permit/trap certificate/trap tags as apply for obtaining the state license/tags (i.e., 300 lb (136.1 kg) of claws landed in one of the six fishing seasons 1993/1994 through 1998/1999). The end of the draft Amendment 7 qualifying period would be May 15, 1999.

4. Persons would have 90 days to apply for a Federal vessel permit/trap certificate/trap tags after the effective date of implementation of the final rule.

5. Persons qualifying would be issued a Federal vessel permit/trap certificate/trap tags based on their landings divided by 5 lb (2.3 kg), which is the annual harvest level that would occur when the number of traps is reduced to the optimum level of 600,000 traps.

6. Federal vessel permits, trap certificates, and tags would be non-transferrable.

7. It is anticipated that the cost of the Federal trap tags would be higher than the cost of the state trap tags (i.e., $1.10 vs $0.50).

8. Draft Amendment 7 includes a Federal appeals process allowing fishermen to appeal denied applications for a Federal vessel permit/trap certificate/trap tags.

### Time and Location for Public Hearings

Public hearings for draft Amendment 7 will be held at the following locations, dates, and times:

1. October 16, 2000, 7 p.m., Marathon Government Center, BOCC Room, 2798 Overseas Highway MM 47.5, Marathon, FL 33050; telephone: 305-295-4385.

2. October 18, 2000, 7 p.m., Plantation Inn & Gulf Resort, 9301 West Fort Island Trail, Crystal River, FL 34429; telephone: 352-795-4211.

### Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by November 3, 2000.

Dated: October 3, 2000.

**Clarence Pautzke,**

*Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 00-25957 Filed 10-6-00; 8:45 am]

**BILLING CODE 3510-22-S**



# Notices

Federal Register

Vol. 65, No. 196

Tuesday, October 10, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

**[Docket No. FV00-33-1NC]**

### Notice of Request for Extension and Revision of a Currently Approved Information Collection

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension for and revision to a currently approved information collection for the Export Apple Act and the Export Grape and Plum Act.

**DATES:** Comments on this notice must be received by December 11, 2000, to be assured of consideration.

**ADDITIONAL INFORMATION OR COMMENTS:** Contact Valerie L. Emmer-Scott, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, D.C., 20090-6456, telephone (202) 205-2829 or Fax (202) 720-5698, or E-mail: moab.docketclerk@usda.gov.

Small businesses may request information on this notice by contacting Jay Guerber, Regulatory Fairness Representative, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone (202) 720-2491, Fax: (202) 720-5698, or E-mail: Jay.Guerber@usda.gov.

**SUPPLEMENTARY INFORMATION:**

*Title:* Export Fruit Regulations—Export Apple Act (7 CFR Part 33) and the Export Grape and Plum Act (7 CFR Part 35).

*OMB Number:* 0581-0143.

*Expiration Date of Approval:* July 31, 2001.

*Type of Request:* Extension and revision of a currently approved information collection.

*Abstract:* Fresh apples and grapes grown in the United States shipped to any foreign destination must meet minimum quality and other requirements established by regulations issued under the Export Apple Act (7 U.S.C. 581-590) and the Export Grape and Plum Act (7 U.S.C. 591-599). Currently, plums are not regulated under the Export Grape and Plum Act. The regulations issued under the Export Grape and Plum Act (7 CFR Part 35) cover fresh grapes grown in the United States and shipped to foreign destinations, except Canada and Mexico. The regulations issued under the Export Apple Act (7 CFR Part 33) covers fresh apples grown in the United States shipped to foreign destinations. In accordance with amendments to that Act, pears have been removed from coverage and the current regulations will be amended accordingly. The Secretary of Agriculture is authorized to oversee the implementation of the export fruit acts and issue regulations regarding these commodities. The information collection requirements in this request are essential to carry out the intent and administration of the export fruit acts. The Export Apple Act and the Export Grape and Plum Act have been in effect since 1933 and 1960 respectively.

Both Acts were designed to promote the foreign trade of the United States in apples, grapes and plums; to protect the reputation of these American-grown commodities; and to prevent deception or misrepresentation of the quality of such products moving in foreign commerce.

The regulations issued under the Acts (§ 33.11 for apples, and § 35.12 for grapes) require that the U.S. Department of Agriculture (USDA) officially inspect and certify that each shipment of fresh apples and grapes is in compliance with all pertinent regulatory requirements effective under the Acts. Persons who ship fresh apples and grapes grown in the United States to foreign destinations must have such shipment inspected and certified by Federal or Federal-State Inspection Service (FSIS) inspectors. The FSIS is administered by the Agricultural Marketing Service.

The forms covered under this information collection require the minimum information necessary to effectively carry out the export fruit acts, and their use is necessary.

The information collection requirements in this request is primarily in the form of recordkeeping. Information needed by USDA is available on official FSIS inspection certificates, and on phytosanitary inspection certificates issued by USDA's Animal and Plant Health Inspection Service.

Export carriers are required to keep on file for three years copies of inspection certificates for apples and grapes transported by them. Export shippers are required to label certain containers of apples and grapes used for export shipments.

The number of exporters has remained fairly constant in recent years. There are an estimated 115 exporters who use the required forms and the corresponding forms have remained constant.

The information collection requirements in this request are periodically reviewed to ensure that they place as small a burden on the exporter as possible. Procedures have been streamlined to assure efficiency in administering the Acts.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 4.9528 hours per response.

*Respondents:* Fruit export shippers and export carriers.

*Estimated Number of Respondents:* 115.

*Estimated Number of Responses per Respondent:* 3.96.

*Estimated Total Annual Burden on Respondents:* 2,204.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated,

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electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC, 20090–6456; Fax: (202) 720–5698; or E-mail: moab.docketclerk@usda.gov. Comments should reference the docket number and the date and page number of this issue of the **Federal Register**. All comments received will be available for public inspection during regular business hours at the same address, or can be viewed at: http://www.ams.usda.gov/fv/moab.html. All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: October 3, 2000.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 00–25947 Filed 10–6–00; 8:45 am]

**BILLING CODE 3410–02–U**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

**[Docket No. FV00–998–1NC]**

### Notice of Request for Extension and Revision of a Currently Approved Information Collection

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension for and revision to a currently approved information collection for Marketing Agreement No. 146 Regulating the Quality of Domestically Produced Peanuts 7 CFR part 998) (Agreement).

**DATES:** Comments on this notice must be received by December 11, 2000.

**FOR FURTHER INFORMATION CONTACT:** Contact Valerie L. Emmer-Scott, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S., P.O. Box 96456, Washington, DC 20090–6456; Tel: (202) 205–2829, Fax: (202) 720–5698, or E-mail: moab.docketclerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register**.

Small businesses may request information on this notice by contacting Jay Guerber, Regulatory Fairness Representative, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

**SUPPLEMENTARY INFORMATION:**

*Title:* Marketing Agreement No. 146, Regulating the Quality of Domestically Produced Peanuts—7 CFR part 998.

*OMB Number:* 0581–0067.

*Expiration Date of Approval:* July 31, 2001.

*Type of Request:* Extension and revision of a currently approved information collection.

*Abstract:* Marketing agreement and order programs provide an opportunity for producers of fresh fruits, vegetables and specialty crops, in a specified production area, to work together to solve marketing problems that cannot be solved individually. Such regulations help ensure adequate supplies of high quality product and adequate returns to producers. Under the Agricultural Marketing Agreement Act of 1997 (AMAA), as amended (7 U.S.C. 601–674), the Agreement was established for handlers who voluntarily signed it. Signers agreed to have peanuts inspected, meet both incoming and outgoing quality regulations, be chemically tested and certified "negative" as to aflatoxin. The Secretary of Agriculture is authorized to oversee the Agreement's operations and consider issuing regulations recommended by a committee of producer and handler representatives from each of the three peanut producing areas within the 16-state production area.

The information collection requirements in this request are essential to carry out the intent of the AMAA, to provide the respondents the type of service they request, and to administer the Peanut Marketing Agreement program, which has been operating since 1965.

The Agreement authorizes the issuance of quality regulations along with inspection requirements. The Agreement also provides authority for limited indemnification. The Agreement, and rules and regulations issued thereunder, authorize the Peanut Administrative Committee (Committee), which is responsible for locally administering the program, to require handlers and growers to submit certain information. Much of the information is compiled in aggregate and provided to the industry to assist in marketing decisions.

The Committee has developed forms as a means for persons to file required information with the Committee relating to peanut supplies, shipments, dispositions, and other information needed to effectively carry out the purpose of the AMAA and Agreement. USDA forms are used by peanut growers and handlers, who are nominated by their peers to serve as representatives on the Committee, to submit their qualifications to the Secretary. Other USDA forms are used by handlers to sign the Agreement.

These forms require the minimum information necessary to effectively carry out the requirements of the Agreement, and their use is necessary to fulfill the intent of the AMAA as expressed in the Agreement.

The information collected is used only by authorized representatives of the USDA, including AMS, Fruit and Vegetable Programs' regional and headquarter's staff, and authorized employees of the Committee. Authorized Committee employees and the industry, which may be provided only aggregate (not confidential) information, are the primary users of the information and AMS is the secondary user.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average .45 hours per response.

*Respondents:* Peanut producers and persons handling fresh and processed peanuts produced in the 16-state production area.

*Estimated Number of Respondents:* 25.

*Estimated Number of Responses per Respondent:* 10.44.

*Estimated Total Annual Burden on Respondents:* 118 hours.

*Comments:* Comments are invited on: (1) Whether the proposed collection of the information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.



Comments should reference OMB No. 0581–0067 and the Peanut Marketing Agreement No. 146, and be mailed to Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; Fax (202) 720–5698; or E-mail: moab.docketclerk@usda.gov. Comments should reference the docket number and the date and page number of this issue of the **Federal Register**. All comments received will be available for public inspection in the Office of the Docket Clerk during regular USDA business hours at 14th and Independence Ave., SW, Washington, DC, room 2525–S, or can be viewed at: http://www.ams.usda.gov/fv/moab.html.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: October 3, 2000.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 00–25948 Filed 10–6–00; 8:45 am]

**BILLING CODE 3410–02–U**

## DEPARTMENT OF AGRICULTURE

### Commodity Credit Corporation

### Sunshine Act Meeting: CCC Board Meeting; Correction

**AGENCY:** Commodity Credit Corporation, USDA.

**ACTION:** Sunshine Act meeting correction.

**SUMMARY:** In **Federal Register** document 65–FR–192 beginning on page 58983–58984 in the issue of Tuesday, October 3, 2000, make the following correction:

The CCC Board Meeting scheduled for October 10, 2000, at 2 p.m., in Room 104–A, Jamie L. Whitten Building has been canceled. The meeting will be rescheduled at a later date.

Dated: October 4, 2000.

**Juanita B. Daniels,**

*Acting Secretary, Commodity Credit Corporation.*

[FR Doc. 00–26037 Filed 10–5–00; 12:52 pm]

**BILLING CODE 3410–05–P**

## DEPARTMENT OF AGRICULTURE

### Farm Service Agency

### Release of Georgia Tobacco Farmers' Social Security Numbers to the State of Georgia

**AGENCY:** Farm Service Agency, USDA.

**ACTION:** Notice of Intent to Release Records and Opportunity to Opt Out of the Release.

**SUMMARY:** This notice announces the intention of the Secretary of Agriculture to release the social security numbers of those Georgia tobacco farmers who receive Tobacco Loss Assistance Program 2000 (TLAP) payments; and provides notice of the method in which interested parties can opt out of that release. The release will be to the State of Georgia which will distribute an identical sum of State funds to each TLAP 2000 Georgia farmer.

**EFFECTIVE DATE:** October 6, 2000.

**ADDRESSES:** Notices should be mailed to Charles Hatcher, Farm Service Agency (FSA), Tobacco and Peanuts Division, STOP 0514, 1400 Independence Avenue, SW, Washington, DC 20250–0514.

**FOR FURTHER INFORMATION CONTACT:** Misty L. Jones, telephone (202) 720–0200.

**SUPPLEMENTARY INFORMATION:** The TLAP 2000 Program is provided for in Section 204(b) of the Agricultural Risk Protection Act of 2000 (ARPA), Public Law 106–224, and is a program in which Federal payments are made to tobacco farmers and other parties with an interest in certain kinds of tobacco which have had reduced quotas. Tobacco farmers who applied for TLAP 2000 payments were required to provide to the Farm Service Agency their social security numbers. The ARPA of 2000, which provided funds for TLAP 2000, contains the following restriction as to the State of Georgia:

> The Secretary shall use the amount allocated to the State of Georgia under paragraph (3) to make payments to eligible persons in Georgia only if the State of Georgia agrees to use an equal amount (not to exceed $13,000,000) to make payments at the same time, or subsequently, to the same eligible persons in the same manner as provided for the Federal payment under paragraphs (4) and (5).

In order to efficiently and expeditiously make the matching payments to Georgia tobacco producers, the State of Georgia has requested that the Farm Service Agency provide the names, addresses, social security numbers, and the amount of money to be paid to each farmer. However, there may be some Georgia tobacco farmers who would rather not have their social security numbers released to the State. Because these matching State payments can provide much needed help to Georgia producers, the Secretary intends to provide the social security numbers to the State of Georgia, except in the case of those parties who wish to opt out of the release. Those who wish to opt out of the release should send notice in writing of their election to Charles Hatcher, Farm Service Agency, Tobacco and Peanuts Division, STOP 0514, 1400 Independence Avenue, SW, Washington, D.C. 20250–0514. Such notice must be received by October 25, 2000.

Parties should understand that a request for an exemption from the disclosure could result in a delay in receiving a distribution from the State of Georgia or ineligibility for such a distribution. It is not expected that there will be many exemption requests filed. Accordingly, it appears that the record collections can be made at one location for re-routing to the national record center for processing.

Signed at Washington, D.C., on October 3, 2000.

**Keith Kelly,**

*Administrator, Farm Service Agency.*

[FR Doc. 00–25949 Filed 10–6–00; 8:45 am]

**BILLING CODE 3410–05–U**

## DEPARTMENT OF COMMERCE

### Bureau of Export Administration

### Transportation and Related Equipment Technical Advisory Committee; Notice of Open Meeting

The Transportation and Related Equipment Technical Advisory Committee will meet on October 25, 2000, 9 a.m., at the Herbert C. Hoover Building, Room 3884, 14th Street between Pennsylvania & Constitution Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical question that affect the level of export controls applicable to transportation and related equipment or technology.

*Agenda*

1. Opening remarks by the Chairman.
2. Consultation with Committee on renewal of charter.
3. Review of pending regulatory revisions.
4. Update on missile technology issues.
5. Update on Wassenaar Arrangement negotiations.
6. Presentation of papers or comments by the public.
7. Review of status of actions items from previous meeting.
8. Member assignments for Wassenaar Arrangement proposals.

The meeting will be open to the public and a limited number of seats

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will be available. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that you forward your public presentation materials two weeks prior to the meeting to the following address: Ms. Lee Ann Carpenter, OSIES/EA/BXA Ms: 3876, U.S. Department of Commerce, 14th & Constitution Avenue, NW., Washington, DC 20230.

For more information or copies of the minutes, please call Lee Ann Carpenter on (202) 482–2583.

Dated: October 4, 2000.

**Lee Ann Carpenter,**

*Committee Liaison Officer.*

[FR Doc. 00–25937 Filed 10–6–00; 8:45 am]

BILLING CODE 3510–JT–M

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A–821–807]

### Final Results of Expedited Sunset Review: Ferrovanadium and Nitrided Vanadium From Russia

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of final results of expedited sunset review: Ferrovanadium and Nitrided Vanadium from Russia.

**SUMMARY:** On June 5, 2000, the Department of Commerce ("the Department") initiated a sunset review of the antidumping duty order on ferrovanadium and nitrided vanadium from Russia (65 FR 35604) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and substantive comments filed on behalf of the domestic interested parties and inadequate response from respondent interested parties, Department determined to conduct an expedited sunset review. As a result of this review, the Department finds that revocation of the antidumping order would likely lead to continuation or recurrence of dumping at the levels indicated in the Final Results of Review section of this notice.

**EFFECTIVE DATE:** October 10, 2000.

**FOR FURTHER INFORMATION CONTACT:** Martha V. Douthit or James P. Maeder, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–5050 or (202) 482–3330, respectively.

**SUPPLEMENTARY INFORMATION:**

### The Applicable Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in Procedures for Conducting Five-Year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders, 63 FR 13516 (March 20, 1998) ("Sunset Regulations") and in 19 CFR Part 351 (2000) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—Policies Regarding the Conduct of Five-Year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) ("Sunset Policy Bulletin").

### Background

On June 5, 2000, the Department initiated a sunset review of the antidumping order on ferrovanadium and nitrided vanadium from Russia (65 FR 35604), pursuant to section 751(c) of the Act. On June 20, 2000, the Department received a Notice of Intent to Participate within the deadline specified in section 351.218(d)(1)(i) of the Sunset Regulations on behalf of the Ferroalloys Association Vanadium Committee ( the "TFA Vanadium Committee") and its members; Bear Metallurgical Corporation, Shieldalloy Metallurgical Corporation ("Shieldalloy"), Gulf Chemical and Metallurgical, Strategic Minerals Corporation, and CS Metals of Louisiana, ( collectively "the domestic interested parties"). On July 5, 2000, the Department received a complete substantive response from the domestic interested parties within the 30-day deadline specified in the Sunset Regulations under section 351.218(d)(3)(i).

The TFA Vanadium Committee claimed interested party status under 19 USC 1677(9)(E) as a trade or business association of a majority of whose members manufacture, produce, or wholesale a domestic like product in the United States. As domestic interested parties, the following members of the TFA Vanadium Committee claimed interested party status under 19 USC 1677(9)(C); Bear Metallurgical Corporation, Shieldalloy Metallurgical Corporation, Gulf Chemical and Metallurgical and Strategic Minerals Corporation.[1] In addition, they identified another member, CS Metals of Louisiana, as an interested party in this sunset review. See Domestic Interested Parties, July 5, 2000, Substantive Response at 2–3.

Bear Metallurgical Corporation and Shieldalloy Metallurgical Corporation assert that they are the only U.S. manufacturers or producers of ferrovanadium. *Id.* at 2. Gulf Chemical and Metallurgical, and Strategic Minerals Corporation assert that they are wholesalers in the United States of domestically-produced ferrovanadium. *Id.* at 2.

With respect to historical participation of this order, the domestic interested parties assert that in 1994, Shieldalloy filed the petition that lead to the issuance of the antidumping duty order on ferrovanadium and nitrided vanadium from Russia. In addition, Shieldalloy actively participated in the Department's first administrative review covering the period January 4, 1995, through June 30, 1996. *Id.* at 4–5.

Although Shieldalloy requested an administrative review for one exporter, Galt Alloys, during the period July 1, 1996, through June 30, 1997, the review was terminated because Galt Alloys did not make sales of the subject merchandise between July 1, 1996 and June 30, 1997. *Id.* at 4. The domestic interested parties further assert that Shieldalloy has actively participated in all judicial appeals and remand proceedings related to this order. *Id.* at 5.

On July 5, 2000, the Department received a complete substantive response to the notice on initiation from respondent interested parties; Vanadium Tulachermet ("Tulachermet") and Chusovskoy Metallurgical Works Joint Stock Company ("Chusovskoy") (collectively "the respondent interested parties") within the 30-day deadline specified in the Sunset Regulations under section 351.218(d)(3)(i). The respondent interested parties claimed interested party status under 19 USC 1677(9)(A) as foreign manufacturers of the subject merchandise. With respect to respondent interested parties' historical participation of the order, they assert that they participated in the original investigation by providing factors of production to the Department, although neither party was deemed an exporter. See Respondent Interested Parties, July 5, 2000, Substantive Response at 1. In the first administrative review, both Chusovskoy and Tulachermet provided information to the Department. However, in their substantive response they assert that, due to a tragic event at Chusovskoy, they were unable to complete their participation in this review. Id.

[1] In its substantive response the domestic interested parties note that Strategic Minerals Corporation sells domestically-produced ferrovanadium in the United States through its wholly-owned subsidiary, U.S. Vanadium Corporation.



With respect to adequacy of response from respondent interested parties, the Department normally will conclude that respondent interested parties have provided adequate response to conduct a full sunset review where respondent interested parties account for more than 50 percent, by volume, of the total exports of subject merchandise to the United States. Where respondent interested parties provide inadequate responses, the Department will conduct an expedited sunset review and issue final results of review based on the facts available.

After examining respondent interested parties' import statistics, on June 26, 2000, the Department notified the U.S. International Trade Commission that respondent interested parties did not provide an adequate response in this sunset review, pursuant to section 751(c)(3)(B) of the Act, and 19 CFR 351.218(e)(1)(ii)(C)(2). Therefore, because we did not receive adequate response from respondent interested parties, we determined to conduct an expedited sunset review and to issue the final results not later than October 3, 2000.

### Scope of Review

The products covered by this sunset review are ferrovanadium and nitrided vanadium, regardless of grade, chemistry, form or size, unless expressly excluded from the scope of this order. Ferrovanadium includes alloys containing ferrovanadium as the predominant element by weight (*i.e.*, more weight than any other element, except iron in some instances) and at least 4 percent by weight of iron. Nitrided vanadium includes compounds containing vanadium as the predominant element, by weight, and at least 5 percent, by weight, of nitrogen.

Excluded from the scope of this review are vanadium additives other than ferrovanadium and nitrided vanadium, such as vanadium-aluminum master alloys, vanadium chemicals, vanadium waste and scrap, vanadium-bearing raw materials, such as slag, boiler residues, fly ash, and vanadium oxides.

The products subject to this review are currently classifiable under subheadings 2850.00.20, 7202.92.00, 7202.99.5040, 8112.40.3000, and 8112.40.6000 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

### Analysis of Comments Received

All issues raised in these cases and rebuttal briefs by parties to this sunset review are addressed in the "Issues and Decision Memorandum" ("Decision Memo") from Jeffrey A. May, Director, Office of Policy, Import Administration, to Troy H. Cribb, Acting Assistant Secretary for Import Administration, dated October 3, 2000, which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail were the order revoked.

Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in room B–099 of the main Commerce Building. In addition, a complete version of the Decision Memo can be accessed directly on the Web at *http://ia.ita.doc.gov.* The paper copy and electronic version of the Decision Memo are identical in content.

### Final Results of Review

As a result of this review, the Department finds that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping at the percentage weighted-average margins listed below:

| Manufacturer/exporter | Margin (percent) |
|---|---|
| Galt Alloys, Inc | 3.75 |
| Gesellschaft für Elektrometallurgie m.b.H. (and its related companies Shieldalloy Metallurgical Corporation and Metallurg, Inc.) | 11.72 |
| Odermet | 10.10 |
| Russia-wide Rate | 108.00 |

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: October 3, 2000.

**Richard W. Moreland,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 00–25970 Filed 10–6–00; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A–489–807]

### Steel Concrete Reinforcing Bars From Turkey; Notice of Extension of Time Limits for Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce is extending the time limits of the preliminary results of the antidumping duty administrative review on steel concrete reinforcing bars from Turkey. The review covers four producers/exporters of the subject merchandise to the United States. The period of review is April 1, 1999, through March 31, 2000.

**EFFECTIVE DATE:** October 10, 2000.

**FOR FURTHER INFORMATION CONTACT:** Irina Itkin at (202) 482–0656, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:** Because it is not practicable to complete this administrative review within the time limits mandated by section 751(a)(3)(A) of Tariff Act of 1930, as amended by the Uruguay Round Agreements Act, the Department is extending the time limit for completion of the preliminary results. This review involves a number of complicated issues including high inflation in Turkey during the period of review. Moreover, the petitioners requested that the Department conduct verification, pursuant to section 782(i)(3)(A) of the Act. Therefore, we intend to verify the sales and cost information submitted by the four respondents. Because the Department will not be able to conduct verification before the scheduled preliminary results, we have extended the deadline until April 30, 2001.

This extension is in accordance with section 751(a)(3)(A) of the Act (19

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U.S.C. 1675(a)(3)(A)) and 19 CFR 351.213(h)(2).

Dated: October 3, 2000.

**Richard W. Moreland**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. 00–25971 Filed 10–6–00; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 081400A]**

### Taking and Importing of Marine Mammals

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of harvesting nation embargoes.

**SUMMARY:** The Assistant Administrator for Fisheries, NMFS, (Assistant Administrator) imposed embargoes on yellowfin tuna and yellowfin tuna products from Belize, Bolivia, Colombia, El Salvador, Guatemala, Honduras, Nicaragua, Panama, Vanuatu, and Venezuela under the Marine Mammal Protection Act (MMPA), 16 U.S.C. 1361 *et seq.*, on October 3, 2000. This action prohibits the importation into the United States from these nations of yellowfin tuna and yellowfin tuna products harvested by purse seine in the eastern tropical Pacific Ocean (ETP). NMFS is imposing the embargoes because these nations harvest tuna in the ETP with purse seine vessels with greater than 400 short tons (362.8 mt) of carrying capacity and have not received "affirmative findings" as required by 50 CFR 216.24(f)(9). This determination remains in effect for each nation until an affirmative finding has been granted to a nation by the Assistant Administrator.

**DATES:** Effective October 3, 2000.

**ADDRESSES:** Copies of this notice may be obtained by writing to Nicole R. Le Boeuf, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, Maryland 90210.

**FOR FURTHER INFORMATION CONTACT:** Nicole R. Le Boeuf; phone 301–713–2322; fax 301–713–4060.

**SUPPLEMENTARY INFORMATION:** Prior to March 3, 1999, section 101(a)(2)(B) of the MMPA required nations wishing to import into the United States yellowfin tuna or yellowfin tuna products harvested by purse seine in the ETP to submit documentation indicating that they were enforcing dolphin protection measures comparable to those of the United States. Under section 101(a)(2)(B) of the MMPA effective prior to March 3, 1999, Belize, Colombia, Panama, Vanuatu, and Venezuela were embargoed. The existing embargoes against yellowfin tuna harvested by purse seine in the ETP and exported from those five nations remain in effect.

Since March 3, 1999, the standards of the MMPA, as amended by the International Dolphin Conservation Program Act (IDCPA) (Pub. L. 105–42), changed for the entry into the United States of yellowfin tuna and yellowfin tuna products harvested by purse seine vessels in the ETP, as set forth by the interim final rule implementing the IDCPA (65 FR 30, January 3, 2000).

In order to export to the United States yellowfin tuna harvested by purse seine in the ETP, nations that have, operating under their jurisdiction, purse seine vessels with over 400 short tons of carrying capacity that fish for tuna in the ETP (i.e., a harvesting nation) are now obligated to submit documentary evidence directly to Assistant Administrator, and to request an affirmative finding as required by 50 CFR 216.24(f)(9). Based upon documentary evidence submitted by a harvesting nation and obtained from the Inter-American Tropical Tuna Commission (IATTC) and/or from the Department of State, the Assistant Administrator will determine whether the nation qualifies for an affirmative finding under section 101(a)(2)(B) of the MMPA. An affirmative finding allows for the importation into the United States of yellowfin tuna and yellowfin tuna products harvested by purse seine in the ETP after March 3, 1999. If a harvesting nation does not provide documentary evidence that shows that the nation meets the standards under section 101(a)(2)(B) of the MMPA, the Assistant Administrator must embargo yellowfin tuna harvested by purse seine in the ETP. Bolivia, El Salvador, Guatemala, Honduras, and Nicaragua are not currently embargoed, however, those nations have failed to submit documentation to NMFS, as required by 50 CFR 216.24(f)(9).

The application procedures to request an affirmative finding are described in the interim final regulations implementing the IDCPA (65 FR 30, January 3, 2000). Harvesting nations must submit documentary evidence directly to the Assistant Administrator demonstrating that they meet several conditions related to compliance with the International Dolphin Conservation Program (IDCP), and request an affirmative finding. To issue an affirmative finding, NMFS must receive the following information:

1. A statement requesting an affirmative finding;
2. Evidence of membership in the Inter-American Tropical Tuna Commission (IATTC);
3. Evidence that a nation is meeting its obligations to the IATTC, including financial obligations;
4. Evidence that a nation is complying with the IDCP. For example, national laws and regulations implementing the Agreement on the IDCP and information that the nation is enforcing those laws and regulations;
5. Evidence of a tuna tracking and verification program comparable to the U.S. tracking and verification regulations at 50 CFR 216.94;
6. Evidence that the national fleet dolphin mortality limits (DMLs) were not exceeded in the previous calendar year;
7. Evidence that the national fleet per-stock per-year mortality limits, if they are allocated to countries, were not exceeded in the previous calendar year;
8. Authorization for the IATTC to release to the Assistant Administrator complete, accurate, and timely information necessary to verify and inspect Tuna Tracking Forms; and
9. Authorization for the IATTC to release to the Assistant Administrator information whether a nation is meeting its obligations of membership to the IATTC and whether a nation is meeting its obligations under the IDCP, including managing (not exceeding) its national fleet DMLs or its national fleet per-stock per-year mortality limits. A nation may opt to provide this information directly to NMFS on an annual basis or to authorize the IATTC to release the information to NMFS in years when NMFS will review and consider whether to issue an affirmative finding determination without an application from the harvesting nation.

An affirmative finding will be terminated, in consultation with the Secretary of State, if the Assistant Administrator determines that the requirements of 50 CFR 216.24(f)(9) are no longer being met or that a nation is consistently failing to take enforcement actions on violations which diminish the effectiveness of the IDCP. Every 5 years, the government of a harvesting nation, must request an affirmative finding and submit the required documentary evidence directly to the Assistant Administrator.

Until such time as the Assistant Administrator receives documentary evidence from the Governments of Belize, Bolivia, Colombia, El Salvador, Guatemala, Honduras, Nicaragua, Panama, Vanuatu, and Venezuela demonstrating that they qualify for affirmative findings, embargoes on yellowfin tuna harvested by purse seine in the ETP by these nations will continue. These embargoes prohibit the importation into the United States from these nations of yellowfin tuna and yellowfin tuna products harvested by purse seine in the ETP after March 3, 1999.

Dated: October 3, 2000.

**William T. Hogarth,**

*Deputy Assistont Administrator for Fisheries, National Marine Fisheries Service.*

[FR Doc. 00–25978 Filed 10–6–00; 8:45 am]

BILLING CODE 3510–22–S



## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D.092600A]**

### Marine Mammals; File No. 373–1575

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Issuance of permit.

**SUMMARY:** Notice is hereby given that Point Reyes Bird Observatory (Dr. Sarah Allen, Principal Investigator) 4990 Shoreline Highway, Stinson Beach, CA 94970, has been issued a permit to take harbor seals (*Phoca vitulina richardsi*), northern elephant seals (*Mirounga angustirostris*), California sea lions (*Zalophus californianus*), and Steller sea lions (*Eumetopias jubatus*) for purposes of scientific research.

**ADDRESSES:** The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289);

Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802 (562/980–4001); and

Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115 (206/526–6150).

**FOR FURTHER INFORMATION CONTACT:** Simona Roberts or Ruth Johnson, 301/713–2289.

**SUPPLEMENTARY INFORMATION:** On July 11, 2000, notice was published in the **Federal Register** 65 FR 42676) that a request for a scientific research permit to take harbor seals (*Phoca vitulina richardsi*), northern elephant seals (*Mirounga angustirostris*), California sea lions (*Zalophus californianus*), and Steller sea lions (*Eumetopias jubatus*) had been submitted by the above-named organization. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: October 3, 2000.

**Ann D. Terbush,**

*Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 00–25956 Filed 10–6–00; 8:45 am]

BILLING CODE 3510–22–S

## DEPARTMENT OF EDUCATION

### Submission for OMB Review; Comment Request

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before November 9, 2000.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address Lauren_Wittenberg@omb.eop.gov.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: October 3, 2000.

**John Tressler,**

*Leader, Regulatory Information Management, Office of the Chief Information Officer.*

### Office of Student Financial Assistance

*Type of Review:* Reinstatement.

*Title:* The Leveraging Educational Assistance and Partnership (LEAP) Program.

*Frequency:* Annually.

*Affected Public:* State, Local, or Tribal Gov't, SEAs or LEAs.

*Reporting and Recordkeeping Hour Burden:*

Responses: 56

Burden Hours: 560

*Abstract:* The LEAP Program uses matching Federal and State funds to provide a nationwide system of grants to assist postsecondary educational students with substantial financial need. State agencies use this performance report to account for yearly program performance. The Department uses the information collected to assess the accomplishment of the program goals and objectives and to aid in program management and compliance assurance.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346.

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Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his internet address Joe_Schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–25871 Filed 10–6–00; 8:45 am]
BILLING CODE 4000–01–U

## DEPARTMENT OF EDUCATION

### Privacy Act of 1974; System of Records

**AGENCY:** Office of Postsecondary Education, ED.

**ACTION:** Notice of a New System of Records.

**SUMMARY:** In accordance with the Privacy Act of 1974, as amended, the Department of Education (ED) publishes this notice of a new system of records entitled "Teacher Quality Recruitment Scholarship System (18–12–06)." The system will contain information about the current and former scholarship recipients, scholarship awards, terms of the scholarship, data about the amount and percentage of teaching time, certification and employing information about the employing school and school district. The Department seeks comment on this new system of records described in this notice, in accordance with the requirements of the Privacy Act.

**DATES:** We must receive your comments on the proposed routine uses for the system of records included in this notice on or before November 9, 2000. The Department filed a report describing the new system of records covered by this notice with the Chair of the Committee on Governmental Affairs of the Senate, the Chair of the Committee on Government Reform and Oversight of the House, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on October 4, 2000. The changes made in this notice will become effective after the 30-day period for OMB review of the system expires on November 3, 2000, unless OMB gives specific notice within the 30 days that the changes are not approved for implementation or requests an additional 10 days for its review. The routine uses become effective November 9, 2000 unless they need to be changed as a result of public comment or OMB review. The Department will publish any changes to the routine uses.

**ADDRESSES:** Address all comments about the proposed routine uses to John Tressler, Office of Chief Information Officer, U.S. Department of Education, 400 Maryland Avenue, SW., room 4082 ROB–3, Washington, DC 20202–4580. Telephone: (202) 708–8900. If you prefer to send comments through the Internet, use the following address: Comments@ed.gov.

You must include the term "SOR Teacher Quality" in the subject line of the electronic message.

During and after the comment period, you may inspect all comments about this notice in room 4082 ROB–3, Seventh and D Streets, SW., Washington, DC, between the hours of 8:00 a.m. and 4:30 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

**Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record**

On request, we supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of aid, you may call (202) 205–8113 or (202) 260–9895. If you use a TDD, you may call the Federal Information Relay Service at 1–800–877–8339.

**FOR FURTHER INFORMATION CONTACT:** Edward Crowe, U.S. Department of Education, 1990 K Street, NW., room 6150, Washington, DC 20202–8525. Telephone: 202–502–7762. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

**Introduction**

The Privacy Act (5 U.S.C. 552a) (Privacy Act) requires the Department to publish in the **Federal Register** this notice of a new system of records managed by the Department. The Department's regulations implementing the Act are contained in the Code of Federal Regulations (CFR) in 34 CFR Part 5b.

The Privacy Act applies to information about individuals that contain individually identifiable information and that may be retrieved by a unique identifier associated with each individual, such as a name or social security number. The information about each individual is called a "record" and the system, whether manual or computer-based, is called a "system of records." The Privacy Act requires each agency to publish notices of systems of records in the **Federal Register** and to prepare reports to the Office of Management and Budget (OMB) whenever the agency publishes a new system of records.

**Electronic Access to This Document**

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use PDF you must have Adobe Acrobat Reader, which is available free at either of the previous sites. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498, or in the Washington, DC area at (202) 512–1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html.

Dated: October 4, 2000.

**A. Lee Fritschler,**

*Assistant Secretary, Office of Postsecondary Education.*

The Office of Postsecondary Education of the U.S. Department of Education publishes a notice of a new system of records to read as follows:

**18–12–06**

**SYSTEM NAME:**

Teacher Quality Recruitment Scholarship System.

**SECURITY CLASSIFICATION:**

None.

**SYSTEM LOCATION:**

Teacher Quality Enhancement Grants Program, Office of Policy, Planning, and Innovation, Office of Postsecondary Education, U.S. Department of Education, 1990 K Street, NW., room 6151, Washington, DC 20006–8525.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

This system contains records on individuals who have been awarded scholarships with funds provided under Title II of the Higher Education Act by States or partnerships to prepare to become kindergarten through twelfth-grade teachers.



**CATEGORIES OF RECORDS IN THE SYSTEM:**

This system consists of information about scholarship recipients, including the amount and period of their scholarships and the institution that awarded them; information about former recipients, including data about the amount and percentage of time the teacher spends teaching; information about the awarding entity; information about the terms of the scholarship; the amount of the scholarship and information about the employing school and the school district, including a certification by the employing school or school district that it meets the regulatory definition of high-need.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Title II, Section 204(e) of the Higher Education Act of 1965, as amended by the 1998 Higher Education Amendments, and 31 U.S.C. Chapter 37.

**PURPOSE(S):**

The information in this system will be used to ensure that recipients of scholarships provided with funds under Title II of the Higher Education Act who complete teacher education programs subsequently (1) teach in a high-need school of a high-need local educational agency for a period of time equivalent to the period for which the recipient received scholarship assistance; or (2) repay the amount of the scholarship. The information, therefore, is a tracking mechanism that will be used to carry out the statutory requirement found in Title II, Section 204(e). In addition the system information will be used to determine the success of the Teacher Recruitment component of the Teacher Quality Enhancement Grant Programs in preparing new teachers for employment in high-need schools and school districts.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:**

The Department of Education (the Department) may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be made on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Act, under a computer matching agreement.

(1) *Disclosure for Use by Other Law Enforcement Agencies.* The Department may disclose information to any Federal, State, local, or foreign agency or other public authority responsible for enforcing, investigating, or prosecuting violations of administrative, civil, or criminal law or regulation if that information is relevant to any enforcement, regulatory, investigative, or prosecutive responsibility within the receiving entity's jurisdiction.

(2) *Enforcement Disclosure.* In the event that information in this system of records indicates, either on its face or in connection with other information, a violation or potential violation of any applicable statute, regulation, or order of a competent authority, the Department may disclose the relevant records to the appropriate agency, whether foreign, Federal, State, Tribal, or local, charged with the responsibility of investigating or prosecuting that violation or charged with enforcing or implementing the statute, Executive order, rule, regulation, or order issued pursuant thereto.

(3) *Litigation and Alternative Dispute Resolution (ADR) Disclosures.*

(a) *Introduction.* In the event that one of the parties listed below is involved in litigation or ADR, or has an interest in litigation or ADR, the Department may disclose certain records to the parties described in paragraphs (b), (c), and (d) of this routine use under the conditions specified in those paragraphs:

(i) The Department of Education, or any component of the Department; or

(ii) Any Department employee in his or her official capacity; or

(iii) Any Department employee in his or her individual capacity if the Department of Justice (DOJ) has agreed to provide or arrange for representation for the employee;

(iv) Any Department employee in his or her individual capacity where the agency has agreed to represent the employee; or

(v) The United States where the Department determines that the litigation is likely to affect the Department or any of its components.

(b) *Disclosure to the DOJ.* If the Department determines that disclosure of certain records to the DOJ is relevant and necessary to litigation or ADR, the Department may disclose those records as a routine use to the DOJ.

(c) *Administrative Disclosures.* If the Department determines that disclosure of certain records to an adjudicative body before which the Department is authorized to appear, an individual or entity designated by the Department or otherwise empowered to resolve or mediate disputes is relevant and necessary to the administrative litigation, the Department may disclose those records as a routine use to the adjudicative body, individual, or entity.

(d) *Parties, counsels, representatives and witnesses.* If the Department determines that disclosure of certain records to a party, counsel, representative or witness in an administrative proceeding is relevant and necessary to the litigation, the Department may disclose those records as a routine use to the party, counsel, representative or witness.

(4) *Employment, Benefit, and Contracting Disclosure.*

(a) *For Decisions by the Department.* The Department may disclose a record to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement or other pertinent records, or to another public authority or professional organization, if necessary to obtain information relevant to a decision concerning the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

(b) *For Decisions by Other Public Agencies and Professional Organizations.* The Department may disclose a record to a Federal, State, local, or foreign agency or other public authority or professional organization, in connection with the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit, to the extent that the record is relevant and necessary to the receiving entity's decision on the matter.

(5) *Employee Grievance, Complaint or Conduct Disclosure.* The Department may disclose a record in this system of records to another agency of the Federal Government if the record is relevant to one of the following proceedings regarding a present or former employee of the Department: complaint, grievance, discipline or competence determination proceedings. The disclosure may only be made during the course of the proceeding.

(6) *Labor Organization Disclosure.* A component of the Department may disclose records to a labor organization if a contract between the component and a labor organization recognized under Title V of the United States Code, Chapter 71, provides that the Department will disclose personal records relevant to the organization's

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mission. The disclosures will be made only as authorized by law.

(7) *Freedom of Information Act (FOIA) Advice Disclosure.* The Department may disclose records to the Department of Justice and the Office of Management and Budget if the Department concludes that disclosure is desirable or necessary in determining whether particular records are required to be disclosed under the FOIA.

(8) *Disclosure to the Department of Justice (DOJ).* The Department may disclose records to the DOJ to the extent necessary for obtaining DOJ advice on any matter relevant to an audit, inspection, or other inquiry related to the programs covered by this system.

(9) *Contract Disclosure.* If the Department contracts with an entity for the purposes of performing any function that requires disclosure of records in this system to employees of the contractor, the Department may disclose the records to those employees. Before entering into such a contract, the Department shall require the contractor to maintain Privacy Act safeguards as required under 5 U.S.C. 552a(m) with respect to the records in the system.

(10) *Research Disclosure.* The Department may disclose records to a researcher if an appropriate official of the Department determines that the individual or organization to which the disclosure would be made is qualified to carry out specific research related to functions or purposes of this system of records. The official may disclose records from this system of records to that researcher solely for the purpose of carrying out that research related to the functions or purposes of this system of records. The researcher shall be required to maintain Privacy Act safeguards with respect to the disclosed records.

(11) *Congressional Member Disclosure.* The Department may disclose records to a member of Congress from the record of an individual in response to an inquiry from the member made at the written request of that individual. The Member's right to the information is no greater than the right of the individual who requested it.

(12) *Disclosure to the Office of Management and Budget (OMB) for Credit Reform Act (CRA) Support.* The Department may disclose records to OMB as necessary to fulfill CRA requirements.

**DISCLOSURE TO CONSUMER REPORTING AGENCIES:**

Disclosures pursuant to 5 U.S.C. 552a(b)(12): The Department may disclose to a consumer reporting agency information regarding a claim by the Department which is determined to be valid and overdue as follows: (1) The name, address, taxpayer identification number and other information necessary to establish the identity of the individual responsible for the claim; (2) the amount, status, and history of the claim; and (3) the program under which the claim arose. The Department may disclose the information specified in this paragraph under 5 U.S.C. 552a(b)(12) and the procedures contained in subsection 31 U.S.C. 3711(e). A consumer reporting agency to which these disclosures may be made is defined at 31 U.S.C. 3701(a)(3).

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM: STORAGE:**

The records are maintained in hard copy, filed in standard filing cabinets; on access controlled personal computers; and on personal computer diskettes that are stored in filing cabinets.

**RETRIEVABILITY:**

Hardcopy files are retrieved by individual names, institutions of higher education and employing school districts. Electronic files may be accessed by using an individual's social security number, individual's name, name of institution of higher education, or name of employing school district.

**SAFEGUARDS:**

All physical access to the program location where this system of records is maintained is controlled and monitored by security personnel. The computers used by program staff to store any system data offer a high degree of resistance to tampering and circumvention. This security system limits data access to program staff and any contract staff that may be hired in the future. The system is available on a "need to know" basis. Controls are in place on individual's ability to access and alter records within the system. All users of this system are given unique user IDs with personal identifiers. All interactions by individual users with the system are recorded.

**RETENTION AND DISPOSAL:**

Disposition: Destroy five years after audit or ED's determination either that the scholarship recipient fulfills the service obligation or the indebtedness has been repaid or forgiven, whichever is later. (ED/RDS, Part 10, Item 3a)

**SYSTEM MANAGER AND ADDRESS:**

Director, Teacher Quality Enhancement Grant Programs, Office of Postsecondary Education, 1990 K Street, NW., room 6150, Washington, DC 20006–8525.

**NOTIFICATION PROCEDURE:**

If you wish to determine if you have a record in this system, provide the system manager with your name, date of birth, and social security number. Your request must meet the regulatory requirements of 34 CFR 5b.5, including proof of identity.

**RECORD ACCESS PROCEDURE:**

If you wish to gain access to your record in this system, provide the system manager with your name, date of birth, and social security number. Your request must meet the regulatory requirements of 34 CFR 5b.5, including proof of identity.

**CONTESTING RECORD PROCEDURE:**

If you wish to contest the content of a record, contact the system manager. Your request must meet the regulatory requirements of 34 CFR 5b.7, including proof of identity.

**RECORD SOURCE CATEGORIES:**

Information is obtained from individual scholarship recipients, institutions of higher education attended by the recipients, and school districts that have employed the recipients.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

None.

[FR Doc. 00–25942 Filed 10–6–00; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board Stewardship Workshop, Rocky Flats

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB) Stewardship Workshop, Rocky Flats. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meeting be announced in the **Federal Register**.

**DATES:** Thursday, October 26 through Friday, October 27, 2000.

**TIME:** 8 a.m. to 5 p.m each day.

**ADDRESSES:** Executive Tower Hotel, 1405 Curtis Street, Denver, CO 80202.

**FOR FURTHER INFORMATION CONTACT:** Ken Korkia, Board/Staff Coordinator, Rocky Flats Citizens Advisory Board, 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021; telephone (303) 420–7855; fax (303) 420–7579.

**SUPPLEMENTARY INFORMATION:**

**Purpose of the Board**

The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

**Tentative Agenda**

*Thursday, October 26*

8:00–8:30 a.m.—Opening remarks.
8:30–11:30—Presentation by DOE-Headquarters representatives and reaction discussion.
2:00–2:45 p.m.—Site Specific presentations.
3:00–5:00 p.m.—Core Topic breakout sessions.

*Friday, October 27*

8:00–10:30 a.m.—Reports from CoreTopic breakout groups
10:45–11:30 am.—Site-specific breakout sessions.
1:00–2:30 p.m.—Core Topic breakout sessions.
2:45–4:30 p.m.—Final plenary discussion of Core Topic statements and wrap-up.

**Public Participation**

The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ken Korkia at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

**Minutes**

The minutes of this meeting will be available for public review and copying at the Public Reading Room located at the Office of the Rocky Flats Citizens Advisory Board, 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021; telephone (303) 420–7855. Hours of operations for the Public Reading Room are 9:00 a.m. to 4:00 p.m., Monday–Friday, except Federal holidays. Minutes will also be made available by writing or calling Deb Thompson at the address or telephone listed above.

Issued at Washington, DC on October 3, 2000.

**Rachel M. Samuel,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 00–25922 Filed 10–6–00; 8:45 am]

BILLING CODE 6450–01–P



## DEPARTMENT OF ENERGY

### Notice of Inventions Available for License

**AGENCY:** Department of Energy, Office of General Counsel.

**ACTION:** Notice of inventions available for license.

**SUMMARY:** The Department of Energy hereby announces that the following patents are available for license, in accordance with 37 USC 207–209: U.S. patent No. 5,114,690, entitled "Two Stage Sorption of Sulfur Compounds;" U.S. Patent No. 5,324,661, entitled "Chemotactic Selection of Pollutant Degrading Soil Bacteria"; U.S. Patent No. 5,384,048, entitled "Bioremediation of Contaminated Groundwater"; and U.S. Patent No. 5,326,703, entitled "Method of Degrading Pollutants in Soil." A copy of the patents may be obtained, for a modest fee, from the U.S. Patent and Trademark Office, Washington, DC 20231.

**FOR FURTHER INFORMATION CONTACT:** Robert J. Marchick, Office of the Assistant General Counsel for Technology Transfer and Intellectual Property, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; Telephone (202) 586–2802.

**SUPPLEMENTARY INFORMATION:** 35 U.S.C. 207 authorizes licensing of Government-owned inventions. Implementing regulations are contained in 37 CFR 404. 37 CFR 404.7(a)(1) authorizes exclusive licensing of Government-owned inventions under certain circumstances, provided that notice of the invention's availability for license has been announced in the **Federal Register**.

Issued in Washington, DC, on October 3, 2000.

**Paul A. Gottlieb,**

*Assistant General Counsel for Technology Transfer and Intellectual Property.*

[FR Doc. 00–25920 Filed 10–6–00; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Bonneville Power Administration

### Availability of the Bonneville Purchasing Instructions and Bonneville Financial Assistance Instructions

**AGENCY:** Bonneville Power Administration, DOE.

**ACTION:** Notice of document availability.

**SUMMARY:** Copies of the Bonneville Purchasing Instructions (BPI) which establishes the procedures Bonneville Power Administration (BPA) uses in the solicitation, award, and administration of its purchases of goods and services, including construction, and the Bonneville Financial Assistance Instructions (BFAI) which establishes the procedures BPA uses in the solicitation, award, and administration of financial assistance instruments (principally grants and cooperative agreements) are available from BPA for $30 and $15 each, respectively, or available without charge at the following Internet addresses:
*http://www.bpa.gov/Corporate/kgp/bpi/bpi.htm* and
*http://www.bpa.gov/corporate/kgp/bfai/bfai.htm.*

**ADDRESSES:** Copies of the BPI or BFAI may be obtained by sending a check for the proper amount to the Head of the Contracting Activity, Routing CC, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208–3621.

**FOR FURTHER INFORMATION CONTACT:** The Manager, Corporate Communications, 1–800–622–4519.

**SUPPLEMENTARY INFORMATION:** BPA was established in 1937 as a Federal Power Marketing Agency in the Pacific Northwest. BPA operations are financed from power revenues as opposed to annual appropriations. Its purchasing operations are conducted under 16 U.S.C. 832 *et seq.* and related statutes, pursuant to these special authorities, the BPI is promulgated as a statement of purchasing policy and as a body of interpretative regulations governing the conduct of BPA purchasing activities. It is significantly different from the Federal Acquisition Regulation, and reflects BPA's private sector approach to purchasing the goods and services that it requires. BPA's financial assistance operations are conducted under 16 U.S.C. 832 *et seq.*, and 16 U.S.C. 839 *et seq.* The BFAI express BPA's financial assistance policy. The BFAI also comprise BPA's rules governing implementation of the principles

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provided in the following OMB circulars:

A–21 Cost principles applicable to grants, contracts, and other agreements within institutions of higher education.
A–87 Cost principles applicable to grants, contracts, and other agreements with State and local governments.
A–102 Uniform administrative requirements for grants in aid to State and local governments, and the common rule.
A–110 Grants and agreements with institutions of higher education, hospitals and other nonprofit organizations.
A–122 Cost principles applicable to grants, contracts, and other agreements with nonprofit organizations.
A–133 Audits of States, Local Governments and Non-Profit Organizations.

BPA's solicitations include notice of applicability and availability of the BPI and the BFAI, as appropriate, for the information of offerors on particular purchases or financial assistance transactions.

Issued in Portland, Oregon, on September 26, 2000.

**Kenneth R. Berglund,**

*Manager, Contracts and Property Management.*

[FR Doc. 00–25923 Filed 10–6–00; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–591–000]**

### ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

October 3, 2000.

Take notice that on September 29, 2000, ANR Pipeline Company ("ANR") tendered for filing, as part of its FERC Gas Tariff, Second Revised Volume No. 1, the Fourth Revised Sheet No. 45E.01, to be effective November 1, 2000.

ANR states that the purpose of this filing is to designate in its tariff a new point eligible for service under its existing Rate Schedule IPLS.

ANR states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boerger,**

*Secretary.*

[FR Doc. 00–25854 Filed 10–6–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–589–000]**

### ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

October 3, 2000.

Take notice that on September 29, 2000, ANR Pipeline Company (ANR) tendered for filing, as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following sheets to be effective October 1, 2000.

*Primary Proposal*

Forty-fourth Revised Sheet No. 8
Forty-fourth Revised Sheet No. 9
Forty-third Revised Sheet No. 13
Fifty-third Revised Sheet No. 18

*Alternate Proposal*

Alternate Forty-fourth Revised Sheet No. 8
Alternate Forty-fourth Revised Sheet No. 9
Alternate Forty-third Revised Sheet No. 13
Alternate Fifty-third Revised Sheet No. 18

ANR states that this filing is being submitted by ANR for the purpose of recovery certain gas supply realignment (GSR) costs incurred as a result of restructuring under Order No. 636. This filing includes both a primary and an alternative set of tariff sheets. In its primary case, which is ANR's preferred case, ANR seeks to implement a GSR surcharge of $0.007, applicable to each Dth of MDQ, over a three (3) year period. In the alternative case, ANR proposes to collect a GSR surcharge of $0.018 per Dth over a 1 year period, resulting in lower interest costs to its customers, and a lower overall recovery amount.

ANR states that copies of the filing have been mailed to each of ANR's Second Revised Volume No. 1 customers, and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–25858 Filed 10–6–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–596–000]**

### Colorado Interstate Gas Company; Notice of Tariff Filing

October 3, 2000.

Take notice that on September 29, 2000, Colorado Interstate Gas Company (CIG), tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed in Appendix A to the filing, to be effective March 27, 2000.

CIG states that tariff sheets reflect the change in Right-of-First Refusal provisions permitted by the Commission's Order No. 637, 637–A and 637–B (collectively referred to as Order No. 637). Specifically, effective on or after March 27, 2000, the firm shipper's contract must be for service for twelve consecutive months or more at applicable maximum rate for that service, except that a contract for more than one year, for a service which is not available for 12 consecutive months, would be subject to the Right-of-First Refusal.

CIG also states it is making some clarifications concerning incremental rates and a shipper not having the right to exercise the right of first refusal for a geographic portion of its agreement.

CIG further states that copies of this filing have been served on CIG's jurisdictional customers and public bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–25857 Filed 10–6–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–602–000]**

### Dominion Transmission Inc.; Notice of Proposed Changes in FERC Gas Tariff

October 3, 2000.

Take notice that on September 29, 2000, Dominion Transmission Inc. (DTI), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, with an effective date of November 1, 2000:

First Revised Sheet No. 31
First Revised Sheet No. 32
First Revised Sheet No. 33
First Revised Sheet No. 34
First Revised Sheet No. 35
First Revised Sheet No. 37

DTI states that the purpose of this filing is to comply with Article VII, Section G, of the August 31, 1998, Stipulation and Agreement in Docket Nos. RP97–406. *et al.*, approved by the Commission in CNG Transmission Corporation, 85 FERC ¶ 61,261 (1998). That settlement provides for the phased conversion of firm storage services under Rate Schedule GSS–II, to corresponding services under Rate Schedule GSS and Rate Schedule FT (FT–GSS). Article VII, Section G permits DTI to implement base rate changes to reflect each phase of the conversion.

DTI states that copies of this letter of transmittal and enclosures are being served upon DTI's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with a Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–25862 Filed 10–6–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–579–000]**

### Iroquois Gas Transmission System, L.P.; Notice of Filing of Deferred Asset Surcharge Report

October 3, 2000.

Take notice that on September 29, 2000, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing its Deferred Asset Surcharge report covering the period commencing November 1, 2000.

Iroquois states that this report is filed pursuant to part 154 of the Commission's regulations and section 12.3 of the General Terms and Conditions of its tariff. Iroquois further states that the report reflects no change in the Deferred Asset Surcharge for the period commencing November 1, 2000.

Iroquois states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before October 11, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–25839 Filed 10–6–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–580–000]**

### Iroquois Gas Transmission System, L.P.; Notice of Proposed Changes in FERC Gas Tariff

October 3, 2000.

Take notice that on September 29, 2000, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, First Revised Sheet No. 4A., with an effective date of November 1, 2000.

Iroquois states that pursuant to Part 154 of the Commission's regulations and section 12.5 of the General Terms and Conditions of its tariff, it is filing First Revised Sheet No. 4A and supporting workpaper as part of its annual Transportation Cost Rate Adjustment filing to reflect changes in Account No. 858 costs for the twelve month period commencing November 1, 2000.

Iroquois states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's

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Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–25847 Filed 10–6–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–584–000]**

### Mississippi River Transmission Corporation, Notice of Compliance Filing

October 3, 2000.

Take notice that on September 29, 2000, Mississippi River Transmission Corporation (MRT) filed with the Commission its annual fuel adjustment filing pursuant to Section 24.1(a) of the General Terms and Conditions of MRT's FERC Gas Tariff, Third Revised Volume No. 1. Requesting an effective date of November 1, 2000, MRT filed the following tariff sheets:

Thirty Sixth Revised Sheet No. 5
Thirty Sixth Revised Sheet No. 6
Thirty Third Revised Sheet No. 7
Twelfth Revised Sheet No. 8

MRT states that the purpose of this filing is to adjust the Fuel Use and Loss Percentages under its Rate Schedules FTS, SCT, ITS, FSS and ISS.

MRT further states that a copy of this filing is being mailed to each of MRT's customers and to the state commissions of Arkansas, Illinois and Missouri.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–25843 Filed 10–6–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00—610–000]**

### National Fuel Gas Supply Corporation; Notice of Tariff Filing

October 3, 2000.

Take notice that on September 29, 2000, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheet to become effective October 1, 2000.

Twenty-Seventh Revised Sheet No. 9

National asserts that the purpose of this filing is to comply with the Commission's order issued February 16, 1996, in Docket Nos. RP94–367–000, *et al.* Under Article I, Section 4, of the settlement approved in that order, National must redetermine quarterly the Amortization Surcharge to reflect revisions in the Plant to be Amortized, interest and associated taxes, and a change in the determinants. The recalculation produced an Amortization Surcharge of 7.46 cents per dth.

Further, National states that under Article II, Section 2, of the settlement, it is required to recalculate the maximum Interruptible Gathering ("IG") rate monthly and to charge that rate on the first day of the following month if the result is an IG rate more than 2 cents above or below the IG rate as calculated under Section 1 of Article II. The recalculation produced an IG rate of 27 cents per dth.

National Fuel states that copies of filing has been served upon all customers on the service list and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–25860 Filed 10–6–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–614–000]**

### Panhandle Eastern Pipe Line Company; Notice of Proposed Changes in FERC Gas Tariff

October 3, 2000.

Take notice that on September 29, 2000, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to become effective November 1, 2000.

Panhandle states that this filing is made in accordance with Section 24 (Fuel Reimbursement Adjustment) of the General Terms and Conditions in Panhandle's FERC Gas Tariff, First Revised Volume No. 1. The revised tariff sheets filed herewith reflect the following changes to Fuel Reimbursement Percentages:

(1) A 0.07% increase change in the Gathering Fuel Reimbursement Percentage;

(2) A 0.07% increase in the Field Zone Fuel Reimbursement Percentage;

(3) A 0.01% increase in the Market Zone Fuel Reimbursement Percentage;

(4) A (0.02%) decrease in the Injection and a (0.02%) decrease in the Withdrawal Field Area Storage Reimbursement Percentages; and

(5) A (0.02%) decrease in the Injection and a (0.02%) decrease in the Withdrawal Market Area Storage Reimbursement Percentages.

Panhandle further states copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–25859 Filed 10–6–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP96–200–058]**

### Reliant Energy Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

October 3, 2000.

Take notice that on September 29, 2000, Reliant Energy Gas Transmission Company (REGT) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheet to be effective October 1, 2000:

Third Revised Sheet No. 8I

REGT state that the purpose of this filing is to reflect the expiration of an existing negotiated rate contract.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–25845 Filed 10–6–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–611–000]**

### Sea Robin Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

October 3, 2000.

Take notice that on September 29, 2000, Sea Robin Pipeline Company (Sea Robin) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheet to be effective November 1, 2000:

Sixth Revised Sheet No. 30a

Sea Robin states that the purpose of this filing, made in accordance with the provisions of Section 154.204 of the Commission's Regulations, is to reflect a reduction in the standard fuel percentage in Section 5.1(b) of the General Terms and Conditions.

Sea Robin further states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–25848 Filed 10–6–00; 8:45 am]

BILLING CODE 6717–01–M



## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–573–000]**

### Southern Natural Gas Company; Notice of Refund Report

October 3, 2000.

Take notice that on September 27, 2000, Southern Natural Gas Company, as successor-in-interest to South Georgia Natural Gas Company (Southern Natural), tendered for filing a report of refunds totaling $551,679 to true up fuel over and under collection for the 15-month period ending July 31, 2000. These refunds are allocated among all shippers based on deliveries for the same 15-month period.

Southern Natural states that copies of the filing are being mailed to all shippers and interested state commissioners for the South Georgia facilities.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before October 11, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–25861 Filed 10–6–00; 8:45 am]

BILLING CODE 6717–01–M

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–615–00]

## Southwest Gas Storage Company; Notice of Proposed Changes in FERC Gas Tariff

October 3, 2000.

Take notice that on September 29, 2000, Southwest Gas Storage Company (Southwest) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheet proposed to become effective November 1, 2000.

Second Revised Sheet No. 5

Southwest states that this filing is made in accordance with Section 16 (Fuel Reimbursement Adjustment) of the General Terms and Conditions in Southwest's FERC Gas Tariff, First Revised Volume No. 1. The Fuel Reimbursement Adjustment filed herewith reflects the following Fuel Reimbursement Percentages: (1) West Area Storage Facilities Injection 1.42% and Withdrawal 0.65%; and (2) East Area Storage Facilities Injection 2.43% and Withdrawal 1.17%.

Southwest further states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–25918 Filed 10–06–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–578–000]

## Transwestern Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

October 3, 2000.

Take notice that on September 29, 2000, Transwestern Pipeline Company (Transwestern), tendered for filing to become part of Transwestern's FERC Gas Tariff, Second Revised Volume No. 1, Eighth Revised Sheet No. 5B.03, to be effective November 1, 2000.

Pursuant to section 25 of the General Terms and Conditions of Transwestern's FERC Gas Tariff, Transwestern is filing a tariff sheet which sets forth the new TCR II Reservation Surcharges that Transwestern proposes to put into effect on November 1, 2000.

Transwestern states that copies of the filing were served upon Transwestern's customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NW., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–25841 Filed 10–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–581–000]

## Transwestern Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

October 3, 2000.

Take notice that on September 29, 2000, Transwestern Pipeline Company (Transwestern), tendered for filing to become part of Transwestern's FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet proposed to become effective on November 1, 2000:

Eleventh Revised Sheet No. 5B.02

Transwestern's Stipulation and Agreement filed on May 2, 1995, in Docket Nos. RP95–271 *et al.*, as amended by Transwestern's Stipulation and Agreement filed on May 21, 1996, provided for adjustments to the Settlement Base Rates (SBRs) beginning November 1, 1998.

Transwestern states that the purpose of this filing is to set forth the factors and calculations used in determining the adjustments to the SBRs and to revise the SBRs to be effective November 1, 2000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–25842 Filed 10–6–00; 8:45 am]

BILLING CODE 6717–01–M



DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–249–002]

## Transwestern Pipeline Company; Notice of Compliance Filing

October 3, 2000.

Take notice that on September 29, 2000, Transwestern Pipeline Company (Transwestern), tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1, the following sheet to be effective September 15, 2000:

Second Revised Volume No. 1
2 Substitute Original Sheet No. 97

Transwestern states that this filing is made to comply with the Commission's September 15, 2000 order accepting, subject to conditions, the tariff sheets filed by Transwestern in this proceeding.

Transwestern states that copies of the filing were served upon Transwestern's customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**Davis P. Boergers,**

*Secretary.*

[FR Doc. 00–25844 Filed 10–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–608–000]

## Trunkline Gas Company; Notice of Proposed Changes in FERC Gas Tariff

October 3, 2000.

Take notice that on September 29, 2000, Trunkline Gas Company (Trunkline) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheet to be effective November 1, 2000:

Third Revised Sheet No. 12A

Trunkline states that the purpose of this filing is to eliminate the minimum gathering rate under Rate Schedule TABS–1.

Trunkline states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–25851 Filed 10–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–607–000]

## Trunkline Gas Company; Notice of Proposed Changes in FERC Gas Tariff

October 3, 2000.

Take notice that on September 29, 2000, Trunkline Gas Company (Trunkline) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed in Appendix A attached to the filing, to become effective November 1, 2000.

Trunkline states that this filing is being made in accordance with Section 22 (Fuel Reimbursement Adjustment) of Trunkline's FERC Gas Tariff, First Revised Volume No. 1. The revised tariff sheets listed on Appendix A reflect: a 0.62% increase (Field Zone to Zone 2), a 0.57% increase (Zone 1A to Zone 2), a 0.34% increase (Zone 1B to Zone 2), a 0.14% increase (Zone 2 only), a 0.68% increase (Field Zone to Zone 1B), a 0.63% increase (Zone 1A to Zone 1B), a 0.40% increase (Zone 1B only), a 0.48% increase (Field Zone to Zone 1A), a 0.43% increase (Zone 1A only) and a 0.25% increase (Field Zone only) to the currently effective fuel reimbursement percentages.

Trunkline states that copies of this filing are being served on all affected shippers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–25855 Filed 10–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–585–000]

## Vector Pipeline L.P.; Notice of Proposed Changes in FERC Gas Tariff

October 3, 2000.

Take notice that on September 29, 2000, Vector Pipeline L.P. (Vector), tendered for filing original and revised pro forma tariff sheets to its FERC Gas Tariff, Original Volume No. 1, to become effective upon issuance of a Commission order.

Vector states that the purpose of this filing is to submit tariff sheets in compliance with Commission requirements in Order Nos. 637, *et seq.*

Vector states that it has tendered pro forma tariff sheets to address the

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following matters, as required in Order No. 637; segmentation and flexible receipt and delivery points, penalties and penalty crediting, operational flow orders, and capacity release.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before October 30, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–25845 Filed 10–6–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–586–000]**

### Vector Pipeline L.P.; Notice of Proposed Changes in FERC Gas Tariff

October 3, 2000.

Take notice that on September 29, 2000, Vector Pipeline L.P. (Vector), tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, the tariff sheets listed in Appendix A to the filing, to become effective November 1, 2000.

Vector states that the purpose of this filing is to propose certain new services and to place into effect its preferred method of dealing with overrun quantities and imbalances. Vector requests any and all waivers of the Commission's regulations that may be required to place the proposed tariff into effect as requested.

Vector states that it is proposing three new services, a park and loan service, a title transfer tracking service, and a management balancing service. Vector states that the proposed interruptible park and loan service in Rate Schedule PALS–1 is intended as a means of dealing with shipper imbalances in preference to the imposition of penalties. Whenever operationally possible, Vector will offer shippers the option of either parking or loaning gas, on an interruptible basis, under Rate Schedule PALS–1. The proposed rate for PALS–1 service is a maximum of $0.2556 per Dth and a minimum rate of $0.00 per Dth. The maximum PALS–1 rate is the same as Vector's maximum interruptible rate for Zone 2 service (*i.e.*, service from Milepost 0 to the terminus of the pipeline at Milepost 333), which is the 100% load factor equivalent of Vector's Zone 2 firm rate under Rate Schedule FT–1. Vector may choose to discount the PALS–1 rate, where market circumstances warrant, on a not unduly discriminatory basis.

Vector states that it also is offering title transfer tracking service in Rate Schedule TTS under which Vector follows the trades of gas supply effected by shippers and others who wish to use the Vector system as a trading mart. Such changes in gas ownership may take place at any point on the Vector system that has been designated by the TTS customer and accepted by Vector. The proposed rate for TTS service is a maximum of $0.01 per Dth and a minimum of $0.00 per Dth, which reflects anticipated operation and maintenance (O&M) costs that Vector will incur in order to render the service. Vector may choose to discount the TTS rate, where market circumstances warrant, on a not unduly discriminatory basis.

Vector states that it is offering a management of balancing agreement service, in Rate Schedule MBA, under which shippers have the opportunity to contract with third parties for imbalance management. The MBA service allows a gas customer, which can be a Vector shipper or an end-user connected to the Vector system, to contract with a third party for balancing, with Vector managing the balancing on behalf of the balancing provider. This service allows the balancing customer to vary its takes of gas on an hourly basis different from the uniform requirement in the tariff while maintaining the overall integrity of the system by adjusting the gas takes of the balancing provider to compensate. For this reason, the balancing provider must be able to provide Vector with gas on a firm basis. Vector will manage the balancing service for the balancing provider. The rate Vector proposes to charge for this administrative service is a maximum of $0.02 per Dth and a minimum of $0.00 per Dth, reflecting anticipated operation and maintenance (O&M) costs that Vector states it will incur in order to render the service. Vector may choose to discount the MBA rate, where market circumstances warrant, on a not unduly discriminatory basis.

With respect to imbalance tolerances, Vector states that it has incorporated the Commission's requirement that imbalances which do not cause system problems should not incur a penalty. Thus, as long as a shipper's imbalance does not contribute—together with the imbalances of all other shippers on the system—to a variance of 5% from the target line pack (*i.e.*, the optimum level needed for system operations on any given day), the shipper incurs no imbalance charge. If, however, these conditions are not present, a shipper—in a noncritical period—could be assessed an imbalance charge of $0.10 per Dth for that portion of shipper's net imbalance that exceeds the greater of 5% or 100 Dth. Where a shipper has created an imbalance and failed to resolve it through available means during an operational flow order (OFO) period, imbalance charges are more severe, starting at $25 per Dth plus a daily index price for imbalances in the 3% to 7% range. Vector states it has provided for the netting and trading of imbalances.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–25849 Filed 10–6–00; 8:45 am]

BILLING CODE 6717–01–M



## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. MT00–18–000]**

### Williston Basin Interstate Pipeline Company; Notice of Compliance Filing

October 3, 2000.

Take notice that on September 29, 2000, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheet, with an effective date of September 29, 2000:

Thirteenth Revised Sheet No. 187

Williston Basin states that it is filing the proposed revision to its Tariff to reflect changes to the titles of two officers and/or board members currently listed in Section 7.1.1 of the General Terms and Conditions of Williston Basin's Tariff. Lester H. Loble was recently promoted from General Counsel and Secretary to Vice President, General Counsel and Secretary and Warren L. Robinson was promoted from Vice President, Treasurer and Chief Financial Officer to Executive Vice President, Treasurer and Chief Financial Officer.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–25850 Filed 10–6–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–599–000]**

### Williston Basin Interstate Pipeline Company; Notice of Tariff Filing

October 3, 2000.

Take notice that on September 29, 2000, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, First Revised Sheet No. 3581, with an effective date of September 29, 2000.

Williston Basin states that as of July 31, 2000 it had a zero balance in FERC Account No. 191. As a result, Williston Basin will neither refund nor bill its former sales customers for any amounts under the conditions of Section No. 39.3.1 of its FERC Gas Tariff.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–25853 Filed 10–6–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–592–000]**

### Wyoming Interstate Company, Ltd.; Notice of Tariff Filing

October 3, 2000.

Take notice that on September 29, 2000, Wyoming Interstate Company, Ltd. (WIC), tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 2, the tariff sheets listed in Appendix A to the filing, to be effective March 27, 2000.

WIC states these tariff sheets reflect the change in right-of-First Refusal provisions permitted by the Commission's Order No. 637,637A and 637B (Collectively referred to as Order No. 637). Specifically, effective on or after March 27, 2000, the firm shipper's contract must be for service for twelve consecutive months or more at applicable maximum rate for that service, except that a contract for more than one year, for a service which is not available for 12 consecutive months, would be subject to the Right-of-First Refusal. WIC also states it is making some clarifications concerning incremental rates and a shipper not having the right to exercise the right of first refusal for a geographic portion of its agreement.

WIC further states that copies of this filing have been served on WIC's jurisdictional customers and public bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–25856 Filed 10–6–00; 8:45 am]

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP00–594–000]

### Young Gas Storage Company, Ltd.; Notice of Tariff Filing

October 3, 2000.

Take notice that on September 29, 2000, Young Gas Storage Company, Ltd. (Young), tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, the tariff sheets listed in Appendix A to the filing, to be effective March 27, 2000.

Young states these tariff sheets reflect the change in Right-of-First Refusal provisions permitted by the Commission's Order No. 637, 737A and 637B (collectively referred to as Order No. 637). Specifically, effective on or after March 27, 2000, the firm shipper's contract must be for service for twelve consecutive months or more at the applicable maximum rate for that service, except that a contract for more than one year, for a service which is not available for twelve consecutive months would also be subject to the Right-of-First Refusal. Young also states it is making a clarification concerning incremental rates.

Young further states that copies of this filing have been served on Young's jurisdictional customers and public bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–25852 Filed 10–6–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. ER98–441–023, et al.]

### Southern California Edison Company, et al.; Electric Rate and Corporate Regulation Filings

October 2, 2000.

Take notice that the following filings have been made with the Commission:

**1. Southern California Edison Company**

[Docket No. ER98–441–023]

Take notice that on September 27, 2000, El Segundo Power, LLC tendered for filing its refund compliance report in the above-captioned docket.

The compliance report has been served on the California ISO, SCE, the EOB, and the CPUC.

*Comment date:* October 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

**2. Western Resources, Inc.**

[Docket No. ER00–3445–003]

Take notice that on September 27, 2000, Western Resources, Inc. (WR), tendered for filing an amendment to its previous filings in this proceeding. The amendment includes an Order No. 614 compliant version of the Electric Power Supply Agreement (Agreement) between WR and the City of Toronto, Kansas. WR states that this agreement extends the term of this agreement until March 14, 2010.

A copy of this filing was served upon the City of Toronto, Kansas.

*Comment date:* October 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

**3. Dunkirk Power, LLC, Huntley Power, LLC and Oswego Harbor, LLC**

[Docket No. EL00–113–000]

Take notice that on September 22, 2000, Dunkirk Power, LLC, Huntley Power, LLC and Oswego Harbor, LLC (collectively NRG), all affiliates of NRG Energy, Inc., submitted a Petition for Declaratory Order requesting that the Commission issue an order declaring that NRG's electric generation facilities, have and have had, the right to treat station power as negative generation. NRG further requests that the Commission issue an order declaring that Niagara Mohawk Power Company cannot (a) require any of NRG's generation facilities to obtain station power under a retail tariff or (b) resort to or utilize state law self-help procedures to bypass the Commission's jurisdiction, terminate station power, and shut down any NRG generation facility. NRG further requests that the Commission issue an interim order preventing Niagara Mohawk from terminating station power for any NRG generation facility pending resolution of NRG's Petition for Declaratory Order.

*Comment date:* October 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

**4. Carolina Power & Light Company**

[Docket No. ER00–3537–001]

Take notice that Carolina Power & Light Company (CP&L), on September 27, 2000, tendered for filing Substitute First Revised Sheet No. 137 to First Revised Volume No. 3 that corrects an error in the minimum power factor.

Copies of the filing were served upon the public utility's jurisdictional customers, North Carolina Utilities Commission and South Carolina Public Service Commission.

*Comment date:* October 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

**5. Northeast Utilities Service Company**

[Docket No. ER00–3742–001]

Take notice that on September 27, 2000, Northeast Utilities Service Company (NUSCO), on behalf of The Connecticut Light and Power Company (CL&P) and Western Massachusetts Electric Company (WMECO), tendered for filing conformed copies of two agreements dated April 10, 2000, which were filed with the Commission on September 22, 2000, under which the Companies have agreed to sell and deliver to Constellation Power Source, Inc. (CPS) capacity and energy and associated ancillary services to which the Companies are entitled under sixteen power purchase agreements.

NUSCO requests that this filing be accepted by December 1, 2000.

*Comment date:* October 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

**6. Central Illinois Light Company**

[Docket No. ER00–3759–000]

Take notice that on September 27, 2000, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61602, tendered for filing with the Commission a substitute Index of Point-To-Point Transmission Service Customers under its Open Access Transmission Tariff and two service agreements for one new customer, Madison Gas & Electric.

CILCO requested an effective date of August 28, 2000, for the service agreements.



Copies of the filing were served on the affected customer and the Illinois Commerce Commission.

*Comment date:* October 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

**7. Illinois Power Company**

[Docket No. ER00–3761–000]

Take notice that on September 27, 2000, pursuant to Section 35.12 of the Commission's Regulations, 18 CFR 35.12, Illinois Power Company (Illinois Power) tendered for filing a fully executed Service Agreement for Network Integration Transmission Service and a fully executed Network Operating Agreement (collectively, the Agreements) between MidAmerican Energy Company and Illinois Power. Under the Agreements, Illinois Power may provide network services to MidAmerican Energy Company in accordance with Illinois Power's FERC Electric Tariff.

Illinois Power has requested that the Commission accept the fully executed Agreements and that the Agreements become effective as of September 1, 2000.

Illinois Power has served a copy of this filing upon the Illinois Commerce Commission and MidAmerican Energy Company.

*Comment date:* October 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

**8. PJM Interconnection, L.L.C.**

[Docket No. ER00–3762–000]

Take notice that on September 27, 2000, PJM Interconnection, L.L.C. (PJM), tendered for filing an executed umbrella service agreement for network integration transmission service under the PJM Open Access Transmission Tariff with Edison Mission Marketing & Trading, Inc., (Edison Mission).

Copies of this filing were served upon Edison Mission and the state commissions within the PJM control area.

*Comment date:* October 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

**9. PJM Interconnection, L.L.C.**

[Docket No. ER00–3763–000]

Take notice that on September 27, 2000, PJM Interconnection, L.L.C. (PJM), tendered for filing five executed interconnection service agreements between PJM and PPL Susquehanna, LLC, Susquehanna Electric Company, Constellation Power Source Generation, Inc., Calvert Cliffs Nuclear Power Plant, Inc, and CinCap VI, L.L.C.

PJM requests a waiver of the Commission's 60-day notice requirement to permit the effective dates agreed to by the parties.

Copies of this filing were served upon each of the parties to the agreements the state regulatory commissions within the PJM control area.

*Comment date:* October 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

**10. Jersey Central Power & Light Company**

[Docket No. ER00–3764–000]

Take notice that on September 27, 2000, Jersey Central Power & Light Company (Jersey Central), tendered for filing amendments to the Interconnection Agreement by and between AmerGen Energy Company, L.L.C. and Jersey Central.

Copies of the filing were served upon AmerGen and regulators in the State of New Jersey.

*Comment date:* October 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

**11. Entergy Services, Inc.**

[Docket No. ER00–3765–000]

Take notice that on September 27, 2000, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, the Entergy Operating Companies), tendered for filing a Non-Firm Point-To-Point Transmission Service Agreement and a Short-Term Firm Point-To-Point Transmission Service Agreement both between Entergy Services, Inc., as agent for the Entergy Operating Companies, and Occidental Chemical Corporation.

*Comment date:* October 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

**12. Canal Electric Company**

[Docket No. ER00–3766–000]

Take notice that on September 28, 2000, Canal Electric Company (Canal), tendered for filing the restated sixth amendment (Restated Sixth Amendment) to the Power Contract between Canal and its retail affiliates Cambridge Electric Light Company (Cambridge) and Commonwealth Electric Company (Commonwealth) (Canal Rate Schedule FERC No. 33, the "Seabrook Power Contract").

The Restated Sixth Agreement provides for a buy down of the Seabrook Power Contract by Cambridge and Commonwealth in furtherance of their efforts to mitigate transition costs, in compliance with the requirements of the Massachusetts Electric Industry Restructuring Act of 1997. Under the Restated Sixth Amendment, Cambridge and Commonwealth each would make a lump-sum payment to Canal, in consideration for a reduction to the Gross Plant Investment account under the Seabrook Power Contract. Reducing the Gross Plant Investment will result in a lower Demand Component under the pricing for the Seabrook Power Contract. With the approval of the Restated Sixth Amendment, Cambridge will pay Canal the amount of $29,260,000, and Commonwealth will pay Canal the amount of $117,481,000 for a reduction in the Gross Plant Investment in the amount of $146,741,000. The Restated Sixth Amendment also would allow for changes in the schedule of decommissioning costs allocable under the Seabrook Power Contract without the need for an amendment every time a change in such schedule is determined by a regulatory agency with jurisdiction over setting such costs.

Canal has requested approval of the Restated Sixth Amendment for effect July 1, 2000.

*Comment date:* October 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

**13. Arizona Public Service Company**

[Docket No. ER00–3768–000]

Take notice that on September 28, 2000, Arizona Public Service Company (APS), tendered for filing a revised rate schedule, APS–FERC Rate Schedule No. 192 in compliance with FERC Order in this docket issued September 13, 2000.

A copy of this filing has been served on the Arizona Corporation Commission and the City of Williams.

*Comment date:* October 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

**14. Potomac Electric Power Company**

[Docket No. ER00–3769–000]

Take notice that on September 28, 2000, Potomac Electric Power Company (Pepco), tendered for filing a service agreement pursuant to Pepco FERC Electric Tariff, Original Volume No. 5, entered into between Pepco and H.Q. Energy Services (U.S.) Inc.

An effective date of September 1, 2000, for this service agreement, with waiver of notice, is requested.

*Comment date:* October 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

**15. Commonwealth Edison Company**

[Docket No. ER00–3770–000]

Take notice that on September 28, 2000, Commonwealth Edison Company (ComEd), tendered for filing Five Non-Firm Transmission Service Agreements

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(Agreements) with the City of Chicago (CHGO), Indeck Energy Services, Inc. (Indeck), The Legacy Energy Group, LLC (Legacy), NRG Power Marketing Inc. (NRG), and SCANA Energy Marketing, Inc. (SCANA), and eleven Short-Term Firm Transmission Service Agreements with Automated Power Exchange, Inc. (APX), Carolina Power & Light Company (CPL), CHGO, Florida Power & Light Company (FPL), FPL Energy Power Marketing, Inc. (FPLM), Indeck, Legacy, NRG, SCANA, TXU Energy Trading Company (TXU), and Wisconsin Public Power Inc. (WPPI) under the terms of ComEd's Open Access Transmission Tariff (OATT).

ComEd requests an effective date of September 28, 2000 for the Agreements, and accordingly, seeks waiver of the Commission's notice requirements.

*Comment date:* October 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraphs**

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–25838 Filed 10–6–00; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. CP00–434–000]**

## Columbia Gulf Transmission Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed Stanton Compressor Replacement and Request for Comments on Environmental Issues

October 3, 2000.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Stanton Compressor Replacement Project, involving replacement, construction and operation of facilities by Columbia Gulf Transmission Company (Columbia Gulf) in Stanton County, Kentucky.[1] These facilities would consist of replacing an existing gas-powered turbine and compressor package with a new compressor package, constructing two small buildings to house the new compressor package and related control equipment, and constructing associated yard piping to tie-in the new compressor to the existing compressor station. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

**Summary of the Proposed Project**

Columbia Gulf wants to replace an aging compressor package at its existing Stanton Compressor Station. Columbia Gulf seeks authority for the following activities:

- Abandon by removal one 12,050-horsepower (hp) gas-powered turbine compressor and driver, the related compressor and control buildings, and associated piping and valves;
- Construct and operate a new 14,470-hp gas turbine compressor package within a new prefabricated building;
- Construct a second prefabricated building to house compressor control and communication equipment; and
- Construct and operate about 2,300 feet of new 30-inch-diameter pipeline to tie-in the replacement compressor facilities with the existing station piping.

All of the proposed activities would be conducted within Columbia Gulf's existing Stanton Compressor Station yard. The location of the project facilities is shown in appendix 1.[2] The replacement would not change the design day or certificated capacity of the compressor station.

**Land Requirements for Construction**

Abandonment of the existing compressor package and construction of the proposed facilities would disturb about 0.7 acre of land. Following abandonment and construction activities, all disturbed areas would be stabilized and revegetated.

**The EA Process**

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us[3] to discover and address concerns the public may have about proposals. We call this "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the abandonment, construction and operation of the proposed project under these general headings:

- Geology and soils
- Water resources, fisheries, and wetlands
- Vegetation and wildlife
- Air quality and noise
- Land use
- Endangered and threatened species
- Cultural resources
- Public safety

We will also evaluate possible alternatives to the proposed project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

[1] Columbia Gulf's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register.** Copies are available on the Commission's website at the "RIMS" link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, N.E., Washington, D.C. 20426, or call (202) 208–1371. For instructions on connecting to RIMS refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[3] "Us," "we," and "our" refer to the environmental staff of the FERC's Office of Energy Projects.



Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

**Public Participation**

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal, and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send two copies of your letter to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas Group 1, PJ–11.1.
- Reference Docket No. CP00–434–000.
- Mail your comments so that they will be received in Washington, DC on or before November 3, 2000.

**Becoming an Intervenor**

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an "intervenor". Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rule of Practice and Procedure (18 CFR 385.214) (see appendix 2). Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Additional information about the proposed project is available from the Commission's Office of External Affairs at (202) 208–0004 or on the FERC website (www.ferc.fed.us) using the "RIMS" link to information in this docket number. Click on the "RIMS" link, select "Docket #" from the RIMS Menus, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the "CIPS" link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the "CIPS" link, select "Docket #" from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–25863 Filed 10–6–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP00–455–002]**

## Honeoye Storage Corporation; Notice of Proposed Change In FERC Gas Tariff

October 3, 2000.

Take notice that on September 28, 2000 Honeoye Storage Corporation (Honeoye) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume 1, the following tariff sheet to be effective October 10, 2000:

First Revised Sheet No. 22B

Honeoye states that the purpose of the filing is to establish a new proposed Article XIX to the General Terms and Conditions of its Part 157 gas tariff that affords customers the right to make title transfers of top gas or cushion gas in the Honeoye Storage Field, but limits the availability of such title transfer authority of gas in place to only upon contract termination. Honeoye further requests that the Commission waive the requirements of Section 154.207 of its regulation so that revised tariff sheet may be made effective October 10, 2000 so that Honeoye may make arrangements to dispose of cushion gas and top gas which remains in the Honeoye gas field after termination of the Providence Gas Company gas storage agreement on March 31, 2000.

Honeoye states that its filing is consistent with the Commission's September 14, 2000 letter order in Docket No. RP00–455–000 which, among other matters, rejected without prejudice Honeoye's proposed tariff provision designed to grant its customers the right to make title transfers to other customers of gas which is held in the Honeoye gas field. The Commission's September 14 letter order found that the title transfer right provided more flexibility to Part 157 customers than is allowed under Commission policy. However, the Commission stated that its rejection of this provision was without prejudice to Honeoye's right to file a tariff provision limiting title transfers to only upon contract termination.

Honeoye states that copies of the filing are being mailed to Honeoye's jurisdictional customers and interested state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–25840 Filed 10–6–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Sunshine Act Meeting

October 4, 2000.

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C 552B:

**AGENCY HOLDING MEETING:** Federal Energy Regulatory Commission

**DATE AND TIME:** October 11, 2000, 10 a.m.

**PLACE:** Room 2C 888 First Street, N.E., Washington, D.C. 20426.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** Agenda.

**Note:** Items listed on the agenda may be deleted without further notice.

**CONTACT PERSON FOR MORE INFORMATION:** David P. Boergers, Secretary, Telephone (202) 208–0400. For a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

**749th—Meeting October 11, 2000, Regular Meeting (10 a.m.)**

*Consent Agenda—Markets, Tariffs and Rates—Electric*

CAE–1.
Docket# ER00–3322, 000, Delmarva Power & Light Company, Conectiv Delmarva Generation, INC., Atlantic City Electric Company, Conectiv Atlantic Generation, LLC and Conectiv Energy Supply, Inc.
Other#s ER00–1770, 001, Delmarva Power & Light Company, Conectiv Delmarva Generation, Inc., Atlantic City Electric Company, Conectiv Atlantic Generation, LLC and Conectiv Energy Supply, Inc.
ER00–3322, 001, Delmarva Power & Light Company, Conectiv Delmarva Generation, Inc., Atlantic City Electric Company, Conectiv Atlantic Generation, LLC and Conectiv Energy Supply, Inc.
CAE–2.
Docket# ER00–3412, 000, Ameren Energy Generating Company
CAE–3.
Docket# ER00–3435, 000, Carolina Power & Light Company
CAE–4.
Docket# ER00–3434, 000, Commonwealth Edison Company and Commonwealth Edison Company of Indiana
CAE–5.
Docket# ER00–3462, 000, New York Independent System Operator, Inc.
CAE–6.
Omitted
CAE–7.
Omitted
CAE–8.
Docket# ER99–3196, 000, Northeast Utilities Service Company
Other#s ER99–3196, 001, Northeast Utilities Service Company
CAE–9.
Docket# ER99–4415, 000, Illinois Power Company
Other#s ER99–4415, 001, Illinois Power Company
ER99–4415, 002, Illinois Power Company
ER99–4415, 003, Illinois Power Company
ER99–4530, 000, Illinois Power Company
ER99–4530, 001, Illinois Power Company
ER99–4530, 002, Illinois Power Company
ER99–4530, 003, Illinois Power Company
EL00–7, 000, Illinois Power Company
EL00–7, 001, Illinois Power Company
EL00–7, 002, Illinois Power Company
EL00–7, 003, Illinois Power Company
CAE–10.
Omitted
CAE–11.
Docket# ER00–851, 000, Pacific Gas and Electric Company
Other#s ER00–851, 001, Pacific Gas and Electric Company
CAE–12.
Docket# EC00–119, 000, New England Power Company
CAE–13.
Docket# EC00–98, 000, Commonwealth Edison Company
Other#s EC00–98, 001, Commonwealth Edison Company
CAE–14.
Omitted
CAE–15.
Omitted
CAE–16.
Docket# ER00–1693, 001, Montana Power Company and PP&L Montana, LLC
CAE–17.
Docket# RM95–9, 014, Open Access Same-Time Information System (Oasis) and Standards of Conduct
Other#s RM95–9, 015, Open Access Same-Time Information System (Oasis) and Standards of Conduct
CAE–18.
Docket# EL00–101, 000, New Horizon Electric Cooperative, Inc. v. Duke Power Company
CAE–19.
Omitted
CAE–20.
Omitted
CAE–21.
Docket# ER00–1, 002, Transenergie U.S. LTD.
Other#s ER00–1, 003, Transenergie U.S. LTD.
CAE–22.
Docket# RM00–7, 000, Revision of Annual Charges Assessed to Public Utilities
CAE–23.
Docket# EL00–62, 005, ISO New England, Inc.
CAE–24.
Docket# EL00–90, 000, Morgan Stanley Capital Group, Inc. v. New York Independent System Operator, Inc.

*Consent Agenda—Markets, Tariffs and Rates—Gas*

CAG–1.
Docket# RP00–542, 000, ANR Pipeline Company
CAG–2.
Omitted
CAG–3.
Omitted
CAG–4.
Docket# RP96–389, 007, Columbia Gulf Transmission Company
CAG–5.
Docket# RP00–538, 000, Young Gas Storage Company, Ltd.
CAG–6.
Docket# PR00–16, 000, Transok, LLC
CAG–7.
Docket# RP98–52, 038, Williams Gas Pipelines Central, Inc.
CAG–8.
Docket# RP97–375, 000, Wyoming Interstate Company, Ltd.
CAG–9.
Docket# RP93–109, 017, Williams Gas Pipelines Central, Inc.
CAG–10.
Docket# PR00–11, 001, Humble Gas Pipeline Company
CAG–11.
Docket# RP00–540, 000, East Tennessee Natural Gas Company
CAG–12.
Docket# RP00–558, 000, Overthrust Pipeline Company

*Consent Agenda—Energy Projects—Hydro*

CAH–1.
Docket# P–2556, 016, FPL Energy Maine Hydro LLC
Other#s P–2557, 013, FPL Energy Maine Hydro LLC
P–2559, 014, FPL Energy Maine Hydro LLC
CAH–2.
Omitted
CAH–3.
Docket# P–10847, 003, Creamer and Noble Energy, Inc.
CAH–4.
Docket# P–1986, 009, Oregon Trail Electric Consumers Cooperative, Inc.

*Consent Agenda—Energy Projects—Certificates*

CAC–1.
Docket# CP00–426, 000, Oneok Midstream Pipeline, Inc.
CAC–2.
Docket# CP97–256, 007, K N Wattenberg Transmission Limited Liability Company

*Energy Projects—Hydro Agenda*

H–1.
Reserved

*Energy Projects—Certificates Agenda*

C–1.
Reserved

*Markets, Tariffs and Rates—Electric Agenda*

E–1.
Docket# RM98–4, 000, Revised Filing Requirements Under Part 33 of the Commission's Regulations
Order on Final Rule.

*Markets, Tariffs and Rates—Gas Agenda*

G–1.
Reserved

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–26038 Filed 10–5–00; 12:52 pm]

BILLING CODE 6717–01–P



## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6883–4]**

### Clean Water Act Section 303(d): Availability of Total Maximum Daily Loads (TMDLs)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of availability.

**SUMMARY:** This document announces the availability for comment of the administrative record file for six TMDLs prepared by EPA Region 6 for waters listed in Louisiana's Mermentau and Vermilion/Teche river basins, under section 303(d) of the Clean Water Act (CWA). EPA prepared these TMDLs in response to a Court Order dated October 1, 1999, in the lawsuit *Sierra Club, et al.* v. *Clifford et al.*, No. 96–0527, (E.D. La. Oct. 1, 1999). Under this court order, EPA is required to prepare TMDLs when needed for waters on the Louisiana 1998 section 303(d) list by December 31, 2007.

**DATES:** Comments on the six TMDLs must be submitted in writing to EPA on or before November 9, 2000.

**ADDRESSES:** Comments on the six TMDLs should be sent to Ellen Caldwell, Environmental Protection Specialist, Water Quality Protection Division, U.S. Environmental Protection Agency Region 6, 1445 Ross Ave., Dallas, TX 75202–2733. For further information, contact Ellen Caldwell at (214) 665–7513. The administrative record file for these TMDLs is available for public inspection at this address as well. Copies of the TMDLs and their respective calculations may be viewed at www.epa.gov/region6/water/tmdl.htm, or obtained by calling or writing Ms. Caldwell at the above address. Please contact Ms. Caldwell to schedule an inspection.

**FOR FURTHER INFORMATION CONTACT:** Ellen Caldwell at (214) 665–7513.

**SUPPLEMENTARY INFORMATION:** In 1996, two Louisiana environmental groups, the Sierra Club and Louisiana Environmental Action Network (plaintiffs), filed a lawsuit in Federal Court against the United States Environmental Protection Agency (EPA), styled *Sierra Club, et al.* v. *Clifford et al.*, No. 96–0527, (E.D. La. Oct. 1, 1999). Among other claims, plaintiffs alleged that EPA failed to establish Louisiana TMDLs in a timely manner. Discussion of the court's order may be found at 65 FR 54032 (September 6, 2000).

#### EPA Seeks Comments on Six TMDLs

By this notice EPA is seeking comment on the following six TMDLs for waters located within the Mermentau and Vermilion/Teche basins:

| Subsegment | Waterbody name | Pollutant |
|---|---|---|
| 060212 | Chatlin Lake Canal and Bayou DuLac. | Fecal Coliform. |
| 060901 | Bayou Petite Anse. | Fecal Coliform. |
| 060701 | Tete Bayou ..... | Fecal Coliform. |
| 060703 | Bayou du Portage. | Fecal Coliform. |
| 060909 | Lake Peigneur .. | Fecal Coliform. |
| 060911 | Vermilion-Teche River Basin. | Fecal Coliform. |

EPA requests that the public provide to EPA any water quality related data and information that may be relevant to the calculations for these TMDLs, or any other comments relevant to these TMDLs. EPA will review all data and information submitted during the public comment period and revise the six TMDLs where appropriate, EPA will then forward the TMDLs to the Court and the Louisiana Department of Environmental Quality (LDEQ). LDEQ will incorporate the TMDLs into its current water quality management plan.

Dated: September 25, 2000.

**Sam Becker,**

*Acting Director, Water Quality Protection Division, Region 6.*

[FR Doc. 00–25930 Filed 10–6–00; 8:45 am]

BILLING CODE 6560–50–U

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6883–7]**

### Science Advisory Board; Notification of Public Advisory Committee Meeting

**SUMMARY:** Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Natural Attenuation Subcommittee of the EPA Science Advisory Board's (SAB) Environmental Engineering Committee will conduct a public teleconference meeting on Wednesday October 25, 2000 from 1–3 p.m. Eastern Time. This activity began at the January 26th conference call meeting and included a face-to-face meeting August 14–15, 2000. Background, including the availability of review materials, will be found in previous notices (see 65 FR 1866–1867, January 12, 2000).

The meeting will be coordinated through a conference call connection in room 6450E Ariel Rios North (6th Floor), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC. The public is strongly encouraged to attend the meeting through a telephonic link, but may attend physically if arrangements are made with the SAB staff by noon Thursday October 19. Additional instructions about how to participate in the conference call can be obtained by calling Ms. Mary Winston at (202) 564–4538, and via e-mail at: winston.mary@epa.gov by noon Thursday, October 19.

*Purpose of the Meeting:* During this meeting the Subcommittee plans to consider approval of its draft report. If approved, the draft report will be forwarded to the Environmental Engineering Committee for consideration at a public face-to-face meeting planned for December.

*Availability of the draft Subcommittee Report:* The staff anticipates the draft report will be mailed to the Subcommittee the week of October 16; the draft will be made available to the public by Email the day after it is mailed to the Subcommittee. For email copies, please contact the Designated Federal Officer at conway.kathleen@epa.gov. A limited number of paper copies will be available from Ms. Mary Winston at (202) 564–4538, and via e-mail at: winston.mary@epa.gov.

*For Further Information*—Any member of the public wishing further information concerning either meeting or wishing to submit brief oral comments must contact Ms. Kathleen White Conway, Designated Federal Officer, Science Advisory Board (1400A), U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone (202) 564–4559; FAX (202) 501–0582; or via e-mail at *conway.kathleen@epa.gov*. Requests for oral comments must be *in writing* (e-mail, fax or mail) and received by Ms. Conway no later than noon Eastern Time one week prior to the meeting.

#### Providing Oral or Written Comments at SAB Meetings

It is the policy of the Science Advisory Board to accept written public comments of any length, and to accommodate oral public comments whenever possible. The Science

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Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. *Oral Comments:* In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes. For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Deadlines for getting on the public speaker list for a meeting are given above. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting. *Written Comments:* Although the SAB accepts written comments until the date of the meeting (unless otherwise stated), because this is a conference call meeting, any comments to be mailed to the Subcommittee in advance of the meeting should be received in the SAB Staff Office by noon Monday October 16. Copies in Email format will be accepted until the day before the meeting, although earlier submission is encouraged. Comments should be supplied to the appropriate DFO at the address/contact information noted above in the following formats: fifteen hard copies, one with original signature, and one electronic copy via e-mail (acceptable file format: WordPerfect, Word, or Rich Text files (in IBM–PC/ Windows 95/98 format)).

*General Information*—Additional information concerning the Science Advisory Board, its structure, function, and composition, may be found on the SAB Website (*http://www.epa.gov/sab*) and in The FY2000 Annual Report of the Staff Director which is available from the SAB Publications Staff at (202) 564–4533 or via fax at (202) 501–0256. Committee rosters, draft Agendas and meeting calendars are also located on our website.

*Meeting Access*—Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact Ms. Winston at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: October 3, 2000.

**A. Robert Flaak,**

*Acting Staff Director, Science Advisory Board.*

[FR Doc. 00–25932 Filed 10–6–00; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6883–8]**

### Science Advisory Board; Notification of Public Advisory Committee Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that a Committee of the US EPA Science Advisory Board (SAB) will meet on the dates and times noted below. All times noted are Eastern Standard Time. The meeting is open to the public, however, seating is limited and available on a first come basis. *Important Notice:* Documents that are the subject of SAB reviews are normally available from the originating EPA office and are not available from the SAB Office—information concerning availability of documents from the relevant Program Office is included below.

The Dioxin Reassessment Review Committee (DRRC) of the US EPA Science Advisory Board (SAB), will meet on November 1 and 2, 2000, at the Ramada Plaza Hotel Pentagon, 4641 Kenmore Avenue, Alexandria, VA. The hotel telephone number is (703) 751–4510. The meeting will begin at 8:45 a.m. on November 1 and adjourn no later than 5 p.m. on November 2.

**Purpose of the Meeting**

In April 1991, EPA announced that it would conduct a scientific reassessment of the potential health risks of exposure to dioxin and related compounds. The reassessment led to the publication of a multi-volume document titled "Exposure and Human Health Reassessment of 2,3,7,8-Tetrachlorodibenzo-p-Dioxin (TCDD) and Related Compounds." The draft of this document was published in 1994. In 1995, this draft was reviewed by EPA's Science Advisory Board (SAB), which issued a report (EPA–SAB–EC–95–021) with the following major findings: (a) There was no need for further SAB review of health and exposure sections (Chapters 1–7) as long as EPA updated these sections with any relevant new information before finalizing them; (b) EPA should develop a new chapter on toxicity equivalence factors (TEFs) to consolidate the discussion and scientific information on the use of TEFs for dioxin and related compounds; (c) the sections addressing Dose Response Modeling (Chapter 8) and the Risk Characterization document (Chapter 9) required revision and improvement; and (d) the revised chapters on Dose Response Modeling and Risk Characterization and the new chapter on TEFs should undergo external peer review and then be brought back to the SAB for another review.

EPA subsequently revised the document, and conducted an external peer review as recommended by the SAB (please see *http://www.epa.gov/ncea/pdfs/dioxin/final.pdf* for a copy of the peer review). The Agency has now requested that the SAB review the revised reassessment document.

**Charge to the Committee**

The Charge asks the DRRC to respond to specific questions in the following areas: (a) Cancer effects; (b) background and population exposures; (c) children's risk; (d) relative risks of breast feeding; (e) the risk characterization summary statement; and (f) dioxin sources. The complete set of 21 Charge Questions, sorted by category, follows:

*Body Burdens*

*(Question 1)* Did EPA adequately justify its use of body burden as a dose metric for inter-species scaling? Should the document present conclusions based on daily dose?

Use of Margin of Exposure Approach

There are two questions on EPA's proposed use of a margin of exposure (MOE) approach to evaluate dioxin-related health risks.

*(Question 2)* Has EPA's choice of the MOE approach to risk assessment adequately considered that background levels of the dioxins have dropped dramatically over the past decade, and are continuing to decline? How might the rationale be improved for EPA's decision not to calculate an RfD/RfC, and for the recommended MOE approach for conveying risk information? Is an MOE approach appropriate, as compared to the traditional RfD/RfC? Should the document present an RfD/RfC?"

*(Question 3)* The SAB commented that previous dose-response modeling was too limited to biochemical endpoints (CYPIA1, IA2, * * *). Are the calculations of a range of $ED_{01}$ body burden for noncancer effects in rodents responsive and clearly presented? Please comment on the weight of evidence interpretation of the body burden data associated with a 1% response rate for non-cancer effects that is presented in Chapter 8, Appendix I and Figure 8–1 (where EPA considers that the data best support a range estimate for $ED_{01}$ body burdens between 10 ng/kg to 50 ng/kg).

Mechanisms and Mode of Action

Two questions concern how the Integrated Summary addresses the mechanisms and mode of action of dioxin toxicity.

*(Question 4)* How might the discussion of mode of action of dioxin and related compounds be improved?

*(Question 5)* Despite the lack of congener-specific data, does the discussion in the Integrated Summary and Risk Characterization support EPA's inference that these effects may occur for all dioxin-like compounds, based on the concept of toxicity equivalence?

Toxicity Equivalence Factors

There are two questions that pertained specifically to the new TEF Chapter (*i.e.*, Chapter 9) in the dioxin reassessment.

*(Question 6)* Is the history, rationale, and support for the TEQ concept, including its limitations and caveats, laid out by EPA in a clear and balanced way in Chapter 9? Did EPA clearly describe its rationale for recommending adoption of the 1998 WHO TEFs?

*(Question 7)* Does EPA establish clear procedures for using, calculating, and interpreting toxicity equivalence factors?

Non-Cancer Effects

There are two questions regarding how the Integrated Summary addresses non-cancer effects.

*(Question 8)* Have the available human data been adequately integrated with animal information in evaluating likely effect levels for the non-cancer endpoints discussed in the reassessment? Has EPA appropriately defined non-cancer adverse effects and the body burdens associated with them? Has EPA appropriately reviewed, characterized, and incorporated the recent epidemiological evidence for non-cancer risk assessment for human populations?

*(Question 9)* Do reviewers agree with the characterization of human developmental, reproductive, immunological, and endocrinological hazard? What, if any, additional assumptions and uncertainties should EPA embody in these characterizations to make them more explicit?

Cancer Effects

There are three questions regarding how EPA characterized cancer effects in the Integrated Summary.

*(Question 10)* Do you agree with the characterization in this document that dioxin and related compounds are carcinogenic hazards for humans? Does the weight-of-the-evidence support EPA's judgement concerning the listing of environmental dioxins as a likely human carcinogen?

*(Question 11)* Does the document clearly present the evolving approaches to estimating cancer risk (*e.g.*, margin of exposure and the $LED_{01}$ as a point of departure), as described in the EPA "Proposed Guidelines for Carcinogenic Risk Assessment" (EPA/600/P–92/003C; April 1996)? Is this approach equally as valid for dioxin-like compounds? Has EPA appropriately reviewed, characterized, and incorporated the recent epidemiological evidence for cancer risk assessment for human populations?

*(Question 12)* Please comment on the presentation of the range of upper bound risks for the general population based on this reassessment. What alternative approaches should be explored to better characterize quantitative aspects of potential cancer risk? Is the range that is given sufficient, or should more weight be given to specific data sources?

Background and Population Exposures

There are three questions pertaining to background and population exposures to dioxin and related compounds.

*(Question 13)* Have the estimates of background exposures been clearly and reasonably characterized?

*(Question 14)* Has the relationship between estimating exposures from dietary intake and estimating exposure from body burden been clearly explained and adequately supported? Has EPA adequately considered available models for the low-dose exposure-response relationships (linear, threshold, "J" shaped)?

*(Question 15)* Have important "special populations" and age-specific exposures been identified and appropriately characterized?

Children's Risk

One question addresses the issue of children's risk of dioxin exposure.

*(Question 16)* Is the characterization of increased or decreased childhood sensitivity to possible cancer and non-cancer outcomes scientifically supported and reasonable? Is the weight of evidence approach appropriate?

*Relative Risks of Breast Feeding*

*(Question 17)* Has EPA adequately characterized how nursing affects short-term and long-term body burdens of dioxins and related compounds?

*Risk Characterization Summary Statement*

*(Question 18)* Does the summary and analysis support the conclusion that enzyme induction, changes in hormone levels, and indicators of altered cellular function seen in humans and laboratory animals, represent effects of unknown clinical significance, but they may be early indicators of toxic response?

*(Question 19)* Has the short summary statement in the risk and hazard characterization on page 107 adequately captured the important conclusions, and the areas where further evaluation is needed? What additional points should be made in this short statement?

*Sources*

*(Question 20)* Are these sources adequately described and are the relationships to exposure adequately explained?

*General Comments*

*(Question 21)* Please provide any other comments or suggestions relevant to the two review documents, as interest and time allow.

**Availability of Review Materials**

The principal review documents (Part III: Integrated Summary and Risk Characterization for 2,3,7,8-Tetrachlorodibenzo-p-Dioxin (TCDD) and Related Compounds; Chapter 8, Dose-Response Modeling for 2,3,7,8-Tetrachlorodibenzo-p-Dioxin (TCDD) and Related Compounds; Chapter 9: Toxicity Equivalence Factors (TEFs) for Dioxin and Related Compounds; and Exposure and Health Reassessment of 2,3,7,8-Tetrachlorodibenzo-p-Dioxin (TCDD) and Related Compounds) were developed by the US EPA's Office of Research and Development, National Center for Environmental Assessment (ORD/NCEA) and are available on the Internet at the ORD/NCEA website (*http://www.epa.gov/ncea/dioxin.htm*), or by request to Ms. Linda Tuxen, phone (202) 564–3332, or by email to *tuxen.linda@epa.gov*.

**FOR FURTHER INFORMATION CONTACT:** Any member of the public wishing further information concerning this meeting or wishing to submit brief oral comments (10 minutes or less) must contact Samuel Rondberg, Designated Federal Officer, Science Advisory Board (1400A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone (301) 812–2560, FAX (410) 286–2689; or via e-mail at *samuelr717@aol.com*. Requests for oral comments must be *in writing* (e-mail, fax or mail) and received by Mr. Rondberg no later than noon (EDT) on Friday, October 20, 2000. The draft meeting Agenda will be available approximately three weeks prior to the meeting on the SAB website (*www.epa.gov/sab*) or from Ms. Wanda Fields, Management Assistant, USEPA Science Advisory Board (1400A), U.S.

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Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone (202) 564–4539, FAX (202) 501–0582; or via e-mail at *fields.wanda@epa.gov*.

**Providing Oral or Written Comments at SAB Meetings**

It is the policy of the Science Advisory Board to accept written public comments of any length, and to accommodate oral public comments whenever possible. The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. *Oral Comments:* In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes. For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Deadlines for getting on the public speaker list for a meeting are given above. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting. *Written Comments:* Although the SAB accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the committee for their consideration. Comments should be supplied to the appropriate DFO at the address/contact information noted above in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file formats: WordPerfect, Word, or Rich Text files (in IBM–PC/Windows 95/98 format). Those providing written comments and who attend the meeting are also asked to bring 25 copies of their comments for public distribution.

**General Information**

Additional information concerning the Science Advisory Board, its structure, function, and composition, may be found on the SAB Website (*http://www.epa.gov/sab*) and in The FY1999 Annual Report of the Staff Director which is available from the SAB Publications Staff at (202) 564–4533 or via fax at (202) 501–0256. Committee rosters, draft Agendas and meeting calendars are also located on our website.

**Meeting Access**

Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact Mr. Rondberg at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: September 22, 2000.

**Donald G. Barnes,**

*Staff Director, Science Advisory Board.*

[FR Doc. 00–25976 Filed 10–6–00; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL COMMUNICATIONS COMMISSION

**[DA 00–2253]**

### Public Safety National Coordination Committee

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** This document advises interested persons of a meeting of the Public Safety National Coordination Committee ("NCC"), which will be held in Washington, D.C. The Federal Advisory Committee Act, Public Law 92–463, as amended, requires public notice of all meetings of the NCC. This notice advises interested persons of the tenth meeting of the Public Safety National Coordination Committee.

**DATES:** November 2, 2000 at 9:30 a.m.–12:30 p.m.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554.

**FOR FURTHER INFORMATION CONTACT:** Designated Federal Officer, Michael J. Wilhelm, (202) 418–0680, e-mail mwilhelm@fcc.gov. Press Contact, Meribeth McCarrick, Wireless Telecommunications Bureau, 202–418–0600, or e-mail mmccarri@fcc.gov.

**SUPPLEMENTARY INFORMATION:** Following is the complete text of the Public Notice: This Public Notice advises interested persons of the tenth meeting of the Public Safety National Coordination Committee ("NCC"), which will be held in Washington, D.C. The Federal Advisory Committee Act, Public Law 92–463, as amended, requires public notice of all meetings of the NCC.

*Date:* November 2, 2000.

*Meeting Time:* General Membership Meeting—9:30 a.m.–12:30 p.m.

*Address:* Federal Communications Commission, 445 12th Street, S.W., Commission Meeting Room, Washington, D.C. 20554.

The NCC Subcommittees will meet from 9:00 a.m. to 5:30 p.m. the previous day. The NCC General Membership Meeting will commence at 9:30 a.m. and continue until 12:30 p.m. The agenda for the NCC membership meeting is as follows:

1. Introduction and Welcoming Remarks.
2. Administrative Matters.
3. Report from the Interoperability Subcommittee.
4. Report from the Technology Subcommittee.
5. Report from the Implementation Subcommittee.
6. Public Discussion.
7. Other Business.
8. Upcoming Meeting Dates and Locations.
9. Closing Remarks.

The FCC has established the Public Safety National Coordination Committee, pursuant to the provisions of the Federal Advisory Committee Act, to advise the Commission on a variety of issues relating to the use of the 24 MHz of spectrum in the 764–776/794–806 MHz frequency bands (collectively, the 700 MHz band) that has been allocated to public safety services. See The Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communications Requirements Through the Year 2010 and Establishment of Rules and Requirements for Priority Access Service, WT Docket No. 96–86, First Report and Order and Third Notice of Proposed Rulemaking, FCC 98–191, 14 FCC Rcd 152 (1998), 63 FR 58645 (11–2–98).

The NCC has an open membership. Previous expressions of interest in membership have been received in response to several Public Notices inviting interested persons to become members and to participate in the NCC's processes. All persons who have previously identified themselves or have been designated as a representative of an organization are deemed members and are invited to attend. All other interested parties are hereby invited to attend and to participate in the NCC processes and its meetings and to become members of the Committee. This policy will ensure balanced participation. Members of the general public may attend the meeting. To attend the tenth meeting of the Public Safety National Coordination Committee, please RSVP to Joy Alford or Bert Weintraub of the Policy and Rules Branch of the Public Safety and Private Wireless Division, Wireless Telecommunications Bureau of the FCC by calling (202) 418–0680, by faxing (202) 418–2643, or by E-mailing at jalford@fcc.gov or bweintra@fcc.gov. Please provide your name, the organization you represent, your phone number, fax number and e-mail address. This RSVP is for the purpose of determining the number of people who will attend this eighth meeting. The FCC will attempt to accommodate as many people as possible. However, admittance will be limited to the seating available. Persons requesting accommodations for hearing disabilities should contact Joy Alford immediately at (202) 418–7233 (TTY). Persons requesting accommodations for other physical disabilities should contact Joy Alford immediately at (202) 418–0694 or via e-mail at jalford@fcc.gov. The public may submit written comments to the NCC's Designated Federal Officer before the meeting.

Additional information about the NCC and NCC-related matters can be found on the NCC website located at: http://www.fcc.gov/wtb/publicsafety/ncc.html.

Federal Communications Commission.

**Jeanne Kowalski,**

*Deputy Division Chief for Public Sofety, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau.*

[FR Doc. 00–25925 Filed 10–6–00; 8:45 am]

BILLING CODE 6712–01–U



## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–1341–DR]**

### Idaho; Amendment No. 2 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Idaho (FEMA–1341–DR), dated September 1, 2000, and related determinations.

**EFFECTIVE DATE:** September 26, 2000.

**FOR FURTHER INFORMATION CONTACT:** Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the incident period for this disaster is closed effective September 26, 2000.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

**Robert J. Adamcik,**

*Deputy Associate Director, Response and Recovery Directorate.*

[FR Doc. 00–25836 Filed 10–6–00; 8:45 am]

BILLING CODE 6718–02–P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–1340–DR]**

### Montana; Amendment No. 2 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Montana (FEMA–1340–DR), dated August 30, 2000, and related determinations.

**EFFECTIVE DATE:** September 26, 2000.

**FOR FURTHER INFORMATION CONTACT:** Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472; (202) 646–3772.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the incident period for this disaster is closed effective September 25, 2000.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

**Robert J. Adamcik,**

*Deputy Associate Director, Response and Recovery Directorate.*

[FR Doc. 00–25835 Filed 10–6–00; 8:45 am]

BILLING CODE 6718–02–P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–1343–DR]**

### Ohio; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of Ohio (FEMA–1343–DR), dated September 26, 2000, and related determinations.

**EFFECTIVE DATE:** September 26, 2000.

**FOR FURTHER INFORMATION CONTACT:** Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated September 26, 2000, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Ohio, resulting from severe storms and a tornado on September 20, 2000, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the Stafford Act). I, therefore, declare that such a major disaster exists in the State of Ohio.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Public Assistance is later determined to be warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Louis Botta of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following area of the State of Ohio to have been

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affected adversely by this declared major disaster:

Greene County for Individual Assistance.

All counties within the State of Ohio are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

James L. Witt,

*Director.*

[FR Doc. 00–25837 Filed 10–6–00; 8:45 am]

BILLING CODE 6718–02–P

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 24, 2000.

**A. Federal Reserve Bank of Atlanta** (Cynthia C. Goodwin, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303–2713:

1. *Adam Gregory Chapman;* Jonathan Luke Chapman; Lance Randall Chapman; Margaret Fruge Chapman; Charles Randel Chapman; Brenda Vidrine Fruge; Jack Cleveland Fruge, Sr.; Jack C. Fruge, Sr. Charitable Remainder Unitrust; Katherine Stephenson LaFleur; all of Ville Platte, Louisiana; Jack Cleveland Fruge, Jr.; Jacques Cleveland Fruge, III; Emily Jeanne Fruge; all of Lafayette, Louisiana; and Jaqueline Stephenson LeCompte, New Iberia, Louisiana; all to retain voting shares of Evangeline Bancshares, Inc., Ville Platte, Louisiana, and thereby indirectly retain voting shares of Evangeline Bank & Trust Company, Ville Platte, Louisiana.

Board of Governors of the Federal Reserve System, October 4, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00–25955 Filed 10–6–00; 8:45 am]

BILLING CODE 6210–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

### Statement of Organization, Functions, and Delegations of Authority

Part F, of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services, Health Care Financing Administration (HCFA), 49 FR 34247, dated September 6, 1998, is amended to include the following delegation of authority from the Secretary to the Administrator, HCFA, for Title II of the Ticket to Work and Work Incentives Improvement Act of 1999.

- Section F.30., Delegations of Authority is amended by adding the following paragraph:

UU. The authorities vested in the Secretary by Title II, "Expanded Availability of Health Care Services," under the Ticket to Work and Work Incentives Improvement Act of 1999, Pub. L. 106–170, as amended hereafter, and as they relate to the mission of HCFA.

This delegation shall be exercised under the Department's existing delegation of authority and policy on regulations. In addition, I hereby affirm and ratify any actions taken by the HCFA Administrator or other HCFA officials which, in effect, involved the exercise of this authority prior to the effective date of this delegation.

This delegation is effective September 25, 2000.

Dated: September 25, 2000.

**Donna E. Shalala,**

*The Secretary.*

[FR Doc. 00–25813 Filed 10–6–00; 8:45 am]

BILLING CODE 4120–03–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Healthcare Research and Quality

### Notice of Meeting

In accordance with section 10(d) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), announcement is made of this Special Emphasis Panel meeting.

A Special Emphasis Panel (SEP) is a committee of experts selected to conduct scientific reviews of applications related to their areas of expertise. The committee members are drawn from a list of experts and designated to serve for particular individual meetings rather than for extended fixed terms of services.

Substantial segments of this upcoming SEP meeting listed below will be closed to the public in accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C., 552b(c)(6). Grant applications are to be reviewed and discussed at this meeting. These discussions are likely to include personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure under the above-cited statutes.

1. *Name of SEP:* Health Research Dissemination & Implementation.

*Date:* October 23, 2000 (Open from 8 a.m. to 8:15 a.m. and closed for the remainder of the meeting).

*Place:* 6010 Building, 4th Floor, Conference Room D, Rockville, Maryland 20852.

*Contact Person:* Anyone wishing to obtain a roster of members or minutes of this meeting should contact Ms. Jenny Griffith, Committee Management Officer, Office of Research Review, Education and Policy, AHRQ, 2101 East Jefferson Street, Suite 400, Rockville, Maryland 20852, Telephone (301) 594–1847.

Agenda items for this meeting are subject to change as priorities dictate.

Dated: October 2, 2000.

**John M. Eisenberg,**

*Director.*

[FR Doc. 00–25877 Filed 10–6–00; 8:45 am]

BILLING CODE 4160–90–M



## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Vessel Sanitation Program Operations Manual—2000

**AGENCY:** Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

**ACTION:** Notice.

**SUMMARY:** This notice announces the revision and implementation of the Vessel Sanitation Program Operations Manual—2000.

**EFFECTIVE DATE:** The revised Operations Manual will become effective on November 1, 2000.

**FOR FURTHER INFORMATION CONTACT:** David Forney, Chief, Vessel Sanitation Program, Division of Emergency and Environmental Health Services (EEHS), National Center for Environmental Health (NCEH), Mailstop F–16, Centers for Disease Control and Prevention (CDC), Atlanta, Georgia 30333, telephone (770) 488–7333, e-mail: DForney@cdc.gov.

**SUPPLEMENTARY INFORMATION:**

#### Purpose and Background

The Vessel Sanitation Program (VSP) is a cooperative activity between the cruise ship industry and the Centers for Disease Control and Prevention (CDC), U.S. Department of Health and Human Services. The purpose and goals of VSP are to achieve and maintain a level of sanitation that will lower the risk for gastrointestinal disease outbreaks and assist the passenger cruise line industry in its effort to provide a healthy environment for passengers and crew.

#### Comments

CDC announced their intention to revise the Vessel Sanitation Operations Manual, August 1989 in the **Federal Register**, Volume 62, Thursday, August 23, 1997, page 44475. A subsequent request to solicit topic-specific information for incorporation into a revised operations manual was published in the **Federal Register** on July 9, 1998 (63 FR 37128). Input and public comments were requested and received from the cruise ship industry, private sanitation consultants, other Federal agencies, and other interested parties and were discussed in detail at a public meeting held in Fort Lauderdale, Florida, on April 14–16, 1999.

Based on comments received, VSP staff redrafted the manual and that revised draft was discussed at a public meeting held in Fort Lauderdale, Florida, on October 5–7, 1999. The current document incorporates the input and comments received from the cruise ship industry, private sanitation consultants, and other interested parties who attended both public meetings, and who submitted comments in writing.

The final draft of the VSP Operations Manual—2000 was also presented to attendees at the VSP annual public meeting held in Ft. Lauderdale, Florida, on March 28, 2000. Major input to this document was also provided by the International Council of Cruise Lines, which represents the 17 largest passenger cruise lines that call on major ports in the United States and abroad.

#### Implementation and Transition for the VSP Operations Manual—2000

The VSP Operations Manual—2000 will become effective on November 1, 2000. At that time, VSP environmental health officers will begin using the new manual and inspection report when they conduct their routine operational inspections.

For a period of one year, or two routine inspections, whichever comes first, VSP staff will document all deficiencies not in compliance with the 2000 manual; however, points will not be deducted for those new and more stringent provisions contained in the 2000 manual that were not in the 1989 manual. During the phase-in period, these deficiencies will only be "starred" so corrective actions can be made accordingly. For example, the new cold holding temperature for potentially hazardous foods is 5°C (41°F) and the old temperature is 7.5°C (45°F). Food found to be labeled between these temperatures during the first year, or two routine inspections, will be documented and "starred" on the inspection report without points being deducted.

#### Applicability

The VSP Operations Manual—2000 will be applicable to all passenger cruise vessels with international itineraries calling on U.S. ports.

#### Availability

Final copies of the VSP Operations Manual—2000 are available in pdf format on the VSP Web site at *http://www.cdc.gov/nceh/vsp* or by contacting Dorothy Johnson, Program Management Assistant at the Vessel Sanitation Program, National Center for Environmental Health, Centers for Disease Control and Prevention (CDC), Mailstop F–16, 4770 Buford Highway, N.E., Atlanta GA 30341–3274, or by e-mailing her at DJJohnson@cdc.gov. Requests may also be sent to *vsp@cdc.gov.*

Dated: October 3, 2000.

**Thena M. Durham,**

*Director, Executive Secretariat, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 00–25906 Filed 10–6–00; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 00N–1521]**

### Agency Information Collection Activities; Proposed Collection; Comment Request; Food Labeling Regulations

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection provisions in FDA's food labeling regulations.

**DATES:** Submit written or electronic comments on the collection of information by December 11, 2000.

**ADDRESSES:** Submit electronic comments on the collection of information to http://www.accessdata.fda.gov/scripts/oc/dockets/edocket home.cfm. Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of

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information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

**Food Labeling Regulations (21 CFR Parts 101, 102, 104, and 105)**

FDA regulations require food producers to disclose to consumers and others specific information about themselves or their products on the label or labeling of their products. Related regulations require that food producers retain records establishing the basis for the information contained in the label or labeling of their products and provide those records to regulatory officials. Finally, certain regulations provide for the submission of food labeling petitions to FDA. FDA's food labeling regulations in parts 101, 102, 104, and 105 (21 CFR parts 101, 102, 104, and 105) were issued under the authority of sections 4, 5, and 6 of the Fair Packaging and Labeling Act (the FPLA) (15 U.S.C. 1453, 1454, and 1455) and of sections 201, 301, 402, 403, 409, 411, 701, and 721 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321, 331, 342, 343, 348, 350, 371, and 379e). Most of these regulations derive from section 403 of the act, which provides that a food product shall be deemed to be misbranded if, among other things, its label or labeling fails to bear certain required information concerning the food product, is false or misleading in any particular, or bears certain types of unauthorized claims. The disclosure requirements and other collections of information in the regulations in parts 101, 102, 104, and 105 are necessary to ensure that food products produced or sold in the United States are in compliance with the labeling provisions of the act and the FPLA.

Section 101.3 of FDA's food labeling regulations requires that the label of a food product in packaged form bear a statement of identity (i.e., the name of the product), including, as appropriate, the form of the food or the name of the food imitated. Section 101.4 prescribes requirements for the declaration of ingredients on the label or labeling of food products in packaged form. Section 101.5 requires that the label of a food product in packaged form specify the name and place of business of the manufacturer, packer, or distributor and, if the food producer is not the manufacturer of the food product, its connection with the food product. Section 101.9 requires that nutrition information be provided for all food products intended for human consumption and offered for sale, unless an exemption in § 101.9(j) applies to the product. Section 101.9(g)(9) also provides for the submission to FDA of requests for alternative approaches to nutrition labeling. Finally, § 101.9(j)(18) provides for the submission to FDA of notices from firms claiming the small business exemption from nutrition labeling.

Section 101.10 requires that restaurants provide nutrition information, upon request, for any food or meal for which a nutrient content claim or health claim is made. Section 101.12(b) provides the reference amount that is used for determining the serving sizes for baking powder, baking soda, and pectin. Section 101.12(e) provides that a manufacturer that adjusts the reference amount customarily consumed (RACC) of an aerated food for the difference in density of the aerated food relative to the density of the appropriate nonaerated reference food must be prepared to show FDA detailed protocols and records of all data that were used to determine the density-adjusted RACC. Section 101.12(g) requires that the label or labeling of a food product disclose the serving size that is the basis for a claim made for the product if the serving size on which the claim is based differs from the RACC. Section 101.12(h) provides for the submission of petitions to FDA to request changes in the reference amounts defined by regulation.

Section 101.13 requires that nutrition information be provided in accordance with § 101.9 for any food product for which a nutrient content claim is made. Under some circumstances, § 101.13 also requires the disclosure of other types of information as a condition for the use of a nutrient content claim. For example, under § 101.13(j), if the claim compares the level of a nutrient in the food with the level of the same nutrient in another "reference" food, the claim must also disclose the identity of the reference food, the amount of the nutrient in each food, and the percentage or fractional amount by which the amount of the nutrient in the labeled food differs from the amount of the nutrient in the reference food. It also requires that when this comparison is based on an average of served foods, this information must be provided to consumers or regulatory officials upon request. Section 101.13(q)(5) requires that restaurants document and provide to appropriate regulatory officials, upon request, the basis for any nutrient content claims they have made for the foods they sell.

Section 101.14 provides for the disclosure of nutrition information in accordance with § 101.9 and, under some circumstances, certain other information as a condition for making a health claim for a food product. Section 101.15 provides that, if the label of a food product contains any representation in a foreign language, all words, statements, and other information required by or under authority of the act to appear on the label shall appear thereon in both the foreign language and in English. Section 101.22 contains labeling requirements for the disclosure of spices, flavorings, colorings, and chemical preservatives in food products. Section 101.22(i)(4) sets forth reporting and recordkeeping requirements pertaining to certifications for flavors designated as containing no artificial flavor. Section 101.30 specifies the conditions under which a beverage that purports to contain any fruit or vegetable juice must declare the percentage of juice present in the beverage and the manner in which the declaration is to be made.

Section 101.36 requires that nutrition information be provided for dietary supplements offered for sale, unless an exemption in § 101.36(h) applies. Section 101.36(f)(2) cross-references the provisions in § 101.9(g)(9) for the submission to FDA of requests for alternative approaches to nutrition labeling. Also, § 101.36(h)(2) cross-references the provisions in § 101.9(j)(18) for the submission of small business exemption notices.



Section 101.42 requests that food retailers voluntarily provide nutrition information for raw fruits, vegetables, and fish at the point of purchase, and § 101.45 contains guidelines for providing such information. Also, § 101.45(c) provides for the submission of nutrient data bases and proposed nutrition labeling values for raw fruit, vegetables, and fish to FDA for review and approval.

Sections 101.54, 101.56, 101.60, 101.61, and 101.62 specify information that must be disclosed as a condition for making particular nutrient content claims. Section 101.67 cross-references requirements in other regulations for ingredient declaration (§ 101.4) and disclosure of information concerning performance characteristics (§ 101.13(d)). Section 101.69 provides for the submission of a petition requesting that FDA authorize a particular nutrient content claim by regulation. Section 101.70 provides for the submission of a petition requesting that FDA authorize a particular health claim by regulation. Section 101.77(c)(2)(ii)(D) requires the disclosure of the amount of soluble fiber per serving in the nutrition labeling of a food bearing a health claim about the relationship between soluble fiber and a reduced risk of coronary heart disease. Section 101.79(c)(2)(iv) requires the disclosure of the amount of folate per serving in the nutrition labeling of a food bearing a health claim about the relationship between folate and a reduced risk of neural tube defects.

Section 101.100(d) provides that any agreement that forms the basis for an exemption from the labeling requirements of section 403(c), (e), (g), (h), (i), (k), and (q) of the act be in writing and that a copy of the agreement be made available to FDA upon request. Section 101.100 also contains reporting and disclosure requirements as conditions for claiming certain labeling exemptions.

Section 101.105 specifies requirements for the declaration of the net quantity of contents on the label of a food in packaged form and prescribes conditions under which a food whose label does not accurately reflect the actual quantity of contents may be sold, with appropriate disclosures, to an institution operated by Federal, State, or local government. Section 101.108 provides for the submission to FDA of a written proposal requesting a temporary exemption from certain requirements of §§ 101.9 and 105.66 for the purpose of conducting food labeling experiments with FDA's authorization.

Regulations in part 102 define the information that must be included as part of the statement of identity for particular foods and prescribe related labeling requirements for some of these foods. For example, § 102.22 requires that the name of a protein hydrolysate shall include the identity of the food source from which the protein was derived.

Part 104, which pertains to nutritional quality guidelines for foods, cross-references several labeling provisions in part 101 but contains no separate information collection requirements.

Part 105 contains special labeling requirements for hypoallergenic foods, infant foods, and certain foods represented as useful in reducing or maintaining body weight.

The disclosure and other information collection requirements in the above regulations are placed primarily upon manufacturers, packers, and distributors of food products. Because of the existence of exemptions and exceptions, not all of the requirements apply to all food producers or to all of their products. Some of the regulations affect food retailers, such as supermarkets and restaurants.

The purpose of the food labeling requirements is to allow consumers to be knowledgeable about the foods they purchase. Nutrition labeling provides information for use by consumers in selecting a nutritious diet. Other information enables a consumer to comparison shop. Ingredient information also enables consumers to avoid substances to which they may be sensitive. Petitions or other requests submitted to FDA provide the basis for the agency to permit new labeling statements or to grant exemptions from certain labeling requirements. Recordkeeping requirements enable FDA to monitor the basis upon which certain label statements are made for food products and whether those statements are in compliance with the requirements of the act or the FPLA.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN

| 21 CFR Sections and Parts | No. of Respondents | Annual Frequency per Response | Total Annual Responses | Hours per Response | Total Hours | Total Capital, Operating, and Maintenance Costs |
|---|---|---|---|---|---|---|
| 101.3, 101.22 and 102 and 104 | 17,000 | 1.03 | 17,500 | 0.5 | 8,750 | 0 |
| 101.4, 101.22, 101.100 and 102, 104, and 105 | 17,000 | 1.03 | 17,500 | 1 | 17,500 | 0 |
| 101.5 | 17,000 | 1.03 | 17,500 | 0.25 | 4,375 | 0 |
| 101.9, 101.13(n), 101.14(d)(3), 101.62, and 104 | 17,000 | 1.03 | 17,500 | 4 | 70,000 | $1,000,000 |
| 101.9(g)(9) and 101.36(f)(2) | 12 | 1 | 12 | 4 | 48 | 0 |
| 101.9(j)(18) and 101.36(h)(2) | 10,000 | 1 | 10,000 | 8 | 80,000 | 0 |
| 101.10 | 265,000 | 1.5 | 397,500 | 0.25 | 99,375 | 0 |
| 101.12(b) | 29 | 2.3 | 66 | 1 | 66 | $39,600 |
| 101.12(e) | 25 | 1 | 25 | 1 | 25 | 0 |

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TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN—Continued

| 21 CFR Sections and Parts | No. of Respondents | Annual Frequency per Response | Total Annual Responses | Hours per Response | Total Hours | Total Capital, Operating, and Maintenance Costs |
|---|---|---|---|---|---|---|
| 101.12.(g) | 5,000 | 1 | 5,000 | 1 | 5,000 | 0 |
| 101.12(h) | 5 | 1 | 5 | 80 | 400 | $400,000 |
| 101.13(d)(i) and 101.67 | 200 | 1 | 200 | 1 | 200 | 0 |
| 101.13(j)(2), 101.13(k), 101.54, 101.56, 101.60, 101.61, and 101.62 | 2,500 | 1 | 2,500 | 1 | 2,500 | 0 |
| 101.13(q)(5) | 265,000 | 1.5 | 397,500 | 0.75 | 298,125 | 0 |
| 101.14(d)(2) | 265,000 | 1.5 | 397,500 | 0.75 | 298,125 | 0 |
| 101.15 | 160 | 10 | 1,600 | 8 | 12,800 | 0 |
| 101.22(i)(4) | 25 | 1 | 25 | 1 | 25 | 0 |
| 101.30 and 102.33 | 1,500 | 3.3 | 5,000 | 1 | 5,000 | 0 |
| 101.36 | 300 | 40 | 12,000 | 4 | 48,000 | $15,000,000 |
| 101.42 and 101.45 | 72,270 | 1 | 72,270 | 0.5 | 36,135 | 0 |
| 101.45(c) | 5 | 4 | 20 | 4 | 80 | 0 |
| 101.69 | 3 | 1 | 3 | 25 | 75 | 0 |
| 101.70 | 3 | 1 | 3 | 80 | 240 | $400,000 |
| 101.77(c)(2)(ii)(D) | 1,000 | 1 | 1,000 | 0.25 | 250 | 0 |
| 101.79(c)(2)(iv) | 100 | 1 | 100 | 0.25 | 25 | 0 |
| 101.100(d) | 1,000 | 1 | 1,000 | 1 | 1,000 | 0 |
| 101.105 and 101.100(h) | 17,000 | 1.03 | 17,500 | 0.5 | 8,750 | 0 |
| 101.108 | 0 | 0 | 0 | 40 | 0 | 0 |
| Total | | | | | 985,000 | $16,800,000 |

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN

| 21 CFR Sections and Parts | No. of Recordkeepers | Annual Frequency per Recordkeepers | Total Annual Records | Hours per Record | Total Hours | Total Capital, Operating, and Maintenance Costs |
|---|---|---|---|---|---|---|
| 101.12(e) | 25 | 1 | 25 | 1 | 25 | 0 |
| 101.13(q)(5) | 265,000 | 1.5 | 397,500 | 0.75 | 298,125 | 0 |
| 101.14(d)(2) | 265,000 | 1.5 | 397,500 | 0.75 | 298,125 | 0 |
| 101.22(i)(4) | 25 | 1 | 25 | 1 | 25 | 0 |
| 101.100(d)(2) | 1,000 | 1 | 1,000 | 1 | 1,000 | 0 |
| 101.105(t) | 100 | 1 | 100 | 1 | 100 | 0 |
| Total | | | | | 597,400 | 0 |

These estimates are based on the document entitled "Regulatory Impact Analysis of the Final Rules to Amend the Food Labeling Regulations," which is the agency's most recent comprehensive review of food labeling costs that published in the **Federal Register** of January 6, 1993 (58 FR 2927); agency communications with industry; and FDA's knowledge of and experience with food labeling and the submission of petitions and requests to the agency. Where an agency regulation implements an information collection requirement in the act or the FPLA, only any additional burden attributable to the regulation has been included in FDA's burden estimate.

No burden has been estimated for those requirements where the information to be disclosed is information that has been supplied by FDA. Also, no burden has been estimated for information that is disclosed to third parties as a usual and customary part of a food producer's normal business activities. Under 5 CFR 1320.3(c)(2), the public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public is not a collection of information. Under 5 CFR 1320.3(b)(2), the time, effort, and financial resources necessary to comply with a collection of information are excluded from the burden estimate if the reporting, recordkeeping, or disclosure activities needed to comply are usual and customary because they would occur in the normal course of activities.

Dated: October 2, 2000.

**Margaret M. Dotzel,**

*Associate Commissioner for Policy.*

[FR Doc. 00–25810 Filed 10–6–00; 8:45 am]

BILLING CODE 4160–01–F



## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301)–443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

***Proposed Project:*** **The Health Education Assistance Loan (HEAL)**

***Program:*** **Regulatory Requirements—(OMB No. 0915–0108)—Revision**

This clearance request is for revision of approval for the notification, reporting and recordkeeping requirements in the HEAL program to insure that the lenders, holders and schools participating in the HEAL program follow sound management procedures in the administration of federally-insured student loans. While the regulatory requirements are approved under this OMB number, some of the burden associated with the regulations is cleared under the OMB numbers for the HEAL forms used to report required information (listed below). The table listed at the end of this notice contains the estimate of burden for the remaining regulations.

Annual Response Burden for the following regulations is cleared by OMB when the reporting forms are cleared:

**OMB Approval No. 0915–0034, Lender's Application, Borrower Status, Loan Transfer, Contract for Loan Insurance**

*Reporting*

42 CFR 60.31(a), Lender annual application.

42 CFR 60.38(a), Loan Reassignment.

*Notification*

42 CFR 60.12(c)(1), Borrower deferment.

**OMB Approval No. 0915–0036, Lender's Application for Insurance Claim**

*Reporting*

42 CFR 60.35(a)(2), Lender skip-tracing activities.

42 CFR 60.40(a), Lender documentation to litigate a default.

42 CFR 60.40(c)(i), (ii), and (iii), Lender default claim.

42 CFR 60.40(c)(2), Lender death claim.

42 CFR 60.40(c)(3), Lender disability claim.

42 CFR 60.40(c)(4), Lender report of student bankruptcy.

**OMB Approval No. 0915–0043, Repayment Schedule, Call Report**

*Notification*

42 CFR 60.11(e), Establishment of repayment terms-borrower.

42 CFR 60.11(f)(5), Borrower notice of supplemental repayment agreement.

42 CFR 60.34(b)(1), Establishment of repayment terms-lender.

**OMB Approval No. 0915–0204, Physicians Certification of Permanent and Total Disability**

*Reporting*

42 CFR 60.39(b)(2), Holder request to Secretary to determine borrower disability.

**OMB Approval No. 0915–227, Refinancing Application/Promissory Note**

42 CFR 60.33(e), Executed application and note to borrower.

The estimate of burden for the regulatory requirements of this clearance are as follows:

REPORTING REQUIREMENTS

| Number of respondents | Number of transactions per respondent | Total transactions | Time per response (hours) | Total burden hours |
|---|---|---|---|---|
| 22 Lenders | 7 | 161 | 0.7 | 116 |
| 200 Schools | 7 | 139 | 0.2 | 23 |
| Total Reporting | | | | 139 |

NOTIFICATION REQUIREMENTS

| Number of respondents | Number of transactions per respondent | Total transactions | Time per response (hours) | Total burden hours |
|---|---|---|---|---|
| 22 Lenders | 11,271 | 247,958 | 0.2 | 46,293 |
| 200 Schools | 30 | 5,956 | 0.3 | 1,988 |

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NOTIFICATION REQUIREMENTS—Continued

| Number of respondents | Number of transactions per respondent | Total transactions | Time per response (hours) | Total burden hours |
|---|---|---|---|---|
| 20,639 Borrowers | 1 | 20,639 | 0.2 | 3,440 |
| Total Notification | | | | 51,721 |

RECORDKEEPING REQUIREMENTS

| Number of respondents | Number of transactions per respondent | Total transactions | Time per response (hours) | Total burden hours |
|---|---|---|---|---|
| 22 Lenders | 4,929 | 128,169 | 0.2 | 28,993 |
| 200 Schools | 768 | 101,639 | 0.1 | 14,437 |
| Total Recordkeeping | | | | 43,430 |

*Total Annual Burden:* 95,290 Hrs.

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: John Morrall, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: October 2, 2000.

**Jane Harrison,**

*Director, Division of Policy Review and Coordination.*

[FR Doc. 00–25812 Filed 10–6–00; 8:45 am]

BILLING CODE 4160–15–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Availability for Licensing: Chromatin Insulator Protecting Expressed Genes of Interest for Human Gene Therapy or Other Mammalian Transgenic Systems

**AGENCY:** National Institutes of Health, Public Health Service, DHHS.

**ACTION:** Notice.

**SUMMARY:** The National Institutes of Health (NIH), Department of Health and Human Services (DHHS), seeks licensee(s) who can effectively pursue the preclinical, clinical and commercial development of the technology embodied in U.S. Patent 5,610,053 entitled "DNA Sequence Which Acts as a Chromatin Insulator Element to Protect Expressed Genes from Cis-acting Regulatory Sequences in Mammalian Cells," issued on March 11, 1997. The invention describes the isolation, identification, and characterization of a DNA element residing in higher eukaryotic chromatin structural domains. All fields of use are available for licensing. The patent rights in this technology have been assigned to the United States of America.

**ADDRESSES:** Requests for copies of the issued patent, inquiries, comments and other materials relating to the contemplated licenses should be directed to: Girish C. Barua, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7735 ext. 266; Facsimile: 301/402–0220; E-mail: baruag@od.nih.gov.

**SUPPLEMENTARY INFORMATION:** The technology provides the isolation of a functional DNA sequence comprising a chromatin insulating element from a vertebrate system and provides the first employment of the pure insulator element as a functional insulator in mammalian cells. The technology further relates to a method for insulating the expression of a gene from the activity of cis-acting regulatory sequences in eukaryotic chromatin.

This technology could be of major importance in providing a mechanism and a tool to restrict the action of cis-acting regulatory elements on genes whose activities or encoded products are needed or desired to be expressed in mammalian transgenic systems. This technology provides the first pure insulator element to function solely as an insulator element in human cells. Accordingly, this technology could have tremendous practical implications for transgenic technology and human gene therapies, either in vitro or in vivo.

The technology further provides a method and constructs for insulating the expression of a gene or genes in transgenic animals such that the transfected genes will be protected and stably expressed in the tissues of the transgenic animal or its offspring. For example, even if the DNA of the construct integrates into areas of silent chromatin in the genomic DNA of the host animal, the gene will continue to be expressed. The invention could provide a means of improving the stable integration and expression of any transgenic construct of interest, with efficiencies higher than are achieved presently. Use of this invention may represent a large potential savings for licensee's constructing transgenic cell lines or animals.

The NIH seeks licensee(s), who in accordance with requirements and regulations governing the licensing of government-owned inventions (37 CFR part 404), have meritorious plan(s) for the development of the DNA Chromatin Insulator technology to a marketable status to meet the needs of the public.

Dated: September 29, 2000.

**Jack Spiegel,**

*Director, Division of Technology Development and Transfer, Office of Technology Transfer.*

[FR Doc. 00–25893 Filed 10–6–00; 8:45 am]

BILLING CODE 4140–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Director's Council of Public Representatives.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

*Name of Committee:* Director's Council of Public Representatives.

*Date:* October 31-November 1, 2000.

*Time:* October 31, 2000, 8:30 am to 3:30 pm.

*Agenda:* Among the topics proposed for discussion are: (1) human research protections; (2) informed consent; and (3) medical applications research.

*Place:* National Institutes of Health, 9000 Rockville Pike, Building 31C, Conference Room 6, Bethesda, MD 20892.

*Time:* November 1, 2000, 8 am to 10 am.

*Agenda:* Same as above.

*Place:* National Institutes of Health, 9000 Rockville Pike, Building 31C, Conference Room 6, Bethesda, MD 20892.

*Contact Person:* Jennifer E. Gorman, Public Liaison/COPR Coordinator, Office of Communications and Public Liaison, Office of the Director, National Institutes of Health, 9000 Rockville Pike, Building 1, Room 344, Bethesda, MD 20892, (301) 435–4448.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program, National Institutes of Health, HHS)

Dated: October 3, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–25878 Filed 10–6–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Center for Research Resources; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Center for Research Resources Special Emphasis Panel, Comparative Medicine.

*Date:* October 20, 2000.

*Time:* 3 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Office of Review, National Center for Research Resources, 6705 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Sybil A. Wellstood, Scientific Review Administrator, Office of Review, National Center for Research Resources, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892–7965, 301–435–0814.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333; 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS)

Dated: September 29, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–25887 Filed 10–6–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Heart, Lung, and Blood Institute Special Emphasis Panel, Demonstration and Education Research Applications (R18s).

*Date:* November 2, 2000.

*Time:* 9 a.m. to 4:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hilton National Airport Hotel, 2399 Jefferson Davis Highway, Arlington, VA 22202.

*Contact Person:* Louise P. Corman, Scientific Review Administrator, Review Branch, Room 7180, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and

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Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: September 29, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–25889 Filed 10–6–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Clinical Trials Review Committee.

*Date:* October 29–30, 2000.

*Time:* 6:30 to 1:30 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency, One Metro Center, Bethesda, MD 20814.

*Contact Person:* Joyce A. Hunter, Review Branch, Room 7192, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, Bethesda, MD 20892–7924, 301/435–0277.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: September 29, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–25890 Filed 10–6–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Mental Health Special Emphasis Panel.

*Date:* October 23, 2000.

*Time:* 3 PM to 4 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* David L Sommers, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6144, MSC 9606, Bethesda, MD 20892–9606, 301–443–6470.

*Name of Committee:* National Institute of Mental Health Special Emphasis Panel.

*Date:* October 24, 2000.

*Time:* 2 PM to 3 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* David I. Sommers, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6144, MSC 9606, Bethesda, MD 20892–9606, 301–443–6470.

*Name of Committee:* National Institute of Mental Health Special Emphasis Panel.

*Date:* November 21, 2000.

*Time:* 11 AM to 12 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Henry J. Haigler, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6150, MSC 9608, Bethesda, MD 20892–9608, 301/443–7216.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: September 26, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–25880 Filed 10–6–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Environmental Health Sciences; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NIEHS.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Environmental Health Sciences, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Board of Scientific Counselors, NIEHS.

*Date:* October 22–24, 2000.

*Closed:* October 22, 2000, 8 p.m. to 9:30 p.m.

*Agenda:* To review and evaluate program information and discuss the review process.

*Place:* Doubletree Guest Suites, 2515 Meridian Parkway, Research Triangle Park, NC 27709.

*Open:* October 23, 2000, 8:30 a.m. to 5 p.m.

*Agenda:* An overview of the organization and conduct of research in the Biometry Branch.

*Place:* Nat. Institute of Environmental Health Sciences, South Campus, Conference Rooms 101 ABC, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709.



*Closed:* October 24, 2000, 8:30 a.m. to Adjournment.

*Agenda:* To review and evaluate personal qualifications and performance, and competence of individual investigators.

*Place:* Nat. Institute of Environmental Health Sciences, South Campus, Conference Rooms 101 ABC, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709.

*Contact Person:* Paul Nettesheim, Acting Scientific Director, Office of the Scientific Director, Nat. Institute of Environmental Health Sciences, National Institutes of Health, Mail Drop A2–09, 111 T. W. Alexander Drive, Research Triangle Park, NC 27709, 919/541–3205.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: October 2, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–25881 Filed 10–6–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Child Health and Human Development Initial Review Group; Maternal and Child Health Research Subcommittee.

*Date:* October 16–18, 2000.

*Time:* 3 pm to 5:30 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* 1380 Piccard Drive, Rockville, MD 20850.

*Contact Person:* Gopal M. Bhatnagar, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, Bethesda, MD 20892.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: October 2, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–25882 Filed 10–6–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

*Date:* October 20, 2000.

*Time:* 8 am to 5 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* River Inn, 924 25th Street, NW, Washington, DC 20037.

*Contact Person:* Sean O'Rourke, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Boulevard, Bethesda, MD 20892–7003, 301–443–2861.

(Catalogue of Federal Domestic Assistance Program Nos. 93. 271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: September 26, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–25883 Filed 10–6–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Arthritis and Musculoskeletal and Skin Diseases Special Grants Review Committee.

*Date:* October 16–17, 2000.

*Time:* 8:30 am to 5:30 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn, 2 Montgomery Village Avenue, Gaithersburg, MD 20879.

*Contact Person:* John R. Lymangrover, Scientific Review Administrater, National Institutes of Health, NIAMS, Natcher Bldg., Room 5As25N, Bethesda, MD 20892, 301–594–4952.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: September 29, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–25884 Filed 10–6–00; 8:45 am]

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**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**National Institutes of Health**

**National Institute on Drug Abuse; Notice of Closed Meetings**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Drug Abuse Special Emphasis Panel, Medication Development Research.

*Date:* November 2, 2000.

*Time:* 10 am to 12 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt—Arlington at Washington's Key Bridge, 1325 Wilson Boulevard, Arlington, VA 22209–9990.

*Contact Person:* Mark Swieter, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1389.

*Name of Committee:* National Institute on Drug Abuse Special Emphasis Panel, Medication Development Research.

*Date:* November 2, 2000.

*Time:* 12:30 pm to 1:30 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt—Arlington at Washington's Key Bridge, 1325 Wilson Boulevard, Arlington, VA 22209–9990.

*Contact Person:* Mark Swieter, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1389.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Program, National Institutes of Health, HHS)

Dated: September 29, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–25885 Filed 10–06–00; 8:45 am]

**BILLING CODE 4140–01–M**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**National Institutes of Health**

**National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as pententable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of person privacy.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel.

*Date:* October 27, 2000.

*Time:* 8:30 am to 1 pm.

*Agenda:* To review and evaluate contract proposals.

*Place:* Gaithersburg Holiday Inn, Gaithersburg, MD 20879.

*Contact Person:* Vassil S. Georgiev, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2217, 6700–B Rockledge Drive, MSC, 7610, Bethesda, MD 20892–7610, 301–496–2550.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: September 29, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–25888 Filed 10–6–00; 8:45 am]

**BILLING CODE 4140–01–M**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**National Institutes of Health**

**Center for Scientific Review; Notice of Closed Meetings**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* October 13, 2000.

*Time:* 11:00 AM to 12:30 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* Governor's House Hotel, Washington, DC 20036.

*Contact Person:* Anita Miller Sostek, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892, (301) 435–1260

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Integrative, Functional and Cognitive Neuroscience 8.

*Date:* October 19–20, 2000.

*Time:* 8:00 AM to 4:00 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Samuel Rawlings, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5160, MSC 7844, Bethesda, MD 20892, (301) 435–1243.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* October 19–20, 2000.

*Time:* 8:00 AM to 5:00 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Yvette M. Davis, VmD, MpH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3152, MSC 7770, Bethesda, MD 20892, 301–435–0906.

*Name of Committee:* Molecular, Cellular and Developmental Neuroscience Integrated Review Group, Visual Sciences C Study Section.

*Date:* October 19–20, 2000.

*Time:* 8:00 AM to 5:00 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn—Santa Fe, 4048 Cerrillos Road, Santa Fe, NM 87505.

*Contact Person:* Carole L. Jelsema, PhD, Chief, MDCN Scientific Review Group, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7850, Bethesda, MD 20892, (301) 435–1248, jelsemac@csr.nih.gov.



*Name of Committee:* Immunological Sciences Integrated Review Group Allergy and Immunology Study Section.

*Date:* October 19–20, 2000.

*Time:* 8:30 AM to 5:00 PM

*Agenda:* To review and evaluate grant applications.

*Place:* Wyndham City Center, 1143 New Hampshire Avenue, NW, Washington, DC 20037.

*Contact Person:* Eugene M. Zimmerman, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4202, MSC 7812, Bethesda, MD 20892, 301–435–1220.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* October 19–20, 2000.

*Time:* 8:30 AM to 5:00 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* Savoy Suites Georgetown, 2505 Wisconsin Avenue, N.W., Washington, DC 20007.

*Contact Person:* Michele C. Hindi-Alexander, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4188 MSC 7848, Bethesda, MD 20892, 301–435–3554.

*Name of Committee:* Oncological Sciences Integrated Review Group, Experimental Therapeutics Subcommittee 1.

*Date:* October 19–20, 2000.

*Time:* 8:30 AM to 5:00 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* Arlington Hyatt, 1325 Wilson Boulevard, Arlington, VA 22209

*Contact Person:* Philip Perkins, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7804, Bethesda, MD 20892, (301) 435–1718, perkinsp@csr.nih.gov.

*Name of Committee:* Biophysical and Chemical Sciences Integrated Review Group, Biophysical Chemistry Study Section.

*Date:* October 19–20, 2000.

*Time:* 8:30 AM to 4:00 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* Ramada Hotel Bethesda, 8400 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Arnold Revzin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4192, MSC 7806, Bethesda, MD 20892, (301) 435–1153.

*Name of Committee:* Cell Development and Function Integrated Review Group, Cell Development and Function 5.

*Date:* October 19–20, 2000.

*Time:* 8:30 AM to 4:00 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

*Contact Person:* Ramesh K. Nayak, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5146, MSC 7840, Bethesda, MD 20892, (301) 435–1026.

*Name of Committee:* Biochemical Sciences Intergrated Review Group, Biochemistry Study Section.

*Date:* October 19–20, 2000.

*Time:* 8:30 AM to 4:00 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

*Contact Person:* Chhanda L. Ganguly, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7842, Bethesda, MD 20892, (301) 435–1739.

*Name of Committee:* Cell Development and Function Integrated Review Group, International and Cooperative Projects Study Section.

*Date:* October 19–20, 2000.

*Time:* 8:30 AM to 5:00 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

*Contact Person:* Sandy Warren, DmD, Mph, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5134, MDC 7840, Bethesda, MD 20892, (301) 435–1019.

*Name of Committee:* Cell Development and Function Integrated Review Group, Cell Development and Function 4.

*Date:* October 19–20, 2000.

*Time:* 8:30 AM to 12:00 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Marcia Steinberg, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5140, MSC 7840, Bethesda, MD 20892, (301) 435–1023.

*Name of Committee:* Infectious Diseases and Microbiology Integrated Review Group, Microbial Physiology and Genetics Subcommittee 2.

*Date:* October 19–20, 2000.

*Time:* 8:30 AM to 5:00 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* Georgetown Suites, 1111 30th Street, NW, Washington, DC 20007.

*Contact Person:* Rona L. Hirschberg, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4186, MSC 7808, Bethesda, MD 20892, (301) 435–1150.

*Name of Committee:* Immunological Sciences Integrated Review Group, Immunobiology Study Section.

*Date:* October 19–20, 2000.

*Time:* 9:30 AM to 3:00 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn, 5520 Wisconsin Avenue, Palladian West, Chevy Chase, MD 20815.

*Contact Person:* Betty Hayden, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4206, MSC 7812, Bethesda, MD 20892, (301) 435–1223.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* October 19–20, 2000.

*Time:* 9:30 AM to 5:00 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* State Plaza Hotel 2117 E Street Washington, DC 20037

*Contact Person:* Carl D. Banner, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5212, MSC 7850, Bethesda, MD 20892, (301) 435–1251, bannerc@drg.nih.gov

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* October 19, 2000.

*Time:* 11:00 AM to 2:00 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* John Bishop, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* October 19–20, 2000.

*Time:* 9:00 PM to 5:00 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Bethesda 8120 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Mariana Dimitrov, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3180, MSC 7848, Bethesda, MD 20892, (301) 435–0902.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* October 20, 2000.

*Time:* 8:00 AM to 5:00 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* Washington Court Hotel, 525 New Jersey Avenue, N.W., Washington, DC 20001.

*Contact Person:* Nancy Hicks, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive Room 3158, MSC 7770, Bethesda, MD 20892.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* October 20, 2000.

*Time:* 2:00 PM to 3:00 PM.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Dennis Leszczynski, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6170, MSC 7892, Bethesda, MD 20892, (301) 435–1044.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

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Dated: October 3, 2000.
**LaVerne Y. Stringfield,**
*Director, Office of Federal Advisory Committee Policy.*
[FR Doc. 00–25879 Filed 10–6–00; 8:45 am]
**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Public Health Service

### National Toxicology Program; National Institute of Environmental Health Sciences; Center for the Evaluation of Risks to Human Reproduction Announces the Availability of Seven Expert Panel Reports on Phthalate Esters and Solicits Public Comments on These Reports

**Background**

The National Toxicology Program (NTP) and the National Institute of Environmental Health Sciences have established the NTP Center for the Evaluation of Risks to Human Reproduction (CERHR; December 14, 1998 [63 FR 68782]). The purpose of the Center is to provide timely and unbiased, scientifically sound evaluations of human and experimental evidence for adverse effects on reproduction, including development, caused by agents to which humans may be exposed. The goals of the individual assessments are to (1) interpret for and provide to the general public information about the strength of scientific evidence that a given exposure or exposure circumstance may pose a hazard to reproduction and the health and welfare of children: (2) provide regulatory agencies with objective and scientifically thorough assessments of the scientific evidence that adverse reproductive/development health effects are associated with exposure to specific chemicals or classes of chemicals, including descriptions of any uncertainties that would diminish confidence in assessment of risks, and (3) identify knowledge gaps to help establish research and testing priorities.

**Phthalate Esters Reviewed**

This evaluation of seven phthalate esters was conducted over a one year period by a 16-member Expert Panel made up of scientists from government, universities, and industry (May 23, 2000 [65 FR 33343–33345]). Public deliberations by the Panel were completed in July, 2000. Since that time, the draft reports have been revised to incorporate the conclusions reached by the Panel in their July, 2000, meeting and have been reviewed for accuracy by the CERHR Core Committee, made up of representatives of NTP-participating agencies, NTP scientists, and members of the Phthalates Expert Panel. Phthalate esters are used as plasticizers in a wide range of polyvinyl chloride-based consumer products. These phthalate esters were selected for the initial evaluation by the CERHR based on their high production volume, extent of human exposures, use in children's products, published evidence of reproductive or developmental toxicity, and public concern.

The following phthalate esters were reviewed by CERHR (Chemical Abstract Service Registry Number):
butyl benzyl phthalate (85–68–7)
di(2-ethylhexyl) phthalate (117–81–7)
di-isodecyl phthalate (26761–40–0, 68515–49–1)
di-isononyl phthalate (28553–12–0, 68515–48–0)
di-n-butyl phthalate (84–74–2)
di-n-hexyl phthalate (84–75–3)
di-n-octyl phthalate (117–84–0)

**Availability of Phthalate Reports**

Expert Panel reports on the above phthalate esters can be obtained from the CERHR website *http://cerhr.niehs.nih.gov).* Hard copies can be obtained by contacting: Ms. Harriet McCullom, Management Coordinator, CERHR, 1800 Diagonal Road, Suite 500, Alexandria, VA 22314–2808, Telephone: 703–838–9440, Facsimile: 703–684–2223.

**Request for Public Comment on the Expert Panel Reports**

The Center invites public comment on the Expert Panel Reports listed above, including any recent relevant toxicology data and human exposure information. These reports are the product of the Expert Panel review of data available as of July 1, 2000. Public comments received on the Expert Panel Reports will be reviewed, summarized, and included in the NTP Center transmittal report prepared by the NTP staff. NTP will transmit the NTP Center report, the Expert Panel Report, the public comments received on the expert panel report, and any new information since completion of the expert panel report to the appropriate Federal and State Agencies, the public, and the scientific community. Further information on the Center's chemical review process can be obtained from the CERHR website (*http://cerhr.niehs.nih.gov*).

Written comments received by December 11, 2000 will be considered. Please forward comments and chemical information to: Michael D. Shelby, Ph.D.; Director, CERHR, NIEHS/NTP B3–09; P.O. Box 12233; Research Triangle Park, NC 27709–2233; Telephone: 919–541–3455; Facsimile: 919–541–4634.

Dated: October 2, 2000.
**Samuel H. Wilson,**
*Deputy Director, NIEHS.*
[FR Doc. 00–25892 Filed 10–6–00; 8:45 am]
**BILLING CODE 4140–01–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[AZ–040–00–1040–XX]**

### Gila Box Riparian National Conservation Area (RNCA) Advisory Committee Meeting

**AGENCY:** Bureau of Land Management, Interior.

**SUMMARY:** The purpose of this notice is to announce the next meeting of the Gila Box Riparian National Conservation Area Advisory Committee Meeting. The purpose of the Advisory Committee is to provide informed advice to the Bureau of Land Management (BLM) Safford Field Manager on management of public lands in the Gila Box Riparian National Conservation Area. The committee meets as needed, generally between two and four times a year.

The meeting will begin at the BLM Safford Field Office on November 3, 2000, commencing at 7 a.m. and ending at 5 p.m. The meeting's agenda will consist of a tour of portions of the Gila Box RNCA with community leaders from Graham and Greenlee counties to build support for the implementation of the Gila Box RNCA management plan. A public comment period will begin at 7 a.m. and may continue for the duration of the meeting at the discretion of the Gila Box Advisory Committee. The public may accompany the Committee and invited guests on the tour, but must provide their own transportation and lunch.

**DATES:** Meeting will be held on November 3, 2000, starting at 7 a.m.

**FOR FURTHER INFORMATION CONTACT:** Jon Collins, Gila Box RNCA Project Coordinator, BLM, Safford Field Office, 711 14th Avenue, Safford, Arizona 85546; telephone number: (520) 348–4400.

Dated: September 28, 2000.
**Wayne King,**
*Acting Field Office Manager.*
[FR Doc. 00–25911 Filed 10–6–00; 8:45 am]
**BILLING CODE 4310–22–M**



## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[WY–920–1310–01; WYW111766]**

### Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

September 27, 2000.

Pursuant to the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW111766 for lands in Converse County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW111766 effective January 1, 2000, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

**Mavis Love,**
*Acting Chief, Leasable Minerals Section.*
[FR Doc. 00–25912 Filed 10–6–00; 8:45 am]
**BILLING CODE 4310–22–M**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[OR–958–1430–ET; HAG01–0002; OR–55528]**

### Proposed Withdrawal and Opportunity for Public Meeting; Oregon

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The Bureau of Land Management proposes to withdraw 2,637.81 acres of public lands, and approximately 560 acres of non-Federal land, if acquired, to protect the natural and recreational values of the North Fork Hunter Creek Area of Critical Environmental Concern and the Hunter Creek Bog Area of Critical Environmental Concern. This notice closes the public lands for up to 2 years from location and entry from the mining laws. The public lands will remain open to the mineral leasing laws.

**EFFECTIVE DATE:** Comments and requests for a public meeting must be received by January 10, 2001.

**ADDRESSES:** Comments and meetings requests should be sent to the Oregon/Washington State Director, BLM, P.O. Box 2965, Portland, Oregon 97208–2965.

**FOR FURTHER INFORMATION CONTACT:** Allison O'Brien, BLM Oregon/Washington State Office, 503–952–6171.

**SUPPLEMENTARY INFORMATION:** On October 3, 2000, a petition/application was approved allowing the Bureau of Land Management to file an application to withdraw the following described public lands and non-Federal lands from entry and location under the United States mining laws (30 U.S.C. Ch. 2 (1994)), subject to valid existing rights:

**Willamette Meridian**

Public Lands

T. 37 S., R. 14 W.,
Sec. 1, lots 1 to 4, inclusive, S½N½, NW¼SW¼, E½SW¼, and SE¼;
Sec. 2, NE¼ and E½SE¼;
Sec. 11, E½;
Sec. 12, NE¼, E½NW¼, SW¼SW¼, E½SW¼, and SE¼;
Sec. 13, N½N½;
Sec. 14, NE¼NE¼ and SE¼NW¼;
Sec. 24, NE¼NE¼, S½NE¼, NW¼NW¼, S½NW¼, SW¼, and SE¼.

The areas described aggregate approximately 2,637.81 acres in Curry County.

Non-Federal Lands:

T. 37 S., R. 14 W.,
Sec. 1, SW¼SW¼;
Sec. 12, W½NW¼ and NW¼SW¼;
Sec. 13, S½N½ and SW¼;
Sec. 24, NE¼NW¼ and NW¼NE¼.

The areas described aggregate approximately 560 acres in Curry County.

The purpose of the withdrawal would be to protect, conserve, and enhance special status species (*i.e.*, threatened, endangered, and other classifications), natural systems/plant communities, fish and wildlife habitat, known historical and cultural resources, public demand recreational values, and the substantial investment of Federal funds within the North Fork Hunter Creek and Hunter Creek Bog Area of Critical Environmental Concern (ACEC) areas.

For a period of 91 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the State Director at the address indicated above.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed action. All interested parties who desire a public meeting for the purpose of being heard on the proposed action must submit a written request to the State Director at the address indicated above within 91 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

For a period of two (2) years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary land uses which may be permitted during this segregative period include licenses, permits, cooperative agreements, or discretionary land use authorizations, upon approval of the authorized officer of the Bureau of Land Management.

Dated: October 3, 2000.
**Sherrie L. Reid,**
*Acting Chief, Branch of Realty and Records Services.*
[FR Doc. 00–25966 Filed 10–6–00; 8:45 am]
**BILLING CODE 4310–33–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### 60-Day Notice of Intention To Request Clearance of Collection of Information; Opportunity for Public Comment

**AGENCY:** Department of the Interior, National Park Service, Acadia National Park.

**ACTION:** Notice and request for comments.

**SUMMARY:** The National Park Service (NPS) in conjunction with the U.S. Navy and the University of Vermont, is proposing in 2001 to conduct a survey of military and civilian employees of the U.S. Navy Base located in the Schoodic Peninsula section of Acadia National Park. In the survey, employees will be asked about their recreational use of Acadia National Park and their feelings about how Navy Base property should be used if and when it is transferred to the National Park Service.

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| | Estimated numbers of responses | Burden hours |
|---|---|---|
| Survey of Employees at the U.S. Navy Base at Schoodic, Maine | 200 | 50 |

Under provisions of the Paperwork Reduction Act of 1995 and 5 CFR Part 1320, Reporting and Record Keeping Requirements, the National Park Service is soliciting comments on the need for gathering the information in the proposed surveys. The NPS also is asking for comments on the practical utility of the information being gathered; the accuracy of the burden hour estimate; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden to respondents, including use of automated information collection techniques or other forms of information technology.

The NPS goal in conducting this survey is to determine the amount and type of recreational use of Acadia National Park by U.S. Navy Base employees, and how these employees feel about potential future uses of Navy Base property if and when this property is transferred to the National Park Service

**DATES:** Public comments will be accepted on or before December 11, 2000.

**SEND COMMENTS TO:** Robert E. Manning, School of Natural Resources, University of Vermont, 356 Aiken Center, Burlington, VT 05405.

**FOR FURTHER INFORMATION CONTACT:** Robert E. Manning: Voice: (802) 656–3096, e-mail: <*rmanning@nature.snr.uvm.edu.*>

**SUPPLEMENTARY INFORMATION:**

*Titles:* Survey of Employees at the U.S. Navy Base at Schoodic, Maine.

*Bureau form No.:* None.

*OMB No.:* To be requested.

*Expiration date:* To be requested.

*Type of request:* Request for new clearance.

*Description of need:* The National Park Service needs information to plan for the potential transfer of property at the U.S. Navy Base at Schoodic, Maine to the National Park Service.

*Automated data collection:* At the present time, there is not an automated way to gather this information because it includes asking respondents about their use of Acadia National Park and their feelings about how Navy Base property should be used.

*Description of respondents:* Military and civilian employees of the U.S. Navy Base at Schoodic, Maine.

*Estimated average number of respondents:* 200.

*Estimated average number of responses:* Each respondent will respond only one time, so the number of responses will be the same as the number of respondents.

*Estimated average burden hours per response:* 15 minutes.

*Frequency of response:* 1 time per respondent.

*Estimated annual reporting burden:* 50 hours.

Dated: October 4, 2000.

**Leonard E. Stowe,**

*Information Collection Clearance Officer, WASO Administrative Program Center, National Park Service.*

[FR Doc. 00–25963 Filed 10–6–00; 8:45 am]

**BILLING CODE 4310–70–M**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Notice of Proposed Information Collection

**AGENCY:** National Park Service, DOI.

**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, the National Park Service (NPS) is announcing its intention to renew authority for the collection of information under 36 CFR part 51, section 51.47 regarding the appeal of a preferred offeror determination, sections 51.54 and 51.55 regarding NPS approval of the construction of capital improvements by concessioners, and section 51.98 concerning recordkeeping requirements with which concessioners must comply. The collection described below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The information request describes the nature of the information collection and the expected burden and cost.

**DATES:** OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, public comments should be submitted to OMB by November 9, 2000, in order to be assured of consideration.

**FOR FURTHER INFORMATION CONTACT:** To request a copy of the information collection request, explanatory information and related materials, contact Wendelin M. Mann at (202) 565–1219, or electronically to *wendy_mann@nps.gov.*

**SUPPLEMENTARY INFORMATION:** The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 13200.8(d)). NPS has submitted a request to OMB to renew approval of the collection of information for 36 CFR part 51, section 51.47 regarding the appeal of a preferred offeror determination, sections 51.54 and 51.55 regarding NPS approval of the construction of capital improvements by concessioners, and section 51.98 concerning recordkeeping requirements with which concessioners must comply. NPS is requesting a 3-year term of approval for this information collection activity.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection of information is 1024–0231, and this collection is referenced in 36 CFR section 51.104(c).

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on these collections of information was published on July 12, 2000 (65 FR 43036). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activity:

*Title:* Concession Contracts—36 CFR 51.

*OMB Control Number:* 1024–0231.

*Summary:* The regulations at 36 CFR Part 51 primarily implement Title IV of the National Parks Omnibus Management Act of 1998 (Pub. L. 105–391 or the Act), which provides new legislative authority, policies and requirements for the solicitation, award and administration of NPS concession contracts. Section 51.47 of the regulations provides any person may submit a written appeal of a decision by the Director that a concessioner is or is not a preferred offeror. Sections 51.55 and 51.56 require concessioners who construct capital improvements to submit information including, without limitation, plans, specifications, cost estimates, and construction reports for the Director's review and consideration in connection with the granting of leasehold surrender interest. Section 51.98 requires concessioners to keep records during the term of the concession contract and for five calendar years after its termination or expiration.

*Bureau Form Number:* None.

*Frequency of Collection:* On occasion.

*Description of Respondents:* Persons or entities seeking a National Park Service concession contract.

*Total Annual Responses:* 758.

*Total Annual Burden Hours:* 3,276.

*Total Non-hour Cost Burden:* $0.

Send comments on the need for the collection of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collection; and ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information, to the following address. Please refer to OMB control number 1024–0231 in all correspondence.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identify, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

**ADDRESSES:** Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of the Interior Desk Officer, 725 17th Street, NW., Washington, DC 20503. Also, please send a copy of your comments to Wendelin M. Mann, Concession Program, National Park Service, 1849 C Street, NW., Room 7313, Washington, DC 20240, or electronically to *wendy_mann@nps.gov.*

Dated: October 4, 2000.

**Leonard E. Stowe,**

*Information Collection Office, WASO Administrative Program Center.*

[FR Doc. 00–25962 Filed 10–6–00; 8:45 am]

**BILLING CODE 4310–70–P**



## DEPARTMENT OF THE INTERIOR

### National Park Service

### National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before September 30, 2000. Pursuant to section 60.13 of 36 CFR part 60, written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by October 25, 2000.

**Carol D. Shull,**

*Keeper of the National Register.*

**ARIZONA**

**Maricopa County**

Angulo—Hostetter House, 150 North Wilbur, Mesa, 00001266

**ARKANSAS**

**Jefferson County**

Strengthen the Arm of Liberty Monument—Pine Bluff, 10th Ave. bet. Georgia and State Sts., Pine Bluff, 00001265

**Washington County**

Strengthen the Arm of Liberty Monument—Fayetteville, North St., NE of jct. with Park Ave., Fayetteville, 00001264

**CALIFORNIA**

**Marin County**

Lyford, Benjamin and Hilarita, House, 376 Greenwood Beach Rd., Tiburon, 00001268

**Riverside County**

Victoria Avenue, Victoria Ave., from Arlington Ave. to Boundary Ln., Riverside, 00001267

**Sacramento County**

Runyon House, 12865 River Rd., Courtland, 00001270

**IDAHO**

**Shoshone County**

Chicago, Milwaukee, St. Paul and Pacific Railroad Company Historic District, Idaho Panhandle National Forest, Avery, 00001269

**MARYLAND**

**Carroll County**

Warfield Complex, Hubner, and T Buildings, Springfield Hospital Center, Sykesville, 00001271

**MASSACHUSETTS**

**Essex County**

Norwood—Hyatt House, 704 Washington St., Gloucester, 00001272

**Middlesex County**

Marcia Browne Junior High School, 295 Broadway, Malden, 00001273

**NEW MEXICO**

**Taos County**

Black Copper Mine and Stamp Mill Historic District, Black Copper Canyon Rd., Red River, 00001274

**NEW YORK**

**Albany County**

Lil's Diner, 893 Broadway, Albany, 00001278

**Richmond County**

Our Lady of Mount Carmel Grotto, 36 Amity St., Staten Island, 00001276

**Rockland County**

Peck, Henry M., House, US 9W at Helen Hayes Hospital, Haverstraw, 00001279

**Ulster County**

Bruynswick School No. 8, 2146 Bruynswick Rd., Shawangunk, 00001277

Trapps Mountain Inlet Historic District, Off NY 44/55, Cliner, 00001275

[FR Doc. 00–2589[illegible]led 10–6–00; 8:45 am]

**BILLING CODE 4310–[illegible]**

## INTERNATIONAL TRADE COMMISSION

### Sunshine Act Meeting

**TIME AND DATE:** October 16, 2000 at 11 a.m.

**PLACE:** Room 10[illegible]00 E Street SW., Washington, DC [illegible]436, Telephone: (202) 205–2000.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:**

1. Agenda for future meeting: none.
2. Minutes.
3. Ratification list.
4. Inv. Nos. 731-TA–474–475 (Review) (Chrome-Plated Lug Nuts from China and Taiwan)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on October 25, 2000.)
5. Outstanding action jackets:

(1.) Document No. GC–00–070: Approval of final disposition of investigation in Inv. No. 337–TA–395 (Certain EPROM, EEPROM, Flash Memory, and Flash Microcontroller Semiconductor Devices and Products Containing Same).

(2.) Document No. GC–00–071: Administrative matters.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: October 4, 2000.

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By order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 00–26018 Filed 10–5–00; 11:04 am]

BILLING CODE 7020–02–U

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA")

Consistent with Departmental policy, 28 CFR 50.7, and under Section 122(d) of CERCLA, 42 U.S.C. 9622(d), notice is hereby given that a proposed consent decree in *United States and State of New York* v. *City of Batavia, et al.*, Civ. No. 00–CV–0838E(SR), was lodged on September 29, 2000 with the United States District Court for the Western District of New York. The Consent Decree concerns hazardous waste contamination at the Batavia Landfill Superfund Site (the "Site"), located in the Town of Batavia, Genesee County, New York. The Consent Decree would resolve the liability in connection with the Site for implementation of response actions, reimbursement of response costs incurred and to be incurred by the United States, and natural resource damages, as to twenty defendants against whom the United States filed a complaint on behalf of the United States Environmental Protection Agency ("EPA") and the Secretary of the United States Department of the Interior ("DOI"). The Consent Decree would also resolve the liability to the State of New York of essentially the same group of defendants for reimbursement of response costs incurred by the State of New York in connection with the Site. In addition, the Consent Decree would resolve any liability the United States on behalf of the Veterans Administration may have for response actions, reimbursement of response costs, or natural resource damages in connection with the Site.

The Consent Decree requires three of the settling defendants—the City of Batavia, the Town of Batavia, and N L Industries, Inc. ("the Settling Work Defendants")—to perform the remedial action at the Site selected by EPA in its 1995 Record of Decision at an estimated cost of approximately $12.78 million and to reimburse the United States approximately three-fourths of the United States' future response costs in connection with the Site. The Settling Work Defendants will also create six acres of wetlands and pay $51,000 in full reimbursement of the DOI's past costs of assessing natural resource damages and estimated future costs of monitoring wetlands work at the Site. The United States will fund approximately one-fourth of this settlement, by relinquishing its claim for approximately $4 million in past response costs incurred by EPA in connection with the Site, and by pre-authorizing the Settling Work Defendants to apply for up to approximately $808,000 in reimbursement from the Hazardous Substance Superfund (established by 26 U.S.C. 9507), and for approximately one-fourth of any excess of costs incurred by the Settling Work Defendants above the projected cost total for the remedial action. The other settling defendants, and the United States on behalf of the Veterans Administration, will resolve their liability by making payments in accordance with a private settlement agreement among the defendants into an escrow account established by the Settling Work Defendants. The United States' payment to the escrow account on behalf of the Veterans Administration is $565,226.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States and State of New York* v. *City of Batavia, et al.*, DOJ Ref. #90–11–2–861.

The proposed consent decree may be examined at the office of the United States Attorney for the Western District of New York, 138 Delaware Avenue, Buffalo, New York 14202 (contact Assistant United States Attorney Mary K. Roach); and the Region II Office of the Environmental Protection Agency, 290 Broadway, New York, New York, 10007–1866 (contact Assistant Regional Counsel Beverly Kolenberg). A copy of the proposed consent decree may be obtained by mail from the Consent Decree Library, P.O. Box 7611, Washington, DC 20044–7611. In requesting a copy please refer to the referenced case and enclose a check in the amount of $25.25 (25 cents per page reproduction costs) for the Consent Decree without Appendices, or in the amount of $68.25 for the Consent Decree with all Appendices, payable to the Consent Decree Library.

**Bruce S. Gelber,**

*Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 00–25902 Filed 10–6–00; 8:45 am]

BILLING CODE 4410–15–M

## DEPARTMENT OF JUSTICE

### Notice of Proposed Agreement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given of a proposed Prospective Purchaser Agreement and Covenant Not to Sue between the United States on behalf of the U.S. Environmental Protection Agency ("EPA") and Renaissance Land Associates, LP, and Renaissance Land Associates Acquisition Corporation (hereinafter referred to as "Purchasers").

The proposed agreement would allow Purchasers to acquire title to approximately 5 acres of land ("the Property") within the Crater Resources Superfund Site ("Site") located in King of Prussia, Upper Merion Township, Pennsylvania, without becoming liable under CERCLA (the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. 9601 *et seq.*) for pre-existing contamination at the Site. Purchasers plan to develop the Property for commercial office uses. In consideration of the Agreement, Purchasers will pay the United States $100,000 to be used as partial reimbursement for past response costs incurred at the Site. In addition, Purchasers will conduct any necessary sampling and cleanup of contamination located on the Property.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed agreement. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *In the matter of Crater Resources Superfund Site—Agreement and Covenant Not To Sue*, Docket Number CERC–PPA–2000–0010, DOJ Ref. #90–11–2–1283.

The proposed Agreement may be examined and copied at the Region III Office of the Environmental Protection Agency, c/o Yvette Hamilton-Taylor, Senior Assistant Regional Counsel, 1650 Arch Street, Philadelphia, PA 19103. A copy of the proposed Agreement may be obtained by mail from the Consent Decree Library, P.O. Box No. 7611, Washington, D.C. 20044. In requesting a copy, please refer to the referenced matter and enclose a check in the amount of $9.25 (25 cents per page reproduction costs), payable to the Consent Decree Library.

**Bruce Gelber,**

*Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 00–25903 Filed 10–6–00; 8:45 am]

BILLING CODE 4410–15–M



## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Therm-O-Rock West, Inc.*, Civil No. 00–1849 was lodged on September 28, 2000, with the United States District Court for District of Arizona.

The consent decree settles claims for civil penalties and injunctive relief against Therm-O-Rock for: civil penalties and injunctive relief pursuant to Section 113(b) of the Clean Air Act, 42 U.S.C. 7413(b), based on Therm-O-Rock's violations of Subparts A and UUU of the New Source Performance Standards ("NSPS"), 40 CFR Part 60. Pursuant to the consent decree Therm-O-Rock will pay a civil penalty of $25,000.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Therm-O-Rock West, Inc.*, DOJ Ref. #90–5–2–1–2233.

The proposed consent decree may be examined at the office of the United States Attorney, for the District of Arizona, 230 North First Ave Phoenix, AZ 85025; and the Region IX Office of the Environmental Protection Agency, 75 Hawthorne Street San Francisco, CA. A copy of the proposed consent decree may be obtained by mail from the Consent Decree Library, P.O. Box 7611, Washington, D.C. 20044–7611. In requesting a copy please refer to the referenced case and enclose a check in the amount of $3.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

**Walker B. Smith,**

*Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 00–25899 Filed 10–6–00; 8:45 am]

BILLING CODE 4410–15–M

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act and Resource Conservation and Recovery Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on September 28, 2000, a proposed Consent Decree in *United States* v. *TPI Petroleum, Inc.*, Civil Action No. 1:00–CV–732, was lodged with the United States District Court for the Western District of Michigan.

The Consent Decree resolves certain claims of the United States against TPI Petroleum, Inc. under Sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a) and Section 7003 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6973 at the former Organic Chemical, Inc. facility ("the Site") in Grandville, Kent County, Michigan. The defendant has been named as a former owner/operator of the Site at the time that hazardous substances were disposed of at the Site.

The settlement requires the settling defendant to make payment of $674,431, plus interest from June 1998, for past response costs incurred by the U.S. Environmental Protection Agency in connection with the Site and for settling defendant to perform the soil component of EPA's selected second phase or Operable Unit for the Site's remediation.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, United States Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044–7611, and should refer to *United States* v. *TPI Petroleum, Inc.*, Civil Action No. 1:00–CV–732, and the Department of Justice Reference No. 90–11–3–990A. Commenters may request an opportunity for a public hearing in the affected area, in accordance with Section 7003(d) of RCRA, 42 U.S.C. 6973(d), by contacting Jerome Kujawa (EPA Region 5) at (312) 886–6731.

The proposed Consent Decree may be examined at the Office of the United States Attorney for the Western District of Michigan, 330 Ionia Avenue, NW., Suite 501, Grand Rapids, Michigan 49503; the Region 5 Office of the United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590. A copy of the proposed Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044–7611. In requesting a copy, please refer to DJ #90–11–3–990A, and enclose a check in the amount of $18.50 (25 cents per page for reproduction costs), payable to the Consent Decree Library.

**Bruce Gelber,**

*Deputy Chief, Environmental Enforcement Section, Environmental and Natural Resources Division.*

[FR Doc. 00–25901 Filed 10–6–00; 8:45 am]

BILLING CODE 4410–15–M

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on October 2, 2000, a proposed Consent Decree in *United States* v. *Whiteford Kenworth, Inc., et al.*, Civil Action No. 3:99 CV 0055AS, was lodged with the United States District Court for teh Northern District of Indiana.

The Consent Decree settles an action brought under Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601, *et seq.*, ("CERCLA") for the recovery of past costs incurred by the United States in responding to releases or threatened releases of hazardous substances at the Whiteford Sales & Service Site, located in South Bend, Indiana. The proposed settlement set forth in the Consent Decree addresses the liability of four defendants in this action, each of which has been named as an owner and/or operator of the Site. Under the terms of the proposed decree, the settling defendants will pay the United States a total of $350,000 in settlement of the United States' past costs claims against them.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the Consent Decrees. Comments should be addressed

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to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, D.C. 20044–7611, and should refer to *United States* v. *Whiteford Kenworth, Inc., et al.*, D.J. Ref. 90–11–3–06145.

The Consent Decree may be examined at the office of the United States Attorney, Northern District of Indiana, 204 South Main Street, South Bend, Indiana 466001, and at United States Environmental Protection Agency Region V, 77 West Jackson Boulevard, Chicago, Illinois 60604. A copy of the proposed consent decree may also be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC. 20044. In requesting a copy please refer to the referenced case and enclose a check in the amount of $5.25 (25 cents per page reproduction costs), payable to the Consent Decree Library.

**Bruce S. Gelber,**

*Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 00–25900 Filed 10–6–00; 8:45 am]

BILLING CODE 4410–15–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Catalytica Advanced Technologies

Notice is hereby given that, on July 24, 2000, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Catalytica Advanced Technologies has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Catalytica Advanced Technologies, Inc., Mountain View, CA; and Argonaut Technologies, Inc., San Carlos, CA. The nature and objectives of the venture are to conduct research on the discovery and development of emission control catalysts for lean burn engines using a novel, rapid Catalyst Development Engine. The activities of this Joint Venture project will be partially funded by an award from the Advanced Technology Program, National Institute of Standards and Technology, Department of Commerce.

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 00–25898 Filed 10–6–00; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—International Pharmaceutical Aerosol Consortium for Toxicology Testing of HFA–134a (IPACT–I)

Notice is hereby given that, on July 6, 2000, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), The International Pharmaceutical Aerosol Consortium for Toxicology Testing of HFA–134a ("IPACT–I") filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing a change in name of some of its members.

The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Astra AB, a member of IPACT–I, is now known as AstraZeneca AB, Sodertalje, Sweden; Rhone-Poulenc Rorer Pharmaceuticals, Inc., a member of IPACT–I, is now known as Aventis Pharmaceuticals Products, Inc., Collegeville, PA; and Fisons plc, a member of IPACT–I, is now known as Fisons Ltd., Holmes Chapel, England, United Kingdom.

No other changes have been made in either the membership or planned activity of IPACT–I. Membership in this joint research project remains open, and IPACT–I intends to file additional written notification disclosing all changes in membership.

On August 7, 1990, IPACT–I filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on September 6, 1990 (55 Fed. Reg. 36710).

The last notification was filed with the Department on December 3, 1997. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on February 19, 1998 (63 FR 8477).

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 00–25896 Filed 10–6–00; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Personalization Consortium, Inc.

Notice is hereby given that, on September 13, 2000, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Personalization Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Charles Schwab & Co., Inc., San Francisco, CA; Vivaldi Networks, Inc., Menlo Park, CA; Angara E-Commerce Services, Mountain View, CA; Broadbase Software, Menlo Park, CA; Cyber Dialogue, New York, NY; Eucid Inc., Chicago, IL; Derivion, Markham, Ontario, Canada; Quadstone, Boston, MA; SilverStream Software, Inc., Billerica, MA; Hot Data, Inc., Austin, TX; Naviant, Newtown Square, PA; Accrue Software, Fremont, CA; Commerce Tone, Inc., Burlington, MA; Yo.com, New York, NY; Insight First, New York, NY; Art Technology Group, Inc., Cambridge, MA; and Aptilon Health, Boston, MA have been added as parties to this venture. The following members have changed their names: PrivaSeek, Broomfield, CO to Persona, Inc., Broomfield, CO; and CERES RO, Relationship Technology Solutions by NCR, Raleigh, NC to NCR, Raleigh, NC. Also, KPMG Consulting, LLC, Mountain View, CA have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Personalization Consortium, Inc. intends to file additional written notification disclosing all changes in membership.

On June 15, 2000, Personalization Consortium, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on August 11, 2000 (65 FR 49266).

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 00–25897 Filed 10–6–00; 8:45 am]

BILLING CODE 4410–11–M



## DEPARTMENT OF JUSTICE

### Office of Juvenile Justice and Delinquency Prevention

**[OJP (OJJDP)–1304]**

### Meeting of the Coalition for Juvenile Justice

**AGENCY:** Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, Justice.

**ACTION:** Notice of meeting.

**SUMMARY:** The Office of Juvenile Justice and Delinquency Prevention is announcing the meeting of the Coalition for Juvenile Justice.

**DATES:** The meeting dates are:

1. Thursday, November 9, 2000, from 9:00 a.m. until 10:00 p.m., ET.
2. Friday, November 10, 2000, from 8:30 a.m. until 6:30 p.m., ET.
3. Saturday, November 11, 2000, from 8:00 a.m. until 6:30 p.m., ET.
4. Sunday, November 12, 2000, from 8:00 a.m. until 1:00 p.m., ET.

**ADDRESS:** All meetings will be held at the Crowne Plaza Hotel, 700 N. Westshore Boulevard, Tampa, Florida 33609.

**FOR FURTHER INFORMATION CONTACT:** For information about how to attend this meeting, contact Freida Thomas, Grants Management Specialist, Office of Juvenile Justice and Delinquency Prevention, 810 7th Street, NW., Washington, DC 20531; telephone: 202–307–5924. (This is not a toll-free number.) Questions may also be submitted by fax (202–307–2819) or e-mail (Freida@ojp.usdoj.gov).

**SUPPLEMENTARY INFORMATION:** The Coalition for Juvenile Justice, established pursuant to section 9 of the Federal Advisory Committee Act, 5 U.S.C. App. 2, is meeting to carry out its advisory functions under section 5651 of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, 42 U.S.C. 5601 *et seq.* The purpose of this meeting is to discuss and adopt recommendations from members regarding the committee's responsibility to advise the OJJDP Administrator, the President, and Congress about State perspectives on the operation of OJJDP and Federal legislation pertaining to juvenile justice and delinquency prevention. This meeting will be open to the public.

Dated: October 3, 2000.

**John J. Wilson,**

*Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.*

[FR Doc. 00–25872 Filed 10–6–00; 8:45 am]

BILLING CODE 4410–18–P

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice 00–120]**

### NASA Advisory Council, Life and Microgravity Sciences and Applications Advisory Committee, NASA–NIH Advisory Subcommittee and Life Sciences Advisory Subcommittee; Joint Meeting

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of Meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Life and Microgravity Sciences and Applications Advisory Committee, NASA–NIH Advisory Subcommittee and Life Sciences Advisory Subcommittee Joint Meeting.

**DATES:** Wednesday, October 18, 2000, 8:00 a.m. to 5:00 p.m.

**ADDRESSES:** National Aeronautics and Space Administration Headquarters, 300 E Street, SW., MIC–3, Room 3H46, Washington, DC 20546.

**FOR FURTHER INFORMATION CONTACT:** Dr. David Tomko, Code UL, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0220.

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Action Status
—NASA Life Sciences Division Update
—Biology and Life Sciences at NASA
—Status of Studies on ISS NGO
—Life Sciences Division FY'00 Performance Metrics
—NASA–NIH Interaction Report
—Preparation of Committee Findings and Recommendations
—Review of Committee Findings and Recommendations

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: October 2, 2000.

**Beth M. McCormick,**

*Federal Advisory Committee Act Management Officer, National Aeronautics and Space Administration.*

[FR Doc. 00–25814 Filed 10–6–00; 8:45 am]

BILLING CODE 7510–01–U

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice 00–121]**

### NASA Advisory Council (NAC), Technology and Commercialization Advisory Committee (TCAC); Meeting

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Technology and Commercialization Advisory Committee.

**DATES:** Wednesday, November 15, 2000, 8:30 a.m. to 5 p.m. and Thursday, November 16, 2000, 8 a.m. to 12 Noon.

**ADDRESSES:** John H. Glenn Research Center, Building 3, Room 225, 2100 Brookpark Road, Cleveland, OH 44135.

**FOR FURTHER INFORMATION CONTACT:** Mr. Gregory M. Reck, Code R, National Aeronautics and Space Administration, Washington, DC 20546 (202/358–4700).

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Proposed TCAC/Aero-Space Technology Advisory Committee (ASTAC) Changes
—Overview of GRC Activities
—GRC Technology Programs
—Technology Implementation at GRC

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: October 2, 2000.

**Beth M. McCormick,**

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

[FR Doc. 00–25815 Filed 10–6–00; 8:45 am]

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## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### National Endowment for the Arts; Combined Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that three meetings of the Combined Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, D.C., 20506 as follows:

*Folk & Traditional Arts section (A)* (Access, Education, and Heritage/Preservation categories)—October 23–25, 2000, Room 716. A portion of this meeting, from 1:15 p.m. to 2:15 p.m. on October 24th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9:00 a.m. to 6:30 p.m. on October 23rd, from 9:00 a.m. to 1:15 p.m. and 2:15 p.m. to 6:30 p.m. on October 24th, and from 9:00 a.m. to 5:30 p.m. on October 25th, will be closed.

*Local Arts Agencies section* (Access, Education, and Heritage/Preservation categories)—October 26–27, 2000, Room 730. A portion of this meeting, from 10:30 a.m. to 12:00 p.m. on October 27th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9:00 a.m. to 5:00 p.m. on October 26th and from 9:00 a.m. to 10:30 a.m. and 12:00 p.m. to 3:00 p.m. on October 27th, will be closed.

*Media Arts section* (Access, Education, and Heritage/Preservation categories)—October 24–25, 2000, Room 714. A portion of this meeting, from 2:45 p.m. to 3:45 p.m. on October 25th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9:00 a.m. to 6:00 p.m. on October 24th and from 9:00 a.m. to 2:45 p.m. and 3:45 p.m. to 5:30 p.m. on October 26th, will be closed.

The closed portions of these meetings are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 12, 2000, these sessions will be closed to the public pursuant to (c)(4)(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, D.C., 20506, or call 202/682–5691.

Dated: October 3, 2000.

**Kathy Plowitz-Worden,**

*Panel Coordinator, Panel Operations, National Endowment for the Arts.*

[FR Doc. 00–25816 Filed 10–6–00; 8:45 am]

BILLING CODE 7537–01–U

## NATIONAL LABOR RELATIONS BOARD

### Privacy Act of 1974, Publication of Revised Systems of Records Notices

**AGENCY:** National Labor Relations Board (NLRB).

**ACTION:** Revised publication of Systems of Records Notices NLRB–5, Employment and Performance Records, Attorney and Field Examiners, and NLRB–6, Employment and Performance Records, Nonprofessionals and Nonlegal Professionals.

**SUMMARY:** The Privacy Act of 1974, as amended, requires that each agency publish a notice of a proposed new system of records, as well as proposals to revise existing systems of records. This notice alters two existing Privacy Act Systems of Records Notices, NLRB–5, Employment and Performance Records, Attorney and Field Examiners, and NLRB–6, Employment and Performance Records, Nonprofessionals and Nonlegal Professionals. This change is accomplished by deleting one routine use; dividing one routine use into two distinct uses for purposes of clarity; amending the language of five routine uses, updating the addresses of systems locations and updating citations referring to 29 CFR 102.117; as well as making several insignificant administrative language revisions.

All persons are advised that in the absence of submitted comments, views, or arguments considered by the NLRB as warranting modification of the notices to be published, it is the intention of the NLRB that the notices shall be effective upon expiration of the comment period without further action by this Agency.

**DATES:** The amended systems of records notices will become effective without further notice November 9, 2000 unless comments are received on or before that date which result in a contrary determination.

**ADDRESSES:** Written comments on the amended Privacy Act Systems of Records Notices may be submitted to the Executive Secretary, National Labor Relations Board, 1099 14th Street, NW, Room 11600, Washington, DC 20570–0001.

Copies of all such communications will be available for examination by interested persons during normal business hours (8:30 a.m. to 5 p.m. Monday through Friday, excluding Federal holidays).

**FOR FURTHER INFORMATION CONTACT:** John J. Toner, Executive Secretary, National Labor Relations Board, 1099 14th Street, NW, Room 11600, Washington, DC 20570–0001.

**SUPPLEMENTARY INFORMATION:** The following changes have been made to both existing NLRB Systems of Records Notices, NLRB–5, Employment and Performance Records, Attorneys and Field Examiners, and NLRB–6, Employment and Performance Records, Nonprofessionals and Nonlegal Professionals.

1. Routine use 1 has been deleted because the specified "need to know" in it is authorized by 5 U.S.C. 552a(b)(1) and (5).

2. The language of routine use 3 has been amended to specify that on disclosure to an inquiring congressional office, the subject individual must be the constituent about whom the records are maintained. Routine use 3 has been renumbered as 2.

3. Routine use 4 has been divided into two distinct uses for purposes of clarity, one dealing solely with arbitrators and the other with officials of labor organizations. The language has been amended to conform to the intent of routine use (e) in the Government-wide system of records OPM/GOVT–2, Employee Performance File System Records, to eliminate the NLRB requirement that the information that may be disclosed to a labor organization "shall be furnished in depersonalized form, *i.e.*, without personal identifiers." Routine use (e) is a Government-wide system of records OPM/GOVT–2 which provides that the information will be "disclosed to an arbitrator to resolve disputes under a negotiated grievance procedure or to officials of labor organizations under 5 U.S.C. Chapter 71 when relevant and necessary to their duties of exclusive representation." The NLRB is deleting the requirement that "[W]henever feasible and consistent with the responsibilities under the Act, such information shall be furnished in depersonalized form, *i.e.*, without personal identifiers," a requirement not contained in OPM/GOVT–2 routine use (e). Routine use 4 has been renumbered 3 and 4.

4. Routine use 5 has been amended to specify more exactly the categories of users and the information that may be disclosed, and has been renumbered 5.

5. Routine use 6 has been amended by changing reference from "Agency" to "NLRB" for more specificity, and has been renumbered 6.

6. Routine use 7 has been amended to specify more exactly the information that may be disclosed to a court or an adjudicative body in the course of presenting evidence or argument including disclosure to opposing counsel or witnesses in the course of civil discovery, and has been renumbered 7.

7. The addresses of systems locations and managers in NLRB–5, and NLRB–6 has been changed from "NLRB, 1717 Pennsylvania Avenue, NW, Washington, DC 20570–0001" to "NLRB, 1099 14th Street, NW, Washington, DC 20570–0001."

8. Reference to 29 CFR 102.117 citations have been changed to read as follows for the paragraphs in Notification Procedures, 29 CFR 102.117(f); Records Access Procedures, 29 CFR 102.117(g) and (h); and Contesting Records Procedures, 29 CFR 102.117(i).

A report of the proposal to revise these systems of records notices was filed pursuant to 5 U.S.C. 552(r) with Congress and the Office of Management and Budget.

Dated: Washington, DC, September 28, 2000.

By direction of the Board.

**John J. Toner,**

*Executive Secretary.*



**NLRB–5**

**SYSTEM NAME:**

Employment and Performance Records, Attorneys and Field Examiners.

**SECURITY CLASSIFICATION:**

None.

**SYSTEM LOCATION:**

Office of Executive Assistant, Division of Operations Management; Board Members' Offices; Office of Representation Appeals; Office of the Solicitor, NLRB, 1099 14th Street, NW, Washington, DC 20570–0001.

Washington and Field Offices are authorized to maintain the records or copies of the records for current and former NLRB employees of that office. See attached appendix for addresses of the Washington and Field Offices.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Current and former Attorneys and Field Examiners in offices under the general supervision of the General Counsel; current and former Attorneys employed on Board Members' Staffs, in the Office of the Solicitor, and in the Office of Representation Appeals.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Records may include copies of employment applications, copies of personnel records, educational transcripts, resumes, employment interview reports, evaluation reports, career development appraisals, recommendations concerning promotion, copies of the official personnel file, correspondence, memoranda, and other relevant information.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 4301 *et seq.*; 29 U.S.C. 153(D), 154, 159, 160.

**PURPOSES:**

These records document employee actions and performance appraisals.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

The records, or information contained therein may be disclosed to:

1. Individuals who have a need for the information in connection with the processing of an appeal, grievance, or complaint.

2. A Member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office made at the written request of the constituent about whom the record is maintained.

3. Officials of labor organizations recognized under 5 U.S.C. Chapter 71, when disclosure is not prohibited by law; and the data is normally maintained by the Agency in the regular course of business and is reasonably available and necessary for full and proper discussion, understanding and negotiation of subjects within the scope of collective bargaining. The foregoing shall have the identical meaning as 5 U.S.C. 7114(b)(4) as interpreted by the FLRA and the courts.

4. An arbitrator to resolve disputes under a negotiated grievance arbitration procedure.

5. Other agencies, offices, establishments, and authorities, whether Federal, State, or local, authorized or charged with the responsibility to investigate, litigate, prosecute, enforce, or implement a statute, rule, regulation, or order, where the record or information, by itself or in connection with other records or information, indicates a violation or potential violation of law, whether criminal, civil, administrative, or regulatory in nature, and whether arising by general statute, or particular program statute, or by regulation, rule or order issued pursuant thereto.

6. The Department of Justice for use in litigation when either: (a) The NLRB or any component thereof; (b) any employee of the NLRB in his or her official capacity; (c) any employee of the NLRB in his or her individual capacity where the Department of Justice has agreed to represent the employee; or (d) the United States Government, where the NLRB determines that litigation is likely to affect the NLRB or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the NLRB to be relevant and necessary to the litigation, provided that in each case the Agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

7. A court, magistrate, administrative tribunal, or other adjudicatory body in the course of presenting evidence or argument, including disclosure to opposing counsel or witness in the course of civil discovery, litigation, or settlement negotiations, or in connection with criminal law proceedings, when: (a) The NLRB or any component thereof; or (b) any employee of the NLRB in his or her official capacity; (c) any employee of the NLRB in his or her individual capacity, where the NLRB has agreed to represent the employee; or (d) the United States Government, is a party to litigation or has interest in such litigation, and determines that such disclosure is relevant and necessary to the litigation and that the use of such records is therefore deemed by the NLRB to be for a purpose that is compatible with the purpose for which the records were collected.

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**DISCLOSURE TO CONSUMER REPORTING AGENCIES:**

None.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Maintained on paper including forms, letters, and memoranda, and on electronic automated media.

**RETRIEVABILITY:**

Alphabetically by name.

**SAFEGUARDS:**

Maintained in file cabinets. During duty hours cabinets are under the surveillance of personnel charged with custody of the records and after duty hours are behind locked doors. Access is limited to personnel having a need for access to perform their official functions. Computer records can be accessed only through use of confidential procedures and passwords. Disks are limited to those with access codes and are stored in a locked room during and after duty hours.

**RETENTION AND DISPOSAL:**

Retained and disposed of in accordance with applicable General Records Schedules issued by the National Archives and Records Administration, and the Office of Personnel Management.

**SYSTEM MANAGER(S) AND ADDRESS:**

1. Attorneys and Field Examiners under supervision of the General Counsel—Executive Assistant, Division of Operations Management, NLRB, 1099 14th Street, NW., Washington, DC 20570–0001.

2. Attorneys under supervision of a Board Member—Chief Counsel to that Board Member, NLRB, 1099 14th Street, NW, Washington, DC 20570–0001.

3. Attorneys under supervision of the Director, Office of Representation Appeals—Director, Office of Representation Appeals, NLRB, 1099 14th Street, NW., Washington, DC 20570–0001.

4. Attorneys under supervision of the Solicitor—Solicitor, NLRB, 1099 14th Street, NW., Washington, DC 20570–0001.

See the attached appendix for titles and addresses of officials responsible for this system at their location.

**NOTIFICATION PROCEDURES:**

An individual may inquire as to whether this system contains a record pertaining to him or her by directing a request to the appropriate System Manager in accordance with the procedures set forth in 29 CFR 102.117(f).

**RECORD ACCESS PROCEDURES:**

An individual seeking to gain access to records in this system pertaining to him or her should contact the appropriate System Manager in accordance with the procedures set forth in 29 CFR 102.117(g) and (h).

**CONTESTING RECORD PROCEDURES:**

An individual may request amendment of a record pertaining to such individual maintained in this system by directing a request to the appropriate System Manager in accordance with the procedures set forth in 29 CFR 102.117(i).

**RECORD SOURCE CATEGORIES:**

The individual, the Personnel Branch, educational institutions, interviewers, evaluators, references, previous employers and supervisors.

**NLRB–6**

**SYSTEM NAME:**

Employment and Performance Records, Nonprofessionals and Nonlegal Professionals.

**SECURITY CLASSIFICATION:**

None.

**SYSTEM LOCATION:**

Records are authorized to be maintained for current and former NLRB employees in all Agency offices. See the attached appendix for the addresses of these offices.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Current and former nonprofessional employees and nonlegal professional employees of the Agency.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Records may include copies of employment applications, copies of personnel records, educational transcripts, resumes, employment interview reports, evaluation reports, career development appraisals, recommendations concerning promotion, copies of the official personnel file, correspondence, memoranda, and other relevant information.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 4301 *et seq.*; 29 U.S.C. 153(d), 154, 159, and 160.

**PURPOSE(S):**

These records document employee actions and performance appraisals.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

The records, or information therefrom, are disclosed to:

1. Individuals who have a need for the information in connection with the processing of an appeal, grievance, or complaint.

2. A Member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office made at the written request of the constituent about whom the record is maintained.

3. Officials of labor organizations recognized under 5 U.S.C. Chapter 71, when disclosure is not prohibited by law; and the data is normally maintained by the Agency in the regular course of business and is reasonably available and necessary for full and proper discussion, understanding and negotiation of subjects within the scope of collective bargaining. The foregoing shall have the identical meaning as 5 U.S.C. 7114(b)(4) as interpreted by the FLRA and the courts.

4. An arbitrator to resolve disputes under a negotiated grievance arbitration procedure.

5. Other agencies, offices, establishments, and authorities, whether Federal, State, or local, authorized or charged with the responsibility to investigate, litigate, prosecute, enforce, or implement a statute, rule, regulation, or order, where the record or information, by itself or in connection with other records or information, indicates a violation or potential violation of law, whether criminal, civil, administrative, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto.

6. The Department of Justice for use in litigation when either: (a) The NLRB or any component thereof; (b) any employee of the NLRB in his or her official capacity; (c) any employee of the NLRB in his or her individual capacity where the Department of Justice has agreed to represent the employee; or (d) the United States Government where the NLRB determines that litigation is likely to affect the NLRB or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the NLRB to be relevant and necessary to the litigation, provided that in each case the Agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

7. A court, magistrate, administrative tribunal, or other adjudicatory body in the course of presenting evidence or argument, including disclosure to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, or in connection with criminal law proceedings, when: (a) the NLRB or any component thereof; or (b) any employee of the NLRB in his or her official capacity; or (c) any employee of the NLRB in his or her individual capacity, where the NLRB has agreed to represent the employee; or (d) the United States Government, is a party to litigation or has interest in such litigation, and determines that such disclosure is relevant and necessary to the litigation and that the use of such records is therefore deemed by the Agency to be for a purpose that is compatible with the purpose for which the records were collected.



**DISCLOSURE TO CONSUMER REPORTING AGENCIES:**

None.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Maintained on paper including forms, letters, memoranda, and on electronic automated media.

**RETRIEVABILITY:**

Alphabetically by name.

**SAFEGUARDS:**

Maintained in file cabinets. During duty hours cabinets are under the surveillance of personnel charged with the custody of the records, and after duty hours are behind locked doors. Access is limited to personnel having a need for access to perform their official functions. Computer records can be accessed only through use of confidential procedures and passwords. Disks are limited to those with access codes and are stored in a locked room during and after duty hours.

**RETENTION AND DISPOSAL:**

Retained and disposed of in accordance with applicable General Records Schedules issued by the National Archives and Records Administration and the Office of Personnel Management.

**SYSTEM MANAGER(S) AND ADDRESS:**

See the attached appendix for the titles and addresses of officials responsible for this system at their locations.

**NOTIFICATION PROCEDURES:**

An individual may inquire as to whether this system contains a record pertaining to him or her by directing a request to the appropriate System Manager in accordance with the procedures set forth in 29 CFR 102.117(f).

**RECORD ACCESS PROCEDURES:**

An individual seeking to gain access to records in this system pertaining to him or her should contact the appropriate System Manager in accordance with the procedures set forth in 29 CFR 102.117(g) and (h).

**CONTESTING RECORD PROCEDURES:**

An individual may request amendment of a record pertaining to such individual maintained in this system by directing a request to the appropriate System Manager in accordance with the procedures set forth in 29 CFR 102.117(i).

**RECORD SOURCE CATEGORIES:**

The individual, the Personnel Branch, professional employees, educational institutions, interviewers, evaluators, references, previous employers and supervisors.

## Appendix

Names and Addresses of NLRB Offices referenced in Notice of Records System shown above.

**NLRB HEADQUARTERS OFFICES**

1099 14th Street, NW, Washington, DC 20570–0001

**OFFICES OF THE BOARD**

Members of the Board
Executive Secretary, Office of the Executive Secretary
Director, Office of Representation Appeals
Director, Division of Information
Solicitor
Inspector General, Office of Inspector General
Chief Administrative Law Judge, 1099 14th Street, NW, Room 5400 East, Washington, DC 20570–0001
Associate Chief Administrative Law Judge, San Francisco Judges, 901 Market Street, Suite 300, San Francisco, California 94103–1779
Associate Chief Administrative Law Judge, New York Judges, 120 West 45th Street, 11th Floor, New York, New York 10036–5503
Associate Chief Administrative Law Judge, Atlanta Judges, Peachtree Summit Building, 401 W. Peachtree Street, NW, Suite 1708, Atlanta, Georgia 30308–3510

**OFFICES OF THE GENERAL COUNSEL**

General Counsel
Associate General Counsel, Division of Operations Management
Associate General Counsel, Division of Advice
Associate General Counsel, Division of Enforcement Litigation
Director, Division of Administration
Director, Equal Employment Opportunity

**NLRB FIELD OFFICES**

Regional Director, Region 1, Thomas P. O'Neal, Jr., Federal Office Building, 10 Causeway Street, 6th Floor, Boston, Massachusetts 02222–1072
Regional Director, Region 2, Jacob K. Javits Federal Building, 26 Federal Plaza, Room 3614, New York, New York 10278–0104
Regional Director, Region 3, Thaddeus J. Dulski Federal Building, 111 West Huron Street, Room 901, Buffalo, New York 14202–2387
Resident Officer, Albany Resident Office, Leo W. O'Brien Federal Building, Clinton Avenue at N. Pearl Street, Room 342, Albany, New York 12207–2350
Regional Director, Region 4, One Independence Mall, 615 Chestnut Street, 7th Floor, Philadelphia, Pennsylvania 19106–4404
Regional Director, Region 5, The Appraisers Store Building, 103 South Gay Street, 8th Floor, Baltimore, Maryland 21202–4026
Resident Officer, Franklin Court Building, 1099 14th Street, NW, Suite 5530, Washington, DC 20570–0001
Regional Director, Region 6, William S. Moorehead Federal Building, 1000 Liberty Avenue, Room 1501, Pittsburgh, Pennsylvania 15222–4173
Regional Director, Region 7, Patrick V. McNamara Federal Building, 477 Michigan Avenue, Room 300, Detroit, Michigan 48226–2569
Resident Officer, Grand Rapids Resident Office, The Furniture Company Building, 82 Ionia Northwest, Room 330, Grand Rapids, Michigan 49503–3022
Regional Director, Region 8, Anthony J. Celebrezze Federal Building, 1240 East 9th Street, Room 1695, Cleveland, Ohio 44199–2086
Regional Director, Region 9, John Weld Peck Federal Building, 550 Main Street, Room 3003, Cincinnati, Ohio 45202–3271
Regional Director, Region 10, Harris Tower, 233 Peachtree Street, NE, Suite 1000, Atlanta, Georgia 30303–1504
Resident Officer, The Burger-Phillips Centre, 1900 3rd Avenue North, Suite 311, Birmingham, Alabama 35203–3511
Regional Director, Region 11, Republic Square, Suite 200, 4035 University Parkway, Winston-Salem, North Carolina 27106–3325
Regional Director, Region 12, South Trust Plaza, Suite 530, 201 East Kennedy Boulevard, Tampa, Florida 33602–5824
Resident Officer, Jacksonville Resident Office, Federal Building, 400 West Bay Street, Room 214, Box 35091, Jacksonville, Florida 32202–4412
Resident Officer, Miami Resident Office, Federal Building, 51 Southwest 1st Avenue, Room 1320, Miami, Florida 33130–1608
Regional Director, Region 13, 200 West Adams Street, Suite 800, Chicago, Illinois 60606–5208
Regional Director, Region 14, 1222 Spruce Street, Room 8.302, Saint Louis, Missouri 63103–2829
Regional Director, Region 15, 1515 Poydras Street, Room 610, New Orleans, Louisiana 70112–3723
Regional Director, Region 16, Federal Office Building, 819 Taylor Street, Room 8A24,

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Fort Worth, Texas 76102–6178
Resident Officer, Houston Resident Office, Mickey Leland Federal Building, 1919 Smith Street—Suite 1545, Houston, Texas 77002–2649
Resident Officer, San Antonio Resident Office, 615 E. Houston Street, Room 565, San Antonio, Texas 78205–2040
Regional Director, Region 17, 8600 Farley Street, Suite 100, Overland Park, Kansas 66212–4677
Resident Officer, Tulsa Resident Office, 224 South Boulder Avenue, Room 318, Tulsa, Oklahoma 74103–3027
Regional Director, Region 18, Towle Building, Suite 790, 330 Second Avenue South, Minneapolis, Minnesota 55401–2221
Resident Officer, Des Moines Resident Office, 210 Walnut Street, Room 439, Des Moines, Iowa 50309–2116
Regional Director, Region 19, Henry M. Jackson Federal Building, 915 Second Avenue, Room 2948, Seattle, Washington 98174–1078
Resident Officer, Anchorage Resident Office, 222 West 7th Avenue, Box 21, Anchorage, Alaska 99513–3546
Officer in Charge, Subregion 36, 601 SW 2nd Avenue, Suite 1910, Portland, Oregon 97204–3170
Regional Director, Region 20, 901 Market Street, Suite 400, San Francisco, California 94103–1735
Officer in Charge, Subregion 37, Prince Kuhio Federal Building, 300 Ala Moana Boulevard, Room 7–245, Honolulu, Hawaii 96850–4980
Regional Director, Region 21, 888 South Figueroa Street, 9th Floor, Los Angeles, California 90017–5449
Resident Officer, San Diego Resident Office, Pacific Professional Center, 555 West Beech Street, Suite 302, San Diego, California 92101–2939
Regional Director, Region 22, 20 Washington Place, 5th Floor, Newark, New Jersey 07102–2570
Regional Director, Region 24, La Torre de Plaza, 525 F.D. Roosevelt Avenue, Suite 1002, San Juan, Puerto Rico 00918–1002
Regional Director, Region 25, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 238, Indianapolis, Indiana 46204–1577
Regional Director, Region 26, Mid-Memphis Tower Building, 1407 Union Avenue, Suite 800, Memphis, Tennessee 38104–3627
Resident Officer, Little Rock Resident Office, TCBY Tower, 425 West Capitol Avenue, Suite 375, Little Rock, Arkansas 72201–3489
Resident Officer, Nashville Resident Office, 810 Broadway, 3rd Floor, Nashville, Tennessee 37203–3816
Regional Director, Region 27, Dominion Plaza, North Tower, 600 17th Street, 7th Floor, Denver, Colorado 80202–5433
Regional Director, Region 28, Security Building, 234 North Central Avenue, Suite 440, Phoenix, Arizona 85004–2212
Resident Officer, Albuquerque Resident Office, Western Bank Plaza, 505 Marquette Avenue, NW, Room 1820, Albuquerque, New Mexico 87102–2181
Resident Officer, Las Vegas Resident Office, Alan Bible Federal Building, 600 Las Vegas Boulevard South, Suite 400, Las Vegas, Nevada 89101–6637
Resident Officer, El Paso Resident Office, PO Box 23159, El Paso, Texas 79923–3159
Regional Director, Region 29, One Metro Tech Center, Jay Street and Myrtle Avenue, 10th Floor, Brooklyn, New York 11201–4201
Regional Director, Region 30, Henry S. Reuss Federal Plaza, 310 West Wisconsin Avenue, Suite 700, Milwaukee, Wisconsin 53203–2211
Regional Director, Region 31, 11150 W. Olympic Boulevard, Suite 700, Los Angeles, California 90064–1824
Regional Director, Region 32, Breuner Building, 2nd Floor, 1301 Clay Street, Room 300N, Oakland, California 94612–5211
Regional Director, Region 33, Hamilton Square Building, 300 Hamilton Boulevard, Suite 200, Peoria, Illinois 61602–1246
Regional Director, Region 34, One Commercial Plaza, 280 Trumbull Street, 21st Floor, Hartford, Connecticut 06103–3503

[FR Doc. 00–25864 Filed 10–6–00; 8:45 am]
BILLING CODE 7545–01–M

## NATIONAL SCIENCE FOUNDATION

### Advisory Panel for Anthropological and Geographic Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following six meetings of the Advisory Panel for Anthropological and Geographic Sciences (#1757):

*Date & Time:* October 30–31, 2000; 8:30 a.m.–6 p.m.
*Place:* 4201 Wilson Boulevard, Room 330, Arlington, VA.
*Contact Person:* Dr. John Yellen, Program Director for Archaeology and Archaeometry Program, National Science Foundation, 4201 Wilson Boulevard, Suite 995, Arlington, VA 22230, Telephone: (703) 292–8759.
*Agenda:* To review and evaluate Archaeology proposals as part of the selection process for awards.

*Date & Time:* December 4–5, 2000; 8:30 a.m.–5 p.m.
*Place:* 4201 Wilson Boulevard, Room 310, Arlington, VA.
*Contact Person:* Dr. Mark Weiss, Program Director for Physical Anthropology, National Science Foundation, 4201 Wilson Boulevard, Suite 995, Arlington, VA 22230. Telephone: (703) 292–7321.
*Agenda:* To review and evaluate Physical Anthropology proposals as part of the selection process for awards.

*Date & Time:* November 2–3, 2000, 8:30 a.m.–5 p.m.
*Place:* 4201 Wilson Boulevard, Room 370, Arlington, VA.
*Contact Person:* Dr. Stuart Plattner, Program Director for Cultural Anthropology, National Science Foundation, 4201 Wilson Boulevard, Suite 995, Arlington, VA 22230. Telephone: (703) 292–7315.
*Agenda:* To review and evaluate Cultural Anthropology proposals as part of the selection process for awards.

*Date & Time:* October 26–27, 2000, 8:30 a.m.–5 p.m.
*Place:* 4201 Wilson Boulevard, Room 390, Arlington, VA.
*Contact Person:* Dr. Stuart Plattner, Program Director for Cultural Anthropology, National Science Foundation, 4201 Wilson Boulevard, Suite 995, Arlington, VA 22230. Telephone: (703) 292–7315.
*Agenda:* To review and evaluate Cultural Anthropology dissertation proposals as part of the selection process for awards.

*Date & Time:* December 7–8, 2000, 8:30 a.m.–5 p.m.
*Place:* 4201 Wilson Boulevard, Room 970, Arlington, VA.
*Contact Person:* Dr. Nina Lam, Program Director for Geography and Regional Science, National Science Foundation, 4201 Wilson Boulevard, Suite 995, Arlington, VA 22230. Telephone: (703) 292–7313.
*Agenda:* To review and evaluate Geography and Regional Science dissertation proposals as part of the selection process for awards.

*Date & Time:* November 30–December 1st, 2000, 8:30 a.m.–5 p.m.
*Place:* 4201 Wilson Boulevard, Room 970, Arlington, VA.
*Contact Person:* Dr. Nina Lam, Program Director for Geography and Regional Science, National Science Foundation, 4201 Wilson Boulevard, Suite 995, Arlington, VA 22230. Telephone: (703) 292–7313.
*Agenda:* To review and evaluate Geography and Regional Science proposals as part of the selection process for awards.

*Type of Meetings:* Closed.
*Purpose of Meetings:* To provide advice and recommendations concerning support for research proposals submitted to the NSF for financial support.
*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 3, 2000.
**Karen J. York,**
*Committee Management Officer.*
[FR Doc. 00–25832 Filed 10–6–00; 8:45 am]
BILLING CODE 7555–01–M

## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Biological Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Special Emphasis Panel in Biological Sciences (1754).
*Date and Time:* October 23, 2000, 8 a.m.–5 p.m.
*Place:* Room 320, NSF, 4201 Wilson Boulevard, Arlington, Virginia.
*Type of Meeting:* Closed.
*Contact Person:* Dr. Sylvia Spengler, Program Director, Biological Database & Informatics, Division of Biological Infrastructure, Room 615, NSF, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 292–8470.
*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to the NSF for financial support.
*Agenda:* To review and evaluate Databases & Informatics proposals as part of the selection process for awards.
*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government Sunshine Act.

Dated: October 3, 2000.
**Karen J. York,**
*Committee Management Officer.*
[FR Doc. 00–25824 Filed 10–6–00; 8:45 am]
BILLING CODE 7555–01–M

## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Chemical and Transport Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Special Emphasis Panel in Chemical and Transport Systems (1190).
*Date and Time:* November 17–18, 2000; 8:30 a.m. to 5:00 p.m.
*Place:* Hyatt Regency @ Capitol Hill, Washington, DC.
*Type of Meeting:* Closed.
*Contact Person:* Dr. Chuan Chen, Program Director, Fluid Dynamics & Hydraulics, Division of Chemical & Transport Systems, Room 525, (703) 292–8371.
*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.
*Agenda:* To review and evaluate nominations for the FY 2000 Career Panel of proposals as part of the selection process for awards.
*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 3, 2000.
**Karen J. York,**
*Committee Management Officer.*
[FR Doc. 00–25830 Filed 10–10–00; 8:45 am]
BILLING CODE 7555–01–M



## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Chemistry; Notice of Meetings

This notice is being published in accord with the Federal Advisory Committee Act (Pub. L. 92–463, as amended). During the period November 13 through November 29, the Special Emphasis Panel in the Division of Chemistry (1191) will be holding panel meetings to review and evaluate research proposals. The dates and types of proposals being reviewed are:

| Dates of meetings | | Types of proposal |
|---|---|---|
| 11/13/00 | 11/14/00 ..... | Physical Chemistry (Career). |
| 11/13/00 | 11/14–15/00 | Inorganic Chemistry (Career). |
| 11/16/00 | 11/17/00 ..... | Analytical and Surface Chemistry (Career). |
| 11/27/00 | 11/28–29/00 | Organic and Macromolecular Chemistry (Career). |

*Times:* 8:30 to 5:00 p.m. each day.
*Place:* National Science Foundation, 4201 Wilson Blvd., Arlington, VA.
*Type of Meetings:* Closed.
*Contact Person:* Dr. Janice Hicks, Program Officer, Experimental Physical Chemistry, Room 1055, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230, telephone (703) 292–4956.
*Purpose of Meetings:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.
*Agenda:* To review and evaluate proposals submitted to the Division of Chemistry as part of the selection process for awards.
*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: October 3, 2000.
**Karen J. York,**
*Committee Management Officer.*
[FR Doc. 00–25822 Filed 10–6–00; 8:45 am]
BILLING CODE 7555–01–M

## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Chemistry; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Special Emphasis Panel in Chemistry (#1191).
*Date and Time:* November 27, 28 & 29, 2000; 8:30 a.m.–5 p.m.
*Place:* Rooms, 1020 and 1060—NSF, 4201 Wilson Boulevard, Arlington, VA 22230.
*Type of Meeting:* Closed.
*Contact Person:* Dr. Joan Frye, Program Director, Chemical Instrumentation Program, Chemistry Division, Room 1055, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 292–4953.
*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.
*Agenda:* To review and evaluate proposals for the Chemical Instrumentation Program as part of the selection process for awards.
*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 3, 2000.
**Karen J. York,**
*Committee Management Officer.*
[FR Doc. 00–25829 Filed 10–6–00; 8:45 am]
BILLING CODE 7555–01–M

## NATIONAL SCIENCE FOUNDATION

### Advisory Panel for Cognitive, Psychological and Language Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting of the Advisory Panel for Cognitive, Psychological and Language Sciences (#1758);

*Date and Time:* October 11–13, 2000; 8:00 a.m.–6:30 p.m.
*Place:* 4201 Wilson Boulevard, Room 390, Arlington, VA.
*Contact Person:* Dr. Catherine Ball, Program Director for Linguistics, National Science Foundation, 4201 Wilson Boulevard, Suite 995, Arlington, VA 22230. Telephone: (703) 292–8731.
*Type of Meeting:* Closed.
*Purpose of Meeting:* To provide advice and recommendations concerning support for research proposals submitted to the NSF for financial support.

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*Agenda:* To review and evaluate linguistics proposals as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 3, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–25821 Filed 10–6–00; 8:45 am]

BILLING CODE 7555–01–M

## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Computing-Communications Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Special Emphasis Panel in Computing-Communications Research (1192).

*Date:* October 31 and November 2, 2000.

*Time:* 8:00 a.m.–5:00 p.m.

*Place:* 4201 Wilson Boulevard, Room 1105, Arlington, VA.

*Type of Meeting:* Closed.

*Contact Person:* Frank Anger, Program Director, Software Engineering and Languages (SEL), CISE/CCR, Room 1145, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230 (703) 292–8911.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluates SEL CAREER proposals as a part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 3, 2000.

**Karen J. York**

*Committee Management Officer.*

[FR Doc. 00–25818 Filed 10–6–00; 8:45 am]

BILLING CODE 7555–01–M

## NATIONAL SCIENCE FOUNDATION

### Earth Sciences Proposal Review Panel; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Earth Sciences Proposal Review Panel (1569).

*Date and Time:* November 1–3, 2000, 8 a.m. to 6 p.m.

*Place:* IRIS Data Management Center, 1408 NE 45th Street, Suite 201, Seattle, WA.

*Type of Meeting:* Closed.

*Contact Person:* Dr. Daniel F. Weill, Program Director, Instrumentation & Facilities Program, Division of Earth Sciences, Room 785, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230; Telephone: (703) 292–4746.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate Instrumentation & Facilities proposals as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 3, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–25827 Filed 10–6–00; 8:45 am]

BILLING CODE 7555–01–M

## NATIONAL SCIENCE FOUNDATION

### Advisory Panel Meeting for Ecological Studies: Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

*Name and Committee Code:* Advisory Panel for Ecological Studies (#1751).

*Date and Time:* October 12, 2000, 8:00 a.m.–5:00 p.m. thru October 13, 2000, 8:00 a.m.–Adjourn.

*Place:* National Science Foundation, 4201 Wilson Boulevard, Room 373, Arlington, VA 22230.

*Type of Meeting:* Closed.

*Contact Person:* Dr. Penelope Firth, Program Officer or Dr. Carol Johnston, Program Officer, Ecological Studies, Room 640N, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230. Telephone: (703) 292–8481.

*Minutes:* May be obtained from the contact person listed above.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals to the National Science Foundation (NSF) for financial support.

*Agenda:* To review and evaluate proposals submitted in response to the Ecological Studies Ecosystem Studies Program Solicitation (99–2).

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4), and (6) of the Government in the Sunshine Act.

Dated: October 3, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–25823 Filed 10–6–00; 8:45 am]

BILLING CODE 7555–01–M

## NATIONAL SCIENCE FOUNDATION

### Advisory Panel Meeting for Ecological Studies; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name and Committee Code:* Advisory Panel for Ecological Studies (#1751).

*Date and Time:* October 11, 2000, 8 a.m.–5 p.m. thru October 13, 2000, 8 a.m.–Adjourn.

*Place:* National Science Foundation, 4201 Wilson Boulevard, Room 375, Arlington, VA 22230.

*Type of Meeting:* Closed.

*Contact Person:* Dr. Scott L. Collins, Program Officer or Mr. Aaron Kinchen, Program & Technology Analyst, Ecological Studies Cluster, Room 640N, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230. Telephone: (703) 292–8481.

*Minutes:* May be obtained from the contact person listed above.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals to the National Science Foundation (NSF) for financial support.

*Agenda:* To review and evaluate proposals submitted in response to the Ecological Studies Ecology Program Solicitation (99–2).

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 3, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–25826 Filed 10–6–00; 8:45 am]

BILLING CODE 7555–01–M



## National Science Foundation

### Advisory Committee for Education and Human Resources; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L.92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Committee on the NSF Niche in K–16 Education, a subcommittee of the Advisory Committee for Education and Human Resources (#1119).

*Date and Time:* October 17, 2000; 1:30 p.m.–5:30 p.m.

*Place:* National Science Foundation, 4201 Wilson Boulevard, Room 1235 Arlington, VA 22230.

*Type of Meeting:* Open.

*Contact Person:* Dr. Daryl Chubin, NSB Senior Policy Officer, National Science Foundation, 4201 Wilson Boulevard, Room 1220, Arlington, VA 22230, Telephone: (703)292–7000.

*Purpose of Meeting:* To provide advice and recommendations to the Advisory Committee for Education and Human Resources.

*Agenda:* To discuss NSF's niche in K–16 Education.

*Reason for Late Notice:* Coordinating members of committee to accommodate meeting schedules. This meeting needs to be held before the Advisory Committee for Education and Human Resources meeting on November 8–9.

Dated: October 3, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–25819 Filed 10–6–00; 8:45 am]

BILLING CODE 7555–01–M

## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Electrical and Communications Systems; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L 92–463, as amended), the National Science Foundation announces the following meetings of the Special Emphasis Panel in Electrical and Communications Systems (1196):

*Date/Time:* November 6–7, 2000, 8:30 a.m.–5 p.m.

*Place:* 4201 Wilson Boulevard, Suite 680, Arlington, VA.

*Contact:* Dr. James Mink, Program Director, Electronics, Photonics, and Device Technologies (EPDT), Division of Electrical and Communications Systems, National Science Foundation, 4201 Wilson Blvd., Room 675, Arlington, VA 22230. Telephone: (703) 292–8339.

*Agenda:* To review and evaluate Electronics, Photonics, and Device Technologies proposals as part of the selection process for awards.

*Date:* November 20–21, 2000, 8:30 a.m.–5 p.m., Room 365.

*Place:* 4201 Wilson Boulevard, Suite 365, Arlington, VA.

*Contact:* Dr. Paul Werbos, Program Director, Control, Networks, and Computational Intelligence (CNCI), Division of Electrical and Communications Systems, National Science Foundation, 4201 Wilson Blvd., Room 675, Arlington, VA 22230. Telephone: (703) 292–8339.

*Agenda:* To review and evaluate Control, Networks, and Computational Intelligence proposals as part of the selection process for awards.

*Type of Meetings:* Closed.

*Purpose of Meetings:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 3, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–25825 Filed 10–6–00; 8:45 am]

BILLING CODE 7555–01–M

## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel for Geosciences: Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Special Emphasis Panel for Geosciences (1756).

*Date & Time:* November 12–17, 2000, 8 am–5 pm.

*Place:* National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

*Type of Meeting:* Closed.

*Contact Person:* Mr. Lawrence Clark, Acting Section Head, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 292–8582.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate the Ocean Science Research Programs (OSRS) as part of the selection process for awards.

*Reason for Closing:* The proposal being reviewed includes information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in The Sunshine Act.

Dated: October 3, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–25831 Filed 10–6–00; 8:45 am]

BILLING CODE 7555–01–M

## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel on Research, Evaluation and Communication; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Special Emphasis Panel on Research, Evaluation and Communication (1210).

*Date and Time:* October 23, 2000 (8 a.m.–6 p.m.); October 24, 2000 (8 a.m.–3 p.m.).

*Place:* National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

*Type of Meeting:* Closed.

*Contact Person:* Dr. Elizabeth VanderPutten, Program Director; Faculty Early Career Development Program of the Division of Research, Evaluation and Communication (REC), Room 855, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: 703/292–8650.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate formal proposals submitted to the CAREER Program as a part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a propriety or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 3, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–25828 Filed 10–6–00; 8:45 am]

BILLING CODE 7555–01–M

## NATIONAL SCIENCE FOUNDATION

### Advisory Committee for Social, Behavioral, and Economic Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Advisory Committee for Social, Behavioral, and Economic Sciences (1171).

*Date and Time:* November 8, 2000; 1:00 p.m.—5:00 p.m.; November 9, 2000; 8:30 a.m.—5:00 p.m.

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*Place:* NSF, Room 1235, 4201 Wilson Blvd., Arlington, VA 22230.

*Type of Meeting:* Open.

*Contact Person:* Dr. Kenneth M. Brown, Executive Secretary; Directorate for Social, Behavioral, and Economic Sciences, NSF, Suite 905; 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 292–8741.

*Minutes:* May be obtained from the contact person listed above.

*Purpose of Meeting:* To provide advice and recommendations to the National Science Foundation on major goals and policies pertaining to SBE programs and activities.

*Agenda:* Discussions on issues, role and future direction of the NSF Directorate for Social, Behavioral and Economic Sciences.

Dated: October 3, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–25820 Filed 10–6–00; 8:45 am]

BILLING CODE 7555–01–M

## NATIONAL SCIENCE FOUNDATION

### Sunshine Act Meeting

*Agency Holding Meeting:* National Science Foundation, National Science Board.

*Date and Time:* October 19, 2000: 11:45 a.m.–12:00 Noon, Closed Session; October 19, 2000: 1:00 p.m.–3:30 p.m., Closed Session; October 19, 2000: 3:30 p.m.–6:00 p.m., Open Session.

*Place:* The National Science Foundation, Room 1235, 4201 Wilson Boulevard, Arlington, VA 22230.

*Status:* Part of this meeting will be closed to the public; Part of this meeting will be open to the public.

**Matters to be Considered**

*Thursday, October 19*

Closed Session (11:45 a.m.–12:00 Noon)

—Closed Session Minutes, August 2000
—Personnel

Closed Session (1:00 p.m.–3:30 p.m.)

—Awards and Agreements
—FY 2002 Budget

Open Session (3:30 p.m.–6:00 p.m.)

—Swearing-in, NSB Nominees
—Open Session Minutes, August 2000
—Closed Session Items for December 2000
—Chairman's Report
—Director's Report
—NSF Planning Issues
Mathematics Initiative
Workforce Initiative
NSF Stipends
—NSB 50th Anniversary Commemorative Booklet
—Committee Reports

**Marta Cehelsky,**

*Executive Officer.*

[FR Doc. 00–25990 Filed 10–4–00; 4:25 pm]

BILLING CODE 7555–01–M

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. STN 50–528, STN 50–529, and STN 50–530]**

### Public Service Company of New Mexico (Palo Verde Nuclear Generating Station Units 1, 2, and 3); Order Approving Application Regarding Proposed Corporate Restructuring and Approving Conforming Amendments

I

Public Service Company of New Mexico (PNM) holds minority ownership interests (both owned and leased) in Palo Verde Nuclear Generating Station (Palo Verde) Units 1, 2, and 3, and in connection therewith is a holder of Facility Operating Licenses Nos. NPF–41, NPF–51, and NPF–74 for Palo Verde. The facility is located in Maricopa County, Arizona. Other co-licensees for Palo Verde are Arizona Public Service Company (APS) (owner or lessee of a 29.1 percent share of each of the three units), Salt River Project Agricultural Improvement and Power District (owner of a 17.49 percent share), El Paso Electric Company (owner of a 15.8 percent share), Southern California Edison Company (owner of a 15.8 percent share), Southern California Public Power Authority (owner of a 5.91 percent share), and Los Angeles Department of Water and Power (owner of a 5.70 percent share). APS is the licensed operator of the Palo Verde units. The remaining licensees hold possession-only licenses.

II

Pursuant to Section 184 of the Atomic Energy Act of 1954, as amended, and 10 CFR 50.80, PNM filed an application dated March 3, 2000, requesting approval of the indirect transfer of the Palo Verde licenses, to the extent held by PNM, to a new holding company, Manzano Corporation (Manzano). Supplemental information on this application was forwarded to the NRC by PNM's outside counsel, Shaw Pittman, in letters dated August 14, August 17, and September 7, 2000. Manzano, presently a subsidiary of PNM, was formed to implement the public utility restructuring requirements of the New Mexico Electric Utility Industry Restructuring Act of 1999. The proposed restructuring encompasses the formation of Manzano and Manzano becoming the holding company for PNM, the transfer by PNM of its electric and gas transmission and distribution businesses to an affiliated company to be named "Public Service Company of New Mexico" (with PNM and such affiliated company being under common control by Manzano), and a change in PNM's name to Manzano Energy Corporation (Manzano Energy). By application dated April 26, 2000, APS requested approval, pursuant to 10 CFR 50.90, of proposed conforming amendments to reflect in the Palo Verde licenses the name change of PNM to Manzano Energy Corporation that will occur in connection with the restructuring. APS will retain its existing ownership interest in, and remain the licensed operator of Palo Verde after the restructuring of PNM, and is not otherwise involved in the restructuring. Similarly, none of the other co-licensees are involved in the restructuring of PNM. No physical changes to the facility or operational changes are being proposed in the applications filed by PNM and APS. Notice of the applications and an opportunity for hearing was published in the **Federal Register** on May 26, 2000 (65 FR 34370). No written comments or hearing requests were filed.

Under 10 CFR 50.80, no license shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission gives its consent in writing. Upon review of the information submitted by PNM in its application, the supplements thereto, and other information before the Commission, the NRC staff has determined that the proposed restructuring will not affect the qualifications of PNM to hold the licenses referenced above to the same extent now held by PNM, and that the indirect transfer of the licenses, to the extent effected by the restructuring, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth herein. The NRC staff has further found that the application for the proposed license amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended, and the Commission's rules and regulations set forth in 10 CFR Chapter I; the facility will operate in conformity with the application, the provisions of the Act and the rules and regulations of the Commission; there is reasonable assurance that the activities authorized by the proposed license amendments



can be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with the Commission's regulations; the issuance of the proposed license amendments will not be inimical to the common defense and security or to the health and safety of the public; and the issuance of the proposed amendments will be in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied. These findings are supported by a Safety Evaluation dated September 29, 2000.

III

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended, 42 USC 2201(b), 2201(i), 2201(o) and 2234; and 10 CFR 50.80, *it is hereby ordered* That the application regarding the proposed restructuring of PNM and indirect license transfers is approved, subject to the following conditions:

1. Manzano Energy shall provide the Director of the Office of Nuclear Reactor Regulation a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from Manzano Energy to its proposed parent, or to any other affiliated company, facilities for the production, transmission, or distribution of electric energy having a depreciated book value exceeding ten percent (10%) of Manzano Energy's consolidated net utility plant, as recorded on Manzano Energy's books of account.

2. Manzano Energy shall continue to provide decommissioning funding assurance, to be held in its decommissioning trusts for Palo Verde Units 1, 2, and 3, from the date of the indirect license transfers, as represented in the respective March 3, 2000, application, as supplemented. In addition, Manzano Energy shall ensure that contractual arrangements with its transmission and distribution affiliate to obtain necessary decommissioning funds for Palo Verde through non-bypassable charges will be established and maintained until the decommissioning trusts are fully funded.

3. Manzano Energy shall enter into an agreement with its transmission and distribution affiliate that shall require the deposit of funds collected for decommissioning funding from wires charges into Manzano Energy's decommissioning trust accounts. A copy of the agreement shall be forwarded to the NRC prior to the completion of the proposed restructuring of PNM.

4. Manzano Energy shall take all necessary steps to ensure that its decommissioning trusts are maintained in accordance with the March 3, 2000, application, as supplemented, and the requirements of this Order approving the respective indirect transfers, and consistent with the safety evaluation supporting this Order.

5. Manzano Energy shall inform the Director of the Office of Nuclear Reactor Regulation within 30 days of approval by the New Mexico Public Regulation Commission of the stranded cost mechanism of recovering decommissioning costs. Within such 30-day period, Manzano Energy shall state the total decommissioning costs subject to stranded cost recovery and the schedule for funding decommissioning costs.

6. Manzano Energy's decommissioning trust agreements for each of the three units shall provide that:

a. The use of assets in both the qualified and non-qualified funds shall be limited to expenses related to decommissioning of the unit as defined by the NRC in its regulations and issuances, and as provided in the unit's license and any amendments thereto. However, upon completion of decommissioning, as defined above, the assets may be used for any purpose authorized by law.

b. Investments in the securities or other obligations of Manzano Energy or affiliates thereof, or their successors or assigns, shall be prohibited. In addition, except for investments tied to market indexes or other non-nuclear sector mutual funds, investments in any entity owning one or more nuclear power plants shall be prohibited.

c. No disbursements or payments from the trust, other than for ordinary administrative expenses, shall be made by the trustee unless the trustee has first given the NRC 30 days prior written notice of the payment. In addition, no such disbursements or payments from the trust shall be made if the trustee receives prior written notice of objection from the Director of the Office of Nuclear Reactor Regulation.

d. The trust agreement shall not be modified in any material respect without 30 days prior written notification to the Director of the Office of Nuclear Reactor Regulation.

e. The trustee, investment advisor, or anyone else directing the investments made in the trust shall adhere to a "prudent investor" standard, as specified in 18 CFR 35.32(3) of the Federal Energy Regulatory Commission's regulations.

*It is further ordered* That, consistent with 10 CFR 2.1315(b), license amendments as indicated in Enclosure 2 to the cover letter forwarding this Order to reflect the subject restructuring action and conditions of this Order are approved. The amendments shall be issued and made effective at the time the proposed restructuring action is completed.

This Order is effective upon issuance.

For further details with respect to this action, see the initial application dated March 3, 2000, supplemental application and submittals dated April 26, August 14, August 17, and September 7, 2000, and the Safety Evaluation dated September 29, 2000, which are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 29th day of September 2000.

For the Nuclear Regulatory Commission.

**Samuel J. Collins,**

*Director, Office of Nuclear Reactor Regulation.*

[FR Doc. 00–25916 Filed 10–6–00; 8:45 am]

BILLING CODE 7590–01–U

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–364]**

### Southern Nuclear Operating Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–8, issued to Southern Nuclear Operating Company (the licensee), for operation of the Joseph M. Farley Nuclear Plant, Unit 2, located in Houston County, Alabama.

The proposed amendment would eliminate the requirement to cycle the Unit 2 pressurizer power-operated relief valve (PORV) block valves during the remainder of operating cycle 14 and provides additional compensatory action. Cycle 14 is presently scheduled to end on February 24, 2001. This change is needed because excessive packing leakage from at least one of the Unit 2 PORV block valves occurs during valve surveillance testing (stroking).

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Cycling the valves with this packing leakage could result in additional valve packing degradation potentially resulting in a forced unit shutdown. Repairing the valve packing would require shutting down and cooling down the unit to establish conditions for the repair. Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to Surveillance Requirement (SR) 3.4.11.1 suspends the requirement to cycle test the Unit Two pressurizer power operated relief valve (PORV) block valves for the remainder of operating cycle 14. This change will eliminate two scheduled cycle tests for the PORV block valves during the remainder of operating cycle 14. SR 3.4.11.4 is added to provide compensatory measures for verifying power available to the block valves at least every 24 hours. At the end of cycle 14, the proposed changes will no longer be in effect. Suspension of the cycle tests for the PORV block valves may result in a small decrease in assurance that the block valves would cycle if required to isolate a stuck open PORV. However, experience with these valves has shown them to be very reliable and suspension of the remaining tests will not appreciably reduce reliability of the valves. The proposed compensatory measure of verifying block valve power available on a 24 hour basis adds additional assurance that the block valves will close if demanded.

* * * * *

The proposed changes do not affect the consequences of a previously analyzed accident since the magnitude and duration of analyzed events are not impacted by this change. The dose consequences of the proposed change are bounded by LOCA analyses. Therefore, the consequences of a previously evaluated accident are unchanged.

Therefore, the proposed TS changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes involve no change to the physical plant. They allow for suspension of the PORV block valve cycle tests for a limited time and provide for compensatory action to verify power to the PORV block valves. These valves provide an isolation function for a postulated stuck open or leaking pressurizer PORV. This condition is an analyzed event since it is bounded by the FNP LOCA analyses. In addition to the isolation function, the block valves are required to remain open to allow the PORVs to function automatically to control reactor coolant system (RCS) pressure. These changes do not impact the open function of the block valves since the normal position is open.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety.

The physical plant is unaffected by these changes. The proposed changes do not impact accident offsite dose, containment pressure or temperature, emergency core cooling system (ECCS) or reactor protection system (RPS) settings or any other parameter that could affect a margin of safety. The elimination of cycle testing of the PORV block valves for the remainder of the Unit Two operating cycle and the addition of the proposed compensatory action that enhances assurance of valve operation are somewhat offsetting.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 14-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 14-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By November 9, 2000, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.



As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to M. Stanford Blanton, Balch and Bingham, Post Office Box 306, 1710 Sixth Avenue North, Birmingham, Alabama, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated September 8, 2000, as supplemented by letter dated October 2, 2000, which are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 4th day of October, 2000.

**L. Mark Padovan,**

*Project Manager, Project Directorate II–1, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 00–25917 Filed 10–6–00; 8:45 am]

BILLING CODE 7590–01–U

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–391]**

### Tennessee Valley Authority; Watts Bar Nuclear Plant, Unit 2, Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an extension of the latest construction completion dates specified in Construction Permit No. CPPR–92 issued to Tennessee Valley Authority (permittee, TVA) for the Watts Bar Nuclear Plant (WBN), Unit 2. The facility is located at the permittee's site on the west branch of the Tennessee River approximately 50 miles northeast of Chattanooga, Tennessee.

**Environmental Assessment**

*Identification of Proposed Action*

The proposed action would extend the latest construction completion date of Construction Permit No. CPPR–92 to December 31, 2010. The proposed action is in response to the permittee's request dated October 13, 1999, as supplemented by letter dated July 14, 2000.

*The Need for the Proposed Action*

The proposed action is needed to grant the licensee the option of completing construction on WBN Unit 2 in the future. The construction permit expired in December 1999. The permittee requested the extension for Unit 2 due to the delay in the completion of Unit 1 and TVA's decision to maintain Unit 2 in a construction layup status pending TVA's determination of further options to meet future electric power demands.

*Environmental Impacts of the Proposed Action*

The environmental impacts associated with the construction of the facility have been previously discussed and evaluated in TVA's Final Environmental Statement for construction (FES–CP) of WBN, Units 1 and 2, issued on November 9, 1972. NRC staff evaluated the environmental impacts of construction and operation of this plant, issuing comments on TVA's FES–CP as

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part of its review. In December 1978, NRC staff issued a Final Environmental Statement for the operating-license stage (FES–OL), which addressed the environmental impacts of construction activities not addressed previously in TVA's FES–CP. The activities included: (1) Construction of the transmission route for the Watts Bar—Volunteer 500 kV line; (2) construction of the settling pond for siltation control for construction runoff at a different location from that originally proposed in the FES–CP; and (3) the relocation of the blowdown diffuser from the originally proposed site indicated in the FES–CP. The staff addressed the terrestrial and aquatic environmental impacts in the FES–OL, as well as historic and archeological impacts, and concluded that the assessment presented in the FES–CP remains valid.

A supplemental Final Environmental Statement related to the operation of WBN Units 1 and 2 was issued in April 1995. Environmental issues evaluated included changes to regional demography, natural resource use, meteorology, ecology, impacts to humans and the environment, and socioeconomic impacts, including environmental justice issues. The staff concluded that there were no significant changes to the environmental impacts discussed in the 1978 FES–OL due to changes in plant design or operation, or changes in the environment. Furthermore, the staff concluded that no additional impacts not previously discussed in the NRC's 1978 FES–OL related to construction of Unit 2 were expected.

Since the NRC's latest review, all candidate species have been removed and the bald eagle delisted from the Federal threatened and endangered species list issued by the Fish and Wildlife Service. The licensee has no plans to construct additional transmission lines or disturb any land that has not been discussed in previous environmental reviews. Socioeconomic impacts were evaluated in the supplement to the FES–OL issued in 1995. No additional impacts are expected.

The construction of Unit 2 is approximately 65 percent complete; therefore, most of the construction impacts discussed in the FES have already occurred. This action would only extend the period of construction as described in the FES. It does not involve any different impacts as described and analyzed in the original and updated environmental impact statements. The proposed extension will not allow any work to be performed that is not already allowed by the existing construction permit. The extension will merely grant the permittee more time to complete construction and modification in accordance with the previously approved construction permit.

Based on the foregoing, the NRC staff has concluded that the proposed action would have no significant environmental impact. Since this action would only extend the period of construction activities described in the FES, it does not involve any different impacts or a significant change to those impacts described and analyzed in the original environmental impact statement. Consequently, an environmental impact statement addressing the proposed action is not required.

*Alternatives to the Proposed Action*

A possible alternative to the proposed action would be to deny the request, or the no-action alternative. This would result in expiration of the construction permit for Watts Bar, Unit 2. This option would require submittal of another application for construction in order to allow the permittee to complete construction of the facility with no significant environmental benefit. The environmental impacts of the proposed action and alternative action are similar.

*Alternative Use of Resources*

This action does not involve the use of resources not previously considered in the FES for Watts Bar.

*Agencies and Persons Contacted*

In accordance with its stated policy, on October 2, 2000, the staff consulted with the Tennessee State Official, Ms. Joel Key, regarding the environmental impact of the proposed action. The State official had no comments.

**Finding of No Significant Impact**

On the basis of the environmental assessment, the NRC concludes that this action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for this action.

For further details with respect to this action, see the licensee's request for extension dated October 13, 1999, as supplemented July 14, 2000. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

Dated at Rockville, Maryland this 3rd day of October 2000.

For the Nuclear Regulatory Commission.

**Richard P. Correia,**

*Chief, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation*

[FR Doc. 00–25915 Filed 10–6–00; 8:45 am]

BILLING CODE 7590–01–U

## OFFICE OF PERSONNEL MANAGEMENT

### Excepted Service

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** This gives notice of positions established or revoked under Schedule C in the excepted service, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

**FOR FURTHER INFORMATION CONTACT:** Pam Shivery, Acting Director, Washington Service Center, Employment Service (202) 606–1015.

**SUPPLEMENTARY INFORMATION:** The Office of Personnel Management published its last monthly notice updating appointing authorities established under the Excepted Service provisions of 5 CFR 213 on September 20, 2000 (64 FR 56966). Individual authorities established under Schedule C between August 1, and August 31, 2000, appear in the listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 will also be published.

**Schedule C**

The following Schedule C authorities were established during August 2000.

*Department of Agriculture*

Confidential Assistant to the Administrator, Farm Services Agency. Effective August 4, 2000.

Staff Assistant to the Administrator, Farm Service Agency. Effective August 4, 2000.

Confidential Assistant to the Administrator, Rural Housing Service. Effective August 11, 2000.

Confidential Assistant to the Under Secretary for Food Safety. Effective August 11, 2000.

Confidential Assistant to the Administrator, Foreign Agricultural Service. Effective August 14, 2000.

Confidential Assistant to the Administrator, Rural Utilities Service, Office of the Administrator. Effective August 28, 2000.

Staff Assistant to the Administrator. Effective August 31, 2000.

*Department of Commerce*

Director of Communications to the Under Secretary for Technology. Effective August 10, 2000.

Executive Assistant to the Secretary of Commerce. Effective August 10, 2000.

*Department of Defense*

Special Assistant to the Deputy Secretary of Defense. Effective August 15, 2000.

Assistant for Plans and Policy (International and Security Affairs) to the Secretary of Defense. Effective August 21, 2000.

Staff Assistant to the Secretary of Defense (International Security Affairs). Effective August 21, 2000.

*Department of Education*

Confidential Assistant to the Director, White House Liaison. Effective August 2, 2000.

Special Assistant to the Deputy Assistant Secretary, Policy Planning and Innovation. Effective August 16, 2000.

Director, Scheduling and Briefing Staff to the Chief of Staff. Effective August 29, 2000.

*Department of Energy*

Director of Communications to the Assistant Secretary for Energy Efficiency. Effective August 10, 2000.

Daily Scheduler to the Director, Office of Scheduling and Advance. Effective August 10, 2000.

Deputy Director, Office of the Consumer Information to the Director, Office of Consumer Information. Effective August 15, 2000.

Special Assistant to the Director of Policy. Effective August 21, 2000.

*Department of Health and Human Services*

Director of Scheduling to the Chief of Staff, Office of the Secretary. Effective August 16, 2000.

Deputy Director of Scheduling to the Director of Scheduling. Effective August 18, 2000.

Confidential Assistant (Scheduling) to the Director of Scheduling. Effective August 21, 2000.

Congressional Liaison Specialist to the Deputy Assistant Secretary for Legislation (Congressional Liaison). Effective August 23, 2000.

*Department of Housing and Urban Development*

Special Assistant to the Special Assistant/Director, Interfaith Community Outreach. Effective August 18, 2000.

*Department of the Interior*

Administrative Aide (Office Automation) to the Director Scheduling Office. Effective August 4, 2000.

*Department of Labor*

Special Assistant to the Director of Womens's Bureau. Effective August 10, 2000.

*Department of State*

Special Assistant to the Director, White House Liaison. Effective August 11, 2000.

*Department of Transportation*

Special Assistant to the Assistant to the Secretary and Director of Public Affairs. Effective August 4, 2000.

*Department of the Treasury*

Advisor to the Secretary and Director of Strategic Planning, Scheduling and Advance to the Chief of Staff. Effective August 2, 2000.

Deputy Director for Strategic Planning, Scheduling and Advance to the Advisor to the Secretary and Director, Strategic Planning, Scheduling and Advance. Effective August 2, 2000.

Special Assistant to the Director of Strategic Planning, Scheduling and Advance. Effective August 30, 2000.

*Federal Communications Commission*

Special Assistant for Policy and Communications to the Director, Office of Media Relations. Effective August 10, 2000.

**Authority:** 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218.

Office of Personnel Management.

**Janice R. Lachance,**

*Director.*

[FR Doc. 00–25909 Filed 10–6–00; 8:45 am]

BILLING CODE 6325–01–P

## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 24672; 812–12046]**

### Equity Managers Trust, et al.; Notice of Application

October 2, 2000.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice of an application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 12(d)(1)(A) and (B) of the Act, under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act, and under section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint transactions.

*Summary of Application:* Applicants request an order to permit certain registered open-end management investment companies to invest uninvested cash and cash collateral in affiliated money market funds.

*Applicants:* Equity Managers Trust, Global Managers Trust, Income Managers Trust (collectively, the "Managers Trusts"), Neuberger Berman Equity Funds, Neuberger Berman Equity Trust, Neuberger Berman Equity Assets, Neuberger Berman Equity Series, Neuberger Berman Income Funds, Neuberger Berman Income Trust (collectively, with the Managers Trusts, the "Trusts"), Neuberger Berman Management Inc. ("NBMI") and Neuberger Berman, LLC ("Neuberger Berman" together with NBMI, the "Adviser").

*Filing Dates:* The application was filed March 28, 2000 and amended on July 31, 2000 and September 5, 2000. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

*Hearing or Notification of Hearing:* An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 27, 2000, and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609; Applicants, NBMI and the Trusts, 605 Third Avenue, 2nd Floor, New York, NY 10158–0180, Neuberger Berman, 605 Third Avenue, 21st Floor, New York, NY 10158–3698.

**FOR FURTHER INFORMATION CONTACT:** Deepak T. Pai, Senior Counsel, at (202) 942–0574 or Janet M. Grossnickle, Branch Chief, at (202) 942–0564, (Division of Investment Management, Office of Investment Company Regulation).

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**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone (202) 942–8090).

**Applicants' Representations**

1. Each of Neuberger Berman Equity Funds, Neuberger Berman Equity Trust, Neuberger Berman Equity Assets, Neuberger Berman Equity Series, Neuberger Berman Income Funds, and Neuberger Berman Income Trust is a Delaware business trust registered under the Act as an open-end management investment company. Neuberger Berman Equity Funds currently has eleven series, Neuberger Berman Equity Trust has eleven series, Neuberger Berman Equity Assets has seven series, Neuberger Berman Equity Series has one series, Neuberger Berman Income Funds has seven series, and Neuberger Berman Income Trust has two series which are seeking the requested relief (collectively, the "Funds"). Each of the Managers Trusts is a New York common law trust, registered under the Act as an open-end management investment company. Equity Managers Trust currently has ten series, Global Managers Trust has one series, and Income Managers Trust has seven series which are seeking the requested relief (collectively, the "Portfolios"). NBMI is the investment manager of each Portfolio and administrator to each Fund. Neuberger Berman serves as the subadviser to each Portfolio. Both NBMI and Neuberger Berman are registered as investment advisers under the Investment Advisers Act of 1940.

2. Each Fund is a "feeder fund" that seeks to achieve its investment objective by investing all of its net investable assets, in reliance on section 12(d)(1)(E) of the Act, in its corresponding Portfolio, which is a "master fund".[1] Applicants also request relief for all other registered open-end investment companies or any series thereof that are advised by the Adviser or by any entity controlling, controlled by, or under common control (within the meaning of section 2(a)(9) of the Act) with the Adviser.[2]

3. Each Investing Portfolio (as defined below) has, or may be expected to have, cash that has not been invested in portfolio securities ("Uninvested Cash"). Uninvested Cash may result from a variety of sources, including dividends or interest received on portfolio securities, unsettled securities transactions, reserves held for investment strategy purposes, scheduled maturity of investments, liquidation of investment securities to meet anticipated redemptions or dividend payments, and new monies received from investors. Currently, the Investing Portfolios can invest Uninvested Cash directly in money market instruments. Certain of the Investing Portfolios also may participate in a securities lending program under which an Investing Portfolio may lend its portfolio securities to registered broker-dealers or other institutional investors. The loans are continuously secured by collateral equal at all times to at least the market value of the securities loaned. Collateral for these loans may include cash ("Cash Collateral," and together with Uninvested Cash, "Cash Balances").

4. Applicants request relief to the extent necessary to permit (a) the Portfolios to utilize Uninvested Cash to purchase shares of one or more existing or future registered open-end management investment companies advised by the Adviser that are money market funds ("Money Market Funds") (a Portfolio that purchases shares of the Money Market Funds is referred to as an "Investing Portfolio"); (b) each of the Investing Portfolios to utilize Cash Collateral received from borrowers of its portfolio securities in connection with the Investing Portfolio's securities lending activities to purchase shares of one or more of the Money Market Funds; (c) the Money Market Funds to sell their shares to, and to purchase such shares from, the Investing Portfolios; and (d) the Adviser to effect such purchases and sales. The Money Market Funds seek current income, liquidity and capital preservation by investing exclusively in short-term money market instruments that are valued at their amortized cost pursuant to the requirements of rule 2a–7 under the Act. Applicants submit that investing Cash Balances in shares of the Money Market Funds is in the best interest of the Funds, their shareholders, and each Fund's corresponding Investing Portfolios, because the Investing Portfolios expect to benefit from economies of scale that maximize investment opportunities, minimize credit and interest rate risk, facilitate management of liquidity, and minimize administrative costs.

**Applicants' Legal Analysis**

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company if such securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other acquired investment companies, represented more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security or transaction (or classes thereof) from any provision of section 12(d)(1) if, and to the extent that, the exemption is consistent with the public interest and the protection of investors. Applicants request an exemption from the provisions of sections 12(d)(1)(A) and (B) to the extent necessary to permit each Investing Portfolio to invest Cash Balances in the Money Market Funds.

3. Applicants state that the proposed arrangement would not result in the abuses that sections 12(d)(1)(A) and (B) were intended to prevent. Applicants state that because each Money Market Fund will maintain a highly liquid portfolio, an Investing Portfolio will not be in a position to gain undue influence over a Money Market Fund. Applicants represent that the proposed arrangement will not result in an inappropriate layering of fees because shares of the Money Market Funds sold to the Investing Portfolios will not be subject to a sales load, redemption fee, distribution fee under a plan adopted in accordance with rule 12b–1 or service fee (as defined in rule 2830(b)(9) of the National Association of Securities Dealers, Inc. ("NASD") Conduct Rules) or, if such shares are subject to any such fees in the future, the Adviser will waive its advisory fee for each Investing Portfolio in an amount that offsets the amount of such fees incurred by the Investing Portfolio. Applicants state that if a Money Market Fund offers more than one class of shares, an Investing Portfolio will invest its Cash Balances only in the class with the lowest expense ratio (taking into account the expected impact of the Investing Portfolio's investment) at the time of the investment. In connection with approving any advisory contract, the boards of trustees of the Investing Portfolios (each a "Board" and together the "Boards"), including a majority of the trustees who are not "interested persons," as defined in section 2(a)(19) of the Act ("Independent Trustees") will consider to what extent, if any, the advisory fees charged to each Investing Portfolio by the Adviser should be reduced to account for reduced services provided to the Investing Portfolio by the Adviser as a result of Uninvested Cash being invested in the Money Market Funds. Applicants represent that no Money Market Fund will acquire securities of any other investment company in excess of the limitations contained in section 12(d)(1)(A) of the Act, except to the extent permitted by section 12(d)(1)(E) of the Act.

4. Section 17(a) of the Act makes it unlawful for any affiliated person of a registered investment company, acting as principal, to sell or purchase any security to or from the company. Section 2(a)(3) of the Act defines an "affiliated person" of an investment company to include the investment adviser, any person that owns 5% or more of the outstanding voting securities of that company, and any person directly or indirectly controlling, controlled by, or under common control with the investment company. Applicants state that as the investment adviser of the Funds and Portfolios, the Adviser is an affiliated person of each of these entities under section 2(a)(3) of the Act. Applicants state that the Portfolios share a common investment adviser and some Funds and Portfolios share common boards of trustees, the Funds and Portfolios may be considered affiliated persons of each other under section 2(a)(3) by virtue of being deemed to be under common control. In addition, applicants submit that an Investing Portfolio may own more than 5% of the outstanding shares of beneficial interest of one or more of the Money Market Funds. Therefore, applicants state that the Investing Portfolio and the Money Market Funds might be deemed affiliated persons (or affiliates of an affiliate) of each other. Accordingly, applicants state that the sale of shares of the Money Market Funds to the Investing Portfolios, and the redemption of such shares, would be prohibited under section 17(a).

5. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if the terms of the proposed transaction, including the consideration to be paid or received, are fair and reasonable and do not involve overreaching on the part of any person concerned, the proposed transaction is consistent with the policies of each registered investment company involved, and with the general purposes of the Act. Section 6(c) of the Act provides, in part, that the Commission may exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from any provision of the Act if, and to the extent that such exemption is necessary or appropriate in the public interest and is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

6. Applicants submit that the request for relief satisfies the standards of sections 17(b) and 6(c) of the Act. Applicants state that the Investing Portfolios will purchase and sell shares on the same terms and on the same basis as shares are purchased and sold by all other shareholders of the Money Market Funds. In addition, under the proposed transactions, the Investing Portfolios will retain their ability to invest their Cash Balances directly in money market instruments as permitted by each Investing Portfolio's investment objectives and policies. Applicants state that each of the Money Market Funds reserves the right to discontinue selling shares to any of the Investing Portfolios if the Money Market Fund board of trustees determines that such sales would adversely affect its portfolio management and operations. Applicants further state that investment of Cash Balances in shares of the Money Market Funds will be made only if not prohibited by such Investing Portfolio's respective investment restrictions and the policies as set forth in the prospectuses and statements of additional information of its corresponding Funds.[3]

7. Section (d) of the Act and rule 17d–1 under the Act prohibit an affiliated person of an investment company, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates, unless the Commission has issued an order authorizing the arrangement. Applicants state that the Investing Portfolios (by purchasing shares of the Money Market Funds), the Adviser (by managing the assets of the Investing Portfolios invested in the Money Market Funds), and the Money Market Funds (by selling shares to and redeeming them from the Investing Portfolios) could be deemed to be participants in a joint enterprise or other joint arrangement within the meaning of section 17(d) of the Act and rule 17d–1 thereunder.

8. In determining whether to authorize a joint transaction, the Commission considers whether the proposed transaction is consistent with the provisions, policies, and purposes of the Act, and the extent to which the participation is on a basis different from or less advantageous than that of other participants. Applicants submit that the proposed transactions meet these standards because the investments by the Investing Portfolios in shares of the Money Market Funds would be indistinguishable from any other shareholder account maintained by the Money Market Funds and the transactions will be consistent with the Act.

**Applicants' Conditions**

Applicants agree that the requested exemption will be subject to the following conditions:

1. Investment of Cash Balances in shares of the Money Market Funds will be in accordance with each Investing Portfolio's respective investment restrictions, if any, and will be consistent with its corresponding Funds' policies as recited in such Funds' prospectuses and statements of additional information (and any supplements thereto). Investing Portfolios that are money market funds will not acquire shares of any Money Market Fund that does not comply with the requirements of rule 2a–7 under the Act.

2. Shares of the Money Market Funds sold to and redeemed by the Investing Portfolios will not be subject to a sales load, redemption fee, distribution fee adopted in accordance with rule 12b–1 under the Act, or service fee (as defined in rule 2830(b)(9) of the NASD Conduct Rules), or if such shares are subject to any such fee, the Adviser will waive its advisory fee for each Investing Portfolio in an amount that offsets the amount of such fees incurred by the Investing Portfolio.

3. Prior to reliance on the order by an Investing Portfolio, the Board of the

[1] Applicants also wish to have the flexibility to allow the Funds to engage directly in the transactions described in the application if, in the future, the Funds were to terminate their master-feeder structure and instead invest directly in investment securities as single-tier funds. To have this flexibility, applicants request relief to engage in the transactions described in the application on behalf of each Fund as well as each Portfolio. Applicants further acknowledge that if the Funds terminate their master-feeder structure, the Funds will rely on the requested relief only in accordance with all of the terms and conditions of the application.

[2] All existing investment companies that currently intend to rely on the requested relief have been named as applicants, and any entities that rely on the requested order in the future will do so only in accordance with the terms and conditions of the application.

[3] If the exemptive relief requested is granted, the current fundamental investment restrictions of any Investing Portfolio would not preclude the Investing Portfolio from investing Uninvested Cash in shares of the Money Market Funds.

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Managers Trust of which the Investing Portfolio is a series will hold a meeting for the purpose of voting on an advisory contract under section 15 of the Act. Before approving any advisory contract for an Investing Portfolio, each such Board, including a majority of the Independent Trustees, taking into account all relevant factors, shall consider to what extent, if any, the advisory fee charged to the Investing Portfolio by the Adviser should be reduced to account for reduced services provided to the Investing Portfolio by the Adviser as a result of Uninvested Cash being invested in the Money Market Funds. In connection with this consideration, the Adviser to the Investing Portfolio will provide the Boards with specific information regarding the approximate cost to the Adviser of, or portion of the advisory fee under the existing advisory fee attributable to, managing the Uninvested Cash of the Investing Portfolio that can be expected to be invested in the Money Market Funds. The minute books of the Investing Portfolio will record fully the Boards' consideration in approving the advisory contract, including the considerations referred to above.

4. Each Investing Portfolio will invest Uninvested Cash in, and hold shares of, the Money Market Funds only to the extent that the Investing Portfolio's aggregate investment of Uninvested Cash in all Money Market Funds does not exceed 25 percent of the Investing Portfolio's total assets. For purposes of this limitation, each Investing Portfolio will be treated as a separate investment company.

5. Each Investing Portfolio, each Money Market Fund, and any future investment company that may rely on the order shall be part of the same group of investment companies as defined in section 12(d)(1)(G)(ii) of the Act and shall be advised, or provided the Adviser manages the Cash Balances, sub-advised by the Adviser, or a person controlling, controlled by, or under common control with the Adviser.

6. No Money Market Fund in which an Investing Portfolio invests shall acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act, except as permitted by section 12(d)(1)(E) of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–25865 Filed 10–6–00; 8:45 am]

BILLING CODE 8010–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43396; File No. SR–CHX–00–16 and SR–Amex–00–10]**

## Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 2 and 3 by the Chicago Stock Exchange, Inc. Relating to the Listing and Trading of Trust Issued Receipts, and Order Approving Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 by the American Stock Exchange LLC Relating to the Listing and Trading of Trust Issued Receipts

September 29, 2000.

### I. Introduction

On May 5, 2000, the Chicago Stock Exchange, Incorporated ("CHX"), filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to the listing and trading of trust issued receipts. On June 7, 2000, CHX filed Amendment No. 1 to the proposal.[3] The proposed rule change and Amendment No. 1 were published in the **Federal Register** on July 7, 2000.[4] No comments were received on the proposal. On September 7, 2000, CHX filed Amendment No. 2 to the proposal.[5] On September 20, 2000, CHX filed Amendment No. 3 to the proposal.[6] This notice and order approves the proposed rule change and Amendment No. 1, solicits comment from interested persons on Amendment Nos. 2 and 3, and approves Amendment Nos. 2 and 3 on an accelerated basis.

On February 14, 2000, the American Stock Exchange LLC ("Amex") submitted to the Commission, pursuant to Section 19(b)(1) of the Act and Rule 19b–4 thereunder,[7] a proposed rule change relating to generic listing standards for trust issued receipts. On June 2, 2000, Amex filed Amendment No. 1.[8] The proposed rule change and Amendment No. 1 were published for comment in the **Federal Register** on June 12, 2000.[9] No comments were received on the proposal. On August 29, 2000, Amex filed Amendment No. 2 to the proposal.[10] This notice and order approves the proposed rule change and Amendment No. 1, solicits comment from interested persons on Amendment No. 2, and approves Amendment No. 2 on an accelerated basis.

### II. Description of the Proposals

The proposals would amend CHX Article XXVII, Rule 27 and Amex Rule 1202 to provide generic standards that permit listing and trading, or trading pursuant to unlisted trading privileges ("UTP"), of trust issued receipts pursuant to Rule 19b–4(e) of the Act.[11] This procedure would allow Amex and CHX to begin trading qualifying products without the need for notice and comment and Commission approval under section 19(b) of the Act, thus reducing the Exchanges' regulatory burden, and benefiting the public interest.

Amex and CHX believe that their proposals supplement the existing

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, which was incorporated into the proposed rule change, CHX replaced a reference to "trust issued receipts" with a reference to "a series of HOLDRs" in the text of proposed Interpretation and Policy .01 to CHX Rule 27. *See* Letter from Ellen J. Neely, Vice President and General Counsel, CHX, to Andrew Shipe, Attorney, Division of Market Regulation ("Division"), Commission, dated June 6, 2000.

[4] Securities Exchange Act Release No. 42049 (June 28, 2000), 65 FR 42049.

[5] In Amendment No. 2, CHX changed all references to "HOLDRs" in the proposed rule text to "trust issued receipts." *See* Letter from Ellen J. Neely, Vice President and General Counsel, CHX, to Heather Traeger, Attorney, Division, Commission, dated September 5, 2000.

[6] In Amendment No. 3, CHX changed the proposed rule text to clarify that the listing criteria apply to each "security" underlying the trust issued receipt, not each "company." *See* Letter from Ellen J. Neely, Vice President and General Counsel, CHX to Heather Traeger, Attorney, Division, Commission, dated September 19, 2000.

[7] 17 CFR 240.19b–4.

[8] *See* letter from Scott Van Hatten, Legal Counsel, Derivative Securities, Amex, to Nancy Sanow, Assistant Director, Division, Commission, dated May 24, 2000. In Amendment No. 1, Amex made several technical changes that were incorporated into the proposed rule change when it was noticed in the **Federal Register**. Amex also clarified that it, and not the Commission, may approve a series of HOLDRs for listing pursuant to Rule 19b–4(e) provided each of the component securities satisfies the proposed listing criteria.

[9] Securities Exchange Act Release No. 42895 (June 2, 2000), 65 FR 36853.

[10] In Amendment No. 2, Amex changed all references to "HOLDRs" in the proposed rule text to "trust issued receipts." *See* Letter from Scott Van Hatten, Legal Counsel, Amex, to Nancy Sanow, Assistant Director, Division, Commission, dated August 25, 2000.

[11] Rule 19b–4(e) provides that the listing and trading of a new derivative securities product by a self-regulatory organization ("SRO") shall not be deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b–4, if the Commission has approved, pursuant to section 19(b) of the Act, the SRO's trading rules, procedures and listing standards for the product class that include the new derivative securities product and the self-regulatory organization has surveillance program for the product class. 17 CFR 240.19b–4(e).



rules[12] with generic listing criteria meant, in part, to ensure that no security underlying a trust issued receipt will be readily susceptible to manipulation, while permitting sufficient flexibility in the construction of various trust issued receipts to meet investors' needs. Amex and CHX further believe that the additional criteria are meant to ensure sufficient liquidity for investors seeking to purchase and deposit the underlying securities with the trustee to create a new trust issued receipt.

Thus, under the proposals, Amex and CHX could list or trade, pursuant to Rule 19b–4(e), any trust issued receipt product that met the following additional criteria: (1) Each component security in the trust issued receipt must be registered under Section 12 of the Act,[13] (2) each component security underlying the trust issued receipt must have a minimum public float of at least $150 million; (3) each component security underlying the trust issued receipt must be listed on a national securities exchange or traded through the facilities of Nasdaq as a reported national market system security; (4) each component security underlying the trust issued receipt must have an average daily trading volume of at least 100,000 shares during the preceding sixty-day trading period; and (5) each component security underlying the trust issued receipt must have an average daily dollar value of shares traded during the preceding sixty-day trading period of at least $1 million. In addition, no underlying security may initially represent more than 20% of the overall value of the receipt.

Finally, Amex and CHX will comply with the recordkeeping requirements of Rule 19b–4(e), and will file Form 19b–4(e) for each trust issued receipt listed under the rule within five business days of commencement of trading.[14]

### III. Discussion

After careful review, the Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of section 6(b)(5).[15] Specifically, the Commission finds that the proposals to provide generic standards to permit listing and trading of trust issued receipts pursuant to Rule 19b–4(e) further the intent of that rule by facilitating commencement of trading in these securities without the need for notice and comment and Commission approval under section 19(b) of the Act. By establishing generic standards, the proposals should reduce Amex and CHX's regulatory burden, as well as benefit the public interest, by enabling Amex and CHX to bring qualifying products to the market more quickly. Accordingly, the Commission finds that Amex and CHX's proposals will promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, protect investors and the public interest consistent with Section 6(b)(5) of the Act.[16]

Rule 19b–4(e) provides that the listing and trading of a new derivative securities product by an SRO shall not be deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b–4, if the Commission has approved, pursuant to section 19(b) of the Act, the SRO's trading rules, procedures and listing standards for the product class that include the new derivative securities product and the SRO has a surveillance program for the product class.[17]

As described above, the Commission has previously approved Amex and CHX rules that permit the listing and trading of individual trust issued receipts on the Exchanges or pursuant to UTP.[18] In approving these securities for trading, the Commission considered their structure, their usefulness to investors and the markets, and the Exchanges' rules and surveillance programs that govern their trading. The Commission concluded then that securities approved for listing under those rules would allow investors to: (1) Respond quickly to changes in the overall securities markets generally and for the industry represented by a particular trust; (2) trade, at a price disseminated on a continuous basis, a single security representing a portfolio of securities that the investor owns beneficially; (3) engage in hedging strategies similar to those used by institutional investors; (4) reduce transactions costs for trading a portfolio of securities; and (5) retain beneficial ownership of the securities underlying the trust issued receipts. The Commission believes, for the reasons set forth below, that additional trust issued receipts that satisfy the proposed generic standards and, therefore, can be listed under Rule 19b–4(e) without prior Commission approval, should produce the same benefits to Amex and CHX and to investors.

The Commission further believes that adopting generic listing standards for these securities and applying Rule 19b–4(e) should fulfill the intended objective of that rule by allowing those trust issued receipt products that satisfy the generic standards to start trading, without the need for notice and comment and Commission approval. Amex and CHX's ability to rely on Rule 19b–4(e) potentially reduces the time frame for bringing these securities to the market or for permitting the trading of these securities pursuant to UTP, and thus enhances investors' opportunities. The Commission notes that while the proposals reduce the Exchanges' regulatory burden, the Commission maintains regulatory oversight over any products listed under the generic standards through regular inspection oversight.

The Commission finds that Amex and CHX's proposals contain adequate rules and procedures to govern the listing and trading of trust issued receipts pursuant to Rule 19b–4(e) on the Amex or CHX, or pursuant to UTP. As the Commission noted in its previous review and approval of CHX Article XXVIII, Rule 27, and Amex Rules 1200 *et seq.*, all trust issued receipt products listed under the generic standards will be subject to the full panoply of Amex and CHX rules and procedures that now govern both the trading of trust issued

[12] The existing Amex and CHX rules provide that trust issued receipts will be listed and traded, or traded pursuant to UTP, subject to application of the following criteria: (a) Initial Listing—For each trust, the Exchange will establish a minimum number of trust issued receipts required to be outstanding at the time of commencement of trading on the Exchange; (b) Continued Listing—Following the initial twelve month period following formation of a trust and commencement of trading on the Exchange, the Exchange will consider the suspension of trading in or removal from listing of a Trust upon which a series of trust issued receipts is based under any of the following circumstances: (i) If the trust has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of trust issued receipts for 30 or more consecutive trading days; (ii) if the trust has fewer than 50,000 receipts issued and outstanding; (iii) if the market value of all receipts issued and outstanding is less than $1,000,000; or (iv) if such other event shall occur or condition exists which in the opinion of the respective Exchange, makes further dealings on the Exchange inadvisable.

[13] 15 U.S.C. 781.

[14] 17 CFR 240.19b–4(e).

[15] 15 U.S.C. 78f(b)(5).

[16] 15 U.S.C. 78f(b)(5). In approving these rules, the Commission notes that is has considered the proposed rules' impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[17] *See* Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998).

[18] *See, e.g.*, Securities Exchange Act Release No. 42056 (October 22, 1999), 64 FR 58870 (November 1, 1999) (CHX); Securities Exchange Act Release No. 41892 (September 21, 1999), 64 FR 52559 (September 29, 1999) (Amex).

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receipts and the trading of equity securities on the Amex and CHX, including, among others, rules and procedures governing trading halts, disclosures to members, responsibilities of the specialist, account opening and customer suitability requirements, the election of a stop or limit order, and margin.[19]

The Commission further finds that: (1) By requiring that the underlying securities in a trust issued receipt are registered under section 12 of the Act and listed on a national securities exchange or Nasdaq and (2) by establishing minimum values for the number of outstanding receipts, average daily trading volume, average daily dollar volume, and public float, the Exchanges' proposed listing criteria will help to ensure that a minimum level of liquidity will exist to allow for the maintenance of fair and orderly markets for those trust issued receipt products listed and traded pursuant to Rule 19b–4(e). The Commission believes that these listing criteria will help to ensure that no security underlying a trust issued receipt will be readily susceptible to manipulation, while permitting sufficient flexibility in the construction of various trust issued receipts to meet investors' needs. The Commission further believes that these criteria should serve to ensure that the underlying securities of such trust issued receipts are well capitalized and actively traded, which will help to ensure that U.S. securities markets are not adversely affected by the listing and trading of new trust issued receipts under Rule 19b–4(e). Accordingly, the Commission finds that these criteria are consistent with section 6(b)(5) of the Act, because they serve to prevent fraudulent or manipulative acts; promote just and equitable principles of trade; remove impediments to and perfect the mechanism of a free and open market and a national market system; and protect investors and the public interest.[20]

Additionally, as the Commission noted in its previous review and approval of CHX Article XXVIII, Rule 27, and Amex Rules 1200 *et seq.*, the Exchanges' delisting criteria allow them to consider the suspension of trading and the delisting of a trust issued receipt if an event occurs that makes further dealings in such securities inadvisable. This will give Amex and CHX flexibility to delist trust issued receipts if circumstances warrant. The proposals also rely on procedures to halt trading in trust issued receipts in certain enumerated circumstances that were approved previously by the Commission.[21]

The Commission notes that, in connection with its previous review and approval of CHX Article XXVIII, Rule 27, and Amex rules 1200 *et seq.*, it approved the Exchanges' minimum price increments, their surveillance procedures, and their disclosure and prospectus delivery requirements for trust issued receipts.[22] In accord with these previous findings, the Commission believes that these rules, which will govern the trading of trust issued receipt products listed pursuant to Rule 19b–4(e), will provide adequate safeguards to prevent manipulative acts and practices and to protect investors and the public interest. Further, the Commission believes that the proposals will ensure that investors have information that will allow them to be adequately apprised of the terms, characteristics, and risk of trading trust issued receipts.

Finally, Amex and CHX will file Form 19–4(e) with the Commission within five business days of commencement of trading a trust issued receipt under the generic standards, and will comply with all Rule 19–4(e) recordkeeping requirements.

Accordingly, the Commission believes that Amex and CHX's proposed rules governing the listing and trading of trust issued receipts pursuant to Rule 19–4(e) provide adequate safeguards to prevent manipulative acts and practices and to protect investors and the public interest, consistent with section 6(b)(5) of the Act.[23]

The Commission finds good cause for approving Amendments No. 2 to the CHX and Amex proposed rule changes prior to the thirtieth day after the date of publication of notice in the **Federal Register**, pursuant to section 19(b)(2) of the Act. Amendments No. 2 to the proposed rule changes established that the proposed generic standards are for the listing and trading of all trust issued receipts that satisfy the proposed standards. The proposed generic standards are not limited to HOLDRs, a type of trust issued receipt. Because the amendments establish the scope of the proposed rule change, the Commission believes that it is necessary to approve them at the same time as approving the proposed rule changes. Accordingly, the Commission finds that there is good cause, consistent with section 6(b)(5) of the Act,[24] to approve Amendments No. 2 to the proposals on an accelerated basis.

The Commission also finds good cause for approving Amendment No. 3 to the CHX proposed rule change prior to the thirtieth day after the date of publication of notice in the **Federal Register** pursuant to section 19(b)(2) of the Act. Amendment No. 3 changes the CHX proposed rule text to clarify that the listing criteria apply to the specific "security" underlying the trust issued receipt, and not to the "company" underlying the trust issued receipt. The Commission believes that this clarification is significant. A company could have multiple issues, only one of which underlies the trust issued receipt. If the text of the proposed rule change used the word "company," the aggregate values for all issues of the company could meet the listing criteria for minimum daily float, daily trading volume and daily dollar volume; yet, these values would not be an accurate accounting of the value of the specific security that underlies the trust issued receipts. Thus, it is conceivable that a security underlying a trust issued receipt might not satisfy the proposed listing criteria, but the company's securities as a whole would satisfy the proposed criteria. Because Amendment No. 3 changes the proposed rule text to specify that it is the individual security that must be evaluated for listing purposes, the Commission believes that it is necessary to approve it at the same time as approving the proposed rule changes. Accordingly, the Commission finds that there is good cause, consistent with section 6(b)(5) of the Act,[25] to approve CHX Amendment No. 3 on an accelerated basis.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning both Amex Amendment No. 2 and CHX Amendment Nos. 2 and 3, including whether those amendments are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CHX–00–16 or SR–Amex–00–10 and should be submitted by October 31, 2000.

## V. Conclusion

For the foregoing reasons, the Commission finds that Amex and CHX's proposals relating to the listing and trading of trust issued receipts pursuant to Rule 19–4(e) are consistent with the requirements of the Act and rules and regulations thereunder.

*It is therefore ordered,* pursuant to section19(b)(2) of the Act,[26] that the proposed rule change (SR–CHX–00–16), as amended, and the proposed rule change (SR–Amex–00–10), as amended, are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[27]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–25866 Filed 10–6–00; 8:45 am]

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[19] *Id.*

[20] 15 U.S.C. 78f(b)(5).

[21] *See* note 18, *supra.*

[22] *Id.*

[23] 15 U.S.C. 78f(b)(5).

[24] 15 U.S.C. 78s(b)(5).

[25] 15 U.S.C. 78s(b)(5).

[26] 15 U.S.C. 78s(b)(2).

[27] 17 CFR 200.30–3(a)(12).



## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43402; File No. SR–CHX–00–29]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to Fees for the E-Session

October 2, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 22, 2000, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange had designated this proposal as one establishing or changing a due, fee, or other charge imposed by the CHX under section 19(b)(3)(A)(ii) of the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

## I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its membership dues and fees schedule (the "Schedule") to provide Exchange specialists and floor brokers with a credit of $.25 per trade executed during the Exchange's extended hours trading session ("E-Session")[4] through December 31, 2000. The text of the proposed rule change is below. Additions are in italics. Deletions are in brackets.

**Membership Dues and Fees**

* * * * *

M. Credits

1. Specialists Credits

Total monthly fees owed by a specialist to the Exchange will be reduced (but to no less than zero) by the application of the following [transaction] credits:

a. No change to text.

b. No change to text.

c. E-Session Credits. A credit of $.25 per trade executed during the E-Session. This credit shall be available through *December 31, 2000* [October 1, 2000].

2. Floor Broker Credits

a. No change to text.

b. No change to text.

c. E-Session Credits. Total monthly fees owed by a floor broker to the Exchange will also be reduced (but to no less than zero) by the application of an E-Session Credit. "E-Session Credit" means a credit of $.25 per trade executed during the E-Session. This credit shall be available through *December 31, 2000* [October 1, 2000].

* * * * *

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Section A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

On October 29, 1999, the Exchange implemented the E-Session, which permits investors to submit limit orders for execution until 5:30 p.m., Central Time. To encourage members to seek additional order flow during the E-Session, the Exchange developed an E-Session credit program that provides Exchange specialists and floor brokers with a credit of $.25 per trade executed during the E-Session. The credit program was effective on filing with the Commission in May 2000,[5] and is scheduled to expire on October 1, 2000. This proposal extends the E-Session credit program through December 31, 2000.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act[6] in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[7] and subparagraph (f)(2) of Rule 19b–4 thereunder,[8] because it involves a due, fee, or other charge. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] On October 13, 1999, the Commission approved, on a pilot basis, the CHX's proposed rule change that allowed the CHX to implement an extended hours trading session. *See* Securities Exchange Act Release No. 42004 (October 13, 1999), 64 FR 56548 (October 20, 1999)(SR–CHX–99–16). The Commission recently approved the CHX's proposal to make the E-Session a permanent part of the CHX's operations. *See* Securities Exchange Act Release No. 43304 (September 19, 2000), 65 FR 57850 (SR–CHX–00–26). The E-Session takes place from 3:30 p.m. to 5:30 p.m., Central Time, Monday through Friday.

[5] *See* Securities Exchange Act Release No. 42784 (May 15, 2000), 65 FR 33383 (May 23, 2000 (SR–CHX–00–12).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 240.19b–4(f)(2).

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abrogate such rule change if it appears if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[9]

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, an subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to file number SR–CHX–00–29, and should be submitted by October 31, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–25867 Filed 10–6–00; 8:45 am]

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[9] The Commission notes that the proposal may raise questions concerning payment for order flow. To the extent that it does raise such issues, exchange members should consider best execution and disclosure obligations they may have under the federal securities laws in general, and particularly under Rules 10b–10 and 11Ac1–3 under the Act. 17 CFR 240.10b–10 and 17 CFR 240.11Ac1–3, respectively.

[10] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43403; File No. SR–CHX–00–30]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to Membership Dues and Fees During the E-Session

October 2, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 22, 2000, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items, I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the CHX under Section 19(b)(3)(A)(ii) of the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend its membership dues and fees schedule (the "Schedule") to continue, through December 31, 2000, the waiver of all transaction, order processing and floor broker fees for transactions that occur during the CHX's E-Session extended hours trading session. The text of the proposed rule change is available upon request from the CHX and the Commission.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The proposed rule change amends the Schedule to eliminate, through December 31, 2000, order processing, transaction and floor broker fees for transactions that occur during the CHX's E-Session.[4] This proposal is designed to allow CHX members to continue to participate in the E-Session without incurring the fees normally associated with their CHX transactions.[5] According to the Exchange, the vast majority of the securities that trade during the E-Session are already subject to order processing and transaction fee waivers under the current fee schedule because they are either Nasdaq/NMS issues or issues within the S&P 500. Waiving fees on the few remaining securities and on floor broker transactions in all securities simplifies the Exchange's fee-related communications with its members.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act[6] in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] On October 13, 1999, the Commission approved, on a pilot basis, the CHX's proposed rule change that allowed the CHX to implement an extended hours trading session. *See* Securities Exchange Act Release No. 42004 (October 13, 1999), 64 FR 56548 (October 20, 1999) (SR–CHX–99–16). The Commission recently approved the CHX's proposal to make the E-Session a permanent part of the CHX's operations. *See* Securities Exchange Act Release No. 43304 (September 19, 2000), 65 FR 57850 (SR–CHX–00–26). The E-Session takes place from 3:30 p.m. to 5:30 p.m., Central Time, Monday through Friday.

[5] E-Session fees have been waived since the beginning of the E-Session. *See* Securities Exchange Act Release Nos. 42089 (November 2, 1999), 64 FR 60864 (November 8, 1999) (SR–CHX–99–23) (waiving fees from October 13, 1999 through December 31, 1999); 42329 (January 11, 2000), 65 FR 3000 (January 19, 2000) (SR–CHX–99–29) (waiving fees from January 1, 2000 through March 1, 2000); 42486 (March 2, 2000), 65 FR 12601 (March 9, 2000) (SR–CHX–005) (waiving fees from March 2, 2000 through June 30, 2000); and 42929 (June 13,2000), 65 FR 38620 (June 21, 2000) (SR–CHX–00–18) (waiving fees from July 1, 2000 through October 1, 2000). This proposal simply extends the waiver of the same fees through December 31, 2000. *See* October 2, 2000 telephone conversation between Ellen J. Neely, Vice President and General Counsel, CHX, and Joseph P. Morra, Special Counsel, Division of Market Regulation, SEC.

[6] 15 U.S.C. 78f(b)(4).



*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[7] and subparagraph (f)(2) of Rule 19b–4 thereunder,[8] because it involves a due, fee, or other charge. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to file number SR–CHX–00–30, and should be submitted by October 31, 2000.

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 240.19b–4(f)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–25868 Filed 10–6–00; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43404; File No. SR–PCX–99–50]**

## Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Non-Agency Orders in P/COAST

October 2, 2000.

**I. Introduction**

On November 18, 1999, the Pacific Exchange, Inc. ("PCX" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to allow non-agency orders to be routed through and executed in the Pacific Computerized Order Access SysTem ("P/COAST").

The proposed rule change was published for comment in the **Federal Register** on February 3, 2000.[3] No comments were received on the proposal. This order approves the proposal.

**II. Description of Proposal**

The P/COAST system is the Exchange's communication, order routing and order execution system for equity securities. Currently, only agency orders are permitted to be routed through, and executed in, the P/COAST system.[4] In the proposed rule change, the Exchange seeks to abolish the current rule, and allow both agency and principal orders to be routed through and executed in the P/COAST system.

The Exchange is not proposing to change its existing rules regarding the priority of bids and offers,[5] which do not currently distinguish between agency and principal orders. Accordingly, agency and principal orders will be able to be routed and executed through the P/COAST system.

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Release No. 42357 (Jan. 27, 2000), 65 FR 5383.

[4] *See* PCX Rule 5.25(b)(1).

[5] *See, e.g.*, PCX Rule 5.8(c).

**III. Discussion**

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[6] In particular, the Commission believes that the proposed rule is consistent with the requirements of Section 6(b)(5) of the Act[7] because it is designed to help perfect the mechanism of a free and open market and is not designed to permit unfair discrimination between customer and brokers or dealers.

Under the Exchange's proposed rule change, non-agency orders may be routed through the P/COAST system for execution. Currently, principal orders are executed manually on the floor of the Exchange. The Commission believes that the proposed rule change should be beneficial because it will allow broker-dealers to take advantage of the increased speed associated with the use of P/COAST, thus providing more efficient execution of their orders. However, according to the PCX, orders of specialists and floor brokers will not be able to be entered into the P/COAST system.[8]

The Commission believes that the Exchange's proposal is consistent with the Act because it does not discriminate between customers, brokers or dealers: all orders in a particular stock will receive the same treatment whether the order is an agency or non-agency order. However, orders of PCX members will still have to comply with Section 11(a) of the Act.[9] Further, the proposal should facilitate transactions on the Exchange because all eligible orders will now be routed automatically by the P/COAST system. This should lead to more timely executions of principal orders.

**IV. Conclusion**

*It Is therefore Ordered,* pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–PCX–99–50) is approved.

[6] In approving this rule proposal, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(5).

[8] Telephone conversation between Michael Pierson, Vice President, Regulatory Policy, PCX, and Kelly Riley, Attorney, Division of Market Regulation, Commission, on September 12, 2000.

[9] 15 U.S.C. 78j.

[10] 15 U.S.C. 78f(b)(2).

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For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–25919 Filed 10–6–00; 8:45 am]

BILLING CODE 8010–01–M

## DEPARTMENT OF STATE

**[Public Notice 3432]**

### Advisory Committee on International Communications and Information Policy; Meeting Notice

The Department of State is announcing the next meeting of its Advisory Committee on International Communications and Information Policy. This is in place of the September 14, 2000 meeting that had to be postponed.

The Committee provides a formal channel for regular consultation and coordination on major economic, social and legal issues and problems in international communications and information policy, especially as these issues and problems involve users of information and communication services, providers of such services, technology research and development, foreign industrial and regulatory policy, the activities of international organizations with regard to communications and information, and developing country interests.

There will be a featured guest speaker at the meeting who will speak on an important topic involving international communications and information policy.

This meeting will be held on Thursday, October 26, 2000, from 9:30 a.m.–12:30 p.m. in Room 1107 of the Main Building of the U.S. Department of State, located at 2201 "C" Street, NW., Washington, DC 20520.

Members of the public may attend these meetings up to the seating capacity of the room. While the meeting is open to the public, admittance to the State Department Building is only by means of a pre-arranged clearance list. In order to be placed on the pre-clearance list, please provide your name, title, company, social security number, date of birth, and citizenship to Timothy C. Finton at <fintontc@state.gov>. All attendees for this meeting must use the 23rd Street entrance. One of the following valid ID's will be required for admittance: any U.S. driver's license with photo, a passport, or a U.S. Government agency ID. Non-U.S. Government attendees must be escorted by State Department personnel at all times when in the State Department building.

For further information, contact Timothy C. Finton, Executive Secretary of the Committee, at (202) 647–5385 or <fintontc@state.gov>.

Dated: October 3, 2000.

**Timothy C. Finton,**

*Executive Secretary.*

[FR Doc. 00–25974 Filed 10–6–00; 8:45 am]

BILLING CODE 4710–45–U

[11] 17 CFR 200.30–3(a)(12)

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### Determination Under the Caribbean Basin Trade Partnership Act

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice.

**SUMMARY:** The United States Trade Representative has determined that Belize, Costa Rica, Dominican Republic, El Salvador, Guatemala, Haiti, Honduras, Jamaica, Nicaragua, and Panama have implemented and follow, or are making substantial progress toward implementing and following, the customs procedures required by the Caribbean Basin Trade Partnership Act and, therefore, imports of eligible products from these countries qualify for the enhanced trade benefits provided under the Act.

**EFFECTIVE DATE:** October 2, 2000.

**FOR FURTHER INFORMATION CONTACT:** Christopher Wilson, Director for Central America and the Caribbean, Office of the United States Trade Representative, (202) 395–5190.

**SUPPLEMENTARY INFORMATION:** The Caribbean Basin Trade partnership Act (Title II of the Trade and Development Act of 2000, Pub. L. No. 106–200) (CBTPA) expands the trade benefits available to Caribbean and Central American countries under the Caribbean Basin Economic Recovery Act (CBERA). The CBTPA reduces or eliminates tariffs and eliminates quantitative restrictions on certain products that previously were not eligible for preferential treatment under the CBERA. The enhanced trade benefits provided by the CBTPA are available to imports of eligible products from countries that (1) are designated as "CBTPA beneficiary countries," and (2) have implemented and follow, or are making substantial progress toward implementing and following, certain customs procedures, drawn from Chapter 5 of the North American Free Trade Agreement, that allow U.S. Customs to verify the origin of the products.

On October 2, 2000, the President designated all 24 current beneficiaries under the CBERA as "CBTPA beneficiary countries." Proclamation 7351 delegated to the United States Trade Representative (USTR) the authority to determine whether the designated CBTPA beneficiary countries have implemented and follow, or are making substantial progress toward implementing and following, the customs procedures required by the CBTPA. The President directed the USTR to announce any such determinations in the **Federal Register** and to implement any such determinations in the Harmonized Tariff Schedule (HTS).

Based on information and commitments received from beneficiary countries to date, I have determined that Belize, Costa Rica, Dominican Republic, El Salvador, Guatemala, Haiti, Honduras, Jamaica, Nicaragua, and Panama have implemented and follow, or are making substantial progress toward implementing and following, the customs procedures required by the CBTPA. Accordingly, pursuant to the authority vested in the USTR by Proclamation 7351, the HTS is modified as provided in Proclamation 7351 and as specified in the Annex to this notice, effective with respect to articles entered, or withdrawn from warehouse, on or after October 2, 2000. The USTR will publish additional notices in the **Federal Register** announcing any determinations that other CBTPA beneficiary countries have satisfied the required customs procedures.

**Charlene Barshefsky,**

*United States Trade Representative.*

### Annex

Pursuant to the authority created in Proclamation 7351, the HTS is modified as follows:

1(a). General note 17(a) to the HTS, as established by the annex to such Proclamation, is modified by inserting at the end of the text the following new sentence and enumeration:

"The following countries have been determined by the USTR to have satisfied the customs requirements of the CBTPA and, therefore, to be afforded the tariff treatment provided for in this note:

Belize, Costa Rica, Dominican Republic, El Salvador, Guatemala, Haiti, Honduras, Jamaica, Nicaragua, Panama"

(b). General note 17(d) to the HTS, as established by the annex to such Proclamation, is modified by striking "the date announced in a **Federal Register** notice issued by the United States Trade Representative" and by inserting in lieu thereof "October 2, 2000."

2. The text of U.S. note 7 to subchapter II of chapter 98 of the HTS, as established by the annex to such Proclamation, is modified by inserting before it the paragraph designation "(b)". Such paragraph is modified by inserting at the end thereof the following new sentence and enumeration:

"The following countries have been determined by the USTR to have satisfied the customs requirements of the CBTPA and, therefore, to be afforded the tariff treatment provided for in this note:

Belize, Costa Rica, Dominican Republic, El Salvador, Guatemala, Haiti, Honduras, Jamaica, Nicaragua, Panama"

3. U.S. note 1 subchapter XX of chapter 98 of the HTS, as established by the annex to such Proclamation, is modified by adding at the end of the text of such note the following new sentence and enumeration:

"The following countries have been determined by the USTR to have satisfied the customs requirements of the CBTPA and, therefore, to be afforded the tariff treatment provided for in this note:

Belize, Costa Rica, Dominican Republic, El Salvador, Guatemala, Haiti, Honduras, Jamaica, Nicaragua, Panama"

4. U.S. note 2(b) and (c) are each modified by striking the expression "the date announced in a **Federal Register** notice issued by the United States Trade Representative" and by inserting in lieu thereof "October 2, 2000".

[FR Doc. 00–26072 Filed 10–5–00; 2:22 am]

BILLING CODE 3190–01–M



## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### Proposed Agency Information Collection Activities; Comment Request

**AGENCY:** Federal Railroad Administration, DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and its implementing regulations, this 30-day notice announces that the Information Collection Requirement (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collections of information was published on July 25, 2000 (65 FR 45825).

**DATES:** Comments must be submitted on or before November 9, 2000.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292), or Dian Deal, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6133). (These telephone numbers are not toll-free.)

**SUPPLEMENTARY INFORMATION:** The Paperwork Reduction Act of 1995 (PRA), Pub. L. No. 104–13, § 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 C.F.R. Part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 C.F.R. 1320.5, 1320.8(d)(1), 1320.12. On July 25, 2000, FRA published a 60-day notice in the **Federal Register** soliciting comment on ICRs that the agency was seeking OMB approval. 65 FR 45825. FRA received no comments in response to this notice.

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30 day notice is published. 44 U.S.C. 3507 (b)-(c); 5 CFR 1320.12(d); see also 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30 day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); see also 60 FR 44983, Aug. 29, 1995.

The summaries below describe the nature of the information collection requirements (ICRs) and the expected burden. The revised requirements are being submitted for clearance by OMB as required by the PRA.

*Title:* Regional Inspection Point Listing Forms.

*OMB Control Number:* 2130-New.

*Type of Request:* New collection.

*Affected Public:* Businesses.

*Form(s):* FRA F 6180.106(a)-(e).

*Abstract:* Through a direct comparison of inspection data with accident/incident data, the collection of information proposes to develop a profile county-by-county of what there is to inspect, and how much inspection activity was done by Federal and State railroad inspectors each year nationwide. The information collected will produce "snapshots" which will allow FRA to determine where the gaps are in inspection territories so that it can focus inspection resources where they will do the most good. As a result of the proposed information collection, FRA will be better able to equalize inspector workloads, and will be able to make informed hiring decisions regarding the most effective placement of new inspectors. More targeted inspections will permit FRA to maximize its limited resources, and will serve to enhance overall safety on the nation's rail system.

*Annual Estimated Burden Hours:* 3,387.

*Addressee:* Send comments regarding these information collections to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, NW., Washington, DC, 20503. Attention: FRA Desk Officer.

*Comments are invited on the following:* Whether the proposed collections of information are necessary for the proper performance of the functions of FRA, including whether the information will have practical utility; the accuracy of FRA's estimates of the burden of the proposed information collections; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collections of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

**Authority:** 44 U.S.C. 3501–3520.

Issued in Washington, DC on October 3, 2000.

**Kathy A. Weiner,**

*Director, Office of Information Technology and Support Systems, Federal Railroad Administration.*

[FR Doc. 00–25973 Filed 10–6–00; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA 99–6207, Notice 2]

### Bombardier Motor Corporation of America, Inc.; Grant of Application for Decision of Inconsequential Noncompliance

This notice grants the application by Bombardier Motor Corporation of America, Inc. (BMCA) to be exempted from the notification and remedy requirements of 49 U.S.C. 30118 and 30120 for vehicles that fail to comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 209, *Seat Belt Assemblies*. By not complying with FMVSS No. 209, the vehicles also fail to comply with FMVSS No. 500, *Low Speed Vehicles*. BMCA has filed an appropriate report pursuant to 49 CFR Part 573 "Defect and Noncompliance Reports." BMCA has also applied under 49 CFR Part 556 to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301 "Motor Vehicle Safety." The basis of the petition is that the noncompliance is claimed to be inconsequential to motor vehicle safety.

Notice of receipt of the application was published in the **Federal Register** November 8, 1999 and an opportunity afforded for comment (64 FR 61178). The comment closing date was December 9, 1999.

No comments were received.

**Background**

BMCA is a Delaware corporation with its principal place of business at 730 East Strawbridge Avenue, Melbourne, FL 32901. BMCA is the importer (manufacture) of a Low-Speed Vehicle ("LSV") under the brand name Bombardier NV neighborhood vehicle. This vehicle is built by Bombardier, Inc., in Canada On May 6, 1999, BMCA sent the National Highway Traffic Safety Administration (NHTSA) a letter pursuant to Title 49, Part 573 of the Code of Federal Regulations, for the purpose of reporting to NHTSA a noncompliance with FMVSS No. 209, S4.1(j)—"Marking." FMVSS No. 500 *Low-Speed Vehicles*, requires vehicles such as the Bombardier NV to be equipped with seat belt assemblies that comply with FMVSS No. 209.

FMVSS No. 209 S4.1 (j) requires that each seat belt assembly be permanently and legibly marked or labeled with the year of manufacture, model, and name or trademark of manufacturer or distributor, or of importer if manufactured outside the United States. The seat belt assemblies, manufactured by Good Success Corporation, model AB401 (309), installed in Bombardier NVs sold between June 17, 1998 and April 9, 1999 do not have the requisite marking or labeling. With the exception of the marking, the seat belt assemblies in question are said to comply fully with FMVSS No. 209.

Bombardier argues that, because the labeling noncompliance has no bearing on the materials or performance standards specified in FMVSS No. 209, all the seat belt assemblies in question were properly installed as original equipment, and BMCA's replacement part system would preclude the purchase and installation of an improper replacement seat belt assembly for a Bombardier NV, the noncompliance poses no motor vehicle safety risk.

**Discussion**

NHTSA has reviewed BMCA's application and, for the reasons discussed below, has decided that the noncompliance of the BMCA seat belt assemblies and the Bombardier NVs with the specified labeling requirements, is inconsequential to motor vehicle safety. Included in the petition was a letter from Erlin, Himes Associates to the seat belt assembly manufacturer, Good Success Corporation, indicating that the seat belt assemblies tested meet the performance requirements of FMVSS No. 209 for the type of seat belt assemblies tested.

NHTSA agrees that the lack of the correct label would not have any effect on occupant safety in these circumstances. BMCA produces only one vehicle model for highway use, and there is only one model of seat belt retractor for these vehicles. Therefore, it is highly unlikely that the wrong assemblies will be provided for replacement.

NHTSA has granted similar petitions for noncompliance with seat belt assembly labeling standards. *See, generally, TRW, Inc.*, Dkt. No. 92–67; Notice 2, 58 FR 7171 (1993); *Chrysler Corporation*, Dkt. No. 92–94–No.2, 57 Fed. Reg. 45,865 (1992). In both of these cases, the petitioners demonstrated that the noncompliant seatbelt assemblies were properly installed, and due to their respective replacement parts ordering systems, improper replacement seat belt assembly selection and installation would not be likely to occur.

In consideration of the foregoing, NHTSA has decided that the applicant has met its burden of persuasion that the noncompliance that it describes is inconsequential to safety. The determination is limited to the vehicles and equipment covered by the Part 573 report.

Accordingly, BMCA's application is granted, and it is exempted from providing the notification of noncompliance that is required by 49 U.S.C. 30118, and from remedying the noncompliance, as required by 49 U.S.C. 30120. All products manufactured or sold on and after the April 9, 1999, including any replacement seat belt assemblies, must comply fully with the requirements of FMVSS Nos. 500 and 209.

**Authority:** 49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.

Issued on: October 4, 2000.

**Stephen R. Kratzke,**

*Associate Administrator for Safety Performance Standards.*

[FR Doc. 00–25972 Filed 10–6–00; 8:45 am]

BILLING CODE 4910–59–P

## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

[Preemption Determination No. PD–13(R); Docket No. RSPA–97–2581 (PDA–16(R))]

### Nassau County, New York, Ordinance on Transportation of Liquefied Petroleum Gases

**AGENCY:** Research and Special Programs Administration (RSPA), DOT.

**ACTION:** Decision on petition for reconsideration of administrative determination of preemption.

*Petitioner:* New York Propane Gas Association (NYPGA)

*Local Laws Affected:* Nassau County, New York, Ordinance No. 344–1979, Sections 6.7(A) & (B) and Section 6.8.

*Applicable Federal Requirements:* Federal hazardous material transportation law, 49 U.S.C. 5101 *et seq.*, and the Hazardous Materials Regulations (HMR), 49 CFR Parts 171–180.

*Modes Affected:* Highway.

**SUMMARY:** Based on additional information provided by NYPGA and persons submitting comments on NYPGA's petition for reconsideration, RSPA finds that the requirement in Sections 6.7(A) and (B) of Ordinance No. 344–1979 for a permit to deliver liquefied petroleum gas (LPG) within Nassau County is preempted with respect to trucks that are based outside of Nassau County. As applied to and enforced against those vehicles, that requirement causes unnecessary delays in the transportation of hazardous materials to Nassau County from locations outside the County and, accordingly, creates an obstacle to accomplishing and carrying out Federal hazardous material transportation law and the HMR. Nassau County's permit requirement does not create unnecessary delays in the transportation of hazardous materials, and is not preempted, with respect to trucks that are based within Nassau County.



No person requested reconsideration of that part of RSPA's August 25, 1998 determination which found that Federal hazardous material transportation law preempts Section 6.8 of Ordinance No. 344–1979 for a certificate of fitness, insofar as that requirement is applied to a motor vehicle driver who sells or delivers LPG, because Section 6.8 imposes more stringent training requirements than provided in the HMR.

This decision constitutes RSPA's final action on NYPGA's application for a determination that Federal hazardous material transportation law preempts Sections 6.7(A) and (B) and 6.8 of Nassau County Ordinance No. 344–1979.

**FOR FURTHER INFORMATION CONTACT:** Frazer C. Hilder, Office of the Chief Counsel, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590–0001, telephone 202–366–4400.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

*A. Preemption Determination (PD) No. 13(R)*

NYPGA applied for a determination that Federal hazardous material transportation law preempts Sections 6.7(A) and (B) and Section 6.8 of Nassau County, New York, Ordinance No. 344–1979, concerning Fire Department permits and "certificates of fitness" for the delivery of liquefied petroleum gas (LPG) within Nassau County. RSPA published the text of NYPGA's application in the **Federal Register** and invited interested parties to comment. 62 FR 61661 (June 10, 1997). Comments were received from the National Propane Gas Association, National Tank Truck Carriers, Inc. (NTTC), New York State Motor Truck Association, Star-Lite Propane Gas Corp. (Star-Lite), the Association of Waste Hazardous Materials Transporters (AWHMT), and Nassau County. NYPGA submitted rebuttal comments.

On August 25, 1998, RSPA published in the **Federal Register** its determination that the requirement in Section 6.8 for a certificate of fitness is preempted, insofar as that requirement is applied to a motor vehicle driver who sells or delivers LPG, because Section 6.8 imposes on drivers of motor vehicles used to deliver LPG more stringent training requirements than provided in the HMR. PD–13(R), 63 FR 45283.

At the same time, RSPA concluded that there was insufficient information to find that Federal hazardous material transportation law preempts the requirement in Sections 6.7(A) and (B) of Ordinance No. 344–1979 for a permit to pick up or deliver LPG within Nassau County. NYPGA's application and the comments failed to show that: (1) the inspection and fee required to obtain a permit cause an unnecessary delay in the transportation of hazardous materials; (2) the permit fee is unfair or used for purposes other than relating to transporting hazardous materials, including enforcement and planning, developing, and maintaining a capability for emergency response; or (3) the permit sticker is a labeling or marking of hazardous material within the meaning and intent of the HMR's hazard communication requirements. *Id.*

In Part I.B. of its August 25, 1998 determination, RSPA explained that propane is a form of LPG that is used throughout the United States for home and commercial heating and cooking, in agriculture, in industrial processing, and as a clean-air alternative fuel for both over-the-road vehicles and industrial lift trucks. 63 FR at 45284. Many propane gas dealers are small businesses that serve customers within 50 miles, although larger dealers may deliver to customers farther away. *Id.* Because New York has adopted the HMR as State law, any company that delivers propane in Nassau County has long been subject to the HMR's substantive requirements, even if that company was an intrastate carrier and not directly governed by the HMR before October 1, 1998. *Id.*

In Part I.C. of PD–13(R), RSPA discussed the standards for making determinations of preemption under the Federal hazardous material transportation law. 63 FR at 45284–85. As RSPA explained, unless there is specific authority in another Federal law or DOT grants a waiver, a local (or other non-Federal) requirement is preempted if:

—it is not possible to comply with both the local requirement and a requirement in the Federal hazardous material transportation law or regulations;

—the local requirement, as applied or enforced, is an "obstacle" to the accomplishing and carrying out of the Federal hazardous material transportation law or regulations; or

—the local requirement concerns any of five specific subjects and is not "substantively the same as" a provision in the Federal hazardous material transportation law or regulations. Among these five subjects are "the designation, description, and classification of hazardous material" and the labeling or marking of hazardous material or a packaging or container certified as "qualified for use in transporting hazardous material."

*See* 49 U.S.C. 5125(a) & (b).

In addition, a State, political subdivision, or Indian tribe may impose a fee related to transporting hazardous material "only if the fee is fair and used for a purpose relating to transporting hazardous material, including enforcement and planning, developing, and maintaining a capability for emergency response." 49 U.S.C. 5125(g)(1).

These preemption provisions stem from congressional findings that State and local laws which vary from Federal hazardous material transportation requirements can create "the potential for unreasonable hazards in other jurisdictions and confounding shippers and carriers which attempt to comply with multiple and conflicting * * * regulatory requirements," and that safety is advanced by "consistency in laws and regulations governing the transportation of hazardous materials." Pub. L. 101–615 §§ 2(3) & 2(4), 104 Stat. 3244.

RSPA also explained that its "[p]reemption determinations do not address issues of preemption under the Commerce Clause of the Constitution or under statutes other than the Federal hazardous material transportation law unless it is necessary to do so in order to determine whether a requirement is authorized by another Federal law." 63 FR at 45285.

*B. Petition for Reconsideration and Further Submissions*

Within the 20-day time period provided in 49 CFR 107.211(a), NYPGA filed a petition for reconsideration of RSPA's determination in PD–13(R) that there was insufficient information to find that Federal hazardous material transportation law preempts the requirement in Sections 6.7(A) and (B) of Ordinance No. 344–1979 for a permit to pick up or deliver LPG within Nassau County. NYPGA certified that it had mailed a copy of its petition to the County Executive and all others who had submitted comments.

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Neither NYPGA nor any other party has petitioned RSPA to reconsider that part of PD–13(R) that found that the certificate of fitness requirement is preempted. In its January 19, 1999 "Affirmation in Opposition to Petition for Reconsideration," Nassau County stated,

> As of November 23, 1998, the County of Nassau has stopped enforcing the provision of Section 6.8 dealing with the requirement for a Certificate of Fitness for LP truck drivers.[1]

On September 17, 1998, RSPA received an undated letter from NTTC requesting reconsideration of RSPA's determination with respect to Nassau County's permit requirement. Because this request was submitted more than 20 days after publication of PD–13(R) in the **Federal Register**, it is not a timely petition for reconsideration. 49 CFR 107.211(a). Nonetheless, NTTC's letter is being treated as a comment in support of NYPGA's petition for reconsideration.

RSPA has also received the following additional submissions, all of which have been placed in the docket:

—an October 26, 1998 letter from Long Island Bottle Gas with an undated extract from the *New York Law Journal* and a copy of its brief to the Appellate Division in the appeal of the Suffolk County Supreme Court's dismissal of its actions against the Towns of Smithtown and Brookhaven.

—November 14, 1998 rebuttal comments submitted by AWHMT in Docket No. RSPA–98–3579 (PDA–20(RF)), expressing concerns about RSPA's decision in PD–13(R);

—a January 18, 1999 letter from Atlantic Bottle Gas Co., Inc., of Hicksville, New York, describing its inability to make deliveries of propane in Nassau County for more than two days until it had its "spare truck" inspected by the Nassau County Fire Marshal;

—the January 19, 1999 "Affirmation" from Nassau County in opposition to NYPGA's petition for reconsideration and NTTC's submission;

—a February 16, 1999 response by NYPGA to Nassau County's Affirmation;

—a facsimile transmission on March 2, 1999, from Long Island Bottle Gas, forwarding a copy of a March 1, 1999 memorandum issued by the Oil Heat Institute of Long Island concerning inspection requirements in 49 CFR 396.11 and 395.17;

—a further undated extract from the *New York Law Journal*, received from Long Island Bottle Gas on March 8, 1999;

—a September 7, 1999 "Addenda" to NYPGA's petition for reconsideration discussing and attaching a hearing transcript in *New York* v. *Star Lite Propane Gas Corp.*, Nos. 19595/98, 20872/98 & 20879/98 (Nassau Cty. Dist. Ct. Aug. 11, 1999), dismissing a summons issued to Star Lite for transporting LPG without a permit from Nassau County;

—September 27 and October 1, 1999 letters from Nassau County requesting an opportunity to respond to NYPGA's Addenda (Nassau County did not submit any further response to NYPGA's petition for reconsideration, February 16, 1999 response, or September 7, 1999 Addenda); and

—a facsimile transmission on June 26, 2000, from NYPGA forwarding a March 20, 2000 decision of the District Court of Suffolk County that Federal hazardous material transportation law preempts Section 164–109(A) of the Smithtown Town Code requiring any person filling containers where LPG is sold or transferred to hold a certificate of fitness issued by the County Fire Marshal.

At a March 29, 2000 public meeting held by RSPA in Secaucus, New Jersey, Star Lite's president (who stated he was also the president of NYPGA) expressed concerns about the length of time since NYPGA's original application and RSPA's failure to call him with questions. A summary of his remarks has been placed in the docket.

Throughout this proceeding, and as recently as September 2000, various persons interested in this proceeding have inquired as to the status of RSPA's decision on NYPGA's petition for reconsideration. In each instance, RSPA stated that it was in the process of preparing its decision, but that it was impossible to predict when the decision would be issued. Because there was no discussion of the substantive issues involved in this proceeding, it was not considered necessary to place in the docket a summary of these inquiries. All the information on which this decision is based is contained in the docket and, to the extent considered relevant, discussed below.

[1] According to materials submitted by Long Island Bottle Gas Supply and Service Corp. (Long Island Bottle Gas) in October 1998 and March 1999, that company challenged similar requirements of the Towns of Smithtown and Brookhaven, in Suffolk County, that drivers hold a certificate of fitness to deliver LPG. These materials appear to indicate that a trial court granted summary judgment in favor of the two Towns against Long Island Bottle Gas, but that the Appellate Division of the New York Supreme Court reversed the trial court's decision. In March 2000, the District Court of Suffolk County found that Federal hazardous material transportation law preempts Suffolk County's certificate of fitness requirement and referred to RSPA's decision in PD–13(R).

## II. Discussion

NYPGA's petition for reconsideration and Nassau County's response contain many disagreements as to how Nassau County's permit and inspection requirements are administered. When all the arguments are sorted out, however, NYPGA's petition for reconsideration appears to raise the following five issues: (1) Whether permit and inspection requirements apply only to LPG and not to other hazardous materials; (2) whether Nassau County is authorized and qualified to conduct leak testing or inspections of cargo tanks and vehicles; (3) whether the permit and inspection requirements cause an unreasonable delay in the transportation of hazardous materials; (4) whether the permit fee is fair and used for purposes relating to transporting hazardous materials, including enforcement and planning, developing, and maintaining a capability for emergency response; and (5) whether the permit "sticker" is a marking or labeling of hazardous material, or of a packaging represented as qualified for transporting hazardous material, that is not substantively the same as provided in the HMR. Each of these issues is discussed below.

### *A. Materials Regulated by Nassau County*

NYPGA and Atlantic Bottle Gas Co. both assert that a permit is not required for the delivery of any other hazardous material within the County. Nassau County replies that the "same requirements [for inspections, fees and permits] are required by Nassau County ordinance for oxidizers, compressed gases, and combustible liquids."

Federal hazardous material law preempts a State, local or Indian tribe law on "the designation, description, and classification of hazardous material" that is not "substantively the same as" the HMR. 49 U.S.C. 5125(b)(1)(A). However, in numerous circumstances, RSPA has found that a State or locality may regulate *some* hazardous materials in a manner that is consistent with the HMR, so long as the non-Federal jurisdiction has not attempted to create new hazardous materials definitions or classifications.

In IR–5, City of New York Administrative Code Governing Definitions of Certain Hazardous Materials, 47 FR 51991, 51993 (Nov. 18, 1982), RSPA found that the former HMTA preempted definitions of hazardous materials that broaden the scope of materials that are subject to the City's requirements to materials that are not subject to the HMR [and] * * * classify some materials differently, for purposes of the City's requirements, from their classification for purposes of application of the HMR.

Similarly, when a city assigned "an entirely different meaning" to the term "radioactive material," which "in effect, created a new hazard class," RSPA concluded that this differing definition was inconsistent with the HMR. IR–16, Tucson City Code Governing Transportation of Radioactive Materials, 50 FR 20872, 20874 (May 20, 1985). RSPA has also found that imposing local requirements on six specified types of radioactive materials "created, in effect, a new hazard class * * *" IR–18, Prince Georges County, MD; Code Section Governing Transportation of Radioactive Materials, 52 FR 200, 202 (Jan. 2, 1987), decision on appeal, 53 FR 28850 (July 29, 1988). RSPA stated that:

> If every jurisdiction were to assign additional requirements on the basis of independently created and variously named subgroups of radioactive materials, the resulting confusion of regulatory requirements would lead directly to the increased likelihood of reduced compliance with the HMR and subsequent decrease in public safety.

*Id.*, quoting from IR–12, St. Lawrence County, New York; Local Law Regulating the Transportation of Radioactive Materials Through St. Lawrence County, 49 FR 46650, 46651 (Nov. 27, 1984).

As RSPA also noted in IR–19, Nevada Public Service Commission Regulations Governing Transportation of Hazardous Materials, 52 FR 24404, 24406 (June 30, 1987), decision on appeal, 53 FR 11600 (Apr. 7, 1988),

> ambiguity and selectivity of [a non-Federal] hazardous materials definition are troublesome. State and local hazardous materials definitions and classifications which result in regulation of different materials than the HMR are obstacles to uniformity in transportation regulation and thus are inconsistent with the HMR.

In contrast, however, RSPA has found that a State or locality may regulate hazardous materials in a manner consistent with the HMR even if it does not reach as broadly as the HMR. In IR–18, 52 FR at 202, RSPA found that "an otherwise consistent requirement will not be found inconsistent merely because it applies only to certain modes of transportation." In a similar manner, RSPA has considered numerous challenges to non-Federal requirements that applied to only specific hazardous materials without finding that the specific requirements were preempted because they did not apply to all hazard classes and all materials listed in the Hazardous Materials Table in 49 CFR 172.101.

In these cases, the non-Federal requirements covered such materials as (1) LPG, IR–2, Rhode Island Rules and Regulations Governing the Transportation of Liquefied Natural Gas and Liquefied Propane Gas, 44 FR 75566 (Dec. 20, 1979), decision on appeal, 45 FR 71881 (Oct. 30, 1980); (2) flammable and combustible liquids, PD–4(R), California Requirements Applicable to Cargo Tanks Transporting Flammable and Combustible Liquids, 58 FR 48933 (Sept. 20, 1993), decision on petition for reconsideration, 60 FR 8800 (Feb. 15, 1995); PD–5(R), Massachusetts Requirement for an Audible Back-up Alarm on Bulk Tank Carriers Used to Deliver Flammable Material, 58 FR 62707 (Nov. 29, 1993); and PD–14(R), Houston, Texas, Fire Code Requirements, 63 FR 67506 (Dec. 7, 1998), decision on petition for reconsideration, 64 FR 33949 (June 24, 1999); (3) hazardous wastes, IR–25, Maryland Heights (Missouri) Ordinance Requiring Bond for Vehicles, 54 FR 16308 (Apr. 21, 1989); IR–32, Montevallo, Alabama Ordinance on Hazardous Waste Transportation, 55 FR 36736 (Sept. 6, 1990), appeal dismissed as moot, 57 FR 41165 (Sept. 9, 1992); PD–1(R), Maryland, Massachusetts, and Pennsylvania Bonding Requirements for Vehicles Carrying Hazardous Wastes, 57 FR 58848 (Dec. 11, 1992), decision on petition for reconsideration, 58 FR 32418 (June 9, 1993), reversed on other grounds, *Massachusetts* v. *United States Dep't of Transp.*, 93 F.3d 890 (D.C. Cir. 1996); PD–6(R), Michigan Marking Requirements for Vehicles Transporting Hazardous and Liquid Industrial Wastes, 59 FR 6186 (Feb. 9, 1994); and PD–12(R), New York Department of Environmental Conservation Requirements on the Transfer and Storage of Hazardous Wastes, 60 FR 62527 (Dec. 6, 1995), decision on petition for reconsideration, 62 FR 15970 (Apr. 3, 1997), judicial review dismissed, *New York* v. *United States Dep't of Transp.*, 37 F. Supp. 2d 152 (N.D.N.Y. 1999); and (4) radioactive materials, *e.g.*, IR–7–15, 49 FR 46632 (Nov. 27, 1984); IR–16, above; IR–18, above.

Nassau County's permit requirement in Section 6.7 does not designate any material as hazardous that is not regulated by the HMR, nor does Nassau County describe, define, or classify LPG in a different manner than in the HMR. Accordingly, that requirement is not preempted merely because it applies to those trucks that pick up or deliver LPG, and not other hazardous materials, within Nassau County. There is no necessity that a State or locality always regulate all materials, although a specific non-Federal requirement that applies only to one hazardous material may, indeed, be an obstacle to accomplishing and carrying out Federal hazardous material transportation law or the HMR. *See, e.g.*, IR–15, Vermont Rules for Transportation of Irradiated Reactor Fuel and Nuclear Waste, decision on appeal, 52 FR 13062, 13064 (Apr. 20, 1987), finding that a State may need to justify a decision to "single out radioactive materials for different types of [traffic] control than hazardous materials generally."

### *B. Nature of the Test or Inspection*

NYPGA repeatedly states that Nassau County conducts a leak test of the propane tank on the vehicle, and that the Fire Marshal may also conduct a "walk around" safety check of the vehicle at the same time. NYPGA indicates that the Fire Marshal also inspects rack trucks that transport LPG cylinders and other service vehicles of propane companies. NYPGA contends that the Fire Marshal is not qualified to conduct the annual testing required under 49 CFR 180.407(c), and that only the New York State Department of Motor Vehicle Regulations is authorized to perform "an annual truck 'Safety/Emission' inspection." As discussed in further detail below, both NYPGA and AWHMT complain that Nassau County does not recognize the inspection conducted by New York State officials, as required by 49 U.S.C. 31142(d). AWHMT also suggests that the purpose of Nassau County's inspection is to "qualify the vehicle to contain hazardous materials," and that RSPA should apply the "substantively the same as" standard in 49 U.S.C. 5125(b)(1) to the actual inspection process.

In response, Nassau County states that it does not "test" tanks, but only checks "the accessories, *e.g.*, pipes, fittings, and connections," for leaks. The County "does not certify the tank," but rather "checks to see that the tank has been certified by such an expert." Nassau County states that its

> inspection includes checking the motor fuel relief valve, head lights, brake lights, turn signals, back-up lights, tires, horn, wipers, inspection stickers, condition of the windshield, defroster, air-brake indicators, registration, and crash bar for roll-over protection.

Nassau County also states that its "inspections are the same for new trucks and trucks already in service" but that "the computer and secretarial work

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needed for processing the paperwork for new trucks" makes the amount of time "longer for new trucks." NYPGA asserts that the County's position in this regard contradicts the County's prior statements that it conducts a "modified" inspection of vehicles with less than 1,000 miles.

*See* 63 FR at 45285.

Cargo tank motor vehicles used to transport LPG must meet DOT specifications MC–330 or MC–331. 49 CFR 173.315(a). Certain requirements for the continued qualification, maintenance, and periodic testing of MC–330 and MC–331 cargo tank motor vehicles are set forth in 49 CFR Part 180, subpart E, beginning at 49 CFR 180.401.[2] The specific tests and inspections are contained in § 180.407, and a cargo tank that successfully passes a specified test or inspection must be marked in accordance with § 180.415. While a person must possess certain qualifications to perform the tests and inspections specified in § 180.407, as set forth in § 180.409, DOT has not established qualifications for non-Federal personnel who inspect cargo tank motor vehicles to determine whether (1) the tank is marked as required in § 180.415, (2) the vehicle otherwise appears to meet the applicable specification, or (3) the vehicle meets the applicable requirements in the Federal Motor Carrier Safety Regulations (FMCSR), 49 CFR Parts 350–399.

As discussed in PD–13(R), DOT encourages States and localities to adopt and enforce requirements that are consistent with the HMR and the FMCSR. 63 FR at 45286. However, DOT does not specify which State or local agencies may enforce such consistent non-Federal requirements, or which personnel within a State or local agency may conduct inspections. That is a matter for State or local discretion, within the boundaries of the governing legal authority. Thus, issues of whether State or local personnel lack authority to enforce a non-Federal requirement should be raised in the appropriate State or local forum—the same as issues related to whether a State or locality is properly interpreting its own requirement. RSPA has recently reiterated that:

> As a general matter, an inconsistent or erroneous interpretation of a non-Federal regulation should be addressed to the appropriate State or local forum, because isolated instances of improper enforcement (e.g., misinterpretation of regulations) do not render such provisions inconsistent with Federal hazardous material transportation law.

PD–15(R), Public Utilities Commission of Ohio Requirements for Cargo Tanks, 64 FR 14965, 14967 (Mar. 29, 1999), decision on petition for reconsideration, 64 FR 44265, 44266 (Aug. 13, 1999), judicial review dismissed, *William E. Comley, Inc.* v. *U.S. Dep't of Transportation*, Civil No. C1–99–880 (S.D. Ohio, June 6, 2000) (citations and internal quotation marks omitted).

The record does not show that a Nassau County's fire inspectors are purporting to certify that a cargo tank motor vehicle has passed the tests and inspections specified in 49 CFR 180.407. Nor is there any indication that a cargo tank motor vehicle that passes all DOT requirements for transporting LPG must meet some additional requirements of Nassau County or will somehow fail to pass Nassau County's inspection. Federal hazardous material transportation law does not preempt inspections designed to enforce local requirements that are consistent with the HMR and the FMCSR, unless those inspections cause an unreasonable delay in the transportation of hazardous material as discussed in the next section. Any issues whether Nassau County's fire inspectors are authorized or qualified to perform their inspections cannot be considered by RSPA in a preemption determination but must be determined in an appropriate State or local forum.

*C. Unreasonable Delay*

In PD–13(R), RSPA found that NYPGA's original application focused on "the delay experienced by a propane delivery company in being able to compete or do business in the County—rather than any delay in the transportation of trucks loaded with propane." 63 FR at 45285. In its petition for reconsideration, NYPGA asserts that "Long waits to undergo inspection are typically experienced by regulated parties." It cites two specific experiences: (1) An instance where a truck owned by Star-Lite carrying propane cylinders was stopped by the Fire Marshal on June 23, 1998, and delayed for three and a half hours "waiting for an inspection by the Nassau Fire Marshal" and (2) a separate "delay of a tractor transport combination of two [hours] and forty-five minutes while awaiting inspection in Nassau County." NYPGA disputes the prior statement of Nassau County that the "two day a month schedule is flexible and does not apply to new vehicles." Id. NYPGA also contends that simply checking that the propane tank has been properly inspected by a registered inspector is a delay and an obstacle to transportation.

With its February 16, 1999 response, NYPGA provided an affidavit by the president of Fort Edward Express Co., Inc., located near Glens Falls, north of Albany. He described his company as "one of the largest propane transporters in the Northeast" and stated that, while his company's trucks regularly travel through Nassau County to serve customers in Suffolk County, it does not attempt to serve customers in Nassau County because it "cannot endure the delays and costs of scheduling our tractors and tank trailers for inspection by the Nassau County Fire Marshall." He also stated that his trucks are dispatched "based on customer need," and that "inspection of all vehicles by Nassau would be impractical, and inspection of only a few would require dedicated vehicles to that county."

AWHMT argues that all non-Federal periodic (as opposed to roadside or "spot") inspections should be preempted. It stated that Congress enacted 49 U.S.C. 31142(d) because it recognized "the unacceptable burden that would result if states, let alone localities, should require motor vehicles to be produced periodically to be inspected." This section provides that a periodic inspection under DOT standards (prescribed under § 31142(b)), an alternative State program approved by DOT, or a State program meeting Commercial Vehicle Safety Alliance standards, "shall be recognized as adequate in every State for the period of the inspection," but that a State may continue to make "random inspections of commercial motor vehicles."

According to AWHMT, "motor vehicles operate over irregular routes and the potential of inflicting 'multiple and conflicting' requirements on carriers is self-evident." It also states that an annual inspection requirement is burdensome even if it is not applied to vehicles that travel through the County without stopping to pick up or deliver hazardous materials, because

what is a "through" vehicle one day can be a vehicle used in local delivery the next. The requirement to produce a vehicle for inspection applies whether or not any given vehicle engages in local delivery or pick up one day or 365 days of the permit year. RSPA has to consider the consequences if every locality demanded the production of vehicles for inspection prior to transporting hazardous materials. Hazardous materials transportation, at least by motor vehicle, would indeed become "local," as companies would be unable to produce vehicles, without limitation, for inspection by local authorities prior to transporting such materials.

AWHMT also argues that "unnecessary delay" should not be the only standard for determining whether there is an obstacle. It asserts that RSPA should specifically consider effects on commerce, rather than just safety, and refers to a congressional finding that "the movement of hazardous materials in commerce is necessary and desirable to maintain economic vitality and meet consumer demands, and shall be conducted in a safe and efficient manner." Pub. L. 101–615 § 2(8), 104 Stat. 3244 (Nov. 20, 1990).

Nassau County specifically addressed the two instances cited by NYPGA as evidence of delay. The County does not dispute that the Star-Lite truck was stopped because it lacked a current permit sticker. However, the County states that this truck was placed out-of-service because it had a flat tire and the three and one-half hour delay was the time that Star Lite took to inflate the tire.[3] With respect to the time involved in the inspection of the tractor transport, the County states that the vehicle arrived early for its scheduled inspection, before the Fire Marshal's starting time at 8:00 a.m. According to the County, the inspection was completed by 10:00 a.m., and two hours is "not unreasonable, and does not cause any delay in transportation." Nassau County also provided a copy of an internal July 31, 1995 memorandum that any new vehicle (less than 1,000 miles) "shall be inspected as soon as possible after receiving a request for inspection," rather than on the two-day-a-month schedule.

Addressing the June 23, 1998 incident involving the Star Lite truck, NTTC assumes that the vehicle could not be used for 14 days, until it could be inspected on July 7 (the next "first Tuesday" of the month). In contrast, Atlantic Bottle Gas states that, when it was cited for delivering propane in a truck with an expired permit on the afternoon of December 8, 1998, the Fire Marshal conducted an inspection at 9:00 a.m. on December 11, 1998, and issued a permit in less than two hours. Atlantic Bottle Gas considers "not being able to use my truck to make deliveries of propane in the winter * * * some 2 plus days would fall into that category of an unreasonable delay."

RSPA cannot find that Federal hazardous material transportation law provides a basis for preempting all periodic inspections, as AWHMT contends. The obstacle criterion for preemption in 49 U.S.C. 5125(a)(2) is a different standard for preemption than whether there is a improper burden on interstate commerce. If the two standards were meant to be equivalent, Congress would have said so, and it would not require RSPA to make a finding with regard to the burden on commerce in considering whether to waive preemption, under § 5125(e), or to consider whether a non-Federal fee is "fair" or not, under § 5125(g)(1).

To the extent that the preemption provisions in 49 U.S.C. 31142 apply, there is a separate statutory procedure in 49 U.S.C. 31141 for DOT to review and decide whether a State or local law is preempted. Under this procedure, a State or local regulation remains in effect until a Commercial Motor Vehicle Safety Regulatory Review Panel reviews the State or local requirement and DOT acts on the Panel's review. *See Interstate Towing Ass'n* v. *City of Cincinnati*, 6 F.3d 1154, 1160 (6th Cir. 1993), where the Court of Appeals stated that, under the prior version of § 31141, "the statute allows to remain in force individual state regulations which have not been affirmatively found, by the Secretary or the Panel, to conflict with federal regulations."[4]

As NTTC specifically recognized in its original comments on NYPGA's application, Nassau County's permit and inspection requirements have a different impact on a carrier that operates entirely within Nassau County, as opposed to a carrier that delivers hazardous materials from outside the County and does not know in advance which vehicle may be needed to deliver LPG in Nassau County. In PD–13(R), 63 FR at 45285–86, RSPA discussed NTTC's comment and the prior decision in PD–4(R) that inspection requirements which cause an "unnecessary delay" in the transportation of hazardous materials are preempted because they violate the requirement currently set forth in 49 CFR 177.800(d) that:

> All shipments of hazardous materials must be transported without unnecessary delay, from and including the time of commencement of the loading of the hazardous material until its final unloading at destination.

As explained in PD–4(R), an inspection requirement is preempted when, as applied and enforced, it creates unnecessary delay in the transportation of hazardous material. RSPA discussed whether or not an inspection creates unnecessary delay in three situations.

First, RSPA reaffirmed earlier decisions that "the minimal increase in travel time when an inspection is actually being conducted, or the vehicle is waiting its 'turn' for an inspector to finish inspecting another vehicle that arrived earlier at the same facility" is not unnecessary delay. 58 FR at 48941, quoted in PD–13(R) at 63 FR at 45286. *Accord*, IR–17, Illinois Fee on Transportation of Spent Nuclear Fuel, 51 FR 20926 (June 9, 1986), decision on appeal, 52 FR 36200, 36205 (Sept. 25, 1987)(a delay of 1.5 to 2 hours during which a State inspection is actually conducted is reasonable and "presumptively valid").

Second, RSPA found that a delay of hours or days waiting for the arrival of an inspector from another location is "unnecessary, because it substantially increases the time [hazardous materials] are in transportation, increasing exposure to the risks of the hazardous materials without corresponding benefit." 58 FR at 48941.

Third, RSPA indicated that a State's annual inspection requirement applied to vehicles or tanks that operate solely within the State is presumptively valid because it would not create the potential for delays "associated with entering the State or being rerouted around" the State. 60 FR at 8803, quoted at 63 FR at 45286. A carrier whose vehicles are based within the inspecting jurisdiction should be able to schedule an inspection at a time that does not disrupt or unnecessarily delay deliveries, and such inspections are consistent with the traditional authority of a State or political subdivision to license, inspect, and otherwise regulate a motor vehicle based within its jurisdictional boundaries.

Nassau County has an interest in the safe transportation and delivery of LPG

[2] Under 49 CFR 173.315(k), a nonspecification cargo tank motor vehicle with a capacity of 3,500 gallons or less may be used in intrastate commerce where permitted by State law. However, these nonspecification cargo tank motor vehicles must also be "inspected, tested, and equipped in accordance with subpart E of part 180" of the HMR. 49 CFR 173.315(k)(5).

[3] According to the transcript submitted with NYPGA's September 7, 1999 Addenda, the Nassau County District Court found that Star Lite's truck was the subject of an "illegal stop," and the summons was dismissed. The Fire Marshal's inspector admitted that he did not have evidence that the truck had made deliveries within the County when he stopped the truck. According to its January 19, 1999 response in this proceeding, the County states that because the main route through the County is the Long Island Expressway, it assumes that vehicles on other roads are making a delivery. NYPGA asserts that trucks use roads other than the Long Island Expressway to reach Suffolk County to the east of Nassau County.

[4] In the *Interstote Towing Ass'n* case, the Court of Appeals considered a local licensing requirement for tow trucks based within 25 miles of the city limits, including inspection of each truck, and an $80 licensing fee. Besides finding that the licensing requirement was not preempted by the Motor Carrier Safety Act (now codified at 49 U.S.C. 31131 *et seq.*), the Court also found that the licensing fee did not violate the Commerce Clause because it was "assessed to help defray the costs of inspecting towing vehicles to ensure that all trucks providing towing services within City limits, Ohio-based and out-of-state-trucks alike, meet certain standards of safety and are equipped sufficiently to provide 'first-class' service." 6 F.3d at 1162–63.

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within the county limits, and that interest extends to any vehicle operating within the County, whether based within the County or outside. Consistent with the principles set forth in PD–4(R), Nassau County may perform roadside or spot inspections on any vehicle transporting a hazardous material within the County, without causing unreasonable delay, so long as the vehicle is not required to wait hours or days for the arrival of an inspector from another location. There is also no obstacle to the County considering such an inspection valid for a year, and issuing an annual permit based on this spot inspection. On the other hand, the County may not require a company to present its vehicles for an annual scheduled inspection when that will prevent a loaded vehicle from completing its delivery for hours or days waiting for the inspection to be performed.

Those propane delivery companies based within Nassau County should be able to present their trucks for an inspection by Nassau County without incurring an unreasonable delay in the delivery of propane. They should be able to plan and schedule inspections without any interruption of deliveries. The few occasions on which an inspection must be scheduled on short notice, for a new truck placed into service or a "reserve" truck placed back in service, must be considered to be part of a company's plan for conducting its business, rather than an unreasonable delay in the transportation of a hazardous material between "the time of commencement of the loading of the hazardous material until its final loading at destination." 49 CFR 177.800(d).

On the other hand, NTTC and Fort Edward Express Co. explain that it is not feasible for a company based outside of Nassau County to predict which of its trucks will be needed to deliver propane to Nassau County within the coming year, nor to have all of its trucks permitted and inspected in any jurisdiction to which any truck might travel. Under the principles announced in PD–4(R), a city or county may apply an annual inspection requirement to trucks based outside its jurisdictional boundaries only if the city or county can actually conduct the equivalent of a "spot" inspection upon the truck's arrival within the local jurisdiction. The city or county may not require a permit or inspection for trucks that are not based within the local jurisdiction if the truck must interrupt its transportation of propane for several hours or longer in order for an inspection to be conducted and a permit to be issued.

In this case, Nassau County indicates that there is some flexibility in performing inspections, and that a company need not always wait for one of the two regular inspection days each month. However, the County does not appear to be able to conduct inspections and issue permits "on demand." According to Atlantic Bottle Gas, it took the Fire Marshal until the morning of the third day to schedule an inspection and issue a permit, following issuance of a citation for delivering propane without a permit. Nassau County has not shown that it can act more promptly with respect to a truck that arrives without notice in the County.

Based on the limited information provided in the comments in this proceeding, RSPA finds that Federal hazardous material transportation law does not preempt Nassau County's annual permit requirement in Sections 6.7(A) & (B) of Ordinance No. 344–1979 with respect to trucks that are based within Nassau County. On the other hand, RSPA finds that Nassau County's annual permit requirement creates an obstacle to accomplishing and carrying out the HMR's prohibition against unnecessary delays in the transportation of hazardous material on vehicles based outside of Nassau County, as those requirements are presently applied and enforced. Accordingly, Federal hazardous material transportation law preempts Sections 6.7(A) & (B) of Ordinance No. 344–1979 with respect to trucks that are based outside of Nassau County.

*D. Permit Fees*

In PD–13(R), RSPA rejected NYPGA's argument that Nassau County's permit fees are a "flat tax" and violate the Commerce Clause. 63 FR at 45286–87. RSPA found that the fee appeared to be a user fee, "related in some measure to the work involved in conducting the required inspection," and noted the County's statements that it collects less than $70,000 in LPG permit fees per year and spends much more than that amount on administration of the permit program, incident response, and enforcement.

In its comments on NYPGA's petition for reconsideration, Nassau County maintains its position that its inspection fees are fair and proper. The County states that, in 1998, it "responded to 113 hazardous materials emergencies on the roadways. The fees generated about $70,000, while the hazmat team alone cost about $1.3 million." NYPGA asserts that the County did not provide data relating only to vehicles carrying propane and asked for "a thorough accounting of how the monies are used."

In PD–21(R), Tennessee Hazardous Waste Transporter Fee and Reporting Requirements, 64 FR 54474 (Oct. 6, 1999), judicial review pending, *Tennessee* v. *U.S. Dep't of Transportation*, Civil Action No. 3–99–1126 (M.D. Tenn), RSPA discussed the "fairness" and "used for" standards in 49 U.S.C. 5125(g)(1). RSPA noted that fees that cover the cost of a required inspection "would be expected to be the same amount for both interstate and intrastate companies" and have not been found to violate the Commerce Clause. 64 FR at 54478 (discussing the *Interstate Towing Ass'n* case). RSPA also indicated that a State or locality need not "create and maintain a separate fund for fees paid by hazardous materials transporters" so long as it could show "that it is actually spending these fees on the purposes permitted by the law." *Id.* at 54479. And while "only the State [or locality] has the information concerning where these funds are spent," *id.*, the amount of detail necessary will depend on all the circumstances.

In this case, the information provided by Nassau County appears sufficient to show that it is using its LPG permit fees for purposes "related to transporting hazardous material, including enforcement and planning, developing, and maintaining a capability for emergency response." 49 U.S.C. 5125(g)(1).

*E. Permit Stickers*

In PD–13(R), RSPA found that the permit sticker is not a "marking * * * of hazardous material," under 49 U.S.C. 5125(b)(1)(B), because the County did not require the sticker to be placed "on the hazardous material itself (or its container)." 63 FR at 45287. There was no evidence that the sticker caused any unnecessary delay or otherwise created an obstacle to accomplishing and carrying out Federal hazardous material law and the HMR. *Id.*

In its petition for reconsideration and further comments, NYPGA repeatedly refers to the permit sticker as a "label" and contends that, until it submitted its petition for reconsideration, Nassau County required that the sticker be placed on the cargo tank of a "transport" vehicle or on the fender of a "bobtail." Nassau County states that the permit does not indicate that the vehicle is "actually carrying hazardous materials" or "make the vehicle a designated hazardous material vehicle." The County also states that the permit is not a label or a placard, as those terms are used in the HMR, and it submitted a copy of a September 1, 1998 internal memorandum referring to PD–13(R) and advising the Fire Marshal's staff that "a permit on a transportation vehicle * * * shall *not* be placed on the tank, but shall be placed on the vehicle."

It is clear that Nassau County's permit sticker is not a "label" as that term is used in the HMR, nor could it be mistaken for a hazard class label. *See* 49 CFR Part 172, subpart E. Nor is the sticker a marking of hazardous material within the meaning and intent of the HMR's hazard communication requirements. Nothing in NYPGA's petition for reconsideration or the comments submitted in response to that petition shows that the requirement to place the permit sticker on the vehicle creates an obstacle to accomplishing and carrying out hazardous material transportation law or the HMR.

**III. Ruling**

Federal hazardous material transportation law preempts the requirement in Sections 6.7(A) and (B) of Ordinance No. 344–1979 for a permit to deliver LPG within Nassau County with respect to trucks that are based outside of Nassau County. As applied to and enforced against those vehicles, that requirement causes unnecessary delays in the transportation of hazardous materials to Nassau County from locations outside of Nassau County and, accordingly, creates an obstacle to accomplishing and carrying out Federal hazardous material transportation law and the HMR.

Nassau County's permit requirement does not create unnecessary delays in the transportation of hazardous materials, and is not preempted, with respect to trucks that are based within Nassau County.

No person requested reconsideration of that part of RSPA's August 25, 1998 determination which found that Federal hazardous material transportation law preempts Section 6.8 of Ordinance No. 344–1979 for a certificate of fitness, insofar as that requirement is applied to a motor vehicle driver who sells or delivers LPG, because Section 6.8 imposes more stringent training requirements than provided in the HMR.

**IV. Final Agency Action**

In accordance with 49 CFR 107.211(d), this decision constitutes RSPA's final agency action on NYPGA's application for a determination of preemption as to the requirements in Sections 6.7(A) and (B) of Nassau County Ordinance No. 344–1979 for a permit to pick up or deliver LPG within Nassau County. Any party to this proceeding "may bring a civil action in an appropriate district court of the United States for judicial review of [this] decision * * * not later than 60 days after the decision becomes final." 49 U.S.C. 5125(f).

Because no party sought reconsideration of RSPA's determination in PD–13(R) that Federal hazardous material transportation law preempts Section 6.8 of Nassau County Ordinance No. 344–1979 for a certificate of fitness, as applied to motor vehicle drivers, that determination published in the **Federal Register** on August 25, 1998, constituted RSPA's final agency action.

Issued in Washington, D.C. on October 3, 2000.

**Robert A. McGuire,**

*Associate Administrator for Hazardous Materials Safety.*

[FR Doc. 00–25953 Filed 10–6–00; 8:45 am]

BILLING CODE 4910–60–P



## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Finance Docket No. 33941]**

### Pioneer Railcorp and Michigan Southern Railroad Company-Corporate Family Transaction Exemption

Pioneer Railcorp (Pioneer) and Michigan Southern Railroad Company (MSO) have filed a verified notice of exemption.[1] MSO owns 100% of the stock of Michigan Southern Railroad Co., Inc. (MSRR), a nonoperating Class III shortline railroad, which owns a property interest in three segments of railroad currently leased and operated by MSO. The three segments of railroad are described as follows: (1) between milepost 0.0, at Elkhart, IN, and milepost 9.8, at Mishiwaka, IN (Elkhart Segment); (2) between milepost 119.0 and milepost 120.1, at Kendallville, IN (Kendallville Segment); and (3) between milepost 382.5, at or near Coldwater, MI, and milepost 421.2, at or near White Pigeon, MI (Michigan Segment).[2]

The exempt transaction involves the reorganization of the MSO railroad holdings and the creation of two new subsidiaries of MSO: Elkhart & Western Railroad, Co. (E&WR) and Kendallville Terminal Railway Co. (KTR). MSO will assign its operating leases of the Elkhart Segment to E&WR[3] and of the Kendallville Segment to KTR. MSO will continue to operate the Michigan Segment.[4] MSRR will continue to own the three segments of railroad.

The transaction is expected to be consummated on September 29, 2000.

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). The parties state that the transaction will not result in adverse changes in service levels, significant operational changes, or changes in the competitive balance with carriers outside the corporate family.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to reopen will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33941, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on John D. Heffner, Esq., REA, CROSS & AUCHINCLOSS, 1707 L Street, N.W., Suite 570, Washington, DC 20036.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: September 29, 2000.

[1] Pioneer is a publicly traded shortline railroad holding company and noncarrier that controls 13 Class III shortline railroads, including MSO.

[2] Pioneer and MSO state that MSRR owns part of the Michigan Segment and that MSRR (despite its description as a "nonoperating" railroad) "operates" the balance of the Michigan Segment under an agreement with a shipper association. According to the verified notice of exemption, the ownership of part or all of the Michigan segment is presently in dispute.

[3] MSO has a haulage agreement with Norfolk Southern Railway Company (NS) from Elkhart to Fort Wayne, IN, which permits MSO to market Fort Wayne as a station on MSO's line. Upon consummation of this transaction, Fort Wayne will become a station of E&WR.

[4] MSO also has a haulage agreement with NS from White Pigeon to Fort Wayne, which permits MSO to market Fort Wayne as a station on MSO's line. Upon consummation of this transaction, Fort Wayne will continue to be a station of MSO.

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By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 00–25954 Filed 10–6–00; 8:45 am]

BILLING CODE 4915–00–P

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Docket No. AB–88 (Sub–No. 10X)]**

### Bessemer and Lake Erie Railroad Co.—Abandonment Exemption—in Armstrong and Butler Counties, PA

Bessemer and Lake Erie Railroad Company (B&LE) has filed a verified notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments and Discontinuances* to abandon and discontinue service over its line of railroad known as the Western Allegheny Branch, extending from Station 1400+80 East to End of Track, at Station 2460+98, in Armstrong and Butler Counties, PA, a distance of 20.1 miles (line). The line traverses United States Postal Service Zip Codes 16025, 16028, 16041, and 16061.

B&LE has certified that: (1) No local traffic has been handled over the line for at least 2 years; (2) no overhead traffic has been handled over the line for at least 2 years; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government agency acting on behalf of such user) regarding cessation of service over the line is either pending with the Surface Transportation Board (Board) or any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on November 9, 2000, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by October 20, 2000. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by October 30, 2000, with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to applicant's representative: Thomas R. Ogoreuc, Esq., Bessemer and Lake Erie Railroad Company, 135 Jamison Lane, Monroeville, PA 15146. If the verified notice contains false or misleading information, the exemption is void *ab initio*.

B&LE has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by October 16, 2000. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), B&LE shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by B&LE's filing of a notice of consummation by October 10, 2001, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: September 28, 2000.

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1000. *See* 49 CFR 1002.2(f)(25).

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 00–25757 Filed 10–6–00; 8:45 am]

BILLING CODE 4915–00–P

## DEPARTMENT OF THE TREASURY

### Financial Crimes Enforcement Network

### Proposed Collection; Comment Request

**AGENCY:** Financial Crimes Enforcement Network (FinCEN), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork and respondent burden, FinCEN invites the general public and other Federal agencies to comment on a proposed information collection contained in a new form, "Registration of Money Services Business." The form will be used by check cashers, currency exchangers, money order and traveler's check businesses, and money transmitters to register with the Department of the Treasury as required by statute. This request for comments is being made pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments should be received on or before December 11, 2000 to be assured of consideration.

**ADDRESSES:** Direct all written comments to: Office of Chief Counsel, Financial Crimes Enforcement Network, Department of the Treasury, Suite 200, 2070 Chain Bridge Road, Vienna, VA 22182–2536, *Attention:* PRA Comments—Registration of Money Services Business. Comments also may be submitted by electronic mail to the following Internet address: "regcomments@fincen.treas.gov" with the caption in the body of the text, "*Attention:* PRA Comments—Registration of Money Services Business."

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to Eileen Mayer, Special Assistant to the Director, (202) 354–6400, or Cynthia Clark, Deputy Chief Counsel, FinCEN, and Christine Schuetz, Attorney-Advisor, FinCEN, at 703–905–3590. A copy of the form may be obtained through the Internet at http://www.treas.gov/fincen.

**SUPPLEMENTARY INFORMATION:**

*Title:* Registration of Money Services Business.



*OMB Number:* Unassigned.

*Form Number:* TD F 90–22.55.

*Abstract:* 31 U.S.C. 5330, a part of the Bank Secrecy Act,[1] requires money services businesses to register with the Department of the Treasury and maintain a list of their agents.[2] Money services businesses include certain (i) check cashers, (ii) currency exchangers, (iii) issuers, sellers, and redeemers of money orders, (iv) issuers, sellers, and redeemers of traveler's checks, and (v) money transmitters. *See* 31 CFR 103.11(uu).

On August 20, 1999, the Department of the Treasury issued a final rule regarding the registration of money services businesses (64 FR 4538). Under the final rule, money services businesses must register with the Department of the Treasury and renew their registration every two years. 31 CFR 103.41. Registration will be made by filing a new form TD F 90–22.55, Registration of Money Services Business. Agents of money services businesses are not required to register regardless of the dollar volume of their money services activities unless they engage in money service activities both on their own behalf and as an agent of others.

The information collected on the new form is required to comply with 31 U.S.C. 5330 and its implementing regulations. The information will be used to assist supervisory and law enforcement agencies in the enforcement of criminal, tax, and regulatory laws and to prevent money services businesses from use by those engaging in money laundering. The collection of information is mandatory.

Money services businesses are advised that the draft form that appears at the end of this notice is presented only for purposes of soliciting public comment on the form. They should not try to use the draft form to register with Treasury. A final version of the form will be made available at a later date to be used for registration.

*Type of Review:* New information collection.

*Affected Public:* Business or other for-profit institutions.

*Estimated Number of Respondents:* 8500.

*Estimated Total Annual Responses:* 8500.[3]

*Estimated Total Annual Burden Hours:* Reporting average of 30 minutes per response; recordkeeping average of 15 minutes per response. Estimated total annual burden hours: Reporting burden of 4250 hours; recordkeeping burden of 2125 hours, for an estimated combined total of 6375 hours.[4]

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Records required to be retained under the Bank Secrecy Act must be retained for five years. Generally, information collected pursuant to the Bank Secrecy Act is confidential, but may be shared as provided by law with regulatory and law enforcement authorities.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: September 29, 2000.

**James F. Sloan,**

*Director, Financial Crimes Enforcement Network.*

**Attachment: Registration of Money Services Business Form TD F 90–22.55**

BILLING CODE 4820–03–P

[1] The Bank Secrecy Act, Titles I and II of Pub. L. 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5330, authorizes the Secretary of the Treasury, *inter alia*, to issue regulations requiring records and reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters. Regulations implementing Title II of the Bank Secrecy Act (codified at 31 U.S.C. 5311–5330) appear at 31 CFR part 103. The authority of the Secretary to administer Title II of the Bank Secrecy Act has been delegated to the Director of FinCEN.

[2] Section 5330 was added to the Bank Secrecy Act by section 408 of the Money Laundering Suppression Act of 1994, Title IV of the Riegle Community Development and Regulatory Improvement Act of 1994, Public Law 103–325 (September 23, 1994).

[3] The estimated number of responses is for the year in which a registration form must be filed; because the form is generally required to be filed only every other year, the estimated annual number of responses would be lower.

[4] The estimated burden is for the year in which a registration form must be filed; because the form is generally required to be filed only every other year, the estimated annual burden would be lower.

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Department of the Treasury
**TD F 90-22.55**
Issued Xxx 2001
OMB No.1506-00xx

# Registration of Money Services Business

Do not write in this space.

1 Date of Filing M M D D Y Y Y Y

2 Type of Filing
a ☐ Initial Registration
b ☐ 2 Year Update
c ☐ Corrects Prior Filing
d ☐ Refiling because: check all that apply [see instructions]
1 ☐ re-registered under state law
2 ☐ more than 10 percent transfer of equity interest
3 ☐ more than 50 percent increase in agents

## Part I Registrant Information

3 Organization Name

4 Doing Business As

5 Address (Number, Street, and Apt. or Suite No.)

6 Taxpayer Identification Number

7 City

8 State

9 Zip Code

10 Telephone Number (include area code)

## Part II Owner or Controlling Person Information

11 Last Name

12 First Name

13 Middle Name

14 Address (Number, Street, and Apt. or Suite No.)

15 Telephone Number - (include area code)

16 City

17 State

18 Zip Code

19 Country

20 Date of Birth M M D D Y Y Y Y

21 Social Security Number

22 Additional identification for Owner or Controlling Person (Provide at least one)
a ☐ Driver's Lic./State ID b ☐ Passport c ☐ Alien Registration d ☐ Other
e Number
f Issuer of Identification

## Part III Money Services Information

23 Where services are offered: Check as many as apply. a ☐ All States and Territories b ☐ All States

| | | | |
|---|---|---|---|
| ☐ Alabama (AL) | ☐ Idaho (ID) | ☐ Montana (MT) | ☐ Puerto Rico (PR) |
| ☐ Alaska (AK) | ☐ Illinois (IL) | ☐ Nebraska (NE) | ☐ Rhode Island (RI) |
| ☐ American Samoa (AS) | ☐ Indiana (IN) | ☐ Nevada (NV) | ☐ South Carolina (SC) |
| ☐ Arizona (AZ) | ☐ Iowa (IO) | ☐ New Hampshire (NH) | ☐ South Dakota (SD) |
| ☐ Arkansas (AR) | ☐ Kansas (KS) | ☐ New Jersey (NJ) | ☐ Tennessee (TN) |
| ☐ California (CA) | ☐ Kentucky (KY) | ☐ New Mexico (NM) | ☐ Texas (TX) |
| ☐ Colorado (CO) | ☐ Louisiana (LA) | ☐ New York (NY) | ☐ Utah (UT) |
| ☐ Connecticut (CT) | ☐ Maine (ME) | ☐ North Carolina (NC) | ☐ Vermont (VT) |
| ☐ Delaware (DE) | ☐ Maryland (MD) | ☐ North Dakota (ND) | ☐ Virgin Islands (VI) |
| ☐ District of Columbia (DC) | ☐ Massachusetts (MA) | ☐ Northern Mariana Islands (MP) | ☐ Virginia (VA) |
| ☐ Florida (FL) | ☐ Michigan (MI) | ☐ Ohio (OH) | ☐ Washington (WA) |
| ☐ Georgia (GA) | ☐ Minnesota (MN) | ☐ Oklahoma (OK) | ☐ West Virginia (WV) |
| ☐ Guam (GU) | ☐ Mississippi (MS) | ☐ Oregon (OR) | ☐ Wisconsin (WI) |
| ☐ Hawaii (HI) | ☐ Missouri (MO) | ☐ Pennsylvania (PA) | ☐ Wyoming (WY) |

24 Number of Agents

25 Is this a mobile operation?
a ☐ Yes b ☐ No

26 Services Offered:
Check as many as apply.
a ☐ Travelers Checks issue
b ☐ Travelers Checks sales and/or redemption
c ☐ Money Orders issue
d ☐ Money Orders sales and/or redemption
e ☐ Currency Exchange
f ☐ Check Cashing
g ☐ Money Transmission

27 Do you also offer stored value products?
a ☐ Yes b ☐ No

**Paperwork Reduction Act.** The estimated average burden associated with this collection of information is 45 minutes per respondent or recordkeeper, depending on individual circumstances. Comments regarding the accuracy of this burden estimate, and suggestions for reducing the burden should be directed to the Paperwork Reduction Act; Department of the Treasury, Financial Crimes Enforcement Network, Suite 200, 2070 Chain Bridge Road, Vienna, VA 22182-2536. You are not required to provide the requested information unless a form displays a valid OMB control number.



28 Name of bank or other depository institution where primary transaction account for Money Services Business activities is held 2

29 Bank address (Number, Street, and Suite No.)

30 City

31 State

32 Zip Code

33 Primary Transaction Account number at bank

## Part IV Location of Supporting Documentation

If kept at the U.S. location reported in Part I, check here, ☐ and leave the rest of this part blank.

34 Address (Number, Street, and Apt. or Suite No.)

35 City

36 State

37 Zip Code

## Part V Authorized Signature

38 I am authorized to file this form on behalf of the money services business listed in Part I. I declare that the information provided is true, correct and complete, and I understand that the registered money services business listed in Part I is subject to the Bank Secrecy Act and its implementing regulations. See 31 CFR Part 103. The registered money services business maintains a current list of all agents, an estimate of its business volume in the coming year, and all other information required to comply with 31 U.S.C. 5330 and the regulations thereunder.

Sign Here ➤ _____ _____
Print Name of Owner or Controlling Person — Signature of Owner of Controlling Person

39 Date Signed M M D D Y Y Y Y

40 Title of signer

**PRIVACY ACT NOTIFICATION**

Pursuant to the requirements of Public Law 93-579 (Privacy Act of 1974), notice is hereby given that, in accordance with 5 U.S.C. 552a(e), the authority to collect information on TD F 90-22.55 is Public Law 103-305; 31 USC 5330; 5 USC 301; 31 CFR 103.

The principal purpose for collecting the information is to assure maintenance of reports or records where such reports or records have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings. The information collected may be provided to those officers and employees of any constituent unit of the Department of the Treasury who have a need for the records in the performance of their duties. The records may be referred to any other department or agency of the United States, to any State, or Tribal Government, or part thereof, upon the request of the head of such department or agency, or authorized State or Tribal Government official for use in a criminal, tax, or regulatory investigation or proceeding, and to foreign governments in accordance with an agreement, or a treaty. Disclosure of this information is mandatory. Civil and criminal penalties, including in certain circumstances a fine of not more than $5,000 per day and imprisonment of not more than five years, are provided for failure to file the form, supply information requested by the form, and for filing a false or fraudulent form. Disclosure of the Social Security or Taxpayer Identification Number is mandatory. The authority to collect is 31 CFR 103. The Social Security Number/Taxpayer Identification Number will be used as a means to identify the individual or entity who files the report.

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### General Instructions

**All fields must be completed in their entirety.**

**When to File**

**Initial Registration: Item 2a.** File the form by December 31, 2001 or within 180 days after the business begins operations, whichever is later.

**2-Year Update: Item 2b.** File the form not later than December 31 of the second calendar year in each two year registration period. See 31 CFR 103.41(b)(2).

**Corrects Prior Filing: Item 2c.** File this form to correct a prior report. Complete Part I in its entirety and only those other entries that are being amended. Staple a copy of the prior report (or the acknowledgement from DCC if received) to the corrected report.

**Refiling: Item 2d.** Refile the form if:

1 there has been a change in ownership requiring re-registration under state registration law;

2 more than 10 percent of voting power or equity interest has been transferred (except certain publicly-traded companies);

3 or the number of agents has increased by more than 50 percent.

See 31 CFR 103.41(b)(4).

**Who should file:**

Each money services business, except one that is a money services business solely because it serves as an agent of another money services business, must register. Money services businesses include:

- money transmitters;
- currency exchangers (except those who do not exchange more than $1,000 for any one customer on any day);
- check cashers (except those who do not cash checks totaling more than $1,000 for any one customer on any day);
- issuers of traveler's checks or money orders (except those who do not issue more than $1,000 in traveler's checks or money orders for any one customer on any day);
- sellers or redeemers of traveler's checks or money orders (except for those who do not sell or redeem more than $1,000 in traveler's checks or money orders for any one customer on any day).

See 31 CFR 103.11(n)(uu).

Excluded from the registration requirement are the United States Postal Service, any agency of the United States, of any state or of any political subdivision of any state. At this time, persons are not required to register to the extent that they issue, sell or redeem stored value. If, however, a money services business provides money services in addition to stored value, the provision of stored value services does not relieve it of the responsibility to register, if required, as a provider of those other services.

**Where to file:** Send this completed form to:

**IRS Detroit Computing Center**
**Attn: Money Services Business Registration**
**P.O. Box _____**
**Detroit, MI _____**

Keep a copy of this registration form.

**Estimate of Business Volume:**

The law requires a money services business to estimate the volume of its business in the coming year. 31 U.S.C. 5530(b). That estimate must be prepared annually. The estimate is not reported on this form, but must be maintained in the files of the money services business for access upon request of an appropriate law enforcement or regulatory entity.

**Supporting Documentation:**

A money services business must retain certain information in support of this registration form at a location within the United States, preferably at the address reported in Part I. That information includes: a copy of the registration form, the registration number assigned to the business by the Detroit Computing Center and, as indicated above, an estimate of the volume of its business in the coming year.

In addition, a money services business must retain as supporting documentation the following information with regard to the ownership or control of the business: the name and address of any shareholder holding more than 5%; any general partner; any trustee; and/or any director or officer of the business.

**Agent Lists:**

A money services business that has agents must prepare and maintain a listing of its agents. That list must be updated annually and retained by the business at the location within the United States reported on the registration form in Part IV. IT SHOULD NOT BE FORWARDED WITH THE REGISTRATION FORM. The list must include:

- each agent's name;
- each agent's address;
- each agent's telephone number;
- the type of service(s) provided by each agent;
- a listing of the months in the immediately preceding 12 months in which gross transaction amount of each agent with respect to financial products/services issued by the business maintaining the list exceeds $100,000;
- the name and address of any depository institution at which each agent maintains a transaction account for the money services in Item 26 conducted by the agent on behalf of the money services business in Part I;
- the year in which each agent first became an agent of the business; and
- the number of branches or subagents each agent has.

See 31 CFR 103.41(d)(2).

### Specific Instructions

**Part I. Registrant Information**

**Items 3 and 4.** Organization Name and Doing Business As. – Enter the name of the organization and, if applicable, the Doing Business As name. For example, Good Hope Enterprises, Inc. DBA Joe's Check Cashing.

**Items 5, 7, 8 and 9. Address.** – Enter the permanent street address, including zip code of the registering business. Use the Post Office's two-letter state abbreviation code. A P.O. Box address may only be used if there is no street address.

**Part II: Owner or Controlling Person Information**

Any person who owns or controls a money services business shares the responsibility for seeing that the business is registered. Only one registration form is required for any business in any registration period. If more than one person owns or controls the business, they may enter into an agreement designating one of them to register the business. That person must complete Part II and provide the requested information. In addition, that person must sign and date the form. Failure by the designated person to register the business does not relieve any of the other persons who own or control the business of the liability for failure to register the business.

An "owner or controlling person" includes the following:
Sole Proprietorships – the owner of the business;
Partnerships – a general partner;
Corporations – a corporate officer;
Trusts – a trustee.

**Part III. Money Services Information**

**Item 23. Where services are offered.** – Mark the box(es) for any state or territory in which the money services business offers services. If a service is offered on tribal lands, mark the box for the state in which the tribal lands are located.

**Item 25. Mobile Operation.** – If any part of your business is a mobile operation, check yes here. A mobile operation is one based in a vehicle, for example, a check cashing service offered from a truck.

**Item 28, 29, 30, 31, 32 and 33. Name, Address, and Account Number of Primary Transaction Account.** – Enter the name and address of the bank or other depository institution where the money services business has its primary transaction account (e.g., the primary checking account) for the funds received in or for the financial products or services of the money services business. A transaction account is defined in 12 U.S.C. 461(b)(1)(c).



[FR Doc. 00–25950 Filed 10–6–00; 8:45 am]
BILLING CODE 4820–03–C

## DEPARTMENT OF THE TREASURY

### Departmental Offices; Debt Management Advisory Committee Meeting

Notice is hereby given, pursuant to 5 U.S.C. App. 10(a)(2), that a meeting will be held at the U.S. Treasury Department, 15th and Pennsylvania Avenue, NW., Washington, DC, on October 31, 2000, of the following debt management advisory committee:

The Bond Market Association Treasury Borrowing Advisory Committee

The agenda for the meeting provides for a technical background briefing by Treasury staff, followed by a charge by the Secretary of the Treasury or his designate that the Committee discuss particular issues, and a working session. Following the working session, the Committee will present a written report of its recommendations.

The background briefing by Treasury staff will be held at 8 a.m. Eastern time and will be opened to the public. The remaining sessions and the committee's reporting session will be closed to the public, pursuant to 5 U.S.C. App. 10(d).

This notice shall constitute my determination, pursuant to the authority placed in heads of departments by 5 U.S.C. App. 10(d) and vested in me by Treasury Department Order No. 101–05, that the closed portions of the meeting are concerned with information that is exempt from disclosure under 5 U.S.C. 552b(c)(9)(A). The public interest requires that such meetings be closed to the public because the Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decision on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community. When so utilized, such a committee is recognized to be an advisory committee under 5 U.S.C. App. 3.

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of the advisory committee, premature disclosure of the committee's deliberations and reports would be likely to lead to significant financial speculation in the securities market. Thus, these meetings fall within the exemption covered by 5 U.S.C. 552b(c)(9)(A).

The Office of Financial Markets is responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of committee activities and such other matters as may be informative to the public consistent with the policy of 5 U.S.C. 552b.

Dated: October 3, 2000.

**Lee Sachs,**

*Assistant Secretary, Financial Markets.*

[FR Doc. 00–25905 Filed 10–6–00; 8:45 am]
BILLING CODE 4810–25–M

## DEPARTMENT OF THE TREASURY

### Fiscal Service

### Financial Management Service; Proposed Collection of Information; Claim Against the United States for the Proceeds of a Government Check

**AGENCY:** Financial Management Service, Fiscal Service, Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Financial Management Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection. By this notice, the Financial Management Service solicits comments concerning form FMS–1133, "Claim Against the United States for the Proceeds of a Government Check."

**DATES:** Written comments should be received on or before December 11, 2000.

**ADDRESSES:** Direct all written comments to Financial Management Service, 3700 East West Highway, Programs Branch, Room 133, Hyattsville, Maryland 20782.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to Pamela Locks, Director, Financial Processing Division, Room 725D, 3700 East West Highway, Hyattsville, Maryland 20782, (202) 874–7620.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Paperwork Reduction Act of 1995, (44 U.S.C. 3506(c)(2)(A)), the Financial Management Service solicits comments on the collection of information described below.

*Title:* Management of Federal Agency Disbursements.

*OMB Number:* 1510–0019.

*Form Number:* FMS–1133.

*Abstract:* This form is used to collect information needed to process an individual's claim for non-receipt of proceeds from a government check. Once the information is analyzed a determination is made and a recommendation is submitted to the program agency to either settle or deny the claim.

*Current Actions:* Extension of currently approved collection.

*Type of Review:* Regular.

*Affected Public:* Individuals or households.

*Estimated Number of Respondents:* 98,500.

*Estimated Time Per Respondent:* 10 minutes.

*Estimated Total Annual Burden Hours:* 18,695.

*Comments:* Comments submitted in response to this notice will be summarized and/or included in the request of Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: October 2, 2000.

**Judith R. Tillman,**

*Assistant Commissioner, Financial Operations.*

[FR Doc. 00–25894 Filed 10–6–00; 8:45 am]
BILLING CODE 4810–35–M

## DEPARTMENT OF THE TREASURY

### Office of Thrift Supervision

### Submission for OMB Review; Comment Request

October 4, 2000.

The Office of Thrift Supervision (OTS) has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Interested persons may obtain copies of the submission(s) by calling the OTS Clearance Officer listed. Send comments regarding this information collection to

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the OMB reviewer listed and to the OTS Clearance Officer, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

**DATES:** Submit written comments on or before November 9, 2000.

*OMB Number:* 1550–0077.

*Form Number:* OTS Form 1579.

*Type of Review:* Regular review.

*Title:* Operating Subsidiary.

Description: 12 CFR Part 559 requires a savings association proposing to establish or acquire an operating subsidiary or conduct new activities in an existing operating subsidiary to either notify the OTS or obtain the prior approval of the OTS. The regulation also requires a savings association to create and maintain certain documents.

*Respondents:* Savings and Loan Associations and Savings Banks.

*Estimated Number of Responses:* 139.

*Estimated Burden Hours Per Response:* 10 hours.

*Frequency of Response:* Once per year.

*Estimated Total Reporting Burden:* 1,390 hours.

*Clearance Officer:* Ralph E. Maxwell, (202) 906–7740, Office of Thrift Supervision, 1700 Street, NW., Washington, DC 20552.

*OMB Reviewer:* Alexander Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

**John E. Werner,**

*Director, Information & Management Services.*

[FR Doc. 00–25940 Filed 10–6–00; 8:45 am]

**BILLING CODE 6720–01–P**

## DEPARTMENT OF THE TREASURY

### Office of Thrift Supervision

### Submission for OMB Review; Comment Request

October 4, 2000.

The Office of Thrift Supervision (OTS) has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Interested persons may obtain copies of the submission(s) by calling the OTS Clearance Officer listed. Send comments regarding this information collection to the OMB reviewer listed and to the OTS Clearance Officer, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552.

**DATES:** Submit written comments on or before November 9, 2000.

*OMB Number:* 1550–0063.

*Form Number:* OTS Form 1564.

*Type of Review:* Regular review.

*Title:* Activities of Savings and Loan Holding Companies.

*Description:* 12 CFR Part 584.2–1 required prior notification to the OTS by savings and loan holding companies proposing to engage in prescribed services and activities. The OTS uses this information to track activities and decide the advisability of other actions.

*Respondents:* Savings and Loan Associations and Savings Banks.

*Estimated Number of Responses:* 2.

*Estimated Burden Hours Per Response:* 2 hours.

*Frequency of Response:* Once per year.

*Estimated Total Reporting Burden:* 4 hours.

*Clearance Officer:* Ralph E. Maxwell, (202) 906–7740, Office of Thrift Supervision, 1700 Street, NW, Washington, DC 20552.

*OMB Reviewer:* Alexander Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, D.C. 20503.

**John E. Werner,**

*Director, Information & Management Services.*

[FR Doc. 00–25941 Filed 10–6–00; 8:45 am]

**BILLING CODE 6720–01–P**



# Corrections

**Federal Register**

Vol. 65, No. 196

Tuesday, October 10, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 73

**[Docket No. 97C–0415]**

### Listing of Color Additives Exempt From Certification; Luminescent Zinc Sulfide

*Correction*

In rule document 00–19952, beginning on page 48375, in the issue of Tuesday, August 8, 2000, make the following correction:

On page 48375, in the third column, under the heading, **FOR FURTHER INFORMATION CONTACT:**, in the first line, "Aydin O—AE4rstan" should read "Aydin Örstan".

[FR Doc. C0–19952 Filed 10–6–00; 8:45 am]

**BILLING CODE 1505–01–D**

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Federal Register

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October 10, 2000

Part II

# Small Business Administration

13 CFR Part 119
PRIME Act Grants; Proposed Rule

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**SMALL BUSINESS ADMINISTRATION**

**13 CFR Part 119**

**PRIME Act Grants**

**AGENCY:** Small Business Administration.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The U.S. Small Business Administration is proposing regulations to add new regulations to set up the Program for Investment in Microentrepreneurs Act ("PRIME" or "the Act"), created by Title VII of the Gramm-Leach-Bliley Act, enacted November 12, 1999. The proposed regulation sets forth the Act's grant requirements for qualified Microenterprise Development Organizations ("MDOs") to: train and provide technical assistance to disadvantaged microentrepreneurs; build MDO's capacity to give disadvantaged microentrepreneurs such training and technical assistance; research and develop best practices for training and technical assistance programs for disadvantaged microentrepreneurs, and perform such other activities as the Administrator or designee determines are consistent with the Act.

PRIME grants will enable MDOs to reach more disadvantaged microentrepreneurs with training and technical assistance, which will make a difference in their ability to start, grow, and sustain microenterprises in economically distressed, high unemployment areas. SBA will award a minimum of 75 percent of available funds to MDOs to use for training and technical assistance to disadvantaged microentrepreneurs. At a minimum, another 15 percent will be used to build MDOs' capacity to give more training and technical assistance. SBA will use the remaining funds to make grants for research and development on best practices or other purposes to improve MDOs' services to PRIME's ultimate beneficiaries—disadvantaged microentrepreneurs.

**DATES:** Submit comments on or before November 9, 2000.

**ADDRESSES:** Written comments should be sent to Jane Palsgrove Butler, Associate Administrator, Microenterprise Development Branch, Office of Financial Assistance (OFA), U.S. Small Business Administration, 409 3rd Street, SW, Washington, DC 20416, 202–205–6497.

**FOR FURTHER INFORMATION CONTACT:** Jody Raskind, Chief, Microenterprise Development Branch, 202–205–6485.

**SUPPLEMENTARY INFORMATION:** Congress recognized that many disadvantaged microentrepreneurs lack sufficient training and education to gain access to capital and to conduct other activities necessary to establish, maintain, and expand their businesses. It enacted the Program for Investment in Microentrepreneurs Act ("PRIME" or "the Act") to augment training and technical assistance under the Small Business Act and other legislation. PRIME grants to qualified Microenterprise Development Organizations (MDOs) will help meet training and technical assistance needs for disadvantaged microentrepreneurs, thereby encouraging entrepreneurship and capital formation at the community level.

The Congressional mandate to provide cognitive support to the target market through the Act is recognition that many low income and very low-income entrepreneurs need training and technical assistance to start, operate, strengthen, or expand their businesses. In order to achieve measurable success, technical assistance providers must be accessible, consistent and committed to the entrepreneur's progress over extended periods of time. The competency and capacity of these providers must also be measured. Research into the outcomes of support, its long-term effect, and how best to continue assistance is essential in determining the value of support over the long run.

The U.S. Department of Commerce's Characteristics of Business Ownership shows that in 1987, approximately 17 percent (2.3 million) of businesses in the United States were operated by low-income and very low-income microentrepreneurs. Since then a variety of economic developments, including corporate downsizing, declining availability of lower skilled manufacturing jobs and expanded opportunities in the technology field, have combined to make microenterprise an increasingly more viable option in the U.S. economy.

The Aspen Institute estimated that during 1997 microlenders nationwide provided business assistance to 172,000 microentrepreneurs, a mere fraction of low-and very-low income individuals involved in microenterprise. The Institute further estimated that of that number, about 57,000 actively pursued and benefited from sustained business-based training and technical assistance. Of those, approximately 6,000 received loans.

One of the major constraints is the cost of providing this training and technical assistance. Current private sector sources simply are not meeting the need. The Act, therefore, focuses on expanding the cultivation, support and motivation of these low- and very-low income microentrepreneurs. It will also help build the capacity of the microenterprise industry in order to deliver vital services to a much greater segment of the 2.3 million or more low income and very low income microentrepreneurs. One of the goals of the PRIME program is to be a resource for MDOs as they grow and develop and ultimately become self-sustaining.

The Act authorizes SBA to make grants to "qualified organizations" to fund training and technical assistance for disadvantaged microentrepreneurs. It also authorizes SBA to make grants to increase the training and technical assistance capacities of MDOs. Further, it provides funding for grants for research and development, and other undertakings deemed by the Administrator or designee to be consistent with the purposes of the Act. The PRIME program requires that grants made by SBA be matched by grantees from non-Federal sources. The proposed regulations set up four categories of technical assistance grants targeted to these purposes.

Grants made either for the purpose of providing technical assistance to disadvantaged microentrepreneurs or for capacity building purposes initially will be awarded, on a competitive basis, in amounts not less than $50,000. Such grants may be renewable, annually, for up to 4 additional years. Renewal of an existing grant will take place at the discretion of the SBA and will be based on the availability of funds, continued legislative authorization, and the individual grantee's performance in terms of goals met, milestones achieved, and demonstrated results.

Grants for research and development will also be awarded on a competitive basis, though not subject to the $50,000 minimum award. These grants may also be renewed based on the appropriateness of extended funding periods, availability of funds, continued legislative authorization and appropriation and performance.

PRIME will be implemented with a clear focus on the applicants' abilities to meet the purposes of the Act. Accountability and outcomes will be an ongoing consideration during the grant period. Applicants for funding for technical assistance to disadvantaged microentrepreneurs will be evaluated based on such items as technical capabilities; market penetration potential; ability to meet stated goals; historical performance; key personnel; resource management; community partnering and collaboration with state and local entities; accountability for outcomes; program sustainability; and replicability of program design. Applicants for funding as capacity builders will be similarly evaluated. Continued performance of these two groups will be measured in terms of such items as number of clients served; range and quality of service; number of businesses started, stabilized, expanded, and/or funded; number of jobs created; business survival rates; capital formation; and non-business outcomes such as wage employment.

SBA is inviting public comment on how the agency intends to fulfill the purposes of the Act. SBA intends to award PRIME grants so that they reach MDOs that most clearly serve, have the potential to serve, or can best improve services to those microentrepreneurs with the greatest need for business-based training and technical assistance.



**Section by Section Analysis**

The following is a section by section analysis of each provision of SBA's proposed regulations to implement the Act.

Section 119.1 of Part 119 states the purpose of PRIME—to make grants to qualified MDOs to provide training and technical assistance to disadvantaged microentrepreneurs; to build MDO's service provider capacities; to pursue research and development in the field of microenterprise development; and for other purposes deemed by the Administrator or designee to be consistent with the Act.

Section 119.2 sets forth definitions found in the Act, and further defines terms not included in the Act. The following terms were either not included or were not fully defined in the Act:

*Capacity Building Grant* in § 119.2(a); *developer* in § 119.2(d); *disadvantaged entrepreneur* or *disadvantaged microentrepreneur* in § 119.2(e); *Discretionary Grant* in § 119.2(f); *economically disadvantaged entrepreneur* or *economically disadvantaged microentrepreneur* in § 119.2(g); *emerging microenterprise development organization* or *program* in § 119.2(h); *grantee* in § 119.2(i); *group* in § 119.2(j); *large* and *small microenterprise development organization* or *program* in §§ 119.2(n) *and (v); local community* in § 119.2(o); *qualified organization* in § 119.2(s); *Research* and *Development Grant* in § 119.2(t); *severe constraints on available sources of matching funds* in § 119.2(u); *Technical Assistance Grant* in § 119.2(w).

In defining these terms, SBA considered the policy objectives of the Act and how the definitions proposed will further the intent of Congress to ensure that PRIME grants reach its intended audience.

SBA proposes a definition of *Indian tribe jurisdiction* in § 119.2(l) consistent with other Federal laws extending Federal assistance to Indian country.

Section 119.3 lists organizations eligible to apply for PRIME grants:

(1) non-profit MDOs or groups of MDOs with demonstrated records of delivering microenterprise services to disadvantaged entrepreneurs;

(2) a private, non-profit entity serving or seeking to serve other qualified organizations;

(3) MDOs or programs accountable to local communities and working with State, local or tribal governments; and

(4) an Indian tribe acting on its own behalf, if no private organization or program as defined in the Act exists within its jurisdiction.

Section 119.4 lists the uses for PRIME grants permitted by the Act:

(1) training and technical assistance for disadvantaged microentrepreneurs;

(2) capacity building services for MDOs;

(3) research and development on best practices in microenterprise; and

(4) other activities not covered by the first three categories and deemed by the Administrator or designee to be consistent with the Act's purposes.

Section 119.5 states the Act's parameters for allocating PRIME grants and their apportionment among the permitted uses of PRIME funds. 50 percent of the number of the grants will be awarded to qualified MDOs assisting very low-income persons, including those on Indian reservations. The categorical allocation of PRIME grants will be:

(1) at least 75 percent to MDOs providing training and technical assistance to disadvantaged microentrepreneurs;

(2) at least 15 percent to organizations providing training and capacity building services to MDOs; and

(3) the remainder to be divided between research and development and for other purposes as the Administrator or designee deems consistent with the Act.

Section 119.6 states awards will be not less than $50,000 for training and technical assistance and capacity building. Although the Act sets no minimum, SBA decided that a certain minimum sum is needed for MDOs to carry out effective training and technical assistance and capacity building to further the purposes of the Act. The Act limits the maximum sum a single MDO may receive in one fiscal year to $250,000 or 10% of PRIME funds available in that fiscal year, whichever is less.

Section 119.7 states that subject to availability of funds and continuing authorization of PRIME, awards will be made to grantees on an annual basis, and will allow for the initial grant plus up to 4 option years, for a total of 5 years. After the initial grant, grant awards for following option years will be in declining amounts, declining by 20 percent of the initial grant amount in each successive year.

Section 119.8 requires a 50 percent match for PRIME grants. It states what resources a grantee may use to fulfill them and the circumstances in which SBA may reduce or eliminate the match requirement. It sets a 10 percent limit on exemptions that may be made in a single fiscal year.

For example, combining the requirements of §§ 119.7 and 119.8, if a grantee receives an initial grant of $100,000, the grantee will receive $80,000 in the first option year, $60,000 in the second option year, $40,000 in the third option year, and $20,000 in the fourth option year. The grantee will be subject to a 50 percent match for each year—$50,000 for initial year, $40,000 for first option year, $30,000 for second option year, $20,000 for third option year, and $10,000 for fourth option year.

Section 119.9 states that SBA will issue Programs Announcements seeking PRIME grant applications. SBA believes a competitive process will allow a greater number of varied, diverse proposals that will accomplish the goals of the Act.

Section 119.10 restates the Act's requirement that SBA not prefer SBA Microloan Program participants under § 7(m) of the Small Business Act over non-participants or former participants in that program. Congress intended PRIME grants to help MDOs serve a greater number of disadvantaged entrepreneurs than currently receive assistance. Though Microloan participants and former participants will still be eligible, avoiding a preference for them will enable SBA to broaden opportunities for training and technical assistance, rather than duplicating existing programs.

Section 119.11 sets forth information that will be requested in an application for funding under PRIME, based on the 4 categories of PRIME grants described in § 119.4.

Section 119.12 explains factors that will affect grant application consideration. To further the Act's goals to assist disadvantaged microentrepreneurs most in need of training and technical assistance, SBA will initially give special consideration

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to organizations located in and serving areas of, or with a history of successful outreach to, low-income and very low-income persons. SBA believes this approach will further the goals of the Act by directing grant funds to those microentrepreneurs who are at the greatest disadvantage.

Section 119.13 explains how grantees may make subgrants from PRIME awards. Subgrants will enable more MDOs to provide training and capacity building, and will enable them to expand the technical assistance network available to disadvantaged entrepreneurs. To make sure that funds are used to carry out purposes of the Act, SBA is requiring grantees to obtain its prior approval for subgrantees. The Act limits how much grantees may use for administrative expenses related to making subgrants.

Section 119.14 sets forth limitations on use of program income.

Section 119.15 explains carryover procedures from one fiscal year to the next or unexpended Federal funds.

Section 119.16 advises the public about SBA reporting, record keeping, and related requirements. Congress stated its intent for qualified organizations to maintain records as the Riegle Community Development Act of 1994 ("Riegle Act") requires of community development financial institutions under 12 U.S.C. § 4714. SBA will include the details of such requirements in its Program Announcements.

Section 119.17 advises the public about SBA oversight functions, including additional reporting requirements in accordance with applicable OMB circulars.

Section 119.18 sets forth restrictions against lobbying.

Section 119.19 explains that fundraising costs are not allowable expenditures of grant funds under the Act.

Section 119.20 explains process for grantees and subgrantees to raise conflict of interest matters with SBA.

Appendix A of this rule contains the Program Announcements SBA proposes to issue to potential applicants. SBA chose to draft three separate Program Announcements, one for each of the first three grant categories identified in § 119.4. The Program Announcements (and their appendices) include such items as the purpose and overview of the PRIME Program, program eligibility and evaluation criteria, application requirements and instructions, reporting and recordkeeping requirements. SBA reserves the right to simultaneously review multiple Program Announcement responses from an applicant applying to receive a grant under more than one of the categories listed in § 119.4. SBA welcomes comments on any aspect of the proposed Program Announcements (and their appendices).

**Compliance With Executive Order 12866, 12988 and 13132, the Regulatory Flexibility Act, 5 U.S.C. 601–12, and the Paperwork Reduction Act, 44 U.S.C. Ch. 35**

The Office of Management and Budget (OMB) reviewed this rule as a "significant" regulatory action under Executive Order 12866.

SBA has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612. Because Congress has limited the funding level for this program, it can only serve a limited number of small businesses by making grants to the defined organizations.

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA will submit to the Office of Management and Budget (OMB) our proposed Program Announcements for the PRIME program. SBA will request OMB to approve or disapprove of these collections of information 30 days after submission. SBA proposes using three separate Program Announcements, one for each of the first three grant categories identified in § 119.4. The data collection requirements of the various Program Announcements (and their appendices) are described generally within this proposed regulation. The specific data collection requirements can be found in the Program Announcements themselves, which are attached to this proposed rule as Appendix A. You may also obtain a copy of the proposed Program Announcements for comments on the data collection requirements by visiting SBA's website at *www.sba.gov*.

The following list identifies the sections of this proposed regulation which describe generally the data collection requirements found within the Program Announcements (and their appendices).

(1) As referenced in § 119.11 (What information will be requested in an application under the PRIME program?) and § 119.12 (What criteria will SBA use to evaluate applications for funding under the PRIME program?), SBA proposes requesting information, such as, basic identifying information and core data, management and organization information, descriptions of past and present performance in serving low and very low income individuals, technical qualifications of the applicant, descriptions of activities proposed using PRIME grant funds, information regarding community partnering efforts, and reporting capabilities.

SBA needs this information to evaluate applicants and ensure that awards are made in furtherance of the PRIME program's objectives. SBA anticipates that the respondents to this request will include those organizations identified in § 119.3 (What types of organizations are eligible to apply for PRIME grants?). Based upon the Agency's knowledge of the industry, SBA estimates that approximately 500 applicants will apply to participate in the PRIME program. Respondents will need to submit the information referenced in §§ 119.11 and .12 each time they apply to participate in the PRIME program. SBA estimates that it will take respondents 80 hours to respond to a Program Announcement and fulfill the reporting and recordkeeping requirements referenced below.

(2) As referenced in § 119.13 (How will an applicant make a subgrant?), SBA proposes requesting information that would support the awarding a subgrant, such as, a description of how the subgrant will allow the grantee to provide expanded services and benefits.

SBA needs this information to assess whether issuing a subgrant is in the best interest of the objectives of the PRIME program. SBA anticipates that the respondents to this request will be grantees that have identified opportunities to enhance proposal implementation through the use of subgrants. Respondents will need to submit the information referenced in § 119.13 each time they request a subgrant. SBA estimates that it will take respondents 10 hours per response to provide the information requested by this section.

(3) As referenced in § 119.15 (If a grantee is unable to spend the entire amount allotted for a single year, can the funds be carried over to the next year?), SBA proposes requesting information, such as, an explanation of why funds were not spent during the period in which they were awarded, budget and matching fund information.

SBA needs this information to assess whether the grantee should be allowed to carry funds over to the next budget period. SBA anticipates that the respondents to this request will be grantees that have not expended their grant funds during the period in which they were awarded. If a respondent makes a request for funds to be carried over, this request will be made on an annual basis. SBA estimates that the time it will take respondents to provide this information is 1 hour per response.

(4) As referenced in § 119.16 (What are the reporting, record keeping, and related requirements for grantees?) and § 119.17 (What types of oversight will SBA provide to grantees?), SBA proposes requesting a variety of data including narrative performance reports and financial status reports. The recipients of:

(a) Technical Assistance and Capacity Building Grants will be required to provide SBA with annual performance and, initially, quarterly financial reports.

(b) Research and Development Grants will be required to provide performance and financial reports in accordance with agreed upon milestones for each particular grant proposal.

(c) Discretionary Grants will be required to provide reports as appropriate for their proposal or on a schedule as described for Technical Assistance and Capacity Building Grants.

SBA needs this information to assess the impact of services provided by the grantees and to measure the success rate of individual clients, microenterprise development organizations, and the microenterprise development industry. SBA anticipates that all grantees will respond to this request as required by their respective grant category. SBA estimates that the time it will take respondents an average of 4 hours to provide this information.

(5) As referenced in § 119.19 (Is fundraising an allowable expense under the PRIME program?), SBA proposes requesting information supporting that the grantees have adequate fundraising resources for the non-Federal matching fund requirements of the PRIME program.

SBA needs this information to ensure that the applicants for the PRIME program have the ability to satisfy the program's regulatory matching requirements. SBA will require this information each time a grantee applies for grant funds under the PRIME program. SBA estimates that it will take respondents 2 hours to provide this information.

(6) As referenced in § 119.20 (Should grantees and subgrantees raise conflict of interest matters with SBA?), SBA proposes requesting that each grantee or subgrantee provide a copy of its conflicts of interest policy.

SBA needs this information to ensure that the grantees and subgrantees are in a position to avoid conflicts of interest, or the appearance of conflicts of interest, in the handling of grant funds or program provisions under the PRIME program. SBA anticipates that all grantees and subgrantees will provide this information. SBA will require that respondents provide this information once, prior to receiving funding under the PRIME program. SBA estimates that it will take respondents .50 burden hours to provide this information.

SBA is seeking your comment on the following: (a) whether the information SBA is requesting is necessary for the proper performance of the Agency, (b) the accuracy of the burden estimate (time estimated to complete each collection of information request), (c) ways to minimize the burden estimates, and (d) ways to enhance the quality of the information being collected. Please send comments on the data collection requirements to David Rostker, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW, Washington, DC 20503, and to Jane Palsgrove Butler, Associate Administrator, Office of Financial Assistance, 409 3rd Street, SW, Washington, DC 20416.

For purposes of Executive Order 13132, SBA has determined that this proposed rule has no federalism implications because the legislation authorizing it provides grants to private, non-profit organizations working directly with disadvantaged entrepreneurs.

For purposes of Executive Order 12988, SBA certifies that this proposed rule is drafted, to the extent practicable, in accordance with the standards set forth in section 3 of that Order.

**List of Subjects in 13 CFR Part 119**

Grant programs—business, Small business.

For the reasons stated in the preamble, the Small Business Administration proposes to add 13 CFR part 119 as follows:

## PART 119—PROGRAM FOR INVESTMENT IN MICROENTREPRENEURS ("PRIME" OR "THE ACT")

Sec.


119.1 What is the Program for Investment in Microentreprenuers ("PRIME" or "the Act")?
119.2 Definitions.
119.3 What types of organizations are eligible for PRIME grants?
119.4 What services or activities may PRIME grant funds be used for?
119.5 How are PRIME grant awards allocated?
119.6 What are the minimum and maximum amounts for an award?
119.7 How long will grant funding be available to a single grantee?
119.8 Are there matching requirements for grantees?
119.9 How will a qualified organization apply for PRIME grant awards?
119.10 Will SBA give preferential consideration to other SBA program participants?
119.11 What information will be requested in an application under the PRIME program?
119.12 What criteria will SBA use to evaluate applications for funding under the PRIME program?
119.13 How will an applicant make a subgrant?
119.14 Are there limitations regarding the use of program income?
119.15 If a grantee is unable to spend the entire amount allotted for a single fiscal year, can the funds be carried over to the next year?
119.16 What are the reporting, record keeping, and related requirements for grantees?
119.17 What types of oversight will SBA provide to grantees?
119.18 What are the restrictions against lobbying?
119.19 Is fundraising an allowable expense under the PRIME program?
119.20 Should grantees and subgrantees raise conflict of interest matters with SBA?


**Authority:** 15 U.S.C. 634(b)(6) and Pub. L. 106–102.

**§ 119.1 What is the Program for Investment in Microentrepreneurs ("PRIME" or "the Act")?**

PRIME authorizes SBA to make grants to "qualified organizations" to fund training and technical assistance for disadvantaged entrepreneurs, build these organizations' own capacity to give training and technical assistance, fund research and development of "best practices" in microenterprise development and technical assistance programs for disadvantaged microentrepreneurs, and to fund other undertakings the Administrator or designee deems consistent with these purposes.

**§ 119.2 Definitions. For the purposes of this part, the following definitions apply:**

*Capacity Building Grant* means a grant made under the Act identified under § 119.4(b).

*Capacity building services* means services provided to an organization or program that is currently, or is developing as, a microenterprise development organization or program, for the purpose of enhancing its ability to provide training and technical assistance to disadvantaged microentrepreneurs.

*Collaborative* means two or more nonprofit entities that agree to act jointly as a qualified organization under this part.

*Developer* means a person interested in starting or acquiring a microenterprise.

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*Disadvantaged entrepreneur,* or *disadvantaged microentrepreneur,* means the owner, majority owner, or developer, of a microenterprise who is also—

(1) A low-income person;

(2) A very low-income person; or

(3) An entrepreneur who lacks adequate access to capital or other resources essential for business success, or is economically disadvantaged, as defined in this part.

*Discretionary Grant* means a grant made under the Act identified under § 119.4(d).

*Economically disadvantaged entrepreneur,* or *economically disadvantaged microentrepreneur,* means an owner, majority owner, or developer of a microenterprise whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the industry such that his or her ownership of a small business would help to qualify the small business for assistance under the section 7(j) or section 8(a) programs of the Small Business Act.

*Emerging microenterprise development organization or program* means a microenterprise development organization or program which has a microenterprise capacity building services component, but has had such a component for less than 4 years at the date of its application for a PRIME grant.

*Grantee* means a recipient of a grant under the Act.

*Group* has the same meaning as "collaborative" as defined in this section.

*Indian tribe* means any Indian tribe, band, pueblo, nation, or other organized group or community, including any Alaska Native village or regional or village corporation, as defined in or established pursuant to the Alaska Native Claims Settlement Act, which is recognized as eligible for the special programs and services the United States provides to Indians because of their status as Indians.

*Indian tribe jurisdiction* means Indian country, as defined in 18 U.S.C. 1151, and any other lands, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any tribe or individual subject to a restriction by the United States against alienation, and any land held by Alaska Native groups, regional corporations, and village corporations, as defined in or established under the Alaska Native Claims Settlement Act, public domain Indian allotments, and former Indian reservations in the State of Oklahoma.

*Intermediary* means a private, nonprofit entity serving or seeking to serve microenterprise development organizations or programs identified under § 119.3.

*Large microenterprise development organization or program* means a microenterprise development organization or program with 10 or more full time employees or equivalents, including its executive director, as of the date it files its application with SBA for a PRIME grant.

*Local community* means an identifiable area and population constituting a political subdivision of a state.

*Low-income person* means a person having an income, adjusted for family size, of not more than—

(1) For metropolitan areas, 80 percent of the median income; and

(2) For non-metropolitan areas, the greater of—

(i) 80 percent of the area median income; or

(ii) 80 percent of the statewide non-metropolitan area median income.

*Microenterprise* means a sole proprietorship, partnership or corporation that—

(1) Has fewer than 5 employees, including the owner; and

(2) Generally lacks access to conventional loans, equity, or other banking services.

*Microenterprise development organization or program* means a nonprofit entity, or a program administered by such an entity, including community development corporations or other nonprofit development organizations and social service organizations, that provides services to disadvantaged microentrepreneurs.

*Qualified organization* means an organization eligible for a PRIME grant identified under § 119.3.

*Research and Development Grant* means a grant made under the Act identified under § 119.4(c).

*Severe constraints on available sources of matching funds* means the documented inability of a qualified organization applying for a PRIME grant to raise matching funds or in-kind resources from non-Federal sources during the 2 years immediately prior to the date of its application because of a lack of or increased scarcity of monetary or in-kind resources from potential non-Federal sources.

*Small microenterprise development organization or program* means a microenterprise development organization or program with less than 10 full time employees or equivalents, including its executive director, as of the date it files its application with SBA for a PRIME grant.

*Technical Assistance Grant* means a grant made under the Act identified under § 119.4(a).

*Training and technical assistance* means services and support provided to disadvantaged entrepreneurs, such as assistance intended to enhance business planning, marketing, management, financial management skills, business operations, or assistance for the purpose of increasing access to loans and other financial services.

*Very low income person* means having an income adjusted for family size of not more than 150 percent of the poverty line, as defined in section 673(2) of the Community Services Block Grant Act, 42 U.S.C. 9902(2), including any revision required by that section.

### § 119.3 What types of organizations are eligible for PRIME grants?

An organization eligible for a PRIME grant ("qualified organization") is one that is:

(a) A microenterprise development organization or program as defined in § 119.2 (or a group or collaborative thereof) that has a demonstrated record of delivering microenterprise services to disadvantaged microentrepreneurs;

(b) An intermediary, as defined in § 119.2;

(c) A microenterprise development organization or program as defined in § 119.2 that is accountable to a local community, working with a State or local government or Indian tribe; or

(d) An Indian tribe acting on its own, if the Indian tribe can certify that no private organization or program referred to in paragraphs (a), (b) and (c) of this section exists within its jurisdiction.

### § 119.4 What services or activities may PRIME grant funds be used for?

A recipient of a PRIME grant ("grantee") must use PRIME grants to—

(a) Provide training and technical assistance to disadvantaged microentrepreneurs ("Technical Assistance Grant");

(b) Provide training and capacity building services to microenterprise development organizations and programs to assist them to develop microenterprise training and services ("Capacity Building Grant");

(c) Aid in researching and developing the best practices in the field of microenterprise development and technical assistance programs for disadvantaged microentrepreneurs ("Research and Development Grant"); or

(d) Conduct such other activities as the Administrator or designee determines to be consistent with the purposes of the Act ("Discretionary Grant").



### § 119.5 How are PRIME grant awards allocated?

(a) Not less than 50 percent of the number of grant awards made under this part will be awarded to qualified organizations benefiting very low-income persons, including those residing on Indian reservations. In general, SBA will make grant award decisions to serve diverse populations by including as recipients both large and small microenterprise development organizations, and organizations serving urban, rural, and Indian tribal communities.

(b) SBA will allocate the funding available for awards as follows:

(1) A minimum of 75 percent for Technical Assistance Grants;

(2) A minimum of 15 percent for Capacity Building Grants; and

(3) The remaining 10 percent or less may be allocated by SBA, in its sole discretion to be used for:

(i) Research and Development Grants; or

(ii) Discretionary Grants.

### § 119.6 What are the minimum and maximum amounts for an award?

(a) The minimum grant award for Technical Assistance and Capacity Building Grants will be $50,000, subject to the availability of funds.

(b) There is no minimum grant award for Research and Development or Discretionary Grants.

(c) The maximum amount that an individual grant recipient may receive in any fiscal year from a single award or multiple awards, under any of the purposes of the program, may not exceed $250,000 or 10 percent of the total grant funds available for award in that fiscal year, whichever is less.

### § 119.7 How long will grant funding be available to a single grantee?

(a) Subject to the availability of funds and continuing authorization of the PRIME program, funding will be available on an annual basis allowing for the initial grant plus up to 4 option years, for a total of 5 years. Continuation of funding during option years will depend upon funding limitations, the grantee's performance, continued legislative authorization, and otherwise at the discretion of SBA. A grantee may apply for funding for less than the 5-year time frame available.

(b) After a grantee receives an initial grant, funding for any option years will be in declining amounts as follows:

(1) 80 percent of initial grant amount in first option year;

(2) 60 percent of initial grant amount in second option year;

(3) 40 percent of initial grant amount in third option year; and

(4) 20 percent of initial grant amount in fourth option year.

### § 119.8 Are there matching requirements for grantees?

Applicants and grantees must match SBA funding as follows:

(a) Except as provided in paragraph (c) of this section, applicants and grantees must match Federal assistance with funds from sources other than the Federal Government in an amount not less than 50 percent of the grant amount awarded each year. Sources such as fees, grants, gifts, income from loan sources, and in-kind resources of a grant recipient from non-Federal public or private sources may be used to comply with the matching funds requirement;

(b) Grantees receiving funds in option years as described in § 119.7(b) are subject to matching requirements of this section.

(c) For an applicant or grantee with severe constraints on available sources of matching funds, the Administrator or designee may reduce or eliminate the matching requirements. Any reductions or eliminations must not exceed 10 percent of the aggregate of all PRIME grant funds made available by SBA in any fiscal year.

(d) An applicant may request a waiver of the matching fund requirement by submitting a written request with its application for funding. The request must justify the need for a waiver indicating:

(1) The cause and extent of the constraints on the historical and projected ability to raise matching funds;

(2) Fund raising efforts up to the time the application is submitted;

(3) Based on those efforts, a list of any matching funds expected for the PRIME grant; and

(4) The extent to which, without the waiver, services under the PRIME program will be unavailable to an area with a demonstrated concentration of microenterprises.

### § 119.9 How will a qualified organization apply for PRIME grant awards?

(a) SBA will issue Program Announcements specifying the terms, conditions, and evaluation criteria for each potential set of awards. Program Announcements will summarize the purpose of the available funds; will advise potential applicants regarding how to obtain an application packet; and will provide summary information regarding deadlines and other requirements. Program Announcements may specify any limitations, special rules, procedures, and restrictions for available funding.

(b) Applicants may submit applications in response to the Program Announcements. Each applicant shall submit an application for a grant in accordance with this part and the applicable Program Announcement.

(c) SBA reserves the right to consider at the same time multiple applications from a single applicant when appropriate.

### § 119.10 Will SBA give preferential consideration to other SBA program participants?

In making grants under this part, SBA will not give preferential consideration to an applicant that is a participant in the program established under section 7(m) of the Small Business Act.

### § 119.11 What information will be requested in an application under the PRIME program?

Each application must contain the information and documentation specified in the applicable Program Announcement including, but not limited to, the following items.

(a) For applications seeking Technical Assistance Grants:

(1) Identifying information and core documentation for the applicant including such items as the applicant's articles of incorporation, by-laws, proof of IRS tax-exempt status, financial statements, and reference contacts.

(2) A description of past and present activities and technical qualifications of the applicant, including workshops, programs and other technical assistance services, with specific descriptions of the extent to which such services have reached low and very low-income individuals, and the success rates of clients.

(3) A list of applicant's community partnerships and collaborations with state and local entities, and a description of how such partnerships and collaborations are serving microentrepreneurs.

(4) A description of the proposed activity for which the applicant will use PRIME grant funds, including training programming plans; a plan for outreach and delivery; applicant's capacity to provide thorough and detailed reports; and a description of the applicant's current data collection and management system, such as computer hardware, software and internet capabilities.

(5) In the event the applicant is a collaborative, a plan for maintaining internal controls, accountability, and program quality control among the participants of the collaborative.

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(6) Resumes of the personnel that will be administering and managing the proposed activities under the PRIME grant, showing knowledge in such areas as business development, business structures, financial management, and business training and counseling.

(7) A list of grants received, and/or contracts entered into, that are similar in scope to the subject grant, including name of Federal or other agency providing funding, grant or contract number, and a summary of services provided.

(b) For applicants seeking Capacity Building Grants:

(1) See paragraphs (a) (1) , (5) , (6) and (7) of this section.

(2) A description of past and present activities and technical qualifications of the applicant, including workshops, programs, operational services, and other technical assistance services, or program development services with specific descriptions of the extent to which such services have improved the operations of client MDOs, assisted client MDOs with operational issues, and assisted client MDOs in reaching low and very low-income individuals.

(3) A description of the proposed activity for which the applicant will use PRIME grant funds, including training programming plans, a plan for outreach and delivery, applicant's capacity to provide thorough and detailed reports; a description of the applicant's current data collection and management system, such as computer hardware, software, and internet capabilities and a description of how these capabilities will or will not be integrated into the training of MDOs.

(c) For applicants seeking Research and Development Grants:

(1) See paragraphs (a)(1), (6), and (7) of this section.

(2) A research proposal indicating the thesis, method(s), scope, duration, and implementation plans (if any).

(3) A description of the expected effect of the research on services to disadvantaged microentrepreneurs.

(d) For applicants seeking Discretionary Grant:

(1) See paragraph(a)(1) of this section.

(2) A description of the proposed activity for which the applicant will use PRIME grant funds, including applicant's capacity to provide thorough and detailed reports, and a description of the applicant's current data collection and management system, such as computer hardware, software and internet capabilities.

**§ 119.12 What criteria will SBA use to evaluate applications for funding under the PRIME program?**

During the first year for which funding is available for the PRIME program, SBA will give special consideration to organizations located in and serving areas of, or with a history of successful outreach to, low-income and very low-income persons, to enable the Prime program to assist those with the greatest need first. SBA will evaluate applications for funding in accordance with the specific goals of the Act, and as more fully described in the Program Announcements. Evaluation criteria include, but are not limited to, the following:

(a) Applications for Technical Assistance Grants:

(1) Applicants will compete within two levels of expertise:

(i) The start-up level, for those that have been in operation as a microenterprise development organization for 4 years or less; and

(ii) The experienced level, for those that have been in operation for more than 4 years.

(2) SBA will evaluate organizational structure, financial stability, financial management systems, personnel capacity, and electronic communication capabilities (or potential for same). SBA will also evaluate data collection capabilities, reporting capacities, and ability to account for performance and outcome.

(3) SBA will evaluate the applicant's history of providing technical assistance to low-income and very low-income microentrepreneurs. This factor includes patterns of program growth, client success, outcomes of training, success in establishing new businesses, and success in arranging micro-level financing when the client indicates financing as a goal.

(4) SBA will evaluate the applicant's ability to use community partnerships and collaborations with state and local entities to better serve low-income and very low-income microentrepreneurs.

(b) Applications for Capacity Building Grants:

(1) SBA will evaluate the criteria set forth in paragraph (a)(2) of this section.

(2) SBA will evaluate the applicant's history of providing capacity building services to MDOs, as an indication of the organization's understanding of the goals and purposes of capacity building, its historical effectiveness with the microenterprise development industry, and its ability to provide quality programming to the targeted market. SBA will evaluate patterns of program growth, outcomes of training, types of services provided, delivery systems used, the number and types of clients served, and the successes realized within the client's organizational goals.

(3) SBA will evaluate expected impact on client MDOs; expected impact on services to low-and very-low income microentrepreneurs; and a plan for service and delivery.

(c) Applications for Research and Development Grants:

(1) SBA will evaluate the criteria set forth in paragraph (a)(2) of this section.

(2) SBA will evaluate how the research potentially will enhance microenterprise-oriented technical assistance services to disadvantaged entrepreneurs. Applicants must show the method(s), scope, duration, and implementation plans of the proposed research.

(3) SBA will evaluate applicant's plan of action incorporating original and secondary research. Applicants must show impact on improved access to microenterprise development services for disadvantaged microentrepreneurs, and the expected replicability/transferability of the finished product to the field.

(d) Applications for Discretionary Grants will be evaluated in accordance with the requirements of each project.

**§ 119.13 How will an applicant make a subgrant?**

(a) An applicant that wants to make subgrants using PRIME grant funds must receive written approval from SBA prior to making subgrants. The applicant must identify the subgrantee(s) and describe in detail what the subgrantee(s) will do to help the grantee implement its proposal. An applicant must submit information to SBA demonstrating that, through the subgrantee(s), the grantee's program will:

(1) Provide expanded services to the community,

(2) Provide a method by which one or more previously unserved communities will gain access to the program, or

(3) Provide other specific benefits to the clients, such as specialized training, expanded schedules of operation, or other benefits.

(b) If an applicant has identified potential subgrantee(s) at the time it submits an application for a PRIME grant, the applicant must include the information requested in paragraph (a) of this section in the application. Otherwise, the applicant or grantee may submit the requested information at such time that approvals for subgrantee(s) are requested.

(c) A grantee may not use more than 7.5 percent of the assistance received under its PRIME grant for administrative expenses in connection with the making of subgrants.



**§ 119.14 Are there limitations regarding the use of program income?**

Program income, as defined in OMB Circular A–110, may only be used to further PRIME program objectives. As such, fees collected from clients, and other program income as defined, may be used to help fund the matching requirement. All program income, as defined, shall be reported on financial reports submitted to SBA and added to funds committed to the project by SBA and the recipient organization. However, any interest earned in excess of the maximum allowable amount as specified in the OMB circular incorporated into the grant must be returned to the Federal Government by the grantee.

**§ 119.15 If a grantee is unable to spend the entire amount allotted for a single fiscal year, can the funds be carried over to the next year?**

(a) The grantee may request approval to use unexpended funds in the next budget period. This is permissible if funds are to be used for a non-severable, non-recurring project or activity within the scope of the PRIME program. Non-severable means a project in its entirety that cannot be subdivided. The request for using unexpended funds in the next budget period must include the following:

(1) SF 424, budget pages, and justification;

(2) Explanation of why the funds were not expended during the period in which they were awarded; and

(3) Evidence of match. The match requirement for funds carried over to the next budget period can be met by using any excess of matching funds from the current budget period, new matching funds, or a combination of both.

(b) The request must be made no later than 60 days before the end of the budget/project period or the de-obligation process will begin. Approved requests will require the issuance of a revised Notice of Award. Expenditures for funds carried over to the next budget period must be tracked separately.

**§ 119.16 What are the reporting, record keeping, and related requirements for grantees?**

A grantee must keep records and meet the other requirements of section 115 of the Riegle Community Development and Regulatory Improvement Act of 1994 (Riegle Act), as if it were a community development financial institution. (*See* 12 U.S.C. 4714). In addition to meeting requirements of the Riegle Act, a grantee must also maintain data allowing it to measure the impact of services provided by it and any subgrantees, and, if specifically required by the terms of the PRIME grant, measure the success rate of individual clients whom the grantees assist. SBA will detail such requirements in its Program Announcements.

**§ 119.17 What types of oversight will SBA provide to grantees?**

(a) In addition to reports required under the Riegle Act, SBA will require reports in accordance with applicable OMB circulars. Such reports will include the following information:

(1) For recipients of Technical Assistance and Capacity Building Grants, for the first three years of receiving grant funding, narrative performance reports and financial status reports will be required quarterly within 15 calendar days of the end of each quarter. Thereafter, SBA may reduce the frequency of reports from quarterly to semi-annually, as it deems appropriate. In addition, details of expenditures will be required with each request for payment. Grantees will be required to submit audited financial statements on an annual basis, if available, or annual financial statements prepared by a licensed, independent public accountant, within 120 calendar days of the end of the grantee's fiscal year.

(2) For recipients of Research and Development Grants, reports will be required in accordance with agreed upon milestones and as part of the disbursement process.

(3) For recipients of Discretionary Grants, reports will be required as appropriate for the project, or on a schedule as described in paragraph(a)(1) of this section, whichever is more frequent.

(b) In addition, SBA may, from time to time, make site visits to the grantee, and review all applicable books and records.

**§ 119.18 What are the restrictions against lobbying?**

No assistance made available under the PRIME program may be expended by a grantee or subgrantee to pay any person to influence, or attempt to influence, any agency, elected official, officer, or employee of a Federal, State, or local government in connection its participation in the program.

**§ 119.19 Is fundraising an allowable expense under the PRIME program?**

Expenditures of grant funds for fundraising activities are not allowable costs under this program. Applicants must be able to raise matching funds without the assistance of grant funds. Unless the full requirement for matching funds is waived, the applicant must demonstrate that it has adequate fundraising resources to obtain required non-Federal matching funds to perform the project.

**§ 119.20 Should grantees and subgrantees raise conflict of interest matters with SBA?**

Each grantee or subgrantee must provide SBA with a copy of its conflicts of interest policies prior to receipt of funding under the program. Such policies must clearly describe the grantee's or subgrantee's protections from conflicts of interest or the appearance thereof in the handling of grant funding and program provision under this program.

Dated: September 25, 2000.

**Aida Alvarez,**

*Administrator.*

**Note:** The following appendix will not appear in the Code of Federal Regulations.

**Program for Investment in Microentrepreneurs**

DATE:
TO: Applicants
FROM: Office of Procurement and Grants Management (OPGM)
SUBJECT: Program Announcement No. PRIME 01–1, Program for Investment in Microenterprise Act, ("PRIME") to provide disadvantaged microentrepreneurs training and technical assistance to start, operate, or expand their businesses.

The U.S. Small Business Administration plans to issue Federal grants awards to qualified organizations under PRIME to provide training and technical assistance to disadvantaged microentrepreneurs. These organizations include: non-profit microenterprise development organizations or programs; intermediaries (as defined); other microenterprise development organizations or programs (as defined) that are accountable to a local community, working in conjunction with a State or local government or Indian tribe; or Indian tribes acting on their own, with proper certification that no other qualified organization exists within their jurisdiction. You are invited to submit an application, an original and two (2) copies, in response to Program Announcement No. PRIME 01–1. You are required to bind the cost proposal and technical proposal separately. Prepare the technical and cost proposals in single-spaced 12-pt. font format. The technical proposal must not exceed 50 pages, excluding exhibits and appendices. The Government will not return proposals, but will retain them for a limited period of time.

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The closing date for the program announcement is _____, 4:00 P.M., Eastern Standard Time. Address your applications/proposal to the U.S. Small Business Administration, Office of Procurement & Grants Management (OPGM), 409 3rd Street, SW., 5th Floor, Washington, DC 20416, Attention: Mina Bookhard, Agreement Officer. If hand carried, deliver the application/proposal to Mina Bookhard, or her designee, at the above address. Deliveries to other locations will be considered late if not received in OPGM at the U.S. Small Business Administration by 4:00 p.m. on _____. Please place the following notation in the lower left corner of the sealed envelope or package:

THIS IS A SEALED OFFER. DO NOT OPEN. STAMP THE DATE AND TIME RECEIVED ON THE ENVELOPE. THE ENCLOSED APPLICATION IS IN RESPONSE TO PROGRAM ANNOUNCEMENT NUMBER PRIME 01–1, DUE _____ AT 4:00 P.M., Eastern Standard Time, AT SBA's OFFICE OF PROCUREMENT & GRANTS MANAGEMENT.

Applicants will be required to meet the standards for financial management systems as prescribed in the Office of Management and Budget's (OMB) Circular A–110, Subpart C, sections .21 through .28, and 13 CFR Part 143.

Questions concerning this program announcement should be directed to Warren Boyd at (202) 205–7534. Questions about budget or funding matters should be directed to Mina Bookhard, at (202) 205–7080.

Sincerely,

Sharon Gurley, Director, *Office of Procurement and Grants Management.*

OFFICE OF FINANCIAL ASSISTANCE

PROGRAM ANNOUNCEMENT

*PROGRAM FOR INVESTMENT IN MICROENTREPRENEURS ACT, ("PRIME")*

TO PROVIDE TRAINING AND TECHNICAL ASSISTANCE TO DISADVANTAGED ENTREPRENEURS

*FISCAL YEAR 2001*

U.S. SMALL BUSINESS ADMINISTRATION OFFICE OF FINANCIAL ASSISTANCE

OPENING DATE: _____

CLOSING DATE: _____

ANNOUNCEMENT NO: PRIME 01–1 _____

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## I. Legislation Purpose

The Program for Investment in Microentrepreneurs Act of 1999 (P.L. 106–102) became law on November 12, 1999. 15 U.S.C. 6901 *et seq.* ("PRIME" or "the Act). The Act authorizes the Administrator of the U.S. Small Business Administration (SBA) to establish a microenterprise training and technical assistance program for disadvantaged microentrepreneurs and to provide training and capacity building grant program to microenterprise development organizations (MDOs). Additionally, the Act authorizes research and development of best practices for microenterprise development and technical assistance programs for disadvantaged entrepreneurs and other activities as the Administrator of SBA determines are consistent with the Act. PRIME has several purposes for which SBA will issue separate program announcements soliciting applications geared toward a particular legislative purpose. Program Announcements called for under the Act solicit, from eligible organizations, applications for grant funding to be used to carry out the purposes of the Act as follows:

Program Announcement No. PRIME 01–1 calls for applications from qualified organizations wishing to obtain grant funding for the purpose of providing training and technical assistance programs for disadvantaged microentrepreneurs.

Program Announcement No. PRIME 01–2 calls for applications from qualified organizations wishing to obtain grant funding for the purpose of providing training and capacity building services to microenterprise development organizations and programs and groups of such organizations to assist them in developing microenterprise training and services.

Program Announcement No. PRIME 01–3 calls for applications from qualified organizations wishing to obtain grant funding for the purpose of pursuing research and developing best practices in the field of microenterprise and technical assistance programs for disadvantaged entrepreneurs.

The purpose of this Program Announcement No. PRIME–01–1, is to solicit applications from qualified organizations wishing to obtain grant funding for the purpose of providing training and technical assistance programs for disadvantaged microentrepreneurs. These PRIME grants will enable MDOs to offer disadvantaged microentrepreneurs training and technical assistance that will make a difference in their ability to start, grow, and sustain microenterprises in economically distressed, high unemployment areas. Seventy-five (75) percent of available PRIME funds will be used for training and direct technical assistance to disadvantaged microentrepreneurs and of the funds allocated for training & technical assistance, 50% will be used to benefit very lows income persons. Subject to the availability of funds, grants awarded under this Program Announcement will be for a minimum of $50,000 with no one grant exceeding $250,000 or 10% of the total amount appropriated, whichever is less.

## II. Introduction

Congress recognized that many disadvantaged microentrepreneurs lack sufficient training and education to gain access to capital to establish and expand their own small businesses. It enacted PRIME to augment training and technical assistance under the Small Business Act and other legislation. PRIME grants to qualified MDOs will help meet more training and technical assistance needs for disadvantaged microentrepreneurs, thereby encouraging entrepreneurship and community development.

Many low income and very-low income entrepreneurs need training and technical assistance to start, operate, or expand their businesses. In order to achieve measurable success in the effort, the providers of this training and technical assistance, (MDOs) must be accessible, competent, consistent and committed to the entrepreneur's progress over extended periods of time.

For every business started or microloan made, a number of entrepreneurs are preparing themselves for business start. A generally accepted assumption in the microenterprise industry is that it takes approximately 10 potential microentrepreneurs for every microenterprise started or microloan booked. The cost of training is substantial because those at the entry-level stage of development typically require the greatest amount of dedicated advice and guidance, over an extended period of time, to achieve the highest rates of success. Funding is scarce relative to the need. The microenterprise industry has found the technical assistance-funding gap to be a nationwide condition, particularly in the very low-income sector.

This Program Announcement addresses funding for training and technical assistance for disadvantaged entrepreneurs, as defined, in the entry-level stages of development. The program requires that grantees match a portion of the SBA's funds with funds from other sources.



## III. Program Overview

1. *Project Name:* Program for Investment in Microentrepreneurs (PRIME).

2. *Purpose:* Provide training and technical assistance to disadvantaged microentrepreneurs for the purpose of enhancing business planning, marketing, management, financial management skills, and assistance for the purpose of accessing financial services.

3. *Federal Catalog Number:* 59.049.

4. *Authority:* The Program for Investment in Microentrepreneurs Act of 1999, "PRIME", P.L.106–102, 15 U.S.C. 6901 *et seq.*

5. *Funding Instrument:* Grant.

6. *Funding:* Funding is subject to the availability of funds and the requirements enumerated under the Act.

7. *Funding Range:* Target award amounts will be a minimum of $50,000. Award amounts may vary, depending upon availability of funds (and performance for option years); however, no single person may receive more than $250,000 or ten (10) percent of the total funds made available for this program in a single fiscal year, whichever is less. In general, match is required, although SBA may reduce or eliminate the required match in certain circumstances (up to a program limit of 10 percent).

8. *Number of Awards:* SBA anticipates issuing multiple awards under this Announcement. The number may vary, based on the needs of the pool of qualified applicants received and the amount of available funds. At least 75% of all funds available under the Act must be awarded under this Program Announcement.

9. *Targeted assistance:* A minimum of 50% of the funds available for grants under the PRIME Act must be used to benefit very low income persons (as defined in this document), including those residing on Indian reservations.

10. *Closing Time and Date for the Submission of Applications:* _____ at 4:00 P.M. Eastern Daylight Time.

11. *Project Starting Date:* _____ (estimated).

12. *Project Duration:* The period performance for this grant is one base year with 4 twelve-month options subject to availability of funds and continued program authorization. The total possible period of performance is five years. Each option year will constitute a separate budget period. The project recipient's satisfactory performance will be one of the key factors in determining the award of an option year. Failure to secure the required annual non-Federal contribution during any project year may jeopardize continued option year funding.

13. *Proposal Evaluation:* Applications will first be screened to determine if the applicant meets certain mandatory eligibility requirements. Applicants that do not document in their application that they meet these requirements will not be evaluated by SBA for participation in the Prime Program. In addition, applications that are incomplete, illegible, or unreadable, in whole or in part, will be deemed incomplete and will not be evaluated.

Eligible proposals will be scored by an Objective Review Committee (ORC) based on evaluation criteria stated in this program announcement. The ORC will consist of SBA officials and may include Federal Officials from other agencies. Microenterprise Development Branch staff will review the ORC evaluations, the ORC's summary report on each applicant, and the applicant's proposals to determine the final scoring of award recipients. SBA may ask applicants for clarification on the technical and cost aspects of the proposals. Such clarifications must not be construed as a commitment to fund the proposed effort.

14. *Points of Contact:* Questions concerning the technical aspects of this Program Announcement should be directed to the Microenterprise Development Branch at (202) 205–7534. However, due to the competitive process, SBA will be unable to assist with answers to specific questions regarding individual proposals or requests for assistance in completing proposals. Questions concerning budgeting or funding for this grant should be directed to Mina Bookhard at (202) 205–6621.

15. *Award Notification:* All applicants will receive a written notification relative to selection of award recipients. This written notice will be SBA's *final* response to this program announcement. SBA will not provide debriefing sessions if your proposal was not successful.

16. *Cancellation:* SBA reserves the right to cancel this Program Announcement in whole or in part at the Agency's discretion.

## IV. Eligible Applicants for This Grant

An organization will be considered eligible for funding for the purpose of providing training and technical assistance to disadvantaged microentrepreneurs if it meets the following qualification requirements:

1. A microenterprise development organization or program (or group or collaborative thereof) that has a demonstrated record of delivering microenterprise services to disadvantaged entrepreneurs, OR

2. An intermediary (as defined in this document) which has experience in delivering technical assistance to disadvantaged entrepreneurs, OR

3. A microenterprise development organization or program (as defined in this document) that is accountable to a local community, working in conjunction with a State or local government or Indian tribe, OR

4. An Indian tribe acting on its own, if the Indian tribe can certify that no private organization or program referred to in this paragraph exists within its jurisdiction.

An eligible applicant for the Prime technical assistance grant must provide documentation in its application that it falls within one of the above categories of qualified organizations. Such documentation should include but is not limited to:

1. A copy of your organization's IRS tax-exempt certificate including the IRS code under which your organization is considered non-profit;

2. Certification by your Secretary of State that your organization is legally allowed to do business in the State and a copy of your organization's articles of incorporation and by-laws;

3. For category 4 in the preceding paragraph, written certification from a duly authorized person that no other qualified organization (i.e. private organization or program as defined in categories 1–3 above) exists within its jurisdiction; and

4. Financial statements for the past 3 years. If your organization has been in business for less than 3 years provide your year end financial statements for

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those years completed and a financial statement not less than 90 days old.

SBA will not evaluate applications that do not meet these requirements. SBA may not screen applicants for eligibility until after the Closing Date for application acceptance. SBA will attempt to notify applicants of ineligible proposals as soon as practicable. However, SBA is under no obligation to notify ineligible applicants before the Closing Date for the acceptance of applications under this Program Announcement. SBA strongly urges all applicants to ensure all eligibility requirements are met and documented before sending an application to SBA.

**V. Ineligible Applicants for This Grant**

The following applicants will automatically be considered ineligible and their applications will not be evaluated:

1. Any organization with an unresolved audit by any Federal agency.
2. Any organization suspended or debarred from any Federal agency or is otherwise excluded from Federal non-procurement or procurement programs.
3. Any organization which has defaulted on an obligation to the United States.

**VI. General Information**

*1. Definitions*

Throughout this Program Announcement specific terminology may be used, as defined in the Act and the accompanying rule (13 CFR part 119) published on ____. The definitions are contained in a glossary of terms located at the end of this document in Section XV.

*2. Collaborative Applications*

a. If you participate in a collaborative (as defined in this document), all entities who are party to the collaborative must separately meet the statutory requirements and eligibility requirements in order to apply as a collaborative.

b. Applications from collaboratives must name the primary liaison with the Federal government, and include a copy of the collaborative agreement outlining responsibilities of each partner organization. An authorized signature from each organization must appear on the agreement. The primary liaison will be responsible for coordinating reports and requests for funding.

*3. Program Income*

All program income as defined in OMB Circular A–110, and OMB A–122 shall be reported on financial reports submitted to SBA and added to funds committed to the project by SBA and recipient organizations. Program income may only be used to further eligible program objectives.

*4. Cost Principles*

a. *General:* All costs approved for a successful applicant must meet the tests of necessity, reasonableness, allowability and allocability in accordance with the cost principles applicable to this award. All proposed costs are subject to pre-award audit. Grantees are responsible to ensure proper management and financial accountability of Federal funds to preclude future cost disallowances. Payment will be made by reimbursement or advance payments as described in the grant award document and applicable OMB Circulars.

b. *Carryover Policy:* The grantee may request approval to use unexpended funds in the next budget period. This is permissible if funds are to be used for a non-severable, non-recurring project or activity within the scope of the PRIME program. Non-severable means a project in its entirety that cannot be subdivided. The request for using unexpended funds in the next budget period must include the following:

(1) SF 424, budget pages, and justification;

(2) Explanation of why the funds were not expended during the period in which they were awarded; and

(3) Evidence of match. The match requirement for funds carried over to the next budget period can be met by using any excess of matching funds from the current budget period, new matching funds, or a combination of both.

The request must be made no later than 60 days before the end of the budget/project period or the de-obligation process will begin. Approved requests will require the issuance of a revised Notice of Award. Expenditures for funds carried over to the next budget period must be tracked separately.

*5. Publications/Websites*

Any publications or websites developed under this grant must be submitted to SBA for prior review and approval. SBA will have an unlimited license to use data and written materials generated under this grant award, whether or not the materials are copyrighted. Any publications resulting from this project must include the following acknowledgement of support, whether copyrighted or not, in legible, easily readable print:

This grant is partially funded by the U.S. Small Business Administration. SBA's funding is not an endorsement of any products, opinions, or services. All SBA funded programs are extended to the public on a nondiscriminatory basis.

The grant recipient may not use the U.S. Small Business Administration name or logo for the endorsement of any services, products, or merchandise under this award.

The SBA logo may appear on prominent webpages of Internet sites that are related to this project, but must appear with the above disclaimer in legible, easily readable print and acknowledgement of support in close physical proximity (within 2 inches) next to it.

*6. Reports*

a. General Reporting

The selected grantees will be required to submit the reports as outlined below. Participants must agree to cooperate with SBA in the collection and retention of data required by this agency. Your ability to meet reporting requirements must be addressed in the Technical Proposal.

Payments may be withheld if reports are not submitted within the required time frame or if the quality of reports is considered inadequate.

b. Performance Reports

Quarterly performance reports, unless otherwise specified, must contain a summary of activity for the reporting period using the following format:

1. A comparison of actual accomplishments to the estimated milestones established in the proposal and/or subsequent grant agreement.

2. A discussion of accomplished milestones and reasons for slippage in those cases where milestones are not met. Where milestones were not met, a plan of action must be provided to overcome these slippages or a detailed statement of how the program will better serve disadvantaged entrepreneurs if the milestones are revised.

3. Evidence that at least 50% of funding expended during the reporting period was expended for the benefit of very-low income clients.

4. Information relating to actual financial expenditures of budgeted cost categories versus the estimated budget award, including an explanation of all cost overruns, if any, by budgeted cost category. Financial data furnished in this report is from a manager's standpoint and is in addition to that furnished in the financial reports cited below.

5. Client Progress Reports. SBA is interested in the actual outcome of technical assistance provided to disadvantaged entrepreneurs. As such, participants will be required to compile, maintain, and submit data as part of its quarterly performance reports. This report includes information regarding each client as follows:

A. At Intake:

- Income level (low-income, very-low income, other)
- Geographic location (Address, Urban, Suburban, Rural)
- Goal of training (business start, business enhancement, professional improvement, self-employment, other)
- Business status (is it a start-up or existing business)
- Financing goal (if any)

Intake reports should be compiled and maintained by the MDO within seven business days of initial intake under this grant.

B. At Client Follow-up:

- Income level
- Geographic location
- Training status in terms of intake goals
- Business status
- Financing status in terms of intake goals

Follow up data should be collected on all clients meeting the Six, Twelve, and Eighteen-Month receipt of technical assistance with the grantee. Follow-up reports should be submitted with quarterly performance reports.

6. Any other pertinent information, including any significant accomplishments or met milestones of special significance. The report should include items which may be determined appropriate by SBA after acceptance of the grant proposal but which cannot be pre-determined due to the undetermined special purpose of the grant at the writing of this document.

Quarterly reports will be due no later than:

(a) January 15 for the period ending December 31,

(b) April 15 for the period ending March 31,

(c) July 15 for the period ending June 30, and

(d) October 15 for the period ending September 30.

c. Financial Reports

1. Financial Status Report Forms must be submitted every quarter with the performance reports. Reports must include Standard Form ("SF") 269, the Financial Status Report, and SF 272, the Federal Cash Transactions Report.

2. The year-end report must include a cost breakdown of actual expenditures and costs incurred by line item. Participants will also be required to submit the SF 2069, Detailed Actual Expenditures for Period Covered by Request, with the final SF 269.



3. In addition, grantees will be required to submit audited annual financial statements, if available, or annual financial statements prepared by a licensed, independent public accountant, within 120 days of the end of the grantee's fiscal year period.

SBA may withhold payment of advances or reimbursements if reports are not received or are regarded as inadequate.

SBA may, at its discretion, reduce reporting requirements to semi-annually as it deems appropriate. SBA will notify participants if it decides to take such action.

*7. Match Requirements*

In general, funds awarded under the PRIME Program will require a non-Federal match of not less than 50% of each dollar awarded. Matching funds may come from fees, non-Federal grants, gifts, funds from loan sources, and in-kind resources. After the initial grant, grant awards for the following option years will be made in declining amounts, declining by 20% of the initial grant amount in each successive year.

*Exception:* In the case of an applicant with severe constraints on available sources of matching funds, SBA may reduce or eliminate the 50% match requirement on a case by case basis. Any reductions or eliminations must not exceed 10% of the aggregate of all PRIME grant funds made available by SBA in any fiscal year.

Organizations seeking to receive a reduction or elimination of the matching fund requirement must include such a request (as a cover letter) with their proposal, and include justification and supporting documentation for their request. Submission of a request will not automatically guarantee that an exception, in whole or in part, will be granted. Rather, it will alert SBA to the applicant's desire to receive an exception.

*8. Fundraising Not Allowable Expense*

Expenditures for fundraising activities are not allowable costs under this grant. Applicants must be able to raise matching funds without the assistance of grant funds. The applicant must demonstrate that it has adequate fundraising resources to obtain required non-Federal matching funds to perform the project.

*9. Subgrants*

An organization selected to receive a grant under the PRIME Program may provide sub-grants to qualified small and emerging microenterprise development organizations.

Applicants wishing to provide sub-grants as a part of their implementation plan should include detailed information regarding same in their Technical Proposal.

An applicant that wants to make subgrants using PRIME grant funds must receive written approval from SBA prior to making subgrants. The applicant must identify the subgrantee(s) and describe in detail what the subgrantee(s) will do to help the grantee implement its proposal. An applicant must submit information to SBA demonstrating that, through the subgrantee(s), the grantee's program will:

(1) provide expanded services to the community,

(2) provide a method by which one or more previously unserved communities will gain access to the program, or

(3) provide other specific benefits to the clients, such as specialized training, expanded schedules of operation, or other benefits.

If an applicant has identified potential subgrantee(s) at the time it submits an application for a PRIME grant, the applicant must include the information requested in paragraph above in the application. Otherwise, the applicant or grantee may submit the requested information at such time that approvals for subgrantee(s) are requested.

The total amount of monies subgranted by the grantee must not exceed 50% of the total amount of the PRIME grant. A maximum of 7.5% of the funds awarded may be used by the grantee for administrative expenses in connection with the making of subgrants.

*10. Subcontracts*

Any and all subcontracts awarded under this grant must be approved by SBA in advance and in writing and must not exceed 50% of the total amount of the PRIME grant.

*11. Diversity*

In making grants under the Act, SBA will ensure that grant recipients include both large and small microenterprise organizations, serving diverse populations including urban, rural and Indian tribal communities serving diverse populations.

*12. Prohibition on Preferential Consideration of Certain SBA Program Participants*

In making grants under this Program Announcement, SBA will not give preferential consideration to an applicant that is a participant in the program established under section 7(m) of the Small Business Act.

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**VII. OMB Uniform Administrative Requirements and Cost Principles**

The Prime Grant Notice of Award incorporates by reference all applicable OMB Circulars, including:

1. OMB Circular A–21, "Cost Principles for Educational Institutions," containing cost principles for educational institutions;
2. OMB Circular A–87 "Cost Principles for State, Local, and Indian Tribal Governments," containing cost principles for State, local governments, and federally recognized Indian tribal governments.
3. OMB Circular A–110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," containing administrative requirements;
4. OMB Circular A–122, "Cost Principles for Non-Profit Organizations," containing cost principles for non-profits; and
5. OMB Circular A–133, "Audits of States, Local Governments, and Non-Profit Organizations," concerning audits.

Current versions of OMB Circulars are available from the Office of Management and Budget's website. The address is: *www.whitehouse.gov/WH/EOP/OMB/html/circular.html.*

**VIII. Proposal Instructions and Evaluation Criteria**

The technical and cost proposals must be bound separately. The technical proposal must be single-spaced and not exceed 50 pages, excluding exhibits and appendices. Prepare your proposal using the following outline.

*1. Application Format*

A. Technical Proposal

*Section 1. Eligibility Requirements (not to exceed 5 pages)*

In this section the applicant must prove that it falls within one of the four categories of qualified organizations. (See Section IV)

Applicants are reminded to include documentation of the mandatory eligibility requirements in their technical narrative. Failure to provide the mandatory eligibility documentation will result in disqualification of the application, and the application will not be evaluated. In addition, incomplete or illegible (in whole or in part) applications will not be evaluated.

*Section 2. Applicant Experience and Activities. (not to exceed 15 pages).*

Applicant experience includes information regarding current and past performance in providing training and technical assistance to disadvantaged entrepreneurs (as defined in this document.)

In this section, the applicant should discuss the items delineated below. To the extent possible, the applicant should provide internal statistical data to document its past experience and illustrate current activities.

1. An understanding of the microentrepreneur community and the needs of disadvantaged entrepreneurs.

2. Its existing and historical training and technical assistance program. If the applicant is a start-up organization it should discuss in detail the its current methods of training. Details regarding curriculum, types of technical assistance offered, and counseling services should be included. This discussion should include a detailed description of the programmatic information regarding activities and services offered to low and very low income individuals, and the success rates of the clients served.

3. As part of documenting past experience, the applicant should include a list of grants and or contracts similar in scope to the grant for which you are applying. Specifically provide the name, if any, of any Federal or non-Federal, agency(ies) or private sector foundations or organizations providing funding, the grant or contract number, a short summary of services provided under each grant, and the period(s) of performance. Include in each summary the name and contact information (phone number and E-mail address) of the person providing oversight on each grant or contract.

4. Discuss your organization's ability to penetrate the target market, including past and current strategies for outreach.

*Section 3. Institutional Capacity (not to exceed 5 pages)*

This section should include the following:

*1. Personnel Qualifications and Internal Structure*

- You must have, or exhibit the ability to obtain, personnel who are qualified to meet the goals of providing technical assistance under this grant. Provide resumes of personnel key to your organization's participation in the PRIME Program. The resumes should clearly present personnel's qualifications relative to this particular work. Special mention should be made of relevant experience. Personnel indicated must demonstrate knowledge of business development, business structures, business planning, marketing, business management, financial management, and training and counseling.
- Provide an organizational chart all proposed full-time and part-time project staff and the amount of time each will devote to the project. The PRIME Project Director must be a full time employee of the organization; however, the PRIME Project Director does not have to be solely dedicated to this activity. The Project Director (and other federally funded staff positions) must not engage in fundraising activities using Federal funds provided under this grant.
- Describe the role of subcontractors, subgrantees and/or outside consultants and indicate the percent of the project services you anticipate they will provide.
- Provide a description of at least one staff or consultant function to handle on-going program data collection and electronic reporting to SBA.
- Indicate the position(s) within your organization that will be responsible for financial record keeping regarding receipt and expenditure of program funds.

*2. Data Collection and Maintenance Capacity*

- Describe your organization's current client data collection and management system and how it will be used and/or modified to meet reporting and other requirements of this grant. If applying as a group or collaborative, describe how data management systems will be integrated for an inter-organizational uniform approach to data gathering and reporting.
- Discuss your organization's computer capacities, if any, and the software used. Indicate whether or not your organization is connected to the Internet and, if not, delineate plans to become connected. The applicant should indicate its level of willingness/capability to report data via the Internet as well as how the applicant will accomplish its electronic management, communication, and reporting goals.
- Describe your organization's internal systems of checks and balances in terms of financial, data collection, and reporting systems. If applying as a group or collaborative, also describe the plan for inter-organizational checks and balances in terms of those systems. Also indicate which member of the group or collaborative will be responsible for coordination and submission of data and reports, and how the collaborative will ensure that this responsibility will be fully implemented.



*Section 4. Program Narrative (not to exceed 15 pages)*

In this section, each applicant must set forth the following:

1. Proposed training and technical assistance management plan. The management plan to provide training and technical assistance to disadvantaged entrepreneurs plan should include but not be limited to long and short term training, counseling and technical assistance. Technical assistance and training activities under the Act must include the following activities:

- assistance for the purpose of enhancing business planning,
- marketing assistance,
- management assistance,
- assistance with financial management skills, and
- assistance for the purpose of accessing financial services.

For purposes of this grant program, technical assistance should be viewed as an ongoing function during the pre-start-up, start-up, maintenance, and growth periods of the business cycle. It includes, but is not necessarily limited to, assistance with the broad issues of business ownership such as business planning assistance, marketing assistance, management assistance, financial management skills assistance, and assistance for the purpose of accessing financial services. It should also include specific assistance in areas of expertise specific to the type of business being pursued. Technical assistance should include both counseling and training. Counseling should be viewed in terms of giving advice, guidance, or instruction specifically tailored to the needs of a single business. Training may include counseling, but can also include teaching in classroom or other public settings. Topics of training and counseling must include information necessary to start, manage, and/or operate a microbusiness. Information delivery media may vary from program to program and may include person to person oral communication, teleconferencing, video tape, printed materials, computer software, or any similar delivery mechanism provided it is effective in assisting clients in meeting their training goals. Technical assistance should not stop in the event microbusiness financing is obtained. It should continue through a significant period of time, to assist the microbusiness owner with continuing knowledge to enhance the chances for success.

2. Outreach and delivery plan. The plan should include, but not necessarily be limited to:

- brief description and map of the proposed service area;
- demonstration of the need for this program in the proposed geographic area;
- description of the target market to be served—geographic size, population numbers, population type (empowerment zone, urban, rural, suburban, Indian reservation);
- plans for penetration of the target market;
- strategies to be used for reaching its scheduling and delivery goals;
- methods by which the applicant organization will incorporate outside resources into the plan;
- evidence of and/or plans for building relationships with financing sources and/or otherwise making financial assistance available to those clients in need of micro-level financing.
- discussion of how the applicant organization will reach its goals in terms of local nuances in population density, economic stratification, levels of education, and racial and ethnic oriented issues that affect the disadvantaged in the defined area of operation.

*Section 5. Strategic Alliances and Partnerships (not to exceed 5 pages)*

In this section, the applicant should describe strategic alliances and partnerships with state and local entities. Inter-organizational cooperation regarding funding, training activities, utilization of space, utilization of human and other resources, client referral networks, and other such activities should be discussed. Organizations should illustrate how these alliances serve the best interests of disadvantaged entrepreneurs and how the alliances have enhanced the applicant's ability to provide training and technical assistance services to the target market.

*Section 6 Timeline/Milestones (not to exceed 5 pages)*

In this section the applicant must include a timeline with milestones covering the 12-month grant period. Milestones should clearly illustrate the applicant's goals for training and technical assistance activity in terms of the projected client, projected programming, and projected use of funds.

*Section 7. Supporting Documentation*

In this section the applicant should provide any necessary documentation to support its proposal, including but not limited to the following documents:

1. A statement signed by your Executive Director (or his/her duly authorized representative), authorizing SBA to make inquiries to other Federal Agencies as to the performance capabilities of your organization.

2. A copy of your organization's IRS tax exempt certificate including the IRS code under which your organization is considered non-profit.

3. Certification by your Secretary of State that your organization is legally allowed to do business in the State and a copy of your organization's articles of incorporation and by-laws.

4. A copy of your organization's financial statements for the last 3 years. If your organization has been in business for less than 3 years, provide your year-end financial statements for those years completed and a year-to-date financial statement not less than 90 days old.

5. A summary table of the training and technical assistance provided to date (limit to 3 pages). Include the income levels of clients served (low, very-low, other).

6. Résumés and reference information for personnel key to the delivery of technical assistance services to date.

7. An organizational chart of the entire organization. If you are applying as a group, or plan to use sub-contractors, or make sub-grants, include a second organizational chart that shows how the members of the group will interact and collaborate and/or how the sub-contractors and/or sub-grantees will fit into the work flow plan.

B. Cost Proposal

The cost proposal must include the application cover sheet, budget information, assurances and certifications. Additional information on how to organize the proposal is provided on page 23, "Preparing Your Budget." The applicant's Cost Proposal will be evaluated in terms of the quality and effectiveness of the proposed training and technical assistance to be provided.

*2. Evaluation Factors*

SBA will evaluate applicant experience on two levels. Applicants having 4 years or less of experience providing training and technical assistance to disadvantaged entrepreneurs at time of application will be evaluated as "start-up" organizations. Applicants having more than 4 years or more of experience providing such services at time of application will be evaluated as "experienced" organizations. Whether start-up, or experienced, applicants are expected to provide information as requested in this Program Announcement.

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Start-up organizations will be evaluated based on the general criteria listed below. The maximum number of points an applicant may receive for each criterion group are shown to the right of the listing.

A. Institutional Capability (total of 90 points)

The following factors are considered under this criteria:

(1) Organizational structure, financial stability, and financial management systems (20).

(2) Personnel (30).

(3) Electronic communication or potential for same (20).

(4) Data collection and reporting capability (20).

B. Past performance and history of performing technical assistance, especially to low and very-low income microentrepreneurs (20 points).

C. Management Plan for Proposed training and technical assistance, including outreach and delivery (total of 140 points).

The following factors are considered under this criteria:

(1) Proposed training and technical assistance activities to low and very low income mircoentrepreneurs (30).

(2) Outreach and delivery plan (20).

(3) Proposed use of community partnerships and collaborations with State and local entities (30).

(4) The appropriateness of the proposed activity to the purposes of the Act (10).

(5) The perceived ability of the applicant to carry out the proposed activity as well as the clarity of the proposal and its attainability in terms of the milestones set. (30).

(6) Performance and outcome measurement tools (20).

The total number of points an applicant may achieve as a start-up organization is 250. Experienced organizations will be evaluated based on the general criteria listed below. The maximum number of points an applicant may receive for each criterion group are shown to the right of the listing.

A. Institutional Capability (total of 90 points).

The following factors are considered under this criteria:

(1) Organizational structure, financial stability, and financial management systems (20).

(2) Personnel (30).

(3) Electronic communication or potential for same (20).

(4) Data collection and reporting capability (20).

B. Past performance and history of performing technical assistance, especially to low and very-low income microentrepreneurs (20 points).

C. Management Plan for Proposed training and technical assistance, including outreach and delivery (total of 140 points).

The following factors are considered under this criteria:

(1) Proposed training and technical assistance activities to low and very low income mircoentrepreneurs (30).

(2) Outreach and delivery plan (20).

(3) Proposed use of community partnerships and collaborations with State and local entities (30).

(4) The appropriateness of the proposed activity to the purposes of the Act (10).

(5) The perceived ability of the applicant to carry out the proposed activity as well as the clarity of the proposal and its attainability in terms of the milestones set. (30).

(6) Performance and outcome measurement tools (20).

The total number of points an applicant may achieve as a start-up organization is 250. As indicated above, applications will be reviewed for technical merit using the evaluation factors listed. Included in the evaluation processes will be qualitative and quantitative analyses of:

a. the applicant's management plan to provide training and technical assistance as described in this Program Announcement. SBA will analyze items including but not limited to the methods, materials, and counseling used to provide training & technical assistance. The evaluation will also include the outreach and delivery plan to identify and provide the assistance to the targeted recipients.

b. the applicants organizational structure, financial stability, financial management systems, personnel capacities, and electronic communication capabilities (or potential for same.) Additional analyses will be made regarding data collection capabilities, reporting capacities, and ability to account for performance of both the organization and the client.

c. the applicant's current activity and history of providing technical assistance to low and very-low income microentrepreneurs will be evaluated considering patterns of program growth, client success, outcomes of training, success in establishing new businesses, and success in arranging micro-level financing in instances where a client indicated financing as a goal.

d. the applicant's involvement in and ability to use community partnerships and collaboration with other entities will be analyzed. Collaborations will be analyzed in terms of any positive effects that such collaborations have had, or are anticipated to have on the applicant's ability to serve low- and very-low income microentrepreneurs. Applicants will also be evaluated in terms of the types, number, and frequency of collaborations needed based on the experience level of the organization.

**IX. Option Year Funding**

Applicants shall prepare application cover sheets (SF Form 424) and budgets for each of the 5 budget periods consisting of 12 months each. Applicants are advised that the performance period for specific awards made under this announcement may consist of one base year with up to 4 twelve-month option years. The project periods may consist of up to 5 twelve-month budget periods. Each additional twelve-month budget period beyond the original base year may be exercised at the discretion of the Government. Among the factors involved in deciding whether to exercise an option are the availability of funds, continuing program authorization, satisfactory performance of the applicant, and the determination that continued funding would be in the best interest of the Government.

After the initial grant, grant awards for the option years will be made in declining amounts, declining by 20 percent of the initial grant amount in each successive year.

**X. Preparing Your Budget**

INSTRUCTIONS FOR STANDARD FORM 424 (APPLICATION FOR FEDERAL ASSISTANCE)

Standard Form 424, Application of Federal Assistance, will be found beginning at page A–1 of this announcement. This guidance supplements that contained on the reverse side of the form.

Item 1. Self-explanatory
Item 2. Refer to instructions on reverse of form
Item 3. Refer to instructions on reverse of form
Item 4. Leave Blank
Item 5. Refer to instructions on reverse of form
Item 6. Refer to instructions on reverse of form
Item 7. Refer to instructions on reverse of form
Item 8. Enter: "new"
Item 9. Enter: "U.S. Small Business Administration"
Item 10. Enter: 59.049 Program for Investment for Microentrepreneurs (PRIME)
Item 11. Refer to instructions on reverse of form
Item 12. Refer to instructions on reverse of form



Item 13. Refer to instructions on reverse of form
Item 14. Refer to instructions on reverse of form
Item 15. Refer to instructions on reverse of form
Item 16. Enter: Check "b." This program is not covered by E.O. 12372.
Item 17. Refer to instructions on reverse of form
Item 18. Refer to instructions on reverse of form

INSTRUCTIONS FOR STANDARD FORM 424A (BUDGET INFORMATION)

Budget information is found on pages *A–1 through A–11.*

The budget is the applicant's estimate of the total cost of performing the project or activity for which grant support is requested. The budget is to be based upon the cost of performing the project, including Federal and private sources. All proposed costs reflected in the budget must be necessary to the project, reasonable and otherwise allowable under applicable cost principles and Agency policies. All costs must be justified and itemized by unit cost on the Budget Worksheets (p. A–3).

*Section A—Budget Summary*

Column (A): Enter "PRIME 01–1".

*Column (B): Enter the Catalog of Federal Domestic Assistance Number 59.049.*

Section B—Budget Categories

Amounts entered by budget category in this section are for summary purposes only. Itemization and justification of specific needs by budget category are to be shown under line 21, Section F.

Line 6.a.–6.h. The budget amounts must reflect the total requirements for funds regardless of the source of funds. All amounts entered in this section are to be expressed in terms of whole dollars only after completing the requirements of Section F.

Line 6.j. Indirect costs are those costs related to the project that are not included as direct costs in a. through h.

*Section C—Non-Federal Resources*

Refer to instructions on reverse of form.

*Section D—Forecasted Cash Needs*

Refer to instructions on reverse of form.

*Section E—Budget Estimates of Federal Funds Needed for Balance of the Project*

Refer to instructions on reverse of form.

*Section F—Other Budget Information*

Line 21, Direct Charges: Identify and explain all items or categories under Section B in accordance with the instructions set forth below. The itemization must reflect the total requirements for funding from Federal and non-Federal sources. In most instances, Line 21 does not provide sufficient space to reflect all of the necessary information. Budget Worksheets are enclosed for your convenience. You may use these worksheets for the detailed budget information listed below or a reasonable facsimile; BUT each budget line item pertinent to your submission MUST ALSO be completed on the application. Please show a complete breakdown of all cost elements summarized in Section B on a separate sheet. Do not list on Line 21 any items included in the indirect expenses entered on Line 22 below.

a. Personnel: List the name, title, salary and estimated amount of time for each employee who will be assigned to this project. Note that fees, expenses, and estimated amount of time for outside consultants should be included in f., Contractual. The estimated performance time for outside consultants is not to exceed 50 percent of the total amount of the Prime grant. Resumes of all personnel assigned to this effort must be included in the application.

b. Fringe Benefits: Leave blank if fringe benefits applicable to direct salaries and wages are treated as part of indirect costs in the indirect cost rate negotiation agreement. If your organization does not have a federally negotiated fringe benefit package, list each component included as a fringe benefit.

c. Travel: Reimbursement will be made based on incurred cost. Estimates should be based on knowledge of the geographical area of small business locations. Reimbursement to contractors or volunteers will not be made for time in travel to and from the client's location. Supporting data should include numbers of trips anticipated, costs per trip per person, destinations proposed, modes of transportation, and related subsistence expenses.

Line 22 Indirect Charges:

(Attach Budget Worksheets or reasonable facsimile if sufficient space is not provided.)

Enter the indirect cost rate, date, and agency that issued rate.

If an indirect cost rate is not established, itemize elements and costs of overhead and G&A (General and Administrative) expense categories relative to the performance of this project.

**XI. Assembly And Mailing Instructions**

1. Please indicate the following information on the front of your return envelope:

a. Your organization's name and return address including zip code in the upper left-hand corner of the return envelope.

b. Place the following notation in the lower left-hand corner of the sealed envelope.

THIS IS A SEALED OFFER. DO NOT OPEN. STAMP THE DATE AND TIME RECEIVED ON THE ENVELOPE. THIS PROPOSAL IS IN RESPONSE TO PROGRAM ANNOUNCEMENT NUMBER, _____ DUE _____, 2000, AT 4:00 P.M., EASTERN STANDARD TIME, AT THE U.S. SMALL BUSINESS ADMINISTRATION, OFFICE OF PROCUREMENT & GRANTS MANAGEMENT, 409 3RD STREET, SW, 5TH FLOOR, WASHINGTON, DC 20416, ATTENTION: MINA BOOKHARD.

2. Application. Please submit an original and 2 copies of the pages described below in items a and b. They are part of the Announcement and should be completed and submitted with an original and 2 copies of your proposal:

a. The Federal Assistance Application (Standard Form 424), including the cost and technical proposals, and related budgetary data.

b. Appendix B, Assurances and Certifications (with appropriate signature).

3. To facilitate review and processing of the proposals, your submission must be arranged, as follows, in two separately bound parts:

a. Part I: COST PROPOSAL—This part is to be comprised of the Application, the Budget Information, and the Assurances and Certifications. The material identified as Part I must be bound separately from the Technical Proposal. DO NOT include any technical information in Part I, The Cost Proposal.

b. Part II: TECHNICAL PROPOSAL—This part is comprised of the Program Narrative. The proposal should be completed with a table of contents and must be responsive to the evaluation criteria set forth on the pages 20–22. The Technical Proposal must be bound separately from Section I and must not exceed 50 pages, excluding exhibits and appendices. DO NOT include any cost information in Part II, The Technical Proposal.

4. Your application should be submitted in original and 2 copies to:

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U.S. Small Business Administration, Office of Procurement and Grants Management, 409 Third Street, SW, 5th Floor, Washington, DC 20416, ATTN: Mina Bookhard.

**XII. Late Submission, Revisions and Withdrawals**

1. Any Application received at the Office of Procurement and Grants Management after the exact time specified for receipt will not be considered unless it is received before award is made, AND:

a. It was sent by registered or certified U.S. mail not later than the fifth calendar day before the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th);

b. It was sent by U.S. mail or hand-carried (including delivery by a commercial carrier) if it is determined by the Government that the late receipt was due primarily to Government mishandling after receipt at the Government installation;

c. It was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5:00 p.m. at the place of mailing two working days prior to the date specified for receipt of proposals. The term "working days" excludes weekends and U.S. Federal holidays;

d. There is acceptable evidence to establish that it was received at OPGM and was under the Government's control prior to the time set for receipt of offers, and the Grants Management Officer determines that accepting the late offer would not unduly delay the grant review process; or

e. It is the only proposal received.

**XIII. Unsuccessful Applicants**

After a decision has been reached and if your proposal is not successful, you will receive written notification. This written notice will be SBA's *final* response to this program announcement. SBA *will not* provide debriefing sessions if your proposal was not successful.

**XIV. Cancellation**

SBA reserves the right to cancel this announcement in whole or in part at the Agency's discretion.

**XV. Glossary of Terms**

- *ADMINISTRATION:* Means the U.S. Small Business Administration (SBA);
- *ADMINISTRATOR:* Means the Administrator of the Small Business Administration;
- *CAPACITY BUILDING SERVICES:* means services provided to an organization or program that is, or is developing as, a microenterprise development organization or program, for the purpose of enhancing its ability to provide training and services to disadvantaged entrepreneurs;
- *COLLABORATIVE:* means two or more nonprofit entities that agree to act jointly as a qualified organization under this part;
- *DISADVANTAGED ENTREPRENEUR,* or *DISADVANTAGED MICROENTREPRENEUR:* means the owner, majority owner, or developer of a microenterprise who is also—

1. A low-income person
2. A very low-income person; or
3. An entrepreneur who lacks adequate access to capital or other resources essential for business success, or, is economically disadvantaged as determined by the Administrator.

- *EMERGING MICROENTERPRISE DEVELOPMENT ORGANIZATION OR PROGRAM:* means a microenterprise development organization or program which has a microenterprise capacity building services component, but has had such a component for less than 4 years at the date of its application for a PRIME grant.
- *GRANTEE:* means a recipient of a grant under the Act.
- *GROUP:* has the same meaning as "collaborative" defined above.
- *INDIAN TRIBE:* means any Indian tribe, band, pueblo, nation, or other organized group or community, including any Alaska Native village or regional or village corporation, as defined in or established pursuant to the Alaska Native Claims Settlement Act, which is recognized as eligible for the special programs and services the United States provides to Indians because of their status as Indians.
- *INDIAN TRIBE JURISDICTION:* means Indian country, as defined in 18 U.S.C. 1151, and any other lands, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any tribe or individual subject to a restriction by the United States against alienation, and any land held by Alaska Native groups, regional corporations, and village corporations, as defined in or established under the Alaska Native Claims Settlement Act, public domain Indian allotments, and former Indian reservations in the State of Oklahoma.
- *INTERMEDIARY:* means a private, nonprofit entity that seeks to serve qualified microenterprise development organizations and programs;
- *LARGE MICROENTERPRISE DEVELOPMENT ORGANIZATION OR PROGRAM:* means a microenterprise development organization or program with 10 or more full time employees or equivalents, including its executive director, as of the date it files its application with SBA for a PRIME grant.
- *LOCAL COMMUNITY:* means an identifiable area and population constituting a political subdivision of a state.
- *LOW-INCOME PERSON:* means a person having an income, adjusted for family size, of not more than—

(1) for metropolitan areas, the greater of 80 percent of the median income; and

(2) for non-metropolitan areas, the greater of—

(a) 80 percent of the area median income; or

(b) 80 percent of the statewide non-metropolitan area median income;

- *MICROENTREPRENEUR:* means the owner or developer of a microenterprise;
- *MICROENTERPRISE:* means a sole proprietorship, partnership, limited liability corporation or corporation that has fewer than 5 employees, including the owner, and generally lacks access to conventional loans, equity, or other banking services.
- *MICROENTERPRISE DEVELOPMENT ORGANIZATION OR PROGRAM:* means a nonprofit entity, or a program administered by such an entity, including community development corporations or other nonprofit development organizations and social service organizations, that provides services to disadvantaged entrepreneurs.
- *QUALIFIED ORGANIZATION:* means an organization eligible for a PRIME grant that is—

(1) a microenterprise development organization or program as defined above (or a group or collaborative thereof) that has demonstrated a record of delivering microenterprise services to disadvantaged microentrepreneurs;

(2) an intermediary, as defined above;

(3) a microenterprise development organization or program as defined above that is accountable to a local community, working with a State or local government or Indian tribe; or

(4) an Indian tribe acting on its own, if the Indian tribe can certify that no private organization referred to in this definition exists within its jurisdiction.

- *SEVERE CONSTRAINTS ON AVAILABLE SOURCES OF MATCHING FUNDS:* means the documented inability of a qualified organization applying for a PRIME grant to raise matching funds or in-kind resources from non-Federal sources during the 2 years immediately prior to the date of its application because of a lack of or increased scarcity of monetary or in-kind resources from potential non-Federal sources.
- *SMALL MICROENTERPRISE DEVELOPMENT ORGANIZATION OR PROGRAM:* means a microenterprise development organization or program with less than 10 full time employees or equivalents, including its executive director, as of the date it files its application with SBA for a PRIME grant.
- *TRAINING AND TECHNICAL ASSISTANCE:* means services and support provided to disadvantaged entrepreneurs, such as assistance for the purpose of enhancing business planning, marketing, management, financial management skills, and assistance for the purpose of accessing financial services.
- *VERY LOW INCOME PERSON:* means having an income adjusted for family size of not more than 150 percent of the poverty line (as defined in § 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2), including any revision required by that section).

**XVI. Paperwork Reduction Act (44 U.S.C. Ch. 35)**

The information being requested in this Program Announcement is needed to evaluate applicants and ensure that awards are made in furtherance of the PRIME program's objectives. The information will be used to grant awards to provide training and technical assistance to disadvantaged microentrepreneurs. Applicants' responses to the data collection requirements are necessary for them to receive a benefit under the Prime Program. The information provided by applicants will be kept confidential to the extent required by law. Applicants are not required to respond to the Program Announcement unless it displays a currently valid OMB number. SBA estimates it will take applicants 80 hours to respond.

**XVII. Privacy Act (5 U.S.C. § 552A)**

Any person can request to see or get copies of any personal information that SBA has in the requestor's file, when that file is retrieved by individual identifiers, such as name or social security number. Requests for information about another party may be denied unless SBA has the written permission of the individual to release the information to the requestor or unless the information is subject to disclosure under the Freedom of Information Act (FOIA).

**Note:** Any person concerned with the collection, use and disclosure of information, under the Privacy Act may contact the Chief, Freedom of Information/Privacy Act Office, U.S. Small Business Administration, Suite 5900, 409 Third Street, SW, Washington, DC 20416, for information about the Agency's procedures relating to the Privacy Act and FOIA.



DATE: _____

TO: Applicants

FROM: Office of Procurement and Grants Management (OPGM)

SUBJECT: Program Announcement No. PRIME 01–2, Program for Investment in Microenterprise Act, ("PRIME") to Provide Microenterprise Development Organizations (MDOs) Capacity Building Services.

The U.S. Small Business Administration plans to issue Federal grant awards to qualified organizations under PRIME to provide capacity building services to microenterprise development organizations and organizations interested in becoming microenterprise development organizations. These organizations include: Non-profit microenterprise development organizations or programs; intermediaries (as defined); other microenterprise development organizations or programs (as defined) that are accountable to a local community, working in conjunction with a State or local government or Indian tribe; or Indian tribes acting on their own, with proper certification that no other qualified organization exists within their jurisdiction.

You are invited to submit an application, an original and two (2) copies, in response to Program Announcement No. PRIME 01–2. You are required to bind the cost proposal and technical proposal separately. Prepare the technical and cost proposals in single-spaced, 12-pt. font format. The technical proposal must not to exceed 45 pages, excluding exhibits and appendices. The Government will not return proposals, but will retain them for a limited period of time.

The closing date for the program announcement is _____, 4 p.m., Eastern Standard Time. Address your applications/proposal to the U.S. Small Business Administration, Office of Procurement and Grants Management (OPGM), 409 3rd Street, SW, 5th Floor, Washington, DC 20416, Attention: Mina Bookhard, Agreement Officer. If hand carried, deliver the application/proposal to Mina Bookhard, or her designee, at the above address. Deliveries to other locations will be considered late if not received in OPGM at the U.S. Small Business Administration by 4 p.m. on _____. Please place the following notation in the lower left corner of the sealed envelope or package:

THIS IS A SEALED OFFER. DO NOT OPEN. STAMP THE DATE AND TIME RECEIVED ON THE ENVELOPE. THE ENCLOSED APPLICATION IS IN RESPONSE TO PROGRAM ANNOUNCEMENT NUMBER PRIME 01–2, DUE _____ AT 4 P.M., EASTERN STANDARD TIME, AT SBA's OFFICE OF PROCUREMENT & GRANTS MANAGEMENT.

Applicants will be required to meet the standards for financial management systems as prescribed in the Office of Management and Budget's (OMB) Circular A–110, Subpart C, sections .21 through .28, and 13 CFR Part 143.

Questions concerning this program announcement should be directed to Warren Boyd at (202) 205–7534. Questions about budget or funding matters should be directed to Mina Bookhard, at (202) 205–7080.

Sincerely,

Sharon Gurley
*Director, Office of Procurement and Grants Management*

OFFICE OF FINANCIAL ASSISTANCE PROGRAM ANNOUNCEMENT

*PROGRAM FOR INVESTMENT IN MICROENTREPRENEURS ACT, ("PRIME")*

TO PROVIDE CAPACITY BUILDING SERVICES TO NEW, EMERGING, AND EXISTING MICROENTERPRISE DEVELOPMENT ORGANIZATIONS

*FISCAL YEAR 2001*

U.S. SMALL BUSINESS ADMINISTRATION

OFFICE OF FINANCIAL ASSISTANCE

OPENING DATE: _____

CLOSING DATE: _____

ANNOUNCEMENT NO: PRIME 01–

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**I. Legislation Purpose**

The Program for Investment in Microentrepreneurs Act of 1999 (Pub. L. 106–102) became law on November 12, 1999. 15 U.S.C. 6901 *et seq.* ("PRIME" or "the Act). The Act authorizes the Administrator of the U.S. Small Business Administration (SBA) to establish a microenterprise training and technical assistance program for disadvantaged microentrepreneurs and to provide training and capacity building grant program to microenterprise development organizations (MDOs). Additionally, the Act authorizes research and development of best practices for microenterprise development and technical assistance programs for disadvantaged entrepreneurs and other activities as the Administrator of SBA determines are consistent with the Act. PRIME has several purposes for which SBA will issue separate program announcements soliciting applications geared toward a particular legislative purpose. Program Announcements called for under the Act solicit, from eligible organizations, applications for grant funding to be used to carry out the purposes of the Act as follows:

Program Announcement No. PRIME 01–1 calls for applications from qualified organizations wishing to obtain grant funding for the purpose of providing training and technical assistance programs for disadvantaged microentrepreneurs.

Program Announcement No. PRIME 01–2 calls for applications from qualified organizations wishing to obtain grant funding for the purpose of providing training and capacity building services to microenterprise development organizations and programs and groups of such organizations to assist them in developing microenterprise training and services.

Program Announcement No. PRIME 01–3 calls for applications from qualified organizations wishing to obtain grant funding for the purpose of pursuing research and developing best practices in the field of microenterprise and technical assistance programs for disadvantaged microentrepreneurs.

PRIME 01–2 solicits proposals from qualified organizations wishing to obtain grant funding for the purpose of providing Training and Capacity Building. These PRIME grants will enable MDOs to improve, expand, and/or enhance the number of MDOs providing training and technical assistance programs for disadvantaged microentrepreneurs.

SBA will use 15 percent of available PRIME funds for grants that provide Training and Capacity Building services. Grants awarded under this program announcement will be for a minimum of $50,000 with no one grant exceeding $250,000 or 10% of the total appropriated, whichever is less.

**II. Introduction**

Congress recognized that many disadvantaged microentrepreneurs lack sufficient training and education to gain access to capital to establish and expand their own small businesses. It enacted PRIME to augment training and technical assistance under the Small Business Act and other legislation. PRIME grants to qualified MDOs will help meet more training and technical assistance needs for disadvantaged microentrepreneurs, thereby encouraging entrepreneurship and community development.

Many low income and very-low income entrepreneurs need training and technical assistance to start, operate, or expand their businesses. In order to achieve measurable success in the effort to providing direct training and technical assistance to low and very low income individuals, another goal of the PRIME Act is to expand and build the capacity of microenterprise development organizations (MDOs) to provide training and technical assistance to the microentrepreneur.

For every business started or microloan made, a number of entrepreneurs are preparing themselves for a business start. A generally accepted assumption in the microenterprise industry is that it takes approximately 10 microentrepreneurs for every microenterprise started or booked. The cost of training is substantial because those at the entry-level stage of development typically require the greatest amount of dedicated advice and guidance, over an extended period of time, to achieve the highest rates of success. Funding is scarce relative to the need. The microenterprise industry has found the technical assistance-funding gap to be a nationwide condition, particularly in the very-low income sector.

The Program for Investment in Microentrepreneurs (PRIME) authorizes SBA to make grants to "qualified organizations" to fund capacity building services to MDOs. The SBA will also make grants to provide training and technical assistance to low and very low income individuals, fund research and development of "best practices" in microenterprise development and technical assistance programs, and to fund other undertakings consistent with these purposes. The program requires that grantees match a portion of the SBA's funds with funds from other sources.

The PRIME grant program should be viewed as a system of tiers. Primary MDOs (PMDOs) are those principally involved in the provision of financial and/or technical assistance services to individual clients, entrepreneurs, and microbusiness owners. Secondary MDOs (SMDOs) are those primarily involved in the training and capacity building of PMDOs through professional development, organizational development, and/or coordination of funds and services within a specific geographic area. While there may be instances where PMDO and SMDO activity types overlap, the distinction between the two types of organizations lies in the major focus of their respective activity. Training and Capacity Building may be viewed as separate and distinct activities, or may be presented as a single, integrated package of services. Training is best described as a classroom or course of study approach and will generally involve coursework, seminars, and other types of professional development activities designed to address a larger audience. Capacity Building, which may include a training aspect, will involve organizational development, site visits, individualized strategic planning, and goal-setting specifically designed to assist a single MDO (but ideally transferable to other MDOs). Capacity Building may also include, as indicated above, the coordination of activities, funds, and information for MDO networks or geographically related groups. Organizations applying for funding under this Program Announcement, PRIME–01–2, should remain cognizant of the information provided above as they plan and apply for funding.

**III. Program Overview**

1. *Project Name:* Program for Investment in Microentrepreneurs (PRIME).

2. *Purpose:* Provide Training and Capacity Building Services to MDOs, and organizations in the process of becoming MDOs, to enhance their ability to provide training and technical assistance to low, very-low income, and otherwise disadvantaged entrepreneurs.

3. *Federal Catalog Number:* 59.049

4. *Authority:* The Program for Investment in Microentrepreneurs Act of 1999, "PRIME", Pub. L. 106–102, 15 U.S.C. § 6901 *et seq.*

5. *Funding Instrument:* Grant

6. *Funding:* Funding is subject to availability and the requirements enumerated under the Act.

7. *Funding Range:* Target award amounts will be a minimum of $50,000. Award amounts may vary, depending upon availability of funds (and performance for option years); however, no single person may receive more than $250,000 or 10 percent of the total funds made available for this program in a single fiscal year, whichever is less. In general, match is required, although SBA may reduce or eliminate the required match in certain circumstances (up to a program limit of 10 percent).

8. *Number of Awards:* SBA anticipates issuing multiple awards under this Announcement. The number may vary, based on the pool of qualified applicants and the amount of available funds. At least 15% of the funds available for grants under PRIME must be awarded under this Program Announcement.

9. *Targeted assistance:* A minimum of 50% of the funds available for grants under the PRIME Act must be used to benefit very low income persons (as defined in this document), including those residing on Indian reservations.

10. *Closing Time and Date for the Submission of Applications:* _____ at 4 p.m. Eastern Daylight Time.

11. *Project Starting Date:* _____ (estimated).

12. *Project Duration:* The period performance for this grant is one base year with 4 twelve-month options subject to availability of funds and continued program authorization. The total possible period of performance is 5 years. Each option year will constitute a separate budget period. The project recipient's satisfactory performance will be one of the key factors in determining the award of an option year. Failure to secure the required annual non-Federal contribution during any project year may jeopardize continued option year funding.

13. *Proposal Evaluation:* Applications will first be screened to determine if the applicant meets certain mandatory eligibility requirements. Applicants that do not document in their application that they meet these requirements will not be evaluated by SBA for participation in the Prime Program. In addition, applications that are incomplete, illegible, or unreadable, in whole or in part, will be deemed incomplete and will not be evaluated.

Eligible proposals will be scored by an Objective Review Committee (ORC) based on evaluation criteria stated in this program announcement. The ORC will consist of SBA officials and may include Federal Officials from other agencies. Microenterprise Development Branch staff will review the ORC evaluations, the ORC's summary report on each applicant, and the applicant's proposals to determine the final scoring of award recipients. SBA may ask applicants for clarification on the technical and cost aspects of the proposals. Such clarifications must not be construed as a commitment to fund the proposed effort.

14. *Points of Contact:* Questions concerning the technical aspects of this Program Announcement should be directed to the Microenterprise Development Branch at (202) 205–7534. However, due to the competitive process, SBA will be unable to assist with answers to specific questions regarding individual proposals or requests for assistance in completing proposals.

Questions concerning budget or funding of this Grant should be directed to Mina Bookhard at (202) 205–6621.

15. *Award Notification:* All applicants will receive a written notification relative to selection of award recipients. This written notice will be SBA's *final* response to this Program Announcement. SBA will not provide debriefing sessions if your proposal was not successful.

16. *Cancellation:* SBA reserves the right to cancel this Program Announcement in whole or in part at the Agency's discretion.

**IV. Eligible Applicants for This Grant**

An organization will be considered eligible for funding for the purpose of providing training and capacity building services to MDOs, or organizations in the process of becoming MDOs, if it is:

1. A microenterprise development organization or program (or group or collaborative thereof) that has a demonstrated record of delivering microenterprise services to disadvantaged entrepreneurs, OR

2. An intermediary (as defined in this document) which has experience in delivering technical assistance to disadvantaged entrepreneurs, OR

3. A microenterprise development organization or program (as defined in this document) that is accountable to a local community, working in conjunction with a State or local government or Indian tribe, OR

4. An Indian tribe acting on its own, if the Indian tribe can certify that no private organization or program referred to in this paragraph exists within its jurisdiction.

An eligible applicant for a PRIME capacity building grant must provide documentation in its application demonstrating that it falls within one of the above categories of qualified organizations. Such documentation should include but is not limited to:

1. A copy of your organization's IRS tax-exempt certificate including the IRS code under which your organization is considered non-profit;

2. Certification by your Secretary of State that your organization is legally allowed to do business in the State and a copy of your organization's articles of incorporation and by-laws;

3. For category 4 in the preceding paragraph, written certification from a duly authorized person that no other qualified organization (*i.e.* private organization or program as defined in categories 1–3 above) exists within its jurisdiction; and

4. Financial statements for the past 3 years. If your organization has been in business for less than 3 years provide your year end financial statements for those years completed and a financial statement not less than 90 days old.

SBA will not evaluate applications that do not meet these requirements. SBA may not screen applicants for eligibility until after the Closing Date for application acceptance. SBA will attempt to notify applicants of ineligible proposals as soon as practicable. However, SBA is under no obligation to notify ineligible applicants before the Closing Date. SBA strongly urges all applicants to ensure all eligibility requirements are met and documented before sending an application to SBA.

**V. Ineligible Applicants for This Grant**

Regardless of the satisfactory submission of information called for in Paragraph IV, above, the following applicants will automatically be considered ineligible and their applications will not be evaluated:

1. Any organization with an unresolved audit by any Federal agency.

2. Any organization suspended or debarred from receiving grants from any Federal agency or otherwise excluded from Federal procurement or non-procurement programs.

3. Any organization which has defaulted on an obligation to the United States.

**VI. General Information**

*1. Definitions*

Throughout this Program Announcement specific terminology may be used, as defined in the Act and the accompanying rule (13 CFR part 119) published on _____. The

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definitions are contained in a glossary of terms located at the end of this document in Section XV.

*2. Collaborative Applications*

a. If you participate in a collaborative (as defined in this document), all entities who are party to the collaborative must separately meet the statutory and eligibility requirements in order to apply as a collaborative.

b. Applications from collaboratives must name the primary liaison with the Federal government and include a copy of the collaborative agreement outlining responsibilities of each partner organization. An authorized representative from each organization must sign the agreement. The primary liaison will be responsible for coordinating reporting and requests for funding.

*3. Program Income*

All program income as defined in OMB Circular A–110, and OMB A–122 must be reported on financial reports submitted to SBA and added to funds committed to the project by SBA and recipient organizations. Program income may only be used to further eligible program objectives.

*4. Cost Principles*

a. *General:* All costs approved for a successful applicant must meet the tests of necessity, reasonableness, allowability and allocability in accordance with the cost principles applicable to this award. All proposed costs are subject to pre-award audit. Grantees are responsible to ensure proper management and financial accountability of Federal funds to preclude future cost disallowances. Payment will be made by reimbursement or advance payments as described in the grant award document and applicable OMB Circulars.

b. *Carryover Policy:* The grantee may request approval to use unexpended funds in the next budget period. This is permissible if funds are to be used for a non-severable, non-recurring project or activity within the scope of the PRIME program. Non-severable means a project in its entirety that cannot be subdivided. The request for using unexpended funds in the next budget period must include the following:

(1) SF 424, budget pages, and justification;

(2) Explanation of why the funds were not expended during the period in which they were awarded; and

(3) Evidence of match. The match requirement for funds carried over to the next budget period can be met by using any excess of matching funds from the current budget period, new matching funds, or a combination of both.

The request must be made no later than 60 days before the end of the budget/project period or the de-obligation process will begin. Approved requests will require the issuance of a revised Notice of Award. Expenditures for funds carried over to the next budget period must be tracked separately.

*5. Publications/Websites*

Any publications or websites developed under this grant must be submitted to SBA for prior review and approval. SBA will have an unlimited license to use data and written materials generated under this grant award, whether or not the materials are copyrighted. Any publications resulting from this project must include the following acknowledgement of support, whether copyrighted or not, in legible, easily readable print:

This grant is partially funded by the U.S. Small Business Administration. SBA's funding is not an endorsement of any products, opinions, or services. All SBA funded programs are extended to the public on a nondiscriminatory basis.

The grant recipient may not use the U.S. Small Business Administration name or logo for the endorsement of any services, products, or merchandise under this award.

The SBA logo may appear on prominent webpages of Internet sites that are related to this project, but must appear with the above disclaimer in legible, easily readable print and acknowledgement of support in close physical proximity (within 2 inches) next to it.

*6. Reports*

a. General Reporting

The selected grantees will be required to submit the reports as outlined below. Participants must agree to cooperate with SBA in the collection and retention of data required by this agency. Your ability to meet reporting requirements must be addressed in the Technical Proposal.

Payments may be withheld if reports are not submitted within the required time frame or if the quality of reports is considered inadequate.

b. Performance Reports:

Quarterly performance reports, unless otherwise specified, must contain a summary of activity for the reporting period using the following format:

1. A comparison of actual accomplishments to the estimated milestones established in the proposal and/or subsequent grant agreement.

2. A discussion of accomplished milestones and reasons for slippage in those cases where milestones are not met. Where milestones were not met, a plan of action must be provided to overcome these slippages or a detailed statement of how the program will better serve MDOs, and organizations in the process of becoming MDOs, if the milestones are revised.

3. Evidence of the amount of funding expended to the benefit of very-low income program clients.

4. Information relating to actual financial expenditures of budgeted cost categories versus the estimated budget award, including an explanation of all cost overruns, if any, by budgeted cost category. Financial data furnished in this report is from a manager's standpoint and is in addition to that furnished in the financial reports cited below.

5. Other pertinent information, including any significant accomplishments or milestones of special significance that have been met.

6. Because SBA is interested in the actual outcome of capacity building services provided under the PRIME Program, Client MDO Progress Reports will be required as part of the quarterly performance reports. As such, grantees will be required to compile, maintain, and submit data regarding each client as follows:

A. At the start of the training relationship:

- Client identification information (location, urban, rural, tribal)
- Level of operating budget
- Total number of employees, excluding volunteers,
- Average number of employee hours used to provide training and technical assistance to disadvantaged entrepreneurs
- Average number of volunteer hours used per month for same purpose
- Number of clients served during each of two years prior to the start of the relationship and an indication of the number and percent of those clients that were low- or very-low income individuals
- The goal of the capacity building project or activity

B. Follow-up:

- Changes in the operating budget of the client
- Changes in human resource utilization patterns (employees and volunteers)
- Changes in the numbers and percentages of end-user client service data as called for above
- Status of training in terms of the stated goal.

Follow-up data should be collected on client MDOs on the six, twelve, and eighteen-month anniversary of the beginning of the capacity building relationship. It is understood that new goals may be stated at the beginning of a new project or specific activity. This understanding is to be built into the grantee's reporting structure.



Quarterly reports will be due no later than:

(a) January 15 for the period ending December 31;

(b) April 15 for the period ending March 31;

(c) July 15 for the period ending June 30; and

(d) October 15 for the period ending September 30.

c. Financial Reports

1. Financial Status Report Forms must be submitted every quarter with the performance reports. Reports must include the SF 269, Financial Status Report, and the SF 272, Federal Cash Transactions Report.

2. The year-end report must include a cost breakdown of actual expenditures and costs incurred by line item. Participants will also be required to submit the SBA Form 2069, Detailed Actual Expenditures for Period Covered by Request, with the final Standard Form 269.

3. In addition, grantees will be required to submit audited annual financial statements, if available, or annual financial statements prepared by a licensed, independent public accountant, within 120 days of the end of the grantee's fiscal year period.

SBA may withhold payment of advances or reimbursements if reports are not received or are regarded as inadequate.

SBA may, at its discretion, reduce any reporting requirements to semi-annually as it deems appropriate. SBA will notify participants if it decides to take such action.

*7. Match Requirements*

In general, funds awarded under the PRIME Program will require a non-Federal match of not less than 50% of each dollar awarded. Matching funds may come from fees, non-Federal grants, gifts, funds from loan sources, and in-kind resources. After the initial grant, grant awards for the following option years will be made in declining amounts, declining by 20% of the initial grant amount in each successive year.

*Exception:* In the case of an applicant with severe constraints on available sources of matching funds, SBA may reduce or eliminate the 50% match requirement on a case by case basis. Any reductions or eliminations must not exceed 10% of the aggregate of all PRIME grant funds made available by SBA in any fiscal year.

Organizations seeking to receive a reduction or elimination of the matching fund requirement must include such a request (as a cover letter) with their proposal, and include justification and supporting documentation for their request. Submission of a request will not automatically guarantee that an exception, in whole or in part, will be granted. Rather, it will alert SBA to the applicant's desire to receive an exception.

*8. Fundraising Not Allowable Expense*

Expenditures for fundraising activities are not allowable costs under this grant. Applicants must be able to raise matching funds without the assistance of grant funds. The applicant must demonstrate that it has adequate fundraising resources to obtain required non-Federal matching funds to perform the project.

*9. Subgrants*

An organization selected to receive a grant under the PRIME Program may provide sub-grants to qualified small and emerging MDOs solely for the purpose of having them assist with Training and Capacity Building services to other MDOs. Applicants wishing to provide sub-grants as a part of their implementation plan should include detailed information regarding same in their Technical Proposal. An applicant that wants to make subgrants using PRIME grant funds must receive written approval from SBA prior to making subgrants. The applicant must identify the subgrantee(s) and describe in detail what the subgrantee(s) will do to help the grantee implement its proposal. An applicant must submit information to SBA demonstrating that, through the subgrantee(s), the grantee's program will:

(1) Provide expanded services to the community,

(2) Provide a method by which one or more previously unserved communities will gain access to the program, or

(3) Provide other specific benefits to the clients, such as specialized training, expanded schedules of operation, or other benefits.

If an applicant has identified potential subgrantee(s) at the time it submits an application for a PRIME grant, the applicant must include the information requested in the paragraph above in the application. Otherwise, the applicant or grantee may submit the requested information at such time that approvals for subgrantee(s) are requested.

The total amount of money subgranted by the grantee must not exceed 50% of the amount of the PRIME grant. A maximum of 7.5% of the funds awarded may be used by the grantee for administrative expenses in connection with the making of subgrants.

*10. Subcontracts*

Any and all subcontracts awarded under this grant must be approved by SBA in advance in writing and must not exceed 50% of the amount of the PRIME grant.

*11. Diversity*

In making grants under this Program Announcement, SBA will ensure that grant recipients include both large and small microenterprise organizations, serving urban, rural and Indian tribal communities and diverse populations.

*12. Prohibition on Preferential Consideration of Certain SBA Program Participants*

In making grants under this Program Announcement, SBA will not give preferential consideration to an applicant that is a participant in the program established under section 7(m) of the Small Business Act.

**VII. OMB Uniform Administrative Requirements and Cost Principles**

The Prime Grant Notice of Award incorporates by reference all applicable OMB Circulars, including:

1. OMB Circular A–21, "Cost Principles for Educational Institutions," containing cost principles for educational institutions;

2. OMB Circular A–87 "Cost Principles for State, Local, and Indian Tribal Governments," containing cost principles for State, local governments, and federally recognized Indian tribal governments.

3. OMB Circular A–110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," containing administrative requirements;

4. OMB Circular A–122, "Cost Principles for Non-Profit Organizations," containing cost principles for non-profits; and

5. OMB Circular A–133, "Audits of States, Local Governments, and Non-Profit Organizations," concerning audits.

Current versions of OMB Circulars are available from the Office of Management and Budget's website. The address is: *www.whitehouse.gov/WH/EOP/OMB/html/circular.html.*

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**VIII. Proposal Instructions and Evaluation Criteria**

The technical and cost proposals must be bound separately. The technical proposal must be single-spaced and not exceed 45 pages, excluding exhibits and appendices. Prepare your proposal using the following outline.

*1. APPLICATION FORMAT*

A. Technical Proposal

*Section 1. Eligibility Requirements (not to exceed 5 pages)*

In this section the applicant must prove that it falls within one of the four categories of qualified organizations. (See Section IV)

Applicants are reminded to include documentation of the mandatory eligibility requirements in their technical narrative. Failure to provide the mandatory eligibility documentation will result in disqualification of the application, and the application will not be evaluated. In addition, incomplete or illegible (in whole or in part) applications will not be evaluated.

*Section 2. Applicant Experience (not to exceed 15 pages)*

Applicant experience includes information regarding current and past performance in providing training and capacity building services to new, emerging, and existing MDOs.

In this section, the applicant should discuss the items delineated below. To the extent possible, the applicant should provide internal statistical data to document its past experience and illustrate current activities.

1. An understanding of the microentrepreneur and MDO communities and the needs of disadvantaged entrepreneurs.

2. The applicant's existing and historical capacity building services to MDOs. This discussion should include a detailed description of the programmatic information as to the activities and services offered to MDOs with specific descriptions of the extent to which such services have improved the operations of client MDOs and assisted MDOs in reaching low and very low income individuals.

3. Provide a list of grants and or contracts similar in scope to the grant for which you are applying. Specifically provide the name of, if any, any Federal, or non-Federal, agency(ies) or private sector foundations or organizations providing funding, the grant or contract number, a short summary of services provided under each grant, and the period(s) of performance. Include in each summary the name and contact information (phone number and E-mail address) of the person providing oversight on each grant or contract.

*Section 3. Institutional Capacity (not to exceed 5 pages)*

This section should include the following:

*1. Personnel Qualifications and Internal Structure*

- You must have, or exhibit the ability to obtain, personnel who are qualified to meet the goals of providing technical assistance under this grant. Provide resumes of personnel key to your organization's participation in the PRIME Program. The resumes should clearly present personnel's qualifications relative to this particular work. Special mention should be made of relevant experience. Personnel indicated must demonstrate knowledge of business development, business structures, business planning, marketing, business management, financial management, and training and counseling.
- Organizational chart for all proposed full-time and part-time project staff and the amount of time each will devote to the project. The Project Director must be a full time employee of the organization; however, the Project Director does not have to be dedicated solely to this activity. The Project Director (and other federally funded staff positions) must not engage in fundraising activities using Federal funds provided under this grant.
- A description of the role of subcontractors, subgrantees and/or outside consultants.
- A description of at least one staff or consultant function to handle on-going program data collection and electronic reporting to SBA.
- A description of whom will be responsible for financial record keeping on the receipt and expenditure of program funds.

*2. Data Collection and Maintenance Capacity*

- Describe your organization's current data collection and management system. If applying as a group or collaborative, describe how data management systems will be integrated for an inter-organizational uniform approach to data gathering and reporting, as well as how these capabilities will or will not be integrated for training MDOs.
- Provide your organization's computer capacities, if any, and the software used. Indicate whether or not your organization is connected to the Internet and, if not, delineate plans to become connected. The applicant should indicate its level of willingness/capability to report data via the Internet as well as how funds received under this grant may help the applicant accomplish its electronic management, communication, and reporting goals.
- Describe your organization's internal systems of checks and balances in terms of financial, data collection, and reporting systems. If applying as a group or collaborative, also describe the plan for inter-organizational checks and balances in terms of those systems. Also indicate which member of the group or collaborative will be responsible for coordination and submission of data and reports, and how the collaborative will ensure that this responsibility will be fully implemented.

*Section 4. Program Narrative (not to exceed 15 pages)*

In this section, each applicant must describe the following:

1. Its management plan to provide capacity building and training services to MDOs. This plan should include but not be limited to long and short term training, counseling and technical assistance.

2. Its outreach and delivery plan. The plan should include, but not necessarily be limited to:

- A description of the types of client MDOs your organization plans to target including whether or not those client organizations serve very-low income populations
- A demonstration of the need for the planned services in terms of both the anticipated client base and the end user of the client MDOs' services;
- Strategies to be used for reaching your scheduling and delivery goals;
- Methods by which your organization will incorporate outside resources into the plan; and,
- A description of any planned or existing strategic alliances and partnerships with state and local entities (public or private) and how these alliances assist, or will assist, your organization in providing capacity building services to client MDOs.

*Section 6. Timeline/Milestones (not to exceed 5 pages)*

In this section the applicant must include a timeline with milestones covering the 12-month grant period. Milestones should clearly illustrate the applicant's goals for delivery of capacity building services in terms of the number and types of projected clients, projected activities, and projected use of funds.

*Section 7. Supporting Documentation*

In this section the applicant should provide any necessary documentation to support its proposal, including but not limited to the following documents:

1. A statement signed by your Executive Director (or an equivalent duly authorized person), authorizing SBA to make inquiries to other Federal Agencies as to the performance capabilities of your organization.

2. A copy of your organization's IRS tax exempt certificate, including the IRS code under which your organization is considered non-profit.

3. Certification by your Secretary of State that your organization is legally allowed to do business in the State and a copy of your organization's articles of incorporation and by-laws.

4. A copy of your organization's financial statements for the last 3 years. If your organization has not been in business for 3 years, submit the most recent full-year financial statements and a copy of your organizations Year-to-Date balance sheet.

5. A summary of the training and technical assistance provided to date (limit to 3 pages).

6. Résumés and reference information for personnel key to the delivery of technical assistance services to date.

7. An organizational chart, if you are applying as a group, or plan to use sub-contractors, include a second organizational chart that shows how the members of the group will interact and collaborate and/or how the sub-contractors will fit into the work flow plan.

B. Cost Proposal

The cost proposal must include the application cover sheet, budget information, assurances and certifications. Additional information on how to organize the proposal is provided on page 21, "Preparing Your Budget." The applicant's Cost Proposal will be evaluated in terms of the quality and effectiveness of the proposed capacity building services and impact as identified in item 3 of the evaluation factors.

*2. Evaluation Factors*

Capacity Building awards will be competed among a single pool of applicants. The Technical Proposal will be evaluated in terms of the following evaluation criteria. The maximum number of points available under each criterion will be as follows:

(a) Institutional Capability (total of 90 points) The following factors will be considered under this criteria:

(1) Organizational structure, financial stability, and financial management systems (20)

(2) Personnel (30)

(3) Electronic communication or potential for same (20)

(4) Data collection and reporting capability (20)

(b) Past performance and history of providing capacity building services to Microenterprise Development Organizations (MDOs) (30)

(c) Management plan for proposed training and capacity building assistance, including outreach and delivery (total of 80 points)

The following factors will be considered under this criteria:

(1) Proposed training and capacity building assistance to client MDOs and services to low-and very-low income microentrepreneurs (30)

(2) Service plan and delivery (30)

(3) Performance and outcome measurement tools (20)

The total number of points an organization may attain under this evaluation system is 200.

As indicated above, applications will be reviewed for technical merit using the evaluation factors listed. Included in the evaluation processes will be qualitative and quantitative analyses of:

a. The applicant's organizational structure, financial stability, financial management systems, personnel capacity, and electronic communication capabilities (or potential for same). Additional evaluations will be made on the data collection capabilities, reporting capacities, and ability to account for performance.

b. The applicant's history of providing capacity building services to MDOs, as an indication of the organization's understanding of the goals and purposes of capacity building, its historical effectiveness with the microenterprise development industry, and its ability to provide quality services to the targeted market. In addition, patterns of program growth, outcomes of training, types of services provided, delivery systems used, the number and types of clients served, and the successes realized within the client's organizational goals.

c. The applicants projected impact on client MDOs, and on their ability to serve or improve services to low- and very-low income microentrepreneurs.

d. The value of the proposed activity to the enhancement of the MDO community and the applicant's ability to attain the stated goals of the proposal. In addition, the transferability and replicability of the project will be considered.

**IX. Option Year Funding**

Applicants will prepare application cover sheets (SF Form 424) and budgets for each of the 5 budget periods consisting of 12 months each. Applicants are advised that the performance period for specific awards made under this announcement may consist of one base year with up to 4 twelve-month option years. The project periods may consist of up to 5 twelve-month budget periods. Each additional twelve-month budget period beyond the original base year may be exercised at the discretion of the Government. Among the factors involved in deciding whether to exercise an option are the availability of funds, continuing program authorization, satisfactory performance of the applicant, and the determination that continued funding would be in the best interest of the Government.

After the initial grant, grant awards for the option years will be made in declining amounts, declining by 20 percent of the initial grant amount in each successive year

**X. Preparing Your Budget**

INSTRUCTIONS FOR STANDARD FORM 424 (APPLICATION FOR FEDERAL ASSISTANCE)

Standard Form 424, Application of Federal Assistance, will be found beginning at page A–1 of this announcement. This guidance supplements that contained on the reverse side of the form.

Item 1. Self-explanatory
Item 2. Refer to instructions on reverse of form
Item 3. Refer to instructions on reverse of form
Item 4. Leave Blank
Item 5. Refer to instructions on reverse of form
Item 6. Refer to instructions on reverse of form
Item 7. Refer to instructions on reverse of form
Item 8. Enter: "new"
Item 9. Enter: "U.S. Small Business Administration"
Item 10. Enter: 59.049 Program for Investment for Microentrepreneurs (PRIME)
Item 11. Refer to instructions on reverse of form
Item 12. Refer to instructions on reverse of form
Item 13. Refer to instructions on reverse of form
Item 14. Refer to instructions on reverse of form
Item 15. Refer to instructions on reverse of form
Item 16. Enter: Check "b." This program is not covered by E.O. 12372.
Item 17. Refer to instructions on reverse of form
Item 18. Refer to instructions on reverse of form

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*INSTRUCTIONS FOR STANDARD FORM 424A (BUDGET INFORMATION)*

Budget information is found on pages *A–1 through A–11*

The budget is the applicant's estimate of the total cost of performing the project or activity for which grant support is requested. The budget is to be based upon the cost of performing the project, including Federal and private sources. All proposed costs reflected in the budget must be necessary to the project, reasonable and otherwise allowable under applicable cost principles and Agency policies. All costs must be justified and itemized by unit cost on the Budget Worksheets (p. A–3).

Section A—Budget Summary
Column (A): Enter "PRIME 01–2"
Column (B): Enter the Catalog of Federal Domestic Assistance Number 59.049
Section B—Budget Categories

Amounts entered by budget category in this section are for summary purposes only. Itemization and justification of specific needs by budget category are to be shown under line 21, Section F.

Line 6.a.–6.h. The budget amounts must reflect the total requirements for funds regardless of the source of funds. All amounts entered in this section are to be expressed in terms of whole dollars only after completing the requirements of Section F.

Line 6.j. Indirect costs are those costs related to the project that are not included as direct costs in a. through h.

**Section C—Non-Federal Resources**

Refer to instructions on reverse of form.

*Section D—Forecasted Cash Needs*

Refer to instructions on reverse of form.

*Section E—Budget Estimates of Federal Funds Needed for Balance of the Project*

Refer to instructions on reverse of form.

*Section F—Other Budget Information*

Line 21, Direct Charges: Identify and explain all items or categories under Section B in accordance with the instructions set forth below. The itemization must reflect the total requirements for funding from Federal and non-Federal sources. In most instances, Line 21 does not provide sufficient space to reflect all of the necessary information. Budget Worksheets are enclosed for your convenience. You may use these worksheets for the detailed budget information listed below or a reasonable facsimile; but each budget line item pertinent to your submission MUST ALSO be completed on the application. Please show a complete breakdown of all cost elements summarized in Section B on a separate sheet. Do not list on Line 21 any items included in the indirect expenses entered on Line 22 below.

a. Personnel: List the name, title, salary and estimated amount of time for each employee who will be assigned to this project. Note that fees, expenses, and estimated amount of time for outside consultants should be included in f., Contractual. The estimated performance time for outside consultants is not to exceed 50% of the total amount of the grant. Resumes of all personnel assigned to this effort must be included in the application.

b. Fringe Benefits: Leave blank if fringe benefits applicable to direct salaries and wages are treated as part of indirect costs in the indirect cost rate negotiation agreement. If your organization does not have a federally negotiated fringe benefit package, list each component included as a fringe benefit.

c. Travel: Reimbursement will be made based on incurred cost. Estimates should be based on knowledge of the geographical area of small business locations. Reimbursement to contractors or volunteers will not be made for time in travel to and from the client's location. Supporting data should include numbers of trips anticipated, costs per trip per person, destinations proposed, modes of transportation, and related subsistence expenses.

Line 22 Indirect Charges:

(Attach Budget Worksheets or reasonable facsimile if sufficient space is not provided.)

Enter the indirect cost rate, date, and agency that issued rate.

If an indirect cost rate is not established, itemize elements and costs of overhead and G&A (General and Administrative) expense categories relative to the performance of this project.

**XI. Assembly and Mailing Instructions**

1. Please indicate the following information on the front of your return envelope:

a. Your organization's name and return address including zip code in the upper left-hand corner of the return envelope.

b. Place the following notation in the lower left-hand corner of the sealed envelope.

THIS IS A SEALED OFFER. DO NOT OPEN. STAMP THE DATE AND TIME RECEIVED ON THE ENVELOPE. THIS PROPOSAL IS IN RESPONSE TO PROGRAM ANNOUNCEMENT NUMBER, ___ DUE, ___ 2000, AT 4:00 P.M., EASTERN STANDARD TIME, AT THE U.S. SMALL BUSINESS ADMINISTRATION, OFFICE OF PROCUREMENT & GRANTS MANAGEMENT, 409 3RD STREET, SW, 5TH FLOOR, WASHINGTON, DC 20416, ATTENTION: MINA BOOKHARD.

2. *Application.* Please submit an original and 2 copies of the pages described below in items a and b. They are part of the Announcement and should be completed and submitted with an original and 2 copies of your proposal:

a. The Federal Assistance Application (Standard Form 424), including the cost and technical proposals, and related budgetary data.

b. Appendix B, Assurances and Certifications (with appropriate signature).

3. To facilitate review and processing of the proposals, your submission must be arranged, as follows, in two separately bound parts:

a. Part I: COST PROPOSAL—This part is to be comprised of the Application, the Budget Information, and the Assurances and Certifications. The material identified as Part I must be bound separately from the Technical Proposal. DO NOT include any technical information in Part I, The Cost Proposal.

b. Part II: TECHNICAL PROPOSAL—This part is comprised of the Program Narrative. The proposal should be completed with a table of contents and must be responsive to the evaluation criteria set forth on pages 20–21. The Technical Proposal must be bound separately from Section I and must not exceed 45 pages. DO NOT include any cost information in Part II, The Technical Proposal.

4. Your application should be submitted in original and 2 copies to: U.S. Small Business Administration, Office of Procurement and Grants Management, 409 Third Street, SW, 5th Floor, Washington, DC 20416, ATTN: Mina Bookhard.

**XII. Late Submission, Revisions and Withdrawals**

1. Any Application received at the Office of Procurement and Grants Management after the exact time specified for receipt will not be considered unless it is received before award is made, AND:

a. It was sent by registered or certified U.S. mail not later than the fifth calendar day before the date specified for receipt of offers (*e.g.*, an offer



submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th);

b. It was sent by U.S. mail or hand-carried (including delivery by a commercial carrier) if it is determined by the Government that the late receipt was due primarily to Government mishandling after receipt at the Government installation;

c. It was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5:00 p.m. at the place of mailing two working days prior to the date specified for receipt of proposals. The term "working days" excludes weekends and U.S. Federal holidays;

d. There is acceptable evidence to establish that it was received at OPGM and was under the Government's control prior to the time set for receipt of offers, and the Grants Management Officer determines that accepting the late offer would not unduly delay the grant review process; or

e. It is the only proposal received.

**XIII. Unsuccessful Applicants**

After a decision has been reached and if your proposal is not successful, you will receive written notification. This written notice will be SBA's *final* response to this program announcement. SBA *will not* provide debriefing sessions if your proposal was not successful.

**XIV. Cancellation**

SBA reserves the right to cancel this announcement in whole or in part at the Agency's discretion.

**XV. Glossary of Terms**

• *ADMINISTRATION:* Means the U.S. Small Business Administration (SBA);

• *ADMINISTRATOR:* Means the Administrator of the Small Business Administration;

• *CAPACITY BUILDING SERVICES:* means services provided to an organization or program that is, or is developing as, a microenterprise development organization or program, for the purpose of enhancing its ability to provide training and services to disadvantaged entrepreneurs;

• *COLLABORATIVE:* means two or more nonprofit entities that agree to act jointly as a qualified organization under this part;

• *DISADVANTAGED ENTREPRENEUR, or DISADVANTAGED MICROENTREPRENEUR:* means the owner, majority owner, or developer of a microenterprise who is also—

1. A low-income person

2. A very low-income person; or

3. An entrepreneur who lacks adequate access to capital or other resources essential for business success, or, is economically disadvantaged as determined by the Administrator.

• *EMERGING MICROENTERPRISE DEVELOPMENT ORGANIZATION OR PROGRAM:* means a microenterprise development organization or program which has a microenterprise capacity building services component, but has had such a component for less than 4 years at the date of its application for a PRIME grant.

• *GRANTEE:* means a recipient of a grant under the Act.

• *GROUP:* has the same meaning as "collaborative" defined above.

• *INDIAN TRIBE:* means any Indian tribe, band, pueblo, nation, or other organized group or community, including any Alaska Native village or regional or village corporation, as defined in or established pursuant to the Alaska Native Claims Settlement Act, which is recognized as eligible for the special programs and services the United States provides to Indians because of their status as Indians.

• *INDIAN TRIBE JURISDICTION:* means Indian country, as defined in 18 U.S.C. § 1151, and any other lands, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any tribe or individual subject to a restriction by the United States against alienation, and any land held by Alaska Native groups, regional corporations, and village corporations, as defined in or established under the Alaska Native Claims Settlement Act, public domain Indian allotments, and former Indian reservations in the State of Oklahoma.

• *INTERMEDIARY:* means a private, nonprofit entity that seeks to serve qualified microenterprise development organizations and programs;

• *LARGE MICROENTERPRISE DEVELOPMENT ORGANIZATION OR PROGRAM:* means a microenterprise development organization or program with 10 or more full time employees or equivalents, including its executive director, as of the date it files its application with SBA for a PRIME grant.

• *LOCAL COMMUNITY:* means an identifiable area and population constituting a political subdivision of a state.

• *LOW-INCOME PERSON:* means a person having an income, adjusted for family size, of not more than—

(1) for metropolitan areas, the greater of 80 percent of the median income; and

(2) for non-metropolitan areas, the greater of—

(a) 80 percent of the area median income; or

(b) 80 percent of the statewide non-metropolitan area median income;

• *MICROENTREPRENEUR:* means the owner or developer of a microenterprise;

• *MICROENTERPRISE:* means a sole proprietorship, partnership, limited liability corporation or corporation that has fewer than 5 employees, including the owner, and generally lacks access to conventional loans, equity, or other banking services.

• *MICROENTERPRISE DEVELOPMENT ORGANIZATION OR PROGRAM:* means a nonprofit entity, or a program administered by such an entity, including community development corporations or other nonprofit development organizations and social service organizations, that provides services to disadvantaged entrepreneurs.

• *QUALIFIED ORGANIZATION:* means an organization eligible for a PRIME grant that is—

1. a microenterprise development organization or program as defined above (or a group or collaborative thereof) that has demonstrated a record of delivering microenterprise services to disadvantaged microentrepreneurs;

2. an intermediary, as defined above;

3. a microenterprise development organization or program as defined above that is accountable to a local community, working with a State or local government or Indian tribe; or

4. an Indian tribe acting on its own, if the Indian tribe can certify that no private organization referred to in this definition exists within its jurisdiction.

• *SEVERE CONSTRAINTS ON AVAILABLE SOURCES OF MATCHING FUNDS:* means the documented inability of a qualified organization applying for a PRIME grant to raise matching funds or in-kind resources from non-Federal sources during the 2 years immediately prior to the date of its application because of a lack of or increased scarcity of monetary or in-kind resources from potential non-Federal sources.

• *SMALL MICROENTERPRISE DEVELOPMENT ORGANIZATION OR PROGRAM:* means a microenterprise development organization or program with less than 10 full time employees or equivalents, including its executive director, as of the date it files its application with SBA for a PRIME grant.

• *TRAINING AND TECHNICAL ASSISTANCE:* means services and support provided to disadvantaged entrepreneurs, such as assistance for the purpose of enhancing business planning, marketing, management,

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financial management skills, and assistance for the purpose of accessing financial services.

• *VERY LOW INCOME PERSON:* means having an income adjusted for family size of not more than 150 percent of the poverty line (as defined in 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2), including any revision required by that section).

**XVI. Paperwork Reduction Act (44 U.S.C. Ch. 35)**

The information being requested in this Program Announcement is needed to evaluate applicants and ensure that awards are made in furtherance of the PRIME program's objectives. The information will be used to grant awards to provide training and technical assistance to disadvantaged microentrepreneurs. Applicants' responses to the data collection requirements are necessary for them to receive a benefit under the Prime Program. The information provided by applicants will be kept confidential to the extent required by law. Applicants are not required to respond to the Program Announcement unless it displays a currently valid OMB number. SBA estimates it will take applicants 80 hours to respond.

**XVII. Privacy Act (5 U.S.C. 552a)**

Any person can request to see or get copies of any personal information that SBA has in the requestor's file, when that file is retrieved by individual identifiers, such as name or social security number. Requests for information about another party may be denied unless SBA has the written permission of the individual to release the information to the requestor or unless the information is subject to disclosure under the Freedom of Information Act (FOIA).

**Note:** Any person concerned with the collection, use and disclosure of information, under the Privacy Act may contact the Chief, Freedom of Information/Privacy Act Office, U.S. Small Business Administration, Suite 5900, 409 Third Street, SW, Washington, DC 20416, for information about the Agency's procedures relating to the Privacy Act and FOIA.

DATE: _____
TO: Applicants
FROM: Office of Procurement and Grants Management (OPGM)
SUBJECT: Program Announcement No. PRIME 01–3, Program for Investment in Microenterprise Act, ("PRIME") for Research and Development of Best Practices in the Field Microenterprise and Technical Assistance to Disadvantaged Entrepreneurs.

The U.S. Small Business Administration plans to issue Federal grants awards to qualified organizations under PRIME to provide research and development in the field of microenterprise and technical assistance programs to disadvantaged entrepreneurs. These organizations include: non-profit microenterprise development organizations or programs; intermediaries (as defined); other microenterprise development organizations or programs (as defined) that are accountable to a local community, working in conjunction with a State or local government or Indian tribe; or Indian tribes acting on their own, with proper certification that no other qualified organization exists within their jurisdiction.

You are invited to submit an application, an original and two (2) copies, in response to Program Announcement No. PRIME 01–3. You are required to bind the cost proposal and technical proposal separately. Prepare the technical and cost proposals in single-spaced 12-pt. font format, not to exceed 45 pages including exhibits and appendices. The Government will not return proposals, but will retain them for a limited period of time. The closing date for the program announcement is _____, 4:00 P.M., Eastern Standard Time. Address your applications/proposal to the U.S. Small Business Administration, Office of Procurement & Grants Management (OPGM), 409 3rd Street, SW, 5th Floor, Washington, DC 20416, Attention: Mina Bookhard, Agreement Officer. If hand carried, deliver the application/proposal to Mina Bookhard, or her designee, at the above address. Deliveries to other locations will be considered late if not received in OPGM at the U.S. Small Business Administration by 4:00 p.m. on _____. Please place the following notation in the lower left corner of the sealed envelope or package:

THIS IS A SEALED OFFER. DO NOT OPEN. STAMP THE DATE AND TIME RECEIVED ON THE ENVELOPE. THE ENCLOSED APPLICATION IS IN RESPONSE TO PROGRAM ANNOUNCEMENT NUMBER PRIME 01–3, DUE _____ AT 4:00 P.M., Eastern Standard Time, AT SBA's OFFICE OF PROCUREMENT & GRANTS MANAGEMENT.

Applicants will be required to meet the standards for financial management systems as prescribed in the Office of Management and Budget's (OMB) Circular A–110, Subpart C, sections .21 through .28, and 13 C.F.R. Part 143.

Questions concerning this program announcement should be directed to Warren Boyd at (202) 205–7534. Questions about budget or funding matters should be directed to Mina Bookhard, at (202) 205–7080.

Sincerely,
Sharon Gurley,
*Director, Office of Procurement and Grants Management*

OFFICE OF FINANCIAL ASSISTANCE

PROGRAM ANNOUNCEMENT

*PROGRAM FOR INVESTMENT IN MICROENTREPRENEURS ACT, ("PRIME")*

TO RESEARCH AND DEVELOP BEST PRACTICES IN THE FIELD OF MICROENTERPRISE AND TECHNICAL ASSISTANCE PROGRAMS TO DISADVANTAGED ENTREPRENEURS

*FISCAL YEAR 2001*

U.S. SMALL BUSINESS ADMINISTRATION

OFFICE OF FINANCIAL ASSISTANCE

OPENING DATE: _____
CLOSING DATE: _____
ANNOUNCEMENT NO: PRIME 01–3

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**I. Legislation Purpose**

The Program for Investment in Microentrepreneurs Act of 1999 (P.L. 106–102) became law on November 12, 1999. 15 U.S.C. 6901 *et seq.* ("PRIME" or "the Act"). The Act authorizes the Administrator of the U.S. Small Business Administration (SBA) to establish a microenterprise training and technical assistance program for disadvantaged microentrepreneurs and



to provide training and capacity building grant program to microenterprise development organizations (MDOs). Additionally, the Act authorizes research and development of best practices for microenterprise development and technical assistance programs for disadvantaged entrepreneurs and other activities as the Administrator of SBA determines are consistent with the Act.

PRIME has several purposes for which SBA will issue separate program announcements soliciting applications geared toward a particular legislative purpose.

Program Announcements called for under the Act solicit, from eligible organizations, applications for grant funding to be used to carry out the purposes of the Act as follows:

Program Announcement No. PRIME 01–1 calls for applications from qualified organizations wishing to obtain grant funding for the purpose of providing training and technical assistance programs for disadvantaged microentrepreneurs.

Program Announcement No. PRIME 01–2 calls for applications from qualified organizations wishing to obtain grant funding for the purpose of providing training and capacity building services to microenterprise development organizations and programs and groups of such organizations to assist them in developing microenterprise training and services.

Program Announcement No. PRIME 01–3 calls for applications from qualified organizations wishing to obtain grant funding for the purpose of pursuing research and developing best practices in the field of microenterprise and technical assistance programs for disadvantaged microentrepreneurs.

The purpose of this Program Announcement No. PRIME 01–3, is to solicit applications from eligible organizations wishing to obtain grant funding for the purpose of conducting research development of microenterprise development best practices. Specifically, PRIME–01–3 solicits proposals from qualified organizations wishing to obtain grant funding for the purpose of researching and developing best practices in the field of microenterprise and technical assistance programs for disadvantaged microentrepreneurs. Grants will be awarded subject to the availability of funds. And, no single entity will receive a grant in excess of $250,000 or 10% of the total amount appropriated, whichever is less.

**II. Introduction**

Congress recognized that many disadvantaged microentrepreneurs lack sufficient training and education to gain access to capital to establish and expand their own small businesses. It enacted PRIME to augment training and technical assistance under the Small Business Act and other legislation, and to foster research and development of best practices in microenterprise and technical assistance to disadvantaged microentrepreneurs to further advance programs to the disadvantaged microentrepreneurs and further advance the microenterprise industry.

Many low income and very-low income entrepreneurs need training and technical assistance to start, operate, or expand their businesses. In order to achieve measurable success in the effort to providing direct training and technical assistance to low and very low income individuals, PRIME will award grants for the research and development of best practices in the delivery of services to disadvantaged microentrepreneurs.

For every business started or microloan made, a number of entrepreneurs are preparing themselves for business start. A generally accepted assumption in the microenterprise industry is that it takes approximately 10 potential microentrepreneurs for every microenterprise started or microloan booked. The cost of training is substantial because those at the entry-level stage of development typically require the greatest amount of dedicated advice and guidance, over an extended period of time, to achieve the highest rates of success. Funding is scarce relative to the need. The microenterprise industry has found the technical assistance-funding gap to be a nationwide condition, particularly in the very low-income sector.

The Program for Investment in Microentrepreneurs (PRIME) authorizes SBA to make grants to fund research and development of "best practices." The microenterprise development industry has reached a stage of development that can produce, and will benefit from, substantive research that captures the best practices in this area. The program requires that grantees match a portion of the SBA's funds with funds from other sources.

**III. Program Overview**

1. *Project Name:* Program for Investment in Microentrepreneurs (PRIME).

2. *Purpose:* Aid in researching and developing best practices in the field of microenterprise and technical assistance programs for disadvantaged microentrepreneurs.

3. *Federal Catalog Number:* 59.049.

4. *Authority:* The Program for Investment in Microentrepreneurs Act of 1999, "PRIME", P.L.106–102, 15 U.S.C. § 6901 *et seq.*

5. *Funding Instrument:* Grant.

6. *Funding:* Funding is subject to the availability of funds and the requirements enumerated under the Act.

7. *Funding Range:* Award amounts may vary, depending upon availability of funds (and performance for option years); however, no single person may receive more than $250,000 or ten (10) percent of the total funds made available for this program in a single fiscal year, whichever is less. In general, match is required, although SBA may reduce or eliminate the required match in certain circumstances (up to a program limit of 10 percent).

8. *Number of Awards:* SBA anticipates issuing multiple awards under this Announcement. The number may vary, based on the needs of the pool of qualified applicants received and the amount of available funds.

9. *Targeted assistance:* A minimum of 50% of the funds available for grants under the PRIME Act must be used to benefit very low income persons (as defined in this document), including those residing on Indian reservations.

10. *Closing Time and Date for the Submission of Applications:* _____ at 4:00 P.M. Eastern Daylight Time.

11. *Project Starting Date:* _____ (estimated).

12. *Project Duration:* The period performance for this grant is one base year with four (4) twelve-month options subject to availability of funds and continued program authorization. The total possible period of performance is five years. Each option year will constitute a separate budget period. The project recipient's satisfactory performance will be one of the key factors in determining the award of an option year. Failure to secure the required annual non-Federal contribution during any project year may jeopardize continued option year funding.

13. *Proposal Evaluation:* Applications will first be screened to determine if the applicant meets certain mandatory eligibility requirements. Applicants that do not document in their application that they meet these requirements will not be evaluated by SBA for participation in the Prime Program. In addition, applications that are incomplete, illegible, or unreadable, in whole or in part, will be deemed incomplete and will not be evaluated.

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Eligible proposals will be scored by an Objective Review Committee (ORC) based on evaluation criteria stated in this program announcement. The ORC will consist of SBA officials and may include Federal Officials from other agencies. Microenterprise Development Branch staff will review the ORC evaluations, the ORC's summary report on each applicant, and the applicant's proposals to determine the final scoring of award recipients. SBA may ask applicants for clarification on the technical and cost aspects of the proposals. Such clarifications must not be construed as a commitment to fund the proposed effort.

14. *Points of Contact:* Questions concerning the technical aspects of this Program Announcement should be directed to the Microenterprise Development Branch at (202) 205–7534. However, due to the competitive process, SBA will be unable to assist with answers to specific questions regarding individual proposals or requests for assistance in completing proposals. Questions concerning budget or funding of this Grant should be directed to Mina Bookhard at (202) 205–6621.

15. *Award Notification:* All applicants will receive a written notification relative to selection of award recipients. This written notice will be SBA's *final* response to this program announcement. SBA will not provide debriefing sessions if your proposal was not successful.

16. *Cancellation:* SBA reserves the right to cancel this Program Announcement in whole or in part at the Agency's discretion.

**IV. Eligible Applicants for This Grant**

An organization will be considered eligible for funding for research and development of best practices in the field of microenterprise and technical assistance programs for disadvantaged microentrepreneurs if it meets the following eligibility criteria:

1. A microenterprise development organization or program (or group or collaborative thereof) that has a demonstrated record of delivering microenterprise services to disadvantaged entrepreneurs, OR

2. An intermediary (as defined in this document) which has experience in delivering technical assistance to disadvantaged entrepreneurs, OR

3. A microenterprise development organization or program (as defined in this document) that is accountable to a local community, working in conjunction with a State or local government or Indian tribe, OR

4. An Indian tribe acting on its own, if the Indian tribe can certify that no private organization or program referred to in this paragraph exists within its jurisdiction.

An eligible applicant for the PRIME research and development grant must provide documentation in its application that it falls within one of the above categories of qualified organizations. Such documentation should include but is not limited to:

1. A copy of your organization's IRS tax-exempt certificate including the IRS code under which your organization is considered non-profit;

2. Certification by your Secretary of State that your organization is legally allowed to do business in the State and a copy of your organization's articles of incorporation and by-laws;

3. For category 4 in the preceding paragraph, written certification from a duly authorized person that no other qualified organization (i.e. private organization or program as defined in categories 1–3 above) exists within its jurisdiction; and

4. Financial statements for the past 3 years. If your organization has been in business for less than 3 years provide your year end financial statements for those years completed and a financial statement not less than 90 days old.

SBA will not evaluate applications that do not meet these requirements. SBA may not screen applicants for eligibility until after the Closing Date for application acceptance. SBA will attempt to notify applicants of ineligible proposals as soon as practicable. However, SBA is under no obligation to notify ineligible applicants before the Closing Date for the acceptance of applications under this Program Announcement. SBA strongly urges all applicants to ensure all eligibility requirements are met and documented before sending an application to SBA.

**V. Ineligible Applicants for This Grant**

The following applicants will automatically be considered ineligible and their applications will not be evaluated:

1. Any organization with an unresolved audit by any Federal agency.

2. Any organization suspended or debarred from receiving grants from any Federal agency or is otherwise excluded from Federal non-procurement or procurement programs.

3. Any organization which has defaulted on an obligation to the United States.

**VI. General Information**

*1. Definitions*

Throughout this program announcement specific terminology may be used, as defined in the Act and the accompanying rule (13 CFR part 119) published on _____. The definitions are contained in a glossary of terms located at the end of this document in Section XV.

*2. Collaborative Applications*

a. If you participate in a collaborative (as defined in this document), all entities who are party to the collaborative must separately meet the statutory requirements and eligibility requirements in order to apply as a collaborative.

b. Applications from collaboratives must name the primary liaison with the Federal government, and include a copy of the collaborative agreement outlining responsibilities of each partner organization. An authorized signature from each organization must appear on the agreement. The primary liaison will be responsible for coordinated reporting and requests for funding.

*3. Program Income*

All program income as defined in OMB Circular A–110, and OMB A–122 shall be reported on financial reports submitted to SBA and added to funds committed to the project by SBA and recipient organizations. Program income may only be used to further eligible program objectives.

*4. Cost Principles*

a. *General:* All costs approved for a successful applicant must meet the tests of necessity, reasonableness, allowability and allocability in accordance with the cost principles applicable to this award. All proposed costs are subject to pre-award audit. Grantees are responsible to ensure proper management and financial accountability of Federal funds to preclude future cost disallowances. Payment will be made by reimbursement or advance payments as described in the grant award document and applicable OMB Circulars.

b. *Carryover Policy:* The grantee may request approval to use unexpended funds in the next budget period. This is permissible if funds are to be used for a non-severable, non-recurring project or activity within the scope of the PRIME program. Non-severable means a project in its entirety that cannot be subdivided.

The request for using unexpended funds in the next budget period must include the following:



(1) SF 424, budget pages, and justification;

(2) Explanation of why the funds were not expended during the period in which they were awarded; and

(3) Evidence of match. The match requirement for funds carried over to the next budget period can be met by using any excess of matching funds from the current budget period, new matching funds, or a combination of both.

The request must be made no later than 60 days before the end of the budget/project period or the de-obligation process will begin. Approved requests will require the issuance of a revised Notice of Award. Expenditures for funds carried over to the next budget period must be tracked separately.

*5. Publications/Websites*

Any publications or websites developed under this grant must be submitted to SBA for prior review and approval. SBA will have an unlimited license to use data and written materials generated under this grant award, whether or not the materials are copyrighted. Any publications resulting from this project must include the following acknowledgement of support, whether copyrighted or not, in legible, easily readable print:

This grant is partially funded by the U.S. Small Business Administration. SBA's funding is not an endorsement of any products, opinions, or services. All SBA funded programs are extended to the public on a nondiscriminatory basis.

The grant recipient may not use the U.S. Small Business Administration name or logo for the endorsement of any services, products, or merchandise under this award.

The SBA logo may appear on prominent webpages of Internet sites that are related to this project, but must appear with the above disclaimer in legible, easily readable print and acknowledgement of support in close physical proximity (within 2 inches) next to it.

*6. Reports*

a. General Reporting

The selected grantees will be required to submit the reports as outlined below. Participants must agree to cooperate with SBA in the collection and retention of data required by this agency. Your ability to meet reporting requirements must be addressed in the Technical Proposal.

Payments may be withheld if reports are not submitted within the required time frame or if the quality of reports is considered inadequate.

b. Performance Reports

Quarterly performance reports, unless otherwise specified, must contain a summary of activity for the reporting period using the following format:

1. A comparison of actual accomplishments to the estimated milestones established in the proposal and/or subsequent grant agreement.

2. A discussion of accomplished milestones and reasons for slippage in those cases where milestones are not met. Where milestones were not met, a plan of action must be provided to overcome these slippages or a detailed statement of how the project will be improved if the milestones are revised.

3. Information relating to actual financial expenditures of budgeted cost categories versus the estimated budget award, including an explanation of all cost overruns, if any, by budgeted cost category. Financial data furnished in this report is from a manager's standpoint and is in addition to that furnished in the financial reports cited below.

4. Any other pertinent information, including any significant accomplishments or met milestones of special significance. The report should include items which may be determined appropriate by SBA after acceptance of the grant proposal but which cannot be pre-determined due to the undetermined special purpose of the grant at the writing of this document.

Quarterly reports will be due no later than:

(a) January 31 for the period ending December 31,

(b) April 31 for the period ending March 31,

(c) July 31 for the period ending June 30, and

(d) October 31 for the period ending September 30.

c. Financial Reports

1. Financial Status Report Forms must be submitted every quarter with the performance reports. Reports must include the SF 269, Financial Status Report, and the SF 272, Federal Cash Transactions Report.

2. The year-end report must include a cost breakdown of actual expenditures and costs incurred by line item. Participants will also be required to submit the SBA Form 2069, Detailed Actual Expenditures for Period Covered by Request, with the final SF 269.

3. In addition, grantees will be required to submit audited annual financial statements, if available, or annual financial statements prepared by a licensed, independent public accountant, within 120 days of the end of the grantee's fiscal year period.

SBA may withhold payment of advances or reimbursements if reports are not received or are regarded as inadequate.

SBA may, at its discretion, reduce reporting requirements to semi-annually as it deems appropriate. SBA will notify participants if it decides to take such action.

*7. Match Requirements*

In general, funds awarded under the PRIME Program will require a non-Federal match of not less than 50% of each dollar awarded. Matching funds may come from fees, non-Federal grants, gifts, funds from loan sources, and in-kind resources. After the initial grant, grant awards for the following option years will be made in declining amounts, declining by 20% of the initial grant amount in each successive year.

*Exception:* In the case of an applicant with severe constraints on available sources of matching funds, SBA may reduce or eliminate the 50% match requirement on a case by case basis. Any reductions or eliminations must not exceed 10% of the aggregate of all PRIME grant funds made available by SBA in any fiscal year.

Organizations seeking to receive a reduction or elimination of the matching fund requirement must include such a request (as a cover letter) with their proposal, and include justification and supporting documentation for their request. Submission of a request will not automatically guarantee that an exception, in whole or in part, will be granted. Rather, it will alert SBA to the applicant's desire to receive an exception.

*8. Fundraising Not Allowable Expense*

Expenditures for fundraising activities are not allowable costs under this grant. Applicants must be able to raise matching funds without the assistance of grant funds. The applicant must demonstrate that it has adequate community based fundraising resources to obtain required non-Federal matching funds to perform the project.

*9. Subgrants*

An organization selected to receive a grant under the PRIME Program may provide sub-grants to qualified small and emerging microenterprise development organizations. Applicants wishing to provide sub-grants as a part of their implementation plan should include detailed information regarding same in their Technical Proposal. An applicant that wants to make subgrants using PRIME grant funds must receive written approval from SBA prior to

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making subgrants. The applicant must identify the subgrantee(s) and describe in detail what the subgrantee(s) will do to help the grantee implement its proposal.

An applicant must submit information to SBA demonstrating that the subgrantee(s) will:

(1) Further the goals of the grantee's research and development project, or

(2) Provide necessary services to the grantee that grantee otherwise would not be able to obtain.

If an applicant has identified potential subgrantee(s) at the time it submits an application for a PRIME grant, the applicant must include the information requested in the paragraph above in the application. Otherwise, the applicant or grantee may submit the requested information at such time that approvals for subgrantee(s) are requested.

The total amount of monies subgranted by the grantee must not exceed 50% of the total amount of the PRIME grant. A maximum of 7.5% of the funds awarded may be used by the grantee for administrative expenses in connection with the making of subgrants.

*10. Subcontracts*

Any and all subcontracts awarded under this grant must be approved by SBA in advance and in writing and must not exceed 50% of the total amount of the PRIME grant.

*11. Diversity*

In making grants under this Program Announcement, SBA will ensure that grant recipients include both large and small microenterprise organizations, serving urban, rural and Indian tribal communities serving diverse populations.

*12. Prohibition on Preferential Consideration of Certain SBA Program Participants*

In making grants under this Program Announcement, SBA will not give preferential consideration to an applicant that is a participant in the program established under section 7(m) of the Small Business Act.

**VII. OMB Uniform Administrative Requirements And Cost Principles**

The Prime Grant Notice of Award incorporates by reference all applicable OMB Circulars, including:

1. OMB Circular A–21, "Cost Principles for Educational Institutions," containing cost principles for educational institutions;

2. OMB Circular A–87 "Cost Principles for State, Local, and Indian Tribal Governments," containing cost principles for State, local governments, and federally recognized Indian tribal governments.

3. OMB Circular A–110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," containing administrative requirements;

4. OMB Circular A–122, "Cost Principles for Non-Profit Organizations," containing cost principles for non-profits; and

5. OMB Circular A–133, "Audits of States, Local Governments, and Non-Profit Organizations," concerning audits.

Current versions of OMB Circulars are available from the Office of Management and Budget's website. The address is: *www.whitehouse.gov/WH/EOP/OMB/html/circular.html.*

**VIII. Proposal Instructions and Evaluation Criteria**

The technical and cost proposals must be bound separately. The technical proposal must be single-spaced and not exceed 45 pages, excluding exhibits and appendices. Prepare your proposal using the following outline.

*1. Application Format*

A. Technical Proposal

*Section 1. Eligibility Requirements (not to exceed 5 pages)*

In this section the applicant must prove that it falls within one of the four categories of qualified organizations. (See Section IV) Applicants are reminded to include documentation of the mandatory eligibility requirements in their technical narrative. Failure to provide the mandatory eligibility documentation will result in disqualification of the application, and the application will not be evaluated. In addition, incomplete or illegible (in whole or in part) applications will not be evaluated.

*Section 2. Applicant Experience (not to exceed 15 pages)*

Applicant experience includes information regarding current and past performance in conducting research and development activities particularly as such activities relate to the improvement of technical assistance to disadvantaged entrepreneurs (as defined in this document). Previous work in the development of best practices in the field of microenterprise development should be noted in discussions of experience.

In this section, the applicant should discuss the items delineated below. To the extent possible, the applicant should provide internal statistical data to document its past experience and illustrate current activities.

1. Illustrate an understanding of the microenterprise industry, the microentrepreneurial community, the perceived needs of disadvantaged entrepreneurs.

2. Enumerate and summarize your organization's current and historical research and development activity as it relates to microenterprise development and provision of technical assistance (particularly to disadvantaged entrepreneurs).

3. Provide a list of grants and or contracts similar in scope to the grant for which you are applying. Specifically provide the name, if any, of any Federal or non-Federal, agency (ies) or private sector foundations or organizations providing funding, the grant or contract number, a short summary of services provided under each grant, and the period(s) of performance. Include in each summary the name and contact information (phone number and E-mail address) of the person providing oversight on each grant or contract. Also include abstracts of research and development activities conducted during the past five years, particularly in the field of microenterprise development and/or training and technical assistance to disadvantaged entrepreneurs. The abstracts should clearly illustrate the nature and scope of the research conducted. (Limit to 8 pages)

*Section 3. Institutional Capacity (not to exceed 5 pages)*

This section should include the following:

*1. Personnel Qualifications and Internal Structure*

• Applicants must have, or demonstrate the ability to obtain, personnel who are qualified to meet the goals of providing research and development under this grant. Provide resumes of personnel key to your organization's participation in the PRIME Program. The resumes should clearly present personnel's qualifications relative to this particular work. Special mention should be made of relevant experience. Personnel indicated must demonstrate knowledge of research and development methodologies and strategies particularly as they relate to microenterprise development issues.

• Provide an organizational chart for all proposed full-time and part-time project staff and the amount of time each will devote to the project. The Project Director should be a full time employee; however, the Project Director does not have to be dedicated solely to this activity. The project director (and other federally funded staff positions) must not engage in fundraising activities using Federal funds provided under this grant.

• A description of the role of subcontractors, subgrantees and/or outside consultants, that may be called upon to provide assistance with the completion of activity to be funded under this grant.

• Delineate how the organization will manage data collection and electronic reporting to SBA and the position of the person within the organization that will be responsible for financial record keeping pertaining to the receipt and expenditure of PRIME program funding.



*2. Data Collection and Statistical Information Tracking*

• Describe your organizations current data collection and management systems. If applying as a group or collaborative, describe how data management systems will be integrated for an inter-organizational uniform approach to data gathering for reporting as well as production of a final product.

• Describe your organization's computer capacities, if any, and the software used. Indicate whether or not your organization is connected to the Internet and, if not, delineate plans to become connected. The applicant should indicate its level of willingness/capability to report data via the Internet.

• Describe your organization's internal systems of checks and balances in terms of financial, data collection, and reporting systems. If applying as a group or collaborative, also describe the plan for inter-organizational checks and balances in terms of those systems. Also indicate which member of the group or collaborative will be responsible for coordination and submission of data and reports, and how the collaborative will ensure that this responsibility will be fully implemented.

*Section 4. Program Narrative (not to exceed 15 pages)*

Research and Development projects are sought in several areas of microenterprise industry development. In a broad sense, several projects are suggested below. However, proposals for projects not suggested, but inside the scope of the goals of the Act, will be accepted for consideration. In general, research should concentrate on the forward movement of the disadvantaged microenterprise development industry. The research should also focus on the development, replicability, and transferability to disadvantaged microenterprise development service providers. The underlying theme of any activities should be how the final product will enhance provision of microenterprise services to disadvantaged entrepreneurs.

Each applicant must provide the following:

1. A research proposal indicating the thesis, method(s) scope, duration, and implementation plans (if appropriate) for the final product.

2. A discussion of how the proposed research will aid in the development of best practices and what enhancements are anticipated, as a result of the proposed activity, to the delivery of microenterprise services to disadvantaged microentrepreneurs.

While not limiting the scope of proposals, SBA is interested in developing several products for general use by industry participants as follows, to meet the ultimate goal of enhancing delivery of services to disadvantaged microentrepreneurs:

• A generally accepted baseline for minimum performance as a microenterprise development organization (MDO) and a standardized method by which neophyte, or under-performing, organizations can meet that baseline performance.

• A generally accepted glossary of terms for use in the domestic microenterprise industry which should be broad based enough to avoid succinct standardization, but specific enough to provide clarity of purpose and a common language within which industry participants can communicate.

• A start-up kit for organizations considering entry into the microenterprise development field.

• A case study oriented "best practices" training manual for use by industry participants.

• Comparative studies of service delivery issues in terms of geography, population density, economic stratification, gender, or other relevant issues.

*Section 5. Timeline/Milestones (not to exceed 5 pages)*

In this section the applicant must include a timeline with milestones covering the 12-month grant period. Milestones should clearly illustrate the applicant's goals for completion of the proposed project and the projected use of funds.

*Section 6. Supporting Documentation*

In this section the applicant should provide any necessary documentation to support its proposal, including but not limited to the following documents:

1. A statement signed by your Executive Director (or an equivalent duly authorized person), authorizing SBA to make inquiries to other Federal Agencies as to the performance capabilities of your organization.

2. A copy of your organization's IRS tax exempt certificate including the IRS code under which your organization is considered non-profit.

3. Certification by your Secretary of State that your organization is legally allowed to do business in the State and a copy of your organization's articles of incorporation and by-laws.

4. A copy of your organization's financial statements for the last 3 years.

5. Résumés and reference information for personnel key to the delivery of technical assistance services to date.

6. An organizational chart, if you are applying as a group, or plan to use sub-contractors, include a second organizational chart that shows how the members of the group will interact and collaborate and/or how the sub-contractors will fit into the work flow plan.

B. Cost Proposal

The cost proposal must include the application cover sheet (SF 424), budget information, and assurances and certifications. Additional information on how to organize the proposal is provided on page 20, "Preparing Your Budget."

*2. Evaluation Factors*

Applications will generally be reviewed for technical merit as follows:

1. SBA will evaluate organizational structure, financial stability, financial management systems, personnel capacity, and electronic communication capabilities (or potential for same). Additional evaluations will be made on the data collection capabilities, reporting capacities, and ability to account for performance.

2. SBA will evaluate how the research potentially will enhance microenterprise oriented technical assistance services to disadvantaged entrepreneurs. Applicants must show the method(s), scope, duration, and implementation plans of the proposed research.

3. SBA will evaluate the applicant's plan of action incorporating original and secondary research. Applicants must show impact on improved access to microenterprise development services for disadvantaged entrepreneurs, and the expected replication/transferability of the finished product to the field.

Research and development awards will be competed from a single pool of applicants. Specifically, areas of

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evaluation and the maximum number of points attainable under each are as follows:

A. Institutional Capability (total of 90 points)

The following factors are considered under this criteria:

(1) Organizational structure, financial stability, and financial management systems (20)

(2) Personnel (30)

(3) Electronic communication or potential for same (20)

(4) Data collection and reporting capability (20)

B. Past performance and history of conducting similar research and development, especially related to disadvantaged microentrepreneurs (20 points)

C. Management Plan for Proposed Research and Development including transferability and replication (total of 110 points)

The following factors are considered under this criteria:

(1) Proposal's potential for enhancement of microenterprise oriented technical assistance to disadvantaged entrepreneurs (30)

(2) Methods and scope of research (20)

(3) Plan of action incorporating original and secondary research (30)

(4) Transferability and replication of the finished product (30)

The total number of points an applicant may attain under this evaluation system is 220.

**IX. Option Year Funding**

Applicants shall prepare application cover sheets (SF Form 424) and budgets for each of the 5 budget periods consisting of 12 months each. Applicants are advised that the performance period for specific awards made under this announcement may consist of one base year with up to 4 twelve-month option years. The project periods may consist of up to 5 twelve-month budget periods. Each additional twelve-month budget period beyond the original base year may be exercised at the discretion of the Government. Among the factors involved in deciding whether to exercise an option are the availability of funds, continuing program authorization, satisfactory performance of the applicant, and the determination that continued funding would be in the best interest of the Government.

After the initial grant, grant awards for the option years will be made in declining amounts, declining by 20 percent of the initial grant amount in each successive year.

**X. Preparing Your Budget**

INSTRUCTIONS FOR STANDARD FORM 424 (APPLICATION FOR FEDERAL ASSISTANCE)

Standard Form 424, Application of Federal Assistance, will be found beginning at page A–1 of this announcement. This guidance supplements that contained on the reverse side of the form.

Item 1. Self-explanatory
Item 2. Refer to instructions on reverse of form
Item 3. Refer to instructions on reverse of form
Item 4. Leave Blank
Item 5. Refer to instructions on reverse of form
Item 6. Refer to instructions on reverse of form
Item 7. Refer to instructions on reverse of form
Item 8. Enter: "new'
Item 9. Enter: "U.S. Small Business Administration"
Item 10. Enter: 59.049 Program for Investment for Microentrepreneurs (PRIME)
Item 11. Refer to instructions on reverse of form
Item 12. Refer to instructions on reverse of form
Item 13. Refer to instructions on reverse of form
Item 14. Refer to instructions on reverse of form
Item 15. Refer to instructions on reverse of form
Item 16. Enter: Check "b." This program is not covered by E.O. 12372.
Item 17. Refer to instructions on reverse of form
Item 18. Refer to instructions on reverse of form

*INSTRUCTIONS FOR STANDARD FORM 424A (BUDGET INFORMATION)*

Budget information is found on pages *A–1 through A–11*

The budget is the applicant's estimate of the total cost of performing the project or activity for which grant support is requested. The budget is to be based upon the cost of performing the project, including Federal and private sources. All proposed costs reflected in the budget must be necessary to the project, reasonable and otherwise allowable under applicable cost principles and Agency policies. All costs must be justified and itemized by unit cost on the Budget Worksheets (p. A–3).

Section A—Budget Summary
Column (A): Enter "PRIME 01–3"
Column (B): Enter the Catalog of Federal Domestic Assistance Number 59.049

Section B—Budget Categories

Amounts entered by budget category in this section are for summary purposes only. Itemization and justification of specific needs by budget category are to be shown under line 21, Section F.

Line 6.a.–6.h. The budget amounts must reflect the total requirements for funds regardless of the source of funds. All amounts entered in this section are to be expressed in terms of whole dollars only after completing the requirements of Section F.

Line 6.j. Indirect costs are those costs related to the project that are not included as direct costs in a. through h.

*Section C—Non-Federal Resources*

Refer to instructions on reverse of form.

*Section D—Forecasted Cash Needs*

Refer to instructions on reverse of form.

*Section E—Budget Estimates of Federal Funds Needed for Balance of the Project*

Refer to instructions on reverse of form.

*Section F—Other Budget Information*

Line 21, Direct Charges: Identify and explain all items or categories under Section B in accordance with the instructions set forth below. The itemization must reflect the total requirements for funding from Federal and non-Federal sources. In most instances, Line 21 does not provide sufficient space to reflect all of the necessary information. Budget Worksheets are enclosed for your convenience. You may use these worksheets for the detailed budget information listed below or a reasonable facsimile; BUT each budget line item pertinent to your submission MUST ALSO be completed on the application. Please show a complete breakdown of all cost elements summarized in Section B on a separate sheet. Do not list on Line 21 any items included in the indirect expenses entered on Line 22 below.

a. Personnel: List the name, title, salary and estimated amount of time for each employee who will be assigned to this project. Note that fees, expenses, and estimated amount of time for outside consultants should be included in f., Contractual. The estimated performance time for outside consultants is not to exceed 50 percent of the total amount of the PRIME grant. Resumes of all personnel assigned to this effort must be included in the application.



b. Fringe Benefits: Leave blank if fringe benefits applicable to direct salaries and wages are treated as part of indirect costs in the indirect cost rate negotiation agreement. If your organization does not have a federally negotiated fringe benefit package, list each component included as a fringe benefit.

c. Travel: Reimbursement will be made based on incurred cost. Estimates should be based on knowledge of the geographical area of small business locations. Reimbursement to contractors or volunteers will not be made for time in travel to and from the client's location. Supporting data should include numbers of trips anticipated, costs per trip per person, destinations proposed, modes of transportation, and related subsistence expenses.

Line 22 Indirect Charges:

(Attach Budget Worksheets or reasonable facsimile if sufficient space is not provided.)

Enter the indirect cost rate, date, and agency that issued rate.

If an indirect cost rate is not established, itemize elements and costs of overhead and G&A (General and Administrative) expense categories relative to the performance of this project.

**XI. Assembly and Mailing Instructions**

1. Please indicate the following information on the front of your return envelope:

a. Your organization's name and return address including zip code in the upper left-hand corner of the return envelope.

b. Place the following notation in the lower left-hand corner of the sealed envelope.

THIS IS A SEALED OFFER. DO NOT OPEN. STAMP THE DATE AND TIME RECEIVED ON THE ENVELOPE. THIS PROPOSAL IS IN RESPONSE TO PROGRAM ANNOUNCEMENT NUMBER, _____ DUE _____, 2000, AT 4:00 P.M., EASTERN STANDARD TIME, AT THE U.S. SMALL BUSINESS ADMINISTRATION, OFFICE OF PROCUREMENT & GRANTS MANAGEMENT, 409 3RD STREET, SW, 5TH FLOOR, WASHINGTON, DC 20416, ATTENTION: MINA BOOKHARD.

2. *Application.* Please submit an original and 2 copies of the pages described below in items a and b. They are part of the Announcement and should be completed and submitted with an original and 2 copies of your proposal:

a. The Federal Assistance Application (Standard Form 424), including the cost and technical proposals, and related budgetary data.

b. Appendix B, Assurances and Certifications (with appropriate signature).

3. To facilitate review and processing of the proposals, your submission must be arranged, as follows, in two separately bound parts:

a. Part I: COST PROPOSAL—This part is to be comprised of the Application, the Budget Information, and the Assurances and Certifications. The material identified as Part I must be bound separately from the Technical Proposal. DO NOT include any technical information in Part I, The Cost Proposal.

b. Part II: TECHNICAL PROPOSAL—This part is comprised of the Program Narrative. The proposal should be completed with a table of contents and must be responsive to the evaluation criteria set forth on the pages 19–20. The Technical Proposal must be bound separately from Section I and must not exceed 45 pages. DO NOT include any cost information in Part II, The Technical Proposal.

4. Your application should be submitted in original and 2 copies to: U.S. Small Business Administration, Office of Procurement and Grants Management, 409 Third Street, SW, 5th Floor, Washington, DC 20416, ATTN: Mina Bookhard.

**XII. Late Submission, Revisions and Withdrawals**

1. Any Application received at the Office of Procurement and Grants Management after the exact time specified for receipt will not be considered unless it is received before award is made, AND:

a. It was sent by registered or certified U.S. mail not later than the fifth calendar day before the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th);

b. It was sent by U.S. mail or hand-carried (including delivery by a commercial carrier) if it is determined by the Government that the late receipt was due primarily to Government mishandling after receipt at the Government installation;

c. It was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5:00 p.m. at the place of mailing two working days prior to the date specified for receipt of proposals. The term "working days" excludes weekends and U.S. Federal holidays;

d. There is acceptable evidence to establish that it was received at OPGM and was under the Government's control prior to the time set for receipt of offers, and the Grants Management Officer determines that accepting the late offer would not unduly delay the grant review process; or

e. It is the only proposal received.

**XIII. Unsuccessful Applicants**

After a decision has been reached and if your proposal is not successful, you will receive written notification. This written notice will be SBA's *final* response to this program announcement. SBA *will not* provide debriefing sessions if your proposal was not successful.

**XIV. Cancellation**

SBA reserves the right to cancel this announcement in whole or in part at the Agency's discretion.

**XV. Glossary of Terms**

- *ADMINISTRATION:* Means the U.S. Small Business Administration (SBA);
- *ADMINISTRATOR:* Means the Administrator of the Small Business Administration;
- *CAPACITY BUILDING SERVICES:* means services provided to an organization or program that is, or is developing as, a microenterprise development organization or program, for the purpose of enhancing its ability to provide training and services to disadvantaged entrepreneurs;
- *COLLABORATIVE:* means two or more nonprofit entities that agree to act jointly as a qualified organization under this part;
- *DISADVANTAGED ENTREPRENEUR, or DISADVANTAGED MICROENTREPRENEUR:* means the owner, majority owner, or developer of a microenterprise who is also—

1. a low-income person
2. a very low-income person; or
3. an entrepreneur who lacks adequate access to capital or other resources essential for business success, or, is economically disadvantaged as determined by the Administrator.

- *EMERGING MICROENTERPRISE DEVELOPMENT ORGANIZATION OR PROGRAM:* means a microenterprise development organization or program which has a microenterprise capacity building services component, but has had such a component for less than 4 years at the date of its application for a PRIME grant.
- *GRANTEE:* means a recipient of a grant under the Act.
- *GROUP:* has the same meaning as "collaborative" defined above.

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• *INDIAN TRIBE:* means any Indian tribe, band, pueblo, nation, or other organized group or community, including any Alaska Native village or regional or village corporation, as defined in or established pursuant to the Alaska Native Claims Settlement Act, which is recognized as eligible for the special programs and services the United States provides to Indians because of their status as Indians.

• *INDIAN TRIBE JURISDICTION:* means Indian country, as defined in 18 U.S.C. 1151, and any other lands, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any tribe or individual subject to a restriction by the United States against alienation, and any land held by Alaska Native groups, regional corporations, and village corporations, as defined in or established under the Alaska Native Claims Settlement Act, public domain Indian allotments, and former Indian reservations in the State of Oklahoma.

• *INTERMEDIARY:* means a private, nonprofit entity that seeks to serve qualified microenterprise development organizations and programs;

• *LARGE MICROENTERPRISE DEVELOPMENT ORGANIZATION OR PROGRAM:* means a microenterprise development organization or program with 10 or more full time employees or equivalents, including its executive director, as of the date it files its application with SBA for a PRIME grant.

• *LOCAL COMMUNITY:* means an identifiable area and population constituting a political subdivision of a state.

• *LOW-INCOME PERSON:* means a person having an income, adjusted for family size, of not more than—

(1) for metropolitan areas, the greater of 80 percent of the median income; and

(2) for non-metropolitan areas, the greater of—

(a) 80 percent of the area median income; or

(b) 80 percent of the statewide non-metropolitan area median income;

• *MICROENTREPRENEUR:* means the owner or developer of a microenterprise;

• *MICROENTERPRISE:* means a sole proprietorship, partnership, limited liability corporation or corporation that has fewer than 5 employees, including the owner, and generally lacks access to conventional loans, equity, or other banking services.

• *MICROENTERPRISE DEVELOPMENT ORGANIZATION OR PROGRAM:* means a nonprofit entity, or a program administered by such an entity, including community development corporations or other nonprofit development organizations and social service organizations, that provides services to disadvantaged entrepreneurs.

• *QUALIFIED ORGANIZATION:* means an organization eligible for a PRIME grant that is—

1. A microenterprise development organization or program as defined above (or a group or collaborative thereof) that has demonstrated a record of delivering microenterprise services to disadvantaged microentrepreneurs;

2. An intermediary, as defined above;

3. A microenterprise development organization or program as defined above that is accountable to a local community, working with a State or local government or Indian tribe; or

4. An Indian tribe acting on its own, if the Indian tribe can certify that no private organization referred to in this definition exists within its jurisdiction.

• *SEVERE CONSTRAINTS ON AVAILABLE SOURCES OF MATCHING FUNDS:* means the documented inability of a qualified organization applying for a PRIME grant to raise matching funds or in-kind resources from non-Federal sources during the 2 years immediately prior to the date of its application because of a lack of or increased scarcity of monetary or in-kind resources from potential non-Federal sources.

• *SMALL MICROENTERPRISE DEVELOPMENT ORGANIZATION OR PROGRAM:* means a microenterprise development organization or program with less than 10 full time employees or equivalents, including its executive director, as of the date it files its application with SBA for a PRIME grant.

• *TRAINING AND TECHNICAL ASSISTANCE:* means services and support provided to disadvantaged entrepreneurs, such as assistance for the purpose of enhancing business planning, marketing, management, financial management skills, and assistance for the purpose of accessing financial services.

• *VERY LOW INCOME PERSON:* means having an income adjusted for family size of not more than 150 percent of the poverty line (as defined in § 673(2) of the Community Services Block Grant Act (42 U.S.C. § 9902(2), including any revision required by that section).

**XVI. Paperwork Reduction Act (44 U.S.C. Ch. 35)**

The information being requested in this Program Announcement is needed to evaluate applicants and ensure that awards are made in furtherance of the PRIME program's objectives. The information will be used to grant awards to provide training and technical assistance to disadvantaged microentrepreneurs. Applicants' responses to the data collection requirements are necessary for them to receive a benefit under the Prime Program. The information provided by applicants will be kept confidential to the extent required by law. Applicants are not required to respond to the Program Announcement unless it displays a currently valid OMB number. SBA estimates it will take applicants 80 hours to respond.

**XVII. Privacy Act (5 U.S.C. 552a)**

Any person can request to see or get copies of any personal information that SBA has in the requestor's file, when that file is retrieved by individual identifiers, such as name or social security number. Requests for information about another party may be denied unless SBA has the written permission of the individual to release the information to the requestor or unless the information is subject to disclosure under the Freedom of Information Act (FOIA).

**Note:** Any person concerned with the collection, use and disclosure of information, under the Privacy Act may contact the Chief, Freedom of Information/Privacy Act Office, U.S. Small Business Administration, Suite 5900, 409 Third Street, SW, Washington, DC 20416, for information about the Agency's procedures relating to the Privacy Act and FOIA.

[FR Doc. 00–25428 Filed 10–6–00; 8:45 am]

BILLING CODE 8025–01–P

Federal Register

Tuesday,
October 10, 2000

Part III

# Department of Energy

**10 CFR Part 830**

**Nuclear Safety Management; Interim Final Rule**

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**DEPARTMENT OF ENERGY**

**10 CFR Part 830**

**RIN 1901–AA34**

**Nuclear Safety Management**

**AGENCY:** Department of Energy.

**ACTION:** Interim final rule and opportunity for public comment.

**SUMMARY:** This interim final rule amends the Department of Energy's (DOE or the Department) nuclear safety regulations to (1) establish and maintain safety bases for hazard category 1, 2, and 3 nuclear facilities and perform work in accordance with safety bases, and (2) clarify that the quality assurance work process requirements apply to standards and controls adopted to meet regulatory or contract requirements that may affect nuclear safety. The requirements in this rule apply to contractor-operated and government-operated nuclear facilities.

**DATES:** This rule is effective December 11, 2000. You may send comments for consideration until November 9, 2000.

**ADDRESSES:** Comments may be addressed to: Richard Black, Director, Office of Nuclear and Facility Safety Policy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

You may also email an electronic copy of your comments to Mary.Haughey@eh.doe.gov.

You may examine written comments between 9:00 a.m. and 4:00 p.m. at the U.S. Department of Energy Freedom of Information Reading Room, Room 1E–190, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–3142.

**FOR FURTHER INFORMATION CONTACT:** Richard L. Black, (See address above), (301) 903–3465, richard.black@eh.doe.gov.

**SUPPLEMENTARY INFORMATION:**

## I. Introduction and Background

*A. What Is the Procedural History of this Rule?*

On December 9, 1991, we published Procedural Rules for DOE Nuclear Activities (56 FR 64290) and a Notice of Proposed Rulemaking and Public Hearing (1991 Notice, 56 FR 64316) to add Parts 820 and 830 to Title 10 of the Code of Federal Regulation (CFR). We proposed 10 CFR Part 820 (Part 820), Procedural Rules for DOE Nuclear Activities, to establish the procedural requirements for enforcement activities in accordance with the Price-Anderson Amendments Act of 1988 (PAAA or Price-Anderson). On August 17, 1993, we issued the Procedural Regulations for DOE Nuclear Activities in final form as 10 CFR Part 820 (58 FR 43680). Part 820 establishes the procedures for DOE enforcement actions and for issuing civil and criminal penalties for contractor, subcontractor, and supplier violations of DOE nuclear safety requirements.

Part 830 was proposed to establish nuclear safety management requirements for DOE nuclear facilities. We issued as final the sections of the Nuclear Safety Management rule (Part 830) related to the general provisions (§§ 830.1–830.7) and the quality assurance requirements (§ 830.120) on April 5, 1994 (1994 Notice, 59 FR 15843).

We issued a Notice of Limited Reopening of the Comment Period for the remaining topics to be addressed in Part 830 on August 31, 1995 (Reopening Notice, 60 FR 45381). The comment period was reopened to solicit and consider comments on a number of issues which had been raised since the 1991 Notice. The Reopening Notice provided an opportunity for contractors and other members of the public to comment on the effect of recent Department initiatives, such as safe management systems, the revision of the related nuclear safety Orders, and the identification of tailored Work Smart Standards (WSS) through the Necessary and Sufficient Closure Process, and on the scope, level of detail, and implementation of the proposed rules. We also requested comments on whether there should be a threshold for the application of nuclear safety management requirements and whether all nuclear safety requirements could be implemented in an integrated fashion through, for example, the use of a site-wide implementation program or system.

*B. Has the General Accounting Office (GAO) Made Recommendations About This Rule?*

On June 10, 1999, the GAO issued a report entitled DOE's Nuclear Safety Enforcement Program Should Be Strengthened. On June 29, 1999, Assistant Secretary of Environment, Safety and Health, Dr. David Michaels testified before the House Committee on Commerce that DOE endorsed the overall GAO conclusion that DOE's enforcement program has been effective and should be further strengthened. The GAO made three recommendations which are that DOE:

- Expeditiously complete the process of issuing enforceable rules covering important nuclear safety requirements,
- Ensure that field locations are properly following DOE's guidance in determining which facilities must comply with the nuclear safety rule on quality assurance, and
- Eliminate the administrative exemption from paying civil penalties for violations of nuclear safety rules that DOE granted to nonprofit educational institutions.

This rule completes DOE's rulemaking regarding nuclear safety management. This rule also reaffirms that the quality assurance requirements of this rule apply to contractors for all DOE nuclear facilities, including hazard category 1, 2, and 3 nuclear facilities and "below hazard category 3 nuclear facilities" (nuclear facilities whose hazards are less than hazard category 3) as defined in DOE Standard (STD) 1027, Change Notice 1, Hazard Categorization and Accident Analysis Techniques for Compliance with DOE Order 5480.23, Nuclear Safety Analysis Reports, September 1997, U.S. Department of Energy, Washington, D.C. 20585.

The PAAA specifically excludes seven nonprofit contractors and their subcontractors and suppliers from civil monetary penalties for violations of the nuclear safety requirements. For consistency, 10 CFR 820.20(d) extends that exclusion to all nonprofit educational institutions. Those exclusions are not within the scope of this rule and therefore are not discussed in this rulemaking.

*C. What Substantive Requirements Are Proposed in This Rule?*

In the 1991 Notice, we proposed that the following nine topics be included in the nuclear safety management rules:

- Quality assurance requirements,
- Safety analysis reports,
- Technical safety requirements,
- Unreviewed safety question (USQ),
- Conduct of operations,
- Maintenance management,
- Training and certification,
- Defect identification and reporting, and
- Occurrence reporting and processing.

The quality assurance requirements were published in 1994 and are revised in this Notice. The safety basis requirements being added address three of the topics from the 1991 Notice: safety analysis reports, technical safety requirements, and USQ. Three of the remaining five nuclear safety management topics from the 1991 Notice (conduct of operations, maintenance management, and training and certification) are expected to be addressed through the documented safety analysis required by the safety basis requirements and the work processes required by the quality assurance requirements. Specifically, the documented safety analysis will establish what training, maintenance, and conduct of operations are required for safety. Compliance with the safety basis and quality assurance provisions of this rule will ensure that these safety functions are established, maintained, and implemented.

Defect identification and occurrence reporting and processing will continue to be addressed through contract provisions that require contractors to use the DOE Occurrence Reporting and Processing System (ORPS). We intend to maintain DOE Order 232.1A, Occurrence Reporting and Processing of Operations Information, and DOE Manual 232.1–1A, Occurrence Reporting and Processing of Operations Information, so that they can be adopted through contract requirements. Consequently, we believe that the nine topics proposed in the 1991 Notice are adequately covered through the combination of this rule and contract requirements.

*D. Why Is DOE Issuing This Rule as an Interim Final Rule?*

We are issuing this rule as an interim final rule to give the public further opportunity to comment. The public has until November 9, 2000 to submit comments on the rule. This regulation then becomes effective December 11, 2000. If DOE decides to amend this rule based on comments received, we will issue a **Federal Register** Notice to state those changes; otherwise this rule will become effective, as written, on December 11, 2000. Pending the effective date of this new rule, the quality assurance provisions of the current rule in 10 CFR 830.120 remain in effect and fully enforceable.

## II. Summary of Changes

The changes to Part 830 are primarily to

- Convert the rule to "plain language",
- Clarify the scope of the rule,
- Add provisions requiring the integration of quality assurance with the Safety Management System (SMS) [Part 830, Subpart A],
- Clarify that the work process provisions of quality assurance apply to standards and controls adopted to meet regulatory and contractual requirements relating to nuclear safety [Part 830, Subpart A], and
- Add provisions for nuclear facility safety bases [Part 830, Subpart B].



**Plain Language**

*A. Why Is DOE Converting the Rule to Plain Language?*

In 1998, President Clinton signed a presidential memo requiring agencies to use plain language principles for most of their written communications. While this memo does not require us to use plain language for regulations that were proposed before January 1, 1999, we chose to revise it in the plain language style because we were revising a substantial portion of Part 830. Plain language requirements vary depending upon the document, but the intent is to make the government language easier to understand. We are reformatting the rule to use

- Common, everyday words, except for necessary technical terms;
- Active voice; and
- Short sentences.

The word "shall" is being replaced with the word "must" to indicate an obligation. The word "may" is used for permission.

Because we are revising the text of the rule to the plain language format, we have rewritten the quality assurance requirements in this rule; however there are few significant changes. The significant changes are described in this summary.

**General Sections**

*B. What Changes Are Made to § 830.1, Scope?*

Section 830.1, Scope, is being revised to state that the rule governs the conduct of DOE contractors, DOE personnel, and other persons conducting activities (including providing items and services) that affect, or may affect, the safety of DOE nuclear facilities. Previously, Part 830 only applied to activities conducted at a DOE nuclear facility. This change will ensure that Part 830 requirements are applicable to all activities performed for or on behalf of DOE that have the potential to affect nuclear safety. Some activities subject to Part 830 requirements may occur outside a nuclear facility and even may be conducted off a DOE site. The nuclear safety management requirements may apply to these activities. If a supplier furnishes safety items or services that either are, or will be, used at a nuclear facility, then that supplier falls within the scope of the rule provisions. Similarly, contractor activities performed in support of facility operations, such as training of operators or maintenance of safety equipment, fall under the scope of the rule to the extent the activities relate to nuclear safety. Furthermore, a nonreactor nuclear facility is broadly defined to include not only buildings, but also activities and operations involving radioactive and/or fissionable materials in such form or quantity that a nuclear hazard or a nuclear explosive hazard potentially exists to workers, the public, or the environment.

We also are revising Paragraph 830.1 to add "DOE personnel." This change is consistent with the change to paragraph 830.4(d).

*C. What Changes Are Made to the Exclusions in § 830.2?*

The exclusion for the Nuclear Explosives and Weapons Safety Program (weapons exclusion) is being deleted. Three new exclusions are being added relating to:

- Transportation;
- Facilities and activities conducted under the Nuclear Waste Policy Act of 1982, as amended (NWPA); and
- Activities related to the launch approval and actual launch of nuclear energy systems into space.

In addition, the reference to the Public Law authorizing the Director Naval Nuclear Propulsion has been updated to Public Law 106–65. Public Law 106–65 also established the National Nuclear Security Administration in DOE.

Deletion

*Nuclear Explosives and Weapons Safety Program.* When we proposed the Nuclear Safety Management rule (Part 830) in the 1991 Notice and the Reopening Notice, we were concerned that conflicts could arise between nuclear safety requirements and the nuclear explosives weapons safety requirements. Today we are including specific methods by which nuclear explosive operations and their associated activities may meet Subpart B to Part 830 that are consistent with nuclear explosives safety. Therefore, we no longer need to exclude the Nuclear Explosives and Weapons Safety program, and we are deleting that exclusion. This change makes clear that this rule applies to nuclear explosives facilities and their associated nuclear explosive operations and activities.

Additions

1. *Transportation.* All transportation activities were excluded in the definition of nonreactor nuclear facility published in the 1994 Notice. The definition of nonreactor nuclear facility that we are publishing today does not exclude transportation activities. Instead, we are adding an exclusion for certain transportation activities to

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§ 830.2. The exclusion for transportation activities in paragraph 830.2(d) is narrower than the exclusion for transportation activities previously contained in the definition for nonreactor nuclear facility. It only excludes transportation activities that are regulated by the Department of Transportation (DOT). We are excluding transportation activities that are regulated by DOT to avoid duplicate regulation by DOE and DOT. Transportation issues are discussed in greater detail in the discussion of responses to public comments.

2. *Activities conducted under the NWPA.* These activities are designated for licensing by the Nuclear Regulatory Commission (NRC), and the design and construction of these activities must meet NRC requirements in order for them to receive an NRC license. Facilities that are licensed by the NRC are already excluded from this Part following issuance of a license to operate by the NRC. This new exclusion will cover activities under the NWPA for the period of time preceding licensing by the NRC. An example of an activity conducted under NWPA is the Yucca Mountain Project. Activities conducted under NWPA should implement and comply with NRC regulations in anticipation of NRC licensing, not DOE nuclear safety regulations. Therefore, they are excluded from this rule.

3. *Activities related to the launch approval and actual launch of nuclear energy systems.* The new exclusion recognizes that some nuclear energy systems are developed and built by DOE contractors for missions to be launched into space. These missions are generally sponsored by the National Aeronautics and Space Administration. Safety analyses activities for such systems are conducted consistent with established executive policy and applicable DOE directives for systems and equipment developed for space launches, and the results of that analysis will be considered during launch decisions. Because these analyses are performed for other government agencies and approved by the Office of the President, they do not need to be governed by the requirements in Part 830. Manufacturing, assembly, and testing of these systems by DOE contractors are not excluded from this rule.

*D. What Changes Are Made to § 830.3, Definitions?*

We are adding, revising, and deleting a number of definitions in Part 830 to support new requirements or the formatting change to plain language.

• *Added Definitions.* We are adding the following definitions for use in Part 830: bases appendix; critical assembly; criticality; design features; documented safety analysis; environmental restoration activities; existing DOE nuclear facility; hazard controls; limiting conditions for operation; limiting control settings; low-level residual fixed radioactivity; major modification; new DOE nuclear facility; operating limits; preliminary documented safety analysis; safety basis; safety class structures, systems, and components; safety evaluation report; safety limits; Safety Management System; safety management program; safety significant structures, systems, and components; safety structures, systems, and components; surveillance requirements; technical safety requirements; Unreviewed Safety Question; Unreviewed Safety Question process; and use and application provisions. Additional discussion on these added definitions is provided in the following paragraphs.

a. *Basis appendix, design features, limiting conditions for operation, limiting control settings, operating limits, safety limits, surveillance requirements, and use and application provisions.* These are all terms that are used in Subpart B of Part 830 to describe the DOE requirements for hazard controls in the form of technical safety requirements. These terms are also currently used in DOE Order 5480.22, Technical Safety Requirements, and are intended to be consistent with that order.

b. *Critical assembly.* The term critical assembly is used in this rule to define the term reactor. Critical assembly was formerly defined within the definition for reactor. It is listed as a separate definition to simplify the definition of reactor.

c. *Criticality.* Criticality is the condition in which a nuclear fission chain reaction becomes self-sustaining. A contractor responsible for a nuclear facility with fissionable material in a form and amount sufficient to pose a potential for criticality is required to define their criticality safety program in their documented safety analysis.

d. *Documented safety analysis.* A documented safety analysis is a report that documents the adequacy of the analysis of a facility or activity to ensure that it can be constructed, operated, performed, maintained, shut down, and decommissioned safely and in compliance with applicable requirements. Depending upon the type of facility and the method approved by DOE to prepare a documented safety analysis for the facility, the documented safety analysis might be in the form of a safety analysis report, a Basis for Interim Operation or BIO (prepared in accordance with DOE–STD–3011–94, Guidance for Preparation of DOE 5480.22 (TSR) and DOE 5480.23 (SAR) Implementation Plans, November 1994 or its successor document), a safety and health plan or HASP (as defined in 29 CFR 1910.120 or 1926.65), or a combination of a safety analysis report and a hazard analysis report (HAR). This term is used in the new safety basis requirements.

e. *Environmental restoration activities.* Environmental restoration activities are the processes by which contaminated sites and facilities are identified and characterized. It is also the process by which existing contamination is contained or removed. These activities include environmental remediation of contaminated soils. Environmental restoration activities are considered to be nuclear facilities if the activities involve radioactive and/or fissionable materials in such form and quantities that a nuclear hazard or a nuclear explosive hazard potentially exists. This term is used in the new safety basis requirements.

f. *Existing DOE nuclear facility and new DOE nuclear facility.* This rule imposes different safety basis requirements in Subpart B for new facilities versus existing facilities. The first difference is related to the development of a preliminary documented safety analysis for new nuclear facilities, which is not required for existing nuclear facilities. The second difference is with respect to schedules as specified in the rule. We consider an existing DOE nuclear facility to be a DOE nuclear facility that is or has been in operation prior to April 9, 2001. New nuclear facilities are facilities, activities and operations that begin operations on or after April 9, 2000.

For activities, such as decontamination or environmental restoration, for which the term "operate" is less clear, DOE intends the term to mean from the date a new decontamination or environmental restoration activity begins.

We consider new DOE nuclear facilities to include (1) construction of a new DOE facility which is intended to be used as a nuclear facility; (2) use of an existing non-nuclear DOE facility to possess, use or store radioactive or fissionable material in such form and quantity that a nuclear hazard potentially exists; and (3) initial possession, use, or storage of radioactive or fissionable material in such form and quantity that a nuclear hazard potentially exists. We also consider the change from operation of a DOE nuclear facility to deactivation, decontamination, decommissioning, or environmental restoration to be a new DOE nuclear activity subject to the schedules for a new nuclear facility.

Many DOE nuclear facilities, particularly those that perform nuclear explosives operations, are designed to accommodate changing missions. These facilities and activities require both a generic form of documented safety analysis and an operation- or activity-specific form of documented safety analysis. One form of operation- or activity-specific documented safety analysis is defined in Appendix A, Table 3 as a specific nuclear explosive operation. We do not consider a specific nuclear explosive operation to be a "new DOE nuclear facility."

g. *Hazard controls.* Hazard controls means measures to eliminate, limit, or mitigate hazards to workers, the public, or the environment including (1) physical, design, structural and engineering features; (2) safety structures, systems and components; (3) safety management programs; (4) technical safety requirements; and (5) other controls necessary to provide adequate protection from hazards. Although the hazard controls are required to address nonradiological hazards as well as radiological hazards, we will only pursue PAAA enforcement actions for noncompliances that have nuclear safety significance.

h. *Low-level residual fixed radioactivity.* Low-level residual fixed radioactivity is the radioactivity remaining following reasonable efforts to remove radioactive systems, components, and stored materials and is composed of:

• Surface contamination that remains fixed following chemical cleaning or some similar process;

• A component of surface contamination that can be picked up by smears; or

• Activated materials within structures.

Although the definition permits some smearable surface contamination (i.e., removable contamination), the smearable radioactivity must be less than the values defined for removable contamination by 10 CFR Part 835, Appendix D, Surface Contamination Values. In addition, the results of the hazard analysis must show that no credible accident scenario or work practices would release the fixed or activated components of remaining radioactivity at levels that would prudently require the use of active safety systems, structures, or components to prevent or mitigate a release of radioactive materials.

This definition is generally consistent with the definition for this term in DOE–STD–1120–98, Integration of Environment, Safety and Health into Facility Disposition Activities, May 1998.

i. *Major modification.* A major modification means a modification to a DOE nuclear facility that is completed on or after April 9, 2001 and which substantially changes the existing safety basis for the facility. Because these changes have a significant effect on the safety basis of a nuclear facility, we expect contractors to develop a preliminary documented safety analysis that addresses these modifications and their impacts on the safety of the nuclear facility so DOE may review the proposed changes before they are implemented. Before operating the nuclear facility in the modified configuration or conducting modified operations, contractors must obtain approval of the upgraded safety basis from DOE and make any changes to the safety basis directed by DOE.

We treat major modifications to hazard category 1, 2, and 3 DOE nuclear facilities, such as the replacement of a major safety system, equivalent to the design, construction, and initial operation of a new facility. Because contractors for major modifications must revise their safety basis documents to reflect the major modifications and obtain DOE approval of the revised safety bases prior to making the modification, they do not need to assess major modifications under the USQ process of Subpart B.

j. *Preliminary documented safety analysis.* The preliminary documented safety analysis is the documentation prepared in connection with the design and construction of a new hazard category 1, 2, or 3 DOE nuclear facility or a major modification to a hazard category 1, 2, or 3 DOE nuclear facility. It is part of the safety basis requirements, and it serves as the principal safety basis for the DOE decision to authorize procurement, construction, or preoperational testing.

k. *Safety basis.* A safety basis for a DOE nuclear facility is documented in the documented safety analysis and the hazard controls for the nuclear facility. As changes are made or potential inadequacies of the safety analysis are discovered, contractors must perform USQ determinations. The results of the USQ determinations and any associated safety evaluations are part of the safety basis for the facility.

l. *Safety class structures, systems, and components.* Safety class structures, systems, and components means structures, systems, or components, including portions of process systems, whose preventive or mitigative function is necessary to limit radioactive hazardous material exposure to the public, as identified by the safety analysis.

m. *Safety evaluation report or SER.* The SER is the documented safety evaluation performed by DOE on the safety basis documents for a facility that are developed by the contractor. It includes the reasons for approving the safety basis and any conditions for approval. Contractors are required by the safety basis requirements to meet any conditions stated in the SER.

n. *Safety Management System (SMS).* Safety Management System means an integrated safety management system established consistent with the Department of Energy Acquisition Regulation (DEAR) in 48 CFR 970.5204–2, Integration of Environment, Safety, and Health into Work Planning and Execution, or any successor regulation. Additional information on SMS may be found in DOE Policy 450.4, Safety Management System Policy; DOE Guide 450.4–1A, Integrated Safety Management System Guide.

o. *Safety management program.* Safety management programs are programs designed to ensure a facility is operated in a manner that adequately protects workers, the public, and the environment. Contractors may have already developed safety management programs to comply with contract requirements for Safety Management Systems. Subpart B of the rule requires contractors to define the characteristics of the safety management programs for the facility that are necessary for safe operations, including, where applicable, quality assurance, procedures, maintenance, personnel training, conduct of operations, emergency preparedness, fire protection, waste management, and radiation protection. They may also include criticality safety programs for nonreactor nuclear facilities with fissionable material in a form or amount sufficient to pose a potential for criticality. Rather than repeating or reinventing these programs for the documented safety analysis, contractors may incorporate existing programs by reference into the documented safety analysis provided these programs are sufficient to provide adequate protection. Contractors may need to include a copy of documents that are incorporated by reference with the documented safety analysis when it

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is submitted to DOE for review and approval.

p. *Safety significant structures, systems, and components.* Safety significant structures, systems, and components means systems, structures, and components which are not designated as safety class systems, structures, and components, but whose preventive or mitigative function is a major contributor to defense in depth (*i.e.*, prevention of uncontrolled material release) and/or worker safety as determined from hazard analyses.

q. *Safety structures, systems, and components.* Safety structures, systems, and components are the combination of safety class systems, structures, and components and safety significant systems, structures, and components.

r. *Technical safety requirements.* Technical safety requirements are the limits, controls and related requirements necessary for the safe operation of a nuclear facility that are appropriate for the work and the hazards. Technical safety requirements include safety limits, operating limits, surveillance requirements, administrative and management controls, use and application provisions, and design features, as well as a bases appendix. These requirements are also consistent with the criteria for technical safety requirements in DOE Order 5480.22 which generally have been implemented by contractors for DOE hazard category 1, 2, and 3 nuclear facilities.

s. *Unreviewed Safety Question (USQ).* A situation involves a USQ if (1) the probability of the occurrence or the consequences of an accident or the malfunction of equipment important to safety previously evaluated in the documented safety analysis could be increased; (2) the possibility of an accident or malfunction of a different type than any evaluated previously in the documented safety analysis could be created; (3) a margin of safety could be reduced; or (4) the documented safety analysis may not be bounding or may be otherwise inadequate. If a situation involves a USQ, the contractor must use the USQ process to determine if the change or the potential inadequacy of the documented safety analysis needs to be submitted to DOE for review and approval.

t. *Unreviewed Safety Question Process.* The USQ process permits a contractor to make physical and procedural changes to a nuclear facility and to conduct tests and experiments without prior DOE approval, provided these changes do not explicitly or implicitly affect the safety basis of the nuclear facility. The USQ process provides a contractor with the flexibility needed to conduct day-to-day operations by requiring that only those changes and tests with a potential to impact the safety basis (and therefore the safety of the nuclear facility) be brought to the attention of DOE. This allows DOE to focus its review on those changes significant to safety. The USQ process is an important tool for keeping the safety basis current by ensuring changes are appropriately reviewed and incorporated into the safety basis. The USQ process provides a method for contractors to determine if a USQ is involved and the actions to take if the situation involves a USQ. DOE approval is required before a change is made that affects the safety basis of a DOE nuclear facility.

2. Revised Definitions

The following terms are continued in this Part, but their definitions are revised:

a. *Document.* The second sentence of this definition regarding when a document is a record is being deleted as unnecessary to the definition. This change does not affect the meaning of the terms document and record.

b. *Graded Approach.* The definition of graded approach is being revised to include an additional condition for grading: "the relative importance of radiological and nonradiological hazards."

c. *Hazard.* Minor editorial changes were made that do not affect the meaning.

d. *Nonreactor nuclear facility.* We are making the following changes to the definition for nonreactor nuclear facility.

i. *Facilities.* We are adding the word "facilities" in the definition so that it reads "Nonreactor facilities means those facilities, operations and activities * * *" to make it clear that facilities are included in the definition. The word "facility" as it is used in this term is broadly defined to include buildings, operations, and activities and, in some cases, the surrounding area.

ii. *Nuclear explosive hazard.* We are adding the words "* * * or a nuclear explosive hazard * * *" to clarify that nuclear explosive facilities, and the nuclear explosive operations conducted therein, are included in the definition of nonreactor nuclear facility.

iii. *Transportation exclusion.* We are deleting the exclusion of transportation activities from the definition, but we are continuing to exclude transportation activities regulated by DOT from the scope of Part 830 through an added exclusion in § 830.2. This narrows the exclusion for transportation activities and is discussed in greater detail in the response to public comments.

iv. *Examples.* The definition of nonreactor nuclear facility previously listed six examples of facilities and activities to be included in the definition. Some persons took these examples to mean that nonreactor nuclear facilities were limited to the specific examples stated. We are deleting the six examples because we do not want to imply that this is a definitive list. Except for the change relating to services to nuclear facilities, which is discussed in the next paragraph, the deletion of the six examples is not intended to change the scope of the definition of nonreactor nuclear facilities.

v. *Services.* The previously listed examples of nonreactor nuclear facilities included design, manufacturing, and assembly. While we continue to consider design, manufacturing, and assembly to be important to the safe operation of a nuclear facility, under the revised definition for a nonreactor nuclear facility, unless the facility where these activities occur also involves, or will involve, radioactive and/or fissionable materials in such form and quantity that a nuclear hazard potentially exists, it is no longer considered to be a nuclear facility. Rather, these activities are considered to be services. Furthermore, we have clarified the requirements in the rule relating to services which are provided to nuclear facilities.

The change relating to services provided to a nuclear facility will affect the application of the rule to facilities which provide services to nuclear facilities, but do not use, possess, or store radioactive or fissionable materials. Under this change, contractors for facilities which provide items and services that may affect nuclear safety, but do not use, store, or possess radioactive or fissionable materials (now or at a later date), must perform their activities in accordance with the quality assurance criteria of Subpart A of this rule, but are not required by this rule to submit a Quality Assurance Program (QAP) to DOE for approval. They may, however, have separate contract requirements for a QAP that they will need to meet. In addition, facilities that provide services or items, but do not expect to use, store, or possess radioactive or fissionable material now or in the future, are not required to meet the safety basis requirements of Subpart B. This change is consistent with the changes to the scope (§ 830.1) relating to items and services that may affect nuclear safety.



vi. *Incidental Use.* We are continuing to exclude incidental use from the definition of nonreactor nuclear facility, however we are making a minor revision to one of the examples. We are adding the word "radiation" to read "Incidental use and generation of radioactive materials or radiation including . . ." This change is to acknowledge that the use of X-ray machines and electronic microscopes does not involve radioactive materials but does produce radiation. This exclusion is for activities that involve such insignificant amounts of radioactive materials or radiation (*e.g.*, X-ray machines, check and calibration sources, electron microscopes, use of radioactive sources in research, experimental, and analytical laboratory activities) that the amounts do not warrant consideration as a nuclear facility and their use does not need to be regulated by this rule. However, some of the uses would still be subject to the radiation protection requirements in 10 CFR Part 835 (Part 835), Occupational Radiation Protection. Other applications of this rule to incidental uses will be handled by DOE on a case-by-case basis.

e. *Nuclear facility.* We are revising the definition of nuclear facility to make it clear that nuclear facilities include any related area, structure, facility, or activity to the extent necessary to ensure proper implementation of the requirements established by Part 830. The nuclear facility may be on or off a DOE site. The facility may be wholly or partially owned or controlled by DOE. This change was made, in part, to address concerns stated in the GAO report that the term nuclear facility was being interpreted too narrowly for purposes of applying the Part 830 requirements.

Nuclear facilities include facilities, operations, and activities whose intended use will require them to possess, use, or form radioactive or fissionable materials. Many activities performed at or for facilities where fissionable material will be stored, used, or formed take place before the introduction of these materials at the facility. Consequently, nuclear facilities also include facilities that will use, store, or possess radioactive or fissionable material in a form or quantity that a nuclear hazard potentially exists to workers or the public.

Nuclear facilities include both reactors and nonreactor nuclear facilities. A nonreactor nuclear facility is broadly defined to include facilities, activities, and operations involving the possession, use, or formation of radioactive or fissionable materials that are conducted by or on behalf of DOE regardless of whether they are conducted onsite or offsite. The term "DOE nuclear facility" and "nuclear facility" are used interchangeably in the rule because those terms relate to those activities conducted by or on behalf of DOE that affect or may affect the safety of DOE nuclear facilities. The use of the term "DOE nuclear facility" does not necessarily require the facility to be owned by DOE.

f. *Quality Assurance Program or QAP.* We are making a minor change to the definition of QAP to add the words "or management system" to clarify that the QAP is a management system.

g. *Reactor.* We are changing the definition of reactor to move the definition of critical assembly to a separate definition. The definition of reactor is also being revised to read more clearly. These changes do not affect the meaning of the definition.

h. *Service.* We are adding the following terms to the definition of service to make clear that these are services: manufacturing, assembly, decontamination, environmental restoration, waste management, and laboratory sample analyses.

3. Deleted Definitions

We are deleting the definitions for contractor, Department or DOE, and person from this rule and incorporating them by reference to the Atomic Energy Act (Act) and 10 CFR Part 820. Paragraph 830.3(b) is revised to read "(b) Terms defined in the Act or in 10 CFR Part 820 and not defined in this section of the rule are used consistent with the meanings given in the Act or in 10 CFR Part 820." We are deleting the definition for Implementation Plan because the term is no longer used in Part 830.

*E. What Changes are Made to § 830.4, General Requirements?*

1. Changes to Paragraph 830.4(a)

We are deleting the language in paragraph 830.4(a) that referred to plans, programs, schedules, or other processes. This language is redundant to the requirement in 10 CFR 820.20(b)(3) and, therefore, is not needed.

2. Changes to Paragraph 830.4(b)

The contractor responsible for a nuclear facility is also expected to ensure compliance with the rule. We have simplified the language but there is no substantive change.

The "contractor responsible for a nuclear facility" is the "prime contractor" for the facility. The prime contractor is the contractor whose work for the facility (including operations and activities) is contracted directly with DOE. The prime contractors include management and operating (M&O) contractors, management and integration (M&I) contractors, and environmental restoration contractors. DOE expects its prime contractors to implement mechanisms to oversee and ensure that subcontractors and suppliers comply with the nuclear safety management requirements. Furthermore, prime contractors are expected to incorporate these expectations and the associated programs in contracts and other procurement documents with their subcontractors and suppliers. This requirement does not relieve subcontractors and suppliers from their responsibilities in accordance with this rule.

3. Changes to Paragraph 830.4(c)

We are rewriting paragraph 830.4(c) to state that the requirements of Part 830 must be implemented in a manner that provides reasonable assurance of adequate protection. This is consistent with DOE's statutory mandate under the Act. Paragraph 830.4(c) also requires contractors to implement the requirements in a manner that takes into account the work to be performed and the associated hazards. This is consistent with the principles of integrated safety management and the concept of grading.

4. Addition of Paragraph 830.4(d)

We are adding a new paragraph 830.4(d) to state where there is no contractor for a DOE facility, DOE must ensure implementation and compliance with the requirements of this Part. This amendment makes the requirements of this rule applicable to government-owned, government-operated (GOGOs) DOE nuclear facilities, as well as the nuclear facilities that are operated by contractors. Many of the requirements in this rule are addressed to contractors. Paragraph 830.4(d) makes clear that where DOE, rather than a contractor, is responsible for operating a nuclear facility, DOE must ensure that the activities and operations for that facility meet the requirements of this rule.

*F. What Changes are Being Made to § 830.7, Graded Approach?*

This section is being changed to state that, where appropriate, contractors must use a graded approach to implement the requirements of Part 830 and they must document the basis of the graded approach used. Contractors are already required to implement the

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quality assurance requirements using a graded approach. The use of the graded approach is not appropriate in implementing the USQ process or in implementing technical safety requirements that establish clearly defined limits or actions.

**Subpart A**

**Quality Assurance Requirements**

*G. What Changes are Being Made to the Scope and the Format of the Quality Assurance Requirements in Subpart A?*

First, we are changing the numbering of the quality assurance requirements. Subpart A is being renamed to "Quality Assurance Requirements" and the requirements are contained in §§ 830.120, 830.121, and 830.122. Second, we are changing the format of the quality assurance requirements to read in plain language.

We are making conforming changes to the quality assurance requirements to agree with the changes made to the scope of Part 830 (§ 830.1) and to the definitions of contractor, nuclear facility, and services. We have revised the scope of the quality assurance rule to require contractors (including those responsible for supplying items and services) that conduct activities that affect, or may affect, the safety of a nuclear facility to conduct work in accordance with the quality assurance criteria of § 830.122. This makes clear that quality assurance requirements apply not only to prime contractors responsible for a nuclear facility, but also to subcontractors, suppliers, and other contractors, including those who provide items (such as pumps, valves, waste containers, piping, and electrical or mechanical devices) or services (such as design, engineering, maintenance, and welding) that affect, or could affect, nuclear safety. The quality of procured items such as fire suppression equipment may, or may not, affect nuclear safety depending upon the application of the equipment. DOE expects the contractor responsible for the nuclear facility (typically the prime contractor) to determine how to flow the quality assurance requirements down to subcontractors and suppliers, as well as the method for ensuring that procured items and services meet requirements and perform as expected. The contractor must also determine if the subcontractor or supplier is capable of providing items and services that meet the requirements including the quality assurance criteria. We have added a requirement for the QAP to describe how the contractor responsible for a nuclear facility ensures that subcontractors and suppliers satisfy the quality assurance criteria.

The scope of § 830.120 makes clear that the quality assurance criteria may apply to activities outside a nuclear facility, and even those conducted off a DOE site, if they can affect the safe operation of a DOE nuclear facility.

*H. Are Subcontractors and Suppliers Expected To Submit a QAP to DOE for Approval?*

As stated in the preamble to the 1994 Notice, subcontractors and suppliers are not expected to submit QAPs to DOE for review and approval. The requirement in the rule for contractors to submit QAPs to DOE for approval applies only to the contractors responsible for the nuclear facility (the prime contractors). However, while only contractors responsible for the nuclear facility are required by this rule to submit QAPs to DOE for approval, prime contractors are expected to use their contracts and other arrangements with subcontractors and suppliers to define what procured items or services are subject to quality assurance requirements (including QAPs) and how their subcontractors and suppliers are to comply with those requirements. Criterion 7 in the Quality Assurance Requirements requires contractors to (a) procure items and services that meet established requirements and perform as specified, (b) evaluate and select prospective suppliers on the basis of specified criteria, and (c) establish and implement processes to ensure that approved suppliers continue to provide acceptable items and services. This criterion is meant to ensure that safety components do not fail while in service and that the fabrication or assembly of safety-related components and systems meet design specifications.

To the extent a contract or a related document states that a subcontractor or supplier must comply with a QAP, the subcontractor or supplier must meet that requirement. Any person, including subcontractors or suppliers subject to the requirements in a QAP, may be subject to enforcement actions under 10 CFR Part 820 if those requirements are violated.

*I. What Changes Are Being Made to the Requirements for the QAP?*

We are:

- Adding a requirement for contractors to identify and document the voluntary consensus standards they relied upon to develop and implement their QAP,
- Adding a requirement for contractors with an SMS to integrate the SMS with the QAP,
- Clarifying that the work process provision is to be read broadly to include all standards and controls adopted to meet regulatory and contract requirements, and
- Making a number of format and plain language changes with no substantive effect.

*J. Why Are We Requiring Contractors To Identify the Voluntary Consensus Standards They Use?*

Most contractors use standards (e.g., American Society of Mechanical Engineers' NQA–1 standard) to develop their QAPs, but they have not always documented their use of these standards in the QAP. We are adding this requirement to ensure we clearly understand what voluntary consensus standards contractors are using to develop their QAPs. This is consistent with the requirement in the National Technology Transfer and Advancement Act of 1995 (Public Law 104–113) that government agencies adopt or use voluntary consensus standards when they are applicable and appropriate.

*K. Why Is DOE Adding a Requirement for Contractors To Integrate Their QAP With Their SMS?*

The Department expects that quality assurance criteria and practices will be embedded in all work processes, not just those that relate to nuclear safety. Therefore, the actions to implement the quality assurance criteria should be integrated with and consistent with the commitments in the SMS. This helps ensure that quality assurance criteria and practices will apply to all work processes that are implemented for safety management. For this reason, we are adding § 830.121(c)(2) to require contractors to integrate their QAP with their SMS. In addition, we wanted to provide a means for contractors to combine the two documents if they wished to reduce the paperwork burden so we have included an option that permits contractors to combine the QAP and the SMS into a single document. The two ways a contractor can document the integration of its QAP and its SMS are:

- The contractor may choose to retain its QAP and its SMS description as separate documents. If the contractor does this, its QAP must describe how the contractor applied the quality assurance criteria of § 830.122 to its integrated SMS; or
- The contractor may choose to integrate its QAP into its SMS description and not have a separate QAP. If the contractor does this, its SMS description must describe how the quality assurance criteria of § 830.122 are met.

If the contractor chooses to maintain a separate QAP and the DOE-approved QAP does not address SMS integration and standards identification, the contractor will need to revise its QAP. The contractor may wait and submit its revised QAP to meet the SMS integration requirement at the time of its next annual update of its QAP. We recently revised our Quality Assurance Management System Guide (DOE G 414.1–2) for use with 10 CFR 830.120. The guide provides information on how quality assurance integrates with and supports the Department's SMS policy.

Use of this guide will facilitate implementation of § 830.121(c)(2) and the effective integration of the quality and safety management systems.

This change is consistent with provisions of 48 CFR 970.5204–2 that state contractors are to provide SMS descriptions. If the contractor does not have a DOE-approved SMS, it is not required to integrate its QAP with its SMS.

*L. Why Is DOE Deleting the Requirement for a Quality Assurance Implementation Plan?*

Implementation plans were an option made available for contractors who needed a transition period for bringing existing facilities and activities into compliance with the quality assurance requirements. The regulatory requirements for a QAP were issued over six years ago and there is no longer any need for a transition period.

*M. Why Is DOE Clarifying the Work Process Provision?*

We are revising criterion 5 on work processes to make clear that work must be performed in accordance with standards and hazard controls adopted to meet contract or regulatory requirements. This clarification provides added emphasis that contractor work processes are very broadly interpreted under the quality assurance requirements and includes work-related standards, instructions, procedures, administrative controls, technical safety requirements, and other hazards controls.

**Subpart B**

*N. What Changes Are Being Made to Subpart B?*

We are adding §§ 830.201 through 830.207 to Subpart B of Part 830 to include requirements for contractors to develop safety basis documents for DOE hazard category 1, 2, and 3 nuclear facilities and comply with those documents. These changes are discussed in greater detail in the Discussion of Safety Basis Requirements in Subpart B.

**Subparts C and D**

*O. Is DOE Continuing to Reserve Subparts C and D?*

Subparts C and D, which were reserved for future rulemaking are no longer needed and, consequently, are being deleted.

**III. Discussion of Safety Basis Requirements in Subpart B**

**Section 830.200, Scope**

*A. Do the Safety Basis Requirements Apply to all DOE Nuclear Facilities?*

No. The safety basis requirements of this Part only apply to DOE hazard category 1, 2, and 3 nuclear facilities. Unlike the general and quality assurance requirements of this rule, the safety basis requirements do not apply to contractors for "below hazard category 3" nuclear facilities. DOE expects its contractors to retain documentation for each of its nuclear facilities to support the determination that the nuclear facility is either a hazard category 1, 2, or 3 nuclear facility or below category 3.

In summary, using DOE–STD–1027, a hazard category 1 nuclear facility has the potential for significant offsite consequences. A hazard category 2 nuclear facility has the potential for significant on-site consequences beyond localized consequences. A hazard category 3 nuclear facility has the potential for only local significant consequences. A below hazard category 3 facility has the potential for consequences less than the other categories. Below category 3 facilities are sometimes referred to as "radiological facilities." While the safety basis provisions in Subpart B do not apply to below hazard category 3 nuclear facilities, the QA requirements in Subpart A and the occupational radiation protection requirements in 10 CFR Part 835 do apply.

**Section 830.201, Performance of Work**

*B. What Are the "Performance of Work" Requirements for a Safety Basis?*

Contractors must perform work in accordance with the DOE-approved safety basis for a DOE hazard category 1, 2, or 3 nuclear facility. This includes prime contractors to DOE, subcontractors, and suppliers. The definition of "work" as applied to this rule is very broad and encompassing. It includes any defined task or activity that may affect a safety basis for a facility. It includes such diverse activities as operations, research and development, environmental restoration and remediation, maintenance and repair, design and construction, software development and use, inspection, data collection, administration, and analysis.

**Section 830.202, Safety Basis**

*C. What Are the Requirements for Establishing a Safety Basis for a DOE Category 1, 2, or 3 Nuclear Facility?*

The proper analysis of facility, operations, and activity hazards, the development of appropriate hazard controls for the work to be conducted, and the performance of work consistent with the approved safety basis are necessary for work at nuclear facilities to be performed safely. The safety basis requirements in this rule are derived from the proposal for requirements in the 1991 Notice and in the Reopening Notice under § 830.110, Safety Analysis Report, § 830.112, Unreviewed Safety Question Requirements, and § 830.310, Technical Safety Requirements, and are updated versions of the underlying requirements in DOE Orders on nuclear safety. While safety basis requirements already exist in DOE Orders and are imposed through contracts, we consider the requirements to be so fundamental to nuclear safety for DOE hazard category 1, 2, and 3 nuclear facilities that it is essential that these requirements be clearly enforceable under the PAAA. To properly establish a safety basis for a hazard category 1, 2, or 3 nuclear facility, a contractor must:

- Define the scope of work to be performed,
- Identify and analyze the hazards associated with the work,
- Categorize the facility consistent with DOE STD–1027,
- Prepare a documented safety analysis for the facility, and
- Establish the hazard controls upon which the contractor will rely to ensure adequate protection of workers, the public, and the environment.

*D. Can a Facility Be Divided Into Compartments or "Segmented" for the Purpose of Facility Hazard Categorization?*

The purpose of performing a hazard categorization and estimating the radiological and nonradiological hazardous material inventory is to understand the possible hazards and their potential interactions and to determine if they could cause harm to individuals or the environment. If there are facility features that prevent hazards from one process, operation, or activity from interacting with those of another, contractors may be able to address the

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hazards separately. Therefore, in certain limited circumstances, contractors may be able to segment facilities (divide one facility into two or more facilities), provided the radiological or nonradiological hazardous materials in one segment cannot interact with radiological or nonradiological hazardous materials in other segments. If a contractor chooses to segment a facility, the burden of proof of the independence of the segments and the adequacy of the treatment of the hazards lies with the contractor.

The safety basis for each segmented facility must demonstrate that the hazards cannot interact with radiological or nonradiological hazardous materials in other segments of the physical structure. For example, if a fire causes the release of hazardous materials in one segment, it must be demonstrated that the materials are confined in that segment by the hazard controls or physical barriers that are not degraded by the fire. If the hazardous materials could be transported to other segments by common confinement systems or the lack of other physical barriers, the facility cannot be segmented for purposes of this rule.

Additional discussion on segmenting nuclear facilities can be found in DOE–STD–1027.

*E. Is the Contractor Required To Incorporate Changes Directed by DOE Into the Safety Basis?*

Yes. As stated in 830.202(c)(1), the contractor must incorporate in the safety basis for the facility, any changes, conditions, or hazard controls directed by DOE.

*F. How Often Is the Contractor Required To Update the Documented Safety Analysis?*

Each year, the contractor responsible for a DOE hazard category 1, 2, or 3 nuclear facility must update the documented safety analysis to reflect all changes to the nuclear facility, the hazards, and the work. The updated documented safety analysis must be submitted to DOE. If there were no changes to the nuclear facility or its activities or operations that affected the documented safety analysis over the previous year, the contractor may instead send DOE a letter confirming that there were no changes.

**Section 830.203, Unreviewed Safety Question Process**

*G. When Must a Contractor Use a USQ Process To Evaluate if a Situation Involves a USQ?*

Some changes to the nuclear facility can impact the safety basis. However, it would be overly burdensome for a contractor to obtain DOE approval before making any changes to DOE hazard category 1, 2, or 3 nuclear facilities. Through the USQ process, contractors responsible for DOE hazard category 1, 2, or 3 nuclear facilities may make physical and procedural changes to a nuclear facility without DOE approval, provided those changes do not implicitly or explicitly affect the safety basis of the facility. The USQ process is also used to assess newly discovered situations that might involve a potential inadequacy of the safety basis.

The USQ process has two-steps. The contractor must first determine whether a situation involves a USQ. If it does, the contractor must inform DOE and then perform an evaluation to determine whether the existing safety basis is adequate to bound the situation.

A contractor responsible for a hazard category 1, 2, or 3 DOE nuclear facility must use the USQ process for any of the following situations to determine if a USQ is involved:

- A temporary or permanent change in the facility as described in the existing documented safety analysis,
- A temporary or permanent change in the procedures as described in the existing documented safety analysis,
- A test or experiment not described in the existing documented safety analysis, or
- A potential inadequacy of the documented safety analysis is discovered for which the safety analysis may not be bounding or may be otherwise inadequate. In this case, the contractor must (1) take action to place the facility in a safe condition, (2) notify DOE of the situation, (3) perform a USQ evaluation, and (4) submit the USQ evaluation to DOE and obtain its approval prior to removing any operational restrictions previously imposed.

*H. What Is an Unreviewed Safety Question (USQ)?*

A situation involves a USQ if

- the probability of the occurrence or the consequences of an accident or the malfunction of equipment important to safety previously evaluated in the facility documented safety analysis could be increased,
- the possibility of an accident or malfunction of a different type than any evaluated previously in the facility documented safety analysis could be created, or
- a margin of safety could be reduced.

A situation also involves a USQ if there is a potential inadequacy of the safety analysis.

*I. Is the Contractor Required To Obtain DOE Approval of the USQ Process?*

Yes. The contractor responsible for a hazard category 1, 2, or 3 existing DOE nuclear facility is required to submit the USQ process to DOE for approval by April 10, 2001. Pending DOE approval of the USQ process, the contractor must continue to use its existing DOE-approved USQ process. If the existing process already meets the requirements of this section, the contractor must notify DOE by April 10, 2001 and request DOE to issue an approval of the existing process. The USQ process for a hazard category 1, 2, or 3 new DOE nuclear facility must be submitted for DOE approval in the safety evaluation report issued pursuant to § 830.207(d) of the rule. In either case, we will notify the contractor if any changes to the process are required.

*J. What Is a USQ Summary and How Often Must a Contractor Submit It to DOE?*

Each year, when the contractor submits its updated documented safety analysis to DOE, the contractor must also submit a report which summarizes all situations for which the contractor performed a USQ determination since the prior submission. The report must summarize the results of those determinations.

**Section 830.204 Documented Safety Analysis**

*K. Does the Rule Permit the Contractor To Use a Method To Develop the Documented Safety Analysis That Is Appropriate for the Hazards and the Work Involved?*

Yes, this rule allows contractors to develop the documented safety analysis by a method that DOE has approved for the particular facility or activity and is appropriately graded for the work and the hazards. Contractors may either propose a method to prepare a documented safety analysis and obtain DOE approval, or use one of the safe harbor methods established for defined facilities and activities in Table 2 of Appendix A to Subpart B of Part 830—General Statement of Safety Basis Policy.

*L. What Are "Safe Harbor" Methods?*

Safe harbor methods are methods which we have already determined to be acceptable for use. They are standards or methods developed by DOE or NRC, or defined in regulations promulgated by the Occupational, Safety and Health Administration (OSHA). The safe harbor methods are based on many years of experience with the types of facilities to which they may be applied.

Contractors who use safe harbor methods in accordance with the provisions in Table 1 of Appendix A to Subpart B of Part 830—General Statement of Safety Basis Policy, do not need to obtain DOE approval prior to preparing a documented safety analysis. They do need to get DOE approval to use a method other than a safe harbor method. Whether or not a contractor uses a safe harbor method to develop its documented safety analysis, the final documented safety analysis must be submitted to DOE for approval in accordance with the schedule contained in the rule. Because the safe harbor methods are already approved by DOE, use of these methods will streamline the safety basis process by reducing the amount of review that DOE will need to do. Most DOE contractors are familiar with DOE standards and NRC regulatory guides relating to the development of documented safety analyses that are in the form of a safety analysis report or a BIO. Safe Harbor methods listed in Table 1 of Appendix A to Subpart B of Part 830 include:

- NRC Regulatory Guide 1.70, Standard Format and Content of Safety Analysis Reports for Nuclear Power Plants,
- DOE–STD–3009–94, Preparation Guide for U.S. Department of Energy Nonreactor Nuclear Facility Safety Analysis Reports,
- DOE–STD–3011–94, Guidance for Preparation of DOE 5480.22 (TSR) and DOE 5480.23 (SAR) Implementation Plans, and
- DOE–STD–3016–99, Hazards Analysis Reports for Nuclear Explosive Operations.

In addition, the safe harbor provisions in Appendix A to Subpart B of Part 830 also approve the use of selected provisions in OSHA regulation 29 CFR 1910.120 (or 29 CFR 1926.65 for construction activities) in conjunction with the methodology of DOE–STD–1120–98 (or its successor document) for the preparation of the documented safety analysis for DOE contractors conducting decommissioning or select environmental restoration activities of hazard category 1, 2, or 3 nuclear facilities.

The safe harbor methods listed are not the only methods that may be used. Contractors may propose other methods which they consider to be more effective. Provided they are approved by DOE, contractor-proposed methods may be used to prepare the facility safety basis. For example, the safe harbor method listed for reactors is NRC Regulatory Guide 1.70. That method was developed primarily for power reactors and may be too onerous for certain types of research reactors. In such cases contractors should propose an alternate method for DOE approval.

*M. What Are the Content Requirements for a Documented Safety Analysis?*

The documented safety analysis must:

- Describe the facility and the work to be performed;
- Identify the hazards associated with the facility;
- Evaluate all accident conditions that are presented by natural and/or manmade hazards;.
- Derive the hazard controls, including technical safety requirements, to eliminate, limit, or mitigate identified hazards, and define the process for maintaining the hazard controls current at all times and controlling their use;
- Define the characteristics of the safety management programs necessary to ensure the safe operation of the facility; and
- Define necessary criticality safety programs.

Requirements for a documented safety analysis are established in Section 830.204 and further guidance is available in the documented safety analysis implementation guide, DOE G 421.X, Implementation Guide for Use in Developing Documented Safety Analyses to Meet Subpart B of 10 CFR Part 830.

**Section 830.205, Technical Safety Requirements**

*N. Why Is DOE Adding Requirements for Technical Safety Requirements?*

The technical safety requirements are the hazard controls that define the conditions, safe boundaries, and the management or administrative controls necessary to ensure the safe operation of a nuclear facility. Technical safety requirements are part of the safety basis, as are other hazards controls necessary for adequate protection from all hazards, and are required to be approved by DOE. Contractors responsible for DOE hazard category 1, 2, and 3 nuclear facilities must ensure that the technical safety requirements are properly maintained and updated as operating conditions change or other situations arise that might not have been analyzed previously.

*O. Are Contractors Required To Obtain DOE Approval of the Technical Safety Requirements?*

Yes. Contractors are required to obtain DOE approval of their technical safety requirements. Section G of the Appendix A to Subpart B of Part 830 provides additional detail on DOE's expectations for technical safety requirements. These expectations are consistent with the criteria for technical safety requirements in DOE Order 5480.22 which are generally being implemented by contractors for DOE hazard category 1, 2, and 3 nuclear facilities.

*P. Are Contractors for Environmental Restoration Facilities Who Follow the Provisions of 29 CFR 1910.120 or 29 CFR 1926.65 Required To Develop Technical Safety Requirements?*

Rather than preparing technical safety requirements, a contractor for an environmental restoration activity that involves either (1) work not done within a permanent structure or (2) the decommissioning of a facility with only low-level residual fixed radioactivity may follow the provisions of 29 CFR 1910.120 or 1926.65 to develop its documented safety analysis and its appropriate hazard controls.

*Q. Are Site Personnel Permitted To Take Actions That Do Not Meet the Technical Safety Requirements?*

Site personnel may take emergency actions that depart from a technical safety requirement in rare circumstances when: (a) no actions consistent with the technical safety requirement are immediately apparent and (b) the departure from the technical safety requirements is needed to protect workers, the public, or the environment from imminent and significant harm. Such emergency actions must be approved by a certified operator for a reactor or by a person in authority as designated in the technical safety requirements for nonreactor nuclear facilities. Contractors should report any emergency actions that depart from the technical safety requirements to DOE as soon as practicable in accordance with an appropriate, existing mechanism as incorporated into contracts, such as the Occurrence Reporting and Processing System.

**Section 830.206, Preliminary Documented Safety Analysis**

*R. Who Must Prepare a Preliminary Documented Safety Analysis?*

To ensure early agreement between DOE and its contractors regarding what safety design and systems are needed in new nuclear facilities, a contractor responsible for a new DOE nuclear facility that is hazard category 1, 2, or 3 must submit a preliminary documented safety analysis to DOE and obtain DOE approval prior to procuring materials or components, or beginning

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construction. In addition, a contractor responsible for a major modification to a hazard category 1, 2, or 3 DOE nuclear facility must submit a preliminary documented safety analysis to DOE for approval.

The rule does not preclude contractors from using subcontractors to develop all or part of the preliminary documented safety analysis. Likewise, in cases where the contractor responsible for the design of, or modification to, a nuclear facility is not the contractor responsible for operation of the facility, the design contractor should generally prepare the preliminary documented safety analysis. Regardless of which contractor prepares the analysis, however, the contractor responsible for the nuclear activity is ultimately responsible for the analysis and must submit it to DOE for review and approval.

**Section 830.207, DOE Approval of Safety Basis**

*S. By What Date Must a Contractor Submit a Safety Basis That Meets the Subpart B Requirements of This Rule for DOE Approval?*

Contractors for hazard category 1, 2, and 3 existing DOE nuclear facilities must submit for DOE approval a safety bases that meets the requirements of Subpart B of this rule by April 10, 2003.

*T. Pending DOE Approval of a Safety Basis That Meets This Rule, What Should a Contractor Do To Continue Operations and Work at a Hazard Category 1, 2, or 3 Existing Nuclear Facility?*

Pending DOE approval of a safety basis that meets this rule, the contractor responsible for a hazard category 1, 2, or 3 existing DOE nuclear facility must continue to perform work in accordance with the safety basis for the facility in effect on October 10, 2000. The contractor must also maintain the safety basis consistent with the requirements of this rule pending DOE approval of the new safety basis.

*U. What Should a Contractor Do if Its Current DOE-Approved Safety Basis Does Not Reflect Current Operations or Working Conditions?*

If the current safety basis does not reflect current operations, the contractor should immediately inform DOE and request approval of any changes to the safety basis that are needed in the interim period while the safety basis is being upgraded to meet the safety basis requirements of this rule. It is essential that contractors establish technical standards, administrative controls, hazard controls, and other work processes that reflect current operations and meet those work processes in accordance with the requirements of Subpart A. The implementation guides that support this rule provide further information on how contractors should establish interim and upgraded safety bases.

*V. What Should a Contractor Do if It Already Has a DOE-Approved Safety Basis That Meets the Requirements of the Rule?*

If the current, DOE-approved safety basis already meets the requirements of this Subpart and is consistent with current hazards and work at the nuclear facility, the contractor must: (1) Notify DOE by April 9, 2001, (2) document the adequacy of the existing safety basis, and (3) request DOE to issue a safety evaluation report that approves the existing safety basis. This is to ensure that both the contractor and DOE have verified the current safety basis against the requirements of this rule. If DOE does not issue a safety evaluation report by October 10, 2001, the contractor should assume that it has not adequately demonstrated or documented its safety basis against the requirements of this Subpart. In that case, the contractor should work with DOE to correct the deficiencies and resubmit the safety basis. In the interim, the contractor should continue to meet the existing safety basis in accordance with paragraph 830.207(b).

*W. When Must a Contractor Have an Approved Safety Basis for a New DOE Hazard Category 1, 2, or 3 Nuclear Facility or a Major Modification to a DOE Hazard Category 1, 2, or 3 Nuclear Facility?*

A contractor for a new nuclear facility or a major modification to a hazard category 1, 2, or 3 DOE nuclear facility must obtain DOE approval of the safety basis for the nuclear facility before beginning operation of the nuclear facility or implementing the major modification.

**Safety Management Systems**

*X. May Contractors Use Safety Bases and Safety Management Programs Developed Consistent With Its Integrated Safety Management System To Meet the Rule?*

Section 830.204 of the rule requires contractors to define the characteristics of the safety management programs for a nuclear facility that are necessary for safe operations. Many DOE contractors responsible for DOE hazard category 1, 2, or 3 nuclear facilities have already developed safety management programs to comply with their contract requirements for Safety Management Systems. There should be no conflict between the requirements of this rule and the requirements for Safety Management Systems. Contractors who have developed safety management programs to meet contract requirements should use these programs as appropriate to meet the requirements of this rule. Contractors may incorporate existing programs by reference into the documented safety analysis provided these programs are sufficient to provide adequate protection. To aid the review process, they should also include a copy of any documents that are incorporated by reference with the documented safety analysis when it is submitted to DOE for review and approval.

**Appendix A to Subpart B of Part 830—General Statement of Safety Basis Policy**

*Y. Why Did DOE Include an Appendix to Subpart B of Part 830?*

DOE included the Appendix A to Subpart B of Part 830—General Statement of Safety Basis Policy, to provide information regarding DOE's expectations and criteria for the safety basis requirements of Part 830. The appendix does not create any new requirements. The appendix and the guidance documents referenced therein are intended to be read and applied consistent with DOE Policy 450.2A, "Identifying, Implementing and Complying with Environment, Safety and Health Requirements" (May 15, 1996).

**IV. Discussion of Other General Topics Pertinent to the Rules**

*A. What Does DOE Intend To Do With Other DOE Directives That Relate to Nuclear Safety Management Topics?*

We intend to maintain the DOE Quality Assurance Order (DOE O 414.1, Quality Assurance) so it may be applied through contracts to non-nuclear facilities. Other directives related to nuclear safety such as DOE Orders 5480.23 (Nuclear Safety Analysis Reports), 5480.22 (Technical Safety Requirements), and 5480.21 (Unreviewed Safety Questions) are incorporated in most DOE contracts where nuclear activities are involved, and work has begun using these orders for requirements. Those contract requirements are not changed by the issuance of this rule.

We will retain DOE Orders 5480.23, 5480.22, and 5480.21 during the transition period for this rule (approximately the next two and a half years) while updated safety bases are established. After this transition period, we will consider canceling DOE Orders 5480.23, 5480.22, and 5480.21 and relying on this rule and its implementing guides for safety basis requirements. DOE contractors may also work with DOE to delete these orders from contracts where appropriate. DOE orders for other nuclear safety management topics such as maintenance, training, conduct of operations, defect identification, and occurrence reporting, will be retained so that the applicable and appropriate requirements of the orders can continue to be referenced in contracts.



*B. What if There Is a Conflict Between Contract Requirements and Technical or Schedule Requirements in This Rule?*

As previously noted, we expect the requirements in DOE Orders 414.1, 5480.23, 5480.22, and 5480.21 and other directives related to nuclear safety that are incorporated in contracts to be compatible with this rule. To the extent there are any conflicts between this rule and contract terms and conditions, the provisions of this rule take precedence. If the rule imposes more stringent requirements than the contract, the contractor must either meet the requirements in the rule or obtain an exemption from the rule in accordance with criteria in Subpart E of 10 CFR Part 820.

A contract or implementing document under a contract may specify details concerning how contractors will comply with the rule. For example, a project execution plan or similar project management planning document may provide for different contractors to design, construct, and operate a facility. In this regard, DOE may require the design contractor to prepare the documented safety analysis, and may require acceptance of the document by the operating contractor.

Also, a contract or implementing document under a contract may impose additional requirements beyond those imposed by the rule. For example, on a project specific basis, DOE might require by contract that a contractor meet a higher level of quality assurance than reflected in the rule as well as an enhanced USQ process. If a contract imposes more stringent requirements than imposed by this rule, the contract requirements would apply unless the contract is modified. Moreover, the contractor would be expected to develop work processes that address these contract requirements, and to the extent that these work processes address nuclear safety activities, they are covered by the quality assurance provisions of 10 CFR 830.120.

*C. What Should Contractors Do if They Have Completed Activities and Documents To Meet the Above DOE Orders?*

We do not expect contractors to significantly modify documents or commitments already provided to meet similar commitments under contract. For example, existing documented safety analyses, technical safety requirements, and processes for USQs that meet the order requirements should meet the rule requirements. We do not expect contractors to reduce their commitments to protect health, safety, and the environment as a result of issuing this rule. If a contractor has previously submitted documents to meet contract requirements and they have been approved by DOE, the contractor should assess whether those documents meet the requirements of Part 830. If they do, the contractor should send a letter to DOE requesting that DOE extend its approval under the rule provisions. DOE will inform the contractor if they need to resubmit the documents for review.

If, on the other hand, a contractor determines that previously submitted documents do not meet the requirements of this rule, you should revise your documents to meet the rule requirements and submit them to DOE for approval. If the changes are minor, you should indicate what changes have been made to the documents since the DOE approval. This may help DOE to narrow its review.

*D. How Are Nuclear Safety Requirements Imposed on Subcontractors and Suppliers?*

Nuclear safety requirements can be imposed on subcontractors and suppliers through both regulations and contracts. The definition of contractor in 10 CFR 820.2 applies to Part 830. That definition includes "any person under contract (or its subcontractors or suppliers) with the Department of Energy." This definition includes those contractors, subcontractors, and suppliers that provide items and services to DOE nuclear facilities and activities. Therefore, requirements in Part 830 that are stated to apply to "contractors" apply to prime contractors, and can, as appropriate, apply to subcontractors, and suppliers.

Certain requirements in Part 830 are stated to apply to "a contractor responsible for a DOE nuclear facility." Such requirements only apply to prime contractors for DOE nuclear facilities. Regardless of the performer of the work, the prime contractor bears responsibility for subcontractor and supplier compliance with appropriate nuclear safety requirements. DEAR clause 48 CFR 5204–78(d) (the Laws Clause) requires contractors to flow down necessary provisions in contracts to subcontractors at any tier to which the contractor determines such requirements apply. In addition, DEAR 48 CFR 5204–2 (the Integrated Safety Management Systems clause) states that contractors must include a clause substantially the same as the Laws Clause in subcontracts involving complex or hazardous work on the site at a DOE-owned or leased facility. Other DOE and federal procurement regulations require contractors to have a DOE-approved contractor purchasing system for subcontracting.

Many of the requirements that flow down to subcontractors and suppliers are quality assurance requirements that pertain to procured items and services. See discussion above in Section II. I. Enforcement actions may be brought against any subcontractor or supplier who fails to comply with requirements that are imposed for the performance of work and provision of items and services that could affect the safety of a DOE nuclear facility.

*E. How Does This Amendment to Part 830 Affect the Positions in Ruling 1995–1?*

Ruling 1995–1 interpreted certain provisions of Parts 830 and 835. 61 FR 4209 (Feb. 5, 1996). This interim final rule amends Part 830 in a manner that changes the interpretations relating to Part 830 in four of the ten questions presented in Ruling 1995–1. None of the changes affect the interpretations as they apply to Part 835. Each of the questions from the Ruling 1995–1 that are affected by this interim final rule is listed below, as well as the impacts of this amendment. The positions from Ruling 1995–1 that are not discussed remain unchanged.

*Question 2.* Do Parts 830 and 835 apply to government employees in general and to the Department's government-owned, government-operated (GOGO) facilities specifically?

*Impact of this amendment:* This amendment changes Ruling 1995–1 as it applies to DOE employees and GOGOs. Ruling 1995–1 indicated that Part 830, unlike Part 835, did not apply to NRC or DOE personnel and to DOE GOGO facilities. As discussed previously, the scope of Part 830 is being amended to cover the conduct of DOE personnel. In addition, the general requirements of Part 830 are being amended to cover GOGO facilities by providing that if

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there is no contractor for a nuclear facility, DOE must ensure implementation of the requirements of Part 830.

*Question 5.* To what extent are activities performed on a DOE site subject to Parts 830 and 835 if they are regulated by the NRC (including activities certified by the NRC under section 1701 of the Atomic Energy Act) or by a State under an agreement with the NRC?

*Impact of this amendment:* Ruling 1995–1 indicated that Part 830 does not apply to activities that are regulated through a license by the NRC or under an Agreement with the NRC. This exclusion deals with the situation where the NRC has issued a license. As discussed previously, Part 830 is being amended to also exclude activities conducted under the NWPA. This new exclusion covers activities conducted under the NWPA for the period prior to the issuance of a license by the NRC.

*Question 6.* To what extent are DOE activities performed off a DOE site subject to Parts 830 and 835, and what is the effect if these activities are performed on a site regulated by the NRC or by an Agreement State?

*Impact of this amendment:* Ruling 1995–1 stated that because Part 830 applies only "at a DOE nuclear facility," Part 830 applies only at DOE operations and activities and would not apply, for example, at a supplier's facility. As discussed previously, the scope of Part 830 is being amended to remove this restrictive language. In particular, the amended scope governs the conduct of DOE contractors and other persons conducting activities (including providing items and services) that affect or may affect the safety of DOE nuclear facilities. The definition of a nuclear facility is amended to include activities conducted for or on behalf of DOE to include any related area, structure, facility, or activity. Furthermore, a nuclear facility is not limited to a facility located at a DOE site, and the nuclear facility may be wholly or partially owned or controlled by DOE.

Ruling 1995–1 indicated that Part 830 did not establish a threshold to exclude coverage of low hazard facilities. That continues to be the case. However, we have created a threshold for the new safety basis provisions in Subpart B of Part 830. Specifically, the safety basis provisions of Subpart B apply only to contractors responsible for hazard category 1, 2, and 3 nuclear facilities.

The discussion in Ruling 1995–1 relating to activities regulated by the NRC or an Agreement State is unchanged by this amendment.

*Question 10.* What is the purpose of the exclusion in Parts 830 and 835 for activities conducted under the Nuclear Explosives and Weapons Safety program relating to the prevention of accidental or unauthorized nuclear detonations, and what activities are intended to be included within the scope of this exclusion?

*Impact of this amendment:* Ruling 1995–1 indicated that the exclusion in Part 830 was drafted narrowly to cover only those activities necessary to prevent an accidental or unauthorized nuclear detonation. As discussed previously, the amended Part 830 does not contain this exclusion and, therefore this exclusion and the related interpretation no longer apply to Part 830. Further, the definition of nonreactor nuclear facility is amended to clarify that nuclear explosive hazards are included.

**V. Summary and Discussion of Public Comments Received in Response to the December 9, 1991 and August 31, 1995 Notices of Proposed Rulemaking for Part 830**

Many of the comments received on the 1991 Notice were responded to in the 1994 Notice, particularly those that related to general topics or quality assurance. Some of the outstanding issues from the 1991 Notice that were not addressed in the 1994 Notice, as well as additional issues raised in response to the Reopening Notice, are addressed below.

**General Topics**

*A. Does the Rule Contain Detailed Criteria or Performance Objectives?*

Many of the comments concerning the proposed Part 830 rule focused on whether the proposed rule should contain the detailed requirements in the existing DOE nuclear safety orders or performance objectives. Most of the comments stated that the rule should impose performance objectives, rather than specific requirements. In general, the commentors said that we should provide clear direction concerning what was expected as opposed to how it should be accomplished. However, there was some disagreement about the level of detail necessary to provide these clear expectations.

Today we are continuing requirements in Part 830 for quality assurance and adding requirements for a safety basis. However, in response to comments on the proposed rule, DOE decided not to include detailed requirements for training and certification, conduct of operation, maintenance management, defect identification, and occurrence reporting which were included as rulemaking topics in the 1991 Notice.

We believe the combination of the safety basis requirements and the quality assurance requirements, along with contract provisions, provides sufficient nuclear safety management requirements to address the hazards at DOE nuclear facilities. Furthermore, rather than prescribing the method to be used to develop safety basis documents, the requirements in Subpart B of this rule allow the contractor to propose the method it intends to use to develop safety basis documents based upon the work to be performed and the hazards. DOE is responsible for approving safety basis documents appropriate to the hazards and facility or activity addressed.

Finally, the enforcement of the safety basis requirements will be performance-oriented. That is, DOE will focus its enforcement efforts on whether the contractor operates a nuclear facility and performs work consistent with its safety basis as approved by DOE.

*B. How Do the Requirements of Part 830 Apply to Hazard Category 1, 2, and 3 Nuclear Facilities and Below Hazard Category 3 Nuclear Facilities?*

We received a number of comments to the question in the Reopening Notice regarding limiting the application of Part 830 requirements to either hazard category 1, 2, and 3 nuclear facilities or only hazard category 1 and 2 nuclear facilities. The comments on this issue came mostly from DOE contractors or subcontractors and were almost equally divided on whether hazard category 3 nuclear facilities should be subject to the requirements in Part 830. In addition, those commentors who recommended limiting the rule to hazard category 1, 2, or 3 nuclear facilities or to hazard category 1 and 2 nuclear facilities generally focused their comments on the impacts of the safety basis requirements (safety analysis reports, technical safety requirements, and USQ) on low hazard facilities, not the impacts of the quality assurance requirements.

We have decided to continue to apply the general requirements of §§ 830.1 through 830.7 and the quality assurance requirements in Subpart A to Part 830 to all activities affecting nuclear safety. The quality assurance requirements apply for all DOE nuclear facilities, including hazard category 1, 2, and 3 nuclear facilities and below hazard category 3 nuclear facilities, except as excluded in § 830.2 or exempted in accordance with Subpart E of Part 820. The rule requires the implementation of the quality assurance requirements to be graded so they may be appropriately applied at all DOE nuclear facilities. Safety basis requirements only apply to hazard category 1, 2, and 3 nuclear facilities. Furthermore, DOE has approved a simplified methodology for establishing a documented safety analysis for a hazard category 3 nuclear facility in Table 2 of Appendix A in recognition of the lesser hazards.

A number of the comments received to the Reopening Notice recommended using DOE–STD–1027, Hazard Categorization and Accident Analysis Techniques for Compliance with DOE Order 5480.23, Nuclear Safety Analysis Reports, to define hazard categories for nuclear facilities. We are incorporating a requirement in § 830.202 for contractors to categorize their nuclear facilities consistent with DOE–STD–1027. DOE retains responsibility for approving the categorization as part of the safety basis.

*C. How Do These Rules Apply to Transportation Activities?*

The definition of nonreactor nuclear facility published in § 830.3 of the 1994 Notice excluded transportation of radioactive materials. This exclusion was added to avoid duplication of regulatory efforts because much of the transportation of radioactive materials occurs offsite where it is governed and regulated by DOT or NRC requirements. In the response to comments in the 1994 Notice, we indicated that we would add specific provisions to the rules to cover shipments wholly within DOE sites.

We have decided to amend the definition of nonreactor nuclear facility to delete the exclusion of transportation of radioactive materials and add new language to § 830.2 to exclude transportation of radioactive materials regulated by the DOT. This exclusion is more narrow than the previous exclusion in the definition of nonreactor nuclear facilities which excluded all transportation activities. We have determined that the applicable provisions of the Part 830 rules should apply to transportation activities which are not subject to DOT regulations.

The exclusion for activities regulated by DOT in Part 830 does not apply to either (1) non-transportation activities or (2) activities which do not need to meet the DOT regulations because they are specifically excluded from the DOT regulations. For example, 49 CFR 173.7(b) is a DOT regulation which excludes certain shipments of hazardous wastes which are made by or under the direction of DOE or the Department of Defense relating to national security. Excluding shipments of hazardous materials which are covered by Paragraph 49 CFR 173.7(b) from Part 830 would result in them being excluded from both the DOT regulations and the DOE regulations. Thus, the exclusion for Part 830 only applies to transportation activities that are subject to DOT requirements.

Some commentors expressed concern that, in cases when the transportation exclusion does not apply, application of the Part 830 rules to transportation of radioactive materials onsite would require safety analysis reports to be prepared specifically for the transportation activities. While contractors may consider treating these activities as separate from the nuclear facilities and consequently prepare separate documented safety analyses (such as safety analysis reports), as well as plans and programs, a more cost effective way to apply the nuclear requirements to transportation requirements, and the one supported by the Department, would be to integrate those activities into existing site or facility analyses and plans.

*D. What Are the Requirements for Nuclear Explosive and Weapons Activities?*

The Reopening Notice indicated that comments received from the 1991 Notice requested that we clarify the exclusion of nuclear explosive and weapons surety activities from nuclear safety requirements. Then-proposed Parts 830 and 835 contained identical exclusions for activities conducted under the Nuclear Explosives and Weapons Surety program relating to the prevention of accidental or unauthorized nuclear detonations. This exclusion was drafted narrowly to exempt from the nuclear safety rules only those activities necessary to prevent an accidental or unauthorized nuclear detonation that might be in conflict with the nuclear safety requirements. The reason for this exclusion was the paramount importance of preventing accidental or unauthorized nuclear detonations and ensuring that the requirements in Parts 830 and 835 did not conflict with activities necessary to prevent any such detonation.

We have crafted the requirements of this rule to permit contractors to use methods to develop their safety basis documents that are based upon the work to be performed and the relevant hazards. Consequently, DOE contractors are expected to use methods that do not conflict with activities necessary to protect individuals from the risk of detonation or explosion. Nuclear Explosive and Weapons Surety requirements are established in DOE Orders 452.1A and 452.2A, and they contain both nuclear and weapons safety requirements. Table 2 in Appendix A to Subpart B of this rule lists a safe harbor method for nuclear explosives facilities that has the same performance-based objectives as the Nuclear Explosive and Weapons Surety program requirements. As contractors now have the means to ensure there are no conflicts between weapons safety and nuclear safety, we determined that the weapons exclusion is no longer necessary and are deleting it from this rule.

The Integrated Weapons Activity Plan (IWAP) governs how and when the Nuclear Explosive and Weapons Surety requirements will be implemented. If a deviation or conflict exists between this rule and the IWAP, the IWAP can be used as a basis for requesting DOE to approve an exemption from rule requirements or schedules in accordance with Subpart E of Part 820.

*E. Does the Rule Cover DOE Employees and DOE-Operated Facilities?*

The Reopening Notice requested comments on the issue of extending applicability of Part 830 to cover DOE employees and DOE-operated facilities. Many commentors on this issue generally favored extending the nuclear safety requirements to DOE employees and DOE-operated nuclear facilities (referred to as GOGOs) where the facilities and hazards were comparable to DOE contractor operated nuclear facilities. The major concern expressed was with regard to application of PAAA civil penalties. DOE's authority to impose PAAA civil penalties only applies to indemnified contractors (including their subcontractors and suppliers), not DOE employees.

We believe that fundamental nuclear safety expectations should be applied to our GOGOs, as well as contractor-operated activities, and therefore the requirements of Part 830 should be applied to GOGOs. We are adding a new paragraph 830.4(d) to the rule to state that where there is no contractor for a DOE nuclear facility, DOE must ensure implementation and compliance with the requirements of this Part. This language is consistent with that in Part 835. It makes clear that where DOE, rather than a contractor, is responsible for the operation of a nuclear facility, DOE must ensure that the activities and operations of that facility meet the requirements of Part 830. However, as the authority to impose PAAA civil penalties for violations of nuclear safety requirements is limited to contractors,

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we will not impose PAAA civil penalties on GOGOs.

*F. Does the Rule Cover Nonradioactive Hazards?*

The Reopening Notice proposed three options regarding the treatment of nonradioactive hazards in Part 830. Specifically, these were to address:

- Only radioactive hazards at a nuclear facility,
- Only radioactive hazards and those hazards which could cause or exacerbate an accident involving radioactivity or reduce the level of nuclear safety, or
- All substantial hazards at a nuclear facility.

The hazard categorization developed to meet § 830.202(b)(3) must be based on an inventory of all radioactive and nonradioactive hazardous materials within a nuclear facility. Further, we expect our contractors to address all hazards and the controls necessary to provide adequate protection to the public, workers, and the environment from these hazards in the documented safety analysis. Currently, a safety analysis report developed in accordance with DOE–STD–3009 would address these hazards. However, the AEA does not authorize DOE to issue civil penalties for violations of requirements not related to nuclear safety, and Price-Anderson enforcement is limited to violations of requirements related to nuclear safety. Therefore, we expect to limit our Price-Anderson enforcement actions to radiological hazards and those hazards which could cause or exacerbate an accident involving radioactivity or reduce the level of nuclear safety.

*G. Does the Rule Apply to Non-Nuclear Facilities?*

In the Reopening Notice, we requested comments on extending Part 830 to non-nuclear DOE facilities. A few commentors noted the advantage of seamless plans which would allow integrated and coordinated programs across sites. However, the majority of the comments, strongly recommended that Part 830 not be expanded to include non-nuclear facilities. We concluded that Part 830 should not be extended to apply to facilities or activities that do not affect safe operation of nuclear facilities. However, we have determined that Part 830 should be applied to activities which could affect the safe performance of a nuclear activity whether or not they are performed at a nuclear facility or on a DOE site.

Contractors are free to include non-nuclear activities together with nuclear activities within the scope of quality assurance and safety management programs so that they are integrated and coordinated on a site-wide basis. In addition, where used, SMS descriptions will address the proper coordination of nuclear and non-nuclear activities. However, as we stated in the General Statement of Enforcement Policy in Part 820 (Appendix A to Part 820) and above, we will only pursue enforcement actions through the procedures in Part 820 for those noncompliances which have nuclear safety significance.

*H. What Is the Role of Implementation Plans in Part 830?*

In the Reopening Notice we requested comments on options to clarify the role of implementation plans for the Part 830 requirements. Implementation plans were an option made available for a contractor who needed a transition period for bringing existing facilities and activities into compliance with the nuclear safety requirements. One commentor to the Reopening Notice stated that deleting the requirement for implementation plans would permit contractors to apply their resources directly to implementing the nuclear safety programs.

DOE agrees. The regulatory requirements for a QAP were issued over six years ago. We expect that actions identified in the quality assurance implementation plans prepared at that time are completed and the implementation plans are superseded by final DOE-approved QAPs.

We also believe that implementation plans are not needed for safety basis requirements. Safety basis requirements have been imposed on contractors responsible for nuclear facilities for many years, consequently those contractors should be able to submit safety bases that meet the requirements of Part 830 by April 10, 2003.

We do not expect new contractors to need to prepare implementation plans. The DOE procurement process allows for ample notification and time for a new contractor either to accept and implement the existing nuclear safety documents and programs or to prepare new ones for DOE approval prior to beginning work. Consequently, the requirement to develop implementation plans should no longer be necessary, and we are deleting it from the rule.

*I. How Does DOE Plan To Assess Compliance With the Requirements of Part 830?*

A number of comments were received on what constitutes compliance with nuclear safety rules. Based on those comments, we have concluded that more specificity as to what constitutes compliance would be useful. In order for a contractor to comply with a nuclear safety rule, it must fully implement the applicable requirements stated in the rule or have an approved exemption. Fully implementing the requirements includes:

- Ensuring that plans, programs, and procedures establish the criteria or define the actions to be taken to meet the requirements for a facility, activity, or operation, and
- Ensuring that actions, operations, and conditions at the site or facility are consistent with the plans, programs, and procedures.

Fully implementing the requirements also entails prime contractors ensuring that appropriate nuclear safety management requirements are imposed on and implemented by their subcontractors who perform work at nuclear facilities or suppliers who provide items and services that affect nuclear safety at these facilities.

*J. Does DOE Plan To Issue Guidance Documents and Must Contractors Use Them?*

We will issue guidance documents in the form of implementation guides and technical standards to help contractors determine what is needed to meet our expectations when implementing the requirements in Part 830. Guidance documents provide details about our expectations and suggest methods that may be used to meet them. DOE Policy 450.2A describes the role of guidance in implementing requirements. The primary implementation guides which define DOE's expectations for this rule are:

- DOE G 414.1–1: Implementation Guide for Use with Independent and Management Assessment Requirements of 10 CFR Part 830.120 and DOE 5700.6C Quality Assurance
- DOE G 414.1–2: Quality Assurance Management System Guide for Use with 10 CFR 830.120 and DOE O 414.1
- DOE G 421.X: Implementation Guide for Use in Developing Documented Safety Analyses to Meet Subpart B of 10 CFR Part 830
- DOE G 423.X: Implementation Guide for Use in Developing Technical Safety Requirements (TSRs)
- DOE G 424.X: Implementation Guide for Use in Addressing Unreviewed Safety Question (USQ) Requirements

Guides DOE G 414.1–1 and DOE G 414.1–2 are final guides already in use. Guides 421.X, 423.X, and 424.X are being made available for use and comment concurrent with the publication of this rule. All of these guides, as well as DOE Policy 450.2A, are available through the DOE directives web page on http://www.explorer.doe.gov:1776/htmls/directives.html. Comments to Guides 421.X, 423.X, and 424.X may be submitted to Richard Black at the mailing address or email address provided at the beginning of this Notice.



*K. To Whom in DOE Does a Contractor Submit Documents for DOE Approval?*

The rule contains requirements for contractors to obtain approval from DOE, but does not specify who or what office in DOE will review and approve these documents. A number of commentors asked us to identify the specific DOE office or individual to whom documents are to be submitted or from whom approval is to be obtained. We chose not to specifically define individuals or offices for DOE responsibilities if they have the potential to be changed in future reorganizations. DOE M 411.1–1A, DOE Safety Management Functions, Responsibilities, and Authorities Manual (FRAM), explicitly defines current DOE responsibilities and authorities related to safety management that are established by DOE rules or Orders.

## VI. Procedural Requirements

*A. Review Under the National Environmental Policy Act*

We have reviewed this amendment to 10 CFR Part 830 under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. § 4321 *et seq.*) and the Council on Environmental Quality regulations for implementing NEPA (40 CFR Part 1500).

Prior to publishing the notice of proposed rulemaking to add Part 830 to Title 10 of the CFR, and under the NEPA procedures then in existence, we concluded that the potential environmental impacts of Part 830 would be clearly insignificant. We decided that neither an environmental impact statement nor an environmental assessment was required in connection with the promulgation of this rule. Since that time, we have issued regulations establishing implementing procedures for complying with NEPA's requirements [See 10 CFR Part 1021]. We have further considered Part 830 under these regulations. The regulations include a list of typical classes of actions, referred to as categorical exclusions, that normally do not require the preparation of either an environmental impact statement or an environmental assessment. Part 830 is covered by several categorical exclusions including, among others, information gathering, data analysis, and document preparation (A9); training exercises and simulations (B1.2); routine maintenance activities and custodial services (B1.3); and site characterization and environmental monitoring (B3.1) [See 10 CFR Part 1021, Appendices A and B to Subpart D].

We have concluded that the amendment to 10 CFR Part 830 does not represent a major federal action having significant impact on the environment under NEPA (42 U.S.C. 4321 *et seq.* (1976)), the Council on Environmental Quality's regulations (40 CFR Parts 1500–08), and DOE's implementing regulations (10 CFR Part 1021). Therefore, the amendment to this rule does not require an environmental impact statement or an environmental assessment pursuant to NEPA.

*B. Review Under Executive Order 12866*

This rule is not a "significant regulatory action" within the scope of section 3(f) of the Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), and no formal assessment of costs and benefits was performed. DOE contracts already contain equivalent requirements for the safe management of nuclear activities to meet the Department's responsibilities under the Atomic Energy Act to protect workers, members of the public, and the environment. Thus, DOE concluded that this rulemaking would not result in any significant additional costs. The public comments submitted in response to the 1991 Notice of Proposed Rulemaking and the 1995 Reopening Notice, which contained similar requirements, provided no basis for DOE to change its view of the likely economic impact of a final rule. Further, we have determined that this rule will not (1) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (2) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights or obligations of recipients thereof; or (3) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order 12866. Accordingly, this rule was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs in the Office of Management and Budget.

*C. Review Under Regulatory Flexibility Act*

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires that a Federal agency prepare a regulatory flexibility analysis for any rule for which the agency is required to publish a general notice of proposed rulemaking. The requirement to prepare an analysis does not apply, however, if the agency certifies that a rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). The impact of the changes to Part 830 are primarily with respect to major contractors. Subcontractors and suppliers are expected to satisfy the provisions of Part 830 primarily through the programs and procedures established by prime contractors. Consequently, the impacts to small entities with respect to changes to Part 830 are expected to be minor. The economic impact on contractors of this filing requirement is negligible. On this basis, DOE certifies that the rule will not have a significant economic impact on a substantial number of small entities and, therefore, no analysis has been prepared.

*D. Review Under the Paperwork Reduction Act of 1995*

The information collection provisions of this rule are not substantially different from those contained in DOE contracts with DOE prime contractors covered by this rule and were previously approved by the Office of Management and Budget (OMB) and assigned OMB Control No. 1910–0300. Accordingly, no additional Office of Management and Budget clearance is required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and the procedures implementing that Act, 5 CFR 1320.1 *et seq.*

*E. Review Under Executive Order 13132*

Executive Order 13132 (64 FR 43255, August 10, 1999), requires agencies to develop an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have "federalism implications." Policies that have federalism implications are defined in the Executive Order to include regulations that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. DOE has examined the changes to Part 830 and determined that they do not have a substantial direct effect on the States, on

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the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government. No further action is required by Executive Order 13132.

*F. Review Under the Unfunded Mandates Reform Act of 1995*

Title II of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531 *et seq.*, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in an agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This rule amends 10 CFR Part 830, and applies only to activities conducted by or for DOE. Any costs resulting from implementation of DOE's management, operation, and enforcement of its nuclear safety program are ultimately borne by the Federal government. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

*G. Review Under Executive Order 12988, Civil Justice Reform*

With respect to the review of existing regulations and the promulgation of new regulations, section 3 of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to eliminate drafting errors and ambiguity, write regulations to minimize litigation, provide a clear legal standard for affected conduct rather than a general standard, and promote simplification and burden reduction. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met. DOE has completed the required review and determined that, to the extent permitted by law, Part 830 meets the relevant standards of Executive Order 12988.

*H. Review Under Small Business Regulatory Enforcement Fairness Act of 1996*

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of the rule prior to its effective date. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 804(3).

**List of Subjects in 10 CFR Part 830**

DOE contracts, Environment Federal buildings and facilities, Government contracts, Nuclear energy, Nuclear materials, Nuclear power plants and reactors, Nuclear safety, Penalties, Public health, Reporting and recordkeeping requirements, and safety.

Issued in Washington, DC on September 28, 2000.

**T. J. Glauthier,**

*Deputy Secretary of Energy, Department of Energy.*

For the reasons set forth in the preamble, Part 830 of chapter III, title 10, of the Code of Federal Regulations is amended as set forth below.

## PART 830—NUCLEAR SAFETY MANAGEMENT

1. The authority citation for part 830 is revised to read as follows:

**Authority:** 42 U.S.C. 2201; 42 U.S.C. 7101 *et seq.*; and 50 U.S.C. 2401 *et seq.*

2. Part 830—is revised to read as follows:

## PART 830—NUCLEAR SAFETY MANAGEMENT

Sec.

830.1 Scope.
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**Subpart A—Quality Assurance Requirements**

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**Subpart B—Safety Basis Requirements**

830.200 Scope.
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830.202 Safety basis.
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Appendix A to Subpart B to Part 830—General Statement of Safety Basis Policy

### § 830.1 Scope.

This part governs the conduct of DOE contractors, DOE personnel, and other persons conducting activities (including providing items and services) that affect, or may affect, the safety of DOE nuclear facilities.

### § 830.2 Exclusions.

This Part does not apply to:

(a) Activities that are regulated through a license by the Nuclear Regulatory Commission (NRC) or a State under an Agreement with the NRC, including activities certified by the NRC under section 1701 of the Atomic Energy Act (Act);

(b) Activities conducted under the authority of the Director, Naval Nuclear Propulsion, pursuant to Executive Order 12344, as set forth in Public Law 106–65;

(c) Transportation activities which are regulated by the Department of Transportation;

(d) Activities conducted under the Nuclear Waste Policy Act of 1982, as amended; and

(e) Activities related to the launch approval and actual launch of nuclear energy systems into space.

### § 830.3 Definitions.

(a) The following definitions apply to this part:

*Administrative controls* means the provisions relating to organization and management, procedures, recordkeeping, assessment, and reporting necessary to ensure safe operation of a facility.

*Bases appendix* means an appendix that describes the basis of the limits and other requirements in technical safety requirements.

*Critical assembly* means special nuclear devices designed and used to sustain nuclear reactions, which may be subject to frequent core and lattice configuration change and which frequently may be used as mockups of reactor configurations.

*Criticality* means the condition in which a nuclear fission chain reaction becomes self-sustaining.

*Design features* means the design features of a nuclear facility specified in the technical safety requirements that, if altered or modified, would have a significant effect on safe operation.

*Document* means recorded information that describes, specifies, reports, certifies, requires, or provides data or results.

*Documented safety analysis* means a documented analysis of the extent to which a nuclear facility can be operated safely with respect to workers, the public, and the environment, including a description of the conditions, safe boundaries, and hazard controls that provide the basis for ensuring safety.

*Environmental restoration activities* means the process(es) by which contaminated sites and facilities are identified and characterized and by which contamination is contained, treated, or removed and disposed.

*Existing DOE nuclear facility* means a DOE nuclear facility in operation before April 9, 2001.

*Fissionable materials* means a nuclide capable of sustaining a neutron-induced chain reaction (e.g., uranium-233, uranium-235, plutonium-238, plutonium-239, plutonium-241, neptunium-237, americium-241, and curium-244).

*Graded approach* means the process of ensuring that the level of analysis, documentation, and actions used to comply with a requirement in this part are commensurate with

(1) The relative importance to safety, safeguards, and security;

(2) The magnitude of any hazard involved;

(3) The life cycle stage of a facility;

(4) The programmatic mission of a facility;

(5) The particular characteristics of a facility;

(6) The relative importance of radiological and nonradiological hazards; and

(7) Any other relevant factor.

*Hazard* means a source of danger (i.e., material, energy source, or operation) with the potential to cause illness, injury, or death to a person or damage to a facility or to the environment (without regard to the likelihood or credibility of accident scenarios or consequence mitigation).

*Hazard controls* means measures to eliminate, limit, or mitigate hazards to workers, the public, or the environment, including

(1) Physical, design, structural, and engineering features;

(2) Safety structures, systems, and components;

(3) Safety management programs;

(4) Technical safety requirements; and

(5) Other controls necessary to provide adequate protection from hazards.

*Item* is an all-inclusive term used in place of any of the following: appurtenance, assembly, component, equipment, material, module, part, product, structure, subassembly, subsystem, system, unit, or support systems.

*Limiting conditions for operation* means the limits that represent the lowest functional capability or performance level of safety structures, systems, and components required for safe operations.

*Limiting control settings* means the settings on safety systems that control process variables to prevent exceeding a safety limit.

*Low-level residual fixed radioactivity* means the remaining radioactivity following reasonable efforts to remove radioactive systems, components, and stored materials. The remaining radioactivity is composed of surface contamination that is fixed following chemical cleaning or some similar process; a component of surface contamination that can be picked up by smears; or activated materials within structures. The radioactivity can be characterized as low-level if the smearable radioactivity is less than the values defined for removable contamination by 10 CFR Part 835, Appendix D, Surface Contamination Values, and the hazard analysis results show that no credible accident scenario or work practices would release the remaining fixed radioactivity or activation components at levels that would prudently require the use of active safety systems, structures, or components to prevent or mitigate a release of radioactive materials.

*Major modification* means a modification to a DOE nuclear facility that is completed on or after April 9, 2001 that substantially changes the existing safety basis for the facility.

*New DOE nuclear facility* means a DOE nuclear facility that begins operation on or after April 9, 2001.

*Nonreactor nuclear facility* means those facilities, activities or operations that involve, or will involve, radioactive and/or fissionable materials in such form and quantity that a nuclear or a nuclear explosive hazard potentially exists to workers, the public, or the environment, but does not include accelerators and their operations and does not include activities involving only incidental use and generation of radioactive materials or radiation such as check and calibration sources, use of radioactive sources in research and experimental and analytical laboratory activities, electron microscopes, and X-ray machines.

*Nuclear facility* means a reactor or a nonreactor nuclear facility where an activity is conducted for or on behalf of DOE and includes any related area, structure, facility, or activity to the extent necessary to ensure proper implementation of the requirements established by this Part.

*Operating limits* means those limits required to ensure the safe operation of a nuclear facility, including limiting control settings and limiting conditions for operation.

*Preliminary documented safety analysis* means documentation prepared in connection with the design and construction of a new DOE nuclear facility or a major modification to a DOE nuclear facility that provides a reasonable basis for the preliminary conclusion that the nuclear facility can be operated safely through the consideration of factors such as

(1) The nuclear safety design criteria to be satisfied;

(2) A safety analysis that derives aspects of design that are necessary to satisfy the nuclear safety design criteria; and

(3) An initial listing of the safety management programs that must be developed to address operational safety considerations.

*Process* means a series of actions that achieves an end or result.

*Quality* means the condition achieved when an item, service, or process meets or exceeds the user's requirements and expectations.

*Quality assurance* means all those actions that provide confidence that quality is achieved.

*Quality Assurance Program (QAP)* means the overall program or management system established to assign responsibilities and authorities, define policies and requirements, and provide for the performance and assessment of work.

*Reactor* means any apparatus that is designed or used to sustain nuclear chain reactions in a controlled manner such as research, test, and power reactors, and critical and pulsed assemblies and any assembly that is designed to perform subcritical experiments that could potentially reach criticality; and, unless modified by words such as containment, vessel, or core, refers to the entire facility, including the housing, equipment and associated areas devoted to the operation and maintenance of one or more reactor cores.

*Record* means a completed document or other media that provides objective evidence of an item, service, or process.

*Safety basis* means the documented safety analysis and hazard controls that provide reasonable assurance that a DOE nuclear facility can be operated safely in a manner that adequately protects workers, the public, and the environment.

*Safety class structures, systems, and components* means the structures, systems, or components, including portions of process systems, whose preventive or mitigative function is necessary to limit radioactive hazardous material exposure to the public, as identified by the documented safety analysis.

*Safety evaluation report* means the report prepared by DOE to document

(1) The sufficiency of the documented safety analysis for a hazard category 1, 2, or 3 DOE nuclear facility;

(2) The extent to which a contractor has satisfied the requirements of Subpart B of this part; and

(3) The basis for approval by DOE of the safety basis for the facility, including any conditions for approval.

*Safety limits* means the limits on process variables associated with those

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safety class physical barriers, generally passive, that are necessary for the intended facility function and that are required to guard against the uncontrolled release of radioactive materials.

*Safety management program* means a program designed to ensure a facility is operated in a manner that adequately protects workers, the public, and the environment by covering a topic such as: quality assurance; maintenance of safety systems; personnel training; conduct of operations; inadvertent criticality protection; emergency preparedness; fire protection; waste management; or radiological protection of workers, the public, and the environment.

*Safety management system* means an integrated safety management system established consistent with 48 CFR 970.5204–2.

*Safety significant structures, systems, and components* means the structures, systems, and components which are not designated as safety class structures, systems, and components, but whose preventive or mitigative function is a major contributor to defense in depth and/or worker safety as determined from safety analyses.

*Safety structures, systems, and components* means both safety class structures, systems, and components and safety significant structures, systems, and components.

*Service* means the performance of work, such as design, manufacturing, construction, fabrication, assembly, decontamination, environmental restoration, waste management, laboratory sample analyses, inspection, nondestructive examination/testing, environmental qualification, equipment qualification, repair, installation, or the like.

*Surveillance requirements* means requirements relating to test, calibration, or inspection to ensure that the necessary operability and quality of safety structures, systems, and components and their support systems required for safe operations are maintained, that facility operation is within safety limits, and that limiting control settings and limiting conditions for operation are met.

*Technical safety requirements (TSRs)* means the limits, controls, and related requirements necessary for the safe operation of a nuclear facility and, as appropriate for the work and the hazards identified in the documented safety analysis for the facility, includes safety limits, operating limits, surveillance requirements, administrative and management controls, use and application provisions, and design features, as well as a bases appendix.

*Unreviewed Safety Question (USQ)* means a situation where

(1) The probability of the occurrence or the consequences of an accident or the malfunction of equipment important to safety previously evaluated in the documented safety analysis could be increased;

(2) The possibility of an accident or malfunction of a different type than any evaluated previously in the documented safety analysis could be created;

(3) A margin of safety could be reduced; or

(4) The documented safety analysis may not be bounding or may be otherwise inadequate.

*Unreviewed Safety Question process* means the mechanism for keeping a safety basis current by reviewing potential unreviewed safety questions, reporting unreviewed safety questions to DOE, and obtaining approval from DOE prior to taking any action that involves an unreviewed safety question.

*Use and application provisions* means the basic instructions for applying technical safety requirements.

(b) Terms defined in the Act or in 10 CFR Part 820 and not defined in this section of the rule are to be used consistent with the meanings given in the Act or in 10 CFR Part 820.

### § 830.4 General requirements.

(a) No person may take or cause to be taken any action inconsistent with the requirements of this part.

(b) A contractor responsible for a nuclear facility must ensure implementation of, and compliance with, the requirements of this part.

(c) The requirements of this part must be implemented in a manner that provides reasonable assurance of adequate protection of workers, the public, and the environment from adverse consequences, taking into account the work to be performed and the associated hazards.

(d) If there is no contractor for a DOE nuclear facility, DOE must ensure implementation of, and compliance with, the requirements of this part.

### § 830.5 Enforcement.

The requirements in this part are DOE Nuclear Safety Requirements and are subject to enforcement by all appropriate means, including the imposition of civil and criminal penalties in accordance with the provisions of 10 CFR Part 820.

### § 830.6 Recordkeeping.

A contractor must maintain complete and accurate records as necessary to substantiate compliance with the requirements of this part.

### § 830.7 Graded approach.

Where appropriate, a contractor must use a graded approach to implement the requirements of this part, document the basis of the graded approach used, and submit that documentation to DOE.

## Subpart A—Quality Assurance Requirements

### § 830.120 Scope.

This subpart establishes quality assurance requirements for contractors conducting activities, including providing items or services, that affect, or may affect, nuclear safety of DOE nuclear facilities.

### § 830.121 Quality Assurance Program (QAP).

(a) Contractors conducting activities, including providing items or services, that affect, or may affect, the nuclear safety of DOE nuclear facilities must conduct work in accordance with the Quality Assurance criteria in § 830.122.

(b) The contractor responsible for a DOE nuclear facility must:

(1) Submit a QAP to DOE for approval and regard the QAP as approved 90 days after submittal, unless it is approved or rejected by DOE at an earlier date.

(2) Modify the QAP as directed by DOE.

(3) Annually submit any changes to the DOE-approved QAP to DOE for approval. Justify in the submittal why the changes continue to satisfy the quality assurance requirements.

(4) Conduct work in accordance with the QAP.

(c) The QAP must:

(1) Describe how the quality assurance criteria of § 830.122 are satisfied.

(2) Integrate the quality assurance criteria with the Safety Management System, or describe how the quality assurance criteria apply to the Safety Management System.

(3) Use voluntary consensus standards in its development and implementation, where practicable and consistent with contractual and regulatory requirements, and identify the standards used.

(4) Describe how the contractor responsible for the nuclear facility ensures that subcontractors and suppliers satisfy the criteria of § 830.122.

### § 830.122 Quality Assurance Criteria.

The QAP must address the following management, performance, and assessment criteria:

(a) Criterion 1—Management/Program.



(1) Establish an organizational structure, functional responsibilities, levels of authority, and interfaces for those managing, performing, and assessing the work.

(2) Establish management processes, including planning, scheduling, and providing resources for the work.

(b) Criterion 2—Management/Personnel Training and Qualification.

(1) Train and qualify personnel to be capable of performing their assigned work.

(2) Provide continuing training to personnel to maintain their job proficiency.

(c) Criterion 3—Management/Quality Improvement.

(1) Establish and implement processes to detect and prevent quality problems.

(2) Identify, control, and correct items, services, and processes that do not meet established requirements.

(3) Identify the causes of problems and work to prevent recurrence as a part of correcting the problem.

(4) Review item characteristics, process implementation, and other quality-related information to identify items, services, and processes needing improvement.

(d) Criterion 4—Management/Documents and Records.

(1) Prepare, review, approve, issue, use, and revise documents to prescribe processes, specify requirements, or establish design.

(2) Specify, prepare, review, approve, and maintain records.

(e) Criterion 5—Preformance/Work Processes.

(1) Perform work consistent with technical standards, administrative controls, and other hazard controls adopted to meet regulatory or contract requirements, using approved instructions, procedures, or other appropriate means.

(2) Identify and control items to ensure their proper use.

(3) Maintain items to prevent their damage, loss, or deterioration.

(4) Calibrate and maintain equipment used for process monitoring or data collection.

(f) Criterion 6—Performance/Design.

(1) Design items and processes using sound engineering/scientific principles and appropriate standards.

(2) Incorporate applicable requirements and design bases in design work and design changes.

(3) Identify and control design interfaces.

(4) Verify or validate the adequacy of design products using individuals or groups other than those who performed the work.

(5) Verify or validate work before approval and implementation of the design.

(g) Criterion 7—Performance/Procurement.

(1) Procure items and services that meet established requirements and perform as specified.

(2) Evaluate and select prospective suppliers on the basis of specified criteria.

(3) Establish and implement processes to ensure that approved suppliers continue to provide acceptable items and services.

(h) Criterion 8—Performance/Inspection and Acceptance Testing.

(1) Inspect and test specified items, services, and processes using established acceptance and performance criteria.

(2) Calibrate and maintain equipment used for inspections and tests.

(i) Criterion 9—Assessment/Management Assessment. Ensure managers assess their management processes and identify and correct problems that hinder the organization from achieving its objectives.

(j) Criterion 10—Assessment/Independent Assessment.

(1) Plan and conduct independent assessments to measure item and service quality, to measure the adequacy of work performance, and to promote improvement.

(2) Establish sufficient authority, and freedom from line management, for the group performing independent assessments.

(3) Ensure persons who perform independent assessments are technically qualified and knowledgeable in the areas to be assessed.

## Subpart B—Safety Basis Requirements

### § 830.200 Scope.

This Subpart establishes safety basis requirements for hazard category 1, 2, and 3 DOE nuclear facilities.

### § 830.201 Performance of work.

A contractor must perform work in accordance with the safety basis for a hazard category 1, 2, or 3 DOE nuclear facility and, in particular, with the hazard controls that ensure adequate protection of workers, the public, and the environment.

### § 830.2021 Safety basis.

(a) The contractor responsible for a hazard category 1, 2, or 3 DOE nuclear facility must establish and maintain the safety basis for the facility.

(b) In establishing the safety basis for a hazard category 1, 2, or 3 DOE nuclear facility, the contractor responsible for the facility must:

(1) Define the scope of the work to be performed;

(2) Identify and analyze the hazards associated with the work;

(3) Categorize the facility consistent with DOE–STD–1027–92 ("Hazard Categorization and Accident Analysis Techniques for compliance with DOE Order 5480.23, Nuclear Safety Analysis Reports," Change Notice 1, September 1997);

(4) Prepare a documented safety analysis for the facility; and

(5) Establish the hazard controls upon which the contractor will rely to ensure adequate protection of workers, the public, and the environment.

(c) In maintaining the safety basis for a hazard category 1, 2, or 3 DOE nuclear facility, the contractor responsible for the facility must:

(1) Update the safety basis to keep it current and to reflect changes in the facility, the work and the hazards as they are analyzed in the documented safety analysis;

(2) Annually submit to DOE either the updated documented safety analysis for approval or a letter stating that there have been no changes in the documented safety analysis since the prior submission; and

(3) Incorporate in the safety basis any changes, conditions, or hazard controls directed by DOE.

### § 830.203 Unreviewed safety question process.

The contractor responsible for a hazard category 1, 2, or 3 DOE nuclear facility must:

(a) Submit for DOE approval a USQ process that meets the requirements of this section:

(1) For an existing DOE nuclear facility, by April 10, 2001. Pending DOE approval of the USQ process, the contractor must continue to use its existing, DOE-approved USQ process. If the existing process already meets the requirements of this section, the contractor must notify DOE by April 10, 2001 and request that DOE issue an approval of the existing process; and

(2) For a new DOE nuclear facility, on a schedule that allows DOE approval in a safety evaluation report issued pursuant to section 207(d) of this Part.

(b) Implement the DOE-approved USQ process in situations where there is a:

(1) Temporary or permanent change in the facility as described in the existing documented safety analysis;

(2) Temporary or permanent change in the procedures as described in the existing documented safety analysis;

(3) Test or experiment not described in the existing documented safety analysis; or

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(4) Potential inadequacy of the documented safety analysis because the analysis potentially may not be bounding or may be otherwise inadequate;

(c) Obtain DOE approval prior to taking any action determined to involve a USQ;

(d) Annually submit to DOE a summary of the USQ determinations performed since the prior submission; and

(e) If the contractor discovers or is made aware of a potential inadequacy of the documented safety analysis:

(1) Take action, as appropriate, to place or maintain the facility in a safe condition until an evaluation of the safety of the situation is completed;

(2) Notify DOE of the situation;

(3) Perform a USQ determination and notify DOE promptly of the results; and

(4) Submit the evaluation of the safety of the situation to DOE prior to removing any operational restrictions initiated to meet paragraph (e)(1) of this section.

**§ 830.204 Documented safety analysis.**

(a) The contractor responsible for a hazard category 1, 2, or 3 DOE nuclear facility must obtain approval from DOE for the methodology used to prepare the documented safety analysis for the facility unless the contractor uses a methodology set forth in Table 2 of Appendix A to this Part.

(b) The documented safety analysis for a hazard category 1, 2, or 3 DOE nuclear facility must, as appropriate for the complexities and hazards associated with the facility:

(1) Describe the facility (including the design of safety structures, systems and components) and the work to be performed;

(2) Provide a systematic identification of both natural and man-made hazards associated with the facility;

(3) Evaluate normal, abnormal, and accident conditions, including consideration of natural and man-made external events, identification of energy sources or processes that might contribute to the generation or uncontrolled release of radioactive and other hazardous materials, and consideration of the need for analysis of accidents which may be beyond the design basis of the facility;

(4) Derive the hazard controls necessary to ensure adequate protection of workers, the public, and the environment, demonstrate the adequacy of these controls to eliminate, limit, or mitigate identified hazards, and define the process for maintaining the hazard controls current at all times and controlling their use;

(5) Define the characteristics of the safety management programs necessary to ensure the safe operation of the facility, including (where applicable) quality assurance, procedures, maintenance, personnel training, conduct of operations, emergency preparedness, fire protection, waste management, and radiation protection; and

(6) With respect to a nonreactor nuclear facility with fissionable material in a form and amount sufficient to pose a potential for criticality, define a criticality safety program that:

(i) Ensures that operations with fissionable material remain subcritical under all normal and credible abnormal conditions,

(ii) Identifies applicable nuclear criticality safety standards, and

(iii) Describes how the program meets applicable nuclear criticality safety standards.

**§ 830.205 Technical safety requirements.**

(a) A contractor responsible for a hazard category 1, 2, or 3 DOE nuclear facility must:

(1) Develop technical safety requirements that are derived from the documented safety analysis;

(2) Prior to use, obtain DOE approval of technical safety requirements and any change to technical safety requirements; and

(3) Notify DOE of any violation of a technical safety requirement.

(b) A contractor may take emergency actions that depart from an approved technical safety requirement when no actions consistent with the technical safety requirement are immediately apparent, and when these actions are needed to protect workers, the public or the environment from imminent and significant harm. Such actions must be approved by a certified operator for a reactor or by a person in authority as designated in the technical safety requirements for nonreactor nuclear facilities. The contractor must report the emergency actions to DOE as soon as practicable.

(c) A contractor for an environmental restoration activity may follow the provisions of 29 CFR 1910.120 or 1926.65 to develop the appropriate hazard controls [rather than the provisions for technical safety requirements in paragraph (a) of this section], provided the activity involves either:

(1) Work not done within a permanent structure, or

(2) The decommissioning of a facility with only low-level residual fixed radioactivity.

**§ 830.206 Preliminary documented safety analysis.**

The contractor responsible for a hazard category 1, 2, or 3 new DOE nuclear facility or a major modification to a hazard category 1, 2, or 3 DOE nuclear facility must:

(a) Prepare a preliminary documented safety analysis for the facility, and

(b) Obtain DOE approval of:

(1) The nuclear safety design criteria to be used in preparing the preliminary documented safety analysis unless the contractor uses the design criteria in DOE Order 420.1, Facility Safety; and

(2) The preliminary documented safety analysis before the contractor can procure materials or components or begin construction; provided that DOE may authorize the contractor to perform limited procurement and construction activities without approval of a preliminary documented safety analysis if DOE determines that the activities are not detrimental to public health and safety and are in the best interests of DOE.

**§ 830.207 DOE approval of safety basis.**

(a) By April 10, 2003, a contractor responsible for a hazard category 1, 2, or 3 existing DOE nuclear facility must submit for DOE approval a safety basis that meets the requirements of this Subpart.

(b) Pending issuance of a safety evaluation report in which DOE approves a safety basis for a hazard category 1, 2, or 3 existing DOE nuclear facility, the contractor responsible for the facility must continue to perform work in accordance with the safety basis for the facility in effect on October 10, 2000 and maintain the existing safety basis consistent with the requirements of this Subpart.

(c) If the safety basis for a hazard category 1, 2, or 3 existing DOE nuclear facility already meets the requirements of this Subpart and reflects the current work and hazards associated with the facility, the contractor responsible for the facility must, by April 9, 2001, notify DOE, document the adequacy of the existing safety basis and request DOE to issue a safety evaluation report that approves the existing safety basis. If DOE does not issue a safety evaluation report by October 10, 2001, the contractor must submit a safety basis pursuant to paragraph (a) of this section.

(d) With respect to a hazard category 1, 2, or 3 new DOE nuclear facility or a major modification to a hazard category 1, 2, or 3 DOE nuclear facility, a contractor may not begin operation of the facility or modification prior to the issuance of a safety evaluation report in which DOE approves the safety basis for the facility or modification.



**Appendix A to Subpart B to Part 830—General Statement of Safety Basis Policy**

**A. Introduction**

This appendix describes DOE's expectations for the safety basis requirements of 10 CFR Part 830, acceptable methods for implementing these requirements, and criteria DOE will use to evaluate compliance with these requirements. This Appendix does not create any new requirements and should be used consistently with DOE Policy 450.2A, "Identifying, Implementing and Complying with Environment, Safety and Health Requirements" (May 15, 1996).

**B. Purpose**

1. The safety basis requirements of Part 830 require the contractor responsible for a DOE nuclear facility to analyze the facility, the work to be performed, and the associated hazards and to identify the conditions, safe boundaries, and hazard controls necessary to protect workers, the public and the environment from adverse consequences. These analyses and hazard controls constitute the safety basis upon which the contractor and DOE rely to conclude that the facility can be operated safely. Performing work consistent with the safety basis provides reasonable assurance of adequate protection of workers, the public, and the environment.

2. The safety basis requirements are intended to further the objective of making safety an integral part of how work is performed throughout the DOE complex. Developing a thorough understanding of a nuclear facility, the work to be performed, the associated hazards and the needed hazard controls is essential to integrating safety into management and work at all levels. Performing work in accordance with the safety basis for a nuclear facility is the realization of that objective.

**C. Scope**

1. A contractor must establish and maintain a safety basis for a hazard category 1, 2, or 3 DOE nuclear facility because these facilities have the potential for significant radiological consequences. DOE–STD–1027–92 ("Hazard Categorization and Accident Analysis Techniques for compliance with DOE Order 5480.23, Nuclear Safety Analysis Reports," Change Notice 1, September 1997) sets forth the methodology for categorizing a DOE nuclear facility. The hazard categorization must be based on an inventory of all radioactive materials within a nuclear facility.

2. Unlike the quality assurance requirements of Part 830 that apply to all DOE nuclear and radiological facilities, the safety basis requirements only apply to hazard category 1, 2, and 3 nuclear facilities and do not apply to nuclear facilities below hazard category 3.

TABLE 1

| A DOE nuclear facility categorized as • • • | has the potential for • • • |
|---|---|
| hazard category 1 | significant off-site consequences. |
| hazard category 2 | significant on-site consequences beyond localized consequences. |
| hazard category 3 | only local significant consequences. |
| below category 3 | only consequences less than those that provide a basis for categorization as a hazard category 1, 2, or nuclear facility. |

**D. Integrated Safety Management**

1. The safety basis requirements are consistent with integrated safety management. DOE expects that, if a contractor complies with the Department of Energy Acquisition Regulation (DEAR) clause on integration of environment, safety, and health into work planning and execution (48 CFR 970.5204–2, Integration of Environment, Safety and Health into Work Planning and Execution) and the DEAR clause on laws, regulations, and DOE directives (48 CFR 970.5204–78, Laws, Regulations and DOE Directives), the contractor will have established the foundation to meet the safety basis requirements.

2. The processes embedded in a safety management system should lead to a contractor establishing adequate safety bases and safety management programs that will meet the safety basis requirements of this Subpart. Consequently, the DOE expects if a contractor has adequately implemented integrated safety management, few additional requirements will stem from this Subpart and, in such cases, the existing safety basis prepared in accordance with integrated safety management provisions, including existing DOE safety requirements in contracts, should meet the requirements of this Subpart.

3. DOE does not expect there to be any conflict between contractual requirements and regulatory requirements. In fact, DOE expects that contract provisions will be used to provide more detail on implementation of safety basis requirements such as preparing a documented safety analysis, developing technical safety requirements, and implementing a USQ process.

**E. Enforcement of Safety Basis Requirements**

1. Enforcement of the safety basis requirements will be performance oriented. That is, DOE will focus its enforcement efforts on whether a contractor operates a nuclear facility consistent with the safety basis for the facility and, in particular, whether work is performed in accordance with the safety basis.

2. As part of the approval process, DOE will review the content and quality of the safety basis documentation. DOE intends to use the approval process to assess the adequacy of a safety basis developed by a contractor to ensure that workers, the public, and the environment are provided reasonable assurance of adequate protection from identified hazards. Once approved by DOE, the safety basis documentation will not be subject to regulatory enforcement actions unless DOE determines that the information which supports the documentation is not complete and accurate in all material respects, as required by 10 CFR 820.11. This is consistent with the DOE enforcement provisions and policy in 10 CFR Part 820.

3. DOE does not intend the adoption of the safety basis requirements to affect the existing quality assurance requirements or the existing obligation of contractors to comply with the quality assurance requirements. In particular, in conjunction with the adoption of the safety basis requirements, DOE revised the language

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in 10 CFR 830.122(e)(1) to make clear that hazard controls are part of the work processes to which a contractor and other persons must adhere when performing work. This obligation to perform work consistent with hazard controls adopted to meet regulatory or contract requirements existed prior to the adoption of the safety basis requirements and is both consistent with and independent of the safety basis requirements.

4. A documented safety analysis must address all hazards (that is, both radiological and nonradiological hazards) and the controls necessary to provide adequate protection to the public, workers, and the environment from these hazards. Section 234A of the Atomic Energy Act, however, only authorizes DOE to issue civil penalties for violations of requirements related to nuclear safety. Therefore, DOE will impose civil penalties for violations of the safety basis requirements (including hazard controls) only if they are related to nuclear safety.

**F. Documented Safety Analysis**

1. A documented safety analysis must demonstrate the extent to which a nuclear facility can be operated safely with respect to workers, the public, and the environment.

2. DOE expects a contractor to use a graded approach to develop a documented safety analysis and describe how the graded approach was applied. The level of detail, analysis, and documentation will reflect the complexity and hazard associated with a particular facility. Thus, the documented safety analysis for a simple, low hazard facility may be relatively short and qualitative in nature, while the documented safety analysis for a complex, high hazard facility may be quite elaborate and more quantitative. DOE will work with its contractors to ensure a documented safety analysis is appropriate for the facility for which it is being developed.

3. Because DOE has ultimate responsibility for the safety of its facilities, DOE will review each documented safety analysis to determine whether the rigor and detail of the documented safety analysis are appropriate for the complexity and hazards expected at the nuclear facility. In particular, DOE will evaluate the documented safety analysis by considering the extent to which the documented safety analysis (1) satisfies the provisions of the methodology used to prepare the documented safety analysis and (2) adequately addresses the criteria set forth in 10 CFR 830.204(b). DOE will prepare a Safety Evaluation Report to document the results of its review of the documented safety analysis. A documented safety analysis must contain any conditions or changes required by DOE.

4. In most cases, the contract will provide the framework for specifying the methodology and schedule for developing a documented safety analysis. Table 2 sets forth acceptable methodologies for preparing a documented safety analysis.

TABLE 2

| The contractor responsible for * * * | may prepare its documented safety analyses * * * |
|---|---|
| (1) a DOE reactor | using the method in U.S. Nuclear Regulatory Commission Regulatory Guide 1.70, Standard Format and Content of Safety Analysis Reports for Nuclear Power Plants or successor document. |
| (2) a DOE nonreactor nuclear facility | using the method in DOE–STD–3009–94, Preparation Guide for U.S. Department of Energy Nonreactor Nuclear Facility Safety Analysis Reports, July 1994 or successor document. |
| (3) a DOE nuclear facility with limited operational life. | using the method in either:<br>(1) DOE–STD–3009–94 or successor document or<br>(2) DOE–STD–3011–94, Guidance for Preparation of DOE 5480.22 (TSR) and DOE 5480.23 (SAR) Implementation Plans, November 1994 or successor document. |
| (4) the deactivation or the transition surveillance and maintenance of a DOE nuclear facility. | Using the method in either:<br>(1) DOE–STD–3009–94 or successor document or<br>(2) DOE–STD–3011–94 or successor document. |
| (5) the decommissioning of a DOE nuclear facility | (1) using the method in DOE–STD–1120–98, May 1998, Integration of Environment, Safety, and Health into Facility Disposition Activities or nuclear successor document;<br>(2) using the provisions in 29 CFR 1910.120 (or 29 CFR 1926.65 for construction activities) for developing Safety and Health Programs, Work Plans, Health and Safety Plans, and Emergency Response Plans to address public safety, as well as worker safety; and<br>(3) deriving hazard controls based on the Safety and Health Programs, the Work Plans, the Health and Safety Plans, and the Emergency Response Plans. |
| (6) a DOE environmental restoration activity that involves either work not done within a permanent structure or the decommissioning of a facility with only low-level residual fixed radioactivity. | (1) using the method in DOE–STD–1120–98 or successor document and<br>(2) using the provisions in 29 CFR 1910.120 (or activity that 29 CFR 1926.65 for construction activities) for developing a Safety and Health Program and a site-specific Health and Safety Plan (including elements for Emergency Response Plans, conduct operations, training and qualifications, and maintenance management). |
| (7) a DOE nuclear explosive facility and the nuclear explosive opertions conducted therein. | developing its documented safety analysis in two pieces:<br>(1) a Safety Analysis Report for the nuclear facility that considers the generic nuclear explosive operations and is prepared in accordance with DOE–STD–3009–94 or successor document and<br>(2) a Hazard Analysis Report for the specific nuclear explosive operations prepared in accordance with DOE–STD–3016–99, Hazards Analysis Reports for Nuclear Explosive Operations, February 1999 or successor document. |
| (8) a DOE hazard category 3 nonreactor nuclear facility. | using the methods in Chapters 2, 3, 4, and 5 of DOE–STD–3009–94 or successor document to address in a simplified fashion:<br>(1) the basic description of the facility/activity and its operations, including safety structures, systems, and components;<br>(2) a qualitative hazards analysis; and<br>(3) the hazard controls (consisting primarily of inventory limits and safety management programs) and their bases. |



5. Table 2 refers to specific types of nuclear facilities. These references are not intended to constitute an exhaustive list of the specific types of nuclear facilities. Part 830 defines nuclear facility broadly to include all those facilities, activities, or operations that involve, or will involve, radioactive and/or fissionable materials in such form and quantity that a nuclear or a nuclear explosive hazard potentially exists to the employees or the general public, and to include any related area, structure, facility, or activity to the extent necessary to ensure proper implementation of the requirements established by Part 830. The only exceptions are those facilities specifically excluded such as accelerators. Table 3 defines the specific nuclear facilities referenced in Table 2 that are not defined in 10 CFR 830.3

TABLE 3

| For purposes of Table 2, * * * | means * * * |
|---|---|
| (1) deactivation | the process of placing a facility in a stable and known condition including the removal of hazardous and radioactive materials. |
| (2) decontamination | the removal or reduction of residual radioactive and hazardous materials by mechanical, chemical, or other techniques to achieve a stated objective or end condition. |
| (3) decommissioning | those actions taking place after deactivation of a nuclear facility to retire it from service and includes surveillance and maintenance, decontamination, and/or dismantlement. |
| (4) environmental restoration activities | the process by which contaminated sites and facilities are identified and characterized and by which existing contamination is contained or removed and disposed. |
| (5) generic nuclear explosive operation | a characterization that considers the collective attributes (such as special facility system requirements, physical weapon characteristics, or quantities and chemical/physical forms of hazardous materials) for all projected nuclear explosive operations to be conducted at a facility. |
| (6) nuclear explosive facility | a nuclear facility at which nuclear operations and activities involving a nuclear explosive may be conducted. |
| (7) nuclear explosive operation | any activity involving a nuclear explosive, including activities in which main-charge, high-explosive parts and pits are collocated. |
| (8) nuclear facility with a limited operational life | a nuclear facility for which there is a short remaining operational period before ending the facility's mission and initiating deactivation and decommissioning and for which there are no intended additional missions other than cleanup. |
| (9) specific nuclear explosive operation | a specific nuclear explosive subjected to the stipulated steps of an individual operation, such as assembly or disassembly. |
| (10) transition surveillance and maintenance activities. | activities conducted when a facility is not operating or during deactivation, decontamination, and decommissioning operations when surveillance and maintenance are the predominant activities being conducted at the facility. These activities are necessary for satisfactory containment of hazardous materials and protection of workers, the public, and the environment. These activities include providing periodic inspections, maintenance of structures, systems, and components, and actions to prevent the alteration of hazardous materials to an unsafe state. |

6. The contractor responsible for the design and construction of a new DOE nuclear facility or of a major modification to an existing DOE nuclear facility must prepare a preliminary documented safety analysis. A preliminary documented safety analysis can ensure that substantial costs and time are not wasted in constructing a nuclear facility that will not be acceptable to DOE. If a contractor is required to prepare a preliminary documented safety analysis, the contractor must obtain DOE approval of the preliminary documented safety analysis prior to procuring materials or components or beginning construction. DOE, however, may authorize the contractor to perform limited procurement and construction activities without approval of a preliminary documented safety analysis if DOE determines that the activities are not detrimental to public health and safety and are in the best interests of DOE. DOE Order 420.1, Facility Safety, sets forth acceptable nuclear safety design criteria for use in preparing a preliminary documented safety analysis. As a general matter, DOE does not expect preliminary documented safety analyses to be needed for activities that do not involve significant construction such as environmental restoration activities, decontamination and decommissioning activities, specific nuclear explosive operations, or transition surveillance and maintenance activities.

**G. Hazard Controls**

1. Hazard controls are measures to eliminate, limit, or mitigate hazards to workers, the public, or the environment. They include (1) physical, design, structural, and engineering features; (2) safety structures, systems, and components; (3) safety management programs; (4) technical safety requirements; and (5) other controls necessary to provide adequate protection from hazards.

2. The types and specific characteristics of the safety management programs necessary for a DOE nuclear facility will be dependent on the complexity and hazards associated with the nuclear facility and the work being performed. In most cases, however, a contractor should consider safety management programs covering topics such as quality assurance, procedures, maintenance, personnel training, conduct of operations, criticality safety, emergency preparedness, fire protection, waste management, and radiation protection. In general, DOE Orders set forth DOE's expectations concerning specific topics. For example, DOE Order 420.1 provides DOE's expectations with respect to fire protection and criticality safety.

3. Safety structures, systems, and components require formal definition of minimum acceptable performance in the documented safety analysis. This is accomplished by first defining a safety function, then describing the structure, systems, and components, placing functional requirements on those portions of the structures, systems, and components required for the safety function, and identifying performance criteria that will ensure functional

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requirements are met. Technical safety requirements are developed to ensure the operability of the safety structures, systems, and components and define actions to be taken if a safety structure, system, or component is not operable.

4. Technical safety requirements establish limits, controls, and related requirements necessary for the safe operation of a nuclear facility. The exact form and contents of technical safety requirements will depend on the circumstances of a particular nuclear facility as defined in the documented safety analysis for the nuclear facility. As appropriate, technical safety requirements may have sections on (1) safety limits, (2) operating limits, (3) surveillance requirements, (4) administrative controls, (5) use and application, and (6) design features. It may also have an appendix on the bases for the limits and requirements. DOE Guide 423.X, Implementation Guide for Use in Developing Technical Safety Requirements (TSRs) provides a complete description of what technical safety requirements should contain and how they should be developed and maintained.

5. DOE will examine and approve the technical safety requirements as part of preparing the safety evaluation report and reviewing updates to the safety basis. As with all hazard controls, technical safety requirements must be kept current and reflect changes in the facility, the work and the hazards as they are analyzed in the documented safety analysis. In addition, DOE expects a contractor to maintain technical safety requirements, and other hazard controls as appropriate, as controlled documents with an authorized users list.

6. Table 4 sets forth DOE's expectations concerning acceptable technical safety requirements.

TABLE 4

| As appropriate for a particular DOE nuclear facility, the section of the technical safety requirements on * * * | will provide information on * * * |
|---|---|
| (1) safety limits | the limits on process variables associated with those safety class physical barriers, generally passive, that are necessary for the intended facility function and that are required to guard against the uncontrolled release of radioactive materials. The safety limit section describes, as precisely as possible, the parameters being limited, states the limit in measurable units (pressure, temperature, flow, etc.), and indicates the applicability of the limit. The safety limit section also describes the actions to be taken in the event that the safety limit is exceeded. These actions should first place the facility in the safe, stable condition attainable, including total shutdown (except where such action might reduce the margin of safety) or should verify that the facility already is safe and stable and will remain so. The technical safety requirement should state that the contractor must obtain DOE authorization to restart the nuclear facility following a violation of a safety limit. The safety limit section also establishes the steps and time limits to correct the out-of-specification condition. |
| (2) operating limits | those limits which are required to ensure the safe operation of a nuclear facility. The operating limits section may include subsections on limiting control settings and limiting conditions for operation. |
| (3) limiting control settings | the settings on safety systems that control process variables to prevent exceeding a safety limit. The limited control settings section normally contains the settings for automatic alarms and for the automatic or nonautomatic initiation of protective actions related to those variables associated with the function of safety class structures, systems, or components if the safety analyses show that they are relied upon to mitigate or prevent an accident. The limited control settings section also identifies the protective actions to be taken at the specific settings chosen in order to correct a situation automatically or manually such that the related safety limit is not exceeded. Protective actions may include maintaining the variables within the requirements and repairing the automatic device promptly or shutting down the affected part of the process and, if required, the entire facility. |
| (4) limiting conditions for operations | the limits that represent the lowest functional capability or performance level of safety structures, systems, and components required to perform an activity safely. The limiting conditions for operation section describes, as precisely as possible, the lowest functional capability or performance level of equipment required for continued safe operation of the facility. The limiting conditions for operation section also states the action to be taken to address a condition not meeting the limiting conditions for operation. Normally this simply provides for the adverse condition being corrected in a certain time frame and for further action if this is impossible. |
| (5) surveillance requirements | requirements relating to test, calibration, or inspection to assure that the necessary operability and quality of safety structures, systems, and components is maintained, that facility operation is within safety limits, and that limiting control settings and limiting conditions for operation are met. If a required surveillance is not successfully completed, the contractor is expected to assume the systems or components involved are inoperable and take the actions defined by the technical safety requirement until the systems or components can be shown to be operable. If, however, a required surveillance is not performed within its required frequency, the contractor is allowed to perform the surveillance within 24 hours or the original frequency, whichever is smaller, and confirm operability. |
| (6) administrative controls | organization and management, procedures, recordkeeping, assessment, and reporting necessary to ensure safe operation of a facility consistent with the technical safety requirement. In general, the administrative controls section addresses (1) the requirements associated with administrative controls, (including those for reporting violations of the technical safety requirement); (2) the staffing requirements for facility positions important to safe conduct of the facility; and (3) the commitments to the safety management programs identified in the documented safety analysis as necessary components of the safety basis for the facility. |



TABLE 4—Continued

| As appropriate for a particular DOE nuclear facility, the section of the technical safety requirements on * * * | will provide information on * * * |
|---|---|
| (7) use and application provisions | the basic instructions for applying the safety restrictions contained in a technical safety requirement. The use and application section includes definitions of terms, operating modes, logical connectors, completion times, and frequency notations. |
| (8) design features | design features of the facility that, if altered or modified, would have a significant effect on safe operation. |
| (9) bases appendix | the reasons for the safety limits, operating limits, and associated surveillance requirements in the technical safety requirements. The statements for each limit or requirement shows how the numeric value, the condition, or the surveillance fulfills the purpose derived from the safety documentation. The primary purpose for describing the basis of each limit or requirement is to ensure that any future changes to the limit or requirement is done with full knowledge of the original intent or purpose of the limit or requirement. |

**H. Unreviewed Safety Questions**

1. The USQ process is an important tool to evaluate whether changes affect the safety basis. A contractor must use the USQ process to ensure that the safety basis for a DOE nuclear facility is not undermined by changes in the facility, the work performed, the associated hazards, or other factors that support the adequacy of the safety basis.

2. The USQ process permits a contractor to make physical and procedural changes to a nuclear facility and to conduct tests and experiments without prior approval, provided these changes do not cause a USQ. The USQ process provides a contractor with the flexibility needed to conduct day-to-day operations by requiring only those changes and tests with a potential to impact the safety basis (and therefore the safety of the nuclear facility) be approved by DOE. This allows DOE to focus its review on those changes significant to safety. The USQ process helps keeps the safety basis current by ensuring appropriate review of and response to situations that might adversely affect the safety basis.

3. DOE Guide 424.X, Implementation Guide for Addressing Unreviewed Safety Question (USQ) Requirements provides DOE's expectations for a USQ process. The contractor must obtain DOE approval of any USQ process.

**I. Functions and Responsibilities**

1. The DOE Management Official for a DOE nuclear facility (that is, the Assistant Secretary, the Assistant Administrator, or the Office Director who is primarily responsible for the management of the facility) has primary responsibility within DOE for ensuring that the safety basis for the facility is adequate and complies with the safety basis requirements of Part 830. The DOE Management Official is responsible for ensuring the timely and proper (1) review of all safety basis documents submitted to DOE and (2) preparation of a safety evaluation report concerning the safety basis for a facility.

2. DOE will maintain a public list on the internet that provides the status of the safety basis for each hazard category 1, 2, or 3 DOE nuclear facility and, to the extent practicable, provides information on how to obtain a copy of the safety basis and related documents for a facility.

[FR Doc. 00–25453 Filed 10–6–00; 8:45 am]
BILLING CODE 6450–01–P

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Federal Register

Tuesday,
October 10, 2000

Part IV

# Department of Housing and Urban Development

24 CFR Part 203
Single Family Mortgage Insurance; Electronic Underwriting; Final Rule

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**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**24 CFR Part 203**

**[Docket No. FR–4311–F–02]**

**RIN 2502–AH15**

## Single Family Mortgage Insurance; Electronic Underwriting

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

**ACTION:** Final rule.

**SUMMARY:** As part of Direct Endorsement processing of a single family mortgage for FHA insurance, FHA previously required a Direct Endorsement underwriter to review personally the appraisal report and credit application, including the analysis performed on the worksheets. HUD issued an interim rule in May 1998 to allow a Direct Endorsement lender to substitute an acceptable risk classification from a FHA-approved automated underwriting system (AUS) in lieu of a personal review by a Direct Endorsement underwriter. The interim rule is adopted without change as a final rule.

**EFFECTIVE DATE:** November 9, 2000.

**FOR FURTHER INFORMATION CONTACT:** Vance Morris, Director, Office of Home Mortgage Insurance, Room 9266, Department Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (voice) (202) 708–2700. (This is not a toll-free number.) Hearing-impaired or speech-impaired individuals may access the voice telephone listed by calling the Federal Information Relay Service during working hours at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:**

### Background

Until changed by an interim rule published on May 29, 1998 (63 FR 29506), the Direct Endorsement (DE) procedure required a DE underwriter to personally review the appraisal report and credit application, including the analysis performed on the worksheets, when a single family mortgage was processed for FHA insurance under the Direct Endorsement procedure. The DE underwriter would certify that the underwriter had personally reviewed the credit application and appraisal report on all mortgages originated under the DE procedure. With the introduction of automated underwriting systems, the need for human underwriters to review certain aspects of the mortgage loan application has been substantially diminished. The regulatory change made by the interim rule allowed the lender to substitute an "accept" risk classification from a FHA-approved automated underwriting system in lieu of a personal review by a DE underwriter of the borrower's credit and capacity to repay the mortgage.

An automated underwriting system (AUS) performs an analysis of the loan application and provides risk grades or classifications as to the probability of mortgage default. The AUS either provides an acceptable risk classification (using such terms as "accept" or "approve") for the application based on information provided by the lender, or refers the application for further review by an individual underwriter. FHA controls the approval of all proprietary AUS's, determines the risk it is willing to accept (i.e., the score necessary to allow the loan to be considered an "accept" or an "approve"), and enters into agreements with the AUS vendors outlining what elements of the mortgage application it is permitting the AUS to evaluate. FHA, at its discretion, may determine that the AUS may be used to review elements of the applicant's credit and capacity.

FHA will continue to require a personal review for those mortgage applications referred to an individual underwriter and to require that the lender certify that all other aspects of the mortgage transaction, including data integrity and eligibility rules, meet FHA requirements. Further, the mortgage lender remains responsible for those aspects of the credit and capacity not evaluated by the AUS, including eligibility requirements, as well as the integrity of the data used by the AUS to arrive at the "accept" risk classification.

### Public Comments

HUD received one comment on the interim rule from a DE underwriter.

*Comment.* The commenter stated that it would be prudent for HUD to retain a requirement for a qualified person to sign off on each loan. The commenter expressed concern that a person would need to ensure the integrity of information, such as that taken from a Builder's Certification for a new home, or make judgment calls concerning a need for repairs to a home. The same commenter expressed concern over what he characterized as "HUD's choice" of Freddie Mac's Loan Prospector, objecting to Freddie Mac's charge for access to that AUS system.

*HUD Response.* Under the rule as revised on May 28, 1998, the lender must still sign and submit to HUD, before the mortgage is endorsed for insurance, the Form HUD–92900–A that holds the lender accountable for data integrity. The lender will have the option to decide who signs for the lender on the form certifying to the accuracy of the data used to determine the credit and capacity of the borrower, and may designate the DE underwriter for this purpose. The DE underwriter will still be responsible for review of the property, including repair requirements. An AUS will eliminate only the mandatory personal review of credit and capacity to repay, not the underlying collateral.

HUD did not approve Freddie Mac's licensing fees as part of the approval process, and does not expect to approve such fees for other systems. As other AUSs receive HUD approval, we expect that this will lead to market competition regarding fees for access to AUS processing for FHA-insured mortgages. Since the interim rule was published, HUD has approved Fannie Mae's Desktop Underwriter, as well as PMI Mortgage Services' pmiAURA, and is continuing to evaluate other systems.

HUD has concluded that no change to the interim rule is needed.

### Findings and Certifications

*Environmental Finding*

A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, at the time of the interim rule. The Finding of No Significant Impact remains available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410.

*Federalism*

Executive Order 13132 (entitled "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on State and local governments and is not required by statute, or preempts State law, unless the relevant requirements of section 6 of the Executive Order are met. This final rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.



*The Regulatory Flexibility Act*

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Secretary by his approval of this rule hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities because it allows mortgage lenders greater flexibility and reduces underwriting time and expense.

*Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) requires Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and on the private sector. This final rule does not impose, within the meaning of the UMRA, any Federal mandates on any State, local, or, tribal governments or on the private sector.

### List of Subjects in Part 203

Hawaiian Natives, Home improvement, Indians—lands, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

### Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number for this program is 14.117.

Accordingly, the amendment to 24 CFR 203.255(b)(5) made by interim rule published on May 29, 1998 at 63 FR 29506 is adopted as a final rule without change.

Dated: October 2, 2000.

**William C. Apgar,**

*Assistant Secretary for Housing-Federal Housing Commissioner.*

[FR Doc. 00–25869 Filed 10–6–00; 8:45 am]

**BILLING CODE 4210–27–P**

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Federal Register

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October 10, 2000

Part V

# Department of Housing and Urban Development

24 CFR Part 291
Disposition of HUD-Acquired Single Family Property; Officer Next Door Sales Program; Final Rule

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**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**24 CFR Part 291**

**[Docket No. FR–4277–F–03]**

**RIN 2502–AH37**

## Disposition of HUD-Acquired Single Family Property; Officer Next Door Sales Program

**AGENCY:** Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

**ACTION:** Final rule.

**SUMMARY:** This final rule on the Officer Next Door Sales program (OND Sales program) follows publication of an interim rule published on July 2, 1999. The interim rule, which solicited public comment, became effective August 2, 1999. The OND Sales program makes HUD-acquired single family homes available, with certain restrictions, to law enforcement officers for purchase at a discount from list prices. This final rule addresses the comments received on the interim rule and expands eligibility for the OND Sales program to include campus police officers employed by private colleges and universities. HUD believes the inclusion of these law enforcement officers will further the goal of the OND Sales program to promote safe neighborhoods.

**DATES:** *Effective Date:* November 9, 2000.

**FOR FURTHER INFORMATION CONTACT:** Joe McCloskey, Director, Single Family Asset Management Division, Office of Insured Single Family Housing, Room 9286, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–8000; telephone (202) 708–1672 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

**SUPPLEMENTARY INFORMATION:**

### I. The July 2, 1999 Interim Rule

On July 2, 1999 (64 FR 36210), HUD published for public comment interim regulations on the Officer Next Door Sales program (OND Sales program). HUD developed this program to further its goal of promoting safe neighborhoods. Beginning in 1997, until publication of the July 2, 1999 interim rule, the OND Sales program had been operating as a temporary program under HUD's authority to make single family properties available under 24 CFR part 291 (entitled "Disposition of HUD-Acquired Single Family Property"). The July 2, 1999 interim rule announced HUD's intent to establish the OND Sales program as a permanent part of HUD's single family property disposition program and issued for effect regulations covering the terms and conditions of the program. The interim rule became effective August 2, 1999.

Under the OND Sales program, law enforcement officers may purchase HUD-acquired single family homes, with certain restrictions, at a discount (currently 50%) from list prices. The home must be located in a HUD-designated revitalization zone, and the law enforcement officer must agree to own and live in the home as his or her sole residence for a set period of time (currently 3 years). The law enforcement officer must also agree to execute a second mortgage and note on the home. The amount of the second mortgage is the difference between the list price of the home and the discounted selling price, and this amount is reduced, according to a schedule established by HUD, periodically over the period of time in which the law enforcement officer is required to own and live in the home. At the end of this period of time, the amount of the second mortgage is zero. So long as he or she fulfills the obligations under the program, the law enforcement officer is not required to make any monthly payments, nor does any interest accrue on the second mortgage.

Governmental entities and private nonprofit organizations may also purchase homes through the OND Sales program, if they intend to resell these homes directly to law enforcement officers under the terms and conditions of the OND Sales program. A complete description of the OND Sales program is presented in the preamble to the July 2, 1999 interim rule.

### II. This Final Rule

This final rule adopts the July 2, 1999 interim regulations, and takes into consideration the public comments received on the interim rule. The public comment period for the interim rule closed on August 31, 1999. HUD received 2 comments, both from nonprofit public interest housing and community development organizations. HUD appreciates the suggestions offered by the commenters and carefully considered these suggestions. For the reasons discussed in section III of this preamble, however, HUD has chosen not to implement their suggestions.

This final rule makes one change to the July 2, 1999 interim rule. Specifically, the final rule expands eligibility for the OND Sales program to include campus police officers employed by private colleges and universities. The July 2, 1999 interim rule defines "law enforcement officers" as persons who are: (1) employed full-time by a Federal, State, county, or municipal government; and (2) sworn to uphold, and make arrests for violations of, Federal, State, county, or municipal law. (See § 291.530 of the July 2, 1999 interim rule.) Under this definition, police officers employed by State or local colleges and universities are eligible to participate in the OND Sales program. Private campus police officers, however, are excluded under the eligibility requirements established by the interim rule.

Upon reconsideration, HUD believes that this limitation on eligibility, based solely on the governmental status of the police officer's employer, is too restrictive. Private campus police officers have the same qualifications and responsibilities as police officers who are employed by public colleges or universities. They are police academy graduates, and are sworn to uphold, and make arrests for violations of, Federal, State, county, or municipal law. The presence of these police officers would be as beneficial to communities as that of their public sector counterparts. However, because these police officers are employed by private entities and not government institutions, they would be denied participation in OND Sales program under the July 2, 1999 interim rule. HUD has, therefore, revised the July 2, 1999 interim rule to allow private campus police officers to participate in the program.

### III. Discussion of the Public Comments Received on the July 2, 1999 Interim Rule

This section of the preamble presents a summary of the issues raised by the public commenters and HUD's responses to their comments. For the reasons discussed below, HUD has decided not to revise the interim rule in response to public comment.

*Comment—Current disposition procedure negatively impacts community development efforts and may harm the Federal Housing Administration (FHA) insurance funds.* Currently, under the OND Sales program, HUD offers both law enforcement officers and nonprofit organizations the opportunity to purchase eligible HUD properties at a discount. The current disposition procedure for these properties is as follows:

(1) Eligible properties are listed on a special nonprofit/OND Sales program list.



(2) Nonprofits and law enforcement officers have 5 days to indicate an interest in a property.

(3) A winner is selected from among those indicating an interest through a random computerized lottery.

(4) The winner has the right to either purchase or not purchase the property. If the winner chooses not to purchase the property, the property is then relisted on a public list.

The commenters wrote that this procedure is unfair to serious bidders and counterproductive for communities requiring significant revitalization because it encourages casual bidding. According to the commenters, casual bidding is encouraged because bid winners are chosen through a random computerized lottery, so law enforcement officers feel the need to play the odds and bid on multiple properties. Additionally, the system does not require a deposit so law enforcement officers need not be selective about which properties they submit bids on.

The commenters wrote that, in some communities, law enforcement officers have been expressing interest in properties, winning the right to purchase those properties, but then failing to purchase them. When this happens, nonprofit organizations lose the opportunity to purchase these properties from the private list because the properties are automatically relisted on the public list. While nonprofit organizations can bid off the public list, the competition is much greater.

The commenters also wrote that, while it may seem that the FHA insurance funds are better protected because properties sold off the public list are sold at a higher price, in many cases this benefit is only short-term. According to the commenters, properties sold from the public list are often purchased by private investors whose primary interest in the property is as an investment. The commenters wrote that these investors may only patch, paint, and either try to quickly resell the properties to unsophisticated purchasers or rent them. The commenters wrote that, as a consequence, these properties often show up on the HUD inventory list again and again. The commenters wrote that nonprofit organizations, on the other hand, are mission oriented and more apt to invest significant funds to substantially renovate these homes in the manner they truly need to stabilize and revitalize the community.

The commenters suggested two possible solutions to these perceived problems. First, the commenters suggested that the computer lottery should simply rank all nonprofit and law enforcement officers in order in which they are selected. The first person selected would be given the option to purchase the property. If this person declines, then the second person on the list would be given the option and so on. This system would not delay the process and could be completed within a reasonable time (such as 14-days) if strict deadlines are enforced.

The commenters also recommended that HUD structure the OND Sales program so that it promotes only serious participants. For example, the program could allow law enforcement officers to participate in only one lottery at a time. Alternatively, limits should be placed on the number of times a law enforcement officer may express interest in a property and then choose not to purchase that property.

*HUD Response.* HUD appreciates the recommendations submitted by the commenters. The comments, however, relate almost exclusively to the lottery procedure currently used by HUD to determine winning bids under the OND Sales program. The July 2, 1999 interim rule did not establish specific disposition procedures for the program. Rather, the interim rule focused on the eligibility requirements for participation in the OND Sales program, and the requirements applicable to eligible law enforcement officers who are selected to purchase a home through the program.

HUD's single family property disposition regulations at 24 CFR part 291 provide HUD with the necessary flexibility to use a variety of innovative, efficient, and cost-effective methods for making properties available for sale (see § 291.90). In developing the OND Sales program, HUD wished to retain this flexibility, and elected not to establish a specific sales method for the program. HUD currently uses a lottery system to make properties available to law enforcement officers under the OND Sales program. However, HUD may, in its discretion, either on a case-by-case basis or as a regular course of business, elect to use another disposition method for the program (for example, a competitive bid process).

The suggestions made by the commenters relate to a matter not covered by the OND Sales program regulations, and are, therefore, outside the scope of this rulemaking. Accordingly, HUD has not adopted the changes recommended by the commenters in this final rule. Again, HUD prefers not to establish precise property disposition procedures for the OND Sales program. HUD, however, will consider these comments in the development of any future revisions to the lottery system, or in the adoption of an alternative disposition method for OND Sales program.

### IV. For More Information About the OND Sales Program

Law enforcement officers, governmental entities, private nonprofit organizations, and other interested persons can receive more information about the OND Sales program by calling (800) 217–6970 or by visiting HUD's Web site at http://www.hud.gov.

### V. Justification for Final Rulemaking

In general, HUD publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking at 24 CFR part 10. Part 10, however, does provide for exceptions from that general rule where HUD finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when the prior public procedure is "impracticable, unnecessary, or contrary to the public interest" (24 CFR 10.1).

As discussed above, this final rule makes a single change to the July 2, 1999 interim rule. Specifically, the final rule amends the July 2, 1999 interim rule to permit private campus police officers to participate in the OND Sales program. HUD finds that good cause exists to publish this amendment for effect without first soliciting public comment, in that prior public procedure is contrary to the public interest. The reasons for HUD's determination are as follows.

As noted above, campus police officers employed by State and local colleges or universities are currently eligible to participate in the OND Sales program. Private campus police officers, however, are ineligible under the July 2, 1999 interim rule. Upon reconsideration, HUD believes that this limitation on eligibility, based solely on the governmental status of the police officer's employer, is too restrictive. Police officers employed by private colleges and universities have the same qualifications and responsibilities as their public sector counterparts.

Delaying the effectiveness of this amendment to solicit prior public comment would only prolong the denial of eligibility to private campus police officers, simply because they are employed by private institutions. In addition, a delay in the effectiveness of this amendment would deny to residents the benefits of having these police officers reside in their communities. By expanding eligibility, HUD anticipates that the number of properties on which bids are placed by law enforcement officers will increase,

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therefore furthering the goal of the OND Sales program to promote safe neighborhoods.

**VI. Findings and Certifications**

*Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) requires Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and on the private sector. This final rule does not impose any Federal mandates on any State, local, or, tribal governments, or on the private sector, within the meaning of the UMRA.

*Environmental Impact*

A Finding of No Significant Impact (FONSI) with respect to the environment was made at the interim rule stage, in accordance with the HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). That FONSI remains applicable to this final rule and is available for public inspection and copying during regular business hours (7:30 a.m. to 5:30 p.m.) at the Office of the Rules Docket Clerk, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500.

*Impact on Small Entities*

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this final rule and in so doing certifies that it would not have a significant economic impact on a substantial number of small entities.

This final rule promotes safe neighborhoods by enabling law enforcement officers to purchase HUD-acquired single family homes at a significant discount. The final rule places restrictions on the use of a home purchased through the Officer Next Door Sales program that affects the individual purchasing the home. The final rule, however, does not place restrictions on any small entities involved in any transactions related to the Officer Next Door Sales program.

**Federalism Impact**

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

**List of Subjects in 24 CFR Part 291**

Community facilities, Conflict of interests, Homeless, Lead poisoning, Low and moderate income housing, Mortgages, Reporting and recordkeeping requirements, Surplus government property.

For the reasons discussed in the preamble, HUD adopts the amendments made in the interim rule amending 24 CFR part 291, which was published at 64 FR 36210 on July 2, 1999, with the following change:

**PART 291—DISPOSITION OF HUD-ACQUIRED SINGLE FAMILY PROPERTY**

1. The authority citation for part 291 continues to read as follows:

**Authority:** 12 U.S.C. 1701 *et seq.*; 42 U.S.C. 1441, 1441a, 1551a, and 3535(d).

2. Revise § 291.530(a) to read as follows:

**§ 291.530 Who qualifies as a law enforcement officer?**

* * * * *

(a) Employed full-time by:

(1) A Federal, state, county or municipal government; or

(2) A public or private college or university; and

* * * * *

Dated: October 2, 2000.

**William C. Apgar,**

*Assistant Secretary for Housing-Federal Housing Commissioner.*

[FR Doc. 00–25870 Filed 10–6–00; 8:45 am]

BILLING CODE 4210–27–P

Federal Register

Tuesday,
October 10, 2000

Part VI

# Department of Health and Human Services

**National Institutes of Health**

**Office of Biotechnology Activities; Recombinant DNA Research: Action Under the Guidelines; Notice**

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**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**National Institutes of Health**

**Office of Biotechnology Activities; Recombinant DNA Research: Action Under the Guidelines**

**AGENCY:** National Institutes of Health (NIH), PHS, DHHS.

**ACTION:** Notice of Actions Under the NIH Guidelines for Research Involving Recombinant DNA Molecules (NIH Guidelines).

**SUMMARY:** This notice describes amendments to the NIH Guidelines regarding research participant enrollment in human gene transfer studies and the submission of study protocols for NIH Recombinant DNA Advisory Committee (RAC) review. NIH's goal in making these modifications to the NIH Guidelines is to ensure that no research participant is enrolled in a human gene transfer study until the RAC review process has been completed, IBC and IRB approvals have been obtained, and applicable regulatory authorization(s) have been obtained.

The NIH is modifying the requirements for protocol submission to the NIH Office of Biotechnology Activities (OBA) for RAC review so that clinical trial proposals: 1) may be submitted for RAC review prior to local Institutional Review Board (IRB) approval; and 2) must be submitted to the NIH OBA for RAC review and the RAC review process completed prior to local Institutional Biosafety Committee (IBC) approval.

In the case of clinical trial proposals that are reviewed publicly and lead to specific recommendations from the RAC with regard to the protocol, the NIH will send written RAC recommendations to the Principal Investigator and the IBC and the IRB within 10 working days of public RAC review and discussion. Once the local IBC is in receipt of the RAC recommendations, the IBC may proceed with its protocol approval process. Investigators may initiate research participant enrollment when they have obtained final IBC and IRB approvals and all applicable regulatory authorization(s).

No later than 20 working days after enrollment of the first research participant, the investigator must have provided to NIH OBA: (1) the final protocol, as approved by the local IRB and IBC and as authorized by the FDA along with the IND number; (2) the NIH grant number(s), if applicable; (3) a copy of the IRB and IBC approvals; (4) as applicable, a written response addressing each of the RAC recommendations resulting from public review and discussion of the protocol; and (5) the date of the initiation of the trial.

**FOR FURTHER INFORMATION CONTACT:** Background documentation and additional information can be obtained from the Office of Biotechnology Activities, National Institutes of Health, MSC 7010, 6000 Executive Boulevard, Suite 302, Bethesda, Maryland 20892–7010, Phone 301–496–9838, FAX 301–496–9839. The OBA web site is located at http://www.nih.gov/od/oba/.

**Background Information**

Since the inception of both basic and clinical recombinant DNA research, the NIH RAC has publicly reviewed and discussed the full range of scientific, medical, ethical, legal, and social issues attendant to this field of research. Prior to the action described in this notice, local IBC and IRB approval of human gene transfer protocols were prerequisites for submission of the protocol to the NIH OBA for RAC review.

The actions set forth here: (1) allow all gene transfer protocols that meet the requirements set forth in Appendix M of the NIH Guidelines (Points to Consider in the Design and Submission of Protocols for the Transfer of Recombinant DNA Molecules into One or More Human Research Participants) to be submitted for RAC review prior to local IRB review and approval; (2) require all gene transfer protocols that meet the requirements set forth in Appendix M of the NIH Guidelines to be submitted for RAC review prior to local IBC approval; (3) require, for protocols selected for public discussion by the RAC, that the discussion occur prior to final IBC approval of those protocols; and (4) ensure that no research participant is enrolled on a clinical study until the RAC review process is completed, and IBC and IRB approvals and applicable regulatory authorizations are obtained. For the purposes of this action, research participant enrollment is defined as the process of obtaining consent from a potential research participant, or a designated legal guardian of the participant, to undergo any test or procedure associated with the gene transfer experiment.

With this change, research participants can be assured that, prior to their participation in a gene transfer clinical trial that is either novel and/or raises significant ethical or safety concerns, their local IRB and IBC, as well as the principal investigator will be apprised of the results of public RAC review and discussion.

Public RAC discussion of selected gene transfer protocols and issues of general relevance to the field enhances human subjects protection by informing research participants, investigators, and local and Federal oversight bodies about the current state of knowledge of risks and benefits, potential safety and ethical concerns, and clinical trial design issues associated with gene transfer research. Local institutional review bodies, which generally see only that subset of gene transfer trials conducted at their institution, benefit from the expertise, broad perspective, and the experience of the RAC.

In developing the actions set forth here, the NIH consulted extensively with the public, the RAC, and the Advisory Committee to the Director, NIH (ACD). A version of this proposed action was initially published in the **Federal Register** for public notice and comment on August 11, 1999 (64 FR 43884). The draft proposal and public comments were discussed by the RAC at the September 2–3, 1999, meeting. During this discussion, some RAC members noted that optimizing the effectiveness of the RAC review process was a high priority, but expressed concern that elimination of the requirement for approval of gene transfer protocols by IRBs and IBCs before submission of protocols to NIH might result in the submission of incomplete or inadequately developed clinical protocols. To address these concerns, the NIH proposed that protocols submitted to NIH OBA for RAC review must address all the elements set forth in Appendix M of the *NIH Guidelines*. Other RAC members expressed concern that RAC review prior to local institutional review might be perceived as diminishing the critical role of IRBs and IBCs in protecting human research participants and the community. To address this concern, NIH proposed that in evaluating gene transfer protocols, the IBC should take into consideration the issues raised and recommendations made during public RAC review and discussion, as well as the Principal Investigator's response to those recommendations. The RAC voted on September 3, 1999, to recommend implementation of this revised proposal.

This proposal was not implemented immediately due to events that occurred shortly thereafter. For the first time in the history of gene transfer research, a research participant's death was attributed directly to participation in a gene transfer study. This event raised concerns about the safety of gene transfer research. In response, the NIH Director established in December, 1999, the ACD Working Group on NIH Oversight of Clinical Gene Transfer Research (the ACD Working Group) to review the role of NIH and the RAC in oversight of clinical gene transfer research. The ACD Working Group included scientists, clinicians, bioethicists, and representatives of the general public. The ACD Working Group was asked to develop recommendations on whether the current NIH framework for oversight and public discussion of clinical gene transfer research is appropriate, especially with regard to the role of the RAC and the *NIH Guidelines*; whether current NIH mechanisms are adequate for coordination of the oversight of clinical gene transfer research with the FDA, the Office for Human Research Protections, IRBs, and IBCs; whether additional NIH measures are needed to minimize risk associated with clinical gene transfer research; and the appropriate role of the NIH with regard to reporting, analysis, and public discussion of serious adverse events.

The ACD Working Group concurred that participants must not be enrolled in a gene transfer protocol until NIH OBA and the RAC have determined whether the protocol requires public RAC review and, in the case of a protocol selected for public review and discussion, until that review has occurred. If the RAC expresses concerns about the safety or design of a protocol, there must be a systematic and established mechanism that allows RAC to communicate those concerns to the investigators prior to enrollment of participants.

The ACD Working Group specifically recommended the following:

- Research participant safety would be optimally enhanced if participants are not enrolled in gene transfer protocols selected for public RAC review and discussion until that public review has occurred and the investigator has responded to the RAC recommendations.
- The timing of review of gene transfer protocols by RAC, the IRB, the IBC, and the FDA should be altered to ensure that RAC functions as an effective advisory committee to investigators, local IRBs and IBCs, NIH, and FDA.
- The requirement that the investigator obtain IBC and IRB approval prior to submission of a protocol to OBA/RAC should be eliminated. This change would allow investigators to receive RAC input at an earlier stage of protocol development.
- Final IBC approval should be withheld until RAC review is complete. In the case of protocols not selected for public RAC review and discussion, IBC approval can be granted as soon as the IBC is notified that the protocol has not been selected for further review. In the case of protocols selected for public RAC review and discussion, IBC approval must be withheld until after RAC discussion and the investigator has responded to the review, thereby preventing the initiation of a trial prior to public RAC review.

The RAC unanimously endorsed the ACD Working Group recommendations on June 29, 2000. On July 15, 2000, the ACD unanimously voted to accept the ACD Working Group recommendations regarding review of human gene transfer protocols by the NIH RAC. Through this notice of action, the NIH is amending the *NIH Guidelines* in light of the recommendations of the RAC and the ACD.

The actions described in this notice implement fundamental changes in the NIH process for protocol submission and review of gene transfer clinical research protocols. These changes affect multiple sections of the *NIH Guidelines*, as set forth below. In addition, Appendix M of the *NIH Guidelines* is significantly modified. Specifically, the text has been substantially changed and reorganized in order to convey the revised protocol review process in a clear and logical manner. For the convenience of the reader, those portions of Appendix M that contain amended language, as well as those containing reorganized text, are reprinted below. The revised *NIH Guidelines*, in their entirety, can be accessed at http://www4.od.nih.gov/oba/guidelines.html. (**Note:** In the text below, adverse event reporting requirements remain unchanged; however, a subsequent notice will describe proposed changes for reporting to NIH on serious adverse events that occur during clinical gene transfer research.)

**Actions Amending the NIH Guidelines**

*Section I. Scope of the NIH Guidelines*

Section I-A–1-a under Purpose is amended to read:

"Section I–A–1–a. For experiments involving the deliberate transfer of recombinant DNA, or DNA or RNA derived from recombinant DNA, into human research participants (human gene transfer), no research participant shall be enrolled (see definition of enrollment in Section I–E–7) until the RAC review process has been completed (see Appendix M–I–B, RAC Review Requirements); Institutional Biosafety Committee (IBC) approval (from the clinical trial site) has been obtained; Institutional Review Board approval has been obtained; and all applicable regulatory authorization(s) have been obtained.

"For a clinical trial site that is added after the RAC review process, no research participant shall be enrolled (see definition of enrollment in Section I-E–7) at the clinical trial site until the following documentation has been submitted to NIH OBA: (1) IBC approval (from the clinical trial site); (2) Institutional Review Board approval; (3) Institutional Review Board-approved informed consent document; and (4) curriculum vitae of the principal investigator(s) (no more than two pages in biographical sketch format); and (5) NIH grant number(s) if applicable."

A new Section I–E–7 is added to read:

"Section I–E–7. "Enrollment" is the process of obtaining informed consent from a potential research participant, or a designated legal guardian of the participant, to undergo a test or procedure associated with the gene transfer experiment."

*Section III. Experiments Covered by the NIH Guidelines*

Section III–C is amended to read:

"Section III–C. Experiments that Require Institutional Biosafety Committee and Institutional Review Board Approvals and RAC Review Before Research Participant Enrollment

"Section III–C–1. Experiments Involving the Deliberate Transfer of Recombinant DNA, or DNA or RNA Derived from Recombinant DNA, into One or More Human Research Participants

"For an experiment involving the deliberate transfer of recombinant DNA, or DNA or RNA derived from recombinant DNA, into human research participants (human gene transfer), no research participant shall be enrolled (see definition of enrollment in Section I–E–7) until the RAC review process has been completed (see Appendix M–I–B, *RAC Review Requirements*).

"In its evaluation of human gene transfer proposals, the RAC will consider whether a proposed human gene transfer experiment presents characteristics that warrant public RAC review and discussion (See Appendix M-I-B–2). The process of public RAC review and discussion is intended to foster the safe and ethical conduct of human gene transfer experiments. Public review and discussion of a human gene transfer experiment (and access to relevant information) also serves to inform the public about the technical aspects of the proposal, meaning and significance of the research, and any significant safety, social, and ethical implications of the research."

"Public RAC review and discussion of a human gene transfer experiment may be: (1) initiated by the NIH Director; or (2) initiated by the NIH OBA Director following a recommendation to NIH OBA by: (a) three or more RAC members; or (b) a Federal agency other than NIH. After a human gene transfer experiment is reviewed by the RAC at a regularly scheduled meeting, NIH OBA will send a letter within 10 working days to the NIH Director, the Principal Investigator, the

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sponsoring institution, and other DHHS components, as appropriate, summarizing the RAC recommendations.

"For a clinical trial site that is added after the RAC review process, no research participant shall be enrolled (see definition of enrollment in Section I–E–7) at the clinical trial site until the following documentation has been submitted to NIH OBA: (1) Institutional Biosafety Committee approval (from the clinical trial site); (2) Institutional Review Board approval; (3) Institutional Review Board-approved informed consent document; and (4) curriculum vitae of the principal investigator(s) (no more than two pages in biographical sketch format).

"In order to maintain public access to information regarding human gene transfer protocols (including protocols that are not publicly reviewed by the RAC), NIH OBA will maintain the documentation described in Appendices M–I through M–V. The information provided in response to Appendix M should not contain any confidential commercial information or trade secrets, enabling all aspects of RAC review to be open to the public.

"**Note:** For specific directives concerning the use of retroviral vectors for gene delivery, consult Appendix B–V–1, *Murine Retroviral Vectors.*"

*Section IV. Roles and Responsibilities*

Section IV is amended to read in part:

Section IV–B. Responsibilities of the Institution

Section IV–B–1. General Information. . .

Section IV–B–1–f. Ensure that . . . (ii) all aspects of Appendix M have been appropriately addressed by the Principal Investigator; and (iii) no research participant shall be enrolled (see definition of enrollment in Section I–E–7) in a human gene transfer experiment until the RAC review process has been completed (see Appendix M–I–B, RAC Review Requirements). . . ."

"Section IV-B–2. Institutional Biosafety Committee (IBC). . .

"Section IV–B–2–a. Membership and Procedures

Section IV–B–2–a–(1). . . . When the institution participates in or sponsors recombinant DNA research involving human research participants, the institution must ensure that: . . . (ii) all aspects of Appendix M have been appropriately addressed by the Principal Investigator; (iii) no research participant shall be enrolled (see definition of enrollment in Section I–E–7) in a human gene transfer experiment until the RAC review process has been completed (see Appendix M–I–B, RAC Review Requirements); and (iv) final IBC approval is granted only after the RAC review process has been completed (see Appendix M–I–B, RAC Review Requirements). Institutional Biosafety Committee approval must be obtained from the institution at which recombinant DNA material will be administered to human research participants (rather than the site involved in manufacturing gene transfer products)."

Section IV–B–2–b. Functions. . .

On behalf of the Institution, the Institutional Biosafety Committee is responsible for:

"Section IV–B–2–b–(1). Reviewing recombinant DNA research conducted at or sponsored by the institution for compliance with the NIH Guidelines as specified in Section III, Experiments Covered by the NIH Guidelines, and approving those research projects that are found to conform with the NIH Guidelines. This review shall include: . . . (iii) ensuring that all aspects of Appendix M have been appropriately addressed by the Principal Investigator; (iv) ensuring that no research participant is enrolled (see definition of enrollment in Section I–E–7) in a human gene transfer experiment until the RAC review process has been completed (see Appendix M–I–B, RAC Review Requirements); (v) for human gene transfer protocols selected for public RAC review and discussion, consideration of the issues raised and recommendations made as a result of this review and consideration of the Principal Investigator's response to the RAC recommendations; (vi) ensuring that final IBC approval is granted only after the RAC review process has been completed (see Appendix M–I–B, RAC Review Requirements); and (vii) ensuring compliance with all surveillance, data reporting, and adverse reporting requirements set forth in the NIH Guidelines."

"Section IV–B–7. Principal Investigator (PI). . .

"Section IV–B–7–b. Information to Be Submitted by the Principal Investigator to NIH OBA

"The Principal Investigator shall: . . . .

"Section IV–B–7–b–(6). Ensure that all aspects of Appendix M have been appropriately addressed prior to the submission of a human gene transfer experiment to NIH OBA, and provide a letter signed by the Principal Investigator(s) on institutional letterhead acknowledging that the documentation being submitted to NIH OBA complies with the requirements set forth in Appendix M. No research participant shall be enrolled (see definition of enrollment in Section I–E–7) in a human gene transfer experiment until the RAC review process has been completed (see Appendix M–I–B, RAC Review Requirements); IBC approval (from the clinical trial site) has been obtained; Institutional Review Board (IRB) approval has been obtained; and all applicable regulatory authorizations have been obtained.

"For a clinical trial site that is added after the RAC review process, no research participant shall be enrolled (see definition of enrollment in Section I–E–7) at the clinical trial site until the following documentation has been submitted to NIH OBA: (1) IBC approval (from the clinical trial site); (2) IRB approval; (3) IRB-approved informed consent document; and (4) curriculum vitae of the principal investigator(s) (no more than two pages in biographical sketch format). . . ."

**Appendix M. Points To Consider in the Design and Submission of Protocols for the Transfer of Recombinant DNA Molecules Into One or More Human Research Participants (Points To Consider)**

**Note:** For the convenience of the reader, those portions of Appendix M that contain amended language, as well as those containing reorganized text, are reprinted below.

Appendix M is amended to read in part:

"Appendix M–I. Requirements for Protocol Submission, Review, and Reporting—Human Gene Transfer Experiments

"Appendix M–I–A. Requirements for Protocol Submission

"The following documentation must be submitted (see exemption in Appendix M–VII–A, Footnotes of Appendix M) in printed or electronic form to the: NIH Office of Biotechnology Activities, National Institutes of Health/MSC 7010, 6000 Executive Boulevard, Suite 302, Bethesda, Maryland 20892–7010, Telephone: 301–496–9838, Facsimile: 301–496–9839, E-mail: rosenthg@od.nih.gov. NIH OBA will confirm receipt within three working days after receiving the submission.

"1. A cover letter on institutional letterhead, signed by the Principal Investigator(s), that: (1) acknowledges that the documentation submitted to NIH OBA complies with the requirements set forth in Appendix M–I–A, Requirements for Protocol Submission; (2) identifies the Institutional Biosafety Committee (IBC) and Institutional Review Board (IRB) at the proposed clinical trial site(s) responsible for local review and approval of the protocol; and (3) acknowledges that no research participant will be enrolled (see definition of enrollment in Section I–E–7) until the RAC review process has been completed (see Appendix M–I–B, RAC Review Requirements); IBC approval (from the clinical trial site) has been obtained; IRB approval has been obtained; and all applicable regulatory authorizations have been obtained.

"2. The scientific abstract.

"3. The non-technical abstract.

"4. The proposed clinical protocol, including tables, figures, and relevant manuscripts.

"5. Responses to Appendices M–II through M–V, Description of the Proposal, Informed Consent, Privacy and Confidentiality, and Special Issues. Responses to Appendices M–II through M–V may be provided either as an appendix to the clinical protocol or incorporated in the clinical protocol. If responses to Appendices M–II through M–V are incorporated in the clinical protocol, each response must refer to the appropriate Appendix M–II through M–V.

"6. The proposed informed consent document (see Appendix M–III, Informed Consent).

"7. Curricula vitae of the principal investigator(s) (no more than two pages in biographical sketch format).

**Note:** A human gene transfer experiment submitted to NIH OBA should not contain confidential commercial information or trade secrets, enabling all aspects of the review to be open to the public.



**"Appendix M–I–B. RAC Review Requirements**

**"Appendix M–I–B–1. Initial RAC Review**

"The initial RAC review process shall include a determination as to whether the human gene transfer experiment presents characteristics that warrant public RAC review and discussion. During the RAC's initial review, individual committee members may request additional information relevant to the protocol. NIH OBA will immediately notify the Principal Investigator(s) of RAC requests for additional information. In making a determination whether an experiment presents characteristics warranting public RAC review and discussion, reviewers will examine the scientific rationale, scientific content, whether the preliminary in vitro and in vivo safety data were obtained in appropriate models and are sufficient, and whether questions related to relevant social and ethical issues have been resolved. Other factors that may warrant public review and discussion of a human gene transfer experiment by the RAC include: (1) a new vector/new gene delivery system; (2) a new clinical application; (3) a unique application of gene transfer; and/or (4) other issues considered to require further public discussion.

"Initial RAC review shall be completed within 15 working days of receipt of a complete submission (see Appendix M–I–A, Requirements for Protocol Submission). At the end of the15-day review period, NIH OBA will notify the Principal Investigator(s) in writing about the results of the RAC's initial review. Two outcomes are possible: (1) the experiment does not present characteristics that warrant further review and discussion and is therefore exempt from public RAC review and discussion; or (2) the experiment presents characteristics that warrant public RAC review and discussion. Completion of the RAC review process is defined as: (1) receipt by the Principal Investigator(s) of a letter from NIH OBA indicating that the submission does not present characteristics that warrant public RAC review and discussion; or (2) receipt by the Principal Investigator(s) of a letter from NIH OBA after public RAC review that summarizes the committee's key comments and recommendations (if any).

"If a human gene transfer protocol is submitted less than eight weeks before a scheduled RAC meeting and is subsequently recommended for public RAC review and discussion, the review of the protocol by the RAC will be deferred until the next scheduled RAC meeting. This eight-week period is needed to ensure adequate time for public notice and comment and thorough review by the committee members.

"No research participant shall be enrolled (see definition of enrollment in Section I–E–7) in the human gene transfer experiment until: (1) the RAC review process has been completed; (2) Institutional Biosafety Committee (IBC) approval (from the clinical trial site) has been obtained; (3) Institutional Review Board (IRB) approval has been obtained; and (4) all applicable regulatory authorization(s) have been obtained.

"For a clinical trial site that is added after the RAC review process, no research participant shall be enrolled (see definition of enrollment in Section I–E–7) at the clinical trial site until the following documentation has been submitted to NIH OBA: (1) IBC approval (from the clinical trial site); (2) IRB approval; (3) IRB-approved informed consent document; and (4) curriculum vitae of the principal investigator(s) (no more than two pages in biographical sketch format).

**"Appendix M–I–B–2. Public RAC Review and Discussion**

"Public RAC review and discussion of a human gene transfer experiment may be: (1) initiated by the NIH Director; or (2) initiated by the NIH OBA Director following a recommendation to NIH OBA by: (a) three or more RAC members; or (b) a Federal agency other than NIH. In making a determination whether an experiment presents characteristics warranting public RAC review and discussion, reviewers will examine the scientific rationale, scientific content, whether the preliminary in vitro and in vivo safety data were obtained in appropriate models and are sufficient, and whether questions related to relevant social and ethical issues have been resolved. Other factors that may warrant public review and discussion of a human gene transfer experiment by the RAC include: (1) a new vector/new gene delivery system; (2) a new clinical application; (3) a unique application of gene transfer; and/or (4) other issues considered to require further public discussion.

"After a human gene transfer experiment is reviewed by the full RAC at a regularly scheduled meeting, NIH OBA will send a letter summarizing the RAC key comments and recommendations (if any) regarding the protocol to the NIH Director, the Principal Investigator, the sponsoring institution, and other DHHS components, as appropriate. Completion of RAC review is defined as receipt by the Principal Investigator(s) of a letter from NIH OBA that summarizes the committee's findings. Unless NIH OBA determines that there are exceptional circumstances, the RAC summary letter will be sent to the Principal Investigator(s) within 10 working days after the completion of the RAC meeting at which the experiment was reviewed.

"RAC meetings will be open to the public except where trade secrets or confidential commercial information are reviewed. To enable all aspects of the protocol review process to be open to the public, information provided in response to Appendix M should not contain trade secrets or confidential commercial information. No application submitted to NIH OBA shall be designated as 'confidential' in its entirety. In the event that an investigator determines that specific responses to one or more of the items described in Appendix M should be considered as confidential commercial information or a trade secret, each item must be clearly identified as such. The cover letter (attached to the submitted material) shall: (1) clearly designate the information that is considered as confidential commercial information or a trade secret; and (2) explain and justify each designation."

**"Appendix M–I–C. Reporting Requirements**

**"Appendix M–I–C–1. Initiation of the Clinical Investigation**

"No later than 20 working days after enrollment (see definition of enrollment in Section I–E–7) of the first research participant on a human gene transfer experiment, the Principal Investigator(s) shall submit the following documentation to NIH OBA: (1) a copy of the informed consent document approved by the Institutional Review Board (IRB); (2) a copy of the protocol approved by the Institutional Biosafety Committee (IBC) and IRB; (3) a copy of the final IBC approval from the clinical trial site; (4) a copy of the final IRB approval; (5) a brief written report that includes the following information: (a) how the investigator(s) responded to each of the RAC's recommendations on the protocol (if applicable); and (b) any modifications to the protocol as required by FDA; (6) applicable NIH grant number(s); (7) the FDA Investigational New Drug Application (IND) number; and (8) the date of the initiation of the trial. The purpose of requesting the FDA IND number is for facilitating interagency collaboration in the Federal oversight of human gene transfer research."

**"Appendix M–I–C–2. Additional Clinical Trial Sites**

"No research participant shall be enrolled (see definition of enrollment in Section I–E–7) at a clinical trial site until the following documentation has been submitted to NIH OBA: (1) Institutional Biosafety Committee approval (from the clinical trial site); (2) Institutional Review Board approval; (3) Institutional Review Board-approved informed consent document; (4) curriculum vitae of the principal investigator(s) (no more than two pages in biographical sketch format); and (5) NIH grant number(s) if applicable."

**"Appendix M–I–C–3. Annual Reporting**

"Investigators shall comply with annual data reporting requirements. Annual data report forms will be forwarded by NIH OBA to investigators. Information submitted in these annual reports will be evaluated by NIH OBA and the RAC, and possibly considered at a future RAC meeting. Information obtained through the annual data reporting process will be included in the NIH Human Gene Transfer Information System to: (1) provide clinical trial information; (2) provide administrative details of protocol registration; (3) provide annual status reports of protocols; (4) facilitate risk assessment of individual applications of human gene transfer; and (5) enhance public awareness of relevant scientific, safety, social, and ethical issues."

**"Appendix M–I–C–4. Serious Adverse Event Reporting**

"Investigators who have received authorization from FDA to initiate a human gene transfer protocol must report any

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serious adverse event immediately to the local Institutional Review Board, Institutional Biosafety Committee, Office for Human Research Protections (if applicable), and NIH OBA, followed by the submission of a written report filed with each group. Reports submitted to NIH OBA shall be sent to the Office of Biotechnology Activities, National Institutes of Health/MSC 7010, 6000 Executive Boulevard, Suite 302, Bethesda, Maryland 20892–7010, (301) 496–9838."

"Appendix M–II. Description of Proposal . . ."

"Appendix M–III. Informed Consent . . .

**"M–III–B. Informed Consent Document**

"Submission of a human gene transfer experiment to NIH OBA must include a copy of the proposed informed consent document. A separate informed consent document should be used for the gene transfer portion of a research project when gene transfer is used as an adjunct in the study of another technique, e.g., when a gene is used as a "marker" or to enhance the power of immunotherapy for cancer. . . ."

"Appendix M–IV. Privacy and Confidentiality . . ."

"Appendix M–V. Special Issues . . ."

Appendix M–VI, RAC Review—Human Gene Transfer Experiments has been incorporated into new Appendix M–I–B, RAC Review Requirements.

Appendix M–VII, Reporting Requirements, has been incorporated into new Appendix M–I–C, Reporting Requirements.

Appendix VIII, Footnotes of Appendix M, will be renumbered to Appendix VI.

* * * * *

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally, NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers virtually every NIH and Federal research program in which recombinant DNA techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

Dated: September 30, 2000.

**Ruth L. Kirschstein,**

*Principal Deputy Director, National Institutes of Health.*

[FR Doc. 00–25891 Filed 10–6–00; 8:45 am]

BILLING CODE 4140–01–P




Federal Register

**Tuesday,**
**October 10, 2000**

**Part VII**

# Department of Transportation

**Federal Aviation Administration**

**14 CFR Parts 61, 63, 65, 108, 121, and 135**
**Advanced Qualification Program; Final Rule**

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Parts 61, 63, 65, 108, 121, and 135**

**[Docket No. FAA–2000–7497; Amendment No. 61–107, 63–30, 65–41, 108–18, 121–280 and 135–78]**

**RIN 2120–AH01**

## Advanced Qualification Program

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The FAA is establishing a new termination date for Special Federal Aviation Regulation (SFAR) No. 58 (55 FR 40275; October 2, 1990), which provides for the approval of an alternate method (known as "Advanced Qualification Program" or "AQP") for qualifying, training and certifying, and otherwise ensuring the competency of crewmembers, aircraft dispatchers, other operations personnel, instructors, and evaluators who are required to be trained or qualified under 14 CFR parts 121 and 135. This action will establish a new termination date, October 2, 2005, for SFAR 58 to allow time for the FAA to complete the rulemaking process that will incorporate SFAR 58 into the Federal Aviation Regulations.

**DATES:** Effective October 2, 2000.

**FOR FURTHER INFORMATION CONTACT:** Thomas M. Longridge, Advanced Qualification Program Branch, AFS–230, Air Transportation Division, Flight Standards Service, Federal Aviation Administration, P.O. Box 20027, Dulles International Airport, Washington, DC 20041–2027; telephone (703) 661–0260.

**SUPPLEMENTARY INFORMATION:**

### Availability of Final Rules

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the FedWorld electronic bulletin board service (telephone: (703) 321–3339) of the Government Printing Office's (GPO) electronic bulletin board service (telephone: (202) 512–1661).

Internet users may reach the FAA's web page at http://www.faa.gov/avr/arm/nprm/nprm.htm or the GPO's web page at http://www.access.gpo.gov/nara for access to recently published rulemaking documents.

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM– 1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Communications must identify the amendment number or docket number of this final rule.

Persons interested in being placed on the mailing list for future rulemaking documents should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

### Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, requires the FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact their local FAA official. Internet users can find additional information on SBREFA on the FAA's web page at http://www.faa.gov/avr/arm/sbrefa.htm and may send electronic inquiries to the following Internet address: 9–AWA–SBREFA@faa.gov.

### Background

On June 8, 2000, the FAA issued a notice of proposed rulemaking (NPRM) proposing to extend the expiration date of SFAR 58 (65 FR 37836; June 16, 2000). The comment period closed on July 17, 2000, and no comments were received. The amendment is adopted as proposed.

### Good Cause Justification for Immediate Adoption

The reasons that justified the original issuance of SFAR 58 still exist. Therefore, it is in the public interest to establish a new expiration date for SFAR 58 of October 2, 2005. If the FAA publishes a final rule incorporating SFAR 58 into the regulations before this expiration date, SFAR 58 will be rescinded concurrently. Ordinarily under the Administrative Procedure Act, a substantive rule must be served or published not less than 30 days before its effective date except, among other things, if the agency finds "good cause" for making it effective sooner. See 5 U.S.C. Section 553(d)(3). The FAA finds that the continuation of SFAR 58 is necessary to permit continued training under this program and to avoid the confusion that would result if the program were discontinued or temporarily suspended because of the general legal requirement to publish a rule at least 30 days before it becomes effective.

For these reasons, and because as a voluntary program AQP imposes no additional burden on any person, the FAA finds "good cause" for making this amendment, which extends the termination date for the SFAR by 5 years, effective immediately upon issuance.

### Economic Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs each Federal agency to propose or adopt a regulation only if the agency makes a reasoned determination that the benefits of the regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 required agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. section 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards. The Trade Act directs agencies, where appropriate, to use those international standards as the basis of U.S. standards. And fourth, the Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules. This requirement applies only to rules that include a Federal mandate on State, local, or tribal governments or the private sector, likely to result in a total expenditure of $100 million or more in any one year (adjusted for inflation). In conducting these analyses, FAA had determined this rule: (1) Has benefits that justify its costs, is not a "significant regulatory action" as defined in the Executive Order, and is not "significant" as defined in DOT's Regulatory Policies and Procedures; (2) will not have a significant impact on a substantial number of small entities; (3) has no impact on international trade; and (4) does not impose an unfunded mandate on state, local, or tribal governments or on the private sector.

AQP is not mandatory; consequently, those operators who choose to participate in the program would do so only if it was in their best interest. Enough operators have found it in their best interest that AQP has become an important means for meeting the requirements for air carrier training programs. AQP gives air carriers flexibility in meeting the safety goals of the training programs in 14 CFR parts 121 and 135 without sacrificing any of the safety benefits derived from those programs. Thus, extending AQP for another 5 years will not impose any additional costs nor decrease the present level of safety. Because this final rule extends an existing, voluntary program that has become an important means for some operators to comply with training requirements, the FAA finds that a detailed regulatory evaluation is not necessary.



### Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This rulemaking allows certain air carriers to continue participating in a voluntary, alternative method for qualifying, training and certifying, and otherwise ensuring competency of crewmembers, aircraft dispatchers, and other operational personnel, instructors, and evaluators who are required to be trained or qualified under 14 CFR parts 121 and 135. As such, this rulemaking will not impose any additional cost on those air carriers. Consequently, the FAA certifies that the rule will not have a significant economic impact on a substantial number of small air carriers.

### International Trade Impact Analysis

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. In addition, consistent with the Administration's belief in the general superiority and desirability of free trade, it is the policy of the Administration to remove or diminish to the extent feasible, barriers to international trade, including both barriers affecting the export of American goods and services to foreign countries and barriers affecting the import of foreign goods and services into the United States.

In accordance with the above statute and policy, the FAA has assessed the potential effect of this final rule and has determined that it will have only a domestic impact and therefore no affect on any trade-sensitive activity.

### Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. The FAA has determined that this action will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the FAA has determined that this final rule will not have federalism implications.

### Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that will impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1553, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

The FAA determines that this final rule does not contain a significant intergovernmental or private sector mandate as defined by the Act.

### International Trade

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activity that crate unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. In addition, consistent with the Administration's belief in the general superiority and desirability of free trade, it is the policy of the Administration to remove or diminish, to the extent feasible, barriers to international trade, including both barriers affecting the export of American goods and services to foreign countries and barriers affecting the import of foreign goods and services to into the U.S.

In accordance with the above statute and policy, the FAA has assessed the potential effect of this final rule and has determined that it will have only a domestic impact and therefore no affect on any trade-sensitive activity.

### Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking action qualifies for categorical exclusion.

### Energy Impact

The energy impact of the notice has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Pub. L. 94–163, as amended (42 U.S.C. 6362) and FAA Order 1053.1. It has been determined that the final rule is not a major regulatory action under the provisions of the EPCA.

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*14 CFR Part 61*

Air safety, Air transportation, Aviation safety, Safety.

*14 CFR Part 63*

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*14 CFR Part 65*

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*14 CFR Part 108*

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*14 CFR Part 121*

Aircraft pilots, Airmen, Aviation safety, Pilots, Safety.

*14 CFR Part 135*

Air carriers, Air transportation, Airmen, Aviation safety, Safety, Pilots.

**The Amendment**

In consideration of the foregoing, the Federal Aviation Administration amends SFAR 58 (14 CFR parts 61, 63, 65, 108, 121, and 135) of Title 14, Code of Federal Regulations, as folows:

1. The authority citation for part 61 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701–44703, 44707, 44709–44711, 45102–45103, 45301–45303.

2. The authority citation for part 63 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40108, 40113, 44701–44703, 44710, 44712, 44714, 44716, 44717, 44722, 45303.

3. The authority citation for part 65 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701–44703, 44707, 44709–44711, 45102–45103, 45301–45302.

4. The authority citation for part 108 continues to read as follows:

**Authority:** 49 U.S.C. 106(g); 5103, 40113, 40119, 44701–44702, 44705, 44901–44905, 44907, 44913–44914, 44932, 44935–44936, 46105.

5. The authority citation for part 121 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 449112, 46105.

6. The authority citation for part 135 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722.

7. In part 121, SFAR 58 is amended by revising paragraph 13 to read as follows:

Special Federal Aviation Regulation No. 58—Advanced Qualification Program

* * * * *

13. Expiration. This Special Federal Aviation Regulation terminates on October 2, 2005, unless sooner terminated.

Issued in Washington, DC, on September 29, 2000.

**Jane F. Garvey,**

*Administrator.*

[FR Doc. 00–25632 Filed 10–6–00; 8:45 am]

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Tuesday,
October 10, 2000

Part VIII

# Department of Education

**Office of Special Education Programs; Notice of Extension; Notice**

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## DEPARTMENT OF EDUCATION

### Office of Special Education Programs; Notice of Extension

**AGENCY:** Office of Special Education and Rehabilitative Services, Department of Education.

**ACTION:** Notice of Extension.

**SUMMARY:** On August 29, 2000, a notice inviting applications for new awards for Grant Applications under Part D, Subpart 2 of the Individuals with Disabilities Education Act (IDEA) was published in the **Federal Register** (65 FR 52618—52628). The notice included an absolute priority for Accessible Media for Students with Visual Impairments and Print Disabilities (84.327K), shown on page 52624, which requires clarification. This notice provides a clarification and extends the deadline for transmittal of applications for Accessible Media for Students with Visual Impairments and Print Disabilities only.

The notice published on August 29, 2000 contained a requirement that, to be considered for funding under the Accessible Media for Students with Visual Impairments and Print Disabilities priority, the project must handle requests for educational materials from students who are visually or print disabled at all educational levels without charging for materials or membership fees. This notice clarifies that the grantee may not charge students or their families a membership fee or charge them fees for educational materials at any educational level that are produced with funds received under this priority. However, the grantee may charge schools, State or local educational agencies, or other educational entities participating in this program, at any educational level, a membership fee or charge them fees for educational materials that are produced with funds received under this priority. Institutions that are charged membership fees cannot pass on these fees or other costs related to obtaining educational materials to students or families.

*Deadline for Transmittal of Applications:* The deadline has been extended to November 3, 2000.

*Deadline for Intergovernmental Review:* The deadline has been extended to January 2, 2001.

**FOR FURTHER INFORMATION CONTACT:** Lynel McFadden, telephone: (202) 205–9095. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–9136. Internet: *Lynel_McFadden@ed.gov*

Individuals with disabilities may obtain this document in an alternate format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

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**Program Authority:** 20 U.S.C. 1487.

Dated: October 5, 2000.

**Judith E. Heumann,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 00–25997 Filed 10–6–00; 8:45 am]
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# Reader Aids

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The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

**H.J. Res. 109/P.L. 106–275**

Making continuing appropriations for the fiscal year 2001, and for other purposes. (Sept. 29, 2000; 114 Stat. 808)

**S. 1638/P.L. 106–276**

To amend the Omnibus Crime Control and Safe Streets Act of 1968 to extend the retroactive eligibility dates for financial assistance for higher education for spouses and dependent children of Federal, State, and local law enforcement officers who are killed in the line of duty. (Oct. 2, 2000; 114 Stat. 812)

**S. 2460/P.L. 106–277**

To authorize the payment of rewards to individuals furnishing information relating to persons subject to indictment for serious violations of international humanitarian law in Rwanda, and for other purposes. (Oct. 2, 2000; 114 Stat. 813)

**Last List September 28, 2000**

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 1999, through January 1, 2000. The CFR volume issued as of January 1, 1999 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 1999, through April 1, 2000. The CFR volume issued as of April 1, 1999 should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 1999, through July 1, 2000. The CFR volume issued as of July 1, 1999 should be retained.

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**Editorial Note:** The Effective Dates Chart in the issue of Tuesday, October 3, 2000, was incorrectly printed and is being republished as follows:

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This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

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10–11–00 Wednesday
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# Federal Register

10–11–00 Wednesday
Vol. 65 No. 197 Oct. 11, 2000
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**NUCLEAR REGULATORY COMMISSION**

**10 CFR Part 72**

**RIN 3150–AG58**

## List of Approved Spent Fuel Storage Casks: HI–STAR 100 Revision

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Direct final rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is amending its regulations by revising the Holtec International HI–STAR 100 cask system listing within the "List of approved spent fuel storage casks" to include Amendment No. 1 to the Certificate of Compliance (CoC). Amendment No. 1 revises the HI–STAR 100 cask system in seven areas and includes changes to the CoC and Technical Specifications. The seven areas involve: revision of the existing fuel specification tables; addition of pressurized water reactor Burnable Poison Rod Assemblies and Thimble Plug Devices; addition of two new classes of fuel to the fuel specification tables; addition of a new damaged fuel container; addition of thoria rods in canisters; addition of antimony-beryllium neutron sources [*i.e.*, reactor startup sources]; and clarifications, editorial corrections, and other minor changes to cask design information and drawings. The CoC was revised to require users to prepare written acceptance tests and a maintenance program consistent with the technical basis described in the Safety Analysis Report (SAR). In addition, the amendment includes two minor changes to the HI–STAR 100 listing in the regulations. This amendment will allow the holders of power reactor operating licenses to store spent fuel in the HI–STAR 100 cask system, as amended, under a general license.

**DATES:** The final rule is effective December 26, 2000, unless significant adverse comments are received by November 13, 2000. If adverse comments are received, a timely notice of withdrawal will be published in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Attention: Rulemakings and Adjudications Staff.

Deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking website (*http://ruleforumllnl.gov*). This site provides the capability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415–5905 (e-mail: *cag@nrc.gov*).

Certain documents related to this rule, including comments received by the NRC, may be examined at the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC. Beginning September 26, 2000 the NRC Public Document Room will be located at 11555 Rockville Pike, Rockville, MD. These documents also may be viewed and downloaded electronically via the rulemaking website.

Documents created or received at the NRC after November 1, 1999, are also available electronically at the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/NRC/ADAMS/index.html*. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of the NRC's public documents. An electronic copy of the proposed CoC and preliminary safety evaluation report (SER) can be found in ADAMS under Accession No. ML003726991. For more information, contact the NRC Public Document Room reference staff at 1–800–397–4209, 202–634–3273 or by email to *pdr@nrc.gov*.

**FOR FURTHER INFORMATION CONTACT:** Gordon Gundersen, telephone (301) 415–6195, e-mail GEG1@nrc.gov of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

**SUPPLEMENTARY INFORMATION:**

### Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended (NWPA), requires that "[t]he Secretary [of the Department of Energy] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission." Section 133 of the NWPA states, in part, that "[t]he Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 218(a) for use at the site of any civilian nuclear power reactor."

To implement this mandate, the NRC approved dry storage of spent nuclear fuel in NRC-approved casks under a general license, publishing a final rule in 10 CFR Part 72 entitled "General License for Storage of Spent Fuel at Power Reactor Sites" (55 FR 29181, July 18, 1990). This rule also established a new Subpart L within 10 CFR Part 72 entitled "Approval of Spent Fuel Storage Casks," containing procedures and criteria for obtaining NRC approval of dry storage cask designs.

The NRC subsequently issued a final rule on September 3, 1999 (64 FR 48274), that approved the HI–STAR 100 cask design, added it to the list of NRC-approved cask designs in § 72.214, and issued Certificate of Compliance Number (CoC No.) 1008.

### Discussion

On November 24, 1999, Holtec International (the certificate holder), submitted an application to the NRC to amend CoC No. 1008 and supplemented the application on February 4, 18, and 28, March 2, 16, and 31, and May 23, 2000. Amendment No. 1 revises the HI–STAR 100 cask system in seven areas and includes changes to the CoC and Technical Specifications. The seven areas involve: (1) Revision of the existing fuel specification tables; (2)

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addition of pressurized water reactor (PWR) Burnable Poison Rod Assemblies (BPRAs) and Thimble Plug Devices (TPDs); (3) addition of two new classes of fuel to the fuel specification tables; (4) addition of a new damaged fuel container that can contain fuel assemblies with known or suspected defects, such as ruptured fuel rods, severed rods, loose pellets; (5) addition of thoria rods in canisters; (6) addition of antimony-beryllium neutron sources [*i.e.*, reactor startup sources]; and (7) clarifications, editorial corrections, and other minor changes to cask design information and drawings. The staff revised the CoC to include Condition 3 that requires users to prepare written acceptance tests and maintenance program consistent with the technical basis described in Chapter 9 of the SAR. This was done for consistency with other CoC's, in particular, the Hi-STORM 100.

In addition, the amendment includes two minor changes to the HI–STAR 100 listing in § 72.214 of the regulations. First, the "Certification Expiration Date" is changed to "Certificate Expiration Date." Second, "Final" is added to the title of the SAR. This amendment will allow the holders of power reactor operating licenses to store spent fuel in the HI–STAR 100 cask system, as amended, under a general license. These changes are described in the Revision History for Amendment 1 (CoC, Appendices A and B). The NRC staff performed a safety evaluation of the amendment request and found that the changes provide reasonable assurance that the spent fuel can be stored safely and in compliance with 10 CFR Part 72. The NRC staff documented its review and evaluation in a Safety Evaluation Report. This direct final rule will revise the Holtec International HI–STAR 100 cask system listing within the list of NRC-approved casks for spent fuel storage in § 72.214 by adding Amendment No. 1 to CoC No. 1008. The amended HI-STAR 100 cask system, when used under the conditions specified in the CoC and NRC regulations, will meet the requirements of 10 CFR Part 72; thus, adequate protection of public health and safety will continue to be ensured. Amendment No. 1 applies to any HI-STAR 100 cask loaded after December 26, 2000.

Amendment No. 1 to CoC No. 1008 and the underlying SER, and the Environmental Assessment and Finding of No Significant Impact are available for inspection and comment through September 21, 2000, at the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC. Beginning September 26, 2000, the NRC Public Document Room wil be located at 11555 Rockville Pike, Rockvill, MD. Single copies of the CoC and SER may be obtained from Gordon Gundersen, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6195, email *GEG1@nrc.gov*. An electronic copy of the proposed CoC and preliminary SER can be found in the NRC's Electronic Reading Room *http://www.nrc.gov/NRC/ADAMS/index.html* under Accession No. ML003726991.

**Discussion of Amendments by Section**

*§ 72.214 List of Approved Spent Fuel Storage Casks*

Certificate No. 1008 will be revised indicating the addition of Amendment No. 1 and its effective date. Also, the "Certification Expiration Date" is changed to "Certificate Expiration Date," and "Final" is added to the title of the safety analysis report.

**Procedural Background**

This rule is limited to the changes contained in Amendment No. 1 to CoC No. 1008 and does not include other aspects of the HI–STAR 100 cask system design. Because NRC considers this amendment to its rules to be noncontroversial and routine, the NRC is using the direct final rule procedure for this rule. This amendment will become effective on December 26, 2000. However, if the NRC receives significant adverse comments by November 13, 2000, then the NRC will publish a document that withdraws this action and will address the comments received in response to the amendments. These comments will be addressed in a subsequent final rule. Absent significant modification to the revisions requiring republication, the NRC will not initiate a second comment period on this action.

**Agreement State Compatibility**

Under the "Policy Statement on Adequacy and Compatibility of Agreement State Programs" approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this rule is classified as Compatibility Category "NRC." Compatibility is not required for Category "NRC" regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended (AEA), or the provisions of Title 10 of the Code of Federal Regulations. Although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws, but does not confer regulatory authority on the State.

**Plain Language**

The Presidential Memorandum dated June 1, 1998, entitled "Plain Language in Government Writing," directed that the Government's writing be in plain language. The NRC requests comments on this direct final rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the heading **ADDRESSES,** above.

**Finding of No Significant Environmental Impact: Availability**

Under the National Environmental Policy Act of 1969, as amended, and the NRC regulations in Subpart A of 10 CFR Part 51, the NRC has determined that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The rule will add Amendment No. 1 to the HI–STAR 100 cask system to the list of approved spent fuel storage casks that power reactor licensees can use to store spent fuel at reactor sites without additional site-specific approvals by the NRC.

Amendment No. 1 revises the HI–STAR 100 cask system in seven areas and includes changes to the CoC and Technical Specifications. The seven areas involve: (1) Revision of the existing fuel specification tables; (2) addition of pressurized water reactor (PWR) Burnable Poison Rod Assemblies (BPRAs) and Thimble Plug Devices (TPDs); (3) addition of two new classes of fuel to the fuel specification tables; (4) addition of a new damaged fuel container; (5) addition of thoria rods in canisters; (6) addition of antimony-beryllium neutron sources [*i.e.*, reactor startup sources]; and (7) clarifications, editorial corrections, and other minor changes to cask design information and drawings. The staff revised the CoC to include Condition 3 that requires users to prepare written acceptance tests and maintenance program consistent with the technical basis described in Chapter 9 of the SAR. This was done for consistency with other CoCs, in particular the HI–STORM 100.

In addition, the amendment includes two minor changes to HI–STAR 100 listing in § 72.214 of the regulations. First, "Certification Expiration Date" is changed to "Certificate Expiration Date." Second, "Final" is added to the title of the safety analysis report. The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC through September 21, 2000. Beginning September 26, 2000, the NRC Public Document Room will located at 11555 Rockville Pike, Rockville, MD. Single copies of the environmental assessment and finding of no significant impact are available from Gordon Gundersen, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 415–6195, email *GEG1@nrc.gov*. An electronic copy of the proposed environmental assessment and finding of no significant impact can be found in the NRC's Electronic Reading Room at *http://www.nrc.gov/NRC/ADAMS/index.html*.

**Paperwork Reduction Act Statement**

This direct final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, Approval Number 3150–0132.

**Public Protection Notification**

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

**Voluntary Consensus Standards**

The National Technology Transfer Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this direct final rule, the NRC will revise the Holtec International HI–STAR 100 cask system listing within the list of NRC approved casks for spent fuel storage in 10 CFR 72.214. This action does not constitute the establishment of a standard that establishes generally-applicable requirements.

**Regulatory Analysis**

On July 18, 1990 (55 FR 29181), the Nuclear Regulatory Commission (NRC) issued an amendment to 10 CFR Part 72 to provide for the storage of spent nuclear fuel under a general license in cask system designs approved by the NRC. Any nuclear power reactor licensee can use NRC-approved casks to store spent nuclear fuel if it notifies the NRC in advance, spent fuel is stored under the conditions specified in the cask's Certificate of Compliance, and the conditions of the general license are met.

A list of NRC-approved cask system designs is contained in § 72.214. On September 3, 1999 (64 FR 48274), the NRC issued an amendment to Part 72 that approved the HI–STAR 100 cask design, added it to the list of NRC-approved cask designs in § 72.214, and issued CoC No. 1008. On November 24, 1999, the certificate holder submitted an application to the NRC to amend the Technical Specifications and CoC No. 1008. Amendment No. 1 revises the HI–STAR 100 cask system in seven areas and includes changes to the CoC and Technical Specifications. The seven areas involve: (1) Revision of the existing fuel specification tables; (2) addition of pressurized water reactor (PWR) Burnable Poison Rod Assemblies (BPRAs) and Thimble Plug Devices (TPDs); (3) addition of two new classes of fuel to the fuel specification tables; (4) addition of a new damaged fuel container; (5) addition of thoria rods in canisters; (6) addition of antimony-beryllium neutron sources [*i.e.*, reactor startup sources]; and (7) clarifications, editorial corrections, and other minor changes to cask design information and drawings. In addition, the amendment includes two minor changes to HI–STAR 100 listing in § 72.214 of the regulations. First, the "Certification Expiration Date" is changed to "Certificate Expiration Date." Second, "Final" is added to the title of the safety analysis report. This amendment will allow holders of power reactor operating licenses to store spent fuel in the HI–STAR 100 cask system.

This rule will permit manufacture of casks under the revisions in Amendment 1. The alternative to this action is to withhold approval of this amended cask system design and give a site-specific license to each utility that proposes to use the casks. This alternative would cost both the NRC and the utilities more time and money because each utility would have to pursue a new site-specific license. Conducting site-specific reviews would be in conflict with the Nuclear Waste Policy Act of 1982, as amended (NWPA), which directed to the NRC to approve technologies for the use of spent fuel storage at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the NRC. This alternative does not foster competition because it would tend to favor new vendors without cause and would arbitrarily limit the choice of cask system designs available to power reactor licensees.

Approval of the direct final rule would eliminate the problems described above and is consistent with previous NRC actions. Further, the direct final rule will have no adverse effect on public health and safety. This direct final rule has no significant identifiable impact or benefit on other Government agencies. Based on the above discussion of the benefits and impacts of the alternatives, the NRC concludes that the requirements of the direct final rule are commensurate with the NRC's responsibilities for public health and safety and the common defense and security. No other available alternative is believed to be as satisfactory, and thus, this action is recommended.

**Small Business Regulatory Enforcement Fairness Act**

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

**Regulatory Flexibility Certification**

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This direct final rule affects only the licensing and operation of nuclear power plants, independent spent fuel storage facilities, and Holtec International. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR Part 121.

**Backfit Analysis**

The NRC has determined that the backfit rule (10 CFR 50.109 or 10 CFR 72.62) does not apply to this direct final rule because this amendment does not involve any provisions that would impose backfits as defined. Therefore, a backfit analysis is not required.

**List of Subjects In 10 CFR Part 72**

Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping

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requirements, Security measures, Spent fuel.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is adopting the following amendments to 10 CFR Part 72.

## PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

1. The authority citation for Part 72 continues to read as follows:

**Authority:** Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 10d–48b, sec. 7902, 10b Stat. 31b3 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c),(d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244, (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

2. In Section 72.214, Certificate of Compliance 1008 is revised to read as follows:

**§ 72.214 List of approved spent fuel storage casks.**

* * * * *

Certificate Number: 1008.
Initial Certificate Effective Date: October 4, 1999.
Amendment Number 1 Effective Date: December 26, 2000.
SAR Submitted by: Holtec International.
SAR Title: Final Safety Analysis Report for the HI–STAR 100 Cask System.
Docket Number: 72–1008.
Certificate Expiration Date: October 4, 2019.
Model Number: HI–STAR 100.

* * * * *

Dated at Rockville, Maryland, this 20th day of September, 2000.

For the Nuclear Regulatory Commission.

**Frank J. Miraglia, Jr.,**

*Acting Executive Director for Operations.*

[FR Doc. 00–25913 Filed 10–10–00; 8:45 am]

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## SMALL BUSINESS ADMINISTRATION

### 13 CFR Part 121

### Small Business Size Standards; Arrangement of Transportation of Freight and Cargo

**AGENCY:** Small Business Administration.

**ACTION:** Final rule; clarification.

**SUMMARY:** This document clarifies SBA's final rule revising the small business size standard for Standard Industrial Classification (SIC) Code 4731, Arrangement of Transportation of Freight and Cargo. On May 15, 2000, SBA established a new table of size standards based on the North American Industry Classification System (NAICS) which replaces the SIC code table on October 1, 2000. Because SBA issued the final rule concerning SIC 4731 after adopting the new NAICS table of size standards, this action updates the NAICS size standards table to reflect the changes for the Freight Transportation Arrangement industry. This action also inserts into the NAICS table a Subsector for Mining Support Activities which was inadvertently excluded from the May 15, 2000 publication.

**DATES:** This rule is effective on October 1, 2000.

**FOR FURTHER INFORMATION CONTACT:** Diane Heal, Office of Size Standards, (202) 205–6618.

**SUPPLEMENTARY INFORMATION:**

### Freight Transportation Arrangements

On August 9, 2000, SBA issued a final rule in the **Federal Register**, (65 FR 48601) that revised the small business size standard for SIC Code 4731, Arrangement of Transportation of Freight and Cargo. SBA revised the standard from $18.5 million to $5.0 million in average annual receipts effective September 8, 2000. However, SBA retained the $18.5 million size standard for Non-Vessel Owning Common Carriers and Household Goods Forwarders. SBA, in that same rule, also changed how it calculates the average annuals receipts of freight forwarders and custom brokers for purposes of determining eligibility for Federal small business programs.

In that final rule, SBA referred to the effect that changing the size standard for SIC 4731 would have on the NAICS codes. The industries covered under SIC Code 4731 relate to industries covered under NAICS Code 488510 (Freight Transportation Arrangement) and NAICS Code 541614 (Process, Physical Distribution, and Logistics Consulting Services). SBA detailed the change at 65 FR 48603, "Reclassification of Activities Under the North American Industry Classification System." The table below summarizes how SIC 4731 corresponds to the NAICS.

| SIC 4731 | NAICS description | NAICS code | Size standard |
|---|---|---|---|
| Arrangement of Transportation of Freight and Cargo (Except Freight Rate Auditors and (Tariff Consultants). | Freight Arrangement Transportation. | 488510 | $5.0 million*<br>Except: Non-Vessel Owning Common Carriers and Household Goods Forwarders.....$18.5 million |
| Freight Rate Auditors and Tariff Consultants ..... | Process, Physical Distribution, and Logistics Consulting. | 541614 | $5.0 million |

*As measured by total revenues, but excluding funds received in trust for an unaffiliated third party.

### Support Activities for Mining

When SBA published the NAICS table in the May 15, 2000, **Federal Register**, Subsector 213, Support Activities for Mining, was inadvertently left out of the published table. SBA is now correcting this oversight by adding the Subsector to the NAICS table.



**List of Subjects in 13 CFR Part 121**

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Loan programs—business, Report and record keeping requirement, Small business.

For reasons stated in the preamble, SBA is amending 13 CFR part 121 as follows:

## PART 121—SMALL BUSINESS SIZE REGULATIONS

1. The authority citation for part 121 continues to read as follows:

**Authority:** 15 U.S.C. 632(a), 634(b)(6), 637(a), 644(c), and 662(5); and Sec. 304, Pub. L. 103–403,108 Stat. 4175, 4188.

2. In § 121.201, amend the table "Small Business Size Standards by NAICS Industry" as follows:

a. Under the heading Sector 21—Mining, a new heading is added reading "Subsector 213—Support Activities for Mining" below the entry for 212399, All Other Nonmetallic Mineral Mining and above the entry for 213111, Drilling Oil and Gas Wells;

b. Under the heading Sectors 48–49—Transportation, Subsector 488—Support Activities for Transportation, revise the entry for 488510.

The revisions read as follows:

**§ 121.201 What size standards has SBA identified by North American Industry Classification System codes?**

* * * * *

SIZE STANDARD BY NAICS INDUSTRY

| NAICS codes | Description (N.E.C. = Not Elsewhere Classified) | Size standards in number of employees or million of dollars |
|---|---|---|
| . | . | . |
| | **Sector 21—Mining** | |
| . | . | . |
| 212399 | All Other Nonmetallic Mineral Mining | 500 |
| | **Subsector 213—Support Activities for Mining** | |
| . | . | . |
| | **Sector 48–49—Transportation** | |
| . | . | . |
| | **Subsector 488—Support Activities for Transportation** | |
| . | . | . |
| 488510 | Freight Transportation Arrangement | [10] $5.0 |
| EXCEPT | Non-Vessel Owning Common Carriers and Household Goods Forwarders | $18.5 |
| . | . | . |

c. Revise footnote 10 to read as follows:

**Footnotes:**

* * * * *

10. *NAICS codes 488510 (part), 531210, 541810, 561510* and *561920*—As measured by total revenues, but excluding funds received in trust for an unaffiliated third party, such as bookings or sales subject to commissions. The commissions received are included as revenue.

* * * * *

Dated: October 3, 2000.

**Gary Jackson,**

*Assistant Administrator for Size Standards.*

[FR Doc. 00–25991 Filed 10–10–00; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 25

**[Docket No. NM176; Special Conditions No. 25–165–SC]**

### Special Conditions: British Aerospace Jetstream 4101 Series Airplanes; Seats with Inflatable Lapbelts

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final special conditions; request for comments.

**SUMMARY:** These special conditions are issued for British Aerospace (BAE) Systems Jetstream Model 4101 series airplanes, modified by BAE Systems to include seats with inflatable lapbelts. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

**DATES:** The effective date of these special conditions is September 28, 2000. Comments must be received on or before November 13, 2000.

**ADDRESSES:** Submit comments in duplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114,

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Attention: Rules Docket No. NM176, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. NM176" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

**FOR FURTHER INFORMATION CONTACT:** Todd Thompson, International Branch, ANM–116, Transport Airplane Directorate, Aircraft Certification Service, FAA, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (206) 227–1175; facsimile (425) 227–1149.

**SUPPLEMENTARY INFORMATION:** The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the approval design and thus delivery of the affected airplanes.

**Comments Invited**

Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number identified above and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered. The special conditions may be changed in light of the comments received.

All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this request must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number NM176." The postcard will be date stamped and returned to the commenter.

**Background**

On April 28, 1999, British Aerospace Systems applied for a change to Type Certificate No. A41NM for the installation of an Amsafe inflatable airbag-seatbelt for the front row passenger seats in the British Aerospace System Jetstream 4101 series airplane. The Model 4101 series airplane is a straight-wing, conventional-tail, twin-engine, turboprop-powered transport. The inflatable lapbelt is designed to limit occupant forward excursion in the event of an accident. This will reduce the potential for head injury, thereby reducing the Head Injury Criteria (HIC) measurement. The inflatable lapbelt behaves similarly to the fixed mounted airbag, but in this case the airbag is integrated into the lapbelt, and deploys away from the seated occupant. While airbags are now standard in the automotive industry, the use of an inflatable lapbelt is novel for commercial aviation.

Title 14 Code of Federal Regulations (14 CFR) § 25.785 requires that occupants be protected from head injury by either the elimination of any injurious object within the striking radius of the head, or by padding. Traditionally, this has required a set back of 35″ from any bulkhead or other rigid interior feature or, where not practical, specified types of padding. The relative effectiveness of these means of injury protection was not quantified. With the adoption of Amendment 25–64 to part 25, a new standard that quantifies required head injury protection was created.

Section 25.562 specifies that dynamic tests must be conducted for each seat type installed in the airplane. In particular, the regulations require that persons not suffer serious head injury under the conditions specified in the tests, and that a HIC measurement of not more than 1000 units be recorded, should contact with the cabin interior occur. While the test conditions described in this section are specific, it is the intent of the requirement that an adequate level of head injury protection be provided for crash severity up to and including that specified. In addition HIC is the only available quantifiable measure of head injury protection. Therefore, the FAA will require that a HIC of less than 1000 be demonstrated for occupants of seats incorporating the inflatable lapbelt.

Because § 25.562, § 25.785, and associated guidance do not adequately address seats with inflatable lapbelts, the FAA recognizes that appropriate pass/fail criteria need to be developed that do fully address the safety concerns specific to occupants of these seats.

The inflatable lapbelt has two potential advantages over other means of head impact protection. First, it can provide significantly greater protection than would be expected with energy absorbing pads, for example, and second, it can provide essentially equivalent protection for occupants of all stature. These are significant advantages from a safety standpoint, since such devices will likely provide a level of safety that exceeds the minimum standards of the Federal Aviation Regulations (FAR). Conversely, airbags in general are active systems, and must be relied upon to activate properly when needed, as opposed to an energy absorbing pad or upper torso restraint that is passive, and always available. These potential advantages must be balanced against the potential disadvantages in order to develop standards that will provide an equivalent level of safety to that intended by the regulations.

The FAA has considered the installation of inflatable lapbelts to have two primary safety concerns: first, that they perform properly under foreseeable operating conditions, and second, that they do not perform in a manner or at such times as would constitute a hazard to the airplane or occupants. This latter point has the potential to be the more rigorous of the requirements, owing to the active nature of the system. With this philosophy in mind, the FAA has considered the following as a basis for the special conditions.

The inflatable lapbelt will rely on electronic sensors for signaling and pyrotechnic charges for activation so that it is available when needed. These same devices could be susceptible to inadvertent activation, causing deployment in a potentially unsafe manner. The consequences of such deployment must be considered in establishing the reliability of the system. BAE Systems must substantiate that the effects of an inadvertent deployment in flight are either not a hazard to the airplane, or that such deployment is an extremely improbable occurrence (less than $10^{-9}$ per flight hour). The effect of an inadvertent deployment on a passenger or crewmember that might be positioned close to the airbag should also be considered. The person could be either standing or sitting. A minimum reliability level will have to be established for this case, depending upon the consequences, even if the effect on the airplane is negligible.

The potential for an inadvertent deployment could be increased as a result of conditions in service. The installation must take into account wear and tear so that the likelihood of an inadvertent deployment is not increased to an unacceptable level. In this context, an appropriate inspection interval and self-test capability are considered

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necessary. Other outside influences are lightning and high intensity electromagnetic fields (HIRF). Since the sensors that trigger deployment are electronic, they must be protected from the effects of these threats. Existing Special Conditions No. 25–ANM–48 regarding lightning and HIRF are therefore applicable. For the purposes of compliance with those special conditions, if inadvertent deployment could cause a hazard to the airplane, the airbag is considered a critical system; if inadvertent deployment could cause injuries to persons, the airbag should be considered an essential system. Finally, the airbag installation should be protected from the effects of fire, so that an additional hazard is not created by, for example, a rupture of the pyrotechnic squib.

In order to be an effective safety system, the airbag must function properly and must not introduce any additional hazards to occupants as a result of its functioning. There are several areas where the airbag differs from traditional occupant protection systems, and requires special conditions to ensure adequate performance.

Because the airbag is essentially a single use device, there is the potential that it could deploy under crash conditions that are not sufficiently severe as to require head injury protection from the airbag. Since an actual crash is frequently composed of a series of impacts before the airplane comes to rest, this could render the airbag useless if a larger impact follows the initial impact. This situation does not exist with energy absorbing pads or upper torso restraints, which tend to provide protection according to the severity of the impact. Therefore, the airbag installation should be such that the airbag will provide protection when it is required, and will not expend its protection when it is not needed. There is no requirement for the airbag to provide protection for multiple impacts, where more than one impact would require protection.

Since each occupant's restraint system provides protection for that occupant only, the installation must address seats that are unoccupied. It will be necessary to show that the required protection is provided for each occupant regardless of the number of occupied seats, and considering that unoccupied seats may have lapbelts that are active.

Since a wide range of occupants could occupy a seat, the inflatable lapbelt should be effective for a wide range of occupants. The FAA has historically considered the range from the fifth percentile female to the ninety-fifth percentile male as the range of occupants that must be taken into account. In this case, the FAA is proposing consideration of a larger range of occupants, due to the nature of the lapbelt installation and its close proximity to the occupant. In a similar vein, these persons could have assumed the brace position, for those accidents where an impact is anticipated. Test data indicate that occupants in the brace position may not require supplemental protection, and so it would not be necessary to show that the inflatable lapbelt will enhance the brace position. However, the inflatable lapbelt must not introduce a hazard in that case by deploying into the seated, braced occupant.

Another area of concern is the use of seats so equipped by children whether lap-held, in approved child safety seats, or occupying the seat directly. Similarly, if a pregnant woman occupies the seat, the installation needs to address such usage, either by demonstrating that it will function properly, or by adding appropriate limitation on usage.

Since the inflatable lapbelt will be electrically powered, there is the possibility that the system could fail due to a separation in the fuselage. Since this system is intended as crash/post-crash protection means, failure due to fuselage separation is not acceptable. As with emergency lighting, the system should function properly if such a separation occurs at any point in the fuselage. A separation that occurs at the location of the inflatable lapbelt would not have to be considered.

Since the inflatable lapbelt is likely to have a large volume displacement, the inflated bag could potentially impede egress of passengers. Since the bag deflates to absorb energy, it is likely that an inflatable lapbelt would be deflated at the time that persons would be trying to leave their seats. Nonetheless, it is considered appropriate to specify a time interval after which the inflatable lapbelt may not impede rapid egress. Ten seconds has been chosen as a reasonable time since this corresponds to the maximum time allowed for an exit to be openable. In actuality, it is unlikely that an exit would be prepared this quickly in an accident severe enough to warrant deployment of the inflatable lapbelt, and the inflatable lapbelt will likely deflate much quicker than ten seconds.

Finally, it should be noted that the special conditions are certification requirements applied to the inflatable lapbelt system as installed. The special conditions are not an installation approval. Therefore, while the special conditions relate to each such system installed, the overall installation approval is a separate finding and must consider the combined effects of all such systems installed.

**Type Certification Basis**

Under the provisions of § 21.101, BAE Systems must show that the Model 4101 series airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A41NM or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The regulations incorporated by reference in Type Certificate No. A41NM are as follows: Amendments 25–1 through 25–66 with exceptions. The U.S. type certification basis for the Model 4101 is established in accordance with §§ 21.29 and 21.17, and the type certification application date to the United Kingdom Civil Aviation Authority. The U.S. type certification basis is listed in Type Certificate Data Sheet No. A41NM.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25 as amended) do not contain adequate or appropriate safety standards for the Model 4101 series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Model 4101 must comply with the fuel vent and exhaust emission requirements of part 34 and the noise certification requirements of part 36.

Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

**Novel or Unusual Design Features**

The Model 4101 series airplanes will incorporate the following novel or unusual design features. BAE Systems plans to install an Amsafe Inc, inflatable lapbelt on the front row passenger seats

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of the Model 4101 series airplanes, in order to reduce the potential for head injury in the event of an accident. The inflatable lapbelt works similarly to an automotive airbag, except that the airbag is integrated with the lap belt of the restraint system.

The CFR states the performance criteria for head injury protection in objective terms. However, none of these criteria are adequate to address the specific issues raised concerning seats with inflatable lapbelts. The FAA has therefore determined that, in addition to the requirements of part 25, special conditions are needed to address requirements particular to installation of seats with inflatable lapbelts.

Accordingly, in addition to the passenger injury criteria specified in § 25.785, these special conditions are adopted for the BAE Model 4101 series airplanes equipped with inflatable lapbelts. Other conditions may be developed, as needed, based on further FAA review and discussions with the manufacturer and civil aviation authorities.

**Discussion**

From the standpoint of a passenger safety system, the airbag is unique in that it is both an active and entirely autonomous device. While the automotive industry has good experience with airbags, the conditions of use and reliance on the airbag as the sole means of injury protection are quite different. In automobile installations, the airbag is a supplemental system and works in conjunction with an upper torso restraint. In addition, the crash event is more definable and of typically shorter duration, which can simplify the activation logic. The airplane-operating environment is also quite different from automobiles and includes the potential for greater wear and tear, and unanticipated abuse conditions (due to galley loading, passenger baggage, etc.); airplanes also operate where exposure to high intensity electromagnetic fields could affect the activation system.

The following special conditions can be characterized as addressing either the safety performance of the system, or the system's integrity against inadvertent activation. Because a crash requiring use of the airbags is a relatively rare event, and because the consequences of an inadvertent activation are potentially quite severe, these latter requirements are probably the more rigorous from a design standpoint.

**Applicability**

As discussed above, these special conditions are applicable to the Model 4101 series airplanes. Should BAE Systems apply at a later date for modification of any other model included on Type Certificate No. A41NM to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

**Conclusion**

This action affects only certain novel or unusual design features on the BAE Systems Model 4101 series airplanes. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

**Immediate Adoption of Special Conditions**

The substance of these special conditions has been subject to the notice and comment period in two prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

**List of Subjects in 14 CFR Part 25**

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

**Authority Citation**

The authority citation for these special conditions is as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

**The Special Conditions**

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for British Aerospace (BAE) Systems Model 4101 series airplanes equipped with Amsafe inflatable lapbelts.

1. *Seats With Inflatable Lapbelts.* It must be shown that the inflatable lapbelt will deploy and provide protection under crash conditions where it is necessary to prevent serious head injury. The means of protection must take into consideration a range of stature from a two-year-old child to a ninety-fifth percentile male. The inflatable lapbelt must provide a consistent approach to energy absorption throughout that range. In addition, the following situations must be considered:

a. The seat occupant is holding an infant.
b. The seat occupant is a child in a child restraint device.
c. The seat occupant is a child not using a child restraint device.
d. The seat occupant is a pregnant woman.

2. The inflatable lapbelt must provide adequate protection for each occupant, regardless of the number of occupants of the seat assembly, considering that unoccupied seats may have active seatbelts.

3. The design must prevent the inflatable lapbelt from being either incorrectly buckled or incorrectly installed such that the airbag would not properly deploy. Alternatively, it must be shown that such deployment is not hazardous to the occupant and will provide the required head injury protection.

4. It must be shown that the inflatable lapbelt system is not susceptible to inadvertent deployment as a result of wear and tear, or inertial loads resulting from in-flight or ground maneuvers (including gusts and hard landings), likely to be experienced in service.

5. Deployment of the inflatable lapbelt must not introduce injury mechanisms to the seated occupant, or result in injuries that could impede rapid egress. This assessment should include an occupant who is in the brace position when it deploys, and an occupant whose belt is loosely fastened.

6. It must be shown that an inadvertent deployment, that could cause injury to a standing or sitting person, is improbable.

7. It must be shown that inadvertent deployment of the inflatable lapbelt, during the most critical part of the flight, will either not cause a hazard to the airplane or is extremely improbable.

8. It must be shown that the inflatable lapbelt will not impede rapid egress of occupants 10 seconds after its deployment, considering the requirements of Special Conditions No. 25–NM–45, issued July 9, 1991, and Special Conditions No. 25–NM–45A, issued November 8, 1994, concerning cabin aisle width.

9. The system must be protected from lightning and high-intensity radiated fields (HIRF). The threats specified in Special Condition No. 25–ANM–48 are incorporated by reference for the purpose of measuring lightning and HIRF protection. For the purposes of complying with HIRF requirements, the inflatable lapbelt system is considered a critical system if its deployment could have a hazardous effect on the airplane; otherwise it is considered an essential system.

10. The inflatable lapbelt must function properly after loss of normal aircraft electrical power, and after a transverse separation of the fuselage at the most critical location. A separation at the location of the lapbelt does not have to be considered.

11. It must be shown that the inflatable lapbelt will not release hazardous quantities of gas or particulate matter into the cabin.

12. The inflatable lapbelt installation must be protected from the effects of fire such that no hazard to occupants will result.

13. There must be a means for a crewmember to verify the integrity of the inflatable lapbelt activation system prior to each flight or it must be demonstrated to reliably operate between inspection intervals.

Issued in Renton, Washington, on September 28, 2000.

**Dorenda D. Baker,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–26016 Filed 10–10–00; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2000–NM–286–AD; Amendment 39–11927; AD 2000–20–16]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 757–200 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 757–200 series airplanes. This action requires repetitive inspections of the cargo loader system in the forward and aft cargo compartments to detect discrepancies, and corrective actions, if necessary. This action is necessary to detect and correct such discrepancies, which could result in reduced structural integrity of the fuselage and consequent cabin depressurization.

**DATES:** Effective October 26, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 26, 2000.

Comments for inclusion in the Rules Docket must be received on or before December 11, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–286–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-iarcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–286–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Dennis Stremick, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2776; fax (425) 227–1181.

**SUPPLEMENTARY INFORMATION:** The FAA has received reports indicating that, on certain Boeing Model 757–200 series airplanes, damage has been detected to the fiberglass pan and fuselage frames located in the forward and aft cargo compartments. This damage has been attributed to incorrect operation of the cargo loader system and subsequent wear damage completely through the fiberglass pan, and in some cases, to the adjacent fuselage frames. This condition, if not corrected, could result in reduced structural integrity of the airplane fuselage and consequent cabin depressurization.

**Explanation of Relevant Service Information**

The FAA has reviewed and approved Boeing Alert Service Bulletin 757–25A0233, dated August 10, 2000, which describes procedures for repetitive inspections of the cargo loader system in the forward and aft cargo compartments to detect discrepancies (i.e., improper operation, wear damage of the fiberglass pan and fuselage frames), and corrective actions, if necessary.

The corrective actions include procedures for repair of the cargo loader system if incorrectly installed or deactivation of the system if the fiberglass pan is worn to the extent that fibers are exposed; follow-on inspection of the fuselage frames if there is a hole worn through the fiberglass pan anywhere within the two-inches forward or aft of any frame location; repair or replacement of the damaged pan; and repair of the fuselage frames if damaged and damage is within the limits specified in the structural repair manual, as described in the alert service bulletin. Following accomplishment of the corrective actions, the alert service bulletin recommends testing the cargo loader system for proper operation. The alert service bulletin also contains instructions to contact the manufacturer for reactivation of the cargo loader system and disposition of certain inspection and repair procedures.

**Explanation of the Requirements of the Rule**

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, this AD would require accomplishment of the actions specified in the alert service bulletin described previously, except as discussed below.

**Differences Between Alert Service Bulletin and This AD**

Operators should note that, although the alert service bulletin permits reactivation of the cargo loader system after contacting the manufacturer for disposition of inspection and repair procedures, this AD requires reactivation of the system and disposition of the inspection and repair procedures be accomplished in accordance with a method approved by the FAA.

Although the alert service bulletin specifies accomplishment of inspections, this AD refers to those inspections as detailed visual inspections. The FAA finds that "detailed visual inspection" is the appropriate terminology for the inspections described in the service bulletin. Additionally, a definition of a detailed visual inspection is included in Note 2 of this proposed AD.

The alert service bulletin also specifies repetitive inspections at intervals not to exceed 300 flight cycles

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provided no damage is detected following accomplishment of the initial inspection. However, paragraph (a) of this AD also requires accomplishment of the repetitive inspections if the cargo loader system is reactivated after damage is repaired.

**Interim Action**

This is considered to be interim action. The manufacturer has advised that it currently is developing a modification that will positively address the unsafe condition addressed by this AD. Once this modification is developed, approved, and available, the FAA may consider additional rulemaking.

**Determination of Rule's Effective Date**

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

**Comments Invited**

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–286–AD." The postcard will be date stamped and returned to the commenter.

**Regulatory Impact**

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–20–16 **Boeing:** Amendment 39–11927. Docket 2000–NM–286–AD.

*Applicability:* Model 757–200 series airplanes, certificated in any category, having Air Cargo Equipment cargo loader systems.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To detect and correct discrepancies of the cargo loader system in the forward and aft cargo compartments, which could result in reduced structural integrity of the fuselage and consequent cabin depressurization, accomplish the following:

**Repetitive Inspections**

(a) Within 60 days or 300 flight cycles after the effective date of this AD, whichever occurs first: Perform a detailed visual inspection of the cargo loader system in the forward and aft cargo compartments to detect discrepancies (*i.e.*, improper operation, wear damage of the fiberglass pan and fuselage frames), in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 757–25A0233, dated August 10, 2000. If no discrepancies are detected, or the cargo loader system is reactivated after repair of damage, repeat the inspection thereafter at intervals not to exceed 300 flight cycles.

**Note 2:** For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

**Corrective Actions**

(b) If any discrepancies (*i.e.*, improper operation, wear damage of the fiberglass pan or fuselage frames), are detected during any inspection required by paragraph (a) of this AD, before further flight: Repair the discrepancies and deactivate the cargo loader system in accordance with Boeing Alert Service Bulletin 757–25A0233, dated August 10, 2000. Further, if the damage to the

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fuselage frame(s) is greater than the limits shown in the 757 Structural Repair Manual, accomplish the repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Reactivate the cargo loader system only in accordance with a method approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

**Alternative Methods of Compliance**

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

**Special Flight Permits**

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

**Incorporation by Reference**

(e) Except as provided by paragraph (b) of this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 757–25A0233, dated August 10, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Effective Date**

(f) This amendment becomes effective on October 26, 2000.

Issued in Renton, Washington, on September 29, 2000.

**Donald L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–25532 Filed 10–10–00; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

[Docket No. 98–NM–207–AD; Amendment 39–11926; AD 2000–20–15]

RIN 2120–AA64

## Airworthiness Directives; Airbus Model A300 and A300–600 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A300 and A300–600 series airplanes, that requires a high frequency eddy current (HFEC) inspection to detect cracking of the rear fittings of fuselage frame FR40 at stringer 27, and repetitive inspections or repair, as applicable. In lieu of accomplishing the repetitive inspections, this amendment requires a modification that would allow the inspection to be deferred for a certain period of time. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to detect and correct fatigue cracking of the rear fittings of fuselage frame FR40 at stringer 27, which could result in reduced structural integrity of the airplane.

**DATES:** Effective November 15, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 15, 2000.

**ADDRESSES:** The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A300 and A300–600 series airplanes was published in the **Federal Register** on May 10, 2000 (65 FR 30033). That action proposed to require a high frequency eddy current (HFEC) inspection to detect cracking of the rear fittings of fuselage frame FR40 at stringer 27, and repetitive inspections or repair, as applicable. In lieu of accomplishing the repetitive inspections, that action proposed to require a modification that would allow the inspection to be deferred for a certain period of time.

**Comment Received**

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

**Request To Revise Compliance Times**

The commenter questions the compliance times specified in the proposed AD. The commenter notes that there are small discrepancies between the compliance thresholds recommended in the referenced service bulletins for Airbus Model A300 B2, B4–100, and B4–600 series airplanes, and the thresholds specified by the proposed AD. The commenter suggests that it would be preferable for the compliance times in the AD to be in line with those in the service bulletins, since this would avoid confusion by operators and reduce the number of questions that may be raised.

The FAA concurs. For the reasons stated in the proposed AD, the FAA specified fixed compliance times for accomplishment of the required actions, rather than permitting use of the "adjustment-for-range" formula for calculating compliance times. During discussions with the manufacturer to determine an interim method of calculating the fixed compliance times, flight cycle thresholds and intervals for certain models were recommended for reduction from those in the service bulletins, based on the average flight times of those models. Subsequently, a revised method for calculation of such fixed compliance times was defined by the manufacturer. This method allows use of the flight cycle thresholds and intervals specified in the referenced service bulletins.

The FAA has determined that, consistent with the manufacturer's revised method for calculation of fixed compliance times, the flight cycle thresholds and intervals recommended in the referenced service bulletins constitute acceptable compliance times for this AD. The final rule has been

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revised accordingly. Because the flight cycle compliance times for certain airplane models have been increased rather than reduced, and the flight hour compliance times are unchanged, such revision imposes no additional restrictions on operators.

**Conclusion**

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change described previously. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

**Cost Impact**

The FAA estimates that 85 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required HFEC inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the inspection on U.S. operators is estimated to be $5,100, or $60 per airplane, per inspection cycle.

Should an operator be required to accomplish the modification rather than the repetitive inspections, it will take approximately 3 work hours per airplane to accomplish. Based on these figures, the cost impact of the modification required by this AD on U.S. operators is estimated to be $15,300, or $180 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

**Regulatory Impact**

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–20–15 **Airbus Industrie:** Amendment 39–11926. Docket 98–NM–207–AD.

*Applicability:* Model A300 and A300–600 series airplanes, on which Airbus Modification 11525 has not been accomplished; certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (h) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking of the rear fittings of fuselage frame FR40 at stringer 27, which could result in reduced structural integrity of the airplane, accomplish the following:

**Inspection**

(a) Perform a high frequency eddy current (HFEC) inspection to detect cracks in the stiffeners at stringer 27 of the rear fitting of fuselage frame FR40, left and right, in accordance with Airbus Service Bulletin A300–53–0332, dated November 24, 1997 (for Model A300 B2 and B4 series airplanes), or Airbus Service Bulletin A300–57–6075, dated November 24, 1997 (for Model A300–600 series airplanes); as applicable; at the applicable time specified in paragraph (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), (a)(6), (a)(7), or (a)(8) of this AD.

(1) For Model A300 B2 series airplanes that have accumulated less than 26,000 total flight cycles as of the effective date of this AD: Inspect at the earlier of the times specified in paragraphs (a)(1)(i) and (a)(1)(ii) of this AD.

(i) Prior to the accumulation of 11,600 total flight cycles, or within 3,000 flight cycles after the effective date of this AD, whichever occurs later.

(ii) Prior to the accumulation of 14,300 total flight hours, or within 3,800 flight hours after the effective date of this AD, whichever occurs later.

(2) For Model A300 B2 series airplanes that have accumulated 26,000 or more total flight cycles as of the effective date of this AD: Inspect within 2,200 flight cycles or 2,800 flight hours after the effective date of this AD, whichever occurs first.

(3) For Model A300 B4–100 series airplanes that have accumulated less than 20,000 total flight cycles as of the effective date of this AD: Inspect at the earlier of the times specified in paragraphs (a)(3)(i) and (a)(3)(ii) of this AD.

(i) Prior to the accumulation of 9,200 total flight cycles, or within 3,000 flight cycles after the effective date of this AD, whichever occurs later.

(ii) Prior to the accumulation of 15,700 total flight hours, or within 5,800 flight hours after the effective date of this AD, whichever occurs later.

(4) For Model A300 B4–100 series airplanes that have accumulated 20,000 or more total flight cycles as of the effective date of this AD: Inspect within 1,800 flight cycles or 3,400 flight hours after the effective date of this AD, whichever occurs first.

(5) For Model A300 B4–200 series airplanes that have accumulated less than 14,000 total flight cycles as of the effective date of this AD: Inspect at the earlier of the times specified in paragraphs (a)(5)(i) and (a)(5)(ii) of this AD.

(i) Prior to the accumulation of 8,300 total flight cycles, or within 3,000 flight cycles after the effective date of this AD, whichever occurs later.

(ii) Prior to the accumulation of 17,200 total flight hours, or within 6,200 flight hours after the effective date of this AD, whichever occurs later.

(6) For Model A300 B4–200 series airplanes that have accumulated 14,000 or more total flight cycles as of the effective date of this AD: Inspect within 1,700 flight cycles or 3,500 flight hours after the effective date of this AD, whichever occurs first.



(7) For Model A300–600 series airplanes that have accumulated less than 18,000 total flight cycles as of the effective date of this AD: Inspect at the earlier of the times specified in paragraphs (a)(7)(i) and (a)(7)(ii) of this AD.

(i) Prior to the accumulation of 6,200 total flight cycles, or within 2,700 flight cycles after the effective date of this AD, whichever occurs later.

(ii) Prior to the accumulation of 15,100 total flight hours, or within 7,000 flight hours after the effective date of this AD, whichever occurs later.

(8) For Model A300–600 series airplanes that have accumulated 18,000 or more total flight cycles as of the effective date of this AD: Inspect within 1,400 flight cycles or 3,600 flight hours after the effective date of this AD, whichever occurs first.

**Repetitive Inspections**

(b) If no crack is detected during the initial inspection required by paragraph (a) of this AD, except as provided by paragraph (e) of this AD, repeat the inspection required by paragraph (a) of this AD at the time specified in paragraph (b)(1), (b)(2), (b)(3), or (b)(4) of this AD, as applicable.

(1) For Model A300 B2 series airplanes: Repeat at intervals not to exceed 2,200 flight cycles or 2,700 flight hours, whichever occurs first.

(2) For Model A300 B4–100 series airplanes: Repeat at intervals not to exceed 1,800 flight cycles or 3,000 flight hours, whichever occurs first.

(3) For Model A300 B4–200 series airplanes: Repeat at intervals not to exceed 1,700 flight cycles or 3,500 flight hours, whichever occurs first.

(4) For Model A300–600 series airplanes: Repeat at intervals not to exceed 1,400 flight cycles or 3,400 flight hours, whichever occurs first.

**Repair Cracking Found During Inspections**

(c) If any crack is found during any inspection required by paragraph (a) or (b) of this AD and the crack is less than 0.787 inches long, prior to further flight, repair in accordance with Airbus Service Bulletin A300–53–0332, dated November 24, 1997 (for Model A300 B2 and B4 series airplanes), or Airbus Service Bulletin A300–57–6075, dated November 24, 1997 (for Model A300–600 series airplanes); as applicable. Perform the inspection required by paragraph (a) of this AD one more time at the time specified in paragraph (c)(1), (c)(2), (c)(3), or (c)(4) of this AD, as applicable, and accomplish the actions specified in paragraph (f) or (g) of this AD, as applicable.

(1) For Model A300 B2 series airplanes: Within 44,500 flight cycles or 54,600 flight hours after accomplishment of the repair, whichever occurs first.

(2) For Model A300 B4–100 series airplanes: Within 35,200 flight cycles or 56,700 flight hours after accomplishment of the repair, whichever occurs first.

(3) For Model A300 B4–200 series airplanes: Within 31,900 flight cycles or 66,100 flight hours after accomplishment of the repair, whichever occurs first.

(4) For Model A300–600 series airplanes: Within 23,700 flight cycles or 57,500 flight hours after accomplishment of the repair, whichever occurs first.

(d) If any crack is found during any inspection required by paragraph (a) or (b) of this AD and the crack is 0.787 inches long or more, prior to further flight, repair it in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, or the Direction Générale de l'Aviation Civile (DGAC) (or its delegated agent). For a repair method to be approved by the Manager, International Branch, ANM–116, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

**Deferral of Repetitive Inspections by Modification**

(e) In lieu of accomplishing the requirements of paragraph (b) of this AD, prior to further flight after accomplishing the inspection required by paragraph (a) of this AD, modify the rear fitting at stringer 27 at FR40 of the center fuselage in accordance with Airbus Service Bulletin A300–53–0333, dated November 24, 1997 (Model A300 B2 and B4 series airplanes), or Airbus Service Bulletin A300–57–6076, dated November 24, 1997 (for Model A300–600 series airplanes); as applicable. Following accomplishment of the modification, perform the inspection required by paragraph (a) of this AD one more time at the time specified in paragraph (e)(1), (e)(2), (e)(3), or (e)(4) of this AD, as applicable, and accomplish the actions specified in paragraph (f) or (g) of this AD, as applicable.

(1) For Model A300 B2 series airplanes: Within 59,600 flight cycles or 73,100 flight hours after accomplishment of the modification, whichever occurs first.

(2) For Model A300 B4–100 series airplanes: Within 47,100 flight cycles or 75,900 flight hours after accomplishment of the modification, whichever occurs first.

(3) For Model A300 B4–200 series airplanes: Within 42,700 flight cycles or 88,400 flight hours after accomplishment of the modification, whichever occurs first.

(4) For Model A300–600 series airplanes: Within 31,700 flight cycles or 76,800 flight hours after accomplishment of the modification, whichever occurs first.

**Follow-on Action if No Cracking Is Found During Certain Inspections**

(f) If no crack is detected during the inspection required by paragraph (c) or (e) of this AD, prior to further flight, contact the Manager, International Branch, ANM–116, or the DGAC (or its delegated agent) for the next inspection time(s), and repeat the inspection(s) thereafter at those times.

**Repair for Cracking Found During a Certain Inspection**

(g) If any crack is detected during the inspection required by paragraph (c) or (e) of this AD, prior to further flight, repair it in accordance with a method approved by the Manager, International Branch, ANM–116, or the DGAC (or its delegated agent). For a repair method to be approved by the Manager, International Branch, ANM–116, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

**Alternative Methods of Compliance**

(h) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

**Special Flight Permits**

(i) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

**Incorporation by Reference**

(j) Except as required by paragraphs (d), (f), and (g) of this AD, the actions shall be done in accordance with Airbus Service Bulletin A300–53–0332, dated November 24, 1997; Airbus Service Bulletin A300–57–6075, dated November 24, 1997; Airbus Service Bulletin A300–53–0333, dated November 24, 1997; or Airbus Service Bulletin A300–57–6076, dated November 24, 1997; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Note 3:** The subject of this AD is addressed in French airworthiness directive 98–028–242 (B), dated January 28, 1998.

(k) This amendment becomes effective on November 15, 2000.

Issued in Renton, Washington, on September 29, 2000.

**Donald L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–25533 Filed 10–10–00; 8:45 am]

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 71**

**[Airspace Docket No. 97–AWA–1]**

**RIN 2120–AA66**

## Modification of the San Francisco Class B Airspace Area; CA; Correction

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; correction.

**SUMMARY:** This action corrects a final rule published in the **Federal Register** on June 7, 2000 (65 FR 36060). In that rule, the legal description of the San Francisco, CA, Class B airspace, Area E, contained an inadvertent error that failed to exclude airspace within the Travis Air Force (AFB) approach control area. This action corrects that error.

**EFFECTIVE DATE:** October 11, 2000.

**FOR FURTHER INFORMATION CONTACT:** Ken McElroy, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

**SUPPLEMENTARY INFORMATION:** On June 7, 2000, Airspace Docket No. 97–AWA–1, FR Doc. 00–14046, was published amending the legal description of the San Francisco, CA, Class B airspace area. This rule included a legal description of the San Francisco, CA, Area E airspace that included a small area within the Travis AFB approach control area, which should have been omitted. This action excludes that airspace from the San Francisco Class B airspace area, thereby correcting this error.

### Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the legal description for the San Francisco, CA, Class B airspace, Area E, as published in the **Federal Register** on June 7, 2000 (65 FR 36060); FR Doc. 00–14046, and incorporated by reference in 14 CFR 71.1, is corrected as follows:

**§ 71.1 [Corrected]**

On page 36064, in column 3, in the legal description of the San Francisco, CA, Class B airspace, correct Area E to read as follows:

*Paragraph 3000—Subpart B—Class B Airspace*

* * * * *

**AWP CA B San Francisco, CA**

* * * * *

Boundaries.

* * * * *

Area E. That airspace extending upward from 6,000 feet MSL to and including 10,000 feet MSL bounded by a line beginning at the 15-mile DME point on the SFO VOR/DME 277° radial thence counterclockwise along the 15-mile DME arc of the SFO VOR/DME to and southeast along the SFO VOR/DME 167° radial to and counterclockwise along the 20-mile DME arc of the SFO VOR/DME to and northeast along the Sausalito VORTAC 052° radial, to and clockwise along the 25-mile DME arc of the SFO VOR/DME to and northeast along the SFO VOR/DME 227° radial to and clockwise along the 20-mile DME arc to and northeast along the SFO VOR/DME 277° radial to the point of beginning, excluding the airspace north of lat 38°00′00″.

* * * * *

Issued in Washington, DC, on September 27, 2000.

**Reginald C. Matthews,**

*Manager, Airspace and Rules Division.*

[FR Doc. 00–25643 Filed 10–10–00; 8:45 am]

**BILLING CODE 4910–13–P**

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 93**

**14 CFR Parts 91, 93, 121 and 135**

## Commercial Air Tour Limitations in the Grand Canyon National Park Special Flight Rules Area; Modification of the Dimensions of the Grand Canyon National Park Flight Rules Area and Flight Free Zones

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Disposition of a request for stay of compliance date.

**SUMMARY:** On April 4, 2000, the FAA published two final rules for Grand Canyon National Park (GCNP) limiting the number of commercial air tour operations in the GCNP Special Flight Rules Area (SFRA) and modifying the airspace of the SFRA. One rule limited commercial air tour operations of each operator, the other redefined the SFRA airspace. A Notice of Availability of commercial routes in the GCNP SFRA also was issued on the same day setting forth new routes available. The Commercial Air Tour allocations final rule was effective on May 4, 2000. The new routes and airspace modifications become effective December 1, 2000. In July 31, 2000, the United States Air Tour Association and seven air tour operators in GCNP requested a stay of the compliance date for the rules. This document informs the public of the FAA disposition of this request for a stay of the compliance date for the final rules.

**DATES:** Effective: October 11, 2000.

**ADDRESSES:** You may view a copy of the final rules, Commercial Air Tour Limitations in the Grand Canyon National Park Special Flight Rules Area and Modification for the Dimensions of the Grand Canyon National Park Special Flight Rules Area and Flight Free Zones, through the Internet at: *http://dms.dot.gov,* by selecting docket numbers FAA–99–5926 and FAA–99–5927. You may also review the public dockets on these regulations in person in the Docket Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office is on the plaza level of the Nassif Building at the Department of Transportation. 7th Ave., SW, Room 401, Washington, DC, 20590.

As an alternative, you may search the **Federal Register's** Internet site at http://www.access.gpo.gov/su_docs for access to the final rules.

You may also request a paper copy of the final rules from the Office of Rulemaking, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591, or by calling (202) 267–9680.

**FOR FURTHER INFORMATION CONTACT:** Howard Nesbitt, Flight Standards Service (AFS–200), Federal Aviation Administration, Seventh and Maryland Streets, SW, Washington, DC 20591; telephone: (202) 493–4981.

**SUPPLEMENTARY INFORMATION:**

### Background

On April 4, 2000, the Federal Aviation Administration published two final rules, the Modification of the Dimensions of the Grand Canyon National Park Special Flight Rules Area and Flight Free Zones (Air Space Modification), and the Commercial Air Tour Limitation in the Grand Canyon National Park Special Flight Rules Area (Commercial Air Tour Limitation). See 65 FR 17736; 65 FR 17708; April 4, 2000. The FAA also simultaneously published a notice of availability of Commercial Routes for the Grand Canyon National Park (Routes Notice). See 65 FR 17698, April 4, 2000. The Commercial Air Tour Limitations final rule because effective on May 4, 2000. The Air Space Modification final rule and the routes set forth in the Routes Notice are scheduled to become effective December 1, 2000. The implementation of the Air Space Modification final rule and the new routes was delayed to provide the air



tour operators ample opportunity to train on the new route system during the non-tour season. The Final Supplementary Environmental Assessment for Special Flight Rules in the Vicinity of Grand Canyon National Park (SEA) was completed on February 22, 2000, and the Finding of No Significant Impact was issued on February 25, 2000.

On May 8, 2000, the United States Air Tour Association and seven air tour operators (hereinafter collectively referred to as the Air Tour Providers) filed a petition for review of the two final rules before the United States Court of Appeals for the District of Columbia Circuit. The FAA, the Department of Transportation, the Department of Interior, the National Park Service and various federal officials were named as respondents in this action. On May 30, 2000, the Air Tour Providers filed a motion for stay pending review before the Court of Appeals. The federal respondents in this case filed a motion for summary denial on grounds that petitioners had not exhausted their administrative remedies. The Court granted the federal respondents summary denial on July 19, 2000. The Grand Canyon Trust, the National Parks and Conservation Association, the Sierra Club, the Wilderness Society, Friends of the Grand Canyon and Grand Canyon River Guides, Inc. (The Trust) filed a petition for review of the same rules on May 22, 2000. The Court, by motion of the Federal Respondents, consolidated that case with that of the Air Tour Providers. The Hualapai Indian Tribe of Arizona filed a motion to intervene in the Air Tour Providers petition for review on June 23, 2000. The Court granted that motion on July 19, 2000.

On July 31, 2000, the Air Tour Providers filed a motion for stay before the FAA. Both the Hualapai Indian Tribe and the Trust filed oppositions to the Air Tour Providers' stay motion.

### Petitions

The Air Tour Providers requested that the FAA stay the effective date of the Air Space Modification Final Rule and suspend the effectiveness of the Commercial Air Tour Limitation final rule "to avoid imposing additional irreparable harm to the Air Tour Providers." Motion at 7. The Air Tour Providers also requested that the stay continue pending the outcome of the judicial proceeding currently before the United States Court of Appeals for the District of Columbia Circuit. Specifically, the Air Tour Providers claim that the four-part test elucidated in *Washington Metropolitan Area Transit Commission* v. *Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977) applies to the FAA and thus, based on this test the FAA should grant the motion for stay. In *Washington Metropolitan,* the Court specified the following four factors that it must look at when considering whether to grant a stay pending review. Those factors are as follows: (a) The likelihood that the moving party will prevail on the merits; (b) the prospect of irreparable injury to the moving party if relief is withheld; (c) the possibility of harm to other parties if relief is granted; and (d) the public interest.

The Air Tour Providers claimed that there is a substantial likelihood that they will prevail on the merits because Air Tour Providers will suffer great harm through these rules. Motion at 8. Additionally, the Air Tour Providers argued that the FAA's actions in issuing the final rules were arbitrary and capricious for the following reasons: (1) The goal of "natural quiet" has been achieved and thus these final rules are unnecessary, Motion at 9; (2) the agencies offered no "reasoned analysis" for "abandon[ing] the definition of 'natural quiet' they have used since the Overflights Act was enacted, in 1987, substituting a 'detectability' standard for the 'noticeability standard,'" Motion at 9–10; (3) the agencies failed to distinguish between aircraft sound generated by commercial aircraft and that generated by other aircraft (military, recreational), Motion at 10; (4) the agencies "failed to develop quiet technology standards for the Grand Canyon or to use the existing quiet technology incentive route," Motion at 9–10; (5) the agencies have "ignor[ed] the issue of safety and abandon[ed] existing rules that ensure aircraft safety," Motion at 11; (6) the agencies' failed to "accommodate the needs of (the elderly, disabled and mobility impaired)", Motion at 12; (7) the agencies failed to use current data to impose the flight caps, Motion at 12; (8) the agencies relied on a scientifically invalid computer sound model, Motion at 13; (9) the agencies created an exemption to "protect the economic interest of the Hualapai (sic) * * * while ignoring the economic interests of the Air Tour Providers," Motion at 13. The Air Tour Providers also maintained that the agencies' actions violate the Regulatory Flexibility Act (RFA) by calculating the costs to the recreational air tour operators using inadequate data; asserting that operators can offset their losses by raising prices; failing to analyze the costs to recreational air tour passengers; overestimating the benefits to ground visitors; and failing to minimize the economic impact of the final rules. Motion at 14–16.

Additionally, the Air Tour Providers argued that their economic losses are irreparable because the loss threatens the very existence of their business and deprives them of their constitutional rights. Motion at 17–19. The Air Tour Providers further maintained that the agencies would not be harmed if the stay is granted since "natural quiet" has already been achieved. Motion at 19. Finally, the Air Tour Providers stated that the public interest strongly favors granting the stay since the "Final Rules deal with sound that the public cannot hear" thus, the "public interest in 'natural quiet' at the Grand Canyon is protected." Motion at 19–20. Also, under the public interest prong of the *Washington Metropolitan* test, the Air Tour Providers argued that the sudden massive economic losses would result in significant losses to the local economy. Motion at 20. Additionally, the Air Tour Providers maintained that because the elderly, disabled or mobility-impaired individuals who visit the Grand Canyon by recreational air tour will be "specifically and unfairly burdened by the Final Rules, the public interest weighs heavily in favor of staying the Final Rules." Motion at 21. The Air Tour Providers attached statements from air tour operators, an alternative acoustical analysis, and an alternative economic analysis to support their contentions.

The Hualapai Indian Tribe (Hualapai) submitted its opposition to the Air Tour Providers' request to stay the final rules arguing that the request is an "untimely request to the Administrator for reconsideration of the final rule." Hualapai Opposition at 1. The Hualapai further argued that the fact that the Air Tour Providers waited three months after the effective date of the final rules to request a stay from the Administrator "strongly indicates the lack of sufficient harm to warrant expedited consideration of the Stay Request, much less to support a stay." Hualapai Opposition at 2. The Hualapai maintained that the only way of staying the rules is through the reconsideration provision because there is not other applicable regulation "for the issuance of a stay in FAA's procedures for rulemaking." Hualapai Opposition at 2. Furthermore, the Hualapai argued that the FAA is "without power to reconsider (and stay) its decision now because the time for reconsideration (and a stay) ran several months before the Air Tour Providers submitted their Stay Request to the Administrator." Hualapai Opposition at 4.

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The Air Tour Providers replied to the Hualapai Opposition on August 24, 2000, arguing that the Hualapai were not a party to this proceeding and did not have standing to oppose this request. Additionally, the Air Tour Providers stated that the Hualapai Tribe erred in stating that the Air Tour Providers had failed to demonstrate that they meet the irreparable harm standard set forth in *Washington Metropolitan*. The Air Tour Providers argued that they "Demonstrated conclusively that the Final Rules have caused them irreparable harm, including: (i) The imminent closure of several of the air tour providers' businesses; (ii) the severe and permanent downsizing of other air tour providers' businesses; (iii) the permanent, and irreparable interference with air tour providers' contractual relationships with their domestic and foreign booking agents; and (iv) the deprivation of the air tour providers' constitutional rights under the Equal Protection component of the Fifth Amendment." Reply to Hualapai at 2.

Additionally, the Air Tour Providers took issue with the Hualapai's recharacterization of the Air Tour Providers' request, arguing that it did not ask "the FAA to 'reconsider' its decision. That matter is now before the Court of Appeals. Instead, the Air Tour Providers asked the FAA to stay the implementation of its rules." Reply to Hualapai at 2. In response to the Hualapai's assertion that the FAA lacks the power to grant a stay request, the Air Tour Providers noted that the FAA affirmatively stated that it has the authority to stay the effective date of action pending judicial review pursuant to 5 U.S.C. section 705. Reply to Hualapai at 2–3. Furthermore, the Air Tour Providers noted that the Court's Order denying the Air Tour Providers' Motion for Stay stated that under the Federal Rules of Appellate Procedure, the Air Tour Providers were required to file a request for a stay pending judicial review first with the FAA because they had not demonstrated that to do so was "impracticale." Reply to Hualapai at 3. Finally, the Air Tour Providers maintained that the request for a stay is not time-barred because 14 CFR 11.73 does not apply.

The Trust also submitted an opposition to the Air Tour Providers' Motion, arguing the following: (1) The request is time barred; and (2) even if the FAA considers the Motion, the Air Tour Providers have failed to demonstrate that they satisfy the four-pronged test. First, the Trust maintained that the Stay Motion was filed in violation of 14 CFR 11.73 which permits a request for reconsideration to be filed within 30 days after the rule is published. The Trust noted that the Air Tour Providers filed their request 118 days after publication—88 days after the regulatory deadline. Trust Opposition at 2.

Second, the Trust argued that the Air Tour Providers failed to demonstrate that the FAA adopted the final rules arbitrarily and capriciously or abused its discretion. The Trust maintained that the Air Tour Providers' argument that the final rules violate the Administrative Procedures Act (APA) review almost entirely on evidence not in the administrative record. See Trust Opposition at 4–5. In response to the Air Tour Providers argument that the FAA violated the RFA, the Trust argued that Section 603 of the RFA is not subject to judicial review. The Trust also maintained that the "RFA does not require agencies to show that economic impacts of their rules were *absolutely* minimized; it requires only a description of steps taken to minimize *significant* economic impact on small entities *consistent with* the stated objectives of the applicable statutes." Trust Opposition at 9 (emphasis in original quotation).

The Trust also argued that the Air Tour Providers failed to show that the balancing of interests and injuries weighs in their favor since economic loss does not constitute irreparable harm. Trust Opposition at 9. Moreover, the Trust noted that "other parties, such as the Grand Canyon Trust, et al. will be *significantly* injured if the FAA grants the requested stay and suspension of the final rules." Trust Opposition at 10 (emphasis in original quotation). The Trust stated that "Members of the Grand Canyon Trust, et al. are frequent backcountry users who take great strides to enjoy unique wilderness settings * * * Air traffic noise destroys the wilderness experience and constitutes a significant injury to an interest protected by federal law." Trust Opposition at 10. Furthermore, the Trust argued that Congress has already determined the public interest at stake when it required determination that the "public interest would be served by timely restoration of natural quiet in the Grand Canyon." Trust Opposition at 10.

The Air Tour Providers replied to the Trust's Opposition on September 14, 2000. The Air Tour Providers maintained that the Request for Stay is an administrative proceeding before the FAA and is completely separate and apart from any legal proceeding to which the Trust is a party. Reply to Trust at 1. The Air Tour Providers thus maintained that the Trust does not have the right to file a response. Furthermore, the Air Tour Providers took issue with the Trust's argument that the Air Tour Providers are time barred from filing their Request for Stay. The Air Tour Providers made the same basic argument in response to the Hualapai's Opposition. See Reply to Trust at 1–2.

The Air Tour Providers argued that the FAA can in fact consider evidence not in the administrative record and there is no authority barring the FAA from so doing. Reply to Trust at 2. The Air Tour Providers maintained that the FAA is "required to consider evidence offered by Air Tour Providers of the irreparable harm they have suffered as a result of the Final Rules." Reply to Trust at 2.

The Air Tour Providers also took issue with the Trust's assertion that the Air Tour Providers have failed to show that they are likely to prevail in their claim that the final rules are arbitrary and capricious. Specifically, the Air Tour Providers argued that the Trust's position that the Air Tour Providers have provided only "thin evidence" that natural quiet was restored in the Grand Canyon prior to implementation of the Final Rules is without merit. The Air Tour Providers point to the "sworn testimony of two acoustical experts before the Subcommittee on National Parks and Public Lands of the United States House of Representatives on two separate occasions" and the declaration by John Alberti. Reply to Trust at 3–4.

The Air Tour Providers also argued that the Trust's statement that the NPS' computer sound model should be given deference because "it has 'expertise' in the field of acoustical measurements" is without support. Reply to Trust at 4. The Air Tour Providers asserted that NPS is "not entitled to any such deference when NPS cannot support its approach even in theory." *Id.* The Air Tour Providers then point to a letter from the FAA to NPS in which the FAA allegedly characterized the NPS' methodology as "unrealistic," "arbitrary and artificial," and "not scientifically valid." *Id.*

The Air Tour Providers also denied the validity of the Trust's contention that the Air Tour Providers cannot support their claims about the significant impact of these rules on the elderly and mobility impaired individuals. Reply to Trust at 5.

In response to the Trust's assertion that Air Tour Providers "cannot even bring the first RFA claim because it is a challenge of the initial regulatory flexibility analysis and therefore, is not subject to review," the Air Tour Provides stated that they are challenging the "final regulatory flexibility analysis



of January 2000" and that challenges under section 604 of the RFA are subject to judicial review. Reply to Trust at 6. The Air Tour Providers also asserted that the Trust's argument that the FAA satisfied its obligations under the RFA by minimizing the significant economic impact is without merit because the FAA has "refused to take such steps" *Id.* Finally, the Air Tour Providers maintained that the Trust's contention that the parties it represents will be significantly injured if the FAA grants the Stay Request is flawed because the standard is not significant injury but "irreparable injury or harm." Rely to Trust at 7. The Air Tour Providers maintained that only they have demonstrated irreparable injury. *Id.*

**Agency Response**

*A. The Air Tour Providers Request Is Not Time Barred*

The FAA is not considering this request to be time-barred-While the FAA would not normally consider a stay motion filed 188 days from the issuance of a rule to be timely, in this instance, the Air Tour Providers first sought remedy in the United States Court of Appeals for the District of Columbia Circuit. The government then filed a Motion for Summary Denial of the Air Tour Provider's motion based on the fact that the Air Tour Providers did not file first before the FAA and thus exhaust its administrative remedies as required by the Federal Rule of Appellate Procedure Rule 18. The Court granted the government's Motion for Summary Denial on July 19, 2000. The Air Tour Providers then filed this Stay Motion with the FAA on July 31, 2000. Thus, the FAA does not intend to act in bad faith by refusing to even consider the Air Tour Providers' Motion because of the length of time that has passed between the issuance of the rule and the Air Tour Providers' stay request to the FAA. Notably, the Air Tour Providers filed their Motion with the FAA twelve days after the Court granted the government's Motion for Summary Denial.

*B. The Four-Pronged Test Enunciated in Washington Metropolitan Is Not Applicable to an Administrative Proceeding*

The Department of Transportation has previously found that the four-pronged test enumerated in *Washington Metropolitan* for deterring whether to grant a stay of rules pending litigation is applicable to the appellate courts only. Albert O. McCauley; Herbert Gene Vance; Duncan Black Parker, FAA Docket CP89SO0149; FAA Docket CP89SO0137; FAA Docket CP89SO0182, 1990 FAA LEXIS 200 (January 12, 1990). "The primary stay consideration at the trial level usually relate[s] to whether the public interest or the interest of the private parties involved, or both would be served by a delay of the proceeding." *Id.* at 7. The public interest, in this case, has been expressed by Congress in Public Law 100–91—to substantially restore natural quiet to the Grand Canyon National Park. Congress gave the NPS broad discretion to define substantial restoration of natural quite. The agencies have determined that the final rules at issue in this stay request would make substantial gains in achieving this goal. Thus, to delay or suspend the effective date of these rules would be contrary to the purpose of the Congressional mandate, unless another public interest or private interest was served by a stay. The private interests alleged by the Air Tour Providers primarily concern the economic impact of the rules. These interests have already been considered by the FAA in the final rules. There is no additional evidence presented by the Air Tour Providers that warrants shifting the balance achieved by these rules. Thus, the FAA has determined that implementing the final rules furthers the public interest by limiting the number of air tours that are permitted in the Park and establishing new routes and air space configurations in the Special Flight Rules Area, thereby promoting the statutory goal of substantial restoration of natural quite.

*C. The Air Tour Providers Have Not Satisfied the Four-Part Test Enunciated in Washington Metropolitan*

Even if the four-part test enunciated in *Washington Metropolitan* is applicable to the FAA's administrative proceeding, the Air Tour Providers have not demonstrated that the test is satisfied and thus, that a stay of the Commercial Air Tour Limitations final rule and the Air Space Modification final rule is warranted.

1. The Air Tour Providers Have Not Demonstrated That They Are Likely To Prevail on the Merits

In support of their contention that the FAA has violated the APA by issuing the final rules in an arbitrary or capricious manner, the Air Tour Providers submit contrary acoustical data in an attempt to discredit the agency's analysis supporting the need for the final rule. See Motion for Stay, Exhibit A, Statement of John Alberti. Mr. Alberti takes issue with the sound studies completed by the FAA and NPS in the 1990's and states that he "performed a neutral study of aircraft sound levels in the Grand Canyon." Alberti Statement at 2. Mr. Alberti's statement is similar to a statement filed in the public docket that is part of the administrative record to this proceeding, see Administrative Record, Document Number 69, Comment No. 38.

As explained in the final rule, the FAA and NPS determined after the 1996 final rule that the aircraft cap did not adequately limit growth and noise modeling "indicated that the potential growth in the number of operations could erode gains made toward substantial restoration of natural quiet." See 65 FR at 17713. The NPS' conclusion that substantial restoration was not going to be achieved under SFAR 50–2, as amended in December 1996, was explained in detail in the SEA. See SEA at 1–5, 4–17—4–22. The fact that the Air Tour Providers have submitted acoustical studies to contradict the studies conducted by FAA and NPS does not demonstrate that the FAA violated the APA in issuing the final rules. It simply indicates that scientific or statistic analyses can differ. The law is clear, however, that the Court "will give due deference to the agency especially when the agency action involves evaluating complex scientific or statistical data within the agency's expertise." *Natural Resources Defense Council, Inc.* v. *EPA*, 194 F.3d 130 (D.C. Cir., 1999). In this case, the FAA has demonstrated a rational connection between the facts and its choice and thus it has satisfied the rationality standard.

The Air Tour Providers argument that the agencies acted arbitrarily and capriciously by "abandoning the definition of natural quiet they have used since the Overflights Act was enacted, in 1987, substituting a "detectability" standard for the "noticeability standard" is also flawed. See Motion at 8. It is not unexpected that over time new information, data and technology might result in a well-considered refinement in methodology. When such a situation occurs, "* * * an agency changing its course must supply a reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored. * * *" *Greater Boston Television Corp.* v./ *FCC*, 444 F.2d 841 (D.C. Cir., 1970); *cert. denied*, 403 U.S. 923, 29 L. Ed. 2d 701, 91 S. Ct. 2233 (1971).

Section 3 of Public Law 100–91 authorizes the Secretary of Interior to provide continued advice and recommendations to the FAA regarding the interpretation of policy on noise

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impact assessment at GCNP. Section 3 further directs that the FAA adopt the recommendations of NPS "without change unless the Administrator determines that implementing the recommendations would adversely affect aviation safety." The two agencies have been seeking to achieve substantial restoration of natural quiet at GCNP pursuant to these congressional mandates. Therefore, in the December 1996, Final EA, as part of the noise methodology for determining substantial restoration of natural quiet and based upon NPS' recommendations, the FAA defined the threshold for evaluating the percent of time each day (12 hour daytime period) that aircraft would be audible in the park as three decibels above ambient. The use of this noticeability standard and methodology was upheld in *Grand Canyon Air Tour Coalition* v. *FAA*, 154 F.3d 455 (D.C. Cir., 1998).

Since 1996, NPS has refined the noise impact assessment methodology to be used in defining substantial restoration of natural quiet at GCNP to more accurately reflect the potential for aircraft noise impacts in the park based on the specific characteristics of the different areas of the Park. NPS explained its rationale for refining the methodology used to define substantial restoration of natural quiet in its Public Notice "Change in Noise Evaluation Methodology for Air Tour Operations Over Grand Canyon National Park, 64 FR 3969, published January 26, 1999. See Administrative Record, Document 108. The NPS also published a Notice of Disposition of Public Comments and Adoption of Final Noise Evaluation Methodology, 64 FR 38006, on July 14, 1999. See Administrative Record, Document 121. The January 26, 1999, **Federal Register** Notice explained that the standard for substantial restoration of natural quiet remained unchanged and only the evaluation methodology was to be refined. 64 FR at 3969–3970; see also 64 FR 38006, 38008. NPS further explained that it would apply two different threshold levels to different parts of the Park based upon its analysis of regions of the park that were determined to have greater or less noise sensitivity. Those areas of the Park encompassing the developed areas would be evaluated using the three decibels above ambient threshold (*i.e.*, Zone 1), while areas without development, or "back country" areas would be evaluated using the eight below ambient threshold (i.e., Zone 2). NPS described at length how it developed the eight decibels below ambient threshold, the aircraft noise monitoring, natural ambient measurements and INM conversion and calculations required in its July 14, 1999 Notice and Disposition of Comments. 64 FR 38006–38012. In the final rule for the Commercial Air Tour Limitation, NPS and FAA further clarified that "the minus 8 decibels below ambient is not the sound level at which aircraft must operate or the acoustic level that must be achieved. It is a mathematical conversion necesitated by the computer modeling. The minus 8 decibels below ambient describes the 'starting point' at which the measurement of substantial restoration begins." 65 FR at 17721. Therefore, the refinement of the thresholds for evaluating substantial restoration of natural quiet at GCNP was not arbitrary and capricious nor contrary to Public Law 100–91.

In their reply to the Trust's Response to the Administrative Motion for Stay, the Air Tour Provider's cite to a letter from FAA to NPS dated June 6, 2000, to support their contention that the FAA has criticized the NPS' noise methodology. This letter contained FAA comments to NPS on its Draft Director's Order #47, "Soundscape Preservation and Noise Management." The FAA has never interpreted Director's Order No. 47 as applying to GCNP. The quotes relied upon by the Air Tour Providers to support their assertion that the FAA criticized the NPS noise methodology actually addressed certain assumptions, quantitative assessments and approaches to evaluating the baseline noise environment, aircraft noise impacts and noise levels proposed by NPS to be utilized in National Park units that do not have legislative directives. Therefore, the refined evaluation methodology for substantial restoration of natural quiet at GCNP is not the subject of the June 6th letter, and the Air Tour Providers references to this letter are both out of context and inapplicable to the subject of the Motion for Stay.

The Air Tour Providers also have failed to demonstrate that the FAA acted arbitrarily and capriciously by focusing on aircraft sound generated by commercial air tour operators. Public Law 100–91 set forth a broad mandate that the FAA issue regulations, pursuant to recommendations by NPS, to regulate aircraft overflights so as to substantially restore natural quiet at the Park. Congress gave the NPS maximum discretion to determine the best means to effect the goal. NPS recommended an operations limitation on air tour aircraft in its Report to Congress. See Recommendation 10.3.10.3, Report on Effects of Aircraft Overflights on the National Park System, September 12, 1994. Furthermore, the record supports the decision to focus on commercial air tour aircraft. As the FAA stated in the Commercial Air Tour Limitations Final Rule, "noise generated by aircraft conducting commercial air tours presents a specific type of problem because these aircraft generally are operated repeatedly at low altitudes over the same routes." 65 FR at 17710. Additionally, FAA data indicates that the volume of commercial air tour traffic is much higher then general aviation traffic. See Regulatory Evaluation Final Rule, Commercial Air Tour Limitation in the Grand Canyon National Park Special Flight Rules Area, at 21 (January 21, 2000). Thus, the FAA's focus on commercial air tour aircraft is supported by the findings in the Record and the broad mandate set forth in Public Law 100–91.

The FAA also did not act arbitrarily and capriciously by determining to impose a limitation on commercial air tours instead of adopting the quiet technology standards proposed in December 1996. In the final rule on Commercial Air Tour Limitations, the FAA reiterated its commitment to developing a quiet technology standard. 65 FR at 17714. However, due to the numerous issues raised by commenters in the NPRM on Noise Limitation of Aircraft Operations in the Vicinity of Grand Canyon National Park (Docket 29770), issuance of the final rule in the Noise Limitations rulemaking has taken longer than anticipated. It is noteworthy that in that rulemaking as well, many commenters maintained that imposition of quiet technology would pose an unreasonable financial burden on the air tour industry. See 65 FR 17714. Because the agencies found that growth in the industry had only temporarily arrested due to economic factors, they determined that an operations limitation was necessary to "make significant strides towards meeting the statutory goal" by the 2008 deadline set by the President of the United States. 65 FR 17714; see 65 FR 17709 (explaining the goals set forth in the President's memorandum of April 22, 1996).

Additionally, the final rules at issue in this stay request were issued prior to the enactment of the National Park Air Tour Management Act. Thus, contrary to the Air Tour Providers' assertions, the issuance of the Commercial Air Tour Limitations final rule and the Air Space Modification final rule does not violate any law. The FAA also notes the fact that operators made equipment decisions to purchase different aircraft is not persuasive since the equipment decision was voluntary and speculative at best. The FAA never finalized the

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Noise Limitations Final Rule, thus the FAA has not mandated a definition of quiet technology air tour aircraft.

Contrary to the Air Tour Providers' accusations, the FAA considered comments by the air tour operators on the route system in devising the routes. The Air Tour Providers' Motion contains statements by Ms. Brenda Halverson, Papillon Airways, Inc., and Mr. Ron Williams, AirStar Helicopters, opposing the new route structure that goes up over the north rim because there is no turnaround in the Zuni Corridor for helicopters. NPS, in its Report to Congress, indicated that eliminating two way traffic in the flight corridors was critical to achieving substantial restoration of natural quiet. Thus, where possible, FAA has attempted to minimize two-way traffic in the Dragon and Zuni Point Corridors. The Dragon Corridor has a turnaround for helicopters only. The Zuni Point Corridor has a turnaround for fixed wing aircraft. Both helicopters and fixed wing aircraft operating in the Zuni Point Corridor have the option of going up over the North Rim, or if necessary using Black 2 and Green 3 routes that go east around the Desert View Flight Free Zone. The movement of the Black 2 and Green 3 was necessary in order to protect Traditional Cultural Properties identified during the consultation process with the Native American Tribes. See 65 FR 17739; SEA at 4–40–41, Appendix H.

Additionally, the FAA finds that the Air Tour Providers' allegations that the new routes are unsafe are without merit. The new routes were developed based on "airspace configurations, safety considerations, the goal of substantial restoration of natural quiet in the GCNP, economic considerations, consultation with Native American tribes" and comments received in response to the initial Notice and prior route proposals. 64 FR 37191 (July 9, 1999). As is typical when routes are change, the FAA flight checked the routes for safety. Additionally, the FAA created a computer model to assess the impact of peak conditions on the new route system. See 65 FR 17719–20. The FAA's primary concern is that air tour operators do not concentrate the use of their allocations into one season which could pose a safety concern and impede the goal of achieving substantial restoration of natural quiet. *Id.*

The Air Tour Providers assertion that these rules are arbitrary and capricious because they violate the Rehabilitation Act is unsubstantiated. First, the Air Tour Providers make no specific allegation as to the provisions of the Rehabilitation Act that are violated and the citation referenced in the quotation contained in the Motion is not applicable. Second, The Air Tour Providers' evidence as to the percentage of air tourists who are mobility impaired, elderly or handicapped varies dramatically depending upon which operator is providing the information. (See Statement of Brenda Halverson supporting Motion for Stay indicating that over 75% of the Air Tour Provider's clients are handicapped, mobility impaired or elderly; Statement of Ron Norman supporting Motion for Stay indicating no less than 40% of AirStar Helicopters clients account for handicapped, mobility impaired or elderly; Comments of Grand Canyon Air Tour Council, September 3, 1999, indicate that about 20% of air tourists are "physically challenged.") The FAA noted in the Commercial Air Tour Limitations Final Rule that "over 50% of the air tour visitors to GCNP also visit the Park on the ground. Also, people who are handicapped, impaired or elderly will continue to enjoy access to the GCNP." 65 FR 17716. Thus people who are handicapped, mobility impaired, or elderly will have the same ability to access the Grand Canyon by air as other individuals.

The Air Tour Providers also attack FAA's choice of base year for the flight limitation because the FAA did not use current data. The FAA's choice of base year was reasonable and is thoroughly discussed in the Commercial Air Tour Limitations Final Rule wherein the FAA stated:

> Data on operations levels for the year May 1, 1997 through April 30, 1998 comprised the most accurate and current data available during the period that this rule was being drafted. Data subsequently collected from the industry for the year May 1, 1998 through April 30, 1999 show a slight decline in the number of total operations from the previous year. Thus the FAA and NPS believe that the period from May 1, 1997 through April 30, 1998 is a representative year for the purpose of imposing this allocation. See 65 FR at 17718.

At the time this rule was being drafted, the data for the period May 1, 1999–April 30, 2000 was not available.

The Air Tour Providers' assertion that the use of the base year data violates the RFA and that the FAA ignored the Small Business Administration's (SBA) comments is unsubstantiated. The SBA did not provide any comments to the docket on the final rules until December 20, 1999 where SBA presented its concerns at a meeting between the Office of Management and Budget, the FAA and representatives of the Air Tour Providers. (In fact, representatives of the Office of Economics and Policy attempted to meet with SBA several times during the time period the final rule was being drafted, but SBA was unable to attend scheduled meetings.) The comment period to the NPRM closed September 7, 1999. At the OMB meeting the SBA noted that "the use of future years, or an average of the next 2 years, might be an alternative that more accurately reflects the marketplace within the Grand Canyon tour industry and will aid in the forecasting industry growth rates." See Administrative Record, Document 70, Comment 277. The FAA believes its analyses of the subsequent base year dispels any concern that this year was an aberration; instead it appears that the base year is part of the business cycle. See Exhibit A, Statement of Alan Stevens to Motion to Stay.

The Air Tour Providers' claim that the agencies' were arbitrary and capricious in relying upon an invalid computer sound model and biased sound data is equally unfounded. The Air Tour Providers rely on statements made by John Alberti asserting that the computer model used by the agencies is without scientific basis. To the contrary, the "FAA chose to use the Integrated Noise Model (INM) for GCNP analysis because of its: (1) Widespread scientific acceptance; (2) use of methodology that conforms to industry and international standards; (3) measurement-derived noise and performance data; (4) ability to calculate noise exposure over varying terrain elevation; and (5) adaptability and reliability for assessing a variety of situations, including GCNP noise impacts." See SEA at 4–5—4–6. The INM is well accepted in the scientific community and meets the standards of the Society of Automotive Engineers Aerospace Information Report (Air) as well as the International Civil Aviation Organization (ICAO) Circular. See SEA at 4–6. The INM was specifically modified for GCNP purposes. These modifications, along with the aircraft and operational data inputted for modeling, assessing and predicting aircraft noise at GCNP were analyzed and explained in detail in the SEA.

The Air Tour Providers did not provide an adequate basis for their statement that the FAA relied on biased sound data. The NPS provided information on data collection in its Disposition or Comments. 64 FR 38006. Additionally, the FAA provided aircraft and operational data utilized in its noise modeling in the SEA. Again, the law is clear, the Court "will give due deference to the agency especially when the agency action involves evaluating complex scientific or statistical data within the agency's expertise." *Natural*

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*Resources Defense Council, Inc.* v. *EPA*, 194 F.3d 130 (D.C. Cir., 1999).

Finally, as stated earlier, the final rules were issued and the accompanying SEA and Record of Decision were completed prior to the enactment of the National Parks Air Tour Management Act cited by the Air Tour Providers. Therefore, the agencies are not in violation of the law. Regardless, the INM is a reasonable and professionally accepted method for assessing and predicting aircraft noise impacts and therefore the agencies' reliance on the model and aircraft and operational data is not arbitrary and capricious.

The Air Tour Provider's assertion that the exception created for operators landing at the Hualapai reservation under contract with the Hualapai Tribe is arbitrary and capricious is contrary to law. When Congress passed the Indian Reorganization Act of 1934 an overriding purpose of that Act was "to establish machinery whereby Indian tribes would be able to assume a greater degree of self-government both politically and economically." *Morton* v. *Mancari et al.*, 417 U.S. 535, 541; 94 S.Ct. 2474 (1974). Congress in 1934 "determined that proper fulfillment of its trust required turning over to the Indians a greater control of their own destinies." Id. at 552. The FAA determined that "the Hualapai would be significantly adversely impacted from an economic perspective if the operations limitation were applied to operators servicing Grand Canyon West Airport in support of the Hualapai Tribe." 65 FR at 17718; see pages 17714–17715 and 17726–17727 (regarding trust responsibility and cost impact on tribe); see also Final Regulatory Evaluation at 98–110. Any operator has the opportunity to obtain the benefits of this exception (i.e., relief from allocations) provided the operator has a contract with the Hualapai Tribe and satisfies the conditions of the exception. The Hualapai decide which operators to contract with.

The exception from allocations applies to the air tour operators servicing the Hualapai Reservation. Contrary to assertions by the Air Tour Providers, this exception does not violate the Air Tour Provider's constitutional rights and in fact, the Air Tour Providers do not actually identify any constitutional rights that have been violated. Furthermore, the Air Tour Providers ignore the fact that if the Hualapai Tribe is enjoying "unparalleled economic growth," the Air Tour Providers also are benefiting since they are providing the flight service to the Hualapai reservation.

2. The Air Tour Providers Have Not Substantiated Irreparable Economic Losses Nor Have They Demonstrated the Quantum of Harm Is Great

In showing irreparable harm, "the movant must provide the proof that the harm has occurred in the past and is likely to occur again, or proof indicating that the harm is certain to occur in the near future." *Wisconsin Gas Co.* v. *FERC*, 758 F.2d 669, 673 (D.C. Cir. 1985). The *Wisconsin* Court further stated that "economic loss does not, in and of itself, constitute irreparable harm." *Id.* Thus, if the Air Tour Providers are in fact losing customers, it does not constitute irreparable harm since the loss of customers is due to the reduction in flights in the SFRA, which is the purpose of the flight limitation. As discussed above, the reduction in flights is necessary in order to achieve the statutory goal of substantial restoration of natural quiet and to meet the President's goal for achieving substantial restoration by 2008.

The Air Tour Providers also do not provide any direct evidence that the harm they are suffering is immediate and imminent and will occur over the next 6–9 months while this litigation is ongoing. The FAA's Commercial air tour limitations final rule became effective May 4, 2000. The operators received a full years worth of allocations for the year 2000. The operators do not provide evidence that they are close to exhausting or have exhausted these allocations and thus must stop conducting business. In fact, Mr. Alan Stevens of Grand Canyon Airlines only acknowledges the theoretical possibility that he could exhaust his allocations. See Statement of Alan Stevens at page 4. Whether the operators will then incur damages for the year 2001 is also theoretical and depends on demand for air tours during the portion of 2001 that coincides with the litigation. Thus, at this point, there is no clear evidence submitted by the Air Tour Providers that the operators currently are losing money for the year 2000 because of the allocation requirement or that they will lose money for the first half of 2001 because of this requirement. Additionally, while some of the operators' statements assert they may go out of business with the imposition of the limitations rule and the routes, they do not provide direct evidence to demonstrate that their demise is due to these rules and not to the cumulative effect of past business conditions in the market.

The Air Tour Providers also argue irreparable injury because the FAA has not minimized the impact of the longer tour routes or the "use it or lose it provision." The FAA has attempted to minimize the impact of the longer routes to the extent possible by creating a fixed wing turnaround in the Zuni Point Corridor. The Dragon corridor contains a turnaround for helicopters. See 65 FR at 17698. With regard to the use it or lose it provision, the FAA eliminated the peak/non-peak distinction that was initially contained in the NPRM. Thus, Ron Norman's assertions that the "FAA will rescind any flight allocations that go unused during either the Peak or non-peak season" is unfounded. See Exhibit A Statement of Ron Norman at paragraph 7.

Furthermore, the FAA adopted suggestions by commenters to soften the use it or lose it provision by lengthening the time period. In fact, the FAA adopted a provision similar to Papillon's suggestion in its comments whereby after 180 days of inactivity, the operator simply sends in a letter of intent to operate that indicates why the operator did not operate for 180 days and when it intends to resume business. The operator then may have up to another 180 days to resume operations, as approved by the Flight Standards District Office. An operator would have up to 360 days of inactivity, as suggested by Air Star Helicopters in its comments. See 65 FR 17721–17722.

The FAA's Regulatory Flexibility Act analysis comports with the requirements of the RFA. See generally, Final Regulatory Evaluation, Commercial Air Tour Limitations Final Rule and Airspace Modification Final Rule, January, 2000. Providing statistical analysis to counter an agency's own analysis is not sufficient to show that an agency acted arbitrarily and capaciously since a court will "give due deference to the agency especially when the agency action involves evaluating complex scientific or statistical data within the agency's expertise." See *NRDC* v. *EPA* 194 F.3d 130 (D.C. Cir., 1999). Furthermore, the fact that the FAA did not proceed first with the Quiet Technology Rulemaking or some other alternative now preferred by the Air Tour Providers is not indicative that the agency violated the APA. The law is clear that an "agency is entitled to the highest deference in deciding priorities among issues, including the sequence and grouping in which it tackles them." *Allied Local and Regional Manufacturers Caucus, et al.*, v. *EPA*, 215 F.3d 61 (2000). The agency provided a detailed economic analysis and RFA analysis that addressed alternatives to the adopted alternative and discussed reasons why those alternatives were not adopted. Thus it has satisfied its mandate under the RFA.



3. The Air Tour Providers Have Not Demonstrated That the Weighing of the Interests Favors a Stay

The FAA, in enacting these rules is carrying out the statutory mandate set forth in Public Law 100–91—to substantially restore natural quiet in the GCNP. It has been 12 years since the enactment of this legislation and the FAA has attempted to work with the Air Tour Providers, the Indian Tribes, the environmental groups and the National Park Service to come to a resolution with regard to the means of substantially restoring natural quiet. The FAA believes that this rule achieves the proper balance that Congress sought in adopting Public Law 100–91 between the interests of the Air Tour Providers and those of the environmental interests and makes significant gains in substantial restoration of natural quiet. See 65 FR 17713. This balance is evidenced by the fact that the government has been sued in the District of Columbia Circuit Court of Appeals for the United States by one party (Air Tour Providers) claiming the government has done too much in effecting the goal of Public Law 100–91 and by another party (Grand Canyon Trust, *et al.*) claiming the government has not gone far enough in fulfilling the statutory mandate. The Air Tour Providers have not demonstrated why their interests outweigh the interest expressed by Congress in passing Public Law 100–91.

**D. Conclusion**

Given that the Air Tour Providers cannot prevail under either the public interest test followed by the Department of Transportation, or the *Washington Metropolitan* test followed by the Circuit Court, the FAA hereby denies the Air Tour Providers' Motion to Stay the final rules.

Issued in Washington, DC on October 3, 2000.

**Jane F. Garvey,**

*Administrator.*

[FR Doc. 00–25952 Filed 10–10–00; 8:45 am]

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 25

**[Docket No. 00N–0085]**

### National Environmental Policy Act; Food Contact Substance Notification System; Confirmation of Effective Date

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Direct final rule; confirmation of effective date.

**SUMMARY:** The Food and Drug Administration (FDA) is confirming the effective date of August 24, 2000, for the direct final rule (DFR) that appeared in the **Federal Register** of May 11, 2000 (65 FR 30352). The DFR amended FDA's regulations on environmental impact considerations. This document confirms the effective date of the DFR.

**DATES:** Effective date confirmed: August 24, 2000.

**FOR FURTHER INFORMATION CONTACT:** Mitchell A. Cheeseman, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3083.

**SUPPLEMENTARY INFORMATION:** In a DFR published in the **Federal Register** of May 11, 2000 (65 FR 30352), FDA amended its regulations on environmental impact considerations as part of the agency's implementation of the FDA Modernization Act (FDAMA) of 1997. FDAMA amended the Federal Food, Drug, and Cosmetic Act (the act) by establishing a notification process for authorizing new uses of food additives that are food contact substances. The DFR amended the regulations in 21 CFR 25.20 to add to the list of those actions that require an environmental assessment allowing a notification submitted under section 409(h) of the act (21 U.S.C. 348(h)) to become effective and in 21 CFR 25.32(i), (j), (k), (q), and (r) to expand the existing categorical exclusions from the requirement of an environmental assessment to include allowing a notification submitted under section 409(h) of the act to become effective.

FDA solicited comments concerning the DFR for a 75-day period ending July 25, 2000. FDA stated that the effective date of the DFR would be on August 24, 2000, 30 days after the end of the comment period, unless any significant adverse comment was submitted to FDA during the comment period.

FDA received only one comment (from a trade association) on the DFR, which reiterated the association's views presented in response to an agency public meeting held prior to the initiation of this rulemaking. FDA has determined that the received comment is not a significant adverse comment for several reasons. First, in the preamble to the DFR, FDA referenced the association's prior submission and addressed its substance. Second, the comment does not dispute (or even directly address) the analysis presented in the DFR. It raises no new arguments and provides no new information for the agency's consideration. Finally, the association expressly characterizes the comment as not a "significant adverse comment" and supports the rule becoming effective as drafted.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, the amendments issued thereby became effective August 24, 2000.

Dated: October 3, 2000.

**Margaret M. Dotzel,**

*Associate Commissioner for Policy.*

[FR Doc. 00–26022 Filed 10–10–00; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 117

**[CGD11–00–009]**

### Drawbridge Operation Regulations; Mokelumne River, CA

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of temporary deviation from regulations.

**SUMMARY:** The Commander, Eleventh Coast Guard District has approved a temporary deviation to the regulations governing the opening of the Millers Ferry swing bridge, mile 12.1, over the Mokelumne River at Walnut Grove, CA. The approval specifies that the bridge need not open for vessel traffic from 8 p.m. to 6 a.m., October 9 through October 13, 2000. The purpose of this deviation is to allow Sacramento County to perform essential maintenance on the bridge.

**DATES:** Effective period of the deviation is 8 p.m., October 9, 2000 through 6 a.m., October 14, 2000.

**FOR FURTHER INFORMATION CONTACT:** Mr. David H. Sulouff, Chief, Bridge Section, Eleventh Coast Guard District, Building 50–6, Coast Guard Island, Alameda, CA 94501–5100, phone (510) 437–3516.

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**SUPPLEMENTARY INFORMATION:** The Millers Ferry Highway Swing Bridge, mile 12.1, over the Mokelumne River at Walnut Grove, CA provides 12.8 feet vertical clearance above Mean High Water when closed. Vessels that can pass under the bridge without an opening may do so at all times. This deviation has been coordinated with commercial operators and various marinas on the waterway. No objections were received.

The normal drawbridge regulation requires the bridge to open on demand, 9 a.m. to 5 p.m., May 1 through October 31; and all other times if at least 12 hours advance notice is given.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the normal operating regulations in 33 CFR 117.5 is authorized in accordance with the provisions of 33 CFR 117.35.

Dated: September 29, 2000.

**C.D. Wurster,**

*Captain, U.S. Coast Guard, Acting Commander, Eleventh Coast Guard District.*

[FR Doc. 00–26077 Filed 10–10–00; 8:45 am]

**BILLING CODE 4910–15–P**

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 117

**[CGD08–00–021]**

**RIN 2115–AE47**

## Drawbridge Operating Regulation; Gulf Intracoastal Waterway, Algiers Alternate Route, Louisiana

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is changing the regulation governing the operation of the State Route 23 vertical lift span drawbridge across the Gulf Intracoastal Waterway (Algiers Alternate Route), mile 3.8, at Belle Chasse, Louisiana. The change allows the bridge to remain closed to navigation from 4 p.m. until 7 p.m. on Saturday and Sunday of the last weekend in October. This change facilitates the movement of vehicular traffic from the New Orleans Open House Air Show held annually at the Naval Air Station, Joint Reserve Base at Belle Chasse, Louisiana.

**DATES:** This rule is effective October 11, 2000.

**ADDRESSES:** Comments and materials received from the public, as well as documents indicated in this preamble as being available in the docket, will be available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Hale Boggs Federal Building, Room 1313, 501 Magazine Street, New Orleans, Louisiana 70130–3396 between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** David Frank, Bridge Administration Branch, Commander (ob), Eighth Coast Guard District, 501 Magazine Street, New Orleans, Louisiana, 70130–3396, telephone number 504–589–2965.

**SUPPLEMENTARY INFORMATION:**

### Regulatory Information

On August 28, 2000, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operating Regulation; Gulf Intracoastal Waterway, Algiers Alternate Route, Louisiana, in the **Federal Register** (65 FR 52057). We received no letters commenting on the proposed rule. No public hearing was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

The change in the regulation involves a community event of limited duration and scope. The closure involves only one bridge and alternate routes are available. No comments were received during the comment period included in the Notice of Proposed Rulemaking. No objections from waterway users have been received and the event will be published in the Local Notice to Mariners.

### Background and Purpose

The State Route 23 vertical lift span drawbridge across the Gulf Intracoastal Waterway (Algiers Alternate Route), mile 3.8, at Belle Chasse, Louisiana has a vertical clearance of 40 feet above mean high water in the closed-to-navigation position and 100 feet above mean high water in the open-to-navigation position. Navigation on the waterway consists primarily of tugs with tows, commercial fishing vessels, and occasional recreational craft.

The Department of the Navy requested a rule changing the operation of the State Route 23 vertical lift span drawbridge. The change accommodates the additional volume of vehicular traffic that the New Orleans Open House Air Show generates each year. Between 150,000 and 200,000 members of the public are expected to attend the New Orleans Open House Air Show on each day. The change allows for the expeditious dispersal of the heavy volume of vehicular traffic expected to depart the Naval Air Station, Joint Reserve Base following the event. This event has been held annually on the last weekend in October. This change eliminates the necessity of having to do a rulemaking each year for this annually scheduled event.

### Discussion of Comments and Changes

No comments were received for the NPRM and no changes have been incorporated into the Final Rule.

### Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

This is because the number of vessels impaired during the closed-to-navigation periods is minimal. All commercial vessels still have ample opportunity to transit this waterway before and after each three-hour closure on the last weekend in October. Additionally, a practical alternate route of approximately seven additional miles is available via the Harvey Canal and the Mississippi River.

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considers whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities.

### Assistance for Small Entities

Under the 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, we want to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.



### Collection of Information

This rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

### Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule would not have implications for federalism under that Order. No comments were received with regards to federalism during NPRM comment period.

### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule would not impose an unfunded mandate. No comments were received with regards to unfunded mandates during NPRM comment period.

### Taking of Private Property

This rule would not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. No comments were received with regards to the taking of private property during NPRM comment period.

### Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. No comments were received with regards to the taking of private property during NPRM comment period.

### Protection of Children

We have analyzed this rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

### Environment

We considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.lC, this rule is categorically excluded from further environmental documentation. Bridge Administration Program actions that can be categorically excluded include promulgation of operating regulations or procedures for drawbridges. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

### List of Subjects in 33 CFR Part 117

Bridges.

### Regulations

For the reasons set out in the preamble, the Coast Guard proposes to amend part 117 of Title 33, Code of Federal Regulations, as follows:

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 105 Stat. 5039.

2. Section 117.451(b) is revised to read as follows:

**§ 117.451 Gulf Intracoastal Waterway.**

* * * * *

(b) The draw of the SR 23 bridge, Algiers Alternate Route, mile 3.8 at Belle Chasse, operates as follows:

(1) The draw shall open on signal; except that, from 6 a.m. until 8:30 a.m. and from 3:30 p.m. until 5:30 p.m. Monday through Friday, except Federal holidays, the draw need not be opened for the passage of vessels.

(2) On Saturday and Sunday of the last weekend in October, the draw need not open for the passage of vessels from 4 p.m. until 7 p.m.

* * * * *

Dated: September 29, 2000.

**K.J. Eldridge,**

*Captain, U.S. Coast Guard, Acting Commander, 8th Coast Guard Dist.*

[FR Doc. 00–26075 Filed 10–10–00; 8:45 am]

**BILLING CODE 4910–15–P**

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 117

**[CGD11–00–011]**

## Drawbridge Operation Regulations; Sacramento River, CA

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of temporary deviation from regulations.

**SUMMARY:** The Commander, Eleventh Coast Guard District has approved a temporary deviation to the regulations governing the opening of the Isleton bascule drawbridge at mile 18.7 over the Sacramento River, Solano County, CA. The approval specifies that the bridge need not open for vessel traffic from 9 a.m. to 3 p.m. on 23 October 2000. This deviation is to allow California Department of Transportation to perform essential maintenance on the bridge.

**DATES:** Effective period of the deviation is from 9 a.m. to 3 p.m. on 23 October 2000.

**FOR FURTHER INFORMATION CONTACT:** David H. Sulouff, Chief, Bridge Section; Eleventh Coast Guard District, Bldg 50–6 Coast Guard Island, Alameda, CA 94501–5100, telephone (510) 437–3516.

**SUPPLEMENTARY INFORMATION:** The Isleton Drawbridge, mile 18.7, over the Sacramento River, Solano County, CA, provides 18 feet vertical clearance above Mean Lower Low Water when closed. Vessels that can pass under the bridge without an opening may do so at all times. This deviation has been coordinated with commercial operators and various marinas on the waterway. No objections were received. The normal drawbridge regulation requires the bridge to open on signal from May 1 through October 31 from 6 a.m. to 10 p.m., and from November 1 through April 30 from 9 a.m. to 5 p.m. At all other times, the draws shall open on signal if at least four hours notice is given.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the normal operating regulations in 33 CFR 117.5 is authorized in accordance with the provisions of 33 CFR 117.35.

Dated: September 29, 2000.

**C.D. Wurster,**

*Captain, U.S. Coast Guard, Acting Commander, Eleventh Coast Guard District.*

[FR Doc. 00–26076 Filed 10–10–00; 8:45 am]

**BILLING CODE 4910–15–P**

## POSTAL SERVICE

### 39 CFR Part 20

## Express Mail International Service

**AGENCY:** Postal Service.

**ACTION:** Final rule.

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**SUMMARY:** On August 7, 2000, the Postal Service announced an interim rule in the **Federal Register** (65 FR 48171) providing a 5 percent discount off the regular postage for all Express Mail International Service (EMS) shipments paid by an Express Mail Corporate Account (EMCA). The Postal Service hereby gives notice that it is implementing the interim rule on a permanent basis.

**EFFECTIVE DATE:** October 11, 2000.

**ADDRESSES:** Written comments should be sent to the Manager, International Products, International Business, U.S. Postal Service, 1735 N Lynn Street, Arlington VA 22209–6026. Copies of all written comments will be available for public inspection between 9 a.m. and 4 p.m., Monday through Friday, in International Business, Second Floor, at that address.

**FOR FURTHER INFORMATION CONTACT:** Angus MacInnes, (703) 292–3601.

**SUPPLEMENTARY INFORMATION:** The Postal Service proposed changes in conditions for certain mailing categories to automatically reduce every payment transaction by 5 percent for all EMS purchased at basic published prices and paid through an EMCA.

An EMCA is an advanced deposit account developed for Express Mail that enables customers to deposit funds with the Postal Service for payment of anticipated future Express Mail mailings. Express Mail Corporate Accounts can be used for domestic and international Express Mail. The discount is available only for Express Mail sent internationally. Federal agencies are eligible for the discount. The discount is deducted from the total postage amount on the mailer's monthly account, rather than for each piece.

The 5 percent discount is offered on postage only; it does not apply to pickup fees, any special fees, nor postage for shipments being made under an International Customized Mail agreement.

As required under the Postal Reorganization Act, this change results in conditions of mailing that do not apportion the costs of service, so the overall value of the service to its users is fair and reasonable, and not unduly or unreasonably discriminatory or preferential.

The Postal Service received no comments in response to its proposal published in the **Federal Register** on August 7, 2000 (65 FR 48171). Accordingly, the Postal Service hereby implements the 5 percent discount and amends the International Mail Manual (IMM), which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 20.1.

**List of Subjects in 39 CFR Part 20**

Foreign relations, international postal services.

**PART 20—[AMENDED]**

1. The authority citation for 39 CFR Part 20 continues to read as follows:

**Authority:** 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408.

2. Revise the International Mail Manual as set forth below:

**2 Conditions for Mailing**

**210 Express Mail International Service**

* * * * *

**212 Postage**

**212.1 Rates**

**212.11 Country Rates**

See the Individual Country Listings for countries that offer Express Mail International Service.

**212.12 Express Mail Corporate Account Discount Rates**

Express Mail International Service (EMS) rates will be reduced by 5 percent for all payments made through an Express Mail Corporate Account (EMCA) or through the federal agency payment system. The discount applies only to the postage portion of EMS rates. It does not apply to pickup service charges (212.24), additional merchandise insurance coverage fees (211.51), or shipments made under an International Customized Mail agreement.

* * * * *

**Stanley F. Mires,**

*Chief Counsel, Legislative.*

[FR Doc. 00–25981 Filed 10–10–00; 8:45 am]

BILLING CODE 7710–12–U

## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Part 81**

**[CA–029–EXTa; FRL–6872–8]**

### Clean Air Act Promulgation of Extension of Attainment Date for the San Diego, California Serious Ozone Nonattainment Area

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is extending the attainment date for the San Diego serious ozone nonattainment area from November 15, 1999, to November 15, 2000. This extension is based in part on monitored air quality readings for the 1-hour national ambient air quality standard (NAAQS) for ozone during 1999. Accordingly, we are updating the table concerning attainment dates for the State of California. In this action, we are approving the State's request through a "direct final" rulemaking. Elsewhere in this **Federal Register**, we are proposing approval and soliciting written comment on this action; if adverse written comments are received, we will withdraw the direct final rule and address the comments received in a new final rule; otherwise no further rulemaking will occur on this attainment date extension request.

**DATES:** This direct final rule is effective December 11, 2000 unless before November 13, 2000 adverse comments are received. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register**, and inform the public that the rule will not take effect.

**ADDRESSES:** Please address your comments to the EPA contact below. You may inspect and copy the rulemaking docket for this notice at the following location during normal business hours. We may charge you a reasonable fee for copying parts of the docket. Environmental Protection Agency, Region 9, Air Division, Air Planning Office (AIR–2), 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the SIP materials are also available for inspection at the addresses listed below:

California Air Resources Board, 2020 L Street, Sacramento, CA 92123–1095

San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123–1096

**FOR FURTHER INFORMATION CONTACT:** Dave Jesson, Air Planning Office (AIR–2), Air Division, U.S. EPA, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901. Telephone: (415) 744–1288. E-mail: *jesson.david@epa.gov*

**SUPPLEMENTARY INFORMATION:**

**Request for Attainment Date Extension for the San Diego Area**

On May 15, 2000, the State of California requested a one-year attainment date extension for the San Diego serious ozone nonattainment area. This area, which consists of San Diego County, is currently designated a serious ozone nonattainment area. The statutory ozone attainment date, as prescribed by section 181(a) of the Clean Air Act as amended in 1990 ("the Act"), was November 15, 1999.



**CAA Requirements Concerning Designation and Classification**

Section 107(d)(4) of the Act required the States and EPA to designate areas as attainment, nonattainment, or unclassifiable for ozone as well as other pollutants for which national ambient air quality standards (NAAQS) have been set. Section 181(a)(1) required that ozone nonattainment areas be classified as marginal, moderate, serious, severe, or extreme, depending on their air quality.

In a series of **Federal Register** documents, we completed this process by designating and classifying all areas of the country for ozone. See, e.g., 56 FR 58694 (Nov. 6, 1991), and 57 FR 56762 (Nov. 30, 1992). San Diego County was originally classified as severe, but was reclassified as serious based upon our determination that the ozone value used in the original classification was incorrect. See 60 FR 3771 (Jan. 19, 1995).

Areas designated nonattainment for ozone are required to meet attainment dates specified under the Act. As noted, the San Diego ozone nonattainment area was reclassified as serious. By this classification, its attainment date became November 15, 1999. A discussion of the attainment dates is found in EPA's General Preamble for Implementation of Title I of the Clean Air Act Amendments of 1990. See 57 FR 13498 (April 16, 1992).

**CAA Requirements Concerning Meeting the Attainment Date**

Section 181(b)(2)(A) requires the Administrator, within six months of the attainment date, to determine whether ozone nonattainment areas attained the NAAQS. For ozone, we determine attainment status on the basis of the expected number of exceedances of the NAAQS over the three-year period up to, and including, the attainment date. See General Preamble, 57 FR 13506. In the case of serious ozone nonattainment areas, the three-year period is 1997–1999.

A review of the actual ambient air quality ozone data from the EPA Aerometric Information Retrieval System (AIRS) shows that three air quality monitors located in the San Diego ozone nonattainment area recorded exceedances of the NAAQS for ozone during the three-year period from 1997 to 1999.[1] (See Table 1.) There were 9 exceedances at the Alpine monitor, an average of more than 1.0 over the three-year period, which constitutes a violation of the ozone NAAQS for the San Diego area during this three-year period. Thus, the area did not meet the November 15, 1999 attainment date.

TABLE 1.—EXCEEDANCES OF THE 1-HOUR OZONE NAAQS IN SAN DIEGO 1997–1999

[Source: AIRS]

| Monitoring Station | Exceedances | | | |
|---|---|---|---|---|
| | 1997 | 1998 | 1999 | Total |
| Chula Vista | 0 | 0 | 0 | 0 |
| El Cajon | 0 | 1 | 0 | 1 |
| Oceanside | 0 | 0 | 0 | 0 |
| San Diego (Overland) | 0 | 1 | 0 | 1 |
| Del Mar | 0 | 0 | 0 | 0 |
| Escondido | 0 | 0 | 0 | 0 |
| Alpine | 1 | 8 | 0 | 9 |
| San Diego (12th St.) | 0 | 0 | 0 | 0 |
| Camp Pendleton | 0 | 0 | 0 | 0 |
| Otay Mesa | 0 | 0 | 0 | 0 |

**CAA Provisions Authorizing a One-Year Extension of the Attainment Date**

CAA section 181(b)(2)(A) states that, for areas classified as marginal, moderate, or serious, if the Administrator determines that the area did not attain the standard by its attainment date, the area must be reclassified upwards. However, CAA section 181(a)(5) provides an exemption from these bump up requirements. Under this exemption, we may grant up to 2 one-year extensions of the attainment date under specified conditions:

Upon application by any State, the Administrator may extend for 1 additional year (hereinafter referred to as the "Extension Year") the date specified in table 1 of paragraph (1) of this subsection if—

(A) the State has complied with all requirements and commitments pertaining to the area in the applicable implementation plan, and

(B) no more than 1 exceedance of the national ambient air quality standard level for ozone has occurred in the area in the year preceding the Extension Year.

No more than 2 one-year extensions may be issued under this paragraph for a single nonattainment area.

We interpret this provision to authorize the granting of a one-year extension under the following minimum conditions: (1) The State requests a one-year extension; (2) all requirements and commitments in the EPA-approved SIP for the area have been complied with; and (3) the area has no more than one measured exceedance of the NAAQS during the year at any one monitor that includes the attainment date (or the subsequent year, if a second one-year extension is requested).

We have determined that the requirements for a one-year extension of the attainment date have been fulfilled as follows:

(1) California has formally submitted the attainment date extension request, in a letter dated May 15, 2000, from Michael P. Kenny, Executive Officer, California Air Resources Board, to P. Kenny, Executive Officer, California Air Resources Board, to Felicia Marcus, EPA Regional Administrator, Region 9.

(2) California is currently implementing the EPA-approved SIP. The State's letter, cited above, discusses implementation of State measures in the SIP, and shows that these measures plus new State measures have achieved an overall surplus of emission reductions beyond those assumed in the SIP. The State also attached a letter dated March

[1] AIRS Data Monitor Values Reports are available electronically at http://www.epa.gov/airsdata/monvals.htm

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13, 2000, from R. J. Sommerville, Director, San Diego County Air Pollution Control District, which provides evidence that all District SIP rules have been fully implemented.

(3) California has certified that the area has monitored no exceedances during 1999. This is also reflected in the quality-assured ambient ozone data shown in Table 1 above.

Because the statutory provisions have been satisfied, we approve California's attainment date extension request for the San Diego ozone nonattainment area. As a result, the chart in 40 CFR 81.305 entitled "California—Ozone" is being modified to extend the attainment date for the San Diego ozone nonattainment area from November 15, 1999, to November 15, 2000.

We are approving the attainment date extension without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, elsewhere in the proposed rule section of today's **Federal Register** we are publishing a proposal to approve this part 81 action should adverse or critical comments be filed. This action will be effective December 11, 2000 unless before November 13, 2000 adverse or critical comments are received.

If we receive such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on December 11, 2000.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

**Administrative Requirements**

*A. Executive Order 12866*

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

*B. Executive Order 13045*

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866; and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

*C. Executive Order 13084*

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

*D. Executive Order 13132*

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state request for an attainment date extension, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

*E. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

Extension of an area's attainment date under the CAA does not impose any new requirements on small entities.



Extension of an attainment date is an action that affects a geographical area and does not impose any regulatory requirements on sources. EPA certifies that the approval of the attainment date extension will not have a significant economic impact on a substantial number of small entities.

*F. Unfunded Mandates*

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the promulgated attainment date extension does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

*G. Submission to Congress and the Comptroller General*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

*H. National Technology Transfer and Advancement Act*

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

*I. Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 11, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 81**

Environmental protection, Air pollution control, National parks, Wilderness areas.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: September 8, 2000.

**Felicia Marcus,**

*Regional Administrator, Region IX.*

Part 81 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

**PART 81—[AMENDED]**

1. The authority citation for part 81 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

2. In § 81.305 the "California—ozone" table is amended by revising the entry for San Diego area to read as follows:

**§ 81.305 California.**

* * * * *

CALIFORNIA—OZONE

[1-Hour Standard]

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date [1] | Type | Date [1] | Type |
| * * * | * | * | * | * |
| San Diego Area: | | | | |
| San Diego County | 11/15/90 | Nonattainment | 2/21/95 | Serious [2] |
| * * * | * | * | * | * |

[1] This date is November 15, 1990, unless otherwise noted.
[2] Attainment date is extended to November 15, 2000.

* * * * *

[FR Doc. 00–25926 Filed 10–10–00; 8:45 am]
BILLING CODE 6560–50–P

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**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Health Care Financing Administration**

**42 CFR Part 424**

**[HCFA–6004–FC]**

**RIN 0938–AH19**

# Medicare Program; Additional Supplier Standards.

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

**ACTION:** Final rule with comment period.

**SUMMARY:** This final rule establishes additional standards for an entity to qualify as a Medicare supplier for purposes of submitting claims and receiving payment for durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS). These regulations will ensure that suppliers of DMEPOS are qualified to provide the appropriate health care services and will help safeguard the Medicare program and its beneficiaries from any instances of fraudulent or abusive billing practices.

**DATES:** *Effective Date:* These regulations are effective on December 11, 2000.

*Comment Date:* We will accept comments on the policies discussed in section IV of the **SUPPLEMENTARY INFORMATION** section of this document. Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on December 11, 2000.

**ADDRESSES:** Mail an original and 3 copies of written comments to the following address only:

Health Care Financing Administration, Department of Health and Human Services, Attention: 6004–FC, P.O. Box 8013, Baltimore, MD 21244–8013

Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, D.C. 20201, or

Room C5–16–03, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To ensure that mailed comments are received in time for us to consider them, please allow for possible delays in delivering them.

Comments mailed to the above addresses may be delayed and received too late for us to consider them.

Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–6004–FC. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 443–G of the Department's office at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 to 5 p.m. (phone: (202) 690–7890).

**FOR FURTHER INFORMATION CONTACT:** Charles Waldhauser, (410) 786–6140.

**SUPPLEMENTARY INFORMATION:** *Copies:* To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 or by faxing to (202) 512–2250. The cost for each copy is $8. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

This **Federal Register** document is also available from the **Federal Register** online database through GPO Access, a service of the U.S. Government Printing Office. The Website address is: http://www.access.gpo.gov/nara/index.html

## I. Background

### *A. General*

Medicare services are furnished by two types of entities, providers and suppliers. The term "provider", as defined in our regulations at 42 CFR 400.202, means a hospital, a critical access hospital, a skilled nursing facility, a comprehensive outpatient rehabilitation facility, a home health agency, or a hospice, that has in effect an agreement to participate in Medicare. A clinic, a rehabilitation agency, or a public health agency that has in effect a similar agreement but only to furnish outpatient physical therapy or speech pathology services, or a community mental health center with a similar agreement to furnish partial hospitalization services, is also considered a provider (see sections 1861(u) and 1866(e) of the Social Security Act (the Act) concerning definitions and provider agreements, respectively).

Generally, a Medicare "supplier" is an individual or entity that furnishes certain types of medical and other health items and services under Medicare Part B. There are different types of suppliers and thus, different definitions of the term "supplier," as well as specific regulations governing the different types of suppliers. A supplier that furnishes durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) is one category of supplier known as a DMEPOS supplier.

In current regulations at § 424.57(a) concerning payment rules for items furnished by DMEPOS suppliers, we define the term "supplier" as an entity or individual, including a physician or Part A provider, that sells or rents Part B covered items to Medicare beneficiaries, and that meets certain standards. The Part B covered items to which the definition refers are DMEPOS.

### *B. Legislative History*

Section 131 of the Social Security Act Amendments of 1994 (Public Law 103–432, enacted on October 31, 1994) made changes to section 1834 of the Act, "Special Payment Rules for Particular Items and Services." Specifically, it added a new subsection (j) to section 1834 of the Act that established additional requirements that a DMEPOS supplier must meet in order to obtain a supplier number. (A "supplier number" is the equivalent of a "billing number" that a supplier must have in order to submit claims and receive payment for items and services furnished under Medicare.) In section 1834(j)(1)(B)(ii)(IV) of the Act, the Congress also expressly delegated authority to the Secretary to specify any other requirements that a supplier must meet.

## II. Provisions of the Proposed Regulations

On January 20, 1998, we published in the **Federal Register** (63 FR 2926) a proposed rule that would require DMEPOS suppliers to meet additional standards in order to submit claims and receive payment. We issued the proposal on the basis of section 1834(j)(1)(B)(ii)(IV) of the Act that authorizes the Secretary to specify additional requirements a DMEPOS supplier must meet. We note that we consulted with representatives of medical equipment and supply companies, carriers, and consumers before issuing the proposal.

As we stated in the proposed rule, we believe it was the Congress' intent in enacting section 131 of the Social Security Act Amendments of 1994 to strengthen existing standards in order to protect the public interest. We also stated our belief that the additional standards we proposed would help safeguard the Medicare program and would serve to protect beneficiaries.



The major provisions of the proposed rule are as follows:

### *A. Specific Requirements for Supplier Standards*

We proposed changes to clarify our current policy concerning certification and recertification for DMEPOS. Specifically, we proposed that in order to obtain a supplier number, a supplier must complete an application certifying that it meets the supplier standards found in § 424.57(c). Additionally, we proposed that when renewing an application for a DMEPOS supplier billing number, a supplier must recertify that it meets all of the supplier standards.

We proposed new standards and revisions to existing standards relating to the following subject areas:

- Compliance with Medicare statutory provisions and applicable regulations.
- Compliance with applicable Federal and State licensure and regulatory requirements.
- Misrepresentation of facts.
- Signature used on a supplier number application.
- Providing requested information and documentation.
- Scope of exclusions.
- Rental or purchase option.
- Warranties.
- Delivery.
- Reassignment of supplier numbers.
- Physical facility.
- Business telephone.
- Liability insurance.
- Telemarketing.
- Prescription drugs.

### *B. Additional Revisions*

We also proposed to require that DMEPOS suppliers obtain a surety bond. We based this requirement on section 1834(a)(16) of the Act which requires DME suppliers to provide the Secretary, on a continuing basis, with a surety bond. We requested comments on the advisability of exercising this authority to impose a surety bond on all suppliers of prosthetics, orthotics, and supplies to the same extent as required for suppliers of durable medical equipment.

## III. Analysis of and Responses to Public Comments

We received 120 comments on the proposed rule primarily from suppliers of DMEPOS and organizations representing various types of DMEPOS suppliers. A summary of the comments and our responses to them follow.

### *A. Payment Rules (Proposed § 424.57(b))*

*Comment:* One commenter requested that an exception be granted to the effective date provision in a change of ownership situation. The commenter was referring to the statement in the proposed rule that Medicare will not pay for any Medicare covered items provided by a DMEPOS supplier prior to the date HCFA issues a DMEPOS supplier number. The commenter suggested that in the case of a change of ownership, Medicare should pay for covered services as of the date of acquisition.

*Response:* We are aware of the change of ownership issue. However, at this time we are not prepared to include a change of ownership provision in this final regulation. We plan to address change of ownership issues in a separate rulemaking.

*Comment:* One commenter stated that a supplier should not receive multiple billing numbers for the same physical location, regardless of how many tax ID numbers they possess.

*Response:* This suggestion is problematic, in that the Internal Revenue Service (IRS) Employer Identification Number (EIN) is the basic identification number that we use to distinguish between suppliers. Suppliers also may obtain multiple EINs for different lines of business.

We note that section 1834(j)(1)(D) of the Act states that "The Secretary may not issue more than one supplier number to any supplier of medical equipment and supplies unless the issuance of more than one number is appropriate to identify subsidiary or regional entities under the supplier's ownership or control." Therefore, we encourage suppliers to request only one supplier number per physical location. However, we are not prepared at this time to forbid multiple billing numbers based on multiple EINs if we can establish through a site visit or other means that clearly distinct lines of business are being conducted at a location. In this final rule, we are adding a new paragraph (b)(1) to § 424.57 to require suppliers to enroll separate physical locations, other than warehouses or repair facilities.

### *B. Supplier Standards (Proposed § 424.57(c))*

1. General

*Comment:* One commenter suggested that we require immediate recertification of all suppliers based on the new standards.

*Response:* This would create a heavy administrative burden on both HCFA and the suppliers. As we stated in the proposed rule, we will not require all DMEPOS suppliers to submit new applications for billing numbers on the date this regulation becomes effective, but will require DMEPOS suppliers to submit new applications as the old numbers expire. Although we may not routinely check to determine the compliance of current suppliers with new standards, it is important to note that as of the effective date of this regulation, December 11, 2000, all DMEPOS suppliers must comply with these standards. We may perform random or focused reviews of previously enrolled suppliers to determine their compliance with the new standards. We may revoke a supplier number if we find evidence that the standards are not satisfied.

*Comment:* One commenter stated that physicians should be exempt from supplier standards because they have to meet similar standards in order to be licensed.

*Response:* While physicians are required to meet State licensing requirements, these may vary by State, and do not necessarily apply to physicians while they are functioning as suppliers. More importantly, standards are different for physicians than suppliers. Therefore, we decline to exempt physicians from the requirements.

2. Compliance With Medicare Statutory Provisions and Applicable Regulations (Proposed § 424.57(c)(1))

*Comment:* One commenter suggested that HCFA provide a list of the requirements that a supplier would need in order to comply with this standard.

*Response:* We have not accepted this suggestion. The intent of this standard is to ensure that the supplier meets all Medicare requirements that may apply. The standard is essentially a restatement of section 1834(j)(1)(B)(ii)(I) of the Act. We note that we do make extensive efforts to educate suppliers on the requirements they must meet through manuals, bulletins, seminars, and other means.

3. Compliance With Applicable Federal and State Licensure and Regulatory Requirements (Proposed § 424.57(c)(2))

*Comment:* One commenter stated the standard requiring that a supplier must operate its business and furnish Medicare covered items in compliance with all applicable Federal and State licensure and regulatory requirements is vague and excessive. Additionally, one

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commenter stated that when Medicaid requirements are stricter than Medicare's, we should use the Medicaid requirements. One commenter also suggested that we allow no exceptions to State licensing requirements. One commenter recommended that consideration be given to waiving Federal standards where applicable State safeguards exist. The commenter added that complying with layers of rules adds confusion, cost, and diverts resources from clinical functions to administrative functions.

*Response:* This requirement is merely a restatement of the law—see section 1834(j)(l)(B)(ii)(I) of the Act. While we agree with the philosophy of requiring suppliers to meet the highest possible standards, it would introduce an increased level of complexity and administrative burden on providers operating in more than one State to meet different requirements in different States in order for the supplier to bill Medicare. For this reason, we have declined to pursue this option. We will take under consideration the possibility of granting waivers, from parts of the National Supplier Clearinghouse (NSC) review process (for example, site visits), to suppliers who are certified or licensed by States with sufficiently stringent requirements. We intend to allow no exceptions to applicable State licensing requirements.

4. Misrepresentation of Facts (Proposed § 424.57(c)(3))

The proposed standard states that a supplier must not make, or cause to be made, any false statement or misrepresentation of a material fact on an application for a billing number. A supplier must provide complete and accurate information in response to questions on its application for a billing number. Any changes in information supplied on the application must be reported within 35 days of the change.

*Comment:* One commenter stated that this standard needs further clarification. One commenter requested a definition of "false statement" and "misrepresentation". Also, one commenter suggested that the application form use simple, clear terminology to provide unambiguous guidance as to the information required.

*Response:* This standard is now located at § 424.57(c)(2). We are not providing definitions of the terms "false statement" and "misrepresentation". These are not technical terms and carry the common meaning normally associated with them. We will continue to develop the application form to be as clear, simple and unambiguous as possible. We note that we are revising the time frame allowed to a supplier to report changes to the information supplied on the application form. We are changing the proposed "35 days" to "30 days" to be consistent with the standard established through the application form. In addition to revocation of the billing number, if the supplier knowingly fills out the application incorrectly (for example, misrepresentation of facts or failure to report critical information) the supplier may be subject to civil and criminal penalties for submitting a false statement in connection with a health care matter.

5. Signature Used on a Supplier Number Application (Proposed § 424.57(c)(4))

*Comment:* One commenter suggested that HCFA should clarify that the signature does not have to be that of an officer of the company, but of a responsible official with first hand knowledge of the requirements listed on the application.

*Response:* We have not changed the proposed language because we believe that the specificity suggested by the commenter is addressed in the instructions for the DMEPOS application form (Form HCFA–855S). This standard is now located at § 424.57(c)(3). Those instructions specify that the application must be signed by an authorized representative of the supplier. An authorized representative is defined as "The appointed official (for example, officer, chief executive officer, general partner, etc.) who has the authority to enroll the entity in Medicare or other Federal health care programs as well as to make changes and/or updates to the applicant's status, and to commit the corporation to Medicare or other Federal health care program laws and regulations." We believe this requirement protects the integrity of the supplier's information and makes the supplier accountable for its dealings with the Medicare program.

6. Providing Requested Information and Documentation (Proposed § 424.57(c)(5)).

This section, as published in the January 20, 1998 proposed rule, stated that a supplier must agree to furnish to HCFA all information or documentation HCFA requires, including—

- Information or documentation needed to process or adjudicate Medicare claims;
- Upon request, copies of contracts with third parties for furnishing Medicare covered items to Medicare beneficiaries;
- Upon request, documentation that it has advised beneficiaries that they may either rent or purchase inexpensive or routinely purchased equipment and about the purchase option for capped rental equipment;
- Upon request, documentation that it has advised Medicare beneficiaries about Medicare covered items covered under warranty;
- Upon request, documentation demonstrating that it has delivered Medicare covered items to Medicare beneficiaries;
- Upon request, documentation that it maintains and repairs directly, or through a service contract with another company, Medicare covered items rented to beneficiaries;
- Upon request, proof of liability insurance; and
- Any other information required by this or other Medicare requirements.

*Comment:* Several commenters stated that the intent of the requirement to furnish copies of contracts (proposed § 424.57(c)(5)(ii)) is unclear. Several commenters also objected to requiring Health Maintenance Organizations (HMO) and Managed Care Organizations (MCO) contracts. Many commenters stated that Medicare has no right to "Most Favored Nation" treatment. One commenter requested clarification of the requirement pertaining to contracts for the delivery of items.

*Response:* Regarding the comments concerning copies of contracts with third parties for furnishing Medicare covered items to Medicare beneficiaries, we never intended to require information that would lead to "Most Favored Nation" treatment. (By "Most Favored Nation" treatment we believe the commenter is referring to a situation in which the seller gives the purchaser a better price than he or she gives any of the seller's other customers.) We think the commenter believes that we intend to gain special privileges for the Medicare program. We only expect assurance of the supplier's compliance with the provisions currently shown in § 424.57(c)(6). Medicare pays based on the lower of the supplier's actual change or the fee schedule. We also do not require copies of HMO/MCO contracts. We have clarified this standard to require only copies of contracts that a supplier has with other entities that deliver supplies to Medicare beneficiaries on the supplier's behalf or that provide supplies to the supplier for use in providing items to Medicare beneficiaries. This would include arrangements for providing componentry. Note, however, that the standard in proposed § 424.57(c)(3), requires a contract if the supplier has no inventory of its own. This standard is now located at § 424.57(c)(4).



*Comment:* Several commenters questioned the type of documentation required by HCFA and whether beneficiaries would have to sign the documents. A number of commenters suggested that we remove redundancy by including the documentation requirements in the specific standards to which they apply.

*Response:* Neither the proposal nor this final rule specifies that the beneficiary has to sign documents under this requirement. As suggested by the commenters, we have moved most of the documentation requirements to the specific standards to which they apply, for clarity and to eliminate redundancy.

*Comment:* With respect to the standard requiring documentation advising beneficiaries that they may either rent or purchase inexpensive or routinely purchased equipment, one commenter objected to additional documentation requirements and paperwork because most beneficiaries prefer to purchase inexpensive and routinely purchased equipment. The commenter believed that HCFA would increase the cost of processing claims if patients rented equipment up to the purchase price, when by physician order, other medical documentation, or expected length of need, one would anticipate usage beyond the months required to reach the purchase price. In addition, the standard would require that the purchase option for capped rental equipment must be given to the beneficiary and documented. The commenter stated that a conversation is usually held with the beneficiary at the time they receive a capped rental item, in order to ensure that they understand the equipment is owned by the supplier until such time as the purchase option is offered in the tenth month. At the tenth month, the purchase option letter is forwarded to the beneficiary, and suppliers customarily make every effort to communicate with the beneficiary with regard to the purchase or continued rental option. The commenter believed that this section of the standards is unnecessary because the purchase option letter should fulfill the need for this documentation.

*Response:* We have not specified any additional documentation requirements and paperwork. A purchase option letter is one way to document compliance with this requirement. The requirements for the purchase option are spelled out in § 414.229(d) of this part and in section 1834(a)(7)(A) of the Act. It is not the intent of this regulation to address the purchase option requirement other than to state that it must be met and documented.

*Comment:* With respect to the standard requiring documentation advising beneficiaries about Medicare covered items covered under warranty, one commenter questioned whether the supplier has to obtain a signed statement to this effect from the beneficiary, pointing out that it would add to the cost of providing services to Medicare patients.

*Response:* A signed statement by the beneficiary is not necessary to comply with this requirement. We will also consider other documentation, such as delivery logs and copies of warranty information provided to beneficiaries.

*Comment:* With respect to the standard requiring documentation that the supplier has delivered Medicare covered items to Medicare beneficiaries, several commenters asked what is considered reasonable documentation for orthotic and prosthetic devices and services because there are no delivery slips as there are in DME.

*Response:* We believe it is reasonable to require a receipt for delivery of an orthotic or prosthetic device if they are not routinely provided items.

*Comment:* With respect to the standard requesting any other information required by this or other Medicare requirements, several commenters stated that this requirement needs limits, otherwise it will generate meaningless paper. Several commenters stated that we should follow the rules in 42 CFR 300 *et. seq.* concerning access to records and contracts between suppliers and subcontractors. One commenter stated that we cannot argue that we are entitled to greater access to information and documentation from Part B suppliers than from Part A suppliers' subcontractors. One commenter suggested that we add a requirement for telephone logs showing contacts with physicians, regarding physicians orders, and with beneficiaries and that we should require a list of delivery charges billed to Medicare or the beneficiary. One commenter stated that they had no objection to this requirement as long as the information required is referenced in the Medicare Carriers Manual and the DMERC supplier manual.

*Response:* We concur with much of the comment and are clarifying this requirement. Specifically, we are requiring that a supplier must agree to furnish to HCFA any information required by this or other applicable Medicare statute and regulations. We believe the references to 42 CFR 300ff should have been to 42 CFR 420.304, which contain the procedures that the Department of Health and Human Services follows in obtaining access to books, documents, and records in order to verify the costs of subcontractor services to a Medicare supplier. Although the procedures are reasonable for the purposes to which they are addressed, we believe that the changes we have made are a reasonable accommodation to purposes addressed in this regulation.

We disagree with the comment that we are not entitled to greater access to information from suppliers than from suppliers' subcontractors. The Congress specifically gave us authority with respect to DMEPOS suppliers in section 1834(j) of the Act.

Although we consider the maintenance of telephone logs for physician and beneficiary contacts good business practice, we are not prepared at this time to mandate their use because there may be other means to satisfy the requirements. We also are not prepared to require information on delivery charges. We will consider referencing the information required in the suggested manuals.

7. Scope of exclusions (Proposed § 424.57(c)(6))

*Comment:* With regard to the standard prohibiting a supplier from contracting with entities excluded from the Medicare program, one commenter stated that it may be necessary to contract with excluded entities in some situations—for example, if there is limited availability. Several commenters stated that it is unreasonable to expect that health care suppliers be able to accurately avoid such entities. They have no source to obtain this information and would, therefore, have to rely solely on the word of the subcontractor, which might not be accurate. Therefore, such policing activity should be the responsibility of HCFA. One commenter questioned the impact this requirement would have on inventory on-hand and servicing items under warranty.

*Response:* Information on excluded entities is available from the Government Printing Office and from the HHS Office of Inspector General (OIG). The OIG web site shows sanctioned entities. The web site address is: http//www.hhs.gov/progorg/oig/cumsan/index.htm. Allowing an excluded entity to contract with a Medicare supplier and indirectly receive Medicare funds because they are a source of items of limited availability would place the entity above the law because of this scarcity. We believe that the marketplace would soon adapt to fill this need, or that suppliers can be resourceful enough to find other

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accommodations. We would also expect suppliers to take reasonable steps to determine if an entity with which they have a contractual arrangement is excluded or debarred. The standard is now located at § 424.57(c)(4).

8. Rental or Purchase Option (Proposed § 424.57(c)(7))

*Comment:* One commenter suggested that we revise the standard stating that a supplier must advise beneficiaries that they may either rent or purchase inexpensive or routinely purchased equipment and of the purchase option for capped rentals. The commenter suggested that the standard give suppliers the discretion of making the decision on whether to rent or purchase based on the length of need estimated by the ordering physician. A related issue is that warranty information should be provided to beneficiaries at the time the title to an item transfers. Including warranty information in the explanation of capped rental may serve to further confuse beneficiaries. Additionally, several commenters suggested that we clarify that this standard applies only to the inexpensive or routinely purchased and capped rental DME categories—and not other items, such as home dialysis supplies and equipment.

*Response:* This standard is merely a reinforcement of our regulations at § 414.229(d) which refer to the purchase option on capped rental items, and the statute, at section 1834(a)(7) of the Act referring to payment for other items of DME. Since it is the beneficiary's decision whether to rent or purchase items, the supplier must explain the ramifications of this decision to the beneficiary at the required points in time to help the beneficiary make an informed decision. We are clarifying the standard in this final rule to state that it applies only when DME items are provided. This standard is now located at § 424.57(c)(5).

9. Warranties (Proposed § 424.57(c)(8))

This proposed standard states that a supplier must honor all warranties, expressed and implied under applicable State law. A supplier must not charge the beneficiary or the Medicare program for the repair or replacement of Medicare covered items or for services covered under warranty.

*Comment:* One commenter suggested that the supplier be required to give the beneficiary a list of the warranty periods for all products sold by that supplier. This provides the beneficiary with full disclosure and ensures basic supplier compliance with the standard. One commenter suggested that warranty information be provided to beneficiaries at the time the title to an item transfers. Another commenter requested that this documentation be provided as part of the delivery document, rather than a separate notice.

*Response:* With regard to the suggestion about providing a complete list of warranties, we think that this requirement is too onerous for larger suppliers. We do not specify at what point in time the warranty information is to be provided—at the time of delivery or at time of transfer of title both seem to be reasonable points of time. This standard is located at § 424.57(c)(6).

*Comment:* One commenter suggested that this standard covers equipment components only. The commenter noted that the cost of repair or replacement not only includes the cost of the actual component(s), but also the extensive labor to remove the old units, install the new, refit and possibly realign the device. In addition, the commenter stated that the warranty from the manufacturer covers only the component costs. A related comment stated that, while the warranty provisions that were set forth in the proposed rule may make sense for off-the-shelf items, they create anomalies for customized devices. Medicare fees for orthotics and prosthetics devices include evaluation, fitting, costs of components, and repairs due to normal wear and tear for 90 days when not necessitated by changes in the residual limb or the patient's functional capabilities. Medicare fees do not include professional service charges for repairs beyond 90 days even though the manufacturer's warranty for parts may exceed 90 days. The commenter suggested that it is in the best interest of the Medicare program to pay the labor cost to replace a component part of a device rather than replace the entire device; therefore, the rules should clarify that the professional service costs to evaluate, fit, disassemble and reassemble an orthotic or prosthetic component covered under a manufacturer's warranty is a covered service.

*Response:* Medicare does not cover maintenance and servicing of equipment when such services are covered under warranty. Medicare does not make separate payment for "fees" charged to process warranty items, paperwork, etc. These fees have been built into the reimbursement rate. We do make payments for maintenance and servicing of equipment after the warranty has expired.

10. Delivery (Proposed § 424.57(c)(9))

This proposed standard stated that a supplier must be responsible for the delivery of Medicare covered items to beneficiaries. A supplier must provide beneficiaries with necessary information and instructions on how to use Medicare covered items safely and effectively.

*Comment:* One commenter stated that the capability of providing proof of delivery exists only when someone is at a beneficiary's home to sign for each delivery. They recommended, instead, that proof of delivery may be maintained by drivers in their individual daily "log worksheets," as well as in the bills of lading for the supplies and equipment that are delivered. One commenter suggested that we include persons who are hearing impaired or have other disabilities. One commenter stated that, in some situations, instructions on how to use Medicare covered items are provided by physicians or other facilities (an ESRD facility, for example), so that the supplier is not directly responsible. One commenter urged that we coordinate any further developments of these standards with the Food and Drug Administration (FDA), insofar as they involve product information that is made available to the public. One commenter stated that instructions often are verbal rather than written, so that documentation in the medical record should suffice.

*Response:* It is our intention that all beneficiaries, including beneficiaries who are hearing impaired, or have other disabilities, always receive the necessary information to safely and effectively use the items they receive. We recognize that this may be accomplished through different means. This requirement can be satisfied as long as the supplier can establish that the necessary training/instructions have been delivered at an appropriate time and in an appropriate manner. We are modifying the language of this standard to clarify that a supplier must document that it, or other qualified parties, has provided the beneficiaries with necessary information and instructions at an appropriate time. This standard is now located at § 424.57(c)(12). When questions arise on the use of products, we consult with the FDA.

11. Repairs (Proposed § 424.57(c)(11))

*Comment:* One commenter stated that the standard stating that a supplier must maintain and repair directly, or through contract, Medicare covered items it has rented to beneficiaries does not address the issue of whether a supplier may



function under the manufacturer's warranty and meet the standard, that is, instead of repairing the item, the supplier simply replaces the product and returns the item in need of repairs to the manufacturer. Another commenter questioned how this was to be documented and what level of repair is needed.

*Response:* We are modifying this standard, now located at § 424.57(c)(14), to allow suppliers to replace items and to clarify that the level of repair should be sufficient that the item functions as required and intended.

12. Return of Items (Proposed § 424.57(c)(12))

This proposed standard states that a supplier must accept returns from beneficiaries of substandard (less than full quality for the particular item) or unsuitable items (inappropriate for the beneficiary at the time it was fitted and/or sold).

*Comment:* One commenter suggested that the supplier should be required to maintain a log of all returns from beneficiaries of substandard or unsuitable items. This would be helpful to ensure compliance with the standard. Another commenter suggested that the standard needed a time limit. One commenter stated that, if an item is ordered by a physician and used by the beneficiary, a supplier should not be required to accept returns if the beneficiary no longer wants the item for reasons other than quality.

*Response:* While we agree that such a log would be helpful in verifying compliance, we believe that such a mechanism is not the only method for ensuring compliance. Therefore, we have not modified this standard. This standard is located at § 424.57(c)(15). With regard to the comments regarding time limits and reasons for return, this standard has been in place since December 11, 1995 with few problems. Since the revision suggested regarding time limit contained no suggestion for a time limit, and we received no other suggestions, we are retaining the requirement without change. We also believe the requirement is clear enough with regard to the intent that it is the quality or suitability of the item that must determine whether it should be returnable. If necessary, we will address this last issue through program instructions.

13. Physical Facility (Proposed § 424.57(c)(16))

This proposed standard states that a supplier must maintain a physical facility on an appropriate site. The physical facility must contain space for storing business records including the supplier's delivery, maintenance, and beneficiary communication records. For purposes of this requirement, a post office box or commercial mailbox is not considered a physical facility.

*Comment:* One commenter suggested that all suppliers need to be in compliance with the Americans with Disabilities Act and be beneficiary accessible. The requirement should apply to both commercial business and residential locations. The commenter also stated that the standard should require that the business have a sign and have hours of operation posted.

*Response:* Medicare suppliers must meet all laws and regulations that might apply to them, including any applicable provisions of the Americans with Disabilities Act. This is provided for under the standard at § 424.57 (c)(1), which requires that suppliers operate their business in compliance with all applicable Federal and State licensure and regulatory requirements. The requirements apply whether the supplier is located at a commercial location or a residence, because it is still a business. In response to the comment concerning the posting of a sign and hours of operation, we are adding to this final rule a statement at § 424.57(c)(8), that the supplier location must be accessible during reasonable business hours to beneficiaries and to HCFA, and must maintain a visible sign and posted hours of operation.

*Comment:* One commenter suggested that this standard should restate the guidance established in title XVIII of the Act that only one supplier number is allowed per location, regardless of whether multiple Tax Identification Numbers are obtained. This would eliminate numerous questionable supplier operations in which several supplier numbers are located at the same address. Another commenter suggested that HCFA develop protocols for conducting an on-site inspection of every entity that submits an initial application for a supplier number prior to approving the application. One commenter stated that some suppliers have no physical facility where they treat clients, placing the commenter at a competitive disadvantage because he had a large and ongoing investment in real estate, tools, supplies, equipment, etc. Several commenters suggested that HCFA exempt national concerns with central sites for record storage from this requirement, or more clearly define the objectives underlying this requirement as a performance specification, and allow companies to satisfy the government's needs in other ways. One commenter stated that warehouses should not be covered by the standards.

*Response:* As previously noted in describing our changes to § 424.57(c)(6), section 1834(j)(1)(D) of the Act states that the Secretary may not issue more than one supplier number to any supplier of medical equipment and supplies unless the issuance of more than one number is appropriate to identify subsidiary or regional entities under the supplier's ownership or control. We are adding a sentence to state that in the case of a multi-site supplier, records may be maintained at a centralized location. A supplier must demonstrate a legitimate need for additional numbers. With regard to the physical site requirement, it is not our intention to ensure that no entities have competitive advantage over others. This is a natural by-product of the marketplace and business environment. Our intention is to ensure that we do business with legitimate entities who can provide safe and effective service to Medicare beneficiaries. We recognize that some suppliers may have multiple sites from which they do business, and may maintain records at one central site. Such suppliers may supply evidence of such recordkeeping, as long as the central site is an enrolled Medicare supplier site or represents a central function of a larger corporation of which the supplier is a part. We note that locations serving simply as warehouses are not subject to these standards.

14. Business Telephone (Proposed § 424.57(c)(17))

This proposed standard states that a supplier must maintain a primary business telephone at the physical facility. This telephone number must be listed under the name of the business and in the business portion of the local telephone company directory. The exclusive use of a beeper number, answering service, pager, facsimile machine, car phone, or an answering machine may not be used as the primary business telephone.

*Comment:* Several commenters strongly supported the standard requiring a supplier to maintain a business telephone at the physical facility where it does business. One commenter, however, noted that some suppliers maintain centralized customer service lines. A strict interpretation of the proposed standard would preclude this practice. Likewise, many suppliers maintain warehouse locations that are not used for retail customers. These types of locations should not be subject to the telephone standard because appropriately trained customer service representatives would not be available

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to respond to the public's questions. The commenters suggested that HCFA should modify the proposed regulation to state that the telephone standard would not apply in the above scenarios. One commenter noted that telephone directories are normally published annually, contracts for inclusion are made several months in advance. Therefore, unless the regulations allow adequate time for suppliers to comply with the requirement, they will not be able to meet the standard.

*Response:* We recognize the practices of large organizations with regard to centralized telephone service as well as centralized records. Therefore, we are modifying the standard now at § 424.57(c)(9) to permit the use of toll free numbers that may not be listed in the business portion of the local telephone directory. Documentation of a paid application for a telephone listing will be considered to meet this requirement. However, the telephone number itself must be in place and available through the telephone company's directory services (information).

15. Liability Insurance (Proposed § 424.57(c)(18))

This proposed standard states that a supplier must have a comprehensive liability insurance policy that covers both the supplier's place of business and any and all customers and employees of the supplier.

*Comment:* One commenter suggested that, if we feel that minimum coverage of $500,000 is adequate for most businesses, then state it clearly as part of the standard requiring that suppliers have a comprehensive liability insurance policy. Experience has indicated that most suppliers and many agents are confused by the lack of such guidance. Another commenter suggested that $300,000 was adequate for the types of businesses under consideration. Several commenters supported this requirement and some suggested that suppliers of custom devices should be required to have professional and product liability insurance to protect the patient and themselves. One commenter stated that national, publicly traded companies with large assets maintain adequate insurance and reinsurance coverages through multiple carriers, but that coverage necessarily includes self-insured retentions. The commenter further stated that HCFA should make it clear that corporations with assets in excess of some fixed amount should not be required to change their insurance profile to satisfy this requirement. Another commenter stated that HCFA's general description of the required "comprehensive liability insurance policy" is inadequate. The commenter felt that it is necessary for a seller and supplier of medical equipment to have a Comprehensive General Liability Insurance Policy plus coverage for product liability and completed operations. The commenter, a national group of home medical equipment supply companies, stated that more than 80 percent of the claims it had received during the last 11 years involved alleged product deficiencies or failures.

*Response:* We are revising this standard, now at § 424.57(c)(10), to require a comprehensive liability insurance policy of at least $300,000. We agree that partial self insurance is an acceptable means of meeting this requirement for publicly traded companies with sufficient assets. However, we are not able at this time to sufficiently define how this would be accomplished. We are also revising this standard to refer to product and operation liability and clarifying that the insurance must remain in force at all times. In addition, we have revised the language to allow suppliers with multiple sites to procure an umbrella policy for each tax ID number.

16. Telephone Contact (Proposed § 424.57(c)(19))

This proposed standard states that a supplier of a Medicare covered item must agree not to contact a beneficiary by telephone regarding the furnishing of a Medicare covered item to the individual unless certain specified situations apply.

*Comment:* One commenter suggested that we add an exception to this standard. Specifically, the commenter suggested that we permit telephone contact if the supplier receives a referral from a medical professional involved in the patient's care.

*Response:* While this may be reasonable in some situations, we find it problematic in that it may have unintended consequences as a loophole by allowing suppliers to purchase "referrals" (client lists) from medical professionals. This standard is located at § 424.57(c)(11).

17. Prescription Drugs (Proposed § 424.57(c)(20))

This proposed standard states that only a supplier that is licensed by the State to dispense the drug may bill for a drug used as a Medicare covered supply with durable medical equipment or prosthetic devices. A supplier of drugs must bill and receive payment for the drug in its own name.

*Comment:* One commenter requested that we clarify that physicians may dispense and bill for drugs if permitted by the State. One commenter requested that we clarify that it is not necessary to have a pharmacy license in order to dispense drugs in connection with ESRD. One commenter requested that we clarify that suppliers may dispense oxygen with a prescription, consistent with FDA requirements. Several commenters supported this requirement completely.

*Response:* We are revising the standard, now at § 424.57(b)(4) to reflect that physicians may dispense and bill for drugs if authorized to do so under State law. There is no exception to the licensure requirement for dispensing drugs furnished in connection with ESRD.

*C. Surety Bonds (proposed § 424.57(e))*

We received many comments on the proposed surety bond provisions. Most of the commenters were opposed to the provisions citing costs as their major objection. Because we have decided to make extensive changes to this requirement and build on our experience with surety bond requirements for home health agencies, as well as a General Accounting Office Study of Medicare surety bonds, we have decided not to incorporate the provisions related to surety bonds in this final rule. Rather, we will issue the surety bond provisions as a proposed rule at a future date and will consider the comments in the development of that rule.

*D. Other Comments*

*Comment:* One commenter suggested that we require that suppliers be certified by appropriate national certification bodies, including the Board for Certification in Pedorthics, before they are eligible to dispense therapeutic shoes for diabetics.

*Response:* This is a good suggestion. Because of the potential impact on the supplier community and the need for public opportunity to comment, we will consider it for future revisions.

*Comment:* One commenter suggested that we implement a specialty code for pedorthics.

*Response:* This can be done administratively, without a regulation. If deemed feasible, we will consider it.

*Comment:* One commenter stated that no physician or hospital should own, in whole or in part, a DME supplier. This is a common practice and is strictly self-referral, which leads to corruption.

*Response:* Although the supplier standards do not address the issue of whether a physician may have an ownership interest in a DME supplier, the physician self-referral provisions in section 1877 of the Act do address this issue. Under the physician self-referral provisions, a physician may not refer a Medicare or Medicaid patient for any "designated health services" listed in section 1877(h)(6) of the Act to an entity with which the physician or an immediate family member of the physician has a financial relationship, unless an exception applies. Designated health services include, but are not limited to, DME and supplies; parenteral and enteral nutrients (PEN); equipment and supplies; and prosthetics; orthotics, and prosthetic devices and supplies. A financial relationship may be through an ownership or investment interest or a compensation relationship. There are certain exceptions that apply to ownership interests. Some exceptions apply to compensation relationships, and some exceptions apply to both ownership and compensation. The physician referral prohibition also has an effect on Federal health care programs (including Medicaid and Medicare). For additional information about physician referral issues, please contact Joanne Sinsheimer at (410) 786–4620.

The current supplier standards do not address the issue of whether a hospital should own a DME supplier. We may consider this suggestion in future revisions because of the potential impact on the supplier community and the need for public opportunity to comment.

We want to draw your attention to the possibility that, based on the facts in each case, referrals may be prohibited under the anti-kickback statute. This statute applies to those who knowingly and willfully offer, pay, solicit, or receive remuneration to induce the furnishing of items or services paid for, in whole or in part, by any Federal health care program, including Medicare or Medicaid. For further information about the anti-kickback statute, please contact the Office of the Inspector General for HHS at (202) 619–0335.

*Comment:* One commenter suggested that HCFA ensure that the application form itself uses simple, clear terminology to provide unambiguous guidance as to the information required. The Form HCFA–855 should be reviewed by the OIG prior to issuance to ensure that the use of vague and ambiguous terminology is minimized and that instructions are clear.

*Response:* The Form HCFA–855 was reviewed by OIG prior to issuance. In addition, we are in the process of revising the Form HCFA–855. We will solicit input from all concerned parties, via a **Federal Register** notice prior to requesting the Office of Management and Budget's (OMB) approval of the revised form. We will consider detailed recommendations related to the revised Form HCFA–855.

*Comment:* One commenter stated that we should submit this rule to the Congress for a 60-day review in accordance with the Contract with America Advancement Act (P.L. 104–121).

*Response:* We are submitting a report to Congress for this rule pursuant to the congressional review procedures established by the Contract with America Advancement Act. We note that OMB has determined that this rule is not a major rule as defined by the Act.

*Comment:* One commenter stated that the proposed rule did not categorize the range of DMEPOS services and items. In addition, we did not provide in Table 2 a breakdown distribution by service or item speciality.

*Response:* The range of DMEPOS services and items are stipulated in various sections of the Act. The preamble of the proposed rule makes references to some of the sections of the Act. We do not have the data to provide a national geographic distribution of each type of service or item furnished by DMEPOS suppliers.

*E. Orthotics/Prosthetics*

*Comment:* Several commenters stated that orthotics and prosthetics suppliers should be licensed or certified. They believed that the provision of custom orthotic and prosthetic devices should be limited to facilities that are accredited by, or practitioners certified by, the American Board for Certification in Orthotics and Prosthetics or that meet equivalent educational and performance standards. One commenter suggested that we allow accreditation by the American Board for Certification in Orthotics and Prosthetics to serve as the equivalent of meeting the Medicare provider standards. One commenter stated that orthotics and prosthetics suppliers should be required to document each case in writing; should be required to give treatment alternatives in writing to each customer; should be required to give written cost estimates to each customer; and should be required to give a one year guarantee. Several commenters stated that orthotics and prosthetics suppliers should be required to have a bond. Several commenters suggested that orthotics and prosthetics suppliers should have separate standards from other suppliers.

*Response:* We will consider these suggestions in future revisions because of the potential impact on the supplier community and the need for public opportunity to comment.

## IV. Request for Comment on Certain Supplier Standards

The Balanced Budget Act of 1997 (BBA) requires the Secretary to establish service standards for home oxygen suppliers. The U.S. General Accounting Office (GAO), in Report GAO/HEHS–99–56: Access to Home Oxygen Equipment, states that such service standards "such as the frequency of maintenance visits and the level of patient education * * * would define what Medicare is paying for in the home oxygen benefit and what beneficiaries should expect from suppliers." We solicit comments as to what should comprise such supplier standards.

In addition, section 1861(s)(12) of the Act permits Medicare payment for extra-depth shoes with inserts or custom molded shoes with inserts for an individual with diabetes, if, among other things, the shoes are fitted and furnished by a podiatrist or other qualified individual (such as a pedorthist or orthotist, as established by the Secretary). We solicit comments as to what standards should be established for suppliers of such shoes and the qualifications to require of the fitting individual.

The Office of the Inspector General in a report titled "Medicare Orthotics" (OEI–02–95–00380) recommended that HCFA "consider stricter standards for who is allowed to bill for orthotics, such as requiring professional credentials for orthotics suppliers." We solicit comments as to what standards should be established for suppliers of Medicare-covered orthoses. We also solicit comments as to whether similar standards should be applied to prostheses.

We also welcome comments as to whether and what kind of standards should apply for home infusion therapy, durable medical equipment such as wheelchairs, or any other item provided under the DMEPOS benefit.

## V. Provisions of the Final Regulations

We are adopting the provisions set forth in the proposed rule with the exceptions noted in the Analysis of and Responses to Public Comments (section III. above) as well as the following change.

Throughout § 424.57, we are changing most of the references to "billing number" to "billing privileges", noting in § 424.57(b)(2) that billing privileges must be conveyed along with a billing number.

Also, we reiterate that although we do not intend to require suppliers with

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current numbers to immediately certify to HCFA their compliance with these revised standards (they will do so when they reapply), it is important to note that as of the effective date of this regulation, all DMEPOS suppliers must comply with the standards as revised. We may revoke a supplier number if we find evidence that the standards are not satisfied.

**VI. Collection of Information Requirements**

This final regulation contains requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). However, all have been approved by OMB. The OMB approval numbers associated with these approved requirements are 0938–0717, DMEPOS Supplier Standards: Additional Information Collection Requirements, for which the approval expires on April 30, 2001, and 0938–0685, Medicare Carrier Provider/Supplier Enrollment Application, for which the approval expires on September 30, 2001.

If you comment on these information collection and recordkeeping requirements, please mail copies directly to the following:

Health Care Financing Administration, Office of Information Services, Information Technology Investment Management Group, Attn: John Burke, Room N2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office building, Washington, DC 20503, Attn: Allison Herron Eydt, HCFA Desk Officer.

**VII. Regulatory Impact Analysis**

We have examined the impacts of this final rule under Executive Order 12866, the Unfunded Mandate Act of 1995, and the Regulatory Flexibility Act. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits. In addition, a Regulatory Impact Analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually).

The costs associated with this rule are as follows:

• Liability insurance requirement (§ 424.57(c)(10)). We estimate that only 10 percent of DMEPOS suppliers do not already have liability insurance that meets this requirement. Based on Medicare data as of May 1999, 10 percent of the total DMEPOS suppliers is approximately 6,600 suppliers. We note that commenters on the proposed rule gave varying estimates of the cost of liability insurance. The range commenters suggested was between $1300 and $1800 annually. Using the highest estimate received ($1,800 annually), results in an approximate additional liability insurance cost of $11.9 million annually (6,600 times $1,800) to the DMEPOS industry due to this rule.

• Primary business telephone listed under the name of the business locally or toll-free for beneficiaries requirement (§ 424.57(c)(9)). We estimate that only 1 percent of DMEPOS suppliers do not already meet this requirement. Based on Medicare data as of May 1999, we determined that one percent of DMEPOS suppliers is 660 suppliers. Therefore, 660 times the approximate $600 annual cost of telephone service results in an additional cost of $0.4 million annually.

Total Cost = $11.9 Million + $0.4 = $12.3 million annually.

The Unfunded Mandates Reform Act of 1995 requires (in section 202) that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in an expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million. This final rule has no consequential effect on State, local, or tribal governments.

Consistent with the Regulatory Flexibility Act, we prepare a Regulatory Flexibility Analysis (RFA) unless we certify that a rule will not have a significant economic impact on a substantial number of small entities. For purposes of the Act, suppliers with annual sales of $5 million or less are considered to be small entities. (Individuals and States are not included in the definition of a small entity.) The RFA is to include a justification of why action is being taken, the kinds and number of small entities which the rule will affect, and an explanation of any considered meaningful options that achieve the objectives and would lessen any significant adverse economic impact on the small entities.

We believe that our standards will help bar fraudulent suppliers from participating in the Medicare program and provide an added level of protection to Medicare beneficiaries. Therefore, we expect to have an impact on an unknown number of persons and entities who will effectively be prevented from practicing their aberrant billing activities. The vast majority of suppliers will not be significantly affected by this rule. The reduction in program overpayments and the added level of protection to beneficiaries that we expect to achieve as a result of this rule justifies the relatively small burden the rule would impose on all small entities.

The following analysis, together with the rest of this preamble, explains the rationale for and purposes of the rule, details the estimable costs and benefits of the rule, analyzes alternatives, and presents the measures we propose to minimize the burden on small entities.

*A. Rationale and Purposes*

We expect this rule to deter some entities that supply DME to Medicare beneficiaries from abusive billing practices or defrauding the Medicare program. For example, abusive practices include refusing to honor manufacturers' warranties or improperly installing equipment in Medicare beneficiaries' homes.

Fraudulent practices include billing the Medicare program for supplies that were not furnished. In a surprisingly large number of instances, when either the beneficiaries or HCFA attempted to contact suppliers alleged to have committed abuses, it was difficult to reach them because they did not have a fixed address or had closed the business and fled. Our experience has been that the market has failed to address these problems because of the motivation for unseemly profits, inadequate control by gatekeepers, and insufficient information on the part of Medicare beneficiaries to detect abuse. This market failure makes it necessary for HCFA to impose standards on DME suppliers and establish safeguards that enable the Medicare program to better protect beneficiary interests.

*B. Characteristics of Suppliers*

The single most striking characteristic of Medicare DMEPOS suppliers is their diversity. DMEPOS suppliers fill a business need and do it in a variety of ways. Some suppliers set out from the beginning to establish a business furnishing DMEPOS items; others evolve into being suppliers. For example, a firm dealing with the oxygen needs of the medical community may add a department that provides oxygen services and supplies as a medical supply as a logical extension of an existing business.

Similarly, a retail rental store may add wheelchairs or hospital beds and a pharmacy may add walkers to an inventory of otherwise unrelated commodities and use existing



advertisements to announce the availability of these items.

Based on the small size of some businesses, it is more characteristic that suppliers furnish a limited number of items in greater demand than to maintain a large inventory of items covering the gamut of covered DMEPOS items. Thus, the only things any two suppliers may have in common is their provision of DMEPOS items and their understanding that the activity will meet the needs of the business. Suppliers are in a position to direct their marketing activities to optimize their most profitable revenue sources, and in seeking to meet patient demand, can choose to provide only those items that meet their business objectives.

For purposes of the RFA, a small entity is one with annual revenues of less than $5 million. Medicare data indicates that more than 95 percent of all DMEPOS suppliers generate billings of less than $350,000 in Medicare revenues annually, and 99 percent less than $5 million.

*C. Geographic Distribution of Suppliers*

Individual patients may receive their durable medical equipment, supplies, and prosthetics either from a local supplier or from a regional or national concern that functions much like a mail order catalogue distribution center. As shown in Table 1, which is based on Medicare data as of May 1999, suppliers locate in areas where there is greatest demand, leaving other areas to be served by catalog, mail order or drop shipments. No States appear to be under served, and competition exists in large population areas, leading us to believe that the imposition of some additional standards will not have adverse effects on competition or on the availability of an adequate number of suppliers to meet patients' needs.

TABLE 1

| State | Number of suppliers per State | Number of beneficiary per State | Beneficiary per supplier |
|---|---|---|---|
| AK | 140 | 5500 | 39 |
| AL | 1960 | 151600 | 77 |
| AR | 1207 | 92400 | 77 |
| AZ | 1518 | 73100 | 48 |
| CA | 9612 | 469800 | 49 |
| CO | 1383 | 64200 | 46 |
| CT | 1552 | 79700 | 51 |
| DC | 167 | 10800 | 65 |
| DE | 274 | 17400 | 63 |
| FL | 7894 | 491200 | 62 |
| GA | 3180 | 186400 | 59 |
| HI | 345 | 16700 | 48 |
| IA | 1733 | 98400 | 57 |
| ID | 603 | 33500 | 56 |
| IL | 4212 | 268000 | 64 |
| IN | 2731 | 163800 | 60 |
| KS | 1386 | 76300 | 55 |
| KY | 2008 | 126200 | 63 |
| LA | 1996 | 115900 | 58 |
| MA | 2175 | 125200 | 58 |
| MD | 1837 | 102600 | 56 |
| ME | 636 | 38500 | 60 |
| MI | 3196 | 295600 | 92 |
| MN | 2001 | 105100 | 53 |
| MO | 2363 | 156100 | 66 |
| MS | 1094 | 96700 | 88 |
| MT | 608 | 28000 | 46 |
| NC | 3472 | 235000 | 68 |
| ND | 388 | 22200 | 57 |
| NE | 1026 | 48300 | 47 |
| NH | 520 | 24800 | 48 |
| NJ | 3291 | 172700 | 52 |
| NM | 539 | 34300 | 64 |
| NV | 553 | 27900 | 50 |
| NY | 6152 | 404700 | 66 |
| OH | 5101 | 294000 | 58 |
| OK | 1576 | 96700 | 61 |
| OR | 1316 | 61400 | 47 |
| PA | 5749 | 325900 | 57 |
| RI | 455 | 22000 | 48 |
| SC | 1666 | 124400 | 75 |
| SD | 458 | 23800 | 52 |
| TN | 2494 | 171600 | 69 |
| TX | 7021 | 408700 | 58 |
| UT | 690 | 36000 | 52 |
| VA | 2864 | 163300 | 57 |
| VT | 275 | 13600 | 49 |
| WA | 2268 | 107900 | 48 |
| WI | 2356 | 146200 | 62 |
| WV | 947 | 64400 | 68 |
| WY | 294 | 13300 | 45 |

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TABLE 1

| State | Number of suppliers per State | Number of beneficiary per State | Beneficiary per supplier |
|---|---|---|---|
| Total | 109,782 | ..... | ..... |

We note that the purpose of Table 1 is to illustrate the locations that provide durable medical equipment and supplies to Medicare beneficiaries. Many of these entities are members of chain organizations. While Table 1 indicates there are more than 109,000 suppliers, due to the affiliation of some suppliers with chains, as of May 1999, there were only 65,528 unique billing numbers. Hence, although in several sections of this preamble we mention 65,528 billing numbers, this reference and Table 1, which describes the more than 109,000 actual locations, describe the same universe of suppliers. According to an industry source, Medicare accounts for approximately 40 percent of the average DMEPOS supplier's revenue. The approximate percentage amounts for other revenue sources are 25 percent private insurance, 15 percent Medicaid, 10 percent institutional, and 10 percent private credit and cash sales. For calendar year 1997, Medicare program allowed charges amounted to $6.7 billion for DMEPOS items. We believe that for most suppliers any additional costs imposed by our standards would be outweighed by the benefits gained by continuing to be a Medicare DMEPOS supplier.

These standards should not result in changes in the number of legitimate business suppliers, because, as set forth below and elsewhere in this preamble, most requirements are logical extensions of good business practices that we believe currently are being met by the vast majority of suppliers.

*D. Discussion of Alternatives*

We believe it was the intent of the Congress to strengthen DMEPOS supplier standards to protect beneficiaries and ensure the integrity of the Medicare program. Therefore, we proposed expanded supplier standards, using as our statutory basis section 1834(j)(1)(B)(ii)(III) of the Act for liability insurance and section 1834(j)(1)(B)(ii)(IV) of the Act, which states that the supplier must meet such other requirements as the Secretary may specify. This final rule will provide a basis to better screen applicants and to revoke the supplier numbers of those who do not meet these standards.

For purposes of this impact statement, we have divided the supplier standards into the following two broad categories: statutory requirements and good business practices.

1. Statutory requirements

Liability Insurance—The statutory authority for § 424.57(c)(10) is section 1834(j)(1)(B)(ii)(III) of the Act. This rule requires a supplier to have comprehensive liability insurance, including product liability and completed operations in the case of a supplier that makes its own items, that covers the supplier's place of business and any and all customers and employees. Based on comments received on the proposed rule, we are requiring a minimum of $300,000 in coverage. Based on discussions with industry experts, we estimate that approximately 10 percent of all suppliers do not currently carry liability insurance. Based on comments received, we estimate the cost per year for a supplier to carry liability insurance in the amount of $300,000 would be no more than approximately $1,800. We believe that the $1,800 cost per supplier does not represent a significant economic impact on the estimated 10 percent of suppliers not currently carrying liability insurance. We also believe that it is good business practice to carry such insurance, as indicated by the fact that 90 percent or more of suppliers already do so.

2. Good Business Practices

Most of the supplier standards in this final rule deal directly with business practices. We do not believe that these standards will result in a significant impact on any sizeable number of legitimate suppliers. For these additional standards, the economic impact on most suppliers is negligible, although the benefits to the program and to the beneficiary will be greater. For example, the requirement at § 424.57(c)(6) that a supplier must not charge Medicare for repair or replacement of Medicare covered items or for services covered under warranty, coupled with the requirement that the supplier provide documentation, upon request, that it has advised Medicare beneficiaries about Medicare covered items covered under warranty, should result in claims for repairs, parts or replacement being made against the warranty, thus decreasing the monies paid by Medicare. The monies paid out by the program and the beneficiary also may decrease as a result of the requirement that the supplier inform the beneficiary of the rental or purchase option and the copay implications involved. More beneficiaries may elect to purchase their equipment, instead of renting for long periods of time.

In most instances, these standards do not exceed the usual business practices necessary for any retail business to succeed. In other words, we believe that a supplier that expects to conduct a successful business would already have in place procedures to meet these standards. We did not develop alternatives because we consider the final supplier standards to be basic requirements that a business would have to meet in order to provide satisfactory customer service and manage properly its inventory.

Under § 424.57(c)(9), a supplier is required to maintain a telephone that is used primarily for business purposes at its physical facility and is listed under the name of the business locally or toll-free for beneficiaries. In order to accept inquiries from potential customers, maintain relationships with current customers, and conduct business with contractors in today's business market, it is necessary that virtually every business have telephonic access. Beneficiaries also need access to their supplier in case they have a problem with or questions about their DMEPOS items.

We believe that this standard is currently met by nearly all legitimate businesses. However, we believe approximately one percent of DMEPOS suppliers currently do not meet the fixed telephone requirement. The estimated cost per year for any supplier to establish and maintain a telephone line to conduct business would be approximately $600 ($50 a month). Thus, the aggregate cost is negligible. We believe the benefits of full time access to the supplier will far exceed the minor economic impact on a supplier.

This requirement will help beneficiaries contact their suppliers in the event of equipment problems and failures, and to resolve questions. Telephonic access to a supplier is also crucial so that the Durable Medical Equipment Regional Carriers may call and obtain additional information to process and pay claims.

*E. Conclusion*

As indicated elsewhere in this preamble, to the extent that we are imposing a burden, it is a necessary one. The public interest is best served by establishing safeguards that prevent suppliers from taking advantage of the current minimal supplier standards. It is by design that these standards would have the greatest impact on those suppliers that need to change the most. We believe that the loss of a few suppliers as a result of these supplier standards, for example those who operate out of a van or who do not provide a value added service, is far outweighed by the benefits of protecting the health and safety of beneficiaries and preserving the Medicare Trust Fund.

*F. Rural Hospital Impact Statement*

Section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, a small rural hospital is a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds. We are not preparing a rural impact statement since we have determined, and certify, that this proposed rule will not have a significant impact on the operations of a substantial number of small rural hospitals.

**VIII. Federalism**

We have reviewed this final rule under the threshold criteria of Executive Order 13132, Federalism and we have determined that it does not significantly affect the rights, roles, and responsibilities of States.

**List of Subjects in 42 CFR Part 424**

Emergency medical services, Health facilities, Health professions, Medicare.

42 CFR chapter IV is amended as set forth below:

**PART 424—CONDITIONS FOR MEDICARE PAYMENT**

1. The authority citation for part 424 continues to read as follows:

**Authority:** Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).



2. Section 424.57 is revised as follows:

**§ 424.57 Special payment rules for items furnished by DMEPOS suppliers and issuance of DMEPOS supplier billing privileges.**

(a) *Definitions.* As used in this section, the following definitions apply:

*DMEPOS* stands for durable medical equipment, prosthetics, orthotics and supplies.

*DMEPOS supplier* means an entity or individual, including a physician or a Part A provider, which sells or rents Part B covered items to Medicare beneficiaries and which meets the standards in paragraph (c) of this section.

*Medicare covered items* means medical equipment and supplies as defined in section 1834(j)(5) of the Act.

(b) *General rule.* A DMEPOS supplier must meet the following conditions in order to be eligible to receive payment for a Medicare-covered item:

(1) The supplier has submitted a completed application to HCFA to furnish Medicare-covered items including required enrollment forms. (The supplier must enroll separate physical locations it uses to furnish Medicare-covered DMEPOS, with the exception of locations that it uses solely as warehouses or repair facilities.)

(2) The item was furnished on or after the date HCFA issued to the supplier a DMEPOS supplier number conveying billing privileges. (HCFA issues only one supplier number for each location.) This requirement does not apply to items furnished incident to a physician's service.

(3) HCFA has not revoked or excluded the DMEPOS supplier's privileges during the period which the item was furnished has not been revoked or excluded.

(4) A supplier that furnishes a drug used as a Medicare-covered supply with durable medical equipment or prosthetic devices must be licensed by the State to dispense drugs (A supplier of drugs must bill and receive payment for the drug in its own name. A physician, who is enrolled as a DMEPOS supplier, may dispense, and bill for, drugs under this standard if authorized by the State as part of the physician's license.)

(5) The supplier has furnished to HCFA all information or documentation required to process the claim.

(c) *Application certification standards.* The supplier must meet and must certify in its application for billing privileges that it meets and will continue to meet the following standards. The supplier:

(1) Operates its business and furnishes Medicare-covered items in compliance with all applicable Federal and State licensure and regulatory requirements;

(2) Has not made, or caused to be made, any false statement or misrepresentation of a material fact on its application for billing privileges. (The supplier must provide complete and accurate information in response to questions on its application for billing privileges. The supplier must report to HCFA any changes in information supplied on the application within 30 days of the change.);

(3) Must have the application for billing privileges signed by an individual whose signature binds a supplier;

(4) Fills orders, frabicates, or fits items from its own inventory or by contracting with other companies for the purchase of items necessary to fill the order. If it does, it must provide, upon request, copies of contracts or other documentation showing compliance with this standard. A supplier may not contract with any entity that is currently excluded from the Medicare program, any State health care programs, or from any other Federal Government Executive Branch procurement or nonprocurement program or activity;

(5) Advises beneficiaries that they may either rent or purchase inexpensive or routinely purchased durable medical equipment, and of the purchase option for capped rental durable medical equipment, as defined in § 414.220(a) of this subchapter. (The supplier must provide, upon request, documentation that it has provided beneficiaries with this information, in the form of copies of letters, logs, or signed notices.);

(6) Honors all warranties expressed and implied under applicable State law. A supplier must not charge the beneficiary or the Medicare program for the repair or replacement of Medicare covered items or for services covered under warranty. This standard applies to all purchased and rented items, including capped rental items, as described in § 414.229 of this subchapter. The supplier must provide, upon request, documentation that it has provided beneficiaries with information about Medicare covered items covered under warranty, in the form of copies of letters, logs, or signed notices;

(7) Maintains a physical facility on an appropriate site. The physical facility must contain space for storing business records including the supplier's delivery, maintenance, and beneficiary communication records. For purposes of this standard, a post office box or commercial mailbox is not considered a

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physical facility. In the case of a multi-site supplier, records may be maintained at a centralized location;

(8) Permits HCFA, or its agents to conduct on-site inspections to ascertain supplier compliance with the requirements of this section. The supplier location must be accessible during reasonable business hours to beneficiaries and to HCFA, and must maintain a visible sign and posted hours of operation;

(9) Maintains a primary business telephone listed under the name of the business locally or toll-free for beneficiaries. The supplier must furnish information to beneficiaries at the time of delivery of items on how the beneficiary can contact the supplier by telephone. The exclusive use of a beeper number, answering service, pager, facsimile machine, car phone, or an answering machine may not be used as the primary business telephone for purposes of this regulation;

(10) Has a comprehensive liability insurance policy in the amount of at least $300,000 that covers both the supplier's place of business and all customers and employees of the supplier. In the case of a supplier that manufactures its own items, this insurance must also cover product liability and completed operations. Failure to maintain required insurance at all times will result in revocation of the supplier's billing privileges retroactive to the date the insurance lapsed;

(11) Must agree not to contact a beneficiary by telephone when supplying a Medicare-covered item unless one of the following applies:

(i) The individual has given written permission to the supplier to contact them by telephone concerning the furnishing of a Medicare-covered item that is to be rented or purchased.

(ii) The supplier has furnished a Medicare-covered item to the individual and the supplier is contacting the individual to coordinate the delivery of the item.

(iii) If the contact concerns the furnishing of a Medicare-covered item other than a covered item already furnished to the individual, the supplier has furnished at least one covered item to the individual during the 15-month period preceding the date on which the supplier makes such contact.

(12) Must be responsible for the delivery of Medicare covered items to beneficiaries and maintain proof of delivery. (The supplier must document that it or another qualified party has at an appropriate time, provided beneficiaries with necessary information and instructions on how to use Medicare-covered items safely and effectively);

(13) Must answer questions and respond to complaints a beneficiary has about the Medicare-covered item that was sold or rented. A supplier must refer beneficiaries with Medicare questions to the appropriate carrier. A supplier must maintain documentation of contacts with beneficiaries regarding complaints or questions;

(14) Must maintain and replace at no charge or repair directly, or through a service contract with another company, Medicare-covered items it has rented to beneficiaries. The item must function as required and intended after being repaired or replaced;

(15) Must accept returns from beneficiaries of substandard (less than full quality for the particular item or unsuitable items, inappropriate for the beneficiary at the time it was fitted and rented or sold);

(16) Must disclose these supplier standards to each beneficiary to whom it supplies a Medicare-covered item;

(17) Must comply with the disclosure provisions in § 420.206 of this subchapter;

(18) Must not convey or reassign a supplier number;

(19) Must have a complaint resolution protocol to address beneficiary complaints that relate to supplier standards in paragraph (c) of this section and keep written complaints, related correspondence and any notes of actions taken in response to written and oral complaints. Failure to maintain such information may be considered evidence that supplier standards have not been met. (This information must be kept at its physical facility and made available to HCFA, upon request.);

(20) Must maintain the following information on all written and oral beneficiary complaints, including telephone complaints, it receives:

(i) The name, address, telephone number, and health insurance claim number of the beneficiary.

(ii) A summary of the complaint; the date it was received; the name of the person receiving the complaint, and a summary of actions taken to resolve the complaint.

(iii) If an investigation was not conducted, the name of the person making the decision and the reason for the decision.

(21) Provides to HCFA, upon request, any information required by the Medicare statute and implementing regulations.

(d) *Failure to meet standards.* HCFA will revoke a supplier's billing privileges if it is found not to meet the standards in paragraphs (b) and (c) of this section. (The revocation is effective 15 days after the entity is sent notice of the revocation, as specified in § 405.874 of this subchapter.)

(e) *Renewal of billing privileges.* A supplier must renew its application for billing privileges every 3 years after the billing privileges are first granted. (Each supplier must complete a new application for billing privileges 3 years after its last renewal of privileges.)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: December 15, 1999.

**Nancy-Ann Min DeParle,**

*Administrator, Health Care Financing, Administration.*

Approved: March 29, 2000.

**Donna E. Shalala,**

*Secretary.*

**Editorial Note:** This document was received at the Office of the Federal Register September 29, 2000.

[FR Doc. 00–25495 Filed 10–10–00; 8:45 am]

BILLING CODE 4120–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[DA 00–2205, MM Docket No. 00–76; RM–9809]**

### Digital Television Broadcast Services; Urbana, IL

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of The University of Illinois Board of Trustees, licensee of noncommercial education Station WILL–TV, substitutes DTV Channel *9 for DTV Channel *33 at Urbana, Illinois. *See* 65 FR 30599, May 12, 2000. DTV Channel *9 can be allotted to Urbana at coordinates (40–02–18 N. and 88–40–10W.) with a power of 30, HAAT of 302 meters, and a DTV service population of 1005 thousand. With this action, this proceeding is terminated.

**DATES:** Effective November 16, 2000.

**FOR FURTHER INFORMATION CONTACT:** Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 00–76, adopted September 29, 2000, and released October 2, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

**List of Subjects in 47 CFR Part 73**

Television, Digital television broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

**PART 73—[AMENDED]**

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334, 336.

**§ 73.622 [Amended]**

2. Section 73.622(b), the Table of Digital Television Allotments under Illinois, is amended by removing DTV Channel *33 and adding DTV Channel *9 at Urbana.

Federal Communications Commission.

**Barbara A. Kreisman,**

*Chief, Video Services Division, Mass Media Bureau.*

[FR Doc. 00–25359 Filed 10–10–00; 8:45 am]

BILLING CODE 6712–01–M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[DA 00–2104; MM Docket No. 00–109; RM–9899]**

### Radio Broadcasting Services; Ravenwood, MO; Correction

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; correction.

**SUMMARY:** This document corrects a final rule concerning Radio Broadcasting Service; Ravenwood, MO published in the **Federal Register** on September 26, 2000, 65 FR 57745.

**DATES:** Effective October 30, 2000.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** We published a document amending part 73 in the **Federal Register** of September 26, 2000, 65 FR 57745 (FR Doc. 00–24647). In that document, the Commission is correcting § 73.202(b) to reflect a change in the community in the Table of FM Allotments from Ravenwood, Florida to Ravenwood, Missouri. In rule FR Doc. 00–24647, published September 26, 2000, 65 FR 57745, make the following corrections:

**PART 73—[CORRECTED]**

**§ 73.202 [Corrected]**

1. On page 57745, in the third column, in amendatory instruction 2, in the second line, correct "Florida" to read "Missouri."

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 00–26013 Filed 10–10–00; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 90

**[PR Docket No. 93–144; FCC 00–288]**

### Rules To Facilitate Future Development of SMR Systems In the 800 MHz Frequency Band

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; compliance deadline requirement.

**SUMMARY:** In this document, the Commission sets forth the construction requirements that the Commission will impose on incumbent 800 MHz Specialized Mobile Radio (SMR) commercial licensees operating wide area systems that include Business and Industrial/Land Transportation (BI/LT) channels obtained prior to 1995 through inter-category sharing. This action is taken in light of the Commission's decision in its *Memorandum Opinion and Order on Remand (Remand Order)*, 14 FCC Rcd. 21679 (1999), published 65 FR 7751 (Feb. 16, 2000), which responded to the decision of the U.S. Court of Appeals for the District of Columbia Circuit (Court) in *Fresno Mobile Radio, Inc.* v. *FCC (Fresno)*, 165 F.3d 965 (D.C. Cir. 1999). Incumbent wide-area licensees must file certifications of construction within fifteen (15) days after the licensee's applicable construction deadline or December 11, 2000, whichever is later.

**DATES:** Effective October 11, 2000. Incumbent wide-area licensees must file certifications of construction within fifteen (15) days after the licensee's applicable construction deadline or December 11, 2000, whichever is later.

**FOR FURTHER INFORMATION CONTACT:** Chris Gacek, Wireless Telecommunications Bureau, at (202) 418–1743; for additional information concerning the information collections contained in this document contact Judy Boley at (202) 418–0214, or via the Internet at jboley@fcc.gov.

**SUPPLEMENTARY INFORMATION:** This *Memorandum Opinion & Order (MO&O)* in PR Docket No. 93–144, adopted August 2, 2000, and released August 4, 2000, is available for inspection and copying during normal business hours in the FCC Reference Center, 445 Twelfth Street, S.W., Washington D.C. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington D.C. 20036 (202) 857–3800. The document is also available via the internet at: *http://www.fcc.gov/Bureaus/Wireless/Orders/2000/fcc00288.doc.*

**Synopsis of Memorandum Opinion and Order**

*I. Introduction*

In this *Memorandum Opinion and Order (MO&O)*, we set forth the construction requirements that the Commission will impose on incumbent 800 MHz Specialized Mobile Radio (SMR) commercial licensees operating wide area systems that include Business and Industrial/Land Transportation (BI/LT) channels obtained prior to 1995 through inter-category sharing. This action is taken in light of the Commission's decision in its *Memorandum Opinion and Order on Remand (Remand Order)*, 14 FCC Rcd. 21679 (1999), published 65 FR 7751 (Feb. 16, 2000), which responded to the decision of the U.S. Court of Appeals for the District of Columbia Circuit (Court) in *Fresno Mobile Radio, Inc.* v. *FCC (Fresno)*, 165 F.3d 965 (D.C. Cir. 1999). Incumbent wide-area licensees must file certifications of construction within fifteen (15) days after the licensee's applicable construction deadline or December 11, 2000, whichever is later.

*II. Summary of the Memorandum Opinion and Order*

A. Background

The 800 MHz band is divided into four channel groups—SMR, General Category, BI/LT, and Public Safety, each with its own eligibility rules. 800 MHz SMR channels are designated for commercial use, while 800 MHz BI/LT channels are designated for non-commercial internal use by the licensee. Prior to 1995, in certain circumstances, the Commission allowed SMR licensees to apply for BI/LT channels under inter-category sharing rules, which the SMR licensee could then use commercially

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despite the eligibility criteria that otherwise reserved these channels for private internal use. Inter-category sharing by SMR licensees was permitted if the BI/LT channel sought by the SMR licensee was unoccupied and if there were no SMR channels available in the licensee's service area.

On December 23, 1999, in response to a remand of its *800 MHz SMR Reconsideration Order*, 12 FCC Rcd. 9972 (1997), published at 62 FR 41225 (July 31, 1997), by the District of Columbia Circuit in *Fresno*, the Commission released its *Remand Order* determining that incumbent 800 MHz SMR licensees who had obtained extended implementation ("EI") authority to build wide-area systems and who were within their extended construction periods at the time of the *Fresno* decision could apply construction requirements similar to those given to SMR Economic Area ("EA") licensees in the 800 MHz band. In the *Remand Order*, however, we granted relief only to wide-area incumbents operating on SMR channels. We did not address the construction status of wide-area incumbents operating on non-SMR channels obtained through inter-category sharing, because we concluded that this issue was beyond the scope of the proceeding. We indicated that we would determine the construction requirements for wide-area licensees on these channels in WT Docket No. 99–87, the pending Balanced Budget Act (BBA) proceeding.

Upon further reflection, the Commission decided to determine the construction status of BI/LT channels used by wide-area 800 MHz SMR licensees in this proceeding which responds to the court's action in *Fresno*, rather than in the BBA proceeding. On March 2, 2000, therefore, we released a *Public Notice* seeking comment on whether we should adopt construction rules for wide-area incumbent 800 MHz SMR licensees using BI/LT channels that would be similar to those adopted in the *Remand Order* for wide-area SMR licensees using SMR channels. We also requested comment on the applicable construction requirements (*e.g.*, substantial service or population-based) for wide-area incumbent 800 MHz SMR licenses using BI/LT channels.

In response to that *Public Notice*, we received four comments and one reply comment. All but one of the commenters contend that wide-area 800 MHz SMR licenses using BI/LT channels should receive the same construction requirements established by the *Remand Order* for wide-area incumbents using SMR channels. Nextel Communications, Inc. (Nextel) and Southern Communications (Southern) maintain that regulatory parity requires giving wide-area 800 MHz SMR licenses using BI/LT channels the same flexible construction requirements as those given to other CMRS providers because they provide similar services. The American Mobile Telecommunication Association, Inc. (AMTA) maintains that all channels properly licensed to a wide-area SMR system under the Commission's rules are part of that system and should be subject to the same regulatory treatment.

B. Discussion

We conclude that wide-area incumbent 800 MHz SMR licensees operating on BI/LT channels are sufficiently similar to wide-area incumbent 800 MHz licensees operating on SMR channels that they should have the same flexibility with respect to construction requirements. The record demonstrates that some of the wide-area SMR licensees who received EI authorizations from the Commission are licensed to operate both on SMR channels and on BI/LT channels that they obtained through inter-category sharing for commercial use. In Southern's case, the vast majority of channels in its wide-area SMR system are BI/LT channels obtained through inter-category sharing. The record further demonstrates that wide-area SMR licensees such as Southern use inter-category BI/LT channels interchangeably with SMR channels, and that the BI/LT channels licensed on this basis are used to provide service that is similar, if not identical, to that provided on SMR channels by 800 MHz EA and incumbent wide-area SMR licensees. Accordingly, we agree with Southern, AMTA, and other supporting commenters that wide-area 800 MHz SMR licensees using BI/LT channels should be subject to the same construction requirements given to 800 MHz SMR EA licensees by our rules and to eligible wide-area SMR licensees by our *Remand Order*.

Recognizing that these licensees may already have constructed their systems in accordance with the requirements in place at the time (i.e., site-by-site, channel-by-channel), we will give eligible wide-area 800 MHz SMR licenses using BI/LT channels the option of complying with the site-specific construction requirements associated with their EI authorizations or applying the EA population coverage requirements to their wide-area systems. This option applies only to wide-area 800 MHz SMR licensees using BI/LT channels obtained through inter-category sharing. We believe that giving wide-area 800 MHz SMR licenses using BI/LT channels the choice between applying site-specific requirements or the EA coverage requirements will establish regulatory parity among all similarly situated wide-area 800 MHz SMR licensees.

We did not receive any comment on when the five-year construction period should begin for BI/LT channels licensed to wide-area SMR licensees that elect to apply the EA construction requirements. We therefore adopt the framework outlined in the *Remand Order*, which begins the construction period from the licensee's EI grant date. Therefore, an eligible wide-area SMR licensee that elects to apply the EA construction requirements to its BI/LT channels must have constructed and placed into operation a sufficient number of base stations to provide coverage to at least two-thirds of the population of its wide-area system, or must provide substantial service to the licensed area, within five years of EI grant plus the tolling period described.

For all licensees entitled to relief under this decision, we will add 546 days to their construction periods, representing the amount of time between the *Fresno* decision and the release of this order. Therefore, the applicable construction deadline for any eligible wide-area licensee that elects to apply the EA coverage requirements will be five years from the date of EI grant plus 546 days. Likewise, the applicable construction deadline for eligible licensees that do not elect the EA requirements will be 546 days after the EI deadline established in the *800 MHz Rejustification Orders*, 13 FCC Rcd. 1533 (WTB: 1997), recon., 12 FCC Rcd. 18349 (WTB: 1997).

A wide-area SMR licensee that is eligible for relief under this Order must certify in a filing with the Bureau that it has either met the EA construction requirements, as set out herein, or complied with the terms of its EI authorization. In addition to the certification, if a licensee chooses to meet the EA requirements for channels in the lower 230 channels using the substantial service option, it must demonstrate in the same filing with the Bureau how it is providing substantial service. All filings must be made within fifteen (15) days after the licensee's applicable construction deadline, as defined supra, or December 11, 2000, whichever is later.

When determining if an eligible licensee has met a specific coverage requirement (i.e., covering two-thirds of the population), the population should be measured using the licensee's wide-area "footprint" as established in the licensee's EI rejustification submission. For this purpose, we adopt the guidelines in the *Remand Order*, i.e., the licensee should compute the population covered within its footprint on a county basis using 1990 U.S. Census information. In cases in which the footprint does not align with county boundaries, the licensee should include the entire population of the county if the licensee covers any portion of it.

*III. Conclusion*

For the reasons given above, any incumbent wide-area 800 MHz SMR licensee that uses BI/LT channels obtained through inter-category sharing and was still in its construction period as of the date of the *Fresno* decision may choose to apply either the existing site-by-site, channel-by-channel construction requirements or the alternative construction requirements set forth in this *MO&O*. Eligible licensees must certify in a filing with the Commission their compliance with one of the enumerated requirements within the later of fifteen days from their applicable construction benchmarks, as defined herein, or December 11, 2000.

*IV. Procedural Matters*

Paperwork Reduction Act of 1995 Analysis

*Supplementary Information:* This *MO&O* contains a modified information collection, which has been submitted to the Office of Management and Budget for approval. As part of our continuing effort to reduce paperwork burdens, we invite the general public to take this opportunity to comment on the information collection contained in this *MO&O*, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public comments should be submitted to OMB and the Commission, and are due November 13, 2000. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

*OMB Approval Number:* 3060–0307.

*Title:* Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band.

*Form No.:* N/A.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Business or other for-profit.

*Number of Respondents:* 15.

*Estimated Time Per Response:* 2 hours.

*Total Annual Burden:* 30 hours.

*Frequency of Response:* Single response.

*Total Annual Estimated Costs:* $6,000. This cost includes an estimate that 100% of the respondents will hire an outside consultant at $200 per hour to prepare the information.

*Needs and Uses:* The Commission will use this information to determine whether wide-area SMR licensees have complied with the Commission's 800 MHz construction requirements for their respective systems.

*Address:* In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, S.W., Washington, D.C. 20554, or via the Internet to jboley@fcc.gov; and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725–17th Street, N.W., Washington, D.C. 20503 or via the Internet to *fain_t@al.eop.gov*.

Regulatory Flexibility Act

The order, adopted by the Commission on August 17, 2000, contained a Supplemental Final Regulatory Flexibility Analysis that is now being retracted. As part of this submission we are including a Final Regulatory Flexibility Act Certification in its place. The Regulatory Flexibility Act (RFA) requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."[1] The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by our rules.[2] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[3] More specifically the Commission has used the term "small business" in the wireless auction context as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years.

We certify that this memorandum opinion and order (MO&O) will not have a significant economic impact on a substantial number of small business entities for the following reasons. First, the direct effect of this MO&O is to give eligible wide-area 800 MHz SMR licensees using BI/LT channels through inter-category sharing the option of complying with the site-specific construction requirements originally given with their EI authorizations or of complying with the more liberal EA population coverage requirements. For any small entity that would be able to exercise this new option as its buildout requirement, we believe there would be no detrimental impact or economic cost. In actuality, there might be a positive benefit to the licensees in this category in that small entities might find it easier to satisfy the buildout requirements.

Second, of the nine licensees directly effected by this order, three belong to extremely large corporations. Of the remaining six, all or none could be small business entities, our data do not permit a more accurate estimate at this time. However, as noted above, we believe that they will not experience a significant economic impact as a result of the revisions set forth in this *MO&O*.

Third, any indirect effects of this decision will be minimal. Currently, Commission rules do not allow the commercial use of BI/LT channels. The directly effected parties, mentioned above, obtained their BI/LT channels prior to 1995. Therefore, they are allowed to use those channels commercially. However, since 1995 users of newly available BI/LT channels are restricted to private mobile service use—that is, a non-commercial, non-business use. Consequently, even though the more liberalized build-out requirement adopted in this *MO&O* may lead to fewer channels reverting to the BI/LT channel pool because the licensees failed to timely construct, there will be no impact on small business entities because any such

[1] 5 U.S.C. 605(b).

[2] 5 U.S.C. 603(b)(3).

[3] 5 U.S.C. 601(4).

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reversionary channels could not be licensed for commercial purposes.

Accordingly, we certify, pursuant to Section 605(b) of the RFA, that any effects flowing from this MO&O will not have a significant economic impact upon a substantial number of small entities, as that term is defined in the RFA. The Commission will send a copy of this *MO&O*, including a copy of this certification, in a report to Congress pursuant to SBREFA.[4] In addition, the MO&O and this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration, and will be published in the **Federal Register**.[5]

*V. Ordering Clauses*

Accordingly, pursuant to the authority of section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), incumbent wide-area 800 MHz SMR licensees eligible for relief as described herein must comply with the terms of their extended implementation authorizations or apply the alternative construction requirements described herein.

Incumbent wide-area 800 MHz SMR licensees eligible for relief as described herein must certify in a filing with the Wireless Telecommunications Bureau their compliance with the construction requirements as described herein within the later of fifteen days after the licensee's applicable construction deadline or December 11, 2000.

The Commission's Consumer Information Bureau, the Reference Information Center, SHALL SEND a copy of this *MO&O*, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 00–25387 Filed 10–10–00; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 101

**[ET Docket No. 95–18; FCC 00–233]**

### Allocation of Spectrum at 2 GHz for Use by the Mobile-Satellite Service; Correction

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; correction.

**SUMMARY:** On August 7, 2000 (65 FR 48174), the Commission published final rules in the Second Report and Order and Second Memorandum Opinion and Order, which revised the rules governing the 2 GHz Mobile-Satellite Service. In that document a new CFR section added in the Fixed Microwave Service inadvertently carried the same CFR section number used subsequently in a final rule published September 7, 2000. This correction renumbers the section published on August 7, 2000.

**DATES:** Effective September 6, 2000.

**FOR FURTHER INFORMATION CONTACT:** Sean White, Office of Engineering and Technology, (202) 418–2453.

**SUPPLEMENTARY INFORMATION:** On August 7, 2000 (65 FR 48174), a new § 101.83 entitled "Reimbursement of relocation expenses in the 2115–2150 MHz and 2165–2200 MHz bands" was added. However, § 101.83 entitled "Modification of station license" was added on September 7, 2000 (65 FR 54155). This correction renumbers the section added on August 7, 2000 as § 101.99.

Accordingly, in FR Doc. 00–19478 published on August 7, 2000 (65 FR 48174), make the following corrections:

### PART 101—[CORRECTED]

1. On page 48183, in the first column, in amendatory instruction 16, correct "§ 101.83" to read "§ 101.99".

2. On page 48183, in the first column, correctly designate "§ 101.83" as "§ 101.99".

Federal Communications Commission.

**William F. Caton,**

*Deputy Secretary.*

[FR Doc. 00–26012 Filed 10–10–00; 8:45 am]

BILLING CODE 6712–01–U

## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

### 49 CFR Parts 172, 173, 177

**[Docket No. RSPA–00–7755 (HM–189Q)]**

**RIN 2137–AD47**

### Hazardous Materials Regulations: Editorial Corrections and Clarifications; Corrections

**AGENCY:** Research and Special Programs Administration (RSPA), DOT.

**ACTION:** Final rule; corrections.

**SUMMARY:** This document contains corrections to a final rule (RSPA–00–7755 (HM–189Q)), which was published in the **Federal Register** on Friday, September 29, 2000. That final rule amended the Hazardous Materials Regulations (HMR) to correct editorial errors, make minor regulatory changes and, in response to requests for clarification, improve the clarity of certain provisions in the HMR.

**EFFECTIVE DATE:** October 1, 2000.

**FOR FURTHER INFORMATION CONTACT:** Charles E. Betts, Office of Hazardous Materials Standards, (202) 366–8553, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

**SUPPLEMENTARY INFORMATION:**

#### Background

On September 29, 2000, RSPA published a final rule under Docket HM–189Q (65 FR 58614) to correct editorial errors, make minor regulatory changes and, in response to requests for clarification, improve the clarity of certain provisions in the HMR. This amendment makes minor changes to correct wording omissions and typographical errors to the September 29 final rule, which was effective October 1, 2000.

Because the amendments do not impose new requirements, notice and public comment are unnecessary.

#### Correction

In rule document 00–24633, beginning on page 58614, in the issue of Friday, September 29, 2000, make the following corrections:

### PART 172—[CORRECTED]

**§ 172.101 [Corrected]**

1. On page 58620, in column 3, in § 172.101, in paragraph (g), in line two, correct the wording "§ 173.248" to read "§ 173.428".

2. On page 58624, in § 172.101, in the table, for the entry "*Organic peroxide type A, liquid or solid.*" add the word "Forbidden" to column 3.

3. On the same page, in § 172.101, in the table, for the entry "Phenylenediamines (*o-, m-, p-*)" add a "+" in column 1.

**§ 172.403 [Corrected]**

4. On page 58626, in column 3, in § 172.403, in paragraph (a), in line 2, remove the two asterisks "**" immediately following the two section symbols.

5. On the same page, in column 3, in § 172.403, in paragraph (g)(2), in the last line, correct the wording "(uCi))" to read "(uCi)".

[4] 5 U.S.C. 801(a)(1)(A).
[5] 5 U.S.C. 605(b).



### PART 173—[CORRECTED]

**§ 173.7 [Corrected]**

6. On page 58628, in column 3, in § 173.7, in paragraph (e), in line 13, add the wording "packages of these" immediately before the wording "materials owned".

**§ 173.62 [Corrected]**

7. On page 58629, in column 2, in amendatory instruction 41.b., in the fourth line, correct "§ 178.83(b)" to read "§ 176.83(b)".

### PART 177—[CORRECTED]

**§ 177.835 [Corrected]**

8. On page 58631, in column 1, in § 177.835, correct paragraph (g)(3) introductory text to read as follows:

**§ 177.835 Class 1 (explosive) materials.**

* * * * *

(g) * * *

(3) It is packed and loaded in accordance with a method approved by the Department. One method approved by the Department requires that—

* * * * *

Issued in Washington, DC, on October 4, 2000, under authority delegated in 49 CFR part 1.

**John P. Murray,**

*Acting Deputy Administrator, Research and Special Programs Administration.*

[FR Doc. 00–26000 Filed 10–10–00; 8:45 am]

BILLING CODE 4910–60–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 223

**[Docket No. 980113011-0267-03; I.D. 061896A]**

**RIN 0648-AK34**

### Endangered and Threatened Species; Regulations Consolidation; Correction

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule; correction.

**SUMMARY:** This document contains corrections to the final rule pertaining to the consolidation and reorganization of existing regulations regarding implementation of the Endangered Species Act which was published in the **Federal Register** on March 23, 1999.

**DATES:** Effective October 11, 2000.

**ADDRESSES:** Donna Wieting, Chief, Marine Mammal Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** Caroline Good, phone: (301) 713-2322.

**SUPPLEMENTARY INFORMATION:**

#### Background

In the final rule, titled Endangered and Threatened Species; Regulations Consolidation; Final Rule, published in the **Federal Register** on March 23, 1999,(64 FR 14052), three errors were made in identifying the eastern population of Steller sea lions.

NMFS is correcting these errors and is making no substantive change to the document in this action.

#### Need for Correction

As published, the final regulations contain errors which misidentify the stock parameters of the eastern population of the Steller sea lion (*Eumetopias jubatus*).

#### List of Subjects in 50 CFR Part 223

Endangered and threatened species, Exports, Imports, Marine mammals, Transportation.

Dated: October 4, 2000.

**William T. Hogarth,**

*Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.*

Accordingly, 50 CFR part 223 is corrected by making the following correcting amendments:

### PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

1. The authority citation continues to read as follows:

**Authority:** 16 U.S.C. 1531 *et seq.*; 16 U.S.C. 742a *et seq.*; 31 U.S.C. 9701.

2. Revise paragraph (c) of § 223.102 to read as follows:

**§ 223.102 Enumeration of threatened marine and anadromous species.**

* * * * *

(c) Marine mammals. Guadalupe fur seal (Arctocephalus townsendi); Steller sea lion (*Eumetopias jubatus*), eastern population, which consists of all Steller sea lions from breeding colonies located east of 144° W. longitude.

* * * * *

[FR Doc. 00–26082 Filed 10–10–00; 8:45 am]

BILLING CODE 3510-22-S

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# Proposed Rules

Federal Register
Vol. 65, No. 197
Wednesday, October 11, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

### 8 CFR Parts 3 and 212

**[EOIR No. 127P; AG Order No. 2329–2000]**

**RIN 1125–AA29**

### Executive Office for Immigration Review; Section 212(c) Relief for Certain Aliens in Deportation Proceedings Before April 24, 1996

**AGENCY:** Executive Office for Immigration Review, Justice.

**ACTION:** Proposed rule; Reopening of comment period.

**SUMMARY:** On July 18, 2000, at 65 FR 44476, the Department of Justice published a proposed rule in the **Federal Register** to create a uniform procedure for applying the law as enacted by the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). This rule would allow certain lawful permanent residents in deportation proceedings that commenced before April 24, 1996, to apply for relief from deportation pursuant to section 212(c) of the Immigration and Nationality Act (INA). In response to requests from the public, and to ensure that the public has ample opportunity fully to review and comment on the proposed rule, this document reopens the public comment period for an additional time period, through October 18, 2000.

**DATES:** Written comments must be submitted on or before October 18, 2000.

**ADDRESSES:** Please submit written comments, original and two copies, to Charles Adkins-Blanch, General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2400, Falls Church, VA 22041, telephone (703) 305–0470. Comments are available for public inspection at the above address by calling (703) 305–0470 to arrange for an appointment.

**FOR FURTHER INFORMATION CONTACT:** Charles Adkins-Blanch, General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2400, Falls Church, VA 22041, telephone (703) 305–0470.

Dated: September 30, 2000.

**Janet Reno,**

*Attorney General.*

[FR Doc. 00–26081 Filed 10–10–00; 8:45 am]

**BILLING CODE 4410–30–M**

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 72

**RIN 3150–AG58**

### List of Approved Spent Fuel Storage Casks: HI–STAR 100 Revision

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations revising the Holtec International HI–STAR 100 cask system listing within the "List of approved spent fuel storage casks" to include Amendment No. 1 to the Certificate of Compliance (CoC). Amendment No. 1 revises the HI-STAR 100 cask system in seven areas and includes changes to the CoC and Technical Specifications. The seven areas involve: revision of the existing fuel specification tables; addition of pressurized water reactor Burnable Poison Rod Assemblies and Thimble Plug Devices; addition of two new classes of fuel to the fuel specification tables; addition of a new damaged fuel container; addition of thoria rods in canisters; addition of antimony-beryllium neutron sources [i.e., reactor startup sources], and clarifications, editorial corrections, and other minor changes to cask design information and drawings. The CoC was revised to require users to prepare written acceptance tests and a maintenance program consistent with the technical basis described in the Safety Analysis Report (SAR). In addition, the amendment includes two minor changes to the HI-STAR 100 listing in the regulations. This amendment will allow the holders of power reactor operating licenses to store spent fuel in the HI–STAR 100 cask system, as amended, under a general license.

**DATES:** Comments on the proposed rule must be received on or before November 13, 2000.

**ADDRESSES:** Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Attention: Rulemakings and Adjudications Staff.

Deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking website (*http://ruleforumllnl.gov*). This site provides the capability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415–5905 (e-mail: cag@nrc.gov).

Certain documents related to this rule, including comments received by the NRC, may be examined through September 21, 2000 at the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC. Beginning September 26, 2000 the NRC Public Document Room will be located at 11555 Rockville Pike, Rockville, MD. These documents also may be viewed and downloaded electronically via the rulemaking website.

Documents created or received at the NRC after November 1, 1999, are also available electronically at the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/NRC/ADAMS/index.html*. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), that provides text and image files of the NRC's public documents. An electronic copy of the proposed CoC and preliminary safety evaluation report (SER) can be found under ADAMS Accession No. ML003726991. For more information, contact the NRC Public Document Room reference staff at 1–800–397–4209, 202–634–3273 or by email to *pdr@nrc.gov*.

**FOR FURTHER INFORMATION CONTACT:** Gordon Gundersen, telephone (301) 415–6195, e-mail *GEG1@nrc.gov* of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.



**SUPPLEMENTARY INFORMATION:** For additional information see the Direct Final Rule published in the final rules section of this **Federal Register**.

**Procedural Background**

Because NRC considers this action noncontroversial and routine, we are publishing this proposed rule concurrently with a direct final rule. The direct final rule will become effective on December 26, 2000. However, if the NRC receives significant adverse comments on the direct final rule by November 13, 2000, then the NRC will publish a document to withdraw the direct final rule. If the direct final rule is withdrawn, the NRC will address the comments received in response to the revisions in a subsequent final rule. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period for this action if the direct final rule is withdrawn.

**List of Subjects in 10 CFR Part 72**

Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is proposing to adopt the following amendments to 10 CFR Part 72.

## PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

1. The authority citation for Part 72 continues to read as follows:

**Authority:** Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 10d–48b, sec. 7902, 10b Stat. 31b3 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c),(d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244, (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

2. In § 72.214, Certificate of Compliance 1008 is revised to read as follows:

**§ 72.214 List of approved spent fuel storage casks.**

* * * * *

Certificate Number: 1008
Initial Certificate Effective Date: October 4, 1999
Amendment Number 1 Effective Date: December 26, 2000.
SAR Submitted by: Holtec International
SAR Title: Final Safety Analysis Report for the HI–STAR 100 Cask System
Docket Number: 72–1008
Certificate Expiration Date: October 4, 2019
Model Number: HI–STAR 100

* * * * *

Dated at Rockville, Maryland, this 20th day of September 2000.

For the Nuclear Regulatory Commission.

**Frank J. Miraglia, Jr.,**

*Acting Executive Director for Operations.*

[FR Doc. 00–25914 Filed 10–10–00; 8:45 am]

**BILLING CODE 7590–01–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Airspace Docket No. 00–AAL–07]**

### Proposed Revision of VOR Federal Airway and Jet Route; AK

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This action proposes to revise Very High Frequency Omnidirectional Range (VOR) Federal Airway 480 (V–480) and Jet Route 120 (J–120) in Alaska by adding a routinely used route segment between Mt. Moffett and St. Paul Island, AK. The FAA is proposing to revise these routes for the following reasons: The conversion of this uncharted nonregulatory route to a VOR Federal airway and jet route would add to the instrument flight rules (IFR) airway and route infrastructure in Alaska; pilots would be provided with minimum en route altitudes and minimum obstruction clearance altitudes information; this amendment would establish controlled airspace, thus eliminating some of the commercial IFR operations in uncontrolled airspace; and the addition of this route would improve the management of air traffic operations and thereby enhance safety.

**DATES:** Comments must be received on or before November 27, 2000.

**ADDRESSES:** Send comments on the proposal in triplicate to: Manager, Air Traffic Division, AAL–500, Docket No. 00-AAL–07, Federal Aviation Administration, 222 West 7th Avenue, #14, Anchorage, AK 99533.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

**FOR FURTHER INFORMATION CONTACT:** Ken McElroy, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW.. Washington, DC 20591; telephone: (202) 267–8783.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 00-AAL–07." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be

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considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRM's**

An electronic copy of this document may be downloaded, using a modem and suitable communications software, from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339) or the **Federal Register**'s electronic bulletin board service (telephone: 202–512–1661).

Internet users may reach the FAA's web page at http://www.faa.gov or the Superintendent of Document's web page at http://www.access.gpo.gov/nara for access to recently published rulemaking documents.

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should call the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

**The Proposal**

The FAA is proposing an amendment to 14 CFR part 71 (part 71) to revise V–480 and J–120 in Alaska. This proposed revision would convert an uncharted nonregulatory route segment to a VOR Federal airway and jet route by adding a segment to V–480 and J–120 between Mt. Moffett and St. Paul Island, AD. Presently, this segment is an uncharted route that is used by air carrier and general aviation aircraft. The FAA is proposing to amend V–480 and J–120 for the following reasons: (1) The conversion of this uncharted nonregulatory route to a VOR Federal airway and jet route would add to the IFR airway and route infrastructure in Alaska; (2) pilots would be provided with minimum en route altitudes and minimum obstruction clearance altitudes information; (3) this amendment would establish controlled airspace, thus eliminating some of the commercial IFR operations in uncontrolled airspace; and (4) the addition of this route would improve the management of air traffic operations and thereby enhance safety.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Jet routes and Alaskan VOR Federal airways are published in paragraphs 2004 and 6010(b), respectively, of FAA Order 7400.9H dated September 1, 2000, and effective September 16, 2000, which is incorporated by reference in 14 CFR 71.1. The Jet route and the Alaskan VOR Federal airway listed in this document would be published subsequently in the order.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p.389.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9H, Airspace Designations and Reporting Points, dated September 1, 2000, and effective September 16, 2000, is amended as follows:

*Paragraph 2004—Jet Routes*

* * * * *

J–120 [Revised]

From Mt. Moffett, AK, NDB via St. Paul Island, AK, NDB; Bethel, AK; McGrath, AK; Fairbanks, AK; Fort Yukon, AK; to the Barter Island, AK, NDB.

* * * * *

*Paragraph 6010(b)-Alaskan VOR Federal Airways*

* * * * *

V–480 [Revised]

From Mt. Moffett, AK, NDB, 20 AGL via St. Paul Island, AK, NDB, 20 AGL, Kipnuk, AK; Bethel, AK, McGrath, AK, Nenana, AK; to Fairbanks, AK.

* * * * *

Issued in Washington, DC, on September 29, 2000.

**Reginald C. Matthews,**

*Manager, Airspace and Rules Division.*

[FR Doc. 00–25640 Filed 10–10–00; 8:45 am]

**BILLING CODE 4910–13–P**

## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Part 81**

**[CA–029–EXTb; FRL–6872–9]**

## Clean Air Act Promulgation of Extension of Attainment Date for the San Diego, California Serious Ozone Nonattainment Area

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to extend the attainment date for the San Diego serious ozone nonattainment area from November 15, 1999 to November 15, 2000. This extension is based in part on monitored air quality readings for the 1-hour national ambient air quality standard (NAAQS) for ozone during 1999. In the final rules section of this **Federal Register**, we are approving the State's request as a "direct final" rule without prior proposal because we view this action as noncontroversial and anticipate no adverse comments. A detailed rationale for the approval is set forth in the direct final rule.

If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If we receive substantive adverse comments which have not already been responded to, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on the proposed rule. We will not institute a



second comment period on this action. Any parties interested in commenting on this action should do so at this time.

**DATES:** Comments must be received on or before November 13, 2000.

**ADDRESSES:** Please address your comments to the EPA contact below. You may inspect and copy the rulemaking docket for this notice at the following location during normal business hours. We may charge you a reasonable fee for copying parts of the docket.

Environmental Protection Agency, Region 9, Air Division, Air Planning, Office (AIR–2), 75 Hawthorne Street, San Francisco, CA 94105–3901

Copies of the SIP materials are also available for inspection at the addresses listed below:

California Air Resources Board, 2020 L Street, Sacramento, CA 92123–1095

San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123–1096

**FOR FURTHER INFORMATION CONTACT:** Dave Jesson, Air Planning Office (AIR–2), Air Division, U.S. EPA, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901. Telephone: (415) 744–1288. E-mail: *jesson.david@epa.gov.*

**SUPPLEMENTARY INFORMATION:** For additional information see the direct final rule published in the rules section of this **Federal Register.**

Dated: September 12, 2000.

**Keith A. Takata,**

*Acting Regional Administrator, Region IX.*

[FR Doc. 00–25927 Filed 10–10–00; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL COMMUNICATIONS COMMISSION

**47 CFR Parts 73 and 76**

**[MM Docket No. 83–484; FCC 00–360]**

## Repeal or Modification of the Personal Attack and Political Editorial Rules

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rules: Request for Supplemental Information.

**SUMMARY:** This document concerns a 60-day suspension of the political editorial and personal attack rules and asks parties to submit evidence on the effects of the suspension 60 days after the suspension period ends. The Commission adopted the *Order and Request to Update Record* in response to the D.C. Circuit Court of Appeals' decision in *Radio-Television News Directors Ass'n* v. *FCC,* 184 F.3d 872 (1999). The intended effect of this action is to enable the Commission to obtain a better record on which to review the rules.

**DATES:** Parties may submit evidence on the effect of the suspension of the rules on or before January 31, 2001, and replies may be submitted on or before February 15, 2001.

**ADDRESSES:** Address all evidence concerning this suspension to the Commission's Secretary, Communications Commission, 445 Twelfth Street, SW., Washington DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Cyndi Thomas, Policy and Rules Division, Mass Media Bureau, at (202) 418–2130.

**SUPPLEMENTARY INFORMATION:** This is a summary of the *Order and Request to Update* in MM Docket No. 83–484, FCC 00–360, adopted on October 3, 2000, and released on October 4, 2000. The full text of this decision is available for inspection and copying during regular business hours in the FCC Reference Center, 445 Twelfth Street, SW., Room CY–A257, Washington DC, and also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 445 Twelfth Street, SW, Room CY–B402, Washington DC. The complete text is also available under the file name fcc00360.pdf on the Commission's Internet site at *www.fcc.gov.*

**Electronic Access and Filing Addresses**

1. Information may be filed using the Commission's Electronic Comment Filing System or by filing paper copies via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* Parties may also submit an electronic copy by Internet e-mail. To get filing instructions for e-mail information, parties should send an e-mail to *ecfs@fcc.gov,*, and should include the following words in the body of the message, "get form, <your e-mail address>." A sample form and directions will be sent in reply.

**Paperwork Reduction Act**

2. The actions taken in this *Order and Request to Update Record* have been analyzed with respect to the Paperwork Reduction Act of 1995 (PRA), and found to request new or modified reporting or recordkeeping by the public. It will be submitted to the Office of Management and Budget for emergency review under Section 3507 of the PRA.

**Summary of Order and Request To Update Record**

3. The Commission adopts an *Order and Request to Update Record* (Order) in response to the D.C. Circuit Court of Appeals' (D.C. Circuit) decision in *Radio-Television News Directors Ass'n* v. *FCC,* 184 F.3d 872 (1999) (*RTNDA*). In the *Order,* the Commission suspends the political editorial and personal attack rules, 47 CFR 73.1920 and 73.1930, for 60 days to enable the Commission to obtain a better record on which to review the rules. These rules as they apply to cable television system operators, 47 CFR 76.209(b), (c), and (d), are also within the scope of this proceeding. The court recognized that the Commission considered the record previously before it to be "old and possibly flawed" and encouraged the Commission to "consider modern factual and legal developments." This brief suspension, which the Commission hopes will provide useful data on the effect of the rules, will allow it "to work from a relatively clean procedural slate," as the court suggested. In addition, the Commission takes this opportunity to make clear that much of the discussion in *Syracuse Peace Council,* 2 FCC Rcd 5043 (1987), *recon. denied,* 3 FCC Rcd 2035 (1988), *aff'd sub nom. Syracuse Peace Council* v. *FCC,* 867 F.2d 654 (D.C. Cir. 1989), *cert. denied,* 493 U.S. 1019 (1990), accompanying the Commission's repeal of the fairness doctrine has been repudiated. The Commission also asks those parties to this proceeding who believe that it is not possible to "distinguish[] political editorials and personal attacks * * * from subjects formerly covered by the fairness doctrine" to consider whether the rules at issue should be extended to cover matters that previously were subject to the fairness doctrine.

4. The lengthy history of this proceeding was summarized by the D.C. Circuit last year in its opinion in *RTNDA.* In 1983, after the National Association of Broadcasters (NAB) filed a petition asking the Commission to repeal the political editorial and personal attack rules, the Commission issued a Notice of Proposed Rulemaking (*"NPRM"*) proposing to repeal or modify the rules (48 FR 28295, June 21,1983). Because the *NPRM* also sought comment on these rules as they apply to cable television system operators, the suspension adopted herein will apply to the cable as well as the broadcast rules and the Commission welcomes comments on the rules as they apply to cable operators as well as broadcasters. The Commission subsequently stopped

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enforcing the related fairness doctrine in 1987, in *Syracuse Peace Council*. For nearly a decade after the repeal of the fairness doctrine, the Radio-Television News Directors Association (RTNDA) and the NAB ("the Broadcasters") did not vigorously press their attack on the political editorial and personal attack rules, but they renewed their challenge in 1996. Since then, the Commission has spent a considerable amount of time on this proceeding, but has twice deadlocked, despite significant changes in membership.

5. After the second deadlock, the D.C. Circuit considered the Broadcasters' arguments concerning the validity of the rules. As a threshold matter, the court rejected the Broadcasters' contention that the Joint Statement of Commissioners Susan Ness and Gloria Tristani favoring retention of the rules, 13 FCC Rcd 21901 (1998) (Joint Statement), should not be accorded deference as the decision of the Commission. To the contrary, the court held that "a deadlocked vote on a proposal to repeal a rule constitutes reviewable, final agency action in support of the status quo," and that it was appropriate to "accord the Joint Statement the same respect normally accorded agency decisions in rulemaking proceedings." The D.C. Circuit also rejected the Broadcasters' principal argument on the merits, which was that "the *Syracuse* order of its own force drags the political editorial and personal attack rules down with the fairness doctrine to which they were moored." Rather, the court explained, in agreement with the Joint Statement, "there is nothing inherently inconsistent about preserving the two challenged rules despite abrogation of the fairness doctrine." The court also declined to review the Broadcasters' contention that the rules unlawfully "chill protected expression, impose undue administrative burdens on broadcasters, and have been rendered obsolete by the proliferation of new media technologies and outlets." At the same time, the court assumed that the rules "interfere with editorial judgment" to some extent, even though the record was not entirely clear on the extent of that interference.

6. After rejecting the Broadcasters' principal argument, the court remanded the matter to the Commission, explaining that the Joint Statement had failed to square the rationale underlying the Commission's decision to repeal the fairness doctrine with the retention of the rules at issue. Generally, the court said that, "[a]fter 1987, the instant rulemaking should have involved distinguishing political editorials and personal attacks, which are regulated, from subjects formerly covered by the fairness doctrine but that have been deregulated, such as non-editorial political commentary, editorials on political issues aside from candidate endorsements, and non-personal attacks." The court found, however, that the Joint Statement was "mostly silent on this salient question, choosing instead to rebut specific attacks against the rules." More specifically, the court noted that "the Joint Statement recognizes that the current rules are broader than their rationales suggest," explaining, for example, that "the fact that a national news network rarely covers local state assembly races may explain why a right of reply is necessary on a local network affiliate for a state assembly candidate maligned by that affiliate, but it does not follow that the local affiliate must also be the venue for a right of reply involving a presidential candidate."

7. In addition, the court noted that, although the Joint Statement criticized the Broadcasters for relying on "old and possibly flawed data to show a chilling effect on editorializing, the FCC offered no updated or more credible information to the contrary." Recognizing the staleness of the record, the court encouraged the Commission "to work from a relatively clean procedural slate, consider modern factual and legal developments, and obtain comments on specific proposals to modify the rules." The court thus urged the Commission "to supplement its analysis" with evidence superior to that which had previously been supplied. The court closed its opinion by directing the Commission to "act expeditiously."

8. In the *Order*, the Commission states that it has been struggling to implement the court's decision. The Commission explains that this has been difficult because, as the court recognized, the Chairman had recused himself from this proceeding, two commissioners would repeal the rules, and the two remaining commissioners have authority to defend "the status quo" but questionable authority to take affirmative steps such as initiating a new rulemaking proceeding or proposing modifications of the rules. In response to a petition filed by the Broadcasters seeking recall of the mandate or the issuance of a writ of mandamus, the D.C. Circuit on July 24, 2000, ordered that the petition be held in abeyance until September 29, 2000, while inviting the Broadcasters to "supplement their requests and seek whatever action they deem appropriate from the court" if the Commission has not acted by that date. The Commission states in the *Order* that it understands, and shares, the court's apparent frustration with the Commission's inability to resolve this matter.

9. On account of the continuing deadlock, the Chairman decided, after the court's order of July 24, to participate in this matter for the purpose of initiating a proceeding to update the record. The existing record is stale and devoid of empirical evidence, except for the 1982 survey criticized in the Joint Statement. In fairness to the Broadcasters, it is difficult to see how they could present evidence that is not susceptible to criticism that it is biased and self-serving, while the rules are in effect, concerning what they would do if the rules were not in effect. To develop a better record, therefore, the Commission has decided to suspend the rules for 60 days following the adoption of this *Order* to create a better record upon which to review the rules at issue. Of course, elections will be held during the 60-day period, making it an ideal time to determine how broadcasters are affected by the political editorial rule. While less obvious, it is also an ideal time to obtain evidence regarding the effect of the personal attack rule, which was established in a series of cases in the early 1960s involving personal attacks on candidates and elected officials.

10. If the Broadcasters intend to continue to challenge the rules, the *Order* requests they present evidence 60 days after the suspension ends reporting on their actions while the rules were suspended, addressing how that evidence supports their contention. Parties will also have an opportunity to submit replies 15 days later. For example, the Broadcasters have contended that elimination of the political editorial rule would lead to a dramatic increase in the number of editorials broadcasters present, on account of the alleged chilling effect of the rules. Suspension of the rule will permit the Commission to test that prediction, and the *Order* requests the Broadcasters to supply it with the information necessary to do so. More specifically, the Commission will want information on the number of political editorials run during the suspension of the rules and comparative information concerning the number of editorials run during prior election cycles. To respond to the court's concerns, the Commission also will need information concerning the nature of the elections on which licensees editorialize: are they, for example, state assembly races or the presidential election? Whether other media outlets editorialized on these races would also be useful in



determining whether the rules should be modified rather than eliminated or retained in full. For example, using the D.C. Circuit's example, it is possible that a right of reply may be warranted in state assembly races but not in presidential elections because the relative merits of the presidential candidates will be thoroughly aired by the media in any event but the relative merits of state assembly candidates will not be discussed by the media in any detail.

11. The *Order* asks the Broadcasters to present evidence relevant to the court's other concerns as well. For example, with respect to the political editorial rule, the court stated that "[i]f broadcasters want to use public resources overtly to push a private agenda by advocating a result in an election, a right of reply might be a minimally intrusive means of countering a licensee's government-granted monopoly on access to the resource," but questioned whether the same could not be said concerning "editorial[s] about tax policy," and directed the Commission "to explain why editorials about candidates are particularly appropriate subjects for regulation." To respond to the court's concerns, the Commission needs information concerning broadcasters' editorial practices more generally. Among other things, the Commission is interested in whether and the extent to which broadcasters editorialize on topics unrelated to political campaigns and whether the rate of such editorials is increasing or decreasing. The *Order* also seeks information regarding the factors relevant to a broadcaster's decision to editorialize. The Broadcasters are in the best position to provide such information and the Commission expects them to do so.

12. In addition to providing information responsive to the court's concerns, the *Order* asks the Broadcasters to provide information relevant to issues raised in the Commission's prior decisions. For example, in their Joint Statement, Commissioners Ness and Tristani indicated their willingness to consider modifying the political editorial rule such that it might shift the burden to the candidates to request time from the station or "would only trigger an obligation to furnish time to major candidates or major party supporters." A modification to include only major candidates or major party supporters would be consistent with the Supreme Court's recognition in *Arkansas Educational Television Ass'n* v. *Forbes*, 523 U.S. 666 (1998), that broadcasters may in good faith decide that in some cases the inclusion of third-party candidates in debates detracts from their usefulness. These modifications also would be responsive to the Broadcasters' claims that the rule is burdensome, because it would reduce the burden. In any event, the *Order* asks the Broadcasters to report whether those licensees who editorialize while the rules are suspended decide to offer response time to some candidates but not others. The Commission hopes that parties will provide as objective and useful information as possible.

13. With respect to the personal attack rule, the Broadcasters similarly should attempt to obtain information that will be useful in evaluating the effect of the rule. However, the *Order* asks broadcasters to collect information regarding complaints concerning personal attacks that are received while the rule is suspended, and to compare the number and nature of the complaints made during those 60 days to a comparable period while the rule was in effect. The *Order* seeks comment on ways that any undue burdens caused by the rule could be reduced. To assist the Commission in evaluating whether the personal attack rule is overly burdensome, as argued by the Broadcasters, the *Order* seeks information on what steps broadcasters take to comply with the notification requirements. For example, in their Joint Statement, Commissioners Ness and Tristani indicated their willingness to consider modifying the personal attack rule to eliminate the existing notification requirements and make the rule request-driven.

14. The *Order* encourages those groups that have advocated retention of the rule to do the same—that is, to collect evidence relating to personal attacks that they would have challenged had the rule not been suspended. In that connection, the Commission notes that some parties have argued that the rule should be expanded to cover situations to which it does not currently apply, and it would welcome any information regarding personal attacks made, for example, during "bona fide news interviews," which currently are not subject to the rule. In addition, the Commission would be particularly interested in learning of personal attacks made in connection with the upcoming elections.

15. In responding to this *Order*, the Commission encourages parties to present the sort of careful analysis the D.C. Circuit expects. Although it cannot rule out the possibility that the rules will be retained exactly as written or eliminated entirely, the Commission believes it would profit most at this point from hearing arguments directed to how the rules should be modified to achieve their fundamental purposes with minimal burden, consistent with the D.C. Circuit's opinion in this case and our decisions in other cases.

16. Some parties, however, may contend that it is not possible to "distinguish[ ] political editorials and personal attacks * * * from subjects formerly covered by the fairness doctrine." For that reason, the *Order* asks the Broadcasters, at the time they file their report on their actions while the rules were suspended, to report also on the effects of the repeal of the fairness doctrine, and the Commission will invite the other parties to respond to that report. In last year's opinion, the D.C. Circuit described *Syracuse Peace Council* as "agency precedent for declining to use the FCC's power to redress a market failure in provision of balanced coverage of important issues," and directed the Commission to provide "clear, cogent explanations" for requiring a right of reply in some situations but not others. Previously, on account of its deadlock, the Commission has been constrained to consider how to reconcile the political editorial and personal attack rules with its decision in *Syracuse Peace Council*. In that connection, those parties who believe that Section 315 of the Communications Act, as amended, requires the Commission to enforce some obligation on broadcasters "to operate in the public interest and to afford reasonable opportunity for the discussion of conflicting views on issues of public importance" should comment on how their reading of the statute bears on the issues before us.

17. The *Order* therefore invites the Broadcasters, and the other parties as well, to consider the court's various statements to the effect that it is difficult to distinguish political editorials and personal attacks from "many issues of public concern," and to address whether it would be appropriate to extend the reach of the rules at issue. For example, the court noted that "a network has more freedom to endorse a ballot initiative than to endorse a candidate championing such an initiative," and concluded that "[t]he FCC has not articulated a basis for the distinction." If those issues may not be distinguished on a principled basis, it may be that a right of reply is warranted in both cases. In addition, the Commission encourages the parties to consider whether the D.C. Circuit has identified a distinction between local and national issues that the Commission ought to examine in more detail. That is, as explained in the Joint Statement, the

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explosion in media outlets relied upon in *Syracuse Peace Council*, and particularly its reliance on cable channels, may be relevant to national issues but not to local issues.

18. The Commission does not intend to prejudge that or any other issue. Rather, while suspending the political editorial and personal attack rules, the Commission asks the Broadcasters to report to the Commission on the various matters discussed in this *Order*. With a fresh record, the Commission will consider how to reconcile its decision in *Syracuse Peace Council* with the rules at issue. It is possible that the Commission will decide to modify the rules at issue, or to modify its decision in *Syracuse Peace Council*, or both.

19. In that regard, it is appropriate to make clear that the dicta in *Syracuse Peace Council* regarding the appropriate level of First Amendment scrutiny has been rejected by Congress, this Commission, and the courts. Although the Commission based its decision in *Syracuse Peace Council* largely on its view that the standard of *Red Lion Broadcasting Co.* v. *FCC*, 395 U.S. 367 (1969), should be abandoned, the D.C. Circuit did not affirm on that basis. Subsequently, in enacting the Children's Television Act of 1990 (CTA), Congress made clear that broadcasters should be subject to public interest obligations reviewed under the *Red Lion* standard, and Congress's views on that matter are entitled to "great weight." The Commission agreed that *Red Lion* sets the appropriate standard of review, as it made clear in its Order implementing the CTA, which expressly repudiated the dicta from *Syracuse Peace Council*. Moreover, the D.C. Circuit not only applied but extended *Red Lion* in 1996 in *Time Warner Entertainment Co.* v. *FCC*, 93 F.3d 957 (1996). In that case, the court upheld under the *Red Lion* standard the constitutionality of Section 335 of the Communications Act, as amended, which requires operators of direct broadcast satellite (DBS) systems to set aside at least four percent of their channels for noncommercial educational programming.

20. The fundamental error of the Commission's decision in the portion of *Syracuse Peace Council* that has been repudiated was its confusion of the rationale underlying the fairness doctrine with the basis for public interest regulation of the broadcast spectrum. The fairness doctrine originated at a time when there were only three major television networks, and the proliferation of television stations and the development of cable television reasonably led the Commission to reevaluate the need for the fairness doctrine. The standard of *Red Lion*, however, was not based on the absolute number of media outlets, but on the fact that the spectrum is a public resource and "there are substantially more individuals who want to broadcast than there are frequencies to allocate." As both the U.S. Supreme Court and the D.C. Circuit have explained, "[a] licensed broadcaster is 'granted the free and exclusive use of a valuable part of the public domain; when he accepts that franchise it is burdened by enforceable public obligations.'" The D.C. Circuit explained in remanding the political editorial and personal attack rules that application of the *Red Lion* standard does not mean that any particular obligation is therefore warranted. Rather, the Commission must provide a reasonable explanation as to why it chooses to impose certain public interest obligations and not others. But the long-standing basis for the regulation of broadcasting is that "the radio spectrum simply is not large enough to accommodate everybody." Under our Nation's system for allocating spectrum, some are granted the "exclusive use" of a portion of this "public domain," even though others would use it if they could. That is why "it is idle to posit an unabridgeable First Amendment right to broadcast comparable to the right of every individual to speak, write or publish."

21. Congress has directed the Commission to ensure that broadcasters granted the exclusive use of a particular frequency serve the public interest. Or, as the D.C. Circuit put it in this case, a broadcaster holds a "government-granted monopoly," and the Commission is required by statute to ensure that the public receives a fair return from each broadcaster for its use of that public resource. Unlike the DBS operator in *Time Warner*, who was required both to pay millions of dollars for the spectrum it won at auction and to set aside at least four percent of its capacity for noncommercial educational programming, broadcasters have obtained their spectrum for free and are not subject to such a set-aside requirement. The Commission therefore requests the parties to address this difference in treatment.

22. Under the relevant constitutional standard, a key factor in deciding whether to retain the rules at issue here or impose any other requirement is the extent to which the requirement interferes with the editorial judgment of broadcasters. As the U.S. Supreme Court has repeatedly recognized, the Commission has long "'walk[ed] a tightrope'" designed to permit broadcasters "to exercise 'the widest journalistic freedom consistent with'" the principle that it is "the right of the viewers and listeners, not the right of the broadcasters which is paramount." In this case, as explained above, the D.C. Circuit assumed that the rules at issue burden broadcasters to some extent, recognized that the Joint Statement had criticized the evidence previously presented on that point by the Broadcasters, but noted that the Commission had "offered no updated or more credible information." A temporary suspension of the rules at issue, coupled with a proceeding that considers the other issues raised in this *Order*, should help the Commission to respond to the court's concerns.

**Administrative Matters**

23. *Request to Update Record.* Parties submitting evidence on the effect of the suspension of the rules as discussed above should submit such evidence 60 days after the suspension ends, and replies should be submitted 75 days after the suspension ends. Information may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121, May 1, 1998.

24. Information filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, parties must transmit one electronic copy of the evidence to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, parties should include their full name, postal service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail information, parties should send e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form, <your e-mail address>." A sample form and directions will be sent in reply.

25. Parties who choose to file by paper should also submit information on diskette. These diskettes should be submitted to: Wanda Hardy, 445 Twelfth Street, SW., Room 2–C221, Washington DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using WORD 97 or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the party's name, proceeding (including the docket number (MM Docket No. 83–484), type of pleading, date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase: "Disk Copy—Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, parties must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 445 Twelfth Street, SW., Room CY–B402, Washington, D.C. 20554.

26. *Ex Parte Rules.* This proceeding will be treated as a "permit-but-disclose" proceeding, subject to the "permit-but-disclose" requirements under Section 1.1206(b) of the rules, 47 CFR 1.1206(b), as revised. *Ex parte* presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. Persons making oral *ex parte* presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one or two sentence description or the views and arguments presented is generally required. 47 CFR 1.1206(b)(2), as revised. Additional rules pertaining to oral and written presentations are set forth in Section 1.1206(b) of the Commission's rules.

27. *Initial Paperwork Reduction Act Analysis.* The actions taken in this *Order and Request to Update Record* have been analyzed with respect to the Paperwork Reduction Act of 1995 (PRA), and found to request new or modified reporting or recordkeeping by the public. It will be submitted to the Office of Management and Budget for emergency review under Section 3507 of the PRA.

**Ordering Clauses**

28. Authority for issuance of this *Order and Request to Update Record* is contained in sections 4(i), 303 and 315 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303, 315.

29. Sections 73.1920 and 73.1930 of the Commission's rules, 47 CFR 73.1920, 73.1930 (broadcast personal attack and political editorial rules), and § 76.209(b), (c), and (d) of the Commission's rules, 47 CFR 76.209(b), (c), (d), (cable personal attack and political editorial rules) *are suspended* upon the adoption date of this *Order and Request to Update Record* through December 2, 2000. This action is taken pursuant to sections 4(i), 303 and 315 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303, 315.

**List of Subjects**

*47 CFR Part 73*

Radio broadcasting, television broadcasting.

*47 CFR Part 76*

Cable television service.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 00–26014 Filed 10–10–00; 8:45 am]

**BILLING CODE 6712–01–P**



## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 17

## Endangered and Threatened Wildlife and Plants; 12-Month Finding for a Petition To List the Columbian Sharp-Tailed Grouse as Threatened

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of 12-month petition finding.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, announce a 12-month finding for a petition to list Columbian sharp-tailed grouse (*Tympanuchus phasianellus columbianus*) throughout its known historic range in the 48 contiguous United States under the Endangered Species Act of 1973, as amended. We have reviewed the petition, information available in our files, other published and unpublished information submitted to us during the public comment period following the 90-day petition finding, consulted with recognized prairie grouse experts, and coordinated with other Federal, State, and tribal resource agencies within the historic range of the subspecies. On the basis of the best scientific and commercial information available, we find that listing the Columbian sharp-tailed grouse as a threatened species throughout its historic range in the contiguous United States is not warranted at this time.

**DATES:** The finding announced in this document was made September 27, 2000. Comments and information may be submitted until further notice is given by a document published in the **Federal Register**.

**ADDRESSES:** Data, information, comments, and material concerning the petition finding may be submitted to the Field Supervisor, Upper Columbia River Basin Field Office, U.S. Fish and Wildlife Service, 11103 East Montgomery Drive, Spokane, Washington, 99206. The 12-month petition finding, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Chris Warren at the above address or telephone (509) 893–8020.

**SUPPLEMENTARY INFORMATION:**

**Background**

Section 4(b)(3)(B) of the Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires, to the maximum extent practicable, that we make a finding within 12 months of the date of receipt of a petition containing substantial information on whether the petitioned action is: (a) not warranted, (b) warranted, or (c) warranted but precluded from an immediate proposal by other pending proposals of higher priority. Upon making a 12-month finding, we must promptly publish such notice in the **Federal Register**.

On March 16, 1995, we received a petition from the Biodiversity Legal Foundation, Boulder, Colorado, dated March 14, 1995. The petitioner requested that the Columbian sharp-tailed grouse be listed as a threatened species throughout its known historic range in the 48 contiguous United States and that critical habitat be designated for the species as soon as its biological needs are sufficiently well known. The petition also recommended a review of the species' status in British Columbia, Canada.

We added the Columbian sharp-tailed grouse to our candidate species list on January 6, 1989, as a Category 2 species (54 FR 560). Category 2 species were those for which we possessed information indicating that a proposal to list as endangered or threatened was possibly appropriate, but for which conclusive data on biological vulnerability and threats were not available to support a proposed rule. On February 28, 1996, we discontinued the designation of Category 2 species as candidates for listing under the Act (61 FR 7596).

Due to a backlog of listing actions and funding constraints in our listing program, we have implemented our Listing Priority Guidance during the course of listing actions for the subject petition. The guidance, first adopted on

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September 21, 1983 (48 FR 43098), was updated on May 16, 1996 (61 FR 24722), December 5, 1996 (61 FR 64475), May 8, 1998 (63 FR 25502), and, most recently, on October 22, 1999 (64 FR 57114). The guidance is a biologically based method of prioritizing listing actions to provide the greatest conservation benefit to imperiled species in the most expeditious manner. On October 26, 1999, we determined that the petition presented substantial information and that the petition action may be warranted. We published an announcement of our administrative finding (64 FR 57620). At that time, we initiated a status review of the Columbian sharp-tailed grouse in accordance with our Listing Priority Guidance.

**Species Information**

The Columbian sharp-tailed grouse is one of seven recognized subspecies of sharp-tailed grouse that have been described in North America (AOU 1957, Aldrich 1963, Johnsgard 1973, Miller and Graul 1980, Connelly *et al.* 1998). Compared to the other subspecies, Columbian sharp-tailed grouse are the smallest and have darker gray plumage, more pronounced spotting on the throat, and narrower markings on the underside. Historically, Columbian sharp-tailed grouse range extended westward from the continental divide in Montana, Idaho, Wyoming, and Colorado to northeastern California and eastern Oregon and Washington; southward to northern Nevada and central Utah; and northward through central and extreme southeastern British Columbia.

Columbian sharp-tailed grouse rely on a variety of good quality native habitats within the sagebrush-bunchgrass, meadow-steppe, mountain shrub, and riparian zones of the northwestern United States (Giesen and Connelly 1993). Various upland habitats, with a component of more dense riparian or mountain shrub habitat to provide escape cover, are important to the subspecies from spring to fall (Saab and Marks 1992, Giesen and Connelly 1993). Suitable wintering habitat, that consists largely of deciduous trees and shrubs, is also thought to be a key element to healthy Columbian sharp-tailed grouse populations (Marshall and Jensen 1937, Hart *et al.* 1950, Marks and Marks 1987, Giesen and Connelly 1993).

Male sharp-tailed grouse employ elaborate courtship displays in the spring to attract females to central dancing grounds, called leks. Established leks may be used for many years, although the exact dancing locations may shift position over time and smaller satellite leks often form in the vicinity of historic leks. Interacting clusters of leks in a local area, where males and females may switch sites within and between seasons, are defined as lek complexes (Schroeder *et al.*, pers. comm. 2000). Individual leks can consist of several to over 30 displaying males, under good conditions 15 to 25 males per lek are common (Meints, Idaho Dept. of Fish and Game, pers. comm. 1995 and 1998; Schroeder, Washington Dept. of Fish and Wildlife (WDFW), pers. comm. 1995, 1998, and 2000). Due to social structures within a lek and other potential influences, such as exposure to predation, leks seldom support more than 25 males (Moyles and Boag 1981, Rodgers 1992, Connelly *et al.* 1998). The few dominant males at a lek's center account for the majority of successful mating attempts (Leopold *et al.* 1981, Moyles and Boag 1981).

Spring-to-fall home range sizes of Columbian sharp-tailed grouse are relatively small, generally less than 2 square kilometers ($km^2$) (1.2 square miles ($mi^2$)), and the areas used are usually within a few km (mi) of a lek. Females typically nest and rear their broods within 1.6 km (1 mi) of an active lek, although nesting more than 3 km (1.9 mi) from a lek has been recorded (Saab and Marks 1992, Giesen and Connelly 1993). Seasonal movements to wintering areas from breeding grounds are typically less than 5 km (3.1 mi) (Giesen and Connelly 1993), although movements of up to 20 km (12.4 mi) have been recorded (Meints 1991). The annual survival rate of sharp-tailed grouse is relatively low, and ranges from roughly 20 to 50 percent (WDFW 1995, Connelly *et al.* 1998).

The area within 2.5 km (1.6 mi) of a lek is thought to be critical to the management of Columbian sharp-tailed grouse and this area should contain, or provide access to, suitable wintering habitats (Saab and Marks 1992, Giesen and Connelly 1993). Because of their influence on the species' demographics, leks (including the surrounding area) can be viewed as the principal units describing the arrangement of sharp-tailed grouse populations. Columbian sharp-tailed grouse assemblages range from local populations (single leks to lek complexes), to regional populations (potentially interacting local populations occupying small geographic areas, such as a county), to metapopulations (potentially interacting regional populations occupying larger geographic areas).

Various historic accounts indicate that Columbian sharp-tailed grouse were once much more abundant throughout their range where suitable habitats occurred (Hart *et al.* 1950, Buss and Dziedzic 1955, Gruell *circa* 1960, WDFW 1995). Excessive hunting in the mid to late 19th century is thought to have been a major contributing factor to the early extirpation of local populations and the initial reduction of the subspecies' range (Hart *et al.* 1950). However, since the turn of the century, the conversion of native habitats for crop production and their degradation as a result of heavy livestock grazing are thought to be the primary factors in further population declines and range reductions (Hart *et al.* 1950, Buss and Dziedzic 1955, Miller and Graul 1980, Marks and Marks 1987, Braun *et al.* 1994, WDFW 1995, McDonald and Reese 1998, Connelly *et al.* 1998). Columbian sharp-tailed grouse have been extirpated from California, Nevada, and Oregon (Miller and Graul 1980, Connelly *et al.* 1998). Past declines in the subspecies' overall abundance and extent of occupied range have isolated various populations of Columbian sharp-tailed grouse from one another since the mid-1900's (*cf* Hart *et al.* 1950).

When large geographic areas are considered (*e.g.*, states and provinces), the overall distribution of Columbian sharp-tailed grouse appears to have changed little since the mid-1900's, and various sources have acknowledged the difficulty of obtaining accurate population estimates for the subspecies (Hart *et al.* 1950, Rogers 1969, Miller and Graul 1980, Schroeder *et al.*, pers. comm. 2000). However, when smaller geographic areas are considered (*e.g.*, local populations, regional populations), a general pattern of continued range reduction and population decline is apparent from the mid-1900's to the present (Miller and Graul 1980; WDFW 1995; Ritcey 1995; Schroeder *et al.*, pers. comm. 2000; Mitchell, Utah Dept. of Natural Resources, pers. comm. 1995 and 1998; Hoffman, Colorado Dept. of Fish and Game, pers. comm. 1995 and 1998; Thier, Montana Dept. of Fish, Wildlife, and Parks, pers. comm. 1998; Chutter, B.C. Min. of Env., Wildlife Branch, pers. comm. 1995). Based on a questionnaire distributed to wildlife professionals in 1979 throughout the species' range, Miller and Graul (1980) state that populations of Columbian sharp-tailed grouse occupy less than 10 percent of their former range in Idaho, Montana, Utah, and Wyoming, 10 to 50 percent in Colorado and Washington, and 80 percent or more in British Columbia.

Most current population estimates have been derived from spring breeding population censuses collected by state and Federal agencies over the last two



decades. In general, estimates of fall population sizes are roughly double that of the spring breeding population. Most of the following discussions of distribution and abundance of Columbian sharp-tailed grouse by State and province are based on published and unpublished agency reports furnished after submission of the petition in March 1995, and during the public comment period for the status review, initiated in October 26, 1999. These reports are cited below, as appropriate. In addition, the following information is based on the best estimates of recognized experts (SRTIM 2000), and an independent report solicited by the Service that addresses the viability of the various extant Columbian sharp-tailed grouse populations (Bart 2000). This report was prepared using and summarizing data submitted by State and Bureau of Land Management offices and on maps of historic and current distributions of Columbian sharp-tailed grouse prepared by Schroeder (2000) using information obtained from State and Federal biologists working on this species.

Based on the best available information, the current minimum to maximum breeding population estimate for Columbian sharp-tailed grouse is approximately 51,000 to 52,000 (mean = 51,500) individuals within the U.S., and 56,000 to 61,500 (mean = 58,700) individuals within the total range. These populations occupy approximately 38,400 $km^2$ (23,800 $mi^2$) within the U.S. and 79,300 $km^2$ (49,200 $mi^2$) rangewide. Over 93 percent of all Columbian sharp-tailed grouse occur within the three metapopulations in northwest Colorado/south-central Wyoming (roughly 4,800 birds), southeastern Idaho/northern Utah (roughly 40,000 birds in Idaho and 5,100 in Utah), and central British Columbia (4,700 to 9,600). These three metapopulations are reported to be either stable or increasing (state reports summarized in Bart 2000). Rangewide, these three metapopulations including the stable population within British Columbia, stable and/or increasing populations occupy approximately 68,000 $km^2$ (42,200 $mi^2$) which is over 85 percent of the occupied range (79,300 $km^2$) (49,200 $mi^2$).

*Colorado* (Mumma, *in litt.* 1999; Bart 2000; House, *in litt.* 2000)—There are two subpopulations of Columbian sharp-tailed grouse in Colorado. The northwest region contains numerous interacting local populations with multiple leks, which likely constitute a distinct, interacting metapopulation totaling roughly 4,700 birds in the spring breeding population (9 percent of the current rangewide spring breeding population within the United States (U.S.)) and occupies about 8,700 $km^2$ (5,400 $mi^2$) (23 percent of the current range within the U.S.). This population occurs primarily in Moffat, Routt, and Rio Blanco Counties, and is continuous with local populations in south-central Wyoming (see below). Current trend data indicate the population is likely stable and increasing. Mesa County, in the west-central region, may still harbor a remnant local population. If this population still exists, it is isolated from other regional populations. The last confirmed sightings of birds in this area are from *circa* 1985. The spring breeding population is estimated to currently be comprised of up to 50 birds (less than 1 percent of the rangewide population within the U.S.) and inhabit about 1,600 $km^2$ (990 $mi^2$) (approximately 4 percent of the currently occupied U.S. range).

*Idaho* (Meints, pers. comm., 1995, 1998; Bart 2000; Mallet, *in litt.* 2000)—There are three subpopulations of Columbian sharp-tailed grouse occupying the state of Idaho. The southeastern region contains numerous, interacting local populations with multiple leks, which likely constitute a distinct, interacting metapopulation totaling roughly 40,000 birds in the spring breeding population (78 percent of the rangewide population within the U.S.). The population occupies approximately 14,800 $km^2$ (9,200 $mi^2$) (39 percent of the current range within the U.S.). This population is likely stable and increasing. It occurs primarily south of Rexburg and east of Rupert, Idaho, and is continuous with local populations in northern Utah (see below). The upper Snake River region, including the Sand Creek and Tex Creek areas, harbors roughly 600 birds in the spring breeding population (approximately 300 in each area). Birds from these two areas likely interact with one another and with the larger population in the southeastern region. This population is reported to be stable. Washington and Adams Counties, in the west-central region, harbor roughly 200 to 300 birds in the spring breeding population (less than 1 percent of the total U.S. population), which supports approximately 7 leks over about 1,690 $km^2$ (1,050 $mi^2$) (4 percent of the current range within the U.S.). The population is reported to be stable, although the area is isolated from other regional populations. Translocation efforts conducted in extreme south-central Idaho beginning in 1992 have resulted in an isolated local population (200 to 400 birds in the spring breeding population; less than 1 percent of U.S. total), supporting at least 3 leks over 175 $km^2$ (110$mi^2$) (less than 1 percent of the total range within the U.S.). This area is contiguous with a small population of reintroduced birds in northeastern Nevada (see below). Translocated birds originated from the population in southeastern Idaho.

*Montana* (Wood 1991; Wood 1992; Bart 2000; McCarthy, *in litt.* 2000)—Two small local populations occur in the northwestern region of this state, one in Lincoln County near the international boundary with British Columbia, the other to the southeast in Powell County. The Lincoln County area supports fewer than 30 birds in the spring breeding population on a single lek, while the Powell County area supports fewer than 50 birds in the spring breeding population on a few leks. From 1987 through 1991, and again in 1996 and 1997, the Lincoln County population was augmented with birds translocated primarily from central British Columbia (one effort included birds translocated from southeastern Idaho). The taxonomic status of the Powell County population is in question. Based on evaluation of a limited number of specimens, these birds may show a greater morphological affinity to the plains subspecies. These two local populations are isolated from one another and from other regional populations. During the early 1970s and again in 1980, limited efforts to reintroduce sharp-tailed grouse to the National Bison Range (roughly 50 km (30 mi) northwest of Missoula) were conducted with birds translocated from southeastern Idaho. It is unlikely that any of these birds or their offspring persisted in the area. Both of these populations are probably still declining, but comprise less than 1 percent of the total U.S. subpopulation.

*Nevada* (Morros 1999; Crawforth, *in litt.* 2000)—One introduced population currently exists in Nevada. During the spring of 1999, 54 birds were translocated to the Snake Range in Elko County. Translocated birds originated from the population in southeastern Idaho. The most recent census information indicates there are roughly 20 to 40 birds remaining from this initial effort. Additional translocation efforts are planned through 2003, with a goal of releasing approximately 50 birds per year from the same source population. This reintroduced local population is likely continuous with reintroduced birds in south-central Idaho (see above).

*Oregon* (Crawford and Snyder 1992, Bart 2000, Crawford and Coggins 2000)—One introduced population currently exists in Oregon. From 1991

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through 1997, a total of 179 birds had been translocated into Wallowa County in northeastern Oregon from the population in southeastern Idaho. As the result of these reintroduction efforts, an isolated local population may have been established. Recent census information indicates there are roughly 15 to 30 individuals in the spring breeding population, supporting one or few leks, and the population is likely declining.

*Utah* (Bart 2000; Mitchell, *in litt.* 2000)—One subpopulation currently exists in northern Utah. It contains numerous, interacting local populations with multiple leks, which likely constitute a distinct, interacting metapopulation totaling roughly 5,100 birds in the spring breeding population (10 percent of the U.S. subpopulation). This population is continuous with the population in southeastern Idaho (see above) and is reported to be stable and increasing, currently occupying roughly 3,600 km$^2$ (2,200 mi$^2$) (9 percent of the range within the U.S.) .

*Washington* (Schroeder, *in litt.* 2000; Cawston, *in litt.* 2000; Schroeder *et al.*, pers. comm. 2000)—Eight local populations occur in north-central Washington; 3 likely have multiple leks, while 5 consist of single or few leks. The overall estimate for the State is approximately 900 individuals in the spring breeding population. Some minimal interaction may occur between a few local populations, while others are isolated. The region is isolated from other regional populations and comprises approximately 1,700 km$^2$ (1,100 mi$^2$) (4 percent of the range within the U.S.). During the spring of 1998, and again in 1999, translocation efforts were conducted to augment one of the remnant, local populations in north-central Washington. Translocated birds originated from the population in southeastern Idaho. The Nespelem population is reported to be stable, but the remainder of the populations are likely declining.

*Wyoming* (Oedekoven 1985; Kruse, *in litt.* 1999; Bart 2000)—The most recent census information for Wyoming indicates there is one population in the south-central region of the state, consisting of roughly 100 to 500 birds in the spring breeding population (less than 1 percent of the U.S. subpopulation) and supporting multiple leks over 2,500 km$^2$ (1,600 mi$^2$) (6 percent of the range within the U.S.). The population occurs in Carbon County and is continuous with the population in northwestern Colorado (see above). This population is reported to be stable.

*British Columbia, Canada* (Ritcey 1995; Chutter, pers. comm. 1995; Bart 2000)—The central region of British Columbia (Fraser Plateau) contains numerous, interacting local populations with multiple leks, which likely constitute a distinct, interacting metapopulation totaling roughly 4,700 to 9,600 birds in the spring breeding population (averaging 12 percent of the rangewide subpopulation) over an area of approximately 41,000 km$^2$ (25,000 mi$^2$) (51 percent of the current rangewide area). This metapopulation is reported to be stable. The available information indicates that the more northerly populations of Columbian sharp-tailed grouse in British Columbia may show a greater morphological and behavioral affinity to the northern subspecies (Tympanuchus phasianellus *caurus*). The area directly south of Cranbrook (southeastern region) may contain one local population with single to few leks. This population is isolated from other regional populations. The area south of Merritt to the Washington border (south-central region) contains individual birds or small flocks during the winter, with no breeding behavior (*i.e.*, leks) apparent.

Section 4(a) of the Act describes five threat factors that we must consider to determine whether any species is a threatened or endangered species for purposes of the Act. Any one or combination of the five threat factors may indicate the appropriateness of a warranted 12-month administrative finding. Section 4(b) of the Act requires that we also give consideration in our determination of a species' status to efforts being made by any state or foreign nation to protect such species. Below, the available information is considered with regard to the five threat factors established by the Act and any ongoing conservation measures for Columbian sharp-tailed grouse.

*(1) Present or Threatened Destruction, Modification, or Curtailment of Habitat or Range*

Large portions of native habitats historically used by Columbian sharp-tailed grouse have been converted for crop production and impacted by other influences, including rural and suburban development, dam construction, minerals exploitation, chaining, herbicide spraying, and fire (Miller and Graul 1980; Wood 1991; Giesen and Connelly 1993; Schroeder, pers. comm. 1995 and 1998; Mitchell, pers. comm. 1995 and 1998; Chutter, pers. comm. 1995). In addition, past grazing practices over large portions of historic Columbian sharp-tailed grouse range have impacted native habitats (Hart *et al.* 1950, Miller and Graul 1980, Kessler and Bosch 1982, Wood 1992, Giesen and Connelly 1993). Intensive grazing pressure can be especially detrimental to nesting and wintering habitats potentially used by sharp-tailed grouse, primarily due to impacts on cover and food resources. However, much of the area currently occupied by Columbian sharp-tailed grouse is not subject to intensive grazing pressure (SRTIM 2000, see below).

Most of the area currently occupied by Columbian sharp-tailed grouse is privately owned (Bart 2000), and a large proportion of these lands are withdrawn from crop production and planted to native and non-native cover under the Federal Conservation Reserve Program (CRP) (USDA 1998). Except under extraordinary circumstances, CRP lands are not subject to grazing and likely have increased forb and insect abundance from spring to fall, which increases the value of these lands to Columbian sharp-tailed grouse females who make substantial use of CRP areas during nesting and brood-rearing (C. Warren, FWS, Spokane, *in litt.* 2000). CRP lands, and probably substantial amounts of adjacent "native" habitat (including important wintering habitat in some regions), are essentially free of pesticide and herbicide applications and grazing pressure (Warren, *in litt.* 2000). Accordingly, these CRP areas have become very important Columbian sharp-tailed grouse large metapopulations in Colorado, Idaho, Utah, and Wyoming (SRTIM 2000, Bart 2000).

A majority of CRP that are 10-year contracts for lands in States supporting Columbian sharp-tailed grouse were renewed after 1997, resulting in 92 to 99 percent of these lands being relatively secure until the years 2008 through 2010 (Warren, *in litt.* 2000). Between the fall of 1997 and the fall of 1998, the total amount of CRP land available to Columbian sharp-tailed grouse increased within all of the counties harboring the subspecies' metapopulations within the United States, including 25, 7, and 1 percent increases in Utah, Colorado, and Idaho, respectively. Lands under CRP contract as of the year 2000 show 1 to 7 percent acreage increases over those in 1998 (Warren, *in litt.* 2000).

The potential net changes that may occur under the CRP or if CRP contracts expire, vary considerably by county within the five States where CRP is shown to be important to Columbian sharp-tailed grouse. Presently, it is unclear what effects these changes may have on the subspecies' populations. If CRP lands that are important to the



smaller populations of Columbian sharp-tailed grouse revert back to crop production or are significantly altered, adverse impacts to these populations will occur and that will increase the risk of extirpation of these smaller populations (Bart 2000). However, the larger metapopulations are likely capable of adjusting to these potential impacts and would not be adversely effected. This is because smaller subpopulations within the region could supply a source for recolonization of modified sites, or alternate areas of suitable habitat would be developed under new CRP contracts to allow the affected local populations to adjust to the changes.

Reclaimed mining lands have also become important to the conservation of Columbian sharp-tailed grouse in northwestern Colorado (Mumma, *in litt.* 1999). These areas fall under the requirements of the Colorado Mined Land Reclamation Act (CMLRA). There is currently little information available regarding the ultimate fate of these areas upon termination of the reclamation bonds. However, it is not assured that they will be converted by development or subject to intensive grazing pressure following bond release. In addition, as with CRP contracts, it is likely that newly reclaimed areas will become available to Columbian sharp-tailed grouse in Colorado as current and future mining operations are completed.

*(2) Overutilization for Commercial, Recreational, Scientific, or Educational Purposes*

Currently, Columbian sharp-tailed grouse are hunted in the fall in Colorado, Idaho, Utah, and British Columbia. Fall population sizes are roughly double that of the estimated spring breeding populations. Colorado maintains a fall hunting season in 1998 and 1999 in the northwest region, with bag and possession limits of two and four birds, respectively. Over the last four years, the annual state harvest estimate has averaged 218 birds, which is 2 percent of a fall population of approximately 9,500 birds. Idaho also maintains a fall hunting season in 1998 and 1999, with bag and possession limits of two and four birds, respectively. The latest available information indicates that a total of roughly 3,000 birds are harvested annually from the southeastern and upper Snake River regions, which is approximately 4 percent of the fall population of about 80,000 birds. Utah reopened its hunting season in 1998 and 1999. Over the past 2 years, Utah has issued 663 2-bird permits in a limited-entry hunt. The State harvest estimates for 1998 and 1999 were 201 birds (less than 2 percent) and 462 birds (less than 5 percent), respectively, of an approximate fall population of 10,200 birds. In British Columbia, it is estimated that up to 5,000 birds (35 percent of an average fall population of 14,300 birds) are harvested during some hunting seasons, however, this estimate is not based on rigorous surveys and is subject to wide year-to-year variation.

For relatively large, stable populations of upland birds under managed conditions, hunting is not likely to have an additive effect over natural mortality because the percentage of the population that is eliminated through hunting mortality is minimal and compensated through the normal population processes of reproduction and immigration (Braun *et al.* 1994, SRTIM 2000). Depending on the status of the hunted population and hunter access patterns, some local areas may act as population sinks and be adversely impacted by the additional mortality. However, the estimated harvest rates are not likely to adversely effect the metapopulations of Columbian sharp-tailed grouse in the States with hunting seasons (Bart 2000).

Several reintroduction efforts have taken place or are planned for Columbian sharp-tailed grouse. The relatively small, isolated populations would be adversely impacted by the removal of source birds for these projects, as may have occurred in British Columbia (Chutter, pers. comm. 1995). In addition, birds translocated from disparate parts of their range may not thrive or survive in the release area (Wood 1991; Thier, pers. comm. 1998). It is also unclear what effects the translocation of birds to disparate parts of their range may have on the genetic integrity of the augmented populations. Saab and Marks (1992) indicate that the conservation of all potential sources of genetic variation should be a critical concern given the fragmented, isolated nature of some of the subspecies' populations. Radio-marked birds may also be more susceptible to predation and other mortality factors (Marks and Marks 1987). The small and fragmented populations of Columbian sharp-tailed grouse would be at increased risk of extirpation from these potential threats. However, as with the potential impacts to the habitats used by the subspecies (above), the large metapopulations are not likely to be adversely affected by these management activities (Bart 2000).

*(3) Disease or Predation*

There are apparently no documented severe episodes of disease or predation that have played a significant role in the population declines and range reduction of Columbian sharp-tailed grouse. Episodes of disease or altered predation patterns may play an important role in the dynamics of the smaller, isolated populations and, as above, they are at increased risk of extirpation from these potential threats. However, these threats are currently of minor concern for the subspecies' metapopulations.

*(4) Inadequacy of Existing Regulatory Mechanisms*

In the majority of the subspecies' current range regulatory mechanisms and conservation measures are apparently adequate for maintaining viable populations of Columbian sharp-tailed grouse.

State hunting regulations appear to be sufficient to control the legal take of Columbian sharp-tailed grouse where they are hunted, and to avoid adverse impacts to these populations (above). In addition, the revegetation and reclamation standards under the CRP and CMLRA, respectively, promote the improvement of habitat conditions for the subspecies' metapopulations, and the CRP restricts livestock grazing on contract lands except under extraordinary circumstances.

*(5) Other Natural or Human-Caused Factors Affecting the Species' Continued Existence*

The fragmented, isolated nature of some local populations of Columbian sharp-tailed grouse may place them at increased risk of extirpation (Bart 2000). Random environmental and human-influenced events could cause significant mortality to, or disruption of, local populations of Columbian sharp-tailed grouse with single or few leks. Such events could include drought, fire, inclement weather, accidents, cultivation practices, recreational activities, altered predator dynamics, or disease epidemics (Hart *et al.* 1950; Rogers 1969; WDFW 1995; Mitchell, pers. comm. 1995 and 1998). If the affected population is also isolated, there is little chance of reestablishment to the area and further range reduction is likely to occur.

There is also concern regarding the lack of sufficient data with respect to the genetic integrity of the subspecies' various populations (Saab and Marks 1992). The deleterious effects of inbreeding and genetic drift may pose long-term threats to the smaller, isolated populations. The breeding dynamics of Columbian sharp-tailed grouse and their relatively short life spans and sederitary habits may exacerbate these potential influences. Conservation or reestablishment of such populations

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may require intensive management efforts (Toepfer *et al.* 1990).

The factors discussed above are not considered to be threats to the subspecies because the large, stable metapopulations that occur in Colorado, Idaho, and Utah, representing roughly 97 percent of the subspecies within the U.S., would likely not be affected.

In summary, the available information indicates that the subspecies' metapopulations are relatively secure. These large metapopulations have persisted for the last several decades with no discernable downward trend, and recent information indicates that they may currently be increasing, as are the habitats available to them (SRTIM 2000). However, most of the small, isolated populations of Columbian sharp-tailed grouse will likely be extirpated within a few decades due to existing threats and current management scenarios (Bart 2000).

**Conservation Measures**

An inter-agency (Federal and State) team is currently preparing a conservation assessment for Columbian sharp-tailed grouse in Idaho (Ulliman *et al.* 1998). Upon its completion, the conservation strategy developed in Idaho may be used as a general model for conservation actions in other States and British Columbia.

The Colorado Division of Wildlife helped form and participates on the Northwest Colorado Columbian Sharp-tailed Grouse Work Group (Mumma, *in litt.* 1999). The work group includes interested parties representing resource industries, sportsmen's and conservation groups, and State and Federal resource agencies. The work group is currently developing a formal conservation plan, and is committed to improving conditions for the Columbian sharp-tailed grouse population in the northwest region of the State.

The Washington Department of Fish and Wildlife has prepared a management plan for Columbian sharp-tailed grouse occurring within the State (WDFW 1995), and has recently listed Columbian sharp-tailed grouse as a State threatened species (WDFW 1998a). Washington currently has a program to acquire lands for the protection and active management of Columbian sharp-tailed grouse (WDFW 1998b). Restoration and enhancement of native habitats to improve conditions for existing (and potential) populations are planned for these areas (Schroeder, pers. comm. 1995 and 1998).

Reintroduction efforts for Columbian sharp-tailed grouse have taken place in Washington, Montana, Oregon, Idaho, and Nevada (SRTIM 2000). Many early reintroduction efforts conducted for prairie grouse (including sharp-tailed grouse) failed to produce self-sustaining populations or to increase the size or distribution of augmented populations (Toepfer *et al.* 1990). Several recent efforts have shown greater potential to be effective as the techniques for reintroductions have improved (Toepfer *et al.* 1990; Crawforth, *in litt.* 2000; Schroeder, pers. comm. 1995 and 1998; Meints, pers. comm. 1995 and 1998). However, most of these improvements have been concerned with keeping translocated birds in the immediate vicinity of the release sites during the breeding season. While some reintroduced birds have established leks and reproduced in the release area over a number of years, none of these populations can yet be considered secure (Bart 2000). Continuing reintroduction efforts are planned for Idaho, Nevada, Washington, and Oregon; and various reintroduction efforts are being considered for California, Colorado, and Montana (SRTIM 2000).

Columbian sharp-tailed grouse populations in British Columbia may be expanding on the periphery of their current range where logging activity has created suitable open, grassland habitat. While this is not an active enhancement effort, the beneficial effects of these activities are believed to last up to approximately 15 years (Ritcey 1995; Chutter, pers. comm. 1995).

**Conclusion**

We have reviewed the petition, literature cited in the petition, other pertinent literature and information available in our files, and consulted with biologists and researchers familiar with Columbian sharp-tailed grouse. After reviewing the best scientific and commercial information available, and considering the information's significance with regard to the five listing factors established by the Act and ongoing conservation measures, we find that listing the Columbian sharp-tailed grouse as a threatened species throughout its known historic range in the 48 contiguous United States, as petitioned is not warranted.

In making this finding, we recognize that there have been declines in Columbian sharp-tailed grouse populations primarily attributed to the loss and degradation of important shrub steppe, grassland, and riparian habitats. These impacts are likely due to a combination of factors including crop production, over-grazing by livestock, altered fire frequencies, rural and suburban development, dam construction, herbicide spraying, recreation, and other factors. The Service's status review of the Columbian sharp-tailed grouse range wide has raised concern regarding the status of many of the small populations such that a further status review focusing on these populations will be initiated. However, the available information does not indicate that the large metapopulations of the subspecies are at increased risk of extirpation. We also recognize that various State and Federal agencies throughout the subspecies' historic distribution are actively managing the populations to try and improve their overall status and/or attempting to restore them to currently unoccupied habitats. If information becomes available indicating that listing as endangered or threatened is appropriate, we would propose to list the Columbia sharp-tailed grouse. Furthermore, we retain the option of recognizing a population segment for listing should information become available indicating that such an action is appropriate and warranted.

**References Cited**

A complete list of all references cited herein is available on request from the Upper Columbia River Basin Field Office, (See **ADDRESSES** section).

**Author**

The primary author of this notice is Chris Warren, U.S. Fish and Wildlife Service, 11103 East Montgomery Drive, Spokane, Washington 99206.

**Authority:** The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: September 27, 2000.

**Jamie Rappaport Clark,**

*Director, U.S. Fish and Wildlife Service.*

[FR Doc. 00–25447 Filed 10–10–00; 8:45 am]

**BILLING CODE 4310–55–P**

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

**[I.D. 100400F]**

## Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of intent to prepare a Supplemental Environmental Impact Statement (SEIS); request for comments.



**SUMMARY:** The New England Fishery Management Council (Council) announces its intention to prepare Framework 14 to the Atlantic Sea Scallop Fishery Management Plan (FMP). The intent of this action is to adjust the limited access scallop days-at-sea (DAS) allocations for the next 2 fishing years (March 1, 2001, through February 28, 2003); create a restricted access program for the scallop Mid-Atlantic closed areas (Hudson Canyon South and Virginia Beach), scheduled to reopen on March 1, 2001; and to close additional areas to scallop fishing to protect concentrations of juvenile scallops, reduce fishing mortality, and increase yield per recruit. The Council, in coordination with NMFS, also announces its intent to prepare an SEIS for the Atlantic Sea Scallop FMP in accordance with the National Environmental Policy Act to analyze the impacts of management alternatives.

**DATES:** Written comments on the intent to prepare the SEIS must be received on or before 5 p.m., local time, November 13, 2000.

**ADDRESSES:** Written comments should be sent to Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. Comments may also be sent via fax to (978) 465-0492. Comments will not be accepted if submitted via e-mail or Internet.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Howard, Executive Director, New England Fishery Management Council, (978) 465-0492.

**SUPPLEMENTARY INFORMATION:**

**Background**

Amendment 4 to the Atlantic Sea Scallop FMP, implemented by a final rule published January 19, 1994 (59 FR 2757), established a limited access program and a schedule of annual DAS allocations for full-time, part-time, and occasional vessels with limited access permits. The primary management tool implemented under Amendment 4 to control fishing mortality was the annual DAS allocation.

Amendment 7 to the FMP, implemented by a final rule published March 29, 1999 (64 FR 14835), changed the overfishing definition and extended the DAS-reduction schedule through 2008 to achieve a 10-year biomass rebuilding objective. To comply with the new overfishing definition and implement the rebuilding schedule, Amendment 7 revised the DAS schedule beginning March 1, 1999. To allow time for industry adjustment to the new regulations, the initial annual DAS allocations in 1999 were 120 days for full-time vessels, 48 days for part-time vessels, and 10 days for occasional vessels. According to Amendment 7, the DAS allocations in 2000 would be reduced to 51 days for full-time vessels, 20 days for part-time vessels, and 4 days for occasional vessels, and would remain below these levels until 2007, when the biomass rebuilding targets were expected to be met. The SEIS for Amendment 7 indicated that the 2000 DAS allocations would have negative impacts on the economic viability of the vessels and the scallop fleet. Amendment 7 also modified the framework adjustment process to allow the Council to consider closing and reopening areas, and closed two areas in the Mid-Atlantic to protect small scallops that were prevalent there, to promote stock rebuilding.

Shortly after the implementation of Amendment 7, the Council began deliberations on a longer-term process of developing Amendment 10, which would implement an area-based management system for scallops. In connection with the development of Amendment 10, the Council and NMFS published a Notice of Intent (NOI) to prepare an SEIS (65 FR 6975, February 11, 2000). The NOI announced that the Council is considering, among other things, closing areas with high concentrations of small scallops and opening them later when the scallops reach a certain size. The Council believes that shifting fishing effort in this manner could promote rebuilding, improve yield, and reduce the economic impacts of the low DAS allocations.

While Amendment 10 was being developed, the Council, through Framework 11 to the Scallop FMP (64 FR 31144, June 10, 1999) began a short-term strategy to access Closed Area II (CA II) in order to allow fishing on dense concentrations of scallops without compromising multispecies rebuilding or habitat protection. Framework 11 implemented a 1999 seasonal Georges Bank Sea Scallop Exemption Area (Exemption Area) in and adjacent to CA II and included the following primary measures for vessels fishing in the Exemption Area: A possession limit of up to 10,000 lb (4,536.0 kg) of scallop meats per trip; a maximum of three trips for full and part-time vessels and a maximum of one trip for occasional vessels; an automatic minimum deduction of 10 DAS for each trip; a minimum mesh twine-top of 10 inches (25.40 cm); a total allowable catch (TAC) of yellowtail flounder of 387 metric tons (mt); and an increase in the regulated species possession limit from 300 lb (136.1 kg) to 500 lb (226.8 kg) per trip. In addition, Framework 11 implemented a minimum mesh twine-top of 8 inches (20.32 cm) for vessels fishing under a scallop DAS when fishing outside the Exemption Area.

This strategy occurred in the 1999 and 2000 fishing years. Based on an updated assessment from the 29th Northeast Regional Stock Assessment Workshop (September 1999) and the 1999 Stock Assessment and Fishery Evaluation (SAFE) Report, the Scallop Plan Development Team determined that increasing the Amendment 7 DAS allocations for each of three permit categories to the same amounts as in the 1999 fishing year would meet the 2000 fishing mortality rate (F) target. This was contingent upon scallops in multispecies CA I, CA II, and the Nantucket Lightship Closed Area (NLCA) remaining protected, or upon maintaining conservation neutrality, if scallopers were allowed access to these closed areas. Based on this information, Framework 12 to the FMP (65 FR 11478, March 3, 2000) adjusted the limited access scallop DAS allocations for the fishing year March 1, 2000, through February 28, 2001, to 120 days for full-time vessels, 48 days for part-time vessels, and 10 days for occasional vessels.

Framework 13 to the FMP (65 FR 37903, June 19, 2000) continued the short-term strategy by implementing the 2000 Sea Scallop Exemption Program (Exemption Program), creating Exemption Areas in portions of CA I, CA II, and NLCA, and by including the following management measures: A possession limit of up to 10,000 lb (4,356.0 kg) of scallop meats per trip; a maximum number of trips for each area; an automatic minimum deduction of 10 DAS for each trip; a minimum mesh twine-top of 10 inches (25.40 cm); a yellowtail flounder TAC of 725 mt for CA I and CA II combined, and 50 mt for the NLCA; and an increase in the regulated species possession limit from 300 lb (136.1 kg) to 1,000 lb (435.6 kg) per trip, among other measures. In addition, this action modified the scallop dredge gear stowage requirements and corrected and clarified the "end of the year DAS carry-over" provision for vessels participating in the limited access scallop fishery. The primary intent of this action was to provide a continuation and an expansion of a short-term strategy to allow scallop dredge vessels access to multispecies closed areas without compromising multispecies and sea scallop rebuilding or habitat protection.

The Council is once again considering development of management measures through Framework 14 to provide for

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effective conservation and management of sea scallops while Amendment 10 is being developed. This action proposes to adjust the limited access scallop DAS allocations for the next 2 fishing years (March 1, 2001, through February 28, 2003). Under this measure annual DAS would remain at 120 days for full-time vessels, 48 days for part-time vessels, and 10 days for occasional vessels. This action also proposes a restricted access program for the Mid-Atlantic scallop closed areas (Hudson Canyon South and Virginia Beach), which are currently scheduled to reopen to scallop fishing on March 1, 2000, with no restrictions. Proposed measures and provisions of this action program include: (1) all scallop limited access and open access vessels (dredge, trawl, and General Category vessels) would be allowed access; (2) a scallop TAC for each of the reopened areas; (3) an allowance of five trips per vessel; (4) a possession limit of 15,000 lb (6,804 kg) of meats per trip (400 lb (181.4 kg) of meats for the General Category vessels); (5) an automatic deduction of 10 DAS for each trip; (6) a season of April 1 through February 28, with the provision that the Administrator, Northeast Region, NMFS, may allow additional trips for those vessels that made a trip prior to September 1, 2001; (7) an emergency landing provision, whereby vessels would only be charged one DAS for each 1,500 lb (680 kg) of meats landed, provided the vessel has experienced an emergency condition that forces the vessel to come into port earlier than anticipated; (8) a minimum mesh twine-top of 10 inches (25 cm) for scallop dredge vessels; (9) a vessel monitoring system requirement, with double-polling for the duration of the access program; (10) a TAC set-aside to allow cooperative research; and (11) a TAC set-aside to provide for observer coverage. The Council also may propose additional closed areas to protect concentrations of small scallops. Options for the closed areas include areas in both the Mid-Atlantic and Georges Bank.

Because the Mid-Atlantic closed areas are scheduled to reopen on March 1, 2001, the Council is considering in Framework 14 a restricted access program to prevent a rush of effort into the closed areas, which could potentially diminish the benefits achieved by the closures, and to balance fishing effort between the closed and open areas of the scallop fishery.

Because Framework 14 is the third in a series of short-term measures adopted by the Council during the development of Amendment 10, the Council, in cooperation with NMFS, has determined that it may be necessary to prepare an SEIS to examine the cumulative effects and consequences of the short-term measures on the human environment. In preparing the SEIS, the Council and NMFS will take into account, in addition to comments received in response to this document, all comments that have already been submitted and all discussions that have occurred in Council meetings before the publication of this document.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: October 5, 2000.

**Bruce C. Morehead,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 00–26060 Filed 10–5–00; 3:52 pm]

**BILLING CODE 3510-22-S**



# Notices

Federal Register
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Wednesday, October 11, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–848]**

### Notice of Preliminary Results of Antidumping Duty Administrative Review and New Shipper Reviews, Partial Rescission of the Antidumping Duty Administrative Review, and Rescission of a New Shipper Review: Freshwater Crawfish Tail Meat From the People's Republic of China

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China (PRC) in response to requests from the Crawfish Processors Alliance (the petitioner); from respondents Qingdao Rirong Foodstuff Co. Ltd. (Qingdao Rirong), Lianyungang Haiwang Aquatic Products Co., Ltd. (Lianyungang Haiwang), Yancheng Haiteng Aquatic Products & Foods, Co., Ltd. (Yancheng Haiteng), Huaiyin Foreign Trade Corporation No. 30 (Huaiyin30), Yancheng Baolong Biochemical Products Co., Ltd. (Baolong Biochemical), and from importers Ocean Harvest Wholesale Inc. (Ocean Harvest), Maritime Trading Company (Maritime Trading), and Boston Seafood Processors (Boston Seafood). The period of review is from September 1, 1998 through August 31, 1999.

The Department is also conducting new shipper reviews in response to requests from Fujian Pelagic Fishery Group Company (Fujian Pelagic), Yangzhou Lakebest Foods Co., Ltd. (Yangzhou Lakebest), Suqian Foreign Trade Co., Ltd. (Suqian FTC), Qingdao Zhengri Seafood Co., Ltd. (Qingdao Zhengri), and Shantou SEZ Yangfeng Marine Products Company (Shantou SEZ). These reviews cover the period September 1, 1998 through August 31, 1999. See the Background section of this notice, below.

We preliminarily determine that sales have been made below normal value (NV). The preliminary results are listed below in the section titled "Preliminary Results of Review." If these preliminary results are adopted in our final results, we will instruct the U.S. Customs Service to assess antidumping duties based on the difference between the export price (EP) or constructed export price (CEP), as applicable, and NV. Interested parties are invited to comment on these preliminary results. (*See* the "Preliminary Results of Review" section of this notice.)

**EFFECTIVE DATE:** October 11, 2000.

**FOR FURTHER INFORMATION CONTACT:** Thomas Gilgunn, Elfi Blum, Jacky Arrowsmith, or Maureen Flannery, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–0648, (202) 482–0197, (202) 482–4052, or (202) 482–3020, respectively.

### The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (1999).

### Background

The Department published in the **Federal Register** an antidumping duty order on freshwater crawfish tail meat from the PRC on September 15, 1997 (62 FR 48218). On September 30, 1999, in accordance with 19 CFR 351.213(b)(1), the Department received requests for review from respondents Qingdao Rirong, Lianyungang Haiwang, Yancheng Haiteng, Huaiyin30, and Baolong Biochemical. The Department also received a request from Ocean Harvest, which requested a review of Yancheng Foreign Trade Corporation (Yancheng FTC), and from Maritime Trading and Boston Seafood Processors, which each requested a review of Huaiyin30. In addition, the Department received a request from petitioner to conduct an administrative review of Qingdao Rirong, Lianyungang Haiwang, Yancheng Haiteng, Huaiyin Foreign Trade Corporation (Huaiyin FTC), Huaiyin, Hua Yin, Huaiyin30, Baolong Biochemical, China Everbright Trading Company (China Everbright), Binzhou Prefecture Foodstuffs Import & Export Corp. (Binzhou Foodstuffs), Yancheng FTC, Jiangsu Cereals, Oils & Foodstuff Import & Export Corp. (Jiangsu Cereals), Yancheng Baolong Aquatic Foods Co., Ltd. (Baolong Aquatic), Huaiyin Ningtai Fisheries Co., Ltd. (Huaiyin Ningtai), Nantong Delu Aquatic Food Co., Ltd. (Nantong Delu), Zhenfeng Foodstuff Company (Zhenfeng Foodstuff), Weishan Hongfa Lake Foodstuff Co., Ltd. (Weishan Hongfa), Ever Concord, Hua Yin Foreign Trading (Hua Yin FT), Huaiyin Foreign Trading (Huaiyin FT), Lianyungang Hailong Aquatic Product (Lianyungang Hailong), Qifaco, Seatrade International, Weishan Jinmuan Foodstuff (Weishan Jinmuan), Welly Shipping, aka Kenwa Shipping (Welly Shipping), Yancheng Foreign Trading, Jiangsu Baolong Group (Baolong Group), Asia-Europe, Jiangsu Yancheng Aquatic Products Freezing Plant (Yancheng Aquatic), and Yupeng Fishery. In addition, the petitioner requested an administrative review of Ningbo Nanlian Frozen Foods Co., Ltd. (Ningbo Nanlian) and Huaiyin Foreign Trade Corporation (No. 5) (Huaiyin5).[1]

On October 28, 1999, the Department initiated an antidumping administrative review of the following companies: Ningbo Nanlian, Huaiyin5, Qingdao Rirong, Lianyungang Haiwang, Yancheng Haiteng, Huaiyin FTC, Huaiyin, Hua Yin, Huaiyin30, Baolong Biochemical, China Everbright, Binzhou Foodstuffs, Yancheng FTC, Jiangsu

[1] In the 1997/1998 administrative review, the Department determined that the export operations of Ningbo Nanlian and Huaiyin5 (Ningbo Nanlian/Huaiyin5) were intertwined such that the two companies appeared to be under common control and should receive a single antidumping duty rate. *See* proprietary versions of the Memorandum from Edward C. Yang to Joseph A. Spetrini: "Relationship of Ningbo Nanlian Frozen Foods Company, Ltd. and Huaiyin Foreign Trade Corporation (5)", dated April 7, 2000; "Issues and Decision Memo for the Administrative Review of the Antidumping Duty Order on Freshwater Crawfish Tail Meat from the People's Republic of China—March 26, 1997 through August 31, 1998," dated April 19, 2000. In light of this decision, the Department required Ningbo Nanlian and Huaiyin5 to submit consolidated questionnaire responses in the current administrative review.

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Cereals, Baolong Aquatic, Huaiyin Ningtai, Nantong Delu, Zhenfeng Foodstuff, Weishan Hongfa, Ever Concord, Hua Yin FT, Huaiyin FT, Lianyungang Hailong, Qifaco, Seatrade International, Weishan Jinmuan, Welly Shipping, Yancheng Foreign Trading, Baolong Group, Asia-Europe, Yancheng Aquatic, and Yupeng Fishery. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 64 FR 60161 (November 4, 1999). This administrative review covers the period September 1, 1998 through August 31, 1999.

On September 19, 1999, the Department received a request from Yixing Ban Chan Foods, and on September 30, 1999, the Department received requests from Fujian Pelagic, Yangzhou Lakebest, Suqian FTC, Qingdao Zhengri, and Shantou SEZ for new shipper reviews of the antidumping duty order on freshwater crawfish tail meat from the PRC. These requests were made pursuant to section 751(a)(2)(B) of the Act and section 351.214(b) of the Department's regulations, which state that, if the Department receives a request for review from an exporter or producer of the subject merchandise stating that it did not export the merchandise to the United States during the period covered by the original investigation (the POI) and that such exporter or producer is not affiliated with any exporter or producer who exported the subject merchandise during that period, the Department shall conduct a new shipper review to establish an individual weighted-average dumping margin for such exporter or producer, if the Department has not previously established such a margin for the exporter or producer.

The regulations require that the exporter or producer shall include in its request, with appropriate certifications: (i) The date on which the merchandise was first entered, or withdrawn from warehouse, for consumption, or, if it cannot certify as to the date of first entry, the date on which it first shipped the merchandise for export to the United States, or if the merchandise has not yet been shipped or entered, the date of sale; (ii) a list of the firms with which it is affiliated; (iii) a statement from such exporter or producer, and from each affiliated firm, that it did not, under its current or a former name, export the merchandise during the POI; and (iv) in an antidumping proceeding involving inputs from a non-market-economy (NME) country, a certification that the export activities of such exporter or producer are not controlled by the central government. *See* 19 CFR 351.214(b)(ii) and (iii).

The requests received from Yixing Ban Chang, Fujian Pelagic, Yangzhou Lakebest, Suqian FTC, Qingdao Zhengri, and Shantou SEZ were accompanied by information and certifications establishing the effective date on which each company first shipped and entered freshwater crawfish tail meat for consumption in the United States, the volume of each shipment, and the date of first sale to an unaffiliated customer in the United States. Each of these five companies certified that it was not affiliated with any company which exported freshwater crawfish tail meat from the PRC during the POI. In addition, Yixing Ban Chang, Fujian Pelagic, Yangzhou Lakebest, Suqian FTC, Qingdao Zhengri, and Shantou SEZ each certified that its export activities are not controlled by the central government. On November 1, 1999, the Department initiated these new shipper reviews covering the period September 1, 1998 through August 31, 1999. *See Freshwater Crawfish Tail Meat From the People's Republic of China: Initiation of New-Shipper Antidumping Administrative Review*, 64 FR 61833 (November 15, 1999). On February 25, 2000, Yixing Ban Chang withdrew its request for review, in accordance with 19 CFR 351.214 (f)(1). On August 4, 2000, the Department published the rescission of the new shipper review of Yixing Ban Chang. *See Freshwater Crawfish Tail Meat From the People's Republic of China: Notice of Partial Rescission of New Shipper Antidumping Duty Review*, 65 FR 47958 (August 4, 2000).

On May 22, 2000 and May 24, 2000, Fujian Pelagic, Qingdao Zhengri, Shantou SEZ, Suqian FTC, and Yangzhou Lakebest, in accordance with 19 CFR 351.214(j)(3), agreed to waive the new shipper time limits applicable to their reviews so that the Department might conduct their new shipper reviews concurrently with the 1998/99 administrative review of crawfish tail meat from the PRC. On August 2, 2000, we aligned the deadlines for the new shipper reviews of Fujian Pelagic, Qingdao Zhengri, Shantou SEZ, Suqian FTC, and Yangzhou Lakebest with the deadlines of the 1998/99 administrative review. *See Freshwater Crawfish Tail Meat From the People's Republic of China: Postponement of Time Limits for Preliminary Results of New Shipper Antidumping Reviews*, 65 FR 48466 (August 8, 2000).

Due to extraordinarily complicated issues in this case, on May 11, 2000 the Department extended the deadline for completion of the preliminary results of the administrative review to September 29, 2000. *See Notice of Extension of Time Limits for Preliminary Results of Administrative Antidumping Review: Freshwater Crawfish Tail Meat from the People's Republic of China*, 65 FR 33297 (May 23, 2000).

**Scope of Reviews**

The product covered by these reviews is freshwater crawfish tail meat, in all its forms (whether washed or with fat on, whether purged or unpurged), grades, and sizes; whether frozen, fresh, or chilled; and regardless of how it is packed, preserved, or prepared. Excluded from the scope of the order are live crawfish and other whole crawfish, whether boiled, frozen, fresh, or chilled. Also excluded are saltwater crawfish of any type, and parts thereof. Freshwater crawfish tail meat is currently classifiable in the Harmonized Tariff Schedule of the United States (HTS) under item numbers 0306.19.00.10 and 0306.29.00.00. The HTS subheadings are provided for convenience and Customs purposes only. The written description of the scope of this order is dispositive.

**Partial Rescission of Administrative Review**

On February 1, 2000, petitioner withdrew its request for review for Everbright, Binzhou Foodstuffs, Jiangsu Cereals, Baolong Aquatic, Huaiyin Ningtai, Nantong Delu, Ever Concord, Lianyungang Hailong, Qifaco, Seatrade International, Weishan Jinmuan, Welly Shipping, and Yancheng Foreign Trading. The Department's regulations at 19 CFR 351.213(d)(1) provide that a party may withdraw its request for review within 90 days of the date of publication of the notice of initiation of the requested review. The petitioner withdrew its request for review of these companies within the 90-day period. Therefore, because there were no other requests for review of these companies, we are rescinding our review of China Everbright, Binzhou Foodstuffs, Jiangsu Cereals, Baolong Aquatic, Huaiyin Ningtai, Nantong Delu, Ever Concord, Lianyungang Hailong, Qifaco, Seatrade International, Weishan Jinmuan, Welly Shipping, and Yancheng Foreign Trading. We note that although petitioner withdrew its request for "Yancheng Foreign Trading," it did not withdraw its request for review of "Yancheng FTC." Both petitioner and Ocean Harvest requested a review of Yancheng FTC, and we are continuing that review.

On March 14, 2000, Qingdao Rirong informed the Department that it had no shipments of the subject merchandise to the United States during the period of review (POR). On June 1, 2000, Zhenfeng Foodstuff informed the Department that it had no shipments of the subject merchandise to the United States during the period of review (POR). We also determined that Weishan Hongfa and Yancheng Aquatic made no exports of subject merchandise during the POR. We also received section D responses from Weishan Hongfa submitted by Baolong Biochemical for its review, and from Yancheng Aquatic, submitted by Yancheng Haiteng for its review. These responses stated, respectively, that Weishan Hongfa and Yancheng Aquatic did not export to the United States during the POR. We independently confirmed that Qingdao Rirong, Zhenfeng Foodstuff, Weishan Hongfa and Yancheng Aquatic had no shipments during the POR. The Department's regulations at 19 CFR 351.213(d)(3) provide that the Department may rescind a review with respect to a company if that company made no exports of subject merchandise during the POR. Therefore, in accordance with section 351.213(d)(3) of the Department's regulations, we are finally rescinding our review of Qingdao Rirong, Zhenfeng Foodstuff, Weishan Hongfa, and Yancheng Aquatic.

Based on information obtained at verification, we determine that Baolong Biochemical did not make any sales to the United States during the POR. (*See* Verification section below and memorandum from Joseph A. Spetrini to Troy H. Cribb "Yancheng Baolong Biochemical Products (Baolong Biochemical): Intent to Rescind Administrative Review" dated September 29, 2000 (Baolong Biochemical Rescission Memo).) The Department's regulations at 19 CFR 351.213(d)(3) provide that the Department may rescind a review with respect to a company if that company made no exports of subject merchandise during the POR. Therefore, in accordance with section 351.213(d)(3) of the Department's regulations, we are preliminarily rescinding our review of Baolong Biochemical.

The petitioner requested a review for Huaiyin, Hua Yin, Hua Yin FT, and Huaiyin FT. The Department had no addresses or other identifying information regarding these four companies. We contacted petitioner and requested addresses, but petitioner was unable to furnish addresses for these names. These names appear to be variant or erroneous spellings of exporters whose names include the word "Huaiyin." The Department's regulations at 19 CFR 351.213(d)(3) provide that the Department may rescind a review with respect to a company if that company made no exports of subject merchandise during the POR. Therefore, in accordance with section 351.213(d)(3) of the Department's regulations, we are preliminarily rescinding our review of Huaiyin, Hua Yin, Hua Yin FT, and Huaiyin FT. We preliminarily determine that subject merchandise entering the United States under one of these names is covered by this review only to the extent that the exporter is in fact Huaiyin FTC, Huaiyin5, or Huaiyin30, which are separately covered by this review.

**Application of Facts Available**

Section 776(a)(2) of the Act provides that if any interested party: (A) Withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested; (C) significantly impedes an antidumping investigation; or (D) provides such information but the information cannot be verified, the Department shall use the facts otherwise available in reaching the applicable determination under this title. *See Dynamic Random Access Memory Semiconductors of One Megabit or Above From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Order in Part*, 64 FR 30481 (June 8, 1999); *Silicon Metal From The People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 63 FR 37850 (July 14, 1998); *Silicon Metal From The People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review*, 63 FR 11654 (March 10, 1998).

Huaiyin FTC, Yupeng Fishery, Baolong Aquatic, and Asia Europe failed to respond to the Department's antidumping questionnaire. In addition, Lianyungang Haiwang failed to respond to the Department's supplemental questionnaire. As a result, we were unable to obtain the information necessary to conduct a review. Therefore, in accordance with section 776(a)(2)(A) of the Act, we are applying facts available to Huaiyin FTC, Yupeng Fishery, Lianyungang Haiwang, Baolong Aquatic, and Asia Europe. Since we have also determined that Baolong Group was the same company as Baolong Aquatic and Asia Europe during the POR (see Verification section below and the *Baolong Biochemical Rescission Memo*), we are applying adverse facts available to the Baolong Group.

It is the Department's policy that a respondent's eligibility for separate rates must be evaluated in each administrative review and must be based on respondent's claim for a separate rate in each administrative review, regardless of any separate rate the respondent received in the past. *See Manganese Metal from the People's Republic of China, Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 63 FR 12441 (March 13, 1998). However, for companies for which no questionnaire response is on the record, we are unable to evaluate whether a separate rate would be appropriate. In the instant administrative review, Huaiyin FTC, Asia-Europe, Baolong Aquatic (aka Baolong Group), Yupeng Fishery, and Lianyungang Haiwang failed to provide complete and accurate responses which could be used in the determination of separate rates. Therefore, consistent with Department practice, we are treating these companies, together with all other PRC companies that have not established that they are entitled to separate rates, as a single enterprise subject to government control. Furthermore, we have determined the rate to be applied to this single enterprise, a PRC-wide rate based on adverse facts available, in accordance with section 776(b) of the Act.

Section 776(b) of the Act provides that the Department may apply adverse facts available to a respondent when that respondent fails to cooperate to the best of its ability. Section 776(b) of the Act states that adverse facts available may include information derived from the petition, the final determination, a previous administrative review, or other information placed on the record. As adverse facts available, we are using the rate for Huaiyin 30, 240.34 percent, the highest rate in this segment of the proceeding, which is also the highest rate in any segment of the proceeding.

Section 776(c) of the Act provides that when the Department relies on secondary information, the Department shall, to the extent practicable, corroborate that information with independent sources reasonably at the Department's disposal. The Statement of Administrative Action (SAA) accompanying the URAA clarifies that the petition is secondary information. *See* SAA, H.R. Doc. 103–316 at 870 (1994). The SAA also clarifies that "corroborate" means to determine whether the information used has probative value. Id. In this instance, we are using an actual calculated rate from a company covered in this review. Thus, we consider this rate to have probative value. Accordingly, pursuant to section

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776(b) of the Act, we are applying the rate of 240.34 percent to Huaiyin FTC, Baolong Aquatic, Asia-Europe, the Baolong Group, Yupeng Fishery, and Lianyungang Haiwang, as well as for the PRC entity. *See Determination of Adverse Facts Available in the Administrative Review of Freshwater Crawfish Tail Meat from the People's Republic of China (Adverse Facts Available Memorandum)*, dated September 29, 2000.

We were unable to verify a significant portion of Huaiyin30's questionnaire responses. Specifically, we found that (1) Huaiyin30 failed to report a factory which supplied it subject merchandise sold during the POR; and (2) we could not verify the significant parts of Huaiyin30's reported factors of production for another factory. Therefore, consistent with sections 776 (a) of the Act, we have determined to assign an antidumping margin based on partial facts available to Huaiyin30. *See* the proprietary memorandum, "Determination of Partial Facts Available for Huaiyin Foreign Trade Corporation (30) in the Administrative Review of Freshwater Crawfish Tail Meat from the People's Republic of China," dated September 29, 2000.

**Duty Absorption**

On December 15, 1999, the petitioners requested that the Department determine whether antidumping duties had been absorbed during the POR for freshwater crawfish tail meat from Fujian Pelagic, Yangzhou Lakebest, Suqian FTC, Qingdao Zhengri, and Shantou SEZ in the new shipper reviews, and for Ningbo Nanlian/Huaiyin5, Huaiyin30, Lianyungang Haiwang, Nantong Delu, Yancheng Haiteng, Yancheng FTC, and Baolong Biochemical in the administrative review.[2] Section 751(a)(4) of the Act provides for the Department, if requested, to determine during an administrative review initiated two or four years after publication of the order, whether antidumping duties have been absorbed by a foreign producer or exporter, if the subject merchandise is sold in the United States through an affiliated importer. In this case, Ningbo Nanlian/Huaiyin5 and Yancheng Haiteng sold to the United States through an affiliated importer. In addition, Yancheng FTC's reported sales included sales in which Yancheng FTC acted as the exporter of record for sales made by Nantong Delu to Ocean Harvest, its affiliated U.S. importer. Because the order underlying this review was issued in 1997, and this review was initiated in 1999, we are making a duty absorption determination in this segment of the proceeding.

Prior to these preliminary results, we requested that Ningbo Nanlian/Huaiyin5, and Yancheng Haiteng place on the record evidence that unaffiliated purchasers will ultimately pay the antidumping duties to be assessed on entries during the review period for the respective class or kind of merchandise, and that Yancheng FTC and Ocean Harvest place such evidence on the record with respect to Nantong Delu. Nantong Delu and Ocean Harvest stated that we can ascertain that Ocean Harvest passed the cost of the estimated duties on to its customers by comparing Ocean Harvest's price to its customers with the entered value of the subject merchandise. None of these companies provided any evidence, nor is there any evidence on the record, that the unaffiliated purchasers of subject merchandise sold by Ningbo Nanlian/Huaiyin5, Yancheng Haiteng, or Nantong Delu will ultimately pay the antidumping duties to be assessed on entries during the review period. Accordingly, based on the record, we cannot conclude that the unaffiliated purchasers in the United States will pay the ultimately assessed duties. Therefore, we preliminarily find that for Ningbo Nanlian/Huaiyin5 and Yancheng Haiteng, antidumping duties have been absorbed by the affiliated importer during the POR. In addition, we preliminarily find that antidumping duties have been absorbed by the Ocean Harvest for sales in which Yancheng FTC acted as the exporter for Nantong Delu during the POR. (*See* "Memorandum to the File from Thomas Gilgunn; Analysis for the Preliminary Results of Administrative Review of Freshwater Crawfish Tail Meat from the People's Republic of China: Ningbo Nanlian Frozen Foods Co., Ltd./Huaiyin Foreign Trade Corp. (5)," dated September 29, 2000, "Memorandum to the File from Sarah Ellerman; Analysis for the Preliminary Results of Administrative Review of Freshwater Crawfish Tail Meat from the People's Republic of China: Yancheng Haiteng Aquatic Products and Foods Co., Ltd.," dated September 29, 2000), and "Memorandum to the File from Elfi Blum-Page; Analysis for the Preliminary Results of Administrative Review of Freshwater Crawfish Tail Meat from the People's Republic of China: Yancheng Foreign Trade Corporation," dated September 29, 2000.)

**Verification**

As provided in section 782(i) of the Act, we conducted a verification of the responses of the following companies: Huaiyin30, Ningbo Nanlian/Huaiyin5, Yancheng Haiteng, Yancheng FTC, Baolong Biochemical, Fujian Pelagic, Suqian FTC, Yangzhou Lakebest, Shantou SEZ, and Qingdao Zhengri. These include all companies for which we are conducting a new shipper review. We used standard verification procedures, including on-site inspection of the manufacturers' facilities and the examination of relevant sales and financial records. Our verification results are outlined in the public versions of the verification reports.

**New Shippers**

Based on the questionnaire responses received from Fujian Pelagic, Suqian FTC, Yangzhou Lakebest, Shantou SEZ, and Qingdao Zhengri, and our verification thereof, we preliminarily determine that these companies have met the requirements to qualify as new shippers during the POR. We have determined that they made their first sale or shipment of subject merchandise to the United States during the POR, that these sales were *bona fide* sales made in normal commercial quantities, and that these companies were not affiliated with any exporter or producer that previously shipped to the United States.

**Separate Rates**

Ningbo Nanlian/Huaiyin5, Huaiyin30, Yancheng Haiteng, Yancheng FTC, Fujian Pelagic, Yangzhou Lakebest, Suqian FTC, Qingdao Zhengri, and Shantou SEZ have requested separate, company-specific rates. In their questionnaire responses, the above companies state that they are independent legal entities. Ningbo Nanlian/Huaiyin5, Qingdao Zhengri, Yangzhou Lakebest, Shantou SEZ, and Yancheng Haiteng have furthermore reported they are PRC-foreign joint ventures.

To establish whether a company operating in an NME country is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991), as amplified by the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994). Under this policy, exporters in NMEs are entitled to separate, company-specific margins when they can demonstrate an absence of government control, both in law and in fact, with respect to export activities. Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. *De facto* absence of government control over exports is based on four factors: (1) Whether each exporter sets its own export prices independently of the government and without the approval of a government authority; (2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) whether each exporter has the authority to negotiate and sign contracts and other agreements; and (4) whether each exporter has autonomy from the government regarding the selection of management.

[2] The Petitioner also requested duty absorption reviews for a number of companies for which we are rescinding the administrative review. As such, the petitioner's request for duty absorption reviews with regard to these companies is moot and we do not address them here.



**De Jure Control**

With respect to the absence of *de jure* government control over the export activities of all the companies reviewed, evidence on the record indicates that Ningbo Nanlian/Huaiyin5, Yancheng Haiteng, Huaiyin30, Yancheng FTC, Fujian Pelagic, Yangzhou Lakebest, Suqian FTC, Qingdao Zhengri, and Shantou SEZ are not controlled by the government. All of the above companies submitted evidence of their legal right to set prices independent of all government oversight. The business licenses of every company indicates that each is permitted to engage in the exportation of crawfish. We find no evidence of *de jure* government control restricting any of the reviewed companies from the exportation of crawfish. *See* "Separate Rate Analysis in the d Administrative Review and New Shipper Review of Freshwater Crawfish Tail Meat from the People's Republic of China," dated September 29, 2000 (*Separate Rates Memorandum*), which is on file in the Central Records Unit (room B099 of the Main Commerce Building).

No export quotas apply to crawfish. Prior verifications have confirmed that there are no commodity specific export licenses required and no quotas for the seafood category "Other," which includes crawfish, in *China's Tariff and Non-Tariff Handbook* for 1996. In addition, we have previously confirmed that crawfish is not on the list of commodities with planned quotas in the 1992 PRC Ministry of Foreign Trade and Economic Cooperation document entitled *Temporary Provisions for Administration of Export Commodities*. (*See Freshwater Crawfish Tail Meat From The People's Republic of China; Preliminary Results of New Shipper Review*, 64 FR 8543 (February 22, 1999) and *Freshwater Crawfish Tail Meat From the People's Republic of China; Final Results of New Shipper Review*, 64 FR 27961 (May 24, 1999) (*Ningbo New Shipper Review*).)

The following laws, which have been placed on the record of this review, indicate a lack of *de jure* government control over companies owned by "all the people" and that control over these enterprises has been transferred from the government to the enterprises themselves. *The Administrative Regulations of the People's Republic of China for Controlling the Registration of Enterprises as Legal Persons* (*Legal Persons Law*), issued on July 13, 1988 by the State Administration for Industry and Commerce of the PRC and placed on the record of these reviews, provide that, to qualify as legal persons, companies must have the "ability to bear civil liability independently" and the right to control and manage their businesses. These regulations also state that as an independent legal entity, a company is responsible for its own profits and losses. (*See Notice of Final Determination of Sales at Less Than Fair Value: Mangonese Metal from the People's Republic of China*, 60 FR 56046 (November 6, 1995) (*Manganese Metal*). *The People's Republic of China All People's Ownership Business Law* (*Company Law*), also on the record of these reviews, states that a foreign company shall bear civil responsibility for the operational activities of its branch organization in China. At verification, we saw that business licenses for Ningbo Nanlian/Huaiyin5, Yancheng Haiteng, Huaiyin5, Huaiyin30, Yancheng FTC, Fujian Pelagic, Yangzhou Lakebest, Suqian FTC, Qingdao Zhengri, and Shantou SEZ were established in accordance with these laws.

Yancheng Haiteng, Yangzhou Lakebest, Yancheng FTC, and Shantou SEZ provided copies of the *Foreign Trade Law*, which identifies the rights and responsibilities of business enterprises with foreign investment, grants autonomy to foreign trade operators in management decisions, and establishes the foreign trade operator's accountability for profits and losses. Therefore, with respect to the absence of *de jure* control over export activity, we determine that these firms are independent legal entities. Yancheng Haiteng placed on the record of this review *The Sino-Foreign Equity Joint Venture Law of the PRC*, which grants export rights to Sino-foreign equity joint venture companies without additional approval from a government entity. Qingdao Zhengri, Yancheng Haiteng, Ningbo Nanlian/Huaiyin5, Yangzhou Lakebest and Shantou SEZ also cited this law in their responses.

**De Facto Control**

With respect to the absence of *de facto* control over export activities, the information presented indicates that the management of Ningbo Nanlian/Huaiyin5, Yancheng Haiteng, Huaiyin30, Yancheng FTC, Fujian Pelagic, Yangzhou Lakebest, Suqian FTC, Qingdao Zhengri, and Shantou SEZ are responsible for all decisions such as the determination of export prices, profit distribution, marketing strategy, and contract negotiations. Our analysis indicates that there is no government involvement in the daily operations or the selection of management for any of these companies. In addition, we have found that these respondents' pricing and export strategy decisions are not subject to any outside entity's review or approval, and that there are no governmental policy directives that affect these decisions.

There are no restrictions on the use of respondent's revenues of profits, including export earnings. Each company's general manager has the right to negotiate and enter into contracts, and may delegate this authority to employees within the company. There is no evidence that this authority is subject any level of governmental approval. Each company has stated that its management is selected by its board of directors and or its employees and that there is no government involvement in the selection process. Lastly, decisions made by respondents concerning purchases of subject merchandise from other suppliers are not subject to government approval. For more information, *see Separate Rates Memorandum*. Consequently, because evidence on the record indicates an absence of government control, both in law and in fact, over their export activities, we preliminarily determine that these exporters are entitled to separate rates. For further discussion of the Department's preliminary determination that these exporters are entitled to separate rates, *see Separate Rate Memorandum*.

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**Normal Value Comparisons**

To determine whether respondents' sales of the subject merchandise to the United States were made at prices below NV, we compared their United States prices to NV, as described in the "United States Price" and "Normal Value" sections of this notice.

**United States Price**

For Ningbo Nanlian/Huaiyin5 and Yancheng Haiteng, in part, and for Yancheng FTC's sales made on behalf of Nantong Delu, we based United States price on CEP in accordance with section 772(b) of the Act, because the first sales to unaffiliated purchasers were made after importation. We calculated CEP based on packed prices from the U.S. affiliate's warehouse to the first unaffiliated purchaser in the United States. We made the following deductions from the starting price (gross unit price), where applicable: foreign inland freight, international (ocean) freight, U.S. customs duty, brokerage and handling expenses, the affiliated purchaser's U.S. credit expenses, and the affiliated purchaser's indirect selling expenses. *See* sections 772(c) and (d) of the Act. Because U.S. customs duty, brokerage and handling expenses, credit expenses, and indirect selling expenses, are market-economy costs incurred in U.S. dollars, we used actual costs rather than surrogate values for these deductions to gross unit price.

For Huaiyin30, Yancheng FTC, Fujian Pelagic, Yangzhou Lakebest, Suqian FTC, Qingdao Zhengri, Shantou SEZ, and, in part, for Ningbo Nalian/Huaiyin5 and Yancheng Haiteng, we based United States price on EP in accordance with section 772(a) of the Act, because the first sales to unaffiliated purchasers were made prior to importation, and CEP was not otherwise warranted by the facts on the record. We calculated EP based on packed prices from the exporter to the first unaffiliated purchaser in the United States. We deducted foreign inland freight and brokerage and handling expenses in the home market from the starting price (gross unit price) in accordance with Section 772(c) of the Act.

The Department has also preliminarily determined that Fujian Pelagic's sales to Pacific Coast Fishery Corporation (Pacific Coast) should be treated as EP sales. For more information, *see* the business proprietary version of the memorandum entitled "New-Shipper Review of Freshwater Crawfish Tail meat from the People's Republic of China (PRC) (A–570–848): Sales Verification Report for Fujian Pelagic Fishery Group Company (Fujian Pelagic Group)," dated September 29, 2000.

**Normal Value**

For companies located in NME countries, section 773(c)(1) of the Act provides that the Department shall determine NV using a factors-of-production methodology if (1) the merchandise is exported from an NME country, and (2) available information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act.

In every case conducted by the Department involving the PRC, the PRC has been treated as an NME country. Pursuant to section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. None of the companies contested such treatment in these reviews. Accordingly, we have applied surrogate values to the factors of production to determine NV.

We calculated NV based on factors of production in accordance with section 773(c)(4) of the Act and section 351.408(c) of our regulations. Consistent with the original investigation and the first administrative review of this order, we determined that India (1) is comparable to the PRC in level of economic development, and (2) is a significant producer of comparable merchandise. With the exception of the crawfish input, we valued the factors of production using publicly available information from India. For the crawfish input, we used Spanish import statistics for crawfish imported from Portugal. For further discussion, *see* Memorandum from The Crawfish Team, *Freshwater Crawfish Tail Meat from the People's Republic of China: Factor Values Memorandum*, dated September 29, 2000 (*Factor Values Memo*). We used import prices to value many factors. As appropriate, we adjusted import prices by adding freight expenses to make them delivered prices.

We valued the factors of production as follows:

- To value whole crawfish, we used the average Spanish import price for fresh (not frozen) crawfish imported from Portugal. In order to factor out seasonal fluctuations in the price of the Spanish import data, we valued whole crawfish using monthly data from the POR.

We used the monthly Spanish import price data for whole crawfish imported from Portugal during the POR submitted by the petitioner on September 18, 2000. Petitioner stated that this information was "updated data from the Spanish Ministry of Customs" obtained through Global Trade Information Services, Inc. On September 19, 2000, Ningbo Nanlian/Huaiyin5 stated that the Department should not use the petitioner's data since that information was obtained from a fee-based internet service, and thus is not publicly available. In addition, Ningbo Nanlian/Huaiyin5 cited discrepancies between the petitioner's data and official Spanish import data which Ningbo Nanlian/Huaiyin5 submitted for one month. On September 20, 2000, the Department requested that Ningbo Nanlian/Huaiyin5 submit Spanish import data for all POR months to the record. (*See* Memorandum to the File, *Freshwater Crawfish Tail Meat from the PRC: Request for Monthly Spanish Import Data for Whole Crawfish*, dated September 21, 2000.) Ningbo Nanlian/Huaiyin5 did not submit the requested information. Thus, we are using the only monthly data on the value of the whole crawfish that is available to us, that petitioners submitted. Since the factors of production were reported for a period concurrent with our valuation of the crawfish input, we did not adjust these factor values for inflation. See the *Factor Values Memorandum* for further discussion.

To value the by-product of shells, we used a free-on-board (FOB) factory price quote for crab and shrimp shells from a Canadian seller of crustacean shells. (*See Notice of Preliminary Results of Antidumping Duty Administrative Review and New Shipper Reviews, Partial Rescission of the Antidumping Administrative Review, and Rescission of the New Shipper Review for Yancheng Baolung Biochemical Products, Co., Ltd.: Freshwater Crawfish Tail Meat from the People's Republic of China*, 64 FR 55236, October 12, 1999.) We adjusted this price to reflect deflation to the crawfish processing season.

To value coal and electricity, we used data reported as the average Indian domestic prices within the categories of "Steam Coal for Industry" and "Electricity for Industry," published in the International Energy Agency's publication, *Energy Prices and Taxes, First Quarter, 2000*. We adjusted the cost of coal to include an amount for transportation. For water, we relied upon public information from the October 1997 *Second Water Utilities Data Book: Asian and Pacific Region*, published by the Asian Development Bank.

To achieve comparability of the energy and water prices to the factors reported for the crawfish processing periods applicable for the companies under review, we adjusted these factor values using the Wholesale Price Index (WPI) for India, as published in the *International Financial Statistics (IFS)* published by the International Monetary Fund (IMF), to reflect inflation through the applicable periods.

- To value plastic bags, cardboard boxes and adhesive tape, we relied upon Indian import data from the April 1998 through August 1998 issues of *Monthly Statistics of the Foreign Trade of India (Monthly Statistics)*. We adjusted these prices to reflect inflation to the crawfish processing season. We adjusted the values of packing materials to include freight costs incurred between the supplier and the factory, and we deflated to the period of production. For transportation distances used for the calculation of freight expenses on raw materials, we added to surrogate values from India a surrogate freight cost using the shorter of (a) the distances between the closest PRC port and the factory, or (b) the distance between the domestic supplier and the factory. *See Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails From the People's Republic of China*, 62 FR 51410 (October 1, 1997) (*Roofing Nails*).
- To value factory overhead, selling, general, and administrative expenses (SG&A), and profit, we calculated simple average rates using publicly available financial statements of three Indian seafood processing companies submitted in the original investigation for which more current data is now available, and applied these rates to the calculated cost of manufacture. *See Factor Values Memorandum.*
- For labor, we used the PRC regression-based wage rate at Import Administration's home page, Import Library, Expected Wages of Selected NME Countries, revised in May 2000. *See http://ia.ita.doc.gov/wages/.* Because of the variability of wage rates in countries with similar per capita gross domestic products, section 351.408(c)(3) of the Department's regulations requires the use of a regression-based wage rate. The source of these wage rate data on the Import Administration's Web site is found in the *1998 Year Book of Labour Statistics*, International Labour Office (Geneva: 1998), Chapter 5: Wages in Manufacturing.
- We valued movement expenses as follows:

To value truck freight expenses we used the seventeen price quotes from six different Indian trucking companies which were used in the antidumping investigation of *Bulk Aspirin from the People's Republic of China*, 65 FR 33805 (May 25, 2000). We adjusted the rates to reflect inflation through the POR using WPI for India in the IFS.

To value brokerage and handling in the home market, we used information reported in the antidumping administrative review of *Certain Stainless Steel Wire Rod From India; Preliminary Results of Antidumping Duty Administrative and New Shipper Reviews*, 63 FR 48184 (September 9, 1998) *(Stainless Steel Wire Rod from India)*, and also used in the *Freshwater Crawfish Tail Meat From the People's Republic of China: Final Results of Administrative Antidumping Duty and New Shipper Reviews, and Final Rescission of New Shipper Review*, 65 FR 20948 (April 19, 2000). We adjusted the rates to reflect inflation through the POR using WPI for India in the *IFS*.

We used the average of the foreign brokerage and handling expenses reported in the U.S. sales listing portion of the public questionnaire response submitted in the antidumping review of Viraj Group, Ltd. in *Stainless Steel Wire Rod from India*. Charges were reported on a per metric ton basis. We adjusted these values to reflect inflation to the POR. For further discussion, see *Factor Values Memorandum.*

To value ocean freight, we obtained publicly available price quotes from Sea Land Services for shipping frozen crawfish tail meat from the PRC to Long Beach, California in the United States. *See Factor Values Memorandum.* To adjust this rate to the POR, we used the closest corresponding monthly WPI and the WPI average for the POR.

**Currency Conversion**

We made currency conversions pursuant to section 351.415 of the Department's regulations at the rates certified by the Federal Reserve Bank. (*See http://ia.ita.doc.gov/exchange/index.html.*)

**Preliminary Results of Review**

We preliminarily determine that the following dumping margins exist:

| Manufacturer/ Exporter | Time period | Margin (percent) |
|---|---|---|
| Ningbo Nanlian/ Huaiyin5 | 9/1/98–8/31/99 | 62.69 |
| Yancheng Haiteng | 9/1/98–8/31/99 | 79.86 |
| Huaiyin30 | 9/1/98–8/31/99 | 240.34 |
| Yancheng FTC | 9/1/98–8/31/99 | 166.93 |
| Fujian Pelagic | 9/1/98–8/31/99 | 174.50 |
| Yangzhou Lakebest | 9/1/98–8/31/99 | 24.55 |
| Suqian FTC | 9/1/98–8/31/99 | 19.97 |
| Qingdao Zhengri | 9/1/98–8/31/99 | 16.09 |
| Shantou SEZ | 9/1/98–8/31/99 | 18.96 |
| PRC-Wide Rate | 9/1/98–8/31/99 | 240.34 |

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of publication in accordance with 19 CFR 351.310(c). Any hearing would normally be held 37 days after the publication of this notice, or the first workday thereafter, at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Requests for a public hearing should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. Interested parties may submit case briefs within 30 days of the date of publication of this notice in accordance with 19 CFR 351.309(c)(2). Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication. Parties who submit arguments are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument. If a hearing is held, an interested party may make an affirmative presentation only on arguments included in that party's case brief and may make a rebuttal presentation only on arguments included in that party's rebuttal brief. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

The Department intends to issue the final results of these administrative and new shipper reviews, which will include the results of its analysis of issues raised in the briefs, within 120 days from the date of publication of these preliminary results.

Upon completion of these administrative and new shipper reviews, the Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between export price and NV may vary from the percentages stated above. The Department will issue appraisement instructions directly to

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the U.S. Customs Service upon completion of this review. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties. For assessment purposes, we intend to calculate importer-specific assessment rates for freshwater crawfish tail meat from the PRC. For both EP and CEP sales, we will divide the total dumping margins (calculated as the difference between NV and EP (or CEP)) for each importer by the entered value of the merchandise. Upon the completion of this review, we will direct Customs to assess the resulting *ad valorem* rates against the entered value of each entry of the subject merchandise by the importer during the POR.

Furthermore, the following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of freshwater crawfish tail meat from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the reviewed firms will be the rates indicated above; (2) for previously-reviewed PRC and non-PRC exporters with separate rates, the cash deposit rate will be the company-specific rate established for the most recent period; (3) for all other PRC exporters, the rate will be the PRC-wide rate, which is 240.34 percent; and (4) for all other non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter.

These deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review, these new shipper reviews, and this notice are published in accordance with section 751(a)(1) of the Act and sections 351.213, 351.214 and 351.221 of the Department's regulations.

Dated: September 29, 2000.

**Troy H. Cribb,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 00–26073 Filed 10–10–00; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–351–605]**

### Frozen Concentrated Orange Juice From Brazil; Final Results of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of final results of antidumping duty administrative review.

**SUMMARY:** On June 6, 2000, the Department of Commerce published the preliminary results of administrative review of the antidumping duty order on frozen concentrated orange juice from Brazil. The merchandise covered by this order is frozen concentrated orange juice from Brazil. This review covers the U.S. sales of three manufacturers/exporters, Citrovita Agro Industrial Ltda., Cambuhy MC Industrial Ltda., and Cambuhy Citrus Comercial e Exportadora. We have collapsed these entities for purposes of this proceeding and have calculated a single margin for them. The period of review is May 1, 1998, through April 30, 1999.

Based on our analysis of the comments received, we have made changes in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled "Final Results of Review."

**EFFECTIVE DATE:** October 11, 2000.

**FOR FURTHER INFORMATION CONTACT:** Irina Itkin or Shawn Thompson, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 482–0656 or (202) 482–1776, respectively.

**SUPPLEMENTARY INFORMATION:**

#### The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR Part 351 (1999).

#### Background

This review covers three manufacturers/exporters, Citrovita Agro Industrial Ltda. (Citrovita), Cambuhy MC Industrial Ltda. (Cambuhy), and Cambuhy Citru Comercial e Exportadora (Cambuhy Exportadora). Because these companies met the requirements of 19 CFR 351.401(f), we have collapsed these entities for purposes of this proceeding and have calculated a single margin for them. For further discussion, see the "Affiliated Producers" section of this notice, below.

On June 6, 2000, the Department published in the **Federal Register** the preliminary results of administrative review of the antidumping duty order on frozen concentrated orange juice (FCOJ) from Brazil. *See Frozen Concentrated Orange Juice from Brazil; Preliminary Results of Antidumping Duty Administrative Review*, 65 FR 35892 (June 6, 2000).

We invited parties to comment on our preliminary results of review. At the request of Citrovita, we held a public hearing on August 9, 2000. The Department has conducted this administrative review in accordance with section 751 of the Act.

#### Scope of Review

The merchandise covered by this review is frozen concentrated orange juice from Brazil. The merchandise is currently classifiable under item 2009.11.00 of the *Harmonized Tariff Schedule* of the United States (HTSUS). The HTSUS item number is provided for convenience and for U.S. Customs purposes. The Department's written description remains dispositive.

#### Period of Review

The period of review (POR) is May 1, 1998, through April 30, 1999.

#### Affiliated Producers

During the POR, a sister company to Citrovita's parent company purchased another Brazilian producer of FCOJ and that producer's affiliated trading company (*i.e.*, Cambuhy and Cambuhy Exportadora, respectively). We determine that it is appropriate to treat Citrovita and these affiliated parties as a single entity. In accordance with 19 CFR 351.401(f), we have collapsed Citrovita, Cambuhy, and Cambuhy Exportadora for purposes of the final results. However, because there is no evidence that these companies were affiliated prior to September 1998, we have used only the sales and cost data reported for Cambuhy and Cambuhy Exportadora from September 1998 through the end of the POR for purposes of calculating normal value. For further discussion, see *Comment 1* in the "Issues and Decision Memorandum" (Decision Memo) from Richard W. Moreland, Deputy Assistant Secretary, Import Administration, to Troy H. Cribb, Acting Assistant Secretary for Import Administration, dated October 4, 2000.



#### Analysis of Comments Received

All issues raised in the case briefs by parties to this administrative review are addressed in the Decision Memo which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memo, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room B–099, of the main Department building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at http://ia.ita.doc.gov. The paper copy and electronic version of the Decision Memo are identical in content.

#### Changes Since the Preliminary Results

Based on our analysis of comments received, we have made certain changes in the margin calculations. These changes are discussed in the relevant sections of the Decision Memo.

#### Final Results of Review

We determine that the following percentage weighted-average margin percentage exists for the period May 1, 1998, through April 30, 1999:

| Manufacturer/exporter | Percent margin |
|---|---|
| Citrovita Agro Industrial Ltda./. Cambuhy MC Industrial Ltda./. Cambuhy Citrus Comercial e Exportadora | 25.87 |

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we have calculated importer-specific assessment rates. We divided the total dumping margins for the reviewed sales by their total entered value for each importer. We will direct Customs to assess the resulting percentage margins against the entered Customs values for the subject merchandise on each of that importer's entries under the relevant order during the review period.

#### Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of FCOJ from Brazil entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed firm will be the rate shown above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 1.96 percent. This rate is the "All Others" rate from the LTFV investigation.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections section 751(a)(1) and 777(i) of the Act.

Dated: October 4, 2000.

**Troy H. Cribb,**

*Acting Assistant Secretary for Import Administration.*

#### Appendix—Issues in Decision Memo

*Comments*

1. Collapsing of Affiliated Parties
2. Calculation of Financing Expenses
3. Treatment of Citrovita's Foreign Exchange Losses
4. Treatment of Cambuhy's Foreign Exchange Losses
5. Calculation of the Cost of Oranges Produced by an Affiliated Party
6. Calculation of Selling, General, and Administrative Expenses and Financing Expenses for the Collapsed Entity

[FR Doc. 00–26074 Filed 10–10–00; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 083000A]**

### Small Takes of Marine Mammals Incidental to Specified Activities; Oil and Gas Exploration Drilling Activities in the Beaufort Sea

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of receipt of application and proposed authorization for a small take exemption; request for comments.

**SUMMARY:** NMFS has received a request from Phillips Alaska, Inc., (Phillips) for an authorization to take small numbers of marine mammals by harassment incidental to conducting exploration drilling activities, during the winter, offshore Prudhoe Bay, in the U.S. Beaufort Sea off Alaska. Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to authorize Phillips to incidentally take, by harassment only, small numbers of ringed and bearded seals while conducting this activity.

**DATES:** Comments and information must be postmarked no later than November 13, 2000. Comments will not be accepted if submitted via e-mail or the Internet.

**ADDRESSES:** Comments on the application should be addressed to Donna Wieting, Chief, Marine Mammal Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910-3225. A copy of the application and a list of references used in this document may be obtained by writing to

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this address or by telephoning one of the contacts listed here.

**FOR FURTHER INFORMATION CONTACT:** Kenneth R. Hollingshead, Office of Protected Resources, NMFS, (301) 713-2055, ext. 128, or Brad Smith, Western Alaska Field Office, NMFS, (907) 271-5006.

**SUPPLEMENTARY INFORMATION:**

**Background**

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 et seq.) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and if the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth.

On April 10, 1996 (61 FR 15884), NMFS published an interim rule establishing, among other things, procedures for issuing incidental harassment authorizations under section 101(a)(5)(D) of the MMPA for activities in Arctic waters, including requirements for peer-review of a monitoring program and a plan of cooperation between the applicant and affected subsistence users. For additional information on the procedures to be followed for this authorization, please refer to that document.

**Summary of Request**

On August 1, 2000, NMFS received an application from Phillips requesting a 1-year authorization for the possible harassment of small numbers of marine mammals incidental to constructing an ice road and an ice island at the McCovey Prospect Area and drilling one or more oil exploration wells at that location during the winter, 2000/2001. The drilling location at McCovey is approximately 14 mi (22.5 kilometers (km)) north of East Dock at Prudhoe Bay, 7 mi (11.3 km) northwest of Cross Island, and 12 mi (19.3 km) east of the Northstar Unit.

The purpose of the operation is to evaluate the oil and gas potential of Phillips' operated leases in the McCovey area. The well will be drilled from an ice island constructed at the beginning of the winter drilling season. Some equipment may be staged on Reindeer Island prior to freeze-up; however, a majority of the equipment will be staged using the ice road.

Ice island construction is expected to begin when ice conditions are thick enough to allow heavy equipment to be transported to the location via ice road (approximately December, 2000). One well is planned to be drilled from a surface location in Outer Continental Shelf Lease Block Y-1577. Depending on the results found from this well, well tests may be performed and a sidetrack may be drilled as length of season permits. All drilling and well-testing operations will be performed only during the 2000-2001 winter drilling season and will be discontinued in May 2001 before ice break-up (which usually occurs in late June or July). Drilling and testing operations will not be conducted in broken ice or open water periods. The McCovey exploration well will be plugged and abandoned regardless of any commercial value demonstrated during well testing and reservoir evaluation. The exploration well is expected to be moved back down the ice road after operations are completed. This is expected to occur between about April 20 and May 2.

Prior to freeze-up in late October, 2000, materials will be barged to Reindeer Island for staging. This includes pumps, a support camp, rolligons and diesel fuel in storage tanks. The storage tanks will be in a containment capable of holding 110 percent of the capacity of the tanks. An ice pad will be constructed at Reindeer Island initially for the support camp and will be later used for the rigging camp. A 12-14 mi (19.3-22.5 km) ice road will be constructed from either West Dock or East Dock in Prudhoe Bay out to the McCovey location. The actual location and length of the ice road will depend on ice conditions prior to commencing operations. The ice road will then be used to transport the ice island construction equipment and the drilling rig out to the McCovey location.

The ice roads are expected to be completed and ready for heavy traffic by mid-February. Following construction, the road will be maintained using graders with snow wings and front-end loaders with snow blowers until ice-road travel is no longer possible, typically in mid-May.

The McCovey Ice Island will be located in 37 ft (11.2 m) of water. Pumps will be used to spray seawater into the cold air to form ice-crystals. The sprayed seawater is first used to thicken the ice at the island location to 2-3 m (6.6-9.8 ft). Then the water will be redirected to the center of the island to ground the island core. The ice island diameter is expected to be 850 ft (259.1 m) at the waterline and 600 ft (182.9 m) at the working surface above the water.

After completion of the ice road and island, a land-based drilling rig will be transported to the location. The support camp will be located on an ice pad constructed on Reindeer Island throughout the drilling operations. Reindeer Island is approximately 4.5 mi (7.2 km) from the ice island location. All drilling materials will be transported to the ice island by ice road and staged on the ice island. Muds and cuttings will be discharged to the sea ice in accordance with the General Offshore National Pollution Discharge Elimination System permit requirements.

A more detailed description of the work planned is contained in the application (Phillips, 2000) and is available upon request (see **ADDRESSES**).

**Description of Habitat and Marine Mammals Affected by the Activity**

A detailed description of the Beaufort Sea ecosystem and its associated marine mammals can be found in several documents (Corps of Engineers, 1999; Minerals Management Service (MMS), 1990, 1992, 1996; NMFS, 1997).

**Marine Mammals**

The Beaufort/Chukchi Seas support a diverse assemblage of marine mammals including bowhead whales (Balaena mysticetus), gray whales (Eschrichtius robustus), beluga (Delphinapterus leucas), ringed seals (Phoca hispida), spotted seals (Phoca largha) and bearded seals (Erignathus barbatus). Descriptions of the biology and distribution of these species, and others, can be found in several other documents (Small and DeMaster, 1995; Hill and DeMaster, 1998; Hill *et al.*, 1999; NMFS, 1997). Please refer to those documents for information on the biology, distribution and abundance of these species. However, because the proposed oil exploration activity will take place only during the winter, only ringed seals, and possibly a few bearded seals, have any potential to be impacted by the project. A description of the biology and abundance of these latter species are addressed in NMFS' Environmental Assessment (EA) on Winter Seismic Activities (NMFS, 1998). The documents mentioned here and in other parts of this document are considered part of this decision-making process.



In addition to the species mentioned in the preceding paragraph, polar bears (Urus maritimus) also have the potential to be taken incidental to the proposed activity. This species is under the jurisdiction of the U.S. Fish and Wildlife Service (USFWS). As a result, Phillips has applied for a Letter of Authorization from the USFWS for the taking of this species incidental to the McCovey drilling project.

**Potential Impacts on Marine Mammals**

Disturbance by noise is the principal means for potential takings by harassment by this activity. The marine mammal most likely to be impacted by construction of the ice road and ice island is the ringed seal. A slight possibility exists to impact bearded seals. While the applicant noted that there is a chance that a ringed seal could be killed during ice road construction (and ice island construction), NMFS believes that noise from road and island construction activity, the timing of the construction in December, and the monitoring described in the next section of this document, will make the injury or mortality of ringed seals very unlikely. However, the ice island location cannot be moved due to the engineering required for ice island design and construction. As a result, breathing holes or structures located within the footprint of the island will be covered by ice and the seals would need to relocate. However, constructing the island in December will mitigate the potential for damage to birthing lairs, since ringed seal ice structures are not well developed at this time of the year, pups are not born until mid-March in this area, and several structures would be available for each seal by that time for use as birthing and pupping lairs.

Site specific ringed seal survey work was conducted by Western Geophysical at the McCovey location during April, 2000 (Coltrane and Williams, 2000). A total of 22 seal structures were found in the core survey area and the surrounding 1 km (0.62 mi) monitoring zone. An additional 21 structures were found in the transit survey route. Seventeen of the structures were breathing holes, 20 were lairs, and 6 were unidentified; none of the identified lairs were birthing lairs. Coltrane and Williams (2000) reported that twenty-eight structures were revisited later. The remaining 15 structures were not rechecked as these structures were either of unknown status or frozen at the time of the initial search. Four breathing holes were found to be abandoned since the initial search (one was abandoned due to research, not industrial activity). The total abandonment rate of active seal structures after shallow hazards survey operations was 11 percent (3 of 28). In addition, the initial survey revealed that 19 percent (8 of 43) of the structures located had already been abandoned prior to any industrial searches. This natural abandonment rate was comparably higher than the abandonment rate after industrial activities in the area (19 percent compared to 11 percent).

Aerial surveys of seal density and abundance, conducted in 1997 in support of the Northstar project (which is approximately 9 miles (14.5 km) to the west from the proposed McCovey Prospect), indicated an average density over the area (including the McCovey Prospect area) of 0.43 ringed seals/km2. The overall observed density on landfast ice, over water depths of 5-20 m (16.4-65.6 ft), was 0.42 ringed seals/km2 (Miller et al., 1998). Surveys conducted in 1999 by Richardson and Williams (2000) indicated an overall observed density of 0.56 seals/km2. Excluding waters less than 3 m (9.8 ft) deep where ringed seals were rarely seen, the overall observed density was 0.63 seals/km2. The overall observed density in areas greater than 3 m (9.8 ft) deep was higher in 1999 than in either 1997 or 1998 (0.39 seals/km2).

Based on the methodology for assessing ringed seal takes by industrial activities at Northstar (see BP Exploration (Alaska), 1998), Phillips estimates that less than 31 ringed seals may be within an area where harassment takings might potentially occur. This estimate is based on the assumptions that any ringed seals within 0.4 mi (0.644 km) of the ice road and within 2.3 mi (3.7 km) of the ice island may be able to hear the noise associated with the McCovey Prospect. This estimate is based on the density recorded during the 1997 aerial survey of 0.42 seals/km2 (Miller et al. 1998). Phillips believes that this estimate of take is very conservative, since the noise associated with ice island construction should be less than the noise associated with construction of the gravel island at Northstar. The 2.3 mi (3.7 km) was based on noise measurements made by Greene (1983) for construction of Seal Island in 1982. Also, the estimated "take" is based on the entire ice road length of 12.5 miles (20.12 km) with no deduction for areas where the ice road may cross grounded ice (with no ringed seal presence). It should be recognized moreover, that NMFS does not consider a taking to have occurred simply because an animal hears a noise or has a minor startle reaction to the noise. In order for NMFS to consider a taking to have occurred, the reaction by the marine mammal needs to result in a behavioral response that may have biological significance on the part of the animal. A biologically significant behavioral response is a response that affects biologically important behavior, such as survival, breeding, feeding and migration, which have the potential to impact the reproductive success of the animal. For ringed seals, simply hearing industrial noise or hearing it and abandoning, either temporarily or permanently, one of its several breathing holes, is not considered significant. A biologically significant response, for example, would be displacement that affects mating, access to critical feeding areas, or weaned pups leaving one lair for another (which although also done naturally to avoid predation, can, in either case, affect survival).

Bearded seals are not expected to be in the area except in very small numbers and therefore should not be affected by the activity. Bearded seals are benthic feeders and the Beaufort Sea provides only limited habitat for them. In addition, their preference for open water further limits the potential for their being in this area at this time of the year.

Therefore, based on the above discussion, NMFS preliminarily concludes that the taking, by noise harassment incidental to construction of the ice road and ice island, will result in no more than a few dozen harassment takings by this activity.

**Potential Effects on Subsistence Needs**

NMFS has not identified any unmitigable adverse impacts by this activity on the availability of the species or stock(s) of marine mammals for subsistence needs.

**Potential Effect on Habitat**

The ice island will be a temporary structure on the winter ice. The temporary loss of this area is negligible when compared to the size of the nearshore Beaufort Sea. When drilling and well-testing operations are completed, the well will be plugged and abandoned in accordance with MMS and Alaska Oil and Gas Conservation Commission regulations. This abandonment will leave the project area in essentially an unmodified condition, since there will be no wellhead or other structures remaining above the ocean floor.

In the unlikely event that there is an oil spill, Phillips has prepared an oil discharge prevention and contingency plan (ODPCP) specifically for this activity. The ODPCP is an extensive

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document that addresses spill response, several spill scenarios, cleanup activities, and numerous other aspects of oil spill prevention and response. Oil spill response teams are located in Deadhorse, AK. Phillips and other operators have oil spill response equipment available in each current or soon-to-be oil-producing area on the North Slope.

**Mitigation**

Several mitigation measures to reduce the potential for marine mammal harassment will be implemented by Phillips as part of their proposed activity. These include:

(1) Conducting a winter drilling program using a land-based rig instead of using either the Concrete Island Drilling System platform, a floating platform, or a semisubmersible platform. The latter two platforms would require the need for icebreaker vessels; and

(2) Conducting drilling operations during winter months instead of during the open water season, and

(3) Constructing the ice road and ice island in December before seal structures are made into fully-developed lairs, and especially before constructing of the birth lair in March.

**Marine Mammal Monitoring**

Phillips proposes to utilize trained dogs or visual observations to assess the level of take of ringed seals during project activities. Prior to commencing ice road or ice island construction, trained dogs would be used to locate seal breathing holes and lairs along the proposed footprint of the ice road route and ice island pad. An adjacent 50-m (164 ft) buffer along the ice road route and a 1 km (0.62 mi) buffer around the ice island will also be surveyed. In the event that trained dogs are not available for the survey due to scheduling, Phillips proposes to employ a visual survey prior to onset of construction activities. The visual survey would involve searching the designated area for breathing holes, and examining pressure ridges, ice hummocks, and deep ice cracks for lairs. Attempts will be made to confirm the presence of lairs by using an aluminum rod to locate the breathing hole or lair access hole where practical. Success in visually locating lairs will be limited by the relatively low density of ringed seals combined with the difficulty of finding breathing holes or lairs on snow-covered ice during winter conditions. A professional marine mammal biologist and an Inupiat hunter would be conducting the visual survey.

Once drilling begins, a designated polar bear watch (typically an Inupiat hunter) will also look for and record seal activities. Because of the low expectation of interactions during the winter with marine mammals that are under the jurisdiction of NMFS, dedicated observers are not considered necessary on the ice island. As a result, NMFS proposes to require as part of the Authorization that Phillips instruct the polar bear watchperson to maintain a sightings-and-behavior log for seals that is separate from the Polar Bear Sightings Log. This latter reporting requirement is mandated by 50 CFR 18.27.

In order to obtain an indication of ringed seal response to Phillips' operations, a second seal structure survey will be conducted near the end of the McCovey project activities. The second survey will be conducted by biologists on snow machines using Differential Global Positioning System units to relocate and determine presence/absence of seals in lairs identified during the first survey. Any new holes would also be noted.

NMFS notes however, that current regulations for winter ice road construction for both Northstar (see 65 FR 34014, May 25, 2000) and on-ice vibroseis surveys (see 63 FR 5277, February 2, 1998), require ice roads to be surveyed a distance of 150 m (492 ft) from either side of the disturbed ice. Preliminarily, it is NMFS' intention to require similar monitoring for this project's ice road construction. In addition, NMFS proposes to require that all ice roads constructed in the Beaufort Sea be monitored by trained dogs until such time as NMFS has clear evidence that ice roads and other activities taking place during the winter are not having a cumulative impact on ringed seals or until peer-reviewed research has shown that human monitoring for ringed seal structures without dogs is as effective as using dogs. As such, trained dogs are required to be used for surveying for ringed seal structures, using that information to mitigate the impact to the greatest extent practicable, and to follow up those surveys at an appropriate time during or after the season to indicate the fate of those structures. NMFS proposes that a condition of the Incidental Harassment Authorization (IHA) be that if NMFS determines dogs are not available, then, and only then, would the human monitoring be authorized. Failure to use dogs when available would be considered a violation of the IHA and may result in suspension or termination of that IHA.

**Reporting**

NMFS proposes to require Phillips to submit one report under this proposed authorization. This report will be required 90 days after completion of activities authorized for marine mammal takings.

**National Environmental Policy Act**

The activity proposed by Phillips was the subject of a Final Environmental Impact Statement prepared by MMS in conjunction with Lease Sale 124 (MMS, 1990). In addition, in 1997 NMFS prepared and released an EA that addressed the impacts on the human environment from issuance of an authorization for taking marine mammals incidental to conducting oil exploration activities during winter and the alternatives to the proposed action. A Finding of No Significant Impact was signed on September 25, 1997.

**Conclusions**

NMFS has preliminarily determined that the short-term impact of exploration drilling and related activities in the Beaufort Sea will result, at worst, in a temporary modification in behavior by certain species of pinnipeds. While behavioral modifications may be made by these species of marine mammals to avoid the resultant noise from ice road and ice island construction, transporting the oil rig and supplies on the ice road, or due to drilling activities, this behavioral change is expected to have a negligible impact on the animals.

While the number of potential incidental harassment takes will depend on the distribution and abundance of marine mammals (which vary annually due to variable ice conditions and other factors) in the activity area, the number of potential harassment takings is estimated to be small. In addition, no take by injury and/or death is anticipated and takes will be at the lowest level practicable due to incorporation of the mitigation measures mentioned previously. No known rookeries, mating grounds, areas of concentrated feeding, or other areas of special significance for marine mammals occur within or near the planned area of operations during the season of operations.

**Proposed Authorization**

NMFS proposes to issue an IHA to Phillips for the possible harassment of small numbers of ringed seals and bearded seals incidental to constructing an ice road and ice island and drilling an oil exploration well at the McCovey Prospect during the winter 2000/01, provided the previously mentioned mitigation, monitoring and reporting requirements are carried out. NMFS has preliminarily determined that the proposed activities would result in the harassment of only small numbers of ringed and bearded seals, will have a negligible impact on these marine mammal stocks; and will not have an unmitigable adverse impact on the availability of these stocks for subsistence uses.

**Information Solicited**

NMFS requests interested persons to submit comments, information, and suggestions concerning this request (see **ADDRESSES**).

Dated: October 4, 2000.

**Art Jeffers,**

*Deputy Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 00–26087 Filed 10–10–00; 8:45 am]

**BILLING CODE: 3510–22 –S**



## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 100400B]**

### Fisheries of the Exclusive Economic Zone Off Alaska; Catch-Monitoring Standards Workshop

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of workshop.

**SUMMARY:** NMFS will present a workshop on proposed catch-monitoring standards for shoreside processors that take deliveries of pollock from the Bering Sea.

**DATES:** The workshop will be held on Thursday, November 16, 2000, from 9 a.m. to 5 p.m.

**ADDRESSES:** The workshop will be held at the Nordby Center, located in Fishermen's Terminal, 1711 West Nickerson Street, Seattle, WA.

**FOR FURTHER INFORMATION CONTACT:** Alan Kinsolving, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** NMFS is developing a proposed rule to implement the American Fisheries Act (AFA). One aspect of this rulemaking is the development of catch monitoring standards for inshore processors that receive deliveries of pollock harvested in the directed fishery for pollock in Bering Sea. As currently envisioned by NMFS, these standards would require that the AFA shoreside processors develop and implement a Catch Monitoring and Control Plan (Plan). The Plan would address performance standards designed to ensure that all catch delivered to the processor is accurately weighed and accounted for.

NMFS is conducting the November 16, 2000, workshop for interested industry members to provide guidance on the development and implementation of these performance standards.

**Special Accommodations**

This workshop is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Alan Kinsolving at 907–586–7228 at least 7 working days prior to the workshop.

Dated: October 5, 2000.

**Bruce C. Morehead,**

*Acting Director, Office of Sustainable Fisheries. National Marine Fisheries Service.*

[FR Doc. 00–26083 Filed 10–10–00; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 080300B]**

### Marine Mammals; File No. 555-1565

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Issuance of permit.

**SUMMARY:** Notice is hereby given that Dr. James T. Harvey (Principal Investigator, PI), Moss Landing Marine Laboratories, P.O. Box 450, Moss Landing CA 95039 has been issued a permit to take Pacific harbor seals (*Phoca vitulina richardsi*) for purposes of scientific research.

**ADDRESSES:** The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713-2289);

Regional Administrator, Northwest Region, 7600 Sand Point Way, NE, BIN C15700, Seattle, WA 98115-0070,(206/526-6150);

Regional Administrator, Southwest Region, 501 West Ocean Blvd., Suite 4200, Long Beach, California 90802-4213,(562/980-4001).

**FOR FURTHER INFORMATION CONTACT:** Simona Roberts or Ruth Johnson, 301/713-2289.

**SUPPLEMENTARY INFORMATION:** On June 6, 2000, notice was published in the **Federal Register** (65 FR 35903) that a request for a scientific research permit to take Pacific harbor seals had been submitted by the above-named individual. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The applicant is authorized to capture, handle and tag 1,600 Pacific harbor seals per year of all age and sex classes near haul-out sites throughout California, Oregon and Washington. Captured seals will be subject to all or some of the following activities: blood and tissue sampling, flipper tagging, PIT tagging, branding, lavaging, and video camera attachment. Acoustic playback experiments and scat collection are also authorized around the haul-out sites. In addition, the applicant is authorized to surgically implant radio tags in 15 captive, rehabilitated Pacific harbor seals and to conduct feeding studies on 12 captive, rehabilitated Pacific harbor seals.

Dated: October 5, 2000.

**Ann Terbush,**

*Permit and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 00–26084 Filed 10–10–00; 8:45 am]

**BILLING CODE 3510-22-S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 092700B]**

### Marine Mammals; File No. 990-1603

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Receipt of application.

**SUMMARY:** Notice is hereby given that, Lizabeth Bowen, John Muir Institute of the Environment, University of California, Davis, CA 95616, has applied in due form for a permit to import blood samples for purposes of scientific research.

**DATES:** Written or telefaxed comments must be received on or before November 13, 2000.

**ADDRESSES:** The application and related documents are available for review upon written request or by appointment in the following office(s):

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Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713-2289); and

Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213 (562/980-4001).

**FOR FURTHER INFORMATION CONTACT:** Ruth Johnson or Simona Roberts, 301/713-2289.

**SUPPLEMENTARY INFORMATION:** The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The applicant proposes to import from Mexico whole blood taken from California sea lions (*Zalophus californianus*) to test two hypotheses: First, Leptospira interrogans pomona is not present in areas inhabited by sea lions in the Sea of Cortez population; Second, L. interrogans is present in the area, yet sea lions in the Sea of Cortez populations are unable to produce an immune response to L. interrogans pomona..

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301) 713-0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

Concurrent with the publication of this notice in the Federal Register, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: October 4, 2000.

**Ann D. Terbush,**

*Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 00–26085 Filed 10–10–00; 8:45 am]

**BILLING CODE 3510-22-S**

## DEPARTMENT OF EDUCATION

### Notice of Proposed Information Collection Requests

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before December 11, 2000.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: October 4, 2000.

**John Tressler,**

*Leader Regulatory Information Management, Office of the Chief Information Officer.*

*Office of Special Education and Rehabilitative Services*

*Type of Review:* New.

*Title:* Evaluation of Independent Programs.

*Frequency:* One time.

*Affected Public:* Businesses or other for-profit.

*Reporting and Recordkeeping Hour Burden:*

Responses: 1,003.

Burden Hours: 639

*Abstract:* The Rehabilitation Services Administration (RSA), in the Office of Special Education and Rehabilitation Services (OSERS), U.S. Department of Education, has funded a comprehensive two-year evaluation of Parts B and C of the Centers for Independent Living (CIL) program. CIL programs promote a philosophy of independent living-consumer control, peer support, self-help, self-determination, equal access, and individual and system advocacy-the goal is to maximize the leadership, empowerment, independence, and productivity of individuals with disabilities, and enhance the integration and full inclusion of individuals with disabilities into the mainstream of American society. This evaluation will include questionnaire surveys of all CIL directors and a nationally representative sample of current and former consumers of CIL services. The study will examine two major areas: (1) consumer satisfaction and outcomes of services, and (2) systems advocacy and change. The results of the study will be used to complement Section 704 Annual Performance Report data; support RSA Government Performance and Results Act (GPRA) reporting requirements; assist CILs to identify successful service and advocacy strategies; and inform advocates and policy makers about the Independent Living Programs.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC. 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708–9915 or via her internet address Sheila_Carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–25994 Filed 10–10–00; 8:45 am]

**BILLING CODE 4000–01–P**



## DEPARTMENT OF ENERGY

### Office of Nuclear Energy, Science and Technology

**AGENCY:** Department of Energy.

**ACTION:** Notice of renewal.

**SUMMARY:** Pursuant to section 14(a)(2)(A) of the Federal Advisory Committee Act, App. 2, and section 101–6.1015(a), title 41, Code of Federal Regulations, and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the Nuclear Energy Research Advisory Committee has been renewed for a two-year period beginning October 2, 2000.

**FOR FURTHER INFORMATION CONTACT:** Ms. Rachel M. Samuel at (202) 586–3279.

**SUPPLEMENTARY INFORMATION:** The Committee will continue to provide advice to the Director, Office of Nuclear Energy, Science and Technology, on long-term planning and priorities in the national nuclear energy research and development program. The Secretary of Energy has determined that renewal of the Committee is essential to the conduct of the Department's business and in the public interest in the connection with the performance of duties imposed upon the Department of Energy by law. The Committee will continue to operate in accordance with the provisions of the Federal Advisory Committee Act (Public Law Number 92–463), section 624 of the Department of Energy Act (Public Law Number 95–91), the General Services Administration Final Rule on Federal Advisory Committee Management, and other directives and instructions issued in implementation of those acts.

Issued in Washington D.C. on October 2, 2000.

**James N. Solit,**

*Advisory Committee Management Officer.*

[FR Doc. 00–25921 Filed 10–10–00; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Idaho Operations Office; Notice of availability of solicitation for Awards of Financial Assistance

**AGENCY:** Idaho Operations Office, DOE.

**ACTION:** Notice of availability of solicitation, University Reactor Instrumentation (URI) Program.

**SUMMARY:** The U.S. Department of Energy, Idaho Operations Office, is soliciting applications for special research grant awards that will upgrade and improve U.S. nuclear research and training reactors. It is anticipated that on October 4, 2000, a full text for Solicitation Number DE–PS07–01ID14012 for the 2001 URI Program will be made available on the Internet at URL address: http://www.id.doe.gov/doeid/psd/proc-div.html. The deadline for receipt of applications will be on December 5, 2000.

**ADDRESSES:** Applications should be submitted to: U.S. Department of Energy, Idaho Operations Office, c/o Marie Warnick, P.O. Box 1625, Mail Stop 3860, Idaho Falls, Idaho 83415–3860.

**FOR FURTHER INFORMATION CONTACT:** Connie Osborne, Contract Specialist at osbornch@id.doe.gov.

**SUPPLEMENTARY INFORMATION:** The solicitation will be issued in accordance with 10 CFR Part 600.6(b), eligibility for awards under this program will be restricted to U.S. colleges and universities having a duly licensed, operating nuclear research or training reactor because the purpose of the University Reactor Instrumentation (URI) program is to upgrade and improve the U.S. university nuclear research and training reactors and to contribute to strengthening the academic community's nuclear engineering infrastructure.

The statutory authority for this program is Public Law 95–91.

Issued in Idaho Falls on October 4, 2000.

**R. Jeffrey Hoyles,**

*Director, Procurement Services Division.*

[FR Doc. 00–26026 Filed 10–10–00; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Secretary of Energy Advisory Board; Notice of Open Meeting

**AGENCY:** Department of Energy.

**SUMMARY:** This notice announces the fourth in a series of meetings of the Secretary of Energy Advisory Board's Panel on Emerging Technological Alternatives to Incineration. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), requires that agencies publish these notices in the **Federal Register** to allow for public participation.

Name: Secretary of Energy Advisory Board—Panel on Emerging Technological Alternatives to Incineration.

**DATES:** October 11, 2000, 7:30am–Noon MST.

**ADDRESSES:** La Quinta Inn & Suites, 6801 Tower Road, Denver, Colorado 80249. Phone—303–371–0888, Fax—303–371–0807.

**FOR FURTHER INFORMATION CONTACT:** Mary Louise Wagner, Executive Director, or Francesca McCann, Staff Director, Office of the Secretary of Energy Advisory Board (AB–1), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–7092 or (202) 586–6279 (fax).

**SUPPLEMENTARY INFORMATION:** The purpose of the Secretary of Energy Advisory Board's Panel on Emerging Technological Alternatives to Incineration is to provide independent external advice and recommendations to the Secretary of Energy Advisory Board on emerging technological alternatives to incineration for the treatment of mixed waste for the Department of Energy. The Panel will focus on the evaluation of emerging non-incineration technologies for the treatment of low-level, alpha low-level and transuranic wastes containing polychlorinated biphenyls (PCBs) and other hazardous constituents. Waste categories to be addressed include inorganic homogeneous solids, organic homogeneous solids, and soils. The Panel will also evaluate whether the emerging non-incineration technologies could be implemented in a manner that would allow the Department of Energy to comply with all legal requirements, including those contained in the Settlement Agreement and Consent Order signed by the State of Idaho, Department of Energy, and the U.S. Navy in October 1995.

**Tentative Agenda**

The agenda for the October 11 meeting has not been finalized. However, the meeting will include panel discussion and a presentation on R&D Plans for Tru Mixed Waste and an overview of the responses to the published Request for Information. Members of the Public wishing to comment on issues before the Panel on Emerging Technological Alternatives to Incineration will have an opportunity to

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address the Panel during the scheduled public comment period. The final agenda will be available at the meeting.

*Tentative Agenda*

7:30 am–7:40 am—Opening Remarks

7:40 am–9 am—Discussion of DOE R&D Plan

9 am–9:10 am—Break

9:10 am–10:40 am—RFI Responses

10:40 am–11:30 am—Review of Revised Report Outline

11:30 am–Noon—Public Comment

*Public Participation:* In keeping with procedures, members of the public are welcome to observe the business of the Panel on Emerging Technological Alternatives to Incineration and submit written comments or comment during the scheduled public comment period. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. The Panel will make every effort to hear the views of all interested parties. The Chairman of the Panel is empowered to conduct the meeting in a fashion that will, in the Chairman's judgment, facilitate the orderly conduct of business. You may submit written comments to Mary Louise Wagner, Executive Director, Secretary of Energy Advisory Board, AB–1, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. This notice is being published less than 15 days before the date of the meeting due to a last minute change in the location of the meeting in Denver.

*Minutes:* A copy of the minutes and a transcript of the meeting will be made available for public review and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday except Federal holidays.

Issued at Washington, D.C., on October 6, 2000.

**Rachel M. Samuel,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 00–26148 Filed 10–6–00; 11:50 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Bonneville Power Administration

### Opportunity for Public Comment; Regarding Bonneville Power Administration's Conservation and Renewables Discount Implementation Manual

**AGENCY:** Bonneville Power Administration, DOE.

**ACTION:** Notice of public review of Draft Conservation and Renewables Discount Implementation Manual and Regional Technical Forum Recommendations.

**SUMMARY:** The purpose of this notice is to announce a public review of the Draft Conservation and Renewables Discount (C&R Discount) Implementation Manual and the supporting Regional Technical Forum (RTF) recommendations/material. Bonneville Power Administration (BPA) is publishing a draft C&R Discount Implementation Manual, for public comment, as a result of the decision in BPA's 2002 Wholesale Power Rate Case (WP–02) to establish guidelines for the C&R Discount Program. After the public comment period, the C&R Discount Implementation Manual will be published in its final version and will be used to implement the C&R Discount Program.

Interested parties can find the Draft C&R Discount Implementation Manual at *http://www.bpa.gov/Energy/N/c&r.htm* and RTF work products can be found at the Northwest Power Planning Council's web site *http://www.nwppc.org/rtf.*

**DATES:** Comments must be submitted on or before November 27, 2000. The number, dates, and locations of the public review meetings have not been determined. These details will be posted on BPA's web page, *http://www.bpa.gov/Energy/N/c&r.htm*, as soon as they are available.

**ADDRESSES:** Comments regarding the Draft C&R Discount Implementation Manual can be sent to Mark Johnson—PNG/1, BPA, P.O. Box 3621, Portland, OR, 97208–3621 or e-mailed to him at *mejohnson@bpa.gov.*

**FOR FURTHER INFORMATION CONTACT:** Mark Johnson—PNG–1, Bonneville Power Administration, P.O. Box 3621, Portland, OR 97208–3621, e-mail: *mejohnson@bpa.gov*, Phone: 503–230–7669.

**SUPPLEMENTARY INFORMATION:** As part of BPA's 2002 Power Rate Proposal, 0.5 mills per kWh was added to the basic rate for Subscription Power Purchases and settlement benefits. This 0.5 mills is referred to as the Conservation and Renewables Discount.

BPA is offering the C&R Discount to customers purchasing under the Priority Firm Power (PF–02), New Resource Firm Power (NR–02), and Residential Load (RL–02) rate schedules. Purchasers of the Slice product and benefits provided as a cash payment in settlement of the Residential Exchange Program will also be eligible for the C&R Discount.

Customers purchasing under the Industrial Firm Power rate (IP–02) will be eligible to the extent that the C&R Discount does not reduce their effective rate below the DSI floor rate. Regional public agency customers with Pre-Subscription contracts with collared pricing provisions may be eligible for the C&R Discount subject to contract provisions.

The amount of the C&R Discount will be a fixed monthly amount based on the customer's forecasted purchases and Residential Exchange Program settlement benefits from BPA under its Subscription contract.

Purchasers accepting the monthly C&R Discount agree to abide by the implementation provisions specified in the C&R Discount Implementation Manual. This notice announces a public review of the Draft C&R Discount Implementation Manual.

The Northwest Power Planning Council (Council) formed a Regional Technical Forum (RTF) to facilitate the development of conservation and renewable resources in the Pacific Northwest and assist BPA in implementing a conservation and renewables discount on BPA's new rates. The RTF was asked, by BPA, to make the following recommendations to BPA to facilitate the operation of the conservation and renewable resources discount program.

- A list of eligible conservation measures and programs, their estimated savings, and the estimated regional power system value associated with those savings.
- A process for updating the list as technology and standard practices change and an appeals process through which customers can demonstrate that different savings and value estimates should apply.
- A set of protocols by which the savings and system value of measures/programs not on the list could be estimated. These would include complex commercial or industrial projects.
- Recommended protocols for measurement and evaluation of savings.

With respect to renewables, the RTF was asked to:



- Develop a list of pre-approved Demonstration (RD&D) activities.
- Develop quality control criteria for direct application renewables and distributed resources that will be credited based on a "deemed" amount of output.
- Develop evaluation criteria to be used on a case-by-case basis to determine whether or not a proposed activity is RD&D.
- Develop criteria for determining what constitutes a "new" facility, as opposed to an expansion or addition to an existing facility.
- When requested by Bonneville, assist in evaluating proposals for which eligibility may be unclear.

The RTF recommendations and the Draft C&R Discount Implementation Manual will be the subject of the public review noticed hereunder. It is BPA's intent to give customers and interested parties the opportunity to comment before publishing final versions of the C&R Discount Manual and BPA's decisions on how to implement the RTF's recommendations.

Issued in Portland, Oregon on September 25, 2000.

**Judith A. Johansen,**

*Administrator and Chief Executive Officer.*

[FR Doc. 00–26025 Filed 10–10–00; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Office of Energy Efficiency and Renewable Energy

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Department of Energy.

**ACTION:** Notice of submission for OMB reviw, comment request.

**SUMMARY:** The Department of Energy (DOE) has submitted the information collection identified in this notice to the Office of Management and Budget (OMB) for review under Sections 3507(a) and 3506(c) of the Paperwork Reduction Act of 1995.

This collection would gather information over a three-year period from participants in the Industrial Assessment Center (IAC) Program (specifically clients, alumni and web-site users), concerning details of energy, waste, production and cost savings generated through their participation in IAC assessments, or through their use of IAC-sponsored web-sites. Information will also be collected to determine the levels of satisfaction that participants have with the services of the IAC.

**DATES:** Written comments must be filed on or before October 23, 2000. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The OMB DOE Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the DOE contact listed below.)

**ADDRESSES:** Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503. (Comments should also be addressed to Oak Ridge National Laboratory at the address below).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the forms and instructions should be directed to M. Martin, Oak Ridge National Laboratory, Bethel Valley Rd., MS–6070, Bldg. 3147, Oak Ridge, TN 37831–6070. Ms. Martin may be contacted by telephone at (865) 574–8688, FAX at (865) 574–9338, or e-mail at martinma@ornl.gov.

**SUPPLEMENTARY INFORMATION:**

*Collection Title:* Program Quality Monitoring of IAC Participants: Clients, Alumni and Web-users

*OMB Control Number:* None.

*Type of Request:* New collection.

*Frequency of response:* One time only.

*Respondents:* IAC Program clients, alumni and web-users (businesses and individuals).

*Estimated number of annual respondents:* 570.

*Estimated total annual burden hours:* 355 hours.

**Background**

As part of its effort to comply with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35), the Department of Energy sought comments from the general public and other Federal agencies regarding this collection of information through its June 9, 2000 notice in the **Federal Register** (65 FR 36679). No comments were received during this 60-day review period. The Department now seeks approval by the Office of Management and Budget (OMB) for clearance of its surveys designed for the IAC effort.

Data will be collected from IAC participants concerning energy, waste, productivity and cost savings generated through their participation in IAC assessments or through their use of technical information provided by IAC-sponsored web-sites. Data will be collected from clients, program alumni, and IAC web-users using either electronic, web-based surveys or telephone interviews. Participation is voluntary. The data will provide input for monitoring performance and satisfaction of IAC participants.

**STATUTORY AUTHORITY:** Section 3507(a) and 3506(c) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13, 44 U.S.C. Chapter 35).

Issued in Washington, DC, September 28, 2000.

**Susan L. Frey,**

*Director, Division of Records Management.*

[FR Doc. 00–26027 Filed 10–10–00; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Compliance Filing

October 4, 2000.

In the matter of: RM9–1–014, RP00–23–000, RP01–9–000, RP00–597–000, RP00–590–000, RP01–11–000, RP00–588–000, RP00–625–000, RP00–604–000, RP00–603–000, RP01–16–000, RP00–598–000, RP00–601–000, RP01–22–000, RP00–622–000, RP00–583–000, RP00–577–000, RP00–606–000, RP00–617–000, RP00–619–000, RP00–574–000, RP00–629–000, RP00–630–000, RP01–7–000, RP01–17–000, RP01–19–000, RP00–575–000, RP01–8–000, RP00–621–000, RP01–2–000, RP00–631–000, RP00–576–000, RP00–582–000, RP00–627–000, RP01–10–000, RP00–587–000, RP00–613–000, RP01–15–000, RP01–12–000, RP00–603–000, RP00–612–000, RP00–593–000, RP00–620–000, RP01–18–000, RP01–25–000, RP00–624–000, RP00–626–000, RP00–609–000, RP00–616–000, RP01–14–000, RP00–618–000, RP01–13–000, RP00–600–000 (Not Consolidated) Standards for Business Practices of Interstate Natural Gas Pipelines, Algonquin Gas Transmission Company, Alliance Pipeline L.P., ANR Pipeline Company, ANR Storage Company, Arkansas Western Pipeline, L.L.C., Blue Lake Gas Storage Company, Canyon Creek Compression Company, Columbia Gas Transmission Corporation, Columbia Gulf Transmission Company, Dauphin Island Gathering Partners, Discovery Gas Transmission L.L.C, Dominion Transmission, Inc., East Tennessee Natural Gas Company, El Paso Natural Gas Company, Florida Gas Transmission Company, Garden Banks Gas Pipeline, L.L.C., Great Lakes Gas Transmission Limited Partnership, Gulf States Transmission Corporation, High Island Offshore System, L.L.C., Honeoye Storage Corporation, Kinder Morgan Interstate Gas Transmission L.L.C., K N Wattenberg Transmission Limited Liability Company, Koch Gateway Pipeline Company, Maritimes & Northeast Pipeline, L.L.C., Midwestern Gas Transmission Company, Mississippi Canyon Gas Pipeline L.L.C., Mississippi River Transmission Corporation, Mojave Pipeline Company, National Fuel Gas Supply

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Corporation, Natural Gas Pipeline Company of America, Nautilus Pipeline Company, L.L.C., Northern Border Pipeline Company, Northern Natural Gas Company, Ozark Gas Transmission, L.L.C., Pauite Pipeline Company, Panhandle Eastern Pipe Line Company, PG&E Gas Transmission, Northwest Corporation, Reliant Energy Gas Transmission Company, Sabine Pipe Line, L.L.C., Sea Robin Pipeline Company, Steuben Gas Storage Company, Stingray Pipeline Company, L.L.C., Tennessee Gas Pipeline Company, Texas Eastern Transmission Corporation, Trailblazer Pipeline Company, Transwestern Pipeline Company, Trunkline Gas Company, Trunkline LNG Company, Tuscarora Gas Transmission Company, U–T Offshore System, L.L.C., Williams Gas Pipelines Central, Inc., Williston Basin Interstate Pipeline Company.

Take notice that the above-referenced pipelines made filings in compliance with order No. 587–L. The tariff sheets implement the imbalance netting and trading regulations adopted by the Commission in Order No. 587–G and are proposed to become effective November 1, 2000.

On June 30, 2000, in Docket No. RM96–1–014, the Commission issued its Order No. 587–L, *Standards for Business Practices of Interstate Natural Gas Pipelines*, 91 FERC ¶ 61,350 (2000). In that order the Commission required pipelines to file revise tariff sheets to comply with the regulation requiring pipelines to permit shippers to offset imbalances on different contracts held by the shipper and to trade imbalances. The regulation was adopted in Order No. 587–G, Docket No. RM96–1–007, 83 FERC 61,029, to amend its Regulation under the Natural Gas Act.

Any person desiring to come a party must file a separate motion to intervene or protest in each docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before October 12, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection in the Public Reference Room. These filings may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–26057 Filed 10–10–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER99–3144–005 and Docket No. EC99–80–005 (not consolidated)]**

### American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company, Consumers Energy Company and the Detroit Edison Company; FirstEnergy Corp. on Behalf of: The Cleveland Electric Illuminating Company, Ohio Edison Company, Pennsylvania Power Company, the Toledo Edison Company and Virginia Electric and Power Company; Notice of Filing

October 4, 2000.

Take notice that on September 22, 2000, Alliance Companies filed an errata to its compliance filing that was submitted on September 15, 2000 in Docket Nos. ER99–3144–004 and EC99–80–004.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before October 13, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–26048 Filed 10–10–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP98–391–005]**

### Colorado Interstate Gas Company; Notice of Revenue Report

October 4, 2000.

Take notice that on September 29, 2000, Colorado Interstate Gas Company (CIG), tendered for filing its report of revenues and credits during the first year of service under Rate Schedule SS–1, CIG's Swing Service.

CIG states that copies of the filing have been mailed to all parties on the Commission's official service list in this docket.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NW., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before October 12, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202–208–2222 for assistance).

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–26041 Filed 10–10–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–623–000]**

### Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

October 4, 2000.

Take notice that on September 29, 2000, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets bearing a proposed effective date of November 1, 2000:

Forty-fifth Revised Sheet No. 25
Forty-fifth Revised Sheet No. 26
Forty-fifth Revised Sheet No. 27
Twentieth Revised Sheet No. 30A



Columbia states that this filing is being submitted pursuant to Stipulation I, Article I, Section E, True-up Mechanism, of the Settlement (Settlement) in Docket No. RP95–408, et al. Pursuant to the true-up mechanism, Columbia is required to true-up its collections from the Settlement Component for twelve-month periods commencing November 1, 1996. In accordance with the Settlement, the true-up component from the currently effective Settlement Component effective November 1, 2000.

Columbia states that copies of its filing have been mailed to all firm customers, interruptible customers, and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–26049 Filed 10–10–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP96–389–010]**

### Columbia Gulf Transmission Company; Notice of Negotiated Rate Filing

October 4, 2000.

Take notice that on September 29, 2000, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing to the Federal Energy Regulatory Commission (Commission) the following Amendment Agreement to a recently filed negotiated rate transaction:

Amendment Agreements to ITS–2 Service Agreement No. 69314 between Columbia Gulf Transmission Company and Dynegy Marketing and Trade dated August 30, 2000, as Amended September 27, 2000.

Transportation service which was scheduled to commence September 5, 2000 and terminate September 30, 2000. The parties have executed an Amendment Agreement extending the term through October 31, 2000. All other terms and provisions remain unchanged and in full force and effect.

Columbia Gulf states that copies of the filing have been served on all parties on the official service list created by the Secretary in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission Docket No. RP96–389–010 and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–26065 Filed 10–10–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–632–000]**

### Dominion Transmission, Inc.; Notice of Proposed Changes in FERC Gas Tariff

October 4, 2000.

Take notice that on September 29, 2000, Dominion Transmission, Inc. (DTI), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, with an effective date of November 1, 2000:

Second Revised Sheet No. 31
Second Revised Sheet No. 32
Second Revised Sheet No. 33
Second Revised Sheet No. 34
Second Revised Sheet No. 35

DTI states that the purpose of this filing is to update DTI's effective Transportation Cost Rate Adjustment (TCRA), through the annual adjustment mechanism described in Section 15 of the General Terms and Conditions of DTI's Tariff (GT&C). DTI's surcharge incorporates the balance of its Unrecovered Fuel Cost Reimbursement Subaccount, as set forth in GT&C Section 16.5, as well as the balance in its Unrecovered EPC Reimbursement Subaccount, pursuant to GT&C Section 17.5.

DTI states that copies of its letter of transmittal and enclosures are being served upon its customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–26051 Filed 10–10–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP01–3–000]**

### Dominion Transmission Inc.; Notice of Termination of Service

October 4, 2000.

Take notice that on October 2, 2000, Dominion Transmission, Inc. (DTI) tendered for filing a notice of termination of service of uncertificated gathering lines in North Mahoning Township, Indiana County, Pennsylvania. The proposed effective date of the termination is November 1, 2000.

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DTI states that the lines for which termination of service is being requested are being sold to Dominion E & P. The date will also be the effective date of the abandonment by sale to Dominion E & P. DTI states that the lines being abandoned are listed in Exhibit A attached to the filing.

DTI states that copies of the filing have been sent to the affected producers, which are listed on Exhibit A. DTI also states that copies of the filing are being mailed to DTI's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before October 12, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.us/online/rims.htm (call 202–208–2222 for assistance).

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–26053 Filed 10–10–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP96–383–011]**

### Dominion Transmission, Inc.; Notice of Negotiated Rate Filing

October 4, 2000.

Take notice that on September 29, 2000, Dominion Transmission, Inc. (DTI) (formerly CNG Transmission Corporation) tendered for filing to the Federal Energy Regulatory Commission (Commission) the following tariff sheet for disclosure of a recently amended negotiated rate transaction.

First Revised Sheet No. 1400

DTI requests an effective date of October 1, 2000, for the negotiated rate.

DTI states that copies of the filing have been served on all parties on the official service list created by the Secretary in this proceeding, DTI's customers, and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene with the Federal Energy Regulatory Commission, 888 First Street, NW., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202–208–2222 for assistance).

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–26064 Filed 10–10–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–455–001]**

### Honeoye Storage Corporation; Notice of Compliance Filing

October 4, 2000.

Take notice that on September 28, 2000 Honeoye Storage Corporation (Honeoye) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume 1, Substitute First Revised Sheet No. 22, Substitute Original Sheet 22A, and Substitute Original Sheet 22B, to be effective September 15, 2000.

Honeoye states that the purpose of the filing is to comply with the Commission's September 14, 2000 letter order in Docket No. RP00–455–000 which accepted two proposed changes to Honeoye's Part 157 gas tariff and rejected without prejudice one proposed tariff change. On August 10, 2000 Honeoye filed revised tariff sheets which contained, among other things, a new provision that would have granted customers the right to make title transfers to other customers of gas which is held in the Honeoye gas field. The Commission's September 14 order found that the title transfer right provided more flexibility to Part 157 customers than is allowed under Commission policy. Consequently, Honeoye is deleting the title transfer right from the General Terms and Conditions of its Part 157 tariff. The revised tariff sheets reflect the other revisions to the General Terms and Conditions of Honeoye's Part 157 gas tariff that were accepted by the Commission.

Honeoye states that copies of the filing are being mailed to Honeoye's jurisdictional customers and interested state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–26047 Filed 10–10–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–628–000]**

### Kinder Morgan Interstate Gas Transmission LLC; Notice of Tariff Filing

October 4, 2000.

Take notice that on September 29, 2000, Kinder Morgan Interstate Gas Transmission LLC, (KMIGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1–A and Fourth Revised Volume 1–B, the tariff sheets listed on Appendix A to the filing, to become effective November 1, 2000.

KMGT states that the proposed changes update the KMIGT tariff and clarify or simplify certain tariff provisions. Through the proposed changes KMIGT: revises the provisions regarding capacity release by small customer service (SCS) shippers; clarifies the provision concerning incidental purchases and sales of gas; and makes a number of housekeeping changes to various tariff sheets.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–26050 Filed 10–10–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP96–320–032]**

### Koch Gateway Pipeline Company; Notice of Negotiated Rate Filing

October 4, 2000.

Take notice that on September 28, 2000, Koch Gateway Pipeline Company (Koch) files with the Federal Energy Regulatory Commission a contract for disclosure of a recently negotiated rate transaction. As shown on the contract, Koch requests an effective date of October 1, 2000.

**Special Negotiated Rate Between Koch and Koch Energy Trading Company**

Koch states that it has served copies of this filing upon all parties on the official service list created by the Secretary in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–26054 Filed 10–10–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–169–001]**

### Natural Gas Pipeline Company of America; Notice of Compliance Filing

October 4, 2000.

Take notice that on September 29, 2000, Natural Gas Pipeline Company of America (Natural) tendered for filing to be a part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Substitute First Revised Sheet No. 75, Original Sheet No. 75A and Original Sheet No. 75B, to be effective November 1, 2000.

Natural states that these tariff sheets were filed in compliance with the Commission's "Order Following Technical Conference" issued September 15, 2000 in Docket No. RP00–169–000, relating to capacity release of rights under Natural's Rate Schedule FRSS (Firm Reverse Storage Service).

Natural requests waiver of the Commission's Regulations to the extent necessary to permit the tariff sheets submitted herein to become effective November 1, 2000.

Natural states that copies of the filing have been mailed to all parties set out on the Commission's official service list in Docket No. RP00–169.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us./online/rims.htm (call 202–208–2222 for assistance).

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–26043 Filed 10–10–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP96–272–017]**

### Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

October 4, 2000.

Take notice that on September 29, 2000, Northern Natural Gas Company (Northern) tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, proposed to become effective on October 1, 2000:

Ninth Revised Sheet No. 66
Fourth Revised Sheet No. 66C

Northern states that the above sheets are being filed to implement a specific negotiated rate transaction with WPS Energy Services, Inc. in accordance with the Commission's Policy Statement on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the

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web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,
*Acting Secretary.*
[FR Doc. 00–26058 Filed 10–10–00; 8:45 am]
BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP01–1–000]

### PG&E Gas Transmission, Northwest Corporation; Notice of Proposed Change in FERC Gas Tariff

October 4, 2000.

Take notice that on October 2, 2000, PG&E Gas Transmission, Northwest Corporation (PG&E GTN) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A, Twentyeighth Revised Sheet No. 4, with an effective date of November 1, 2000.

PG&E GT–NW states that this tariff sheets is filed to modify the rate for service under Rate Schedule FTS–1(E–2)(WWP) in accordance with the negotiated rate formula for that service as specified in PG&E GTN's tariff.

PG&E GTN further states that a copy of this filing has been served on PG&E GT–NW's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protest must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,
*Acting Secretary.*
[FR Doc. 00–26052 Filed 10–10–00; 8:45 am]
BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP99–327–003]

### Texas Gas Transmission Corporation; Notice of Order No. 528 Reconciliation Report

October 4, 2000.

Take notice that on September 28, 2000, Texas Gas Transmission Corporation (Texas Gas) tendered for filing a reconciliation report that compares Order No. 528 (TOP) costs with amounts recovered through the TOP recovery surcharge.

Texas Gas states that this reconciliation filing is being made in accordance with Section 29.3(c) as found in Texas Gas's FERC Gas Tariff, First Revised Volume No. 1, and in compliance with Commission Order dated July 20, 2000. Texas Gas states that it has over-recovered its TOP costs by $35,367, which will be refunded on October 19, 2000.

Texas Gas states that copies of the reconciliation report are being mailed to Texas Gas's jurisdictional customers, interested state commissions, and all parties appearing on the official service list.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before October 12, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202–208–2222 for assistance).

Linwood A. Watson, Jr.,
*Acting Secretary.*
[FR Doc. 00–26042 Filed 10–10–00; 8:45 am]
BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal; Energy Regulatory Commission

[Docket No. RP00–426–001]

### Texas Gas Transmission Corporation; Notice of Compliance Filing

October 4, 2000.

Take notice that on September 29, 2000, Texas Gas Transmission Corporation (Texas Gas) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective:

Substitute Sixth Revised Sheet No. 235
Substitute Fourth Revised Sheet No. 236

In this compliance filing, Texas Gas hereby provides the clarifications and/or tariff modifications required by the August 31, 2000 Order of the Commission.

Texas Gas states that copies of the revised tariff sheets are being mailed to Texas Gas's jurisdictional customers, interested state commissions, and those persons appearing on the official service list.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 285.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,
*Acting Secretary.*
[FR Doc. 00–26046 Filed 10–10–00; 8:45 am]
BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP00–260–003]

### Texas Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

October 4, 2000.

Take notice that on September 27, 2000, Texas Gas Transmission Corporation (Texas Gas) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Thirteenth Revised Sheet No. 13, with an effective date of June 1, 2000.

Texas Gas states that the filing is being made because Texas Gas's April 28, 2000, filing inadvertently omitted Thirteenth Revised Sheet No. 13 reflecting the revised rates for Rate Schedules FFS and ISS as presented on Schedule J–2, Parts 28 and 29, respectively, of the above referenced filing. Texas Gas respectfully requests that the tariff sheet be accepted for filing and be subject to the provisions of the Commission's May 31, 2000 "Order Accepting and Suspending Tariff Sheets Subject to Refund and Conditions, Rejecting Other Tariff Sheets, and Establishing a Hearing and Settlement Procedures," 91 FERC ¶ 61,215 (2000) which includes being suspended and permitted to become effective November 1, 2000, subject to refund, and subject to the conditions set forth in the body of the order.

Texas Gas states that copies of the filing have been served upon Texas Gas's jurisdictional customers, interested state commissions, and all parties appearing on the official restricted service list in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202–208–2222 for assistance).

Linwood A. Watson, Jr.,
*Acting Secretary.*
[FR Doc. 00–26044 Filed 10–10–00; 8:45 am]
BILLING CODE 6717–01–M



## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP97–255–014]

### TransColorado Transmission Company; Notice of Tariff Filing

Take notice that on September 29, 2000, TransColorado Gas Transmission Company (TransColorado) tendered for filing to become part of its FERC Gas Tariff Original Volume No. 1, the following tariff sheets, with an effective date of October 1, 2000:

Fourteenth Revised Sheet No. 21
Tenth Revised Sheet No. 22

TransColorado states that the filing is being made in compliance with the Commission's letter order issued March 20, 1997, in Docket No. RP97–255–000.

TransColorado states that the tendered tariff sheets revised TransColorado's Tariff to reflect the new negotiated-rate firm transportation service contracts with Barrett Resources Corporation, Sempra Energy Trading, Enserco Energy, Inc., Dominion Exploration & Production, Texaco Natural Gas Inc. and Dynegy Marketing and Trade. TransColorado requested waiver of 18 CFR 154.207 so that the tendered tariff sheet may become effective October 1, 2000.

TransColorado stated that a copy of this filing has been served upon all parties to this proceeding, TransColorado's customers, the Colorado Public Utilities Commission and the New Mexico Public Utilities Commission.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,
*Acting Secretary.*
[FR Doc. 00–26040 Filed 10–10–00; 8:45 am]
BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP00–425–001]

### Williams Gas Pipelines Central, Inc.; Notice of Compliance Filing

October 4, 2000.

Take notice that on September 29, 2000, Williams Gas Pipelines Central, Inc. (Williams) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets to become effective September 1, 2000.

First Revised Original Sheet No. 215
Substitute Original Sheet No. 299
Substitute Original Sheet No. 300

Williams states that this compliance filing is being made pursuant to Section 4 of the Natural Gas Act and in compliance with Ordering Paragraph B of the Commission's August 31, 2000 Order Accepting Tariff Sheets Subject to Conditions and Clarification in Docket No. RP00–425–000. Williams Gas Pipelines Central, Inc., 92 FERC ¶ 61,190 (2000).

In its August 31, 2000 Order, the Commission accepted, subject to conditions and clarification, tariff sheets filed by Williams on July 31, 2000 proposing to permit Williams to charge negotiated rates pursuant to the Commission's Alternative Rates Policy Statement and to implement generic discount conditions. In this compliance filing, Williams hereby provides the clarifications and/or tariff modifications required by the August 31, 2000 Order.

Williams states that copies of the revised tariff sheets are being mailed to Williams's jurisdictional customers, all parties appearing on the official service list, and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NW., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://

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www.ferc.fed.us/online/rims.htm (call (202–208–2222 for assistance).

Linwood A. Watson, Jr.,

*Acting Secretary.*

[FR Doc. 00–26045 Filed 10–10–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP00–471–000]**

### Wyoming Interstate Company, Ltd.; Notice of Application

October 4, 2000.

Take notice that on September 26, 2000, Wyoming Interstate Company, Ltd. (WIC), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP00–471–000 an application pursuant to Section 7 of the Natural Gas Act (NGA), and the Commission's Rules and Regulations for a certificate of public convenience and necessity authorizing WIC to construct and operate a loop of its existing Medicine Bow Lateral and install a third compressor unit at its existing Douglas Compressor Station all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may be viewed at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

Specifically, WIC proposes to construct and operate the following facilities:

- An approximately 155 mile, 36-inch diameter pipeline loop of its entire existing Medicine Bow Lateral commencing in Converse County, Wyoming and extending in a southeasterly direction through Converse, Platt and Laramie Counties, Wyoming and terminating at the discharge side of WIC's existing Cheyenne Compressor Station in Weld County, Colorado.
- A 7,170 horsepower compressor unit at WIC's existing Douglas Compressor Station in Converse County, Wyoming.
- Additional facilities to increase the capacity of the meter stations at the northern end of the Medicine Bow Lateral and to increase capacity at the existing check meter station at the southern end in the Cheyenne Compressor Station yard.

WIC states that the proposed facilities will increase the capacity of the Medicine Bow Lateral from 380,000 dth per day to 1,055,000 dth per day. WIC avers that the project is fully supported by firm service agreements for which WIC has requested confidential treatment pursuant 18 CFR 388.112. WIC estimates that the proposed facilities will cost $159,575,900 and proposes to roll-in the costs of the expansion into its existing Medicine Bow Lateral rate. WIC also proposes to roll-in the incremental fuel into its existing Medicine Bow Incremental FL&U Percentage.

Any questions regarding this application should be directed to James R. West, Manager, Certificates, at (719) 520–4679, Wyoming Interstate Company, Ltd., P.O. Box 1087, Colorado Springs, Colorado 80944.

Any person desiring to be heard or to protest with reference to said application should on or before October 25, 2000, file with the Federal Energy Regulatory Commission (Commission), 888 First Street, NE, Washington, DC 20426, a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and procedure (18 CFR 385.211 and 385.214) and the regulations under the Natural Gas Act (NGA) (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding must file a motion to intervene in accordance with the Commission's rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents issued by the Commission, filed by the applicant, or filed by all other intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must serve copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as filing an original and 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered, a person, instead, may submit two copies of such comments to the Secretary of the Commission, Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents, and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, Commenters will not receive copies of all documents filed by other parties or issued by the Commission, and will not have the right to seek rehearing or appeal the Commission's final order to a Federal court.

The Commission will consider all comments and concerns equally, whether filed by Commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Section 7 and 15 of the NGA and Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for WIC to appear or be represented at the hearing.

Linwood A. Watson, Jr.

*Acting Secretary,*

[FR Doc. 00–26055 Filed 10–10–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER00–3784–000, et al.]**

### Valley Electric Association, Inc., et al.; Electric Rate and Corporate Regulation Filings

October 3, 2000.

Take notice that the following filings have been made with the Commission:

**1. Valley Electric Association, Inc.**

[Docket No. ER00–3784–000]

Take notice that on September 29, 2000, Valley Electric Association, Inc., tendered for filing an agreement extending the term of a transmission capacity contract with the United States Department of Energy.

A copy of the filing was served upon the Department of Energy.

*Comment date:* October 20, 2000, in accordance with Standard Paragraph E at the end of this notice.



**2. Golden Spread Electric Cooperative, Inc.**

[Docket No. ER00–3338–001]

**The Montana Power Trading and Marketing Company**

[Docket Nos. ER00–3367–001 and ER00–3368–001]

Take notice that on September 29, 2000, the Western Systems Power Pool (WSPP), tendered for filing a revised version of the WSPP Agreement (Agreement) in compliance with the Federal Energy Regulatory Commission's September 15, 2000 order in the proceedings captioned above. The WSPP states that the changes reflected in the revised Agreement are non-substantial, and only involve reformatting the Agreement as required by Order No. 614, Designation of Electric Rate Schedule Sheets, III FERC Stats. & Regs. ¶ 31,096 (2000).

The WSPP seeks an effective date of July 1, 2000 for this filing, the same date as assigned to the currently effective version of the Agreement.

*Comment date:* October 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

**3. FirstEnergy Operating Companies**

[Docket No. ER00–3771–000]

Take notice that on September 29, 2000, The Cleveland Electric Illuminating Company, Ohio Edison Company, Pennsylvania Power Company and The Toledo Edison Company (collectively, the FirstEnergy Operating Companies), tendered for filing the following items:

- FERC Electric Tariff, Original Volume No. 3 of the FirstEnergy Operating Companies ("Ancillary Services Tariff").
- Service Agreement No. 3 under the Ancillary Services Tariff for the sale of ancillary services by the FirstEnergy Operating Companies to American Transmission Systems, Inc. ("ATSI"), a transmission-company affiliate of the FirstEnergy Operating Companies, from September 1, 2000 through August 31, 2003.

The FirstEnergy Operating Companies state that they have recently transferred their transmission facilities to ATSI, which does not own or control any generation resources. Because generation and transmission facilities historically owned by the FirstEnergy Operating Companies are now owned and operated by separate corporate entities, the FirstEnergy Operating Companies are offering to sell specified ancillary services under the Ancillary Services Tariff. The FirstEnergy Operating Companies state that the rates for most ancillary services available under the Ancillary Services Tariff are identical to rates that were previously incorporated in the open access transmission tariff of the FirstEnergy Operating Companies. In order to comply with FERC Order No. 888, ATSI initially will purchase ancillary services from the FirstEnergy Operating Companies in accordance with the rates, terms and conditions of the Ancillary Services Tariff.

The FirstEnergy Operating Companies are proposing to make the Ancillary Services Tariff and Service Agreement No. 1 thereunder effective as of September 1, 2000.

*Comment date:* October 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

**4. Arizona Public Service Company**

[Docket No. ER00–3772–000]

Take notice that on September 29, 2000, Arizona Public Service Company (APS), tendered for filing umbrella Service Agreement to provide Short-Term Firm Point-to-Point Transmission Service to PacifiCorp Power Marketing, Inc., under APS' Open Access Transmission Tariff.

A copy of this filing has been served on PacifiCorp Power Marketing, Inc., and the Arizona Corporation Commission.

*Comment date:* October 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

**5. Niagara Mohawk Power Corporation**

[Docket No. ER00–3773–000]

Take notice that on September 29, 2000, Adirondack Fourth Branch, LLC, tendered for filing on behalf of Niagara Mohawk Power Corporation, an Interconnection Agreement between Niagara Mohawk and Adirondack Fourth Branch.

*Comment date:* October 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

**6. Adirondack Hydro Fourth Branch, LLC.**

[Docket No. ER00–3774–000]

Take notice that on September 29, 2000, Adirondack Hydro Fourth Branch, LLC (Adirondack), tendered for filing an application for authorization to make wholesale sales of electric power at market-based rates, acceptance of a long-term power purchase agreement with Niagara Mohawk Power Company (Niagara Mohawk), and waiver of certain of the Commission's Regulations and blanket approval to engage in certain transactions.

Adirondack state that copies of this filing are being mailed to Niagara Mohawk and to the New York Public Service Commission.

*Comment date:* October 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

**7. SOWEGA Power, LLC.**

[Docket No. ER00–3775–000]

Take notice that on September 29, 2000, SOWEGA Power LLC tendered for filing amended and restated long-term service agreements with Grady Electric Membership Corporation and Three Notch Electric Membership Corporation pursuant to SOWEGA Power LLC's market-based tariff, FERC Electric Tariff, Original Vol. No. 1. These amended and restated long-term service agreements are designated as SOWEGA Power's First Revised Service Agreement No. 1 and First Revised Service Agreement No. 2, respectively.

*Comment date:* October 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

**8. Green Power Partners I, LLC.**

[Docket No. ER00–3776–000]

Take notice that on September 29, 2000, Green Power Partners I LLC tendered for filing its Notice of Cancellation effective September 29, 2000, pursuant to Sections 35.15 and 131.53 of the Commission's Regulations, 18 CFR 35.15 and 131.53, with respect to Rate Schedule FERC Nos. 1 and 2, and supplements thereto. Green Power Partners I LLC is now a qualifying facility under Part 292 of the Commission's regulations, 18 CFR Part 292, and accordingly is canceling its rates schedule and supplements.

*Comment date:* October 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

**9. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company**

[Docket No. ER00–3777–000]

Take notice that on September 29, 2000, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (d/b/a GPU Energy), tendered for filing an executed Service Agreement between GPU Energy and PG&E Energy Services (PGE), dated September 28, 2000. This Service Agreement specifies that PGE has agreed to the rates, terms and conditions of GPU Energy's Market-Based Sales Tariff (Sales Tariff) designated as FERC Electric Rate Schedule, Second Revised Volume No. 5. The Sales Tariff allows GPU Energy and PGE to enter into separately scheduled transactions under which GPU Energy will make available for sale, surplus capacity and/or energy.

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GPU Energy requests a waiver of the Commission's notice requirements for good cause shown and an effective date of September 28, 2000 for the Service Agreement.

GPU Energy has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

*Comment date:* October 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

**10. American Electric Power Service Corporation**

[Docket No. ER00–3778–000]

Take notice that on September 29, 2000, the American Electric Power Service Corporation (AEPSC), tendered for filing executed Firm and Non-Firm Point-to-Point Transmission Service Agreements for Alliance Energy Services Partnership, British Columbia Power Exchange Corporation, and North Carolina Electric Marketing, LLC and Specifications for Long-Term Firm Point-to-Point Transmission Service Reservations to be attached as addenda to the previously filed Firm Point-to-Point Transmission Service Agreements with Commonwealth Edison Company, Michigan Companies (Consumers Energy and The Detroit Edison Company), and Virginia Power Company. All of these agreements are pursuant to the AEP Companies' Open Access Transmission Service Tariff (OATT) that has been designated as the Operating Companies of the American Electric Power System FERC Electric Tariff Revised Volume No. 6, effective June 15, 2000.

AEPSC requests waiver of notice to permit the Service Agreements to be made effective for service billed on and after September 1, 2000.

Pursuant to a request by Public Service Electric and Gas Company (PSE&G), the Non-firm Point-to-Point Transmission Service Agreement No. 71, under AEP Companies' FERC Electric Tariff Original Volume No. 4, is being assigned to PSEG Energy Resources & Trade LLC (PSEG ER&T). The AEP Companies' FERC Electric Tariff Original Volume No. 4 is superceded by the OATT.

A copy of the filing was served upon the Parties and the state utility regulatory commissions of Arkansas, Indiana, Kentucky, Louisiana, Michigan, Ohio, Oklahoma, Tennessee, Texas, Virginia and West Virginia.

*Comment date:* October 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

**11. Commonwealth Edison Company**

[Docket No. ER00–3779–000]

Take notice that on September 29, 2000, Commonwealth Edison Company (ComEd), tendered for filing 12 Short-Term Firm Transmission Service Agreements with Allegheny Energy Supply Company, LLC (AESC), British Columbia Power Exchange Corporation (PowerEx), Cargill-Alliant, LLC (Alliant), Dynegy Power Marketing, Inc. (DYPM), El Paso Merchant Energy, L.P. (EPME), Illinois Municipal Electric Agency (IMEA), InPower Marketing Corp. (INPM), Koch Energy Trading, Inc. (Koch), PECO Energy Company (PECO), Split Rock Energy LLC (SRE), Tractebel Energy Marketing, Inc. (TEMI), and Wisconsin Public Service Corporation (WPS) under the terms of ComEd's Open Access Transmission Tariff (OATT). These Agreements have been amended to provide that Transmission Customers must confirm accepted requests for service within the reservation timing requirements established in the Commission's Order No. 638. These Agreements amend and supersede agreements already on file with the Commission.

ComEd requests an effective date of May 30, 2000 for the Agreements, and accordingly, seeks waiver of the Commission's notice requirements.

*Comment date:* October 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

**12. Wisconsin Public Service Corporation**

[Docket No. ER00–3780–000]

Take notice that on September 29, 2000, WPS Resources Operating Companies (WPS), tendered for filing unexecuted service agreements with Village of Stratford Water & Electric Utility (Stratford) and with Washington Island Electric Cooperative (Washington Island) for Network Integration Transmission Service under WPS's open access transmission tariff, FERC Electric Tariff, Volume No. 1 (Tariff). The purpose of this filing is to include distribution loss compensation service factors applicable to the billing of ancillary services under Schedules 3, 5 and 6 of the Tariff, and make other minor changes. WPS also files notices of cancellation for the prior service agreements for these customers.

Copies of the filing were served upon Stratford, Washington Island, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

*Comment date:* October 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

**13. The Montana Power Company**

[Docket No. ER00–3781–000]

Take notice that on September 29, 2000, The Montana Power Company (Montana), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13 an unexecuted Network Integration Transmission Service Agreement with Holnam, Inc., under Montana's FERC Electric Tariff, Fourth Revised Volume No. 5 (Open Access Transmission Tariff).

A copy of the filing was served upon Holnam, Inc.

*Comment date:* October 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

**14. Entergy Services, Inc.**

[Docket No. ER00–3782–000]

Take notice that on September 29, 2000, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., tendered for filing a modified and redesignated Interconnection and Operating Agreement with Union Power Partners, L.P. (UPP), and a redesignated Generator Imbalance Agreement with UPP. The modified Interconnection and Operating Agreement reflects the alterations necessary to conform the Interconnection and Operating Agreement to the First Amendment to that Agreement.

*Comment date:* October 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

**15. AES Mohave, LLC.**

[Docket No. ER00–3783–000]

Take notice that on September 28, 2000, AES Mohave, LLC (AES Mohave) petitioned the Commission for acceptance for filing of the Transitional Power Purchase Agreement between AES Mohave and Nevada Power Company and to accept the rates under the agreement as just and reasonable under Section 205(a) of the Federal Power Act, 16 U.S.C. 824d(a); for the granting of certain blanket approvals, including the authority to sell capacity, energy and certain Ancillary Services at market-based rates; and for the waiver of certain Commission regulations. AES Mohave is a limited liability company that proposes to engage in the wholesale sale of electric power in the state of Nevada.

*Comment date:* October 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

**16. Virginia Electric and Power Company**

[Docket No. ER00–3785–000]

Take notice that on September 29, 2000, Virginia Electric and Power Company (Dominion Virginia Power), tendered for filing an Amended Settlement Agreement between Virginia Electric and Power Company and North Carolina Eastern Municipal Power Agency, North Carolina Electric Membership Corporation, Southeastern Federal Power Customers, Inc., Southeastern Power Administration, Virginia Municipal Electric Association No. 1, Central Virginia Electric Cooperative, Inc., Craig-Botetourt Electric Cooperative, Inc., and Old Dominion Electric Cooperative. The Amended Settlement Agreement amends the Settlement Agreement accepted by the Commission on October 28, 1999 in Docket No. ER99–417–000.

Dominion Virginia Power requests an effective date of September 29, 2000, the date of filing of the Amended Settlement Agreement.

Copies of the filing were served upon the parties of record in Docket No. ER99–417–000, North Carolina Eastern Municipal Power Agency, North Carolina Electric Membership Corporation, Southeastern Federal Power Customers, Inc., Southeastern Power Administration, Virginia Municipal Electric Association No. 1, Central Virginia Electric Cooperative, Inc., Craig-Botetourt Electric Cooperative, Inc., Old Dominion Electric Cooperative, the Virginia State Corporation Commission, the Public Service Commission of West Virginia, and the North Carolina Utilities Commission.

*Comment date:* October 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

**17. Atlantic City Electric Company**

[Docket No. ER00–3786–000]

Take notice that on September 29, 2000, Atlantic City Electric Company (Atlantic), tendered for filing an executed umbrella service agreement with PSEG Energy Resources & Trade LLC under Atlantic's market rate sales tariff, FERC Electric Tariff, Second Revised Volume No. 1.

Atlantic requests an effective date of September 1, 2000.

*Comment date:* October 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

**18. Delmarva Power & Light Company**

[Docket No. ER00–3787–000]

Take notice that on September 29, 2000, Delmarva Power & Light Company (Delmarva), tendered for filing an executed umbrella service agreement with PSEG Energy Resources & Trade LLC under Delmarva's market rate sales tariff, FERC Electric Tariff, Second Revised Volume No. 14.

Delmarva requests an effective date of September 1, 2000.

*Comment date:* October 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

**19. Commonwealth Edison Company**

[Docket No. ER00–3788–000]

Take notice that on September 29, 2000, Commonwealth Edison Company (ComEd), tendered for filing two Network Service Agreements (Service Agreements) and two Network Operating Agreements (Operating Agreements) between ComEd and the City of Batavia and the City of St. Charles. These agreements will govern ComEd's provision of network service load under the terms of ComEd's Open Access Transmission Tariff (OATT).

ComEd requests an effective date of September 1, 2000 for the Agreements, and accordingly, seeks waiver of the Commission's notice requirements.

*Comment date:* October 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

**20. PSI Energy, Inc.**

[Docket No. ER00–3789–000]

Take notice that on September 29, 2000, PSI Energy, Inc., tendered for filing its Power Coordination Agreement and Power Supply Agreement with Wabash Valley Power Association and its Service Agreement for Firm Point-to-Point Transmission Service with the City of Logansport, Indiana, redesignated according to Order No. 614. This filing is being made in conjunction with the filing of revised pages to these three agreements as part of a partial settlement in Docket No. ER00–188.

This filing has been served on the Wabash Valley Power Association and Logansport Municipal Utilities.

*Comment date:* October 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

**21. Metropolitan Edison Company**

[Docket No. ER00–3790–000]

Take notice that on September 29, 2000, Metropolitan Edison Company (Metropolitan Edison), tendered for filing a Generation Facility Interconnection Agreement (Agreement) by and between Metropolitan Edison and Green Knight Economic Development Corporation (Green Knight), entered into on September 11, 2000.

Copies of the filing were served upon Green Knight and regulators in the State of Pennsylvania.

*Comment date:* October 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

**22. Metropolitan Edison Company**

[Docket No. ER00–3791–000]

Take notice that on September 29, 2000, Metropolitan Edison Company (Metropolitan Edison), tendered for filing a Generation Facility Interconnection Agreement (Agreement) by and between Metropolitan Edison and Lebanon Methane Recovery, Inc. (Lebanon Methane), entered into on July 17, 2000.

Copies of the filing were served upon Lebanon Methane and regulators in the State of Pennsylvania.

*Comment date:* October 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraphs**

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–25989 Filed 10–10–00; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 2183–023, Oklahoma]**

### Grand River Dam Authority; Notice of Availability of Environmental Assessment

October 4, 2000.

An environmental assessment (EA) is available for public revivew. The EA analyzes the environmental impacts of Grand River Dam Authority's (GRDA) application to grant a permit to Mike Sisemore (applicant) to install 2 boat docks with 38 slips in Lake Hudson, the reservoir for the Markham Ferry Hydroelectric Project. GRDA's proposed

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permit would also allow the applicant to dredge about 25,000 cubic yards of sediment to improve boat access from the docks to Lake Hudson. The Markham Ferry Project is on the Grand (Nesho) River in Mayes County, Oklahoma.

The EA was written by staff in the Office of Energy Projects, Federal Energy Regulatory Commission. In the EA, Commission staff conclude that approving GRDA's application to grant the permit would not constitute a major federal action significantly affecting the quality of the human environment. Copies of the EA can be viewed on the web at *www.ferc.fed.us/online/rims.htm*. Call (202) 208–2222 for assistance. Copies are also avaiable for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington DC 20426, or by calling (202) 208–1371.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–26061 Filed 10–10–00; 8:45 am]

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP00–447–000]**

### Distrigas of Massachusetts LLC; Notice of Intent To Prepare an Environmental Assessment for the Proposed High Pressure Expansion Project and Request for Comments on Environmental Issues

October 4, 2000.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the High Pressure Expansion Project involving construction and operation of facilities by Distrigas of Massachusetts LLC (DOMAC) at its existing liquefied natural gas (LNG) storage facility Everett, Massachusetts.[1] These facilities would consist of new vaporization equipment and associated systems to provide regasified LNG to a nonjurisdictional electric power generating plant currently under construction. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

**Summary of the Proposed Project**

The proposed project would allow DOMAC to supply 280,000 million British thermal units per day of regasified LNG to an electric power generating plant. Specifically, DOMAC requests Commission authorization to:

- Install four submerged combustion vaporization units capable of 600,000 thousand cubic feet per day;
- Replace the existing LNG tank pumps with higher capacity pumps;
- Install eight LNG booster pumps;
- Modify the LNG impoundment and vapor control systems; and
- Install various cross-connections, tie-ins, pollution control systems, and odorization equipment.

In addition to the above jurisdictional facilities, Sithe Mystic Development LLC is constructing the New Mystic Station, a 1,550 megawatt natural gas-fired, combined-cycle electric generating power plant at Everett, Massachusetts. The New Mystic Station, approved by the Massachusetts Energy Facilities Siting Board on September 30, 1999, is currently under construction and was 40 percent complete at the time of DOMAC's filing with the Commission. A 24-inch-diameter nonjurisdictional pipeline, approximately 1,200 feet in length, would also be constructed by Boston Gas Company to transport the regasified LNG to the New Mystic Station.

The general location of DOMAC's proposed project facilities is shown on the map attached as appendix 1.[2] Construction of the proposed facilities would occur completely on DOMAC's existing LNG plant site.

**The EA Process**

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping".[3] The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils
- Vegetation and wildlife
- Public safety
- Cultural resources
- Water resources, fisheries, and wetlands
- Endangered and threatened species
- Land use
- Air quality and noise impacts

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

**Public Participation**

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal, and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send two copies of your letter to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas Group 1, PJ–11.1.
- Reference Docket No. CP00–447–000.
- Mail your comments so that they will be received in Washington, DC on or before November 3, 2000.

**Becoming an Intervenor**

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an "intervenor". Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2). Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Additional information about the proposed project is available from the Commission's Office of External Affairs at (202) 208–0004 or on the FERC website (www.ferc.fed.us) using the "RIMS" link to information in this docket number. Click on the "RIMS" link, select "Docket #" from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the "CIPS" link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the "CIPS" link, select "Docket #" from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

**Lindood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–26056 Filed 10–10–00; 8:45 am]

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

October 4, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent license.

b. *Project No.:* 2103–002.

c. *Date filed:* June 29, 2000.

d. *Applicant:* Cominco American Incorporated.

e. *Name of Project:* Cedar Creek.

f. *Location:* On Cedar Creek, a tributary of the Pend Oreille River, in Stevens County, Washington. The project occupies 2.058 acres of BLM land, 0.298 acres of International Boundary Reserve land controlled by the International Joint Commission, and 0.44 acres of private land.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Bruce DiLuzio, Cominco American Incorporated, 15918 E. Euclid Avenue, Spokane, WA, 98216, (509)747–6111.

i. *FERC Contact:* Brandi Bradford, (202) 219–2789, brandi.bradford@ferc.fed.us.

j. *Deadline for filing motions to intervene and protests:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted, but is not ready for environmental analysis at this time.

l. *Project Description:* The existing Cedar Creek Project consists of 2.4 acres of land periodically inundated by operation of the Waneta Project located in British Columbia, Canada. The Cedar Creek Project area is located in the United States. All Waneta Project facilities, including the dam and power generation facilities, are located in Canada and are outside FERC jurisdiction. Within the confines of the Cedar Creek Project, the maximum pool is EL 1517.8 (Canadian Geodetic Survey of Canada Datum) and minimum pool is EL 1502. Cominco American Incorporated currently has flowage rights to lands in the Cedar Creek Project boundary up to EL 1521.

m. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2–A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

n. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

**Linwood A. Watson, Jr.**

*Acting Secretary.*

[FR Doc. 00–26059 Filed 10–10–00; 8:45 am]

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[1] DOMAC's application was filed with the Commission under Section 7 of the Natural Gas Act and part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's website at the "RIMS" link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE., Washington, DC 20426, or call (202) 208–1371. For instructions on connecting to RIMS refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[3] "We," "us," and "our" refer to the environmental staff of the Office of Energy Projects (OEP).

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Non-Project Use Of Project Lands

October 4, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands.

b. *Project No.:* 2197–042.

c. *Date Filed:* August 1, 2000.

d. *Applicant:* Alcoa Power Generating Inc. (formerly Yadkin Inc.).

e. *Name of Project:* Yadkin Hydroelectric Project.

f. *Location:* The Yadkin Hydroelectric Project is on the Yadkin/Pee Dee River in Montgomery, Stanly, Davidson, Rowan, and Davie Counties, North Carolina. The Yadkin Project contains the following reservoirs: High Rock, Tuckertown, Narrows, and Falls.

g. *Applicant Contact:* Mr. Gene Ellis, Alcoa Power Generating Inc., P.O. Box 576, Badin, NC 28009–0576; (704) 422–5606.

h. *FERC Contact:* Questions about this notice can be answered by Steve Hocking as (202) 219–2656 or e-mail address: *steve.hocking@ferc.fed.us.* Please note the Commission cannot accept comments, recommendations, motions to intervene or protests sent by e-mail; these documents must be filed as described below.

i. *Deadline for filing comments, recommendations, motions to intervene and protests:* November 13, 2000.

All documents (original and eight copies) should be filed with: Davis P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules and Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of the Application:* Alcoa Power Generating, Inc. (Alcoa), licensee for the Yadkin Hydroelectric Project, filed a non-project use of project lands application. In its application, Alcoa proposes to grant a permit to KEJ Marketing Co., Inc., for the construction of four boat docks with a total of 48 boat slips and one boat launch ramp on Narrows Reservoir, part of the Yadkin Project. Alcoa proposes to grant a second permit to Heron Bay Homeowners Association for the use and operation of the above facilities. The above facilities would not be open to the public; they would be for Heron Bay residents only.

k. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm.* Call (202) 208–2222 for assistance.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS," "RECOMMENDATIONS FOR TERMS AND CONDITIONS," "PROTEST," or "MOTION TO INTERVENE," as applicable, and the Project Number (P–2197–042) of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–26062 Filed 10–10–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Draft Application for Nonpower License and Preliminary Draft Environmental Assessment (PDEA) and Request for Preliminary Terms and Conditions

October 4, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Nonpower License (Draft).

b. *Project No.:* 2852.

c. *Applicant:* New York State Electric & Gas Corporation.

d. *Name of Project:* Keuka.

e. *Location:* On Waneta and Lamoka Lakes, Keuka Lake, Mud Creek, in Steuben and Schulyer Counties, New York.

f. *Applicant Contact:* Carol Howland, New York State Electric & Gas Corporation, Corporate Drive, Kirkwood Industrial Park, P.O. Box 5224, Binghamton, NY 13902–5224.

g. *FERC Contact:* William Guey-Lee (202) 219–2808, Email: william.gueylee@ferc.fed.us.

h. New York State Electric & Gas Corporation (NYSEG) mailed a copy of the Draft Nonpower License Application and PDEA to interested parties on September 15, 2000. The Commission received a copy of the Draft Application and PDEA on September 21, 2000. Copies of the documents are available from NYSEG at the above address.

i. With this notice we are soliciting preliminary terms, conditions, recommendations, prescriptions, and comments on the PDEA and draft license application. All comments on the PDEA and draft license application should be sent to the address above in item (f) with one copy filed with the Commission at the following address: Federal Energy Regulatory Commission, David P. Boergers, Secretary, 888 First St. NE., Washington, DC 20426. All comments must include the project name and number and bear the heading "Preliminary Comments," "Preliminary Recommendations," "Preliminary Terms and Conditions," or "Preliminary Prescriptions." Any party interested in commenting on the draft license application and the PDEA, must do so on or before December 15, 2000.

j. With this notice, we are initiating consultation with the STATE HISTORIC PRESERVATION OFFICER (SHPO), as required by Section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–26063 Filed 10–10–00; 8:45 am]

BILLING CODE 6717–01–M



## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6884–1]**

### Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) or Superfund, Section 104; "Announcement of Proposal Deadline for the Competition for the FY 2001 Brownfields Cleanup Revolving Loan Fund Pilots"

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of proposal deadlines, revised guidelines.

**SUMMARY:** The United States Environmental Protection Agency (EPA) will begin to accept proposals for the FY 2001 Brownfields Cleanup Revolving Loan Fund Pilots on October 11, 2000. The Brownfields Cleanup Revolving Loan Fund pilots (each may be funded up to $1,000,000) to test cleanup and redevelopment planning models, direct special efforts toward removing regulatory barriers without sacrificing protectiveness, and facilitate coordinated public and private environmental cleanup and redevelopment efforts. EPA expects to select up to 35 additional Brownfields Cleanup Revolving Loan Fund pilots by March 2001. The deadline for new proposals for the FY 2000 Brownfields Cleanup Revolving Loan Fund pilots is *December 18, 2000.* Proposals must be postmarked by the U.S. Postal Service (USPS) by December 18, 2000, and sent to U.S. EPA Headquarters. In addition, duplicate copies of the proposal must also be submitted to the appropriate U.S. EPA Regional Office, ATTN: Brownfields Cleanup Revolving Loan Fund Coordinator.

The Brownfields Cleanup Revolving Loan Fund pilot proposals are selected on a competitive basis. To ensure a fair selection process, evaluation panels consisting of EPA Regional and Headquarters staff and other federal agency representatives will assess how well the proposals meet the selection criteria outlined in the newly revised guidelines, entitled The Brownfields Economic Redevelopment Initiative: Proposal Guidelines for Brownfields Cleanup Revolving Loan Fund (September 2000).

**DATES:** All proposals must be postmarked by USPS or sent to U.S. EPA Headquarters and a duplicate copy sent to the appropriate U.S. EPA Regional Office via registered or tracked mail no later than December 18, 2000.

**ADDRESSES:** BCRLF guidelines can be obtained by calling the Superfund Hotline at the following numbers:

Washington, DC Metro Area at 703–412–9810

Outside Washington, DC Metro at 1–800–424–9346

TDD for the Hearing Impaired at 1–800–553–7672

Copies of the Proposal Guidelines for Brownfields Cleanup Revolving Loan Fund are available via the Internet: http://www.epa.gov/brownfields/

**FOR FURTHER INFORMATION CONTACT:** The U.S. EPA's Office of Solid Waste and Emergency Response, Outreach and Special Projects Staff, Barbara Bassuener (202) 260–9347 or Jennifer Millett Wilbur (202) 260–6454.

**SUPPLEMENTARY INFORMATION:** The Environmental Protection Agency's (EPA) Brownfields Economic Redevelopment Initiative is designed to empower states, local governments, communities, and other stakeholders involved in economic redevelopment to work together in a timely manner to prevent, assess, and safely cleanup brownfields in order to facilitate their sustainable reuse. As part of this Initiative, EPA has awarded cooperative agreements to States, political subdivisions (including cities, towns, counties), and Indian tribes to capitalize Brownfields Cleanup Revolving Loan Fund pilots. The purpose of these pilots is to test brownfields cleanup revolving loan fund models that direct special efforts toward facilitating coordinated public and private brownfields cleanup efforts.

In FY 2001, the EPA expects to select up to 35 new BCRLF pilots to be funded up to $1,000,000 per eligible entity by the end of March 2001.

Eligible entities for FY 2001 BCRLF pilots will be states, political subdivisions, or federally recognized Indian Tribes that have established and can demonstrate progress already made in the assessment, cleanup and revitalization of brownfields in their community, State or Tribe.

Coalitions of eligible entities are permitted to apply, but a single entity must be identified as the applicant. Additionally, a letter of support from each coalition member must be included as an attachment.

Applicants must demonstrate through their proposal: (1) an existing commitment to brownfields; (2) an ability to manage a revolving loan fund and environmental cleanups; (3) a need for cleanup funds; (4) commitment to making loans and to creative leveraging of EPA funds with public-private partnerships and in-kind services (matching funds are not required); and (5) a clear plan for sustaining the environmental protection and related economic development activities initiated through the BCRLF program. The eligible entities must meet EPA's threshold and evaluation criteria. There is no guarantee of an award. Also, the size of the awards may vary (for example, from $350,000 to $1,000,000 per eligible entity), depending on the proposal's responses to the evaluation criteria.

Funding for the Brownfields Cleanup Revolving Loan Fund pilots is authorized under Section 104(d)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, (CERCLA or Superfund), 42 U.S.C. 9604(d)(1).

The Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register.** A Major rule cannot take effect until 60 days after it is published in the **Federal Register.** This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective on October 11, 2000.

Dated: October 3, 2000.

**Linda Garczynski,**

*Director, Outreach and Special Projects Staff, Office of Solid Waste and Emergency Response.*

[FR Doc. 00–26066 Filed 10–10–00; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00301; FRL–6749–9]

### Forum on State and Tribal Toxics Action (FOSTTA); Open Meetings; Notice of Public Meeting

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of public meeting.

**SUMMARY:** Two components (Chemical Management, and Tribal Affairs) of the Forum on State and Tribal Toxics Action (FOSTTA) will hold meetings October 23–24, 2000. This notice announces the location and times for the meetings and sets forth some tentative agenda topics. The National Conference of State Legislatures (NCSL) and the Environmental Protection Agency's (EPA) Office of Pollution Prevention and Toxics (OPPT) are co-sponsoring the meetings. As part of a cooperative agreement, NCSL facilitates ongoing efforts of the States and Tribes to identify, discuss, and address toxics-related issues, and to continue the dialogue on how Federal environmental programs can best be implemented.

**DATES:** The two components will meet concurrently October 23, 2000, from 8 a.m. to 5 p.m. and October 24, 2000, from 8 a.m. to noon. A plenary session is being planned for all the participants on Monday, October 24, 2000, from 8 a.m. to 9:30 a.m.

**ADDRESSES:** The meetings will be held at the Holiday Inn, Old Town, 480 King Street, Alexandria, VA, 22314. The hotel is about 12 blocks from the King Street Metro Station.

**FOR FURTHER INFORMATION CONTACT:** For general information contact: Barbara Cunningham, Acting Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7408), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 260–1761.

For technical information contact: George Hagevik, National Conference of State Legislatures, 1560 Broadway, Suite 700, Denver, CO 80202; telephone: (303) 839–0273 and FAX: (303) 863–8003; e-mail: george.hagevik@ncsl.org or Darlene Harrod, Environmental Assistance Division (7408), OPPT, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone: (202) 260–6904 and fax: (202) 260–2219; e-mail: harrod.darlene@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:**

**I. Does this Notice Apply to Me?**

This action is directed to the public in general. This action may, however, be of interest to all parties interested in FOSTTA and hearing more about the perspectives of the States and Tribes on EPA programs and the information exchange regarding important issues related to human health and environmental exposure to toxics. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. However, in the interest of time and efficiency, the meetings are structured to provide maximum opportunity for State, Tribal, and EPA participants to discuss items on the predetermined agenda. At the discretion of the chair, an effort will be made to accommodate participation by observers attending the proceedings. If you have any questions regarding the applicability of this action to a particular entity, consult the technical people listed under **FOR FURTHER INFORMATION CONTACT.**

**II. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?**

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the NCSL Web site at http://www.ncsl.org/programs/esnr/fostta/fostta.htm. To access this document on the EPA Internet Home Page go to http://www.epa.gov and select "Laws and Regulations" "Regulations and Proposed Rules" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/FOSTTA.

2. *Facsimile.* Notify the contacts listed above if you would like any of the documents sent to you via fax.

**III. Purpose of Meeting:**

Tentative Agenda Items Identified by NCSL, the States, and the Tribes:

1. Subsistence food panel discussion
2. OPPTS Tribal strategy
3. Education and exposure models
4. Other topics as appropriate.

**IV. How Can I Request To Participate in this Meeting?**

You may submit a request to participate in this meeting in the mail or electronically to the names under the **FOR FURTHER INFORMATION** section. Do not submit any information in your request that is considered Confidential Business Information. Your request must be received by EPA on or before October 20, 2000.

**List of Subjects**

Environmental protection.

Dated: October 5, 2000.

**Clarence O. Lewis, III,**

*Acting Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics.*

[FR Doc. 00–26119 Filed 10–10–00; 8:45 pm]

**BILLING CODE 6560–50–S**

## ENVIRONMENTAL PROTECTION AGENCY

[OPP–34183B; FRL–6750–4]

### Organophosphate Pesticide; Availability of Preliminary Risk Assessments

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the availability of documents that were developed as part of the EPA's process for making reregistration eligibility decisions for the organophosphate pesticides and for tolerance reassessments consistent with the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA). These documents are the preliminary dichlorvos (DDVP) risk assessments and related documents for dichlorvos (DDVP). This notice also starts a 60-day public comment period for the preliminary risk assessments. Comments are to be limited to issues directly associated with the dichlorvos (DDVP) organophosphates pesticides that have risk assessments placed in the docket and should be limited to issues raised in those documents. By allowing access and opportunity for comment on the preliminary risk assessments, EPA is seeking to strengthen stakeholder involvement and help ensure our decisions under FQPA are transparent and based on the best available information. The tolerance reassessment process will ensure that the United States continues to have the safest and most abundant food supply. The Agency cautions that these risk assessments are preliminary assessments only and that further refinements of the risk assessments will be appropriate for some, if not all, of these dichlorvos (DDVP) organophosphate pesticides. These documents reflect only the work and analysis conducted as of the time they were produced and it is appropriate that, as new information becomes available and/or additional analyses are performed, the conclusions they contain may change.



**DATES:** Comments, identified by the docket control number OPP–34183B for dichlorvos (DDVP), must be received on or before December 11, 2000.

**ADDRESSES:** Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–34183B for dichlorvos (DDVP) in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** Kimberly Lowe, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8059; e-mail address: lowe.kimberly@epa.gov.

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this Action Apply to Me?*

This action is directed to the public in general, nevertheless, a wide range of stakeholders will be interested in obtaining the preliminary risk assessments for dichlorvos (DDVP), including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the use of pesticides on food. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

*B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?*

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. In addition, copies of the preliminary risk assessments for the dichlorvos (DDVP) organophosphate pesticides may also be accessed at http: www.epa.gov/oppsrrd1/op.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–34183B. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

*C. How and to Whom Do I Submit Comments?*

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–34183B in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by email to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–34183B. Electronic comments may also be filed online at many Federal Depository Libraries.

*D. How Should I Handle CBI that I Want to Submit to the Agency?*

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

*E. What Should I Consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

**II. What Action is the Agency Taking?**

EPA is making available preliminary risk assessments that have been

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developed as part of EPA's process for making reregistration eligibility decisions for the organophosphate pesticides and for tolerance reassessments consistent with the FFDCA, as amended by the FQPA. The Agency's preliminary dichlorvos (DDVP) risk assessments for the following dichlorvos (DDVP) organophosphate pesticides are available in the individual organophosphate pesticide dockets.

Included in the individual organophosphate pesticide dockets are the Agency's preliminary risk assessments. As additional comments, reviews, and risk assessment modifications become available, these will also be docketed for the dichlorvos (DDVP) organophosphate pesticides listed in this notice. The Agency cautions that these risk assessments are preliminary assessments only and that further refinements of the risk assessments will be appropriate for some, if not all, of these dichlorvos (DDVP) organophosphate pesticides. These documents reflect only the work and analysis conducted as of the time they were produced and it is appropriate that, as new information becomes available and/or additional analyses are performed, the conclusions they contain may change.

As the preliminary risk assessments for the remaining organophosphate pesticides are completed and registrants are given a 30-day review period to identify possible computational or other clear errors in the risk assessment, these risk assessments and registrant responses will be placed in the individual organophosphate pesticide dockets. A notice of availability for subsequent assessments will appear in the **Federal Register**.

The Agency is providing an opportunity, through this notice, for interested parties to provide written comments and input to the Agency on the preliminary risk assessments for the chemicals specified in this notice. Such comments and input could address, for example, the availability of additional data to further refine the risk assessments, such as percent crop treated information or submission of residue data from food processing studies, or could address the Agency's risk assessment methodologies and assumptions as applied to these specific chemicals. Comments should be limited to issues raised within the preliminary risk assessments and associated documents. EPA will provide other opportunities for public comment on other science issues associated with the organophosphate pesticide tolerance reassessment program. Failure to comment on any such issues as part of this opportunity will in no way prejudice or limit a commenter's opportunity to participate fully in later notice and comment processes. All comments should be submitted by December 11, 2000 using the methods in Unit I. of the **SUPPLEMENTARY INFORMATION**. Comments will become part of the Agency record for each individual organophosphate pesticide to which it pertains.

**List of Subjects**

Environmental protection, Chemicals, Pesticides and pests.

Dated: October 3, 2000.

**Jack E. Housenger,**

*Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.*

[FR Doc. 00–26067 Filed 10–10–00; 8:45 am]
BILLING CODE 6560–50–S

## ENVIRONMENTAL PROTECTION AGENCY

**[PF–979; FRL–6749–6]**

## Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

**DATES:** Comments, identified by docket control number PF–979, must be received on or before November 13, 2000.

**ADDRESSES:** Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–979 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** By mail: Kathryn Boyle, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–6304; e-mail address: boyle.kathryn@epa.gov.

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this Action Apply to Me?*

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

| Categories | NAICS codes | Examples of potentially affected entities |
|---|---|---|
| Industry | 111<br>112<br>311<br>32532 | Crop production<br>Animal production<br>Food manufacturing<br>Pesticide manufacturing |

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?*

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF–979. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.



*C. How and to Whom Do I Submit Comments?*

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–979 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–979. Electronic comments may also be filed online at many Federal Depository Libraries.

*D. How Should I Handle CBI That I Want to Submit to the Agency?*

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT**.

*E. What Should I Consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

**II. What Action is the Agency Taking?**

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

**List of Subjects**

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 29, 2000.

**James Jones,**

*Director, Registration Division, Office of Pesticide Programs.*

**Summary of Petition**

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the view of the petitioner. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

**Avecia Biocides**

*PP 0F6172*

EPA has received a pesticide petition (PP 0F6172) from Avecia Biocides, 1405 Foulk Road P.O. Box 15457 Wilmington, DE 19859 proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for 1,2 benzisothiazoline-3-one (BIT) when used as a preservative/stabilizer in pesticide formulations applied to animals. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

*A. Residue Chemistry*

1. *Analytical method.* Because Avecia Biocides is petitioning for an exemption from the requirement of a tolerance, an enforcement analytical method for BIT is not needed.

2. *Magnitude of residues.* Based on the proposed amount of BIT to be used in the final products (0.1% or less of the total formulation) and the recommended frequency and rates of application to the animals, the residues in treated animals are expected to be essentially undetectable and not toxicologically significant.

*B. Toxicological Profile*

1. *Acute toxicity.* The acute oral toxicity of technical BIT is relatively low by oral and dermal exposure. The

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acute oral median lethal dose (MLD) of the technical is 700–800 milligrams/kilograms (mg/kg) (toxicity category III) in rats and the acute dermal $LD_{50}$ in rats is >2,000 mg/kg (toxicity category III). Technical BIT is slightly irritating to rabbit skin following a single 4 hour exposure and an abbreviated rabbit eye irritation study showed technical BIT to be a severe eye irritant. In skin sensitization studies using guinea pigs, technical BIT was shown to be a moderate skin sensitizer under the conditions of the test.

2. *Genotoxicty.* Generally, BIT is non-mutagenic in the Ames test with and without metabolic activation. In cases where the Ames test has produced positive responses the responses are either not reproducible or lack a dose response effect. In a L5178Y mouse lymphoma cell test, BIT produced a negative response both in the presence and absence of S9 activation, indicating it is non-mutagenic in mammalian cells. Negative responses were also seen *in vitro* in a DNA repair assay. In an *in vivo* mouse bone marrow micronucleus assay, BIT produced a negative response, indicating that it was not cytotoxic to bone marrow cells. BIT did not induce unscheduled DNA synthesis in rat hepatocytes. The conclusion from the results of these various assays is that BIT presents no significant genotoxic hazard, either *in vitro* or *in vivo*.

3. *Reproductive and developmental toxicity.* In a rat teratology study, doses up to 100 mg/kg/day of the technical BIT administered from days 7–16 of gestation did not cause any teratogenic effects. The highest dose level was maternally toxic and was marginally toxic to the fetuses. The no observed adverse effect level (NOAEL) for fetal toxicity was 40 mg/kg/day and 10 mg/kg/day for maternal toxicity.

4. *Subchronic toxicity.* NOAELs for BIT have been determined in 2 subchronic studies. In a 90 day feeding study conducted with rats in which the animals received 0, 200, 900, or 4,000 ppm of BIT technical paste in the diet, the only toxic effects observed occurred in the high dose animals and consisted of decreased body weights (bwts) (both sexes) and reduced food consumption (females). Hyperplasia of the fore stomach observed histopathologically in high dose animals was considered to be due to irritation by the test material. The toxicological NOAEL was 900 parts per million (ppm) (about 74 mg/kg/day).

In another subchronic study, male and female beagle dogs (4 animals sex/dose) were dosed orally for 90 days with 0, 5, 20, or 50 mg/kg/day of the BIT technical paste in corn oil. No toxicologically significant effects were seen in any dose group, resulting in a toxicological NOAEL of 50 mg/kg/day. The absolute NOAEL in the study was 5 mg/kg/day.

5. *Chronic toxicity.* Although no chronic studies have been conducted on BIT, the proposed use of BIT as an inert ingredient (preservative/stabilizer) in pesticide products applied to animals is not expected to create or result in chronic exposure to humans. The combined results from various mutagenicity studies indicate that BIT is not genotoxic. The effects noted in the subchronic studies in both rats and dogs did not indicate concern for potential chronic toxicity. Since BIT is not structurally similar to a known carcinogen, all current available evidence indicates that BIT would not be carcinogenic.

6. *Animal metabolism.* Rats administered radiolabelled BIT by gavage showed that most (86%) of the radioactivity was excreted within 24 hours. A total of 96% (91% in urine, 5% in feces) was excreted in 5 days. Analysis of abdominal fat after repeated dosing with BIT showed no accumulation of BIT or any of its metabolites. In another study comparing the metabolism of BIT in the rat and dog, the routes of metabolism in the 2 species were shown to be essentially similar. Breakdown of BIT by both species was rapid and was carried essentially to completion since no unchanged BIT was found in either rat or dog urine.

7. *Metabolite toxicology.* Metabolism studies in both the rat and dog showed that BIT was rapidly and completely metabolized by both species. The metabolites identified included o-(methylsulphinly)benzamide, and o-(methylsulphonyl)benzamide. The studies showed there were no significant accumulation of BIT or its metabolites in either species. There are, therefore, no significant concerns regarding the toxicity of BIT or its metabolites.

8. *Endocrine disruption.* BIT does not appear to disrupt (block, enhance, or mimic) normal endocrine function. BIT is not structurally similar to natural hormones, especially estrogens, androgens, and thyroid hormones.

*C. Aggregate Exposure*

1. *Dietary exposure*—i. *Food.* Based on the toxicity data, an aggregate risk or likelihood of the occurrence of an adverse health effect resulting from all routes of exposure to BIT is not expected. There are not acute toxicological concerns associated with the proposed use of BIT as an inert ingredient in animal pesticide products. An acute dietary risk assessment, therefore, is not required.

Chronic exposure to BIT through food is essentially insignificant. This is illustrated by using cattle as an example because proposed dose rates as well as frequency of dosing will be higher in this species that other potential food source animals such as sheep or swine. The absolute maximum accumulated dose of BIT which could be received by an animal based on the highest number of applications permitted at the highest dose rates would not exceed 280 mg of BIT per year, based on a maximum of 20 applications per animal per year. This is assuming 100% of each dose of the pesticide is absorbed through the skin whether it is applied as a pour-on or a spray. For a 500 kg cow this amounts to 0.56 mg/kg BIT per year. Metabolism studies show that 96% of BIT is excreted within 5 days. If it were assumed that the remaining 4% of BIT is not excreted and accumulates in the animal, this would leave 0.022 mg/kg BIT per animal. Assuming a maximum dietary intake of 16 ounces of beef per day, an average 70 kg adult would ingest 0.01 mg of BIT, which is 0.0001 mg/kg per day. A 28 kg child consuming an average of 4 ounces of beef per day would ingest 0.002 mg of BIT per day, which is 0.00007 mg/kg/day. These calculations indicate that levels of BIT in the diet resulting from its proposed use in animal pesticide products are essentially insignificant in both adults and children, even when highly exaggerated levels of product absorption and food consumption are used in the calculations. It is assumed that infants will not be consuming any beef. Potential exposure to BIT through milk consumption, even to children during the years of highest consumption of cows' milk, is considered to be negligible.

ii. *Drinking water.* Contamination of drinking water would not be expected to occur under the proposed use conditions of BIT as an inert preservative/stabilizer in very low concentrations in pesticide products intended for topical applications only. The end use product would be applied principally to cattle and other domestic animals as either a direct pour-on application or as a spray. Neither method of application is expected to contaminate water supplies intended for human consumption.

2. *Non-dietary exposure.* The proposed use of BIT as a preservative/stabilizer in end-use animal pesticide formulations is not expected to result in any significant non-dietary exposure due to the low concentration of BIT employed in the formulation and the extremely low probability of significant contact by the general public following animal treatment.

*D. Cumulative Effects*

The cumulative exposure assessment provides an estimate of the extent to which a defined population is exposed to two or more chemicals that share a common mechanism of toxicity by all relevant routes and from all relevant sources. Essentially all exposure from this proposed use of BIT will occur via the diet in the form of meat consumed from animals treated topically with products intended to control external parasites. As discussed above, the levels consumed should not exceed 0.0001 mg/kg/day for adults and 0.00007 mg/kg/day for children. No additional exposure of the general public is expected from either drinking water or non-dietary sources. Even using extremely conservative assumptions, the calculated exposure levels are so low as to be insignificant. The risk of cumulative effects and/or toxicity from BIT is negligible.

*E. Safety Determination*

1. *U.S. population.* No adverse effects of any kind would be expected from the extremely low dietary levels of BIT that may result from the proposed use of BIT in animal pesticide formulations.

2. *Infants and children.* Nothing in the available literature would suggest that infants and children are more sensitive to the effects of BIT than adults. Since the calculated dietary exposure of children to BIT is even less than adults, this proposed use of BIT should not pose a risk to this population subgroup. Exposure of infants to BIT resulting from its proposed use is expected to be negligible based on the fact that beef is not a normal dietary component for this population. In summary the proposed use of BIT as an inert ingredient in certain animal pesticides formulations will not put infants and children at risk.

*F. International Tolerances*

No Codex maximum residue levels have been established for BIT.

[FR Doc. 00–25751 Filed 10–10–00; 8:45 am]

BILLING CODE 6560–50–S



## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–00609A; FRL–6741–2]**

## The Role of Use-Related Information in Pesticide Risk Assessment and Risk Management

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of availability.

**SUMMARY:** EPA announces the availability of the revised version of the pesticide science policy document entitled "The Role of Use-Related Information in Pesticide Risk Assessment and Risk Management." This notice is one in a series concerning science policy documents related to the implementation of the Federal Food, Drug and Cosmetic Act, as amended by the Food Quality Protection Act.

**FOR FURTHER INFORMATION CONTACT:** Deborah Sisco, Environmental Protection Agency (7503C), 1200 Pennsylvania, Ave., NW., Washington, DC 20460; telephone number: (703) 308–8121; fax number (703) 308–8090; e-mail address: sisco.deborah@epa.gov.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

You may be potentially affected by this action if you manufacture or formulate pesticides. Potentially affected categories and entities may include, but are not limited to:

| Categories | NAICS | Examples of potentially affected entities |
|---|---|---|
| Pesticide producers | 32532 | Pesticide manufacturers<br>Pesticide formulators |

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this notice affects certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

*B. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?*

1. *Electronically.* You may obtain electronic copies of this document, the science policy documents, and certain other related documents that might be available from the Office of Pesticide Programs' Home Page at http://www.epa.gov/pesticides. On the Office of Pesticide Programs' Home Page select "FQPA" and then look up the entry for this document under "Science Policies." You can also go directly to the listings at the EPA Home page at http://www.epa.gov. On the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry to this document under "**Federal Register**—Environmental Documents." You can go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr.

2. *Fax-on-demand.* You may request a faxed copy of the science policy documents, as well as supporting information, by using a faxphone to call (202) 401–0527. Select item 6069 for the document entitled "The Role of Use-Related Information in Pesticide Risk Assessment and Risk Management." Select item 6070 for the document entitled "EPA's Responses to Public Comments on the Draft Policy Document." You may also follow the automated menu.

3. *In person.* The Agency has established an official record for this action under docket control number OPP–00609A. In addition, the documents referenced in the framework notice, which published in the **Federal Register** on October 29, 1998 (63 FR 58038) (FRL–6041–5) have also been inserted in the docket under docket control number OPP–00557. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal

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holidays. The PIRIB telephone number is (703) 305–5805.

**II. Background Information**

On August 3, 1996, the Food Quality Protection Act of 1996 (FQPA) was signed into law. The FQPA significantly amended the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Among other changes, FQPA established a stringent health-based standard ("a reasonable certainty of no harm") for pesticide residues in foods to assure protection from unacceptable pesticide exposure and strengthened health protections for infants and children from pesticide risks.

Thereafter, the Agency established the Food Safety Advisory Committee (FSAC) as a subcommittee of the National Advisory Council for Environmental Policy and Technology (NACEPT) to assist in soliciting input from stakeholders and to provide input to EPA on the broad policy choices facing the Agency and on strategic direction for the Office of Pesticide Programs (OPP). The Agency has used the interim approaches developed through discussions with FSAC to make regulatory decisions that meet the new FFDCA standard, but that could be revisited if additional information became available or as the science evolved. In addition, the Agency seeks independent review and public participation, generally through presentation of the science policy issues to the FIFRA Scientific Advisory Panel, a group of independent, outside experts who provide peer review and scientific advice to OPP.

During 1998 and 1999, as directed by Vice President Albert Gore, EPA and the U.S. Department of Agriculture (USDA) established a second subcommittee of NACEPT, the Tolerance Reassessment Advisory Committee (TRAC) to address FFDCA issues and implementation. TRAC comprised more than 50 representatives of affected user, producer, consumer, public health, environmental, states, and other interested groups. The TRAC met from May 27, 1998 through April 29, 1999.

In order to continue the constructive discussions about FFDCA, EPA and USDA have established, under the auspices of NACEPT, the Committee to Advise on Reassessment and Transition (CARAT). The CARAT provides a forum for a broad spectrum of stakeholders to consult with and advise the Agency and the Secretary of Agriculture on pest and pesticide management transition issues related to the tolerance reassessment process. The CARAT is intended to further the valuable work initiated by the FSAC and TRAC toward the use of sound science and greater transparency in regulatory decisionmaking, increased stakeholder participation, and reasonable transition strategies that reduce risks without jeopardizing American agriculture and farm communities. The CARAT held its first meeting on June 23, 2000.

As a result of the 1998 and 1999 TRAC process, EPA decided that the implementation process and related policies would benefit from providing notice and comment on major science policy issues. The TRAC identified nine science policy areas it believed were key to implementation of tolerance reassessment. EPA agreed to provide one or more documents for comment on each of the nine issues by announcing their availability in the **Federal Register**. In a notice published in the **Federal Register** of October 29, 1998 (63 FR 58038), EPA described its intended approach. Since then, EPA has been issuing a series of draft documents concerning the nine science policy issues. This notice announces the availability of the revised science policy document concerning the role of use-related information in pesticide risk assessment and risk management.

**III. Summary of Revised Science Policy Guidance Document**

EPA is charged with regulating the sale and use of pesticides in the United States. In order to evaluate the risks of pesticide use and the benefits derived from pesticide use, and to evaluate the potential ramifications of regulatory decisions about the sale and use of pesticides, regulators must have information about how, where, when, why, and how much each pesticide is used in the United states

This document provides an overview of the role of use-related information in the regulatory process in terms that can be understood by the educated lay public. The document summarizes the types of use-related data used by EPA in pesticide risk assessment and risk management. It further describes where the data come from, how the Agency employs these data, and how EPA organizes and evaluates pesticide use data. However, this document is not intended to delve into the technical details of quantitative pesticide usage analysis, such as calculation of likely maxima, weighting methods, and prediction intervals.

The document goes on to describe the role of use-related data in human health risk assessments, including drinking water, and in ecological risk assessments, and, finally, the role of use-related information in risk management decisions. The final discussion of future steps for improving the quality and quantity of pesticide use data and strengthening the Agency's analytical approaches highlights the limitations of the available use-related data.

EPA published a draft version of this document in the **Federal Register** of July 14, 1999 (64 FR 37977) (FRL–6088–6) and comments were filed in docket control number OPP–00609. All comments were considered by the Agency in revising the document. Many of the comments were similar in content, and pertained to general issues concerning the proposed policy or specific sections within the draft document. The Agency grouped the comments according to the nature of the comment and the issue or section of the document which they addressed. The Agency's response to the comments is available as described in Units I.B.1. and I.B.2.

**IV. Policies Not Rules**

The policy document discussed in this notice is intended to provide guidance to EPA personnel and decision-makers, and to the public. As a guidance document and not a rule, the policy in this guidance is not binding on either EPA or any outside parties. Although this guidance provides a starting point for EPA risk assessments, EPA will depart from its policy where the facts or circumstances warrant. In such cases, EPA will explain why a different course was taken. Similarly, outside parties remain free to assert that a policy is not appropriate for a specific pesticide or that the circumstances surrounding a specific risk assessment demonstrate that a policy should not be applied.

**List of Subjects**

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: September 27, 2000.

**Susan H. Wayland,**

*Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.*

[FR Doc. 00–25933 Filed 10–10–00; 8:45 am]

BILLING CODE 6560–50–S



**ENVIRONMENTAL PROTECTION AGENCY**

**[OPP–00679; FRL–6743–9]**

**Pesticides; Drinking Water Science Policies**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of availability.

**SUMMARY:** EPA is soliciting comments on two draft pesticide science policy documents concerning pesticide risk assessment in drinking water. These documents are entitled, respectively, "Drinking Water Screening-Level Assessments" and "Standard Operating Procedure (SOP) for Incorporating Screening-Level Estimates of Drinking Water Exposures into Aggregate Risk Assessments." Together, these documents describe EPA's approach to conducting a screening-level risk assessment of pesticide residues in water. This notice is one in a series of science policy documents related to the implementation of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act.

**DATES:** Comments, identified by docket control number OPP–00679, must be received on or before December 11, 2000.

**ADDRESSES:** Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00679 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** For "Drinking Water Screening-Level Assessment," contact James Hetrick, Environmental Protection Agency (7507C), 1200 Pennsylvania, Ave., NW., Washington, DC 20460; telephone number: (703) 305–5237; fax number: (703) 308–6181; e-mail address: hetrick.james@epa.gov. For "Standard Operating Procedure (SOP) for Incorporating Screening-Level Estimates of Drinking Water Exposure into Aggregate Risk Assessments," contact Catherine Eiden, Environmental Protection Agency (7509C), 1200 Pennsylvania, Ave., NW., Washington, DC 20460; telephone number: (703) 305–7887; fax number: (703) 308–5147; e-mail address: eiden.catherine@epa.gov.

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this Action Apply to Me?*

This action is directed to the public in general. This action may, however, be of interest to persons who produce or formulate pesticides, or who register pesticide products. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

*B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?*

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *Fax-on-demand.* You may request a faxed copy of the science policy documents, as well as supporting information, by using a faxphone to call (202) 401–0527. Select item 6083 for the document entitled "Drinking Water Screening-Level Assessments" and select item 6084 for the document entitled "Standard Operating Procedure (SOP) for Incorporating Screening-Level Estimates of Drinking Water Exposures into Aggregate Risk Assessments." You may also follow the automated menu.

3. *In person.* The Agency has established an official record for this action under docket control number OPP–00679. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

*C. How and to Whom Do I Submit Comments?*

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00679 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described in this unit. Do not submit any information electronically that you consider to be CBI.. Electronic comments must be submitted as an ASCII file avoiding use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–00679. Electronic comments may also be filed online at many Federal Depository Libraries.

*D. How Should I Handle CBI that I Want to Submit to the Agency?*

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of

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the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

*E. What Should I Consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the documents.
7. Make sure to submit your comments by the deadline in this document.
8. At the beginning of your comments (e.g., as part of the "Subject" heading), be sure to properly identify the document you are commenting on. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00679 in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

**II. Background Information**

On August 3, 1996, the Food Quality Protection Act of 1996 (FQPA) was signed into law. The FQPA significantly amended the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Among other changes, FQPA established a stringent health-based standard ("a reasonable certainty of no harm") for pesticide residues in foods to assure protection from unacceptable pesticide exposure and strengthened health protections for infants and children from pesticide risks.

Thereafter, the Agency established the Food Safety Advisory Committee (FSAC) as a subcommittee of the National Advisory Council for Environmental Policy and Technology (NACEPT) to assist in soliciting input from stakeholders and to provide input to EPA on the broad policy choices facing the Agency and on strategic direction for the Office of Pesticide Programs (OPP). The Agency has used the interim approaches developed through discussions with FSAC to make regulatory decisions that meet the new FFDCA standard, but that could be revisited if additional information became available or as the science evolved. In addition, the Agency seeks independent review and public participation, generally through presentation of the science policy issues to the FIFRA Scientific Advisory Panel (SAP), a group of independent, outside experts who provide peer review and scientific advice to OPP.

During 1998 and 1999, as directed by Vice President Albert Gore, EPA and the U.S. Department of Agriculture (USDA) established a second subcommittee of NACEPT, the Tolerance Reassessment Advisory Committee (TRAC) to address FFDCA issues and implementation. TRAC comprised more than 50 representatives of affected user, producer, consumer, public health, environmental, states, and other interested groups. The TRAC met from May 27, 1998 through April 29, 1999.

In order to continue the constructive discussions about FFDCA, EPA and USDA have established, under the auspices of NACEPT, the Committee to Advise on Reassessment and Transition (CARAT). The CARAT provides a forum for a broad spectrum of stakeholders to consult with and advise the Agency and the Secretary of Agriculture on pest and pesticide management transition issues related to the tolerance reassessment process. The CARAT is intended to further the valuable work initiated by the FSAC and TRAC toward the use of sound science and greater transparency in regulatory decisionmaking, increased stakeholder participation, and reasonable transition strategies that reduce risks without jeopardizing American agriculture and farm communities. The CARAT held its first meeting on June 23, 2000.

As a result of the 1998 and 1999 TRAC process, EPA decided that the implementation process and related policies would benefit from providing notice and comment on major science policy issues. The TRAC identified nine science policy areas it believed were key to implementation of tolerance reassessment. EPA agreed to provide one or more documents for comment on each of the nine issues by announcing their availability in the **Federal Register**. In a notice published in the **Federal Register** of October 29, 1998 (63 FR 58038) (FRL–6041–5), EPA described its intended approach. Since then, EPA has been issuing a series of draft documents concerning the nine science policy issues. This notice announces the availability of two draft science policy documents concerning the methodology and standard operating procedures for conducting screening-level drinking water assessments.

**III. Summary of Drinking Water Documents**

*A. Part A: "Guidance for Use of the Index Reservoir in Drinking Water Exposure Assessments"*

The purpose of this draft science policy document is to provide guidance on using the index reservoir scenario for use in estimating the exposure in drinking water derived from vulnerable surfacewater supplies. Since 1996, the Agency has been using a standard small "farm pond" as an interim scenario for estimating a potential upper bound on drinking water exposure until more appropriate tools could be developed. The index reservoir is being implemented in conjunction with the percent cropped area factor to replace the farm pond scenario. These two steps are intended to improve the quality and accuracy of OPP's modeling of high-end drinking water exposure for pesticides.

The index reservoir is intended as a replacement for the farm pond for use in drinking water exposure modeling. It is used in a similar manner to the farm pond except that flow rates have been calibrated for local weather conditions. Instructions for using the index reservoir are provided in this guidance document. The Exposure Analysis Modeling System (EXAMS) parameters for the standard index reservoir are provided in Appendix C of this guidance document.

*B. Part B: "Applying a Percent Crop Area Adjustment to Tier 2 Surface Water Model Estimates for Pesticide Drinking Water Exposure Assessments"*

The current process for screening food-use pesticides for drinking water exposure concerns from runoff to surface water is to run the Generic Estimated Environmental Concentrations (GENEEC, the Tier 1 screening model) and compare the resulting concentration to the Drinking Water Level of Comparison (DWLOC). If the Tier 1 estimates exceed the DWLOC, then the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS, the Tier 2 screening model) is run. When running PRZM/EXAMS for drinking water assessments, the current policy is to select the crop use which is expected to result in the highest runoff potential (based on application rate and method and on crop location). With issuance of this guidance document, OPP is changing its Tier 2 assessment process to incorporate the Percent Crop Area (PCA) concept.

The PCA is a generic watershed-based adjustment factor which will be applied to pesticide concentrations estimated for the surface water component of the drinking water exposure assessment using PRZM/EXAMS with the index reservoir scenario. The output generated by the PRZM/EXAMS model is multiplied by the maximum PCA (expressed as a decimal) generated for the crop or crops of interest. For purposes of conducting the Tier 2 drinking water assessment, the crop of interest would most typically be the labeled crop use that is anticipated to result in the greatest mass of pesticide entering the surface water body via runoff. Currently, OPP will apply PCA adjustments for four major crops—corn, soybeans, wheat, and cotton. For pesticides applied to corn, soybeans, wheat, and cotton, Tier 2 drinking water exposure assessments should utilize the appropriate index reservoir scenario and corresponding PCA(s).

This guidance results from a May 1999 presentation to the FIFRA SAP, "Proposed Methods For Determining Watershed-derived Percent Crop Areas And Considerations For Applying Crop Area Adjustments to Surface Water Screening Models," and the response and recommendations from the panel. A more thorough discussion of this method and comparisons of monitoring and modeling results for selected pesticide/crop/site combinations is located at http://www.epa.gov/scipoly/SAP/1999/may/pca_sap.pdf. The SAP did not provide guidance in a few critical areas, such as defining "major" versus "minor" uses or what to do in most cases where a pesticide is used on multiple crops.

This draft science policy document provides guidance on when and how to apply the PCA to model estimates, describes the methods used to derive the PCA, and discusses some of the assumptions and limitations with the process.

**IV. Summary of "Standard Operating Procedure (SOP) for Incorporating Screening-level Estimates of Drinking Water Exposure into Aggregate Risk Assessments"**

This draft science policy document is the SOP for a document entitled, "Estimating the Drinking Water Component of a Dietary Exposure Assessment" (notice of availability published in the **Federal Register** of November 10, 1999, 64 FR 61346; FRL–6389–7). It outlines the general approach to incorporating screening-level estimates of drinking water exposure into OPP's human health aggregate risk assessments. Specifically, it provides:

(1) A step-by-step process for OPP staff to follow while coordinating their work on registration and reregistration actions.

(2) Terms, definitions, descriptions, and calculations for use in incorporating estimates of pesticide concentrations in surface water and groundwater from screening-level models into aggregate risk assessments.

(3) Examples of specific language that may be used in health effects risk assessment documents to characterize screening-level exposure estimates for drinking water.

(4) An appendix containing example scenarios and calculations.

Under the procedures outlined in this draft science policy document, the resulting estimates of risk associated with a pesticide in drinking water are considered to be unrefined, high-end, upper-bound values. However, since many compounds can be "cleared" of drinking water concerns using these screening-level procedures, the process saves limited resources by providing an efficient means to determine whether a more refined assessment of drinking water exposure for a specific compound is warranted. This document is an updated version of the existing SOP for incorporating drinking water exposure into aggregate risk assessment and replaces the previous SOP dated August 1, 1999 (HED SOP 99.5, 1999).

**V. Questions/Issues for the Drinking Water Screening-Level Assessment and SOP Documents**

*A. Index Reservoir (Part A)*

1. Is the index reservoir a suitable replacement for the standard farm pond for screening-level drinking water assessments?
2. Do the process and criteria used to select the index reservoir represent a reasonable approach? Are there any other criteria the Agency should consider when we reassess the reservoir scenario in the future?
3. There are many refinements to the reservoir approach and its screening approach in general. Which of these refinements should have the highest priority?
4. It is assumed that there is no spray drift buffer zone around the perimeter of the reservoir. Are there any suggestions on how to develop a standard spray drift buffer zone for the index reservoir?

*B. Percent Cropped Area (Part B)*

1. The PRZM runoff model in the index reservoir may be limited to watersheds of no more than 20 square miles. Are there any suggestions in addressing the scale limitation of the PRZM model?
2. Is it reasonable to use a PCA adjustment to PRZM/EXAMS modeling for more accurate and appropriately conservative estimates of pesticide concentrations in surface water for screening evaluations of drinking water exposure?
3. Is the GIS procedure for calculating PCA appropriate for accounting for the portion of the watershed planted to the crops or crops of interest?
4. A default PCA has been calculated for cases where a defensible PCA cannot be calculated. Is it appropriate to use a default PCA?

*C. The Standard Operating Procedure*

Given the limited information available on pesticides in drinking water, is the approach outlined in the SOP guidance document a reasonable way to incorporate the available information on pesticide concentration in surface and ground water from screening-level models into aggregate human health risk assessment?

**VI. Policies Not Rules**

The policy document discussed in this notice is intended to provide guidance to EPA personnel and decision-makers, and to the public. As a guidance document and not a rule, the policy in this guidance is not binding on either EPA or any outside parties. Although this guidance provides a starting point for EPA risk assessments, EPA will depart from its policy where the facts or circumstances warrant. In such cases, EPA will explain why a different course was taken. Similarly, outside parties remain free to assert that a policy is not appropriate for a specific pesticide or that the circumstances surrounding a specific risk assessment demonstrate that a policy should not be applied.

**List of Subjects**

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: September 27, 2000.

**Susan H. Wayland,**

*Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.*

[FR Doc. 00–25934 Filed 10–10–00 8:45 am]

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## FARM CREDIT ADMINISTRATION

### Farm Credit Administration Board; Regular Meeting; Sunshine Act

**AGENCY:** Farm Credit Administration.

**SUMMARY:** Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

**DATE AND TIME:** The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on October 12, 2000, from 9:00 a.m. until such time as the Board concludes its business.

**FOR FURTHER INFORMATION CONTACT:** Kelly Mikel Williams, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

**ADDRESSES:** Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

**SUPPLEMENTARY INFORMATION:** This meeting of the Board will be open to the public (limited space available). In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

**Open Session**

*1. Approval of Minutes*

September 14, 2000 (Open and Closed).

*2. Report*

Corporate Approvals Report.

*1. New Business—Other*

Corporate and Chartering Approvals (Consent Action).

A. *ACA Formations*

1. Valley AgCredit, PCA/FLCA
2. FCS of Eastern Missouri, PCA/FLCA
3. Eastern Arkansas, PCA/FLCA

B. *ACA Restructuring*

1. Farm Credit of South Florida, ACA

C. *Conversions to ACAs*

1. Heritage Land Bank, FLCA
2. Panhandle Plains PCA
3. AgTexas FCS
4. AgriLand FCS

Dated: October 5, 2000.

**Kelly Mikel Williams,**

*Secretary, Farm Credit Administration Board.*

[FR Doc. 00–26105 Filed 10–5–00; 4:25 pm]

BILLING CODE 6705–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

October 3, 2000.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Written comments should be submitted on or before December 11, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all comments to Les Smith, Federal Communications Commission, Room 1 A–804, 445 Twelfth Street, SW., Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

**SUPPLEMENTARY INFORMATION:**

*OMB Control No.:* 3060–0745.

*Title:* Implementation of the Local Exchange Carrier Tariff Streamlining Provisions in the Telecommunications Act of 1996, CC Docket No. 96–187.

*Form No.:* N/A.

*Type of Review:* Extension.

*Respondents:* Business or Other for Profit.

*Number of Respondents:* 1520.

*Estimated Time Per Response:* .75 hrs (avg.).

*Total Annual Burden:* 1150.

*Estimated Annual Reporting and Recordkeeping Cost Burden:* $5,100,000.

*Frequency of Response:* On occasion; Recordkeeping; Third Party Disclosure.

*Needs and Uses:* In CC Docket No. 96–187, the Commission adopted measures to implement the specific streamlining tariff filing requirements for local exchange carriers. Incumbent LECs must use the Common Carrier Bureau's electronic tariff filing system to file tariffs and associated documents officially. EFTS is not limited to mandatory filing by incumbent LECs. Other parties may also file documents in tariff proceedings by means of ETFS.

*OMB Control No.:* 3060–0782.

*Title:* Petitions for Limited Modification of LATA Boundaries to Provide Expanded Local Calling Service (ELS) at Various Locations.

*Form No.:* N/A.

*Type of Review:* Extension.

*Respondents:* Business or Other for Profit.

*Number of Respondents:* 20.

*Estimated Time Per Response:* 40 hrs (avg.).

*Total Annual Burden:* 800.

*Estimated Annual Reporting and Recordkeeping Cost Burden:* $0.

*Frequency of Response:* On occasion.

*Needs and Uses:* The Commission has provided voluntary guidelines for filing expanded local calling service requests. The collection of information will enable the Commission to determine if there is a public need for expanded local calling service in each area subject to the request.

*OMB Control No.:* 3060–0786.

*Title:* Petitions for LATA Association changes by Independent Telephone Companies.

*Form No.:* N/A.

*Type of Review:* Extension.

*Respondents:* Business or Other for Profit.

*Number of Respondents:* 20.

*Estimated Time Per Response:* 6 hrs (avg.).

*Total Annual Burden:* 120 hours.

*Estimated Annual Reporting and Recordkeeping Cost Burden:* $0.

*Frequency of Response:* On occasion.

*Needs and Uses:* The Commission has provided voluntary guidelines for filing LATA association change requests. These guidelines will allow the Commission to conduct smooth and continuous processing of these requests. The collection of information will enable the Commission to determine if there is a public need for changes in LATA associated in each area subject to the request.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 00–25984 Filed 10–10–00; 8:45 am]

BILLING CODE 6712–01–U



## FEDERAL COMMUNICATIONS COMMISSION

**[GN Docket No. 00–185; FCC 00–355]**

### Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of inquiry.

**SUMMARY:** On September 28, 2000, the Commission released a Notice of Inquiry in this docket seeking comment on issues surrounding high-speed access to the Internet provided to subscribers using cable television infrastructure, or so-called "cable modem services." The Commission inquires into what regulatory treatment, if any, should apply to cable modem services and the cable modem platform used in providing such services, and what impact such treatment will have on other providers of high-speed services. The underlying purpose of issuing this Notice of Inquiry is to create a national legal and policy framework for cable modem service that will foster competitive deployment of high-speed services by all providers and instill a degree of regulatory stability that will encourage investment in all high-speed networks. In this proceeding, the Commission will examine whether to continue its present market-based approach and whether and how to introduce a national policy framework for regulating high-speed services.

**DATES:** Comment must be filed on or before November 27, 2000. Reply comment must be filed on or before December 26, 2000.

**ADDRESSES:** Parties who choose to file comments or reply comments should file an original and four copies of each filing with the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, Room TW–B204, 445 12th St. SW., Washington, DC 20554. Parties should also serve: (1) Johanna Mikes, Common Carrier Bureau, 445 12th Street, SW., Room 5–C163, Washington, DC 20554; (2) Christopher Libertelli, Common Carrier Bureau, 445 12th Street SW., Room 5–C264, Washington, DC 20554; (3) Carl Kandutsch, Cable Services Bureau, 445 12th Street, SW., Room 3–A832, Washington, DC 20554; (4) Douglas Sicker, Office of Engineering and Technology, 445 12th Street, SW., Room 7–A325, Washington DC 20554; (5) Robert Cannon, Office of Plans & Policy, 445 12th Street, SW., Room 7–B410, Washington, DC 20554; and (6) the Commission's copy contractor, International Transcription Service, Inc. (ITS), 445 12th Street, SW., CY–B402, Washington, DC 20554, (202) 857–3800, with copies of any documents filed in this proceeding.

**FOR FURTHER INFORMATION CONTACT:** Johanna Mikes or Christopher Libertelli, Attorneys, Policy and Program Planning Division, Common Carrier Bureau, at (202) 418–1580, or via the Internet at *jmikes@fcc.gov* or *clibertelli@fcc.gov*, respectively; Carl Kandutsch, Cable Services Bureau, at (202) 418–7200; Robert Cannon, Office of Plans and Policy, at (202) 418–2030; and Douglas Sicker, Office of Engineering and Technology, at (202) 418–2478.

**SUPPLEMENTARY INFORMATION:** This document is a brief description of the Commission's Notice of Inquiry adopted September 28, 2000, and released September 28, 2000. The full text of this Notice of Inquiry is available for inspection and copying during normal business hours in the FCC Reference Information Center, CY–A257, 445 12th Street, SW., Washington, DC 20554. The full text also may be obtained through the World Wide Web, at *http://www.fcc.gov/ccb/Notices/index6.html*; or may be purchased from the Commission's copy contractor, International Transcription Service, Inc. (ITS), CY B–400, 445 12th Street, SW., Washington, DC. Further information may also be obtained by calling the Common Carrier's TTY number: (202) 418–0484.

**Synopsis of the Notice of Inquiry**

1. The purpose of the Notice of Inquiry is to develop a factual record regarding the high-speed services provided by cable operators and the type of access sought by unaffiliated Internet Service Providers (ISPs), as well as the extent to which such access is necessary to benefit consumers or otherwise achieve desired policy goals. The Commission invites comments on alternative approaches to classifying cable modem service and the cable modem platform under the Communications Act and the implications of adopting each such classification.

2. The Commission seeks comment on various issues related to "open access," including how to define the concept, what initiatives have taken place to date, and how market-based and regulatory approaches may affect the availability of high-speed services. The Notice of Inquiry asks whether achieving open access is a desirable policy goal and, if so, whether the Commission's existing policy of regulatory restraint will adequately achieve open access or whether the Commission should adopt a regulatory, or prescriptive, approach.

3. It also inquires whether the Commission's legal and policy framework for cable modem service or the cable modem platform should apply to all providers of high-speed services. The Notice of Inquiry invites comment on technical and operations concerns associated with achieving open access, and asks whether the Commission should pursue any further course of action, such as continuing its current approach or exercising its rulemaking or forbearance authority.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 00–25983 Filed 10–10–00; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### Sunshine Act Meeting

October 5, 2000.

**Open Commission Meeting, Thursday, October 12, 2000**

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, October 12, 2000, which is scheduled to commence at 9:30 a.m. in Room TW–C305, at 445 12th Street, SW., Washington, DC.

*1. Office of Engineering and Technology and Wireless Telecommunications*

*Title:* Amendment of the Commission's Rules with Regard to the 3650–3700 MHz Government Transfer Band (ET Docket No. 98–237, RM–9411); and The 4.9 GHz Band Transferred from Federal Government Use (WT Docket No. 00–32).

*Summary:* The Commission will consider a First Report and Order to reallocate the 3650–3700 MHz and the 4.9 GHz band transferred from Government to non-Govenrment use.

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*2. Common Carrier*

*Title:* 2000 Biennial Regulatory Review—Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2 and Phase 3.

*Summary:* The Commission will consider a Notice of Proposed Rule Making concerning issues regarding the accounting rules and ARMIS reporting requirements for incumbent local exchange carriers.

*3. Wireless TeleCommunications*

*Title:* Promotion of Competitive Networks in Local Telecommunications Markets (WT Docket No. 99–217); Wireless Communications Association International, Inc., Petition for Rule Making to Amend Section 1.400 of the Commission's Rules to Preempt Restrictions on Subscriber Premises Reception or Transmission Antennas Designed to provide Fixed Wireless Services; Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 (CC Docket No. 96–98); and Review of Sections 68.104, and 68.213 of the Commission's Rules Concerning Connection of Simple Inside Wiring to Telephone Network (CC Docket No. 88–57).

*Summary:* The Commission will consider a First Report and Order and Further Notice of Proposed Rule Making in WT Docket No. 99–217, a Fourth Report and Order and Memorandum Opinion and Order in CC Docket No. 96–98, and a Memorandum Opinion and Order in CC Docket No. 88–57), regarding obstacles to consumer's choice of telecommunications providers in multiple tenant environments.

*4. Office of General Counsel*

*Title:* Amendment of Section 19.735–203 of the Commission's Rules Concerning Nonpublic Information.

*Summary:* The Commission will consider an Order governing the misuse of nonpublic information (47 CFR 19.735–203).

Additional information concerning this meeting may be obtained from Maureen Peratino or David Fiske, Office of Media Relations, telephone number (202) 418–0500; TTY (202) 418–2555.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, International Transcription Services, Inc. (ITS, Inc.) at (202) 857–3800; fax (202) 857–3805 and 857–3184; or TTY (202) 293–8810. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio tape. ITS may be reached by e-mail: its_inc@ix.netcom.com. Their Internet address is *http://www.itsdocs.com/*

This meeting can be viewed over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. For information on these services call (703) 993–3100. The audio portion of the meeting will be broadcast live on the Internet via the FCC's Internet audio broadcast page at <http://www.fcc.gov/realaudio/>. The meeting can also be heard via telephone, for a fee, from National Narrowcast network, telephone (202) 966–2211 or fax (202) 966–1770. Audio and video tapes of this meeting can be purchased from Infocus, 341 Victory Drive, Herndon, VA 20170, telephone (703) 834–0100; fax number (703) 834–0111.

Federal Communications Commission.

**William F. Caton,**

*Deputy Secretary.*

[FR Doc. 00–26186 Filed 10–6–00; 1:19 pm]

BILLING CODE 6712–01–M

## GENERAL SERVICES ADMINISTRATION

### Office of Communications; Cancellation of Optional Forms

**AGENCY:** General Services Administration.

**ACTION:** Notice.

**SUMMARY:** The Department of Agriculture and the Department of Interior are cancelling the following Optional Forms because they do not collect the correct information:

OF 285, Warehouse Supplies Order

OF 290, Receipt for Property, Fire Suppression

Both of these forms are replaced with the following new Optional Forms:

OF 316, Interagency Incident Waybill (NSN 7540–01–475–4307)

OF 326A, Interagency Incident Waybill—Continuation (NSN 7540–01–475–4306)

You can order the above mentioned forms from the Federal Supply Service, General Products Commodity Center, Fort Worth, TX (817) 978–2508.

**DATES:** Effective October 11, 2000.

**FOR FURTHER INFORMATION CONTACT:** Ms. Barbara Williams, General Services Administration, (202) 501–0581.

Dated: September 1, 2000.

**Barbara M. Williams,**

*Deputy Standard and Optional Forms Management Officer.*

[FR Doc. 00–25988 Filed 10–10–00; 8:45 am]

BILLING CODE 6820–34–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Healthcare Research and Quality

### Public Meeting on Medicare Coverage of Clinical Trials

**AGENCY:** Agency for Healthcare Research and Quality (AHRQ) formerly known as the Agency for Health Care Policy and Research (AHCPR).

**ACTION:** Notice of public meeting.

**SUMMARY:** In the past, Medicare has not paid for health care services provided as part of clinical trials because of their experimental nature. To carry out an executive memorandum from the President of the United States to the Secretary of Health and Human Services received on June 7, 2000 directing Medicare to provide for payment of routine patient care costs incurred by Medicare beneficiaries in connection with participation in clinical trials, the Health Care Financing Administration (HCFA) has issued a National Coverage Decision. In order to implement this new coverage policy for routine costs in clinical trials, HCFA must define the clinical trials for which payment of routine costs would be appropriate. Therefore, HCFA requested AHRQ to convene a multi-agency Federal group to develop readily verifiable criteria by which to identify trials that meet an appropriate standard of quality. The qualifying criteria will be developed under the authority to support health care research in § 1142 of the Social Security Act (Act). This notice announces a public meeting for the purpose of receiving oral and written comments on easily verifiable qualifying criteria for identifying sound clinical trials appropriate for Medicare coverage.

**DATES:** The meeting will take place on October 20, 2000, from 9 a.m.–12 p.m.

**ADDRESSES:** The meeting will be held at the Agency for Healthcare Research and Quality Conference Center, 6010 Executive Blvd., 4th Floor, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Nilam Patel, M.P.H., Center for Practice and Technology Assessment, AHRQ, 6010 Executive Blvd., Suite 300, Rockville, MD 20852; phone: (301) 594–0236; Fax: (301) 594–4027; E-mail: *npatel@ahrq.gov.*

*Arrangements for the Public Meeting:* All representatives of organizations and other individuals who wish to attend, provide relevant written comments and information to AHRQ, and/or make a brief (10 minutes or less) oral statement at the meeting, must register with Nilam Patel, AHRQ, at the above address no later than three days prior to the date of the meeting. A copy of written materials should also be submitted to Ms. Patel. On the day of the meeting, presenters are requested to bring 25 copies of their written materials for distribution.

If sign language interpretation or other reasonable accommodations for a disability is needed, please contact Linda Reeves, Assistant Administrator for Equal Opportunity, AHRQ, at (301) 594–6662 no later than three days before the meeting date.

**SUPPLEMENTARY INFORMATION:**

**1. Background**

In June, 2000, the President of the United States issued an executive memorandum directing the Secretary of Health and Human Resources to "explicitly authorize Medicare payment for routine patient care costs * * * and costs due to medical complications associated with participation in clinical trials." In keeping with the President's directive, HCFA has developed and added a new section in the Medicare Coverage Issues Manual that will implement national coverage of routine costs of qualified clinical trials. For the purposes of this national coverage decision, routine costs of clinical trials include all items and services that are otherwise generally available to Medicare beneficiaries (conventional care); for example, hospital services, physician services, and diagnostic tests that are not statutorily excluded from coverage. Certain costs, such as costs for the investigational item or service itself, data collection-related costs, and items and services provided free of charge by the sponsor will not be covered.

In order to implement the coverage policy, a system must be in place to help identify trials that meet an appropriate standard of quality and for which it is appropriate for Medicare to pay the associated routine costs. HCFA requested AHRQ to form a multi-agency Federal group to develop qualifying criteria that would indicate a high probability that a trial has the following desirable characteristics of a scientifically sound clinical trial:

(1) The principal purpose of the trial is to test whether the intervention potentially improves the participants' health outcomes;



(2) The trial is well-supported by available scientific and medical information or it is intended to clarify or establish the health outcomes of interventions already in common clinical use;

(3) The trial does not unjustifiably duplicate existing studies;

(4) The trial design is appropriate to answer the research question being asked in the trial;

(5) The trial is sponsored by a credible organization or conducted by an individual capable of executing the proposed trial successfully;

(6) The trial is in compliance with Federal regulations relating to the protection of human subjects; and

(7) The trial is conducted according to appropriate standards of scientific integrity.

Certain trials are presumed by AHRQ, and the other members of the multi-agency panel that it has convened, to be of sound quality and to have these desirable characteristics. Guided by the assumptions of the multi-agency group and discussions with AHRQ, HFCA announced both long term and short term types of automatic qualification for Medicare coverage of the routine costs of clinical trials in its related NCD.

"Effective September 19, 2000, clinical trials that are deemed to be automatically qualified are:

1. Trials funded by NIH, CDC, AHRQ, HCFA, DOD, and VA;

2. Trials supported by centers or cooperative groups that are funded by the NIH, CDC, AHRQ, HCFA, DOD and VA;

3. Trials conducted under an investigational new drug application (IND) reviewed by the FDA; and

4. Drug trials that are exempt from having an IND under 21 CFR 312.2(b)(1) will be deemed automatically qualified until the qualifying criteria are developed and the certification process is in place. At that time the principal investigators of these trials must certify that the trials meet the qualifying criteria in order to maintain Medicare coverage of routine costs. This certification process will only affect the future status of the trial and will not be used to retroactively change the earlier deemed status."

The Federal multi-agency group will be developing criteria for identifying other trials that are likely to have the seven desirable characteristics of clinical trials. (From HCFA's Final National Coverage Decisions posted on HCFA's website (http://www.hcfa.gov/quality/8d.htm).

**2. Purpose**

To gather pertinent information and views that would contribute to defining the qualifying criteria used to identify sound clinical trials appropriate for Medicare coverage, AHRQ is holding this meeting. We are soliciting comments about what qualifying criteria might be appropriate and adequate to capture the desirable characteristics of sound clinical trials. The criteria should be easily verifiable and, where possible, dichotomous (that is, objective yes/no responses). Some examples might be:

Is the trial approved by an investigational review board (IRB)?

Does the trial have a written protocol?

Has the trial been approved by a Federal agency?

Has the trial received any external, non-Federal funding?

Has the trial been reviewed by any external, non-Federal group?

Does a data safety and monitoring board provide independent oversight of the trial?

AHRQ is also interested in receiving information on the availability of relevant literature (citations or copies if possible) that might assist the panel in its formulation of the qualifying criteria.

**Agenda**

The meeting will begin at 9 a.m. and continue through 12 p.m. If more requests to make oral statements are received than can be accommodated at this meeting, the chair person will allocate speaking time in a manner that attempts, to the extent possible, to have a range of information, findings and views presented orally. Those who cannot be granted speaking time because of time constraints are assured that their written comments will be considered along with other evidence during the course of further discussions and report preparation.

Due to time constraints, this Notice is published within the recommended 15 days prior to holding this public meeting.

Dated: October 4, 2000.

**John M. Eisenberg,**

*Director.*

[FR Doc. 00–25993 Filed 10–10–00; 8:45 am]

BILLING CODE 4160–90–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Toxic Substances and Disease Registry

[ATSDR–162]

### Availability of Draft Toxicological Profiles

**AGENCY:** Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

**ACTION:** Notice of availability.

**SUMMARY:** The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), Section 104(i)(3) [42 U.S.C. 9604(i)(3)] directs the Administrator of ATSDR to prepare toxicological profiles of priority hazardous substances and to revise and publish each updated toxicological profile as necessary. This notice announces the availability of the 14th set of toxicological profiles, which consists of seven updated drafts, prepared by ATSDR for review and comment.

**DATES:** In order to be considered, comments on these draft toxicological profiles must be received on or before February 23, 2001. Comments received after the close of the public comment period will be considered at the discretion of ATSDR based upon what is deemed to be in the best interest of the general public.

**ADDRESSES:** Requests for copies of the draft toxicological profiles should be sent to the attention of Ms. Franchetta Stephens, Division of Toxicology, Agency for Toxic Substances and Disease Registry, Mailstop E–29, 1600 Clifton Road, NE, Atlanta, Georgia 30333. Comments regarding the draft toxicological profiles should be sent to the attention of Dr. Ganga Choudhary, Division of Toxicology, Agency for Toxic Substances and Disease Registry, Mailstop E–29, 1600 Clifton Road, NE, Atlanta, Georgia 30333.

Requests for the draft toxicological profiles must be in writing, and must specifically identify the hazardous substance(s) profile(s) you wish to receive. ATSDR reserves the right to provide only one copy of each profile requested, free of charge. In case of extended distribution delays, requestors will be notified.

Written comments and other data submitted in response to this notice and the draft toxicological profiles should bear the docket control number ATSDR–162. Send one copy of all comments and three copies of all supporting documents to Dr. Ganga Choudhary at the above stated address by the end of the comment period. Because all public comments regarding ATSDR toxicological profiles are available for public inspection, no confidential business or other confidential information should be submitted in response to this notice.

**FOR FURTHER INFORMATION CONTACT:** Ms. Franchetta Stephens, Division of Toxicology, Agency for Toxic Substances and Disease Registry, Mailstop E–29, 1600 Clifton Road, NE, Atlanta, Georgia 30333, telephone 1–(800)447–1544 or (404)639–6345.

**SUPPLEMENTARY INFORMATION:** The Superfund Amendments and Reauthorization Act (SARA) (Pub. L. 99–499) amends the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) (42 U.S.C. 9601 *et seq.*) by establishing certain responsibilities for ATSDR and the Environmental Protection Agency (EPA) with regard to hazardous substances which are most commonly found at facilities on the CERCLA National Priorities List (NPL). Among these responsibilities is that the Administrator of ATSDR prepare toxicological profiles for substances included on the priority lists of hazardous substances. These lists identified 275 hazardous substances that ATSDR and EPA determined pose the most significant potential threat to human health. The availability of the revised priority list of 275 hazardous substances was announced in the **Federal Register** on October 21, 1999 (64 FR 56792). For prior versions of the list of substances see **Federal Register** notices dated April 17, 1987 (52 FR 12866); October 20, 1988 (53 FR 41280); October 26, 1989 (54 FR 43619); October 17, 1990 (55 FR 42067); October 17, 1991 (56 FR 52166); October 28, 1992 (57 FR 48801); February 28, 1994 (59 FR 9486); April 29, 1996 (61 FR 18744) and November 17, 1997 (62 FR 61332). [CERCLA also requires ATSDR to assure the initiation of a research program to fill data needs associated with the substances.]

Section 104(i)(3) of CERCLA [42 U.S.C. 9604(i)(3)] outlines the content of these profiles. Each profile will include an examination, summary and interpretation of available toxicological information and epidemiologic evaluations. This information and these data are to be used to identify the levels of significant human exposure for the substance and the associated health effects. The profiles must also include a determination of whether adequate information on the health effects of each substance is available or in the process of development. When adequate information is not available, ATSDR, in cooperation with the National Toxicology Program (NTP), is required to assure the initiation of research to determine these health effects.

Although key studies for each of the substances were considered during the profile development process, this **Federal Register** notice seeks to solicit any additional studies, particularly unpublished data and ongoing studies, which will be evaluated for possible addition to the profiles now or in the future.

The following draft toxicological profiles will be made available to the public on or about October 17, 2000.

| Document | Hazardous substance | CAS No. |
|---|---|---|
| 1 | ALDRIN | 000060–57–1 |
| | DIELDRIN | 000309–00–2 |
| 2 | BERYLLIUM | 007440–41–7 |
| 3 | CREOSOTE | 008001–58–9 |
| | COAL TARS | 008007–45–2 |
| | COAL TAR PITCH | 065996–93–2 |
| 4 | DDT | 000050–29–3 |
| | DDD | 000072–54–8 |
| | DDE | 000072–55–9 |
| 5 | DI(2-ETHYLHEXYL)PHTHALATE | 000117–81–7 |
| 6 | HEXACHLOROBENZENE | 000118–74–1 |
| 7 | METHOXYCHLOR | 000072–43–5 |

All profiles issued as "Drafts for Public Comment" represent ATSDR's best efforts to provide important toxicological information on priority hazardous substances. We are seeking public comments and additional information which may be used to supplement these profiles. ATSDR remains committed to providing a public comment period for these documents as a means to best serve public health and our clients.

Dated: September 25, 2000.

**Georgi Jones,**

*Director, Office of Policy and External Affairs, Agency for Toxic Substances and Disease Registry.*

[FR Doc. 00–24979 Filed 10–10–00; 8:45 am]

BILLING CODE 4163–70–P



## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Advisory Committee on Childhood Lead Poisoning Prevention: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the National Center for Environmental Health (NCEH) of the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

*Name:* Advisory Committee on Childhood Lead Poisoning Prevention.

*Times and Dates:* 8:30 a.m.–5 p.m., October 24, 2000. 8:30 a.m.–12 p.m., October 25, 2000.

*Place:* Hyatt Regency Crystal City Hotel, 2799 Jefferson Davis Highway, Arlington, Virginia 22202, telephone 703/418–1234.

*Status:* Open to the public, limited only by the space available. The meeting room accommodates approximately 90 people.

*Purpose:* The Committee shall provide advice and guidance to the Secretary; the Assistant Secretary for Health; and the Director, CDC, regarding new scientific knowledge and technological developments and their practical implications for childhood lead poisoning prevention efforts. The Committee shall also review and report regularly on childhood lead poisoning prevention practices and recommend improvements in national childhood lead poisoning prevention efforts.

*Matters To Be Discussed:* Agenda items include: Update on Case Management of Children with Lead Poisoning issues, Medicaid issues, Educational, Environmental, Medical, Developmental, and Nutritional Management Policy Document updates, and Impact of Dissemination and Evaluation of Case Management Recommendations. Agenda items are subject to change as priorities dictate.

Opportunities will be provided during the meeting for oral comments. Depending on the time available and the number of requests, it may be necessary to limit the time of each presenter.

This notice is published less than 15 days prior to the meeting due to administrative delay.

*Contact Person for More Information:* Becky Wright, Program Analyst, Lead Poisoning Prevention Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 1600 Clifton Road, NE, M/S E–25, Atlanta, Georgia 30333, telephone 404/639–1789, fax 404/639–2570.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: October 4, 2000.

**Carolyn J. Russell,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 00–26135 Filed 10–6–00; 2:43 pm]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### National Vaccine Advisory Committee, Subcommittee on Future Vaccines, Subcommittee on Immunization Coverage, and Subcommittee on Vaccine Safety and Communication Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following Federal advisory committee meetings.

This notice is published less than 15 days prior to the meeting due to administrative delay.

*Name:* National Vaccine Advisory Committee (NVAC).

*Times and Dates:* 9 a.m.–2:15 p.m., October 23, 2000. 8:30 a.m.–3:45 p.m., October 24, 2000.

*Place:* Hubert H. Humphrey Building, Room 505A, 200 Independence Avenue, SW, Washington, DC 20201.

*Status:* Open to the public, limited only by the space available.

*Notice:* In the interest of security, the Department has instituted stringent procedures for entrance to the Hubert H. Humphrey Building by non-government employees. Thus, persons without a government identification card should plan to arrive at the building each day either between 8:00 a.m. and 8:30 a.m. or 12:30 p.m. and 1:00 p.m. Entrance to the meeting at other times during the day cannot be assured.

*Purpose:* This committee advises and makes recommendations to the Director of the National Vaccine Program on matters related to the Program responsibilities.

*Matters to be Discussed:* Agenda items will include: a report from the National Vaccine Program Office (NVPO) and the Interagency Vaccine Workgroup; an update on the IOM Report, Vaccines for the 21st Century; an update on Pandemic Planning; a discussion of the IOM Report on Immunization Funding; NVAC Polio Containment Workgroup Report; Vaccine Safety and Communication Subcommittee Report; Immunization Coverage Subcommittee Report; Future Vaccines Subcommittee Report; update from the Office of the Assistant Secretary for Health and Surgeon General; a report on Global Immunization Initiatives; discussions on Malaria Vaccine Initiative; a report on HIV Vaccine Status; Measles Eradication in the Americas; ACCV Annual Report; VRPBC Highlights; and ACIP Highlights.

*Name:* Subcommittee on Future Vaccines.

*Time and Date:* 2:15 p.m.–5 p.m., October 23, 2000.

*Place:* Hubert H. Humphrey Building, Room 305A, 200 Independence Avenue, SW, Washington, DC 20201.

*Status:* Open to the public, limited only by the space available.

*Purpose:* This subcommittee develops policy options and guides national activities that lead to accelerated development, licensure, and the best use of new vaccines in the simplest possible immunization schedules.

*Matters to be Discussed:* Agenda items will include discussions on a proposal to hold a Workshop on Oral Vaccines and an update on the Workshop on Cytomegalovirus Vaccine development.

*Name:* Subcommittee on Immunization Coverage.

*Time and Date:* 2:15 p.m.-5 p.m., October 23, 2000.

*Place:* Hubert H. Humphrey Building, Room 505A, 200 Independence Avenue, SW, Washington, DC 20201.

*Status:* Open to the public, limited only by the space available.

*Purpose:* This subcommittee will identify and propose solutions that provide a multifaceted and holistic approach to reducing barriers that result in low immunization coverage for children.

*Matters to be Discussed:* Agenda items will include discussions on adult immunization standards; the adult immunization action plan; school-based and other institutional immunization requirements; and unmet needs priorities.

*Name:* Subcommittee on Vaccine Safety and Communication.

*Time and Date:* 2:15 p.m.–5 p.m., October 23, 2000.

*Place:* Hubert H. Humphrey Building, Room 325A, 200 Independence Avenue, SW, Washington, DC 20201.

*Status:* Open to the public, limited only by the space available.

*Purpose:* This subcommittee reviews issues relevant to vaccine safety and adverse reactions to vaccines.

*Matters to be Discussed:* Update on vaccine-related activities; an update on the

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IOM vaccine safety contract; and a follow-up to the Communications Workshop.

Agenda items are subject to change as priorities dictate.

*Contact Person For More Information:* Gloria Sagar, Committee Management Specialist, NVPO, CDC, 1600 Clifton Road, NE, M/S D–66, Atlanta, Georgia 30333, telephone 404/687–6672.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: October 4, 2000.

**Carolyn J. Russell,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 00–26134 Filed 10–6–00; 2:43 pm]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Advisory Committee; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Health Professions and Nurse Education Special Emphasis Panel meetings.

*Name:* Geriatric Nursing Knowledge and Experiences in Long Term Care Facilities for Baccalaureate Nursing Students Peer Review Group.
*Date and Time:* November 13–14, 2000.
*Place:* Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.
*Open on:* November 13, 2000, 8 a.m. to 10 a.m.
*Closed on:* November 13, 2000, 10 a.m. to 6 p.m., November 14, 2000, 8 a.m. to 6 p.m.

*Name:* Residencies in the Practice of Pediatric Dentistry and Residencies and Advanced Training in the Practice of General Dentistry Peer Review Group.
*Date and Time:* December 4–7, 2000.
*Place:* Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.
*Open on:* December 4, 2000, 8 a.m. to 10 a.m.
*Closed on:* December 4, 2000, 10 a.m. to 6 p.m.; December 5–7, 2000, 8 a.m. to 6 p.m.

*Name:* Residencies Training in Primary Care (Family Medicine, General Internal Medicine/General Pediatrics) Peer Review Group I.
*Date and Time:* December 11–14, 2000.
*Place:* Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.
*Open on:* December 11, 2000, 8 a.m. to 10 a.m.
*Closed on:* December 11, 2000, 10 a.m. to 6 p.m., December 12–14, 2000, 8 a.m. to 6 p.m.

*Name:* Residencies Training in Primary Care (Family Medicine, General Internal Medicine/General Pediatrics) Peer Review Group II.
*Date and Time:* January 8–11, 2001.
*Place:* Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.
*Open on:* January 8, 2001, 8 a.m. to 10 a.m.
*Closed on:* January 8, 2001, 10 a.m. to 6 p.m., January 9–11, 2001, 8 a.m. to 6 p.m.

*Name:* Preventive Medicine Residency Programs Peer Review Group.
*Date and Time:* January 8–11, 2001.
*Place:* Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.
*Open on:* January 16, 2001, 8 a.m. to 10 a.m.
*Closed on:* January 16, 2001, 10 a.m. to 6 p.m., January 17–19, 2001, 8 a.m. to 6 p.m.

*Name:* Faculty Development Training in Primary Care (Family Medicine, General Internal Medicine/General Pediatrics) Peer Review Group.
*Date and Time:* January 22–25, 2001.
*Place:* Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.
*Open on:* January 22, 2001, 8 a.m. to 10 a.m.
*Closed on:* January 22, 2001, 10 a.m. to 6 p.m., January 23–25, 2001, 8 a.m. to 6 p.m.

*Name:* Podiatric Residency Training in Primary Care Peer Review Group.
*Date and Time:* February 5, 2001.
*Place:* Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.
*Open on:* February 5, 2001, 8 a.m. to 10 a.m.
*Closed on:* February 5, 2001, 10 a.m. to 6 p.m.

*Name:* Predoctoral Training in Primary Care (Family Medicine, General Internal Medicine/General Pediatrics) Peer Review Group.
*Date and Time:* February 26–March 1, 2001.
*Place:* Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.
*Open on:* February 26, 2001, 8 a.m. to 10 a.m.
*Closed on:* February 26, 2001, 10 a.m. to 6 p.m., February 27–March 1, 2001, 8 a.m. to 6 p.m.

*Name:* Nursing Workforce Diversity Program Peer Review Group.
*Date and Time:* March 5–8, 2001.
*Place:* Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.
*Open on:* March 5, 2001, 8 a.m. to 10 a.m.
*Closed on:* March 5, 2001, 10 a.m. to 6 p.m., March 6–8, 2001, 8 a.m. to 6 p.m.

*Name:* Centers of Excellence Peer Review Group.
*Date and Time:* March 12–15, 2001.
*Place:* Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.
*Open on:* March 12, 2001, 8:00 a.m. to 10:00 a.m.
*Closed on:* March 12, 2001, 10:00 a.m. to 6:00 p.m.; March 13–15, 2001, 8:00 a.m. to 6:00 p.m.

*Name:* Public Health Training Centers Peer Review Group.
*Date and Time:* March 12–15, 2001.
*Place:* Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.
*Open on:* March 12, 2001, 8:00 a.m. to 10:00 a.m.
*Closed on:* March 12, 2001, 10:00 a.m. to 6:00 p.m.; March 13–15, 2001, 8:00 a.m. to 6:00 p.m.

*Name:* Academic Administrative Units in Primary Care (Family Medicine, General Internal Medicine/General Pediatrics) Peer Review Group.
*Date and Time:* March 26–29, 2001.
*Place:* Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.
*Open on:* March 26, 2001, 8:00 a.m. to 10:00 a.m.
*Closed on:* March 26, 2001, 10:00 a.m. to 6:00 p.m.; March 27–29, 2001, 8:00 a.m. to 6:00 p.m.

*Name:* Geriatric Training Regarding Physicians and Dentists Peer Review Group.
*Date and Time:* March 26–29, 2001.
*Place:* Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.
*Open on:* March 26, 2001, 8:00 a.m. to 10:00 a.m.
*Closed on:* March 26, 2001, 10:00 a.m. to 6:00 p.m.; March 27–29, 2001, 8:00 a.m. to 6:00 p.m.

*Name:* Basic/Area Health Education Centers Peer Review Group.
*Date and Time:* April 2–3, 2001.
*Place:* Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.
*Open on:* April 2, 2001, 8:00 a.m. to 10:00 a.m.
*Closed on:* April 2, 2001, 10:00 a.m. to 6:00 p.m.; April 3, 2001, 8:00 a.m. to 6:00 p.m.

*Name:* Model/Area Health Education Centers Peer Review Group.
*Date and Time:* April 4–5, 2001.
*Place:* Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.
*Open on:* April 4, 2001, 8:00 a.m. to 10:00 a.m.
*Closed on:* April 4, 2001, 10:00 a.m. to 6:00 p.m.; April 5, 2001, 8:00 a.m. to 6:00 p.m.

*Name:* Allied Health Project Grants Peer Review Group.
*Date and Time:* April 17–20, 2001.
*Place:* Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.
*Open on:* April 17, 2001, 8:00 a.m. to 10:00 a.m.
*Closed on:* April 17, 2001, 10:00 a.m. to 6:00 p.m.; April 18–20, 2001, 8:00 a.m. to 6:00 p.m.

*Name:* Grants for Physician Assistant Training Peer Review Group.
*Date and Time:* April 17–20, 2001.
*Place:* Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.
*Open on:* April 17, 2001, 8:00 a.m. to 10:00 a.m.
*Closed on:* April 17, 2001, 10:00 a.m. to 6:00 p.m.; April 18–20, 2001, 8:00 a.m. to 6:00 p.m.

*Name:* Health Careers Opportunity Program Peer Review Group.
*Date and Time:* April 23–26, 2001.
*Place:* Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.
*Open on:* April 23, 2001, 8:00 a.m. to 10:00 a.m.

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*Closed on:* April 23, 2001, 10:00 a.m. to 6:00 p.m.; April 24–26, 2001, 8:00 a.m. to 6:00 p.m.

*Name:* Advanced Education Nursing Peer Review Group I.

*Date and Time:* April 30–May 3, 2001.

*Place:* Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

*Open on:* April 30, 2001, 8:00 a.m. to 10:00 a.m.

*Closed on:* April 30, 2001, 10:00 a.m. to 6:00 p.m.; May 1–3, 2001, 8:00 a.m. to 6:00 p.m.

*Name:* Advanced Education Nursing Peer Review Group II.

*Date and Time:* May 7–10, 2001.

*Place:* Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

*Open on:* May 7, 2001, 8:00 a.m. to 10:00 a.m.

*Closed on:* May 7, 2001, 10:00 a.m. to 6:00 p.m.; May 8–10, 2001, 8:00 a.m. to 6:00 p.m.

*Name:* Advanced Education Nursing Peer Review Group III.

*Date and Time:* May 14–17, 2001.

*Place:* Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

*Open on:* May 14, 2001, 8:00 a.m. to 10:00 a.m.

*Closed on:* May 14, 2001, 10:00 a.m. to 6:00 p.m.; May 15–17, 2001, 8:00 a.m. to 6:00 p.m.

*Name:* Basic Nurse Education and Practice Program Peer Review Group.

*Date and Time:* May 21–24, 2001.

*Place:* Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

*Open on:* May 21, 2001, 8:00 a.m. to 10:00 a.m.

*Closed on:* May 21, 2001, 10:00 a.m. to 6:00 p.m.; May 22–24, 2001, 8:00 a.m. to 6:00 p.m.

*Purpose:* The Health Professions and Nurse Education Special Emphasis Panel shall advise the Associate Administrator for Health Professions on the technical merit of grants to improve the training, distribution, utilization, and quality of personnel required to staff the Nation's health care delivery system.

*Agenda:* The open portion of each meeting will cover welcome and opening remarks, financial management and legislative implementation updates, and overview of the review process. The meetings will be closed at approximately 10:00 a.m. on the first day of each meeting until adjournment for the review of grant applications. The closing is in accordance with the provision set forth in section 552b(c)(6), Title 5 U.S. Code, and the Determination by the Associate Administrator for Management and Program Support, Health Resources and Services Administration, pursuant to Public Law 92–463.

Anyone wishing to obtain a roster of members or other relevant information should write or contact Ms. Jennifer Burks, Director, Office of Extramural Program Review, Bureau of Health Professions, Parklawn Building, Room 8C–23, 5600 Fishers Lane, Rockville, Maryland 20857, telephone 301–443–6339.

Dated: October 4, 2000.

**Jane M. Harrison,**

*Director, Division of Policy Review and Coordination.*

[FR Doc. 00–26024 Filed 10–10–00; 8:45 am]

BILLING CODE 4160–15–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Availability of Comprehensive Conservation Plan and Summary of the Comprehensive Conservation Plan for Ouray National Wildlife Refuge, Vernal, UT

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability.

**SUMMARY:** Pursuant to the Refuge Improvement Act of 1997, the U.S. Fish and Wildlife Service has published the Ouray National Wildlife Refuge Comprehensive Conservation Plan and Summary of the Comprehensive Conservation Plan. These documents describe how the FWS intends to manage the Ouray NWR for the next 10–15 years.

**ADDRESSES:** A copy of the Plan or Summary may be obtained by writing to U.S. Fish and Wildlife Service, HC 69, Box 232, Randlett, UT 84063–9729. The Plan can also be downloaded from *http://www. r6.fws.gov/larp/.*

**FOR FURTHER INFORMATION CONTACT:** Allison Banks, U.S. Fish and Wildlife Service, P.O. Box 25486 DFC, Denver, CO 80225, 303/236–8145 extension 626; fax 303/236–4792.

**SUPPLEMENTARY INFORMATION:** Ouray NWR is located in northeast Utah. Implementation of the Plan will focus on adaptive resource management of wetland, grassland, and semidesert shrubland habitats, restoration and improved management of riparian bottomlands, recovery of endangered fish species of the Upper Colorado River Ecosystem, and opportunities for compatible wildlife-dependent recreation. Habitat monitoring and evaluation will be emphasized as the Plan is implemented. Opportunities for wildlife-dependent recreation will continue to be provided.

Dated: October 4, 2000.

**Ralph O. Morgenweck,**

*Regional Director, Denver, Colorado.*

[FR Doc. 00–26003 Filed 10–10–00; 8:45 am]

BILLING CODE 4310–55–M

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Receipt of Application for Endangered Species Permit

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of receipt of application for endangered species permit.

**SUMMARY:** The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

If you wish to comment, you may submit comments by any one of several methods. You may mail comments to the Service's Regional Office (see **ADDRESSES**). You may also comment via the internet to "victoria_davis@fws.gov". Please submit comments over the internet as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your internet message. If you do not receive a confirmation from the Service that we have received your internet message, contact us directly at either telephone number listed below (see **FURTHER INFORMATION**). Finally, you may hand deliver comments to either Service office listed below (see **ADDRESSES**). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the administrative record. We will honor such requests to the extent allowable by law. There may also be other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. We will not; however, consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

**DATES:** Written data or comments on these applications must be received, at the address given below, by November 13, 2000.

**ADDRESSES:** Documents and other information submitted with these applications are available for review,

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subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Victoria Davis, Permit Biologist). Telephone: 404/679–4176; Facsimile: 404/679–7081.

**FOR FURTHER INFORMATION CONTACT:** Victoria Davis, Telephone: 404/679–4176; Facsimile: 404/679–7081.

**SUPPLEMENTARY INFORMATION:** *Applicant:* Clark W. Brandon, Arnold Air Force Base Tennessee, Arnold Air Force Base, Tennessee, TE034379–0

The applicant requests authorization to harass and take (enter maternity colony once per year, observe evening roost emergence, capture, band, and place recording thermometers into maternity colonies the endangered gray bat, *Myotis grisescens* and Indiana bat, *Myotis sodalis*, throughout the species range on Arnold Air Force Base Tennessee, for the purpose of enhancement of survival of the species.

Dated: October 4, 2000.

**H. Dale Hall,**

*Acting Regional Director.*

[FR Doc. 00–26001 Filed 10–10–00; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Receipt of Application for Endangered Species Permit

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of receipt of application for endangered species permit.

**SUMMARY:** The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

If you wish to comment, you may submit comments by any one of several methods. You may mail comments to the Service's Regional Office (see **ADDRESSES**). You may also comment via the internet to "victoria_davis@fws.gov". Please submit comments over the internet as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your internet message. If you do not receive a confirmation from the Service that we have received your internet message, contact us directly at either telephone number listed below (see **FURTHER INFORMATION**). Finally, you may hand deliver comments to either Service office listed below (see **ADDRESSES**). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the administrative record. We will honor such requests to the extent allowable by law. There may also be other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. We will not; however, consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

**DATES:** Written data or comments on these applications must be received, at the address given below, by November 13, 2000.

**ADDRESSES:** Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Victoria Davis, Permit Biologist). Telephone: 404/679–4176; Facsimile: 404/679–7081.

**FOR FURTHER INFORMATION CONTACT:** Victoria Davis, Telephone: 404/679–4176; Facsimile: 404/679–7081.

**SUPPLEMENTARY INFORMATION:** *Applicant:* Jonathan M. Stober, Jones Ecological Research Center, Newton, Georigia, TE034156–0

The applicant requests authorization to take (capture, band, install inserts, and harass during nest monitoring and construction of artificial cavities) the endangered red-cockaded woodpecker, *Picoides borealis*, throughout the species range, for the purpose of enhancement of survival of the species.

Dated: October 3, 2000.

**H. Dale Hall,**

*Acting Regional Director.*

[FR Doc. 00–26002 Filed 10–10–00; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[AZ–952–09–1420–00]**

### Arizona; Notice of Filing of Plats of Survey

September 28, 2000.

1. The plats of survey of the following described land were officially filed in the Arizona State Office, Phoenix, Arizona on the dates indicated:

A plat representing the dependent resurvey of the Seventh Standard Parallel North through Range 15 East, (south boundary), the east, west and north boundaries and the subdivisional lines, Township 29 North, Range 15 East of the Gila and Salt River Meridian, Arizona, accepted July 17, 2000 and officially filed July 28, 2000.

This plat was prepared at the request of the Bureau of Indian Affairs, Phoenix Area Office.

A plat representing the dependent resurvey of the Seventh Standard Parallel North through Range 16 East, the Fourth Guide Meridian East through Township 29 North, the north boundary and the subdivisional lines and the subdivision of section 34, Township 29 North, Range 16 East of the Gila and Salt River Meridian, Arizona, accepted July 20, 2000 and officially filed August 4, 2000.

This plat was prepared at the request of the Bureau of Indian Affairs, Phoenix Area Office.

A plat representing the dependent resurvey of the Seventh Standard Parallel North through Range 17 East, (south boundary), the east and north boundaries and the subdivisional lines Township 29 North, Range 17 East of the Gila and Salt River Meridian, Arizona, accepted July 25, 2000 and officially filed August 4, 2000.

This plat was prepared at the request of the Bureau of Indian Affairs, Phoenix Area Office.

A plat representing the corrective resurvey of a portion of the subdivision of section 32 and a metes-and-bounds survey in section 32, Township 11 North, Range 20 East of the Gila and Salt River Meridian, Arizona, accepted August 25, 2000 and officially filed September 1, 2000.

This plat was prepared at the request of the United States Forest Service.



A plat representing the survey of the Sixth Guide Meridian East, (west boundary), the east and north boundaries, and the subdivisional lines, Township 33 North, Range 25 East of the Gila and Salt River Meridian, Arizona, accepted July 27, 2000 and officially filed August 10, 2000.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Area Office.

A plat representing the survey of the east and north boundaries, and the subdivisional lines, Township 33 North, Range 26 East of the Gila and Salt River Meridian, Arizona, accepted July 31, 2000 and officially filed August 10, 2000.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Area Office.

A plat in two sheets, representing the dependent resurvey of a portion of the east boundary and a portion of the subdivisional lines and the subdivision of section 25, Township 10 North, Range 6 West of the Gila and Salt River Meridian, Arizona, accepted August 25, 2000 and officially filed September 1, 2000.

This plat was prepared at the request of the Bureau of Land Management, Phoenix Field Office.

A plat in three sheets, representing the dependent resurvey of a portion of the subdivisional lines and the metes-and-bounds survey of the Mount Trumbull Wilderness Area Boundary, Township 35 North, Range 7 West of the Gila and Salt River Meridian, Arizona accepted September 18, 2000 and officially filed September 22, 2000.

This plat was prepared at the request of the Bureau of Land Management, Arizona State Office.

A plat in three sheets, representing the dependent resurvey of a portion of the subdivisional lines and the metes-and-bounds survey of the Mount Trumbull Wilderness Area Boundary, Township 34 North, Range 8 West of the Gila and Salt River Meridian, Arizona, accepted September 18, 2000 and officially filed September 22, 2000.

This plat was prepared at the request of the Bureau of Land Management, Arizona State Office.

A plat in six sheets, representing the dependent resurvey of a portion of the south and east boundaries and a portion of the subdivisional lines, the subdivision of section 15 and the metes-and-bounds survey of the Mount Trumbull Wilderness Area Boundary, Township 35 North, Range 8 West of the Gila and Salt River Meridian, Arizona, accepted September 5, 2000 and officially filed September 15, 2000.

This plat was prepared at the request of the Bureau of Land Management, Arizona State Office.

A supplemental plat in two sheets, Township 22 North, Range 18 West, sections 9, 14, 15 and 23 of the Gila and Salt River Meridian, Arizona, accepted August 14, 2000 and officially filed August 24, 2000.

This plat was prepared at the request of the Bureau of Land Management, Arizona State Office.

A plat representing the dependent resurvey of a portion of the north boundary, and a portion of the subdivisional lines, the subdivision of section 2 and the metes-and-bounds survey in sections 2 and 11, Township 11 South, Range 25 West of the Gila and Salt River Meridian, Arizona, accepted May 15, 2000 and officially filed May 25, 2000.

This plat was prepared at the request of the Bureau of Land Management, Yuma Field Office.

These plats will immediately become the basic records for describing the land for all authorized purposes. These plats have been placed in the open files and are available to the public for information only.

2. All inquires relation to these lands should be sent to the Arizona State Office, Bureau of Land Management, 222 N. Central Avenue, P.O. Box 1552, Phoenix, Arizona 85001–1552.

**Kenny D. Ravnikar,**

*Chief Cadastral Surveyor of Arizona.*

[FR Doc. 00–26036 Filed 10–10–00; 8:45 am]

**BILLING CODE 4310–32–P**

## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Notice of extension of a currently approved information collection (OMB Control Number 1010–0006).

**SUMMARY:** To comply with the Paperwork Reduction Act of 1995 (PRA), we are inviting comments on an information collection request (ICR), titled "30 CFR Part 256, Leasing of Sulphur or Oil and Gas in the Outer Continental Shelf." We are preparing an ICR, which we will submit to the Office of Management and Budget (OMB) for review and approval.

**DATES:** Submit written comments by December 11, 2000.

**ADDRESSES:** Mail or hand carry comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

**FOR FURTHER INFORMATION CONTACT:** Alexis London, Rules Processing Team, telephone (703) 787–1600. You may also contact Alexis London to obtain a copy of the regulations requiring the collection of information at no cost.

**SUPPLEMENTARY INFORMATION:**

*Title:* 30 CFR Part 256, Leasing of Sulphur or Oil and Gas in the Outer Continental Shelf.

*OMB Control Number:* 1010–0006.

*Abstract:* The Outer Continental Shelf (OCS) Lands Act, as amended, 43 U.S.C. 1331 *et seq.*, requires the Secretary of the Interior to preserve, protect, and develop offshore oil and gas resources; to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of the human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition. The Energy Policy and Conservation Act of 1975 (EPCA) prohibits certain lease bidding arrangements (42 U.S.C. 6213 (c)).

The Independent Offices Appropriations Act of 1952 (IOAA), 31 U.S.C. 9701, authorizes Federal agencies to recover the full cost of services that provide special benefits. Under the Department of the Interior's (DOI) policy implementing the IOAA, MMS is required to charge the full cost for services that provide special benefits or privileges to an identifiable non-Federal recipient above and beyond those that

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accrue to the public at large. Instruments of transfer of a lease or interest are subject to cost recovery, and MMS regulations specify filing fees for these transfer applications.

The MMS uses the information required by 30 CFR part 256 to determine if applicants are qualified to hold leases in the OCS. Specifically, MMS uses the information to:

- Verify the qualifications of a bidder on an OCS lease sale. Once the required information is filed with MMS, a qualification number is assigned to the bidder so that duplicate information is not required on subsequent filings.
- Develop the semiannual List of Restricted Joint Bidders. This identifies parties ineligible to bid jointly with each other on OCS lease sales, under limitations established by the EPCA.
- Ensure the qualification of assignees. Once a lease is awarded, the transfer of a lessee's interest to another qualified party must be approved by an MMS regional director.
- Obtain information and nominations on oil and gas leasing, exploration, and development and production. Early planning and consultation ensure that all interests and concerns are communicated to us for future decisions in the leasing process.
- Document that a leasehold or geographical subdivision has been surrendered by the record title holder.
- Verify that lessees have adequate bonding coverage. Respondents must submit their bonds certification forms: Form MMS–2028, Outer Continental Shelf Mineral Lessee's and Operator's Bond and Act of Suretyship," and Form MMS–2028A, "Outer Continental Shelf Mineral Lessee's and Operator's Supplemental Plugging & Abandonment Bond and Act of Suretyship." The MMS uses these documents to hold the surety libel for the obligations and liability of the principal/lessee or operator.

Responses are required to obtain or retain a benefit. No questions of a "sensitive" nature are asked. The individual responses to Calls for Information are the only information collected involving the protection of confidentiality. The MMS will protect specific individual replies from disclosure as proprietary information according to section 26 of the OCS Lands Act and 30 CFR 256.10(d).

*Frequency:* The frequency of reporting is "on occasion."

*Estimated Number and Description of Respondents:* Approximately 130 Federal OCS oil and gas or sulphur lessees, as well as the affected states and local governments.

*Estimated Annual Reporting and Recordkeeping "Hour" Burden:* The currently approved" hour burden for this information collection is a total of 17,856 hours. The major components of this burden and burden per response are:

- Submit qualification of bidders for joint bids and statements/reports of production (4.5 hours).
- Submit bids (1 hour).
- Submit joint lease agreements (4 hours).
- Execute forms MMS–2028 and MMS–2028A (¼ hour).
- Demonstrate ability to carry out financial obligations, request approval for other forms of security, or request reduction in supplemental bond requirements (4 hours).
- Provide plan to fund lease-specific abandonment account and related information (4 hours).
- Provide third-party guarantee, indemnity agreement, related notices, and annual report (8 hours).
- File application for assignment or transfer for approval (5 hours).
- File required documents for record purposes (½ hour)
- Request relinquishment of lease (5 hours).

*Estimated Annual Reporting and Recordkeeping "Non-Hour Cost" Burden:* The currently approved "non-hour cost" burden for this information collection is a total of $470,875. This cost burden is for filing fees associated with submitting requests for approval of instruments of transfer ($185 per application) or to file non-required documents for record purposes ($25 per filing).

*Comments:* The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Section 3506(c)(2)(A) of the PRA requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *"

Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

The PRA also requires agencies to estimate the total annual reporting "non-hour cost" burden to respondents or recordkeepers resulting from the collection of information. Other than the filing fees, we have not identified any non-hour cost burdens and need to know if you have other costs associated with the collection of this information for either total capital and startup cost components or annual operation, maintenance, and purchase of service components. Your estimates should consider the costs to generate, maintain, and disclose or provide the information. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information, monitoring, and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission. In calculating the burden, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Dated: September 28, 2000.

**E.P. Danenberger,**

*Chief, Engineering and Operations Division.*

[FR Doc. 00–25765 Filed 10–10–00; 8:45 am]

BILLING CODE 4310–MR–W



## INTERNATIONAL TRADE COMMISSION

**[Investigation Nos. 731–TA–888–890 (Preliminary)]**

### Stainless Steel Angle From Japan, Korea, and Spain

**Determinations**

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Japan, Korea, and Spain of stainless steel angle, provided for in subheading 7222.40.30 of the Harmonized Tariff schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

**Commencement of Final Phase Investigations**

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules upon notice from the Department of Commerce (Commerce) of affirmative preliminary determinations in the investigations under section 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

**Background**

On August 18, 2000, a petition was filed with the Commission and the Department of Commerce by Slater Steels Corporation, Specialty Alloys Division, Fort Wayne, IN, and the United States Steelworkers of America, AFL–CIO/CLC, Pittsburgh PA, alleging that an industry in the United States is materially injured and threatened with material injury by reason of LTFV imports of stainless steel angle from Japan, Korea, and Spain. Accordingly, effective August 18, 2000, the Commission instituted antidumping duty investigations Nos. 73–TA–888–890 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of August 25, 2000 (65 FR 51845). The conference was held in Washington, DC, on September 8, 2000, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on October 2, 2000. The views of the Commission are contained in USITC Publication 3356 (October 2000), entitled Stainless Steel Angle from Japan, Korea, and Spain: Investigations Nos. 731–TA–888–890 (Preliminary).

By order of the Commission.

Dated: Issued: October 3, 2000.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 00–26020 Filed 10–10–00; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in section 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–436]**

### In the Matter of Certain WAP-Compatible Wireless Communication Devices, Components Thereof, and Products Containing Same; Notice of Investigation

**AGENCY:** International Trade Commission.

**ACTION:** Institution of investigation pursuant to 19 U.S.C. 1337.

**SUMMARY:** Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on September 8, 2000, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Geoworks Corporation of Alameda, California. A supplement to the complaint was filed on September 29, 2000. The complaint alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain WAP-compatible (wireless application protocol) wireless communication devices, components thereof, and products containing same by reason of infringement of claims 1–8 of U.S. Letters Patent 5,327,529. The complaint further alleges that there exists in the United States an industry as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after a hearing, issue a permanent exclusion order and permanent cease and desist orders.

**ADDRESSES:** The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

**FOR FURTHER INFORMATION CONTACT:** Thomas S. Fusco, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2571.

**Authority:** The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2000).

*Scope of Investigation:* Having considered the complaint, the U.S. International Trade Commission, on October 3, 2000, *Ordered That*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain WAP-compatible wireless communication devices, components thereof, or products containing same by reason of infringement of claims 1–7 or 8 of U.S. Letters Patent 5,327,529; and whether

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there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—

Geoworks Corporation, 960 Atlantic Avenue, Alameda, California 94501.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Phone.com, Inc., 800 Chesapeake Drive, Redwood City, California 94063

Sanyo Electronic Co. Ltd. of Japan, 5–5 Keihan-Hondori, 2-chome, Moriguchi City, Osaka 570–8677, Japan

Sanyo North America Corporation, 2055 Sanyo Avenue, San Diego, California 92154

(c) Thomas S. Fusco, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, S.W., Room 401–O, Washington, D.C. 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Debra Morriss is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received no later than 20 days after the date of service by the Commission of the complaint and notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

Issued: October 4, 2000.

By order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 00–26021 Filed 10–10–00; 8:45 am]

BILLING CODE 7020–02–P

## DEPARTMENT OF LABOR

### Office of the Secretary

### Submission for OMB Review; Comment Request

October 3, 2000.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation for BLS, ETA, PWBA, and OASAM contact Karin Kurz ((202) 693–4127 or by E-mail to Kurz-Karin@dol.gov). To obtain documentation for ESA, MSHA, OHSA, and VETS contact Darrin King ((202) 693–4129 or by E-Mail to King-Darrin@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

*Type of Review:* Extension of a currently approved collection.

*Agency:* Office of the Chief Financial Officer.

*Title:* Salary Offset.

*OMB Number:* 1225–0038.

*Affected Public:* Individuals or households..

*Total Respondents:* 150.

*Frequency:* On Occasion.

*Total Responses:* 300.

*Average Time Per Response:* 1.25.

*Total Burden Hours:* 375.

*Total Burden Cost (capital/startup):* $0.

*Total Burden Cost (operating/maintenance):* $0.

*Total Annualized Capital/Startup Costs:* $0.

*Description:* The Department of Labor (DOL) collects information from debtors to assist in determining whether an individual is actually indebted to DOL, and if so indebted, to evaluate the individuals ability to repay the debt.

**Ira L. Mills,**

*Departmental Clearance Officer.*

[FR Doc. 00–26039 Filed 10–10–00; 8:45 am]

BILLING CODE 4510–23–M

## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

**[Prohibited Transaction Exemption 2000–48; Exemption Application No. D–10802, et al.]**

### Grant of Individual Exemptions; Columbia Energy Group (Columbia)

**AGENCY:** Pension and Welfare Benefits Administration, Labor.

**ACTION:** Grant of individual exemptions.

**SUMMARY:** This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

### Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

### Columbia Energy Group (Columbia), Located in Herndon, Virginia

[Prohibited Transaction Exemption 2000–48; Exemption Application No. D–10802]

*Exemption*

The restrictions of section 406(a) and (b) of the Act shall not apply to the reinsurance of risks and the receipt of premiums therefrom by Columbia Insurance Corporation, Ltd. (CICL) in connection with an insurance contract sold by Employers Insurance of Wausau (Wausau), or any successor insurance company to Wausau which is unrelated to Columbia, to provide long-term disability benefits to participants in Columbia's Long Term Disability Plan (the Plan), provided the following conditions are met:

(a) CICL—

(1) Is a party in interest with respect to the Plan by reason of a stock or partnership affiliation with Columbia that is described in section 3(14)(E) or (G) of the Act;

(2) Is licensed to sell insurance or conduct reinsurance operations in at least one State as defined in section 3(10) of the Act;

(3) Has obtained a Certificate of Authority from the Insurance Commissioner of its domiciliary state which has neither been revoked nor suspended;

(4)(A) Has undergone an examination by an independent certified public accountant for its last completed taxable year immediately prior to the taxable year of the reinsurance transaction; or

(B) Has undergone a financial examination (within the meaning of the law of its domiciliary State, Vermont) by the Insurance Commissioner of the State of Vermont within 5 years prior to the end of the year preceding the year in which the reinsurance transaction occurred; and

(5) Is licensed to conduct reinsurance transactions by a State whose law requires that an actuarial review of reserves be conducted annually by an independent firm of actuaries and reported to the appropriate regulatory authority;

(b) The Plan pays no more than adequate consideration for the insurance contracts;

(c) No commissions are paid by the Plan with respect to the direct sale of such contracts or the reinsurance thereof;

(d) In the initial year of any contract involving CICL, there will be an immediate and objectively determined benefit to the Plan's participants and beneficiaries in the form of increased benefits;

(e) In subsequent years, the formula used to calculate premiums by Wausau or any successor insurer will be similar to formulae used by other insurers providing comparable long-term disability coverage under similar programs. Furthermore, the premium charge calculated in accordance with the formula will be reasonable and will be comparable to the premium charged by the insurer and its competitors with the same or a better rating providing the same coverage under comparable programs;

(f) The Plan only contracts with insurers with a rating of A or better from A.M. Best Company (Best's). The reinsurance arrangement between the insurers and CICL will be indemnity insurance only, i.e., the insurer will not be relieved of liability to the Plan should CICL be unable or unwilling to cover any liability arising from the reinsurance arrangement;

(g) CICL retains an independent fiduciary (the Independent Fiduciary), at Columbia's expense, to analyze the transaction and render an opinion that the requirements of sections (a) through (f) have been complied with. For purposes of this exemption, the Independent Fiduciary is a person who:

(1) Is not directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with Columbia or CICL (this relationship hereinafter referred to as an "Affiliate");

(2) Is not an officer, director, employee of, or partner in, Columbia or CICL (or any Affiliate of either);

(3) Is not a corporation or partnership in which Columbia or CICL has an ownership interest or is a partner;

(4) Does not have an ownership interest in Columbia or CICL, or any of either's Affiliates;

(5) Is not a fiduciary with respect to the Plan prior to the appointment; and

(6) Has acknowledged in writing acceptance of fiduciary responsibility and has agreed not to participate in any decision with respect to any transaction in which the Independent Fiduciary has an interest that might affect its best judgment as a fiduciary.

For purposes of this definition of an "Independent Fiduciary," no organization or individual may serve as an Independent Fiduciary for any fiscal year if the gross income received by such organization or individual (or partnership or corporation of which such individual is an officer, director, or 10 percent or more partner or shareholder) from Columbia, CICL, or their Affiliates (including amounts received for services as Independent Fiduciary under any prohibited transaction exemption granted by the Department) for that fiscal year exceeds 5 percent of that organization or individual's annual gross income from all sources for such fiscal year.

In addition, no organization or individual who is an Independent Fiduciary, and no partnership or corporation of which such organization or individual is an officer, director, or 10 percent or more partner or shareholder, may acquire any property from, sell any property to, or borrow funds from Columbia, CICL, or their Affiliates during the period that such organization or individual serves as Independent Fiduciary, and continuing for a period of six months after such organization or individual ceases to be an Independent Fiduciary, or negotiates any such transaction during the period that such organization or individual serves as Independent Fiduciary.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on August 17, 2000 at 65 FR 50237.

**FOR FURTHER INFORMATION CONTACT:** Gary H. Lefkowitz of the Department,

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telephone (202) 219–8881. (This is not a toll-free number.)

**Actuarial Sciences Associates, Inc. (ASA) and ASA Fiduciary Counselors Inc. (ASA Counselors), Located in Alexandria, VA**

[Prohibited Transaction Exemption 2000–47; Exemption Application No: D–10879]

*Exemption*

I. General Transactions

The restrictions of section 406(a)(1)(A) through (D) and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (D), shall not apply to a transaction between a party in interest with respect to the Plumbers and Pipe Fitters National Pension Fund (the Fund) and an account (the Account) that holds certain assets of the Fund managed by ASA or ASA Counselors, while serving as independent named fiduciary (the Named Fiduciary) in connection with Prohibited Transaction Exemption 99–46 (PTE 99–46)(64 FR 61944, November 15, 1999); provided that the following conditions are satisfied:

(a) ASA or ASA Counselors, as Named Fiduciary of the Account, is an investment adviser registered under the Investment Advisers Act of 1940 that has, as of the last day of its most recent fiscal year, total client assets under its management and control in excess of $50,000,000, and shareholders' equity or partners' equity, as defined in Section III(h), below, in excess of $750,000;

(b) At the time of the transaction, as defined in Section III(i), below, the party in interest or its affiliate, as defined in Section III(a), below, does not have, and during the immediately preceding one (1) year has not exercised, the authority to—

(1) appoint or terminate the Named Fiduciary as a manager of the Account, or

(2) negotiate the terms of the management agreement with the Named Fiduciary (including renewals or modifications thereof) on behalf of the Fund;

(c) The transaction is not described in—

(1) Prohibited Transaction Class Exemption 81–6 (PTCE 81–6)[1] (relating to securities lending arrangements);

(2) Prohibited Transaction Class Exemption 83–1 (PTCE 83–1)[2] (relating to acquisitions by plans of interests in mortgage pools), or

(3) Prohibited Transaction Class Exemption 82–87 (PTCE 82–87)[3] (relating to certain mortgage financing arrangements);

(d) The terms of the transaction are negotiated on behalf of the Account under the authority and general direction of the Named Fiduciary, and either the Named Fiduciary, or (so long as the Named Fiduciary retains full fiduciary responsibility with respect to the transaction) a property manager acting in accordance with written guidelines established and administered by the Named Fiduciary, makes the decision on behalf of the Account to enter into the transaction, provided that the transaction is not part of an agreement, arrangement, or understanding designed to benefit a party in interest;

(e) The party in interest dealing with the Account is neither the Named Fiduciary nor a person related to the Named Fiduciary, as defined in Section III(f), below;

(f) At the time the transaction is entered into, and at the time of any subsequent renewal or modification thereof that requires the consent of the Named Fiduciary, the terms of the transaction are at least as favorable to the Account as the terms generally available in arm's length transactions between unrelated parties;

(g) Neither the Named Fiduciary nor any affiliate thereof, as defined in Section III(b), below, nor any owner, direct or indirect, of a 5 percent (5%) or more interest in the Named Fiduciary is a person who, within the ten (10) years immediately preceding the transaction, has been either convicted or released from imprisonment, whichever is later, as a result of:

(1) any felony involving abuse or misuse of such person's employee benefit plan position or employment, or position or employment with a labor organization;

(2) any felony arising out of the conduct of the business of a broker, dealer, investment adviser, bank, insurance company, or fiduciary;

(3) income tax evasion;

(4) any felony involving the larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds or securities; conspiracy or attempt to commit any such crimes or a crime in which any of the foregoing crimes is an element; or

(5) any other crimes described in section 411 of the Act.

For purposes of this Section I(g), a person shall be deemed to have been "convicted" from the date of the judgment of the trial court, regardless of whether the judgment remains under appeal.

II. Specific Exemption Involving Places of Public Accommodation

The restrictions of sections 406(a)(1)(A) through (D) and 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, effective November 8, 1999, to the furnishing of services, facilities, and any goods incidental thereto by a place of public accommodation owned by the Account managed by the Named Fiduciary to a party in interest with respect to the Fund, if the services, facilities, and incidental goods are furnished on a comparable basis to the general public.

III. Definitions

(a) For purposes of Section I(b), above, of this exemption, an "affiliate" of a person means—

(1) any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person,

(2) any corporation, partnership, trust, or unincorporated enterprise of which such person is an officer, director, 5 percent (5%) or more partner, or employee (but only if the employer of such employee is the plan sponsor), and

(3) any director of the person or any employee of the person who is a highly compensated employee, as described in section 4975(e)(2)(H) of the Code, or who has direct or indirect authority, responsibility, or control regarding the custody, management, or disposition of plan assets. A named fiduciary (within the meaning of section 402(a)(2) of the Act) of a plan, and an employer any of whose employees are covered by the plan will also be considered affiliates with respect to each other for purposes of Section I(b) if such employer or an affiliate of such employer has the authority, alone or shared with others, to appoint or terminate the named fiduciary or otherwise negotiate the terms of the named fiduciary's employment agreement.

(b) For purposes of Section I(g), above, of this exemption, an "affiliate" of a person means—

(1) any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person,

(2) any director of, relative of, or partner in, any such person,

(3) any corporation, partnership, trust, or unincorporated enterprise of which such person is an officer, director, or a 5 percent (5%) or more partner or owner, and

(4) any employee or officer of the person who—

(A) Is a highly compensated employee (as described in section 4975(e)(2)(H) of the Code) or officer (earning 10 percent (10%) or more of the yearly wages of such person) or

(B) Has direct or indirect authority, responsibility or control regarding the custody, management, or disposition of Fund assets.

(c) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) The term "goods" includes all things which are movable or which are fixtures used by the Account but does not include securities, commodities, commodities futures, money, documents, instruments, accounts, chattel paper, contract rights, and any other property, tangible or intangible, which, under the relevant facts and circumstances, is held primarily for investment.

(e) The term "party in interest" means a person described in section 3(14) of the Act and includes a "disqualified person," as defined in section 4975(e)(2) of the Code.

(f) The Named Fiduciary is "related" to a party in interest for purposes of Section I(e), above, of this exemption, if the party in interest (or a person controlling, or controlled by, the party in interest) owns a 5 percent (5%) or more interest in the Named Fiduciary, or if the Named Fiduciary (or a person controlling, or controlled by, the Named Fiduciary) owns a 5 percent (5%) or more interest in the party in interest. For purposes of this definition:

(1) The term "interest" means with respect to ownership of an entity—

(A) The combined voting power of all classes of stock entitled to vote or the total value of the shares of all classes of stock of the entity if the entity is a corporation,

(B) The capital interest or the profits interest of the entity if the entity is a partnership; or

(C) The beneficial interest of the entity if the entity is a trust or unincorporated enterprise; and

(2) A person is considered to own an interest held in any capacity if the person has or shares the authority—

(A) To exercise any voting rights, or to direct some other person to exercise the voting rights relating to such interest, or

(B) To dispose or to direct the disposition of such interest.

(g) The term "relative" means a relative as that term is defined in section 3(15) of the Act, or a brother, sister, or a spouse of a brother or sister.

(h) For purposes of Section I(a) of this exemption, the term "shareholders' equity" or "partners" equity" means the equity shown in the most recent balance sheet prepared within the two (2) years immediately preceding a transaction undertaken pursuant to this exemption, in accordance with generally accepted accounting principles.

(i) The "time" as of which any transaction occurs is the date upon which the transaction is entered into. In addition, in the case of a transaction that is continuing, the transaction shall be deemed to occur until it is terminated. If any transaction is entered into on or after the effective date of this exemption, or a renewal that requires the consent of the Named Fiduciary occurs on or after such effective date, and the requirements of this exemption are satisfied at the time the transaction is entered into or renewed, respectively, the requirements will continue to be satisfied thereafter with respect to the transaction. Nothing in this subsection shall be construed as exempting a transaction which becomes a transaction described in section 406 of the Act or section 4975 of the Code while the transaction is continuing, unless the conditions of this exemption were met either at the time the transaction was entered into or at the time the transaction would have become prohibited but for this exemption.

*Temporary Nature of Exemption*

The Department has determined that the relief provided to ASA and ASA Counselors by this exemption will be temporary in nature. The exemption is effective for ASA from November 8, 1999, through December 20, 1999, and for ASA Counselors from December 20, 1999, until the resignation of ASA Counselors and the appointment of a replacement independent Named Fiduciary for the Account. In accordance with Section 14 of the Independent Named Fiduciary Agreement (the Agreement), the Department was notified that ASA Counselors intends to resign as Named Fiduciary for the Account and terminate the Agreement on the *later* of: (a) Thirty (30) days from September 12, 2000; or (b) the appointment of a replacement independent Named Fiduciary for the Account. Accordingly, in order to accommodate the latest effective date of the resignation of ASA Counselors, the Department has determined that the relief provided by this exemption is available until the *later of*: (a) October 12, 2000, or (b) the effective date of the appointment of a replacement independent Named Fiduciary for the Account that is acceptable to the Department.

*Written Comments*

In the Notice of Proposed Exemption (the Notice), the Department of Labor (the Department) invited all interested persons to submit written comments and requests for a hearing on the proposed exemption. As set forth in the Notice, interested persons consisted of the Trustees of the Fund and any interested persons who commented in writing to the Department in connection with Prohibited Transaction Exemption 99–46 (PTE 99–46). The deadline for submission of such comments was within forty-five (45) days of the date of the publication of the Notice in the **Federal Register** on June 26, 2000. All comments and requests for a hearing were due on August 10, 2000.

Prior to August 10, 2000, interested persons contacted the Department by telephone and in writing in order to point out that the documents provided in the notice to interested persons referenced the application number D–10514 for PTE 99–46, rather than the application number D–10879 for the subject case. In light of this error, the Department required, and the applicants agreed, that a corrected copy of these documents would be sent to all interested persons by first class mail. Further, in order to allow interested parties to have the full comment period after receiving the revised notice, the Department required, and the applicants agreed to, an extension of the deadline when comments would be due on the proposed exemption. In a letter dated July 20, 2000, the applicants confirmed that it had re-notified all interested persons, as of July 19, 2000. Accordingly, all comments and requests for a hearing were due on August 31, 2000.

During the comment period, the Department received no requests for a hearing. However, the Department did receive comment letters from eleven (11) commentators. At the close of the comment period, the Department forwarded copies of these letters to the applicant for response. The applicant responded in writing to the various concerns raised by the commentators. A description of the comments and the applicant's responses thereto are summarized below.

A number of commentators objected to the acquisition by the Fund of the Diplomat Resort and Country Club (the

[1] 46 FR 7527, January 23, 1981.

[2] 48 FR 895, January 7, 1983.

[3] 47 FR 21331, May 18, 1982.

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Diplomat Project) which was the subject of PTE 99–46, and expressed concern over the ASA Counselors' authority under the exemption to use assets of the Fund for the operation of the Diplomat Project. In response to the comment, the applicants noted that the Department previously granted PTE 99–46 which permitted the investment. Further, the applicants maintain that the Diplomat Project involves a large hotel, country club, and marina. Given the number of participants, contributing employers, and service providers for the Fund and the scope of the Diplomat Project, in the opinion of the applicants, there would be significant administrative difficulties in identifying and preventing inadvertent prohibited transactions. In the opinion of the applicants, the granting of this exemption to ASA Counselors, the Named Fiduciary, will eliminate the risk that a prohibited transaction will occur during the course of building, selling, or operating the Diplomat Project.

One commentator asked whether CS Capital Management had any ties to Capital Consultants, Inc. or Wilshire Financial Services. In response, CS Capital Management has confirmed that they do not have ties to either organization.

After giving full consideration to the entire record, including the written comments from the commentators, the Department has decided to grant the exemption. In this regard, the comment letters submitted to the Department have been included as part of the public record of the exemption application. The complete application file, including all supplemental submissions received by the Department, is made available for public inspection in the Public Documents Room of the Pension Welfare Benefits Administration, Room N–5638, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice published on June 26, 2000, at 65 FR 39435.

*For Further Information Contact:* Ms. Angelena C. Le Blanc of the Department, telephone (202) 219–8883 (this is not a toll-free number).

**General Information**

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 4th day of October, 2000.

**Ivan Strasfeld,**

*Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.*

[FR Doc. 00–26029 Filed 10–10–00; 8:45 am]

BILLING CODE 4510–29–P

## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

**[Application No. D–10538, et al.]**

### Proposed Exemptions; Sei Investments Company (SEI Investments), SEI Investments Management Corporation (SIMC) and SEI Trust Company (STC)

**AGENCY:** Pension and Welfare Benefits Administration, Labor.

**ACTION:** Notice of Proposed Exemptions.

**SUMMARY:** This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

**Written Comments and Hearing Requests**

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

**ADDRESSES:** All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. ____-_, stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5638, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

**Notice to Interested Persons**

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

**SUPPLEMENTARY INFORMATION:** The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.



**SEI Investments Company (SEI Investments), SEI Investments Management Corporation (SIMC) and SEI Trust Company (STC), Located in Oaks, PA**

[Application No. D–10538]

*Proposed Exemption*

Based on the facts and representations set forth in the application, the Department is considering granting an exemption under the authority of section 408(a) of the Act (or ERISA) and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).[1]

Section I. Proposed Exemption for the Purchase of Fund Shares With Assets Transferred in Kind From a Plan Account

If the exemption is granted, the restrictions of section 406(a) and section 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code, shall not apply, effective June 19, 1996, to the purchase of shares of one or more open-end management investment companies (the Fund or Funds) registered under the Investment Company Act of 1940 (the ICA), to which SEI Investments, SIMC, STC, or any of their affiliates (collectively, SEI) serve as investment adviser and may provide other services, by an employee benefit plan (the Plan or Plans) whose assets are held by SEI as trustee, investment manager, or as a discretionary fiduciary, in exchange for securities held by the Plan in an account (the Account) with SEI (the Purchase Transaction), provided the following conditions are met:

(a) A fiduciary (the Second Fiduciary) who is acting on behalf of each affected Plan and who is independent of and unrelated to SEI, as defined in paragraph (g) of Section III below, receives advance written notice of the Purchase Transaction and full and written information concerning the Funds which includes the following:

(1) A current prospectus for each Fund to which the Plan's assets may be transferred;

(2) A statement describing the fees to be charged to, or paid by, the Plan and the Funds to SEI, including the nature and extent of any differential between the rates of the fees paid by the Fund and the rates of the fees otherwise payable by the Plan to SEI;

(3) A statement of the reasons why SEI may consider the Purchase Transaction to be appropriate for the Plan;

(4) A statement of whether there are any limitations on SEI with respect to which Plan assets may be invested in the Funds;

(5) The identity of all securities that are deemed suitable by the Funds' sub-advisers for transfer to the Funds;

(6) The identity of all such securities that will be valued in accordance with the procedures set forth in Rule 17a–7(b)(4) under the ICA; and

(7) Upon such fiduciary's request, copies of the proposed and final exemptions pertaining to the exemptive relief provided herein for Purchase Transactions occurring after the date of the final exemption.

(b) On the basis of the foregoing information, the Second Fiduciary gives SEI prior written approval with respect to—

(1) Each Purchase Transaction, consistent with the responsibilities, obligations, and duties imposed on fiduciaries by Part 4 of Title I of the Act;

(2) The transaction date proposed by SEI; and

(3) The receipt of confirmation statements, described below in paragraph (g)(1) and (g)(2), by facsimile or electronic mail.

(c) No sales commissions or other fees are paid by the Plans in connection with a Purchase Transaction.

(d) All transferred assets are securities for which market quotations are readily available, or cash.

(e) The transferred assets consist of assets transferred to the Plan's Account at the direction of the Second Fiduciary and constitute all of the assets held in the Account immediately prior to the transfer (other than Fund shares already held in the Account). With respect to any Plan assets transferred in-kind to an Account wich are not suitable for acquisition by the Funds, such assets are liquidated as soon as reasonably practicable and the cash proceeds are invested directly in Fund shares.

(f) With respect to assets transferred in-kind, each Plan receives shares of a Fund which have a total net asset value that is equal to the value of the assets of the Plan exchanged for such shares, based on the current market value of such assets at the close of the business day on which such Purchase Transaction occurs, using independent sources in accordance with the procedures set forth in Rule 17a–7b (Rule 17a–7) under the ICA and the procedures established by the Funds pursuant to Rule 17a–7 for the valuation of such assets. Such procedures must require that all securities for which a current market price cannot be obtained by reference to the last sale price for transactions reported on a recognized securities exchange or NASDAQ be valued based on an average of the highest current independent bid and lowest current independent offer, as of the close of business on the last business day prior to the Purchase Transaction determined on the basis of reasonable inquiry from at least three sources that are broker-dealers or pricing services independent of SEI.

(g) SEI sends by regular mail or personal delivery or, if applicable, by facsimile or electronic mail to the Second Fiduciary of each Plan that engages in a Purchase Transaction, the following information:

(1) Not later than 30 business days after completion of each Purchase Transaction, a written confirmation which contains—

(A) The identity of each of the assets that was valued for purposes of the transaction in accordance with Rule 17a–7(b)(4) under the ICA;

(B) The current market price, as of the date of the Purchase Transaction, of each of the assets involved in the Purchase Transaction; and

(C) The identity of each pricing service or market maker consulted in determining the value of such assets.

(2) Not later than 90 days after completion of each Purchase Transaction, a written confirmation which contains—

(A) The aggregate dollar value of the assets held in the Account immediately before the Purchase Transaction; and

(B) The number of shares of the Funds that are held by the Account following the Purchase Transaction (and the related per share net asset value and the aggregate dollar value of the shares received).

(h) With respect to each of the Funds in which a Plan continues to hold shares acquired in connection with a Purchase Transaction, SEI provides the Second Fiduciary with—

(1) A copy of an updated prospectus of such Fund, at least annually; and

(2) Upon request of the Second Fiduciary, a report or statement (which

[1] For purposes of this proposed exemption, references to provisions of Title I of the Act, unless otherwise specified, refer also to corresponding provisions of the Code.

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may take the form of the most recent financial report, the current statement of additional information, or some other statement) containing a description of all fees paid by the Fund to SEI.

(i) As to each Plan, the combined total of all fees received by SEI for the provision of services to the Plan, and in connection with a Purchase Transaction, is not in excess of "reasonable compensation" within the meaning of section 408(b)(2) of the Act.

(j) All dealings in connection with the Purchase Transaction between the Plan and the Fund are on a basis no less favorable to the Plan than dealings between the Fund and other shareholders.

(k) Between June 19, 1996 and the date this final exemption is granted, no Plan may enter into more than one Purchase Transaction with the Funds. However, subsequent to the granting of this exemption, a Second Fiduciary may engage in more than one Purchase Transaction provided that such Second Fiduciary allocates additional securities representing a different asset class to a Plan Account.

(l) SEI maintains for a period of six years, in a manner that is accessible for audit and examination, the records necessary to enable the persons, as described in paragraph (m) of this Section I, to determine wither the conditions of this proposed exemption have been met, except that—

(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of SEI, the records are lost or destroyed prior to the end of the six year period; and

(2) No party in interest, other than SEI, shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (m) of this Section I.

(m)(1) Except as provided in paragraph (m)(2) of this Section II and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (l) of Section I above are unconditionally available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service or the Securities and Exchange Commission (the SEC);

(B) Any fiduciary of each of the Plans who has authority to acquire or dispose of shares of any of the Funds owned by such a Plan, or any duly authorized employee or representative of such fiduciary; and

(C) Any participant or beneficiary of the Plans or duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described in paragraph (m)(1)(B) or (C) of this Section I shall be authorized to examine the trade secrets of SEI or commercial or financial information which is privileged or confidential.

Section II. Availability of Prohibited Transaction Exemption (PTE) 77–4

Any purchase of Fund shares that complies with the conditions of Section I of this proposed exemption shall be treated as a "purchase or sale" of shares of an open-end investment company for purposes of PTE 77–4 and shall be deemed to have satisfied paragraphs (a), (d) and (e) of Section II of PTE 77–4 (42 FR 18732, April 3, 1977).[2]

Section III. Definitions

For purposes of this proposed exemption,

(a) The term "SEI" means SEI Investments Company, SEI Investments Management Corporation, SEI Trust Company and any affiliate of SEI, as defined in paragraph (b) of this Section III.

(b) An "affiliate" of a person includes:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(c) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) The term "Fund" or "Funds" means any open-end investment company or companies registered under the ICA for which SEI serves as investment adviser, and may also provide custodial or other services as approved by such Funds.

(e) The term "net asset value" means the amount for purposes of pricing all purchases and sales calculated by dividing the value of all securities, determined by a method as set forth in a Fund's prospectus and statement of additional information, and other assets belonging to each of the portfolios in such Fund, less the liabilities charged to each portfolio, by the number of outstanding shares.

(f) The term "relative" means a "relative" as that term is defined in section 3(15) of the Act (or a "member of the family" as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or a sister.

(g) The term "Second Fiduciary" means a fiduciary of a plan who is independent of and unrelated to SEI. For purposes of this exemption, the Second Fiduciary will not be deemed to be independent of and unrelated to SEI if—

(1) Such Second Fiduciary directly or indirectly controls, is controlled by, or is under common control with SEI;

(2) Such Second Fiduciary, or any officer, director, partner, employee, or relative of such Second Fiduciary is an officer, director, partner, or employee of SEI (or is a relative of such persons); or

(3) Such Second Fiduciary directly or indirectly receives any compensation or other consideration from SEI for his or her own personal account in connection with any transaction described in this proposed exemption.

If an officer, director, partner, or employee of SEI (or a relative of such persons), is a director of such Second Fiduciary, and if he or she abstains from participation in (A) the choice of the Plan's investment manager/adviser; (B) the approval of any purchase, continued holding or redemption by the Plan of shares of the Funds; and (C) the approval of any change of fees charged to or paid by the Plan, in connection with the transactions described above in Section I, then paragraph (g)(2) of this Section III, shall not apply.

Effective Date: If granted, this proposed exemption will be effective as of June 19, 1996, with the exception of Section I(a)(7), which will applicable for Purchase Transactions occurring after the date of the final exemption.

*Summary of Facts and Representations*

Description of the Parties

1. *SEI Investments*, which is located in Oaks, Pennsylvania, is a financial services company that was founded in 1968. SEI Investments and its affiliates provide a broad range of financial services to banks, institutional investors, investment advisers, and insurance companies, including funds evaluation services, trust accounting systems and brokerage and information services and has offices located throughout the United States and Canada. As of December 31, 1999, SEI Investments had total assets of $253,779,000.

2. *SIMC*, a wholly owned subsidiary of SEI Investments and also located in Oaks, Pennsylvania, currently provides the Funds described herein with overall investment management services (including selection and supervision of investment advisers), and regulatory reporting services. In addition, SIMC serves as transfer agent with respect to certain classes of Fund shares and as investment adviser to certain Fund portfolios. Further, SIMC serves as manager or administrator to more than 40 investment companies and portfolios as well as to various Plans. As of December 31, 1999, SIMC had total assets under management of approximately $64.3 billion.

3. *STC*, a state-chartered trust company incorporated under the laws of the Commonwealth of Pennsylvania, is located in Oaks, Pennsylvania. Formerly known as Eagle Trust Company, STC is a wholly owned subsidiary of SEI Investments and serves as trustee/investment manager of the Plans. As of December 31, 1999, STC had custody of approximately $35.5 billion in assets.

4. *The Plans*, as to which SIMC may serve as an investment manager or STC may serve as a trustee, consist of retirement plans qualified under section 401(a) of the Code which constitute "pension plans" as defined in section 3(2) of the Act, certain welfare plans as defined under section 3(1) of the Act and "plans" as defined in section 4975(e)(1) of the Code. The Plans do not include any plans sponsored by SEI.

5. *The Funds* to which the requested exemption will apply currently consist of the separate portfolios of the SEI Institutional Investments Trust (the Investments Trust), the SEI Institutional Managed Trust (the Managed Trust) and the SEI Institutional International Trust (the SIT), all of which are investment companies registered under the ICA.[3] The Funds are further described as follows:

(a) *The Investments Trust* is a Massachusetts business trust established on March 1, 1995. It is a no-load, open-end management investment company which is available only to Plans and other institutional investors that retain SIMC as investment manager. Currently, nine portfolios comprise the Investments Trust. They are the Large Cap Fund, the Large Cap Value Fund, the Large Cap Growth Fund, the Small Cap Fund, the International Equity Fund, the Core Fixed Income Fund, the Emerging Markets Equity Fund, the High Yield Bond Fund and the International Fixed Income Fund.[4] Each of the portfolios of the Investments Trust issues only one class of beneficial interests (*i.e.*, shares). No sales loads or fees payable under Rule 12b–1 of the ICA (the Rule 12b–1 Fees) are paid with respect to Investments Trust shares.

(b) *The Managed Trust* is a Massachusetts business trust that was established on October 20, 1986. It is a no-load, open-end management investment company currently having the following twelve portfolios: the Large Cap Value Fund, the Large Cap Growth Fund, the Tax-Managed Large Cap Fund, the Small Cap Value Fund, the Small Cap Growth Fund, the Capital Appreciation Fund, the Balanced Fund, the Mid-Cap Fund, the Equity Income Fund, the Core Fixed Income Fund, the Bond Fund and the High Yield Bond Fund.[5] Each of the Fund portfolios of the Managed Trust issues two classes of shares, only one of which, Institutional Class A shares, is offered to institutional investors, including Plans. No sales loads or Rule 12b–1 Fees are paid with respect to such shares.

(c) *SIT*, a Massachusetts business trust established on June 30, 1988, currently offers the following four portfolios: the International Equity Fund, the Emerging Markets Equity Fund, the Emerging Markets Debt Fund and the International Fixed Income Fund. Each of the portfolios of the International Trust issues two classes of shares, only one of which, Institutional Class A shares, is offered to institutional investors including Plans. No sales loads or Rule 12b-1 fees are paid with respect to such shares.

6. SIMC (including its subsidiaries) acts as the administrator of all of the Funds and serves as investment adviser to all of the Funds with the exception of the International Trust's International Fixed Income Fund, which is advised by Strategic Fixed Income LLC, an unaffiliated investment adviser. However, for this Fund, SIMC retains overall investment advisory supervision including the formulation of investment policy. In addition, SIMC generally follows a "manager of managers" approach to the Funds whereby all of the assets of the Funds are advised by sub-advisers which are independent of SIMC.

As administrator and investment adviser, SIMC retains independent sub-advisers, makes overall investment decisions with respect to the assets of each Fund, and continuously reviews, supervises and administers each Fund's investment program. SIMC receives an investment advisory fee from each Fund for such services and is responsible for paying the sub-advisers. The Funds may also pay certain transfer agent and administrative fees to SIMC or to other SEI affiliates.

The Funds are offered and sold exclusively through the use of prospectuses and materials (which have been, or will be, filed, as required, with the various federal and state securities regulatory authorities prior to their distribution) and are offered and sold in full compliance with regulations of the SEC. Shareholders of the Funds periodically receive the following disclosures concerning the Funds as mandated by the SEC: (a) a copy of the prospectus, which is updated annually; (b) an annual report containing audited financial statements of the Funds and information regarding such Funds' performance (unless such performance information is included in the prospectus of such Funds); and (c) a semi-annual report containing unaudited financial statements. With respect to the Plans, SIMC or the custodian reports all transactions in shares of the Funds in periodic account statements provided to each of the Plans.

The Asset Allocation Strategy (the Strategy)

7. According to SEI, the Strategy can be viewed as a series of separate, but interrelated, asset allocation transactions provided by SIMC and its affiliates to a Plan. In effect, the Strategy constitutes a set of investment guidelines established in advance by the Second Fiduciary, under which SIMC may be retained to exercise investment discretion with respect to all of the Plan's assets covered by such Strategy.

As Representations 7 and 8 illustrate, the specific steps involved in creating

[2] In relevant part, PTE 77–4 permits the purchase and sale by an employee benefit plan of shares of a registered open-end investment company when a fiduciary with respect to such plan is also the investment adviser for the mutual fund. Section II(a) of PTE 77–4 requires that a plan does not pay a sales commission in connection with such purchase or sale. Section II(d) describes the disclosures that are to be received by an independent plan fiduciary. For example, the plan fiduciary must receive a current prospectus for the mutual fund as well as full and detailed written disclosure of the investment advisory and other fees that are charged to or paid by the plan and the investment company. Section II(e) requires that the independent plan fiduciary approve, in writing, purchases and sales of mutual fund shares on the basis of the disclosures give.

[3] Because SEI would like the exemption to apply prospectively to any Fund in which a Plan invests and with respect to which SEI or any of its affiliates may provide services, SEI represents that all other future Funds that utilize the requested exemption will assume similar structures and the Plan investments therein will be subject to the terms and conditions of this exemption.

[4] It should be noted that although the Emerging Markets Equity Fund, the High Yield Bond Fund and the International Fixed Income Fund constitute part of the Investments Trust, these Funds are no longer open.

[5] It should be noted that the Bond Fund is presently closed.

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and implementing the Strategy generally can be described as follows:

(a) The development of a Plan-level asset allocation policy, *i.e.*, the selection of broad asset classes and percentages of Plan assets to be allocated among those asset classes (*e.g.*, one such class may be "domestic equities").

(b) The development of a more refined asset allocation policy within each asset class (*e.g.*, "domestic equities" may be further divided into "large-cap," "small-cap," "growth," etc.).

(c) The Second Fiduciary's determination of what asset classes SIMC will manage.

(d) With respect to each asset class that will be invested in shares of the Funds, the selection and liquidation of securities, and the purchase of Fund shares (in-kind or in cash).

(e) The retention of SIMC as the discretionary asset manager with respect to the Plan or specified asset classes.

Theoretically, a Plan may retain SIMC to perform one or more component Strategy functions separately, even though they are all offered as part of the same package (in other words, tasks (a) through (e) may be purchased separately), and the Strategy steps may occur in different orders or concurrently.

Thus, as a preliminary step, SIMC, as investment adviser, must first develop the overall asset allocation. Using its own proprietary software, SIMC will work with a Second Fiduciary of the Plan[6] to develop an asset allocation strategy that is based upon various objective and measurable criteria such as the Plan's employee population information, investment goals and risk tolerance. For this purpose, SIMC will assume that the Plan will implement the Strategy by investing assets in the Funds, irrespective of whether the Strategy is being implemented through in-kind or cash transfers.

A Strategy will represent a different asset allocation model. If SIMC manages all of the Plan's assets, there will be only one Strategy per Plan.[7] Once the Strategy is proposed, it must be reviewed, approved and adopted by the Second Fiduciary. Although certain information is obtained in writing, generally this will be done in narrative format through a series of meetings and interviews. If two Plans provide the same inputs, SIMC's software will present both investors with the same generic Strategy.

Once a Strategy is selected by the Second Fiduciary, it may be modified only by such Second Fiduciary. No separate fee is being charged for an asset allocation. The fee for such services is included in SEI's Plan-level investment management fee.

After reviewing the Strategy, the Plan's Second Fiduciary must decide whether it will ask SIMC to manage part or all of the Plan's assets in accordance with the Strategy. For example, the Strategy may have a fixed income allocation and an equity allocation. Thus, it is possible that the Second Fiduciary may retain SIMC to manage Plan assets that are allocated to only one asset allocation.

The Purchase Transaction

8. In conjunction with the hiring of SIMC and the development and adoption of the Strategy, the Second Fiduciary will allocate certain assets of the Plan to an Account that is maintained by SIMC. In many cases, this transfer of fiduciary authority involves the Second Fiduciary's termination of one or more pre-existing agreements with investment managers who are not affiliated with SIMC. In other situations, it may involve a Second Fiduciary's decision to retain SIMC to manage only a portion (or portions) of the Plan's investment portfolio and the continued use of unaffiliated investment managers. Accordingly, the assets to be transferred to the Account may include an existing portfolio of securities representing a distinct asset class. However, because it invests Plan assets in the Funds rather than in individual securities and because of fiduciary liability concerns raised by taking responsibility for an existing portfolio of securities acquired at the direction of a different investment manager, SIMC prefers that such assets be liquidated before they are transferred to the Account.

In many cases, an existing securities portfolio may include securities that are suitable for investment by the Funds. Therefore, SEI recognizes that it may be appropriate to transfer such securities in-kind directly to the relevant Fund(s) in order to avoid transaction costs and potential market disruption that could occur from a sale of those securities by the Plan and the nearly simultaneous repurchase of those same securities by the Fund. Rather than require that the existing portfolio be liquidated before it is allocated to the Account, SIMC will accept an in-kind allocation of such securities to an Account, at the request of the Second Fiduciary. Whatever portfolio securities may be acceptable for an in-kind transfer will be determined by the sub-advisers to the Funds.

Specifically, upon obtaining a new client Plan that proposes to engage in a Purchase Transaction, SIMC will present to all Fund sub-advisers[8] a list of the Plan's portfolio securities.[9] Each sub-adviser will be asked to indicate which of those securities (and in what quantities) it would be interested in acquiring in connection with the Fund portfolio for which it is responsible. SIMC will then compile the results and forward them to the Second Fiduciary for approval or rejection.

In addition, SIMC will accept the entire securities portfolio, including those securities that are not suitable for investment by the Funds. Subsequently, any securities that are acceptable to the Funds will be transferred in-kind in exchange for Fund shares. Any securities that are not acceptable will be liquidated at the direction of SIMC.[10] Once SIMC has directed the liquidation of any securities of the Account that are not suitable for transfer to the Funds, SIMC will use the cash proceeds to buy Fund shares directly on behalf of the Plan.

9. SEI maintains that the in-kind transfers of Account assets in exchange for shares of the Funds will be ministerial transactions performed in accordance with pre-established objective procedures which are approved by the board of trustees of each Fund. Such procedures require that assets transferred to a Fund (a) be consistent with the investment objectives, policies and restrictions of the corresponding portfolios of the Fund, as determined by the Funds' sub-advisers; (b) satisfy the applicable requirements of the ICA and the Code; and (c) have a readily ascertainable market value. In addition, any assets that are transferred will be liquid and will not be subject to restrictions on resale. Assets which do not meet these requirements will be sold in the open market prior to any transfer in-kind. Further, prior to entering into an in-kind transfer, each affected Plan will receive certain disclosures from SIMC and approve such transaction in writing.

10. With certain exceptions, SEI represents that the Purchase Transactions are similar to the in-kind exchange transactions described in PTE 93–72 (58 FR 51109, September 30, 1993) involving Western Asset Management Co. (WAMC). The first exception relates to the fact that SIMC proposes that a Plan participate in more than one Purchase Transaction over time, i.e., as the Second Fiduciary decides to allocate additional securities representing a different asset class to the Account, perhaps in connection with changing the Strategy.[11] In WAMC, concern was expressed by the Department about WAMC's ability to exercise its fiduciary authority to engage in (or to influence) exchanges in a manner that would allow WAMC to "time" transactions. In contrast to WAMC, SEI notes that SIMC does not (except for the limited purpose of disposing of those assets that are not suitable for in-kind transfer to the Funds) manage assets both "inside" and "outside" the Funds and all fiduciary discretion over which Plan assets will be allocated to the Funds remains with the Plan's Second Fiduciary.[12] According to SEI, the second exception relates to the valuation of the securities to be transferred. In this regard, SEI is following the valuation procedures under Rule 17a–7 of the ICA as set forth in Representation 13.

Notwithstanding the above, SEI represents that it will not permit a Plan to engage in more than one Purchase Transaction prior to the granting of this exemption so as to conform the Purchase Transaction more closely to PTE 93–72, the WAMC exemption, and the Rule 17a–7 valuation procedures that are set forth in the Department's "conversion" exemptions.[13]

Accordingly, SEI requests that the exemption apply retroactively and be made effective as of June 19, 1996 with respect to Purchase Transactions occurring at that time.[14] The Department concurs with this retroactivity date. However, it has imposed a requirement to the effect that Section I(a)(7) of the proposal, relating to SEI's dissemination to Second Fiduciaries of copies of the proposed and final exemptions, will be applicable to Purchase Transactions occurring after the exemption is granted.

Rebalancing

11. The Investment Management Agreement requires SIMC to rebalance the Account periodically among the Funds. In this regard, SIMC uses close-of-business values to determine the daily net asset value of assets held in an Account. Each Account has a pre-set "trigger" point for rebalancing purposes. Although the exact trigger may vary from Account to Account, SIMC typically rebalances an Account if an investment allocation varies by more than 4 percent from the target allocation. Generally, rebalancing occurs automatically and on the last day of any calendar month if any allocation deviates from its target percentage by more than an agreed upon percentage.

Advance Disclosure/Approval

12. Under the Investment Management Agreement, a Second Fiduciary will receive all of the disclosures required by PTE 77–4. In this regard, such information includes, but is not limited to, (a) a current prospectus for the Fund in which the Plan's assets may be transferred; (b) a statement describing the fees to be charged to, or paid by, the Plan and the Fund to SEI, including the nature and extent of any differential between the rates of the fees paid by the Fund and the rates of the fees otherwise payable by the Plan to SEI; (c) a statement of the reasons why SEI may consider the Purchase Transaction to be appropriate for the Plan; (d) a statement of whether there are any limitations on SEI with respect to which Plan assets may be invested in the Funds; (e) the identity of all securities that are deemed suitable by the Funds' sub-advisers for transfer to the Funds; and (f) the identity of all such securities that will be valued in accordance with Rule 17a–7(b)(4). In addition, for Purchase Transactions occurring after the date of the grant notice, SEI will provide copies of the proposed and final exemptions to the Second Fiduciary, upon request.

Based on these disclosures, the Second Fiduciary by executing the Investment Management Agreement will approve, in writing, the transfer of the Plan's assets to the corresponding Fund in exchange for shares of such Fund and the receipt by SEI of fees for services to the Fund. If the Second Fiduciary does not approve the use of the Funds as Plan investments, it will not retain SIMC as the Plan's investment manager. Additionally, if the Second Fiduciary does not approve the Purchase Transaction, the securities held by the Plan will be sold for cash on the open market and the transaction will proceed in accordance with PTE 77–4.

Valuation Procedures

13. The assets transferred by an Account to the Funds in connection with a Purchase Transaction will consist entirely of cash and marketable

[6] The Strategy services that are subject to this exemption relate only to defined benefit plans, welfare plans and fiduciary-managed defined contribution plans but they do not cover participant-directed accounts.

[7] To the extent that SIMC is asked to manage only a portion of a Plan, it may develop one or more specific strategies, *e.g.*, an Equity Strategy or a Fixed Income Strategy.

[8] Although the requested exemption currently covers unaffiliated sub-advisers, SEI represents that it may wish to retain affiliated sub-advisers for the Funds in the future so that the benefits of the Purchase Transactions will not be diluted. SEI points out that the only theoretical way that an affiliated sub-adviser could act to the detriment of a Plan would be to agree to accept a security for in-kind transfer on terms that favored the Fund over the Plan. However, SEI believes that several factors protect the Plan from this action. First, when an affiliated sub-adviser checks off the securities it is willing to take in-kind, it is bidding for the same securities against unaffiliated sub-advisers. Second, when the sub-adviser determines which securities it is willing to take, it does not set a price at that time but agrees to take them at their fair market value. Third, the price on such transfer date (SEI will propose the transaction date but the Second Fiduciary will make the actual determination.) will be objectively determined in accordance with Rule 17a–7 (see Representation 13).

[9] A Sub-adviser will not be presented with the option of purchasing securities held in a Plan's portfolio for which there is no corresponding Fund. Instead, only those sub-advisers of Funds that may be used to implement the Strategy will be presented with a list of the Plan's securities for possible Purchase Transactions. Each sub-adviser will then be limited to acquiring only those securities which do not exceed in value the amount of Fund shares the Plan will be purchasing.

[10] SEI represents that brokerage transactions with respect to an Account may be executed by an affiliate of SIMC in accordance with the terms of PTE 86–128 (51 FR 41686, November 18, 1986). However, the Department expresses no opinion herein on whether such transactions will satisfy the terms and conditions of PTE 86–128.

[11] For example, a Second Fiduciary may hire SIMC to manage a domestic equity Account only so the initial Strategy would provide for allocation among domestic equity Funds. If the Second Fiduciary subsequently decides to expand the scope of SIMC's management authority to include international equities, it will transfer to the Account an existing portfolio of international equity securities in another Purchase Transaction. At a later date, the Second Fiduciary may decide to retain SIMC to manage the Plan's fixed income securities. So, the Second Fiduciary would engage in still another Purchase Transaction.

Under the foregoing circumstances, subsesquent transfers of similar types of securities are not contemplated. Instead, SEI represents that a Second Fiduciary will be able to make a one-time, in-kind transfer of a distinct portion of the Plan's asset portfolio.

[12] It is represented that SIMC does not become a fiduciary until after the Second Fiduciary has specified which portion of the Plan's assets (including which specific assets) will be allocated to the Account. It is also represented that SEI may become a fiduciary with respect to a particular pool of assets (e.g., helping the Plan develop its Strategy) before those assets are "converted" into Fund shares.

[13] See, for example, PTE 94–82 involving Marshall & Ilsley Trust Company (59 FR 62422, December 5, 1994); PTE 94–86 involving The Bank of California, N.A. (59 FR 65403, December 19, 1994); PTE 95–33 involving Bank South, N.A. (60 FR 20773, April 27, 1995); PTE 95–48 involving Mellon Bank, N.A. (60 FR 32995, June 26, 1995); and PTE 95–49 involving Norwest Bank (60 FR 33000, June 26, 1995).

[14] SEI represents that SIMC accepted two or three new Plan clients which elected to engage in Purchase Transactions. In each case, the Plan (or its outside manager) expressly retained responsibility for (a) selecting the securities to be transferred and directing their transfer; (b) directing the sale of all other securities through SEI's brokerage affiliates; and (c) determining whether the securities were valued in accordance with Rule 17a–7 for purposes of the transfer. SEI further notes that its fiduciary responsibilities only commenced after the completion of the Purchase Transactions. Accordingly, SEI does not believe that exemptive relief is necessary with respect to these Purchase Transactions. However, because the determination of its fiduciary status is uncertain, SEI requests that the exemption be made retroactive to June 19, 1996 to cover the Purchase Transactions that occurred at that time.

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securities. For this purpose, the value of the securities in the Account will be determined based on market value as of the close of business on the last business date prior to the transfer (the Account Valuation Date). The values on the Account Valuation Date will be determined in a single valuation using the valuation procedures described in Rule 17a–7 under the '40 Act. In this regard, the "current market price" for specific types of Account securities will be determined as follows:

(a) If the security is a "reported security" as the term is defined in Rule 11Aa3–1 under the 1934 Act, the last sale price with respect to such security reported in the consolidated transaction reporting system (the Consolidated System) for the Account Valuation Date; or if there are no reported transactions in the Consolidated System that day, the average of the highest current independent bid and the lowest current independent offer for such security (reported pursuant to Rule 11Ac1–1 under the 1934 Act), as of the close of business on the Account Valuation Date; or

(b) If the security is not a reported security, and the principal market for such security is an exchange, then the last sale on such exchange on the Account Valuation Date; or if there is no reported transaction on such exchange that day, the average of the highest current independent bid and lowest current independent offer on such exchange as of the close of business on the Account Valuation Date; or

(c) If the security is not a reported security and is quoted in the NASDAQ system, then the average of the highest current independent bid and lowest current independent offer reported on Level 1 of NASDAQ as of the close of business on the Account Valuation Date; or

(d) For all other securities, the average of the highest current independent bid and lowest current independent offer as of the close of business on the Account Valuation Date, determined on the basis of reasonable inquiry. For securities in this category, SIMC intends to obtain quotations from at least three sources that are either broker-dealers or pricing services independent of and unrelated to SEI and, where more than one valid quotation is available, use the average of the quotations to value the securities, in conformance with interpretations by the SEC and practice under Rule 17a–7.[15]

The securities received by a transferee Fund portfolio will be valued by such portfolio for purposes of the transfer in the same manner and as of the same day as such securities will be valued by the corresponding transferor Account. The per share value of the shares of each Fund portfolio issued to the Accounts will be based on the corresponding portfolio's then-current net asset value.

SEI will send by regular mail or personal delivery, or if applicable, by facsimile or electronic mail, the following information to the Second Fiduciary of a Plan that engages in a Purchase Transaction:

(a) Not later than 30 business days after completion of the transaction, a written confirmation of the transaction to each affected Plan. Such confirmation will contain (1) the identity of each security that is valued in accordance with Rule 17a–7(b)(4), as described above; (2) the price of each such security for purposes of the transaction; and (3) the identity of each pricing service or market maker consulted in determining the value of such securities.

(b) Not later than 90 days after completion of each Purchase Transaction, a written confirmation which contains (1) the aggregate dollar value of the assets held in the Account immediately before the Purchase Transaction; and (2) the number of shares of the Funds that are held by the Account following the Purchase Transaction (and the related per net asset value and the aggregate dollar value of the shares received).

Compliance With PTE 77–4

14. It is anticipated that most Purchase Transactions will occur when a Plan retains SIMC as a discretionary fiduciary under the Investment Management Agreement in connection with an existing portfolio of assets or possibly, STC may serve as a directed trustee and be instructed by a Plan to engage in a Purchase Transaction.[16] Thus, once the Purchase Transactions are completed, SIMC intends to continue to manage an Account in accordance with the terms of the Investment Management Agreement and under the exemptive relief afforded by PTE 77–4 with respect to future purchases and sales of Fund shares as well as with respect to the receipt of fees by SEI or its affiliates in connection with such transactions. Therefore, SEI is not requesting further administrative exemptive relief from the Department with respect to such transactions after they are completed as described above.

Besides engaging in a Purchase Transaction, SEI may invest a Plan's cash assets in the Funds as a directed or discretionary fiduciary, pursuant to the terms of PTE 77–4. Under certain conditions, PTE 77–4 permits SEI to receive fees from the Funds (a) where the Plan does not pay any investment management, investment advisory or similar fees with respect to the assets of such Plan invested in shares of the Fund for the entire period of the investment; or (b) where the Plan pays investment management, investment advisory or similar fees to SEI based on the total assets of such Plans from which a credit has been subtracted representing such Plan's *pro rata* share of such investment advisory fees.

Each individual Plan (or Plan sponsor) that retains SIMC as an investment manager pays directly to SIMC a Plan-level investment management fee covering all services of SIMC and its subsidiaries. With respect to any Plan assets invested in the Funds, SEI follows the second approach of PTE 77–4. Thus, each Plan's *pro rata* share of investment advisory fees paid to SEI by the Funds is applied as a credit against Plan-level fees.[17] Investment management fees charged with respect to the Funds vary and are described in the Fund prospectuses.

SEI's Plan-level investment management fees may also include a performance fee which is calculated and payable to it or its affiliates in accordance with advisory opinions issued by the Department to Batterymarch Financial Management (ERISA Advisory Opinion 86–20A, August 29, 1986); BDN Advisers, Inc. (ERISA Advisory Opinion 86–21A, August 29, 1986); and Alliance Capital Management Corporation (ERISA Advisory Opinion 89–28A, September 25, 1989).[18] The Fund-level fees which do not include any performance fee component, are applied as a credit against such Plan-level fees.

In addition, STC may be separately retained by the Plan (in which case it may be paid an additional Plan-level fee) as a non-discretionary trustee or custodian where it is directed to invest in the Funds by SIMC (if SIMC is the investment manager), by a fiduciary independent of SEI, or by Plan participants and beneficiaries pursuant to section 404(c) of the Act. As a non-discretionary trustee or custodian, STC receives no Plan-level fees for investment management or investment advisory services; its fees are strictly for non-discretionary administrative, custodial and similar services.

SEI may also receive other Fund-level fees for administrative, transfer, accounting, and other secondary services (the Secondary Services)[19] provided to such Fund or to the distributor of shares of such Funds and its affiliates. However, no such fees will be paid to SEI pursuant to a 12b–1 Plan. SEI represents that the Funds' Trustees and the shareholders of the Funds approve the compensation that SEI receives from the Funds. Also, the Funds' Trustees approve any changes in the compensation paid to SEI for services rendered to the Funds. Although currently under the Investment Management Agreement all such fees for Secondary Services are credited back to the Plans in the same manner as SEI credits back its Fund-level advisory fees, it reserves the right to retain such fees in the future in accordance with the Department's advisory opinions involving PNC Financial Corp (ERISA Advisory Opinion 93–12A, April 27, 1993) and the Frank Russell Company (ERISA Advisory Opinion 93–13A, April 27, 1993).

SEI represents that, after all of the foregoing credits are taken into account, the combined total of all Plan-level and Fund-level fees received by SEI for the provision of services to the Plans and to the Funds, respectively, are not in excess of "reasonable compensation" within the meaning of section 408(b)(2) of the Act.

Conditions for Exemption

15. If granted, this proposed exemption will be subject to the satisfaction of certain general conditions that will further protect the interests of the Plans. For example, the transactions are subject to the prior authorization of a Second Fiduciary, acting on behalf of each of the Plans, who has been provided with full written disclosure by SEI. The Second Fiduciary will generally be the administrator, sponsor, or a committee appointed by the sponsor to act as a named fiduciary for a Plan.

With respect to disclosure, the Second Fiduciary of such Plan will receive advance written notice of the in-kind transfer of assets of the Accounts and full written disclosure of information concerning the Funds as set forth in the Investment Management Agreement, including (a) a current prospectus for each Fund to which the Plan's assets may be transferred; (b) a statement describing the fees to be charged to, or paid by, the Plan and the Funds to SEI, including the nature and extent of any differential between the rates of the fees paid by the Fund and the rates of the fees otherwise payable by the Plan to SEI; (c) a statement of the reasons why SEI may consider the Purchase Transaction to be appropriate for the Plan; (d) a statement of whether there are any limitations on SEI with respect to which Plan assets may be invested in the Funds; (e) the identity of all securities that are deemed suitable by the Funds' sub-advisers for transfer to the Funds; (f) the identity of all such securities that will be valued in accordance with the procedures set forth in Rule 17a–7(b)(4) under the ICA; and (g) upon such fiduciary's request, copies of the proposed and final exemptions pertaining to the exemptive relief provided herein for Purchase Transactions occurring after the date of the grant notice.

On the basis of the information disclosed, the Second Fiduciary, by executing the Investment Management Agreement, will authorize in writing the investment of assets of the Plans in shares of the Fund in connection with the transactions set forth herein (including the transaction date proposed by SEI), the compensation received by SEI in connection with its services to the Funds, and the receipt of confirmation statements by facsimile or electronic mail. The Second Fiduciary's written authorization will extend to those investment portfolios of the Funds referenced in the Investment Management Agreement, contingent upon delivery of a prospectus to such Second Fiduciary. Having obtained the authorization of the Second Fiduciary, SEI will invest the assets of a Plan among the portfolios and in the manner provided in the Investment Management Agreement and the Strategy, subject to satisfaction of the other terms and conditions of this proposed exemption.

In addition to the disclosures provided to the Plan prior to investment in any of the Funds, SEI represents that it will routinely provide at least annually to the Second Fiduciary updated prospectuses of the Funds in accordance with the requirements of the ICA and the SEC rules promulgated thereunder. Further, the Second Fiduciary will be supplied, upon request, with a report or statement (which may take the form of the most recent financial report of such Funds, the current statement of additional information, or some other written statement) which contains a description of all fees paid by the Fund to SEI.[20]

In addition to the foregoing, SEI represents that (a) Plans and other investors will purchase or redeem shares in the Funds in accordance with standard procedures adopted by each Fund's board of directors; (b) the Plans will pay no sales commissions or redemption fees in connection with purchase or redemption of shares in the Funds by the Plans; (c) SEI will not purchase from or sell to any of the Plans shares of any of the Funds; and (d) the price paid or received by the Plans for shares of the Funds will be the net asset value per share at the time of such purchase or redemption and will be the same price as any other investor would have paid or received at that time. The value of the Funds' shares and the value of each Funds' portfolios are determined on a daily basis. Assets are valued at fair market value, as required by Rule 17a–7. Net asset value per share for purposes of pricing purchases and redemptions is determined by dividing the value of all securities and other assets of each portfolio, less the liabilities charged to each portfolio, by the number of each portfolio's outstanding shares.

16. In summary, it is represented that the transactions have satisfied or will satisfy the statutory criteria for an

[15] Securities of non-U.S. issuers may be traded on U.S. exchanges or the NASDAQ, directly or in the form of ADRs, or may be acquired on foreign exchanges or foreign over-the-counter markets. In the latter case, valuation will be in accordance with Representation 13(d).

[16] If STP is separately retained by a Plan as a non-discretionary trustee or a custodian, STC will take legal title to the Fund shares being acquired. Otherwise, it will have no role with respect to the Purchase Transactions and will act solely at the directions of the Second Fiduciary and/or SIMC.

[17] Fees paid to third party sub-advisers that are retained by SIMC are paid by SIMC out of its own pocket and are not deducted prior to applying the credit. Under such circumstances, SIMC credits back a "gross" investment advisory fee to the Plan as opposed to a "net" investment advisory fee.

[18] In an arrangement involving a performance fee, SEI may charge a Plan, at the Plan-level, an annualized minimum (floor) fee calculated as a fixed percentage of the Plan's assets under SEI's management and ranging from 40 to 60 basis points. Typically, the performance fee is calculated based on the Plan's return in excess of an annual hurdle rate which represents a weighted average of several generally recognized external mutual fund indices. Both the weighting and the choice of indices are negotiated between the Plan and SEI. The performance fee may represent a percentage of the excess return to the Plan, a fixed amount or "scaled" and have multiple hurdle rates. Thus, SEI states that there is no standard or model performance fee arrangement.

The Department expresses no opinion herein on whether SEI's performance fee arrangements comply with the advisory opinions cited above.

[19] The term "Secondary Service" means a service, other than an investment management, investment advisory or similar service which is provided by SEI to the Funds, including, but not limited to custodial, accounting, administrative, brokerage or any other service.

[20] In some cases, SEI executes brokerage transactions for the investment portfolios of certain of the Funds as a Secondary Service. To the extent that SEI does not presently execute securities brokerage transactions with respect to any Fund for which an investment advisory fee is paid to SEI, but proposes to do so in the future, for any Plan that invests in the Fund (other than an SEI-sponsored Plan investing in the Fund pursuant to PTE 77–3), SEI will, at least 30 days in advance of the implementation of such additional service, provide a written notice to the Plan's Second Fiduciary which explains the nature of such additional brokerage service and the amount of the fees. Further, with respect to any Fund for which SEI does or will provide such brokerage services, SEI will provide, at least annually to each such Plan, a written disclosure indicating (a) the total, expressed in dollars, of brokerage commissions of each Fund's investment portfolio that are paid to SEI by such Fund; (b) the total, expressed in dollars, of brokerage commissions of each Fund's investment portfolio that are paid by such Fund to brokerage firms unrelated to SEI; (c) the average brokerage commissions per share, expressed as cents per share, paid to SEI by each portfolio of a Fund; and (d) the average brokerage commissions per share, expressed as cents per share, paid by each portfolio of a Fund to brokerage firms unrelated to SEI.

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exemption under section 408(a) of the Act because:

(a) A Second Fiduciary has authorized or will authorize, in writing, a Purchase Transaction prior to its consummation after such Second Fiduciary has received or will receive full written disclosure of information concerning a Fund.

(b) Each Plan has received or will receive shares of a Fund, in connection with a Purchase Transaction, that are equal in value to the assets of the Plan exchanged for such shares, as determined in a single valuation performed in the same manner and as of the close of business on the same day in accordance with the procedures set forth in Rule 17a–7 under the ICA, as amended from time to time or any successor rule, regulation or similar pronouncement.

(c) Not later than 30 business days after completion of a Purchase Transaction, a Second Fiduciary of a Plan has received or will receive written confirmation of the securities involved in the exchange which were valued in accordance with Rule 17a–7(b)(4), the price of such securities and the identity of the pricing service or market maker consulted in determining the current market price of such securities.

(d) Not later than 90 days after completion of a Purchase Transaction, a Second Fiduciary of a Plan has received or will receive written confirmation of the aggregate dollar value of the assets held by the Plan in its Account immediately before the Purchase Transaction (and the related per share net asset value and the aggregate dollar value of the shares received).

(e) The price that has been or will be paid or received by the Plans for shares in the Funds is the net asset value per share at the time of the transaction and will be the same price for the shares which would have been paid or received by any other investor for shares of the same class at that time.

(f) As to each individual Plan, the combined total of all fees received by SEI for the provision of services to a Plan, and in connection with the provision of services to any of the Funds in which the Plan may invest, has not been or will not be in excess of "reasonable compensation" within the meaning of section 408(b)(2) of the Act.

(g) No sales commissions or Rule 12b–1 Fees have been paid or will be paid by a Plan in connection with a Purchase Transaction.

(h) With respect to each Purchase Transaction, the Second Fiduciary has received or will receive a full and detailed written disclosure of information concerning such Fund, including a current prospectus and a statement describing the fee structure, and such Second Fiduciary has authorized or will authorize, in writing, the investment of the Plan's assets in the Fund and the fees paid by the Fund to SEI.

(i) In accordance with the requirements of PTE 77–4 and advisory opinions issued by the Department thereunder, (1) the Plans have received or will receive a full credit against Plan-level fees of any investment management, investment advisory or similar fees to SEI with respect to any of the assets of such Plans that are or will be invested in shares of any of the Funds; and (2) SEI may retain fees for certain Secondary Services it performs on behalf of the Funds.

(j) SEI has provided or will provide ongoing disclosures to Second Fiduciaries of Plans so that such fiduciaries may, among other things, verify the fees charged by SEI to the Funds.

(k) All dealings between the Plans and any of the Funds have been or will be on a basis that is no less favorable to such Plans than dealings between the Funds and other shareholders holding shares of the same class as the Plans.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

**The David Mandelbaum IRA Rollover Account (the IRA), Located in West Orange, New Jersey**

[Application No. D–10765]

*Proposed Exemption*

The Department is considering granting an exemption under section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code shall not apply to the proposed cash sale by the IRA to the David Mandelbaum Family Trust (the Family Trust) of a 50 percent (50%) undivided interest in two (2) parcels of improved real property subject to a long term lease (the Property); provided the following conditions are satisfied:

(1) The sale is a one time transaction for cash; (2) the terms and conditions of the sale are at least as favorable to the IRA, as the terms of similar transactions negotiated at arm's length with unrelated third parties; (3) the IRA receives the *greater* of $4,307,000 dollars or the fair market value of the IRA's undivided interest in the Property, as of the date of the sale; (4) the fair market value of the IRA's undivided interest in the Property is determined by an independent, qualified appraiser, as of the date of the sale; and (5) the IRA does not pay any commissions, costs, finder's fees, or other expenses in connection with such sale.

*Summary of Facts and Representations*

1. The IRA is a self-directed individual retirement account, as described under section 408(a) of the Code.[21] David Mandelbaum is the owner of the IRA and retains discretion with respect to the investment of the assets in the IRA. As such, David Mandelbaum is a fiduciary with regard to the IRA and a disqualified person, pursuant to section 4975(e)(2)(A) of the Code. The primary beneficiaries under the terms of the IRA are David Mandelbaum's four (4) sons, and as such they are disqualified persons with respect to the IRA, pursuant to section 4975(e)(2)(F) of the Code.

The IRA was established in 1989 with the roll over distributions from the Mandelbaum & Mandelbaum, P.A. Employees Retirement Plan (the M&M Plan). As of December 31, 1998, the IRA held assets of approximately $19.6 million dollars with an estimated annual income of $777,722. The custodian of the IRA is Summit Bank (formerly Summit Trust Company) of Summit, New Jersey.

2. The M&M Plan was a tax qualified money purchase plan which was sponsored by Mandelbaum & Mandelbaum P.A. Both David Mandelbaum and his brother, Nathan Mandelbaum, were participants in the M&M Plan. The M&M Plan was terminated, effective June 30, 1983. On July 8, 1983, the M&M Plan acquired the Property which is the subject of this exemption, as a real estate investment from Frank X. Weny and Mary E. Weny, unrelated third parties. The M&M Plan was subsequently liquidated in December of 1989.

3. The Property, located in the Municipality of Wayne, Passaic County, New Jersey, consists of two parcels of improved commercial real estate which function as a single economic unit of approximately 49.48 acres. Each of the parcels is subject to a long term triple net lease totaling 99 years, consisting of an initial term that extends from December 1, 1965, through November 30, 2015; four (4) option periods of ten (10) years each; and a final option period of nine (9) years. Pursuant to such leases, the right to use and occupy the Property was conveyed to Westbelt Realty Associates, an unrelated third party.

[21] Pursuant to the provisions contained in 29 CFR 2510.3–2(d), the IRA is not subject to Title I of the Employee Retirement Income Security Act of 1974 (the Act). However, the IRA is subject to Title II of the Act, pursuant to section 4975 of the Code.



The improvements on the Property consist of a shopping center, which was built in 1974 and subsequently renovated and expanded in 1989 and 1997, professional landscaping, exterior lighting, and a 38,000 space parking lot. The shopping center is an enclosed mall, commonly known as Wayne Towne Center (a/k/a the Westbelt Mall) which offers approximately 650,000 square feet of rental space to anchor tenants, such as Fortunoff's, J. C. Penney, Borders Books and Music, Loehmann's, and Old Navy. It is represented that no related party owns any interest in the buildings or improvements on the Property.

4. As a result of the liquidation of the M&M Plan in 1989, David Mandelbaum and Nathan Mandelbaum each received a lump sum in-kind distribution of an undivided interest in the ownership of the Property. In this regard, together the brothers owned 100 percent (100%) of the interests in the Property, with David and Nathan Mandelbaum receiving a distribution of a 62.4% interest and a 37.6% interest, respectively, in such Property.

5. On December 7, 1989, RMJJ Associates (RMJJ) purchased a 20 percent (20%) interest in the Property from David and Nathan Mandelbaum. RMJJ is a New Jersey partnership, the partners of which consist of four (4) trusts, each of which own a 25 percent (25%) interest in RMJJ. Each trust was established to benefit one of David Mandelbaum's four sons. From a total purchase price of $950,000 paid by RMJJ for its interest in the Property, David Mandelbaum received $589,000 and Nathan Mandelbaum received $361,000. Further, it is represented that, pursuant to section 402(c)(6) of the Code, David and Nathan Mandelbaum timely rolled over into their respective individual retirement accounts the proceeds from the sale to RMJJ and their remaining interests in the Property. Accordingly, it is represented that, as of the filing of the application for exemption, the IRA, RMJJ, and the Nathan Mandelbaum IRA, respectively, owned a 50 percent (50%), a 20 percent (20%), and a 30 percent (30%) undivided interest in the Property, as tenants in common. It is represented that the fair market value of the IRA's 50 percent (50%) undivided interest in the Property constitutes 21.9% of the assets of such IRA.

It is represented that the sole purpose of RMJJ is to facilitate collection and proper disbursement of rents. In this regard, RMJJ collects rents from various properties owned by Mandelbaum family members, including the Property which is the subject of this exemption. It is represented that the Property has produced annual rental income averaging $1,114,212 over the past four (4) years. It is further represented that such rental income has been apportioned and distributed among the owners of the Property in accordance with each owner's interest.[22]

6. Louis S. Izenberg (Mr. Izenberg), MAI, SRPA, SRA, and Steven J. Wetstein (Mr. Wetstein), both state certified general real estate appraisers associated with Izenberg Appraisal Associates in Parsippany, New Jersey, were hired to determine the value of the leased fee interest in the Property. Mr. Izenberg and Mr. Wetstein represent that they are qualified real estate appraisers with approximately twenty (20) years and twelve (12) years of experience, respectively, and are familiar with the Property and with similar properties located in the surrounding area. In addition, Mr. Izenberg and Mr. Wetstein represent that they are independent in that they have no present or prospective interest in the Property and have no personal interest or bias with respect to the parties involved, and are unrelated to David Mandelbaum.

Mr. Izenberg's and Mr. Wetstein's appraisal of the leased fee interest in the Property relied primarily on the income capitalization approach to establish the fair market value. Based on this analysis and their inspection of the Property, Mr. Izenberg and Mr. Wetstein concluded that the fair market value of the leased fee interest in the Property, as of May 27, 1998, was $16,565,000 dollars. It is represented that Mr. Izenberg and Mr. Wetstein will update their appraisal of the value of the leased fee interest in the Property at the time of the actual sale by the IRA of its interest in the Property to the Family Trust.

[22] The applicant maintains that if RMJJ is deemed to be a disqualified person with respect to the IRA, pursuant to section 4975(e)(2)(B) of the Code, the provision of services RMJJ renders to the IRA and to other parties would qualify for statutory exemption, pursuant to section 4975(d)(2) of the Code. In this regard, it is represented that RMJJ receives no compensation for the services rendered to the IRA and others in connection with the collection and distribution of rents. The Department is not opining, herein, whether RMJJ is a disqualified person with respect to the IRA, nor has the Department determined that the conditions, as set forth in section 4975(d)(2) of the Code, have been satisfied. Further, the Department is offering no relief for transactions other than those proposed.

7. Because Mr. Izenberg's and Mr. Wetstein's appraisal was based on the fair market value of the leased fee interest in the entire Property, Frank E. Koehl, Jr. (Mr. Koehl) ASA, a certified business valuation appraiser, and Michael F. Nelson (Mr. Nelson), a valuation analyst, both of Management Planning, Inc. (MPI) were retained to undertake a financial analysis of undivided fractional interests in the Property and to determine the fair market value of the 50 percent (50%) undivided interest in the Property owned by the IRA. In this regard, it is represented that MPI has been preparing financial analyses of closely held businesses and evaluating the securities of such businesses since 1939. Mr. Koehl and Mr. Nelson maintain they are qualified in that they, respectively have eighteen (18) years and three (3) years of experience as employees of MPI. It is represented that neither MPI nor its employees have any present or contemplated future financial interest in the Property or any other interest that might affect their performance in a disinterested manner.

The analysis of the value of the IRA's 50 percent (50%) undivided interest in the Property included a discount of 20 percent (20%) for lack of control. In the appraisal report Mr. Koehl and Mr. Nelson noted that a majority ownership position does not constitute control where co-tenants of an undivided interest in real property have equal rights and cannot act upon those rights without the consent of the other co-tenants. For this reason, Mr. Koehl and Mr. Nelson determined that a discount for lack of control was appropriate to the IRA's undivided ownership interest in the Property, even though Mr. Koehl and Mr. Nelson acknowledged that all of the co-tenants of the Property are members of the Mandebaum family.

The analysis of the value of the IRA's 50 percent (50%) undivided interest in the Property also included a discount of 35 percent (35%) for lack of marketability. In this regard, Mr. Koehl and Mr. Nelson stated in their report that a willing buyer would be aware that the Property has three owners; there is no ready market for fractional interests; and that such buyer would be buying an asset that could be sold only in a private transaction.

Based on their analysis, Mr. Koehl and Mr. Nelson concluded that the fair market value of the IRA's 50 percent (50%) undivided interest in the Property is $4,307,000 dollars, as of December 31, 1998. In this regard, it is represented that Mr. Koehl and Mr. Nelson will update their appraisal at the time of the actual sale of the IRA's 50

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percent (50%) interest in the Property to the Family Trust.[23]

8. The Family Trust is an irrevocable trust established by David Mandelbaum, as the grantor. The trustee of the Family Trust is Ronald Targan. One hundred percent (100%) of the interest of the Family Trust is held for the benefit of David Mandelbaum's grandchildren. David Mandelbaum's grandchildren, as lineal descendants of a fiduciary, are members of the family, within the meaning of section 4975(e)(6) of the Code, and disqualified persons, pursuant to section 4975(e)(2)(F) of the Code.

9. David Mandelbaum requests an exemption for the sale by the IRA of a 50 percent (50%) undivided interest in the Property to the Family Trust. In this regard, the sale by the IRA to the Family Trust would be an indirect sale by a plan to the members of a fiduciary's family, pursuant to section 4975(c)(1)(A) of the Code, and a direct transfer of a plan's assets for the benefit of such fiduciary's family, under section 4975(c)(1)(D) of the Code. Although David Mandelbaum, the fiduciary of the IRA, is not a beneficiary of the Family Trust, he has an interest in his grandchildren who are the beneficiaries of the Family Trust which may effect his best judgment as a fiduciary. Accordingly, the application describes a transaction for which relief from the prohibitions of section 4975(c)(1)(A)–(F) of the Code is requested.

10. The applicant maintains that the proposed transaction is feasible in that it involves a one-time sale of the IRA's interest in the Property in exchange for cash. In this regard, it is represented that the IRA will not pay any commissions, costs, finder's fees, or other expenses in connection with such sale. Further, David Mandelbaum shall personally bear the cost of filing the exemption application.

11. The transaction is in the interest of the IRA, in that the IRA will be able to dispose of an illiquid asset which would otherwise be difficult to sell, especially in a period of economic downturn. In this regard, the IRA will receive for its undivided interest in the Property a price equal to the greater of $4,307,000 dollars or the fair market value of the such interest, as of the date of the sale. It is represented that the Property has appreciated in value, and that the IRA will realize a gain on the sale from the purchase price to be paid by the Family Trust. Further, in selling at this time the IRA will avoid the costly annual appraisals which have been required by the IRA's trustees and custodian, as a condition of the IRA's continuing to hold the asset.

12. The transaction is structured to include certain safeguards for the protective of the participant and beneficiaries of the IRA. In this regard, the terms of the transaction will be at least as favorable as arm's length terms negotiated with unrelated parties. Further, the fair market value of the Property has been determined by independent, qualified appraisers, and such value will be updated at the time the transaction is entered. In addition, independent qualified financial analysts have issued a certified business valuation appraisal of the fair market value of the IRA's 50 percent (50%) undivided interest in the Property, and an updated appraisal will be used at the time of the sale to determine the purchase price to be paid by the Family Trust.

13. In summary, the applicant represents that the proposed transaction will meet the statutory criteria of section 4975(c)(2) of the Code because: (a) The sale by the IRA of the undivided interest in the Property to the Family Trust will be a one-time transaction for cash; (b) the terms and conditions of the sale are at least as favorable to the IRA as similar terms negotiated at arm's length with unrelated parties; (c) the IRA will receive the *greater* of $4,307,000 dollars or the fair market value of the IRA's undivided interest in the Property, as of the date of the sale; (d) the fair market value of the Property and the fair market value of the IRA's undivided interest in the Property will be determined by independent, qualified appraisers, as of the date of the sale; and (e) the IRA will not pay any commissions, costs, finder's fees, or other expenses in connection with the sale.

*Notice to Interested Persons*

Because David Mandelbaum is the only participant in the IRA, it has been determined that there is no need to distribute the notice of proposed exemption (the Notice) to interested persons. Comments and requests for a hearing must be received by the Department within thirty (30) days of the date of publication of the Notice in the **Federal Register**.

[23] The Department notes that the appraisers have included in their calculations of the fair market value of the IRA's 50 percent (50%) interest in the Property substantial discounts for lack of control (20%) and lack of marketability (35%). In this regard, the Department states that relief from the prohibited transactions provisions of the Code provided by this exemption would not be available, if the amount received by the IRA for the sale of its interest in the Property is not equal to the *greater* of $4,307,000 dollars or the fair market value of the IRA's 50 percent (50%) undivided interest in the Property, as determined by an independent, qualified appraiser, as of the date of the sale of such Property to the Family Trust.

**FOR FURTHER INFORMATION CONTACT:** Ms. Angelena C. Le Blanc of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

**HSBC Holdings plc, Located in London, England**

[Exemption Application No.: D–10910]

*Proposed Exemption.*

The Department of Labor is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth 29 CFR Part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).[24] If the exemption is granted, HSBC Asset Management Americas, Inc. (AMUS), HSBC Asset Management Hong Kong, Ltd. (AMHK), HSBC Bank USA (Bank USA), any current affiliate of HSBC Holdings plc (HSBC) that in the future becomes eligible to serve as a qualified professional asset manager, as defined in Prohibited Transaction Class Exemption 84–14 (PTCE 84–14) (QPAM),[25] HSBC, itself, if in the future it becomes a QPAM, and any newly acquired or newly established affiliate of HSBC that is a QPAM or in the future becomes a QPAM, other than the Bangkok Metropolitan Bank PLC (BMB), shall not be precluded from functioning as a QPAM, pursuant to the terms and conditions of PTCE 84–14, for the period beginning on June 16, 2000, and ending ten (10) years from the date the final exemption is published in the **Federal Register**, solely because of a failure to satisfy Section I(g) of PTCE 84–14, as a result of an affiliation with BMB; provided that:

(a) BMB has not in the past acted, nor does it now act, nor will it act as a fiduciary with respect to any employee benefit plans subject to the Act;

(b) This exemption is not applicable if HSBC and/or any successor or affiliate becomes affiliated with any person or entity convicted of any of the crimes described in Section I(g) of PTCE 84–14, other than BMB; and

(c) This exemption is not applicable if HSBC and/or any successor or affiliate is convicted of any of the crimes described in Section I(g) of PTCE 84–14, including any such crimes subsequently committed by BMB.

*Effective Date:* If granted, this proposed exemption will be effective for the period beginning on June 16, 2000, the date the application for exemption

[24] For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer to the corresponding provisions of the Code.

[25] 49 FR 9494 (March 13, 1984), *as amended*, 50 FR 41430 (October 10, 1985).



was filed with the Department, and ending ten (10) years from the date of publication of the final exemption in the **Federal Register**.

*Summary of Facts and Representations*

1. HSBC, a publicly owned holding company headquartered in London, England, provides banking and financial services worldwide. The exemption is requested for affiliates of HSBC, AMUS, AMHK, and Bank USA, as well as for any current affiliate of HSBC that in the future becomes eligible to serve as a QPAM, HSBC, itself, if it becomes a QPAM, and any newly acquired or newly established affiliate of HSBC that is a QPAM or in the future becomes a QPAM (collectively, the Applicants), other than BMB.

It is represented that HSBC's affiliate, Bank USA, is a bank as defined in section 202(a)(2) of the Investment Advisers Act of 1940 (the Advisers Act) and is subject to the anti-fraud provisions of the Advisers Act, as well as the fiduciary standards imposed by the Office of the Comptroller of Currency and pursuant to state law. Further, Bank USA has equity capital in excess of $1,000,000. Accordingly, the Applicants represent that Bank USA qualifies as a QPAM, pursuant to Section V (a)(1) of PTCE 84–14.

Two other HSBC affiliates, AMUS and AMHK, each are also currently qualified to serve as a QPAM.[26] In this regard, both AMUS and AMHK are investment advisers registered under the Advisers Act, and, as such, are subject to the jurisdiction of the Securities and Exchange Commission and to the substantive requirements of the Advisers Act. It is represented that AMUS has total assets under its management and control well in excess of $50,000,000. In this regard, $6.4 million, as of March 31, 2000, is attributable to three (3) accounts subject to the Act. As of March 31, 2000, AMHK had total funds under management of $13.1 billion of which $462 million was attributable to two (2) accounts subject to the Act. It is represented that consistent with the requirements of PTCE 84–14, a fiduciary independent of the Applicants (typically a named fiduciary other than a trustee) is or will be involved in the appointment of a QPAM with respect to the assets of any plan that is or will be affected by this proposed exemption.

2. The proposed exemption would apply with respect to any employee benefit plans to which the Applicants now or in the future provide investment management services, (collectively, the ERISA Plan Clients).[27] Given the changing identity of such plans, the Applicants maintain that such plans could not definitely be identified at the time the application was filed.

3. BMB is a commercial bank incorporated in Thailand. Prior to 1994, BMB maintained two agencies in the United States (the US Agencies), one in New York and one in California. In 1994, regulators in the United States identified approximately twenty (20) aspects of BMB's operations in the United States that fell short of acceptable standards. Under the terms of a written agreement dated July 29, 1994, between BMB and its regulators, BMB agreed to rectify these deficiencies. Following BMB's failure to correct such deficiencies in accordance with such agreement, BMB's license to maintain its US Agencies in the United States was revoked and its operations wound up under the terms of a Consent Order, dated July 25, 1996.

In a Joint Statement issued concurrently with the Consent Order, the Board of Governors of the Federal Reserve System, the California State Banking Department, and the New York State Banking Department concluded that BMB should no longer have a banking presence in the United States.. This conclusion was based on the following: (1) Both US Agencies made loans knowing that the stated purposes of the loans were false; (2) both US Agencies made loans that were diverted from their stated purposes, sometimes to benefit insiders; (3) senior management of BMB could not satisfactorily explain the appearance of involvement in a money laundering scheme; (4) officials and employees at BMB and the US Agencies were not forthright with examiners; (5) both US Agencies had misleading books and records; (6) officers of the US Agencies admitted that BMB's home office mandated that certain transactions occur in a manner contrary to safe and sound banking practices; and (7) management at BMB and its US Agencies failed to rectify problems identified by regulators.

In addition to the Consent Order, under the terms of a plea agreement with the United States Attorney for the Southern District of New York and for the Northern District of California, BMB also pleaded guilty to four criminal offenses in relation to the activities of its US Agencies. In this regard, BMB pleaded guilty to one count of obscuring the examination of a fiscal institution in violation of 18 U.S.C. § 1517 and three (3) counts of falsifying its books, reports, and statements in violation of 18 U.S.C. 1005.

4. After the Asian economic crisis, it is represented that the Thai government took control of 99 percent (99%) of the voting shares of BMB, and subsequently, conducted an auction sale of its interests in BMB. It is represented that HSBC was the winning bidder at the auction sale and that HSBC expects to finalize its acquisition of BMB within the next several months. As of June 16, 2000, the date the application was submitted, HSBC represents that no transaction that is the subject of this proposed exemption had been consummated or is planned to be consummated. However, it is represented that the size and diversity of the operations of the Applicants make it impossible to say that a transaction requiring the requested relief will not be consummated before the final decision is made on this proposed exemption. Accordingly, the Applicants seek retroactive relief, effective June 16, 2000, from the restrictions of section 406(a)(1)(A)–(D), 406(b)(1), 406(b)(2), and 407(a) of the Act and 4975(c)(1)(A)–(E) of the Code for the subject transactions.

5. The requested exemption would apply to a full range of transactions on and after the acquisition by HSBC of BMB from the Thai government. Such transactions include, but are not limited to sale and exchange transactions, derivative transactions, leasing and other real estate transactions, foreign currency trading transactions, and transactions involving the furnishing of goods, services, and facilities to an investment fund managed on a discretionary basis by the Applicants. It is represented that such transactions will be evaluated by the Applicants, consistent with their fiduciary responsibilities under the Act.[28]

[26] The Department expresses no opinion as to whether AMUS, AMHK, or Bank USA would qualify as a QPAM for purposes of PTCE 84–14.

[27] It is represented that with respect to transactions concerning employee benefit plans that cover employees of one or more of the Applicants, the Applicants will rely on Prohibited Transaction Class Exemption 96–23.

[28] The Department notes that the general standards of fiduciary conduct under the Act would apply to the investment transactions permitted by this proposed exemption, and that satisfaction of the conditions of this proposed exemption should not be viewed as an endorsement of any particular investment by the Department. Section 404 of the Act requires, among other things, that a fiduciary discharge his duties with respect to a plan solely in the interest of the plan's participants and beneficiaries and in a prudent fashion. Accordingly, the manager or other plan fiduciary must act prudently with respect to the decision to enter into an investment transaction, as well as to the negotiation of the specific terms under which the plan will engage in such transaction. The Department further emphasizes that it expects a manager or other plan fiduciary to fully understand

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6. The Applicants represent that it would not be uncommon for one of the Applicants, as a fiduciary for one of the ERISA Plan Clients, to propose a transaction, such as those described above, that involve a party in interest, as defined under section 3(14) of the Act. The proposed exemption would apply to all current and future parties in interest with respect to the ERISA Plan Clients. Given the size and number of such ERISA Plan Clients and the large number of service providers (particularly financial institutions) that such ERISA Plan Clients engage, it is impractical for the Applicants to identify all the parties in interest that might be involved in transactions covered by the requested exemption. Accordingly, the Applicants have not attempted to do so in the application file.

7. The proposed exemption, if granted, will be subject to terms and conditions, similar to those, as set forth PTCE 84–14. PTCE 84–14, in general, permits various parties in interest with respect to an employee benefit plan to engage in certain transactions involving plan assets if, among other conditions, the assets are managed by a QPAM, who is independent and who meets specified financial standards and other conditions. One such condition, Section I(g)of PTCE 84–14, requires that neither the QPAM nor any affiliate of the QPAM were convicted of certain felonies [29] within a ten (10) year period preceding the subject transaction. Section V(d) of PTCE 84–14, defines an "affiliate" of a person to mean—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person, (2) Any director of, relative of, or partner in, any such person, (3) Any corporation, partnership, trust, or unincorporated enterprise of which such person is an officer, director, or a 5 percent (5%) or more partner or owner, and (4) Any employee or officer of the person who —(A) Is a highly compensated employee (as defined in section 4975(e)(2)(H) of the Code) or officer (earning 10 percent (10%) or more of the yearly wages of such person), or (B) Has direct or indirect authority, responsibility or control regarding the custody, management, or disposition of plan assets.

Section V(e) of PTCE 84–14 states that the term, "control," means the power to exercise a controlling influence over the management or disposition of plan assets.

8. Upon acquisition of BMB by HSBC from the Thai government, the Applicants will become affiliates of BMB, pursuant to the definition of "affiliate," as set forth in Section V(d) of PTCE 84–14. Further, because BMB, in 1996, entered a plea of guilty with respect to a felony described in Section I(g) of PTCE 84–14, the Applicants, as affiliates of BMB, could not satisfy Section I(g) of PTCE 84–14. Furthermore, even though BMB's plea occurred well before HSBC acquisition of BMB, any of the Applicants which qualify as a QPAM (*e.g.*, AMUS, AMHK and Bank USA) would be precluded from acting or continuing to act as a QPAM. In order to avoid this result, the Applicants have requested the proposed exemption.

9. The Applicants maintain that the requested exemption should be granted notwithstanding the guilty plea entered by BMB. In support of their position, the Applicants state that no entity affiliated with HSBC, other than BMC, nor any employee of HSBC was involved in the conduct that formed the basis of the guilty plea. In this regard, it is represented that the individuals responsible for BMB's misconduct have not been and will not be employed at any time by HSBC or any of its affiliates.

None of the acts underlying the guilty plea involved any investment management activities of BMB; nor did such acts involve any assets of plans subject to the Act. Further, all of the acts that formed the factual basis of the guilty plea occurred prior to HSBC's acquisition and control of BMB.

With regard to the future, it is represented that BMB will not influence or control the management or policies of the Applicants, nor will BMB be involved in the investment management activities relating to any ERISA Plan Clients. In this regard, BMB employees will not have any involvement in the investment management activities of the Applicants. Finally, it is represented that BMB has not in the past acted, nor does it now act, nor does it intend to act in the future as a fiduciary with respect to any employee benefit plans subject to the Act.

10. The Applicants maintain that the requested exemption will afford protection similar to that provided in PTCE 84–14. In this regard, other than Section I(g) of PTCE 84–14, all of the conditions of PTCE 84–14 will apply to this proposed exemption. Further, it is represented that many of the Applicants' ERISA Plan Clients have significant assets, and hence are sophisticated and have access to resources necessary to monitor effectively the performance of the investment manager.

The proposed exemption also contains conditions, in addition to those imposed by PTCE 84–14, which are designed to ensure the presence of adequate safeguards to protect the interests of the ERISA Plan Clients against wrongdoers now and in the future. In this regard, the proposed exemption will not be applicable if any of the Applicants is convicted of or becomes affiliated with any person or entity convicted of any of the crimes described in Section I(g) of PTCE 84–14, including any such crimes subsequently committed by BMB.

11. The Applicants represent that the requested exemption is administratively feasible because the relief would not impose any administrative burdens on the Department which are not already imposed by PTCE 84–14. In the opinion of the Applicants, the administrative feasibility of the requested exemption is also demonstrated by the fact that the Department has previously granted other individual exemptions for a variety of similarly situated entities under substantially the same circumstances.[30]

12. The requested exemption would allow the Applicants' ERISA Plan Clients to enter into transactions which are in the best interest of such plans. In this regard, such plans would not be precluded from engaging in transactions with parties in interest, where the terms of such transactions are at least as favorable to such plans as those of a similar transaction with an unrelated party. Absent the proposed exemption, the Applicants would be required to examine each transaction involving such ERISA Plan Clients to determine parties in interest, no matter how remote, with respect to such plans.

13. Denial of the exemption, in the opinion of the Applicants, would be unduly and disproportionately severe and would have adverse consequences for the ongoing business operation of the Applicants. Disqualification from serving or continuing to serve as a QPAM would deprive the Applicants of their ability to render diversified investment advisory services to their ERISA Plan Clients. Further, the unavailability of the exemption would work a hardship on the ERISA Plan Clients which the Applicants serve. In this regard, such ERISA Plan Clients might be forced to forgo certain attractive investment opportunities or beneficial transactions that involve parties in interest for which no existing class exemptions apply. Finally, the ERISA Plan Clients would have to incur higher transaction costs and risks on other investments by limiting the number of parties that might engage in transactions with such plans and by limiting the number of high-credit quality counter-parties available in principal transactions.

14. In summary, the Applicants represent that the proposed transactions satisfy the statutory criteria for an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code because, among other things:

(a) no entity affiliated with HSBC, other than BMB, nor any employee of HSBC was involved in the conduct that formed the basis of the guilty plea;

(b) all of the acts that formed the factual basis of the guilty plea occurred before the date that HSBC acquired control of BMB;

(c) the individuals responsible for BMB misconduct have not been and will not be employed at any time by HSBC or any other affiliates;

(d) absent the proposed exemption, the ERISA Plan Clients may have to forgo attractive investment opportunities or incur higher transaction costs and risks;

(e) AMUS and AMHK, as investment advisors registered under the Advisers Act, are subject to the jurisdiction of the Securities and Exchange Commission and the requirements of the Advisers Act;

(f) Bank USA is a bank, as defined in section 202(a)(2) of the Advisers Act), and is subject to the anti-fraud provisions of the Advisers Act, as well as the fiduciary standards imposed by the Office of the Comptroller of Currency and pursuant to state law;

(g) BMB has not in the past acted, nor does it now act, nor will it act in the future as a fiduciary with respect to any employee benefit plans subject to the Act;

(h) BMB will not be involved in investment management activities relating to the ERISA Plan Clients, nor will BMB influence or control the management or policies of HBSC;

(i) other than Section I(g) of PTCE 84–14, all of the conditions of PTCE 84–14 will apply to the transactions covered by this exemption;

(j) this exemption, if granted, would not be applicable if any of the Applicants now or in the future becomes affiliated with any person or entity convicted of any of the crimes described in Section I(g) of PTCE 84–14, other than BMB; and

(k) this exemption, if granted, would not be applicable if any of the Applicants now or in the future becomes convicted of any of the crimes described in Section I(g) of PTCE 84–14, including such crimes subsequently committed by BMB.

**Notice to Interested Persons**

The Applicants will furnish a copy of the Notice of Proposed Exemption (the Notice) along with the supplemental statement (the Supplemental Statement), described at 29 CFR 2570.43(b)(2), to the trustee or other fiduciary of each of the ERISA Plan Clients for which one or more of the Applicants have discretionary investment authority.

The Notice and the Supplemental Statement will be delivered by hand delivery or first class mail, within fifteen (15) days of the publication of the Notice in the **Federal Register**. Comments and requests for a hearing are due on or before 45 days from the date of publication of the Notice in the **Federal Register.**

A copy of the final exemption, if granted, will also be provided to the trustee or fiduciary of each of the ERISA Plan Clients for which one or more of the Applicants have discretionary investment authority.

**FOR FURTHER INFORMATION CONTACT:** Angelena C. Le Blanc of the Department telephone (202) 219–8883. (This is not a toll-free number.)

**Pembroke Construction Company, Inc. Employees 401(k) Profit Sharing Plan (the Plan), Located in Hampton, Virginia**

[Application No. D–10915]

*Proposed Exemption*

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990.) If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale of a condominium (the Condo) by Thomas N. Hunnicutt (Mr. Hunnicutt), and his wife Ann N. Hunnicutt (collectively, the Hunnicutts), to Mr. Hunnicutt's self-directed individual account (the Account) in the Plan, with respect to which the Hunnicutts are parties in interest; provided that the following conditions are satisfied:

(a) the proposed sale will be a one-time cash transaction;

(b) the Account will pay the current fair market value for the Condo, as established at the time of the purchase by an independent qualified appraiser;

(c) the Account will pay no expenses or commissions associated with the purchase; and

(d) the purchase will enable the Account to acquire the Condo, which is expected to be a valuable asset that will yield significant rental income.

*Summary of Facts and Representations*

1. The Plan was established on May 10, 1977, and was amended and restated effective January 1, 1992. As of June 30, 1999, the Plan had 72 participants. As of June 30, 1999, the Plan had $4,899,548 in total assets, and the Account had $2,272,573 in total assets. Pembroke Construction Company, Inc. (PCC) is the sponsor of the Plan. The Hunnicutts are trustees of the Plan as well as employees, officers and directors of PCC. PCC was established on September 12, 1961, and is a subchapter "S" corporation in the Commonwealth of Virginia. PCC is in the business of residential and commercial construction.

2. On or about March 9, 1987, the Hunnicutts purchased the Condo from Busch Properties, for $140,000 in cash and credit (*i.e.*, the Condo is encumbered by an existing mortgage). However, the applicant states that when the Condo will be transferred to the Account, such mortgage will be paid off and the Account will own the Condo free and clear of any debt. It is represented that the Hunnicutts have not rented or leased the Condo to anyone. The Hunnicutts currently use the Condo for business purposes, such as for overnight guests. As noted below in paragraph 4, the Condo will only be leased to, and used by, independent third parties after it is sold to the

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the benefits and risks associated with engaging in a specific transaction. In addition, such manager or plan fiduciary must be capable of periodically monitoring the investment, including any changes in the value of the investment and the creditworthiness of the issuer or other party to the transaction. Thus, in considering whether to enter into a transaction, a fiduciary should take into account its ability to provide adequate oversight of the particular investment.

[29] The term, "felony," as set forth in Section I(g) of PTCE 84–14 includes: (1) Any felony involving abuse or misuse of such person's employee benefit plan position or employment, or position or employment with a labor organization; (2) any felony arising out of the conduct of the business of a broker, dealer, investment adviser, bank, insurance company, or fiduciary; (3) income tax evasion; (4) any felony involving the larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds or securities; conspiracy or attempt to commit any such crimes or a crime in which any of the foregoing crimes is an element; or (5) any other crimes described in section 411 of the Act.

[30] Bankers Trust Co., BT Alex Brown, Inc., and Deutsche Bank, Prohibited Transaction Exemption 99–29, 64 FR 40623 (July 22, 1999); PanAngora Management, Inc., Prohibited Transaction Exemption 97–10, 62 FR 4813 (Jan. 31, 1997; American Express Company and Affiliates, Prohibited Transaction Exemption 94–34, 59 FR 19247 (April 22, 1994); CS Holding and its Worldwide Affiliates, Prohibited Transaction Exemption 94–31, 59 FR 17590 (April 13, 1994).

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Account. Thus, the Condo will not be used by the Hunnicutts after the purchase by the Account.[31] The applicant represents that the Condo is not adjacent to any other property owned by the Hunnicutts.

3. The Property, located at 314 Padgetts Ordinary, Williamsburg, Virginia, was appraised on January 27, 2000 (the Appraisal). The Appraisal was prepared by R. Epes McMurran, Jr., SRA (Mr. McMurran), who is an independent Virginia state certified appraiser. Mr. McMurran is employed with Barker and Associates, Inc., a real estate firm located in Newport News, Virginia. In the Appraisal, Mr. McMurran states that the Condo consists of 1,686 square feet and contains, among other things, three bedrooms and three baths. The common elements include a storage area, swimming pool, tennis courts, and clubhouse. Mr. McMurran represents in the Appraisal that the monthly home owners association unit charge for the Condo is $237 (the Condo Fee). Mr. McMurran states further that the Condo has been well maintained, has received periodic maintenance, and is in readily marketable condition. Mr. McMurran relied primarily on the sales comparison approach to value the Condo. Based on an analysis of recent sales of similar properties in the local real estate area, Mr. McMurran determined that the fair market value of the Property was $285,000, as of January 27, 2000.

4. The applicant maintains that after the Account acquires the Condo, the Condo will be leased to independent third parties only. The applicant represents that the Condo could yield annual rental income for the Account in the range of $80,000 to $85,000. In this regard, the applicant submitted a statement dated November 30, 1999, from Barbara Eddins (Ms. Eddins), Rental Property Manager of Kingsmill Resort, located in Williamsburg, Virginia. Ms. Eddins states that possible rental revenue income for 3 bedroom condominiums in the Padgett's Ordinary area of Kingsmill Resort may be in the range of $80,000 to $85,000 during any calendar year. The applicant also represents that after the transaction is consummated, the Account will pay the monthly Condo Fee for the Condo.

5. The applicant now proposes that the Account purchase the Condo from the Hunnicutts in a one-time cash transaction. After the proposed purchase, the Condo will represent approximately 14% of the Account's total assets. The applicant represents that the proposed transaction would be in the best interest and protective of the Account and the Plan because the Account and the Plan will pay no expenses or commissions associated with the purchase. The Account will pay the Hunnicutts the current fair market value of the Condo, as determined by an independent qualified appraiser at the time of the transaction.

The acquisition of the Condo by the Account will diversify the Account's portfolio, and will enable the Account to realize an annual return of approximately 28 percent (28%) if the Condo can be fully leased throughout the year.

6. In summary, the applicant represents that the transaction satisfies the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because:

(a) The proposed purchase of the Condo by the Account will be a one-time cash transaction;

(b) The Account will pay the Hunnicutts the current fair market value for the Condo, as established at the time of the transaction by an independent qualified appraiser;

(c) The Condo will represent approximately 14% of the Account's total assets at the time of the transaction;

(d) The transaction will enable the Account to acquire the Condo, which is expected to be a valuable asset that will yield significant rental income; and

(e) Mr. Hunnicutt is the only participant in the Plan that will be affected by this transaction, and he desires that the transaction be consummated.

*Notice to Interested Persons*

Because Mr. Hunnicutt is the only participant in the Plan that will be affected by the proposed transaction, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a hearing are due thirty (30) days from the date of publication of this notice in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Ekaterina A. Uzlyan of the Department at (202) 219–8883. (This is not a toll-free number.)

**General Information**

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 4th day of October, 2000.

**Ivan Strasfeld,**

*Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.*

[FR Doc. 00–26028 Filed 10–10–00; 8:45 am]

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[31] The Department notes that this proposed exemption would not permit any leasing of the Condo to, or use of the condo by, a party in interest with respect to the Plan (e.g., employees of PCC).

## MEDICARE PAYMENT ADVISORY COMMISSION

### Commission Meeting

**AGENCY:** Medicare Payment Advisory Commission.

**ACTION:** Notice of meeting.

**SUMMARY:** The Commission will hold its next public meeting on Thursday, October 19, 2000, and Friday, October 20, 2000, at the Ronald Reagan Building, International Trade Center, 1300 Pennsylvania Avenue, NW., Washington, DC. The meeting is tentatively scheduled to begin at 10 a.m. to October 19, and at 9 a.m. on October 20.

Topics for discussion include: Issues in risk-adjusting payments to Medicare+Choice plans; Medicare MSAs; meeting Medicare+Choice program goals; proposed work plan for regulatory burden study; post-surgical recovery care centers; developing input price indexes for all health care settings; ESRD payment issues; issues in post-acute care, including case-mix changes in skilled nursing facilities, payment policy for speciality psychiatric facilities, and the feasibility of developing clinical indicators for evaluating use; and options to reduce beneficiary coinsurance for hospital outpatient department services.

Agendas will be mailed on October 11, 2000. The final agenda will be available on the Commission's website (www.MedPAC.gov).

**ADDRESSES:** MedPAC's address is: 1730 K Street, NW., Suite 800, Washington, DC 20006. The telephone number is (202) 653–7220.

**FOR FURTHER INFORMATION CONTACT:** Diane Ellison, Office Manager, (202) 653–7220.

**Murray N. Ross,**

*Executive Director.*

[FR Doc. 00–25985 Filed 10–10–00; 8:45 am]

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## NATIONAL COUNCIL ON DISABILITY

### Advisory Committee Meeting

**AGENCY:** National Council on Disability (NCD).

**SUMMARY:** This notice sets forth the schedule of the forthcoming meeting, in teleconference format, for NCD's Youth Advisory Committee. Notice of this meeting is required under Section 10(a)(1)(2) of the Federal Advisory Committee Act (Pub. L. 92–463).

*Youth Advisory Committee:* The purpose of NCD's Youth Advisory Committee is to provide input into NCD activities consistent with the values and goals of the Americans with Disabilities Act.

*Date:* November 15, 2000, 4 p.m.–5 p.m. EST.

*Location:* 1331 F Street, NW., Suite 1050, Washington, DC.

*For Youth Advisory Committee Information Contact:* Gerrie Drake Hawkins, Ph.D., Program Specialist, National Council on Disability, 1331 F Street NW., Suite 1050, Washington, DC 20004; 202–272–2004 (voice), 202–272–2074 (TTY), 202–272–2022 (fax), ghawkins@ncd.gov (e-mail).

*Agency Mission:* The National Council on Disability is an independent federal agency composed of 15 members appointed by the President of the United States and confirmed by the U.S. Senate. Its overall purpose is to promote policies, programs, practices, and procedures that guarantee equal opportunity for all people with disabilities, regardless of the nature or severity of the disability; and to empower people with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

This committee is necessary to provide advice and recommendations to NCD on disability issues.

We currently have a membership reflecting our nation's diversity and representing a variety of disabling conditions from across the United States.

*Open Meeting:* This advisory committee meeting, in teleconference format, of the National Council on Disability will be open to the public. However, due to fiscal constraints and staff limitations, a limited number of additional lines will be available. Those interested in joining the meeting should contact the appropriate staff member listed above. Space is limited.

Records will be kept of all Youth Advisory Committee meetings calls and will be available after the meeting for public inspection at the National Council on Disability.

Signed in Washington, DC, on October 5, 2000.

**Jeffrey T. Rosen,**

*General Counsel and Director of Policy.*

[FR Doc. 00–26035 Filed 10–10–00; 8:45 am]

BILLING CODE 6820–MA–M

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 030–32990; License No. 47–25225–01; EA–00–118]**

### In the Matter of Bass Energy, Inc. Bruceton Mills, West Virginia 26525; Order Imposing Civil Monetary Penalty

I

Bass Energy, Inc. (Licensee) is the previous holder of Materials License No. 47–25225–01 originally issued by the Nuclear Regulatory Commission (NRC) on December 15, 1992, and amended on September 2, 1998. The License has subsequently been transferred to another entity. The license authorized Bass Energy, Inc. to possess and use sealed sources registered pursuant to 10 CFR 32.210 or an equivalent Agreement State regulation and contained in a Scan Technologies Model 3500 fixed gauging device.

II

An investigation of the Licensee's activities was initiated by the NRC Office of Investigations (OI) on November 3, 1999, and an NRC inspection conducted on September 28, 1999. The results of the investigation and inspection revealed that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated June 30, 2000. The Notice stated the nature of the violations, the provisions of the NRC's requirements that the Licensee violated, and the amount of the civil penalty proposed for the violations.

To date, the Licensee has not responded to the Notice or paid the civil penalty. Additionally, telephone calls were initiated on August 16,18, 25 and 30, and September 1, 2000 by Mr. Mark Lesser, Acting Deputy Director, Division of Nuclear Materials Safety, NRC, Region II, to Mr. Thomas, President of Bass Energy, Inc., and his attorney concerning Bass Energy's intent to respond to the Notice or pay the civil penalty. Mr. Thomas has declined to discuss the matter and his attorney has not returned Mr. Lesser's calls.

III

After consideration of the Licensee's failure to respond to the Notice and pay the proposed civil penalty, the NRC staff has determined, that the civil penalty in the amount of $8,800 for the violations described in the Notice should be imposed.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, 10 CFR 2.201 and 10 CFR 2.205, *It Is Hereby Ordered That:*

(A) The Licensee pay a civil penalty in the amount of $8,800 within 30 days of the date of this Order, in accordance with NUREG/BR–0254. In addition, at the time of making payment, the Licensee shall submit a statement indicating when and by what method payment was made, to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738, and

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(B) The Licensee respond in writing to the Notice pursuant to the provisions of 10 CFR 2.201 within 30 days of the date of this Order addressing: (1) Admission or denial of the alleged violations, (2) the reasons for the violations if admitted, and if denied, the reasons why, (3) the corrective steps that have been taken and the results achieved, (4) the corrective steps that will be taken to avoid further violations, and (5) the date when full compliance will be achieved. This response shall also be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission.

The Licensee may request a hearing within 30 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, and to the Regional Administrator, NRC Region II, U.S. Nuclear Regulatory Commission, 61 Forsyth St., SW, Suite 23T85, Atlanta, GA 30303.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order (or if written approval of an extension of time in which to request a hearing has not been granted), the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the Licensee was in violation of the Commission's requirements as set forth in Part I of the Notice referenced in Section II above, and

(b) Whether, on the basis of such violation, this Order should be sustained.

Dated this 29th day of September 2000.

**R. William Borchardt,**

*Director, Office of Enforcement.*

[FR Doc. 00–26009 Filed 10–10–00; 8:45 am]

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## NUCLEAR REGULATORY COMMISSION

### Consideration of License Amendment Request for the Nuclear Fuels Services, Inc., and Opportunity for Hearing

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of availability of Environmental Assessment and Finding of No Significant Impact and Opportunity to Request a Hearing on Amendment of Materials License SNM–124, Nuclear Fuel Services, Inc.

**SUMMARY:** The U.S. Nuclear Regulatory Commission is considering the amendment of Special Nuclear Material License SNM–124 at the Nuclear Fuel Services, Inc. facility located in Erwin, TN.

**Environmental Assessment**

**1.0 Introduction**

*1.1 Background*

The Nuclear Regulatory Commission (NRC) staff has evaluated the environmental impacts of the amendment request from Nuclear Fuel Services, Inc. (NFS) to change liquid effluent action levels and reporting commitments in Materials License SNM–124 in accordance with 10 CFR 20.1302. This Environmental Assessment (EA) has been prepared pursuant to the Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500–1508) and NRC regulations (10 CFR Part 51) which implement the requirements of the National Environmental Policy Act (NEPA) of 1969. The purpose of this document is to assess the environmental consequences of the proposed license amendment.

The NFS facility in Erwin, TN is authorized under SNM–124 to possess nuclear materials for the fabrication and assembly of nuclear fuel components. The facility produces nuclear fuel for the U.S. Naval Reactor Program. The principle operations include: (1) the processing of highly enriched uranium [greater than 90 weight percent $^{235}U$] into a classified fuel product; and (2) the processing of scrap materials containing highly enriched uranium (HEU) to recover uranium.

*1.2 Review Scope*

In accordance with 10 CFR Part 51, this EA serves to (1) present information and analysis for determining whether to issue a Finding of No Significant Impact (FONSI) or to prepare an Environmental Impact Statement (EIS); (2) fulfill the NRC's compliance with the National Environmental Policy Act (NEPA) when no EIS is necessary; and (3) facilitate preparation of an EIS if one is necessary. Should the NRC issue a FONSI, no EIS would be prepared and the license amendment would be granted.

*1.3 Proposed Action*

The proposed action is to amend NRC Materials License SNM–124 to change liquid effluent action levels and reporting commitments in accordance with 10 CFR 20.1302. Currently, NFS uses 20.1302(b)(2) to demonstrate compliance. NFS proposes to use 20.1302(b)(1) to demonstrate compliance.

*1.4 Need for Proposed Action*

Licensees are required to comply with the annual dose limits in 10 CFR 20.1301. The applicable dose limit in 20.1301(a)(1) states that the licensee shall conduct operations so that the total effective dose equivalent (TEDE) to individual members of the public from the license operation does not exceed 100 mrem in a year, exclusive of dose contribution from background radiation, from medical procedures, or from the licensee's disposal of radioactive material into sanitary sewerage. In accordance with 10 CFR 20.1302, compliance can be demonstrated by either of two ways: (1) the licensee can demonstrate, by measurement or calculation, that the TEDE to the individual likely to receive the highest dose from the licensed operation does not exceed the annual dose limit; or (2) the licensee may show that the annual average concentrations of radioactive material released in the gaseous and liquid effluents at the boundary of the restricted area do not exceed values specified in Table 2, "Effluent Concentrations," of Appendix B to 10 CFR Part 20 in conjunction with other measurements.

Amending the NFS license to allow effluent discharge compliance to be reported as dose provides the licensee with the flexibility to continue operating the Waste Water Treatment Facility (WWTF) in case a sample is suspect and needs to be re-analyzed. NFS has previously demonstrated compliance with the annual dose limit in 10 CFR 20.1301 for releases to the Nolichucky River from the WWTF by



meeting the concentration values in 10 CFR Part 20, Appendix B, Table 2. If a sample was suspected of exceeding the values in 10 CFR Part 20, the WWTF shut down until the sample was re-analyzed. NFS proposes to ensure compliance by demonstrating, through calculation, that the annual TEDE from liquid effluents will remain below 10 mrem to the maximally exposed off-site receptor.

*1.5 Alternatives*

The alternatives available to the NRC are:

Alternative 1—Deny the amendment request (no action alternative); or

Alternative 2—Approve the license amendment request as submitted.

**2.0 Affected Environment**

The affected environment for Alternative 1 and Alternative 2 would be the NFS site, the Nolichucky River, and the near downstream area of the river. A full description of the affected area and its characteristics is given in the 1999 Environmental Assessment for the Renewal of the NRC license for NFS.

**3.0 Effluent Releases and Monitoring**

Effluents from the NFS facility include discharges of sanitary wastes to the City of Erwin sanitary sewer, effluents to air, and liquid effluents to Banner Spring Branch, Martin Creek, and the Nolichucky River. A full description of the NFS Environmental Monitoring Program is given in the 1999 Environmental Assessment for Renewal.

Alternative 1

The WWTF treats liquid effluents generated by the various site operations, including fuel production, low-enriched and high-enriched uranium recovery, mixed-waste treatment, laboratory operations, laundry, building decommissioning, and site remediation. These liquid waste streams are pH adjusted and ammonia is removed by a stripping tower or by breakpoint chlorination, as appropriate. Waste water is treated by lime precipitation to remove fluoride, uranium, and other metals. After the lime is precipitated, the waste water is filtered, neutralized, and discharged into the Nolichucky River through outfall 001, under the National Pollutant Discharge Elimination System (NPDES) permit. The precipitate is dewatered in a filter press, and the filter press cake is packaged for off-site disposal at a low-level waste disposal facility.

During operation of the WWTF, each batch is analyzed for gross alpha and gross beta radioactivity prior to discharge. Also, a monthly composite sample is analyzed for isotopes of uranium. The monthly composite is analyzed for other radionuclides if materials, in addition to uranium, are suspected to be present in process waste water at levels exceeding 10% of the concentration values in Appendix B, Table 2, Column 2, 10 CFR Part 20. The chemical parameters prescribed in the State of Tennessee NPDES permit are also analyzed at the frequency specified in the permit. Samples of the treated waste water are collected from the final neutralization or storage tank prior to discharge.

If an action level is exceeded, the following actions occur: (1) The Environmental Protection Function Manager and the responsible process engineering control personnel are notified, (2) an investigation is undertaken to identify the cause of the exceedance, and (3) appropriate corrective actions are initiated to reduce observed levels that are above the action levels, and to minimize the likelihood of a recurrence. No discharge is authorized by the NFS Environmental Protection Function Manager that would result in a 12 month average concentration exceeding the applicable level specified in 10 CFR Part 20, Appendix B, Table 2, Column 2. Corrective actions are documented. If necessary, the Environmental Protection Function manager may order processing activities in an area to be halted until appropriate corrective actions are implemented.

Alternative 2

Each calender quarter, WWTF liquid effluent data will be compiled and used to calculate the maximum concentration of radioactive materials at the location of the maximally exposed off-site receptor and the dose (TEDE) to the maximally exposed off-site receptor due to discharge of WWTF liquid effluents. This quarterly assessment will typically be completed within 60 days of receiving all sample results necessary to perform the assessment. If any sample results are pending, a preliminary assessment may be performed if necessary to meet the semi-annual reporting condition.

If the resulting TEDE to the maximally exposed off-site receptor exceeds 2.5 mrem/quarter, appropriate corrective action will be identified and implemented to reduce future dose levels. Each calender quarter, the dose for the four previous (consecutive) quarters will be calculated. If the calculated TEDE to any member of the public for this four quarter period exceeds the 10 mrem per year action level, NFS will implement corrective actions and the NRC will be notified of the event, in writing, within 30 days.

Assessment of the maximum concentration and TEDE to the maximally exposed off-site receptor will be performed using: (1) National Council on Radiation Protection and Measurements (NCRP) Report No. 123, "Screening Models for Releases of Radionuclides to Atmosphere, Surface Water, and Ground," or (2) pathway analysis models that consider all exposure pathways and accurately reflect site conditions and simulate exposure to members of the public. Site-specific characteristics of the surface waters receiving liquid effluents will be accurately assessed. NFS will follow written procedures to perform these calculations. Parameter values will be based on information contained in NCRP Report No. 123, data collected during the assessment period, publicly available information (*e.g.*, stream flow data compiled by the U.S. Geological Survey), previous monitoring history, or the professional judgement of the NFS Environmental Protection Function Manager.

In accordance with 10 CFR 70.59, NFS is required to submit a semi-annual effluent report. If the semi-annual average activity concentration for WWTF effluents exceed concentrations listed in 10 CFR Part 20, Appendix B, Table 2, Column 2, results of an assessment of the TEDE to the maximally exposed off-site receptor from these effluents will be included in the semi-annual effluent report to the NRC.

**4.0 Environmental Impacts of Proposed Action and Alternatives**

*4.1 Public Health*

Alternative 1

The impacts of normal operation are provided in the 1999 Environmental Assessment for the Renewal of the NRC license for NFS. The analysis assumes that an individual along the Nolichucky River and the surrounding population out to a distance of 50 miles uses this potentially contaminated water. Liquid-release exposure pathways include ingestion of drinking water, fish, and irrigated crops and external exposure during recreational activities. The total effective dose estimate (TEDE) for the maximally exposed individual was estimated as 0.10 mrem/yr from liquid releases.

Alternative 2

NFS is proposing a maximum TEDE of 10 mrem/yr for liquid releases. This is 10% of the 10 CFR Part 20 limit of 100 mrem/yr from all pathways. NFS'

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commitment to a 10 mrem action level will provide reasonable assurance that the facility will continue to operate within the regulatory limits.

*4.2 Occupational Health*

Alternative 1 and Alternative 2

The dose to the workers at the NFS site has been analyzed in the Safety Evaluation Report for the Renewal, dated July 2, 1999. This dose will not increase as a result of Alternative 2 because there will be no changes to the treatment process. NFS is committed to keeping doses as low as reasonable achievable (ALARA) by maintaining a radiation protection program that minimizes radiation exposures and releases of radioactive material to the environment.

*4.3 Water Resources and Biota*

Alternative 1 and Alternative 2

Liquid effluents are released directly or indirectly into the Nolichucky River. Small creeks receiving portions of the liquid discharge, Banner Spring Branch and Martin Creek, are not used as a drinking water supply for area residents. The nearest drinking water intake on the Nolichucky River is 8 miles downstream from the NFS outfall (NFS, 1996). Since the amount of radioactivity entering Banner Spring Branch, Martin Creek and the Nolichucky River does not exceed the allowable limits in 10 CFR Part 20 for either alternative, there will be no significant impact on water quality or biota. NFS will continue to meet the requirements for effluent discharge in their NPDES permit.

*4.4 Geology, Soils, Air Quality, Demography, Cultural and Historic Resources*

Alternative 1 and Alternative 2

The NRC staff has determined that the neither alternative will impact geology, soils, air quality, demography, or cultural or historic resources at or near the NFS site. A full description of these parameters is given in the 1999 Environmental Assessment for Renewal.

*4.5 Alternatives*

The action that the NRC is considering is approval of an amendment request to a Materials license issued pursuant to 10 CFR Part 70. The proposed action is to amend NRC Materials License SNM–124 to change liquid effluent action levels and reporting commitments in accordance with 10 CFR 20.1302. The alternatives available to the NRC are:

1. Deny the amendment request; or
2. Approve the license amendment request as submitted.

Based on its review, the NRC staff has concluded that the environmental impacts associated with the proposed action are minimal. Although the TEDE might increase from 0.010 mrem to 10 mrem for the liquid release pathway, there is reasonable assurance that the 10 CFR 20.1301 dose limit of 100 mrem/yr from all pathways will not be exceeded. The staff considers that Alternative 2 is the appropriate alternative for selection and recommends approval of the license amendment.

**5.0 Agencies and Persons Contacted**

The NRC contacted a representative from the State of Tennessee, Department of Health in correspondence dated August 10, 2000. The State had no comments.

**6.0 References**

Nuclear Fuel Services, Inc., December, 1999, "Environmental Report for Renewal of Special Nuclear Material License No. SNM–124."

U.S. Nuclear Regulatory Commission (NRC), January, 1999, "Environmental Assessment for Renewal of Special Nuclear Material License SNM–124."

U.S. Nuclear Regulatory Commission (NRC), July 2, 1999, "Safety Evaluation Report for the Renewal of Special Nuclear Material License SNM–124 for Nuclear Fuel Services, Inc."

**7.0 Conclusions**

Based on an evaluation of the environmental impacts of the amendment request, the NRC has determined that the proper action is to issue a FONSI in the **Federal Register**. The NRC staff considered the environmental consequences of amending NRC Materials License SNM–124 to change liquid effluent action levels and reporting commitments in accordance with 10 CFR 20.1302, and have determined that the approval of this request will have no significant effect on public health and safety or the environment.

**Finding of No Significant Impact**

The Commission has prepared an Environmental Assessment related to the amendment of Special Nuclear Material License SNM–124. On the basis of the assessment, the Commission has concluded that environmental impacts associated with the proposed action would not be significant and do not warrant the preparation of an Environmental Impact Statement. Accordingly, the Commission is making a Finding of No Significant Impact.

The Environmental Assessment and the documents related to this proposed action are available for public inspection and copying at the Commission's Public Document Room at 11555 Rockville Pike, Rockville, Maryland between 7:30 a.m. and 4:15 p.m. on federal workdays.

**Opportunity for a Hearing**

Based on the Environmental Assessment and Finding of No Significant Impact, and a staff safety evaluation to be completed, NRC is preparing to amend License SNM–124. The NRC hereby provides that this is a proceeding on an application for amendment of a license falling within the scope of Subpart L, "Informal Hearing Procedures for Adjudication in Materials Licensing Proceedings," of NRC's rules and practice for domestic licensing proceedings in 10 CFR Part 2. Pursuant to Section 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with Section 2.1205(d). A request for a hearing must be filed within thirty (30) days of the date of publication of this **Federal Register** notice.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission either:

1. By delivery to the Rulemakings and Adjudications Staff of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738; or
2. By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Attention: Rulemakings and Adjudications Staff.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

1. The interest of the requester in the proceeding;
2. How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in Section 2.1205(h).
3. The requester's areas of concern about the licensing activity that is the subject matter of the proceeding; and
4. The circumstances establishing that the request for a hearing is timely in accordance with Section 2.1205(d).

In accordance with 10 CFR Section 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail to:

1. The applicant, Nuclear Fuel Services ; and
2. The NRC staff, by delivering it to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail, addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

The NRC contact for this licensing action is Mary Adams. Ms. Adams may be contacted at (301) 415–7249 or by e-mail at mta@nrc.gov for more information about this licensing action.

Dated at Rockville, Maryland, this 4th day of October, 2000.

For the Nuclear Regulatory Commission.

**Philip Ting,**

*Chief, Fuel Cycle Licensing Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 00–26010 Filed 10–10–00; 8:45 am]

BILLING CODE 7590–01–P



## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Nuclear Waste Procedures for Meetings

**Background**

This notice describes procedures to be followed with respect to meetings conducted pursuant to the Federal Advisory Committee Act by the Nuclear Regulatory Commission's (NRC's) Advisory Committee on Nuclear Waste (ACNW). These procedures are set forth so that they may be incorporated by reference in future notices for individual meetings.

The ACNW advises the Nuclear Regulatory Commission on nuclear waste disposal issues. This includes facilities covered under 10 CFR Parts 61 and the proposed Part 63 and other applicable regulations and legislative mandates, such as the Nuclear Waste Policy Act, the Low-Level Radioactive Waste Policy Act and amendments, and the Uranium Mill Tailings Radiation Control Act, as amended. The Committee's reports become a part of the public record.

The ACNW meetings are normally open to the public and provide opportunities for oral or written statements from members of the public to be considered as part of the Committee's information gathering process. The meetings are not adjudicatory hearings such as those conducted by the NRC's Atomic Safety and Licensing Board Panel as part of the Commission's licensing process. ACNW meetings are conducted in accordance with the Federal Advisory Committee Act.

**General Rules Regarding ACNW Meetings**

An agenda is published in the **Federal Register** for each full Committee meeting and is available on the Internet at *http://www.nrc.gov/ACRSACNW* and is updated as changes are made. During an ACNW meeting there may be a need to make changes to the agenda to facilitate the conduct of the meeting. The Chairman of the Committee is empowered to conduct the meeting in a manner that, in his/her judgment, will facilitate the orderly conduct of business, including making provisions to continue the discussion of matters not completed on the scheduled day during another meeting. Persons planning to attend the meeting may contact the Designated Federal Official specified in the individual **Federal Register** Notice prior to the meeting to be advised of any changes to the agenda that may have occurred. This individual can be contacted between 7:30 a.m. and 4:15 p.m., Eastern Time.

The following requirements shall apply to public participation in ACNW meetings:

(a) Persons wishing to submit written comments regarding the agenda items may do so by sending a readily reproducible copy addressed to the Designated Federal Official specified in the **Federal Register** Notice for the individual meeting in care of the Advisory Committee on Nuclear Waste, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments should be in the possession of the Designated Federal Official at least five days prior to the meeting to allow time for reproduction and distribution. Comments should be limited to topics being considered by the Committee. Written comments may also be submitted by providing a readily reproducible copy to the Designated Federal Official at the beginning of the meeting.

(b) Persons desiring to make oral statements at the meeting should make a request to do so to the Designated Federal Official. If possible, the request should be made five days before the meeting, identifying the topics to be discussed and the amount of time needed for presentation so that orderly arrangements can be made. The Committee will hear oral statements on topics being reviewed at an appropriate time during the meeting as scheduled by the Chairman.

(c) In addition to the ACRS/ACNW Internet web site, information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled and the time allotted to present oral statements can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 4:15 p.m., Eastern Time.

(d) During the ACNW meeting presentations and discussions, questions may be asked only by ACNW members, Committee consultants, NRC staff, and the ACNW staff.

(e) The use of still, motion picture, and television cameras will be permitted at the discretion of the Chairman and subject to the condition that the physical installation and presence of such equipment will not interfere with the conduct of the meeting. The Designated Federal Official will have to be notified prior to the meeting and will authorize the installation or use of such equipment after consultation with the Chairman. The use of such equipment will be restricted as is necessary to protect proprietary or privileged information that may be in documents, folders, etc., in the meeting room. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

(f) A transcript is kept for certain open portions of the meeting and will be made available to the public through the NRC's Public Document Room, One White Flint North, Room O–1F21, 11555 Rockville Pike, Rockville, MD 20852–2738, or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/NRC/ADAMS/index.html* (the Public Electronic Reading Room). A copy of the certified minutes of the meeting will be available at the same location on or before three months following the meeting. Copies may be obtained from the PDR upon payment of appropriate reproduction charges. ACNW meeting agenda, meeting transcripts, and letter reports are available for downloading or viewing on the Internet at *http://www.nrc.gov/ACRSACNW*.

(g) Videoteleconferencing service is available for observing open sessions of some ACNW meetings. Those wishing to use this service for observing ACNW meetings should contact Mr. Theron Brown, ACNW Audio Visual Technician, (301–415–8066) between 7:30 a.m. and 3:45 p.m., Eastern Time at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the videoteleconferencing link. The availability of videoteleconferencing services is not guaranteed.

**ACNW Working Group Meetings**

ACNW Working Group meetings will also be conducted in accordance with these procedures, as appropriate. When

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Working Group meetings are held at locations other than at NRC facilities, reproduction facilities may not be available at a reasonable cost. Accordingly, 25 additional copies of the materials to be used during the meeting should be provided for distribution at such meetings.

**Special Provisions When Proprietary Sessions Are To Be Held**

If it is necessary to hold closed sessions for the purpose of discussing matters involving proprietary information, persons with agreements permitting access to such information may attend those portions of the ACNW meetings where this material is being discussed upon confirmation that such agreements are effective and related to the material being discussed.

The Designated Federal Official should be informed of such an agreement at least five working days prior to the meeting so that it can be confirmed, and a determination can be made regarding the applicability of the agreement to the material that will be discussed during the meeting. The minimum information provided should include information regarding the date of the agreement, the scope of material included in the agreement, the project or projects involved, and the names and titles of the persons signing the agreement. Additional information may be requested to identify the specific agreement involved. A copy of the executed agreement should be provided to the Designated Federal Official prior to the beginning of the meeting for admittance to the closed session.

Dated: October 4, 2000.

**Andrew L. Bates,**

*Advisory Committee Management Officer.*

[FR Doc. 00–26006 Filed 10–10–00; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Reactor Safeguards; Procedures for Meetings

**Background**

This notice describes procedures to be followed with respect to meetings conducted by the Nuclear Regulatory Commission's (NRC's) Advisory Committee on Reactor Safeguards (ACRS) pursuant to the Federal Advisory Committee Act. These procedures are set forth so that they may be incorporated by reference in future notices for individual meetings.

The ACRS is a statutory group established by Congress to review and report on applications for the licensing of nuclear power reactor facilities and on certain other nuclear safety matters. The Committee's reports become a part of the public record.

The ACRS meetings are conducted in accordance with the Federal Advisory Committee Act; they are normally open to the public and provide opportunities for oral or written statements from members of the public to be considered as part of the Committee's information gathering process. ACRS reviews do not normally encompass matters pertaining to environmental impacts other than those related to radiological safety.

The ACRS meetings are not adjudicatory hearings such as those conducted by the NRC's Atomic Safety and Licensing Board Panel as part of the Commission's licensing process.

**General Rules Regarding ACRS Meetings**

An agenda is published in the **Federal Register** for each full Committee meeting and is available on the Internet at *http://www.nrc.gov/ACRSACNW* and is updated as changes are made. There may be a need to make changes to the agenda to facilitate the conduct of the meeting. The Chairman of the Committee is empowered to conduct the meeting in a manner that, in his/her judgment, will facilitate the orderly conduct of business, including making provisions to continue the discussion of matters not completed on the scheduled day on another meeting day. Persons planning to attend the meeting may contact the Designated Federal Official specified in the individual **Federal Register** Notice prior to the meeting to be advised of any changes to the agenda that may have occurred. This individual can be contacted between 7:30 a.m. and 4:15 p.m., Eastern Time.

The following requirements shall apply to public participation in ACRS full Committee meetings:

(a) Persons wishing to submit written comments regarding the agenda items may do so by sending a readily reproducible copy addressed to the Designated Federal Official specified in the **Federal Register** Notice, care of the Advisory Committee on Reactor Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments should be limited to items being considered by the Committee. Comments should be in the possession of the Designated Federal Official at least five days prior to a meeting to allow time for reproduction and distribution. Written comments may also be submitted by providing a readily reproducible copy to the Designated Federal Official at the beginning of the meeting.

(b) Persons desiring to make oral statements at the meeting should make a request to do so to the Designated Federal Official. If possible, the request should be made five days before the meeting, identifying the topics to be discussed and the amount of time needed for presentation so that orderly arrangements can be made. The Committee will hear oral statements on topics being reviewed at an appropriate time during the meeting as scheduled by the Chairman.

(c) Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 4:15 p.m., Eastern Time.

(d) During the presentations and discussions at ACRS meetings, questions may be asked only by ACRS members, ACRS consultants and staff, and the NRC staff.

(e) The use of still, motion picture, and television cameras will be permitted at the discretion of the Chairman and subject to the condition that the physical installation and presence of such equipment will not interfere with the conduct of the meeting. The Designated Federal Official will have to be notified prior to the meeting and will authorize the installation or use of such equipment after consultation with the Chairman. The use of such equipment will be restricted as is necessary to protect proprietary or privileged information that may be in documents, folders, etc., in the meeting room. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

(f) A transcript is kept for certain open portions of the meeting and will be made available to the public through the NRC's Public Document Room, One White Flint North, Room O–1F21, 11555 Rockville Pike, Rockville, MD 20852–2738, or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/NRC/ADAMS/index.html* (the Public Electronic Reading Room). A copy of the certified minutes of the meeting will be available at the same location on or before three months following the meeting. Copies may be obtained from the PDR upon payment of appropriate reproduction charges. ACRS meeting agenda, meeting transcripts, and letter reports are available for downloading or viewing on the Internet at *http://www.nrc.gov/ACRSACNW.*

(g) Videoteleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown, ACRS Audio Visual Technician, (301–415–8066) between 7:30 a.m. and 3:45 p.m. Eastern Time at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the videoteleconferencing link. The availability of videoteleconferencing services is not guaranteed.

**ACRS Subcommittee Meetings**

ACRS Subcommittee meetings will also be conducted in accordance with the above procedures, as appropriate. When Subcommittee meetings are held at locations other than at NRC facilities, reproduction facilities may not be available at a reasonable cost. Accordingly, 25 additional copies of the materials to be used during the meeting should be provided for distribution at such meetings.

**Special Provisions When Proprietary Sessions Are To Be Held**

If it is necessary to hold closed sessions for the purpose of discussing matters involving proprietary information, persons with agreements permitting access to such information may attend those portions of the ACRS meetings where this material is being discussed upon confirmation that such agreements are effective and related to the material being discussed.

The Designated Federal Official should be informed of such an agreement at least five working days prior to the meeting so that it can be confirmed, and a determination can be made regarding the applicability of the agreement to the material that will be discussed during the meeting. The minimum information provided should include information regarding the date of the agreement, the scope of material included in the agreement, the project or projects involved, and the names and titles of the persons signing the agreement. Additional information may be requested to identify the specific agreement involved. A copy of the executed agreement should be provided to the Designated Federal Official prior to the beginning of the meeting for admittance to the closed session.



Dated: October 4, 2000.

**Andrew L. Bates,**

*Advisory Committee Management Officer.*

[FR Doc. 00–26007 Filed 10–10–00; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

### Appointments to Recertification Performance Review Boards for the Senior Executive Service

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Appointment to Recertification Performance Review Boards for the Senior Executive Service.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) has announced the following appointments to NRC Recertification Performance Review Boards.

The following individuals are appointed as members of the NRC Recertification Performance Review Board (PRB) responsible for making recommendations to the appointing and awarding authorities on recertification for Senior Executives:

**Appointees**

Patricia G. Norry, Deputy Executive Director for Management Services, Chair

Ellis Merschoff, Regional Administrator, Region IV

Stephen G. Burns, Deputy General Counsel

The following individuals are appointed as members of the NRC Recertification PRB Panel responsible for making recommendations to the appointing and awarding authorities on recertification of Recertification PRB members:

**Appointees**

Jesse L. Funches, Chief Financial Officer, Chair

Frank Miraglia, Deputy Executive Director for Reactor Programs

Dennis Rathbun, Director, Office of Congressional Affairs

All appointments are made pursuant to section 4314 of chapter 43 of title 5 of the United States Code.

**EFFECTIVE DATE:** October 11, 2000.

**FOR FURTHER INFORMATION CONTACT:** Carolyn J. Swanson, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (301) 415–7530.

Dated at Rockville, Maryland, this 29th day of September, 2000.

For the U.S. Nuclear Regulatory Commission.

**Carolyn J. Swanson,**

*Secretary, Executive Resources Board*

[FR Doc. 00–26008 Filed 10–10–00; 8:45 am]

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## PRESIDIO TRUST

### The Presidio of San Francisco, California; Amendment of Notice of Intent and Extension of the Public Comment Period for the Presidio Trust Implementation Plan Supplemental Environmental Impact Statement

**AGENCY:** The Presidio Trust.

**ACTION:** Amendment of initial Notice of Intent to conduct public scoping and prepare a Supplemental Environmental Impact Statement and extension of scoping period.

**SUMMARY:** The Presidio Trust (Trust) is amending its Notice of Intent published on June 30, 2000 (65 FR 40707) to add a third public scoping meeting and make factual corrections. The Trust is also extending the previously announced scoping period from November 15, 2000 to December 8, 2000 to provide additional time for the public to make views known regarding the Presidio Trust Implementation Plan (PTIP) Environmental Impact Statement (EIS). The PTIP EIS is a supplement to the 1994 Final General Management Plan Amendment (GMPA) EIS for the Presidio.

**SUPPLEMENTARY INFORMATION:** On June 30, 2000, the Trust announced its intention to prepare a Supplemental EIS for PTIP and to hold two public scoping meetings to determine the scope of impact topics and alternatives to be addressed in the Supplemental EIS (first NOI; 65 FR 40707–08). The first public workshop on July 12, 2000 addressed scoping issues and solicited public comment regarding the range of issues, alternatives, and specific impacts to be evaluated in the Supplemental EIS. A second workshop, not originally planned but widely announced through a variety of media and held on September 13, 2000, solicited comments on financial planning concepts that will help shape the alternatives to be evaluated in the EIS. A third workshop, previously planned for October 11, 2000 and now rescheduled for November 15, 2000 will present conceptual alternatives to be addressed in the EIS and visions for the Presidio's future. The extension of the scoping period until December 8, 2000 will enable the public to review and comment on the

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alternatives prior to their being analyzed in the EIS.

In addition to schedule changes, the first NOI stated an intent to prepare an "amendment" to the 1994 GMPA. Due to the term "amendment" causing public confusion, the Trust is clarifying that the comprehensive plan to be prepared and analyzed through the Supplemental EIS will update the 1994 GMPA for Area B (the area of the Presidio under the Trust's jurisdiction) and be adopted by the Trust Board of Directors as the governing comprehensive plan for Area B. It will retain many elements of the 1994 GMPA, but will update others that have been affected by changes since the GMPA was finalized. The GMPA will remain the governing plan for Area A of the Presidio under the jurisdiction of the U.S. Department of the Interior, National Park Service (NPS).

**PUBLIC MEETING:** The Trust will solicit public comments on the conceptual alternatives proposed for analysis in the EIS and on visions for Area B of the Presidio at the third of three public scoping workshops on Wednesday, November 15, 2000 from 6 to 9 p.m. at the Log Cabin (Building 1299), Fort Scott at the Presidio.

**ADDRESSES:** Written comments concerning the content of the plan and the scope of the Supplemental EIS should be sent by December 8, 2000 to John Pelka, NEPA Compliance Coordinator, The Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, CA 94129–0052. Fax: 415–561–5315. E-mail: ptip@presidiotrust.gov.

**FOR FURTHER INFORMATION:** Contact: John Pelka, NEPA Compliance Coordinator, The Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, CA 94129–0052. Telephone: 415–561–5300.

**Reference:** 40 CFR 1508.22.

Dated: October 4, 2000.

**Karen A. Cook,**

*General Counsel.*

[FR Doc. 00–26004 Filed 10–10–00; 8:45 am]

**BILLING CODE 4310–4R–P**

## PRESIDIO TRUST

### Notice of Receipt of and Availability for Public Comment on an Application for Wireless Telecommunications Facilities Site; The Presidio of San Francisco, California.

**AGENCY:** The Presidio Trust.

**ACTION:** Public notice.

**SUMMARY:** This notice announces the Presidio Trust's receipt of and availability for public comment on an application from Bay Area Cellular Telephone Company, Sprint PCS, for colocation at an existing wireless telecommunications facilities site ("the project") in the Presidio of San Francisco. The proposed location of the project is in the parking area located directly below the Doyle Drive overpass in the vicinity of the intersection of Halleck and Vallejo Streets.

The project involves (i) replacing a single existing utility pole (installed by Cellular One) with a taller, slightly broader pole to accommodate three additional antenna panels, and (ii) placing the associated radio equipment within a nearby building. The utility pole will be approximately 65 feet tall, 15 feet taller than the existing Cellular One pole. Power for the project will be provided through underground coaxial cables connected to existing power sources. Connection to telephone lines will be through existing telephone lines.

**COMMENTS:** Comments on the proposed project must be sent to Devon Danz, Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, CA 94129–0052, and be received by November 13, 2000. A copy of Sprint PCS's application is available upon request to the Presidio Trust.

**FOR FURTHER INFORMATION CONTACT:** Devon Danz, Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, CA 94129–0052. Email: ddanz@presidiotrust.gov. Telephone: 415–561–5300.

Dated: October 4, 2000.

**Karen A. Cook,**

*General Counsel.*

[FR Doc. 00–26005 Filed 10–10–00; 8:45 am]

**BILLING CODE 4310–4R–U**

## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

*Extension:* Rule 17f–6; SEC File No. 270–392; OMB Control No. 3235–0447.

Notice is hereby given that, under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission (the "Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 17f–6 under the Investment Company Act of 1940 [17 CFR 270.17f–6] permits registered investment companies ("funds") to maintain assets (*i.e.*, margin) with futures commission merchants ("FCMs") in connection with commodity transactions effected on both domestic and foreign exchanges. Before the rule was adopted, funds generally were required to maintain such assets in special accounts with a custodian bank.[1]

Rule 17f–6 permits funds to maintain their assets with FCMs that are registered under the Commodity Exchange Act ("CEA") and that are not affiliated with the fund. The rule requires that a written contract containing the following provisions govern the manner in which the FCM maintains a fund's assets:

- The PCM must comply with the segregation requirements of section 4d(2) of the CEA [7 U.S.C. 6d(2)] and the rules under that statute [17 CFR Chapter I] or, if applicable, the secured amount requirements of rule 30.7 under the CEA [17 CFR 30.7];
- If the FCM places the fund's margin with another entity for clearing purposes the FCM must obtain an acknowledgement from the clearing organization that the fund's assets are held on behalf of the FCM's customers in accordance with provisions under the CEA; and
- Upon request the FCM must furnish records about the fund's assets to the Commission or its staff.

The rule requires a written contract that contains certain provisions to ensure important safeguards and other benefits relating to the custody of fund assets by FCMs. For example, the requirement that FCMs comply with the segregation or secured amount requirements of the CEA and the rules under the statue is designed to protect fund assets held by FCMs. The contract requirement that an FCM obtain an acknowledgement from an entity that clears fund transactions that the fund's assets are held on behalf of the FCM's customers according to CEA provisions seeks to accommodate the legitimate needs of the participants in the commodity settlement process, consistent with the protection of fund assets. Finally, FCMs are required to furnish to the Commission or its staff on request information concerning the fund's assets in order to facilitate Commission inspections of funds.

[1] See Custody of Investment Company Assets With Futures Commission Merchants and Commodity Clearing Organizations, Investment Company Act Release No. 22389 (Dec. 11, 1996) [61 FR 66207 (Dec. 17, 1996)].

The Commission estimates that approximately 3,031 funds could deposit margin with FCMs under rule 17f–6 in connection with their investments in futures contracts and commodity options. The Commission further estimates that each fund uses and deposits margin with 3 different FCMs in connection with its commodity transactions. Approximately 211 FCMs are eligible to hold investment company margin under the rule.[2]

The only paperwork burden of the rule consists of meeting the rule's contract requirements. The Commission estimates that 3,031 funds will spend an average of 1 hour complying with the contract requirements of the rule (*e.g.*, signing contracts with additional FCMs), for a total of 3,031 burden hours. The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

Complying with the collection of information requirements of the rule is necessary to obtain the benefit of relying on the rule. Although the rule requires that the FCM provide certain records upon request, these records are not made public. The rule does not require these records be retained for any specific period of time. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comment must be submitted to OMB within 30 days after this notice.

Dated: October 2, 2000.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–26030 Filed 10–10–00; 8:45 am]

**BILLING CODE 8010–01–M**



## SECURITIES AND EXCHANGE COMMISSION

### Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Citizens First Financial Corp., Common Stock, $0.01 Par Value) File No. 1–14274

October 4, 2000.

Citizens First Financial Corp., a Delaware corporation ("Company"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $.01 par value ("Security"), from listing and registration on the American Stock Exchange LLC ("Amex").

The Company has effected a new listing for its Security on the National Market of the Nasdaq Stock Market, Inc. ("Nasdaq"). On October 2, 2000, the Company filed a Registration Statement on Form 8–A with the Commission in conjunction with the new Nasdaq listing. Trading in the Security on the Nasdaq commenced, and was concurrently suspended on the Amex, at the opening of business on October 2, 2000. The Company believes that trading in the Nasdaq marketplace will improve the liquidity of its Security by increasing its exposure among investors.

The Company's application relates solely to the withdrawal of the Security from listing and registration on the Amex and shall have no effect upon the Security's continued listing on the Nasdaq and registration under section 12(g) of the Act.[3]

Any interested person may, on or before October 26, 2000, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(g).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 00–26031 Filed 10–10–00; 8:45 am]

**BILLING CODE 8010–01–M**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. IC–24676; 812–11924]**

### Hartford Capital Appreciation HLS Fund Inc., et al.

October 3, 2000.

**AGENCY:** U.S. Securities & Exchange Commission ("Commission").

**ACTION:** Notice of application for an order of exemption under section 6(c) of the Investment Company Act of 1940 (the "Act") for exemptions from the provisions of sections 9(a), 13(a), 15(a) and 15(b) of the Act and Rules 6e–2b(15) and 6e–3(T)(b)(15) thereunder.

### Summary of Application

Applicants seek an order pursuant to section 6(c) of the Investment Company Act of 1940, as amended (the "Act") exempting each life insurance company separate account supporting variable life insurance contracts (and its insurance company depositor) that may invest in shares of an Existing Fund or a "Future Fund," as defined below, from the provisions of sections 9(a), 13(a), 15(a), and 15(b) of the Act, and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder, to the extent necessary to permit such separate accounts ("VLI accounts") to hold shares of any Existing Fund or Future Fund when the following other types of investors also hold shares that Existing Fund or Future Fund: (1) A VLI account of a life insurance company that is not an affiliated person of the insurance company depositor of any VLI account, (2) an Existing Fund's or Future Fund's investment adviser (representing seed money investments in the Existing Fund or Future Fund), (3) a life insurance company separate account supporting variable annuity contracts (a "VA account"), and/or (4) a qualified pension or retirement plan (a "Plan" or "Qualified Plan"), as defined below.

*Applicants:* Hartford Capital Appreciation HLS Fund, Inc., Hartford Dividend and Growth HLS Fund, Inc., Hartford Series Fund, Inc., Hartford Index HLS Fund, Inc., Hartford International Opportunities HLS Fund,

[4] 17 CFR 200.30–3(a)(1).

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Inc., Hartford MidCap HLS Fund, Inc., Hartford Small Company HLS Fund, Inc., Hartford Stock HLS Fund, Inc., Hartford Advisers HLS Fund, Inc., Hartford International Advisers HLS Fund, Inc., Hartford Bond HLS Fund, Inc., Hartford Mortgage Securities HLS Fund, Inc. and Hartford Money Market HLS Fund, Inc. (each, an "Existing Fund" and collectively, the "Existing Funds") and HL Investment Advisors, L.L.C. "HL Advisors").

*Relevant Section of the Act:* Exemption requested under section 6(c) of the Act from the provisions of sections 9(a), 13(a), 15(a), and 15(b) of the Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

*Filing Dates:* the application was filed on December 22, 1999, and amended and restated on March 27, 2000, and August 24, 2000.

**Hearing and Notification of Hearing**

An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving the Existing Funds or HL Advisors with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 30, 2000, and should be accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o Hartford Investment Management Company, 55 Farmington Avenue, 11th Floor, Hartford, Connecticut 06105, Attention: Kevin J. Carr, Esq.

**FOR FURTHER INFORMATION CONTACT:** Lorna MacLeod, Branch Chief, Division of Investment Management, Office of Insurance Products, at (202) 942–0670.

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application; the complete application is available for a fee from the Public Reference Branch of the Commission, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. (202) 942–8090).

**Applicants' Representations**

1. As used herein, a Future Fund is any investment company (or investment porfolio or series thereof), other than an Existing Fund, designed to be sold to VLI accounts and to which Applicants or their affiliates may in the future serve as investment advisers, investment sub-advisers, investment managers, administrators, principal underwriters or sponsors. As used herein, Plan or qualified Plan means any trust, plan, account, contract or annuity described in sections 401(a), 403(a), 403(b), 408(a), 408(b), 414(d), 457(b), 408(k), 501(c)(18) of the Internal Revenue Code of 1986, as amended (the "Code")), and any other trust, plan, account, contract or annuity that is determined to be within the scope of Treasury Regulation 1.817–5(f)(3)(iii).

2. Each Existing Fund, except the Global Leaders Fund, Growth and Income Fund and High Yield Fund, is a Maryland corporation which is registered under the Act as an open-end management investment company. Each of the Global Leaders Fund, Growth and Income Fund and High Yield Fund is a diversified series of Hartford Series Fund, Inc., a Maryland corporation, which is a series fund registered under the Act. HL Advisors, a Connecticut corporation, is the investment adviser for each of the Existing Funds and is registered as an investment adviser under the Investment Advisers Act of 1940. Hartford Securities Distribution Company, Inc., a Connecticut corporation, serves as distributor of the Existing Funds.

3. The Existing Funds and Future Funds may offer their shares to VLI accounts and VA accounts ("Participating Separate Accounts") of various life insurance companies ("Participating Insurance Companies") to serve as an investment medium to support variable life insurance contracts and variable annuity contracts (together, "Variable Contracts") issued through such accounts. Each VLI acocunt and VA account will be established as a segregated asset account by a Participating Insurance Company pursuant to the insurance law of the Company's state of domicile. As such, the assets of each will be the property of the Participating Insurance Company and that portion of the assets of such an account equal to the reserves and other contract liabilities with respect to the account will not be chargeable with liabilities arising out of any other business that the Participating Insurance Company may conduct. The income, gains and losses, realized or unrealized from such an account's assets will be credited to or charged against the account without regard to other income, gains or losses of the Participating Insurance Company. If a VLI account or VA account is registered as an investment company, it will be a "separate account" as by Rule 0–1(e) (or any successor rule) under the Act and will be registered as a unit investment trust. For purposes of the Act, the Participating Insurance Company that establishes such a registered VLI account or VA account is the depositor and sponsor of the account as those terms have been interpreted by the Commission with respect to variable life insurance and variable annuity separate accounts.

4. The Existing Funds and Future Funds will only sell their shares to registered VLI accounts and registered VA accounts if each Participating Insurance Company sponsoring such a VLI account or VA account enters into a participation agreement with the Fund. The participation agreements will define the relationship between each Existing or Future Fund and each Participating Insurance Company and will memorialize, among other matters, the fact that, except where the agreement specifically provides otherwise, the participating insurance company will remain responsible for establishing and maintaining any VLI account or VA account covered by the agreement and for complying with all applicable requirements of state and federal law pertaining to such accounts and to the sale and distribution of variable contracts issued through such accounts. The participation agreements also will memorialize, among other matters, the fact that, with regard to compliance with federal securities laws, unless the agreement specifically states otherwise, the Existing or Future Fund's obligations relate solely to offering and selling its shares to VLI accounts and VA accounts covered.

5. The use of a common management investment company (or investment portfolio thereof) as an investment medium for both VLI accounts and VA accounts of the same insurance company, or of two or more insurance companies that are affiliated persons of each other, is referred to herein as "mixed funding." The use of a common management investment company (or investment portfolio thereof) as an investment medium for VLI accounts and/or VA accounts of two or more insurance companies that are not affiliated persons of each other, is referred to herein as "shared funding."

6. Applicants propose that each Existing Fund and any Future Fund may offer and sell its shares directly to Qualified Plans. Changes in the federal tax law have created the opportunity for each Existing Fund and any Future Fund to substantially increase its net assets by selling shares to Qualified Plans. Most of the plans will be pension or retirement plans intended to qualify under sections 401(a) and 501(a) of the Code. Many of the plans will include a cash or deferred arrangement (permitting salary reduction contributions) intended to qualify under section 401(k) of the Code. The plans that qualify under sections 401(a) and 501(a) will also be subject to, and will be designed to comply with, the provisions of the Employee Retirement Income Security Act of 1974 ("ERISA") applicable to either defined benefit or to defined contribution profit-sharing plans, specifically "Title I—Protection of Employee Benefit Rights." These plans therefore will be subject to regulatory provisions under the Code and ERISA regarding, for example, reporting and disclosure, participation and vesting, funding, fiduciary responsibility, and enforcement. Existing Fund and any Future Fund shares sold to such Qualified Plans would be held by the Trustees of said Plans as required by section 403(a) of ERISA. As noted elsewhere in this Application, pass through voting is generally not required to be provided to participants in Qualified Plans pursuant to ERISA.



7. More particularly, section 817(h) of the Code imposes certain diversification standards on the assets underlying Variable Contracts, such as those in the Existing Funds. The Code provides that Variable Contracts will not be treated as annuity contracts or life insurance contracts, as the case may be, for any period (or any subsequent period) for which the underlying assets are not, in accordance with regulations issued by the Treasury Department, adequately diversified. On March 3, 1989, the Treasury Department issued regulations (Treas. Reg. 1.817–5) which established specific diversification requirements for investment portfolios underlying Variable Contracts. The regulations generally provide that, in order to meet these diversification requirements, all of the beneficial interests in the investment company must be held by the segregated asset accounts of one or more life insurance companies. Notwithstanding this, the regulations also contain an exception to this requirement that permits trustees of a qualified pension or retirement plan to hold shares of an investment company, the shares of which are also held by insurance company segregated asset accounts, without adversely affecting the status of the investment company as an adequately diversified underlying investment for Variable Contracts issued through such segregated asset accounts (Treas. Reg. 1.817–5(f)(3)(iii)).

8. As a result of this exception to the general diversification requirement, qualified pension and retirement plans may select the Existing Funds as investment options without endangering the tax status of Variable Contracts issued through Participating Separate Accounts as life insurance or annuities, respectively. The use of a common management investment company (or investment portfolio thereof) as an investment medium for VLI accounts, VA accounts and Qualified Plans, is referred to herein as "extended mixed and shared funding."

**Applicants' Legal Analysis**

1. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered under the Act as a unit investment trust, Rule 6e–2(b)(15) under the Act provides partial exemptions from sections 9(a), 13(a), 15(a), and 15(b) of the Act. Section 9(a) of the Act provides that it is unlawful for any company to serve as an investment adviser or principal underwriter of any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in section 9(a)(1) or (2). Rules 6e–2(b)(15)(i) and (ii) provide partial exemptions from section 9(a) of the Act, the Rule 6e–2(b)(15)(iii) provides a partial exemption from sections 13(a), 15(a), and 15(b) of the Act to the extent those sections have been deemed by the Commission to require "pass-through" voting with respect to an underlying fund's shares.

2. The exemptions granted to a registered VLI account by Rule 6e–2(b)(15) are available only where all of the assets of the separate account consist of the shares of one or more registered management investment companies which offer their shares "*exclusively* to variable life insurance separate accounts of the life insurer, or of any affiliated life insurance company" (emphasis supplied), and then, only where *scheduled* premium variable life insurance contracts are issued through such VLI accounts. Therefore, the relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium VLI account that owns shares of a management company that also offers its shares to a VA account of the same insurance company or any other insurance company. Likewise, the relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium VLI account that owns shares of a management company that also offers its shares to a VLI account of the same insurance company or any other insurance company that issues flexible premium variable life insurance contracts.

3. In addition, the relief granted by Rule 6e–2(b)(15) under the Act is not available with respect to a scheduled premium VLI account that owns shares of an underlying management company that also offers its shares to VLI or VA accounts funding Variable Contracts of one or more unaffiliated life insurance companies. Furthermore, Rule 6e–2(b)(15) does not contemplate that shares of the underlying fund might also be sold to Qualified Plans.

4. In connection with flexible premium variable life insurance contracts issued through a separate account registered under the Act as a unit investment trust, Rule 6e–3(T)(b)(15) under the Act provides partial exemptions from section 9(a), and from sections 13(a), 15(a), and 15(b) of the Act to the extent that those sections have been deemed by the Commission to require "pass-through" voting with respect to an underlying fund's shares. The exemptions granted to a separate account by Rule 6e–3(T)(b)(15) are available only where all of the assets of the separate account consist of the shares of one or more registered management investment companies which offer their shares "*exclusively* to separate accounts of the life insurer, or of any affiliated life insurance company offering either scheduled [premium variable life insurance] contracts or flexible [premium variable life insurance] contracts, or both; or which also offer their shares to VA accounts of the life insurer or of an affiliated life insurance company" (emphasis supplied). Therefore, Rule 6e–3(T) permits mixed funding with respect to a flexible premium VLI account, subject to certain conditions. Rule 6e–3(T), however, does not permit shared funding because the relief granted by Rule 6e–3(T)(b)(15) is not available with respect to a flexible premium VLI account that owns shares of a management company that also offers its shares to separate accounts (including variable annuity and flexible premium and scheduled premium variable life insurance separate accounts) of unaffiliated life insurance companies. Also, Rule 6e–3(T) does not contemplate extended mixed and shared funding.

5. Applicants maintain, as discussed below, that there is no policy reason for the sale of Existing Fund and Future Fund shares to Qualified Plans to prohibit or otherwise limit a Participating Insurance Company from relying on the relief provided by Rules 6e–2(b)(15) and 6e–3(T)(b)(15).

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Notwithstanding, Rule 6e–2 and Rule 6e–3(T) each specifically provides that the relief granted thereunder is available only where shares of the underlying fund are offered *exclusively* to insurance company separate accounts. In this regard, Applicants request exemptive relief to the extent necessary to permit shares of the Existing Funds and Future Funds to be sold to Qualified Plans while allowing Participating Insurance Companies and their Participating Separate Accounts to enjoy the benefits of the relief granted in Rules 6e–2(b)(15) and 6e–3(T)(b)(15).

6. Applicants note that if the Existing Funds and Future Funds were to sell their shares only to Qualified Plans, exemptive relief under Rule 6e–2 and Rule 6e–3(T) would not be necessary. The relief provided for under Rule 6e–2(b)(15) and Rule 6e–3(T)(b)(15) does not relate to qualified pension and retirement plans or to a registered investment company's ability to sell its shares to such plans. Applicants also note that the promulgation of Rules 6e–2(b)(15) and 6e–3(T)(b)(15) preceded the issuance of the Treasury Regulations which made it possible for shares of an investment company to be held by the trustee of a qualified pension and retirement plan without adversely affecting the ability of shares in the same investment company to also be held by the separate accounts of insurance companies in connection with their variable contracts. Thus, the sale of shares of the same investment company to both separate accounts and Qualified Plans was not contemplated at the time of the adoption of Rules 6e–2(b)(15) and 6e–3(T)(b)(15).

7. Applicants are not aware of any reason for excluding separate accounts and investment companies engaged in shared funding from the exemptive relief provided under Rules 6e–2(b)(15) and 6e–3(T)(b)(15) or for excluding separate accounts and investment companies engaged in mixed funding from the exemptive relief provided under Rule 6e–2(b)(15). Similarly, Applicants are not aware of any reason for excluding Participating Insurance Companies from the exemptive relief requested because the Existing Funds and Future Funds may also sell their shares to qualified pension and retirement plans. Rather, Applicants assert that the proposed sale of shares of the Existing Funds and Future Funds to Qualified Plans, in fact, may allow for the development of larger pools of assets resulting in the potential for greater investment and diversification opportunities, and for decreased expenses at higher asset levels resulting in greater cost efficiencies.

8. Applicants recognize that the reason the Commission did not grant more extensive relief in the area of mixed and shared funding when it adopted Rule 6e–3(T) is because of the Commission's uncertainty in this area with respect to such issues as conflicts of interest. Applicants believe that Commission concern is not warranted in the context of permitting Qualified Plans to invest in the Existing Funds or Future Funds. Applicants have concluded that the addition of Qualified Plans as eligible shareholders should not increase the risk of material irreconcilable conflicts among shareholders. (See "Lack of Conflicts—Qualified Plans," below.) Even if a material irreconcilable conflict involving Qualified Plans arose, the trustees of (or participants in) the Qualified Plans could simply redeem their shares and make alternative investments.

9. Consistent with the Commission's authority under Section 6(c) of the Act to grant exemptive orders to a class or classes of persons and transactions, Applicants request relief for the class consisting of Participating Insurance Companies and their separate accounts investing in the Existing Funds and Future Funds as well as their principal underwriters that currently invest or in the future will invest in the Existing Funds and Future Funds.

10. There is ample precedent, in a variety of contexts, for granting exemptive relief not only to the applicants in a given case, but also to members of the class not currently identified that may be similarly situated in the future. Such class relief has been granted in various contexts and from a wide variety of the Act's provisions, including class exemptions in the context of mixed and shared funding. Such class exemptions have included, among other things, exemptions permitting the sale of shares by unnamed underlying funds to Participating Separate Accounts and Qualified Plans.

11. The Commission has previously granted exemptive orders permitting open-end management investment companies to offer their shares directly to qualified Plans in addition to offering their shares to separate accounts of affiliated or unaffiliated insurance companies which issue either or both variable annuity contracts or variable life insurance contracts. The Order sought in this Application is identical to these precedents with respect to the conditions Applicants proposed to be imposed on Participating Separate Accounts and Qualified Plans in connection with investment in the Funds. The Commission has also granted exemptions similar to those requested herein where a fund's shares would not be sold directly to Qualified Plans. Applicants believe that the same policies and considerations that led the Commission to grant such exemption to other applicants are present here.

12. Section 9(a) of the Act provides that it is unlawful for any company to serve as investment adviser or principal underwriter of any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in section 9(a)(1) or (2). Rules 6e–2(b)(15)(i) and (ii) and Rule 6e–3(T)(b)(15)(i) and (ii) under the Act provide exemptions from section 9(a) under certain circumstances, subject to limitations on mixed and shared funding. These exemptions limit the application of the eligibility restrictions to affiliated individuals or companies that directly participate in the management of the underlying management company.

13. Rules 6e–2(b)(15)(i) and 6e–3(T)(b)(15)(i) under the Act provide, in effect, that the fact that an individual disqualified under section 9(a)(1) or (2) of the Act is an officer, director, or employee of an insurance company, or any of its affiliates, would not, by virtue of section 9(a)(3) of the act, disqualify the insurance company or any of its affiliates from sserving in any capacity with respect to an underlying investment company, provided that the disqualified individual did not participate directly in the management or administration of the underlying investment company. Similarly, Rules 6e–2(b)(15)(ii) and 6e–3(T)(b)(15)(ii) under the Act provide, in effect, that the fact that any company disqualified under section 9(a)(1) or (2) of the Act is affiliated with the insurance company would not, by virtue of section 9(a)(3) of the Act, disqualify the insurance company from serving in any capacity with respect to an underlying investment company, provided that the disqualified company did not participate directly in the management or administration of the investment company.

14. The partial relief granted in Rules 6e–2(b)(15) and 6(e)–3(T)(b)(15) under the Act from requirements of Section 9 of the Act limits, in effect, the amount of monitoring of an insurer's personnel that would otherwise be necessary to ensure compliance with section 9. Those Rules recognize that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the Act to apply the provisions of section 9(a) to the many individuals involved in an insurance company complex, most of whom typically will have no involvement in matters pertaining to investment companies funding the separate accounts. Those Rules further recognize that it also is unnecessary to apply section 9(a) of the Act to individuals in various unaffiliated insurance companies (or affiliated companies of Participating Insurance Companies) that may utilize a Fund as the funding medium for Variable Contracts. There is no regulatory purpose in extending the section 9(a) monitoring requirements because of mixed or shared funding. Neither the Participating Insurance Companies) that may utilize a Fund as the funding medium for Variable Contracts. There is no regulatory purpose in extending the section 9(a) monitoring requirements because of mixed or shared funding. Neither the Participating Insurance Companies nor the Qualified Plans are expected to play any role in the management or administration of the Existing Funds or the Future Funds.

15. Those individuals who participate in the management or administration of the Existing Funds and the Future Funds will remain the same regardless of which Separate Accounts, insurance companies or Qualified Plans use such Funds. Applying the requirements of Section 9(a) of the Act because of investment by the separate accounts of other insurers and Qualified Plans would be unjustified and would not serve any regulatory purpose. Furthermore, the increased monitoring costs would reduce the net rates of return realized by contractowners. Moreover, in the case of Qualified Plans, the Plans, unlike the separate accounts, are not themselves investment companies, and therefore are not subject to section 9 of the Act. Furthermore, it is not anticipated that a Qualified Plan would be an affiliated person of an Existing Fund or any Future Fund except by virtue of its holding 5% or more of a Fund's shares.

16. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) under the Act assume the existence of a pass-through voting requirement with respect to management investment company shares held by a separate account. Pass-through voting privileges will be provided with respect to all variable contractowners so long as the Commission interprets the Act to require pass-through voting privileges for variable contractowners.

17. Rules 6e–2(b)(15)(iii) and Rules 6e–3(T)(15)(iii) provide exemptions from the pass-through voting requirement with respect to several significant matters, assuming the limitations discussed above on mixed and shared funding are observed. Rules 6e–2(b)(15)(iii) and Rules 6e–3(T)(15)(iii)(A) provide that the insurance company may disregard the voting instructions of its contractowners with respect to the investment of an underlying fund, or any contract between a fund and its investment adviser, when required to do so by an insurance regulatory authority (subject to the provisions of paragraphs (b)(5)(i) and (b)(7)(ii)(A) of the Rules.) Rules 6e–2(b)(15)(iii)(B) and Rules 6e–3(T)(b)(15)(iii)(A)(2) provide that the insurance company may disregard the voting instructions of contractowners if the contractowners initiate certain changes in an underlying fund's investment policies, principal underwriter or any investment adviser (provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraphs (b)(5)(ii), (b)(7)(ii)(B), and (b)(7)(ii)(C) of the Rules.)

18. Rules 6e–2 and 6e–3(T) under the Act recognize that a variable life insurance contract, as an insurance contract, has important elements unique to insurance contracts, and is subject to extensive state regulation of insurance. In adopting Rule 6e–2(b)(15)(iii), the Commission recognized that state insurance regulators have authority, pursuant to state insurance laws or regulations, to disapprove or require changes in investment policies, investment advisers, or principal underwriters. The Commission also expressly recognized that state insurance regulators have authority to require an issuer to draw from its general account to cover costs imposed upon the insurer by a change approved by contractowners over the insurer's objection. The Commission, therefore, deemed such exemptions necessary "to assure the solvency of the life insurer and performance of its contractual obligations by enabling an insurance regulatory authority or the life insurer to act when certain proposals reasonably could be expected to increase the risks undertaken by the life insurer." In this respect, Rule 6e–3(T)'s corresponding provisions for flexible premium variable life insurance undoubtedly were adopted in recognition of the same factors.

19. With respect to the Qualified Plans, which are not registered as investment companies under the Act, there is no requirement to pass through voting rights to plan participants. Indeed, to the contrary, applicable law expressly reserves voting rights associated with the assets of most Plans to certain specified persons. Under Section 403(a) of ERISA, shares of a fund sold to a Qualified Plan covered by ERISA must be held by the trustees of the Plan. Section 403(a) also provides that the trustee(s) must have exclusive authority and discretion to manage and control the Plan with two exceptions: (1) When the Plan expressly provides that the trustee(s) are subject to the direction of a named fiduciary who is not a trustee, in which case the trustees are subject to proper directions made in accordance with the terms of the Plan and not contrary to ERISA, and (2) when the authority to manage, acquire or dispose of assets of the Plan is delegated to one or more investment managers pursuant to section 402(c)(3) of ERISA. Unless one of the above two exceptions stated in section 403(a) applies, Plan trustees have the exclusive authority and responsibility for voting proxies. Where a named fiduciary to an ERISA covered Qualified Plan appoints an investment manager, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is reserved to the trustees or the named fiduciary. The Qualified Plans may have their trustee(s) or other fiduciaries exercise voting rights attributable to investment securities held by the Qualified Plans in their discretion. Some of the ERISA covered Qualified Plans, however, may provide for the trustee(s), an investment adviser (or advisers) or another named fiduciary to exercise voting rights in accordance with instructions from participants.

20. Where a Qualified Plan does not provide participants with the right to give voting instructions, Applicants do not see any potential for material irreconcilable conflicts of interest between or among variable contract holders and Plan investors with respect to voting of the respective Fund's shares. Accordingly, unlike the case with insurance company separate accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with respect to such Qualified Plans since the Qualified Plans are not entitled to pass-through voting privileges.

21. Even if a Qualified Plan were to hold a controlling interest in an Existing Fund or a Future Fund, Applicants do not believe that such control would disadvantage other investors in such Fund to any greater extent than is the case when any institutional shareholder holds a majority of the voting securities of any open-end management investment company. In this regard, Applicants submit that investment in an Existing Fund or a Future Fund by a Plan will not create any of the voting complications occasioned by mixed

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funding or shared funding. Unlike mixed or shared funding, Plan investor voting rights cannot be frustrated by veto rights of insurers or state regulators.

22. Some of the Qualified Plans, however, may provide for the trustee(s), an investment adviser (or advisers) or another named fiduciary to exercise voting rights in accordance with instructions from participants. Where a Qualified Plan provides participants with the right to give voting instructions, Applicants see no reason to believe that participants in Qualified Plans generally or those in a particular Qualified Plan, either as a single group or in combination with participants in other Qualified Plans, would vote in a manner that would disadvantage Variable Contract holders. In sum, the purchase of shares of the Existing Funds or Future Funds by Qualified Plans that provide voting rights does not present any complications not otherwise occasioned by mixed or shared funding.

23. The prohibitions on mixed and shared funding might reflect some concern with possible divergent interests among different classes of investors. When Rule 6e–2 under the Act was adopted, variable annuity separate accounts could invest in mutual funds whose shares also were offered to the general public. Therefore, at the time of the adoption of Rule 6e–2, the Commission staff contemplated underlying funds with public shareholders and with variable life insurance separate account shareholders. The Commission staff may have been concerned with the potentially different investment motivations of public shareholders and variable life insurance contractowners. There also may have been some concern with respect to the problems of permitting a state insurance regulatory authority to affect the operations of a publicly-available mutual fund and to affect the investment decisions of public shareholders.

24. However, for reasons unrelated to the Act, IRS Revenue Ruling 81–225 (September 25, 1981) effectively deprived most variable annuities funded by publicly available mutual funds of their tax-benefited status. The Tax Reform Act of 1984 codified the prohibition against the use of publicly available mutual funds as an investment medium for most variable contracts (including variable life contracts) in new section 817(h). Section 817(h) of the Code, in effect, requires that the investments made by variable annuity and variable life insurance separate accounts be "adequately diversified." If a separate account is organized as a unit investment trust that invests in a single fund or series, the separate account will not be diversified. In this situation, however, section 817(h) of the Code provides, in effect, that the diversification test will be applied at the underlying fund level, rather than at the separate account level, but only if "all of the beneficial interests" in the underlying fund "are held by one or more insurance companies (or affiliated companies) in their general account or in segregated asset accounts * * *." Accordingly, a unit investment trust separate account that invests solely in a publicly-available mutual fund will generally not be adequately diversified. In addition, any underlying mutual fund, including the Funds, that sells shares to separate accounts, in effect, would be precluded from selling its shares to the public. Consequently, there will be no public shareholders of the Existing Funds or the Future Funds.

25. Shared funding by unaffiliated insurance companies does not present any issues that do not already exist where a single insurance company is licensed to do business in several or all states. Where insurers are domiciled in different states, it is possible that the particular state insurance regulatory body in a state in which one insurance company is domiciled could require action that is inconsistent with the requirements of insurance regulators of other states in which other insurance companies are domiciled. The fact that a single insurer and its affiliates offer their insurance products in different states does not create a significantly different or enlarged problem.

26. Shared funding by unaffiliated insurers is, in this respect, no different than the use of the same investment company as the funding vehicle for affiliated insurers, which Rules 6e–e(b)(15) and 6e–33(T)(b)(15) permit under various circumstances. Affiliated insurers may be domiciled in different states and be subject to differing state law requirements. Affiliation does not reduce the potential, if any exists, for differences in state regulatory requirements. In any event, the conditions set forth below are designed to safeguard against, and provide procedures for resolving, any adverse effects that differences among state regulatory requirements may produce. For instance, if a particular state insurance regulator's decision conflicts with the majority of other state regulators, the affected insurer will be required to withdraw its participating Separate Account's investment in the relevant Fund.

27. The right of an insurance company under Rules 6e–2(b)(15) and 6e–3(T)(b)(15) under the Act to disregard contractowners' voting instructions does not raise any issues different from those raised by the authority of state insurance administrators over separate accounts. Under Rules 6e–2(b)(15) and 6e–3(T)(b)(15), an insurer can disregard contractowner voting instructions only with respect to certain specified items. Affiliation does not eliminate the potential, if any exists, for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter, or investment adviser initiated by contractowners. The potential for disagreement is limited by the requirements in Rules 6e–2 and 6e–3(T) under the Act that the insurance company's disregard of voting instructions be reasonable and based on specific good-faith determinations.

28. However, a particular insurer's disregard of voting instructions, nevertheless, could conflict with the majority of contractowner voting instructions. The insurer's action could arguably be different from the determination of all or some of the other insurers (including affiliated insurers) that the contractholders' voting instructions should prevail, and could either preclude a majority vote approving the change or represent a minority view. If the insurer's judgment represents a minority position or would preclude a majority vote, the insurer may be required, at the election of the relevant Fund, to withdraw the Participating Separate Account's investment in such Fund, and no charge or penalty would be imposed as a result of such withdrawal. There is no reason why the investment policies of the Existing Funds or any Future Fund would or should be materially different from what these policies would or should be if it funded only variable annuity contracts or variable life insurance policies, whether flexible premium or scheduled premium policies. Each type of insurance product is designed as a long-term investment program.

29. Neither the Existing Funds nor any Future Fund will be managed to favor or disfavor any particular Participating Insurance Company or type of Variable Contract. There is no reason to believe that different features of various types of contracts, including the "minimum death benefit" guarantee under certain variable life insurance contracts, will lead to different investment policies for different types of variable contracts. To the extent that the degree of risk may differ as between variable annuity contracts and variable life insurance policies, the different insurance charges imposed, in effect, adjust any such differences and equalize the insurers' exposure in either case. No one investment strategy can be identified as appropriate to a particular insurance product. Each pool of variable annuity and variable life insurance contractowners is composed of individuals of diverse financial status, age, insurance and investment goals. A fund supporting even one type of insurance product must accommodate those factors in order to attract and retain purchasers. Permitting mixed and shared funding will provide economic justification for the continuation of the Existing Funds and any Future Fund. Also, permitting mixed and shared funding will facilitate the establishment of additional Future Funds serving diverse goals. The broader base of contractowners can be expected to provide economic justification for the creation of additional portfolios with a greater variety of investment objectives and policies.



30. Applicants do not believe that the sale of the shares of the Existing funds and Future Funds to Qualified Plans will increase the potential for material irreconcilable conflicts of interest between or among different types of investors. In particular, Applicants see very little potential for such conflicts beyond that which would otherwise exist between variable annuity and variable life insurance contractowners. Moreover, in considering the appropriateness of the requested relief, Applicants have analyzed the following issues to assure themselves that there were either no conflicts of interest or that there existed the ability by the affected parties to resolve the issues without harm to the contractowners in the Participating Separate Accounts or to the participants under the Qualified Plans.

31. Applicants considered whether there are any issues raised under the Code or the Treasury Regulations or Revenue Rulings thereunder it Qualified Plans, VA accounts and VLI accounts all invest in the same underlying fund. As noted above, Section 817(h) of the Code imposes certain diversification standards on the underlying assets of variable contracts held in an underlying mutual fund. The Code provides that a variable contract shall not be treated as an annuity contract or life insurance, as applicable, for any period (and any subsequent period) for which the investments are not, in accordance with regulations prescribed by the Treasury Department, adequately diversified.

32. Treasury Department Regulations issued under section 817(h) provide that, in order to meet the statutory diversification requirements, all of the beneficial interests in the investment company must be held by the segregated asset accounts of one or more insurance companies. However, the Regulations contain certain exceptions to this requirement, one of which allows shares in an underlying mutual fund to be held by the trustees of a qualified pension or retirement plan without adversely affecting the ability of shares in the underlying fund also to be held by separate account of insurance companies in connection with their variable contracts. (Treas. Reg. 1.817–5(f)(3)(iii). Thus, Treasury Regulations specifically permit "qualified pension or retirement plans" and separate accounts to invest in the same underlying fund. For this reason, Applicants have concluded that neither the Code, nor the Treasury Regulations or Revenue Rulings thereunder, present any inherent conflicts of interest.

33. Applicants note that while there are differences in the manner in which distributions from Variable Contracts and Qualified Plans are taxed, these differences will have no impact on the Existing Funds and Future Funds. When distributions are to be made, and a Separate Account or Qualified Plan is unable to net purchase payments to make the distributions, the Separate Account and Qualified Plan will redeem shares of the Existing Funds and the Future Funds at their respective net asset value in conformity with Rule 22c–1 under the Act (without the imposition of any sales charges) to provide proceeds to meet distribution needs. A Qualified Plan will make distributions in accordance with the terms of the Plan. Moreover, there is analogous precedent for a situation in which the same funding vehicle was used for contractowners subject to different tax rules, without any apparent conflicts. Prior to the Tax Reform Act of 1984, a number of insurance companies offered variable annuity contracts on both a qualified and non-qualified basis through the same separate account. Underlying reserves of both qualified and non-qualified contracts therefore were commingled in the same separate account. However, long-term capital gains incurred in such separate accounts were taxed on a different basis than short-terms gains and other income with respect to the reserves underlying non-qualified contracts. A tax reserve at the estimated tax rate was established in the separate account affecting only the non-qualified reserves. To the best of Applicants' knowledge, that practice was never found to have violated any fiduciary standards. Accordingly, Applicants have concluded that the tax consequences of distributions with respect to Participating Separate Accounts and Qualified Plans do not raise any material irreconcilable conflicts of interest with respect to the use of an Existing Fund or any Future Fund.

34. Applicants considered whether it is possible to provide an equitable means of giving voting rights to Participating Separate Account contractowners and to Qualified Plans, and determined it is possible, as indicated below. In connection with any meeting of shareholders, the Existing Funds and Future Funds will inform each shareholder, including each Participating Insurance Company and Qualified Plan, of information necessary for the meeting, including their respective share of ownership in the relevant Fund. Each Participating Insurance Company will then solicit voting instructions in accordance with Rules 6e–2 and 6e–3(T), as applicable, and its participation agreement with the relevant Fund. Shares held by Qualified Plans will be voted in accordance with applicable law. The voting rights provided to Qualified Plans with respect to shares of the Existing Funds and Future Funds would be no different from voting rights that are provided to Qualified Plans with respect to shares of funds sold to the general public.

35. Applicants also considered whether there are any conflicts between the contractowners of the Participating Separate Accounts and Qualified Plan participants with respect to the state insurance commissioners' veto powers over investment objectives. Applicants note that the basic premise of corporate democracy and shareholder voting is that not all shareholders may agree with a particular proposal. Although the interests and opinions of shareholders may differ, this does not mean that inherent conflicts of interest exist between or among shareholders. State insurance commissioners have been given the veto power in recognition of the fact that insurance companies usually cannot simply redeem their separate accounts out of one fund and invest in another. Generally, time-consuming, complex transactions must be undertaken to accomplish such redemptions and transfers. Conversely, the trustees of Qualified Plans or the participants in participant-directed Qualified Plans can make the decision quickly and redeem their interest in the Existing Funds and Future Funds and reinvest in another funding vehicle without the same regulatory impediments faced by separate accounts

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or, as is the case with most Qualified Plans, even hold cash pending suitable investment.

36. Based on the foregoing, Applicants have concluded that even if there should rise issues where the interests of contractowners and the interests of Qualified Plans are in conflict, the issues can be almost immediately resolved since the trustees of (or participants in) the Qualified Plans can, on their own, redeem the shares out of the Existing Funds and Future Funds.

37. Finally, Applicants considered whether there is a potential for future conflicts of interest between Participating Separate Accounts and Qualified Plans created by future changes in the tax laws. Applicants do not see any greater potential for material irreconcilable conflicts arising between the interests of participants under Qualified Plans and contractowners of Participating Separate Accounts from possible future changes in the federal tax laws than that which already exist between variable annuity contractowners and variable life insurance contractowners.

38. Applicants recognize that the foregoing is not an all inclusive list but rather is representative of issues which they believe are relevant to this Application. Applicants believe that the discussion contained herein demonstrates that the sale of shares of the Existing Funds and Future Funds to Qualified Plans does not increase the risk of material irreconcilable conflicts of interest. Further, Applicants submit that the use of the Existing Funds and Future Funds with respect to Qualified Plans is not substantially dissimilar from the Funds' current use, in that Qualified Plans, like Variable Contracts, are generally long-term retirement vehicles.

39. Applicants note that when the Commission last revised Rule 6e–3(T) in 1987, the Treasury Department had not issued the current regulations (Treas. Reg. 1.817–5) which currently make it possible for shares of the Existing Funds and Future Funds to be sold to Qualified Plans without adversely affecting the tax status of the insurer's Variable Contracts. Applicants submit that, although proposed regulations had been published, the commission did not envision this possibility when it last examined (b)(15) of rule 6e–3(T) and might well have broadened the exclusivity provision of that paragraph at that time to include Qualified Plans had this possibility been apparent.

40. Various factors have limited the number of insurance companies that offer variable annuities and variable life insurance contracts. These factors include the costs of organizing and operating a fund medium, the lack of expertise with respect to investment management (principally with respect to stock and money market investments), and the lack of name recognition by the public of certain insurers as investment experts with whom the public feels comfortable entrusting their investment dollars. For example, some smaller life insurance companies may not find it economically feasible, or within their investment or administrative expertise, to enter the Variable Contract business on their own.

41. Use of the Existing Funds and Future Funds as common investment vehicles for Variable Contracts would reduce or alleviate the above-mentioned concerns. Mixed and shared funding, including extended mixed and shared funding, also should provide several benefits to variable contractowners by eliminating a significant portion of the costs of establishing and administering separate funds. Participating Insurance Companies will benefit not only from the investment and administrative expertise of the Existing Funds' and Future Funds' investment adviser, but also from the cost efficiencies and investment flexibility afforded by a large pool of funds. Therefore, making the Existing Funds and Future Funds available for mixed and shared funding and extended mixed and shared funding will encourage more insurance companies to offer variable contracts, and this should result in increased competition with respect to both variable contract design and pricing, which can be expected to result in more product variation and lower charges.

42. Mixed and shared funding and extended mixed and shared funding benefits variable contractowners by eliminating a significant portion of the costs of establishing and administering separate funds. Applicants also assert that the sale of shares of the Existing Funds and Future Funds to Qualified Plans in addition to Separate Accounts of Participating Insurance Companies will result in an increased amount of assets available for investment by such Funds. This may benefit variable contractowners through greater diversification, and by making the addition of new portfolios more feasible.

43. Applicants assert that, regardless of the type of shareholder in an Existing Fund or any Future Fund, the investment adviser is or would be contractually obligated to manage such Existing Fund or Future Fund solely and exclusively in accordance with that Fund's investment objectives, policies and restrictions as well as any guidelines established by the Board. The investment adviser works with a pool of money and does not take into account the identity of the shareholders. Thus, the Existing Funds are and any Future Fund will be managed in the same manner as any other mutual fund.

44. Applicants see no significant legal impediment to permitting mixed and shared funding and extended mixed and shared funding. Separate accounts organized as unit investment trusts historically have been employed to accumulate shares of mutual funds which have not been affiliated with the depositor or sponsor of the separate account and Applicants believe, as indicated above, that mixed and shared funding and extended mixed and shared funding will have no adverse federal income tax consequences.

45. Applicants also note that the Commission has issued orders permitting mixed funding and shared funding. Applicant's proposal for mixed and shared funding and extended mixed and shared funding complies with the same conditions consented to by the applicants for such orders. Therefore, granting the exemptions requested herein is in the public interest and, as discussed above, will not compromise the regulatory purposes of sections 9(a), 13(a), 15(a) and 15(b) of the Act or Rules 6e–2 or 6e–3(T) thereunder.

**Applicants' Conditions**

If the requested order is granted, Applicants consent to the following conditions:

1. A majority of the members of the Board of each Existing Fund and Future Fund will consist of persons who are not "interested persons" of such Fund, as defined by section 2(a)(19) of the Act, and the Rules thereunder, as modified by any applicable orders of the Commission, except that if this condition is not met by reason of the death, disqualification or bona-fide resignation of any director or directors, then the operation of this condition will be suspended: (a) For a period of 45 days if the vacancy or vacancies may be filled by the Board; (b) for a period of 60 days if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by order upon application or by future rule.

2. Each Board will monitor its respective Fund for the existence of any material irreconcilable conflict between and among the interests of the contractholders of all Participating Separate Accounts and of participation of Qualified Plans investing in such Fund and determine what action, if any, should be taken in response to such conflicts. A material irreconcilable conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretative letter, or any similar action by insurance, tax or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of such Fund are being managed; (e) a difference in voting instructions given by variable annuity contractowners, variable life insurance contractowners and trustees of the Plans; (f) a decision by a Participating Insurance Company to disregard the voting instructions of contractowners; or (g) if applicable, a decision by a Qualified Plan to disregard the voting instructions of Plan participants.



3. HL Advisors (or any investment adviser to a Fund), and any Participating Insurance Companies and Qualified Plan that executes a participation agreement upon becoming an owner of 10 percent or more of the assets of an Existing Fund or a Future Fund (collectively, "Participants") will report any potential or existing conflicts to the relevant Board. Such Participants will be responsible for assisting the relevant Board in carrying out the Board's responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This includes, but is not limited to, an obligation by each Participating Insurance Company to inform the relevant Board whenever contractowner voting instructions are disregarded, and, if pass-through voting is applicable, an obligation by each Qualified Plan to inform the Board whenever it has determined to disregard Plan participant voting instructions. The responsibility to report such information and conflicts, and to assist the Board, will be contractual obligations of all Participating Insurance Companies under their participation agreements with the Existing Funds and any Future Funds, and these responsibilities will be carried out with a view only to the interests of the contractowners. The responsibility to report such information and conflicts, and to assist the Board, also will be contractual obligations of all Qualified Plans with participation agreements, and such agreements will provide that these responsibilities will be carried out with a view only to the interests of Plan participants.

4. If it is determined by a majority of a Board, or a majority of the disinterested members of such Board, that a material irreconcilable conflict exists, then the relevant Participating Insurance Company or Plan will, at its expense and to the extent reasonably practicable (as determined by a majority of the disinterested members of the Board), take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict, including: (a) Withdrawing the assets allocable to some or all of the Participating Separate Accounts from the relevant Existing Fund or Future Fund and reinvesting such assets in a different investment medium, which may include another such Fund, (b) in the case of Participating Insurance Companies, submitting the question as to whether such segregation should be implemented to a vote of all affected contractowners and, as appropriate, segregating the assets of any appropriate group (*i.e.*, annuity contractowners or life insurance contractholders of one or more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected contractowners the option of making such a change; and (c) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a decision by a Participating Insurance Company to disregard contractowner voting instructions, and that decision represents a minority position or would preclude a majority vote, then the Participating Insurance Company may be required, at the election of the relevant Existing Fund or Future Fund, to withdraw such Participating Insurance Company's separate account's investment in such Fund, and no charge or penalty will be imposed as a result of such withdrawal. If a material irreconcilable conflict arises because of a Qualified Plan's decision to disregard Plan participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Plan may be required, at the election of the relevant Existing Fund or Future Fund, to withdraw its investment in such Fund, and no charge or penalty will be imposed as a result of such withdrawal. The responsibility to take remedial action in the event of a Board determination of a material irreconcilable conflict and to bear the cost of such remedial action will be a contractual obligation of all Participants under their agreements governing participation in the relevant Existing Fund or Future Fund and this responsibility, in the case of Participating Insurance Companies, will be carried out with a view only to the interests of contractowners and in the case of Qualified Plans, will be carried out with a view only to the interest of Plan participants.

For purposes of this Condition 4, a majority of the disinterested members of a Board will determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but, in no event, will any Existing Fund, any Future Fund or HL Advisors (or any other investment adviser to a Fund), as relevant, be required to establish a new funding medium for any Variable Contract. No Participating Insurance Company will be required by this Condition 4 to establish a new funding medium for any Variable Contracts if an offer to do so has been declined by the vote of a majority of the contractowners materially and adversely affected by the material irreconcilable conflict. Further, no Qualified Plan will be required by this Condition 4 to establish a new funding medium for the Plan if (a) a majority of the Plan participants materially and adversely affected by the irreconcilable material conflict vote to decline such offer, or (b) pursuant to documents governing the Qualified Plan, the Plan makes each decision without a Plan participant vote.

5. A Board's determination of the existence of a material irreconcilable conflict and its implications will be made known in writing promptly to all Participants.

6. Participating Insurance Companies will provide pass-through voting privileges to all variable contractowners so long as the Commission continues to interpret the Act as requiring such pass-through voting privileges. Accordingly, such Participating Insurance Companies, where applicable, will vote shares of the applicable Fund held in its Participating Separate Accounts in a manner consistent with voting instructions timely received from contractowners. Participating Insurance Companies will be responsible for assuring that each Participating Separate Account investing in an Existing Fund or Future Fund calculates voting privileges in a manner consistent with other Participating Insurance Companies. The obligation to vote a Fund's shares and calculate voting privileges in a manner consistent with all other Participating Separate Accounts in the Fund will be a contractual obligation of all Participating Insurance Companies under their agreements governing their

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participation in an Existing Fund or Future Fund. Each Participating Insurance Company will vote shares for which it has not received timely voting instructions as well as shares attributable to it in the same proportion as it votes those shares for which it has received voting instructions. Each Qualified Plan will vote as required by applicable law and governing Plan documents.

7. As long as the Commission continues to interpret the Act as requiring pass-through voting privileges to be provided to variable contractowners, HL Advisors or any of its affiliates will vote its shares of any Existing Fund or Future Fund in the same proportion of all variable contract owners having voting rights with respect to the relevant Fund.

8. Each Existing Fund and Future Fund will comply with all provisions of the Act requiring voting by shareholders (including persons who have a voting interest in the shares of the Existing Funds and any Future Fund), and, in particular, each such Fund will either provide for annual meetings (except to the extent that the Commission may interpret section 16 of the Act not to require such meetings) or comply with section 16(c) of the Act (although the Existing Funds and Future Funds are not, or will not be, the type of trust described in section 16(c) of the Act), as well as with section 16(a) of the Act and, if and when applicable, section 16(b) of the Act. Further, each such Fund will act in accordance with the Commission's interpretation of the requirements of section 16(a) with respect to periodic elections of directors and with whatever rules the Commission may promulgate with respect thereto.

9. Each Existing Fund and Future Fund will notify all Participants that separate account prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate. Each such Fund will disclose in its prospectus that: (a) Shares of such Fund may be offered to insurance company separate accounts of both variable annuity and variable life insurance contracts and to Qualified Plans; (b) due to differences in tax treatment and other considerations, the interests of various contractowners participating in such Fund and the interests of Qualified Plans investing in such Funds may conflict; and (c) such Funds' Board will monitor events in order to identify the existence of any material irreconciliable conflicts and determine what action, if any, should be taken in response to any such conflict.

10. If and to the extent that Rule 6e–2 or Rule 6e–3(T) under the Act are amended, or proposed Rule 6e–3 under the Act is adopted, to provide exemptive relief from any provision of the Act, or the rules promulgated thereunder, with respect to mixed or shared funding, on terms and conditions materially different from any exemptions granted in the Order requested in this Application, then each Existing Fund and each Future Fund and/or the Participants, as appropriate, shall take such steps as may be necessary to comply with Rules 6e–2 or 6e–3(T), as amended, or Rule 6e–3, as adopted, as such rules are applicable.

11. The Participants, at least annually, will submit to the Board of each Existing Fund and any Future Fund such reports, materials, or data as a Board may reasonably request so that the directors of the Board may fully carry out the obligations imposed upon a Board by the conditions contained in this Application, and said reports, materials and data will be submitted more frequently if deemed appropriate by a Board. The obligations of the Participants to provide these reports, materials and data to a Board, when it so reasonably requests, will be a contractual obligation of all Participants under their agreements governing participation in the Existing Funds and Future Funds.

12. All reports of potential or existing conflicts received by a Board, and all Board action with regard to (a) determining the existence of a conflict, (b) notifying Participants of the existence of a conflict and (c) determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the meetings of the relevant Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

13. An Existing Fund and any Future Fund will not accept a purchase order from a Qualified Plan if such purchase would make the Plan shareholder an owner of 10 percent or more of the assets of such Fund unless such Plan executes an agreement with the relevant Fund governing participation in such Fund that includes the conditions set forth herein to the extent applicable. A Qualified Plan will execute an application containing an acknowledgement of this condition at the time of its initial purchase of shares of any such Fund.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–26032 Filed 10–10–00; 8:45 am]

BILLING CODE 8010–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[Rel No. IC–24674; 812–11878]**

## GE Asset Management Incorporated, et al.; Notice of Application

October 3, 2000.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application under section 17(b) of the Investment Company Act of 1940 ("Act") for an exemption from section 17(a) of the Act.

*Summary of Application:* Applicants request an order to permit certain series of GE Institutional Funds (the "Fund") to accept an investment in-kind from certain affiliated investors in exchange for shares of the series.

*Applicants:* GE Asset Management Incorporated (GEAM) and the Fund.

*Filing Dates:* The application was filed on December 10, 1999, and amended on May 3, 2000 and October 3, 2000.

*Hearing or Notification of Hearing:* An order granting the requested relief will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 27, 2000, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, GE Asset Management Incorporated, 777 Long Ridge Road, Stamford, Connecticut 06927.

**FOR FURTHER INFORMATION CONTACT:** Julia Kim Gilmer, Senior Counsel, at (202) 942–0528, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the



application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel: 202–942–8090).

**Applicants' Representations**

1. The Fund is an open-end management investment company organized under the laws of the State of Delaware in 1997 and registered under the Act. The Fund consists of 17 series and is designed primarily for institutional investors.

2. GEAM is an investment adviser registered under the Investment Advisers Act of 1940 and serves as the investment adviser to the Fund. GEAM is a direct wholly-owned subsidiary of General Electric Company ("GE").

3. GE Capital Asset Maintenance Plan Master Trust and Asset Management Plan for GE Affiliated Companies (the "Affiliated Investors") are qualified retirement plans and trusts maintained by GE and its affiliates. The Affiliated Investors currently own more than 5% of certain series of GE Funds ("Redeeming Series"), an open-end management investment company organized under the laws of the Commonwealth of Massachusetts in 1992 and registered under the Act.[1] GE Funds offers shares primarily to retail and smaller institutional investors who generally do not meet the requirements for investment in the Fund. The Affiliated Investors first invested in GE Funds in 1995.

4. Applicants propose that the Affiliated Investors redeem in-kind all of their shares of the Redeeming Series and immediately invest all the proceeds of the redemptions in corresponding series of the Fund ("Fund Series") with substantively the same investment objectives and strategies as the Redeeming Series (the "Purchase").[2] The Purchase will occur as soon as practicable after the relief requested in the application is granted or on November 1, 2000, whichever is later.[3] The securities to be delivered to the Fund in connection with the Purchase will be valued in the same manner as they would be valued for purposes of computing the net asset value for the Fund Series. The Affiliated Investors have determined to redeem their interests in the Redeeming Funds and invest in the corresponding Fund Series to benefit from the lower fund operating expenses of the Fund Series. Applicants state that, since the Affiliated Investors are pension plans, it is expected that they will be long-term investors in the Fund.

**Applicants' Legal Analysis**

1. Section 17(a)(1) of the Act, in pertinent part, prohibits an affiliated person of a registered investment company, or any affiliated person of such person, acting as principal, from selling to or purchasing from such registered investment company, any security or other property.

2. Section 2(a)(3)(C) of the Act defines an "affiliated person" of another person to include any person directly or indirectly controlling, controlled by, or under common control with, such other person, and if the other person is an investment company, any investment adviser of the company. Applicants state that the Affiliated Investors may be deemed to be controlled by or under common control with the Fund's investment adviser by virtue of being a pension plan sponsored by GE or a GE-affiliated entity. The Affiliated Investors, therefore, are affiliated persons of the Fund, and the Purchase may be prohibited by section 17(a) of the Act.

3. Section 17(b) of the Act provides that the SEC shall exempt a transaction from the restrictions of section 17(a) if evidence establishes that the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; the proposed transaction is consistent with the policy of each registered investment company concerned, as recited in its registration statement and reports filed under the Act; and the proposed transaction is consistent with the general purposes of the Act.

4. Applicants submit that the terms of the Purchase satisfy the standards set forth in section 17(b). Applicants state that Fund's board of trustees ("Board"), including all of the non-interested trustees, has determined that the Purchase is in the best interests of the shareholders of the Fund Series. Applicants also state that the Purchase will comply with rule 17a–7(c) and (d) of the Act and the conditions set forth below.

**Applicants' Conditions**

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The securities to be transferred to the Fund Series in the Purchase will be valued in the same manner as they would be valued for purposes of computing the Fund Series' net asset values.

2. At the next regular meeting following the Purchase, the Board, including a majority of the disinterested trustee, will determine (a) whether the securities transferred in the Purchase were valued in accordance with condition 1; and (b) whether the acquisition of the securities was consistent with the policies of the Fund Series as reflected in their registration statements and reports filed under the Act.

3. The Fund will maintain and preserve for a period of not less than six years from the end of the fiscal year in which the Purchase occurs, the first two years in an easily accessible place, a written record of the Purchase setting forth a description of each security transferred, the terms of the transfer, and the information or materials upon which the determinations required by condition 2 were made.

For the SEC, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–26033 Filed 10–10–00; 8:45 am]

BILLING CODE 8010–11–M

## SECURITIES AND EXCHANGE COMMISSION

**[Rel No. IC–24675; 812–12176]**

## Scudder Pathway Series, et al; Notice of Application

October 3, 2000.

**AGENCY:** Securities and Exchange Commission ("SEC" or "Commission").

**ACTION:** Notice of application under section 17(b) of the Investment Company Act of 1940 (the "Act") for an exemption from section 17(a) of the Act.

*Summary of Application:* Applicants request an order to permit Scudder Income Fund ("Income"), a series of Scudder Portfolio Trust (the "Trust"), to acquire substantially all of the assets and all of the liabilities of Scudder Corporate Bond Fund ("Corporate Bond"), also a series of the Trust (the "Reorganization"). Because of certain

[1] As of June 30, 2000, the Affiliated Investors owned 11.27% of the GE Funds International Equity Fund, 7.25% of the GE Funds U.S. Equity Fund, 8.87% of the GE Funds Strategic Investment Fund, and 5.02% of the GE Funds Fixed Income Fund.

[2] The Redeeming Series will rely on and adhere to all of the conditions enumerated in the no-action letter issued by SEC staff to *Signature Financial Group, Inc.* (publicly available Dec. 28, 1999) in connection with the redemptions in-kind of the Affiliated Investors' shares in the Redeeming Series.

[3] The Affiliated Investors will purchase shares of the following Fund Series with the proceeds of their redemptions: GE Institutional International Equity Fund, GE Institutional U.S. Equity Fund, GE Institutional Strategic Investment Fund and GE Institutional Fixed Income Fund.

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affiliations, applicants may not rely on rule 17a–8 under the Act.

*Applicants:* Scudder Pathway Series ("Pathway"), the Trust, and Scudder Kemper Investments, Inc. ("Scudder Kemper").

*Filing Dates:* The application was filed on July 21, 2000 and amended on October 2, 2000.

*Hearing or Notification of Hearing:* An order granting the requested relief will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 26, 2000, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, Two International Place, Boston, Massachusetts, 02110.

**FOR FURTHER INFORMATION CONTACT:** Julia H. Kim, Senior Counsel, at (202) 942–0528, or Janet M. Grossnickle, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

**Applicants' Representation**

1. The Trust, a Massachusetts business trust, is registered under the Act as an open-end management investment company and currently offers four series. Corporate Bond and Income (each a "Fund," and together, the "Funds") are two of the four series of the Trust. Pathway, a Massachusetts business trust registered under the Act as an open-end management investment company, has three series, each of which operates as a fund of funds pursuant to an order from the SEC.[1] One series offered by pathway, the Balanced Portfolio, owns more than 5% of the outstanding voting shares of each of Corporate Bond and Income. Scudder Kemper, a Delaware corporation, is registered as an investment adviser under the Investment Advisers Act of 1940, and serves as the investment adviser to the Funds and Pathway.

2. On February 7, 2000, the board of trustees of the Trust (the "Board"), including the trustees who are not "interested persons,") as defined in section 2(a)(19) of the Act ("Independent Trustees"), unanimously approved an agreement and plan of reorganization (the "Plan") between the Funds. Under the Plan, Income will acquire all or substantially all of the assets and all of the liabilities of Corporate Bond, in exchange for Class S shares of Income (the "Reorganization"). The shareholders of Corporate Bond will receive Class S shares of Income having an aggregate net asset value equal to the aggregate net asset value of Corporate Bond shares held by the shareholders, as determined at the close of business on the business day immediately preceding the day of the closing of the Reorganization ("Closing Date"). The value of the assets of the Funds will be determined in accordance with the valuation procedures described in each Fund's then-current prospectus and statement of additional information. Corporate Bond will distribute Class S shares of Income, pro rata, to Corporate Bond's shareholders and will liquidate. The Closing Date is expected to be at the end of October.

3. Applicants state that the investment objectives and policies of Income and Corporate Bond are substantially similar and that both have identical investment restrictions. No sales charges will be imposed on Corporate Bond shareholders in connection with the Reorganization.

4. The Board, including the Independent Trustees, determined that the Reorganization is in the best interests of each Fund and its shareholders, and that the interests of the existing shareholders of each Fund would not be diluted by the Reorganization. In assessing the Reorganization, the Board considers various factors, including: (a) The fee and expense ratios of the Funds; (b) the terms and conditions of the Reorganization; (c) compatibility of each Fund's investment objectives, policies, and restrictions; (d) Scudder Kemper's agreement to provide administrative services at a fixed rate for an initial three-year term; (e) the services available to the shareholders of the Funds; (f) the costs of the Reorganization; (g) the prospects for Income to attract additional assets; (h) the tax consequences of the Reorganization; and (i) the investment performances of the Funds. Scudder Kemper will bear Corporate Bond's costs associated with the Reorganization. Income will bear up to $450,559 for its share of Reorganization costs, with Scudder Kemper paying any Reorganization costs allocated to Income in excess of $450,559.

5. The Reorganization is subject to a number of conditions, including that: (a) The Plan is approved by the shareholders of Corporate Bond; (b) the Funds receive an opinion of counsel that all regulatory consents, authorizations, approvals or filings have been obtained or made; (c) all consents of other parties have been obtained; (d) that all representations and warranties of the Trust on behalf of each Fund in the Plan be true and correct in all material respects; (e) Income adopt a new investment management agreement and enter into an administrative services agreement with Scudder Kemper, each in a form reasonably satisfactory to Corporate Bond; and (f) the Funds receive an opinion from counsel that the Reorganization will be tax-free. Either Fund may terminate the Plan upon a material breach of the Plan by the other or if any condition set forth in the Plan has not been fulfilled or waived by the party entitled to its benefits. Applicants agree not to make any material changes to the Plan without prior Commission approval.

6. A registration statement on Form N–14 containing a combined prospectus/proxy statement was filed with the Commission on March 3, 2000 and became effective on April 7, 2000. Proxy solicitation materials were mailed to Corporate Bond shareholders on or about April 18, 2000, and definitive proxy materials were filed with the Commission on April 25, 2000. The shareholders of Corporate Bond approved the Plan at a special meeting held on July 13, 2000.

**Applicants' Legal Analysis**

1. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of that person, acting as principal, from selling any security to, or purchase any security from, that company. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include (a) any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose outstanding voting securities are directly owned a connelled or held with power to vote by the other person; (c) any person directly or indirectly controlling, controlled by or under common control with the other person; and (d) if the other person is an investment company, any investment adviser of that company.

[1] *Scrudder Global Fund, Inc.*, Investment Company Act Rels. No. 222104 (July 26, 1996) (notice) and 22168 (August 23, 1996) (order).



2. Rule 17a–8 under the Act generally exempts from the prohibitions of section 17(a) mergers, consolidations, or purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers, provided that certain conditions set forth in the rule are satisfied. Applicants believe that they may not be able to rely on rule 17a–8 in connection with the Reorganization because the Funds may be deemed to be affiliated by reasons other than those set forth in the rule. Applicants state that the Balanced Portfolio of Pathway owns more than 5% of the outstanding voting securities of each of the Funds and did not use mirror or pass-through voting when it voted its Corporate Bond shares in favor of the Reorganization.

3. Section 17(b) of the Act provides, in relevant part, that the Commission may exempt a transaction from the provisions of section 17(a) if the evidence establishes that the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

4. Applicants request an order under section 17(b) of the Act exempting them from section 17(a) to the extent necessary to consummate the Reorganization. Applicants submit that the Reorganization satisfies the standards of section 17(b) of the Act. Applicants also state that the Board, including the Independent Trustees, determined that the participation of each Fund in the Reorganization is in the best interests of each Fund and its shareholders and that such participation will not dilute the interests of shareholders of each Fund. Applicants further state that the terms of the Reorganization are fair and reasonable and do not involve overreaching. Ina ddition, applicanats state that the Reorganization will be based on the Funds' relative net asset values.

For the Commission, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–26034 Filed 10–10–00; 8:45 am]

**BILLING CODE 8010–01–M**

## SMALL BUSINESS ADMINISTRATION

### Announcement of SBA Export Express—a New Pilot Loan Guaranty Program for Exporters

Department of Commerce statistics indicate that small businesses with fewer than 20 employees represent approximately 65 percent of all exporters in the U.S. The SBA recognizes that many of these exporters have financing needs that are too small to be met profitably by traditional lending sources. SBA is mandated under the Small Business Act to increase the access of small businesses to capital for the purpose of fostering international trade. To that end, the Agency has developed a pilot loan guaranty program called SBA Export Express. This pilot will streamline the processing of small export loans by allowing a lender to use its own documents based on its use of established and proven credit review and analysis procedures for loans of similar size and type. SBA Export Express is a sub-program of SBAExpress, conforming to its already established policies and procedures. Its difference from SBAExpress lies in its exclusive focus on existing and potential small business exporters.

To be eligible for this pilot loan guaranty program, an applicant must demonstrate that loan proceeds will enable their company to enter a new export market or expand an existing export market. To fulfill this requirement, a business plan must be submitted to the lender with information provided to establish a reasonable likelihood of expanded export sales. In addition, applicants must have been in operation, though not necessarily in exporting, for at least 12 months.

SBA Export Express proceeds are to be used by small businesses to develop or expand their export markets. SBA Export Express proceeds may be used to finance: standby letters of credit that are used as bid or performance bonds; revolving lines of credit for export purposes; term loans; and other financing to enable small business concerns, including small business export trading companies and export management companies, to develop foreign markets. Proceeds may also be used for the acquisition, construction, renovation, modernization, improvement or expansion of productive facilities or equipment to be used in the United States in the production of goods or services involved in international trade.

To encourage participating lenders to address more aggressively the needs of small business exporters, SBA's percent of loan guaranty under SBAExpress will be the same as that for the regular 7(a) loans, or currently 75 percent (80 percent if the loan amount is $100,000 or less). The maximum loan amount eligible for SBA Export Express will be $150,000.

Recognizing that technical assistance can be crucial to the success of small business exporters, the SBA Export Express program requires a technical assistance component, delivered through the SBA personnel at U.S. Export Assistance Centers (USEACs). This assistance may include training offered by: the Export Trade Assistance Partnership (ETAP) Program; International Trade Centers (located at Small Business Development Centers); Service Corps of Retired Executives; District Export Councils; or the Export Legal Assistance Network (E-LAN).

Participation in the SBA Export Express program will be granted to any lender that has been approved for participation in SBAExpress. SBA Export Express will adopt the abbreviated SBAExpress loan application, which will be submitted to the Agency's centralized processing center in Sacramento. The processing center will determine the borrower's eligibility and issue a SBA loan number.

**FOR FURTHER INFORMATION CONTACT:** Paul Kirwin of SBA at 202–205–7261.

Dated: July 17, 2000.

**Jeanne Sclater,**

*Associate Deputy Administrator for Capital Access.*

[FR Doc. 00–25992 Filed 10–10–00; 8:45 am]

**BILLING CODE 8025–01–P**

## SOCIAL SECURITY ADMINISTRATION

### Agency Information Collection Activities: Proposed Request and Comment Request

In compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, SSA is providing notice of its information collections that require submission to the Office of Management and Budget (OMB). SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for

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the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

I. The information collection listed below will be submitted to OMB within 60 days from the date of this notice. Therefore, comments and recommendations regarding the information collection would be most useful if received by the Agency within 60 days from the date of this publication. Comments should be directed to the SSA Reports Clearance Officer at the address listed at the end of this publication. You can obtain a copy of the collection instrument by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him.

1. Request for Replacement SSA–1099/SSA–1042S Social Security Benefits Statement—0960–0583. The information requested by the Social Security Administration (SSA) via the Internet will be used to verify identity and to provide replacement copies of Form SSA–1099/SSA–1042, which are needed to prepare Federal tax returns. This Internet option to request a replacement SSA–1099/SSA–1042 will eliminate the need for a phone call to a teleservice center or a visit to a field office. The respondents are beneficiaries who request a replacement SSA–1099/1042 via the Internet.

*Number of Respondents:* 7,000.

*Frequency of Response:* 1.

*Average Burden Per Response:* 5 minutes.

*Estimated Average Burden:* 583 hours.

II. The information collections listed below have been submitted to OMB for clearance. Written comments and recommendations on the information collections would be most useful if received within 30 days from the date of this publication. Comments should be directed to the SSA Reports Clearance Officer and the OMB Desk Officer at the addresses listed at the end of this publication. You can obtain a copy of the OMB clearance packages by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him.

1. Application of Circuit Court Law—0960–0581. SSA regulations at 20 CFR 404.985 and 416.1485 inform claimants of their right to request that a published Acquiescence Ruling (AR) be applied to a prior determination when we make a determination or decision on a claim between the date of the Circuit Court decision and the date we publish the AR. The regulations also specify that claimants can request that the AR be applied to a prior determination or decision by submitting a statement that demonstrates how the AR could change the prior determination or decision. SSA will use the information provided in the statement to readjudicate the claim, if the claimant demonstrates the Ruling could change the prior determination. Claimants may use Form SSA–795, Statement of Claimant or Other Person (OMB No. 0960–0045), to request and support application of a published AR to the prior determination or decision. The respondents are claimants whose determinations or decisions on their claims may be affected by an AR.

*Number of Respondents:* 100,000.

*Frequency of Response:* 1.

*Average Burden Per Response:* 17 minutes.

*Estimated Annual Burden:* 28,333 hours.

2. Statement for Determining Continuing Eligibility, Supplemental Security Income Payment-0960–0145. SSA uses Form SSA–8202–F6 to conduct low- and middle-error-profile (LEP–MEP) telephone or face-to-face interviews with Supplemental Security Income (SSI) recipients and representative payees. The information collected during the interview is used to determine whether SSI recipients have met and continue to meet all statutory and regulatory requirements for SSI eligibility and whether they have been and are still receiving the correct payment amount. The respondents are recipients of SSI benefits or their representative payees.

*Number of Respondents:* 920,000

*Frequency of Response:* 1.

*Average Burden Per Response:* 17 minutes.

*Estimated Annual Burden:* 260,667 hours.

(SSA Address)

Social Security Administration, DCFAM, Attn: Frederick W. Brickenkamp 1–A–21 Operations Bldg., 6401 Security Blvd., Baltimore, MD 21235

(OMB Address)

Office of Management and Budget, OIRA, Attn: Desk Officer for SSA, New Executive Office Building, Room 10230, 725 17th St., NW.,Washington, DC 20503

Dated: October 4, 2000.

**Frederick W. Brickenkamp,**

*Reports Clearance Officer, Social Security Administration.*

[FR Doc. 00–25982 Filed 10–10–00; 8:45 am]

BILLING CODE 4191–02–P

## DEPARTMENT OF STATE

**[Public Notice 3440]**

### Culturally Significant Objects Imported for Exhibition Determinations: "Dangerous Curves: The Art of the Guitar"

**AGENCY:** United States Department of State.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 [79 Stat. 985, 22 U.S.C. 2459], the Foreign Affairs Reform and Restructuring Act of 1998 [112 Stat. 2681 *et seq.*], Delegation of Authority No. 234 of October 1, 1999 [64 FR 56014], and Delegation of Authority No. 236 of October 19, 1999 [64 FR 57920], as amended by Delegation of Authority No. 236–3 of August 28, 2000 [65 FR 53795], I hereby determine that the objects to be included in the exhibit, "Dangerous Curves: The Art of the Guitar," imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the temporary exhibition or display of the exhibit objects at the Museum of Fine Arts, Boston, Massachusetts from on or about November 5, 2000, to on or about February 24, 2001, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, 202/619–5997, and the address is Room 700, United States Department of State, 301 4th Street, SW., Washington, DC 20547–0001.

Dated: September 29, 2000.

**Helena Kane Finn,**

*Acting Assistant Secretary for Educational and Cultural Affairs, United States Department of State.*

[FR Doc. 00–26090 Filed 10–10–00; 8:45 am]

BILLING CODE 4710–08–P



## DEPARTMENT OF STATE

**[Public Notice Number 3412]**

### Notice of Meetings: United States International Telecommunication Advisory Committee (ITAC)—Telecommunication Standardization Sector (ITAC–T), National Committee & U.S. Study Groups A & D

The Department of State announces meetings of the U.S. International Telecommunication Advisory Committee (ITAC)—Telecommunication Standardization (ITAC–T) National Committee and US Study Groups A and D. The purpose of the Committees is to advise the Department on policy and technical issues with respect to the International Telecommunication Union and international telecommunication standardization and development. Except where noted, meetings will be held at the Department of State, 2201 "C" Street, NW, Washington, DC.

The ITAC–T National Committee will meet from 9:30 to noon on October 18, 2000, at the Department of State to review the results of the ITU–T World Telecommunication Standardization Assembly (WTSA) and organize the national study program to support those results.

The ITAC–T U.S. Study Group A will meet from 2:00 to 4:00 on November 14, 2000, at the Federal Communications Commission to prepare positions for the ITU–T Study Group 3 meeting starting in December.

The ITAC–T U.S. Study Group D will meet from 9 a.m. to noon on October 19, 2000, at the Department of State to prepare positions for the next ITU–T Study Groups 8 and 16 and Study Group 9 Working Party 1.

Members of the general public may attend these meetings. Directions to meeting locations and actual room assignments may be determined by calling the Secretariat at 202 647–0965/2592. Entrance to the Department of State is controlled; people intending to attend any of the ITAC meetings should send a fax to (202) 647–7407 not later than 24 hours before the meeting. This fax should display the name of the meeting (ITAC–T, U. S. Study Group A or D) and date of meeting, your name, social security number, date of birth, and organizational affiliation. One of the following valid photo identifications will be required for admission: U.S. driver's license, passport, U.S. Government identification card. Enter the Department of State from the C Street Lobby; in view of escorting requirements, non-Government attendees should plan to arrive not less than 15 minutes before the meeting begins.

Attendees may join in the discussions, subject to the instructions of the Chair. Admission of members will be limited to seating available.

Dated: October 2, 2000.

**John R. Gilsenan,**

*Chairman, ITAC–R, U.S. Department of State.*

[FR Doc. 00–26089 Filed 10–10–00; 8:45 am]

BILLING CODE 4710–45–P

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

**[USCG–1998–3553]**

### Marine Transportation System: Waterways, Ports, and Their Intermodal Connections

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of availability and request for public comments.

**SUMMARY:** The Coast Guard announces the availability of summaries from the seven Regional Dialog Sessions sponsored by the Interagency Committee for Marine Transportation System. These summaries report on progress in addressing the Marine Transportation System Report recommendations and coordinating Marine Transportation System issues at the regional level.

**DATES:** Comments and related material must reach the Docket Management Facility on or before November 30, 2000.

**ADDRESSES:** To make sure your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, (USCG–1998–3553), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By hand delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at http://dms.dot.gov.

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at http://dms.dot.gov.

**FOR FURTHER INFORMATION CONTACT:** For questions on this notice, or the RDS's, call LCDR Greg Case, Coast Guard, telephone 202–267–0386. For questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

**SUPPLEMENTARY INFORMATION:**

#### Request for Comments

We encourage you to submit comments and related material on the Regional Dialog Sessions or the Marine Transportation System. If you do so, please include your name and address, identify the docket number for this notice (USCG–1998–3553) and give the reasons for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES;** but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

#### Background

The Marine Transportation System (MTS) includes waterways, ports, and their intermodal connections with highways, railways, and pipelines. The MTS links the United States to overseas markets and is important to national security interests. Excluding Mexico and Canada, over 95% of the U.S. foreign trade by tonnage are shipped by sea, and 14% of U.S. inter-city freight is transported by water. Forecasts show that U.S. foreign ocean-borne trade is expected to more than double by the year 2020; and commuter ferries, recreational boating, and other recreational uses of the waterway are expected to increase, placing even greater demands on the marine transportation system. In turn, an expanding marine transportation system will pose greater challenges for

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protecting and enhancing the environment

Many federal agencies, state and local governments, port authorities, and the private sector share responsibility for the marine transportation system. Recognizing that the economic, safety, and environmental implications of aging infrastructure, inadequate channels, and congested intermodal connections will become more critical as marine traffic volume increases, the Secretary of Transportation began a multi-agency MTS initiative in March 1998.

The MTS initiative began in the spring of 1998 with seven Regional Listening Sessions to gather stakeholder input on the current state and future needs of the MTS. The input received at the listening sessions became the basis for a National MTS Conference in November of 1998. After the conference, the Secretary established the Congressionally mandated MTS Task Force to conduct an assessment of the U.S. Marine Transportation System. The September 1999 MTS Task Force Report to Congress, An Assessment of the Marine Transportation System, recommended action in seven strategic areas. Regional coordination and implementation of the recommendations contained in Chapter 6 of the Report to Congress was the focus of the Regional Dialog Sessions. The docket (USCG–1998–3553) contains the MTS Report to Congress, summaries of the Regional Listening Sessions, the Proceedings of the National MTS Conference, and the Regional Dialog Sessions Summaries. You may access it electronically on the Internet at http://dms.dot.gov.

**Next Steps**

Comments received during the comment period will be considered by an Interagency Committee for the Marine Transportation System and Marine Transportation System National Advisory Council to assess the adequacy of the marine transportation system. They will continue examining the critical marine transportation issues, and recommending strategies and plans of action to ensure safety, advance national interest, including economic competitiveness and national security in the marine transportation arena.

Dated: October 4, 2000.

**J.P. High,**

*Director of Waterways Management.*

[FR Doc. 00–26078 Filed 10–10–00; 8:45 am]

**BILLING CODE 4910–15–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### RTCA Special Committee 159; Minimum Operational Performance Standards for Airborne Navigation Equipment Using Global Positioning System (GPS)

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 159 meeting to be held October 24–27, 2000, starting at 9 a.m. each day. The meeting will be held at RTCA, 1140 Connecticut Avenue, NW., Washington, DC 20036.

The agenda will include:

**Specific Working Group Sessions**

*October 24*

Working Group (WG–1), Third Civil Frequency and WG–2C, GPS/Inertial.

*October 25*

9:00–12:00
WG–4, Precision Landing Guidance (GPS/LAAS) and WG–6, GPS/Interference;
1:30–4:30
WG–2, GPS/WAAS
SC–159 AD Hoc, Recommendation and WG5, Surface Surveillance

*October 26*

WG–2, GPS/WAAS
WG–4, Precision Landing Guidance (GPS/LAAS) and WG–6, GPS/Interference

**October 27: Plenary Session**

(1) Introductory Remarks;
(2) Approve Summary of Previous Meeting;
(3) Review Working Group (WG) Progress and Identify Issues for Resolution:
(a) GPS/3rd Civil Frequency (WG–1);
(b) GPS/WAAS (WG–2);
(c) GPS/GLONASS (WG–2A);
(d) GPS/Inertial (WG–2C);
(e) GPS/Precision Landing Guidance (WG–4);
(f) GPS/Airport Surface Surveillance (WG–5);
(g) GPS Interference (WG–6);
(h) SC–159 Ad Hoc;
(4) Review of EUROCAE Activities;
(5) Review/Approve Final Draft, SC–159, Response to the Johns Hopkins University Applied Physics Laboratory Recommendation Regarding Receiver Autonomous Integrity Monitoring;
(6) Assignment/Review of Future Work;
(7) Other Business;
(8) Date and Location of Next Meeting;
(9) Closing.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, at (202) 833–9339 (phone), (202) 833–9434 (fax). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on October 2, 2000.

**Janice L. Peters,**

*Designated Official.*

[FR Doc. 00–26017 Filed 10–10–00; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Intelligent Transportation Society of America; Public Meeting

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of public meeting.

**SUMMARY:** The Intelligent Transportation Society of America (ITS AMERICA) will hold a meeting of its Board of Directors on Sunday, November 5, 2000. The meeting begins at 1 p.m. The letter designations that follow each item mean the following: (I) Is an information item; (A) is an action item; (D) is a discussion item. The General Session includes the following items: (1) Introductions and ITS America Antitrust Policy and Conflict of Interest Statements (I); (2) Review & Approval of August 10, 1999 Board Meeting #31 Minutes; (3) Federal ITS Initiatives Report (I/D); (4) Coordinating Council Report (I/D); (5) State Chapters Council Report (I/D); (6) International Affairs Council & World Congresses Reports (I/D); (7) ITS America Trade Association Report (I); (8) President's Report (External Issues) (I/D); (9) Other Business;

*Business Session* (U.S. DOT participants excused; Board Members, ITS America Members and Staff Only.) (10) Report to the Executive Committee (I/D); (11) Report of the Nominating Committee (I); (12) President's Report (Internal Issues) (I/D); (13) Other Business. Adjournment until January 11, 2001, 2 p.m. Board of Directors Meeting #37 in Washington, D.C.

ITS AMERICA provides a forum for national discussion and recommendations on ITS activities including programs, research needs, strategic planning, standards, international liaison, and priorities.

The charter for the utilization of ITS AMERICA establishes this organization as an advisory committee under the Federal Advisory Committee Act (FACA) 5 U.S.C. app. 2, when it provides advice or recommendations to DOT officials on ITS policies and programs. (56 FR 9400, March 6, 1991).

**DATES:** The Board of Directors of ITS AMERICA will meet on Sunday, November 5, 2000, from 1 p.m.–5 p.m. Room TBA.

**ADDRESSES:** Lingotto Congress Center, Via Nizza, 280, Turin, Italy. Phone: +39–011 2446 911; Fax: +39–011 2446 900.

**FOR FURTHER INFORMATION CONTACT:** Materials associated with this meeting may be examined at the offices of ITS AMERICA, 400 Virginia Avenue SW, Suite 800, Washington, D.C. 20024. Persons needing further information or who request to speak at this meeting should contact Debbie M. Busch at ITS AMERICA by telephone at (202) 484–2904 or by FAX at (202) 484–3483. The DOT contact is Kristy Frizzell, FHWA, HOIT, Washington, D.C. 20590, (202) 366–9536. Office hours are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except for legal holidays.

(23 U.S.C. 315; 49 CFR 1.48)

Issued on: October 5, 2000.

**Jeffrey Paniati,**

*Deputy Director,, ITS Joint Program Office.*

[FR Doc. 00–26079 Filed 10–10–00; 8:45 am]

**BILLING CODE 4910–22–P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket Number MARAD–2000–8060]**

### Requested Administrative Waiver of the Coastwise Trade Laws

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel *Challenge Business 32*.

**SUMMARY:** As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR Part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

**DATES:** Submit comments on or before November 13, 2000.

**ADDRESSES:** Comments should refer to docket number MARAD–2000–8060. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at http://dmses.dot.gov/submit/. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at http://dms.dot.gov.

**FOR FURTHER INFORMATION CONTACT:** Gordon Angell, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, S.W., Washington, DC 20590. Telephone 202–366–5129.

**SUPPLEMENTARY INFORMATION:** Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR § 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR Part 388.

**Vessel Proposed for Waiver of the U.S.-Build Requirement**

(1) Name of vessel and owner for which waiver is requested.

Name of vessel: *Challenge Business 32*. Owner: Challenge Business International, Ltd.

(2) Size, capacity and tonnage of vessel. According to the applicant: "The yacht is 66.24′ long, has a breadth of 17.32′ and a depth of 8.6′. Under our Simplified Measurement Rules, (46 C.F.R. Part 69), the yacht has a gross tonnage of 49.33 and a net tonnage of 44.40″."

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: "The yacht will be used to generate interest in a race called the New World Challenge. In that race, ordinary people, from all walks of life, often with little or no sailing experience, will become members of the crew. They will sail on 10 newer, slightly larger boats that will depart from San Francisco and sail to Japan, Hong Kong, Singapore, Cape Town, Buenos Aires, Cape Horn, and back to San Francisco. The interest, love and excitement of sailing such boats, in difficult conditions, over a period of approximately 10 months, will be supported by a number of corporate sponsors who expect to benefit from the team building aspect of the race and the publicity that the race will generate. In addition, a selected charity will receive approximately $1,000,000.00." "This yacht will be based in San Francisco, and may be sailed on San Francisco Bay and anywhere between the areas of Southern California and Vancouver, British Colombia."

(4) Date and Place of construction and (if applicable) rebuilding. Date of construction: 1996. Place of construction: United Kingdom.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "This activity will have absolutely no impact on any existing commercial passenger operation. The yacht we propose to use has been sailed in another race organized by Challenge Business. This yacht is very similar in size, design, living accommodations, communications capability, sail area, equipment, handling characteristics, etc. to the 10 boats that will be competing in the race. Thus, it is the most representative, "experienced", boat that could be used for the intended purposes. No existing commercially operated yacht can duplicate the feel, characteristics and overall experience of sailing in the New World Challenge race.".

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "Similarly, the proposed activity will have absolutely no impact on U.S. shipyards.

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This yacht is uniquely valuable in that it has been raced under similar conditions, in a similar race while manned by individuals who had little, if any, sailing experience before sailing aboard such a yacht. This yacht most accurately represents the look, feel and impact that the 10 yachts in the race will have on the sailors, media, press, sponsors and supporters. Given its historical connection to a similar race, no newly built U.S. yacht could preform (sic) the same role. Further, we are not aware of any similar yachts currently under construction in the U.S."

Dated: October 4, 2000.

By Order of the Maritime Administrator.

**Joel C. Richard,**

*Secretary, Maritime Administration.*

[FR Doc. 00–25995 Filed 10–10–00; 8:45 am]

BILLING CODE 4910–81–P

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket Number: MARAD–2000–8061]**

### Requested Administrative Waiver of the Coastwise Trade Laws

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel *Challenge Business 35*.

**SUMMARY:** As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR Part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

**DATES:** Submit comments on or before November 13, 2000.

**ADDRESSES:** Comments should refer to docket number MARAD–2000–8061. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., S.W., Washington, D.C. 20590–0001. You may also send comments electronically via the Internet at http://dmses.dot.gov/submit/. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at http://dms.dot.gov.

**FOR FURTHER INFORMATION CONTACT:** Gordon Angell, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, S.W., Washington, DC 20590. Telephone 202–366–5129.

**SUPPLEMENTARY INFORMATION:** Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR § 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR Part 388.

**Vessel Proposed for Waiver of the U.S.-Build Requirement**

(1) Name of vessel and owner for which waiver is requested. Name of vessel: *Challenge Business 35*. Owner: Challenge Business International, Ltd.

(2) Size, capacity and tonnage of vessel. According to the applicant: "The yacht is 66.24′ long, has a breadth of 17.32′ and a depth of 8.6′. Under our Simplified Rules, (46 CFR Part 69), the yacht has a gross tonnage of 49.33 and a net tonnage of 44.40."

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: "The yacht will be used to generate interest in a race called the New World Challenge. In that race, ordinary people, from all walks of life, often with little or no sailing experience, will become members of the crew. They will sail on 10 newer, slightly larger boats that will depart from San Francisco and sail to Japan, Hong Kong, Singapore, Cape Town, Buenos Aires, Cape Horn, and back to San Francisco. The interest, love and excitement of sailing such boats, in difficult conditions, over a period of approximately 10 months, will be supported by a number of corporate sponsors who expect to benefit from the team building aspect of the race and the publicity that the race will generate. In addition, a selected charity will receive approximately $1,000,000.00." "This yacht will be based in Boston, Massachusetts, and may be sailed anywhere between Maine and Florida."

(4) Date and Place of construction and (if applicable) rebuilding. Date of construction: 1996. Place of construction: United Kingdom.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "This activity will have absolutely no impact on any existing commercial passenger operation. The yacht we propose to use has been sailed in another race organized by Challenge Business. This yacht is very similar in size, design, living accommodations, communications capability, sail area, equipment, handling characteristics, etc. to the 10 boats that will be competing in the race. Thus, it is the most representative, "experienced", boat that could be used for the intended purposes. No existing commercially operated yacht can duplicate the feel, characteristics and overall experience of sailing in the New World Challenge race."

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "Similarly, the proposed activity will have absolutely no impact on U.S. shipyards. This yacht is uniquely valuable in that it has been raced under similar conditions, in a similar race while manned by individuals who had little, if any, sailing experience before sailing aboard such a yacht. This yacht most accurately represents the look, feel and impact that the 10 yachts in the race will have on the sailors, media, press, sponsors and supporters. Given its historical connection to a similar race, no newly built U.S. yacht could preform (sic) the same role. Further, we are not aware of any similar yachts currently under construction in the U.S."

Dated: October 4, 2000.

By Order of the Maritime Administrator.

**Joel C. Richard,**

*Secretary, Maritime Administration.*

[FR Doc. 00–25996 Filed 10–10–00; 8:45 am]

BILLING CODE 4910–81–P



## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA–00–8064]**

### Drowsy Driver Detection Device Laboratory Validation

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Notice of Research Activity.

**SUMMARY:** The U.S. Department of Transportation (US DOT) is seeking partners who have the potential of providing non-contact eye closure monitoring sensors that can be used in a drowsy driver detection system field operational test. This notice describes criteria and tests that will be applied to each candidate sensor as part of the determination of fitness for inclusion in a field operational test. Manufacturers of devices that may meet these criteria are invited to submit a description of their device and detailed instructions on operations of the device to the US DOT.

Each device must satisfy the following criteria: (1) The device must measure the percentage of eyelid closure over time (PERCLOS) and calculate PERCLOS 1 and/or PERCLOS 3 (one-minute and three-minute running averages of PERCLOS, respectively); (2) this measurement must occur in real time; (3) the device shall be unobtrusive and have no physical contact with the driver; (4) the device shall cause no harmful emissions of any type over the duration of the experiment; and (5) the device operation shall include no moving parts that could easily fail or that would require replacement, service, or routine maintenance by the driver.

Any device that meets the above criteria may be included in a US DOT sponsored laboratory research study to evaluate the validity and reliability of its real-time drowsiness detection capability. Previous research has demonstrated the feasibility of implementing a drowsiness detection system with physical eyelid closure as a continuous input. A successful device should demonstrate that it can provide a valid measure of alertness during a vigilance task and that this detection is repeatable (reliability). In addition to being valid and reliable, this device needs to be practical, and must meet additional standards of high sensitivity and high specificity. Thus the device must detect all (or nearly all) fatigue events and fatigued vehicle operators (high sensitivity), without false alarms (high specificity.)

The offeror understands that the device, if selected to participate in the laboratory validation study, will be provided on an as-is basis, requiring no further engineering or development and should be operationally ready. Second, the analysis that is derived from this laboratory research will be made publicly available and the device returned to the submittor, and third, the offeror shall in no way interfere with the procedures or personnel involved in conducting or managing the study. Furthermore:

1. Previous studies and research involving the device may be disclosed and provided to the government to assist in evaluating the "fitness" of the device for evaluation.

2. Selection to participate in the laboratory validation study will NOT constitute an endorsement of the device by the federal government.

3. A small budget shall exist to ensure the appropriate hookup of the device to the experimental apparatus.

4. Involvement does not constitute a promise of future relations with the federal government.

The devices will be tested in a laboratory in a double blind testing methodology. Results will be sent back to manufacturer for interpretation. The US DOT is only interested in testing devices that are operationally ready, not devices under development.

**DATES:** Submit device descriptions on or before November 27, 2000.

**ADDRESSES:** All proposals should refer to Docket No. NHTSA–00–8064 and be submitted to Docket Management, Room PL–401, 400 7th Street, SW, Washington, D.C. 20590. Docket hours are from 10 a.m. to 5 p.m. Monday through Friday. Proposals may also be sent by electronic submission. The electronic submission procedure is described in the Docket Management section of the DOT's web site: http://www.dot.gov.

**FOR FURTHER INFORMATION CONTACT:** Paul Rau, Office of Vehicle Safety Research, NHTSA, (202) 366–0418; or Mr. Robert Carroll, Office of Research and Technology, FMCSA, (202) 366–9109, 400 Seventh Street, SW., Washington, DC 20590–0001.

**SUPPLEMENTARY INFORMATION:**

**Background**

The DOT has created a program titled the Intelligent Vehicle Initiative (IVI). The goal of the IVI program is to increase safety on the nation's highways through the acceleration of the deployment of on-vehicle safety devices. One of the primary focus areas of the IVI is (commercial) motor vehicle driver fatigue. Further information on the IVI program may be found on: www.its.dot.gov/ivi. Additionally, the DOT has the goal of reducing truck involved fatalities by 50% by the year 2010. Additional information concerning DOT and commercial motor vehicle safety goals may be found on: *www.fmcsa.dot.gov* and *www.nhtsa.dot.gov*.

Further, technical conferences were held in 1997 and 1999, to discuss scientific validation findings regarding PERCLOS and other eye activity measures of alertness, and the status of efforts to develop in-vehicle sensors to continuously measure PERCLOS. The conferences were the primary focus of U.S. DOT-sponsored research over the past decade demonstrating the validity of PERCLOS as a measure of driver vigilance performance and also explored related psycho physiological alertness measures and alertness monitoring-related issues. The conferences reviewed potential and appropriate uses of PERCLOS data and ways to ensure the active participation and acceptance of drivers and management. The 1999 conference report, Ocular Measures of Driver Alertness: Technical Conference Proceedings (FHWA–MC–99–136) is available from National Technical Information Service (NTIS) (PB2000–101412), telephone: (703) 605–6000.

The vigilance task testing will be conducted in a controlled laboratory environment, similar to the previous work sponsored by NHTSA and FMCSA. A detailed description of this previous research, as well as the findings, can be obtained from the report entitled "Evaluation of Techniques for Ocular Measurement as an Index of Fatigue and the Basis for Alertness Management" published by the US DOT/NHTSA Report #DOT HS 808–762 is also available from NTIS. A summary in the form of an FMCSA Technical Analysis Brief may be found on http://www.fmcsa.dot.gov/safetyprogs/research/researchpubs.htm.

Each device will be tested on sleep deprived subjects who will remain awake for 42 hours, while working on a computerized test battery every two hours. The tests include a 20 minute psychomotor vigilance task (PVT) each two hours. PVT performance lapses refer to the times when a subject fails to respond to a task in a timely manner (*i.e.* <500 msec.); lapses will be recorded for each minute for the entire 20 minutes.

PVT lapses will be used as the validation criteria variable because driving is a vigilance task requiring psychomotor reactions, and psychomotor vigilance has been previously validated in medical research to be very sensitive to fatigue

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from night work and sleep loss. Thus, PVT lapses are a valid index for evaluating candidate technologies.

Additionally: (1) Each device will be time locked in real-time to PVT performance to permit coherence estimates for minute-to-minute fluctuations and bout-to-bout fluctuations in alertness-drowsiness across the entire 42 hour period of wakefulness; (2) suppliers of devices will have no knowledge of PVT lapse data during the course of their extracting drowsiness/alertness scores from their devices, while the researchers will have no knowledge of the device's scoring algorithm. This double blind procedure will be maintained throughout data acquisition and analysis; (3) to further optimize the reliability of coherence estimates, technology suppliers will also be unaware of the timing of data acquisition; and (4) processed data (drowsiness scores) received from device manufacturers and PVT lapse data (criterion vigilance performance scores) from the researcher will be electronically forwarded to an independent professional statistician for calculation of coherence results.

The independent coherence results will be used as the basis for assessing the validity of the submitted device. The non-obtrusiveness and ease of use by the subject driver of the device will be assessed by the researchers during the laboratory phase of this research and be noted. Additionally, the device must be "ready-to-use" with clear instructions on how to operate the device. This means that the laboratory researchers will not have to do any engineering or re-configuring of the devices in order to use them in the laboratory validation.

Results from this program will be important criteria in the selection of devices eligible to participate in the planned IVI Operational Field Test of Drowsy Driver Technology planned to begin in late FY 2001.

**Technology Submission Instructions**

Submit proposed device descriptions to the U.S. Department of Transportation's Public Docket Management Room at the address listed above. The submission should include the following:

1. A detailed description of the device, along with operating instructions.
2. It should be no more than 10 pages in length.
3. Any existing evidence of objective validity, reliability, sensitivity, or specificity is encouraged to be submitted. This information DOES NOT count toward the 10 page length limit.
4. Three copies of your submission.
5. Your name, address, phone number and e-mail address.
6. DO NOT submit your device at this time.
7. Applications, once submitted, become the property of the US DOT.

**Joseph N. Kanianthra,**

*Acting Associate Administrator for Research and Development, National Highway Traffic Safety Administration.*

[FR Doc. 00–26015 Filed 10–10–00; 8:45 am]

BILLING CODE 4910–59–M

## DEPARTMENT OF THE TREASURY

### Customs Service

**[T.D. 00–69]**

### Annual User Fee for Customs Broker Permit and National Permit; General Notice

**AGENCY:** Customs Service, Department of the Treasury.

**ACTION:** Notice of due date for broker user fee.

**SUMMARY:** This is to advise Customs brokers that for 2001 the annual user fee of $125 that is assessed for each permit held by an individual, partnership, association or corporate broker is due by January 19, 2001. This announcement is being published to comply with the Tax Reform Act of 1986.

**DATES:** Due date for fee: January 19, 2001.

**FOR FURTHER INFORMATION CONTACT:** Michael S. Craig, Broker Management (202) 927–0380.

**SUPPLEMENTARY INFORMATION:** Section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99–272) established that an annual user fee of $125 is to be assessed for each Customs broker permit and National permit held by an individual, partnership, association, or corporation. This fee is set forth in the Customs Regulations in section 111.96 (19 CFR 111.96).

Customs Regulations provides that this fee is payable for each calendar year in each broker district where the broker was issued a permit to do business by the due date which will be published in the **Federal Register** annually. Broker districts are defined in the General Notice published in the **Federal Register**, Volume 60, No.187, September 27, 1995.

Section 1893 of the Tax Reform Act of 1986 (Pub. L. 99–514), provides that notices of the date on which a payment is due of the user fee for each broker permit shall be published by the Secretary of Treasury in the **Federal Register** by no later than 60 days before such due date.

This document notifies brokers that for 2001, the due date for payment of the user fee is January 19, 2001. It is expected that annual user fees for brokers for subsequent years will be due on or about the twentieth of January of each year.

Dated: October 4, 2000.

**Bonni G. Tischler,**

*Assistant Commissioner, Office of Field Operations.*

[FR Doc. 00–25977 Filed 10–10–00; 8:45 am]

BILLING CODE 4820–02–P



# Corrections

Federal Register
Vol. 65, No. 197
Wednesday, October 11, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF DEFENSE
## DEPARTMENT OF TRANSPORTATION

### Coast Guard

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 21

**RIN 2900–AJ88**

### Increase in Rates Payable Under the Montgomery GI Bill—Selected Reserve

*Correction*

In rule document 00–25488 beginning on page 59127 in the issue of Wednesday, October 4, 2000, make the following corrections:

**§21.7636 [Corrected]**

1. On page 59127, in the third column, in §21.7636, in paragraph (a)(1), in the second line, "*21.7639" should read "§21.7639".

2. On page 59128, in the same section, in paragraph (a)(2), subparagraph designation "(i)" is inserted after the seventh line and above the table.

[FR Doc. C0–25488 Filed 10–10–00; 8:45 am]

BILLING CODE 1505–01–D

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

**[DEA # 207P]**

### Controlled Substances: Proposed Aggregate Production Quotas for 2001

*Correction*

In notice document 00–25421 beginning on page 59214 in the issue of Wednesday, October 4, 2000, make the following correction:

On page 59214, in the third column, in the table, in the fifth line from the bottom, "Porpiram" should read "Propiram".

[FR Doc. C0–25421 Filed 10–10–00; 8:45 am]

BILLING CODE 1505–01–D

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Part II

# Department of Agriculture

**Food and Nutrition Service**

**7 CFR Part 210 et al.**

**National School Lunch Program, Child and Adult Care Food Program, State Administrative Expense Funds, Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools: Reimbursement for Snacks in Afterschool Care Programs; Proposed Rule**

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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210, 226, 235, 245

RIN 0584–AC 72

# National School Lunch Program, Child and Adult Care Food Program, State Administrative Expense Funds, Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools: Reimbursement for Snacks in Afterschool Care Programs

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would incorporate the provisions of the William F. Goodling Child Nutrition Reauthorization Act of 1998 regarding reimbursement of afterschool snacks in the regulations governing the National School Lunch Program and the Child and Adult Care Food Program. Corresponding technical amendments are also proposed to the regulations governing the State Administrative Expense Funds and Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools. Under this proposed rule, certain afterschool care programs would earn reimbursement for snacks served which meet program requirements. This rule, as proposed, would be expected to increase consumption of nutritious snacks in afterschool care programs.

**DATES:** To be assured of consideration, written comments must be postmarked on or before January 9, 2001.

**ADDRESSES:** Comments may be mailed to Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Room 1007, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302. You may also submit comments electronically at CNDProposal@fns.gov. All written submissions will be available for public inspection in Room 1007 at this address during regular business hours (8:30 am to 5 pm) Monday through Friday. Since comments are being accepted simultaneously on several separate rulemakings, commentors on this proposed rule are asked to label their comments "Reimbursement for Snacks in Afterschool Care Programs."

**FOR FURTHER INFORMATION CONTACT:** Mary Jane Whitney (National School Lunch Program and Commodity Schools Program) or Ron Ulibarri (Child and Adult Care Food Program) at the above address or by telephone at (703) 305–2590.

**SUPPLEMENTARY INFORMATION:**

## Background

On October 31, 1998, President Clinton signed Public Law 105–336, the William F. Goodling Child Nutrition Reauthorization Act of 1998 (Child Nutrition Reauthorization Act). The Child Nutrition Reauthorization Act (Act) expanded the availability of snacks for both the National School Lunch Program (NSLP) and the Child and Adult Care Food Program (CACFP). Specifically, the Act expanded the availability of snacks in the CACFP so that snacks served to children aged 12 to 18 in afterschool care programs located in the area of a school in which at least 50 percent of the children enrolled are certified as eligible to receive free or reduced price meals can be claimed for reimbursement. The Act also expanded the NSLP to permit the service of afterschool snacks to children aged 12 to 18 and further expanded the eligibility of schools to ensure more schools can avail themselves of reimbursement for snacks served afterschool.

For ease of reference, we refer only to the NSLP and CACFP in this preamble. The proposed rule makes clear that the afterschool supplement would also be available in the Commodity School Program. The statutory authority for the NSLP afterschool supplement is in section 17A of the Richard B. Russell National School Lunch Act (NSLA) (42 U.S.C. 1766a); the CACFP provisions are in section 17(r) of the NSLA (42 U.S.C. 1766(r)). Throughout this preamble, the commonly used terms "afterschool snack(s)" and "snack(s)" are used in lieu of the term "supplement(s)." Commenters will find additional discussion of this terminology in Part 4.I of this preamble.

The new afterschool snack component provides reimbursement for snacks served to children in certain afterschool care programs. According to the Conference Report that accompanied this law (House Report 105–786), Congress intended that these new components provide nutrition assistance to programs that offer the types of activities known to help reduce or prevent involvement in juvenile crime. The House Committee on Education and the Workforce further noted in its report (House Report 105–633) that "afterschool programs, which operate between the end of a school day and time when parents return from work, provide a quality alternative to juveniles with too much time on their hands." The proposed afterschool snack components in the NSLP and CACFP are an effort to support and promote these afterschool programs.

This preamble is divided into five parts. Part 1 discusses the proposed core requirements for both the NSLP and CACFP afterschool snack components. Part 2 is a chart showing the requirements with their regulatory citations for the two programs as contained in this proposed rule. We included this chart in lieu of a detailed preamble discussion of each provision of this rule as an easy way to show the proposed changes and to compare the NSLP and CACFP requirements. Part 3 is a discussion, by program, of the particular provisions of this proposed rule that we think warrant elaboration. Part 4 discusses some related changes this rule proposes to make to the regulations. Part 5 addresses implementation dates.

## Part 1—What Are the Proposed Core Requirements?

*Section I. What Are the Proposed Core Requirements Under the NSLP?*

A. Eligible Afterschool Care Programs

Under this proposal and in accordance with the criteria set forth under the NSLA, to be approved for reimbursement under the new afterschool snack component of the NSLP, snacks must be served in an eligible afterschool care program which is operated or sponsored by a school or school district which participates in the NSLP (see Part 3.I.A below) and:

- Is organized primarily to provide care for children after school;
- Has organized, regularly scheduled activities (*i.e.*, in a structured and supervised environment); and
- Includes education or enrichment activities.

These provisions are proposed at 7 CFR 210.4a, paragraphs (a) and (b). Hereinafter, references to proposed amendments to part 210 and 226 of Title 7 of the Code of Federal Regulations are made to the appropriate section number only.

Afterschool care programs would be permitted to limit participation for space, security considerations, special needs or, where applicable, licensing requirements. For example, afterschool care programs designed to accommodate special needs or with other limiting factors, such as programs targeted to children with learning disabilities or to children who are academically gifted, would be eligible for reimbursement.

Programs could include supervised athletic activity along with education or enrichment activities, such as those typically sponsored by the Police Athletic League, Boys and Girls Clubs and the YWCA. The key requirement for afterschool programs that include sports would be that they are "open to all" and would not limit membership for reasons of athletic ability, or would not exist principally for the pursuit of competitive athletics.



B. Ineligible Afterschool Care Programs

Under this proposal, organized interscholastic athletic programs or community level competitive sports programs would not be approved as afterschool care programs under the NSLP. In the Conference Report that accompanied the Child Nutrition Reauthorization Act, the Conference Committee declared its intent that support for afterschool snacks would not be provided to members of athletic teams. This limitation is found at § 210.4a(b)(2) of this proposed rule.

C. Eligible Children

Under the proposal, children would be eligible to participate in the afterschool snack service in traditional schools (see paragraphs (a) and (b) in the definition of "School," § 210.2), if they participate in an approved afterschool care program and are age 18 or under. However, the Conference Report that accompanied the Child Nutrition Reauthorization Act indicated that snacks could be claimed for children who turn 19 during the school year. Therefore, this proposed rule would allow reimbursement to be claimed for snacks served to these children until the end of the school year in which they turn 19.

Reimbursement could also be claimed for students with disabilities (see definition of "Student with disabilities", § 210.2), regardless of their age, who participate in a school program of high school grade or under. This provision is found at § 210.4a(c) of this proposed rule.

Children enrolled in a residential child care institution (RCCI) would be eligible to participate in an approved afterschool care program's snack service if they are age 18 or under at the start of the school year. Snacks could be claimed for children who turn 19 during the school year. This provision is also found at § 210.4a(c) of this proposed rule.

There would be no minimum age for participation. Even snacks served after school to pre-primary children could be claimed as long as the children are attending class in a school (e.g., Head Start or Even Start) *and* are participating in an approved afterschool care program after their regularly scheduled school day.

D. Days of Service

Under this proposal, the afterschool snack component in the NSLP would only operate on days that school is in session. This would include snacks served in afterschool care programs operated for children attending summer school, but would not include weekends, holidays, or school vacations. Snacks served *after school* to children attending schools that operate on a year-round basis also would be claimed through the afterschool snack component of the NSLP, assuming the other eligibility requirements are met. These provisions are found at § 210.4a(m) of this proposed rule. Organizations that offer programs during summer vacations may be eligible to participate in the Summer Food Service Program (SFSP).

E. Number of Afterschool Snacks Claimed

Under the proposal, school food authorities would claim reimbursement for no more than one afterschool snack per child per day. Any excess afterschool snacks that are produced could be offered, but would not be claimed for reimbursement. This provision is found at § 210.4a(k) of this proposed rule.

F. Afterschool Snack Meal Pattern

The proposal would require that afterschool snacks meet the meal pattern requirements set forth in § 210.10(n), *What are the requirements for afterschool snacks?*. This provision is consistent with section 17A(c) of the Act which requires that the content of meal supplements specified under the CACFP be applied to the content of snacks served under the NSLP. Portions for children ages 13 through 18 would follow the portions stipulated for children ages 6 through 12. Even though this proposed rule does not require larger portions for children ages 13–18, we would recommend that older children in afterschool care programs be offered larger portions based on their greater food energy requirements. Under the proposal, if schools offer choices of snacks or choices within the snack meal pattern, children who are eligible for free or reduced price snacks would be allowed to take any snack or choice offered as a part of the reimbursable snack. This requirement is found at § 210.4a(l) of this proposed rule.

G. Reimbursement

Under this proposal and consistent with the provisions of section 17A of the Act, school food authorities may claim reimbursement for afterschool snacks served in any facility selected as a site of an eligible afterschool care program, but only those afterschool care program sites that are "area eligible" would automatically receive reimbursement at the free rate for all snacks. ("Area eligibility" is discussed in Part 1.I.H of this preamble.) In this case, free and reduced price applications would not be required.

Reimbursement for snacks served at schools or sites that are not "area eligible" would depend on the eligibility status of the child (i.e. free, reduced price, or paid). In this case, free and reduced price applications would be required to establish eligibility status. Generally, sites would not need to distribute new free and reduced price applications. In most cases, the families of children participating in the afterschool care program would have already applied for free and reduced price meals in connection with the lunch component of the NSLP or the School Breakfast Program. In these cases, the school food authority sponsoring the afterschool care program would use the free and reduced price meal determinations made for purposes of school lunches or breakfasts as documentation for free and reduced price afterschool snacks. If children in a school's afterschool care program are from another school, the school sponsoring the afterschool care program would use the determinations made by the children's regular school as long as it documents the source of the eligibility information.

However, if the afterschool care program that is not area eligible includes children from schools that do not participate in the NSLP lunch component or the School Breakfast Program, then the families for those children would not have had the opportunity to apply for free and reduced price meals. Only in this limited circumstance would a school food authority sponsoring the afterschool care program need to distribute free and reduced price applications and make eligibility determinations for purposes of afterschool snacks. These determinations must be made in accordance with 7 CFR part 245. These provisions are found at § 210.4a(n) and (o) of this proposed rule.

H. Area Eligibility

Under this proposal and consistent with the provisions of section 17A of the Act, a school would be "area eligible" if at least 50 percent of the enrolled children are certified eligible for free or reduced price meals. Additionally, a school or site would be considered area eligible if it is located

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in the attendance area of an elementary, middle, or high school in which at least 50 percent of its enrolled children are certified eligible for free or reduced price meals. This provision is found at § 210.4a(i) of this proposed rule.

The State agency would determine "area eligibility" for each afterschool care program site seeking to qualify as area eligible based on information provided by the school food authority. This provision is found at § 210.4a (f) of this proposed rule.

Area eligibility determinations would be made each school year, although FNS, the State agency, or the school food authority could change the determination if updated data indicates that a school or site is no longer area eligible. However, the State agency would not routinely require redeterminations of area eligibility status based on updated data before the school year has expired. We recognize that frequent re-evaluation of area eligibility is disruptive to program operations and have tried to balance this concern with the need for accountability.

Area eligibility determinations would be made using the free and reduced price meal data for the preceding October, or the other month the State agency has designated pursuant to § 210.9(b), *Agreements with State agency,* paragraph (20). School food authorities would make area eligibility determinations prior to beginning snack service each school year. Typically, the school food authority would make the determination before the start of the school year using the preceding October's free and reduced price meal data. Area eligibility provisions are found at § 210.4a(i) of this proposed rule.

School food authorities could, at any time during the school year, submit more recent area eligibility data that would qualify a site that was previously not area eligible. However, only data for October, or the other month designated by the NSLP State agency for free and reduced price data collection, would be used. For example, a particular site is not area eligible at the beginning of the school year (August 1999) based on the most recent October data (October 1998). That site could be determined to be area eligible in January 2000 if the new October data (October 1999) shows an appropriate change.

In order to facilitate area eligibility determinations, this rule proposes to amend § 210.9(b)(20). School food authorities would be required to provide their State agency with a list of all middle and high schools in their jurisdictions in which at least 50 percent of the enrolled children are certified eligible for free or reduced price meals the preceding October, or another State agency-designated month. This is in addition to the list of elementary schools that meet these requirements that is currently required by § 210.9(b)(20).

I. Claiming Reimbursement

Sections 210.7, *Reimbursement for school food authorities,* and 210.8, *Claims for reimbursement,* of existing regulations establish procedures which are designed to ensure the fiscal accountability of the lunch and snack service. Prior to the 1998 authorization of the *afterschool* snack service, section 106(a) of the Child Nutrition and WIC Reauthorization Act of 1989 added section 17A (42 U.S.C.1766a) to the NSLA. Under section 17A, elementary and secondary schools that were participating in the CACFP as of May 15, 1989 could be reimbursed for meal supplements served in afterschool care programs. Implementing regulations issued in 1993 (58 FR 42483) made a number of changes to the reimbursement process specified in § § 210.7 and 210.8 to ensure that Federal reimbursement is being properly paid.

This proposed rule would make a number of technical revisions to § § 210.7 and 210.8 to reflect the use of the term "afterschool snacks" in lieu of "meal supplements". Additionally, this proposal would make several revisions to these sections in order to ensure the fiscal integrity of the afterschool snack service.

Under paragraph (c)(1)(iii) of existing § 210.7, school food authorities are required to base Claims for Reimbursement on lunch counts, taken daily at the point of service, which correctly identify the number of free, reduced price and paid lunches served to eligible children. This proposed rule would revise this paragraph to require school food authorities to base Claims for Reimbursement on daily lunch *and afterschool snack* counts. In recognition of the unconventional nature of many afterschool care programs, the Department has determined not to extend the requirement for point of service meal counts to the afterschool snack service. However, as discussed further in part 1.I.J, we are requiring schools to maintain daily attendance rosters or sign-in sheets.

Not requiring a point of service meal count is expected to provide some operational flexibility. However, school food authorities are reminded that they must continue to ensure that the Claim for Reimbursement accurately reflects the number of free, reduced price and paid lunches and afterschool snacks that are served to children eligible for such meals for each day of operation, Further, the Claim for Reimbursement cannot request payment for more than one lunch and afterschool snack per child per day.

This proposal would also make revisions to the internal controls set forth under existing § 210.8(a). Currently, school food authorities are required to establish internal controls which ensure the accuracy of lunch counts prior to the submission of the monthly Claim for Reimbursement.

Under the proposed rule, the existing on-site review requirements for afterschool snack service would be modified. These proposed modifications are further discussed in Part 1.I.K of this preamble.

This proposal would also revise § 210.8(a) to expand the comparisons of daily free, reduced price and paid lunch counts to include comparisons of afterschool snack counts against data which will assist in the identification of snack counts in excess of the number of free, reduced price and paid snacks served each day to eligible children. The Department is not proposing specific data comparisons in order to provide school food authorities with the flexibility to design comparisons which ensure the fiscal integrity of the afterschool snack service under their jurisdiction.

Finally, under the proposal, school food authorities would be required to expand the system for following up on lunch counts which suggest the likelihood of counting problems to include afterschool snack counts which also have the likelihood of problems.

J. Recordkeeping and Reporting Requirements

In recognition of the fact that many afterschool care programs operate on a drop-in basis, this proposed rule would not require school food authorities to maintain traditional enrollment records for the children who attend their afterschool care programs. Instead, the rule would require school food authorities to maintain daily attendance rosters, sign-in sheets or, with State agency approval, other methods of accurately recording attendance. This information is needed to confirm the child care aspects of the operation and to support the meal counts reported on the Claim for Reimbursement. This provision is found at § 210.4a(q) of this proposed rule.

The school food authority would report the number of afterschool snacks served by eligibility category and, for each October, the number of schools and sites claiming reimbursement for afterschool snacks under the NSLP on the monthly Claim for Reimbursement. These provisions are found at § 210.4a(r) and at § 210.8(c) of this proposed rule.



K. School Food Authority Monitoring

This rule proposes to revise the current monitoring requirements for the NSLP afterschool care programs. Under § 210.9(c), *Afterschool care requirements,* paragraph (7) of existing regulations, school food authorities are required to review each afterschool snack service site twice each year; the first review must be made during the first four weeks that school is in operation. Under this proposal, the first review would be required to be made during the first six weeks of snack service, thus providing school food authorities with an additional two weeks for review activities. The proposed rule also clarifies that the school food authority must review the afterschool snack counting and claiming system and compliance with meal pattern requirements. These provisions are found at § 210.4a(s) of this proposed rule.

L. State Agency Monitoring

This proposed rule would add State agency monitoring requirements to § 210.19(a), *General Program management.* Under the proposed paragraph, each State agency would be required to determine whether school food authorities claiming reimbursement for afterschool snacks under § 210.4a meet the requirements of this part in order to establish whether Claims for Reimbursement are properly payable. Each State agency would be required to conduct on-site reviews of at least 10 percent, but not less than 1 site, of each school food authority's afterschool snack service sites on the same schedule required of administrative reviews under § 210.18(c). Such reviews could be conducted at the same time the school food authority is scheduled for an administrative review in accordance with § 210.18. State agencies could also conduct these evaluations in conjunction with technical assistance visits, other reviews, or separately. These requirements are cross-referenced at § 210.4a(t).

*Section II. What Are the Proposed Core Requirements Under the CACFP?*

A. Eligible Institutions

Under this proposed rule, an "at-risk afterschool care center" is a public or private nonprofit organization (or proprietary title XX center) eligible to participate in the CACFP that provides nonresidential care to children through an approved afterschool care program in an eligible area. (Area eligibility is discussed in Part 1.II.I of this preamble.) At-risk afterschool care centers receive reimbursement at the free rate for all snacks served to eligible children. Like other centers in the CACFP, an at-risk afterschool care center may participate as an independent center by entering into an agreement directly with the State agency, or under the auspices of a sponsoring organization which enters into the agreement. This rule proposes to include a definition of "at-risk afterschool care center" in § 226.2. (Licensing is discussed in Part 4.II of this preamble.)

B. Eligible Afterschool Care Programs

Under the proposal, to receive reimbursement under the afterschool snack component of the CACFP, an at-risk afterschool care center must serve snacks to eligible children in an eligible afterschool care program. An eligible afterschool care program:

- Is organized primarily to provide care for children *after* school;
- Has organized, regularly scheduled activities (*i.e.,* in a structured and supervised environment); and
- Includes education or enrichment activities.

Afterschool care program requirements are found at § 226.17a(b) of this proposed rule.

Afterschool care programs would be permitted to limit participation for space, security considerations, special needs or, where applicable, licensing requirements. For example, afterschool care programs designed to accommodate special needs or with other limiting factors, such as programs targeted to children with learning disabilities or to children who are academically gifted, would be eligible for reimbursement.

Programs could include supervised athletic activity along with education or enrichment activities, such as those typically sponsored by the Police Athletic League, Boys and Girls Clubs and the YWCA. The key requirement for afterschool programs that include sports would be that they are "open to all" and would not limit membership for reasons of athletic ability, or would not exist principally for the pursuit of competitive athletics.

C. Ineligible Afterschool Care Programs

Under the proposal, organized interscholastic athletic programs or community level competitive sports programs would not be approved as afterschool care programs under the CACFP. This prohibition is found at § 226.17a (b)(2) of this proposed rule.

D. Eligible Children

Under the proposal, children would be eligible to participate if they are students who participate in an approved afterschool care program and are age 18 or under. However, the Conference Report that accompanied the Child Nutrition Reauthorization Act indicated that snacks could be claimed for children who turn 19 during the school year. Therefore, this proposed rule would allow reimbursement to be claimed for snacks served to these children until the end of the school year in which they turn 19. Reimbursement may also be claimed for persons, regardless of age, who meet the other requirements and are determined by the State agency to have one or more disabilities and are enrolled in a child care institution which serves a majority of persons age 18 and under. This provision is found at § 226.17a(c) of this proposed rule.

As in the NSLP, there would be no minimum age for participation. Even snacks served after school to pre-primary children could be claimed as long as the children are attending class in a school (*e.g.,* Head Start or Even Start) and are participating in an approved afterschool care program after their regularly scheduled school day.

E. Days of Service

Under this proposal, the CACFP at-risk afterschool care centers would receive reimbursement for snacks served on any day during the regular school year, including weekends, holidays, and school vacations that fall during the regular school year. In fact, a CACFP at-risk afterschool care center could choose to operate only on weekends, holidays and school vacations during the regular school year. However, CACFP at-risk afterschool care centers would *not* be reimbursed for snacks served during summer vacations, because the Child Nutrition Reauthorization Act explicitly limits reimbursement to snacks served during the "regular" school year. These provisions are found at § 226.17a(l) of this proposed rule.

Organizations that offer programs during summer vacations may also be eligible to participate in the Summer Food Service Program (SFSP). CACFP at-risk afterschool care centers that qualify for the SFSP would be able to claim 2 meals, or 1 meal and 1 snack, per child per day under that Program. For schools that operate on a year-round basis, snacks served afterschool in the summer to children could be claimed through the afterschool care

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components of either the NSLP or CACFP, assuming the other eligibility requirements are met.

F. Number of Snacks Claimed

Under the proposal, reimbursement may be claimed for one snack per child per day. An at-risk afterschool care center that provides care to a child under another component of the CACFP during the same day could not claim reimbursement for more than two meals and one snack, or one meal and two snacks, per child per day, including the afterschool snack. All meals and any snacks would be claimed in accordance with the requirements for the applicable component of the CACFP (*e.g.*, child care centers, outside-school-hours care centers). This provision is found at § 226.17a(j) of the proposed rule.

G. Snack Meal Pattern

The proposal would require that snacks meet the meal pattern for supplemental food (snacks) in § 226.20(a)(4) or (c)(4). Portions for children ages 13 through 18 would follow the portions stipulated for children ages 6 through 12. This provision is found at § 226.17a(k) of this proposed rule. Even though this proposed rule does not require larger portions for children ages 13–18, we would recommend that afterschool care programs offer larger portions for older children based on their greater food energy requirements.

H. What Reimbursement Do At-Risk Afterschool Care Centers Earn?

Under the proposal, CACFP afterschool care programs must be "area eligible" in order to qualify as at-risk afterschool care centers. As such, all snacks would be reimbursed at the free rate. Applications for free and reduced price meals would not be required for at-risk afterschool care centers. This provision is found at § 226.17a(m) of the proposed rule.

Afterschool care programs that do not meet area eligibility criteria would not receive reimbursement for afterschool snacks under the at-risk component of the CACFP. However, such programs could be eligible to participate in the CACFP as outside-school-hours care centers, provided they meet all of the requirements established for these facilities under the CACFP regulations. If they meet the criteria set forth in § 210.4a, they may be eligible to participate in the NSLP afterschool snack component.

I. Area Eligibility

As mentioned above, only those afterschool care programs that are "area eligible" (*i.e.*, located in an eligible area) could claim reimbursement as an at-risk afterschool care center. Under this proposal, an afterschool care program site would be located in an "eligible area" if it is located in the attendance area of an elementary, middle, or high school in which at least 50 percent of the enrolled children are certified eligible for free or reduced price meals. Area eligibility requirements are found at § 226.17a(h) of this proposed rule.

Under this proposed rule, the State agency would determine the area eligibility for each afterschool care program site seeking to qualify as area eligible based on information provided by the at-risk afterschool care center (for independent centers), or by the sponsoring organization of the at-risk afterschool care center(s). This provision is found at § 226.17a(e) of this proposed rule. We would encourage State agencies to provide technical assistance to sponsoring organizations and independent at-risk afterschool care centers in obtaining the necessary documentation of area eligibility.

Area eligibility determinations for the CACFP would be made once every *three years*. FNS, the State agency or the sponsoring organization could change the determination if updated data indicates that an at-risk afterschool care center is no longer area eligible. However, the State agency may not routinely require redeterminations of area eligibility status based on updated data before the three-year period has expired. We decided to propose to make the CACFP determinations valid for three years to be consistent with the statutory mandate for tiering determinations for day care homes participating in the CACFP. Tier I day care home determinations based on school data are valid for three years.

Area eligibility determinations would be made using free and reduced price school meal data for the preceding October, or the other month the NSLP State agency has designated pursuant to § 210.9(b)(20) of this proposed rule. At-risk afterschool care centers could begin program operations at any time during the year. For example, if a particular site is not area eligible at the beginning of the school year (August 1999) based on the most recent October data (October 1998), that site could be determined to be area eligible in January 2000 if the new October data (October 1999) shows an appropriate change. These provisions are found at § 226.17a(h)(2) of this proposed rule.

As previously mentioned, in order to facilitate area eligibility determinations, this rule proposes to expand current § 210.9(b)(20) to require school food authorities to provide their State agency with a list of all middle and high schools in their jurisdictions in which at least 50 percent of the enrolled children are certified eligible for free or reduced price meals the preceding October, or another State agency-designated month. This is in addition to the list of elementary schools that meet these requirements that is currently required by § 210.9(b)(20) to assist with tiering determinations for day care homes in the CACFP.

Under this proposed rule, § 210.19(f) is similarly expanded to require this information to be provided to the CACFP State agency along with the list of the qualifying elementary schools already required to be provided. Commenters should note that, unlike tiering determinations, area eligibility determinations for at-risk afterschool care centers would be based on the attendance area for *any* school in whose attendance area the afterschool care program is located, not just elementary schools. Also unlike tiering determinations, area eligibility could not be established using census data since, unlike tiering, the use of census data is not authorized by statute.

J. Recordkeeping and Reporting Requirements

This proposed rule would require at-risk afterschool care centers to maintain a daily attendance roster, sign-in sheet or, with State agency approval, other methods of accurately recording attendance. This information is needed to confirm the child care aspects of the operation and to support the meal counts reported on the Claim for Reimbursement. This provision is found in § 226.17a(n) of this proposed rule.

This rule would not require at-risk afterschool care centers to maintain traditional enrollment records for the children who attend their afterschool care programs. This is in recognition that many afterschool care programs operate on a drop-in basis and do not have specific enrollment procedures and schedules for attendance. We are proposing to amend the definition of "Enrolled child" in § 226.2 to include this approach for at-risk afterschool care centers. All other types of facilities participating in the CACFP (i.e., day care homes, child care centers, outside-school-hours centers, and adult care centers) would continue to be required to have signed enrollment forms for each child or adult in care.

K. Monitoring Requirements

This rule proposes to require sponsors of at-risk afterschool care centers to monitor their centers three times a year.



Although they serve similar populations, sponsors of outside-school-hours care centers will still be required to monitor their centers six times a year (§ 226.16(d)(4)(iv)). We are evaluating whether to reduce the frequency for monitoring sponsored outside-school-hours care centers in the CACFP and expect to address this provision in an upcoming rule on CACFP management improvement. This provision for at-risk afterschool care centers is found at § 226.16(d)(4)(iii) and § 226.17a(p) of this proposed rule.

In addition, this rule proposes to require State agencies to conduct a technical assistance visit to each newly participating independent at-risk afterschool care center. The visit would be required during the first 90 days of the center's program operations. At the visit, the State agency would be required to examine meal pattern compliance. The State agency would also confirm the accuracy of the documentation submitted and used by the State agency to determine the eligibility of the center's afterschool care program and the center's area eligibility. These visits are expected to ensure that the new at-risk afterschool centers are off to a strong start. Without this new requirement, it would be possible under the current review requirements in § 226.6(l) that the State agency would not visit a new at-risk afterschool care center until its fourth year of operation. These provisions are found at § 226.6(l)(4) and § 226.17a(p) of this proposed rule.

**Part 2—How Do the Afterschool Snack Components in the NSLP and CACFP Compare in This Proposed Rule?**

The chart below summarizes the proposed requirements for afterschool care programs in the NSLP and CACFP and provides the regulatory citations established by this proposed rule. A more detailed discussion of some of the requirements follows in Part 3 of this preamble.

BILLING CODE 3410-30-P

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| | NSLP AFTERSCHOOL SNACKS, AS PROPOSED | | CACFP AT-RISK AFTERSCHOOL SNACKS, AS PROPOSED | |
|---|---|---|---|---|
| PROPOSED REQUIREMENT | DESCRIPTION | REGULATORY CITATION | DESCRIPTION | REGULATORY CITATION |
| Eligible institutions | School food authorities participating in the lunch component of the NSLP or Commodity School Program<br><br>Participating schools/sites may be area eligible and claim all meals free. If a school/site is not area eligible, reimbursement would be based on each child's eligibility for free and reduced price meals. | §210.4a(a)<br><br>§210.4a(n) | Institutions eligible to participate in the CACFP and which are located in an eligible area. (See "area eligibility" below.) | §226.2 (definition of "At-risk afterschool care center"); §226.17a(a) |
| Eligible afterschool care programs | (1) Is organized primarily to provide care for children after school when school is in session;<br><br>(2) Have organized, regularly scheduled activities (i.e., in a structured and supervised environment);<br><br>(3) Include education or enrichment activities; and<br><br>(4) Are operated or sponsored by a school or school district<br><br>Afterschool care programs do not include organized interscholastic athletic programs or community level competitive sports; however, programs may include sports as part of education or enrichment activities | §210.4a(b)<br><br>§210.4a(a)<br><br>§210.4a(b) | (1) Is organized primarily to provide care for children after school or on weekends, holidays, or school vacations during the regular school year;<br><br>(2) Have organized, regularly scheduled activities (i.e., in a structured and supervised environment);<br><br>(3) Include education or enrichment activities; and<br><br>(4) Are located in an "eligible area"<br><br>Afterschool care programs do not include organized interscholastic athletic programs or communlty level competitive sports; however, programs may include sports as part of education or enrichment activities. | §226.17a(b) |



| | NSLP AFTERSCHOOL SNACKS, AS PROPOSED | | CACFP AT-RISK AFTERSCHOOL SNACKS, AS PROPOSED | |
|---|---|---|---|---|
| PROPOSED REQUIREMENT | DESCRIPTION | REGULATORY CITATION | DESCRIPTION | REGULATORY CITATION |
| Area eligibility | "Area eligible site" means a site located in the attendance area of an elementary, middle, or high school in which at least 50 percent of the enrolled children are certified eligible for free or reduced price meals | §210.2 (definition of "Area eligible site") | "Eligible area" means the attendance area of an elementary, middle, or high school in which at least 50 percent of the enrolled children are certified eligible for free or reduced price school meals | §226.2 (definition of "Eligible area") |
| Licensing | No Federal requirement, although there may be State or local licensing requirements | Not applicable | Must meet State or local health and safety standards unless there is a Federal, State, or local requirement for licensing | §226.17a(a)(1)(iii); §226.6(d)(1)(iv) §226.17(b)(1) |
| Reimbursement | All snacks served in area eligible sites reimbursed at free rate; reimbursement for snacks served at other sites depends on the eligibility status of the child (i.e., free, reduced price or paid) | §210.4a(n) | All snacks served in at-risk afterschool care centers reimbursed at free rate | §226.17a(m) |
| Meal charges | The school food authority may set the price for paid afterschool snacks; maximum reduced price charge is 15 cents;<br><br>Free afterschool snacks must be served at no charge | §210.4a(j) | All snacks must be served at no charge | §226.17a(i) |

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| | NSLP AFTERSCHOOL SNACKS, AS PROPOSED | | CACFP AT-RISK AFTERSCHOOL SNACKS, AS PROPOSED | |
|---|---|---|---|---|
| PROPOSED REQUIREMENT | DESCRIPTION | REGULATORY CITATION | DESCRIPTION | REGULATORY CITATION |
| Eligible children | Students participating in an approved afterschool care program in a traditional school who either are age 18 or under at the start of the school year or meet the definition of a "Student with disabilities"; students participating in an approved afterschool care program who are enrolled in an RCCI must be age 18 or under at the start of the school year | §210.2 (definitions of "Child" and "Student with disabilities") and §210.4a(c) | Students enrolled in an approved afterschool care program and who either are age 18 or under at the start of the school year or meet the definition of "Person with disabilities" | §226.2 (definitions of "Children" and "Person with disabilities") and §226.17a(c) |
| Meal requirements | Same as current meal supplement meal pattern (no nutrient analysis option); for children older than age 12, use portion sizes for children age 6 through 12, although larger portion sizes recommended for older children;<br><br>No offer versus serve (authorized only for lunch service);<br><br>A la carte foods may be offered with the reimbursable snack; however, no foods of minimal nutritional value may be sold in the food service areas during the snack period | §210.10(n)<br><br>§210.10(n)<br><br>§210.11(b) | Same as current supplemental food meal pattern; for children older than age 12, use portion sizes for children age 6 through 12, although larger portion sizes recommended for older children | §226.20(a)(4) and (c)(4) |



| | NSLP AFTERSCHOOL SNACKS, AS PROPOSED | | CACFP AT-RISK AFTERSCHOOL SNACKS, AS PROPOSED | |
|---|---|---|---|---|
| PROPOSED REQUIREMENT | DESCRIPTION | REGULATORY CITATION | DESCRIPTION | REGULATORY CITATION |
| Meal service periods | Snacks must be served after a child's school day and only on days when school is in session (no weekends, holidays, or school vacations); may claim snacks served in approved afterschool care programs operated for children attending summer school | §210.4a(m) | Snacks must be served after a child's school day or on weekends, holidays, or school vacations during the regular school year including breaks in year-around schools; however, snacks cannot be served during a school's summer vacation | §226.17a(l) |
| Area eligibility determinations | On an annual basis, the school food authority must provide the State agency with an indication of which afterschool care program sites it wishes to claim area eligibility for, and with documentation which permits the State agency to establish whether the afterschool care program site is area eligible | §210.4a(e) | Based on information submitted by the sponsoring organization or independent at-risk afterschool care center, the State agency must make the initial area eligibility determination and must re-determine at least once every three years. | §226.17a(e); §226.15(g); and §226.6(f)(9)(v) |
| Afterschool care program eligibility determinations | The State agency makes the initial determination of afterschool care program eligibility and reviews changed information about the eligibility of the afterschool care program upon submission of changed information | §210.4a(e), (g) | The State agency makes the initial determination of afterschool care program eligibility and reviews changed information about the eligibility of the afterschool care program upon submission of changed information | §226.17a(e), (f) and §226.6(f)(12) |
| Agreement | Amend State agency-school food authority agreement to include afterschool snack component | §210.4a(f) | Enter into a new agreement with the State agency (if new to the CACFP) or amend existing agreement (if already participating in the CACFP) | Independent centers: §226.6(f)(1) (current regulations) and §226.15(i); sponsored centers: §226.16(f) |

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| NSLP AFTERSCHOOL SNACKS, AS PROPOSED | | CACFP AT-RISK AFTERSCHOOL SNACKS, AS PROPOSED | |
|---|---|---|---|
| PROPOSED REQUIREMENT | REGULATORY CITATION | DESCRIPTION | REGULATORY CITATION |
| Reporting and recordkeeping | §210.4a(p)<br><br>§210.4a(q)<br>§210.15(a),(b) | School food authorities must provide State agencies with the number of snacks served, and, for the month of October, data on the number of schools and sites offering snacks under the NSLP<br><br>School food authorities must maintain records as required under part 210, including daily attendance rosters, sign-in sheets or, with State agency approval, other methods of accurately recording attendance<br><br>School food authorities must report middle schools and high schools in which 50 percent of the enrolled children are eligible for free or reduced price meals (currently school food authorities report elementary schools) | At-risk afterschool care centers:<br>(1) documentation of eligibility as an afterschool care program;<br>(2) documentation of area eligibility;<br>(3) daily attendance rosters, sign-in sheets or, with State agency approval, other methods of accurately recording attendance;<br>(4) menus for each snack served;<br>(5) number of snacks prepared or delivered for each meal service;<br>(6) number of snacks served to children and to adults performing labor necessary to the food service for each meal service;<br>(7) documentation that snacks are claimed only for children who are enrolled in an approved afterschool care program, in accordance with the center's licensed capacity, if applicable, and, for a proprietary title XX center, only in months in which the requirements for a proprietary title XX center are met<br><br>§226.17a(b)(1) and (d)(2)<br>§226.17a(n)(1)<br>§226.17a(a)(2) |
| Monitoring | §210.8(a) | School food authorities would be required to make comparisons of daily free, reduced price and paid snack counts against data so they can identify excessive snack counts. They also would be required to follow-up with sites identified as having excessive snack counts. School food authorities would have discretion to select the data used to perform edit checks. | |



| NSLP AFTERSCHOOL SNACKS, AS PROPOSED | | CACFP AT-RISK AFTERSCHOOL SNACKS, AS PROPOSED | |
|---|---|---|---|
| PROPOSED REQUIREMENT | REGULATORY CITATION | DESCRIPTION | REGULATORY CITATION |
| | The school food authority must review each site's counting and claiming procedures and meal pattern compliance twice each school year; first review in the first six weeks of snack service each school year<br><br>The State agency must conduct an on-site review of at least 10%, but not less than 1 site, of a school food authority's afterschool snack sites to determine compliance with §210.4a<br><br>The State agency must review afterschool snack component as part of any follow-up administrative reviews of school food authorities if not reviewed on initial administrative review | §210.4a(s)<br><br>§210.19(a)(7)<br><br>§210.18(i)(4)(iv) | The State agency must review independent at-risk afterschool care centers and sponsoring organizations of at-risk afterschool care centers on the same schedule as for other centers and sponsoring organizations (i.e., 1/3 each year, in each center at least once every four years)<br><br>The State agency must conduct a technical assistance visit to all newly participating independent at-risk afterschool care centers during the first 90-days of program operation.<br><br>The sponsoring organization must review sponsored at-risk afterschool care centers 3 times each year, including at least one review during the first six weeks of program operation and not more than 6 months between reviews. | Independent centers and sponsoring organizations:<br>§226.6(l)(1) (in current regulations)<br><br>Independent centers: §226.6(l)(4)<br><br>Sponsored centers:<br>§226.16(d)(4)(iii) |

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**Part 3—What Are the Program-Specific Issues?**

This part highlights issues raised by the afterschool snack component that are program specific.

*Section I. Issues Specific to the NSLP*

A. Must the Afterschool Care Program Be Operated Directly by the School?

Under the proposal, a school seeking to participate in the NSLP afterschool snack component would participate through its school food authority (§ 210.4a(a)). There may be individual afterschool care programs sponsored by one or more schools under the jurisdiction of the school district or a single afterschool care program operated by the school district at one or more sites. At least one school in the school food authority would have to participate in the NSLP lunch component.

While the afterschool care program would be "sponsored or operated" by a school or school district, this does not mean that the school or school district would have to carry out the day-to-day management of the program. A school or school district could contract with another organization (such as the YWCA or a Boys and Girls Club) to manage the afterschool care program on its behalf. However, the school or school district would be required to retain overall administrative responsibility for the afterschool care program and the school food authority must retain administrative and fiscal responsibility for the snack service. Furthermore, the school food authority would be the party that enters into the agreement with the State agency and would assume full responsibility for meeting all program requirements.

B. Do the Point of Service Requirements Apply to the Afterschool Snack Component?

This proposed rule would not impose point of service count requirements (as discussed in Part 1.I.I of this preamble). However, accurate daily meal counts would continue to be required. State agencies may require point of service counts.

C. Does the Competitive Foods Requirement Apply?

This proposed rule would amend the competitive foods provision found at § 210.11(b) to extend the prohibition on the sale of foods of minimal nutritional value in food service areas to the afterschool snack periods.

D. May Schools Choose To Claim Snacks Through the CACFP Instead?

Under the proposal, schools may claim reimbursement for afterschool snacks either under the NSLP or CACFP. If a school claims afterschool snacks under the CACFP, the school would be required to meet all requirements for at-risk afterschool care centers, outside-school-hours care centers, or child care centers in that Program and keep CACFP records separate from the NSLP records. Afterschool snacks may not be claimed by CACFP at-risk afterschool care centers in the summer. Therefore, schools wishing to claim reimbursement for afterschool snacks served in afterschool care programs after summer school classes would do so: (1) Through the NSLP; (2) as a CACFP child care center or outside-school-hours care center; or (3) as an area eligible "open site" through the Summer Food Service Program (Refer to 7 CFR 225.2).

*Section II. Issues Specific to the CACFP*

A. What Would Be the Difference Between At-Risk Afterschool Care Centers and Outside-School-Hours Care Centers?

Prior to enactment of the Child Nutrition Reauthorization Act, organizations operating afterschool care programs could participate in the CACFP as either outside-school-hours care centers, or, if they also provided child care during the school day, as traditional child care centers with an afterschool care program. The new afterschool snack component adds another possibility—participation as an at-risk afterschool care center. Under this proposed rule, the main differences between participation as an outside-school-hours care center and an at-risk afterschool care center would be:

- All snacks served in at-risk afterschool care centers are reimbursed at the free rate; reimbursement in outside-school-hours care centers is based on the child's eligibility for free, reduced price, or paid meals;
- Snacks served to all children through age 18 may be reimbursed in at-risk afterschool care centers; only meals and snacks served to children through age 12 may be reimbursed in outside-school-hours care centers;
- At-risk afterschool care centers must be area eligible;
- Only one snack per child per day may be claimed by at-risk afterschool care centers; outside-school-hours care centers may claim two meals and one snack or one meal and two snacks per child per day;
- At-risk afterschool care centers may only receive reimbursement for snacks served after school; outside-school-hours care centers may receive reimbursement for meals and snacks served before and after school; and
- At-risk afterschool care centers may only receive reimbursement during the regular school year, including weekends and holidays; outside-school-hours care centers can receive reimbursement during periods of school vacation, including weekends, holidays, and summer.

The following chart compares the requirements for the existing afterschool care centers to the proposed at-risk afterschool care center requirements.

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CACFP

**COMPARISON BETWEEN THE REQUIREMENTS FOR CACFP OUTSIDE-SCHOOL-HOURS CARE CENTERS AND AT-RISK AFTERSCHOOL CARE CENTERS, AS PROPOSED**

| | OUTSIDE-SCHOOL-HOURS CARE CENTERS CURRENT REGULATIONS | | AT-RISK AFTERSCHOOL CARE CENTERS PROPOSED RULE | |
|---|---|---|---|---|
| PROPOSED REQUIREMENT | DESCRIPTION | REGULATORY CITATION | DESCRIPTION | REGULATORY CITATION |
| Eligible institutions | Public and private nonprofit organizations, proprietary title XX centers, and Iowa/Kentucky demonstration project centers | §226.2 (definition of "Outside-school-hours care center") | Same; except that facilities must be located in an eligible area | §226.2 (definitions of "At-risk afterschool care center" and "Eligible area") |
| Licensing | Must meet State or local health and safety standards unless there is a Federal, State or local requirement for licensing | §226.6(d)(1) | Same | §226.6(d)(1) |
| Reimbursement/ Area eligibility | Program may operate in any area; individual free and reduced price applications are taken to determine level of reimbursement (free, reduced price, and paid) | §226.19(b)(8) | Program must be located in an eligible area (i.e. the attendance area of a school in which 50 percent or more of the children enrolled are eligible for free or reduced price school meals); all snacks are reimbursed at the free rate | §226.2 (definition of "Eligible area"); §226.17a(b)(1)(iv), §226.17a(h) and 226.17a(m) |
| Eligible children | Children who are age 12 and under<br><br>Children age 15 and under who are children of migrant workers<br><br>Persons of any age who meet the definition of "Person with disabilities" | §226.2 (definition of "Children") | Students enrolled in an approved afterschool care program and who are age 18 or under at the start of the school year, including children of migrants; persons of any age who meet the definition of "Person with disabilities" | §226.2 (definitions of "Children" and "Person with disabilities"); §226.17a(c) |
| Types of meals eligible for reimbursement | Breakfast, snack, and supper (lunch may also be served under certain conditions) | §226.19(b)(4) | Snack only | §226.17a(j) |

| | OUTSIDE-SCHOOL-HOURS CARE CENTERS CURRENT REGULATIONS | | AT-RISK AFTERSCHOOL CARE CENTERS PROPOSED RULE | |
|---|---|---|---|---|
| PROPOSED REQUIREMENT | DESCRIPTION | REGULATORY CITATION | DESCRIPTION | REGULATORY CITATION |
| Number of reimbursable meals | Maximum of two meals and one snack per child per day (or two snacks and one meal) | §226.19(b)(5) | Maximum of 1 snack per child per day | §226.17a(j) |
| Meal patterns | CACFP meal patterns | §226.20(a)(4), (c)(4) | CACFP snack patterns | §226.17a(k) |
| Meal service periods | School days, school vacation, including weekends and holidays; no weekend-only programs | §226.19(b)(4) | School days, weekends, holidays, and school vacations (except summer vacation) during the regular school year; weekend/holiday/ school break-only programs are permitted; no summer snack service except in year-round districts | §226.17a(l) |
| Time restrictions for meal service | Three hours must elapse between the beginning of one meal service and the beginning of another, except that four hours must elapse between the service of a lunch and supper when no snack is served between lunch and supper. In addition, the service of a supper must begin no later than 7 p.m., and end no later than 8 p.m.; the duration of the meal service is limited to 2 hours for lunch and supper, and 1 hour for other meals | §226.19(b)(6) | On school days, the snack must be served after school; on weekends, holidays, and school breaks, snack may be served at any time of day | §226.17a(l) |



| | OUTSIDE-SCHOOL-HOURS CARE CENTERS CURRENT REGULATIONS | | AT-RISK AFTERSCHOOL CARE CENTERS PROPOSED RULE | |
|---|---|---|---|---|
| PROPOSED REQUIREMENT | DESCRIPTION | REGULATORY CITATION | DESCRIPTION | REGULATORY CITATION |
| Monitoring | The State agency must review independent outside-school-hours care centers and sponsoring organizations of independent outside-school-hours care centers on the same schedule as for other centers and sponsoring organizations (i.e. 1/3 each year and each center at least once every four years)<br><br>The sponsoring organization must review sponsored outside-school-hours care centers six times each year, including at least one review during the first four weeks of program operations and not more than three months between reviews | Independent centers: §226.6(l)(1)<br><br>Sponsored centers: §226.16(d)(4)(iv) | The State agency must review independent at-risk afterschool care centers and sponsoring organizations of at-risk afterschool care centers on the same schedule as for other centers and sponsoring organizations (i.e. 1/3 each year and each center at least once every four years)<br><br>The State agency must conduct a technical assistance visit of all newly participating independent at-risk afterschool care centers during the first 90 days of program operation<br><br>The sponsoring organization must review sponsored at-risk afterschool care centers three times each year, including at least one review during the first six weeks of program operations and not more than six months between reviews | Independent centers and sponsoring organizations: §226.6(l)(1) (in current regulations)<br><br>Independent centers: §226.6(l)(4)<br><br>Sponsored centers: §226.16(d)(4)(iii) |

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B. May For-Profit Organizations Participate as At-Risk Afterschool Care Centers?

A proprietary title XX center is a for-profit organization that provides nonresidential child care for which it receives funds under Title XX of the Social Security Act for not less than 25 percent of its enrolled children, or 25 percent of its licensed capacity, whichever is less. Under this proposal, a proprietary title XX center could participate in the CACFP as an at-risk afterschool care center, but only if it also participates as a child care center or an outside-school-hours care center.

Due to the drop-in nature of many afterschool care programs, children who only participate in the afterschool care program would not be counted in determining an organization's eligibility as a proprietary title XX center. This means that a for-profit organization seeking to serve as an at-risk afterschool care center could participate only if it qualifies as a proprietary title XX center based on the enrollment of its traditional child care program (i.e., the center receives funds under title XX of the Social Security Act for not less than 25 percent of the children enrolled in the traditional child care program). If the center qualifies as a proprietary title XX center, then it could claim reimbursement for snacks served in an at-risk afterschool care center if: (1) It operates an approved afterschool care program; (2) it is located in an eligible area; and (3) the snacks are served to eligible children after their school day. Similarly, private for-profit organizations participating in the Iowa/Kentucky demonstration projects under section 17(p) of the NSLA could serve as at-risk afterschool care centers, under the requirements described above.

C. Should the Children Participating in the At-Risk Afterschool Component Be Included in a Center's Enrollment for the Purpose of Determining the Claiming Percentage or Blended Rate?

Under this proposal, children who only participate in the at-risk afterschool component would not be counted as enrolled children for the purposes of determining claiming percentages/blended rates. Children who participate in both the at-risk snack component of the program and in at least one meal service of the traditional child care program at a center would be required to have signed income eligibility statements on file. Such children would be included in the center's enrollment for the purpose of determining claiming percentages/blended rates. We are proposing to amend § 226.9(b)(2) of the regulations to reflect this requirement.

**Part 4—What Other Changes Does This Proposed Rule Make?**

*I. Terminology*

As mentioned previously, this rule proposes to use the terms "afterschool snack" (for the NSLP) and "snack" (for the CACFP) rather than "meal supplement" in order to conform to the more commonly used terminology. We have proposed conforming changes throughout the NSLP and CACFP regulations, including the addition of the definition of "Afterschool snack" in § 210.2 and the definition of "Snack" in § 226.2.

*II. CACFP Licensing*

The Child Nutrition Reauthorization Act also revised the current CACFP licensing requirements in section 17(a)(1)(C) of the NSLA to facilitate CACFP participation of organizations that provide care outside of school hours. This applies both to outside-school-hours care centers and to the new at-risk afterschool care centers. Under the change, these centers are required to be licensed only if Federal, State, or local licensing is required. If licensing is not required, they must only meet State or local health and safety requirements. This change is found in § 226.6(d)(1)(vi) of this proposed rule.

*III. Maximum Number of Meals*

Section 708(d) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. 104–193) amended section 17(f)(2)(B) of the NSLA (42 U.S.C. 1766(f)(2)(B)) to reduce the number of meals that may be claimed by participating centers in the CACFP. The statutorily revised maximum is two meals and one supplement and took effect August 22, 1996. State agencies were informed of this change in an August 13, 1996, memorandum. This proposed rule makes conforming changes throughout the CACFP regulations and clarifies that one meal and two supplements also satisfies the new limit.

*IV. Correction to Part 235*

The statute authorizing State administrative expense (SAE) funds does not reference the NSLP afterschool care component. Thus, State expenditures for the NSLP afterschool snack component will not "earn" SAE funds. However, the CACFP at-risk afterschool snack expenditures (which are made under section 17 of the NSLA) will. This proposed rule would correct an error in the SAE regulations that may cause confusion on this matter. Section 235.4(a)(1) incorrectly states that the amount of SAE funds allocated to each State agency is equal to one percent of the funds expended by the State in the second preceding fiscal year under sections 4 and 11 of the NSLA, and sections 3, 4, and 17A of the Child Nutrition Act of 1966. However, there is no section 17A in the Child Nutrition Act; therefore, this rule proposes to delete that reference. We wish to point out that this provision is taken directly from section 7(a)(1) of the Child Nutrition Act of 1966 (42 U.S.C. 1776(a)(1)); that section does not contain the erroneous cite to section 17A of the Child Nutrition Act. Nor does that section reference funds expended under section 17A of the NSLA (the authorizing statute for the afterschool snack component in the NSLP).

**Part 5—What Are the Implementation Dates?**

The afterschool snack provisions of the Child Nutrition Reauthorization Act were made effective retroactive to October 1, 1998. To facilitate immediate implementation of these provisions, we provided guidance to State agencies on how to claim reimbursement for afterschool snacks under this new law.

**Executive Order 12866**

This proposed rule has been determined to be "significant" and was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866. The Department has prepared a regulatory impact analysis which indicates an estimated USDA cost of $308 million over 5 years. The regulatory impact analysis can be obtained from Mr. Eadie at the address listed in the **ADDRESSES** section of this preamble.

**Regulatory Flexibility Act**

This proposed rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Pursuant to that review, Shirley R. Watkins, Under Secretary for Food, Nutrition, and Consumer Services, has certified that this proposed rule would not have a significant impact on a substantial number of small entities because of the optional nature of the snack service. Schools or institutions choose whether they wish to participate in this additional meal service. Because most schools or institutions that will choose to add a snack service are already participating in the NSLP or the CACFP, the snack service will not have a significant paperwork or reporting burden because it is incorporated under the existing agreement and Claim for Reimbursement.



**Executive Order 12372**

The NSLP, SAE funds, and CACFP are listed in the Catalog of Federal Domestic Assistance Programs under 10.555, 10.560, and 10.558, respectively. For the reasons set forth in the final rule in 7 CFR part 3015, subpart V, and related Notice (48 FR 29115), these programs are included in the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials. Since enactment of the Act in 1998, the Department informally consulted with State administering agencies, Program sponsors, and NSLP and CACFP advocates on ways to effectively implement the service of afterschool snacks. Discussions with State agencies took place at the Biennial State Directors' Meeting held in 1999 and at multiple State agency meetings held at various times throughout 1999 and 2000. Discussions with school food service personnel took place at various meetings sponsored by the American School Food Service Association and in a variety of other small and large group meetings.

**Executive Order 12988**

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified. Prior to any judicial challenge to the application of the provisions of this rule, all applicable administrative procedures must be exhausted.

In the NSLP, the administrative procedures are set forth under the following regulations: (1) School food authority appeals of State agency findings as a result of an administrative review must follow State agency hearing procedures as established pursuant to 7 CFR 210.18(q); (2) school food authority appeals of FNS findings as a result of an administrative review must follow FNS hearing procedures as established pursuant to 7 CFR 210.30(d)(3); and (3) State agency appeals of SAE fund sanctions (7 CFR 235.11(b)) must follow FNS Administrative Review Process as established pursuant to 7 CFR 235.11(f).

In the CACFP, the administrative procedures are set forth at: (1) 7 CFR 226.6(k), which establishes appeal procedures; and (2) 7 CFR 226.22 and 7 CFR part 3015, which address administrative appeal procedures for disputes involving procurement by State agencies and institutions.

**Public Law 104–4**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, the FNS generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local or tribal governments, in the aggregate, or the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires FNS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This proposed rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and tribal governments or the private sector of $100 million or more in any one year. Thus, this proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA.

**Paperwork Reduction Act of 1995**

This proposed rule contains paperwork burdens that are subject to review and approval by the Office of Management and Budget. In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, this notice invites the general public and other public agencies to comment on the information collection contained in this proposed rule.

Written comments must be received on or before December 11, 2000. Comments concerning the information collection aspects of this proposed rule should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Room 10235, New Executive Office Building, Washington, DC 20503, Attention: Desk Officer for the FNS. A copy of these comments may also be sent to Mr. Eadie at the address listed in the **ADDRESSES** section of this preamble. Commentors are asked to separate their information collection requirements comments from their comments on the remainder of this proposed rule.

OMB is required to make a decision concerning the collection of information contained in this proposed rule between 30 and 60 days after the publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulation. These information collection requirements will not become effective until approved by OMB.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

The title, description, and respondent description of the information collections are shown below with an estimate of the annual reporting and recordkeeping burdens. Included in the estimates is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information.

*Title:* 7 CFR part 210, National School Lunch Program.
*OMB Number:* 0584–0006.
*Expiration Date:* March 31, 2003.

*Title:* 7 CFR part 226, Child and Adult Care Food Program.
*OMB Number:* 0584–0055.
*Expiration Date:* May 31, 2001.

*Title:* 7 CFR part 245, Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools.
*OMB Number:* 0584–0026.
*Expiration Date:* September 30, 2001.
*Type of Request:* Revision of currently approved collections.

*Abstract:* This rule proposes to codify the provisions of the William F. Goodling Child Nutrition Reauthorization Act of 1998 regarding reimbursement of afterschool snacks in the NSLP and the CACFP. Corresponding technical amendments are also proposed to the regulations governing the SAE Funds and Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools.

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Provisions for operating the afterschool snack component are similar under the two programs, yet are distinguished enough to fit easily into the two larger programs, the NSLP or CACFP. For example, the afterschool snack component under both programs serves the same age group (ages 18 and under at the start of the school year) and must provide care that includes education or enrichment activities. On the other hand, the times that the component is available vary between the NSLP and CACFP. Under the NSLP, afterschool snacks may be provided only on days when school is in session, whereas afterschool snacks under the CACFP may be provided on weekends, holidays, or during vacations that occur during the regular school year. These similarities and differences illustrate how the afterschool snack component mirrors the features and goals of the larger programs.

By utilizing similar features of the "parent" program (*i.e.*, the NSLP or the CACFP), this proposed rule would place fewer new information collection burdens on State agencies and local program administrators than might have otherwise been necessary. Thus, we estimate that most of the reporting or recordkeeping burdens that normally would accompany a new program can be contained within existing burdens.

In accordance with the Paperwork Reduction Act of 1995, the Department is providing the public with the opportunity to provide comments on the information collection requirements of the proposed rule as noted below:

BILLING CODE 3410-30-P



**Estimated Annual Reporting Burden for 0584-0006, National School Lunch Program, 7 CFR 210**

| | 7 CFR Part 210 Section | Annual Number of Respondents | Annual Frequency | Average Burden Per Response | Annual Burden Hours |
|---|---|---|---|---|---|
| State agency provides to CACFP State agencies lists of elementary, middle, and high schools with 50% enrollment that is eligible for free or reduced price meals | | | | | |
| Existing Burden | §210.19(f) | 12 | 1 | .5 | 6 |
| Proposed Burden | §210.19(f) | 12 | 1 | 1.5 | 18 |
| State agency prepares Grant Closeout Report | | | | | |
| Existing Burden | §210.25 | 58 | 2 | 3.2 | 371 |
| Proposed Burden | §210.25 | 58 | 2 | 4.0 | 464 |
| School food authority (SFA) reports the number of schools offering meals for October | | | | | |
| Existing Burden | §210.8(c)(2) | 20,287 | 1 | .08 | 1,623 |
| Proposed Burden | §210.8(c)(2) | 20,287 | 1 | .09 | 1,826 |
| SFA submits application to operate the afterschool snack program | | | | | |
| Existing Burden | none | 0 | 0 | 0 | 0 |
| Proposed Burden | §210.4a(e) | 4,580 | 1 | 1 | 4,580 |
| SFA submits claim for reimbursement | | | | | |
| Existing Burden | §210.8(c) | 19,976 | 12 | 1.5 | 359,568 |
| Proposed Burden | §210.8(c) | 19,976 | 12 | 1.6 | 383,539 |
| Schools take daily counts of snacks served. | | | | | |
| Existing Burden | none | 0 | 0 | 0 | 0 |
| Proposed Burden | §210.4a(q) | 24,000 | 10 | .03 | 7,200 |
| Total Existing **Reporting** Burden for Part 210 | | | 1,126,120 | | |
| Total Proposed **Reporting** Burden for Part 210 | | | 1,162,179 | | |
| Difference Attributed to Proposed Rule | | | +36,059 | | |

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**Estimated Annual Recordkeeping Burden for 0584-0006, National School Lunch Program, 7 CFR 210**

| | 7 CFR Part 210 Section | Annual Number of Respondents | Annual Frequency | Average Burden Per Response | Annual Burden Hours |
|---|---|---|---|---|---|
| State agency records which document details of all reviews and the degree of compliance with the critical and general areas of review to include documented corrective action and fiscal action take on file for review by FNS | | | | | |
| Existing Burden | §210.18(k),(p) §210.20(b)(6) | 58 | 93.23 | 1.25 | 6,759 |
| Proposed Burden | §210.18(k),(p) §210.20(b)(6) | 58 | 93.23 | 1.30 | 7,030 |
| Documentation by the State agency of fiscal action taken to disallow improper claims submitted by SFAs, as determined through claims processing, CRE reviews, and USDA audits | | | | | |
| Existing Burden | §210.19(c), §210.18(p) | 58 | 139 | .33 | 2,660 |
| Proposed Burden | §210.19(c), §210.18(p) | 58 | 145 | .33 | 2,775 |
| SFA keeps documentation of participation data by school, each month's claim for reimbursement and all data used in the claims review process | | | | | |
| Existing Burden | §210.8(a), §210.15(b)(1) | 3,442 16,807 | 12 12 | 10 8 | 413,040 1,613,472 |
| Proposed Burden | §210.8(a), §210.15(b)(1) | 3,442 16,807 | 12 12 | 10 8.25 | 413,040 1,663,893 |
| Schools maintain daily meal menus and production records | | | | | |
| Existing Burden | §210.10(b), §210.15(b)(2) and (b)(3) | 56,941 | 180 | .25 | 2,562,345 |
| Proposed Burden | §210.10(b), §210.15(b)(2) and (b)(3), §210.4a(l) | 56,941 | 180 | .28 | 2,869,826 |
| Schools maintain records of daily counts of afterschool snacks served | | | | | |
| Existing Burden | none | 0 | 0 | 0 | 0 |
| Proposed Burden | §210.4a(p) | 24,000 | 180 | .01 | 43,200 |
| Total **Recordkeeping** Existing Burden for Part 210 | | | 8,307,935 | | |
| Total Proposed **Recordkeeping** Burden for Part 210 | | | 8,709,423 | | |
| Difference Attributed to Proposed Rule | | | +401,488 | | |



**Estimated Annual Reporting Burden for 0584-0055, Child and Adult Care Food Program, 7 CFR 226**

| | 7 CFR Part 226 Section | Annual Number of Respondents | Annual Frequency | Average Burden Per Response | Annual Burden Hours |
|---|---|---|---|---|---|
| State agency processes claims for reimbursement | | | | | |
| Existing Burden | §226.7(k) | 54 | 1 | 1.79 | 97 |
| Proposed Burden | §226.7(k) | 54 | 1 | 1.83 | 99 |
| Technical assistance visits to newly participating independent at-risk afterschool care centers | | | | | |
| Existing Burden | 0 | 0 | 0 | 0 | 0 |
| Proposed Burden | §226.6(l)(4) | 47 | 15 | 0.5 | 352.5 |
| Sponsor or independent institution submits documentation to demonstrate that child care centers, at-risk afterschool care centers, outside-school-hours care centers, day care homes, and adult day care centers are in compliance with licensing/approval criteria | | | | | |
| Existing Burden | §226.6(d), §226.6(e) | 10,144 | 1 | .3 | 3,043 |
| Proposed Burden | §226.6(d), §226.6(e), §226.15(b) | 10,759 | 1 | .3 | 3,228 |
| Sponsor or independent institution submits documentation to demonstrate that at-risk afterschool care centers meet eligibility and area eligibility requirements as part of application process at least once every three years and notify State agency of changes as necessary | | | | | |
| Existing Burden | §226.6(b)(11) | 0 | 0 | 0 | 0 |
| Proposed Burden | §226.15(g) | 1,318 | .3 | 1 | 395 |
| Institutions enter into annual program agreement with State agencies by executing FNS-344 | | | | | |
| Existing Burden | §226.6(f)(1) | 283 | 1 | .92 | 260 |
| Proposed Burden | §226.6(f)(1) | 898 | 1 | .92 | 826 |
| Sponsor or institution submits Claim for Reimbursement | | | | | |
| Existing Burden | §226.7(k) | 283 | 12 | 2.29 | 7,777 |
| Proposed Burden | §226.7(k) | 898 | 12 | 2.29 | 24,677 |
| Total Existing **Reporting** Burden for Part 226 | | | 4,413,645 | | |
| Total Proposed **Reporting** Burden for Part 226 | | | 4,432,045.5 | | |
| Difference Attributed to Proposed Rule | | | +18,400.5 | | |

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**Estimated Annual Recordkeeping Burden for 0584-0055, Child and Adult Care Food Program, 7 CFR 226**

| | 7 CFR Part 226 Section | Annual Number of Respondents | Annual Frequency | Average Burden Per Response | Annual Burden Hours |
|---|---|---|---|---|---|
| State agency collects and maintains CACFP agreements, records received from applicant and participating institutions and documentation of administrative review and Program assistance activities, results, and corrective actions | | | | | |
| Existing Burden | §226.6 | 54 | 1 | 1.92 | 104 |
| Proposed Burden | §226.6 | 54 | 1 | 1.96 | 106 |
| Independent centers and sponsoring organizations of centers must ensure that family size and income, menus, meal counts, enrollment, invoices, and receipts, claims for reimbursement, day care licenses, CACFP applications, and tax exempt certifications (if applicable) are maintained on file for a period of 3 years. Sponsoring organizations of day care homes must ensure that menus, meal counts, attendance, enrollment, day care licenses, CACFP applications and providers' family size and income records are maintained for up to 3 years | | | | | |
| Existing Burden | §226.10(d), §226.15(e) | 10,144 | 1 | 7.828 | 79,407 |
| Proposed Burden | §226.10(d), §226.15(e), §226.17a(o) | 10,759 | 1 | 7.828 | 84,221 |
| Total Existing **Recordkeeping** Burden for Part 226 | | | 170,831 | | |
| Total Proposed **Recordkeeping** Burden for Part 226 | | | 175,647 | | |
| Difference Attributed to Proposed Rule | | | +4,816 | | |

**Estimated Annual Recordkeeping Burden for 0584-0026, Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools, 7 CFR 245**

| | 7 CFR Part 245 Section | Annual Number of Respondents | Annual Frequency | Average Burden Per Response | Annual Burden Hours |
|---|---|---|---|---|---|
| SFAs notify parents in area eligible sites that all children attending afterschool care programs will receive free snacks | | | | | |
| Existing Burden | none | 0 | 0 | 0 | 0 |
| Proposed Burden | §245.5(a)(1)(ii) | 4,580 | 1 | .08 | 366 |
| Total Existing **Recordkeeping** Burden for Part 245 | | | 369,782 | | |
| Total Proposed **Recordkeeping** Burden for Part 245 | | | 370,148 | | |
| Difference Attributed to Proposed Rule | | | +366 | | |

BILLING CODE 3410-30-C



**List of Subjects**

*7 CFR Part 210*

Food and Nutrition Service, Grant programs—education, Grant programs—health, Infants and children, Nutrition, Penalties, Reporting and recordkeeping requirements, School breakfast and lunch programs, Surplus agricultural commodities.

*7 CFR Part 226*

Accounting, Aged, Day care, Food and Nutrition Service, Food assistance programs, Grant programs—health, Indians, Individuals with disabilities, Infants and children, Intergovernmental relations, Loan programs, Reporting and recordkeeping requirements, Surplus agricultural commodities.

*7 CFR Part 235*

Food and Nutrition Service, Food assistance programs, Grant programs—education, Grant programs—health, Infants and children, Reporting and recordkeeping requirements, School breakfast and lunch programs.

*7 CFR Part 245*

Civil rights, Food and Nutrition Service, Food assistance programs, Grant programs—education, Grant programs—health, Infants and children, Milk, Reporting and recordkeeping requirements, School breakfast and lunch programs.

For reasons set forth in the preamble, 7 CFR Parts 210, 226, 235, and 245 are proposed to be amended as follows:

## PART 210—NATIONAL SCHOOL LUNCH PROGRAM

1. The authority citation for part 210 is revised to read as follows:

**Authority:** 42 U.S.C. 1751–1760, 1766a, 1769,1779.

2. In § 210.1:

a. Revise the last two sentences of paragraph (a); and

b. Remove the word "lunches" in the second sentence of paragraph (b) and add in its place the word "meals".

The revision reads as follows:

### § 210.1 General purpose and scope.

(a) * * * Pursuant to this Act, the Department provides States with cash assistance and donated foods to assist schools with serving nutritious meals to children each school day. To meet the Program's objectives, schools must serve meals that are nutritionally adequate in accordance with the applicable provisions of this part 210 to assist participating children with learning the relationship between proper eating habits and good health.

* * * * *

3. In § 210.2:

a. Remove the definitions of "Afterschool care program", "Free lunch", "Reduced price lunch", and "Subsidized lunch";

b. Add definitions for "Afterschool snack", "Area eligibility", "Free meal", "Meal", "Paid meal", and "Reduced price meal";

c. Revise the first sentence of the definition of "Average Daily Participation";

d. Revise paragraph (c) in the definition of "Child" and add a new paragraph (d);

e. Remove the words "lunch program" in the first sentence of the definition of "Commodity School Program" and add in their place the words "school food service";

f. Revise the definition of "Donated foods";

g. Remove the word "meal" in the second sentence of the definition of "Menu item" and add in its place the word "lunch";

h. Revise the definition of "National School Lunch Program";

i. Remove the reference to "1954" in the definition of "Nonprofit" and add in its place a reference to "1986"; and

j. Remove the word "lunches" in the definition of "Reimbursement" and add in its place the word "meals".

The additions and revisions read as follows:

### § 210.2 Definitions.

* * * * *

*Afterschool snack* means a meal supplement that meets the meal pattern requirements specified in § 210.10(n).

*Area eligibility* means a determination that an afterschool care program site is located in a needy area as provided for in § 210.4a(i).

* * * * *

*Average Daily Participation* means the average number of children, by eligibility category, participating in the lunch service each operating day. * * *

*Child* means—* * * (c) for purposes of reimbursement for afterschool snacks in a "School", that term is defined in paragraphs (a) and (b) of the definition of that term, a student participating in an approved afterschool care program who is either age 18 or under at the start of the school year or is a student of any age who meets the definition of a "Student with disabilities" and who is participating in a school program as authorized by paragraph (a) of this definition; or (d) for purposes of reimbursement for afterschool snacks in a "School" as provided for in paragraph (c) of that definition, a student participating in an approved afterschool care program must be age 18 or under at the start of the school year.

* * * * *

*Donated foods* means food commodities donated by the Department for use in the National School Lunch Program or the Commodity School Program.

* * * * *

*Free meal* means a meal served under the Program to a child eligible for free meals under part 245 of this chapter or to a child participating in an approved afterschool care program at an area eligible site. Neither the child nor any member of the household may be required to pay or to work in order to receive the free meal.

* * * * *

*Meal* means food that meets the requirements for a lunch or an afterschool snack in § 210.10.

* * * * *

*National School Lunch Program* means the Program under which participating schools operate a nonprofit school food service in accordance with this part 210. The Program may include serving both lunches and afterschool snacks.

* * * * *

*Paid meal* means a meal served under the Program to a child who is either not eligible for or who elects not to receive free or reduced price meals under part 245 of this chapter.

* * * * *

*Reduced price meal* means a meal served under the Program to a child eligible for reduced price meals under part 245 of this chapter, for which the price is less than the school food authority's full price of the meal and which does not exceed the maximum allowable reduced price specified under part 245 of this chapter or in § 210.4a(j)(2). Neither the child nor any member of the household may be required to work in order to receive a reduced price meal.

* * * * *

4. In § 210.4:

a. Revise paragraph (a);

b. Add a new sentence at the end of paragraph (b)(2);

c. Revise paragraph (b)(3);

d. Remove paragraph (b)(4); and

e. Amend paragraph (c) introductory text by adding a new second sentence.

The revisions and additions read follows:

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**§ 210.4 Cash and donated food assistance to States.**

(a) *General.* To the extent funds are available, FNS will make cash assistance available in accordance with this section to each State agency for meals served to children under the Program.

(b) * * *

(2) * * * FNS will provide additional donated foods for use in lunches and afterschool snacks when they are available.

(3) *Cash assistance* for afterschool snacks. (i) Cash assistance is provided to each State agency for all afterschool snacks served to children in accordance with the provisions of § 210.4a. The total cash assistance provided to a State agency may not exceed the lesser of:

(A) The amounts reported to FNS as paid to school food authorities in accordance with § 210.5(d)(3); or

(B) The total calculated by multiplying the number of afterschool snacks reported to FNS in accordance with § 210.5(d)(1) for each month during the fiscal year by the applicable rate.

(ii) The cash assistance rates for afterschool snacks are adjusted annually to reflect changes in the food away from home series of the Consumer Price Index for all Urban Consumers. These adjustments are announced by Notice in the **Federal Register** in July of each year and are effective on July 1 of each year.

(c) * * * FNS will also make cash assistance available to each State agency for afterschool snacks served in commodity schools in the same manner as it is provided in the National School Lunch Program. * * *

* * * * *

5. Add a new § 210.4a to read as follows:

**§ 210.4a Afterschool snacks.**

(a) *When is a school food authority eligible to receive reimbursement for afterschool snacks?* A school food authority is eligible to receive reimbursement for afterschool snacks when it has an agreement with the State agency for one or more schools to serve lunches under the National School Lunch Program and a school or school district operates or sponsors an eligible afterschool care program as provided in paragraph (b) of this section.

(b) *What is an eligible afterschool care program?* (1) *Eligible program.* For the purposes of paragraph (a) of this section, an eligible afterschool care program is one which:

(i) Is organized primarily to provide care for children after school;

(ii) Has organized, regularly scheduled activities (*i.e.*, in a structured and supervised environment);

(iii) Includes education or enrichment activities; and

(iv) Is sponsored or operated by the school or school district.

(2) *Eligibility limitation.* Organized athletic programs engaged in interscholastic or community level competitive sports are not eligible afterschool care programs.

(c) *What are the eligibility requirements for children participating in an approved afterschool care program?*

(1) *Requirements for children in schools.* In schools, as provided for in paragraphs (a) and (b) of the definition of "School" in § 210.2, school food authorities may claim reimbursement for afterschool snacks served to children who meet the conditions in paragraph (c) of the definition of "Child" in § 210.2 . In such schools, a school food authority may claim reimbursement for a "Student with disabilities" (as defined in § 210.2) who is any age.

(2) *Requirements for children in residential child care institutions.* In residential child care institutions, as provided for in paragraph (c) of the definition of "School" in § 210.2, school food authorities may claim reimbursement for afterschool snacks served who meet the conditions in paragraph (d) of the definition of "Child" in § 210.2.

(d) *Must the afterschool care program be located in a school?* No. Any facility selected as a site of an eligible afterschool care program may participate in the afterschool snack service.

(e) *How does a school food authority apply for the afterschool snack component of the Program?*

(1) *Application.* An official of the school food authority must make written application to the State agency for any school or site in which it desires to operate an afterschool snack service under National School Lunch Program.

(2) *Required information.* At a minimum, the school food authority must submit:

(i) A description of how the afterschool care program meets the eligibility criteria in paragraph (b) of this section;

(ii) A list of all schools and/or sites;

(iii) An indication of which schools and/or sites the school food authority is requesting area eligibility for; and

(iv) Documentation which permits the State agency to confirm that schools and/or sites for which area eligibility is requested meet the criteria in paragraph (i)(1) of this section.

(f) *How does the State agency approve the application?*

(1) *State agency approval.* The responsibility for approval rests with the State agency. The State agency must evaluate the description(s) of the afterschool care program(s) to determine if they meet the criteria in paragraph (b) of this section. The State agency must review the documentation provided by the school food authority for any school or site requesting area eligibility.

(2) *Agreement.* Upon approval, the State agency amends the existing agreement between the State agency and the school food authority outlined in § 210.9. The amendment must describe the approved afterschool care program(s), list the approved sites and indicate whether they meet the criteria for area eligibility as provided for in paragraph (i)(1) of this section. The amendment must also require the school food authority to comply with the applicable requirements of this part 210 for the afterschool snack service.

(g) *What is the application process in subsequent years?* Prior to beginning afterschool snack service in each subsequent year, the school food authority must provide the information described in paragraphs (e)(2)(ii) through (e)(2)(iv) of this section for all schools and/or sites. The school food authority must also provide information about any substantive changes to the afterschool care program(s) to determine if it continues to meet the criteria in paragraph (e)(2)(i) of this section. The State agency reviews and approves the application and amends the agreement as discussed in paragraph (f) of this section.

(h) *What if school food authorities wish to add new at-risk afterschool care sites after application approval?* School food authorities wishing to add new afterschool care sites after application approval must provide the State agency with the information specified in paragraph (e) of this section. The State agency would then follow the procedures established under paragraph (f) of this section.

(i) *What is area eligibility?*

(1) *General.* A school is area eligible if at least 50 percent of its enrolled children are certified as eligible for free or reduced price meals or if it is located in the attendance area of an elementary, middle, or high school in which at least 50 percent of the enrolled children are certified eligible for free or reduced price meals. A site is area eligible if it is located in the attendance area of an elementary, middle, or high school in which at least 50 percent of the enrolled children are certified eligible for free or reduced price meals.

(2) *Data used.* Area eligibility determinations must be based on the total number of children approved for free and reduced price meals for the preceding October or another month the State agency has designated pursuant to § 210.9(b)(20). If the State agency decides to choose another month, it must do so for the entire State.

(j) *What may a school food authority charge for afterschool snacks?*

(1) *Free afterschool snacks.* School food authorities may not charge for afterschool snacks served to children who are eligible for free meals or who participate at an area eligible school or site.

(2) *Reduced price afterschool snacks.* School food authorities may charge no more than 15 cents for afterschool snacks served to children eligible for reduced price meals at non-area eligible schools or sites.

(3) *Paid afterschool snacks.* School food authorities may set the charge for afterschool snacks served to children from households who are not eligible for free or reduced price meals at non-area eligible sites.

(k) *How many snacks may be claimed for reimbursement?* School food authorities may claim reimbursement for no more than one afterschool snack per child per day. Any excess afterschool snacks that are produced may be offered, but may not be claimed for reimbursement.

(l) *What are the meal pattern requirements for afterschool snacks?* Afterschool snacks must meet the meal pattern requirements for afterschool snacks in § 210.10(n). If schools or sites offer choices of snacks or choices within the snack meal pattern, children who are eligible for free or reduced price snacks must be allowed to take any snack or choice offered as a part of the reimbursable snack. The afterschool snack must be priced as a unit.

(m) *When may snacks be served?* School food authorities may claim reimbursement only for afterschool snacks served in an afterschool care programs after a child's school day on days when school is in session. School food authorities may claim afterschool snacks served in approved afterschool care programs operated for children attending a summer school program which is an integral part of the curriculum or an actual extension of the local educational program. School food authorities may not claim afterschool snacks served on days when school is not in session (i.e. weekends, holidays, or school vacations).

(n) *What reimbursements do schools earn?*

(1) *At area eligible sites.* All afterschool snacks served in area eligible sites are reimbursed at the free afterschool snack rate.

(2) *At non-area eligible sites.* For afterschool snacks served in sites that are not area eligible, the reimbursement rate depends on the eligibility status of the child (i.e. free, reduced price, or paid).

(o) *How do schools determine eligibility status in non-area eligible sites?* School food authorities must determine and document the income eligibility (in accordance with part 245 of this chapter) of the children served in sites that are not area eligible. School food authorities may use the free and reduced price determinations made for purposes of free and reduced price lunches and/or breakfasts as documentation for free and reduced price afterschool snacks.

(p) *How do schools claim reimbursement?* To be entitled to reimbursement under this part 210, each school food authority must ensure that Claims for Reimbursement are limited to the number of free, reduced price and paid afterschool snacks that are served to children eligible for free, reduced price and paid afterschool snacks for each day of operation. In order to obtain reimbursement for afterschool snacks, school food authorities must follow the procedures set forth in § 210.7 and § 210.8, as applicable.

(q) *What additional recordkeeping is required for the snack service?* In addition to the other records required by this part 210, school food authorities or schools must maintain daily attendance rosters, sign-in sheets or, with State agency approval, other methods which result in accurate recording of daily attendance.

(r) *What additional reporting is required for the snack service?* In addition to other reporting requirements under this part 210, school food authorities must submit a claim for reimbursement as specified in § 210.8.

(s) *What are the monitoring requirements for the school food authority?* Twice each school year, the school food authority must review each afterschool care program site's afterschool snack counting and claiming system and compliance with the afterschool snack meal pattern requirements. The first review must be made during the first six weeks of snack service each school year.

(t) *What are the monitoring requirements for State agencies?* State agency monitoring requirements are set forth in § 210.19(a)(7).

(u) *What are the other requirements for afterschool snacks?* School food authorities must comply with all applicable requirements in this part 210 except point of service counts as specified in § § 210.7(c)(1)(iii), 210.7(c)(2), and 210.9(b)(9)).

6. In § 210.5, revise the third sentence of paragraph (d)(1) to read as follows:

**§ 210.5 Payment process to States.**

* * * * *

(d) * * *

(1) * * * For the month of October as of the last day of operation, the final report must include the total number of children approved for free lunches; the total number of children approved for reduced priced lunches; the total number of children enrolled in participating public schools, private schools, and residential child care institutions, respectively; and the total number of public schools/sites, private schools/sites and residential child care institutions, respectively, claiming reimbursements for meals under the National School Lunch Program. * * *

* * * * *

**§ 210.6 [Amended]**

7. In § 210.6, remove the words "lunches and meals supplements" in the first sentence and add in their place the word "meals".

8. In § 210.7:

a. Revise paragraph (a);

b. Revise the heading and first sentence of paragraph (b);

c. Revise the introductory text in paragraph (c);

d. Revise paragraph (c)(1) introductory text;

e. Revise paragraph (c)(1)(i);

f. Revise paragraph (c)(1)(ii) introductory text;

g. Revise paragraph (c)(1)(iii);

h. Revise paragraph (c)(1)(iv);

i. Revise paragraph (c)(1)(v); and

j. Revise paragraph (d).

The revisions read as follows:

**§ 210.7 Reimbursement for school food authorities.**

(a) *General.* Reimbursement payments to finance nonprofit school food service operations must be made only to school food authorities operating under a written agreement with the State agency. Subject to the provisions of § 210.8(c), such payments may be made for meals served in accordance with provisions of this part 210 and part 245 of this chapter in the calendar month preceding the calendar month in which the agreement is executed. These reimbursement payments include general cash assistance for all lunches served to children under the National School Lunch Program. Reimbursement payments also include special cash assistance payments for free or reduced price lunches served to children

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determined eligible for such benefits under the National School Lunch and Commodity School Programs. Reimbursement payments will also be made for afterschool snacks served in approved afterschool care programs in accordance with § 210.4a.

(b) *Assignment of rates for lunch.* At the beginning of each school year, State agencies must establish the per meal rates of reimbursement for lunches for school food authorities participating in the Program. * * *

(c) *Reimbursement limitations.* To be entitled to reimbursement under this part 210, each school food authority must ensure that Claims for Reimbursement are limited to the number of free, reduced price and paid meals that are served to children eligible for free, reduced price and paid meals, respectively, for each day of operation.

(1) *Meal count system.* To ensure that the Claim for Reimbursement accurately reflects the number of meals, by eligibility category, served to eligible children for each day of operation, the school food authority must, at a minimum:

(i) Correctly approve each child's eligibility for free and reduced price meals based on the requirements prescribed under part 245 of this chapter;

(ii) Maintain a system to issue benefits and to update the eligibility of children approved for free or reduced price meals. The system must:

* * * * *

(iii) Base Claims for Reimbursement on meal counts, taken daily, that correctly identify the number of free, reduced price and paid lunches and afterschool snacks served to eligible children each day. For lunches, the counts must be taken daily, at the point of service, or in accordance with a point of service alternative authorized under paragraph (c)(2) of this section;

(iv) Correctly record, consolidate and report those lunch and afterschool snack counts on the Claim for Reimbursement; and

(v) Ensure that Claims for Reimbursement do not request payment for any excess meals produced, as prohibited in § 210.10(a)(2) or non-Program meals (i.e., a la carte or adult lunches) or for more than one lunch and one afterschool snack per child per day.

* * * * *

(d) *Reimbursement for afterschool snacks.* State agencies must reimburse school food authorities for afterschool snacks at the rates set in § 210.4(b)(3).

9. In § 210.8:

a. Revise paragraph (a) introductory text;

b. Add a new sentence at the end of paragraph (a)(1);

c. Revise paragraph (a)(2) introductory text and paragraph (a)(2)(i) introductory text;

d. Remove the word "meal" in paragraphs (a)(2)(ii) and (a)(3)(ii) and add in its place the word "lunch";

e. Revise paragraph (a)(4);

f. Revise paragraph (b)(2) introductory text;

g. Revise the second sentence of paragraph (b)(2)(ii);

h. Remove the word "lunch" in paragraph (b)(3) and add in its place the word "meal";

i. Revise the first sentence of paragraph (b)(4);

j. Revise the second sentence of paragraph (c) introductory text;

k. Revise the second sentence of paragraph (c)(1);

l. Revise the first sentence of paragraph (c)(2); and

m. Revise the second sentence of paragraph (d).

The revisions and addition read as follows:

**§ 210.8 Claims for reimbursement.**

(a) *Internal controls.* The school food authority must establish internal controls which ensure the accuracy of meal counts prior to the submission of the monthly Claim for Reimbursement. At a minimum, these internal controls for meal counting and claiming must include: An on-site review of the counting and claiming system employed by each school within the jurisdiction of the school food authority; comparisons of daily free, reduced price and paid meal counts against data which will assist in the identification of meal counts in excess of the number of free, reduced price and paid meals served each day to children eligible for such meals; and a system for following up on those meal counts which suggest the likelihood of counting problems.

(1) * * * On-site review requirements for afterschool snacks are set forth in § 210.4a(s).

(2) *School food authority claims review process.* Prior to the submission of a monthly Claim for Reimbursement, each school food authority must review the meal count data for each school under its jurisdiction to ensure the accuracy of the monthly Claim for Reimbursement. The objective of this review is to ensure that monthly claims include only the number of free, reduced price and paid lunches and afterschool snacks served on any day of operation to children currently eligible for such lunches and afterschool snacks.

(i) Any school food authority that was found by its most recent administrative review conducted in accordance with § 210.18; to have no lunch counting and claiming violations may:

* * * * *

(4) *Follow-up activity.* The school food authority must promptly follow-up through phone contact, on-site visits or other means when the internal controls used by schools in accordance with paragraph (a)(2) of this section or the claims review process used by schools suggest the likelihood of meal count problems. When problems or errors are identified, the meal counts must be corrected prior to submission of the monthly Claim for Reimbursement. Improvements to the meal count system must also be made to ensure that the meal counting system consistently results in meal counts of the actual number of reimbursable free, reduced price and paid lunches and afterschool snacks served for each day of operation.

* * * * *

(b) * * *

(2) *State agency claims review process.* The State agency must review each school food authority's Claim for Reimbursement, on a monthly basis, in an effort to ensure that monthly claims are limited to the number of free and reduced price lunches and afterschool snacks served, by type, to eligible children.

* * * * *

(ii) * * * Such alternative analyses must meet the objective of ensuring that the monthly Claims for Reimbursement are limited to the numbers of free and reduced price lunches and afterschool snacks served, by type, to eligible children.

* * * * *

(4) *Corrective action.* The State agency must promptly take corrective action with respect to any Claim for Reimbursement which includes more than the number of lunches and/or afterschool snacks served, by type, to eligible children. * * *

(c) * * * Such data must include, at a minimum, the number of free, reduced price and paid lunches and afterschool snacks served to eligible children. * * *

(1) * * * Unless otherwise approved by FNS, the Claim for Reimbursement for any month must include only lunches and afterschool snacks served in that month except if the first or last month of operation for any school year contains 10 operating days or less, such month may be combined with the Claim for Reimbursement for the appropriate adjacent month. * * *

(2) *October data.* For the month of October as of the last day of operation, the State agency must also obtain, either through the Claim for Reimbursement or other means: the total number of children approved for free lunches; the total number of children approved for reduced price lunches; the total number of children enrolled in the school food authority and the total number of schools and sites claiming reimbursement for meals under the National School Lunch Program. * * *

(d) * * * Following the receipt of claims, the State agency must make adjustments, as necessary, to ensure that the total amount of payments received by the school food authority for the fiscal year does not exceed an amount equal to the number of lunches and afterschool snacks by reimbursement type served to children times the respective payment rates assigned by the State in accordance with § 210.7(b).

* * *

10. In § 210.9:

a. Revise paragraphs (b)(5) through (b)(7);

b. Revise the first sentence of paragraph (b)(8);

c. Revise paragraph (b)(9);

d. Remove the word "lunches" in first sentence of paragraph (b)(18) and add in its place the word "meals";

e. Revise paragraphs (b)(19) and (b)(20); and

f. Remove paragraph (c).

The revisions read as follows:

**§ 210.9 Agreement with State agency.**

* * * * *

(b) * * *

(5) Serve lunches, during the lunch period, which meet the minimum requirements prescribed in § 210.10; and serve snacks after the end of the school day which meet the applicable requirements in § 210.10;

(6) Price the lunch and afterschool snack as units;

(7) Serve meals free or at a reduced price to all children who are determined by the school food authority to be eligible for such meals under part 245 of this chapter and serve afterschool snacks free to all children at area eligible sites in accordance with § 210.4a(i);

(8) Claim reimbursement at the assigned rates only for reimbursable free, reduced price and paid meals served to eligible children in accordance with part 210. * * *

(9) Count the number of meals in accordance with § 210.7(c);

* * * * *

(19) Retain the individual applications for free and reduced price meals submitted by families for a period of 3 years after the end of the fiscal year to which they pertain or as otherwise specified under paragraph (b)(17) of this section.

(20) No later than December 31, provide the State agency with a list of all elementary, middle and high schools under its jurisdiction in which 50 percent or more of enrolled children have been determined eligible for free or reduced price meals as of the last operating day the preceding October. The State agency may designate a month other than October for the collection of this information, in which case the list must be provided to the State agency within 60 calendar days following the end of the month designated by the State agency. In addition, each school food authority must provide information on the boundaries of the attendance areas for the elementary, middle and high schools identified as having 50 percent or more of enrolled children certified for free or reduced price meals. Each school food authority must provide this information when available for the schools under its jurisdiction, and upon the request of:

(i) At-risk afterschool care center;

(ii) Sponsoring organization of at-risk afterschool care centers; or

(iii) A sponsoring organization of day care homes participating in the Child and Adult Care Food Program.

11. In § 210.10, revise paragraph (n) to read as follows:

**§ 210.10 What are the nutrition standards and menu planning approaches for lunches and the requirements for afterschool snacks?**

* * * * *

(n) *What are the requirements for afterschool snacks?* (1) *Minimum components.* In order to be reimbursed, afterschool snacks must contain two different components from the following four:

(i) A serving of fluid milk, as defined in paragraph (m)(1)(ii) of this section, as a beverage, or on cereal, or used in part for each purpose;

(ii) A serving of meat or meat alternate. Nuts and seeds and their butters listed in program guidance are nutritionally comparable to meat or other meat alternates based on available nutritional data. Acorns, chestnuts, and coconuts are excluded and must not be used as meat alternates due to their low protein content. Nut or seed meals or flours must not be used as a meat alternate except as defined under appendix A to this part: Alternate Foods for Meals;

(iii) A serving of vegetable(s) or fruit(s) or full-strength vegetable or fruit juice, or an equivalent quantity of any combination of these foods. Juice may not be served when milk is served as the only other component;

(iv) A serving of whole-grain or enriched bread; or an equivalent serving of cornbread, biscuits, rolls, muffins, etc., made with whole-grain or enriched meal or flour; or a serving of cooked whole-grain or enriched pasta or noodle products such as macaroni, or cereal grains such as rice, bulgur, or corn grits; or an equivalent quantity of any combination of these foods.

(2) *Afterschool snacks for infants.* Afterschool snacks for infants must contain the following:

(i) Birth through 3 months: 4–6 fluid ounces of breast milk or iron-fortified infant formula.

(ii) 4 through 7 months: 4–6 fluid ounces of breast milk or iron-fortified infant formula.

(iii) 8 through 11 months: 2–4 fluid ounces of breast milk or iron-fortified infant formula or full strength fruit juice; 0–½ slice of crusty bread or 0–2 cracker type products made from whole-grain or enriched meal or flour that are suitable for an infant for use as a finger food when appropriate. To improve the nutrition of participating children over one year of age, additional foods may be served with the afterschool snacks as desired.

(3) *Minimum quantities.* In order to be reimbursed, afterschool snacks must contain the following quantities of the required components. (Note: Juice may not be served when milk is served as the only other component.) Children older than age 12 may be served larger portions based on the greater food needs of older boys and girls, but must be served no less than the minimum quantities specified for children age 6 through 12.

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**Afterschool Snack Chart for Children**

| Components (Select two different components from the four listed) | Ages 1 and 2 | Ages 3 through 5 | Ages 6 through 12 |
|---|---|---|---|
| Milk, fluid | 4 ounces | 4 ounces | 8 ounces |
| Meat or meat alternate [4] | ½ ounce | ½ ounce | 1 ounce |
| Juice or fruit or vegetable | ½ cup | ½ cup | ¾ cup |
| Bread and/or cereal: enriched or whole grain bread or | ½ slice | ½ slice | 1 slice |
| Cereal: cold dry or hot cooked | ¼ cup [1]<br>¼ cup | 1/3 cup [2]<br>¼ cup | ¾ cup [3]<br>½ cup |

[1] ¼ cup (volume) or 1/3 ounce (weight), whichever is less.
[2] 1/3 cup (volume) or ½ ounce (weight), whichever is less.
[3] 3/4 cup (volume) or 1 ounce (weight), whichever is less.
[4] Yogurt may be used as meat/meat alternate. You may serve 4 ounces (weight) or ½ cup (volume) of plain, or sweetened and flavored yogurt to fulfill the equivalent of 1ounce of the meat/meat alternate component. For younger children, 2 ounces (weight) or ¼ cup (volume) may fulfill the equivalent of ½ ounce of the meat/meat alternate requirement.
Caution: Children under five years of age are at the highest risk of choking. USDA recommends that nuts and/or seeds be served to them ground or finely chopped in a prepared food.

**Afterschool Snack Chart for Infants**

| Birth through three months | Four months through seven months | Eight months through eleven months |
|---|---|---|
| 4-6 fluid ounces breast milk [2,3] or formula [1] | 4-6 fluid ounces breast milk [2,3] or formula [1] | 2-4 fluid ounces breast milk [2,3] formula,[1] or fruit juice.[4] 0-½ slice bread [5] or 0-2 crackers [5] |

[1] Infant formula must be iron fortified.
[2] It is recommended that breast milk be served in place of formula from birth through 11 months.
[3] For some breastfed infants who regularly consume less than the minimum amount of breast milk per feeding, a serving of less than the minimum amount of breast milk may be offered with additional breast milk offered if the infant is still hungry.
[4] Fruit juice must be full-strength.
[5] Bread and bread alternates must be made from whole grain or enriched meal or flour. A serving of this component must be optional.

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**§ 210.11 [Amended]**

12. In § 210.11:

a. Remove the word "lunch" and add the word "meal" in its place in paragraph (a)(1); and

b. In paragraph (b):

(i) Remove the word "lunches" and add in its place the word "meals" in the first sentence;

(ii) Remove the word "lunch" and add in its place the word "meal" in the second sentence; and

(iii) Remove the words "lunch period" and add in their place the words "meal periods" in the third sentence.

13. In § 210.15, revise paragraphs (b)(3) and (b)(4) to read as follows:

**§ 210.15 Reporting and recordkeeping.**

* * * * *

(b) * * *

(3) Participation records to demonstrate positive action toward providing one lunch per child per day as required under § 210.10(a)(2) and one afterschool snack per child per day under § 210.4a;

(4) Currently approved and denied applications for free and reduced price meals and a description of the verification activities, including verified applications, and any accompanying source documentation in accordance with § 245.6a of this chapter.



14. In § 210.16:

a. revise the second sentence in paragraph (a); and

b. revise the first sentence in paragraph (b)(1).

The revisions read as follows:

**§ 210.16 Food service management companies.**

(a) * * * However, no school or school food authority may contract with a food service management company to operate an a la carte food service unless the company agrees to offer free, reduced price and paid reimbursable meals to all eligible children. * * *

* * * * *

(b) * * *

(1) The invitation to bid or request for proposal contains a 21-day cycle menu developed in accordance with the provisions of § 210.10 to be used as a standard for the purpose of basing bids or estimating average cost per lunch and/or afterschool snack. * * *

* * * * *

15. In § 210.18:

a. revise paragraph (i)(4)(iv);

b. revise the second sentence of paragraph (l)(2); and

c. revise the last sentence of paragraph (l)(4).

The revisions read as follows:

**§ 210.18 Administrative reviews.**

* * * * *

(i) * * *

(4) * * *

(iv) If the State agency did not evaluate the certification, count and milk/meal service procedures for the School Breakfast Program (part 220) and/or the Special Milk Program for Children (part 215) or the afterschool snack service (§ 210.4a) in those schools selected for the administrative review and participating in those Programs, the State agency must do so for those schools selected for the first follow-up review.

* * * * *

(l) * * *

(2) * * * Subsequent to the State agency's acceptance of the corrective actions (and a follow-up review, when required), payments will be released for all meals served in accordance with the provisions of this part during the period the payments were withheld. * * *

* * * * *

(4) * * * Subsequent to the documentation of compliance, any withheld administrative funds will be released and payment will be released for any meals served in accordance with the provisions of this part during the period the payments were withheld.

* * * * *

16. In § 210.19:

a. Remove the word "lunches" and add the word "meals" in its place in the fifth sentence of paragraph (a)(2);

b. Add a new paragraph (a)(7);

c. Revise paragraph (c)(2)(i);

d. Revise the last sentence of paragraph (c)(2)(ii);

e. Revise paragraph (c)(2)(iii); and

f. Revise paragraph (f).

The revisions and addition read as follows:

**§ 210.19 Additional responsibilities.**

(a) * * *

(7) *Compliance with afterschool snack requirements.* Each State agency shall determine whether school food authorities claiming reimbursement for afterschool snacks comply with the provisions of § 210.4a. Each State agency shall conduct on-site reviews of at least 10 percent, but not less than 1 site, of each school food authority's afterschool snack service sites on the same schedule required of administrative reviews under § 210.18(c). Such reviews may be conducted at the same time the school food authority is scheduled for an administrative review in accordance with § 210.18. State agencies may also conduct these evaluations in conjunction with technical assistance visits, other reviews, or separately.

* * * * *

(c) * * *

(2) * * *

(i) The State agency must identify the school food authority's correct entitlement and take fiscal action when any school food authority claims or receives more Federal funds than earned under § 210.7. In order to take fiscal action, the State agency must identify accurate counts of reimbursable lunches and afterschool snacks through available data, if possible. In the absence of reliable data, the State agency must reconstruct the lunch and afterschool snack counts in accordance with procedures established by FNS.

(ii) * * * The State agency must ensure that any Claim for Reimbursement, filed subsequent to the reviews conducted under § 210.18 and prior to the implementation of corrective action, is limited to meals eligible for reimbursement under this part 210.

(iii) In taking fiscal action, State agencies must assume that children determined by the reviewer to be incorrectly approved for free and reduced price meals participated at the same rate as correctly approved children in the corresponding category.

* * * * *

(f) *Cooperation with the Child and Adult Care Food Program.* On an annual basis, the State agency must provide the State agency which administers the Child and Adult Care Food Program with a list of all elementary, middle, and high schools in the State participating in the National School Lunch Program in which 50 percent or more of enrolled children have been determined eligible for free or reduced price meals as of the last operating day of the preceding October, or another month specified by the State agency. Lists must be provided by February 1 of each year or, if data is based on a month other than October, within 90 calendar days following the end of the month designated by the State agency. The State agency may provide updated free and reduced price enrollment data on individual schools to the State agency which administers the Child and Adult Care Food Program only when unusual circumstances render the initial data obsolete. In addition, the State agency must provide the current list, upon request, to at-risk afterschool care centers and sponsoring organizations of at-risk afterschool care centers or sponsoring organizations of day care homes participating in the Child and Adult Care Food Program.

17. In § 210.23, revise paragraph (a) to read as follows:

**§ 210.23 Other responsibilities.**

(a) *Free and reduced price meals.* State agencies and school food authorities must ensure that meals are made available free or at a reduced price to all children who are determined by the school food authority to be eligible for such benefits. The determination of a child's eligibility for free or reduced price meals is to be made in accordance with part 245 of this chapter.

* * * * *

18. In § 210.24, revise the last sentence to read as follows:

**§ 210.24 Withholding payments.**

* * * Subsequent to the State agency's acceptance of the corrective actions, payments will be released for any meals served in accordance with the provisions of this part during the period the payments were withheld.

## PART 226—CHILD AND ADULT CARE FOOD PROGRAM

1. The authority citation for part 226 is revised to read as follows:

**Authority:** 42 U.S.C. 1758, 1759a, 1765, and 1766.

2. In part 226:

a. Remove the words "supplement" or "supplements" wherever they appear in

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the following sections and add the words "snack" or "snacks", respectively, in their place:

§ 226.4(b)(7);
§ 226.4(b)(8);
§ 226.4(b)(9);
§ 226.13(b);
§ 226.15(e)(4);
§ 226.17(b)(8);
§ 226.19(b)(4);
§ 226.19(b)(6);
§ 226.19a(b)(9);
§ 226.20(b)(4) introductory text;
§ 226.25(g)(1)(i)(C); and

b. remove the words "supplemental food" wherever they appear in the following sections and add the word "snacks" in their place:

§ 226.20(a)(4);
§ 226.20(b)(1)(iii)
§ 226.20(b)(2)(iii);
§ 226.20(b)(3)(iii);
§ 226.20(c)(4); and
§ 226.20(d)(2).

3. In § 226.2:

a. Add new definitions of "At-risk afterschool care center", "Eligible area", "Iowa/Kentucky demonstration project center", "Person with disabilities", and "Snack" in alphabetical order;

b. Revise the definitions of "CACFP child care standards", "Child care facility", "Children", "Nonpricing program", "Pricing program", "Proprietary title XX center", "Reduced price meal", and "Sponsoring organization";

c. Add a new sentence to the end of the definition of "Enrolled child";

d. Revise the first sentence in the definition of "Free meal";

e. Add the words "at-risk afterschool care center," in the definition of "Independent center" after the words "child care center,";

f. Add the words "at-risk afterschool care center," in the definition of "Institution" after the words "child care center,"; and

g. Add the words "in accordance with § 226.6(d)(1)" in the first sentence of the definition of "Outside-school-hours care center" after the words "licensed or approved".

The new definitions and revisions read as follows:

**§ 226.2 Definitions.**

* * * * *

*At-risk afterschool care center* means a public or private nonprofit organization (or a proprietary title XX center, as defined in this section) eligible to participate in the CACFP that provides nonresidential child care to children after school through an approved afterschool care program in an eligible area. An at-risk afterschool care center may participate in the Program as an independent center or under the auspices of a sponsoring organization.

CACFP child care standards means the Child and Adult Care Food Program child care standards developed by the Department for alternate approval of child care centers and day care homes by the State agency under the provisions of § 226.6(d)(2) and (d)(3).

* * * * *

*Child care facility* means a child care center, day care home, at-risk afterschool care center, or outside-school-hours care center under the auspices of a sponsoring organization.

*Children* means:

(a) Persons age 12 and under;

(b) Persons age 15 and under who are children of migrant workers;

(c) "Person with disabilities" as defined in this section; and

(d) For at-risk afterschool care centers, students who are enrolled in an approved afterschool care program and who either are age 18 or under at the start of the school year or who are any age and meet the definition of "Person with disabilities" as defined in this section.

* * * * *

*Eligible area* means the attendance area of an elementary, middle, or high school in which at least 50 percent of the enrolled children are certified eligible for free or reduced price school meals.

*Enrolled child* * * * For at-risk afterschool care centers, "enrolled child" means a child participating in an approved afterschool care program.

* * * * *

*Free meal* means a meal served under the Program to: a participant from a family that meets the income standards for free school meals; a child who is automatically eligible for free meals by virtue of food stamp, FDPIR or AFDC recipiency; a child who is a Head Start participant; a child participating in an approved at-risk afterschool care program; or an adult participant who is automatically eligible for free meals by virtue of food stamp or FDPIR recipiency or is a SSI or Medicaid participant. * * *

* * * * *

*Iowa/Kentucky demonstration project center* means any private for-profit center:

(a) Providing nonresidential child care;

(b) In which at least 25 percent of the enrolled children or 25 percent of the licensed capacity, whichever is less, meet the income eligibility criteria for free or reduced price meals. However, children who only participate in the at-risk afterschool snack component of the Program must not be considered in determining this percentage; and

(c) Participating in the demonstration project under section 17(p) of the National School Lunch Act.

* * * * *

*Nonpricing program* means an institution, child care facility, or adult day care facility in which there is no separate identifiable charge made for meals served to participants.

* * * * *

*Person with disabilities* means a person of any age who has one or more disabilities, as determined by the State agency, and who is enrolled in an institution or child care facility serving a majority of persons who are age 18 and under.

* * * * *

*Pricing program* means an institution, child care facility, or adult day care facility in which a separate identifiable charge is made for meals served to participants.

* * * * *

*Proprietary title XX center* means:

(a) Any private, for profit center which provides nonresidential child care services for which it receives compensation from amounts granted to the States under title XX of the Social Security Act; and in which title XX child care beneficiaries were at least 25 percent of enrolled eligible participants or licensed capacity, whichever is less, during the calendar month before initial application or annual reapplication for Program participation. (Children who only participate in the at-risk afterschool snack component of the Program must not be considered in determining this percentage); or

(b) Any private, for profit center which provides nonresidential adult day care services for which it receives compensation from amounts granted to the States under title XX of the Social Security Act; and in which title XX adult beneficiaries were at least 25 percent of enrolled eligible participants during the calendar month before initial application or annual reapplication for Program participation.

*Reduced price meal* means a meal served under the Program to a participant from a family which meets the income standards for reduced price school meals. Any separate charge imposed must be less than the full price of the meal, but in no case more than 40 cents for a lunch or supper, 30 cents for a breakfast, and 15 cents for a snack. Neither the participant nor any member of his family may be required to work in the food service program for a reduced price meal.

* * * * *

*Snack* means a meal supplement which meets the meal pattern requirements specified in § 226.20(a)(4).

*Sponsoring organization* means a public or nonprofit private organization which is entirely responsible for the administration of the food program in:

(a) One or more day care homes;

(b) A child care center, at-risk afterschool care center, outside-school-hours care center, or adult day care center which is a legally distinct entity from the sponsoring organization;

(c) Two or more child care centers, at-risk afterschool care centers, outside-school-hours care center, or adult day care centers; or

(d) Any combination of child care centers, at-risk afterschool care centers, outside-school-hours care centers, adult day care centers, and day care homes. The term "sponsoring organization" also includes a for-profit organization which is entirely responsible for administration of the Program in any combination of two or more child care centers, at-risk afterschool care centers, adult day care centers and outside-school-hours care centers which are part of the same legal entity as the sponsoring organization, and which are proprietary title XIX or XX centers, as defined in this section.

* * * * *

4. In § 226.4:

a. Revise paragraph (a);

b. Redesignate paragraphs (c) through (j) as paragraphs (d) through (k), respectively;

c. Add a new paragraph (c);

d. Remove the word "supplements" wherever it appears in newly redesignated paragraphs (d)(7) through (d)(9), and add in its place the word "snacks";

e. Revise the first sentence of newly redesignated paragraph (h)(2).

The revisions and addition read as follows:

**§ 226.4 Payments to States and use of funds.**

(a) *Availability of funds.* For each fiscal year based on funds provided to the Department, FNS must make funds available to each State agency to reimburse institutions for their costs in connection with food service operations, including administrative expenses, under this part 226. Funds must be made available in an amount no less than the sum of the totals obtained under paragraphs (b), (c), (d), (e), (f), and (i) of this section. However, in any fiscal year, the aggregate amount of assistance provided to a State under this part 226 must not exceed the sum of the Federal funds provided by the State to participating institutions within the State for that fiscal year and any funds used by the State under paragraphs (i) and (k) of this section.

* * * * *

(c) *At-risk afterschool care center funds.* For snacks served to children in at-risk afterschool care centers, funds will be made available to each State agency in an amount equal to the total calculated by multiplying the number of snacks served in the Program within the State to such children by the national average payment rate for free snacks under section 11 of the National School Lunch Act.

* * * * *

(h) * * *

(2) The rate for snacks served in child care centers, at-risk afterschool care centers, adult day care centers and outside-school-hours care centers will be adjusted annually, on July 1, on the basis of changes in the series for food away from home of the Consumer Price Index for All Urban Consumers published by the Department of Labor.

* * *

* * * * *

5. In § 226.6:

a. Revise paragraph (b)(7);

b. Remove the first sentence and add three sentences in its place in paragraph (b)(8);

c. Add a new paragraph (b)(11);

d. Revise the heading of paragraph (d) and paragraph (d)(1) introductory text;

e. Remove the period at the end of paragraph (d)(1)(v) and add in its place the word "; or";

f. Add a new paragraph (d)(1)(vi);

g. Remove the words "and outside-school-hours care centers" in paragraph (d)(2)(i)(A)(*2*);

h. Remove paragraph (d)(2)(ii);

i. Revise the second sentence of paragraph (d)(3) and paragraph (f)(9);

j. Add new paragraphs (f)(12) and (l)(4); and

k. Remove the words ", outside-school-hours care centers," and ",outside-school-hours care center," wherever they appear in paragraph (n).

The additions and revisions read as follows:

**§ 226.6 State agency administrative responsibilities.**

* * * * *

(b) * * *

(7) Submission of documentation that all child care centers, at-risk afterschool care centers, adult day care centers, outside-school-hours care centers and day care homes for which application is made are in compliance with Program licensing/approval provisions;

(8) For proprietary title XX child care centers and proprietary title XX at-risk afterschool care centers, submission of documentation that they are currently providing nonresidential day care services for which they receive compensation under title XX of the Social Security Act. Each such center must also certify that at least 25 percent of its enrolled children or 25 percent of its licensed capacity (whichever is less) were title XX beneficiaries during the most recent calendar month. However, children who only participate in the at-risk afterschool snack component of the Program must not be considered in determining this percentage. * * *

* * * * *

(11) For at-risk afterschool care centers:

(i) Documentation sufficient to determine if each afterschool care program meets the eligibility requirements in § 226.17a(a);

(ii) Information about any substantive changes to the afterschool care program whenever such changes occur (even if the changes do not affect the eligibility of the afterschool care program); and

(iii) Documentation of area eligibility at least once every three years thereafter.

* * * * *

(d) *Licensing/approval for child care centers, at-risk afterschool care centers, outside-school hours care centers and day care homes.* * * *

(1) *General.* Each State agency must establish procedures to annually review information submitted by institutions to ensure that all participating child care centers, at-risk afterschool care centers and outside-school hours care centers and day care homes either:

* * * * *

(vi) If Federal, State or local licensing or approval is not otherwise required, at-risk afterschool care centers and outside-school-hours care centers must meet State or local health and safety standards.

* * * * *

(3) * * * Licensing or approval is not available when no Federal, State, or local licensing/approval standards have been established for child care centers or day care homes; or no mechanism exists to determine compliance with licensing/approval standards. * * *

* * * * *

(f) * * *

(9) The State agency must comply with the requirements of this paragraph (f) for tiering and at-risk afterschool center area eligibility determinations.

(i) *General.* Coordinate with the State agency which administers the National School Lunch Program to ensure the receipt of a list of elementary, middle,

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and high schools in the State in which at least one-half of the children enrolled are certified eligible to receive free or reduced price meals.

(ii) *Tiering data.* The State agency must provide the list of elementary schools to sponsoring organizations of day care homes by February 15 each year unless the State agency that administers the National School Lunch Program has elected to base data for the list on a month other than October. In that case, the State agency must provide the list to sponsoring organizations of day care homes within 15 calendar days of its receipt from the State agency that administers the National School Lunch Program. The State agency also must provide each sponsoring organization of day care homes with census data (as provided to the State agency by FNS upon its availability on a decennial basis) showing areas in the State in which at least 50 percent of the children are from households meeting the income standards for free or reduced price meals.

(iii) *Tiering determinations.* The State agency must ensure that the most recent available data is used when the determination of a day care home's eligibility as a tier I day care home (as defined in § 226.2) is made using elementary school or census data. Determinations of a day care home's eligibility as a tier I day care home are valid for one year if based on a provider's household income, three years if based on elementary school data, or until more current data are available if based on census data. However, a sponsoring organization, the State agency, or FNS may change the determination if information becomes available indicating that a home is no longer in a qualified area. The State agency may not routinely require annual redeterminations of the tiering status of tier I day care homes based on updated elementary school data during the three-year period.

(iv) *Area eligibility data.* The State agency must provide the list of elementary, middle, and high schools to at-risk afterschool care centers and sponsoring organizations of at-risk afterschool care centers upon request.

(v) *At-risk afterschool care center area eligibility determinations.* The State agency must determine the area eligibility for each independent at-risk afterschool care center. The State agency must use the most recent data available pursuant to paragraph (f)(9)(i) of this section. The State agency must use attendance area information that it has obtained, or verified with the appropriate school officials to be current, within the last school year. Area eligibility determinations are valid for three years. However, the State agency, a sponsoring organization, or FNS may change the determination if information becomes available indicating that an at-risk afterschool care center is no longer area eligible. The State agency may not routinely require redeterminations of area eligibility based on updated school data during the three-year period.

* * * * *

(12) Determine whether the afterschool care programs of at-risk afterschool care centers meet the requirements of § 226.17a(a) before the centers begin participating in the Program and whenever information on changes to the afterschool care programs is submitted or otherwise becomes available. The determinations must be based on information submitted by the sponsoring organization or, for independent centers, by the at-risk afterschool care centers.

* * * * *

(l) * * *

(4) *Technical assistance visits to independent at-risk afterschool care centers.* In addition to these reviews, State agencies must conduct a technical assistance visit to each newly participating independent at-risk afterschool care center. The visit must be made during the first 90 days of program operations. At the visit, the State agency must confirm the accuracy of the documentation provided by the at-risk afterschool care center and used by the State agency to determine eligibility. The State agency must also examine meal pattern compliance.

* * * * *

6. In § 226.7, revise paragraph (f) to read as follows:

**§ 226.7 State agency responsibilities for financial management.**

* * * * *

(f) *Rate assignment.* Each State agency must require institutions (other than at-risk afterschool care centers, sponsoring organizations of at-risk afterschool care centers, and sponsoring organizations for day care homes) to submit, not less frequently than annually, information necessary to assign rates of reimbursement as outlined in § 226.9.

* * * * *

**§ 226.8 [Amended]**

7. In § 226.8, remove the references to "§ 226.4(h)" in the first sentence of paragraph (b), the first sentence of paragraph (c), and the first and second sentences of paragraph (d), and add in their places references to "§ 226.4(i)".

8. In § 226.9:

a. Add a new second sentence in paragraph (a);

b. Revise paragraph (b) introductory text; and

c. Revise paragraph (b)(2).

The addition and revisions read as follows:

**§ 226.9 Assignment of rates of reimbursement for centers.**

(a) * * * However, no rates should be assigned for at-risk afterschool care centers. * * *

(b) Except for at-risk afterschool care centers, the State agency must either:

* * * * *

(2) Establish claiming percentages, not less frequently than annually, for each institution on the basis of the number of enrolled participants eligible for free, reduced price, and paid meals. Children who only participate in the at-risk afterschool snack component of the Program must not be considered to be enrolled participants for the purpose of claiming percentages; or

* * * * *

9. In § 226.10, revise the third sentence of paragraph (c) and add a new fourth sentence to read as follows:

**§ 226.10 Program payment procedures.**

* * * * *

(c) * * * Independent proprietary title XX child care centers and independent proprietary title XX at-risk afterschool care centers must submit the number and percentage of the enrolled participants, or the licensed capacity receiving title XX benefits for the month claimed for months in which not less than 25 percent of the enrolled children or 25 percent of licensed capacity, whichever is less, were title XX beneficiaries. However, children who only participate in the at-risk afterschool snack component of the Program must not be considered in determining this percentage. * * *

* * * * *

10. In § 226.11:

a. Revise the section heading, and paragraphs (a), (b) and (c); and

b. Add a heading to paragraphs (d) and (e).

The revisions and additions read as follows:

**§ 226.11 Program payments for child care centers, at-risk afterschool care centers, adult day care centers and outside-school-hours care centers.**

(a) *Requirement for agreements.* Payments must be made only to institutions operating under an agreement with the State agency for the meal types specified in the agreement served at approved child care centers, at-risk afterschool care centers, adult day care centers and outside-school-hours care centers. A State agency may make payment for meals served in accordance with provisions of the Program in the calendar month preceding the calendar month in which the agreement is executed.



(b) *Institution reporting.*—(1) *Child and adult care institutions.* Each child care institution and each adult day care institution must report each month to the State agency the total number of Program meals, by type (breakfasts, lunches, suppers, and snacks), served to children or adult participants, respectively, except as provided in paragraph (b)(2) of this section.

(2) *Exception for proprietary title XIX and title XX centers.* For proprietary title XX child care centers and proprietary title XX at-risk afterschool care centers, the reports required in paragraph (b)(1) of this section must be made only for calendar months during which at least 25 percent of enrolled children or 25 percent of licensed capacity (whichever is less) were title XX beneficiaries. Children who only participate in the at-risk afterschool snack component of the Program must not be considered in determining this percentage. For proprietary title XIX and title XX adult day care centers, the reports required in paragraph (b)(1) of this section must be made only for calendar months during which at least 25 percent of enrolled adult participants were title XIX or title XX beneficiaries.

(c) *Reimbursement.*—(1) *Child and adult care institutions.* Each State agency must base reimbursement to each approved child care institution and adult day care institution on the number of meals, by type, served to children or adult participants multiplied by the assigned rates of reimbursement, except as provided in paragraph (c)(3) of this section.

(2) *At-risk afterschool care institutions.* Each State agency must base reimbursement to each at-risk afterschool care institution on the number of snacks served to children multiplied by the free rate for snacks, except as provided in paragraph (c)(3) of this section.

(3) *Exception for proprietary title XIX and title XX centers.* For proprietary title XX child care centers and proprietary title XX at-risk afterschool care centers, reimbursement must be payable only for calendar months during which at least 25 percent of enrolled children or 25 percent of licensed capacity (whichever is less) were title XX beneficiaries. Children who only participate in the at-risk afterschool snack component of the Program must not be considered in determining this percentage. For proprietary title XIX and title XX adult day care centers, reimbursement must be payable only for calendar months during which at least 25 percent of enrolled adult participants were title XIX or title XX beneficiaries.

(4) *Computation of reimbursement.* Except for at-risk afterschool care centers, in computing reimbursement, the State agency must either:

(i) *Actual counts.* Base reimbursement to institutions on actual daily counts of meals served, and multiply the number of meals, by type, served to participants eligible to receive free meals, participants eligible to receive reduced price meals, and participants not eligible for free or reduced price meals by the applicable national average payment rate; or

(ii) *Claiming percentages.* Apply the applicable claiming percentage or percentages to the total number of meals, by type, served to participants and multiply the product or products by the assigned rate of reimbursement for each meal type; or

(iii) *Blended rates.* Multiply the assigned blended per meal rate of reimbursement by the total number of meals, by type, served to participants.

(d) *Limits on reimbursement.* * * *

(e) *Institution recordkeeping.* * * *

11. In § 226.15:

a. Revise paragraphs (b)(4) and (b)(6);

b. Remove paragraph (e)(5) and redesignate paragraphs (e)(6) through (e)(14) as paragraphs (e)(5) through (e)(13), respectively; and

c. Redesignate paragraphs (g) through (k) as paragraphs (h) through (l), respectively, and add a new paragraph (g).

The revisions and addition read as follows:

**§ 226.15 Institution provisions.**

* * * * *

(b) * * *

(4) If an independent child care center, independent at-risk afterschool care center or independent outside-school hours care center, documentation that it meets the licensing/approval requirements of § 226.6(d)(1); or, if an independent adult day care center, the licensing/approval requirements of § 226.19a(b)(3).

* * * * *

(6) For each proprietary title XX child care center and proprietary title XX at-risk afterschool care center, documentation that it provides nonresidential day care services for which it receives compensation under title XX of the Social Security Act. Such centers must also certify that at least 25 percent of the enrolled children or 25 percent of the licensed capacity (whichever is less) were title XX beneficiaries during the most recent calendar month. However, children who only participate in the at-risk afterschool snack component of the Program must not be considered in determining this percentage. For each proprietary title XIX or title XX adult day care center, documentation that it provides nonresidential day care services for which it receives compensation under title XIX or title XX of the Social Security Act. Such centers must also certify that at least 25 percent of the adult participants enrolled during the most recent calendar month were title XIX or title XX beneficiaries. Sponsoring organizations must provide documentation and certification for each proprietary title XIX or title XX center under its jurisdiction.

* * * * *

(g) *Area eligibility determinations for at-risk afterschool care centers.* Sponsoring organizations of at-risk afterschool care centers must provide information, as required by the State agency, which permits the State agency to determine whether the centers they sponsor are located in eligible areas. Such information may include the most recent free and reduced price school data available pursuant to § 226.6(f)(9) and attendance area information that it has obtained, or verified with the appropriate school officials to be current, within the last school year.

* * * * *

12. In § 226.16:

a. Remove the word "and" at the end of paragraph (d)(4)(ii), redesignate paragraph (d)(4)(iii) as paragraph (d)(4)(iv) and add a new paragraph (d)(4)(iii); and

b. Revise paragraphs (f) and (h).

The addition and revisions read as follows:

**§ 226.16 Sponsoring organization provisions.**

* * * * *

(d) * * *

(4) * * *

(iii) Three times each year at each at-risk afterschool care center, provided at least one review is made during each at-risk afterschool care center's first six weeks of Program operations and not more than six months elapse between reviews; and

* * * * *

(f) The State agency may require a sponsoring organization to enter into separate agreements for the administration of separate types of facilities (child care centers, at-risk afterschool care centers, day care

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homes, adult day care centers and outside-school-hours care centers).

* * * * *

(h) Sponsoring organizations must make payments of program funds to child care centers, at-risk afterschool care centers, adult day care centers and outside-school-hours care centers within five working days of receipt from the State agency. These payments must be made on the basis of the management plan approved by the State agency. In addition, payments must not exceed the Program costs documented at each facility during any fiscal year, except in those States where the State agency has chosen the option to implement a meals times rates payment system. In those States which implement this optional method of reimbursement, such disbursements must not exceed the rates times the number of meals documented at each facility during any fiscal year.

* * * * *

13. In § 226.17:

a. Revise paragraph (b)(1) introductory text;

b. Revise paragraph (b)(3);

c. Add in the second sentence of paragraph (b)(4), the words "(excluding children receiving snacks in an approved afterschool care program)," after the words "enrolled children"; and

d. Revise paragraph (b)(5)

The revisions read as follows:

**§ 226.17 Child care center provisions.**

* * * * *

(b) * * *

(1) Child care centers (except for at-risk afterschool care centers and outside-school-hours care centers) must have Federal, State, or local licensing or approval to provide day care services to children. If Federal, State or local licensing or approval is not otherwise required, at-risk afterschool care centers and outside-school-hours care centers must meet State or local health and safety standards. Child care centers which are complying with applicable procedures to renew licensing or approval may participate in the Program during the renewal process, unless the State agency has information which indicates that renewal will be denied. If licensing or approval is not available, a center may participate if:

* * * * *

(3) Each child care center participating in the Program must serve one or more of the following meal types: breakfast; lunch; supper; and snack. Reimbursement may not be claimed for more than two meals and one snack or one meal and two snacks provided daily to each child.

* * * * *

(5) A child care center with preschool children may also be approved to serve a breakfast, snack, and supper to school-age children enrolled in an outside-school-hours care program meeting the criteria of § 226.19(b) which is distinct from its day care program for preschool-age children. The State agency may authorize the service of lunch to such enrolled children who attend a school which does not offer a lunch program provided the limit of two meals and one snack, or one meal and two snacks, per child per day is not exceeded. A child care center with preschool children may also be approved to serve a snack to school age children enrolled in an afterschool care program meeting the requirements of § 226.17a which is distinct from its day care program for preschool children, provided the limit of two meals, and one snack, or one meal and two snacks, per child per day is not exceeded.

* * * * *

14. Add a new § 226.17a to read as follows:

**§ 226.17a At-risk afterschool care center provisions.**

(a) *When is an organization eligible to receive reimbursement for afterschool snacks?*

(1) *Eligible organizations.* In order to be eligible to receive reimbursement, organizations must meet all of the following criteria.

(i) Organizations must meet the definition of an "at-risk afterschool care center" in § 226.2. An organization may participate in the Program either as an independent center or under the auspices of a sponsoring organization. Independent centers must comply with the provisions of § 226.15. Public and private nonprofit centers may not participate under the auspices of a for-profit sponsoring organization.

(ii) Organizations must operate an eligible afterschool care program, as described in paragraph (b) of this section.

(iii) Organizations must meet the licensing/approval requirements in § 226.6(d)(1).

(iv) Except for proprietary title XX centers, at-risk afterschool care centers must be public, or have tax-exempt status under the Internal Revenue Code of 1986 or be currently participating in another Federal program requiring nonprofit status.

(2) *Limitations.* At-risk afterschool care centers may only claim reimbursement for snacks served to children who are participating in an approved afterschool care program. In addition, such centers may only claim reimbursement for snacks served at any one time to children within the at-risk afterschool care center's authorized capacity, and for snacks served at a proprietary title XX center during a calendar month in which at least 25 percent of the enrolled children or 25 percent of the licensed capacity (whichever is less) were title XX beneficiaries. However, children who only participate in the at-risk afterschool snack component of the Program must not be considered in determining this percentage.

(b) *What is an eligible at-risk afterschool care program?*

(1) *Eligible program.* To be eligible for reimbursement, an afterschool care program must:

(i) Be organized primarily to provide care for children after school or on weekends, holidays, or school vacations (except summer vacation) during the regular school year;

(ii) Have organized, regularly scheduled activities (i.e., in a structured and supervised environment);

(iii) Include education or enrichment activities; and

(iv) Be located in an eligible area, as described in paragraph (h) of this section.

(2) *Eligibility limitation.* Organized athletic programs engaged in interscholastic or community level competitive sports are not eligible afterschool care programs.

(c) *What are the eligibility requirements for children?* At-risk afterschool care centers may claim reimbursement only for snacks served to children who participate in an approved afterschool care program and who either are age 18 or under at the start of the school year or meet the definition of "Person with disabilities" in § 226.2.

(d) *How does an organization apply to be an at-risk afterschool care center?*

(1) *Application.* An official of the organization must make written application to the State agency for any afterschool care program which it wants to operate as an at-risk afterschool care center.

(2) *Required information.* At a minimum, an organization must submit:

(i) An indication that the applicant organization meets the eligibility criteria for organizations as specified in paragraph (a) of this section;

(ii) A description of how the afterschool care program(s) meets the eligibility criteria in paragraph (b) of this section;

(iii) In the case of a sponsoring organization, a list of all applicant afterschool care centers;

(iv) Documentation which permits the State agency to confirm that all applicant afterschool care centers are located in an eligible area, as described in paragraph (h) of this section.

(e) *How does the State agency approve the application?*

(1) *State agency approval.* In addition to establishing applicant eligibility (in accordance with §§ 226.6(b), 226.15(b), and 226.16(b)), the State agency must determine the eligibility of the afterschool care program for each sponsored afterschool care center based on the information submitted by the sponsoring organization (see § 226.6(f)(12)). The State agency must determine the eligibility of the afterschool care programs of independent afterschool care centers (see § 226.6(f)(12)). An approved organization must enter into an agreement with the State agency as described in paragraph (e)(2) of this section.

(2) *Agreement.* The State agency must enter into an agreement or amend an existing agreement with an approved at-risk afterschool care center pursuant to § 226.6(f)(1). The amendment must describe the approved afterschool care program and list the approved centers. The amendment must also require the at-risk afterschool care center to comply with the applicable requirements of this part.

(f) *What is the application process in subsequent years?* In addition to renewing applicant eligibility (as described in §§ 226.6(b), 226.15(b), 226.16(b)), the independent at-risk afterschool care center or sponsoring organization must advise the State agency of any substantive changes to the afterschool care program consistent with the timeframes described in paragraph (h)(2) of this section.

(g) *What if sponsoring organizations want to add new at-risk after school care centers after application approval?* Sponsoring organizations that want to add new at-risk afterschool care centers must provide the State agency with the information sufficient to demonstrate its compliance with the requirements of this section.

(h) *What is "area eligibility"?* In order to receive reimbursement for snacks served in at-risk afterschool care centers, such centers must be located in an "Eligible area" as defined in § 226.2.

(1) *Definition.* An at-risk afterschool care center is in an "eligible area" when it is located in the attendance area of an elementary, middle, or high school in which at least 50 percent of the enrolled children are certified eligible for free or reduced price school meals.

(2) *Data used.* Area eligibility determinations must be based on the total number of children approved for free and reduced price school meals for the preceding October, or another month designated by the State agency that administers the National School Lunch Program, pursuant to § 210.9(b)(20) of this chapter. If the State agency chooses a month other than October, it must do so for the entire State. Area eligibility determinations are valid for three years from the beginning of the month in which the determination was made.

(i) *May an at-risk afterschool care center charge for a snack?* No, all afterschool snacks served under this section must be made available to participating children at no charge.

(j) *How many snacks may be claimed for reimbursement?* At-risk afterschool care programs may claim reimbursement only for one afterschool snack per child per day. A center that provides care to a child under another component of the Program during the same day may not claim reimbursement for more than two meals and one snack, or one meal and two snacks, per child per day, including the afterschool snack. All meals and any snacks in addition to one snack per child per day must be claimed in accordance with the requirements for the applicable component of the Program.

(k) *What are the meal pattern requirements for afterschool snacks?* Afterschool snacks must meet the meal pattern requirements for snacks in §§ 226.20(a)(4) and (c)(4).

(l) *When may snacks be served?* At-risk afterschool care centers may claim only snacks served in approved afterschool care programs after a child's school day or on weekends, holidays, or school vacations (except summer vacation) during the regular school year.

(m) *What reimbursements do at-risk afterschool care centers earn?* All snacks served in at-risk afterschool care centers will be reimbursed at the free snack rate.

(n) *What additional recordkeeping is required for at-risk afterschool care centers?* In addition to the other records required by this part, at-risk afterschool care centers must maintain:

(1) Daily attendance rosters, sign-in sheets or, with State agency approval, other methods which result in accurate recording of daily attendance;

(2) The number of snacks prepared or delivered for each snack service;

(3) The number of snacks served to participating children for each snack service; and

(4) Menus for each snack service.

(o) *What additional reporting is required for the snack service?* In addition to other reporting requirements under this part, at-risk afterschool care centers must report the total number of snacks served to eligible children.

(p) *What are the monitoring requirements for at-risk afterschool care centers?* State agencies must monitor independent centers in accordance with § 226.6(l). Sponsoring organizations of at-risk afterschool care centers must monitor their centers in accordance with § 226.16(d)(4)(iii).

15. In § 226.18, revise paragraph (c) to read as follows:

**§ 226.18 Day care home provisions.**

* * * * *

(c) Each day care home must serve one or more of the following meal types—breakfast, lunch, supper, and snack. Reimbursement may not be claimed for more than two meals and one snack, or one meal and two snacks, provided daily to each child.

* * * * *

16. In § 226.19, revise paragraph (b)(1) and (b)(5) to read as follows:

**§ 226.19 Outside-school-hours care center provisions.**

* * * * *

(b) * * *

(1) For purposes of Program participation, outside-school-hours care centers must have current Federal, State or local licensing or approval to provide organized child care services to enrolled school-age children outside of school hours only if Federal, State or local licensing or approval is otherwise required. If Federal, State or local licensing or approval is not otherwise required, outside-school-hours care centers must meet State or local health and safety standards. The main purpose of the center must be the care and the supervision of children. In cases where Federal, State or local licensing or approval is required, outside-school-hours care centers which are complying with applicable procedures to renew licensing or approval may participate in the Program during the renewal process, unless the State agency has information which indicates the renewal will be denied.

* * * * *

(5) Each outside-school-hours care center participating in the Program must claim only the meal types specified in its approved application and served in compliance with the meal pattern requirements of § 226.20. Reimbursement may not be claimed for more than two meals and one snack or one meal and two snacks provided daily to each child. In addition, reimbursement may not be claimed for meals served to children who are not enrolled, or meals served to children at any one time in excess of authorized

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capacity, or for any meal served at a proprietary title XX center during a calendar month when less than 25 percent of enrolled children, or 25 percent of licensed capacity, whichever is less, were title XX beneficiaries.

* * * * *

17. In § 226.19a, revise paragraph (b)(5) to read as follows:

**§ 226.19a Adult day care center provisions.**

* * * * *

(b) * * *

(5) Each adult day care center participating in the Program must serve one or more of the following meal types—breakfast, lunch, supper, and snack. Reimbursement may not be claimed for more than two meals and one snack, or one snack and two meals, provided daily to each adult participant.

* * * * *

**§ 226.20 [Amended]**

18. In § 226.20(b)(4), remove the words "Supplement (snack)" in the table and add in their place the word "Snack".

19. In § 226.23:

a. Revise the first sentence in paragraph (b);

b. Revise paragraph (c)(6);

c. Revise the second and third sentences of paragraph (d); and

d. Add in the first sentence of paragraph (e)(1)(i), the words "other than at-risk afterschool care centers" after the word "institutions".

The revisions read as follows:

**§ 226.23 Free and reduced-price meals.**

* * * * *

(b) At-risk afterschool care centers, sponsoring organizations of at-risk afterschool care centers, and sponsoring organizations of day care homes (which may not serve meals at a separate charge to children) and other institutions which elect to serve meals at no separate charge, must develop a policy statement consisting of an assurance to the State agency that all participants are served the same meals at no separate charge, regardless of race, color, national origin, sex, age, or handicap and that there is no discrimination in the course of the food service. * * *

(c) * * *

(6) An assurance that the charges for a reduced price lunch or supper will not exceed 40 cents, that the charge for a reduced price breakfast will not exceed 30 cents, and that the charge for a reduced price snack will not exceed 15 cents.

(d) * * * All media releases issued by institutions other than at-risk afterschool care centers, sponsoring organizations of at-risk afterschool care centers, and sponsoring organizations of day care homes, must include the Secretary's Income Eligibility Guidelines for Free and Reduced Price Meals. The release issued by all at-risk afterschool care centers, sponsoring organizations of at-risk afterschool care centers and sponsoring organizations of day care homes, and by other institutions which elect not to charge separately for meals, must announce the availability of meals at no separate charge. * * *

* * * * *

## PART 235—STATE ADMINISTRATIVE EXPENSE FUNDS

1. The authority citation for 7 CFR part 235 continues to read as follows:

**Authority:** Secs. 7 and 10 of the Child Nutrition Act of 1966, 80 Stat. 888, 889, as amended (42 U.S.C. 1776, 1779).

2. In § 235.4, revise the first sentence of paragraph (a)(1) and paragraph (b)(3)(iii) to read as follows:

**§ 235.4 Allocation of funds to States.**

(a) * * *

(1) To each State which administers the National School Lunch, School Breakfast or Special Milk Programs an amount equal to one (1) percent of the funds expended by such State during the second preceding fiscal year under sections 4 and 11 of the National School Lunch Act, as amended, and sections 3 and 4 of the Child Nutrition Act of 1966, as amended. * * *

* * * * *

(b) * * *

(3) * * *

(iii) The ratio of the number of free and reduced price lunches served in school food authorities under the jurisdiction of the State agency during the second preceding fiscal year to the number of free and reduced price lunches served in all States in the second preceding fiscal year times twenty (20) percent of the funds designated by FNS for reviews conducted under § 210.18 of this chapter.

* * * * *

## PART 245—DETERMINING ELIGIBLITY FOR FREE AND REDUCED PRICE MEALS AND FREE MILK IN SCHOOLS

1. The authority citation for 7 CFR part 245 continues to read as follows:

**Authority:** 42 U.S.C. 1772, 1773, 1779; and 42 U.S.C. 1751–60.

2. In § 245.1, revise the second sentence of paragraph (a) to read as follows:

**§ 245.1 General purpose and scope.**

(a) * * * Section 9 of the National School Lunch Act, as amended, and sections 3 and 4 of the Child Nutrition Act of 1966, as amended, require schools participating in any of the programs and commodity schools to make available, as applicable, free and reduced price breakfasts, lunches, and afterschool snacks and, at the option of the School Food Authority for schools participating only in the Special Milk Program, free milk to eligible children.

* * * * *

3. In 245.2, revise paragraphs (f) and (g) to read as follows:

**§ 245.2 Definitions.**

* * * * *

(f) *Meal* means a lunch, afterschool snack, or breakfast which meets the applicable requirements in § 210.10 and § 220.8 of this chapter.

* * * * *

(g) *Reduced price meal* means a meal which meets all of the following criteria:

(1) The price must be less than the full price of the meal;

(2) The price must not exceed 40 cents for a lunch, 30 cents for a breakfast, and 15 cents for afterschool snacks; and

(3) Neither the child nor any member of his family must be required to supply an equivalent value in work for the school or the school's food service.

* * * * *

4. In § 245.5, redesignate paragraphs (a)(1)(ii) through (a)(1)(xi) as paragraphs (a)(1)(iii) through (a)(1)(xii) and add a new paragraph (a)(1)(ii) to read as follows:

**§ 245.5 Public announcement of the eligibility criteria.**

(a) * * *

(1) * * *

(ii) In schools participating in the afterschool snack meal service in area eligible sites, an explanation that all children attending the afterschool care program will receive free snacks;

* * * * *

**§ 245.8 [Amended]**

5. In § 245.8(e), remove the words "lunch or breakfast" and add in their place the words "lunch, breakfast, or

6. In § 245.9, revise paragraph (a) introductory text to read as follows:

**§ 245.9 Special assistance certification and reimbursement alternatives.**

(a) A school food authority of a school having at least 80 percent of its enrolled children determined eligible for free or reduced price lunches may, at its option, authorize the school to reduce annual certification and public notification for those children eligible for free meals to once every two consecutive school years. This alternative is known as Provision 1 and the following requirements must apply:

* * * * *

7. In § 245.11, revise the second sentence of paragraph (a)(1) to read as follows:

**§ 245.11 Action by State agencies and FNSROs.**

(a) * * *

(1) * * * If the State agency elects to establish a maximum price for reduced price lunches, breakfasts, or afterschool snacks in all schools that is less than the maximum charge permitted under this part, the State agency must establish the price in its prototype policy. * * *

* * * * *

Dated: September 22, 2000.

**Shirley R. Watkins,**

*Under Secretary, Food, Nutrition, and Consumer Services.*

[FR Doc. 00–25817 Filed 10–10–00; 8:45 am]

BILLING CODE 3410–30–P

VOL
65
ISS
197
OC
11
2000
UMI




Federal Register

Wednesday,
October 11, 2000

Part III

# Department of Defense
# General Services Administration
# National Aeronautics and Space Administration

48 CFR Chapter I, Parts 2, 4, et al.
Federal Acquisition Circular 97–20; Introduction and Federal Acquisition Regulations: Veterans Entrepreneurship and Small Business Development Act of 1999, Truth in Negotiations Act Threshold, and Small Entity Compliance Guide; Final Rules

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**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Chapter 1**

**Federal Acquisition Circular 97–20; Introduction**

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Summary presentation of final and interim rules.

**SUMMARY:** This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) in this Federal Acquisition Circular (FAC) 97–20. The Councils drafted these FAR rules using plain language in accordance with the White House memorandum, Plain Language in Government Writing, dated June 1, 1998. The Councils wrote all new and revised text using plain language. A companion document, the Small Entity Compliance Guide (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at http://www.arnet.gov/far.

**DATES:** For effective dates and comment dates, see separate documents which follow.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact the analyst whose name appears in the table below in relation to each FAR case or subject area. Please cite FAC 97–20 and specific FAR case numbers. Interested parties may also visit our website at http://www.arnet.gov/far.

| Item | Subject | FAR case | Analyst |
|---|---|---|---|
| I | Veterans Entrepreneurship and Small Business Development Act of 1999 | 2000–302 | Moss. |
| II | Truth in Negotiations Act Threshold | 2000–300 | Olson. |

**SUPPLEMENTARY INFORMATION:**
Summaries for each FAR rule follow. For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

Federal Acquisition Circular 97–20 amends the FAR as specified below:

**Item I—Veterans Entrepreneurship and Small Business Development Act of 1999 (FAR Case 2000–302)**

This interim rule amends the FAR to implement sections 501(c), 502(a)(2), and 604(d) of the Veterans Entrepreneurship and Small Business Development Act of 1999 (Pub. L. 106–50). This Act established new assistance programs for veterans and service-disabled veterans who own and operate small businesses. This interim rule—

- Defines the terms "veteran-owned small business concerns" and "service-disabled veteran-owned small business concerns;"
- Establishes that veteran-owned and service-disabled veteran-owned small businesses be afforded maximum practical opportunity to participate in the performance of contracts and subcontracts awarded by any Federal agency;
- Establishes a requirement to include a goal for veteran-owned small businesses in subcontracting plans under FAR 52.219–9; and
- Amends the SF 294 and SF 295 to add data collection requirements for subcontract awards to veteran-owned small businesses and service-disabled veteran-owned small business concerns.

**Item II—Truth in Negotiations Act Threshold (FAR Case 2000–300)**

This final rule amends FAR 15.403–4 to increase the threshold for obtaining cost or pricing data from $500,000 to $550,000. This implements the requirements of 10 U.S.C. 2306a(a)(7) and 41 U.S.C. 254b(a)(7). These statutes require review of the Truth in Negotiations Act threshold every 5 years, starting October 1, 1995.

Dated: October 3, 2000.

**Al Matera,**

*Acting Director, Federal Acquisition Policy Division.*

**Federal Acquisition Circular**

Federal Acquisition Circular (FAC) 97–20 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

All Federal Acquisition Regulation (FAR) changes and other directive material contained in FAC 97–20 are effective October 11, 2000.

Dated: October 3, 2000.

**Col. R.D. Kerrins, Jr., USA**

*Acting Director, Defense Procurement.*

Dated: October 3, 2000.

**David A. Drabkin,**

*Deputy Associate Administrator, Office of Acquisition Policy, General Services Administration.*

Dated: October 2, 2000.

**Tom Luedtke,**

*Associate Administrator for Procurement, National Aeronautics and Space Administration.*

[FR Doc. 00–25873 Filed 10–10–00; 8:45 am]
BILLING CODE 6820–EP–P

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 2, 4, 5, 7, 19, 52, and 53**

**[FAC 97–20; FAR Case 2000–302; Item I]**

**RIN 9000–AI93**

**Federal Acquisition Regulation; Veterans Entrepreneurship and Small Business Development Act of 1999**

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to implement portions of the Veterans Entrepreneurship and Small Business Development Act of 1999 (Pub. L. 106–50). The Act established new assistance programs for veterans and service-disabled veterans who own and operate small businesses.

**DATES:** *Effective Date:* October 11, 2000.

*Comment Date:* Interested parties should submit comments to the FAR Secretariat at the address shown below on or before December 11, 2000 to be considered in the formulation of a final rule.



**ADDRESSES:** Submit written comments to: General Services Administration, FAR Secretariat (MVR), 1800 F Street, NW, Room 4035, Attn: Ms. Laurie Duarte, Washington, DC 20405

Submit electronic comments via the Internet to: farcase.2000–302@gsa.gov. Please submit comments only and cite FAC 97–20, FAR case 2000–302 in all correspondence related to this case.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Victoria Moss, Procurement Analyst, at (202) 501–4764. Please cite FAC 97-20, FAR case 2000–302.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

This interim rule amends the FAR to implement sections 501(c), 502(a)(2), and 604(d) of the Veterans Entrepreneurship and Small Business Development Act of 1999 (Pub. L. 106–50). This Act established new assistance programs for veterans and service-disabled veterans who own and operate small businesses. Specifically, the Act—

1. Defined the terms "small business concern owned and controlled by veterans" and "small business concern owned and controlled by service-disabled veterans;"
2. Established that veteran-owned and service-disabled veteran-owned small businesses be afforded maximum practical opportunity to participate in the performance of contracts and subcontracts awarded by any Federal agency;
3. Established a requirement to include a goal for veteran-owned small businesses in subcontracting plans under FAR 52.219–9;
4. Established a 3 percent Governmentwide goal (based on the total value of all prime contract and subcontract awards) for participation by service-disabled veteran-owned small businesses; and
5. Added data collection requirements for prime and subcontract awards to veteran-owned small businesses and service-disabled veteran-owned small business concerns.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

**B. Regulatory Flexibility Act**

The changes may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the rule now expands the small business program by identifying new subgroups of small entities (i.e., veteran-owned small businesses and service-disabled veteran-owned small businesses) for prime contracting and subcontracting opportunities. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and is summarized as follows:

This interim rule amends the Federal Acquisition Regulation in order to comply with recently enacted legislation concerning small business concerns owned and controlled by veterans and service-disabled veterans. It implements section 501(c), section 502(a)(2), and section 604(d) of the Veterans Entrepreneurship and Small Business Development Act of 1999 (Pub. L. 106–50). It is estimated that there are 4 to 5.5 million small businesses owned and controlled by veterans and 100,000 to 300,000 small businesses owned and controlled by service-disabled veterans. Section 604(d) of Title VI of the Act adds data collection requirements to the Federal Procurement Data System for prime contracts and subcontracts awarded to small business concerns owned and controlled by veterans and small business concerns owned and controlled by service-disabled veterans. This rule does not duplicate, overlap, or conflict with other relevant Federal rules. There are no significant alternatives to the interim rule that would accomplish the stated beneficial objectives.

The FAR Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. Interested parties may obtain a copy from the FAR Secretariat. The Councils will consider comments from small entities concerning the affected FAR Parts in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 601, *et seq.* (FAC 97–20, FAR case 2000–302), in correspondence.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act (Pub. L. 104–13) applies because the interim rule contains information collection requirements. Two existing OMB clearances are affected by this rule as follows:

*Annual Reporting Burden for OMB Clearance 9000–0006*

We estimate the public reporting burden for this collection of information to average 50.54 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

We estimate the annual reporting burden is as follows:

*Respondents:* 4,253.
*Responses per respondent:* 3.44.
*Total annual responses:* 14,631.
*Preparation hours per response:* 50.54.
*Total response burden hours:* 739,389.

*Annual Reporting Burden for OMB Clearance 9000–0007*

We estimate the public reporting burden for this collection of information to average 15.9 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

We estimate the annual reporting burden is as follows:

*Respondents:* 4,253.
*Responses per respondent:* 1.67.
*Total annual responses:* 7,098.
*Preparation hours per response:* 15.9.
*Total response burden hours:* 112,864.

**D. Request for Comments Regarding Paperwork Burden**

Submit comments, including suggestions for reducing this burden, not later than December 11, 2000 to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVR), 1800 F Street, NW, Room 4035, Washington, DC 20405.

We particularly invite public comments on: whether this collection of information is necessary for the proper performance of functions of the FAR, and will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Requester may obtain a copy of the justifications from the General Services Administration, FAR Secretariat (MVR), Room 4035, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control Numbers 9000–0006 or 9000–0007 in all correspondence.

**E. Determination To Issue an Interim Rule**

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator

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of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary in order to implement portions of the Veterans Entrepreneurship and Small Business Development Act of 1999 (Pub. L. 106–50). However, pursuant to Public Law 98–577 and FAR 1.501, the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

**List of Subjects in 48 CFR Parts 2, 4, 5, 7, 19, 52, and 53**

Government procurement.

Dated: October 3, 2000.

**Al Matera,**

*Acting Director, Federal Acquisition Policy Division.*

Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 4, 5, 7, 19, 52, and 53 as set forth below:

1. The authority citation for 48 CFR parts 2, 4, 5, 7, 19, 52, and 53 continues to read as follows:

**Authority:** 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

## PART 2—DEFINITIONS OF WORDS AND TERMS

2. Amend section 2.101 by adding, in alphabetical order, the definitions "Service-disabled veteran-owned small business concern" and "Veteran-owned small business concern" to read as follows:

**2.101 Definitions.**

* * * * *

*Service-disabled veteran-owned small business concern*—

(1) Means a small business concern—

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

* * * * *

*Veteran-owned small business concern* means a small business concern—

(1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(2) The management and daily business operations of which are controlled by one or more veterans.

* * * * *

## PART 4—ADMINISTRATIVE MATTERS

3. Amend section 4.602 by revising paragraph (a)(2); and in paragraph (d) by removing "shall" each time it is used (three times) and adding "must" in its place. The revised text reads as follows:

**4.602 Federal Procurement Data System.**

(a) * * *

(2) A means of measuring and assessing the impact of Federal contracting on the Nation's economy and the extent to which small, veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged, and women-owned small business concerns are sharing in Federal contracts; and

* * * * *

## PART 5—PUBLICIZING CONTRACT ACTIONS

4. Amend section 5.002 in the introductory paragraph by removing "shall" and adding "must" in its place; and by revising paragraph (c) to read as follows:

**5.002 Policy.**

* * * * *

(c) Assist small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns in obtaining contracts and subcontracts.

## PART 7—ACQUISITION PLANNING

5. Amend section 7.105 in the introductory paragraph by removing "shall" each time it is used (four times) and adding "must" in its place; and by revising the third sentence of paragraph (b)(1) to read as follows:

**7.105 Contents of written acquisition plans.**

* * * * *

(b) *Plan of action*—(1) *Sources.* * * * Include consideration of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns (see part 19), and the impact of any bundling that might affect their participation in the acquisition (see 7.107) (15 U.S.C. 644(e)). * * *

* * * * *

## PART 19—SMALL BUSINESS PROGRAMS

6. Amend section 19.000 in paragraph (a)(9) by removing "and"; in paragraph (a)(10) by removing the period and adding "; and" in its place; and by adding paragraph (a)(11) to read as follows:

**19.000 Scope of part.**

(a) * * *

(11) The use of veteran-owned small business concerns and service-disabled veteran-owned small business concerns.

* * * * *

**19.001 [Amended]**

7. Amend section 19.001 in the definition "Small disadvantaged business concern" by removing "52.212–3(c)(2)" and adding "52.212–3(c)(4)" in its place; and by removing "52.212–3(c)(7)(ii)" and adding "52.212–3(c)(9)(ii)" in its place.

**19.201 [Amended]**

8. Amend section 19.201 in the first sentence of paragraph (a) by adding "veteran-owned small business, service-disabled veteran-owned small business," before the word "HUBZone"; and in the second sentence by removing "shall" and adding "must" in its place.

**19.202–2 [Amended]**

9. Amend section 19.202–2 in the introductory paragraph by removing "shall" and adding "must" in its place; and by adding "veteran-owned small business, service-disabled veteran-owned small business," before the word "HUBZone".

**19.202–4 [Amended]**

10. Amend section 19.202–4 in the introductory paragraph by removing "shall" and adding "must" in its place; and by adding "veteran-owned small business, service-disabled veteran-owned small business," before the word "HUBZone".

**19.202–5 [Amended]**

11. Amend section 19.202–5 in the introductory paragraph by removing "shall" and adding "must" in its place; and in paragraphs (a) and (b) by adding "veteran-owned small business, service-disabled veteran-owned small business," before the word "HUBZone".



## Subpart 19.3—Determination of Small Business Status for Small Business Programs

12. The heading of subpart 19.3 is revised to read as set forth above.

**19.301 [Amended]**

13. Amend section 19.301 in the first sentence of paragraph (d) by adding "veteran-owned small business," before the word "HUBZone".

**19.304 [Amended]**

14. Amend section 19.304 in paragraph (b) by removing "52.212–3(c)(2)" and adding "52.212–3(c)(4)" in its place; and in paragraph (c) by removing "52.212–3(c)(7)" and adding "52.212–3(c)(9)" in its place.

**19.402 [Amended]**

15. Amend section 19.402 in paragraph (c)(1)(ii) by adding "veteran-owned small, service-disabled veteran-owned small," before the word "HUBZone".

16. Amend section 19.702 by revising the introductory paragraph to read as follows:

**19.702 Statutory requirements.**

Any contractor receiving a contract for more than the simplified acquisition threshold must agree in the contract that small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns will have the maximum practicable opportunity to participate in contract performance consistent with its efficient performance. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.

* * * * *

17. Amend section 19.703 by revising the introductory text of paragraph (a), paragraph (a)(1) and the first sentence of paragraph (b); in the fifth sentence of paragraph (b) by removing "shall" and adding "must" in its place; and adding a sixth sentence to paragraph (b). The revised and added text reads as follows:

**19.703 Eligibility requirements for participating in the program.**

(a) To be eligible as a subcontractor under the program, a concern must represent itself as a small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or woman-owned small business concern.

(1) To represent itself as a small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, or woman-owned small business concern, a concern must meet the appropriate definition in 2.101 or 19.001.

* * * * *

(b) A contractor acting in good faith may rely on the written representation of its subcontractor regarding the subcontractor's status as a small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, or a woman-owned small business concern. * * * Protests challenging HUBZone small business concerns status must be filed in accordance with 13 CFR 126.800.

18. Amend section 19.704 by revising paragraph (a)(1); and in paragraphs (a)(2), (a)(3), (a)(6), (a)(8), and (a)(11) by adding "veteran-owned small business," before the word "HUBZone". The revised text reads as follows:

**19.704 Subcontracting plan requirements.**

(a) * * *

(1) Separate percentage goals for using small business, veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors. Service-disabled veteran-owned small business concerns meet the definition of veteran-owned small business concerns, and offerors may include them within the subcontracting plan goal for veteran-owned small business concerns. A separate goal for service-disabled veteran-owned small business concerns is not required;.

* * * * *

**19.705–2 [Amended]**

19. Amend section 19.705–2 in the introductory paragraph by removing "shall" and adding "must" in its place; and in the last sentence of paragraph (d) by removing "shall" and adding "must" in its place, and adding "veteran-owned small business (including service-disabled veteran-owned small business)," before the word "HUBZone".

20. Amend section 19.705–4 by—

a. Removing from the introductory paragraph "shall" and adding "must" in its place;

b. Adding in the second and last sentences of paragraph (c), and paragraphs (d)(1) and (d)(5) "veteran-owned small business," before the word "HUBZone"; and

c. Revising paragraph (d)(6) to read as follows:

**19.705–4 Reviewing the subcontracting plan.**

* * * * *

(d) * * *

(6) Advise the offeror of available sources of information on potential small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business subcontractors, as well as any specific concerns known to be potential subcontractors. If the offeros proposed goals are questionable, the contracting officer must emphasize that the information should be used to develop realistic and acceptable goals. The contracting officer should ensure that the contractor has considered the use of service-disabled veteran-owned small businesses in developing its veteran-owned small business goal (see 19.704(a)(1) and 52.219–9(d)(1)).

* * * * *

**19.705–7 [Amended]**

21. Amend section 19.705–7 in paragraph (a) by adding in the first sentence "veteran-owned small business (including service-disabled veteran-owned small business)," before the word "HUBZone"; and in the third and fourth sentences of paragraph (d) by adding "veteran-owned small business (including service-disabled veteran-owned small business)," before the word "HUBZone".

**19.706 [Amended]**

22. Amend section 19.706 in paragraphs (b) and (c) by adding "veteran-owned small business (including service-disabled veteran-owned small business)," before the word "HUBZone".

**19.708 [Amended]**

23. Amend section 19.708 in paragraphs (c)(1), (c)(2), and (c)(3) by adding "veteran-owned small business (including service-disabled veteran-owned small business)," before the word "HUBZone".

## PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

24. Amend section 52.212–3 by—

a. Revising the date of the provision;

b. Adding in paragraph (a), in alphabetical order, the definitions "Service-disabled veteran-owned small

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business concern" and "Veteran-owned small business concern";

c. Redesignating paragraphs (c)(2) through (c)(7) as (c)(4) through (c)(9), respectively, and adding new paragraphs (c)(2) and (c)(3);

d. Removing from the "Note" paragraph in newly designated paragraph (c)(5), "(c)(4) and (c)(5)" and adding "(c)(6) and (c)(7)" in its place;

e. Removing from Alternate I "(*Oct 1998*)" and adding "(*Oct 2000*)" in its place, and removing "(c)(8)" and adding "(c)(10)" in its place; redesignating paragraph "(8)" as "(10)" and removing "(c)(7)" and adding "(c)(9)" in its place;

f. Removing from Alternate II "(*Oct 1998*)" and adding "(*Oct 2000*)" in its place, and removing "(c)(7)(iii)" and adding "(c)(9)(iii)" in its place; and

g. Removing from Alternate III "(*Jan 1999*)" and adding "(*Oct 2000*)" in its place, and removing "(c)(9)" and adding "(c)(11)" in its place; designating the second paragraph of Alternate III as paragraph (c)(11); and removing from newly designated paragraph (c)(11)(ii) "(c)(9)(i)" and adding "(c)(11)(i)" in its place.

The revised text reads as follows:

**52.212–3 Offeror Representations and Certifications—Commercial Items.**

* * * * *

**Offeror Representations and Certifications—Commercial Items (Oct. 2000)**

(a) * * *

* * * * *

*Service-disabled veteran-owned small business concern*—

(1) Means a small business concern—

(i) Not less than 51 percent of which is owned by one or more service—disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a veteran with permanent and severe disabillty, the spouse or permanent caregiver of such veteran.

(2) Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

* * * * *

*Veteran-owned small business concern* means a small business concern—

(1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(2) The management and daily business operations of which are controlled by one or more veterans.

* * * * *

(c) * * *

(2) *Veteran-owned small business concern. [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.]* The offeror represents as part of its offer that it [ ] is, [ ] is not a veteran-owned small business concern.

(3) *Service-disabled veteran-owned small business concern. [Complete only if the offeror represented itself as a veteran-owned small business concern in paragraph (c)(2) of this provision.]* The offeror represents as part of its offer that it [ ] is, [ ] is not a service-disabled veteran-owned small business concern.

* * * * *

25. Amend section 52.219–1 by—

a. Revising the date of the provision;

b. Adding paragraphs (b)(4) and (b)(5);

c. Revising the heading of paragraph (c) and adding, in alphabetical order, the definitions "Service-disabled veteran-owned small business concern" and "Veteran-owned small business concern";

d. Removing ", as used in this provision," from the definitions "Small business concern" and "Women-owned small business concern";

e. Adding in the introductory text of paragraph (d)(2) "HUBZone small," after the word "small," the first time it appears;

f. Removing from Alternate I "(*Nov 1999*)" and adding "(*Oct 2000*)" in its place, removing "(b)(4)" and adding "(b)(6)" in its place; redesignating paragraph (4) as paragraph (b)(6); removing from newly designated paragraph (b)(6)(ii) "(b)(4)(i)" and adding "(b)(6)(i)" in its place; and

g. Removing from Alternate II "(*Nov 1999*)" and adding "(*Oct 2000*)" in its place, and removing "(b)(5)" and adding "(b)(7)" in its place; and redesignating paragraph (5) of Alternate II as paragraph (b)(7). The revised text reads as follows:

**52.219–1 Small Business Program Representations.**

* * * * *

**Small Business Program Representations (Oct. 2000)**

* * * * *

(b) * * *

(4) [*Complete only if the offeror represented itself as a small business concern in paragraph (b)(1) of this provision.*] The offeror represents as part of its offer that it [ ] is, [ ] is not a veteran-owned small business concern.

(5) [*Complete only if the offeror represented itself as a veteran-owned small business concern in paragraph (b)(4) of this provision.*] The offeror represents as part of its offer that it [ ] is, [ ] is not a service-disabled veteran-owned small business concern.

(c) *Definitions.* As used in this provision—

*Service-disabled veteran-owned small business concern*—

(1) Means a small business concern—

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

* * * * *

*Veteran-owned small business concern* means a small business concern—

(1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(2) The management and daily business operations of which are controlled by one or more veterans.

* * * * *

26. Amend section 52.219–8 by revising the date of the clause and paragraphs (a), (c), and (d) to read as follows:

**52.219–8 Utilization of Small Business Concerns.**

* * * * *

**Utilization of Small Business Concerns (Oct. 2000)**

(a) It is the policy of the United States that small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns.

* * * * *

(c) *Definitions.* As used in this contract—

*HUBZone small business concern* means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

*Service-disabled veteran-owned small business concern*—

(1) Means a small business concern—



(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

*Small business concern* means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

*Small disadvantaged business concern* means a small business concern that represents, as part of its offer that—

(1) It has received certification as a small disadvantaged business concern consistent with 13 CFR part 124, subpart B;

(2) No material change in disadvantaged ownership and control has occurred since its certification;

(3) Where the concern is owned by one or more individuals, the net worth of each individual upon whom the certification is based does not exceed $750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

(4) It is identified, on the date of its representation, as a certified small disadvantaged business in the database maintained by the Small Business Administration (PRO-Net).

*Veteran-owned small business concern* means a small business concern—

(1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(2) The management and daily business operations of which are controlled by one or more veterans.

*Women-owned small business concern* means a small business concern—

(1) That is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

(d) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as a small business concern, a veteran-owned small business concern, a service-disabled veteran-owned small business concern, a HUBZone small business concern, a small disadvantaged business concern, or a women-owned small business concern.

(End of clause)

27. Amend section 52.219–9 by—

a. Revising the date of the clause;

b. Adding to the first and second sentences of paragraph (c) "veteran-owned small business," before the word "HUBZone";

c. Revising paragraph (d)(1);

d. Redesignating paragraphs (d)(2)(iii) through (d)(2)(v) as (d)(2)(iv) through (d)(2)(vi), and adding a new (d)(2)(iii);

e. Redesignating paragraphs (d)(3)(ii) through (d)(3)(iv) as (d)(3)(iii) through (d)(3)(v), and adding a new paragraph (d)(3)(ii);

f. Revising paragraph (d)(5);

g. Redesignating paragraphs (d)(6)(ii) through (d)(6)(iv) as (d)(6)(iii) through (d)(6)(v), and adding a new paragraph (d)(6)(ii);

h. Adding to paragraph (d)(8) "veteran-owned small business," before the word "HUBZone";

i. Revising paragraph (d)(10)(iii);

j. Adding to the introductory text of paragraph (d)(11), (d)(11)(i), and (d)(11)(ii) "veteran-owned small business," before the word "HUBZone";

k. Redesignating paragraphs (d)(11)(iii)(B) through (d)(11)(iii)(E) as (d)(11)(iii)(C) through (d)(11)(iii)(F), and adding a new paragraph (d)(11)(iii)(B);

l. Removing from paragraph (d)(11)(iv)(B) the word "and"; removing the period at the end of (d)(11)(iv)(C) and adding "; and" in its place; and adding new paragraph (d)(11)(iv)(D);

m. Adding in paragraphs (e)(1) (twice), (e)(2), (e)(3), and (e)(4) "veteran-owned small business," before the word "HUBZone";

n. Removing from Alternate I "(*Jan 1999*)" and adding "(*Oct 2000*)" in its place; and by adding "veteran-owned small business," before the word "HUBZone" (twice) in paragraph (c) of the Alternate; and

o. Removing from Alternate II "(*Jan 1999*)" and adding "(*Oct 2000*)" in its place; and by adding "veteran-owned small business," before the word "HUBZone" (twice) in paragraph (c) of the Alternate. The revised text reads as follows:

**52.219–9 Small Business Subcontracting Plan.**

* * * * *

**Small Business Subcontracting Plan (Oct. 2000)**

(d) * * *

(1) Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business, veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors. Service-disabled veteran-owned small business concerns meet the definition of veteran-owned small business concerns, and offerors may include them within the subcontracting plan goal for veteran-owned small business concerns. A separate goal for service-disabled veteran-owned small business concerns is not required. The offeror shall include all subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs.

(2) * * *

(iii) Total dollars planned to be subcontracted to veteran-owned small business concerns;

* * * * *

(3) * * *

(ii) Veteran-owned small business concerns;

* * * * *

(5) A description of the method used to identify potential sources for solicitation purposes (*e.g.*, existing company source lists, the Procurement Marketing and Access Network (PRO-Net) of the Small Business Administration (SBA), veterans service organizations, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, HUBZone, small disadvantaged, and women-owned small business trade associations). A firm may rely on the information contained in PRO-Net as an accurate representation of a concern's size and ownership characteristics for the purposes of maintaining a small, veteran-owned small, HUBZone small, small disadvantaged, and women-owned small business source list. Use of PRO-Net as its source list does not relieve a firm of its responsibilities (*e.g.*, outreach, assistance, counseling, or publicizing subcontracting opportunities) in this clause.

(6) * * *

(ii) Veteran-owned small business concerns;

* * * * *

(10) * * *

(iii) Submit Standard Form (SF) 294, Subcontracting Report for Individual Contracts, and/or SF 295, Summary Subcontract Report, in accordance with paragraph (j) of this clause. The reports shall provide information on subcontract awards to small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, small disadvantaged business concerns, women-owned small business concerns, and Historically Black Colleges and Universities and Minority Institutions. Reporting shall be in accordance with the instructions on the forms or as provided in agency regulations.

* * * * *

(11) * * *

(iii) * * *

(B) Whether veteran-owned small business concerns were solicited and, if not, why not;

* * * * *

(iv) * * *

(D) Veterans service organizations.

* * * * *

(End of clause)

**52.219–10 [Amended]**

28. Amend section 52.219–10 by revising the date of the clause to read "(Oct 2000)"; by adding in paragraph (a)

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"veteran-owned small business (including service-disabled veteran-owned small business)," before the word "HUBZone"; and by adding in paragraph (b) "veteran-owned small business (including service-disabled veteran-owned small business)," before the word "HUBZone", and adding a comma following "goals for small business".

## PART 53—FORMS

**53.219 [Amended]**

29. Amend section 53.219 in paragraphs (a) and (b) by removing "(*Rev. 12/98*)" and adding "(Rev. *10/00*)" in their place.

30. Revise sections 53.301–294 and 53.301–295 to read as follows:

BILLING CODE 6820–EP–P



**53.301–294 Subcontracting Report for Individual Contracts.**

**SUBCONTRACTING REPORT FOR INDIVIDUAL CONTRACTS**
***(See instructions on reverse)***

OMB No.: 9000-0006
Expires: 04/30/2001

Public reporting burden for this collection of information is estimated to average 8 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, DC 20405.

1. CORPORATION, COMPANY OR SUBDIVISION COVERED
a. COMPANY NAME
b. STREET ADDRESS
c. CITY | d. STATE | e. ZIP CODE
2. CONTRACTOR IDENTIFICATION NUMBER

3. DATE SUBMITTED
4. REPORTING PERIOD FROM INCEPTION OF CONTRACT THRU:
☐ MAR 31 ☐ SEPT 30 YEAR
5. TYPE OF REPORT
☐ REGULAR ☐ FINAL ☐ REVISED

6. ADMINISTERING ACTIVITY *(Please check applicable box)*
☐ ARMY ☐ NAVY ☐ AIR FORCE ☐ GSA ☐ DOE ☐ DEFENSE LOGISTICS AGENCY ☐ NASA ☐ OTHER FEDERAL AGENCY *(Specify)*

7. REPORT SUBMITTED AS *(Check one and provide appropriate number)*
☐ PRIME CONTRACTOR — PRIME CONTRACT NUMBER
☐ SUBCONTRACTOR — SUBCONTRACT NUMBER

8. AGENCY OR CONTRACTOR AWARDING CONTRACT
a. AGENCY'S OR CONTRACTOR'S NAME
b. STREET ADDRESS
c. CITY | d. STATE | e. ZIP CODE

9 DOLLARS AND PERCENTAGES IN THE FOLLOWING BLOCKS:
☐ DO INCLUDE INDIRECT COSTS ☐ DO NOT INCLUDE INDIRECT COSTS

**SUBCONTRACT AWARDS**

| TYPE | CURRENT GOAL | | ACTUAL CUMULATIVE | |
|---|---|---|---|---|
| | WHOLE DOLLARS | PERCENT | WHOLE DOLLARS | PERCENT |
| 10a. SMALL BUSINESS CONCERNS (Include SDB, WOSB, HBCU/MI, HUBZone SB, VOSB and Service-Disabled VOSB) *(Dollar Amount and Percent of 10c)* | | | | |
| 10b. LARGE BUSINESS CONCERNS *(Dollar Amount and Percent of 10c.)* | | | | |
| 10c. TOTAL *(Sum of 10a and 10b.)* | | 100.0% | | 100.0% |
| 11. SMALL DISADVANTAGED (SDB) CONCERNS *(Include HBCU/MI) (Dollar Amount and Percent of 10c.)* | | | | |
| 12. WOMEN-OWNED SMALL BUSINESS (WOSB) CONCERNS *(Dollar Amount and Percent of 10c.)* | | | | |
| 13. HISTORICALLY BLACK COLLEGES AND UNIVERSITIES (HBCU) AND MINORITY INSTITUTIONS (MI) *(If applicable) (Dollar Amount and Percent of 10c.)* | | | | |
| 14. HUBZONE SMALL BUSINESS (HUBZone SB) CONCERNS *(Dollar Amount and Percent of 10c.)* | | | | |
| 15. VETERAN-OWNED SMALL BUSINESS *(Include Service-Disabled Veteran Owned SB) (Dollar Amount and Percent of 10c.)* | | | | |

16 REMARKS

17a NAME OF INDIVIDUAL ADMINISTERING SUBCONTRACTING PLAN
17b TELEPHONE NUMBER — AREA CODE | NUMBER

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**STANDARD FORM 294** (REV. 10-2000)
Prescribed by GSA-FAR (48 CFR) 53.219(a)

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GENERAL INSTRUCTIONS

1. This report is not required from small businesses.

2. This report is not required for commercial items for which a commercial plan has been approved, nor from large businesses in the Department of Defense (DOD) Test Program for Negotiation of Comprehensive Subcontracting Plans. The Summary Subcontract Report (SF 295) is required for contractors operating under one of these two conditions and should be submitted to the Government in accordance with the instructions on that form.

3. This form collects subcontract award data from prime contractors/subcontractors that: (a) hold one or more contracts over $500,000 (over $1,000,000 for construction of a public facility); and (b) are required to report subcontracts awarded to Small Business (SB), Small Disadvantaged Business (SDB), Women-Owned Small Business (WOSB), HUBZone Small Business (HUBZone SB), Veteran-Owned Small Business (VOSB) and Service-Disabled Veteran-Owned Small Business concerns under a subcontracting plan. For the Department of Defense (DOD), the National Aeronautics and Space Administration (NASA), and the Coast Guard, this form also collects subcontract award data for Historically Black Colleges and Universities (HBCUs) and Minority Institutions (MIs).

4. This report is required for each contract containing a subcontracting plan and must be submitted to the administrative contracting officer (ACO) or contracting officer if no ACO is assigned, semi-annually during contract performance for the periods ended March 31st and September 30th. A separate report is required for each contract at contract completion. Reports are due 30 days after the close of each reporting period unless otherwise directed by the contracting officer. Reports are required when due, regardless of whether there has been any subcontracting activity since the inception of the contract or since the previous report.

5. Only subcontracts involving performance within the U.S., its possessions, Puerto Rico, and the Trust Territory of the Pacific Islands should be included in this report.

6. Purchases from a corporation, company, or subdivision that is an affiliate of the prime/subcontractor are not included in this report.

7. Subcontract award data reported on this form by prime contractors/subcontractors shall be limited to awards made to their immediate subcontractors. Credit cannot be taken for awards made to lower tier subcontractors.

SPECIFIC INSTRUCTIONS

BLOCK 2: For the Contractor Identification Number, enter the nine-digit Data Universal Numbering System (DUNS) number that identifies the specific contractor establishment. If there is no DUNS number availble that identifies the exact name and address entered in Block 1, contact Dun and Bradstreet Information Services at 1-800-333-0505 to get one free of charge over the telephone. Be prepared to provide the following information: (1) Company name; (2) Company address; (3) Company telephone number; (4) Line of business; (5) Chief executive officer/key manager; (6) Date the company was started; (7) Number of people employed by the company; and; (8) Company affiliation.

BLOCK 4: Check only one. Note that all subcontract award data reported on this form represents activity since the inception of the contract through the date indicated in this block.

BLOCK 5: Check whether this report is a "Regular," "Final," and/or "Revised" report. A "Final" report should be checked only if the contractor has completed the contract or subcontract reported in Block 7. A "Revised" report is a change to a report previously submitted for the same period.

BLOCK 6: Identify the department or agency administering the majority of subcontracting plans.

BLOCK 7: Indicate whether the reporting contractor is submitting this report as a prime contractor or subcontractor and the prime contract or subcontract number.

BLOCK 8: Enter the name and address of the Federal department or agency awarding the contract or the prime contractor awarding the subcontract.

BLOCK 9: Check the appropriate block to indicate whether indirect costs are included in the dollar amounts in blocks 10a through 14. To ensure comparability between the goal and actual columns, the contractor may include indirect costs in the actual column only if the subcontracting plan included indirect costs in the goal.

BLOCKS 10a through 15: Under "Current Goal," enter the dollar and percent goals in each category (SB, SDB, WOSB, VOSB, and HUBZone SB) from the subcontracting plan approved for this contract. (If the original goals agreed upon at contract award have been revised as a result of contract modifications, enter the original goals in Block 16. The amounts entered in Blocks 10a through 15 should reflect the revised goals.) Under "Actual Cumulative," enter actual subcontract achievements (dollar and percent) from the inception of the contract through the date of the report shown in Block 4. In cases where indirect costs are included, the amounts should include both direct awards and an appropriate prorated portion of indirect awards.

BLOCK 10a: Report all subcontracts awarded to SBs including subcontracts to SDBs, WOSBs, VOSBs and HUBZone SBs. For DOD, NASA, and Coast Guard contracts, include subcontracting awards to HBCUs and MIs.

BLOCK 10b: Report all subcontracts awarded to large businesses (LBs).

BLOCK 10c: Report on this line the total of all subcontracts awarded under this contract (the sum of lines 10a and 10b).

BLOCKS 11 through 15: Each of these items is a subcategory of Block 10a. Note that in some cases the same dollars may be reported in more than one block (e. g., SDBs owned by women or veterans).

BLOCK 11: Report all subcontracts awarded to SDBs (including women-owned, veteran-owned, and HUBZone SB SDBs). For DOD, NASA, and Coast Guard contracts, include subcontract awards to HBCUs and MIs.

BLOCK 12: Report all subcontracts awarded to Women-Owned firms (including SDBs, VOSB's, and HUBZone SBs owned by women).

BLOCK 13 (For contracts with DoD, NASA, and Coast Guard): Report all subcontracts with HBCUs/MIs. Complete the column under "Current Goal" only when the subcontracting plan establishes a goal.

BLOCK 14: Report all subcontracts awarded to HUBZone SBs (including women-owned, veteran-owned, and SDB HUBZone SBs).

BLOCK 15: Report all subcontracts awarded to VOSBs including Service-Disabled VOSBs (include VOSBs that are also SDBs, WOSBs and HUBZone SBs.).

BLOCK 16: Enter a short narrative explanation if (a) SB, SDB, WOSB, VOSBs, or HUBZone SB accomplishments fall below that which would be expected using a straight-line projection of goals through the period of contract performance; or (b) if this is a final report, any one of the three goals was not met.

DEFINITIONS

1. Direct Subcontract Awards are those that are identified with the performance of one or more specific Government contract(s).

2. Indirect costs are those which, because of incurrence for common or joint purposes, are not identified with specific Government contracts; these awards are related to Government contract performance but remain for allocation after direct awards have been determined and identified to specific Government contracts.

DISTRIBUTION OF THIS REPORT

For the Awarding Agency or Contractor:

The original copy of this report should be provided to the contracting officer at the agency or contractor identified in Block 8. For contracts with DOD, a copy should also be provided to the Defense Logistics Agency (DLA) at the cognizant Defense Contract Management Area Operations (DCMAO) office.

For the Small Business Administration (SBA):

A copy of this report must be provided to the cognizant Commerical Market Representative (CMR) at the time of a compliance review. It is NOT necessary to mail the SF 294 to SBA unless specifically requested by the CMR.

STANDARD FORM 294 (REV 10-2000) BACK



53.301–295 Summary Subcontract Report.

**SUMMARY SUBCONTRACT REPORT**
*(See instructions on reverse)*

OMB No.: 9000-0007
Expires: 09/30/2003

Public reporting burden for this collection of information is estimated to average 12.9 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, DC 20405.

1. CORPORATION, COMPANY OR SUBDIVISION COVERED
a COMPANY NAME
b STREET ADDRESS
c. CITY | d. STATE | e. ZIP CODE
2 CONTRACTOR IDENTIFICATION NUMBER

3. DATE SUBMITTED

4. REPORTING PERIOD: ☐ OCT 1 - MAR 31 ☐ APR 1 - SEPT 30 | YEAR

5. TYPE OF REPORT ☐ REGULAR ☐ FINAL ☐ REVISED

6. ADMINISTERING ACTIVITY *(Please check applicable box)*
☐ ARMY ☐ DEFENSE LOGISTICS AGENCY ☐ DOE
☐ NAVY ☐ NASA ☐ OTHER FEDERAL AGENCY *(Specify)*
☐ AIR FORCE ☐ GSA

7. REPORT SUBMITTED AS *(Check one)*
☐ PRIME CONTRACTOR ☐ SUBCONTRACTOR ☐ BOTH

8. TYPE OF PLAN
☐ INDIVIDUAL ☐ COMMERCIAL PRODUCTS
IF PLAN IS A COMMERCIAL PLAN, SPECIFY THE PERCENTAGE OF THE DOLLARS ON THIS REPORT ATTRIBUTABLE TO THIS AGENCY.

9. CONTRACTOR'S MAJOR PRODUCTS OR SERVICE LINES
a | b

**CUMULATIVE FISCAL YEAR SUBCONTRACT AWARDS**
*(Report cumulative figures for reporting period in Block 4)*

| | TYPE | WHOLE DOLLARS | PERCENT (To nearest tenth of a %) |
|---|---|---|---|
| 10a. | SMALL BUSINESS CONCERNS *(Include SDB, WOSB, HBCU/MI, HUBZone SB, VOSB and Service-Disabled VOSB) (Dollar Amount and Percent of 10c.)* | | |
| 10b. | LARGE BUSINESS CONCERNS *(Dollar Amount and Percent of 10c.)* | | |
| 10c. | TOTAL *(Sum of 10a and 10b.)* | | 100.0% |
| 11. | SMALL DISADVANTAGED (SDB) CONCERNS *(Include HBCU/MI) (Dollar Amount and Percent of 10c.)* | | |
| 12. | WOMEN-OWNED SMALL BUSINESS (WOSB) CONCERNS *(Dollar Amount and Percent of 10c.)* | | |
| 13. | HISTORICALLY BLACK COLLEGES AND UNIVERSITIES (HBCU) AND MINORITY INSTITUTIONS (MI) *(If applicable) (Dollar Amount and Percent of 10c.)* | | |
| 14. | HUBZONE SMALL BUSINESS (HUBZone SB) CONCERNS *(Dollar Amount and Percent of10c.)* | | |
| 15a. | VETERAN-OWNED SMALL BUSINESS (VOSB) CONCERNS *(Dollar Amount and Percent of10c.)* | | |
| 15b. | SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS CONCERNS *(Dollar Amount and Percent of10c.)* | | |

16 REMARKS

17. CONTRACTOR'S OFFICIAL WHO ADMINISTERS SUBCONTRACTING PROGRAM
a. NAME | b. TITLE | c. TELEPHONE NUMBER: AREA CODE | NUMBER

18. CHIEF EXECUTIVE OFFICER
a. NAME | c. SIGNATURE
b. TITLE | d. DATE

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STANDARD FORM 295 (REV. 10-2000)
Prescribed by GSA - FAR (48 CFR) 53.219(b)

VOL 65 ISS 197 OC 11 2000 UMI



GENERAL INSTRUCTIONS

1 This report is not required from small businesses.

2 This form collects subcontract award data from prime contractors/subcontractors that: (a) hold one or more contracts over $500,000 (over $1,000,000 for construction of a public facility); and (b) are required to report subcontracts awarded to Small Business (SB), Small Disadvantaged Business (SDB), Women-Owned Small Business (WOSB), Veteran-Owned Small Business (VOSB), Service-Disabled Veteran-Owned Small Business, and HUBZone Small Business (HUBZone SB) concerns under a subcontracting plan. For the Department of Defense (DOD), the National Aeronautics and Space Administration (NASA), and the Coast Guard, this form also collects subcontract award data for Historically Black Colleges and Universities (HBCUs) and Minority Institutions (MIs).

3 This report must be submitted semi-annually (for the six months ended March 31st and the twelve months ended September 30th) for contracts with the Department of Defense (DOD) and annually (for the twelve months ended September 30th) for contracts with civilian agencies, except for contracts covered by an approved Commercial Plan (see special instructions in right-hand column). Reports are due 30 days after the close of each reporting period.

4 This report may be submitted on a corporate, company, or subdivision (e.g., plant or division operating on a separate profit center) basis, unless otherwise directed by the agency awarding the contract.

5 If a prime contractor/subcontractor is performing work for more than one Federal agency, a separate report shall be submitted to each agency covering only that agency's contracts, provided at least one of that agency's contracts is over $500,000 (over $1,000,000 for construction of a public facility) and contains a subcontracting plan. (Note that DOD is considered to be a single agency; see next instruction.)

6 For DOD, a consolidated report should be submitted for all contracts awarded by military departments/agencies and/or subcontracts awarded by DOD prime contractors. However, DOD contractors involved in construction and related maintenance and repair must submit a separate report for each DOD component.

7 Only subcontracts involving performance within the U.S., its possessions, Puerto Rico, and the Trust Territory of the Pacific Islands should be included in this report.

8 Purchases from a corporation, company, or subdivision that is an affiliate of the prime/subcontractor are not included in this report.

9 Subcontract award data reported on this form by prime contractors/subcontractors shall be limited to awards made to their immediate subcontractors. Credit cannot be taken for awards made to lower tier subcontractors.

10 See special instructions in right-hand column for Commercial Plans.

SPECIFIC INSTRUCTIONS

BLOCK 2: For the Contractor Identification Number, enter the nine-digit Data Universal Numbering System (DUNS) number that identifies the specific contractor establishment. If there is no DUNS number available that identifies the exact name and address entered in Block 1, contact Dun and Bradstreet Information Services at 1-800-333-0505 to get one free of charge over the telephone. Be prepared to provide the following information: (1) Company name; (2) Company address; (3) Company telephone number; (4) Line of business; (5) Chief executive officer/key manager; (6) Date the company was started; (7) Number of people employed by the company; and (8) Company affiliation.

BLOCK 4: Check only one. Note that March 31 represents the six months from October 1st and that September 30th represents the twelve months from October 1st. Enter the year of the reporting period.

BLOCK 5: Check whether this report is a "Regular," "Final," and/or "Revised" report. A "Final" report should be checked only if the contractor has completed all the contracts containing subcontracting plans awarded by the agency to which it is reporting. A "Revised" report is a change to a report previously submitted for the same period.

BLOCK 6: Identify the department or agency administering the majority of subcontracting plans.

BLOCK 7: This report encompasses all contracts with the Federal Government for the agency to which it is submitted, including subcontracts received from other large businesses that have contracts with the same agency. Indicate in this block whether the contractor is a prime contractor, subcontractor, or both (check only one).

BLOCK 8: Check only one. Check "Commercial Plan" only if this report is under an approved Commercial Plan. For a Commercial Plan, the contractor must specify the percentage of dollars in Blocks 10a through 15b attributable to the agency to which this report is being submitted.

BLOCK 9: Identify the major product or service lines of the reporting organization.

BLOCKS 10a through 15b: These entries should include all subcontract awards resulting from contracts or subcontracts, regardless of dollar amount, received from the agency to which this report is submitted. If reporting as a subcontractor, report all subcontracts awarded under prime contracts. Amounts should include both direct awards and an appropriate prorated portion of indirect awards. (The indirect portion is based on the percentage of work being performed for the organization to which thereport is being submitted in relation to other work being performed by the prime contractor/subcontractor.) Do not include awards made in support of commercial business unless "Commercial" is checked in Block 8 (see Special Instructions for Commercial Plans in right hand column). Report only those dollars subcontracted this fiscal year for the period indicated in Block 4.

BLOCK 10a: Report all subcontracts awarded to SBs including subcontracts to SDBs, WOSBs, VOSBs, and HUBZone SBs. For DOD, NASA, and Coast Guard contracts, include subcontracting awards to HBCUs and MIs.

BLOCK 10b: Report all subcontracts awarded to large businesses (LBs).

BLOCK 10c: Report on this line the grand total of all subcontracts (the sum of lines 10a and 10b).

BLOCKS 11 through 15b: Each of these items is a subcategory of Block 10a. Note that in some cases the same dollars may be reported in more than one block (e.g., SDBs owned by women); likewise subcontracts to HBCUs or MIs should be reported on both Block 11 and 13.

BLOCK 11: Report all subcontracts awarded to SDBs (including women-owned, veteran-owned, and HUBZone SB SDBs). For DOD, NASA, and Coast Guard contracts, include subcontract awards to HBCUs and MIs.

BLOCK 12: Report all subcontracts awarded to WOSB firms (including SDBs, VOSBs, and HUBZone SBs owned by women).

BLOCK 13: (For contracts with DOD, NASA, and Coast Guard): Enter the dollar value of all subcontracts with HBCUs/MIs.

BLOCK 14: Report all subcontracts awarded to HUBZone SBs (including women-owned, veteran-owned, and SDB HUBZone SBs).

BLOCK15a: Report all subcontracts awarded to VOSBs (including women-owned, SDB, and HUBZone SB VOSBs).

BLOCK 15b: Report all subcontracts awarded to service disabled VOSBs (these subcontracts should also be reported in Block 15a).

SPECIAL INSTRUCTIONS FOR COMMERCIAL PLANS

1. This report is due on October 30th each year for the previous fiscal year ended September 30th.

2. The annual report submitted by reporting organizations that have an approved company-wide annual subcontracting plan for commercial items shall include all subcontracting activity under commercial plans in effect during the year and shall be submitted in addition to the required reports for other-than-commercial items, if any.

3. Enter in Blocks 10a through 15b the total of all subcontract awards under the contractor's Commercial Plan. Show in Block 8 the percentage of this total that is attributable to the agency to which this report is being submitted. This report must be submitted to each agency from which contracts for commercial items covered by an approved Commercial Plan were received.

DEFINITIONS

1. Direct Subcontract Awards are those that are identified with the performance of one or more specific Government contract(s).

2. Indirect Subcontract Awards are those which, because of incurrence for common or joint purposes, are not identified with specific Government contracts; these awards are related to Government contract performance but remain for allocation after direct awards have been determined and identified to specific Government contracts.

SUBMITTAL ADDRESSES FOR ORIGINAL REPORT

For DOD Contractors, send reports to the cognizant contract administration office as stated in the contract.

For Civilian Agency Contractors, send reports to awarding agency:

1. NASA: Forward reports to NASA, Office of Procurement (HS), Washington, DC 20546.
2. OTHER FEDERAL DEPARTMENTS OR AGENCIES: Forward report to the OSDBU Director unless otherwise provided for in instructions by the Department or Agency.

FOR ALL CONTRACTORS:

SMALL BUSINESS ADMINISTRATION (SBA): Send "info copy" to the cognizant Commercial Market Representative (CMR) at the address provided by SBA. Call SBA Headquarters in Washington, DC at (202) 205-6475 for correct address if unknown.

STANDARD FORM 295 (REV. 10-2000) BACK

[FR Doc. 00–25874 Filed 10–10–00; 8:45 am]

BILLING CODE 6820–EP–C



**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Part 15**

**[FAC 97–20; FAR Case 2000–300; Item II]**

**RIN 9000–AI83**

## Federal Acquisition Regulation; Truth in Negotiations Act Threshold

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement the requirements of 10 U.S.C. 2306a(a)(7) and 41 U.S.C. 254b(a)(7). These statutes require review of the Truth in Negotiations Act threshold every 5 years, starting October 1, 1995.

**DATES:** *Effective Date:* October 11, 2000.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jeremy Olson at (202) 501–3221. Please cite FAC 97–20, FAR case 2000–300.

**SUPPLEMENTARY INFORMATION:**

### A. Background

This final rule amends FAR 15.403–4 to implement the requirements of 10 U.S.C. 2306a(a)(7) and 41 U.S.C. 254b(a)(7). These statutes require review of the Truth in Negotiations Act threshold every 5 years, starting October 1, 1995. The increase of $50,000 is based on escalation of 10.22 percent from 1994 to 2000, calculated using the gross domestic product deflators from the fiscal year 2001 budget.

DoD, GSA, and NASA published a proposed rule in the Federal Register at 65 FR 41267, July 3, 2000. Two respondents submitted public comments. The Councils considered all public comments in formulation of the final rule. This final rule is the same as the proposed rule.

This is not a significant regulatory action, and therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

### B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts and subcontracts with small entities do not require the submission of cost or pricing data.

### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes do not significantly change the existing information collection requirements that have been approved by the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*, under OMB Clearance Number 9000–0045.

### List of Subjects in 48 CFR Part 15

Government procurement.

Dated: October 3, 2000.

**Al Matera,**

*Acting Director, Federal Acquisition Policy Division.*

Therefore, DoD, GSA, and NASA amend 48 CFR part 15 as set forth below:

## PART 15—CONTRACTING BY NEGOTIATION

1. The authority citation for 48 CFR part 15 continues to read as follows:

**Authority:** 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Amend section 15.403–4 by revising paragraph (a)(1) to read as follows:

**15.403–4 Requiring cost or pricing data (10 U.S.C. 2306a and 41 U.S.C. 254b).**

(a)(1) The contracting officer must obtain cost or pricing data only if the contracting officer concludes that none of the exceptions in 15.403–1(b) applies. However, if the contracting officer has sufficient information available to determine price reasonableness, then the contracting officer should consider requesting a waiver under the exception at 15.403–1(b)(4). The threshold for obtaining cost or pricing data is $550,000. Unless an exception applies, cost or pricing data are required before accomplishing any of the following actions expected to exceed the current threshold or, for existing contracts, the threshold specified in the contract:

(i) The award of any negotiated contract (except for undefinitized actions such as letter contracts).

(ii) The award of a subcontract at any tier, if the contractor and each higher-tier subcontractor were required to submit cost or pricing data (but see waivers at 15.403–1(c)(4)).

(iii) The modification of any sealed bid or negotiated contract (whether or not cost or pricing data were initially required) or any subcontract covered by paragraph (a)(1)(ii) of this subsection. Price adjustment amounts must consider both increases and decreases (*e.g.*, a $200,000 modification resulting from a reduction of $400,000 and an increase of $200,000 is a pricing adjustment exceeding $550,000). This requirement does not apply when unrelated and separately priced changes for which cost or pricing data would not otherwise be required are included for administrative convenience in the same modification. Negotiated final pricing actions (such as termination settlements and total final price agreements for fixed-price incentive and redeterminable contracts) are contract modifications requiring cost or pricing data if—

(A) The total final price agreement for such settlements or agreements exceeds the pertinent threshold set forth at paragraph (a)(1) of this subsection; or

(B) The partial termination settlement plus the estimate to complete the continued portion of the contract exceeds the pertinent threshold set forth at paragraph (a)(1) of this subsection (see 49.105(c)(15)).

* * * * *

[FR Doc. 00–25875 Filed 10–10–00; 8:45 am]

BILLING CODE 6820–EP–P

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**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Chapter 1**

## Federal Acquisition Regulation; Small Entity Compliance Guide

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Small Entity Compliance Guide.

**SUMMARY:** This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the

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Administrator for the National Aeronautics and Space Administration. This *Small Entity Compliance Guide* has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121). It consists of a summary of rules appearing in Federal Acquisition Circular (FAC) 97–20 which amend the FAR. An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared in accordance with 5 U.S.C. 604. Interested parties may obtain further information regarding these rules by referring to FAC 97–20 which precedes this document. These documents are also available via the Internet at http://www.arnet.gov/far.

**FOR FURTHER INFORMATION CONTACT:** Laurie Duarte, FAR Secretariat, (202) 501–4225. For clarification of content, contact the analyst whose name appears in the table below.

LIST OF RULES IN FAC 97–20

| Item | Subject | FAR case | Analyst |
|---|---|---|---|
| I | Veterans Entrepreneurship And Small Business Development Act * | 2000–302 | Moss. |
| II | Truth in Negotiations Act Threshold | 2000–300 | Olson. |

**Item I—Veterans Entrepreneurship and Small Business Development Act of 1999 (FAR Case 2000–302)**

This interim rule amends the FAR to implement sections 501(c), 502(a)(2), and 604(d) of the Veterans Entrepreneurship and Small Business Development Act of 1999 (Pub. L. 106–50). This Act established new assistance programs for veterans and service-disabled veterans who own and operate small businesses. This interim rule—

- Defines the terms "veteran-owned small business concerns" and "service-disabled veteran-owned small business concerns";
- Establishes that veteran-owned and service-disabled veteran-owned small businesses be afforded maximum practical opportunity to participate in the performance of contracts and subcontracts awarded by any Federal agency;
- Establishes a requirement to include a goal for veteran-owned small businesses in subcontracting plans under FAR 52.219–9; and
- Amends the SF 294 and SF 295 to add data collection requirements for subcontract awards to veteran-owned small businesses and service disabled veteran-owned small business concerns.

**Item II—Truth in Negotiations Act Threshold (FAR Case 2000–300)**

This final rule amends FAR 15.403–4 to increase the threshold for obtaining cost or pricing data from $500,000 to $550,000. This implements the requirements of 10 U.S.C. 2306a(a)(7) and 41 U.S.C. 254b(a)(7). These statutes require review of the Truth in Negotiations Act threshold every 5 years, starting October 1, 1995.

Dated: October 3, 2000.

**Al Matera,**

*Acting Director, Federal Acquisition Policy Division.*

[FR Doc. 00–25876 Filed 10–10–00; 8:45 am]

BILLING CODE 6820–EP–P

Federal Register

**Wednesday,**
**October 11, 2000**

**Part IV**

# Department of Transportation

**Federal Aviation Administration**

**14 CFR Part 135**
**Service Difficulty Reports; Final Rule**

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 135**

**[Docket No. 28293; Amendment No. 135–78]**

**RIN 2120–AF71**

## Service Difficulty Reports

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; technical amendment.

**SUMMARY:** The Federal Aviation Administration (FAA) is making minor technical changes to a final rule published in the **Federal Register** on September 15, 2000 (65 FR 56192). That final rule amends the reporting requirements for air carriers and certificated domestic and foreign repair station operators concerning failures malfunctions, and defects of aircraft engines, systems, and components. In that final rule the FAA neglected to make conforming amendments to sections not amended by the final rule.

**EFFECTIVE DATES:** Effective on January 16, 2001.

**FOR FURTHER INFORMATION CONTACT:** Jose E. Figueroa, AFS–300, Flight Standards Service, Federal Aviation Administration, 800 Independence Ave., Washington, DC 20591, telephone (703) 661–0522.

**SUPPLEMENTARY INFORMATION:** The Federal Aviation Administration (FAA) published in the **Federal Register** of September 15, 2000 (65 FR 56192) a document that amended the regulations on reporting service difficulties. The FAA neglected to include a revision to 14 CFR 135.411 to clearly address the applicability of one newly adopted section to part 135 operations. When the provisions of § 135.415 were expanded into revised § 135.415 and new § 135.416, the appropriate changes to § 135.411 were not made to reflect the existence of the new § 135.416. The only change in this amendment is to add a reference to new § 135.416 to existing § 135.411 in two places. This document makes the appropriate amendatory change to clearly reflect that new § 135.416 as well as current §§ 134.415 and 135.417 apply to all operations under part 135. This amendment will not impose any additional restrictions on operators affected by these regulations.

### Technical Amendment

The technical amendment will correct the omission of § 135.416 from the applicability paragraphs of § 135.411.

### List of Subjects in 14 CFR Part 135

Air taxis, Aircraft, Aviation safety, Reporting and recordkeeping requirements.

Accordingly, Title 14 of the Code of Federal Regulations (CFR) part 135 is amended as follows:

### PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON-DEMAND OPERATIONS AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

1. The authority citation of part 135 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722.

2. Amend § 135.411 by revising the first sentence of paragraph (a)(1) and paragraph (a)(2) to read as follows:

**§ 135.411 Applicability.**

(a) * * *

(1) Aircraft that are type certificated for a passenger seating configuration, excluding any pilot seat, of nine seats or less, shall be maintained under parts 91 and 43 of this chapter and §§ 135.415, 135.416, 135.417, and 135.421. * * *

(2) Aircraft that are type certificated for a passenger seating configuration, excluding any pilot seat, of ten seats or more, shall be maintained under a maintenance program in §§ 135.415. 135.416: 135.417, and 135.423 through 135.443.

* * * * *

Issued in Washington, DC on October 3, 2000.

**Donald P. Byrne,**

*Assistant Chief Counsel for Regulations.*

[FR Doc. 00–25951 Filed 10–10–00; 8:45 am]

BILLING CODE 4910–13–M

Federal Register

**Wednesday,**
**October 11, 2000**

**Part V**

# Commodity Futures Trading Commission

**17 CFR Part 30**

**Foreign Futures and Options Transactions; Final Rules**

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**COMMODITY FUTURES TRADING COMMISSION**

**17 CFR Part 30**

**Foreign Futures and Options Transactions**

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Final rule; Interpretative statement.

**SUMMARY:** The Commodity Futures Trading Commission ("Commission" or "CFTC") is clarifying its interpretation of the foreign futures or foreign options secured amount requirement set forth in Commission Rule 30.7 ("secured amount requirement"). The Commission previously interpreted Rule 30.7 to require futures commission merchants ("FCMs") and certain firms exempt from such registration to perform an inquiry with respect to the treatment of the foreign futures or foreign options secured amount by any depository handling those funds. Under that interpretation, if a firm determines that any depository, including those beyond the initial depository, would not hold the funds set aside to cover the secured amount in a manner consistent with the provisions of the rule, then the firm must set aside funds with an acceptable depository in order to include such funds in the daily computation of the secured amount. As part of the Commission's ongoing program of regulatory reform, the Commission is revising its interpretation of Rule 30.7 to clarify the obligations of an FCM or a firm exempt from FCM registration in accordance with Rule 30.10 concerning the treatment of funds of foreign futures or foreign options customers under Rule 30.7. The Commission's revised interpretation set forth herein is a revised appendix to our Rules.

**EFFECTIVE DATE:** October 11, 2000.

**FOR FURTHER INFORMATION CONTACT:** Lawrence B. Patent, Associate Chief Counsel, or Andrew V. Chapin, Staff Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5430.

**SUPPLEMENTARY INFORMATION:** The current Appendix B to Part 30 sets forth option contracts permitted to be offered or sold in the U.S. pursuant to Rule 30.3(a).[1] The Commission previously amended Rule 30.3(a) to eliminate the requirement that the Commission authorize the offer and sale of a particular foreign exchange-traded commodity option before it can be offered or sold in the U.S., except for those involving stock indices or foreign government debt futures.[2] That action rendered existing Appendix B to Part 30 generally irrelevant. Accordingly, the Commission proposed to remove the current Appendix B and replace it with the Interpretative Statement to Rule 30.7 contained herein.[3]

The Commission received one favorable comment on the proposed Interpretative Statement. The commenter noted that "the extra requirements imposed by the current interpretation effectively compel FCMs to choose between becoming insurers of funds their customers knowingly commit to foreign markets or refusing to accept those trades[,]" and stated that the revised interpretation "is a more logical approach to balancing the desire of U.S. customers to trade on foreign exchanges with the increased insolvency risks involved in trading in some of those jurisdictions."

**Administrative Procedures Act**

The Administrative Procedures Act provides that the required publication of a substantive rule shall be made not less than 30 days before its effective date, but provides an exception for "a substantive rule which grants or recognizes an exemption or relieves a restriction." The Interpretative Statement to Rule 30.7 set forth in revised Appendix B will relieve the obligation of FCMs and certain foreign firms exempt from registration as an FCM under Rule 30.10 to set aside their own funds to satisfy the secured amount requirement set forth in Rule 30.7. Accordingly, the Commission has determined to make Appendix B effective immediately.

**List of Subjects in 17 CFR Part 30**

Consumer protection, Definitions, Foreign futures, Foreign options, Treatment of foreign futures or foreign options secured amount.

Accordingly, the Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations as follows:

## PART 30—FOREIGN FUTURES AND FOREIGN OPTIONS TRANSACTIONS

1. The authority citation for Part 30 continues to read as follows:

**Authority:** 7 U.S.C. 1a, 2, 4, 6, 6c and 12a, unless otherwise noted.

2. Appendix B is revised to read as follows:

**Appendix B to Part 30—Interpretative Statement With Respect to the Secured Amount Requirement Set Forth in § 30.7**

1. Rule 30.7 requires FCMs who accept money, securities or property from foreign futures and foreign options customers to maintain in a separate account or accounts such money, securities and property in an amount at least sufficient to cover or satisfy all of its current obligations to those customers.[1] This amount is denominated as the "foreign futures or foreign options secured amount" and that term is defined in Rule 1.3(rr). The separate accounts must be maintained under an account name that clearly identifies the funds as belonging to foreign futures and foreign options customers at a depository that meets the requirements of Rule 30.7(c). Further, each FCM must obtain and retain in its files for the period provided in Rule 1.31 an acknowledgment from the depository that the depository was informed that such money, securities or property are held for or on behalf of foreign futures and foreign options customers and are being held in accordance with the provisions of these regulations.

2. In a series of orders issued pursuant to Rule 30.10, the Commission required that certain foreign firms exempt from registration as FCMs essentially comply with the standards of Rule 30.7.[2] Specifically, the Commission stated that "(the secured amount] requirement is intended to ensure that funds provided by U.S. customers for foreign futures and options transactions, whether held at a U.S. FCM under Rule 30.7(c) or a firm exempted from registration as an FCM under CFTC Rule 30.10, will receive equivalent protection at *all* intermediaries and exchange clearing organizations."[3] The Commission further interpreted Rule 30.7 to require each FCM and Rule 30.10 firm to take appropriate action (i.e., set aside funds in a "mirror" account) in the event that it becomes aware of facts leading it to conclude that foreign futures and foreign options customer funds are not being handled consistent with the requirements of Commission rules or relevant order for relief by any subsequent intermediary or exchange clearing organization.

3. Upon further analysis and reconsideration of this matter, the Commission has determined to revise its prior interpretation of the Rule 30.7 secured amount requirement. The Commission notes that the initial depository's ability to identify customer funds affords foreign futures and foreign options customers a measure of protection in the event that the intermediating FMC or foreign firm becomes insolvent. Moreover, Rule 30.6(a) requires that foreign futures and foreign options customers receive a Rule 1.55 written disclosure explaining that the treatment of customer funds outside the U.S. may not afford the same level of protection offered in the U.S. These protections exist whetehr the intermediating firm is a U.S. FCM or a firm exempt from such registration under Rule 30.10.[4]

4. The Commission further notes, however, that, in February 1998, Rule 30.6 was amended to permit an FCM to open a commodity account for a foreign futures or foreign options customer without providing the Rule 1.55 risk disclosure statement or obtaining an acknowledgment of receipt of such statement, provided that the customer is, at the time at which the account is opened, one of several types of sophisticated customers enumerated in Rule 1.55(f) ("Rule 1.55(f) customers").[5] While the amendment to Rule 30.6(a) extinguished the obligation to provide a standardized risk disclosure statement to Rule 1.55(f) customers at the time of the account opening, the Commission stated that FCMs have obligations to these customers independent of such a duty that would be material in the circumstances of a given transactions.[6]

5. After careful consideration of the issue, the Commission has determined that intermediaries should advise all customers (regardless of their level of sophistication) to consider making appropriate inquiries relating to the treatment of customer funds by depositories located outside the jurisdiction of the intermediating firm. Accordingly, the Commission has determined that an FCM, at a minimum, must provide each foreign futures or foreign option customer with a written disclosure tracking the language in either: (1) Rule 1.55(b)(7),[7] or (2) Paragraphs 6 and 8 of Appendix A to Rule 1.55(c).[8] Rule 30.10 firms must provide each foreign futures or foreign options customer with a written disclosure tracking the language in either Rule 1.55(b)(7) or paragraphs 6 and 8 of Appendix A to Rule 1.55(c), or a comparable disclosure statement prescribed by the firm's home country regulator. The Commission further encourages all firms, whether domestic or foreign, to provide a Rule 1.55 written risk disclosure to all customers, regardless of each customer's respective level of experience. The Commission notes that, in any instance where a firm provides a Rule 1.55(f) customer with a written disclosure, it is not necessary for the firm to obtain an acknowledgment of receipt. In addition, those FCMs that already have provided customers with a disclosure tracking either Rule 1.55(b)(7) or paragraphs 6 and 8 of Appendix A to Rule 1.55(c) (or in the case of Rule 30.10 firm, a comparable disclosure statement prescribed by its home country regulatory) need not provide those same customers with an additional written disclosure.

6. For the reasons set forth above, the Commission is revising its interpretation of the secured amount requirement set forth in Rule 30.7. The Commission believes that the Rule 30.7 acknowledgment required of FCMs, or other appropriate acknowledgment required by Rule 30.10 firms, only applies to the maintenance of the account or accounts containing foreign futures and foreign options customer funds by the initial depository, and not to the manner in which any subsequent depository holds or subsequently transmits those funds. If an FCM receives from the initial depository the acknowledgment described in Rule 30,7, furnishes to each foreign futures or foreign options customer a written disclosure statement tracking the language set forth in Rule 1.55(b)(7) or paragraphs 6 and 8 of Appendix A of Rule 1.55(c) and otherwise complies with the provisions of Rule 30.7, then it may include all funds maintained in the separate account or accounts in calculating its secured amount requirement. A Rule 30.10 firm must satisfy the same requirements, except that it may provide each foreign futures or foreign options customer with a comparable disclosure statement prescribed by is home regulator.

7. IF an FCM or Rule 30.10 firm fails to receive the required acknowledgment from the initial depository or provide the above written disclosure statement (and in certain circumstances, receive from customers and acknowledgment of receipt), then it must set aside funds with an acceptable depository and receive from such depository the required acknowledgment.

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[1] Commission rules referred to herein are found at 17 CFR Chapter I.

[2] 61 FR 10891 (March 18, 1996).

[3] 65 FR 53946 (September 6, 2000). Persons concerned with what options on foreign stock index or government debt futures can be lawfully offered or sold to customers located in the U.S. may consult the foreign instruments epproval backgrounder on the Commission's website at http://www.cftc.gov/opa/backgrounder/part30.htm.

[1] "Foreign futures or foreign options customer" means "any person located in the United States, its territories or possessions who trades in foreign futures or foreign options: Provided, That an owner or holder of a proprietary account as defined in paragraph (y) of [Rule 1.3] shall not be deemed to be a foreign futures or foreign options customer within the meaning of [Rules 30.6 and 30.7]." Rule 30.1(c). "Foreign futures" means "any contract for the purchase or sale of any commodity for future delivery made, or to be made, on or subject to the rules of any foreign board of trade." Rule 30.1(a). "Foreign option" means "any transaction or agreement which is or is held out to be of the character of, or is commonly known to the trade as, an 'option,' 'privilege,' 'indemnity,' 'bid,' 'offer,' 'put,' 'call,' 'advance guaranty,' or 'decline guaranty,' made or to be made on or subject to the rules of any foreign board of trade." Rule 30.1(b).

[2] Under Rule 30.10, the Commission may exempt a foreign firm acting in the capacity of an FCM from registration under the Commodity Exchange Act ("Act") and compliance with certain Commission rules based upon the firm's compliance with comparable regulatory requirements imposed by the firm's home-country regulator or self-regulatory organization ("SRO"). Once the Commission determines that the foreign jurisdiction's regulatory structure offers comparable regulatory oversight, the Commission may issue an Order granting general relief subject to certain conditions. Firms seeking confirmation of relief (referred to herein as "Rule 30.10 firms") must make certain representations set forth in the Rule 30.10 order issued to the regulator or SRO from the firm's home country. For a list of those foreign regulators and SROs that have been issued a Rule 30.10 order, see Appendix C to Part 30. In certain cases, where a foreign regulator or SRO has requested that firms subject to its jurisdiction be granted broader relief to engage in transactions on exchanges other than in its home jurisdiction (referred to herein as "expanded relief"), the relief has been granted where the relevant authority has represented that it will monitor its firms for compliance with the terms of the order in connection with such offshore transactions. Although Rule 30.10 orders generally exempt foreign intermediaries from compliance with the secured amount requirement under Rule 30.7, firms seeking confirmation of the expanded relief must represent that, with respect to transactions entered into on behalf of U.S. customers on any non-U.S. exchange located outside their home country, they will treat U.S. customer funds in a manner consistent with the provisions of Rule 30.7. For the most recent order granting expanded relief, see 64 FR 50248 (September 16, 1999) (Singapore Exchange Derivatives Trading Limited).

[3] 64 FR 50248, 50251, n.19 (emphasis added).

[4] Although orders for expanded relief exempt foreign firms from compliance with Rule 1.55, sales practice standards and the treatment of customer funds constitute two of the specific elements examined in evaluating whether the particular foreign regulatory program provides a basis for permitting substituted compliance for purposes of exemptive relief pursuant to Rule 30.10. Appendix A to Part 30.

[5] 63 FR 8566 (February 20, 1998). The list of sophisticated customers referenced in Rule 1.55(f) closely tracks, with one exception, the list of "eligible swap participants" in Rule 35.1.

[6] *Id.* at 8569.

[7] Rule 1.55(b)(7) reads as follows: Foreign futures transactions involve executing and clearing trades on a foreign exchange. This is the case even if the foreign exchange is formally "linked" to a domestic exchange whereby a trade executed on one exchange liquidates or establishes a position on the other exchange. No domestic organization regulates the activities of a foreign exchange, including the execution, delivery and clearing of transactions on such exchange, and no domestic regulator has the power to compel enforcement of the rules of the foreign exchange or the laws of the foreign country. Moreover, such laws or regulations will vary depending on the foreign country in which the transaction occurs. For these reasons, customers who trade on foreign exchanges may not be afforded certain of the protections which apply to domestic transactions, including the right to use alternative dispute resolution. In particular, funds received from customers to margin foreign futures transactions may not be provided the same protections as funds received to margin futures transactions on domestic exchanges. Before you trade, you should familiarize yourself with the foreign rules which will apply to your particular transaction.

[8] Appendix A to Rule 1.55(c) is the Generic Risk Disclosure Statement, which FCMs may use as an alternative to the Risk Disclosure Statement prescribed in Rule 1.55(b). The Commission understands that most FCMs, in particular those that are most active in international markets, use the Generic Risk Disclosure Statement.

Paragraphs 6 and 8 of Appendix A to Rule 1.55(c) read as follows:

6. Deposited cash and property.

You should familiarize yourself with the protections accorded money or property you deposit for domestic and foreign transactions, particularly in the event of a firm insolvency or bankruptcy. The extent to which you may recover your money or property may be governed by specified legislation or local rules. In some jurisdictions, property which has been specifically identifiable as your own will be pro-rated in the same manner as cash for purposes of distribution in the event of a shortfall.

8. Transactions in other jurisdictions.

Transactions on markets in other jurisdictions, including markets formally linked to a domestic market, may expose you to additional risk. Such markets may be subject to regulation which may offer different or diminished investor protection. Before you trade you should enquire about any rules relevant to your particular transactions. Your local regulatory authority will be unable to compel the enforcement of the rules of the regulatory authorities or markets in other jurisdictions where your transactions have been effected. You should ask the firm with which you deal for details about the types of redress available in both your home jurisdiction and other relevant jurisdictions before you start to trade.

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8. The Commission's interpretation of the Rule 30.7 secured amount requirement will apply to all regulated activities with all new and existing foreign futures and foreign options customers as of October 11, 2000. The Commission's interpretation does not alter any other requirement set forth in Rule 30.7 or any other section of Part 30.

Dated: Issued in Washington, D.C. on October 5, 2000.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 00–26068 Filed 10–10–00; 8:45 am]

BILLING CODE 6351–01–M

## COMMODITY FUTURES TRADING COMMISSION

**17 CFR Part 30**

**Foreign Futures and Options Transactions**

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Order.

**SUMMARY:** The Commodity Futures Trading Commission ("Commission" or "CFTC") is amending the orders issued pursuant to Rule 30.10 to the New Zealand Futures and Options Exchange, the Montreal Exchange, the Sydney Futures Exchange, the U.K. Securities and Futures Authority, the U.K. Investment Management Regulatory Organisation Limited, and the Singapore Exchange Derivatives Trading Limited. The amendment reflects the Commission's revised interpretation of the Rule 30.7 foreign futures or foreign options secured amount requirement ("secured amount requirement") as it applies to both futures commission merchants ("FCMs") and certain foreign firms exempt from such registration. Specifically, the Commission has determined to revise its interpretation of Rule 30.7 to clarify the obligations of an FCM or a firm exempt from FCM registration in accordance with Rule 30.10 concerning the treatment of funds of foreign futures or foreign options customers under Rule 30.7. The Commission's revised interpretation of the secured amount requirement is set out in a revised appendix issued concurrently with this release and published elsewhere in today's **Federal Register**.

**EFFECTIVE DATE:** October 11, 2000.

**FOR FURTHER INFORMATION CONTACT:** Lawrence B. Patent, Associate Chief Counsel, or Andrew V. Chapin, Staff Attorney, Division of Trading and Markets, Commodity Futures Trading Commisison, 1155 21st Street, NW, Washington, DC 20581. Telephone: (202) 418–5430.

**SUPPLEMENTARY INFORMATION:** The Commission has issued the following Order:

**Order Amending Prior Orders Issued Pursuant to Rule 30.10 to the New Zealand Futures and Options Exchange, the Montreal Exchange, the Sydney Futures Exchange, the U.K. Securities and Futures Authority, the U.K. Investment Management Regulatory Organisation Limited, and the Singapore Exchange Derivatives Trading Limited**

*I. Background*

Part 30 of the Commission's rules sets forth rules governing foreign futures [1] and foreign option [2] transactions. Under Rule 30.10, the Commission may exempt a foreign firm acting in the capacity of a futures commission merchant ("FCM") from registration under the Commodity Exchange Act ("Act") and compliance with certain Commission rules based upon the firm's compliance with comparable regulatory requirements imposed by the firm's home-country regulator or self-regulatory organization ("SRO").[3] Once the Commission determines that the foreign jurisdiction's regulatory structure offers comparable regulatory oversight, the Commission may issue an Order granting general relief subject to certain conditions.[4] Firms seeking confirmation of relief (referred to herein as "Rule 30.10 firms") must make certain representations set forth in the Rule 30.10 Order issued to the regulator or SRO from the firm's home country.[5]

In certain cases, where a foreign regulator or SRO has requested that firms subject to its jurisdiction to be granted broader relief to engage in transaction on exchanges other than in its home jurisdiction (referred to herein as "expanded relief"), the relief has been granted where the relevant authority has represented that it will monitor its firms for compliance with the terms of the order in connection with such offshore transactions.[6] Although Rule 30.10 orders generally exempt foreign intermediaries from compliance with the secured amount requirement under Rule 30.7, firms seeking confirmation of the expanded relief must represent that, with respect to transactions entered into on behalf of U.S. customers on any non-U.S. exchange located outside their home country, they will treat U.S. customer funds in a manner consistent with the provisions of Rule 30.7.

The orders granting expanded relief require Rule 30.10 firms to either set aside funds constituting the secured amount requirement in a separate account: (1) As set forth in the relevant order for expanded relief (see below), (2) as set forth in Rule 30.7 (treating those funds in the manner prescribed by that rule), or (3) in compliance with either of the above procedures, with the amount required to be segregated under local law to be substituted for the secured amount. The alternative secured amount requirement described within each order for expanded relief states, in relevant part:

> The separate account or accounts referred to [herein] may be deemed a good secured amount depository only if the [firm] obtains and retains in its files for the period required by applicable law and [exchange or SRO] rules, a written acknowledgment from such separate account depository that:
>
> • It was informed that such money, securities or property are held for or on behalf of customers of the [firm]; and
>
> • It will ensure that such money, securities or property will be held and treated in accordance with the provisions of this paragraph; and, *provided further, that the [firm] assures itself that such separate account depository will not pass on such money, securities or property to any other depository unless the [firm] has assured itself that all such other separate account depositories will treat such funds in a manner consistent with the procedures described [herein].* (emphasis added)

In other words, the Commission required each Rule 30.10 firm with expanded relief to perform an inquiry before customer funds were sent to another intermediary, and to take appropriate action (*i.e.*, set aside funds in a "mirror" account) in the event that it became aware of facts leading it to conclude that U.S. customer funds were not being handled consistent with this requirement by any intermediary or exchange clearing organization beyond the initial depository. The Commission further stated that "[the secured amount] requirement [set forth herein] is intended to ensure that funds provided by U.S. customers for foreign futures and options transactions, whether held at a U.S. FCM under Rule 30.7(c) or a firm exempted from registration as an FCM under CFTC Rule 30.10, will receive equivalent protection at all intermediaries and exchange clearing organizations."[7]

*II. Amendment*

Upon further analysis and reconsideration of this matter, the Commission has determined to revise its interpretation of the secured amount requirement set forth in Rule 30.7 and the orders for expanded relief. As set forth in Appendix B to Part issued concurrently with this order, the Commission believes that existing written risk disclosures provide foreign futures and foreign options customers with notice that the treatment of customer funds outside the U.S. may differ from the treatment of customer funds inside the U.S. The Commission also believes that the initial depository's ability to identify customer funds affords foreign futures and foreign options customers a measure of protection in the event that the intermediating firm becomes insolvent. Accordingly, the Commission believes that the Rule 30.7 acknowledgment required of certain Rule 30.10 firms should apply only to the maintenance of the account or accounts containing foreign futures and foreign options customer funds by the initial depository.

Appendix B provides that FCMs and certain Rule 30.10 firms need not maintain mirror accounts, provided that they obtain from the initial depository the acknowledgment described in Rule 30.7 and that they furnish a written disclosure statement to customers concerning treatment of customer funds by other jurisdictions set forth either in Rule 1.55(b)(7) or paragraphs 6 and 8 of Appendix A to Rule 1.55(c), or in a comparable disclosure statement prescribed by the firm's home country regulator. The Commission believes that Rule 30.10 firms transacting business for foreign futures and foreign option customers outside of the firms' jurisdictions should be able to operate in a similar fashion. Accordingly, if a Rule 30.10 firm operating pursuant to an order for expanded relief receives from the initial depository the acknowledgment described in Rule 30.7 and furnishes to foreign futures and foreign option customers the written disclosure statement set forth either in Rule 1.55(b)(7) or paragraphs 6 and 8 of Appendix A to Rule 1.55(c), or a comparable disclosure statement prescribed by its home country regulator, then it may include all funds maintained in the account or accounts in calculating its secured amount requirement. Should a Rule 30.10 firm fail to receive from the initial depository the required acknowledgment or to furnish the required risk disclosure, then it must set aside funds with an acceptable depository and receive from such depository the required acknowledgment.

*III. Conclusion and Order*

The Commission has determined to revise its interpretation of the secured amount requirement. For drafting purposes, the Commission has determined to amend the alternative secured amount requirement set forth in prior Rule 30.10 orders for expanded relief to track as closely as possible the language of Rule 30.7. In addition, the Commission is adding to each order the requirement that each Rule 30.10 firm furnish to each foreign futures and foreign option customer a risk disclosure statement containing the language set forth either in Rule 1.55(b)(7) or paragraphs 6 and 8 of Appendix A to Rule 1.55(c), or a comparable disclosure statement prescribed by the firm's home country regulator. For the sake of clarity, the Commission also is deleting from each order granting expanded relief the footnote describing the obligation to perform an inquiry with respect to depositories beyond the initial depository and, if necessary, to set aside funds. These amendments are made to the following orders:

**NZFOE (61 FR 64988–89)**

The text of paragraphs describing the secured amount requirement is amended to read:

II. Each Dealer seeking rule 30.10 relief hereunder must apply in writing whereby it:

* * * * *

K. With respect to transactions effected on behalf of U.S. customers on any non-U.S. futures and options exchange other than the NZFOE and the SFE [20] [footnote unchanged], whether by the Dealer directly as a clearing member of such other exchange or through the intermediation of one or more intermediaries, complies with paragraphs 1 or 2 below:

1.a. Must maintain in a separate account or accounts money, securities and property in an amount at least sufficient to cover or satisfy all of its current obligations to U.S. customers denominated as the foreign futures or foreign options secured amount;

* * * * *

e. Each Member must obtain and retain in its files for the period required by applicable law and Exchange rules an acknowledgment from a depository identified in paragraph d.(1)–(4) above that the depository was informed that such money, securities or property are held for or on behalf of foreign futures and foreign options customers and are being held in accordance with the provision of these regulations.

f. Each Member must provide each foreign futures and foreign options customer with one of the written disclosure statements in (1), (2) or (3) below:

(1) Foreign futures transactions involve executing and clearing trades on a foreign exchange. This is the case even if the foreign exchange is formally "linked" to a domestic exchange whereby a trade executed on one exchange liquidates or establishes a position on the other exchange. No domestic organization regulates the activities of a foreign exchange, including the execution, delivery and clearing of transactions on such exchange, and no domestic regulator has the power to compel enforcement of the rules of the foreign exchange or the laws of the foreign country. Moreover, such laws or regulations will vary depending on the foreign country in which the transaction occurs. For these reasons, customers who trade on foreign exchanges may not be afforded certain of the protections which apply to domestic transactions, including the right to use alternative dispute resolution. In particular, funds received from customers to margin foreign futures transactions may not be provided the same protections as funds received to margin futures transactions on domestic exchanges. Before you trade, you should familiarize yourself with the foreign rules which will apply to your particular transaction.

OR

---

[1] "Foreign futures" as defined in Part 30 means "any contract for the purchase or sale of any commodity for future delivery made, or to be made, on or subject to the rules of any foreign board of trade." Rule 30.1(a). Commission rules referred to herein are found at 17 CFR Ch. I (2000).

[2] "Foreign option" as defined in Part 30 means "any transaction or agreement which is or is held out to be of the character of, or is commonly known to the trade as, an 'option,' 'privilege', 'indemnity,' 'bid', 'offer', 'put', 'call', 'advance guaranty', or 'decline guaranty', made or to be made on or subject to the rules of any foreign board of trade." Rule 30.1(b).

[3] The specific elements examined by the Commission in evaluating whether the particular foreign regulatory program provides a basis for issuing an order pursuant to Rule 30.10 are set forth in Appendix A to Part 30. *See* 52 FR 28990, 29001 (August 5, 1987).

[4] These conditions require the regulator or SRO responsible for monitoring the compliance of the firm with the regulatory requirements described in the Rule 30.10 petition to make certain representations regarding the fitness of each firm seeking to receive confirmation of Rule 30.10 relief, the protections to be afforded to U.S. Customers, and the exchange of information with the Commission. *See* 62 FR 47792, 47793, n.7 (September 11, 1997].

[5] For a list of representations typically required of each Rule 30.10 firm, see 62 FR 47792, 47793, n.8.

[6] The Commission has issued orders granting expanded relief to the U.K. Investment Management Regulatory Organisation ("IMRO") 62 FR 10449 (March 7, 1997), the U.K. Securities and Futures Association ("SFA") 62 FR 10447 (March 7, 1997, New Zealand Futures and Options Exchange ("NZFOE"), 61 FR 64985 (December 10, 1996), the Montreal Exchange, 62 FR 8875 (February 27, 1997) and the Sydney Futures Exchange ("SFE"), 62 FR 10445 (March 7, 1997). In addition, the Commission has authorized members of the Singapore International Monetary Exchange, now known as the Singapore Exchange Derivatives Trading Limited ("SGX–DT"), to solicit and accept orders from U.S. customers for otherwise permitted transactions on Eurex Deutschland, 64 FR 50248 (September 16, 1999). Although applicants for Rule 30.10 orders generally have obtained relief from transactions entered into from within their home country before seeking expanded relief applicable to transactions entered into on an exchange located outside their borders, *e.g.*, IMRO, the Commission has combined the two forms of relief into one single order, *e.g.*, NZFOE.

[7] For the most recent order, see 64 FR 50248, 50251, n.19 (SGX–DT).

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(2) You should familiarize yourself with the protections accorded money or property you deposit for domestic and foreign transactions, particularly in the event of a firm insolvency or bankruptcy. The extent to which you may recover your money or property may be governed by specified legislation or local rules. In some jurisdictions, property which has been specifically identifiable as your own will be pro-rated in the same manner as cash for purposes of distribution in the event of a shortfall.

Transactions on markets in other jurisdictions, including markets formally linked to a domestic market, may expose you to additional risk. Such markets may be subject to regulation which may offer different or diminished investor protection. Before you trade you should enquire about any rules relevant to your particular transactions. You local regulatory authority will be unable to compel the enforcement of the rules of the regulatory authorities or markets in other jurisdictions where your transactions have been effected. You should ask the firm with which you deal for details about the types of redress available in both your home jurisdiction and other relevant jurisdictions before you start to trade

OR

(3) A comparable disclosure statement prescribed by the NZFOE; or

2. Must comply with the terms and procedures of paragraph 1, with the amount required to be segregated under NZFOE rules and New Zealand laws to be substituted for the secured amount requirement as set forth in paragraph 1.[21] [formerly footnote 22]

* * * * *

For the sake of clarity, the Commission notes that language similar to the following HAS BEEN STRICKEN from each order, using the NZFOE order as an example:

1. * * *

*e. The separate account or accounts referred to in paragraph 1.a. may be deemed to be a good secured amount depository only if the Dealer obtains and retains in its files for the period required by Exchange rules, a written acknowledgment from such separate account depository that:*

*(1) It was informed that such money, securities or property are held for or on behalf of customers of the Dealer; and*

*(2) It will ensure that such money, securities or property will be held and treated at all times effectively in accordance with the provisions of this paragraph; and, provided further, that the Dealer assures itself that such seporate account depository will not pass on such money, securities, or property to any other depository unless the Dealer has assured itself that all such other separate account depositories will treat such funds in a manner consistent with the procedures described in this paragraph 1 herein;[21] [footnote 21 deleted]*

*2. Must set aside funds constituting the entire secured amount requirement in a separate account as set forth in Commission rule 30.7, 17 CFR 30.7 (2000), and treat those funds in the manner described by thot rule.*

* * * * *

**The Montreal Exchange (62 FR 8875, 8876)**

The text of paragraphs describing the secured amount requirement is amended to read:

Accordingly, the expanded relief permitted Montreal Exchange Member firms to engage in foreign futures and [foreign] options transactions for U.S. customers other than on the Montreal Exchange under this Supplemental Order will be contingent upon compliance by the Exchange Member firm with the following additional conditions:

* * * * *

(6) With respect to transactions effected on any non-U.S. futures and options exchange on behalf of U.S. customers, whether by the Montreal Exchange Member directly as a clearing member of such other exchange or through the intermediation of one or more intermediaries, complies with paragraph 1 below:

1.a. Must maintain in a separate account or accounts money, securities and property in an amount at least sufficient to cover or satisfy all of its current obligations to U.S. customers denominated as the foreign futures or foreign options secured amount;

* * * * *

e. Each Member must obtain and retain in its files for the period required by applicable law and Exchange rules an acknowledgement from a depository identified in paragraph d.(1)–(4) above that the depository was informed that such money, securities or property are held for or on behalf of foreign futures and foreign options customers and are being held in accordance with the provision of these regulations.

f. Each Member must provide each foreign futures and foreign options customers with one of the written disclosure statements in (1), (2) or (3) below:

(1) Foreign futures transactions involve executing and clearing trades on a foreign, exchange. This is the case even if the foreign exchange is formally "linked" to a domestic exchange whereby a trade executed on exchange liquidates or establishes a position on the other exchange. No domestic organization regulates the activities of a foreign exchange, including the execution, delivery and clearing of transactions on such exchange, and no domestic regulator has the power to compel enforcement of the rules of the foreign exchange or the laws of the foreign country. Moreover, such laws or regulations will vary depending on the foreign country in which the transaction occurs. For these reasons, customers who trade on foreign exchanges may not be afforded certain of the protections which apply to domestic transactions, including the right to use alternative dispute resolution. In particular, refunds received from customers to margin foreign futures transactions may not be provided the same protections as funds received to margin futures transactions on domestic exchanges. Before you trade, you should familiarize yourself with the foreign rules which will apply to your particular transaction.

OR

(2) You should familiarize yourself with the protections accorded money or property you deposit for domestic and foreign transactions, particularly in the event of a firm insolvency or bankruptcy. The extent to which you may recover your money or property may be governed by specified legislation or local rules. In some jurisdictions, property which has been specifically identifiable as your own will be pro-rated in the same manner as cash for purposes of distribution in the event of a shortfall.

Transactions on markets in other jurisdictions, including markets formally linked to a domestic market, may expose you to additional risk. Such markets may be subject to regulation which may offer different or diminished investor protection. Before you trade you should enquire about any rules relevant to your particular transactions. Your local regulatory authority will be unable to compel the enforcement of the rules of the regulatory authorities or markets in other jurisdictions where your transactions have been effected. You should ask the firm with which you deal for details about the types of redress available in both your home jurisdiction and other relevant jurisdictions before you start to trade.

OR

(3) A comparable disclosure statement prescribed by the Exchange; or

* * * * *

**SFE (62 FR 10445, 1044)**

The text of paragraphs describing the secured amount requirement is amended to read:

Accordingly, the Commission has determined to clarify that the relief set forth in the expanded relief authorized pursuant to the 1993 Order is applicable only if the Exchange Member firm complies with the following procedures, which are consistent with the requirements applicable to commission registered FCMs concerning the protection of customer funds under the provisions of [Rule 30.7]: [footnote 6 unchanged]

With respect to transactions effected on behalf of U.S. customers on any non-U.S. futures and options exchange other than the NZFOE[7] [footnote 7 unchanged] and the SFE, whether by the SFE member directly as a clearing member of such other exchange or through the intermediation of one or more intermediaries, the SFE member complies with paragraphs a or b below:

a.(1) Must maintain in a separate account or accounts money, securities and property in an amount denominated as the foreign futures or foreign options secured amount, at least sufficient to cover or satisfy all of its current obligations to U.S. customers;

* * * * *

(5) Each member must obtain and retain in its files for the period required by applicable law and Exchange rules an acknowledgment from a depository identified in paragraph (4)(a)–(d) above that the depository was informed that such money, securities or property are held for or on behalf of foreign futures and foreign options customers and are being held in accordance with the provision of these regulations.

(6) Each member must provide each foreign futures and foreign options customer with one of the written disclosure statements in (a), (b) or (c) below:

(a) Foreign futures transactions involve executing and clearing trades on a foreign exchange. This is the case even if the foreign exchange is formally "linked" to a domestic exchange whereby a trade executed on one exchange liquidates or establishes a position on the other exchange. No domestic organization regulates the activities of a foreign exchange, including the execution, delivery and clearing of transactions on such exchange, and no domestic regulator has the power to compel enforcement of the rules of the foreign exchange or the laws of the foreign country. Moreover, such laws or regulations will vary depending on the foreign country in which the transaction occurs. For these reasons, customers who trade on foreign exchanges may not be afforded certain of the protections which apply to domestic transactions, including the right to use alternative dispute resolution. In particular, funds received from customers to margin foreign futures transactions may not be provided the same protections as funds received to margin futures transactions on domestic exchanges. Before you trade, you should familiarize yourself with the foreign rules which will apply to your particular transaction.

OR

(b) You should familiarize yourself with the protections accorded money or property you deposit for domestic and foreign transactions, particularly in the event of a firm insolvency or bankruptcy. The extent to which you may recover your money or property may be governed by specified legislation or local rules. In some jurisdictions, property which has been specifically identifiable as your own will pro-rated in the same manner as cash for purposes of distribution in the event of a shortfall.

Transactions on markets in other jurisdictions, including markets formally linked to a domestic market, may expose you to additional risk. Such markets may be subject to regulation which may offer different or diminished investor protection. Before you trade you should enquire about any rules relevant to your particular transactions. Your local regulatory authority will be unable to compel the enforcement of the rules of the regulatory authorities or markets in other jurisdictions where your transactions have been effected. You should ask the firm with which you deal for details about the types of redress available in both your home jurisdiction and other relevant jurisdictions before you start to trade.

OR

(c) A comparable disclosure statement prescribed by SFE; or

b. Complies with the terms and procedures of paragraph a, except that the amount required to be segregated under SFE rules and Australian laws may be substituted for the secured amount requirement as set forth in such paragraphs.[8] [formerly footnote 9]

* * * * *

**SFA (62 FR 10448, 10449)**

The text of paragraphs describing the secured amount requirement is amended to read:

Accordingly, the Commission has determined to clarify that the relief authorized in its Original Order with respect to transactions on [an exchange other than a U.K. Recognized Investment Exchange] is applicable only if an SFA member firm complies with the following procedures, which are consistent with the requirements applicable to Commission registered futures commission merchants ("FCMs") concerning the protection of customer funds under the provisions of [Rule 30.7]:[6] [footnote 6 unchanged]

With respect to transactions effected on behalf of U.S. customers on any non-U.S. futures and options exchange which is a DIE, whether by the SFA Member directly as a clearing member of such other exchange or through the intermediation of one or more intermediaries, the SFA member complies with paragraphs a or b below:

a.(1) Maintains in a separate account or accounts money, securities and property in an amount denominated as the foreign futures or foreign options secured amount, at least sufficient to cover or satisfy all of its current obligations to U.S. customers;

* * * * *

(5) Each member must obtain and retain in its files for the period required by applicable law and Exchange rules an acknowledgment from a depository identified in paragraph (4)(a)–(d) above that the depository was informed that such money, securities or property are held for or on behalf of foreign futures and foreign options customers and are being held in accordance with the provision of these regulations.

(6) Each member must provide each foreign futures and foreign options customer with one of the written disclosure statements in (a), (b) or (c) below:

(a) Foreign futures transactions involve executing and clearing trades on a foreign exchange. This is the case even if the foreign exchange is formally "linked" to a domestic exchange whereby a trade executed on one exchange liquidates or establishes a position on the other exchange. No domestic organization regulates the activities of a foreign exchange, including the execution, delivery and clearing of transactions on such exchange, and no domestic regulator has the power to compel enforcement of the rules of the foreign exchange or the laws of the foreign country. Moreover, such laws or regulations will vary depending on the foreign country in which the transaction occurs. For these reasons, customers who trade on foreign exchanges may not be afforded certain of the protections which apply to domestic transactions, including the right to use alternative dispute resolution. In particular, funds received from customers to margin foreign futures transactions may not be provided the same protections as funds received to margin futures transactions on domestic exchanges. Before you trade, you should familiarize yourself with the foreign rules which will apply to your particular transaction.

OR

(b) You should familiarize yourself with the protections accorded money or property you deposit for domestic and foreign transactions, particularly in the event of a firm insolvency or bankruptcy. The extent to which you may recover your money or property may be governed by specified legislation or local rules. In some jurisdictions, property which has been specifically identifiable as your own will be pro-rated in the same manner as cash for purposes of distribution in the event of a shortfall.

Transactions on markets in other jurisdictions, including markets formally linked to a domestic market, may expose you to additional risk. Such markets may be subject to regulation which may offer different or diminished investor protection. Before you trade you should enquire about any rules relevant to your particular transactions. Your local regulatory authority will be unable to compel the enforcement of the rules of the regulatory authorities or markets in other jurisdictions where your transactions have been effected. You should ask the firm with which you deal for details about the types of redress available in both your home jurisdiction and other relevant jurisdictions before you start to trade.

OR

(c) A comparable disclosure statement prescribed by SFA; or

b. Complies with the terms and procedures of paragraph a, except that the amount required to be segregated under SFA rules and United Kingdom laws may be substituted for the secured amount requirement as set forth in paragraph a.[8] [formerly footnote 9]

* * * * *

**IMRO (62 FR 10449, 10450)**

The text of paragraphs describing the secured amount requirement is amended to read:

Accordingly, the Commission has determined to clarify that the relief authorized in its Original Order with respect to transactions on [an exchange other than a U.K. Recognized Investment Exchange] is applicable only if an IMRO member firm complies with the following procedures, which are consistent with the requirements applicable to Commission registered futures commission merchants ("FCMs") concerning the protection of customer funds under the provisions of [Rule 30.7]:[6] [footnote 6 unchanged]

With respect to transactions effected on behalf of U.S. customers on any non-U.S. futures and options exchange which is a DIE, whether by the IMRO Member directly as a clearing member of such other exchange or through the intermediation of one or more intermediaries, the IMRO member complies with paragraphs a or b below:

a.(1) Maintains in a separate account or accounts money, securities and property in

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an amount denominated as the foreign futures or foreign options secured amount, at least sufficient to cover or satisfy all of its current obligations to U.S. customers;

* * * * *

(5) Each member must obtain and retain in its files for the period required by applicable law and IMRO rules an acknowledgment from a depository identified in paragraph (4)(a)–(d) above that the depository was informed that such money, securities or property are held for or on behalf of foreign futures and foreign options customers and are being held in accordance with the provision of these regulations.

(6) Each member must provide each foreign futures and foreign options customer with one of the written disclosure statements in (a), (b) or (c) below:

(a) Foreign futures transactions involve executing and clearing trades on a foreign exchange. This is the case even if the foreign exchange is formally "linked" to a domestic exchange whereby a trade executed on one exchange liquidates or establishes a position on the other exchange. No domestic organization regulates the activities of a foreign exchange, including the execution, delivery and clearing of transactions on such exchange, and no domestic regulator has the power to compel enforcement of the rules of the foreign exchange or the laws of the foreign country. Moreover, such laws or regulations will vary depending on the foreign country in which the transaction occurs. For these reasons, customers who trade on foreign exchanges may not be afforded certain of the protections which apply to domestic transactions, including the right to use alternative dispute resolution. In particular, funds received from customers to margin foreign futures transactions may not be provided the same protections as funds received to margin futures transactions on domestic exchanges. Before you trade, you should familiarize yourself with the foreign rules which will apply to your particular transaction.

OR

(b) You should familiarize yourself with the protections accorded money or property you deposit for domestic and foreign transactions, particularly in the event of a firm insolvency or bankruptcy. The extent to which you may recover your money or property may be governed by specified legislation or local rules. In some jurisdictions, property which has been specifically identifiable as your own will be pro-rated in the same manner as cash for purposes of distribution in the event of a shortfall.

Transactions on markets in other jurisdictions, including markets formally linked to a domestic market, may expose you to additional risk. Such markets may be subject to regulation which may offer different or diminished investor protection. Before you trade you should enquire about any rules relevant to your particular transactions. Your local regulatory authority will be unable to compel the enforcement of the rules of the regulatory authorities or markets in other jurisdictions where your transactions have been effected. You should ask the firm with which you deal for details about the types of redress available in both your home jurisdiction and other relevant jurisdictions before you start to trade.

OR

(c) A comparable disclosure statement prescribed by IMRO.

b. Complies with the terms and procedures of paragraph a, except that the amount required to be segregated under IMRO rules and United Kingdom laws may be substituted for the secured amount requirement as set forth in paragraph a.7 [formerly footnote 8]

* * * * *

**SGX–DT (64 FR 50248, 50250–51)**

The text of paragraphs describing the secured amount requirement is amended to read:

The expanded Rule 30.10 relief provided under this Supplemental Order, however, is contingent upon SGX–DT's and SGX–DT Member's compliance with certain conditions below.

* * * * *

(5) With respect to transactions effected on Eurex on behalf of U.S. customers, whether by the SGX–DT Member directly as a clearing member of Eurex or through the intermediation of one or more intermediaries, the SGX–DT Member complies with paragraphs 1 or 2 below:

1.a. Must remain in a separate account or accounts money, securities and property in an amount at least sufficient to cover or satisfy all of its current obligations to U.S. customers denominated as the foreign futures or foreign options secured amount;

* * * * *

e. Each Member must obtain and retain in its files for the period required by applicable law and Exchange rules an acknowledgment from a depository identified in paragraph d.(1)–(4) above that the depository was informed that such money, securities or property are held for or on behalf of foreign futures and foreign options customers and are being held in accordance with the provision of these regulations.

f. Each Member must provide each foreign futures and foreign options customer with one of the written disclosure statements in (1), (2) or (3) below:

(1) Foreign futures transactions involve executing and clearing trades on a foreign exchange. This is the case even if the foreign exchange is formally "linked" to a domestic exchange whereby a trade executed on one exchange liquidates or establishes a position on the other exchange. No domestic organization regulates the activities of a foreign exchange, including the execution, delivery and clearing of transactions on such exchange, and no domestic regulator has the power to compel enforcement of the rules of the foreign exchange or the laws of the foreign country. Moreover, such laws or regulations will vary depending on the foreign country in which the transaction occurs. For these reasons, customers who trade on foreign exchanges may not be afforded certain of the protections which apply to domestic transactions, including the right to use alternative dispute resolution. In particular, funds received from customers to margin foreign futures transactions may not be provided the same protections as funds received to margin futures transactions on domestic exchanges. Before you trade, you should familiarize yourself with the foreign rules which will apply to your particular transaction.

OR

(2) You should familiarize yourself with the protections accorded money or property you deposit for domestic and foreign transactions, particularly in the event of a firm insolvency or bankruptcy. The extent to which you may recover your money or property may be governed by specified legislation or local rules. In some jurisdictions, property which has been specifically identifiable as your own will be pro-rated in the same manner as cash for purposes of distribution in the event of a shortfall.

Transactions on markets in other jurisdictions, including markets formally linked to a domestic market, may expose you to additional risk. Such markets may be subject to regulation which may offer different or diminished investor protection. Before you trade you should enquire about any rules relevant to your particular transactions. You local regulatory authority will be unable to compel the enforcement of the rules of the regulatory authorities or markets in other jurisdictions where your transactions have been effected. You should ask the firm with which you deal for details about the types of redress available in both your home jurisdiction and other relevant jurisdictions before you start to trade.

OR

(3) A comparable disclosure statement prescribed by SGX–DT.

2. Complies with the terms and procedures of paragraph 1, except that the amount required to be segregated under SGX–DT rules and Singapore law may be substituted for the secured amount requirement as set forth in paragraph 1.

* * * * *

Issued in Washington, DC on October 5, 2000.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 00–26069 Filed 10–10–00; 8:45 am]

BILLING CODE 6351–01–M

Federal Register

Wednesday,
October 11, 2000

Part VI

# The President

Proclamation 7352—German-American Day, 2000

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# Presidential Documents

Title 3—

The President

## Proclamation 7352 of October 5, 2000

## German-American Day, 2000

**By the President of the United States of America**

**A Proclamation**

As we celebrate German-American Day and the many contributions that German Americans have made to our national community, we also mark the 10th anniversary of German unification. The historic achievements of the last 10 years are all the more remarkable when we remember the dark days of the Cold War, a time when many citizens in Eastern Europe and around the globe lived under governments of oppression and tyranny. Nowhere was the threat more real than in West Berlin, where Americans and Germans stood together in defense of democracy and commitment to freedom. Ultimately, after almost three decades of division, the Berlin Wall came down and the people of Germany were reunited. Today, Americans and Germans are working together to ensure that democracy will be an abiding legacy for future generations throughout Europe.

Our present efforts are only the latest chapter of our shared history. In 1683, German Mennonites seeking religious tolerance landed near Philadelphia. Their arrival marked the beginning of waves of German immigration that would ebb and flow with the tides of history, ultimately bringing more than 7 million people to our shores. Today, nearly a quarter of all Americans can trace their ancestry back to their Germanic roots, and they continue to enrich our Nation with a proud heritage marked by a strong commitment to family, work, duty, and country.

Many prominent German Americans have strengthened our society through the years. Publisher Johann Peter Zenger championed freedom of the press in the early 18th century, and Thomas Nast's powerful cartoons increased public awareness of corruption within Tammany Hall in 19th-century New York. During the American Revolution, Baron de Kalb and Friedrich von Steuben fought valiantly for our freedom, just as Dwight Eisenhower and Chester Nimitz did in World War II. German Americans who have enriched America's cultural, scientific, and economic life include writers John Steinbeck and Erich Maria Remarque; physicists Albert Einstein and Maria Goeppert-Mayer; philosophers Hannah Arendt and Paul Tillich; and industrialists and business leaders John D. Rockefeller and John Wanamaker.

Behind the many well-known individuals who have played a prominent part in our history are millions of German immigrants whose names are not widely recognized, yet who profoundly shaped the America we know today. Industrious German Americans helped settle our cities and frontiers; defend democracy during times of conflict; promote our prosperity in times of peace; and preserve the bonds of family and heritage that our Nation shares with the people of Germany. As we celebrate German-American Day and the 10th anniversary of German unification and look ahead to the promise of a new century, America recognizes with pride and gratitude the important role that German Americans continue to play in the life of our Nation and celebrates the strength of our friendship with Germany.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim Friday, October 6, 2000, as German-American Day. I encourage all Americans to remember

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and celebrate the important contributions made to our country by our millions of citizens of German descent and to celebrate our close ties to the people of Germany.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of October, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fifth.

William J. Clinton

[FR Doc. 00–26298
Filed 10–10–00; 8:45 am]
Billing code 3195–01–P



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## LIST OF PUBLIC LAWS

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To designate the Lackawanna Valley and the Schuylkill River National Heritage Areas, and for other purposes. (Oct. 6, 2000; 114 Stat. 814)

**H.R. 2909/P.L. 106–279**
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**H.R. 5193/P.L. 106–281**
FHA Downpayment Simplification Extension Act of 2000 (Oct. 6, 2000; 114 Stat. 865)

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Making further continuing appropriations for the fiscal year 2001, and for other purposes. (Oct. 6, 2000; 114 Stat. 866)

**S. 430/P.L. 106–283**
Kake Tribal Corporation Land Transfer Act (Oct. 6, 2000; 114 Stat. 867)

**Last List October 4, 2000**

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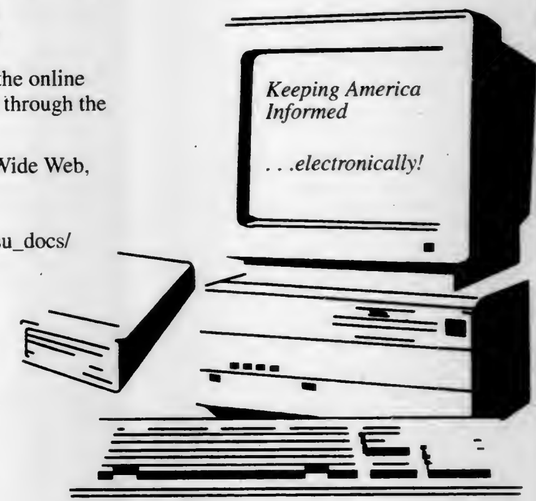
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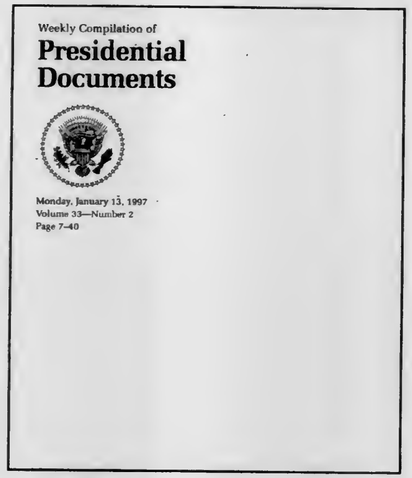
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Federal Register
Vol. 65, No. 198
Thursday, October 12, 2000

# Presidential Documents

Title 3—

## The President

**Proclamation 7353 of October 6, 2000**

## Afterschool Week, 2000

**By the President of the United States of America**

**A Proclamation**

Each weekday afternoon in America, the ringing of school bells signals not just the end of the school day, but also the beginning of a period when 8 to 15 million of our children are home alone. These so-called "latchkey" children can be found in every American community, whether urban, suburban, or rural; they are the children of working parents who, for a variety of reasons, are unable to arrange or afford a better alternative. Not surprisingly, most juvenile crimes are committed and most children are likely to become victims of crime during the 5 or 6 hours immediately after the school day ends.

Providing appropriate supervision for children after school is one of the more difficult challenges that working parents face. Recognizing this, my Administration has worked hard to provide parents with alternative afternoon activities for their children. Through our 21st Century Community Learning Centers program, under the leadership of Education Secretary Richard Riley, we are providing schools and community organizations with funding to create and expand learning opportunities for children in a drug-free, supervised environment. This program enables schools to stay open longer so that students have places to do their homework, receive counseling about the dangers of substance abuse, and participate with mentors in a wide array of academic and recreational activities that challenge their imagination and broaden their horizons.

In the 4 years since we created the 21st Century Community Learning Centers program, hundreds of thousands of children across our country have enrolled in safe and smart afterschool programs. My proposed budget for fiscal 2001 will more than double the Federal commitment to this program, enabling us to reach as many as 2.5 million students next year. These community learning centers provide America's parents with the comforting assurance that, while they are out earning a living, their children are participating in engaging and constructive afterschool activities.

To highlight the growing need for afterschool programs, the Afterschool Alliance—a partnership of public, private, and nonprofit organizations dedicated to raising awareness and expanding resources for afterschool programs—has announced a nationwide project called "Lights On Afterschool!" On October 12 of this year, schools, community centers, museums, libraries, and parks across the country will host activities to inform families about the places currently open to children after school and the need to provide additional centers where children can participate in engaging, stimulating activities until their parents return from work.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim the week of October 8 to October 14, 2000, as Afterschool Week. I encourage parents, students, educators, community and business leaders, and concerned citizens to participate in "Lights On Afterschool!" activities on Thursday, October 12. I also urge all Americans to recognize the importance of providing afterschool

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programs in their communities to promote the safety and well-being of our Nation's children.

IN WITNESS WHEREOF, I have hereunto set my hand this sixth day of October, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fifth.

William J. Clinton

[FR Doc. 00–26391
Filed 10–11–00; 8:45 am]
Billing code 3195–01–P



## Presidential Documents

**Proclamation 7354 of October 6, 2000**

### Fire Prevention Week, 2000

**By the President of the United States of America**

**A Proclamation**

Each year, fire takes a heavy toll on the lives and property of thousands of Americans. Approximately 100 firefighters and 4,000 civilians die in fires annually; some 25,000 civilians sustain injuries and an average of $8 billion in property is destroyed. Last year alone, America's fire departments responded to almost 2 million fires. Most of these fires occurred in homes, as did 80 percent of last year's fire fatalities. It is clear from these tragic statistics that if we can better educate Americans about fire safety and prevention, we can save thousands of lives every year.

The most important lesson we can teach about fire is how rapidly it can spread. From the time a smoke alarm sounds in a typical home, a family may have as little as 2 minutes to escape safely. Knowing how to use those minutes wisely is the key to survival. I urge every American to develop and practice regularly a home fire escape plan that identifies two ways out of each room and establishes a meeting place where household members can reunite outside the home. In addition, it is crucial that smoke alarms be installed and properly maintained on every level of the home.

To raise public awareness of the importance of home fire escape plans, the National Fire Protection Association, in partnership with the Federal Emergency Management Agency through its United States Fire Administration and America's fire departments, launched a 3-year program in 1998 called "Fire Drills: The Great Escape!" To date, this program is credited with saving at least 58 lives. In support of this program, on Wednesday, October 11, at 7:00 p.m. local time, fire departments in communities across America will sound the alarm signaling the start of "The Great Escape" fire drill to test the effectiveness of families' fire escape plans. I encourage all Americans to participate in this important and potentially lifesaving event.

As we observe this week, let us also express our pride in and gratitude for the devoted service of our Nation's firefighters and emergency response personnel. They uphold our country's finest values—commitment and community, teamwork and trust, courage and sacrifice. Day in and day out, these extraordinary men and women put their lives on the line to protect our families and our property from the devastating effects of fire, and many of them pay the ultimate price for their devotion. We will honor their memory on Sunday, October 8, 2000, at the National Fallen Firefighters Memorial Service in Emmitsburg, Maryland.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim October 8 through October 14, 2000, as Fire Prevention Week. I encourage the people of the United States to take an active role in fire prevention not only during this week, but also throughout the year. I call upon every citizen to pay tribute to our firefighters and emergency response personnel who have lost their lives or been injured in the line of duty and to those brave men and women who carry on their noble tradition of service.

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IN WITNESS WHEREOF, I have hereunto set my hand this sixth day of October, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fifth.

William J. Clinton

[FR Doc. 00–26392
Filed 10–11–00; 8:45 am]
Billing code 3195–01–P



## Presidential Documents

**Proclamation 7355 of October 6, 2000**

### National School Lunch Week, 2000

**By the President of the United States of America**

**A Proclamation**

One of the best ways we can move forward as a society is to meet our obligations to our children. President Harry Truman recognized this profound responsibility when he signed the National School Lunch Act into law in 1946. The significance of this legislation went beyond the daily meal that children would receive; the National School Lunch Program firmly established the Federal Government's commitment to work in partnership with States, schools, and the agricultural community to administer a major program designed to improve children's diets and, in turn, their overall health and well-being.

Today, more than 96,000 schools serve lunches to over 27 million children every day—more than half of them for free or at a reduced price, so that no schoolchild in America, regardless of family income, need go hungry at lunchtime. We have also built on the program's success by establishing a number of child nutrition initiatives administered by the Department of Agriculture—from the School Breakfast Program, which helps ensure eligible children are ready to learn; to the Summer Food Service Program, which serves healthy meals and snacks to low-income children during long school vacations; to the Child and Adult Care Food Program, which provides nutritious meals and snacks to infants and young children in day care and to adults with physical or mental disabilities who are enrolled in adult day care. Most recently, we authorized funding through the Child Nutrition Reauthorization Act of 1998 to make snacks available to children and teenagers enrolled in after-school programs.

We can be proud that these school meal programs promote the well-being of some of our Nation's most vulnerable children by providing them with the nourishment they need to develop healthy bodies and sound minds. Nutritious meals help students reach their full potential by keeping them alert and attentive in the classroom. As both common sense and extensive scientific research confirm, a hungry child cannot focus on schoolwork as well as one who has been fed a nutritious meal.

The National School Lunch Program also offers us a valuable tool for identifying children who are eligible for health insurance under Medicaid or the State Children's Health Insurance Program. Since 60 percent of children who lack adequate health coverage participate in the school lunch program, sharing eligibility information can improve our outreach efforts and bring us closer to our goal of universal health care for all of America's children. My proposed budget for fiscal 2001 sets aside $345 million over 10 years to help schools share information with Medicaid and the State Children's Health Insurance Program so that we can enhance our efforts to reach eligible children and their families. In addition, this summer I announced an initiative to expand the school lunch program to the developing world. This initiative will make school lunches and breakfasts available in the poorest countries for the poorest children, helping students whose deficiencies in nutrition affect their cognitive development and attracting children who otherwise might never attend school.

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As we observe National School Lunch Week this year, let us pay tribute to the thousands of State and local school food service professionals across America whose hard work and dedication make these programs a reality for our children; and let us acknowledge the important role school lunches play in the healthy development of so many students.

In recognition of the contributions of the National School Lunch Program to the health, education, and well-being of our Nation's children, the Congress, by joint resolution of October 9, 1962 (Public Law 87–780), has designated the week beginning the second Sunday in October of each year as "National School Lunch Week" and has requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim October 8 through October 14, 2000, as National School Lunch Week. I call upon all Americans to recognize those individuals whose efforts contribute so much to the success of our national child nutrition programs, whether at the Federal, State, or local level.

IN WITNESS WHEREOF, I have hereunto set my hand this sixth day of October, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fifth.

William J. Clinton

[FR Doc. 00–26393
Filed 10–11–00; 8:45 am]
Billing code 3195–01–P



## Presidential Documents

### Proclamation 7356 of October 6, 2000

## National Children's Day, 2000

**By the President of the United States of America**

**A Proclamation**

Children hold a special place in our lives, and raising healthy, happy children is the greatest success any parent can hope to achieve; it should also be an important goal of every member of society, because children are profoundly influenced by the people and environment around them. The strongest influence, of course, is often child's family; but good schools and nurturing communities also play a vital role in helping children reach their full potential.

Over the past 7–1/2 years, my Administration has worked with families and communities across the country to meet the needs of America's children, and we can be proud of what we have accomplished together. We have made education one of our highest priorities, to ensure that every child is empowered with the knowledge and skills necessary to achieve personal fulfillment and success. By expanding Head Start and Early Head Start for preschoolers; promoting high academic standards, smaller class sizes, teacher quality, and charter schools for primary and secondary school students; and providing loans, scholarships, and tax credits so that millions of young Americans can attend college, we are building a world-class education system that will serve our children well.

We have achieved other important legislative victories for children and families, including a $500 child tax credit, a $1 per hour increase in the minimum wage, expanding the Earned Income Tax Credit, passing the Family and Medical Leave Act, enacting the largest expansion of health insurance for children ever, and creating incentives to move more children from foster care to safe, loving, and permanent homes. As a result of these victories, the child poverty rate in our country has dropped by 22 percent since 1993; millions of working parents have taken time off to care for a new child or sick relative; child immunization rates are at an all-time high, with 90 percent of toddlers receiving crucial vaccinations; and adoptions increased nearly 65 percent between 1996 and 1999.

We have shown our commitment to ensuring that every child grows up in a safe and nurturing environment through additional measures such as teen pregnancy prevention efforts, welfare reform that moves families from economic dependency to self-sufficiency, expanded access to affordable housing and homeownership, and responsible fatherhood initiatives to ensure that fathers provide both the financial and emotional support their children need. And, to help working families provide for their children, we are continuing our efforts to improve access to high-quality, safe, and affordable child care. We know that from infancy through adolescence, in child-care settings and after-school programs, children can learn and thrive with the right care, attention, and education. We owe them no less.

As we observe National Children's Day this year, let us recommit ourselves to using every resource in this time of unprecedented prosperity to build a bright future for all our children. Let us show our love for them not only through our words, but also by making the tough decisions and important investments necessary to give them the opportunity to achieve their dreams.

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NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim October 8, 2000, as National Children's Day. I urge all Americans to express their love and appreciation for children on this day and every day throughout the year, and to work within their communities to nurture, love, and teach all our children. I invite Federal officials, State and local governments, and particularly all American families to join together in observing this day with appropriate programs, ceremonies, and activities to honor our Nation's children.

IN WITNESS WHEREOF, I have hereunto set my hand this sixth day of October, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fifth.

William J. Clinton

[FR Doc. 00–26394
Filed 10–11–00; 8:45 am]
Billing code 3195–01–P



## Presidential Documents

**Proclamation 7357 of October 6, 2000**

### Columbus Day, 2000

**By the President of the United States of America**

**A Proclamation**

During this first year of the new century, the American people have devoted time and thought to the people and events of our Nation's past so that we might better prepare for the challenges of the future. While Christopher Columbus' epic voyage took place almost three centuries before the founding of our democracy, his journey helped shape our national experience and offers important lessons as we chart our own course for the 21st century.

One of the most valuable of those lessons is the importance of sustaining our spirit of adventure, our willingness to explore new concepts and new horizons. Columbus, after careful study and planning, rejected the conventional thinking of his time, sailed for the open seas, and succeeded in opening up a New World for the people of Europe. Like Columbus, our founders rejected the familiar paths of the past and ventured boldly to create a new form of government that has profoundly shaped world history. Explorers, pioneers, inventors, artists, entrepreneurs—all have found a refuge in America and a chance to achieve their dreams.

Today we have other worlds to explore—from the deepest oceans to the outermost reaches of space to the genetic code of human life. The same adventurous spirit that propelled Columbus' explorations will enable us to challenge old assumptions, acquire new knowledge, and broaden the horizons of humankind.

Columbus' story illustrates the importance of diversity. Columbus was born and raised in Italy; he learned much of his seafaring knowledge and experience from Portuguese sailors and navigators; and he put those skills in service to the King and Queen of Spain, who funded his explorations. By establishing a safe, reliable route between Europe and the New World, Columbus opened the door for subsequent explorers from Spain, France, and England and for the millions of immigrants who would be welcomed by America in later centuries. But the encounters between Columbus and other European explorers and the native peoples of the Western Hemisphere also underscore what can happen when cultures clash and when we are unable to understand and respect people who are different from us.

While more than 500 years have passed since Christopher Columbus first sailed to these shores, the lessons of his voyage are still with us. Brave, determined, open to new ideas and new experiences, in many ways he foreshadowed the character of the American people who honor him today.

In tribute to Columbus' many achievements, the Congress, by joint resolution of April 30, 1934 (48 Stat. 657), and an Act of June 28, 1968 (82 Stat. 250), has requested the President to proclaim the second Monday in October of each year as "Columbus Day."

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim October 9, 2000, as Columbus Day. I call upon the people of the United States to observe this day with appropriate ceremonies and activities. I also direct that the flag of the United States be displayed on all public buildings on the appointed day in honor of Christopher Columbus.

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IN WITNESS WHEREOF, I have hereunto set my hand this sixth day of October, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fifth.

William J. Clinton

[FR Doc. 00–26395
Filed 10–11–00; 8:45 am]
Billing code 3195–01–P



## Presidential Documents

**Proclamation 7358 of October 6, 2000**

### Leif Erikson Day, 2000

**By the President of the United States of America**

**A Proclamation**

This year, as we mark the beginning of a new millennium, we also celebrate the 1000th anniversary of Europe's first contact with North America. At the turn of the last millennium, the legendary explorer Leif Erikson—son of Iceland, grandson of Norway—sailed across the cold waters of the Atlantic from his home in Greenland to the eastern coast of North America, completing the first documented voyage of Europeans to the New World.

In the ensuing centuries, millions of other men and women followed the lead of these brave Vikings—some seeking riches, some seeking adventure, all in search of a new and better life. Families from Denmark, Finland, Iceland, Sweden, and Norway would make their new homes in communities like New Sweden, Delaware; Oslo, Minnesota; and Denmark, Iowa, bringing with them a reverence for freedom and a deep love of democracy that stemmed from their own egalitarian traditions. More than 10 million Americans today can trace their roots to the Nordic countries, and their family ties, traditions, and values have strengthened the warm friendship our Nation has always enjoyed with the people of Scandinavia.

In celebration of this friendship and our shared pride in Leif Erikson's exploits, Americans have joined with the Nordic countries to commemorate this special anniversary. The Smithsonian Institution sponsored a traveling exhibit earlier this year to highlight the Viking explorations of North America; the Library of Congress hosted an international symposium on the ancient texts of the Icelandic Sagas, many of which were displayed in the United States for the first time; and we joined Iceland in creating our first jointly issued coin to commemorate Leif Erikson's historic voyage.

These cultural initiatives reflect the strong ties and long history between the United States and the Nordic countries, and we continue to cooperate on many mutual goals. The Nordic countries are our full partners in the Northern Europe Initiative (NEI), which we launched in 1997 to build on the dramatic progress toward a free Europe that occurred following the break-up of the Soviet Union. Through the NEI, we are working together to promote democracy, stability, and prosperity in the Baltic nations and northwest Russia, to facilitate their fuller integration into Western institutions, and to cooperate on such cross-border issues as energy, health, law enforcement, and the environment. In addition, many of the best and brightest entrepreneurs in America and the Nordic countries are collaborating to encourage trade and the spread of innovative ideas and technologies around the world. Americans and Nordics alike value courage, independence, energy, and resourcefulness; working together in this new millennium, we are charting a new course for our people just as exciting and full of promise as the one Leif Erikson traveled a thousand years ago.

In honor of Leif Erikson and of our Nordic American heritage, the Congress, by joint resolution (Public Law 88–566) approved on September 2, 1964, has authorized and requested the President to proclaim October 9 of each year as "Leif Erikson Day."

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim Monday, October 9, 2000, as Leif Erikson

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Day. I call upon all Americans to observe this day with appropriate ceremonies, activities, and programs to honor our rich Nordic American heritage.

IN WITNESS WHEREOF, I have hereunto set my hand this sixth day of October, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fifth.

William J. Clinton

[FR Doc. 00–26396
Filed 10–11–00; 8:45 am]
Billing code 3195–01–P



## Presidential Documents

### Executive Order 13169 of October 6, 2000

### Assistance to Small Business Exporters and Dislocated Workers

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Small Business Act, 15 U.S.C. 631 *et seq.*, the Workforce Investment Act, 29 U.S.C. 2801 *et seq.*, and the Trade Act of 1974, 19 U.S.C. 2271 *et seq.*, and in order to assist small businesses, including businesses headed by underserved populations, in participating in the export of products, and to expedite the delivery of adjustment assistance to dislocated workers, it is hereby ordered as follows:

**Section 1.** *Policy.* By its accession to the World Trade Organization, the People's Republic of China will be required to open its markets to a wide range of products and services provided by Americans. In addition, the United States has recently enacted a new law to facilitate trade with the countries of Sub-Saharan Africa and the Caribbean Basin. Federal agencies should take steps to assist small businesses, including businesses headed by underserved populations, in capitalizing on these new opportunities. The agencies should also take steps to assist workers who lose their jobs as a result of competition from imports in their efforts to secure adjustment assistance benefits for which they are eligible.

**Sec. 2.** *Interagency Task Force on Small Business Exports.* (a) The Secretaries of Commerce and Labor, the Administrator of the Small Business Administration, the United States Trade Representative, and the Chairman of the Export-Import Bank shall, within 60 days from the date of this order, establish an interagency task force through the Trade Promotion Coordinating Committee (TPCC). The task force shall facilitate exports by United States small businesses, including businesses headed by underserved populations, particularly with respect to the People's Republic of China and the countries of Sub-Saharan Africa and the Caribbean Basin. The TPCC shall submit an annual report to the President on the functions carried out by this task force during the preceding year. As part of its work, the task force shall assess the extent to which the establishment of permanent normal trade relations with the People's Republic of China, and the United States enactment of the African Growth and Opportunity Act, 19 U.S.C.A. 3701 *et seq.*, and the United States- Caribbean Basin Trade Partnership Act, 19 U.S.C.A. 2701 note, may contribute to the creation of export opportunities for small businesses including businesses headed by underserved populations.

(b) For the purposes of this order, "businesses headed by underserved populations" means businesses headed by women or minorities, and/or located in rural communities.

**Sec. 3.** *Expedited Response to Worker Dislocation.* (a) The Secretary of Labor shall expedite the Federal response to worker dislocation through the Workforce Investment Act and the Trade Adjustment Assistance program by proactively seeking information, from a variety of sources, on actual or prospective layoffs, including the media and community and labor union members, and by sharing such information with appropriate state workforce officials. In addition, the Department of Labor (Labor) shall undertake a number of proactive steps to support public outreach activities aimed at workers, employers, the media, local officials, the community, and labor

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organizations and their members to improve awareness of the adjustment assistance available through Labor programs, including, but not limited to:

(1) developing a set of methods to inform employers of the services available through Labor workforce programs, which will explain the requirements of the Worker Adjustment and Retraining Notification Act, 29 U.S.C. 2101 *et seq.*, and provide information on worker adjustment programs, including the Trade Adjustment Assistance and the basic dislocated worker programs, emphasizing the importance of early intervention to minimize the affects of work layoffs;

(2) improving websites and other modes of communication to provide basic information on dislocated worker and Trade Adjustment Assistance program contacts at the State and local level;

(3) developing a National Toll-Free Help Line to provide universal, accurate, and easy access to information about public workforce services to workers and employers;

(4) providing on-site technical assistance, in partnership with other Federal agencies, when there are layoffs or closures with multi-State impact, or when there are dislocations with significant community impact (such as areas that have been affected by numerous layoffs of apparel and textile workers);

(5) informing States directly when a secondary worker impact has been affirmed by Labor; and

(6) to the extent permitted by law, and subject to the availability of appropriations, providing funding or an outreach campaign for secondary workers (i.e., individuals indirectly affected by increased imports from other countries).

(b) The Secretary of Labor, in consultation with the Secretary of Commerce and the United States Trade Representative, shall report annually on the employment effects of the establishment of permanent normal trade relations with the People's Republic of China.

**Sec. 4.** *Judicial Review.* This order does not create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its officers, its employees, or any other person.

William J. Clinton

THE WHITE HOUSE,
*October 6, 2000.*

[FR Doc. 00–26397
Filed 10–11–00; 8:45 am]
Billing code 3195–01–P



# Rules and Regulations

Federal Register
Vol. 65, No. 198
Thursday, October 12, 2000

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## FEDERAL RESERVE SYSTEM

**12 CFR Part 263**

**[Docket No. R–1083]**

### Rules of Practice for Hearings

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Final rule.

**SUMMARY:** The Board of Governors of the Federal Reserve System (the Board) is amending its rules of practice and procedure to adjust the maximum amount, as set by statute, of each civil money penalty (CMP) within its jurisdiction to account for inflation. This action is required under the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996.

**EFFECTIVE DATE:** October 12, 2000.

**FOR FURTHER INFORMATION CONTACT:** Katherine H. Wheatley, Assistant General Counsel (202/452–3779), Legal Division, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551. For users of Telecommunication Device for the Deaf (TDD) only, please contact Janice Simms (202/452–4984).

**SUPPLEMENTARY INFORMATION:** The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, 28 U.S.C. 2461 *note* (FCPIA Act), requires each Federal agency to adjust each CMP within its jurisdiction by a prescribed cost-of-living adjustment at least once every four years. This cost-of-living adjustment is based on the formula described in section 5(b) of the FCPIA Act. The Board made its last adjustment in October 1996 (see 61 FR 56407).

The required cost-of-living adjustment formula is based on the difference between the Consumer Price Index (CPI) for June of the year preceding the adjustment (in this case, June 1999) and the CPI for June of the year when the CMP was last set or adjusted (generally, June 1996).[1] To calculate the adjustment, the Board used the Department of Labor, Bureau of Labor Statistics—All Urban Consumers tables, in which the period 1982–84 was equal to 100, to get the CPI values. In this case, the CPI was 156.7 for June 1996 and was 166.2 for June 1999, resulting in an increase of 6.1 percent.

Section 5 of the FCPIA Act provides that the adjustment amount must be rounded before adding it to the existing penalty amount. The rounding provision depends on the size of the penalty being adjusted. For example, if the penalty is greater than $100 but less than or equal to $1000, the increase is rounded to the nearest $100; if it is greater than $1000 but less than or equal to $10,000, the increase is rounded to the nearest $1000. Because of this rounding rule, several penalty amounts are not changing at this time. For example, because the Tier I penalty under 12 U.S.C. 1818(i)(2) is currently $5,500, the 6.1 percent adjustment would be $336. Rounding that increase to the nearest $1000 results in an increase of $0. The penalties that are not adjusted at this time because of this rounding formula will be adjusted at the next adjustment cycle to take account of the entire period between the time of their last adjustment (generally, 1996) and the next adjustment date. These unadjusted penalties are identified in the amended regulation at subparagraphs 263.65(b)(1)(ii), (b)(2)(i) and (ii), (b)(3), (b)(4), (b)(5)(ii), (b)(6), (b)(7), (b)(8)(i), and (b)(9)(i).

When the regulation was adopted in 1996, several statutory penalty provisions that should have been identified for adjustment were inadvertently omitted. Those provisions, which have maximum statutory penalties that are identical to provisions that were adjusted, are 12 U.S.C. 334, 374a, 3110(a), and 3110(c). In order to comply with the statutory intent and to provide for uniformity in penalty amounts for similar violations, the Board is treating those provisions as though they had been previously adjusted in accordance with the FCPIA Act, and adjusting them for the second time in this cycle if such adjustment is warranted under the calculation called for by the FCPIA.

In addition, when the regulation was adopted in 1996, several penalty amounts did not change from their original statutory values because of the effect of the rounding rules in the FCPIA Act. Specifically, the penalty for inadvertently late or misleading reports under 12 U.S.C. 324, and the Tier I penalties under 12 U.S.C. 1847(d) and 3110(c), all of which were set by Congress in 1989 at $2000, were unchanged in the initial FCPIA adjustment. Accordingly, these penalties must be adjusted in this cycle in a manner that captures inflation from 1989 to the present. The CPI increase between June 1989 and June 1999 was 33.9 percent, which when applied to the $2000 penalty amount and rounded in accordance with the applicable rounding rule would result in an increase of $1000. Because such an increase would exceed the 10 percent limit imposed by the statute for the initial increase in any penalty, these penalties were increased to $2,200. The per-violation penalty under 42 U.S.C. 4012a(f)(5) was enacted in 1994 and was also not adjusted in 1996 due to the application of the rounding rule. The CPI increase of 12.3 percent from June 1994 to June 1999 was used to calculate the increase for this penalty; due to the rounding rules, the penalty was not adjusted in this cycle either, and remains $350 for each violation.

In accordance with section 6 of the FCPIA Act, the increased penalties set forth in this amendment apply only to violations that occur after the date the increase takes effect.

### Public Comment Not Required

This rule is not subject to the provisions of 5 U.S.C. 553 requiring notice, public participation, and deferred effective date. The FCPIA Act provides Federal agencies with no discretion in the adjustment of CMPs to the rate of inflation, and it also requires that adjustments be made at least every four years. Moreover, this regulation is ministerial and technical. For these reasons, the Board finds good cause to determine that public notice and comment for this new regulation is

[1] The 1996 adjustment was based on the June 1995 CPI. In calculating the new adjustments, the FCPIA Act requires us to use the 3-year period from June 1996 to June 1999 for those penalties that were adjusted in 1996.

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unnecessary, impractical, and contrary to the public interest, pursuant to the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(3)(B). These same reasons also provide the Board with good cause to adopt an effective date for this regulation that is less than 30 days after the date of publication in the **Federal Register**, pursuant to the APA, 5 U.S.C. 553(d).

*Regulatory Flexibility Act:* No significant impact.

**Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 3506; 5 CFR Part 1320 Appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget. No collections of information pursuant to the Paperwork Reduction Act are contained in the final rule.

**List of Subjects in 12 CFR Part 263**

Administrative practice and procedure, Claims, Crime, Equal Access to Justice, Federal Reserve System, Lawyers, Penalties.

For the reasons set forth in the preamble, the Board of Governors amends 12 CFR part 263 to read as follows:

## PART 263—RULES OF PRACTICE FOR HEARINGS

1. The authority citation for part 263 continues to read as follows:

**Authority:** 5 U.S.C. 504; 12 U.S.C. 248, 324, 504, 505, 1817(j), 1818, 1828(c), 1831o, 1831p–1, 1847(b), 1847(d), 1884(b), 1972(2)(F), 3105, 3107, 3108, 3907, 3909; 15 U.S.C. 21, 78o–4, 78o–5, 78u–2; and 28 U.S.C. 2461 note.

2. Section 263.65 is revised to read as follows:

**§ 263.65 Civil penalty inflation adjustments**

(a) *Inflation adjustments.* In accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note), the Board has set forth in paragraph (b) of this section adjusted maximum penalty amounts for each civil money penalty provided by law within its jurisdiction. The adjusted civil penalty amounts provided in paragraph (b) of this section replace only the amounts published in the statutes authorizing the assessment of penalties and the previously-adjusted amounts adopted as of October 24, 1996. The authorizing statutes contain the complete provisions under which the Board may seek a civil money penalty. The increased penalty amounts apply only to violations occurring after the effective date of this rule.

(b) *Maximum civil money penalties.* The maximum civil money penalties as set forth in the referenced statutory sections are adjusted as follows:

(1) 12 U.S.C. 324:

(i) Inadvertently late or misleading reports, *inter alia*—$2200.

(ii) Other late or misleading reports, *inter alia*—$22,000.

(iii) Knowingly or recklessly false or misleading reports, *inter alia*—$1,175,000.

(2) 12 U.S.C. 504, 505, 1817(j)(16), 1818(i)(2) and 1972(F):

(i) First tier—$5,500.

(ii) Second tier—$27,500.

(iii) Third tier—$1,175,000.

(3) 12 U.S.C. 1832(c)—$1,100.

(4) 12 U.S.C. 1847(b), 3110(a)—$27,500.

(5) 12 U.S.C. 1847(d), 3110(c):

(i) First tier—$2,200.

(ii) Second tier—$22,000.

(iii) Third tier—$1,175,000.

(6) 12 U.S.C. 334, 374a, 1884—$110.

(7) 12 U.S.C. 3909(d)—$1,100.

(8) 15 U.S.C. 78u–2:

(i) 15 U.S.C. 78u–2(b)(1)—$5,500 for a natural person and $60,000 for any other person.

(ii) 15 U.S.C. 78u–2(b)(2)—$60,000 for a natural person and $300,000 for any other person.

(iii) 15 U.S.C. 78u–2(b)(3)—$120,000 for a natural person and $575,000 for any other person.

(9) 42 U.S.C. 4012a(f)(5):

(i) For each violation—$350.

(ii) For the total amount of penalties assessed under 42 U.S.C. 4012a(f)(5) against an institution or enterprise during any calendar year—$115,000.

By order of the Board of Governors of the Federal Reserve System, October 5, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00–26080 Filed 10–11–00; 8:45 am]

BILLING CODE 6210–01–P

## SOCIAL SECURITY ADMINISTRATION

### 20 CFR Parts 404 and 416

**[Regulations Nos. 4 and 16]**

### Revised Medical Criteria for Evaluating Mental Disorders and Traumatic Brain Injury; Correction

**AGENCY:** Social Security Administration.

**ACTION:** Final rules; correction.

**SUMMARY:** We published in the **Federal Register** of August 21, 2000, a document concerning revising our regulations for evaluating mental impairments. Inadvertently §§ 404.1520a and 416.920a each contains a word from the prior rules that we had revised in the final rules. This document corrects that oversight.

**DATES:** Effective on September 20, 2000.

**FOR FURTHER INFORMATION CONTACT:** Deborah Barnes, Social Insurance Specialist, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, deborah.barnes@ssa.gov, (410) 965–4171 or TTY (410) 966–5609 for information about these rules. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet web site, *SSA Online*, at www.ssa.gov.

**SUPPLEMENTARY INFORMATION:** We published a document in the **Federal Register** of July 18, 1991 (56 FR 33130), proposing revisions to §§ 404.1520a and 416.920a. In the final rules we published in the **Federal Register** of August 21, 2000 (65 FR 50746), we inadvertently used the word "slight" from the prior rules for the second point of the five-point scale in §§ 404.1520a(c)(4) and 416.920a(c)(4). We intended to use the word "mild," as we had proposed. This correction makes §§ 404.1520a(c)(4) and 416.920a(c)(4) consistent with the remainder of the final rules.

In the **Federal Register** of August 21, 2000, make the following corrections. On page 50775, in the first column, in § 404.1520a(c)(4), the first sentence, correct "slight" to read "mild." On page 50783, in the first column, in § 416.920a(c)(4), the first sentence, correct "slight" to read "mild."

**§ 404.1520a Evaluation of Mental impairments.**

* * * * *

(c) * * *

(4) When we rate the degree of limitation in the first three functional areas (activities of daily living; social functioning; and concentration, persistence, or pace), we will use the following five-point scale: None, mild, moderate, marked, and extreme. * * *

* * * * *

**§ 416.920a Evaluation of Mental Impairments.**

* * * * *

(c) * * *

(4) When we rate the degree of limitation in the first three functional areas (activities of daily living; social functioning; and concentration, persistence, or pace), we will use the following five-point scale: None, mild, moderate, marked, and extreme. * * *

* * * * *



Dated: September 25, 2000.

**Georgia E. Myers,**

*SSA Regulations Officer.*

[FR Doc. 00–26091 Filed 10–11–00; 8:45 am]

BILLING CODE 4191–02–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 510

### New Animal Drugs; Change of Sponsor's Name

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor's name from Carl S. Akey, Inc., to Akey, Inc.

**DATES:** This rule is effective October 12, 2000.

**FOR FURTHER INFORMATION CONTACT:** Thomas J. McKay, Center for Veterinary Medicine (HFV09102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0213.

**SUPPLEMENTARY INFORMATION:** Carl S. Akey, Inc., P.O. Box 607, Lewisburg, OH 45338, has informed FDA of a change of sponsor's name to Akey, Inc. Accordingly, the agency is amending the regulations in 21 CFR 510.600(c)(1) and (c)(2) to reflect the change of sponsor's name.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 80109808.

**List of Subjects in 21 CFR Part 510**

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 510 is amended as follows:

## PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

**Authority:** 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

**§ 510.600 [Amended]**

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in the table in paragraph (c)(1) in the entry for "Carl S. Akey, Inc." and in paragraph (c)(2) in the entry for "017790" by removing the sponsor's name and adding in its place "Akey, Inc.".

Dated: September 28, 2000.

**Claire M. Lathers,**

*Director, Office of New Animal Drug Evaluation, Center for Food Safety and Applied Nutrition.*

[FR Doc. 00–26023 Filed 10–11–00; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 1

**[TD 8865]**

**RIN 1545–AS77**

### Amortization of Intangible Property; Correction

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correcting amendment.

**SUMMARY:** This document contains a correction to Treasury Decision 8865, which was published in the **Federal Register** on Tuesday, January 25, 2000 (65 FR 3820), and corrected on March 28, 2000 (65 FR 16318), relating to the amortization of certain intangible property.

**DATES:** This correction is effective January 25, 2000.

**FOR FURTHER INFORMATION CONTACT:** John Huffman at (202) 622–3110 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**Background**

The final regulations that are the subject of this correction are under sections 167 and 197 of the Internal Revenue Code.

**Need for Correction**

As published, TD 8865 contains an error which may prove to be misleading and is in need of clarification.

**List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

**Correction of Publication**

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendment:

## PART 1—INCOME TAXES

**Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 * * *

**§ 1.197–2 [Corrected]**

**Par. 2.** Section 1.197–2(g)(3) is amended by revising the second sentence to read as follows:

**§ 1.197–2 Amortization of goodwill and certain other intangibles.**

* * * * *

(g) * * *

(3) * * * For purposes of determining the amortization period under section 197 with respect to the basis increase, the intangible is treated as having been acquired at the time of the transaction that causes the basis increase, except as provided in § 1.743–1(j)(4)(i)(B)(*2*). * * *

* * * * *

**Cynthia Grigsby,**

*Chief, Regulations Unit, Office of Special Counsel (Modernization & Strategic Planning).*

[FR Doc. 00–25999 Filed 10–11–00; 8:45 am]

BILLING CODE 4830–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[DA 00–2226; MM Docket No. 96–66, RM–8729, RM–8821]**

### Radio Broadcasting Services; Sibley, IA, and Brandon, SD

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document denies a Petition for Reconsideration filed by 21st Century Radio Ventures, Inc. directed to the *Report and Order* in this proceeding which allotted Channel 261A to Brandon, South Dakota. *See* 63 FR 64876, November 24, 1998. With this action, the proceeding is terminated.

**FOR FURTHER INFORMATION CONTACT:** Robert Hayne, Mass Media Bureau, (202) 418–2177.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Memorandum Opinion and Order* adopted September 27, 2000, and released September 29, 2000. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Information Center at Portals II, CY–A257, 445 12th Street, SW, Washington,

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DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3805, 1231 M Street, NW, Washington, DC 20036.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 00–26192 Filed 10–11–00; 8:45 am]

BILLING CODE 6712–01–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 648

**[Docket No. 000119014-0137-02; I.D. 100400D]**

### Fisheries of the Northeastern United States; Scup Fishery; Commercial Quota Harvested for Winter II Period

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Commercial quota harvest for Winter II period.

**SUMMARY:** NMFS announces that the Winter II period scup commercial fishery will close 0001 hours November 3, 2000. Federally permitted commercial vessels may not land scup in any state from Maine through North Carolina for the remainder of the 2000 Winter II quota period (through December 31, 2000). Regulations governing the scup fishery require publication of this notification to advise the coastal states from Maine through North Carolina that the quota has been harvested and to advise Federal vessel permit holders and Federal dealer permit holders that no commercial quota is available for landing for the remainder of the Winter II period.

**DATES:** Effective 0001 hours, November 3, 2000, through 2400 hours, December 31, 2000.

**FOR FURTHER INFORMATION CONTACT:** Jennifer L. Anderson, Fishery Management Specialist, (978) 281-9226.

**SUPPLEMENTARY INFORMATION:** Regulations governing the scup fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is allocated into three quota periods. The Winter II commercial quota (November through December) is distributed to the coastal states from Maine through North Carolina on a coastwide basis. The process to set the annual commercial quota and the seasonal allocation is described in § 648.120.

The total commercial quota for scup for the 2000 calendar year was set at 2,534,160 lb (1,149,476 kg) (65 FR 33486; May 24, 2000). The Winter II period quota was initially set at 403,945 lb (183,226 kg). As specified in § 648.120, landings in excess of the commercial quota in the 1999 Winter II period were deducted from the Winter II period allocation this year, resulting in a final Winter II quota allocation of 70,356 lb (31,913 kg)(65 FR 50463).

Section 648.121 requires the Administrator, Northeast Region, NMFS (Regional Administrator) to monitor the commercial scup quota for each quota period and, based upon dealer reports, state data, and other available information, to determine when the commercial quota for a period has been harvested. NMFS is required to publish notification in the **Federal Register** advising that, effective upon a specific date, the scup commercial quota has been harvested, and notifying vessel and dealer permit holders that no commercial quota is available for landing scup for the remainder of the period. The Regional Administrator has determined, based on the limited Winter II quota allocation and historic landings information, that the scup commercial quota for the 2000 Winter II period will be harvested in 48 hours and that no further quota is available through December 31, 2000.

Section 648.4(b) provides that Federal scup moratorium permit holders agree as a condition of the permit not to land scup in any state after NMFS has published a notification in the **Federal Register** stating that the commercial quota for the period has been harvested and that no commercial quota for scup is available. Therefore, effective 0001 hours, November 3, 2000, further landings of scup by vessels holding Federal scup moratorium permits are prohibited through December 31, 2000. Should the Winter II quota not be harvested during the 48-hour opening, the fishery may reopen at a later time to allow attainment of the period's allocation. The Winter I period for commercial scup harvest will open on January 1, 2001. Effective 0001 hours, November 3, 2000, federally permitted dealers are also advised that they may not purchase scup from federally permitted vessels that land in coastal states from Maine through North Carolina for the remainder of the Winter II period (through December 31, 2000).

### Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: October 5, 2000.

**Bruce C. Morehead,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 00–26187 Filed 10–6–00; 3:39 pm]

BILLING CODE: 3510–22 –S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 648

**[I.D. 100400C]**

### Fisheries of the Northeastern United States; Atlantic Surf Clam and Ocean Quahog Fishery; Suspension of Minimum Surf Clam Size for 2001

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce.

**ACTION:** Suspension of surf clam minimum size limit.

**SUMMARY:** NMFS suspends the minimum size limit of 4.75 inches (12.07 cm) for Atlantic surf clams for the 2001 fishing year. This action is taken under the authority of the implementing regulations for this fishery, which allow for the annual suspension of the minimum size limit based upon set criteria. The intended effect is to relieve the industry from a regulatory burden that is not necessary, as the majority of surf clams harvested are larger than the minimum size limit.

**DATES:** Effective January 1, 2001, through December 31, 2001.

**FOR FURTHER INFORMATION CONTACT:** Jennifer L. Anderson, Fishery Management Specialist, 978-281-9226.

**SUPPLEMENTARY INFORMATION:** Section 648.72(c) of the regulations implementing the Fishery Management Plan (FMP) for the Atlantic Surf Clam and Ocean Quahog Fisheries allows the Administrator, Northeast Region, NMFS (Regional Administrator) to suspend annually, by publication of a notification in the **Federal Register**, the minimum size limit for Atlantic surf clams. This action may be taken unless discard, catch, and survey data indicate that 30 percent of the Atlantic surf clam resource is smaller than 4.75 inches (12.07 cm) and the overall reduced size is not attributable to harvest from beds where growth of the individual clams has been reduced because of density-dependent factors.



At its August meeting, the Mid-Atlantic Fishery Management Council (Council) voted to recommend that the Regional Administrator suspend the minimum size limit. Commercial surf clam shell length data for 2000 indicate that only 15.5 percent of the samples were composed of surf clams that were less than 4.75 inches (12.07 cm). Based on these data, the Regional Administrator adopts the Council's recommendation and suspends the minimum size limit for Atlantic surf clams from January 1, 2001, through December 31, 2001.

### Classification

This action is authorized by 50 CFR part 648 and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: October 5, 2000.

**Bruce C. Morehead,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 00–26218 Filed 10–12–00; 8:45 am]

BILLING CODE: 3510–22 –S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 679

**[Docket No. 991210329-0273-02; I.D. 102699B]**

**RIN 0648-AM63**

### Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Area; Amendment 58 To Revise the Chinook Salmon Savings Areas

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS issues regulations to implement Amendment 58 to the Fishery Management Plan (FMP) for the Groundfish Fishery in the Bering Sea and Aleutian Islands Area (BSAI). Amendment 58 established a framework to allow NMFS to reduce the annual trawl bycatch limit for chinook salmon and revised the Chinook Salmon Savings Area (CHSSA) in the BSAI. Pursuant to this framework authority, NMFS hereby reduces the annual trawl bycatch limit for chinook salmon. This action is necessary to reduce chinook salmon bycatch and is intended to further the conservation and management objectives of the FMP.

**DATES:** Effective November 13, 2000.

**ADDRESSES:** Copies of the Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) prepared for this action may be obtained from the Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802-1668; Attn: Lori Gravel, or by calling the Alaska Region, NMFS, at 907-586-7228. Send any comments on any ambiguity or unnecessary complexity arising from the language used in this final rule to the Regional Administrator, Alaska Region, NMFS, 709 West Ninth Street, Federal Office Building, Suite 453, Juneau, AK 99801.

**FOR FURTHER INFORMATION CONTACT:** John Lepore, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fisheries in the BSAI under the FMP. The FMP is implemented by regulations appearing at 50 CFR part 679 issued under authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). General regulations governing U.S. fisheries appear at 50 CFR part 600. The North Pacific Fishery Management Council (Council) prepared the FMP under authority of the Magnuson-Stevens Act.

### Background

Trawl fisheries in the BSAI, particularly the midwater pollock fishery, incidentally catch chinook salmon. Salmon are a prohibited species in the BSAI groundfish fisheries. They cannot be retained and must be returned to the sea as soon as possible with a minimum of injury after they have been counted by a NMFS- certified observer. However, the mortality rate for salmon caught in trawl fisheries is 100 percent as salmon cannot survive interception by traw l gear. Final regulations published on November 29, 1995 (60 FR 61215), effective January 1996, established annual prohibited species catch (PSC) limits for chinook salmon and specific seasonal no-trawling zones in the CHSSA that are triggered when the limits are reached. These existing regulations prohibit trawling in the CHSSA through April 15 of each year once the bycatch limit of 48,000 chinook salmon, as specified in the FMP, is reached.

In 1999, the Council prepared Amendment 58 to the FMP to further reduce bycatch of chinook salmon by trawl fisheries in the BSAI. NMFS published a notice of availability (NOA) for this amendment in the **Federal Register** at 64 FR 60157 on November 4, 1999. The public comment period on the NOA ended on January 3, 2000; NMFS approved Amendment 58 on February 2, 2000. NMFS published a proposed rule to implement Amendment 58 on December 21, 1999 (64 FR 71390). The comment period on the proposed rule ended on February 4, 2000. NMFS received two letters commenting on the proposed rule. Both letters expressed strong support for the adoption of the rule with no changes recommended. NMFS concurs and has made no changes to the final rule except that the starting year for the chinook salmon bycatch reductions will be 2001 rather than 2000, as stated in the proposed rule, because the effective date of this final rule will be too late to use 2000 as a starting year. Additional background information supporting Amendment 58 and its implementing rule was published in the **Federal Register** with the NOA and proposed rule.

### Elements of Amendment 58

Amendment 58 and this final rule implement the following regulatory changes to trawl chinook salmon PSC limitations: (1) The chinook salmon bycatch limit is reduced from 48,000 to 29,000 chinook salmon over a 4-year period; (2) year-round accounting of chinook salmon bycatch is established for the pollock fishery, beginning on January 1 of each year; (3) the boundaries defining the CHSSA are revised; and (4) new CHSSA closure dates are established.

### Chinook Salmon Savings Area

Amendment 58 redefines the CHSSA as two non-contiguous areas of the BSAI composed of eight geographic blocks, each defined by 1/2° latitude by 1° longitude. Based on historical observer data, this new definition better identifies areas of consistently high chinook salmon bycatch rates in the pollock fishery.

### Progressive Reduction of the Chinook Salmon Bycatch Limit

This action prohibits directed fishing for pollock by vessels using trawl gear within the CHSSA when NMFS determines that the bycatch limit for chinook salmon in the BSAI pollock trawl fisheries has been attained for each year according to the following schedule:

| Year | Chinook Salmon Limit |
|---|---|
| 2001 | 41,000 |
| 2002 | 37,000 |
| 2003 | 33,000 |

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| Year | Chinook Salmon Limit |
|---|---|
| 2004 and after | 29,000 |

Accounting for the PSC limit begins on January 1 and continues throughout the fishing year. Non-pollock fisheries, which account for about 10 percent of the trawl chinook salmon bycatch, are exempt from the closure of the CHSSA, and any chinook salmon bycatch in those fisheries is not counted toward the PSC limit.

According to the bycatch data collected, chinook salmon are more likely to be caught in the CHSSA before April 15, and after September 1. Therefore, in the event the chinook salmon limit is triggered before April 15, the CHSSA would close immediately. The closure would be removed on April 15, but would be reinitiated on September 1 and continue through the end of the year. If the limit were reached after April 15, but before September 1, then the CHSSA would close on September 1. If the limit were reached after September 1, the CHSSA would close immediately and not reopen until the following year on January 1.

**Classification**

This action has been determined to be not significant under E.O. 12866. No new reporting, recordkeeping, or compliance requirements are imposed by this final rule.

NMFS has prepared an FRFA that describes the economic impact this action, if adopted, would have on small entities. A copy of this analysis is available from NMFS (see **ADDRESSES**). No comments were received on the Initial Regulatory Flexibility Analysis. A summary of the FRFA follows:

The final rule would apply to the 128 fishing vessels permitted in 2000 to fish in the pollock fishery (21 catcher/processor permits, 107 catcher vessel permits). In 1997, pollock vessels harvested about 1.15 million mt of pollock, an ex-vessel value of about $227 million. Under the rule, if a chinook salmon PSC limit is attained, all vessels would be prohibited from directed fishing for pollock within the CHSSA. The rule would affect all 128 vessels, including CDQ vessels. However, the available pollock TAC would not be reduced; only the location of the catch would be restricted. Therefore, this action should not prevent these vessels' ability to harvest the entire amount, although pollock catch rates could decrease as a direct result of a CHSSA closure. During the summer months when chinook salmon bycatch has been historically very low, the CHSSA would be open to directed fishing for pollock even if the PSC limit has been previously attained. This action specifically targets the pollock fishery, which is composed primarily of large entities, historically responsible for the vast majority of chinook salmon bycatch in the BSAI. All other fisheries in the BSAI, many of which have a higher number and percentage of small entity participation, are exempt from any trawling prohibitions that might result from attainment of a PSC limit under this action. Also, chinook salmon bycatch in these non-pollock fisheries would not be counted toward the cap under this action. These exemptions minimize the impacts on small entities while still achieving the objective of this action, which is an overall reduction in chinook bycatch. In addition, NMFS considered the alternative of maintaining the status quo, which could have minimized impacts on small entities. However, that alternative would not have achieved the objectives of this action. There are no projected recording, recordkeeping, or other compliance requirements in the rule.

The President has directed Federal agencies to use plain language in their communication with the public, including regulations. To comply with this directive, we seek public comment on any ambiguity or unnecessary complexity arising from the language used in this final rule. Such comments should be sent to the Alaska Regional Administrator (see **ADDRESSES**).

**List of Subjects in 50 CFR Part 679**

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: October 4, 2000.

**William T. Hogarth,**

*Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 679 is amended as follows:

## PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

**Authority:** 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 et seq.

2. In § 679.2, the definition for "Chinook Salmon Savings Area of the BSAI" is revised to read as follows:

**§ 679.2 Definitions.**

* * * * *

*Chinook Salmon Savings Area of the BSAI* (see § 679.21(e)(7)(viii)).

* * * * *

3. In § 679.7, paragraph (d)(9) is revised to read as follows:

**§ 679.7 Prohibitions.**

* * * * *

(d) * * *

(9) For the operator of an eligible vessel listed on an approved CDP, use trawl gear to harvest pollock CDQ in the Chinook Salmon Savings Area between January 1 and April 15, and between September 1 and December 31, after the CDQ group's chinook salmon PSQ is attained.

* * * * *

4. In § 679.21, paragraphs (e)(1)(vii) and (e)(7)(viii) are revised to read as follows:

**§ 679.21 Prohibited species bycatch management.**

* * * * *

(e) * * *

(1) * * *

(vii) *Chinook salmon.* The trawl closures identified in paragraph (e)(7)(viii) of this section will take effect when the Regional Administrator determines that the PSC limit of chinook salmon caught while harvesting pollock in the BSAI between January 1 and December 31 is attained according to the following amounts identified for each year:

| Year | Chinook Salmon Limit |
|---|---|
| 2001 | 41,000 |
| 2002 | 37,000 |
| 2003 | 33,000 |
| 2004 and after | 29,000 |

* * * * *

(7) * * *

(viii) *Chinook salmon.* (A) *Closure.* If, during the fishing year, the Regional Administrator determines that catch of chinook salmon, by vessels using trawl gear while directed fishing for pollock in the BSAI, will reach the annual limit, as identified in paragraph (e)(1)(vii) of this section, NMFS, by notification in the **Federal Register** will close the Chinook Salmon Savings Area, as defined in Figure 8 to this part, to directed fishing for pollock with trawl gear consistent with the following dates:

(*1*) From the effective date of the closure until April 15, and from September 1 through December 31, if the Regional Administrator determines that the annual limit of chinook salmon will be attained before April 15.

(*2*) From September 1 through December 31, if the Regional Administrator determines that the annual limit of chinook salmon will be attained after April 15.

* * * * *

5. In part 679, Figure 8 is revised to read as Figure 8a and Figure 8b:



**Figure 8a to part 679. Chinook Salmon Savings Areas of the BSAI**

*a. Map*

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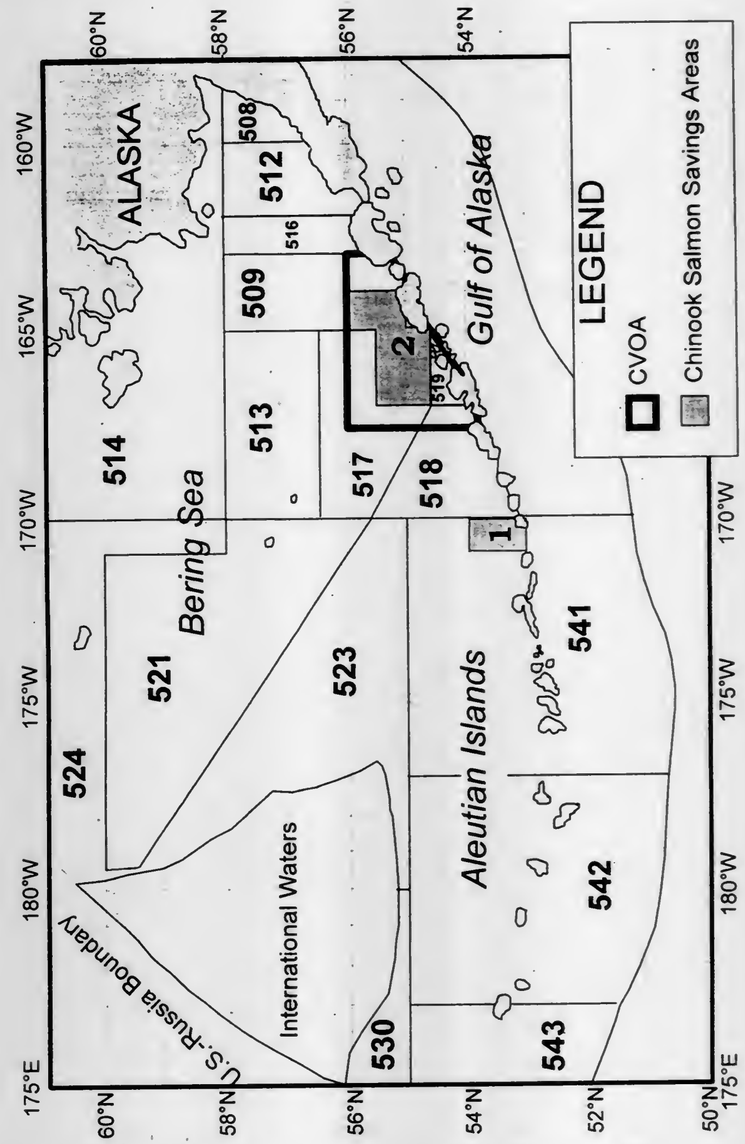



Figure 8 to Part 679. Chinook Salmon Savings Area of the BSAI.

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**Figure 8b to part 679. Chinook Salmon Savings Areas of the BSAI**

*b. Coordinates*

The Chinook Salmon Savings Area as defined in the following two areas of the BSAI:

b. Coordinates

(1) The area defined by straight lines connecting the following coordinates in the order listed:

54° 00' N., 171° 00' W.;

54° 00' N., 170° 00' W.;

53° 00' N., 170° 00' W.;

53° 00' N., 171° 00' W.; and

54° 00' N., 171° 00' W.

(2) The area defined by straight lines connecting the following coordinates in the order listed:

56° 00' N., 165° 00' W.;

56° 00' N., 164° 00' W.;

55° 00' N., 164° 00' W.;

55° 00' N., 165° 00' W.;

54° 30' N., 165° 00' W.;

54° 30' N., 167° 00' W.;

55° 30' N., 167° 00' W.;

55° 30' N., 165° 00' W.; and

56° 00' N., 165° 00' W.

[FR Doc. 00–26086 Filed 10–11–00; 8:45 am]
BILLING CODE: 3510–22–C



# Proposed Rules

Federal Register
Vol. 65, No. 198
Thursday, October 12, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. 2000–NM–101–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Gulfstream Model G–IV Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Gulfstream Model G–IV series airplanes. For certain airplanes this proposal would require installation of an additional indicator located on the pilot's instrument panel in primary view of the flight crew. The indicator would inform the flight crew that the airplane main batteries are powering the direct current (DC) essential bus which supplies power to vital communication and navigation equipment. For certain other airplanes, this proposal would require the EICAS (Engine Instruments/Caution Advisory System) to be used for this indication. This action is necessary to ensure that the flight crew is aware that an electrical system failure has occurred and that the airplane main batteries are powering the essential DC bus. If the flight crew is unaware of this situation, action to stop depletion of the airplane batteries will not be taken, and critical communications and navigation equipment could fail. This action is intended to address the identified unsafe condition.

**DATES:** Comments must be received by November 27, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–101–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9–anm–nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–101–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Gulfstream Aerospace Corporation, P.O. Box 2206, M/S D–10, Savannah, Georgia 31402–9980. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia.

**FOR FURTHER INFORMATION CONTACT:** Neil Berryman, Aerospace Engineer, ACE–116A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6066; fax (770) 703–6097.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–101–AD." The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–101–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

### Discussion

The FAA has received a report of the loss of normal electrical power to the essential direct current (DC) bus going undetected by the flight crew. The bus provides power to vital systems, such as aircraft flight displays, communication and navigation equipment, the thrust reverser control, the auxiliary power unit, and fire extinguishing systems. In the event of a problem with the power supply, the bus will automatically switch to the airplane's main batteries to keep these vital systems operating. Operation on battery power is for a short time and is intended only to allow time to land the airplane.

Following a problem with the power supply to the DC essential bus, the flight crew may not be aware of the switch to battery power or the subsequent depletion of the batteries, because the relevant caution lights are located on the overhead instrument panel, rather than in the flight crew's primary line of sight.

This condition, if not corrected, could lead to the flight crew being unaware that depletion of the airplane batteries is occurring, which could result in failure

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of the vital equipment normally powered by the DC essential bus.

**Explanation of Relevant Service Information**

The FAA has reviewed and approved Gulfstream Customer Bulletin No. 102A, dated February 1, 2000; Gulfstream Aircraft Service Change No. 327B, dated January 26, 2000; and Aircraft Service Change No. 327B AM1 (Amendment 1), dated August 28, 2000, which describe procedures for modifications to inform the flight crew when the aircraft batteries are powering the essential (DC) bus.

For airplanes having SPZ 8400, the procedures describe modification of the EICAS (Engine Instruments/Caution Advisory System) to replace the existing blue message with an amber indicating light. For airplanes not having the SPZ 8400, the procedures describe modification of the pilot's instrument panel to add an amber indicating light. All airplanes will also have an audible tone when the indicating system is activated. Accomplishment of the actions specified in the customer bulletin and aircraft service changes is intended to adequately address the identified unsafe condition.

**Explanation of Requirements of Proposed Rule**

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the customer bulletin and aircraft service changes described previously.

**Cost Impact**

The FAA estimates that 292 airplanes of U.S. registry would be affected by this proposed AD and that the average labor rate is $60 per work hour. There will be no charge for required parts for the modification. The cost impact of the proposed AD on U.S. operators depends upon whether the airplane has the SPZ 400, whether the airplane has the production equivalent of Aircraft Service Change No. 327, and whether the operator has performed earlier Aircraft Service Changes No. 327 or No. 327A, as shown in Table 1.

TABLE 1.—COST IMPACT OF PERFORMING AIRCRAFT SERVICE CHANGE NO. 327B OR NO. 327B AM1 (AMENDMENT 1)

| | Airplane has the SPZ 8400 | Airplane does not have the SPZ 8400 |
|---|---|---|
| Airplane has production equivalent of Aircraft Service Change No. 327: | | |
| Time (in work-hours) | 36 | 68 |
| Cost/airplane (in $) | 2,160 | 4,080 |
| Operator has performed Aircraft Service Change No. 327 | | |
| Time (in work-hours) | 24 | 28 |
| Cost/airplane (in $) | 1,440 | 1,680 |
| Operator has performed Aircraft Service Change No. 327A | No time estimate given | No time estimate given. |

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

**Regulatory Impact**

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

**PART 39—AIRWORTHINESS DIRECTIVES**

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Gulfstream Aerospace Corporation:** Docket 2000–NM–101–AD.

*Applicability:* Model G–IV series airplanes, serial numbers 1000 through 1359 inclusive, certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously. To ensure that the flight crew is aware that an electrical system failure may have occurred and that the main airplane batteries are powering the direct current (DC) essential bus, accomplish the following:



**Modifications**

(a) Within 12 months after the effective date if this AD, for airplanes equipped with the SPZ 8400: Perform paragraph (a)(1), (a)(2), or (a)(3) of this AD, as applicable.

(1) If the airplane has the production equivalent of Aircraft Service Change No. 327, install the new indicator light and the audible tone, in accordance with Gulfstream Customer Bulletin No. 102A, dated February 1, 2000; and Modification Instructions A, J through L, and P of Gulfstream Aircraft Service Change No. 327B, dated January 26, 2000.

(2) If the operator has performed Gulfstream Aircraft Service Change No. 327 but not Gulfstream Aircraft Service Change No. 327A, install the new indicator light and the audible tone, in accordance with Gulfstream Customer Bulletin No. 102A, dated February 1, 2000; Modification Instructions A through E of Gulfsteam Aircraft Service Change No. 327B *AM1, dated August 28, 2000;* and Modification Instruction P of Gulfstream Aircraft Service Change No. 327B, dated January 26, 2000.

**Note 2:** Modification Instruction E in Gulfstream Aircraft Service Change No. 327B AM1 is the same as Modification Instruction P in Gulfstream Aircraft Service Change No. 327B.

(3) If the operator has performed Gulfstream Aircraft Service Change No. 327A, ensure that all ground wires from connectors 95A1P2B and 95A2P2B are removed or rerouted in accordance with Gulfstream Customer Bulletin No. 102A, dated February 1, 2000; and Figure 6 of Gulfstream Aircraft Service Change No. 327B, dated January 26, 2000.

(b) Within 12 months after the effective date if this AD, for airplanes not equipped with the SPZ 400: Perform paragraph (b)(1), (b)(2), or (b)(3) of this AD, as applicable.

(1) If the operator has not performed Gulfstream Aircraft Service Change No. 327, install the new indicator light and the audible tone, in accordance with Gulfstream Customer Bulletin No. 102A, dated February 1, 2000; and Modification Instructions A, B through I, and P of Gulfstream Aircraft Service Change No. 327B, dated January 26, 2000.

(2) If the operator has performed Gulfstream Aircraft Service Change No. 327, install the new indicator light and the audible tone, in accordance with Gulfstream Customer Bulletin No. 102A, dated February 1, 2000; and Modification Instructions A, M through O, and P of Gulfstream Aircraft Service Change No. 327B dated January 26, 2000.

(3) If the operator has performed Gulfstream Aircraft Service Change No. 27A, ensure that wire P9052C22 is rerouted and is connected in accordance with Gulfstream Customer Bulletin No. 102A, dated February 1, 2000; and Figure 7 of Gulfstream Aircraft Service Change No. 327B, dated January 26, 2000.

**Note 3:** Page 1 of Gulfstream Aircraft Service Change No. 327B incorrectly refers to Figure 5; Figure 7 is the correct figure.

**Alternative Methods of Compliance**

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

**Note 4:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

**Special Flight Permits**

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on October 4, 2000.

**Donald L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–26095 Filed 10–11–00; 8:45 am]

BILLING CODE 4910–13–P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. 2000–NM–144–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Gulfstream Model G–1159A (G–III) Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Gulfstream Model G–1159A (G–III) series airplanes. This proposal would require modification of the master caution panel by installing an additional legend labeled "BATT ON BUS" and associated wiring to indicate when the airplane batteries are powering the direct current (DC) essential bus. This action is necessary to ensure that the flight crew is aware that an electrical system failure has occurred and that the main airplane batteries are powering the essential DC bus. If the flight crew is unaware of this situation, action to stop the depletion of the airplane batteries will not be taken and critical equipment, such as communications and navigation equipment, could fail. This action is intended to address the identified unsafe condition.

**DATES:** Comments must be received by November 27, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–144–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–144–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Gulfstream Aerospace Corporation, P.O. Box 2206, M/S D–10, Savannah, Georgia 31402–9980. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia.

**FOR FURTHER INFORMATION CONTACT:** Neil Berryman, Aerospace Engineer, Systems and Flight Test Branch, ACE–116A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6066; fax (770) 703–6097.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Submit comments using the following format:

• Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a

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request to change the service bulletin reference as two separate issues.

• For each issue, state what specific change to the proposed AD is being requested.

• Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–144–AD." The postcard will be date stamped and returned to the commenter.

**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–144–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

**Discussion**

Power to vital systems (such as aircraft flight displays, communication and navigation equipment, and fire extinguishing systems) is provided through the direct current (DC) essential bus. In the event of a problem with the power supply, the bus will automatically switch to battery power to keep these vital systems operating. Operation on battery power is for a short time and is intended only to allow time to land the airplane.

Following a problem with the power supply to the DC essential bus, the flight crew may not be aware of the switch to battery power or the subsequent depletion of the batteries, because the relevant caution lights are located on the overhead instrument panel and are not in the primary line-of-sight of the flight crew. The FAA has one report of a loss of electrical power to the DC essential bus being undetected by a Gulfstream G–IV flight crew, because they did not see the caution light. The DC essential bus on certain Model G–IV series airplanes is almost identical to that on the affected Model G–III series airplanes. Therefore, those Model G–III series airplanes may be subject to the same unsafe condition revealed on the Model G–IV series airplanes.

If the flight crew could not see the caution light, the flight crew could be unaware that an electrical system failure has occurred and that the airplane main batteries were powering the essential DC bus. If the flight crew were unaware of this situation, action to stop the depletion of the airplane batteries would not be taken and critical equipment, such as communications and navigation equipment, could fail.

**Explanation of Relevant Service Information**

The FAA has reviewed and approved Gulfstream Customer Bulletin No. 149, dated March 23, 1999, which describes procedures for adding an additional legend to the master caution panel in the primary view of the flight crew to inform them when batteries are powering the DC essential bus. The customer bulletin also describes modification of wiring in the pilot's and copilot's junction boxes, the auxiliary power relay box, and the power distribution box. Gulfstream Customer Bulletin No. 149, dated March 23, 1999, references Gulfstream Aircraft Service Change No. 294, dated February 3, 1999, as the appropriate source of service information for accomplishment of the modification. Accomplishment of the actions specified in the customer bulletin and aircraft service change is intended to adequately address the identified unsafe condition.

**Explanation of Requirements of Proposed Rule**

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the Gulfstream customer bulletin and aircraft service change described previously, except as discussed below.

**Differences Between the Proposal and the Customer Bulletin**

Operators should note that, although Customer Bulletin No. 149 recommends accomplishing the modification within 24 months after the release of the customer bulletin, the FAA has determined that an interval of 24 months would not address the identified unsafe condition in a timely manner. In developing an appropriate compliance time for this proposed AD, the FAA considered not only the manufacturer's recommendation, but also the degree of urgency associated with addressing the subject unsafe condition and the average utilization of the affected fleet. In light of these factors, the FAA finds a 12-month compliance time for initiating the proposed actions to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

**Cost Impact**

There are approximately 198 airplanes of the affected design in the worldwide fleet. The FAA estimates that 144 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 55 work hours per airplane to accomplish the proposed modification, and that the average labor rate is $60 per work hour. Required parts would cost approximately $1,587 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $703,728, or $4,887 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

**Regulatory Impact**

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**



**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

**PART 39—AIRWORTHINESS DIRECTIVES**

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Gulfstream Aerospace Corporation:** Docket 2000–NM–144–AD.

*Applicability:* Model G–1159A (G–III) series airplanes, serial numbers 357 and 402 through 498 inclusive, certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent the flight crew from being unaware that an electrical system failure has occurred and that the airplane main batteries are powering the direct current (DC) essential bus, accomplish the following:

(a) Within 12 months after the effective date of this AD, modify the wiring in the pilot's and co-pilot's junction boxes, the auxiliary power relay box, the power distribution box, and the master caution panel, in accordance with Gulfstream Customer Bulletin No. 149, dated March 23, 1999, and Gulfstream Aircraft Service Change No. 294, dated February 3, 1999.

**Alternative Methods of Compliance**

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

**Special Flight Permits**

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on October 4, 2000.

**Donald L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–26094 Filed 10–11–00; 8:45 am]

BILLING CODE 4910–13–P

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. 2000–NM–181–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Bombardier Model DHC–7–100, –101, –102, and –103 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Bombardier Model DHC–7–100, –101, –102, and –103 series airplanes. This proposal would require inspecting the endcaps of the main landing gear selector valve for leaks of hydraulic oil and, if leaks are detected, replacing the leaking endcaps or the entire selector valve. This proposal would also require eventual replacement or rework of certain selector valves, which would terminate the repetitive inspections. This action is prompted by a report of the collapse of the main landing gear due to an external leak of hydraulic oil in the landing gear selector valve, resulting from a fracture of the endcap. This action is intended to prevent leaks of hydraulic oil from the main landing gear selector valve, which could result in the collapse of the main landing gear.

**DATES:** Comments must be received by November 13, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–181–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9–anm–nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–181–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centreville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

**FOR FURTHER INFORMATION CONTACT:** James E. Delisio, Aerospace Engineer, ANE–171, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7521; fax (516) 568–2716.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Submit comments using the following format:

• Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.

• For each issue, state what specific change to the proposed AD is being requested.

• Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic,

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environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2000–NM–181–AD." The postcard will be date stamped and returned to the commenter.

**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–181–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

**Discussion**

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on certain Bombardier Model DHC–7–100, –101, –102, and –103 series airplanes. TCCA advises that an investigation of the collapse of the main landing gear of a Model DHC–8 series airplane identified the cause as an external hydraulic oil leak in the landing gear selector valve due to a fracture of the endcap. Model DHC–7 series airplanes have the same parts in their main landing gears.

TCCA further advises that inspection of main landing gear selector valves undergoing bench testing have revealed additional cases of fatigue failure in the endcaps. In addition, main landing gear selector valves which have not been upgraded to part number (P/N) 57420–5 configuration are more susceptible to internal leaks, and excessive internal leaks can also contribute to the collapse of the main landing gear. This condition, if not corrected, could result in leaks of hydraulic oil from the main landing gear selector valve, which could result in the collapse of the main landing gear.

**Explanation of Relevant Service Information**

Bombardier has issued Alert Service Bulletin A7–32–103, dated September 3, 1999, which describes procedures for repetitive visual inspection of the endcaps of the main landing gear selector valve for leaks of hydraulic oil and replacement of the endcaps with new serviceable parts, if leaks are found. The service bulletin also describes procedures for rework or replacement of certain selector valves with new improved parts, which would eliminate the need for the repetitive inspections. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. TCCA classified this service bulletin as mandatory and issued Canadian airworthiness directive CF–99–31, dated December 21, 1999, in order to assure the continued airworthiness of these airplanes in Canada.

**FAA's Conclusions**

These airplane models are manufactured in Canada and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCCA has kept the FAA informed of the situation described above. The FAA has examined the findings of TCCA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

**Explanation of Requirements of Proposed Rule**

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously. The FAA is also preparing a proposed AD, which will address a similar unsafe condition on Bombardier Model DHC–8–100, –200, and –300 series airplanes.

**Cost Impact**

The FAA estimates that 32 airplanes of U.S. registry would be affected by this proposed AD, that it would require 1 work hour per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed inspection on U.S. operators is estimated to be $1,920, or $60 per airplane.

The FAA also estimates that it would require 5 work hours per airplane to rework or replace the main landing gear selector valve and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed rework or replacement on U.S. operators is estimated to be $9,600 or $300 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Should an operator elect to replace the endcaps and perform the optional repetitive inspections prior to replacing the main landing gear selector valve, it would take approximately 1 work hour per airplane to conduct each inspection. Based on these figures, the cost impact of the optional repetitive inspections is estimated to be $60 per inspection per airplane.

**Regulatory Impact**

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:



**PART 39—AIRWORTHINESS DIRECTIVES**

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Bombardier, Inc.** (Formerly de Havilland, Inc.): Docket 2000–NM–181–AD.

*Applicability:* Model DHC–7–100, –101, –102, and –103 series airplanes, serial numbers 003 through 113 inclusive; certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent the collapse of the main landing gear due to leaks of hydraulic oil from the main landing gear selector valve, accomplish the following:

**Inspection**

(a) Within 100 flight cycles after the effective date of this AD, perform a general visual inspection of both endcaps of the main landing gear selector valve for the presence of hydraulic oil, in accordance with the Accomplishment Instructions of Bombardier Alert Service Bulletin A7–32–103, dated September 3, 1999. If no hydraulic oil is detected on either endcap, repeat the inspection at intervals not to exceed 400 flight hours until the requirements of paragraph (c) are accomplished.

**Note 2:** For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

**Replacement or Modification**

(b) If any hydraulic oil is detected on either endcap: Prior to further flight, perform the actions specified in either paragraph (b)(1) or (b)(2) of this AD.

(1) Replace the existing aluminum endcaps, part number (P/N) 34629, with new stainless steel endcaps having P/N 52982, in accordance with the Accomplishment Instructions of Bombardier Alert Service Bulletin A7–32–103, dated September 3, 1999.

(2) Replace the main landing gear selector valve with a valve having P/N 57420–5A, in accordance with the Accomplishment Instructions of Bombardier Alert Service Bulletin A7–32–103, dated September 3, 1999.

**Note 3:** Use care when removing the endcaps, so that the internal components do not fall on the ground and get damaged.

(c) Within 12 months after the effective date of this AD: Perform the actions specified in either paragraph (c)(1) or (c)(2) of this AD, in accordance with the Accomplishment Instructions of Bombardier Alert Service Bulletin A7–32–103, dated September 3, 1999. Accomplishment of either paragraph (c)(1) or (c)(2) terminates the repetitive inspection requirement of this AD.

(1) If a main landing gear selector valve having P/N 57420–1 or 57420–3 is installed, remove it and replace it with a valve having P/N 57420–5A.

(2) If a main landing gear selector valve having P/N 57420–5 is installed, remove it and replace it with a valve having P/N 57420–5A or modify the valve to the P/N 57420–5A configuration (Modification 7/2742).

**Alternative Methods of Compliance**

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

**Note 4:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

**Special Flight Permits**

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

**Note 5:** The subject of this AD is addressed in Canadian airworthiness directive CF–99–31, dated December 21, 1999.

Issued in Renton, Washington, on October 4, 2000.

**Donald L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–26093 Filed 10–11–00; 8:45 am]

BILLING CODE 4910–13–P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. 90–ANE–25–AD; Amendment No. 39–XXXX]**

**RIN 2120–AA64**

## Airworthiness Directives; General Electric Company (GE) CF–645 and CF6–50 Series Turbofan Engines

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes to revise an existing airworthiness directive (AD), applicable to certain GE turbofan engines. That AD currently requires initial and repetitive inspections of high pressure compressor (HPC) rear shafts and installation of a certain rear shaft flange bolt configuration. This action would add additional HPC rear shaft part numbers for reworked rear shafts to the AD. This proposal is prompted by the need to ensure that the additional HPC rear shafts listed in this proposed rule receive the same inspections as part numbers covered by the current amendment. The actions specified by the proposed AD are intended to detect and replace cracked HPC rear shafts, which, if not replaced, could lead to an uncontained engine failure.

**DATES:** Comments must be received by November 16, 2000.

**ADDRESSES:** Submit comments to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 90–ANE–25–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: "9-ane-adcomment@faa.gov". Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The service information referenced in the proposed rule may be obtained from General Electric Company, Technical Publications Department, 1 Neumann Way, Cincinnati, OH 45215. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

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**FOR FURTHER INFORMATION CONTACT:** Karen Curtis, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone: (781) 238–7192; fax: (781) 238-7199.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 90–ANE–25–AD." The postcard will be date stamped and returned to the commenter.

### Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 90–ANE–25–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

### Discussion

On March 18, 1991, the FAA issued AD 91–10–03, Amendment 39–6956 (56 FR 19920, May 1, 1991), applicable to GE CF6–45 and CF6–50 turbofan engines, to require initial and repetitive inspections of HPC rear shafts and installation of a certain rear shaft flange bolt. That action was prompted by reports of 35 HPC rear shafts found cracked in the bolt hole area. The inspection requirements of that AD were intended to detect and replace cracked HPC rear shafts to prevent an HPC rear shaft fracture, which could result in an uncontained engine failure. On April 4, 1995, the FAA issued AD 91–10–03 Revision 1, Amendment 39–9186 (60 FR 1879, May 13, 1995), applicable to GE CF6–45 and CF6–50 series turbofan engines. That action was prompted by an FAA determination that the Parts Manufacturer Approval (PMA) Production Approval Listing, Supplement No. 27, authorizes the use of Valley-Todeco (VT) bolts, part number (P/N) VCD0016, as an alternate to GE bolts, P/N 1375M69P01. The VT bolt is identical in design to the GE bolt and the amendment adds the VT bolt to the applicability. That amendment also clarifies that engines with one or more PMA bolts, P/N VCD0016 installed, must accomplish the inspection requirements of the original AD, and allow the installation of PMA bolts as alternates to the GE bolts. That AD Revision requires initial and repetitive inspections to detect and replace cracked HPC rear shafts to prevent an HPC rear shaft fracture, which could result in an uncontained engine failure.

### New Information

Since that revision to the AD was issued, the FAA has become aware of HPC rear shaft rework P/N's that have been issued by the manufacturer that are not listed in AD 91–10–03, Revision 1 but should be inspected.

### Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would revise AD 91–10–03 Revision 1 to add HPC rear shaft rework P/N's to the AD. The actions would be required to be accomplished in accordance with the SB's described previously.

### Economic Impact

There are about 1,730 engines of the affected design in the worldwide fleet. The FAA estimates that 469 engines installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take about 2 work hours per engine to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required labor would cost about $120.00 per engine. Based on these figures, the total labor cost impact of the proposed AD on U.S. operators is estimated to be $56,280.

### Regulatory Impact

This proposal does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposal.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–9186 (60 FR 18729, April 13, 1995), and by adding a new airworthiness directive (AD), to read as follows:

**General Electric Company:** Docket No. 90–ANE–25–AD. Revises AD 91–10–03, Revision 1, Amendment 39–9186.

*Applicability:* General Electric Company (GE) CF6–45 and CF6–50 series turbofan engines installed on, but not limited to, McDonnell Douglas DC–10 series, Boeing 747 series, and Airbus A300 series airplanes.

**Note 1:** This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.



*Compliance:* Required as indicated, unless accomplished previously. To prevent a high pressure compressor (HPC) rear shaft fracture, which could result in an uncontained engine failure and/or in-flight engine shutdown, accomplish the following:

(a) Fluorescent-penetrant inspect HPC rear shafts having the part numbers (P/N's) in Table 1 below, in accordance with the Accomplishment Instructions of GE Service Bulletin (SB) No. 72–958, Revision 1, dated October 18, 1990 as follows:

TABLE 1

| | | | |
|---|---|---|---|
| 9127M58P03 | 9079M63P12 | 9079M63P15 | 9079M63P16 |
| 9079M63P17 | 9079M63P18 | 9079M63P19 | 1999M25P01 |
| 1999M25P02 | 1999M25P03 | 1999M25P04 | 1999M25P05 |
| 1999M25P06 | 1999M25P07 | | |

(1) For HPC rear shafts currently installed with hook bolts, P/N 9012M99G10, 9114M95G07, and 9114M95G10, inspect in accordance with the following schedule:

(i) For shafts that have not been previously inspected and have 10,000 cycles since new (CSN) or more on the effective date of this AD, inspect within the next 1,500 cycles in service (CIS) after the effective date of this AD.

(ii) For shafts that have not been previously inspected and have fewer than 10,000 CSN on the effective date of this AD, inspect within the next 2,500 CIS from the effective date of this AD, or before accumulating 7,500 CSN, whichever occurs later. However, no shaft may exceed 11,500 CSN before inspection.

(iii) For shafts that have been previously inspected and have 3,000 cycles since last inspection (CSLI) or fewer on the effective date of this AD, inspect within 4,500 CSLI, or before accumulating 7,500 CSN, whichever occurs later.

(iv) For shafts that have been previously inspected and have greater than 3,000 CSLI on the effective date of this AD, inspect within the next 1,500 CIS from the effective date of this AD, or before accumulating 7,500 CSN, whichever occurs later.

(v) Remove from service HPC rear shaft hook bolts identified in (a)(1) of this AD after any inspection performed in accordance with paragraph (a)(1) of this AD and replace with new tapered turn-around bolts, P/N 1375M69P01 or VCD0016.

(2) For HPC rear shafts installed with turn-around bolts, P/N 9249M54P01, or tapered turn-around bolts, P/N 1375M69P01 or VCD0016, inspect in accordance with the following schedule:

(i) For shafts that have not been previously inspected and have 6,500 CSN or more on the effective date of this AD, inspect within the next 2,500 CIS after the effective date of this AD.

(ii) For shafts that have not been previously inspected and have fewer than 6,500 CSN on the effective date of this AD, inspect before accumulating 9,000 CSN.

(iii) For shafts that have been previously inspected and have 3,500 CSLI or fewer on the effective date of this AD, inspect within 6,000 CSLI, or before accumulating 9,000 CSN, whichever occurs later.

(iv) For shafts that have been previously inspected and have more than 3,500 CSLI on the effective date of this AD, inspect within the next 2,500 CIS after the effective date of this AD, or before accumulating 9,000 CSN, whichever occurs later.

(v) Remove from service HPC rear shaft turn-around bolts identified in paragraph (a)(2) of this AD after any inspection performed in accordance with paragraph (a)(3) of this AD and replace with new tapered turn-around bolts, P/N 1375M69P01 or VCD0016.

**Note 2.** Information concerning the tapered turn-around bolt noted in paragraph (a) of this proposed AD can be found in GE SB No. 72–877.

(b) Remove from service, prior to further flight, any shafts found cracked at inspection.

(c) Thereafter, for shafts that have been inspected in accordance with paragraph (a) of this AD, reinspect in accordance with the Accomplishment Instructions of GE SB No. 72–958, Revision 1, dated October 18, 1990, at intervals not to exceed 6,000 CSLI.

(d) Compliance with paragraph (a) of AD 91–10–03, Revision 1 satisfies the corresponding requirements of paragraph (a) of this AD. For the purposes of this AD, the inspection cycle interval must be measured from the last HPC rear shaft bolt hole inspection, regardless of any rear shaft rework and re-identifying after inspection.

### Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Manager, ECO.

### Special Flight Permits

(f) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on October 5, 2000.

**David A. Downey,**

*Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 00–26141 Filed 10–11–00; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 99–CE–74–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Raytheon Aircraft Company Beech Models 60, A60, and B60 Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Raytheon Aircraft Company (Raytheon) Beech Models 60, A60, and B60 airplanes. The proposed AD would require you to inspect for the existence of any lower forward wing bolts with the Mercury Aerospace trademark, and replace any such bolt with an FAAapproved bolt without this trademark. The proposed AD is the result of a report that wing bolts supplied by Mercury Aerospace may not meet the required Rockwell hardness specifications. The actions specified by the proposed AD are intended to detect and correct wing bolts that do not meet strength requirements. Continued airplane operation with such bolts could result in fatigue failure of the bolts with consequent separation of the wing from the airplane.

**DATES:** The Federal Aviation Administration (FAA) must receive any comments on this rule on or before December 5, 2000.

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**ADDRESSES:** Submit comments in triplicate to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–74–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140. This information also may be examined at the Rules Docket at the address above.

**FOR FURTHER INFORMATION CONTACT:** Mr. T.N. Baktha, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4155; facsimile: (316) 946–4407.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

*How do I comment on the proposed AD?* The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments in triplicate to the address specified under the caption **ADDRESSES.** The FAA will consider all comments received on or before the closing date. We may amend the proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of the proposed AD action and determining whether we need to take additional rulemaking action.

*Are there any specific portions of the proposed AD I should pay attention to?* The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of the proposed rule that might suggest a need to modify the rule. You may examine all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each FAA contact with the public that concerns the substantive parts of the proposed AD.

The FAA is re-examining the writing style we currently use in regulatory documents, in response to the Presidential memorandum of June 1, 1998. That memorandum requires federal agencies to communicate more clearly with the public. We are interested in your comments on whether the style of this document is clearer, and any other suggestions you might have to improve the clarity of FAA communications that affect you. You can get more information about the Presidential memorandum and the plain language initiative at *http://www.plainlanguage.gov.*

*How can I be sure FAA receives my comment?* If you want us to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 99–CE–74–AD." We will date stamp and mail the postcard back to you.

### Discussion

*What events have caused this AD?* The FAA has received a report indicating that about 70 lower forward wing bolts that Mercury Aerospace supplied for certain Raytheon Models 60, A60, and B60 airplanes may not meet Rockwell hardness specifications. The bolts were distributed between 1995 and 1996. An independent test lab has confirmed that the bolts do not meet the structural requirements for an MS21250–14034 bolt.

Specifically, these wing bolts are required to meet Rockwell hardness specifications of C39–C43. Laboratory tests indicate that bolts from this manufacturing batch are below these specifications.

*What are the consequences if the condition is not corrected?* Continued airplane operation with such bolts could result in fatigue failure of the bolts with consequent separation of the wing from the airplane.

### Relevant Service Information

*Is there service information that applies to this subject?* Raytheon has issued Mandatory Service Bulletin No. SB 57–3328, Issued: July, 1999.

*What are the provisions of this service bulletin?* The service bulletin includes procedures for:

—Inspecting all lower forward wing bolts for the Mercury Aerospace trademark; and

—Replacing any of these bolts, along with the nuts and washers.

### The FAA's Determination and an Explanation of the Provisions of the Proposed AD

*What has FAA decided?* After examining the circumstances and reviewing all available information related to the conditions described above, we have determined that:

—the unsafe condition referenced in this document exists or could develop on Raytheon Beech Models 60, A60, and B60 airplanes of the same type design;

—the actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and

—AD action should be taken in order to correct this unsafe condition.

*What does the proposed AD require?* This proposed AD would require you to inspect for the existence of any lower forward wing bolt with the Mercury Aerospace trademark and replace such bolt with an FAA-approved bolt without this trademark.

### Cost Impact

*How many airplanes does the proposed AD impact?* We estimate that the proposed AD affects 593 airplanes in the U.S. registry.

*What is the cost impact of the proposed AD on owners/operators of the affected airplanes?* We estimate the following costs to accomplish the proposed inspection:

| Labor cost | Parts cost | Total cost per airplane | Total cost on U.S. airplane operators |
|---|---|---|---|
| 1 workhour × $60 per hour = $60 | Not applicable | $60 per airplane | $35,580. |

We estimate the following costs to accomplish any necessary replacements that would be required based on the results of the proposed inspection. Based on manufacturer data from its warranty program, 10 bolts were replaced, which leaves 60 suspect bolts still in the field.



| Labor cost | Parts cost | Total cost per airplane |
|---|---|---|
| 8 workhours × $60 per hour = $480 | Approximately $500 per airplane. NOTE: Warranty credit has expired. | $980 per airplane. |

### Regulatory Impact

*Does this proposed AD impact various entities?* The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

*Does this proposed AD involve a significant rule or regulatory action?* For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

**Raytheon Aircraft Company:** Docket No. 99–CE–74–AD

(a) *What airplanes are affected by this AD?* This AD affects Beech Models 60, A60, and B60 airplanes, serial numbers P–4 through P–596, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes on the U.S. Register must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct wing bolts that do not meet strength requirements. Continued airplane operation with such bolts could result in fatigue failure of the bolts with consequent separation of the wing from the airplane.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

| Action | Compliance time | Procedures |
|---|---|---|
| (1) Inspect the lower forward wing bolts (left and right) for the Mercury Aerospace trademark. | Within the next 100 hours time-in-service (TIS) after the effective date of this AD. | Use the ACCOMPLISHMENT INSTRUCTIONS section of Raytheon Mandatory Service Bulletin SB 57–3328, Issued: July, 1999. |
| (2) Replace any lower forward wing bolt that has the Mercury Arospace trademark with an FAA-approved bolt that does not have this trademark. Replace the associated nuts and washers. | Prior to further flight after the inspection | Use the ACCOMPLISHMENT INSTRUCTIONS section of Raytheon Mandatory Service bulletin SB 57–3328, Issued: July, 1999, and the instructions in the applicable maintenance manual. |
| (3) Do not install, on any affected airplane, a forward wing bolt that has the Mercury Aerospace trademark. | As of the effective date of this AD | Not Applicable. |

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Wichita Aircraft Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

**Note:** This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD.For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Mr. T.N. Baktha, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4155; facsimile: (316) 946–4407.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may obtain copies of the documents referenced in this AD from Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085. You may examine these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

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Issued in Kansas City, Missouri, on October 5, 2000.

**Marvin R. Nuss,**

*Acting Manager, Small Airplane Directorate,, Aircraft Certification Service.*

[FR Doc. 00–26238 Filed 10–11–00; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF THE INTERIOR

### Office of Hearings and Appeals

### 43 CFR Part 4

**RIN 1090–AA74**

### Special Rules Applicable to Surface Coal Mining Hearings and Appeals; Petitions for Award of Costs and Expenses Under Section 525(e) of the SMCRA

**AGENCY:** Office of Hearings and Appeals, Interior.

**ACTION:** Proposed rule; extension of comment period.

**SUMMARY:** This action extends the comment period an additional 30 days on the Department of the Interior's Office of Hearings and Appeals' proposal to amend its rules governing who may receive an award of costs and expenses, including attorney fees, under section 525(e) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment provides that an applicant for a permit may only receive an award from the Office of Surface Mining Reclamation and Enforcement (OSM), if OSM denies an application in bad faith and for the purpose of harassing or embarrassing the applicant.

**EFFECTIVE DATE:** Comments are due to the agency by November 13, 2000.

**ADDRESSES:** Send written comments to Robert L. Baum, Director, Office of Hearings and Appeals, 4015 Wilson Boulevard, Room 1111, Arlington, VA 22203. Phone: 703–235–3750. Comments received will be made available for public inspection and copying during regular business hours (9 a.m. to 5 p.m.) In the Office of Hearings and Appeals, Director's office, 11th floor, 4015 Wilson Boulevard, Arlington, VA 22203. Person wishing to inspect comments are requested to call in advance at 703–235–3810 to make an appointment.

**FOR FURTHER INFORMATION CONTACT:** Will A. Irwin, Administrative Judge, Interior Board of Land Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, VA 22203. Phone: 703–235–3750.

**SUPPLEMENTARY INFORMATION:** On July 28, 2000, the Office of Hearings and Appeals (OHA) published a proposed rule (65 FR 46389) amending 43 CFR 4.1294(b) and (c) to provide than an applicant for a permit from OSM is entitled to an award of costs and expenses from OSM only when circumstances demonstrate that OSM denied an application in bad faith and for the purpose of harassing or embarrassing the applicant. In a letter to the Director of OHA, dated August 15, 2000, the National Mining Association (NMA) requested a 45 day extension of the comment period for this proposed amendment because the existing comment period did not allow adequate opportunity to comment fully. The NMA also requested records related to the proposed amendment under the Freedom of Information Act. The FOIA response letter was issued on September 12, 2000.

The Director of OHA has determined that an extension of time to obtain the comments on the proposed rule is warranted and, therefore, a 30 day extension is granted. This notice announces that 30 day extension of the comment period.

Dated: October 4, 2000.

**John Berry,**

*Assistant Secretary for Policy, Management and Budget.*

[FR Doc. 00–26100 Filed 10–11–00; 8:45 am]

BILLING CODE 4310–BK–M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[DA 00–2230, MM Docket No. 00–186, RM–9970]**

### Radio Broadcasting Services; Rapid City, South Dakota, Gillette, Wyoming

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by Bethesda Christian Broadcasting, Inc. ("petitioner"), licensee of Station KLMP, Rapid City South Dakota, requesting the substitution of Channel 250C for 250C1 at Rapid City, and the modification of Station KLMP's license accordingly, and the substitution of Channel 282A for vacant Channel 249A at Gillette, Wyoming, to accommodate its upgrade. Channel 250C can be allotted at Rapid City, South Dakota, at coordinates 44–19–42 and 103–50–03. Channel 282A can be allotted at Gillette, Wyoming at coordinates 44–17–36 and 105–30–06.

**DATES:** Comments must be filed on or before November 20, 2000, and reply comments on or before December 5, 2000.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, S.W., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Bethesda Christian Broadcasting, Inc. P.O. Box 168, Rapid City, SD 57709 (petitioner); J. Dominic Monahan, Luvaas, Cobb, Richards and Fraser, 300 Forum Building, 777 High Street, P.O. Box 10747, Eugene, OR 97401 (Counsel to petitioner).

**FOR FURTHER INFORMATION CONTACT:** Victoria M. McCauley, Mass Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–186, adopted September 20, 2000, and released September 29, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 00–26191 Filed 10–11–00; 8:45 am]

BILLING CODE 6712–01–P



## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 17

### Endangered and Threatened Wildlife and Plants: 90-Day Finding on a Petition To List the Mountain Yellow-legged Frog as Endangered

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of 90-day petition finding.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) announces a 90-day finding on a petition to list the mountain yellow-legged frog (*Rana muscosa*) as endangered, under the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*). We believe that the petition presents substantial information indicating that listing the species may be warranted. A status review is initiated.

**DATES:** The finding announced in this document was made on October 5, 2000. To be considered in the 12-month finding for this petition, comments and information should be submitted to the Service by December 11, 2000.

**ADDRESSES:** Data, information, comments, or questions concerning this petition should be submitted to the Field Supervisor; Sacramento Fish and Wildlife Office; Sacramento Fish and Wildlife Office; 2800 Cottage Way, Room W–2605; Sacramento, California 95825. The petition finding, supporting data and comments are available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Jason Davis or Maria Boroja at the Sacramento Fish and Wildlife Office (see **ADDRESSES** section above), or at (916) 414–6600.

**SUPPLEMENTARY INFORMATION:**

#### Background

Section 4(b)(3)(A) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial information indicating that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be published promptly in the **Federal Register**. If the finding is that substantial information was presented, the Service will commence a review of the status of the involved species. This finding is based on information contained in the petition, supporting information submitted with the petition, and otherwise available to the Service at the time the finding was made.

The processing of this petition conforms with our final listing priority guidance published in the **Federal Register** on October 22, 1999 (64 FR 57114). The guidance clarifies the order in which we will process rulemakings. Highest priority is processing emergency listing rules for any species determined to face a significant and imminent risk to its well-being (Priority 1). Second priority (Priority 2) is processing final determinations on proposed additions to the lists of endangered and threatened wildlife and plants. Third priority (Priority 3) is processing new proposals to add species to the lists. The processing of administrative petition findings (petitions filed under section 4 of the Act) is the fourth priority. The processing of critical habitat determinations (prudency and determinability decisions) and proposed or final designations of critical habitat will be funded separately from other section 4 listing actions and will no longer be subject to prioritization under the listing priority guidance. The processing of this petition finding is a Priority 4 action.

We have made a 90-day finding on a petition to list the mountain yellow-legged frog (*Rana muscosa*) as an endangered species. On February 10, 2000, we received a petition, dated February 8, 2000, to list the Sierra Nevada Mountain population of the mountain yellow-legged frog as an endangered species. The petition was submitted by the Center for Biological Diversity and Pacific Rivers Council. The letter clearly identified itself as a petition, and contained the names, signatures, and addresses of the two parties submitting the petition. The petitioners argued that the "Sierra Nevada population of the mountain yellow-legged frog" qualifies for listing under our Distinct Vertebrate Population Segment Policy (61 FR 4722). Included in the petition was supporting information relating to the species' taxonomy and ecology, adequacy of existing regulatory mechanisms for the species, and the historic and present distribution, current status, and potential causes of decline. This notice constitutes the 90-day finding for the February 10, 2000, petition.

On July 10, 1995, we were petitioned to list the southern California population of the mountain yellow-legged frog a distinct population segment (DPS) of the mountain yellow-legged frog. The southern California population is isolated from the main part of the species' range, in the Sierra Nevada Mountains, by the Tehachapi Mountains and a distance of 225 kilometers (km) (140 miles(mi)). On December 22, 1999, we published a proposed rule to list the Southern California DPS of the mountain yellow-legged frog as an endangered species (64 FR 71714). In the proposed rule we recognized the southern population according to our policy on distinct vertebrate population segments (61 FR 4722). On March 20, 2000, we published a notice in the **Federal Register** to reopen the comment period on the proposal to list the southern California DPS of the mountain yellow-legged frog as endangered for a 30-day period.

As the present petition (and this finding) addresses the remainder of the species' range, in the Sierra Nevada from Tulare County, California, in the south to Plumas County, California, in the north, we find no reason to recognize mountain yellow-legged frogs that occur in the Sierra Nevada as a DPS. Throughout the rest of this finding we refer to the petitioned entity, all mountain yellow-legged frogs that occur north of the Tehachapi Mountains in the Sierra Nevada, as the mountain yellow-legged frog.

The petition and accompanying documentation state that the species qualifies for listing pursuant to the Act due to potential habitat destruction and modification, the presence of disease in combination with natural predation, the inadequacy of existing regulatory mechanisms, and other natural or human-caused factors affecting its continued existence. The petitioners contend that natural and human-induced changes to mountain yellow-legged frog habitats, including (1) non-native fish introductions, (2) contaminant introductions, (3) livestock grazing, (4) acidification from atmospheric deposition, (5) nitrate deposition, (6) ultraviolet radiation, (7) drought, and (8) other factors, separately and in combination are responsible for an estimated 70 to 90 percent decline in mountain yellow-legged frog populations throughout the historic range of the species in the Sierra Nevada Mountains.

The introduction of nonnative fish, including rainbow trout (Oncorhynchus mykiss), is one the best documented causes of decline of Sierra Nevada Mountain populations of mountain yellow-legged frogs. Careful study of the distributions of introduced trout and mountain yellow-legged frogs for several years has shown conclusively that

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introduced trout have had negative impacts on mountain yellow-legged frogs over much of the Sierra Nevada Mountains (Bradford 1989; Knapp 1996). Bradford (1989) and Bradford *et al.* (1994) concluded that introduced trout have eliminated many populations of mountain yellow-legged frogs. In addition, the presence of trout in intervening streams sufficiently isolates other frog populations so recolonization after stochastic (random, naturally occurring) local extinctions is essentially impossible. This mechanism is sufficient to explain the elimination of mountain yellow-legged frogs from the majority of sites they once inhabited in the Sierra Nevada Mountains.

Several studies have shown that significant levels of contaminants have been deposited in high Sierran aquatic ecosystems from pesticide drift, acid precipitation, and smog drift (Seiber *et al.* 1998; Aston and Seiber 1997; Cahill *et al.* 1996; Miller 1996; Byron and Goldman 1991; Nikolaidis 1991; Laird *et al.* 1986). The petitioners present general evidence that the presence of contaminants in water, sediment, and aquatic vegetation can harm frog populations through lethal and sublethal effects including delayed metamorphosis, reduced breeding and feeding activity (Berrill *et al.* 1993, 1994, 1995, 1998; Boyer and Grue 1995; Beaties and Tyler-Jones 1992; Corn and Vertucci 1992; Hall and Henry 1992). In addition, contaminant introduction may weaken the immune systems of frogs rendering them more susceptible to disease such as chytrid fungus and red-legged disease (Carey *et al.* 1993, 1995, 1999; Jennings 1996; Drost and Fellers 1996; Sherman and Morton 1993). The petitioners cite recent work by Carlos Davidson (U.C. Davis, unpublished manuscript) that shows a positive relationship between amphibian declines in the Sierra Nevada Mountains that occur upwind from areas in California's Central Valley that apply large amounts of wind-borne agrochemicals. In particular, Davidson found agricultural land use to be twice as high downwind of sites where mountain yellow-legged frogs had disappeared compared to sites where the species is still present (Davidson, unpublished manuscript).

Livestock grazing can directly impact mountain yellow-legged frogs through trampling of individuals. Indirectly, livestock can have a significant effect on frog populations by: (1) Altering the hydrology and morphology of high mountain streams and ponds, (2) trampling of cover and vegetation along the periphery of wetland systems that are important egg laying and larval rearing areas, and (3) introducing nitrates into breeding areas resulting in elevated levels of bacteria (Armour *et al.* 1994; Duff 1977; Bohn and Buckhouse 1985; Kauffman and Krueger 1984; Kauffman *et al.* 1983; Marlow and Pogacnik 1985; Meehan and Platts 1978; Stephenson and Street 1978; U.S. Forest Service 2000).

Acidification, nitrate deposition, and ultraviolet radiation have been implicated as other factors that may contribute to the range wide decline of mountain yellow-legged frogs. The petitioners state these factors may have negative effects on mountain yellow-legged frogs that include reduced growth rates, reduced feeding activity, disequilibrium, physical abnormalities, paralysis, embryonic failure, and even death among tadpoles and young frogs (Blaustein *et al.* 1994, Bradford and Gordon 1993, Carey *et al.* 1999, Clark and LaZerte 1985, Freda 1990, Marco *et al.* 1999, Marco and Blaustein 1999).

During periods of prolonged drought, amphibians find refugial habitat in deeper, permanent sources of water which are also suited for fish. These refugial habitats allow for repopulation of more peripheral areas during wetter years (Bradford *et al.* 1993; Knapp 1996; Drost and Fellers 1996). The presence of nonnative fish has eliminated many of the permanent sources of refugial habitat from the mountain yellow-legged frog, thus rendering frog populations more vulnerable to drought-related extinction events (Bradford *et al.* 1993; Knapp 1996; Drost and Fellers 1996).

The petitioners state that disease likely plays a significant role in the widespread decline of mountain yellow-legged frogs. Two diseases potentially affecting mountain yellow-legged frogs are red-legged disease (Aeromonas hydrophila), which is caused by a freshwater bacteria, and chytrid fungus. The petitioners cite an article by Bradford (1991) reporting the loss of a mountain yellow-legged frog population in the Sierra Nevada due to red-legged frog disease and predation by Brewer's blackbirds (Euphagus cyanocephalus). In addition, they cite studies reporting mortality of adult Yosemite toads (Bufo canorus) in the Sierra Nevada and boreal toads (Bufo boreas boreas) in the Rocky Mountains due to red-legged disease (Sherman and Morton 1993; Carey 1993). Chytrid fungus, an aquatic pathogen discovered after 1993, has led to the mortality of many amphibian species in the United States and worldwide. The chytrid fungus attacks the mouthparts of tadpoles affecting their ability to feed. Chytrids have recently been discovered in larval mountain yellow-legged frogs in the Sierra Nevada (Gary Fellers, U.S. Geologic Survey, pers. comm. 1999). Roland Knapp (Sierra Nevada Aquatic Research Lab, pers. comm. 2000) reported a significant decline of mountain yellow-legged frogs at Dry Creek near Mono Lake, a site that had thriving population in 1998. He attributed the population crash to the chytrid fungus after detecting deformed mouthparts in several tadpoles at the site. The petitioners also cite a personal communication with Vance Vredenburg (University of California, Berkeley, Museum of Vertebrate Zoology, pers. comm. 2000) who reported the complete loss of another mountain yellow-legged frog population in the Emigrant Wilderness due to the chytrid fungus. There have been reports of chytrid fungus attacking other Sierra Nevada amphibians, including the Yosemite toad. An investigation of museum specimens of Yosemite toads collected by Sherman and Morton at Tioga Pass during a 1977–1978 die-off found those toads to be infected with chytrid fungus (Carey *et al.* 1999). The petitioners state that there is significant information yet to be discovered regarding aquatic pathogens and their relationship to the ecology of mountain yellow-legged frogs. Should evidence indicate that mountain yellow-legged frogs have evolved with aquatic pathogens, then other stressors including contaminant introductions and UV-radiation may be reducing the ability of frogs to fight off infection from these pathogens (Sherman and Morton 1993; Drost and Fellers 1996; Carey *et al.* 1993, 1995, 1999; Jennings 1996; Taylor *et al.* 1999).

Up to the 1960s, the mountain yellow-legged frog was widely distributed and abundant across the Sierra Nevada (Zwefel 1955; Cory *et al.* 1970, Jennings and Hayes 1994). Since then, however, the overall population has declined dramatically. The most pronounced declines have occurred within the northernmost 125 km (78 mi) of the range, north of Lake Tahoe, and the southernmost 50 km (31 mi) of the range, below Sequoia and Kings Canyon National Parks, where only a few populations remain (Jennings and Hayes 1994; Fellers 1999). Jennings and Hayes (1994) noted a 50 percent decline in the species across the Sierra Nevada based on sampling historic mountain yellow-legged frog locations conducted before the 1970s. Knapp and Matthews (2000) noted that the 50 percent decline may be conservative, as the sampling conducted by Jennings and Hayes took place in Sequoia and Kings Canyon National Parks, where mountain yellow-legged frog populations are larger and more abundant compared to populations north of the Sierra National Forest.

However, even in the protected areas of Sequoia and Kings Canyon National Parks, mountain yellow-legged frog populations have undergone significant declines. Bradford *et al.* (1994) published results of two separate studies which resurveyed historic sites where mountain yellow-legged frogs were documented between 1959 and 1979 in Sequoia and Kings Canyon National Parks. They found mountain yellow-legged frogs at only 12 of 49 sites surveyed in 1989 and 1990. In addition, mountain yellow-legged frogs had disappeared from one of these 12 sites by 1991.

Outside of Sequoia and Kings Canyon National Parks, Bradford *et al.* (1994) reported the absence of mountain yellow-legged frogs at 21 of 24 historic sites. In another study, Drost and Fellers (1996) resurveyed 14 sites originally surveyed in 1915 by Grinnell and Storer (1924), and found only two now occupied by the mountain yellow-legged frog. These surveys all strongly suggest that the mountain yellow-legged frog has systematically declined throughout its range.

We have reviewed the petition and other information available in the Service's files. Based upon this review, we believe that substantial evidence exists that listing the mountain yellow-legged frog as endangered may be warranted. When we make a positive finding, we also are required to promptly commence a review of the status of the species. Based upon available and any newly obtained information, we will issue a 12-month finding as required by section 4(b)(3)(B) of the Act. Petitioners also requested that critical habitat be designated for the Sierra Nevada population of the mountain yellow-legged frog. The 12-month finding will address this issue.

### Public Information Requested

The Service hereby announces its formal review of the species' status pursuant to this 90-day petition finding. We request any additional data, comments, and suggestions from the public, other concerned government agencies, the scientific community, industry, and any other interested parties concerning the status of the mountain yellow-legged frog. Of particular interest is information regarding: (1) The existence and status of additional subpopulations, (2) the impact of nonnative fish introductions, contaminants, livestock grazing, acidification from atmospheric deposition, nitrate deposition, ultraviolet radiation, drought, disease, and other factors that may be responsible for the range-wide decline of the species, (3) the implementation of any actions that are benefitting the species, and (4) genetic variability in known subpopulations.

If you wish to comment, you may submit your comments and materials concerning this finding to the Field Supervisor, Sacramento Fish and Wildlife Office (see **ADDRESSES** section). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Respondents may request that we withhold their home address, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

### References Cited

A complete list of all references cited herein is available on request from the Sacramento Fish and Wildlife Office, (See **ADDRESSES** section).

Author: The primary author of this document is Jason Davis, Sacramento Fish and Wildlife Office (see **ADDRESSES** section).

### Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: October 5, 2000.

**Jamie Rappaport Clark,**

*Director, Fish and Wildlife Service.*

[FR Doc. 00–26179 Filed 10–11–00; 8:45 am]

BILLING CODE 4310–55–P



**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

## Endangered and Threatened Wildlife and Plants: 90-Day Finding on a Petition to List the California Spotted Owl as Threatened or Endangered

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of 90-day petition finding.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to list the California spotted owl (*Strix occidentalis occidentalis*) as threatened or endangered, under the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*). We find that the petition presents substantial information indicating that listing the species may be warranted. A status review is initiated.

**DATES:** The finding announced in this document was made on October 5, 2000. To be considered in the 12-month finding for this petition, comments and information should be submitted to the Service by December 11, 2000.

**ADDRESSES:** Data, information, comments, or questions concerning this petition should be submitted to the Field Supervisor; Sacramento Fish and Wildlife Office; Sacramento Fish and Wildlife Office; 2800 Cottage Way, Room W–2605; Sacramento, California 95825. The petition finding, supporting literature, and comments are available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Catherine Hibbard or Maria Boroja at the Sacramento Fish and Wildlife Office (see **ADDRESSES** section above), or at (916) 414–6600.

**SUPPLEMENTARY INFORMATION:**

### Background

Section 4(b)(3)(A) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial information indicating that the petitioned action may be warranted. This finding is based on information contained in the petition, supporting information submitted with the petition, and information otherwise available to us at the time we make the finding. To the maximum extent practicable, we make this finding within 90 days of the

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receipt of the petition, and the finding is to be published promptly in the **Federal Register**. If we find that substantial information was presented, we commence a review of the status of the involved species.

The processing of this petition conforms with the Service's final listing priority guidance published in the **Federal Register** on October 22, 1999 (64 FR 57114). The guidance clarifies the order in which we process rulemakings. Highest priority is processing emergency listing rules for any species determined to face a significant and imminent risk to its well-being (Priority 1). Second priority (Priority 2) is processing final determinations on proposed additions to the lists of endangered and threatened wildlife and plants. Third priority (Priority 3) is processing new proposals to add species to the lists. The processing of administrative petition findings (petitions filed under section 4 of the Act) is the fourth priority. The processing of critical habitat determinations (prudency and determinability decisions) and proposed or final designations of critical habitat will be funded separately from other section 4 listing actions and will no longer be subject to prioritization under the listing priority guidance. The processing of this petition finding is a Priority 4 action.

We have made a 90-day finding on a petition to list the California spotted owl as a threatened or endangered species. On April 3, 2000, we received a petition dated April 2000, to list the California spotted owl as a threatened or endangered species. The petition was submitted by the Center for Biological Diversity and the Sierra Nevada Forest Protection Campaign, who acted on the behalf of themselves and 14 other organizations. The letter clearly identified itself as a petition, and the names, signatures, and addresses of representatives of the two parties submitting the petition followed in a letter dated April 17, 2000. The petitioners requested the Service to designate critical habitat for the California spotted owl concurrent with listing, and also requested emergency listing and emergency critical habitat designation. The petition referenced supporting information on the subspecies' description, natural history, habitat, and population status. It also presented threats to the California spotted owl including present or threatened destruction, modification, or curtailment of the subspecies' habitat or range; other natural or manmade factors affecting the subspecies' continued existence; predation; and the inadequacy of existing regulatory mechanisms to protect the subspecies. This notice constitutes the 90-day finding for the April 3, 2000, petition.

The California spotted owl is one of three recognized subspecies of spotted owls. The other subspecies, the northern spotted owl (*Strix occidentalis caurina*), and the Mexican spotted owl (*Strix occidentalis lucida*), were listed by the Service as threatened. The final rule to list the northern spotted owl was published in the **Federal Register** on June 26, 1990 (55 FR 26114–26194) and the final rule to list the Mexican spotted owl was published in the **Federal Register** on March 16, 1993 (58 FR 14248–14271). Genetic studies have found evidence of interbreeding between the northern and California subspecies (Barrowclough *et al.* 1999).

The California spotted owl occurs on the west side of the Sierra Nevada from Shasta County south to the Tehachapi Pass. It also occurs on the eastern side of the Sierra, in the central Coast Ranges at least as far north as Monterey County, and in all major mountains of Southern California including the San Bernardino, San Gabriel, Tehachapi, north and south Santa Lucia, Santa Ana, Liebre/Sawmill, San Diego, San Jacinto, and Los Padres ranges.

The petition and accompanying documentation state that the California spotted owl qualifies for listing under the Act due to potential habitat destruction and modification, predation, the inadequacy of existing regulatory mechanisms to protect the subspecies, and other natural or human-caused factors affecting its continued existence. The petitioners contend that the California spotted owl is threatened by destruction, modification, or curtailment of habitat or range by logging on public and private lands, urban development, livestock grazing, mining, recreation, and road construction. According to the petitioners, logging, livestock grazing, and fire suppression have altered fire regimes over the range of the California spotted owl, putting some owl habitat at risk to loss by catastrophic fire. They also assert that habitat loss and modification may increase predation or the negative effects of climate on California spotted owls. Finally, they cite existing regulations or guidelines to manage California spotted owl habitat on public and private lands as inadequate regulatory mechanisms to protect the owl and its habitat.

The distribution and abundance of California spotted owls before intensive surveys were initiated in the late 20th century is largely unknown. As summarized in the petition, recent estimates of population change suggest populations of California spotted owls in the Lassen, Eldorado, and Sierra National Forests and in the San Bernardino Mountains of southern California have been significantly declining over the past several years, while a population of owls in the Sequoia/Kings Canyon National Park may be stable (Steger *et al.* 1999). These differences were attributed to higher rates of adult survival in the park (Steger *et al.* 1999).

Where owls are declining, modeled estimates indicate annual declines of 7–10 percent, but these estimates may not reflect true rates of declines for several reasons as discussed by Noon *et al.* (1992), Verner (1999) and USDA (2000). However, the declining trends of California spotted owls suggested by these models are generally corroborated by actual declines in occupied sites (Gordon Gould, California Department of Fish and Game, pers. comm., 2000). Most or all researchers studying the demography of California spotted owls agree that populations are declining, but uncertainty exists about the steepness of the decline (Verner 1999). For the Sierra Nevada, the Forest Service (USDA 2000) concluded "In summary, the demographic studies strongly suggest population declines in California spotted owls. The declines are sufficient to warrant concern, even in light of uncertainties in the magnitude of the declines."

No studies have been designed to test cause and effects of population declines of California spotted owls (Verner 1999). Gutiérrez (1994) stated that logging has caused the greatest loss of habitat for all subspecies of spotted owls. California spotted owls in the Sierra Nevada may have undergone at least three periods of decline due to: (1) The elimination of prey species by intensive livestock grazing and burning in the 1800s; (2) logging beginning in the late 1800s, which removed basic elements of owl habitat; and (3) recent logging of regenerated stands (Gutiérrez 1994).

We have reviewed the petition and other information available in our files. Based on this review, we find that listing the California spotted owl as threatened or endangered may be warranted. When we make a positive finding, we are also required to promptly commence a review of the status of the species. Based on available and any newly obtained information, we will issue a 12-month finding as required by section 4(b)(3)(B) of the Act.

The petitioners requested that critical habitat be designated for the California spotted owl and also requested emergency listing and emergency designation of critical habitat. We note that emergency listing and designation of critical habitat are not petitionable actions under the Act. Based on the information presented in the petition, the habitat loss and other threats to the species have been long-standing and ongoing for many years. There are no imminent, devastating actions that could result in the extinction of the species. Therefore, we find that an emergency situation does not exist. The 12-month finding will address the issue of critical habitat.

**Public Information Requested**

The Service hereby announces its formal review of the species' status pursuant to this 90-day petition finding. We request additional data, comments, and suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested parties regarding the status of the California spotted owl. Of particular interest is information pertaining to the factors the Service uses to determine if a species is threatened or endangered: (1) the present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) the inadequacy of existing regulatory mechanisms; and (5) other natural or manmade factors affecting its continued existence.

If you wish to comment, you may submit your comments and materials concerning this finding to the Field Supervisor, Sacramento Fish and Wildlife Office (see **ADDRESSES** section). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Respondents may request that we withhold their home address, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

**References Cited**

You may request a complete list of all references we cited, as well as others, from the Sacramento Fish and Wildlife Office (see **ADDRESSES** section).

Author: The primary author of this document is Catherine Hibbard, Sacramento Fish and Wildlife Office (see **ADDRESSES** section).

**Authority:** The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: October 5, 2000.

**Jamie Rappaport Clark,**

*Director, U.S. Fish and Wildlife Service.*

[FR Doc. 00–26181 Filed 10–11–00; 8:45 am]

BILLING CODE 4310–55–P



## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 17

### Endangered and Threatened Wildlife and Plants: 90-day Finding on a Petition To List the Yosemite Toad as Endangered

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of 90-day petition finding.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) announces a 90-day finding on a petition to list the Yosemite toad (*Bufo canorus*) as endangered under the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*). We find that the petition presents substantial scientific or commercial information to indicate that listing the species may be warranted. Therefore, we are initiating a status review to determine if the petition action is warranted. To ensure that the review is comprehensive, we are asking for information and data regarding this species.

**DATES:** The finding announced in this document was made on October 5, 2000. To be considered in the 12-month finding for this petition, comments and information should be submitted to the Service by December 11, 2000.

**ADDRESSES:** Data, information, comments, or questions concerning this petition should be submitted to the Field Supervisor; Sacramento Fish and Wildlife Office; Sacramento Fish and Wildlife Office; 2800 Cottage Way, Room W–2065; Sacramento, California 95825. The petition finding, supporting data and comments are available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Jason Davis or Maria Boroja at the Sacramento Fish and Wildlife Office (see **ADDRESSES** section above), or at (916–414–6600.

**SUPPLEMENTARY INFORMATION:**

**Background**

Section 4(b)(3)(A) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial information indicating that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be published promptly in the **Federal Register**. If the finding is that substantial information was presented, the Service will commence a review of the status of the involved species. This finding is based on information contained in the petition, supporting information submitted with the petition, and other information available to the Service at the time the finding was made.

The processing of this petition conforms with the Service's final listing priority guidance published in the **Federal Register** on October 22, 1999 (64 FR 57114). The guidance clarifies the order in which we will process rulemakings. Highest priority is processing emergency listing rules for any species determined to face a significant and imminent risk to well-being (Priority 1). Second priority (Priority 2) is processing final determinations on proposed additions to the lists of endangered and threatened wildlife and plants. Third priority (Priority 3) is processing new proposals to add species to the lists. The processing of administrative petition findings (petitions filed under section 4 of the Act) is the fourth priority (Priority 4). The processing of critical habitat determinations (prudency and determinability decisions) and proposed or final designations of critical habitat will be funded separately from other section 4 listing actions and will no longer be subject to prioritization under the listing priority guidance. The processing of this petition finding is a Priority 4 action.

We have made a 90-day finding on a petition to the list Yosemite toad (*Bufo canorus*) as an endangered species. On Monday, April 3, 2000, we received a

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petition, dated February 28, 2000, to list the Yosemite toad as endangered. The petition was submitted by the Center for Biological Diversity and Pacific Rivers Council. The letter clearly identified itself as a petition and contained the names, signatures, and addresses of the petitioners. Included in the petition was supporting information relating to the species' taxonomy and ecology, adequacy of existing regulatory mechanisms for the species, and the historic and present distribution, current status, and potential cause of decline. This notice constitutes the 90-day finding for the February 28, 2000, petition.

The Yosemite toad is a high elevation species that occurs in the central Sierra Nevada Mountains of California (Stebbins 1985). The range of the Yosemite toad extends from Ebbetts Pass, Alphine County, to south of Kaiser Pass and Evolution Lake, Fresno County (Stebbins 1966, Karlstrom 1962, 1973). According to the petition, the Yosemite toad commonly occurs at elevation between 2,438 and 3.047 meters (8,000 and 10,000 feet), with an overall elevation range of 1,950 to 3,500 meters (6,400 to 11,300 feet).

The Yosemite toad is a member of the Boreas-canorus group, the most primitive of three evolutionary lines of North American Bufo (Camp 1917, Karlstrom 1962). According to Camp (1916), the Yosemite toad has long been recognized as a distinct species. The Yosemite toad is a close relative of three toad species, the western toad (*Bufo boreas*), black toad (*Bufo exsul*), and Amargosa toad (*Bufo nelsoni*) (Blair 1972, Stebbins 1985). The petitioners state that Yosemite/western toad hybridization occurs in the northern portion of the Yosemite toad's range in the Blue Lake region of the Carson-Iceberg Wilderness, just southeast of Carson Pass in Alphine County (Karlstrom 1973, Stebbins 1966).

The petition and accompanying documentation state that the species qualifies for listing pursuant to the Act due to potential habitat destruction and modification, the presence of disease in combination with natural predation, the inadequacy of existing regulatory mechanisms, and other natural or human-caused factors affecting its continued existence. The petitioners contend that natural and human-induced changes to Yosemite toad habitats, including (1) livestock grazing, (2) contaminant introductions, (3) non-native fish introductions, (4) disease (5) ultraviolet radiation, (6) climate change, (7) acid deposition, (8) drought, and (9) other factors, separately and in combination, are responsible for the range-wide decline of the species.

There have been few if any studies to date on the direct effect of contaminant introductions on Yosemite toad populations. However, several studies show that significant levels of contaminants have been deposited in high Sierran aquatic ecosystems from pesticide drift, acid precipitation, and smog drift (Seiber *et al.* 1998, Aston and Seiber 1997, Cahill *et al.* 1996, Miller 1996, Byron 1991, Nikolaidis 1991, Laird *et al.* 1986). The petitioners believe that contaminant introductions can harm toad populations through lethal and sublethal effects including delayed metamorphosis, reduced breeding and feeding activity (Berrill *et al.* 1993, 1994, 1995,1998, Boyer and Grue 1995, Beaties and Tyler-Jones 1992, Corn and Vertucci 1992, Hall and Henry 1992). In addition, contaminant introduction may weaken the immune systems of toads rendering them more susceptible to disease such as chytrid fungus and red-legged disease (Aeromonas hydrophila) (Carey *et al.* 1993, 1995, 1999, Jennings 1996, Drost and Fellers 1996, Sherman and Morton 1993).

There is ample evidence to suggest that Yosemite toads cannot coexist with introduced fish. In addition, there are strong indications that nonnative fish introductions have contributed to the decline of the toad. Not only do nonnative fish prey upon adult, juvenile and larval toads, they also alter the food chain of high Sierran aquatic ecosystems (Knapp 1996, Jennings 1996, Bradford 1989, 1993). The petitioners state that the most significant effect of nonnative fish on Yosemite toads is that they preclude the use of the deeper and more permanent water bodies that provide refuge for toads during periods of prolonged drought. The loss of higher quality, permanent breeding habitats for Yosemite toads disrupts their ability to recolonize peripheral areas after long periods of drought, and renders them more susceptible to localized extinctions (Knapp 1996, Drost and Fellers 1994, 1996, Bradford *et al.* 1993).

The petitioners state that disease likely plays a significant role in the widespread decline of Yosemite toad populations. Two diseases that may affect Yosemite toads are red-legged disease, which is caused by a freshwater bacteria, and chytrid fungus. Sherman and Morton (1984, 1993) noted the mortality of adult Yosemite toads due to red-legged disease at Tioga Pass during the 1970's. Chytrid fungus, an aquatic pathogen discovered after 1993, has caused mortality in many amphibian species in the United States and worldwide. An investigation of museum specimens of Yosemite toads collected by Sherman and Morton at Tioga Pass during a die-off in 1977–1978 found those toads to be infected with chytrid fungus (Carey *et al.* 1999). The petitioners state that there is significant information yet to be discovered regarding aquatic pathogens and their relationship to the ecology of Yosemite toads. Should evidence indicate that Yosemite toads have evolved with aquatic pathogens, then other stressors including contaminant introductions and UV-radiation may be reducing the ability of toads to fight off infection from these pathogens (Sherman and Norton 1993, Drost and Fellers 1996, Carey *et al.* 1993, 1995, 1999, Jennings 1996, Taylor *et al.* 1999).

The petitioners state that there are other natural and anthropogenic factors that may be negatively affecting the Yosemite toad, including (1) airborne contamination, (2) ultraviolet radiation, and (3) climate change. However, there are significant gaps in the extent of the information regarding affects of airborne contaminants on Yosemite toads. The affect of UV-radiation and global warming on Yosemite toad populations is also lacking at this time. These factors may provide additional stresses on toad populations that are already being assaulted by nonnative fish, livestock grazing, drought, and disease. Combinations of stresses may explain the significant declines of Yosemite toads recorded over the past few decades.

Several studies and observations made within the first half of the twentieth century report that Yosemite toads were abundant throughout their range, especially within Yosemite National Park (Grinnell and Storer 1924, Karlstrom 1962, Mullally 1953, Mullally and Cunningham 1956, Yosemite National Park Office 1999). More recent studies indicated that Yosemite toads have suffered significant declines in both abundance and distribution throughout their range. Jennings and Hayes (1994) reported that, even though Yosemite toads occur in areas that are free from physical disturbance, the species has declined or disappeared from 50 percent of known historic sites.

Within Yosemite National Park, the heart of the Yosemite toad's range, there are several documented declines in the distribution and abundance of Yosemite toad populations. Drost and Fellers (1994, 1996) resurveyed areas within the park that were originally surveyed in the first quarter of last century by the U.C. Berkeley survey team lead by Grinnell and Storer. By the 1990s, Yosemite toads only occupied 50 percent of these sites. The petitioners note that in a subsequent amphibian survey within Yosemite National Park, Fellers (1997) found 5 locations occupied by Yosemite toads out of 260 survey sites. The petitioners do not report whether these 260 survey locations were historically occupied by Yosemite toads. Additionally, several other sites that once supported abundant Yosemite toad populations including Tioga Pass, Sylvester Meadows, and several nearby sites have shown complete disappearances of toads in recent years (Karlstrom 1962, Sherman and Morton 1993). Sherman and Morton (1993) further documented significant declines in toad populations at their Tioga Pass Meadow study area. They counted an average of 257 toads annually during the period of 1974–1978 at Tioga Pass Meadow. By 1982, toad populations had declined to 28 individuals and in 1990, only one female, two males, and 4 to 6 egg masses. In 1991, these researchers noted only two egg masses and a single calling male. Other researchers have corroborated this decline (Drost and Fellers 1994). Additional population declines of Yosemite toads were observed at Saddlebag Lake, Frog Lake, Hoover Lake, and Mildred Lake (Sherman and Morton 1993).

The trend of populations declines also holds true for sites outside of Yosemite National Park. Bradford and Gordon (1992) conducted a survey of 235 randomly selected sites in potential Yosemite toad habitat above 2,625 meters (8,000 feet) and found only 17 sites occupied. In addition, the petitioners cite a survey conducted by David Martin (1990) that found of 75 historic localities surveyed throughout the high Sierra, only 40 were occupied. During his survey, Martin (1990) found no toads at historic locations at elevations below 2,461 meters (7,500 feet). Furthermore, Martin (1990) reported that of the 40 sites with toads present, he found an average of 5.75 individuals. The petition cites a personal communication with David Martin (San Jose State University, pers. comm. 2000), indicating that historically, Yosemite toad numbers were estimated to be over 100 individuals per site at each of these 75 locations. Additional toad declines have been reported by Martin (1992) at Emigrant Meadow and Lunch Meadow in the Emigrant Wilderness, Stanislaus National Forest, and around Sonora Pass, where toad populations that had once been abundant are now small or undetectable. This trend appears to hold for toad populations on the El Dorado and Sequoia National Forests (Stebbins 1966).

We have reviewed the petition and other information available in our files. Based upon this review, we believe that substantial evidence exists that listing of this species as endangered may be warranted. When we make a positive finding, we also are required to promptly commence a review of the status of the species. Based upon available and any newly obtained information, we will issue a 12-month finding as required by section 4(b)(3)(B) of the Act. Petitioners also requested that critical habitat be designated for the Yosemite toad; the 12-month finding will address this issue.

**Public Information Requested**

The Service hereby announces its formal review of the species' status pursuant to this 90-day petition finding. We request any additional data, comments, and suggestions from the public, other concerned government agencies, the scientific community, industry, or any other interested parties concerning the status of the Yosemite toad. Of particular interest is information regarding: (1) The existence and status of additional populations, (2) the implementation of any actions that are benefitting the species, and (3) the impact of livestock grazing, contaminant introductions, non-native fish introductions, disease, ultraviolet radiation, climate change, drought, and other factors that may be responsible for the range-wide decline of the species.

If you wish to comment, you may submit your comments and materials concerning this finding to the Field Supervisor, Sacramento Fish and Wildlife Office (see **ADDRESSES** section). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Respondents may request that we withhold their home address, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

**References Cited**

You may request a complete list of all references we cited, as well as others, from the Sacramento Fish and Wildlife Office (see **ADDRESSES** section).

Author: The primary author of this document is Jason Davis, Sacramento Fish and Wildlife Office (see **ADDRESSES** section).

**Authority**

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: October 5, 2000.

**Jamie Rappaport Clark,**

*Director, Fish and Wildlife Service.*

[FR Doc. 00–26180 Filed 10–11–00; 8:45 am]

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# Notices

Federal Register
Vol. 65, No. 198
Thursday, October 12, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## AFRICAN DEVELOPMENT FOUNDATION

### Board of Directors Meeting; Sunshine Act

**TIME:** 9 a.m. to 1 p.m.

**PLACE:** ADF Headquarters.

**DATE:** Friday, October 13, 2000.

**STATUS:** Open.

**Agenda**

9:00 a.m.—Chairman's Report
9:30 a.m.—President's Report
10:30 a.m.—New Business
11:00 a.m.—Executive Session (Closed)
1:00 p.m.—Adjournment

If you have any questions or comments, please direct them to Dick Day, Coordinator, Office of Policy, Planning and Outreach, who can be reached at (202) 673–3916.

**Nathaniel Fields,**
*President.*

[FR Doc. 00–26351 Filed 10–10–00; 1:17 pm]
BILLING CODE 6116–01–U

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

**[Docket No. L.S.–00–09]**

### Notice of Request for Extension and Revision of Currently Approved Information Collection

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension for and revision to a currently approved information collection for the Seed Service Testing Program.

**DATES:** Comments on this notice must be received by December 11, 2000 to be assured of consideration.

*Additional Information or Comments:* Richard C. Payne, Chief, Seed Regulatory and Testing Branch (SRTB), Livestock and Seed Program, AMS, Room 209, Building 306, BARC–E., Beltsville, Maryland 20705–2325, telephone (301) 504–9430, Fax (301) 504–8098.

**SUPPLEMENTARY INFORMATION:**

*Title:* Seed Service Testing Program.

*OMB Number:* 0581–0140.

*Expiration Date of Approval:* July 31, 2001.

*Type of Request:* Extension and revision of currently approved information collection.

*Abstract:* This information collection is necessary to conduct voluntary seed testing on a fee for service basis. The AMA of 1946, as amended, 7 U.S.C. 1621 *et seq.* authorizes the Secretary to inspect and certify the quality of agricultural products and collect such fees as reasonable to cover the cost of service rendered.

The purpose of the voluntary program is to promote efficient, orderly marketing of seeds, and assist in the development of new and expanding markets. Under the program, samples of agricultural and vegetable seeds submitted to the Agricultural Marketing Service are tested for factors such as purity and germination at the request of the applicant for the service. In addition, grain samples, submitted at the applicant's request, by the Grain Inspection, Packers and Stockyards Administration are examined for the presence of certain weed and crop seed. A Federal Seed Analysis Certificate is issued giving the test results. Most of the seed tested under this program is scheduled for export. Many importing countries require a Federal Seed Analysis Certificate on U.S. seed.

The only information collected is information needed to provide the service requested by the applicant. This includes information to identify the seed being tested, the seed treatment (if treated with a pesticide), the tests to be performed, and any other appropriate information required by the applicant to be on the Federal Seed Analysis Certificate.

The number of seed companies applying for the seed testing service has decreased from 92 to 65 during the past 3 years due to consolidation of the seed industry. Even though the number of seed companies applying for the service has decreased, the number of samples received for testing has increased slightly. Therefore, the average burden for information collection has increased for seed companies applying for the service.

The information in this collection is used only by authorized AMS employees to track, test, and report test results to the applicant.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average .25 hours per response.

*Respondents:* Applicants for seed testing service.

*Estimated Number of Respondents:* 65.

*Estimated Number of Responses per Respondent:* 24.1.

*Estimated Total Annual Burden on Respondents:* 392 hours.

*Comments are invited on:* (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology. Comments may be sent to Richard C. Payne, Chief, Seed Regulatory and Testing Branch, L.S., AMS, USDA, Room 209, Building 306, BARC–E., Beltsville, Maryland 20705–2325 or by E-mail to richard.payne2@usda.gov. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.



Dated: October 4, 2000.

**Barry L. Carpenter,**
*Deputy Administrator, Livestock and Seed Program.*

[FR Doc. 00–26107 Filed 10–11–00; 8:45 am]
BILLING CODE 3410–02–P

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

**[Docket No. LS–00–08]**

### Notice of Request for Extension and Revision of Currently Approved Information Collection

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension for and revision to a currently approved information collection for the Federal Seed Act Labeling and Enforcement.

**DATES:** Comments on this notice must be received by December 11, 2000 to be assured of consideration.

*Additional Information or Comments:* Richard C. Payne, Chief, Seed Regulatory and Testing Branch (SRTB), Livestock and Seed Program, AMS, Room 209, Building 306, BARC–E., Beltsville, Maryland 20705–2325, telephone (301) 504–9430, Fax (301) 504–8098.

**SUPPLEMENTARY INFORMATION:**

*Title:* Federal Seed Act Program.

*OMB Number:* 0581–0026.

*Expiration Date of Approval:* July 30, 2001.

*Type of Request:* Extension and revision of currently approved information collection.

*Abstract:* This information collection and recordkeeping requirements are necessary to conduct the FSA (7 U.S.C. 1551, *et seq.*) program with respect to certain testing, labeling, and recordkeeping requirements of agricultural and vegetable seeds in interstate commerce.

The FSA, Title II, is a truth-in-labeling law that regulates agricultural and vegetable planting seed in interstate commerce. Seed subject to the FSA must be labeled with certain quality information and it requires information to be truthful. The Act prohibits the interstate shipment of falsely advertised seed and seed containing noxious-weed seeds that are prohibited from sale in the State into which the seed is being shipped.

Besides providing farmers and other seed buyers with information necessary to make an informed choice and protect the buyer from buying mislabeled seed, the FSA promotes fair competition within the seed industry. It also encourages uniformity in labeling, aiding the movement of seed between the States. Because seed moving in interstate commerce must be labeled according to the FSA, most State laws have seed labeling requirements similar to those of the FSA, causing more uniformity of State laws.

Although anyone can submit a complaint to the SRTB, the FSA is primarily enforced through cooperative agreements with the States. State seed inspectors inspect and sample seed where it is being sold. They send a sample of the seed and a copy of the labeling to the State seed laboratory where the sample is tested and the analysis compared with the label. When violations are found, State personnel may take corrective action such as issuing a stop sale order to keep the seed from being sold until it is correctly labeled or otherwise disposed of. They may also take action against the shipper or labeler of the seed. The action a State may take against a shipper in another State is limited. Therefore, violations involving interstate shipments may be turned over to AMS for Federal action.

AMS investigates the complaints. The investigation normally involves check testing the State's official sample and possibly the shipper's file sample at the Testing Section. The shipper's records are checked to establish that there was a violation of the FSA, responsibility for the violation, and the cause of the mislabeling, if possible. The investigation will help the shipper find and correct the problem causing the violation and help AMS to determine the appropriate regulatory action.

No unique forms are required for this information collection. The FSA requires seed in interstate commerce to be tested and labeled. Once in a State, seed must comply with the testing and labeling requirements of the State seed law. The same test and labeling required by the FSA nearly always satisfies the State's testing and labeling requirements. Also the receiving, sales, cleaning, testing, and labeling records required by the FSA, are records that the shipper would normally keep in good business practice.

The information obtained under this information collection is the minimum information necessary to effectively carry out the enforcement of the FSA.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 2.08 hours per response.

*Respondents:* Interstate shippers and labelers of seed.

*Estimated Number of Respondents:* 2,997.

*Estimated Number of Responses per Respondent:* 5.90.

*Estimated Total Annual Burden on Respondents:* 37,215 hours.

*Comments are invited on:* (1) Whether the proposed collections of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Richard C. Payne, Chief, Seed Regulatory and Testing Branch, LS, AMS, USDA, Room 209, Building 306, BARC–E., Beltsville, Maryland 20705–2325 or by E-mail to richard.payne2@usda.gov. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: October 4, 2000.

**Barry L. Carpenter,**
*Deputy Administrator, Livestock and Seed Program.*

[FR Doc. 00–26108 Filed 10–11–00; 8:45 am]
BILLING CODE 3410–02–P

## DEPARTMENT OF AGRICULTURE

### Commodity Credit Corporation and Farm Service Agency

### Hurricane Damage Assistance for 1999 Crop

**AGENCIES:** Commodity Credit Corporation and Farm Service Agency, USDA.

**ACTION:** Notice of relief available to reduce the amount of loan indebtedness on certain 1999-crop loans.

**SUMMARY:** This notice announces the intent of the Secretary of Agriculture,

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pursuant to new legislation, to release up to $81 million of loan indebtedness for certain 1999 crop loans made in North Carolina by the Commodity Credit Corporation where the collateral was destroyed or damaged by Hurricanes Dennis, Floyd or Irene. To assure all are given a chance to be heard, this notice sets out the statute and invites all persons who believe that they may be entitled to relief under the terms of the statute as well as all other interested persons to comment or suggest how eligibility for relief should be determined and how such relief should be administered.

**DATES:** Comments with respect to this notice must be received by October 27, 2000 to be assured of consideration.

**ADDRESSES:** Comments should be filed by the date set in this notice with Larry W. Mitchell, Deputy Administrator for Farm Programs, STOP 0510, 1400 Independence Avenue, SW, Washington, DC 20250–0510.

**FOR FURTHER INFORMATION CONTACT:** Thomas R. Burgess, telephone (202) 720–0156.

**SUPPLEMENTARY INFORMATION:** Section 2101 of Chapter 5 of the Fiscal Year 2001 Military Construction Appropriations (Pub. L. 106–246) provides in connection with North Carolina hurricane loses for up to $81 million for relief in connection with the 1999 crop year loans made by the Commodity Credit Corporation (CCC).

The entire Section reads as follows:

Sec. 2101. With respect to any 1999 crop year loan made by the Commodity Credit Corporation to a cooperative marketing association established under the laws of North Carolina, and to any person or entity in North Carolina obtaining a 1999 crop upland cotton marketing assistance loan, the Corporation shall reduce the amount of such outstanding loan indebtedness in an amount up to 75 percent of the amount of the loan applicable to any collateral (in the case of cooperative marketing associations of upland cotton producers and upland cotton producers, not to exceed $5,000,000 for benefits to such associations and such producers for up to 75 percent of the loss incurred by such associations and such producers with respect to upland cotton that had been placed under loan) that was produced in a county in which either the Secretary of Agriculture or the President of the United States declared a major disaster or emergency due to the occurrence of Hurricane Dennis, Floyd, or Irene if the Corporation determines that such collateral suffered any quality loss as a result of said hurricane: *Provided*, That if a person or entity obtains a benefit under this section with respect to a quantity of a commodity, no marketing loan gain or loan deficiency payment shall be made available under the Federal Agricultural Improvement and Reform Act of 1996 with respect to such quantity: *Provided further*, That no more than $81,000,000 of the funds of the Corporation shall be available to carry out this section: *Provided further*, That the entire amount shall be available only to the extent an official budget request for $81,000,000, that includes designation of the entire amount of the request as an emergency requirement as defined in the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, is transmitted by the President to the Congress: *Provided further*, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of such Act.

This notice is intended to provide an opportunity for any person who believes that they are entitled to relief to provide comments on how the statutes eligibility provisions should be construed. Such comments should be addressed to Larry W. Mitchell, Deputy Administrator for Farm Programs, STOP 0510, 1400 Independence Avenue, SW, Washington, DC 20250–0510.

Following such comment, the Deputy Administrator will take such action as may be warranted taking into account, the comments and any other new information as may be relevant, including new legislation as may related to the use of such funds.

Signed at Washington, D.C., on October 4, 2000.

**Keith Kelly,**

*Administrator, Farm Service Agency and Executive Vice President, Commodity Credit Corporation.*

[FR Doc. 00–26106 Filed 10–11–00; 8:45 am]

**BILLING CODE 3410–05–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Southwestern Region, Arizona, New Mexico, West Texas and Oklahoma; Proposed 115KV Transmission Line Project on the Tres Piedras Ranger District, Carson National Forest, Taos County, NM

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare an environmental impact statement.

**SUMMARY:** Based on a request made by the Kit Carson Electric Cooperative, the Carson National Forest is preparing an environmental impact statement (EIS) to analyze the effects of a proposal to authorize Kit Carson Cooperative to construct, operate and maintain a new 115 KV electric transmission line and fiber optic system on National Forest Lands from the existing Ojo to Taos 115 KV line to Ojo Caliente, New Mexico. The proposal also includes construction, operation and maintenance of a substation in Ojo Caliente.

The proposal has several parts, most of which pertain directly to National Forest lands and for which the USDA Forest Service will make the decision. Other portions pertain to Bureau of Land Management administered lands including the proposed substation location, for which the responsible line officer in the Bureau of Land Management will be the deciding official. If any alternative should be selected that might include private holdings, Kit Carson Electric Cooperative will negotiate for approval. The purpose of the project is to improve existing service by reducing voltage fluctuations and the number of outages. It is also to provide fiber optic capabilities to a number of small communities in the area.

**DATES:** The proposed action is currently available for review and comment. It is estimated that the draft environmental impact statement (DEIS) will be completed and distributed for comments by the end of January, 2000. A 45 day comment period will follow. The final environmental impact statement and a record of decision is estimated to be released by the end of July 2001.

**ADDRESSES:** Copies of the proposed action and DEIS will be available upon request from the Carson Forest Supervisor's Office, 208 Cruz Alta Road, Taos, NM 87571, Attn: Power Line Analysis Team. Comments related to the DEIS can be sent to the same address.

Responsible Official: The Forest Supervisor, Carson National Forest, is the responsible official and will decide whether or not the project will be implemented on Forest Service lands. If so, the Forest Supervisor will decide where, how and when they will be implemented.

**FOR FURTHER INFORMATION CONTACT:** Power Line Team Leader, Carson Forest Supervisor's Office, (505) 758–6200.

40 CFR 1501.7

Dated: September 27, 2000.

**Gilbert Vigil,**

*Forest Supervisor, Carson National Forest.*

[FR Doc. 00–26097 Filed 10–11–00; 8:45 am]

**BILLING CODE 3410–11–U**

## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* Bureau of Export Administration (BXA).

*Title:* License Exception TMP: Special Requirements.

*Agency Form Number:* None.

*OMB Approval Number:* 0694–0029.

*Type of Request:* Extension of a currently approved collection of information.

*Burden:* 1 hour.

*Average Time Per Response:* 20 minutes per response.

*Number of Respondents:* 3 respondents.

*Needs and Uses:* If commodities shipped under License Exception TMP are for news-gathering purposes, the exporter must send BXA a copy of the notification. Also, a TMP exporter must send BXA an explanatory letter if commodities shipped must be detained abroad beyond the 12 month limit. The information is used to determine whether or not an extension should be granted. This collection of information is necessary to identify original export licenses of respondents who request duplicate export licenses for lost or destroyed licenses.

*Affected Public:* Individuals, businesses or other for-profit institutions.

*Respondent's Obligation:* Required to obtain or retain a benefit.

*OMB Desk Officer:* David Rostker.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton (202) 482–3129, Management Analyst, Office of the Chief Information Officer, Department of Commerce, Room 6066, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20230.

Dated: October 6, 2000.

**Madeleine Clayton,**

*Departmental Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 00–26195 Filed 10–11–00; 8:45 am]

**BILLING CODE 3510–DT–U**

## DEPARTMENT OF COMMERCE

### Submission For OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* Bureau of Economic Analysis (BEA).

*Title:* Initial Report on a Foreign Person's Direct or Indirect Acquisition, Establishment, or Purchase of the Operating Assets of a U.S. Business Enterprise, Including Real Estate (BE–13) and Report by a U.S. Person Who Assists or Intervenes in the Acquisition of a U.S. Business Enterprise by, or Who Enters Into a Joint Venture With, a Foreign Person (BE–14).

*Form Number(s):* BE–13 and BE–14.

*Agency Approval Number:* 0608–0035.

*Type of Request:* Extension of a currently approved collection without any change in the substance or in the method of collection.

*Burden:* 1,800 hours.

*Number of Respondents:* 1,200.

*Avg Hours Per Response:* 1.5 hours.

*Needs and Uses:* The U.S. Government requires data from the BE–13 and BE–14 surveys to measure the amount of new foreign direct investment in the United States, monitor changes in such investment, assess its impact on the U.S. economy, and based upon this assessment, make informed policy decisions regarding foreign direct investment in the United States. State governments use the data to assess the impact of foreign direct investment on individual States, in advising foreign investors seeking to invest in the United States, and in developing State policies related to foreign direct investment. The data are also used to update data on the universe of foreign-owned U.S. affiliates on a continuous basis to ensure that it is complete, and to determine whether new affiliates exceed the exemption criteria required for reporting in related benchmark surveys, and annual and quarterly cut-off sample surveys of foreign direct investment conducted by BEA.

The data from the BE–13 survey complement data from BEA's other ongoing surveys of foreign direct investment in the United States, namely the BE–605 and BE–605 Bank quarterly surveys of transactions of U.S. affiliates with their foreign parents, and the BE–12 (benchmark) and BE–15 (annual) surveys, which provide data on the overall operations of U.S. affiliates.

*Affected Public:* U.S. businesses or other for-profit institutions.

*Frequency:* One-time survey.

*Respondent's Obligation:* Mandatory.

*Legal Authority:* Title 22 U.S.C., 3101–3108, as amended.

*OMB Desk Officer:* Paul Bugg, (202) 395–3093.

You may obtain copies of the above information collection proposal by calling or writing Madeleine Clayton, Departmental Forms Clearance Officer, Office of the Chief Information Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Send comments on the proposed information collection within 30 days of publication of this notice to Paul Bugg, OMB Desk Officer, Room 10201, New Executive Office Building, Washington, DC 20503.

Dated: October 6, 2000.

**Madeleine Clayton,**

*Departmental Forms Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 00–26196 Filed 10–12–00; 8:45 am]

**BILLING CODE 3510–06–U**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–583–008]**

### Certain Circular Welded Carbon Steel Pipes and Tubes From Taiwan: Final Results of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of final results of antidumping duty administrative review.

**SUMMARY:** On June 7, 2000, the Department of Commerce (the Department) published the preliminary results of review of the antidumping duty order on certain circular welded carbon steel pipes and tubes from Taiwan (65 FR 36110). The review covers one manufacturer/exporter of the subject merchandise to the United States and the period May 1, 1998 through April 30, 1999. The manufacturer covered is Yieh Hsing Enterprise Co. Ltd. (Yieh Hsing). This review originally covered seven firms; however, we rescinded the review with respect to six of these companies at the preliminary results. Based on our analysis of the comments received, we have made changes in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margin for the reviewed firm is listed below in the section entitled "Final Results of Review."

**EFFECTIVE DATE:** October 12, 2000.

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**FOR FURTHER INFORMATION CONTACT:** Thomas Killiam or Robert James, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–5222 or (202) 482–0649, respectively.

**SUPPLEMENTARY INFORMATION:**

**The Applicable Statute and Regulations**

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (1999).

**Background**

On June 7, 2000 the Department published the preliminary results of this administrative review, and rescinded the review with respect to Far East Machinery Co., Ltd., Sheng Yu Steel Co., Ltd., Tai Feng Industries Ltd., Kao Hsing Chang Iron & Steel Corporation, Yu Din Steel Co., Ltd., and Yieh Loong Co., Ltd. See Certain Circular Welded Carbon Steel Pipes and Tubes From Taiwan: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Review (65 FR 36110) (Preliminary Results). We received comments on the Preliminary Results from respondent Yieh Hsing. We received no rebuttal comments from the petitioners.[1] The Department has now completed this review in accordance with section 751 of the Tariff Act.

**Scope of the Review**

Imports covered by this review are shipments of certain circular welded carbon steel pipes and tubes. The Department defines such merchandise as welded carbon steel pipes and tubes of circular cross section, with walls not thinner than 0.065 inch and 0.375 inch or more but not over 4½ inches in outside diameter. These products are commonly referred to in the industry as standard pipe and are produced to various American Society for Testing and Materials specifications, most notably A–53, A–120, or A–135. Standard pipe is currently classified under Harmonized Tariff Schedule of the United States (HTSUS) item numbers 7306.30.5025, 7306.30.5032, 7306.30.5040, and 7306.30.5055. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under review is dispositive.

**Methodology**

Except for the corrections of clerical errors discussed below we did not change our method of analysis from the preliminary results. Thus, we applied the same methods with regard to price and cost of production, and observed the requirements of section 773(a)(1)(B)(i) of the Tariff Act concerning our level-of-trade analysis.

*Comment 1: Model Match Characteristics*

Yieh Hsing argues that the Department mistakenly included the product characteristic of thickness twice to create its concordance for U.S. sales in its model matching program. Because of this error, Yieh Hsing asserts, the product characteristic of specification was excluded from the concordance with respect to U.S. sales, and a U.S. sale was improperly matched with non-identical or non-similar home market sales to calculate Yieh Hsing's dumping margin.

*Department's Position*

We agree with Yieh Hsing that in the model match program the characteristic measuring pipe wall thickness was not properly referenced when matching U.S. sales to home market sales, and we have adjusted our final results accordingly (*See* Analysis Memorandum).

*Comment 2: Matching Sales in the Same Month*

Yieh Hsing argues that the number code that the Department assigned to U.S. sales for a particular month in its margin calculation program was not identical to the number code assigned to home market sales sold in the same month in its model matching program. Yieh Hsing asserts this error resulted in comparison of U.S. sales of a month with home market sales in the wrong months.

*Department's Position*

We agree that the number codes for the months in the model matching program were incorrect and have corrected those typographical errors (*See* Analysis Memorandum).

*Comment 3: Improper Coding of Sales Months*

Yieh Hsing further claims that the Department assigned two different number codes to January 1998 in its model matching program and margin program. Because of these errors, Yieh Hsing argues, the margin calculation program failed to compare U.S. sales to the correct contemporaneous home market sales.

*Department's Position*

We agree that the number codes for the months in the model matching program and margin program were incorrect and have corrected those typographical errors (*See* Analysis Memorandum).

**Final Results of Review**

As a result of this review, we determine that the following weighted-average margin exists:

| Manufacturer/exporter | Period of review | Margin (percent) |
|---|---|---|
| Yieh Hsing | 5/1/1998–4/30/1999 | 0.17 |

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department shall issue appraisement instructions directly to the Customs Service. For assessment purposes, the Department has calculated importer-specific assessment rates by dividing the total antidumping duties calculated for the subject merchandise examined by the entered value of such merchandise. The Department will direct the Customs Service to assess antidumping duties on appropriate entries by applying the assessment rate to the entered value of the merchandise entered during the POR, except where the assessment rate is zero or *de minimis* (*see* 19 CFR 351.106(c)(2)).

Furthermore, the following deposit requirements will be effective for all

[1] Allied Tube & Conduit Corp., Wheatland Tube Company, and the Sawhill Tubular Division of Armco Inc.



shipments of certain circular welded carbon steel pipes and tubes from Taiwan entered, or withdrawn from the warehouse, for consumption on or after the publication date of the final results of these administrative reviews, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for Yieh Hsing will be zero, in light of its *de minimis* weighted-average margin; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this review, the cash deposit rate will be 9.70 percent. This rate is the "all others" rate from the amended final determination in the LTFV investigation.

This notice also serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during these review periods. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with sections 351.305 and 351.306 of the Department's regulations. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 351.221.

Dated: October 5, 2000.

**Troy H. Cribb,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 00–26243 Filed 10–11–00; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–588–838]**

### Clad Steel Plate From Japan: Rescission of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of rescission of antidumping duty administrative review.

**SUMMARY:** In response to notification by Dana Glacier Daido America LLC that it is not an interested party in this proceeding, we are rescinding the 1999–2000 administrative review of clad steel plate from Japan.

**EFFECTIVE DATE:** October 12, 2000.

**FOR FURTHER INFORMATION CONTACT:** James Nunno or Christopher Priddy, AD/CVD Enforcement Group I, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–0783 or (202) 482–1130, respectively.

**Applicable Statute and Regulations**

Unless otherwise indicated, all citations to the Act are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (1999).

**Background**

On July 31, 2000, Dana Glacier Daido America LLC (Dana), requested that the Department conduct an administrative review of the antidumping duty order on stainless steel sheet and strip in coils from Japan for subject merchandise produced and exported by Daido Metal Corp. (Daido) during the period January 4, 1999, through June 30, 2000. On August 3, 2000, and August 9, 2000, Dana revised this request to correct and clarify the case name and number for which it requested an administrative review (*i.e.*, Dana intended to request a review of clad steel plate from Japan produced and/or exported by Daido to the United States). On August 31, 2000, Dana informed the Department that the merchandise that it imported is not subject to the antidumping duty order on clad steel plate from Japan, and withdrew its request for an administrative review. On September 6, 2000, the Department published in the **Federal Register** a notice of initiation of administrative review with respect to Daido. See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part; 65 FR 53980 (Sept. 6, 2000).

**Rescission of Review**

Pursuant to 19 CFR 351.213(b)(3), the Department will initiate an administrative review based on a request from an importer of the subject merchandise. Given that Dana withdrew its request for review, notified the Department that it was not an importer of the subject merchandise during the period of review, and that no other party requested a review of this order, we are rescinding this review.

This rescission of the administrative review and notice are in accordance with section 751 of the Act and 19 CFR 351.213(d).

Dated: October 2, 2000.

**Richard W. Moreland,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. 00–26242 Filed 10–11–00; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–583–824]**

### Polyvinyl Alcohol From Taiwan: Final Results of Third Antidumping Duty Administrative Review and Determination Not To Revoke Order in Part

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of final results of third antidumping duty administrative review and determination not to revoke order in part.

**SUMMARY:** On June 6, 2000, the Department of Commerce published the preliminary results in the third administrative review of the antidumping duty order on polyvinyl alcohol from Taiwan and intent not to revoke the order in part. The review covers Chang Chun Petrochemical Co., Ltd., a manufacturer/exporter of the subject merchandise. The period of review is May 1, 1998, through April 30, 1999.

Based on our analysis of the comments received, we have made one change in the margin calculations to correct a ministerial error. However, the final results do not differ from the preliminary results as a result of that change. The final weighted-average

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dumping margin for the reviewed firm is listed below in the section entitled "Final Results of Review."

**EFFECTIVE DATE:** October 12, 2000.

**FOR FURTHER INFORMATION CONTACT:** Brian Ledgerwood or Brian Smith, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–3836 or (202) 482–1766, respectively.

**SUPPLEMENTARY INFORMATION:**

**The Applicable Statute**

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR part 351 (April 1999).

**Background**

The review covers one manufacturer/exporter, Chang Chun Petrochemical Co., Ltd. ("Chang Chun"). The period of review ("POR") is May 1, 1998, through April 30, 1999.

On June 6, 2000, the Department published in the **Federal Register** the preliminary results in the third administrative review of the antidumping duty order on polyvinyl alcohol from Taiwan and intent not to revoke the order in part (65 FR 35896). On July 6, 2000, Chang Chun requested a hearing.

We invited parties to comment on the preliminary results of review. Parties filed case and rebuttal briefs on July 6 and 13, 2000, respectively. A public hearing was held on July 20, 2000. The Department has conducted this administrative review in accordance with section 751 of the Act.

**Scope of Review**

The product covered by this review is PVA. PVA is a dry, white to cream-colored, water-soluble synthetic polymer. This product consists of polyvinyl alcohols hydrolyzed in excess of 85 percent, whether or not mixed or diluted with defoamer or boric acid. Excluded from this review are PVAs covalently bonded with acetoacetylate, carboxylic acid, or sulfonic acid uniformly present on all polymer chains in a concentration equal to or greater than two mole percent, and PVAs covalently bonded with silane uniformly present on all polymer chains in a concentration equal to or greater than one-tenth of one mole percent. PVA in fiber form is not included in the scope of this review.

The merchandise under review is currently classifiable under subheading 3905.30.00 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope is dispositive.

**Analysis of Comments Received**

All issues raised in the case and rebuttal briefs by parties to this antidumping duty administrative review are addressed in the "Issues and Decision Memorandum" ("Decision Memorandum") from Richard W. Moreland, Deputy Assistant Secretary for Import Administration, to Troy H. Cribb, Acting Assistant Secretary for Import Administration, dated October 4, 2000, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memorandum, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B–099 of the main Department building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at ia.ita.doc.gov. The paper copy and electronic version of the Decision Memorandum are identical in content.

**Determination Not To Revoke Order**

For the reasons outlined in the Decision Memorandum, we have determined not to revoke the antidumping duty order with respect to subject merchandise produced and also exported by Chang Chun Petrochemical Co., Ltd. because its sales were not made in commercial quantities in accordance with 19 CFR 351.222(e).

**Changes Since the Preliminary Results**

Based on our analysis of the comments received, we have made one change in the margin calculations. For a discussion of this change, see the "Margin Calculations" section of the Decision Memorandum.

**Final Results of Review**

We determine that the following weighted-average margin percentage exists for Chang Chun for the period May 1, 1998, through April 30, 1999:

| Manufacturer/exporter | Margin (percent) |
|---|---|
| Chang Chun Petrochemical Co., Ltd | 0.00 |

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.106(c)(2), we will instruct the Customs Service to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis* (*i.e.*, at or above 0.50 percent). If no importer-specific assessment rate is at or above *de minimus*, we shall instruct the Customs Service to liquidate all appropriate entries without regard to antidumping duties.

**Cash Deposit Requirements**

The following deposit requirements will be effective upon publication of this notice of final results of the administrative review for all shipments of PVA from Taiwan entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) No cash deposit rate for Chang Chun will be required for PVA from Taiwan that is produced and exported by Chang Chun; (2) for exporters not covered in this review, but covered in the less-than-fair-value ("LTFV") investigation or prior reviews, the cash deposit rate will continue to be the company-specific rate from the LTFV investigation or the prior review; (3) if the exporter is not a firm covered in this review, a prior review, or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 19.21 percent. This rate is the "All Others" rate from the LTFV investigation.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections section 751(a)(1) and 777(i) of the Act.

Dated: October 4, 2000.

**Troy H. Cribb,**

*Acting Assistant Secretary for Import Administration.*

**Appendix—List of Issues**

1. Commercial Quantities:
   a. Applicability of the Commercial Quantities Regulation to Chang Chun's U.S. Sales of Subject Merchandise
   b. Application of the Commercial Quantities Requirement and the Positive Evidence Rule
   c. Other Commercial-Quantity-Related Issues
2. Positive Evidence Rule and Factors to Consider in Revoking the Order
3. Ministerial Error

[FR Doc. 00–26241 Filed 10–11–00; 8:45 am]

**BILLING CODE 3510–DS–P**

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–533–810]**

### Stainless Steel Bar From India; Notice of Extension of Time Limit for Preliminary Results of Antidumping Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of extension of time limit for preliminary results of administrative review.

**SUMMARY:** The Department of Commerce is extending the time limit for the preliminary results of the fifth administrative review of the antidumping duty order on stainless steel bar from India. The period of review is February 1, 1999, through January 31, 2000. This extension is made pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act.

**EFFECTIVE DATE:** October 12, 2000.

**FOR FURTHER INFORMATION CONTACT:** Ryan Langan or Blanche Ziv, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–1279 or 482–4207, respectively.

**The Applicable Statute and Regulations**

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations refer to 19 CFR Part 351, April 1999.

**Extension of Time Limit for Preliminary Results**

Due to the delayed initiation of the Department's cost of production investigation and the additional time required to collect and analyze cost of production data, it is not practicable to complete this review within the time limit currently mandated by section 751(a)(3)(A) (i.e., October 31, 2000). Therefore, in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2), the Department is extending the time limit for completion of the preliminary results by 90 days (*i.e.*, until January 29, 2001).

Dated: October 5, 2000.

**Louis Apple,**

*Acting Deputy Assistant Secretary for AD/CVD Enforcement.*

[FR Doc. 00–26244 Filed 10–11–00; 8:45 am]

**BILLING CODE 3510–DS–P**

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 100400A]**

### Pacific Fishery Management Council; Public Meetings

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meetings.

**SUMMARY:** The Pacific Fishery Management Council (Council) and its advisory entities will hold public meetings.

**DATES:** The Council and its advisory entities will meet October 30-November 3, 2000. The Council meeting will begin on Tuesday, October 31, at 8 a.m., reconvening each day through Friday. All meetings are open to the public, except a closed session will be held from 8 a.m. until 9 a.m. on Wednesday, November 1 to address litigation and personnel matters. The Council will meet as late as necessary each day to complete its scheduled business.

**ADDRESSES:** The meetings will be held at the Red Lion Hotel at the Quay, 100 Columbia Street, Vancouver, WA 98660; telephone: (360) 694-8341.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

**FOR FURTHER INFORMATION CONTACT:** Dr. Donald O. McIsaac, Executive Director; telephone: (503) 326-6352.

**SUPPLEMENTARY INFORMATION:** The following items are on the Council agenda, but not necessarily in this order:

**A. Call to Order**

1. Opening Remarks, Introductions
2. Roll Call
3. Executive Director's Report
4. Report on Federal Regulation Implementation
5. Approve Agenda

**B. Salmon Management**

1. Sequence of Events and Status of Fisheries in 2000
2. Results of Scientific and Statistical Committee Methodology Review
3. Final Report of the Oregon Coastal Natural Coho Work Group
4. Progress Report on Review of Queets Wild Coho Status
5. Salmon Option Hearing Sites

**C. Groundfish Management**

1. Rebuilding Plans for Cowcod and Canary Rockfish
2. Apportionment of Sablefish Discard Estimates for 2001
3. Final Harvest Levels for 2001
4. Status of NMFS Research Programs and Other Non-regulatory Activities
5. Update on American Fisheries Act Measures
6. Exempted Fishing Permit Applications
7. 2001 Groundfish Management Process and Schedule
8. Sablefish Permit Stacking
9. Management Measures for 2001
10. Permit Transfer Regulatory Amendment
11. Status of Fisheries and Inseason Adjustments

**D. Pacific Halibut Management**

1. Estimate of Bycatch in 1999
2. Changes to Catch Sharing Plan and Regulations for 2001

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**E. Coastal Pelagic Species Management**

1. Limited Entry Fishery - Capacity Goal and Other Issues
2. Pacific Sardine Harvest Guideline
3. Pacific Sardine Suballocation

**F. Habitat Issues**

Ongoing and New Habitat Issues

**G. Highly Migratory Species Management**

1. Update on Fishery Management Plan Development

**H. Administrative and Other Matters**

1. Report of the Budget Committee
2. Status of Legislation
3. Research and Data Needs and Economic Data Plan
4. Appointments to Advisory Bodies for 2001 Through 2003
5. Draft Agenda Ideas for March 2001

SCHEDULE OF ANCILLARY MEETINGS

| DATE | TIME | ROOM NAME |
|---|---|---|
| SUNDAY, OCTOBER 29, 2000 | | |
| Groundfish Management Team Scientific and Statistical | 1 p.m. | Quay Side |
| Committee Salmon Subcommittee Scientific and Statistical | 1 p.m. | Quarterdeck |
| Committee Groundfish Subcommittee | 1 p.m. | Chart |
| MONDAY, OCTOBER 30, 2000 | | |
| Council Secretariat | 7 a.m. | Pool Side |
| Groundfish Management Team | 8 a.m. | Quay Side |
| Salmon Technical Team | 8 a.m. | West River I |
| Scientific and Statistical | 8 a.m. | East River I |
| Groundfish Advisory Subpanel | 10:30 a.m. | East River II |
| Salmon Advisory Subpanel | 1 p.m. | West River II |
| Budget Committee | 2 p.m. | After Deck |
| TUESDAY, OCTOBER 31, 2000 | | |
| Council Secretariat | 7 a.m. | Pool Side |
| California State Delegation | 7 a.m. | East River I |
| Oregon State Delegation | 7 a.m. | East River II |
| Washington State Delegation | 7 a.m. | Quay Side |
| Groundfish Advisory Subpanel | 8 a.m. | East River II |
| Salmon Advisory Subpanel | 8 a.m. | West River II |
| Salmon Technical Team | 8 a.m. | West River I |
| Scientific and Statistical SSC/GMT/GAP Joint Meeting on Groundfish Stock Assessment Process | 8 a.m. | East River I |
| Enforcement Consultants | 10 a.m. | East River II |
| Groundfish Management Team | 5:30 p.m. | After Deck |
| WEDNESDAY, NOVEMBER 1; 2000 | As Needed | Quay Side |
| Council Secretariat | 7 a.m. | Pool Side |
| California State Delegation | 7 a.m. | East River I |
| Oregon State Delegation | 7 a.m. | East River II |
| Washington State Delegation | 7 a.m. | Quay Side |
| Groundfish Advisory Subpanel | 8 a.m. | East River II |
| Habitat Steering Group | 9 a.m. | East River I |
| Enforcement Consultants | As Needed | After Dock |
| Groundfish Management Team | As Needed | Quay Side |
| THURSDAY NOVEMBER 2, 2000 | | |
| Council Secretariat | 7 a.m. | Pool Side |
| California State Delegation | 7 a.m. | East River I |
| Oregon State Delegation | 7 a.m. | East River II |
| Washington State Delegation | 7 a.m. | Quay Side |
| Ad Hoc Marine Reserves | 8 a.m. | East River I |
| Enforcement Consultants | As Needed | After Deck |
| Groundfish Advisory Subpanel | As Needed | East River II |
| Groundfish Management Team | As Needed | Quay Side |
| FRIDAY, NOVEMBER 3, 2000 | | |
| Council Secretariat | 7 a.m. | Pool Side |
| California State Delegation | 7 a.m. | East River I |
| Oregon State Delegation | 7 a.m. | East River II |
| Washington State Delegation | 7 a.m. | Quay Side |

Although non-emergency issue not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

**Special Accommodations**

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 326-6352 at least 5 days prior to the meeting date.



Dated: October 4, 2000.

**Richard W. Surdi,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 00–26219 Filed 10–11–00; 8:45 am]

BILLING CODE: 3510–22–S

## DEPARTMENT OF COMMERCE

### United States Patent and Trademark Office

### Notice of Meeting of the National Intellectual Property Law Enforcement Coordination Council

**AGENCY:** United States Patent and Trademark Office, Commerce Department.

**ACTION:** Notice of meeting.

**SUMMARY:** The National Intellectual Property Law Enforcement Coordination Council (Council) will be holding a public meeting. Interested members of the public are invited to attend the meeting.

**DATES:** The public meeting will be held on Monday, November 27, 2000, beginning at noon and ending no later than 2 P.M. Those wishing to attend the meeting must pre-register by close of business on Friday, November 16, 2000.

**ADDRESSES:** The November 27, 2000, meeting will be held in the Main Auditorium at the U.S. Department of Commerce, Herbert C. Hoover Building, 14th Street and Constitution Avenue, NW., Washington, DC. Those interested in attending should pre-register by submitting their name and telephone contact number either by electronic mail through the Internet to *elizabeth.shaw2@uspto.gov* or by facsimile sent to the attention of Elizabeth Shaw at 703–305–7575.

Transcripts of the meeting will be available after January 5, 2001, and will be maintained for public inspection in the Executive Library of the USPTO, Crystal Park Two, Room 900A, 2121 Crystal Drive, Arlington, Virginia.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Shaw by telephone at 703–305–1033; by facsimile at 703–305–7575; by electronic mail at *elizabeth.shaw2@uspto.gov;* or by mail addressed to Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, Box 4, United States Patent and Trademark Office, Washington, DC 20231.

**SUPPLEMENTARY INFORMATION:** On Monday, June 5, 2000, the Council published a Notice of Request for Public Comments (65 FR 35611 (2000)) regarding issues related to the Council's policies and agenda. The November 27, 2000, meeting will introduce the Council to the public and give those who submitted comments (respondent industry speakers) regarding the issues identified in the notice an opportunity to elaborate on their responses.

**I. Issues To Be Discussed**

Respondent industry speakers have been invited to address the Council regarding law enforcement and policy issues related to the Council's mission and how the Council and the intellectual property industries can work together to improve intellectual property law enforcement in the U.S. and abroad.

The Government speakers will discuss the Council's activities and the individual agencies' current and future intellectual property law enforcement-related activities.

**II. Meeting Format**

The Council will provide a brief overview of its activities and introduce its Members and other affiliated agencies. Each agency will then have an opportunity to make a brief presentation on its law enforcement-related efforts. Respondent industry speakers will be given up to fifteen (15) minutes to present their remarks. The exact duration of each presentation will depend upon the final number of speakers. A question and answer session will follow the final industry presentation. The public is invited to be present for the entire program; however, only Council Members and respondent industry speakers may participate orally in the program. Industry speakers may provide a written copy of their testimony for inclusion in the record of the proceedings. These remarks should be provided in electronic format no later than November 27, 2000. A schedule providing the approximate starting time for each Government and industry speaker will be distributed the morning of the day of the hearing. Speakers are advised that the schedule for testimony will be subject to change during the course of the hearing. Information that is provided pursuant to this notice will be made part of a public record and may be available via the Internet. In view of this, parties should not submit information that they do not wish to be publicly disclosed or made electronically accessible. Parties who would like to rely on confidential information to illustrate a point are requested to summarize or otherwise submit the information in a way that will permit its public disclosure.

Dated: October 5, 2000.

**Q. Todd Dickinson,**

*Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.*

[FR Doc. 00–26182 Filed 10–11–00; 8:45 am]

BILLING CODE 3510–16–P

## COMMISSION OF FINE ARTS

### Notice of Meeting

The next meeting of the Commission of Fine Arts is scheduled for October 19, 2000, at 10 a.m., in the Commission's offices at the National Building Museum (Pension Building), Suite 312, Judiciary Square, 441 F Street, NW., Washington, DC, 20001–2728. Items of discussion will include designs for projects affecting the appearance of Washington, DC, including buildings and parks.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call 202–504–2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated in Washington, DC, October 2, 2000.

**Charles H. Atherton,**

*Secretary.*

[FR Doc. 00–26098 Filed 10–11–00; 8:45 am]

BILLING CODE 6330–01–M

## COMMODITY FUTURES TRADING COMMISSION

### Chicago Board of Trade: Proposed Amendments to the Chicago Board of Trade Corn and Soybeans Futures Contracts, Increasing the Maximum Daily Premium Charge, Decreasing the Maximum Number of Shipping Certificates Issuable, and Modifying Certain Loading Requirements

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice of availability of proposed amendments to contract terms and conditions.

**SUMMARY:** The Chicago Board of Trade (CBOT or Exchange) has submitted proposed amendments to its corn and soybeans futures contracts which would increase the maximum daily premium charge, decrease the maximum number of shipping certificates issuable, and modify certain loading requirements. The CBT's proposals are described in detail below. The proposed amendments were submitted under the

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Commission's 45-day Fast Track procedures which provide that, absent any contrary action by the Commission, the proposed amendments may be deemed approved on November 20—45 days after the Commission's receipt of the proposals. The Acting Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposed amendments is in the public interest and will assist the Commission in considering the views of interested persons.

**DATES:** Comments must be received on or before November 13, 2000.

**ADDRESSES:** Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street, NW, Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to secretary@cftc.gov. Reference should be made to the proposed amendments to the CBOT's maximum permissible premium charge, maximum number of shipping certificates issuable, and certain loading requirements.

**FOR FURTHER INFORMATION CONTACT:** Please contact Martin Murray of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street NW, Washington, DC 20581, telephone (202) 418–5276. Facsimile number: (202) 418–5527. Electronic mail: mmurray@cftc.gov

**SUPPLEMENTARY INFORMATION:** The CBT's proposed amendments are summarized in the table below.

| Item | Current terms | Proposed terms |
|---|---|---|
| 1. Increase the daily premium charge on outstanding shipping certificates. | 12/100 cent/bu/day at Chicago, 10/100 cent/bu/day at all other locations. | 15/100 cent/bu/day at all locations on all outstanding shipping certificates, effective November 1, 2001. |
| 2. Decrease the maximum number of shipping certificates operators of delivery facilities are allowed to issue. | Maximum certificates issuable limited to the storage capacity of delivery facilities in Chicago, and 30 times the delivery facility's registered daily rate of loading at facilities on the Illinois Waterway and St. Louis. | Maximum certificates issuable limited to the storage capacity in Chicago, and 20 times the delivery facility's registered daily rate of loading at facilities on the Illinois Waterway and St. Louis. |
| 3. Rescind the cessation of premium charges while transportation is constructively placed. | Premium charges stop 10 days after transportation is constructively placed, or load-out is completed, whichever is earlier. | Premium charges stop after load-out is completed. |
| 4. Include the stevedoring costs in barge load-out charge. | Certificate owner pays for stevedoring costs for barge load-out. | Certificate issuer pays for stevedoring costs for barge load-out. |
| 5. Extend the responsibility of the certificate owner to reimburse the certificate issuer's expense for making grain available at the delivery location. | Certificate owner must reimburse certificate issuer if owner fails to place barge within 10 days of scheduled loading date. | Certificate owner must reimburse certificate issuer if owner fails to place barge within 10 days of scheduled loading date or cancels loading orders and requires shipping certificates to be reissued. |
| 6. Eliminate the requirement that shipping certificates be delivered in multiples of 55,000 bushels. | Delivery facilities on the Illinois Waterway must make initial deliveries in multiples of 55,000 bushels. | Delivery facilities on the Illinois Waterway must make initial deliveries in multiples of 5,000 bushels. |
| 7. Improve merchantability of shipping certificates at shipping stations with less than eleven outstanding at a delivery facility, the owner of all such outstanding shipping certificates. | (No current provision.) In the event less than eleven shipping certificates are outstanding at a delivery facility, the owner of all such outstanding shipping certificates may cancel the shipping certificates and obligate the certificate issuer to provide a market value at which the issuer will either buy back all the canceled shipping certificates or sell the balance needed to complete a barge loading of at least 55,000 bushels, taker's preference. | |

The Exchange intends to make the proposed amendments effective on November 1, 2001, for all existing and newly listed contract months beginning with the November 2001 contract month. The proposed changes will apply to all shipping certificates that are outstanding on the effective date. Shipping certificates issued prior to November 1, 2001 or shipping certificates that are returned to the shipper, or his agent, for reissuance prior to November 1, 2000 may indicate two premium charges, one for the period through October 31, 2001 and other commencing on November 1, 2001.

In support of the proposed amendments, the Exchange provides the following justification:

• Increase in the maximum premium charge. The CBT indicates that the proposed charge better reflects commercial charges in the delivery territory during periods of high crop surplus, such as currently exist. Thus, the CBT believes that the proposal will improve convergence between cash and futures prices.

• Reduction in the maximum number of shipping certificates issuable to 20 times the daily rate of load-out. The CBT believes that the proposal will provide more timely load-out to receivers by reducing the potential delivery lineup to 20 business days from 30. The Exchange further notes that "only about 20 percent of the [current] maximum number of shipping certificates have been registered at one time." Consequently, it believes that this proposal would not reduce substantively "the effective deliverable supply."

• Receiver must pay premium charges through completion of loading, rather than through the earlier of ten business days following constructive placement of barges or completion of loading. The CBT indicates that the proposal "would compensate the maker for securing grain in preparation for load-out." The Exchange also notes that the receiver is protected from unnecessary delays in loading (and consequent increased premium charges) by the contracts' existing preferential treatment of shipping certificate holders over all other receivers, as well as the proposed reduction in the potential delivery line-up to 20 days, as indicated above.

• Stevedoring fees for loading grain into barges are to be paid by the certificate issuer. The CBT indicates that this reflects customary cash market practice, and "will standardize the load-out charges at all shipping stations for barges."

• Clarification that receiver must compensate deliverer for costs incurred when loading orders are canceled. The CBT notes that the proposal merely "clarifies that the taker must reimburse the maker for expenses for making the grain available for load-out when loading and shipping instructions are canceled prior to load-out."

• Permit delivery in minimum increments of 5,000 bushels, rather than 55,000 bushels. The CBT states that, "If the taker can issue shipping certificates in any multiple of 5,000 bushels and not be restricted to making initial deliveries in multiples of 55,000 bushels, the delivery process will be simplified and made more flexible." Furthermore, the "concern that less than barge load quantities would be left outstanding is minimized" by the proposed requirement that a shipper with fewer than a barge-load quantity of certificates outstanding must quote a market rate for buying back the certificates or selling a sufficient quantity of certificates to make up a barge load.

• New requirement that shippers provide a market quote for buying or selling shipping certificates should the number of shipping certificates at the shipping station fall below eleven certificates (55,000 bushels or one barge load). The CBT states that the proposal "increases merchandising opportunities of outstanding shipping certificates for the taker." The CBT also notes that, "if the shipper does not wish to be obligated to buy back shipping certificates or provide the balance for loadout, he may decide to maintain at least eleven shipping certificates outstanding at a shipping station."

The Commission is requesting comments on the proposed amendments. In particular, the Commission requests that commenters address the extent to which the proposals reflect commercial practices, and their potential impact on deliverable supplies for the corn and soybeans futures contracts.

Copies of the proposed amendments will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street NW, Washington, DC 20581. Copies of the proposed amendments can be obtained through the Office of the Secretariat by mail at the above address, by phone at (202) 418–5100, or via the Internet at secretary@cftc.gov.

Other materials submitted by the Exchange in support of the proposal may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed amendments, or with respect to other materials submitted by the Exchange, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street NW, Washington, DC 20581 by the specified date.

Issued in Washington, DC, on October 6, 2000.

**Richard Shilts,**

*Acting Director.*

[FR Doc. 00–26221 Filed 10–11–00; 8:45 am]

**BILLING CODE 6351–01–M**



## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Proposed Collection; Comment Request

**AGENCY:** Office of the Under Secretary of Defense (Personnel and Readiness), DoD.

**ACTION:** Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Assistant Secretary of Defense (Force Management Policy) announces the following proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by December 11, 2000.

**ADDRESSES:** Written comments and recommendations on the proposed information collection should be sent to the Defense Manpower Data Center (Personnel Testing Division), ATTN: Dr. Harley Baker, 400 Gigling Road, Seaside, CA 93955.

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address or call at (831) 583–2400.

*Title, Associated Form, and OMB Control Number:* High School Career Development Questionnaire, 0704—[To be determined]

*Needs and Uses:* This information collection requirement is necessary to increase the utilization of the ASVAB Career Exploration Program (CEP) in the nation's high schools. At no cost to the schools, the CEP provides age-appropriate materials to support high school career counseling and aids in the process of identifying interested students who meet the qualifications for entrance into the nation's Armed Forces. While the CEP is utilized in about 14,000 schools nationwide serving about 850,000 students, this represents only about 13% of the school population. This brief questionnaire study will provide the information needed to modify the CEP to make it more useful both for the schools and the students they serve and for DoD recruiting efforts.

*Affected public:* Not-for-profit educational institutions.

*Annual burden hours:* 722.

*Number of respondents:* 2,166.

*Responses per respondent:* 1.

*Average burden per response:* 20 minutes.

*Frequency:* Other: One-time.

**SUPPLEMENTARY INFORMATION:**

**Summary of Information Collection**

This one-time study will employ a brief questionnaire to help document why schools elect to participate in the ASVAB program. The questionnaire will be sent to approximately 3,050 schools, with an expected response rate of about 70%. This study will employ the sampling plan developed by the National Center for Education Statistics (NCES) for their School and Staffing Survey. The information is needed to determine what changes could be made in the ASVAB program to increase its effectiveness in high school career counseling and thus increase its utilization in the schools. The questionnaire focuses on several issues, such as the types of career development programs used in the schools, their strengths and weaknesses, barriers to wider implementation of these programs, and the career development needs of high school students. For those schools that use the CEP, we will ask questions about why they elect to use the ASVAB program, whether

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participation could be increased among college-bound students, potential ASVAB internet administration, and whether ASVAB personnel negatively affect participation. For nonparticipating schools, we will also ask why they elect not to use the ASVAB program, and to what extent logistical problems, anti-military sentiment, poor fit with school goals, and poor fit with student goals have influenced their decision not to use the ASVAB program. Results will be merged with data collected as part of the NCES School and Staffing Survey to provide a more complete understanding of the reasons schools elect to participate in the CEP. The results of this study will be reported internally to the ASVAB Career Exploration Program and to the appropriate DoD committees and agencies, as well as to the Congressionally-mandated oversight committee. It is anticipated that the results will be of primary interest to those involved in the marketing of the ASVAB program, as well as members of the recruiting community. Only aggregated data will be reported; no individual or school names will be included in the results.

Dated: October 5, 2000.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 00–26166 Filed 10–11–00; 8:45 am]

BILLING CODE 5001–10–M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Transmittal No. 00–68]**

### 36(b)(1) Arms Sales Notification

**AGENCY:** Department of Defense, Defense Security Cooperation Agency.

**ACTION:** Notice.

**SUMMARY:** The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

**FOR FURTHER INFORMATION CONTACT:** Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 00–68 with attached transmittal and policy justification.

Dated: October 5, 2000.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

BILLING CODE 5001–10–M



DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

27 SEP 2000

In reply refer to:
I-00/008889

**Honorable J. Dennis Hastert**
**Speaker of the House of Representatives**
**Washington, D.C. 20515-6801**

**Dear Mr. Speaker:**

**Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 00-68 and under separate cover the classified offset certificate thereto. This Transmittal concerns the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to the Taipei Economic and Cultural Representative Office in the United States for defense articles and services estimated to cost $513 million. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.**

**Reporting of Offset Agreements in accordance with Section 36(b)(1)(C) of the Arms Export Control Act (AECA), as amended by Section 1245 of H.R. 3427 enacted by P.L. 106-113 dated November 29, 1999, requires a description of any offset agreement with respect to this proposed sale. Section 36(b)(1)(g) of the AECA, as amended, provides that reported information related to offset agreements be treated as confidential information in accordance with section 12(c) of the Export Administration Act of 1979 (50 U.S.C. App. 2411(c)). Information about offsets for this proposed sale are described in the enclosed confidential attachment.**

**Sincerely,**

TOME H. WALTERS, JR.
LIEUTENANT GENERAL, USAF
DIRECTOR

**Attachments**

**Separate Cover:**
**Offset certificate**

**Same ltr to: House Committee on International Relations**
**Senate Committee on Appropriations**
**Senate Committee on Foreign Relations**
**House Committee on National Security**
**Senate Committee on Armed Services**
**House Committee on Appropriations**

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**Transmittal No. 00-68**

**Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act**

(i) Prospective Purchaser: Taipei Economic and Cultural Representative Office in the United States pursant to P.L. 96-8

(ii) Total Estimated Value:

| | |
|---|---|
| Major Defense Equipment* | $ 0 million |
| Other | $ 513 million |
| TOTAL | $ 513 million |

(iii) Description of Articles or Services Offered: This purchase is for the continued Improved Mobile Subscriber Equipment (IMSE) communication system, spare and repair parts, test equipment, publications and technical documentation, personnel training and training equipment, Quality Assurance Team, U.S. Government and contractor technical support and other related elements of logistics support.

(iv) Military Department: Army (YVT and YVV)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: none

(vii) Date Report Delivered to Congress: 27 SEP 2000

* as defined in Section 47(6) of the Arms Export Control Act.



**POLICY JUSTIFICATION**

Taipei Economic and Cultural Representative Office in the United States - Improved Mobile Subscriber Equipment Communication System

The Taipei Economic and Cultural Representative Office in the United States has requested possible purchase for the continued Improved Mobile Subscriber Equipment (IMSE) communication system, spare and repair parts, test equipment, publications and technical documentation, personnel training and training equipment, Quality Assurance Team, U.S. Government and contractor technical support and other related elements of logistics support. The estimated cost is $513 million.

This sale is consistent with United States law and policy as expressed in Public Law 96-8.

The recipient will use this equipment to continue upgrade of their current tactical communications capability by providing secure tactical voice and data communications service to all echelons of its field military forces. The purchaser will have no difficulty absorbing this additional equipment into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be General Dynamics Communications Systems of Taunton, Massachusetts. One or more proposed offset agreements may be related to this proposed sale.

Implementation of this proposed sale will require the assignment of 18 U.S. Government and 35 contractor representatives for periods ranging from one month to three years. There will be a U.S. Government Quality Assurance Team for one week to inspect the equipment.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 00–26169 Filed 10–11–00; 8:45 am]
BILLING CODE 5001–10–C

**DEPARTMENT OF DEFENSE**

**Office of the Secretary**

**[Transmittal No. 00–69]**

**36(b)(1) Arms Sales Notification**

**AGENCY:** Department of Defense, Defense Security Cooperation Agency.

**ACTION:** Notice.

**SUMMARY:** The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

**FOR FURTHER INFORMATION CONTACT:** Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 00–69 with attached transmittal and policy justification.

Dated: October 5, 2000.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

BILLING CODE 5001–10–M

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DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

27 SEP 2000

In reply refer to:
I-00/008890

Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 00-69, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to the Taipei Economic and Cultural Representative Office in the United States for defense articles and services estimated to cost $405 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

TOME H. WALTERS, JR.
LIEUTENANT GENERAL, USAF
DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations



**Transmittal No. 00-69**

**Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act**

(i) Prospective Purchaser: Taipei Economic and Cultural Representative Office in the United States pursuant to P.L. 96-8

(ii) Total Estimated Value:

| | |
|---|---|
| Major Defense Equipment* | $ 298 million |
| Other | $ 107 million |
| TOTAL | $ 405 million |

(iii) Description of Articles or Services Offered: One hundred forty-six M109A5 155mm self-propelled howitzers, 79 M2 machine gun, six M88A2 recovery vehicles, 160 AN/PVS-7B Night Vision Goggles, 146 AN/VRC-87E and six AN/VRC-90E SINCGARS, Advanced Field Artillery Technical Data Systems and software, trainers, machine guns, radio, receiver transmitter modules, mount machine guns, radar chronograph sets, tripods, machine guns, radios, installation kits, simulators, launcher grenades, spare and repair parts, test equipment, publications and technical documentation, personnel training and training equipment, Quality Assurance Team, U.S. Government and contractor engineering and logistics personnel services, and other related elements of logistics support.

(iv) Military Department: Army (YVU)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: none

(vii) Date Report Delivered to Congress: 27 SEP 2000

* as defined in Section 47(6) of the Arms Export Control Act.

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## POLICY JUSTIFICATION

Taipei Economic and Cultural Representative Office in the United States - M109A5 155mm Self-propelled Howitzers

The Taipei Economic and Cultural Representative Office in the United States has requested possible sale of 146 M109A5 155mm self-propelled howitzers, 79 M2 machine gun, six M88A2 recovery vehicles, 160 AN/PVS-7B Night Vision Goggles, 146 AN/VRC-87E and six AN/VRC-90E SINCGARS, Advanced Field Artillery Technical Data Systems and software, trainers, machine guns, radio, receiver transmitter modules, mount machine guns, radar chronograph sets, tripods, machine guns, radios, installation kits, simulators, launcher grenades, spare and repair parts, test equipment, publications and technical documentation, personnel training and training equipment, Quality Assurance Team, U.S. Government and contractor engineering and logistics personnel services, and other related elements of logistics support. The estimated cost is $405 million.

This sale is consistent with United States law and policy as expressed in Public Law 96-8.

The recipient requires these various munitions to improve their current fleet of ground defense equipment. The purchaser will have no difficulty absorbing this additional equipment into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be United Defense, Limited Partnership of York, Pennsylvania. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of nine U.S. Government and seven contractor representatives for periods ranging from one month to six months. There will be a U.S. Government Quality Assurance Team for three weeks intervals quarterly to participate in program management and technical reviews.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 00–26170 Filed 10–11–00; 8:45 am]
BILLING CODE 5001–10–C

## DEPARTMENT OF DEFENSE

### Office of the Secretary

[Transmittal No. 00–70]

### 36(b)(1) Arms Sales Notification

**AGENCY:** Department of Defense, Defense Security Cooperation Agency.

**ACTION:** Notice.

**SUMMARY:** The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

**FOR FURTHER INFORMATION CONTACT:** Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 00–70 with attached transmittal, policy justification, and Sensitivity of Technology.

L.M. Bynum,
*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

BILLING CODE 5001–10–M



DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

27 SEP 2000

In reply refer to:
I-00/008891

Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-7001

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 00-70 and under separate cover the classified offset certificate thereto. This Transmittal concerns the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to the Taipei Economic and Cultural Representative Office in the United States for defense articles and services estimated to cost $240 million. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Reporting of Offset Agreements in accordance with Section 36(b)(1)(C) of the Arms Export Control Act (AECA), as amended by Section 1245 of H.R. 3427 enacted by P.L. 106-113 dated November 29, 1999, requires a description of any offset agreement with respect to this proposed sale. Section 36(b)(1)(g) of the AECA, as amended, provides that reported information related to offset agreements be treated as confidential information in accordance with section 12(c) of the Export Administration Act of 1979 (50 U.S.C. App. 2411(c)). Information about offsets for this proposed sale are described in the enclosed confidential attachment.

Sincerely,

TOME H. WALTERS, JR.
LIEUTENANT GENERAL, USAF
DIRECTOR

Attachments

Separate Cover:
Offset certificate

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

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**Transmittal No. 00-70**

**Notice of Proposed Issuance of Letter of Offer**
**Pursuant to Section 36(b)(1)**
**of the Arms Export Control Act**

(i) Prospective Purchaser: Taipei Economic and Cultural Representative Office in the United States pursant to P.L. 96-8

(ii) Total Estimated Value:

| | |
|---|---|
| Major Defense Equipment* | $ 184 million |
| Other | $ 56 million |
| TOTAL | $ 240 million |

(iii) Description of Articles or Services Offered: Seventy-one RGM-84L HARPOON missiles, six HARPOON training missiles, 10 HARPOON Shipboard Launcher Command Launch Control Set, missile containers, spare and repair parts, support and test equipment, supply and software support, maintenance training, publications and technical documents, U.S. Government and contractor technical assistance, and other related elements of logistics support.

(iv) Military Department: Navy (LGI and LGJ)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: none

(vii) Date Report Delivered to Congress: 27 SEP 2000

* as defined in Section 47(6) of the Arms Export Control Act.



**POLICY JUSTIFICATION**

Taipei Economic and Cultural Representative Office in the United States - HARPOON Missiles

The Taipei Economic and Cultural Representative Office in the United States has requested a possible sale of 71 RGM-84L HARPOON missiles, six HARPOON training missiles, 10 HARPOON Shipboard Launcher Command Launch Control Set, missile containers, spare and repair parts, support and test equipment, supply and software support, maintenance training, publications and technical documents, U.S. Government and contractor technical assistance, and other related elements of logistics support. The estimated cost is $240 million.

This sale is consistent with United States law and policy as expressed in Public Law 96-8.

The recipient will use these HARPOON missiles as armament for their PFG-2 to maintain an anti-ship defensive capability. The recipient, which already air and surface-launch HARPOON missiles in its inventory, will have no difficulty absorbing these missiles.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be the Boeing Company of St. Louis, Missouri. One or more offset agreements may be related to this potential sale.

Implementation of this sale will not require the assignment of any U.S. Government personnel in recipient; however, it is estimated that approximately two years of contractor technical support will be required in recipient following delivery of the missiles.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

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**Transmittal No. 00-70**

**Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act**

**Classified Annex Item No. vi**

(vi) Sensitivity of Technology:

1. The RGM-84L Block II HARPOON missile, excluding a land strike capability (coastal target suppression), provides a Global Positioning System/Inertial Navigation System capability with improved Anti-Surface Warfare against ships in the open ocean and littoral waters. The HARPOON missile contains sensitive technology and has the following classified components, including applicable technical and equipment documentation and manuals:

a. Guidance Section Components
   (1) radar seeker (C)
   (2) guidance control unit (C)
   (3) radar altimeter (C)

b. AN/SWG-1A(V) Command Launch System
   (1) HARPOON control console (C)
   (2) fault isolation kit (C)
   (3) HSCLCS embedded trainer (C)

c. Missile Subsystem Test Set Upgrade Kit
   (1) disk assembly (C)

d. Missile Characteristics and Performance Data

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

3. A determination has been made that the recipient can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This proposed sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 00–26171 Filed 10–11–00; 8:45 am]
BILLING CODE 5001–10–C



**DEPARTMENT OF DEFENSE**

**Office of the Secretary**

**[Transmittal No. 00–71]**

**36(b)(1) Arms Sales Notification**

**AGENCY:** Department of Defense, Defense Security Cooperation Agency.

**ACTION:** Notice.

**SUMMARY:** The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

**FOR FURTHER INFORMATION CONTACT:** Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 00–71 with attached transmittal and policy justification.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

BILLING CODE 5001–10–M

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DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

27 SEP 2000

In reply refer to:
I-00/007627

Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6801

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 00-71 and under separate cover, the classified documents thereto. This Transmittal concerns the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to the Taipei Economic and Cultural Representative Office in the United States for defense articles and services estimated to cost $150 million. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Reporting of Offset Agreements in accordance with Section 36(b)(1)(C) of the Arms Export Control Act (AECA), as amended by Section 1245 of H.R. 3427 enacted by P.L. 106-113 dated November 29, 1999, requires a description of any offset agreement with respect to this proposed sale. Section 36(b)(1)(g) of the AECA, as amended, provides that reported information related to offset agreements be treated as confidential information in accordance with section 12(c) of the Export Administration Act of 1979 (50 U.S.C. App. 2411(c)). Information about offsets for this proposed sale are described in the enclosed confidential attachment.

Sincerely,

TOME H. WALTERS, JR.
LIEUTENANT GENERAL, USAF
DIRECTOR

Attachments

Separate Cover:
Classified Annex
Offset certificate

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations



**Transmittal No. 00-71**

**Notice of Proposed Issuance of Letter of Offer**
**Pursuant to Section 36(b)(1)**
**of the Arms Export Control Act**

(i) Prospective Purchaser: Taipei Economic and Cultural Representative Office in the United States pursuant to P.L. 96-8

(ii) Total Estimated Value:

| | |
|---|---|
| Major Defense Equipment* | $ 102 million |
| Other | $ 48 million |
| TOTAL | $ 150 million |

(iii) Description of Articles or Services Offered: Two hundred AIM-120C Advanced Medium Range Air-to-Air Missiles (AMRAAM), 292 LAU-129 Missile Launchers, missile containers, aircraft modification and integration, spare and repair parts, support and test equipment, software support, maintenance and pilot training, publications and technical documents, U.S. Government and contractor technical assistance, and other related elements of logistics support.

(iv) Military Department: Air Force (SKA, Amendment 13)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex under separate cover

(vii) Date Report Delivered to Congress: 27 SEP 2000

* as defined in Section 47(6) of the Arms Export Control Act.

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## POLICY JUSTIFICATION

Taipei Economic and Cultural Representative Office in the United States - AIM-120C Advanced Medium Range Air-to-Air Missiles

The Taipei Economic and Cultural Representative Office in the United States has requested a possible sale of 200 AIM-120C Advanced Medium Range Air-to-Air Missiles (AMRAAM), 292 LAU-129 Missile Launchers, missile containers, aircraft modification and integration, spare and repair parts, support and test equipment, software support, maintenance and pilot training, publications and technical documents, U.S. Government and contractor technical assistance, and other related elements of logistics support. The estimated cost is $150 million.

This sale is consistent with United States law and policy as expressed in Public Law 96-8.

The recipient will use these missiles to augment and enhance their F-16 air defense and aircraft survivability. These missiles will allow the recipient F-16 aircraft to protect and defend their air space. The recipient will have no difficulty absorbing these missiles into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Raytheon Missile Systems Corporation of Tucson, Arizona. One or more offset agreements may be related to this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to the recipient.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 00–26172 Filed 10–11–00; 8:45 am]
BILLING CODE 5001–10–C

## DEPARTMENT OF DEFENSE

### Office of the Secretary

[Transmittal No. 00–72]

### 36(b)(1) Arms Sales Notification

**AGENCY:** Department of Defense, Defense Security Cooperation Agency.

**ACTION:** Notice.

**SUMMARY:** The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

**FOR FURTHER INFORMATION CONTACT:** Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 00–72 with attached transmittal and policy justification.

Dated: October 5, 2000.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

BILLING CODE 5001–10–M



DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

27 SEP 2000

In reply refer to:
I-00/007833

Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 00-72 and under separate cover the classified annex thereto. This Transmittal concerns the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Singapore for defense articles and services estimated to cost $85 million. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Sincerely,

TOME H. WALTERS, JR.
LIEUTENANT GENERAL, USAF
DIRECTOR

Attachments

Separate Cover:
Classified Annex

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

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**Transmittal No. 00-72**

**Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act**

(i) Prospective Purchaser: Singapore

(ii) Total Estimated Value:

| | |
|---|---|
| Major Defense Equipment* | $ 70 million |
| Other | $ 15 million |
| TOTAL | $ 85 million |

(iii) Description of Articles or Services Offered: Up to 100 AIM-120C Advanced Medium Range Air-to-Air Missiles, 60 LAU-129A/A missile launcher, two Captive Air Training Missiles, missile containers, aircraft modification and integration, spare and repair parts, support and test equipment, software support, publications and technical documentation, maintenance and pilot training, contractor support and other related elements of logistics support.

(iv) Military Department: Air Force (YAD)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex under separate cover

(vii) Date Report Delivered to Congress: 27 SEP 2000

* as defined in Section 47(6) of the Arms Export Control Act.



**POLICY JUSTIFICATION**

Singapore - AIM-120C Advanced Medium Range Air-to-Air Missiles

The Government of Singapore has requested a possible sale of up to 100 AIM-120C Advanced Medium Range Air-to-Air Missiles (AMRAAM), 60 LAU-129A/A missile launcher, two Captive Air Training Missiles, missile containers, spare and repair parts, support and test equipment, software support, publications and technical documentation, maintenance and pilot training, contractor support and other related elements of logistics support. The estimated cost is $85 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in Southeast Asia.

Singapore needs these missiles to enhance the air-to-air self-defense capability of its F-16 aircraft and provide for increase interoperability with U.S. forces. Singapore will have no difficulty absorbing these missiles into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The principal contractors will be Raytheon Missile Systems Corporation of Tucson, Arizona and Lockheed Martin Aeronautics Company of Ft. Worth, Texas. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Singapore.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 00–26173 Filed 10–11–00; 8:45 am]
BILLING CODE 5001–10–C

**DEPARTMENT OF DEFENSE**

**Office of the Secretary**

**[Transmittal No. 00–75]**

**36(b)(1) Arms Sales Notification**

**AGENCY:** Department of Defense, Defense Security Cooperation Agency.

**ACTION:** Notice.

**SUMMARY:** The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

**FOR FURTHER INFORMATION CONTACT:** Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 00–75 with attached transmittal, policy justification and Sensitivity of Technology.

Dated: October 5, 2000.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

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DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

25 SEP 2000

In reply refer to:
I-00/007597

Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6801

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 00-75 and under separate cover the classified offset certificate thereto. This Transmittal concerns the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to Israel for defense articles and services estimated to cost $509 million. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Reporting of Offset Agreements in accordance with Section 36(b)(1)(C) of the Arms Export Control Act (AECA), as amended by Section 1245 of H.R. 3427 enacted by P.L. 106-113 dated November 29, 1999, requires a description of any offset agreement with respect to this proposed sale. Section 36(b)(1)(g) of the AECA, as amended, provides that reported information related to offset agreements be treated as confidential information in accordance with section 12(c) of the Export Administration Act of 1979 (50 U.S.C. App. 2411(c)). Information about offsets for this proposed sale are described in the enclosed confidential attachment.

Sincerely,

TOME H. WALTERS, JR.
LIEUTENANT GENERAL, USAF
DIRECTOR

Attachments

Separate Cover:
Offset certificate

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations



**Transmittal No. 00-75**

**Notice of Proposed Issuance of Letter of Offer**
**Pursuant to Section 36(b)(1)**
**of the Arms Export Control Act**

(i) Prospective Purchaser: Israel

(ii) Total Estimated Value:

| | |
|---|---|
| Major Defense Equipment* | $ 396 million |
| Other | $ 113 million |
| TOTAL | $ 509 million |

(iii) Description of Articles or Services Offered: Eight AH-64D APACHE attack helicopters, 10 AN/APG-78 AH-64D Longbow Fire Control Radar, configuration of 70 M272 HELLFIRE missile launchers to M299 HELLFIRE missile launchers, spare and repair parts, communications equipment, support equipment, tools and test sets, chaff dispensers, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor technical support and other related elements of logistics support.

(iv) Military Department: Army (YUM, Amendment 2)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: none

(vii) Date Report Delivered to Congress: 25 SEP 2000

* as defined in Section 47(6) of the Arms Export Control Act.

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## POLICY JUSTIFICATION

Israel - AH-64D APAHCE Attack Helicopters

The Government of Israel has requested a possible sale of eight AH-64D APACHE attack helicopters, 10 AN/APG-78 AH-64D Longbow Fire Control Radar, configuration of 70 M272 HELLFIRE missile launchers to M299 HELLFIRE missile launchers, spare and repair parts, communications equipment, support equipment, tools and test sets, chaff dispensers, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor technical support and other related elements of logistics support. The estimated cost is $509 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in Middle East.

Israel desires these articles to fulfill their strategic commitments for self-defense and self-reliance. The proposed sale will upgrade its anti-armor day/night missile capability, provide for the defense of vital installations and provide close air support for the military ground forces. Israel, which already has APACHE helicopters in its inventory, will have no difficulty absorbing these helicopters.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Boeing Company of Mesa, Arizona; Lockheed Martin Electronics and Missiles, Orlando, Florida; Lockheed Martin Federal Systems, Owego, New York; General Electric, Lynn, Massachusetts; and Longbow LLC, Orlando, Florida. One or more proposed offset agreements may be related to this proposed sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Israel.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.



**Transmittal No. 00-75**

**Notice of Proposed Issuance of Letter of Offer**
**Pursuant to Section 36(b)(1)**
**of the Arms Export Control Act**

**Annex**
**Item No. vi**

(vi) Sensitivity of Technology:

1. The AH-64D APACHE Attack Helicopter includes the following classified or sensitive components:

a. AN/APG-78 AH-64D Longbow Fire Control Radar (FCR) is an active fire control radar system providing detection, location, classification and prioritization of targets to be prosecuted by the Longbow HELLFIRE Modular Missile System or handed over to other on-board sensor systems. This enables the APACHE helicopter to detect and fire upon targets in visual conditions which preclude the use of visual or infrared imaging systems. Hardware is Unclassified; releasable technical manuals for operation and organic level maintenance are Unclassified. The AH-64D Longbow critical system information is stored in the FCR in the form of mission source codes, target detection, classification algorithms, and coded threat parametrics; all classified Secret. The data, including operational software, proposed for release will not, in itself, facilitate reverse engineering.

b. The AN/APR-48A Radar Frequency Interferometer (RFI) is part of the AN/APR-78 FCR. It passively detects, locates in azimuth, and identifies radar emitters and sends the emitter identification, and location to either the FCR or to the APACHE Weapons Processor for display to the aircrew. Emitter information can also be used for prioritization. Hardware is classified Secret when the User Data Module (UDM) is attached to the RFI Processor Assembly; Unclassified when the UDM is absent. Releasable technical manuals for operation and organic level maintenance are Unclassified. The data, including operational software, proposed for release will not facilitate reverse engineering.

c. The Target Acquisition and Designation Sight/Pilot Night Vision Sensor (TADS/PNVS) with Optical Improvements (OIP) system provides day, night, limited adverse weather target information, as well as night navigation capabilities. The PNVS provides thermal imaging that permits nap-of-the-earth flight to, from, and within the battle area, while TADS provides the co-pilot gunner with search, detection, recognition, and designation by means of Direct View Optics (DVO), television, and Forward Looking Infrared (FLIR) sighting systems that may be used singularly or in combinations. Hardware is Unclassified. Technical manuals for authorized maintenance levels are Unclassified. Reverse engineering is not a major concern.

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d. The AGM-114L3 HELLFIRE missiles with containers, hardware, and documentation are Unclassified. The Longbow HELLFIRE missile guidance section and the guidance algorithms (source codes) contain classified technical data and design information. This design information is classified Secret and the warhead performance is classified Confidential. Sensitive software algorithms are contained within the system, but the L-3 version contains several software security capabilities. Also, the missile source code is not releasable. This protects the sensitive software information from being compromised. The Longbow seeker contains critical components, but the technical data package will not be released.

e. AN/ALQ-144A(V)3 Infrared Countermeasure Set - an active, continuous operating, omni-directional, electrically fired infrared jammer system designed to confuse or decoy threat IR missile systems, in conjunction with low reflective paint and engine suppressors. Hardware is classified Confidential. Technical manuals for authorized maintenance levels are classified Secret. Reverse engineering and development of counter-countermeasures are concerns if the hardware and releasable technical data were compromised.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

3. A determination has been made that Israel can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 00–26174 Filed 10–11–00; 8:45 am]
BILLING CODE 5001–10–C

## DEPARTMENT OF DEFENSE

### Office of the Secretary

[Transmittal No. 00–76]

### 36(b)(1) Arms Sales Notification

**AGENCY:** Department of Defense, Defense Security Cooperation Agency.

**ACTION:** Notice.

**SUMMARY:** The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

**FOR FURTHER INFORMATION CONTACT:** Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 00–76 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: October 5, 2000.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

BILLING CODE 5001–10–M



DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

27 SEP 2000

In reply refer to:
I-00/011149

Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 00-76, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Italy for defense articles and services estimated to cost $780 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

TOME H. WALTERS, JR.
LIEUTENANT GENERAL, USAF
DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

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## POLICY JUSTIFICATION

Italy - F-16A Block 10 OCU Aircraft

The Government of Italy has requested a possible sale of four F-16A Block 10 operational capabilities upgrade (OCU) aircraft for cannibalization, four Pratt and Whitney F-100-PW-200 spare engines, four AN/APG-66 radar sets, spare and repair parts, devices, support equipment, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor engineering and logistics personnel services and other related elements of logistics support. The estimated cost is $780 million.

This proposed sale will contribute to the foreign policy and national security objectives of the United States by improving the military capabilities of Italy and further weapon system standardization and interoperability with U.S. forces.

Italy will use the F-16A Block 10 OCU aircraft to maintain a continuous air defense capability and upgrade/modernize their current fleet. This proposed sale will support a potential lease of F-16A/B aircraft that will provide the capability Italy requires to perform its air defense mission and be a viable air defense provider for their NATO commitments. The Italian Air Force has chosen the F-16A aircraft as their choice to provide this capability until they make a decision on a defense platform to modernize their force. Italy will have no difficulty absorbing this equipment into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The principal contractors will be Lockheed Martin of Fort Worth, Texas and Pratt and Whitney of East Hartford, Connecticut. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of two U.S. Government and 117 contractor representatives for five years to Italy.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.



Transmittal No. 00-76

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The F-16A Block 10 operational capability upgrade aircraft and Pratt and Whitney F-100-PW-200 engine are unclassified. The aircraft does not contain state-of-the-art technology.

2. The F-100 engine and the associated component parts used in F-16A aircraft are unclassified. However, several manufacturing processes, design practices, and metallurgical fabrication techniques used are advanced technology methods found only with the U.S. propulsion industry. The sale of F-100 engines to Italy will not include the transfer of sensitive technology as the sale does not include sensitive manufacturing, design, or metallurgical processes or information.

3. If a technologically advanced adversary were to obtain knowledge of the above systems, such knowledge could be used in an attempt to develop component countermeasures or systems with similar or advanced capabilities.

4. A determination has been made that Italy can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 00–26175 Filed 10–11–00; 8:45 am]
BILLING CODE 5001–10–C

## DEPARTMENT OF DEFENSE

### Office of the Secretary

[Transmittal No. 00–77]

### 36(b)(1) Arms Sales Notification

**AGENCY:** Department of Defense, Defense Security Cooperation Agency.

**ACTION:** Notice.

**SUMMARY:** The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

**FOR FURTHER INFORMATION CONTACT:** Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 00–77 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: October 5, 2000.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

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DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

27 SEP 2000

In reply refer to:
I-00/011352

Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-7701

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 00-77 and under separate cover the classified offset certificate thereto. This Transmittal concerns the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to Israel for defense articles and services estimated to cost $525 million. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Reporting of Offset Agreements in accordance with Section 36(b)(1)(C) of the Arms Export Control Act (AECA), as amended by Section 1245 of H.R. 3427 enacted by P.L. 106-113 dated November 29, 1999, requires a description of any offset agreement with respect to this proposed sale. Section 36(b)(1)(g) of the AECA, as amended, provides that reported information related to offset agreements be treated as confidential information in accordance with section 12(c) of the Export Administration Act of 1979 (50 U.S.C. App. 2411(c)). Information about offsets for this proposed sale are described in the enclosed confidential attachment.

Sincerely,

TOME H. WALTERS, JR.
LIEUTENANT GENERAL, USAF
DIRECTOR

Attachments

Separate Cover:
Offset certificate

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations



Transmittal No. 00-77

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Israel

(ii) Total Estimated Value:

| | |
|---|---|
| Major Defense Equipment* | $ 400 million |
| Other | $ 125 million |
| TOTAL | $ 525 million |

(iii) Description of Articles or Services Offered: Thirty-five UH-60L BLACKHAWK helicopters, 70 T700-GE-701C turbine engines, 29 spare T700-GE-701C turbine engines with containers, external rescue hoist provisions, rotor brake system, spare and repair parts, tools and support equipment, publications and technical data, personnel training and training equipment, U.S. Government Quality Assurance Team, contractor engineering and technical support services and other related elements of logistics support.

(iv) Military Department: Army (YWV)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached

(vii) Date Report Delivered to Congress: 27 SEP 2000

* as defined in Section 47(6) of the Arms Export Control Act.

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## POLICY JUSTIFICATION

Israel - UH-60L BLACKHAWK Helicopters

The Government of Israel has requested the purchase of 35 UH-60L BLACKHAWK helicopters, 70 T700-GE-701C turbine engines, 29 spare T700-GE-701C turbine engines with containers, external rescue hoist provisions, rotor brake system, spare and repair parts, tools and support equipment, publications and technical data, personnel training and training equipment, U.S. Government Quality Assurance Team (QAT), contractor engineering and technical support services and other related elements of logistics support. The estimated cost is $525 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Middle East.

The proposed sale will enhance their current helicopter fleet and provide combat service support for Israeli Defense personnel. Israel, which already has BLACKHAWK helicopters in its inventory, will have no difficulty absorbing the additional helicopters.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractors participating in the program will be Sikorsky Aircraft Company of Stratford, Connecticut and General Electric of Lynn, Massachusetts. One or more proposed offset agreements may be related to this proposed sale.

A United States Government QAT will be required for a minimum of one week during the delivery and initial operation of the helicopters. An U.S. contractor field service representative will also be required in-country for a period of three years to support the new helicopters.

There will be no adverse impact on U.S. defense readiness as a result of this sale.



**Transmittal No. 00-77**

**Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act**

**Annex Item No. vi**

(vi) Sensitivity of Technology:

1. The UH-60L BLACKHAWK helicopter is Unclassified. The highest level of classified information required to be released for training, operation and maintenance of the BLACKHAWK is Confidential. The highest level which could be revealed through reverse engineering or testing of the end item is Confidential. This information includes Confidential reports and test data, as well as performance and capability data, classified Confidential/Secret.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware in this sale, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

3. A determination has been made that Israel can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 00–26176 Filed 10–11–00; 8:45 am]
BILLING CODE 5001–10–C

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Defense Partnership Council Meeting

**AGENCY:** Department of Defense.

**ACTION:** Notice of meeting.

**SUMMARY:** The Department of Defense (DoD) announces a meeting of the Defense Partnership Council. Notice of this meeting is required under the Federal Advisory Committee Act. This meeting is open to the public. The agenda will include: an update on the Blue Collar Wage Setting project and other topics related to the enhancement of Labor-Management partnerships throughout DoD.

**DATES:** The meeting is to be held on November 9, 2000, in room 1E801, Conference Room 7, the Pentagon, from 1 p.m. until 3 p.m. Comments should be received by November 1, 2000, in order to be considered at the November 9 meeting.

**ADDRESSES:** We invite persons and organizations to submit written comments or recommendations. Mail or deliver your comments or recommendations to Ben James at the address shown below. Seating is limited and available on a first-come, first-serve basis. Individuals wishing to attend who do not possess an appropriate Pentagon building pass should call the below listed telephone number to obtain instructions for entry into the Pentagon. Handicapped individuals wishing to attend should also call the below listed telephone number to obtain appropriate accommodations.

**FOR FURTHER INFORMATION CONTACT:** Ben James, Chief, Labor Relations Branch, Field Advisory Services Division, Defense Civilian Personnel Management Service, 1400 Key Blvd., Suite B–200, Arlington, VA 22209–5144, (703) 696–6301, ext. 730.

Dated: October 5, 2000.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 00–26168 Filed 10–11–00; 8:45 am]

**BILLING CODE 5001–10–M**

## DEPARTMENT OF DEFENSE

### Office of the Secretary of Defense

### Department of Defense Wage Committee; Notice of Closed Meetings

Pursuant to the provisions of section 10 of Public Law 92–463, the Federal Advisory Committee Act, notice is hereby given that closed meetings of the Department of Defense Wage Committee will be held on November 7, 2000; November 14, 2000; November 21, 2000; and November 28, 2000, at 10 a.m. in Room A105, The Nash Building, 1400 Key Boulevard, Rosslyn, Virginia.

Under the provisions of section 10(d) of Public Law 92–463, the Department of Defense has determined that the meetings meet the criteria to close meetings to the public because the matters to be considered are related to internal rules and practices of the Department of Defense and the detailed wage data to be considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence.

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning the meetings may be obtained by writing to the Chairman, Department of Defense Wage Committee, 4000 Defense Pentagon, Washington, DC 20301–4000.

Dated: October 5, 2000.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 00–26167 Filed 10–11–00; 8:45 am]

**BILLING CODE 5001–10–M**

## DEPARTMENT OF DEFENSE

### Department of the Air Force

### Air University Board of Visitors Meeting

The Air University Board of Visitors will hold an open meeting on November 12–15, 2000, with the first business session beginning at 8 a.m. in the Air University Conference Room at Headquarters Air University, Maxwell Air Force Base, Alabama (five seats are available).

The purpose of the meeting is to give the board an opportunity to review Air University educational programs and to present to the Commander, a report of their findings and recommendations concerning these programs.

For further information on this meeting, contact Dr. Dorothy Reed, Chief of Academic Affairs, Air University Headquarters, Maxwell Air Force Base, Alabama 36112–6335, telephone (334) 953–5159.

**Janet A. Long,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 00–26099 Filed 10–11–00; 8:45 am]

**BILLING CODE 5001–05–P**

## DEPARTMENT OF ENERGY

### Office of Arms Control and Nonproliferation; Proposed Subsequent arrangement

**AGENCY:** Department of Energy.

**ACTION:** Subsequent arrangement.

**SUMMARY:** This notice has been issued under the authority of Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160). The Department is providing notice of a proposed "subsequent arrangement" under the Agreement for Cooperation in the Peaceful Uses of Nuclear Energy between the United States and the European Atomic Energy Community (EURATOM).

This subsequent arrangement concerns the addition of Brazil, Kazakhstan, Romania and Ukraine to the list of countries referred to in paragraph 2 of the Agreed Minute to the Agreement for Cooperation in the Peaceful Uses of Nuclear Energy, listing countries eligible to receive retransfers under Article 8.1(C)(i) of the Agreement of low enriched uranium, non-nuclear material, equipment and source material transferred under the Agreement, or receive retransfers of low enriched uranium produced through the use of nuclear material or equipment transferred under the Agreement, for nuclear fuel cycle activities other than the production of high enriched uranium.

The United States has brought into force new Agreements for Cooperation in the Peaceful Uses of Nuclear Energy, under the authority of Section 123 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), with Brazil, Kazakhstan, Romania and Ukraine. These four countries have also made effective non-proliferation commitments as prescribed in paragraph 2 of the Agreed Minute to the U.S.-EURATOM Agreement. Accordingly, they are eligible third countries to which retransfers may be made.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, we have determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

**Andrew Bieniawski,**

*Acting Director, Office of International Policy and Analysis, for Arms Control and Nonproliferation, Office of Defense Nuclear Nonproliferation.*

[FR Doc. 00–26153 Filed 10–11–00; 8:45 am]

**BILLING CODE 6450–01–P**



## DEPARTMENT OF ENERGY

**[Docket Nos. FE C&E 00–19, C&E 00–20, C&E 00–21, C&E 00–22 and C&E 00–23 Certification Notice—190]**

### Office of Fossil Energy; Notice of Filings of Coal Capability of Mesquite Power, LLC, GenPower McAdams, LLC, GenPower Dell, LLC, GenPower Kelley, LLC and SRW Cogen. Ltd. Partnership Powerplant and Industrial Fuel Use Act

**AGENCY:** Office of Fossil Energy, Department of Energy.

**ACTION:** Notice of filing.

**SUMMARY:** Mesquite Power, LLC, GenPower McAdams, LLC, GenPower Dell, LLC, GenPower Kelley, LLC and SRW Cogen. Ltd. Partnership submitted coal capability self-certifications pursuant to section 201 of the Powerplant and Industrial Fuel Use Act of 1978, as amended.

**ADDRESSES:** Copies of self-certification filings are available for public inspection, upon request, in the Office of Coal & Power Im/Ex, Fossil Energy, Room 4G–039, FE–27, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

**FOR FURTHER INFORMATION CONTACT:** Ellen Russell at (202) 586–9624.

**SUPPLEMENTARY INFORMATION:** Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 *et seq.*), provides that no new baseload electric powerplant may be constructed or operated without the capability to use coal or another alternate fuel as a primary energy source. In order to meet the requirement of coal capability, the owner or operator of such facilities proposing to use natural gas or petroleum as its primary energy source shall certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date filed with the Department of Energy. The Secretary is required to publish a notice in the **Federal Register** that a certification has been filed. The following owners/operators of the proposed new baseload powerplants have filed a self-certification in acccordance with section 201(d).

*Owner:* Mesquite Power, LLC (C&E 00–19).

*Operator:* Mesquite Power, LLC.

*Location:* Maricopa County, AZ.

*Plant Configuration:* Combined-cycle.

*Capacity:* 1,000 MW.

*Fuel:* Natural gas.

*Purchasing Entities:* Sold into the wholesale power market.

*In-Service Date:* Second quarter of 2003.

*Owner:* GenPower McAdams, LLC (C&E 00–20).

*Operator:* General Electric International, Inc.

*Location:* Attala County, Sallis, MS.

*Plant Configuration:* Combined-cycle.

*Capacity:* 640 MW.

*Fuel:* Natural gas

*Purchasing Entities:* Sold into the wholesale power market.

*In-Service Date:* June 2002.

*Owner:* GenPower Dell, LLC (C&E 00–21).

*Operator:* General Electric International, Inc.

*Location:* Mississippi County, Dell, AR.

*Plant Configuration:* Combined-cycle.

*Capacity:* 600 MW.

*Fuel:* Natural gas.

*Purchasing Entities:* Sold into the wholesale power market.

*In-Service Date:* June 2002.

*Owner:* GenPower Kelley, LLC (C&E 00–22).

*Operator:* General Electric International, Inc.

*Location:* Flat Creek Road, Quinton, AL.

*Plant Configuration:* Combined-cycle.

*Capacity:* 1,086 MW.

*Fuel:* Natural gas.

*Purchasing Entities:* Sold into the wholesale power market.

*In-Service Date:* Summer 2003.

*Owner:* SRW Cogeneration Limited Partnership (C&E 00–23).

*Operator:* DuPont de Nemours and Company.

*Location:* Orange, TX.

*Plant Configuration:* Combined-cycle.

*Capacity:* 421 MW.

*Fuel:* Natural gas.

*Purchasing Entities:* 50 MW by E.I. DuPont de Nemours, and 250 MW by PG&E Energy Trading-Power, L.P. The balance (approx. 121 MW) will be sold at market.

*In-Service Date:* August 2001.

Issued in Washington, D.C., October 5, 2000.

**Anthony J. Como,**

*Deputy Director, Electric Power Regulation, Office of Coal & Power Im/Ex, Office of Coal & Power Systems, Office of Fossil Energy.*

[FR Doc. 00–26154 Filed 10–11–00; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Control of Releases of Materials with Residual Radioactive Contamination from DOE Facilities

**AGENCY:** U.S. Department of Energy, DOE.

**ACTION:** Notice of availability and opportunity for public comment.

**SUMMARY:** In July 2000, DOE suspended the unrestricted release of scrap metal for recycling from radiological areas within DOE facilities until improvements in release criteria have been developed and implemented. DOE is proposing criteria for controlling the release of materials with residual radioactive contamination and procedures for better management of information concerning these releases. The proposed criteria for the release of scrap metal for recycling would require that no radioactivity be detectable above background using DOE-approved measurement protocols prior to the release from a DOE site.

**DATES:** The comment period will end on December 4, 2000.

**ADDRESSES:** The proposed changes, the January 12, 2000 memorandum, the July 13, 2000 memoranda, and other relevant information will be available on the World-Wide Web at *http://tis.eh.doe.gov/portal* or at *http://www.eh.doe.gov/oepa* under "Focus Areas," then select "DOE Directives Development Initiative for the Management and Release of Surplus Materials," and then "Public Documents." Hard copies are also available from the persons listed below under information contacts. You may examine written comments between 9 AM and 4 PM at the U.S. Department of Energy Freedom of Information Public Reading Room, Room 1E–190, 1000 Independence Avenue, SW, Washington, DC, 202–586–3142.

**TO PROVIDE COMMENTS AND FOR FURTHER INFORMATION CONTACT:** Comments and inquiries may be addressed to: Harold T. Peterson, Jr., Tele. (202) 586–9640, *harold.peterson@hq.doe.gov* or Stephen L. Domotor, *stephen.domotor@hq.doe.gov*, Tele. (202) 586–0871.

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Air, Water and Radiation Division, Office of Environmental Policy and Guidance, U.S. Department of Energy (EH–41), 1000 Independence Avenue, SW, Washington, DC 20585.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Under the Atomic Energy Act of 1954, 42 U.S.C. 2201, *et seq.*, and other law, the Department conducts atomic energy defense and research and development activities at various sites around the Nation. These activities are carried out by prime contractors who manage and operate the sites pursuant to DOE policies enforceable under the provisions of the contracts and under the oversight of DOE employees. A standard provision of these prime contracts is the Laws, Regulations and Directives Clause which is set forth in DOE's Acquisition Regulation at title 48 of the Code of Federal Regulations. The clause provides for an appendix which, among other things, lists the DOE administrative directives, including DOE Orders, that are enforceable under the contracts. DOE Order 5400.5, Radiation Protection of the Public and Environment, is one of those directives. Today DOE is making available for public comment proposed revisions to that Order.

On January 12, 2000, the Secretary of Energy issued a moratorium on the Department's release of volumetrically-contaminated metals pending a decision by the Nuclear Regulatory Commission (NRC) whether to establish national standards. The NRC continues to review the issue and the moratorium remains in effect. At that time, the Secretary created a task force to review the Department's policy on releasing materials from DOE sites. The task force reviewed past practices and made recommendations for improving monitoring, documentation, reporting and coordination.

On July 13, 2000, the Secretary of Energy issued a memorandum directing the Assistant Secretary for Environment, Safety and Health to revise DOE directives and associated guidance documents applicable to scrap metal releases. The Secretary's memorandum directed action in four areas: (1) Improvement of the Department's release criteria and monitoring practices; (2) expansion of efforts to promote reuse and recycling within the complex of DOE facilities; (3) improvement of the Department's management of information about material inventories and releases; and (4) the accelerated recovery of sealed sources. The July 13th memorandum also suspended the unrestricted release for recycling of scrap metal from radiological areas within DOE facilities. This suspension will remain in effect until improvements in DOE release criteria and information management have been developed and implemented. The Secretary stated that DOE would not allow the release of scrap metals for recycling if contamination from DOE operations is detected using appropriate, commercially-available monitoring equipment and approved procedures.

The purpose of this notice is to solicit public comment on two new chapters (Chapters V and VI) to DOE Order 5400.5 that DOE developed to implement this policy.

**II. Questions and Answers Regarding the Changes to the DOE Order 5400.5**

*A. What requirements did DOE Order 5400.5 place on releasing materials that may have small quantities of radioactive materials?*

The current DOE policy for controlling the release of materials is set forth in the existing Order DOE 5400.5. The Order requires, and will continue to require in the proposed changes, the establishment of DOE-approved authorized limits for releases based on the ALARA ("As Low as is Reasonably Achievable") process. For surface activity, the radioactive materials can be measured by conventional radiation monitoring instruments and the levels must be less than the Surface Activity Guidelines in Figure IV.1 of DOE Order 5400.5 (reprinted as Table 1 in a November 17, 1995 guidance memorandum). The latter document, as well as the full DOE Order 5400.5, is available on the Office of Environmental Policy and Guidance's website: *http://www.eh.doe.gov/oepa* under "Policy and Guidance." Select "Radiation Protection (Atomic Energy Act)" from the subject area listing. The existing Order 5400.5 is item 20 and the November 17, 1995 guidance memorandum is item 8. For new information supporting the revised policy, such as the implementation guidance, go to: "Focus Areas" and "DOE Directive Development Initiative for the Management and Release of Surplus Materials."

Under the current Order, authorized limits for releases of surface contaminated materials that conform to these Surface Activity Guidelines can be approved by a DOE Field Office. Contractors develop these Authorized Limits for DOE approval by following the DOE ALARA process. The current Order permits use of alternative limits in place of these Surface Activity Guidelines if they are reviewed and approved by the Assistant Secretary for Environment, Safety and Health.

In contrast to surface contamination, property that contains radioactive materials distributed throughout its volume is generally more difficult to measure and evaluate. In some cases, samples of materials have to be taken for laboratory analysis. DOE does not have numerical guidelines on concentrations of volumetrically-distributed radioactive material that can be released. Under DOE Order 5400.5, release of these volumetrically contaminated materials would require a case-by-case review and approval by the Assistant Secretary for Environment, Safety and Health. However, under the moratorium of January 12, 2000, volumetrically-contaminated metals cannot be released until the moratorium is lifted by DOE. The surface guideline values are repeated in the Table VI–1 in the proposed changes.

*B. What does the Secretary's new policy require as reflected in the proposed change to the DOE Order 5400.5?*

The Secretary's memorandum requires improvements in the collection, maintenance, reporting of information associated with releases of surplus equipment, scrap metals and other excess personal property. The revised release policy reflected in the proposed change to the Order primarily affects one class of materials—scrap metals that were in a radiological area and are intended to be recycled into general commerce. The proposed change would require that these metals exhibit no detectable radioactivity content above background prior to their release from a DOE site (i.e., any residual radioactivity cannot be detected above background using DOE-approved measurement protocols. DOE is preparing new guidance to specify how to perform the measurements necessary to demonstrate "no detectable activity."

*C. Are the proposed changes new requirements?*

The proposed changes are generally consistent with the existing version of the Order as well as guidance and implementation practices. This notice reflects DOE's intent to add two chapters to Order 5400.5: (1) Chapter V, Control and Release of Personal Property Including Metals for Recycling, contains requirements for personal property management and specifically addresses the Secretary's policy to limit the release of scrap metal for recycling to metal that has no detectable residual radioactive contamination and (2) Chapter VI, General Requirements for the Release of Property, which contains DOE's general requirements for controlling the release of property. Chapter VI also includes existing practices currently set forth in guidance and proposed improvements in monitoring, documentation and information management.

The two new chapters place additional emphasis on the public availability of information, record-keeping requirements and procedures for implementing the additional constraints established for recycled metal. The major refinement contained in the new chapters is the requirement to base authorized limits for scrap metals to be recycled on whether radioactivity can be detected above background using approved measurement protocols.

**III. Questions and Answers Concerning Recycling of Metals**

*A. Can metal or equipment from a radiological area be released for reuse under the proposed restrictions?*

Yes, in some cases. Equipment from a radiological area may be released and reused for its intended purpose or released through current property management systems for reuse. For example, a machine tool may be reused or sold for reuse as a tool as long as it meets current surface release limits for radiological materials as defined in Order DOE 5400.5 and associated guidance. Similarly, metal items may be surveyed and released as long as they are used in their present form. Both the existing Order and the proposed changes allow these results (so long as it does not violate the moratorium).

Under the proposed changes, the key factor in determining what is permissible is whether the metal will be melted and re-fabricated into new products. All cases that involve re-melting and remanufacturing of scrap metal released from radiological areas are considered to be recycling and would have to conform to the new proposed standard on non-detectable activity above background prior to release, unless the new product is to be used within the DOE complex or under an NRC or NRC Agreement State license.

*B. What will DOE's responsibility be to assure that material or equipment sold is used for its intended purpose and not remelted as scrap?*

The proposed changes allow scrap metal that does not meet the non-detectable release criterion to be released only for restricted recycling with a designated use (such as waste containers), if the scrap metal meets approved authorized limits and there is reasonable assurance that the property will not be recycled into general commerce. Extensive documentation is required including a description of any restrictions on use or disposition of the property and the specific process or means that provide a reasonable expectation that the restrictions or controls will be implemented.

*C. May a DOE contractor release radioactive contaminated scrap metal to an NRC licensee?*

DOE contractors may not transfer scrap metal to an NRC (or Agreement State) licensee or to another DOE facility for the purpose of releasing the metal for recycling into commerce by the licensee unless that scrap metal meets the zero-detectable activity release criterion at the time that it is released from the DOE site.

*D. May a DOE contractor transfer suspect contaminated materials to an NRC (or Agreement State) licensee for a purpose other than recycling into general commerce?*

Materials and equipment may be transferred to an NRC (or Agreement State) licensee in accordance with any license provisions. Metal may be transferred to an NRC or Agreement State licensee for use other than recycling if the material is properly surveyed and it meets the applicable DOE authorized release limit. If the material is not going to be recycled into general commerce and it will be used within the licensee's facility, then it has to meet any possession limits placed on the recipient by the NRC or an NRC Agreement State, but is not required to meet the non-detectable release criterion.

*E. What effect does the January 12, 2000 moratorium on the release of volumetrically contaminated metals have on the proposed changes?*

On January 12, 2000, the Secretary issued a moratorium prohibiting the Department's release of volumetrically contaminated metals pending a decision by the NRC whether to establish national standards. The NRC continues to review the issue and the moratorium remains in effect. While the proposed changes to the Order continue to allow the release of DOE materials under various criteria, DOE may not release volumetrically contaminated metals under either the proposed changes or the current Order until the ban is lifted.

*F. What effect do the proposed changes have on the July 13, 2000 suspension of release of recycled scrap metal?*

On July 13, 2000, the Secretary suspended the unrestricted release of scrap metals for recycling from radiation areas within DOE facilities until improvements in DOE release criteria and information management have been developed and implemented. The Secretary stated that upon certification that each DOE site has met all the requirements of the revised order and has a local public participation program, sites may resume unrestricted release of scrap metals for recycling. Adoption of the proposed changes is an essential element in satisfying the criteria for lifting the suspension.

**IV. What New Implementation Programs and Procedures are Required?**

DOE's Office of Environment, Safety and Health, through its Office of Environmental Policy and Guidance (EH–41) has developed these additional chapters and modifications to Order DOE 5400.5 to implement the Secretary's policy. The proposed changes would require contractors operating DOE facilities to have a program and procedures in place to ensure that: (1) Metal released for recycling contains no detectable residual radioactive contamination, (2) the release of all property from DOE control meets DOE radiation protection requirements, and (3) releases of surplus equipment, scrap metal and other excess personal property are appropriately documented, reported, certified and verified so that the public has full access to information relating to such releases.

*A. How is DOE improving release criteria and monitoring?*

Although these concepts were implicitly part of the existing release clearance process, they would become explicitly part of the new procedures in the proposed Chapter VI. This more clearly presents the process and criteria for establishing authorized limits and provides more specific guidance on survey and monitoring procedures. Information on responsibilities for surveying, certifying and carrying out independent verification is also contained in the proposed new chapters. The procedures in the proposed new chapters would require more detailed documentation of the establishment of authorized limits, survey and verification measurements and the certification of releases.

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*B. How will the new procedures improve information management?*

Chapter V would require that the process of implementing these new requirements be coordinated with the public and that this coordination be integrated into existing site public advisory and coordination activities. Although public information programs have been in existence for some time at DOE sites, these new requirements would require that this information be available to the public. DOE proposes to make available an annual summary report of property released under these requirements at each site. DOE is also proposing to require that the authorized limits used for materials releases, the quantities released, and summaries of the certification and verification information be summarized in the annual site environmental reports (ASERs).

**V. Topics on Which Public Comment is Sought**

1. Comments are sought on how the economic value of the metal should be factored into a decision regarding its disposition?

2. Comments are solicited on both on the desirable and attainable sensitivity of radiation monitoring devices including survey meters, portable spectrometers, bulk measurement detectors, and truckload monitors. Information on the cost of monitors would also be useful.

Signed this 5th day of October 2000.

**David Michaels,**

*Assistant Secretary, Environment, Safety and Health.*

[FR Doc. 00–26155 Filed 10–11–00; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP99–301–007]**

### ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

October 5, 2000.

Take notice that on October 2, 2000, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets proposed to become effective October 1, 2000:

Original Sheet No. 14Q

ANR is filing the attached tariff sheet to reflect the implementation of a negotiated rate agreement with Anadarko Energy Services Company for service under Rate Schedule PTS–3. Anadarko's new agreement will be effective October 1, 2000, and will continue through the life of the reserve underlying such agreement. ANR requests that the Commission grant ANR any waivers of the Commission's regulations which are necessary in order to make this tariff sheet effective as of October 1, 2000, and to the extent necessary, moves pursuant to 18 CFR 154.7(a)(9) for the tariff sheet to go into effect on said date. Additionally, ANR requests all such further relief as is appropriate.

ANR states that a copy of this filing is being mailed to the affected shipper and to each of ANR's FERC Gas Tariff, Second Revised Volume No. 1 and Original Volume No. 2 customers, and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–26127 Filed 10–11–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP00–472–000]**

### Destin Pipeline Company, L.L.C.; Notice of Request Under Blanket Authorization

October 5, 2000.

Take notice that on September 29, 2000, Destin Pipeline Company, L.L.C. (Destin), 1301 McKinney Street, Suite 700, Houston, Texas 77010, filed in Docket No. CP00–472–000 a request pursuant to §§ 157.205 and 157.208(b) of the Commission's Regulations (18 CFR 157.205 and 157.208(b)) under the Natural Gas Act (NGA), and Destin's blanket certificate issued in Docket No. CP96–657–000 and –001, for authorization to construct, own, install, and operate an offshore supply lateral line and associated facilities to receive and transport natural gas produced in the Viosca Knoll Area of the Gulf of Mexico, pursuant to Section 7 of the NGA, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the FERC website at http://www.ferc.fed.us/online/htm (call 202–208–2222 for assistance).

The lateral line (the "Pompano Project") which is the subject of this request will consist of 8.03 miles of 16-inch diameter pipeline to connect the Pompano Platform in Viosca Knoll Block 989 to a subsea tie-in on the Destin pipeline in Viosca Knoll Block 900. Destin will also construct and operate a receipt point with pig launcher, measurement and SCADA equipment to complete the connection with the Pompano Platform. The facilities will have the capability of transporting up to 200 million cubic feet of natural gas per day at a maximum allowable operating pressure of 2,220 pounds per square inch (gauge). Destin estimates the cost of the project to be $13.8 million, including a $4 million contribution in aid of construction to be made by Destin to the shippers to offset a portion of their cost of facilities necessary to connect their production to Destin's system.

Any questions regarding the application may be directed to Larry D. Jensen, Director—Regulatory Affairs, at (713) 230–3134.

Any person or the Commission's staff may, within 45 days after the issuance of the instance notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and, pursuant to Section 157.205 of the Commission's regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–26121 Filed 10–11–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. GT01–1–000]**

### Distrigas of Massachusetts LLC.; Notice of Proposed Changes in FERC Gas Tariff

October 5, 2000.

Take notice that on October 2, 2000, Distrigas of Massachusetts LLC (DOMAC), formerly Distrigas of Massachusetts Corporation, tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet, to become effective December 1, 2000:

Ninth Revised Sheet No. 94

DOMAC states that the purpose of this filing is to record semiannual changes in DOMAC's index of customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–26123 Filed 10–11–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–343–000]**

### Kinder-Morgan Interstate Gas Transmission Co.; Notice of Technical Conference

October 5, 2000.

On June 15, 2000, Kinder-Morgan Interstate Gas Transmission Company (Kinder Morgan) submitted a filing to comply with Order No. 637. Several parties have protested various aspects of Kinder-Morgan's filing. On August 18, 2000, Kinder Morgan submitted certain substitute *pro forma* tariff sheets to reflect the Commission's action in an order issued July 26, 2000, in Docket No. RP00–316–000. In that order, the Commission accepted in part and rejected in part certain tariff changes proposed by Kinder-Morgan.

Take notice that a technical conference to discuss the various issues raised by Kinder-Morgan's filing will be held on Wednesday, November 1, 2000, at 10 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Parties protesting aspects of Kinder-Morgan's filing should be prepared to discuss alternatives.

All interested persons and Staff are permitted to attend.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–26126 Filed 10–11–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP01–21–000]**

### Midwestern Gas Transmission Co.; Notice of Compliance Filing

October 5, 2000.

Take notice that on October 2, 2000, Midwestern Gas Transmission Company (Midwestern), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Third Revised Sheet No. 80 and First Revised Sheet No. 124, with an effective date of November 1, 2000.

Midwestern states that the purpose of this filing is to revise its tariff in order to modify the applicability of the right of first refusal as directed by the Commission in Order Nos. 637, 637–A, and 673–B.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–26132 Filed 10–11–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP94–367–011]**

### National Fuel Gas Supply Corporation; Notice of Pro Forma Compliance Filing

October 5, 2000.

Take notice that on September 29, 2000, National Fuel Gas Supply Corporation (National) tendered for filing pro forma tariff sheets to be part

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–374–000]**

### Columbia Gas Transmission Corp., Notice of Technical Conference

October 5, 2000

In the Commission's order issued on August 23, 2000,[1] the Commission directed that a technical conference be held to address issues raised by the filing.

A technical conference was held on Thursday, September 14, 2000. At that conference the parties indicated that another conference is warranted.

Take notice that the technical conference will be held on Tuesday, October 17, 2000, at 10 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

All interested parties and Staff are permitted to attend.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–26125 Filed 10–11–00; 8:45 am]

BILLING CODE 6717–01–M

[1] 92 FERC 61,173 (2000).

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of its FERC Gas Tariff, Fourth Revised Volume No. 1, to implement the Gathering Settlement, approved by the Commission on February 16, 1996. National Fuel states that, pursuant to the Gathering Settlement, the revised rates are to be effective on April 1, 2001.

National states that, pursuant to Article IV, Section 2, of the Gathering Settlement, National is required to submit a Compliance filing to eliminate the Amortization Surcharge from its transmission rates by removing the gathering A&G costs, the interest and taxes related to the amortization of the "Plant to be Amortized," and the amortization component of the transmission cost-of-service. Also, National is revising the Gathering cost-of-service to reflect $1,575,000 of A&G costs.

National states that copies of this filing were served upon its current customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–26124 Filed 10–11–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–506–001]**

### Northwest Pipeline Corp.; Notice of Correction Filing

October 5, 2000.

Take notice that on October 2, 2000, Northwest Pipeline Corporation (Northwest) tendered for filing and acceptance the following tariff sheets as part of its FERC Gas Tariff, Third Revised Volume No. 1, to be effective as indicated:

*To Be Effective March 27, 2000*

Substitute Fourteenth Revised Sheet No. 5–A

*To Be Effective July 1, 2000*

Fifteenth Revised Sheet No. 5–A

Northwest states that the purpose of this filing is to correct errors on Fourteenth Revised Sheet No. 5–A. Fourteenth Revised Sheet No. 5–A was accepted by the Commission on September 22, 2000 in Docket No. RP00–506–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426; in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–26129 Filed 10–11–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER00–1997–000]**

### PPL Electric Utilities Corporation; Notice to Convene Meeting and Setting Date for Convening Session

October 5, 2000

The Commission's Dispute Resolution Service will conduct a convening session on October 11, 2000, commencing at 10 a.m., in Room 3M–1 at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC. Following informal conversations between the Dispute Resolution Service and Allegheny Electric Cooperative, Inc. and PPL Electric Utilities Corporation, the parties agreed to an Alternative Dispute Resolution (ADR) process to resolve their disputes in the above-captioned dockets. The convening session will be held to finalize the ADR process. The Dispute Resolution Service will also assist the parties in better identifying and clarifying the issues in the above-captioned dockets for the follow-up ADR session. If a party has any questions, please call Deborah Osborne at (202) 208–0831.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–26178 Filed 10–11–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER00–1655–004]**

### Southern Company Services, Inc.; Notice of Filing

October 5, 2000.

Take notice that on October 2, 2000, Southern Company Services, Inc. (SCSI), acting as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company tendered for filing two revised pages to the Southern Company System Intercompany Interchange Contract to reflect the clarifications directed in the order issued September 27, 2000, that conditionally accepted SCSI's earlier compliance filing dated June 20, 2000.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before October 16, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–26133 Filed 10–11–00; 8:45 am]

BILLING CODE 6717–01–M



## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–633–000]**

### Southern Natural Gas; Notice of Tariff Filing

October 5, 2000.

Take notice that on September 28, 2000, Southern Natural Gas Company (Southern), tendered for filing to part of its FERC Gas Tariff, Seventh Revised Volume No. 1, Second Revised Sheet No. 191. Southern requests that the Commission approve the revised tariff sheet effective November 1, 2000.

Southern states that the filed tariff sheet is being filed to reference the revised reporting requirements in Section 161.3(1)(2) of the Commission's Regulations with respect to marketing affiliates.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–26130 Filed 10–11–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–477–000]**

### Tennessee Gas Pipeline Co.; Notice of Technical Conference

October 5, 2000.

On August 15, 2000, Tennessee Gas Pipeline Company (Tennessee) submitted a filing to comply with Order No. 637. Several parties have protested various aspects of Tennessee's filing.

Take notice that a technical conference to discuss the various issues raised by Tennessee's filing will be held on Tuesday, November 14, 2000, at 10:00 am, in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426. Parties protesting aspects of Tennessee's filing should be prepared to discuss alternatives.

All interested persons and Staff are permitted to attend.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–26128 Filed 10–11–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP01–20–000]**

### Tennessee Gas Pipeline Co.; Notice of Compliance Filing

October 5, 2000.

Take notice that on October 2, 2000, Tennessee Gas Pipeline Company (Tennessee), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the tariff sheets listed in Appendix A to the filing, with an effective of November 1, 2000.

Tennessee states that the purpose of this filing is to revise its tariff in order to modify the applicability of the right of first refusal as directed by the Commission in Order Nos. 637, 637–A, and 637–B.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–26131 Filed 10–11–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP00–463–000]**

### Transcontinental Gas Pipe Line Corporation, Columbia Gas Transmission Corporation; Columbia Gulf Transmission Company, Notice of Application

October 5, 2000.

Take notice that on September 15, 2000, Transcontinental Gas Pipe Line Corporation (Transco), 2800 Post Oak Boulevard, Houston, Texas 77056; Columbia Gulf Transmission Company (Columbia Gulf), 2603 Augusta, Suite 125, Houston, Texas 77057–5637; and Columbia Transmission Corporation (Columbia), 12801 Fair Lakes Parkway, Fairfax, Virginia, 22030–1046 (jointly referred to as Applicants), tendered for filing a joint application for a certificate of public convenience and necessity pursuant to section 7(b) of the Natural Gas Act (NGA) to abandon: (1) Certain transportation services which were once required to permit Transco to transport natural gas for Columbia in offshore Louisiana; (2) certain exchange services which were once required to permit the exchange of natural gas between Transco and Columbia in the Lake Hatch Field, Terrebonne Parish, Louisiana; and (3) certain transportation and exchange of natural gas between Columbia, Columbia Gulf, and Transco in offshore, Louisiana, all as more fully set forth in the application, which is on file and open to public inspection. The application may be viewed on the web at *www.ferc.fed.us/online/rims.htm* (call (202) 208–2222 for assistance).

Applicants assert that no abandonment of any facility is proposed. Applicants also assert that the rate schedules for which Applicants

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seek abandonment authority are as follows:

| Docket No. | Company name | Rate schedule |
|---|---|---|
| CP76–132 | Transco | X–97 |
| CP79–199 | Columbia | X–89 |
| CP79–199 | Transco | X–214 |
| CP79–393 | Columbia | X–94 |
| CP79–393 | Columbia Gulf | X–72 |
| CP79–393 | Transco | X–223 |

The contact person for Columbia is Victoria J. Hamilton, 1700 MacCorkle Avenue, S.E., P.O. Box 1273, Charleston, West Virginia 25325–1273 at (304) 357–2927. The contact person for Transco is Julie P. Baumgarten, Esquire, P.O. Box 1396, Houston, Texas 77251–1396 at (713) 215–2344. The contact person for Columbia Gulf is Jacquelyne M. Rocan, Esquire, 2603 Augusta, Suite 125, Houston, Texas 77057–5637 at (713) 267–4743.

Any person desiring to be heard or to make protest with reference to said application should on or before October 26, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing must file therein a motion to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Section 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter that permission and approval for the proposed abandonments are required by the public convenience or necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–26120 Filed 10–11–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. EC00–137–000, et al.;]**

### The Connecticut Light and Power Company, et al. Electric Rate and Corporate Regulation Filings

October 4, 2000.

Take notice that the following filings have been made with the Commission:

**1. The Connecticut Light and Power Company, et al.; Western Massachusetts Electric Company,**

[Docket Nos. EC00–137–000 and ER00–3639–000]

Take notice that on September 26, 2000, The Connecticut Light and Power Company, Western Massachusetts Electric Company, The United Illuminating Company, Central Maine Power Company, Fitchburg Gas and Electric Light Company, New England Power Company, Public Service Company of New Hampshire, Dominion Resources, Inc. and Dominion Nuclear Connecticut, Inc. filed certain work papers in connection with their application under Sections 203 and 205 of the Federal Power Act for approvals relating to the sale of the Millstone Nuclear Power Station.

*Comment date:* October 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

**2. Adirondack Hydro Fourth Branch, LLC**

[Docket No. EG00–259–000]

Take notice that on September 29, 2000, Adirondack Hydro Fourth Branch, LLC (Adirondack), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Adirondack owns and operates a 3.3 MW hydroelectric facility located on the Mohawk River in the Town of Waterford, in Saratoga County, New York. Adirondack's business offices are located at 39 Hudson Falls Road in South Glens Falls, New York.

*Comment date:* October 25, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

**3. CinCap VI, LLC**

[Docket No. ER00–3792–000]

Take notice that on September 29, 2000, Sunbury Holdings, LLC, on behalf of CinCap VI, LLC (CinCap), tendered for filing under Section 205 of the Federal Power Act, a Notice of Succession in Ownership regarding the transfer of interest in an interconnection agreement between Cinergy Capital & Trading, Inc. (CCT) and PPL Electric Utilities Corporation from CCT to CinCap.

*Comment date:* October 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

**4. American Transmission Systems, Inc.**

[Docket No. ER00–3594–000]

Take notice that on September 25, 2000, American Transmission Systems, Inc. (ATSI), tendered for filing notice of withdrawal of its September 5, 2000 filing made with the Commission in the above-referenced docket.

*Comment date:* October 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

**5. Praxair, Inc.**

[Docket No. ER00–3767–000]

Take notice that on September 28, 2000, Praxair, Inc. (Praxair), tendered for filing pursuant to Rules 205 and 207 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.205 and 385.207, and Section 35.12 of the Commission's Regulations, 18 CFR 35.12, an application for blanket authorizations and certain waivers under various regulations of the Commission, and for an order accepting its FERC Electric Rate Schedule No.1 to be effective the earlier of 60 days from the date of filing or the date of a Commission order granting approval of this Rate Schedule.

Praxair intends to engage in electric power and energy transactions as a marketer. In transactions where Praxair purchases power, including capacity and related services from electric utilities, qualifying facilities and independent power producers, and resells such power to other purchasers, Praxair will be functioning as a marketer. In Praxair's marketing transactions, Praxair proposes to charge rates mutually agreed upon by the parties. Praxair is not in the business of producing nor does it contemplate acquiring title to any electric power transmission facilities.

*Comment date:* October 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

**6. Baltimore Gas and Electric Company**

[Docket No. ES00–54–000]

Take notice that on September 26, 2000, Baltimore Gas and Electric Company submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to issue not more than $700 million of short-term unsecured promissory notes, commercial paper notes, medium-term notes, and guarantees of assumptions of liabilities or obligations with a final maturity date no later than December 31, 2003.

*Comment date:* October 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

**7. Basin Electric Power Cooperative, Inc.**

[Docket No. NJ00–7–000]

Take notice that on September 29, 2000, Basin Electric Power Cooperative (Basin Electric), tendered for filing a petition for a declaratory order finding that its open access transmission tariff providing for service on its facilities in the Western Interconnection is an acceptable reciprocity tariff under Order Nos. 888 and 888–A. Basin Electric also requests a waiver of the fee otherwise applicable to the filing of a request for declaratory order.

*Comment date:* November 3, 2000, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraphs**

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–26118 Filed 10–11–00; 8:45 am]

BILLING CODE 6717–01–P



## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Declaration of Intention and Soliciting Comments, Motions To Intervene, and Protests

October 5, 2000.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Declaration of Intention.

b. *Docket No:* DI00–9–000.

c. *Date Filed:* August 28, 2000.

d. *Applicant:* Wenckus Energy, Incorporated.

e. *Name of Project:* Wiscoy Hydroelectric Plant.

f. *Location:* On Wiscoy Creek, in Allegany County, Hume, New York. The project does not utilize federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mark Wenckus, Wenckus Energy, Incorporated, 4881 Macks Road, Stewartstown, PA 17363. (717) 993–5726 Fax: (717) 993–5877 e-mail: *mwenergy@blazent.net.*

i. *FERC Contact:* Any questions on this notice should be addressed to Etta Foster at (202) 219–2679, or e-mail address: *etta.foster@ferc.fed.us.*

j. *Deadline for filing comments and or motions:* November 13, 2000.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

Please include the docket number (DI00–9–000) on any comments or motions filed.

k. *Description of Project:* The existing run-of-river project will consists of a 32.3-foot-high, 225-foot-long concrete dam; or reservoir with a normal surface area of 10.5 acres; a 60-inch, 1470-foot-long penstock; a power house containing two generating units with a total generator rating of 1080 kW, and appurtenant facilities.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, N.E., Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. This filing may be viewed on *http://www.ferc.fed.us/online/rims.htm* (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTESTS", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the applicant specified in the particular application.

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Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–26122 Filed 10–11–00; 8:45 am]

**BILLING CODE 6717–01–M**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6884–5]**

### Announcement of an Analysis of Oversight and Review of EPA Information Products

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice is to announce EPA's intent to perform an analysis of oversight and review mechanisms for EPA information products. Oversight and review of EPA information products is an aspect of accountability, which EPA is considering as the Agency develops its public access strategy. The analysis will provide useful background for EPA's strategy. Specifically, the analysis will focus on mechanisms to address concerns if inaccurate or misleading information products are published by EPA. The analysis will look at the scope and adequacy of various oversight mechanisms.

EPA will provide detailed issue papers prepared by independent experts from the fields of law, economics and public administration for each of the following issues:

1. What current mechanisms exist to address concerns about inaccurate or misleading information products published by the government? The analysis will address judicial and non-judicial mechanisms for review in both pre-publication and post-publication stages.

2. Generally, what types of additional pre-publication or post-publication mechanisms could be developed under existing law to ensure there is accountability for correcting errors?

3. Assuming the availability of judicial review, what are the costs and benefits (*e.g.*, to the government, to private parties, and to society in general)?

4. When considering the feasibility of new mechanisms to ensure accountability for accurate and clear information or data, what economic and social costs and benefits should be considered (*e.g.*, likelihood for abuse, timeliness of resolution, completeness of information disclosure, effectiveness for resolving issues)?

5. What are some pertinent case histories that show the costs and benefits for judicial and non-judicial review options?

These issue papers are intended to be neutral in tone; they will explain the range of opinions on each issue without advocating any specific position. EPA anticipates that the issue papers will be ready in January 2001. When they are complete, EPA will announce their availability in the **Federal Register** and on the EPA Website, and will post the full texts on the EPA Website. The Agency will open a 30-day public comment period on-line to solicit public input. EPA is interested in obtaining comments from a broad spectrum of its stakeholders, but is particularly interested in hearing from experts in the legal and administrative aspects of judicial and non-judicial review. The Agency would prefer that commenters use the EPA Website to send comments, but will also accept written comments by mail.

**ADDRESSES:** There will be a 30-day public comment period, announced on the EPA Website *(www.epa.gov)* and in the **Federal Register** when the issue papers are available. Written comments can be sent by mail to Kevin Donovan, Office of Environmental Information, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Mail Code 2843, Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** For more detailed information on specific aspects of the issue papers, contact Kevin Donovan (*donovan.kevin-e@epa.gov*) or Vipul Bhatt (*bhatt.vipul@epa.gov*), Office of Environmental Information, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Mail Code 2843, Washington, DC 20460.

Dated: October 6, 2000.

**Elaine Stanley,**

*Director, Office of Information and Analysis and Access, Office of Environmental Information.*

[FR Doc. 00–26188 Filed 10–11–00; 8:45 am]

**BILLING CODE 6560–50–U**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6884–3]**

### Interagency Project To Clean Up Open Dumps on Tribal Lands: Request for Proposals

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of availability.

**SUMMARY:** The national Tribal Solid Waste Interagency Workgroup (Workgroup) is soliciting proposals for its Tribal Open Dump Cleanup Project (Cleanup Project) for Fiscal Year (FY) 2001. In FY 2000 the Workgroup made $2.4 million available to fund or partially fund eleven proposed projects. The Workgroup believes that a similar dollar amount will be available to fund projects in FY 2001. In selecting Cleanup Project proposals, the Workgroup plans to use a two-step process. The first step is to submit a pre-proposal which generally outlines the proposed project and provides a general budget estimate. This will allow the tribes that are considering submitting full proposals to present their ideas to the Workgroup and receive feedback prior to submitting full proposals. It will also allow the Workgroup agencies to assess and plan for potential financial and technical needs early in the process. The second step of the proposal submission process is to submit a full proposal. Please note that tribes are eligible to submit full proposals even if they do not submit a pre-proposal.

The Cleanup Project is intended to assist tribal communities with closing or upgrading high threat waste disposal sites and providing alternative disposal options. In determining whether a site is high threat, the Workgroup will generally rely on the Indian Health Service's Report to Congress on open dumps on Indian lands. The Workgroup recognizes that an individual tribe may have information on high threat sites that are not included in the IHS Report. To address such sites, the Request for Proposals package includes criteria that allow a tribe to demonstrate that a site represents a serious threat to human health and the environment and should be considered high threat.

The Tribal Solid Waste Interagency Workgroup was established in April 1998 to design a Federal plan for helping tribes bring their waste disposal sites into compliance with the municipal solid waste landfill criteria (40 CFR Part 258), *i.e.*, closing or upgrading open dumps and planning for appropriate alternative disposal. Current Workgroup members include representatives from EPA, the Bureau of Indian Affairs, the Indian Health Service, the Federal Aviation Administration, the National Oceanic and Atmospheric Administration, the U.S. Geological Survey, the Agency for Toxic Substances and Disease Registry, the United States Coast Guard and the Departments of Agriculture, Defense and Housing and Urban Development.

*Criteria:* Eligible recipients of assistance under the Cleanup Project include federally recognized tribes and multi-tribe 501(c)(3) organizations whose membership consists of federally recognized tribes. A full explanation of the submittal process, the qualifying requirements, and the criteria that will be used to evaluate proposals for this Project may be found in the Request for Proposals package.

**DATES:** For consideration, pre-proposals must be received by close of business on November 13, 2000 and full proposals must be received by close of business on February 23, 2001.

**FOR FURTHER INFORMATION CONTACT:** Copies of the Request for Proposals package may be downloaded from the Internet at www.epa.gov/tribalmsw by clicking on "What's New." Copies may also be obtained by contacting EPA, IHS or BIA regional or area offices or one of the following Workgroup representatives:

EPA—Melanie Barger Garvey, 202–564–2579, Beverly Goldblatt, 703–308–7278, or Tonya Barnett, 703–308–8278.

IHS—Steve Aoyama, 301–443–1046.

BIA—Jerry Gidner, 202–208–5696.

Dated: October 2, 2000.

**Elizabeth A. Cotsworth,**

*Director, Office of Solid Waste.*

[FR Doc. 00–26223 Filed 10–11–00; 8:45 am]

**BILLING CODE 6560–50–P**



## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6884–4]**

### Science Advisory Board; Notification of Public Advisory Committee Meetings

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that two committees of the US EPA Science Advisory Board (SAB) will meet on the dates and times noted below. All times noted are Eastern Time. All meetings are open to the public, however, seating is limited and available on a first come basis. *Important Notice:* Documents that are the subject of SAB reviews are normally available from the originating EPA office and are not available from the SAB Office—information concerning availability of documents from the relevant Program Office is included below.

**1. Research Strategies Advisory Committee (RSAC)—October 27, 2000**

The Research Strategies Advisory Committee (RSAC) will meet via public teleconference on Friday, October 27, 2000 from 10:00 am–12:00 pm. The teleconference meeting will be hosted out of Conference Room 6013 in the USEPA, Ariel Rios Building North, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. Members of the public located in the Washington, DC area are encouraged to attend the meeting due to the limitation on teleconference lines.

*Purpose of the Meeting:* In this meeting, the Research Strategy Advisory Committee will hold a consultation on the Office of Research and Development's (ORD) draft Strategic Plan 2000.

*Availability of Review Materials:* A draft agenda will be available to the public at the SAB website (http://www.epa.gov/sab) by close-of-business on October 20, 2000. Copies of the ORD draft Strategic Plan 2000 are available from Greg Grinder, US EPA, ORD (8201R), 1300 Pennsylvania Avenue, NW, Washington, DC 20460, telephone (202) 564–6882 or via e-mail at: *grinder.greg@epa.gov*. The draft is also available on the ORD Website at: *http://www.epa.gov/ORD/SP2K*.

**FOR FURTHER INFORMATION CONTACT:** Any member of the public wishing further information concerning this meeting or wishing to submit brief oral comments must contact John "Jack" R. Fowle III, Designated Federal Officer, Science Advisory Board (1400A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone (202) 564–4547; FAX (202) 501–0323; or via e-mail at *fowle.jack@epa.gov*. Requests for oral comments must be in writing (e-mail preferred) and received by Fowle no later than noon Eastern Time on October 20, 2000. For further information concerning participation via telephone, please contact Wanda Fields, Management Assistant, Committee Operations Staff, US EPA Science Advisory Board (1400A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone (202) 564–4539; FAX (202) 501–0582; or via e-mail at *fields.wanda@epa.gov*.

**2. Executive Committee (EC)—November 1–2, 2000**

The Executive Committee (EC) of US EPA's Science Advisory Board (SAB) will meet on Wednesday and Thursday, November 1–2, 2000 beginning at 8:30 a.m. each day and ending no later than 5:00 p.m. each day. The meeting will be held in Conference Room 6013 in the USEPA, Ariel Rios Building North, 1200 Pennsylvania Avenue, NW, Washington, DC 20460.

*Purpose of the Meeting:* In this meeting, the Executive Committee plans to review reports from some of its Committees/Subcommittee, most likely including, but not limited to, the following:

(a) *Environmental Engineering Committee* (EEC): (1) Commentary on Diffusion (For more details on this SAB commentary, please refer to 65 **Federal Register** 32089, May 22, 2000); (2) Commentary on Measures of Environmental Technology Performance (For more details on this SAB commentary, please refer to 65 **Federal Register** 1866, January 12, 2000).

(b) *Radiation Advisory Committee* (RAC): (1) Advisory on GENII ver. 2.0; and (2) Advisory on TENORM (Technologically Enhanced Naturally Occurring Radioactive Material) (For more details on these two SAB Advisories, please refer to 65 **Federal Register** 18095, April 6, 2000).

On the afternoon of November 1st, the Board will conduct the fourth and final workshop in its series on Science and New Approaches to Stakeholder Involvement. In addition, the EC is planning to conduct a Consultation with the Office of Environmental Information (OEI), discuss interactions with other Federal Advisory committees in the Agency, develop plans for a strategic planning retreat next spring, and confer with selected Agency officials.

*Availability of Review Materials:* The agenda for the meeting will be updated on the SAB Website (*www.epa.gov/sab*) up to the time of the meeting per se and will track which reports will be reviewed by EC. The draft SAB reports will also be posted on the Website at least one week prior to the meeting.

*Important Notice:* The Agency documents that are the subject of SAB reviews are normally available from the originating EPA office and are not available from the SAB Office. Information concerning availability of documents from the relevant Program Office is included in the FR references given above with each SAB report.

*For Further Information:* Any member of the public wishing further information concerning this meeting or wishing to submit brief oral comments must contact Donald Barnes, Designated Federal Officer, Science Advisory Board (1400A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue,

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NW, Washington, DC 20460; telephone (202) 564–4533; FAX (202) 501–0323; or via e-mail at *barnes.don@epa.gov*. Requests for oral comments must be in writing (e-mail preferred) and received by Dr. Barnes no later than noon Eastern Time on October 24, 2000.

**Providing Oral or Written Comments at SAB Meetings**

It is the policy of the Science Advisory Board to accept written public comments of any length, and to accommodate oral public comments whenever possible. The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. *Oral Comments:* In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes. For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Deadlines for getting on the public speaker list for a meeting are given above. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting. *Written Comments:* Although the SAB accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the committee for their consideration. Comments should be supplied to the appropriate DFO at the address/contact information noted above in the following formats: One hard copy with original signature, and one electronic copy via e-mail (acceptable file format: WordPerfect, Word, or Rich Text files (in IBM–PC/Windows 95/98 format). Those providing written comments and who attend the meeting are also asked to bring 25 copies of their comments for public distribution.

*General Information:* Additional information concerning the Science Advisory Board, its structure, function, and composition, may be found on the SAB Website (*http://www.epa.gov/sab*) and in The FY1999 Annual Report of the Staff Director which is available from the SAB Publications Staff at (202) 564–4533 or via fax at (202) 501–0256. Committee rosters, draft Agendas and meeting calendars are also located on our website.

*Meeting Access:* Individuals requiring special accommodation at these meetings, including wheelchair access to the conference room, should contact the appropriate DFO at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: October 4, 2000.

**Donald G. Barnes,**

*Staff Director, Science Advisory Board.*

[FR Doc. 00–26225 Filed 10–11–00; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–OW–6883–9]**

### Notice of Intent To Develop Ambient Water Quality Criteria for Protection of Human Health—Arsenic, Methylmercury, and Carbofuran; Notice of Data Availability; Request for Data and Information

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of intent to revise ambient water quality criterion for protection of human health for arsenic; notice of intent to develop ambient water quality criteria for methylmercury and carbofuran; notice of data availability; request for data and information.

**SUMMARY:** Section 304(a)(1) of the Clean Water Act requires the Environmental Protection Agency (EPA) to develop and publish, and from time to time revise, ambient water quality criteria (AWQC) that accurately reflect the latest scientific knowledge. Today, EPA is notifying the public of its intent to revise the current, recommended human health water quality criterion for arsenic, and to develop recommended criteria for methylmercury, and carbofuran. This notice does not establish a schedule for revision or development of the criteria; the criteria will be revised or developed on differing schedules. EPA expects to have a peer review draft of the methylmercury criterion on the Office of Water web page, http://www.epa.gov/ost/standards/humanhealth/ in the fall of 2000. The arsenic criteria revisions will parallel the development of the Safe Drinking Water Standard for arsenic. Carbofuran criteria development is on a one-year schedule.

The pertinent list of references on the adverse health effects of arsenic is available for viewing at the Office of Water's Docket (W–99–16) for the proposed National Primary Drinking Water Regulation, 65 FR 38888; June 22, 2000. The Agency will be using these references and scientific views and data submitted in response to the proposed maximum contaminant level (MCL) for arsenic in drinking water in revising the human health AWQC for arsenic. Thus, persons who have submitted health effects data to the docket for that proposal or any subsequent notice of data availability with respect to that proposal need not resubmit the same information. However, information about bioaccumulation of arsenic is relevant specifically to the AWQC and should be submitted as noted under the **ADDRESSES** section. References for methylmercury and carbofuran will be posted on the Office of Science and Technology's website at *www.epa.gov/ost/humanhealth/* when they are available. EPA is soliciting any additional pertinent data or scientific views that may be useful in revising the criteria for arsenic, and developing criteria for methylmercury and carbofuran.

**DATES:** Information submissions should be submitted by November 13, 2000 for methylmercury and by December 11, 2000 for carbofuran and arsenic. Information submitted after this date and too near to the end of the document preparation may not receive the degree of consideration of data submitted earlier.

**ADDRESSES:** By US mail, send an original and three copies of any data, references or information to W–00–19 Comment Clerk for arsenic; to W–00–20 Comment Clerk for methylmercury; or to W–00–21 Comment Clerk for carbofuran at the Water Docket, MC 4101, US EPA, 1200 Pennsylvania Ave. NW, Washington, D.C. 20460. Material may also be hand delivered to Room EB 57, 401 M Street SW, Washington, DC 20460 between 9:00 am and 3:30 pm EST. When using a private delivery company, send to Room EB 57, 401 M Street SW, Washington, DC 20460 or to Charles O. Abernathy, US EPA (4304), 401 M Street SW, Room 543 West Tower, Washington, DC 20460. Information may also be submitted electronically to *OW-Docket@epa.gov*. Information should be submitted as a WP5.1, 6.1 and/or 8.0 or an ASCII file with no form of encryption.

**FOR FURTHER INFORMATION CONTACT:** Charles O. Abernathy, Health and Ecological Criteria Division (4304), US EPA, 1200 Pennsylvania Ave. NW, Washington, D.C. 20460; (202) 260–5374; *abernathy.charles@epa.gov* (data on toxicity of arsenic); Keith Sappington, Health and Ecological Criteria Division (4304), US EPA, 1200 Pennsylvania Ave. NW, Washington, D.C. 20460; (202) 260–9898; *sappington.keith@epa.gov* or Erik Winchester, Health and Ecological Criteria Division (4304), US EPA, 1200 Pennsylvania Ave. NW, Washington, D.C. 20460; (202) 260–6107; *winchester.erik@epa.gov* (data pertaining to bioaccumulation of arsenic, methylmercury, and carbofuran in fish and shellfish); Mary Manibusan, Health and Ecological Criteria Division (4304), US EPA,1200 Pennsylvania Ave. NW, Washington, D.C. 20460; (202) 260–3688; *manibusan.mary@epa.gov* (data on the toxicity of methylmercury); Amal Mahfouz, Health and Ecological Criteria Division (4304), US EPA, 1200 Pennsylvania Ave. NW, S.W., Washington, D.C. 20460; (202) 260–9568, *mahfouz.amal@epa.gov* (data on toxicity of carbofuran).

**SUPPLEMENTARY INFORMATION:**

**What Are Human Health Criteria?**

Section 304(a)(1) of the Clean Water Act requires the EPA to develop and publish, and from time to time revise, criteria for water accurately reflecting the latest scientific knowledge. AWQC recommended for protection of human health under section 304(a) are based solely on data and scientific judgments. They do not consider economic impacts or the technological feasibility of meeting the criteria in ambient water. Section 304(a) recommended criteria provide guidance to States, Territories and authorized Tribes in adopting water quality standards for protection of human health and provide a scientific basis for developing controls of discharges or releases of pollutants. The criteria also provide a scientific basis for EPA to develop federal regulations under section 303(c).

**What Type of Information Does EPA Want From the Public?**

Today, EPA is notifying the public of its intent to revise the current human health water quality criterion for arsenic, and to develop criteria for methylmercury and carbofuran. Revisions to the human health section of the water quality criterion for arsenic will be based on the adverse health effects of arsenic as recently reviewed by the National Academy of Sciences' National Research Council (NRC) in the 1999 peer-reviewed report entitled "Arsenic in Drinking Water", and on other peer-reviewed data in the docket for the MCL proposal; there will be no separate peer review for the health effects information in support of the arsenic AWQC. However, the EPA also consider the potential for bioaccumulation as part of the AWQC and the NRC report does not address this facet. Accordingly, EPA is soliciting any additional pertinent data or scientific views that may be useful in revising or developing the human health section including the available data on the toxicity and bioaccumulation of arsenic and arsenic compounds in fish and shellfish. The lists of references identified by the Agency on health effects of arsenic will be available at the Water Docket W–99–16 or on the Office of Science and Technology's website at: *www.epa.gov/ost/humanhealth/*. In particular, EPA is interested in obtaining; (1) any data, not discussed by the NRC report or identified by the Agency's literature review on the chronic toxicity of arsenic and arsenic compounds to human health [Refer to Water Docket W–99–16] , (2) any data or scientific view on the toxicity and bioaccumulation of arsenic and arsenic compounds in fish and shellfish and, (3) scientific views on the interpretation of data or on the application of the Agency's methodology for deriving the human health criteria for arsenic. Any data submitted must be adequately documented and contain enough supporting information to indicate that acceptable test procedures were used and that the results are likely reliable.

The Agency has recently completed a comprehensive literature review on the human health effects of methylmercury and carbofuran. In addition EPA has received the recent report of the National Academy of Sciences, National Research Council on methylmercury: Toxicological Effects of Methylmercury. EPA will be considering this report in the development of the human health criterion for methylmercury. References identified by the Agency for these chemicals will be put on the Office of Science and Technology's web site at: *www.epa.gov/ost/humanhealth/*. EPA is soliciting any additional pertinent data or scientific views that may be useful in revising or developing the ambient water human health criteria for arsenic, methylmercury and carbofuran. In particular, the Agency is interested in acquiring from the public any new data that have not been identified by EPA. When the Agency has developed new human health water quality criteria for arsenic, methylmercury and carbofuran, their availability will be announced in the **Federal Register**. Additional data and comments will be considered in any subsequent revisions to the criteria.

**Where Can I Find More Information on EPA's Revised Process for Developing New or Revised Criteria?**

The Agency published detailed information about its revised process for developing and revising AWQC in the **Federal Register** on December 10, 1998 (63 FR68354) and in the EPA document entitled, National Recommended Water Quality Criteria—Correction (EPA 822–Z–99–001, April 1999). The revised process is to provide additional opportunities for public input, and to increase the efficiency of the water quality criteria development process.

Dated: October 2, 2000.

**Geoffrey H. Grubbs,**

*Director, Office of Science and Technology.*

[FR Doc. 00–26222 Filed 10–11–00; 8:45 am]

BILLING CODE 6560–50–P



## FEDERAL COMMUNICATIONS COMMISSION

### Public Information Collections Approved by Office of Management and Budget

October 3, 2000.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

**Federal Communications Commission**

*OMB Control No.:* 3060–0723.

*Expiration Date:* 09/30/2003.

*Title:* Public Disclosure of Network Information by Bell Operating Companies.

*Form No.:* N/A.

*Respondents:* Business or other for-profit.

*Estimated Annual Burden:* 7 respondents; 50 hours per response (avg.); 350 total annual burden hours.

*Estimated Annual Reporting and Recordkeeping Cost Burden:* $0.

*Frequency of Response:* On occasion; third party disclosure.

*Description:* Public Disclosure of Network Information by Bell Operating Companies (BOCs). Pursuant to Section 276(b)(1)(C) which directs the Commission to "prescribe a set of nonstructural safeguards for Bell operating company payphone service to implement the provisions of paragraphs (1) and (2) of subsection (a), which safeguards shall, at a minimum, include the nonstructural safeguards equal to those adopted in the Computer Inquiry—III (CC Docket No. 90–623) proceeding", 47 U.S.C. Section 276 (B)(a)(C), the BOCs are required to

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publicly disclose changes in their networks or new network services at two different points in time. First, disclosure would occur at the make/buy point: when a BOC decides to make for itself, or procure from an unaffiliated entity, any product whose design affects or relies on the network interface. Second, a BOC would publicly disclose technical information about a new service 12 months before it is introduced. If the BOC could introduce the service within 12 months of the make/buy point, it would make a public disclosure at the make/buy point. In no event, however, would the public disclosure occur less than six months before the introduction of the service. Without provision of these reports, the industry would be unable to ascertain whether the BOCs designing new network services or changing network technical specifications are to the advantage of their own payphones, or might disadvantage BOC payphone competitors. The information required by the Public Disclosure of Network Information by BOCs must be provided to third parties. All of the requirements would be used to ensure that BOCs comply with their obligations under the Telecommunications Act of 1996.

Obligation to respond: Mandatory.

*OMB Control No.:* 3060–0787.

*Expiration Date:* 04/30/2001.

*Title:* Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance.

*Form No.:* N/A.

*Respondents:* Business or other for-profit.

*Estimated Annual Burden:* 28,676 respondents; 3.83 hours per response (avg.); 109,876 total annual burden hours.

*Estimated Annual Reporting and Recordkeeping Cost Burden:* $0.

*Frequency of Response:* On occasion; Third Party Disclosure; Recordkeeping.

*Description:* Section 258 of the Communications Act of 1934 (Act), as amended by the Telecommunications Act of 1996, makes it unlawful for any telecommunications carrier to "submit or execute a change in a subscriber's selection of a provider of telecommunications exchange service or telephone toll service except in accordance with such verification procedures as the Commission shall prescribe." The Section further provides that any telecommunications carrier that violates such verification procedures and that collects charges for telephone exchange service or telephone toll service from a subscriber, shall be liable to the carrier previously selected by the subscriber in an amount equal to all charges paid by the subscriber after such violation. In the Second Report and Order and Further Notice of Proposed Rulemaking (Section 258 Order) issued in CC Docket No. 94–129, the Commission adopted rules to implement Section 258 of the Communications Act of 1934 (Act), as amended by the Telecommunications Act of 1996 (1996 Act). The goal of Section 258 is to eliminate the practice of "slamming," which is the unauthorized change of a subscriber's preferred carrier. In the Section 258 Order, the Commission adopted various rules addressing verification of preferred carrier changes and preferred carrier freezes. The Commission also adopted liability rules designed to take the profit out of slamming. In the First Order on Reconsideration (Order), released May 3, 2000, the Commission amends certain of its liability rules by requiring slamming disputes between consumers and carriers to be brought before appropriate state commissions, or this Commission in cases where the state has not opted to administer our rules, rather than to authorized carriers. The Order also modifies the liability rules that apply when a consumer has paid charges to a slamming carrier. Finally, the Order sets forth certain notification requirements to facilitate carriers' compliance with the liability rules. a. Section 64.1110, State Notification of Election to Administer FCC Rules. Pursuant to Section 64.1110(a), state notification of an intention to administer the Federal Communication Commission's unauthorized carrier change rules and remedies shall be filed with the Commission Secretary in CC Docket No. 94–129 with a copy of such notification provided to the Consumer Information Bureau Chief. Such notification shall contain, at a minimum, information on where consumers should file complaints, the type of documentation, if any, that must accompany a complaint, and the procedures the state will use to adjudicate complaints. Pursuant to Section 64.1110(b), state notification of an intention to discontinue administering the Federal Communication Commission's unauthorized carrier change rules and remedies shall be filed with the Commission Secretary in CC Docket No. 94–129 with a copy of such amended notification provided to the Consumer Information Bureau Chief. Such discontinuance shall become effective 60 days after the Commission's receipt of the state's letter. (*No. of respondents:* 51; *hours per response:* 2 hours; *total annual burden:* 102 hours). b. Section 64.1120, Verification of Orders for Telecommunications Carriers. A carrier must retain verification records for two years after their creation. Pursuant to Section 64.1120 no telecommunications carrier shall submit a preferred carrier charge order unless and until the order has first been confirmed. Telecommunications carriers may obtain the subscriber's written authorization as required by section 64.1130 or an electronic authorization, or an oral authorization through a qualified independent third party. (*Number of respondents:* 1800; *hours per response:* 1.5 hours; *total annual burden:* 2700 hours). c. Section 64.1130, Letter of Agency Form and Content. Section 64.1130 contains the requirements for issuing a letter of agency to obtain written authorization and/or verification of a subscribers' request to change his/her preferred carrier selection. A carrier marketing multiple services must specifically distinguish among such services in any letter of agency, and must obtain separate authorization for each service that is being changed. (*No. of respondents;* 1800; *hours per response:* 1.5 hours; *total annual burden:* 2700 hours). d. Section 64.1140, Carrier Liability for Slamming. Pursuant to Section 64.1140(a), any submitting telecommunications carrier that fails to comply with the procedures prescribed in this part shall be liable to the subscriber's properly authorized carrier in an amount equal to 150% of all charges paid to the submitting telecommunications carrier by such subscriber after such violation, as well as for additional amounts as prescribed in § 64.1170 of Part 64. Pursuant to Section 64.1140(b), any subscriber whose selection of telecommunications service provider is changed without authorization or verification in accordance with the procedures set for 47 CFR 64.1140 will be liable for charges. (*No. of respondents:* 1910; *hours per response:* 2 hours; *total annual burden:* 3820 hours). e. Section 64.1150, Procedures For Resolution of Unauthorized Changes in Preferred Carrier—Pursuant to Section 64.1150(a), executing carriers who are informed of an unauthorized carrier change by a subscriber must immediately notify both the authorized and allegedly unauthorized carrier of the incident. This notification must include the identity of both carriers. Pursuant to Section 64.1150(b), any carrier, executing, authorized, or allegedly unauthorized, that is informed by a



subscriber or an executing carrier of an unauthorized carrier change shall direct that subscriber either to the state commission or, where the state commission has not opted to administer these rules, to the Federal Communications Commission's Consumer Information Bureau, for resolution of the complaint. Pursuant to Section 64.1150(c), upon receipt of an unauthorized carrier change complaint, the relevant governmental agency will notify the allegedly unauthorized carrier of the complaint and order that the carrier removes all unpaid charges from the subscriber's bill pending a determination of whether an unauthorized change, as defined by § 64.1100(e) of this part, has occurred, if it has not already done so. Pursuant to Section 64.1150(d), not more than 30 days after notification of the complaint, or such lesser time as is required by the state commission if a matter is brought before a state commission, the alleged unauthorized carrier shall provide to the relevant government agency a copy of any valid proof of verification of the carrier change. Failure by the carrier to respond or provide proof of verification will be presumed to be clear and convincing evidence of a violation. Pursuant to Section 64.1150(e), the Federal Communications Commission will not adjudicate a complaint filed pursuant to § 1.719 or §§ 1.720–736, involving an alleged unauthorized change, as defined by § 64.1100(e) of this part, while a complaint based on the same set of facts is pending with a state commission. (*No. of respondents:* 1960; *hours per response:* 8 hours; *total annual hours:* 9800 hours). f. Section 64.1160, Absolution Procedures Where the Subscriber Has Not Paid—Pursuant to Section 64.1160(a), this section shall only apply after a subscriber has determined that an unauthorized change, as defined by § 64.1100(e) of this part, has occurred and the subscriber has not paid charges to the allegedly unauthorized carrier for service provided for 30 days, or a portion thereof, after the unauthorized change occurred. Pursuant to Section 64.1160(b), an allegedly unauthorized carrier shall remove all charges incurred for service provided during the first 30 days after the alleged unauthorized change occurred, as defined by § 64.1100(e) of this part, from a subscriber's bill upon notification that such unauthorized change is alleged to have occurred. Pursuant to Section 64.1160(c), an allegedly unauthorized carrier may challenge a subscriber's allegation that an unauthorized change, as defined by § 64.1100(e) of this part, occurred. An allegedly unauthorized carrier choosing to challenge such allegation shall immediately notify the complaining subscriber that: (1) The complaining subscriber must file a complaint with a state commission that has opted to administer the FCC's rules, pursuant to § 64.1110 of this part, or the FCC within 30 days of either (i) the date of removal of charges from the complaining subscriber's bill in accordance with paragraph (b) of this section or (ii) the date the allegedly unauthorized carrier notifies the complaining subscriber of the requirements of this paragraph, whichever is later; and (2) a failure to file such a complaint within this 30-day time period will result in the charges removed being reinstated on the subscriber's bill and, consequently, the complaining subscribers will only be entitled to remedies for the alleged unauthorized change other than those provided for in § 64.1140(b)(1) of this part. No allegedly unauthorized carrier shall reinstate charges to a subscriber's bill pursuant to the provisions of this paragraph without first providing such subscriber with a reasonable opportunity to demonstrate that the requisite complaint was timely filed within the 30-day period described in this paragraph. Pursuant to Section 64.1160(d), if the relevant governmental agency determines after reasonable investigation that an unauthorized change, as defined by § 64.1100(e) of this part, has occurred, an order shall be issued providing that the subscriber is entitled to absolution from the charges incurred during the first 30 days after the unauthorized carrier change occurred, and neither the authorized or unauthorized carrier may pursue any collection against the subscriber for those charges. Pursuant to Section 64.1160(e), if the subscriber has incurred charges for more than 30 days after the unauthorized carrier change, the unauthorized carrier must forward the billing information for such services to the authorized carrier. Pursuant to Section 64.1160(f), if the unauthorized carrier received payment from the subscriber for services provided after the first 30 days after the unauthorized change occurred, the obligations for payments and refunds provided for in § 64.1160 of this part shall apply to those payments. Pursuant to Section 64.1160(g), if the relevant governmental agency determines after reasonable investigation that the carrier change was authorized, the carrier may re-bill the subscriber for charges incurred. (*No. of respondents:* 1960; *hours per response:* 8 hours; *total annual burden:* 15,680). g. Section 64.1170, Reimbursement Procedures Where the Subscriber Has Paid—Pursuant to Section 64.1170(a), the procedures set forth in Section 64.1170 shall apply only after a subscriber has determined that an unauthorized change, as defined by Section 64.1100(e) of our rules, has occurred and the subscriber has paid charges to an allegedly unauthorized carrier. Pursuant to Section 64.1170(b), if the relevant governmental agency determines after reasonable investigation that an unauthorized change, as defined by § 64.1100(e) of this part, has occurred, it shall issue an order directing the unauthorized carrier to forward to the authorized carrier the following, in addition to any appropriate state remedies, an amount equal to 150% of all charges paid by the subscriber to the unauthorized carrier; and copies of any telephone bills issued from the unauthorized carrier to the subscriber. Pursuant to Section 64.1170(c), within ten days of receipt of the amount provided for in paragraph (b)(1) of this section, the authorized carrier shall provide a refund or credit to the subscriber in the amount of 50% of all charges paid by the subscriber to the unauthorized carrier. The subscriber has the option of asking the authorized carrier to re-rate the unauthorized carrier's charges based on the rates of the authorized carrier and, on behalf of the subscriber, seek an additional refund from the unauthorized carrier, to the extent that the re-rated amount exceeds the 50% of all charges paid by the subscriber to the unauthorized carrier. The authorized carrier shall also send notice to the relevant governmental agency that it has given a refund or credit to the subscriber. Pursuant to Section 64.1170(d), if an authorized carrier incurs billing and collection expenses in collecting charges from the unauthorized carrier, the unauthorized carrier shall reimburse the authorized carrier for reasonable expenses. Pursuant to Section 64.1170(e), if the authorized carrier has not received payment from the unauthorized carrier as required by paragraph (c) of this section, the authorized carrier is not required to provide any refund or credit to the subscriber. The authorized carrier must, within 45 days of receiving an order as described in paragraph (b) of this section, inform the subscriber and the relevant governmental agency that issued the order if the unauthorized carrier has failed to forward to it the appropriate charges, and also inform the subscriber of his or her right to pursue a claim against the unauthorized carrier

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for a refund of all charges paid to the unauthorized carrier. Pursuant to Section 64.1170(f), where possible, the properly authorized carrier must reinstate the subscriber in any premium program in which that subscriber was enrolled prior to the unauthorized change, if the subscriber's participation in that program was terminated because of the unauthorized change. If the subscriber has paid charges to the unauthorized carrier, the properly authorized carrier shall also provide or restore to the subscriber any premiums to which the subscriber would have been entitled had the unauthorized change not occurred. The authorized carrier must comply with the requirements of this section regardless of whether it is able to recover from the unauthorized carrier any charges that were paid by the subscriber. (*No. of respondents:* 1960; *hours per response:* 7 hours; *total annual burden:* 13,720 hours). h. Section 64.1190, Preferred Carrier Freezes. Section 64.1190 requires that all local exchange carriers that impose preferred carrier freezes on their subscribers' accounts must verify such freezes, as well as accept subscriber requests to lift such freezes in writing or by three-way calls. (*No. of respondents:* 1800; *hours per response:* 2 hours; *total annual burden:* 3600 hours). i. Section 1.719, Informal Complaints Filed Pursuant to Section 258—Section 1.719 applies to complaints alleging that a carrier has violated Section 258 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, by making an unauthorized change of a subscriber's preferred carrier, as defined by § 64.1100(e). Pursuant to Section 1.719(b), the complaint shall be in writing, and should contain: (1) The complainant's name, address, telephone number and e-mail address (if the complainant has one); (2) the name of both the allegedly unauthorized carrier, as defined by § 64.1100(d), and authorized carrier, as defined by § 64.1100(c); (3) a complete statement of the facts (including any documentation) tending to show that such carrier engaged in an unauthorized change of the subscriber's preferred carrier; (4) a statement of whether the complainant has paid any disputed charges to the allegedly unauthorized carrier; and (5) the specific relief sought. If the complainant is unsatisfied with the resolution of a complaint under this section, the complainant may file a formal complaint with the Commission in the form specified in § 1.721 of this part. (*No. of respondents:* 13,200; *hours per response:* 4 hours; *total annual burden:* 52,800 hours). j. Voluntary Reporting Requirement. States that choose to administer the Commission's slamming rules must regularly file information with the Commission that details slamming activity in their regions. Such filings should identify the number of slamming complaints handled, including data on the number of valid complaints per carrier; the identity of top slamming carriers; slamming trends; and other relevant information. See paragraph 34 of the Order. (*Number of respondents:* 51; *hours per response:* 10 hours; *total annual burden:* 510 hours). The information from these collections will be used to implement Section 258 of the Act. The information will strengthen the ability of our rules to deter slamming, while addressing concerns raised with respect to our previous administrative procedures. The information will also enable us to give victims of slamming adequate redress and ensure that carriers that slam do not profit from their fraud. Finally, the information will help to protect consumers from carriers who may attempt to take advantage of consumer confusion over different types of telecommunications services. Obligation to respond: Required to obtain or retain benefits.

Public reporting burden for the collection of information is as noted above. Send comments regarding the burden estimate or any other aspect of the collections of information, including suggestions for reducing the burden to Performance Evaluation and Records Management, Washington, DC 20554.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 00–26194 Filed 10–11–00; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[Report No. 2443]**

### Petition for Reconsideration of Action in Rulemaking Proceeding

October 5, 2000.

Petition for Reconsideration has been filed in the Commission's rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of this document is available for viewing and copying in Room CY–257, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to this petition must be filed by October 27, 2000. See section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

*Subject*

Toll Free Service Access Codes (CC Docket No. 95–155)
Database Services Management, Inc. Petition for Declaratory Ruling
Beehive Telephone Company Petition for Declaratory Ruling

*Number of Petitions Filed:* 3.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 00–26190 Filed 10–11–00; 8:45 am]

**BILLING CODE 6712–01–M**

## FEDERAL ELECTION COMMISSION

### Sunshine Act Meeting

**PREVIOUSLY ANNOUNCED DATE & TIME:** Thursday, October 12, 2000, 10 a.m., meeting open to the public.

The following items were added to the agenda:

Status of Regulations—October 2000 Monthly Update
Conference Planning Procurement Recommendation

**DATE & TIME:** Tuesday, October 17, 2000 at 10 a.m.

**PLACE:** 999 E Street, NW., Washington, DC.

**STATUS:** This meeting will be closed to the public.

**ITEMS TO BE DISCUSSED:**

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

**DATE & TIME:** Thursday, October 19, 2000 at 10 a.m.

**PLACE:** 999 E Street, NW., Washington, DC (ninth floor)

**STATUS:** This meeting will be open to the public.

**ITEMS TO BE DISCUSSED:**

Correction and Approval of Minutes.

Draft Advisory Opinion 2000–29: The Honorable W.J. "Billy" Tauzin, United States House of Representatives, joined by House Members: Richard H. Baker, John Cooksey, Jim McCrery, David Vitter, William Jefferson, Chris John, and by Senators John Breaux and Mary Landrieu.



Dole for President, Inc.—Statement of Reasons (LRA#467).

Dole/Kemp '96, Inc.—Statement of Reasons (LRA#506).

Administrative Matters.

**PERSON TO CONTACT FOR INFORMATION:** Mr. Ron Harris, Press Officer, telephone: (202) 694–1220.

**Mary W. Dove,**

*Acting Secretary.*

[FR Doc. 00–26358 Filed 10–10–00; 1:32 pm]

**BILLING CODE 6715–01–M**

## FEDERAL MARITIME COMMISSION

### Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register.**

*Agreement No.:* 011728.

*Title:* Maersk Sealand/APL Mediterranean Slot Charter Agreement

*Parties:*

A.P. Moller-Maersk Sealand ("MSL")
APL Co. Pte. Ltd. and American President Lines, Ltd. (collectively, "APL")

*Synopsis:* The proposed agreement authorizes MSL to charter slots to APL in the trade between U.S. East and Gulf Coasts ports and ports in the Mediterranean, including ports in Spain, Malta, and Italy.

By Order of the Federal Maritime Commission.

**Sandra L. Kusumoto,**

*Director, Bureau of Consumer Complaints and Licensing.*

[FR Doc. 00–26230 Filed 10–11–00; 8:45 am]

**BILLING CODE 6730–01–P**

## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License; Terminations

The Federal Maritime Commission hereby gives notice that the following ocean transportation intermediary licenses have been terminated pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding dates shown below:

*License Number:* 14074N
*Name:* Bahaghari Express Cargo
*Address:* 1530-B Industrial Park Street, Covina, CA 91722
*Date Revoked:* August 24, 2000.
*Reason:* Failed to maintain a valid bond.

*License Number:* 2075F
*Name:* Bethlehem Forwarding Company
*Address:* 1452 Mercado Avenue, Coral Gables, FL 33146
*Date Terminated:* August 28, 2000.
*Reason:* Surrendered license voluntarily.

*License Number:* 11436N
*Name:* Blue Ocean Line, Inc. d/b/a Blue Ocean Lines
*Address:* 40 Exchange Place, 12th Floor, New York, NY 10004
*Date Revoked:* August 24, 2000.
*Reason:* Failed to maintain a valid bond.

*License Number:* 2363F
*Name:* Cargoza Forwarding Corporation
*Address:* 2801 N.W. 74th Avenue, #202, Miami, FL 33122
*Date Revoked:* September 13, 2000.
*Reason:* Failed to maintain a valid bond.

*License Number:* 4168F
*Name:* Continental Express International, Inc.
*Address:* 7506 S.W. 26th Court, Davie, FL 33314
*Date Revoked:* September 17, 2000.
*Reason:* Failed to maintain a valid bond.

*License Number:* 3482F
*Name:* Frontier Interational Shipping Company, Inc.
*Address:* 147–60 175th Street, Jamaica, NY 11434
*Date Revoked:* August 9, 2000.
*Reason:* Failed to maintain a valid bond.

*License Number :* 7842NF
*Name:* Global Worldwide, Inc.
*Address:* 810 W. Taft, Orange, CA 92865
*Date Revoked:* April 15, 2000.
*Reason:* Failed to maintain a valid bond.

*License Number:* 9776N
*Name:* Jewett Cameron Lumber Corporation
*Address:* P.O. Box 1010, North Plains, OR 97133
*Date Revoked:* August 25, 2000.
*Reason:* Failed to maintain a valid bond.

*License Number:* 16080N
*Name:* Kenwa Shipping, USA
*Address:* 701 S. Atlanta Blvd., Suite 200, Monterey, CA 91754
*Date Revoked:* August 24, 2000.
*Reason:* Failed to maintain a valid bond.

*License Number:* 14321N
*Name:* Kintetsu World Express Latin America Inc.
*Address:* 8551 NW 30th Terrace (Kintetsu Way), Miami, FL 33122
*Date Revoked:* September 20, 2000.
*Reason:* Failed to maintain a valid bond.

*License Number:* 3719F
*Name:* KNL International, Inc.
*Address:* 7710 Wentworth Drive, Duluth, GA 30155
*Date Revoked:* September 13, 2000.
*Reason:* Failed to maintain a valid bond.

*License Number:* 3493NF
*Name:* Lancer International Corp.
*Address:* 1766 NW 82nd Avenue, Miami, FL 33126
*Date Revoked:* September 20, 2000.
*Reason:* Failed to maintain a valid bond.

*License Number:* 14343N
*Name:* Mars Air Freight Ltd.
*Address:* 175–01 Rockaway Blvd., Suite 300, Jamaica, NY 11434
*Date Revoked:* September 8, 2000.
*Reason:* Failed to maintain a valid bond.

*License Number:* 4572F
*Name:* Nada Abed d/b/a Export Center
*Address:* 581 California Street, Newton, MA 02460
Dated: October 6, 2000.

**Bryant L. VanBrakle,**

*Secretary.*

[FR Doc. 00–26231 Filed 10–11–00; 8:45 am]

**BILLING CODE 6730–01–P**

## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License; Reissuance of License

Notice is hereby given that the following Ocean Transportation Intermediary license has been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, as amended by OSRA 1998 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR 515.

| License No. | Name/Address | Date reissued |
|---|---|---|
| 16790F | Atlantic Pacific Container Line, d/b/a APC Line, 333 Hamilton Blvd., Bldg. 10, South Plainfield, NJ 07080. | June 6, 2000. |
| 10380N | Pana-York Maritima, Ltd., 411–A North Wood Avenue, Suite #5, Linden, NJ 07036 | June 1, 2000. |

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*Date Revoked:* August 27, 2000.
*Reason:* Failed to maintain a valid bond.
*License Number:* 3571F
*Name:* Network Trading, Corp. d/b/a NTC
*Address:* 9901 NW 106th Street, Medley, FL 33178
*Date Revoked:* July 28, 2000.
*Reason:* Failed to maintain a valid bond.
*License Number:* 13996N
*Name:* Ocean Masters Inc.
*Address:* 3546 Montreal Place, Phoenix, AZ 85032–3942
*Date Revoked:* July 28, 2000.
*Reason:* Failed to maintain a valid bond.
*License Number:* 4667F
*Name:* Oceanair Freight Int'l. Inc.
*Address:* 509–513 S. Caroline Street, Baltimore, MD 21231
*Date Revoked:* September 17, 2000.
*Reason:* Failed to maintain a valid bond.
*License Number:* 16340N
*Name:* Pacific & Atlantic Ocean Container Line, Inc.
*Address:* 45 Rockerfeller Plaza, Suite 3162, New York, NY 10020
*Date Revoked:* September 10, 2000.
*Reason:* Failed to maintain a valid bond.
*License Number:* 4270F
*Name:* Panamerican All Trading Services, Corp.
*Address:* 5531 N.W. 72nd Avenue, Miami, FL 33166
*Date Revoked:* September 3, 2000.
*Reason:* Failed to maintain a valid bond.
*License Number:* 4068F
*Name:* Robinson Expediters, Inc.
*Address:* 7968 Plantation Blvd., Miramar, FL 33023
*Date Terminated:* September 7, 2000.
*Reason:* Surrendered license voluntarily.
*License Number:* 3144F
*Name:* Robo Cellular, Inc. d/b/a Robo Company
*Address:* 24309 Narbonne Avenue, Suite 200, Lomita, CA 90717
*Date Revoked:* August 13, 2000.
*Reason:* Failed to maintain a valid bond.
*License Number:* 3958NF
*Name:* Romi's Express, Inc.
*Address:* 1757 N.W. 79th Avenue, Miami, FL 33126–1112
*Date Revoked:* September 13, 2000.
*Reason:* Failed to maintain a valid bond.
*License Number:* 4293F
*Name:* Sea Inland Air International Inc.
*Address:* 9230 N.W. 12th Street, Miami, FL 33172
*Date Revoked:* August 16, 2000.
*Reason:* Failed to maintain a valid bond.
*License Number:* 9404N
*Name:* Seagate Shipping Lines, Inc.
*Address:* 72 Linda Avenue, Suite 106, Staten Island, NY 10305
*Date Revoked:* September 18, 2000.
*Reason:* Failed to maintain a valid bond.
*License Number:* 3506F
*Name:* Shannon International, Inc.
*Address:* 4110 Walker Avenue, Greensboro, NC 27407
*Date Revoked:* August 16, 2000.
*Reason:* Failed to maintain a valid bond.
*License Number:* 13217N
*Name:* Steve Dinh d/b/a American Container Line
*Address:* 1340 Tully Road, Suite 313, San Jose, CA 95122
*Date Revoked:* September 7, 2000.
*Reason:* Failed to maintain a valid bond.
*License Number:* 14875N
*Name:* Sun Ocean Lines, Inc.
*Address:* 7508 NW 54th Street, Miami, FL 33166
*Date Revoked:* August 16, 2000.
*Reason:* Failed to maintain a valid bond.
*License Number:* 13929N
*Name:* Sunrise American Shipping, Corp.
*Address:* 5437 NW 72nd Avenue, Miami, FL 33166
*Date Revoked:* September 1, 2000.
*Reason:* Failed to maintain a valid bond.
*License Number:* 3757F
*Name:* Trans-Global Logistics, Corp..
*Address:* 3121 NW 125th Street, Miami, FL 33167–2522
*Date Revoked:* July 27, 2000.
*Reason:* Failed to maintain a valid bond.
*License Number:* 2997F
*Name:* Virginia A. Miller & Company, Inc.
*Address:* c/o Alexis M. Sparks, 13502 Chimney Sweep Drive, Houston, TX 77041
*Date Revoked:* September 20, 2000.
*Reason:* Failed to maintain a valid bond.
*License Number:* 0469F
*Name:* Wilmington Shipping Company d/b/a Southern Overseas Corporation
*Address:* 330 Shipyard, P.O. Box 1809, Wilmington, NC 24802–1809
*Date Revoked:* September 20, 2000.
*Reason:* Failed to maintain a valid bond.

**Sandra L. Kusumoto,**
*Director, Bureau of Consumer Complaints and Licensing.*
[FR Doc. 00–26233 Filed 10–11–00; 8:45 am]
BILLING CODE 6730–01–P

## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License; Applicant

Notice is hereby given that the following applicant has filed with the Federal Maritime Commission an application for a license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why the following applicant should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, D.C. 20573.

### Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

Helayel Inc., 235 West 37th Street, #1502, New York, NY 10001, Officer: Daniella Helayel, President (Qualifying Individual).

Dated: October 6, 2000.

**Bryant L. VanBrakle,**
*Secretary.*
[FR Doc. 00–26232 Filed 10–11–00; 8:45 am]
BILLING CODE 6730–01–P

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 25, 2000.

**A. Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

*1. Kyle Lee Thompson,* Dallas, Texas, trustee of The Gass Family Trust, Dallas, Texas; to retain voting shares of Founders Bancshares, Inc., Dallas, Texas, and thereby indirectly retain voting shares of Founders National Bank, Dallas, Texas.

Board of Governors of the Federal Reserve System, October 5, 2000.

**Robert deV. Frierson,**
*Associate Secretary of the Board.*
[FR Doc. 00–26116 Filed 10–11–00; 8:45 am]
BILLING CODE 6210–01–P



## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 26, 2000.

**A. Federal Reserve Bank of Kansas City** (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

*1. JPM Trust II,* Okemah, Oklahoma; to retain voting shares of OK Bancorporation, Inc., Okemah, Oklahoma, and thereby indirectly retain voting shares of The Okemah National Bank, Okemah, Oklahoma.

Board of Governors of the Federal Reserve System, October 6, 2000.

**Robert deV. Frierson,**
*Associate Secretary of the Board.*
[FR Doc. 00–26228 Filed 10–11–00; 8:45 am]
BILLING CODE 6210–01–P

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 3, 2000.

**A. Federal Reserve Bank of New York** (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045–0001:

*1. MetLife, Inc.,* New York, New York; to become a bank holding company by acquiring 100 percent of the voting shares of Grand Bank, N.A., Kingston, New Jersey.

Board of Governors of the Federal Reserve System, October 5, 2000.

**Robert deV. Frierson,**
*Associate Secretary of the Board.*
[FR Doc. 00–26117 Filed 10–11–00; 8:45 am]
BILLING CODE 6210–01–P

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 6, 2000.

**A. Federal Reserve Bank of Atlanta** (Cynthia C. Goodwin, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303–2713:

*1. Red Level Financial Corporation,* Red Level, Alabama; to become a bank holding company by acquiring 100 percent of the voting shares of The Peoples Bank of Red Level, Red Level, Alabama.

**B. Federal Reserve Bank of Chicago** (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

*1. Calumet Bancorporation, Inc.,* Chilton, Wisconsin; to acquire 100 percent of the voting shares of State Bank of Stockbridge, Stockbridge, Wisconsin.

Board of Governors of the Federal Reserve System, October 6, 2000.

**Robert deV. Frierson,**
*Associate Secretary of the Board.*
[FR Doc. 00–26227 Filed 10–11–00; 8:45 am]
BILLING CODE 6210–01–P

## FEDERAL RESERVE SYSTEM

### Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

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Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applicants must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 26, 2000.

**A. Federal Reserve Bank of San Francisco** (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

*1. Greater Bay Bancorp*, Palo Alto, California; to acquire the Matsco Companies, Inc., Emeryville, California, and thereby engage in commercial lending, equipment lease financing, and management consulting and counseling activities, pursuant to §§ 225.28(b)(1), (2), (3), and (9)(i)(A)(2) of Regulation Y.

Board of Governors of the Federal Reserve System, October 6, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00–26229 Filed 10–11–00; 8:45 am]

BILLING CODE 6210–01–P

## FEDERAL RESERVE SYSTEM

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Board of Governors of the Federal Reserve System.

**TIME AND DATE:** 11:00 a.m., Monday, October 16, 2000.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Lynn S. Fox, Assistant to the Board; 202–452–3204.

**SUPPLEMENTARY INFORMATION:** You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: October 6, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00–26297 Filed 10–6–00; 4:43 pm]

BILLING CODE 6210–01–P

## GENERAL SERVICES ADMINISTRATION

### Performance Review Board; Membership; Senior Executive Service

**AGENCY:** General Services Administration.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of the names of the members of the Performance Review Board.

**FOR FURTHER INFORMATION CONTACT:** Karla J. Hester, Chief of the Executive Resources Staff, Office of the Chief People Officer, General Services Administration, 1800 F Street, NW., Washington, DC 20405, (202) 501–1207.

**SUPPLEMENTARY INFORMATION:** Section 4313(c)(1) through (5) of title 5 U.S.C. requires each agency to establish in accordance with regulations prescribed by the Office of Personnel Management, one or more Performance Review Board(s). The Board(s) shall review the performance rating of each senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive.

Members of the Performance Review Board are:

1. Thurman M. Davis, Sr., Deputy Administrator (Chairperson)
2. William B. Early, Jr., Chief Financial Officer
3. Sandra N. Bates, Commissioner, Federal Technology Service
4. Stephenie Foster, General Counsel
5. Martha N. Johnson, Chief of Staff
6. Gail T. Lovelace, Chief People Officer
7. Robert A. Peck, Commissioner, Public Buildings Service
8. William C. Piatt, Chief Information Officer
9. Donna D. Bennett, Commissioner, Federal Supply Service
10. G. Martin Wagner, Associate Administrator for Governmentwide Policy

Dated: October 4, 2000.

**David J. Barram,**

*Administrator.*

[FR Doc. 00–26189 Filed 10–11–00; 8:45 am]

BILLING CODE 6820–BR–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meeting.

*Name:* National Committee on Vital and Health Statistics (NCVHS), Subcommittee on Standards and Security.

*Time and Date:* 9 a.m. to 5 p.m., October 26, 2000, 9 a.m. to 5 p.m., October 27, 2000.

*Place:* Room 505A, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, D.C. 20201.

*Status:* Open.

*Purpose:* The purpose of this hearing is to allow the Subcommittee to better understand the current state of the issues related to electronic signatures from a business perspective, as they apply to the NCVHS recommendations to the Secretary of HHS concerning the adoption of an electronic signature standard to be used in healthcare under the Health Insurance Portability and Accountability Act of 1996 (HIPAA). This hearing will center on the business issues, legal considerations, standards available for adoption, current electronic signature practices, relationship with other industries, feasibility, and barriers for the adoption of standards for electronic signatures. Technical and infrastructure issues will only be discussed as they relate to the central topics described above, and will not be the focus of the hearing.

*Notice:* In the interest of security, the Department has instituted stringent procedures for entrance to the Hubert H. Humphrey building by non-government employees. Thus, persons without a government identification card will need to have the guard call for an escort to the meeting.

*Contact Person for More Information:* Substantive program information as well as summaries of meetings and a roster of committee members may be obtained from J. Michael Fitzmaurice, Senior Science Advisor for Information Technology, Agency for Health Care Research and Quality, 2101 East Jefferson Street, #600, Rockville, MD 20852, phone: (301) 594–3938; or Majorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone (301) 458–4245. Information also is available on the NCVHS home page of the HHS website: *http://www.ncvhs.hhs.gov/* where an agenda for the meeting will be posted when available.



Dated: October 4, 2000.

**James Scanlon,**

*Director, Division of Data Policy, Office of the Assistant Secretary for Planning and Evaluation.*

[FR Doc. 00–26096 Filed 10–11–00; 8:45 am]

BILLING CODE 4151–05–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention (CDC)

### Safety and Occupational Health Study Section: Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Safety and Occupational Health Study Section, National Institute for Occupational Safety and Health (NIOSH), of the Department of Health and Human Services, has been renewed for a 2-year period beginning June 30, 2000, through June 30, 2002.

For further information, contact Charles N. Rafferty, NIOSH Scientific Review Administrator,Safety and Occupational Health Study Section, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4114, MSC 7816, Bethesda, MD 20892 (20817 overnight mail), 301/435–3562 FAX 301/480–2644—Email: Raffertc@csr.nih.gov.

The Director, Management Analysis and Services Office, has been delegated the authority to sign Federal Register notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: October 4, 2000.

**Carolyn J. Russell,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 00–26138 Filed 10–11–00; 8:45 am]

BILLING CODE 4163–19–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Notice of Meeting

Office of the Director, Centers for Disease Control and Prevention (CDC), announces the following meeting:

*Name:* Guide to Community Preventive Services (GCPS) Task Force Meeting.

*Times and Dates:* 8:30 a.m.–6:15 p.m., October 18, 2000. 8 a.m.–4:30 p.m., October 19, 2000.

*Place:* The D. Abbott Turner Center, 1703 Clifton Road, NE Atlanta, Georgia 30329, telephone (404) 712–6725.

*Status:* Open to the public, limited only by the space available. The meeting room accommodates approximately 40 people.

*Purpose:* The mission of the Task Force is to develop and publish a Guide to Community Preventive Services, which is based on the best available scientific evidence and current expertise regarding essential public health services and what works in the delivery of those services.

*Matters to be Discussed:* Agenda items include: briefings on the following: administrative matters, dissemination/implementation/evaluation plan, expansion of the Vaccine Preventable Disease Chapter, and progress on the Guide to Clinical Preventive Services; approval of recommendations for interventions from the: Oral Health, Motor Vehicle (seat belt), Diabetes, Sociocultural Environment, and Physical Activity Chapters; review chapter development for the: Nutrition, Mental Health, Sexual Behavior, Violence Prevention, Economic Effectiveness, and Methods Chapters; and review implementation projects for the: Vaccine Preventable Disease and Tobacco Use and Prevention Chapters.

Agenda items are subject to change as priorities dictate.

*Contact Person for Additional Information:* Stephanie Zaza, Chief, Community Guide Section, Division of Prevention Research and Analytic Methods, Epidemiology Program Office, CDC, 4770 Buford Highway, M/S K–73, Atlanta, Georgia 30341, telephone 770/488–8189. Persons interested in reserving a space for this meeting should call 770/488–8189 by close of business on October 16, 2000.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: October 4, 2000.

**Carolyn J. Russell,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 00–26137 Filed 10–11–00; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

*Name:* Safety and Occupational Health Study Section (SOHSS), National Institute for Occupational Safety and Health (NIOSH).

*Times and Dates:* 9 a.m.–5 p.m., October 26, 2000; 8:30 a.m.–5 p.m., October 27, 2000.

*Place:* Embassy Suites, 1900 Diagonal Road, Alexandria, VA, 22314.

*Status:* Open 9 a.m.–10 a.m., October 26, 2000. Closed 10 a.m.–5 p.m., October 26, 2000. Closed 8:30 a.m.–5 p.m., October 27, 2000.

*Purpose:* The Safety and Occupational Health Study Section will review, discuss, and evaluate grant application(s) received in response to the Institute's standard grants review and funding cycles pertaining to research issues in occupational safety and health and allied areas.

It is the intent of NIOSH to support broad-based research endeavors in keeping with the Institute's program goals which will lead to improved understanding and appreciation for the magnitude of the aggregate health burden associated with occupational injuries and illnesses, as well as to support more focused research projects which will lead to improvements in the delivery of occupational safety and health services and the prevention of work-related injury and illness. It is anticipated that research funded will promote these program goals.

*Matters to be Discussed:* The meeting will convene in open session from 9–10 a.m. on October 26, 2000, to address matters related to the conduct of Study Section business. The remainder of the meeting will proceed in closed session. The purpose of the closed sessions is for the Safety and Occupational Health Study Section to consider safety and occupational health related grant applications. These portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6) title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Public Law 92–463.

Agenda items are subject to change as priorities dictate.

*Contact Person for More Information:* Charles N. Rafferty, NIOSH Scientific Review Administrator, Bethesda, Maryland. Telephone (301) 435–3562, E-mail raffertc@csr.nih.gov.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: October 5, 2000.

**Joseph E. Salter,**

*Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 00–26136 Filed 10–11–00; 8:45 am]

BILLING CODE 4163–19–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

[Document Identifier: HCFA–R–0282]

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

*Type of Information Request:* Reinstatement, without change, of a previously approved collection.

*Title of Information Collection:* Medicare+Choice (M+C) Organization Appeals and Grievance Data Disclosure Requirements and Supporting Regulations in 42 CFR 422.64, 422.111, and 422.560—422.622.

*HCFA Form Number:* HCFA–R–0282 (OMB approval #: 0938–0778);

*Use:* These information collection pertains to the aggregate number and disposition of grievances and appeals by M+C organizations. Both the Balanced Budget Act (BBA) of 1997 and the Government Performance and Results Act (GPRA) of 1993 establish a need for HCFA to set and monitor performance standards in the area of appeals. The purpose is to hold M+C organizations accountable to regulators and consumers, as well as promote informed choice.

*Frequency:* Semi-annually.

*Affected Public:* Business or other for-profit.

*Number of Respondents:* 268.

*Total Annual Responses:* 536.

*Total Annual Burden Hours:* 1608.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: September 29, 2000.

**John P. Burke III,**

*HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.*

[FR Doc. 00–26198 Filed 10–11–00; 8:45 am]

BILLING CODE 4120–03–P

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4561–N–63]

### Notice of Submission of Proposed Information Collection to OMB; Applications for Housing Assistance Payments

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** *Comments Due Date:* November 13, 2000.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0182) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail Wayne_Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This notice also lists the following information:

*Title of Proposal:* Applications for Housing Assistance Payments.

*OMB Approval Number:* 2502–0182.

*Form Numbers:* HUD–52670, HUD–52670–A–pt.1, HUD–52670–A–pt.2, HUD–52671–A, HUD–52671–B, HUD–52671–C, HUD–52671–D.

*Description of the Need for the Information and Its Proposed Use:* Project owners applications/claims for monthly assistance payments for eligible households; unpaid rent and damages not received from vacating tenants; funds for vacancy losses; limit the number of households who have income above 90% of median income; and restrict admission of ineligible tenants.

*Frequency of Submission:* Monthly.

*Reporting Burden:*



| Number of respondents | × | Frequency of response | × | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|
| 20,677 | | 12 | | 1.15 | | 284,110 |

*Total Estimated Burden Hours:* 44,800.

*Status:* Reinstatement, with change.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: October 4, 2000.

**Wayne Eddins,**

*Departmental Reports Management Officer, Office of the Chief Information Officer.*

[FR Doc. 00–26103 Filed 10–11–00; 8:45 am]

BILLING CODE 4210–01–M

## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

### Alaska Land Managers Forum

**AGENCY:** Office of the Secretary, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice is published in accordance with section 10(a)(2) of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. (1988) and 41 CFR 101–6.1015(b). The Department of the Interior hereby gives notice of a public meeting of the Alaska Land Managers Forum (ALMF) to be held on Tuesday, October 17, 2000, beginning at 9:00 a.m. It will take place at the Hampton Inn, 4301 Credit Union Drive, Anchorage, Alaska. This meeting will be held to receive and discuss work group reports and informational briefings on recreation and tourism, and to announce the 2000 ALMF Tourism Awards Program.

**FOR FURTHER INFORMATION CONTACT:** Ronald B. McCoy at (907) 271–5485 or Sally Rue at (907) 465–4084.

**Ronald B. McCoy,**

*Staff Coordinator, Department of the Interior, Office of the Secretary.*

[FR Doc. 00–26299 Filed 10–11–00; 8:45 am]

BILLING CODE 4310–RP–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[MT–925–2810–XU–241E]

### Notice of Rescindment of Special Fire Restrictions and Closures in the South Dakota Field Office, SD

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** Pursuant to 43 Code of Federal Regulations 9212.2, the prohibitions listed in Order No. MT–00–08 (Fall River, Custer, Pennington, Lawrence, Butte, Harding, Meade, Perkins, and Stanley Counties), applicable to Bureau of Land Management lands administered by the South Dakota Field Office, dated August 30, 2000, will be terminated at 12:01 a.m., Friday, October 6, 2000.

**DATES:** Restrictions are terminated at 12:01 a.m., on Friday, October 6, 2000.

**ADDRESSES:** Comments should be sent to BLM Montana State Director, Attention: Pat Mullaney, P.O. Box 36800, Billings, Montana 59107–6800.

**FOR FURTHER INFORMATION CONTACT:** Pat Mullaney, Fire Management Specialist, 406–896–2915.

Dated: October 5, 2000.

**Roberta A. Moltzen,**

*Acting State Director.*

[FR Doc. 00–26300 Filed 10–10–00; 10:30 am]

BILLING CODE 4310–$$–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[NM–930–1320–PF; OKNM 96155]

### Extension of the Current Qualification of the Designated Nine (9) County "Area" of Oklahoma Federal Coal for "Category 5" Royalty Rate Reductions

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** This announcement gives notice that (1) since the Federal coal lands within the nine (9) Oklahoma Counties of Atoka, Coal, Haskell, Latimer, LeFlore, McIntosh, Muskogee, Pittsburgh, and Sequoyah were designated in 1990 by the New Mexico State Office as a Federal coal "Area", and (2) since that Area was determined to be "Qualified" as being eligible for "Category 5" royalty rate reductions in order to establish fair and competitive royalties, and (3) since no important changes in the Area coal market have occurred, the State Director of the New Mexico State Office of the Bureau of Land Management has made the Decision to extend the Qualification of the Designated Area for "Category 5" Royalty Rate Reduction for five (5) years from December 17, 2000 to, and inclusive of, December 17, 2005. Category 5 refers to royalty reductions granted within a designated Area that the Bureau of Land Management has concluded to have met ALL of the following criteria:

1. The Federal Government is not market dominate.
2. Federal lease royalty rates and terms are above the current market royalty rates for non-Federal coal in the Area.
3. Federal coal would be bypassed or remain undeveloped due to royalty rate differentials.
4. The above conditions exist throughout the Area.
5. A royalty rate reduction under this Category is not likely to result in undue competitive advantages over neighboring coal producing areas.

The Area Federal coal royalty rates shall continue to be: (A) 2% for Federal coal mined by industry accepted underground methods, and (B) 4% for Federal coal mined by industry accepted surface methods.

**FOR FURTHER INFORMATION CONTACT:** Darwyn F. Pogue, Geologist/Minerals Review Appraiser, Division of Resource Planning, Use and Protection, New Mexico State Office, Bureau of Land Management, P.O. Box 27115, Mail Stop 93000, Santa Fe, New Mexico 87502–0115, Telephone 505–438–7466.

Dated: October 5, 2000.

**Carsten F. Goff,**

*Deputy State Director, Division of Resource Planning, Use and Protection.*

[FR Doc. 00–26139 Filed 10–11–00; 8:45 am]

BILLING CODE 4310–FB–M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[NV–056–1430–ES; N–65826]

### Notice of Realty Action: Segregation Terminated, Lease/Conveyance for Recreation and Public Purposes

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Segregation Terminated, Recreation and Public Purpose Lease/Conveyance.

**SUMMARY:** The following described public land in Las Vegas, Clark County, Nevada was segregated for exchange purposes on July 23, 1997 under serial number N–61855, on October 19, 1995

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under serial number N–60073, and on July 23, 1997 under serial number N–66364. The exchange segregations on the subject land will be terminated upon publication of this notice in the **Federal Register**. The land has been examined and found suitable for lease/conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). Clark County proposes to use the land for the Pinnacle Peak Park.

**Mount Diablo Meridian, Nevada**

T. 22 S., R. 60 E., M.D.M.
Sec. 12, W½SE¼SW¼, W½E½SE¼SW¼.

Containing 30.0 acres, more or less, located at Windmill Lane and Duneville Road.

The land is not required for any federal purpose. The lease/conveyance is consistent with current Bureau planning for this area and would be in the public interest. The lease/patents, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe and will be subject to:

1. Easements in accordance with the Clark County Transportation Plan.

2. Those rights for road purposes which have been granted to Clark County by Permit No. N–62080 under the Act of October 21, 1976 (43 U.S.C. 1761).

3. Those rights for sewer line purposes which have been granted to Clark County Sanitation District by Permit N–66267 under the Act of October 21, 1976 (43 U.S.C. 1761).

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas Field Office, 4765 Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the Recreation and Public Purposes Act, leasing under the mineral leasing laws, and disposal under the mineral material disposal laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed lease/conveyance for classification of the lands to the Las Vegas Field Manager, Las Vegas Field Office, 4765 Vegas Drive, Las Vegas, Nevada 89108.

*Classification Comments:* Interested parties may submit comments involving the suitability of the land for a park. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

*Application Comments:* Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a park. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification of the land described in this Notice will become effective 60 days from the date of publication in the **Federal Register**. The lands will not be offered for lease/conveyance until after the classification becomes effective.

Dated: September 14, 2000.

**Sharon DiPinto,**

*Acting Assistant Field Manager, Division of Lands, Las Vegas, NV.*

[FR Doc. 00–26101 Filed 10–11–00; 8:45 am]

BILLING CODE 4510–HC–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[NM–030–5440–EU–G503; NMNM10171]**

### Realty Action; Conveyance of Public Land; Dona Ana County, NM

**AGENCY:** Bureau of Land Management (BLM), Interior.

**ACTION:** Notice of realty action; airport conveyance to the Village of Hatch.

**SUMMARY:** The following public land in Dona Ana County, New Mexico has been found suitable for conveyance to the Village of Hatch for airport purpose under the Act of May 24, 1928, as amended, and Section 516 of the Airport and Airway Improvement Act of 1982.

T. 19 S., R. 3 W., NMPM

Section 18: Lots 1 and 2.

T. 19 S., R. 4 W.,

Section 12: S½SW¼, S½SW¼SE¼;

Section 13: N½NE¼, N½SE¼NE¼, N½N½NW¼.

Containing approximately 320 acres.

**DATES:** Comments regarding the proposed conveyance must be submitted on or before November 27, 2000.

**ADDRESSES:** Comments should be sent to the Bureau of Land Management, Las Cruces Field Office, 1800 Marquess Street, Las Cruces, New Mexico 88005.

**FOR FURTHER INFORMATION CONTACT:** Gilda Fitzpatrick, Realty Specialist, at the address above or at (505) 524–4454.

**SUPPLEMENTARY INFORMATION:** Conveyance of the land is consistent with applicable Federal and county land use plans and will help meet the needs of Dona Ana County residents for air transportation.

The conveyance will contain reservations to the United States for ditches, canals and all minerals. Additionally, the conveyance will be subject to rights of record including right-of-way NMNM 28109, to Caballo Natural Resource Conservation District for the Denson Sims Watershed Project. Specific covenants required by the Federal Aviation Administration will also be included in the conveyance and are available by contacting the BLM Las Cruces Field Office.

The conveyance is consistent with the BLM Mimbres Resource Management Plan.

The land is not required for any other Federal purpose.

This notice segregates the above described public land from all forms of appropriation under the public land laws, including the general mining laws, except application for airport purposes and leasing under the mineral leasing laws.

On or before November 27, 2000, interested parties may submit comments regarding the proposed conveyance to the Bureau of Land Management, Las Cruces Field Office, 1800 Marquess Street, Las Cruces, New Mexico 88005. In the absence of any objections, the decision to approve this realty action will become the final determination of the Department of the Interior.

Dated: October 5, 2000.

**Amy L. Lueders,**

*Field Manager.*

[FR Doc. 00–26140 Filed 10–11–00; 8:45 am]

BILLING CODE 4310–VC–P



## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[CO–956–7130 BJ–7359–241A]**

### Colorado: Filing of Plats of Survey

September 29, 2000.

The plats of survey of the following described land will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10:00 am., September 29, 2000. All inquiries should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215–7093.

The plat representing the dependent resurvey of a portion of the subdivisional lines, and the subdivision of certain sections, and the retracement of a portion of the Colorado-New Mexico boundary, T 32 N., R. 10 W., New Mexico principal Meridian, Group 1230, Colorado, was accepted September 7, 2000.

This survey was requested by the Bureau of Indian Affairs for administrative purposes.

The plat representing the dependent resurvey of portions of the subdivisional lines and subdivisional lines of certain sections and the subdivision of section 23, and the survey of irregular boundaries in certain sections, T. 40 N., R. 2 W., New Mexico Principal Meridian, Group 1261, Colorado, was accepted July 27, 2000.

The amended protraction diagram, 24 C, prepared for the express purpose of describing unsurveyed public land and may be used for leasing and administrative purposes only in T. 42 N., R. 7 W., New Mexico Principal Meridian, Group 1297, Colorado, was accepted September 25, 2000.

These surveys were requested by the Forest Service for administrative purposes.

The plat representing the corrective dependent resurvey of a portion of the south boundary and the dependent resurvey of a portion of the Seventh Guide Meridian West (E. Bdy.) and a portion of the subdivisional lines, and the subdivision survey of sections 34 and 35, and the metes-and-bounds surveys of an easement in section 34, and a portion of the East Boundary, Pinion Canyon Maneuver Site, T. 29 S., R. 57 W., Sixth Principal Meridian, Group 1001, Colorado, was accepted September 14, 2000.

The plat representing the dependent resurvey of a portion of the Sixth Standard Parallel South, a portion of the subdivisional lines and a metes-and-bounds of the east boundary of the Pinion Canyon Maneuver Site in sections 25, 35, and 36, in T. 30 S., R. 58 W., Sixth Principal Meridian, Group 1001, Colorado, was accepted September 14, 2000.

The plat representing the dependent resurvey of a portion of the subdivisional lines and a metes-and-bounds survey of the east boundary of the Pinion Canyon Maneuver Site, T. 31 S., R. 58 W., Sixth Principal Meridian, Group 1001, Colorado, was accepted September 14, 2000.

The plat representing the dependent resurvey of a portion of the east boundary and a portion of the subdivisional lines, and a metes-and-bounds survey of a portion of the South Boundary of the Pinion Canyon Maneuver Site, T. 31 S., R. 59 W., Sixth Principal Meridian, Group 1001, Colorado, was accepted September 14, 2000.

These surveys were requested by the Army for administrative purposes.

The supplemental plat, creating lots in section 11, and new lots 4, 5, and 6 from old lot 1 in section 13, and new lots 11 and 12 from old lot 1 in section 14, in T. 3 N., R. 71 W., Sixth Principal Meridian, Colorado, was accepted August 3, 2000.

The supplemental plat, creating new lots 52 and 53 from old lot 2, in the 4NW¼ of section 12, T. 1 N., R. 73 W., Sixth Principal Meridian, Colorado, was accepted August 14, 2000.

The plat representing the dependent resurvey of a portion of the subdivisional lines and certain tract lines, and the subdivision of section 14 and an informative traverse along the center line of a dirt road in section 14, T. 2 S., R. 85 W., Sixth Principal Meridian, Group 1274, Colorado, was accepted September 21, 2000.

The plat representing the dependent resurvey of portions of the north boundary and the subdivisional lines, and the subdivision of certain sections in T. 2 S., R. 94 W., Group 1244, Colorado, was accepted September 26, 2000.

The plat, in two sheets, representing the dependent resurvey of a portion of the east, west, and north boundaries and subdivisional lines, and the subdivision of certain sections, T. 8 S., R. 98 W., Sixth Principal Meridian, Group 1218, Colorado, was accepted July 18, 2000.

The plat representing the dependent resurvey of a portion of the Eighth Standard Parallel North (south boundary) and a portion of the subdivisional lines, and the subdivision survey of certain sections, T. 33 N., R. 10 E., New Mexico Principal Meridian, Group 1225, Colorado, was accepted August 1, 2000.

The plat, in 4 sheets, represents the dependent resurvey of portions of the subdivisional lines and certain claim lines, and a metes-and-bounds survey, all in sections 29, 30, 31, and 32, T. 8 N., R. 97 W., Sixth Principal Meridian, Group 1231, Colorado, was accepted August 31, 2000.

The plat representing the entire record of the dependent resurvey of certain claim lines, in section 1, T. 7 N., R. 98 W., Sixth Principal Meridian, Group 1231, Colorado, was accepted August 31, 2000.

The plat, in two sheets, representing the entire record, the dependent resurvey of a portion of the west boundary, certain claim lines, and a metes-and-bounds survey in section 6, T. 7 N., R. 97 W., Sixth Principal Meridian, Group 1231, Colorado, was accepted August 31, 2000.

The plat representing the entire record of the dependent resurvey of a portion of the west boundary and subdivisional lines, with subdivision of section and metes-and-bounds surveys in sections 29 and 30, T. 45 N., R. 5 E., New Mexico Principal Meridian, Group 1263, Colorado, was accepted September 14, 2000.

These surveys were requested by the Bureau of Land Management for administrative purposes.

**Darryl A. Wilson,**

*Chief Cadastral Surveyor for Colorado.*

[FR Doc. 00–26102 Filed 10–11–00; 8:45 am]

BILLING CODE 4310–JB–P

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Anacapa Island Restoration Plan, Final Environmental Impact Statement, Channel Islands National Park, Ventura County, CA; Notice of Availability

**SUMMARY:** Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969 (Pub. L. 81–190 as amended), the National Park Service, Department of the Interior, has prepared a Final Environmental Impact Statement (FEIS) assessing the potential impacts of eradicating the Black rat on Anacapa Island. This FEIS analyzes the effects of implementing proposed actions that accomplish the following objectives: (1) Eradicating introduced Black rats on Anacapa Island; (2) adopting an emergency response plan for accidental introductions of rodents on Anacapa, Santa Barbara, Prince, and Sutil Islands; and (3) incorporating a prevention strategy to reduce the potential for rodents to be accidentally introduced to Park islands. The proposed action was

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developed in concert with the Island Conservation and Ecology Group and is based on worldwide evaluation of other island rat eradication projects. Actions to manage existing and potential Black rat infestations are necessary because of the ecological damage occurring on Anacapa Island, and the potential negative impact they would have if introduced to other Park islands.

*Proposal*

The technique proposed for eradicating rats on Anacapa Island is modeled after other island rat eradication projects that have successfully been completed worldwide. Due to the steep cliffs of the island, an aerial broadcast is necessary to deliver rodenticide to every rat's territory, a condition that has to be met to accomplish eradication. The proposed target date for the application is fall-winter 2000–2001. This period offers the optimum time to apply the bait for three reasons: the Endangered brown pelicans are not breeding on the island; rats are in decline due to lack of available food sources, which prompts them to eat bait more readily; and the onset of the rainy season would expedite the degradation of any residual bait not consumed by the target species. The chronology of eradication would begin with baiting in representative habitat within the project area during the 2000 treatment window. Representative habitat may include all of East Islet or smaller area on Middle Islet that allows for easy and unobtrusive access. The objective of the initial eradication treatment is to conduct both effectiveness and validation monitoring of the project's objective and the alternative's proposed activities including mandated mitigation. This effort would be followed up with the completion of the island-wide eradication activities starting with East Islet. East Islet baiting would occur during the 2000 treatment window and would be treated along with approximately 20 ha of Middle Islet to lower the probability of invasion by rats from Middle Islet to East Islet. The 20 ha section of Middle Islet may be treated intermittently to prevent re-invasion of East Islet. Middle Islet (including the section treated with East Islet) and West Islet would be treated during the 2001 application window following East Islet application.

*Alternatives*

In addition to the six alternatives analyzed in detail in the FEIS, many other alternatives were considered, but were eliminated from further study because they could not meet the objective of total eradication.

The alternatives considered in the FEIS are as follows: *Alternative One* (No Action) would continue with limited control of rats around buildings and structures; *Alternative Two* (proposal) would use an aerial broadcast technique and use a rodent bait containing brodifacoum; *Alternative Three* would utilize bait stations for the top of islands and aerial broadcast the cliffsides and use the rodent bait containing brodifacoum; *Alternative Four* would use an aerial broadcast of a rodent bait containing bromadiolone; *Alternative Five* would use bait stations for the top of islands and aerial broadcast the cliffsides with the rodent bait bromadiolone; and *Alternative Six* would aerial broadcast a rodent bait containing diphacinone followed by a rodent bait containing brodifacoum.

Mitigation measures specific to implementing each alternative were identified. In addition, each alternative addresses the need to: (1) Conduct effectiveness and validation monitoring; (2) implement a non-native rodent introduction and prevention plan; (3) protect the native deer mouse population; (4) implement the rat detection response plan; (5) require visitor use restrictions for a short period during and after bait application; (6) restrict baiting to specified treatment windows; (7) obtain Federal EPA approval for use of rodenticide bait (and otherwise comply with NPS integrated pest management policies); and (8) conduct public awareness program on the impacts of introduced species.

*Public Involvement*

Since 1996 conservation biologists, educators, agency officials, and interested individuals and organizations have deliberated on the Anacapa Island rat infestation. The Park formally initiated scoping activities in November, 1999, including public meeting held December 8, 1999. Through the scoping and public involvement process the following significant environmental issues were identified: (1) Target species efficacy; (2) Non-target species impacts; and (3) Visitation and visitor use. Development of alternatives was strongly influenced by these environmental issues. In developing a complete range of alternatives, the Park consulted many experts in the field of vertebrate biology, toxicology, and avian biology. The DEIS was distributed during June, 2000. The formal comment period ended September 5, 2000; nine written responses were received.

**SUPPLEMENTARY INFORMATION:** The FEIS is available at Park headquarters, on the Park's website (http:www.nps.gov/chis/naturalresources/AIRP.html), and at Fosters Library, Ventura, California. Copies of the FEIS may also be obtained by contacting the Superintendent, Channel Islands National Park, 1901 Spinnaker Dr, Ventura, California 93001 (or via telephone at (805) 658–5700).

If individuals submitting comments at this time request that their name or/and address be withheld from public disclosure, it will be honored to the extent allowable by law. Such requests must be stated prominently in the beginning of the comments. There also may be circumstances wherein the NPS will withhold a respondent's identity as allowable by law. As always: NPS will make available to public inspection all submissions from organizations or businesses and from persons identifying themselves as representatives or officials of organizations and businesses; and, anonymous comments may not be considered.

**Decision**

No sooner than 30 (thirty) days after release of this FEIS a Record of Decision (ROD) will be executed. Notice of approval will be given via local and regional media, and will be duly noted in the **Federal Register** (actions to implement any elements of this plan may not occur until after the latter Notice). The official responsible for approval is the Regional Director, Pacific West Region; the official responsible for implementation is the Superintendent, Channel Islands National Park.

Dated: October 4, 2000.

**Patricia L. Neubacher,**

*Regional Director, Pacific West Region.*

[FR Doc. 00–26143 Filed 10–11–00; 8:45 am]

BILLING CODE 4310–70–P

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Record of Decision; Final Oil and Gas Management Plan/Environmental Impact Statement, Padre Island National Seashore, Texas

**ACTION:** Notice of Approval of Record of Decision:

**SUMMARY:** Pursuant to subsection 102(2)(C) of the National Environmental Policy Act of 1969, as amended, and the regulations promulgated by the Council on Environmental Quality (40 CFR 1505.2), the National Park Service, U.S. Department of the Interior, has prepared a Record of Decision on the Final Oil and Gas Management Plan/Environmental Impact Statement for Padre Island National Seashore in Texas.



**DATES:** The Record of Decision was recommended by the Superintendent of Padre Island National Seashore, concurred in by the Deputy Regional Director, Southwest Cluster of the Intermountain Region, and approved by the Director, Intermountain Region on August 14, 2000.

**ADDRESSES:** Inquiries regarding the Record of Decision or the Environmental Impact Statement (EIS) should be submitted to the Superintendent, Padre Island National Seashore, P.O. Box 181300, Corpus Christi, Texas 78480–1300, telephone (361) 949–8173, or e-mail to: pais_superintendent@nps.gov. You may also view the entire ROD at the Padre Island NS web site: *http://www.nps.gov/pais* and click on "In depth."

**SUPPLEMENTARY INFORMATION:** The summary of the Record of Decision follows:

The Department of the Interior, National Park Service (NPS), has prepared this Record of Decision (ROD) on the final Environmental Impact Statement (EIS) for the Oil and Gas Management Plan for Padre Island National Seashore, located within Kleberg, Kenedy and Willacy Counties, Texas. This ROD provides a statement of the decision made; a summary description of the 3 alternatives analyzed in the EIS; identification of the environmentally preferable alternative; the decision rationale used in selecting the alternative; a description of mitigation measures and monitoring plans that will be implemented for the selected alternative; and a statement that addresses how all practical means to avoid or minimize environmental harm from the selected alternative have been adopted.

Congress established Padre Island National Seashore on September 28, 1962, 16 U.S.C. 459d *et seq.*, "in order to save and preserve, for purposes of public recreation, benefit, and inspiration, a portion of the diminishing seashore of the United States that remains undeveloped . . ."

At the time of the park's establishment, surface ownership was held by the State of Texas or by private landowners. In 1963, the surface estate owned by the State of Texas was donated to the United States, while those surface rights held by private landowners were acquired by the federal government through condemnation proceedings in 1965 and 1966. Private owners retained all mineral interests underlying the park's terrestrial landbase. Those underlying the submerged lands under the Laguna Madre and Gulf of Mexico were retained by the State of Texas and are administered by the Texas General Land Office. Thus, the federal government does not own any of the subsurface oil and gas rights in the park.

In Padre Island National Seashore's enabling act (16 U.S.C. subsection 459d–3(a) and section 459–4, 4(a) and section 5), Congress authorized the NPS to regulate nonfederal oil and gas development. The NPS recognizes these activities as important to those individuals and entities that have developed or intend to develop nonfederal oil and gas resources underlying the park. The NPS' Nonfederal Oil and Gas Rights Regulations are published at Title 36 of the Code of Federal Regulations, Part 9, Subpart B (36 CFR Part 9B). The 36 CFR Part 9B regulations provide the fundamental regulatory mechanism through which the NPS permits and regulates nonfederal oil and gas operations within units of the National Park System. Many past, present, and future anticipated oil and gas operations, however, have potential to adversely impact park resources, visitor use and experience, and human health and safety, which NPS is required to address.

Public involvement and the 36 CFR Part 9B regulations, in combination with laws, other regulations, NPS policies, executive orders, and applicable direction provided in park planning documents, form the legal and policy requirements that helped to direct and ultimately determine the decision to select Alternative A. These guidelines were also used as fundamental direction and guidance for all of the alternatives considered in the EIS. More in depth discussion of Current Legal and Policy Requirements are described in the EIS, in Chapter 2, Part II, and in Appendices B and C.

The Reasonably Foreseeable Development scenario (RFD) is used to provide a basis to compare and analyze alternatives, and address cumulative effects of the action. The RFD used in the final plan assumes that a 3–D seismic survey would be conducted over the entire Seashore. Following the 3–D seismic survey, full field development of 6 gas fields could result in up to 18 wells being drilled to develop 80 billion cubic feet of natural gas and associated liquid hydrocarbons. This level of exploration and development could utilize up to 748 acres of the terrestrial landbase for seismic exploration, and up to 250 acres of direct surface impacts for drilling and production operations. It is understood that the actual level of exploration and development may be less or greater than projected in the RFD scenario.

During the scoping process on the Draft EIS, the NPS interdisciplinary (ID) team, along with public input, identified resources and values that could be affected by nonfederal oil and gas operations. Park resources, and locations identified as being particularly sensitive to potential adverse impacts from oil and gas operations, and/or necessary to protect resources and values important to the overall legislated purposes of the park, were designated as Sensitive Resource Areas (SRAs). In addition, other topics of concern, such as the effect of future planning decisions on nonfederal oil and gas development, were considered and evaluated in the Oil and Gas Management Plan/EIS. The ID team also developed issue statements to define problems (and benefits) that might occur with oil and gas operations (see FEIS, Chapter 1, pages 1–17 through 1–22).

The issue statements and SRAs were used in the evaluation and selection of Alternative A. The list of SRAs is provided in the final plan (see Chapter 2, page 2–8).

**Decision (Selected Action)**

This Record of Decision adopts and approves for immediate implementation Alternative A, the (Preferred Alternative). Padre Island National Seashore identified Alternative A as the agency preferred action that best satisfies the park and NPS missions, as well as the park's long-term management objectives. In response to public comments and concerns, Alternative A has been slightly modified from the Preferred Alternative published in the Draft Oil and Gas Management Plan/EIS in February 1999.

From this planning effort, a final plan will be prepared that describes the overall approaches to be implemented over the next 15 to 20 years to manage the exploration and development of nonfederal oil and gas underlying Padre Island National Seashore. It will utilize the ROD, mitigation measures, and existing planning documents to protect natural and cultural resources, visitor use values, and human health and safety concerns. The final plan will serve as a guide for directing geophysical exploration, exploratory drilling, treatment and storage (production), and transportation of nonfederal oil and gas resources in the park. It will also provide pertinent information to oil and gas owners and operators that will facilitate operations planning and

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compliance with all applicable regulations.

**Alternatives Analyzed in the EIS**

Three alternatives were evaluated in the EIS.

No Action/Current Management (Alternative B). Alternative B provides a benchmark of existing environmental impacts against which the decision-maker can compare the environmental effects from Alternatives A (Preferred) and C (Maximum Resource Protection for All Sensitive Resource Areas). It describes baseline conditions under the current program of oil and gas management at Padre Island National Seashore. Under Alternative B, all 130,434 acres of the park could be considered for nonfederal oil and gas exploration and development under Current Legal and Policy Requirements.

Identification of sensitive resources and values, and application of mitigation measures specific to the type and scope of operations proposed would be developed during initial scoping meetings between the operator, the NPS, and other interested state and federal agencies, and presented for comment and review at subsequent meetings during the public involvement process. Mitigation measures would be developed and applied, as needed, to comply with Current Legal and Policy Requirements.

Under the No-Action alternative, no comprehensive planning document would be available. Proposed actions would continue to be assessed on a case-by-case basis, and identification of sensitive resources and values, recommended mitigation measures and protection of sensitive resources and values may not be consistently applied. Sensitive resources and values vulnerable to potential adverse impacts from nonfederal oil and gas operations are at greater risk.

Preferred Alternative (Alternative A) (Selected Action). Under Alternative A, Sensitive Resource Areas (SRAs) within Padre Island National Seashore will be formally designated, and specific protection prescribed. SRAs include 4 cultural sites listed or eligible for listing on the National Register of Historic Places, 3 freshwater ponds, the Laguna Madre, wind-tidal flats, visitor use areas, foredunes, washover channels, rookery islands, and 2 relict live oak mottes. Specific protection, tailored to avoid or minimize potential adverse impacts from specific types of oil and gas operations, is applied as operating restrictions to each SRA. Operating restrictions include No Surface Disturbance, No Surface Occupancy, No Surface Access, and Timing Stipulations.

As a mitigation measure, operating restrictions will be applied to the SRAs within designated protective buffers. The maximum acreage of the SRAs is 68,731 acres or 52.7 percent of the park. Specific operating restrictions applied to SRAs will effectively close surface use on 1,316 acres (1.0% of the park) to geophysical (3–D seismic) exploration. Additional closures are described in Table 2.3, pages 2–12—2–15 of the final plan. Where specific types of oil and gas operations could be permitted within SRAs, the requirement to conduct operations "in a manner which utilizes technologically feasible methods least damaging to the federally-owned or controlled lands, waters and resources of the unit while assuring the protection of public health and safety" is a standard requirement.

In areas of the park that are not formally designated as Sensitive Resource Areas, comprising 61,703 acres (47.3% of the park), oil and gas operations will be permitted under Current Legal and Policy Requirements (CLPR).

One error in the Selected Plan, Alternative A, in the Final Oil and Gas Management Plan/EIS (see FEIS, pages S–10 and S–11, and 2–13 and 2–14) is corrected in this ROD. The timing stipulation applied to Rookery Islands is corrected to read: "No Surface Access would be permitted within 1,000 feet of the island edge between February 15 through August 31;" and that "geophysical exploration may be permitted between September 1 through February 14, under CLPR."

Maximum Resource Protection in All Sensitive Resource Areas, Alternative C. Under this alternative, Sensitive Resource Areas (SRAs) within Padre Island National Seashore would be formally designated, similar to Alternative A. The SRAs, and their maximum protective buffers, would be the same as those designated under Alternative A. Alternative C would provide maximum resource protection to all SRAs by applying a No Surface Access stipulation within SRA protective buffers. This would comprise 68,731 acres (52.7% of the park). Although SRAs would be closed to surface access, underlying nonfederal oil and gas could be reached via directional drilling technology from outside the SRAs. Where SRAs are small, operators could plan geophysical operations around them, and directionally drill underneath them. However, for the geographically large SRAs that include the Laguna Madre and Wind-Tidal Flats, about 58,790 acres would not be accessible. The lack of current or site-specific 3–D seismic data from these areas may deter operators from drilling extended-reach directional wells, and a portion of this acreage may be effectively unavailable for oil and gas development. This could result in moderate to major adverse impacts to oil and gas exploration and development and to owners, operators or lessees.

In areas of the park not designated as SRAs, comprising 61,703 acres (47.3% of the park), oil and gas operations could be permitted under Current Legal and Policy Requirements.

Under all three alternatives, contamination of soils from past and current oil and gas operations are limited to small geographic areas. Because of the risk these contaminants present to wildlife and water quality, the cumulative impact to soils under all alternatives is considered a major adverse impact until the contaminated sites are remediated. Mitigation measures required under Current Legal and Policy Requirements reduce the potential for leaks and spills of oil and gas and contaminating, or hazardous materials, and require cleanup and remediation measures.

**Identification of the Environmentally Preferable Alternative**

Alternative C is the environmentally preferable alternative. The Council on Environmental Quality (CEQ) has stated, "The environmentally preferable alternative is the alternative that will promote the national environmental policy as expressed in NEPA's Section 101. Generally this means the alternative which causes the least damage to the biological and physical environment. It also means the alternative which best protects, preserves, and enhances historic, cultural, and natural resources." The No Surface Access operating stipulation applied within maximum SRA protective buffers would close 68,731 acres (52.7% of the park) to all types of oil and gas operations so that there would be no direct impact on these areas from nonfederal oil and gas operations. Therefore, Alternative C would provide maximum protection to park resources and values, human health and safety, and visitor use and enjoyment of those resources.

**Decision Rationale Used in Selecting Alternative A**

Alternative A is selected for implementation over the environmentally preferable Alternative C because, after careful consideration of public comments throughout the planning process, including comments on the draft EIS, the selected action best accomplishes the legislated purposes of Padre Island National Seashore and balances the statutory mission of the NPS to provide long-term protection to the park's resources and significance, while allowing for the exercise of rights to oil and gas not owned by the United States. The selected Alternative A also best meets the objectives of the Oil and Gas Management Plan/Final Environmental Impact Statement to:

- Identify which park resources and values are most sensitive to oil and gas exploration and development disturbance, and define mitigation requirements to protect such resources and values;
- Establish reasonable oil and gas exploration and development performance standards to protect park resources and values; and
- Provide pertinent information to oil and gas owners and operators that will facilitate operations planning and compliance with all applicable regulations.

The mitigating measures applied through specific operating stipulations for each SRA under Alternative A will increase protection to SRAs over baseline conditions (No Action Alternative B), so that potential adverse impacts are either avoided or reduced to acceptable limits; but will provide less than the maximum protection provided SRAs under Alternative C. Due to the extensive acreage of SRAs where a blanket No Surface Access operating stipulation is applied under Alternative C, a portion of this acreage may be effectively unavailable for oil and gas development. Therefore, the NPS has decided that Alternative A best accomplishes identified planning objectives, with the fewest environmental impacts.

**Description of Mitigation Measures and Monitoring Plans for the Selected Alternative A**

The NPS will implement the resource protection, mitigation, and monitoring measures found in the selected Alternative A, and described under Current Legal and Policy Requirements (Chapter 2, Part II; and Appendix C) of the final EIS and plan. The operating stipulations applied in Alternative A to Sensitive Resource Areas (SRA) provide specific mitigation measures that result in avoiding or minimizing potential adverse impacts from nonfederal oil and gas operations.

The final location for each well site, production facility, access road, gathering pipeline segment, or other facility will be determined following a site specific environmental document in accordance with the NPS' NEPA policy (Director's Order 12). Development and evaluation of these individual "Plans of Operations", by the NPS, and with input from interested state, federal agencies, and public involvement, will incorporate existing mitigation measures described here and in the final plan. Additional mitigation measures will be developed to avoid or minimize potential adverse impacts. The park will continue to routinely monitor and inspect nonfederal oil and gas operations to ensure compliance with approved plans of operations, and to protect resources and seashore values. NPS and the operator's personnel will conduct these monitoring inspections to ensure that the mitigation measures are effective and implemented.

Mitigation measures also may include: reclaiming/closing roads and wellpads to restore fish and wildlife habitat; reducing the extent of surface disturbance associated with wellpads, access roads and pipeline corridors (to the extent permitted by safety standards); and maximizing reclamation and restoration success on disturbed lands to improve wildlife habitat wherever reasonably possible.

All practicable means to avoid of minimize environmental impacts from the selected alternative will be adopted and incorporated into the final plan.

**Public Involvement**

Public comment has been requested, considered, and incorporated throughout the planning process:

- A Notice of Intent to prepare an EIS was published in the **Federal Register** on June 10, 1997 (Vol. 62, No. 111, pg. 31622), and in newspapers, including the Austin American-Statesmen, the Houston Chronicle, and the Corpus Christi Caller Times.
- The NPS mailed a public scoping newsletter to over 300 individuals, organizations, and government agencies to explain the planning process, provide information, and encourage public participation.
- A public scoping open house was held in Corpus Christi, Texas, on July 9, 1997. During the scoping period, nine comment letters were received, and 13 individuals requested to be added to the mailing list.
- A second newsletter was sent to more than 280 individuals on March 6, 1998, summarizing the results of the scoping open house and the written comments received by the NPS.
- The following state and federal agencies were consulted:

U.S. Fish and Wildlife Service
National Marine Fisheries Service
Texas Parks and Wildlife
Texas State Historic Preservation Officer and Tonkawa Tribe
Texas General Land Office
Texas Coastal Coordination Council.

- A Notice of Availability was published by the NPS in the **Federal Register** on February 24, 1999 (Vol. 64, No. 36, pg. 9167–9168); and, upon filing of the Draft Oil and Gas Management Plan/EIS.
- The U.S. Environmental Protection Agency (EPA) published a Notice of Availability in the **Federal Register** on February 26, 1999 (Vol. 64, No. 38, pg. 9508). Fifteen (15) comment letters were received. All substantive comments (62) were addressed in the final EIS.
- The public review period ran from February 26 through May 12, 1999.
- In addition, the document was posted on the Internet at the Padre Island NS web site.
- The Final Oil and Gas Management Plan/EIS was released to the public on February 23, 2000. The EPA Notice of Availability was published in the **Federal Register** on March 3, 2000 (Vol. 65, No. 43, pg. 11575); the NPS Notice of Availability was published in the **Federal Register** on March 7, 2000 (Vol. 65, No. 45, pgs. 12029–12030). The final document included a reprint of the 15 comment letters and NPS responses. In response to releasing the Final Oil and Gas Management Plan/EIS, 4 comment letters were received. The comments in the 4 letters raised no new substantive issues.

Dated: August 14, 2000.

**John A. King,**

*Director, Intermountain Region.*

[FR Doc. 00–26142 Filed 10–11–00; 8:45 am]

BILLING CODE 4310–70–P



## DEPARTMENT OF THE INTERIOR

### National Park Service

### Environmental Statements; Availability, etc: Tallgrass Prairie National Preserve, KS

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice of availability of the final general management plan/final environmental impact statement for the Tallgrass Prairie National Preserve, Kansas.

**SUMMARY:** Pursuant to section 102(2) of the National Environmental Policy Act of 1969, the National Park Service announces the availability of the final general management plan/final environmental impact statement (FGMP/FEIS) for the Tallgrass Prairie National Preserve.

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**DATES:** The no-action period on this FEIS will expire 30 days after the Environmental Protection Agency has published a notice of availability of the FEIS in the **Federal Register**, or on November 20, 2000, whichever is later.

**ADDRESSES:** Copies of the FGMP/FEIS are available by request by writing the Tallgrass Prairie National Preserve, P.O. Box 585, Cottonwood Falls, KS 66845, by phone 316–273–6034, or by e-mail from TAPR_Superintendent@nps.gov. The document can be picked-up in person or viewed at the Tallgrass National Preserve administrative headquarters, 226 Broadway, Cottonwood Falls, KS. The document also can be downloaded from the Internet at: www.nps.gov/tapr/gmp/gmp.pdf

**FOR FURTHER INFORMATION CONTACT:** Superintendent, Tallgrass Prairie National Preserve, at the address and telephone number listed above.

**SUPPLEMENTARY INFORMATION:** The purpose of the general management plan is to set forth the basic management philosophy for the Preserve and to provide the strategies for addressing issues and achieving identified management objectives. The FGMP/FEIS describes and analyzes the environmental impacts of a proposed action and four action alternatives for the future management direction of the Preserve. A no action alternative also is evaluated.

The draft general management plan and draft environmental impact statement (DGMP/DEIS) for this action was released for public review in November 1999 (see **Federal Register**, 64 FR 66641) and the public comment period closed on January 25, 2000.

Modifications to the DGMP/DEIS have been made based on public comment received and further impact analysis.

The responsible official is Mr. William Schenk, Midwest Regional Director, National Park Service.

Dated: October 4, 2000.

**William W. Schenk,**

*Regional Director, Midwest Region.*

[FR Doc. 00–26144 Filed 10–11–00; 8:45 am]

BILLING CODE 4310–70–P

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Notice of Inventory Completion of Human Remains and Associated Funerary Objects in the Possession of the American Museum of Natural History, New York, NY

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the American Museum of Natural History, New York, NY.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains and associated funerary objects was made by American Museum of Natural History professional staff in consultation with representatives of the Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California; the Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California; the Cuyapaipe Community of Diegueno Mission Indians of the Cuyapaipe Reservation, California; the Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California; Jamul Indian Village of California; the La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California; the Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California; the Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California; the San Pasqual Band of Diegueno Mission Indians of California; the Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation, California; the Sycuan Band of Diegueno Mission Indians of California; and the Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California.

In 1907, human remains representing a minimum of one individual were collected by an unknown collector ("an Indian") from southern California. Constance Goddard DuBois purchased the remains from the collector in 1907, and the American Museum of Natural History purchased the remains from Ms. DuBois in the same year. No known individual was identified. The eight associated funerary objects include a burial urn, daub, chipped stone, a projectile point, shell, ceramics, charcoal, and animal bone.

This individual has been identified as Native American based on mortuary treatment, its provenience within the historic territory of the Diegueño, and the association with the culture name Diegueño in American Museum of Natural History records. The practice of cremation and the placement of human remains into mortuary urns is consistent with Diegueño burial practices that were observed at the time of and slightly after contact. Archeological evidence documents cultural continuity in this area from the late pre-contact (circa 1500 B.P.) into the contact period. The Diegueño have remained within this territory under successive Spanish, Mexican, and Anglo-American governments.

In an unknown year, human remains representing a minimum of one individual were collected by an unknown collector from a location 40 miles east of Mesa Grande, Vallecito Mountains(?), Vallecito(?), San Diego County, CA. The American Museum of Natural History acquired these human remains in an exchange with the Museum of the American Indian, Heye Foundation in 1919. Details of the transfer from the unknown collector to the Museum of the American Indian, Heye Foundation are not known. No known individual was identified. The one associated funerary object is a mortuary jar.

This individual has been identified as Native American based on the mortuary treatment of these human remains and geographic evidence. The mortuary practice of cremation and placement of the remains into mortuary urns is consistent with burial practices observed by Diegueño peoples at the time of and slightly after contact in southern California. These remains derive from the territory of the Diegueño in the post-contact period. The Diegueño have remained within these boundaries during successive Spanish, Mexican, and Anglo-American governments.

Based on the above-mentioned information, officials of the American Museum of Natural History have determined that, pursuant to 43 CFR 10.2(d)(1), the human remains listed above represent the physical remains of a minimum of two individuals of Native American ancestry. Officials of the American Museum of Natural History also have determined that, pursuant to 43 CFR 10.2(d)(2), the nine objects listed above are reasonably believed to have been placed with or near these individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the American Museum of Natural History have determined that, pursuant to 43 CFR 10.2(e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California; the Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California; the Cuyapaipe Community of Diegueno Mission Indians of the Cuyapaipe Reservation, California; the Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California; Jamul Indian Village of California; the La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California; the Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California; the Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California; the San Pasqual Band of Diegueno Mission Indians of California; the Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation, California; the Sycuan Band of Diegueno Mission Indians of California; and the Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California.

This notice has been sent to officials of the Kumeyaay Cultural Repatriation Committee; the Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California; the Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California; the Cuyapaipe Community of Diegueno Mission Indians of the Cuyapaipe Reservation, California; the Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California; Jamul Indian Village of California; the La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California; the Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California; the Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California; the San Pasqual Band of Diegueno Mission Indians of California; the Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation, California; the Sycuan Band of Diegueno Mission Indians of California; and the Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Martha Graham, Director of Cultural Resources, American Museum of Natural History, Central Park West at 79th Street, New York, NY 10024–5192, telephone (212) 769–5846, before November 13, 2000. Repatriation of the human remains and associated funerary objects to the Kumeyaay Cultural Repatriation Committee on behalf of the Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California; the Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California; the Cuyapaipe Community of Diegueno Mission Indians of the Cuyapaipe Reservation, California; the Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California; Jamul Indian Village of California; the La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California; the Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California; the Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California; the San Pasqual Band of Diegueno Mission Indians of California; the Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation, California; the Sycuan Band of Diegueno Mission Indians of California; and the Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California may begin after that date if no additional claimants come forward.

Dated: October 5, 2000.

**John Robbins,**

*Assistant Director, Cultural Resources, Stewardship and Partnerships.*

[FR Doc. 00–26146 Filed 10–11–00; 8:45 am]

BILLING CODE 4310–70–P

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by the Peabody Museum of Archaeology and Ethnology professional staff in consultation with representatives of the Klamath Indian Tribe of Oregon.

In 1891, human remains representing one individual were removed from the Klamath Reservation, Oregon by D.S. Moncrieff, who donated the human remains to the Peabody Museum of Archaeology and Ethnology in 1893. No known individual was identified. No associated funerary objects are present.

Museum documentation describes the human remains as "Snake." Historical documents and consultation information indicate that the Yahooskin Band of Snake Indians occupied the area where the remains were collected during the 19th century, and that the Yahooskin Band of Snake Indians joined with the Klamath Indians on the Klamath Reservation beginning in 1864. The attribution of such specific cultural affiliation to the individual by the collector indicates that the interment belongs to the period that the area was occupied by the Snake people. Consultation information also confirms that the Yahooskin Band of Snake Indians shares a unified government with, and continues to be represented by, the Klamath Indian Tribe of Oregon.

Based on the above-mentioned information, officials of the Peabody Museum of Archaeology and Ethnology have determined that, pursuant to 43 CFR 10.2(d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the Peabody Museum of Archaeology and Ethnology have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and the Klamath Indian Tribe of Oregon.

This notice has been sent to officials of the Klamath Indian Tribe of Oregon. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains

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should contact Barbara Isaac, Repatriation Coordinator, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 495–2254, before November 13, 2000. Repatriation of the human remains to the Klamath Indian Tribe of Oregon may begin after that date if no additional claimants come forward.

Dated: October 4, 2000.

**John Robbins,**

*Assistant Director, Cultural Resources, Stewardship and Partnerships.*

[FR Doc. 00–26145 Filed 10–11–00; 8:45 am]

BILLING CODE 4310–70–P

## INTERNATIONAL TRADE COMMISSION

**[Inv. No. 337–TA–437]**

### Certain Synchronous Dynamic Random Access Memory Devices and Modules and Products Containing Same; Notice of Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Institution of investigation pursuant to 19 U.S.C. 1337.

**SUMMARY:** Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on September 11, 2000, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Rambus Inc. of Mountain View, California. A supplemental letter was filed on September 26, 2000. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain synchronous dynamic random access memory devices and modules and products containing same by reason of infringement of claims 1–24, 27, and 32–39 of U.S. Letters Patent 6,038,195, claims 1–5, 14–17, 27–28; and 30–33 of U.S. Letters Patent 5,953,263, and claims 1–3, 6–10, 13–16, 18–21, 24–26, 29–31, 33–34, and 37–38 of U.S. Letters Patent 6,034,918. The complaint further alleges that there exists, or is in the process of being established, an industry in the United States as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and a permanent cease and desist order.

**ADDRESSES:** The complaint and supplement, except for any confidential information contained therein, are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may be obtained by accessing its Internet server (*http://www.usitc.gov*).

**FOR FURTHER INFORMATION CONTACT:** Karin J. Norton, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2606.

**Authority:** The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2000).

*Scope of Investigation:* Having considered the complaint, the U.S. International Trade Commission, on October 5, 2000, *ordered* that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain synchronous dynamic random access memory devices or modules or products containing same by reason of infringement of claims 1–24, 27, or 32–39 of U.S. Letters Patent 6,038,195, claims 1–5, 14–17, 27–28, or 30–33 of U.S. Letters Patent 5,953,263, or claims 1–3, 6–10, 13–16, 18–21, 24–26, 29–31, 33–34, or 37–38 of U.S. Letters Patent 6,034,918, and whether there exists, or is in the process of being established, an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Rambus Inc., 2465 Latham Street, Mountain View, CA 94040.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Hyundai Electronics Industries Co., Ltd., San 136–1, Amiri, Bubal-eub Ichon-kun, Kyoungki-do, Korea

Hyundai Electronics America, 3101 North First Street, San Jose, California 95134

(c) Karin J. Norton, Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401–A, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Sidney Harris is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received no later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

Issued: October 5, 2000.

By order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 00–26217 Filed 10–11–00; 8:45 am]

BILLING CODE 7020–02–P



## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

**[INS No. 2084–00]**

### Notice of Availability of Environmental Assessment (EA) for the Installation, Operation, and Maintenance of a Remote Video Surveillance (RVS) System in Whatcom County, WA

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Notice of Availability of Environmental Assessment (EA).

**SUMMARY:**

**Proposed Action**

The Immigration and Naturalization Service (INS) has completed an Environmental Assessment (EA) for the Installation, Operation, and Maintenance of a Remote Video Surveillance (RVS) system in Whatcom County, Washington. The RVS system would consist of 45.5 miles of underground fiber optic line and 32 camera sites mounted on poles ranging in height from 50 to 80 feet. The proposed action would involve construction of an underground fiber optic line inside a 2-inch diameter (maximum) conduit by use of trenching, plowing, or directional boring equipment. The observation poles would be placed within augured holes and reinforced where necessary. All line and pole locations have been surveyed to identify wetlands, streams, endangered species habitat, or cultural resources. Where such resources were identified, the line would be relocated or installed via directional boring to avoid potential adverse impacts. Based upon the findings of this analysis, no significant adverse environmental impacts would result from the proposed action. Positive socioeconomic benefits would result from increased capabilities to interdict terrorist activity and illegal drug or alien trafficking.

**Alternatives to the Proposed Action**

The "No Action" alternative would reduce the effectiveness of the Border Patrol in performing counter drug and alien interdictions. The "Microwave" alternative would be more obtrusive, less flexible, and more expensive. The "increased staffing" alternative would be prohibitively expensive and would place an increased surveillance burden on Border Patrol staff.

A copy of the final EA/Finding of No Significant Impact (FONSI) can be obtained from the INS at the following location: Ramon Garcia, Program Officer, Immigration and Naturalization Service Facilities and Engineering 425 I Street, NW, Room 2060, Washington, DC, 20536, Telephone: (202) 616–2588, Fax: (202) 514–0579 e-mail: ramon.garcia@usdoj.gov.

**FOR FURTHER INFORMATION CONTACT:** Richard Diefenbeck, Director of Facilities and Engineering Division, 425 I Street, NW, Washington, DC 20536, telephone (202) 514–3099.

Dated: September 26, 2000.

**Doris Meissner,**

*Commissioner, Immigration and Naturalization Service.*

[FR Doc. 00–26220 Filed 10–11–00; 8:45 am]

BILLING CODE 4410–10–M

## DEPARTMENT OF JUSTICE

### National Institute of Justice

**[OJP (NIJ)–1302]**

### Eleventh Meeting of the National Commission on the Future of DNA Evidence Held in Conjunction With a DNA Conference Co-Hosted by the Kennedy School of Government; Notice of Meeting

**AGENCY:** Office of Justice Programs, National Institute of Justice, Justice.

**ACTION:** Notice of meeting.

**SUMMARY:** Announcement of the eleventh meeting of the National Commission on the Future of DNA Evidence held in conjunction with a DNA Conference co-hosted with the Kennedy School of Government.

**DATES:** The eleventh meeting of the National Commission on the Future of DNA Evidence will take place on Sunday, November 19, 2000, from 12:00 p.m. until 5:00 p.m., ET. The Commission meeting will be followed by a three-day conference on "DNA and the Criminal Justice System" co-hosted by the Center for Business and Government at John F. Kennedy School of Government and the Department of Justice (please see "Supplementary Information" for details).

**ADDRESSES:** The meeting will take place at the John F. Kennedy School of Government, Harvard University, Malkin Penthouse, 79 John F. Kennedy Street, Cambridge, Massachusetts. Phone: (617) 495–1446.

**FOR FURTHER INFORMATION CONTACT:** For further information about the Commission Meeting, contact Christopher H. Asplen, AUSA, Executive Director; Phone (202) 616–8123. To register for the Conference, please call Robin Wilson of the National Institute of Justice at (202) 307–5847. Reservations for the Conference must be made by October 27, 2000.

**SUPPLEMENTARY INFORMATION:**

**Authority**

This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, 201–03, as amended, 42 U.S.C. 3721–23 (1994).

**Commission Background**

The purpose of the National Commission on the Future of DNA Evidence is to provide the Attorney General with recommendations on the use of current and future DNA methods, applications and technologies in the operation of the criminal justice system, from the crime scene to the courtroom. Over the course of its Charter, the Commission will review critical policy issues regarding DNA evidence and provide recommended courses of action to improve its use as a tool of investigation and adjudication in criminal cases.

**Commission Meeting**

The National Commission on the Future of DNA Evidence, established pursuant to Section 3(2)A of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, will meet on Sunday, November 19, 2000, from 12:00 p.m. until 5:00 p.m., ET., at the John F. Kennedy School of Government, Harvard University, Cambridge, Massachusetts, to carry out its advisory functions under Sections 201–202 of the Omnibus Crime Control and Safe Streets Act of 1968, as amended. This meeting will be open to the public.

**DNA Conference**

The Commission meeting will be followed by a conference on "DNA and the Criminal Justice System" co-hosted by the Center for Business and Government at John F. Kennedy School of Government and the Department of Justice. The conference will be held on:

1. Sunday, November 19, 2000, from 4:00 p.m. to 7:00 p.m., ET,
2. Monday, November 20, 2000, from 8:30 a.m. to 7:00 p.m., ET, and
3. Tuesday, November 21, 2000, from 8:30 a.m. to 3:00 p.m., ET.

Because space is limited for the conference, a firm registration deadline has been set for October 27, 2000. If you would like to register for the conference, please contact Robin Wilson at (202) 307–5847. A registration fee is required.

Dated: October 4, 2000.

**Doug Horner,**

*Acting Assistant Director, National Institute of Justice.*

[FR Doc. 00–26149 Filed 10–11–00; 8:45 am]

BILLING CODE 4410–18–P

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## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA–W–37,973 AND NAFTA–4064]

### General Motors Corporation Desert Proving Ground Mesa, Arizona; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at General Motors Corporation, Desert Proving Ground, Mesa, Arizona. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–37,973 and NAFTA–4064; General Motors Corporation Desert Proving Ground, Mesa, Arizona (October 4, 2000)

Signed at Washington, D.C. this 5th day of October, 2000.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 00–26158 Filed 10–11–00; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of September 2000.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision, thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or sub-division have decreased absolutely; and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline sales or production.

### Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

*TA–W–37,903; Tini Industries, Inc., New York, NY*
*TA–W–37,972; ABC–NACO, Inc., Superior, WI*
*TA–W–37,983; Penn Machine Co., Johnstown, PA*

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

*TA–W–38,086; Hennessee Apparel, Inc., Decatur, TN*
*TA–W–38,072; JN Oil and Gas, Inc., Billings, MT*
*TA–W–38,041; Harris Interactive, Inc., Vestal, NY*
*TA–W–38,062; Grant Geophysical Corp., Midland, TX*

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

*TA–W–38,029; Trus Joist, A Weyerhaeuser Co., Junction City, OR*
*TA–W–37,981; Adirondack Knitting Mills, Inc., Amsterdam, NY*
*TA–W–37,977; Academy Broadway Corp., Sleeping Bags Div., Pine Knot, KY*
*TA–W–37,017; International Paper Co., Flexible Packaging Div., Monticello, AR*
*TA–W–37,946; Heritage Toys and Collectables, Dover Foxcroft, ME*
*TA–W–38,037; AES Interconnects, Aircraft Specialities, San Benito, TX*
*TA–W–37,988; Tyco International, Tyco Electronics, Sanford, ME*

Increased imports did not contribute importantly to worker separations at the firm.

*TA–W–37,969; The Arnold Palmer Golf Co., Pocahontas, AR*

The investigation revealed that criteria (1) has not been met. A significant number or proportion of the workers did not become totally or partially separated from employment as required for certification.

### Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

*TA–W–37,844; J and L Specialty Steel, Inc., Detroit, MI: January 16, 2000.*
*TA–W–38,055; Natalie Knitting Mills, Chilhowie, VA: August 25, 1999.*
*TA–W–37,935; 2158, Inc., Slatington, PA: July 20, 1999.*
*TA–W–37,993; Circuit Systems of Tennessee, LP, Greeneville, TN: August 10, 1999.*
*TA–W–38,039; Tru Stitch Footwear, Malone, NY: August 16, 1999.*
*TA–W–37,939; Forcenergy, Inc., Miami, FL: July 20, 1999.*
*TA–W–37,752; Hamilton Sunstrand, Denver, CO: May 30, 1999.*
*TA–W–37,878; A & B; Sebago, Inc., Gorham, ME: Westbrook, ME and Bridgton, ME: June 30, 1999.*
*TA–W–37,915; ASAP Sewing, a/k/a Island Textile, Andrews, SC: July 12, 1999.*
*TA–W–37,958; HPH Apparel Manufacturing Co., Piney Flats, TN: July 27, 1999.*
*TA–W–37,945; VF Workwear, Inc., Red Kap Industries, Dickson, TN: July 20, 1999.*
*TA–W–37,567; Niemand Industries, Container Div., Marion, AL: March 24, 1999.*
*TA–W–38,014; Bay Club Sportswear, Inc., Copiague, NY: August 15, 1999.*
*TA–W–37,916; Alloy Machining Operation, Miamisburg, OH, A; Digition Dayton, Dayton, OH, B; Digitron Franklin, Franklin, OH, C; Digitron Kettering, Kettering, OH, D; Digitron-CMI, Miamisburg, OH: July 12, 1999.*
*TA–W–37,959; Melvin Quilting, Rocky Mount, NC: July 18, 1999.*
*TA–W–38,020; A.O. Smith Electrical Products Co., Gordonsville, TN: August 10, 1999.*
*TA–W–38,048 & A; PL Industries, a/k/a PL Garment Finishers, McRae, GA and PL Tech Center, McRae, GA: August 21, 1999.*
*TA–W–37,867; WP Industries, Inc., South Gate, CA: June 20, 1999.*
*TA–W–37,932; Ribco Mfg., Inc., Providence, RI: July 24, 1999.*
*TA–W–37,870; Standard Ceramics, Inc., Niagara Falls, NY: June 28, 1999.*
*TA–W–37,788; Azteca Production Int'l, Finishing/Packing Div., Aztec Finishing, Inc., Commerce, CA: June 1, 1999.*
*TA–W–37,724; Volex, Inc., Power Cord Div., Clinton, AR: May 12, 1999.*
*TA–W–37,847; Rickett Benckiser, Consumer Products Div., Rockwood, MI: June 21, 1999.*



Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with section 250(a), Subchaper D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of September, 2000.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

### Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

*NAFTA–TAA–04006; Chipman-Union, Inc., Belmont, NC*
*NAFTA–TAA–04023; Flexfab Horizons International, Inc., Flexfab/ Moxness, L.L.C., Racine, WI*
*NAFTA–TAA–04067; ABC–NACO, Inc., Superior, WI*
*NAFTA–TAA–04115; International Paper Co., Flexible Packaging Div., Monticello, AR*
*NAFTA–TAA–04022; Pharr Yarns, Inc., McAdenville, NC*
*NAFTA–TAA–04089; Tyco International, Tyco Electronics, Sanford, ME*
*NAFTA–TAA–04095; Trus Joist, A Weyerhaeuser Co., Junction City, OR*
*NAFTA–TAA–04062; Penn Machine Co., Johnstown, PA*
*NAFTA–TAA–04031 & A; Occidental Chemical Corp., Buffalo Avenue-Niagara Falls Plant, Niagara Falls, New York and Grand Island Technology Center, Grand Island, NY*

The investigation revealed that the criteria for eligibility have not been met for the reasons specified

*NAFTA–TAA–4112; Harris Interactive, Inc., Vestal, NY*
*NAFTA–TAA–04104; Hennessee Apparel, Inc., Decatur, TN*

The investigation revealed that workers of the subject firm did not produce an article within the meaning of section 250(a) of the Trade Act, as amended.

### Affirmative Determinations NAFTA–TAA

*NAFTA–TAA–04019; Reckitt Benckiser, Inc., Consumer Products Div., Rockwood, MI: June 21, 1999.*
*NAFTA–TAA–04039; ABEK, LLC, Bristol, CT: July 13, 1999.*
*NAFTA–TAA–03898; Volex, Inc., Power Cord Div., Clinton, AR: May 1, 1999.*
*NAFTA–TAA–04107; American Bag Corp., Stearns, KY: August 23, 1999.*
*NAFTA–TAA–04033; Diversified Enterprises, d/b/a Habitat, Inc., Montrose, CO: July 20, 1999.*
*NAFTA–TAA–04094; A.O. Smith Electrical Products Co., Gordonsville, TN: August 2, 1999.*
*NAFTA–TAA–04140; Ultima Trim, Inc., Los Indios, TX: September 1, 1999.*
*NAFTA–TAA–4083; Canon Business Machines, Inc., Costa Mesa, CA: August 7, 1999.*
*NAFTA–TAA–04038; Dana Engine Controls, Brandford, CT: July 20, 1999.*
*NAFTA–TAA–04105; Lucchese, Inc., El Paso, TX: August 20, 1999.*
*NAFTA–TAA–04097; Trinity Industries, Inc., McConway and Torley Group, Asheville, NC: August 14, 1999.*

I hereby certify that the aforementioned determinations were issued during the month of September 2000. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: October 5, 2000.

**Curtis Kooser,**

*Acting Director, Division of Trade Adjustment Assistance.*

[FR Doc. 00–26157 Filed 10–11–00; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address show below, not later than October 23, 2000.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than October 23, 2000.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, N.W., Washington, DC 20210.

Signed at Washington, DC this 25th day of September, 2000.

**Edward A. Tomchick,**

*Director, Division of Trade Adjustment Assistance.*

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APPENDIX

[Petitions Instituted on 09/25/2000]

| TA–W | Subject firm (petitioners) | Location | Date of petition | Product(s) |
|---|---|---|---|---|
| 38,115 | Wallowa Forest Products (Wkrs) | Wallowa, OR | 09/18/2000 | Dimensional Lumber. |
| 38,116 | SI Cutting (Wkrs) | Opalocka, FL | 09/13/2000 | Fabric Cutting. |
| 38,117 | California Direct Service (Wkrs) | San Diego, CA | 09/13/2000 | Print of Direct Mail & Data Processing. |
| 38,118 | Livingston Apparel (Wkrs) | Livington, AL | 09/12/2000 | Sweatshirts, Pants, Shorts. |
| 38,119 | John Dusenbery Co: (IBS) | Randolph, NJ | 09/11/2000 | Large Industrial Converting Equipment. |
| 38,120 | Bausch and Lomb (Wkrs) | Rochester, NY | 09/06/2000 | Contact Lens. |
| 38,121 | Duke Energy Field Service (Wkrs) | Ada, OK | 08/24/2000 | Natural Gas and Gas Liquids. |
| 38,122 | Equitable Production Co. (Wkrs) | Kingsport, TN | 09/13/2000 | Oil and Gas. |
| 38,123 | Thaw Corporation Co. | Seattle, WA | 09/06/2000 | Fleece, Powerstretch, Gore-Tex. |
| 38,124 | A.D.H. Manufacturing (Co.) | Etowah, TN | 09/08/2000 | Ladies' and Girl's Clothing. |
| 38,125 | Santa's Best (Co.) | Millville, NJ | 09/12/2000 | Plush & Non-Woven Textile Christmas Item. |
| 38,126 | Eastland Manufacturing (Co.) | Freeport, ME | 09/13/2000 | Mens' & Women's Shoes, Boots. |
| 38,127 | Ansell Healthcare (Co.) | Dothan, AL | 09/12/2000 | Condoms. |
| 38,128 | Fujitsu Computer Products (Co.) | Hillsboro, OR | 09/13/2000 | Computer Products. |
| 38,129 | Eramet Marietta (Co.) | Marietta, OH | 09/11/2000 | Manganese Metal. |
| 38,130 | Elberton Manufacturing (UNITE) | Elberton, GA | 09/08/2000 | Ladies' Blouses. |
| 38,131 | Imperial Coat Front (UNITE) | New York City, NY | 09/10/2000 | Lapels for Suits and Coats. |
| 38,132 | Christina Coat and Suit (Wkrs) | Brooklyn, NY | 09/12/2000 | Ladies' Jackets, Skirts. |
| 38,133 | UFE (Wkrs) | El Paso, TX | 09/12/2000 | Automotive Plastic Components. |
| 38,134 | Antonio Clothing (UNITE) | New York, NY | 09/14/2000 | Men's Jackets and Overcoats. |
| 38,135 | Archer Daniels Midland (Wkrs) | Helena, AR | 09/08/2000 | Soybeans, Soybean Oil and Meal. |



[FR Doc. 00–26160 Filed 10–11–00; 8:45 am]
BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration Office of Workforce Security; Proposed Collection; Comment Request

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed extension collection of the MA 8–7, Transmittal for Unemployment Insurance Materials. A copy of the proposed information collection request can be obtained by contacting the office listed below in the addressee section of this notice.

**DATES:** Written comments must be submitted to the office listed in the addressee section below on or before December 11, 2000.

**ADDRESSES:** Darlyne Bryant, Room C–4518, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 219–5200, extension 366 (this is not a toll-free number); e-mail: *dbryant@doleta.gov;* facsimile (202) 208–5844.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

Department of Labor, Employment and Training Administration regulations, 20 CFR 601, Administrative Procedures, contains collection of information requirements at Sections 601.2 and 601.3. Section 601.2 requires States to submit copies of their unemployment compensation laws for approval by the Secretary of Labor so that the Secretary may determine the status of State laws and plans of operation. Section 601.3 requires States to "submit all relevant State materials such as statutes, executive and administrative orders, legal opinions, rules, regulations, interpretations, court decisions, etc." These materials are used by the Secretary to determine whether the State law contains provisions required by Section 3304(a) of the Internal Revenue Code of 1986. Grants of funds are made to States for the administration of their employment security laws if their unemployment compensation laws and their plans of operation for public employment offices meet required conditions of Federal laws. The information transmitted by Form MA 8–7 is used by the Secretary to make findings (as specified in the above cited Federal laws) required for certification to the Secretary of the Treasury for payment to States or for certification of the State law for purposes of additional tax credit. If this information is not available, the Secretary cannot make such certifications. To facilitate transmittal of required material, the Department prescribes the use of Form MA 8–7, Transmittal for Unemployment Insurance Materials. This simple checkoff form is used by the States to identify material being transmitted to the National Office and allows the material to be routed to appropriate staff for prompt action.

#### II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technologies collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

#### III. Current Actions

States could not be certified if this information were not collected and Form MA 8–7 greatly facilitates its receipt.

*Type of Review:* Extension without change.

*Agency:* Employment and Training Administration.

*Title:* Transmittal for Unemployment Insurance Materials.

*OMB Number:* 1205–0222.

*Agency Number:* MA 8–7.

*Affected Public:* State Governments.

*Total Respondents:* 53.

*Frequency:* As needed.

*Total Responses:* 3,120.

*Average Time per Response:* 1 minute.

*Estimated Total Burden Hours:* 53 hours.

*Total Burden Cost (capital/startup):* None.

*Total Burden Cost (operating/maintaining):* $1,060.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: October 5, 2000.

**Grace A Kilbane,**

*Administrator, Office of Workforce Security.*

[FR Doc. 00–26156 Filed 10–11–00; 8:45 am]
BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later that October 23, 2000.

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Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than October 23, 2000.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 18th day of September, 2000.

**Edward A. Tomchick,**

*Director, Division of Trade Adjustment Assistance.*

APPENDIX

[Petitions instituted on 09/18/2000]

| TA–W | Subject firm (petitioners) | Location | Date of petition | Product(s) |
|---|---|---|---|---|
| 38,085 | Evy of California (Wrks) | Los Angeles, CA | 09/06/2000 | Children's Clothing. |
| 38,086 | Hennessee Apparel, Inc (Comp) | Decatur, TN | 08/10/2000 | Fleecewear. |
| 38,087 | Imaging Technologies, Inc (Comp) | Cookeville, TN | 08/21/2000 | Ink Jet Systems. |
| 38,088 | Heinz Pet Products (Wrks) | El Paso, TX | 08/30/2000 | Beef Jerky Treat. |
| 38,089 | Federal Bag Co., Inc. (Comp) | St. Louis, MO | 09/05/2000 | Backpacks, Fannypacks. |
| 38,090 | Waynesboro Apparel, Inc (Wrks) | Waynesboro, TN | 08/31/2000 | Tee Shirts. |
| 38,091 | American Metal Products (Wrks) | Union, MO | 08/31/2000 | Decorative Floor Resisters. |
| 38,092 | Xerox ColorgrafX Systems (UNITE) | San Jose, CA | 09/01/2000 | Ink Jet Printers. |
| 38,093 | Robinson Manufacturing Co (Wrks) | Oxford, ME | 09/08/2000 | Wool and Wool Blend Cloth. |
| 38,094 | Ajay Leisure Products (Wrks) | Delevan, WI | 08/19/2000 | Golf Bags. |
| 38,094 | Ungo Security (Wkrs) | Hayward, CA | 08/18/2000 | Security Alarms. |
| 38,096 | Ultima Trim (Wrks) | Los Indios, TX | 09/01/2000 | Steering Wheels. |
| 38,097 | Toastmaster, Inc. (Comp) | Macon, MO | 09/05/2000 | Portable Kitchen Appliances. |
| 38,098 | Burlington Resources (Wrks) | Sidney, MT | 08/25/2000 | Oil and Gas. |
| 38,099 | Delco Remy America (UAW) | Anderson, IN | 09/06/2000 | Heavy Duty Armatures. |
| 38,100 | Farah/Savane Int'l (Wrks) | El Paso, TX | 08/22/2000 | Slacks, Shirts. |
| 38,101 | Bonney Forge Corp. (Wrks) | Allentown, PA | 08/29/2000 | Steel Fittings. |
| 38,102 | McDowell Manufacturing (Comp) | DuBois, PA | 09/11/2000 | Metal Stampings. |
| 38,103 | Lebanite Corp (Wrks) | Lebanon, OR | 08/31/2000 | High Density Hard Board. |
| 38,104 | Garan Manufacturing Corp (Wrks) | Jemison, AL | 08/30/2000 | Children's Clothing. |
| 38,105 | Briggs Industries, Inc. (Wrks) | Abingdon, IL | 09/07/2000 | China Toilets, Tanks Wash Basins. |
| 38,106 | Abbeville Shirtmakers (Comp) | Abbeville, SC | 09/07/2000 | Men's Dress Shirts. |
| 38,107 | Timex Corp (IAMAW) | Little Rock, AR | 09/05/2000 | Watch Case Backs, Bezels. |
| 38,108 | AirBoss Polymer Products (Comp) | South Haven, MI | 09/07/2000 | Molded Rubber Products. |
| 38,109 | C and P Trucking Co., Inc (Comp) | Attalla, AL | 09/07/2000 | Trucking Transportation. |
| 38,110 | Authentic Fitness (Wrks) | Bell, CA | 09/06/2000 | Bathing Suits and Sportwear. |
| 38,111 | Standard Forged Products (USWA) | Johnstown, PA | 09/05/2000 | Railroad Traing Car Axles and Mounts. |
| 38,112 | Mead Products (Wrks) | Kalamazoo, MI | 08/31/2000 | Rules Paper Tablets. |
| 38,113 | Eramet Marietta, Inc. (Comp) | Marietta, OH | 09/11/2000 | Manganese Metal. |
| 38,114 | American Identity (Comp) | Fairbury, NE | 09/12/2000 | Shirts. |

[FR Doc. 00–26161 Filed 10–11–00; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

[NAFTA 3980]

### Morton Forest Products A.K.A. Tree Source Morton, Washington; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of September 20, 2000, the company requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for NAFTA Transitional Adjustment Assistance, applicable to petition number NAFTA 3980. The denial notice was signed on August 18, 2000 and published in the **Federal Register** on September 12, 2000 (65 FR 55050).

The petitioner alleges that the Department did not survey sufficient customers and provided a list of additional customers of the subject facility.

*Conclusion*

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, D.C. this 2nd day of October 2000.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 00–26159 Filed 10–11–00; 8:45 am]

BILLING CODE 4510–30–M

## LIBRARY OF CONGRESS

### Copyright Office

[Docket No. 2000–2 CARP CD 93–97]

### Distribution of 1993, 1994, 1995, 1996 and 1997 Cable Royalty Funds

**AGENCY:** Copyright Office, Library of Congress.

**ACTION:** Initiation of arbitration.

**SUMMARY:** The Librarian of Congress is announcing initiation of the 180-day arbitration period for the Phase II distribution of the 1997 cable royalty funds for the syndicated programming category.

**EFFECTIVE DATE:** October 17, 2000.

**ADDRESSES:** All hearings and meetings for the Phase II cable distribution proceeding shall take place in the James Madison Memorial Building, Room LM–414, First and Independence Avenue, S.E., Washington, D.C. 20540.



**FOR FURTHER INFORMATION CONTACT:** David O. Carson, General Counsel, or William J. Roberts, Jr., Senior Attorney for Compulsory Licenses, P.O. Box 70977, Southwest Station, Washington, D.C. 20024. Telephone: (202) 707–8380. Telefax: (202) 252–3423.

**SUPPLEMENTARY INFORMATION:**

#### Background

By Order dated January 12, 2000, the Library consolidated all Phase II controversies in Docket Nos. 96–7 CARP CD 93–94, 97–2 CARP CD 95, 98–2 CARP CD 96 and 99–5 CARP CD 97 into a single distribution proceeding and announced the precontroversy discovery schedule for a Phase II distribution proceeding in the syndicated programming category. All controversies in this category have reached settlement, except for a dispute between certain claimants represented by the Independent Producers Group ("IPG"), and certain claimants represented by the Motion Picture Association of America, Inc. ("Program Suppliers"), for distribution of the 1997 royalty funds collected under the cable statutory license of the Copyright Act. 17 U.S.C. 111. The Library has completed the discovery phase of the proceeding between IPG and Program Suppliers, and the case is now ready for submission to a Copyright Arbitration Royalty Panel ("CARP") for arbitration proceedings.

#### Selection of Arbitrators

In accordance with § 251.6 of the CARP rules, the arbitrators for this proceeding have been selected. They are:

The Honorable Dorothy K. Campbell (Chairperson)
The Honorable John W. Cooley
The Honorable Mark J. Davis

#### Initiation of Proceeding

Pursuant to § 251.72 of the CARP rules, the Librarian is formally announcing the existence of a controversy as to the distribution of 1997 cable royalties in the syndicated programming category and is initiating an arbitration proceeding under chapter 8 of title 17 to resolve the distribution. The arbitration proceeding commences on October 17, 2000, and runs for a period of 180 days. The arbitrators shall file their written report with the Librarian no later than April 16, 2001, in accordance with § 251.53 of the rules.

A meeting between the parties in this proceeding and the arbitrators shall take place on Tuesday, October 17, at 2 p.m. at the Library of Congress, James Madison Memorial Building, Room LM–414, First and Independence Avenue, S.E., Washington, D.C., to discuss the hearing schedule, resolution of designated issues, and other matters. The meeting is open to the public. Copies of the hearing schedule, once finalized, will be available at the Copyright Office upon request.

Dated: October 6, 2000.

**David O. Carson,**

*General Counsel.*

[FR Doc. 00–26165 Filed 10–11–00; 8:45 am]

BILLING CODE 1410–33–P

## FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

### Sunshine Act Meeting

October 5, 2000.

**TIME AND DATE:** 10 a.m., Thursday, October 12, 2000.

**PLACE:** Room 6005, 6th Floor, 1730 K Street, NW., Washington, DC.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** The Commission will consider and act upon the following:

1. Consolidation Coal Co., Docket No. WEVA 98–37 (Issues include whether, based on visible observations, the operator failed to disperse and carry away drill dust from the breathing zones of roof bolters, thereby violating 30 C.F.R. § 72.630(d)).

Any person attending an open meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 C.F.R. §§ 2706.150(a)(3) and 2706.160(d).

**CONTACT PERSON FOR MORE INFORMATION:** Jean Ellen (202) 653–5629/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

**Jean H. Ellen,**

*Chief Docket Clerk.*

[FR Doc. 00–26401 Filed 10–10–00; 3:41 pm]

BILLING CODE 6735–01–M

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 00–122]

### NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC); Meeting

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science Advisory Committee.

**DATES:** Wednesday, November 1, 2000, 8:30 a.m. to 5:30 p.m.; Thursday, November 2, 2000, 8:30 a.m. to 5:30 p.m.; and Friday, November 3, 2000, 8:30 a.m. to Noon.

**ADDRESSES:** Jet Propulsion Laboratory, 4800 Oak Grove Drive, Building 180, First Floor Conference Room, Pasadena, CA 91109.

**FOR FURTHER INFORMATION CONTACT:** Dr. Marc Allen, Code S, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–2470.

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following:

—Associate Administrator's Program Status Report
—Science Theme Status Reports
—Subcommittee Reports
—GPRA FY 2000 Performance Report Discussion
—GPRA FY 2002 Performance Plan Status
—Education and Public Outreach Programs Report
—Mars Program Reformulation Status
—Plans for Establishment of a New Fifth NASA Strategic Enterprise
—Research Division Issues

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: October 2, 2000.

**Beth M. McCormick,**

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

[FR Doc. 00–26201 Filed 10–11–00; 8:45 am]

BILLING CODE 7510–01–P

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 00–123]

### NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC), Sun-Earth Connection Advisory Subcommittee

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration

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announces a forthcoming meeting of the NASA Advisory Council, Space Science Advisory Committee, Sun-Earth Connection Advisory Subcommittee.

**DATES:** Wednesday, October 25, 2000, 8:30 a.m. to 5 p.m.; Thursday, October 26, 2000, 8:30 a.m. to 5 p.m; Friday, October 27, 2000, 8:30 a.m. to Noon.

**ADDRESSES:** National Aeronautics and Space Administration, Conference Room 6H46, 300 E Street, SW, Washington, DC, 20546.

**FOR FURTHER INFORMATION CONTACT:** Dr. George L. Withbroe, Code S, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–2150.

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:

—Sun-Earth Connection Program Overview: Budget, Ongoing Program, Future Activities
—Research and Analysis Program
—Solar Terrestrial Probe Program
—Living with a Star Program
—Discussion and Writing Groups

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: October 5, 2000.

**Beth M. McCormick,**

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

[FR Doc. 00–26202 Filed 10–11–00; 8:45 am]

**BILLING CODE 7510–01–P**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice 00–124]**

### NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC), Solar System Exploration Subcommittee

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Space Science Advisory Committee, Solar System Exploration Subcommittee.

**DATES:** Monday, October 30, 2000, 8:30 a.m. to 5 p.m., and Tuesday, October 31, 2000, 8:30 a.m. 5 p.m.

**ADDRESSES:** Infrared Processing and Analysis Center, (IPAC), Conference Room 102, in Building 22, 770 South Wilson Road, Pasadena, California 91125.

**FOR FURTHER INFORMATION CONTACT:** Jay Bergstralh, Code SR, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–0735.

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public up to the capacity of the room. The agenda for the meeting is as follows:

—Mars Architecture Development
—Europa Mission Update
—Outer Planets Science Strategy
—Pluto Science Drivers
—Future Outer Planets Mission Options

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: October 5, 2000.

**Beth M. McCormick,**

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

[FR Doc. 00–26203 Filed 10–11–00; 8:45 am]

**BILLING CODE 7510–01–P**

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** National Archives and Records Administration (NARA).

**ACTION:** Notice.

**SUMMARY:** NARA is giving public notice that the agency proposes to request use of NATF Form 326, Microfilm Publication Order Form, used by customers/researchers for ordering roll(s) or microfiche of a microfilm publication. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be received on or before December 11, 2000 to be assured of consideration.

**ADDRESSES:** Comments should be sent to: Paperwork Reduction Act Comments (NHP), Room 3200, National Archives and Records Administration, 8601 Adelphi Rd, College Park, MD 20740–6001; or faxed to 301–713–6913; or electronically mailed to tamee.fechhelm@arch2.nara.gov.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–713–6730, or fax number 301–713–6913.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways, including the use of information technology, to minimize the burden of the collection of information on respondents. The comments that are submitted will be summarized and included in the NARA request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this notice, NARA is soliciting comments concerning the following information collection:

*Title:* Microfilm Publication Order Form.

*OMB number:* 3095–NEW.

*Agency form number:* NATF Form 326.

*Type of review:* Regular.

*Affected public:* Business or for-profit, nonprofit organizations and institutions, federal, state and local government agencies, and individuals or households.

*Estimated number of respondents:* 5,200.

*Estimated time per response:* 10 minutes.

*Frequency of response:* On occasion.

*Estimated total annual burden hours:* 867 hours.

*Abstract:* The information collection is prescribed by 36 CFR 1254.72. The collection is prepared by researchers who cannot visit the appropriate NARA research room or who request copies of records as a result of visiting a research room. NARA offers limited provisions to obtain copies of records by mail and requires requests to be made on prescribed forms for certain bodies of records. The National Archives Trust Fund (NATF) Form 326 (8/00), Microfilm Publication Order Form, is used by customers/researchers for ordering a roll, rolls, or a microfiche of a microfilm publication.



Dated: October 2, 2000.

**L. Reynolds Cahoon,**

*Assistant Archivist for Human Resources and Information Services.*

[FR Doc. 00–26162 Filed 10–11–00; 8:45 am]

**BILLING CODE 7515–01–P**

## NUCLEAR REGULATORY COMMISSION

### Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

**AGENCY:** U.S. Nuclear Regulatory Commission (NRC).

**ACTION:** Notice of the OMB review of information collection and solicitation of public comment.

**SUMMARY:** The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* revision.

2. *The title of the information collection:* Request for Taxpayer Identification Number.

3. *The form number if applicable:* NRC Form 531.

4. *How often the collection is required:* One time from each applicant or individual to enable that Department of the Treasury to process electronic payments or collect debts owed to the government.

5. *Who will be required or asked to report:* The Debt Collection Improvement Act of 1996 requires all Federal agencies to obtain TINs from all persons who do business with the Government including contractors and recipient of credit, licenses, permits, and benefits.

6. *An estimate of the number of responses:* 300.

7. *The estimated number of annual respondents:* 300.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 25 hours (5 minutes per response).

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* Applicable.

10. *Abstract:* The Debt Collection Improvement Act of 1996 requires that agencies collect taxpayer identification numbers (TINs) from individuals who do business with the Government, including contractors and recipient of credit, licenses, permits and benefits. TINs will be used to process all electronic payments (refunds) made to licensees by electronic funds transfer by the Department of the Treasury (Treasury). Treasury will use TINs to determine whether the refund can be used to administratively offset any delinquent debts reported to the Treasury by other government agencies. In addition, TINs will be used to collect and report to the Treasury any delinquent indebtedness arising out of the licensee's or applicant's relationship with the NRC.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by November 13, 2000. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Amy Farrell, Office of Information and Regulatory Affairs (3150–0188), NEOB–10202, Office of Management and Budget, Washington, DC 20503

Comments can also be submitted by telephone at (202) 395–7318.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 5th day of October 2000.

For the Nuclear Regulatory Commission.

**Brenda Jo. Shelton,**

*NRC Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 00–26152 Filed 10–11–00; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–250 and 50–251]**

### Florida Power and Light Company Turkey Point, Units 3 and 4; Notice of Acceptance for Docketing of the Application and Notice of Opportunity for a Hearing Regarding Renewal of License Nos. DPR–31 and DPR–41 for an Additional Twenty-Year Period

The U.S. Nuclear Regulatory Commission (the Commission) is considering an application for the renewal of Operating Licenses Nos. DPR–31 and DPR–41 which authorize Florida Power and Light Company (FPL) to operate Turkey Point, Units 3 and 4 at 2300 megawatts thermal. The renewed licenses would authorize the applicant to operate Turkey Point, Units 3 and 4 for an additional 20 years beyond the period specified in the current licenses. The current operating licenses for Turkey Point, Units 3 and 4 expire on July 19, 2012 and April 10, 2013, respectively.

FPL submitted an application to renew the operating licenses for Turkey Point, Units 3 and 4 on September 11, 2000. A Notice of Receipt of Application, "Florida Power and Light Company, Turkey Point, Units 3 and 4; Notice of Receipt of Application for Renewal of Facility Operating License Nos. DPR–31 and DPR–41, for an Additional Twenty-Year Period," was published in the **Federal Register** on September 26, 2000 (65 FR 57847).

The Commission's staff has determined that FPL has submitted information in accordance with 10 CFR 54.19, 54.21, 54.22, 54.23, and 51.53(c) that is complete and acceptable for docketing. The current Docket Nos. 50–250 for Operating License No. DPR–31 and 50–251 for Operating License No. DPR–41 will be retained. The docketing of the renewal application does not preclude requesting additional information as the review proceeds, nor does it predict whether the Commission will grant or deny the application.

Before issuance of a requested license renewal, the NRC will have made the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the NRC's rules and regulations. In accordance with 10 CFR 54.29, the NRC will issue a renewed license on the basis of its review and findings that actions have been identified and have been or will be taken with respect to: (1) Managing the effects of aging during the period of extended operation on the functionality of structures and components that have been identified as requiring aging management review;

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and (2) time-limited aging analyses that have been identified as requiring review such that there is reasonable assurance that the activities authorized by the renewed license will continue to be conducted in accordance with the current licensing basis (CLB) and that any changes made to the plant's CLB comply with the Act and the Commission's regulations.

Additionally, in accordance with 10 CFR 51.95(c), the NRC will prepare an environmental impact statement that is a supplement to the Commission's NUREG–1437, "Generic Environmental Impact Statement for License Renewal of Nuclear Power Plants" (May 1996). Pursuant to 10 CFR 51.26, and as part of the environmental scoping process, the staff intends to hold a public scoping meeting. Detailed information regarding this meeting will be included in a future **Federal Register** notice. The Commission also intends to hold public meetings to discuss the license renewal process and the schedule for conducting the review. The Commission will provide prior notice of these meetings. As discussed further herein, in the event that a hearing is held, issues that may be litigated will be confined to those pertinent to the foregoing.

By November 13, 2000, the applicant may file a request for a hearing, and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene with respect to the renewal of the licenses in accordance with the provisions of 10 CFR 2.714. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the Commission's Public Document Room, 11555 Rockville Pike (first floor) Rockville, Maryland, and on the NRC website at *http://www.nrc.gov* (the Electronic Reading Room). If a request for a hearing or a petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel will rule on the request(s) and/or petition(s), and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order. In the event that no request for a hearing or a petition for leave to intervene is filed by the above date, the NRC may, upon completion of its evaluations and upon making the findings required under 10 CFR Parts 54 and 51, renew the licenses without further notice.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding, taking into consideration the limited scope of matters that may be considered pursuant to 10 CFR parts 54 and 51. The petition must specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order that may be entered in the proceeding on the petitioner's interest. The petition must also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the board up to 15 days before the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days before the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene that must include a list of the contentions that the petitioner seeks to have litigated in the hearing. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of each contention and a concise statement of the alleged facts or the expert opinion that supports the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the action under consideration. The contention must be one that, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement that satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Requests for a hearing and petitions for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, 11555 Rockville Pike (first floor), Rockville, Maryland, 20855–2738, by the above date. A copy of the request for a hearing and the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Thomas F. Plunkett, President—Nuclear Division, Florida Power & Light Company, P.O. Box 14000, Juno Beach, FL 33408–0420.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions, and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

Detailed information about the license renewal process can be found under the nuclear reactors' icon of the NRC's Web page <http://www.nrc.gov>.

A copy of the application to renew the Turkey Point, Units 3 and 4 licenses is available for public inspection at the Commission's Public Document Room, 11555 Rockville Pike (first floor) Rockville, Maryland, 20855–2738, and on the NRC's Web page <http://www.nrc.gov>.

Dated at Rockville, Maryland, this 4th day of October 2000.

For the Nuclear Regulatory Commission.

**Christopher I. Grimes,**

*Chief, License Renewal and Standardization Branch, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.*

[FR Doc. 00–26151 Filed 10–11–00; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

### Sunshine Meeting Act

*Agency Holding the Meeting:* Nuclear Regulatory Commission.

*Date:* Weeks of October 9, 16, 23, 30, November 6, and 13, 2000.



*Place:* Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

*Status:* Public and Closed.

**Matters to be Considered:**

*Week of October 9*

There are no meetings scheduled for the Week of October 9.

*Week of October 16—Tentative*

Tuesday, October 17
9:25 a.m. Affirmation Session (Public Meeting) (If needed)

*Week of October 23—Tentative*

Monday, October 23
1:55 p.m. Affirmation Session (Public Meeting) (If needed)

*Week of October 30—Tentative*

There are no meetings scheduled for the Week of October 30.

*Week of November 6—Tentative*

There are no meetings scheduled for the Week of November 6.

*Week of November 13—Tentative*

Friday, November 17
9:25 a.m. Affirmation Session (Public Meeting) (If needed)
9:30 a.m. Briefing on Risk-Informed Regulation Implementation Plan (Public Meeting)

This meeting will be webcast live at the Web address—*www.nrc.gov/live.html*

*The schedule for commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Bill Hill (301) 415–1661.

* * * * *

**Additional Information**

By a vote of 5–0 on October 6, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Affirmation of VERMONT YANKEE NUCLEAR POWER CORP. & AMERGEN VERMONT, LLC (Vermont Yankee Nuclear Power Station), Docket No. 50–271–LT. Petitions to Intervene and Motions for Hearing from Citizens Awareness Network ("CAN") and the Vermont Department of Public Service ("Vermont"); also various motions by CAN associated with its petition" be held on October 6, and on less than one week's notice to the public.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm

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This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: October 6, 2000.

**William M. Hill, Jr.,**

*SECY Tracking Officer, Office of the Secretary.*

[FR Doc. 00–26334 Filed 10–10–00; 11:44 am]

BILLING CODE 7590–01–M

## NUCLEAR REGULATORY COMMISSION

### State of Oklahoma: Discontinuance of Certain Commission Regulatory Authority Within the State; Notice of Agreement Between the NRC and the State of Oklahoma

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of Agreement between the NRC and the State of Oklahoma.

**SUMMARY:** This notice is announcing that on August 30, 2000, Richard Meserve, Chairman of the U.S. Nuclear Regulatory Commission (NRC) and on September 22, 2000, Governor Frank Keating of the State of Oklahoma signed an Agreement as authorized by section 274b of the Atomic Energy Act of 1954, as amended (Act). The Agreement provides for the Commission to discontinue its regulatory authority and for Oklahoma to assume regulatory authority over the possession and use of byproduct material as defined in section 11e.(1) of the Act, special nuclear materials (in quantities not sufficient to form a critical mass), source material used to take advantage of its density and high mass properties where the use of the specifically licensed material is subordinate to the primary specifically licensed use of either 11e.(1) byproduct material or special nuclear material (primarily used as shielding), and the disposal of low-level radioactive waste at a land disposal site in the State of Oklahoma.

Under the Agreement, a person in Oklahoma possessing these materials is exempt from certain Commission regulations. The exemptions have been previously published in the **Federal Register** (FR) and are codified in the Commission's regulations as 10 CFR part 150. The Agreement is published here as required by section 274e of the Act.

**ADDRESSES:** Copies of the staff assessment, and the Commission's decision may be viewed at the NRC website, *http://www.nrc.gov.*

**FOR FURTHER INFORMATION CONTACT:** Patricia M. Larkins, Office of State and Tribal Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone (301) 415–2309 or e-mail PML@NRC.GOV.

**SUPPLEMENTARY INFORMATION:** The draft Agreement was published in the **Federal Register** for comment once a week for four consecutive weeks (see, *e.g.*, 65 FR 36169; June 7, 2000) as required by the Act. The public comment period ended on July 7, 2000, and the Commission did not receive any comments during that time. After considering the request for an Agreement by the Governor of Oklahoma, the supporting documentation submitted with the request for an Agreement, and its interactions with the staff of the Oklahoma Department of Health, Bureau of Radiological Health, the NRC staff completed an assessment of the Oklahoma program. A copy of the NRC staff assessment was made available in the NRC's Public Document Room and electronically on NRC's website.

Based on the NRC staff's assessment, the Commission determined on August 24, 2000, that the proposed Oklahoma program for the control of radiation hazards is adequate to protect public health and safety, and that it is compatible with the Commission's program. Following execution of the Agreement, NRC staff will continue a program of active interaction with the new Agreement State that includes the exchange of regulatory information (*e.g.*, incident reports, policy changes, rule and guidance development), and periodic on-site reviews of the Agreement State program.

Dated at Rockville, Maryland, this 4th day of October, 2000.

For the Nuclear Regulatory Commission.

**Annette L. Vietti-Cook,**

*Secretary of the Commission.*

**Agreement Between the United States Nuclear Regulatory Commission and the State of Oklahoma for Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended**

*Whereas*, the United States Nuclear Regulatory Commission (hereinafter referred to as the Commission) is authorized under section 274 of the Atomic Energy Act of 1954, as amended (hereinafter referred to as the Act), to enter into agreements with the Governor of any State providing for discontinuance of the regulatory authority of the Commission within the State under Chapters 6, 7, and 8, and section 161 of the Act with respect to byproduct materials as defined in sections 11e.(1) and (2) of the Act, source materials, and special nuclear materials in quantities not sufficient to form a critical mass; and,

*Whereas*, the Governor of the State of Oklahoma is authorized under section 2–9–103(c) of the Radiation Management Act (27A

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O.S. Supp. 1998 § 2–9–101 *et seq.*) to enter into this Agreement with the Commission; and,

*Whereas,* the Governor of the State of Oklahoma certified on December 28, 1999 that the State of Oklahoma (hereinafter referred to as the State) has a program for the control of radiation hazards adequate to protect the health and safety with respect to materials within the State covered by this Agreement, and that the State desires to assume regulatory responsibility for such materials; and,

*Whereas,* the Commission found on August 24, 2000, that the program of the State for the regulation of the materials covered by this Agreement is compatible with the Commission's program for the regulation of such materials and is adequate to protect public health and safety; and,

*Whereas,* the State and the Commission recognize the desirability and importance of cooperation between the Commission and the State in the formulation of standards for protection against hazards of radiation and in assuring that State and Commission programs for protection against hazards of radiation will be coordinated and compatible; and,

*Whereas,* the Commission and the State recognize the desirability of reciprocal recognition of licenses, and of the granting of limited exemptions from licensing of those materials subject to this Agreement; and,

*Whereas,* this Agreement is entered into pursuant to the provisions of the Act: Now, Therefore, it is hereby agreed between the Commission and the Governor of the State of Oklahoma, acting in behalf of the State, as follows:

*Article I*

Subject to the exceptions provided in Articles II, IV, and V, the Commission shall discontinue, as of the effective date of this Agreement, the regulatory authority of the Commission in the State under Chapters 6, 7, and 8, and section 161 of the Act with respect to the following materials:

A. Byproduct material as defined in section 11e.(1) of the Act;

B. Source material used to take advantage of the density and high-mass property where the use of the specifically licensed source material is subordinate to the primary specifically licensed use of either 11e.(1) byproduct material or special nuclear material;

C. Special nuclear materials in quantities not sufficient to form a critical mass;

D. The regulation of the land disposal of byproduct source or special nuclear waste material received from other persons.

*Article II*

This Agreement does not provide for discontinuance of any authority and the Commission shall retain authority and responsibility with respect to:

A. The regulation of the construction and operation of any production or utilization facility or any uranium enrichment facility;

B. The regulation of the export from or import into the United States of byproduct, source, or special nuclear material, or of any production or utilization facility;

C. The regulation of the disposal into the ocean or sea of byproduct, source, or special nuclear waste material as defined in the regulations or orders of the Commission;

D. The regulation of the disposal of such other byproduct, source, or special nuclear material as the Commission from time to time determines by regulation or order should, because of the hazards or potential hazards thereof, not be so disposed without a license from the Commission;

E. The evaluation of radiation safety information on sealed sources or devices containing byproduct, source, or special nuclear materials and the registration of the sealed sources or devices for distribution, as provided for in regulations or orders of the Commission;

F. Byproduct material as defined in section 11e. (2) of the Act;

G. Source material except for source material used to take advantage of the density and high-mass properties where the use of the specifically licensed source material is subordinate to the primary specifically licensed use of either 11e.(1) byproduct material or special nuclear material.

*Article III*

With the exception of those activities identified in Article II, paragraph A through D, this Agreement may be amended, upon application by the State and approval by the Commission, to include one or more of the additional activities specified in Article II, paragraphs E through G, whereby the State may then exert regulatory authority and responsibility with respect to those activities.

*Article IV*

Notwithstanding this Agreement, the Commission may from time to time by rule, regulation, or order, require that the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source, byproduct, or special nuclear material shall not transfer possession or control of such product except pursuant to a license or an exemption from licensing issued by the Commission.

*Article V*

This Agreement shall not affect the authority of the Commission under subsection 161b or 161i of the Act to issue rules, regulations, or orders to protect the common defense and security, to protect restricted data, or to guard against the loss or diversion of special nuclear material.

*Article VI*

The Commission will cooperate with the State and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that Commission and State programs for protection against hazards of radiation will be coordinated and compatible. The State agrees to cooperate with the Commission and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that the State's program will continue to be compatible with the program of the Commission for the regulation of materials covered by this Agreement.

The State and the Commission agree to keep each other informed of proposed changes in their respective rules and regulations, and to provide each other the opportunity for early and substantive contribution to the proposed changes.

The State and the Commission agree to keep each other informed of events, accidents, and licensee performance that may have generic implication or otherwise be of regulatory interest.

*Article VII*

The Commission and the State agree that it is desirable to provide reciprocal recognition of licenses for the materials listed in Article I licensed by the other party or by any other Agreement State. Accordingly, the Commission and the State agree to develop appropriate rules, regulations, and procedures by which such reciprocity will be accorded.

*Article VIII*

The Commission, upon its own initiative after reasonable notice and opportunity for hearing to the State, or upon request of the Governor of the State, may terminate or suspend all or part of this Agreement and reassert the licensing and regulatory authority vested in it under the Act if the Commission finds that: (1) Such termination or suspension is required to protect public health and safety, or (2) the State has not complied with one or more of the requirements of section 274 of the Act. The Commission may also, pursuant to section 274j(2) of the Act, temporarily suspend all or part of this Agreement if, in the judgment of the Commission, an emergency situation exists requiring immediate action to protect public health and safety and the State has failed to take necessary steps. The Commission shall periodically review actions taken by the State under this Agreement to ensure compliance with section 274 of the Act which requires a State program to be adequate to protect public health and safety with respect to the materials covered by this Agreement and to be compatible with the Commission's program.

*Article IX*

This Agreement shall become effective on September 29, 2000, and shall remain in effect unless and until such time as it is terminated pursuant to Article VIII.

Dated at Rockville, Maryland, in triplicate, this 30th day of August 2000.

For the United States Nuclear Regulatory Commission.

Richard A. Meserve,

*Chairman.*

Dated at Oklahoma City, Oklahoma, in triplicate, this 22nd day of September 2000.

For the State of Oklahoma.

Frank Keating,

*Governor.*

[FR Doc. 00–26150 Filed 10–11–00; 8:45 am]

BILLING CODE 7590–01–P



## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 35–27240]**

## Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

October 4, 2000.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The applicant(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by October 30, 2000, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After October 30, 2000, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

**System Energy Resources, Inc., 70–9753**

Entergy Corporation ("Entergy"), 639 Loyola Avenue, New Orleans, Louisiana 70113, a registered holding company, Entergy's electric generating subsidiary company, System Energy Resources, Inc. ("System Energy"), 1340 Echelon Parkway, Jackson, Mississippi 39213, and Entergy's operating subsidiary companies ("Operating Subsidiaries"), Entergy Arkansas, Inc., 425 West Capitol, Little Rock, Arkansas 72201, Entergy Louisiana, Inc., 4809 Jefferson Highway, Jefferson, Louisiana 70121, Entergy Mississippi, Inc., 308 East Pearl Street, Jackson, Mississippi 39201, Entergy New Orleans, Inc., 1600 Perido Building, New Orleans, LA 70112, have filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(b) and 12(d) of the Public Utility Holding Company Act of 1935 ("Act"), as amended, and rules 44, 45 and 54 under the Act.

System Energy proposes, from time to time through December 31, 2005 to issue and sell one or more series of its First Mortgage Bonds ("Bonds"), and/or one or more series of its Debentures ("Debentures") in a combined aggregate principal amount of Bonds and Debentures not to exceed $350 million. Each series of Bonds and Debentures will have such interest rate, maturity date, redemption, and sinking fund provisions, as shall be determined at the time of sale. No series of Bonds or Debentures will be sold if the fixed interest rate or adjustable interest rate would exceed 15% per annum and mature not later than fifty years from the date of issuance.

In order to provide security for its obligations with respect to each series of the Bonds, System Energy may determine to enter into one or more assignments for the benefit of the holders of such Bonds, of its rights under the Availability Agreement, dated as of June 21, 1974, as amended. The Operating Companies, each of which is a party to the Availability Agreement, will be required to consent to and join in any such Assignment. In addition, System Energy may determine to enter into an assignment for the benefit of the holders of the Bonds of its rights under the Capital Funds Agreement, dated as of June 21, 1974. In such event, Entergy, which is a party to the Capital Funds Agreement, will be required to consent to and join in the assignment. Lastly, System Energy may determine to provide an insurance policy for the payment of the principal of and/or interest and/or premium on one or more series of Bonds or Debentures.

System Energy proposes to use the net proceeds from the issuance and sale of the Bonds and Debentures for general corporate purposes, including the repayment of outstanding securities when due and/or the possible redemption or the acquisition of outstanding First Mortgage Bonds and/or Debentures, the payment of construction costs and nuclear fuel costs, the repayment of borrowings and for other working capital needs.

System Energy also proposes to enter into arrangements for the issuance of tax-exempt bonds under which System Energy proposes from time to time through December 31,2005, to enter into one or more installment purchases, refunding or other facilities agreements or one or more supplements thereto ("Facilities Agreement") with one or more issuing governmental authorities ("Issuer") which will contemplate the issuance and sale by the Issuer of one or more series of tax-exempt bonds in an aggregate principal amount not to exceed $500 million ("Tax-Exempt Bonds") under one or more trust indentures between the Issuer and one or more trustees ("Trustee"). Each series of Tax-Exempt Bonds will have such interest rate, maturity date, redemption, and sinking fund provisions, be secured by such means, as shall be determined at the time of sale. In no event will the Tax-Exempt Bonds mature earlier than five years nor later than fifty years from the date of issuance and no series of Tax-Exempt Bonds will be sold if the fixed interest rate or initial adjustable interest rate thereon will exceed 13% per annum.

In order to obtain a more favorable rating on any series of Tax-Exempt Bonds, and improve the marketability thereof, System Energy may arrange for one or more irrevocable letters of credit from one or more banks in favor of the Trustee. As an alternative, System Energy may provide an insurance policy for the payment of the Tax-Exempt Bonds or pledge one or more new series of First Mortgage Bonds up to an aggregate amount not to exceed $565 million ("Collateral Bonds"). The terms of the Collateral Bonds relating to maturity, interest payment dates, redemption provisions and acceleration will correspond to the terms of the related Tax-Exempt Bonds.

System Energy also proposes from time to time through December 31, 2005 to enter into arrangements for the issuance of municipal securities in an aggregate principal amount not to exceed $100 million ("Municipal Securities") to be issued in one or more series through a state or local municipal entity on behalf of System Energy.

System Energy proposes to use the net proceeds from the issuance and sale of the bonds and Debentures to acquire and retire at any time or from time to time prior to December 31, 2005, by means of tender offer, open market, negotiated or other purchases, or redemption, in whole or in part, prior to their respective maturities, one or more series of outstanding Tax-Exempt Bonds.

For the Commission by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–26109 Filed 10–11–00; 8:45 am]

BILLING CODE 8010–01–M

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**SECURITIES AND EXCHANGE COMMISSION**

**[Investment Company Act Release No. 24678; 812–10528]**

**PADCO Advisors, Inc., et al.; Notice of Application**

October 5, 2000.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice of an application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the "Act") for exemption from sections 12(d)(1)(A) and (B) and under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act.

**SUMMARY OF THE APPLICATION:** The order would permit certain registered open-end management investment companies to acquire shares of other registered open-end management investment companies outside the same group of investment companies.

**APPLICANTS:** PADCO Advisors, Inc., Rydex Series Funds and Rydex Dynamic Funds.

**FILING DATES:** The application was filed on February 17, 1997, and amended on February 27, 1998, and on October 2, 2000.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicant with a copy of the request personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 30, 2000, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants. 6116 Executive Boulevard, Ste. 400, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Michael W. Mundt, Branch Chief, and Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

**Applicants' Representations**

1. The Rydex Series Funds and the Rydex Dynamic Funds (together the "Trusts") are open-end management investment companies registered under the Act comprised of separate series, each of which pursues a distinct set of investment objectives and policies. PADCO Advisers, Inc. is a Maryland corporation registered as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act") and serves as investment adviser to the series of the Trusts (each, a "Rydex Fund").

2. Applicants request relief to permit registered open-end management investment companies that are not part of the same "group of investment companies," as that term is defined in section 12(d)(1)(G)(ii) of the Act, as the Trusts (each, a "Fund of Funds"), to acquire shares of Rydex Funds. Each Fund of Funds will be advised by an investment adviser that is registered under the Advisers Act ("Fund of Funds Adviser"). Applicants request that the relief apply to: (a) Each open-end management investment company that currently or subsequently is part of the same "group of investment companies," within the meaning of section 12(d)(1)(G)(ii) of the Act as the Trusts (together with the Rydex Funds, "Underlying Funds"); and (b) each Fund of Funds that enters into a participation agreement ("Participation Agreement") with an Underlying Fund to purchase shares of the Underlying Fund.[1]

3. Applicants state that the Rydex Funds will offer Fund of Funds simple and efficient vehicles to achieve their asset allocation or diversification objectives. Applicants also assert that the Rydex Funds provide high quality and low cost professional investment program alternatives to Fund of Funds that do not have sufficient assets to operate a comparable fund.

**Applicants' Legal Analysis**

*A. Section 12(d)(1)*

1. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring shares of an investment company if the securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company from selling its shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

2. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any classes of persons, securities or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Applicants seek an exemption under section 12(d)(1)(J) to permit a Fund of Funds to acquire shares of the Rydex Funds and to permit the Rydex Funds to sell shares to the Fund of Funds beyond the limits set forth in sections 12(d)(1)(A) and (B).

3. Applicants state that the proposed arrangement and conditions will adequately address the policy concerns underlying sections 12(d)(1)(A) and (B), which include concerns about undue influence by a fund of funds over underlying funds, excessive layering of fees, and overly complex fund structures. Accordingly, applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

4. Applicants state that the proposed arrangement will not result in undue influence by a Fund of Funds or its affiliates over the Rydex Funds. To limit the control that a Fund of Funds may have over a Rydex Fund, applicants propose a condition prohibiting the Fund of Funds Adviser and certain affiliates (individually or in the aggregate) from controlling a Rydex Fund within the meaning of section 2(a)(9) of the Act. To limit further the potential for undue influence over Rydex Funds, applicants propose conditions 2 through 7, stated below, to preclude a Fund of Funds and its affiliate entities from taking advantage of a Rydex Fund with respect to transactions between the entities and to ensure the transactions will be on an arm's length basis.

5. As an additional assurance that a Fund of Funds understands the implications of an investment by a Fund of Funds under the requested order, each Fund of Funds and the appropriate Trust will execute a Participation Agreement stating that the board of directors of the Fund of Funds and the Fund of Funds Adviser understand the terms and conditions of the order and agree to fulfill their responsibilities under the order. Applicants note that a Rydex Fund may choose to reject an investment from a Fund of Funds.

6. Applicants do not believe that the proposed arrangement will involve excessive layering of fees. The board of directors of each Fund of Funds, including a majority of the disinterested directors, will be required to determine that the advisory fees charged to the Fund of Funds are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract of any Rydex Fund in which the Fund of Funds may invest. In addition, a Fund of Funds Adviser will waive fees otherwise payable to it by a Fund of Funds in an amount at least equal to any compensation received by the Fund of Funds Adviser or an affiliated person of the Fund of Funds Adviser from the Rydex Funds in connection with the investment by the Fund of Funds in the Rydex Funds. Applicants also state that any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the applicable limits set forth in rule 2830 of the Conduct Rules of the National Association of Securities Dealers ("NASD Conduct Rules").

7. Applicants state that the proposed arrangement will not create an overly complex fund structure. Applicants note that a Rydex Fund will be prohibited from acquiring securities of any investment company in excess of the limits contained in section 12(d)(1)(A), except to the extent permitted by section 12(d)(1)(E) of the Act[2] or an exemptive order allowing a Rydex Fund to purchase shares of an affiliated money market fund for short-term cash management purposes. Applicants also represent that the Participation Agreement will require that a Fund of Funds' prospectus and sales literature disclose, in "plain English," the unique characteristics of a Fund of Funds investing in the Rydex Funds, including, but not limited to, the expense structure and any additional expenses of investing in the Rydex Funds.

*B. Section 17(a)*

1. Section 17(a) of the Act generally prohibits sales or purchases of securities between a registered investment company and any affiliated person of the company. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the other person.

2. Applicants state that a Rydex Fund could become an affiliated person of a Fund of Funds if the Fund of Funds acquires more than 5% of a Rydex Fund's outstanding voting securities. In light of this possible affiliation, section 17(a) could prevent a Rydex Fund from selling shares to and redeeming shares from the Fund of Funds.

3. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt any person or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Applicants submit that the proposed arrangement satisfies the standards for relief under sections 17(b) and 6(c) of the Act. Applicants state that the terms of the arrangement are fair and reasonable and do not involve overreaching. Applicants note that the consideration paid for the sale and redemption of shares of the Rydex Funds will be based on the net asset values of the Rydex Funds. Applicants state that the proposed arrangement will be consistent with the policies of each Fund of Funds and Rydex Fund and with the general purposes of the Act.

**Applicants' Conditions**

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. (a) A Fund of Funds Adviser, (b) any person controlling, controlled by, or under common control with a Fund of Funds Adviser, and (c) any investment company and any issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act who is advised by a Fund of Funds Adviser or any person controlling, controlled by, or under common control with a Fund of Funds Adviser (collectively, the "Group") will not control (individually or in the aggregate) a Rydex Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of a Rydex Fund, the Group, in the aggregate, becomes a holder of more than 25 percent of the outstanding voting securities of a Rydex Fund, the Group will vote its shares of the Rydex Fund in the same proportion as the vote of all other holders of the Rydex Fund's shares.

2. A Fund of Funds and its investment adviser, promoter, and principal underwriter, and any person controlling, controlled by, or under common control with any of those entities (each a "Fund of Funds Affiliate") will not cause any existing or potential investment by the Fund of Funds in shares of a Rydex Fund to influence the terms of any services or transactions between the Fund of Funds or a Fund of Funds Affiliate and the Rydex Fund or its investment adviser, promoter, principal underwriter, and any person controlling, controlled by, or under common control with any of those entities (each a "Rydex Fund Affiliate").

3. The board of directors of a Fund of Funds, including a majority of the disinterested directors, will adopt procedures reasonably designed to assure that the Fund of Fund's Adviser is conducting the investment program of the Fund of Funds without taking into account any consideration received by the Fund of Funds or a Fund of Funds Affiliate from a Rydex Fund or a Rydex Fund Affiliate in connection with any services or transactions.

4. The board of trustees of each Trust ("Board of Trustees"), including a majority of the disinterested trustees, will determine that any consideration paid by a Rydex Fund to a Fund of Funds or a Fund of Funds Affiliate in connection with any services or transactions: (a) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Rydex Fund; (b) is within the range of consideration that the Rydex Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (c) does not involve overreaching on the part of any person concerned.

[1] All investment companies that currently intend to rely on the requested order are named as applicants. Any other investment company that relies on the order in the future will comply with the terms and conditions of the application. A Fund of Funds may rely on the requested order only to invest in Underlying Funds and not in any other registered investment company.

[2] A Rydex Fund may operate as a "feeder fund" that invests all of its assets in another investment company (the "master fund") in reliance on section 12(d)(1)(E) of the Act. Applicants state that in such situations, the master fund would be in the same group of investment companies as the Rydex Fund and no other feeder funds would invest in the master fund.

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5. No Fund of Funds or Fund of Funds Affiliate will cause a Rydex Fund to purchase a security from any underwriting or selling syndicate in which a principal underwriter is an officer, director, member of an advisory board, investment adviser, or employee of the Fund of Funds, or a person of which any such officer, director, member of an advisory board, investment adviser, employee is an affiliated person (each an "Underwriting Affiliate"). An offering of securities during the existence of an underwriting or selling syndicate of which principal underwriter is an Underwriting Affiliate is considered an "Affiliated Underwriting."

6. The Board of Trustees, including a majority of the disinterested trustees, will adopt procedures reasonably designed to monitor any purchases of securities by a Rydex Fund in an Affiliated Underwriting, including any purchases made directly from an Underwriting Affiliate. The Board of Trustees will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Fund of Funds in shares of the Rydex Fund.

The Board of Trustees should consider, among other things: (a) Whether the purchases were consistent with the investment objectives and policies of the Rydex Fund; (b) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (c) whether the amount of securities purchased by the Rydex Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have significantly from prior years. The Board of Trustees will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to assure that purchases of securities from Affiliated Underwritings are in the best interests of shareholders.

7. The Trusts shall maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications, and will maintain and preserve for a period not less than six years from the end of the fiscal year in which any purchase from an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the Board of Trustee's determinations were made.

8. Prior to an investment in shares of a Rydex Fund in excess of the limit in section 12(d)(1)(A)(i), each Fund of Funds and the appropriate Trust will execute an agreement stating, without limitation, that the board of directors of the Fund of Funds and the Fund of Funds Adviser have read the notice of the application requesting the order, understand the terms and conditions of the order and agree to fulfill their responsibilities under the order. At the time of its investment in shares of a Rydex Fund in excess of the limit in section 12(d)(1)(A)(i), a Fund of Funds will notify the Rydex Fund of the investment. At such time, the Fund of Funds also will transmit to the Rydex Fund a list of the names of each Fund of Funds Affiliate and Underwriting Affiliate.

The Fund of Funds will notify the Rydex Fund of any changes to the list as soon as reasonably practicable after a change occurs. The Rydex Fund and the Fund of Funds will maintain and preserve a copy of the order, the agreement, and the list with any updated information for a period of not less than six years from the end of the fiscal year in which any investment occurred, the first two years in an easily accessible place.

9. Prior to approving any advisory contract under section 15 of the Act, the board of directors of each Fund of Funds, including a majority of the disinterested directors, will find that the advisory fees charged under the contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract of any Rydex Fund in which the Fund of Funds may invest. These findings and their basis will be recorded fully in the minute books of the appropriate Fund of Funds.

10. A Fund of Funds Adviser will waive fees otherwise payable to it by a Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to a plan adopted by a Rydex Fund under rule 12b–1 under the Act) received by the Fund of Funds Adviser or an affiliated person of the Funds of Funds Adviser from the Rydex Funds in connection with the investment by the Funds of Funds in the Rydex Funds.

11. Any sales charges and/or service fees with respect to shares of the Fund of Funds will not exceed the applicable limits set forth in rule 2830 of the NASD Conduct Rules.

12. No Rydex Fund will acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by section 12(d)(1)(E) of the Act or an exemptive order that allows the Rydex Fund to purchase shares of an affiliated money market fund for short-term cash management purposes.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–26183 Filed 10–11–00; 8:45 am]

BILLING CODE 8010–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. IC–24677; File No. 812–12030]**

## First Allmerica Financial Life Insurance Company, et al.

October 5, 2000.

**AGENCY:** Securities and Exchange Commission ("SEC" or "Commission").

**ACTION:** Notice of application for an order under section 6(c) of the Investment Company Act of 1940 (the "1940 Act") granting exemptions from the provisions of sections 2(a)(32), 22(c), and 27(i)(2)(A) of the 1940 Act and Rule 22c–1 thereunder to permit the deduction of a monthly charge upon termination of an Optional Insurance Rider.

**APPLICANTS:** First Allmerica Financial Life Insurance Company ("First Allmerica") and Allmerica Financial Life Insurance and Annuity Company ("Allmerica Financial") (hereinafter referred to as the "Companies") together with Separate Account VA–K of First Allmerica, Allmerica Select Separate Account of First Allmerica, Separate Account VA–P of First Allmerica, Separate Account KG of First Allmerica, Separate Account KGC of First Allmerica, Separate Account VA–K of Allmerica Financial, Allmerica Select Separate Account of Allmerica Financial, Separate Account VA–P of Allmerica Financial, Separate Account KG of Allmerica Financial, Separate Account KGC of Allmerica Financial (together, the "Separate Accounts"), and Allmerica Investments, Inc. (collectively "Applicants").

**SUMMARY OF APPLICATION:** Applicants seek an order under section 6(c) of the 1940 Act, to the extent necessary to permit the deduction of a monthly charge from variable deferred annuity contracts (the "Contracts"), for optional insurance riders ("Optional Insurance Riders") upon surrender of a Contract, that the Companies will issue through the Separate Accounts or other separate accounts which the Companies may establish in the future ("Other Separate Accounts"), as well as other contracts, similar in all material respects to the Contracts described herein, that the Companies may issue in the future through the Separate Accounts or Other Separate Accounts ("Future Contracts"). Applicants state that the Optional Insurance Riders contained in Future Contracts funded by Separate Accounts or any Other Separate Accounts may offer the same benefits described herein, even if the Optional Insurance Rider is offered under a different name. Applicants also request that the order being sought extend to any other National Association of Securities Dealers, Inc. ("NASD") member broker-dealer controlling or controlled by, or under common control of First Allmerica or Allmerica Financial, whether existing or created in the future, that serves as distributor or principal underwriter of the Contracts or Future Contracts offered through the Separate Accounts or any Other Separate Account (collectively, "the Companies' Broker-Dealers").

**FILING DATE:** The Application was filed on March 7, 2000, and amended and restated on May 17, 2000 and September 6, 2000.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 30, 2000, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

**ADDRESSES:**

Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549.

Applicants, c/o Allmerica Financial Corporation, 440 Lincoln Street, Worcester, Massachusetts 01653, Attn: John C. Donlon, Jr.



**FOR FURTHER INFORMATION CONTACT:** Mark Cowan, Senior Counsel, or Keith Carpenter, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the Commission, 450 Fifth Street, NW., Washington, DC 20549 (tel. (202) 942–8090).

### Applicants Representations

1. First Allmerica is a life insurance company organized under the laws of Massachusetts in 1844. Effective October 16, 1995, First Allmerica converted from a mutual life insurance company known as State Mutual Life Assurance Company of America to a stock life insurance company and adopted its present name. First Allmerica is a wholly owned subsidiary of Allmerica Financial Corporation ("AFC") and is licensed to do business in the State of New York.

2. Allmerica Financial is a life insurance company organized under the laws of Delaware in July 1974. Allmerica Financial, a wholly owned subsidiary of First Allmerica, is licensed to do business in the District of Columbia, Puerto Rico, the Virgin Islands, and all states except New York.

3. Each of the Separate Accounts of First Allmerica is a segregated asset account that is registered with the Commission as a unit investment trust under the 1940 Act (Separate Account VA–K, see file No. 811–8114; Allmerica Select Separate Account, see file No. 811–8116; Separate Account VA–P, see file No. 811–8872; Separate Account KG, see file No. 811–7769; and Separate Account KGC, see file No. 811–7771).

4. Each of the Separate Accounts of Allmerica Financial is a segregated asset account that is registered with the Commission as a unit investment trust under the 1940 Act (Separate Account VA–K, see file No. 811–6293; Allmerica Select Separate Account, see file No. 811–6632; Separate Account VA–P, see file No. 811–8848, Separate Account KG, see file No. 811–7767; and Separate Account KGC, see file No. 811–7777).

5. Allmerica Investments, Inc. ("Allmerica Investments") is an affiliate of Allmerica Financial and will be the principal underwriter of the Separate Accounts and distributor of the Contracts funded through Separate Account VA–K of First Allmerica and Allmerica Financial ("VA–K Contracts"), Allmerica Select Separate Account of First Allmerica and Allmerica Financial ("Select Contract"), Separate Account VA–P of First Allmerica and Allmerica Financial ("VA–P Contracts"), Separate Account KG of First Allmerica and Allmerica Financial ("KG Contracts"), and Separate Account KGC of First Allmerica and Allmerica Financial ("KGC Contracts") (collectively, the "Contracts"). Allmerica Investments is registered with the Commission as a broker-dealer under the Securities Exchange Act of 1934 (the "1934 Act") and is a member of the NASD. The Contracts will be offered through registered representative of Allmerica Investments, or through registered representatives of brokers-dealers, which are registered under the 1934 Act and members of NASD, that have selling agreements with Allmerica Investments. Allmerica Investments , or any successor entity, may act as principal underwriter for any Other Separate Account and distributor for any Future Contracts issued by the Companies. A successor entity may also act as principal underwriter for the Separate Accounts and Other Separate Accounts.

6. The Contracts are a combination fixed and variable, flexible payment deferred annuity contracts. Contracts may be issued as non-qualified annuities for after-tax contributions only, as individual retirement annuities ("IRAs," including either "Traditional IRAs" or "Roth IRSs"), for use in certain types of qualified plans which qualify for special federal income tax treatment under sections 401, 403(b), 408, 408A and 457 of the Internal Revenue Code, and in retirement plans which do not qualify for special tax treatment. In some states the Contracts may be issued on a group basis connection with retirement plans that do not qualify for special federal income tax treatment.

7. The Contracts permit the owner to allocate contributions to a fixed interest account ("Fixed Account") of the Companies' General Account, to accumulate interest at a fixed, guaranteed rate. Contributions may also be allocated to certain guarantee period accounts ("Gurarantee Period Accounts") that will provide a guarantee of each contribution plus interest at a guaranteed interest rate. Once declared, the guaranteed interest rate will not change during the duration of the guarenteed period. A "Market Value Adjustment" will be made to the annuity account value in a Guarantee Period Account upon a withdrawal, surrender or transfer from the Gurantee Period Account prior to the expiration of its guarantee period. Even after application of the Market Value Adjustment, earnings in a Guarantee

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Period Account will not be less than an effective rate of 3% annually.

8. Each Separate Account consists of Sub-Accounts that invest in the portfolios of certain underlying investment companies ("Funds") each of which is registered with the Commission as an open-end management investment company. The shares of the Funds are registered under the 1933 Act. Other Funds may be made available to the Separate Accounts or to Other Separate Accounts of the Companies. The Owner may allocate contributions to the Sub-Accounts offered by the Contracts (the Contract may contain restrictions as to the number of Sub-Accounts that may be selected).

9. The Contracts sold by the Companies provide the purchaser with the right to select an Optional Insurance Rider or Riders for an additional charge. The following riders are offered by the Companies (the actual riders offered will vary by Contract): the Disability Rider, the Living Benefits Rider, the Enhanced Death Benefit Rider, and the Minimum Guaranteed Annuity Payout (M–GAP) Rider. The Companies deduct a separate monthly change for each rider selected. On the last day of the month and on the date the rider is terminated, a charge equal to 1/12 of the applicable annual rate is made against the Accumulated Value of the Contract at that time.

**Applicant's Legal Analysis**

1. Section 6(c) of the 1940 Act authorizes the Commission, by order upon application, to exempt any person, security or transaction, or any class or classes of persons, securities or transactions from the provisions of the 1940 Act and the rules promulgated thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. Applicants request that the Commission, pursuant to section 6(c) of the 1940 grant the exemptions requested below with respect to the Contracts, and any Future Contracts funded by the Separate Accounts or Other Separate Accounts, which are issued by the Companies and underwritten or distributed by Allmerica Investments or other Allmerica Broker-Dealers. Applicants state that the riders contained in Future Contracts funded by Separate Accounts or any Other Separate Account may offer the same benefit described herein, even if the Optional Insurance Rider is offered under a different name. Applicants believe that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. Rule 6c–8(b) under the Act exempts a registered separate account and its depositor and principal underwriter from certain provisions of the Act and Rule 22c–1 to permit the imposition of a contingent deferred sales charge on variable annuity contracts participating in such separate account. Applicants maintain that Rule 6c–8(b) is not available with respect to the imposition of a charge for an Optional Insurance Rider because it is a charge for an optional insurance benefit rather than a contingent deferred sales charge.

3. Rule 6c–8(c) provides exemptions from certain provisions of the Act and Rule 22c–1 to permit the deduction of a full annual administrative services fee from variable annuity contracts upon surrender. However, an Optional Insurance Rider charge is not a fee for administrative services and, therefore, Rule 6c–8(c) is not applicable. Applicants note; however, that Rule 6c–8(c) permits the deduction of the entire annual administrative fee upon surrender, it does not require that the fee be pro-rated. Applicants only seek an exemption so that it may collect the entire monthly charge when a Contract is surrendered on any day other than the last day of a Contract month.

4. Section 2(a)(32) of the 1940 Act defines "redeemable security" as any security under the terms of which the holder, upon its presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's currents net assets, or the cash equivalent thereof. Assessing the full monthly charge upon termination of an Optional Insurance Rider may not be contemplated by section 2(a)(32), and thus may be deemed inconsistent with the foregoing provision, to the extent that the charge can be viewed as causing a Contract to be redeemed at a price less than the current net asset value that is next computed after termination of the rider. Although Applicants do not concede that relief is necessary, Applicants request relief from section 2(a)(32) to permit the deduction of a monthly charge for each Optional Insurance Rider upon surrender of a Contract.

5. The Optional Insurance Rider represents a benefit for which each Insurer is entitled to receive compensation. Accordingly, Applicants assert the deduction of an Optional Insurance Rider charge is a legitimate charge for an optional insurance benefit under the Contract, and therefore does not reduce the amount of the Separate Account's current net assets that a Contract Owner would otherwise be entitled to receive.

6. The charge assessed for an Optional Insurance Rider at surrender of the Contract is little different, for this purpose, from the "redemption" charge authorized in section 10(d)(4) of the 1940 Act. Congress, according to the Applicants, obviously intended that such a redemption charge, which is expressly described as a "discount from net asset value," be deemed consistent with the concept of "proportionate share" under section 2(a)(32).

7. The deduction of the charge for the Optional Insurance Rider upon termination of the rider is disclosed in the prospectuses. There will be no restriction on, or impediment to, surrender or partial withdrawal that should cause the Contracts to be considered other than redeemable securities within the meaning of section 2(a)(32) of the 1940 Act and the rules thereunder.

8. Rule 22c–1, promulgated under section 22(c), prohibits a registered investment company issuing any redeemable security, a person designated in such insurer's prospectus as authorized to consummate transactions in any such security, and a principal underwriter of, or dealer in, such security from selling, redeeming, or repurchasing any such security except at a price based on the current net asset value of such security. The deduction of a monthly charge for an Optional Insurance Rider upon the surrender of a Contract is consistent with the policy behind Rule 22c–1. Applicants submit that the Contracts will satisfy the requirements of Rule 22c–1. However, to avoid any uncertainty as to full compliance with the 1940 Act, Applicants request an exemption from the provisions of section 22(c) and Rule 22c–1 to the extent necessary to permit the deduction of a monthly charge for an Optional Insurance Rider upon surrender of a Contract.

9. Section 27(i)(2)(A) provides that it shall be unlawful for any registered separate account funding variable insurance contracts, or for the sponsoring insurance company of such account, to sell any such contracts unless such contract is a redeemable security. Applicants submit that the deduction of a monthly charge for an Optional Insurance Rider upon surrender of a Contract is nothing more than the deduction of an insurance charge. Applicants submit that the Contracts will satisfy the requirements of section 27(i)(2)(A).

10. Accordingly, Applicants seek exemptions pursuant to section 6(c) from sections 2(a)(32), 22(c) and 27(i)(2)(A) of the 1940 Act and Rule 22c–1 thereunder to the extent deemed necessary to permit the Companies to issue Contracts that offer Optional Insurance Riders and deduct a monthly charge for each rider upon surrender of a Contract.

11. Applicants seek relief not only with respect to themselves and the Contracts, but also with respect to Other Separate Accounts established by the Companies that may support Future Contracts that may offer the same benefit described herein, even if the Optional Insurance Rider is offered under a different name. Applicants also seek relief with respect to any of the Companies' Broker-Dealers, which will be members of the NASD.

12. Applicants state, that without the requested class relief, exemptive relief for Future Contracts, any other Separate Account, or any of the Companies' Broker-Dealers would have to be requested and obtained separately. Applicants assert that these additional requests for exemptive relief would present no new issues under the 1940 Act not already addressed herein. Applicants state that if they were to repeatedly seek exemptive relief with respect to the same issues addressed herein, investors would not receive any additional protection or benefit, and investors and Applicants could be disadvantaged by increased costs from preparing such additional requests for relief. Applicants argue that the requested class relief is appropriate in the public interest because the relief will promote competitiveness in the variable annuity market by eliminating the need for Applicants to refile redundant exemptive applications, thereby reducing administrative expenses and maximizing efficient uses of resources. Elimination of the delay and the expense of repeatedly seeking exemptive relief would, Applicants opine, enhance each Applicant's ability to effectively take advantage of business opportunities as such opportunities arise.

**Conclusion**

For the reasons summarized above, Applicants submit that the requested exemptions are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. Applicants therefore request that an order be granted permitting the proposed transactions.

For the Commission, by Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–26184 Filed 10–11–00; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43414; File No. SR–OPRA–00–09]**

## Options Price Reporting Authority; Notice of Filing and Immediate Effectiveness of a Proposal To Amend the Options Price Reporting Authority Plan To Increase the Professional Subscriber Information Fees

October 4, 2000.

Pursuant to Rule 11Aa3–2 under the Securities Exchange Act of 1934 ("Act")[1] notice is hereby given that on October 3, 2000, the Options Price Reporting Authority ("OPRA")[2] submitted to the Securities and Exchange Commission ("SEC" or "Commission") an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information ("Plan"). The proposed Plan amendment would increase the professional subscriber information fees charged by OPRA in respect of its Basic Service.

**I. Description and Purpose of the Amendment**

The purpose of the amendment is to increase by approximately five percent the device-based information fees payable to OPRA by professional subscribers to OPRA's Basic Service, which consists of market data and related information pertaining to equity and index options ("OPRA Data").[3] OPRA does not propose to make any changes to OPRA's nonprofessional subscriber fee or to OPRA's usage-based fees that apply to dial-up market data services (which may include Internet services), radio paging services, and voice-synthesized market data services.

The proposed increase of device-based professional subscriber fees ranges from 4.35% to 6.06% of the existing fees. Professional subscriber fees charged to members will continue to be discounted by two percent for members who preauthorize payment by electronic funds transfer through an automated clearinghouse system. OPRA estimates that the overall effect of the proposed increase in professional subscriber fees will be to increase revenues derived from professional subscriber fees by approximately five percent. Professional subscribers are those persons who subscribe to OPRA Data and do not qualify for the reduced fees charged to nonprofessional subscribers. As an alternative to device-based fees, professional subscribers may pay an enterprise rate fee based on the number of their U.S. registered representatives. No changes are proposed to be made to the enterprise rate fee.

The proposed increase in the amount of the professional subscriber fees is intended to generate additional OPRA revenues derived from device-based subscriber fees in order to cover actual and anticipated increases in the costs of collecting, consolidating, processing, and disseminating options market data. These increases for the most part reflect the costs of major enhancements to and upgrades of the OPRA system to enable it to handle expanded multiple trading of options, overall greater trading volume, and the move to decimal pricing for options.

**II. Implementation of the Plan Amendment**

Pursuant to paragraph (c)(3)(i) of Rule 11Aa3–2,[4] OPRA designates this amendment as establishing or changing a fee or other charge collected on behalf of all of the OPRA participants in connection with access to or use of OPRA facilities, thereby qualifying for effectiveness upon filing. In order to give subscribers advance notice of the revised fees, they are proposed to be put into effect commencing January 1, 2001. The Commission may summarily abrogate the amendment within 60 days of filing and require refiling and approval of the amendment by Commission order pursuant to Rule

[1] 17 CFR 240.11 Aa3–2.

[2] OPRA is a National Market System Plan approved by the Commission pursuant to Section 11A of the Act and Rule 11Aa3–2 thereunder. *See* Securities Exchange Act Release No. 17638 (March 18, 1981).

The Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the member exchanges. The six exchanges that are participants to the Plan are the American Stock Exchange, the Chicago Board Options Exchange, the International Securities Exchange, the New York Stock Exchange, the Pacific Exchange, and the Philadelphia Stock Exchange.

[3] No changes are proposed to be made at this time to fees charged to vendors and subscribers for access to information pertaining to foreign currency options ("FCO") provided through OPRA's FCO Service.

[4] 17 CFR 240.11Aa3–2(c)(3)(i).

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11Aa3–2(c)(2),[5] if it appears to the Commission that such action is necessary or appropriate in the public interests, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Exchange Act.[6]

**II. Solicitation of Comments**

Interested person are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed Plan amendment is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the Submission, all subsequent amendments, and all written statements with respect to the proposed Plan amendment that are filed with the Commission, and all written communications relating to the proposed Plan amendment between the Commission and any person, other than those withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available at the principal offices of OPRA. All submissions should refer to File No. SR–OPRA–00–09 and should be submitted by November 2, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–26185 Filed 10–11–00; 8:45 am]

**BILLING CODE 8010–01–M**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43405; File No. SR–AMEX–00–54]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to Amex Rule 915

October 3, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 27, 2000, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend the numbering of Amex Rule 915, Commentary .07, as filed with the Commission in SR–Amex–00–45, to Amex Rule 915, Commentary .08. This commentary relates to liability disclaimer and warranty with respect to the FORTUNE Indexes.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Items IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

On August 16, 2000, the Exchange filed an amendment to Amex Rule 915 relating to the liability disclaimer and warranty with respect to the FORTUNE Indexes (SR–Amex–00–45). This amendment became effective pursuant to Section 19(b)(3) of the Act and subparagraph (f)(6) of Rule 19b–4 under the Act.[3] In SR–Amex–00–45, proposed new Commentary to Amex Rule 915 was inadvertently numbered as Commentary .07. The Exchange hereby amends numbering of this Commentary .07 to Commentary .08 to avoid conflict with Amex Rule 915, Commentary .07 relating to options on Trust Issued Receipts, previously approved by the Commission on June 15, 2000.[4]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)[5] of the Act in general and furthers the objectives of Section 6(b)(5)[6] in particular in that is it designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange represents that the proposed rule change will impose no burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(1) thereunder[8] because the proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.[9]

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions

[5] 17 CFR 240.11Aa3–2(c)(2).
[6] 17 CFR 240.11Aa3–2.
[7] 17 CFR 200.30–3(a)(29).

[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240.19b–4.
[3] Securities Exchange Act Release No. 43191 (August 22, 2000), 65 FR 52456 (August 29, 2000).
[4] Securities Exchange Act Release No. 42947, 65 FR 39211 (June 23, 2000).
[5] 15 U.S.C. 78f.
[6] 15 U.S.C. 78f(b)(5).
[7] 15 U.S.C. 78s(b)(3)(A).
[8] 17 CFR 240.19b–4(f)(3).
[9] 15 U.S.C. 78s(b)(3)(C).



should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–AMEX–00–54 and should be submitted by November 2, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–26110 Filed 10–11–00; 8:45 am]

**BILLING CODE 8010–01–M**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43394; File No. SR–BSE–00–13]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to Electronic Trading Permits for BEACON Remote Units

September 29, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 21, 2000, the Boston Stock Exchange, Inc. ("Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange seeks to add a paragraph to its rules regarding BEACON Remote specialists relating to Electronic Trading Permits ("ETP") which will provide remote access to the BEACON trading system from remote locations using authorized terminals and related equipment. The text of the proposed rule change follows.

**Chapter XXXIII**

Boston Exchange Automated Communication Order-routing Network (BEACON)

BEACON Remote

Sec. 9. * * *

Electronic Trading Permits ("ETP")

*(o) Each remote BEACON terminal assigned and registered by the Exchange will require an ETP, and will be subject to the following:*

(1) *Each approved Specialist unit may be authorized to trade up to 200 issues.*

(2) *Each Specialist unit must have at least one registered Exchange seat assigned to the approved specialist.*

a. *A specialist may be authorized to obtain additional ETP's for qualified registered clerks to access BEACON in support of the Specialist unit.*

b. *All specialists and registered clerk ETP holders must be approved by the Market Performance Committee and must meet the following:*

i. *file an ETP application form with the BSE Surveillance Department;*

ii. *completion of the required floor training program*;*

iii. *successful completion of the BSE floor examination with 90 days of application (unless waived by the Exchange);*

iv. *successful completion of the Series 63 (NASAA Uniform State Law Exam), and registration with the Commonwealth of Massachusetts, and;*

v. *submission of fingerprint records to the BSE.*

(3) *Each Specialist unit identified by the member firm will be assigned an account ("give up") and will be evaluated under the Exchange's Specialist Performance Evaluation Program ("SPEP") which currently measures performance in several separate categories comprising a relative overall performance ranking.*

** Training: On-site floor training for at least two weeks unless other arrangements are made with and approved by the Exchange, and will include, among other things:*

(1) *Questioned trade procedures*

(2) *Communication procedures with Floor Brokers, Front Desk Operations, Surveillance, Systems Support, and ITS coordination with the Floor.*

(3) *Competing Specialist Initiative ("CSI") and Unlisted Trading Privilege ("UTP") applications and procedures*

(4) *Stock allocation procedures*

(5) *Book or symbol change procedures*

(6) *Trading Halt procedures*

(7) *Floor official rulings*

(8) *Authorizations required for billing, withdrawals, and payment of fines where applicable*

(9) *Minor Rule Plan Violations policies and application*

(10) *Books and records/reports available*

(11) *Explanation of the SPEP categories and procedures*

(12) *Certain other rules and policies deemed appropriate by the Exchange (e.g. Limit Order Display Rule, auto-executions, Price Improvement, etc.)*

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Section A, B, and C below, of the most significant aspects of such statments.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to add paragraph (o) to Chapter XXXIII, Section 9, *BEACON Remote*, to require and establish guidelines for Electronic Trading Permits ("ETP") for remote specialist operations. Each BEACON Remote terminal will be individually identified and associated with (an) authorized and qualified specialist(s) and/or registered clerk(s). The Exchange will specifically authorize and approve each ETP based on certain qualifications. Each ETP will provide remote access to the BEACON system from remote locations using authorized terminals and related equipment.

The Exchange states that remote specialists and associated registered clerks with ETP's, like current BSE floor specialist units, will receive orders, commitments over the Intermarket Trading system ("ITS") and administrative messages through the BEACON system. The existing Exchange systems and rules will support remote specialists as they currently support the physical trading floor. All executions occurring within BEACON, whether

[10] 17 CFR 200.30–3(a)(12).
[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240.19b–4.

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conducted on the floor or electronically from remote locations, will be considered to be executions occurring on the Exchange.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act,[3] in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating securities transactions, to remove impediments, to perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. In addition, the Exchange believes that the proposed rule change is consistent with the provisions of Section 11A(a)(1)(B) of the Act,[4] in that it pertains to new data processing and communications techniques which create the opportunity for more efficient and effective market operations.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days if it finds such longer period to be appropriate and publishes it reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(1) by order approve such proposed rule change, or

(2) institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to file number SR–BSE–00–13 and should be submitted by November 2, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–26114 Filed 10–11–00; 8:45 am]

BILLING CODE 8010–01–M

[3] 15 U.S.C. 78f(b)(5).

[4] 15 U.S.C. 78k(a)(1)(B).

[5] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43395; File No. SR–CBOE–00–46]**

## Self-Regulatory Organizations; Notice of Filing and Order Granting Partial Accelerated Approval of Proposed Rule Change and Amendment No. 1 thereto by the Chicago Board Options Exchange, Inc. Relating to its Rapid Opening System Pilot Program

September 29, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[1] notice is hereby given that on September 7, 2000, the Chicago Board Options Exchange ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On September 27, 2000, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant partial accelerated approval to the portion of the proposal extending the Exchange's ROS pilot program ("Pilot") until the earlier of September 30, 2001 or such time as the Commission has approved ROS on a permanent basis.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to adopt ROS on a permanent basis, as well as extend the Pilot until the earlier of September 30, 2001 or such time as the Commission has approved ROS on a permanent basis.[4] The text of the proposed rule change is available at the Exchange and the Commission.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

On February 9, 1999, the Commission approved the implementation of the Pilot.[5] The Pilot was extended once and is scheduled to expire on September 30, 2000.[6] ROS is a system developed by the Exchange to open an entire options class, all series, as a single event, based on a single underlying value.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, CBOE acknowledged that prior to permanent approval of the proposed rule change, the Exchange is required to submit to the Commission a workable plan for electronic incorporation of non-bookable orders on the Exchange's Rapid Opening System ("ROS"), and a description of the methods the Exchange will employ to surveil market-maker activities on ROS. The Exchange also clarified that the current ROS pilot program would be extended until the earlier of September 30, 2001 or such time as the Commission has approved ROS on a permanent basis. Letter from Jaime Galvan, Attorney, CBOE, to Terri Evans, Special Counsel, Division of Market Regulation ("Division"), Commission, dated September 26, 2000 ("Amendment No. 1").

[4] *See* Amendment No. 1 effectively clarifying that the Pilot will not be further extended beyond September 30, 2001 without separate Commission approval.

[5] Securities Exchange Act Release No. 41033 (February 9, 1999), 64 FR 8156 (February 18, 1999).

[6] Securities Exchange Act Release No. 42596 (March 30, 2000), 65 FR 18397 (April 7, 2000).



The Exchange is now proposing to make the Pilot program permanent. The Exchange's experience with ROS over the past year and a half has been positive. The Exchange believes that ROS has successfully facilitated the expedited openings of options classes on the Exchange, thereby improving market efficiency for all market participants. By providing the Exchange's market-makers with the ability to open option classes within seconds of the opening of the underlying security, customer orders have been addressed in open trading in a more timely manner. The Exchange believes that ROS has enhanced the quality of customer executions and has served to protect existing order entry priority.

The Exchange is continuing to explore possibilities for bring non-bookable orders into ROS in an automated fashion. The Exchange continues to actively study the possibility of making changes to its limit order book to allow for the inclusion of other order types, at least at the opening. These changes to the Exchange's limit order book would allow ROS to electronically accommodate orders that cannot be placed in the limit order book today. The Exchange believes the Pilot is operating successfully and requests permanent approval of the proposed rule change.

The Exchange also requests an extension of the Pilot pending the Commission's consideration of the proposal to adopt ROS on a permanent basis. An extension of the Pilot program would allow the Exchange and its customers to continue to realize the benefits of ROS pending Commission consideration of permanent approval of ROS.

2. Statutory Basis

The Exchange represents that the proposed rule change is consistent with Section 6(b) of the Act[7] in general and furthers the objectives of Section 6(b)(5)[8] in particular in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

The Exchange has neither solicited nor received comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

The Exchange has requested that the Commission find good cause, pursuant to Section 19(b)(2) of the Act,[9] for approving the extension of the Pilot through September 30, 2001 or until such earlier time as the Commission grants the Exchange's request for permanent approval of the program, prior to the thirtieth day after publication in the **Federal Register**.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–00–46 and should be submitted by November 2, 2000.

**V. Commission's Findings and Order Granting Partial Accelerated Approval of Proposed Rule Change**

The Commission finds that the portion of the proposed rule change relating to the extension of the Pilot is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[10] Specifically, the Commission believes the proposal is consistent with the Section 6(b)(5) of the Act,[11] which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to remove the impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public.

The Commission believes that accelerating effectiveness of the proposed extension of the Pilot will allow the Exchange to continue to offer the benefits of ROS without interruption while the Commission considers the Exchange's proposal to adopt ROS on a permanent basis.

The Commission finds good cause for approving this proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. Specifically, the Commission believes that accelerating the effectiveness of the proposed extension of the Pilot would benefit investors by providing for the continuation of expedited openings of options classes on the Exchange afforded by ROS.[12] In addition, the Commission believes that accelerated approval of the Pilot would enable the CBOE to continue uninterrupted operation of ROS while ensuring adequate time for the Commission to evaluate the Exchange's proposal.

*It Is Therefore Ordered*, pursuant to Section 19(b)(2) of the Act,[13] that the extension of the Pilot by the Exchange (File No. SR–CBOE–00–46) is approved until the earlier of September 30, 2001 or such time as the Commission has approved ROS on a permanent basis.

[7] 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(2).

[10] In approving the extension of the Pilot, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78s(b)(5).

[12] Approval of the extension of the Pilot should not be interpreted as suggesting that the Commission is predisposed to approving the Pilot on a permanent basis.

[13] 15 U.S.C. 78s(b)(2).

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For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–26113 Filed 10–11–00; 8:45 am]

BILLING CODE 8010–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43408; File No. SR–CSE–00–01]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendments Nos. 1 and 2 by the Cincinnati Stock Exchange, Incorporated, Amending its Rules To Accommodate the Implementation of Decimal Pricing

October 3, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 2, 2000, The Cincinnati Stock Exchange, Incorporated ("CSE" OR "Exchange"), filed with the Securities and Exchange Commission ("Commission") a proposed rule change to amend its rules to permit quotations made in decimal increments in conjunction with the securities industry's phased implementation of decimal pricing conventions. On August 7, 2000, the CSE amended the proposed rule change[3] by requesting that the Commission grant immediate effectiveness to the proposal pursuant to Section 19(b)(3)(A) of the Act.[4] On October 2, 2000, the Exchange again amended the proposed rule change[5] by making minor technical corrections to the proposed rule text amendments. The proposal, as amended, is described in Items I, II, and III below, which Items have been prepared by the CSE. Because the CSE filed the amended proposal pursuant to Section 19(b)(3)(A) of the Act,[6] and Rule 19b–4(f)(6) thereunder,[7] it has become effective upon filing with the Commission.[8] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules to provide for the implementation of decimal pricing. The CSE believes the proposed rule change conforms to the uniform industry approach to implementing decimal pricing contained in the joint submission to the Commission by the CSE and other interested parties dated July 24, 2000, and entitled "Decimals Implementation Plan for the Equities and Options Markets" ("Decimals Plan"). The text of the proposed rule change is set forth below. Proposed new language appears in italic; proposed deletions appear in brackets.

* * * * *

Chapter XI Trading Rules

Rule 11.3 Price Variations

(a) Bids or offers in stocks traded on the Exchange at or above $1.00 per share shall not be made at a smaller variation than ⅛ of $1.00 per share; in stocks below $1.00 but at or above ½ of $1.00 per share, at a smaller variation than 1/16 of $1.00; in stocks below ½ of $1.00 per share, at a smaller variation than 1/32 of $1.00 per share; and in bonds at a smaller variation than ⅛ of 1% of the principal amount, except in the case of a dually or multiply-traded security where the principal exchange shall have a different rule or when the Board of Trustees of the Exchange shall provide otherwise. *(Rule 11.3(a) will be eliminated upon completion of decimal conversion.)*

*(b) Bids or offers in stocks traded on the Exchange shall not be made at a smaller variation than $.01 per share; and in bonds at a smaller variation than ⅛ of 1% of the principal amount.*

*(c) Notwithstanding (b) above, bids and offers in stocks not participating in the decimal pilot program and not converted to decimal pricing at or above $1.00 per share must be made in fractions at a minimum variation of 1/16 per share. The minimum variation of .01 described in (b) above is applicable to stocks that have been converted to decimal pricing. (Rule 11.3(c) will be eliminated upon completion of decimal conversion.)*

* * * * *

Chapter XIV Intermarket Trading System Plan

Rule 14.3 Pre-Opening Application

(b) * * * The "applicable price changes" are:

| Previous day's closing price | Applicable price change (more than) |
|---|---|
| Network A: | |
| Under $15 .. | ⅛ point *or for stocks trading in decimals .10* |
| $15 or over[1] [*]. | ¼ point *or for stocks trading in decimals .25* |
| Network B: | |
| Under $5 .... | ⅛ point *or for stocks trading in decimals .10* |
| $5 or over[2] | ¼ point *or for stocks trading in decimals .25* |

*[1] [*] If the previous day's consolidated closing price of [an] a Network A* Eligible Security exceeded $100 and the Security does not underlie an individual stock option contract listed and currently trading on a national securities exchange, the "applicable price change" is [one point] *one dollar.*

*[2] If the previous day's consolidated closing price of a Network B Eligible Security exceeded $75 and the Security is not a Portfolio Deposit Receipt, Index Fund Share, or Trust Issued Receipt, or does not underlie an individual stock option contract listed and currently trading on a national securities exchange, the "applicable price change" is one dollar.*

(c) A pre-opening notification shall—

(1) Be designated as a pre-opening notification ("IND")

(2) Identify the Exchange ("C"), the inquiring specialist and the security ("XYZ")

(3) Indicate the "applicable price range" by being formatted as a standardized pre-opening administrative message as follows:

IND C/XYZ [RANGE]

The price range shall not exceed the "applicable price range" shown below:

| Consolidated closing price | Applicable price range *$* |
|---|---|
| Network A: | |
| Under $50 | ½ point *or for stocks trading in decimals .50* |
| $50 or over[3] [**] | 1 point *or for stocks trading in decimals 1.00* |
| Network B: | |
| Under $10 | ½ point *or, for stocks trading in decimals, .50* |

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Jeffrey T. Brown, Vice President, Regulation, and General Counsel, Exchange, to Joseph P. Morra, Senior Counsel, Division of Market Regulation, Commission, dated August 7, 2000 ("Amendment No. 1").

[4] 15 U.S.C. 78s(b)(3)(A).

[5] *See* letter form Jeffrey T. Brown, Vice President, Regulation, and General Counsel, Exchange, to Joseph P. Morra, Senior Counsel, Division of Market Regulation, Commission, dated September 22, 2000 ("Amendment No. 2").

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6).

[8] In filing its Amendment No. 1, the Exchange requested that the Commission waive the requirement that the Exchange provide the Commission with written notice of its intent to make such filing, as well as a description of the proposal, at least five business days prior to the filing of the proposed rule change with the Commission. *See* Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii). The Commission agrees to waive such requirement of prior notice.

[14] 17 CFR 200.30–3(a)(12).



| Consolidated closing price | Applicable price range *$* |
|---|---|
| $10 or over[4] | 1 point *or, for stocks trading in decimals, 1.00* |

*[3] [**] If the previous day's closing price of [an] a Network A* Eligible Security exceeded $100 and the Security does not underlie an individual stock option contract listed and currently trading on a national securities exchange, the "applicable price change" is [two points] *two dollars.*

*[4] If the previous day's consolidated closing price of a Network B Eligible Security exceeded $75 and the Security is not a Portfolio Deposit Receipt, Index Fund Share, or Trust Issued Receipt, or does not underlie and individual stock option contract listed and currently trading on a national securities exchange, the "applicable price change" is two dollars.*

The price range also shall not straddle the previous day's closing price, although it may include it as an endpoint (e.g., a ⅛–⅝ *or for stocks trading in decimals 40.15–40.65* price range would be permissible if the previous day's consolidated closing price were ⅛ or ⅝ *or for stocks trading in decimals 40.15 or 40.65*, but not if the closing price were ¼, ⅜, or ½ *or, for stocks trading in decimals, within the price range of 40.16–40.64).*

* * * * *

(g) If after sending a pre-opening notification, * * *

(1) Increase or Decrease in Applicable Price Range * * *

(2) Shift to within Applicable Price Change Parameter

(a) The inquiring specialist * * *

(b) Notwithstanding the preceding sentence, in situations where the price range in an initial or additional notification includes price variations equal to or less than the applicable price change parameters, the "cancellation" notification signifies that the anticipated opening price: (1) may or may not be outside of the price range specified in the pre-opening notification and (2) does not represent a change from the previous day's consolidated closing price of more than the applicable price change.[5] [*]

[5] [*] Example: CTA close at 30. Pre-Opening Notification sent with any one of the following price ranges: 30–30½; 30⅛–30⅝; or 30¾ *or for stocks trading in decimals a price range of 30.10–30.60, etc.* It is then determined that the stock will open at 30, 30⅛, or 30¼ *or, for stocks trading in decimals, o price within the range of 30 to 30.25*, the specialist need not re-indicate the stock pursuant to paragraph (2)(b).

* * * * *

(m) Subject to paragraph (n), * * *

(1) Be designated as a pre-opening response ("RES")

(2) Identify the Exchange ("C"), the specialist, and the security ("XYZ"), and

(3) Show the specialist's interest (if any), both as principal for his own account ("P") and as agent on orders left with him ("A"), at each price level within the price-range indicated in the pre-opening notification (*e.g., 40⅜ or, for stocks trading in decimals, 40.40),* reflected on a netted share basis by being formatted as a standardized pre-opening administrative message as follows:

RES C/XYZ BUY {SELL} A–P 40⅜ *(or, for stocks trading in decimals, 40.40)*

The response may also show market orders separately.

* * * * *

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Commission has ordered the securities exchanges and other interested parties to implement decimal pricing in their markets.[9] Pursuant to the Order, the Commission required the exchanges to submit proposed rule changes implementing a uniform decimals phase-in schedule. As described above, the Exchange is proposing to amend the following rules in conjunction with the securities industry's conversion of its markets to decimal pricing which will allow for minimum price variations of $.01 per share in quotations for stocks that trade on the Exchange: Chapter XI, Trading Rules, Rule 11.3, Price Variations; and Chapter XIV, Intermarket Trading System Plan, Rule 14.3, Pre-Opening Application.

2. Statutory Basis

The CSE believes that the proposal is consistent with the provisions of Section 6(b)(5)[10] of the Act which requires that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The CSE does not believe that the proposed rule change will impose any inappropriate burden on competition.

*C: Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments were neither solicited nor received in connection with the proposed rule change.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[11] the Rule 19b–4(f)(6) thereunder.[12] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[13]

The CSE has requested that the Commission accelerate the operative date. The Commission believes that it is consistent with the protection of investors and the public interest and therefore finds good cause to designate the proposal to become immediately operative upon filing.[14] Acceleration of

[9] *See* Securities Exchange Act Release No. 42914 (June 8, 2000), 65 FR 38010 (June 19, 2000).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] The Commission will measure this sixty-day period from August 7, 2000, the date of Amendment No. 1, since Amendment No. 2, filed on October 2, 2000, made only minor corrections to the proposal as previously amended.

[14] The Decimals Plan provides for minimum price variations for equities and options of no less than

Continued

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the operative date will ensure that the CSE is able to operate in accordance with the terms and conditions of the Decimals Plan. For these reasons, the Commission finds good cause to designate that the proposal become operative immediately upon filing.[15]

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CSE. All submissions should refer to file number SR–CSE–00–01 and should be submitted by November 2, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–26112 Filed 10–11–00; 8:45 am]

BILLING CODE 8010–01–M

one cent. The Commission's June 8th Order requires the Participants to submit joint or individuals studies two months after Full Implementation (as defined in the Plan) regarding the impact of decimal pricing on system capacity, liquidity, and trading behavior, including an analysis of whether there should be a uniform minimum quoting increment. If a Participant wishes to move to quoting in an increment of less than one cent, the Participant should include in its study a full analysis of the potential impact of such trading on the Participant's market and the markets as a whole. Within thirty days after submitting the study, and absent Commission action, the Participants individually must submit for notice, comment, and Commission action, proposed rule changes under Section 19(b) of the Exchange Act to establish their individual choice of minimum increments by which equities or options are quoted on their respective markets.

[15] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43406; File No. SR–Phlx–00–39]**

## Self Regulatory Organizations; Order Approving Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Disqualification of Governors

October 3, 2000.

**I. Introduction**

On April 14, 2000, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to the disqualification of governors. On August 16, 2000, the Phlx filed Amendment No. 1 to the proposals.[3] The proposed rule change was published for comment in the **Federal Register** on July 13, 2000.[4] No comments were received on the proposal. This order approves the proposed rule change.

**II. Description of the Proposal**

Phlx By-Law, Article IV, Section 4–8 describes the discussions and decisions in which members of the Phlx Board of Governors ("Board Members") must refrain from participation. The provision further specifies discussions and decisions that do not require Board Members to refrain from participation. The Exchange proposes to amend Phlx By-Law, Article IV, Section 4–8 to conform to the new Phlx 1999 Code of Conduct for Board Members and Committee Members ("1999 Code of Conduct"). The Phlx Code of Conduct, which was adopted in 1997 ("1997 Code of Conduct"), describes, among other things, the discussions and decisions in which Covered Persons must refrain from participation.[5] The Phlx Board of Governors revised the 1997 Code of Conduct in July 1999, modifying the language regarding the disqualification of Covered Persons.

The Phlx's proposed rule change will amend its By-Law, Article IV, Section 4–8 to prohibit Covered Persons from participating in matters in which they or their immediate family have an interest.[6] The Exchange proposes to allow participation in matters where the Covered Person's interest arises solely from membership in the Exchange or a sub-class of membership, unless their impartiality might reasonably be questioned.[7]

**III. Discussion**

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[8] Specifically, the Commission believes that the proposal is consistent with the requirements of Section 6(b)(3)[9] that the rules of an Exchange be designed to assure a fair representation of its members in the administration of the Exchange's affairs.[10] The Commission believes that the proposal will prohibit the discussion and determination of Exchange matters by Covered Persons or their immediate family who have an interest in the matter, unless that interest is impartial and arises solely from membership in the Exchange or a sub-class of membership. The proposal will also add to the Exchange's present framework of conflict of interest provisions.[11]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Letter from John Dayton, Assistant Secretary and Counsel, Phlx, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission (August 16, 2000) ("Amendment No. 1"). Amendment No. 1 made a technical correction to the language of the proposed rule.

[4] Securities Exchange Act Release No. 43161 (August 16, 2000), 65 FR 51396 (August 23, 2000).

[5] Following the adoption of the 1997 Code of Conduct, the Exchange conformed the language in Phlx By-Law, Article IV, Section 4–8 to the language in the 1997 Code of Conduct. *See* Securities Exchange Act Release No. 39722 (March 4, 1998), 63 FR 12569 (March 13, 1998).

[6] The 1999 Code of Conduct and the proposed amendment to Phlx By-Law Article IV, Section 4–8 define "immediate family" as a spouse, a parent, a mother-in-law, a father-in-law, a brother, a sister, a child, any other person living with the individual or any person for whom the individual provides at least 50 percent of that person's financial support per year.

[7] The phrase "a sub-class of membership" refers to the various categories of Phlx membership. Examples of sub-classes include: equity members and options members; on-floor and off-floor members; and specialists and floor brokers on each floor. The Exchange represents that many decisions in Board and committee meetings, such as fees on equity floor transactions or requirements for arbitration in customer contracts, apply to only one or more of these sub-classes and not to others. The Exchange represents that it does not intend to disqualify persons from making decisions solely because they are part of a sub-class, such as market makers or off-floor members, which will be affected by the outcome of the decision.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(3).

[10] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] *See e.g.*, 1999 Code of Conduct (requiring Covered Persons to make prompt disclosure of any interest that could reasonably appear to violate the 1999 Code of Conduct( and Phlx By-Law Article X,



**IV. Conclusion**

For the reasons discussed above, the Commission finds that the proposal is consistent with the Act and the rules and regulations thereunder.

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change, SR–Phlx–00–39, be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

**Margaret H. McFarland,**

*Depyty Secretary.*

[FR Doc. 00–26111 Filed 10–11–00; 8:45 am]

BILLING CODE 8010–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43407; File No. SR–Phlx–00–072]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Amending Rules 501, 505, and 506 Regarding Allocation and Specialist Appointment, as well as Rule 748, Supervision, To Reflect Current Circumstances on the Equity Foreign Currency Option and Option Trading Floors

October 3, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 25, 2000, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Phlx proposes to amend Rules 501, 505, 506, and 748 to require certain information be provided to the Allocation, Evaluation and Securities Committee ("AES Committee") for approval and to require certain minimum staffing levels for specialist units. Specifically, the Exchange proposes to amend Rule 501(b)(4) to require that option and foreign currency option specialist units provide detailed information on their application to become a specialist unit regarding their back-up arrangements with regard to financial and staffing support.

The proposal would add Rule 501(c) to require that individuals be approved by the AES Committee prior to acting as a specialist on behalf of a specialist unit. In addition, proposed Rule 501(c) would require that applications for individuals to act as specialist shall include any other special requirements that the AES Committee may require for approval. Proposed Rule 501(c) would also require that the AES Committee or its designee approve an individual prior to that individual moving from one specialist unit to another specialist unit.

The proposal would re-designate Rule 501(c) as Rule 501(d), which requires that to be approved and retain their specialist privileges, option and foreign currency option specialists must maintain the clearing arrangements and capital structure stated on their application. In addition, Rule 501(d) would require that changes regarding their back-up arrangements must be submitted to and approved by the AES Committee. The proposal would also amend Rule 501(d) to require option and foreign currency option specialists to maintain a minimum staffing level for each quarter turret of space on the trading floor.

The proposal would add Rule 501(e), which is similar to Rule 501(d), and would contain the same staffing requirements for equity specialists as are currently contained in Rule 501(c)(2).

The proposal would re-designate Rule 501(d) as Rule 501(f). The proposal would amend the language of 501(f) to state that once an applicant is approved by the AES Committee as a specialist unit, any material change in the capital or staff of the unit or any move by the head or assistant specialist must be reported in writing to the AES Committee within two days of the change.

The proposal would add Rule 501, Commentary .02, which states that for purposes of rule 748 on Supervision, individuals employed or associated with the back-up specialist will be considered engaging in a business activity of the specialist unit that they are assisting. Rule 748(b) would also be amended to refer to this situation.

The proposal would amend Rule 505 to require registrant specialist units to report material changes on the respective equity, option and foreign currency option registration forms to the AES Committee.

The proposal would amend Rule 506 to codify expressly that AES Committee may require applicant specialist units to provide other information, including system order acceptance and execution levels, and guarantees on the application for a particular equity or option. The proposal would require that, should a specialist be allocated that equity or option, the specialist would be immediately required to notify the Exchange staff and submit for approval to the AES Committee or its designee in writing any change to the respective system acceptance and execution levels or any other material changes on that application.

The proposal would replace references to the Department of Securities in Rules 505 and 506 with references to the Exchange staff. The text of the proposed rule change is available at the Phlx and the Commission.

**II. Self-Regulatory Organization's Statements of the Purpose of, and the Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in section A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposed rule change is to provide the AES Committee with the appropriate information and a greater understanding of the specialist unit's operation when approving a prospective specialist unit for trading privileges, as well as approving the allocation, reallocation and transfer of equity, option, and foreign currency option books to specialist units. Specifically, proposed amendments to Rule 501(b)(4) regarding back-up arrangements for staffing and capital are intended to help ensure that specialist books will continue to trade on the floor in an efficient manner by requiring the specialist unit have sufficient staff to handle the high volume in busy markets and requiring the back-up specialist to

Section 10–9(b) (authorizing the Exchange's Audit Committee to conduct reviews of any alleged improper conduct and recommend appropriate action to the Board).

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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step in to act as a specialist, when the assigned specialist is unable to do so.

Proposed Rule 501(c) should increase the AES Committee's supervision over the individuals applying to be a specialist on the floor, which should in turn help to ensure that applicants have sufficient qualifications and experience to perform the duties of a specialist in active markets. In addition, proposed Rule 501(c) should also help to ensure that the AES Committee is notified in the event that an individual moves from one firm to another firm.

Proposed amendments to Rule 501(d) would require option and foreign currency option specialist units to have certain staffing levels per quarter turret of trading floor space, rather than for the entire specialist unit, to help to ensure adequate staffing coverage on the trading floors. The current rule does not sufficiently address these issues because it lacks detail on how the specialist staff is deployed, particularly when the specialist unit may have books located in different areas of the option or foreign currency option floor.

With respect to proposed amendments to Rule 506, the AES Committee may require additional information on the allocation application, such as system acceptance and execution levels. The Phlx believes that system acceptance and execution levels are important in attracting order flow to the Exchange and providing customers with efficient order delivery and execution. The Phlx believes that codifying expressly in Exchange rules the AES Committee's authority to require specialist units to state their system order acceptance and execution levels, as well as notifying the AES Committee of such changes, should help the AES Committee to accurately assess whether the specialist units have the ability to attract order flow to the Exchange and can keep that order flow with the maintenance of the delivery and execution levels stated in their application.

The proposal would require Rule 501, Commentary .02 and proposed amendments to Rule 748 to specifically delegate responsibility for supervision of back-up staff used by a specialist to the specialist utilizing the back-up staff. The Phlx believes that this is the most efficient method of holding a specialist unit accountable for the acts of staff under their direction, albeit such staff is not directly employed by that specialist unit.

The proposal would also require that equity, option and foreign currency option specialists notify the AES Committee of material changes in their registration and application forms for specific securities as well as their applications to be a specialist unit.[3] This should supply the Phlx and the AES Committee with the appropriate information to make determinations regarding the suitability of this specialist to perform in a particular security in accordance with the AES Committee's review procedures for specialist performance evaluations outlined in Rule 511.

2. Statutory Basis

The Phlx believes the proposed rule change is consistent with Section 6(b) of the Act[4] in general, and in particular, with Section 6(b)(5) of the Act,[5] in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, as well as to protect investors and the public interest by better assessing that specialist units have the appropriate staffing. In addition, the proposed amendments and rules should help to ensure that the AES Committee has suitable information to make well-reasoned decisions regarding allocation, reallocation, and transfer of specialist books as well as the approval and retention of high quality specialists on the trading floor.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Phlx does not believe that the proposed rule change will impose any burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Phlx has neither solicited nor received written comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the publication of this notice in the **Federal Register** or within such other period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding; or (ii) as to which the Phlx consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx.

All submissions should refer to File No. SR–Phlx–00–72 and should be submitted by November 2, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–26115 Filed 10–11–00; 8:45 am]

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[3] *See supra* text discussing proposed Rule 501(d) and (e), proposed Rule 506(e) and the proposed amendments to Rule 505, pp 2–3.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 17 CFR 200.30–3(a)(12).

## SOCIAL SECURITY ADMINISTRATION

**Privacy Act of 1974, As Amended; Computer Matching Program (SSA/Department of Labor (DOL))—Match Number 1003**

**AGENCY:** Social Security Administration (SSA).

**ACTION:** Notice of computer matching program.

**SUMMARY:** In accordance with the provisions of the Privacy Act, as amended, this notice announces a computer matching program that SSA plans to conduct with DOL.

**DATES:** SSA will file a report of the subject matching program with the Committee on Governmental Affairs of the Senate, the Committee on Government Reform and Oversight of the House of Representatives and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The matching program will be effective as indicated below.

**ADDRESSES:** Interested parties may comment on this notice by either telefax to (410) 966–1722 or writing to the Associate Commissioner for Program Support, 2–Q–16 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235–6401. All comments received will be available for public inspection at this address.

**FOR FURTHER INFORMATION CONTACT:** The Associate Commissioner for Program Support at the address shown above.

**SUPPLEMENTARY INFORMATION:**

**A. General**

The Computer Matching and Privacy Protection Act of 1988 (Public Law (Pub.L.) 100–503), amended the Privacy Act (5 U.S.C. 552a) by establishing the conditions under which computer matching involving the Federal government could be performed and adding certain protections for individuals applying for and receiving Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub.L. 101–508) further amended the Privacy Act regarding protections for such individuals. The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State or local government records. Among other things, it requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain the approval of the match agreement by the Data Integrity Boards (DIB) of the participating Federal Agencies;

(3) Furnish detailed reports about matching programs to Congress and OMB;

(4) Notify applicants and beneficiaries that their records are subject to matching; and

(5) Verify match findings before reducing, suspending, terminating or denying an individual's benefits or payments.

**B. SSA Computer Matches Subject to the Privacy Act**

We have taken action to ensure that all of SSA's computer matching programs comply with the requirements of the Privacy Act, as amended.

Dated: July 13, 2000.

**Susan M. Daniels,**

*Deputy Commissioner for Disability and Income Security Programs.*

**Notice of Computer Matching Program, Social Security Administration (SSA) with the Department of Labor (DOL)**

*A. Participating Agencies SSA and DOL*

*B. Purpose of the Matching Program*

The purpose of this matching program is to establish the conditions, safeguards and procedures under which DOL agrees to disclose Part C Black Lung benefit data to SSA. SSA will use the match results to determine the correct amount of Social Security disability benefits for recipients of Part C Black Lung benefits, as required by the Social Security Act (the Act).

*C. Authority for Conducting the Matching Program*

Section 224(h)(1) of the Act, 42 U.S.C. (h)(1).

*D. Categories of Records and Individuals Covered by the Match*

DOL will provide SSA with a magnetic tape file extracted from the Office of Workers' Compensation Programs Black Lung Benefits Payments File. The extracted file will contain information about all live miners, under age 65, entitled to Part C Black Lung benefits. Each record on the DOL file will be matched with SSA's Master Beneficiary Record to identify individuals potentially subject to benefit reductions, due to their receipt of Part C Black Lung benefits, under section 224 of the Social Security Act, 42 U.S.C. 424.

*E. Inclusive Dates of the Match*

The matching program shall become effective upon the signing of the agreement by both parties to the agreement and approval of the agreement by the Data Integrity Boards of the respective agencies, but no sooner than 40 days after notice of the matching program is sent to Congress and the Office of Management and Budget, or 30 days after publication of this notice in the **Federal Register**, whichever is later. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

[FR Doc. 00–26163 Filed 10–11–00; 8:45 am]

**BILLING CODE 4191–02–U**

## DEPARTMENT OF STATE

**[Public Notice No. 3414]**

**Advisory Committee On International Economic Policy Notice of Committee Renewal**

*Renewal of Advisory Committee.* The Department of State has renewed the Charter of the Advisory Committee on International Economic Policy. The Committee serves in a solely advisory capacity providing information and advice to the Secretary of State on the effective integration of economic interests into overall foreign policy. The Committee's advice and information assists in appraising the role and limits of international economic institutions, advancing American commercial interests in a competitive global economy and formulating U.S. policy, positions, proposals and strategies for multilateral and bilateral negotiations.

This committee includes representatives of American organizations and institutions having an interest in international economic policy, including representatives of American business, labor unions, public interest groups, and trade and professional associations. The committee meets at least annually to advise the Department on range of international economic policies and issues.

For further information, please call: Carol Thompson, EB/PAPD, U.S. Department of State, at (202) 647–1808.

**Carol E. Thompson,**

*Acting, Office of Policy Analysis and Public Diplomacy.*

[FR Doc. 00–26226 Filed 10–11–00; 8:45 am]

**BILLING CODE 4710–07–P**

## DEPARTMENT OF TRANSPORTATION

**Federal Aviation Administration**

**[Summary Notice No. PE–2000–56]**

**Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of petitions for exemption received and of dispositions of prior petitions.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption Part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified

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requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**DATES:** Comments on petitions received must identify the petition docket number involved and must be received on or before November 2, 2000.

**ADDRESSES:** Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

**FOR FURTHER INFORMATION CONTACT:** Forest Rawls (202) 267–8033, or Vanessa Wilkins (202) 267–8029 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to §§ 11.85 and 11.91 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, D.C., on October 6, 2000.

**Donald P. Byrne,**

*Assistant Chief Counsel of Regulations.*

**Dispositions of Petitions**

*Docket No.:* 30154
*Petitioner:* Phoenix Air Medical Services
*Section of the 14 CFR Affected:* 14 CFR 135.251, 135.255, 135.353, and appendixes I and J to part 121.
*Description of Relief Sought/ Disposition:* To permit PAMS to conduct local sightseeing flights at Gastonia Airport for a charitable event on September 30 and October 1, 2000, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.
*Grant, 09/27/00, Exemption No. 7361*

*Docket No.: 25245*
*Petitioner:* Department of the Air Force
*Section of the 14 CFR Affected:* 14 CFR 91.215(b) and (c).
*Description of Relief Sought/ Disposition:* To permit USAF to conduct certain military training flight operations in designated airspace above 10,000 feet mean sea level without being required to operate the aircraft transponders.
*Grant, 09/27/00, Exemption No. 4633H*

*Docket No.:* 30070
*Petitioner:* The Lancair Company
*Section of the 14 CFR Affected:* 14 CFR 47.65.
*Description of Relief Sought/ Disposition:* To permit petitioner to obtain a Dealer's Aircraft Registration Certificate without meeting the United States citizenship requirements.
*Grant, 08/30/00, Exemption No. 7330*

*Docket No.:* 29491
*Petitioner:* Am-Safe, Inc.
*Section of the 14 CFR Affected:* 14 CFR 21.325(b)(3).
*Description of Releif Sought/ Disposition:* To permit Am-Safe to issue export airworthiness approvals for Class II and III products manufactured by Am-Safe, Ltd., in England under Am-Safe's technical standard order authorization (TSOAs).
*Grant, 09/08/00, Exemption No. 7354*

*Docket No.:* 29335
*Petitioner:* Honeywell International, Inc.
*Section of the 14 CFR Affected:* 14 CFR 21.325(b)(3).
*Description of Relief Sought/ Disposition:* To permit AlliedSignal, Inc., Aerospace Equipment Systems (AES Tempe) to issue export airworthiness approval tags for Class II and Class III products manufactured in Singapore by its AlliedSignal Singapore facility as an approved supplier to AES Tempe under AES Tempe's PMA No. PQ1222NM.
*Grant, 09/13/00, Exemption No. 7075A*

[FR Doc. 00–26240 Filed 10–11–00; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket No. MARAD–2000–8072]**

### Information Collection Available for Public Comments and Recommendations

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) this notice announces the Maritime Administration's (MARAD) intentions to request Office of Management and Budget (OMB) approval of a currently approved information collection titled "Port Facility Conveyance Information," OMB Number 2133–0524.

**DATES:** Comments should be submitted on or before December 11, 2000.

**FOR FURTHER INFORMATION CONTACT:** William J. Aird, Office of Ports and Domestic Shipping, MAR–830, Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–1901 or fax—202–366–6988. Copies of this collection can also be obtained from that office.

**SUPPLEMENTARY INFORMATION:**

*Title of Collection:* Port Facility Conveyance Information.
*Type of Request:* Extension of a currently approved information collection.
*OMB Control Number:* 2133–0524.
*Form Number:* None.
*Expiration Date of Approval:* Three years from the date of approval.
*Summary of Collection of Information:* Public Law 103–160 authorizes the Department of Transportation to convey to public entities surplus Federal property needed for the development or operation of a port facility. The information collection will allow MARAD to approve the conveyance of property and administer the port facility conveyance program.
*Need and Use of the Information:* The information collection is necessary for MARAD to determine whether (1) the community is committed to the redevelopment/reuse plan; (2) the redevelopment /reuse plan is viable and is in the best interest of the public; and (3) the property is being used in accordance with the terms of the conveyance and applicable statutes and regulations.
*Description of Respondents:* Eligible port entities.
*Annual Responses:* 30 responses.
*Annual Burden:* 1,280 hours.
*Comments:* Comments regarding this information collection should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Comments may also be submitted by electronic means via the Internet at *http://dmses.dot.gov/submit.* Specifically, address whether this information collection is necessary for proper performance of the function of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at http://dms.dot.gov.

Dated: October 5, 2000.

By Order of the Maritime Administrator.

**Joel C. Richard,**

*Secretary.*

[FR Doc. 00–26147 Filed 10–11–00; 8:45 am]

**BILLING CODE 4910–81–P**



## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Finance Docket No. 33929]**

### State of New Hampshire Department of Transportation—Acquisition Exemption—Line of Boston and Maine Corporation

The State of New Hampshire Department of Transportation (NHDOT), a noncarrier, has filed a notice of exemption under 49 CFR 1150.31 to acquire approximately 2.8 miles ± of rail line from Boston and Maine Corporation (B&M) from milepost 140.00 to milepost 142.78 in West Lebanon, NH. NHDOT certifies that its projected revenues as a result of this transaction will not result in the creation of a Class II or Class I rail carrier.

This transaction is related to a simultaneously filed notice of exemption in STB Finance Docket No. 33930, *Claremont Concord Railroad Corporation—Operation Exemption—Line of the State of New Hampshire Department of Transportation,* wherein Claremont Concord Railroad Corporation seeks to operate the track being acquired by NHDOT.

The transaction is expected to be consummated on or shortly after October 6, 2000.[1]

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

[1] NHDOT reported that it intended to consummate the transaction on or shortly after September 25, 2000. The earliest the transaction can be consummated is October 6, 2000, the effective of the exemption (7 days after the exemption was filed). NHDOT's representative has been notified and has confirmed that consummation would not take place before October 6, 2000.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33929, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on James E. Howard, One Thompson Square, Suite 201, Charlestown, MA 02129.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: October 5, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 00–26199 Filed 10–11–00; 8:45 am]

**BILLING CODE 4915–00–P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Finance Docket No. 33930]**

### Claremont Concord Railroad Corporation—Operation Exemption—Line of the State of New Hampshire Department of Transportation

Claremont Concord Railroad Corporation (CCRR), a Class III rail carrier, has filed a notice of exemption under 49 CFR 1150.41 to operate pursuant to an agreement entered into with the State of New Hampshire Department of Transportation (NHDOT) approximately 2.8 miles ± from milepost 140.00 to milepost 142.78 in West Lebanon, NH. CCRR certifies that its projected revenues as a result of this transaction will not result in the creation of a Class II or Class I rail carrier.

This transaction is related to a simultaneously filed notice of exemption in STB Finance Docket No. 33929, *State of New Hampshire Department of Transportation—Acquisition Exemption—Line of Boston and Maine Corporation,* wherein NHDOT seeks to acquire track owned and operated by Boston and Maine Corporation..

The transaction is expected to be consummated on or shortly after October 6, 2000.[1]

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

[1] CCRR reported that it intended to consummate the transaction on or shortly after September 25, 2000. The earliest the transaction can be consummated is October 6, 2000, the effective of the exemption (7 days after the exemption was filed). CCRR's representative has been notified and has confirmed that consummation would not take place before October 6, 2000.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33930, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on James E. Howard, One Thompson Square, Suite 201, Charlestown, MA 02129.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: October 5, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 00–26200 Filed 10–11–00; 8:45 am]

**BILLING CODE 4915–00–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

**[FI–59–91]**

### Proposed Collection; Comment Request for Regulation Project

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, FI–59–91 (TD 8674), Debt Instruments With Original Issue Discount; Contingent Payments; Anti-Abuse Rule (§§ 1.1275–2, 1.1275–3, 1.1275–4, and 1.1275–6).

**DATES:** Written comments should be received on or before December 11, 2000.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the regulation should be

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directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Debt Instruments With Original Issue Discount; Contingent Payments; Anti-Abuse Rule.

*OMB Number:* 1545–1450.

*Regulation Project Number:* FI–59–91.

*Abstract:* This regulation relates to the tax treatment of debt instruments that provide for one or more contingent payments. The regulation also treats a debt instrument and a related hedge as an integrated transaction. The regulation provides general rules, definitions, and reporting and recordkeeping requirements for contingent payment debt instruments and for integrated debt instruments.

*Current Actions:* There is no change to this existing regulation.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations, individuals, and state, local, or tribal governments.

*Estimated Number of Respondents:* 180,000.

*Estimated Time Per Respondent:* 30 minutes.

*Estimated Total Annual Burden Hours:* 89,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 4, 2000.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 00–26207 Filed 10–11–00; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

**[REG–209322–82]**

### Proposed Collection; Comment Request for Regulation Project

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–209322–82 (TD 8841), Return of Partnership Income (§ 1.6031(a)–1).

**DATES:** Written comments should be received on or before December 11, 2000.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the regulation should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Return of Partnership Income.

*OMB Number:* 1545–1583.

*Regulation Project Number:* REG–209322–82.

*Abstract:* Section 1.6031(a)–1 requires partnerships to file a partnership return. The information in this section is required to enable the IRS to verify that a taxpayer is reporting the correct amount of income or gain or claiming the correct amount of losses, deductions, or credits from that taxpayer's interest in the partnership. The partnership return is filed on Form 1065.

*Current Actions:* There is no change to this existing regulation.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations, and farms.

The burden is reflected in the burden estimate of Form 1065.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 4, 2000.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 00–26208 Filed 10–11–00; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

**[REG–209463–82]**

### Proposed Collection; Comment Request for Regulation Project

**AGENCY:** Internal Revenue Service (IRS), Treasury.



**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking, REG–209463–82, Required Distributions From Qualified Plans and Individual Retirement Plans (§ 1.401(a)(9)–(1).

**DATES:** Written comments should be received on or before December 11, 2000, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Request for additional information or copies of the regulation should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Required Distributions From Qualified Plans and Individual Retirement Plans.

*OMB Number:* 1545–1573.

*Regulation Project Number:* REG–209463–82.

*Abstract:* This regulation permits a taxpayer to name a trust as the beneficiary of the employee's benefit under a retirement plan and use the life expectancies of the beneficiaries of the trust to determine the required minimum distribution, if certain conditions are satisfied.

*Current Actions:* There is no change to this existing regulation.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals or households.

*Estimated Number of Respondents:* 1,000.

*Estimated Time Per Respondent:* 20 minutes.

*Estimated Total Annual Burden Hours:* 333.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 3, 2000.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 00–26209 Filed 10–11–00; 8:45 am]

**BILLING CODE 4830–01–M**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

**[REG–209373–81]**

### Proposed Collection; Comment Request for Regulation Project

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–209373–81 (TD 8797), Election to Amortize Start-Up Expenditures for Active Trade or Business (§ 1.195–1).

**DATES:** Written comments should be received on or before December 11, 2000 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the regulation should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Election to Amortize Start-Up Expenditures for Active Trade or Business.

*OMB Number:* 1545–1582.

*Regulation Project Number:* REG–209373–81.

*Abstract:* Section 1.195–1 of the regulation provides that start-up expenditures may, at the discretion of the taxpayer, be amortized over a period of not less than 60 months beginning with the month the active trade or business begins. Taxpayers may elect to amortize start-up expenditures by filing a statement with their tax return for the taxable year in which the trade or business begins.

*Current Actions:* There is no change to this existing regulation.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 150,000.

*Estimated Time Per Respondent:* 15 minutes.

*Estimated Total Annual Burden Hours:* 37,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper

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performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 5, 2000.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 00–26210 Filed 10–11–00; 8:45 am]

BILLING CODE 4830–01–U

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

**[REG–248900–96]**

### Proposed Collection; Comment Request for Regulation Project

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–248900–96 (TD 8712), Definition of Private Activity Bonds (§§ 1.141–1, 1.141–12, 1.142–2, and 1.148–6).

**DATES:** Written comments should be received on or before December 11, 2000.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the regulation should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Definition of Private Activity Bonds.

*OMB Number:* 1545–1451.

*Regulation Project Number:* REG–248900–96.

*Abstract:* Internal Revenue Code section 103 provides generally that interest on certain State or local bonds is excluded from gross income. However, under Code sections 103(b)(1) and 141, interest on private activity bonds (other than qualified bonds) is not excluded. This regulation provides rules, for purposes of Code section 141, to determine how bond proceeds are measured and used and how debt service for those bonds is paid or secured.

*Current Actions:* There is no change to this existing regulation.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* State, local or tribal governments.

*Estimated Number of Respondents:* 10,100.

*Estimated Time Per Respondent:* 2 hours, 59 minutes.

*Estimated Total Annual Burden Hours:* 30,100.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 5, 2000.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 00–26211 Filed 10–11–00; 8:45 am]

BILLING CODE 4830–01–U

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

**[IA–54–90]**

### Proposed Collection; Comment Request For Regulation Project

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, IA–54–90 (TD 8459), Settlement Funds (§§ 1.468B–1, 1.468B–2, 1.468B–3, and 1.468B–5).

**DATES:** Written comments should be received on or before December 11, 2000 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the regulation should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Settlement Funds.

*OMB Number:* 1545–1299.

*Regulation Project Number:* IA–54–90.

*Abstract:* This regulation prescribes reporting requirements for settlement funds, which are funds established or approved by a governmental authority to resolve or satisfy certain liabilities, such as those involving tort or breach of contract. The regulation relates to the tax treatment of transfers to these funds, the taxation of income earned by the funds, and the tax treatment of distributions made by the funds.



*Current Actions:* There is no change to this existing regulation.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals, business or other for-profit organizations, not-for-profit institutions, farms and Federal, state, local or tribal governments.

*Estimated Number of Respondents:* 1,500.

*Estimated Time Per Respondent:* 2 hours, 22 minutes.

*Estimated Total Annual Burden Hours:* 3,542.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 2, 2000.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 00–26212 Filed 10–11–00; 8:45 am]

BILLING CODE 4830–01–U

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Revenue Procedure 97–48

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 97–48, Automatic Relief for Late S Corporation Elections.

**DATES:** Written comments should be received on or before December 11, 2000 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the revenue procedure should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Automatic Relief for Late S Corporation Elections.

*OMB Number:* 1545–1562.

*Revenue Procedure Number:* Revenue Procedure 97–48.

*Abstract:* The Small Business Job Protection Act of 1996 provides the IRS with the authority to grant relief for late S corporation elections. This revenue procedure provides that, in certain situations, taxpayers whose S corporation election was filed late can obtain relief by filing Form 2553 and attaching a statement explaining that the requirements of the revenue procedure have been met.

*Current Actions:* There are no changes being made to the revenue procedure at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 100.

*Estimated Time Per Respondent:* 1 hour.

*Estimated Total Annual Burden Hours:* 100.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 4, 2000.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 00–26213 Filed 10–11–00; 8:45 am]

BILLING CODE 4830–01–U

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Revenue Procedure 2000–41

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2000–41, Change in Minimum Funding Method.

**DATES:** Written comments should be received on or before December 11, 2000 to be assured of consideration.

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**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the revenue procedure should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Change in Minimum Funding Method.

*OMB Number:* 1545–1704.

*Revenue Procedure Number:* Revenue Procedure 2000–41.

*Abstract:* Revenue Procedure 2000–41 provides a mechanism whereby a plan sponsor or plan administrator may obtain a determination from the Internal Revenue Service that its proposed change in the method of funding its pension plan(s) meets the standards of section 412 of the Internal Revenue Code.

*Current Actions:* There are no changes being made to the revenue procedure at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations, not-for-profit institutions, and state, local or tribal governments.

*Estimated Number of Respondents:* 300.

*Estimated Time Per Respondent:* 18 hours.

*Estimated Total Annual Burden Hours:* 5,400.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 4, 2000.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 00–26214 Filed 10–11–00; 8:45 am]

**BILLING CODE 4830–01–U**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Revenue Procedure 98–46 and Revenue Procedure 97–44

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 98–46 and Revenue Procedure 97–44, LIFO Conformity Requirement.

**DATES:** Written comments should be received on or before December 11, 2000 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the revenue procedures should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* LIFO Conformity Requirement.

*OMB Number:* 1545–1559.

*Revenue Procedure Number:* Revenue Procedure 98–46 and Revenue Procedure 97–44.

*Abstract:* Revenue Procedure 97–44 permits automobile dealers that comply with the terms of the revenue procedure to continue using the LIFO inventory method despite previous violations of the LIFO conformity requirements of Internal Revenue Code section 472(c) or (e)(2). Revenue Procedure 98–46 modified Revenue Procedure 97–44 by allowing medium- and heavy-duty truck dealers to take advantage of the favorable relief provided in Revenue Procedure 97–44.

*Current Actions:* There are no changes being made to these revenue procedures at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 5,000.

*Estimated Time Per Respondent:* 20 hours.

*Estimated Total Annual Burden Hours:* 100,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 3, 2000.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 00–26215 Filed 10–11–00; 8:45 am]

**BILLING CODE 4830–01–U**



## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

**[EE–81–88]**

### Proposed Collection; Comment Request For Regulation Project

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, EE–81–88 (TD 8599), Deductions for Transfers of Property (§ 1.83–6(a)).

**DATES:** Written comments should be received on or before December 11, 2000 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection should be directed to Larnice Mack, (202) 622–3179, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Deductions for Transfers of Property.

*OMB Number:* 1545–1448.

*Regulation Project Number:* EE–81–88.

*Abstract:* Section 1.83–6(a) of the regulation provides that when property is transferred in connection with the performance of services, the recipient of service may claim a deduction for the amount included as compensation in the gross income of the service provider. The service provider will be deemed to have included an amount in gross income if the service recipient provides a timely Form W–2 or 1099, as appropriate.

*Current Actions:* There is no change to this existing regulation.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals or households, business or other for-profit organizations, not-for-profit institutions, and farms.

The estimated annual burden of reporting will be reflected in the reporting burden for Forms W–2 and 1099–MISC.

The following paragraph applies to all of the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 4, 2000.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 00–26216 Filed 10–11–00; 8:45 am]

**BILLING CODE 4830–01–U**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of Citizen Advocacy Panel, Brooklyn District

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice.

**SUMMARY:** An open meeting of the Brooklyn District Citizen Advocacy Panel will be held in Brooklyn, New York.

**DATES:** The meeting will be held Thursday, November 16, 2000.

**FOR FURTHER INFORMATION CONTACT:** Eileen Cain at 1–888–912–1227 or 718–488–3555.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an operational meeting of the Citizen Advocacy Panel will be held Thursday, November 16, 2000, 6:00 p.m. to 9:20 p.m. at the Internal Revenue Service Brooklyn Building located at 625 Fulton Street, Brooklyn, NY 11201. For more information or to confirm attendance, notification of intent to attend the meeting must be made with Eileen Cain. Mrs. Cain can be reached at 1–888–912–1227 or 718–488–3555. The public is invited to make oral comments from 8:30 p.m. to 9:00 p.m. on Thursday, November 16, 2000. Individual comments will be limited to 5 minutes. If you would like to have the CAP consider a written statement, please call 1–888–912–1227 or 718–488–3555, or write Eileen Cain, CAP Office, P.O. Box R, Brooklyn, NY 11201.

The Agenda will include the following: various IRS issues.

**Note:** Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: October 5, 2000.

**M. Cathy Vanhorn,**

*Director, CAP, Communications & Liaison, Toxpayer Advocate Service.*

[FR Doc. 00–26205 Filed 10–11–00; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of Citizen Advocacy Panel, Pacific-Northwest District

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice.

**SUMMARY:** An open meeting of the Pacific-Northwest Citizen Advocacy Panel will be held in Olympia, Washington.

**DATES:** The meeting will be held Friday, November 17, 2000 and Saturday, November 18, 2000.

**FOR FURTHER INFORMATION CONTACT:** Judi Nicholas at 1–888–912–1227 or 206–220–6096.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Citizen Advocacy Panel will be held Friday, November 17, 2000, 8:30 a.m. to 4:30

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p.m. at the John L. O'Brien Bldg, Capitol Campus, Olympia, Washington 98501 and Saturday, November 18, 2000, 9:00 a.m. to Noon at the Phoenix Inn, Phoenix Room, 415 Capitol Way N, Olympia, Washington 98501. The public is invited to make oral comments. Individual comments will be limited to 10 minutes. If you would like to have the CAP consider a written statement, please call 1–888–912–1227 or 206–220–6096, or write Judi Nicholas, CAP Office, 915 2nd Avenue, Room 442, Seattle, WA 98174. Due to limited conference space, notification of intent to attend the meeting must be made with Judi Nicholas. Ms. Nicholas can be reached at 1–888–912–1227 or 206–220–6096.

The Agenda will include the following: Various IRS issue updates.

**Note:** Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: October 5, 2000.

**M. Cathy Vanhorn,**

*Director, CAP, Communications & Liaison, Taxpayer Advocate Service.*

[FR Doc. 00–26206 Filed 10–11–00; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Privacy Act of 1974: Computer Matching Program

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Notice of matching program.

**SUMMARY:** Pursuant to section 552a(e)(12) of the Privacy Act of 1974, as amended, and the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs, notice is hereby given of the conduct of the Internal Revenue Service Disclosure of Information to Federal, State and Local Agencies (DIFSLA) Computer Matching Program.

**EFFECTIVE DATE:** This notice will be effective November 13, 2000.

**ADDRESSES:** Inquiries may be mailed to the Director, Governmental Liaison and Disclosure, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** D.G. Lee, Project Manager, Office of Governmental Liaison, Internal Revenue Service, 202–622–3941.

**SUPPLEMENTARY INFORMATION:** The notice of the matching program was last published on August 11, 1998, at 63 FR 42908. Members of the public desiring specific information concerning an ongoing matching activity may request a copy of the agreement at the address provided above.

*Purpose:* The purpose of this program is to prevent or reduce fraud and abuse in certain federally assisted benefit programs while protecting the privacy interest of the subjects of the match. Information is disclosed by the Internal Revenue Service only for the purpose of, and to the extent necessary in, determining eligibility for, and/or the correct amount of, benefits for individuals applying for or receiving certain benefit payments.

*Authority:* In accordance with section 6103(l)(7) of the Internal Revenue Code (IRC) of 1986, the Secretary shall, upon written request, disclose current return information from returns with respect to unearned income from the Internal Revenue Service files to any Federal, State, or local agency administering a program listed below:

(i) A State program funded under part A of title IV of the Social Security Act;

(ii) Medical assistance provided under a State plan approved under title XIX of the Social Security Act;

(iii) Supplemental security income benefits under title XVI of the Social Security Act, and federally administered supplementary payments of the type described in section 1616(a) of such Act (including payments pursuant to an agreement entered into under section 212(a) of Public Law 93–66);

(iv) Any benefits provided under a State plan approved under title I, X, XIV, or XVI of the Social Security Act (as those titles apply to Puerto Rico, Guam, and the Virgin Islands);

(v) Unemployment compensation provided under a State law described in section 3304 of the Internal Revenue Code;

(vi) Assistance provided under the Food Stamp Act of 1977;

(vii) State-administered supplementary payments of the type described in section 1616(a) of the Social Security Act (including payments pursuant to an agreement entered into under section 212(a) of Public Law 93–66);

(viii)(I) Any needs-based pension provided under Chapter 15 of title 38, United States Code, or under any other law administered by the Secretary of Veterans Affairs;

(II) Parents' dependency and indemnity compensation provided under section 1315 of title 38, United States Code;

(III) Health-care services furnished under sections 1710(a)(2)(G) (formerly 1710(a)(1)(I)), 1710(a)(3) (formerly 1710(a)(2)), 1710(b) and 1712(a)(2)(B) of USC title 38; and

(ix) Any housing assistance program administered by the Department of Housing and Urban Development that involves initial and periodic review of an applicant's or participant's income, except that return information may be disclosed under this clause only on written request by the Secretary of Housing and Urban Development and only for use by officers and employees of the Department of Housing and Urban Development with respect to applicants for and participants in such programs.

*Name of recipient agency:* Internal Revenue Service.

*Categories of records covered in the match:* Internal Revenue Service Wage and Information Returns Processing File (Treas./IRS System 22.061 (IRP)) for the latest tax year. This file contains information returns (e.g., Forms 1099-DIV, 1099-INT and W–2G) filed by payers of income.

*Name of source agencies and categories of records covered in the match:*

A. Federal agencies expected to participate and their Privacy Act systems of records are:

1. Department of Housing and Urban Development: Real Estate Assessment Center—Tenant Eligibility Verification Files, HUD/REAC–1;
2. Department of Veterans Affairs: Veterans Benefits Administration—Compensation, Pension, Education and Rehabilitation Records, 58 VA 21/22, and Veterans Health Administration—Patient Medical Records—VA, 24VA136;
3. Social Security Administration: Office of Program Benefits Policy—Supplemental Security Record (SSR), HHS/SSA/OSR 90–60–0103.

B. State agencies expected to participate using nonfederal records are:

1. Alabama Department of Human Resources
2. Alabama Medicaid Agency
3. Alaska Department of Health and Social Services
4. Arizona Department of Economic Security
5. Arizona Health Care Cost Containment System
6. Arkansas Department of Human Services
7. California Department of Social Services
8. Colorado Department of Human Services
9. Connecticut Department of Social Services
10. Delaware Health and Social Services



11. District of Columbia Department of Human Services
12. Florida Department of Children and Families
13. Georgia Department of Human Resources
14. Guam Department of Public Health and Social Services
15. Hawaii Department of Human Services
16. Idaho Department of Health and Welfare
17. Illinois Department of Human Services
18. Indiana Family and Social Services Administration
19. Iowa Department of Human Services
20. Kansas Department of Social and Rehabilitation Services
21. Kentucky Cabinet for Families and Children
22. Louisiana Department of Health and Hospitals
23. Louisiana Department of Social Services
24. Maine Department of Human Services
25. Maryland Department of Human Resources
26. Massachusetts Department of Transitional Assistance
27. Massachusetts Division of Medical Assistance
28. Michigan Family Independence Agency
29. Minnesota Department of Human Services
30. Mississippi Division of Medicaid
31. Mississippi Department of Human Services
32. Missouri Department of Social Services
33. Montana Department of Public Health and Human Services
34. Nebraska Department of Health and Human Services
35. Nevada Department of Human Resources
36. New Hampshire Department of Health and Human Services
37. New Jersey Department of Human Services
38. New Mexico Human Services Department
39. New York Office of Temporary and Disability Assistance
40. North Carolina Department of Health and Human Services
41. North Dakota Department of Human Services
42. Ohio Department of Human Services
43. Oklahoma Department of Human Services
44. Oregon Department of Human Services
45. Pennsylvania Department of Public Welfare
46. Puerto Rico Department of the Family
47. Puerto Rico Department of Health
48. Rhode Island Department of Human Services
49. South Carolina Department of Social Services
50. South Dakota Department of Social Services
51. Tennessee Department of Human Services
52. Texas Department of Human Services
53. Utah Department of Health
54. Utah Department of Workforce Services
55. Vermont Department of Prevention, Assistance, Transition, and Health Access
56. Virgin Islands Bureau of Health Insurance and Medical Assistance
57. Virgin Islands Department of Human Services
58. Virginia Department of Social Services
59. Washington Department of Social and Health Services
60. West Virginia Department of Human Services
61. Wisconsin Department of Workforce Development
62. Wyoming Department of Family Services

*Beginning and completion dates:* The matches are conducted on an ongoing basis in accordance with the terms of the computer matching agreement in effect with each participant as approved by the applicable Data Integrity Board(s). The term of these agreements is expected to cover the 18-month period, January 1, 2001 through June 30, 2002. Ninety days prior to expiration of the agreement, the parties to the agreement may request a 12-month extension in accordance with 5 U.S.C. 552a(o).

Dated: October 2, 2000.

**W. Earl Wright, Jr.,**

*Chief Management and Administrative Programs Officer.*

[FR Doc. 00–26177 Filed 10–11–00; 8:45 am]

BILLING CODE 4830–01–P

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# Corrections

Federal Register
Vol. 65, No. 198
Thursday, October 12, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

**DEPARTMENT OF VETERANS AFFAIRS**

**38 CFR Part 21**

**RIN 2900–AI74**

**Veterans Training: Vocational Rehabilitation Subsistence Allowance Rates**

*Correction*

In rule document 00–21722 beginning on page 51763 in the issue of Friday, August 25, 2000, make the following corrections:

**§21.260 [Corrected]**

1. On page 51766, in §21.260, in paragraph (b)(3), in the table, in the last line, "¼ time$^{3}/_{5u}$" should read "¼ time$^{3}$".

2. On the same page, in the same table, in the same line, the data should be shifted one column to the right, so that "96.97" is in the column for "No dependents", "120.17" is in the column for "One dependent", "141.25" is in the column for "Two dependents", and "10.54" is in the column for "Additional amount for each dependent over two".

3. On page 51767, in the same section, in paragraph (b)(5), in the table, eight lines down, "¾" should read "¾ time".

4. On page 51768, in the same section, in paragraph (b)(7), in the table, 12 lines down, "Full-time only" should read "Full-time".

5. On the same page, in the same table, in footnote 3, "(Authority: 38 U.S.C. 3108, 3115(a)(1); Pub. L. 103–446" is moved from the footnote to its own line below, to appear as follows:

(Authority: 38 U.S.C. 3108, 3115(a)(1); Pub. L. 103–446)

[FR Doc. C0–21722 Filed 10–11–00; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Thursday,
October 12, 2000

Part II

## Office of Personnel Management

**Expected Service; Consolidated Listing of Schedules A, B, and C Exceptions; Notice**

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## OFFICE OF PERSONNEL MANAGEMENT

### Excepted Service; Consolidated Listing of Schedules A, B, and C Exceptions

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** This gives a consolidated notice of all positions excepted under Schedules A, B, and C as of June 30, 2000, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

**SUPPLEMENTARY INFORMATION:** Civil Service Rule VI (5 CFR 6.1) requires the Office of Personnel Management (OPM) to publish notice of all exceptions granted under Schedules A, B, and C. Title 5, Code of Federal Regulations, § 213.103(c), further requires that a consolidated listing, current as of June 30 of each year, be published annually as a notice in the **Federal Register**. That notice follows. OPM maintains continuing information on the status of all Schedule A, B, and C excepted appointing authorities. Interested parties needing information about specific authorities during the year may obtain information by writing to the Washington Service Center, Employment Service, Room 2469, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415, or by calling (202) 606–2575.

The following exceptions were current on June 30, 2000:

Schedule A

Section 213.3102 Entire Executive Civil Service

(a) Positions of Chaplain and Chaplain's Assistant.

(b) (Reserved).

(c) Positions to which appointments are made by the President without confirmation by the Senate.

(d) Attorneys.

(e) Law clerk trainee positions. Appointments under this paragraph shall be confined to graduates of recognized law schools or persons having equivalent experience and shall be for periods not to exceed 14 months pending admission to the bar. No person shall be given more than one appointment under this paragraph. However, an appointment that was initially made for less than 14 months may be extended for not to exceed 14 months in total duration.

(f) Chinese, Japanese, and Hindu interpreters.

(g) Any nontemporary position the duties of which are part-time or intermittent in which the appointee will receive compensation during his or her service year that aggregates not more than 40 percent of the annual salary rate for the first step of grade GS–3. This limited compensation includes any premium pay such as for overtime, night, Sunday, or holiday work. It does not, however, include any mandatory within-grade salary increases to which the employee becomes entitled subsequent to appointment under this authority. Appointments under this authority may not be for temporary project employment.

(h) Positions in Federal mental institutions when filled by persons who have been patients of such institutions and have been discharged and are certified by an appropriate medical authority thereof as recovered sufficiently to be regularly employed but it is believed desirable and in the interest of the persons and the institution that they be employed at the institution.

(i) Temporary and less-than-full time positions for which examining is impracticable. These are:

(1) Positions in remote/isolated locations where examination is impracticable. A remote/isolated location is outside of the local commuting area of a population center from which an employee can reasonably be expected to travel on short notice under adverse weather and/or road conditions which are normal for the area. For this purpose, a population center is a town with housing, schools, health care, stores and other businesses in which the servicing examining office can schedule tests and/or reasonably expect to attract applicants. An individual appointed under this authority may not be employed in the same agency under a combination of this and any other appointment to positions involving related duties and requiring the same qualifications for more than 1,040 working hours in a service year. Temporary appointments under this authority may be extended in 1-year increments, with no limit on the number of such extensions, as an exception to the service limits in § 213.104.

(2) Positions for which a critical hiring needs exists. This includes both short-term positions and continuing positions that an agency must fill on an interim basis pending completion of competitive examining, clearances, or other procedures required for a longer appointment. Appointments under this authority may not exceed 30 days and may be extended up to an additional 30 days if continued employment is essential to the agency's operations. The appointments may not be used to extend the service limit of any other appointing authority. An agency may not employ the same individual under this authority for more than 60 days in any 12-month period.

(3) Other positions for which OPM determines that examining is impracticable.

(j) Positions filled by current or former Federal employees eligible for placement under special statutory provisions. Appointments under this authority are subject to the following conditions:

(1) *Eligible employees.* (i) Persons previously employed as National Guard Technicians under 32 U.S.C. 709(a) who are entitled to placement under § 353.110 of this chapter, or who are applying for or receiving an annuity under the provisions of 5 U.S.C. 8337(h) or 5 U.S.C. 8456 by reason of a disability that disqualifies them from membership in the National Guard or from holding the military grade required as a condition of their National Guard employment;

(ii) Executive branch employees (other than employees of intelligence agencies) who are entitled to placement under § 353.110 but who are not eligible for reinstatement or noncompetitive appointment under the provisions of part 315 of this chapter.

(iii) Legislative and judicial branch employees and employees of the intelligence agencies defined in 5 U.S.C. 2302(a)(2)(C)(ii) who are entitled to placement assistance under § 353.110.

(2) *Employees excluded.* Employees who were last employed in Schedule C or under a statutory authority that specified the employee served at the discretion, will, or pleasure of the agency are not eligible for appointment under this authority.

(3) *Position to which appointed.* Employees who are entitled to placement under § 353.110 will be appointed to a position that OPM determines is equivalent in pay and grade to the one the individual left, unless the individual elects to be placed in a position of lower grade or pay. National Guard Technicians whose eligibility is based upon a disability may be appointed at the same grade, or equivalent, as their National Guard Technician position or at any lower grade for which they are available.

(4) *Conditions of appointment.* (i) Individuals whose placement eligibility is based on an appointment without time limit will receive appointments without time limit under this authority. These appointees may be reassigned, promoted, or demoted to any position within the same agency for which they qualify.



(ii) Individuals who are eligible for placement under § 353.110 based on a time-limited appointment will be given appointments for a time period equal to the unexpired portion of their previous appointment.

(k) Positions without compensation provided appointments thereto meet the requirements of applicable laws relating to compensation.

(l) Positions requiring the temporary or intermittent employment of professional, scientific, and technical experts for consultation purposes.

(m) (Reserved).

(n) Any local physician, surgeon, or dentist employed under contract or on a part-time or fee basis.

(o) Positions of a scientific, professional or analytical nature when filled by bona fide members of the faculty of an accredited college or university who have special qualifications for the positions to which appointed. Employment under this provision shall not exceed 130 working days a year.

(p)–(q) (Reserved).

(r) Positions established in support of fellowship and similar programs that are filled from limited applicant pools and operate under specific criteria developed by the employing agency and/or a non-Federal organization. These programs may include: internship or fellowship programs that provide developmental or professional experiences to individuals who have completed their formal education; training and associateship programs designed to increase the pool of qualified candidates in a particular occupational specialty; professional/industry exchange programs that provide for a cross-fertilization between the agency and the private sector to foster mutual understanding, an exchange of ideas, or to bring experienced practitioners to the agency; residency programs through which participants gain experience in a Federal clinical environment; and programs that require a period of Government service in exchange for educational, financial or other assistance. Appointment under this authority may not exceed 4 years.

(s) Positions with compensation fixed under 5 U.S.C. 5351–5356 when filled by student-employees assigned or attached to Government hospitals, clinics or medical or dental laboratories. Employment under this authority may not exceed 4 years.

(t) Positions when filled by mentally retarded persons in accordance with the guidance in Federal Personnel Manual chapter 306. Upon completion of 2 years of satisfactory service under this authority, the employee may qualify for conversion to competitive status under the provisions of Executive Order 12125 and implementing regulations issued by OPM.

(u) Positions when filled by severely physically handicapped persons who: (1) Under a temporary appointment have demonstrated their ability to perform the duties satisfactorily; or (2) have been certified by counselors of State vocational rehabilitation agencies or the Veterans Administration as likely to succeed in the performance of the duties. Upon completion of 2 years of satisfactory service under this authority, the employee may qualify for conversion to competitive status under the provisions of Executive Order 12125 and implementing regulations issued by OPM.

(v)–(w) (Reserved).

(x) Positions for which a local recruiting shortage exists when filled by inmates of Federal, District of Columbia, and State (including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands) penal and correctional institutions under work-release programs authorized by the Prisoner Rehabilitation Act of 1965, the District of Columbia Work Release Act, or under work-release programs authorized by the States. Initial appointments under this authority may not exceed 1 year. An initial appointment may be extended for one or more periods not to exceed 1 additional year each upon a finding that the inmate is still in a work-release status and that a local recruiting shortage still exists. No person may serve under this authority longer than 1 year beyond the date of that person's release from custody.

(y) (Reserved).

(z) Not to exceed 30 positions of assistants to top-level Federal officials when filled by persons designated by the President as White House Fellows.

(aa) Scientific and professional research associate positions at GS–11 and above when filled on a temporary basis by persons having a doctoral degree in an appropriate field of study for research activities of mutual interest to appointees and their agencies. Appointments are limited to persons referred by the National Research Council under its post-doctoral research associate program, may not exceed 2 years; and are subject to satisfactory outcome of evaluation of the associate's research during the first year.

(bb) Positions when filled by aliens in the absence of qualified citizens. Appointments under this authority are subject to prior approval of OPM except when the authority is specifically included in a delegated examining agreement with OPM.

(cc)–(ee) (Reserved).

(ff) Not to exceed 25 positions when filled in accordance with an agreement between OPM and the Department of Justice by persons in programs administered by the Attorney General of the United States under Public Law 91–452 and related statutes. A person appointed under this authority may continue to be employed under it after he/she ceases to be in a qualifying program only as long as he/she remains in the same agency without a break in service.

(gg)–(hh) (Reserved).

(ii) Positions of Presidential Intern, GS–9 and 11, in the Presidential Management Intern Program. Initial appointments must be made at the GS–9 level. No one may serve under this authority for more than 2 years, unless extended with OPM approval for up to 1 additional year. Upon completion of 2 years of satisfactory service under this authority, the employee may qualify for conversion to competitive appointment under the provisions of Executive order 12364, in accordance with requirements published in the Federal Personnel Manual.

(jj–kk) (Reserved).

(ll) Positions as needed of readers for blind employees, interpreters for deaf employees and personal assistants for handicapped employees, filled on a full time, part-time, or intermittent basis.

*Section 213.3103 Executive Office of the President*

(a) *Office of Administration.* (1) Not to exceed 75 positions to provide administrative services and support to the White House office.

(b) *Office of Management and Budget.* (1) Not to exceed 15 positions at grades GS–5/15.

(c) *Council on Environmental Quality.* (1) Professional and technical positions in grades GS–9 through 15 on the staff of the Council.

(d)–(f) (Reserved).

(g) *National Security Council.* (1) All positions on the staff of the Council.

(h) *Office of Science and Technology Policy.* (1) Thirty positions of Senior Policy Analyst, GS–15; Policy Analyst, GS–11/14; and Policy Research Assistant, GS–9, for employment of anyone not to exceed 5 years on projects of a high priority nature.

(i) *Office of National Drug Control Policy.* (1) Not to exceed 15 positions, GS–15 and below, of senior policy analysts and other personnel with expertise in drug-related issues and/or

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technical knowledge to aid in anti-drug abuse efforts.

*Section 213.3104 Department of State*

(a) *Office of the Secretary.* (1) All positions, GS–15 and below, on the staff of the Family Liaison Office, Director General of the Foreign Service and the Director of Personnel, Office of the Under Secretary for Management.

(2) One position of Museum Curator (Arts), in the Office of the Under Secretary for Management, whose incumbent will serve as Director, Diplomatic Reception Rooms. No new appointments may be made after February 28, 1997.

(b) *American Embassy, Paris, France.* (1) Chief, Travel and Visitor Unit. No new appointments may be made under this authority after August 10, 1981.

(c)–(f) (Reserved).

(g) *Bureau of Population, Refugees, and Migration.* (1) Not to exceed 10 positions at grades GS–5 through 11 on the staff of the Bureau.

(h) *Bureau of Administration.* (1) One Presidential Travel Officer. No new appointments may be made under this authority after June 11, 1981.

(2) One position of the Director, Art in Embassies Program, GM–1001–15.

*Section 213.3105 Department of the Treasury*

(a) *Office of the Secretary.* (1) Not to exceed 20 positions at the equivalent of GS–13 through GS–17 to supplement permanent staff in the study of complex problems relating to international financial, economic, trade, and energy policies and programs of the Government, when filled by individuals with special qualifications for the particular study being undertaken. Employment under this authority may not exceed 4 years.

(2) Not to exceed 20 positions, which will supplement permanent staff involved in the study and analysis of complex problems in the area of domestic economic and financial policy. Employment under this authority may not exceed 4 years.

(3) Not to exceed 20 positions in the Office of the Under Secretary (Enforcement). Employment under this authority may not exceed 4 years, and no new appointments may be made after July 31, 2001.

(b) *U.S. Customs Service.* (1) Positions in foreign countries designated as "interpreter-translator" and "special employees," when filled by appointment of persons who are not citizens of the United States; and positions in foreign countries of messenger and janitor.

(2)–(5) (Reserved).

(6) Three hundred positions of Criminal Investigator for special assignments and 10 positions for oversight policy and direction of sensitive law enforcement activities.

(7)–(8) (Reserved).

(9) Not to exceed 25 positions of Customs Patrol Officers in the Papago Indian Agency in the State of Arizona when filled by the appointment of persons of one-fourth or more Indian blood.

(d) *Office of Thrift Supervision.* (1) All positions in the supervision policy and supervision operations functions of OTS. No new appointments may be made under this authority after December 31, 1993.

(e) *Internal Revenue Service.* (1) Twenty positions of investigator for special assignments.

(f) (Reserved).

(g) *Bureau of Alcohol, Tobacco, and Firearms.* (1) One hundred positions of criminal investigator for special assignments.

(2) One non-permanent Senior Level (SL) Criminal Investigator to serve as a senior advisor to the Assistant Director (Firearms, Explosives, and Arson).

*Section 213.3106 Department of Defense*

(a) *Office of the Secretary.* (1)–(5) (Reserved).

(6) One Executive Secretary, US–USSR Standing Consultative Commission and Staff Analyst (SALT), Office of the Assistant Secretary of Defense (International Security Affairs).

(b) *Entire Department (including the Office of the Secretary of Defense and the Departments of the Army, Navy, and Air Force).* (1) Professional positions in Military Dependent School Systems overseas.

(2) Positions in attache 1 systems overseas, including all professional and scientific positions in the Naval Research Branch Office in London.

(3) Positions of clerk-translator, translator, and interpreter overseas.

(4) Positions of Educational Specialist the incumbents of which will serve as Director of Religious Education on the staffs of the chaplains in the military services.

(5) Positions under the program for utilization of alien scientists, approved under pertinent directives administered by the Director of Defense Research and Engineering of the Department of Defense, when occupied by alien scientists initially employed under the program including those who have acquired United States citizenship during such employment.

(6) Positions in overseas installations of the Department of Defense when filled by dependents of military or civilian employees of the U.S. Government residing in the area. Employment under this authority may not extend longer than 2 months following the transfer from the area or separation of a dependent's sponsor: *Provided,* that (i) a school employee may be permitted to complete the school year; and (ii) an employee other than a school employee may be permitted to serve up to 1 additional year when the military department concerned finds that the additional employment is in the interest of management.

(7) Twenty secretarial and staff support positions at GS–12 or below on the White House Support Group.

(8) Positions in DOD research and development activities occupied by participants in the DOD Science and Engineering Apprenticeship Program for High School Students. Persons employed under this authority shall be bona fide high school students, at least 14 years old, pursuing courses related to the position occupied and limited to 1,040 working hours a year. Children of DOD employees may be appointed to these positions, notwithstanding the sons and daughters restriction, if the positions are in field activities at remote locations. Appointments under this authority may be made only to positions for which qualification standards established under 5 CFR Part 302 are consistent with the education and experience standards established for comparable positions in the competitive service. Appointments under this authority may not be used to extend the service limits contained in any other appointing authority.

(d) *General.* (1) Positions concerned with advising, administering, supervising, or performing work in the collection, processing, analysis, production, evaluation, interpretation, dissemination, and estimation of intelligence information, including scientific and technical positions in the intelligence function; and positions involved in the planning, programming, and management of intelligence resources when, in the opinion of OPM, it is impracticable to examine. This authority does not apply to positions assigned to cryptologic and communications intelligence activities/functions.

(2) Positions involved in intelligence-related work of the cryptologic intelligence activities of the military departments. This includes all positions of intelligence research specialist, and similar positions in the intelligence classification series; all scientific and technical positions involving the



applications of engineering, physical or technical sciences to intelligence work; and professional as well as intelligence technician positions in which a majority of the incumbent's time is spent in advising, administering, supervising, or performing work in the collection, processing, analysis, production, evaluation, interpretation, dissemination, and estimation of intelligence information or in the planning, programming, and management of intelligence resources.

(e) *Uniformed Services University of the Health Sciences.*

(1) Positions of President, Vice Presidents, Assistant Vice Presidents, Deans, Deputy Deans, Associate Deans, Assistant Deans, Assistants to the President, Assistants to the Vice Presidents, Assistants to the Deans, Professors, Associate Professors, Assistant Professors, Instructors, Visiting Scientists, Research Associates, Senior Research Associates, and Postdoctoral Fellows.

(2) Positions established to perform work on projects funded from grants.

(f) *National Defense University.* (1) Not to exceed 16 positions of senior policy analyst, GS–15, at the Strategic Concepts Development Center. Initial appointments to these positions may not exceed 6 years, but may be extended thereafter in 1-, 2-, or 3-year increments, indefinitely.

(g) *Defense Communicotions Agency.* (1) Not to exceed 10 positions at grades GS–10/15 to staff and support the Crisis Management Center at the White House.

(h) *Defense Systems Management College, Fort Belvoir, Va.* (1) The Provost and professors in grades GS–13 through 15.

(i) *George C. Marshall European Center for Security Studies, Garmisch, Germany.*

(1) The Director, Deputy Director, and positions of professor, instructor, and lecturer at the George C. Marshall European Center for Security Studies, Garmisch, Germany, for initial employment not to exceed 3 years, which may be renewed in increments from 1 to 2 years thereafter.

(j) *Asia-Pacific Center for Security Studies, Honolulu, Hawaii.* (1) The Director, Deputy Director, Dean of Academics, Director of College, deputy department chairs, and senior positions of professor, associate professor, and research fellow within the Asia Pacific Center. Appointments may be made not to exceed 3 years and may be extended for periods not to exceed 3 years.

*Section 213.3107 Department of the Army*

(a)–(c) (Reserved).

(d) *U.S. Military Academy, West Point, New York.* (1) Civilian professors, instructors, teachers (except teachers at the Children's School), Cadet Social Activities Coordinator, Chapel Organist and Choir-Master, Director of Intercollegiate Athletics, Associate Director of Intercollegiate Athletics, coaches, Facility Manager, Building Manager, three Physical Therapists (Athletic Trainers), Associate Director of Admissions for Plans and Programs, Deputy Director of Alumni Affairs; and librarian when filled by an officer of the Regular Army retired from active service, and the military secretary to the Superintendent when filled by a U.S. Military Academy graduate retired as a regular commissioned officer for disability.

(e)–(f) (Reserved).

(g) *Defense Language Institute.* (1) All positions (professors, instructors, lecturers) which require proficiency in a foreign language or a knowledge of foreign language teaching methods.

(h) *Army War College, Carlisle Barracks, PA.* (1) Positions of professor, instructor, or lecturer associated with courses of instruction of at least 10 months duration for employment not to exceed 5 years, which may be renewed in 1-, 2-, 3-, 4-, or 5-year increments indefinitely thereafter.

(i) (Reserved).

(j) *U.S. Military Academy Preparatory School, Fort Monmouth, New Jersey.* (1) Positions of Academic Director, Department Head, and Instructor.

(k) *U.S. Army Command and General Staff College, Fort Leavenworth, Kansas.* (1) Positions of professor, associate professor, assistant professor, and instructor associated with courses of instruction of at least 10 months duration, for employment not to exceed up to 5 years, which may be renewed in 1, 2, 3, 4, or 5-year increments indefinitely thereafter.

*Section 213.3108 Department of the Navy*

(a) *General.* (1)–(14) (Reserved).

(15) Marine positions assigned to a coastal or seagoing vessel operated by a naval activity for research or training purposes.

(16) All positions necessary for the administration and maintenance of the official residence of the Vice President.

(b) *Naval Academy, Naval Postgraduate School, and Naval War College.* (1) Professors, instructors, and teachers; the Director of Academic Planning, Naval Postgraduate School; and the Librarian, Organist-Choirmaster, Registrar, the Dean of Admissions, and social counselors at the Naval Academy.

(c) *Chief of Naval Operations.* (1) One position at grade GS–12 or above that will provide technical, managerial, or administrative support on highly classified functions to the Deputy Chief of Naval Operations (Plans, Policy, and Operations).

(d) *Military Sealift Command.* (1) All positions on vessels operated by the Military Sealift Command.

(e) *Pacific Missile Range Facility, Barking Sands, Hawaii.* (1) All positions. This authority applies only to positions that must be filled pending final decision on contracting of Facility operations. No new appointments may be made under this authority after July 29, 1988.

(f) (Reserved).

(g) *Office of Naval Research.* (1) Scientific and technical positions, GS/GM–13/15, in the Office of Naval Research Asian Office in Tokyo, Japan, which covers East Asia, New Zealand and Australia. Positions are to be filled by personnel having specialized experience in scientific and/or technical disciplines of current interest to the Department of the Navy.

*Section 213.3109 Department of the Air Force*

(a) *Office of the Secretary.* (1) One Special Assistant in the Office of the Secretary of the Air Force. This position has advisory rather than operating duties except as operating or administrative responsibilities may be exercised in connection with the pilot studies.

(b) *General.* (1) Professional, technical, managerial and administrative positions supporting space activities, when approved by the Secretary of the Air Force.

(2) Ninety-five positions engaged in interdepartmental defense projects involving scientific and technical evaluations.

(c) Not to exceed 20 professional positions, GS–11 through GS–15, in Detachments 6 and 51, SM–ALC, Norton and McClellan Air Force Bases, California, which will provide logistic support management to specialized research and development projects.

(d) *U.S. Air Force Academy, Colorado.* (1) (Reserved).

(2) Positions of Professor, Associate Professor, Assistant Professor, and Instructor, in the Dean of Faculty, Commandant of Cadets, Director of Athletics, and Preparatory School of the United States Air Force Academy.

(e) (Reserved).

(f) *Air Force Office of Special Investigations.* (1) Not to exceed 350 positions of Criminal Investigators/

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Intelligence Research Specialists, GS–5 through GS–15.

(g) Not to exceed eight positions, GS–12 through 15, in Headquarters Air Force Logistics Command, DCS Material Management, Office of Special Activities, Wright-Patterson Air Force Base, Ohio, which will provide logistic support management staff guidance to classified research and development projects.

(h) *Air University, Maxwell Air Force Base, Alabama.* (1) Positions of Professor, Instructor, or Lecturer.

(i) *Air Force Institute of Technology, Wright-Patterson Air Force Base, Ohio.* (1) Civilian deans and professors.

(j) *Air Force Logistics Command.* (1) One Supervisory Logistics Management Specialist, GM–346–14, in Detachment 2, 2762 Logistics Management Squadron (Special), Greenville, Texas.

(k) One position of Supervisory Logistics Management Specialist, GS–346–15, in the 2762nd Logistics Squadron (Special), at Wright-Patterson Air Force Base, Ohio.

(l) One position of Commander, Air National Guard Readiness Center, Andrews Air Force Base, Maryland.

*Section 213.3110 Department of Justice*

(a) *General.* (1) Deputy U.S. Marshals employed on an hourly basis for intermittent service.

(2) Positions at GS–15 and below on the staff of an office of a special counsel.

(3)–(5) (Reserved).

(6) Positions of Program Manager and Assistant Program Manager supporting the International Criminal Investigative Training Assistance Program in foreign countries. Initial appointments under this authority may not exceed 2 years, but may be extended for an additional period not to exceed 2 years.

(b) *Immigration and Naturalization Service.* (1) (Reserved).

(2) Not to exceed 500 positions of interpreters and language specialists, GS–1040–5/9.

(3) Not to exceed 25 positions, GS–15 and below, with proficiency in speaking, reading, and writing the Russian language and serving in the Soviet Refugee Processing Program with permanent duty location in Moscow, Russia.

(c) *Drug Enforcement Administration.* (1) (Reserved).

(2) Four hundred positions of Intelligence Research Agent and/or Intelligence Operation Specialist in the GS–132 series, grades GS–9 through GS–15.

(3) Not to exceed 200 positions of Criminal Investigator (Special Agent). New appointments may be made under this authority only at grades GS–7/11.

(d) *National Drug Intelligence Center.* All positions.

*Section 213.3112 Department of the Interior*

(a) *General.* (1) Technical, maintenance, and clerical positions at or below grades GS–7, WG–10, or equivalent, in the field service of the Department of the Interior, when filled by the appointment of persons who are certified as maintaining a permanent and exclusive residence within, or contiguous to, a field activity or district, and as being dependent for livelihood primarily upon employment available within the field activity of the Department.

(2) All positions on Government-owned ships or vessels operated by the Department of the Interior.

(3) Temporary or seasonal caretakers at temporarily closed camps or improved areas to maintain grounds, buildings, or other structures and prevent damages or theft of Government property. Such appointments shall not extend beyond 130 working days a year without the prior approval of OPM.

(4) Temporary, intermittent, or seasonal field assistants at GS–7, or its equivalent, and below in such areas as forestry, range management, soils, engineering, fishery and wildlife management, and with surveying parties. Employment under this authority may not exceed 180 working days a year.

(5) Temporary positions established in the field service of the Department for emergency forest and range fire prevention or suppression and blister rust control for not to exceed 180 working days a year: *Provided,* that an employee may work as many as 220 working days a year when employment beyond 180 days is required to cope with extended fire seasons or sudden emergencies such as fire, flood, storm, or other unforeseen situations involving potential loss of life or property.

(6) Persons employed in field positions, the work of which is financed jointly by the Department of the Interior and cooperating persons or organizations outside the Federal service.

(7) All positions in the Bureau of Indian Affairs and other positions in the Department of the Interior directly and primarily related to providing services to Indians when filled by the appointment of Indians. The Secretary of the Interior is responsible for defining the term "Indian."

(8) Temporary, intermittent, or seasonal positions at GS–7 or below in Alaska, as follows: Positions in nonprofessional mining activities, such as those of drillers, miners, caterpillar operators, and samplers. Employment under this authority shall not exceed 180 working days a year and shall be appropriate only when the activity is carried on in a remote or isolated area and there is a shortage of available candidates for the positions.

(9) Temporary, part-time, or intermittent employment of mechanics, skilled laborers, equipment operators and tradesmen on construction, repair, or maintenance work not to exceed 180 working days a year in Alaska, when the activity is carried on in a remote or isolated area and there is a shortage of available candidates for the positions.

(10) Seasonal airplane pilots and airplane mechanics in Alaska, not to exceed 180 working days a year.

(11) Temporary staff positions in the Youth Conservation Corps Centers operated by the Department of the Interior. Employment under this authority shall not exceed 11 weeks a year except with prior approval of OPM.

(12) Positions in the Youth Conservation Corps for which pay is fixed at the Federal minimum wage rate. Employment under this authority may not exceed 10 weeks.

(b) (Reserved).

(c) *Indian Arts and Crafts Board.* (1) The Executive Director.

(d) (Reserved).

(e) *Office of the Assistant Secretary, Territorial and International Affairs.* (1) (Reserved).

(2) Not to exceed four positions of Territorial Management Interns, grades GS–5, GS–7, or GS–9, when filled by territorial residents who are U.S. citizens from the Virgin Islands or Guam; U.S. nationals from American Samoa; or in the case of the Northern Marianas, will become U.S. citizens upon termination of the U.S. trusteeship. Employment under this authority may not exceed 6 months.

(3) (Reserved).

(4) Special Assistants to the Governor of American Samoa who perform specialized administrative, professional, technical, and scientific duties as members of his or her immediate staff.

(f) *National Park Service.* (1) (Reserved).

(2) Positions established for the administration of Kalaupapa National Historic Park, Molokai, Hawaii, when filled by appointment of qualified patients and Native Hawaiians, as provided by Public Law 95–565.

(3) Seven full-time permanent and 31 temporary, part-time, or intermittent positions in the Redwood National Park, California, which are needed for rehabilitation of the park, as provided by Public Law 95–250.



(4) One Special Representative of the Director.

(5) All positions in the Grand Portage National Monument, Minnesota, when filled by the appointment of recognized members of the Minnesota Chippewa Tribe.

(g) *Bureau of Reclamation.* (1) Appraisers and examiners employed on a temporary, intermittent, or part-time basis on special valuation or prospective-entrymen-review projects where knowledge of local values on conditions or other specialized qualifications not possessed by regular Bureau employees are required for successful results. Employment under this provision shall not exceed 130 working days a year in any individual case: *Provided,* that such employment may, with prior approval of OPM, be extended for not to exceed an additional 50 working days in any single year.

(h) *Office of the Deputy Assistant Secretary for Territorial Affairs.* (1) Positions of Territorial Management Interns, GS–5, when filled by persons selected by the Government of the Trust Territory of the Pacific Islands. No appointment may extend beyond 1 year.

*Section 213.3113 Department of Agriculture*

(a) *General.* (1) Agents employed in field positions the work of which is financed jointly by the Department and cooperating persons, organizations, or governmental agencies outside the Federal service. Except for positions for which selection is jointly made by the Department and the cooperating organization, this authority is not applicable to positions in the Agricultural Research Service or the National Agricultural Statistics Service. This authority is not applicable to the following positions in the Agricultural Marketing Service: Agricultural commodity grader (grain) and (meat), (poultry), and (dairy), agricultural commodity aid (grain), and tobacco inspection positions.

(2)–(4) (Reserved).

(5) Temporary, intermittent, or seasonal employment in the field service of the Department in positions at and below GS–7 and WG–10 in the following types of positions: Field assistants for subprofessional services; agricultural helpers, helper-leaders, and workers in the Agricultural Research Service and the Animal and Plant Health Inspection Service; and subject to prior OPM approval granted in the calendar year in which the appointment is to be made, other clerical, trades, crafts, and manual labor positions. Total employment under this subparagraph may not exceed 180 working days in a service year: *Provided,* that an employee may work as many as 220 working days in a service year when employment beyond 180 days is required to cope with extended fire seasons or sudden emergencies such as fire, flood, storm, or other unforeseen situations involving potential loss of life or property. This paragraph does not cover trades, crafts, and manual labor positions covered by paragraph (i) of § 213.3102 or positions within the Forest Service.

(6) (Reserved).

(7) Not to exceed 34 Program Assistants, whose experience acquired in positions excepted from the competitive civil service in the administration of agricultural programs at the State level is needed by the Department for the more efficient administration of its programs. No new appointment may be made under this authority after December 31, 1985.

(b)–(c) (Reserved).

(d) *Farm Service Agency.* (1) (Reserved).

(2) Members of State Committees: *Provided,* that employment under this authority shall be limited to temporary intermittent (WAE) positions whose principal duties involve administering farm programs within the State consistent with legislative and Departmental requirements and reviewing national procedures and policies for adaptation at State and local levels within established parameters. Individual appointments under this authority are for 1 year and may be extended only by the Secretary of Agriculture or his designee. Members of State Committees serve at the pleasure of the Secretary.

(e) *Rural Development.* (1) (Reserved).

(2) County committeemen to consider, recommend, and advise with respect to the Rural Development program.

(3) Temporary positions whose principal duties involve the making and servicing of natural disaster emergency loans pursuant to current statutes authorizing natural disaster emergency loans. Appointments under this provision shall not exceed 1 year unless extended for one additional period not to exceed 1 year, but may, with prior approval of OPM be further extended for additional periods not to exceed 1 year each.

(4)–(5) (Reserved).

(6) Professional and clerical positions in the Trust Territory of the Pacific Islands when occupied by indigenous residents of the Territory to provide financial assistance pursuant to current authorizing statutes.

(f) *Agricultural Marketing Service.* (1) Positions of Agricultural Commodity Graders, Agricultural Commodity Technicians, and Agricultural Commodity Aids at grades GS–9 and below in the tobacco, dairy, and poultry commodities; Meat Acceptance Specialists, GS–11 and below; Clerks, Office Automation Clerks, and Computer Clerks at GS–5 and below; Clerk-Typists at grades GS–4 and below; and Laborers under the Wage System. Employment under this authority is limited to either 1,280 hours or 180 days in a service year.

(2) Positions of Agricultural Commodity Graders, Agricultural Commodity Technicians, and Agricultural Commodity Aids at grades GS–11 and below in the cotton, raisin, and processed fruit and vegetable commodities and the following positions in support of these commodities: Clerks, Office Automation Clerks, and Computer Clerks and Operators at GS–5 and below; Clerk-Typists at grades GS–4 and below; and, under the Federal Wage System, High Volume Instrumentation (HVI) Operators and HVI Operator Leaders at WG/WL–2 and below, respectively, Instrument Mechanics/Workers/Helpers at WG–10 and below, and Laborers. Employment under this authority may not exceed 180 days in a service year. In unforeseen situations such as bad weather or crop conditions, unanticipated plant demands, or increased imports, employees may work up to 240 days in a service year. Cotton Agricultural Commodity Graders, GS–5, may be employed as trainees for the first appointment for an initial period of 6 months for training without regard to the service year limitation.

(3) Milk Market Administrators.

(4) All positions on the staffs of the Milk Market Administrators. (g)–(k) (Reserved).

(l) *Food Safety and Inspection Service.* (1)–(2) (Reserved).

(3) Positions of meat and poultry inspectors (veterinarians at GS–11 and below and nonveterinarians at appropriate grades below GS–11) for employment on a temporary, intermittent, or seasonal basis, not to exceed 1,280 hours a year.

(m) *Grain Inspection, Packers and Stockyards Administration.* (1) One hundred and fifty positions of Agricultural Commodity Aid (Grain), GS–2/4; 100 positions of Agricultural Commodity Technician (Grain), GS–4/7; and 60 positions of Agricultural Commodity Grader (Grain), GS–5/9, for temporary employment on a part-time, intermittent, or seasonal basis not to exceed 1,280 hours in a service year.

(n) *Alternative Agricultural Research and Commercialization Corporation.* (1) Executive Director.

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*Section 213.3114 Department of Commerce*

(a) *General.* (1)–(2) (Reserved).

(3) Not to exceed 50 scientific and technical positions whose duties are performed primarily in the Antarctic. Incumbents of these positions may be stationed in the continental United States for periods of orientation, training, analysis of data, and report writing.

(b)–(c) (Reserved).

(d) *Bureau of the Census.* (1) Managers, supervisors, technicians, clerks, interviewers, and enumerators in the field service, for time-limited employment to conduct a census.

(2) Current Program Interviewers employed in the field service. (e)–(h) (Reserved).

(i) *Office of the Under Secretary for International Trade.*

(1) Fifteen positions at GS–12 and above in specialized fields relating to international trade or commerce in units under the jurisdiction of the Under Secretary for International Trade. Incumbents will be assigned to advisory rather than to operating duties, except as operating and administrative responsibility may be required for the conduct of pilot studies or special projects. Employment under this authority will not exceed 2 years for an individual appointee.

(2) (Reserved).

(3) Not to exceed 15 positions in grades GS–12 through GS–15, to be filled by persons qualified as industrial or marketing specialists; who possess specialized knowledge and experience in industrial production, industrial operations and related problems, market structure and trends, retail and wholesale trade practices, distribution channels and costs, or business financing and credit procedures applicable to one or more of the current segments of U.S. industry served by the Under Secretary for International Trade, and the subordinate components of his organization which are involved in Domestic Business matters. Appointments under this authority may be made for a period of not to exceed 2 years and may, with prior approval of OPM, be extended for an additional period of 2 years.

(j) *National Oceanic and Atmospheric Administration.* (1)–(2) (Reserved).

(3) All civilian positions on vessels operated by the National Ocean Service.

(4) Temporary positions required in connection with the surveying operations of the field service of the National Ocean Service. Appointment to such positions shall not exceed 8 months in any 1 calendar year.

(k) (Reserved).

(l) *National Telecommunication and Information Administration.* (1) Seventeen professional positions in grades GS–13 through GS–15.

*Section 213.3115 Department of Labor*

(a) *Office of the Secretary.* (1) Chairman and five members, Employees' Compensation Appeals Board.

(2) Chairman and eight members, Benefits Review Board. (b)–(c) (Reserved).

(d) *Employment and Training Administration.* (1) Not to exceed 10 positions of Supervisory Manpower Development Specialist and Manpower Development Specialist, GS–7/15, in the Division of Indian and Native American Programs, when filled by the appointment of persons of one-fourth or more Indian blood. These positions require direct contact with Indian tribes and communities for the development and administration of comprehensive employment and training programs.

*Section 213.3116 Department of Health and Human Services*

(a) *General.* (1) Intermittent positions, at GS–15 and below and WG–10 and below, on teams under the National Disaster Medical System including Disaster Medical Assistance Teams and specialty teams, to respond to disasters, emergencies, and incidents/events involving medical, mortuary and public health needs.

(b) *Public Health Service.* (1) (Reserved).

(2) Positions at Government sanatoria when filled by patients during treatment or convalescence.

(3) (Reserved).

(4) Positions concerned with problems in preventive medicine financed or participated in by the Department of Health and Human Services and a cooperating State, county, municipality, incorporated organization, or an individual in which at least one-half of the expense is contributed by the participating agency either in salaries, quarters, materials, equipment, or other necessary elements in the carrying on of the work.

(5)–(6) (Reserved).

(7) Not to exceed 50 positions associated with health screening programs for refugees.

(8) All positions in the Public Health Service and other positions in the Department of Health and Human Services directly and primarily related to providing services to Indians when filled by the appointment of Indians. The Secretary of Health and Human Services is responsible for defining the term "Indian."

(9) (Reserved).

(10) Health care positions of the National Health Service Corps for employment of any one individual not to exceed 4 years of service in health manpower shortage areas.

(11)–(14) (Reserved).

(15) Not to exceed 200 staff positions, GS–15 and below, in the Immigration Health Service, for an emergency staff to provide health related services to foreign entrants.

(c)–(e) (Reserved).

(f) *The President's Council on Physical Fitness.* (1) Four staff assistants.

*Section 213.3117 Department of Education*

(a) Positions concerned with problems in education financed and participated in by the Department of Education and a cooperating State educational agency, or university or college, in which there is joint responsibility for selection and supervision of employees, and at least one-half of the expense is contributed by the cooperating agency in salaries, quarters, materials, equipment, or other necessary elements in the carrying on of the work.

*Section 213.3124 Board of Governors, Federal Reserve System*

(a) All positions.

*Section 213.3127 Department of Veterans Affairs*

(a) *Construction Division.* (1) Temporary construction workers paid from "purchase and hire" funds and appointed for not to exceed the duration of a construction project.

(b) Not to exceed 400 positions of rehabilitation counselors, GS–3 through GS–11, in Alcoholism Treatment Units and Drug Dependence Treatment Centers, when filled by former patients.

(c) *Board of Veterans' Appeals.* (1) Positions, GS–15, when filled by a member of the Board. Except as provided by section 201(d) of Public Law 100–687, appointments under this authority shall be for a term of 9 years, and may be renewed.

(2) Positions, GS–15, when filled by a non-member of the Board who is awaiting Presidential approval for appointment as a Board member.

(d) Not to exceed 600 positions at grades GS–3 through GS–11, involved in the Department's Vietnam Era Veterans Readjustment Counseling Service.

*Section 213.3132 Small Business Administration*

(a) When the President under 42 U.S.C. 1855–1855g, the Secretary of Agriculture under 7 U.S.C. 1961, or the Small Business Administration under 15 U.S.C. 636(b)(1) declares an area to be a disaster area, positions filled by time-limited appointment of employees to make and administer disaster loans in the area under the Small Business Act, as amended. Service under this authority may not exceed 4 years, and no more than 2 years may be spent on a single disaster. Exception to this time limit may only be made with prior Office approval. Appointments under this authority may not be used to extend the 2-year service limit contained in paragraph (b) below. No one may be appointed under this authority to positions engaged in long-term maintenance of loan portfolios.

(b) When the President under 42 U.S.C. 1855–1855g, the Secretary of Agriculture under 7 U.S.C. 1961, or the Small Business Administration under 15 U.S.C. 636(b)(1) declares an area to be a disaster area, positions filled by time-limited appointment of employees to make and administer disaster loans in that area under the Small Business Act, as amended. No one may serve under this authority for more than an aggregate of 2 years without a break in service of at least 6 months. Persons who have had more than 2 years of service under paragraph (a) of this section must have a break in service of at least 8 months following such service before appointment under this authority. No one may be appointed under this authority to positions engaged in long-term maintenance of loan portfolios.



*Section 213.3133 Federal Deposit Insurance Corporation*

(a)–(b) (Reserved).

(c) Temporary positions located at closed banks or savings and loan institutions that are concerned with liquidating the assets of the institutions, liquidating loans to the institutions, or paying the depositors of closed insured institutions. New appointments may be made under this authority only during the 60 days immediately following the institution's closing date. Such appointments may not exceed 1 year, but may be extended for not to exceed 1 additional year.

*Section 213.3136 U.S. Soldiers' and Airmen's Home*

(a) (Reserved).

(b) Positions when filled by member-residents of the Home.

*Section 213.3138 Federal Communications Commission*

(a) Fifteen positions of Telecommunications Policy Analyst, GS–301–13/14/15. Initial appointment to these positions will be for a period of not to exceed 2 years with provision for two 1-year extensions. No new appointments may be made under this authority after May 31, 1998.

*Section 213.3142 Export-Import Bank of the United States*

(a) One Special Assistant to the Board of Directors, grade GS–14 and above.

*Section 213.3146 Selective Service System*

(a) State Directors.

*Section 213.3148 National Aeronautics and Space Administration*

(a) One hundred and fifty alien scientists having special qualifications in the fields of aeronautical and space research where such employment is deemed by the Administrator of the National Aeronautics and Space Administration to be necessary in the public interest.

*Section 213.3155 Social Security Administration*

(a) Six positions of Social Insurance Representative in the district offices of the Social Security Administration in the State of Arizona when filled by the appointment of persons of one-fourth or more Indian blood.

(b) Seven positions of Social Insurance Representative in the district offices of the Social Security Administration in the State of New Mexico when filled by the appointment of persons of one-fourth or more Indian blood.

(c) Two positions of Social Insurance Representative in the district offices of the Social Security Administration in the State of Alaska when filled by the appointments of persons of one-fourth or more Alaskan Native blood (Eskimos, Indians, or Aleuts).

*Section 213.3162 The President's Crime Prevention Council*

(a) Up to 7 positions established in the President's Crime Prevention Council office created by the Violent Crime Control and Law Enforcement Act of 1994. No new appointments may be made under this authority after March 31, 1998.

*Section 213.3165 Chemical Safety and Hazard Investigation Board*

(a) Up to 37 positions established to create the Chemical Safety and Hazard Investigation Board. No new appointments may be made under this authority after December 31, 2000.

*Section 213.3174 Smithsonian Institution*

(a) (Reserved).

(b) All positions located in Panama which are part of or which support the Smithsonian Tropical Research Institute.

(c) Positions at GS–15 and below in the National Museum of the American Indian requiring knowledge of, and experience in, tribal customs and culture. Such positions comprise approximately 10 percent of the Museum's positions and, generally, do not include secretarial, clerical, administrative, or program support positions.

*Section 213.3175 Woodrow Wilson International Center for Scholars*

(a) One Asian Studies Program Administrator, one International Security Studies Program Administrator, one Latin American Program Administrator, one Russian Studies Program Administrator, one West European Program Administrator, one Environmental Change & Security Studies Program Administrator, one United States Studies Program Administrator, and two Social Science Program Administrators.

*Section 213.3178 Community Development Financial Institutions Fund*

(a) All positions in the Fund and positions created for the purpose of establishing the Fund's operations in accordance with the Community Development Banking and Financial Institutions Act of 1994, except for any positions required by the Act to be filled by competitive appointment. No new appointments may be made under this authority after September 23, 1998.

*Section 213.3180 Utah Reclamation and Conservation Commission*

(a) Executive Director.

*Section 213.3182 National Foundation on the Arts and the Humanities*

(a) *National Endowment for the Arts.* (1) Artistic and related positions at grades GS–13 through GS–15 engaged in the review, evaluation and administration of applications and grants supporting the arts, related research and assessment, policy and program development, arts education, access programs and advocacy or evaluation of critical arts projects and outreach programs. Duties require artistic stature, in-depth knowledge of arts disciplines and/or artistic-related leadership qualities.

*Section 213.3190 African Development Foundation*

(a) One Enterprise Development Fund Manager. Appointment authority is

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limited to four years unless extended by the Office.

*Section 213.3191 Office of Personnel Management*

(a)–(c) (Reserved).

(d) Part-time and intermittent positions of test examiners at grades GS–8 and below.

*Section 213.3194 Department of Transportation*

(a) *U.S. Coast Guard.* (1) (Reserved).

(2) Lamplighters.

(3) Professors, Associate Professors, Assistant Professors, Instructors, one Principal Librarian, one Cadet Hostess, and one Psychologist (Counseling) at the Coast Guard Academy, New London, Connecticut.

(b)–(d) (Reserved).

(e) *Maritime Administration.* (1)–(2) (Reserved).

(3) All positions on Government-owned vessels or those bareboats chartered to the Government and operated by or for the Maritime Administration.

(4)–(5) (Reserved).

(6) U.S. Merchant Marine Academy, positions of: Professors, Instructors, and Teachers, including heads of Departments of Physical Education and Athletics, Humanities, Mathematics and Science, Maritime Law and Economics, Nautical Science, and Engineering; Coordinator of Shipboard Training; the Commandant of Midshipmen, the Assistant Commandant of Midshipmen; Director of Music; three Battalion Officers; three Regimental Affairs Officers; and one Training Administrator.

(7) U.S. Merchant Marine Academy positions of: Associate Dean; Registrar; Director of Admissions; Assistant Director of Admissions; Director, Office of External Affairs; Placement Officer; Administrative Librarian; Shipboard Training Assistant; three Academy Training Representatives; and one Education Program Assistant.

*Section 213.3195 Federal Emergency Management Agency*

(a) Field positions at grades GS–15 and below, or equivalent, which are engaged in work directly related to unique response efforts to environmental emergencies not covered by the Disaster Relief Act of 1974, Public Law 93–288, as amended. Employment under this authority may not exceed 36 months on any single emergency. Persons may not be employed under this authority for long-term duties or for work not directly necessitated by the emergency response effort.

(b) Not to exceed 30 positions at grades GS–15 and below in the Offices of Executive Administration, General Counsel, Inspector General, Comptroller, Public Affairs, Personnel, Acquisition Management, and the State and Local Program and Support Directorate which are engaged in work directly related to unique response efforts to environmental emergencies not covered by the Disaster Relief Act of 1974, Public Law 93–288, as amended. Employment under this authority may not exceed 36 months on any single emergency, or for long-term duties or work not directly necessitated by the emergency response effort. No one may be reappointed under this authority for service in connection with a different emergency unless at least 6 months have elapsed since the individual's latest appointment under this authority.

(c) Not to exceed 350 professional and technical positions at grades GS–5 through GS–15, or equivalent, in Mobile Emergency Response Support Detachments (MERS).

*Section 213.3199 Temporary Organizations*

(a) Positions on the staffs of temporary boards and commissions which are established by law or Executive order for specified periods not to exceed 4 years to perform specific projects. A temporary board or commission originally established for less than 4 years and subsequently extended may continue to fill its staff positions under this authority as long as its total life, including extension(s), does not exceed 4 years. No board or commission may use this authority for more than 4 years to make appointments and position changes unless prior approval of the Office is obtained.

(b) Positions on the staffs of temporary organizations established within continuing agencies when all of the following conditions are met: (1) The temporary organization is established by an authority outside the agency, usually by law or Executive order; (2) the temporary organization is established for an initial period of 4 years or less and, if subsequently extended, its total life including extension(s) will not exceed 4 years; (3) the work to be performed by the temporary organization is outside the agency's continuing responsibilities; and (4) the positions filled under this authority are those for which other staffing resources or authorities are not available within the agency. An agency may use this authority to fill positions in organizations which do not meet all of the above conditions or to make appointments and position changes in a single organization during a period longer than 4 years only with prior approval of the Office.

**Schedule B**

*Section 213.3202 Entire Executive Civil Service*

(a) *Student Educational Employment Program—Student Temporary Employment Program.* (1) Students may be appointed to the Student Temporary Employment Program if they are pursuing any of the following educational programs:

(I) High School Diploma or General Equivalency Diploma (GED);

(ii) Vocational/Technical certificate;

(iii) Associate degree;

(iv) Baccalaureate degree;

(v) Graduate degree; or

(vi) Professional degree

* * * * *

[The remaining text of provisions pertaining to the Student Temporary Employment Program can be found in 5 CFR 213.3202(a).]

(b) *Student Educational Employment Program—Student Career Experience Program.* (1)(i) Students may be appointed to the Student Career Experience Program if they are pursuing any of the following educational programs:

(A) High school diploma or General Equivalency Diploma (GED);

(B) Vocational/Technical certificate;

(C) Associate degree;

(D) Baccalaureate degree;

(E) Graduate degree; or

(F) Professional degree.

(ii) Student participants in the Harry S. Truman Foundation Scholarship Program under the provision of Public Law 93–842 are eligible for appointments under the Student Career Experience Program.

[The remaining text of provisions pertaining to the Student Career Experience Program can be found in 5 CFR 213.3202(b).]

* * * * *

(c)–(i) (Reserved).

(j) Special executive development positions established in connection with Senior Executive Service candidate development programs which have been approved by OPM. A Federal agency may make new appointments under this authority for any period of employment not exceeding 3 years for one individual.

(k) Positions at grades GS–15 and below when filled by individuals who (1) are placed at a severe disadvantage in obtaining employment because of a psychiatric disability evidenced by hospitalization or outpatient treatment and have had a significant period of substantially disrupted employment because of the disability; and (2) are certified to a specific position by a State vocational rehabilitation counselor or a Veterans Administration counseling psychologist (or psychiatrist) who indicates that they meet the severe disadvantage criteria stated above, that they are capable of functioning in the positions to which they will be appointed, and that any residual disability is not job related. Employment of any individual under this authority may not exceed 2 years following each significant period of mental illness.

(l) (Reserved).

(m) Positions when filled under any of the following conditions: (1) Appointment at grades GS–15 and above, or equivalent, in the same or a different agency without a break in service from a career appointment in the Senior Executive Service (SES) of an individual who:

(i) Has completed the SES probationary period;

(ii) Has been removed from the SES because of less than fully successful executive performance or a reduction in force; and

(iii) Is entitled to be placed in another civil service position under 5 U.S.C. 3594(b).

(2) Appointment in a different agency without a break in service of an individual originally appointed under paragraph (m)(1).

(3) Reassignment, promotion, or demotion within the same agency of an individual appointed under this authority.

(n) Positions when filled by preference eligibles or veterans who have been separated from the armed forces under honorable conditions after 3 years or more of continuous active service and who, in accordance with 5 U.S.C. 3304(f) (Pub. L. 105–339), applied for these positions under merit promotion procedures when applications were being accepted by the agency from individuals outside its own workforce. These veterans may be promoted, demoted, or reassigned, as appropriate, to other positions within the agency but would remain employed under this excepted authority as long as there is no break in service. No new appointments may be made under this authority after November 30, 1999.

*Section 213.3203 Executive Office of the President*

(a) (Reserved).

(b) *Office of the Special Representative for Trade Negotiations.* (1) Seventeen positions of economist at grades GS–12 through GS–15.



*Section 213.3204 Department of State*

(a)–(c) (Reserved).

(d) Fourteen positions on the household staff of the President's Guest House (Blair and Blair-Lee Houses).

(e) (Reserved).

(f) Scientific, professional, and technical positions at grades GS–12 to GS–15 when filled by persons having special qualifications in foreign policy matters. Total employment under this authority may not exceed 4 years.

*Section 213.3205 Department of the Treasury*

(a) Positions of Deputy Comptroller of the Currency, Chief National Bank Examiner, Assistant Chief National Bank Examiner, Regional Administrator of National Banks, Deputy Regional Administrator of National Banks, Assistant to the Comptroller of the Currency, National Bank Examiner, Associate National Bank Examiner, and Assistant National Bank Examiner, whose salaries are paid from assessments against national banks and other financial institutions.

(b)–(c) (Reserved).

(d) Positions concerned with the protection of the life and safety of the President and members of his immediate family, or other persons for whom similar protective services are prescribed by law, when filled in accordance with special appointment procedures approved by OPM. Service under this authority may not exceed (1) a total of 4 years; or (2) 120 days following completion of the service required for conversion under Executive Order 11203, whichever comes first.

(e) Positions, grades GS–5 through 12, of Treasury Enforcement Agent in the Bureau of Alcohol, Tobacco, and Firearms; and Treasury Enforcement Agent, Pilot, Marine Enforcement Officer, and Aviation Enforcement Officer in the U.S. Customs Service. Service under this authority may not exceed 3 years and 120 days.

*Section 213.3206 Department of Defense*

(a) *Office of the Secretary.* (1) (Reserved).

(2) Professional positions at GS–11 through GS–15 involving systems, costs, and economic analysis functions in the Office of the Assistant Secretary (Program Analysis and Evaluation); and in the Office of the Deputy Assistant Secretary (Systems Policy and Information) in the Office of the Assistant Secretary (Comptroller).

(3)–(4) (Reserved).

(5) Four Net Assessment Analysts.

(b) *Interdepartmental activities.* (1) Five positions to provide general administration, general art and information, photography, and/or visual information support to the White House Photographic Service.

(2) Eight positions, GS–15 or below, in the White House Military Office, providing support for airlift operations, special events, security, and/or administrative services to the Office of the President.

(c) *National Defense University.* (1) Sixty-one positions of Professor, GS–13/15, for employment of any one individual on an initial appointment not to exceed 3 years, which may be renewed in any increment from 1 to 6 years indefinitely thereafter.

(d) *General.* (1) One position of Law Enforcement Liaison Officer (Drugs), GS–301–15, U.S. European Command.

(2) Acquisition positions at grades GS–5 through GS–11, whose incumbents have successfully completed the required course of education as participants in the Department of Defense scholarship program authorized under 10 U.S.C. 1744.

(e) *Office of the Inspector General.* (1) Positions of Criminal Investigator, GS–1811–5/15.

(f) *Department of Defense Polygraph Institute, Fort McClellan, Alabama.* (1) One Director, GM–15.

(g) *Defense Security Assistance Agency.* All faculty members with instructor and research duties at the Defense Institute of Security Assistance Management, Wright Patterson Air Force Base, Dayton, Ohio. Individual appointments under this authority will be for an initial 3-year period, which may be followed by an appointment of indefinite duration.

*Section 213.3207 Department of the Army*

(a) *U.S. Army Command and General Staff College.* (1) Seven positions of professors, instructors, and education specialists. Total employment of any individual under this authority may not exceed 4 years.

*Section 213.3208 Department of the Navy*

(a) *Naval Underwater Systems Center, New London, Connecticut.* (1) One position of Oceanographer, grade GS–14, to function as project director and manager for research in the weapons systems applications of ocean eddies.

(b) All civilian faculty positions of professors, instructors, and teachers on the staff of the Armed Forces Staff College, Norfolk, Virginia.

(c) One Director and four Research Psychologists at the professor or GS–15

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level in the Defense Personnel Security Research and Education Center.

(d) All civilian professor positions at the Marine Corps Command and Staff College.

(e) One position of Staff Assistant, GS–301–15, whose incumbent will manage the Navy's Executive Dining facilities at the Pentagon.

(f) One position of Housing Management Specialist, GM–1173–14, involved with the Bachelor Quarters Management Study. No new appointments may be made under this authority after February 29, 1992.

*Section 213.3209 Department of the Air Force*

(a) Not to exceed four interdisciplinary positions for the Air Research Institute at the Air University, Maxwell Air Force Base, Alabama, for employment to complete studies proposed by candidates and acceptable to the Air Force. Initial appointments are made not to exceed 3 years, with an option to renew or extend the appointments in increments of 1, 2, or 3 years indefinitely thereafter.

(b)–(c) (Reserved).

(d) Positions of Instructor or professional academic staff at the Air University, associated with courses of instruction of varying durations, for employment not to exceed 3 years, which may be renewed for an indefinite period thereafter.

(e) One position of Director of Development and Alumni Programs, GS–301–13, with the U.S. Air Force Academy, Colorado.

*Section 213.3210 Department of Justice*

(a) Criminal Investigator (Special Agent) positions in the Drug Enforcement Administration. New appointments may be made under this authority only at grades GS–5 through 11. Service under the authority may not exceed 4 years. Appointments made under this authority may be converted to career or career-conditional appointments under the provisions of Executive Order 12230, subject to conditions agreed upon between the Department and OPM.

(b) (Reserved).

(c) Not to exceed 400 positions at grades GS–5 through 15 assigned to regional task forces established to conduct special investigations to combat drug trafficking and organized crime.

(d) (Reserved).

(e) Positions, other than secretarial, GS–6 through GS–15, requiring knowledge of the bankruptcy process, on the staff of the offices of United States Trustees or the Executive Office for U.S. Trustees.

*Section 213.3213 Department of Agriculture*

(a) *Foreign Agricultural Service.* (1) Positions of a project nature involved in international technical assistance activities. Service under this authority may not exceed 5 years on a single project for any individual unless delayed completion of a project justifies an extension up to but not exceeding 2 years.

(b) *General.* (1) Temporary positions of professional Research Scientists, GS–15 or below, in the Agricultural Research Service and the Forest Service, when such positions are established to support the Research Associateship Program and are filled by persons having a doctoral degree in an appropriate field of study for research activities of mutual interest to appointees and the agency. Appointments are limited to proposals approved by the appropriate Administrator. Appointments may be made for initial periods not to exceed 2 years and may be extended for up to 2 additional years. Extensions beyond 4 years, up to a maximum of 2 additional years, may be granted, but only in very rare and unusual circumstances, as determined by the Personnel Officer, Agricultural Research Service, or the Personnel Officer, Forest Service.

(2) Not to exceed 55 Executive Director positions, GM–301–14/15, with the State Rural Development Councils in support of the Presidential Rural Development Initiative.

*Section 213.3214 Department of Commerce*

(a) *Bureau of the Census.* (1) (Reserved).

(2) Not to exceed 50 Community Services Specialist positions at the equivalent of GS–5 through GS–12.

(3) Not to exceed 300 Community Awareness Specialist positions at the equivalent of GS–7 through GS–12. Employment under this authority may not exceed December 31, 1992.

(b)–(c) (Reserved).

(d) *National Telecommunications and Information Administration.* (1) Not to exceed 10 positions of Telecommunications Policy Analysts, grades GS–11 through 15. Employment under this authority may not exceed 2 years.

*Section 213.3215 Department of Labor*

(a) Chairman, two Members, and one Alternate Member, Administrative Review Board.

(b) (Reserved).

(c) *Bureau of International Labor Affairs.* (1) Positions in the Office of Foreign Relations, which are paid by outside funding sources under contracts for specific international labor market technical assistance projects. Appointments under this authority may not be extended beyond the expiration date of the project.

*Section 213.3217 Department of Education*

(a) Seventy-five positions, not in excess of GS–13, of a professional or analytical nature when filled by persons, other than college faculty members or candidates working toward college degrees, who are participating in midcareer development programs authorized by Federal statute or regulation, or sponsored by private nonprofit organizations, when a period of work experience is a requirement for completion of an organized study program. Employment under this authority shall not exceed 1 year.

(b) Fifty positions, GS–7 through GS–11, concerned with advising on education policies, practices, and procedures under unusual and abnormal conditions. Persons employed under this provision must be bona fide elementary school and high school teachers. Appointments under this authority may be made for a period of not to exceed 1 year, and may, with the prior approval of the Office of Personnel Management, be extended for an additional period of 1 year.

*Section 213.3227 Department of Veterans Affairs*

(a) Not to exceed 800 principal investigatory, scientific, professional, and technical positions at grades GS–11 and above in the medical research program.

(b) Not to exceed 25 Criminal Investigator (Undercover) positions, GS–1811, in grades 5 through 12, conducting undercover investigations in the Veterans Health Administration supervised by the VA, Office of Inspector General. Initial appointments shall be greater than 1 year, but not to exceed 4 years and may be extended indefinitely in 1-year increments.

*Section 213.3236 U.S. Soldiers' and Airmen's Home*

(a) (Reserved).

(b) Director, Health Care Services; Director, Member Services; Director, Logistics; and Director, Plans and Programs.



*Section 213.3240 National Archives and Records Administration*

(a) Executive Director, National Historical Publications and Records Commission.

*Section 213.3248 National Aeronautics and Space Administration*

(a) Not to exceed 40 positions of Command Pilot, Pilot, and Mission Specialist candidates at grades GS–7 through 15 in the Space Shuttle Astronaut program. Employment under this authority may not exceed 3 years.

*Section 213.3274 Smithsonian Institution*

(a) (Reserved).

(b) *Freer Gallery of Art.* (1) Not to exceed four positions of Oriental Art Restoration Specialist at grades GS–9 through GS–15.

*Section 213.3276 Appalachian Regional Commission*

(a) Two Program Coordinators.

*Section 213.3278 Armed Forces Retirement Home*

(a) *Naval Home, Gulfport, Mississippi.* (1) One Resource Management Officer position and one Public Works Officer position, GS/GM–15 and below.

*Section 213.3282 National Foundation on the Arts and the Humanities*

(a) (Reserved).

(b) *National Endowment for the Humanities.* (1) Professional positions at grades GS–11 through GS–15 engaged in the review, evaluation, and administration of grants supporting scholarship, education, and public programs in the humanities, the duties of which require indepth knowledge of a discipline of the humanities.

*Section 213.3285 Pennsylvania Avenue Development Corporation*

(a) One position of Civil Engineer (Construction Manager).

*Section 213.3291 Office of Personnel Management*

(a) Not to exceed eight positions of Associate Director at the Executive Seminar Centers at grades GS–13 and GS–14. Appointments may be made for any period up to 3 years and may be extended without prior approval for any individual. Not more than half of the authorized faculty positions at any one Executive Seminar Center may be filled under this authority.

(b) Twelve positions of faculty members at grades GS–13 through 15, at the Federal Executive Institute. Initial appointments under this authority may be made for any period up to 3 years and may be extended in 1-, 2-, or 3-year increments indefinitely thereafter.

**Schedule C**

*Section 213.3303 Executive Office of the President*

Council of Economic Advisers

CEA 1 Confidential Assistant to the Chairman
CEA 4 Confidential Assistant to the Chairman
CEA 5 Administrative Operations Assistant to a Member
CEA 6 Administrative Operations Assistant to a Member

Council on Environmental Quality

CEQ 10 Special Assistant to the Chair, Council on Environmental Quality
CEQ 15 Public Affairs Specialist/Deputy Director to Director for Communications
CEQ 16 Special Assistant to the Chair
CEQ 17 Special Assistant for Outreach and Strategic Planning to the Chief of Staff

Office of Management and Budget

OMB 80 Executive Assistant to the Deputy Director, Office of Management and Budget
OMB 92 Confidential Assistant to the Associate Director for Legislative Reference and Administration
OMB 97 Confidential Assistant to the Administrator, Office of Information and Regulatory Affairs
OMB 102 Special Assistant to the Director, Office of Management and Budget
OMB 107 Senior Public Affairs Specialist to the Director, Office of Management and Budget
OMB 117 Confidential Assistant to the Associate Director, Health/Personnel
OMB 118 Special Assistant to the Controller
OMB 119 Confidential Assistant to the Associate Director, National Security and International Affairs
OMB 123 Legislative Analyst to the Associate Director for Legislative Affairs
OMB 129 Special Assistant for Policy and Legislation to Associate Director, Legislative Affairs
OMB 131 Special Assistant for Policy and Legislation to the Associate Director for Legislative Affairs
OMB 134 Special Assistant to the Director, Office of Management and Budget
OMB 135 Legislative Analyst to the Associate Director for Legislative Affairs
OMB 136 Public Affairs Specialist to the Associate Director for Communication
OMB 137 Legislative Assistant to the Associate Director, Legislative Affairs
OMB 138 Public Affairs Officer to the Associate Director for Communications

Office of National Drug Control Policy

ONDCP 83 Chief, Press Relations to the Director
ONDCP 87 Confidential Administrative Assistant to the Deputy Director
ONDCP 88 Strategic Analyst (Speech writer) to the Chief of Staff
ONDCP 95 Policy Advisor to the Deputy Director
ONDCP 96 Deputy Events Manager to the Director, Strategic Affairs
ONDCP 97 Assistant Director, to the Director, Strategic Planning
ONDCP 98 Staff Assistant to the Chief of Staff
ONDCP 100 Press Relations Assistant (Typing) to the Chief of Press Relations
ONDCP 104 Confidential Assistant to the Director
ONDCP 105 Staff Assistant to the Chief of Staff
ONDCP 108 Special Assistant to the Chief of Staff
ONDCP 109 Staff Assistant to the Director
ONDCP 110 Staff Assistant to the Deputy Director, Supply Reduction

Office of Science and Technology Policy

OSTP 21 Confidential Assistant to the Associate Director Technology Division
OSTP 27 Confidential Assistant to the Associate Director for Science
OSTP 29 Public Affairs Specialist (Assistant) to the Chief of Staff

Office of the United States Trade Representative

USTR 56 Confidential Assistant to the Deputy U.S. Trade Representative
USTR 67 Confidential Assistant to the Chief of Staff
USTR 69 Private Sector Liaison to the Assistant U.S. Trade Representative for Intergovernmental Affairs and Public Liaison
USTR 70 Deputy Assistant for Congressional Affairs to the Assistant U.S. Trade Representative

Official Residence of the Vice President

ORVP 1 Special Assistant, Official Residence of the Vice President to the Chief of Staff to Mrs. Gore

President's Commission on White House Fellowships

PCWHF 7 Education Director to the Director, President's Commission on White House Fellowships
PCWHF 13 Special Assistant to the Director, President's Commission on White House Fellowships

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*Section 213.3304 Department of State*

ST 101 Secretary (Steno O/A) to the Deputy Director
ST 102 Secretary (O/A) to the Under Secretary (Director)
ST 104 Special Assistant to the Under Secretary (Director)
ST 105 Congressional Affairs Specialist to the Director, Congressional Affairs
ST 106 Special Assistant to the Director, Bureau of Education and Cultural Affairs
ST 107 Deputy Chief to the Chief, Cultural Programs Division
ST 108 Legislative Management Officer to the Assistant Secretary, Bureau of Legislative Affairs
ST 109 Special Assistant to the Deputy Assistant Secretary, Bureau of Public Affairs
ST 110 Senior Advisor to the Director, Bureau of Educational and Cultural Affairs
ST 111 Program Officer to the Director, Bureau of Educational and Cultural Affairs
ST 112 Senior Technology Advisor to the Director, Office of International Information Programs
ST 113 Public Affairs Specialist to the Deputy Assistant Secretary, Public Affairs
ST 114 Senior Advisor to the Under Secretary for Public Diplomacy and Public Affairs
ST 115 Staff Director, Fulbright Foreign Scholarship Fund to the Assistant Secretary, Education and Cultural Affairs
ST 116 Special Projects Officer to the Director, Educational and Cultural Affairs
ST 117 Special Assistant to the Director, Office of International Information Programs
ST 118 Senior Advisor to the Deputy Assistant Secretary, Bureau of Public Affairs
ST 119 Director, New York Foreign Press Center to the Deputy Assistant Secretary, Bureau of Public Affairs
ST 121 Special Assistant to the Special Assistant, New York Reception Area
ST 122 Deputy Director to the Director, Intergovernmental Affairs, Bureau of Public Affairs
ST 123 Special Assistant to the Director, Office of International Information Programs
ST 220 Special Assistant to the Assistant Secretary, Bureau of Public Affairs
ST 329 Staff Assistant to the Deputy Secretary of State
ST 399 Confidential Assistant to the Secretary of State
ST 405 Supervisory Protocol Officer (Visits) to the Foreign Affairs Officer (Visits)
ST 406 Staff Assistant to the Under Secretary for Economic, Business and Agricultural Affairs
ST 416 Protocol Officer (Visits) to the Supervisory Protocol Officer for Visits
ST 429 Special Assistant to the Director, Foreign Service Institute
ST 433 Correspondence Officer to the Assistant Secretary, Bureau of Legislative Affairs
ST 451 Special Assistant to the Ambassador-at-Large
ST 460 Staff Assistant to the Chief of Staff
ST 461 Senior Advisor to the Director, Policy Planning Staff
ST 465 Special Assistant to the Secretary of State
ST 467 Foreign Affairs Officer (Visits) to the Chief of Protocol
ST 468 Protocol Officer (Ceremonials) to the Foreign Affairs Officer (Assistant Chief of Protocol for Ceremonials)
ST 478 Special Coordinator to the Deputy Assistant Secretary, Bureau of Democracy, Human Rights and Labor
ST 485 Member Policy Planning Staff to the Director
ST 491 Policy Advisor to the Assistant Secretary, European and Canadian Affairs
ST 495 Senior Coordinator to the Assistant Secretary, Bureau of Democracy, Human Rights and Labor
ST 497 Legislative Management Officer to the Assistant Secretary, Legislative Affairs
ST 500 Staff Assistant to the Special Coordinator for Cyprus
ST 511 Special Assistant to the Legal Advisor
ST 514 Protocol Officer (Visits) to the Foreign Affairs Officer
ST 519 Supervisory Public Affairs Specialist to the Deputy Assistant Secretary
ST 521 Special Assistant to the Deputy Assistant Secretary, Bureau of Public Affairs
ST 523 Office Director (Foreign Affairs) to the Assistant Secretary, Bureau of Democracy, Human Rights and Labor
ST 524 Special Assistant to the Assistant Secretary, Bureau of African Affairs
ST 527 Staff Assistant to the Deputy Assistant Secretary, Bureau of Administration
ST 528 Foreign Affairs Officer (Ceremonials) to the Chief of Protocol
ST 529 Deputy Assistant Secretary to the Assistant Secretary, Bureau of Democracy, Human Rights and Labor
ST 530 Special Assistant to the Assistant Secretary, Asian and Pacific Affairs
ST 531 Special Assistant to the Senior Advisor to the Secretary and White House Liaison
ST 533 Special Assistant to the Ambassador-at-Large for War Crimes Issues
ST 535 Special Assistant to the Women's Coordinator
ST 536 Coordinator, Office of Business Affairs to the Under Secretary for Economic, Business and Agricultural Affairs
ST 539 Foreign Affairs Officer to the Under Secretary for Global Affairs
ST 542 Special Assistant to the Deputy Assistant Secretary, Bureau of Public Affairs
ST 543 Special Assistant to the Assistant Secretary, Bureau of Population, Refugees and Migration
ST 546 Special Assistant to the Assistant Secretary, International Narcotics and Law Enforcement Affairs
ST 547 Special Assistant to the Deputy Assistant Secretary, International Narcotics and Law Enforcement Affairs
ST 548 Member to the Director, Policy and Planning Staff
ST 549 Special Advisor to the Deputy Assistant Secretary
ST 550 Special Assistant to the Chief of Protocol
ST 551 Foreign Affairs Officer to the Deputy Secretary of State
ST 552 Special Assistant to the Senior Advisor
ST 553 Special Assistant to the Assistant Secretary for International Organization Affairs
ST 554 Legislative Management Officer to the Assistant Secretary, Legislative Affairs
ST 555 Legislative Management Officer to the Deputy Assistant Secretary, Legislative Affairs
ST 556 Legislative Management Officer to the Deputy Assistant Secretary
ST 557 Legislative Management Officer to the Assistant Secretary, Bureau of Legislative Affairs
ST 558 Staff Assistant to the Assistant Secretary, Legislative Affairs
ST 559 Staff Assistant to the Deputy Assistant Secretary, Legislative Affairs
ST 560 Special Advisor to the Deputy Assistant Secretary, Bureau of International Narcotics and Law Enforcement
ST 561 Foreign Affairs Officer to the Under Secretary for Global Affairs
ST 562 Legislative Management Officer to the Assistant Secretary, Legislative Affairs
ST 563 Foreign Affairs Officer to the Deputy Director, Office of Policy Planning
ST 565 Public Affairs Specialist to the Deputy AssistantSecretary
ST 566 Public Affairs Specialist to the Deputy Assistant Secretary, Department Spokesman, Bureau of Public Affairs
ST 568 Public Affairs Specialist to the Deputy Assistant Secretary, Public Affairs
ST 569 Public Affairs Specialist to the Deputy Assistant Secretary, Public Affairs
ST 570 Senior Policy Advisor to the Assistant Secretary, Bureau of Legislative Affairs
ST 571 Special Assistant to the Assistant Secretary, Bureau of European Affairs
ST 572 Senior Advisor to the Assistant Secretary, Bureau of South Asian Affairs
ST 573 Resources, Plans and Policy Advisor to the Director, Resources, Plans and Policy
ST 574 Resources, Plans and Policy Advisor to the Director, Resources, Plans and Policy
ST 576 Special Assistant to the Under Secretary for Public Diplomacy and Public Affairs
ST 578 Special Assistant to the Chairman
ST 579 Staff Assistant to the Senior Advisor, Office of the Under Secretary
ST 580 Senior Advisor to the Under Secretary for Public Diplomacy and Public Affairs
ST 581 Staff Assistant to the Under Secretary for Economic, Business and Agricultural Affairs
ST 582 Staff Assistant to the Deputy to the Chief of Staff
ST 583 Program Officer to the Deputy Assistant Secretary, Bureau of Public Affairs
ST 584 Management Analyst to the Deputy Assistant Secretary for Logistics Management
ST 585 Protocol Officer (Visits) to the Chief of Protocol
ST 586 Legislative Management Officer to the Deputy Assistant Secretary, Legislative Affairs
ST 587 Foreign Affairs Officer to the Under Secretary for Global Affairs
ST 588 Special Assistant to the Chief of Protocol
ST 589 Foreign Affairs Officer to the Deputy Director
ST 590 Public Affairs Specialist to the Assistant Secretary, Bureau of Public Affairs
ST 591 Public Affairs Specialist to the Deputy Assistant Secretary, Public Affairs
ST 592 Public Affairs Specialist to the Deputy Assistant Secretary
ST 593 Special Assistant to the Assistant Secretary, Bureau of Oceans, International Environmental and Scientific Affairs
ST 594 Supervisory Public Affairs Specialist to the Deputy Assistant Secretary, Bureau of Public Affairs
ST 595 Special Assistant to the Deputy Assistant Secretary for Public Affairs
ST 596 Program Officer to the Director Foreign Press Center
ST 597 Special Assistant to the United States Representative to the American States, Bureau of Western Hemisphere Affairs
ST 598 Staff Assistant to the Assistant Secretary, Bureau of Legislative Affairs
ST 599 Public Affairs Specialist to the Deputy Assistant Secretary

International Boundary and Water Commission, United States and Mexico

IBWC 1 Confidential Assistant (OA) to the Commissioner, United States Section, International Boundary and Water Commission, United States and Mexico

*Section 213.3305 Department of the Treasury*

TREA 230 Public Affairs Specialist to the Director, Office of Public Affairs
TREA 250 Director, Office of Public Affairs to the Deputy Assistant Secretary
TREA 254 Deputy Executive Secretary to the Executive Secretary
TREA 316 Public Affairs Specialist to the Director, Office of Public Affairs
TREA 317 Public Affairs Specialist to the Director, Office of Public Affairs
TREA 318 Deputy to the Assistant Secretary, Legislative Affairs and Public Liaison
TREA 342 Deputy Treasurer to the Treasurer of the United States
TREA 351 Public Affairs Specialist to the Director, Office of Public Affairs
TREA 357 Director, Public Correspondence & Deputy to the Executive Secretary
TREA 375 Senior Advisor for Public Affairs to the Director of the U.S. Mint
TREA 378 Chief of Staff to the Under Secretary for Enforcement
TREA 380 Deputy to the Assistant Secretary to the Assistant Secretary, Legislative Affairs and Public Liaison
TREA 381 Senior Advisor to the Assistant Secretary for Legislative Affairs and Public Liaison
TREA 384 Special Assistant and Associate White House Liaison to the Chief of Staff
TREA 387 Enforcement Policy Advisor to the Director, Policy Development
TREA 391 Associate Director of Scheduling and Advance to the Director, Strategic Planning, Scheduling and Advance
TREA 394 Executive Secretary to the Chief of Staff
TREA 396 Director, Public and Business Liaison to the Deputy Assistant Secretary for Public Liaison
TREA 397 Senior Deputy to the Assistant Secretary, Legislative Affairs and Public Liaison
TREA 403 Special Assistant to the Assistant Secretary for Economic Policy
TREA 404 Special Assistant to the Assistant Secretary for Financial Institutions
TREA 405 Special Assistant to the Assistant Secretary, Legislative Affairs and Public Liaison
TREA 406 Director, Public and Business Liaison to the Deputy Assistant Secretary Public Liaison, Office of Legislative Affairs and Public Liaison
TREA 408 Senior Policy Advisor to the Deputy Assistant Secretary for Policy Enforcement
TREA 409 Deputy to the Assistant to the Assistant Secretary for Legislative Affairs and Public Liaison
TREA 410 Executive Assistant to the Deputy Secretary
TREA 411 Special Assistant to the Assistant Secretary for Public Affairs
TREA 412 Special Assistant for Scheduling and Advance to the Director, Strategic Planning, Scheduling and Advance
TREA 413 White House Liaison to the Chief of Staff
TREA 414 Senior Advisor to the Deputy Secretary of the Treasury
TREA 415 Public Affairs Specialist to the Deputy Assistant Secretary, Public Affairs
TREA 416 Associate to the Deputy Assistant Secretary, Management Operations
TREA 417 Senior Advisor to the Deputy Assistant Secretary, Government Financial Policy
TREA 418 Special Assistant to the Executive Secretary
TREA 419 Senior Advisor to the Under Secretary (Enforcement)
TREA 420 Special Assistant to the Assistant Secretary, Legislative Affairs and Public Liaison
TREA 421 Special Assistant to the Assistant Secretary, Legislative Affairs and Public Liaison
TREA 422 Attorney-Advisor to the General Counsel

*Section 213.3306 Department of Defense*

DOD 24 Chauffeur to the Secretary of Defense
DOD 33 Personal Secretary to the Deputy Secretary of Defense
DOD 271 Private Secretary to the Assistant Secretary of Defense (Reserve Affairs)
DOD 279 Personal and Confidential Assistant to the Director Operational Test and Evaluation

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DOD 295 Personal and Confidential Assistant to the Under Secretary of Defense for Personnel and Readiness
DOD 300 Confidential Assistant to the Under Secretary (Acquisition and Technology)
DOD 312 Director, Cooperative Threat Reduction to the Assistant Secretary of Defense (Strategy and Threat Reduction)
DOD 319 Confidential Assistant to the Secretary of Defense
DOD 332 Personal and Confidential Assistant to the Assistant Secretary of Defense (Regional Security)
DOD 355 Special Assistant for Strategic Modernization to the Assistant Secretary of Defense (Legislative Affairs)
DOD 368 Personal and Confidential Assistant to the Assistant Secretary of Defense for Legislative Affairs
DOD 428 Staff Assistant to the Special Assistant to the Secretary of Defense for White House Liaison
DOD 440 Personal and Confidential Assistant to the Deputy Under Secretary of Defense for Acquisition Reform
DOD 449 Staff Specialist to the Assistant to the Secretary of Defense for Public Affairs
DOD 459 Public Affairs Specialist to the Assistant to the Secretary of Defense for Public Affairs
DOD 464 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison
DOD 468 Staff Specialist (International) to the Director, Defense Information Systems Agency
DOD 471 Defense Fellow to the Special Assistant for White House Liaison
DOD 473 Personal and Confidential Assistant to the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict
DOD 474 Program Analyst to the Deputy Under Secretary (Environmental Security)
DOD 480 Executive Assistant to the Assistant Secretary of Defense (Strategy Requirements and Resources)
DOD 488 Personal and Confidential Assistant to the Under Secretary of Defense (Comptroller)
DOD 500 Staff Specialist to the Special Assistant for White House Liaison
DOD 501 Special Assistant to the Special Assistant to the Secretary of Defense for White House Liaison
DOD 519 Private Secretary to the Assistant Secretary of Defense (Regional Security Affairs)
DOD 535 Special Assistant to the Deputy to the Under Secretary of Defense for Policy Support
DOD 545 Public Affairs Specialist to the Assistant to the Secretary of Defense (Public Affairs)
DOD 571 Secretary (OA) to the Inspector General, Department of Defense
DOD 577 Special Assistant to the Assistant Secretary (Legislative Affairs)
DOD 578 Personal and Confidential Assistant to the Under Secretary of Defense (Policy)
DOD 580 Defense Fellow to the Special Assistant for White House Liaison
DOD 581 Staff Specialist to the Special Assistant for White House Liaison
DOD 582 Defense Fellow to the Special Assistant for White House Liaison
DOD 583 Speech writer to the Assistant Secretary of Defense for Public Affairs
DOD 588 Director of Communications to the Assistant Secretary of Defense for Legislative Affairs
DOD 595 Confidential Assistant to the Assistant Secretary for Public Affairs
DOD 601 Defense Fellow to the Special Assistant for White House Liaison
DOD 605 Deputy Press Secretary to the Chief Speech Writer for Foreign Affairs
DOD 606 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison
DOD 607 Staff Specialist to the Assistant to the President/Director, White House Office for Women's Initiative and Outreach, Office of the Secretary
DOD 609 Private Secretary to the Deputy Secretary of Defense
DOD 610 Special Assistant to the Assistant Secretary for Health Affairs
DOD 611 Personal and Confidential Assistant to the Secretary of Defense
DOD 613 Staff Assistant to the Secretary of Defense
DOD 614 Staff Specialist to the Chief of Staff to the President
DOD 615 Special Assistant to the Deputy Under Secretary of Defense for Industrial Affairs
DOD 621 Defense Fellow to the Special Assistant for White House Liaison
DOD 624 Defense Fellow to the Special Assistant for White House Liaison
DOD 629 Special Assistant to the Assistant Secretary of Defense, Strategy and Threat Reduction
DOD 631 Staff Specialist to the Director, NATO Policy
DOD 632 Director for Communications Strategy to the Assistant Secretary of Defense for Public Affairs
DOD 634 Special Assistant to the Assistant Secretary of Defense for Legislative Affairs
DOD 635 Director of Public Services to the Assistant Secretary of Defense (Reserve Affairs)
DOD 636 Civilian Executive Assistant to the Chairman, Joint Chiefs of Staff
DOD 638 Director of Editorial Services to the Assistant Secretary of Defense for Public Affairs (European and NATO Affairs)
DOD 639 Staff Specialist to the Assistant Secretary of Defense, (International Security Affairs)
DOD 640 Staff Specialist to the Assistant Secretary of Defense for Strategy and Threat Reduction
DOD 641 Foreign Affairs Specialist to the Deputy Assistant Secretary (Asian and Pacific Affairs)
DOD 642 Special Assistant to the Director, National Partnership for Reinventing Government
DOD 643 Staff Specialist to the Under Secretary for Acquisition and Technology
DOD 646 Defense Fellow to the Special Assistant for White House Liaison
DOD 647 Special Assistant to the Special Assistant to the Secretary and Deputy Secretary of Defense
DOD 649 Confidential Assistant to the Assistant Secretary of Defense for Health Affairs
DOD 650 Speech writer to the Assistant Secretary for Public Affairs
DOD 651 Defense Fellow to the Special Assistant for White House Liaison
DOD 652 Special Assistant to the Special Assistant to the Secretary and Deputy Secretary of Defense
DOD 653 Personal and Confidential Assistant to the Principal Deputy Under Secretary of Defense for Policy
DOD 654 Staff Specialist to the Director, Legislative Affairs
DOD 655 Staff Specialist to the Special Assistant to the President/Senior Director for Intelligence Programs
DOD 658 Speech writer to the Assistant Secretary of Defense for Public Affairs
DOD 660 Staff Specialist to the Special Assistant to the Secretary and Deputy Secretary of Defense
DOD 662 Protocol Specialist to the Director of Protocol
DOD 663 Public Affairs Specialist to the Deputy Assistant Secretary for Communications
DOD 664 International Counterdrug Program Officer to the Principal Director, Drug Enforcement Policy and Support
DOD 665 Special Assistant to the Under Secretary of Defense for Policy
DOD 666 Special Assistant to the Assistant Secretary for Legislative Affairs
DOD 667 Defense Fellow to the Special Assistant for White House Liaison
DOD 668 Defense Fellow to the Special Assistant for White House Liaison
DOD 669 Foreign Affairs Specialist to the Deputy Assistant Secretary for Peacekeeping and Humanitarian Affairs



DOD 670 Foreign Affairs Specialist to the Deputy Assistant Secretary for Inter-American Affairs
DOD 671 Confidential Assistant to the Director, Defense Research and Engineering
DOD 672 Special Assistant to the Assistant Secretary of Defense (Special Operations and Low Intensity Conflict)
DOD 673 Special Assistant for Outreach to the Deputy Under Secretary of Defense (Environmental Security)
DOD 674 Defense Fellow to the Special Assistant to the Secretary of Defense
DOD 675 Special Assistant to the Under Secretary of Defense for Industrial Affairs
DOD 676 Special Assistant for Counter Terrorism/Crisis Management to the Assistant Secretary of Defense for Legislative Affairs
DOD 677 Assistant for Terrorism Consequence Management Policy and Programs to the Deputy Assistant Secretary of Defense
DOD 678 Staff Assistant to the Deputy Assistant Secretary of Defense (Inter-American Affairs)
DOD 679 Defense Fellow to the Special Assistant to Secretary of Defense for White House Liaison
DOD 680 Confidential Assistant to the Deputy Secretary of Defense
DOD 681 Public Affairs Specialist to the Principal Deputy Assistant Secretary of Defense for Public Affairs
DOD 682 Confidential Assistant to the Assistant Secretary of Defense for Public Affairs
DOD 683 Foreign Affairs Specialist to the Deputy Assistant Secretary of Defense (Peacekeeping and Humanitarian Affairs)
DOD 684 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison

*Section 213.3307 Department of the Army (DOD)*

ARMY 1 Executive Staff Assistant to the Secretary of the Army
ARMY 5 Secretary (Office Automation) to the Assistant Secretary of the Army (Installations, Logistics and Environment)
ARMY 17 Secretary (Office Automation) to the Assistant Secretary of the Army (Civil Works)
ARMY 21 Secretary (Office Automation) to the General Counsel of the Army
ARMY 43 Assistant for Public Liaison to the Secretary of the Army
ARMY 55 Secretary (Office Automation) to the Assistant Secretary of the Army (Financial Management)
ARMY 73 Special Assistant to the Secretary of the Army
ARMY 76 Special Assistant to the Assistant Secretary, Research, Development and Acquisition
ARMY 77 Secretary (Office Automation) to the Assistant Secretary of the Army for Research, Development and Acquisition
ARMY 78 Personal and Confidential Assistant to the Under Secretary of the Army
ARMY 79 Speech writer to the Secretary of the Army

*Section 213.3308 Department of the Navy (DOD)*

NAV 56 Staff Assistant to the Assistant Secretary of the Navy (Financial Management)
NAV 62 Attorney Advisor to the Principal Deputy General Counsel
NAV 66 Staff Assistant to the Secretary of the Navy
NAV 68 Special Assistant to the Residence Manager/Social Secretary
NAV 69 Staff Assistant to the Under Secretary of the Navy
NAV 70 Staff Assistant to the Assistant Secretary of the Navy for Research, Development and Acquisition

*Section 213.3309 Department of the Air Force (DOD)*

AF 5 Secretary (Steno) to the Assistant Secretary Acquisition
AF 6 Secretary (Steno) to the Assistant Secretary (Manpower and Reserve Affairs, Installation and Environment)
AF 8 Secretary (Steno/OA) to the General Counsel of the Air Force
AF 22 Secretary (Stenography/OA) to the Assistant to the Vice President for National Security Affairs
AF 31 Staff Assistant to the Assistant to the Vice President for National Security Affairs
AF 42 Staff Assistant to the Principal Deputy Assistant Secretary of the Air Force (Manpower, Reserve Affairs, Installations and Environment).
AF 44 Confidential Assistant to the Secretary of the Air Force

*Section 213.3310 Department of Justice*

JUS 21 Chief of Staff to the Director, Community Oriented Policing Services
JUS 25 Confidential Assistant to the Assistant Attorney General, Criminal Division
JUS 27 Counsel to the Assistant Attorney General, Environmental and Natural Resources Division
JUS 40 Secretary (OA) to the United States Attorney, Eastern District of Michigan
JUS 47 Secretary (OA) to the United States Attorney, Northern District of West Virginia
JUS 97 Assistant to the Attorney General
JUS 114 Staff Assistant to the Attorney General
JUS 115 Special Assistant to the Director, Community Oriented Policing Services
JUS 122 Public Affairs Specialist to the Director, Office of Public Affairs
JUS 133 Staff Assistant to the Assistant to the Attorney General
JUS 140 Attorney Advisor to the Assistant Attorney General
JUS 144 Special Assistant to the Solicitor General
JUS 150 Special Assistant to the Chairman, U.S. Parole Commission
JUS 166 Counsel to the Attorney General
JUS 198 Special Assistant to the Assistant Attorney General, Criminal Division
JUS 207 Staff Assistant to the Director, Office of Public Affairs
JUS 209 Confidential Assistant to the Assistant Attorney General for Civil Rights Division
JUS 211 Secretary (Office Automation) to the United States Attorney, Nevada
JUS 217 Special Assistant to the Assistant Attorney General
JUS 264 Confidential Assistant to the Assistant Attorney General
JUS 266 Staff Assistant to the Director, Office of Public Affairs
JUS 267 Counsel to the Assistant Attorney General
JUS 273 Special Assistant to the Director, Violence Against Women Office
JUS 283 Assistant Director to the Director, Intergovernmental Affairs
JUS 298 Staff Assistant to the Director, Office of Public Affairs
JUS 312 Senior Counsel to the Assistant Attorney General
JUS 316 Special Assistant to the Director, Bureau of Justice Assistance, Office of Justice Programs
JUS 357 Confidential Assistant to the Deputy Attorney General
JUS 360 Deputy Assistant Attorney General to the Assistant Attorney General, Office of Policy Development
JUS 383 Staff Assistant to the Attorney General
JUS 385 Staff Assistant to the Attorney General
JUS 404 Assistant to the Attorney General
JUS 406 Public Affairs Specialist to the Director, Office of Public Affairs
JUS 412 Deputy Director, Office of Public Affairs to the Director, Office of Public Affairs
JUS 418 Secretary (OA) to the U.S. Attorney, District of Nebraska
JUS 420 Confidential Assistant to the United States Attorney, Eastern District of Pennsylvania

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JUS 425 Secretary (OA) to the United States Attorney, Middle District of Pennsylvania
JUS 426 Secretary (OA) to the United States Attorney, District of Maryland
JUS 427 Secretary (OA) to the United States Attorney, District of New Hampshire
JUS 428 Secretary (OA) to the United States Attorney
JUS 431 Secretary (OA) to the United States Attorney, District of Oregon, Portland, OR
JUS 433 Secretary (OA) to the United States Attorney, Middle District of Louisiana
JUS 436 Secretary (OA) to the United States Attorney, Middle District of Alabama
JUS 445 Special Assistant to the Director, Community Relations Service
JUS 448 Secretary (OA) to the U.S. Attorney

*Section 213.3312 Department of the Interior*

INT 172 Special Assistant to the Commissioner of Reclamation
INT 375 Special Assistant to the Secretary and White House Liaison to the Chief of Staff
INT 467 Special Assistant to the Deputy Chief of Staff
INT 479 Special Assistant to the Associate Director for Policy and Management Improvement
INT 490 Special Assistant (Advance) to the Deputy Chief of Staff
INT 502 Special Assistant to the Assistant Secretary for Policy, Management and Budget
INT 505 Special Assistant to the Director, National Park Service
INT 508 Special Assistant to the Deputy Secretary
INT 509 Special Assistant to the Director, National Park Service
INT 511 Special Assistant to the Deputy Chief of Staff
INT 512 Deputy Director, Office of Intergovernmental Affairs to the Deputy Chief of Staff
INT 513 Special Assistant to the Director, Office of Surface Mining
INT 514 Special Assistant to the Director, Bureau of Land Mines
INT 515 Special Assistant to the Chief of Staff
INT 518 Special Assistant to the Deputy Director, Bureau Land Management
INT 519 Senior Advisor to the Assistant Secretary for Water and Science
INT 520 Director of Scheduling and Advance to the Chief of Staff, Office of the Secretary
INT 523 Chief of Staff to the Deputy Secretary
INT 524 Special Assistant to the Director, Bureau of Land Management
INT 525 Communications Director to the Assistant Secretary for Indian Affairs
INT 526 Deputy Director to the Director, Office of Communications
INT 527 Special Assistant to the Director, Office of Communications
INT 528 Special Assistant for Scheduling to the Deputy Director for External Affairs
INT 529 Special Assistant to the Deputy Director, U.S. Geological Survey
INT 531 Attorney Advisor (General) to the Solicitor
INT 532 Special Assistant to the Deputy Chief of Staff
INT 533 Deputy Scheduler (Outreach) to the Deputy Chief of Staff
INT 534 Special Assistant to the Director, Office of Surface Mining
INT 535 Special Assistant to the Director, Minerals Management Service
INT 537 Special Assistant to the Director, Office of Congressional and Legislative Affairs
INT 538 Special Assistant to the Chief of Staff
INT 539 Special Assistant to the White House Liaison
INT 540 Special Assistant to the Director, Fish and Wildlife Service
INT 541 Special Assistant to the Director, Minerals Management Service
INT 542 Communications Director to the Deputy Secretary
INT 543 Deputy Director, Office of Intergovernmental Affairs to the Deputy Chief of Staff
INT 544 Staff Assistant to the Director, Office of Surface Mining
INT 545 Special Assistant for Hawaiian Affairs to the Director, Office of Insular Affairs
INT 546 Deputy Director, to the Director, Office of Insular Affairs
INT 547 Special Assistant to the Chief of Staff
INT 548 Deputy Assistant Secretary for Workforce Diversity to the Assistant Secretary for Policy, Management and Budget
INT 549 Special Assistant to the Deputy Chief of Staff
INT 550 Senior Advisor to the Assistant Secretary, Policy, Management and Budget
INT 551 Special Assistant to the Deputy Chief of Staff
INT 552 Senior Advisor to the Director, Bureau of Land Management
INT 553 Special Assistant to the Deputy Chief of Staff
INT 554 Special Assistant to the Deputy Assistant Secretary, Policy and International Affairs
INT 555 Administrative Aide to the Director of Intergovernmental Affairs
INT 556 Director of Scheduling and Advance to the Deputy Chief of Staff
INT 557 Special Assistant to the Deputy Chief of Staff
INT 558 Special Assistant to the Deputy Assistant Secretary, Policy and International Affairs
INT 559 Special Assistant to the Deputy Chief of Staff
INT 560 Deputy Director, Office of Intergovernmental Affairs to the Deputy Chief of Staff

*Section 213.3313 Department of Agriculture*

AGR 32 Confidential Assistant to the Administrator, Agricultural Stabilization and Conservation Service
AGR 35 Staff Assistant to the Administrator, Federal Service Agency
AGR 64 Confidential Assistant to the Administrator, Rural Utilities Service
AGR 77 Director, Intergovernmental Affairs to the Assistant Secretary for Congressional Relations
AGR 79 Confidential Assistant to the Administrator, Farmers Home Administration
AGR 100 Special Assistant for Nutrition Education to the Administrator, Food and Consumer Service
AGR 131 Private Secretary to the Under Secretary for Natural Resources and Environment
AGR 151 Associate Administrator to the Administrator, Agricultural Marketing Service
AGR 159 Special Assistant to the Administrator, Foreign Agricultural Service
AGR 160 Confidential Assistant to the Associate Administrator, Foreign Agricultural Service
AGR 161 Special Assistant to the Director, Office of Public Affairs
AGR 162 Confidential Assistant to the Administrator, Agricultural Marketing Service
AGR 188 Northeast Area Director to the Deputy Administrator, State and County Operations, Agricultural Stabilization and Conservation Service
AGR 192 Area Director, South West Area to the Administrator, Farm Service Agency
AGR 205 Confidential Assistant to the Director, Office of Consumer Affairs
AGR 224 Chief of Staff to the Administrator, Risk Management Agency
AGR 231 Director, Office of Communications to the Deputy Under Secretary for Rural Development
AGR 258 Confidential Assistant to the Administrator, Foreign Agricultural Service



AGR 263 Special Assistant to the Chief, Natural Resources Conservation Service
AGR 267 Special Assistant to the Director, Office of Communications
AGR 268 Confidential Assistant to the Administrator, Rural Utilities Service
AGR 270 Director, Office of the Executive Secretariat to the Secretary of Agriculture
AGR 275 Confidential Assistant to the Assistant Secretary for Congressional Relations
AGR 281 Confidential Assistant to the Administrator, Farm Service Agency
AGR 285 Confidential Assistant to the Executive Assistant to the Secretary
AGR 286 Confidential Assistant to the Administrator, Foreign Agricultural Service
AGR 294 Confidential Assistant to the Administrator, Animal and Plant Health Inspection Service
AGR 303 Staff Assistant to the Chief, Natural Resources Conservation Service
AGR 311 Confidential Assistant to the Administrator, Agricultural Research Service
AGR 313 Special Assistant to the Administrator, Rural Housing Service
AGR 318 Staff Assistant to the Administrator, Foreign Agricultural Service
AGR 332 Confidential Assistant to the Administrator, Rural Business Service
AGR 352 Confidential Assistant to the Director, Communications and Governmental Affairs
AGR 355 Speech Writer to the Director, Office of Communications
AGR 369 Confidential Assistant to the Director, Office of Communications
AGR 371 Confidential Assistant to the Deputy Under Secretary for Policy and Planning
AGR 377 Confidential Assistant to the Deputy Administrator, Rural Business Service
AGR 384 Confidential Assistant to the Secretary of Agriculture
AGR 386 Special Assistant to the Director, Empowerment Zone/ Enterprise Community
AGR 393 Special Assistant to the Administrator, Rural Business-Cooperative Service
AGR 402 Confidential Assistant to the Director, Office of Communications
AGR 404 Confidential Assistant to the Director of Personnel
AGR 413 Special Assistant to the Chief of Natural Resources Conservation Service
AGR 415 Confidential Assistant to the Administrator, Rural Utilities Service
AGR 418 Confidential Assistant to the Chief, Natural Resources Conservation Service
AGR 422 Special Assistant to the Administrator, Farm Service Agency
AGR 426 Deputy Director, Special Projects to the Director, Office of Communications
AGR 427 Confidential Assistant to the Deputy Secretary
AGR 428 Confidential Assistant to the Administrator, Rural Business and Cooperative Development Service
AGR 435 Confidential Assistant to the Administrator, Grain Inspection, Packers and Stockyards Administration
AGR 436 Confidential Assistant to the Administrator, Rural Utilities Service
AGR 438 Confidential Assistant to the Chief, Natural Resources Conservation Service
AGR 440 Confidential Assistant to the Administrator, Rural Utilities Service
AGR 448 Confidential Assistant to the Deputy Administrator for Community Development, Rural Business Cooperative-Service
AGR 450 Confidential Assistant to the Administrator, Agricultural Research Service
AGR 452 Confidential Assistant to the Administrator, Rural Housing Service
AGR 455 Director, Community Outreach Division to the Deputy Administrator, Community Development
AGR 456 Special Assistant to the Administrator, Rural Development/ Rural Housing Service
AGR 458 Confidential Assistant to the Deputy Under Secretary, Policy and Planning
AGR 459 Confidential Assistant to the Administrator, Farm Agency Service
AGR 461 Special Assistant to the Chief, Forest Service
AGR 465 Confidential Assistant to the Administrator, Rural Utilities Service
AGR 471 Confidential Assistant to the Administrator, Agricultural Marketing Service
AGR 473 Confidential Assistant to the Administrator, Farm Service Agency
AGR 474 Confidential Assistant to the Director, Communications and Governmental Affairs
AGR 477 Special Assistant to the Associate Administrator, Rural Business Service
AGR 478 Confidential Assistant to the Director, Tobacco and Peanuts Division, Farm Service Agency
AGR 479 Special Assistant to the Administrator, Risk Management Agency
AGR 482 Confidential Assistant to the Administrator, Rural Utilities Service
AGR 483 Confidential Assistant to the Administrator, Rural Business Service
AGR 485 Special Assistant to the Administrator, Food and Inspection Service
AGR 487 Confidential Assistant to the Administrator, Farm Service Agency
AGR 488 Confidential Assistant to the Administrator, Economic Research Service
AGR 489 Confidential Assistant to the Chief Financial Officer
AGR 490 Confidential Assistant to the Administrator, Foreign Agricultural Service
AGR 491 Special Assistant to the Administrator, Agricultural Marketing Service
AGR 492 Special Assistant to the Administrator, Risk Management Agency
AGR 493 Special Assistant to the Administrator, Grain Inspection, Packers and Stockyards Administration
AGR 494 Confidential Assistant to the Administrator, Rural Business Service
AGR 496 Confidential Assistant to the Chief, Natural Resources Conservation Service
AGR 497 Executive Assistant to the Administrator, Rural Housing Service
AGR 498 Confidential Assistant to the Chief Information Officer, Policy Analysis and Coordination Center
AGR 499 Confidential Assistant to the Special Assistant to the Secretary
AGR 501 Confidential Assistant to the Director, Office of Civil Rights
AGR 503 Staff Assistant to the Executive Director
AGR 504 Confidential Assistant to the Administrator, Food and Nutrition Service
AGR 507 Confidential Assistant to the Administrator, Farm Service Agency
AGR 509 Regional Director, Outreach to the Associate Chief, Natural Resources Conservation Service
AGR 510 Speech Writer to the Director, Office of Communications
AGR 515 Confidential Assistant to the Administrator, Rural Business-Cooperative Service
AGR 517 Confidential Assistant to the Administrator, Risk Management Agency
AGR 518 Regional Director, Davis, California, to the Administrator, Farm Service Agency
AGR 519 Staff Assistant to the Chief, Natural Resources Conservations Service
AGR 520 Staff Assistant to the Confidential Assistant to the Secretary of Agriculture
AGR 521 Staff Assistant to the Secretary of Agriculture
AGR 522 Special Assistant to the Director, Office of Civil Rights
AGR 524 Confidential Assistant to the Administrator, Rural Utilities Service
AGR 525 Confidential Assistant to the Administrator, Farm Services Agency

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AGR 527 Special Assistant to the Administrator, Foreign Agricultural Service
AGR 528 Confidential Assistant to the Administrator, Farm Service Agency
AGR 529 Special Assistant to the Assistant Secretary for Congressional Relations
AGR 530 Special Assistant to the Confidential Assistant to the Director, Office Civil Rights
AGR 531 Confidential Assistant to the Deputy Administrator, Community Development
AGR 532 Confidential Assistant to the Deputy Administrator, Office of Community Development
AGR 533 Special Assistant to the Deputy Administrator, Community Development
AGR 534 Confidential Assistant to the Director, Office of Communications
AGR 536 Special Assistant to the Deputy Chief Information Officer
AGR 537 Confidential Assistant to the Administrator, Rural Housing Service
AGR 538 Special Assistant to the Associate Chief, Chief Operation Officer, Forest Service
AGR 539 Confidential Assistant to the Administrator, Food Safety and Inspection Service
AGR 542 Confidential Assistant to the Administrator, Rural Utilities Service
AGR 544 Confidential Assistant to the Chief, Natural Resources Conservation Service
AGR 546 Deputy Press Secretary to the Director, Office of Communications
AGR 547 Staff Assistant to the Press Secretary to the Director, Office of Communications
AGR 548 Confidential Assistant to the Director, Office of Communications
AGR 549 Staff Assistant to the Chief (Program Support Assistant) to the Chief, Natural Resources and Environment
AGR 550 Confidential Assistant to the Director, Office of Communications
AGR 551 Special Assistant to the Administrator, Agricultural Research Service
AGR 552 Confidential Assistant to the Administrator, Rural Utilities Service
AGR 553 Staff Assistant to the Administrator, Agricultural Marketing Service
AGR 555 Staff Assistant to the Director, Office of Communications
AGR 556 Confidential Assistant to the Administrator, Animal and Plant Health Inspection Service
AGR 557 Special Assistant to the Chief, Natural Resources Conservation Service
AGR 558 Special Assistant to the Administrator, Foreign Agricultural Service
AGR 559 Confidential Assistant to the Administrator, Risk Management Agency
AGR 560 Senior Policy Director to the Deputy Under Secretary, Policy and Planning
AGR 561 Staff Assistant to the Director, Legislative Liaison, Executive Secretariat and Public Affairs Staff
AGR 562 Confidential Assistant to the Administrator, Rural Housing Service
AGR 563 Confidential Assistant Chief, Natural Resources Conservation Service
AGR 564 Confidential Assistant to the Assistant Secretary for Congressional Relations
AGR 565 Confidential Assistant to the Administrator, Animal and Plant Inspection Service
AGR 566 Confidential Assistant to the Director, Legislative and Public Affairs Staff
AGR 567 Confidential Assistant to the Administrator, Inspection, Packers and Stockyards Administration
AGR 568 Confidential Assistant to the Administrator, External Affairs Staff
AGR 569 Deputy Press Secretary to the Press Secretary
AGR 570 Confidential Assistant to the Administrator, Rural Utilities Service
AGR 571 Staff Assistant to the Director, Office of Communications
AGR 572 Confidential Assistant to the Assistant Secretary for Congressional Relations
AGR 573 Confidential Assistant to the Administrator, Animal Plant and Health Inspection Service
AGR 574 Confidential Assistant to the Administrator, Agricultural Research Service
AGR 575 Special Assistant to the Administrator, Food and Safety Inspection Service
AGR 576 Confidential Assistant to the Administrator, Farm Service Agency
AGR 577 Staff Assistant to the Press Secretary
AGR 578 Confidential Assistant to the Administrator, Rural Utilities Service

*Section 213.3314 Department of Commerce*

COM 1 Deputy Director to the Director, Office of Business Liaison
COM 2 Confidential Assistant to the Director, Office of External Affairs
COM 30 Confidential Assistant to the Director, Minority Business Development Agency
COM 70 Director, Office of Communications and Congressional Liaison to the Assistant Secretary, Economic Development Administration
COM 162 Senior Advisor to the Assistant Secretary for Market Access and Compliance
COM 163 Special Assistant to the Deputy Assistant Secretary
COM 165 Director, Office of Business Liaison to the Secretary of Commerce
COM 190 Director, Office of Congressional Affairs to the Assistant Secretary for Communication and Information
COM 191 Special Counsel to the General Counsel
COM 200 Special Assistant to the Deputy Assistant Secretary for Intergovernmental Affairs
COM 202 Legislative Affairs Specialist to the Deputy Assistant Secretary for Legislative and Intergovernmental Affairs
COM 204 Special Assistant to the Chief Scientist, National Oceanic and Atmospheric Administration
COM 228 Senior Advisor to the Director, Office of Sustainable Development and Intergovernmental Affairs
COM 259 Director of Congressional Affairs to the Under Secretary for International Trade
COM 290 Confidential Assistant to the Director, Office of Business Liaison
COM 291 Special Assistant to the Director, Office of Public Affairs and Press Secretary
COM 292 Legislative Affairs Specialist to the Assistant Secretary for Legislative and Intergovernmental Affairs
COM 294 Executive Director for Electronic Commerce Coordination to the Chief of Staff
COM 309 Senior Advisor to the Director, Minority Business Development Agency
COM 342 Deputy Director, to the Director, Office of the White House Liaison
COM 345 Senior Advisor to the Counselor to the Department, International Trade
COM 354 Special Assistant to the Assistant Secretary for National Telecommunications and Information Administration
COM 365 Senior Advisor to the Director, Minority Business Development Agency
COM 387 Confidential Assistant to the Under Secretary for Oceans and Atmoshpere
COM 393 Legislative Affairs Specialist to the Assistant Secretary for Legislative and Intergovernmental Affairs
COM 416 Director, Office of Consumer Affairs to the Secretary of Commerce
COM 423 Senior Advisor to the Assistant Secretary and Commissioner, Patent and Trademark Office



COM 425 Director of Public Affairs to the Under Secretary, International Trade Administration
COM 444 Senior Advisor to the Assistant Secretary for Economic Development Administration
COM 447 Confidential Assistant to the Chief of Staff
COM 461 Senior Policy Advisor to the Assistant to the Secretary and Director, Office of Strategic Planning
COM 462 Special Assistant to the Under Secretary for Intellectual Property and Director of the U.S. Patent and Trademark Office
COM 473 Special Assistant to the General Counsel
COM 486 Speech writer to the Assistant to the Secretary and Director, Office of Policy and Strategic Planning
COM 491 Deputy Director for External Affairs and Director of Scheduling to the Director, Office of External Affairs
COM 504 Chief, Office of Congressional Affairs to the Assistant Director for Communications
COM 518 Special Assistant to the Under Secretary for Oceans and Atmospheric Administration
COM 527 Executive Assistant to the Secretary of Commerce
COM 530 Special Assistant to the Under Secretary of Commerce for Technology
COM 533 Special Assistant to the Under Secretary for Intellectual Property and Director of the U.S. Patent and Trademark Office
COM 546 Confidential Assistant to the Chief of Staff
COM 551 Special Assistant to the Assistant Secretary for Legislative and Intergovernmental Affairs
COM 561 Special Assistant to the Assistant Secretary and Commissioner, Patent and Trademark Office
COM 576 Special Assistant to the Deputy Director, Office of Policy and Strategic Planning
COM 578 Special Assistant to the Under Secretary for Export Administration
COM 579 Director of Legislative, Intergovernmental and Public Affairs to the Under Secretary, Bureau of Export Administration
COM 583 Special Assistant to the Chief of Staff
COM 589 Special Assistant to the Director, Office of Sustainable Development and Intergovernmental Affairs
COM 612 Senior Advisor to the Deputy Assistant Secretary for Basic Industries
COM 613 Executive Assistant to the Deputy Secretary of Commerce
COM 618 Special Assistant to the Director, Executive Secretariat Staff
COM 622 Special Assistant to the Assistant Secretary for Economic Development Administration
COM 639 Public Affairs Specialist to the Director, Office of Public Affairs and Press Secretary
COM 645 Senior Advisor for Communications to the Under Secretary for Export Administration, Bureau of Export Administration
COM 652 Special Assistant to the Director, Office of Public Affairs
COM 672 Senior Policy Advisor to the Assistant to the Secretary and Director, Office of Policy and Strategic Planning
COM 674 Special Assistant to the Assistant to the Secretary and Director, Office of Policy and Strategic Planning
COM 677 Deputy Director for External Affairs to the Director of External Affairs
COM 684 Special Assistant to the Senior Advisor to the Department for Puerto Rico Initiatives
COM 688 Confidential Assistant to the Director of External Affairs
COM 692 Director, Secretariat for Electronic Commerce to the Assistant to the Secretary and Director, Office of Policy and Strategic Planning
COM 694 Senior Advisor to the Under Secretary for Economic Affairs
COM 695 Senior Advisor and Counsel to the Director, Office of Policy and Strategic Planning
COM 697 Ombudsman to the Under Secretary for Oceans and Atmosphere

*Section 213.3315 Department of Labor*

LAB 3 Special Assistant to the Director, Office of Public Liaison
LAB 24 Special Assistant to the Director of the Women's Bureau
LAB 25 Associate Director to the Assistant Secretary for Congressional and Intergovernmental Affairs
LAB 35 Special Assistant to the Director, Women's Bureau
LAB 43 Special Assistant to the Assistant Secretary for Occupational Safety and Health
LAB 66 Executive Assistant to the Deputy Assistant Secretary, Office of Federal Contracts Compliance Programs, Employment Standards Administration
LAB 83 Special Assistant to the Assistant Secretary, Pension and Welfare Benefits Administration
LAB 93 Special Assistant to the Secretary of Labor
LAB 99 Special Assistant to the Assistant Secretary of Labor
LAB 103 Secretary's Representative, Boston, MA to the Office of the Associate Director
LAB 104 Secretary's Representative to the Assistant Secretary, Office of Congressional and Intergovernmental Affairs
LAB 105 Secretary's Representative, Philadelphia, PA to the Assistant Secretary, Office of Congressional and Intergovernmental Affairs
LAB 106 Secretary's Representative, Atlanta, GA to the Director, Office of Intergovernmental Affairs
LAB 107 Secretary's Representative Chicago, Ill to the Associate Director, Congressional and Intergovernmental Affairs
LAB 109 Secretary's Representative Kansas City, MO, to the Associate Director
LAB 110 Secretary's Representative to the Associate Director, Congressional and Intergovernmental Affairs
LAB 111 Secretary's Representative to the Associate Director, Office of Congressional and Intergovernmental Affairs
LAB 112 Secretary's Representative, Seattle, WA to the Director, Office of Intergovernmental Affairs
LAB 125 Chief of Staff to the Assistant Secretary, Employment Standards Administration
LAB 126 Special Assistant for Public Affairs to the Assistant Secretary, Employment Standards Administration
LAB 129 Special Assistant to the Assistant Secretary for Occupational Safety and Health, Occupational Safety And Health Administration
LAB 130 Special Assistant to the Executive Secretary
LAB 132 Associate Director for Congressional Affairs to the Assistant Secretary for Congressional and Intergovernmental Affairs
LAB 139 Special Assistant to the Wage Hour Administrator
LAB 143 Special Assistant to the Administrator, Office of Job Training Programs, Employment and Training
LAB 145 Intergovernmental Officer to the Associate Director Intergovernmental Affairs
LAB 147 Attorney-Advisor to the Solicitor of Labor
LAB 150 Special Assistant to the Director of Public Liaison
LAB 153 Director of Policy to the Assistant Secretary for Occupational Safety and Health
LAB 159 Special Assistant to the Deputy Under Secretary for International Affairs, Bureau of International Labor Affairs
LAB 160 Director of Scheduling and Advance to the Chief of Staff
LAB 161 Special Assistant to the Secretary (Scheduling) to the Director of Scheduling and Advance
LAB 164 Director of Communications and Public Information to the

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Assistant Secretary for Employment and Training
LAB 171 Special Assistant to the Secretary of Labor
LAB 172 Special Assistant to the Deputy Secretary of Labor
LAB 175 Special Assistant to the Assistant Secretary for Policy
LAB 178 Special Assistant to the Deputy Assistant Secretary for Federal Contract Compliance Programs
LAB 179 Special Assistant to the Assistant Secretary, Employment Standards Administration
LAB 180 Director, Intergovernmental Affairs to the Assistant Secretary, Congressional and Intergovernmental Affairs
LAB 181 Special Assistant to the Deputy Under Secretary for International Labor Affairs
LAB 182 Special Assistant to the Deputy Secretary of Labor
LAB 187 Special Assistant to the Assistant Secretary for Employment and Training
LAB 190 Chief of Staff to the Assistant Secretary, Office of Congressional and Intergovernmental Affairs
LAB 196 Executive Assistant to the Assistant Secretary, Veterans Employment and Training
LAB 204 Special Assistant to the Assistant Secretary for Veterans Employment and Training
LAB 211 Special Assistant to the Director of Scheduling and Advance
LAB 213 Deputy Chief of Staff to the Assistant Secretary for Employment and Training
LAB 215 Special Assistant to the Director, Women's Bureau
LAB 217 Associate Director to the Assistant Secretary for Congressional and Intergovernmental Affairs
LAB 218 Staff Assistant to the Director of Scheduling and Advance
LAB 220 Senior Public Affairs Advisor to the Assistant Secretary for Public Affairs
LAB 221 Special Assistant to the Assistant Secretary for Public Affairs
LAB 225 Special Assistant to the Assistant Secretary for Pension and Welfare Benefits Administration
LAB 226 Special Assistant to the Assistant Secretary
LAB 230 Special Assistant to the Assistant Secretary for Public Affairs
LAB 233 Special Assistant to the Assistant Secretary, Employment Standards Administration
LAB 237 Legislative Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs
LAB 239 White House Liaison to the Secretary of Labor
LAB 240 Legislative Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs
LAB 244 Special Assistant to the Secretary of Labor
LAB 248 Special Assistant to the Chief of Staff
LAB 252 Speech Writer to the Assistant Secretary for Public Affairs
LAB 254 Intergovernmental Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs
LAB 263 Special Assistant to the Administrator, Wage and Hour Division
LAB 269 Intergovernmental Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs
LAB 280 Special Assistant to the Assistant Secretary for Occupational Safety and Health
LAB 283 Advisor to the Assistant Secretary for Mine Safety and Health
LAB 284 Legislative Officer to the Assistant Secretary, Office of Policy and Research, Employment and Training Administration
LAB 288 Special Assistant to the Assistant Secretary for Public Affairs
LAB 289 Special Assistant to the Assistant Secretary for Policy

*Section 213.3316 Department of Health and Human Services*

HHS 2 Special Assistant to the Chief of Staff
HHS 14 Special Assistant to the Executive Secretary
HHS 17 Director of Scheduling to the Chief of Staff,
HHS 31 Special Assistant to the Secretary of Health and Human Services
HHS 120 Special Assistant to the General Counsel
HHS 187 Special Assistant to the Deputy Assistant Secretary for Public Affairs (Media)
HHS 293 Special Assistant to the Commissioner, Administration for Children, Youth and Families
HHS 315 Special Assistant to the Director, Office of Intergovernmental Affairs
HHS 331 Special Assistant to the Administrator, Health Care Financing Administration
HHS 336 Special Assistant to the Deputy Assistant Secretary for Legislation (Human Services)
HHS 340 Executive Assistant to the Assistant Secretary for Legislation
HHS 346 Congressional Liaison Specialist to the Deputy Assistant Secretary for Legislation (Congressional Liaison)
HHS 359 Congressional Liaison to the Deputy Assistant Secretary for Legislation (Congressional Liaison)
HHS 361 Congressional Liaison Specialist to the Deputy Assistant Secretary for Legislation (Congressional Liaison)
HHS 368 Senior Press Officer to the Administrator, Health Care Financing Administration
HHS 373 Confidential Assistant to the Executive Secretary
HHS 395 Special Assistant to the Director, Office of Community Services, Administration for Children and Families.
HHS 399 Special Assistant to the Assistant Secretary for Children and Families
HHS 419 Special Assistant to the Secretary of Health and Human Services
HHS 427 Executive Director, President's Committee on Mental Retardation to the Assistant Secretary for Children and Families
HHS 436 Associate Commissioner for Family and Youth Services to the Commissioner, Administration for Children and Youth Families
HHS 487 Confidential Assistant to the Administrator, Health Care Financing Administration
HHS 489 Special Assistant to the Assistant Secretary for Children and Families
HHS 513 Confidential Assistant to the Administrator, Health Care Financing Administration
HHS 526 Confidential Assistant to the Executive Associate Administrator, Health Care Financing Administration
HHS 527 Confidential Assistant (Scheduling) to the Director of Scheduling
HHS 529 Confidential Assistant (Scheduling) to the Director of Scheduling and Advance
HHS 553 Director of Communications to the Deputy Assistant Secretary for Public Affairs (Policy and Strategy)
HHS 556 Director of Speech writing to the Deputy Assistant Secretary for Public Affairs
HHS 558 Confidential Assistant to the Assistant Secretary for Public Affairs
HHS 585 Special Assistant (Speech writer) to the Director of Speech writing
HHS 588 Director, Office of Intergovernmental Affairs to the Deputy Assistant Secretary for Policy and External Affairs
HHS 589 Speech writer to the Director of Speech writing
HHS 590 Confidential Assistant (Advance) to the Director of Scheduling and Advance
HHS 593 Special Assistant to the Principal Deputy Assistant Secretary for Children and Families
HHS 615 Special Assistant to the Director of Communications



HHS 625 Special Assistant to the Deputy Assistant Secretary for Public Affairs (Policy and Strategy)
HHS 632 Special Outreach Coordinator to the Assistant Secretary for Public Affairs
HHS 634 Special Assistant to the Deputy Director, Office of Child Support Enforcement
HHS 636 Senior Advisor to the Director, Indian Health Service
HHS 643 Executive Assistant for Legislative Projects to the Assistant Secretary for Health
HHS 644 White House Liaison to the Chief of Staff
HHS 645 Strategic Planning and Policy Coordinator to the Deputy Assistant Secretary for Public Affairs (Policy and Strategy)
HHS 646 Deputy Chief of Staff to the Chief of Staff
HHS 657 Executive Director, Presidential Advisory Council on HIV/AIDS to the Assistant Secretary for Public Health and Science
HHS 659 Special Assistant to the Deputy Secretary
HHS 660 Confidential Assistant to the Executive Secretary
HHS 661 Special Assistant to the Deputy Secretary of Health and Human Services
HHS 665 Deputy Director for Policy to the Director of Intergovernmental Affairs
HHS 666 Deputy Director for Operations to the Director of Intergovernmental Affairs
HHS 667 Confidential Assistant to the Executive Secretary to the Department of Health and Human Services
HHS 668 Special Assistant Community Outreach and Liaison to the Administrator, Substance Abuse and Mental Health Services Administration
HHS 672 Deputy Director of Scheduling to the Director of Scheduling
HHS 673 Senior Advisor to the Assistant Secretary for Health
HHS 674 Special Assistant to the Deputy Director, Office of Child Support Enforcement
HHS 675 Special Assistant to Principal Deputy Assistant for Aging
HHS 678 Confidential Assistant to the Deputy Assistant Secretary for Health
HHS 679 Confidential Assistant to the Strategic Planning and Policy Coordinator
HHS 680 Special Assistant to the Deputy Assistant Secretary for Legislation (Human Services)
HHS 681 Special Assistant to the Commissioner, Administration for Children, Youth and Families
HHS 682 Executive Director, President's Advisory Commission and White House Initiative on Asian Americans and Pacific Islanders to the Principal Deputy Assistant Secretary for Health
HHS 683 Confidential Assistant to the Executive Secretary

*Section 213.3317 Department of Education*

EDU 1 Special Assistant to the Secretary's Regional Representative, Region IX
EDU 2 Special Assistant to the Assistant Secretary, Office of Elementary and Secondary Education
EDU 3 Special Assistant to the Deputy Secretary
EDU 4 Deputy Secretary's Regional Representative to the Secretary's Regional Representative, Region IV, Office of Intergovernmental and Interagency Affairs
EDU 5 Special Assistant to the Senior Advisor to the Secretary
EDU 6 Confidential Assistant to the Director, Office of Public Affairs
EDU 8 Special Assistant to the Assistant Secretary for Postsecondary Education
EDU 9 Special Assistant to the Counselor to the Secretary
EDU 11 Confidential Assistant to the Senior Advisor to the Secretary of Education
EDU 13 Special Assistant to the Director, Empowerment Zone, Enterprise Community Task Force Staff
EDU 14 Special Assistant to the Assistant Secretary, Office of Postsecondary Education
EDU 16 Special Assistant to the Director, Office of Public Affairs
EDU 17 Special Assistant to the Director, Office of Public Affairs
EDU 18 Special Assistant to the Deputy Assistant Secretary for Regional and Community Services
EDU 19 Director, Intergovernmental and Interagency Affairs Coordination to the Deputy Assistant Secretary, Intergovernmental and Interagency Affairs Coordination
EDU 20 Steward to the Chief of Staff
EDU 21 Confidential Assistant to the Director of Scheduling and Briefing, Office of the Secretary
EDU 23 Special Assistant to the Assistant Secretary, Office of Post Secondary Education
EDU 24 Special Assistant to the Deputy Assistant Secretary for Regional and Community Services, Intergovernmental and Interagency Affairs
EDU 28 Confidential Assistant to the Senior Advisor to the Secretary
EDU 29 Special Assistant to the Assistant Secretary, Office of Special Education and Rehabilitative Services
EDU 30 Director, Scheduling and Briefing Staff to the Chief of Staff, Office of the Secretary
EDU 31 Deputy Director, Scheduling and Briefing Staff to the Director Scheduling and Briefing Staff
EDU 32 Confidential Assistant to the Chief of Staff
EDU 34 Special Assistant to the Commissioner, Rehabilitation Service Administration
EDU 35 Special Assistant to the Deputy Assistant Secretary for Office of Intergovernmental and Interagency Affairs
EDU 36 Special Assistant to the Senior Advisor to the Secretary (Director, America Reads Challenge)
EDU 37 Special Assistant to the Assistant Secretary, Office for Civil Rights
EDU 38 Special Assistant to the Inspector General
EDU 40 Special Assistant to the Assistant Secretary, Office of Elementary and Secondary Education
EDU 41 Confidential Assistant to the Assistant Secretary, Office of Legislative and Congressional Affairs
EDU 42 Special Assistant to the Assistant Secretary for Elementary and Secondary Education
EDU 44 Deputy Assistant Secretary for Intergovernmental, Constituent Relations and Corporate Liaison to the Assistant Secretary, Office of Intergovernmental and Interagency Affairs
EDU 47 Special Assistant to the Assistant Secretary, Office of Postsecondary Education
EDU 48 Special Assistant/Chief of Staff to the Assistant Secretary, Office of Elementary and Secondary Education
EDU 49 Special Assistant to the Assistant Secretary, Office of Civil Rights
EDU 50 Special Assistant to the Director, Office of Public Affairs
EDU 51 Director, White House Initiatives on Tribal Colleges and Universities to the Assistant Secretary, Office of Vocational and Adult Education
EDU 52 Special Assistant to the Chief of Staff
EDU 53 Special Assistant to the Assistant Secretary, Office of Vocational and Adult Education
EDU 54 Confidential Assistant to the Assistant Secretary for Legislation and Congressional Affairs
EDU 55 Special Assistant to the Director, Historically Black Colleges and Universities Staff
EDU 56 Special Assistant to the Secretary's Regional Representative, Region VII

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EDU 57 Special Assistant to the Assistant Secretary, Office of Legislative and Congressional Affairs
EDU 58 Confidential Assistant to the Deputy Secretary
EDU 59 Special Assistant to the Deputy Secretary
EDU 60 Confidential Assistant to the Chief of Staff, Office of the Deputy Secretary
EDU 64 Special Assistant to the Director, Scheduling and Briefing Staff
EDU 65 Special Assistant to the Director, Scheduling and Briefing
EDU 66 Special Assistant to the Assistant Secretary, Office of Special Education and Rehabilitative Services
EDU 67 Special Assistant to the Secretary of Education
EDU 69 Special Assistant to the Assistant Secretary, Office of Postsecondary Education
EDU 70 Special Assistant to the Deputy Assistant Secretary, Regional and Community Service
EDU 71 Executive Assistant to the Deputy Secretary
EDU 73 Confidential Assistant to the Director, Intergovernmental and Interagency Coordination
EDU 76 Special Assistant to the Assistant Secretary, Office of Postsecondary Education
EDU 78 Special Assistant to the Assistant Secretary, Office of Postsecondary Education
EDU 79 Special Assistant to the Director, Office of Public Affairs
EDU 81 Special Assistant to the Secretary of Education
EDU 82 Deputy Director to the Director, Office of Bilingual Education and Minority Language Affairs
EDU 84 Special Assistant to the Director Scheduling and Briefing Staff
EDU 89 Special Assistant to the Counselor to the Secretary
EDU 93 Confidential Assistant to the Director, White House Liaison
EDU 94 Special Assistant to the Assistant Secretary, Office of Vocational and Adult Education
EDU 96 Special Assistant to the Director, Scheduling and Briefing, Office of the Secretary
EDU 97 Special Assistant to the Assistant Secretary, Office of Postsecondary Education
EDU 100 Confidential Assistant to the Special Assistant to the Counselor to the Secretary, Office of the Secretary
EDU 103 Secretary's Regional Representative, Region VIII–Denver, CO, to the Assistant Secretary for Intergovernmental and Interagency Affairs
EDU 104 Special Assistant to the Counselor to the Secretary
EDU 107 Secretary's Regional Representative, Region V, Chicago, IL to the Deputy Assistant Secretary
EDU 109 Secretary's Regional Representative, Region VII, Kansas City, MO, to the Director, of the State, Local and Regional Services Staff, Office of Intergovernmental and Interagency Affairs
EDU 110 Secretary's Regional Representative—Region II–New York, N.Y. to the Deputy Assistant Secretary for Regional Services
EDU 113 Special Assistant to the Assistant Secretary, Office of Special Education and Rehabilitative Services
EDU 114 Special Assistant to the Assistant Secretary, Office of Elementary and Secondary Education
EDU 117 Director, Historically Black Colleges to the Assistant Secretary, Office of Postsecondary Education
EDU 118 Special Assistant to the Deputy Assistant Secretary, Intergovernmental, Constituent Relations, and Corporate Liaison
EDU 122 Deputy Secretary's Regional Representative Region VI, Dallas, Texas to the Secretary's Regional Representative
EDU 123 Secretary's Regional Representatives Region VI—Dallas, TX, to the Assistant Secretary for Intergovernmental and Interagency Affairs
EDU 127 Secretary's Regional Representative, Region I, Boston, Massachusetts to the Director, Regional Services Team
EDU 128 Confidential Assistant to the Secretary's Regional Representative, Texas
EDU 130 Confidential Assistant to the Assistant Secretary, Office of Postsecondary Education
EDU 131 Secretary's Regional Representative, Region IX, San Francisco, CA, to the Director, State, Local and Regional Services Staff, Office of Governmental and Interagency Affairs
EDU 132 Special Assistant to the Director, Office of Educational Technology, Office of the Deputy Secretary
EDU 134 Special Assistant to the Assistant Secretary, Office of Interagency Affairs and Community Service
EDU 135 Confidential Assistant to the Director, White House Liaison
EDU 139 Special Assistant to the General Counsel
EDU 140 Liaison for Community and Junior Colleges to the Assistant Secretary for Vocational and Adult Education
EDU 145 Special Assistant to the Assistant Secretary, Office of Elementary and Secondary Education
EDU 146 Special Assistant to the Assistant Secretary, Office of Elementary and Secondary Education
EDU 149 Director, White House Initiative on Hispanic Education to the Assistant Secretary, Office of Intergovernmental and Interagency Affairs
EDU 150 Special Assistant to the Deputy Assistant Secretary, Intergovernmental and Interagency Affairs
EDU 156 Special Assistant to the Deputy Secretary
EDU 157 Special Assistant to the Assistant Secretary, Office of Postsecondary Education
EDU 161 Special Assistant to the Assistant Secretary, Office of Elementary and Secondary Education
EDU 164 Special Assistant to the Assistant Secretary, Office of Intergovernmental and Interagency Affairs
EDU 166 Special Assistant to the Deputy Assistant Secretary for Regional and Community Services
EDU 170 Special Assistant to the Deputy Assistant Secretary for Regional and Community Services
EDU 173 Special Assistant to the Counselor to the Secretary
EDU 174 Special Assistant to the Director, Office of Educational Technology
EDU 176 Confidential Assistant to the Assistant Secretary, Office of Elementary and Secondary Education
EDU 177 Special Assistant to the Deputy Assistant Secretary, for Regional and Community Services, Office of Intergovernmental and Interagency Affairs
EDU 178 Confidential Assistant to the Director, White House Initiative on Hispanic Education
EDU 186 Confidential Assistant to the Director, America Reads Challenge
EDU 188 Confidential Assistant to the Senior Advisor to the Secretary
EDU 190 Special Assistant to the Assistant Secretary, Office of Elementary and Secondary Educations
EDU 191 Confidential Assistant to the Senior Advisor to the Secretary
EDU 194 Confidential Assistant to the Deputy Assistant Secretary, Office of Intergovernmental and Interagency Affairs
EDU 197 Confidential Assistant to the Deputy Assistant Secretary for Regional and Community Services
EDU 198 Special Assistant to the Deputy Secretary
EDU 217 Confidential Assistant to the Assistant Secretary for Intergovernmental and Interagency Affairs



EDU 219 Special Assistant to the Senior Advisor to the Secretary
EDU 224 Confidential Assistant to the Deputy Assistant Secretary
EDU 226 Confidential Assistant to the Director, America Reads Challenge
EDU 227 Confidential Assistant to the Director, Scheduling and Briefing Staff
EDU 228 Confidential Assistant to the Chief of Staff
EDU 256 Special Assistant to the Chief of Staff
EDU 332 Confidential Assistant to the Special Assistant to the Secretary, Office of the Secretary
EDU 340 Deputy Secretary's Regional Representative, Region II, New York, NY, to the Secretary's Regional Representative
EDU 347 Secretary's Regional Representative, Region X, Seattle, WA, to the Director of the State, Local and Regional Services Staff, Office of Intergovernmental and Interagency Affairs
EDU 356 Deputy Director to the Director Office of Public Affairs
EDU 374 Confidential Assistant to the Director, Scheduling and Briefing Staff
EDU 404 Secretary's Regional Representative, Region IV, Atlanta, GA, to the Director, State, Local and Regional Services Staff, Office of Intergovernmental and Interagency Affairs

*Section 213.3318 Environmental Protection Agency*

EPA 175 Director, Office of the Executive Secretariat to the Chief of Staff, Office of the Administrator
EPA 187 Counsel to the Assistant Administrator for Air and Radiation
EPA 221 Director, Executive Secretariat to the Chief of Staff
EPA 226 Special Assistant to the Regional Administrator
EPA 228 Senior Policy Advisor to the Regional Administrator
EPA 230 Congressional Liaison Specialist to the Assistant Administrator for the Office of Congressional and Intergovernmental Relations
EPA 231 Deputy Chief of Staff (Scheduling) to the Chief of Staff
EPA 232 Press Secretary to the Administrator to the Associate Administrator, Office of Communications, Education and Media Relations
EPA 233 Senior Advisor to the Assistant Administrator, Office of Resources and Management
EPA 235 Deputy Director, Office of Communications and Governmental Relations to the Deputy Regional Administrator, Region Nine
EPA 237 Congressional Liaison Specialist to the Associate Administrator, Office of Congressional and Intergovernmental Affairs
EPA 238 Special Counsel to the Regional Administrator
EPA 239 Special Assistant to the Deputy Administrator
EPA 240 Special Assistant to the Deputy Administrator

*Section 213.3328 Federal Communications Commission*

FCC 20 Associate Director, Office of Media Relations to the Director, Office of Media Relations
FCC 24 Special Assistant to the Director, Office of Media Relations
FCC 28 Special Assistant for Policy and Communication to the Director, Office of Media Relations
FCC 29 Senior Advisor to the Director, Legislative and Intergovernmental Affairs
FCC 30 Assistant Director to the Director, Office of Media Relations

*Section 213.3323 Overseas Private Investment Corporation*

OPIC 18 Confidential Assistant to the President and Chief Executive Officer
OPIC 20 Director, Protocol and Special Initiatives to the Vice President, Investment Development Department

*Section 213.3325 United States Tax Court*

TCOUS 41 Secretary and Confidential Assistant to a Judge
TCOUS 42 Secretary and Confidential Assistant to a Judge
TCOUS 43 Secretary (Confidential Assistant) to a Judge
TCOUS 44 Secretary and Confidential Assistant to a Judge
TCOUS 45 Secretary and Confidential Assistant to a Judge
TCOUS 46 Secretary and Confidential Assistant to a Judge
TCOUS 47 Secretary (Confidential Assistant) to a Judge
TCOUS 48 Secretary and Confidential Assistant to a Judge
TCOUS 49 Secretary and Confidential Assistant to a Judge
TCOUS 50 Secretary and Confidential Assistant to a Judge
TCOUS 51 Secretary and Confidential Assistant to a Judge
TCOUS 52 Secretary (Confidential Assistant) to a Judge
TCOUS 53 Secretary and Confidential Assistant to a Judge
TCOUS 56 Secretary and Confidential Assistant to a Judge
TCOUS 59 Secretary and Confidential Assistant to a Judge
TCOUS 60 Secretary (Confidential Assistant) to a Judge
TCOUS 61 Secretary and Confidential Assistant to a Judge
TCOUS 62 Secretary and Confidential Assistant to a Judge
TCOUS 63 Secretary and Confidential Assistant to a Judge.
TCOUS 64 Secretary and Confidential Assistant to a Judge
TCOUS 65 Secretary and Confidential Assistant to a Judge
TCOUS 66 Trial Clerk to a Judge
TCOUS 67 Trial Clerk to a Judge
TCOUS 68 Trial Clerk to a Judge
TCOUS 69 Trial Clerk to a Judge
TCOUS 71 Trial Clerk to a Judge
TCOUS 72 Trial Clerk to a Judge
TCOUS 73 Trial Clerk to a Judge
TCOUS 74 Trial Clerk to a Judge
TCOUS 75 Trial Clerk to a Judge
TCOUS 77 Trial Clerk to a Judge
TCOUS 78 Trial Clerk to a Judge
TCOUS 79 Trial Clerk to a Judge
TCOUS 80 Secretary (Confidential Assistant) to a Judge

*Section 213.3327 Department of Veterans Affairs*

VA 72 Special Assistant to the Principal Deputy Assistant Secretary for Congressional Affairs
VA 78 Special Assistant to the Assistant Secretary for Finance and Information Resources Management
VA 79 Special Assistant to the Assistant Secretary for Human Resources and Administration
VA 84 Special Assistant to the Assistant Secretary for Congressional Affairs
VA 90 Executive Assistant to the Deputy Secretary of Veterans Affairs
VA 92 Special Assistant to the Deputy Secretary of Veterans Affairs
VA 96 Special Assistant to the Assistant Secretary for Public and Intergovernmental Affairs
VA 97 Special Assistant to the Assistant Secretary for Policy and Planning
VA 100 Special Assistant to the Deputy Assistant Secretary for International Affairs
VA 101 Special Assistant White House Liaison/Special Projects Staff to the Assistant Secretary for Human Resources and Administration
VA 103 Special Assistant to the Secretary of Veterans Affairs
VA 104 Confidential Assistant to the Secretary of Veterans Affairs
VA 105 Special Assistant to the Chief of Staff
VA 106 Executive Assistant to the Assistant Secretary for Congressional Affairs

*Section 213.3328 Broadcasting Board of Governors*

BBG 1 Staff Director to the Chairman, Advisory Board for Cuba Broadcasting
BBG 2 Writer to the Director, Office of Policy, International Broadcasting Bureau

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BBG 3 Confidential Assistant to the Director, Office of Cuba Broadcasting
BBG 4 Public Affairs Officer to the Director, Voice of America
BBG 5 Senior Advisor to the Director, International Broadcasting Bureau
BBG 6 Development Officer to the Director, International Broadcasting Bureau
BBG 7 Confidential Assistant to the Director, Voice of America

*Section 213.3330 Securities and Exchange Commission*

SEC 2 Confidential Assistant to a Commissioner
SEC 3 Confidential Assistant to a Commissioner
SEC 4 Confidential Assistant to the Chief of Staff
SEC 5 Confidential Assistant to a Commissioner
SEC 6 Confidential Assistant to a Commissioner
SEC 8 Secretary (OA) to the Chief Accountant
SEC 9 Secretary to the General Counsel
SEC 11 Confidential Assistant to the Chairman
SEC 12 Director of Public Affairs to the Chairman,
SEC 14 Secretary to the Director
SEC 16 Secretary to the Director
SEC 18 Secretary to the Director, Division of Investment Management
SEC 19 Secretary to the Director, Corporation Finance
SEC 24 Secretary to the Chief Economist
SEC 28 Confidential Assistant to the Chairman
SEC 29 Secretary to the Deputy Director of Market Regulation
SEC 31 Special Assistant to the Director, Office of Investor Education and Assistance
SEC 32 Public Affairs Specialist to the Director, Office of Public Affairs, Policy Evaluation and Research
SEC 33 Confidential Assistant to the Director of Public Affairs
SEC 39 Director of Legislative Affairs to the Chairman
SEC 40 Special Advisor to the Chairman
SEC 41 Legislative Affairs Specialist to the Director, Legislative Affairs
SEC 42 Secretary to the Director, Office of Compliance Inspections and Examinations

*Section 213.3331 Department of Energy*

DOE 189 Special Assistant to the Assistant Secretary for International Affairs
DOE 220 Special Assistant to the Assistant Secretary for Defense Program
DOE 223 Associate Director to the Director, Office of Policy
DOE 231 Public Affairs Specialist to the Director, Office of Public Affairs
DOE 232 Special Assistant to the Assistant Secretary, Office of Environment, Safety and Health
DOE 301 Senior Advisor for Intergovernmental Affairs to the Deputy Assistant Secretary for Intergovernmental and External Affairs
DOE 320 Special Assistant to the Chief Financial Officer
DOE 345 Special Assistant to the Director, Office of Scheduling and Advance
DOE 501 Executive Officer to the Assistant Secretary, Office of Fossil Energy
DOE 511 Senior Policy Advisor to the Secretary of Energy
DOE 578 Director, Office of Materials Management Policy to the Director, Office of Policy
DOE 587 Senior Advisor on Health Policy to the Assistant Secretary for Environment, Safety and Health
DOE 603 Special Assistant to the Director, Office of Strategic Planning and Analysis
DOE 610 Staff Assistant to the Director, Office of Energy Research
DOE 622 Legislative Affairs Liaison Officer to the Deputy Assistant Secretary for Senate Liaison, Office of Congressional and Intergovernmental Affairs
DOE 631 Special Assistant to the Press Secretary, Press Services Division, Office of Public and Consumer Affairs
DOE 644 Staff Assistant to the Assistant Secretary for Efficiency and Renewable Energy
DOE 654 Confidential Staff Assistant to the Deputy Director for Small and Disadvantaged Business Utilization
DOE 655 Special Assistant for Regulatory Compliance to the Deputy Assistant Secretary for Compliance and Program Coordination
DOE 663 Assistant Director for Energy Research (Communications and Development) to the Director, Office of Energy Research
DOE 666 Special Assistant to the Director, Press Services Division
DOE 667 Staff Assistant to the Assistant Secretary for Energy Efficiency and Renewable Energy
DOE 676 Confidential Assistant to the Deputy Assistant Secretary for Management and Evaluation
DOE 679 Special Assistant to the Assistant Secretary for Policy and International Affairs
DOE 680 Staff Assistant to the Chief Financial Officer
DOE 681 Special Assistant to the Director, Office of Worker and Community Transition
DOE 684 Program Specialist to the Director, International Policy and Analysis Division
DOE 699 Special Assistant to the Assistant Secretary for Energy Efficiency and Renewable Energy
DOE 701 Special Assistant to the Assistant Secretary for Defense Programs
DOE 702 Special Assistant to the Director, Office for Worker and Community Transition
DOE 707 Executive Assistant to the Secretary of Energy
DOE 709 Senior Advisor to the Assistant Secretary for Environment, Safety and Health
DOE 712 Special Assistant to the Assistant Secretary for Energy Efficiency and Renewable Energy
DOE 714 Senior Advisor to the Assistant Secretary for Fossil Energy
DOE 718 Intergovernmental Specialist to the Deputy Assistant Secretary, Office of Planning, Budget and Policy
DOE 720 Director of Communications to the Assistant Secretary for Energy Efficiency and Renewable Energy
DOE 722 Special Assistant to the Assistant Secretary for Energy Efficiency and Renewable Energy
DOE 730 Confidential Assistant to the Director, Office of Economic Impact and Diversity
DOE 735 Special Assistant to the Director, Office of Science
DOE 736 Special Assistant to the Director, Office of Energy Research
DOE 740 Special Assistant to the Director, Office of Civilian Radioactive Management
DOE 741 Special Assistant to the Deputy Assistant Secretary for Natural Gas and Petroleum Technology
DOE 747 Deputy Assistant Secretary for Senate Liaision to the Assistant Secretary for Congressional and Intergovernmental Affairs
DOE 755 Special Assistant to the Director, Office of Human Resources
DOE 756 Senior Policy Advisor to the Secretary of Energy
DOE 757 Special Assistant to the Director, Office of Advance and Special Projects
DOE 758 Special Assistant to the Secretary of Energy
DOE 759 Executive Assistant to the Secretary of Energy
DOE 762 Special Assistant to the Secretary of Energy
DOE 763 Senior Management Advisor to the Director, Office of Nuclear Energy, Science and Technology
DOE 766 Special Assistant for Community Outreach to the Assistant Secretary for Environment, Safety and Health
DOE 767 Special Assistant to the Director, Scheduling and Advance



DOE 770 Deputy Assistant Secretary for House Liaison to the Assistant Secretary for Congressional and Intergovernmental Affairs
DOE 771 Special Projects Officer to the Director, Office of Policy and Planning
DOE 772 Special Projects Officer to the Deputy Director, Office of Policy and Planning
DOE 773 Special Assistant to the Principal Deputy Assistant Secretary for Environmental Management
DOE 775 Special Assistant to the Assistant Secretary for Energy Efficiency and Renewable Energy
DOE 776 Director for Indian Affairs to the Assistant Secretary for Congressional and Intergovernmental Affairs
DOE 777 Senior Policy Advisor to the Director of Management and Administration
DOE 778 Special Assistant to the Director of Scheduling and Advance
DOE 779 Special Assistant to the Assistant Secretary for Policy and International Affairs
DOE 780 Associate Chief Financial Officer for Budget, Planning and Financial Management to the Chief Financial Management
DOE 782 Special Assistant to the Director, Office of Arms Control and Nonproliferation
DOE 783 Congressional Liaison Officer to the Deputy Assistant Secretary for House Liaison
DOE 784 Congressional Liaison Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs
DOE 787 Special Assistant to the Assistant Secretary for Environmental Management
DOE 788 Daily Scheduler to the Director, Office of Scheduling and Advance
DOE 789 Daily Scheduler to the Director, Office of Scheduling and Advance
DOE 791 Advisor to the Chief of Staff
DOE 792 Special Assistant to the Deputy Secretary of Energy
DOE 793 Special Assistant to the Director, Consumer Information
DOE 794 Special Assistant to the Director, Office of Scheduling and Advance
DOE 795 Special Assistant to the Director, Office of Scheduling and Advance
DOE 796 Special Assistant to the Director, Office of Consumer Information
DOE 797 Director, Consumer Information to the Director, Management and Administration
DOE 798 Staff Assistant to the Assistant Secretary for Policy
DOE 799 Special Assistant to the Principal Deputy Assistant Secretary
DOE 800 Special Assistant to the Director, Office of Public Affairs
DOE 801 Staff Assistant to the Director of Scheduling and Advance
DOE 802 Special Assistant to the Assistant Secretary for International Affairs
DOE 803 Senior Policy Advisor to the Assistant Secretary for Defense Programs
DOE 805 Special Assistant to the Deputy Assistant Secretary for Transportation Technologies
DOE 806 Special Projects Officer to the Deputy Assistant Secretary, Office of Power Technology
DOE 808 Special Assistant for Communications to the Assistant Secretary for Environmental Management
DOE 809 Director, Energy Advisory Board to the Secretary of Energy
DOE 810 Public Affairs Specialist to the Director, Office of Public Affairs
DOE 811 Public Affairs Specialist to the Director, Office of Public Affairs
DOE 812 Senior Policy Advisor to the Secretary of Energy
DOE 813 Special Assistant to the Deputy Assistant Secretary for Natural Gas and Petroleum Technology
DOE 814 Senior Policy Advisor to the Secretary of Energy
DOE 815 Special Assistant for Regulatory Compliance to the Assistant Secretary for Environmental Management
DOE 816 Special Assistant to the Director, Office of Science
DOE 817 Special Assistant to the Director, Office of Economic Impact and Diversity
DOE 818 Special Assistant to the Director, Office of Scheduling and Advance
DOE 820 Deputy Assistant Secretary for Intergovernmental and External Affairs to the Principal Deputy Assistant Secretary for Congressional and Intergovernmental Affairs
DOE 821 Special Assistant to the Director, Scheduling and Briefing
DOE 822 Special Assistant to the Director, Office of Scheduling and Advance
DOE 824 Special Assistant to the Principal Deputy Assistant Secretary for Congressional and Intergovernmental Affairs

Federal Energy Regulatory Commission

FERC 1 Special Assistant to the Director, Office of External Affairs
FERC 2 Confidential Assistant to a Member
FERC 3 Confidential Assistant to a Member
FERC 13 Technical Advisor to a Member
FERC 14 Ombudsman to the Director, Office of External Affairs
FERC 15 Special Assistant to the Chief Information Officer
FERC 16 Regulatory Policy Analyst to the Director, Office of Markets, Tariffs and Rates

*Section 213.3332 Small Business Administration*

SBA 11 Deputy Assistant Administrator for Congressional and Legislative Affairs to the Assistant Administrator for Congressional and Legislative Affairs
SBA 30 National Director for Native American Outreach to the Associate Deputy Administrator for Entrepreneurial Development
SBA 35 Senior Advisor to the Associate Deputy Administrator for Government Contracting and Minority Enterprise Development
SBA 55 Senior Advisor to the Associate Deputy Administrator for Management
SBA 59 Assistant Administrator for Public Communications to the Associate Administrator for Communications and Public Liaison
SBA 100 Special Assistant to the Regional Administrator, Dallas Regional Office
SBA 157 Senior Advisor to the Associate Deputy Administrator for Capital Access
SBA 160 Special Assistant to the Assistant Administrator, Office of International Trade
SBA 169 Regional Administrator, Region I, Boston, MA, to the Administrator, Small Business Administration
SBA 170 Regional Administrator to the Associate Administrator for Field Administrations
SBA 172 Regional Administrator, Region VII, Kansas City, MO to the Administrator, Small Business Administration
SBA 173 Regional Administrator, Region VI, Dallas, TX to the Project Director for Field Operations
SBA 174 Regional Administrator, Region V, Chicago, IL to the Assistant Director, for Field Operations
SBA 175 Regional Administrator, Region IV, Atlanta, GA, to the Administrator, Small Business Administration
SBA 176 Regional Administrator, Region II, New York, NY, to the Administrator, Small Business Administration
SBA 178 Regional Administrator, Region III, Philadelphia, PA, to the Administrator, Small Business Administration

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SBA 179 Press Officer and Senior Advisor to the Assistant Administrator for Public Communications
SBA 180 Senior Advisor for Communications and Public Liaison to the Associate Administrator for Marketing and Customer Service
SBA 182 Assistant Administrator for Marketing and Outreach to the Associate Administrator for Communications and Public Liaison
SBA 188 Regional Administrator, Region IX, San Francisco, to the Administrator, Small Business Administration
SBA 189 Regional Administrator to the Assistant Administrator, Field Operations
SBA 190 Deputy Chief of Staff to the Chief of Staff
SBA 194 Special Assistant to the Administrator to the Chief of Staff
SBA 195 Associate Director for Field Operations to the Associate Administrator for Field Operations
SBA 205 Deputy Scheduler to the Chief of Staff
SBA 206 National Director for Community Outreach to the Administrator, Small Business Administration
SBA 208 Senior Advisor to the Associate Deputy Administrator of Entrepreneurial Development
SBA 211 Speech Writer to the Associate Administrator for Communications and Public Liaison
SBA 212 Assistant General Counsel to the General Counsel
SBA 214 Assistant Administrator for International Trade to the Associate Deputy Administrator for Capital Access
SBA 216 Senior Advisor to the Associate Deputy Administrator for Entrepreneurial Development
SBA 217 Director for Intergovernmental Affairs to the Associate Administrator for Commerce and Public Liaison
SBA 218 Senior Advisor to the Deputy Administrator

*Section 213.3333 Federal Deposit Insurance Corporation*

FDIC 11 Secretary to the Chairman
FDIC 15 Administrative Specialist to the Deputy to the Chairman
FDIC 16 Confidential Assistant to the Deputy to the Chairman

*Section 213.3334 Federal Trade Commission*

FTC 2 Director of Public Affairs (Supervisory Public Affairs Specialist) to the Chairman
FTC 14 Congressional Liaison Specialist to the Director of Congressional Relations
FTC 23 Special Assistant to a Commissioner
FTC 24 Special Assistant to a Commissioner
FTC 25 Director, Congressional Relations to the Chairman
FTC 26 Confidential Assistant to a Commissioner

*Section 213.3337 General Services Administration*

GSA 24 Special Assistant to the Commissioner, Public Buildings Service
GSA 44 Senior Advisor to the Chief of Staff
GSA 51 Special Assistant to the Administrator
GSA 69 Congressional Relations Officer to the Associate Administrator for Congressional and Intergovernmental Affairs
GSA 90 Deputy Associate Administrator to the Associate Administrator for Congressional and Intergovernmental Affairs
GSA 94 Senior Policy Advisor to the Associate Administrator, Office of Congressional and Intergovernmental Affairs
GSA 102 Special Assistant to the Regional Administrator, National Capital Region
GSA 113 Special Assistant to the Regional Administrator (Boston, MA)
GSA 114 Special Assistant to the Regional Administrator
GSA 130 Special Assistant to the Regional Administrator, Region 7

*Section 213.3339 U.S. International Trade Commission*

ITC 5 Executive Assistant to a Commissioner
ITC 6 Staff Assistant (Economics) to a Commissioner
ITC 7 Staff Assistant to a Commissioner
ITC 12 Confidential Assistant/Advisor to a Commissioner
ITC 13 Senior Economist to a Commissioner
ITC 15 Confidential Assistant to a Commissioner
ITC 17 Attorney-Advisor (General) to a Commissioner
ITC 18 Staff Assistant (Legal) to a Commissioner
ITC 19 Staff Economist to a Commissioner
ITC 22 Staff Assistant to a Commissioner
ITC 25 Staff Assistant (Economics) to a Commissioner
ITC 30 Confidential Assistant to a Commissioner
ITC 31 Executive Assistant to a Commissioner
ITC 33 Special Assistant (Economics) to a Commissioner
ITC 36 Executive Assistant to a Commissioner

*Section 213.3340 National Archives and Records Administration*

NARA 3 Presidential Diarist to the Archivist of the United States

*Section 213.3341 National Labor Relations Board*

NLRB 1 Confidential Assistant to the Chairman

*Section 213.3342 Export-Import Bank of the United States*

EXIM 3 Administrative Assistant to the President and Chairman
EXIM 30 Administrative Assistant to the Director
EXIM 44 Personal and Confidential Assistant to the First Vice President and Vice Chairman
EXIM 44 Personal and Confidential Assistant to the First Vice President and Vice Chairman
EXIM 45 Administrative Assistant to the Director, a Member of the Bank Board of Directors
EXIM 46 Special Assistant to the First Vice President and Vice Chairman
EXIM 48 Administrative Assistant to the Director, Member of the Board
EXIM 49 Deputy Chief of Staff to the Chief of Staff
EXIM 50 Special Assistant to the President and Chairman
EXIM 53 Special Assistant to the Chairman
EXIM 54 Administrative Specialist to the President and Chairman
EXIM 55 Administrative Specialist to the President and Chairman
EXIM 56 Administrative Specialist to the President and Chairman
EXIM 57 Special Assistant to the President and Chairman

*Section 213.3343 Farm Credit Administration*

FCA 2 Special Assistant to the Chairman, Farm Credit Administration
FCA 8 Secretary of the Board to the Chief Executive Officer
FCA 12 Public and Congressional Affairs Specialist to the Director, Office of Congressional and Public Affairs
FCA 13 Special Assistant to a Member
FCA 16 Executive Assistant to the Chairman, Farm Credit Administration

*Section 213.3344 Occupational Safety and Health Review Commission*

OSHRC 2 Confidential Assistant to the Chairman
OSHRC 3 Confidential Assistant to a Member (Commissioner)



OSHRC 8 Counsel to a Member (Commissioner)

*Section 213.3346 Selective Service System*

SSS 16 Special Assistant to the Director of Selective Service System

*Section 213.3348 National Aeronautics and Space Administration*

NASA 31 Special Assistant to the NASA Administrator
NASA 34 Manager, Multimedia Relations to the Associate Administrator for Public Affairs
NASA 38 Writer-Editor to the Associate Administrator for Public Affairs
NASA 41 State Local Intergovernmental Affairs Specialist to the Associate Administrator for Policy and Plans
NASA 45 Legislative Affairs Specialist to the Associate Administrator for Legislative Affairs
NASA 47 Program Analyst to the Deputy Associate Administrator for External Relations
NASA 49 Staff Assistant to the Associate Administrator for Legislative Affairs
NASA 52 Program Support Specialist to the Associate Administrator, Outreach Division, Office of Legislative Affairs
NASA 53 Commercialization Specialist to the Associate Administrator for Public Affairs
NASA 54 Public Affairs Specialist to the Associate Administrator for Public Affairs
NASA 55 Legislative Affairs Coordinator to the Associate Administrator for Legislative Affairs

*Section 213.3351 Federal Mine Safety and Health Review Commission*

FM 8 Attorney Advisor to a Commissioner
FM 17 Confidential Assistant to the Chairman
FM 26 Attorney-Advisor (General) to the Chairman
FM 29 Attorney-Advisor to a Commissioner
FM 30 Confidential Assistant to a Commissioner
FM 31 Confidential Assistant to a Commissioner

*Section 213.3352 Government Printing Office*

GPO 21 Staff Assistant to the Public Printer

*Section 213.3355 Social Security Administration*

SSA 4 Special Assistant to the Chief of Staff
SSA 6 Press Officer to the Deputy Commissioner for Communications
SSA 8 Confidential Assistant to the Commissioner of Social Security
SSA 9 Public Affairs Specialist (Speech writer) to the Deputy Commissioner for Communications

*Section 213.3356 Commission on Civil Rights*

CCR 1 Special Assistant to the Staff Director
CCR 10 Special Assistant to the Staff Director, Office of the Staff Director
CCR 11 Special Assistant to a Commissioner
CCR 12 Special Assistant to a Commissioner
CCR 14 Acting General Counsel to the Staff Director
CCR 23 Special Assistant to a Commissioner
CCR 28 Special Assistant to a Commissioner
CCR 30 Special Assistant to a Commissioner

*Section 213.3357 National Credit Union Administration*

NCUA 9 Staff Assistant to the Chairman of the Board, National Credit Union Administration
NCUA 12 Executive Assistant to a Board Member
NCUA 20 Executive Assistant to a Board Member
NCUA 21 Confidential Assistant to a Board Member
NCUA 23 Special Assistant to the Executive Director

*Section 213.3360 Consumer Product Safety Commission*

CPSC 49 Special Assistant to a Commissioner
CPSC 50 Staff Assistant to a Commissioner
CPSC 53 Special Assistant to the Chairman
CPSC 55 Executive Assistant to the Chairman
CPSC 56 Director, Office of Congressional Relations to the Chairman
CPSC 60 Special Assistant to the Chairman
CPSC 61 Staff Assistant to a Commissioner
CPSC 62 Special Assistant to a Commissioner
CPSC 63 Special Assistant to a Commissioner
CPSC 64 Special Assistant (Legal) to a Commissioner
CPSC 66 Supervisory Public Affairs Specialist to the Executive Director

*Section 213.3365 U.S. Chemical Safety and Hazard Investigation Board*

CSHIB 1 Special Assistant to a Board Member

*Section 213.3367 Federal Maritime Commission*

FMC 26 Executive Assistant to the Chairman
FMC 42 Counsel to a Commissioner
FMC 43 Counsel to a Commissioner
FMC 44 Special Assistant to a Commissioner
FMC 45 Counsel to a Commissioner

*Section 213.3368 Agency for International Development*

AID 125 Executive Assistant to the Chief of Staff
AID 127 Supervisory Public Affairs Specialist to the Director, Office of External Affairs
AID 149 Public Affairs Specialist to the Chief, Legislative and Public Affairs, Public Liaison Division
AID 151 Congressional Liaison Officer to the Chief of Legislative and Public Affairs, Congressional Liaison Division
AID 152 Special Assistant to the Assistant Administrator, Bureau for Latin America and the Caribbean

*Section 213.3371 Office of Government Ethics*

OGE 2 Executive Secretary to the Director, Office of Government Ethics

*Section 213.3373 United States Trade and Development Agency*

TDA 1 Special Assistant for Public Affairs and Marketing to the Director of the U.S. Trade and Development Agency
TDA 2 Congressional Liaison Officer to the Director, U.S. Trade and Development Agency
TDA 2 Congressional Liaison Officer to the Director, U.S. Trade and Development Agency Section

*Section 213.3376 Appalachian Regional Commission*

ARC 12 Senior Policy Advisor to the Federal Co-Chairman
ARC 13 Policy Advisor to the Federal Co-Chairman

*Section 213.3377 Equal Employment Opportunity Commission*

EEOC 2 Special Assistant to the Chairman
EEOC 13 Confidential Assistant to the Director, Legal Counsel
EEOC 32 Senior Advisor to a Commissioner
EEOC 36 Attorney-Advisor to the General Counsel

*Section 213.3379 Commodity Futures Trading Commission*

CFTC 1 Administrative Assistant to the Chairman
CFTC 3 Administrative Assistant to a Commissioner

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CFTC 4 Administrative Assistant to a Commissioner
CFTC 5 Administrative Assistant to a Commissioner
CFTC 21 Governmental Affairs Officer to the Chairman
CFTC 31 Special Assistant to a Commissioner
CFTC 32 Special Assistant to a Commissioner

*Section 213.3382 National Foundation on the Arts and Humanities*

National Endowment for the Arts

NEA 72 Director of Policy, Planning and Research to the Chairman
NEA 76 Executive Secretary to the Chairman
NEA 77 Director of Public Affairs to the Chairman
NEA 78 Special Assistant to the Chairman
NEA 79 Staff Assistant to the Chairman

National Endowment for the Humanities

NEH 70 Assistant Director of Government Affairs to the Director of Governmental Affairs
NEH 71 Director of Governmental Affairs to the Chief of Staff
NEH 72 Enterprise/Development Officer to the Chief of Staff

*Section 213.3384 Department of Housing and Urban Development*

HUD 36 Special Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations
HUD 60 Director, Office of Executive Scheduling to the Chief of Staff
HUD 65 Special Assistant to the Assistant Secretary for Community Planning and Development
HUD 68 Special Assistant to the Assistant Secretary for Community Planning and Development
HUD 137 Special Assistant to the Assistant Secretary for Fair Housing and Equal Opportunity
HUD 143 Special Assistant to the Director, Executive Scheduling
HUD 143 Special Assistant to the Director, Office of Executive Scheduling
HUD 164 Intergovernmental Relations Specialist to the Deputy Assistant Secretary for Intergovernmental Relations
HUD 188 Special Assistant to the Assistant Secretary for Administration
HUD 193 Deputy General Counsel for Programs and Regulations to the General Counsel
HUD 198 Special Assistant to the Senior Advisor to the Secretary
HUD 231 Deputy Assistant Secretary for Strategic Planning to the Assistant Secretary for Congressional and Intergovernmental Relations
HUD 272 Deputy Assistant Secretary for Grant Programs to the Assistant Secretary for Community Planning and Development
HUD 285 Special Assistant to the Advisor for Management Reform and Operations
HUD 292 Special Assistant to the Deputy Assistant Secretary for Economic Development
HUD 339 Special Assistant to the Secretary's Representative
HUD 354 Special Assistant to the Assistant Secretary for Public and Indian Housing
HUD 363 Special Assistant to the Assistant Secretary for Policy Development and Research
HUD 390 Legislative Officer to the Assistant Secretary for Congressional and Intergovernmental Relations
HUD 410 Special Assistant to the General Counsel
HUD 412 Executive Assistant to the Secretary
HUD 421 Assistant Director to the Director, Executive Secretariat, Office of Administration
HUD 423 Secretary's Representative, Rocky Mountain to the Deputy Secretary
HUD 427 Special Assistant to the Advisor to the Deputy Secretary for Management Reform
HUD 437 Special Assistant to the Advisor for Management Reform and Operations
HUD 438 Director, Office of Insured Health Care Facilities to the Assistant Secretary for Housing—Federal Housing Commissioner
HUD 460 Special Assistant to the Director, Office of Executive Scheduling
HUD 469 Special Assistant to the Deputy Assistant Secretary for Community Empowerment
HUD 478 Special Projects Officer to the Senior Advisor to the Secretary
HUD 482 Special Projects Officer to the Director, Special Actions Office
HUD 483 Special Assistant (Advance/Security) to the Director, Executive Scheduling
HUD 487 Advance/Security Coordinator to the Director of Executive Scheduling
HUD 492 Special Assistant to the General Deputy Assistant Secretary for Community Planning and Development
HUD 494 Intergovernmental Relations Specialist to the Deputy Assistant Secretary for Intergovernmental Relations
HUD 496 Staff Assistant to the Deputy Assistant Secretary for Congressional and Intergovernmental Relations
HUD 506 Deputy Assistant Secretary for Community Empowerment to the Assistant Secretary for Community Planning and Development
HUD 524 Special Counsel to the General Counsel
HUD 526 Intergovernmental Relations Specialist to the Deputy Assistant Secretary for Intergovernmental Relations
HUD 534 Special Assistant for Inter-Faith Community Outreach to the Director, Office of Special Actions
HUD 537 Associate General Deputy Assistant Secretary to the Assistant Secretary for Housing
HUD 542 Senior Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations
HUD 543 Special Assistant to the Deputy Secretary
HUD 548 General Deputy Assistant Secretary to the Assistant Secretary for Public and Indian Housing
HUD 551 Scheduling Assistant to the Director of Executive Scheduling
HUD 555 Staff Assistant to the Advisor for Management Reform and Operation
HUD 558 Special Assistant to the Director, Intergovernmental Relations
HUD 559 Special Assistant to the Secretary's Representative
HUD 560 Secretary's Representative-Midwest to the Deputy Secretary, Office of the Secretary's Representative
HUD 563 Special Assistant to the Secretary's Representative, California State Office
HUD 565 Special Advisor to the Deputy Assistant Secretary for Policy Development
HUD 568 Briefing Coordinator to the Director of Executive Scheduling
HUD 569 Assistant Deputy Secretary for Field Policy and Management to the Deputy Secretary
HUD 573 Special Counsel to the General Counsel
HUD 576 Senior Advisor to the Assistant Secretary for Community Planning and Development
HUD 577 Advisor for Management Reform and Operations to the Assistant Secretary for Administration
HUD 578 Special Assistant to the Secretary's Representative, New England
HUD 579 Special Assistant to the Assistant Secretary for Policy Development and Research
HUD 581 Special Assistant to the Director, Office of Special Actions
HUD 582 Advance Coordinator to the Director, Executive Scheduling
HUD 586 Special Assistant to the Assistant Secretary for Public Affairs



HUD 587 Deputy Assistant Secretary to the Assistant Secretary for Administration.
HUD 590 Special Assistant to the Assistant Secretary for Community Planning and Development
HUD 591 Special Counsel to the General Counsel
HUD 592 Special Counsel to the General Counsel
HUD 593 Deputy Assistant Secretary for Research to the Assistant Secretary for Policy Development and Research
HUD 594 Special Events Coordinator to the Advisor to the Deputy Secretary for Management Reform
HUD 595 Senior Intergovernmental Relations Officer to the Deputy Assistant Secretary for Intergovernmental Relations
HUD 596 Special Assistant to the Assistant Secretary for Policy, Development and Research
HUD 597 Special Assistant to the Assistant Secretary for Policy Development and Research
HUD 598 Special Assistant to the General Counsel
HUD 599 Congressional Relations Officer to the Deputy Assistant Secretary for Congressional Relations
HUD 600 Special Projects Advisor to the Special Events Coordinator, Office of the Assistant Secretary for Administration
HUD 601 Intergovernmental Relations Specialist to the Deputy Assistant Secretary for Intergovernmental Affairs

*Section 213.3389 National Mediation Board*

NMB 53 Confidential Assistant to a Board Member
NMB 54 Confidential Assistant to a Board Member

*Section 213.3391 Office of Personnel Management*

OPM 65 Special Assistant to the Director, Office of Congressional Relations
OPM 83 Special Assistant to the Director, Office of Congressional Relations
OPM 86 Deputy Chief of Staff to the Chief of Staff/Director of Scheduling
OPM 87 Confidential Assistant to the Director of Communications
OPM 88 Special Assistant to the Director, Office of Communications
OPM 89 Deputy Director to the Director of Communications
OPM 91 Senior Speech Writer to the Director of Communications
OPM 92 Special Assistant to the Deputy Director
OPM 93 Special Assistant to the Director of Congressional Relations
OPM 95 Special Assistant (White House Liaison) to the Chief of Staff
OPM 96 Deputy Chief of Staff to the Chief of Staff
OPM 97 Senior Advisor for Communications to the Director, Office of Communications
OPM 98 Special Assistant to the Director, Office of the Personnel Management

*Section 213.3392 Federal Labor Relations Authority*

FLRA 22 Director of External Affairs/Special Projects to the Chair, Federal Labor Relations Authority

*Section 213.3393 Pension Benefit Guaranty Corporation*

PBGC 7 Assistant Executive Director for Legislative Affairs to the Executive Director

*Section 213.3394 Department of Transportation*

DOT 38 Special Assistant to the Deputy Administrator, National Highway Traffic Safety Administration
DOT 70 Special Assistant to the Assistant Secretary for Governmental Affairs
DOT 100 Chief, Consumer Information Division to the Director, Office of Public and Consumer Affairs
DOT 105 Staff Assistant to the Director of External Communications
DOT 112 Policy Advisor to the Assistant Secretary for Transportation Policy
DOT 117 Special Assistant to the Secretary of Transportation
DOT 121 Deputy Director to the Director, Office of Congressional Affairs
DOT 127 Special Assistant and Chief, Administrative Operations Staff to the Assistant Secretary for Budget and Programs
DOT 142 Intergovernmental Liaison Officer to the Director, Office of Intergovernmental Affairs
DOT 147 Special Assistant to the Assistant to the Secretary and Director of Public Affairs
DOT 148 Associate Director of Media Relations and Special Projects to the Assistant to the Secretary and Director of Public Affairs
DOT 150 Special Assistant to the Administrator, National Highway Traffic Safety Administration
DOT 151 Special Assistant to the Secretary of Transportation
DOT 159 Special Assistant to the Administrator, Federal Highway Administration
DOT 173 Senior Advisor to the Administrator, Federal Railroad Administration
DOT 185 Special Assistant to the Deputy Assistant Secretary for Aviation and International Affairs
DOT 217 Senior Advisor to the Administrator, Research and Special Programs Administration, Office of the Administrator
DOT 226 Director, Office of Congressional and Public Affairs to the Administrator, Maritime Administration
DOT 235 Scheduling and Advance Assistant to the Director of Scheduling and Advance
DOT 242 Deputy Director, to the Director, Executive Secretariat
DOT 265 Special Assistant to the Director, Office of External Communications
DOT 274 Special Assistant to the Associate Director for Media Relations and Special Projects
DOT 279 Associate Director for Speechwriting and Research to the Assistant to the Secretary and Director of Public Affairs
DOT 287 Scheduling/Advance Assistant to the Director for Scheduling and Advance, Office of the Secretary
DOT 293 Associate Director, Office of Intergovernmental and Consumer Affairs to the Director, Office of Intergovernmental Affairs
DOT 294 Special Assistant to the Associate Deputy Secretary
DOT 296 Special Assistant to the Deputy Administrator, Maritime Administration
DOT 301 Director, Office of Intergovernmental Affairs to the Assistant Secretary for Governmental Affairs
DOT 315 Director of Intergovernmental and Congressional Affairs to the Administrator, National Highway Traffic Safety Administration
DOT 320 Special Assistant to the Secretary of Transportation
DOT 324 Director of Scheduling and Advance to the Chief of Staff
DOT 338 Special Assistant to the Federal Highway Administrator, Federal Highway Administration
DOT 351 Special Assistant to the Deputy Secretary
DOT 355 Director for Drug Enforcement and Program Compliance to the Chief of Staff
DOT 356 Senior Congressional Liaison Officer to the Director, Office of Congressional Affairs
DOT 357 Special Assistant for Scheduling and Advance to the Director for Scheduling and Advance
DOT 358 Special Assistant for Scheduling and Advance to the Director of Scheduling and Advance
DOT 359 Senior Policy Advisor to the Deputy Secretary

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DOT 361 Senior Congressional Liaison Officer to the Director, Office of Congressional Affairs
DOT 362 Senior Advisor to the Administrator, Research and Special Programs Administration
DOT 364 Special Assistant to the Deputy Assistant Secretary for Transportation Policy
DOT 365 Special Assistant to the Assistant Secretary for Transportation Policy

*Section 213.3395 Federal Emergency Management Agency*

FEMA 53 Deputy Chief of Staff to the Director, Federal Emergency Management Agency
FEMA 55 Assistant to the Director for Special Events to the Director, Federal Emergency Management Agency
FEMA 56 Director of Corporate Affairs to the Director, Federal Emergency Management Agency
FEMA 57 Special Assistant for Northridge Transition to the Deputy Chief of Staff, Office of the Director
FEMA 59 Policy Advisor for Congressional and Legislative Affairs to the Director, Office of Congressional nd Legislative Affairs
FEMA 61 Advisor for Intergovernmental Affairs to the Director, Office of Intergovernmental Affairs
FEMA 62 Director, Office of Public Affairs to the Director, Federal Emergency Management Agency

*Section 213.3396 National Transportation Safety Board*

NTSB 1 Special Assistant to the Chairman
NTSB 2 Special Assistant to the Member
NTSB 30 Confidential Assistant to the Chairman
NTSB 32 Family and Government Affairs Specialist to the Director, Office of Government, Public and Family Matters
NTSB 102 Special Assistant to the Board Member
NTSB 105 Confidential Assistant to the Chairman
NTSB 107 Special Assistant to the Director, Office of Government, Public, and Family Matters

*Section 213.3397 Federal Housing Finance Board*

FHFB 6 Counselor to the Chairman

**Senior Pay Level Positions**

*Section 213.3390 African Development Foundation*

Vice President to the President

*Section 213.3342 Export-Import Bank*

Vice President—Office of Communications to the President and Chairman
Special Counselor to the President and Chairman
Vice President of Congressional and External Affairs to the President and Chairman General Counsel to the President and Chairman

*Section 213.3382 National Foundation on the Arts and the Humanities*

Executive Director, President's Committee on the Arts and Humanities

*Section 213.3343 Farm Credit Administration*

Director, Congressional and Public Affairs to the Chairman
Executive Assistant to a Member
Executive Assistant to a Member

*Section 213. 3393 Pension Benefit Guaranty Corporation*

Deputy Executive Director and Chief Financial Officer to the Executive Director
Deputy Executive Director/Chief of Staff to the Executive Director

*Section 213.3333 Federal Deposit Insurance Corporation*

General Counsel to the Chairman
Deputy to the Chairman

*Section 213.3305 Department of the Treasury*

Secial Assistant to the Commissioner of the Internal Revenue Service

*Section 213.3357 National Credit Union Administration*

Executive Director to the Board
Executive Assistant to the Chairman
Executive Assistant to a Member
Executive Assistant to a Member
Director of Community Development Credit Unions to the Board

*Section 213.3331 Department of Energy*

Senior Advisor for Multi-Lateral and Bi-Lateral Affairs to the Assistant Secretary for International Affairs

*Section 213.3391 Office of Personnel Management*

Senior Advisor to the Director

**Authority:** 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., P.218.

Office of Personnel Management.

**Janice R. Lachance,**

*Director.*

[FR Doc. 00–26011 Filed 10–11–00; 8:45 am]
BILLING CODE 6325–01–P

Federal Register

Thursday,
October 12, 2000

Part III

# Federal Emergency Management Agency

**44 CFR Parts 59 and 61**

**National Flood Insurance Program (NFIP); Insurance Coverage and Rates; Final Rule**

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**FEDERAL EMERGENCY MANAGEMENT AGENCY**

**44 CFR Parts 59 and 61**

**RIN 3067–AD01**

**National Flood Insurance Program (NFIP); Insurance Coverage and Rates**

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Final Rule.

**SUMMARY:** We (the Federal Insurance Administration of FEMA) are changing the Standard Flood Insurance Policy (SFIP). The revisions include rendering the SFIP in "plain language" and restructuring its format to resemble the homeowners policy. We are also making some changes in the policy's coverage.

**EFFECTIVE DATE:** December 31, 2000.

**FOR FURTHER INFORMATION CONTACT:** James S. P. Shortley, Federal Emergency Management Agency, Federal Insurance Administration, 500 C Street SW., Washington, DC 20472, 202–646–3418, (facsimile) 202–646–4327, (email) *James.Shortley@fema.gov.*

**SUPPLEMENTARY INFORMATION**

**Proposed Revisions to the Standard Flood Insurance Policy and Public Comments**

On May 31, 2000, we published a proposed rule at 65 FR 34823 that would revise the Standard Flood Insurance Policy (SFIP) so that it conforms with "plain language" standards. The rule also proposed changes that would bring the three forms of the SFIP more in line with the format of the insurance industry's homeowners policy. We also proposed a number of changes in coverage.

We received 22 letters and email messages about the proposed rule. Many of these contained multiple comments, and, in a number of cases, the submissions raised similar issues and concerns. One organization submitted two separate sets of comments.

The following submitted comments on the proposed rule:

- Three national trade associations for lenders,
- Three individual lending institutions,
- Six private insurance companies writing flood insurance under the Write Your Own program,
- One claims adjuster,
- Three vendors that provide specialized insurance services,
- Two insurance agents,
- Two private citizens, and
- One private business consulting firm.

Each of the following sections treats an issue raised by the public during the comment period and explains our reasons for adopting, rejecting, or modifying a given recommendation.

*General Comments.* One of the private insurance companies that write flood insurance under the Write Your Own program commended the proposed plain language revision of the SFIP in this way:

"The proposed language changes in the flood policy are excellent. The coverage additions and deletions are acceptable, and the changes in wording to 'plain language' make the policy more readable and understandable."

This company also recommended that we "prepare a document * * * to flood policyholders and agents to explain all coverage changes." This is a good suggestion. In fact, this is a practice that we follow whenever we make any major change in coverage under the National Flood Insurance Program (NFIP). We will continue that practice and put a summary of changes in the revised policy document that the policyholder receives. This will help policyholders and agents understand the most significant changes in coverage that result from this final rule. We also plan to include a summary of significant coverage changes in the updated claims manual we are preparing for adjusters to implement the new policy.

Several national associations representing the interests of lending institutions, however, expressed disappointment that we had failed in the preamble of the proposed rule to mention lenders in the paragraph titled "External Customers." The associations also expressed concern that representatives of the lending community did not sit on the work group that rewrote the SFIP.

The express purpose of the proposed rule was to make the SFIP easier to read for policyholders and easier to use by the producers and agents that sell and service flood insurance policies. The focus of our revision of the SFIP, as expressed in the preamble to the proposed rule, was to address the needs of the "two largest external groups that use the SFIP." That statement was not meant to be a complete list of our customers but rather to define the specific purposes of the revision: to render the policy in plain language and conform the SFIP with the homeowners policy. In spite of our not mentioning lenders as a constituent group in the preamble of the proposed rule, we felt that we had preserved the protections and interests of lenders by modeling the proposed revision of the SFIP's "Mortgage Clause" on the mortgage clause of the homeowners policy. However, after reviewing lenders' specific comments and recommendations, we understand their concerns and have made a number of adjustments that address those concerns.

Several of the lenders' recommendations that we did not accept would have involved duplicating coverage already available in the private market or changing long-standing practices, such as changing the length of time flood insurance coverage continues for the benefit of the mortgagee after cancellation or non-renewal. We plan to invite representatives of the lending industry to join us in a series of meetings to discuss these and other issues.

*Mortgagee as a Named Insured.* We received five comments that objected to our description of the named insured under the proposed changes in "Definitions." In the proposed rule we said, "In this policy, 'you' and 'your' refer to the insured(s) shown on the Declarations Page of this policy." The five respondents expressed concern that our revision did not specifically mention the mortgagee as a named insured and potentially jeopardized the mortgagee's financial interest. The respondents requested that we reinsert in the description of the named insured(s) language that specifically mentions the mortgagee. Several respondents also pointed out that we had not included in the Dwelling Form any mention of the "spouse," if a member of the same household, as a named insured.

We have reinserted language similar to that in the current policy identifying mortgagees as a named insured and added a reference to the named insured's spouse. The final version of the Dwelling Form reads: "In this policy, 'you' and 'your' refer to the insured(s) shown on the Declarations Page of this policy and your spouse, if a resident of the same household. Insured(s) includes: Any mortgagee and loss payee named in the Application and Declarations Page, as well as any other mortgagee or loss payee determined to exist at the time of loss in the order of precedence."

The final versions of the General Property Form and the Residential Condominium Building Association Policy have similar language mentioning the mortgagee as a named insured. Absent from the description of the named insured in these two forms, however, is a reference to "your spouse, if a resident of the same household."

*Mortgagees as Loss Payees.* Five representatives from the lending industry also expressed concern that the proposed change to the "Mortgage Clause" limited protection only to mortgagees of whom we had actual notice. They interpreted "mortgagees of whom we had actual notice" to mean only those on the Declarations Page, rather than to any other mortgagee or loss payee determined to exist at the time of loss. The commenters urged that we add language in the final rule that explicitly protects the rights of any mortgagee or trustee determined to exist at the time of loss.

That was our intent, and we agree to clarify this. We have modified a provision of the "Mortgage Clause" of the three policy forms to read as follows:

"The word 'mortgagee' includes trustee. Any loss payable under Coverage A—Building Property will be paid to any mortgagee of whom we have actual notice as well as any other mortgagee or loss payee determined to exist at the time of loss, and you, as interests appear. If more than one mortgagee is named, the order of payment will be the same as the order of precedence of the mortgages."

We believe that the addition of this language in the "Mortgage Clause" as well as the added language in the "Definitions" section described above addresses the lending community's major concerns, adopts their recommendations, and preserves the rights and interests of the mortgagee.

*Mortgage Clause and Foreclosure.* Two representatives from the lending community expressed concern that the proposed revision was silent about the rights of the mortgagee as a loss payee after a flood loss when the lender has started foreclosure on the building.

We believed we were simplifying the policy without affecting the mortgagee's rights. However, we understand this concern, and we have added the following language to the "Mortgage Clause" of the final version of the SFIP:

"The mortgagee has the right to receive loss payment even if the mortgagee has started foreclosure or similar action on the building or structure."

*Transfer of Mortgage Note to the Insurer.* Two respondents commented that we had removed language from the existing policy's "Mortgage Clause" that gives us the option to pay the whole principal due and to receive transfer of the mortgage under certain conditions and recommended that we reinsert similar language in the final rule.

We disagree. This provision is an option for us. We have never in the program's history exercised this option nor do we intend to do so in the future because we do not wish to become a mortgagee. As a result, we have left any reference to our option to receive transfer of the mortgage out of the final revision of the SFIP.

*Continuation of coverage for after non-renewal for the mortgagee's benefit.* Three respondents objected that 30 days—the length of time we continue coverage for the benefit of the mortgagee after non-renewal—is not enough time and recommended that we increase that benefit to 45 days. The commenters pointed out that the National Flood Insurance Reform Act of 1994 gives a borrower 45 days to cure a deficiency regarding flood insurance before the lender may force-place coverage. The commenters argued that we should increase the benefit of continued coverage for the lender to 45 days to be consistent with the statute.

First, the proposed rule does not change what is currently in the policy. Our continuation of coverage under the current SFIP for the benefit of the mortgagee is 30 days, and 30 days has been the continuation of coverage benefit for years. So in the proposed rule we were not reducing a benefit for lenders. Second, there is "gap" insurance coverage in the private sector available for lenders to address such contingencies, and it is our understanding that most lenders have such coverage for all perils to protect their interests in the event a borrower fails to renew required property insurance protection. While we believe it is appropriate for us to provide some cushion for lenders, such as our 30-day benefit, providing 45 days to match the statute is unnecessary since gap coverage is available in the private market. It is not, in our view, appropriate public policy to duplicate under the NFIP coverage that is readily available in the private sector. Third, during the six years since the enactment of the National Flood Insurance Reform Act of 1994, lenders have not reported any difficulties with our long-standing practice of providing 30 days continuation of coverage for their benefit when a borrower fails to renew required property insurance coverage. We do not believe we need to change our current practice. In our continuing dialogue and planned meetings with the lending community on flood insurance, we will make certain that we carefully monitor this issue.

*Policy Cancellation.* Five commenters expressed concern that our proposed revision of the "Cancellation of the Policy by You" provision in the "General Conditions" section makes it appear that a policyholder may unilaterally cancel the flood policy regardless of whether there is an existing mortgage obligation. Our intention was to remove, from the cancellation provision, language that had weighed down the policy with a number of examples of when the policyholder may be eligible for a premium refund. We did not intend in our proposed revision to undermine the mortgagee's interest, and we considered our applicable rules and regulations that the insurance agent must follow before we allow cancellation of any flood insurance policy to be sufficient to safeguard the lender's interest, i.e., when the lender has required flood insurance as a condition for the mortgage loan. Those rules and regulations remain unchanged.

We understand the concern expressed by the commenters. To make it clearer that we do not permit a unilateral cancellation of flood insurance by the policyholder, we have in this final rule changed the wording in the "Cancellation of the Policy by You" clause to read, "you may cancel this policy in accordance with the applicable rules and regulations of the NFIP."

First of all, it is not in the interests of the program to allow cancellation of policies without good reasons or adequate safeguards in our processing system. In that connection, we publish in the Flood Insurance Manual that Write Your Own companies and agents must follow when canceling an NFIP policy. Under the terms of the current "Cancellation Section," in this manual, the agent must submit a Cancellation/Nullification request to the insurer citing one of the approved reasons cited in the manual for a policy cancellation. Without documentation that the cancellation request meets approved criteria the policy does not get cancelled.

In the cases where there is a mortgage loan on the property, the manual says that the NFIP permits cancellation when, through a map revision, the property is no longer in a special flood hazard area and "the lender no longer requires the flood insurance policy." The mortgagee must confirm this in writing to the NFIP insurer. The applicable rules and regulations for agents also permit cancellation when the borrower has paid off the mortgage; however, before we allow a cancellation the agent must submit a "statement from the mortgagee stating that the mortgage has been paid off and that flood insurance was required as part of the mortgage must be attached to the Cancellation/Nullification Request Form."

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In both cases, the agent must furnish documentation from the lender. In short, there are safeguards built into the program's processing and reporting system that we will continue to require before we will permit cancellation of a policy.

Our revision of the "Cancellation of the Policy by You" in the final rule then does two things: It removes from the policy unnecessary examples of situations when we will refund premiums while preventing any unilateral cancellation of the policy by the policyholder. We achieve the latter purpose by cross-referencing the applicable rules and regulations that the agent and the NFIP insurer must follow before the insurer can honor a request to cancel a policy.

*Policy Reformation.* We received one comment that we were using the word "restoration" incorrectly in the "General Conditions" section of the three policy forms and that we should substitute "reformation" instead. We agree with this comment and have changed the heading in the "General Conditions" section of each of the policy forms to read, "Reduction and Reformation of Coverage." We have also modified the wording in this clause to be consistent with the more precise title.

Another person expressed concern that the "Reduction and Reformation of Coverage" clause gives the insured and the mortgagee only 30 days from the date of our notification that there is insufficient premium for the requested coverage to submit the shortfall in premium. The commenter recommended that we increase the grace period to 45 days to conform with the National Flood Insurance Reform Act of 1994 which gives an insured that amount of time to make premium payment before the lender may force-place coverage.

As we mentioned in our discussion of continuation of coverage for the benefit of the mortgagee above, we do not believe we need to change our current practice. In our continuing dialogue and planned meetings with the lending community on flood insurance, we will make certain that we carefully monitor this issue as well.

*Duplicate policies.* Five respondents objected to the "Duplicate Policies Not Allowed" provision in "General Conditions" and argued that our allowing duplicate policies would ensure that there would be no gap between the limit of an existing SFIP and the amount required by law. The commenters cited situations involving multiple mortgagees where allowing duplicate policies would preserve every lender's interest at the time of loss. One of the commenters suggested we develop a product like the "Contributing Insurance Endorsement" which permits multiple insurance carriers.

We considered this recommendation but believe that any perceived benefit does not outweigh our overriding concern over the problems that multiple policies present for us to assure that the statutory limits of coverage not be exceeded on any property. Duplicate policies also allow an opportunity for abuse and fraud at claim time.

The changes to those sections in the final rule, which we have already discussed, have addressed those concerns, and there is no need to alter our long-standing practice to prohibit duplicate policies under the NFIP. We have therefore not adopted this recommendation to allow duplicate policies.

*Definitions: Flood.* We received one comment asking us to revise our definition of "flood" that refers to the inundation of "two or more properties (one of which is your property) * * *." The respondent recommended that we replace the term "property" with "premises."

We considered the comment but believe adopting the suggestion would hurt the policyholder by making our definition of "flood" more restrictive than we intend. "Properties" is general enough for us to consider not only an insured property but also some other property such as a public road. This wording is particularly appropriate for rural or low density development areas. We have therefore retained the word "properties" in the definition of "flood" in the final rule.

The respondent also pointed out that "premises" would be more accurate in our treatment of debris removal under "Coverage C—Other Coverages." We disagree, but we have addressed this concern by simplifying the debris removal provision.

*Definition: Manufactured home.* We received one comment that the qualifiers ("built on a permanent chassis," "affixed to a permanent foundation" and "transported to its site in one or more sections") in the definition of "manufactured home" seem misplaced in the proposed rule and that we should modify the definition. The correspondent also suggested that we did not need the criterion of affixing the manufactured home to a permanent foundation because we have the requirement that manufactured homes be tied down.

We agree that we need to change the order of the qualifiers for the definition. This is how the revised definition reads in the final rule: "b. A manufactured home ('a manufactured home,' also known as a mobile home, is a structure: built on a permanent chassis, transported to its site in one or more sections, and affixed to a permanent foundation)." We feel however we need to continue our requirements that all manufactured homes be affixed to a permanent foundation and those in special flood hazard areas be tied down to be consistent with the NFIP's floodplain management requirement.

*Land subsidence.* We received one comment that the exclusion of "land subsidence" in the proposed rule is confusing since we do pay for land subsidence losses whose cause is from the kind of erosion described in the definition of "flood."

We agree with this comment and have modified the language in the policy's "Exclusions" section to clarify the difference between land subsidence not caused by this kind of erosion in contrast with subsidence caused by this kind of erosion. The final policy clarifies that we cover land subsidence caused by erosion covered under the definition of "flood."

*Sewer back-up.* Three people expressed concern that we had added a new criterion for honoring claims for losses from sewer back-up, namely, that flood waters had to damage, *i.e.*, touch, the building before we would pay for sewer back-up losses. (We added this criterion because we believed it was a more objective standard than just having a flood in the general area.) The argument of those objecting to the proposed criterion ran this way: for us to require that the water "touch" the building could actually prove a disincentive for policyholders to take loss avoidance measures, such as sandbagging, to hold losses to a minimum. Such a requirement, the respondents wrote, also fails to take into account consumer expectations that have built up during the program's history for such coverage since we have historically covered sewer back-up and marketed flood insurance without such a criterion. Their arguments were convincing.

Since our proposal was a major departure in flood insurance coverage for consumers from the current policy, we have removed the proposed criterion that flood waters touch the insured building in order for us to honor sewer back-up losses, and we have restored the criterion that the proximate cause of the sewer back-up damage must be from general and temporary condition of flooding in the area.

Still, we believe this issue warrants further study and monitoring, and we plan to look into future loss experience to see whether we need to adjust coverage or the criteria for coverage in the future regarding sewer back-up.



*References to Adjusters.* We received one comment on the use of the term "our adjuster" in "J. Requirements in Case of Loss" in the "General Conditions" section of the policy forms. The commenter pointed out that because the adjuster is an independent contractor we should therefore change the term to "the adjuster."

We agree with this comment and have made the change in the policy forms since we say later that "we have not authorized the adjuster to approve or disapprove claims" to describe the independent stature of the adjuster.

The same person also made this point about the use of the indefinite article when we say "at our option, we may accept an adjuster's report" in the same section of the policy forms. We have changed the wording to read "at our option, we may accept the adjuster's report."

*Manuscripts.* Two people pointed out that there are discrepancies in the proposed rule between the exclusion of coverage for manuscripts in "Property Not Covered" and the coverage in "Coverage B—Personal Property" for manuscripts in a list of covered property subject to a $2,500 limit.

We have remedied the discrepancy by removing manuscripts from the list of covered property subject to the $2,500 limit under "Coverage B—Personal Property." There is available in the private market special limits coverage for items, such as manuscripts, against all perils including flood. Since the private market provides such coverage, we will not duplicate it in our policy.

*Functional Value for Antiques.* One person questioned why the revised policy would pay only the "functional value" for flood losses to antiques rather than actual cash value (ACV)—the conventional approach in the property insurance industry. The current SFIP excludes antique value to the property. The use of the phrase "functional value" is meant to be a clarification of but not a change to our current policy.

*Detached garages.* We received one comment on detached garages. The writer pointed out that the phrase "used as such" in the "III. Property Covered, A.3" for detached garages is "indistinct" since many homeowners use garages for a variety of purposes such as workshops or business storage.

We agree with this point and have modified the language related to detached garages in the final rule to make clearer the conditions under which we cover a detached garage. We have removed the phrase "used as such" from "III. Property Covered, A.3." We have also included in "III. Property Covered, A.3." language to make it clear when certain uses render a detached garage ineligible for coverage. This is what we say in the final rule about the restrictions on coverage for detached garages: "We do not cover any detached garage used or held for use for residential (*i.e.*, dwelling), business, or farming purposes." Our modification in the final rule addresses the comment.

*Personal property in basements.* One person recommended that we add refrigerators to the list of items we will cover in basements since we provide coverage for freezers.

We do not see any justification in adding flood coverage for more items in basements, which are at higher flood risk than other parts of a building. We developed the current list of items we will cover in basements based on several factors. First, we wanted to cover items essential for the operation and maintenance of the building itself, such as machinery and mechanical equipment. Second, there are certain items such as freezers that seem to be better suited for basements than in other parts of a dwelling since there are few alternative locations for freezers. Third, we have resisted, appropriately, offering coverage for items such as beds, sofas, recreational items, normal kitchen equipment such as stoves and refrigerators in basements since flood insurance coverage for such items might be at odds with the NFIP's floodplain management efforts: The NFIP would on the one hand be trying to guide development and occupancy away from the riskier flood-prone areas while inviting such uses with its coverage. We have decided not to add refrigerators to the list of what we cover in basements.

*Swimming pools, hot tubs, equipment, and machinery.* Two people expressed concern about our exclusions of coverage in the proposed rule for swimming pools, hot tubs, and spas. The proposed rule under "Property Not Covered" excludes coverage for "swimming pools, hot tubs and spas, and their equipment such as, but not limited to, heaters, filters, pumps, and pipes, wherever located * * *." One correspondent said, "These items are * * * often bathroom fixtures, especially hot tubs."

We agree with the latter point, and we provide in the final rule coverage for hot tubs and spas and their equipment, if they are bathroom fixtures. We still believe that it is not in the public's interest to provide flood insurance coverage for hot tubs or spas which are not part of bathrooms or for swimming pools because of their inherent exposure to flood risk. Also, the difficulties in underwriting just the machinery and equipment of swimming pools outweigh any conceivable benefit.

*Condominium loss assessments.* One person recommended that we allow up to $1,000 coverage for loss assessment for a condominium unit owner. This would, the writer believes, track more closely with loss assessment coverage in private commercial policies for other perils and would cover the deductible under the association's coverage which may be passed on to the unit owner.

We currently have no restriction on how much building coverage, within policy limits, the unit owner may apply to an assessment from the condominium association. To limit the benefit for loss assessments to $1,000 is a considerable reduction in coverage. We have decided not to put such a restriction in the revised policy. We will not, on the other hand, pay for another policy's deductible, such as the deductible of the Residential Condominium Building Association Policy. We have therefore decided to retain the language in this final rule regarding loss assessment coverage for individual condominium unit owners.

*Replacement cost coverage for multi-family structures.* Four people recommended that we provide replacement cost coverage for multi-family structures since we provide this coverage for owner-occupied single family dwellings if the policyholder insures the building to value.

We decided not to accept this recommendation since adopting it would raise rates and would run counter to our efforts to reduce costs for the NFIP. We believe this issue bears looking into further, and we will study the economic impacts of providing replacement cost coverage for multi-family dwellings and examine the costs and benefits of such an approach.

*Pollution-pollutants.* Six respondents expressed concern about the proposed rule's exclusion of pollution. (Under the current policy, an insured may receive, up to policy limits, payment to repair damage to the building from flood-borne pollutants. The pollution exclusion in the current policy, which applies to Increased Cost of Compliance coverage, will remain.)

The following two comments are representative of this concern:

(1) "A flood by its very nature contains pollutants. This definition would exclude virtually all flooding events since flood by its very nature would always contain contaminants, especially waste."

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(2) "A property owner will be unable to secure coverage elsewhere for pollution caused by flooding. Since the loss settlement will still be restricted to policy limits, pollution caused by flooding should be made available."

Several who submitted comments on this issue recommended that we use language similar to that in the Insurance Services Organization (ISO)'s homeowners policy treating the subject of pollution. They recommended the following language:

"We do not insure any of the following: discharge, dispersal, seepage, migration, release or escape of pollutants unless the discharge, dispersal, seepage, migration, release or escape is itself caused by a peril insured against."

Several other commenters cited the pollution benefit of $10,000 in the ISO commercial property insurance form and recommended we use that as an available coverage benefit for pollution caused by flood.

We considered the comments objecting to our proposed exclusion of losses from pollution. The arguments were convincing, and we have decided to remove the exclusion for pollution from the final revisions for the Dwelling Form and the Residential Condominium Building Association Policy and permit these policyholders, as they are able to do under the current policy, to apply up to their policy limits under Coverage A to pay for damage from pollution caused by flood. We believe it is appropriate to continue the benefit we have traditionally offered for the owners of single family dwellings and for the owners of units within a residential condominium since property owners have no other recourse in the private market to protect themselves from losses from pollution caused by flood. We exclude, however, from the Dwelling Form and the Residential Condominium Building Association Policy, any payment for the testing for or monitoring pollutants unless a law or ordinance requires the testing or the monitoring.

We believe some limitation on pollution for commercial properties is appropriate, and we have adopted one commenter's recommendation that we model limited coverage for pollution from the ISO private commercial policy. We are therefore limiting the amount we will pay under the General Property Form to $10,000 for each occurrence, but this amount, when combined with other benefits under the policy, cannot exceed the policy limits or the replacement cost or actual cash value of the covered property, whichever settlement amount is appropriate. As a result of our revision, we will pay for the removal and clean-up of such pollutants from covered property after a flood loss, but, as we have for the Dwelling Form and the Residential Condominium Building Association Policy, we exclude the cost of testing for or monitoring pollutants unless law or ordinance requires the testing or the monitoring.

*Property removed to safety.* In the proposed revision of the SFIP, we increased from $750 to $1,000 to help defray the costs of moving property out an endangered flood area. One person expressed concern that this benefit was not enough to cover the costs of moving personal property such as business inventories and that the benefit would not cover the deductible.

We believe that the increase in benefits over what we have offered in the past is a relatively sizable one. We do not believe we can justify a higher increase in the face of our need to make the program actuarially sound, but we will monitor the issue to see if future increases may be justifiable from our loss experience.

*Self-propelled vehicles.* One person commented that the reference to self-propelled vehicles in the "Property Not Covered" section was unclear since the qualification "while the vehicles are inside a building at the desired location" seems to apply only to vehicles for the handicapped and should apply both to vehicles for the handicapped and to vehicles "used mainly to service the described location."

This is a good point. The qualification applies to both types of vehicles, and we will format the policy to make this clear.

*Interpretation of "common wall" and additions and extensions.* Two people commented on references to additions and extensions under "Property Covered, A. Coverage A—Building Property." One respondent limited comments to the errors and omissions that might arise from giving the insured the option of insuring an addition or extension (explained below) either as a separate building or consider it part of the insured building. The second commenter raised three issues related to "additions and extensions": Clarity over what is meant by a common wall, competitive pricing, and the concern about errors and omissions. This commenter said:

"It has been our experience that a solid, load-bearing interior wall and a common wall are the same definition. In theory, we agree that the common wall issue needs to be changed but this draft still leaves unresolved issues by not specifically listing these definitions (*i.e.*, solid, load-bearing wall, common interior wall). Additionally, by allowing the option of issuing a separate policy we then fall into a competitive pricing issue. The insured may be offered two policies with one carrier therefore paying the expense/policy service fee twice or shop around and find another carrier that can issue one policy for his additions and extensions. Lastly, if we are required to offer two policies then will we be required to re-underwrite our current policies?"

The difference between a common interior wall that is not a solid, load-bearing wall and an interior wall that is load-bearing, we believe, is clear enough, and there is no need to revise the language in the policy on additions and extensions. On the issue of competition, one of the advantages of the Write Your Own program—with currently about 90 participating insurance companies—is that the consumer has a choice based on service since the same rates and rules apply to all companies selling flood insurance.

The policyholder has the advantage under the cited provision to insure additions and extensions connected by a rigid exterior wall, a solid load-bearing interior wall, a stairway, elevated walkway, or a roof, as a separate building or consider the addition as part of the insured building. This, we believe, is an advantage for the policyholder. It is incumbent on the agent and the insurance company to explain those options to the property owner to avoid any concern over errors and omissions while giving the property owner information to make an informed choice about coverage. Regarding the commenter's inquiry about the need to "re-underwrite" every policy, as with any change in coverage, companies need to reexamine their existing book of business, as appropriate.

*Minor word changes (Loss Avoidance Measures vs. Avoidance and Mitigation).* One person suggested that we change the heading "Loss Avoidance Measures" to "Avoidance and Mitigation." We considered the suggested title change and believe the wording as proposed is preferable, and we are keeping the wording from the proposed rule in the final version of the policy.

*Expense for Sandbags.* Two people agreed with our proposed increase of how much we will reimburse the insured for the expense of sandbags as a loss avoidance measure. One commenter wondered why, however, we could not pay more for the expense of sandbags.

We increased from $750 to $1,000 the amount we will pay for sandbags to avoid losses. Again, we believe that the increase in benefits over what we have offered in the past is a relatively sizable one. We do not believe we can justify a higher increase in the face of our need to make the program actuarially sound, but we will monitor the issue to see if future increases may be justifiable from our loss experience.

*Payment for floodproofing.* We received one suggestion that we pay for floodproofing of buildings without basements. The person argued that since we pay under Increased Cost of Compliance coverage (Coverage D) for floodproofing of basements of residential structures, we should also pay for permanent floodproofing of residential structures without basements. The writer also argued that since we pay for temporary protective measures when there is the threat of flooding, we should pay for permanent floodproofing. The writer also contended that the installation of a permanent device, such as a flood shield, would pay for itself over time in prevented flood losses and fewer flood claims. And because of those potential savings in flood claims, we should pay for such a device.

First of all, we only pay for the floodproofing of basements under Increased Cost of Compliance coverage (Coverage D) under very limited circumstances. The property must have suffered substantial damage by flood or repetitive flood losses, and the community must be requiring the repair or other mitigation measure to bring the building into compliance with a local or State floodplain management ordinance or law. Also, for us to pay under Coverage D to bring a basement into compliance with a local floodplain management law or ordinance, the community must meet rigorous standards for floodproofing residential basements approved by FEMA. Only 53 communities out of 19,000 participating communities have been approved for this option. We would also point out an essential difference between the standards for floodproofing residential basements in approved communities and the flood shield that the commenter recommends: a basement once floodproofed requires no further intervention on the part of the occupant for the floodproofing to be effective. The flood shield on the other hand requires human intervention just before a flood for the device to be effective.

Finally, certain devices and equipment clearly make buildings safer and reduce the risk to certain perils. The installation of sprinklers in residential dwellings is a good example of a loss mitigation measure that adds protection, increases safety, and reduces the building's exposure to fire loss; however, property insurance companies will not and should not pay for the permanent installation of such devices that reduce the risk. Such devices if worthwhile will sell themselves or be required by code. They are not eligible for nor should they become eligible for payment as a covered loss in the insurance sense.

For these reasons, we have therefore rejected the recommendation for the SFIP to pay for the installation of loss mitigation measures as a preventive step.

*Miscellaneous Questions.* We received several sets of comments asking us to clarify whether coverage for certain items or under certain conditions had changed in the revised policy. We will restate the each question and follow with our answer.

*Question.* Can two properties be a house and the street in front of the house or does it have to be two houses? NFIP has taken the position in the past that two properties can be the insured house and the street in front of the house; however, we want to verify that this has not changed with the new policy.

*Answer.* Our position has not changed. "Two properties" can still mean under the new policy the insured house and the street in front of the building.

*Question.* Under Coverage C—Other Coverages, Contents Removal, it states that any property removed must be placed aboveground level or outside the special flood hazard area. This appears to mean that we can still cover personal property that is moved to a special flood hazard area if it is above ground level and in a fully enclosed building. This doesn't sound logical since the point is to move it outside of the special flood hazard area.

*Answer.* Coverage C—Contents Removal under the new policy requires that the contents must be removed above ground or outside a special flood hazard area. This is not inconsistent. There are situations where moving property to a safer location within a floodplain, *e.g.*, within a broad floodplain or in a coastal area, is the best available mitigation option available to a policyholder. Moving property inland away from an approaching hurricane to a location that may still be within a special flood hazard area, may be enough to move property out of harm's way.

*Question.* The policy is silent on who makes substantial improvements. Does the responsibility of determining substantial improvement still rest with the community officials? This is important because we are talking about the denial of coverage for post-FIRM enclosures.

*Answer.* The responsibility for making a determination whether a building has suffered substantial damage and must meet the substantial improvement requirement still rests with the community official.

*Question.* The policy mentions special coverage for handicapped persons, but does not define "handicapped" in the definition section. Is it intended that "handicapped" means only people protected by Federal law, or can it mean someone with a broken leg, etc. This could become an issue if not properly defined.

*Answer.* A temporary handicap, such as a broken leg, would qualify for special coverage for handicapped persons under the new policy.

*Question.* There is an exclusion for decks outside the perimeter walls of the dwelling. NFIP has taken the position in the past that we could pay for sixteen square feet of decking outside the perimeter walls of the dwelling, which is not spelled out in the policy. Are we still allowing the sixteen square feet or do we totally exclude decking outside the perimeter walls of the dwelling.

*Answer.* Our interpretation under the new policy has not changed. We will still pay, as we currently do, for sixteen square feet of space that permits entrance and exit to a building.

*Question.* We insure against direct physical loss by or from flood for "clean-up." But what does "clean-up" include?

*Answer.* "Clean-up" includes the removal of muck from the interior of the insured building, cleaning the flood-soiled surfaces of the insured building, and the removal of debris from the boundaries of the insured property.

*Question.* How can this policy state that it will not insure for direct physical loss caused directly or indirectly by rain? Rain is one of the major reasons for flooding. This seems contradictory.

*Answer.* Rain without surface flooding is not covered under the SFIP. This is not a new interpretation or a change from previous version of the SFIP. Conversely, damage from rain alone can be covered under the homeowners policy.

*Question.* Does the NFIP intend to settle losses for manufactured homes with materials on a replacement cost basis but never more than 1.5 times the actual cash value apply to repairs as well as total losses?

*Answer.* Under VII General Conditions, V. Loss Settlement, 3.a. and

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3.b., we explain how losses will be adjusted under the policy for manufactured homes: Under 3.a., we will pay for total losses on a replacement cost basis or 1.5 times the actual cash value, whichever is less; under 3.b., we will pay for repairs on a replacement cost basis.

*Question.* How will an adjuster know, *i.e.*, for sewer back-up claims, if the flood waters actually touch the structure if it does not leave a visible water line or debris? (Flood waters may briefly touch the structure but leave no visible water line.)

*Answer.* This is no longer an issue since we have removed the criterion that water touch a building in order for us to pay for damages from sewer back-up. (See our earlier discussion of sewer back-up.)

*Question.* What is "loss in progress"? Is it the threat of flooding? When water touches the building? What about when water touches the detached garage?

*Answer.* "Loss in progress" does not merely mean the threat of flooding. "Loss in progress" means when water touches the insured building. If the policyholder has elected to apply up to 10% of the building's coverage on the dwelling and flood waters touch the detached garage, the loss would be a loss in progress. If the policyholder has elected to insure the detached garage separately from the dwelling, the flood waters touching the detached garage would involve a loss in progress for the detached garage, insured separately, but not the separately insured dwelling.

*Question.* When does a carport become a garage?

*Answer.* If a structure has two walls and a roof it is a building that is eligible for coverage under the NFIP. Normally, carports do not meet the definition of a building. We do not agree that we need to add a definition for "carport" which the questioner implied since our definition of building is in our view clear enough.

*Decision to Retain Scheduled Building Policies.* During the comment period, we received no comments on the deletion in the proposed rule of the provision for scheduled building policies. We have decided, however, to retain in the final rule the provision in the definition of "policy" that permits us to offer scheduled buildings policies, *i.e.*, one policy that provides coverage for several buildings. We are retaining this product option since we have become aware of recent interest in and a potential need for scheduled building policies for municipal buildings.

**Closed Basin Lake Endorsement**

*Interim Final Rule.* On August 2, 1999, we published at 64 FR 41825 an interim final rule, with a request for comments. That rule added an endorsement to the Standard Flood Insurance Policy (SFIP) that provides a permanent procedure for honoring claims for buildings damaged by continuous lake flooding from closed basin lakes or under imminent threat of flood damage from those lakes.

During the comment period, we received seven sets of comments. After reviewing those comments, we have adopted several recommendations for making textual changes to the policy. For the other recommendations, which we decided not to adopt, we explain our decisions in each of the following sections.

*Size Standard for Closed Basin Lakes.* We received one comment that we should use a standard less than one square mile as the basis for our definition of a closed basin lake. We have selected the one square mile standard to agree with the scope of our flood insurance studies found in "Flood Insurance Study: Guidelines and Specifications" (FEMA 37, January 1995). The guidelines state that our flood insurance studies should be terminated where the 100-year floodplain narrows to a width of 200 feet or less, or "where the drainage area of the flooding source is less than one square mile." We felt that some measurable cut-off was reasonable for our definition of closed basin lakes in the SFIP so we used one square mile as the limit to conform with our published standard for flood insurance studies. For that reason, we have retained that one square mile standard in the revised closed basin lake section of the SFIP.

*Physical Damage or Imminent Threat.* One person argued that the closed basin lake endorsement should not require that flooding from a closed basin lake "touch" the structure in order for us to pay a claim under the closed basin lake endorsement. The endorsement does not impose such a requirement. The endorsement says, "we will pay your claim as if the building is a total loss even though it has not been continuously inundated for 90 days, subject to the following conditions: 1. Lake waters must damage or 2. imminently threaten your building." We review closed basin lake claims filed under the SFIP on a case-by-case basis to determine whether a structure—not physically damaged by flooding—is "imminently threatened" by flood waters from a closed basin lake.

*Imminent Threat.* Three people objected to the concept of "imminent threat" and wanted us to base eligibility for claim payments on predictions by the National Weather Service (NWS) that conditions from a designated closed basin lake will inundate certain areas. Our policy for the payment of claims from closed basin lakes has evolved. Initially, we based eligibility for claims on NWS predictions of inundation for broad areas. Program experience has prompted us to change this policy. Now, we apply the concept of "imminent threat" which we can apply on a case-by-case basis to claims. The reason for this shift is that, by using prediction as the standard for claim payment, the NFIP could be liable for claims on buildings neither damaged by flooding nor imminently threatened by flooding. Rather, the building's location in a general area exposed to closed basin lake flooding would make it eligible for claim payment. Using "imminent threat" as the basis for paying claims in closed basin lake areas however is much more defensible for several reasons. First "imminent threat" means that it is reasonably certain that surface water will damage an insured structure due to existing conditions in the Area of Special Consideration (ASC). Second, using "imminent threat" allows us to evaluate claims on a case-by-case basis.

*Buildings with Basements.* Several people raised concerns that the concept of "imminent threat" did not expressly apply to basements as well. We have responded to those concerns by interpreting the concept of "imminent threat," as it applies to buildings with basements, as follows: In the event a building located in the ASC has water in the basement, we will consider the building to be "imminently" threatened by damage from closed basin lake flooding when:

- The building is in such close proximity to the closed basin lake that it is probable that the lake flooding is the cause of the basement flooding;
- The lake level is higher than the basement floor level; and
- Either: (1) the owner is currently taking reasonable preventive measures to manage the flow of lake water into the building and has done so for at least the last 30 days or (2) lake water has been in the basement for the last 30 days.

The adjuster may base the evidence of both reasonable preventive measures and the presence of lake water in the basement for the specified period on any documented source.

*Date Coverage Must be in Effect.* We received three comments urging that the date by which continuous flood insurance coverage must be in effect, in order for the policyholder to be eligible for coverage, should be later than October 31, 1999. The rule is silent about a specific date. The endorsement says, "You (the policyholder) must have NFIP flood insurance coverage continuously in effect from a date established by FEMA until you file a claim under this endorsement." FEMA had set October 31, 1999, as the continuous coverage date for the Devils Lake area of North Dakota and communicated that to public officials. To give local property owners additional time to buy flood insurance and meet the requirements of the endorsement, however, FEMA changed that date to November 30, 1999.

One person argued that the continuous flood insurance coverage date for the Devils Lake area should be postponed until after the Flood Insurance Rate Map (FIRM) showing the Area of Special Consideration (ASC) has become effective. He said:

"All hazards illustrated by the NFIP on a FIRM must be identified on a scientific and technical basis, even the ASC which approximates the 500-year flood hazard surrounding Devils Lake. As such, the ASC is subject to the review and the appeal process (44 CFR part 67) simply because it is on a revised preliminary FIRM which lists the proposed flood elevation determinations for the lake."

The endorsement states that we will "identify on a map an area or areas of special consideration (ASC) in which there is a potential for flood damage from continuous lake flooding." The endorsement does not require that the map be a Flood Insurance Rate Map (FIRM). However, because we were in the process of either revising existing maps or producing new maps for the communities around Devils Lake in connection with an ongoing Flood Insurance Study, we decided to show the ASC on the preliminary FIRMs. We established the ASC for advisory purposes; the advisory ASC is considered final and is not subject to the statutory and regulatory appeal period as base flood elevations are. Additionally, the statutory and regulatory intent of the appeals process is to give individuals and communities every opportunity to appeal, with scientific and technical data, the elevations we derive from our studies since the base flood elevations trigger full risk premiums and building standards for new construction. On the other hand, the ASC, which we delineated in close coordination with State and local governments, is an area that identifies the areas eligible for the benefits under the closed basin lake endorsement. The ASC in itself does not impose a statutory requirement for flood coverage. We did not therefore adopt this recommendation.

*Tracking Continuous Coverage Requirement.* We received one comment expressing concern that FEMA would have difficulty in tracking the continuous coverage requirement when one owner sells the property. The endorsement addresses the issue of continuous coverage when a property owner sells a property affected by a closed basin lake in this way:

"You must have NFIP flood insurance coverage continuously in effect from a date established by FEMA until you file a claim under this endorsement. If a subsequent owner buys NFIP insurance that goes in effect within 60 days of the date of transfer of title, any gap in coverage during that 60-day period will not be a violation of this continuous coverage requirement."

FEMA's tracking the ownership of an insured property is not an issue since the burden of proof of continuous flood insurance coverage will be on the property buyer. In this regard, we have been working with and will continue to work with State and local officials to make sure that the affected members of the public know their responsibilities under the endorsement and are able to take full advantage of the endorsement's benefit. We believe our current efforts address this concern.

*Textual Comments.* We also received recommendations to revise the wording of the endorsement in two places. Specifically, one person recommended we change "floodplain management permit" (see criterion number 4 in the endorsement) to "floodplain development permit." We adopted this recommendation.

The same person also pointed out that the wording "grant the conservation easement to be recorded on the deed of the property" was imprecise since an easement "runs with the land" and cannot be recorded "on the deed." We agree with this recommendation too. We believe the following change in the policy language achieves greater precision: "Grant a conservation easement * * * to be recorded in the office of the local recorder of deeds."

*Clarification of Coverage Requirement.* The interim final rule was silent about how much coverage had to be continuously in force for benefits under the closed basin lake coverage. Under the interim final rule, policyholders had to have "NFIP flood insurance continuously in effect from a date established by FEMA until" the policyholder filed a claim. This meant that a policyholder could technically meet this criterion for continuous coverage by buying a minimal amount of flood coverage initially, keeping the minimal amount of coverage in effect, and then increasing the face amount of the policy when the structure is eligible for relocation. This final rule now requires that policyholders have the same amount of insurance in effect continuously from the date set by FEMA until the policyholder files a claim. This change still allows the policyholder to buy recommended increases in coverage at policy renewal to keep pace with inflation.

*Incorporation in the Revised SFIP.* As an aid for readers, we have incorporated language on the policyholder's requirements and benefits regarding closed basin lake flooding under "Continuous Lake Flooding" in the text itself of the "OTHER PROVISIONS" section of the revised policy. We feel this is a more logical place for information on closed basin lake coverage and will be easier for affected policyholders to access rather than in a separate endorsement.

**Definition of "Structure"**

This final rule changes several key definitions including the definition for "building." Our revised definition of "building" cross-references the term "structure" found in the "Definitions" section of the program's regulations at 44 CFR 59.1. Therefore, we have revised the definition of "structure" to be consistent with our new definition of "building." This change does not affect the definition of "structure" for floodplain management purposes, only for insurance purposes.

**Group Flood Insurance Policy**

Changing the Dwelling Form requires us to change in this final rule several cross-references to the Dwelling Form in § 61.17, which establishes the Group Flood Insurance Policy. We have made those reference changes in this final rule.

**Coverage Changes**

We have made several changes in coverage for the three policy forms. The following tables compare the previous coverage under the SFIP with the new changes established by this rule:

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TABLE 1.—LAND SUBSIDENCE, SEWER BACK-UP, AND SEEPAGE

| New changes in SFIP coverage | Former coverage under the SFIP |
|---|---|
| The new changes will not affect the coverage for losses from "subsidence of land" along the shore of a lake or other body of water as a result of flood-related erosion. | Pay for losses from subsidence of land along the shore of a lake or other body of water as a result of flood-related erosion. |
| We will not pay for any losses from other land subsidence | Pay for losses from other land subsidence under certain circumstances. |
| We will pay for losses from sewer back-up if there is a general condition of flooding in the general area. | Pay for losses from sewer-back-up and seepage: |
| We are removing the current requirement for replacement cost coverage on the building. | If there is a general condition of flooding in the general area; |
| We are removing the criterion that the loss must occur within 72 hours after the flood has receded. | If the building has replacement cost coverage; and |
| We will not apply a separate deductible to claims for sewer back-up and seepage. | If the loss occurs within 72 hours after the flood has receded. Apply a separate deductible to claims for these losses. |

As noted in the preceding table, we will pay for losses from sewer backup if flooding is "in the area." Also, as the preceding table shows, there are two references to the subsidence of land in the current policy. The first is in our definition of "flood." Section 1370 of the National Flood Insurance Act of 1968 mandates that the term "flood" shall also include "the collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels." The second reference to land subsidence is in the Dwelling Form: currently we pay for losses from land subsidence when certain criteria are met such as amount of insurance coverage in force on the dwelling, the duration of flooding ("no later than 72 hours after the flood has receded"), and the proximity of the flood ("in the area"). The changes do not include any revision to the statutory reference to "subsidence of land" in the policy's definition of "flood." The revisions however eliminate coverage for land subsidence in any other situation.

TABLE 2.—LOSS MITIGATION MEASURES AND LOSS ASSESSMENTS

| New changes in SFIP coverage | Former coverage under the SFIP |
|---|---|
| We are increasing the amount we pay for the labor and materials of certain mitigation activities (*e.g.*, sandbagging) to $1,000. | We currently pay up to $750 for materials and labor for mitigation efforts such as sandbagging. |
| We are increasing to $1,000 the amount we will pay for removal of personal property from a flood-threatened building. | We currently pay up to $500 for the removal of personal property in anticipation of the flood. |

TABLE 3.—PERSONAL PROPERTY, MOTORIZED VEHICLES AND SPECIAL NEEDS

| New changes in SFIP coverage | Former Coverage under the SFIP |
|---|---|
| We will permit a renter to apply 10% of contents coverage to cooking stoves, ranges, or refrigerators belonging to the renter, as well as to improvements by the renter to the building. | No coverage under the Dwelling Form. |
| We will permit a condominium unit owner to apply 10% of the contents coverage to losses to interior walls, floors, and ceilings under the Dwelling Form. | No coverage. |
| We will increase to $2,500 what we will pay for flood losses to collectibles, artwork, furs, etc., and we will add these items to the list business contents. | We now pay only up to $250 for eligible flood losses to collectibles, artwork, furs, etc. |
| We will pay for losses to self-propelled vehicles that service the premises and assist handicapped persons provided the vehicles are in a building on the premises. | We only pay for losses to self-propelled vehicles that service the building. |

TABLE 4.—LOSS SETTLEMENT FOR MANUFACTURED HOMES AND INTERPRETATION OF COMMON WALL

| New changes in SFIP coverage | Former coverage under the SFIP |
|---|---|
| We are changing how we settle losses for double-wide manufactured homes. We will settle total losses for these structures with materials on a replacement cost basis but never more than 1.5 times the actual cash value. | Replacement cost interpreted for total losses as the value shown in NADA guide for mobile homes. |



TABLE 4.—LOSS SETTLEMENT FOR MANUFACTURED HOMES AND INTERPRETATION OF COMMON WALL—Continued

| New changes in SFIP coverage | Former coverage under the SFIP |
|---|---|
| We treat as part of the building additions or extensions attached by a rigid exterior wall, a solid load-bearing interior wall, a stairway, an elevated walkway, or a roof. At the insured's option, these additions and extensions may be separately insured. If the addition or extension is attached by a common interior wall, it may not be insured as a separate building. | We currently only treat, as part of the building, extensions or additions that are connected by a common wall. Additions and extensions connected by a covered breezeway, for example, are treated as separate buildings—not as part of the building. |

TABLE 5.—REDUCTION AND REFORMATION OF COVERAGE LIMITS

| New changes in SFIP coverage | Former coverage under the SFIP |
|---|---|
| We are adding a policy reformation provision for situations when an application or endorsement is received without all the necessary information. We are requiring the applicant to submit the missing information within 60 days. If the missing information is not received within 60 days, and a loss occurs, the maximum amount of insurance available is limited to the lesser of: the amount originally requested or the amount of coverage the original premium paid would buy, using the correct rating information. | No such provision. |

We are also adding coverage in basements and in enclosures of elevated buildings for water softeners and the chemicals in them, water filters and faucets. In addition, we are adding coverage for damage from the pressure or weight of water against the structure with the requirements that there be surface flooding in the area and that the flooding be the cause of the damage. On the other hand, we are excluding from coverage scrip and stored value cards. The revisions to the policy also exclude any losses caused by the policyholder's failure to inspect and maintain the property after the flood recedes.

We are retaining coverage for detached garages, but we are eliminating coverage for detached carports since they do not have two walls—one of the criteria under the definition of building. We are also eliminating the requirement for a minimum premium. The final rule adds to the definition of "flood" criteria previously found elsewhere in the policy. Those criteria require that a qualifying flood event under the policy must inundate two properties or two acres. The consolidation of the criteria into the definition of "flood" is much more useful for the policyholder to understand the scope of coverage under the policy.

In addition to these coverage changes, we are changing how we define loss in progress to make our intent clearer on when coverage begins in connection with loan closings.

**Inspection Procedure of Insured Structures**

On June 27, 2000, FEMA published a final rule establishing an inspection procedure on a pilot project basis for Monroe County, Florida and the Village of Islamorada, which is located in Monroe County. The rule also added endorsements to the SFIP making the renewal of certain flood insurance policies for certain properties in these communities contingent on the property owner's submission of a completed community inspection report by local officials. These optional endorsements affect some 30,000 policies in these two pilot project communities.

We revised these endorsements in this final rule to match the new policy format. Also, in our efforts to simplify the Standard Flood Insurance Policy, we have shortened the endorsements to each of the policy forms in this final rule. We have retained the language regarding the inspection report and the policy renewal, but we have removed a number of redundancies from the policy language.

**Exclusive Federal Jurisdiction and Applicable Law**

Standard Flood Insurance Policies are sold by a number of private Write Your Own (WYO) insurance companies and directly to the public by the Federal Insurance Administration. Because the National Flood Insurance Program is national in scope and accomplishes a number of programmatic missions in addition to making affordable flood insurance generally available to the public, the SFIP provides that its terms cannot be altered, varied or waived except by the written authority of the Federal Insurance Administrator. The Administrator intends that the same benefits should be available to insureds wherever the insured property is located, or whether the policy is purchased from a WYO insurance company or from the Federal government. Thus, there is a need for uniformity in the interpretation of and standards applicable to the policies and their administration. Therefore, we have clarified the policy language pertaining to jurisdiction, venue and applicable law to emphasize that matters pertaining to the Standard Flood Insurance Policy, including issues relating to and arising out of claims handling, must be heard in Federal court and are governed exclusively by Federal law.

**National Environmental Policy Act**

This final rule falls within the exclusion category 44 CFR part 10.8(d)(2)(ii), which addresses the preparation, revision, and adoption of regulations, directives, and other guidance documents related to actions that qualify for categorical exclusions. Qualifying for this exclusion and because no other extraordinary circumstances have been identified, this final rule will not require the preparation of either an environmental assessment or environmental impact statement as defined by the National Environmental Policy Act.

**Executive Order 12866, Regulatory Planning and Review**

We have prepared and reviewed this final rule under the provisions of E.O. 12866, Regulatory Planning and Review. Under Executive Order 12866, 58 FR 51735, October 4, 1993, a significant regulatory action is subject to OMB review and the requirements of the Executive Order. The Executive Order

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defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

For the reasons that follow we have concluded that the rule is neither an economically significant nor a significant regulatory action under the Executive Order.

The rule accomplishes three principal changes: (1) it renders the SFIP in "plain English"; (2) it restructures the format to resemble the basic homeowners policy; and (3) it makes several changes in the policy's coverage. In all other substantive aspects the SFIP is unchanged from its past version.

Of 18 changes that affect coverage, we summarize 11 in Tables 1 through 5 of this preamble. We summarize the remaining 7 changes in the paragraphs that immediately follow the tables. The 18 proposed changes are evenly divided between changes that add or increase coverage and changes that reduce or remove coverage or require certain coverage from a date certain to the time a claim is filed for "closed basin lake" claims.

For each revised policy provision, we made two estimates: the first was the percentage of claims that would be impacted by the revised provision; the second estimate was the dollar impact that provision would have on each affected claim. We multiplied these two amounts to develop the dollar impact of each change spread over all program claims. We then summed those dollar amounts to arrive at an estimated increase of $62.88 in the average paid claim under these revised policy provisions. We estimate that during the first fiscal year after enactment the NFIP would have about 4.3 million policyholders and about 55,900 total flood losses. If so, that would result in an annual cost to the Program of approximately $3.5 million resulting from the proposed changes to the policy.

The Office of Management and Budget has reviewed this rule under the principles of Executive Order 12866.

**Paperwork Reduction Act**

This rule requires the collection of information. Under the Paperwork Reduction Act (Act) we must consider the impact of paperwork and other information collection burdens imposed on the public. The Act mandates specific reductions in the amount of paperwork requirements imposed by agencies. It requires specific approval by the Office of Management and Budget (OMB) of any new requirements for collection of information imposed on ten or more persons by an agency; without such approval, the agency lacks the authority to enforce any such requirement. The Act also requires us to inform respondents that a response is not required unless the collection of information displays a valid OMB control number.

OMB has previously approved the following information collection requirements covered by this final rule under the provisions of the Paperwork Reduction Act, as amended:

| OMB control No. | Title |
|---|---|
| 3067–0021 | National Flood Insurance Claims Forms. |
| 3067–0022 | National Flood Insurance Policy Forms. |
| 3067–0077 | Post Construction Elevation Certificate/Floodproofing Certificate. |
| 3067–0195 | Community Rating System (CRS) Program, Application Worksheets and Commentary. |
| 3067–0235 | Residential Basement Floodproofing Certificate. |
| 3067–0275 | Inspection of Insured Structures by Communities. |

In addition, FEMA has submitted for OMB clearance and approval one other information collection package: Closed Basin Lake Endorsement. When approved by OMB we will publish a separate notice of this collection of information and its expiration date. Any person who is to respond to this collection of information is not required to respond unless the collection of information displays a currently valid OMB control number.

**Executive Order 13132, Federalism**

Executive Order 13132, Federalism, dated August 4, 1999, sets forth principles and criteria that agencies must adhere to in formulating and implementing policies that have federalism implications, that is, regulations that have substantial direct effects on the States, or on the distribution of power and responsibilities among the various levels of government. Federal agencies must closely examine the statutory authority supporting any action that would limit the policymaking discretion of the States, and to the extent practicable, must consult with State and local officials before implementing any such action.

We have reviewed this final rule under E.O. 13132 and have concluded that the rule does not have federalism implications as defined by the Executive Order. The rule is a plain language revision of the Standard Flood Insurance Policy. Inasmuch as the insurance benefits and requirements derive from a Federal statute and program exclusively administered by the Federal Government for the benefit of State, local and tribal governments, individuals, and not-for-profit organizations, the rule neither limits nor preempts any policymaking discretion of the State that the State might otherwise have.

The Office of Management and Budget has reviewed this rule under the provisions of Executive Order 13132.

**Congressional Review of Agency Rulemaking**

We have sent this final rule to the Congress and to the General Accounting Office under the Congressional Review of Agency Rulemaking Act, Public Law 104–121. The rule is not a "major rule" within the meaning of that Act. It is a "plain English" revision of the existing Standard Flood Insurance Policy and any substantive changes in the rule will not result in an annual effect on the economy of $100,000,000 or more. We do not expect that it will result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Nor do we expect that it will have "significant adverse effects" on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises.

**List of Subjects in 44 CFR Parts 59 and 61**

Flood insurance.

Accordingly, we amend 44 CFR Parts 59 and 61 as follows:

## PART 59—GENERAL PROVISIONS

1. The authority citation for Part 59 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.



2. We revise the definition of "Structure" found in § 59.1 Definitions to read as follows:

**§ 59.1 Definitions.**

* * * * *

"Structure" means, for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home. "Structure," for insurance purposes, means:

(1) A building with two or more outside rigid walls and a fully secured roof, that is affixed to a permanent site;

(2) A manufactured home ("a manufactured home," also known as a mobile home, is a structure: built on a permanent chassis, transported to its site in one or more sections, and affixed to a permanent foundation); or

(3) A travel trailer without wheels, built on a chassis and affixed to a permanent foundation, that is regulated under the community's floodplain management and building ordinances or laws.

For the latter purpose, "structure" does not mean a recreational vehicle or a park trailer or other similar vehicle, except as described in paragraph (3) of this definition, or a gas or liquid storage tank.

* * * * *

## PART 61—INSURANCE COVERAGE AND RATES

3. The authority citation for part 61 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

**§ 61.10 [Removed]**

4. We remove § 61.10.

5. We revise § 61.17 to read as follows:

**§ 61.17 Group Flood Insurance Policy.**

(a) A Group Flood Insurance Policy (GFIP) is a policy covering all individuals named by a State as recipients under section 411 of the Stafford Act (42 U.S.C. 5178) of an Individual and Family Grant (IFG) program award for flood damage as a result of a major disaster declaration by the President.

(b) The premium for the GFIP is a flat fee of $200 per policyholder. We may adjust the premium to reflect NFIP loss experience and any adjustment of benefits under the IFG program.

(c) The amount of coverage is equivalent to the maximum grant amount established under section 411 of the Stafford Act (42 U.S.C. 5178).

(d) The term of the GFIP is for 37 months and begins 60 days after the date of the disaster declaration.

(e) Coverage for individual grantees begins on the thirtieth day after the NFIP receives the required data for individual grantees and their premium payments.

(f) We will send a Certificate of Flood Insurance to each individual insured under the GFIP.

(g) The GFIP is the Standard Flood Insurance Policy Dwelling Form (a copy of which is included in Appendix A(1) of this part), except that:

(1) VI. DEDUCTIBLES does not apply to the GFIP. A special deductible of $200 (applicable separately to any building loss and any contents loss) applies to insured flood-damage losses sustained by the insured property in the course of any subsequent flooding event during the term of the GFIP. The deductible does not apply to:

(i) III.C.2. Loss Avoidance Measures; or

(ii) III. C.3. Condominium Loss Assessments coverage.

(2) VII. GENERAL CONDITIONS, E. Cancellation of Policy by You, does not apply to the GFIP.

(3) VII. GENERAL CONDITIONS, H. Policy Renewal, does not apply to the GFIP.

(h) We will send a notice to the GFIP certificate holders approximately 60 days before the end of the thirty-seven month term of the GFIP. The notice will encourage them to contact a local insurance agent or producer or a private insurance company selling NFIP policies under the Write Your Own program of the NFIP to apply for a conventional NFIP Standard Flood Insurance Policy, and advise them as to the amount of coverage they must maintain in order not to jeopardize their eligibility for future disaster assistance. The IFG program will provide the NFIP the amount of flood insurance coverage to be maintained by certificate holders.

6. We revise Appendix A(1) to Part 61, Dwelling Form, to read as follows:

**APPENDIX A(1) TO PART 61**

**Federal Emergency Management Agency, Federal Insurance Administration**

**Standard Flood Insurance Policy**

**DWELLING FORM**

Please read the policy carefully. The flood insurance provided is subject to limitations, restrictions, and exclusions. This policy covers only:

1. A non-condominium residential building designed for principal use as a dwelling place of one to four families, or

2. A single family dwelling unit in a condominium building.

**I. Agreement**

The Federal Emergency Management Agency (FEMA) provides flood insurance under the terms of the National Flood Insurance Act of 1968 and its Amendments, and Title 44 of the Code of Federal Regulations.

We will pay you for direct physical loss by or from flood to your insured property if you:

1. Have paid the correct premium;

2. Comply with all terms and conditions of this policy; and

3. Have furnished accurate information and statements.

We have the right to review the information you give us at any time and to revise your policy based on our review.

**II. Definitions**

A. In this policy, "you" and "your" refer to the insured(s) shown on the Declarations Page of this policy and your spouse, if a resident of the same household. Insured(s) includes: Any mortgagee and loss payee named in the Application and Declarations Page, as well as any other mortgagee or loss payee determined to exist at the time of loss in the order of precedence. "We," "us," and "our" refer to the insurer.

Some definitions are complex because they are provided as they appear in the law or regulations, or result from court cases. The precise definitions are intended to protect you.

*Flood*, as used in this flood insurance policy, means:

1. A general and temporary condition of partial or complete inundation of two or more acres of normally dry land area or of two or more properties (one of which is your property) from:

a. Overflow of inland or tidal waters,

b. Unusual and rapid accumulation or runoff of surface waters from any source,

c. Mudflow.

2. Collapse or subsidence of land along the shore of a lake or similar body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels that result in a flood as defined in A.1.a. above.

B. The following are the other key definitions we use in this policy:

1. *Act.* The National Flood Insurance Act of 1968 and any amendments to it.

2. *Actual Cash Value.* The cost to replace an insured item of property at the time of loss, less the value of its physical depreciation.

3. *Application.* The statement made and signed by you or your agent in applying for this policy. The application gives information we use to determine the eligibility of the risk, the kind of policy to be issued, and the correct premium payment. The application is part of this flood insurance policy. For us to issue you a policy, the correct premium payment must accompany the application.

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4. *Base Flood.* A flood having a one percent chance of being equaled or exceeded in any given year.

5. *Basement.* Any area of the building, including any sunken room or sunken portion of a room, having its floor below ground level (subgrade) on all sides.

6. *Building.*

a. A structure with two or more outside rigid walls and a fully secured roof, that is affixed to a permanent site;

b. A manufactured home (a "manufactured home," also known as a mobile home, is a structure: built on a permanent chassis, transported to its site in one or more sections, and affixed to a permanent foundation); or

c. A travel trailer without wheels, built on a chassis and affixed to a permanent foundation, that is regulated under the community's floodplain management and building ordinances or laws.

*Building* does not mean a gas or liquid storage tank or a recreational vehicle, park trailer or other similar vehicle, except as described in B.6.c. above.

7. *Cancellation.* The ending of the insurance coverage provided by this policy before the expiration date.

8. *Condominium.* That form of ownership of real property in which each unit owner has an undivided interest in common elements.

9. *Condominium Association.* The entity made up of the unit owners responsible for the maintenance and operation of:

a. Common elements owned in undivided shares by unit owners; and

b. Other real property in which the unit owners have use rights; where membership in the entity is a required condition of unit ownership.

10. *Declarations Page.* A computer-generated summary of information you provided in the application for insurance. The Declarations Page also describes the term of the policy, limits of coverage, and displays the premium and our name. The Declarations Page is a part of this flood insurance policy.

11. *Described Location.* The location where the insured building(s) or personal property are found. The described location is shown on the Declarations Page.

12. *Direct Physicol Loss By or From Flood.* Loss or damage to insured property, directly caused by a flood. There must be evidence of physical changes to the property.

13. *Dwelling.* A building designed for use as a residence for no more than four families or a single-family unit in a building under a condominium form of ownership.

14. *Elevated Building.* A building that has no basement and that has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

15. *Emergency Program.* The initial phase of a community's participation in the National Flood Insurance Program. During this phase, only limited amounts of insurance are available under the Act.

16. *Expense Constont.* A flat charge you must pay on each new or renewal policy to defray the expenses of the Federal Government related to flood insurance.

17. *Federal Policy Fee.* A flat charge you must pay on each new or renewal policy to defray certain administrative expenses incurred in carrying out the National Flood Insurance Program. This fee covers expenses not covered by the Expense Constant.

18. *Improvements.* Fixtures, alterations, installations, or additions comprising a part of the insured dwelling or the apartment in which you reside.

19. *Mudflow.* A river of liquid and flowing mud on the surface of normally dry land areas, as when earth is carried by a current of water. Other earth movements, such as landslide, slope failure, or a saturated soil mass moving by liquidity down a slope, are not mudflows.

20. *National Flood Insurance Program (NFIP).* The program of flood insurance coverage and floodplain management administered under the Act and applicable Federal regulations in Title 44 of the Code of Federal Regulations, Subchapter B.

21. *Policy.* The entire written contract between you and us. It includes:

a. This printed form;

b. The application and Declarations Page;

c. Any endorsement(s) that may be issued; and

d. Any renewal certificate indicating that coverage has been instituted for a new policy and new policy term.

Only one dwelling, which you specifically described in the application, may be insured under this policy.

22. *Pollutants.* Substances that include, but are not limited to, any solid, liquid, gaseous, or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, and waste. "Waste" includes, but is not limited to, materials to be recycled, reconditioned, or reclaimed.

23. *Post-FIRM Building.* A building for which construction or substantial improvement occurred after December 31, 1974, or on or after the effective date of an initial Flood Insurance Rate Map (FIRM), whichever is later.

24. *Probation Premium.* A flat charge you must pay on each new or renewal policy issued covering property in a community the NFIP has placed on probation under the provisions of 44 CFR 59.24.

25. *Regular Program.* The final phase of a community's participation in the National Flood Insurance Program. In this phase, a Flood Insurance Rate Map is in effect and full limits of coverage are available under the Act.

26. *Special Flood Hazard Area.* An area having special flood or mudflow, and/or flood-related erosion hazards, and shown on a Flood Hazard Boundary Map or Flood Insurance Rate Map as Zone A, AO, A1–A30, AE, A99, AH, AR, AR/A, AR/AE, AR/AH, AR/AO, AR/A1–A30, V1–V30, VE, or V.

27. *Unit.* A single-family unit you own in a condominium building.

28. *Valued Policy.* A policy in which the insured and the insurer agree on the value of the property insured, that value being payable in the event of a total loss. The Standard Flood Insurance Policy is not a valued policy.

**III. Property Covered**

*A. Coverage A—Building Property*

We insure against direct physical loss by or from flood to:

1. The dwelling at the described location, or for a period of 45 days at another location as set forth in III.C.2.b., Property Removed to Safety.

2. Additions and extensions attached to and in contact with the dwelling by means of a rigid exterior wall, a solid load-bearing interior wall, a stairway, an elevated walkway, or a roof. At your option, additions and extensions connected by any of these methods may be separately insured. Additions and extensions attached to and in contact with the building by means of a common interior wall that is not a solid load-bearing wall are always considered part of the dwelling and cannot be separately insured.

3. A detached garage at the described location. Coverage is limited to no more than 10% of the limit of liability on the dwelling. Use of this insurance is at your option but reduces the building limit of liability. We do not cover any detached garage used or held for use for residential (i.e., dwelling), business, or farming purposes.

4. Materials and supplies to be used for construction, alteration, or repair of the dwelling or a detached garage while the materials and supplies are stored in a fully enclosed building at the described location or on an adjacent property.

5. A building under construction, alteration, or repair at the described location.

a. If the structure is not yet walled or roofed as described in the definition for building (see II.B.6.a.) then coverage applies:

(1) Only while such work is in progress; or

(2) If such work is halted, only for a period of up to 90 continuous days thereafter.

b. However, coverage does not apply until the building is walled and roofed if the lowest floor, including the basement floor, of a non-elevated building or the lowest elevated floor of an elevated building is:

(1) Below the base flood elevation in Zones AH, AE, A1–A30, AR, AR/AE, AR/AH, AR/A1–A30, AR/A, AR/AO; or

(2) Below the base flood elevation adjusted to include the effect of wave action in Zones VE or V1–V30.

The lowest floor levels are based on the bottom of the lowest horizontal structural member of the floor in Zones VE or V1–V30 and the top of the floor in Zones AH, AE, A1–A30, AR, AR/AE, AR/AH, AR/A1–A30, AR/A, AR/AO.

6. A manufactured home or a travel trailer as described in the Definitions section (see II.B.6.b. and II.B.6.c.).

If the manufactured home or travel trailer is in a special flood hazard area, it must be anchored in the following manner at the time of the loss:

a. By over-the-top or frame ties to ground anchors; or

b. In accordance with the manufacturer's specifications; or

c. In compliance with the community's floodplain management requirements unless it has been continuously insured by the NFIP at the same described location since September 30, 1982.

7. The following items of property which are covered under Coverage A only:

a. Awnings and canopies;

b. Blinds;



c. Built-in dishwashers;

d. Built-in microwave ovens;

e. Carpet permanently installed over unfinished flooring;

f. Central air conditioners;

g. Elevator equipment;

h. Fire sprinkler systems;

i. Walk-in freezers;

j. Furnaces and radiators;

k. Garbage disposal units;

l. Hot water heaters, including solar water heaters;

m. Light fixtures;

n. Outdoor antennas and aerials fastened to buildings;

o. Permanently installed cupboards, bookcases, cabinets, paneling, and wallpaper;

p. Plumbing fixtures;

q. Pumps and machinery for operating pumps;

r. Ranges, cooking stoves, and ovens;

s. Refrigerators; and

t. Wall mirrors, permanently installed.

8. Items of property in a building enclosure below the lowest elevated floor of an elevated post-FIRM building located in Zones A1–A30, AE, AH, AR, AR/A, AR/AE, AR/AH, AR/A1–A30, V1–V30, or VE, or in a basement, regardless of the zone. Coverage is limited to the following:

a. Any of the following items, if installed in their functioning locations and, if necessary for operation, connected to a power source:

(1) Central air conditioners;

(2) Cisterns and the water in them;

(3) Drywall for walls and ceilings in a basement and the cost of labor to nail it, unfinished and unfloated and not taped, to the framing;

(4) Electrical junction and circuit breaker boxes;

(5) Electrical outlets and switches;

(6) Elevators, dumbwaiters and related equipment, except for related equipment installed below the base flood elevation after September 30, 1987;

(7) Fuel tanks and the fuel in them;

(8) Furnaces and hot water heaters;

(9) Heat pumps;

(10) Nonflammable insulation in a basement;

(11) Pumps and tanks used in solar energy systems;

(12) Stairways and staircases attached to the building, not separated from it by elevated walkways;

(13) Sump pumps;

(14) Water softeners and the chemicals in them, water filters, and faucets installed as an integral part of the plumbing system;

(15) Well water tanks and pumps;

(16) Required utility connections for any item in this list; and

(17) Footings, foundations, posts, pilings, piers, or other foundation walls and anchorage systems required to support a building.

b. Clean-up.

*B. Coverage B—Personal Property*

1. If you have purchased personal property coverage, we insure against direct physical loss by or from flood to personal property inside a building at the described location, if:

a. The property is owned by you or your household family members; and

b. At your option, the property is owned by guests or servants.

Personal property is also covered for a period of 45 days at another location as set forth in III.C.2.b., Property Removed to Safety.

Personal property in a building that is not fully enclosed must be secured to prevent flotation out of the building. If the personal property does float out during a flood, it will be conclusively presumed that it was not reasonably secured. In that case there is no coverage for such property.

2. Coverage for personal property includes the following property, subject to B.1. above, which is covered under Coverage B only:

a. Air conditioning units, portable or window type;

b. Carpets, not permanently installed, over unfinished flooring;

c. Carpets over finished flooring;

d. Clothes washers and dryers;

e. "Cook-out" grills;

f. Food freezers, other than walk-in, and food in any freezer; and

g. Portable microwave ovens and portable dishwashers.

3. Coverage for items of property in a building enclosure below the lowest elevated floor of an elevated post-FIRM building located in Zones A1–A30, AE, AH, AR, AR/A, AR/AE, AR/AH, AR/A1–A30, V1–V30, or VE, or in a basement, regardless of the zone, is limited to the following items, if installed in their functioning locations and, if necessary for operation, connected to a power source:

a. Air conditioning units, portable or window type;

b. Clothes washers and dryers; and

c. Food freezers, other than walk-in, and food in any freezer.

4. If you are a tenant and have insured personal property under Coverage B in this policy, we will cover such property, including your cooking stove or range and refrigerator. The policy will also cover improvements made or acquired solely at your expense in the dwelling or apartment in which you reside, but for not more than 10% of the limit of liability shown for personal property on the Declarations Page. Use of this insurance is at your option but reduces the personal property limit of liability.

5. If you are the owner of a unit and have insured personal property under Coverage B in this policy, we will also cover your interior walls, floor, and ceiling (not otherwise covered under a flood insurance policy purchased by your condominium association) for not more than 10% of the limit of liability shown for personal property on the Declarations Page. Use of this insurance is at your option but reduces the personal property limit of liability.

6. Special Limits. We will pay no more than $2,500 for any one loss to one or more of the following kinds of personal property:

a. Artwork, photographs, collectibles, or memorabilia, including but not limited to, porcelain or other figures, and sports cards;

b. Rare books or autographed items;

c. Jewelry, watches, precious and semi-precious stones, or articles of gold, silver, or platinum;

d. Furs or any article containing fur which represents its principal value; or

e. Personal property used in any business.

7. We will pay only for the functional value of antiques.

*C. Coverage C—Other Coverages*

1. *Debris Removal.*

a. We will pay the expense to remove non-owned debris that is on or in insured property and debris of insured property anywhere.

b. If you or a member of your household perform the removal work, the value of your work will be based on the Federal minimum wage.

c. This coverage does not increase the Coverage A or Coverage B Limit of Liability.

2. *Loss Avoidance Measures*

a. Sandbags, Supplies, and Labor

(1) We will pay up to $1,000 for costs you incur to protect the insured building from a flood or imminent danger of flood, for the following:

(a) Your reasonable expenses to buy:

(i) Sandbags, including sand to fill them;

(ii) Fill for temporary levees;

(iii) Pumps; and

(iv) Plastic sheeting and lumber used in connection with these items.

(b) The value of work, at the Federal minimum wage, that you or a member of your household perform.

(2) This coverage for Sandbags, Supplies and Labor only applies if damage to insured property by or from flood is imminent and the threat of flood damage is apparent enough to lead a person of common prudence to anticipate flood damage. One of the following must also occur:

(a) A general and temporary condition of flooding in the area near the described location must occur, even if the flood does not reach the building; or

(b) A legally authorized official must issue an evacuation order or other civil order for the community in which the building is located calling for measures to preserve life and property from the peril of flood.

This coverage does not increase the Coverage A or Coverage B Limit of Liability.

b. Property Removed to Safety

(1) We will pay up to $1,000 for the reasonable expenses you incur to move insured property to a place other than the described location that contains the property in order to protect it from flood or the imminent danger of flood.

Reasonable expenses include the value of work, at the Federal minimum wage, you or a member of your household perform.

(2) If you move insured property to a location other than the described location that contains the property, in order to protect it from flood or the imminent danger of flood, we will cover such property while at that location for a period of 45 consecutive days from the date you begin to move it there. The personal property that is moved must be placed in a fully enclosed building or otherwise reasonably protected from the elements.

Any property removed, including a moveable home described in II.6.b.and c., must be placed above ground level or outside of the special flood hazard area.

This coverage does not increase the Coverage A or Coverage B Limit of Liability.

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3. *Condominium Loss Assessments.*

a. If this policy insures a unit, we will pay, up to the Coverage A limit of liability, your share of loss assessments charged against you by the condominium association in accordance with the condominium association's articles of association, declarations and your deed.

The assessment must be made as a result of direct physical loss by or from flood during the policy term, to the building's common elements.

b. We will not pay any loss assessment charged against you:

(1) And the condominium association by any governmental body;

(2) That results from a deductible under the insurance purchased by the condominium association insuring common elements;

(3) That results from a loss to personal property, including contents of a condominium building;

(4) That results from a loss sustained by the condominium association that was not reimbursed under a flood insurance policy written in the name of the association under the Act because the building was not, at the time of loss, insured for an amount equal to the lesser of:

(a) 80% or more of its full replacement cost; or

(b) The maximum amount of insurance permitted under the Act;

(5) To the extent that payment under this policy for a condominium building loss, in combination with payments under any other NFIP policies for the same building loss, exceeds the maximum amount of insurance permitted under the Act for that kind of building; or

(6) To the extent that payment under this policy for a condominium building loss, in combination with any recovery available to you as a tenant in common under any NFIP condominium association policies for the same building loss, exceeds the amount of insurance permitted under the Act for a single-family dwelling.

Loss assessment coverage does not increase the Coverage A Limit of Liability.

*D. Coverage D—Increased Cost of Compliance*

1. *General.*

This policy pays you to comply with a State or local floodplain management law or ordinance affecting repair or reconstruction of a structure.suffering flood damage. Compliance activities eligible for payment are: elevation, floodproofing, relocation, or demolition (or any combination of these activities) of your structure. Eligible floodproofing activities are limited to:

a. Non-residential structures.

b. Residential structures with basements that satisfy FEMA's standards published in the Code of Federal Regulations [44 CFR 60.6 (b) or (c)].

2. *Limit of Liability.*

We will pay you up to $20,000 under this Coverage D—Increased Cost of Compliance, which only applies to policies with building coverage (Coverage A). Our payment of claims under Coverage D is in addition to the amount of coverage which you selected on the application and which appears on the Declarations Page. But the maximum you can collect under this policy for both Coverage A—Building Property and Coverage D—Increased Cost of Compliance cannot exceed the maximum permitted under the Act. We do not charge a separate deductible for a claim under Coverage D.

3. *Eligibility*

a. A structure covered under Coverage A—Building Property sustaining a loss caused by a flood as defined by this policy must:

(1) Be a "repetitive loss structure." A repetitive loss structure is one that meets the following conditions:

(a) The structure is covered by a contract of flood insurance issued under the NFIP.

(b) The structure has suffered flood damage on two occasions during a 10-year period which ends on the date of the second loss.

(c) The cost to repair the flood damage, on average, equaled or exceeded 25% of the market value of the structure at the time of each flood loss.

(d) In addition to the current claim, the NFIP must have paid the previous qualifying claim, and the State or community must have a cumulative, substantial damage provision or repetitive loss provision in its floodplain management law or ordinance being enforced against the structure; or

(2) Be a structure that has had flood damage in which the cost to repair equals or exceeds 50% of the market value of the structure at the time of the flood. The State or community must have a substantial damage provision in its floodplain management law or ordinance being enforced against the structure.

b. This Coverage D pays you to comply with State or local floodplain management laws or ordinances that meet the minimum standards of the National Flood Insurance Program found in the Code of Federal Regulations at 44 CFR 60.3. We pay for compliance activities that exceed those standards under these conditions:

(1) 3.a.(1) above.

(2) Elevation or floodproofing in any risk zone to preliminary or advisory base flood elevations provided by FEMA which the State or local government has adopted and is enforcing for flood-damaged structures in such areas. (This includes compliance activities in B, C, X, or D zones which are being changed to zones with base flood elevations. This also includes compliance activities in zones where base flood elevations are being increased, and a flood-damaged structure must comply with the higher advisory base flood elevation.) Increased Cost of Compliance coverage does not apply to situations in B, C, X, or D zones where the community has derived its own elevations and is enforcing elevation or floodproofing requirements for flood-damaged structures to elevations derived solely by the community.

(3) Elevation or floodproofing above the base flood elevation to meet State or local "freeboard" requirements, *i.e.*, that a structure must be elevated above the base flood elevation.

c. Under the minimum NFIP criteria at 44 CFR 60.3(b)(4), States and communities must require the elevation or floodproofing of structures in unnumbered A zones to the base flood elevation where elevation data is obtained from a Federal, State, or other source. Such compliance activities are also eligible for Coverage D.

d. This coverage will also pay for the incremental cost, after demolition or relocation, of elevating or floodproofing a structure during its rebuilding at the same or another site to meet State or local floodplain management laws or ordinances, subject to Exclusion D.5.g. below.

e. This coverage will also pay to bring a flood-damaged structure into compliance with state or local floodplain management laws or ordinances even if the structure had received a variance before the present loss from the applicable floodplain management requirements.

4. *Conditions.*

a. When a structure covered under Coverage A—Building Property sustains a loss caused by a flood, our payment for the loss under this Coverage D will be for the increased cost to elevate, floodproof, relocate, or demolish (or any combination of these activities) caused by the enforcement of current State or local floodplain management ordinances or laws. Our payment for eligible demolition activities will be for the cost to demolish and clear the site of the building debris or a portion thereof caused by the enforcement of current State or local floodplain management ordinances or laws. Eligible activities for the cost of clearing the site will include those necessary to discontinue utility service to the site and ensure proper abandonment of on-site utilities.

b. When the building is repaired or rebuilt, it must be intended for the same occupancy as the present building unless otherwise required by current floodplain management ordinances or laws.

5. *Exclusions.*

Under this Coverage D (Increased Cost of Compliance) we will not pay for:

a. The cost to comply with any floodplain management law or ordinance in communities participating in the Emergency Program.

b. The cost associated with enforcement of any ordinance or law that requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of pollutants.

c. The loss in value to any insured building or other structure due to the requirements of any ordinance or law.

d. The loss in residual value of the undamaged portion of a building demolished as a consequence of enforcement of any State or local floodplain management law or ordinance.

e. Any Increased Cost of Compliance under this Coverage D:

(1) Until the building is elevated, floodproofed, demolished, or relocated on the same or to another premises; and

(2) Unless the building is elevated, floodproofed, demolished, or relocated as soon as reasonably possible after the loss, not to exceed two years.

f. Any code upgrade requirements, *e.g.*, plumbing or electrical wiring, not specifically related to the State or local floodplain management law or ordinance.

g. Any compliance activities needed to bring additions or improvements made after the loss occurred into compliance with State or local floodplain management laws or ordinances.

h. Loss due to any ordinance or law that you were required to comply with before the current loss.

i. Any rebuilding activity to standards that do not meet the NFIP's minimum requirements. This includes any situation where the insured has received from the State or community a variance in connection with the current flood loss to rebuild the property to an elevation below the base flood elevation.

j. Increased Cost of Compliance for a garage or carport.

k. Any structure insured under an NFIP Group Flood Insurance Policy.

l. Assessments made by a condominium association on individual condominium unit owners to pay increased costs of repairing commonly owned buildings after a flood in compliance with State or local floodplain management ordinances or laws.

6. *Other Provisions.*

a. Increased Cost of Compliance coverage will not be included in the calculation to determine whether coverage meets the 80% insurance-to-value requirement for replacement cost coverage as set forth in VII. General Conditions, V. Loss Settlement.

b. All other conditions and provisions of the policy apply.

**IV. Property Not Covered**

We do not cover any of the following:

1. Personal property not inside a building;

2. A building, and personal property in it, located entirely in, on, or over water or seaward of mean high tide if it was constructed or substantially improved after September 30, 1982;

3. Open structures, including a building used as a boathouse or any structure or building into which boats are floated, and personal property located in, on, or over water;

4. Recreational vehicles other than travel trailers described in the Definitions section (see II.B.6.c.) whether affixed to a permanent foundation or on wheels;

5. Self-propelled vehicles or machines, including their parts and equipment. However, we do cover self-propelled vehicles or machines not licensed for use on public roads that are:

a. Used mainly to service the described location or

b. Designed and used to assist handicapped persons, while the vehicles or machines are inside a building at the described location;

6. Land, land values, lawns, trees, shrubs, plants, growing crops, or animals;

7. Accounts, bills, coins, currency, deeds, evidences of debt, medals, money, scrip, stored value cards, postage stamps, securities, bullion, manuscripts, or other valuable papers;

8. Underground structures and equipment, including wells, septic tanks, and septic systems;

9. Those portions of walks, walkways, decks, driveways, patios and other surfaces, all whether protected by a roof or not, located outside the perimeter, exterior walls of the insured building or the building in which the insured unit is located;

10. Containers, including related equipment, such as, but not limited to, tanks containing gases or liquids;

11. Buildings or units and all their contents if more than 49% of the actual cash value of the building is below ground, unless the lowest level is at or above the base flood elevation and is below ground by reason of earth having been used as insulation material in conjunction with energy efficient building techniques;

12. Fences, retaining walls, seawalls, bulkheads, wharves, piers, bridges, and docks;

13. Aircraft or watercraft, or their furnishings and equipment;

14. Hot tubs and spas that are not bathroom fixtures, and swimming pools, and their equipment, such as, but not limited to, heaters, filters, pumps, and pipes, wherever located;

15. Property not eligible for flood insurance pursuant to the provisions of the Coastal Barrier Resources Act and the Coastal Barrier Improvement Act and amendments to these Acts;

16. Personal property you own in common with other unit owners comprising the membership of a condominium association.

**V. Exclusions**

A. We only pay for direct physical loss by or from flood, which means that we do not pay you for:

1. Loss of revenue or profits;

2. Loss of access to the insured property or described location;

3. Loss of use of the insured property or described location;

4. Loss from interruption of business or production;

5. Any additional living expenses incurred while the insured building is being repaired or is unable to be occupied for any reason;

6. The cost of complying with any ordinance or law requiring or regulating the construction, demolition, remodeling, renovation, or repair of property, including removal of any resulting debris. This exclusion does not apply to any eligible activities we describe in Coverage D—Increased Cost of Compliance; or

7. Any other economic loss you suffer.

B. We do not insure a loss directly or indirectly caused by a flood that is already in progress at the time and date:

1. The policy term begins; or

2. Coverage is added at your request.

C. We do not insure for loss to property caused directly by earth movement even if the earth movement is caused by flood. Some examples of earth movement that we do not cover are:

1. Earthquake;

2. Landslide;

3. Land subsidence;

4. Sinkholes;

5. Destabilization or movement of land that results from accumulation of water in subsurface land area; or

6. Gradual erosion.

We do, however, pay for losses from mudflow and land subsidence as a result of erosion that are specifically covered under our definition of flood (see II.A.1.c. and II.A.2.).

D. We do not insure for direct physical loss caused directly or indirectly by any of the following:

1. The pressure or weight of ice;

2. Freezing or thawing;

3. Rain, snow, sleet, hail, or water spray;

4. Water, moisture, mildew, or mold damage that results primarily from any condition:

a. Substantially confined to the dwelling; or

b. That is within your control, including but not limited to:

(1) Design, structural, or mechanical defects;

(2) Failure, stoppage, or breakage of water or sewer lines, drains, pumps, fixtures, or equipment; or

(3) Failure to inspect and maintain the property after a flood recedes;

5. Water or water-borne material that:

a. Backs up through sewers or drains;

b. Discharges or overflows from a sump, sump pump or related equipment; or

c. Seeps or leaks on or through the covered property;

unless there is a flood in the area and the flood is the proximate cause of the sewer or drain backup, sump pump discharge or overflow, or the seepage of water;

6. The pressure or weight of water unless there is a flood in the area and the flood is the proximate cause of the damage from the pressure or weight of water;

7. Power, heating, or cooling failure unless the failure results from direct physical loss by or from flood to power, heating, or cooling equipment on the described location;

8. Theft, fire, explosion, wind, or windstorm;

9. Anything you or any member of your household do or conspires to do to deliberately cause loss by flood; or

10. Alteration of the insured property that significantly increases the risk of flooding.

E. We do not insure for loss to any building or personal property located on land leased from the Federal Government, arising from or incident to the flooding of the land by the Federal Government, where the lease expressly holds the Federal Government harmless under flood insurance issued under any Federal Government program.

F. We do not pay for the testing for or monitoring of pollutants unless required by law or ordinance.

**VI. Deductibles**

A. When a loss is covered under this policy, we will pay only that part of the loss that exceeds your deductible amount, subject to the limit of liability that applies. The deductible amount is shown on the Declarations Page.

However, when a building under construction, alteration, or repair does not have at least two rigid exterior walls and a fully secured roof at the time of loss, your deductible amount will be two times the deductible that would otherwise apply to a completed building.

B. In each loss from flood, separate deductibles apply to the building and personal property insured by this policy.

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C. The deductible does NOT apply to:
1. III.C.2. Loss Avoidance Measures;
2. III.C.3. Condominium Loss Assessments; or
3. III.D. Increased Cost of Compliance.

**VII. General Conditions**

*A. Pair and Set Clause*

In case of loss to an article that is part of a pair or set, we will have the option of paying you:

1. An amount equal to the cost of replacing the lost, damaged, or destroyed article, minus its depreciation, or

2. The amount that represents the fair proportion of the total value of the pair or set that the lost, damaged, or destroyed article bears to the pair or set.

*B. Concealment or Fraud and Policy Voidance*

1. With respect to all insureds under this policy, this policy:
a. Is void;
b. Has no legal force or effect;
c. Cannot be renewed; and
d. Cannot be replaced by a new NFIP policy, if, before or after a loss, you or any other insured or your agent have at any time:
(1) Intentionally concealed or misrepresented any material fact or circumstance;
(2) Engaged in fraudulent conduct; or
(3) Made false statements; relating to this policy or any other NFIP insurance.

2. This policy will be void as of the date wrongful acts described in B.1.above were committed.

3. Fines, civil penalties, and imprisonment under applicable Federal laws may also apply to the acts of fraud or concealment described above.

4. This policy is also void for reasons other than fraud, misrepresentation, or wrongful act. This policy is void from its inception and has no legal force under the following conditions:
a. If the property is located in a community that was not participating in the NFIP on the policy's inception date and did not join or reenter the program during the policy term and before the loss occurred; or
b. If the property listed on the application is otherwise not eligible for coverage under the NFIP.

*C. Other Insurance*

1. If a loss covered by this policy is also covered by other insurance that includes flood coverage not issued under the Act, we will not pay more than the amount of insurance you are entitled to for lost, damaged, or destroyed property insured under this policy subject to the following:
a. We will pay only the proportion of the loss that the amount of insurance that applies under this policy bears to the total amount of insurance covering the loss, unless C.1.b. or c. immediately below applies.
b. If the other policy has a provision stating that it is excess insurance, this policy will be primary.
c. This policy will be primary (but subject to its own deductible) up to the deductible in the other flood policy (except another policy as described in C.1.b. above). When the other deductible amount is reached, this policy will participate in the same proportion that the amount of insurance under this policy bears to the total amount of both policies, for the remainder of the loss.

2. If there is other insurance in the name of your condominium association covering the same property covered by this policy, then this policy will be in excess over the other insurance.

*D. Amendments, Waivers, Assignment*

This policy cannot be changed nor can any of its provisions be waived without the express written consent of the Federal Insurance Administrator. No action we take under the terms of this policy constitutes a waiver of any of our rights. You may assign this policy in writing when you transfer title of your property to someone else except under these conditions:

1. When this policy covers only personal property; or

2. When this policy covers a structure during the course of construction.

*E. Cancellation of the Policy by You*

1. You may cancel this policy in accordance with the applicable rules and regulations of the NFIP.

2. If you cancel this policy, you may be entitled to a full or partial refund of premium also under the applicable rules and regulations of the NFIP.

*F. Non-Renewal of the Policy by Us*

Your policy will not be renewed:

1. If the community where your covered property is located stops participating in the NFIP, or

2. If your building has been declared ineligible under section 1316 of the Act.

*G. Reduction and Reformation of Coverage*

1. If the premium we received from you was not enough to buy the kind and amount of coverage you requested, we will provide only the amount of coverage that can be purchased for the premium payment we received.

2. The policy can be reformed to increase the amount of coverage resulting from the reduction described in G.1. above to the amount you requested as follows:
a. Discovery of Insufficient Premium or Incomplete Rating Information Before a Loss:
(1) If we discover before you have a flood loss that your premium payment was not enough to buy the requested amount of coverage, we will send you and any mortgagee or trustee known to us a bill for the required additional premium for the current policy term (or that portion of the current policy term following any endorsement changing the amount of coverage). If you or the mortgagee or trustee pay the additional premium within 30 days from the date of our bill, we will reform the policy to increase the amount of coverage to the originally requested amount effective to the beginning of the current policy term (or subsequent date of any endorsement changing the amount of coverage).
(2) If we determine before you have a flood loss that the rating information we have is incomplete and prevents us from calculating the additional premium, we will ask you to send the required information. You must submit the information within 60 days of our request. Once we determine the amount of additional premium for the current policy term, we will follow the procedure in G.2.a.(1) above.
(3) If we do not receive the additional premium (or additional information) by the date it is due, the amount of coverage can only be increased by endorsement subject to any appropriate waiting period.
b. Discovery of Insufficient Premium or Incomplete Rating Information After a Loss:
(1) If we discover after you have a flood loss that your premium payment was not enough to buy the requested amount of coverage, we will send you and any mortgagee or trustee known to us a bill for the required additional premium for the current and the prior policy terms. If you or the mortgagee or trustee pay the additional premium within 30 days of the date of our bill, we will reform the policy to increase the amount of coverage to the originally requested amount effective to the beginning of the prior policy term.
(2) If we discover after you have a flood loss that the rating information we have is incomplete and prevents us from calculating the additional premium, we will ask you to send the required information. You must submit the information before your claim can be paid. Once we determine the amount of additional premium for the current and prior policy terms, we will follow the procedure in G.2.b.(1) above.
(3) If we do not receive the additional premium by the date it is due, your flood insurance claim will be settled based on the reduced amount of coverage. The amount of coverage can only be increased by endorsement subject to any appropriate waiting period.
3. However, if we find that you or your agent intentionally did not tell us, or falsified, any important fact or circumstance or did anything fraudulent relating to this insurance, the provisions of Condition B. Concealment or Fraud and Policy Voidance apply.

*H. Policy Renewal*

1. This policy will expire at 12:01 a.m. on the last day of the policy term.

2. We must receive the payment of the appropriate renewal premium within 30 days of the expiration date.

3. If we find, however, that we did not place your renewal notice into the U.S. Postal Service, or if we did mail it, we made a mistake, e.g., we used an incorrect, incomplete, or illegible address, which delayed its delivery to you before the due date for the renewal premium, then we will follow these procedures:
a. If you or your agent notified us, not later than one year after the date on which the payment of the renewal premium was due, of non-receipt of a renewal notice before the due date for the renewal premium, and we determine that the circumstances in the preceding paragraph apply, we will mail a second bill providing a revised due date, which will be 30 days after the date on which the bill is mailed.
b. If we do not receive the premium requested in the second bill by the revised due date, then we will not renew the policy. In that case, the policy will remain an expired policy as of the expiration date shown on the Declarations Page.

4. In connection with the renewal of this policy, we may ask you during the policy term to recertify, on a Recertification Questionnaire we will provide to you, the rating information used to rate your most recent application for or renewal of insurance.

*I. Conditions Suspending or Restricting Insurance*

We are not liable for loss that occurs while there is a hazard that is increased by any means within your control or knowledge.

*J. Requirements in Case of Loss*

In case of a flood loss to insured property, you must:

1. Give prompt written notice to us;

2. As soon as reasonably possible, separate the damaged and undamaged property, putting it in the best possible order so that we may examine it;

3. Prepare an inventory of damaged property showing the quantity, description, actual cash value, and amount of loss. Attach all bills, receipts, and related documents;

4. Within 60 days after the loss, send us a proof of loss, which is your statement of the amount you are claiming under the policy signed and sworn to by you, and which furnishes us with the following information:
a. The date and time of loss;
b. A brief explanation of how the loss happened;
c. Your interest (for example, "owner") and the interest, if any, of others in the damaged property;
d. Details of any other insurance that may cover the loss;
e. Changes in title or occupancy of the covered property during the term of the policy;
f. Specifications of damaged buildings and detailed repair estimates;
g. Names of mortgagees or anyone else having a lien, charge, or claim against the insured property;
h. Details about who occupied any insured building at the time of loss and for what purpose; and
i. The inventory of damaged personal property described in J.3. above.

5. In completing the proof of loss, you must use your own judgment concerning the amount of loss and justify that amount.

6. You must cooperate with the adjuster or representative in the investigation of the claim.

7. The insurance adjuster whom we hire to investigate your claim may furnish you with a proof of loss form, and she or he may help you complete it. However, this is a matter of courtesy only, and you must still send us a proof of loss within 60 days after the loss even if the adjuster does not furnish the form or help you complete it.

8. We have not authorized the adjuster to approve or disapprove claims or to tell you whether we will approve your claim.

9. At our option, we may accept the adjuster's report of the loss instead of your proof of loss. The adjuster's report will include information about your loss and the damages you sustained. You must sign the adjuster's report. At our option, we may require you to swear to the report.

*K. Our Options After a Loss*

Options we may, in our sole discretion, exercise after loss include the following:

1. At such reasonable times and places that we may designate, you must:
a. Show us or our representative the damaged property;
b. Submit to examination under oath, while not in the presence of another insured, and sign the same; and
c. Permit us to examine and make extracts and copies of:
(1) Any policies of property insurance insuring you against loss and the deed establishing your ownership of the insured real property;
(2) Condominium association documents including the Declarations of the condominium, its Articles of Association or Incorporation, Bylaws, rules and regulations, and other relevant documents if you are a unit owner in a condominium building; and
(3) All books of accounts, bills, invoices and other vouchers, or certified copies pertaining to the damaged property if the originals are lost.

2. We may request, in writing, that you furnish us with a complete inventory of the lost, damaged or destroyed property, including:
a. Quantities and costs;
b. Actual cash values or replacement cost (whichever is appropriate);
c. Amounts of loss claimed;
d. Any written plans and specifications for repair of the damaged property that you can reasonably make available to us; and
e. Evidence that prior flood damage has been repaired.

3. If we give you written notice within 30 days after we receive your signed, sworn proof of loss, we may:
a. Repair, rebuild, or replace any part of the lost, damaged, or destroyed property with material or property of like kind and quality or its functional equivalent; and
b. Take all or any part of the damaged property at the value that we agree upon or its appraised value.

*L. No Benefit to Bailee*

No person or organization, other than you, having custody of covered property will benefit from this insurance.

*M. Loss Payment*

1. We will adjust all losses with you. We will pay you unless some other person or entity is named in the policy or is legally entitled to receive payment. Loss will be payable 60 days after we receive your proof of loss (or within 90 days after the insurance adjuster files the adjuster's report signed and sworn to by you in lieu of a proof of loss) and:
a. We reach an agreement with you;
b. There is an entry of a final judgment; or
c. There is a filing of an appraisal award with us, as provided in VII. P.

2. If we reject your proof of loss in whole or in part you may:
a. Accept our denial of your claim;
b. Exercise your rights under this policy; or
c. File an amended proof of loss as long as it is filed within 60 days of the date of the loss.

*N. Abandonment*

You may not abandon to us damaged or undamaged property insured under this policy.

*O. Salvage*

We may permit you to keep damaged property insured under this policy after a loss, and we will reduce the amount of the loss proceeds payable to you under the policy by the value of the salvage.

*P. Appraisal*

If you and we fail to agree on the actual cash value or, if applicable, replacement cost of your damaged property to settle upon the amount of loss, then either may demand an appraisal of the loss. In this event, you and we will each choose a competent and impartial appraiser within 20 days after receiving a written request from the other. The two appraisers will choose an umpire. If they cannot agree upon an umpire within 15 days, you or we may request that the choice be made by a judge of a court of record in the state where the covered property is located. The appraisers will separately state the actual cash value, the replacement cost, and the amount of loss to each item. If the appraisers submit a written report of an agreement to us, the amount agreed upon will be the amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will set the amount of actual cash value and loss, or if it applies, the replacement cost and loss.

Each party will:

1. Pay its own appraiser; and

2. Bear the other expenses of the appraisal and umpire equally.

*Q. Mortgage Clause*

The word "mortgagee" includes trustee.

Any loss payable under Coverage A—Building Property will be paid to any mortgagee of whom we have actual notice, as well as any other mortgagee or loss payee determined to exist at the time of loss, and you, as interests appear. If more than one mortgagee is named, the order of payment will be the same as the order of precedence of the mortgages.

If we deny your claim, that denial will not apply to a valid claim of the mortgagee, if the mortgagee:

1. Notifies us of any change in the ownership or occupancy, or substantial change in risk of which the mortgagee is aware;

2. Pays any premium due under this policy on demand if you have neglected to pay the premium; and

3. Submits a signed, sworn proof of loss within 60 days after receiving notice from us of your failure to do so.

All of the terms of this policy apply to the mortgagee.

The mortgagee has the right to receive loss payment even if the mortgagee has started foreclosure or similar action on the building.

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If we decide to cancel or not renew this policy, it will continue in effect for the benefit of the mortgagee only for 30 days after we notify the mortgagee of the cancellation or non-renewal.

If we pay the mortgagee for any loss and deny payment to you, we are subrogated to all the rights of the mortgagee granted under the mortgage on the property. Subrogation will not impair the right of the mortgagee to recover the full amount of the mortgagee's claim.

*R. Suit Against Us*

You may not sue us to recover money under this policy unless you have complied with all the requirements of the policy. If you do sue, you must start the suit within one year after the date of the written denial of all or part of the claim, and you must file the suit in the United States District Court of the district in which the covered property was located at the time of loss. This requirement applies to any claim that you may have under this policy and to any dispute that you may have arising out of the handling of any claim under the policy.

*S. Subrogation*

Whenever we make a payment for a loss under this policy, we are subrogated to your right to recover for that loss from any other person. That means that your right to recover for a loss that was partly or totally caused by someone else is automatically transferred to us, to the extent that we have paid you for the loss. We may require you to acknowledge this transfer in writing. After the loss, you may not give up our right to recover this money or do anything that would prevent us from recovering it. If you make any claim against any person who caused your loss and recover any money, you must pay us back first before you may keep any of that money.

*T. Continuous Lake Flooding*

1. If an insured building has been flooded by rising lake waters continuously for 90 days or more and it appears reasonably certain that a continuation of this flooding will result in a covered loss to the insured building equal to or greater than the building policy limits plus the deductible or the maximum payable under the policy for any one building loss, we will pay you the lesser of these two amounts without waiting for the further damage to occur if you sign a release agreeing:

a. To make no further claim under this policy;

b. Not to seek renewal of this policy;

c. Not to apply for any flood insurance under the Act for property at the described location; and

d. Not to seek a premium refund for current or prior terms.

If the policy term ends before the insured building has been flooded continuously for 90 days, the provisions of this paragraph T.1. will apply when the insured building suffers a covered loss before the policy term ends.

2. If your insured building is subject to continuous lake flooding from a closed basin lake, you may elect to file a claim under either paragraph T.1. above or T.2. (A "closed basin lake" is a natural lake from which water leaves primarily through evaporation and whose surface area now exceeds or has exceeded one square mile at any time in the recorded past. Most of the nation's closed basin lakes are in the western half of the United States where annual evaporation exceeds annual precipitation and where lake levels and surface areas are subject to considerable fluctuation due to wide variations in the climate. These lakes may overtop their basins on rare occasions.) Under this paragraph T.2., we will pay your claim as if the building is a total loss even though it has not been continuously inundated for 90 days, subject to the following conditions:

a. Lake flood waters must damage or imminently threaten to damage your building.

b. Before approval of your claim, you must:

(1) Agree to a claim payment that reflects your buying back the salvage on a negotiated basis; and

(2) Grant the conservation easement described in FEMA's "Policy Guidance for Closed Basin Lakes" to be recorded in the office of the local recorder of deeds. FEMA, in consultation with the community in which the property is located, will identify on a map an area or areas of special consideration (ASC) in which there is a potential for flood damage from continuous lake flooding. FEMA will give the community the agreed-upon map showing the ASC. This easement will only apply to that portion of the property in the ASC. It will allow certain agricultural and recreational uses of the land. The only structures it will allow on any portion of the property within the ASC are certain simple agricultural and recreational structures. If any of these allowable structures are insurable buildings under the NFIP and are insured under the NFIP, they will not be eligible for the benefits of this paragraph T.2. If a U.S. Army Corps of Engineers certified flood control project or otherwise certified flood control project later protects the property, FEMA will, upon request, amend the ASC to remove areas protected by those projects. The restrictions of the easement will then no longer apply to any portion of the property removed from the ASC; and

(3) Comply with paragraphs T.1.a. through T.1.d. above.

c. Within 90 days of approval of your claim, you must move your building to a new location outside the ASC. FEMA will give you an additional 30 days to move if you show there is sufficient reason to extend the time.

d. Before the final payment of your claim, you must acquire an elevation certificate and a floodplain development permit from the local floodplain administrator for the new location of your building.

e. Before the approval of your claim, the community having jurisdiction over your building must:

(1) Adopt a permanent land use ordinance, or a temporary moratorium for a period not to exceed 6 months to be followed immediately by a permanent land use ordinance, that is consistent with the provisions specified in the easement required in paragraph T.2.b. above.

(2) Agree to declare and report any violations of this ordinance to FEMA so that under Section 1316 of the National Flood Insurance Act of 1968, as amended, flood insurance to the building can be denied; and

(3) Agree to maintain as deed-restricted, for purposes compatible with open space or agricultural or recreational use only, any affected property the community acquires an interest in. These deed restrictions must be consistent with the provisions of paragraph T.2.b. above, except that, even if a certified project protects the property, the land use restrictions continue to apply if the property was acquired under the Hazard Mitigation Grant Program or the Flood Mitigation Assistance Program. If a non-profit land trust organization receives the property as a donation, that organization must maintain the property as deed-restricted, consistent with the provisions of paragraph T.2.b. above.

f. Before the approval of your claim, the affected State must take all action set forth in FEMA's "Policy Guidance for Closed Basin Lakes."

g. You must have NFIP flood insurance coverage continuously in effect from a date established by FEMA until you file a claim under paragraph T.2. If a subsequent owner buys NFIP insurance that goes into effect within 60 days of the date of transfer of title, any gap in coverage during that 60-day period will not be a violation of this continuous coverage requirement. For the purpose of honoring a claim under this paragraph T.2, we will not consider to be in effect any increased coverage that became effective after the date established by FEMA. The exception to this is any increased coverage in the amount suggested by your insurer as an inflation adjustment.

h. This paragraph T.2. will be in effect for a community when the FEMA Regional Director for the affected region provides to the community, in writing, the following:

(1) Confirmation that the community and the State are in compliance with the conditions in paragraphs T.2.e. and T.2.f. above, and

(2) The date by which you must have flood insurance in effect.

*U. Duplicate Policies Not Allowed*

1. We will not insure your property under more than one NFIP policy.

If we find that the duplication was not knowingly created, we will give you written notice. The notice will advise you that you may choose one of several options under the following procedures:

a. If you choose to keep in effect the policy with the earlier effective date, you may also choose to add the coverage limits of the later policy to the limits of the earlier policy. The change will become effective as of the effective date of the later policy.

b. If you choose to keep in effect the policy with the later effective date, you may also choose to add the coverage limits of the earlier policy to the limits of the later policy. The change will be effective as of the effective date of the later policy.

In either case, you must pay the pro rata premium for the increased coverage limits within 30 days of the written notice. In no event will the resulting coverage limits exceed the permissible limits of coverage



under the Act or your insurable interest, whichever is less. We will make a refund to you, according to applicable NFIP rules, of the premium for the policy not being kept in effect.

2. Your option under Condition U. Duplicate Policies Not Allowed to elect which NFIP policy to keep in effect does not apply when duplicates have been knowingly created. Losses occurring under such circumstances will be adjusted according to the terms and conditions of the earlier policy. The policy with the later effective date must be canceled.

*V. Loss Settlement*

1. Introduction

This policy provides three methods of settling losses: Replacement Cost, Special Loss Settlement, and Actual Cash Value. Each method is used for a different type of property, as explained in a-c. below.

a. Replacement Cost Loss Settlement, described in V.2. below, applies to a single-family dwelling provided:

(1) It is your principal residence, which means that, at the time of loss, you or your spouse lived there for 80% of:

(a) The 365 days immediately preceding the loss; or

(b) The period of your ownership, if you owned the dwelling for less than 365 days; and

(2) At the time of loss, the amount of insurance in this policy that applies to the dwelling is 80% or more of its full replacement cost immediately before the loss, or is the maximum amount of insurance available under the NFIP.

b. Special Loss Settlement, described in V.3. below, applies to a single-family dwelling that is a manufactured or mobile home or a travel trailer.

c. Actual Cash Value loss settlement applies to a single-family dwelling not subject to replacement cost or special loss settlement, and to the property listed in V.4. below.

2. Replacement Cost Loss Settlement

The following loss settlement conditions apply to a single-family dwelling described in V.1.a. above:

a. We will pay to repair or replace the damaged dwelling after application of the deductible and without deduction for depreciation, but not more than the least of the following amounts:

(1) The building limit of liability shown on your Declarations Page;

(2) The replacement cost of that part of the dwelling damaged, with materials of like kind and quality and for like use; or

(3) The necessary amount actually spent to repair or replace the damaged part of the dwelling for like use.

b. If the dwelling is rebuilt at a new location, the cost described above is limited to the cost that would have been incurred if the dwelling had been rebuilt at its former location.

c. When the full cost of repair or replacement is more than $1,000, or more than 5% of the whole amount of insurance that applies to the dwelling, we will not be liable for any loss under V.2.a. above or V.4.a.(2) below unless and until actual repair or replacement is completed.

d. You may disregard the replacement cost conditions above and make claim under this policy for loss to dwellings on an actual cash value basis. You may then make claim for any additional liability according to V.2.a., b., and c. above, provided you notify us of your intent to do so within 180 days after the date of loss.

e. If the community in which your dwelling is located has been converted from the Emergency Program to the Regular Program during the current policy term, then we will consider the maximum amount of available NFIP insurance to be the amount that was available at the beginning of the current policy term.

3. Special Loss Settlement

a. The following loss settlement conditions apply to a single-family dwelling that:

(1) is a manufactured or mobile home or a travel trailer, as defined in II.B.6.b. and c.,

(2) is at least 16 feet wide when fully assembled and has an area of at least 600 square feet within its perimeter walls when fully assembled, and

(3) is your principal residence as specified in V.1.a.(1) above.

b. If such a dwelling is totally destroyed or damaged to such an extent that, in our judgment, it is not economically feasible to repair, at least to its pre-damage condition, we will, at our discretion pay the least of the following amounts:

(1) The lesser of the replacement cost of the dwelling or 1.5 times the actual cash value, or

(2) The building limit of liability shown on your Declarations Page.

c. If such a dwelling is partially damaged and, in our judgment, it is economically feasible to repair it to its pre-damage condition, we will settle the loss according to the Replacement Cost conditions in V.2.above.

4. Actual Cash Value Loss Settlement

The types of property noted below are subject to actual cash value (or in the case of V.4.a.(2), below, proportional) loss settlement.

a. A dwelling, at the time of loss, when the amount of insurance on the dwelling is both less than 80% of its full replacement cost immediately before the loss and less than the maximum amount of insurance availeble under the NFIP. In that case, we will pay the greater of the following amounts, but not more than the amount of insurance that applies to that dwelling:

(1) The actual cash value, as defined in II.B.2., of the damaged part of the dwelling; or

(2) A proportion of the cost to repair or replace the damaged part of the dwelling, without deduction for physical depreciation and after application of the deductible.

This proportion is determined as follows: If 80% of the full replacement cost of the dwelling is less than the maximum amount of insurance available under the NFIP, then the proportion is determined by dividing the actual amount of insurance on the dwelling by the amount of insurance that represents 80% of its full replacement cost. But if 80% of the full replacement cost of the dwelling is greater than the maximum amount of insurance available under the NFIP, then the proportion is determined by dividing the actual amount of insurance on the dwelling by the maximum amount of insurance available under the NFIP.

b. A two-, three-, or four-family dwelling.

c. A unit that is not used exclusively for single-family dwelling purposes.

d. Detached garages.

e. Personal property.

f. Appliances, carpets, and carpet pads.

g. Outdoor awnings, outdoor antennas or aerials of any type, and other outdoor equipment.

h. Any property covered under this policy that is abandoned after a loss and remains as debris anywhere on the described location.

i. A dwelling that is not your principal residence.

5. Amount of Insurance Required

To determine the amount of insurance required for a dwelling immediately before the loss, we do not include the value of:

a. Footings, foundations, piers, or any other structures or devices that are below the undersurface of the lowest basement floor and support all or part of the dwelling;

b. Those supports listed in V.5.a. above, that are below the surface of the ground inside the foundation walls if there is no basement; and

c. Excavations and underground flues, pipes, wiring, and drains.

**Note:** The Coverage D—Increased Cost of Compliance limit of liability is not included in the determination of the amount of insurance required.

**VIII. Liberalization Clause**

If we make a change that broadens your coverage under this edition of our policy, but does not require any additional premium, then that change will automatically apply to your insurance as of the date we implement the change, provided that this implementation date falls within 60 days before or during the policy term stated on the Declarations Page.

**IX. What Law Governs**

This policy and all disputes arising from the handling of any claim under the policy are governed exclusively by the flood insurance regulations issued by FEMA, the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001, *et seq.*), and Federal common law.

*In Witness Whereof*, we have signed this policy below and hereby enter into this Insurance Agreement.

**Jo Ann Howard,**

*Administrator, Federal Insurance Administration.*

7. We revise Appendix A(2) to Part 61, General Property Form, to read as follows:

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**APPENDIX A(2) TO PART 61**

**Federal Emergency Management Agency, Federal Insurance Administration**

**Standard Flood Insurance Policy**

**GENERAL PROPERTY FORM**

Please read the policy carefully. The flood insurance coverage provided is subject to limitations, restrictions, and exclusions.

This policy provides no coverage:

1. In a regular program community, for a residential condominium building, as defined in this policy; and

2. Except for personal property coverage, for a unit in a condominium building.

**I. Agreement**

The Federal Emergency Management Agency (FEMA) provides flood insurance under the terms of the National Flood Insurance Act of 1968 and its Amendments, and Title 44 of the Code of Federal Regulations.

We will pay you for direct physical loss by or from flood to your insured property if you:

1. Have paid the correct premium;

2. Comply with all terms and conditions of this policy; and

3. Have furnished accurate information and statements.

We have the right to review the information you give us at any time and to revise your policy based on our review.

**II. Definitions**

A. In this policy, "you" and "your" refer to the insured(s) shown on the Declarations Page of this policy. Insured(s) includes: Any mortgagee and loss payee named in the Application and Declarations page, as well as any other mortgagee or loss payee determined to exist at the time of loss in the order of precedence. "We," "us," and "our" refer to the insurer.

Some definitions are complex because they are provided as they appear in the law or regulations, or result from court cases. The precise definitions are intended to protect you.

*Flood*, as used in this flood insurance policy, means:

1. A general and temporary condition of partial or complete inundation of two or more acres of normally dry land area or of two or more properties (one of which is your property) from:

a. Overflow of inland or tidal waters;

b. Unusual and rapid accumulation or runoff of surface waters from any source;

c. Mudflow.

2. The collapse or subsidence of land along the shore of a lake or similar body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels which result in a flood as defined in A.1.a. above.

B. The following are the other key definitions we use in this policy:

1. *Act.* The National Flood Insurance Act of 1968 and any amendments to it.

2. *Actual Cash Value.* The cost to replace an insured item of property at the time of loss, less the value of its physical depreciation.

3. *Application.* The statement made and signed by you or your agent in applying for this policy. The application gives information we use to determine the eligibility of the risk, the kind of policy to be issued, and the correct premium payment. The application is part of this flood insurance policy. For us to issue you a policy, the correct premium payment must accompany the application.

4. *Base Flood.* A flood having a one percent chance of being equaled or exceeded in any given year.

5. *Basement.* Any area of the building, including any sunken room or sunken portion of a room, having its floor below ground level (subgrade) on all sides.

6. *Building.*

a. A structure with two or more outside rigid walls and a fully secured roof, that is affixed to a permanent site;

b. A manufactured home ("a manufactured home," also known as a mobile home, is a structure: built on a permanent chassis, transported to its site in one or more sections, and affixed to a permanent foundation); or

c. A travel trailer without wheels, built on a chassis and affixed to a permanent foundation, that is regulated under the community's floodplain management and building ordinances or laws.

*Building* does not mean a gas or liquid storage tank or a recreational vehicle, park trailer, or other similar vehicle, except as described in B.6.c., above.

7. *Cancellation.* The ending of the insurance coverage provided by this policy before the expiration date.

8. *Condominium.* That form of ownership of real property in which each unit owner has an undivided interest in common elements.

9. *Condominium Association.* The entity, formed by the unit owners, responsible for the maintenance and operation of:

a. Common elements owned in undivided shares by unit owners; and

b. Other real property in which the unit owners have use rights where membership in the entity is a required condition of unit ownership.

10. *Declarations Page.* A computer-generated summary of information you provided in the application for insurance. The Declarations Page also describes the term of the policy, limits of coverage, and displays the premium and our name. The Declarations Page is a part of this flood insurance policy.

11. *Described Location.* The location where the insured building or personal property is found. The described location is shown on the Declarations Page.

12. *Direct Physical Loss By or From Flood.* Loss or damage to insured property, directly caused by a flood. There must be evidence of physical changes to the property.

13. *Elevated Building.* A building that has no basement and that has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

14. *Emergency Program.* The initial phase of a community's participation in the National Flood Insurance Program. During this phase, only limited amounts of insurance are available under the Act.

15. *Expense Constant.* A flat charge you must pay on each new or renewal policy to defray the expenses of the Federal Government related to flood insurance.

16. *Federal Policy Fee.* A flat charge you must pay on each new or renewal policy to defray certain administrative expenses incurred in carrying out the National Flood Insurance Program. This fee covers expenses not covered by the expense constant.

17. *Improvements.* Fixtures, alterations, installations, or additions comprising a part of the insured building.

18. *Mudflow.* A river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water. Other earth movements, such as landslide, slope failure, or a saturated soil mass moving by liquidity down a slope, are not mudflows.

19. *National Flood Insurance Program (NFIP).* The program of flood insurance coverage and floodplain management administered under the Act and applicable Federal regulations in Title 44 of the Code of Federal Regulations, Subchapter B.

20. *Policy.* The entire written contract between you and us. It includes:

a. This printed form;

b. The application and Declarations Page;

c. Any endorsement(s) that may be issued; and,

d. Any renewal certificate indicating that coverage has been instituted for a new policy and new policy term.

Only one building, which you specifically described in the application, may be insured under this policy.

21. *Pollutants.* Substances that include, but that are not limited to, any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, and waste. "Waste" includes, but is not limited to, materials to be recycled, reconditioned, or reclaimed.

22. *Post-FIRM Building.* A building for which construction or substantial improvement occurred after December 31, 1974, or on or after the effective date of an initial Flood Insurance Rate Map (FIRM), whichever is later.

23. *Probation Premium.* A flat charge you must pay on each new or renewal policy issued covering property in a community that has been placed on probation under the provisions of 44 CFR 59.24.

24. *Regular Program.* The final phase of a community's participation in the National Flood Insurance Program. In this phase, a Flood Insurance Rate Map is in effect and full limits of coverage are available under the Act.

25. *Residential Condominium Building.* A building, owned and administered as a condominium, containing one or more family units and in which at least 75% of the floor area is residential.

26. *Special Flood Hazard Area.* An area having special flood or mudflow, and/or flood-related erosion hazards, and shown on a Flood Hazard Boundary Map or Flood Insurance Rate Map as Zone A, AO, A1–A30, AE, A99, AH, AR, AR/A, AR/AE, AR/AH, AR/AO, AR/A1–A30, V1–V30, VE, V.

27. *Stock* means merchandise held in storage or for sale, raw materials, and in-process or finished goods, including supplies used in their packing or shipping.



*Stock* does not include any property not covered under Section IV. Property Not Covered, except the following:

a. Parts and equipment for self-propelled vehicles;

b. Furnishings and equipment for watercraft;

c. Spas and hot-tubs, including their equipment; and

d. Swimming pool equipment.

28. *Unit.* A unit in a condominium building.

29. *Valued Policy.* A policy in which the insured and the insurer agree on the value of the property insured, that value being payable in the event of a total loss. The Standard Flood Insurance Policy is not a valued policy.

**III. Property Covered**

*A. Coverage A—Building Property*

We insure against direct physical loss by or from flood to:

1. The building described on the Declarations Page at the described location. If the building is a condominium building and the named insured is the condominium association, Coverage A includes all units within the building and the improvements within the units, provided the units are owned in common by all unit owners.

2. We also insure building property for a period of 45 days at another location, as set forth in III.C.2.b., Property Removed to Safety.

3. Additions and extensions attached to and in contact with the building by means of a rigid exterior wall, a solid load-bearing interior wall, a stairway, an elevated walkway, or a roof. At your option, additions and extensions connected by any of these methods may be separately insured. Additions and extensions attached to and in contact with the building by means of a common interior wall that is not a solid load-bearing wall are always considered part of the building and cannot be separately insured.

4. The following fixtures, machinery, and equipment, which are covered under Coverage A only:

a. Awnings and canopies;

b. Blinds;

c. Carpet permanently installed over unfinished flooring;

d. Central air conditioners;

e. Elevator equipment;

f. Fire extinguishing apparatus;

g. Fire sprinkler systems;

h. Walk-in freezers;

i. Furnaces;

j. Light fixtures;

k. Outdoor antennas and aerials attached to buildings;

l. Permanently installed cupboards, bookcases, paneling, and wallpaper;

m. Pumps and machinery for operating pumps;

n. Ventilating equipment; and

o. Wall mirrors, permanently installed;

p. In the units within the building, installed:

(1) Built-in dishwashers;

(2) Built-in microwave ovens;

(3) Garbage disposal units;

(4) Hot water heaters, including solar water heaters;

(5) Kitchen cabinets;

(6) Plumbing fixtures;

(7) Radiators;

(8) Ranges;

(9) Refrigerators; and

(10) Stoves.

5. Materials and supplies to be used for construction, alteration, or repair of the insured building while the materials and supplies are stored in a fully enclosed building at the described location or on an adjacent property.

6. A building under construction, alteration, or repair at the described location.

a. If the structure is not yet walled or roofed as described in the definition for building (see II. 6.a.), then coverage applies:

(1) Only while such work is in progress; or

(2) If such work is halted, only for a period of up to 90 continuous days thereafter.

b. However, coverage does not apply until the building is walled and roofed if the lowest floor, including the basement floor, of a non-elevated building or the lowest elevated floor of an elevated building is:

(1) Below the base flood elevation in Zones AH, AE, A1–A30, AR, AR/AE, AR/AH, AR/A1–A30, AR/A, AR/AO; or

(2) Below the base flood elevation adjusted to include the effect of wave action in Zones VE or V1–V30.

The lowest floor levels are based on the bottom of the lowest horizontal structural member of the floor in Zones VE or V1–V30 and the top of the floor in Zones AH, AE, A1–A30, AR, AR/AE, AR/AH, AR/A1–A30, AR/A, AR/AO.

7. A manufactured home or a travel trailer as described in the Definitions

Section (see II.B.6.b.and II.B.6.c.).

If the manufactured home or travel trailer is in a special flood hazard area, it must be anchored in the following manner at the time of the loss:

a. By over-the-top or frame ties to ground anchors; or

b. In accordance with the manufacturer's specifications; or

c. In compliance with the community's floodplain management requirements unless it has been continuously insured by the NFIP at the same described location since September 30, 1982.

8. Items of property in a building enclosure below the lowest elevated floor of an elevated post-FIRM building located in zones A1–A30, AE, AH, AR, AR/A, AR/AE, AR/AH, AR/A1–A30, V1–V30, or VE, or in a basement, regardless of the zone. Coverage is limited to the following:

a. Any of the following items, if installed in their functioning locations and, if necessary for operation, connected to a power source:

(1) Central air conditioners;

(2) Cisterns and the water in them;

(3) Drywall for walls and ceilings in a basement and the cost of labor to nail it, unfinished and unfloated and not taped, to the framing;

(4) Electrical junction and circuit breaker boxes;

(5) Electrical outlets and switches;

(6) Elevators, dumbwaiters, and related equipment, except for related equipment installed below the base flood elevation after September 30, 1987;

(7) Fuel tanks and the fuel in them;

(8) Furnaces and hot water heaters;

(9) Heat pumps;

(10) Nonflammable insulation in a basement;

(11) Pumps and tanks used in solar energy systems;

(12) Stairways and staircases attached to the building, not separated from it by elevated walkways;

(13) Sump pumps;

(14) Water softeners and the chemicals in them, water filters, and faucets installed as an integral part of the plumbing system;

(15) Well water tanks and pumps;

(16) Required utility connections for any item in this list; and

(17) Footings, foundations, posts, pilings, piers, or other foundation walls and anchorage systems required to support a building.

b. Clean-up.

*B. Coverage B—Personal Property*

1. If you have purchased personal property coverage, we insure, subject to B. 2., 3., and 4. below, against direct physical loss by or from flood to personal property inside the fully enclosed insured building:

a. Owned solely by you, or in the case of a condominium, owned solely by the condominium association and used exclusively in the conduct of the business affairs of the condominium association; or

b. Owned in common by the unit owners of the condominium association.

We also insure such personal property for 45 days while stored at a temporary location, as set forth in III.C.2.b., Property Removed to Safety.

2. When this policy covers personal property, coverage will be either for household personal property or other than household personal property, while within the insured building, but not both.

a. If this policy covers household personal property, it will insure household personal property usual to a living quarters, that:

(1) Belongs to you, or a member of your household, or at your option:

(a) Your domestic worker;

(b) Your guest; or

(2) You may be legally liable for.

b. If this policy covers other than household personal property, it will insure your:

(1) Furniture and fixtures;

(2) Machinery and equipment;

(3) Stock; and

(4) Other personal property owned by you and used in your business, subject to IV. Property Not Covered.

3. Coverage for personal property includes the following property, subject to B.1.a. and B.1.b. above, which is covered under Coverage B. only:

a. Air conditioning units installed in the building;

b. Carpet, not permanently installed, over unfinished flooring;

c. Carpets over finished flooring;

d. Clothes washers and dryers;

e. "Cook-out" grills;

f. Food freezers, other than walk-in, and the food in any freezer;

g. Outdoor equipment and furniture stored inside the insured building;

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h. Ovens and the like; and
i. Portable microwave ovens and portable dishwashers.

4. Items of property in a building enclosure below the lowest elevated floor of an elevated post-FIRM building located in zones A1–A30, AE, AH, AR, AR/A, AR/AE, AR/AH, AR/A1–A30, V1–V30, or VE, or in a basement, regardless of the zone, is limited to the following items, if installed in their functioning locations and, if necessary for operation, connected to a power source:
a. Air conditioning units—portable or window type;
b. Clothes washers and dryers; and
c. Food freezers, other than walk-in, and food in any freezer.

5. Special Limits. We will pay no more than $2,500 for any loss to one or more of the following kinds of personal property:
a. Artwork, photographs, collectibles, or memorabilia, including but not limited to, porcelain or other figures, and sports cards;
b. Rare books or autographed items;
c. Jewelry, watches, precious and semi-precious stones, articles of gold, silver, or platinum;
d. Furs or any article containing fur which represents its principal value; or

6. We will pay only for the functional value of antiques.

7. If you are a tenant, you may apply up to 10% of the Coverage B limit to improvements:
a. Made a part of the building you occupy; and
b. You acquired, or made at your expense, even though you cannot legally remove.

This coverage does not increase the amount of insurance that applies to insured personal property.

8. If you are a condominium unit owner, you may apply up to 10% of the Coverage B limit to cover loss to interior:
a. walls,
b. floors, and
c. ceilings,
that are not covered under a policy issued to the condominium association insuring the condominium building.

This coverage does not increase the amount of insurance that applies to insured personal property.

9. If you are a tenant, personal property must be inside the fully enclosed building.

*C. Coverage C—Other Coverages*

1. *Debris Removal.*
a. We will pay the expense to remove non-owned debris that is on or in insured property and debris of insured property anywhere.
b. If you or a member of your household perform the removal work, the value of your work will be based on the Federal minimum wage.
c. This coverage does not increase the Coverage A or Coverage B limit of liability.

2. *Loss Avoidance Measures.*
a. Sandbags, Supplies, and Labor
(1) We will pay up to $1,000 for the costs you incur to protect the insured building from a flood or imminent danger of flood, for the following:
(a) Your reasonable expenses to buy:
(i) Sandbags, including sand to fill them;
(ii) Fill for temporary levees;
(iii) Pumps; and
(iv) Plastic sheeting and lumber used in connection with these items; and
(b) The value of work, at the Federal minimum wage, that you perform.
(2) This coverage for Sandbags, Supplies, and Labor only applies if damage to insured property by or from flood is imminent and the threat of flood damage is apparent enough to lead a person of common prudence to anticipate flood damage. One of the following must also occur:
(a) A general and temporary condition of flooding in the area near the described location must occur, even if the flood does not reach the insured building; or
(b) A legally authorized official must issue an evacuation order or other civil order for the community in which the insured building is located calling for measures to preserve life and property from the peril of flood.

This coverage does not increase the Coverage A or Coverage B limit of liability.

b. Property Removed to Safety
(1) We will pay up to $1,000 for the reasonable expenses you incur to move insured property to a place other than the described location that contains the property in order to protect it from flood or the imminent danger of flood.

Reasonable expenses include the value of work, at the Federal minimum wage, that you perform.

(2) If you move insured property to a place other than the described location that contains the property, in order to protect it from flood or the imminent danger of flood, we will cover such property while at that location for a period of 45 consecutive days from the date you begin to move it there. The personal property that is moved must be placed in a fully enclosed building, or otherwise reasonably protected from the elements.

Any property removed, including a moveable home described in II.6.b. and c., must be placed above ground level or outside of the special flood hazard area.

This coverage does not increase the Coverage A or Coverage B limit of liability.

3. *Pollution Damage.*

We will pay for damage caused by pollutants to covered property if the discharge, seepage, migration, release, or escape of the pollutants is caused by or results from flood. The most we will pay under this coverage is $10,000. This coverage does not increase the Coverage A or Coverage B limits of liability. Any payment under this provision when combined with all other payments for the same loss cannot exceed the replacement cost or actual cash value, as appropriate, of the covered property. This coverage does not include the testing for or monitoring of pollutants unless required by law or ordinance.

*D. Coverage D—Increased Cost of Compliance*

1. *General.*

This policy pays you to comply with a State or local floodplain management law or ordinance affecting repair or reconstruction of a structure suffering flood damage. Compliance activities eligible for payment are: elevation, floodproofing, relocation, or demolition (or any combination of these activities) of your structure. Eligible floodproofing activities are limited to:
a. Non-residential structures. b. Residential structures with basements that satisfy FEMA's standards published in the Code of Federal Regulations [44 CFR 60.6 (b) or (c)].

2. *Limit of Liability.*

We will pay you up to $20,000 under this Coverage D (Increased Cost of Compliance), which only applies to policies with building coverage (Coverage A). Our payment of claims under Coverage D is in addition to the amount of coverage which you selected on the application and which appears on the Declarations Page. But the maximum you can collect under this policy for both Coverage A (Building Property) and Coverage D (Increased Cost of Compliance) cannot exceed the maximum permitted under the Act. We do NOT charge a separate deductible for a claim under Coverage D.

3. *Eligibility.*

a. A structure covered under Coverage A—Building Property sustaining a loss caused by a flood as defined by this policy must:
(1) Be a "repetitive loss structure." A "repetitive loss structure" is one that meets the following conditions:
(a) The structure is covered by a contract of flood insurance issued under the NFIP.
(b) The structure has suffered flood damage on 2 occasions during a 10-year period which ends on the date of the second loss.
(c) The cost to repair the flood damage, on average, equaled or exceeded 25% of the market value of the structure at the time of each flood loss.
(d) In addition to the current claim, the NFIP must have paid the previous qualifying claim, and the State or community must have a cumulative, substantial damage provision or repetitive loss provision in its floodplain management law or ordinance being enforced against the structure; or
(2) Be a structure that has had flood damage in which the cost to repair equals or exceeds 50% of the market value of the structure at the time of the flood. The State or community must have a substantial damage provision in its floodplain management law or ordinance being enforced against the structure.

b. This Coverage D pays you to comply with State or local floodplain management laws or ordinances that meet the minimum standards of the National Flood Insurance Program found in the Code of Federal Regulations at 44 CFR 60.3. We pay for compliance activities that exceed those standards under these conditions:
(1) 3.a.(1) above.
(2) Elevation or floodproofing in any risk zone to preliminary or advisory base flood elevations provided by FEMA which the State or local government has adopted and is enforcing for flood-damaged structures in such areas. (This includes compliance activities in B, C, X, or D zones which are being changed to zones with base flood elevations. This also includes compliance activities in zones where base flood elevations are being increased, and a flood-damaged structure must comply with the higher advisory base flood elevation.)

Increased Cost of Compliance coverage does not apply to situations in B, C, X, or D zones where the community has derived its own elevations and is enforcing elevation or floodproofing requirements for flood-damaged structures to elevations derived solely by the community.

(3) Elevation or floodproofing above the base flood elevation to meet State or local "freeboard" requirements, i.e., that a structure must be elevated above the base flood elevation.

c. Under the minimum NFIP criteria at 44 CFR 60.3(b)(4), States and communities must require the elevation or floodproofing of structures in unnumbered A zones to the base flood elevation where elevation data is obtained from a Federal, State, or other source. Such compliance activities are also eligible for Coverage D.

d. This coverage will also pay for the incremental cost, after demolition or relocation, of elevating or floodproofing a structure during its rebuilding at the same or another site to meet State or local floodplain management laws or ordinances, subject to Exclusion D.5.g. below.

e. This coverage will also pay to bring a flood-damaged structure into compliance with State or local floodplain management laws or ordinances even if the structure had received a variance before the present loss from the applicable floodplain management requirements.

4. *Conditions.*

a. When a structure covered under Coverage A—Building Property sustains a loss caused by a flood, our payment for the loss under this Coverage D will be for the increased cost to elevate, floodproof, relocate, or demolish (or any combination of these activities) caused by the enforcement of current State or local floodplain management ordinances or laws. Our payment for eligible demolition activities will be for the cost to demolish and clear the site of the building debris or a portion thereof caused by the enforcement of current State or local floodplain management ordinances or laws. Eligible activities for the cost of clearing the site will include those necessary to discontinue utility service to the site and ensure proper abandonment of on-site utilities.

b. When the building is repaired or rebuilt, it must be intended for the same occupancy as the present building unless otherwise required by current floodplain management ordinances or laws.

5. *Exclusions.*

Under this Coverage D—Increased Cost of Compliance, we will not pay for:
a. The cost to comply with any floodplain management law or ordinance in communities participating in the Emergency Program.
b. The cost associated with enforcement of any ordinance or law that requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of pollutants.
c. The loss in value to any insured building or other structure due to the requirements of any ordinance or law.



d. The loss in residual value of the undamaged portion of a building demolished as a consequence of enforcement of any State or local floodplain management law or ordinance.
e. Any Increased Cost of Compliance under this Coverage D:
(1) Until the building is elevated, floodproofed, demolished, or relocated on the same or to another premises; and
(2) Unless the building is elevated, floodproofed, demolished, or relocated as soon as reasonably possible after the loss, not to exceed two years.
f. Any code upgrade requirements, e.g., plumbing or electrical wiring, not specifically related to the State or local floodplain management law or ordinance.
g. Any compliance activities needed to bring additions or improvements made after the loss occurred into compliance with State or local floodplain management laws or ordinances.
h. Loss due to any ordinance or law that you were required to comply with before the current loss.
i. Any rebuilding activity to standards that do not meet the NFIP's minimum requirements. This includes any situation where the insured has received from the State or community a variance in connection with the current flood loss to rebuild the property to an elevation below the base flood elevation.
j. Increased Cost of Compliance for a garage or carport.
k. Any structure insured under an NFIP Group Flood Insurance Policy.
l. Assessments made by a condominium association on individual condominium unit owners to pay increased costs of repairing commonly owned buildings after a flood in compliance with State or local floodplain management ordinances or laws.

6. *Other Provisions.*

All other conditions and provisions of the policy apply.

**IV. Property Not Covered**

A. We do not cover any of the following property:
1. Personal property not inside the fully enclosed building;
2. A building, and personal property in it, located entirely in, on, or over water or seaward of mean high tide, if it was constructed or substantially improved after September 30, 1982;
3. Open structures, including a building used as a boathouse or any structure or building into which boats are floated, and personal property located in, on, or over water;
4. Recreational vehicles other than travel trailers described in the II.B.6.c., whether affixed to a permanent foundation or on wheels;
5. Self-propelled vehicles or machines, including their parts and equipment. However, we do cover self-propelled vehicles or machines, provided they are not licensed for use on public roads and are:
a. Used mainly to service the described location; or
b. Designed and used to assist handicapped persons, while the vehicles or machines are inside a building at the described location;
6. Land, land values, lawns, trees, shrubs, plants, growing crops, or animals;
7. Accounts, bills, coins, currency, deeds, evidences of debt, medals, money, scrip, stored value cards, postage stamps, securities, bullion, manuscripts, or other valuable papers;
8. Underground structures and equipment, including wells, septic tanks, and septic systems;
9. Those portions of walks, walkways, decks, driveways, patios, and other surfaces, all whether protected by a roof or not, located outside the perimeter, exterior walls of the insured building;
10. Containers including related equipment, such as, but not limited to, tanks containing gases or liquids;
11. Buildings or units and all their contents if more than 49% of the actual cash value of the building or unit is below ground, unless the lowest level is at or above the base flood elevation and is below ground by reason of earth having been used as insulation material in conjunction with energy efficient building techniques;
12. Fences, retaining walls, seawalls, bulkheads, wharves, piers, bridges, and docks;
13. Aircraft or watercraft, or their furnishings and equipment;
14. Hot tubs and spas that are not bathroom fixtures, and swimming pools, and their equipment such as, but not limited to, heaters, filters, pumps, and pipes, wherever located;
15. Property not eligible for flood insurance pursuant to the provisions of the Coastal Barrier Resources Act and the Coastal Barrier Improvement Act of 1990 and amendments to these Acts;
16. Personal property owned by or in the care, custody or control of a unit owner, except for property of the type and under the circumstances set forth under III. Coverage B—Personal Property of this policy;
17. A residential condominium building located in a Regular Program community.

**V. Exclusions**

A. We only provide coverage for direct physical loss by or from flood, which means that we do not pay you for:
1. Loss of revenue or profits;
2. Loss of access to the insured property or described location;
3. Loss of use of the insured property or described location;
4. Loss from interruption of business or production;
5. Any additional expenses incurred while the insured building is being repaired or is unable to be occupied for any reason;
6. The cost of complying with any ordinance or law requiring or regulating the construction, demolition, remodeling, renovation or repair of property, including removal of any resulting debris. This exclusion does not apply to any eligible activities that we describe in Coverage D—Increased Cost of Compliance; or
7. Any other economic loss you suffer.

B. We do not insure a loss directly or indirectly caused by a flood that is already in progress at the time and date:
1. The policy term begins; or

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2. Coverage is added at your request.

C. We do not insure for loss to property caused directly by earth movement even if the earth movement is caused by flood. Some examples of earth movement that we do not cover are:

1. Earthquake;
2. Landslide;
3. Land subsidence;
4. Sinkholes;
5. Destabilization or movement of land that results from accumulation of water in subsurface land areas; or
6. Gradual erosion.

We do, however, pay for losses from mudflow and land subsidence as a result of erosion that are specifically covered under our definition of flood (see A.1.c. and II.A.2.).

D. We do not insure for direct physical loss caused directly or indirectly by:

1. The pressure or weight of ice;
2. Freezing or thawing;
3. Rain, snow, sleet, hail, or water spray;
4. Water, moisture, mildew, or mold damage that results primarily from any condition:
   a. Substantially confined to the insured building; or
   b. That is within your control including, but not limited to:
   (1) Design, structural, or mechanical defects;
   (2) Failures, stoppages, or breakage of water or sewer lines, drains, pumps, fixtures, or equipment; or
   (3) Failure to inspect and maintain the property after a flood recedes;
5. Water or water-borne material that:
   a. Backs up through sewers or drains;
   b. Discharges or overflows from a sump, sump pump, or related equipment; or
   c. Seeps or leaks on or through the covered property;

unless there is a flood in the area and the flood is the proximate cause of the sewer or drain backup, sump pump discharge or overflow, or the seepage of water;

6. The pressure or weight of water unless there is a flood in the area and the flood is the proximate cause of the damage from the pressure or weight of water;
7. Power, heating, or cooling failure unless the failure results from direct physical loss by or from flood to power, heating, or cooling equipment situated on the described location;
8. Theft, fire, explosion, wind, or windstorm;
9. Anything that you or your agents do or conspire to do to cause loss by flood deliberately; or
10. Alteration of the insured property that significantly increases the risk of flooding.

E. We do not insure for loss to any building or personal property located on land leased from the Federal Government, arising from or incident to the flooding of the land by the Federal Government, where the lease expressly holds the Federal Government harmless under flood insurance issued under any Federal Government program.

**VI. Deductibles**

A. When a loss is covered under this policy, we will pay only that part of the loss that exceeds the applicable deductible amount, subject to the limit of liability that applies. The deductible amount is shown on the Declarations Page.

However, when a building under construction, alteration, or repair does not have at least two rigid exterior walls and a fully secured roof at the time of loss, your deductible amount will be two times the deductible that would otherwise apply to a completed building.

B. In each loss from flood, separate deductibles apply to the building and personal property insured by this policy.

C. No deductible applies to:

1. III.C.2. Loss Avoidance Measures; or
2. III.D. Increased Cost of Compliance.

**VII. General Conditions**

*A. Pair and Set Clause*

In case of loss to an article that is part of a pair or set, we will have the option of paying you:

1. An amount equal to the cost of replacing the lost, damaged, or destroyed article, less depreciation, or
2. An amount which represents the fair proportion of the total value of the pair or set that the lost, damaged, or destroyed article bears to the pair or set.

*B. Concealment or Fraud and Policy Voidance*

1. With respect to all insureds under this policy, this policy:
   a. Is void,
   b. Has no legal force or effect,
   c. Cannot be renewed, and
   d. Cannot be replaced by a new NFIP policy, if, before or after a loss, you or any other insured or your agent have at any time:
   (1) Intentionally concealed or misrepresented any material fact or circumstance,
   (2) Engaged in fraudulent conduct, or
   (3) Made false statements relating to this policy or any other NFIP insurance.
2. This policy will be void as of the date wrongful acts described in B.1. above were committed.
3. Fines, civil penalties, and imprisonment under applicable Federal laws may also apply to the acts of fraud or concealment described above.
4. This policy is also void for reasons other than fraud, misrepresentation, or wrongful act. This policy is void from its inception and has no legal force under the following conditions:
   a. If the property is located in a community that was not participating in the NFIP on the policy's inception date and did not join or re-enter the program during the policy term and before the loss occurred; or
   b. If the property listed on the application is otherwise not eligible for coverage under the NFIP.

*C. Other Insurance*

1. If a loss covered by this policy is also covered by other insurance that includes flood coverage not issued under the Act, we will not pay more than the amount of insurance that you are entitled to for lost, damaged, or destroyed property insured under this policy subject to the following:
   a. We will pay only the proportion of the loss that the amount of insurance that applies under this policy bears to the total amount of insurance covering the loss, unless C.1.b. or c. below applies.
   b. If the other policy has a provision stating that it is excess insurance, this policy will be primary.
   c. This policy will be primary (but subject to its own deductible) up to the deductible in the other flood policy (except another policy as described in C.1.b. above). When the other deductible amount is reached, this policy will participate in the same proportion that the amount of insurance under this policy bears to the total amount of both policies, for the remainder of the loss.
2. Where this policy covers a condominium association and there is a flood insurance policy in the name of a unit owner that covers the same loss as this policy, then this policy will be primary.

*D. Amendments, Waivers, Assignment*

This policy cannot be changed nor can any of its provisions be waived without the express written consent of the Federal Insurance Administrator. No action that we take under the terms of this policy can constitute a waiver of any of our rights. You may assign this policy in writing when you transfer title of your property to someone else except under these conditions:

1. When this policy covers only personal property; or
2. When this policy covers a structure during the course of construction.

*E. Cancellation of Policy by You*

1. You may cancel this policy in accordance with the applicable rules and regulations of the NFIP.
2. If you cancel this policy, you may be entitled to a full or partial refund of premium also under the applicable rules and regulations of the NFIP.

*F. Non-Renewal of the Policy by Us*

Your policy will not be renewed:

1. If the community where your covered property is located stops participating in the NFIP; or
2. If your building has been declared ineligible under section 1316 of the Act.

*G. Reduction and Reformation of Coverage*

1. If the premium we received from you was not enough to buy the kind and amount of coverage that you requested, we will provide only the amount of coverage that can be purchased for the premium payment we received.
2. The policy can be reformed to increase the amount of coverage resulting from the reduction described in G.1. above to the amount you requested as follows:
   a. Discovery of Insufficient Premium or Incomplete Rating Information Before a Loss.
   (1) If we discover before you have a flood loss that your premium payment was not enough to buy the requested amount of coverage, we will send you and any mortgagee or trustee known to us a bill for the current policy term (or that portion of the current policy term following any endorsement changing the amount of coverage). If you or the mortgagee or trustee pay the additional premium within 30 days from the date of our bill, we will reform the policy to increase the amount of coverage to the originally requested amount effective to the beginning of the current policy term (or subsequent date of any endorsement changing the amount of coverage).



(2) If we determine before you have a flood loss that the rating information we have is incomplete and prevents us from calculating the additional premium, we will ask you to send the required information. You must submit the information within 60 days of our request. Once we determine the amount of additional premium for the current policy term, we will follow the procedure in G.2.a.(1) above.

(3) If we do not receive the additional premium (or additional information) by the date it is due, the amount of coverage can only be increased by endorsement subject to any appropriate waiting period.

b. Discovery of Insufficient Premium or Incomplete Rating Information After a Loss.

(1) If we discover after you have a flood loss that your premium payment was not enough to buy the requested amount of coverage, we will send you and any mortgagee or trustee known to us a bill for the required additional premium for the current and the prior policy terms. If you or the mortgagee or trustee pay the additional premium within 30 days of the date of our bill, we will reform the policy to increase the amount of coverage to the originally requested amount effective to the beginning of the prior policy term.

(2) If we discover after you have a flood loss that the rating information we have is incomplete and prevents us from calculating the additional premium, we will ask you to send the required information. You must submit the information before your claim can be paid. Once we determine the amount of additional premium for the current and prior policy terms, we will follow the procedure in G.2.b.(1) above.

(3) If we do not receive the additional premium by the date it is due, your flood insurance claim will be settled based on the reduced amount of coverage. The amount of coverage can only be increased by endorsement subject to any appropriate waiting period.

3. However, if we find that you or your agent intentionally did not tell us, or falsified, any important fact or circumstance or did anything fraudulent relating to this insurance, the provisions of Condition B. above apply.

*H. Policy Renewal*

1. This policy will expire at 12:01 a.m. on the last day of the policy term.
2. We must receive the payment of the appropriate renewal premium within 30 days of the expiration date.
3. If we find, however, that we did not place your renewal notice into the U.S. Postal Service, or if we did mail it, we made a mistake, e.g., we used an incorrect, incomplete, or illegible address, which delayed its delivery to you before the due date for the renewal premium, then we will follow these procedures:
   a. If you or your agent notified us, not later than one year after the date on which the payment of the renewal premium was due, of nonreceipt of a renewal notice before the due date for the renewal premium, and we determine that the circumstances in the preceding paragraph apply, we will mail a second bill providing a revised due date, which will be 30 days after the date on which the bill is mailed.
   b. If we do not receive the premium requested in the second bill by the revised due date, then we will not renew the policy. In that case, the policy will remain as an expired policy as of the expiration date shown on the Declarations Page.
4. In connection with the renewal of this policy, we may ask you during the policy term to re-certify, on a Recertification Questionnaire that we will provide to you, the rating information used to rate your most recent application for or renewal of insurance.

*I. Conditions Suspending or Restricting Insurance*

We are not liable for loss that occurs while there is a hazard that is increased by any means within your control or knowledge.

*J. Requirements in Case of Loss*

In case of a flood loss to insured property, you must:

1. Give prompt written notice to us;
2. As soon as reasonably possible, separate the damaged and undamaged property, putting it in the best possible order so that we may examine it;
3. Prepare an inventory of damaged property showing the quantity, description, actual cash value, and amount of loss. Attach all bills, receipts, and related documents;
4. Within 60 days after the loss, send us a proof of loss, which is your statement of the amount you are claiming under the policy signed and sworn to by you, and which furnishes us with the following information:
   a. The date and time of loss;
   b. A brief explanation of how the loss happened;
   c. Your interest (for example, "owner") and the interest, if any, of others in the damaged property;
   d. Details of any other insurance that may cover the loss;
   e. Changes in title or occupancy of the insured property during the term of the policy;
   f. Specifications of damaged buildings and detailed repair estimates;
   g. Names of mortgagees or anyone else having a lien, charge, or claim against the insured property;
   h. Details about who occupied any insured building at the time of loss and for what purpose; and
   i. The inventory of damaged property described in J.3. above.
5. In completing the proof of loss, you must use your own judgment concerning the amount of loss and justify that amount.
6. You must cooperate with the adjuster or representative in the investigation of the claim.
7. The insurance adjuster whom we hire to investigate your claim may furnish you with a proof of loss form, and she or he may help you complete it. However, this is a matter of courtesy only, and you must still send us a proof of loss within sixty days after the loss even if the adjuster does not furnish the form or help you complete it.
8. We have not authorized the adjuster to approve or disapprove claims or to tell you whether we will approve your claim.
9. At our option, we may accept the adjuster's report of the loss instead of your proof of loss. The adjuster's report will include information about your loss and the damages you sustained. You must sign the adjuster's report. At our option, we may require you to swear to the report.

*K. Our Options After a Loss*

Options we may, in our sole discretion, exercise after loss include the following:

1. At such reasonable times and places that we may designate, you must:
   a. Show us or our representative the damaged property;
   b. Submit to examination under oath, while not in the presence of another insured, and sign the same; and
   c. Permit us to examine and make extracts and copies of:
   (1) Any policies of property insurance insuring you against loss and the deed establishing your ownership of the insured real property;
   (2) Condominium association documents including the Declarations of the condominium, its Articles of Association or Incorporation, Bylaws, and rules and regulations; and
   (3) All books of accounts, bills, invoices, and other vouchers, or certified copies pertaining to the damaged property if the originals are lost.
2. We may request, in writing, that you furnish us with a complete inventory of the lost, damaged, or destroyed property, including:
   a. Quantities and costs;
   b. Actual cash values;
   c. Amounts of loss claimed;
   d. Any written plans and specifications for repair of the damaged property that you can reasonably make available to us; and
   e. Evidence that prior flood damage has been repaired.
3. If we give you written notice within 30 days after we receive your signed, sworn proof of loss, we may:
   a. Repair, rebuild, or replace any part of the lost, damaged, or destroyed property with material or property of like kind and quality or its functional equivalent; and
   b. Take all or any part of the damaged property at the value that we agree upon or its appraised value.

*L. No Benefit to Bailee*

No person or organization, other than you, having custody of covered property will benefit from this insurance.

*M. Loss Payment*

1. We will adjust all losses with you. We will pay you unless some other person or entity is named in the policy or is legally entitled to receive payment. Loss will be payable 60 days after we receive your proof of loss (or within 90 days after the insurance

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adjuster files an adjuster's report signed and sworn to by you in lieu of a proof of loss) and:

a. We reach an agreement with you;

b. There is an entry of a final judgment; or

c. There is a filing of an appraisal award with us, as provided in VII. P.

2. If we reject your proof of loss in whole or in part you may:

a. Accept such denial of your claim;

b. Exercise your rights under this policy; or

c. File an amended proof of loss as long as it is filed within 60 days of the date of the loss.

*N. Abandonment*

You may not abandon damaged or undamaged insured property to us.

*O. Salvage*

We may permit you to keep damaged insured property after a loss, and we will reduce the amount of the loss proceeds payable to you under the policy by the value of the salvage.

*P. Appraisal*

If you and we fail to agree on the actual cash value of the damaged property so as to determine the amount of loss, either may demand an appraisal of the loss. In this event, you and we will each choose a competent and impartial appraiser within 20 days after receiving a written request from the other. The two appraisers will choose an umpire. If they cannot agree upon an umpire within 15 days, you or we may request that the choice be made by a judge of a court of record in the state where the insured property is located. The appraisers will separately state the actual cash value and the amount of loss to each item. If the appraisers submit a written report of an agreement to us, the amount agreed upon will be the amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will set the amount of actual cash value and loss.

Each party will:

1. Pay its own appraiser; and

2. Bear the other expenses of the appraisal and umpire equally.

*Q. Mortgage Clause*

The word "mortgagee" includes trustee.

Any loss payable under Coverage A—Building Property will be paid to any mortgagee of whom we have actual notice, as well as any other mortgagee or loss payee determined to exist at the time of loss, and you, as interests appear. If more than one mortgagee is named, the order of payment will be the same as the order of precedence of the mortgages. If we deny your claim, that denial will not apply to a valid claim of the mortgagee, if the mortgagee:

1. Notifies us of any change in the ownership or occupancy, or substantial change in risk of which the mortgagee is aware;

2. Pays any premium due under this policy on demand if you have neglected to pay the premium; and

3. Submits a signed, sworn proof of loss within 60 days after receiving notice from us of your failure to do so.

All terms of this policy apply to the mortgagee.

The mortgagee has the right to receive loss payment even if the mortgagee has started foreclosure or similar action on the building.

If we decide to cancel or not renew this policy, it will continue in effect for the benefit of the mortgagee only for 30 days after we notify the mortgagee of the cancellation or non-renewal.

If we pay the mortgagee for any loss and deny payment to you, we are subrogated to all the rights of the mortgagee granted under the mortgage on the property. Subrogation will not impair the right of the mortgagee to recover the full amount of the mortgagee's claim.

*R. Suit Against Us*

You may not sue us to recover money under this policy unless you have complied with all the requirements of the policy. If you do sue, you must start the suit within one year of the date of the written denial of all or part of the claim, and you must file the suit in the United States District Court of the district in which the insured property was located at the time of loss. This requirement applies to any claim that you may have under this policy and to any dispute that you may have arising out of the handling of any claim under the policy.

*S. Subrogation*

Whenever we make a payment for a loss under this policy, we are subrogated to your right to recover for that loss from any other person. That means that your right to recover for a loss that was partly or totally caused by someone else is automatically transferred to us, to the extent that we have paid you for the loss. We may require you to acknowledge this transfer in writing. After the loss, you may not give up our right to recover this money or do anything that would prevent us from recovering it. If you make any claim against any person who caused your loss and recover any money, you must pay us back first before you may keep any of that money.

*T. Continuous Lake Flooding*

1. If an insured building has been flooded by rising lake waters continuously for 90 days or more and it appears reasonably certain that a continuation of this flooding will result in a covered loss to the insured building equal to or greater than the building policy limits plus the deductible or the maximum payable under the policy for any one building loss, we will pay you the lesser of these two amounts without waiting for the further damage to occur if you sign a release agreeing:

a. To make no further claim under this policy;

b. Not to seek renewal of this policy;

c. Not to apply for any flood insurance under the Act for property at the described location; and

d. Not to seek a premium refund for current or prior terms.

If the policy term ends before the insured building has been flooded continuously for 90 days, the provisions of this paragraph T.1. will apply when as the insured building suffers a covered loss before the policy term ends.

2. If your insured building is subject to continuous lake flooding from a closed basin lake, you may elect to file a claim under either paragraph T.1. above or this paragraph T.2. (A "closed basin lake" is a natural lake from which water leaves primarily through evaporation and whose surface area now exceeds or has exceeded one square mile at any time in the recorded past. Most of the nation's closed basin lakes are in the western half of the United States, where annual evaporation exceeds annual precipitation and where lake levels and surface areas are subject to considerable fluctuation due to wide variations in the climate. These lakes may overtop their basins on rare occasions.) Under this paragraph T.2 we will pay your claim as if the building is a total loss even though it has not been continuously inundated for 90 days, subject to the following conditions:

a. Lake flood waters must damage or imminently threaten to damage your building.

b. Before approval of your claim, you must:

(1) Agree to a claim payment that reflects your buying back the salvage on a negotiated basis; and

(2) Grant the conservation easement described in FEMA's "Policy Guidance for Closed Basin Lakes," to be recorded in the office of the local recorder of deeds. FEMA, in consultation with the community in which the property is located, will identify on a map an area or areas of special consideration (ASC) in which there is a potential for flood damage from continuous lake flooding. FEMA will give the community the agreed-upon map showing the ASC. This easement will only apply to that portion of the property in the ASC. It will allow certain agricultural and recreational uses of the land. The only structures that it will allow on any portion of the property within the ASC are certain, simple agricultural and recreational structures. If any of these allowable structures are insurable buildings under the NFIP and are insured under the NFIP, they will not be eligible for the benefits of this paragraph T.2. If a U.S. Army Corps of Engineers certified flood control project or otherwise certified flood control project later protects the property, FEMA will, upon request, amend the ASC to remove areas protected by those projects. The restrictions of the easement will then no longer apply to any portion of the property removed from the ASC; and

(3) Comply with paragraphs T.1.a. through T.1.d. above.

c. Within 90 days of approval of your claim, you must move your building to a new location outside the ASC. FEMA will give you an additional 30 days to move if you show that there is sufficient reason to extend the time.

d. Before the final payment of your claim, you must acquire an elevation certificate and a floodplain development permit from the local floodplain administrator for the new location of your building.

e. Before the approval of your claim, the community having jurisdiction over your building must:

(1) Adopt a permanent land use ordinance, or a temporary moratorium for a period not to exceed 6 months to be followed immediately by a permanent land use ordinance, that is consistent with the provisions specified in the easement required in paragraph T.2.b. above.

(2) Agree to declare and report any violations of this ordinance to FEMA so that under Sec. 1316 of the National Flood Insurance Act of 1968, as amended, flood insurance to the building can be denied; and

(3) Agree to maintain as deed-restricted, for purposes compatible with open space or agricultural or recreational use only, any affected property the community acquires an interest in. These deed restrictions must be consistent with the provisions of paragraph T.2.b. above except that even if a certified project protects the property, the land use restrictions continue to apply if the property was acquired under the Hazard Mitigation Grant Program or the Flood Mitigation Assistance Program. If a non-profit land trust organization receives the property as a donation, that organization must maintain the property as deed-restricted, consistent with the provisions of paragraph T.2.b. above.

f. Before the approval of your claim, the affected State must take all action set forth in FEMA's "Policy Guidance for Closed Basin Lakes."

g. You must have NFIP flood insurance coverage continuously in effect from a date established by FEMA until you file a claim under this paragraph T.2. If a subsequent owner buys NFIP insurance that goes into effect within 60 days of the date of transfer of title, any gap in coverage during that 60-day period will not be a violation of this continuous coverage requirement. For the purpose of honoring a claim under this paragraph T.2, we will not consider to be in effect any increased coverage that became effective after the date established by FEMA. The exception to this is any increased coverage in the amount suggested by your insurer as an inflation adjustment.

h. This paragraph T.2. will be in effect for a community when the FEMA Regional Director for the affected region provides to the community, in writing, the following:

(1) Confirmation that the community and the State are in compliance with the conditions in paragraphs T.2.e. and T.2.f. above, and

(2) The date by which you must have flood insurance in effect.

*U. Duplicate Policies Not Allowed*

1. Property may not be insured under more than one NFIP policy.

If we find that the duplication was not knowingly created, we will give you written notice. The notice will advise you that you may choose one of several options under the following procedures:

a. If you choose to keep in effect the policy with the earlier effective date, you may also choose to add the coverage limits of the later policy to the limits of the earlier policy. The change will become effective as of the effective date of the later policy.

b. If you choose to keep in effect the policy with the later effective date, you may also choose to add the coverage limits of the earlier policy to the limits of the later policy. The change will be effective as of the effective date of the later policy.

In either case, you must pay the pro rata premium for the increased coverage limits within 30 days of the written notice. In no event will the resulting coverage limits exceed the permissible limits of coverage under the Act or your insurable interest, whichever is less. We will make a refund to you, according to applicable NFIP rules, of the premium for the policy not being kept in effect.

2. Your option under this Condition U. Duplicate Policies Not Allowed to elect which NFIP policy to keep in effect does not apply when duplicates have been knowingly created. Losses occurring under such circumstances will be adjusted according to the terms and conditions of the earlier policy. The policy with the later effective date must be canceled.

*V. Loss Settlement*

We will pay the least of the following amounts after application of the deductible:

1. The applicable amount of insurance under this policy;

2. The actual cash value; or

3. The amount it would cost to repair or replace the property with material of like kind and quality within a reasonable time after the loss.

**VIII. Liberalization Clause**

If we make a change that broadens your coverage under this edition of our policy, but does not require any additional premium, then that change will automatically apply to your insurance as of the date we implement the change, provided that this implementation date falls within 60 days before or during the policy term stated on the Declarations Page.

**IX. What Law Governs**

This policy and all disputes arising from the handling of any claim under the policy are governed exclusively by the flood insurance regulations issued by FEMA, the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001, *et seq.*), and Federal common law.

*In Witness Whereof,* we have signed this policy below and hereby enter into this Insurance Agreement.

**Jo Ann Howard,**

*Administrator, Federal Insurance Administration.*

8. We revise Appendix A(3) to Part 61, Residential Condominium Building Association Policy, to read as follows:

**APPENDIX A(3) TO PART 61**

**Federal Emergency Management Agency**
**Federal Insurance Administration**

**Standard Flood Insurance Policy**

**RESIDENTIAL CONDOMINIUM BUILDING ASSOCIATION POLICY**

**I. Agreement**

Please read the policy carefully. The flood insurance provided is subject to limitations, restrictions, and exclusions.

This policy covers only a residential condominium building in a regular program community. If the community reverts to emergency program status during the policy term and remains as an emergency program community at time of renewal, this policy cannot be renewed.

The Federal Emergency Management Agency (FEMA) provides flood insurance under the terms of the National Flood Insurance Act of 1968 and its Amendments, and Title 44 of the Code of Federal Regulations.

We will pay you for direct physical loss by or from flood to your insured property if you:

1. Have paid the correct premium;

2. Comply with all terms and conditions of this policy; and

3. Have furnished accurate information and statements.

We have the right to review the information you give us at any time and to revise your policy based on our review.

**II. Definitions**

A. In this policy, "you" and "your" refer to the insured(s) shown on the Declarations Page of this policy. Insured(s) includes: any mortgagee and loss payee named in the Application and Declarations Page, as well as any other mortgagee or loss payee determined to exist at the time of loss in the order of precedence. "We," "us," and "our" refer to the insurer.

Some definitions are complex because they are provided as they appear in the law or regulations, or result from court cases. The precise definitions are intended to protect you.

"Flood", as used in this flood insurance policy, means:

1. A general and temporary condition of partial or complete inundation of two or more acres of normally dry land area or of two or more properties (one of which is your property) from:

a. Overflow of inland or tidal waters;

b. Unusual and rapid accumulation or runoff of surface waters from any source;

c. Mudflow.

2. Collapse or subsidence of land along the shore of a lake or similar body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels which result in a flood as defined in A.1.a above.

B. The following are the other key definitions we use in this policy:

1. *Act.* The National Flood Insurance Act of 1968 and any amendments to it.

2. *Actual Cash Value.* The cost to replace an insured item of property at the time of loss, less the value of its physical depreciation.

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3. *Application.* The statement made and signed by you or your agent in applying for this policy. The application gives information we use to determine the eligibility of the risk, the kind of policy to be issued, and the correct premium payment. The application is part of this flood insurance policy. For us to issue you a policy, the correct premium payment must accompany the application.

4. *Base Flood.* A flood having a one percent chance of being equaled or exceeded in any given year.

5. *Basement.* Any area of the building, including any sunken room or sunken portion of a room, having its floor below ground level (subgrade) on all sides.

6. *Building.*

a. A structure with two or more outside rigid walls and a fully secured roof, that is affixed to a permanent site;

b. A manufactured home ("a manufactured home," also known as a mobile home, is a structure: built on a permanent chassis, transported to its site in one or more sections, and affixed to a permanent foundation); or

c. A travel trailer without wheels, built on a chassis and affixed to a permanent foundation, that is regulated under the community's floodplain management and building ordinances or laws.

*Building* does not mean a gas or liquid storage tank or a recreational vehicle, park trailer or other similar vehicle, except as described in B.6.c., above.

7. *Cancellation.* The ending of the insurance coverage provided by this policy before the expiration date.

8. *Condominium.* That form of ownership of real property in which each unit owner has an undivided interest in common elements.

9. *Condominium Association.* The entity, formed by the unit owners, responsible for the maintenance and operation of:

a. Common elements owned in undivided shares by unit owners; and

b. Other real property in which the unit owners have use rights; where membership in the entity is a required condition of unit ownership.

10. *Declarations Page.* A computer-generated summary of information you provided in the application for insurance. The Declarations Page also describes the term of the policy, limits of coverage, and displays the premium and our name. The Declarations Page is a part of this flood insurance policy.

11. *Described Location.* The location where the insured building or personal property is found. The described location is shown on the Declarations Page.

12. *Direct Physical Loss By or From Flood.* Loss or damage to insured property, directly caused by a flood. There must be evidence of physical changes to the property.

13. *Elevated Building.* A building that has no basement and that has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

14. *Emergency Program.* The initial phase of a community's participation in the National Flood Insurance Program. During this phase, only limited amounts of insurance are available under the Act.

15. *Expense Constant.* A flat charge you must pay on each new or renewal policy to defray the expenses of the Federal Government related to flood insurance.

16. *Federal Policy Fee.* A flat charge you must pay on each new or renewal policy to defray certain administrative expenses incurred in carrying out the National Flood Insurance Program. This fee covers expenses not covered by the expense constant.

17. *Improvements.* Fixtures, alterations, installations, or additions comprising a part of the residential condominium building, including improvements in the units.

18. *Mudflow.* A river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water. Other earth movements, such as landslide, slope failure, or a saturated soil mass moving by liquidity down a slope, are not mudflows.

19. *National Flood Insurance Program (NFIP).* The program of flood insurance coverage and floodplain management administered under the Act and applicable Federal regulations in Title 44 of the Code of Federal Regulations, Subchapter B.

20. *Policy.* The entire written contract between you and us. It includes:

a. This printed form;

b. The application and Declarations Page;

c. Any endorsement(s) that may be issued; and

d. Any renewal certificate indicating that coverage has been instituted for a new policy and new policy term.

Only one building, which you specifically described in the application, may be insured under this policy.

21. *Pollutants.* Substances that include, but are not limited to, any solid, liquid, gaseous, or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, and waste. Waste includes, but is not limited to, materials to be recycled, reconditioned, or reclaimed.

22. *Post-FIRM Building.* A building for which construction or substantial improvement occurred after December 31, 1974, or on or after the effective date of an initial Flood Insurance Rate Map (FIRM), whichever is later.

23. *Probation Premium.* A flat charge you must pay on each new or renewal policy issued covering property in a community that the NFIP has placed on probation under the provisions of 44 CFR 59.24.

24. *Regular Program.* The final phase of a community's participation in the National Flood Insurance Program. In this phase, a Flood Insurance Rate Map is in effect and full limits of coverage are available under the Act.

25. *Residential Condominium Building.* A building, owned and administered as a condominium, containing one or more family units and in which at least 75% of the floor area is residential.

26. *Special Flood Hazard Area.* An area having special flood or mudflow, and/or flood-related erosion hazards, and shown on a Flood Hazard Boundary Map or Flood Insurance Rate Map as Zone A, AO, A1–A30, AE, A99, AH, AR, AR/A, AR/AE, AR/AH, AR/AO, AR/A1–A30, V1–V30, VE, or V.

27. *Unit.* A single-family unit in a residential condominium building.

28. *Valued Policy.* A policy in which the insured and the insurer agree on the value of the property insured, that value being payable in the event of a total loss. The Standard Flood Insurance Policy is not a valued policy.

**III. Property Covered**

*A. Coverage A—Building Property*

We insure against direct physical loss by or from flood to:

1. The residential condominium building described on the Declarations Page at the described location, including all units within the building and the improvements within the units.

2. We also insure such building property for a period of 45 days at another location, as set forth in III.C.2:b., Property Removed to Safety.

3. Additions and extensions attached to and in contact with the building by means of a rigid exterior wall, a solid load-bearing interior wall, a stairway, an elevated walkway, or a roof. At your option, additions and extensions connected by any of these methods may be separately insured. Additions and extensions attached to and in contact with the building by means of a common interior wall that is not a solid load-bearing wall are always considered part of the building and cannot be separately insured.

4. The following fixtures, machinery and equipment, including its units, which are covered under Coverage A only:

a. Awnings and canopies;

b. Blinds;

c. Carpet permanently installed over unfinished flooring;

d. Central air conditioners;

e. Elevator equipment;

f. Fire extinguishing apparatus;

g. Fire sprinkler systems;

h. Walk-in freezers;

i. Furnaces;

j. Light fixtures;

k. Outdoor antennas and aerials fastened to buildings;

l. Permanently installed cupboards, bookcases, paneling, and wallpaper;

m. Pumps and machinery for operating pumps;

n. Ventilating equipment;

o. Wall mirrors, permanently installed; and

p. In the units within the building, installed:

(1) Built-in dishwashers;

(2) Built-in microwave ovens;

(3) Garbage disposal units;

(4) Hot water heaters, including solar water heaters;

(5) Kitchen cabinets;

(6) Plumbing fixtures;

(7) Radiators;

(8) Ranges;

(9) Refrigerators; and

(10) Stoves.

5. Materials and supplies to be used for construction, alteration or repair of the insured building while the materials and supplies are stored in a fully enclosed building at the described location or on an adjacent property.

6. A building under construction, alteration or repair at the described location.



a. If the structure is not yet walled or roofed as described in the definition for building (see II.B.6.a.), then coverage applies:

(1) Only while such work is in progress; or

(2) If such work is halted, only for a period of up to 90 continuous days thereafter.

b. However, coverage does not apply until the building is walled and roofed if the lowest floor, including the basement floor, of a non-elevated building or the lowest elevated floor of an elevated building is:

(1) Below the base flood elevation in Zones AH, AE, A1–30, AR, AR/AE, AR/AH, AR/A1–30, AR/A, AR/AO; or

(2) Below the base flood elevation adjusted to include the effect of wave action in Zones VE or V1–30.

The lowest floor levels are based on the bottom of the lowest horizontal structural member of the floor in Zones VE or V1–V30 and the top of the floor in Zones AH, AE, A1–A30, AR, AR/AE, AR/AH, AR/A1–A30, AR/A, AR/AO.

7. A manufactured home or a travel trailer as described in the Definitions Section (See II.B.b. and c.).

If the manufactured home is in a special flood hazard area, it must be anchored in the following manner at the time of the loss:

a. By over-the-top or frame ties to ground anchors; or

b. In accordance with the manufacturer's specifications; or

c. In compliance with the community's floodplain management requirements unless it has been continuously insured by the NFIP at the same described location since September 30, 1982.

8. Items of property in a building enclosure below the lowest elevated floor of an elevated post-FIRM building located in zones A1–A30, AE, AH, AR, AR/A, AR/AE, AR/AH, AR/A1–A30, V1–V30, or VE, or in a basement, regardless of the zone. Coverage is limited to the following:

a. Any of the following items, if installed in their functioning locations and, if necessary for operation, connected to a power source:

(1) Central air conditioners;

(2) Cisterns and the water in them;

(3) Drywall for walls and ceilings in a basement and the cost of labor to nail it, unfinished and unfloated and not taped, to the framing;

(4) Electrical junction and circuit breaker boxes;

(5) Electrical outlets and switches;

(6) Elevators, dumbwaiters, and related equipment, except for related equipment installed below the base flood elevation after September 30, 1987;

(7) Fuel tanks and the fuel in them;

(8) Furnaces and hot water heaters;

(9) Heat pumps;

(10) Nonflammable insulation in a basement;

(11) Pumps and tanks used in solar energy systems;

(12) Stairways and staircases attached to the building, not separated from it by elevated walkways;

(13) Sump pumps;

(14) Water softeners and the chemicals in them, water filters and faucets installed as an integral part of the plumbing system;

(15) Well water tanks and pumps;

(16) Required utility connections for any item in this list; and

(17) Footings, foundations, posts, pilings, piers, or other foundation walls and anchorage systems required to support a building.

b. Clean-up.

*B. Coverage B—Personal Property*

1. If you have purchased personal property coverage, we insure, subject to B.2. and B.3. below, against direct physical loss by or from flood to personal property that is inside the fully enclosed insured building and is:

a. Owned by the unit owners of the condominium association in common, meaning property in which each unit owner has an undivided ownership interest; or

b. Owned solely by the condominium association and used exclusively in the conduct of the business affairs of the condominium association.

We also insure such personal property for 45 days while stored at a temporary location, as set forth in III.C.2.b., Property Removed to Safety.

2. Coverage for personal property includes the following property, subject to B.1. above, which is covered under Coverage B only:

a. Air conditioning units—portable or window type;

b. Carpet, not permanently installed, over unfinished flooring;

c. Carpets over finished flooring;

d. Clothes washers and dryers;

e. "Cook-out" grills;

f. Food freezers, other than walk-in, and the food in any freezer;

g. Outdoor equipment and furniture stored inside the insured building;

h. Ovens and the like; and

i. Portable microwave ovens and portable dishwashers.

3. Coverage for items of property in a building enclosure below the lowest elevated floor of an elevated post-FIRM building located in zones A1–A30, AE, AH, AR, AR/A, AR/AE, AR/AH, AR/A1–A30, V1–V30, or VE, or in a basement, regardless of the zone, is limited to the following items, if installed in their functioning locations and, if necessary for operation, connected to a power source:

a. Air conditioning units—portable or window type;

b. Clothes washers and dryers; and

c. Food freezers, other than walk-in, and food in any freezer.

4. Special Limits. We will pay no more than $2,500 for any one loss to one or more of the following kinds of personal property:

a. Artwork, photographs, collectibles, or memorabilia, including but not limited to, porcelain or other figures, and sports cards;

b. Rare books or autographed items;

c. Jewelry, watches, precious and semi-precious stones, or articles of gold, silver, or platinum;

d. Furs or any article containing fur which represents its principal value.

5. We will pay only for the functional value of antiques.

*C. Coverage C—Other Coverages*

1. *Debris Removal*

a. We will pay the expense to remove non-owned debris that is on or in insured property and debris of insured property anywhere.

b. If you or a member of your household perform the removal work, the value of your work will be based on the Federal minimum wage.

c. This coverage does not increase the Coverage A or Coverage B limit of liability.

2. *Loss Avoidance Measures*

a. Sandbags, Supplies, and Labor

(1) We will pay up to $1,000 for the costs you incur to protect the insured building from a flood or imminent danger of flood, for the following:

(a) Your reasonable expenses to buy:

(i) Sandbags, including sand to fill them;

(ii) Fill for temporary levees;

(iii) Pumps; and

(iv) Plastic sheeting and lumber used in connection with these items; and

(b) The value of work, at the Federal minimum wage, that you perform.

(2) This coverage for Sandbags, Supplies, and Labor applies only if damage to insured property by or from flood is imminent and the threat of flood damage is apparent enough to lead a person of common prudence to anticipate flood damage. One of the following must also occur:

(a) A general and temporary condition of flooding in the area near the described location must occur, even if the flood does not reach the insured building; or

(b) A legally authorized official must issue an evacuation order or other civil order for the community in which the insured building is located calling for measures to preserve life and property from the peril of flood. This coverage does not increase the Coverage A or Coverage B limit of liability.

b. Property Removed to Safety

(1) We will pay up to $1,000 for the reasonable expenses you incur to move insured property to a place other than the described location that contains the property in order to protect it from flood or the imminent danger of flood.

Reasonable expenses include the value of work, at the Federal minimum wage, that you perform.

(2) If you move insured property to a location other than the described location that contains the property, in order to protect it from flood or the imminent danger of flood, we will cover such property while at that location for a period of 45 consecutive days from the date you begin to move it there. The personal property that is moved must be placed in a fully enclosed building, or otherwise reasonably protected from the elements.

Any property removed, including a moveable home described in II.6.b. and c., must be placed above ground level or outside of the special flood hazard area.

This coverage does not increase the Coverage A or Coverage B limit of liability.

*D. Coverage D—Increased Cost of Compliance*

1. *General.*

This policy pays you to comply with a State or local floodplain management law or ordinance affecting repair or reconstruction

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of a structure suffering flood damage. Compliance activities eligible for payment are: elevation, floodproofing, relocation, or demolition (or any combination of these activities) of your structure. Eligible floodproofing activities are limited to:

a. Non-residential structures.

b. Residential structures with basements that satisfy FEMA's standards published in the Code of Federal Regulations [44 CFR 60.6 (b) or (c)].

2. *Limit of Liability.*

We will pay you up to $20,000 under this Coverage D—Increased Cost of Compliance, which only applies to policies with building coverage (Coverage A). Our payment of claims under Coverage D is in addition to the amount of coverage which you selected on the application and which appears on the Declarations Page. But the maximum you can collect under this policy for both Coverage A—Building Property and Coverage D—Increased Cost of Compliance cannot exceed the maximum permitted under the Act. We do not charge a separate deductible for a claim under Coverage D.

3. *Eligibility.*

a. A structure covered under Coverage A—Building Property sustaining a loss caused by a flood as defined by this policy must:

(1) Be a "repetitive loss structure." A "repetitive loss structure" is one that meets the following conditions:

(a) The structure is covered by a contract of flood insurance issued under the NFIP.

(b) The structure has suffered flood damage on 2 occasions during a 10-year period which ends on the date of the second loss.

(c) The cost to repair the flood damage, on average, equaled or exceeded 25% of the market value of the structure at the time of each flood loss.

(d) In addition to the current claim, the NFIP must have paid the previous qualifying claim, and the State or community must have a cumulative, substantial damage provision or repetitive loss provision in its floodplain management law or ordinance being enforced against the structure; or

(2) Be a structure that has had flood damage in which the cost to repair equals or exceeds 50% of the market value of the structure at the time of the flood. The State or community must have a substantial damage provision in its floodplain management law or ordinance being enforced against the structure.

b. This Coverage D pays you to comply with State or local floodplain management laws or ordinances that meet the minimum standards of the National Flood Insurance Program found in the Code of Federal Regulations at 44 CFR 60.3. We pay for compliance activities that exceed those standards under these conditions:

(1) 3.a.(1) above.

(2) Elevation or floodproofing in any risk zone to preliminary or advisory base flood elevations provided by FEMA which the State or local government has adopted and is enforcing for flood-damaged structures in such areas. (This includes compliance activities in B, C, X, or D zones which are being changed to zones with base flood elevations. This also includes compliance activities in zones where base flood elevations are being increased, and a flood-damaged structure must comply with the higher advisory base flood elevation.) Increased Cost of Compliance coverage does not apply to situations in B, C, X, or D zones where the community has derived its own elevations and is enforcing elevation or floodproofing requirements for flood-damaged structures to elevations derived solely by the community.

(3) Elevation or floodproofing above the base flood elevation to meet State or local "freeboard" requirements, i.e., that a structure must be elevated above the base flood elevation.

c. Under the minimum NFIP criteria at 44 CFR 60.3(b)(4), States and communities must require the elevation or floodproofing of structures in unnumbered A zones to the base flood elevation where elevation data is obtained from a Federal, State, or other source. Such compliance activities are also eligible for Coverage D.

d. This coverage will also pay for the incremental cost, after demolition or relocation, of elevating or floodproofing a structure during its rebuilding at the same or another site to meet State or local floodplain management laws or ordinances, subject to Exclusion D.5.g.below relating to improvements.

e. This coverage will also pay to bring a flood-damaged structure into compliance with State or local floodplain management laws or ordinances even if the structure had received a variance before the present loss from the applicable floodplain management requirements.

4. *Conditions.*

a. When a structure covered under Coverage A—Building Property sustains a loss caused by a flood, our payment for the loss under this Coverage D will be for the increased cost to elevate, floodproof, relocate, or demolish (or any combination of these activities) caused by the enforcement of current State or local floodplain management ordinances or laws. Our payment for eligible demolition activities will be for the cost to demolish and clear the site of the building debris or a portion thereof caused by the enforcement of current State or local floodplain management ordinances or laws. Eligible activities for the cost of clearing the site will include those necessary to discontinue utility service to the site and ensure proper abandonment of on-site utilities.

b. When the building is repaired or rebuilt, it must be intended for the same occupancy as the present building unless otherwise required by current floodplain management ordinances or laws.

5. *Exclusions.*

Under this Coverage D—Increased Cost of Compliance, we will not pay for:

a. The cost to comply with any floodplain management law or ordinance in communities participating in the Emergency Program.

b. The cost associated with enforcement of any ordinance or law that requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of pollutants.

c. The loss in value to any insured building or other structure due to the requirements of any ordinance or law.

d. The loss in residual value of the undamaged portion of a building demolished as a consequence of enforcement of any State or local floodplain management law or ordinance.

e. Any Increased Cost of Compliance under this Coverage D:

(1) Until the building is elevated, floodproofed, demolished, or relocated on the same or to another premises; and

(2) Unless the building is elevated, floodproofed, demolished, or relocated as soon as reasonably possible after the loss, not to exceed two years.

f. Any code upgrade requirements, e.g., plumbing or electrical wiring, not specifically related to the State or local floodplain management law or ordinance.

g. Any compliance activities needed to bring additions or improvements made after the loss occurred into compliance with State or local floodplain management laws or ordinances.

h. Loss due to any ordinance or law that you were required to comply with before the current loss.

i. Any rebuilding activity to standards that do not meet the NFIP's minimum requirements. This includes any situation where the insured has received from the State or community a variance in connection with the current flood loss to rebuild the property to an elevation below the base flood elevation.

j. Increased Cost of Compliance for a garage or carport.

k. Any structure insured under an NFIP Group Flood Insurance Policy.

l. Assessments made by a condominium association on individual condominium unit owners to pay increased costs of repairing commonly owned buildings after a flood in compliance with State or local floodplain management ordinances or laws.

6. *Other Provisions.*

a. Increased Cost of Compliance coverage will not be included in the calculation to determine whether coverage meets the coinsurance requirement for replacement cost coverage under VIII. General Conditions, V. Loss Settlement.

b. All other conditions and provisions of this policy apply.

**IV. Property Not Covered**

We do not cover any of the following:

1. Personal property not inside the fully enclosed building;

2. A building, and personal property in it, located entirely in, on, or over water or seaward of mean high tide, if constructed or substantially improved after September 30, 1982;

3. Open structures, including a building used as a boathouse or any structure or building into which boats are floated, and personal property located in, on, or over water;

4. Recreational vehicles other than travel trailers described in the Definitions Section (see II.B.6.c.) whether affixed to a permanent foundation or on wheels;

5. Self-propelled vehicles or machines, including their parts and equipment.



However, we do cover self-propelled vehicles or machines, provided they are not licensed for use on public roads and are:

a. Used mainly to service the described location, or

b. Designed and used to assist handicapped persons, while the vehicles or machines are inside a building at the described location;

6. Land, land values, lawns, trees, shrubs, plants, growing crops, or animals;

7. Accounts, bills, coins, currency, deeds, evidences of debt, medals, money, scrip, stored value cards, postage stamps, securities, bullion, manuscripts, or other valuable papers;

8. Underground structures and equipment, including wells, septic tanks, and septic systems;

9. Those portions of walks, walkways, decks, driveways, patios, and other surfaces, all whether protected by a roof or not, located outside the perimeter, exterior walls of the insured building;

10. Containers, including related equipment, such as, but not limited to, tanks containing gases or liquids;

11. Buildings and all their contents if more than 49% of the actual cash value of the building is below ground, unless the lowest level is at or above the base flood elevation and is below ground by reason of earth having been used as insulation material in conjunction with energy efficient building techniques;

12. Fences, retaining walls, seawalls, bulkheads, wharves, piers, bridges, and docks;

13. Aircraft or watercraft, or their furnishings and equipment;

14. Hot tubs and spas that are not bathroom fixtures, and swimming pools, and their equipment such as, but not limited to, heaters, filters, pumps, and pipes, wherever located;

15. Property not eligible for flood insurance pursuant to the provisions of the Coastal Barrier Resources Act and the Coastal Barrier Improvements Act of 1990 and amendments to these Acts;

16. Personal property used in connection with any incidental commercial occupancy or use of the building.

**V. Exclusions**

A. We only pay for direct physical loss by or from flood, which means that we do not pay you for:

1. Loss of revenue or profits;

2. Loss of access to the insured property or described location;

3. Loss of use of the insured property or described location;

4. Loss from interruption of business or production;

5. Any additional living expenses incurred while the insured building is being repaired or is unable to be occupied for any reason;

6. The cost of complying with any ordinance or law requiring or regulating the construction, demolition, remodeling, renovation, or repair of property, including removal of any resulting debris. This exclusion does not apply to any eligible activities that we describe in Coverage D—Increased Cost of Compliance; or

7. Any other economic loss.

B. We do not insure a loss directly or indirectly caused by a flood that is already in progress at the time and date:

1. The policy term begins; or

2. Coverage is added at your request.

C. We do not insure for loss to property caused directly by earth movement even if the earth movement is caused by flood. Some examples of earth movement that we do not cover are:

1. Earthquake;

2. Landslide;

3. Land subsidence;

4. Sinkholes;

5. Destabilization or movement of land that results from accumulation of water in subsurface land areas; or

6. Gradual erosion.

We do, however, pay for losses from mudflow and land subsidence as a result of erosion that are specifically covered under our definition of flood (see II.A.1.c. and II.A.2.).

D. We do not insure for direct physical loss caused directly or indirectly by:

1. The pressure or weight of ice;

2. Freezing or thawing;

3. Rain, snow, sleet, hail, or water spray;

4. Water, moisture, mildew, or mold damage that results primarily from any condition:

a. Substantially confined to the insured building; or

b. That is within your control including, but not limited to:

(1) Design, structural, or mechanical defects;

(2) Failures, stoppages, or breakage of water or sewer lines, drains, pumps, fixtures, or equipment; or

(3) Failure to inspect and maintain the property after a flood recedes;

5. Water or water-borne material that:

a. Backs up through sewers or drains;

b. Discharges or overflows from a sump, sump pump, or related equipment; or

c. Seeps or leaks on or through insured property;

unless there is a flood in the area and the flood is the proximate cause of the sewer, drain, or sump pump discharge or overflow, or the seepage of water;

6. The pressure or weight of water unless there is a flood in the area and the flood is the proximate cause of the damage from the pressure or weight of water.

7. Power, heating, or cooling failure unless the failure results from direct physical loss by or from flood to power, heating or cooling equipment situated on the described location;

8. Theft, fire, explosion, wind, or windstorm;

9. Anything you or your agents do or conspire to do to cause loss by flood deliberately; or

10. Alteration of the insured property that significantly increases the risk of flooding.

E. We do not insure for loss to any building or personal property located on land leased from the Federal Government, arising from or incident to the flooding of the land by the Federal Government, where the lease expressly holds the Federal Government harmless under flood insurance issued under any Federal Government program.

F. We do not pay for the testing for or monitoring of pollutants unless required by law or ordinance.

**VI. Deductibles**

A. When a loss is covered under this policy, we will pay only that part of the loss that exceeds the applicable deductible amount, subject to the limit of insurance that applies. The deductible amount is shown on the Declarations Page.

However, when a building under construction, alteration, or repair does not have at least two rigid exterior walls and a fully secured roof at the time of loss, your deductible amount will be two times the deductible that would otherwise apply to a completed building.

B. In each loss from flood, separate deductibles apply to the building and personal property insured by this policy.

C. No deductible applies to:

1. III.C.2. Loss Avoidance Measures; or

2. III.D. Increased Cost of Compliance.

**VII. Coinsurance**

A. This Coinsurance Section applies only to coverage on the building.

B. We will impose a penalty on loss payment unless the amount of insurance applicable to the damaged building is:

1. At least 80% of its replacement cost; or

2. The maximum amount of insurance available for that building under the NFIP, whichever is less.

C. If the actual amount of insurance on the building is less than the required amount in accordance with the terms of VII. B. above, then loss payment is determined as follows (subject to all other relevant conditions in this policy, including those pertaining to valuation, adjustment, settlement, and payment of loss):

1. Divide the actual amount of insurance carried on the building by the required amount of insurance.

2. Multiply the amount of loss, before application of the deductible, by the figure determined in C.1. above.

3. Subtract the deductible from the figure determined in C.2. above.

We will pay the amount determined in C.3. above, or the amount of insurance carried, whichever is less. The amount of insurance carried, if in excess of the applicable maximum amount of insurance available under the NFIP, is reduced accordingly.

*Examples*

Example #1 (Inadequate Insurance)

Replacement value of the building—$250,000
Required amount of insurance—$200,000
(80% of replacement value of $250,000)
Actual amount of insurance carried—$180,000
Amount of the loss—$150,000
Deductible—$500
Step 1:180,000 ÷ 200,000 = .90
(90% of what should be carried.)
Step 2: 150,000 × .90 = 135,000
Step 3: 135,000 − 500 = 134,500

We will pay no more than $134,500. The remaining $15,500 is not covered due to the coinsurance penalty ($15,000) and application of the deductible ($500).

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Example #2 (Adequate Insurance)
Replacement value of the building—$500,000
Required amount of insurance—$400,000
(80% of replacement value of $500,000)
Actual amount of insurance carried—$400,000
Amount of the loss—$200,000
Deductible—$500

In this example there is no coinsurance penalty, because the actual amount of insurance carried meets the required amount. We will pay no more than $199,500 ($200,000 amount of loss minus the $500 deductible).

D. In calculating the full replacement cost of a building:

1. The replacement cost value of any covered building property will be included;

2. The replacement cost value of any building property not covered under this policy will not be included; and

3. Only the replacement cost value of improvements installed by the condominium association will be included.

**VIII. General Conditions**

A. *Pair and Set Clause.*

In case of loss to an article that is part of a pair or set, we will have the option of paying you:

1. An amount equal to the cost of replacing the lost, damaged, or destroyed article, less depreciation; or

2. An amount which represents the fair proportion of the total value of the pair or set that the lost, damaged, or destroyed article bears to the pair or set.

B. *Concealment or Fraud and Policy Voidance.*

1. With respect to all insureds under this policy, this policy:

a. Is void,

b. Has no legal force or effect,

c. Cannot be renewed, and

d. Cannot be replaced by a new NFIP policy, if, before or after a loss, you or any other insured or your agent have at any time:

(1) Intentionally concealed or misrepresented any material fact or circumstance,

(2) Engaged in fraudulent conduct, or

(3) Made false statements,

relating to this policy or any other NFIP insurance.

2. This policy will be void as of the date the wrongful acts described in B.1. above were committed.

3. Fines, civil penalties, and imprisonment under applicable Federal laws may also apply to the acts of fraud or concealment described above.

4. This policy is also void for reasons other than fraud, misrepresentation, or wrongful act. This policy is void from its inception and has no legal force under the following conditions:

a. If the property is located in a community that was not participating in the NFIP on the policy's inception date and did not join or re-enter the program during the policy term and before the loss occurred; or

b. If the property listed on the application is not otherwise eligible for coverage under the NFIP.

C. *Other Insurance.*

1. If a loss covered by this policy is also covered by other insurance that includes flood coverage not issued under the Act, we will not pay more than the amount of insurance that you are entitled to for lost, damaged or destroyed property insured under this policy subject to the following:

a. We will pay only the proportion of the loss that the amount of insurance that applies under this policy bears to the total amount of insurance covering the loss, unless C.1.b. or c. immediately below applies.

b. If the other policy has a provision stating that it is excess insurance, this policy will be primary.

c. This policy will be primary (but subject to its own deductible) up to the deductible in the other flood policy (except another policy as described in C.1.b. above). When the other deductible amount is reached, this policy will participate in the same proportion that the amount of insurance under this policy bears to the total amount of both policies, for the remainder of the loss.

2. If there is a flood insurance policy in the name of a unit owner that covers the same loss as this policy, then this policy will be primary.

D. *Amendments, Waivers, Assignment.*

This policy cannot be changed nor can any of its provisions be waived without the express written consent of the Federal Insurance Administrator. No action that we take under the terms of this policy constitutes a waiver of any of our rights. You may assign this policy in writing when you transfer title of your property to someone else except under these conditions:

1. When this policy covers only personal property; or

2. When this policy covers a structure during the course of construction.

E. *Cancellation of Policy by You.*

1. You may cancel this policy in accordance with the applicable rules and regulations of the NFIP.

2. If you cancel this policy, you may be entitled to a full or partial refund of premium also under the applicable rules and regulations of the NFIP.

F. *Non-Renewal of the Policy by Us.*

Your policy will not be renewed:

1. If the community where your covered property is located stops participating in the NFIP, or

2. Your building has been declared ineligible under section 1316 of the Act.

G. *Reduction and Reformation of Coverage.*

1. If the premium we received from you was not enough to buy the kind and amount of coverage you requested, we will provide only the amount of coverage that can be purchased for the premium payment we received.

2. The policy can be reformed to increase the amount of coverage resulting from the reduction described in G.1. above the amount that you requested as follows:

a. Discovery of Insufficient Premium or Incomplete Rating Information Before a Loss.

(1) If we discover before you have a flood loss that your premium payment was not enough to buy the requested amount of coverage, we will send you and any mortgagee or trustee known to us a bill for the required additional premium for the current policy term (or that portion of the current policy term following any endorsement changing the amount of coverage). If you or the mortgagee or trustee pay the additional premium within 30 days from the date of our bill, we will reform the policy to increase the amount of coverage to the originally requested amount effective to the beginning of the current policy term (or subsequent date of any endorsement changing the amount of coverage).

(2) If we determine before you have a flood loss that the rating information we have is incomplete and prevents us from calculating the additional premium, we will ask you to send the required information. You must submit the information within 60 days of our request. Once we determine the amount of additional premium for the current policy term, we will follow the procedure in G.2.a.(1) above.

(3) If we do not receive the additional premium (or additional information) by the date it is due, the amount of coverage can only be increased by endorsement subject to any appropriate waiting period.

b. Discovery of Insufficient Premium or Incomplete Rating Information After a Loss.

(1) If we discover after you have a flood loss that your premium payment was not enough to buy the requested amount of coverage, we will send you and any mortgagee or trustee known to us a bill for the required additional premium for the current and the prior policy terms. If you or the mortgagee or trustee pay the additional premium within 30 days of the date of our bill, we will reform the policy to increase the amount of coverage to the originally requested amount effective to the beginning of the prior policy term.

(2) If we discover after you have a flood loss that the rating information we have is incomplete and prevents us from calculating the additional premium, we will ask you to send the required information. You must submit the information before your claim can be paid. Once we determine the amount of additional premium for the current and prior policy terms, we will follow the procedure in G.2.b.(1) above.

(3) If we do not receive the additional premium by the date it is due, your flood insurance claim will be settled based on the reduced amount of coverage. The amount of coverage can only be increased by endorsement subject to any appropriate waiting period.

3. However, if we find that you or your agent intentionally did not tell us, or falsified, any important fact or circumstance or did anything fraudulent relating to this insurance, the provisions of Condition B. Concealment or Fraud and Policy Voidance above apply.

H. *Policy Renewal.*

1. This policy will expire at 12:01 a.m. on the last day of the policy term.

2. We must receive the payment of the appropriate renewal premium within 30 days of the expiration date.

3. If we find, however, that we did not place your renewal notice into the U.S. Postal Service, or if we did mail it, we made a mistake, *e.g.*, we used an incorrect, incomplete, or illegible address, which delayed its delivery to you before the due date for the renewal premium, then we will follow these procedures:



a. If you or your agent notified us, not later than one year after the date on which the payment of the renewal premium was due, of nonreceipt of a renewal notice before the due date for the renewal premium, and we determine that the circumstances in the preceding paragraph apply, we will mail a second bill providing a revised due date, which will be 30 days after the date on which the bill is mailed.

b. If we do not receive the premium requested in the second bill by the revised due date, then we will not renew the policy. In that case, the policy will remain as an expired policy as of the expiration date shown on the Declarations Page.

4. In connection with the renewal of this policy, we may ask you during the policy term to re-certify, on a Recertification Questionnaire that we will provide you, the rating information used to rate your most recent application for or renewal of insurance.

I. *Conditions Suspending or Restricting Insurance.*

We are not liable for loss that occurs while there is a hazard that is increased by any means within your control or knowledge.

J. *Requirements in Case of Loss.*

In case of a flood loss to insured property, you must:

1. Give prompt written notice to us;

2. As soon as reasonably possible, separate the damaged and undamaged property, putting it in the best possible order so that we may examine it;

3. Prepare an inventory of damaged personal property showing the quantity, description, actual cash value, and amount of loss. Attach all bills, receipts and related documents;

4. Within 60 days after the loss, send us a proof of loss, which is your statement of the amount you are claiming under the policy signed and sworn to by you, and which furnishes us with the following information:

a. The date and time of loss;

b. A brief explanation of how the loss happened;

c. Your interest (for example, "owner") and the interest, if any, of others in the damaged property;

d. Details of any other insurance that may cover the loss;

e. Changes in title or occupancy of the insured property during the term of the policy;

f. Specifications of damaged insured buildings and detailed repair estimates;

g. Names of mortgagees or anyone else having a lien, charge, or claim against the insured property;

h. Details about who occupied any insured building at the time of loss and for what purpose; and

i. The inventory of damaged personal property described in J.3. above.

5. In completing the proof of loss, you must use your own judgment concerning the amount of loss and justify that amount.

6. You must cooperate with the adjuster or representative in the investigation of the claim.

7. The insurance adjuster whom we hire to investigate your claim may furnish you with a proof of loss form, and she or he may help you complete it. However, this is a matter of courtesy only, and you must still send us a proof of loss within sixty days after the loss even if the adjuster does not furnish the form or help you complete it.

8. We have not authorized the adjuster to approve or disapprove claims or to tell you whether we will approve your claim.

9. At our option, we may accept the adjuster's report of the loss instead of your proof of loss. The adjuster's report will include information about your loss and the damages you sustained. You must sign the adjuster's report. At our option, we may require you to swear to the report.

K. *Our Options After a Loss.*

Options that we may, in our sole discretion, exercise after loss include the following:

1. At such reasonable times and places that we may designate, you must:

a. Show us or our representative the damaged property;

b. Submit to examination under oath, while not in the presence of another insured, and sign the same; and

c. Permit us to examine and make extracts and copies of:

(1) Any policies of property insurance insuring you against loss and the deed establishing your ownership of the insured real property;

(2) Condominium association documents including the Declarations of the condominium, its Articles of Association or Incorporation, Bylaws, and rules and regulations; and

(3) All books of accounts, bills, invoices and other vouchers, or certified copies pertaining to the damaged property if the originals are lost.

2. We may request, in writing, that you furnish us with a complete inventory of the lost, damaged, or destroyed property, including:

a. Quantities and costs;

b. Actual cash values or replacement cost (whichever is appropriate);

c. Amounts of loss claimed;

d. Any written plans and specifications for repair of the damaged property that you can make reasonably available to us; and

e. Evidence that prior flood damage has been repaired.

3. If we give you written notice within 30 days after we receive your signed, sworn proof of loss, we may:

a. Repair, rebuild, or replace any part of the lost, damaged, or destroyed property with material or property of like kind and quality or its functional equivalent; and

b. Take all or any part of the damaged property at the value we agree upon or its appraised value.

L. *No Benefit to Bailee.*

No person or organization, other than you, having custody of covered property will benefit from this insurance.

M. *Loss Payment.*

1. We will adjust all losses with you. We will pay you unless some other person or entity is named in the policy or is legally entitled to receive payment. Loss will be payable 60 days after we receive your proof of loss (or within 90 days after the insurance adjuster files an adjuster's report signed and sworn to by you in lieu of a proof of loss) and:

a. We reach an agreement with you;

b. There is an entry of a final judgment; or

c. There is a filing of an appraisal award with us, as provided in VIII. P.

2. If we reject your proof of loss in whole or in part you may:

a. Accept such denial of your claim;

b. Exercise your rights under this policy; or

c. File an amended proof of loss as long as it is filed within 60 days of the date of the loss.

N. *Abandonment.*

You may not abandon damaged or undamaged insured property to us.

O. *Salvage.*

We may permit you to keep damaged insured property after a loss, and we will reduce the amount of the loss proceeds payable to you under the policy by the value of the salvage.

P. *Appraisal.*

If you and we fail to agree on the actual cash value or, if applicable, replacement cost of the damaged property so as to determine the amount of loss, then either may demand an appraisal of the loss. In this event, you and we will each choose a competent and impartial appraiser within 20 days after receiving a written request from the other. The two appraisers will choose an umpire. If they cannot agree upon an umpire within 15 days, you or we may request that the choice be made by a judge of a court of record in the state where the insured property is located. The appraisers will separately state the actual cash value, the replacement cost, and the amount of loss to each item. If the appraisers submit a written report of an agreement to us, the amount agreed upon will be the amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will set the amount of actual cash value and loss, or if it applies, the replacement cost and loss.

Each party will:

1. Pay its own appraiser; and

2. Bear the other expenses of the appraisal and umpire equally.

Q. *Mortgage Clause.*

The word "mortgagee" includes trustee.

Any loss payable under Coverage A—Building will be paid to any mortgagee of whom we have actual notice, as well as any other mortgagee or loss payee determined to exist at the time of loss, and you, as interests appear. If more than one mortgagee is named, the order of payment will be the same as the order of precedence of the mortgages.

If we deny your claim, that denial will not apply to a valid claim of the mortgagee, if the mortgagee:

1. Notifies us of any change in the ownership or occupancy, or substantial change in risk, of which the mortgagee is aware;

2. Pays any premium due under this policy on demand if you have neglected to pay the premium; and

3. Submits a signed, sworn proof of loss within 60 days after receiving notice from us of your failure to do so.

All of the terms of this policy apply to the mortgagee.

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The mortgagee has the right to receive loss payment even if the mortgagee has started foreclosure or similar action on the building.

If we decide to cancel or not renew this policy, it will continue in effect for the benefit of the mortgagee only for 30 days after we notify the mortgagee of the cancellation or non-renewal.

If we pay the mortgagee for any loss and deny payment to you, we are subrogated to all the rights of the mortgagee granted under the mortgage on the property. Subrogation will not impair the right of the mortgagee to recover the full amount of the mortgagee's claim.

R. *Suit Against Us.*

You may not sue us to recover money under this policy unless you have complied with all the requirements of the policy. If you do sue, you must start the suit within one year of the date of the written denial of all or part of the claim and you must file the suit in the United States District Court of the district in which the insured property was located at the time of loss. This requirement applies to any claim that you may have under this policy and to any dispute that you may have arising out of the handling of any claim under the policy.

S. *Subrogation.*

Whenever we make a payment for a loss under this policy, we are subrogated to your right to recover for that loss from any other person. That means that your right to recover for a loss that was partly or totally caused by someone else is automatically transferred to us, to the extent that we have paid you for the loss. We may require you to acknowledge this transfer in writing. After the loss, you may not give up our right to recover this money or do anything that would prevent us from recovering it. If you make any claim against any person who caused your loss and recover any money, you must pay us back first before you may keep any of that money.

T. *Continuous Lake Flooding.*

1. If an insured building has been flooded by rising lake waters continuously for 90 days or more and it appears reasonably certain that a continuation of this flooding will result in a covered loss to the insured building equal to or greater than the building policy limits plus the deductible or the maximum payable under the policy for any one building loss, we will pay you the lesser of these two amounts without waiting for the further damage to occur if you sign a release agreeing:

a. To make no further claim under this policy;

b. Not to seek renewal of this policy;

c. Not to apply for any flood insurance under the Act for property at the described location; and

d. Not to seek a premium refund for current or prior terms.

If the policy term ends before the insured building has been flooded continuously for 90 days, the provisions of this paragraph T.1. will apply as long as the insured building suffers a covered loss before the policy term ends.

2. If your insured building is subject to continuous lake flooding from a closed basin lake, you may elect to file a claim under either paragraph T.1. above or this paragraph T.2. (A "closed basin lake" is a natural lake from which water leaves primarily through evaporation and whose surface area now exceeds or has exceeded one square mile at any time in the recorded past. Most of the nation's closed basin lakes are in the western half of the United States where annual evaporation exceeds annual precipitation and where lake levels and surface areas are subject to considerable fluctuation due to wide variations in the climate. These lakes may overtop their basins on rare occasions.) Under this paragraph T.2, we will pay your claim as if the building is a total loss even though it has not been continuously inundated for 90 days, subject to the following conditions:

a. Lake flood waters must damage or imminently threaten to damage your building.

b. Before approval of your claim, you must:

(1) Agree to a claim payment that reflects your buying back the salvage on a negotiated basis; and

(2) Grant the conservation easement contained in FEMA's "Policy Guidance for Closed Basin Lakes," to be recorded in the office of the local recorder of deeds. FEMA, in consultation with the community in which the property is located, will identify on a map an area or areas of special consideration (ASC) in which there is a potential for flood damage from continuous lake flooding. FEMA will give the community the agreed-upon map showing the ASC. This easement will only apply to that portion of the property in the ASC. It will allow certain agricultural and recreational uses of the land. The only structures that it will allow on any portion of the property within the ASC are certain simple agricultural and recreational structures. If any of these allowable structures are insurable buildings under the NFIP and are insured under the NFIP, they will not be eligible for the benefits of this paragraph T.2. If a U.S. Army Corps of Engineers certified flood control project or otherwise certified flood control project later protects the property, FEMA will, upon request, amend the ASC to remove areas protected by those projects. The restrictions of the easement will then no longer apply to any portion of the property removed from the ASC; and

(3) Comply with paragraphs T.1.a. through T.1.d. above.

c. Within 90 days of approval of your claim, you must move your building to a new location outside the ASC. FEMA will give you an additional 30 days to move if you show there is sufficient reason to extend the time.

d. Before the final payment of your claim, you must acquire an elevation certificate and a floodplain development permit from the local floodplain administrator for the new location of your building.

e. Before the approval of your claim, the community having jurisdiction over your building must:

(1) Adopt a permanent land use ordinance, or a temporary moratorium for a period not to exceed 6 months to be followed immediately by a permanent land use ordinance, that is consistent with the provisions specified in the easement required in paragraph T.2.b. above;

(2) Agree to declare and report any violations of this ordinance to FEMA so that under Sec. 1316 of the National Flood Insurance Act of 1968, as amended, flood insurance to the building can be denied; and

(3) Agree to maintain as deed-restricted, for purposes compatible with open space or agricultural or recreational use only, any affected property the community acquires an interest in. These deed restrictions must be consistent with the provisions of paragraph T.2.b. above, except that even if a certified project protects the property, the land use restrictions continue to apply if the property was acquired under the Hazard Mitigation Grant Program or the Flood Mitigation Assistance Program. If a non-profit land trust organization receives the property as a donation, that organization must maintain the property as deed-restricted, consistent with the provisions of paragraph T.2.b. above.

f. Before the approval of your claim, the affected State must take all action set forth in FEMA's "Policy Guidance for Closed Basin Lakes."

g. You must have NFIP flood insurance coverage continuously in effect from a date established by FEMA until you file a claim under this paragraph T.2. If a subsequent owner buys NFIP insurance that goes into effect within 60 days of the date of transfer of title, any gap in coverage during that 60-day period will not be a violation of this continuous coverage requirement. For the purpose of honoring a claim under this paragraph T.2., we will not consider to be in effect any increased coverage that became effective after the date established by FEMA. The exception to this is any increased coverage in the amount suggested by your insurer as an inflation adjustment.

h. This paragraph T.2. will be in effect for a community when the FEMA Regional Director for the affected region provides to the community, in writing, the following:

(1) Confirmation that the community and the State are in compliance with the conditions in paragraphs T.2.e. and T.2.f. above, and

(2) The date by which you must have flood insurance in effect.

U. *Duplicate Policies Not Allowed.*

1. We will not insure your property under more than one NFIP policy.

If we find that the duplication was not knowingly created, we will give you written notice. The notice will advise you that you may choose one of several options under the following procedures:

a. If you choose to keep in effect the policy with the earlier effective date, you may also choose to add the coverage limits of the later policy to the limits of the earlier policy. The change will become effective as of the effective date of the later policy.

b. If you choose to keep in effect the policy with the later effective date, you may also choose to add the coverage limits of the earlier policy to the limits of the later policy. The change will be effective as of the effective date of the later policy.

In either case, you must pay the pro rata premium for the increased coverage limits within 30 days of the written notice. In no event will the resulting coverage limits exceed the permissible limits of coverage under the Act or your insurable interest, whichever is less. We will make a refund to you, according to applicable NFIP rules, of the premium for the policy not being kept in effect.

2. The insured's option under this condition U. Duplicate Policies Not Allowed to elect which NFIP policy to keep in effect does not apply when duplicates have been knowingly created. Losses occurring under such circumstances will be adjusted according to the terms and conditions of the earlier policy. The policy with the later effective date must be canceled.

V. *Loss Settlement.*

1. Introduction

This policy provides three methods of settling losses: Replacement Cost, Special Loss Settlement, and Actual Cash Value. Each method is used for a different type of property, as explained in a.-c. below.

a. Replacement Cost Loss Settlement described in V.2. below applies to buildings other than manufactured homes or travel trailers.

b. Special Loss Settlement described in V.3. below applies to a residential condominium building that is a travel trailer or a manufactured home.

c. Actual Cash Value loss settlement applies to all other property covered under this policy, as outlined in V.4. below.

2. Replacement Cost Loss Settlement

a. We will pay to repair or replace a damaged or destroyed building, after application of the deductible and without deduction for depreciation, but not more than the least of the following amounts:

(1) The amount of insurance in this policy that applies to the building;

(2) The replacement cost of that part of the building damaged, with materials of like kind and quality, and for like occupancy and use; or

(3) The necessary amount actually spent to repair or replace the damaged part of the building for like occupancy and use.

b. We will not be liable for any loss on a Replacement Cost Coverage basis unless and until actual repair or replacement of the damaged building or parts thereof, is completed.

c. If a building is rebuilt at a location other than the described location, we will pay no more than it would have cost to repair or rebuild at the described location, subject to all other terms of Replacement Cost Loss Settlement.

3. Special Loss Settlement

a. The following loss settlement conditions apply to a residential condominium building that is: (1) a manufactured home or travel trailer, as defined in II.B.6.b. and c., and (2) at least 16 feet wide when fully assembled and has at least 600 square feet within its perimeter walls when fully assembled.

b. If such a building is totally destroyed or damaged to such an extent that, in our judgment, it is not economically feasible to repair, at least to its pre-damaged condition, we will, at our discretion, pay the least of the following amounts:

(1) The lesser of the replacement cost of the manufactured home or travel trailer or 1.5 times the actual cash value; or

(2) The Building Limit of liability shown on your Declarations Page.

c. If such a manufactured home or travel trailer is partially damaged and, in our judgment, it is economically feasible to repair it to its pre-damaged condition, we will settle the loss according to the Replacement Cost Loss Settlement conditions in V.2. above.

4. Actual Cash Value Loss Settlement

a. The types of property noted below are subject to actual cash value loss settlement:

(1) Personal property;

(2) Insured property abandoned after a loss and that remains as debris at the described location;

(3) Outside antennas and aerials, awning, and other outdoor equipment;

(4) Carpeting and pads;

(5) Appliances; and

(6) A manufactured home or mobile home or a travel trailer as defined in II.B.6.b. or c. that does not meet the conditions for special loss settlement in V.3. above.

b. We will pay the least of the following amounts:

(1) The applicable amount of insurance under this policy;

(2) The actual cash value (as defined in II.B.2.); or

(3) The amount it would cost to repair or replace the property with material of like kind and quality within a reasonable time after the loss.

**IX. Liberalization Clause**

If we make a change that broadens your coverage under this edition of our policy, but does not require any additional premium, then that change will automatically apply to your insurance as of the date we implement the change, provided that this implementation date falls within 60 days before or during the policy term stated on the Declarations Page.

**X. What Law Governs**

This policy and all disputes arising from the handling of any claim under the policy are governed exclusively by the flood insurance regulations issued by FEMA, the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001, *et seq.*), and Federal common law.

*In Witness Whereof,* we have signed this policy below and hereby enter into this Insurance Agreement.

**Jo Ann Howard,**

*Administrator, Federal Insurance Administration.*

9. We revise Appendix A (4) to Part 61 to read as follows:



**APPENDIX A (4) TO PART 61**

**Federal Emergency Management Agency, Federal Insurance Administration**

**Standard Flood Insurance Policy**

**ENDORSEMENT TO DWELLING FORM POLICY**

This endorsement replaces the provisions of VII.B.4 and VII.H.2, and also adds a new paragraph, VII.H.5. This endorsement applies only in Monroe County and the Village of Islamorada, Florida.

VII.B.4. This policy is also void for reasons other than fraud, misrepresentation, or wrongful act. This policy is void from its inception and has no legal force under the following conditions:

a. If the property is located in a community that was not participating in the NFIP on the policy's inception date and did not join or re-enter the program during the policy term and before the loss occurred.

b. If you have not submitted a community inspection report, referred to in "H. Policy Renewal" below, that was required in a notice sent to you in conjunction with the community inspection procedure established under 44 CFR 59.30.

c. If the property listed on the application is not otherwise eligible for coverage under the NFIP

VII.H.2. We must receive the payment of the appropriate renewal premium and when applicable, the community inspection report referred to in H.5 below within 30 days of the expiration date.

VII.H.5. Your community has been approved by the Federal Emergency Management Agency to participate in an inspection procedure set forth in National Flood Insurance Program Regulations (44 CFR 59.30). During the several years that this inspection procedure will be in place, you may be required to obtain and submit an inspection report from your community certifying whether or not your insured property is in compliance with the community's floodplain management ordinance before you can renew your policy. You will be notified in writing of this requirement approximately 6 months before a renewal date and again at the time your renewal bill is sent.

10. We revise Appendix A (5) to Part 61 to read as follows:

**APPENDIX A(5) TO PART 61**

**Federal Emergency Management Agency, Federal Insurance Administration**

**Standard Flood Insurance Policy**

**ENDORSEMENT TO GENERAL PROPERTY FORM**

This endorsement replaces the provisions of VII.B.4 and VII.H.2, and also adds a new paragraph, VII.H.5. This endorsement applies only in Monroe County and the Village of Islamorada, Florida.

VII.B.4. This policy is also void for reasons other than fraud, misrepresentation, or wrongful act. This policy is void from its inception and has no legal force under the following conditions:

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a. If the property is located in a community that was not participating in the NFIP on the policy's inception date and did not join or re-enter the program during the policy term and before the loss occurred.

b. If you have not submitted a community inspection report, referred to in "H. Policy Renewal" below, that was required in a notice sent to you in conjunction with the community inspection procedure established under 44 CFR 59.30.

c. If the property listed on the application is not otherwise eligible for coverage under the NFIP

VII.H.2. We must receive the payment of the appropriate renewal premium and when applicable, the community inspection report referred to in H.5 below within 30 days of the expiration date.

VII.H.5. Your community has been approved by the Federal Emergency Management Agency to participate in an inspection procedure set forth in National Flood Insurance Program Regulations (44 CFR 59.30). During the several years that this inspection procedure will be in place, you may be required to obtain and submit an inspection report from your community certifying whether or not your insured property is in compliance with the community's floodplain management ordinance before you can renew your policy. You will be notified in writing of this requirement approximately 6 months before a renewal date and again at the time your renewal bill is sent.

11. We revise Appendix A (6) to Part 61 to read as follows:

**APPENDIX A(6) TO PART 61**

**Federal Emergency Management Agency, Federal Insurance Administration**

**Standard Flood Insurance Policy**

**ENDORSEMENT to RESIDENTIAL CONDOMINIUM BUILDING ASSOCIATION POLICY**

This endorsement replaces the provisions of VIII.B.4. and VIII.H.2, and also adds a new paragraph, VIII.H.5. This endorsement applies only in Monroe County and the Village of Islamorada, Florida.

VIII.B.4. This policy is also void for reasons other than fraud, misrepresentation, or wrongful act. This policy is void from its inception and has no legal force under the following conditions:

a. If the property is located in a community that was not participating in the NFIP on the policy's inception date and did not join or re-enter the program during the policy term and before the loss occurred.

b. If you have not submitted a community inspection report, referred to in "H. Policy Renewal" below, that was required in a notice sent to you in conjunction with the community inspection procedure established under 44 CFR 59.30.

c. If the property listed on the application is not otherwise eligible for coverage under the NFIP

VIII.H.2. We must receive the payment of the appropriate renewal premium and when applicable, the community inspection report referred to in H.5 below within 30 days of the expiration date.

VIII.H.5. Your community has been approved by the Federal Emergency Management Agency to participate in an inspection procedure set forth in National Flood Insurance Program Regulations (44 CFR 59.30). During the several years that this inspection procedure will be in place, you may be required to obtain and submit an inspection report from your community certifying whether or not your insured property is in compliance with the community's floodplain management ordinance before you can renew your policy. You will be notified in writing of this requirement approximately 6 months before a renewal date and again at the time your renewal bill is sent.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance").

Dated: October 2, 2000.

**Jo Ann Howard,**

*Administrator, Federal Insurance Administration.*

[FR Doc. 00–25833 Filed 10–11–00; 8:45 am]

BILLING CODE 6718–03–P




Federal Register

Thursday,
October 12, 2000

Part IV

# Department of the Treasury

**Fiscal Service**

**31 CFR Part 205**

**Rules and Procedures for Efficient Federal-State Funds Transfers; Proposed Rule**

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**DEPARTMENT OF THE TREASURY**

**Fiscal Service**

**31 CFR Part 205**

**RIN 1510–AA38**

## Rules and Procedures for Efficient Federal-State Funds Transfers

**AGENCY:** Financial Management Service, Fiscal Service, Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Financial Management Service (FMS) proposes to revise the regulations implementing the Cash Management Improvement Act of 1990, as amended (CMIA). These regulations govern the transfer of funds between the Federal Government and States for certain Federal assistance programs. The revisions will provide greater flexibility in funding techniques; ensure that Treasury-State Agreements are unambiguous and auditable; address concerns raised by States, Federal agencies, and the General Accounting Office (GAO); delete obsolete provisions; incorporate FMS policy statements as appropriate; reflect new legislation and directives; and make the regulation clearer and, where possible, more concise.

**DATES:** Send your comments to reach us on or before January 10, 2001; we may not consider comments received after the above date in making our decision.

**ADDRESSES:** For information about filing comments electronically, see the **SUPPLEMENTARY INFORMATION** section under "Electronic access and filing address." You may also mail comments to Cynthia L. Johnson, Director, Cash Management Policy and Planning Division, Financial Management Service, 401 14th Street, S.W., Room 420, Washington, D.C. 20227. You may hand deliver comments to us at that same location.

**FOR FURTHER INFORMATION CONTACT:** Sally Phillips, Senior Financial Program Specialist, at (202) 874–7106, or Stephen K. Kenneally, Financial Program Specialist, at (202) 874–6966, or Matthew Helfrich, Financial Program Specialist, at (202) 874–6754, or Oscar Oña, Financial Program Specialist, at (202) 874–6799, or Adam Martin, Financial Program Specialist, at (202) 874–6881, or Cynthia L. Johnson, Director, Cash Management Policy and Planning Division, at (202) 874–6657, or Ellen Neubauer, Senior Attorney, at (202) 874–6680. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339 between 8:00 a.m. and 4:00 p.m. Eastern time, Monday through Friday, excluding Federal holidays.

**SUPPLEMENTARY INFORMATION:**

I. Public Comment Procedures
II. Background
III. Discussion of Proposed Rule
IV. Procedural Matters

### I. Public Comment Procedures

*Electronic Access and Filing Address*

You may view an electronic version of this proposed rule at http://www.fms.treas.gov/policycmia and submit comments to FMS via the web site. You may also comment via e-mail to: cmia@fms.treas.gov. Please also include "Attention: RIN—1510-AA38" and your name, address, and phone number in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at (202) 874–6590.

*Written Comments*

Written comments on the Notice of Proposed Rulemaking (NPRM) should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any change you recommend. Where possible, you should reference the specific section or paragraph of the proposal you are addressing. We may not consider or include in the Administrative Record for the final rule comments which we receive after the close of the comment period.

Comments, including names, street addresses, and other information of respondents, will be available for public review at the Department of the Treasury Public Reading Room during regular business hours (8:00 a.m. to 4:00 p.m.), Monday through Friday, except Federal holidays. We will also post all comments on the CMIA policy website at http://www.fms.treas.gov/policycmia at the end of the comment period. Individual respondents may request confidentiality. If you wish to request that we consider withholding your name, street address, or other contact information (such as Internet address, FAX or phone number) from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. We will honor requests for confidentiality on a case-by-case basis to the extent allowed by law. We will make available for public inspection in their entirety all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses.

*Public Hearings*

In addition, Treasury will hold two public hearings on the proposed rule that will provide individuals with the opportunity to publicly present their comments. The dates, times, and locations of these public hearings will be announced in a document that will be published in the **Federal Register** and made available on the CMIA Policy website at http://www.fms.treas.gov/policycmia.

### II. Background

We are proposing to revise our regulations at 31 CFR Part 205 (Part 205). Part 205 implements the Cash Management Improvement Act of 1990 (CMIA), Public Law 101–453, and the Cash Management Improvement Act Amendments of 1992, Public Law 102–589, codified at 31 U.S.C. 3335, 6501, and 6503.

CMIA was enacted in order to create greater efficiency and equity in the exchange of funds between the Federal Government and the States. Prior to the enactment of CMIA, Federal agencies expressed concerns that States were drawing down Federal funds well in advance of the time those funds were needed by States. States, on the other hand, expressed concerns about having to pay out their own funds in advance of receiving funds from the Federal Government.

CMIA, which requires the heads of executive agencies to provide for the timely disbursement of Federal funds in accordance with regulations prescribed by the Secretary of the Treasury, has three major provisions designed to address these issues:

- States and Federal agencies must minimize the time between the transfer of funds from the U.S. Treasury and the clearance of funds out of the accounts of a State.
- The Secretary of the Treasury shall enter into a Treasury-State Agreement with each State which specifies the funds transfer procedures for Federal assistance programs.
- In general, States and the Federal Government are respectively entitled to interest when the other fails to make funds transfers in a timely fashion. States owe the Federal Government interest for the time Federal funds are in State accounts before they are spent for Federal assistance program purposes. A Federal agency owes a State interest if the State disburses its own funds with obligational authority to support the Federal portion of a program before receiving Federal funds.

We issued Part 205 in 1992. The Final Rule was published on September 24, 1992 (57 FR 44272). The foundation of the regulation was the use of recognized, sound cash management principles in order to increase certainty in the timeliness of payments between Federal agencies and States. Since 1992, we have issued a number of CMIA Policy Statements (Policy Statements) that address various issues relevant to Part 205.

One of the purposes of the proposed rulemaking is to update the current regulation by deleting obsolete provisions and incorporating FMS Policy Statements. Another purpose is to address various concerns that States, Federal agencies, and the General Accounting Office [1] have raised since the issuance of Part 205. Specifically, the proposed regulation:

(1) Provides greater flexibility in funding techniques;
(2) Ensures that Treasury-State Agreements are unambiguous and auditable;
(3) Reflects new legislation and directives, including the Single Audit Act Amendments of 1996, 31 U.S.C. Chapter 75; and Executive Order 12866 of September 30, 1993, Regulatory Planning and Review; and,
(4) Makes the regulation clearer and, where possible, more concise.

FMS provided an earlier draft of this proposed rule to the National Association of State Auditors, Comptrollers and Treasurers, the National Governors' Association, the National Conference of State Legislatures, the Council of State Governments, and the National League of Cities and solicited comments from their membership. We also provided the draft proposed rule to the state of Colorado. We received several comments which have been considered in the formulation of this rule.

### III. Discussion of Proposed Rule

*General.* We are proposing to reorganize subpart A of Part 205 by presenting general information on Treasury-State Agreements first, followed by specific information related to the various sections of a Treasury-State Agreement. The proposal consolidates requirements related to specific programs into one section. In addition, the proposed reorganization puts State oversight and compliance requirements in one section, and Federal agency requirements in another. Proposed subpart B combines the existing two subsections on the consequences of Federal and State noncompliance since the result of noncompliance by either party is the same for the noncomplying party. Subpart C continues to be reserved.

[1] See Financial Management: "Implementation of the Cash Management Improvement Act" (Letter Report, 01/08/96, GAO/AIMD–96–4).



Although the format is different due to recently enacted plain language requirements, the proposed rule is consistent with the existing rule except where specifically noted. Incorporating existing Policy Statements into the regulation has also altered the rule's appearance. The proposed changes have been made based on input received from key program stakeholders: States and Federal program agencies.

*Disallowances.* Section 205.2 of the proposed rule defines disallowances as costs incurred by a State which the Federal program agency determines to be costs which should not be charged to the Federal Government either because the funds were used for other than Federal assistance program purposes or the amount of the funds used for Federal assistance program purposes was improper. Section 205.15 of the proposed rule adds a provision expressly recognizing that disallowances are subject to the CMIA's interest provisions.

Generally, disallowances occur when a Federal agency determines that a request for funds submitted by a State is invalid because the funds are not used for legitimate Federal assistance program purposes or the amount of funds used or requested for Federal assistance purposes was improper. A Federal agency may disallow a funds transfer prior to it being made to a State or after it is made to a State. In some cases, the statutes governing a specific program address disallowances and assess interest penalties. The CMIA allows Treasury to consider such statutory provisions when determining whether the CMIA interest provisions apply to particular disallowances.

This rule does not change the way an expenditure is determined to be a disallowance. Whether or not funds expended by a State should be properly charged to the Federal government is a determination to be made by the Federal program agency responsible for the Federal assistance program under which the expenditure arose. As in the past, this determination will be made in accordance with the statutes, regulations, and policies applicable to that program.

We are specifically seeking comment from States, Federal agencies, and the public on the implementation of the disallowance provisions.

### Section-by-Section Analysis

*Section 205.1 What Federal Assistance Programs Are Covered by This Part?*

Proposed § 205.1 replaces current § 205.1, *Purpose*, and current § 205.2, *Scope*. Proposed § 205.1 states that the rule applies to all States and Federal program agencies (except the Tennessee Valley Authority) and covers programs listed in the Catalogue of Domestic Federal Assistance.

*Section 205.2 What Definitions Apply to This Part?*

Proposed § 205.2 replaces current § 205.3, titled *Definitions*. Based on input from Federal agencies and States during several years of CMIA implementation, we're proposing certain deletions, additions, and modifications to the definitions. Three definitions are deleted: equivalent rate, issue checks, and program. Twenty-three definitions are added: administrative costs, business day, Catalog of Federal Domestic Assistance, compensating balance, default procedures, direct cost, disallowances, dollar-weighted average day of clearance, drawdown as a verb, estimate, Federal assistance program, Financial Management Service, grant, indirect cost, indirect cost rate, maintenance-of-effort, rebate, refund transaction, reverse flow program, revolving loan fund, Treasury-State Agreement, vendor payment, and we and us. Additionally, the table describing the applicable dollar thresholds for major Federal assistance programs found in Appendix A of current subpart A is moved to proposed § 205.5, *What are the thresholds for major Federal assistance programs?* since the proposed rule addresses program eligibility in that section.

*Subpart A: Rules Applicable to Federal Assistance Programs Included in a Treasury-State Agreement*

*Section 205.3 What Federal Assistance Programs Are Subject to Subpart A?*

Proposed § 205.3 replaces portions of current § 205.4, *Scope of subpart*. This section provides criteria by which States and Federal agencies determine which programs are covered by this Part in general, and by subpart A in particular.

Proposed § 205.3 clarifies that, at the discretion of the State, the number of programs included in a Treasury-State Agreement can be increased by lowering the funding thresholds. Lowering the funding threshold as a means of expanding permissible program coverage avoids disputes over individual programs. Federal agencies were concerned that States would try to add individual programs under which the Federal Government would likely incur interest liabilities to the States. States, on the other hand, were concerned that the Federal Government would oppose adding specific programs

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with likely Federal interest liabilities and instead move to cover programs under which the States would likely incur interest obligations.

Since they are no longer applicable, the subsections in current Part 205 on initial program coverage and the grace period for colleges and universities are deleted in the proposed rule.

These sections applied only to the first year of CMIA implementation.

We are seeking comment from Federal program agencies and States on reducing the administrative burden associated with the requirements of subpart A. In particular, we seek input on methods granting relief, consistent with the CMIA, to States and Federal program agencies that practice good cash management.

*Section 205.4 Are There Any Circumstances Where a Federal Assistance Program That Meets the Criteria of 205.3 Would Not Be Subject to Subpart A?*

Proposed § 205.4 replaces portions of existing § 205.4, *Scope of Subpart.* Proposed § 205.4 outlines a few exceptions to the regulation regarding the applicability of subpart A to some Federal assistance programs. Although the section heading is new, these exemptions are not new and exist in the current rule or are included in Policy Statements. Some examples of exempted programs are those that have been discontinued and whose remaining funding is below the major program threshold and those administered through several State agencies provided certain other requirements are met.

Proposed § 205.4 includes a provision integrating Policy Statement 8 ("Materiality Exemptions," April 19, 1993). Proposed § 205.4 describes exemptions for components of certain Federal programs that are spread over several agencies within a State. If a State agency's portion of the funding does not exceed 5% of the State's major Federal assistance threshold or 10% of total program expenditures, the regulation allows us and a State to exclude that portion of the funding from subpart A of Part 205. For example, a State Human Services agency and a State Agriculture Agency may share responsibility for a Federally funded nutrition program. If the share of funding received by the State Agriculture Agency falls within the limits given above, funds received are not subject to subpart A of Part 205. However, if interest liability is found in the State Human Services agency's portion of the program that is subject to this Part, the interest liabilities should be pro-rated to reflect interest on 100% of the program's funding.

Proposed § 205.4 also includes a provision integrating Policy Statement 17 ("Exclusion of Major Federal Assistance Programs Based on Funding Changes", June 21, 1995), which describes exemptions for discontinued programs. Specifically, we and a State may agree to exempt a program from being subject to Part 205 if the program has been discontinued and the remaining funding does not exceed the existing major program threshold. We may also agree with a State to exempt from subpart A of Part 205 multi-year programs that have remaining funds totaling less than that of a State's threshold. For example, assume a five-year program has spent all but $100,000 of its authorized funds in its first four years. If the major program threshold for that State is $900,000, we and a State can agree to exempt the program from subpart A of Part 205 program for its one remaining year.

*Section 205.5 What Are the Thresholds for Major Federal Assistance Programs?*

In the current rule, § 205.5 is reserved. In the proposed rule, this section is used to state the threshold determination levels and incorporate Appendix A from the current rule.

A small number of Federal programs are responsible for the majority of interest exchanged each year. In general, these are the largest Federal assistance programs, based on funding levels. The proposed rule increases the existing thresholds, thereby reducing the number of programs covered.

As with the current rule, the proposed rule requires States to determine the major program thresholds based on a percentage of the total expenditure of Federal assistance by a State. Different percentages are applied based on the amount of Federal assistance received by a State. The proposed rule doubles the percentages used in the existing rule. For example, States that receive $100 million or less would apply a 6.00 percent standard under the proposed rule instead of the 3.00 percent standard currently in effect. States that receive between $100 million and $10 billion would apply a 0.60 percent standard instead of 0.30 percent standard. States receiving in excess of $10 billion in Federal assistance must apply a 0.30 percent standard instead of the 0.15 percent standard. However, States in this largest category are subject to a default threshold level of $60 million or greater. This is to ensure that the threshold is at least as great as for those States in the middle category. Under the proposed rule, States do not have the option of selecting a fixed dollar amount instead of the percentage. This reduces the number of applicable threshold levels from ten to three.

The higher thresholds allow States, Federal program agencies, and FMS to focus their resources on large dollar programs and eliminate the administrative burden of tracking interest liabilities for numerous, but relatively small, Federal assistance programs. A review of the potential effect of approximately doubling the major program threshold indicates that the eliminated programs represent a very small percentage of the program funds that would remain subject to this Part. This is because the eliminated programs represent the smallest programs, measured by dollar amount, covered by CMIA.

To ensure that adequate program coverage is maintained, the proposed regulation requires a State to compare its coverage under the new thresholds with program coverage under the existing thresholds determined by the Single Audit Act. Consider, for example, a State that has a threshold of $10 million under the existing regulation, using the current 0.3 percent multiplier, and would have its threshold doubled to $20 million under the proposed regulation using the 0.6 percent multiplier. That State must sum the total dollar value of the additional programs that would be exempted under the proposed rule. If that figure exceeds 10 percent of the total dollar value of the programs covered using the lower threshold amount, then the threshold must be lowered until 90 percent coverage of the total program dollars is maintained.

Assume, for purposes of our example that, under the existing regulations the State's $10 million dollar threshold would cover 24 programs that represent a total value of $600 million. Under the proposed regulation, the threshold rises to $20 million, covering 15 programs that total $530 million. To determine if 90% coverage is maintained, the State must divide the reduction in total program coverage by the program coverage value under the existing rule or ($600 million − $530 million)/$600 million=11.6 percent. In this case, program coverage would be reduced by more than 10% and the threshold level would be adjusted downward until that level of coverage is reached. The 10% reduction in program coverage is not a target, but an outer limit. A State that doubles its threshold which eliminates less than 10% of its total program dollar coverage is NOT allowed to automatically increase its threshold to reach the 10% level.



As noted in § 205.3, States that wish to retain or expand current CMIA program coverage would be allowed to continue to negotiate Treasury-State Agreements containing lower program thresholds.

To determine if a program meets the threshold for a "major" program, refer to Table A in proposed § 205.5. For example, assume a State receives $3 billion in Federal assistance for all programs. To determine which programs are major Federal assistance programs, look at the corresponding information in Column B. Column B indicates that any program with expenditures exceeding 0.60 percent of the total Federal assistance expenditures would be considered a major Federal assistance program. Under the proposed rule, the State calculates the threshold by multiplying $3 billion by 0.60 percent, totaling $18 million.

On May 5, 1999, the current regulation was revised with updated major program threshold criteria derived from the Single Audit Act Amendments of 1996, 64 FR 24242. We are now proposing to move the amended table describing these thresholds to proposed § 205.5 from the definitions section of the current rule. The Single Audit Act Amendments of 1996 identify programs subject to audit based on a combination of objective funding figures and a subjective "risk" analysis of each program. The "risk based" criteria do not apply to this Part. The only criterion for designation as a major program subject to this Part is funding level.

*Section 205.6 What Is a Treasury-State Agreement?*

Proposed § 205.6 includes provisions found in current § 205.9, *Treasury-State Agreements.* Provisions from current § 205.6, *Funding Techniques* are moved to proposed § 205.12. A Treasury-State Agreement is a document negotiated by FMS and the States that identifies the covered programs, funding techniques, and interest calculation methods used for programs subject to subpart A.

We are proposing a major change in the Treasury-State Agreement negotiation process. Currently, the majority of Treasury-State Agreements have a one-year term and thus must be renegotiated annually. We do not believe that it is necessary or productive to renegotiate each agreement every year, particularly since agreements are amended as necessary to reflect changes in programs, funding techniques, and clearance patterns. Therefore, we are proposing to make Treasury-State Agreements effective until terminated. States and the Federal Government retain the right to terminate a Treasury-State Agreement with 30 days written notice.

*Section 205.7 Can a Treasury-State Agreement Be Amended?*

Proposed § 205.7 is a new section that contains details on the amendment process currently set forth in Policy Statement 10 ("Amendment Policy and Process," May 11, 1994). In general, proposed § 205.7 indicates how, when, and for what reason States can amend Treasury-State Agreements. A State may amend a Treasury-State Agreement for such reasons as: adding or deleting programs, changing funding techniques, and changing clearance patterns.

*Section 205.8 What if There Is No Treasury-State Agreement in Effect?*

This section addresses the default process that is currently part of existing § 205.9 *Treasury-State Agreements.* It describes the situation when there is no Treasury-State Agreement in effect. In these circumstances, we will prescribe default procedures to implement subpart A. We will identify the major programs to be subject to subpart A as well as the funding techniques to be used by the State.

*Section 205.9 What Is Included in a Treasury-State Agreement?*

Proposed § 205.9 is similar to current § 205.9 in that it describes the components that must be included in a Treasury-State Agreement. Proposed § 205.9 also prescribes a uniform format for Treasury-State Agreements. Although we have made an effort in the past to standardize the format of the first-year agreements, most agreements still have differences in format. These differing formats add to the time needed to review the agreements and make it difficult to examine and compare them. Proposed § 205.9 is designed to correct this problem, but it is not intended to change the substantive provisions of the agreements. We'll provide the new format to the designated State and Federal agency CMIA contacts. The format will consist of terms and conditions common to all States, followed by addenda specific to any one State.

*Section 205.10 How Do You Document Funding Techniques?*

Proposed § 205.10 replaces current § 205.7, *Requesting and transferring funds.* Proposed § 205.10 clarifies the information on funding techniques that must be included in a Treasury-State Agreement. Concise descriptions of each funding technique must include details such as "what is a timely request for funds?" and "what procedures are used to reconcile estimates with actual cash needs?'

It is important to include these details in the negotiated Treasury-State Agreement because we aren't requiring any particular funding techniques. Therefore, it will benefit all parties to have the terms of the agreed upon funding techniques clearly described.

*Section 205.11 What Requirements Apply to Funding Techniques?*

Proposed § 205.11 contains basic requirements a State and a Federal agency have to meet to achieve an efficient level of funds transfers. Proposed § 205.11 restates much of current § 205.11. In addition, proposed § 205.11 mandates electronic funds transfer for Federal funds transfers to States, pursuant to the Debt Collection Improvement Act of 1996 and its implementing regulation, 31 CFR Part 208. 63 FR 51490. The definition of electronic funds transfer found in proposed § 205.2 has been expanded beyond wire transfers and Automated Clearing House payments to include any payment made electronically.

In response to the questions received from States on the treatment of compensating balances under CMIA, proposed § 205.11(c) provides that a State must not draw down funds from its account in the Unemployment Trust Fund or from a Federal account in the Unemployment Trust Fund in advance of actual immediate cash needs for the express purpose of maintaining a compensating balance. Compensating balances are deposits held in bank accounts to offset the costs of bank services.

CMIA requires States and Federal agencies to minimize the time between the drawdown and the subsequent expenditure of Federal funds for Federal assistance program purposes. Thus, a State may only draw down Federal funds in accordance with the timing and amounts dictated by the agreed upon funding technique. The amount drawn down must equal the amount issued or the amount expected to clear. Drawdowns may not include an extra amount, or occur earlier, to create a balance for the purpose of compensating a bank. A State's interest liability on funds withdrawn from a State account in the Unemployment Trust Fund is based on actual interest earned. The proposed rule clarifies that actual interest earned does not include non-cash bank earnings.

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*Section 205.12 What Funding Techniques May Be Used?*

Proposed § 205.12 contains much of current § 205.6, *Funding techniques.* However, proposed § 205.12 states in clear language that the funding techniques listed in the section are not the only methods allowed. The General Accounting Office report, "Financial Management: Implementation of the Cash Management Improvement Act," January 1996, noted that States found the restrictions on the use of reimbursable funding burdensome. In response, FMS is giving States more flexibility in choosing funding techniques. However, we believe that there is value in providing definitions of some funding techniques. States and Federal agencies may benefit from having a standard definition when negotiating a Treasury-State Agreement. The definitions in proposed § 205.12 may be adopted, modified, or excluded from a Treasury-State Agreement at the discretion of the parties negotiating the agreement.

The proposal allows States and Federal program agencies to negotiate the use of a technique that meets their needs, including reimbursable funding, which is currently prohibited. Reimbursable funding is a funds transfer method where, after a State pays out its own funds for the Federal portion of a program, the State then requests and receives reimbursement for the Federal funds paid out by the State. The proposal would eliminate the current prohibition on reimbursable funding.

We're proposing this change because some States have used reimbursable funding to fund certain administrative and overhead costs through cost allocation or other after-the-fact distribution methods. We expect to limit the use of reimbursable funding to those limited circumstances where there aren't any other acceptable funding techniques.

*Section 205.13 How Do You Determine When State or Federal Interest Liability Accrues?*

Proposed § 205.13 is a new separate section that clarifies that State or Federal interest liability may accrue when funding techniques agreed to in the Treasury-State Agreement are applied. Proposed § 205.13 contains a provision included in existing § 205.10 that allows a State and FMS to agree not to assess interest liability for indirect costs or indirect allocated costs. These costs would be based on an indirect cost rate and the arrangement must be included in the Treasury-State Agreement.

*Section 205.14 When Does Federal Interest Liability Accrue?*

Proposed § 205.14 replaces current § 205.11 governing Federal interest liabilities. In general, the Federal government incurs an interest liability if the State pays out its own funds for Federal assistance program purposes with valid obligational authority. Obligational authority is defined as "the existence of a definite commitment on the part of the Federal government to provide appropriated funds to a State to carry out specified programs, whether the commitment is executed before or after a State pays out funds for Federal assistance program purposes." Thus, obligational authority exists if the Federal government is authorized to make payments to a State and appropriates funds to make those payments. If a State pays out funds for Federal assistance program purposes before Congress has appropriated funds, and Congress subsequently appropriates funds to cover the period for which the State paid out the funds, obligational authority exists and the Federal Government incurs an interest liability to the State.

Some Federal agencies have questioned whether obligational authority exists if a State's expenditure of funds is subject to agency approval or authorization, and the State pays out funds prior to obtaining the agency's approval or authorization. We invite agencies and States to comment on the nature and operation of any agency approval requirements that currently are in place, including whether the agency's approval or authorization requirement is imposed pursuant to a Federal statute, a Federal regulation, or an agreement between the Federal agency and the State. We also request comment on whether we should amend the definition of "obligational authority" in the regulation to address this issue more specifically.

Proposed § 205.14(a)(3) clarifies that a Federal agency does not accrue retroactive interest liability if a State expends funds for a discretionary grant project prior to receiving approval from the Federal agency. A discretionary grant is a project for which a Federal program agency is authorized by law to exercise judgment in awarding a grant and in selecting a grantee, generally through a competitive process. CMIA interest liability on discretionary grants cannot begin to accrue until the Federal program agency approves the project. This position is consistent with the existing regulation.

Proposed § 205.14(a)(5) includes a provision that allows FMS to deny Federal interest liability if a State fails to follow the agreed upon procedures outlined in the Treasury-State Agreement. The intent of this regulation, efficient cash management, is best accomplished when all parties comply with the Treasury-State Agreement.

*Section 205.15 When Does State Interest Liability Accrue?*

Proposed § 205.15 replaces current § 205.12 describing the circumstances under which State interest liability accrues.

Proposed § 205.15(b) provides that States will incur an interest liability on disallowances. The CMIA states the following: "The Secretary shall issue regulations that shall require a State, when not inconsistent with Federal assistance program purposes, to pay interest to the United States on funds from the time funds are deposited by the United States to the State's account until the time that funds are paid out by the State in order to redeem checks or warrants or make payments by other means for program purposes." Disallowed funds are funds that have been paid out for other than Federal assistance program purposes and, therefore, are not properly chargeable to the Federal government. Under CMIA, a State must pay interest to the United States on such funds.

In general, if a Federal program agency disallows a State expenditure, a State will owe interest from the day on which the Federal funds associated with the disallowed expenditure were credited to the State's account to the day the funds are credited back to the Federal government. In many instances, however, State expenditures are disallowed by a Federal program agency in CMIA reporting years subsequent to the CMIA reporting year in which the State originally made the expenditure. In such instances, either the State or the Federal government may previously have paid CMIA interest on the funds associated with the disallowed expenditure. The State's CMIA interest calculation resulting from the disallowance shall be adjusted to reflect any prior CMIA interest payments.

For example, a State may have paid interest to the Federal government in the reporting year in which the State made the expenditure because the State drew down Federal funds early. In that case, the State's interest liability resulting from the disallowance should be reduced by the amount of interest it had already paid in the earlier reporting year (i.e., interest accruing from the day the State drew down the funds until the State paid out the funds). Alternatively, the Federal government may have paid interest to a State in an earlier reporting year because the State advanced the funds associated with the disallowed expenditure. Because the State did not pay out the funds for Federal assistance program purposes, the State was not entitled to the interest that the Federal government paid for that period. Accordingly, the State must reimburse the Federal government for that interest, and the State's liability resulting from the disallowance must be increased accordingly.

FMS is specifically seeking comment on the implementation of this provision.

Proposed § 205.15(c)(2)changes the current provision allowing States and FMS to agree on a refund transaction exemption threshold of $10,000. The proposed rule lets FMS and a State mutually agree on either a $50,000 threshold or no refund transaction threshold. The purpose of the threshold is to give States relief from tracking large volumes of small dollar refunds. The General Accounting Office report noted that some States believe excessive effort is required to monitor and calculate interest on refunds. Some States adopted labor-intensive procedures to separate refund transactions above the threshold from those below it, and to calculate interest on each refund transaction rather than an aggregate refund activity.

*Section 205.16 What Special Rules Apply to Federal Assistance Programs and Projects Funded by the Highway Trust Fund?*

Proposed § 205.16 contains provisions currently included in § 205.11, *Federal interest liabilities.* Some States have asked FMS to clarify the Federal interest provisions for programs and projects funded from the Federal Highway Trust Fund. If a State pays out its own funds in the absence of a project agreement, the Federal Government will not incur an interest liability, even if obligational authority is established subsequently to permit payment for the State's expenditure. This is the current policy, and it remains unchanged in the proposed rule. Where a project agreement exists, States must request funds at least weekly for current project costs. The Federal Government will accrue an interest liability on current project costs for which there is valid obligational authority, for a maximum of one week's time. The Federal Government will not accrue an interest liability on project costs accrued prior to the week the State request funds.



*Section 205.17 Are Funds Transfers Delayed by Automated Payment Systems Restrictions Based on the Size and Timing of the Drawdown Request Subject to This Part?*

Proposed § 205.17 clarifies the role Part 205 plays when funds transfers are delayed by a Federal program agency. Part 205 applies to funds transfers that are deferred by a Federal program agency based solely on the size and timing of the drawdown request. This is in response to State concerns that payment systems such as the Automated Standard Application for Payment (ASAP) and the Payment Management System (PMS) may allow Federal program agencies to automatically reject drawdown requests that fall outside a predetermined set of parameters.

*Section 205.18 Are Federal Program Agency Grants for Administrative Costs Subject to This Part?*

Proposed § 205.18 clarifies the treatment of grants made to States to compensate for indirect administrative costs. This subject is addressed in current § 205.10, *Funding of indirect costs and administrative costs.* We are proposing these changes in response to concerns that tracking these costs is not an efficient use of resources. These two provisions make clear that Federal agency grants that are 100% dedicated to compensate for indirect and/or other administrative costs are subject to subpart A. However, as for grants that contain funds dedicated to program costs and administrative costs, the portion of the grant dedicated to indirect administrative costs is not subject to Part 205.

*Section 205.19 How Is Interest Calculated?*

Proposed § 205.19 incorporates the provisions of current § 205.13, *Interest calculation.* Proposed § 205.19 lists the requirements that States must comply with to calculate and support interest liability claims. States must ensure that the interest calculations are auditable and retain a record of the calculations. This section also describes the method used to calculate the interest rate applied to CMIA liabilities. We will provide that interest rate to each State.

*Section 205.20 What Is a Clearance Pattern?*

Proposed § 205.20 contains information found in current § 205.8, as well as more detailed information regarding the requirements of developing and maintaining proper clearance patterns. These requirements are intended to ensure that all clearance patterns meet an adequate level of accuracy and detail. In general, a clearance pattern must accurately represent the flow of Federal funds under the Federal assistance programs. These clearance patterns must be based on at least three consecutive months of disbursement data, and valid statistical sampling must be applied.

Several States have requested a clearer statement of the standards to be used in developing clearance patterns. Therefore, the proposed rule specifies:

(1) The information that must be included in a Treasury-State Agreement, consistent with proposed § 205.9;

(2) The amount of data to be used to develop a clearance pattern;

(3) The standards of statistical accuracy to be applied if checks are sampled to develop a clearance pattern; and

(4) the range of days which a clearance pattern must cover.

Some States have questioned why we require that a clearance pattern be carried out until 99 percent of the dollars in a disbursement clear or are paid out for Federal assistance program purposes. The States' concern was noted in the General Accounting Office report, "Financial Management: Implementation of the Cash Management Improvement Act," January 1996. The 99 percent standard, currently documented in FMS Policy Statement 11 ("Clearance Patterns," May 20, 1994), is incorporated in the proposed rule. The 99 percent standard was adopted because the 95 percent standard did not accurately represent the flow of funds, leaving a substantial amount of funding undocumented.

When CMIA was initially implemented, we required that a clearance pattern be carried out until 95% of the dollars cleared. At that time, only a limited amount of clearance data were available. When additional clearance data became available, we learned that some States do not have expiration dates for checks; thus, checks could remain outstanding for years. The 95 percent standard allowed States to draw down 5 percent of Federal funds before the dollars cleared. Further, the 95 percent clearance standard allowed the dollar-weighted average day of clearance to be one day earlier than with the 99 percent standard.

A clearance pattern based on either the old 95 percent standard or the current 99 percent standard may extend over a significant period of time. Some States are concerned about making numerous small drawdowns, as noted in the GAO report. There are many ways to avoid this, such as the use of average clearance. A State also may use estimated clearance for a period of time

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specified in its Treasury-State Agreement. A State may use estimated clearance for the first two weeks of the clearance pattern, then make one additional drawdown on the average day of clearance of the remaining funds.

*Section 205.21 When May Clearance Patterns Be Used?*

Proposed § 205.21 through § 205.23 address specific issues regarding clearance patterns, found in current § 205.8, *Clearance patterns.* A State may use clearance patterns to estimate when funds are paid out, given a known dollar amount and a known date of disbursement. When the dollar amount and/or the timing of disbursements are not known, we may agree with a State on other procedures to use to estimate when funds are paid out. Clearance patterns may be used to determine the flow of funds for individual Federal assistance programs, accounts at financial institutions, groups of Federal assistance programs, and other types of payments. The methods used to create and maintain clearance patterns must be contained in the Treasury-State Agreement.

*Section 205.22 How Are Accurate Clearance Patterns Maintained?*

If a State has knowledge that a clearance pattern is no longer accurate, it must notify us. The State must develop a new and accurate clearance pattern, certify it, and submit it to us. Clearance patterns must be re-certified by the authorized State official every five years.

*Section 205.23 What Requirements Apply to Estimates?*

A major change that we are proposing to the current rule is the introduction of standards for developing, documenting, and maintaining estimates, other than clearance patterns, used to determine the amount to request and the timing of the transfer of funds. Many States have negotiated unique funding techniques that are not based on the actual amount of funds in a disbursement, but rely on some method of estimating the State's cash requirements. Often these funding techniques are difficult to audit because they are not documented in sufficient detail. The proposed standards are designed to ensure that, when such estimates are used, a Treasury-State Agreement clearly documents how to calculate the amount to request, the timing of the transfer of funds, and the method for reconciling estimates and actual payments for Federal assistance program purposes.

Estimates are used for predicting program volume for non-payment variables. For example, under a Child Care program, a State would need to estimate the increase or decrease of children needing care. This could be based on population growth or a change in the unemployment rate, or other factors. These estimates will affect the amount of funds a State draws down. The new language requires that States document and justify their estimates.

*Section 205.24 How Are Accurate Estimates Maintained?*

The proposed rule requires that States notify us immediately when they possess actual or constructive knowledge that the estimates in use are not accurate. This is similar to the requirement that States inform us of changes in clearance patterns.

*Section 205.25 How Does This Part Apply to Certain Federal Assistance Programs or Funds?*

Proposed § 205.25 contains information on how Part 205 affects several different programs.

*Unemployment Trust Fund (UTF)*

Proposed § 205.25 describes the treatment of the UTF under Part 205. A state's interest liability on funds withdrawn from its UTF account do not accrue at the designated CMIA rate. Instead, the interest is calculated at the actual interest earned on those funds less the related banking costs. To maintain an accurate interest calculation, if funds that are withdrawn from a State UTF account are commingled with other monies, the UTF funds must be allocated a proportional share of the related interest earnings and banking costs.

Interest earned on funds withdrawn by a State from a Federal UTF account, with the exception of the Federal Unemployment Account, will accrue under the rules of this Part, specifically, § 205.19.

*Supplemental Security Income*

Proposed § 205.25 sets forth the treatment of Supplemental Security Income transactions under CMIA. This subsection describes the effect of this Part on Supplemental Security Income administrative fees and supplemental State payments by integrating Policy Statement 4 ("Interest Calculations for the Supplemental Security Income Program," February 22, 1993,) and Policy Statement 14 ("Supplemental Security Income Program Fees," December 21, 1994) into the regulation.

For the most part, Part 205 applies to programs in which money flows from the Federal Government to the State. SSI is unique under CMIA in that it is a program in which money flows from the State to the Federal Government. Congress especially addressed this "reverse flow" in 31 U.S.C. 6503(g), which provides:

> If the Federal Government makes a payment to a recipient under a Federal program, and a portion of that payment is an amount which the Federal Government is paying to such recipient on behalf of a State, such amounts will be considered a transfer of funds between the Federal Government and the State for purposes of this section.

Interest must be calculated on the difference between a State's monthly SSI payment, which is an estimate, and the State's actual liability. This is consistent with other requirements to calculate interest on quarterly shortfalls or reporting period adjustments.

Interest liabilities shall not accrue to the Federal Government or States on refunds of State funds because States are credited with the refunds in advance, before the Social Security Administration even collects the funds. Rather than being liable for interest, the Federal Government bears the cost of crediting States with refunds early.

This provision makes it clear that the only SSI funds that are subject to CMIA are payments to recipients. Since the new administrative fees are not funds to be delivered to recipients, they are not considered a transfer of funds and, therefore, are not governed by CMIA. Interest on late fees is calculated in accordance with the Social Security Administration's (SSA) debt collection procedures.

Under the SSI program, States may supplement the Federal SSI benefit. States where the Federal SSI benefit would be less than beneficiaries received under State programs prior to SSI must supplement the Federal SSI benefit. All but a few States and jurisdictions provide supplementation. States may administer their supplementary payments themselves or may contract with the SSA for Federal administration. The SSA administers the State supplementation of SSI benefits in 27 States and the District of Columbia. Interest on late State supplementation is calculated in accordance with the provisions of Part 205.

*Child Support Enforcement Program transactions*

Proposed § 205.25(d) incorporates Policy Statement 6 ("Funds Collected by States Under the Child Support Enforcement Program," February 26, 1993), which describes the treatment for CMIA purposes of certain funds received under the Child Support Enforcement Program.



The interest provisions of CMIA do not come into play with respect to child support collections by States. Federal law provides that the Federal government will reimburse States for a portion of a State's expenditures in administering a State child support enforcement program, conditioned on the State's complying with Federal assistance program requirements. When a State collects child support, the Federal funding scheme allows the State to retain certain collections for a period of time rather than immediately distributing them to custodial parents. CMIA interest does not accrue on such undistributed funds because they are considered still paid out for Federal assistance program purposes. Rather, interest earned on undistributed funds is treated as program income under program regulations found at 45 CFR 304.50(b) and, in accordance with those regulations, must be deducted from a State's claim to the Federal government for reimbursement. Additionally, late payment fees collected by States from absent parents, as permitted by the Federal funding scheme, are not subject to interest liabilities under CMIA. These fees are State funds and are not considered Federal funds for CMIA purposes. In accordance with program regulations found at 45 CFR 302.75(b)(6), such fees must be treated as program income and must be deducted from a State's claim to the Federal government for reimbursement.

*Block Grant Programs*

Proposed § 205.25(e) provides clarification on Part 205's effect on certain block grant programs. This section incorporates information included in Policy Statement 7 ("Interest Provisions for Block Grants Where States Voluntarily Supplement Federal Funding," March 31, 1993) related to Social Services Block Grants (SSBG) and Policy Statement 19 ("Inclusion of the New Temporary Assistance to Needy Families and the New Matching and Mandatory Child Care Funds Programs Under CMIA," June 1, 1999). Proposed § 205.25(e) is meant to implement a policy that favors neither States nor Federal agencies participating in block grant programs.

States that supplement SSBG funding with their own funds are not allowed to draw down all Federal funds first, then use State funds. A State must draw down Federal funds in proportion to the State's participation in the block grant program.

Policy Statement 7 addresses two questions: (1) If a State voluntarily supplements the SSBG program, can the Federal program agency limit the drawdowns to be made quarterly, forcing States to supplement funds, or will this limitation result in an interest liability for the agency? (2) Can a State draw and spend all Federal funds for allowable expenses first, then spend State funds?

Federal law requires all definite appropriations to be apportioned to prevent obligation at a rate that would result in a deficiency or necessitate a supplemental appropriation. For example, if a program is expected to use funds at a constant rate and receives a quarterly Federal payment, the drawdown should be ¼ of the total amount. Given the nature of the SSBG program, it is expected that the Office of Management and Budget will continue to apportion funds quarterly. Policy Statement 7 clarifies that States are entitled to interest if they must advance their own funds due to funding breakdowns caused by apportionments.

With SSBG programs, the State is under no obligation to match or appropriate funding. However, if a State elects to appropriate funding (as opposed to temporarily fronting State funds pending reimbursement at the start of the next fiscal quarter), the State may not arbitrarily assign its earliest costs to the Federal Government and claim interest.

If a State elects to appropriate funding for the SSBG program, which does not require matching or State appropriations, funds should be allocated in a manner that benefits neither the Federal Government nor the State with respect to cash flow. Consequently, Federal funds and State funds should be combined and allocated proportionately with no interest ramifications until the combined quarterly allocation is exceeded. For example, if the total Federal allotment to a State for a given program is $16 million ($4M per quarter) and the State voluntarily appropriates $8 million ($2M per quarter), interest liabilities could occur once $6 million is paid out in any given quarter. Under this scenario, neither party "wins" regarding cash flow. Therefore, a State cannot draw and exhaust Federal funds first because voluntary funds which the State appropriates must be made commensurately with each Federal drawdown. In addition, States should indicate in their Treasury-State Agreement if State appropriations will currently supplement, or have historically supplemented, Federal block grants or programs which do not require a State match. If States claim interest liabilities have been incurred, Annual Reports should provide the amount of the State appropriation and State apportionment procedure.

Policy Statement 19 refers to Temporary Assistance to Needy Families (TANF) and Mandatory and Matching Child Care Funds Programs that require a State maintenance-of-effort for funding. This Policy Statement reaffirms Policy Statement 7 that Federal funds must not be drawn down in advance of, or out of proportion with, State funds used in these programs.

*Women, Infants, and Children Program*

Proposed § 205.25(f) is added to the regulation to clarify that interest earned on rebates from the Women, Infants, and Children Program (WIC) is not subject to Part 205 if the funds are used for Federal assistance program purposes. As noted in Policy Statement 18 ("Special Supplemental Food Program for WIC Rebates," September 13, 1995), this subsection recognizes the November 2, 1994 amendment to the Child Nutrition Act of 1966. That amendment declared that States will not incur any interest liability to the Federal Government on rebate funds for infant formula and other foods provided all interest earned by the State on funds is used for Federal assistance program purposes.

*Revolving Loan Funds*

Proposed § 205.25(g) incorporates Policy Statement 15 ("Community Development Block Grant Revolving Loan Funds," March 13, 1995), which describes the effect of Part 205 on revolving loan funds. Although Policy Statement 15 addresses a question on one specific program, proposed § 205.25(g) applies to all revolving loan fund programs. If a Federal agency program authorizes a revolving loan fund and specifically designates that income earned from that fund be used for Federal assistance program purposes, then the interest earned is not subject to this Part if it is used for Federal assistance program purposes. However, transfers of funds to the revolving loan fund remain subject to Part 205.

*Section 205.26 What Are the Requirements for Creating Annual Reports?*

Proposed § 205.26 contains provisions of current § 205.15, *Annual reports.* Proposed § 205.26 provides that annual reports are due to FMS on December 31 for the State's most recently completed fiscal year. Interest will continue to be exchanged on March 1 since interest liabilities are aggregated among all States to offset direct costs, as noted in proposed § 205.27. Prior period adjustments are limited to the two State

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fiscal years prior to the State fiscal year covered by an annual report.

*Section 205.27 How Are Direct Costs Calculated?*

Proposed § 205.27 contains provisions found in current § 205.14, *Direct costs of implementation*. Provisions on cost claims for the initial implementation of CMIA are deleted. In addition, the proposed rule deletes the requirement that FMS review the policies on direct costs of implementation to determine their effectiveness. In reviewing direct cost claims for reasonableness, we will consider how necessary a task is to the development and maintenance of clearance patterns in support of interest calculations or the actual calculation of interest liabilities. All States seeking reimbursement should maintain proper documentation of accrued expenses. States seeking more than $50,000 for direct costs should have documentation supporting that assertion.

The General Accounting Office report noted that some States believe they should be reimbursed for costs that are outside the definition of direct costs for the implementation of subpart A as set forth in § 205.12. Congress authorized FMS to reimburse only those costs directly related to the interest calculations required by this Part. Congress intended that other costs should be reimbursed in accordance with Office of Management and Budget guidelines for reimbursement for indirect program costs (OMB Circular A–87). In order to clarify the scope of direct costs that are reimbursable under CMIA, the definition of direct cost in § 205.2 has been revised to provide that States will be compensated only for costs associated with the calculation of CMIA interest, including those costs a State incurs in developing and maintaining clearance patterns in support of interest calculations. The legislative history of the cost recovery provisions of CMIA was discussed in the proposed and final CMIA rules. 57 FR 10102 and 57 FR 44272.

*Section 205.28 How Are Interest Payments Exchanged?*

Proposed § 205.28 addresses the manner in which States and the Federal agencies offset interest liability on or before March 31 of each year. This interest exchange date is changed from March 1 in the existing regulation. The date change will benefit all stakeholders seeking an equitable exchange of interest because more time will be allowed to conduct comprehensive reviews of disputed liabilities.

*Section 205.29 What Are the State Oversight and Compliance Responsibilities?*

Proposed § 205.29 restates, without material change, the State oversight and compliance responsibilities that are set forth in current § 205.17, *Compliance and oversight*. A State's implementation of subpart A is subject to audit in accordance with the requirements for single audits. CMIA specific audit objectives and suggested audit procedures now appear in the *OMB Circular A–133 Compliance Supplement*. States are required to maintain all pertinent records for three fiscal years following submission of an Annual Report.

*Section 205.30 What Are the Federal Oversight and Compliance Responsibilities?*

The Federal oversight and compliance responsibilities that are set forth in current § 205.17, *Compliance and oversight*, are relocated to proposed § 205.30. In addition, proposed § 205.30 requires Federal agencies to notify us when they have actual or constructive knowledge that corrective action needs to be taken by us or by a State with respect to the implementation of Part 205 or if a State's clearance pattern doesn't correspond to a program's clearance activity. We believe that this requirement will improve compliance with Part 205.

Proposed § 205.30 also clarifies that Federal program agencies are responsible for determinations regarding whether or not costs should be properly chargeable to the Federal government.

Federal program agencies that incur interest liabilities through improper actions or compliance failures continue to be subject to charges by FMS. In these instances, we will issue a Notice of Assessment that describes the nature of the non-compliance and the amount of the charge to the Federal program agency. An appeals process is available to Federal program agencies.

*Section 205.31 How Does a State or Federal Program Agency Appeal a Determination Made by Us and Resolve Disputes?*

Proposed § 205.31 sets forth the appeal and dispute provisions that appear in current § 205.18. However, unlike the current rule, the proposed rule provides that an aggrieved party has 90 days from the date of the notice of assessment to submit a written petition if a dispute arises from the implementation or administration of subpart A. Currently there is no limitation on the amount of time an aggrieved party can take to submit a written appeal. We are proposing this change to respond to requests from Federal agencies for a time limit on filing appeals.

Proposed § 205.31 also clarifies that the appeal and dispute resolution procedures of this section apply to matters concerning the implementation of subpart A and do not apply to disputes between States and Federal program agencies concerning the determination of whether a cost is properly chargeable to the Federal government.

*Subpart B: Rules Applicable to Federal Assistance Programs Not Included in a Treasury-State Agreement*

*Section 205.32 What Federal Assistance Programs Are Subject to Subpart B?*

This section clarifies that all Federal assistance programs listed in the Catalogue of Federal Domestic Assistance, but not included in a State's Treasury-State Agreement or subject to default procedures, are subject to subpart B.

*Section 205.33 How Are Funds Transfers Processed?*

Proposed § 205.33 reaffirms the overall goal of Part 205, efficient cash management. Federal program agencies and States must limit funds transfers to the minimum amounts necessary to meet program goals. These funds transfers must be conducted to minimize the time between the funding and the paying out of the funds for Federal assistance program purposes.

This section states that no interest liability will be incurred by States or Federal program agencies for funds transfers subject to subpart B.

*Section 205.34 What Are the Federal Oversight and Compliance Responsibilities?*

Federal program agencies must monitor a State's practices and notify us if a State exhibits an unwillingness or inability to practice efficient cash management. Federal program agencies must develop procedures to comply with subpart B to promote efficient cash management.

*Section 205.35 What Is the Result of Federal Program Agency or State Non-Compliance?*

In the event of State or Federal program agency non-compliance, we may transfer Federal assistance programs to subpart A. These programs would then be subject to interest liabilities.



*Subpart C [Reserved]*

Subpart C remains reserved pending further consideration. In the Notice of Proposed Rulemaking issued in March 1992, 57 FR 10102, this section applied to programs administered by non-State recipients and non-State subrecipients. Subpart C did not apply the interest provisions of CMIA to these non-state recipients and sub-recipients and is not included in the Final Rule.

**IV. Procedural Matters**

*Executive Order 12866, Regulatory Planning and Review*

These proposed regulations are not a significant regulatory action and are not subject to review by the Office of Management and Budget under Executive Order 12866. These proposed regulations will not have effect of $100 million or more on the economy. They will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. These proposed regulations will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. These proposed regulations do not alter the budgetary effects of entitlement, grants, user fees, or loan programs, or the right or obligations of their recipients; nor do they raise novel legal or policy issues.

*Clarity of the Regulations*

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. President Clinton's Presidential memorandum of June 2, 1998, requires us to write new regulations in plain language. We invite your comments on how to make these proposed regulations easier to understand.

*Regulatory Flexibility Act*

Pursuant to section 605(b) of the Regulatory Flexibility Act, it is hereby certified that this proposal will not have a significant economic impact on a substantial number of small business entities. The proposed rule does not require any actions on the part of small entities. Accordingly, a Regulatory Flexibility Act analysis is not required.

*Paperwork Reduction Act*

The Office of Management and Budget has approved the information collection requirements in the proposed rule under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*, and has assigned clearance number 1510–0061. Sections of this proposed rule with information collection requirements are 205.9, 205.26, 205.27, 205.29, and we estimate the public reporting burden of these sections to average, respectively, 500 hours per response. This estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. We estimate the number of respondents to be 56.

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Information Collection Clearance Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; Attention: 1510–AA38; with copies to Juanita Holder, Public Reports Clearance Officer, Financial Management Service, 3361 75th Avenue, Landover, Maryland 20785.

**List of Subjects in 31 CFR Part 205**

Electronic funds transfer, Grant programs, Intergovernmental relations.

**Authority and Issuance**

For the reasons set out in the preamble, we propose to revise part 205 of title 31 of the Code of Regulations to read as follows:

## PART 205—RULES AND PROCEDURES FOR EFFICIENT FEDERAL-STATE FUNDS TRANSFERS

Sec.

205.1 What Federal assistance programs are covered by this part?
205.2 What definitions apply to this part?

**Subpart A—Rules Applicable to Federal Assistance Programs Included in a Treasury-State Agreement**

205.3 What Federal assistance programs are subject to this subpart A?
205.4 Are there any circumstances where a Federal assistance program that meets the criteria of § 205.3 would not be subject to this subpart A?
205.5 What are the thresholds for major Federal assistance programs?
205.6 What is a Treasury-State Agreement?
205.7 Can a Treasury-State Agreement be amended?
205.8 What if there is no Treasury-State Agreement in effect?
205.9 What is included in a Treasury-State Agreement?
205.10 How do you document funding techniques?
205.11 What requirements apply to funding techniques?
205.12 What funding techniques may be used?
205.13 How do you determine when State or Federal interest liability accrues?
205.14 When does Federal interest liability accrue?
205.15 When does State interest liability accrue?
205.16 What special rules apply to Federal assistance programs and projects funded by the Federal Highway Trust Fund?
205.17 Are funds transfers delayed by automated payment systems restrictions based on the size and timing of the drawdown request subject to this part?
205.18 Are Federal assistance program agency grants for administrative costs subject to this part?
205.19 How is interest calculated?
205.20 What is a clearance pattern?
205.21 When may clearance patterns be used?
205.22 How are accurate clearance patterns maintained?
205.23 What requirements apply to estimates?
205.24 How are accurate estimates maintained?
205.25 How does this part apply to certain Federal assistance programs or funds?
205.26 What are the requirements for creating Annual Reports?
205.27 How are direct costs calculated?
205.28 How are interest payments exchanged?
205.29 What are the State oversight and compliance responsibilities?
205.30 What are the Federal oversight and compliance responsibilities?
205.31 How does a State or Federal program agency appeal a determination made by us and resolve disputes?

**Subpart B—Rules Applicable to Federal Assistance Programs Not Included in a Treasury-State Agreement**

205.32 What Federal assistance programs are subject to this subpart B?
205.33 How are funds transfers processed?
205.34 What are the Federal oversight and compliance responsibilities?
205.35 What is the result of Federal program agency or State non-compliance?

**Subpart C—[Reserved]**

**Authority:** 5 U.S.C. 301; 31 U.S.C. 321, 3335, 6501, 6503.

**§ 205.1 What Federal assistance programs are covered by this part?**

(a) This part prescribes rules for transferring funds between the Federal Government and States for Federal assistance programs. This part applies to:

(1) All States as defined in § 205.2; and

(2) All Federal program agencies, except the Tennessee Valley Administration (TVA) and its Federal assistance programs.

(b) Only programs listed in the Catalog of Federal Domestic Assistance, as established by Chapter 61 of Title 31, United States Code (U.S.C.) are covered by this part.

(c) This part does not apply to:

(1) Payments made to States acting as vendors on Federal contracts, which are

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subject to the Prompt Payment Act of 1982, as amended, 31 U.S.C. 3901 *et seq.*, 5 CFR part 1315, and 48 CFR part 32; or

(2) Direct loans from the Federal Government to States.

**§ 205.2 What definitions apply to this part?**

For purposes of this part:

*Administrative cost grant* means a grant wholly dedicated to compensate States for administrative expenses.

*Administrative costs* means expenses incurred by a State associated with managing a Federal assistance program.

*Auditable* means records must be retained to allow for calculations outlined in the Treasury-State Agreements to be reviewed and replicated for compliance purposes. States must maintain these records to be readily available, fully documented, and verifiable.

*Authorized State Official* means a person with the authority under the laws of a State to make commitments on behalf of the State for the purposes of this part, or that person's official designee as certified in writing.

*Business day* means a day when Federal Reserve Banks are open.

*Catalog of Federal Domestic Assistance (CFDA)* means the government-wide list of Federal assistance programs, projects, services, and activities which provide assistance or benefits to the American public. The listing includes financial and nonfinancial Federal assistance programs administered by agencies of the Federal Government. (The Catalog is available at http://www.cfda.gov)

*Clearance pattern* means a forecast showing the daily amount subtracted from a State's bank account each day after the State makes a disbursement. For example, a State mailing out benefit checks may forecast that the percentage of checks cashed each day will be 0% for the first day, 10% for the second day, 80% on the third day, and 10% on the fourth day following issuance. Clearance patterns are used to schedule the transfer of funds with various funding techniques and to support interest calculations.

*Compensating balance* means funds maintained in State bank accounts and/or State Treasurer bank accounts to offset the costs of bank services.

*Current project cost* means a cost for which the State has recorded a liability on or after the day that the State last requested funds for the project.

*Day* means a calendar day unless otherwise specified.

*Default procedures* means efficient cash management practices that we prescribe for Federal funds transfers to a State if a Treasury-State Agreement is not in place.

*Direct cost* means those costs a State incurs in performing the actual calculation of interest liabilities, including those costs a State incurs in developing and maintaining clearance patterns in support of interest calculations.

*Disallowances* mean costs incurred by a State which the Federal program agency has determined to be costs which should not be charged to the Federal Government either because the funds were used for other than Federal assistance program purposes or the amount of the funds used for Federal assistance program purposes was improper.

*Disburse* means to issue a check or initiate an electronic funds transfer payment.

*Discretionary grant project* means a project for which a Federal program agency is authorized by law to exercise judgment in awarding a grant and in selecting a grantee, generally through a competitive process.

*Dollar-weighted average day of clearance* means the day when, on a cumulative basis, 50 percent of funds have been paid out. To calculate the dollar-weighted average day of clearance for a clearance pattern:

(1) For each day, multiply the percentage of dollars paid out that day by the number of days that have elapsed since the payments were issued. For example, on the first day payments were issued, multiply the percentage of dollars paid out on that day by zero, since zero days have elapsed. On the day after payments were issued, multiply the percentage of dollars paid out on that day by one, since one day has elapsed; and so forth.

(2) Total the results from paragraph (1) of this definition. Round to the nearest whole number. This is the dollar-weighted average day of clearance.

*Draw down* (verb) means a process in which a State requests and receives Federal funds. *Drawdown* (noun) means Federal funds requested and received by a State.

*Electronic Funds Transfer (EFT)* means any transfer of funds, other than a transaction originated by cash, check, or similar paper instrument, that is initiated through an electronic terminal, telephone, computer, or magnetic tape, for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account.

*Estimate* means a projection of the future needs of a Federal assistance program that can't be accurately described by a clearance pattern.

*Federal assistance program* means a program included in the Catalog of Federal Domestic Assistance where funds are transferred from the Federal Government to a State. Federal assistance programs do not include vendor payments or direct loans.

*Federal program agency* means an executive agency as defined by section 102 of title 31, United States Code, except the Tennessee Valley Authority (TVA), that issues and administers grants to States or cooperative agreements with States.

*Federal-State agreement* means an agreement between a State and a Federal program agency specifying terms and conditions for carrying out a Federal assistance program or group of programs. This is different than a Treasury-State Agreement.

*Financial Management Service (we or us)* means the Bureau of the U.S. Department of the Treasury responsible for implementation of this part.

*Fiscal Year* means the twelve-month period that a State designates as its budget year.

*Grant* means, for the purposes of this Part, a funds transfer by the Federal Government associated with a Federal assistance program listed in the Catalog of Federal Domestic Assistance.

*Indirect cost* means costs a State incurs that are necessary to the operation and performance of its Federal assistance programs, but that aren't readily identifiable with a particular project or Federal assistance program.

*Indirect cost rate* means a formula that identifies the amount of indirect costs based on the amount of accrued direct costs.

*Maintenance-of-effort* means a requirement that a State spend at least a specified amount of State funds for Federal assistance program purposes.

*Major Federal assistance program* means a Federal assistance program which receives Federal funding in excess of the dollar thresholds found in Table A to § 205.5.

*Obligational authority* means the existence of a definite commitment on the part of the Federal Government to provide appropriated funds to a State to carry out specified programs, whether the commitment is executed before or after a State pays out funds for Federal assistance program purposes.

*Pay out* means to debit the State's bank account.

*Pay out funds for Federal assistance program purposes* means, in the context of State payments, to debit a State account for the purpose of making a payment properly chargeable to the Federal Government to:



(1) A person or entity that is not considered part of the State pursuant to the definition of "State" in this section; or

(2) A State entity that provides goods or services for the direct benefit or use of the payor State entity or the Federal Government to further Federal assistance program goals.

*Rebate* means funds returned to a State by third parties after a State has paid out those funds for Federal assistance program purposes.

*Refund* means funds that a State recovers that it previously paid out for Federal assistance program purposes. Refunds include rebates received from third parties.

*Refund transaction* means an entry to the record of a State bank account representing a single deposit of refunds. A refund transaction may consist of a single check or item, or a bundle of accumulated checks.

*Related banking costs* means separately identified costs which are necessary and customary for maintaining an account in a financial institution, whether a commercial account or a State Treasurer account. Investment service fees and fees for credit-related services aren't related banking costs.

*Request for funds* means a State's request for funds that the State completes and submits in accordance with Federal program agency guidelines.

*Reverse flow program* means a Federal assistance program, such as Supplemental Security Income (SSI), for which the Federal Government makes payments to recipients on behalf of a State.

*Revolving loan fund* means a pool of program funds managed by a State. States may loan funds from the pool to other entities in support of Federal assistance program goals. Investment income is earned on the funds that remain in the pool and on loans made from pool funds. A Federal program agency may require that all income derived from a revolving loan fund be used for Federal assistance program purposes.

*Secretary* means the Secretary of the United States Department of the Treasury. We are the Secretary's representative in all matters concerning this Part, unless otherwise specified.

*State* means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, and the Virgin Islands. It includes any agency, instrumentality, or fiscal agent of a State that is legally and fiscally dependent on the State executive, State Treasurer, or State Comptroller.

(1) A State agency or instrumentality is any organization of the primary government of the State financial reporting entity, as defined by generally accepted accounting principles.

(2) A fiscal agent of a State is an entity that pays, collects, or holds Federal funds on behalf of the State in furtherance of a Federal assistance program, excluding private nonprofit community organizations.

(3) Local governments, Indian Tribal governments, institutions of higher education, hospitals, and nonprofit organizations are excluded from the definition of State.

*Treasury-State Agreement* means a document describing the accepted funding techniques and methods for calculating interest and identifying the Federal assistance programs governed by this subpart A.

*Trust fund for which the Secretary is the trustee* means a trust fund administered by the Secretary.

*Vendor payment* means a funds transfer by a Federal program agency to a State to compensate the State for acting as a vendor on a Federal contract.

*We and us* means Financial Management Service.

## Subpart A—Rules Applicable to Federal Assistance Programs Included in a Treasury-State Agreement

**§ 205.3 What Federal assistance programs are subject to this subpart A?**

(a) Generally, this subpart prescribes the rules that apply to Federal assistance programs which:

(1) Are listed in the Catalog of Federal Domestic Assistance;

(2) Meet the funding threshold for a major Federal assistance program; and

(3) Are included in a Treasury-State Agreement or default procedures.

(b) Upon a State's request, we will make additional Federal assistance programs subject to this subpart A by lowering the funding threshold in the Treasury-State Agreement. All of a State's programs that meet this lower threshold would be subject to this subpart A.

(c) We may make additional Federal assistance programs subject to this subpart A if a State or Federal program agency fails to comply with subpart B of this part.

**§ 205.4 Are there any circumstances where a Federal assistance program that meets the criteria of § 205.3 would not be subject to this subpart A?**

(a) A Federal assistance program that meets or exceeds the threshold for major Federal assistance programs in a State is not subject to this subpart A until it is included in an amended Treasury-State Agreement or in default procedures.

(b) We and a State may agree to exclude components of a major Federal assistance program from interest calculations if the State administers the program through several State agencies and meets the following requirements:

(1) The dollar amount of the exempted cash flow doesn't exceed 5% of the State's major Federal assistance program threshold and can't exceed 10% of that Federal assistance program's total expenditures;

(2) If less than the total amount of Federal assistance program funding is subject to interest calculation procedures, the interest liabilities should be pro-rated to 100% of the Federal assistance program funding;

(3) A State may not use this exclusion if a Federal assistance program is administered by only one State agency; and

(4) We may request Federal assistance program specific data on funding levels to determine exemptions.

(c) We and a State may exclude a Federal assistance program from this subpart A if the Federal assistance program has been discontinued since the most recent Single Audit and the remaining funding is below the threshold, or if the Federal assistance program is funded by an award not limited to one fiscal year and the remaining Federal assistance program funding is below the State's threshold.

**§ 205.5 What are the thresholds for major Federal assistance programs?**

(a) Table A of this section defines major Federal assistance programs based on the dollar amount of an individual Federal assistance program and the dollar amount of all Federal assistance being received by a State for all Federal assistance programs. A State must locate the appropriate row in Column A based upon the total expenditures of Federal assistance received. In that same row, a State must apply the percentage from Column B to determine the State's threshold for major Federal assistance programs. A State with expenditures greater than $10 billion will have a minimum default threshold of $60 million.

(b) To ensure adequate coverage of all State programs, a State must compare its program coverage using the threshold figure obtained under paragraph (a) of this section to the program coverage projected by a threshold of one half that of paragraph (a) of this section.

(1) Sum the total dollar expenditures of programs that exceed the threshold

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determined in Column B. Designate this amount as X.

(2) Sum the total dollar expenditures of programs that exceed one half of the threshold amount determined in Column B. Designate this amount as Y.

(3) Subtract X from Y. Designate this amount as Z.

(4) If Z is less than or equal to 10% of Y use the figure found in Column B of Table A.

(5) If Z is greater than 10% of Y, then a State must lower its threshold, or add programs, until the difference between Y and the new total dollar value of program coverage is less than or equal to 10%.

(c) Unless specified otherwise, major Federal assistance programs must be determined from the most recent Single Audit data available.

TABLE A TO § 205.5

| Column A—Total expenditure of Federal Assistance for all programs per State | Column B—Major Federal Assistance Program means any Federal assistance program with expenditures that exceed these levels |
|---|---|
| Between zero and $100 million inclusive | 6.00 percent of such total expenditures. |
| Over $100 million but less than or equal to $10 billion | 0.60 percent of such total expenditures. |
| Over $10 billion | The greater of 0.30 percent of such total expenditures or $60 million. |

**§ 205.6 What is a Treasury-State Agreement?**

(a) A Treasury-State Agreement documents the accepted funding techniques and methods for calculating interest agreed upon by us and a State and identifies the Federal assistance programs governed by this subpart A. If anything in a Treasury-State Agreement is inconsistent with this subpart A, that part of the Treasury-State Agreement won't have any effect and this subpart A will govern.

(b) A Treasury-State Agreement will be effective until terminated. We or a State may terminate a Treasury-State Agreement on 30 days written notice.

**§ 205.7 Can a Treasury-State Agreement be amended?**

(a) We or a State may amend a Treasury-State Agreement at any time if both we and the State agree in writing.

(b) The effective date of an amendment shall be the date both parties agree to the amendment in writing. Amendments may not be retroactive, except for an amendment to clarify the terms of a Treasury-State Agreement.

(c) We and a State must amend a Treasury-State Agreement as needed to change or clarify its language when the terms of the existing agreement are either no longer correct or no longer applicable. A State must notify us in writing describing the Federal assistance program change and include a proposed amendment for our review and a current list of all programs included in the Treasury-State Agreement. Amendments may address, but are not limited to:

(1) Additions or deletions of Federal assistance programs subject to this subpart A;

(2) Changes in funding techniques; and

(3) Changes in clearance patterns.

(d) Additions or deletions to the list of Federal assistance programs subject to this subpart A take effect when a Treasury-State Agreement is amended.

(e) Federal assistance programs that are to be added to a Treasury-State Agreement are not subject to this subpart A until the Treasury-State Agreement is amended, except when a Federal assistance program subject to this subpart A is being replaced by a Federal assistance program governed by subpart B of this part, in which case the replacement program is immediately subject to this subpart A.

**§ 205.8 What if there is no Treasury-State Agreement in effect?**

When a State doesn't have a Treasury-State Agreement in effect, we will prescribe default procedures to implement this subpart A. The default procedures will prescribe efficient funds transfer procedures consistent with State and Federal law and identify the covered Federal assistance programs and designated funding techniques.

**§ 205.9 What is included in a Treasury-State Agreement?**

We will prescribe a uniform format for all Treasury-State Agreements. A Treasury-State Agreement must include, but is not limited to, the following:

(a) State agencies, instrumentalities, and fiscal agents that administer the Federal assistance programs subject to this subpart A.

(b) Federal assistance programs subject to this subpart A, consistent with §§ 205.3 and 205.4. A State must use its most recent single audit report as a basis for determining the funding thresholds for major Federal assistance programs, unless otherwise specified in the Treasury-State Agreement. A State may use budget or appropriations data for a more recent period instead of single audit data, if specified in the Treasury-State Agreement.

(c) Funding techniques applied to Federal assistance programs subject to subpart A based on the Federal assistance program's purpose and administration.

(d) Methods the State will use to develop and maintain clearance patterns and estimates, consistent with § 205.11. The method must include, at a minimum, a clear indication of:

(1) the data used;

(2) the sources of the data;

(3) the development process;

(4) for estimates, when and how the State will update the estimate to reflect the most recent data available;

(5) for estimates, when and how the State will make adjustments, if any, to reconcile the difference between the estimate and the State's actual cash needs; and

(6) any assumptions, standards, or conventions used in converting the data into the clearance pattern or estimate.

(e) Federal program agency provisions requiring reconciliation of estimates to actual outlays may be included in a Treasury-State Agreement. The supporting documentation must be retained by the State for three years.

(f) States must include the results of the clearance pattern process in the Treasury-State Agreement. The supporting documentation must be retained by the State for three years.

(g) Methods used by the State and Federal agencies to calculate interest liabilities pursuant to this subpart A. The method must include, but is not limited to, a clear indication of:

(1) the data used;

(2) the sources of the data;

(3) the calculation process; and

(4) any assumptions, standards, or conventions used in converting the data into the interest liability amounts.

(h) Treasury-State agreements must include language describing how a State and Federal program agency will address a State request for supplemental funding. This language must include, but is not limited to, the following provisions:



(1) What constitutes a timely request for supplemental funds for Federal assistance program purposes by a State; and

(2) What constitutes a timely transfer of supplemental funds for Federal assistance program purposes from a Federal program agency to a State.

**§ 205.10 How do you document funding techniques?**

The Treasury-State Agreement must include a concise description for each funding technique that a State will use. The description must include the following:

(a) What constitutes a timely request for funds;

(b) How the State determines the amount of funds to request;

(c) What procedures are used to estimate or reconcile estimates with actual and immediate cash needs;

(d) What constitutes the timely receipt of funds; and

(e) Whether a State or Federal interest liability accrues when the funding technique, including any associated procedure for estimation or reconciliation, is properly applied.

**§ 205.11 What requirements apply to funding techniques?**

(a) A State and a Federal program agency must minimize the time elapsing between the transfer of funds from the United States Treasury and the State's pay out of funds for Federal assistance program purposes, whether the transfer occurs before or after the pay out of funds.

(b) A State and a Federal program agency must limit the amount of funds transferred to the minimum required to meet a State's actual and immediate cash needs.

(c) A State must not draw down funds from its account in the Unemployment Trust Fund or from a Federal account in the Unemployment Trust Fund in advance of actual immediate cash needs for any purpose including maintaining a compensating balance.

(d) A Federal program agency must allow a State to submit requests for funds daily. This requirement shouldn't be construed as a change to Federal program agency guidelines defining a properly completed request for funds.

(e) In accordance with the electronic funds transfer provisions of the Debt Collection Improvement Act of 1996 (31 U.S.C. 3332), a Federal program agency must use electronic funds transfer methods to transfer funds to States unless a waiver is available.

**§ 205.12 What funding techniques may be used?**

(a) We and a State may negotiate the use of mutually agreed upon funding techniques. We may deny interest liability if a State does not use a mutually agreed upon funding technique. Funding techniques should be efficient and minimize the exchange of interest between States and Federal agencies.

(b) We and a State may base our agreement on the sample funding techniques listed in paragraphs (b)(1) through (5) of this section, or any other technique upon which both parties agree.

(1) Zero balance accounting means that a Federal program agency transfers the actual amount of Federal funds to a State that are paid out by the State each day.

(2) Estimated clearance means that a Federal program agency transfers to a State the estimated amount of funds that the State pays out each day. The estimated amount paid out each day is determined by applying a clearance pattern to the total amount the State will disburse.

(3) Average clearance means that a Federal program agency, on the dollar-weighted average day of clearance of a disbursement, transfers to a State a lump sum equal to the actual amount of funds that the State is paying out. The dollar-weighted average day of clearance is the day when, on a cumulative basis, 50 percent of the funds have been paid out. The dollar-weighted average day of clearance is calculated from a clearance pattern, consistent with § 205.20.

(4) Cash advance (preissuance) funding means that a Federal program agency transfers the actual amount of Federal funds to a State that will be paid out by the State, in a lump sum, not more than 2 business days prior to the day the State issues checks or initiates EFT payments.

(5) Reimbursable funding means that a Federal program agency transfers Federal funds to a State after that State has already paid out the funds for Federal assistance program purposes.

**§ 205.13 How do you determine when State or Federal interest liability accrues?**

(a) State or Federal interest liability may or may not apply when mutually agreed to funding techniques are applied, depending on the terms of the Treasury-State Agreement.

(b) We and a State may agree in a Treasury-State Agreement that no State or Federal interest liability will accrue for indirect costs or indirect allocated costs based on an indirect cost rate. This indirect cost rate must be approved by the appropriate Federal program agency under Office of Management and Budget (OMB) Circular A–87 (available from the addresses in 5 CFR 1310.3) and be in accordance with this subpart A.

**§ 205.14 When does Federal interest liability accrue?**

(a) Federal interest liabilities may accrue if funding techniques aren't properly applied, in accordance with the following provisions:

(1) The Federal program agency incurs interest liability if a State pays out its own funds for Federal assistance program purposes with valid obligational authority under Federal law, Federal regulation, or Federal-State agreement. A Federal interest liability will accrue from the day a State pays out its own funds for Federal assistance program purposes to the day Federal funds are credited to a State account.

(2) If a State pays out its own funds for Federal assistance program purposes without obligational authority, the Federal program agency incurs an interest liability if obligational authority subsequently is established.

(3) If a State pays out its own funds prior to the day a Federal program agency officially notifies the State in writing that a discretionary grant project is approved, the Federal program agency doesn't incur an interest liability, notwithstanding any other provision of this section.

(4) If a State pays out its own funds prior to the availability of Federal funds authorized or appropriated for a future Federal fiscal year, the Federal program agency doesn't incur an interest liability, notwithstanding any other provision of this section.

(5) If a State fails to request funds timely as set forth in § 205.29 or otherwise fails to apply a funding technique properly, we may deny any resulting Federal interest liability.

(b) Federal agency programs that have specific payment dates set by the Federal program agency that create interest liabilities are subject to this part.

(c) States must adhere to Federal program agency disbursement schedules when requesting funds. We may deny a State's claim for Federal interest liability for the period prior to a late drawdown request. States must time their funds drawdown so that it does not create Federal interest liability. The drawdown request must allow the Federal program agency sufficient time to meet its disbursement schedule. If the Federal program agency does not make a timely payout in accordance with the terms of the Treasury-State Agreement,

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a State may submit a claim for interest liability.

**§ 205.15 When does State interest liability accrue?**

(a) *General rule.* State interest liability may accrue if Federal funds are received by a State prior to the day the State pays out the funds for Federal assistance program purposes. State interest liability accrues from the day Federal funds are credited to a State account to the day the State pays out the Federal funds for Federal assistance program purposes.

(b) *Disallowances.* A State incurs an interest liability on disallowances.

(1) If a Federal program agency disallows a State expenditure, a State will owe interest from the day that Federal funds associated with the disallowance are credited to a State account to the day the funds are credited to the Federal government.

(2) In instances where an expenditure is disallowed in a CMIA reporting year subsequent to the CMIA reporting year in which the State made the expenditure, the amount of interest calculated in accordance with paragraph (b)(1) of this section shall be adjusted for any CMIA interest previously paid on such amounts, either by a State or by the Federal government.

(c) *Refunds.* (1) A State incurs interest liability on refunds of Federal funds from the day the refund is credited to a State account to the day the refund is either paid out for Federal assistance program purposes or credited to the Federal government.

(2) We and a State may agree, in a Treasury-State Agreement, that a State doesn't incur an interest liability on refunds in refund transactions under $50,000.

(d) *Exception to the general rule.* A State does not incur an interest liability to the Federal Government if a Federal statute requires the State to retain or use for Federal assistance program purposes the interest earned on Federal funds, notwithstanding any other provision in this section.

**§ 205.16 What special rules apply to Federal assistance programs and projects funded by the Federal Highway Trust Fund?**

The following applies to Federal assistance programs and projects funded out of the Federal Highway Trust Fund, notwithstanding any other provision of this part:

(a) A State must request funds at least weekly for current project costs, or Federal interest liability won't accrue prior to the day a State submits a request for funds.

(b) If a State pays out its own funds in the absence of a project agreement or in excess of the Federal obligation in a project agreement, the Federal program agency won't incur an interest liability.

**§ 205.17 Are funds transfers delayed by automated payment systems restrictions based on the size and timing of the drawdown request subject to this part?**

Funds transfers delayed due to payment processes that automatically reject drawdown requests that fall outside a pre-determined set of parameters are subject to this part.

**§ 205.18 Are Federal assistance program agency grants for administrative costs subject to this part?**

(a) Federal assistance program agency grants wholly dedicated to compensate States for administrative costs are subject to this part.

(b) Federal assistance program agency grants dedicating only a portion of their funding for administrative costs are partially exempt from this part. The portion dedicated to compensate States for indirect and other administrative costs is not subject to this part.

**§ 205.19 How is interest calculated?**

(a) A State must calculate Federal interest liabilities and State interest liabilities for each Federal assistance program subject to this subpart A.

(b) The interest rate for all interest liabilities for each Federal assistance program subject to subpart A is the annualized rate equal to the average equivalent yields of 13-week Treasury Bills auctioned during a State's fiscal year. We provide this rate to each State.

(c) A State must calculate and report interest liabilities on the basis of its fiscal year. A State must ensure that its interest calculations are auditable and retain a record of the calculations.

(d) As set forth in § 205.9, a Treasury-State Agreement must include the method a State uses to calculate and document interest liabilities.

(e) A State may use actual data, a clearance pattern, or statistical sampling to calculate interest. A clearance pattern used to calculate interest must meet the standards of § 205.20. If a State uses statistical sampling to calculate interest, the State must sample transactions separately for each Federal assistance program subject to this subpart A. Each sample must be representative of the pool of transactions and be of sufficient size to accurately represent the flow of Federal funds under the Federal assistance program, including seasonal or other periodic variations.

(f) For the first year in which a Federal assistance program is covered in a Treasury-State Agreement, funds transfers that occur prior to the first day of the State's fiscal year must not be included in interest calculations and are not subject to the interest liability provisions of this part.

**§ 205.20 What is a clearance pattern?**

States use clearance patterns to estimate when funds are paid out, given a known dollar amount and a known date of disbursement. We and a State may agree to other procedures to estimate when funds are paid out when the dollar amount and/or the timing of disbursements are not known. A State must ensure that clearance patterns meet the following standards:

(a) A clearance pattern must be auditable.

(b) A clearance pattern must accurately represent the flow of Federal funds under the Federal assistance programs to which it is applied.

(c) A clearance pattern must include seasonal or other periodic variations in clearance activity.

(d) A clearance pattern must be based on at least three consecutive months of disbursement data, unless additional data is required to accurately represent the flow of Federal funds.

(e) If a State uses statistical sampling to develop a clearance pattern, the sample size must be sufficient to ensure a 96% confidence interval no more than plus or minus 0.25 weighted days above or below the estimated mean.

(f) A clearance pattern must extend, at a minimum, until 99 percent of the dollars in a disbursement have been paid out for Federal assistance program purposes.

**§ 205.21 When may clearance patterns be used?**

(a) A State may develop a clearance pattern for:

(1) An individual Federal assistance program;

(2) A logical group of Federal assistance programs that have the same disbursement method and type of payee;

(3) A bank account;

(4) A specific type of payments, such as payroll or vendor payments; or

(5) Anything that is agreed upon by us and a State. If a clearance pattern is used for multiple Federal assistance programs, a State must apply the clearance pattern separately to each Federal assistance program when scheduling funds transfers or calculating interest.

(b) As set forth in § 205.9, a Treasury-State Agreement must include the method a State uses to develop and maintain clearance patterns.

**§ 205.22 How are accurate clearance patterns maintained?**

(a) If a State has knowledge, at any time, that a clearance pattern no longer reflects a Federal assistance program's actual clearance activity, or if a Federal assistance program undergoes operational changes that may affect clearance activity, the State must notify us, develop a new clearance pattern, and certify that the new pattern corresponds to the Federal assistance program's clearance activity.

(b) An authorized State official must certify that a clearance pattern corresponds to the clearance activity of the Federal assistance programs to which it is applied. An authorized State official must re-certify the accuracy of a clearance pattern at least every 5 years. If a State develops a clearance pattern for a bank account or a specific type of payment, or on another basis, as set forth in § 205.21, we may prescribe other requirements for re-certifying the accuracy of the clearance pattern. A State can begin to use a new clearance pattern on the date the new clearance pattern is certified.

**§ 205.23 What requirements apply to estimates?**

The requirements in this section apply when we and a State negotiate a mutually agreed upon funds transfer procedure based on an estimate of the State's immediate cash needs. These requirements don't apply to an estimate based on a clearance pattern or an indirect cost rate.

(a) The State must ensure that the estimate reasonably represents the flow of Federal funds under the Federal assistance program or program component to which the estimate applies. The estimate must take into account seasonal or other periodic variations in activity throughout the period for which the Federal funds are available. If a State supplements the Federal funds for a Federal assistance program, other than through required matching, the State must not arbitrarily assign its earliest costs to the Federal Government. The State may allocate its costs proportionately over the period for which the Federal funds are available, or specify in the Treasury-State Agreement which Federal assistance program components will use Federal funds exclusively.

(b) As set forth in § 205.9, a Treasury-State Agreement must include the method a State uses to develop and maintain the estimate.

**§ 205.24 How are accurate estimates maintained?**

(a) If a State has knowledge that an estimate doesn't reasonably correspond to the State's cash needs for a Federal assistance program or program component, or if a Federal assistance program undergoes operational changes that may affect cash needs, the State must immediately notify us in writing. We and the State will amend the funding technique provisions in the Treasury-State Agreement or take other mutually agreed upon corrective action.

(b) When estimates are properly updated and applied, a State or Federal interest liability may or may not accrue, depending on the terms of the Treasury-State Agreement.

(c) We may require a State to justify in writing that it is not feasible to use a more efficient funding technique for the Federal assistance program or program component to which an estimate is applied. We may prescribe requirements for certifying the reasonableness of an estimate.

**§ 205.25 How does this part apply to certain Federal assistance programs or funds?**

(a) Special rules apply to certain Federal assistance programs or funds described in this section. To the extent the provisions of this section are inconsistent with other provisions of this part, this section applies.

(b) A State's interest liability on funds withdrawn from its account in the Unemployment Trust Fund equals the actual interest earned on such funds less the related banking costs. Actual interest earned doesn't include non-cash bank earnings. If funds withdrawn from the State account in the UTF are commingled with other funds, the funds withdrawn from the State account must be allocated a proportionate share of interest earnings and banking costs. (Interest liabilities on funds withdrawn from a Federal account in the UTF, except the Federal Unemployment Account, are calculated in accordance with § 205.19.)

(c) Supplemental Security Income. (1) The Federal Government incurs an interest liability from the day State funds are credited to the Federal Government's account to the day a Federal program agency pays out the State funds for Federal assistance program purposes. A State incurs an interest liability from the day a Federal program agency pays out Federal funds for Federal assistance program purposes to the day State funds are credited to the Federal Government's account.

(2) Interest liability must be calculated on the difference between a State's monthly Supplemental Security Income payment and the State's actual liability for the month.

(3) The Federal Government won't incur interest liabilities on refunds of State funds under the Supplemental Security Income Program.

(4) Administrative fees charged by the Social Security Administration to States under the Supplemental Security Income program are not subject to this part.

(5) Supplemental State payments made in conjunction with Supplemental Security Income are not subject to this part.

(d) Funds collected under the Child Support Enforcement Program. (1) Funds collected by States from absent parents pursuant to Title IV–D of the Social Security Act are not subject to this part.

(2) Interest earned by States on undistributed collections must be treated as Federal assistance program income under 45 CFR 304.50(b) and is not subject to this part.

(3) Late payment fees collected by States from absent parents are not subject to CMIA interest liabilities and are not subject to this Part. However, such fees must be treated as Federal assistance program income in accordance with 45 CFR 302.75(b)(6).

(e) States supplementing Social Services block grants, Temporary Assistance for Needy Families block grants, and the Mandatory and Matching Child Care Funds program. (1) At the discretion of the Office of Management and Budget, Federal funds will be apportioned to avoid depletion and a supplemental appropriation.

(2) A State must not draw down all Federal funds prior to spending State funds.

(3) A State is entitled to interest if the apportioned funds are not transferred timely.

(4) A State that provides matching State funding and/or maintenance-of-effort funding, as defined in 45 CFR 98.60(f), in conjunction with a Federal block grant program:

(i) Must not arbitrarily assign its earliest costs to the Federal Government;

(ii) Must coordinate a proportional drawdown of State and Federal funds to avoid interest liabilities; and

(iii) Must include these arrangements in the Treasury-State Agreement.

(f) A State that earns interest on Special Supplemental Food Program for Women, Infants, and Children rebates is not subject to interest liability if the funds earned are used for Federal assistance program purposes.

(g) Revolving Loan Funds. (1) This part applies to any transfer of funds from the Federal program agency to the State for the Revolving Loan Fund.

(2) This part doesn't apply to interest a State earns on Revolving Loan Funds when Federal program agency regulations require that all interest

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earned on invested funds be used for Federal assistance program purposes.

**§ 205.26 What are the requirements for creating Annual Reports?**

(a) A State must submit to us an Annual Report accounting for the interest liabilities of the State's most recently completed fiscal year. Adjustments to the Annual Report must be limited to the two State fiscal years prior to the State fiscal year covered by the report. The authorized State official must certify the accuracy of a State's Annual Report. A signed original of the Annual Report must be received by the next December 31 after the end of the State's fiscal year. We will provide copies of Annual Reports to Federal agencies. We will prescribe the format of the Annual Report, and may prescribe that the Annual Report be submitted by electronic means.

(b) A State must submit a description and supporting documentation for liability claims greater than $5,000. This information must include the following:

(1) The amount of funds requested;

(2) The date the funds were requested;

(3) The date the funds were paid out for Federal assistance program purposes;

(4) The date the funds were received by the State; and

(5) The date of late grant awards.

(c) A State may submit with its Annual Report a claim for reimbursement of the direct costs of implementing this subpart A, calculated in accordance with § 205.27. An authorized State official must certify the accuracy of a State's direct cost claim.

**§ 205.27 How are direct costs calculated?**

(a) We will compensate a State annually for the direct costs of implementing this subpart A, subject to the conditions and limitations of this section.

(b) We may deny a direct cost claim if a State doesn't:

(1) Have a Treasury-State Agreement with us, as set forth in §§ 205.6 through 205.9;

(2) Submit timely a Treasury-State Agreement, as set forth in §§ 205.6 through 205.9;

(3) Submit timely an updated list of Federal assistance programs subject to this subpart A, as set forth in §§ 205.6 through 205.9;

(4) Submit timely a claim for direct costs with its Annual Report, as set forth in § 205.26; or

(5) Submit timely its Annual Report, as set forth in § 205.26.

(c) A State must maintain documentation to substantiate its claim for direct costs. We may require a State to provide documentation to support its direct cost claims. We will review all direct cost claims for reasonableness. If we determine that a cost claim is unreasonable, we will not reimburse a State for that cost, notwithstanding any other provision of this section.

(d) Eligibility and treatment of direct costs. (1) Direct costs don't include expenses for normal disbursing services, such as processing checks or maintaining records for accounting and reconciliation of cash accounts, or expenses for upgrading or modernizing accounting systems.

(2) Direct costs in excess of $50,000 in any year are not eligible for reimbursement, unless a State can justify to us that the State is unable to develop and maintain clearance patterns in support of interest calculations, or perform the actual calculation of interest, without incurring such costs. Supporting documentation must accompany State requests for reimbursement in excess of $50,000.

(3) Direct costs that a State incurs in fiscal years prior to its most recently completed Annual Report are not eligible for reimbursement.

(4) A State must not include the direct costs of implementing this subpart A in its State-wide cost allocation plan, as defined and provided for in OMB Circular A–87. All costs incurred by a State to implement this subpart A, other than direct costs, are subject to the procedures and principles of OMB Circular A–87.

(e) The payments from the Federal Government to individual States to offset direct costs incurred are funded from the aggregate interest payments States make to the Federal Government. The following limitations apply:

(1) We will not reduce or adjust interest liabilities for Federal assistance programs funded out of trust funds for which the Secretary is trustee; and

(2) The aggregate payments from the Federal Government to States to offset direct costs will not be greater than the aggregate interest payments States make to the Federal Government.

**§ 205.28 How are interest payments exchanged?**

(a) We adjust a State's total interest liability to the Federal government and the Federal government's total interest liability to a State to determine direct cost reimbursement, as set forth in § 205.27.

(b) The adjusted total State interest liability and the adjusted total Federal interest liability for each State are offset to determine the net interest payable to or from each specific State. The payment of net interest to or from a State for its most recently completed fiscal year must occur no later than March 31. We will notify a State of the final net interest liability. A State must submit a claim to receive payment.

(c) A State may appeal a decision by us on interest liabilities and direct cost claims in accordance with § 205.31.

(d) If a State appeals the amount of interest payable in accordance with the provisions of § 205.31, payment must occur by March 31 for any portions not subject to the appeal.

**§ 205.29 What are the State oversight and compliance responsibilities?**

(a) A State must designate an official representative with the statutory or administrative authority to coordinate all interaction with the Federal Government concerning subpart A, and must notify us in writing of the representative's name and title.

(b) A State must maintain records supporting interest calculations, clearance patterns, direct costs, and other functions directly pertinent to the implementation and administration of this subpart A for audit purposes. A State must retain the records for each fiscal year for three years from the date the State submits its Annual Report, or until any dispute or action involving the records and documents is completed, whichever is later. We, the Comptroller General, and the Inspector General or other representative of a Federal program agency must have the right of access to, and may require submission of, all records for the purpose of verifying interest calculations, clearance patterns, direct cost claims, and the State's accounting for Federal funds.

(c) A State's implementation of subpart A is subject to audit in accordance with chapter 75 of title 31, United States Code, "Requirements for Single Audits."

(d) If a State repeatedly or deliberately fails to request funds in accordance with the procedures established for its funding techniques, as set forth in § 205.11, § 205.12, or a Treasury-State Agreement, we may deny the State payment or credit for the resulting Federal interest liability, notwithstanding any other provision of this part.

(e) If a State materially fails to comply with this subpart A, we may, in addition to the action described in paragraph (d) of this section, take one or more of the following actions, as appropriate under the circumstances:

(1) Request a Federal program agency or the General Accounting Office to conduct an audit of the State to determine interest owed to the Federal Government, and to implement procedures to recover such interest;

(2) Deny the reimbursement of all or a part of the State's direct cost claim;

(3) Initiate a debt collection process to recover claims owed to the United States; or

(4) Take other remedies legally available.



**§ 205.30 What are the Federal oversight and compliance responsibilities?**

(a) A Federal program agency must designate an official representative to coordinate all interaction with us and the States concerning this subpart A, and must notify us in writing of the representative's name and title.

(b) Determinations regarding whether or not costs are properly chargeable to the Federal government shall be the responsibility of the Federal program agency responsible for the Federal assistance program under which the disallowance arose. Disallowances will be determined in accordance with the statutes, regulations, and policies otherwise applicable to the Federal assistance program under which the disallowance arose.

(c) A Federal program agency's implementation of this subpart A is subject to review pursuant to procedural instructions that we issue.

(d) We will consult with Federal agencies as necessary and appropriate before entering into or amending a Treasury-State Agreement.

(e) We will distribute Annual Reports to Federal agencies, as set forth in § 205.26. Upon our request, a Federal program agency must review a State's Annual Report for reasonableness and must report its findings to us within 10 days.

(f) A Federal program agency must notify us in writing if the program agency has knowledge, at any time, that:

(1) A State's clearance pattern doesn't correspond to a Federal assistance program's clearance activity; or

(2) Corrective action needs to be taken by a State, us, or another Federal program agency, with respect to the implementation of this subpart. We will notify the State or Federal program agency as appropriate in writing with a description of the Federal program agency's claim.

(g) If a Federal program agency incurs an interest liability by failing to comply with this subpart A, we may collect a charge from the Federal program agency. A Federal interest liability resulting from circumstances beyond the control of a Federal program agency doesn't constitute noncompliance. We will determine the charge using the following procedures:

(1) We will issue a Notice of Assessment to the Federal program agency, indicating the nature of the noncompliance, the amount of the charge, the manner in which it was calculated, and the right to file an appeal.

(2) To the maximum extent practicable, a Federal program agency must pay a charge for noncompliance out of appropriations available for the Federal program agency's operations and not from the Federal program agency's program funds.

(3) If a Federal program agency doesn't pay a charge for noncompliance within 45 days after receiving a Notice of Assessment, we will debit the appropriate Federal program agency account.

(4) In the event a Federal program agency appeals a charge imposed under the Notice of Assessment, we will defer the charge until we decide the appeal. If we deny the appeal, the effective date of the charge may be retroactive to the date indicated in the Notice of Assessment.

**§ 205.31 How does a State or Federal program agency appeal a determination made by us and resolve disputes?**

(a) This section documents the procedures for:

(1) A State to appeal the net interest charge that we have assessed;

(2) A State to appeal a determination we have made regarding the State's claim for direct costs in accordance with § 205.27;

(3) A Federal program agency to appeal a charge for noncompliance that we have assessed in accordance with § 205.30; or

(4) A State or a Federal program agency to resolve other disputes with us or between or among each other concerning the implementation of this subpart A.

(b) A State or Federal program agency must submit a written petition to the Assistant Commissioner, Federal Finance, Financial Management Service (Assistant Commissioner), within 90 days of the date of the notice of assessment or the event that initiated the appeal or dispute. The Petition must include a concise factual statement, not to exceed 15 pages, with supporting documentation in the appendices, of the conditions forming the basis of the Petition and the action requested of the Assistant Commissioner. In the case of a dispute, the party submitting the petition to us must concurrently provide a copy of the petition to the other concerned parties. The other concerned parties may submit to the Assistant Commissioner a rebuttal within 90 days of the date of the petition. The rebuttal must include a concise factual statement, not to exceed 15 pages, with supporting documentation in the appendices.

(c) The Assistant Commissioner will review the Petition, any rebuttal, and all supporting documentation. As part of the review process, the Assistant Commissioner may request to meet with any or all parties and may request additional information.

(d) The Assistant Commissioner will issue a written decision within the later of 120 days of the date of the Petition, or the rebuttal in case of a dispute, or 120 days from receipt of any additional information. The Assistant Commissioner's decision will be the final program agency action on our part for purposes of judicial review procedures under the Administrative Procedures Act (APA), 5 U.S.C. 701–706, unless either the State or Federal program agency invokes the provisions of the Administrative Dispute Resolution Act of 1990 (ADRA), 5 U.S.C. 581–593.

(e) Either a State or Federal program agency may seek to invoke the provisions of the ADRA within 45 days after the date of the Assistant Commissioner's written decision.

(1) The party invoking the ADRA must notify the Assistant Commissioner and any other concerned parties in writing. If all parties, including the Assistant Commissioner, agree in writing, a neutral party appointed under the provisions of the ADRA may assist in resolving the dispute through the use of alternate means of dispute resolution as defined in the ADRA.

(2) If the party invoking the ADRA is unable to reach a satisfactory resolution, the Assistant Commissioner's decision will be the final agency action on our part for purposes of the judicial review procedures under the APA.

(f) Any amount due as a result of an appeal or dispute must be paid within 14 days of the date of the decision of the Assistant Commissioner or the date of the resolution under the ADRA. If a State fails to pay, the State will be subject to collection techniques under 31 U.S.C. 3701 *et seq.*, including accrual of interest on outstanding balances and administrative offset.

(g) The appeal and dispute resolution procedures described in this section do not apply to disputes between States and Federal program agencies concerning whether or not costs are properly chargeable to the Federal government.

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**Subpart B—Rules Applicable to Federal Assistance Programs Not Included in a Treasury-State Agreement**

**§ 205.32 What Federal assistance programs are subject to this subpart B?**

This subpart B applies to all Federal assistance programs listed in the Catalog of Federal Domestic Assistance that are not subject to subpart A of this part.

**§ 205.33 How are funds transfers processed?**

(a) A Federal program agency must limit a funds transfer to a State to the minimum amounts needed by the State and must time the disbursement to be in accord with the actual, immediate cash requirements of the State in carrying out a Federal assistance program or project. The timing and amount of funds transfers must be as close as is administratively feasible to a State's actual cash outlay for direct program costs and the proportionate share of any allowable indirect costs.

(b) Neither a State nor the Federal government will incur an interest liability under this part on the transfer of funds for a Federal assistance program subject to this subpart B.

**§ 205.34 What are the Federal oversight and compliance responsibilities?**

(a) A Federal program agency must review the practices of States as necessary to ensure compliance with this subpart B.

(b) A Federal program agency must notify us if a State demonstrates an unwillingness or inability to comply with this subpart B.

(c) A Federal program agency must formulate procedural instructions specifying the methods for carrying out the responsibilities of this section.

**§ 205.35 What is the result of Federal program agency or State non-compliance?**

We have unilateral authority to require a State and a Federal program agency to make the affected Federal assistance programs subject to subpart A of this part, consistent with Federal assistance program purposes and regulations, notwithstanding any other provision of this part, if:

(a) A State demonstrates an unwillingness or inability to comply with this subpart B; or

(b) A Federal program agency demonstrates an unwillingness or inability to make Federal funds available to a State as needed to carry out a Federal assistance program.

**Subpart C—[Reserved]**

Dated: October 3, 2000.

**Kenneth R. Papaj,**

*Acting Commissioner.*

[FR Doc. 00–25964 Filed 10–11–00; 8:45 am]

BILLING CODE 4810–35–P




Federal Register

Thursday,
October 12, 2000

Part V

# Department of Labor

**Office of Federal Contract Compliance Programs**

**41 CFR Parts 60–1, 60–250, and 60–741**

**Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors; Compliance Evaluations in All OFCCP Programs; Proposed Rule**

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**DEPARTMENT OF LABOR**

**Office of Federal Contract Compliance Programs**

**41 CFR Parts 60–1, 60–250, and 60–741**

**RIN 1215–AB28, 1215–AB27, 1215–AB23**

# Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors; Compliance Evaluations in All OFCCP Programs

**AGENCY:** Office of Federal Contract Compliance Programs, Employment Standards Administration, Labor.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This proposal would revise certain regulations implementing Section 503 of the Rehabilitation Act of 1973, as amended (Section 503 or the Act). Section 503 requires Government contractors and subcontractors to take affirmative action to employ and advance in employment qualified individuals with disabilities. The current regulations implementing Section 503 authorize OFCCP to conduct compliance reviews to determine whether a contractor is complying with its affirmative action and nondiscrimination obligations. Today's proposal would revise the Section 503 regulations to expressly authorize OFCCP to use additional investigative procedures to determine a contractor's compliance with Section 503. In this regard, today's proposal would conform the regulations implementing Section 503 to the compliance evaluation procedures contained in the regulations implementing Executive Order 11246, as amended, and the affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (VEVRAA), respectively.

In addition, today's proposal would revise the compliance check procedure found in the current regulations implementing Executive Order 11246 and the affirmative action provisions of VEVRAA by eliminating the on-site visit requirement. The compliance check is one of the four compliance evaluation methods currently used by OFCCP to determine a contractor's compliance with Executive Order 11246 and the affirmative action provisions of VEVRAA.

**DATES:** To be assured of consideration, comments must be in writing and must be received on or before December 11, 2000.

**ADDRESSES:** Comments should be sent to James I. Melvin, Director, Division of Policy, Planning and Program Development, OFCCP, Room C–3325, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

As a convenience to commenters, public comments transmitted by facsimile (FAX) machine will be accepted. The telephone number of the FAX receiver is (202) 693–1304. To assure access to the FAX equipment, only public comments of six or fewer pages will be accepted via FAX transmittal. Receipts of FAX transmittals will not be acknowledged; however the sender may request confirmation that a submission has been received by calling (202) 693–0102 (voice), (202) 693–1308 (TTY).

**FOR FURTHER INFORMATION CONTACT:** James I. Melvin, Director, Division of Policy, Planning and Program Development, OFCCP, Room C–3325, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Telephone (202) 693–0102 (voice), (202) 693–1308 (TTY). Copies of this proposed rule, including copies in alternative formats, may be obtained by calling (202) 693–0102 (voice), or (202) 693–1308 (TTY). The alternate formats available are large print, electronic file on computer disk, and audiotape. The proposed rule also is available on the Internet at http://www.dol.gov/dol/esa.

**SUPPLEMENTARY INFORMATION:**

## Background

Section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 793 (Section 503 or the Act), requires parties holding a nonexempt Government contract or subcontract in excess of $10,000 to take affirmative action to employ and advance in employment qualified individuals with disabilities. The Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) enforces Section 503 through implementing regulations codified at 41 CFR Part 60–741. OFCCP published a substantial revision of its Section 503 regulations on May 1, 1996 (61 FR 19336). Since that time, OFCCP has revised its regulations implementing Executive Order 11246, as amended, and the affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act, as amended (VEVRAA). Among the revisions made to both sets of regulations was the introduction of a variety of alternative means of assessing contractors' compliance with their nondiscrimination and affirmative action obligations.

Before amendment, the primary method for evaluating compliance in the Executive Order and VEVRAA enforcement programs was the "compliance review." Both the scope and content of a compliance review under Executive Order 11246 were prescribed by regulation. Compliance reviews were to be a comprehensive evaluation of a contractor's employment practices and were to consist of a desk audit, an on-site review and, if necessary, an off-site analysis. The recent amendments to the Executive Order and VEVRAA implementing regulations were designed to provide the agency greater flexibility in the manner in which it evaluates compliance by authorizing the agency to utilize a wider range of methods for evaluating compliance. Specifically, in addition to the full compliance review, three abbreviated methods for evaluating a contractor's compliance are included in the Executive Order 11246 and VEVRAA regulations: off-site review of records, compliance check, and focused review.

This proposal to revise certain provisions of the Section 503 regulations is precipitated by the new methods for evaluating contractor compliance introduced in the Executive Order 11246 and VEVRAA regulations. Under the current regulations implementing Section 503 the compliance review remains the primary method for evaluating compliance. The current regulations at 41 CFR 60–741.60 prescribe the scope of compliance reviews, but unlike the prior Executive Order regulations, do not prescribe the content of a review. For example, under the current regulations, OFCCP may complete the Section 503 compliance review without making an on-site visit to the contractor's establishment, if the agency can make a determination about compliance based upon a review and analysis of the documentation submitted by the contractor in response to the scheduling letter. Likewise, if an on-site visit is required in order to evaluate a particular contractor's compliance with the requirements of Section 503, OFCCP has the authority, under the current regulations, to limit its on-site investigation to one or two issues.

Today's proposal would supplement the comprehensive compliance review with a variety of different means for assessing a contractor's compliance with Section 503 and its implementing regulations. The rule we propose today would formally adopt the compliance evaluation approach and expressly authorize off-site reviews of records, compliance checks, and focused reviews under Section 503. Today's proposal also would replace the term "compliance review" with "compliance evaluation," as appropriate, in certain sections of the regulations.



The proposed revisions to 41 CFR Part 60–741 are necessary to harmonize the procedures used when enforcing Section 503, the Executive Order, and VEVRAA. OFCCP believes that adopting the compliance evaluation approach for determining compliance with Section 503 and its implementing regulations would further improve efficiency and permit the agency to better target its resources. Today's proposal would ensure that the agency could use parallel procedures to simultaneously evaluate contractor compliance under all three laws. At the same time, today's proposal would give OFCCP leeway to develop and pursue enforcement initiatives that focus on contractor compliance with the requirements of Section 503 and its implementing regulations. For example, the rule we propose today would allow OFCCP to conduct compliance checks solely for the purpose of examining whether contractors have developed and implemented the affirmative action programs required under the regulations in 41 CFR Part 60–741.

Today's proposal also would revise the definition of "compliance check" used in the Executive Order and VEVRAA regulations by removing the requirement that OFCCP visit a contractor's establishment during a compliance check. This change would allow OFCCP greater flexibility when using the compliance check method to assess a contractor's compliance status. With this change, OFCCP could permit a contractor to satisfy the requirements of the compliance check by supplying the required records and supporting information to an OFCCP office or other designated site. Although the proposal would change how the agency intends to implement the compliance check, it would not expand the scope of the examination contemplated under the compliance check procedure. Lastly, today's proposal corrects a drafting oversight by adding the term and definition of "compliance evaluation" to the definition section of the VEVRAA regulations at 41 CFR 60–250.2. The definition proposed is consistent with the definition in OFCCP's Executive Order 11246 regulations and with the definition we today propose to add to the Section 503 regulations.

## Section-by-Section Analysis

*Section 60–741.2 Definitions*

A definition of the term "compliance evaluation" is being added to the definition section of the regulations implementing Section 503 of the Rehabilitation Act of 1973. The proposed definition is consistent with the definition included in the regulations implementing Executive Order 11246 at 41 CFR 60–1.3. Under the new definition a compliance evaluation means any one or combination of actions OFCCP may take to examine a Federal contractor's or subcontractor's compliance with one or more of the requirements of Section 503 of the Rehabilitation Act of 1973.

*Section 60–741.44 Required Contents of Affirmative Action Programs*

These paragraphs are unchanged from the existing § 60–741.44, except that the term "compliance review" has been replaced with the new term "compliance evaluation" in § 60–741.44(a)(2).

*Section 60–741.60 Compliance Evaluations*

We propose to revise existing paragraph (a) of § 60–741.60, which now addresses compliance reviews.

In the current regulations, paragraph (a) describes the purpose of a compliance review, provides that the review will consist of a comprehensive analysis of all relevant nondiscrimination and affirmative action practices, and provides that, where necessary, recommendations for appropriate sanctions will be made. The proposal expressly authorizes OFCCP's use of additional methods to evaluate a contractor's compliance with its Section 503 obligations. Consistent with the regulations implementing Executive Order 11246 and the affirmative action provisions of VEVRAA, the proposal specifies that the compliance evaluation methods available to OFCCP, other than the full compliance review, include an off-site review of records, a compliance check and a focused review. The activities that are contemplated under each of the four evaluation methods are described in proposed paragraph (a).

Proposed paragraph (a)(1), as does existing paragraph (a), states that a compliance review is a comprehensive analysis and evaluation of the hiring and employment practices of the contractor, the written affirmative action program, and the results of affirmative actions efforts undertaken by the contractor. Proposed paragraph (a)(2) describes the off-site review of records. An off-site review of records is composed of an analysis and evaluation of the affirmative action program (or any part thereof) and supporting documentation, and other documents related to the contractor's personnel policies and employment actions that may be relevant to a determination of whether the contractor has complied with the requirements of Section 503 of the Rehabilitation Act of 1973 and its implementing regulations. A compliance check is described in proposed paragraph (a)(3) as a determination of whether data and other information previously submitted by the contractor are complete and accurate; whether the contractor has maintained records consistent with § 60–741.80 and/or whether the contractor has developed an affirmative action program consistent with § 60–741.40. Proposed paragraph (a)(4) states that a focused review is an on-site review restricted to one or more components of the contractor's organization or one or more aspects of the contractor's employment practices.

*Section 60–741.62 Conciliation Agreements and Letters of Commitment*

These paragraphs are unchanged from the existing § 60–741.62, except that at § 60–741.62 the term "compliance review" is replaced with the new term "compliance evaluation."

*Section 60–741.65 Enforcement Proceedings*

These paragraphs are unchanged from the existing § 60–741.65, except that the term "compliance review" is replaced with the new term "compliance evaluation" at § 60–741.65(a)(1).

*Section 60–741.68 Reinstatement of Eligible Contractors*

These paragraphs are unchanged from the existing § 60–741.68, except that the term "compliance review" is replaced with the new term "compliance evaluation" at § 60–741.68(a).

*Section 60–741.69 Intimidation and Interference*

These paragraphs are unchanged from the existing § 60–741.69, except that the term "compliance review" is replaced with the new term "compliance evaluation" at § 60–741.69(a)(2).

*Section 60–741.80 Recordkeeping*

These paragraphs are unchanged from the existing § 60–741.80, except that the term "compliance review" is replaced with the new term "compliance evaluation."

*Section 60–741.81 Access to Records*

The paragraph is unchanged from the existing § 60–741.81, except that the term "compliance review" is replaced with the new term "compliance evaluation."

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*Sections 60–1.20 and 60–250.60 Compliance Evaluations*

As discussed in the above preamble, the regulations currently authorize OFCCP to conduct compliance evaluations to determine contractor compliance with the requirements under Executive Order 11246 and the affirmative action provisions of VEVRAA. The current regulations at 41 CFR 60–1.20(a)(3) and 60–250.60(a)(3) describe a compliance check as "a visit to the [contractor's] establishment" to ascertain whether data and other information previously submitted is accurate and complete; whether the contractor has maintained records consistent with the record retention requirements in §§ 60–1.12 and 60–250.80; and whether the contractor has developed affirmative action programs consistent with the regulations. The agency has found that, in many instances, the assessments made with a compliance check procedure can be made without making an on-site visit. Accordingly, the proposal would revise the regulations at 41 CFR 60–1.20(a)(3) and 60–250.60(a)(3) by removing the requirement that OFCCP visit a contractor's establishments when the "compliance check" procedure is used to assess compliance. The proposed revision to the compliance check procedure is designed to improve agency efficiency, but OFCCP believes that contractors also would find it more efficient and less burdensome if the regulations did not require that a compliance check involve an on-site visit. Under this revision the contractor will be required to provide OFCCP access to the requested documents, but at the contractor's option the documents may be provided either on-site or off-site. While the proposal would change how the agency intends to implement the compliance check, it would not expand the scope of the examination contemplated under the compliance check procedure.

*Section 60–250.2 Definitions*

A definition of the term "compliance evaluation" is being added to the definition section of the regulations implementing VEVRAA. The definition being added is consistent with the definition in OFCCP's Executive Order 11246 regulations. Under the new definition, a compliance evaluation means any one or combination of actions OFCCP may take to examine a Federal contractor or subcontractor's compliance with one or more of the requirements of VEVRAA.

**Regulatory Procedures**

*Executive Order 12866*

The Department is issuing this proposed rule in conformance with Executive Order 12866. The rule has been determined not to be significant for purposes of Executive Order 12866 and therefore need not be reviewed by OMB. This rule does not meet the criteria of Section 3(f)(1) of Executive Order 12866 and therefore the information enumerated in Section 6(a)(3)(C) of that Order is not required.

This conclusion is based on the fact that this proposed rule does not substantially change the existing obligations of Federal contractors to apply a policy of nondiscrimination and affirmative action. Furthermore, this proposed rule does not substantially change the enforcement techniques currently employed by OFCCP to ensure federal contractor compliance with their nondiscrimination and affirmative action obligations.

*Regulatory Flexibility Act*

This proposed rule does not substantively change existing obligations for Federal contractors; it would only specify the procedures the agency may use to evaluate a Federal contractor's compliance with existing requirements. Accordingly, we certify that the rule will not have a significant economic impact on a substantial number of small business entities. Therefore, a regulatory flexibility analysis under the Regulatory Flexibility Act is not required.

*Unfunded Mandates Reform*

For purposes of the Unfunded Mandates Reform Act of 1995, as well as Executive Order 12875, the proposed rule, if promulgated, will not include any federal mandates that may result in increased expenditures by state, local, and tribal governments, or increased expenditures by the private sector, of $100,000,000 or more in any one year.

*Paperwork Reduction Act*

Today's proposal would have a negligible impact, if any, on the information collection requirements currently approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*). Information collection requirements for compliance evaluations are currently approved under OMB control number 1215–0072. The currently approved inventory includes a burden estimate for compliance checks, which is based on the assumption that it takes the average contractor approximately four-tenths of an hour to find and make available the documents requested during a compliance check. The proposal to revise the compliance check procedure by removing the on-site visit requirement would mean that, during some compliance checks, contractors would be asked to provide documents to OFCCP rather than make them available for an OFCCP compliance officer to review on-site. OFCCP believes that, for some contractors, this may take more time than it would to make them available on-site, but, for others, it may take less time. Accordingly, OFCCP estimates that the proposed revision to the compliance check procedure will not result in a net change in the burden hours associated with compliance checks. OFCCP will submit for approval to OMB the information collection provisions of this rule as necessary. OFCCP invites comments on the information collection provisions of this rule.

*Executive Order 13132 (Federalism)*

OFCCP has reviewed this proposed rule in accordance with Executive Order 13132 regarding federalism, and has determined that it does not have "federalism implications." The rule does not "have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

**List of Subjects**

*41 CFR Part 60–1*

Administrative practice and procedure, Equal employment opportunity, Government contracts, Reporting and recordkeeping requirements.

*41 CFR Part 60–250*

Administrative practice and procedure, Equal employment opportunity, Government contracts, Individuals with disabilities, Reporting and recordkeeping requirements, Veterans.

*41 CFR Part 60–741*

Administrative practice and procedure, Equal employment opportunity, Government contracts, Individuals with disabilities, Reporting and recordkeeping requirements.



Signed at Washington, D.C., this 2d day of October, 2000.

**Alexis M. Herman,**

*Secretary of Labor.*

**Bernard E. Anderson,**

*Assistant Secretary for Employment Standards.*

**Shirley J. Wilcher,**

*Deputy Assistant Secretary for Federal Contract Compliance.*

Accordingly, for the reasons set forth in the Preamble, we propose to amend Title 41 of the Code of Federal Regulations, chapter 60, Parts 60–1, 60–250 and 60–741, under authorities cited as set forth below:

## PART 60–1—OBLIGATIONS OF CONTRACTORS AND SUBCONTRACTORS

1. The authority citation for part 60–1 continues to read as follows:

**Authority:** Sec. 201, E.O. 11246 (30 FR 12319), as amended by E.O. 11375 (32 FR 14303) and E.O. 12086 (43 FR 46501).

2. In § 60–1.20 paragraph (a)(3) is revised to read as follows:

**§ 60–1.20 Compliance evaluations.**

(a) * * *

(3) *Compliance check.* A determination of whether data and other information previously submitted by the contractor is complete and accurate; whether the contractor has maintained records consistent with § 60–1.12; and/or whether the contractor has developed an AAP consistent with § 60–1.40; or

* * * * *

## PART 60–250—AFFIRMATIVE ACTION AND NONDISCRIMINATION OBLIGATIONS OF CONTRACTORS AND SUBCONTRACTORS REGARDING SPECIAL DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA

3. The authority citation for part 60–250 continues to read as follows:

**Authority:** 29 U.S.C. 793: 38 U.S.C. 4211 and 4212; E.O. 11758 (3 CFR, 1971–1975 Comp., p. 841.)

4. In § 60–250.2 paragraph (v) is added to read as follows:

**§ 60–250.2 Definitions.**

* * * * *

(v) *Compliance evaluation* means any one or combination of actions OFCCP may take to examine a Federal contractor or subcontractor's compliance with one or more of the requirements of the Vietnam Era Veterans' Readjustment Assistance Act.

5. In § 60–250.60 paragraph (a)(3) is revised to read as follows:

**§ 60–250.60 Compliance evaluations.**

(a) * * *

(3) *Compliance check.* A determination of whether data and other information previously submitted by the contractor is complete and accurate; whether the contractor has maintained records consistent with § 60–250.80; and/or whether the contractor has developed an AAP consistent with § 60–250.40; or

* * * * *

## PART 60–741—AFFIRMATIVE ACTION AND NONDISCRIMINATION OBLIGATIONS OF CONTRACTORS AND SUBCONTRACTORS REGARDING INDIVIDUALS WITH DISABILITIES

6. The authority citation for part 60–741 continues to read as follows:

**Authority:** 29 U.S.C. 706 and 793; and E.O. 11758 (3 CFR, 1971–1975 Comp., p. 841.)

7. § 60–741.2 is amended by adding a new paragraph (z) to read as follows:

**§ 60–741.2 Definitions.**

* * * * *

(z) *Compliance evaluation* means any one or combination of actions OFCCP may take to examine a Federal contractor's or subcontractor's compliance with one or more of the requirements of Section 503 of the Rehabilitation Act of 1973.

8. In § 60–741.44 paragraph (a)(2) is revised to read as follows:

**§ 60–741.44 Required contents of affirmative action programs.**

* * * * *

(a) * * *

(2) Assisting or participating in an investigation, compliance evaluation, hearing, or any other activity related to the administration of Section 503 of the Rehabilitation Act of 1973, as amended (Section 503) or any other Federal, State or local law requiring equal opportunity for disabled persons;

* * * * *

9. In § 60–741.60 the section heading and paragraph (a) are revised to read as follows:

**§ 60–741.60 Compliance evaluations.**

(a) OFCCP may conduct compliance evaluations to determine if the contractor maintains nondiscriminatory hiring and employment practices and is taking affirmative action to ensure that applicants are employed and that employees are placed, trained, upgraded, promoted, and otherwise treated in accordance with this part during employment. A compliance evaluation may consist of any one or any combination of the following investigative procedures:

(1) *Compliance review.* A comprehensive analysis and evaluation of the hiring and employment practices of the contractor, the written affirmative action program, and the results of the affirmative action efforts undertaken by the contractor. A compliance review may proceed in three stages:

(i) A desk audit of the written affirmative action program and supporting documentation to determine whether all elements required by the regulations in this part are included, whether the affirmative action program meets agency standards of reasonableness, and whether the affirmative action program and supporting documentation satisfy agency standards of acceptability. The desk audit is conducted at OFCCP offices;

(ii) An on-site review, conducted at the contractor's establishment to investigate unresolved problem areas identified in the affirmative action program and supporting documentation during the desk audit, to verify that the contractor has implemented the affirmative action program and has complied with those regulatory obligations not required to be included in the affirmative action program, and to examine potential instances or issues of discrimination. An on-site review normally will involve an examination of the contractor's personnel and employment policies, inspection and copying of documents related to employment actions, and interviews with employees, supervisors, managers, hiring officials; and

(iii) Where necessary, an off-site analysis of information supplied by the contractor or otherwise gathered during or pursuant to the on-site review;

(2) *Off-site review of records.* An analysis and evaluation of the affirmative action program (or any part thereof) and supporting documentation, and other documents related to the contractor's personnel policies and employment actions that may be relevant to a determination of whether the contractor has complied with the requirements of Section 503 of the Rehabilitation Act of 1973 and regulations;

(3) *Compliance check.* A determination of whether data and other information previously submitted by the contractor is complete and accurate; whether the contractor has maintained records consistent with § 60–741.80; and/or whether the contractor has developed an affirmative action program consistent with § 60–741.40; or

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(4) *Focused review.* An on-site review restricted to one or more components of the contractor's organization or one or more aspects of the contractor's employment practices.

* * * * *

10. In § 60–741.62, the first sentence of paragraph (a) is revised to read as follows:

**§ 60–741.62 Conciliation agreements and letters of commitment.**

(a) If a compliance evaluation, complaint investigation or other review by OFCCP finds a material violation of the Act or this part, and if the contractor is willing to correct the violations and/or deficiencies, and if OFCCP determines that settlement on that basis (rather than referral for consideration of formal enforcement) is appropriate, a written conciliation agreement shall be required. * * *

* * * * *

11. In § 60–741.65, the first sentence of paragraph (a)(1) is revised to read as follows:

**§ 60–741.65 Enforcement proceedings.**

(a) *General.* (1) If a compliance evaluation, complaint investigation or other review by OFCCP finds a violation of the act or this part, and the violation has not been corrected in accordance with the conciliation procedures in this part, or OFCCP determines that referral for consideration of formal enforcement (rather than settlement) is appropriate, OFCCP may refer the matter to the Solicitor of Labor with a recommendation for the institution of enforcement proceedings to enjoin the violations, to seek appropriate relief, to impose appropriate sanctions, or any combination of these outcomes. * * *

* * * * *

12. In § 60–741.68, the fourth sentence of paragraph (a) is revised to read as follows:

**§ 60–741.68 Reinstatement of ineligible contractors.**

(a) * * * Before reaching a decision, the Deputy Assistant Secretary may conduct a compliance evaluation of the contractor and may require the contractor to supply additional information regarding the request for reinstatement. * * *

* * * * *

13. In § 60–741.69, paragraph (a)(2) is revised to read as follows:

**§ 60–741.69 Intimidation and interference.**

(a) * * *

(2) Assisting or participating in any manner in an investigation, compliance evaluation, hearing, or any other activity related to the administration of the act or any other Federal, State or local law requiring equal opportunity for disabled persons;

* * * * *

14. In § 60–741.80, the last two sentences of paragraph (a) are revised to read as follows:

**§ 60–741.80 Recordkeeping.**

(a) * * * Where the contractor has received notice that a complaint of discrimination has been filed, that a compliance evaluation has been initiated, or that an enforcement action has been commenced, the contractor shall preserve all personnel records relevant to the complaint, compliance evaluation or action until final disposition of the complaint, compliance evaluation or action. The term "personnel records relevant to the complaint, compliance evaluation or action" would include, for example, personnel or employment records relating to the aggrieved person and to all other employees holding positions similar to that held or sought by the aggrieved person and application forms or test papers completed by an unsuccessful applicant and by all other candidates for the same position as that for which the aggrieved person applied and was rejected.

* * * * *

15. In § 60–741.81, the first sentence is revised to read as follows:

**§ 60–741.81 Access to records.**

Each contractor shall permit access during normal business hours to its places of business for the purpose of conducting on-site compliance evaluations and complaint investigations and inspecting and copying such books and accounts and records, including computerized records, and other material as may be relevant to the matter under investigation and pertinent to compliance with the act or this part. * * *

[FR Doc. 00–25774 Filed 10–11–00; 8:45 am]

BILLING CODE 4510–45–P

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October 12, 2000

Part VI

# Department of the Treasury

Internal Revenue Service

## 26 CFR Part 301

## Classification of Certain Pension and Employee Benefit Trusts, and Other Trusts; Proposed Rule

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**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 301**

**[REG–108553–00]**

**RIN 1545–AY09**

## Classification of Certain Pension and Employee Benefit Trusts, and Other Trusts

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking and notice of public hearing.

**SUMMARY:** This document contains proposed amendments to the regulations defining a domestic or foreign trust for federal tax purposes. The proposed regulations will affect certain specified employee benefit trusts and investment trusts. The proposed amendments provide that these employee benefit trusts and investment trusts are deemed to satisfy the control test for domestic trust treatment if United States trustees control all of the substantial decisions of the trust made by the trustees of the trust. This document also provides notice of a public hearing on these proposed regulations.

**DATES:** Written or electronic comments must be received by January 10, 2001. Requests to speak (with outlines of oral comments to be discussed) at the public hearing scheduled for January 31, 2001, at 10 a.m. must be submitted by January 10, 2001.

**ADDRESSES:** Send submissions to: CC:M&SP:RU (REG–108553–00), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:M&SP:RU (REG–108553–00), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/tax_regs/regslist.html. The public hearing will be held in the Internal Revenue Service Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Concerning the regulations, James A. Quinn, (202) 622–3060; concerning submissions and the hearing, Guy R. Traynor, (202) 622–7180 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

### Background

Section 401(a) requires a trust forming part of a pension, profit-sharing, or stock bonus plan (qualified plan trust) to be created or organized in the United States in order to be a qualified trust. Similarly, section 408(a) requires an individual retirement account trust (IRA trust), which also includes a trust for a Simple IRA described in section 408(p) and a trust for a Roth IRA described in section 408A, to be created or organized in the United States. Section 1.401–1(a)(3)(i) further provides that a trust will not constitute a qualified trust under section 401(a) unless the trust is maintained at all times as a domestic trust in the United States. Under § 1.408–2(b), a similar requirement applies to an IRA trust.

Prior to the enactment of the Small Business Job Protection Act (SBJPA), Public Law 104–188 (110 Stat. 1755) (August 20, 1996), the status of a qualified plan trust as a domestic trust generally turned on a facts and circumstances determination that the trust was a resident trust and was subject to the continuous jurisdiction of the United States. See, for example, Rev. Rul. 70–242 (1970–1 C.B. 89) regarding the determination of domestic trust status for purposes of section 401(a).

The SBJPA and the Taxpayer Relief Act of 1997 (TRA 97), Public Law 105–34 (111 Stat. 788) (August 5, 1997), amended section 7701(a)(30) to provide objective criteria for determining whether a trust is a domestic trust. New section 7701(a)(30)(E) provides that a trust will be treated as a domestic trust if: (1) a court within the United States is able to exercise primary supervision over the administration of the trust (court test), and (2) one or more United States persons have the authority to control all substantial decisions of the trust (control test). These changes are generally effective for taxable years beginning after December 31, 1996.

Section 301.7701–7, published in the **Federal Register** on February 2, 1999 (64 FR 4967), provides guidance under section 7701(a)(30)(E) in determining whether a trust is treated as a United States person and therefore as a domestic trust for federal tax purposes. The regulations are generally effective for taxable years ending after February 2, 1999, but may be applied by taxpayers for taxable years beginning after December 31, 1996. In addition, section 1907(a)(3) of the SBJPA, as amended by the TRA 97, generally provides that, to the extent prescribed in regulations, a trust that was in existence on August 20, 1996, and that was treated as a United States person on August 19, 1996, may elect to continue to be treated as a United States person. Section 301.7701–7(f) provides rules governing this election to continue to be treated as a United States person.

Section 301.7701–7(d) provides guidance on the application of the control test, including defining United States persons, substantial decisions, and control. Generally, for purposes of the control test, all persons with any power over substantial decisions of the trust, whether acting in a fiduciary capacity or not, must be counted for purposes of the control test.

However, § 301.7701–7(d)(1)(iv) provides a special rule for certain employee benefit trusts listed therein. These trusts are required to be created or organized in the United States and are subject to other detailed requirements for qualification under the Internal Revenue Code (Code). Therefore, § 301.7701–7(d)(1)(iv) provides that these trusts are deemed to satisfy the control test, provided that United States fiduciaries control all of the substantial decisions of the trust that are made by the trustees or fiduciaries. Section 301.7701–7(d)(1)(iv) authorizes the Commissioner to designate additional categories of trusts subject to the special rule in revenue procedures, notices, or other guidance published in the Internal Revenue Bulletin.

### Explanation

The IRS and the Treasury Department have become aware of two additional categories of trusts that should qualify for the special control test rule in § 301.7701–7(d)(1)(iv).

The first category is group trusts consisting of qualified plan trusts and IRA trusts, as described in Rev. Rul. 81–100 (1981–1 C.B. 326). If the requirements set forth in Rev. Rul. 81–100 are met, a group trust is itself exempt from tax, and the tax-exempt status of the participating trusts is not affected by the pooling of their funds in the group trust. One of the requirements is that the group trust must be created or organized in the United States and must be maintained at all times as a domestic trust in the United States. Because these trusts are required to be created or organized in the United States and are subject to other detailed requirements, they are similar to the other categories of employee benefit trusts listed in § 301.7701–7(d)(1)(iv). Therefore, the proposed regulations add group trusts described in Rev. Rul. 81–100 to the categories of trusts that may use the special control test rule.

The second category is certain investment trusts that are classified as trusts under § 301.7701–4(c)(1). An investment trust with a single class of ownership interests, representing undivided beneficial interests in the assets in the trust, is classified as a trust if there is no power under the trust agreement to vary the investment of the certificate holders. In addition, an investment trust with multiple classes of ownership interests, in which there is no power under the trust agreement to vary the investment of the certificate holders, is classified as a trust if the trust is formed to facilitate direct investment in the assets of the trust and the existence of multiple classes of ownership interests is incidental to that purpose. These trusts are treated as owned by the investors under the grantor trust rules of subpart E, part I, subchapter J, chapter 1 of the Code.

The proposed regulations add investment trusts classified as trusts under § 301.7701–4(c)(1) to the categories of trusts that may use the special control test rule, provided the investment trusts meet the conditions described in § 301.7701–7(d)(1)(iv)(I). These trusts are subject to reporting requirements as domestic grantor trusts, and each investor must report the items of income, deduction, and credit that are attributable to the investor's portion of the trust. The conditions set forth in the proposed regulations are intended to ensure that all trustees are United States persons including at least one institutional United States trustee, the sponsors (persons who exchange investment assets for beneficial interests with a view to selling the beneficial interests) are United States persons, and the beneficial interests are widely offered for sale primarily in the United States to United States persons. An investment trust that satisfies these conditions is deemed to satisfy the control test even though one or more investors may be foreign persons with the power to make a substantial decision of the trust.

In addition, the IRS and the Treasury Department have become aware of concerns expressed by taxpayers in applying the special rule of § 301.7701–7(d)(1)(iv) with respect to determining whether a person is or is not a fiduciary for purposes of the control test. For example, under section 3(14)(A) of the Employee Retirement Income Security Act of 1974 (ERISA), Public Law 93–406 (88 Stat. 829) (September 2, 1974), a variety of persons in addition to the trustee(s) is considered fiduciaries with respect to an employee benefit trust. In contrast, under ordinary trust principles the fiduciary of a trust is generally considered to be the trustee holding legal title to the trust assets on behalf of those having a beneficial interest therein. Section 301.7701–6(b). Therefore, these regulations propose to amend § 301.7701–7(d)(1)(iv) relating to the application of the control test of section 7701(a)(30)(E) to clarify that employee benefit trusts and certain investment trusts identified in the regulations are deemed to satisfy the control test if United States trustees control all of the substantial decisions of the trust made by the trustees of the trust.

Taxpayers concerned with maintaining domestic trust status should also note that, in appropriate cases, it may still be possible to elect pursuant to § 301.7701–7(f) to treat a trust existing on August 19, 1996, as a United States person.

*Applicotion to Certain Pension Trusts Created or Organized in Puerto Rico*

Section 1022(i)(1) of ERISA provides for tax exemption for certain trusts created or organized in Puerto Rico that form part of a pension, profit-sharing, or stock bonus plan. Section 1022(i)(2) and § 1.401(a)–50 generally provide that the administrator of such a trust may elect to have the trust treated as a trust created or organized in the United States for purposes of section 401(a). In light of the changes made to section 7701(a)(30) in the SBJPA and the TRA 97, and the ensuing regulations, some taxpayers have expressed concerns regarding the continuing application of sections 1022(i)(1) and (2) and § 1.401–50 to a pension trust created or organized in Puerto Rico that is not a domestic trust within the meaning of section 7701(a)(30). Because the application of these provisions is not restricted to trusts that are domestic trusts within the meaning of section 7701(a)(30), the 1996 and 1997 amendments to section 7701(a)(30) and the ensuing regulations do not affect the application of these provisions.

### Proposed Effective Date

The amendments to the regulations are proposed to be applicable to trusts for taxable years ending on or after the date on which these regulations are published as final regulations in the **Federal Register**. It is anticipated that the final regulations will provide that trusts will be able to rely on the final regulations for taxable years beginning after December 31, 1996, and for electing trusts under section 1907(a)(3)(B) of the SBJPA for taxable years ending after August 20, 1996. In addition, for taxable years beginning after December 31, 1996, and taxable years ending before these regulations are finalized, or for electing trusts under section 1907(a)(3)(B) of the SBJPA for taxable years ending after August 20, 1996, and before these regulations are finalized, the status of a trust as a qualified plan trust under section 401(a), an IRA trust under section 408(a), or any other employee benefit trust described in § 301.7701–7(d)(1)(iv) of these proposed regulations will not be challenged by the IRS based on a failure of the trust to satisfy the control test of section 7701(a)(30)(E)(ii) and, therefore, a failure to be maintained at all times as a domestic trust in the United States, if the trust satisfies the control test safe harbor set forth in § 301.7701–7(d)(1)(iv) of these proposed regulations or § 301.7701–7(d)(1)(iv) of the final regulations published in the **Federal Register** on February 2, 1999.

### Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

### Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (preferably a signed original and eight (8) copies) that are submitted timely to the IRS. The IRS and the Treasury Department specifically request comments on the clarity of the proposed regulations and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for January 31, 2001, at 10 a.m. in the Internal Revenue Service Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington DC. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

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Persons that wish to present oral comments at the hearing must submit written comments by January 10, 2001, and submit an outline of the topics to be discussed and the time to be devoted to each topic (preferably a signed original and eight (8) copies) by January 10, 2001.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information: The principal author of these regulations is James A. Quinn of the Office of Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

**List of Subjects in 26 CFR Part 301**

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

**Proposed Amendments to the Regulations**

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

**PART 301—PROCEDURE AND ADMINISTRATION**

**Paragraph 1.** The authority citation for part 301 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 * * *

**Par. 2.** Section 301.7701–7 is amended as follows:

1. Paragraph (d)(1)(iv) introductory text is revised.
2. Paragraph (d)(1)(iv)(H) is redesignated as paragraph (d)(1)(iv)(J).
3. New paragraphs (d)(1)(iv)(H) and (I) are added.
4. Paragraph (d)(1)(v) *Example 1* is revised and *Example 5* is added.
5. The first sentence of paragraph (e)(1) is revised.
6. Paragraph (e)(3) is added.

The revisions and additions read as follows:

**§ 301.7701–7 Trusts—domestic and foreign.**

* * * * *

(d) * * *

(1) * * *

(iv) *Safe harbor for certain employee benefit trusts and investment trusts.* Notwithstanding the provisions of this paragraph (d), the trusts listed in this paragraph (d)(1)(iv) are deemed to satisfy the control test set forth in paragraph (a)(1)(ii) of this section, provided that United States trustees control all of the substantial decisions made by the trustees of the trust—

* * * * *

(H) A group trust described in Rev. Rul. 81–100 (1981–1 C.B. 326) (See § 601.601(d)(2) of this chapter);

(I) An investment trust classified as a trust under § 301.7701–4(c), provided that the following conditions are satisfied—

(*1*) All trustees are United States persons and at least one of the trustees is a bank, as defined in section 581, or a United States Government-owned agency or United States Government-sponsored enterprise;

(*2*) All sponsors (persons who exchange investment assets for beneficial interests with a view to selling the beneficial interests) are United States persons; and

(*3*) The beneficial interests are widely offered for sale primarily in the United States to United States persons;

* * * * *

(v) * * *

*Example 1.* Trust is a testamentary trust with three fiduciaries, *A*, *B*, and *C*. *A* and *B* are United States citizens and *C* is a nonresident alien. No persons except the fiduciaries have authority to make any decisions of the trust. The trust instrument provides that no substantial decisions of the trust can be made unless there is unanimity among the fiduciaries. The control test is not satisfied because United States persons do not control all the substantial decisions of the trust. No substantial decisions can be made without *C*'s agreement.

* * * * *

*Example 5. X*, a foreign corporation, conducts business in the United States through various branch operations. *X* has United States employees and has established a trust as part of a qualified employee benefit plan under section 401(a) for these employees. The trust is established under the laws of State *A*, and the trustee of the trust is *B*, a United States bank governed by the laws of State *A*. *B* holds legal title to the trust assets for the benefit of the trust beneficiaries. A plan committee makes decisions with respect to the plan and the trust. The plan committee can direct *B*'s actions with regard to those decisions and under the governing documents *B* is not liable for those decisions. Members of the plan committee consist of United States persons and nonresident aliens, but nonresident aliens make up a majority of the plan committee. Decisions of the plan committee are made by majority vote. In addition, *X* retains the power to terminate the trust and to replace the United States trustee or to appoint additional trustees. This trust is deemed to satisfy the control test under paragraph (d)(1)(iv) of this section because *B*, a United States person, is the trust's only trustee. Any powers held by the plan committee or *X* are not considered under the safe harbor of paragraph (d)(1)(iv) of this section. In the event that *X* appoints additional trustees including foreign trustees, any powers held by such trustees must be considered in determining whether United States trustees control all substantial decisions made by the trustees of the trust.

* * * * *

(e) *Effective date*—(1) *General rule.* Except for the election to remain a domestic trust provided in paragraph (f) of this section and except as provided in paragraph (e)(3) of this section, this section is applicable to taxable years ending after February 2, 1999.

* * * * *

(3) *Effective date of safe harbor for certain employee benefit trusts and investment trusts.* Paragraphs (d)(1)(iv) and (v) *Examples 1* and *5* of this section apply to trusts for taxable years ending on or after the date of publication of final regulations in the **Federal Register**. Paragraphs (d)(1)(iv) and (v) *Examples 1* and *5* of this section may be relied on by trusts for taxable years beginning after December 31, 1996, and also may be relied on by trusts whose trustees have elected to apply sections 7701(a)(30) and (31) to the trusts for taxable years ending after August 20, 1996, under section 1907(a)(3)(B) of the SBJP Act.

* * * * *

**David A. Mader,**

*Acting Commissioner of Internal Revenue.*

[FR Doc. 00–26350 Filed 10–10–00; 3:31 pm]

BILLING CODE 4830–01–P

Federal Register

**Thursday,**
**October 12, 2000**

**Part VII**

# The President

**Executive Order 13170—Increasing Opportunities and Access for Disadvantaged Businesses**

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# Presidential Documents

Title 3—

The President

## Executive Order 13170 of October 6, 2000

## Increasing Opportunities and Access for Disadvantaged Businesses

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Small Business Act (15 U.S.C. 631 *et seq.*), section 7102 of the Federal Acquisition Streamlining Act of 1994 (Public Law 103–355, 15 U.S.C. 644 note), the Office of Federal Procurement Policy Act (41 U.S.C. 403 *et seq.*), Executive Order 11625, and to provide for increased access for disadvantaged businesses to Federal contracting opportunities, it is hereby ordered as follows:

**Section 1.** *Policy.* It is the policy of the executive branch to ensure nondiscrimination in Federal procurement opportunities for businesses in the Small Disadvantaged Business Program (SDBs), businesses in the section 8(a) Business Development program of the Small Business Administration (8(a)s), and Minority Business Enterprises (MBEs) as defined in section 6 of Executive Order 11625, of October 13, 1971, and to take affirmative action to ensure inclusion of these businesses in Federal contracting. These businesses are of vital importance to job growth and the economic strength of the United States but have faced historic exclusion and underutilization in Federal procurement. All agencies within the executive branch with procurement authority are required to take all necessary steps, as permitted by law, to increase contracting between the Federal Government and SDBs, 8(a)s, and MBEs.

**Sec. 2.** *Responsibilities of Executive Departments and Agencies with Procurement Authority.* The head of each executive department and agency shall carry out the terms of this order and shall designate, where appropriate, his or her Deputy Secretary or equivalent to implement the terms of this order.

(a) Each department and agency with procurement authority shall:

(i) aggressively seek to ensure that 8(a)s, SDBs, and MBEs are aware of future prime contracting opportunities through wide dissemination of contract announcements, including sources likely to reach 8(a)s, SDBs, other small businesses, and MBEs. Each department and agency shall use all available forms of communication to implement this provision, including the Internet, speciality press, and trade press;

(ii) work with the Small Business Administration (SBA) to ensure that information regarding sole source contracts awarded through the section 8(a) program receives the widest dissemination possible to 8(a)s;

(iii) ensure that the price evaluation preference programs authorized by the Federal Acquisition Streamlining Act of 1994 are used to the maximum extent permitted by law in areas of economic activity in which SDBs have historically been underused;

(iv) aggressively use the firms in the section 8(a) program, particularly in the developmental stage of the program, so that these firms have an opportunity to overcome artificial barriers to Federal contracting and gain access to the Federal procurement arena;

(v) ensure that department and agency heads take all reasonable steps so that prime contractors meet or exceed Federal subcontracting goals, and enforce subcontracting commitments as required by the Small Business Act (15 U.S.C. 637(d)) and other related laws. In particular, they shall

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ensure that prime contractors actively solicit bids for subcontracting opportunities from 8(a)s and SDBs, and fulfill their SDB and section 8(d) subcontracting obligations. Enforcement of SDB subcontracting plan commitments shall include assessments of liquidated damages, where appropriate, pursuant to applicable contract clauses;

(vi) encourage the establishment of business-to-business mentoring and teaming relationships, including the implementation of Mentor-Protege programs, to foster the development of the technical and managerial capabilities of 8(a)s and SDBs and to facilitate long-term business relationships;

(vii) offer information, training, and technical assistance programs for 8(a)s and SDBs including, where appropriate, Government acquisition forecasts in order to assist 8(a)s and SDBs in developing their products, skills, business planning practices, and marketing techniques;

(viii) train program and procurement officials regarding the policy of including 8(a)s and SDBs in Federal procurement. This includes prescribing procedures to ensure that acquisition planners, to the maximum extent practicable, structure acquisitions to facilitate competition by SDBs and 8(a)s, including their participation in the competition of multiple award requirements;

(ix) provide the information required by the Department of Commerce when it requests data to develop the benchmarks used in the price evaluation preference programs authorized by the Federal Acquisition Streamlining Act of 1994;

(x) ensure that Directors of Offices of Small and Disadvantaged Business Utilization carry out their responsibilities to maximize the participation of 8(a)s and SDBs in Federal procurement and, in particular, ensure that the Directors report directly to the head of each department or agency as required by law; and

(xi) as required by law, establish with the Small Business Administration small business goals to ensure that the government-wide goal for participation of small business concerns is not less than 23 percent of Federal prime contracts. Where feasible and consistent with the effective and efficient performance of its mission, each agency shall establish a goal of achieving a participation rate for SDBs of not less than 5 percent of the total value of prime contract awards for each fiscal year and of not less than 5 percent of the total value of subcontract awards for each year. Each agency shall also establish a goal for awards made to 8(a) firms pursuant to section 8(a) of the Small Business Act. These goals shall be considered the minimum goals and every effort shall be taken to exceed these goals wherever feasible.

(b) Each department and agency with procurement authority shall:

(i) develop a long-term comprehensive plan to implement the requirements of section 2(a) of this order and submit this plan to the Director of the Office of Management and Budget (OMB) within 90 days of the date of this order. The Director of OMB shall review each plan and report to the President on the sufficiency of each plan to carry out the terms of this order; and

(ii) annually, by April 30 each year, assess its efforts and the results of those efforts to increase utilization of 8(a)s, SDBs, and MBEs as both prime contractors and subcontractors and report on those efforts to the President through the Director of OMB, who shall review the evaluations made of the agency assessments by the Small Business Administration.

**Sec. 3.** *Responsibilities of the Small Business Administration.* The Administrator of the SBA shall:

(a) evaluate on a semi-annual basis, using the Federal Procurement Data System (FPDS), the achievement of government-wide prime and subcontract goals and the actual prime and subcontract awards to 8(a)s and SDBs for each department and agency. The OMB shall review SBA's evaluation;



(b) ensure that Procurement Center Representatives receive adequate training regarding the section 8(a) and SDB programs and that they consistently and aggressively seek opportunities for maximizing the use of 8(a)s and SDBs in department and agency procurements; and

(c) ensure that each department and agency's small and disadvantaged business procurement goals as well as the amount of procurement of each department and agency with 8(a)s, SDBs, and MBEs is publicly available in an easily accessible and understandable format such as through publication on the Internet.

**Sec. 4.** *Federal Advertising.* Each department or agency that contracts with businesses to develop advertising for the department or agency or to broadcast Federal advertising shall take an aggressive role in ensuring substantial minority-owned entities' participation, including 8(a), SDB, and MBE, in Federal advertising-related procurements. Each department and agency shall ensure that all creation, placement, and transmission of Federal advertising is fully reflective of the Nation's diversity. To achieve this diversity, special attention shall be given to ensure placement in publications and television and radio stations that reach specific ethnic and racial audiences. Each department and agency shall ensure that payment for Federal advertising is commensurate with fair market rates in the relevant market. Each department and agency shall structure advertising contracts as commercial acquisitions consistent with part 12 of the Federal Acquisition Regulation processes and paperwork to enhance participation by 8(a)s, SDBs, and MBEs.

**Sec. 5.** *Information Technology.* Each department and agency shall aggressively seek to ensure substantial 8(a), SDB, and MBE participation in procurements for and related to information technology, including procurements in the telecommunications industry. In so doing, the Chief Information Officer in each department and agency shall coordinate with procurement officials to implement this section.

**Sec. 6.** *General Services Administration Schedules.* The SBA and the General Services Administration (GSA) shall act promptly to expand inclusion of 8(a)s and SDBs on GSA Schedules, and provide greater opportunities for 8(a) and SDB participation in orders under such schedules. The GSA should ensure that procurement and program officials at all levels that use GSA Schedules aggressively seek to utilize the Schedule contracts of 8(a)s and SDBs. The GSA shall allow agencies ordering from designated 8(a) firms under the Multiple Award Schedule to count those orders toward their 8(a) procurement goals.

**Sec. 7.** *Bundling Contracts.* To the extent permitted by law, departments and agencies must submit to the SBA for review any contracts that are proposed to be bundled. The determination of the SBA with regard to the appropriateness of bundling in each instance must be carefully reviewed by the department or agency head, or his or her designee, and must be given due consideration. If there is an unresolvable conflict, then the SBA or the department or agency can seek assistance from the OMB.

**Sec. 8.** *Awards Program.* The Secretary of Commerce and the Administrator of the SBA shall jointly undertake a feasibility study to determine the appropriateness of an awards program for executive departments and agencies who best exemplify the letter and intent of this order in increasing opportunities for 8(a)s, SDBs, and MBEs in Federal procurement. Such study shall be presented to the President within 90 days of the date of this order.

**Sec. 9.** *Applicability.* Independent agencies are requested to comply with the provisions of this order.

**Sec. 10.** *Administration, Enforcement, and Judicial Review.*

(a) This order shall be carried out to the extent permitted by law and consistent with the Administration's priorities and appropriations.

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(b) This order is not intended and should not be construed to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or its employees.

William J. Clinton

THE WHITE HOUSE,
*October 6, 2000.*

[FR Doc. 00–26446
Filed 10–11–00; 8:45 am]
Billing code 3195–01–P



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## LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

**H.R. 940/P.L. 106–278**

To designate the Lackawanna Valley and the Schuylkill River National Heritage Areas, and for other purposes. (Oct. 6, 2000; 114 Stat. 814)

**H.R. 2909/P.L. 106–279**

Intercountry Adoption Act of 2000 (Oct. 6, 2000; 114 Stat. 825)

**H.R. 4919/P.L. 106–280**

Security Assistance Act of 2000 (Oct. 6, 2000; 114 Stat. 845)

**H.R. 5193/P.L. 106–281**

FHA Downpayment Simplification Extension Act of 2000 (Oct. 6, 2000; 114 Stat. 865)

**H.J. Res. 110/P.L. 106–282**

Making further continuing appropriations for the fiscal year 2001, and for other purposes. (Oct. 6, 2000; 114 Stat. 866)

**S. 430/P.L. 106–283**

Kake Tribal Corporation Land Transfer Act (Oct. 6, 2000; 114 Stat. 867)

**Last List October 4, 2000**

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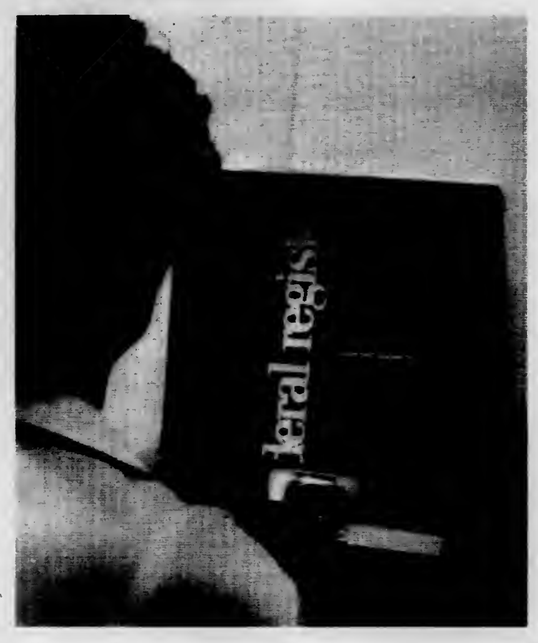
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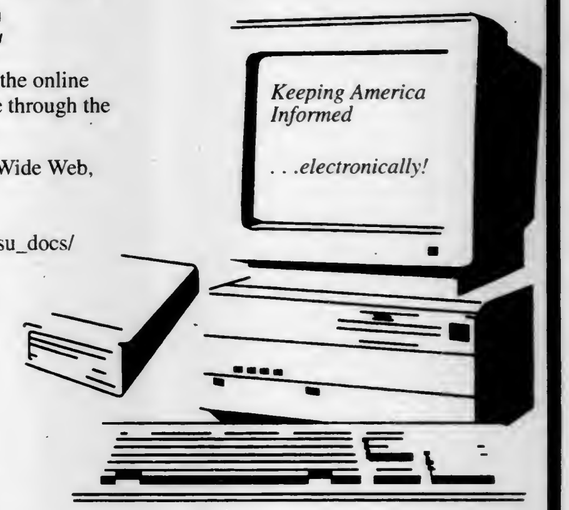
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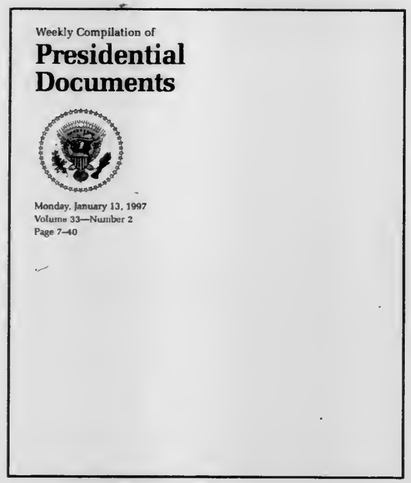
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# Federal Register

10–13–00 Friday
Vol. 65 No. 199 Oct. 13, 2000

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# Federal Register

10–13–00 Friday
Vol. 65 No. 199 Oct. 13, 2000
Pages 60831–61076

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# Presidential Documents

Title 3—

The President

**Proclamation 7359 of October 10, 2000**

## Suspension of Entry as Immigrants and Nonimmigrants of Persons Impeding the Peace Process in Sierra Leone

**By the President of the United States of America**

**A Proclamation**

In light of the longstanding political and humanitarian crisis in Sierra Leone, I have determined that it is in the interests of the United States to restrict the entry into the United States as immigrants and nonimmigrants of certain foreign nationals who plan, engage in, or benefit from activities that support the Revolutionary United Front or that otherwise impede the peace process in Sierra Leone, and the spouses, children of any age, and parents of such persons.

NOW, THEREFORE, I, WILLIAM J. CLINTON, by the power vested in me as President by the Constitution and the laws of the United States of America, including section 212(f) of the Immigration and Nationality Act of 1952, as amended (8 U.S.C. 1182(f)), and section 301 of title 3, United States Code, hereby find that the unrestricted immigrant and nonimmigrant entry into the United States of persons described in section 1 of this proclamation would, except as provided for in section 2 or 3 of this proclamation, be detrimental to the interests of the United States. I therefore hereby proclaim that:

**Section 1.** The entry into the United States as immigrants and nonimmigrants of persons who plan, engage in, or benefit from activities that support the Revolutionary United Front or that otherwise impede the peace process in Sierra Leone, and the spouses, children of any age, and parents of such persons, is hereby suspended.

**Sec. 2.** Section 1 shall not apply with respect to any person otherwise covered by section 1 where the entry of such person would not be contrary to the interests of the United States.

**Sec. 3.** Persons covered by sections 1 and 2 shall be identified pursuant to such procedures as the Secretary may establish under section 5 of this proclamation.

**Sec. 4.** Nothing in this proclamation shall be construed to derogate from United States obligations under applicable international agreements.

**Sec. 5.** The Secretary of State shall have responsibility to implement this proclamation pursuant to such procedures as the Secretary may establish.

**Sec. 6.** This proclamation is effective immediately and shall remain in effect, in whole or in part, until such time as the Secretary of State determines that it is no longer necessary and should be terminated, in whole or in part. The Secretary of State's determination shall be effective upon publication of such determination in the **Federal Register**.

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IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of October, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fifth.

William J. Clinton

[FR Doc. 00–26529
Filed 10–12–00; 8:45 am]
Billing code 3195–01–P



## Presidential Documents

**Proclamation 7360 of October 10, 2000**

### Eleanor Roosevelt Day, 2000

**By the President of the United States of America**

**A Proclamation**

Eleanor Roosevelt was one of the most influential figures of the 20th century, and her life spanned some of the most dramatic and challenging events in modern history. Steadfast in her commitment to America, democracy, and a world that honored human rights, she told Americans across the Nation, "We are on trial to show what democracy means." Through the Great Depression, two world wars, the Holocaust, the creation of the United Nations, the Cold War, and the civil rights movement, her singular integrity and clear moral vision helped forge a better life for people around the world.

Eleanor Roosevelt was our longest-serving First Lady, and her dedicated efforts as a political leader, humanitarian, social activist, and journalist have made her an icon to millions. During the 12 years of Franklin Delano Roosevelt's Administration, she traveled tirelessly around the country, listening to the American people's problems, concerns, joys, and fears. She saw firsthand the ravages that poverty, greed, ignorance, and bigotry wreaked on the lives of ordinary Americans. She advocated strongly for our Nation's disadvantaged—urging an end to child labor, pushing for the establishment of a minimum wage, speaking out for workers' rights, confronting racial discrimination in New Deal programs, and encouraging greater power and independence for women in the workplace.

But perhaps her greatest achievement would come in the years after her husband's death. A delegate to the General Assembly of the newly created United Nations from 1945 to 1951, Eleanor Roosevelt was elected Chairperson of the U.N.'s Human Rights Commission in 1946. She played a pivotal role in drafting the Universal Declaration of Human Rights, and its final language vividly reflects her humanitarian ideals and uncompromising commitment to the inherent worth of every human being. The first article of the Declaration, "All human beings are born free and equal in dignity and rights," set the standard by which all future human rights charters would be judged.

Whether working for the United Nations, the NAACP, the Girl Scouts, the Presidential Commission on the Status of Women, or the National Conference of Christians and Jews, Eleanor Roosevelt devoted her boundless energy to creating a world defined by respect for and dedication to democratic values. She was a woman ahead of her time, and her achievements transcend her generation. As we seek to chart a steady course for America, democracy, and human rights in this new century, we need only look to her values, character, and accomplishments to provide us with an unfailing moral compass.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim October 11, 2000, the anniversary of her birthday, as Eleanor Roosevelt Day. I call upon government officials, educators, labor leaders, employers, diplomats, human rights activists, and citizens of the United States to observe this day with appropriate programs and activities.

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IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of October, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fifth.

William J. Clinton

[FR Doc. 00–26539
Filed 10–12–00; 8:45 am]
Billing code 3195–01–P



## Presidential Documents

**Proclamation 7361 of October 10, 2000**

### General Pulaski Memorial Day, 2000

**By the President of the United States of America**

**A Proclamation**

Each year on October 11, we solemnly pause to honor the life and achievements of Casimir Pulaski, a true hero whose devotion to liberty has inspired the gratitude of the American people for more than 200 years.

Born to wealth and privilege in Poland, Pulaski sacrificed both by joining his father and brothers in the fight against tyranny and foreign oppression in his beloved homeland. His battlefield exploits earned him a leading position among Polish patriotic forces as well as renown and admiration throughout Europe. After years of braving insurmountable odds, however, Pulaski and his fellow freedom fighters were overwhelmed by enemy forces. Undaunted, he continued to battle for Poland's freedom while in exile in Turkey and France.

Impressed by Pulaski's military record and reverence for freedom, Benjamin Franklin wrote from his post in Paris to George Washington and succeeded in helping Pulaski secure a commission in the Continental Army. As a result of Pulaski's brave and able conduct at the battle of Brandywine Creek in 1777, the Continental Congress granted him a Brigadier General commission and the command of all Continental Army cavalry forces. For the next 2 years, General Pulaski contributed much to the American cause in the Revolutionary War through his battlefield expertise, mastery of cavalry tactics, and extraordinary courage. On October 9, 1779, Pulaski was gravely wounded at the siege of Savannah while leading patriot forces against fire from enemy batteries. He died 2 days later, far from his beloved homeland and mourned by the brave Americans whose cause he had made his own.

Today, as both the United States and Poland enjoy freedom and growing prosperity and look forward to a bright future as friends and NATO allies, we remember with profound appreciation Casimir Pulaski's resolve and sacrifice and the generations of Poles and Americans like him who valiantly fought to secure the peace and liberty we enjoy today.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim Wednesday, October 11, 2000, as General Pulaski Memorial Day. I encourage all Americans to commemorate this occasion with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of October, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fifth.

William J. Clinton

[FR Doc. 00–26540
Filed 10–12–00; 8:45 am]
Billing code 3195–01–P

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# Rules and Regulations

Federal Register
Vol. 65, No. 199
Friday, October 13, 2000

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## OFFICE OF PERSONNEL MANAGEMENT

## 5 CFR Part 430

**RIN 3206–AI57**

## MANAGING SENIOR EXECUTIVE PERFORMANCE

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management (OPM) is amending its regulations governing performance appraisal in the Senior Executive Service (SES). The amended regulations will help agencies hold senior executives accountable by: Reinforcing the link between performance management and strategic planning; requiring agencies to use balanced measures in evaluating executive performance; and giving agencies more flexibility to tailor performance management systems to their unique mission requirements and organizational climates.

**EFFECTIVE DATES:** November 13, 2000.

**FOR FURTHER INFORMATION CONTACT:** Anne Kirby, (202) 606–1610, or email to SESmgmt@opm.gov.

**SUPPLEMENTARY INFORMATION:** OPM published a proposed rule in the **Federal Register** on June 21, 2000 (65 FR 38442) to amend the regulations governing SES performance appraisal. We received 15 written comments during the public comment period: 7 from Federal departments and agencies; 2 from professional organizations; and 6 from individuals. In addition, we have discussed the proposals with a number of senior executives and other stakeholders since publication of the proposed rule. There was broad support for the proposed changes, especially those that give agencies greater flexibility for tailoring their performance management systems to their organizational and operational needs. There was also general support for the concept of balanced measurement, although some commenters said they need additional information and guidance about using balanced measures. There were a few suggested modifications to the proposals, and some commenters proposed additional requirements. We discussed the public comments and suggestions with a representative group of agency SES program managers. We have included their views in our reactions to these comments and suggestions.

### Background

The members of the Senior Executive Service (SES) are dedicated, hard-working public servants. Individually and through the organizations they lead, these senior executives strive to deliver value to the American people. This results-orientation was central to the original vision for the SES, outlined in the Civil Service Reform Act (CSRA) of 1978. CSRA intended that SES performance management systems:

- "Ensure accountability for honest, economical, and efficient Government"
- "Assure that senior executives are accountable and responsible for the effectiveness and productivity of employees under them"
- "Ensure that compensation, retention, and tenure are contingent on executive success which is measured on the basis of individual and organizational performance"
- "Recognize exceptional accomplishment."

The Government Performance and Results Act (GPRA) of 1993 and the National Partnership for Reinventing Government (NPR) validated this original vision and challenged Government to shift its focus from internal processes and outputs to results that are aligned with customer expectations.

In discussions with stakeholders that were triggered by OPM's 1998 *Draft Framework for Improving the Senior Executive Service*, executives and others said the current regulations discourage results-oriented performance management. They also told us that agency leaders must drive the effort to strengthen their SES performance management systems. Respondents to OPM's survey of the Senior Executive Service in 1999 reinforced these findings:

- Only 72% believed their performance rating represents a fair and accurate picture of their performance;
- Only 48% felt that SES bonus determinations are based on merit; and
- 57% did not think poor performing executives are removed from their positions.

(The survey findings are available on OPM's website (www.opm.gov/SES).)

In response to these concerns, OPM proposed to amend the regulations governing SES performance appraisal. The amended regulations give agencies more flexibility to reinvigorate their SES performance management systems—to focus on results over process. They reinforce the agencies' responsibility to communicate performance expectations and to use the results of the performance management process as a basis for performance awards and other personnel decisions. The regulations also require SES performance management systems to balance organizational results with the needs and perspectives of customers and employees.

### Overall Approach

Our intent was to substantially deregulate in order to give agencies much more flexibility to tailor their systems and approaches for managing senior executive performance to fit their unique and changing mission and operational needs and organizational climates. We pared many of the current regulatory requirements back to the statutory requirements. We eliminated requirements that are unnecessarily constraining and burdensome to agencies or are process-bound. The changes balance the agencies' desire for maximum flexibility with the need for a corporate approach that safeguards merit principles and contributes to a better, more diverse, results-oriented Government. In addition, we totally restructured the regulations to organize the material more logically and to use plain language, as the President directed in June 1998.

We broadened the focus from determining annual summary ratings to managing performance on an ongoing basis and shifted the emphasis from process to results. The restructured regulations establish separate sections on the key components of performance

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management: planning and communicating, monitoring, appraising, and rating performance and using performance results.

As part of this expanded focus, we revised the purpose statement to stress:

- Expecting excellence in senior executive performance;
- Holding executives accountable for results;
- Communicating regularly about goals and expectations;
- Appraising senior executive performance using measures that balance organizational results with customer, employee, or other perspectives; and
- Making performance the basis for pay, awards, and other personnel decisions.

This emphasis is fundamental to the key regulatory changes.

Most commenters supported this approach. One agency in particular expressed appreciation for OPM's efforts to make the regulations as open as possible, with few absolute restrictions. Four commenters specifically mentioned support for reinforcing the links between SES performance and agency strategic planning initiatives. Another agency said the changes would help agencies hold senior executives accountable.

Two commenters questioned whether regulations are needed to accomplish the goals of this initiative. One agency said that agencies can align performance management systems with GPRA goals under current regulations. A professional organization said rulemaking is not the most appropriate vehicle for establishing guidelines for managing performance, as this is an ever-evolving art. This organization preferred that we use more informal methods to provide guidance to agencies.

It is true that many of the performance management improvements included in these regulations can be implemented under the current framework of law and regulation. In fact, several agencies have already implemented innovative performance management systems which incorporate balanced measures. However, many agencies told us that the current regulations focus too much on process and inhibit results-oriented performance management. They asked for more latitude to design performance systems that better fit their organizational cultures and operational goals. By overhauling these regulations, we hope to promote a culture change—a culture change that views SES performance management as a tool for driving results, instead of an irritating, annual chore.

**Key Changes in Current Requirements**

We modified *system requirements* to prescribe a framework for agency systems that identifies key system components, without specifying how these components will be implemented. Within this framework, agencies can design performance management systems to meet their organizational and operational needs. No commenters opposed this modification.

We modified the *minimum appraisal period*. The current requirements provide for a minimum appraisal period of 90–120 days. Agencies can rate a senior executive's performance after he/she has completed the minimum period, provided there is enough information on which to base a rating. We proposed to keep the 90-day minimum, but remove the 120-day cap to allow agencies to establish minimum appraisal periods that are longer than 120 days. There was general support for this proposal. However, one professional organization recommended that the minimum appraisal period be lengthened from 90 days to 120 days because, in their view, 90 days does not give sufficient time to form the basis for a meaningful evaluation. The minimum appraisal period has always been 90 days, with the caveat that agencies can rate an executive's performance only if there is enough information on which to base a rating. To date, there has been no evidence of agency or senior executive difficulty with the 90-day minimum. Further, the SES program managers preferred to retain the 90-day minimum period, provided that we also retain the caveat. Therefore, we are not adopting the organization's recommendation. The final regulations reflect the minimum appraisal provisions as proposed.

We changed *performance standards to performance requirements* to reflect the term used in statute, and eliminated the requirement to use the term *non-critical element*. Agencies will establish performance requirements for critical elements and any other performance elements that will be used to appraise performance and derive the annual summary rating. There were no objections to these changes, so they are adopted as proposed.

We modified *rating level* requirements to remove the requirement to establish three rating levels for each critical element. The performance on each critical element and any other performance elements must be appraised. No commenters objected to these changes, so they are adopted as proposed.

We reduced the *summary rating level requirements* to the minimum three summary rating levels prescribed in statute (*i.e.*, fully successful, minimally satisfactory, and unsatisfactory). We removed the current maximum of five levels (*i.e.*, no more than two levels above fully successful). There were no objections to these changes, so they are adopted as well.

We revised *rating terms* to reflect the statutory requirement for an annual summary rating. There are now only two rating terms: the *initial rating* becomes *initial summary rating* and the *final rating* becomes the *annual summary rating*. We removed references to other types of ratings. There were no comments on these changes, so they are adopted as proposed.

We modified the *method for deriving summary ratings* to remove the current requirement to give critical elements more weight than non-critical elements in determining a summary rating. There were no comments on this change, so it is adopted.

**Balanced Measurement**

The regulations require agencies to evaluate senior executive performance using measures that balance organizational results with customer satisfaction, employee perspectives, and any other measures agencies decide are appropriate. Introduction of the balanced scorecard concept in 1992 by Robert Kaplan and David Norton of the Harvard Business School as well as recent studies by the National Partnership for Reinventing Government and others have shown that both the public and private sectors are increasingly and successfully using balanced measurement to help create high-performing organizations. They indicate that an approach to performance planning, management, and measurement that balances the needs and perspectives of customers, stakeholders, and employees with the achievement of the organization's business or operational results is critical to successful improvement efforts.

By institutionalizing the use of balanced measures, the Government acknowledges what its best executives have always known: leading people and building customer coalitions are the foundation of organizational success. In OPM's 1999 SES survey, career executives reported that "leading people" and "building coalitions" are the most important contributors to executive success now, and they will be even more important in the future.

There is general support for the concept of balanced measurement, although some commenters requested additional information and guidance about using balanced measures. There



was consensus that the regulations should not prescribe how balanced measures are imposed and implemented. The regulations require agencies to evaluate senior executive performance using balanced measures, but they do not dictate how. Agencies can define the measures, determine the appropriate balance among the various measures, and decide an implementation method that best meets their organizational and operational needs.

In discussions with stakeholders about the proposed regulations, some have expressed anxiety about the measurement factors and what they mean. Some fear that employee perspectives means a supervisor's popularity with employees. Some said that senior executives have multiple customers and stakeholders, many of whom have conflicting views and interests. They are concerned that these considerations might not be taken into account. A few worried that senior executives would be held accountable for program results over which they have little or no control. Others were concerned that using balanced measurement would require agencies to invest in expensive surveys or sophisticated measurement tools.

These are all valid concerns, but agencies will have latitude under the regulations to weigh employee and customer concerns in whatever manner they decide is appropriate to their missions and structures. The employee perspectives factor is not a "popularity contest." Rather, this factor focuses on such things as how executives lead and motivate their employees, address job and training needs, and provide a healthy working environment.

- Having multiple stakeholders is a "given" in the Federal sector, where executives frequently have to balance the needs of a variety of customers and stakeholders. For example, in regulatory agencies, executives often make decisions that stakeholders do not endorse. The customer satisfaction factor considers how executives deal with stakeholders, balance the varying needs of customers, and build partnerships and coalitions to achieve results. The issue is not always whether customers or stakeholders agree with the decision, but how the executives reach the decision; *i.e.*, whether stakeholders have an opportunity to participate in the decision-making and share their views, whether customers are treated with interest and respect, etc.
- Regarding measurement, we believe that agencies can measure results in ways that do not require elaborate systems.

Further, agencies will have the flexibility to define measures and design systems that fit their organizational and operational needs and are aligned with their strategic and performance planning initiatives. These flexibilities should enable agencies to address their senior executives' concerns.

Two commenters suggested mandating additional measures. One was the addition of financial results to more directly reflect Kaplan and Norton's balanced scorecard approach. The other proposed adding diversity and representation.

The National Partnership for Reinventing Government's August 1999 report on *Balancing Measures* states that, although there is no such thing as a fixed and truly balanced set of measures, a balanced approach should factor in at least employee, customer, and business perspectives. Agencies may add other measures; however they must not dilute the importance of the key measures. (The report on *Balancing Measures* is available on the NPR website at: www.npr.gov.)

We discussed these recommended additions with SES program managers, who preferred that the regulations only specify the three most common factors, *i.e.*, organization results, customer satisfaction, and employee perspectives. Most believed that the three key measures are broad enough to incorporate diversity and financial measures. However, agencies have the flexibility to address them as separate factors, if they choose. Therefore, consistent with our approach to give agencies as much flexibility as possible to develop measures that reflect their overall mission strategies, we are not adopting the recommendations. OPM will issue supplemental guidance and continue ongoing discussions with stakeholders to help agencies address balanced measurement.

**Additional Proposed Requirements**

*Evaluation Criteria.* Two commenters proposed that we mandate additional evaluation criteria. One proposed to include selected leadership competencies as an element of each executive's appraisal. Another proposed a requirement that two of the executive core qualifications for entry into the Senior Executive Service (leading people and building coalitions) be made critical elements in all SES appraisals.

Strong and effective leadership is fundamental to executive success; it is manifested through the three balanced measures. All new career executives must demonstrate their leadership ability in five areas (*i.e.*, leading change, leading people, results-driven, business acumen, and building coalitions). Some agencies have incorporated the themes of these Executive Core Qualifications into their SES performance management systems. We support this approach, but SES program managers indicated that we should not dictate it. Since the suggested changes would be inconsistent with the flexible approach taken in the regulations, we are not adopting them.

One commenter also suggested that an increased emphasis on diversity and representation as an SES performance element would serve to increase accountability for results. We agree that this is important. The appraisal criteria in the revised regulations at § 430.307(a) address an executive's progress in meeting affirmative action, equal employment opportunity, and diversity goals.

Another commenter proposed that the regulations clarify that senior executives are responsible and accountable for protecting the human and workplace assets under their control and for ensuring that these assets are used in ways that prevent pollution and use energy resources efficiently. We believe that effectively managing the work environment is inherent in both the "organizational results" and "employee perspectives" factors of balanced measurement, which agencies can describe in ways that are appropriate to their organizational needs. Accordingly, we are not adopting this proposed addition.

*Supervisor Appraisals.* An agency was concerned about the lack of incentive for supervisors to conduct timely performance assessments. The agency wanted the regulations to require that, before a supervisor changes jobs or leaves an agency he/she be required to appraise the performance of subordinate senior executives in writing. The proposed regulations include requirements for appraisals of senior executives who change jobs, but they are silent on departing supervisors. The current regulations do not address this, but we have issued supplemental guidance to agencies that encourages them to obtain appraisal information from departing supervisors. We sought the views of SES program managers, who felt that we should not mandate this as a governmentwide requirement, but continue to address it in supplemental guidance. We agree. Agencies have the latitude to include such a requirement in their performance management systems.

*Written Progress Reviews.* The same agency also felt that the requirement for periodic progress reviews needed to be strengthened by requiring that the

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overall results of each progress review be documented in writing. We shared this comment with the SES program managers, who did not support the proposal. We understand the concern, but we prefer to let agencies decide how best to ensure that there is ongoing communication between supervisors and senior executives about their performance. The emphasis should be on communication, rather than process or format.

*Performance Review Boards.* A professional organization proposed mandating that agencies include women, minorities, and people with disabilities on Performance Review Boards (PRBs) in organizations, organizational components, and geographical locations where minorities, women, and persons with disabilities are determined to be underrepresented in the workforce. We appreciate the concerns about diversity that prompted this comment, but it might be difficult for other than large departments and agencies to comply with such a requirement. The revised regulations encourage agencies to include women, minorities, and people with disabilities on PRBs. Including this in the actual language of the regulation sends a strong message to agency leadership. Further, we want to maintain the focus on the substance of diversity and diverse viewpoints, rather than on numbers or process.

*Editorial Suggestions.* One commenter suggested more precise language for clarity. For example, the commenter felt the term "strategic planning initiatives" might be misinterpreted as a process-focused item, rather than a linkage between performance accountability and an agency's long-term and annual goals and objectives. By using this term, we intended a broad focus on strategic and annual performance planning and evaluation efforts and any related initiatives. In our view, using more precise terminology or definition could narrow that focus or limit an agency's flexibility. Therefore, we are not adopting the suggested language changes.

**System Approval**

During the public comment period, we discussed with agency SES program managers options for obtaining OPM approval of revised performance management systems, in accordance with 5 U.S.C. 4312. The general consensus was agency self-certification, similar to the method used to approve performance management systems for the general workforce to comply with requirements at 5 CFR 430.209 and 210. Under this approach, OPM would develop a checklist of key system requirements, and agencies would certify that their revised performance management systems comply with these requirements and provide supporting documentation as appropriate. OPM will provide these materials and accompanying guidance to agencies within 60 days of the publication of this final rule.

**Additional Guidance**

OPM will issue additional guidance in various formats to help agencies implement the changes, including examples of ways to use the various flexibilities provided under these regulations. We will also share information about how public and private sector organizations are using balanced measurement to evaluate senior executive performance.

**Table of Changes**

The following table lists the changes to the current regulations. The "current rule" column lists the regulations in the current subpart C affected by the final regulations. The "final rule" column shows the disposition of the current rules. The third column explains each change.

| Current rule | Final rule | Explanation of change |
|---|---|---|
| 430.301(a) | 430.301(a) | Plain language edits. |
| 430.301(b) | 430.301(b) | Revises purpose to emphasize expecting excellence, holding senior executives accountable for results, communicating goals and expectations, factoring balanced measurement into performance appraisal, and making performance the basis for personnel decisions. |
| 430.302(a) | 430.302(a) | Plain language edits. |
| 430.302(b) | 430.302(b) | Plain language edits. |
| 430.303 | 430.303 | Revises definitions as follows: *Annual summary rating* replaces the term *summary rating* to reflect the statutory terminology and means the overall rating level the appointing authority assigns at the end of the appraisal period after considering PRB recommendations. *Appointing authority* is revised to clarify that this individual must be authorized to make SES appointments. *Appraisal* is replaced with *performance appraisal* and edited for plain language. *Appraisal period* reflects plain language edits. *Appraisal system* is replaced with the term *performance management system* to broaden the focus from the annual appraisal to managing performance on an ongoing basis. *Balanced measures* is added because the regulations require agencies to use balanced measurement to evaluate senior executive performance. *Critical element* is broadened to cover the senior executive's work, which may include more than the duties of the position, and focus on organizational results. *Final rating* is replaced with the term used in statute, *annual summary rating*, and edited for plain language. *Initial rating* is replaced with *initial summary rating* and revised for clarity. *Non-critical elements* is replaced with the broader term, *other performance elements*, which refers to components of an executive's work that are not critical but may be important enough to factor into the executive's appraisal. *Performance* is broadened from the focus on critical and non-critical elements of the position to the accomplishment of work described in the senior executive's performance plan. *Performance appraisal* is added to replace *appraisal* and edited for plain language. |



| Current rule | Final rule | Explanation of change |
|---|---|---|
| | | *Performance Appraisal System* is replaced with the term *performance management system*, which refers to a framework of policies and practices for planning, monitoring, developing, evaluating, and rewarding individual and organizational performance and for using performance information as a basis for personnel decisions. *Performance Management Plan* is deleted. The concepts are covered under *performance management system*. *Performance plan* is replaced with the term *senior executive performance plan* which is expanded to address work the senior executive is expected to accomplish and the requirements against which performance will be evaluated. *Performance standard* is replaced by the term *performance requirement* used in statute and reflects plain language edits. *Progress review* reflects plain language edits. *Rating of record* is deleted. *Summary rating* is replaced with *annual summary rating*. *Strategic planning initiatives* is added because of new requirements for aligning performance plans with strategic planning. |
| 430.304 | 430.304 | Retitles section as SES Performance Management Systems; edits substantially and restructures it to include the key components of agency systems. Moves other requirements to other sections in the subpart. |
| 430.304(a) | 430.304(a) | Plain language edits. |
| 430.304(b) | 430.305(b) | Moves critical element requirements to Planning and Communicating Performance. Replaces reference to non-critical elements with the broader *other performance elements*. |
| | 430.307(a) | Moves appraisal requirements to Appraising Performance; revises them to reflect deletion of term *non-critical elements*. |
| | 430.308(d) | Moves summary rating requirements to Rating Performance. |
| 430.304(c) | 430.304(b) | Planning performance becomes a key component of performance management systems. |
| | 430.305(a) | Moves requirements for individual senior executive performance plans to Planning and Communicating Performance. |
| 430.304(d)(1) | 430.304(b) | Replaces *performance standards* with the statutory term *performance requirements*; some provisions are included in performance management system requirements. |
| | 430.305 | Moves establishing and communicating critical elements and requirements to Planning and Communicating Performance. |
| | 430.307(a) | Moves annual appraisal requirements to Appraising Performance. |
| 430.304(d)(2) | 430.304(b)(1), 430.305 | Includes accomplishing organizational objectives in requirements to address organizational performance and to link performance management with GPRA goals and with strategic planning initiatives. |
| 430.304(e) | 430.305(b) | Revises section to eliminate the requirement to establish three rating levels for each critical element. Replaces *performance standards* with *performance requirements* and moves it to senior executive performance plan requirements under Planning and Communicating Performance. |
| 430.304(f) | 430.304(c)(3) | Edits derivation method requirements to remove references to non-critical elements and moves it to system requirements. New section incorporates restriction on rating level distribution. |
| 430.304(g) | 430.304(c)(2) | Modifies summary rating level requirements to reflect the statutory requirement for a minimum of three levels. Removes the 5-level maximum and rating level numbers. |
| 430.304(h) | 430.306(c) | Broadens requirement for performance assistance to require agencies to help senior executives improve their performance, not just those who are rated less than fully successful, to reflect the emphasis on overall performance improvement. |
| 430.304(i) | 430.309(c) | Edits requirements for action on less than successful performance ratings and moves them to the new section, Using Performance Results. This section is added to focus on basing personnel decisions on performance. |
| | 430.305 | Adds two new sections on Planning and Communicating Performance and Monitoring Performance, which are key components of performance management systems. Consolidates senior executive performance plan requirements under Planning and Communicating Performance. |
| | 430.306 | Consolidates progress review and performance improvement requirements under monitoring performance. |
| 430.305 | 430.307 | Retitles heading as Appraising Performance, a key component of performance management systems. |
| 430.305(a)(1) | 430.304(c)(1) | Moves appraisal period requirements to System Requirements. |
| | 430.307(b) | Moves rating performance on details and temporary assignments to Appraising Performance. Replaces summary rating requirement with requirement to appraise performance and factor appraisal into initial summary rating. |
| 430.305(a)(2) | 430.304(c)(1)(ii) | Edits provisions for terminating the appraisal period and moves them to System Requirements. |
| 430.305(a)(3) | 430.304(c)(1)(iii) | Edits restriction on appraisals and ratings during Presidential election periods and moves it to System Requirements. |
| 430.305(b) | 430.304(c)(1)(i) | Revises minimum appraisal period to eliminate the 120-day maximum and moves it to System Requirements. |

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| Current rule | Final rule | Explanation of change |
|---|---|---|
| 430.305(c) | 430.307(a)(1) | Deletes the requirement to appraise on non-critical elements. Requires appraisal on critical elements only—appraising other elements is optional. |
| 430.305(d)(1) & 430.305(d)(2). | 430.307(b)(1), 430.307(b)(2), &430.307(b)(3). | Substantially edits requirements for appraising performance on details and temporary assignments. Modifies the current requirement for rating on critical elements to appraising performance and factoring that appraisal into the initial summary rating. |
| 430.305(e) | 430.306(b) | Edits progress review requirements and moves them to Monitoring Performance. |
| 430.306 | 430.308 | Retitles heading as Rating Performance, a key component of performance management systems. |
| 430.306(a)(1) | 430.308(a) | Plain language edits. |
| 430.306(a)(2) | 430.308(a) | Plain language edits. |
| 430.306(a)(3) | 430.308(b) | Plain language edits. |
| 430.306(a)(4) | 430.308(b), 430.308(c) | Plain language edits. |
| 430.306(a)(5) | 430.308(b) | Removes specific section; provisions are inherent in higher level review requirements. |
| 430.306(b) | 430.308(b) | Adds requirement that higher level reviewer may not change initial summary rating, but can recommend a different rating to PRB and appointing authority. Plain language edits. |
| | 430.308(c) | Adds new section in Rating Performance on PRB review for clarity. |
| 430.306(c) | 430.308(d) | Changes term *final rating* to *annual summary rating* for consistency with statutory language and edits for plain language. |
| 430.306(d) | 430.304(c)(3) | Includes requirement in derivation methods under System Requirements and edits for plain language. |
| 430.306(e) | 430.308(e) | Includes provisions under new section, Extending the appraisal period; edits for plain language. |
| | 430.308(f) | States statutory language that appraisals and ratings are not appealable. |
| 430.306(f) | 430.307(b) | Modifies requirement for summary rating on transfer to a written appraisal which the gaining supervisor must factor into the annual summary rating. Plain language edits. |
| 430.306(g) | 430.308(a), 430.308(b), 430.311(c). | Deletes section; incorporates requirements for executive notification in relevant sections. |
| 430.307 | 430.310 | Edits documentation maintenance requirements and moves them to Training and Evaluation. |
| 430.307(a) | 430.310(a)(1) | Plain language edits. |
| 430.307(b) | 430.310(a)(4) | Plain language edits. |
| 430.307(c) | 430.310(a)(2) | Plain language edits. |
| 430.307(d) | 430.310(a)(3) | Deletes reference to OPM authority to waive requirement for career majority on PRBs. Authority is stated in statute. |
| 430.307(e) | 430.310(b)(1) | Plain language edits. |
| 430.307(f) | 430.310(b)(3) | Plain language edits. |
| 430.307(g) | 430.301(b)(2) | Plain language edits. |
| 430.308 | 430.311(a), 430.311(b) | Plain language edits. |
| 430.309(a) | 430.312(b) | Plain language edits. |
| 430.309(b) | 430.312(c) | Plain language edits. |
| 430.310 | 430.312(a) | Moves requirement to section on OPM review of agency systems and edits for plain language. |

**E.O. 12866, Regulatory Review**

This final rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

**Regulatory Flexibility Act**

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because the regulations pertain only to Federal employees and agencies.

**List of Subjects in 5 CFR Part 430**

Government employees, Performance management.

Office of Personnel Management.

**Janice R. Lachance,**

*Director.*

Accordingly, OPM is amending 5 CFR Part 430 as follows:

## PART 430—PERFORMANCE MANAGEMENT

1. The authority citation for part 430 continues to read as follows:

**Authority:** 5 U.S.C. chapter 43.

2. Subpart C is revised to read as follows:

### Subpart C—Managing Senior Executive Performance

Sec.
430.301 General.
430.302 Coverage.
430.303 Definitions.
430.304 SES performance management systems.
430.305 Planning and communicating performance.
430.306 Monitoring performance.
430.307 Appraising performance.
430.308 Rating performance.
430.309 Using performance results.
430.310 Performance Review Boards (PRBs).
430.311 Training and evaluation.
430.312 OPM review of agency systems.

### Subpart C—Managing Senior Executive Performance

**§ 430.301 General.**

(a) *Statutory authority.* Chapter 43 of title 5, United States Code, provides for performance management for the Senior Executive Service (SES), the establishment of SES performance appraisal systems, and appraisal of senior executive performance. This subpart prescribes regulations for managing SES performance to implement the statutory provisions at 5 U.S.C. 4311–4315.



(b) *Purpose.* The regulations in this subpart require agencies to establish performance management systems that hold senior executives accountable for their individual and organizational performance in order to improve the overall performance of Government by—

(1) Expecting excellence in senior executive performance;

(2) Linking performance management with the results-oriented goals of the Government Performance and Results Act of 1993;

(3) Setting and communicating individual and organizational goals and expectations;

(4) Systematically appraising senior executive performance using measures that balance organizational results with customer, employee, or other perspectives; and

(5) Using performance results as a basis for pay, awards, development, retention, removal, and other personnel decisions.

**§ 430.302 Coverage.**

(a) This subpart applies to all senior executives covered by subchapter II of chapter 31 of title 5, United States Code.

(b) This subpart applies to agencies identified in section 3132(a)(1) of title 5, United States Code.

**§ 430.303 Definitions.**

Terms used in this subpart are defined as follows:

*Appointing authority* means the department or agency head, or other official with authority to make appointments in the Senior Executive Service.

*Appraisal period* means the established period of time for which a senior executive's performance will be appraised and rated.

*Balanced measures* means an approach to performance measurement that balances organizational results with the perspectives of distinct groups, including customers and employees.

*Critical element* means a key component of an executive's work that contributes to organizational goals and results and is so important that unsatisfactory performance of the element would make the executive's overall job performance unsatisfactory.

*Other performance elements* means components of an executive's work that do not meet the definition of a critical element, but may be important enough to factor into the executive's performance appraisal.

*Performance* means the accomplishment of the work described in the senior executive's performance plan.

*Performance appraisal* means the review and evaluation of a senior executive's performance against performance elements and requirements.

*Performance management system* means the framework of policies and practices that an agency establishes under subchapter II of chapter 43 of title 5, United States Code, and this subpart, for planning, monitoring, developing, evaluating, and rewarding both individual and organizational performance and for using resulting performance information in making personnel decisions.

*Performance requirement* means a statement of the performance expected for a critical element.

*Progress review* means a review of the senior executive's progress in meeting the performance requirements. A progress review is not a performance rating.

*Ratings:* (1) *Initial summary rating* means an overall rating level the supervisor derives from appraising the senior executive's performance during the appraisal period and forwards to the Performance Review Board.

(2) *Annual summary rating* means the overall rating level that an appointing authority assigns at the end of the appraisal period after considering a Performance Review Board's recommendations. This is the official rating.

*Senior executive performance plan* means the written summary of work the senior executive is expected to accomplish during the appraisal period and the requirements against which performance will be evaluated. The plan addresses all critical elements and any other performance elements established for the senior executive.

*Strategic planning initiatives* means agency strategic plans, annual performance plans, organizational workplans, and other related initiatives.

**§ 430.304 SES performance management systems.**

(a) To encourage excellence in senior executive performance, each agency must develop and administer one or more performance management systems for its senior executives.

(b) Performance management systems must provide for:

(1) Planning and communicating performance elements and requirements that are linked with strategic planning initiatives;

(2) Consulting with senior executives on the development of performance elements and requirements;

(3) Monitoring progress in accomplishing elements and requirements;

(4) At least annually, appraising each senior executive's performance against requirements using measures that balance organizational results with customer and employee perspectives; and

(5) Using performance information to adjust pay, reward, reassign, develop, and remove senior executives or make other personnel decisions.

(c) Additional system requirements.

(1) *Appraisal period.* Each agency must establish an official performance appraisal period for which an annual summary rating must be prepared.

(i) There must be a minimum appraisal period of at least 90 days.

(ii) An agency may end the appraisal period any time after the minimum appraisal period is completed, if there is an adequate basis on which to appraise and rate the senior executive's performance.

(iii) An agency may not appraise and rate a career appointee's performance within 120 days after the beginning of a new President's term of office.

(2) *Summary performance levels.* Each performance management system must have at least three summary performance levels: one or more fully successful levels, a minimally satisfactory level, and an unsatisfactory level.

(3) *Method for deriving summary ratings.* Agencies must develop a method for deriving summary ratings from appraisals of performance against performance requirements. The method must ensure that only those employees whose performance exceeds normal expectations are rated at levels above fully successful. An agency may not prescribe a forced distribution of rating levels for senior executives.

**§ 430.305 Planning and communicating performance.**

(a) Each senior executive must have a performance plan that describes the individual and organizational expectations for the appraisal period and sets the requirements against which performance will be evaluated. Supervisors must develop performance plans in consultation with senior executives and communicate the plans to them on or before the beginning of the appraisal period.

(b) Senior executive performance plan requirements:

(1) *Critical elements.* At a minimum, plans must describe the critical elements of the senior executive's work and any other relevant performance elements. Elements must reflect individual and organizational performance.

(2) *Performance requirements.* At a minimum, plans must describe the level

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of performance expected for fully successful performance of the executive's work. These are the standards against which the senior executive's performance will be appraised.

(3) *Link with strategic planning initiatives.* Critical elements and performance requirements for each senior executive must be consistent with the goals and performance expectations in the agency's strategic planning initiatives.

**§ 430.306 Monitoring performance.**

(a) Supervisors must monitor each senior executive's performance during the appraisal period and provide feedback to the senior executive on progress in accomplishing the performance elements and requirements described in the performance plan. Supervisors must provide advice and assistance to senior executives on how to improve their performance.

(b) Supervisors must hold a progress review for each senior executive at least once during the appraisal period. At a minimum, senior executives must be informed about how well they are performing against performance requirements.

**§ 430.307 Appraising performance.**

(a) *Annual appraisals.* Agencies must appraise each senior executive's performance in writing and assign an annual summary rating at the end of the appraisal period.

(1) At a minimum, a senior executive must be appraised on the performance of the critical elements in the performance plan.

(2) Appraisals of senior executive performance must be based on both individual and organizational performance, taking into account such factors as—

(i) Results achieved in accordance with the goals of the Government Performance and Results Act of 1993;

(ii) Customer satisfaction;

(iii) Employee perspectives;

(iv) The effectiveness, productivity, and performance quality of the employees for whom the senior executive is responsible; and

(v) Meeting affirmative action, equal employment opportunity, and diversity goals and complying with the merit system principles set forth under section 2301 of title 5, United States Code.

(b) *Details and job changes.* (1) When a senior executive is detailed or temporarily reassigned for 120 days or longer, the gaining organization must set performance goals and requirements for the detail or temporary assignment. The gaining organization must appraise the senior executive's performance in writing, and this appraisal must be factored into the initial summary rating.

(2) When a senior executive changes jobs or transfers to another agency after completing the minimum appraisal period, the supervisor must appraise the executive's performance in writing before the executive leaves.

(3) The annual summary rating and any subsequent appraisals must be transferred to the gaining agency. The gaining supervisor must consider the rating and appraisals when developing the initial summary rating at the end of the appraisal period.

**§ 430.308 Rating performance.**

(a) *Initial summary rating.* The supervisor must develop an initial summary rating of the senior executive's performance, in writing, and share that rating with the senior executive. The senior executive may respond in writing.

(b) *Higher level review.* The senior executive may ask a higher level official to review the initial summary rating before the rating is given to the Performance Review Board (PRB). The senior executive is entitled to one higher level review, unless the agency provides for more than one review level. The higher level official cannot change the supervisor's initial summary rating, but may recommend a different rating to the PRB and the appointing authority. Copies of the reviewer's findings and recommendations must be given to the senior executive, the supervisor, and the PRB.

(c) *PRB review.* The initial summary rating, the senior executive's response to the initial rating, and the higher level official's comments must be given to the PRB. The PRB must review the rating and comments from the senior executive and the higher level official, and make recommendations to the appointing authority, as provided in § 430.310.

(d) *Annual summary rating.* The appointing authority must assign the annual summary rating of the senior executive's performance, in writing, after considering any PRB recommendations. This rating is the official rating.

(e) *Extending the appraisal period.* When an agency cannot prepare an annual summary rating at the end of the appraisal period because the senior executive has not completed the minimum appraisal period or for other reasons, the agency must extend the executive's appraisal period. The agency will then prepare the annual summary rating.

(f) *Appeals.* Senior executive performance appraisals and ratings are not appealable.

**§ 430.309 Using performance results.**

(a) Agencies will use the results of performance appraisals and ratings as a basis for adjusting pay, granting awards, and making other personnel decisions. Performance information will also be a factor in assessing a senior executive's continuing development needs.

(b) A career executive whose annual summary rating is at least fully successful may be given a performance award under part 534, subpart D, of this chapter.

(c) An executive may be removed from the SES for performance reasons, subject to the provisions of part 359, subpart E, of this chapter.

(1) An executive who receives an unsatisfactory annual summary rating must be reassigned or transferred within the Senior Executive Service, or removed from the Senior Executive Service;

(2) An executive who receives two unsatisfactory annual summary ratings in any 5-year period must be removed from the Senior Executive Service; and

(3) An executive who receives less than a fully successful annual summary rating twice in any 3-year period must be removed from the Senior Executive Service.

**§ 430.310 Performance Review Boards (PRBs).**

Each agency must establish one or more PRBs to make recommendations to the appointing authority on the performance of its senior executives.

(a) *Membership.* (1) Each PRB must have three or more members who are appointed by the agency head, or by another official or group acting on behalf of the agency head. Agency heads are encouraged to include women, minorities, and people with disabilities on PRBs.

(2) PRB members must be appointed in a way that assures consistency, stability, and objectivity in SES performance appraisal.

(3) When appraising a career appointee's performance or recommending a career appointee for a performance award, more than one-half of the PRB's members must be SES career appointees.

(4) The agency must publish notice of PRB appointments in the **Federal Register** before service begins.

(b) *Functions.* (1) Each PRB must review and evaluate the initial summary rating, the senior executive's response, and the higher level official's comments on the initial summary rating, and conduct any further review needed to make its recommendations.

(2) The PRB must make a written recommendation to the appointing authority about each senior executive's annual summary rating.

(3) PRB members may not take part in any PRB deliberations involving their own appraisals.

**§ 430.311 Training and evaluation.**

(a) To assure that agency performance management systems are effectively implemented, agencies must provide appropriate information and training to supervisors and senior executives on performance management, including planning and appraising performance.

(b) Agencies must periodically evaluate the effectiveness of their performance management system(s) and implement improvements as needed.

(c) Agencies must maintain all performance-related records for no less than 5 years from the date the annual summary rating is issued, as required in § 293.404(b)(1) of this chapter.

**§ 430.312 OPM review of agency systems.**

(a) Agencies must submit proposed SES performance management systems to OPM for approval.

(b) OPM will review agency systems for compliance with the requirements of law, OPM regulations, and OPM performance management policy.

(c) If OPM finds that an agency system does not meet the requirements and intent of subchapter II of chapter 43 of title 5, United States Code, or of this subpart, it will direct the agency to take corrective action, and the agency must comply.

[FR Doc. 00–26337 Filed 10–12–00; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 99–CE–91–AD; Amendment 39–11922; AD 2000–20–11]**

**RIN 2120–AA64**

## Airworthiness Directives; LET Aeronautical Works Model L–13 "Blanik" Sailplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that applies to all LET Aeronautical Works (LET) Model L–13 "Blanik" sailplanes. This AD requires you to inspect the tail-fuselage hinge for strength requirements and damage, and also requires you to replace any hinge with damage or that does not meet strength requirements. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the Czech Republic. The actions specified by this AD are intended to detect and correct any tail-fuselage hinge that is damaged or has inadequate material characteristics. Any tail-fuselage hinge with damage or inadequate material characteristics could fail and result in loss of controlled flight.

**DATES:** This AD becomes effective on November 27, 2000.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of November 27, 2000.

**ADDRESSES:** You may get the service information referenced in this AD from LET Aeronautical Works, Kunovice 686 04, Czech Republic; telephone: +420 632 55 44 96; facsimile: +420 632 56 41 13. You may examine this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–91–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the **Federal Register**, 800 North Capitol Street, NW, suite 700, Washington, DC 20001.

**FOR FURTHER INFORMATION CONTACT:** Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; facsimile: (816) 329–4090.

**SUPPLEMENTARY INFORMATION:**

### Discussion

*What events have caused this AD?* The Civil Aviation Authority (CAA), which is the airworthiness authority for the Czech Republic, recently notified the FAA that an unsafe condition may exist on all LET Model L–13 "Blanik" sailplanes. The CAA reports an incident involving one of the affected sailplanes where the tail-fuselage attachment fitting was damaged. Further analysis reveals that the material characteristics of the tail-fuselage attachment fitting were inadequate.

*What are the consequences if the condition is not corrected?* The tail-fuselage attachment fitting is a primary structural element within the empennage. Failure of this part, if not detected and corrected, could result in loss of controlled flight.

*Has FAA taken any action to this point?* We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all LET Model L–13 "Blanik" sailplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on August 9, 2000 (65 FR 48648). The NPRM proposed to require you to inspect the tail-fuselage hinge for strength requirements and damage, and would require you to replace any hinge with damage or that does not meet strength requirements.

*Was the public invited to comment?* Interested persons were afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

### The FAA's Determination

*What is FAA's Final Determination on this Issue?* After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We determined that these minor corrections:

- Will not change the meaning of the AD; and
- Will not add any additional burden upon the public than was already proposed.

### Cost Impact

*How many sailplanes does this AD impact?* We estimate that this AD affects 140 sailplanes in the U.S. registry.

*What is the cost impact of the inspection for the affected sailplanes on the U.S. Register?* We estimate that it will take approximately 4 workhours per sailplane to accomplish the inspection, at an average labor rate of $60 an hour. Based on the cost factors presented above, we estimate the total cost impact of the inspection on U.S. operators to be $33,600, or $240 per sailplane.

*What is the cost impact of the replacement for the affected sailplanes on the U.S. Register?* We estimate that it will take approximately 16 workhours per sailplane to accomplish the replacement (as necessary), at an average labor rate of $60 an hour. The manufacturer will provide the replacement attachment fittings at no cost. Based on the cost factors presented above, we estimate the total labor cost impact of the replacement on U.S. operators to be $960 per sailplane.

### Regulatory Impact

*Does this AD impact various entities?* The regulations adopted herein will not

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have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

*Does this AD involve a significant rule or regulatory action?* For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by Reference, Safety.

**Adoption of the Amendment**

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

**PART 39—AIRWORTHINESS DIRECTIVES**

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. FAA amends Section 39.13 by adding a new AD to read as follows:

**2000–20–11 LET Aeronautical Works:** Amendment 39–11922; Docket No. 99–CE–91–AD.

*(a) What sailplanes are affected by this AD?* This AD applies to Model L–13 "Blanik" sailplanes, all serial numbers, certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above sailplanes on the U.S. Register must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent the tail-fuselage hinge failing and consequent loss of controlled flight.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

| Actions | Compliance times | Procedures |
|---|---|---|
| (1) Inspect the tail-fuselage attachment fitting, part number (P/N) A 102 021N, for damage and material hardness. | Within 60 days after November 27, 2000 (the effective date of this AD). | Follow the procedures in Mandatory Bulletin No. L13/085a, dated November 17, 1999. |
| (2) If the tail-fuselage attachment fitting is damaged or the material does not meet the hardness requirements specified in the service bulletin, you must replace the tail-fuselage attachment fitting. | Before further flight after the inspection ..... | You must notify LET Aeronautical Works and request they send the replacement part with installation instructions. |
| (3) Do not install, on any sailplane, a P/N A 102 021N attachment fitting that has not passed the inspection requirements specified in paragraph (d)(1) of this AD. | As of November 27, 2000 (the effective date of this AD). | Inspect any attachment fitting in accordance with the previously referenced service bulletin. |

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106.

**Note 1:** This AD applies to each sailplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For sailplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; facsimile: (816) 329–4090.

(g) *What if I need to fly the sailplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your sailplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with LET Mandatory Bulletin No. L13/085a, dated November 17, 1999. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from LET Aeronautical Works, Kunovice 686 04, Czech Republic; telephone: +420 632 55 44 96; facsimile: +420 632 611 26. You can look at copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC 20001.

(i) *When does this amendment become effective ?* This amendment becomes effective on November 27, 2000.

**Note 2:** The subject of this AD is addressed in Czech Republic AD Number CAA–AD–T–112/1999, dated November 18, 1999.

Issued in Kansas City, Missouri, on September 28, 2000.

**Michael Gallagher,**

*Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–25548 Filed 10–12–00; 8:45 am]

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. 2000–CE–15–AD; Amendment 39–11925; AD 2000–20–14]**

**RIN 2120–AA64**

## Airworthiness Directives; Raytheon Aircraft Company Beech Models A36 and B36TC Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that applies to certain Raytheon Aircraft Corporation (Raytheon) Beech Models A36 and B36TC airplanes. This AD requires you to inspect for the installation of firewall sealant and install firewall sealant if not present. This AD is the result of a report that firewall sealant was not found during a routine production inspection. The actions specified by this AD are intended to correct the absence of sealant and prevent the consequent entry of smoke or fire into the flight compartment or cabin in the event of an engine compartment fire.

**DATES:** This AD becomes effective on November 28, 2000.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of November 28, 2000.

**ADDRESSES:** You may get the service information referenced in this AD from Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140; on the Internet at <http://www.raytheon.com/rac/servinfo/53–3375.pdf>. This file is in Adobe Portable Document Format. The Acrobat Reader is available at <http://www.adobe.com/>. You may examine this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–15–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC 20001.



**FOR FURTHER INFORMATION CONTACT:** Jeff Pretz, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4153; facsimile: (316) 946–4407.

**SUPPLEMENTARY INFORMATION:**

**Discussion**

*What events have caused this AD?* Raytheon recently notified FAA that a Beech Model A36 airplane did not have sealant between the faying surfaces of the part number (P/N) 109–361023–13 tube assembly fitting and the P/N 36–430054–69 upper firewall panel. Raytheon found this condition during a routine production process inspection.

Other airplanes that were part of this particular production process are:

Beech Model A36: Serial numbers E–3113 through E–3231, E–3233 through E–3263, E–3265 through E–3267, E–3269, E–3271, E–3273, and E3277

Beech Model B36TC: Serial numbers EA–594 through EA–644

*What are the consequences if the condition is not corrected?* This condition, if not corrected, could result in smoke or fire penetrating the firewall and entering the flight compartment or cabin.

*Has FAA taken any action to this point?* We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Raytheon Beech Models A36 and B36TC airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on August 16, 2000 (65 FR 49952). The NPRM proposed to require you to inspect for the installation of firewall sealant; and install firewall sealant if not present.

*Was the public invited to comment?* Interested persons were afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

**The FAA's Determination**

*What is FAA's Final Determination on this Issue?* After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We determined that these minor corrections:

- Will not change the meaning of the AD; and
- Will not add any additional burden upon the public than was already proposed.

**Cost Impact**

*How many airplanes does this AD impact?* We estimate that this AD affects 134 airplanes in the U.S. registry.

*What is the cost impact of this AD on owners/operators of the affected airplanes?* We estimate the following costs to accomplish the inspection:

| Labor cost | Parts cost | Total cost per airplane | Total cost on U.S. airplane operators |
|---|---|---|---|
| 1 workhour × $60 per hour = $60 | No parts required for the inspection. | $60 per airplane ..... | $60 × 134 = $8,040. |

We estimate the following costs to accomplish the modification:

| Labor cost | Parts cost | Total cost per airplane | Total cost on U.S. airplane operators |
|---|---|---|---|
| 2 workhours × $60 per hour = $120. | No parts required for the modification. | $120 per airplane ..... | $120 × 134 = $16,080. |

**Regulatory Impact**

*Does this AD impact various entities?* The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

*Does this AD involve a significant rule or regulatory action?* For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by Reference, Safety.

**Adoption of the Amendment**

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration

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amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. FAA amends Section 39.13 by adding a new AD to read as follows:

**2000–20–14 Raytheon Aircraft Company:** Amendment 39–11925; Docket No. 2000–CE–15–AD.

(a) *What airplanes are affected by this AD?* This AD affects the following airplanes, certificated in any category:

Beech Model A36: Serial numbers E–3113 through E–3231, E–3233 through E–3263, E–3265 through E–3267, E–3269, E–3271, E–3273, and E3277.

Beech Model B36TC: Serial numbers EA–594 through EA–644.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes on the U.S. Register must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to correct the lack of a firewall seal and consequent progression of fire and smoke through the firewall panel into the flight compartment or cabin in the event of an engine compartment fire.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following actions:

| Actions | Compliance time | Procedures |
|---|---|---|
| (1) Inspect for sealant between the faying surfaces of the part number (P/N) 109–361023–13 tube assembly fitting and the P/N 36–430054–69 upper firewall panel.<br><br>(i) If sealant is present, no further action is necessary<br>(ii) If sealant is not present, apply sealant to the tube assembly and the upper firewall panel. | Inspection required within 50 hours time-in-service after November 28, 2000 (the effective date of this AD), and sealant application required before further flight after the inspection. | Accomplish all actions in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Raytheon Mandatory Service Bulletin SB 53–3375, Issued: December 1999. |

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Wichita Aircraft Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

**Note:** This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where con I get information about any already-approved alternative methods of compliance?* You can contact Jeff Pretz, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4153; facsimile: (316) 946–4407.

(g) *What if I need to fly the oirplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Raytheon Mandatory Service Bulletin No. SB 53–3375, dated December 1999. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140; on the Internet at <http://www.raytheon.com/rac/servinfo/53–3375.pdf>. This file is in Adobe Portable Document Format. The Acrobat Reader is available at <http://www.adobe.com/>. You can look at copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC 20001.

(i) *When does this amendment become effective?* This amendment becomes effective on November 28, 2000. Issued in Kansas City, Missouri, on September 28, 2000.

Issued in Kansas City, Missouri, on September 28, 2000.

**Michael Gallagher,**

*Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–25549 Filed 10–12–00; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

[Docket No. 99–CE–90–AD; Amendment 39–11921; AD 2000–20–10]

RIN 2120–AA64

## Airworthiness Directives; DG Flugzeugbau GmbH Model DG–800B Sailplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that applies to certain DG Flugzeugbau (DG Flugzeugbau) GmbH Model DG 800B sailplanes. This AD requires you to measure and correct improper propeller drive belt tension. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the Federal Republic of Germany. The actions specified in this AD are intended to correct improper drive belt tension and consequent engine crankshaft or connecting rod bearing damage. Such damage could result in loss of propulsion during critical phases of flight.

**DATES:** This AD becomes effective on November 27, 2000.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of November 27, 2000.



**ADDRESSES:** You may get the service information referenced in this AD from DG Flugzeugbau, Postbox 41 20, D–76646 Bruchsal, Federal Republic of Germany; telephone: +49 7257–890; facsimile: +49 7257–8922. You may examine this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–90–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC 20001.

**FOR FURTHER INFORMATION CONTACT:** Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; facsimile: (816) 329–4090.

**SUPPLEMENTARY INFORMATION:**

### Discussion

*What events have caused this proposed AD?* The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for the Federal Republic of Germany, recently notified the FAA that an unsafe condition may exist on all DG Flugzeugbau GmbH Model DG–800B sailplanes equipped with a SOLO engine. The LBA reports that 5 sailplanes had a broken crankshaft or connecting rod bearing failures. Improper drive belt tension caused the damage and failures.

*What happens if you do not correct the condition?* This condition, if not corrected, could result in loss of propulsion during critical phases of flight.

*Has FAA taken any action to this point?* We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain DG Flugzeugbau Model DG 800B sailplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on August 10, 2000 (65 FR 48931). The NPRM proposed to measure and correct improper propeller drive belt tension.

*Was the public invited to comment?* Interested persons were afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

### The FAA's Determination

*What is FAA's Final Determination on this Issue?* After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We determined that these minor corrections:

- Will not change the meaning of the AD; and
- Will not add any additional burden upon the public than was already proposed.

*What are the differences between the LBA AD and this AD?* The German AD requires measuring the drive belt tension within the next 25 hours time-in-service but no later than December 31, 1999, on the affected sailplanes registered in Germany. We require measuring the drive belt tension within the next 25 hours time-in-service or 90 days after the effective date of this AD, whichever occurs first.

*Why is the compliance time in both hours time-in-service and calendar time?* The unsafe condition described in this AD does not originate as a result of sailplane operation. Applying improper tension to the propeller belt drive can occur at any time. The condition worsens with sailplane operation, but could already exist now. The compliance times afford the following:

- The 25 hours TIS provides that the high-usage sailplanes are inspected for improper tension in a reasonable time period; and
- The 90 day compliance time provides that improper tension does not go undetected for a long period of time on low-usage sailplanes.

### Cost Impact

*How many sailplanes does this AD impact?* We estimate that this AD affects 6 sailplanes in the U.S. registry.

*What is the cost impact of this AD on owners/operators of the affected sailplanes?* We estimate the following costs to accomplish the measurement:

| Labor cost | Parts cost | Total cost per sailplane | Total cost on U.S. sailplane operators |
|---|---|---|---|
| 3 workhours × $60 per hour = $180.. | Not applicable | $180 per sailplane | $180 × 6 = $1,080. |

### Regulatory Impact

*Does this AD impact various entities?* The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

*Does this AD involve a significant rule or regulatory action?* For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by Reference, Safety.

### Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. FAA amends Section 39.13 by adding a new AD to read as follows:

**2000–20–10 DG Flugzeugbau GMBH:** Amendment 39–11921; Docket No. 99–CE–90–AD.

(a) *What sailplanes are affected by this AD?* Model DG–800B sailplanes, all serial numbers, that are:

(1) certificated in any category; and

(2) equipped with SOLO engines.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above sailplanes on the U.S. Register must comply with this AD.

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(c) *What problem does this AD address?* The actions specified by this AD are intended to correct improper drive belt tension and consequent engine crankshaft or connecting rod bearing damage. Such damage could result in loss of propulsion during critical phases of flight.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

| Actions | Compliance times | Procedures |
|---|---|---|
| (1) Measure the drive belt tension. The difference should be a minimum of 6 millimeters (mm) (0.236 inches (in)) and should not exceed 11 mm (0.433 in).<br>(2) If you find improper tension as specified in this AD, accomplish the following:.<br>(i) Lower the tension if it is too high. Check the position of the propeller in relation to the engine compression point to assure it is within limits, and adjust if necessary.<br>(ii) If you have to reduce the drive belt tension, execute a ground test run. Check to assure that the position of the propeller in relation to the engine compression point has not changed, and adjust as necessary. If this has happened, the drive belt has slipped due to too low tension.<br>(iii) Notify DG Flugzeugbau if tension problems are still not resolved. | Within the next 25 hours time-in-service (TIS) or 90 days after November 27, 2000, (the effective date of this AD),whichever comes first.<br>Before operating the sailplane. | Follow the procedures in DG Flugzeugbau Technical Note (TN) 873/16, dated October 25, 1999, and the Maintenance Manual for DG–800B. |

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

**Note 1:** This AD applies to each sailplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For sailplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; facsimile: (816) 329–4090.

(g) *What if I need to fly the sailplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your sailplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with DG Flugzeugbau Technical Note (TN) 873/16, dated October 25, 1999. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from DG Flugzeugbau, Postbox 41 20, D–76646 Bruchsal, Federal Republic of Germany; telephone: +49 7257–890; facsimile: +49 7257–8922. You can look at copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC 20001.

**Note 2:** The subject of this AD is addressed in German AD Number 1999–377, dated December 2, 1999.

(i) *When does this amendment become effective?* This amendment becomes effective on November 27, 2000.

Issued in Kansas City, Missouri, on September 28, 2000.

**Michael Gallagher,**

*Manager, Small Airplane Directorate,, Aircraft Certification Service.*

[FR Doc. 00–25550 Filed 10–12–00; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2000–CE–12–AD; Amendment 39–11924; AD 2000–20–13]**

**RIN 2120–AA64**

## Airworthiness Directives; British Aerospace HP137 Mk1, Jetstream Series 200, and Jetstream Models 3101 and 3201 Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that applies to certain British Aerospace HP137 Mk1, Jetstream series 200, and Jetstream Models 3101 and 3201 airplanes. This AD requires you to inspect the rudder quadrant support structure for cracks and correct D-washer installation; and also requires you to replace any cracked component and replace any incorrectly installed D-washers. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the United Kingdom. The actions specified by this AD are intended to detect, correct, and prevent further cracking in the rudder quadrant structure caused by incorrectly installed D-washers. Cracks in this structure could result in loss of rudder control with consequent airplane control problems.

**DATES:** This AD becomes effective on November 27, 2000.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of November 27, 2000.

**ADDRESSES:** You may get the service information referenced in this AD from British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland; telephone: (01292) 479888; facsimile: (01292) 479703. You may examine this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–12–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC 20001.



**FOR FURTHER INFORMATION CONTACT:** Mr. S.M. Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4145; facsimile: (816) 329–4090.

**SUPPLEMENTARY INFORMATION:**

### Discussion

*What events have caused this AD?* The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain British Aerospace HP137 Mk1, Jetstream series 200, and Jetstream Models 3101 and 3201 airplanes. The CAA reports two incidents of cracks in the upper edge member radii and bottom diaphragm radii of the rudder quadrant support structure.

Investigation of these incidents revealed that the D-washers in the rudder quadrant support structure were installed incorrectly. These D-washers, when installed correctly, are designed to reinforce the bend radii of the affected structure.

*What are the consequences if the condition is not corrected?* Cracks in the rudder quadrant support structure, if not detected and corrected, could result in loss of rudder control with consequent airplane control problems.

*Has FAA taken any action to this point?* We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain British Aerospace HP137 Mk1, Jetstream series 200, and Jetstream Models 3101 and 3201 airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on August 10, 2000, (65 FR 48933). The NPRM proposed to require you to inspect the rudder quadrant support structure for cracks and correct D-washer installation; and would require you to replace any cracked component and replace any incorrectly installed D-washers.

*Was the public invited to comment?* Interested persons were afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

### The FAA's Determination

*What is FAA's Final Determination on this Issue?* After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We determined that these minor corrections:

- Will not change the meaning of the AD; and
- Will not add any additional burden upon the public than was already proposed.

### Compliance Time

*What is the compliance time of this AD?* The compliance time of this AD will be "within 90 calendar days after the effective date of this AD."

*Why is the compliance in calendar time instead of hours time-in-service (TIS)?* The cracks in the rudder quadrant support structure occur as a direct result of airplane operation if the D-washers are incorrectly installed. Because the D-washers could have been incorrectly installed in the field or at the factory, the problem has the same chance of occurring on an airplane with 50 hours TIS as one with 5,000 hours TIS. Therefore, we believe that 90 calendar days will:

- Assure that the unsafe condition does not go undetected for a long period of time on the affected airplanes; and
- Will not inadvertently ground any of the affected airplanes.

### Cost Impact

*How many airplanes does this AD impact?* We estimate that this AD affects 264 airplanes in the U.S. registry.

*What is the cost impact of this AD on owners/operators of the affected airplanes?* We estimate that it will take approximately 1 workhour per airplane to accomplish the inspection of the rudder quadrant support structure and the D-washers, at an average labor rate of $60 an hour. Based on the figures presented above, the total cost impact of the inspection on U.S. operators is estimated to be $15,840, or $60 per airplane.

Costs for any necessary replacements are as follows:

| Action | Number of workhours | Parts cost | Total cost per airplane |
|---|---|---|---|
| Right upper edge member replacement | 8 workhours at $60 per hour. | $514 | $994 |
| Lower diaphragm replacement | 8 workhours at $60 per hour. | 760 | 1,240 |
| D-washer replacement | 4 workhours at $60 per hour. | 250 | 490 |

### Regulatory Impact

*Does this AD impact various entities?* The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

*Does this AD involve a significant rule or regulatory action?* For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by Reference, Safety.

### Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

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## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. FAA amends Section 39.13 by adding a new AD to read as follows:

**2000–20–13 British Aerospace:** Amendment 39–11924; Docket No. 2000–CE–12–AD.

(a) *What airplanes are affected by this AD?* This AD affects Models HP137 Mk1, Jetstream Series 200 airplanes, and Jetstream Models 3101 and 3201 airplanes, all serial numbers excluding 936 and 940, certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes on the U.S. Register must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect, correct, and prevent further cracking in the rudder quadrant structure caused by incorrectly installed D-washers. Cracks in this structure could result in loss of rudder control with consequent airplane control problems.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

| Actions | Compliance times | Procedures |
|---|---|---|
| (1) Inspect the upper edge member radii and bottom diaphragm radii adjacent to the rudder artificial feel assembly attachments at the rudder quadrant support for cracks and inspect the D-washers to assure correct installation. | Within 90 calendar days after November 27, 2000 (the effective date of this AD). | Accomplish in accordance with the "ACCOMPLISHMENT INSTRUCTIONS: Part 1—Inspection" section of British Aerospace Mandatory Alert Service Bulletin 53–JA–990842, Revision 1, dated February 21, 2000. |
| (2) If cracks are found in the area of the upper edge member radii on the rudder quadrant support structure, replace this component by incorporating material Kit No. '53–JA–990842PT2'. | Before further flight after the inspection where the cracked part was detected. | Accomplish in accordance with the "ACCOMPLISHMENT INSTRUCTIONS: Part 2—Replacement of the right upper edge member if cracks are found at Part 1" section of British Aerospace Mandatory Alert Service Bulletin 53–JA–990842, Revision 1, dated February 21, 2000. |
| (3) If cracks are found in the area of the bottom diaphragm on the rudder quadrant support structure, replace this component by incorporating material Kit No. '53–JA–990842PT3'. | Before further flight after the inspection where the cracked part was detected. | Accomplish in accordance with the "ACCOMPLISHMENT INSTRUCTIONS: Part 3—Replacement of the bottom diaphragm of the rudder quadrant support structure" section of British Aerospace Mandatory Alert Service Bulletin 53–JA–990842, Revision 1, dated February 21, 2000. |
| (4) Remove any incorrectly installed D-washer and replace with a new D-washer. This replacement is accomplished by incorporating material Kit No. '53–JA–990842PT4'. | Before further flight after the inspection where the incorrect installation was detected. | Accomplish in accordance with the "ACCOMPLISHMENT INSTRUCTIONS: Part 4—Removal and replacement of D-washers" section of British Aerospace Mandatory Alert Service bulletin 53–JA–990842, Revision 1, dated February 21, 2000. |

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Small Airplane Directorate approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

**Note 1:** This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact S.M. Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4145; facsimile: (816) 329–4090.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with British Aerospace Mandatory Alert Service Bulletin 53–JA–990842, Revision 1, dated February 21, 2000. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland. You can look at copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC 20001.

(i) *When does this amendment become effective?* This amendment becomes effective on November 27, 2000.

**Note 2:** The subject of this AD is addressed in British AD Number 006–12–99, not dated.

Issued in Kansas City, Missouri, on September 28, 2000.

**Michael Gallagher,**

*Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–25554 Filed 10–12–00; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF COMMERCE

### Bureau of Export Administration

### 15 CFR Parts 734, 738, 740, 742, 743, 744, 748, and 774

**[Docket No. 000204027–0266–02]**

**RIN 0694–AC14**

### Revisions to License Exception CTP

**AGENCY:** Bureau of Export Administration, Commerce.

**ACTION:** Final rule.

**SUMMARY:** The Bureau of Export Administration (BXA) is amending the Export Administration Regulations (EAR) by revising License Exception CTP to reflect continuing technological advancement in the computer industry. High Performance Computers (HPCs) with a composite theoretical performance (CTP) of up to 45,000 millions of theoretical operations per second (MTOPS) can be exported to Computer Tier 2 countries under License Exception CTP, and HPCs with a CTP up to 28,000 MTOPS can be exported Computer Tier 3 destinations under License Exception CTP. The civil-military distinction for computer Tier 3 end-users and end-uses is removed. Effective February 26, 2001, this rule also raises the advance notification level for HPC exports to Computer Tier 3 countries to 28,000 MTOPS. As required by the National Defense Authorization Act of 1998 (NDAA), changes in the advance notification level for HPC exports to Tier 3 destinations are only effective 180 days following the submission by the President of a report to Congress. The President sent the report to Congress on August 30, 2000. This rule moves Argentina from Computer Tier 2 to Computer Tier 1. This rule also moves Estonia from Computer Tier 3 to Computer Tier 2, effective December 28, 2000.

**DATES:** This rule is effective October 13, 2000.

**FOR FURTHER INFORMATION CONTACT:** James A. Lewis, Office of Strategic Trade and Foreign Policy Controls, Bureau of Export Administration, Telephone: (202) 482–0092.

**SUPPLEMENTARY INFORMATION:**

### Background

On August 3, 2000, the President announced significant changes to export control policy for HPCs. The new policy continues the Administration's commitment, as announced on July 1, 1999, to review and update its HPC policy every six months to reflect rapid advancements in microprocessor technology, as well as identify any risk posed by HPC exports to certain end-users and countries. This policy strengthens America's high-tech competitiveness, while maintaining export controls to protect U.S. national security.

The Administration, in consultation with the national security community and industry, has determined the following adjustments are warranted. Effective immediately, the upper License Exception CTP level for Computer Tier 2 countries is raised from 33,000 to 45,000 MTOPS and the upper License Exception CTP level for Computer Tier 3 countries is raised from 20,000 to 28,000 MTOPS. For purposes of License Exception CTP eligibility, this rule removes the distinction between military and civil end-users and end-uses in Computer Tier 3 countries. Effective February 26, 2001, this rule raises the advance notification level for HPC exports to Computer Tier 3 countries from 12,500 to 28,000 MTOPS. As required by the NDAA, changes in the advance notification level for HPC exports to Tier 3 destinations are only effective 180 days following the President's submission of a report to Congress. The President sent this report to Congress on August 30, 2000. This new level reflects the Administration's determination that widespread commercial availability of computers with performance capabilities up to 28,000 MTOPS makes that a realistic and enforceable control level.

The Administration has decided to combine the Tier 3 civil and military licensing thresholds, as agencies have determined that the previous distinction, based on the judgement that there is a difference in the availability and ease of upgrade/assembly between four and eight processor systems, is no longer valid. Agencies now judge that this distinction no longer exists due to improvement in, and the world-wide availability of single processors, boards, chipsets, and operating systems. Removal of the distinction will allow agencies to focus export control resources on meaningful control levels.

This rule removes Argentina from Computer Tier 2 and places it in Computer Tier 1, and removes Estonia from Computer Tier 3 and places it in Computer Tier 2. However, due to requirements in the 1998 NDAA, removing Estonia from Computer Tier 3 is not effective until 120 days after the Congress receives a report justifying such a removal. On August 30, 2000, the President informed the Congress of his intent to remove Estonia from Computer Tier 3; thus, Estonia will be moved to Computer Tier 2 effective December 28, 2000.

Finally, this rule raises the CTP levels under License Exception TSR relating to items controlled under ECCNS 4D003 and 4E003 on the Commerce Control List to 33,000 MTOPS. This update reflects the rapid advances in HPC technology and aligns the level with our domestic policy and our multilateral Wassenaar Arrangement obligations. Requirements for reporting exports in § 743.1(c)(2) remain consistent with our Wassenaar Arrangement obligations.

Due to advancement in HPC and microprocessor technology, the United States will review these levels to determine if further adjustments are warranted. In particular, agencies will review control levels by December 2000 to determine if further changes are warranted; additional countries may also be moved between tiers.

Although the Export Administration Act (EAA) expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and continued in effect the EAR, and to the extent permitted by law, the provisions of the EAA, as amended, in Executive Order 12924 of August 19, 1994, as extended by the President's notices of August 15, 1995 (60 FR 42767), August 14, 1996 (61 FR 42527), August 13, 1997 (62 FR 43629), August 13, 1998 (63 FR 44121), August 10, 1999 (64 FR 44101), and August 8, 2000 (65 FR 48347).

### Rulemaking Requirements

1. This final rule has been determined to be significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. This regulation involves collections previously approved by the Office of Management and Budget under control numbers 0694–0088, "Multi-Purpose Application," which carries a burden hour estimate of 45 minutes per manual submission and 40 minutes per electronic submission. Miscellaneous and recordkeeping activities account for 12 minutes per submission. Information is also collected under OMB control number 0694–0107, "National Defense Authorization Act," Advance Notifications and Post-Shipment Verification Reports, which carries a burden hour estimate of 15 minutes per report. This rule also involves collections of information under OMB control number 0694–0073, "Export Controls of High Performance Computers" and OMB control number 0694–0093, "Import Certificates and End-User Certificates".

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 13132.

4. The provisions of the Administrative Procedure Act requiring notice of proposed rule making, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military or foreign affairs

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function of the United States (see 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rule making and an opportunity for public comment be given for this rule. Because a notice of proposed rule making and opportunities for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Office of Exporter Services, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

**List of Subjects**

*15 CFR Parts 734 and 738*

Administrative practice and procedure, Exports, Foreign trade.

*15 CFR Parts 740, 743 and 748*

Administrative practice and procedure, Exports, Foreign trade, Reporting and recordkeeping requirements.

*15 CFR Part 742*

Exports, Foreign trade.

*15 CFR Parts 744 and 774*

Exports, Foreign trade, Reporting and recordkeeping requirements.

Accordingly, parts 734, 738, 740, 742, 743, 744, 748, and 774 of the Export Administration Regulations (15 CFR Parts 730–799) are amended as follows:

1. The authority citation for 15 CFR part 734 is revised to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp. p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of November 10, 1999, 64 FR 61767, 3 CFR, 1999 Comp., p. 318; Notice of August 3, 2000 (65 FR 48347, August 8, 2000).

2. The authority citation for 15 CFR Part 738 is revised to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(*s*), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of August 3, 2000 (65 FR 48347, August 8, 2000).

3. The authority citation for 15 CFR Part 740 is revised to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of August 3, 2000 (65 FR 48347, August 8, 2000).

4. The authority citation for 15 CFR Part 742 is revised to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of November 10, 1999, 64 FR 61767, 3 CFR, 1999 Comp., p. 318; Notice of August 3, 2000 (65 FR 48347, August 8, 2000).

5. The authority citation for 15 CFR part 743 is revised to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq*; 50 U.S.C. 1701 *et seq*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; Notice of August 3, 2000 (65 FR 48347, August 8, 2000).

6. The authority citation for 15 CFR part 744 is revised to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of November 10, 1999, 64 FR 61767, 3 CFR, 1999 Comp., p. 318; Notice of August 3, 2000 (65 FR 48347, August 8, 2000).

7. The authority citation for 15 CFR part 748 is revised to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of August 3, 2000 (65 FR 48347, August 8, 2000).

8. The authority citation for part 774 is revised to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*, 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of August 3, 2000 (65 FR 48347, August 8, 2000).

**PART 734—[AMENDED]**

**§ 734.4 [Amended]**

9. Section 734.4 is amended by revising the phrase "20,000 MTOPS" in paragraph (a) to read "28,000 MTOPS".

**PART 738—[AMENDED]**

10. Supplement No. 1 to Part 738 is amended by revising the phrase "greater than 33,000 MTOPS" in the second footnote to read "greater than 45,000 MTOPS".

**PART 740—[AMENDED]**

11. Section 740.7 is amended by revising the first sentence of paragraph (a) and paragraphs (b)(1), (c), (d)(1), (d)(2), (d)(4), (d)(5)(i), and (d)(5)(v) introductory text to read as follows:

**§ 740.7 Computers (CTP).**

(a) *Scope.* License Exception CTP authorizes exports and reexports of computers and specially designed components therefor, exported or reexported separately or as part of a system for consumption in Computer Tier countries as provided by this section. * * *

(b) *Computer Tier 1*—(1) *Eligible countries.* The countries that are eligible to receive exports and reexports under this License Exception are Argentina, Australia, Austria, Belgium, Brazil, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Liechtenstein, Luxembourg, Mexico, Monaco, Netherlands, New Zealand, Norway, Poland, Portugal, San Marino, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and Vatican City.

* * * * *

(c) *Computer Tier 2*—(1) *Eligible countries.* The countries that are eligible to receive exports under this License Exception include Antigua and Barbuda, Bahamas, Barbados, Bangladesh, Belize, Benin, Bhutan, Bolivia, Botswana, Brunei, Burkina Faso, Burma, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Chile, Colombia, Congo, Costa Rica, Cote d'Ivoire, Cyprus, Dominica, Dominican Republic, Ecuador, El Salvador, Equatorial Guinea, Eritrea, Ethiopia, Fiji, Gabon, Gambia (The), Ghana, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Hong Kong, Indonesia, Jamaica, Kenya, Kiribati, Korea (Republic of), Lesotho, Liberia, Madagascar, Malawi, Malaysia, Maldives, Mali, Malta, Marshall Islands, Mauritius, Micronesia (Federated States of), Mozambique, Namibia, Nauru, Nepal, Nicaragua, Niger, Nigeria, Palau, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Romania, Rwanda, St. Kitts & Nevis, St. Lucia, St. Vincent and Grenadines, Sao Tome & Principe, Senegal, Seychelles, Sierra Leone, Singapore, Slovakia, Slovenia, Solomon Islands, Somalia, South Africa, Sri Lanka, Surinam, Swaziland, Taiwan, Tanzania, Togo, Tonga, Thailand, Trinidad and Tobago, Tuvalu, Uganda, Uruguay, Venezuela, Western Sahara, Western Samoa, Zaire, Zambia, and Zimbabwe. As of December 26, 2000, Estonia is a Computer Tier 2 country.

(2) *Eligible computers.* The computers eligible for License Exception CTP to Tier 2 destinations are those having a CTP greater than 6,500 MTOPS, but less than or equal to 45,000 MTOPS.

(d) *Computer Tier 3*—(1) *Eligible countries.* The countries that are eligible to receive exports and reexports under this License Exception are Afghanistan, Albania, Algeria, Andorra, Angola, Armenia, Azerbaijan, Bahrain, Belarus, Bosnia & Herzegovina, Bulgaria, Cambodia, China (People's Republic of), Comoros, Croatia, Djibouti, Egypt, Estonia, Georgia, India, Israel, Jordan, Kazakhstan, Kosovo (Serbian province of), Kuwait, Kyrgyzstan, Laos, Latvia, Lebanon, Lithuania, Macau, Macedonia (The Former Yugoslav Republic of), Mauritania, Moldova, Mongolia, Montenegro, Morocco, Oman, Pakistan, Qatar, Russia, Saudi Arabia, Serbia, Tajikistan, Tunisia, Turkmenistan, Ukraine, United Arab Emirates, Uzbekistan, Vanuatu, Vietnam, and Yemen. Until December 26, 2000, Estonia is a Computer Tier 3 country. As of December 26, 2000, Estonia is moved to Computer Tier 2.

(2) *Eligible computers.* The computers eligible for License Exception CTP to Tier 3 destinations are those having a CTP greater than 6,500 MTOPS, but less than or equal to 28,000 MTOPS, subject to the restrictions in paragraph (d)(3) of this section.

* * * * *

(4) *Supporting documentation.* Prior to February 26, 2001, exports of computers with a CTP greater that 12,500 MTOPS, as described by paragraph (d)(2) of this section, to the People's Republic of China must be supported by a PRC End-User Certificate, regardless of value. See § 748.10(c)(3) of the EAR for information on obtaining the PRC End-User Certificate.) Exporters are required to obtain a PRC End-User Certificate before exporting computers regardless of value to the People's Republic of China. Exporters are also required to provide the PRC End-User Certificate Number to BXA as part of their post-shipment report (see paragraph (d)(5) of this section). When providing the PRC End-User Certificate Number to BXA, you must identify the transaction in the post shipment report to which that PRC End-User Certificate Number applies. The original PRC End-User Certificate shall be retained in the exporter's files in accordance with the recordkeeping provisions of § 762.2 of the EAR.

(5) *NDAA notification*—(i) *General requirement.* The National Defense Authorization Act (NDAA) of FY98 (Public Law 105–85, 111 Stat. 1629) enacted on November 18, 1997 requires advance notification of certain exports and reexports of computers to Computer Tier 3 countries. Prior to February 26, 2001, advance notification is required for all exports and reexports of computers with a CTP greater than 12,500 but less than or equal to 28,000 MTOPS to Computer Tier 3 destinations. For each such transaction destined to Computer Tier 3, prior to using License Exception CTP, you must first notify BXA by submitting a completed Multipurpose Application Form (BXA–748P). The Multipurpose Application Form must be completed including all information required for a license application according to the instructions described in Supplement No. 1 to part 748 of the EAR, with two exceptions. You (the applicant as listed in Block 14) shall in Block 5 (Type of Application) mark the box "Other." This designator will permit BXA to route the NDAA notice into a special processing procedure. (Blocks 6 and 7, regarding support documentation, may be left blank.) BXA will not initiate the registration of an NDAA notice unless all information on the Multipurpose Application form is complete. Beginning on February 26, 2001, advance notification is not required for exports and reexport of computers with a CTP less than or equal to 28,000 MTOPS to Computer Tier 3 destinations. You must also provide a notice using this procedure prior to exporting or reexporting items that you know will be used to enhance beyond 12,500 MTOPS the CTP of a previously exported or reexported computer. Beginning on February 26, 2001, you must obtain a license prior to exporting or reexporting items that you know will be used to enhance beyond 28,000 MTOPS the CTP of a previously exported or reexported computer.

* * * * *

(v) *Post-shipment verification.* This section outlines special post-shipment reporting requirements for exporters of certain computers to destinations in Computer Tier 3. Exporters must file post-shipment reports for computer exports, as well as exports of items used to enhance previously exported or reexported computers, according to the following schedule: for exports occurring on or after January 23, 2000, but on or before August 13, 2000, reports are required for computers with a CTP greater than 6,500 MTOPS; for exports occurring on or after August 14, 2000, but on or before February 25, 2001, reports are required for computers with a CTP greater than 12,500 MTOPS; and for exports occurring on or after February 26, 2001, reports are required for computers with a CTP greater than 28,000 MTOPS. Post-shipment reports must be submitted in accordance with the provisions of this paragraph (d)(5)(v), and all relevant records of such exports must be kept in accordance with part 762 of the EAR.

* * * * *

**§ 740.11 [Amended]**

12. Section 740.11 is amended by revising the phrase "33,000 MTOPS" in paragraphs (a)(2)(ii) and (a)(2)(iii) and in paragraph (c)(2)(i) to read "45,000 MTOPS".

13. Supplement No. 1 to section 740.11 is amended by revising the phrase "33,000 MTOPS" in paragraphs (a)(1)(ii), (a)(1)(iii), (b)(1)(ii), and (b)(1)(iii) to read "45,000 MTOPS".

14. Section 740.16 is amended by revising the phrase "10,000 MTOPS" in paragraph (b)(1) to read "45,000 MTOPS".

**PART 742—[AMENDED]**

15. Section 742.12 is amended by revising the phrase "greater than 33,000" in paragraph (b)(2)(i) to read "greater than 45,000"; and by revising paragraphs (b)(3)(i)(B), (b)(3)(i)(C), and (b)(3)(iv) introductory text to read as follows:

**§ 742.12 High performance computers.**

* * * * *

(b) * * *

(3) * * *

(i) * * *

(B) A license is required to export or reexport computers with a CTP greater than 28,000 MTOPS to a country in Computer Tier 3.

(C) Prior to February 26, 2001, a license may be required to export or reexport computers with a CTP greater than 12,500 MTOPS to countries in Computer Tier 3 pursuant to the NDAA (see § 740.7(d)(5) of the EAR). Beginning on February 26, 2001, a license is required to export or reexport computers with a CTP greater than

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28,000 MTOPS to countries in Computer Tier 3.

* * * * *

(iv) *Post-shipment verification.* This section outlines special post-shipment reporting requirements for exporters of certain computers to destinations in Computer Tier 3. Exporters must file post-shipment reports for computer exports, as well as exports of items used to enhance previously exported or reexported computers, according to the following schedule: for exports occurring on or after January 23, 2000, but on or before August 13, 2000, reports are required for computers with a CTP greater than 6,500 MTOPS; for exports occurring on or after August 14, 2000, but on or before February 25, 2001, reports are required for computers with a CTP greater than 12,500 MTOPS; and for exports occurring on or after February 26, 2001, reports are required for computers with a CTP greater than 28,000 MTOPS. Post-shipment reports must be submitted in accordance with the provisions of this paragraph (b)(3)(iv), and all relevant records of such exports must be kept in accordance with part 762 of the EAR.

* * * * *

## PART 743—[AMENDED]

**§ 743.1 [Amended]**

16. § 743.1 is amended by revising the phrase "provisions of § 740.7(d)(4)(v)" to read "provisions of § 740.7(d)(5)(v)" in the Note to paragraph (c)(2).

## PART 744—[AMENDED]

17. Supplement No. 4 to part 744 is amended by revising the phrase "For computers above the Tier 3 military level described in § 742.12(b)(3)(i)(B)" in the License requirement column for the Israeli entity "Ben Gurion University, Israel" to read "For computers above the Tier 3 level described in § 742.12(b)(3)(i)(B)".

## PART 748—[AMENDED]

18. Section 748.10 is amended by revising paragraph (b)(3) as follows:

**§ 748.10 Import and End-User Certificates.**

* * * * *

(b) * * *

(3) Your transaction involves an export to the People's Republic of China of a computer, you must obtain a PRC End-User Certificate, regardless of dollar value, as follows:

(i) For license applications submitted on or before February 25, 2001, a PRC End-User Certificate is required for computers with a Composite Theoretical Performance (CTP) greater than 12,500 Million Operations Per Second (MTOPS) and for license applications submitted on or after February 26, 2001, a PRC End-User Certificate is required for computers with a CTP greater than 28,000 MTOPS;

(ii) For exports under License Exception CTP occurring on or before February 25, 2001, a PRC End-User Certificate is required for computers with a CTP of greater than 12,500 MTOPS.

* * * * *

## PART 774—[AMENDED]

19. In Supplement No. 1 to part 774 (the Commerce Control List), Category 4—Computers is amended by revising the "License Requirements" section of Export Control Classification Numbers (ECCNs) of 4A001 and 4A002, the "License Exceptions" section of ECCN 4A003, and the "License Requirements" and "License Exceptions" sections of ECCNs 4D001 and 4E001, to read as follows:

**4A001 Electronic computers and related equipment, and "electronic assemblies" and specially designed components therefor.**

**License Requirements**

*Reason for Control:* NS, MT, AT, NP, XP.

| Control(s) | Country chart |
|---|---|
| NS applies to entire entry ..... | NS Column 2 |
| MT applies to items in 4A001.a when the parameters in 4A101 are met or exceeded. | MT Column 1 |
| AT applies to entire entry ..... | AT Column 1 |

NP applies to electronic computers with a CTP greater than 6,500 Mtops, unless a License Exception is available. See § 742.3(b) of the EAR for information on applicable licensing review policies.

XP applies to electronic computers with a CTP greater than 6,500 Mtops, unless a License Exception is available. XP controls vary according to destination and end-user and end-use. See § 742.12 of the EAR for additional information.

*License Requirement Notes:* See § 743.1 of the EAR for reporting requirements for exports under License Exceptions.

* * * * *

**4A002 "Hybrid computers" and "electronic assemblies" and specially designed components therefor.**

**License Requirements**

*Reason for Control:* NS, MT, AT, NP, XP.

| Control(s) | Country chart |
|---|---|
| NS applies to entire entry ..... | NS Column 2 |
| MT applies to hybrid computers combined with specially designed "software", for modeling, simulation, or design integration of complete rocket systems and unmanned air vehicle systems that are usable in systems controlled for MT reasons. | MT Column 1 |
| AT applies to entire entry ..... | AT Column 1 |

NP applies to hybrid computers with a CTP greater than 6,500 Mtops, unless a License Exception is available. See § 742.3(b) of the EAR for information on applicable licensing review policies.

XP applies to hybrid computers with a CTP greater than 6,500 Mtops, unless a License Exception is available. XP controls vary according to destination and end-user and end-use. See § 742.12 of the EAR for additional information.

* * * * *

**4A003 "Digital computers", "electronic assemblies", and related equipment therefor, and specially designed components therefor.**

* * * * *

**License Exceptions**

LVS: $5000; N/A for MT and "digital" computers controlled by 4A003.b and having a CTP exceeding 12,500 MTOPS; or "electronic assemblies" controlled by 4A003.c and capable of enhancing performance by aggregation of "computing elements" so that the CTP of the aggregation exceeds 12,500 MTOPS.

GBS: Yes, for 4A003.d, .e, and .g and specially designed components therefor, exported separately or as part of a system.

CTP: Yes, for computers controlled by 4A003.a, .b and .c, to the exclusion of other technical parameters, with the exception of parameters specified as controlled for Missile Technology (MT) concerns and 4A003.e (equipment performing analog-to-digital or digital-to-analog conversions exceeding the limits of 3A001.a.5.a). See § 740.7 of the EAR.

CIV: Yes, for 4A003.d (having a 3–D vector rate less than or equal to 100 M vectors/sec), .e, and .g.

* * * * *

**4D001 "Software" specially designed or modified for the "development", "production" or "use" of equipment or "software" controlled by 4A001 to 4A004, or 4D (except 4D980, 4D993 or 4D994).**

**License Requirements**

*Reason for Control:* NS, MT, CC, AT, NP, XP.

| Control(s) | Country chart |
|---|---|
| NS applies to "software" for commodities or software controlled by 4A001 to 4A004, 4D001 to 4D003. | NS Column 1 |
| MT applies to "software" for equipment controlled by 4A001 to 4A003 for MT reasons. | MT Column 1 |
| CC applies to "software" for computerized finger-print equipment controlled by 4A003 for CC reasons. | CC Column 1 |
| AT applies to entire entry ..... | AT Column 1 |

NP applies to "software" for computers with a CTP greater than 6,500 Mtops, unless a License Exception is available. See § 742.3(b) of the EAR for information on applicable licensing review policies.

XP applies to "software" for computers with a CTP greater than 6,500 Mtops, unless a License Exception is available. XP controls vary according to destination and end-user and end-use. See § 742.12 of the EAR for additional information.

*License Requirement Notes:* See § 743.1 of the EAR for reporting requirements for exports under License Exceptions.

**License Exceptions**

CIV: N/A

TSR: Yes, except for the following:

(1) "Software" controlled for MT reasons;

(2) "Software" for equipment or "software" requiring a license; or

(3) Exports and reexports to destinations outside of Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Japan, Luxembourg, the Netherlands, Portugal, Spain, Sweden, or the United Kingdom of "software" specially designed for the "development" or "production" of equipment controlled as follows:

(a) "Digital" computers controlled by 4A003.b and having a CTP exceeding 33,000 MTOPS; or

(b) "Electronic assemblies" controlled by 4A003.c and capable of enhancing performance by aggregation of "computing elements" so that the CTP of the aggregation exceeds 33,000 MTOPS.

* * * * *

**4E001 "Technology" according to the General Technology Note, for the "development", "production" or "use" of equipment or "software" controlled by 4A (except 4A980, 4A993 or 4A994) or 4D (except 4D980, 4D993, 4D994).**

**License Requirements**

*Reason for Control:* NS, MT, CC, AT, NP, XP.

| Control(s) | Country chart |
|---|---|
| NS applies to "technology" for commodities or software controlled by 4A001 to 4A004, 4D001 to 4D003. | NS Column 1 |
| MT applies to "technology" for items controlled by 4A001 to 4A003, 4A101, 4D001, 4D102 or 4D002 for MT reasons. | MT Column 1 |
| CC applies to "technology" for computerized finger-print equipment controlled by 4A003 for CC reasons. | CC Column 1 |
| AT applies to entire entry .. | AT Column 1 |

NP applies to "technology" for computers with a CTP greater than 6,500 Mtops, unless a License Exception is available. See § 742.3(b) of the EAR for information on applicable licensing review policies.

XP applies to "technology" for computers with a CTP greater than 6,500 Mtops, unless a License Exception is available. XP controls vary according to destination and end-user and end-use. See § 742.12 of the EAR for additional information.

*License Requirement Notes:* See § 743.1 of the EAR for reporting requirements for exports under License Exceptions.

**License Exceptions**

CIV: N/A.

TSR: Yes for "technology" directly related for hardware exported under a License Exception.

N/A for the following:

(1) "Technology" controlled for MT reasons; or

(2) Exports and reexports to destinations outside of Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Japan, Luxembourg, the Netherlands, Portugal, Spain, Sweden, or the United Kingdom of "technology" for the "development" or "production" of the following items:

(a) "Digital" computers controlled by 4A003.b and having a CTP exceeding 33,000 MTOPS;

(b) "Electronic assemblies" controlled by 4A003.c and capable of enhancing performance by aggregation of "computing elements" so that the CTP of the aggregation exceeds 33,000 MTOPS; or

(c) "Software" specially designed for the "development" or "production" of equipment listed in paragraphs (a) or (b) above.

* * * * *

Dated: October 5, 2000.

**R. Roger Majak,**

*Assistant Secretary for Export Administration.*

[FR Doc. 00–26239 Filed 10–12–00; 8:45 am]

BILLING CODE 3510–33–P



## FEDERAL TRADE COMMISSION

## 16 CFR Parts 1 and 311

## Federal Civil Penalties Inflation Adjustment Act of 1990; and Debt Collection Improvement Act of 1996

**AGENCY:** Federal Trade Commission (FTC).

**ACTION:** Final rule amendments.

**SUMMARY:** These rule amendments adjust the dollar amounts of civil penalties under statutes within the FTC's jurisdiction to reflect inflation that has occurred since the Commission last made such inflation adjustments in 1996.

**EFFECTIVE DATE:** November 20, 2000.

**FOR FURTHER INFORMATION CONTACT:** Alex Tang, Attorney, Office of General Counsel, FTC, 600 Pennsylvania Avenue, NW, Washington, DC 20580, (202) 326–2447, atang@ftc.gov.

**SUPPLEMENTARY INFORMATION:** The Federal Civil Penalties Inflation Adjustment Act of 1990 (FCPIAA), as amended by the Debt Collection Improvement Act of 1996 (DCIA), 28 U.S.C. 2461 note, requires each federal agency to issue regulations adjusting civil monetary penalty amounts within its jurisdiction for inflation at least once every four years, using the June consumer price index (CPI) published by the United States Department of Labor, Bureau of Labor Statistics. The last time the Commission adjusted its civil penalties was in 1996, when it published the initial adjustments required by the Act. *See* 61 FR 54548 (Oct. 21, 1996), 55840 (Oct. 29, 1996) (correction); Commission Rule 1.98, 16 CFR 1.98 (inflation adjustments of civil monetary penalty amounts).

The Commission is now amending Rule 1.98 to reflect the 10.02% increase in the relevant CPI since 1996 (*i.e.*, from 156.7 in June 1996 to 172.4 in June 2000), with the amount of each increase being rounded in accordance with

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section 5(a) of the FCPIAA. The Commission is also making conforming amendments to include its Recycled Oil Rule, which was inadvertently omitted from the previous adjustment. *See* 16 CFR 1.98(l), as amended; 16 CFR 311.6 (prohibited acts under test procedures and labeling standards for recycled oil).

Thus, the civil penalty amount for violations of Clayton Act section 7A and of rules and orders enforced under or by reference to the FTC Act will increase from $11,000 to $12,000. *See* amended Rule 1.98(a), (c)–(e), (m). Civil penalty amounts prescribed by Webb-Pomerence Act section 5, Wool Products Labeling Act section 6(b), Fur Products Labeling Act sections 3(e) and 8(d)(2), and Energy Policy and Conservation Act sections 333(a) (Appliance Labeling Rule) will increase from $110 to $120. *See* amended Rule 1.98(g)–(k). Civil penalty amounts prescribed by Clayton Act section 11(*l*), FTC Act section 10, and Energy Policy and Conservation Act section 525(a) and (b) (Recycled Oil Rule) will reflect comparable percentage increases. *See* amended Rule 1.98(b), (f), (l). These inflation adjustments will become effective November 20, 2000, and will apply to violations occurring after that date, pursuant to section 7 of the FCPIAA.

Because the Commission has no discretion in determining the relevant amounts of these mandatory adjustments, the Commission finds it unnecessary to seek public comment on them. *See* 5 U.S.C. 553(b)(B). The requirements of the Regulatory Flexibility Act also do not apply. *See* 5 U.S.C. 603, 604.

**List of Subjects**

*16 CFR Part 1*

Administrative practice and procedure, Penalties, Trade practices.

*16 CFR Part 311*

Energy conservation, Labeling, Recycled oil, Trade practices.

For the reasons set forth in the preamble, the Federal Trade Commission amends Title 16, chapter I, subchapters A, Part 1, and C, Part 311, of the Code of Federal Regulations as follows:

**SUBCHAPTER A—ORGANIZATION, PROCEDURES AND RULES OF PRACTICE**

**PART 1—GENERAL PROCEDURES**

**Subpart L—Civil Penalty Adjustments Under the Federal Civil Penalties Inflation Adjustment Act of 1990, as Amended by the Debt Collection Improvement Act of 1996**

1. Revise the authority for subpart L to read as follows:

**Authority:** 28 U.S.C. 2461 note.

2. Revise the heading of subpart L to read as set forth above.

(3) Revise § 1.98 to read as follows:

**§ 1.98 Adjustment of civil monetary penalty amounts.**

This section makes inflation adjustments in the dollar amounts of civil monetary penalties provided by law within the Commission's jurisdiction. The following civil penalty amounts apply to violations occurring after November 20, 2000:

(a) Section 7A(g)(1) of the Clayton Act, 15 U.S.C. 18a(g)(1)—$12,000;

(b) Section 11(*l*) of the Clayton Act, 15 U.S.C. 21(*l*)—$6,500;

(c) Section 5(*l*) of the FTC Act, 15 U.S.C. 45(*l*)—$12,000;

(d) Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. 45(m)(1)(A)—$12,000;

(e) Section 5(m)(1)(B) of the FTC Act, 15 U.S.C. 45(m)(1)(B)—$12,000;

(f) Section 10 of the FTC Act, 15 U.S.C. 50—$120;

(g) Section 5 of the Webb-Pomerene (Export Trade) Act, 15 U.S.C. 65—$120;

(h) Section 6(b) of the Wool Products Labeling Act, 15 U.S.C. 68d(b)—$120;

(i) Section 3(e) of the Fur Products Labeling Act, 15 U.S.C. 69a(e)—$120;

(j) Section 8(d)(2) of the Fur Products Labeling Act, 15 U.S.C. 69f(d)(2)—$120;

(k) Section 333(a) of the Energy Policy and Conservation Act, 42 U.S.C. 6303(a)—$120;

(l) Sections 525(a) and (b) of the Energy Policy and Conservation Act, 42 U.S.C. 6395(a) and (b)—$6,500 and $12,000, respectively; and

(m) Civil monetary penalties authorized by reference to the Federal Trade Commission Act under any other provision of law within the jurisdiction of the Commission—refer to the amounts set forth in paragraphs (c), (d), (e) and (f) of this section, as applicable.

**SUBCHAPTER C—REGULATIONS UNDER SPECIFIC ACTS OF CONGRESS**

**PART 311—TEST PROCEDURES AND LABELING STANDARDS FOR RECYCLED OIL**

4. The authority for part 311 continues to read as follows:

**Authority:** 42 U.S.C. 6363(d).

5. Amend § 311.6 by revising the last sentence to read as follows:

**§ 311.6 Prohibited acts.**

* * * Violations will be subject to enforcement through civil penalties (as adjusted for inflation pursuant to § 1.98 of this chapter), imprisonment, and/or injunctive relief in accordance with the enforcement provisions of Section 525 of the Energy Policy and Conservation Act (42 U.S.C. 6395).

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 00–26303 Filed 10–12–00; 8:45 am]

BILLING CODE 6750–01–M

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**21 CFR Part 172**

**[Docket No. 99F–3087]**

**Food Additives Permitted for Direct Addition to Food for Human Consumption; Sodium Stearoyl Lactylate**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of sodium stearoyl lactylate as an emulsifier, stabilizer, and texturizer in cream liqueur drinks. This action is in response to a petition filed by the American Ingredients Co.

**DATES:** This rule is effective October 13, 2000. Submit written objections and requests for a hearing by November 13, 2000.

**ADDRESSES:** Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Mary E. LaVecchia, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW.,Washington, DC 20204, 202–418–3047.

**SUPPLEMENTARY INFORMATION:**

**I. Introduction**

In a notice published in the **Federal Register** on September, 13, 1999 (64 FR 49495), FDA announced that a food additive petition (FAP 9A4684) had been filed by the American Ingredients Co., 3947 Broadway, Kansas City, MO 64111. The petition proposed to amend the food additive regulations in § 172.846 *Sodium stearoyl lactylate* (21 CFR 172.846) to provide for the safe use of sodium stearoyl lactylate as an emulsifier, stabilizer, and texturizer in cream liqueur drinks.

**II. Conclusions**

FDA has evaluated the data in the petition and other relevant material. Based on this information, the agency concludes that the proposed use of sodium stearoyl lactylate is safe, that the additive will achieve its intended technical effect, and, therefore, that the regulation in § 172.846 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

**III. Environmental Impact**

The agency has previously considered the environmental effects of this rule as announced in the notice of filing for FAP 9A4684. No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

**IV. Paperwork Reduction Act of 1995**

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

**V. Objections**

Any person who will be adversely affected by this regulation may at any time file with the Dockets Management Branch (address above) written objections by November 13, 2000. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents are to be submitted and are to be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

**List of Subjects in 21 CFR Part 172**

Food additives, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 172 is amended as follows:

**PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION**

1. The authority citation for 21 CFR part 172 continues to read as follows:

**Authority:** 21 U.S.C. 321, 341, 342, 348, 371, 379e.

2. Section 172.846 is amended by adding paragraph (c)(9) to read as follows:

**§ 172.846 Sodium stearoyl lactylate**

* * * * *

(c) * * *

(9) As an emulsifier, stabilizer, or texturizer in cream liqueur drinks, at a level not to exceed 0.5 percent by weight of the finished product.

Dated: October 2, 2000.

**L. Robert Lake,**

*Director of Regulations and Policy, Center for Food Safety and Applied Nutrition.*

[FR Doc. 00–26251 Filed 10–12–00; 8:45 am]

BILLING CODE 4160–01–F



**PENSION BENEFIT GUARANTY CORPORATION**

**29 CFR Parts 4022 and 4044**

**Benefits Payable in Terminated Single-Employer Plans; Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits**

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Final rule.

**SUMMARY:** The Pension Benefit Guaranty Corporation's regulations on Benefits Payable in Terminated Single-Employer Plans and Allocation of Assets in Single-Employer Plans prescribe interest assumptions for valuing and paying benefits under terminating single-employer plans. This final rule amends the regulations to adopt interest assumptions for plans with valuation dates in November 2000. Interest assumptions are also published on the PBGC's web site (www.pbgc.gov).

**EFFECTIVE DATE:** November 1, 2000.

**FOR FURTHER INFORMATION CONTACT:** Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (For TTY/TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

**SUPPLEMENTARY INFORMATION:** The PBGC's regulations prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Three sets of interest assumptions are prescribed: (1) a set for the valuation of benefits for allocation purposes under section 4044 (found in Appendix B to Part 4044), (2) a set for the PBGC to use to determine whether a benefit is payable as a lump sum and to determine lump-sum amounts to be paid by the PBGC (found in Appendix B to Part 4022), and (3) a set for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology (found in Appendix C to Part 4022). (See the PBGC's two final rules published March 17, 2000, in the **Federal Register** (at 65 FR 14752 and 14753). Effective May 1, 2000, these rules changed how the interest

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assumptions are used and where they are set forth in the PBGC's regulations.)

Accordingly, this amendment (1) adds to Appendix B to Part 4044 the interest assumptions for valuing benefits for allocation purposes in plans with valuation dates during November 2000, (2) adds to Appendix B to Part 4022 the interest assumptions for the PBGC to use for its own lump-sum payments in plans with valuation dates during November 2000, and (3) adds to Appendix C to Part 4022 the interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology for valuation dates during November 2000.

For valuation of benefits for allocation purposes, the interest assumptions that the PBGC will use (set forth in Appendix B to part 4044) will be 7.10 percent for the first 25 years following the valuation date and 6.25 percent thereafter. These interest assumptions represent an increase (from those in effect for October 2000) of 0.10 percent for the first 25 years following the valuation date and are otherwise unchanged.

The interest assumptions that the PBGC will use for its own lump-sum payments (set forth in Appendix B to part 4022) will be 5.25 percent for the period during which a benefit is in pay status, 4.50 percent during the seven-year period directly preceding the benefit's placement in pay status, and 4.00 percent during any other years preceding the benefit's placement in pay status. These interest assumptions represent an increase (from those in effect for October 2000) of 0.25 percent for the period in which a benefit is in pay status and for the seven-year period directly preceding benefit's placement in pay status and are otherwise unchanged.

For private-sector payments, the interest assumptions (set forth in Appendix C to part 4022) will be the same as those used by the PBGC for determining and paying lump sums (set forth in Appendix B to part 4022).

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation and payment of benefits in plans with valuation dates during November 2000, the PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

**List of Subjects**

*29 CFR Part 4022*

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

*29 CFR Part 4044*

Employee benefit plans, Pension insurance, Pensions.

In consideration of the foregoing, 29 CFR parts 4022 and 4044 are amended as follows:

## PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

1. The authority citation for part 4022 continues to read as follows:

**Authority:** 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

2. In appendix B to part 4022, Rate Set 85, as set forth below, is added to the table. (The introductory text of the table is omitted.)

**Appendix B to Part 4022—Lump Sum Interest Rates for PBGC Payments**

* * * * * * *

| Rate set | For plans with a valuation date | | Immediate annuity rate (percent) | Deferred annuities (percent) | | | | |
|---|---|---|---|---|---|---|---|---|
| | On or after | Before | | $i_1$ | $i_2$ | $i_3$ | $n_1$ | $n_2$ |
| . | . | . | . | . | . | . | . | . |
| 85 | 11–1–00 | 12–1–00 | 5.25 | 4.50 | 4.00 | 4.00 | 7 | 8 |

3. In appendix C to part 4022, Rate Set 85, as set forth below, is added to the table. (The introductory text of the table is omitted.)

**Appendix C to Part 4022—Lump Sum Interest Rates For Private-Sector Payments**

* * * * * * *

| Rate set | For plans with a valuation date | | Immediate annuity rate (percent) | Deferred annuities (percent) | | | | |
|---|---|---|---|---|---|---|---|---|
| | On or after | Before | | $i_1$ | $i_2$ | $i_3$ | $n_1$ | $n_2$ |
| . | . | . | . | . | . | . | . | . |
| 85 | 11–1–00 | 12–1–00 | 5.25 | 4.50 | 4.00 | 4.00 | 7 | 8 |



## PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

4. The authority citation for part 4044 continues to read as follows:

**Authority:** 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

5. In appendix B to part 4044, a new entry, as set forth below, is added to the table. (The introductory text of the table is omitted.)

**Appendix B to Part 4044—Interest Rates Used to Value Benefits**

* * * * * * *

| For valuation dates occurring in the month— | The values of $i_t$ are | | | | | |
|---|---|---|---|---|---|---|
| | $i_1$ | for $t$= | $i_2$ | for $t$= | $i_3$ | for $t$= |
| . | . | . | . | . | . | . |
| November 2000 | .0710 | 1–25 | .0625 | >25 | N/A | N/A |

Issued in Washington, DC, on this 6th day of October 2000.

**John Seal,**

*Acting Executive Director, Pension Benefit Guaranty Corporation.*

[FR Doc. 00–26328 Filed 10–12–00; 8:45 am]

BILLING CODE 7708–01–P

## DEPARTMENT OF DEFENSE

### Department of the Navy

### 32 CFR Part 752

RIN 0703–AA68

### Admiralty Claims

**AGENCY:** Department of the Navy, DOD.

**ACTION:** Final rule.

**SUMMARY:** The Department of the Navy is updating its Admiralty Claims regulations to reflect a change in the Division name and address, to update citations to the United States Code provisions, and to remove the reference to Commander, Fleet Air Caribbean, a command that has been disestablished.

**DATES:** Effective October 13, 2000.

**ADDRESSES:** Office of the Judge Advocate General (Code 13), 1322 Patterson Ave SE, Suite 3000, Washington Navy Yard, DC 20374–5066.

**FOR FURTHER INFORMATION CONTACT:** Commander Gregg A. Crevi, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), Office of the Judge Advocate General (Code 11), 1322 Patterson Ave SE, Suite 3000, Washington Navy Yard, DC 20374–5066, (202) 685–5040.

**SUPPLEMENTARY INFORMATION:** Pursuant to the authority cited below, the Department of the Navy amends 32 CFR part 752. This amendment provides notice that the Deputy Judge Advocate General of the Navy (Admiralty and Maritime Law) has made administrative corrections to the Admiralty Claims regulations. It has been determined that invitation of public comment on this amendment would be impracticable and unnecessary, and it is therefore not required under the public rulemaking provisions of 32 CFR part 336 or Secretary of the Navy Instruction 5720.45. Interested persons, however, are invited to comment in writing on this amendment. All written comments received will be considered in making subsequent amendments or revisions of 32 CFR Part 752, or the instructions on which they are based. Changes may be initiated on the basis of comments received. Written comments should be addressed to Commander Gregg A. Crevi, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), Office of the Judge Advocate General (Code 11), 1322 Patterson Ave SE, Suite 3000, Washington Navy Yard, DC 20374–5066. It has been determined that this final rule is not a "significant regulatory action" as defined in Executive Order 12866.

**Executive Order 13132, Federalism**

It has been determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will have little or no direct effect on States or local governments.

**Regulatory Flexibility Act**

This rule will not have a significant economic impact on a substantial number of small entities for purposes of the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

**Paperwork Reduction Act**

This rule does not impose collection of information requirements for purposes of the Paperwork Reduction Act (44 U.S.C. Chapter 35, 5 CFR Part 1320).

**List of Subjects**

Admiralty, Claims, Salvage.

For the reasons set forth in the preamble, amend part 752 of title 32 of the Code of Federal Regulations as follows:

## PART 752—ADMIRALTY CLAIMS

1. The authority citation for 32 CFR part 752 continues to read as follows:

**Authority:** 5 U.S.C. 301; 10 U.S.C. 5013, 5148, and 7621–7623, 32 CFR 700.206 and 700.1202.

**§§ 752.2, 752.3, 752.4, 752.5 [Amended]**

2. a. In 32 CFR part 752 remove the words "Admiralty Division" and add, in their place, the words "Admiralty and Maritime Law Division" in the following places:

(1) Section 752.2(b), (c), (d) and (g)

(2) Section 752,4(d)

(3) Section 752.5(a)

b. In addition to the amendments set forth above, in 32 CFR part 752 remove the date "(1982)" following all citations to the United States Code, and add, in its place, the date "(1994)" in the following places:

(1) Section 752.2(a)

(2) Section 752.3(a)

(3) Section 752.4(a) and (c)

(4) Section 752.5(b)

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**§ 752.2 [Amended]**

3. In 32 CFR 752.2(b), remove the words "(Code 31), Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400" and add, in their place, the words "(Code 11), 1322 Patterson Avenue SE, Suite 3000, Washington Navy Yard, DC 20374–5066".

**§ 752.3 [Amended]**

4. In 32 CFR 752.3(a), remove the word "(Admiralty)" and add, in its place, the words "(Admiralty and Maritime Law)" and remove the words "Commander Fleet Air, Carribean, for damage to fishing equipment arising in Culebra-Vieques waters, not to exceed $3,000."

**§ 752.5 [Amended]**

5. In 32 CFR 752.5(b), remove the words "Washington, DC 20362–5101" and add in their place "2531 Jefferson Davis Highway, NC/3 Room 11E54, Arlington, VA 22242–5160."

Dated: October 2, 2000.

**C.G. Carlson,**

*Major, U.S. Marine Corps, Alternate Federal Register, Liaison Officer.*

[FR Doc. 00–26270 Filed 10–12–00; 8:45 am]

BILLING CODE 3810–FF–P

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

**36 CFR Part 1258**

**RIN 3095–AA87**

## NARA Reproduction Fee Schedule

**AGENCY:** National Archives and Records Administration (NARA).

**ACTION:** Final rule.

**SUMMARY:** NARA is revising its schedule of fees for reproduction of records and other materials in the custody of the Archivist of the United States. This rule covers reproduction of Federal records created by other agencies that are in the National Archives of the United States, donated historical materials, Presidential records, Nixon Presidential historical materials, certain Federal agency records in NARA Federal records centers, and records filed with the Office of the Federal Register. The fees are being changed to reflect current costs of providing the reproductions. This rule will affect members of the public and Federal agencies who order reproductions from NARA.

**EFFECTIVE DATE:** November 13, 2000.

**FOR FURTHER INFORMATION CONTACT:** Nancy Allard on (301)713–7360, ext. 226.

**SUPPLEMENTARY INFORMATION:** The proposed rule was published in the April 25, 2000, **Federal Register** (65 FR 24164) for a 60-day public comment period. NARA announced the availability of the proposed rule widely and posted notices in its research rooms nationwide. A copy of the proposed rule was also posted on the NARA web site for review.

### Overview

NARA received over 285 timely comments by mail, fax, and email to the Comments, Inquire, and OIG Hotline mailboxes. We considered multiple comments from a single respondent (e.g., to more than one NARA email address or to provide additional examples of concerns with specific copiers) as a single timely comment. We also received a number of Congressional inquiries on behalf of constituents and have considered those inquiries also.

Most of the comments were from individuals, a number of whom identified themselves as genealogists. We received comments from 9 genealogical organizations, ranging in scope from a local genealogy club in California and a subordinate Grange unit in Wisconsin to the Ohio Society of the War of 1812 to the joint Federation of Genealogical Societies/National Genealogy Society Records Preservation and Access Committee. We received comments from several individuals who identified themselves as professional/academic historians.

In response to the comments, we have modified the fees and process for ordering pension files and clarified the effective date of the final rule. In addition, we have removed the fee for diazo microfiche reproductions (§ 1258.12(d) in the proposed rule). There is no longer a need to include this item in the fee schedule because we have completed conversion of all of the microfiche previously covered by the fee schedule to products sold through NARA's microform publication program. The fee for published microfiche, unchanged since 1996, is $4.25 per fiche. All other provisions in the proposed Part 1258, including the fees for other products specified in § 1258.12, are unchanged in this final rule. Following is a discussion of the major issues addressed in the comments.

### Magnitude of Increases for Fixed Fee Orders

*Comments:* A large number of respondents commented that the fee increases for fixed fee (NATF 80 series) orders would put them beyond their reach and asked NARA to reconsider the proposal. A recurring theme throughout these comments was that many genealogists are retired and on fixed incomes. A number of respondents voiced suspicion that NARA was intentionally discouraging requests to reduce its workload. Still others questioned why NARA was raising prices when the Federal Government was reporting a budget surplus. The Records Preservation and Access Committee, which sought input from the genealogical community before developing their position, reported that that the comments to the Committee were "overwhelmingly negative" and that the $40 fee for pension files was "almost universally condemned." The Committee's experience also reflects the comments NARA received directly.

Only a handful of respondents supported the proposed fixed fee order changes. The Records Preservation and Access Committee and one individual reluctantly supported the revised fees because they are based on actual costs. Several other individuals stated their full support for the fees. Four respondents in addition to the Records Preservation and Access Committee said that they could "live with" the proposed $17–$17.75 fee for non-pension file fixed fee orders.

*NARA response:* The current fees for fixed fee orders were last changed in 1991. Since that time, there have been increases in salaries, equipment costs, and postage, as well as changes in how the orders are handled that account for the additional costs. The order fulfillment system, required as part of a mandatory upgrade to our Trust Fund accounting system to meet Government financial accounting requirements and to make the system Y2K compliant, and use of a contractor to copy the records are major differences in how orders are handled.

We regret the need to increase fees for providing copies of NARA records using the fixed fee order forms and we recognize that the amount of the increase may cause a hardship for some of our customers. A major component of NARA's mission is to provide continuing access to our archival holdings, and we do not want to diminish access provided through reproduction of the records. To provide such access requires resources. As we explained in the preamble to the proposed rule, NARA does not receive appropriations to provide copies of our holdings for the public. The cost of searching for files that are not found and providing negative responses, however, is funded by appropriations. Customers who receive copies are not also absorbing the cost for negative searches and customers who receive negative responses are not charged for NARA's effort.

NARA fees for reproduction of records in 36 CFR Part 1258, including these fixed fee orders, are set under the Archivist's authority in 44 U.S.C. 2116(c). That statute requires that, to the extent possible, NARA recover the actual cost of making copies of records and other materials transferred to the custody of the Archivist of the United States. The actual cost of making copies of records in response to pension fixed-fee orders includes materials and equipment, order handling, shipping, and the labor costs associated with making the reproduction. A brief description of these cost elements for a copy of a full pension file follows.



| Cost element | Description |
|---|---|
| Materials ($0.08 per page copied from microfilm; $0.02 per page copied from paper). | —Paper.<br>—Toner (microfilm reader-printer; included in rental costs copied for fixed-fee paper-to-paper copiers). |
| Equipment ($0.027 per page copied from microfilm; $0.025 per page copied from paper). | —Equipment rental or depreciation (over 5 years).<br>—Service maintenance agreement/repairs. |
| Order handling costs ($5.00 per pension file order) | —Proportional share of the cost of the system to track orders from receipt through payment to shipping and close out.<br>—Costs associated with receiving and handling payments.<br>—Proportional share of the Trust Fund overhead costs to manage the National Archives Trust Fund (*e.g.*, policy, oversight, procurement functions). |
| Shipping ($3.15 per full pension file order) | —Postage for bill notice and mailing reproductions.<br>—Envelopes for mailing. |
| Labor cost—NARA staff ($1.91 per pension file order) | —Batch incoming requests for processing (we receive approximately 1,000 pension requests per week).<br>—Search and pull paper records from their boxes; for pension files, there is an additional step of searching the pension index).<br>—Take paper records to the on-site contractor for reproduction.<br>—Reshelve paper records after copying.<br>—Supervisory oversight of the above processes. |
| Labor costs—contractor ($24.00 per full pension file order) | —Enter orders into the workflow system.<br>—Making copies of paper files.<br>—For records Revolutionary War pension records (which are on microfiche):<br>(1) Locating and mounting the correct microfiche on the reader printer,<br>(2) Locating the correct frame(s) on the fiche, making the copies, and removing the microfiche from the carrier, and<br>(3) Returning the microfiche to the storage cabinet.<br>—For all orders, packaging the orders for mailing. |

### Pension Files: Size of Files

*Comments:* We received a number of comments questioning our statement that the average pension file is approximately 105 pages. While some of the respondents may have confused selected pension files or military service files which they had received with full pension files, many researchers who had ordered a number of complete pension files reported their experience that the file size was generally 40–50 pages or less. The Sons of Union Veterans of the Civil War stated that none of their members had received a pension file close to 102 pages.

*NARA response:* Because of the number of comments on the size of files and the level of concern that a requester would be charged $40 for 20 or fewer pages, NARA conducted a new 2-week sample of all NATF 80 pension and bounty land warrant orders copied by the on-site contractor between June 16 and June 29, 2000. The 2-week sample contained 1,338 files, and all pages in each file were counted regardless of whether the order was for the selected file or remaining documents. Each side that had writing on it was counted. If the back was blank, it was not counted. For this sample, we collected additional information on the period of service for which the pension was sought to allow us to analyze the orders in greater depth.

Our analysis showed that the size of the pension file was affected by the service time period. The Civil War and post-Civil War period had the largest number of orders and the greatest variation in size of the file. Eighty-seven percent of the orders in the sample were for Civil War or post-Civil War pensions; the size of these files ranged from a low of 5 pages to 546 pages. Five percent of the files from the Civil War/post-Civil War period (60 files) had more than 200 pages. In contrast, pre-Civil War pension files accounted for only 2 percent of the total orders in the sample period (25 files) and ranged from 4 pages to 111 pages. Eleven percent of the orders in the sample were for Revolutionary War records, which are the only pension files serviced on microfilm. The size of these files ranged from a low of 5 pages to a maximum of 184 pages.

Because the new sample is larger and more current than the sample on which the proposed $40 fee for complete pension files was based, we have used the new sample as the basis for the revisions to the fees for pension file orders discussed later in this **SUPPLEMENTARY INFORMATION.** We have calculated the revised fees based on a weighted composite order that includes records from all three eras. The weighting omits the highest and lowest 10 percent of the orders in the samples to reduce the distortion in pricing that their inclusion would cause. For paper records (89 percent of the total files), we used an order size of 66 pages. For microfilm records (11 percent of the total files), we used an order size of 26 pages.

### Pension Files: All Pages in the File

*Comments:* A relatively small number of respondents strongly endorsed the proposal to copy all pages in a pension file, and several respondents expressed surprise that more people did not realize they were not receiving the entire file. The proposed fee for the full file orders may have been the reason

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more researchers did not support the proposal, but 13 respondents provided other specific reasons why a partial file at a lower fee is desirable. Several comments stated that a full file is only useful if it is for the right person. These respondents noted that it is not always possible to be sure of the identification of the veteran when placing the order. Another reason raised in five comments was that the researcher might be seeking only basic information. One respondent had ordered 43 files in the past and only needed the full pension file 3 or 4 times. A professional genealogist, who endorsed offering full files, also noted that many people use the pension file only as a supplementary source for information on the veteran and his family. Several respondents expressed their views that the full pension file contains duplicative or unimportant materials.

Eighteen respondents recommended that NARA offer an option for full or partial pension files. Some of these respondents suggested a variety of alternatives including charging more for expedited service, raising fees only for customers who are not veterans, charging a flat fee for a set number of pages plus an additional charge per page or increment of 10 pages, and establishing a multi-tiered fee structure based on whether records are available on microfilm through other sources such as the Family History Centers or if NARA is the only source.

*NARA response:* We considered the alternative pricing structures suggested in the comments before deciding on the approach to take. It is not feasible to retain the current $10 fee for any pension file order due to the cost increases described earlier in the **SUPPLEMENTARY INFORMATION.**

We are aware that copies of vital records (birth, death, and marriage records) are available on an expedited basis from some states for an extra fee. We currently allow expedited service only for still pictures and motion picture and video recordings among the holdings of a Presidential library and only if staff is available to handle the order or the NARA contractor making the reproduction can provide the service. Given that the standard fee cannot stay at $10 as the respondent assumed, we do not believe that there would be sufficient demand for expedited handling of fixed fee orders to warrant setting up special handling procedures to accommodate it.

We also find no basis for charging veterans less than other citizens for the reproduction of pension files that are not related to their own service. Department of Defense regulations govern furnishing copies of military service records at the National Personnel Records Center to veterans and their immediate family members because those records are still in the legal custody of the Department. The pension files ordered through the NATF Form 85 are in NARA legal custody in the National Archives of the United States.

We carefully evaluated the proposals for charging a flat search/order handling fee plus a copying fee per page or per increment of pages. These proposals would add to the staff handling costs. The pricing information on the number of pages or increments would have to be entered in the order processing/fulfillment system for each order; the staff would have to count the number of pages and send a price quote to the customer; and, when a response is received, retrieve the file again for copying. The proposals would also increase the overall response time.

**Fixed Fee Orders: Alternatives for Reducing Costs**

*Comments:* Some respondents suggested ways that NARA might reduce its costs to provide copies of military service and pension files. A number of respondents suggested that NARA put key genealogical records on the Internet. One respondent suggested that NARA donate digital copies to RootsWeb where the public could download copies. While one respondent acknowledged that it would be costly for NARA to digitize the records, most respondents did not address the cost to scan the records or maintain them on the NARA web site. Several encouraged NARA to use volunteers to assist in the process or to assist with scanning or microfilming the records. One person recommended that people rent the Revolutionary War microfilm from a Family History Center and make their own copies. Three respondents urged NARA to have the Church of Jesus Christ of Latter Day Saints microfilm or digitize the records and make the records available through their Family History Centers. Another three respondents suggested privatizing the service. One person suggested charging a $5 research fee for all searches instead of raising the reproduction fee.

*NARA response:* The suggestions relating to microfilming or scanning the records are not solutions that can be implemented quickly to avoid raising the fees for copies of military service and pension files. We have worked with both volunteers and private sector partners on other microfilming and digitizing projects, and plan to continue this effort. Nevertheless, scanning or microfilming the records is a very labor-intensive, long-term effort, even if volunteers or private-sector partners were to do part or all of the work. The records that NARA reproduces in response to researcher requests are different for each requester. NARA has 288 million pages of military pension files that currently exist only in paper and we would need significant resources to convert these holdings to electronic form.

In response to the suggestion that individuals rent the Revolutionary War microfilm and make their own copies, we note that NARA microfilm publications containing records of genealogical interest, including many military service records as well as Revolutionary War pension records, are widely available. NARA regional records facilities and many large libraries and genealogical societies have all or some of the microfilm sets. In addition, rolls of microfilm are available to libraries and individuals through NARA's Microfilm Rental Program (see http://www.nara.gov/publications/microfilm/micrent.html).

The other suggestions would not allow NARA to maintain the $10 fee. NARA is very fortunate to have a large corps of volunteers who provide valuable services to help us carry out our mission nationwide. We could use volunteers to assist with aspects of the fixed-fee order process at the National Archives Building in Washington, DC, but it is not possible to find enough volunteers to replace NARA staff and contractors to lower the costs to $10 per order. As noted earlier in this preamble, we do use a contractor in providing the service but privatizing the service would not reduce the cost. It is not appropriate to charge $5 for each negative research request in order to offset the cost of positive responses. As we stated previously, we do not charge a fee when no file is found.

**Fixed Fee Orders: Revised Pension File Prices**

After evaluating all of the comments on the pension file proposal, we have decided to offer researchers a choice between reproduction of the complete pension file and a pension documents packet of up to 10 pages. Providing the choice of the two reproduction packages will allow NARA to measure the relative demand for each reproduction package. We still believe that providing the complete pension file is the most appropriate way to provide access to these records when researchers are unable to view the records on microfilm or in person, but we need to further evaluate how we can best provide this service. In a future proposed rule we will seek public comment on alternative pricing structures.



For now, we are willing to continue to provide an option for researchers to obtain certain limited information that is contained in most pension files if they do not wish to order a complete file or cannot afford the full file. The pension documents package will not contain the same range of documents previously provided in the $10 fee. It will contain, to the extent that these documents are present in the file, eight documents that contain genealogical information about the pension applicant. Not all of these documents will be found in every file. The package will include any of the following items that are in the file:

1. Declaration of pension
2. Declaration of widow's pension
3. Adjutant General statements of service
4. Questionnaires completed by applicants (numbered forms)
5. "Pension Dropped" cards
6. Marriage certificates
7. Death certificates
8. Discharge certificate

We will not provide a count of the remaining pages; if a researcher wishes to obtain a full pension file after reviewing the selected package, he or she will need to order the complete file. If the entire pension file is no more than the 10 pages, we will mark the order "Complete file provided." Based on our sample, this should occur in no more than 2 percent of the orders. So that customers are not misled that the selected documents constitute the entire file, we will include with the copies an explanation that the entire file contains more information.

The fee for a complete pension file under the new fee schedule is $37.00. The fee for the selected documents packet is $14.75. The new NATF Form 85 will be used to order either a complete pension file or a selected pension documents packet or a bounty land warrant file. As we stated in the proposed rule, the bounty land warrant file should be ordered only when there is no pension file.

Researchers who review military service files and pension files in person at the National Archives Building will continue to be able to copy whatever selected pages they want from the file at a self-service copier.

**Pricing Structure for Other Fixed Fee Orders**

We specifically invited public comment on our planned pricing structure for separate fees for each of the different types of fixed fee orders versus a blended fee that applied to all fixed fee orders except pension files. We received only one comment on this issue, which supported the blended fee. Because customers did not express a strong preference, we have decided to retain the separate fees for each type of fixed fee order.

**Self-Service Copying: Cost of Copies**

*Comments:* Several respondents commented directly on the proposed nickel increase in the fee for self-service copying. A number of respondents compared the cost of NARA's self-service copies to lower prices available at local copy centers or libraries.

*NARA response:* Comparing the fees for NARA's nationwide self-service copying program with those charged by a commercial copy center is misleading. The fees for self-service copying of archival records include more than just the cost of the paper, toner, and copier equipment. In addition to these two components, NARA costs that must be recovered include staff oversight of self-service copying and Trust Fund overhead/cashier costs.

NARA self-service copiers use primarily legal or ledger size paper at a cost of approximately 2 cents per page for paper and toner. These costs reflect the quantity discounts that we are able to obtain based on our volume. Our equipment costs average almost 4 cents per page for paper-to-paper copiers and almost 19 cents per page for microfilm-to-paper copiers. These higher equipment costs result from the variation in volume from facility to facility and our commitment to provide self-service copying in all of our facilities. Although very high-volume self-service copiers in the Washington, DC, area, account for 79.6 percent of the 4.9 million self-service electrostatic copies made, our 10 Presidential libraries and 13 regional archives each have at least one paper-to-paper copier available. All regional archives and several libraries have at least one microfilm reader-printer. The costs of copier equipment in all of these field facilities must be shared across fewer copies per facility. (The self-service copier costs discussed here reflect costs for 64 paper-to-paper copiers and 46 microfilm reader-printers used in self-service operations nationwide. The materials and equipment costs cited earlier for fixed-fee pension orders are for the specific copiers used in the fixed-fee operation.)

NARA is one of the few archives in the world that permits large-scale self-service copying. We are able to offer this service because of the staff oversight of the copying operation. Before a researcher is allowed to copy paper records, the records must be reviewed by a NARA staff member in the research room to ensure that none of the records are fragile or otherwise unsuitable for self-service copying, and that declassified records are properly marked with the declassification information. These staff costs and the staff time spent maintaining the equipment and supplies are also recovered through the fees for self-service copies. In the Washington, DC, area, our Trust Fund cashier staff process customer payments and service the debit card dispensers. In the field, archival staff handle customer payments. Additionally, a proportional share of the Trust Fund overhead, described previously, is allocated to self-service copying.

**Self-Service Copying: Service Issues**

*Comments:* Most of the comments on self-service copying addressed the poor quality of copies and problems with self-service equipment, particularly in the Washington, DC, area. One respondent recommended that NARA install self-service oversize copiers at its College Park, MD and regional facilities.

*NARA response:* We are very aware that the current copiers at the Washington area facilities have their drawbacks. Beginning two years ago, we installed digital copiers for self-service copying. While these have worked very well in enhancing poor quality microfilm, they have proved to be too sensitive to variations in poor quality paper originals. To address the problems with paper to paper copiers, we are in the process of replacing digital copiers in the Washington area with more durable analog copiers that are easier to maintain. We are also replacing older microfilm reader-printers and the book scanner in FY 2001. The newer versions of these machines take advantage of the simplified process of printing to a digital laser printer, and should prove less prone to mechanical breakdowns. We are in the process of upgrading the microfilm reader-printers in all of our regional archives, replacing the older reader-printers with digital equipment.

We carefully considered the suggestion to provide an oversize copier at the College Park facility and the field facilities, but concluded that oversize copiers are not appropriate for self-service use. In addition to space and low demand considerations in the regional research rooms, our archival reference and preservation staff had serious concerns that oversize maps and other large documents can be more

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vulnerable to damage during copying. Moreover, these copiers are more complicated to use and, if something should break, more difficult to repair.

**Effective Date**

We received several questions about what fees would apply to orders that had been received but not filled by NARA when the new fee schedule is effective. We have clarified the effective date in § 1258.16 to specify that the new fees will apply to orders that are received on or after the effective date of the final rule, and not to work that is in process.

**Paperwork Reduction Act**

NATF Forms 81 through 86 in this proposed rule have been approved by the Office of Management and Budget under the Paperwork Reduction Act and bear current approval numbers on the face of the forms.

This rule is a significant regulatory action for purposes of Executive Order 12866 of September 30, 1993, and has been reviewed by the Office of Management and Budget. This rule does not have federalism implications. As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on a substantial number of small entities because the affected public is primarily individuals. This rule is not a major rule as defined in 5 U.S.C. Chapter 8, Congressional Review of Agency Rulemaking.

**List of Subjects in 36 CFR Part 1258**

Archives and records.

For the reasons set forth in the preamble, NARA revises part 1258 of title 36, Code of Federal Regulations, to read as follows:

## PART 1258—FEES

Sec.

1258.1 What is the authority for this part?
1258.2 What does the NARA reproduction fee schedule cover?
1258.4 What reproductions are not covered by the NARA fee schedule?
1258.6 When does NARA provide reproductions without charge?
1258.8 Who pays to have a copy negative made?
1258.10 What is NARA's mail order policy?
1258.12 NARA reproduction fee schedule.
1258.14 What is NARA's payment policy?
1258.16 Effective date.

**Authority:** 44 U.S.C. 2116(c) and 2307.

### § 1258.1 What is the authority for this part?

(a) 44 U.S.C. 2116(c) authorizes NARA to charge a fee for making or authenticating copies or reproductions of materials transferred to the Archivist's custody. This fee is to be "fixed by the Archivist at a level which will recover, so far as practicable, all elements of such costs and may, in the Archivist's discretion, include increments for the estimated replacement costs of equipment." The fees collected for reproductions are to be paid into and expended as part of the National Archives Trust Fund.

(b) 44 U.S.C. 2307 authorizes the Archivist of the United States, as Chairman of the National Archives Trust Fund Board, to sell copies of microfilm publications at a price that will cover their cost, plus 10 percent.

### § 1258.2 What does the NARA reproduction fee schedule cover?

The NARA reproduction fee schedule in § 1258.12 covers reproduction of:

(a) NARA archival records, donated historical materials, Presidential records, and Nixon Presidential historical materials except as otherwise provided in §§ 1258.4 and 1258.6. Some reproduction services listed in § 1258.12 may not be available at all NARA facilities;

(b) Other Federal records stored in NARA Federal records centers, except when NARA and the agency that transferred the records have agreed to apply that agency's fee schedule; and

(c) Records filed with the Office of the Federal Register.

### § 1258.4 What reproductions are not covered by the NARA fee schedule?

The following categories are not covered by the NARA fee schedule in § 1258.12.

(a) Still photography, including aerial film, and oversize maps and drawings. Information on the availability and prices of reproductions of records held in the Special Media Archives Services Division (NWCS), 8601 Adelphi Rd., College Park, MD 20740–6001, and in the Presidential libraries and regional archives (see 36 CFR 1253.3 and 36 CFR 1253.7 for addresses) may be obtained from the unit which has the original records.

(b) Motion picture, sound recording, and video holdings of the National Archives and Presidential libraries. Information on the availability of and prices for reproduction of these materials are available from the Special Media Archives Services Division (NWCS), 8601 Adelphi Rd., Room 3340, College Park, MD 20740–6001, or from the Presidential library which has such materials (see 36 CFR 1253.3 for addresses).

(c) Electronic records. Information on the availability of and prices for duplication are available from the Electronic and Special Media Records Services Division (NWME), 8601 Adelphi Rd., Room 5320, College Park, MD 20740–6001, or from the Presidential library which has such materials (see 36 CFR 1253.3 for addresses).

(d) Reproduction of the following types of records using the specified order form:

| Type of record and order form | Price |
|---|---|
| (1) Passenger arrival lists (order form NATF Form 81) | $17.25 |
| (2) Federal Census requests (order form NATF Form 82) | 17.50 |
| (3) Eastern Cherokee applications to the Court of Claims (order form NATF Form 83) | 17.50 |
| (4) Land entry records (order form NATF 84) | 17.75 |
| (5) Bounty land warrant application files (order form NATF Form 85) | 17.25 |
| (6) Pension files more than 75 years old (order form NATF Form 85)—complete file | 37.00 |
| (7) Pension documents packet (order form NATF Form 85) | 14.75 |
| (8) Military service files more than 75 years old (order form NATF Form 86) | 17.00 |



(e) National Archives Trust Fund Board publications, including microfilm publications. Prices are available from the Customer Service Center (NWCC2), 8601 Adelphi Rd., Room 1000, College Park, MD 20740–6001.

(f) Reproductions of NARA operational records made in response to FOIA requests under part 1250 of this chapter.

(g) Orders for expedited service ("rush" orders) for reproduction of still pictures and motion picture and video recordings among the holdings of a Presidential library. Orders may be accepted on an expedited basis by the library when the library determines that sufficient personnel are available to handle such orders or that the NARA contractor making the reproduction can provide the service. Rush orders are subject to a surcharge to cover the additional cost of providing expedited service.

(h) Orders requiring additional expense to meet unusual customer specifications such as the use of special techniques to make a photographic copy more legible than the original document, or unusual format or background requirement for negative microfilm. Fees for these orders are computed for each order.

### § 1258.6 When does NARA provide reproductions without charge?

NARA does not charge a fee for reproduction or certification in the instances described in this section, if the reproduction is not a color reproduction. Color reproductions are furnished to the public and the Government only on a fee basis.

(a) When NARA furnishes copies of documents to other elements of the Federal Government. However, a fee may be charged if the appropriate director determines that the service cannot be performed without reimbursement;

(b) When NARA wishes to disseminate information about its activities to the general public through press, radio, television, and newsreel representatives;

(c) When the reproduction is to furnish the donor of a document or other gift with a copy of the original;

(d) When the reproduction is for individuals or associations having official voluntary or cooperative relations with NARA in its work;

(e) When the reproduction is for a foreign, State, or local government or an international agency and furnishing it without charge is an appropriate courtesy;

(f) For records of other Federal agencies in NARA Federal records centers only:

(1) When furnishing the service free conforms to generally established business custom, such as furnishing personal reference data to prospective employers of former Government employees;

(2) When the reproduction of not more than one copy of the document is required to obtain from the Government financial benefits to which the requesting person may be entitled (*e.g.*, veterans or their dependents, employees with workmen's compensation claims, or persons insured by the Government);

(3) When the reproduction of not more than one copy of a hearing or other formal proceeding involving security requirements for Federal employment is requested by a person directly concerned in the hearing or proceeding; and

(4) When the reproduction of not more than one copy of a document is for a person who has been required to furnish a personal document to the Government (*e.g.*, a birth certificate required to be given to an agency where the original cannot be returned to the individual).

### § 1258.8 Who pays to have a copy negative made?

Requests for photographs of materials for which no copy negative is on file are handled as follows:

(a) The customer is charged to make the copy negative, except in cases where NARA wishes to retain the negative for its own use.

(b) When no fee is charged the negative becomes the property of NARA. When a fee is charged the negative becomes the property of the customer.

### § 1258.10 What is NARA's mail order policy?

(a) There is a minimum fee of $10.00 per order for reproductions that are sent by mail to the customer.

(b) Orders to addresses in the United States are sent either first class or UPS depending on the weight of the order and availability of UPS service. When a customer requests special mailing services (such as Express Mail or registered mail) and/or shipment to a foreign address, the cost of the special service and/or additional postage for foreign mail is added to the cost of the reproductions.

### § 1258.12 NARA reproduction fee schedule.

(a) Certification: $6.

(b) Electrostatic copying (in order to preserve certain records which are in poor physical condition, NARA may restrict customers to photographic or microfilm copies instead of electrostatic copies):

| Service | Fee |
|---|---|
| (1) Paper-to-paper copies (up to and including 11 in. by 17 in.) made by the customer on a NARA self-service copier | [1]$0.15 |
| (2) Paper-to-paper copies (up to and including 11 in. by 17 in.) made by NARA staff | [1]0.50 |
| (3) Oversized electrostatic copies | [2]2.70 |
| (4) Electrostatic copies (22 in. by 34 in.) | [1]2.70 |
| (5) Microfilm or microfiche to paper copies made by the customer on a NARA self-service copier | [1]0.30 |
| (6) Microfilm or microfiche to paper copies made by NARA staff | [1]1.90 |

[1] Per copy.
[2] Per linear foot.

(c) Original negative microfilm (paper-to-microfilm): $0.70 per image.

(d) Self-service video copying in the Motion Picture, Sound and Video Research Room:

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| Service | Fee |
|---|---|
| (1) Initial 90-min use of video copying station with 120-minute videocassette | $9.75 |
| (2) Additional 90-minute use of video copying station with no videocassette | 6.25 |
| (3) Blank 120-minute VHS videocassette | 3.50 |

(e) Self-service Polaroid prints: $5.75 per print.

(f) Unlisted processes: For reproductions not covered by this fee schedule, see also § 1258.4. Fees for other reproduction processes are computed upon request.

**§ 1258.14 What is NARA's payment policy?**

(a) *Form of payment.* Fees may be paid in cash, by check or money order made payable to the National Archives Trust Fund, or by selected credit cards. Payments from outside the United States must be made by international money order payable in U.S. dollars or a check drawn on a U.S. bank.

(b) *Timing.* Fees must be paid in advance except when the appropriate director approves a request for handling them on an account receivable basis. Purchasers with special billing requirements must state them when placing orders and must complete any special forms for NARA approval in advance.

**§ 1258.16 Effective date.**

The fees in this part are effective on November 13, 2000. If your order was received by NARA before this effective date, we will charge the fees in effect at the time the order was received.

Dated: August 23, 2000.

**John W. Carlin,**

*Archivist of the United States.*

[FR Doc. 00–26310 Filed 10–12–00; 8:45 am]

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 1

**[FCC 00–347]**

### Inflation Adjustment of Maximum Forfeiture Penalties

**AGENCY:** Federal Communications Commission

**ACTION:** Final rule.

**SUMMARY:** This document increases the maximum monetary forfeiture penalties available to the Commission under its rules governing monetary forfeiture proceedings to account for inflation. The inflationary adjustment is necessary to implement the Debt Collection Improvement Act of 1996, which requires federal agencies to adjust "civil monetary penalties provided by law" at least once every four years. The increase covers the period from the last adjustment on June 1995, to June 1999. During that period, the Consumer Price Index ("CPI") increased by 9.02%. The CPI increase was applied to each maximum penalty, and then rounded using the statutorily defined rules to adjust each maximum monetary forfeiture penalty accordingly. The base forfeiture amounts in the Commission's rules remain unchanged by this rule revision.

**DATES:** Effective November 13, 2000.

**FOR FURTHER INFORMATION CONTACT:** Thomas Spavins, Enforcement Bureau, Technical and Public Safety Division, 202–418–1739.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Order by the Commission, FCC 00–347, adopted on September 14, 2000, and released on September 19, 2000. The complete text of this Order is available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, SW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services, Inc., at 202–857–3800, CY–B400, 445 12th Street, SW., Washington, DC.

This Order amends § 1.80(b) of the Commission's rules by increasing the maximum monetary forfeiture penalties available to the Commission. The Order adjusts the maximum forfeiture penalties to account for the increase in the Consumer Price Index between June 1995 and June 1999, as required by the Debt Collection Improvement Act of 1996, 28 U.S.C. 2461, and as defined in § 1.80(b)(5) of the Commission's rules. In addition to amending § 1.80(b) of the Commission's rules, the Order also deletes some obsolete or duplicative material. The Order does not affect the forfeiture base amounts specified in § 1.80(b)(4) of the Commission's rules.

As the Order simply implements the requirements of § 1.80(b)(5) and updates associated text, the Commission finds good cause to conclude that notice and comment procedures of the Administrative Procedure Act are unnecessary. 5 U.S.C. 553(b)(3)(B). Since a general notice of proposed rulemaking is not required, the Regulatory Flexibility Act does not apply. 5 U.S.C. 601 *et seq.*

The actions taken in the Order have been analyzed with respect to the Paperwork Reduction Act of 1995, and found to impose no new or modified reporting and record keeping requirements or burdens on the public.

**List of Subjects in 47 CFR Part 1**

Administrative practice and procedure, Penalties.

Federal Comunications Commission.

**William F. Caton,**

*Deputy Secretary.*

**Rule Changes**

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 1 as follows:

**PART 1—PRACTICE AND PROCEDURE**

**Subpart A—General Rules of Practice and Procedure**

**Miscellaneous Proceedings**

1. The authority citation for part 1 continues to read as follows:

**Authority:** 47 U.S.C. 325(e).

2. Section 1.80 is amended by:

(a) Revising paragraphs (b)(1) through the text of paragraph (b)(4) preceding the table.

(b) Revising the first paragraph and Section III of the note to paragraph (b)(4).

(c) Revising paragraph (b)(5)(iii) including the table.

The revisions read as follows:

**§ 1.80 Forfeiture proceedings.**

* * * * *

(b) *Limits on the amount of forfeiture assessed.* (1) If the violator is a broadcast station licensee or permittee, a cable television operator, or an applicant for any broadcast or cable television operator license, permit, certificate, or other instrument of authorization issued by the Commission, except as otherwise noted in this paragraph, the forfeiture penalty



under this section shall not exceed $27,500 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of $300,000 for any single act or failure to act described in paragraph (a) of this section. There is no limit on forfeiture assessments for EEO violations by cable operators that occur after notification by the Commission of a potential violation. See Section 634(f)(2) of the Communications Act.

(2) If the violator is a common carrier subject to the provisions of the Communications Act or an applicant for any common carrier license, permit, certificate, or other instrument of authorization issued by the Commission, the amount of any forfeiture penalty determined under this section shall not exceed $120,000 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of $1,200,000 for any single act or failure to act described in paragraph (a) of this section.

(3) In any case not covered in paragraphs (b)(1) or (b)(2) of this section, the amount of any forfeiture penalty determined under this section shall not exceed $11,000 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of $87,500 for any single act or failure to act described in paragraph (a) of this section.

**Note to paragraph (b)(3):** For information concerning notices of apparent liability and notices of opportunity for hearing, see paragraphs (e), (f), and (g) of this section.

(4) *Factors considered in determining the amount of the forfeiture penalty.* In determining the amount of the forfeiture penalty, the Commission or its designee will take into account the nature, circumstances, extent and gravity of the violations and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.

**Note to paragraph (b)(4):**

**Guidelines for Assessing Forfeitures**

The Commission and its staff may use these guidelines in particular cases. The Commission and its staff retain the discretion to issue a higher or lower forfeiture than provided in the guidelines, to issue no forfeiture at all, or to apply alternative or additional sanctions as permitted by the statute. The forfeiture ceiling per violation or per day for a continuing violation stated in Section 503 of the Communications Act and the Commission's Rules are described in § 1.80(b)(5)(iii). These statutory maxima are effective November 13, 2000. Forfeitures issued under other sections of the Act are dealt with separately in Section III of this note.

* * * * *

*Section III. Non-Section 503 Forfeitures That Are Affected by the Downward Adjustment Factors*

Unlike Section 503 of the Act, which establishes maximum forfeiture amounts, other sections of the Act, with one exception, state prescribed amounts of forfeitures for violations of the relevant section. These amounts are then subject to mitigation or remission under Section 504 of the Act. The one exception is Section 223 of the Act, which provides a maximum forfeiture per day. For convenience, the Commission will treat this amount as if it were a prescribed base amount, subject to downward adjustments. The following amounts are adjusted for inflation pursuant to the Debt Collection Improvement Act of 1996 (DCIA), 28 U.S.C. 2461. These non-Section 503 forfeitures may be adjusted downward using the "Downward Adjustment Criteria" shown for Section 503 forfeitures in Section II of this note.

| Violation | Statutory amount ($) |
|---|---|
| Sec. 202(c) Common Carrier Discrimination | 7,600 330/day. |
| Sec. 203(e) Common Carrier Tariffs | 7,600 330/day. |
| Sec. 205(b) Common Carrier Prescriptions | 13,200. |
| Sec. 214(d) Common Carrier Line Extensions | 1,200/day. |
| Sec. 219(b) Common Carrier Reports | 1,200. |
| Sec. 220(d) Common Carrier Records & Accounts | 7,600/day. |
| Sec. 223(b) Dial-a-Porn | 60,000 maximum/day. |
| Sec. 364(a) Ship Station Inspection | 5,500 (owner). |
| Sec. 364(b) Ship Station Inspection | 1,100 (vessel master). |
| Sec. 386(a) Forfeitures | 5,500/day (owner). |
| Sec. 386(b) Forfeitures | 1,100 (vessel master). |
| Sec. 634 Cable EEO | 500/day. |

(5) * * *

(iii) The application of the inflation adjustments required by the DCIA, 28 U.S.C. 2461, results in the following adjusted statutory maximum forfeitures authorized by the Communications Act:

| U.S. Code citation | Maximum penalty after DCIA adjustment |
|---|---|
| 47 U.S.C. 202(c) | $7,600 |
| | 330 |
| 47 U.S.C 203(e) | 7,600 |
| | 330 |
| 47 U.S.C. 205(b) | 13,200 |
| 47 U.S.C. 214(d) | 1,200 |
| 47 U.S.C. 219(b) | 1,200 |
| 47 U.S.C. 220(d) | 7,600 |
| 47 U.S.C. 223(b) | 60,000 |
| 47 U.S.C. 362(a) | 5,500 |
| 47 U.S.C. 362(b) | 1,100 |
| 47 U.S.C. 386(a) | 5,500 |
| 47 U.S.C. 386(b) | 1,100 |
| 47 U.S.C. 503(b)(2)(A) | 27,500 |
| | 300,000 |
| 47 U.S.C. 503(b)(2)(B) | 120,000 |
| | 1,200,000 |
| 47 U.S.C. 503(b)(2)(C) | 11,000 |
| | 87,500 |
| 47 U.S.C. 507(a) | 550 |
| 47 U.S.C. 507(b) | 110 |
| 47 U.S.C. 554 | 500 |

**Note to paragraph (b)(5):** Pursuant to Public Law 104–134, the first inflation adjustment cannot exceed 10 percent of the statutory maximum amount.

* * * * *

[FR Doc. 00–26193 Filed 10–12–00; 8:45 am]

BILLING CODE 6712–01–U

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 2, 90 and 95

**[WT Docket No. 98–182; RM–9222; FCC 00–235]**

### 1998 Biennial Regulatory Review—Private Land Mobile Radio Services

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

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**SUMMARY:** This document consolidates and streamlines the Commission's Rules concerning the private land mobile radio services (PLMRS). Several licensing and operational requirements are modified or eliminated in order to reduce the regulatory burden on PLMR licensees and to promote greater flexibility and more efficient use of the private land mobile radio frequency spectrum.

**DATES:** Effective November 13, 2000.

**FOR FURTHER INFORMATION CONTACT:** Guy Benson (202) 418–2946 <gbenson@fcc.gov> or Ghassen Khalek (202) 418–2771 <gkhalek@fcc.gov>, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, or Les Smith, AMD–PERM, Office of Managing Director at (202) 418–0217.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Report and Order, (R&O)*, in the *R&O and Further Notice of Proposed Rule Making, (FNPRM)*, FCC 00–235 in WT Docket No. 98–182 and PR Docket No. 92–235, adopted on June 28, 2000, and released on July 12, 2000. The full text of this *R&O and FNPRM)* is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, S.W., Washington, D.C. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W. Washington, D.C. 20037. The full text may also be downloaded at: *www.fcc.gov*. Alternative formats are available to persons with disabilities by contacting Martha Contee at (202) 418–0260 or TTY (202) 418–2555.

**Summary of the R&O**

1. The Commission initiated this proceeding in conjunction with the 1998 biennial regulatory review under section 11 of the Communications Act of 1934, 47 U.S.C. 161. Section 11 requires the Commission to review all the regulations applicable to providers of telecommunications service and determine whether any rule is no longer in the public interest as a result of meaningful economic competition between providers of telecommunications service, and whether such regulations should be deleted or modified. As part of this review, however, the Commission found it appropriate to consider all of the regulations relating to administering wireless services, not just those pertaining to providers of a telecommunications service, to determine which regulations can be streamlined or eliminated. As a result, the *R&O* consolidates and streamlines the part 90 Rules.

2. First, the Commission amends the rules to eliminate the distinction between cargo handling and other uses of certain frequencies in the 450–470 MHz band.

3. Second, the Commission amends the rules to change the duration of the license term for stations authorized under part 90 from five years to ten years from the date of initial issuance or renewal. This change will result in decreased costs for licensees.

4. Third, the Commission amends the rules to change the time in which a station must be placed in operation from eight months to twelve months, thereby giving licensees more flexibility in building their stations and simplifying regulatory requirements.

5. Fourth, the Commission amends the rules to require applicants for any of the fifteen 220 MHz public safety channels set forth in §§ 90.719(c) and 90.720 of the Commission's Rules to submit their applications to a public safety frequency coordinator for frequency coordination prior to submission of the applications to the Commission.

6. Fifth, the Commission amends the rules to provide that a radio facility authorized to a public safety licensee may be shared with a Federal Government entity on a cost-shared, non-profit basis.

7. Sixth, the Commission amends the rules to clarify definitions for centralized and decentralized trunking and to establish a new process for licensing trunked systems.

8. Finally, the Commission amends the rules to reassign five low power VHF frequencies from the part 90 PLMRS to the part 95 Citizens Band Radio Service, and eliminates the licensing requirement for these frequencies.

**Final Regulatory Flexibility Act and Final Analysis**

9. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the 1998 Biennial Regulatory Review, *Notice of Proposed Rule Making (NPRM)*, FCC 98–251, 63 FR 65568 (Nov. 27, 1998) *NPRM*. The Commission sought written public comment on the proposals in the *NPRM*, including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

*Reason for, and Objectives of, the R&O*

10. The Commission's objective in this proceeding is to streamline part 90 of the Commission's Rules and reduce regulatory requirements, and to promote more efficient use of the spectrum. Therefore, the Commission amends part 90 to: (i) Ease restrictions on uses of certain frequencies in the 450–470 MHz band; (ii) extend the license term for stations authorized under part 90; (iii) increase the time in which a station must be placed in operation; (iv) require frequency coordination for public safety applications at 220 MHz; (v) provide that a radio facility authorized to a public safety licensee may be shared with a Federal Government entity on a cost-shared, non-profit basis; (vi) clarify definitions for centralized and decentralized trunking and establishment of a new process for licensing trunked systems; and (vii) reassign five low power VHF frequencies from the part 90 Private Land Mobile Radio (PLMR) Services to the part 95 Citizens Band Radio Service, and eliminate the licensing requirement for these frequencies. The Commission believes that these changes will encourage growth of land mobile systems and enhance telecommunications offerings for consumers, producers and new entrants.

*Summary of Significant Issues Raised by Public Comments in Response to the Initial Regulatory Flexibility Analyses*

11. No petitions or comments were filed in direct response to the IRFA. The Commission has nonetheless considered the effect of these rule changes on small entities and considered other alternatives. These actions should benefit all entities subject to the rule changes, including small businesses.

**Description and Estimate of the Number of Small Entities to Which the Rules Will Apply**

12. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate for its activities.

Under the Small Business Act, a "small business concern" is one that: (i) Is independently owned and operated; (ii) is not dominant in its field of operation; and (iii) satisfies any additional criteria established by the Small Business Administration (SBA). A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Last, the definition of "small governmental entity" is one with populations of fewer than 50,000. There are 85,006 governmental entities in the nation. This number includes such entities as states, counties, cities, utility districts and school districts. There are no figures available on what portion of this number has populations of fewer than 50,000. However, this number includes 38,978 counties, cities and towns, and of those, 37,556, or ninety-six percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all government entities. Thus, of the 85,006 governmental entities, we estimate that ninety-six percent, or about 81,600, are small entities that may be affected by our rules.

The rules adopted in this *R&O* affect a number of small entities who are either licensees, or may choose to become applicants for licenses, in the PLMR Service. The adopted rules apply to businesses and local government entities that operate radio systems for their own internal use in the PLMR services. Traditionally, PLMR services have provided for the private, internal communications needs of public safety entities, state and local government entities, large and small businesses, transportation providers, the medical community, and other diverse users of two-way radio systems.

PLMR systems currently serve an essential role in a vast range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories. Because of the vast array of PLMR users, the Commission has not developed nor would it be possible to develop a definition of small businesses specifically applicable to PLMR users. Therefore, for the purpose of determining whether a licensee is a small business as defined by the Small Business Administration (SBA), each licensee would need to be evaluated within its own business area. Therefore, the appropriate definition for PLMR small businesses is the SBA's definition for radiotelephone (wireless) companies. That definition provides that a small entity is a radiotelephone company employing no more than 1,500 persons.



**Reporting, Recordkeeping, and Other Compliance Requirements**

13. The Rules adopted in this document have minimal additional reporting or recordkeeping requirements for PLMR licensees. In fact, our decision to increase the license term from five to ten years will result in a decrease in the amount of fees paid and paperwork required. On the other hand, applicants for certain channels are now required to coordinate their frequencies prior to submission of an application, which is achieved through the use of registered frequency coordinators.

**Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered**

14. In the IRFA, the Commission indicated that many of the proposed rules will result in economic benefits to small business and local government entities. The Commission believes that relaxing the restrictions on cargo/non-cargo operations will help to satisfy demand for communications on these frequencies. Continued exclusion of non-cargo operations is an alternative to the approach here, but that would result in the underutilization of important spectrum resources.

15. The Commission also believes that there will be several public interest benefits gained by the decision to extend the license term for all part 90 licensees to ten years. First, there will be an economic benefit to new applicants in that their licensing costs would effectively be lowered. Under the Commission's current license fee structure, a part 90 licensee with a ten-year authorization has an economic advantage over a licensee with a five-year license in that it enjoys a longer license term at less cost. Second, existing five-year licenses will receive a ten-year renewal period upon expiration of the five-year license, thus halving the licensee's long-term renewal costs. One alternative to this action would be to leave the license term at five years. This alternative would not benefit small businesses. In addition, it would result in administrative inefficiencies for the agency.

16. Regarding the decision to increase the time in which a station must be placed in operation from eight to twelve months, the Commission envisions that this change in the regulatory treatment of PLMR stations will reduce the necessity for a licensee to request an extension of the time to construct, and thus would eliminate the costs necessary to make such a request. It will also give licensees more flexibility in determining how and when to construct their stations. The alternative to this situation is to leave the requirement date at eight months and require licensees to continue requesting extensions of time. The changes we undertake herein, however, will benefit small businesses and enhance administrative efficiencies.

17. By requiring frequency coordination for the 220 MHz public safety channels, the Commission is benefiting small entities and other applicants in a number of ways. For example, requiring frequency coordination will prevent the filing of mutually exclusive applications and will result in applications for the most appropriate channels, thereby minimizing interference potential and congestion. The alternative would be to make no changes to these licensing procedures, but then the benefits of frequency coordination would not be realized.

18. Permitting a public safety licensee to share its station with a Federal Government entity on a non-profit, cost-sharing basis, will be beneficial to both parties. It will lower the operational costs of the public safety system in that the public safety licensee would obtain cost-sharing benefits from the Federal agency, and it would enable the Federal agency to obtain needed communications at a lower cost than if the Federal agency had to implement its own communications system. An alternative to this change would be to continue prohibiting such sharing arrangements, but the Commission believes that adopting these Rules and thereby lowering costs and increasing access to needed spectrum will ease the regulatory burden on small businesses.

19. By requiring all trunked operations to be specifically licensed, the Commission is promoting licensee flexibility, facilitating more efficient use of the spectrum, and minimizing interference concerns and congestion. The alternative, *i.e.*, to not require such licensing, would not achieve these benefits.

**Report to Congress**

The Commission will send a copy of the *R&O*, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. In addition, the Commission will send a copy of the *R&O*, including FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *R&O* and FRFA (or summaries thereof) will also be published in the **Federal Register**.

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**List of Subjects**

*47 CFR Parts 2 and 95*

Communications equipment, Radio.

*47 CFR Part 90*

Administrative practice and procedure, Business and industry, Communications equipment, Radio.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

**Rule Changes**

For reasons discussed in the preamble, the Federal Communications Commission amends parts 2, 90, and 95 as follows:

## PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation for part 2 continues to read as follows:

**Authority:** 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

2. Amend § 2.106 of the Table of Frequency Allocations by revising page 29 of the Table.

**§ 2.106 Table of Frequency Allocations.**

* * * * *

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148-162.0125 MHz (VHF) — Page 29

| United States Table | | | International Table | | |
|---|---|---|---|---|---|
| Federal Government | Non-Federal Government | FCC Rule Part(s) | Region 1 | Region 2 | Region 3 |
| 148-149.9<br>FIXED<br>MOBILE<br>MOBILE-SATELLITE (Earth-to-space) 599B<br>US319 US320 US323<br>US325<br>S5.218 608A US10 G30 | 148-149.9<br>MOBILE-SATELLITE (Earth-to-space) 599B<br>US319 US320 US323<br>US325<br>S5.218 608A US10 | Satellite Communications (25) | 148-149.9<br>FIXED<br>MOBILE except aeronautical mobile (R)<br>MOBILE-SATELLITE (Earth-to-space) S5.209<br>S5.218 S5.219 S5.221 | 148-149.9<br>FIXED<br>MOBILE<br>MOBILE-SATELLITE (Earth-to-space) S5.209<br>S5.218 S5.219 S5.221 | |
| 149.9-150.05<br>MOBILE-SATELLITE (Earth-to-space) 599B US319 US322<br>RADIONAVIGATION-SATELLITE<br>S5.223 608B | | | 149.9-150.05<br>MOBILE-SATELLITE (Earth-to-space) S5.209 S5.224A<br>RADIONAVIGATION-SATELLITE S5.224B<br>S5.220 S5.222 S5.223 | | |
| 150.05-150.8<br>FIXED<br>MOBILE<br>US216 G30 | 150.05-150.8<br>US216 | | 150.05-153<br>FIXED<br>MOBILE except aeronautical mobile<br>RADIO ASTRONOMY<br>S5.149 | 150.05-156.7625<br>FIXED<br>MOBILE | |
| 150.8-152.855<br>FIXED<br>LAND MOBILE<br>US216 | 150.8-152.855<br>FIXED<br>LAND MOBILE<br>US216 NG4 NG51 NG112<br>NG124 | Public Mobile (22)<br>Private Land Mobile (90)<br>Personal Radio (95) | 153-154<br>FIXED<br>MOBILE except aeronautical mobile (R)<br>Meteorological aids | | |
| 152.855-154<br>LAND MOBILE | 152.855-154<br>LAND MOBILE<br>NG4 NG124 | Auxiliary Broadcasting (74)<br>Private Land Mobile (90) | 154-156.7625<br>FIXED<br>MOBILE except aeronautical mobile (R) | | |
| 154-156.2475<br>FIXED<br>LAND MOBILE<br>S5.226 | 154-156.2475<br>FIXED<br>LAND MOBILE<br>S5.226 NG112 NG117<br>NG124 NG148 | Maritime (80)<br>Private Land Mobile (90)<br>Personal Radio (95) | S5.228 S5.227 | S5.225 S5.226 S5.227 | |
| 156.2475-157.0375<br>MARITIME MOBILE | 156.2475-157.0375<br>MARITIME MOBILE | | | | |

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## PART 90—PRIVATE LAND MOBILE RADIO SERVICES

3. The authority citation for part 90 continues to read as follows:

**Authority:** Sections 4(i), 11, 303(g), 303(r) and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

4. Section 90.1 is amended by revising paragraph (b) to read as follows:

**§ 90.1 Basis and purpose.**

* * * * *

(b) *Purpose.* This part states the conditions under which radio communications systems may be licensed and used in the Public Safety Radio Pool, Industrial/Business Radio Pool, and the Radiolocation Service. The rules in this part do not govern radio systems employed by agencies of the Federal Government.

5. Section 90.7 is amended by revising the definition of Trunked radio system to read as follows:

**§ 90.7 Definitions.**

* * * * *

*Trunked radio system.* A radio system employing technology that provides the ability to search two or more available channels and automatically assign a user an open channel.

* * * * *

6. Section 90.20 (c)(3) is amended in the table by removing the entry for 453.025 MHz and by revising the entries for 453.0125 MHz and 453.03125 MHz to read as follows:

**§ 90.20 Public Safety Pool.**

* * * * *

(c) * * *

(3) * * *

PUBLIC SAFETY POOL FREQUENCY TABLE

| Frequency or band | Class of station(s) | Limitations | Coordinator |
|---|---|---|---|
| | | **Megahertz** | |
| 453.0125 | Mobile | 57, 78 | PX |
| 453.03125 | Base or mobile | 44, 59, 60, 61, 62 | PM |

* * * * *

7. Section 90.22 is amended by revising the introductory text to read as follows:

**§ 90.22 Paging operations.**

Unless specified elsewhere in this part, paging operations may be authorized in the Public Safety Pool on any frequency except those assigned under the provisions of § 90.20(d)(78). Paging operations on frequencies subject to § 90.20(d)(78) authorized before August 17, 1974, may be continued only if they do not cause harmful interference to regular operations on the same frequencies. Such paging operations may be renewed indefinitely on a secondary basis to regular operations, except within 125 km (75 mi) of the following urbanized areas:

* * * * *

8. Section 90.35 is amended in paragraph (b)(3) in the table under Megahertz by removing the entries for 151.820, 151.880, 151.940, 154.570, 154.600 and by revising the entries for 153.560 and 154.585 and revising paragraph (c)(60) to read as follows:

**§ 90.35 Industrial/Business Pool.**

* * * * *

(b) * * *

(3) * * *

INDUSTRIAL/BUSINESS POOL FREQUENCY TABLE

| Frequency or band | Class of stations(s) | Limitations | Coordinator |
|---|---|---|---|
| | | **Megahertz** | |
| 153.560 | | 80 | IP, IW |
| 154.585 | Mobile | 8, 46 | IP |

* * * * *

(c) * * *

(60)(i) This frequency is available for voice or non-voice communications concerned with cargo handling from a dock or cargo handling facility, a vessel alongside the dock, or cargo handling facility. The effective radiated power (ERP) shall not exceed 2 watts. Mobile relay stations may be temporarily installed on vessels located at or in the vicinity of a dock or cargo handling facility. The center of the radiating system of the mobile relay shall be located no more than 3 meters (10 feet) above the vessel's highest working dock.

(ii) This frequency is also available for low power non-cargo handling operations, both voice and non-voice, on a secondary basis to cargo handling communications. This frequency will not be assigned for non-cargo handling operations at temporary locations.

(iii) Mobile relay frequency table as follows:

| Mobile relay (MHz) [1] | Mobile (MHz) |
|---|---|
| 457.525 | 467.750 |
| 457.53125 | 467.75625 |
| 457.5375 | 467.7625 |
| 457.54375 | 467.76875 |
| 457.550 | 467.775 |
| 457.55625 | 467.78125 |
| 457.5625 | 467.7875 |
| 457.56875 | 467.79375 |
| 457.575 | 467.800 |
| 457.58125 | 467.80625 |
| 457.5875 | 467.8125 |
| 457.59375 | 467.81875 |
| 457.600 | 467.825 |
| 457.60625 | 467.83125 |
| 457.6125 | |
| 457.61875 | |

[1] The mobile relay frequencies may also be used for single frequency simplex

* * * * *

9. Section 90.135 is revised to read as follows:

**§ 90.135 Modification of license.**

(a) In addition to those changes listed in § 1.929(k) of this chapter and in accordance with § 1.947 of this chapter the following modifications may be made to an existing authorization without prior Commission approval:

(1) Change in the number and location of station control points or of control stations operating below 470 or above 800 MHz meeting the requirements of § 90.119(b).

(2) Change in the number of mobile units operated by Radiolocation Service licensees.

(b) Unless specifically exempted in § 90.175, licensees must submit a Form 601 application for modification to the applicable frequency coordinator for any change listed in § 1.929(c)(4) of this chapter.

10. Section 90.149 is amended by revising paragraph (a) to read as follows:

**§ 90.149 License term.**

(a) Licenses for stations authorized under this part will be issued for a term not to exceed ten (10) years from the date of the original issuance or renewal.

* * * * *

11. Section 90.155 is revised to read as follows:



**§ 90.155 Time in which station must be placed in operation.**

(a) All stations authorized under this part, except as provided in §§ 90.629, 90.631(f), 90.665, and 90.685, must be placed in operation within twelve (12) months from the date of grant or the authorization cancels automatically and must be returned to the Commission.

(b) A local government entity in the Public Safety Pool, applying for any frequency in this part, may also seek extended implementation authorization pursuant to § 90.629.

(c) For purposes of this section, a base station is not considered to be placed in operation unless at least one associated mobile station is also placed in operation. See also §§ 90.633(d) and 90.631(f).

(d) Multilateration LMS systems authorized in accordance with § 90.353 must be constructed and placed in operation within twelve (12) months from the date of grant or the authorization cancels automatically and must be returned to the Commission. MTA-licensed multilateration LMS systems will be considered constructed and placed in operation if such systems construct a sufficient number of base stations that utilize multilateration technology (see paragraph (e) of this section) to provide multilateration location service to a substantial portion of at least one BTA in the MTA.

(e) A multilateration LMS station will be considered constructed and placed in operation if it is built in accordance with its authorized parameters and is regularly interacting with one or more other stations to provide location service, using multilateration technology, to one or more mobile units. Specifically, LMS multilateration stations will only be considered constructed and placed in operation if they are part of a system that can interrogate a mobile, receive the response at 3 or more sites, compute the location from the time of arrival of the responses and transmit the location either back to the mobile or to a subscriber's fixed site.

(f) For purposes of this section, a station licensed to provide commercial mobile radio service is not considered to have commenced service unless it provides service to at least one unaffiliated party.

(g) Application for extension of time to commence service may be made on FCC Form 601. Extensions of time must be filed prior to the expiration of the construction period. Extensions will be granted only if the licensee shows that the failure to commence service is due to causes beyond its control. No extensions will be granted for delays caused by lack of financing, lack of site availability, for the assignment or transfer of control of an authorization, or for failure to timely order equipment. If the licensee orders equipment within 90 days of the license grant, a presumption of due diligence is created.

(h) An application for modification of an authorization (under construction) at the existing location does not extend the initial construction period. If additional time to commence service is required, a request for such additional time must be submitted on FCC Form 601, either separately or in conjunction with the submission of the FCC Form 601 requesting modification.

**§ 90.167 [Removed]**

12. Remove § 90.167.

13. Section 90.175 is amended by revising paragraph (i)(14) to read as follows:

**§ 90.175. Frequency coordination requirements.**

* * * * *

(i) * * *

(14) Except for applications for the frequencies set forth in §§ 90.719(c) and 90.720, applications for frequencies in the 220–222 MHz band.

14. Section 90.179 is amended by redesignating paragraph (g) as paragraph (i) and adding new paragraphs (g) and (h) to read as follows:

**§ 90.179 Shared use of radio stations.**

* * * * *

(g) Notwithstanding paragraph (a) of this section, licensees authorized to operate radio systems on Public Safety Pool frequencies designated in § 90.20 may share their facilities with Federal Government entities on a non-profit, cost-shared basis. Such a sharing arrangement is subject to the provisions of paragraphs (b), (d), and (e) of this section.

(h) Notwithstanding paragraph (a) of this section, licensees authorized to operate radio systems on Industrial/Business Pool frequencies designated in § 90.35 may share their facilities with Public Safety Pool entities designated in § 90.20 and with Federal Government entities on a non-profit, cost-shared basis. Such a sharing arrangement is subject to the provisions of paragraphs (b), (d), and (e) of this section.

* * * * *

15. Section 90.187 is revised to read as follows:

**§ 90.187 Trunking in the bands between 150 and 512 MHz.**

(a) Applicants for trunked systems operating on frequencies between 150 and 512 MHz (except 220–222 MHz)

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must indicate on their applications (class of station code, instructions for FCC Form 601) that their system will be trunked. Licensees of stations that are not trunked, may trunk their systems only after modifying their license (see § 1.927 of this chapter).

(b) Trunked systems operating under this section must employ equipment that prevents transmission on a trunked frequency if a signal from another system is present on that frequency. The level of monitoring must be sufficient to avoid causing harmful interference to other systems. However, this monitoring requirement does not apply if the conditions in paragraph (b)(1) or (b)(2) of this section, are met:

(1) Where applicants for or licensees operating in the 470–512 MHz band meet the loading requirements of § 90.313 and have exclusive use of their frequencies in their service area.

(2) On frequencies where an applicant or licensee does not have an exclusive service area provided that all frequency coordination requirements are complied with and written consent is obtained from affected licensees using either the procedure set forth in paragraphs (b)(2)(i) and (b)(2)(ii) of this section (mileage separation) or the procedure set forth in paragraph (b)(2)(iii) of this section (protected contours).

(i) Affected licensees for the purposes of this section are licensees of stations that have assigned frequencies (base and mobile) that are 15 kHz or less removed from proposed stations that will operate with a 25 kHz channel bandwidth; stations that have assigned frequencies (base and mobile) that are 7.5 kHz or less removed from proposed stations that will operate with a 12.5 kHz bandwidth; or stations that have assigned frequencies (base and mobile) 3.75 kHz or less removed from proposed stations that will operate with a 6.25 kHz bandwidth.

(ii) Where such stations' service areas (37 dBu contour for stations in the 150–174 MHz band and 39 dBu contour for stations in the 421–512 MHz bands; see § 90.205) overlap a circle with radius 113 km (70 mi.) from the proposed base station.

(iii) In lieu of the mileage separation procedure set forth in paragraphs (b)(2)(i) and (b)(2)(ii) of this section, applicants for trunked facilities may obtain consent only from stations that would be subjected to objectionable interference from the trunked facilities. Objectionable interference will be considered to exist when the interference contour (19 dBu for VHF stations, 21 dBu for UHF stations) of a proposed trunked station would intersect the service contour (37 dBu for VHF stations, 39 dBu for UHF stations) of an existing station. The existing stations that must be considered in a contour overlap analysis are a function of the channel bandwidth of the proposed trunked station, as follows:

(A) For trunked stations proposing 25 kHz channel bandwidth: Existing co-channel stations and existing stations that have an operating frequency 15 kHz or less from the proposed trunked station.

(B) For trunked stations proposing 12.5 kHz channel bandwidth: Existing co-channel stations and existing stations that have an operating frequency 7.5 kHz or less from the proposed trunked station.

(C) For trunked stations proposing 6.25 kHz channel bandwidth: Existing co-channel stations and existing stations that have an operating frequency 3.75 kHz or less from the proposed trunked station.

(iv) The calculation of service and interference contours referenced in paragraph (b)(2)(iii) of this section shall be done using generally accepted engineering practices and standards which, for purposes of this section, shall presumptively be the practices and standards agreed to by a consensus of all certified frequency coordinators.

(v) The written consent from the licensees specified in paragraphs (b)(2)(i) and (b)(2)(ii) or (b)(2)(iii)(A), (b)(2)(iii)(B) and (b)(2)(iii)C of this section shall specifically state all terms agreed to by the parties and shall be signed by the parties. The written consent shall be maintained by the operator of the trunked station and be made available to the Commission upon request. The submission of a coordinated trunked application to the Commission shall include a certification from the applicant that written consent has been obtained from all licensees specified in paragraphs (b)(2)(i) and (b)(2)(ii) or (b)(2)(iii)(A), (b)(2)(iii)(B) and (b)(2)(iii)(C) of this section that the written consent documents encompass the complete understandings and agreements of the parties as to such consent; and that the terms and conditions thereof are consistent with the Commission's rules. Should a potential applicant disagree with a certified frequency coordinator's determination that objectionable interference exists with respect to a given channel or channels, that potential applicant may request the Commission to overturn the certified frequency coordinator's determination. In that event, the burden of proving by clear and convincing evidence that the certified frequency coordinator's determination is incorrect shall rest with the potential applicant. If a licensee has consented to the use of trunking, but later decides against the use of trunking, that licensee may request that the licensee(s) of the trunked system(s) cease the use of trunking. Should the trunked station(s) decline the licensee's request, the licensee may request a replacement channel from the Commission. A new applicant whose interference contour overlaps the service contour of a trunked licensee will be assigned the same channel as the trunked licensee only if the trunked licensee consents in writing and a copy of the written consent is submitted to the certified frequency coordinator responsible for coordination of the application.

(c) Trunking of systems licensed on paging-only channels or licensed in the Radiolocation Service (subpart F) is not permitted.

(d) Potential applicants proposing trunked operation may file written notice with any certified frequency coordinator for the pool (Public Safety or Industrial/Business) in which the applicant proposes to operate. The notice shall specify the channels on which the potential trunked applicant proposes to operate and the proposed effective radiated power, antenna pattern, height above ground, height above average terrain and proposed channel bandwidth. On receipt of such a notice, the certified frequency coordinator shall notify all other certified frequency coordinators in the relevant pool within one business day. For a period of sixty days thereafter, no application will be accepted for coordination which specifies parameters that would result in objectionable interference to the channels specified in the notice. Potential applicants shall not file another notice for the same channels within 10 km (6.2 miles) of the same location unless six months shall have elapsed since the filing of the last such notice. Certified frequency coordinators shall return without action, any coordination request which violates the terms of this paragraph (d).

(e) No more than 10 channels for trunked operation in the Industrial/Business Pool may be applied for in a single application. Subsequent applications, limited to an additional 10 channels or fewer, must be accompanied by a certification, submitted to the certified frequency coordinator coordinating the application, that all of the applicant's existing channels authorized for trunked operation have been constructed and placed in operation. Certified frequency coordinators are authorized to require documentation in support of the applicant's certification that existing channels have been constructed and placed in operation. Applicants in the Public Safety Pool may request more than 10 channels at a single location provided that any application for more than 10 Public Safety Pool channels must be accompanied by a showing of sufficient need. The requirement for such a showing may be satisfied by submission of loading studies demonstrating that requested channels in excess of 10 will be loaded with 50 mobiles per channel within a five year period commencing with grant of the application.

(f) If a licensee authorized for trunked operation discontinues trunked operation for a period of 30 consecutive days, the licensee, within 7 days of the expiration of said 30 day period, shall file a conforming application for modification of license with the Commission. Upon grant of that application, new applicants may file for the same channel or channels notwithstanding the interference contour of the new applicant's proposed channel or channels overlaps the service contour of the station that was previously engaged in trunked operation.

16. Section 90.242 is amended by revising paragraph (a)(3) to read as follows:

**§ 90.242 Travelers' information stations.**

(a) * * *

(3) Travelers Information Stations will be authorized on a secondary basis to stations authorized on a primary basis in the bands 510–1715 kHz.

* * * * *

17. Section 90.421 is revised to read as follows:

**§ 90.421 Operation of mobile station units not under the control of the licensee.**

Mobile stations, as defined in § 90.7, include vehicular-mounted and hand-held units. Such units may be operated by persons other than the licensee, as provided for below, when necessary for the licensee to meet its requirements in connection with the activities for which it is licensed. If the number of such units, together with units operated by the licensee, exceeds the number of mobile units authorized to the licensee, license modification is required. The licensee is responsible for taking necessary precautions to prevent unauthorized operation of such units not under its control.

(a) *Public Safety Pool.* (1) Mobile units licensed in the Public Safety Pool may be installed in any vehicle which in an emergency would require cooperation and coordination with the licensee, and in any vehicle used in the performance, under contract, of official activities of the licensee. This provision does not permit the installation of radio units in non-emergency vehicles that are not performing governmental functions under contract but with which the licensee might wish to communicate.

(2) Mobile units licensed under § 90.20(a)(2)(iii) may be installed in a vehicle or be hand-carried for use by any person with whom cooperation or coordinations is required for medical services activities.

(b) *Industrial/Business Pool.* Mobile units licensed in the Industrial/Business Pool may be installed in vehicles of persons furnishing under contract to the licensee and for the duration of the contract, a facility or service directly related to the activities of the licensee.

(c) In addition to the requirements in paragraphs (a) and (b) of this section, frequencies assigned to licensees in the Private Land Mobile Radio Services may be installed in the facilities of those who assist the licensee in emergencies and with whom the licensee must communicate in situations involving imminent safety to life or property.

**§ 90.449 [Removed]**

18. Remove § 90.449.

19. Section 90.629 is amended by revising paragraphs (a)(1) and (a)(2) and adding paragraph (f) to read as follows:

**§ 90.629 Extended implementation period.**

* * * * *

(a) * * *

(1) The proposed system will require longer than twelve (12) months to construct and place in operation because of its purpose, size, or complexity; or

(2) The proposed system is to be part of a coordinated or integrated wide-area system which will require more than twelve (12) months to plan, approve, fund, purchase, construct, and place in operation; or

* * * * *

(f) Pursuant to § 90.155(b), the provisions of this section shall apply to local government entities applying for any frequency in the Public Safety Pool.

## PART 95—PERSONAL RADIO SERVICES

20. The authority citation for part 95 continues to read as follows:

**Authority:** Secs 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303.

21. Section 95.401 is amended by adding a new paragraph (f) to read as follows:

**§ 95.401 (CB Rule 1) What are the Citizens Band Radio Services?**

* * * * *

(f) The Multi-Use Radio Service (MURS)—a private, two-way, short-distance voice, data or image communications service for personal or business activities of the general public. The rules for this service are contained in subpart J of this part.

22. Section 95.601, as amended at 65 FR 44008 effective October 16, 2000, is further amended by revising the last sentence to read as follows:

**§ 95.601 Basis and purpose.**

* * * The Personal Radio Services are the GMRS (General Mobile Radio Service)—subpart A, the Family Radio Service (FRS)—subpart B, the R/C (Radio Control Radio Service)—subpart C, the CB (Citizens Band Radio Service)—subpart D, the Low Power Radio Service (LPRS)—subpart G, the Wireless Medical Telemetry Service (WMTS)—subpart H, the Medical Implants Communication Service (MICS)—subpart I, and the Multi-Use Radio Service (MURS)—subpart J.

23. Section 95.603 is amended by adding a new paragraph (g) to read as follows:

**§ 95.603 Certification required.**

* * * * *

(g) Each Multi-Use Radio Service transmitter (a transmitter that operates or is intended to operate in the MURS) must be certified in accordance with § 90.203 of this chapter.

24. Section 95.605 is amended by revising the first sentence to read as follows:

**§ 95.605 Certification procedures.**

Any entity may request certification for its transmitter when the transmitter is used in the GMRS, FRS, R/C, CB, IVDS, LPRS, MURS, or MICS following the procedures in part 2 of this chapter.

* * *

25. Section 95.631 is amended by adding a new paragraph (j) to read as follows:

**§ 95.631 Emission types.**

* * * * *

(j) A MURS station may transmit any emission type as specified in § 90.207 of this chapter.

26. A new section 95.632 is added to read as follows:

**§ 95.632 MURS transmitter frequencies.**

(a) The MURS transmitter channel frequencies are 151.820 MHz, 151.880 MHz, 151.940 MHz, 154.570 MHz, 154.600 MHz.

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(b) The authorized bandwidth is 11.25 kHz on frequencies 151.820 MHz, 151.880 MHz and 151.940 MHz. The authorized bandwidth is 12.5 kHz on frequencies 154.570 and 154.600 kHz.

(c) MURS transmitters must maintain a frequency stability of 5.0 ppm, or 2.0 ppm if designed to operate with a 6.25 kHz bandwidth.

27. Section 95.633 is amended by adding a new paragraph (f) to read as follows:

**§ 95.633 Emission bandwidth.**

* * * * *

(f) The authorized bandwidth for any emission type transmitted by a MURS transmitter is specified in § 90.209 of this chapter.

28. Section 95.635 is amended by adding a new paragraph (e) to read as follows:

**§ 95.635 Unwanted radiation.**

* * * * *

(e) For transmitters designed to operate in the MURS, transmitters shall comply with § 90.210 of this chapter.

29. Section 95.639 is amended by adding a new paragraph (h) to read as follows:

**§ 95.639 Maximum transmitter power.**

* * * * *

(h) No MURS unit, under any condition of modulation, shall exceed 2 W effective radiated power (ERP).

30. Section 95.649 is revised to read as follows:

**§ 95.649 Power capability.**

No CB, R/C, LPRS, FRS, MICS, MURS or WMTS unit shall incorporate provisions for increasing its transmitter power to any level in excess of the limits specified in § 95.639.

31. Section 95.651 is revised to read as follows:

**§ 95.651 Crystal control required.**

All transmitters used in the Personal Radio Services must be crystal controlled, except an R/C station that transmits in the 26–27 MHz frequency band, a FRS unit, a LPRS unit, a MURS unit, a MICS transmitter, or a WMTS unit.

32. Appendix 1 to Subpart E is revised to read as follows:

**Appendix 1 to Subpart E of Part 95—Glossary of Terms**

The definitions used in this subpart E are:

*Authorized bandwidth.* Maximum permissible bandwidth of a transmission.

*Carrier power.* Average TP during one unmodulated RF cycle.

*CB.* Citizens Band Radio Service.

*CB transmitter.* A transmitter that operates or is intended to operate at a station authorized in the CB.

*Channel frequencies.* Reference frequencies from which the carrier frequency, suppressed or otherwise, may not deviate by more than the specified frequency tolerance.

*Crystal.* Quartz piezo-electric element.

*Crystal controlled.* Use of a crystal to establish the transmitted frequency.

*dB.* Decibels.

*EIRP.* Effective Isotropic Radiated Power. Antenna input power times gain for free-space or in-tissue measurement configurations required by MICS, expressed in watts, where the gain is referenced to an isotropic radiator.

*FCC.* Federal Communications Commission.

*Filtering.* Refers to the requirement in § 95.633(b).

*FRS.* Family Radio Service.

*GMRS.* General Mobile Radio Service.

*GMRS transmitter.* A transmitter that operates or is intended to operate at a station authorized in the GMRS.

*Harmful interference.* Any transmission, radiation or induction that endangers the functioning of a radionavigation or other safety service or seriously degrades, obstructs or repeatedly interrupts a radiocommunication service operating in accordance with applicable laws, treaties and regulations.

*Mean power.* TP averaged over at least 30 cycles of the lowest modulating frequency, typically 0.1 seconds at maximum power.

*Medical Implant Communications Service (MICS) transmitter.* A transmitter authorized to operated in the MICS.

*Medical implant device.* Apparatus that is placed inside the human body for the purpose of performing diagnostic or therapeutic functions.

*Medical implant event.* An occurrence or the lack of an occurrence recognized by a medical implant device, or a duly authorized health care professional, that requires the transmission of data from a medical implant transmitter in order to protect the safety or well-being of the person in whom the medical implant transmitter has been implanted.

*Medical implant programmer/control transmitter.* A MICS transmitter that operates or is designed to operate outside of a human body for the purpose of communicating with a receiver connected to a medical implant device.

*Medical implant transmitter.* A MICS transmitter that operates or is designed to operate within a human body for the purpose of facilitating communications from a medical implant device.

*MICS.* Medical Implant Communications Service.

*MURS.* Multi-Use Radio Service.

*Peak envelope power.* TP averaged during one RF cycle at the highest crest of the modulation envelope.

*R/C.* Radio Control Radio Service.

*R/C transmitter.* A transmitter that operates or is intended to operate at a station authorized in the R/C.

*RF.* Radio frequency.

*TP.* RF transmitter power expressed in W, either mean or peak envelope, as measured at the transmitter output antenna terminals.

*Transmitter.* Apparatus that converts electrical energy received from a source into RF energy capable of being radiated.

*W.* Watts.

33. A new Subpart J is added to Part 95 to read as follows:

**Subpart J—Multi-Use Radio Service (MURS)**

**General Provisions**

95.1301 Eligibility.
95.1303 Authorized locations.
95.1305 Station identification.
95.1307 Permissible communications.
95.1309 Channel use policy.

## Subpart J—Multi-Use Radio Service (MURS)

### General Provisions

**§ 95.1301 Eligibility.**

An entity is authorized by rule to operate a MURS transmitter if it is not a foreign government or a representative of a foreign government and if it uses the transmitter in accordance with § 95.1309 and otherwise operates in accordance with the rules contained in this subpart. No license will be issued.

**§ 95.1303 Authorized locations.**

(a) MURS operation is authorized:

(1) Anywhere CB station operation is permitted under § 95.405; and

(2) Aboard any vessel of the United States, with the permission of the captain, while the vessel is travelling either domestically or in international waters.

(b) MURS operation is not authorized aboard aircraft in flight.

(c) Anyone intending to operate a MURS unit on the islands of Puerto Rico, Desecheo, Mona, Vieques, and Culebra in a manner that could pose an interference threat to the Arecibo Observatory shall notify the Interference Office, Arecibo Observatory, Post Office Box 995, Arecibo, Puerto Rico 00613, in writing or electronically, of the location of the unit. Operators may wish to consult interference guidelines, which will be provided by Cornell University. Operators who choose to transmit information electronically should e-mail to: prcz@naic.edu.

(1) The notification to the Interference Office, Arecibo Observatory shall be made 45 days prior to commencing operation of the unit. The notification shall state the geographical coordinates of the unit.

(2) After receipt of such notifications, the Commission will allow the Arecibo Observatory a period of 20 days for comments or objections. The operator will be required to make reasonable efforts in order to resolve or mitigate any potential interference problem with the Arecibo Observatory. If the Commission determines that an operator has satisfied its responsibility to make reasonable efforts to protect the Observatory from interference, the unit may be allowed to operate.

**§ 95.1305 Station identification.**

A MURS station is not required to transmit a station identification announcement.

**§ 95.1307 Permissible communications.**

(a) MURS stations may transmit voice, data or image signals as permitted in this subpart.

(b) A MURS station may transmit any emission type, subject to the limitations contained in § 90.207 of this chapter.

(c) MURS frequencies may be used for remote control and telemetering functions. Emission types A1D, A2D, F1D, F2D are authorized and stations used to control remote objects or devices may be operated on the continuous carrier transmit mode, except on frequency 154.600 MHz.

**§ 95.1309 Channel use policy.**

(a) The channels authorized to MURS systems by this part are available on a shared basis only and will not be assigned for the exclusive use of any entity.

(b) Those using MURS transmitters must cooperate in the selection and use of channels in order to reduce interference and make the most effective use of authorized facilities. Channels must be selected in an effort to avoid interference to other MURS transmissions.

[FR Doc. 00–25276 Filed 10–12–00; 8:45 am]
BILLING CODE 6712–01–P



## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 17

**RIN 1018–AG26**

## Endangered and Threatened Wildlife and Plants; Establishment of a Nonessential Experimental Population of Black-Footed Ferrets in North-Central South Dakota

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** We, the Fish and Wildlife Service (Service), in cooperation with the Cheyenne River Sioux Tribe, the Forest Service, and the Bureau of Indian Affairs (BIA), will reintroduce black-footed ferrets (*Mustela nigripes*) into north-central South Dakota on the Cheyenne River Sioux Reservation. The purposes of this reintroduction are to implement actions required for recovery of the species and to evaluate and improve reintroduction techniques and management applications. We will release surplus captive-raised black-footed ferrets in October 2000, and release additional animals annually for several years thereafter until we establish a self-sustaining population. If this reintroduction program is successful, a wild population could be established in 5 years or less. The Cheyenne River Sioux Reservation population is established as a nonessential experimental population in accordance with section 10(j) of the Endangered Species Act of 1973, as amended. We will manage this population under provisions of this final special rule.

**DATES:** The effective date of this rule is October 13, 2000.

**ADDRESSES:** You may inspect the complete file for this rule during normal business hours at the U.S. Fish and Wildlife Service, Ecological Services Office, 420 South Garfield Avenue, Suite 400, Pierre, South Dakota 57501 or telephone 605/224–8693. You must make an appointment in advance if you wish to inspect the file.

**FOR FURTHER INFORMATION CONTACT:** Mike Lockhart at 307/721–8805.

**SUPPLEMENTARY INFORMATION:**

### Background

#### 1. Legislative

Congress made significant changes to the Endangered Species Act of 1973 (Act), as amended, with the addition of section 10(j) to allow for the designation of specific populations of listed species as "experimental populations." Previously, we had authority to reintroduce populations into unoccupied portions of a listed species' historical range when doing so would foster the conservation and recovery of the species. However, local citizens often opposed these reintroductions because they were concerned about the placement of restrictions and prohibitions on Federal and private activities. Under section 10(j), the Secretary of the Department of the Interior can designate reintroduced populations established outside the species' current range but within its historical range as "experimental." Based on the best available information, the Secretary will determine whether such populations are "essential," or "nonessential," to the continued existence of the species. Regulatory restrictions are considerably reduced under a Nonessential Experimental Population (NEP) designation.

Species listed as endangered or threatened are afforded protection primarily through the prohibitions of section 9 and the requirements of section 7. Section 9 of the Act prohibits the take of a listed species. "Take" is defined by the Act as harass, harm, pursue, hunt, shoot, wound, trap, capture, or collect, or attempt to engage in any such conduct. Section 7 of the Act outlines the procedures for Federal interagency cooperation to conserve federally listed species and designated critical habitats. It mandates all Federal agencies to determine how to use their existing authorities to further the purposes of the Act to aid in recovering listed species. It also states that Federal agencies will, in consultation with the Service, ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. Section 7 of the Act does not affect activities undertaken on private lands unless they are authorized, funded, or carried out by a Federal agency.

For the purposes of section 9 of the Act, a population designated as experimental is treated as threatened regardless of the species' designation elsewhere in its range. Threatened designation allows us greater discretion in devising management programs and allows us to adopt whatever regulations are necessary to provide for the conservation of a threatened species. In these situations, the general regulations applying most section 9 prohibitions to threatened species do not apply to that species, and the special rule contains the prohibitions and exceptions necessary and appropriate to conserve that species. Regulations for NEP's are usually more compatible with human activities in the reintroduction area.

For the purposes of section 7 of the Act, we treat NEP's as if the population is proposed for listing, but we treat NEP's as threatened species when they are located within a National Wildlife Refuge or National Park. When NEP's occur outside of such refuges or parks, Federal agencies are required to confer with the Service, in accordance with section 7(a)(4) of the Act, on their actions that are likely to jeopardize the continued existence of a proposed species. The results of a conference are advisory in nature, and agencies are not restricted from committing resources to projects regardless of conference findings and recommendations.

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Individuals used to establish an experimental population may come from a donor population, provided their removal is not likely to jeopardize the continued existence of the species, and appropriate permits are issued in accordance with our regulations (50 CFR 17.22) prior to their removal. In this case, the donor ferret population is a captive-bred population, which was propagated with the intention of reestablishing wild populations to achieve recovery goals. In addition, wild progeny from other NEP areas (and also which originated from captive sources) may be directly translocated to the reintroduction site.

**2. Biological**

The black-footed ferret is a member of the Mustelid or weasel family; has a black facemask, black legs, and a black-tipped tail; is nearly 60 centimeters (2 feet) in length; and weighs up to 1.1 kilograms (2.5 pounds). It is the only ferret species native to North America. The historical range of the species, based on specimen collections, extends over 12 western States (Arizona, Colorado, Kansas, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah, and Wyoming) and the Canadian Provinces of Alberta and Saskatchewan. Prehistoric evidence indicates that ferrets once occurred from the Yukon Territory in Canada to Mexico and Texas (Anderson *et al.* 1986).

Black-footed ferrets depend almost exclusively on prairie dogs for food, shelter, and denning (Henderson *et al.* 1969, Forrest *et al.* 1985). The range of the ferret coincides with that of three prairie dog species (Anderson *et al.* 1986), and ferrets with young have been documented only in the vicinity of active prairie dog colonies. Historically, black-footed ferrets have been reported in association with black-tailed prairie dog (*Cynomys ludovicianus*), white-tailed prairie dog (*Cynomys leucurus*), and Gunnison's prairie dog (*Cynomys gunnisoni*) towns (Anderson *et al.* 1986).

Significant reductions in both prairie dog numbers and distribution occurred during the last century due to widespread poisoning of prairie dogs, the conversion of native prairie to farmland, and outbreaks of sylvatic plague, particularly in the southern portions of prairie dog ranges in North America. Sylvatic plague arrived from Asia in approximately 1900. It is an exotic disease foreign to the evolutionary history of prairie dogs, which have little or no immunity to it. Black-footed ferrets also are highly susceptible to sylvatic plague. This severe reduction in the availability of the ferret's principal prey, in combination with other factors such as secondary poisoning from prairie dog toxicants, resulted in the near extinction of the black-footed ferret in the wild by 1980.

In 1974, a remnant wild population of ferrets in South Dakota, originally discovered in 1964, abruptly disappeared. Afterwards, we believed the species to be extinct; however, in 1981 a small population of ferrets was discovered near Meeteetse, Wyoming. In 1985–1986, the Meeteetse population declined to only 18 animals due to outbreaks of sylvatic plague and canine distemper. Following this critical decline, the remaining individuals were taken into captivity in 1986–1987 to serve as founders for a captive-propagation program. Since that time, captive-breeding efforts have been highly successful and have facilitated ferret reintroductions in several areas of formerly occupied range. Today, the captive population of juveniles and adults fluctuates annually between 300 and 600 animals depending on the time of year and on annual reproductive success and mortality. The captive ferret population is currently divided among six captive-breeding facilities throughout the United States and Canada, with a small number of live animals on display for educational purposes at several zoos and other facilities. Also, 65 to 90 ferrets are located at field-based captive-breeding sites in Arizona, Colorado, New Mexico, and Montana.

**3. Recovery Efforts**

The recovery plan for the black-footed ferret (U.S. Fish and Wildlife Service 1988) contains the following recovery objectives for reclassification:

(a) Increasing the captive population of ferrets to 200 breeding adults by 1991 (which has been achieved);

(b) Establishing a prebreeding population of 1,500 free-ranging breeding adults in 10 or more different populations, with no fewer than 30 breeding adults in each population by the year 2010 (not achieved); and

(c) Encouraging the widest possible distribution of reintroduced animals throughout their historical range. Although several reintroduction efforts have occurred throughout the ferret's range, populations may have become self-sufficient at only one site in South Dakota.

We can reclassify the black-footed ferret to threatened status when the recovery objectives listed above have been achieved, assuming that the mortality rate of established populations remains at or below a rate at which new populations become established or increase. We have been successful in rearing black-footed ferrets in captivity, and in 1997 we reached captive-breeding program objectives.

In 1988, we divided the single captive population into three subpopulations to avoid the possibility of a catastrophic event eliminating the entire captive population (*e.g.*, contagious disease). Additional breeding centers were added later, and presently there are six separate subpopulations in captive-breeding facilities. Current recovery priorities emphasize the reintroduction of animals back into the wild from the captive source stock. Surplus individuals produced in captivity are now available for release into reintroduction areas.

**4. Reintroduction Sites**

The Service, in cooperation with western State and Federal agencies, Tribal representatives, and conservation groups, evaluates potential black-footed ferret reintroduction sites and has previously initiated ferret reintroduction projects at several sites within the historical range of the black-footed ferret. The first reintroduction project occurred in Wyoming in 1991, and subsequent efforts have taken place in South Dakota and Montana in 1994, in Arizona in 1996, a second effort in Montana in 1997, and in Colorado/Utah in 1999. The Service and the Black-Footed Ferret Recovery Implementation Team (composed of 27 State and Federal agencies, Indian Tribes, and conservation organizations) have identified the Cheyenne River Sioux Reservation as a priority black-footed ferret reintroduction site due to its extensive black-tailed prairie dog habitat and the absence of sylvatic plague.

*(a) Cheyenne River Sioux Reservation Experimental Population Reintroduction Area*

The area designated as the Cheyenne River Sioux Reservation Black-Footed Ferret Experimental Population Area (Experimental Population Area) overlays all of Dewey and Ziebach Counties in South Dakota. The boundaries of these Counties also are the boundaries of the Cheyenne River Sioux Reservation. Within the Experimental Population Area, the primary reintroduction area will be in large black-tailed prairie dog complexes located along the Moreau River. The approximate center of the Experimental Population Area is the town of Eagle Butte, the location of Cheyenne River Sioux Tribal offices. Eagle Butte is approximately 160 kilometers (100 miles) northwest of Pierre, the capital of South Dakota.



The Experimental Population Area supports two large complexes of black-tailed prairie dog colonies located within the two-county area. These two counties encompass approximately 1,141,558 hectares (2,820,751 acres). Approximately half or 574,752 hectares (1,420,193 acres) of the Experimental Population Area is Tribal Trust and Allotted lands. The majority of this Tribal Trust and Allotted land, approximately 90 percent or 505,875 hectares (1,250,000 acres), is native rangeland used for grazing.

Some lands within the Experimental Population Area are owned by private landowners (approximately 50 percent, although much less in the primary reintroduction area). No ferrets will be released on private lands. The Tribe and other Cooperators have agreed that if any ferrets disperse onto private lands they will capture and translocate them to Tribal lands if requested by the landowner or if necessary for protection of the ferrets.

Black-footed ferret dispersal into areas outside of the Experimental Population Area is unlikely due to the large size of the Experimental Population Area, the absence of suitable nearby habitat (few if any prairie dogs can be found to the south and west), cropland barriers (*e.g.*, expansive cultivation over the northern portion of the Experimental Population Area), and physical barriers (*e.g.*, the Missouri River to the east). The Tribe estimates a total of approximately 8,408 hectares (20,777 acres) of black-tailed prairie dog colonies are potentially available to black-footed ferrets in the Experimental Population Area and could support over 200 ferret families (characterized as an adult female, three kits, and one-half an adult male; *i.e.*, one adult male for every two adult females). Large, contiguous prairie dog colonies and the absence of physical barriers between prairie dog colonies along the Moreau River (the primary ferret release area) should facilitate ferret distribution throughout the Moreau River Reintroduction Area.

*(b) Primary Reintroduction Areas*

In the early 1990s, the Tribe began development of a Prairie Management Plan as a framework for managing the natural resources of 574,752 hectares (1,420,193 acres) of Tribal Trust lands within the Cheyenne River Sioux Reservation boundaries (Cheyenne River Sioux Tribe 1992). The Prairie Management Plan included development of prairie dog and black-footed ferret management strategies. Phase I of the Prairie Management Plan accomplished initial prairie dog surveys along the Moreau River in areas believed to be well-suited for ferret reintroduction. Phase II surveys confirmed that prairie dog colonies along the Moreau River are highly suitable for ferret releases due to the number and size of prairie dog colonies, the spatial relationships of prairie dog towns to each other, their location on Tribal Trust and Allotted lands, their remoteness, and their distance from human settlements (Cheyenne River Sioux Tribe 1999).

Recent surveys revealed 5,739 hectares (14,156 acres) of prairie dog colonies within the Moreau River complex. In addition to the Moreau River prairie dog complex, a secondary black-footed ferret release area was identified to the south in the Southeast Parade Management Area, an area that supports 2,280 hectares (6,621 acres) of black-tailed prairie dog towns. This area requires further evaluation to ensure appropriate conditions exist for future reintroductions of black-footed ferrets. The Tribe selected the Moreau River prairie dog complex as the primary ferret reintroduction area because of its location within the historical range of the black-footed ferret, our determination that ferrets are no longer present, the abundance of suitable ferret habitat (lands containing active prairie dog colonies), the extensive amount of land managed by the Tribe, and the area's isolation from human activities.

The primary reintroduction area within the Experimental Population Area generally includes lands along the Moreau River in Dewey and Ziebach Counties in north-central South Dakota. Extensive ferret surveys were conducted in this area in the 1980s and 1990s, but no evidence of ferrets was found. There are no confirmed records of ferrets occurring within the boundaries of the Experimental Population Area since the early 1960s.

Black-footed ferrets will be released only if biological conditions are suitable and meet the management framework developed by the Tribe, in cooperation with the BIA, the Service, private landowners, and Federal and State land managers. The Service will reevaluate ferret reintroduction efforts in the Experimental Population Area should any of the following conditions occur:

(i) Failure to maintain sufficient habitat on specific reintroduction areas to support at least 30 breeding adults after 5 years.

(ii) Failure to maintain suitable prairie dog habitat available within specific reintroduction areas.

(iii) A wild ferret population is found within the Experimental Population Area following the initial reintroduction and prior to the first breeding season. The only black-footed ferrets currently occurring in the wild result from reintroductions in Wyoming, Montana, Arizona, Utah/Colorado, and elsewhere in South Dakota over 100 miles from the reintroduction site on Cheyenne River Tribal lands. Consequently, the discovery of a black-footed ferret on the experimental population area prior to the reintroduction would confirm the presence of a new population and prevent designation of an experimental population in the area.

(iv) Discovery of an active case of canine distemper or other disease contagious to black-footed ferrets on or near the reintroduction area prior to the scheduled release.

(v) Fewer than 20 captive black-footed ferrets are available for release.

(vi) Funding is not available to implement the reintroduction phase of the project on the Cheyenne River Sioux Reservation.

(vii) Land ownership changes significantly, or cooperators withdraw from the project.

All of the above conditions will be based on information routinely collected by us or the Tribe.

**5. Reintroduction Procedures**

The standard reintroduction protocol calls for the release of 20 or more captive-raised, or wild-translocated black-footed ferrets in the Experimental Population Area in the first year of the program, and 20 or more animals released annually for the next 2 to 4 years. Biologists expect to release 50 or more ferrets in the first year and believe a self-sustaining wild population could be established on the Cheyenne River Sioux Reservation within 5 years. Released ferrets will be excess to the needs of the captive-breeding program, and their use will not affect the genetic diversity of the captive ferret population (ferrets used for reintroduction efforts can be replaced through captive breeding). In the future, it may be necessary to interchange ferrets from established, reintroduced populations to enhance the genetic diversity of the population on the Experimental Population Area.

Recent studies (Biggins *et al.* 1998, Vargas *et al.* 1998) have documented the importance of outdoor "precon-ditioning" experience on captive-reared ferrets prior to release in the wild. Ferrets exposed to natural prairie dog burrows in outdoor pens and natural prey prior to release survive in the wild at significantly higher rates than do

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cage-reared, non-preconditioned ferrets. The Forest Service will participate in the reestablishment of ferrets on the Cheyenne River Sioux Reservation by preconditioning captive-raised ferrets in large open-air pens on the Conata Basin District of the Buffalo Gap National Grasslands in southwestern South Dakota. In these pens, young ferrets are exposed to live prairie dogs, burrows, and other natural stimuli. In addition, biologists may translocate up to 25 ferrets born in the wild on the Buffalo Gap National Grasslands to the Cheyenne River Sioux Reservation (if annual production levels of wild ferrets on Conata Basin are sufficient to allow translocation of excess young).

The Tribe will develop specific reintroduction plans and submit them to the Service as part of an established, annual black-footed ferret allocation process. Ferret reintroduction cooperators submit proposals by mid-March of each year, and the Service makes preliminary allocation decisions (numbers of ferrets provided to specific projects) by May. Proposals submitted to the Service include updated information on habitat, disease, project/ferret status, proposed reintroduction and monitoring methods, and predator management. In this manner, the Service and reintroduction cooperators evaluate the success of prior year efforts and apply current knowledge to various aspects of reintroduction efforts, thereby providing greater assurance of long-range reintroduction success.

We will transport ferrets to identified reintroduction areas within the Experimental Population Area and release them directly from transport cages into prairie dog burrows. Depending on the availability of suitable vaccine, we will vaccinate released animals against certain diseases (especially canine distemper) and take appropriate measures to reduce predation from coyotes, badgers, and raptors, where warranted. All ferrets we release will be marked with individually coded passive integrated transponder tags, and we may promote use of radio-telemetry studies to document ferret behavior and movements. Other monitoring will include spotlight surveys, snow tracking surveys, and visual surveillance.

Since captive-born ferrets are more susceptible to predation, starvation, and environmental conditions than wild animals, up to 90 percent of the released ferrets could die during the first year of release. Mortality is usually highest during the first month following release. In the first year of the program, a realistic goal is to have at least 25 percent of the animals survive the first winter.

The goal of the Cheyenne River Sioux Reservation reintroduction project is to establish a free-ranging population of at least 30 adults within the Experimental Population Area within 5 years of release. At the release site, population demographics and potential sources of mortality will be monitored on an annual basis (for up to 5 years). We do not intend to change the nonessential designation for this experimental population unless we deem this reintroduction a failure or the black-footed ferret is recovered in the wild.

**6. Status of Reintroduced Population**

We determine this reintroduction to be nonessential to the continued existence of the species for the following reasons:

(a) The captive population (founder population of the species) is protected against the threat of extinction from a single catastrophic event by housing ferrets in six separate subpopulations. As a result, any loss of an experimental population in the wild will not threaten the survival of the species as a whole.

(b) The primary repository of genetic diversity for the species is 240 adult ferrets maintained in the captive-breeding population. Animals selected for reintroduction purposes are surplus to the captive population. Hence, any use of animals for reintroduction efforts will not affect the overall genetic diversity of the species.

(c) Captive breeding can replace any ferrets lost during this reintroduction attempt. Juvenile ferrets produced in excess of the numbers needed to maintain the captive-breeding population are available for reintroduction.

This reintroduction will be the seventh release of ferrets back into the wild in six experimental population areas. The other experimental populations occur in Wyoming, southwestern South Dakota, north-central Montana (with two separate reintroduction efforts), Arizona, and Colorado/Utah (a single reintroduction area that overlays both States). Reintroductions are necessary to further the recovery of this species. The NEP designation alleviates landowner concerns about possible land use restrictions. This nonessential designation provides a flexible management framework for protecting and recovering black-footed ferrets while ensuring that the daily activities of landowners are unaffected.

**7. Location of Reintroduced Population**

Section 10(j) of the Act requires that an experimental population be geographically separate from other wild populations of the same species. Since the mid-1980s, the BIA and the Tribe conducted black-footed ferret surveys in the Experimental Population Area. In addition to these surveys, they spent many hours surveying prairie dog colonies at the reintroduction site. No ferrets or ferret sign (skulls, feces, trenches) were located. Therefore, we conclude that wild ferrets are no longer present on the Experimental Population Area and that this reintroduction will not overlap with any wild population.

All released ferrets and their offspring are expected to remain in the Experimental Population Area due to the presence of prime habitat (lands occupied by prairie dog colonies) and surrounding geographic barriers. We will attempt to capture any ferret that leaves the Experimental Population Area (in an attempt to identify its origin) and will either return it to the release site, translocate it to another site, or place it in captivity. If a ferret leaves the reintroduction area, but remains within the Experimental Population Area, and occupies private property, the landowner can request its removal. Ferrets will remain on private lands only when the landowner does not object to their presence.

We will mark all released ferrets and will attempt to determine the source of any unmarked animals found. Any ferret found outside the Experimental Population Area is considered endangered, as provided under the Act. We will undertake efforts to confirm whether any ferret found outside the Experimental Population Area originated from captive stock. If the animal is unrelated to members of this or other experimental populations (*i.e.*, it is from noncaptive stock), we will place it in captivity as part of the breeding population to improve the overall genetic diversity of the captive population. Existing contingency plans allow for the capture and retention of up to nine ferrets that are not from captive stock. In the highly unlikely event that a ferret from captive stock is found outside the Experimental Population Area, we will move the ferret back to habitats that would support the primary population(s) of ferrets.

**8. Management**

This reintroduction will be undertaken in cooperation with the Cheyenne River Sioux Tribe, the BIA, and the Forest Service in accordance with the "Cooperative Management Plan for Black-Footed Ferrets, Moreau River or Southeast Parade Reintroduction Areas"Cheyenne River Sioux Reservation. Copies of the Cooperative Management Plan may be obtained from the Prairie Management Program Coordinator, P.O. Box 590, Eagle Butte, South Dakota 57625. In the future, we will evaluate whether additional black-footed ferret reintroductions are feasible within the Experimental Population Area (over 45,000 total acres of occupied prairie dog habitat exist within the Experimental Population Area). Cooperating agencies and private landowners would be involved in the selection of any additional sites. Management considerations of the reintroduction project include:

*(a) Monitoring*

Several monitoring efforts will occur during the first 5 years of the program. We will annually monitor prairie dog distribution and numbers, and test for the occurrence of sylvatic plague. Testing resident carnivores (*e.g.*, coyotes) for canine distemper will begin prior to the first ferret release and continue each year. We will monitor released ferrets and their offspring annually using spotlight surveys, snowtracking, other visual survey techniques, and possibly radio-telemetry on some individuals. The surveys will incorporate methods to monitor breeding success and long-term survival rates.

Through public outreach programs, we will inform the public and other appropriate State and Federal agencies about the presence of ferrets in the Experimental Population Area and the handling of any sick or injured animals. To meet our responsibilities to treat the Tribe on a Government to Government basis, we will request that the Tribe inform Tribal members of the presence of ferrets on Cheyenne River Sioux Reservation lands, and the proper handling of any sick or injured ferrets that are found. The Tribe will serve as the primary point of contact to report any injured or dead ferrets. Reports of injured or dead ferrets also must be provided to the Service Field Supervisor (see **ADDRESSES** section). It is important that we determine the cause of death for any ferret carcass found. Therefore, we request that discovered ferret carcasses not be disturbed, but reported as soon as possible to appropriate Tribal and Service offices.

*(b) Disease*

The presence of canine distemper in any mammal on or near the reintroduction site will cause us to reevaluate the reintroduction program. Prior to releasing ferrets, we will establish the presence or absence of canine distemper in the release area by collecting at least 20 coyotes or other carnivores. Sampled predators will be tested for canine distemper and other diseases.

We will attempt to limit the spread of distemper by discouraging people from bringing unvaccinated pets into core ferret release areas. Any dead mammal or any unusual behavior observed in animals found within the area should be reported to us. Efforts are under way to develop an effective canine distemper vaccine for black-footed ferrets. Routine sampling for sylvatic plague in prairie dog towns will take place before and during the reintroduction effort, and annually thereafter.

*(c) Genetics*

Ferrets selected for reintroduction are excess to the needs of the captive population. Experimental populations of ferrets are usually less genetically diverse than overall captive populations. Selecting and reestablishing breeding ferrets that compensate for any genetic biases in earlier releases can correct this disparity. The ultimate goal is to establish wild ferret populations with the maximum genetic diversity possible from founder ferrets. The eventual interchange of ferrets between established populations found elsewhere in the western United States will ensure that genetic diversity is maintained to the maximum extent possible.

*(d) Prairie Dog Management*

We will work with the Tribe, affected landowners, and other Federal and State agencies to resolve any management conflicts in order to maintain suitable prairie dog habitat on core release areas at or above 90 percent of the habitat levels as determined by the 1999 survey.

*(e) Mortality*

We will reintroduce only ferrets that are surplus to the captive-breeding program. Predator control, prairie dog management, vaccination, ferret preconditioning, and improved release methods should reduce mortality. Public education will help reduce potential sources of human-caused mortality.

The Act defines "incidental take" as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. A person may take a ferret within the Experimental Population Area provided that the take is unavoidable, unintentional, and was not due to negligent conduct. Such conduct will not constitute "knowing take," and we will not pursue legal action. However, when we have evidence of knowing (*i.e.*, intentional) take of a ferret, we will refer matters to the appropriate authorities for prosecution. Any take of a black-footed ferret, whether incidental or not, must be reported to the local Service Field Supervisor (see **ADDRESSES** section). We expect a low level of incidental take since the reintroduction is compatible with existing land use practices for the area.

Based on studies of wild black-footed ferrets at Meeteetse, Wyoming, black-footed ferrets can be killed by motor vehicles and dogs. We expect a rate of mortality similar to what was documented at Meeteetse, and, therefore, we estimate a human-related annual mortality rate of about 12 percent of all reintroduced ferrets and their offspring. If this level is exceeded in any given year, we will develop and implement measures to reduce the level of mortality.

*(f) Special Handling*

Service employees and authorized agents acting on their behalf may handle black-footed ferrets for scientific purposes; to relocate ferrets to avoid conflict with human activities; for recovery purposes; to relocate ferrets to other reintroduction sites; to aid sick, injured, and orphaned ferrets; and salvage dead ferrets. We will return to captivity any ferret we determine to be unfit to remain in the wild. We also will determine the disposition of all sick, injured, orphaned, and dead ferrets.

*(g) Coordination With Landowners and Land Managers*

The Service and cooperators identified issues and concerns associated with the ferret reintroduction before preparing this rule. The reintroduction also has been discussed with potentially affected State agencies and landowners within the release area. Affected State agencies, landowners, and land managers have indicated support for the reintroduction of ferrets in the Experimental Population Area as a NEP, if land use activities in the Experimental Population Area are not constrained without the consent of affected landowners.

*(h) Potential for Conflict With Grazing and Recreational Activities*

We do not expect conflicts between livestock grazing and ferret management. Grazing and prairie dog management on private lands within the Experimental Population Area will continue without additional restriction

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from implementation of ferret recovery activities. With proper management, we do not expect adverse impacts to ferrets from hunting, prairie dog shooting, prairie dog control, and trapping of furbearers or predators within the Experimental Population Area. If proposed prairie dog shooting or control will locally affect ferret prey base within a specific area, project biologists will determine whether ferrets could be impacted and, if necessary, take steps to avoid such impacts. If private activities impede the establishment of ferrets, we will work closely with the Tribe and landowners to develop appropriate procedures to minimize conflicts.

*(i) Protection of Black-Footed Ferrets*

We will release ferrets in a manner that provides short-term protection from natural (predators, disease, lack of prey base) and human-related sources of mortality. Improved release methods, vaccination, predator control, and management of prairie dog populations should help reduce natural mortality. Releasing ferrets in areas with little human activity and development will minimize human-related sources of mortality. We will work with the Tribe and landowners to help avoid certain activities that could impair ferret recovery.

*(j) Public Awareness and Cooperation*

We will inform the general public of the importance of this reintroduction project in the overall recovery of the black-footed ferret. The designation of the NEP on the Cheyenne River Sioux Reservation will provide greater flexibility in the management of reintroduced ferrets. The NEP designation is necessary to secure needed cooperation of the Tribe, landowners, agencies, and recreational interests in the affected area. Based on the above information, and using the best scientific and commercial data available (in accordance with 50 CFR 17.81), the Service finds that releasing black-footed ferrets into the Experimental Population Area will further the conservation of the species.

**Summary of Comments**

In the July 18, 2000, proposed rule and associated notifications, we requested all interested parties to submit factual reports or information that might contribute to the development of a final rule. Appropriate Federal and State agencies, Tribes, county governments, environmental and agricultural organizations, and other interested parties were contacted and requested to comment. Articles providing information about the proposed rule and the opportunity for public comment were published in South Dakota in the "Midwest News," the "Capitol Journal," the "Timberlake Topic," the "Eagle Butte News," the "West River Progress," and the "Rapid City Journal." Information regarding the publication of the proposed rule as well as the text of the rule itself was made available on the Region 6 website >www.r6.fws.gov< during the public comment period. A news interview with South Dakota Public Radio was conducted by a representative of the Cheyenne River Sioux Tribe.

We informed the Cheyenne River Sioux Tribe of the publication of the proposal and the opportunity for public comment. Throughout development of the proposal we maintained regular coordination with the Cheyenne River Sioux Tribe and have received their full support in this reintroduction. Public meetings were held by the Cheyenne River Sioux Tribe on June 19 and 22, 2000, in Eagle Butte, South Dakota. Contacts were made with the South Dakota Department of Game, Fish, and Parks regarding the publication of the reintroduction proposal and the public comment period. On July 15, 2000, a presentation about the proposal, including the public comment period, was given to the South Dakota Prairie Dog Working Group, a consortium of Federal and State agencies, environmental organizations, and local agricultural groups interested in black-tailed prairie dog and black-footed ferret conservation issues. No requests for public hearings were made and no public comments were received on this proposal.

**Required Determinations**

*Regulatory Planning and Review*

In accordance with the criteria in Executive Order 12866, the rule to designate NEP status for the black-footed ferret reintroduction into north-central South Dakota is not a significant regulatory action subject to Office of Management and Budget review. This rule will not have an annual economic effect of $100 million and will not have an adverse effect upon any economic sector, productivity, jobs, the environment, or other units of government. Therefore, a cost-benefit and economic analysis is not required.

All the lands within the NEP area are within the Cheyenne River Sioux Reservation, and the specific lands where ferrets will actually be released are Tribal Trust and Allotted lands. Other public areas in the NEP include South Dakota school lands, South Dakota Department of Game, Fish, and Parks lands, and U.S. Army Corps of Engineers lands. Most of the prairie dogs within the NEP area occur on Tribal Trust and Allotted lands, and those occurring on other lands are not needed for a successful ferret release. Land uses on private, Tribal, and State school lands will not be hindered by the reintroduction, and only voluntary participation by private landowners will occur.

This rule will not create inconsistencies with other agencies' actions or otherwise interfere with an action taken or planned by another agency. Federal agencies most interested in this rulemaking are primarily other Department of the Interior bureaus (*i.e.*, Bureau of Land Management and BIA) and the Department of Agriculture (Forest Service). The action allowed by this rulemaking is consistent with the policies and guidelines of the other Interior bureaus. Because of the substantial regulatory relief provided by the NEP designation, we believe the reintroduction of the black-footed ferret in the areas described will not conflict with existing human activities or hinder public utilization of the area.

This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. This rule will not raise novel legal or policy issues. The Service has previously designated experimental populations of black-footed ferrets at five other locations (in Colorado/Utah, Montana, South Dakota, Arizona, and Wyoming) and for other species at numerous locations throughout the nation.

*Regulatory Flexibility Act*

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The area affected by this rule consists of Dewey and Ziebach Counties, South Dakota. A majority of the area affected by this rule is within the Cheyenne River Sioux Reservation, which is administered by the Tribe.

Reintroduction of ferrets allowed by this rule will not have any significant effect on recreational activities in the experimental area. We do not expect any closures of roads, trails, or other recreational areas. Suspension of prairie dog shooting for ferret management purposes will be localized and prescribed by the Tribe. We do not expect ferret reintroduction activities to affect grazing operations, resource development actions, or the status of any other plant or animal species within the release area.



Because participation in ferret reintroduction by private landowners is voluntary, this rulemaking is not expected to have any significant impact on private activities in the affected area. The designation of a NEP in this rule will significantly reduce the regulatory requirements regarding the reintroduction of ferrets on the Cheyenne River Sioux Reservation, will not create inconsistencies with other agency actions, and will not conflict with existing or proposed human activity, or Tribal and public uses of the land.

*Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule will not have an annual effect on the economy of $100 million or more for reasons outlined above. It will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The rule does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises.

*Unfunded Mandates Reform Act*

The nonessential experimental population designation will not place any additional requirements on any city, county, or other local municipalities. The site designated for release of the experimental population is predominantly Cheyenne River Sioux Tribal Trust and Allotted land administered by the Cheyenne River Sioux Tribe, who support this project. Some South Dakota State school lands may also be affected.

The State of South Dakota has expressed support for accomplishing the reintroduction through a nonessential experimental designation. Accordingly, this rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required.

Because this rulemaking does not require any action be taken by local or State government or private entities, we have determined and certify pursuant to the Unfunded Mandates Reform Act, 2, U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities (*i.e.*, it is not a "significant regulatory action" under the Act).

*Takings*

In accordance with Executive Order 12630, the rule does not have significant takings implications.

Designating reintroduced populations of federally listed species as NEP's significantly reduces the Act's regulatory requirements with respect to the reintroduced listed species within the NEP. Regulatory relief can be provided regarding take of reintroduced species within NEP areas, and a special rule has been developed stipulating that unavoidable and unintentional take (including killing or injuring) of the reintroduced black-footed ferrets would not be a violation of the Act, when such take is nonnegligent and incidental to a legal activity (*e.g.*, livestock management, mineral development) and the activity is in accordance with State laws and regulations.

Most of the lands within the Experimental Population Area are administered by the Cheyenne River Sioux Tribe. Multiple-use management of these lands by industry and recreation interests will not change as a result of the experimental designation. Private landowners within the Experimental Population Area will still be allowed to conduct lawful control of prairie dogs, and may elect to have black-footed ferrets removed from their land should ferrets move onto private lands.

Because of the substantial regulatory relief provided by NEP designations, we do not believe the reintroduction of ferrets would conflict with existing human activities or hinder public use of the area. A takings implication assessment is not required.

*Federalism*

In accordance with Executive Order 13132, the rule does not have significant Federalism implications to warrant the preparation of a Federalism Assessment. As stated above, most of the lands within the Experimental Population Area are Tribal Trust and Allotted lands, and multiple-use management of these lands will not change to accommodate black-footed ferrets. The designation will not impose any new restrictions on the State of South Dakota. The Service has coordinated extensively with the Tribe and State of South Dakota, and they endorse the NEP designation as the only feasible way to pursue ferret recovery in the area. A Federalism Assessment is not required.

*Civil Justice Reform*

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

*Paperwork Reduction Act*

This regulation contains collection of information requiring Office of Management and Budget (OMB) approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* This information collection has been approved by OMB and has been assigned OMB control number 1018–0095. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

*National Environmental Policy Act*

We have analyzed this rule in accordance with the criteria of the National Environmental Policy Act of 1969 (NEPA). We have prepared an Environmental Assessment (EA) as defined under the authority of NEPA, which is available from Service offices identified in the **ADDRESSES** section. In that EA we determined that this rule does not constitute a major Federal action significantly affecting the quality of the human environment.

*Government-to-Government Relationship With Tribes*

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2, we have closely coordinated this rule with the Cheyenne River Sioux. Throughout development of this rule, we maintained regular contact with the Cheyenne River Sioux Tribe and have received their full support in this reintroduction.

**Effective Date**

We have waived the 30-day delay between publication of this final rule and its effective date as provided in the Administrative Procedure Act (5 U.S.C. 533(d)(3)). This is necessary to ensure that ferret kits are released on the Cheyenne River Sioux Reservation at the most biologically favorable time possible. Previous ferret releases and scientific study have demonstrated that ferret survival is markedly enhanced by adequate preconditioning of kits in outdoor pens between 60–90 days of age and subsequent release into the wild from about 120–140 days of age.

The bulk of the annual production of captive-reared ferrets for the year 2000 was completed between mid-May to mid-June. To facilitate the reintroduction of ferrets on the

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Cheyenne River Sioux Reservation site in 2000, we have allocated ferrets from later litters. However, in order to ensure that ferrets are reintroduced as close to optimal age as possible, it will be necessary to release allocated ferrets by October 2000.

A substantial delay of releasing ferrets at optimal ages would necessitate the transfer of allocated ferrets to other reintroduction sites and would postpone reintroduction efforts on the Cheyenne River Sioux Reservation until 2001. Such an action would substantially impact our ferret reintroduction efforts for the year 2000 and would retard overall species recovery. Good cause exists under 5 U.S.C. 553(d) for the rule to be effective immediately upon publication.

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### Authors

The primary authors of this rule are Mike Lockhart at telephone 307/721–8805 and Scott Larson (see **ADDRESSES** section).

### List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

### Special Regulations Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the U.S. Code of Federal Regulations, as set forth below:

## PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend section 17.11(h) by revising the existing entry for "Ferret, black-footed" under "MAMMALS" to read as follows:

**§ 17.11 Endangered and threatened wildlife.**

* * * * *

(h) * * *

| Species | | Historic range | Vertebrate population where endangered or threatened | Status | When listed | Critical habitat | Special rules |
|---|---|---|---|---|---|---|---|
| Common name | Scientific name | | | | | | |
| MAMMALS | | | | | | | |
| • | • | • | • | • | • | • | |
| Ferret, black-footed ... | *Mustela nigripes* ..... | Western U.S.A., Western Canada. | Entire, except where listed as an experimental population. | E | 1, 3, 433, 545, 546, 582, 646, 703 | NA | NA |
| Do..... ..... | .....do ..... | .....do ..... | U.S.A. (specified portions of AZ, CO, MT, SD, UT, and WY, see 17.84(g)(9)). | XN | 433, 545, 546, 582, 646, 703 | NA | 17.84(g) |
| • | • | • | • | • | • | • | |

3. Amend section 17.84 as follows: Revise the text of paragraph (g)(1) and add paragraphs (g)(6)(vi), (g)(9)(vi), and a new map to follow the five existing maps at the end of paragraph (g):

**§ 17.84 Special rules—vertebrates.**

* * * * *

(g) Black-footed ferret (*Mustela nigripes*).

(1) The black-footed ferret populations identified in paragraphs (g)(9)(i) through (vi) of this section are nonessential experimental populations. We will manage each of these populations in accordance with their respective management plans.

* * * * *

(6) * * *

(vi) Report such taking in the Cheyenne River Sioux Tribe Experimental Population Area to the Field Supervisor, Ecological Services, U.S. Fish and Wildlife Service, Pierre, South Dakota (telephone 605/224–8693).

* * * * *

(9) * * *

(vi) The Cheyenne River Sioux Tribe Reintroduction Area is shown on the map of north-central South Dakota at the end of paragraph (g) of this section. The boundaries of the nonessential experimental population area are the exterior boundaries of the Cheyenne River Sioux Reservation which includes all of Dewey and Ziebach Counties, South Dakota. Any black-footed ferret found in the wild within these counties will be considered part of the nonessential experimental population after the first breeding season following the first year of black-footed ferret release. A black-footed ferret occurring outside the Experimental Population Area in north-central South Dakota would initially be considered as endangered but may be captured for genetic testing. When a ferret is found outside the Experimental Population Area, the following may occur:

(A) If an animal is genetically determined to have originated from the experimental population, we may return it to the reintroduction area or to a captive-breeding facility.

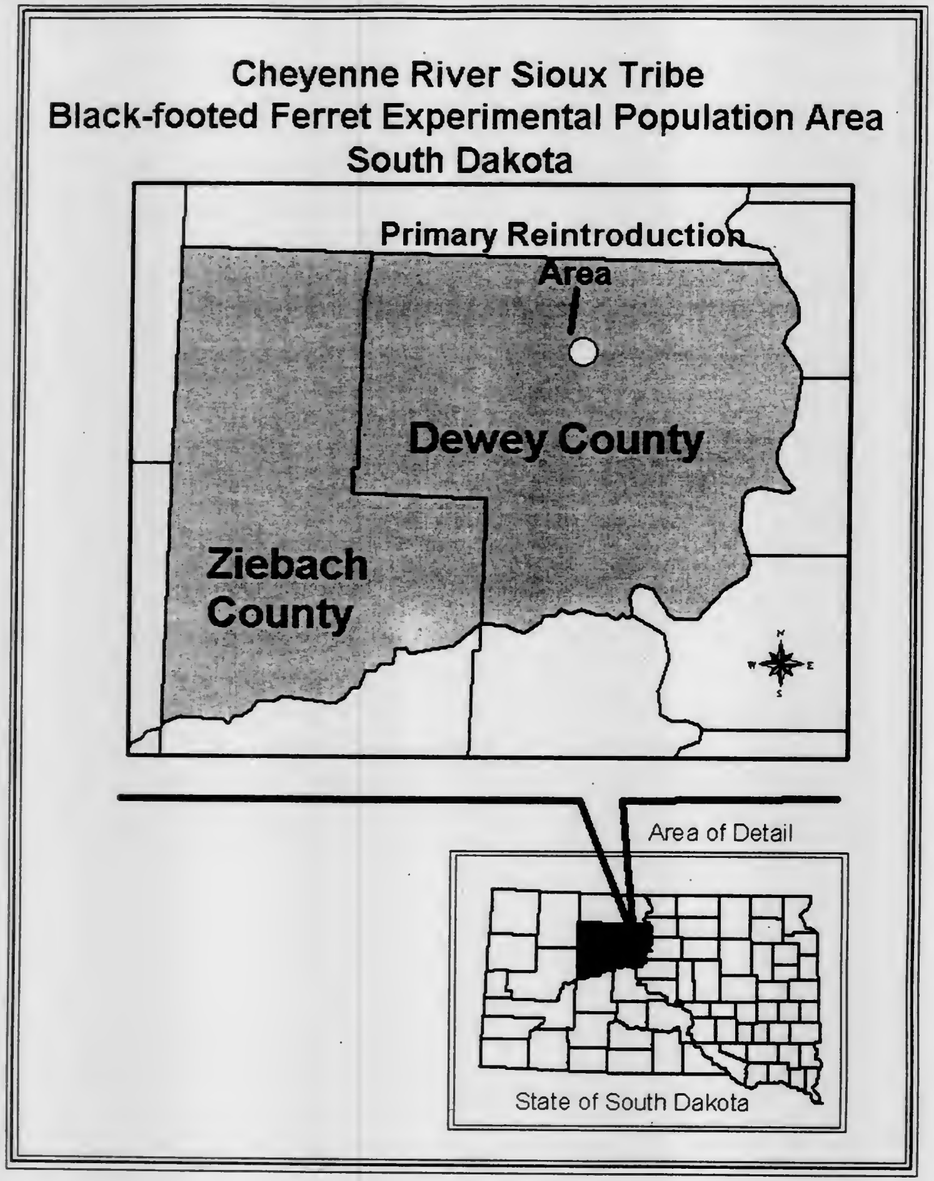
(B) If an animal is determined to be genetically unrelated to the experimental population, we will place it in captivity under an existing contingency plan. Up to nine black-footed ferrets may be taken for use in the captive-breeding program.

* * * * *

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Dated: September 28, 2000.

**Kenneth L. Smith,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 00–26349 Filed 10–12–00; 8:45 am]

BILLING CODE 4310–55–C

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 635

**[Docket No. 000928277-0277-01; I.D. 091100A]**

**RIN 0648-AO67**

## Atlantic Highly Migratory Species; Pelagic Longline Fishery; Sea Turtle Protection Measures

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Emergency rule; request for comments.

**SUMMARY:** NMFS issues emergency regulations to implement a time and area closure for pelagic longline fishing, within the Northeast Distant Statistical Sampling (NED) Area. Additionally, this rule requires all pelagic longline vessels that have been issued Federal highly migratory species (HMS) fishing permits and that fish in the Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, to carry on board dipnets and line clippers meeting NMFS design and performance standards. These regulations are necessary to reduce the bycatch and bycatch mortality of loggerhead and leatherback sea turtles by the Atlantic pelagic longline fishery.

**DATES:** This emergency rule is effective October 10, 2000, through April 9, 2001, except that the amendment to § 635.21(c)(5) is effective November 24, 2000, through April 9, 2001. Comments must be received no later than 5 p.m. on January 8, 2001.

**ADDRESSES:** Written comments on this action must be mailed to Christopher Rogers, Acting Chief, NMFS Highly Migratory Species Management Division, 1315 East-West Highway, Silver Spring, MD 20910; or faxed to 301-713-1917. Comments will not be accepted if submitted via email or the Internet. Copies of the environmental assessment and regulatory impact review prepared for this action may be obtained from Christopher Rogers.

**FOR FURTHER INFORMATION CONTACT:** Margo Schulze-Haugen, Karyl Brewster-Geisz, or Tyson Kade at 301-713-2347.

**SUPPLEMENTARY INFORMATION:** The Atlantic swordfish and tuna fisheries are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Atlantic Tunas Convention Act. The Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP) is implemented by regulations at 50 CFR part 635.

### Pelagic Longline Fishery

Pelagic longline gear is the dominant commercial fishing gear used by U.S. fishermen in the Atlantic Ocean to target HMS. The gear consists of a mainline, often many miles long, suspended in the water column by floats and from which baited hooks are attached on leaders (gangions). Though not completely selective, longline gear can be modified (e.g., gear configuration, hook depth, timing of sets) to target preferentially yellowfin tuna, bigeye tuna, or swordfish.

Observer data and vessel logbook data indicate that pelagic longline fishing for Atlantic swordfish and tunas results in catch of such non-target finfish species, as bluefin tuna, billfish, undersized swordfish, and of protected species, including threatened and endangered sea turtles. The bycatch of fish that are hooked but not retained due to economic or regulatory factors contributes to overall fishing mortality. Such bycatch mortality may significantly impair the rebuilding of overfished finfish stocks. Additionally, the bycatch of protected species (sea turtles or marine mammals) may significantly impair the recovery of these species.

Consistent with national standard 9 of the Magnuson-Stevens Act, NMFS has implemented measures to reduce bycatch and bycatch mortality to the extent practicable in the Atlantic pelagic longline fishery. In 1999, NMFS implemented a time and area closure in the Mid-Atlantic bight for the month of June to reduce bycatch of Atlantic bluefin tuna (64 FR 29090, May 28, 1999). Additionally, NMFS implemented a year-round time and area closure in the northeastern Gulf of Mexico (DeSoto Canyon), effective November 1, 2000; a year-round time and area closure along the east coast of Florida, effective February 1, 2001; and a 3-month time and area closure off Georgia, South Carolina, and a portion of North Carolina (Charleston Bump), effective February 1, 2001 (65 FR 47214, August 1, 2000).

### Sea Turtle Bycatch Reduction

Under the Endangered Species Act (ESA), NMFS is required to address fishery-related take of sea turtles that are listed as threatened or endangered. Although a high percentage of hooked sea turtles are released alive, NMFS remains concerned about serious injuries of turtles taken by pelagic longline gear. On November 19, 1999, NMFS re-initiated consultation under section 7 of the ESA based on preliminary reports observing that incidental take of loggerhead sea turtles by the Atlantic pelagic longline fishery during 1999 had exceeded levels anticipated in the Incidental Take Statement previously issued for the HMS FMP. Additionally, the consultation considered the impacts of the pelagic longline rulemaking that was in preparation because it was recognized that certain time and area closures, if implemented, could affect the overall interaction rates of the pelagic longline fleet with sea turtles.

National standard 9 of the Magnuson-Stevens Act requires that conservation and management measures, "to the extent practicable, (A) minimize bycatch and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch." Sea turtles are defined as bycatch in the Magnuson-Stevens Act because they may not be retained and must be released. In certain times and areas, the Atlantic pelagic longline fishery has relatively high rates of sea turtle bycatch, with associated mortality.

In its most recent Biological Opinion (BO) on management of the Atlantic HMS fisheries, completed June 30, 2000, NMFS concluded that operation of the pelagic longline fishery jeopardized the continued existence of threatened loggerhead and endangered leatherback sea turtles. This conclusion was based on the current status of the loggerhead and leatherback sea turtle populations in the Atlantic Ocean, Caribbean Sea, and Gulf of Mexico, the status of the northern subpopulation of loggerhead sea turtles, and the anticipated continuation of current levels of injury and mortality of both species described in the environmental baseline and cumulative effects section of the BO. The future trend of species abundance considers the current rate of bycatch in HMS fisheries and the potential shifts in effort estimated in the Final Supplemental Environmental Impact Statement on the Regulatory Amendment to the Atlantic Tunas, Swordfish, and Sharks Fishery Management Plan.

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Since the June 30, 2000, BO was issued, NMFS has concluded that further analyses of observer data and additional population modeling of loggerhead sea turtles are needed to determine more precisely the impact of the pelagic longline fishery on sea turtles. Consequently, NMFS has re-initiated consultation. NMFS anticipates completing the consultation and issuing a new BO in early 2001. Until the consultation is completed and appropriate long-term measures can be determined, NMFS is implementing these emergency measures in the short-term to reduce sea turtle bycatch and bycatch mortality in the pelagic longline fishery.

After the June 30, 2000, BO was issued, NMFS conducted a series of seven scoping workshops in locations where pelagic longline vessels make landings and which could potentially be affected by implementation of the reasonable and prudent alternatives identified in that BO. NMFS received numerous comments that the alternatives identified in the June 30, 2000, BO would have significant economic impacts and would potentially eliminate segments of the Atlantic pelagic longline fleet. Commentors questioned the validity of the June 30, 2000, BO conclusions and suggested alternative measures that NMFS could analyze to reduce sea turtle bycatch. These alternative measures included gear deployment modifications, such as fishing deeper and colder waters, increasing the number of hooks between floats, using different bait, avoiding warm core eddies, and using line clippers to remove gear on captured sea turtles. Additionally, NMFS received comments that agency guidance on sea turtle handling and release has been confusing and that clarification of guidelines would reduce the number of sea turtles released with fishing gear attached. The measures implemented in this rule are based in part on the consideration of these comments.

### Time and Area Closure and Gear Requirements

The goal of this regulation is to reduce the incidental take and mortality of sea turtles captured by pelagic longlines. The first measure is a time and area closure that will reduce the number of sea turtles caught by the pelagic longline fleet in the NED area. The NED area has a historically high level of incidental sea turtle captures. The regulation will close an L-shape area to vessels that have been issued Federal HMS permits and use pelagic longline gear. The closed area is bounded by the following coordinates: 45°00' N. lat., 49°00' W. long.; 45°00' N. lat., 43°00' W. long.; 43°00' N. lat., 43°00' W. long.; 43°00' N. lat., 47°00' W. long.; 41°00' N. lat., 47°00' W. long.; 41°00' N. lat., 49°00' W. long.; 45°00' N. lat., 49°00' W. long. This area is closed to pelagic longline fishing from October 10, 2000, through April 9, 2001.

The second measure is designed to reduce the mortality rate of captured sea turtles. All Atlantic pelagic longline vessels that have been issued Federal HMS permits by [insert date 45 days after date of filing in the **Federal Register**] must carry on board dipnets and line clippers that meet NMFS design and performance standards and must comply with requirements for the use of these dipnets and line clippers and for the handling of incidentally caught sea turtles. Dipnets and line clippers will enable the vessel captain and crew to disengage sea turtles caught or entangled in their gear. Technical descriptions of the dipnet and line clipper gear are available from NMFS (see **ADDRESSES**) and are also included in this rule. The starting date for this requirement allows fishermen ample opportunity to purchase or fabricate the gear.

### Classification

These emergency regulations are published under the authority of the Magnuson-Stevens Act and the Atlantic Tunas Convention Act. The Assistant Administrator (AA) has determined that these regulations are necessary to reduce, to the extent practicable, the bycatch and bycatch mortality of sea turtles in the pelagic longline fishery.

NMFS prepared an Environment Assessment for this emergency rule that describes the impact on the human environment and found that no significant impact would result. This emergency rule is of limited duration and is expected to result in a reduction of overall sea turtle bycatch and bycatch mortality associated with the pelagic longline fisheries. NMFS intends to complete the consultation on HMS fisheries in early 2001, and any reasonable and prudent alternatives to jeopardy to sea turtles would be implemented prior to the primary pelagic longline fishing season (July through October) in the NED area.

NMFS also prepared a Regulatory Impact Review for this action which assesses the economic costs and benefits of the action. In the time period between January 1, to March 31, 1998, and October 1, to December 31, 1998, 12 vessels made 13 trips to the NED area. During the same time periods in 1999, 8 vessels made 10 trips to the NED area. The estimated gross revenues for this fishery in this timeframe were $819,620 in total and averaged $68,302 per vessel in 1998 and were $794,678 in total and averaged $99,335 per vessel in 1999.

In 1998, 11 vessels fished in the L-shape closed area within the NED area, and 7 vessels fished in the L-shape closed area in 1999. The estimated gross revenues for these vessels from the L-shape closed area from October 1 to March 31 were $525,771 in total and averaged $47,797 per vessel in 1998 and were $548,439 in total and averaged $78,348 per vessel in 1999. Closing this area for the duration of the emergency rule beginning October 10, 2000, could result in losses of approximately 25 to 40 percent in annual gross revenues per vessel, when considering catch taken in 1998 or 1999. However, this assumes that these fishermen would not fish in any other portion of the NED area or in another statistical area. This is not realistic, especially considering the fact that the logbooks indicate that the fishermen have historically fished both inside and outside the closed area within the same trip. NMFS believes that, although some revenues may be lost as a result of this closure, it is likely that fishermen will be able to compensate for lost revenues by fishing in portions of the NED area that remain open or by fishing in other statistical areas.

Requiring the use of line clippers and dipnets to release hooked turtles is not expected to increase costs substantially. In a similar rule for the fisheries in the Western Pacific, NMFS estimated the total cost for the materials to fabricate and/or purchase line clippers and dipnets to be $250 (65 FR 16347, March 28, 2000).

Closing this area is likely to cause some individual fishermen, processors, dealers, and suppliers to experience a slight increase in costs and possibly a large decrease in gross revenues. This emergency rule should not affect the fishery as a whole because the fishermen can and do fish in other areas. Also, it does not limit the amount of fish that may be landed. Finally, this emergency rule is of limited duration. The modification of the definition of pelagic longline gear will not result in any economic impacts not previously considered.

This emergency rule has been determined to be significant for the purposes of Executive Order 12866.

NMFS issues this emergency rule, effective for 180 days, as authorized by section 305(c) of the Magnuson-Stevens Act. This emergency rule may be extended for an additional 180 days provided the public has had an opportunity to comment on the emergency rule and, at the time of extension, a plan amendment or proposed regulations to address sea turtle bycatch and bycatch mortality on a permanent basis is being actively pursued. Public comments on this emergency rule will be considered in determining whether to maintain or extend this emergency rule to reduce sea turtle bycatch. Responses to comments will be provided if the emergency rule is revoked, modified, or extended. Because no general notice of proposed rulemaking is required to be published in the **Federal Register** for this emergency rule, the analytical requirements of the Regulatory Flexibility Act are not applicable and no Regulatory Flexibility Analysis was prepared.

The AA finds that there is good cause to waive the requirement to provide prior notice and an opportunity for public comment pursuant to authority set forth at 5 U.S.C. 553(b)(B), as such provisions would be contrary to public interest. This emergency rule is necessary to reduce the anticipated impacts of the pelagic longline fishery on listed sea turtles. The NED area closure is scheduled to be in effect October 10, 2000, in order to reduce sea turtle bycatch and bycatch mortality in the remaining portion of the fishing season in the NED area. The months of July through November, are historically high periods of sea turtle interactions. If this action is delayed, then the expected reduction in sea turtle bycatch and bycatch mortality will not occur, contrary to the public interest, because the highest level of fishing activity in the NED area will have already occurred.

The AA, under 5 U.S.C. 553(d)(3), finds that it would be contrary to the public interest to delay the effective date of the time and area closure within the NED area for the 30 days normally required. The AA finds that these measures are necessary to reduce sea turtle bycatch and bycatch mortality. Given NMFS's ability to communicate rapidly these regulations to fishing interests through the HMS Fax network, NOAA weather radio, press releases, mailing lists, and the HMS Infoline, the AA has determined there is good cause for a partial waiver of the 30-day delay in the effective date for the area closure because such delay would be contrary to the public good.

NMFS has determined that this emergency rule is consistent to the maximum extent practicable with the coastal zone management programs of those Atlantic, Gulf of Mexico, and Carribean coastal states that have approved coastal zone management programs.



### List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing Vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics, Treaties.

Dated: October 10, 2000.

**William T. Hogarth,**

*Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 635 is amended as follows:

## PART 635— ATLANTIC HIGHLY MIGRATORY SPECIES

1. The authority citation for part 635 continues to read as follows:

**Authority:** 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

2. In § 635.2, a new definition for "Northeast Distant closed area" is added alphabetically to read as follows:

**§ 635.2 Definitions.**

* * * * *

*Northeast Distant closed area* means the Atlantic Ocean area bounded by straight lines connecting the following coordinates in the order stated: 45°00' N. lat., 49°00' W. long.; 45°00' N. lat., 43° 00' W. long.; 43°00' N. lat., 43°00' W. long.; 43°00' N. lat., 47°00' W. long.; 41°00' N. lat., 47°00' W. long.; 41°00' N. lat., 49°00' W. long.; 45°00' N. lat., 49°00' W. long.

* * * * *

3. In § 635.21, paragraph (c)(2)(v) is added, and paragraph (c)(5) is added to read as follows:

**§ 635.21 Gear operation and deployment restrictions.**

* * * * *

(c) * * *

(2) * * *

(v) In the Northeast Distant closed area from October 10, 2000, local time, through April 9, 2001.

* * * * *

(5) Sea turtle take mitigation measures. The following measures to reduce sea turtle post-release mortality are effective November 24, 2000 through April 9, 2001.

(i) Possession and use of required mitigation gear. Line clippers meeting minimum design standards as specified in paragraph (c)(5)(i)(A) of this section and dipnets meeting minimum standards prescribed in paragraph (c)(5)(i)(B) of this section must be carried aboard all Federally permitted vessels engaged in pelagic longline fishing and must be used to disengage any hooked or entangled sea turtles as close as possible to the hook to prevent any harm to the sea turtles in accordance with the requirements specified in paragraph (c)(5)(ii) of this section.

(A) Line clippers. Line clippers are intended to cut fishing line as close as possible to hooked or entangled sea turtles. NMFS has established minimum design standards for line clippers. The minimum design standards are as follows:

(*1*) A protected cutting blade. The cutting blade must be curved, recessed, contained in a holder, or otherwise afforded some protection to minimize direct contact of the cutting surface with sea turtles or users of the cutting blade.

(*2*) Cutting blade edge. The blade must be capable of cutting 2.0-2.1 mm monofilament line and nylon or polypropylene multistrand material commonly known as braided mainline or tarred mainline.

(*3*) An extended reach holder for the cutting blade. The line clipper must have an extended reach handle or pole of at least 6 ft (1.82 m).

(*4*) Secure fastener. The cutting blade must be securely fastened to the extended reach handle or pole to ensure effective deployment and use.

(B) Dipnets. Dipnets are intended to facilitate safe handling of sea turtles and access to sea turtles for purposes of cutting lines in a manner that prevents injury and trauma to sea turtles. The minimum design standards for dipnets that meet the requirements of this section nets are:

(*1*) An extended reach handle. The dipnet must have an extended reach handle of at least 6 ft (1.82 m) of wood or other rigid material able to support a minimum of 100 lbs (34.1 kg) without breaking or significant bending or distortion.

(*2*) Size of dipnet. The dipnet must have a net hoop of at least 31 inches (78.74 cm) inside diameter and a bag depth of at least 38 inches (96.52 cm). The bag mesh openings may be no more than 3 inches x 3 inches (7.62 cm 7.62 cm).

(ii) Handling requirements. (A) All incidentally taken sea turtles brought aboard for dehooking and/or disentanglement must be handled in a manner to prevent injury and promote post-hooking survival.

(B) When practicable, comatose sea turtles must be brought on board immediately, with a minimum of injury, and handled in accordance with the procedures specified in § 223.206(d)(1).

(C) If a sea turtle is too large or hooked in such a manner as to preclude

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safe boarding without causing further damage/injury to the turtle, line clippers described in paragraph (c)(5)(i)(A) of this section must be used to clip the line and remove as much line as possible prior to releasing the turtle.

* * * * *

4. In § 635.71, paragraphs (a)(33) and (a)(34) are added to read as follows:

**§ 635.71 Prohibitions.**

* * * * *

(a)* * *

(33) Deploy or fish with any fishing gear from a vessel with pelagic longline gear on board without carrying a dipnet and line clipper as specified at § 635.21(c)(5)(i).

(34) Fail to disengage any hooked or entangled sea turtle with the least harm possible to the sea turtle as specified at § 635.21(c)(5)(ii).

* * * * *

[FR Doc. 00–26400 Filed 10–10–00; 3:01 pm]

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

**[Docket No. 991104295–0259–02; I.D. 100599D]**

**RIN 0648–AM74**

# Fisheries of the Northeastern United States; Dealer and Vessel Reporting Requirements

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS issues a final rule to amend the existing reporting regulations for dealers and owners whose vessels are federally permitted to operate in the summer flounder, scup, black sea bass, Atlantic sea scallop, Northeast (NE) multispecies, monkfish, Atlantic mackerel, squid, butterfish, surfclam, ocean quahog, spiny dogfish or Atlantic bluefish fisheries. Changes to the existing regulations are needed to improve the monitoring of commercial landings and to enhance the enforceability of the reporting regulations. The intent of this action is to improve the collection of fisheries-dependent data.

**DATES:** Effective November 13, 2000.

**ADDRESSES:** Copies of the Regulatory Impact Review supporting this action are available from Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930. Comments regarding the collection-of-information requirements contained in this final rule should be sent to Patricia A. Kurkul and to the Office of Information and Regulatory Affairs, Attention: NOAA Desk Officer, Office of Management and Budget, Washington, D.C. 20503. Send comments regarding any ambiguity or unnecessary complexity arising from the language used in this rule to Patricia Kurkul.

**FOR FURTHER INFORMATION CONTACT:** Sandra Arvilla, (978) 281–9255, Kelley McGrath, (978) 281–9307 or Gregory Power, (978) 281–9304.

**SUPPLEMENTARY INFORMATION:**

## Background

In order to improve monitoring of commercial landings and to enhance enforceability of the reporting regulations, this final rule clarifies or modifies several of the existing reporting requirements for dealers and owners whose vessels are federally permitted in the summer flounder, scup, black sea bass, Atlantic sea scallop, NE multispecies, monkfish, Atlantic mackerel, squid, butterfish, surfclam, ocean quahog, spiny dogfish or Atlantic bluefish fisheries. Regulations implementing the fishery management plans (FMPs) for the summer flounder, scup, black sea bass, Atlantic sea scallop, NE multispecies, monkfish, Atlantic mackerel, squid, butterfish, surfclam, ocean quahog, spiny dogfish and Atlantic bluefish fisheries were prepared under the authority of the Magnuson-Stevens Fishery Conservation and Management Act and are found at 50 CFR part 648. A proposed rule to implement these changes was published on December 2, 1999 (64 FR 67551). NMFS reopened the comment period on the proposed rule to ensure that affected fishmen and dealers were aware of the proposed reporting changes and had an opportunity to provide comments (65 FR 7820, February 16, 2000).

## Trip Identifier

One of the data elements that dealers are required to provide on the weekly reports is a trip identifier for each trip from which fish are purchased. This requirement is in the existing regulations. However, the term "trip identifier" has not been defined and, thus, has not been reported by industry. Supplying a trip identifier for each trip from which fish are purchased would aid in matching dealer data with the corresponding vessel data by using a uniquely identifiable serial number from the vessel logbook, if applicable, or a combination of the date sailed, and, if the vessel sailed more than once on the same day, the sequential trip number within that date sailed. To enable dealers to provide the trip identifier to NMFS, vessel owners/operators would have to provide each dealer with the trip identifier information at the time of offloading.

Because dealer compliance would be dependent upon compliance by the vessel owner/operator, establishing responsibility for compliance would be difficult, making fair and equitable enforcement of the requirement equally difficult. Thus, a requirement to provide a trip identifier is not being imposed at this time. Due to the importance of establishing a link between the dealer and vessel data, NMFS intends to make reporting a trip identifier mandatory in the near future. NMFS will work with industry members to explore various options for transferring trip identifier information from vessels to dealers without overly burdening either party. NMFS encourages the industry to assist in the development of alternative methods for providing this information.

## Dealer Reporting Changes

This final rule modifies two requirements affecting summer flounder, scup, black sea bass, Atlantic sea scallop, NE multispecies, monkfish, Atlantic mackerel, squid, butterfish, spiny dogfish or Atlantic bluefish dealers, and two requirements affecting surfclam or ocean quahog dealers.

To collect more comprehensive and accurate data on the processing segment of the industry, dealers who have been issued a summer flounder, scup, black sea bass, Atlantic sea scallop, NE multispecies, monkfish, Atlantic mackerel, squid, butterfish, spiny dogfish or an Atlantic bluefish permit must complete all sections of the Annual Processed Products Report.

Federally permitted dealers must retain copies of reports, and records upon which the reports were based, for a total of 3 years after the date of the last entry on the report. This time frame is in keeping with standard business practices and will allow for validating the compliance of past landings reported by dealers and vessels.

To ensure that quotas in the surfclam and ocean quahog fisheries are not exceeded, harvest levels must be monitored on a timely basis. While dealers have historically provided these data on a weekly basis, this action specifies that reports must be postmarked or received within 3 days of the end of the reporting week.



## Vessel Reporting Changes

This final rule modifies three requirements affecting vessels that have been issued a summer flounder, scup, black sea bass, Atlantic sea scallop, NE multispecies, monkfish, Atlantic mackerel, squid and butterfish, spiny dogfish or Atlantic bluefish permit. This final rule also modifies two requirements affecting vessels federally permitted in the surfclam or ocean quahog fisheries.

Regulations requiring vessel owners/operators to submit fishing log reports are clarified to indicate that a vessel logbook report needs to be submitted only for each trip taken, rather than for each day within a trip. The current regulations state that vessel owner/operators must submit an "accurate daily fishing log report" for all trips. To clarify that a report must be submitted only for each fishing trip, the word "daily" is removed from the existing regulations.

Vessel owners/operators are required to report the pounds, by species, of all fish landed or discarded. This final rule clarifies that "hail weight" should be reported rather than exact weight. Because many vessel owners/operators interpret the pounds landed to be the exact pounds sold to the dealer, many vessel operators copy the catch information from the dealer receipts after the catch has been sold. "Hail weight" is defined to mean a good-faith estimate, in pounds for commercial vessels and in numbers of individual fish for party and charter vessels, by species, or parts of species, such as monkfish livers, of all fish landed or discarded for each trip.

To clarify, for enforcement purposes, which logbook information must be completed prior to the vessel entering port with fish, this final rule specifies that all information, other than that which is not able to be ascertained (i.e., dealer name, dealer permit number, and date sold) must be completed prior to entering port with fish.

Vessel log reports and any records upon which the reports were based must be kept on board the vessel for at least 1 year and retained for a total of 3 years after the date of the last entry on the report. This time frame is in keeping with standard business practices and will allow for validation of compliance of past landings reported by dealers and vessels.

To better monitor harvest levels of surfclams and ocean quahogs, surfclam and ocean quahog vessel log reports must be postmarked or received within 3 days of the end of the reporting week. While vessel owners have historically provided these data on a weekly basis, this action clarifies that reports must be submitted within the specified time frame.

## Comments and Responses

NMFS received three written comments during the initial comment period from December 2, 1999, through January 3, 2000, and 12 additional comments during the reopening of the comment period, which ran from February 16, 2000, through March 2, 2000. Only comments received during the comment periods were considered for response. Seven comments were received after one or both comment periods were closed. Those comments were not considered. However, all but one of those comments were contained in comments received during the comment period.

*Comment 1*: Eight commenters cited increased costs and compliance issues as the two primary reasons for opposition to the trip identifier requirement. One concern was the requirement for fishermen to supply dealers with a trip identifier at the time of offloading. This would be difficult in cases where product is being shipped, sold on consignment, or sold to multiple dealers, as the owner/operator would not be in contact with the dealer. The commenters felt that the burden imposed on dealers would be significant, causing a halt to production in the crucial period of offloading to fill out logbooks. Several commenters were also concerned about potential violations and who would be held responsible if the trip identifier is not reported. Since dealer compliance would be dependent upon compliance by the vessel owner/operator, establishing responsibility for compliance would be difficult.

Three commenters supported the rule to provide a trip identifier, expressing that it would not be unreasonable or cumbersome for dealers to provide the information. One commenter felt that this change would help improve the accuracy of landings data and it would also make it easier to determine the location of catches.

*Response*: While the requirement for federally permitted dealers to provide a trip identifier is in the existing regulations, trip identifier has not been defined, and, thus, has not been reported by industry. Supplying a trip identifier for each trip from which fish are purchased would aid in matching dealer data with the corresponding vessel data by using a uniquely identifiable serial number from the vessel logbook, if applicable, or a combination of the date sailed, and, if the vessel sailed more than once on the same day, the sequential trip number within that date sailed. NMFS believes that having a unique trip identifier to link dealer and vessel data is critical to provide accurate data for fishery scientists, managers and analysts to quantify harvest rates, set quotas, predict closures, and assess stocks. Because of its importance, reporting a trip identifier will be mandatory in the near future.

*Comment 2*: Five commenters opposed the requirement to complete trip reports prior to entering port with fish because of a variety of physical conditions at sea that sometimes make it impossible to complete a vessel trip report. Also, loss of revenue may result from having to complete trip reports rather than actually fishing while at sea. One commenter expressed that although the Agency requires "hail weight," a captain may not have the ability to estimate weights accurately and that actual weights would allow assessments, analyses and management decisions to be based on more accurate data. One commenter also perceived the requirement as an excuse to revoke licenses for non-compliance. Another commenter expressed concern that completing trip reports at sea does not promote legibility and/or accuracy.

*Response*: Although NMFS understands the industry's concerns, the Agency's objective is to collect the most accurate data. To ensure that NMFS is receiving the most accurate data, the information should be recorded at the time of the vessel's trip. The information submitted on the vessel trip reports, such as the vessel's gear type and statistical area fished, is used to augment the dealer data, which provide exact weight and value. These data are used by fishery scientists, managers, and analysts to quantify harvest rates, set quotas, predict closures, and assess stock status. This modification would enhance the enforceability of the reporting requirements.

Therefore, NMFS is requiring that all information in the logbooks, other than that which is not able to be ascertained, be completed prior to entering port with fish. To complete the log books within this time frame, this action clarifies that vessel owners/operators must report hail weight, defined as a good faith estimate, by species, or parts of species, such as monkfish livers, of all fish landed or discarded.

*Comment 3*: Two commenters were concerned with NMFS over- burdening the industry with reporting requirements. Another concern was that additional data-collection measures will impose increased costs of compliance

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(without improvements in data collection); present unnecessary complexity due to differences between primary versus secondary product sales at auction; and introduce administrative burdens, increasing both risk and liability to dealers.

*Response*: The intention of the proposed changes is to improve the collection of fisheries-dependent data by modifying or clarifying several dealer and vessel reporting requirements. It will also improve the monitoring of commercial landings and enhance the enforceability of the reporting regulations. The modifications and clarifications of the existing regulations being implemented by this rule do not add any new reporting requirements.

*Comment 4*: One commenter was concerned that requiring a vessel logbook report to be submitted for "each trip taken" rather than for "each day of the trip" would result in the loss of detailed catch and area information, and that the vessel logbook information would be diminished in value.

*Response*: This rule would not change the current regulations that require a separate logbook report to be completed for each statistical area fished, and each change in gear or mesh size within a trip. Existing regulations state that vessels must submit an "accurate daily fishing log report" for all trips. This has resulted in misinterpretation of when a logbook report must be completed and submitted. To clarify that reports must be submitted only for each fishing trip, the word "daily" would be removed from the existing regulations. Because a separate report will continue to be required for any change in gear type, mesh or statistical area, this change will not cause any pertinent data to be lost.

*Comment 5*: One commenter was concerned that an extra paperwork burden would be imposed on the Maine Mahogany Quahog dealers to report the ocean quahog landings to NMFS because Maine Mahogany Quahog dealers are also required to submit monthly reports to the state of Maine. The commenter expressed that detailed weekly reports are too burdensome to an industry with limited clerical staff.

*Response*: As part of the final rule implementing Amendment 10 for the Atlantic Surfclam and Ocean Quahog Fisheries (63 FR 27481, May 19, 1998) and joint management between NMFS and the state of Maine, NMFS is responsible for setting and monitoring Maine Mahogany quahog quotas. Maine dealers are currently required to submit weekly reports to NMFS. Although state- certified dealers submit monthly reports to the state of Maine, they need to submit weekly reports, within 3 days of the end of the reporting week, to NMFS so that the Agency may effectively monitor quotas. NMFS is working with the state of Maine in an effort to eliminate duplicate reporting, where possible.

*Comment 6*: Two comments received stated that the additional record retention from 1 year to 3 years is not justified, and that 2 more years of additional storage is unreasonable.

*Response*: Increasing the record retention requirement for dealer and vessel reports from 1 year to a total of 3 years, after the date of the last entry on the report, is consistent with standard business practices and the Internal Revenue Service requirements. In keeping with current regulations, vessel owner/operators will continue to be required to retain logbooks on board the vessel for at least 1 year. It will allow for validating the compliance of past landings reported by dealers and vessel owners or operators. Requirement of records for storage for the total retention period would be minimal since many companies keep their records for at least 3 years for business purposes already. In addition, only 1 year need be stored on board. Thus, the actual amount of records required to be on board a vessel has not changed.

*Comment 7*: Two commenters who were opposed to the requirement for dealers to fill out an annual processing report on all processed seafood stated that most product is in some way processed, whether purchased from vessels, domestic dealers or foreign countries. One commenter felt that NMFS should currently have enough data with landing data, import data and employment data to assess economic factors in the processing industry. One commenter stated that completion time would exceed the estimated 30 minutes per annual report.

*Response*: The data on volume and value are used by NMFS and Regional Fishery Management Council economists to estimate processing capacity and to forecast and subsequently measure the economic impact of fishery management regulations on fish and shellfish supplies. The information collected through all sections of the Annual Processed Product survey is a necessary part of the economic and social analyses NMFS must perform when proposing and evaluating management actions affecting federally managed fisheries. Many of the species under Federal management are considered overfished and some stocks have reached critically low levels. In order to manage these fisheries effectively and balance the needs of the resource and the industry members, NMFS must have a comprehensive database that accurately represents the fishing industry, including the processing segment of the industry. If decisions affecting the fisheries are based on inadequate or incomplete data, the long-term viability and economic yield from those fisheries, as well as the credibility of the fishery management process itself, are jeopardized.

Direct feedback from respondents provide the estimate for average response time. The 30 minutes per response was based on a statistical analysis of 1,260 respondents.

*Comment 8*: Two commenters felt that NMFS should place the same level of reporting requirements on the recreational sector, including party/charter vessels and head boats, as exist for the commercial vessels. They were concerned that statistical information on the recreational sector is lacking.

*Response*: Any recreational fishing vessel that fishes for federally managed species in the EEZ, under 50 CFR part 648, and takes passengers for hire, must have been issued a Federal permit. Federally-permitted vessels in the recreational fisheries are subject to the same reporting requirements as federally permitted commercial vessels. Under the Magnuson-Stevens Fishery Conservation and Management Act, recreational fishing vessels that do not fish in the EEZ are not required to be issued a Federal permit, and therefore are not subject to Federal reporting requirements. Similarly, recreational vessels that fish in the EEZ for their own recreation and do not take passengers for hire are also not required to obtain a Federal permit and are not required to report their catch. However, recreational vessels do provide catch and effort data to NMFS for inclusion in the Marine Recreational Fishery Statistics Survey.

### Changes From the Proposed Rule

Because reporting a trip identifier is not being implemented at this time, changes were made to two sections of the proposed rule to clarify the measures and the intent of the regulations, and to respond to public comments. These changes are listed here in the order that they appear in the regulations:

Section 648.2 is revised to delete definitions for "Serial number" and "Trip identifier" to reflect that the "trip identifier" requirement is not being implemented at this time. The definition for "Hail weight" has been expanded to clarify that a party or charter vessel report in numbers of individual fish.



In § 648.7, paragraph (b)(1)(i) is modified to reflect the new language from the final rule implementing Amendment 1 to the FMP for the Atlantic Bluefish Fishery. The new language was incorporated into the Atlantic bluefish final rule to make it easier for the public to understand which vessel owner/operators are affected by the reporting requirements specified in this part. Also, in this paragraph the phrase "hail weight, in pounds (or count, if a party or charter vessel) by species, of all species landed or discarded" was expanded to read "hail weight, in pounds (or count of individual fish, if a party or charter vessel), by species, of all species, or parts of species, such as monkfish livers, landed or discarded."

The President has directed Federal agencies to use plain language in their communications with the public, including regulations. To comply with this directive, we seek public comment on any ambiguity or unnecessary complexity arising from the language used in this rule. Send comments to Patricia Kurkul (see **ADDRESSES**).

### Classification

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this final rule would not have a significant economic impact on a substantial number of small entities. The basis for this certification was contained in the classification section of the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not prepared.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number.

This rule contains collection-of-information requirements subject to review and approval by the OMB under the PRA, and clarifies or modifies requirements previously approved under OMB control number 0648–0229 (2 minutes per response for dealer purchase reports, 4 minutes for interactive voice response reports, and 30 minutes for shellfish processor reports); OMB control number 0648–0212 (5 minutes per response for vessel logbook reports and 12 minutes for shellfish logs); and OMB control number 0648–0018 (30 minutes per response for processed products reports and 15 minutes for fish meal and oil production reports). The requirement to complete all sections of the Annual Processed Products Report was approved on March 4, 2000, under OMB control number 0648–0018. Public reporting burden for this collection of information is estimated to average 30 minutes per response.

The aforementioned response estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS and OMB (see **ADDRESSES**).

### List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: October 6, 2000.

**William T. Hogarth,**

*Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

## PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

2. Section 648.2 is revised by adding definition for "Hail Weight", to read as follows:

**§ 648.2 Definitions.**

* * * * *

*Hail Weight* means a good-faith estimate in pounds (or count of individual fish, if a party or charter vessel), by species, of all species, or parts of species, such as monkfish livers, landed or discarded for each trip.

* * * * *

3. In § 648.7 paragraphs (f)(1)(ii) and (f)(1)(iii) are redesignated as (f)(1)(iii) and (f)(1)(iv) respectively; new paragraph (f)(1)(ii) is added; paragraph (f)(2) is redesignated as paragraph (f)(2)(i) and the first sentence is revised; new paragraph (f)(2)(ii) is added; and paragraphs (a)(3)(i), (b)(1)(i), (c), (e), and (f)(1)(i) first sentence are revised to read as follows:

**§ 648.7 Recordkeeping and reporting requirements.**

(a) * * *

(3) * * *

(i) All dealers issued a dealer permit under this part, with the exception of those processing only surfclams or ocean quahogs, must complete all sections of the Annual Processed Products Report for all species of fish or shellfish that were processed during the previous year. Reports must be submitted to the address supplied by the Regional Administrator.

* * * * *

(b) * * *

(1) * * *

(i) The owner or operator of any vessel issued a valid permit under this part must maintain on board the vessel, and submit, an accurate fishing log report for each fishing trip, regardless of species fished for or taken, on forms supplied by or approved by the Regional Administrator. If authorized in writing by the Regional Administrator, a vessel owner or operator may submit reports electronically, for example by using a VMS or other media. With the exception of those vessel owners or operators fishing under a surfclam or ocean quahog permit, at least the following information and any other information required by the Regional Administrator, must be provided: vessel name; USCG documentation number (or state registration number, if undocumented); permit number; date/time sailed; date/time landed; trip type; number of crew; number of anglers (if a charter or party boat); gear fished; quantity and size of gear; mesh/ring size; chart area fished; average depth; latitude/longitude (or loran station and bearings); total hauls per area fished; average tow time duration; hail weight, in pounds (or count of individual fish, if a party or charter vessel), by species, of all species, or parts of species, such as monkfish livers, landed or discarded; dealer permit number; dealer name; date sold, port and state landed; and vessel operator's name, signature, and operator's permit number (if applicable).

* * * * *

(c) *When to fill out a log report.* Log reports required by paragraph (b)(1)(i) of this section must be filled out with all required information, except for information not yet ascertainable, prior to entering port with fish. Information that may be considered unascertainable prior to entering port with fish includes dealer name, dealer permit number, and date sold. Log reports must be completed as soon as the information becomes available. Log reports required by paragraph (b)(1)(ii) of this section

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must be filled out before landing any surfclams or ocean quahogs.

* * * * *

(e) *Record retention.* Copies of dealer reports, and records upon which the reports were based, must be retained and be available for review for a total of 3 years after the date of the last entry on the report. Dealers must retain required reports and records at their principal place of business. Copies of fishing log reports must be kept on board the vessel for at least 1 year and available for review and retained for a total of 3 years after the date of the last entry on the log.

(f) * * *

(1) * * *

(i) Detailed weekly trip reports, required by paragraph (a)(1)(i) of this section, must be postmarked or received within 16 days after the end of each reporting week. * * *

(ii) Surfclam and ocean quahog reports, required by paragraph (a)(1)(ii) of this section, must be postmarked or received within 3 days after the end of each reporting week.

* * * * *

(2) * * *

(i) Fishing vessel log reports, required by paragraph (b)(1)(i) of this section, must be postmarked or received within 15 days after the end of the reporting month. * * *

(ii) Surfclam and ocean quahog log reports, required by paragraph (b)(1)(ii) of this section, must be postmarked or received within 3 days after the end of each reporting week.

* * * * *

FR Doc. 00–26357 Filed 10–12–00; 8:45 am]

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# Proposed Rules

Federal Register

Vol. 65, No. 199

Friday, October 13, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 98–NM–122–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Fokker Model F.28 Mark 0070 and 0100 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Fokker Model F.28 Mark 0070 and 0100 series airplanes. This proposal would require revising the Airworthiness Limitations Section of the Instructions for Continued Airworthiness to incorporate life limits for certain items and inspections to detect fatigue cracking in certain structures. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to ensure that fatigue cracking of certain structural elements is detected and corrected; such fatigue cracking could adversely affect the structural integrity of these airplanes.

**DATES:** Comments must be received by November 13, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–122–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9–anm–nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 98–NM–122–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–122–AD." The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–122–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

### Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, has notified the FAA that a new revision of Appendix 1 of Fokker 70/100 Maintenance Review Board (MRB) Document has been issued. [The FAA refers to the information included in this appendix as the Airworthiness Limitations Section (ALS).] This new revision of Appendix 1 of the MRB Document affects all Fokker Model F.28 Mark 0070 and 0100 series airplanes. This new revision provides mandatory replacement times and structural inspection intervals approved under section 25.571 of the Joint Aviation Requirements and the Federal Aviation Regulations (14 CFR 25.571). As airplanes gain service experience, or as results of post-certification testing and evaluation are obtained, it may become necessary to add additional life limits or structural inspections in order to ensure the continued structural integrity of the airplane.

The RLD advises that analysis of fatigue test data has revealed that certain inspections must be performed at specific intervals to preclude fatigue cracking in certain areas of the airplane. In addition, the RLD advises that certain life limits must be imposed for various components on these airplanes to preclude the onset of fatigue cracking in those components. Such fatigue cracking, if not corrected, could adversely affect the structural integrity of these airplanes.

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**Explanation of Relevant Service Information**

Fokker Services B.V. has issued Appendix 1 of Fokker 70/100 Maintenance Review Board Document, dated June 1, 2000, which specifies, among other things, the following:

1. Life limit times for certain structural components, or other components or equipment.

2. Structural inspection times to detect fatigue cracking of certain Structural Significant Items (SSI's).

The RLD classified this service information as mandatory and issued Dutch airworthiness directive BLA No. 1997–065.(A), dated July 31, 1997, in order to assure the continued airworthiness of these airplanes in the Netherlands.

**FAA's Conclusions**

The FAA has reviewed Appendix 1 of the MRB Document and all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. These airplane models are manufactured in the Netherlands and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. The FAA has determined that Appendix 1 of the MRB Document must be incorporated into the ALS of the Instructions for Continued Airworthiness.

**Explanation of Requirements of Proposed Rule**

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require a revision to the ALS of the Instructions for Continued Airworthiness. This revision is necessary to incorporate inspections to detect fatigue cracking of certain SSI's, and to revise inspection intervals and life limits for certain equipment and components specified in the previously referenced maintenance document.

**Explanation of Action Taken by the FAA**

In accordance with airworthiness standards requiring "damage tolerance assessments" for transport category airplanes [section 25.1529 of the Federal Aviation Regulations (14 CFR 25.1529), and the Appendices referenced in that section], all products certificated to comply with that section must have Instructions for Continued Airworthiness (or, for some products, maintenance manuals) that include an ALS. That section must set forth:

- Mandatory replacement times for structural components,
- Structural inspection intervals, and
- Related approved structural inspection procedures necessary to show compliance with the damage-tolerance requirements.

Compliance with the terms specified in the ALS is required by sections 43.16 (for persons maintaining products) and 91.403 (for operators) of the Federal Aviation Regulations (14 CFR 43.16 and 91.403).

In order to require compliance with these inspection intervals and life limits, the FAA must engage in rulemaking, namely the issuance of an AD. For products certificated to comply with the referenced part 25 requirements, it is within the authority of the FAA to issue an AD requiring a revision to the ALS that includes reduced life limits, or new or different structural inspection requirements. These revisions then are mandatory for operators under section 91.403(c) of the Federal Aviation Regulations (14 CFR 91.403), which prohibits operation of an airplane for which airworthiness limitations have been issued unless the inspection intervals specified in those limitations have been complied with.

After that document is revised, as required, and the AD has been fully complied with, the life limit or structural inspection change remains enforceable as a part of the airworthiness limitations. (This is analogous to AD's that require changes to the Limitations Section of the Airplane Flight Manual.)

Requiring a revision of the airworthiness limitations, rather than requiring individual inspections, is advantageous for operators because it allows them to record AD compliance status only once—at the time they make the revision—rather than after every inspection. It also has the advantage of keeping all airworthiness limitations, whether imposed by original certification or by AD, in one place within the operator's maintenance program, thereby reducing the risk of non-compliance because of oversight or confusion.

**Difference Between Dutch Airworthiness Directive and Proposed Rule**

Operators should note that, although the Dutch airworthiness directive includes Fokker Model F.27 Mark 50/60 series airplanes in the effectivity, this AD includes only Fokker Model F.28 Mark 70/100 series airplanes in the applicability. The FAA may consider separate rulemaking action to address ALS revisions for Fokker Model F.27 Mark 050 airplanes. (Fokker Model F.27 Mark 060 airplanes are not included in the U.S. Type Certificate.)

**Difference Between Dutch Airworthiness Directive and Service Information, and the Proposed Rule**

Operators should note that, although the Dutch airworthiness directive and service information include certification maintenance requirements (CMR's), this AD does not include those requirements. Although the manufacturer considers that CMR tasks, which are applicable to the equipment and systems, are necessary to maintain the certificated standard level of airworthiness, the FAA has determined that the necessity for those actions is based on statistical safety analyses of various airplane systems prior to issuance of an airplane Type Certificate (TC). Therefore, CMR tasks are undertaken for a different purpose than are the actions required by this AD and are intended to address a different unsafe condition than is addressed in this AD. However, if CMR tasks are added or made more restrictive following issuance of the TC, the FAA will consider separate rulemaking action to require accomplishment of those additional actions.

**Cost Impact**

The FAA estimates that 131 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $7,860, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

**Regulatory Impact**

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Fokker Services B.V: Docket 98–NM–122–AD.**

*Applicability:* All Model F.28 Mark 0070 and 0100 series airplanes, certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To ensure continued structural integrity of these airplanes, accomplish the following:

**Airworthiness Limitations Revision**

(a) Within 30 days after the effective date of this AD, revise the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness by incorporating Report SE–623, "Airworthiness Limitation Items and Safe Life Items," of Appendix 1 of Fokker 70/100 Maintenance Review Board Document, dated June 1, 2000, into the ALS.

(b) Except as provided in paragraph (c) of this AD: After the actions specified in paragraph (a) of this AD have been accomplished, no alternative inspections or inspection intervals may be approved for the structural elements specified in the document listed in paragraph (a) of this AD.

**Alternative Methods of Compliance**

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

**Special Flight Permits**

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

**Note 3:** The subject of this AD is addressed in Dutch airworthiness directive BLA No. 1997–065.(A), dated July 31, 1997.

Issued in Renton, Washington, on October 6, 2000.

**Donald L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–26309 Filed 10–12–00; 8:45 am]

**BILLING CODE 4910–13–P**

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## FEDERAL TRADE COMMISSION

## 16 CFR Part 307

## Reopening and Extension of Time for Comments Concerning Regulations Implementing the Comprehensive Smokeless Tobacco Health Education Act of 1986

**AGENCY:** Federal Trade Commission.

**ACTION:** Notice of reopening and extension of comment period.

**SUMMARY:** The Federal Trade Commission (the "Commission") has reopened and extended the date by which comments must be submitted concerning the review of its regulations ("smokeless tobacco regulations" or "the regulations") implementing the Comprehensive Smokeless Tobacco Health Education Act of 1986 ("Smokeless Tobacco Act"). This document informs prospective commenters of the change and sets a new date of October 16, 2000 for the end of the comment period.

**DATES:** Comments must be submitted on or before October 16, 2000.

**ADDRESSES:** Written comments should be identified as "16 CFR Part 307" and sent to the Secretary, Federal Trade Commission, Room H–159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. The Commission requests that the original comment be filed with five copies, if feasible. The Commission also requests, if possible, that the comments be submitted in electronic form on a computer disc. (Programs based on DOS or Windows are preferred. Files from other operating systems should be submitted in ASCII text format.) The disc label should identify the commenter's name and the name and version of the word processing program used to create the document.

All comments will be placed on the public record and will be available for public inspection in accordance with the Freedom of Information Act, 5 U.S.C. 552, and the Commission's Rules of Practice, 16 CFR 4.11, during normal business days from 8:30 a.m. to 5 p.m., at the Public Reference Room, Room H–130, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington DC 20580. In addition, comments will be placed on the Internet at the FTC web site: http://www.ftc.gov.

**FOR FURTHER INFORMATION CONTACT:** Rosemary Rosso (202) 326–3076, Division of Advertising Practices, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580, E-Mail (for questions or information only): rrosso@ftc.gov.

**SUPPLEMENTARY INFORMATION:** On March 7, 2000, the Commission published in the **Federal Register** a Request for Comment on its regulations ("smokeless tobacco regulations" or "the regulations") implementing the Comprehensive Smokeless Tobacco Health Education Act of 1986 ("Smokeless Tobacco Act"), 16 CFR Part 307, as part of its regulatory review program. 65 FR 11944. The regulations set forth the manner in which smokeless tobacco manufacturers, importers, and packagers must display and rotate the three health warnings mandated by the Smokeless Tobacco Act. The **Federal**

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**Register** Notice ("notice") posed twelve questions in all; some were general regulatory review questions, while others asked about material issues that are specific to the smokeless tobacco regulations. The notice requested commenters to provide answers where possible, and specifically asked for consumer research, studies or other data to support comments submitted to the Commission. Pursuant to the **Federal Register** Notice, the initial comment period ended on April 24, 2000. The Commission subsequently reopened and extended that comment period to July 21, 2000.

After the comment period ended, United States Tobacco Company requested an opportunity to submit an untimely comment. In particular, the company would like an opportunity to respond to the comment submitted by the Massachusetts Department of Health and the two statistical surveys filed as part of that comment, and to respond to questions posed in the Commission's **Federal Register** Notice regarding potential burdens that may result from any suggested changes to the existing regulations.

The Commission is mindful that United States Tobacco Company has both notice and opportunity to file a timely comment. The Commission likewise appreciates the need to deal with this matter as expeditiously as possible. At the same time, the Commission recognizes the need to obtain comments from parties that are directly affected by these regulations. Accordingly, in order to provide an opportunity for this and other interested parties to submit comments, the Commission has decided to reopen the public comment period and extend the deadline for comments until October 16, 2000.

**List of Subjects in 16 CFR Part 307**

Health warnings, Smokeless tobacco, Trade practices.

**Authority:** 15 U.S.C. 1401–1410.

By direction of the Commission, Commissioner Anthony dissenting.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 00–26302 Filed 10–12–00; 8:45 am]

BILLING CODE 6750–01–M

## DEPARTMENT OF DEFENSE

### Defense Logistics Agency

### 32 CFR Part 323

**[Defense Logistics Agency Regulation 5400.21]**

### Defense Logistics Agency Privacy Program

**AGENCY:** Defense Logistics Agency, DoD.

**ACTION:** Proposed rule.

**SUMMARY:** The Defense Logistics Agency (DLA) is proposing to amend its Privacy Act regulations. These changes consist of DLA office code changes and DLA publication name changes. DLA is also adding language to clarify the training requirements for its employees and military members who work with the news media or the public.

**DATES:** Comments must be received on or before December 12, 2000 to be considered by this agency.

**ADDRESSES:** Send comments to the Privacy Act Officer, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

**FOR FURTHER INFORMATION CONTACT:** Ms. Susan Salus at (703) 767–6183.

**SUPPLEMENTARY INFORMATION:**

**Executive Order 12866**

It has been determined that this Privacy Act rule for the Department of Defense does not constitute "significant regulatory action". Analysis of the rule indicates that it does not have an annual effect on the economy of $100 million or more; does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

**Regulatory Flexibility Act**

It has been determined that this Privacy Act rule for the Department of Defense does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the Department of Defense.

**Paperwork Reduction Act**

It has been determined that this Privacy Act rule for the Department of Defense imposes no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act, and 44 U.S.C. Chapter 35.

**List of Subjects in 32 CFR Part 323**

Privacy.

Accordingly, 32 CFR part 323 is proposed to be amended as follows:

## PART 323—DEFENSE LOGISTICS AGENCY PRIVACY PROGRAM

1. The authority citation for 32 CFR Part 323 continues to read as follows:

**Authority:** Pub. L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

2. 32 CFR part 323 is propose to be amended by revising footnotes 1 through 8 to read as follows:

Copies may be obtained, if needed, from the Defense Logistics Agency, ATTN: DSS–CV, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

3. Section 323.2(e) is proposed to be revised to read as follows:

**§ 323.2 Policy.**

* * * * *

(e) Make reasonable efforts to ensure that records containing personal information are accurate, relevant, timely, and complete for the purposes for which they are being maintained before making them available to any recipients outside DoD, other than a Federal agency, unless the disclosure is made under DLAR 5400.14, DLA Freedom of Information Act Program (32 CFR part 1285).

* * * * *

4. Section 323.4 is proposed to be amended as follows:

a. By revising paragraph (a)(1) introductory text,

b. Adding paragraph (a)(1)(v), and

c. Revising paragraph (a)(2), introductory text, paragraphs (a)(3) and (b)(4). The revisions and addition read as follows:

**§ 323.4 Responsibilities.**

(a) * * *

(1) The Staff Director, Corporate Communications, DLA Support Services (DSS–C) will:

* * * * *

(v) Establish training programs for all individuals with public affairs duties, and all other personnel whose duties require access to or contact with systems of records affected by the Privacy Act. Initial training will be given to new employees and military members upon assignment. Refresher training will be provided annually or more frequently if conditions warrant.



(2) The General Counsel, DLA (DLA–GC) will:

* * * * *

(3) The DLA Chief Information Office (J–6) will formulate and implement protective standards for personal information maintained in automated data processing systems and facilities.

(b) * * *

(4) Establish training programs for all individuals with public affairs duties, and all other personnel whose duties require access to or contact with systems of records affected by the Privacy Act. Initial training will be given to new employees and military members upon assignment. Refresher training will be provided annually or more frequently if conditions warrant.

5. Section 323.5 is proposed to be amended by revising, paragraphs (b)(3)(iv), (b)(4), (b)(5), (c)(5)(ii), (c)(6) introductory text, (c)(6)(i), (f)(3), introductory text, (h)(6), (i)(5)(ii), (j)(5), (k), (l)(1), (1)(2), and (1)(3) and by removing paragraph (b)(3)(v) to read as follows:

**§ 323.5 Procedures.**

* * * * *

(b) * * *

(3) * * *

(iv) Notice to the individual of his or her right to appeal the denial within 60 calendar days of the date of the denial letter and to file any such appeal with the HQ DLA Privacy Act Officer, Defense Logistics Agency (DSS–CA), 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

(4) DLA will process all appeals within 30 days of receipt unless a fair and equitable review cannot be made within that period. The written appeal notification granting or denying access is the final DLA action on access.

(5) The records in all systems of records maintained in accordance with the Office of Personnel Management (OPM) Government-wide system notices are technically only in the temporary custody of DLA. All requests for access to these records must be processed in accordance with the Federal Personnel Manual (5 CFR part 293, 294, 297 and 735) as well as this part. DLA–GC is responsible for the appellate review of denial of access to such records.

(c) * * *

(5) * * *

(ii) Notification that he or she may seek further independent review of the decision by filing an appeal with the HQ DLA Privacy Act Officer, Defense Logistics Agency (DSS–CA), 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221, and including all supporting materials.

(6) DLA will process all appeals within 30 days unless a fair review cannot be made within this time limit.

(i) If the appeal is granted, DLA will promptly notify the requester and system manager of the decision. The system manager will amend the record(s) as directed and ensure that all prior known recipients of the records who are known to be retaining the record are notified of the decision and the specific nature of the amendment and that the requester is notified as to which DoD Components and Federal agencies have been told of the amendment.

* * * * *

(f) * * *

(3) All records must be disclosed if their release is required by the Freedom of Information Act. DLAR 5400.14, (32 CFR part 1285) requires that records be made available to the public unless exempted from disclosure by one of the nine exemptions found in the Freedom of Information Act. The standard for exempting most personal records, such as personnel records, medical records, and similar records, is found in DLAR 5400.14 (32 CFR part 1285). Under the exemption, release of personal information can only be denied when its release would be a "clearly unwarranted invasion of personal privacy."

* * * * *

(f) * * *

(6) DLAI 5530.1, Publications, Forms, Printing, Duplicating, Micropublishing, Office Copying, and Automated Information Management Programs,[2] provides guidance on administrative requirements for Privacy Act Statements used with DLA forms. Forms subject to the Privacy Act issued by other Federal agencies have a Privacy Act Statement attached or included. Always ensure that the statement prepared by the originating agency is adequate for the purpose for which the form will be used by the DoD activity. If the Privacy Act Statement provided is inadequate, the activity concerned will prepare a new statement of a supplement to the existing statement before using the form. Forms issued by agencies not subject to the Privacy Act (state, municipal, and other local agencies) do not contain Privacy Act statements. Before using a form prepared by such agencies to collect personal data subject to this part, an appropriate Privacy Act Statement must be added.

* * * * *

(i) * * *

(5) * * *

(ii) Special administrative, physical, and technical procedures are required to protect data that are stored or being processed temporarily in an automated data processing (ADP) system or in a work processing activity to protect it against threats unique to those environments (see DLAR 5200.17, Security Requirements for Automated Information and Telecommunications System,[3] and appendix D of this part).

* * * * *

(j) * * *

(5) Systems notices and reports of new and altered systems will be submitted to DLA Support Services (DSS–CA) as required.

* * * * *

(k) *Exemptions.* The Director, DLA will designate the DLA records which are to be exempted from certain provision of the Privacy Act. DLA Support Services (DSS–CA) will publish in the **Federal Register** information specifying the name of each designated system, the specific provisions of the Privacy Act from which each system is to be exempted, the reasons for each exemption, and the reason for each exemption of the record system.

(l) * * *

(1) Forward all requests for matching programs to include necessary routine use amendments and analysis and proposed matching program reports to DLA Support Services. Changes to existing matching programs shall be processed in the same manner as a new matching program report.

(2) No time limits are set by the OMB guidelines. However, in order to establish a new routine use for a matching program, the amended system notice must have been published in the **Federal Register** at least 30 days before implementation. Submit the documentation required above to DLA Support Services (DSS–CA) at least 60 days before the proposed initiation date of the matching program. Waivers to the 60 days' deadline may be granted for good cause shown. Requests for waivers will be in writing a fully justified.

(3) For the purpose of the OMB guidelines, DoD and all DoD Components are considered a single agency. Before initiating a matching program using only the records of two or more DoD activities, notify DLA Support Services (DSS–CA) that the match is to occur. Further information may be requested from the activity proposing the match.

* * * * *

6. Section 323.6 is proposed to be revised to read as follows:

**§ 323.6 Forms and reports.**

DLA activities may be required to provide data under reporting requirements established by the Defense

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Privacy Office and DLA Support Services (DSS–CA). Any report established shall be assigned Report Control Symbol DD–DA&M(A)1379.

**Appendix A to Part 323 [Amended]**

7. Appendix A to part 323 is proposed to be amended by revising paragraphs C.2., F.2., I.4., revised to read as follows:

* * * * *

C. * * *

2. When multiple locations are identified by type of organization, the system location may indicate that official mailing addresses are contained in an address directory published as an appendix to DLAH 5400.1.

* * * * *

F. * * *

2. For administrative housekeeping records, cite the directive establishing DLA as well as the Secretary of Defense authority to issue the directive. For example, 'Pursuant to the authority contained in the National Security Act of 1947, as amended (10 U.S.C. 133d), the Secretary of Defense has issued DoD Directive 5105.22 (32 CFR part 398), Defense Logistics Agency (DLA), the charter of the Defense Logistics Agency (DLA) as a separate agency of the Department of Defense under his control. Therein, the Director, DLA, is charged with the responsibility of maintaining all necessary and appropriate records.'

I. * * *

4. *Retention and disposal.* Indicate how long the record is retained. When appropriate, state the length of time the records are maintained by the activity, when they are transferred to a Federal Records Center, length of retention at the Records Center and when they are transferred to the National Archives or are destroyed. A reference to DLAI 5015.1,[8] DLA Records Management Procedures and Records Schedules, or other issuance without further detailed information is insufficient.

* * * * *

**Appendix B to Part 323 [Amended]**

8. Appendix B to part 323 is proposed to be amended by revising paragraphs C. and F.1 introductory text to read as follows:

* * * * *

C. Reports of new and altered systems. Submit a report of a new or altered system to DLA Support Service (DSS–CA) before collecting information and for using a new system or altering an existing system.

* * * * *

F. * * *

11. The OMB may authorize a Federal agency to begin operation of a system of records before the expiration of time limits described above. When seeking such a waiver, include in the letter of transmittal to DLA Support Services (CA) an explanation why a delay of 60 days in establishing the system of records would not be in the public interest. The transmittal must include:

* * * * *

Dated: October 6, 2000.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 00–26254 Filed 10–12–00; 8:45 am]

BILLING CODE 5001–10–M



# Notices

Federal Register

Vol. 65, No. 199

Friday, October 13, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List; Proposed Additions and Deletions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Proposed additions to and deletions from procurement list.

**SUMMARY:** The Committee has received proposals to add to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete commodities previously furnished by such agencies.

**DATES:** Comments must be received on or before November 13, 2000.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

**FOR FURTHER INFORMATION CONTACT:** Louis R. Bartalot, (703) 603–7740.

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

**Additions**

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodity or services.

3. The action will result in authorizing small entities to furnish the commodity and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information. The following commodity and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

*Commodity*

Vegetable Oil
8945–00–NSH–0001
(Additional 5% of Government Requirement)
NPA: Advocacy and Resources Corp. (ARC), Cookeville, Tennessee

*Services*

Laundry Service: Stratton Medical Center, 113 Holland Avenue, Albany, NY
NPA: Uncle Sam's House, Inc., Schenectady, New York
Administrative Services: NASA Goddard Space Flight Center, Greenbelt, MD
NPA: ServiceSource, Alexandria, Virginia
Laundry Service: Anniston Army Depot, Anniston, AL
NPA: Opportunity Center Easter Seal Rehabilitation Facility, Anniston, Alabama

**Deletions**

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. This action will not have a severe economic impact on future contractors for the commodities.

3. The action will result in authorizing small entities to furnish the commodity and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and services proposed for deletion from the Procurement List.

The following commodities have been proposed for deletion from the Procurement List:

Pallet, Wood
3990–00–X77–1721
Pallet, Wood
3990–00–NSH–0005

**Louis R. Bartalot,**

*Deputy Director (Operations).*

[FR Doc. 00–26361 Filed 10–12–00; 8:45 am]

BILLING CODE 6353–01–P

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List; Addition

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Addition to the procurement list.

**SUMMARY:** This action adds to the Procurement List a service to be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities.

**EFFECTIVE DATE:** November 13, 2000.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

**FOR FURTHER INFORMATION CONTACT:** Louis R. Bartalot, (703) 603–7740.

**SUPPLEMENTARY INFORMATION:** On August 25, 2000 the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (61 F.R. 51794) of proposed addition to the Procurement List. After consideration of the material presented to it concerning capability of the qualified nonprofit agency to provide the service and impact of the addition on the current or most recent contractor, the Committee has determined that the service listed below is suitable for procurement by the

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Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.
2. The action will not have a severe economic impact on current contractors for the service.
3. The action will result in authorizing small entities to furnish the service to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

Accordingly, the following service is hereby added to the Procurement List:

*Janitorial/Custodial*

Backbay National Wildlife Refuge, 4005 Sandpiper Road, Virginia Beach, Virginia

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

**Louis R. Bartalot,**

*Deputy Director (Operations).*

[FR Doc. 00–26362 Filed 10–12–00; 8:45 am]

BILLING CODE 6353–01–U

## BROADCASTING BOARD OF GOVERNORS

### Sunshine Act Meeting

**DATE AND TIME:** October 18, 2000; 9 a.m.–12 Noon.

**PLACE:** Hoover Institution, DeBasily Conference Room, Hoover Tower, 434 Galvez Mall, Palo Alto, CA 94305.

**CLOSED MEETING:** The members of the Broadcasting Board of Governors (BBG) will meet in closed session to review and discuss a number of issues relating to U.S. Government-funded non-military international broadcasting. They will address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues relating to potential options in the U.S. international broadcasting field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b.(c)(1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b.(c)(9)(B)) In addition, part of the discussion will relate solely to the internal personnel and organizational issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b.(c)(2) and (6))

**CONTACT PERSON FOR MORE INFORMATION:** Persons interested in obtaining more information should contract either Brenda Hardnett or Carol Booker at (202) 401–3736.

Dated: October 10, 2000.

**Carol Booker,**

*Legal Counsel.*

[FR Doc. 00–26425 Filed 10–10–00; 4:45 pm]

BILLING CODE 8230–01–M

## DEPARTMENT OF COMMERCE

**[I.D. 101000B]**

### Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency*: National Oceanic and Atmospheric Administration (NOAA).

*Title*: Information for Share Transfer in Wreckfish Fishery.

*Form Number(s)*: None.

*OMB Approval Number*: 0648-0262.

*Type of Request*: Regular submission.

*Burden Hours*: 1.

*Number of Respondents*: 4.

*Average Hours Per Response*: 15 minutes.

*Needs and Uses*: The individual transferable quota system in the Southeast wreckfish fishery is based on percentage shares. Persons holding shares may sell or otherwise transfer them to others, but information about the proposed transfer must be provided to NOAA. The information is needed to manage the quota system, and information about the sales price is used in economic analyses.

*Affected Public*: Business and other for-profit organizations, and individuals.

*Frequency*: On occasion.

*Respondent's Obligation*: Mandatory.

*OMB Desk Officer*: David Rostker, (202) 395-3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, DOC Forms Clearance Officer, (202) 482-3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: October 6, 2000

**Madeleine Clayton,**

*Departmental Forms Clearance Officer, Office of the Chief Information Officer.*

FR Doc. 00–26356 Filed 10–12–00; 8:45 am]

BILLING CODE 3510–22–S

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–122–506]**

### Notice of Final Results of Antidumping Duty Administrative Review: Oil Country Tubular Goods From Canada

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** On June 8, 2000, the Department of Commerce ("the Department") published the preliminary results of its administrative review of the antidumping duty order on oil country tubular goods from Canada. *See Notice of Preliminary Results of Antidumping Duty Administrative Review: Oil Country Tubular Goods from Canada* 65 FR 36407 (June 8, 2000) ("*Preliminary Results*"). This review covers one manufacturer/exporter, Atlas Tube, Inc. ("Atlas"), and the period December 1, 1998, through May 31, 1999. The period of review specified by the Department's opportunity to request administrative review was June 1, 1998, through May 31, 1999. However, due to the fact that the Department conducted a concurrent new shipper review of the same manufacturer/exporter for the period June 1, 1998, through November 30, 1998, this administrative review only covers the remainder of the period, December 1, 1998, through May 31, 1999. *See Notice of Initiation of Administrative Review* 64 FR 47167 (August 30, 1999). We gave interested parties an opportunity to comment on the *Preliminary Results* of review but received no comments. Therefore, these final results do not differ from the *Preliminary Results*, in which we found the dumping margin for Atlas to be 4.41 percent.

**EFFECTIVE DATE:** October 13, 2000.

**FOR FURTHER INFORMATION CONTACT:** Nithya Nagarajan, AD/CVD Enforcement, Group II, Office IV, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–5253.

**SUPPLEMENTARY INFORMATION:**

#### The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 351 (1999).

#### Background

On June 8, 2000, the Department published in the **Federal Register** (65 FR 36407) the *Preliminary Results* of this review. We invited parties to comment on our *Preliminary Results*. We did not receive any comments.

In the *Preliminary Results*, we found the dumping margin for Atlas to be 4.41 percent. We have now completed the administrative review in accordance with section 751 of the Act and continue to find the rate of 4.41 percent.

#### Scope of the Review

The products covered by this review include shipments of OCTG from Canada. This includes American Petroleum Institute ("API") specification OCTG and all other pipe with the following characteristics except entries which the Department determined through its end-use certification procedure were not used in OCTG applications: Length of at least 16 feet; outside diameter of standard sizes published in the API or proprietary specifications for OCTG with tolerances of plus 1/8 inch for diameters less than or equal to 8 5/8 inches and plus 1/4 inch for diameters greater than 8 5/8 inches, minimum wall thickness as identified for a given outer diameter as published in the API or proprietary specifications for OCTG; a minimum of 40,000 PSI yield strength and a minimum 60,000 PSI tensile strength; and if with seams, must be electric resistance welded. Furthermore, imports covered by this review include OCTG with non-standard size wall thickness greater than the minimum identified for a given outer diameter as published in the API or proprietary specifications for OCTG, with surface scabs or slivers, irregularly cut ends, ID or OD weld flash, or open seams; OCTG may be bent, flattened or oval, and may lack certification because the pipe has not been mechanically tested or has failed those tests. This merchandise is currently classifiable under the Harmonized Tariff Schedules (HTS) item numbers 7304.20, 7305.20, and 7306.20. The HTS item numbers are provided for convenience and U.S. Customs purposes. The written description remains dispositive.

#### Analysis of Comments Received

We did not receive any interested party comments on our *Preliminary Results*. Therefore, there is no Issues and Decision Memorandum for the final results of review.

#### Final Results of Review

We have determined that no changes to our analysis are warranted for purposes of these final results. As a result of this review, we determine that a 4.41 percent dumping margin exists for Atlas for the period December 1, 1998, through May 31, 1999.

#### Assessment

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. We have calculated an importer-specific duty assessment rate based on the ratio of the total amount of antidumping duties calculated for the importer-specific sales to the total entered value of the same sales. The rate will be assessed uniformly on all entries by that particular importer made during the POR. The Department will issue appraisement instructions directly to the Customs Service.

#### Cash Deposit Requirements

The following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of OCTG from Canada entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this new shipper review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for Atlas will be the rate shown above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, in a prior review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 16.65 percent. This rate is the "All-Others" rate established in the less-than-fair-value investigation. These deposit requirements shall remain in effect until publication of the final results of administrative review for a subsequent review period.

#### Notification

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: October 5, 2000.

**Troy H. Cribb,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 00–26384 Filed 10–12–00; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–469–807]**

### Notice of Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Wire Rod From Spain

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of the preliminary results of antidumping duty administrative review.

**SUMMARY:** In response to a request by Roldan S.A. ("Roldan"), the sole respondent in this review, the Department of Commerce ("the Department") is conducting an administrative review of the antidumping duty order on stainless steel wire rod ("SSWR") from Spain.

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The review covers sales for the period March 5, 1998 through August 31, 1999 (the "period of review" or "POR").

The Department has preliminarily determined that Roldan did not sell subject merchandise at less than normal value ("NV"). If these preliminary results are adopted in the final results of this administrative review, the Department will instruct the Customs Service to liquidate entries of subject merchandise from Roldan without regard to antidumping duties.

The Department invites interested parties to comment on the preliminary results.

**EFFECTIVE DATE:** October 13, 2000.

**FOR FURTHER INFORMATION CONTACT:** Howard Smith or Timothy Finn, AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–5193, and 482–0065, respectively.

**SUPPLEMENTARY INFORMATION:**

### The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended, ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (1999).

### Case History

On September 15, 1998, the Department published the antidumping duty order on SSWR from Spain (*see Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Stainless Steel Wire Rod From Spain*, 63 FR 49330). On September 9, 1999, the Department published a notice of opportunity to request an administrative review of this antidumping duty order (*see Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 64 FR 48980). On September 30, 1999, in accordance with 19 CFR 351.213(b)(1), the respondent, Roldan, requested that the Department conduct an administrative review of its sales and entries of subject merchandise into the United States during the POR. The Department initiated a review of Roldan's sales on October 28, 1999 (*see Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 64 FR 60161 (November 4, 1999)).

The Department issued its antidumping duty questionnaire to Roldan on November 19, 1999 and received Roldan's response thereto on January 18, 2000. In addition, the Department issued supplemental questionnaires to Roldan during March and May, 2000 and received Roldan's responses thereto during April, May, and June, 2000.

Pursuant to section 751(a)(3)(A) of the Act, the Department may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the review within the statutory time limit of 245 days. On May 8, 2000, the Department extended the time limits for the preliminary results until September 29, 2000 in accordance with the Act (*see Stainless Steel Wire Rod From Spain: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review*, 65 FR 26582).

During June and July, 2000, the Department conducted verifications of Roldan and its affiliates, Acerinox, S.A. ("Acerinox") and Acerinox, U.S.A. ("Acerinox-USA")

The Department is conducting this administrative review in accordance with section 751 of the Act.

### Scope of the Review

For purposes of this review, SSWR comprises products that are hot-rolled or hot-rolled annealed and/or pickled and/or descaled rounds, squares, octagons, hexagons or other shapes, in coils, that may also be coated with a lubricant containing copper, lime, or oxalate. SSWR is made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are manufactured only by hot-rolling or hot-rolling, annealing, and/or pickling and/or descaling, are normally sold in coiled form, and are of solid cross-section. The majority of SSWR sold in the United States is round in cross-sectional shape, annealed and pickled, and later cold-finished into stainless steel wire or small-diameter bar.

The most common size for such products is 5.5 millimeters or 0.217 inches in diameter, which represents the smallest size that normally is produced on a rolling mill and is the size that most wire-drawing machines are set up to draw. The range of SSWR sizes normally sold in the United States is between 0.20 inches and 1.312 inches in diameter. Two stainless steel grades, SF20T and K–M35FL, are excluded from the scope of the review. The chemical makeup for the excluded grades is as follows:

| SF20T | |
|---|---|
| Carbon | 0.05 max. |
| Manganese | 2.00 max. |
| Phosphorous | 0.05 max. |
| Sulfur | 0.15 max. |
| Silicon | 1.00 max. |
| Chromium | 19.00/21.00. |
| Molybdenum | 1.50/2.50. |
| Lead | added (0.10/0.30). |
| Tellurium | added (0.03 min). |

| K–M35FL | |
|---|---|
| Carbon | 0.015 max. |
| Silicon | 0.70/1.00. |
| Manganese | 0.40 max. |
| Phosphorous | 0.04 max. |
| Sulfur | 0.03 max. |
| Nickel | 0.30 max. |
| Chromium | 12.50/14.00. |
| Lead | 0.10/0.30. |
| Aluminum | 0.20/0.35. |

The products under investigation are currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0030, 7221.00.0045, and 7221.00.0075 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the scope of this review is dispositive.

### Period of Review

The POR is March 5, 1998 through August 31, 1999.

### Verification

As provided in section 782(i) of the Act, the Department conducted verifications of the information provided by Roldan. The Department used standard verification procedures including: On-site inspection of the manufacturers' facilities, examination of relevant sales, cost, and financial records, and selection of relevant source documentation as exhibits. Verification findings are detailed in the sales and cost verification memoranda dated September 29, 2000, the public versions of which are on file in the Central Records Unit, Room B099 of the Main Commerce building (CRU-Public File).

### Fair Value Comparison

In order to determine whether Roldan sold SSWR to the United States at less than NV, the Department compared the constructed export price ("CEP") of individual U.S. sales to the monthly weighted-average NV of sales of the foreign like product made in the ordinary course of trade (*see* section 777A(d)(2) of the Act; *see also* section 773(a)(1)(B)(i) of the Act). The methodology used to compare sales and to calculate CEP and NV are described in the "Comparison Methodology", "Constructed Export Price," and "Normal Value" sections of this notice.



### Comparison Methodology

In accordance with section 771(16) of the Act, the Department considered all products within the scope of this review that Roldan produced and sold in the comparison market during the POR to be foreign like products for purposes of determining appropriate product comparisons to SSWR sold in the United States. The Department determined that the home market is the appropriate comparison market because the aggregate quantity of Roldan's home market sales of foreign like product is more than five percent of the aggregate quantity of its U.S. sales of subject merchandise (*see* section 773(a)(1)(C) of the Act). The Department compared U.S. sales to sales made in the home market within the contemporaneous window period, which extends from three months prior to the U.S. sale until two months after the sale. Where there were no sales of identical merchandise made in the home market in the ordinary course of trade, the Department compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. In making product comparisons, the Department selected identical and most similar foreign like products based on the physical characteristics reported by Roldan in the following order of importance: grade, diameter, further processing, and coating.

### Constructed Export Price

Roldan reported that it made sales in the United States through three channels of distribution. In U.S. channel one, Roldan sold SSWR to customers in the United States through its U.S. affiliate, Acerinox-USA. Roldan classified its U.S. channel one sales as export price ("EP") transactions and its U.S. channel two and three sales as CEP transactions. The Department has preliminarily determined that Roldan's channel one sales should also be classified as CEP transactions because these sales occurred in the United States. Section 772(b) of the Act defines CEP transactions as those in which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of subject merchandise or by a seller affiliated with the producer or exporter. In determining whether sales were made in the United States, the Department examines the totality of the circumstances surrounding the U.S. sales process. Neither the magnitude of the indirect selling expenses incurred by the U.S. affiliate nor the fact that the U.S. affiliate performs a particular type of selling activity is, by itself, a controlling factor in making a CEP determination. The record in the instant review characterizes the POR sales process for U.S. channel one as follows: (1) all communication required to effectuate sales is between Acerinox-USA and unaffiliated customers; (2) Acerinox-USA negotiates the terms of sales based on guidelines established by Roldan and the terms of recent sales; [1] (3) once the terms of sale are agreed upon by Acerinox-USA and the customer, Acerinox-USA accepts the customers' orders and transmits the orders through Acerinox (Roldan's parent corporation) to Roldan; (4) Acerinox arranges for transportation of the subject merchandise to the United States; (5) Acerinox-USA arranges for transportation of the subject merchandise from the U.S. port to the U.S. customer; (5) Acerinox invoices customers in U.S. channel one in Roldan's name; and, (6) U.S. customers remit payment to Acerinox-USA which subsequently transfers the payments to Roldan by wire.

Thus, the record shows that during the POR, Acerinox-USA was involved in every aspect of the sales process except for arranging for shipment of SSWR to the United States and invoicing U.S. customers. Moreover, Acerinox-USA's involvement in the sales process was extensive when compared to that of Roldan or Acerinox. Because the preponderance of selling functions incurred to sell Roldan's SSWR to U.S. customers occurred in the United States, the Department has preliminarily determined that the sales through U.S. channel one were made in the United States, and, thus, are CEP transactions.

The Department calculated CEP in accordance with section 772 of the Act. Specifically, the Department calculated CEP based on packed, delivered prices to unaffiliated purchasers in the United States. The Department made deductions from the starting price, where appropriate, for billing adjustments and early payment discounts. The Department also made deductions, where appropriate, for foreign inland freight and insurance, foreign brokerage and handling, international freight, U.S. brokerage and Customs fees, U.S. Customs duty, U.S. warehousing expenses, U.S. inland freight, and other U.S. transportation expenses pursuant to section 772(c)(2)(A) of the Act. In accordance with section 772(d)(1) of the Act, the Department deducted those selling expenses associated with economic activity occurring in the United States, including credit expenses, indirect selling expenses, and inventory carrying costs. In addition, the Department reduced the U.S. starting price by further manufacturing costs as required by section 772(d)(2) of the Act. Pursuant to 19 CFR 351.402(e), the Department also reduced the U.S. starting price by the actual selling expenses incurred by Roldan's U.S. affiliate rather than the commissions that Roldan paid the affiliate. Finally, the Department made an adjustment for profit in accordance with section 772(d)(3) of the Act. Based on verification findings, the Department made the following adjustments to Roldan's U.S. sales related charges: (1) corrected invoice-specific figures for billing adjustments, U.S. duty, brokerage and handling, and other U.S. transportation costs; (2) recalculated U.S. credit expense for channel two and three sales based on actual payment and shipment dates; (3) recalculated indirect selling expenses incurred in the United States; and (4) recalculated inventory carrying cost incurred in the home market for one control number.

[1] *See* Memorandum to The File from Howard Smith and Timothy Finn regarding the Verification of the Sales Response of Roldan, S.A. in the Antidumping Duty Administrative Review of Stainless Steel Wire Rod from Spain dated September 29, 2000 in the public of the CRU.

### Normal Value

As noted above in the "Comparison Methodology" section of this notice, the Department determined that the home market is the appropriate comparison market. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, the Department based NV on the prices at which Roldan first sold usual commercial quantities of foreign like product for consumption in the home market in the ordinary course of trade. In addition, to the extent practicable, the Department based NV on sales of foreign like product at the same level of trade as that of the U.S. sales to which they are being compared.

### Disregarded Sales

The Department did not base NV on sales to affiliated home market customers that were not at arm's length because such sales are outside the ordinary course of trade (*see* 19 CFR 351.102). The Department determined that sales to affiliated home market customers were not arm's-length sales where the weighted-average sales price to the affiliated party was less than 99.5

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percent of the weighted-average sales price to unaffiliated parties. *See Usinor Sacilor* v. *United States*, 872 F. Supp. 1000, 1004 (CIT 1994).

Furthermore, in accordance with section 773(b) of the Act, the Department did not base NV on home market sales made at prices below the cost of production ("COP") that failed the cost test. The Department examined whether Roldan sold SSWR in the home market at prices below the COP because in the investigation of SSWR from Spain the Department disregarded home market sales by Roldan which failed the cost test. *See* section 773(b)(2)(A)(ii) of the Act; *see also Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod From Spain*, 63 FR 40391 (July 29, 1998). In order to determine whether Roldan made home market sales at prices below the COP, the Department compared product-specific production costs to the prices at which Roldan sold the product in the home market, less any applicable movement charges, selling expenses, and packing costs.

The Department based the cost of producing the foreign like product on Roldan's reported material and fabrication costs, general and administrative ("G&A") expenses, and financing expenses pursuant to section 773(b)(3) of the Act.

In determining whether below cost sales should serve as a basis for NV, the Department examined whether such sales were made: (1) In substantial quantities within an extended period of time; and (2) at prices which permitted the recovery of all costs within a reasonable period of time (*see* section 773(b)(1) of the Act).

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of a respondent's sales of a given product were made at prices less than the COP, the Department does not disregard any below-cost sales of that product in determining NV because the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product were at prices below the COP, the Department determines that sales of that model were made in "substantial quantities" within an extended period of time and that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time as defined in section 773(b)(2)(B), (C) and (D) of the Act. Therefore, the Department disregards such below-cost sales in determining NV.

The Department found that more than 20 percent of Roldan's home market sales within an extended period of time were made at prices less than the COP. Further, the prices did not provide for the recovery of costs within a reasonable period of time. Therefore, in accordance with section 773(b)(1) of the Act, the Department disregarded those below-cost sales as outside the ordinary course of trade and based NV on the remaining above-cost sales.

For those U.S. sales of SSWR for which there were no comparable home market sales in the ordinary course of trade within the contemporaneous window, the Department compared CEP to constructed value ("CV"), in accordance with section 773(a)(4) of the Act. In accordance with section 773(e) of the Act, the Department calculated CV based on the sum of Roldan's cost of materials, fabrication, selling general and administrative ("SG&A") expenses (including an appropriate amount for financing expenses), profit, and U.S. packing costs. In accordance with section 773(e)(2)(A) of the Act, the Department based SG&A (including financing expenses), and profit on the amounts incurred and realized in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the home market.

**Level of Trade**

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, the Department determines NV based on sales in the comparison market at the same level of trade as the U.S. sale. The NV level of trade is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which the Department derives SG&A expenses and profit. When U.S. price is based on CEP transactions, the starting price is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different level of trade than CEP sales, the Department examines stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different level of trade and the difference affects price comparability, as manifested by a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the level of trade of the export transaction, the Department makes a level-of-trade adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level of trade is more remote from the factory than the CEP level of trade, and there is no basis for determining whether any difference between the NV and CEP levels of trade affects price comparability, the Department adjusts NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

The U.S. Court of International Trade ("CIT") has held that the Department's practice of determining levels of trade for CEP transactions after CEP deductions is an impermissible interpretation of section 772(d) of the Act. *See Borden, Inc.* v. *United States*, 4 F. Supp. 2d 1221, 1241–42 (CIT 1998) ("*Borden*"). The Department believes, however, that its practice is in full compliance with the statute. On June 4, 1999, the CIT entered final judgement in *Borden* on the level of trade issue. *See Borden Inc.* v. *United States*, Court No. 96–08–01970, Slip Op. 99–50 (CIT June 4, 1999). The government has filed an appeal of *Borden* which is pending before the U.S. Court of Appeals for the Federal Circuit. Consequently, the Department has continued to follow its normal practice of adjusting CEP under section 772(d) of the Act prior to starting a level of trade analysis, as articulated by the Department's regulations at 19 CFR 351.412.

Based upon an analysis of the information on the record, the Department has determined that there is a single level of trade in the home market and a single level of trade in the U.S. market which are dissimilar. *See* the memorandum regarding the Level of Trade Analysis in the 1998–1999 Antidumping Duty Administrative Review of Stainless Steel Wire Rod From Spain—Preliminary Results dated September 29, 2000 ("LOT Memorandum") in the public file of the CRU. Because Roldan did not make home market sales at the level of trade of its CEP sales, the Department cannot compare CEP sales to home market sales (*i.e.*, NV) at the same level of trade. Moreover, because there is only one level of trade in the home market, any difference in the NV and CEP levels of trade cannot be quantified. Furthermore, the Department does not have information which would allow it to examine pricing patterns based on Roldan's sales of other products and there are no other respondents or other information on the record upon which such an analysis could be based. Therefore, a level of trade adjustment is not possible.

Because all of Roldan's U.S. sales are CEP transactions and a level of trade adjustment is not possible, the Department examined whether to adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). In order to determine whether the NV is at a more advanced level of trade than that of the CEP transactions, the Department compared the selling functions performed for home market sales with those performed for CEP transactions after deducting the expenses identified in section 772(d) of the Act which are associated with selling activities occurring in the United States. After making these deductions, the Department found that fewer selling functions were performed for CEP sales than for home market sales. Thus, the Department has found that Roldan's sales in the home market are at a more advanced stage of marketing and distribution (*i.e.*, more remote from the factory) than the level of trade of CEP sales and, therefore, has applied the CEP offset to NV. *See* the LOT Memorandum.

**Calculation of Normal Value**

The Department calculated monthly weighted-average NVs based on the starting prices of home market sales to unaffiliated customers and the starting prices of arm's-length home market sales to affiliated customers. The Department based NV on the starting price reduced, where appropriate, by billing adjustments and inland freight and insurance (less freight revenue). In addition, in calculating NV the Department adjusted the starting price by credit expenses in accordance with section 773(a)(6)(C)(iii) of the Act. As noted above, the Department applied the CEP offset to NV. The CEP offset reduced NV by the amount of home market indirect selling expenses, including inventory carrying costs and other indirect selling expenses, up to the amount of indirect selling expenses incurred on U.S. sales. Finally, in calculating NV the Department subtracted home market packing costs from the starting price and added U.S. packing costs. Based on verification findings, the Department made the following adjustments to Roldan's home market sales related charges: (1) Corrected the foreign inland freight expense reported for one sales observation; (2) recalculated home market credit expense for one sales observation using the correct payment date; and (3) corrected the inventory carrying cost for four control numbers.

**Currency Conversion**

Pursuant to section 773A(a) of the Act, the Department made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.



**Preliminary Results of the Review**

As a result of this review, the Department preliminarily determines that the following weighted-average dumping margin exists:

| Manufacturer/ Exporter | Period | Margin Percent |
|---|---|---|
| Roldan, S.A. .... | 3/5/1998–8/31/ 1999. | 0.38 |

In accordance with 19 CFR 351.224(b), within five days of the date of publication of this notice, the Department will disclose to the parties in this proceeding the calculations performed in determining the above dumping margin. An interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c)(1999). Any hearing, if requested, will be held 44 days after the date of publication of this notice, or the first working day thereafter. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of the preliminary results of this review. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 37 days after the date of publication of this notice. Further, the Department requests that parties submitting written comments provide the Department with a diskette containing the public version of those comments. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in interested party comments, within 120 days of publication of the preliminary results.

Upon completion of this administrative review, the Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the U.S. Customs Service to assess antidumping duties on appropriate entries by applying the assessment rate to the entered value of the merchandise. The Department will calculate the duty assessment rate based upon the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the examined sales. The rate will be assessed uniformly on all entries made during tl e POR. Where appropriate, in order to calculate the entered value, the Department will subtract international movement expenses and U.S. duty from the gross sales value.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of SSWR from Spain entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for Roldan will be the rate established in the final results of this administrative review except if the rate is *de minimis*, then no cash deposit will be required; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original less-than-fair-value ("LTFV") investigation or a previous review, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review, the cash deposit rate will be 4.73 percent, the "all-others" rate established in the LTFV investigation.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of administrative review for a subsequent review period.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: September 29, 2000.

**Troy H. Cribb,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 00–26383 Filed 10–12–00; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–502]

## Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Final Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipes and Tubes from Thailand.

**SUMMARY:** On April 7, 2000, the Department of Commerce ("the Department") published in the **Federal Register** the preliminary results of its administrative review of the antidumping duty order on certain welded carbon steel pipes and tubes from Thailand (65 FR 18301). The review covers Saha Thai Steel Pipe Company, Ltd. ("Saha Thai"), a manufacturer/exporter of the subject merchandise and an affiliate. The period of review is March 1, 1998 through February 28, 1999.

Based on our analysis of the comments received, the final results differ from the preliminary results of review. The final weighted-average dumping margin for the reviewed firm is listed below in the section entitled "Final Results of the Review."

**EFFECTIVE DATE:** October 13, 2000.

**FOR FURTHER INFORMATION CONTACT:** Javier Barrientos or Abdelali Elouaradia, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–2243 and (202) 482–1374, respectively.

**SUPPLEMENTARY INFORMATION:**

### The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 351 (1999).

### Background

On April 7, 2000, the Department published its preliminary results for this case. *See Certain Welded Carbon Steel Pipes and Tubes From Thailand: Preliminary Results of Antidumping Duty Administrative Review*, 65 FR 18301 (April 7, 2000). After the preliminary results, the Department verified Saha Thai's sales and cost data from June 14 through 28, 2000. We invited parties to comment on the preliminary results. The Department received case briefs on August 17, 2000, and rebuttal briefs on August 23, 2000.

The Department has conducted this administrative review in accordance with section 751 of the Act.

### Scope of the Review

The products covered by this administrative review are certain welded carbon steel pipes and tubes from Thailand. The subject merchandise has an outside diameter of 0.375 inches or more, but not exceeding 16 inches. These products, which are commonly referred to in the industry as "standard pipe" or "structural tubing," are hereinafter designated as "pipe and tube." The merchandise is classifiable under the Harmonized Tariff Schedule (HTS) item numbers 7306.30.1000, 7306.30.5025, 7306.30.5032, 7306.30.5040, 7306.30.5055, 7306.30.5085, and 7306.30.5090. Although the HTS subheadings are provided for convenience and Customs purposes, our written description of the scope of the order is dispositive.

### Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the "Issues and Decision Memorandum" ("*Decision Memorandum*") from Joseph A. Spetrini, Deputy Assistant Secretary, Import Administration, to Troy H. Cribb, Acting Assistant Secretary for Import Administration, dated October 04, 2000, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the *Decision Memorandum*, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, Room B–099 of the main Department building. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Web at *http://ia.ita.doc.gov/frn/index.html*. The paper copy and electronic version of the *Decision Memorandum* are identical in content.

### Changes Since the Preliminary Results

Based on our analysis of comments received and the database calculations, we have changed our results from the preliminary results of review. For the final results of review, Date of Sale, U.S. Brokerage Expenses, U.S. Imputed Credit Expense, and Raw Materials Exchange Gains have been adjusted to reflect the decisions the Department has reached for the Final Results. These changes are discussed in the relevant sections of the *Decision Memorandum*. In addition, minor corrections from verification and review of the preliminary results calculations by the Department resulted in revisions to: The net U.S. price calculation, which has been corrected to account for the proper currency in one of the variables; the home market customer affiliation for some observations; the interest amounts in the duty drawback calculation; ship date and credit for a U.S. observation; and other miscellaneous U.S. market related expenses in some of the observations.

### Final Results of Review

We determine that the following weighted-average percentage margin exists for the period March 1, 1998, through February 28, 1999:

| Manufacturer/exporter/reseller | Margin (percent) |
|---|---|
| Saha Thai Steel Pipe Company, Ltd | 1.81 |

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service. In accordance with 19 CFR 351.212(b), we have calculated exporter/importer-specific assessment rates. We divided the total dumping margins for the reviewed sales by the entered quantity of those reviewed sales for Saha Thai. We will direct Customs to assess the resulting percentage margins against the entered quantity for the subject merchandise on each of Saha Thai's entries during the review period.

### Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of certain welded carbon steel pipes and tubes from Thailand entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for Saha Thai will be the rate shown above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in these or any previous reviews conducted by the Department, the cash deposit rate will be the "all others" rate established in the original LTFV investigation, which is 15.67 percent.

The cash deposit rate has been determined on the basis of the selling price to the first unaffiliated U.S. customer. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

### Notification of Interested Parties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders ("APOs") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: October 4, 2000.

**Troy H. Cribb,**

*Acting Assistant Secretary for Import Administration.*

### Appendix 1—Issues in Decision Memorandum

*Comments and Responses*

1. Date of Sale
2. Exchange Rate Losses
3. VAT charges
4. Duty Drawback
5. Thai Antidumping Duties on Russian Coils
6. Raw Materials Exchange Gains
7. U.S. Brokerage Expenses
8. U.S. Imputed Credit Expense
9. Duty Reimbursement

[FR Doc. 00–26385 Filed 10–12–00; 8:45 am]

BILLING CODE 3510–DS–P



DEPARTMENT OF COMMERCE

International Trade Administration

[C–475–819]

## Certain Pasta From Italy: Notice of Extension of Time Limit for the 1998 Countervailing Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce is extending the time limit for the final results of the third review of the countervailing duty order on certain pasta from Italy. The period of review is January 1 through December 31, 1998.

**EFFECTIVE DATE:** October 13, 2000.

**FOR FURTHER INFORMATION CONTACT:** Craig Matney or Annika O'Hara, Office of AD/CVD Enforcement I, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–1778 or (202) 482–3798, respectively.

**SUPPLEMENTAL INFORMATION:**

### Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. Unless otherwise indicated, all citations to the Department of Commerce's (the Department) regulations are to 19 CFR part 351 (1999).

### Background

The preliminary results of this review were published in the **Federal Register** on August 8, 2000 (65 FR 48479). The final results are currently due no later than December 6, 2000.

### Postponement

Certain recent decisions by the United States Court of Appeals for the Federal Circuit have raised significant legal issues which must be considered in this case. Because of the complexity of these issues, it is not practicable to complete this review within the time limit mandated by section 751(a)(3)(A) of the Act. Accordingly, the Department is extending the time limit for completion of these final results for 60 days (*i.e.*, until February 5, 2001).

This extension is in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2).

October 5, 2000.

**Louis Apple,**

*Acting Deputy Assistant Secretary for Import Administration.*

[FR Doc. 00–26382 Filed 10–12–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D.100200B]

## Marine Fisheries Advisory Committee; Public Meetings

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meetings.

**SUMMARY:** Notice is hereby given of meetings of the Marine Fisheries Advisory Committee (MAFAC) from November 8 - 10, 2000.

**DATES:** The meetings are scheduled as follows:

1. November 8, 2000, 1 p.m. - 5 p.m.
2. November 9, 2000, 8 a.m. - 5 p.m.
3. November 10, 2000, 8 a.m. - 1 p.m.

**ADDRESSES:** The meetings will be held at the Crowne Plaza at LaGuardia Airport, 104-04 Ditmars Boulevard, East Elmhurst, New York. Requests for special accommodations may be directed to MAFAC, Office of Operations, Management and Information, NMFS, 1315 East-West Highway, Silver Spring, Maryland 20910.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Lu Cano, Designated Federal Official; telephone: (301) 713-2252.

**SUPPLEMENTARY INFORMATION:** As required by section 10(a) (2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1982), notice is hereby given of meetings of MAFAC and MAFAC Subcommittees. MAFAC was established by the Secretary of Commerce (Secretary) on February 17, 1972, to advise the Secretary on all living marine resource matters that are the responsibility of the Department of Commerce. This Committee ensures that the living marine resource policies and programs of the Nation are adequate to meet the needs of commercial and recreational fisheries, and of environmental, state, consumer, academic, tribal, and other national interests.

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**Matters to Be Considered**

*November 8, 2000*

Budget Review/Update, Marine Protected Areas Report, Strategy for Development of "Views Paper" for Transition Team

*November 9, 2000*

Preparation of "Views Paper", Dialogue with Students of York College, Tour of Food and Drug Administration Laboratory in Queens

*November 10, 2000*

Steering Committee Report, Completion of "Views Paper"
Time will be set aside for public comment on agenda items.

**Special Accommodations**

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to MAFAC (see **ADDRESSES**).

Dated: October 3, 2000.

**William T. Hogarth,**

*Deputy Assistant Administrator, National Marine Fisheries Service.*

FR Doc. 00–26360 Filed 10–12–00; 845 am]

**BILLING CODE 3510–22–S**

## COMMODITY FUTURES TRADING COMMISSION

### Application of onExchange$^{SM}$ Board of Trade, Inc. for Designation as a Contract Market in Five Year U.S. Treasury Note Futures Contracts

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice of availability of the terms and conditions of proposed commodity futures contracts.

**SUMMARY:** OnExchange$^{SM}$ Board of Trade, Inc. ("ONXBOT" or "Exchange") has applied for designation as a contract market for the automated trading of Five Year U.S. Treasury Note futures contracts on its electronic trading system, onTrade$^{SM}$. The Exchange has not previously been approved by the Commodity Futures Trading Commission ("Commission") as a contract market in any commodity. Accordingly, in addition to the terms and conditions of the proposed futures contract, ONXBOT has submitted to the Commission proposed bylaws and rules pertaining to ONXBOT membership, governance, trading standards, disciplinary and arbitration procedures, and various other materials necessary to meet the requirements for a board of trade seeking initial designation as a contract market, including a description of its trade-matching algorithm. ONXBOT's submission also includes various proposed bylaws and rules of the onExchange$^{SM}$ Clearing Corporation ("ONXCC"), an affiliate that would be responsible for clearing and settlement functions for the Exchange.

Acting pursuant to the authority delegated by Commission Regulation 140.96, the Division of Economic Analysis and the Division of Trading and Markets ("the Divisions") have determined to publish the Exchange's proposal for public comment. The Divisions believe that publication of the proposal for comment at this time is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the Commodity Exchange Act. The Divisions seek comment pertaining to all aspects of ONXBOT's application and which address any issue commenters believe the Commission should consider.

**DATES:** Comments must be received on or before November 13, 2000.

**FOR FURTHER INFORMATION CONTACT:** With respect to questions about the terms and conditions of ONXBOT's proposed futures contract, please contact Thomas M. Leahy, Jr., Chief of Financial Instruments, Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581; telephone number (202) 418–5278; facsimile number (202) 418–5527; or electronic mail: tleahy@cftc.gov. With respect to ONXBOT's and ONXCC's other proposed rules, please contact Lois J. Gregory, Special Counsel, Division of Trading and Markets, at the same address, by telephone at (202) 418–5483, by facsimile at (202) 418–5536, or by electronic mail at lgregory@cftc.gov; or Joshua R. Marlow, Attorney-Advisor, Division of Trading and Markets, at the same address, by telephone at (202) 418–5484, by facsimile at (202) 418–5536, or by electronic mail at jmarlow@cftc.gov.

**SUPPLEMENTARY INFORMATION:**

### I. Description of Proposal

By letters dated September 12, 2000 and September 27, 2000, ONXBOT, a subsidiary of onExchange$^{SM}$, Inc., has applied to the Commission for designation as a contract market for electronic trading of futures contracts in Five Year U.S. Treasury Notes. The Exchange has not previously been approved as a contract market in any commodity. Thus, in addition to the terms and conditions of the proposed futures contract, ONXBOT has submitted, among other things, proposed bylaws and rules pertaining to ONXBOT membership rights and obligations, governance, trading standards, and disciplinary and arbitration procedures, along with a description of its trading system's trade-matching algorithm. ONXBOT's submission also includes various proposed ONXCC bylaws, rules, and procedures.

ONXBOT is organized as a Delaware corporation with one class of shares. All shares in ONXBOT are currently held by onExchange$^{SM}$, Inc. OnExchange$^{SM}$, Inc. is majority owned by its officers, employees, and venture capital investment firms. Once operational, the Exchange would be governed by a Board of Directors ("ONXBOT Board"), which would include seven directors elected by the shareholders and two public directors appointed by the seven non-public directors. The ONXBOT Board would appoint a Chairman of the Board, President, Secretary, and Treasurer, and the President would be the chief executive officer of the Exchange. ONXCC would similarly be governed by a Board of Directors that, among other things, would appoint a President as chief executive officer of the company.[1]

Trading privileges on ONXBOT would be limited to ONXBOT Subscribers, who would be required to qualify as Eligible Swap Participants under Commission Regulation 35.1(b)(2). Each Subscriber would be limited to trading for its own accounts, with no intermediation permitted. Subscribers could designate an unlimited number of Authorized Traders ("ATs") to exercise discretion over their trading accounts, and would be responsible for supervising all activities of their ATs relating to transactions effected on the Exchange or subject to its rules. Each Subscriber would also be responsible for training and testing its ATs with respect to the proper use of the Exchange and its rules. Any violation of the rules and bylaws of the Exchange by any AT would be deemed a violation of the AT's Subscriber.

[1] ONXCC is organized as a Delaware non-stock, membership corporation with two classes of members. Class A members of ONXCC are entitled to elect and remove directors, and decide all matters which require a vote of the corporation's members. Only the holders of Class A shares would be entitled to receive any dividends or distributions that may be declared or paid by the corporation. OnExchange$^{SM}$, Inc. initially will be the sole Class A member. Class B members, comprised of all ONXBOT Subscribers, are not entitled to vote on any matter. ONXCC's Board would initially be comprised of three directors.



ONXBOT contracts would trade over onTrade$^{SM}$, an electronic trading system developed by onExchange$^{SM}$ and accessed by Subscribers via the Internet.[2] Under the proposal, orders could be entered into onTrade$^{SM}$ only by ONXBOT Subscribers and their ATs. OnTrade$^{SM}$ would accept orders for purchase or sale of futures contracts, combination trades, and calendar spreads. Orders would be required to include user identity (including Subscriber identity), intention to buy or sell, quantity, designation as a "market order" or specification of a price limit, time period the order would remain open, and an activation price if designated as a stop order. Orders would be executed pursuant to a trade-matching algorithm that would give first priority to orders at the best prices, and then give priority among orders at the same price based upon time of entry into onTrade$^{SM}$.[3]

ONXBOT also plans to permit Subscribers to execute block trades away from the trade matching system.[4] Both parties to the transaction must request a Block Order Trade ID from the Exchange in advance and then submit identical orders to ONXBOT within 10 minutes of obtaining such ID. The price designated for the block trade must be "fair and reasonable" in light of, among other factors, market liquidity, size of the transaction, and current market prices (including the underlying cash market and other related futures markets). ONXBOT would publicize details of the transaction immediately after receipt of such information.

All orders would be verified with ONXCC for sufficient margin assets prior to execution.[5] Upon execution, transaction data would be instantaneously transmitted to onClear$^{SM}$, ONXCC's automated clearing system. The transaction would clear immediately, and electronic confirmation notices would then be sent to both parties. ONXCC would have a settlement account at each ONXCC approved custody bank,[6] and would maintain at least one subcustody account for each ONXBOT Subscriber at an approved custody bank,[7] subject to the terms of an agreement between ONXCC and the custody bank.[8] Subscribers would deposit margin assets in these accounts for purposes of original margin, delivery margin, and variation margin.[9]

In the event of Subscriber default, ONXCC would take control of the Subscriber's open positions and would be empowered by ONXCC rules to take steps to ensure minimum market disruption, including the closing out of open positions and liquidation of margin assets. If such proceeds would be insufficient to cover the default, ONXCC could meet the shortfall from a number of sources, including its guaranty fund which will initially consist of $10,000,000.[10]

ONXBOT's provisions for compliance and surveillance programs would include market surveillance, trade practice surveillance, disciplinary functions, financial surveillance in cases where onExchange$^{SM}$ is the Subscriber's designated self-regulatory organization, and arbitration. ONXBOT would secure an agreement with the National Futures Association to perform many of these functions. Investigations of any suspected violation of ONXBOT and ONXCC bylaws and rules by Subscribers or ATs would be presented to ONXBOT's Business Conduct Committee ("BCC"). If the BCC concludes that a violation may have occurred, it may authorize a settlement agreement, issue a warning letter, or direct the enforcement staff to institute disciplinary proceedings. Disciplinary proceedings would be conducted in front of a hearing panel drawn from the Exchange's Hearing Committee, whose decision may be appealed to the Board. ONXBOT rules also would permit summary proceedings against Subscribers and ATs for certain violations. ONXBOT rules do not contemplate fines as penalties. Penalties resulting from disciplinary action would only include suspension or termination.

[2] The proposed trading hours for Five Year U.S. Treasury Note futures would be from 8:20 a.m. to 3:00 p.m. EST.

[3] Subject to this priority, orders for combination trades would be executed, and the legs thereof would be priced, pursuant to an algorithm that gives priority to execution of each leg of the transaction as a separate transaction rather than to execution of the transaction at a differential, if the prices for the legs of the transaction are better than, or equal to, the differential price.

[4] ONXBOT also would permit Subscribers to execute exchanges of futures for physicals and exchanges of futures for swaps.

[5] OnExchange$^{SM}$, Inc. representatives have informed Commission staff that this margin asset verification process would take place within a fraction of a second before trade execution.

[6] ONXCC rules do not preclude custody agreements with more than one custody bank. Initially, ONXCC plans to have only one custody bank, but might enter into other custody bank relationships in the future, in which case it would establish a master settlement account for the purpose of netting pays and collects across settlement accounts.

[7] Subscribers are permitted to have more than one trading account and more than one subcustody account.

[8] Assets in subcustody accounts would be held by ONXCC, subject to Commission regulations requiring segregation of funds at clearing organizations.

[9] Original margin will consist of an amount no less than any assets necessary to cover three consecutive days of "maximum price movement," as defined by each ONXBOT contract's terms and conditions.

[10] The guaranty fund would increase, as necessary, to provide an amount equal to 1% of the aggregate original margin required to be maintained by Subscribers at ONXCC. At no time, however, would it drop below $10,000,000, regardless of the level of aggregate original margin, except when money from the fund has been applied to cover a Subscriber default. ONXCC would not have the power to impose assessments on non-defaulting Subscribers to cover shortfalls caused by the default of other Subscribers.

### II. Request for Comments

Any person interested in submitting written data, views, or arguments on the proposal to designate ONXBOT as a contract market should submit their comments by the specified date to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. In addition, comments may be sent via facsimile to (202) 418–5521, or by electronic mail to secretary@cftc.gov. The Divisions seek comment on all aspects of ONXBOT's application for designation as a new contract market. Reference should be made to onExchange$^{SM}$ Board of Trade's application for designation as a contract market in Five Year U.S. Treasury Note futures contracts. Copies of the proposed contract's terms and conditions, as well as the proposed trading rules, clearing rules, and other governing rules of ONXBOT and ONXCC, are available for inspection at the Office of the Secretariat, or may be obtained at the above address or by telephoning (202) 418–5100.

Other materials submitted by ONXBOT may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552), except to the extent that they are entitled to confidential treatment pursuant to 17 CFR 145.5 or 145.9. Requests for copies of such materials should be made to the Freedom of Information, Privacy and Sunshine Act compliance staff of the Office of the Secretariat at Commission headquarters in accordance with 17 CFR 145.7, 145.8.

Issued in Washington, DC, on October 10, 2000.

**Alan L. Seifert,**

*Deputy Director.*

[FR Doc. 00–26388 Filed 10–12–00; 8:45 am]

**BILLING CODE 6351–01–P**

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## CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

### Renewal of a Currently Approved Information Collection; Submission for OMB Review; Comment Request

**AGENCY:** Corporation for National and Community Service.

**ACTION:** Notice.

The Corporation for National and Community Service (hereinafter the "Corporation") has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. Chapter 35). Copies of these individual ICRs, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Wayne E. Verry, (202) 606–5000, extension 108. Individuals who use a telecommunications device for the deaf (TTY–TDD) may call (202) 565–2799 between 8:30 a.m. and 5 p.m. Eastern time, Monday through Friday.

Comments should be sent to the Office of Information and Regulatory Affairs, Attn: Brenda Aguilar, OMB Desk Officer for the Corporation for National and Community Service, Office of Management and Budget, Room 10235, Washington, DC 20503, (202) 395–6929, within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information to those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.* permitting electronic submissions of responses.

*Type of Review:* Renewal.

*Agency:* Corporation for National and Community Service.

*Title:* AmeriCorps*NCCC Service Project Application.

*OMB Number:* 3045–0010.

*Frequency:* Annually.

*Affected Public:* Various non-profit organizations/project sponsors.

*Number of Respondents:* 900.

*Estimated Time Per Respondent:* 8 hours.

*Total Burden Hours:* 7200 hours.

*Total Burden Cost (capital/startup):* N/A.

*Total Annual Cost (operating/maintaining systems or purchasing services):* $120,000.

**Description**

The Corporation proposes to renew the AmeriCorps*NCCC Service Project Application in a revised form, which incorporates lessons learned since the program inception. The Form is the means by which various organizations can request NCCC members to assist in community service projects, and by which the NCCC evaluates such proposals for approval and selection.

Dated: October 6, 2000.

**Fred L. Peters,**

*AmeriCorps*NCCC Acting National Director.*

[FR Doc. 00–26335 Filed 10–12–00; 8:45 am]

BILLING CODE 6050–28–U

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### National Security Education Board Meeting

**AGENCY:** National Defense University, DoD.

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to Public Law 92–463, notice is hereby given of a forthcoming meeting of the National Security Education Board. The purpose of the meeting is to review and make recommendations to the Secretary concerning requirements established by the David L. Boren National Security Education Act, Title VIII of Public Law 102–183, as amended.

**DATES:** November 8, 2000.

**ADDRESSES:** The Crystal City Marriott Hotel, 1999 Jefferson Davis Highway, Arlington, Virginia 22202.

**FOR FURTHER INFORMATION CONTACT:** Dr. Edmond J. Collier, Deputy Director, National Security Education Program, 1101 Wilson Boulevard, Suite 1210, Rosslyn P.O. Box 20010, Arlington, Virginia 22209–2248; (703) 696–1991. Electronic mail address: colliere@ndu.edu

**SUPPLEMENTARY INFORMATION:** The National Security Education Board meeting is open to the public.

Dated: October 6, 2000.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 00–26253 Filed 10–12–00; 8:45 am]

BILLING CODE 5001–10–M

## DEPARTMENT OF DEFENSE

### Marine Corps

### Privacy Act of 1974; System of Records

**AGENCY:** U.S. Marine Corps, DoD.

**ACTION:** Notice to Alter a System of Records.

**SUMMARY:** The U.S. Marine Corps proposes to alter a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The alteration adds a routine use to permit disclosure of information to the National Academy of Sciences, for the purposes of conducting personnel and/or health-related research.

**DATES:** This action will be effective on November 13, 2000 unless comments are received that would result in a contrary determination.

**ADDRESSES:** Send comments to the Head, FOIA and Privacy Act Section, Headquarters, U.S. Marine Corps, 2 Navy Annex, Washington, DC 20380–1775.

**FOR FURTHER INFORMATION CONTACT:** Ms. B. L. Thompson at (703) 614–4008 or DSN 224–4008.

**SUPPLEMENTARY INFORMATION:** The U.S. Marine Corps notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above. The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act was submitted on September 25, 2000, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996, (61 FR 6427, February 20, 1996).



Dated: October 5, 2000.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**MMN00006**

**SYSTEM NAME:**

Marine Corps Military Personnel Records (OQR/SRB) (May 11, 1999, 64 FR 25299).

**CHANGES:**

* * * * *

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Add new paragraph to read 'To Federal agencies, their contractors and grantees, and to private organizations, such as the National Academy of Sciences, for the purposes of conducting personnel and/or health-related research in the interest of the Federal government and the public. When not considered mandatory, the names and other identifying data will be eliminated from records used for such research studies.

* * * * *

**MMN00006**

**SYSTEM NAME:**

Marine Corps Military Personnel Records (OQR/SRB).

**SYSTEM LOCATION:**

**PRIMARY SYSTEM:**

Headquarters, U.S. Marine Corps (Code MMSB), 2008 Elliot Road, Quantico, VA 22134–5030.

**DECENTRALIZED SEGMENTS:**

Commanding officer of the organization to which the Marine officer or enlisted individual is assigned for duty and has responsibility for the Officer Qualification Records/Service Record Books (OQR/SRB).

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

All Marine Corps military personnel (enlisted/officer): Reserve, retired and discharged or otherwise separated.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

The system contains the Official Military Personnel File, SRB and OQR.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 5041, Headquarters, Marine Corps; and E.O. 9397 (SSN).

**PURPOSE(S):**

To provide a record on all Marine Corps military personnel for use in management of resources, screening and selection for promotion, training and educational programs, administration of appeals, grievances, discipline, litigations and adjudication of claims and determination of benefits and entitlements.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To officials and employees of the Coast Guard and National Guard in the performance of their official duties relating to screening members who have expressed a positive interest in an interservice transfer, enlistment, appointment or acceptance.

To agents of the Secret Service in connection with matters under the jurisdiction of that agency upon presentation of credentials.

To private organizations under government contract to perform random analytical research into specific aspects of military personnel management and administrative procedures.

To officials and employees of the American Red Cross and Navy Relief Society in the performance of their duties. Access will be limited to those portions of the member's record required to effectively assist the member.

To officials and employees of the Sergeant at Arms of the U.S. House of Representatives in the performance of official duties related to the verification of Marine Corps service of Members of Congress. Access will be limited to those portions of the member's record required to verify service time, active and reserve.

To state, local, and foreign (within Status of Forces agreements) law enforcement agencies or their authorized representatives in connection with litigation, law enforcement, or other matters under the jurisdiction of such agencies.

To officials and employees of the Department of Veterans Affairs, Department of Health and Human Services, and Selective Service Administration in the performance of their official duties related to eligibility, notification, and assistance in obtaining benefits by members and former members of the Marine Corps.

To officials and employees of the Department of Veterans Affairs in the performance of their official duties relating to approved research projects.

To officials and employees of other Departments and Agencies of the Executive Branch of government, upon request, in performance of their official duties related to the management, supervision, and administration of members and former members of the Marine Corps.

To Federal agencies, their contractors and grantees, and to private organizations, such as the National Academy of Sciences, for the purposes of conducting personnel and/or health-related research in the interest of the Federal government and the public. When not considered mandatory, the names and other identifying data will be eliminated from records used for such research studies.

The DoD "Blanket Routine Uses" set forth at the beginning of the Marine Corp's compilation of systems of records notices apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records are stored on paper in file folders, magnetic megastorage and on microfiche.

**RETRIEVABILITY:**

The records at Headquarters, U.S. Marine Corps (all active and reserve officer records, all temporary disability retired records, all active and organized reserve and Fleet Marine Corps Reserve enlisted records of personnel joined/transferred to these components subsequent to June 30, 1974, all former Commandants, all living retired officers (who served in General Officer grade, records of all personnel separated/retired four months or less) are retrieved by full name and Social Security Number. Except for OQR's and SRB's of participating members, all other categories of Marine Corps military personnel records are maintained at the National Personnel Records Center, St. Louis, MO. Those retired to St. Louis prior to January 1, 1964 and/or those with military service numbers (MSN) below 1800000 are retrieved by MSN and full name. All other Marine Corps records retired to St. Louis, MO are accessed by MSN and/or Social Security Number and are retrieved by an assigned registry number.

**SAFEGUARDS:**

Restricted access to building and all areas where data is maintained. Records are maintained in areas accessible only by authorized personnel who have been properly screened, cleared, and trained.

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**RETENTION AND DISPOSAL:**

Records are permanent. Records maintained at Headquarters, U.S. Marine Corps are transferred to the National Personnel Records Center, 9700 Page Avenue, St. Louis, MO 63132–5100, one year after separation, placement on the Permanent Disability Retired List, retirement, retirement from Fleet Marine Corps Reserve, death of an officer who served in General Officer grade and former Marines no longer considered of newsworthy status.

**SYSTEM MANAGER(S) AND ADDRESS:**

Commandant of the Marine Corps (Code MMSB), Headquarters, U.S. Marine Corps, 2008 Elliot Road, Quantico, VA 22134–5030.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Commandant of the Marine Corps (Code MMSB), Headquarters, U.S. Marine Corps, 2008 Elliot Road, Quantico, VA 22134–5030 (for active duty members); or to the Director, National Personnel Records Center, 9700 Page Avenue, St. Louis, MO 63132–5100 (for separated members).

Individuals seeking to determine information about their OQR/SRB records maintained by their respective commanding officer should address written inquiries to the command concerned. U.S. Marine Corps official mailing addresses are incorporated into Department of the Navy's mailing addresses, published as an appendix to the Navy's compilation of record system notices.

Written requests should contain the full name, Social Security Number, and signature of the requester.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to records about themselves contained in this system of records should address written requests to the Commandant of the Marine Corps (Code MMSB), Headquarters, U.S. Marine Corps, 2008 Elliot Road, Quantico, VA 22134–5030 (for active duty personnel); to the respective commanding officer of the command concerned for OQR/SRB; or to the Director, National Personnel Records Center, 9700 Page Avenue, St. Louis, MO 63132–5100 (for separated members).

Written requests should include the full name, Social Security Number, and signature of the requester.

The individual may visit any of the above activities for review of records. Proof of identification may consist of an individual's active, reserve or retired identification card, Armed Forces Report of Transfer or Discharge (DD Form 214), discharge certificate, driver's license, or other data sufficient to insure that the individual is the subject of the record.

**CONTESTING RECORD PROCEDURES:**

The U.S. Marine Corps rules for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; Marine Corps Order P5211.2; 32 CFR part 701; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

Staff agencies and subdivisions of Headquarters, U.S. Marine Corps; Marine Corps commands and organizations; other agencies of federal, state, and local government; medical reports; correspondence from financial and other commercial enterprises; correspondence and records of educational institutions; correspondence of private citizens addressed directly to the Marine Corps or via the U.S. Congress and other agencies; investigations to determine suitability for enlistment, security clearances, and special assignments; investigations related to disciplinary proceedings; and the individual of the record.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. 00–26258 Filed 10–12–00; 8:45 am]

**BILLING CODE 5001–10–P**

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## DEPARTMENT OF DEFENSE

### Department of the Air Force

### Privacy Act of 1974; System of Records

**AGENCY:** Department of the Air Force, DoD.

**ACTION:** Notice to alter a system of records.

**SUMMARY:** The Department of the Air Force proposes to alter a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The alteration adds a routine use to permit disclosure of information to the National Academy of Sciences.

**DATES:** This action will be effective on November 13, 2000 unless comments are received that would result in a contrary determination.

**ADDRESSES:** Send comments to the Air Force Access Programs Manager, Headquarters, Air Force Communications and Information Center/ITC, 1250 Air Force Pentagon, Washington, DC 20330–1250.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Anne Rollins at (703) 588–6187.

**SUPPLEMENTARY INFORMATION:** The Department of the Air Force notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act was submitted on September 25, 2000, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996, (61 FR 6427, February 20, 1996).

Dated: October 5, 2000.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**F036 AF PC C**

**SYSTEM NAME:**

Military Personnel Records System (June 11, 1997, 62 FR 31793).

**CHANGES:**

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Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Add a new paragraph as follows 'To Federal agencies, their contractors and grantees, and to private organizations, such as the National Academy of Sciences, for the purposes of conducting personnel and/or health-related research in the interest of the Federal government and the public. When not considered mandatory, the names and other identifying data will be eliminated from records used for such research studies.'

* * * * *

**F036 AF PC C**

**SYSTEM NAME:**

Military Personnel Records System.

**SYSTEM LOCATION:**

Primary locations: Headquarters United States Air Force, 1040 Air Force Pentagon, Washington, DC 20330–1040.

Headquarters Air Force Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150–4703.

Air Reserve Personnel Center, 6760 East Irvington Place 4000, Denver, CO 80280–4000.



National Personnel Records Center, Military Personnel records, 9700 Page Boulevard, St. Louis, MO 63132–5100.

Headquarters of major commands and field operating agencies; consolidated base personnel offices; State Adjutant General Office of each respective state, District of Columbia and Commonwealth of Puerto Rico, and Air Force Reserve and Air National Guard units. Official mailing addresses are published as an appendix to the Air Force compilation of records systems notices.

Secondary locations: Officer Correspondence and Miscellaneous Document Group for active duty officers at Headquarters Air Force Personnel Center (HQ AFPC), and at Headquarters, United States Air Force (HQ USAF); Officer Selection Record Group (OSRGp) at HQ USAF, General Officer Group and at HQ USAF and HQ AFPC Air Force Colonel's Group; retired general officers Master Personnel Record Group (MPerRGp) at AFPC; Officer Command Selection Record Group (OCSRGp) at the respective Air Force base of assignment servicing Military Personnel Flight (MPF), and respective Air Force major command; Air Force active duty enlisted personnel MPerRGp and senior NCO selection folder at AFPC; Field Personnel Records Group (FPerRGp) at the respective unit of assignment or servicing MPF or Consolidated Reserve Personnel Office (CRPO); personnel in Temporary Disability Retired List, Missing in Action (MIA), Prisoner of War (POW), Dropped From Rolls status MPerGp at AFPC; Reserve officers MPerRGp at Air Reserve Personnel Center (ARPC); Reserve airmen MPerRGp at ARPC and FPerRGp at the respective unit of assignment or servicing MPF/CRPO; United States Air National Guard (ANGUS) officers MPerRGp at ARPC, OCSRGp at the respective State Adjutant General Office, and FPerRGp at the respective unit of assignment; ANGUS airmen MPerRGp at the respective State Adjutant General Office and FPerRGp at the respective unit of assignment; retired and discharged Air Force military personnel MPerRGp at National Personnel Records Center; and Air Force Academy cadets MPerRGp at unit of assignment MPF.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Air Force active duty military, Air Force Reserve and Air National Guard personnel.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

System contains substantiating documents such as forms, certificates, administrative orders and correspondence pertaining to appointment as a commissioned officer, warrant officer, Regular AF, AF Reserve or ANGUS, enlistment/reenlistment/extension of enlistment, assignment, Permanent Change of Station, Temporary Duty (TDY), promotion and demotion; identification card requests; casualty; duty status changes—Absent Without Leave/MIA/POW/Missing/Deserter; military test administration/results; service dates; separation; discharge; retirement; security; training; Professional Military Education (PME); On-The-Job Training; Technical, General Military Training; commissioning; driver; academic education; performance/effectiveness reports; unfavorable communications in the OSRGp; records corrections; formal/informal medical or dental treatment/examination; flying/rated status administration; extended active duty; emergency data; line of duty determinations; human/personnel reliability; career counseling; records transmittal; AF reserve administration; Air National Guard administration; board proceedings; personnel history statements; Veterans Administration compensations; disciplinary actions; record extracts; locator information; personal clothing/equipment items; passport; classification; grade data; Career Reserve applications/cancellations; traffic safety; Unit Military Training; travel voucher for TDY to Republic of Vietnam; dependent data; professional achievements; Geneva Convention card; Federal insurance; travel and duty restrictions; Conscientious Objector status; decorations and awards; badges; Favorable Communications (colonels only); Inter-Service transfers; pay and allowances; combat duty; leave; photographs, and Personnel Data System products.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C. 8013, Secretary of the Air Force; as implemented by Air Force Instruction 36–2608, and E.O. 9397 (SSN).

**PURPOSE(S):**

Military personnel records are used at all levels of Air Force personnel management within the agency for actions/processes related to procurement, education and training, classification, assignment, career development, evaluation, promotion, compensation, sustentation, separation and retirement.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DOD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Records may be disclosed to the Department of Veterans Affairs for research, processing and adjudication of claims, and providing medical care.

To dependents and survivors for determination of eligibility for identification card privileges.

To the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) for determination of eligibility and benefits.

To local Immigration/Naturalization Office for accountability and audit purposes.

To State Unemployment Compensation offices for verification of military service related information for unemployment compensation claims; Respective local state government offices for verification of Vietnam 'State Bonus' eligibility.

To the Office of Personnel Management for verification of military service for benefits, leave, or Reduction in Force purposes, and to establish Civil Service employee tenure and leave accrual rate.

To the Social Security Administration to substantiate applicant's credit for social security compensation; Local state office for verification of military service relative to the Soldiers and Sailors Civil Relief Act. Information as to name, rank, Social Security Number, salary, present and past duty assignment, future assignments that have been finalized, and office phone number may be provided to military financial institutions who provide services to DOD personnel. For personnel separated, discharged or retired from the Air Force, information as to last known address may be provided to the military financial institutions upon certification by a financial institution officer that the facility has a dishonored check or defaulted loan.

To the Selective Service Agencies for computation of service obligation. To the American National Red Cross for emergency assistance to military members, dependents, relatives or other persons if conditions are compelling.

To the Department of Labor for claims of civilian employees formerly in military service, verification of service-related information for unemployment compensation claims, investigations of

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possible violations of labor laws and for pre-employment investigations.

To the Armed Forces Retirement Home to determine eligibility. To Federal agencies, their contractors and grantees, and to private organizations, such as the National Academy of Sciences, for the purposes of conducting personnel and/or health-related research in the interest of the Federal government and the public. When not considered mandatory, the names and other identifying data will be eliminated from records used for such research studies.

The DoD 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Maintained in visible file folders/ binders, cabinets and on computer and computer output products.

**RETRIEVABILITY:**

Information in the system is retrieved by last name, first name, middle initial and Social Security Number.

Records stored at National Personnel Records Center are retrieved by registry number, last name, first name, middle initial and Social Security Number.

**SAFEGUARDS:**

Records are accessed by person(s) responsible for servicing the records system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records stored in locked room, cabinets, and in computer storage devices protected by computer system software.

**RETENTION AND DISPOSAL:**

Those documents designated as temporary in the prescribing directive remain in the records until their obsolescence (superseded, member terminates status, or retires) when they are removed and provided to the individual. Unfavorable communications in the OSRGp are transferred to Air Reserve Component and retained for one year following an officer's termination of status, or destroyed if officer retires or dies. Those documents designated as permanent remain in the military personnel records system permanently and are retired with the master personnel record group.

**SYSTEM MANAGER(S) AND ADDRESS:**

Commander, Headquarters Air Force Military Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150–4703.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to the Commander, Headquarters Air Force Military Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150–4703.

Individuals may also appear in person at the responsible official's office or the respective repository for records for personnel in a particular category during normal duty hours any day except Saturday, Sunday or national and local holidays. The Saturday and Sunday exception does not apply to Reserve and National Guard units during periods of training. The system manager has the right to waive these requirements for personnel located in areas designated as Hostile Fire Pay areas. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

**RECORD ACCESS PROCEDURES:**

Individuals seeking to access records about themselves contained in this system should address written requests to the Commander, Headquarters Air Force Military Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150–4703.

Individuals may also appear in person at the responsible official's office or the respective repository for records for personnel in a particular category during normal duty hours any day except Saturday, Sunday or national and local holidays. The Saturday and Sunday exception does not apply to Reserve and National Guard units during periods of training. The system manager has the right to waive these requirements for personnel located in areas designated as Hostile Fire Pay areas. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

**CONTESTING RECORD PROCEDURES:**

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

Information is obtained from the subject of the file, supervisors, correspondence generated within the agency in the conduct of official business, educational institutions, and civil authorities.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. 00–26255 Filed 10–12–00; 8:45 am]

**BILLING CODE 5001–10–P**

## DEPARTMENT OF DEFENSE

### Department of the Army

### Privacy Act of 1974; System of Records

**AGENCY:** Department of the Army, DoD.

**ACTION:** Notice to alter a system of records.

**SUMMARY:** The Department of the Army proposes to alter a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

**DATES:** This action will be effective on November 13, 2000 unless comments are received that would result in a contrary determination.

**ADDRESSES:** Records Management Division, U.S. Army Records Management and Declassification Agency, ATTN: TAPC–PDD–RP, Stop 5603, Ft. Belvoir, VA 22060–5603.

**FOR FURTHER INFORMATION CONTACT:** Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390 or Ms. Christie King at (703) 806–3711 or DSN 656–3711.

**SUPPLEMENTARY INFORMATION:** The Department of the Army notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above. The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act was submitted on September 25, 2000, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996, (61 FR 6427, February 20, 1996).

Dated: October 5, 2000.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**A0640–10b TAPC**

**SYSTEM NAME:**

Official Military Personnel Record (November 30, 1998, 63 FR 65761).



**CHANGES:**

* * * * *

**SYSTEM IDENTIFIER:**

Delete entry and replace with 'A0600–8–104b TAPC'.

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**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Add two new paragraphs as follows 'To victims and witnesses of a crime for purposes of providing information, consistent with the requirements of the Victim and Witness Assistance Program, regarding the investigation and disposition of an offense.'

To Federal agencies, their contractors and grantees, and to private organizations, such as the National Academy of Sciences, for the purposes of conducting personnel and/or health-related research in the interest of the Federal government and the public. When not considered mandatory, the names and other identifying data will be eliminated from records used for such research studies.

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**A0600–8–104b TAPC**

**SYSTEM NAME:**

Official Military Personnel Record.

**SYSTEM LOCATION:**

U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400 for active Army officers.

U.S. Army Enlisted Records and Evaluation Center, 8899 East 56th Street, Fort Benjamin Harrison, IN 46249–5301 for active duty enlisted personnel.

U.S. Army Reserve Personnel Command, 9700 Page Avenue, St Louis, MO 63132–5200 for reserve personnel.

National Personnel Records Center, National Archives and Records Administration, 9700 Page Avenue, St Louis, MO 63132–5100, for discharged or deceased personnel.

An automated index exists at the U.S. Army Reserve Personnel Command showing physical location of the Official Military Personnel of retired, separated and files on all service members returned to active duty.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Active duty members of the U.S. Army who are enlisted, appointed, or commissioned status; members of the U.S. Army who were enlisted, appointed, or commissioned and were separated by discharge, death, or other termination of military status.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Records include enlistment contract; Department of Veterans Affairs benefit forms; physical evaluation board proceedings; military occupational specialty data; statement of service; qualification record; group life insurance election; emergency data; application for appointment; qualification/evaluation report; oath of office; medical examination; security questionnaire; application for retired pay; application for correction of military records; field for active duty; transfer or discharge report/Certificate of Release or Discharge from Active Duty; active duty report; voluntary reduction; line of duty and misconduct determinations; discharge or separation reviews; police record checks, consent/ declaration of parent/guardian; Army Reserve Officers Training Corps supplemental agreement; award recommendations; academic reports; casualty report; U.S. field medical card; retirement points, deferment; preinduction processing and commissioning data; transcripts of military records; summary sheets review of conscientious objector; election of options; oath of enlistment; enlistment extensions; survivor benefit plans; efficiency reports; records of proceeding, 10 U.S.C. section 815 appellate actions; determinations of moral eligibility; waiver of disqualifications; temporary disability record; change of name; statements for enlistment; acknowledgments of service requirements; retired benefits; application for review by physical evaluation board and disability board; appointments; designations; evaluations; birth certificates; photographs; citizenship statements and status; educational constructive credit transcripts; flight status board reviews; assignment agreements, limitations/ waivers/election and travel; efficiency appeals; promotion/reduction/ recommendations, approvals/ declinations announcements/ notifications, reconsiderations/ worksheets elections/letters or memoranda of notification to deferred officers and promotion passover notifications; absence without leave and desertion records; FBI reports; Social Security Administration correspondence; miscellaneous correspondence, documents, and military orders relating to military service including information pertaining to dependents, interservice action, in-service details, determinations, reliefs, component; awards, pay entitlement, released, transfers, and other military service data.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C. 3013, Secretary of the Army; 42 U.S.C. 10606; DoD Instruction 1030.1, Victim and Witness Assistance; and E.O. 9397 (SSN).

**PURPOSE(S):**

These records are created and maintained to manage the member's Army service effectively; document historically a member's military service, and safeguard the rights of the member and the Army.

**ROUTINE USE OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Department of State to issue passport/visa; to document persona-non-grata status, attache assignments, and related administration of personnel assigned and performing duty with the Department of State.

To the Department of Treasury to issue bonds; to collect and record income taxes.

To the Department of Justice to file fingerprints to perform investigative and judicial functions.

To the Department of Agriculture to coordinate matters related to its advanced education program.

To the Department of Labor to accomplish actions required under Federal Employees Compensation Act.

To the Department of Health and Human Services to provide services authorized by medical, health, and related functions authorized by 10 U.S.C. 1074 through 1079.

To the Nuclear Regulatory Commission to accomplish requirements incident to Nuclear Accident/Incident Control Officer functions.

To the American Red Cross to accomplish coordination and service functions including blood donor programs and emergency investigative support and notifications.

To the Civil Aeronautics Board to accomplish flight qualifications, certification and licensing actions.

To the Federal Aviation Agency to determine rating and certification (including medical) of in-service aviators.

To the U.S. Postal Service to accomplish postal service authorization involving postal officers and mail clerk authorizations.

To the Department of Veterans Affairs:

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1. To provide information relating to service, benefits, pensions, in-service loans, insurance, and appropriate hospital support.

2. To provide information relating to authorized research projects.

To the Bureau of Immigration and Naturalization to comply with status relating to alien registration, and annual residence/location.

To the Office of the President of the United States of America to exchange required information relating to White House Fellows, regular Army promotions, aides, and related support functions staffed by Army members.

To the Federal Maritime Commission to obtain licenses for military members accredited as captain, mate, and harbor master for duty as Transportation Corps warrant officer.

To each of the several states, and U.S. possessions to support state bonus application; to fulfill income tax requirements appropriate to the service member's home of record; to record name changes in state bureaus of vital statistics; and for National Guard affairs.

Civilian educational and training institutions to accomplish student registration, tuition support, tests, and related requirements incident to in-service education programs in compliance with 10 U.S.C. chapters 102 and 103.

To the Social Security Administration to obtain or verify Social Security Number; to transmit Federal Insurance Compensation Act deductions made from members' wages.

To the Department of Transportation to coordinate and exchange necessary information pertaining to inter-service relationships between U.S. Coast Guard (USCG) and U.S. Army when service members perform duty with the USCG.

To the Civil authorities for compliance with 10 U.S.C. 814.

To the U.S. Information Agency to investigate applicants for sensitive positions pursuant to E.O. 10450.

To the Federal Emergency Management Agency to facilitate participation of Army members in civil defense planning training, and emergency operations pursuant to the military support of civil defense as prescribed by DoD Directive 3025.10, Military Support of Civil Defense, and Army Regulation 500–70, Military Support of Civil Defense.

To the Director of Selective Service System to Report of Non-registration at Time of Separation Processing, of individuals who decline to register with Selective Service System. Such report will contain name of individual, date of birth, Social Security Number, and mailing address at time of separation.

Other elements of the Federal Government pursuant to their respective authority and responsibility.

**Note:** Record of the identity, diagnosis, prognosis, or treatment of any client/patient, irrespective of whether or when he/she ceases to be a client/patient, maintained in connection with the performance of any alcohol or drug abuse prevention and treatment function conducted, regulated, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided therein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd–2. This statute takes precedence over the Privacy Act of 1974, in regard to accessibility of such records except to the individual to whom the record pertains. The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices do not apply to these categories of records.

To victims and witnesses of a crime for purposes of providing information, consistent with the requirements of the Victim and Witness Assistance Program, regarding the investigation and disposition of an offense.

To Federal agencies, their contractors and grantees, and to private organizations, such as the National Academy of Sciences, for the purposes of conducting personnel and/or health-related research in the interest of the Federal government and the public. When not considered mandatory, the names and other identifying data will be eliminated from records used for such research studies.

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system, except for those specifically excluded categories of records.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Optical digital imagery, microfiche stored randomly in electro-mechanical storage/retrieval devices. Files consists of selected data automated in support of military personnel management purposes on platters, disc fiche and other computer media.

**RETRIEVABILITY:**

Alphabetically by surname; automated data retrievable by name, Social Security Number or ADP parameter; records of active Army, Reserve, National Guard, (officer), retired, separated and deceased persons are retrieved by Social Security Number terminal digit sequence.

**SAFEGUARDS:**

Records are maintained in areas accessible only to authorized personnel; automated records are further protected by authorized password system for access terminals, controlled access to operations locations, and controlled output distribution.

**RETENTION AND DISPOSAL:**

Microfiche and paper records are permanent; retained in active file until termination of service, following which they are retired to the U.S. Army Reserve Personnel Command, 9700 Page Avenue, St. Louis, MO 63132–5200.

**SYSTEM MANAGER(S) AND ADDRESS:**

Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the following:

Inquiries for records of commissioned or warrant officers (including members of Reserve Components) serving on active duty should be sent to the Commander, U.S. Total Army Personnel Command, ATTN: TAPC–MSR, 200 Stovall Street, Alexandria, VA 22332–0400.

Inquiries for records of enlisted members (including members of Reserve Components) serving on active duty should be sent to: Commander, U.S. Army Enlisted Records and Evaluation Center, 8899 East 56th Street, Fort Benjamin Harrison, IN 46249–5301.

Inquiries for records of commissioned officers or warrant officers in a reserve status not on active duty, or Army enlisted reservists not on active duty, or members of the National Guard who performed active duty, or commissioned officers, warrant officers, or enlisted members in a retired status should be sent to the Commander, U.S. Army Reserve Personnel Command, 9700 Page Avenue, St. Louis, MO 63132–5200.

Inquiries for records of commissioned officers and warrant officers who were completely separated from the service after June 30, 1917, or enlisted members who were completely separated after October 31, 1912, or for records of deceased Army personnel should be sent to the Chief, National Personnel Records Command, National Archives and Records Administration, 9700 Page Avenue, St. Louis, MO 63132–5200.

Individual should provide the full name, Social Security Number, service identification number, military status, and current address.



**RECORD ACCESS PROCEDURES:**

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the following:

Inquiries for records of commissioned or warrant officers (including members of Reserve Components) serving on active duty should be sent to the Commander, U.S. Total Army Personnel Command, ATTN: TAPC–MSR, 200 Stovall Street, Alexandria, VA 22332–0400.

Inquiries for records of enlisted members (including members of Reserve Components) serving on active duty should be sent to: Commander, U.S. Army Enlisted Records and Evaluation Center, 8899 East 56th Street, Fort Benjamin Harrison, IN 46249–5301.

Inquiries for records of commissioned officers or warrant officers in a reserve status not on active duty, or Army enlisted reservists not on active duty, or members of the National Guard who performed active duty, or commissioned officers, warrant officers, or enlisted members in a retired status should be sent to the Commander, U.S. Army Reserve Personnel Command, 9700 Page Avenue, St. Louis, MO 63132–5200.

Inquiries for records of commissioned officers and warrant officers who were completely separated from the service after June 30, 1917, or enlisted members who were completely separated after October 31, 1912, or for records of deceased Army personnel should be sent to the Chief, National Personnel Records Center, National Archives and Records Administration, 9700 Page Avenue, St. Louis, MO 63132–5200.

Individual should provide the full name, Social Security Number, service identification number, military status, and current address.

**CONTESTING RECORD PROCEDURES:**

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

Enlistment, appointment, or commission related forms pertaining to individual's military status; academic, training, or qualifications records acquired prior to or during military service; correspondence, forms, records, documents and other relevant papers in Department of the Army, other Federal agencies, or state and local governmental entities; civilian education and training institutions; and members of the public when information is relevant to the Service Member.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. 00–26256 Filed 10–12–00; 8:45 am]

BILLING CODE 5001–10–F

## DEPARTMENT OF DEFENSE

### Defense Logistics Agency

### Privacy Act of 1974; Systems of Records

**AGENCY:** Defense Logistics Agency, DOD.

**ACTION:** Notice to Amend Systems of Records.

**SUMMARY:** The Defense Logistics Agency proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. In addition, DLA is making a global administrative change to all its Privacy Act systems of records notices.

**DATES:** This action will be effective without further notice on November 13, 2000 unless comments are received that would result in a contrary determination.

**ADDRESSES:** Send comments to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DSS–C, 8725 John J. Kingman Road, Suite 2533, Fort Belvior, VA 22060–6221.

**FOR FURTHER INFORMATION CONTACT:** Ms. Susan Salus at (703) 767–6183.

**SUPPLEMENTARY INFORMATION:** The Defense Logistics Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The Department of the Navy proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The amendment is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: October 5, 2000.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

DLA is revising the current entry called "Contesting record procedures:" for all its Privacy Act systems of records to read as follows:

"Contesting record procedures." The DLA rules for accessing records, for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21, 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DSS–C, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

* * * * *

**S900.10 CA**

**SYSTEM NAME:**

Personnel Roster/Locator Files (September 21, 1999, 64 FR 51110).

**CHANGES:**

* * * * *

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Add to entry "day and month of birth."

* * * * *

**S900.10 CA**

**SYSTEM NAME:**

Personnel Roster/Locator Files.

**SYSTEM LOCATION:**

Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221, and the DLA Primary Level Field Activities (PLFAs). Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Current civilian employees, military personnel, and a select number of former employees of the DLA activity where records are maintained.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Records include name, Social Security Number, organizational assignment, home address and telephone number, grade/rank, position title and job series, day and month of birth, and spouse or next-of-kin name, address, and telephone numbers.

Security offices and police force records may also contain emergency medical and disability data, including information on special equipment or devices the individual requires, name and telephone number of medical practitioner, and medical alert data.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; 10 U.S.C. Chapter 31 (Personnel); and E.O. 9397 (SSN).

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**PURPOSE(S):**

To notify DLA personnel of the arrival of visitors, to plan social and honorary recognition functions, to recall personnel to duty station when required, for use in emergency notification, and to perform relevant functions/requirements/actions consistent with managerial functions.

Medical and disability data is used by security and police officers to identify and locate individuals during medical emergencies, facility evacuations, and similar threat situations.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: In addition to the disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Security and police officers may relay medical and disability data to emergency medical treatment personnel, local fire fighters, and similar groups responding to calls for emergency assistance.

The DoD 'Blanket Routine Uses' set forth at the beginning of DLA's compilation of systems of records notices apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records are maintained in paper and electronic form.

**RETRIEVABILITY:**

Retrieved by name, Social Security Number, organization, or grade/rank.

**SAFEGUARDS:**

Records are maintained in areas accessible only to DLA personnel who must use the records to perform their duties. The computer files are password protected with access restricted to authorize users. Records are secured in locked or guarded buildings, locked offices, or locked cabinets during nonduty hours.

**RETENTION AND DISPOSAL:**

Records are destroyed upon termination/departure of DLA personnel or when no longer needed for notification of official or social Agency functions.

**SYSTEM MANAGER(S) AND ADDRESS:**

Heads of HQ DLA principal staff elements and Heads of DLA field activities which maintain locator/roster files. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221, or the Privacy Act Officer of the particular DLA PLFA involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221, or the Privacy Act Officer of the particular DLA PLFA involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

**CONTESTING RECORD PROCEDURES:**

The DLA rules for accessing records, for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21, 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

**RECORD SOURCE CATEGORIES:**

Record subject.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. 00–26257 Filed 10–12–00; 8:45 am]

**BILLING CODE 5001–10–P**

## DEPARTMENT OF DEFENSE

### Department of the Navy

### Notice of Availability of Inventions for Licensing; Government-Owned Inventions

**AGENCY:** Department of the Navy, DOD.

**ACTION:** Notice.

**SUMMARY:** The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are available for licensing by the Department of the Navy.

U.S. Provisional Patent Application Serial No. 60/207,891 entitled, "RESOURCE MANAGEMENT METHODOLOGY", filing date: May 25, 2000, Navy Case No. 82185.

U.S. Provisional Patent Application Serial No. 60/224,381entitled, "PAYLOAD DISPENSING SYSTEM PARTICULARLY SUITED FOR UNMANNED AERIAL VEHICLES", filing date: August 8, 2000, Navy Case No. 82210.

U.S. Provisional Patent Application Serial No. 60/229,063 entitled, "CLOCK SYNCHRONIZATION USING QUANTUM MECHANICAL NON-LOCALITY EFFECTS", filing date: August 31, 2000, Navy Case No. 82343.

**ADDRESSES:** Requests for copies of the provisional patent applications cited should be directed to the Naval Surface Warfare Center, Dahlgren Laboratory, Code CD222, 17320 Dahlgren Road, Building 183, Room 015, Dahlgren, VA 22448–5100, and must include the Navy Case number. Interested parties will be required to sign a Confidentiality, Non-Disclosure and Non-Use Agreement before receiving copies of requested patent applications.

**FOR FURTHER INFORMATION CONTACT:** James B. Bechtel, Patent Counsel, Naval Surface Warfare Center, Dahlgren Laboratory, Code CD222, 17320 Dahlgren Road, Building 183, Room 015, Dahlgren, VA 22448–5100, telephone (540) 653–8016.

**(Authority:** 35 U.S.C. 207, 37 CFR Part 404)

Dated: September 29, 2000.

**J.L. Roth,**

*Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. 00–26271 Filed 10–12–00; 8:45 am]

**BILLING CODE 3810–FF–P**

## DEPARTMENT OF DEFENSE

### Department of the Navy

### Notice of Intent To Grant Exclusive License; Daniel G. Jablonski

**AGENCY:** Department of the Navy, DOD.

**ACTION:** Notice.

**SUMMARY:** The Department of the Navy gives notice of its intent to grant Daniel G. Jablonski, a revocable, nonassignable, exclusive license in the United States to practice the Government-owned invention, U.S. Patent Number 4,881,080 *Apparatus for and a Method of Determining Compass Headings.*

**DATES:** Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any not later than December 12, 2000.

**ADDRESSES:** Written objections are to be filed with Carderock Division, Naval Surface Warfare Center, Code 004, 9500 MacArthur Blvd., West Bethesda MD 20817–5700.

**FOR FURTHER INFORMATION CONTACT:** Mr. Dick Bloomquist, Director Technology Transfer, Carderock Division, Naval Surface Warfare Center, Code 0117, 9500 MacArthur Blvd., West Bethesda, MD 20817–5700, (301) 227–4299.

Dated: September 26, 2000.

**J.L. Roth,**

*Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. 00–26269 Filed 10–12–00; 8:45 am]

**BILLING CODE 3810–FF–P**



## DEPARTMENT OF DEFENSE

### Department of the Navy

### Privacy Act of 1974; System of Records

**AGENCY:** Department of the Navy, DoD.

**ACTION:** Notice to Alter a System of Records.

**SUMMARY:** The Department of the Navy proposes to alter a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The alteration adds a routine use to permit disclosure of information to the National Academy of Sciences, for the purposes of conducting personnel and/or health-related research.

**DATES:** This action will be effective on November 13, 2000 unless comments are received that would result in a contrary determination.

**ADDRESSES:** Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (N09B30), 2000 Navy Pentagon, Washington, DC 20350–2000.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Doris Lama at (202) 685–6545 or DSN 325–6545.

**SUPPLEMENTARY INFORMATION:** The Department of the Navy's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act was submitted on September 25, 2000, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996, (61 FR 6427, February 20, 1996).

Dated: October 5, 2000.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**N01070–3**

**SYSTEM NAME:**

Navy Personnel Records System (August 30, 2000, 65 FR 52718).

**CHANGES:**

* * * * *

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Add new paragraph to read "To Federal agencies, their contractors and grantees, and to private organizations, such as the National Academy of Sciences, for the purposes of conducting personnel and/or health-related research in the interest of the Federal government and the public. When not considered mandatory, the names and other identifying data will be eliminated from records used for such research studies."

* * * * *

**N01070–3**

**SYSTEM NAME:**

Navy Personnel Records System.

**SYSTEM LOCATION:**

**PRIMARY LOCATIONS:**

Navy Personnel Command, 5720 Integrity Drive, Millington, TN 38055–3130; Naval Reserve Personnel Center, 4400 Dauphine Street, New Orleans, LA 70149–7800; and local activity to which individual is assigned. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.

**SECONDARY LOCATIONS:**

Department of the Navy Activities in the chain of command between the local activity and the headquarters level; Federal Records Storage Centers; National Archives. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

All Navy military personnel: officers, enlisted, active, inactive, reserve, fleet reserve, retired, midshipmen, officer candidates, and Naval Reserve Officer Training Corps personnel.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Personnel service jackets and service records, correspondence and records in both automated and non-automated form concerning classification, assignment, distribution, promotion, advancement, performance, recruiting, retention, reenlistment, separation, training, education, morale, personal affairs, benefits, entitlements, discipline and administration of naval personnel.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 301, Departmental Regulations; 42 U.S.C. 10601 *et seq.*, Victim's Rights and Restitution Act of 1990 as implemented by DoD Instruction 1030.2, Victim and Witness Assistance Procedures; and E.O. 9397 (SSN).

**PURPOSE(S):**

To assist officials and employees of the Navy in the management, supervision and administration of Navy personnel (officer and enlisted) and the operations of related personnel affairs and functions.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To officials and employees of the National Research Council in Cooperative Studies of the National History of Disease, of Prognosis and of Epidemiology. Each study in which the records of members and former members of the naval service are used must be approved by the Chief of Naval Personnel.

To officials and employees of the Department of Health and Human Services, Department of Veteran Affairs, and Selective Service Administration in the performance of their official duties related to eligibility, notification and assistance in obtaining benefits by members and former members of the Navy.

To officials and employees of the Department of Veteran Affairs in the performance of their duties relating to approved research projects.

To officials and employees of Navy Relief and the American Red Cross in the performance of their duties relating to the assistance of the members and their dependents and relatives, or related to assistance previously furnished such individuals, without regard to whether the individual

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assisted or his/her sponsor continues to be a member of the Navy.

To duly appointed Family Ombudsmen in the performance of their duties related to the assistance of the members and their families.

To state and local agencies in the performance of their official duties related to verification of status for determination of eligibility for Veterans Bonuses and other benefits and entitlements, including Department of Labor and state unemployment agencies for unemployment compensation for ex-service members.

To officials and employees of the Office of the Sergeant at Arms of the United States House of Representatives in the performance of their official duties related to the verification of the active duty naval service of Members of Congress. Information as to current military addresses and assignments may be provided to military banking facilities who provide banking services overseas and who are reimbursed by the Government for certain checking and loan losses. For personnel separated, discharged or retired from the Armed Forces information as to last known residential or home of record address may be provided to the military banking facility upon certification by a banking facility officer that the facility has a returned or dishonored check negotiated by the individual or the individual has defaulted on a loan and that if restitution is not made by the individual the United States Government will be liable for the losses the facility may incur.

To federal, state, local, and foreign (within Status of Forces agreements) law enforcement agencies or their authorized representatives in connection with litigation, law enforcement, or other matters under the jurisdiction of such agencies.

Information relating to professional qualifications of chaplains may be provided to civilian certification boards and committees, including, but not limited to, state and federal licensing authorities and ecclesiastical endorsing organizations.

To governmental entities or private organizations under government contract to perform random analytical research into specific aspects of military personnel management and administrative procedures.

To victims and witnesses of a crime for purposes of providing information, consistent with the requirements of the Victim and Witness Assistance Program, regarding the investigation and disposition of an offense.

To Federal agencies, their contractors and grantees, and to private organizations, such as the National Academy of Sciences, for the purposes of conducting personnel and/or health-related research in the interest of the Federal government and the public. When not considered mandatory, the names and other identifying data will be eliminated from records used for such research studies.

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of system of record notices also apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Automated records may be stored on magnetic tapes, disc, and drums. Manual records may be stored in paper file folders, microfiche or microfilm.

**RETRIEVABILITY:**

Automated records may be retrieved by name and Social Security Number. Manual records may be retrieved by name, Social Security Number, enlisted service number, or officer file number.

**SAFEGUARDS:**

Computer facilities and terminals are located in restricted areas accessible only to authorized persons that are properly screened, cleared and trained. Manual records and computer printouts are available only to authorized personnel having a need-to-know.

**RETENTION AND DISPOSAL:**

Transfer to Naval Reserve Personnel Center, New Orleans, LA 70149 six months after discharge, retirement, or death of service member. Naval Reserve Personnel Center will forward to the National Personnel Records Center, (Military Personnel Records), 9700 Page Avenue, St. Louis, MO 63132–5000. Transfer to the National Archives and Records Administration 75 years after separation of service member. [Note: An exception is made for copies of officer fitness reports, enlisted evaluations, and officer and enlisted counseling forms which may be maintained by the member's commanding officer or command for a period not to exceed five years.]

**SYSTEM MANAGER(S) AND ADDRESS:**

Commander, Navy Personnel Command, 5720 Integrity Drive, Millington, TN 38055–3130; Commanding Officers, Officers in Charge, and Heads of Department of the Navy activities. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Commander, Navy Personnel Command, 5720 Integrity Drive, Millington, TN 38055–3130; or contact the personnel officer where assigned. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.

The letter should contain full name, Social Security Number (and/or enlisted service number/officer file number), rank/rate, designator, military status, address, and signature of the requester.

The individual may visit the Navy Personnel Command, Records Review Room, Building 769, Room K615, Millington, TN for assistance with records located in that building; or the individual may visit the local activity to which attached for access to locally maintained records. Proof of identification will consist of Military Identification Card for persons having such cards, or other picture-bearing identification.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Commander, Navy Personnel Command, 5720 Integrity Drive, Millington, TN 38055–3130, or contact the personnel officer where assigned. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.

The letter should contain full name, Social Security Number (and/or enlisted service number/officer file number), rank/rate, designator, military status, address, and signature of the requester.

The individual may visit the Navy Personnel Command, Records Review Room, Building 769, Room K615, Millington, TN for assistance with records located in that building; or the individual may visit the local activity to which attached for access to locally maintained records. Proof of identification will consist of Military Identification Card for persons having such cards, or other picture-bearing identification.

**CONTESTING RECORD PROCEDURES:**

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.



**RECORD SOURCE CATEGORIES:**

Correspondence; educational institutions; federal, state, and local court documents; civilian and military investigatory reports; general correspondence concerning the individual; official records of professional qualifications; Navy Relief and American Red Cross requests for verification of status.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. 00–26259 Filed 10–12–00; 8:45 am]

BILLING CODE 5001–10–P

## DEPARTMENT OF EDUCATION

### National Center for Education Statistics (NCES); Notice of Partially Closed Meeting

**AGENCY:** U.S. Department of Education.

**ACTION:** Notice of partially closed meeting.

**SUMMARY:** This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Advisory Council on Education Statistics (ACES). Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

**DATES:** October 26–27, 2000.

**Times**

*October 26, 2000*

Full Council
9 a.m.–10:45 a.m. (open)
10:45–11:45 (closed)
11:45–2:15 p.m. (open)
Statistics Committee and Policy Committee
2:15 p.m.–5 p.m. (open).

*October 27, 2000*

Statistics Committee and Policy Committee
9 a.m.–12 noon (open)
Full Council
12 noon–2:30 p.m. (open).

*Location:* Department of Education, 1990 K Street NW, Washington, DC 20006.

**FOR FURTHER INFORMATION CONTACT:** Audrey Pendleton, National Center for Education Statistics, 1990 K Street NW, Room 9115, Washington, DC 20006.

**SUPPLEMENTARY INFORMATION:** The Advisory Council on Education Statistics (ACES) is established under section 46(c)(1) of the Education Amendments of 1974, Public Law 93–380. The Council is established to review general policies for the operation of the National Center for Education Statistics (NCES) in the Office of Educational Research and Improvement (OERI) and is responsible for advising on standards to ensure that statistics and analyses disseminated by NCES are of high quality and are not to subject to political influence. In addition, ACES is required to advise the Commissioner of NCES and the National Assessment Governing Board on technical and statistical matters related to the National Assessment of Educational Progress (NAEP).

Meetings of the Council are open to the public. Individuals who will need accommodations for a disability in order to attend the meeting (*i.e.* interpreting services, assistive listening devices, and materials in alternative format) should notify Audrey Pendleton at 202–502–7300 by no later than October 13, 2000. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities.

The proposed agenda includes the following:

- New member swearing-in
- A status report from the NCES Commissioner on major Center initiatives; including the reauthorization of NCES and ACES;
- The closed session on the agenda involves discussion about specific cost estimates for future procurements/contracts. The public disclosure of this information would be likely to significantly frustrate implementation of proposed action if conducted in open session. Such matters are protected by exemption (9)(B) of section 552b(c) of Title 5 U.S.C.
- NCES' International Program;
- Enhancing school and state participation in NAEP;

Individual meetings of two ACES Committees will focus on specific topics:

- The agenda for the Statistics Committee includes a discussion of revision of NCES statistical standards, technical issues on adult literacy surveys, and Research and Development studies.
- The agenda for the Policy Committee includes discussion of adjustments of NAEP Data, Coordination of NAEP, TIMSS–R, and PISA reports, and revision of the Integrated Postsecondary Education Data System sample frame.

Records are kept of all Council proceedings and are available for public inspection at the Office of the Executive Director, Advisory Council on Education Statistics, National Center for Education Statistics, 1990 K Street NW, Room 9100, Washington, DC 20006.

C. Kent McGuire,
*Assistant Secretary for Educational Research and Improvement.*

[FR Doc. 00–26344 Filed 10–12–00; 8:45 am]

BILLING CODE 4000–01–M

## DEPARTMENT OF ENERGY

### Special Environmental Analysis for Emergency Actions Taken in Response to the Cerro Grande Fire at the Los Alamos National Laboratory, Los Alamos, NM

**AGENCY:** National Nuclear Security Administration, DOE.

**ACTION:** Notice of availability.

**SUMMARY:** The Department of Energy (DOE) announces the availability of the Special Environmental Analysis for Actions Taken in Response to the Cerro Grande Fire at the Los Alamos National Laboratory, Los Alamos, New Mexico. The special environmental analysis (SEA) describes the impacts related to the emergency fire suppression, soil erosion and flood control actions by DOE starting in early May 2000 at the time of the Cerro Grande Fire and extending through November 2000. DOE prepared the SEA in compliance with the Council on Environmental Quality National Environmental Policy Act (NEPA) regulations regarding emergency actions. The SEA will be forwarded in October 2000 to the Los Alamos National Laboratory (LANL) to be used for implementation of the mitigation measures described in the document.

**ADDRESSES:** For copies of the SEA, further information regarding the document or activities described, or to provide comments, contact: Elizabeth Withers, NEPA Compliance Officer, U.S. Department of Energy, Los Alamos Area Office, 528 35th Street, Los Alamos, NM 87544, phone (505) 667–8690, fax (505) 665–4872. The SEA will be available under the DOE NEPA Analyses module of the DOE NEPA web site at http://tis.eh.doe.gov/nepa/.

For more information regarding activities related to the Cerro Grande Fire and the LANL Emergency Rehabilitation Team, including relevant phone numbers, visit the LANL web site at www.lanl.gov.

**FOR FURTHER INFORMATION CONTACT:** For general information on the DOE NEPA process, please contact Ms. Carol M. Borgstrom, EH–42, Director, Office of NEPA Policy and Compliance, U.S. Department of Energy, 1000 Independence Ave., SW., Washington,

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DC 20585. Ms. Borgstrom may be contacted by calling (202) 586–4600 or by leaving a message at (800) 472–2756.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Council on Environmental Quality (Council) regulation for implementing NEPA under emergency circumstances (40 CFR 1506.11) and DOE's corresponding NEPA implementing regulation (10 CFR 1021.343), DOE consulted with the Council regarding alternative NEPA compliance arrangements for emergency actions having potentially significant environmental impacts. As a result of the consultations, DOE prepared this SEA of impacts related to the emergency fire suppression, soil erosion and flood control actions by DOE starting in early May 2000 at the time of the Cerro Grande Fire and extending through November 2000. A notice of emergency DOE actions was published in the **Federal Register** on June 21, 2000, which included a brief description of contemplated actions, and their potential impacts, as both were understood at that time. The **Federal Register** notice also served as the Public Notice and Statement of Findings regarding DOE's intention to take action involving construction and other actions within floodplains and wetlands pursuant to DOE's regulations for Compliance with Floodplain/Wetlands Environmental Review Requirements (10 CFR Part 1022). DOE announced the preparation of the SEA at regular public and stakeholder meetings regarding the status of DOE's emergency actions being taken. These status meetings were held weekly in Los Alamos beginning on June 30 and extending through August 11, 2000. The meetings are now being held on a monthly basis, with the first monthly meeting held on September 15, 2000.

DOE is providing copies of the SEA to LANL stakeholders, including tribes and members of the public who have identified themselves as interested parties. DOE has also made the SEA publicly available through the Internet and by placing it in DOE and LANL reading rooms and local public libraries in: Los Alamos, Santa Fe, Española, and Albuquerque, New Mexico.

The actions covered in this SEA encompass a wide range of activities, including felling trees, igniting back fires, applying fire-retardants, removing and stabilizing contaminants, and controlling erosion and storm water. In general, DOE actions had localized or limited individual adverse impacts and were designed to protect life and property from the effects of the fire and subsequent soil erosion and surface water runoff caused by seasonally heavy rainfalls. In this respect, the actions had a significant positive cumulative impact at LANL and within the regions of influence for most resources. However, individual projects had some adverse effects, such as loss of habitat for wildlife, primarily resulting from soil and vegetation removal. The SEA does not include an analysis of the impacts that resulted from the Cerro Grande Fire itself. The fire impacts at LANL will be captured in other reports, and specifically, the Annual SWEIS Yearbook will detail the cumulative impacts of the wildfire.

**Subsequent Document Preparation**

Results of monitoring the mitigation effectiveness and the environmental effects of the emergency actions will be made available to the public through an annual mitigation tracking report. The first annual tracking report will be issued in January 2002 for the Fiscal Year beginning October 1, 2000, and ending on September 30, 2001. DOE will consider any comments received on the SEA and the subsequent documents in pursuing adaptive mitigation measures. Comments should be sent to Ms. Withers as indicated in the **ADDRESSES** section above.

Issued in Washington, DC, on October 5, 2000.

**Henry Garson,**

*NEPA Compliance Officer, Defense Programs, National Nuclear Security Administration.*

[FR Doc. 00–26332 Filed 10–12–00; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP01–26–000]**

### El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

October 6, 2000.

Take notice that on October 3, 2000, El Paso Natural Gas Company (El Paso) tendered for filing to its FERC Gas Tariff, Second Revised Volume No. 1–A, the following tariff sheets, with an effective date of November 3, 2000:

First Revised Sheet No. 309A
First Revised Sheet No. 445

El Paso states that the tariff sheets delete El Paso's pro forma Trading Partner Agreement and implement the use of the Gas Industry Standards Board's Model Trading Partner Agreement.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–26290 Filed 10–12–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–340–000]**

### Koch Gateway Pipeline Company; Notice of Technical Conference

October 6, 2000.

On June 15, 2000, Koch Gateway Pipeline Company (Kock Gateway) filed in compliance with Order No. 637. A technical conference to discuss the various issues raised by Koch's filing was held on Wednesday, September 20, 2000.

Take notice that a second technical conference to discuss the issue of segmentation on Kock's system will be held Wednesday, October 25, 2000, at 9:00 am, in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

All interested persons and Staff are permitted to attend.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–26289 Filed 10–12–00; 8:45 am]

BILLING CODE 6717–01–M



## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP01–29–000]**

### Michigan Gas Storage Company; Notice of Compliance Filing

October 6, 2000.

Take notice that on October 4, 2000, Michigan Gas Storage company (MGSCo) tendered a filing in compliance with the Commission's September 28, 2000 order in Docket No. RM96–1–016. That order stated that "pipelines seeking an exemption from the imbalance trading requirement are * * * to show why they should not be required to implement imbalance trading."

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–26291 Filed 10–12–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP01–28–000]**

### Mojave Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

October 6, 2000.

Take notice that on October 4, 2000, Mojave Pipeline Company (Mojave) tendered for filing to its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with an effective date of November 4, 2000:

First Revised Sheet No. 242
First Revised Sheet No. 506

Mojave states that the tariff sheets delete Mojave's pro forma Trading Partner Agreement and implement the use of the Gas Industry Standards Board's Model Trading Partner Agreement.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–26287 Filed 10–12–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP99–518–017]**

### PG&E Gas Transmission, Northwest Corporation; Notice of Proposed Change in FERC Gas Tariff

October 6, 2000.

Take notice that on October 3, 2000, PG&E Gas Transmission, Northwest Corporation (PG&E GTN) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A., Fourth Revised Sheet No. 7.01, to become effective October 1, 2000.

PG&E GTN states that this sheet is being filed to reflect the implementation of one negotiated rate agreement.

PG&E GTN further states that a copy of this filing has been served on PG&E GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–26288 Filed 10–12–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. PR00–9–000]**

### PG&E Texas Pipeline, L.P.; Notice of Staff Panel

October 6, 2000.

Take notice that a Staff Panel shall be convened in accordance with the Commission order[1] in the above-captioned docket to allow opportunity for written comments and for the oral presentation of views, data, and arguments regarding the fair and equitable rates to be established for transportation service under section 311 of the Natural Policy Act of 1978 on PG&E Texas Pipeline, L.P.'s system. The Staff Panel will not be a judicial or evidentiary-type hearing and there will be no cross-examination of persons presenting statements. Members participating on the Staff Panel before whom the presentations are made may ask questions. If time permits, Staff Panel members may also ask such relevant questions as are submitted to them by participants. Other procedural rules relating to the panel will be announced at the time the proceeding commences.

The Staff Panel will be held on Friday, October 13, 2000, at 10 a.m. in a room to be designated at the offices of the Federal Energy Regulatory

[1] See PG&E Texas Pipeline, L.P., 93 FERC ¶61,012 (2000).

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Commission, 888 First Street, NE., Washington, DC 20426.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–26286 Filed 10–12–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP01–27–000]**

### Southern California Gas Company v. El Paso Natural Gas Company; Notice of Complaint

October 6, 2000.

Take notice that on October 4, 2000 pursuant to Rule 206 of the Federal Energy Regulatory Commission's (Commission's) Rules of Practice and Procedure (18 CFR 385.206), Southern California Gas Company (SoCalGas) filed a Section 5 Complaint against El Paso Natural Gas Company (El Paso).

Specifically, SoCalGas requests the Commission to issue an order: (1) Finding that the SoCalGas/Topock delivery point is fully subscribed on a firm primary basis (without determining which shippers hold firm primary capacity), and was fully subscribed when capacity was awarded commencing January 1, 2000 (Open Season) and subsequently; (2) directing El Paso to cease and desist violating express orders and regulations by continuing to sell firm primary capacity at the SoCalGas/Topock delivery point since no such capacity is available and (3) directing El Paso to schedule capacity acquired during the Open Season and subsequently into the SoCalGas/Topock delivery point on a secondary basis only.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before October 25, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222) for assistance. Answers to the complaint shall also be due on or before October 25, 2000.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–26285 Filed 10–12–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ES01–1–000, et al.]**

### Central Illinois Light Company, et al.; Electric Rate and Corporate Regulation Filings

October 5, 2000.

Take notice that the following filings have been made with the Commission:

**1. Central Illinois Light Company**

[Docket No. ES01–1–000]

Take notice that on October 3, 2000, Central Illinois Light Company submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to issue, from time to time between November 1, 2000, and October 31, 2002, short-term debt obligations in an aggregate principal amount not to exceed $150 million at any one time and with final maturities of not later than October 31, 2003.

*Comment date:* October 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

**2. Edison Sault Electric Company**

[Docket No. ES01–2–000]

Take notice that on October 3, 2000, Edison Sault Electric Company submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to issue not more than $50 million of long-term and/or short-term secured and unsecured debt to its parent corporation, Wisconsin Energy Corporation and other third-party lenders, over a two-year period.

Edison Sault Electric Company also seeks a waiver of the Commission's competitive bidding and negotiated placement requirements in 18 CFR 34.2.

*Comment date:* October 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

**3. FirstEnergy Operating Companies American Transmission Systems, Inc.**

[Docket Nos. ER99–2609–005 ER99–2647–002]

Take notice that on September 29, 2000, the FirstEnergy Operating Companies (FirstEnergy) and American Transmission Systems, Inc. (ATSI), tendered for filing a notice of cancellation of FirstEnergy's Open Access Transmission Tariff, and a service agreement under which FirstEnergy becomes a customer of ATSI for network integration transmission service. FirstEnergy and ATSI state that the filing is made to implement provisions in the Stipulation and Agreement approved by FERC on March 16, 2000 in the above-referenced dockets.

FirstEnergy and ATSI state further that they have served the filing on all parties to the proceeding.

*Comment date:* October 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

**4. Ameren Services Company**

[Docket No. ER01–1–000]

Take notice that on October 2, 2000, Ameren Services Company (ASC), tendered for filing Service Agreements for Long-Term Firm Point-to-Point Transmission Services between ASC and Ameren Energy, as Agent for Ameren Services Company and Reliant Energy Services, Inc. ASC asserts that the purpose of the Agreements is to permit ASC to provide transmission service to the parties pursuant to Ameren's Open Access Transmission Tariff.

*Comment date:* October 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

**5. The Detroit Edison Company**

[Docket No. ER01–2–000]

Take notice that on October 5, 2000, The Detroit Edison Company (Detroit Edison), tendered for filing Service Agreements (Service Agreements) for Short Term Firm and Non-Firm Point-to-Point Transmission Service under the Open Access Transmission Tariff of Detroit Edison, FERC Electric Tariff No. 1. These Service Agreements are between Detroit Edison and Cinergy Services, Inc., dated as of August 29, 2000. The parties have not engaged in any transactions under the Service Agreements prior to thirty days to this filing.

Also Detroit Edison tenders for filing Service Agreements (Service Agreements) for Short-term Firm Point-to-Point Transmission Service under the Joint Open Access Transmission Tariff of Consumers Energy Company and Detroit Edison, FERC Cinergy Services, Inc., dated as of August 29, 2000.

Detroit Edison requests that the Service Agreements be made effective as rate schedules as of September 29, 2000.



The parties have not engaged in any transactions under the Service Agreements prior to thirty days to this filing.

*Comment date:* October 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

**6. The Detroit Edison Company**

[Docket No. ER01–3–000]

Take notice that on October 2, 2000, The Detroit Edison Company (Detroit Edison), tendered for filing a Service Agreement (Service Agreement) for Firm Point-to-Point Transmission Service under the Joint Open Access Transmission Tariff of Consumers Energy Company and Detroit Edison, FERC Electric Tariff No. 1. The Service Agreement is between Detroit Edison and DTE Energy Marketing, dated as of August 3, 2000.

Also Detroit Edison tenders for filing a Service Agreement (Service Agreement) for Firm Point-to-Point Transmission Service under the Open Access Transmission Tariff of Detroit Edison, FERC Electric Tariff No. 1. This Service Agreement is between Detroit Edison and DTE Energy Marketing, dated as of August 3, 2000.

The parties have not engaged in any transactions under the Service Agreements prior to thirty days to this filing. Detroit Edison requests that the Service Agreements be made effective as rate schedules as of September 5, 2000.

*Comment date:* October 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

**7. The Detroit Edison Company**

[Docket No. ER01–4–000]

Take notice that on October 2, 2000, The Detroit Edison Company (Detroit Edison), tendered for filing Service Agreements (Service Agreement) for Short Term Firm and Non-Firm Point-to-Point Transmission Service under the Open Access Transmission Tariff of Detroit Edison, FERC Electric Tariff No. 1. These Service Agreements are between Detroit Edison and Connectiv Energy Supply, dated as of July 19, 2000.

Also Detroit Edison tenders for filing a Service Agreement (Service Agreement) for Firm Point-to-Point Transmission Service under the Joint Open Access Transmission Tariff of Consumers Energy Company and Detroit Edison, FERC Electric Tariff No. 1. The Service Agreement is between Detroit Edison and Connectiv Energy Supply, Inc., dated as of July 19, 2000.

The parties have not engaged in any transactions under the Service Agreements prior to thirty days to this filing. Detroit Edison requests that the Service Agreements be made effective as rate schedules as of August 18, 2000.

*Comment date:* October 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

**8. The Detroit Edison Company**

[Docket No. ER01–5–000]

Take notice that on October 2, 2000, The Detroit Edison Company (Detroit Edison), tendered for filing Service Agreements (Service Agreements) for Short-term Firm and Non-Firm Point-to-Point Transmission Service under the Joint Open Access Transmission Tariff of Consumers Energy Company and Detroit Edison, FERC Electric Tariff No. 1. These Service Agreements are between Detroit Edison and Rainbow Energy Marketing Corporation, dated as of August 31, 2000.

Also Detroit Edison tendered for filing Service Agreements (Service Agreements) for Short Term Firm and Non-Firm Point-to-Point Transmission Service under the Open Access Transmission Tariff of Detroit Edison, FERC Electric Tariff No. 1. These Service Agreements are between Detroit Edison and Rainbow Energy, dated as of August 31, 2000.

The parties have not engaged in any transactions under the Service Agreements prior to thirty days to this filing. Detroit Edison requests that the Service Agreements be made effective as rate schedules as of September 29, 2000.

*Comment date:* October 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

**9. Puget Sound Energy, Inc.**

[Docket No. ER01–6–000]

Take notice that on October 2, 2000, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a Service Agreement for Firm Point-To-Point Transmission Service and a Service Agreement for Non-Firm Point-To-Point Transmission Service with Sacramento Municipal Utility District (SMUD) as Transmission Customer.

A copy of the filing was served upon SMUD.

*Comment date:* October 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

**10. Ameren Energy Marketing Company**

[Docket No. ER01–7–000]

Take notice that on October 2, 2000, Ameren Energy Marketing Company (AEM), pursuant to Section 205 of the Federal Power Act (FPA), 16 U.S.C. § 824d, and the market-based rate authority provided to it by the Commission, Ameren Energy Marketing Company (AEM) filed an amendment to an existing Electric Service Agreement with Soyland Power Cooperative, Inc., currently on file with the FERC.

*Comment date:* October 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

**11. Jersey Central Power & Light Company, Metropolitan Edison Company, and Pennsylvania Electric Company**

[Docket No. ER01–8–000]

Take notice that on October 2, 2000, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (individually doing business as GPU Energy), tendered for filing a Notice of Cancellation of the Service Agreement between GPU Service Corporation and Associated Power Services, Inc. (now PanCanadian Energy Services Inc.), FERC Electric Tariff, Original Volume No. 1, Service Agreement No. 35.

GPU Energy requests that cancellation be effective November 29, 2000.

*Comment date:* October 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

**12. Jersey Central Power & Light Company, Metropolitan Edison Company, and Pennsylvania Electric Company**

[Docket No. ER01–9–000]

Take notice that on October 2, 2000, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (individually doing business as GPU Energy), tendered for filing a Notice of Cancellation of the Service Agreement between GPU Service Corporation and Citizens Lehman Power Sales (now Citizens Power LLC), FERC Electric Tariff, Original Volume No. 1, Service Agreement No. 18.

GPU Energy requests that cancellation be effective November 29, 2000.

*Comment date:* October 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

**13. Jersey Central Power & Light Company, Metropolitan Edison Company, and Pennsylvania Electric Company**

[Docket No. ER01–10–000]

Take notice that on October 2, 2000, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (individually doing business as GPU Energy), tendered for filing a Notice of Cancellation of the Service Agreement between GPU Service Corporation and

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Coastal Electric Services Company, FERC Electric Tariff, Original Volume No. 1, Service Agreement No. 30.

GPU Energy requests that cancellation be effective November 29, 2000.

*Comment date:* October 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

**14. Jersey Central Power & Light Company, Metropolitan Edison Company, and Pennsylvania Electric Company**

[Docket No. ER01–11–000]

Take notice that on October 2, 2000, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (individually doing business as GPU Energy), tendered for filing a Notice of Cancellation of the Service Agreement between GPU Service Corporation and AES Power, Inc., FERC Electric Tariff, Original Volume No. 1, Service Agreement No. 39.

GPU Energy requests that cancellation be effective November 29, 2000.

*Comment date:* October 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

**15. Jersey Central Power & Light Company, Metropolitan Edison Company, and Pennsylvania Electric Company**

[Docket No. ER01–12–000]

Take notice that on October 2, 2000, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (individually doing business as GPU Energy), tendered for filing a Notice of Cancellation of the Service Agreement between GPU Service Corporation and Koch Power Services (now Koch Energy Trading, Inc.), FERC Electric Tariff, Original Volume No. 1, Service Agreement No. 26.

GPU Energy requests that cancellation be effective November 29, 2000.

*Comment date:* October 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

**16. Jersey Central Power & Light Company, Metropolitan Edison Company, and Pennsylvania Electric Company**

[Docket No. ER01–13–000]

Take notice that on October 2, 2000, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (individually doing business as GPU Energy), tendered for filing a Notice of Cancellation of the Service Agreement between GPU Service Corporation and Electric Clearinghouse, Inc., FERC Electric Tariff, Original Volume No. 1, Service Agreement No. 10.

GPU Energy requests that cancellation be effective November 29, 2000.

*Comment date:* October 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

**17. Ameren Energy Marketing Company, Union Electric Company d/b/a AmerenUE**

[Docket No. ER01–14–000]

Take notice that on October 2, 2000, Ameren Energy Marketing Company (AEM), pursuant to Section 205 of the Federal Power Act (FPA), 16 U.S.C. § 824d, and Part 35 of the Federal Energy Regulatory Commission's (FERC or Commission) Regulations issued thereunder, 18 CFR 35, tendered for filing an agreement with Union Electric Company d/b/a AmerenUE (AmerenUE) allowing for the substitution of AEM as the contracting party under certain jurisdictional agreements.

AEM seeks an effective date of September 1, 2000, for this agreement.

*Comment date:* October 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

**18. The United Illuminating Company**

[Docket No. ER01–15–000]

Take notice that on October 2, 2000, The United Illuminating Company (UI) tendered for filing an Interconnection Agreement with Quinnipiac Energy LLC.

UI requests an effective date of October 2, 2000.

UI states that a copy of this filing has been sent to Quinnipiac Energy.

*Comment date:* October 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

**19. Arizona Public Service Company**

[Docket No. ER01–31–000]

Take notice that on October 2, 2000, Arizona Public Service Company (the Company), tendered for filing an informational report on refunds of over-billed amounts to certain wholesale customers through the Company's FERC Fuel Adjustment Clause.

Copies of this filing have been served upon the affected parties as follows:

| Customer Name | APS–FPC/FERC Rate |
|---|---|
| **Schedule** | |
| Electrical District No. 3 (ED–3) | 12. |
| Wellton-Mohawk Irrigation and Drainage District (Wellton-Mohawk) | 58. |
| Electrical District No. 1 (ED–1) | 68. |
| Town of Wickenburg (Wickenburg) | 74, APS–FERC Electric Tariff Vol No. 3. |
| Southern California Edison Company (SCE) | 120. |
| City of Williams (Williams) | 192. |
| San Carlos Indian Irrigation Project (SCIIP) | 201. |
| Electrical District No. 6 (ED–6) | APS–FERC Electric Tariff Vol No. 3. |
| Electrical District No. 7 (ED–7) | APS–FERC Electric Tariff Vol No. 3. |
| Electrical District No. 8 (ED–8) | APS–FERC Electric Tariff Vol No. 3. |
| Aguila Irrigation District (AID) | APS–FERC Electric Tariff Vol No. 3. |
| McMullen Valley Water Conservation and Drainage District (MVD) | APS–FERC Electric Tariff Vol No. 3. |
| Tonopah Irrigation District (TID) | APS–FERC Electric Tariff Vol No. 3. |
| Harquahala Valley Power District (HVPD) | APS–FERC Electric Tariff Vol No. 3. |
| Buckeye Water Conservation and Drainage District (Buckeye) | APS–FERC Electric Tariff Vol No. 3. |
| Roosevelt Irrigation District (RID) | APS–FERC Electric Tariff Vol No. 3. |
| Maricopa County Municipal Water Conservation District (MCMWCD) | APS–FERC Electric Tariff Vol No. 3. |
| City of Williams (Williams) the California Public Utilities Commission and the Arizona Corporation Commission. | APS–FERC Electric Tariff Vol No. 3. |



*Comment date:* October 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraphs**

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–26283 Filed 10–12–00; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RM99–2–000]**

### Regional Transmission Organizations; Notice Providing Further Details on Procedures for Order No. 2000 Filings

October 6, 2000.

In a notice issued on July 20, 2000,[1] the Commission offered guidance on procedures for making filings in compliance with Order No. 2000[2] and the regulations promulgated by that order.[3] This notice provides further details on filing procedures in response to questions addressed to the Secretary's office.

**Timing of Filings**

Section 35.34(c) sets forth the general rule that filings are due by October 15, 2000, and section 35.34(h) establishes January 15, 2001 as the deadline for public utilities already participating in approved transmission entities.[4] Attached as an appendix to the July 20 notice was a list of the public utilities that the Commission deems to be within section 35.34(h) with a January 15, 2001 filing deadline. It has been called to the Commission's attention that some public utilities that should be subject to the January 15, 2001 filing deadline were inadvertently omitted from that appendix. This omission will not be considered controlling for compliance purposes. Any public utility required to make an Order No. 2000 compliance filing, and that satisfies the section 35.34(h) criteria,[5] may file by January 15, 2001 even if inadvertently omitted from the appendix. Any public utility required to make an Order No. 2000 compliance filing that does not meet the section 35.34(h) criteria is expected to make a filing specified by section 35.34(d) or (g) by October 15, 2000.[6]

**Docketing of Filings**

The Commission has established the new "RT" prefix for docket numbers that will be assigned to any filing made in compliance with Order No. 2000. The Commission requests that all public utilities making compliance filings required by section 35.34(c) or (h) of the regulations put the "RT" docket prefix in the docket area of their filings.

The Commission intends to assign the same docket number to all components of a single RTO proposal, including any filings made pursuant to sections 203 and 205 of the Federal Power Act and any petitions for declaratory order pursuant to section 35.34(d)(3) of the regulations. Accordingly, those filing an RTO proposal are encouraged to file it as a single package and clearly identify how the contents of the package satisfy all applicable statutory and regulatory requirements.

**Filings by Non-Jurisdictional Entities**

To the extent any non-public utility (that is not subject to Federal Power Act section 203 or 205 jurisdiction) wants to make a voluntary filing regarding how its electric transmission facilities may or may not be included in an RTO, it may do so in the following ways. If the non-public utility is participating in an RTO proposal, it may join in the RTO filing without jeopardizing its non-jurisdictional status. If the non-public utility wishes to comment on a particular RTO compliance filing, it may do so during the comment period that will be established in the notice of each compliance filing. Finally, if the non-public utility wishes to make an informational filing informing the Commission generally of its status with respect to RTO formation, it may make such a filing in Docket No. RT01–1–000.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–26292 Filed 10–12–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RM98–1–000]**

### Regulations Governing Off-the-Record Communications; Public Notice

October 6, 2000.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested off-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to

[1] Notice of Guidance for Processing Order No. 2000 Filings, 92 FERC ¶ 61,048 (2000).

[2] Regional Transmission Organizations, Order No. 2000, 65 Fed. Reg. 809 (January 6, 2000), FERC Stats. and Regs. ¶ 31,089 (1999), *order on reh'g*, Order No. 2000–A, 65 Fed. Reg. 12,088 (March 8, 2000), FERC Stats. and Regs. ¶ 31,092 (2000).

[3] 18 CFR 35.34.

[4] Because October 15, 2000 falls on a Sunday, and January 15, 2001 falls on a holiday, the filings are due by close of business on October 16, 2000, and January 16, 2001, respectively. *See* 18 CFR 385.2007(a)(2).

[5] Section 35.34(h) applies to every "public utility that owns, operates or controls facilities used for the transmission of electric energy in interstate commerce as of March 6, 2000, and that has filed with the Commission on or before March 6, 2000 to transfer operational control of its facilities to a transmission entity that has been approved or conditionally approved by the Commission on or before March 6, 2000 as being in conformance with the eleven ISO principles set forth in Order No. 888 * * *."

[6] With respect to any public utility that has filed to transfer operational control of its transmission facilities to an approved transmission entity as defined in section 35.34(h) but had not done so as of March 6, 2000, and with respect to any public utility that has made a firm commitment to participate in an RTO compliance filing that will be made by January 15, 2001, the filing due by October 15, 2000 may be brief, but should state clearly the filer's intent to participate in the future compliance filing.

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respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication should serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of exempt and prohibited off-the-record communications received in the Office of the Secretary within the preceding 14 days. The documents may be viewed on the Internet at http:/www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

| Project No. | Date | Name |
|---|---|---|
| Exempt: | | |
| 1. CP00–232–000 | 9–15–00 | Warren Geisler, M.D. |
| 2. CP00–65–000 | 9–25–00 | Clifford G. Day. |
| 3. Project No. 2146–081 | 9–25–00 | Aubry Q. Cohon. |
| 4. Project No. 1864–005 | 9–18–00 | Honorable Don Koivisto. |
| 5. Project No. 1864–005 | 9–6–00 | Richard G. Gerrits. |
| 6. Project No. 1864 | 7–28–00 | Randy Kemp. |
| 7. Project No. 1864 | 9–7–00 | Gerald and Hetty Gray. |
| 8. Project No. 1864 | 9–2–00 | Richard J. Matrello. |
| 9. Project No. 10875–001 | 9–27–00 | Stephen L. Saunders. |
| 10. Project No. 2146–081 | 9–26–00 | Steve Means.<br>Randy B. Kelley,<br>Robert W. Echols, Jr.<br>Dawson Partee.<br>Douglas M. Weems.<br>Robert Avery.<br>Bill C. Stewart. |
| 11. Project No. 2146–081 | 9–26–00 | Donna E. Graham. |
| 12. Project No. 2146–081 | 9–14–00 | Jerry and Iralene Dowdy. |
| Prohibited: | | |
| 1. Project No. 9974–043 | 9–22–00 | Kenneth J. Robillard. |

**Linwood A. Watson, Jr.,**
*Acting Secretary.*

[FR Doc. 00–26284 Filed 10–12–00; 8:45 am]
BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Western Area Power Administration

### Boulder Canyon Project—Rate Order No. WAPA–94

**AGENCY:** Western Area Power Administration, DOE.

**ACTION:** Notice of rate order.

**SUMMARY:** This action is to approve the existing Boulder Canyon Project (BCP) electric service ratesetting formula, Rate Order No. WAPA–70, through September 30, 2005, and to approve the Fiscal Year (FY) 2001 Base Charge and Rates. The existing electric service ratesetting formula and base charge and rates will expire September 30, 2000. This notice for approval of the ratesetting formula and the FY 2001 Base Charge and Rates are issued under 10 CFR part 903.

**FOR FURTHER INFORMATION CONTACT:** Mr. Maher Nasir, Rates Team Lead, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, (602) 352–2768, or by e-mail: nasir@wapa.gov.

**SUPPLEMENTARY INFORMATION:** By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary of Energy delegated: (1) The authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of the Western Area Power Administration (Western); and (2) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (FERC). In Delegation Order No. 0204–172, effective November 24, 1999, the Secretary delegated the authority to the confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary. Existing Department of Energy (DOE) procedures for public participation in electric service rate adjustments are located at 10 CFR part 903, effective September 18, 1985 (50 FR 37835). DOE procedures have been followed by Western in developing this provisional electric service ratesetting formula.

The project began with 1928 legislation approving construction of the BCP. The 1928 legislation provided for a dam to be built in the Black Canyon located on the Colorado River adjacent to the Arizona/Nevada border. Commercial power generation began in 1936 with yearly average generation of 4.5 billion kilowatthours (kWh). Its installed capacity is 2,074 megawatts (MW).

BCP power is marketed in three states; Arizona, California, and Nevada under the Hoover Power Plant Act of 1984 and following the marketing plan approved and published in the **Federal Register** on December 28, 1984. The power is marketed as long-term contingent capacity and firm energy. This capacity and firm energy are available as long as sufficient water in the reservoir allows Western to meet its delivery obligations. If sufficient water to support Contractors' capacity entitlements is not available, each Contractor's capacity entitlement is temporarily reduced. Contractors are entitled to receive 4.5 billion kWh of firm energy each year. If generation at Hoover Powerplant is less than that, Western can purchase energy to make up the shortfall at the request of individual Contractors on a pass-through cost basis.

The Boulder Canyon Project Implementation Agreement Contract No. 95–PAO–10616 requires Western, prior to October 1 of each Rate Year, to determine the next FY annual base charge and rates. The Base Charge and Rates for the first rate year and each fifth FY thereafter, shall become effective provisionally upon approval by the Deputy Secretary of Energy subject to final approval by the FERC. For all other FYs, the rate shall become effective upon approval by the Deputy Secretary of Energy.

Western will continue to provide the Contractors an annual base charge and rates by October 1 of each year using the same ratesetting formula. The base charge and rates are reviewed annually and adjusted upward or downward to assure sufficient revenues to achieve payment of all costs and financial obligations associated with the project. Each FY, Western prepares a power repayment study that includes estimates of annual revenues and expenses for the BCP including interest and capitalized costs.

Western's BCP electric service ratesetting formula was submitted to FERC for confirmation and approval on October 31, 1995. On April 19, 1996, in Docket No. EF96–5091–000 at 75 FERC ¶ 62,050, FERC issued an order confirming, approving, and placing into effect on a final basis the electric service ratesetting formula for BCP. The ratesetting formula set forth in Rate Order No. WAPA–70 was approved for a period beginning November 1, 1995, and ending September 30, 2000.

Western proposes to extend the existing ratesetting formula, and approve the proposed FY 2001 Base Charge of $47,788,574, and Rates of $0.99/kWmonth for capacity and 5.04 mills/kWh for energy, which ensures sufficient revenues to pay for the BCP project expenses, interest, and capital requirements through September 30, 2001. Increased annual expenses have contributed to the proposed annual rate adjustment.

In accordance with 10 CFR part 903, Western held a consultation and comment period. The notice of the proposed ratesetting formula and for the proposed FY 2001 Base Charge and Rates of the electric service was published in the **Federal Register** on March 10, 2000.

Following review of Western's proposal within the Department of Energy, I approved Rate Order No. WAPA–94, on an interim basis, for the Boulder Canyon Project electric service Rate Schedule BCP–F6 through September 30, 2005, and the FY 2001 Base Charge and Rates through September 30, 2001.

Dated: September 18, 2000.

**T.J. Glauthier,**
*Deputy Secretary.*

### Order Approving the Boulder Canyon Project Electric Service Ratesetting Formula and the FY 2001 Base Charge and Rates

This ratesetting formula was established under section 302(a) of the Department of Energy Organization Act (42 U.S.C. 7152(a)), through which the power marketing functions of the Department of the Interior and the Bureau of Reclamation under the Reclamation Act of 1902 (ch. 1093, 32 stat. 388), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)), were transferred to and vested in the Secretary of Energy (Secretary).

By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary delegated (1) The authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of the Western Area Power Administration (Western); and (2) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (FERC).

In Delegation Order No. 0204–172, effective November 24, 1999, the Secretary delegated the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary. Existing Department of Energy (DOE) procedures for public participation in electric service rate adjustments are located at 10 CFR part 903, effective September 18, 1985 (50 FR 37835). Procedures for approving Power Marketing Administration rates by FERC are found in 18 CFR part 300.

#### Acronyms and Definitions

As used in this rate order, the following acronyms and definitions apply:

*BCP:* Boulder Canyon Project.

*Base Charge:* The total charge paid by a Contractor for capacity and energy based on the annual revenue requirement, under section 13 of the BCPIA effective February 17, 1995. The base charge shall be composed of a capacity component and an energy component.

*BCPIA:* The Boulder Canyon Project Implementation Agreement which became effective February 17, 1995. The agreement resolved eleven rate-related issues: (1) Replacements; (2) Visitor Facilities; (3) Amendment to Regulations; (4) Multi-Project Benefits and Costs; (5) Engineering & Operating Committee (E&OC) and Coordinating Committee; (6) Billing and Payment; (7) Operating Amount and Working Capital; (8) Audits; (9) Principal Payments; (10) Annual Rate Adjustments; and (11) Uprating Credits.

*Calculated Energy Rate:* The calculated amount equal to 50 percent of the annual revenue requirement for each FY divided by the energy deemed delivered in such FY.

*Capacity Dollar:* The amount of revenue to be billed for BCP capacity sales for each FY. Such amount shall be 50 percent of the annual revenue requirement, adjusted for the annual capacity credit in accordance with section 13.9 of the BCPIA.

*Contractors:* An entity with a contract and receiving service from Western's Desert Southwest Customer Service Region. The BCP Contractors are: City of Anaheim, Arizona Power Authority, City of Azusa, City of Banning, City of Boulder City, City of Burbank, Colorado River Commission, City of Colton, City of Glendale, City of Los Angeles Department of Water & Power, Metropolitan Water District of Southern California, City of Pasadena, City of Riverside, Southern California Edison, and City of Vernon.

*DOE:* Department of Energy.

*DOE Order RA 6120.2:* An order identifying the financial reporting and rate-making procedures for the power marketing administrations.

*Energy Dollar:* The amount of revenue to be billed for BCP energy sales for each FY. Such amount shall be 50 percent of the annual revenue requirement, adjusted for the annual capacity credit in accordance with section 13.9 of the BCPIA.

*FERC:* Federal Energy Regulatory Commission.

*FY:* Fiscal Year, October 1 through September 30.

*Forecast Capacity Rate:* Equals the Capacity Dollar divided by 1,951,000 kWs.

*Forecast Energy Rate:* Equals the Energy Dollar divided by the lesser of the energy forecasted in the total master schedule or 4,501.001 million kWhs.

*Hoover Dam:* The dam on the Colorado River which forms Lake Mead.

*kW:* Kilowatt.

*kWh:* Kilowatthour.

*mills/kWh:* Mills per kilowatthour.

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*NEPA:* National Environmental Policy Act of 1969.
*OM&R:* Operation, maintenance, and replacement.
*PRS:* Power Repayment Study.
*Project Act:* The Boulder Canyon Project Act authorizing the construction of Boulder Canyon Project dated December 21, 1928 (43 U.S.C. 617, *et seq.*).
*Rates:* A forecast energy rate and a forecast capacity rate.
*Rate Year:* The next FY for which the annual revenue requirement is forecast for annual rate determination purposes in the PRS.
*Reclamation:* United States Department of the Interior, Bureau of Reclamation.
*Western:* United States Department of Energy, Western Area Power Administration.

**Effective Date**

This Rate Order No. WAPA–94 approves the existing ratesetting formula and the FY 2001 Base Charge and Rates which will take effect on October 1, 2000. The ratesetting formula will be in effect on an interim basis, pending FERC's approval of this or a substitute ratesetting formula on a final basis for a 5-year period ending September 30, 2005, or until superseded.

**Public Notice and Comment**

Western held a consultation and comment period under 10 CFR part 903. A **Federal Register** notice was published March 10, 2000, announcing Western's proposal to extend the existing ratesetting formula, and of the calculation of the FY 2001 Base Charge and Rates. The notice also announced a public information forum on April 13, 2000, and a public comment forum on May 9, 2000.

On March 30, 2000, Western met with the Contractors and again notified them of Western's intent to extend the existing ratesetting formula and presented the proposed calculation of the FY 2001 Base Charge and Rates. Western discussed in detail the FY 2001 budget and capital expenditures. This Order is for approval of the existing ratesetting formula and the calculation of the FY 2001 Base Charge and Rates.

**Project Description**

The BCP was authorized for construction by the Project Act. The Project Act provided for a dam to be built in the Black Canyon located on the Colorado River adjacent to the Arizona-Nevada border. The dam was built for the express purposes of: (1) Controlling the flooding in the lower regions of the Colorado River drainage system, (2) improving navigation of the Colorado River and its tributaries, (3) regulating the Colorado River, while providing storage and delivery of the stored water for the reclamation of public lands; and (4) generating electrical energy as a means of making the BCP a self-supporting and financially solvent undertaking.

Construction of Hoover Dam, formerly known as Boulder Dam, began in 1930. Commercial power generation began in 1936 with the first generating unit of the powerplant going into service in 1937. The Hoover Powerplant has 19 generating units and an installed capacity of 2,074 MW.

The Hoover Powerplant Act of 1984 sets forth the amounts of Hoover power to be sold beginning June 1, 1987, to the 15 Contractors located in the states of Arizona, California, and Nevada.

**Power Repayment Studies**

The BCPIA Contract No. 95–PAO–10616 requires that the amount of each annual Base Charge and Rates be reviewed annually prior to October 1 and adjusted upward or downward, and to take effect in the first billing period of the Rate Year. Each FY Western estimates BCP expenses by preparing a PRS that includes estimates for OM&R costs for the BCP to determine the annual revenue requirement for the next FY. The preparation of each FY's PRS includes adjustments from estimated to actual dollars in the previous year's PRS. Any adjustments required, whether resulting in an increase or decrease of the annual revenue requirement, are carried forward and included in the estimated revenue requirement used to calculate the next year's rate.

Each annual Base Charge pays the annual amortized portion of the United States' investment in the BCP facilities with interest and associated OM&R costs. This repayment schedule does not depend upon the power and energy made available for sale or the rate of generation each year.

**Certification of Rate**

Western's Administrator has certified that the BCP electric service ratesetting formula determining the annual Base Charge and Rates placed into effect on an interim basis is consistent with applicable laws, policies, regulations, agreements, and departmental orders and the calculation of the FY 2001 Base Charge and Rates is the lowest consistent with sound business principles.

**Discussion**

According to Reclamation law, Western must establish power rates sufficient to recover operation, maintenance, and purchase power expenses, and to repay the Federal Government's investment in generation and transmission facilities. Rates must also be set to cover interest expenses on the unpaid balance of facilities' investments, and replacements and additions, and certain non-power costs in excess of the irrigation users' ability to pay.

Western prepares an annual PRS that identifies the estimated annual revenue requirement for the next FY. In accordance with the contracts, expenses for replacements and additions are included in the annual anticipated OM&R. The existing ratesetting formula for the BCP requires that each year the Contractors pay the total estimated annual revenue requirement in return for up to 1,951,000 kWs of capacity and 4,501.001 million kWhs of energy. The capacity and energy, produced up to the above limits at the BCP, are allocated to the Contractors on a percentage basis. The existing ratesetting formula for the annual Base Charge and Rates satisfies the cost-recovery criteria set forth in DOE Order RA 6120.2.

**Statement of Revenue and Related Expenses**

The annual revenue requirement for the BCP is based upon the PRS calculations for future requirements, which will be adjusted when FY actuals are known. The following tables provide a summary of the revenues and expenses for the existing electric service ratesetting formula and also the projected revenues and expenses for the proposed 5-year electric service ratesetting formula.



BCP REVENUES AND EXPENSES, FY 1996–2000
[$1,000]

| Item | Actual | Projected | Difference |
|---|---|---|---|
| Total Revenues | $276,372 | $315,522 | |
| Sum of Prior Year's Revenue Adjustment | (4,122) | 0 | |
| Adjusted Total Revenues | 272,250 | 315,522 | ($43,272) |
| Revenue Distribution: | | | |
| O&M | 116,148 | 131,051 | (14,903) |
| Payments to States | 3,000 | 3,000 | 0 |
| Other | 20,604 | 23,201 | (2,597) |
| Uprating Payments | 58,102 | 74,699 | (16,597) |
| Replacements | 17,612 | 20,402 | (2,790) |
| Working Capital | (1,347) | 653 | (2,000) |
| Interest | 62,032 | 62,577 | (546) |
| Investment replayment | 14,185 | 13,577 | 930 |
| Prior Year Carryover | (9,878) | (13,317) | (3,439) |
| Sum of Prior Year's Expense Adjustment | (8,208) | 0 | (8,208) |
| Total Revenue Distribution | 272,250 | 315,522 | (43,272) |

BCP 5-YEAR PROJECTIONS, REVENUES AND EXPENSES
[$1,000]

| | FY 2001–2005 projections |
|---|---|
| Total Revenues | $317,809 |
| Revenue Distribution: | |
| O&M | 141,448 |
| Payments to States | 3,000 |
| Other Expense | 42,490 |
| Uprating Payments | 55,751 |
| Replacements | 9,456 |
| Working Capital | 0 |
| Interest | 57,792 |
| Investment Repayment | 9,811 |
| Carryover | (1,939) |
| Total Revenue Distribution | 317,809 |

**Basis for Rate Development**

The annual Energy Dollar and Capacity Dollar are designed to maintain a 50/50 split between revenue earned from energy sales and the capacity credit revenue adjustment to resolve the historic imbalance between revenues collected from capacity and energy. The cost to an individual BCP Contractor varies because of the differences in each BCP Contractor's entitlement.

Each Contractor is billed a monthly Base Charge comprised of: (1) An energy charge equal to the Rate Year Energy Dollar multiplied by the Contractor's firm energy percentage multiplied by its monthly energy ratio; and (2) a capacity charge equal to the Rate Year Capacity Dollar divided by 12 multiplied by the Contractor's contingent capacity percentage. The monthly Base Charge is due and payable regardless of the amount of power and energy produced by BCP. The annual Base Charge does not depend upon the amount of power and energy made available for sale.

In addition to the Contractor's monthly Base Charge, a Forecast Energy Rate and a Forecast Capacity Rate are calculated and applied to: (1) Excess energy; (2) unauthorized overruns; and (3) water pump energy.

At the end of the FY, and once the actual energy deemed delivered is known, Western determines a Calculated Energy Rate. If the actual energy deemed delivered is greater than 4,501.001 million kWhs, Western then applies the Calculated Energy Rate to each Contractor's energy deemed delivered to determine the Contractor's actual energy charge. Western then establishes a credit or debit for each Contractor based on the difference between the Contractor's Energy Dollar and the Contractor's actual energy charge. The credit or debit is then applied to the Contractor's next power bill.

**Comments**

During the public consultation and comment period, Western received 4 written comment letters on the annual rate adjustment. In addition, 5 contractor representatives commented during the May 9, 2000, public comment forum. All comments received by the end of the public consultation and comment period on June 8, 2000, that were relevant to this rate process, were reviewed and considered in preparing this rate order.

Written comments were received from:

Arizona Power Authority, AZ
Colorado River Commission, NV
Irrigation & Electrical Districts Association of Arizona, AZ
Metropolitan Water District of Southern California, CA

Comments dealt with specific cost allocation methodologies, unbundling of the Visitor Center cost components, civil service retirement costs, providing timely information to the Contractors, and commitment to maintaining the schedule for the various processes implemented under the BCPIA. All comments supported Western's efforts to reduce the Base Charge and Rates. The following is a summary of all relevant comments received and Western's responses to those comments. Comments and responses are paraphrased for brevity. Specific comments are used for clarification where necessary.

**Rate Impacting Issues**

*Comment:* A major component of the increase in revenue requirements at Hoover is associated with efforts to increase and ensure unit availability through capital investments. Can Western and Reclamation provide an estimate of the expected increase in unit availability?

*Response:* This issue of unit availability was discussed at the Engineering and Operating Committee (E&OC) meeting held May 17, 2000, in Las Vegas, NV. As an agenda item for the upcoming E&OC meeting in October 2000, Contractors are to decide, as a group, how important plant availability is to them and subsequently provide that information to Western and Reclamation as input into the decision making process related to capital investments.

*Comment:* A Contractor requested a response from Western regarding a

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Contractor proposal whereby the costs for the Buchanan Boulevard Project be allocated in proportion to the voltage of each project's/entity's transmission lines interconnected at Mead rather than allocating the total costs among Western's three projects.

*Response:* Western believes the contractor proposal is incomplete or too vague at this time to determine whether it would be a more appropriate method than Western's current allocation method. Western's current allocation of the total costs for the Buchanan Boulevard Project is allocated between Western's three projects that are interconnected at Mead Substation. Based upon this logic, approximately one-third is allocated to BCP, one-third to the Parker-Davis Project, and one-third to the Pacific Northwest-Pacific Southwest Intertie Project.

As stated during the informal stage of the rate process, Western is pursuing non-reimbursable emergency funding from the Federal Highway Administration. In the event that Western is not successful in obtaining this funding, Western will conduct a re-evaluation of the current allocation method, at which time Western would further consider the Contractor's proposal.

*Comment:* A Contractor requested that costs related to the Visitor Center and Parking Structure be accounted for as Visitor Services expense rather than regular O&M expense. The Contractors also requested a meeting to discuss various Visitor Services issues.

*Response:* A meeting was held on June 29, 2000, with Reclamation, Western, and the Contractors to discuss this issue. It was agreed by all that beginning in FY 2001, the expenses related to the Visitor Services would be accounted for as such, and not be included under regular O&M expense.

*Comment:* A Contractor expressed concern that the costs due to the FERC open access orders and additional costs to power marketing services are inappropriately charged to the existing power Contractors. The Contractors are recommending that Western and the BCP Contractors revisit the cost allocation procedures and determine a more equitable determination of allocating the costs to the projects.

*Response:* Western is currently seeking to schedule a meeting with the Contractors to discuss organizational responsibilities and how each organization within the Desert Southwest Region allocates their costs.

*Comment:* The Contractors stated they believe Western has no authority to collect civil service retirement costs in their rates.

*Response:* DOE General Counsel stated by memorandum dated July 1, 1998, the Power Marketing Administrations (PMAs) have the authority to collect, through the rates, the full costs of the retirement benefits. In addition, FERC has issued numerous orders approving the inclusion of such costs in PMA rates: *Western Area Power Administration* (Intertie Project), 87 FERC ¶ 61,346 (1999), *Southeastern Power Administration*, 86 FERC ¶ 61,195 (1999), and *Southeastern Power Administration*, 91 FERC ¶ 61,272 (2000). Under the provisions of the Boulder Canyon Project Adjustment Act, 43 U.S.C. 618–618p, all receipts from the BCP shall be paid into the Colorado River Dam Fund (CRDF) and are available for defraying the costs of operation. The total dollars associated with these costs, collected into the CRDF, under these authorities, through FY 2001 is approximately $4.9 million.

**General Issues**

*Comment:* A Contractor commented that Western and Reclamation need to work harder on cost control and containment in the future.

*Response:* Western and Reclamation have worked very diligently with the BCP Contractors under the BCPIA, and will continue to work on cost control and containment in coordination with the Contractors. This collaborative process has held total expenses to less than an average annual increase of 2 percent since FY 1994.

*Comment:* A Contractor noted the importance and need to pay attention to the change in discretionary components of the budget and not allow fixed components to "muddy the water."

*Response:* Western and Reclamation are aware of the cost components in the annual budgets that are considered discretionary items versus fixed items. The various annual processes allow us to focus on the discretionary items. However, in the future, Western will present the discretionary items separately from the fixed items, and demonstrate the impacts of both, on the annual Base Charge and Rates.

*Comment:* A Contractor emphasized its concern for rate increases, and that BCP power was three-fourths of their annual operating budget.

*Response:* Western and Reclamation are committed to continue working with the BCP Contractors in keeping increases in the Base Charge and Rates the lowest possible consistent with sound business principles.

*Comment:* A Contractor noted the need for more communications to extend beyond the various processes, among Western, Reclamation, and the Contractors to ensure common understanding of a Contractor's intent regarding questions, and the appropriate responses.

*Response:* In addition to the E&OC, the ten year operating plan, and the technical review committee processes, Western and Reclamation are open to more communications with the Contractors. Both agencies are committed to enforcing the appropriate time tables and are open to more opportunities for better communications for understanding Contractor needs during, and outside of, each process at the Contractor's request.

*Comment:* The Contractors stated the need for more timely processes. The Contractors also commented that they fully expect Western and Reclamation to resolve, within the very near future, the causes of the encumbrances by other activities, resulting in information not being made available to them due to lack of resources.

*Response:* Western and Reclamation apologize for the delay, lack of information provided, and short turn around for Contractor comment in the current ten year operating plan process. Both agencies are committed to working diligently through future annual processes, and in a timely manner, as set forth and agreed to, under Section 12 and Appendix D of the BCPIA.

*Comment:* A commentor stated that the E&OC process is "flawed" because of the continuing increase in revenue requirements for BCP, and that the E&OC has the wrong focus. Rather than justifying annual cost increases, they need to refocus on the approach to "budgeting," and hold Western and Reclamation to the goal of a 2- to 3-percent increase from year to year.

*Response:* Western and Reclamation do not agree that the E&OC process is flawed, given the accomplishments of the E&OC since February 1995. Processes were implemented that created the existing rate methodology of an annual Base Charge for the purchase of Hoover power, which is derived from the annual revenue requirement and the contractual entitlement percentages, rather than paying an annual energy and capacity rate based on projected annual hydrology. The annual ten year operating plan process was developed under the E&OC and allows for Contractor input and review of the annual plan that impacts the annual Base Charge and Rates. Each FY, a final operating plan is published with Western, Reclamation, and the Contractors agreeing to the increases in annual expenses that go forth in the annual rate process. In addition to these processes, Western and Reclamation are committed to continue working with the Contractors to mitigate the annual increases and are open to additional meetings with the Contractors. Once again, as an example of Western's and Reclamation's commitment to minimizing year to year cost increases, since 1994, BCP's total expenses have increased by less than an average of 2 percent per year through FY 2000.



*Comment:* A Contractor requests that Western commit to implementing an accounting process that identifies direct costs associated with the generation and transmission functions.

*Response:* Western is planning to implement direct charging work order numbers during the forthcoming FY.

**Environmental Compliance**

In compliance with the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4321, *et seq.*; Council on Environmental Quality Regulations (40 CFR parts 1500–1508); and DOE NEPA Regulations (10 CFR part 1021), Western has determined that this action is categorically excluded from the preparation of an environmental assessment or an environmental impact statement.

**Determination Under Executive Order 12866**

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

**Regulatory Flexibility Analysis**

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*) requires Federal agencies to perform a regulatory flexibility analysis if a final rule is likely to have a significant economic impact on a substantial number of small entities and there is a legal requirement to issue a general notice of proposed rulemaking. Western has determined that this action does not require a regulatory flexibility analysis since it is a rulemaking of particular applicability involving rates or services applicable to public property.

**Small Business Regulatory Enforcement Fairness Act**

Western has determined that this rule is exempt from congressional notification requirements under 5 U.S.C. 801 because the action is a rulemaking of particular applicability relating to rates or services and involves matters of procedure.

**Availability of Information**

Information regarding this ratesetting formula and the calculation of the FY 2001 Base Charge and Rates, including PRSs, letters, memorandums, and other supporting material made or kept by Western used to develop the provisional ratesetting formula, is available for public review in the Desert Southwest Customer Service Regional Office, Western Area Power Administration, 615 South 43rd Avenue, Phoenix, AZ 85009–5313; and in the Power Marketing Liaison Office, Room 8G–027, 1000 Independence Avenue SW., Washington, DC 20585–0001.

**Submission to Federal Energy Regulatory Commission**

The ratesetting formula and the calculation of the FY 2001 Base Charge and Rates herein confirmed, approved, and placed into effect on an interim basis, together with supporting documents, will be submitted to FERC for confirmation and approval.

**Order**

In view of the foregoing and under the authority delegated to me by the Secretary, I hereby approve on an interim basis, effective October 1, 2000, Rate Schedule BCP–F6 for electric service, and the FY 2001 Base Charge and Rates for the Boulder Canyon Project. Rate Schedule BCP–F6 will be in effect on an interim basis, pending FERC confirmation and approval or a substitute ratesetting formula on a final basis through September 30, 2005.

Dated: September 18, 2000.

**T.J. Glauthier,**

*Deputy Secretary.*

**Boulder Canyon Project; Schedule of Rates for Electric Service**

[Rate Schedule BCP–F6; (Supercedes BCP–F5)]

*Effective:* The first day of the first full billing period beginning on or after October 1, 2000, and remaining in effect through September 30, 2005, or until superseded.

*Available:* In the marketing area serviced by the Boulder Canyon Project (BCP).

*Applicable:* To power contractors served by the BCP supplied through one meter, at one point of delivery, unless otherwise provided by contract.

*Character and Conditions of Service:* Alternating current at 60 hertz, three-phase, delivered and metered at the voltages and points established by contract.

*Base Charge:* The total charge paid by a contractor for annual capacity and energy based on the annual revenue requirement. The Base Charge shall be composed of an energy component and a capacity component:

*Energy Charge:* Each Contractor shall be billed monthly an energy charge equal to the Rate Year Energy Dollar multiplied by the Contractor's firm energy percentage multiplied by the Contractor's monthly energy ratio as provided by contract.

*Capacity Charge:* Each Contractor shall be billed monthly a capacity charge equal to the Rate Year Capacity Dollar divided by 12 multiplied by the Contractor's contingent capacity percentage as provided by contract.

*Forecast Rates:*

*Energy:* Shall be equal to the Rate Year Energy Dollar divided by the lesser of the total master schedule energy or 4,501.001 million kWhs. This rate is to be applied for use of excess energy, unauthorized overruns, and water pump energy.

*Capacity:* Shall be equal to the Rate Year Capacity Dollar divided by 1,951,000 kWs, to be applied for use of unauthorized overruns.

*Calculated Energy Rate:* Within 90 days after the end of each rate year, a Calculated Energy Rate shall be calculated. If the energy deemed delivered is greater than 4,501.001 million kWhs, then the Calculated Energy Rate shall be applied to each Contractor's energy deemed delivered. A credit or debit shall be established based on the difference between the Contractor's Energy Dollar and the Contractor's actual energy charge, to be applied the following month calculated or as soon as possible thereafter.

*Lower Basin Development Fund Contribution Charge:* The contribution charge is 4.5 mills/kWh for each kWh measured or scheduled to an Arizona purchaser and 2.5 mills/kWh for each kWh measured or scheduled to a California or Nevada purchaser, except for purchased power.

*Billing for Unauthorized Overruns:* For each billing period in which there is a contract violation involving an unauthorized overrun of the contractual power obligations, such overrun shall be billed at 10 times the Forecast Energy Rate and Forecast Capacity Rate. The contribution charge shall be applied also to each kWh of overrun.

*Adjustments:* None.

[FR Doc. 00–26331 Filed 10–12–00; 8:45 am]

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**ENVIRONMENTAL PROTECTION AGENCY**

**[FRL–6884–6]**

**Agency Information Collection Activities: Proposed Collection; Comment Request; Assessing Public Opinions on Visibility Impairment Due to Air Pollution**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB): Assessing Public Opinions on Visibility Impairment due to Air Pollution (ICR number 1970.01). Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

**DATES:** Comments should be submitted on or before December 12, 2000.

**ADDRESSES:** Comments should be submitted to Mr. Rich Damberg, Office of Air Quality Planning and Standards, Mail Code 15, U.S. Environmental Protection Agency, Research Triangle Park NC 27711, email *damberg.rich@epa.gov*, phone 919–541–5592, fax 919–541–7690.

**Availability of Related Information**

A summary of the focus group process and the proposed questions can be obtained without charge by contacting Rich Damberg at the address or telephone number listed above. Be sure to include name, address, telephone number, e-mail if available, and delivery preference (mail or e-mail delivery).

**Electronic Availability**

The summary and proposed questions can also be obtained online at the Agency's Office of Air Quality Planning and Standards (OAQPS) Technology Transfer Network (TTN) under the technical area of "Office of Air and Radiation Policy and Guidance (OAR P&G), and under the heading of "General Documents" at the following web site: *http://www.epo.gov/ttn/oarpg/gener.html*. If assistance is needed in accessing the system, call the help desk at (919) 541–5384 in Research Triangle Park, NC.

**FOR FURTHER INFORMATION CONTACT:** Mr. Rich Damberg at (919) 541–5592.

**SUPPLEMENTARY INFORMATION:**

*Affected Entities:* Entities potentially affected by this action are individuals who agree to participate in the focus groups. Participation is voluntary and subjects will be appropriately compensated for their time and effort. Recruiting will be done by Abt Associates Inc., in a manner described in the abstract below.

*Title:* Assessing Public Opinions on Visibility Impairment Due to Air Pollution (EPA ICR number 1970.01).

*Abstract:* The purpose of this project is to obtain information regarding public opinions on visibility impairment. The findings will be used to inform the review of the National Ambient Air Quality Standards (NAAQS) for Particulate Matter (PM). Secondary NAAQS are established to protect against adverse effects on public welfare, and one of the welfare effects associated with airborne PM is visibility impairment. These focus groups will provide one important tool for obtaining information on people's views on discernability and acceptability of differing levels of visibility impairment. Photographic representations will be prepared for each focus group city that illustrate visibility at differing levels of pollution, and will be used along with the focus group discussion questions to elicit comment on people's views on discernability and acceptability of different levels of visibility. A contractor, Abt Associates Inc., will develop and implement the focus group discussions, including coordination of focus group facilitation. We plan to recruit subjects from six or seven U.S. metropolitan areas. Subjects will be asked to participate in a focus group discussion, which will last 2 or 2½ hours. Approximately nine to twelve subjects will be recruited for each focus group session. Participation is voluntary. Respondents will have to expend time, effort, and possibly travel expense to participate in the study. As such, we will compensate subjects for their time (and travel if necessary). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. We solicit comment on the summary of the proposed focus group project, and specifically solicit comment on the following issues:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) The quality, utility, and clarity of the information to be collected; and

(iv) Minimization of the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*Burden Statement:* The total national burden estimate for all parts of the questionnaire process is 672 hours. The burden estimates are based on participation by 12 subjects in 14 focus group discussions (2 different sessions in each selected city). We estimate that each subject will require, on average, 1 minute to refuse to participate during the phone recruiting process, and up to 4 hours to participate in the focus group (including possible travel time). Given these assumptions, the total burden for the survey in terms of participant time (672 hours) valued at $13.18 (the average hourly earnings for May 1999 according to the Bureau of Labor Statistics) is estimated to be $8,857 prior to the payment of the proposed compensation. We stress again that participation by subjects in the survey is voluntary and that subjects will be compensated for their time and effort. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: October 2, 2000.

**Henry C. Thomas,**

*Acting Director, Office of Air Quality Planning and Standards.*

[FR Doc. 00–26352 Filed 10–12–00; 8:45 am]

**BILLING CODE 6560–50–P**



**ENVIRONMENTAL PROTECTION AGENCY**

**[FRL–6884–8]**

**Agency Information Collection Activities: Proposed Collection; Comment Request; Reformulated Gasoline and Conventional Gasoline**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Reformulated Gasoline and Conventional Gasoline, (EPA ICR No. 1591.13, OMB Control No. 2060–0277, expiration date: 12–31–00). Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

**DATES:** Comments must be submitted on or before December 12, 2000.

**ADDRESSES:** Transportation and Regional Programs Division, Office of Transportation and Air Quality, Office of Air and Radiation, Mail Code 6406J, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. A paper or electronic copy of the draft ICR may be obtained without charge by contacting the person listed below.

**FOR FURTHER INFORMATION CONTACT:** James W. Caldwell, (202) 564–9303, fax: (202) 565–2085, caldwell.jim@epa.gov.

**SUPPLEMENTARY INFORMATION:**

*Affected entities:* Entities potentially affected by this action are those which produce, import, or distribute gasoline.

*Title:* Reformulated Gasoline and Conventional Gasoline: Requirements for Refiners, Oxygenate Blenders, and Importers of Gasoline; Requirements for Parties in the Gasoline Distribution Network (40 CFR part 80—subparts D, E and F), EPA ICR No. 1591.13, OMB Control No. 2060–0277, expiration date: 12–31–00.

*Abstract:* Gasoline combustion is the major source of air pollution in most urban areas. The Clean Air Act (Act) requires that gasoline dispensed in certain areas with severe air quality problems be reformulated to reduce toxic and ozone-forming (smog) emissions. The Act also requires that in the process of producing reformulated gasoline (RFG), dirty components removed in the reformulation process not be "dumped" into the remainder of the country's gasoline, known as conventional gasoline (CG). The EPA promulgated regulations at 40 CFR part 80 establishing standards for RFG and CG, as specified in the Act, and establishing mandatory reporting and recordkeeping requirements for demonstrating compliance and as an aid to enforcement. The primary requirements are to test each batch of gasoline for various properties, report the results to EPA, and demonstrate compliance with the standards on an annual basis. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

*Burden Statement:* EPA estimates the respondent population at 75 RFG refineries, 25 RFG import facilities, 25 RFG oxygenate blenders, 225 CG refineries, 50 CG import facilities, 250 pipelines and terminals, 500 truckers, 19 independent laboratories, 20 auditors, and the RFG Survey Association, Inc. The typical RFG or CG respondent will have around 100 to 130 reports per year, depending primarily on the number of batches of gasoline involved. The total number of reports is estimated at 53,170 and the total burden at 101,585 hours. While this gives an average burden per report of about two hours, about 95% of the reports have an estimated burden of one hour. At $60 per hour, the labor cost is about $6 million. Most start-up costs were incurred at the start of the program in 1995. However, there is an estimated annualized capital cost for analysis equipment of $4.8 million. Annual operating and maintenance costs are estimated at about $5 million, and annual purchase of services costs are estimated at about $13 million. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: October 4, 2000.

**Lori Stewart,**

*Acting Director, Transportation and Regional Programs Division.*

[FR Doc. 00–26354 Filed 10–12–00; 8:45 am]

**BILLING CODE 6560–50–P**

**ENVIRONMENTAL PROTECTION AGENCY**

**[ER–FRL–6611–6]**

**Environmental Impact Statements; Notice of Availability**

*Responsible Agency:* Office of Federal Activities, General Information (202) 564–7167 or www.epa.gov/oeca/ofa

Weekly receipt of Environmental Impact Statements

Filed October 02, 2000 Through October 06, 2000

Pursuant to 40 CFR 1506.9.

EIS No. 000345, FINAL EIS, COE, DE, Fenwick Island Feasibility Study, Storm Damage Reduction, Delaware Coast from Cape Henlopen to Fenwick Island, Protective Berm and Dune Construction, Community of Fenwick Island, Sussex County, DE, Due: November 13, 2000, Contact: Steve Allen (215) 656–6555.

EIS No. 000346, FINAL EIS, NPS, CA, Anacapa Island Restoration Project, Implementation, Channel Islands National Park, Ventura County, CA, Due: November 13, 2000, Contact: Alan Schmierer (415) 427–1441.

**Amended Notices**

EIS No. 000338, DRAFT EIS, STB, SD, WY, MN, Powder River Basin Expansion Project, Construction of

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New Rail Facilities, Finance Docket No. 33407 Dakota, Minnesota and Eastern Railroad, SD, WY and MN, Due: January 05, 2001, Contact: Victoria Rutson (202) 565–1545. Revision of FR notice published on 10/06/2000: CEQ Comment Date corrected from 11/20/2000 to 01/05/2001.

Dated: October 10, 2000.

**Joseph C. Montgomery,**

*Director, NEPA Compliance Division, Office of Federal Activities.*

[FR Doc. 00–26386 Filed 10–12–00; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

**[ER–FRL–6611–7]**

### Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 14, 2000 (65 FR 20157).

**Draft EISs**

ERP No. D–USN–D11030–VA Rating EC2, Marine Corps Heritage Center (MCHC) Complex, Construction and Operation at Marine Corps Base (MCB) Quantico, VA.

*Summary:* EPA expressed concern due to the loss of valuable forested habitat. EPA recommended reducing the area of deforestation by consolidating MCHC functions into multi-story buildings and creating underground and/or raised parking structures as well as reducing to a minimum the size of the area needed for demonstration operations.

**Final EISs**

ERP No. F–FHW–B40090–ME Augusta River Crossing Study, To Reduce Traffic Deficiencies within the Transportation System Serving the City of Augusta, Funding, Kennebec River, Kennebec County, ME.

*Summary:* A number of the concerns regarding analysis of alternatives and potential impacts EPA raised in its review of the draft EIS remain unaddressed in the final EIS.

ERP No. F–FHW–D40306–WV King Coal Highway Project Construction, from the vicinity of Williamson to the vicinity of Bluefield, COE Section 404 Permit, Mingo, McDowell Mercer, and Wyoming Counties, WV.

*Summary:* EPA maintains its concerns regarding the level of information provided in assessing the impacts to streams, wetlands, and community resources for the proposed 96 mile transportation corridor.

ERP No. F–FHW–J40145–UT Legacy Parkway Project, Construction from I–215 at 2100 North in Salt Lake City to I–15 and US 89 near Farmington, Funding and COE Section 404 Permit, Salt Lake and Davis Counties, UT.

*Summary:* EPA continues to have objections to the proposed action. EPA has determined that the least damaging alternative has not been selected, and the proposed Legacy Nature Preserve does not fully offset the wetland impacts. EPA is also concerned with the alternative selection process used in the FEIS, the permanence of the proposed Legacy Preserve, the accuracy and reproducibility of the traffic demand model, and the impacts of connected and reasonably foreseeable future actions.

*Adoption*—Woodrow Wilson Bridge Replacement, I–95/I–495 From West of Telegraph Road to East of MD Routes 210, City of Alexandria and Fairfax County, VA; Prince George's County, MD and DC.

*Summary:* EPA's key concerns pertain to time of year restrictions to protect fishery resources, upland disposal of dredged material, and completion of a comprehensive compensatory mitigation package.

ERP No. FS–COE–E36167–FL Central and Southern Florida Project for Flood Control and Other Purposes, Everglades National Park Modified Water Deliveries, New Information concerning Flood Mitigation to the 8.5 Square Mile Area (SMA), Implementation, South Miami, Dade County, FL.

*Summary:* EPA agreed that Alternative 6D (modified) reasonably maximized ecosystem restoration benefits when compared to the costs and social impacts.

Dated: October 10, 2000.

**Joseph C. Montgomery,**

*Director, NEPA Compliance Division, Office of Federal Activities.*

[FR Doc. 00–26387 Filed 10–12–00; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6884–7]**

### Transfer and Cross-Collateralization of Clean Water State Revolving Funds and Drinking Water State Revolving Funds

**AGENCY:** Environmental Protection Agency.

**ACTION:** Policy statement.

**SUMMARY:** Enactment of the Safe Drinking Water Act (SDWA) Amendments of 1996 and the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act of Fiscal Year 1999, (Appropriations Act) provide flexibility to States for both their drinking water and wastewater needs. The SDWA Amendments established the Drinking Water State Revolving Fund (DWSRF) and also contain a provision authorizing States to transfer funds between the DWSRF and the Clean Water State Revolving Fund (CWSRF). Congress also created additional flexibility by authorizing a form of cross-collateralization in the Appropriations Act. With proper planning, priority setting, and public disclosure, these two provisions can assist the States in maximizing their infrastructure funding programs by increasing the availability of funds where they are most needed, enhancing bond ratings, and lowering borrowing costs without increasing risks.

Since there are similarities between the two SRF programs, the Environmental Protection Agency (EPA) intends to administer the two programs in a similar manner in regard to transfers and cross-collateralization. Requirements regarding transfer and cross-collateralization of funds are contained in EPA's Interim Final Rule, Drinking Water State Revolving Funds (see 65 FR 48286). This policy establishes EPA policy regarding the use of these two provisions in funding DWSRF and CWSRF projects. It identifies the process a State must undergo to gain EPA approval for incorporating transfers and/or cross-collateralization into its SRF program.

**DATES:** This policy statement is effective October 13, 2000.

**FOR FURTHER INFORMATION CONTACT:** For technical inquiries, contact Sheila Platt, State Revolving Fund Branch, Municipal Support Division, Office of Wastewater Management (MC–0064204), U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. The telephone number is (202) 260–7376 and the e-mail address is platt.sheila@epa.gov. Copies of this document can be obtained from EPA's Office of Wastewater Management website at www.epa.gov/owm/finan.html.



**SUPPLEMENTARY INFORMATION:**

**Background**

Section 302 of the SDWA Amendments authorizes a State to transfer up to 33 percent of the amount of a fiscal year's DWSRF program capitalization grant to the CWSRF program or an equivalent amount from the CWSRF program to the DWSRF program. The Fiscal Year 1999 Appropriations Act (Public Law 105–276) authorizes cross-collateralization between the DWSRF and CWSRF programs.

EPA released a draft policy entitled "Transfer/Cross-collateralization Policy for the DWSRF and CWSRF" in June 1998 which specified the provisions that States must meet in order to gain EPA approval for incorporating transfers and cross-collateralization provisions into their programs. The draft policy has been used for the past two years for review and approval of State transfer and cross-collateralization proposals. The policy was developed with substantial review and comment from EPA Regional staff, national stakeholder organizations, and a State/EPA SRF Work Group comprised of State DWSRF managers, State CWSRF managers, and managers of State financial agencies. The only major comment received pertained to extending the September 30, 2001 sunset date for transfers. EPA will recommend to Congress that the sunset date for transfers be dropped. This policy statement includes the transfer and cross-collateralization requirements for both the DWSRF and the CWSRF programs.

Dated: October 5, 2000.

**J. Charles Fox,**

*Assistant Administrator, Office of Water.*

### Transfer and Cross-Collateralization of Clean Water State Revolving Funds and Drinking Water State Revolving Funds

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## I. Transfers

### *A. Statutory Authority*

Section 302 of the Safe Drinking Water Act (SDWA) Amendments of 1996 offers States the flexibility to transfer funds from one SRF program to the other. The transfer provision reads as follows:

Sec. 302. Transfer of Funds.

(a) In General.—Notwithstanding any other provision of law, at any time after the date 1 year after a State establishes a State loan fund pursuant to section 1452 of the Safe Drinking Water Act but prior to fiscal year 2002, a Governor of the State may—(1) reserve up to 33 percent of a capitalization grant made pursuant to such section 1452 and add the funds reserved to any funds provided to the State pursuant to section 601 of the Federal Water Pollution Control Act (33 U.S.C. 1381); and (2) reserve in any year a dollar amount up to the dollar amount that may be reserved under paragraph (1) for that year from capitalization grants made pursuant to section 601 of such Act (33 U.S.C. 1381) and add the reserved funds to any funds provided to the State pursuant to section 1452 of the Safe Drinking Water Act.

(b) REPORT.—Not later than 4 years after the date of enactment of this Act, the Administrator shall submit a report to Congress regarding the implementation of this section, together with the Administrator's recommendations, if any, for modifications or improvement.

(c) STATE MATCH.—Funds reserved pursuant to this section shall not be considered to be a State match of a capitalization grant required pursuant to section 1452 of the Safe Drinking Water Act or the Federal Water Pollution Control Act (33 U.S.C. 1251 *et seq.*).

Section 302 states that the governor of a State can reserve up to 33% of its DWSRF capitalization grant for transfer to its CWSRF or an equivalent amount from its CWSRF to its DWSRF. Therefore, a State has the flexibility to prioritize its funding where it has the greatest need.

Both the CWSRF and the DWSRF programs require that an Attorney General's opinion certifying that the SRF program is consistent with State law be submitted with each capitalization grant application. If a State receives a capitalization grant and later decides to transfer funds, the capitalization grant agreement must be amended and an Attorney General's opinion must be submitted certifying that State law permits the State to transfer funds. Transfers must be made by the Governor or by a State official acting pursuant to authorization from the Governor.

1. Authorized Time Period

Funds may be reserved and transferred only during a limited time period:

a. CWSRF or DWSRF funds may be transferred after one year has elapsed since a State establishes its DWSRF Fund (i.e., the date of the first DWSRF capitalization grant awarded to the State for projects), and may include an amount equal to the allowance associated with its fiscal year 1997 capitalization grant. For example, if a DWSRF Fund is established on October 31, 1997 with the award of a capitalization grant for project funds, the first day funds can be transferred is November 1, 1998.

b. Funds may only be transferred "prior to fiscal year 2002" (October 1, 2001).

2. Transfer Ceiling

The amount of the total DWSRF capitalization grant, including any portion awarded for set-aside activities, determines the amount of funds that can be reserved and transferred.

a. The Governor of a State may reserve an amount equal to 33% of the DWSRF capitalization grant and transfer the funds to the CWSRF.

b. The Governor may reserve funds from the CWSRF in an amount equal to no more than 33% of the DWSRF capitalization grant and transfer those funds to the DWSRF.

### *B. Transfer Flexibility*

1. Transfer Funds

Based on section 302 of the SDWA, the DWSRF capitalization grant the State is basing the transfer amount on must have been awarded prior to the transfer of any funds. Section 302 does not limit the transfer of funds to Federal capitalization grant dollars. States may

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transfer Federal capitalization grant dollars, State match, investment earnings, or principal and interest repayments. When CWSRF Federal funds are transferred, the CWSRF capitalization grant must also have been awarded prior to the transfer of funds. As part of the transfer process, States must identify in both the CWSRF and DWSRF Intended Use Plans (IUPs) that funds will be transferred, the type of funds to be transferred (Federal capitalization grant dollars, State match, investment earnings, etc.), and the effect that transfers will have on the program's ability to fund projects. States may elect to reserve the authority to transfer funds in one year, but not actually transfer those funds until a later time, but no later than fiscal year 2001 (see Table #1).

2. Timely and Expeditious Use

Reserving the authority to transfer funds at a future date is not reserving the actual cash, but is a "credit" for future transfer. Funds must still be used for project or set-aside activities during the time period prior to when the actual transfer occurs. States may then transfer other moneys present in the respective SRF at the time of the transfer.

3. Expiration of Authority to Reserve or Transfer

Funds may not be reserved or transferred after September 30, 2001.

4. Transferring on Net Basis

Moneys may be transferred between the SRF programs on a net basis provided that the 33% ceiling is maintained. Once money has been transferred, even if the donor SRF reaches the 33% limit, it may still be transferred back to the donor SRF from the receiving SRF by a subsequent transfer. Table #2 shows the effect of multiple capitalization grants of $100 each and transfers between the SRF programs.

Another example is a situation where State law does not allow State funds to be used to fund private water systems in the State's DWSRF program. In this case, the State may designate that it will transfer State match funds from the DWSRF to the CWSRF and Federal funds, equal to the State match amount, from the CWSRF to the DWSRF. Since the dollar amounts of these transfers are equal, there is no effect on the amount available to transfer. Table #3 illustrates this example.

*C. State Match, Set-asides, Administrative Ceiling and 604(b) Calculation*

Transfers do not impact the State match calculation in the capitalization grants, the set-asides calculations in the DWSRF, or the 4% administration and 604(b) calculations in the CWSRF.

1. State Match

In both SRF programs, the State match requirement is 20% of the capitalization grant. Transfers do not affect the calculation of those required amounts in either program. Section 302 of the SDWA stipulates that funds transferred under this provision cannot be considered the required State match for the capitalization grant in either SRF program. The transfer provision cannot be used to acquire State match. Transferred funds cannot be used for the purposes of securing or repaying State match bonds.

2. DWSRF Set-asides

Since set-aside ceilings in the DWSRF are calculated based on the allotment or the capitalization grant, the ceilings are not recalculated as a result of transferring funds.

3. CWSRF Administrative Ceiling and 604(b) Calculation

The 4% administrative ceiling is not calculated using transferred amounts. The calculation of the 4% is based upon the initial capitalization grant. The 604(b) funds are calculated on the allotment.

The following example illustrates the fact that a transfer will have no impact on State match, the DWSRF set-asides, the CWSRF administrative ceiling, and the CWSRF 604(b) calculation. The CWSRF capitalization grant is $10,000,000 and the State match is $2,000,000. The DWSRF capitalization grant is $10,000,000 and the State match is $2,000,000. The State has determined it will use 31% of the capitalization grant for set-aside activities. The State also decided to transfer $3,000,000 from the CWSRF to the DWSRF for additional SDWA project activities. After the transfer, the State match for each SRF program ($2,000,000) remains unchanged because the CWSRF and DWSRF State match is based upon the initial capitalization grants. The DWSRF set-aside calculation does not change ($3,100,000) because the set-asides are based upon the initial capitalization grant amount and/or the allotment. The CWSRF 4% administrative ceiling remains at $400,000 and 604(b) is still calculated at $100,000.

*D. Project Funding for Small Systems*

Transfers into or out of the DWSRF Fund could impact loan assistance for small systems that serve fewer than 10,000 persons. The SDWA requires that a State use a minimum of 15 percent of all dollars credited to the Fund to provide loan assistance to small public water systems to the extent such funds can be obligated for eligible projects of public water systems. Accordingly, 15 percent of all dollars transferred into the DWSRF Fund must also be used in accordance with the small systems provision of the SDWA.

*E. Intended Use Plan and Operating Agreement*

1. Intended Use Plan

States must develop an annual IUP for each SRF program for public review and comment that includes a description of the funds to be reserved and/or transferred and how those funds will be used. The IUPs must disclose how and why the decisions to transfer funds were made. EPA encourages States to include a discussion of wastewater and drinking water needs to show the public that the highest priorities are being funded. The IUP must provide sufficient information regarding transfers for the public to understand:

a. The total amount of authority being reserved for future transfer including the authority from previous years;

b. The total amount and type of funds being transferred during the term of the IUP;

c. The impact on the current year's Fund and set-asides; and

d. The long-term impact on the Fund.

Both CWSRF and DWSRF IUPs must be amended if a mid-year transfer is to occur that has not had prior disclosure to the public. For example, the State received its DWSRF capitalization grant in June 1998 and subsequently decides to transfer funds to its CWSRF. Because the current year IUPs did not contain information concerning transfers, the IUPs must be amended (and capitalization grants if transferring federal dollars) and distributed for public review and comment in accordance with the State procedures established for amending IUPs.

2. Operating Agreement

When a State initially decides to include the ability to transfer in its program, the Operating Agreement must be amended to include the method the State will use to transfer funds.



*F. Transferring Federal Funds and State Match Funds*

Because transfers can complicate the analysis of whether a State is complying with the proper payment schedule, binding commitments, and cross-cutting Federal authorities, the State must identify whether the transferred amount consists of dollars on which these requirements will apply or other dollars. The State must maintain sufficient procedures to ensure proper accounting for transferred dollars.

1. Payment Schedule/Grant Amendments

If a State decides to transfer Federal funds subsequent to establishing a payment schedule, a revised payment schedule will be necessary. Changes to the payment schedule will be effected through an amendment to the grant agreement.

2. Cash Draw Proportionality

Transfers of Federal capitalization dollars or State match dollars will impact cash draw proportionality. Please refer to the "Guide to Using EPA's Automated Clearing House for the Drinking Water State Revolving Fund Program" (EPA–832–B98–003) published in September 1998 for details concerning recalculating proportionality.

3. Binding Commitments

When Federal funds or State match funds are transferred from one SRF program's Fund into the other SRF program's Fund, the State must enter into binding commitments in the receiving SRF program for the transferred amount within one year after receipt of payment or, if payment has already been taken, within one year of the transfer date, in addition to the binding commitments required for its capitalization grant and State match. If funds are transferred from the CWSRF to the set-aside account in the DWSRF, the binding commitment requirement on the amount transferred will not apply. The donor SRF program will not be required to enter into binding commitments on the transferred funds.

4. Cross-cutting Federal Authorities

Cross-cutting Federal authorities apply to transferred Federal funds in the same manner as they apply to the capitalization grant funds in the receiving SRF program.

*G. Transferring Other Funds*

Since transfers do not relieve the State from complying with those requirements that apply to the amount of the capitalization grant, the State should consider transferring principal and interest repayments and investment earnings rather than transferring Federal and State match funds. Grant amendments, binding commitment requirements and cross-cutters, except for civil rights, do not apply to transferred funds consisting of repayments of principal and interest, and investment earnings. Also, cash draw proportionality will not be impacted by transfers of repayment funds and investment earnings. Please refer to the "Guide to Using EPA's Automated Clearing House for the Drinking Water State Revolving Fund Program."

*H. Reporting, Monitoring and Review*

A State must report transfers in the DWSRF Biennial Report and in the CWSRF Annual Report. The reports must identify the amount of funds transferred from one SRF program to the other and how those funds were used. Since the State must be able to track all transfers, a schedule of actual transfers must be included in the reports which can be reconciled with the schedule of expected transfers in the IUP. A State must also explain reasons that funds were not transferred in accordance with the plan described in the IUP, including the impact on the SRF programs.

The State must also report transfers in the financial statements of the SRF programs with corresponding footnotes explaining the type of funds transferred (Federal dollars, State match, principal and interest repayments, or investment earnings).

## II. Cross-Collateralization

*A. Authorization*

The Departments of Veteran Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act of Fiscal Year 1999 (Public Law 105–276) authorizes cross-collateralization between the DWSRF and the CWSRF programs. The language included in the law in regard to cross-collateralization is as follows:

* * * *Provided, That,* consistent with section 1452(g) of the Safe Drinking Water Act (42 U.S.C. 300j–12(g)), section 302 of the Safe Drinking Water Act Amendments of 1996 (Public Law 104–182) and the accompanying joint explanatory statement of the committee on conference (H. Rept. No. 104–741 to accompany S. 1316, the Safe Drinking Water Act Amendments of 1996), and notwithstanding any other provision of law, beginning in fiscal year 1999 and thereafter, States may combine the assets of State Revolving Funds (SRFs) established under section 1452 of the Safe Drinking Water Act, as amended, and title VI of the Federal Water Pollution Control Act, as amended, as security for bond issues to enhance the lending capacity of one or both SRFs, but not to acquire the State match for either program, provided that revenues from the bonds are allocated to the purposes of the Safe Drinking Water Act and the Federal Water Pollution Control Act in the same portion as the funds are used as security for the bonds * * *

*B. Purpose*

The drinking water and wastewater community has advocated cross-collateralization to increase the financing flexibility of the CWSRF and the DWSRF. For States which issue bonds, the added security provided by the strength of the CWSRF will enhance the funding capacity in the DWSRF by achieving better bond ratings. Funds from one SRF program can be used to secure the other SRF program against a default.

*C. Legislative Authority*

The CWSRF and the DWSRF programs require that an Attorney General's opinion certifying that the SRF program is consistent with State law be submitted with each capitalization grant application. If a State receives a capitalization grant and later decides to cross-collateralize, the capitalization grant agreement must be amended and an Attorney General's opinion must be submitted certifying that State law permits the State to cross-collateralize.

*D. Operating Agreement and Intended Use Plan*

When a State initially decides to include cross-collateralization in its program, the Operating Agreement must be amended to detail how cross-collateralization will be implemented. The State must annually include in the IUP for each SRF program a description of how cross-collateralization will be used, and provide the IUPs to the public for review and comment prior to submitting them to the Region as part of the capitalization grant applications. The IUPs must, at a minimum, describe:

a. the type of moneys which will be used as security;

b. how moneys will be used in the event of a default;

c. whether or not moneys used for a default in the other program will be repaid; and, if it will not be repaid, what will be the cumulative impact on the Funds.

*E. Revenues From the Bonds*

The proceeds generated by the issuance of bonds must be allocated to the purposes of the DWSRF and the CWSRF in the same proportion as the assets from the two Funds that are used as security for the bonds. States must

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demonstrate that at the time of bond issuance, the proportionality requirements have been or will be met. If a default should occur, and Fund assets from one SRF program are used for debt service in the other SRF program, the security would no longer need to be proportional.

Proportionality may be achieved at different levels of security. A State may achieve proportionality at the debt service reserve level. If the debt service reserve is the primary security and consists of 35% DWSRF funds and 65% CWSRF funds, the bond proceeds must be allocated 35% to DWSRF purposes and 65% to CWSRF purposes.

A State may also achieve proportionality by requiring that loan repayments on loans made from the CWSRF are pledged, as the primary security, only to the CWSRF bonds (or portion of a joint bond issue) and loan repayments on loans made from the DWSRF are pledged, as the primary security, only to the DWSRF bonds (or portion of a joint bond issue). If principal forgiveness is used as a subsidy for disadvantaged communities funded with bond proceeds in the DWSRF program, this option may not be used since the security would be disproportionate to the security provided by the CWSRF program.

The above are only two examples which can be used to maintain the proportionality of the security for bonds. There may be other options the State will want to explore and submit for EPA approval.

*F. State Match*

States may not combine the assets of the SRF programs as security for bond issues to acquire State match for either program. States may not use the assets of one SRF program to secure match bonds of the other SRF program.

*G. Operation of SRF Programs*

States may use, in combination, the assets of the SRF programs as security for bond issues. However, the CWSRF and DWSRF must each continue to be operated separately. States must maintain records so that, for each SRF program, separate financial statements can be compiled and separate financial audits can be conducted. The debt service reserve and interest earned thereon for the DWSRF program and the CWSRF program must each be accounted for separately. Repayments on loans in the CWSRF program must be paid to the CWSRF and repayments on loans made in the DWSRF program must be paid to the DWSRF.

Cross-collateralization does not effect the calculation of set-asides, the 4% administrative ceiling and binding commitments. Payments and cash draw proportionality may be affected if there are defaults. The CWSRF Annual Report and the DWSRF Biennial Report must describe the use of assets of the SRF programs as security for bond issues and any use of moneys from one SRF program by the other as a result of cross-collateralization.

TABLE 1.—RESERVING THE RIGHT (BANKING) TO TRANSFER IN FUTURE YEARS

| Year | DWSRF capitalization grant | Amount reserved for transfer | Banked transfer ceiling | Amount transferred |
|---|---|---|---|---|
| 1997 | $100 | $33 | $33 | $00 |
| 1998 | 100 | 33 | 66 | 00 |
| 1999 | 100 | 33 | 99 | 00 |
| 2000 | 100 | 33 | 132 | 00 |
| 2001 | 100 | 33 | 165 | 165 |
| 2002 | 100 | [1] 00 | [1] 00 | [1] 00 |
| Total | 600 | 165 | | 165 |

[1] No funds may be reserved or transferred after fiscal year 2001.

TABLE 2.—TRANSFERRING ON A NET BASIS

[In this example, the DWSRF capitalization grant in each year is $100. Therefore, the transfer ceiling is $33 for the first year, increasing to $66 in the second year and $99 in the third year, etc.]

| Year | Transaction description | Banked transfer ceiling | Transferred from CWSRF–DWSRF | Transferred from DWSRF–CWSRF | CW funds available for transfer [1] | DW funds available for transfer [1] |
|---|---|---|---|---|---|---|
| 1997 | CG Award | $33 | | | [2] $33 | [2] $332 |
| 1998 | CG Award | 66 | | | 66 | 66 |
| 1998 | Transfer | 66 | 20 | | 46 | 86 |
| 1999 | CG Award | 99 | | | 79 | 119 |
| 1999 | Transfer | 99 | | 86 | 165 | 33 |
| 1999 | Transfer | 99 | 90 | | 75 | 123 |
| 2000 | CG Award | 132 | | | 108 | 156 |
| 2000 | Transfer | 132 | | 50 | 158 | 106 |
| 2001 | CG Award | 165 | | | 191 | 139 |
| 2001 | Transfer | 165 | 191 | | 0 | 330 |
| 2002 | CG Award | 0 | | | 0 | 0 |

[1] The maximum either SRF can transfer as the result of banking and previous transfers.
[2] Transfers cannot occur until one year after the DWSRF has been established.



TABLE 3

| Year | Transaction description | Banked transfer ceiling | Transferred from CWSRF–DWSRF (Federal) | Transferred from DWSRF–CWSRF (State) | CW Funds available for transfer [1] | DW Funds available for transfer [1] |
|---|---|---|---|---|---|---|
| 1997 | CG Award | $33 | | | $33 | $33 |
| 1998 | CG Award | 66 | | | 66 | 66 |
| 1998 | Transfer | 66 | $40 | $40 | 66 | 66 |

[1] The maximum either SRF can transfer as the result of banking and previous transfers.

[FR Doc. 00–26353 Filed 10–12–00; 8:45 am]
BILLING CODE 6560–50–P

## FEDERAL COMMUNICATIONS COMMISSION

**[Report No. 2444]**

### Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings

October 10, 2000.

Petitions for Reconsideration and Clarification have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of this document is available for viewing and copying in Room CY–A257, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed by October 30, 2000. See section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions have expired.

*Subject:* Amendment of Section 73.202(b) of the Commission's Rules FM Broadcast Station Johannesburg and Edwards, California (MM Docket No. 99–239).

*Number of Petitions Filed:* 1.

*Subject:* Amendment of Part 1 of the Commission's Rules—Competitive Bidding Procedures (WT Docket No. 97–82).

*Number of Petitions Filed:* 5.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 00–26399 Filed 10–12–00; 8:45 am]
BILLING CODE 6712–01–M

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10:00 a.m. on Tuesday, October 17, 2000, to consider the following matters:

**Summary Agenda**

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Report of actions taken pursuant to authority delegated by the Board of Directors

*Memorandum and resolution re:* Final Rule—Part 308—Rules of Practice and Procedure

**Discussion Agenda**

*Memorandum and resolution re:* Proposed Rule—Part 325—Capital Maintenance—Risk-Based Capital Treatment for Claims on Securities Firms

*Memorandum and resolution re:* Joint Advance Notice of Proposed Rulemaking—Part 325—Capital Maintenance—Simplified Capital Framework Applicable to Non-Complex Institutions

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

The FDIC will provide attendees with auxiliary aids (*e.g.*, sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 416–2089 (Voice); (202) 416–2007 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: October 10, 2000.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. 00–26447 Filed 10–11–00; 10:11 am]
BILLING CODE 6714–01–M

## FEDERAL HOUSING FINANCE BOARD

**[No. 2000–N–6]**

### Federal Home Loan Bank Members Selected for Community Support Review

**AGENCY:** Federal Housing Finance Board.

**ACTION:** Notice.

**SUMMARY:** The Federal Housing Finance Board (Finance Board) is announcing the Federal Home Loan Bank (Bank) members it has selected for the 2000–01 third quarter review cycle under the Finance Board's community support requirement regulation. This notice also prescribes the deadline by which Bank members selected for review must submit Community Support Statements to the Finance Board.

**DATES:** Bank members selected for the 2000–01 third quarter review cycle under the Finance Board's community support requirement regulation must submit completed Community Support Statements to the Finance Board on or before November 27, 2000.

**ADDRESSES:** Bank members selected for the 2000–01 third quarter review cycle under the Finance Board's community support requirement regulation must submit completed Community Support Statements to the Finance Board either by regular mail at the Office of Policy, Research and Analysis, Program Assistance Division, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006, or by electronic mail at FITZGERALDE@FHFB.GOV.

**FOR FURTHER INFORMATION CONTACT:** Emma J. Fitzgerald, Program Analyst, Office of Policy, Research and Analysis, Program Assistance Division, by telephone at 202/408–2874, by electronic mail at

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FITZGERALDE@FHFB.GOV, or by regular mail at the Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006. A telecommunications device for deaf persons (TDD) is available at 202/408–2579.

**SUPPLEMENTARY INFORMATION:**

**I. Selection for Community Support Review**

Section 10(g)(1) of the Federal Home Loan Bank Act (Bank Act) requires the Finance Board to promulgate regulations establishing standards of community investment or service Bank members must meet in order to maintain access to long-term advances. *See* 12 U.S.C. 1430(g)(1). The regulations promulgated by the Finance Board must take into account factors such as the Bank member's performance under the Community Reinvestment Act of 1977 (CRA), 12 U.S.C. 2901 *et seq.*, and record of lending to first-time homebuyers. *See* 12 U.S.C. 1430(g)(2). Pursuant to the requirements of section 10(g) of the Bank Act, the Finance Board has promulgated a community support requirement regulation that establishes standards a Bank member must meet in order to maintain access to long-term advances, and review criteria the Finance Board must apply in evaluating a member's community support performance. *See* 12 CFR part 944. The regulation includes standards and criteria for the two statutory factors—CRA performance and record of lending to first-time homebuyers. 12 CFR 944.3. Only members subject to the CRA must meet the CRA standard. 12 CFR 944.3(b). All members, including those not subject to CRA, must meet the first-time homebuyer standard. 12 CFR 944.3(c).

Under the rule, the Finance Board selects approximately one-eighth of the members in each Bank district for community support review each calendar quarter. 12 CFR 944.2(a). The Finance Board will not review an institution's community support performance until it has been a Bank member for at least one year. Selection for review is not, nor should it be construed as, any indication of either the financial condition or the community support performance of the member.

Each Bank member selected for review must complete a Community Support Statement and submit it to the Finance Board by the November 27, 2000 deadline prescribed in this notice. 12 CFR 944.2(b)(1)(ii) and (c). On or before October 27, 2000, each Bank will notify the members in its district that have been selected for the 2000–01 third quarter community support review cycle that they must complete and submit to the Finance Board by the deadline a Community Support Statement. 12 CFR 944.2(b)(2)(i). The member's Bank will provide a blank Community Support Statement Form, which also is available on the Finance Board's web site: WWW.FHFB.GOV. Upon request, the member's Bank also will provide assistance in completing the Community Support Statement.

The Finance Board has selected the following members for the 2000–01 third quarter community support review cycle:

| Name | City | State |
|---|---|---|
| **Federal Home Loan Bank of Boston—District 1** | | |
| Collinsville Savings Society | Collinsville | Connecticut. |
| The Guilford Savings Bank | Guilford | Do. |
| Advest Bank and Trust Company | Hartford | Do. |
| Southington Savings Bank | Southington | Do. |
| Tolland Bank | Vernon | Do. |
| Northwest Community Bank | Winsted | Do. |
| Bar Harbor Banking and Trust Company | Bar Harbor | Maine |
| Calais Federal Savings and Loan Association | Calais | Do. |
| Camden National Bank | Camden | Do. |
| Damariscotta Bank and Trust Company | Damariscotta | Do. |
| Franklin Savings Bank | Farmington | Do. |
| Katahdin Trust Company | Patten | Do. |
| Peoples Heritage Savings Bank | Portland | Do. |
| Rockland Savings and Loan Association | Rockland | Do. |
| Coastal Bank | Westbrook | Do. |
| Abington Savings Bank | Abington | Massachusetts. |
| Athol Savings Bank | Athol | Do. |
| Boston Bank of Commerce | Boston | Do. |
| Security Federal Savings Bank | Brockton | Do. |
| Canton Institution for Savings, Bank of Canton | Canton | Do. |
| Clinton Savings Bank | Clinton | Do. |
| Danvers Savings Bank | Danvers | Do. |
| Lafayette Federal Savings Bank | Fall River | Do. |
| Falmouth Co-operative Bank | Falmouth | Do. |
| Family Federal Savings, FA | Fitchburg | Do. |
| Florence Savings Bank | Florence | Do. |
| Colonial Co-operative Bank | Gardner | Do. |
| Hingham Institution for Savings | Hingham | Do. |
| Peoples Savings Bank | Holyoke | Do. |
| Ipswich Savings Bank | Ipswich | Do. |
| Roxbury-Highland Bank | Jamaica Plain | Do. |
| Equitable Co-operative Bank | Lynn | Do. |
| Mansfield Co-operative Bank | Mansfield | Do. |
| Milford Federal Savings and Loan Association Milford | Do.. | |
| Newton South Co-operative Bank | Newton | Do. |
| Northampton Cooperative Bank | Northampton | Do. |
| Colonial Federal Savings Bank | Quincy | Do. |
| Reading Co-operative Bank | Reading | Do. |
| Southbridge Savings Bank | Southbridge | Do. |



| Name | City | State |
|---|---|---|
| Mechanics Co-operative Bank | Taunton | Do. |
| Hometown Bank, a Co-operative Bank | Webster | Do. |
| Woronoco Savings Bank | Westfield | Do. |
| South Shore Savings Bank | Weymouth | Do. |
| Bow Mills Bank and Trust | Bow | New Hampshire. |
| Citizens Bank—New Hampshire | Manchester | Do. |
| Newport Federal Savings Bank | Newport | Rhode Island. |
| First Vermont Bank and Trust Company | Brattleboro | Vermont. |
| National Bank of Middlebury | Middlebury | Do. |
| Union Bank | Morrisville | Do. |
| Northfield Savings Bank | Northfield | Do. |
| Merchants Bank | South Burlington | Do. |
| Franklin Lamoille Bank | St. Albans | Do. |
| **Federal Home Loan Bank of New York—District 2** | | |
| Audubon Savings Bank | Audubon | New Jersey. |
| Bogota Savings Bank | Bogota | Do. |
| Peoples Savings Bank | Bordentown | Do. |
| Century Savings Bank | Bridgeton | Do. |
| Colonial Bank FSB | Bridgeton | Do. |
| NVE Savings Bank | Englewood | Do. |
| Glen Rock Savings Bank | Glen Rock | Do. |
| Summit Bank | Hackensack | Do. |
| Roma Federal Savings Bank | Hamilton | Do. |
| Schuyler Savings Bank | Kearny | Do. |
| Kearny Federal Savings Bank | Kearny | Do. |
| Lincoln Park Savings and Loan Association | Lincoln Park | Do. |
| Metuchen Savings Bank | Metuchen | Do. |
| Boiling Springs Savings Bank | Rutherford | Do. |
| Gloucester County Federal Savings Bank | Sewell | Do. |
| Sturdy Savings Bank | Stone Harbor | Do. |
| South Jersey Savings and Loan Association | Turnersville | Do. |
| Penn Federal Savings Bank | West Orange | Do. |
| Woodstown National Bank and Trust Company | Woodstown | Do. |
| Evans National Bank | Angola | New York. |
| Independence Community Bank | Brooklyn | Do. |
| Elmira Savings Bank, F.S.B. | Elmira | Do. |
| Goshen Savings Bank | Goshen | Do. |
| Cattaraugus County Bank | Little Valley | Do. |
| Abacus Federal Savings Bank | New York | Do. |
| Chinatown Federal Savings Bank | New York | Do. |
| Commercial Bank of New York | New York | Do. |
| Staten Island Savings Bank | Staten Island | Do. |
| The Savings Bank of Utica | Utica | Do. |
| Wallkill Valley FS&LA | Wallkill | Do. |
| Doral Bank | Catano | Puerto Rico. |
| Oriental Bank and Trust | Hato Rey | Do. |
| **Federal Home Loan Bank of Pittsburgh—District 3** | | |
| Altoona First Savings Bank | Altoona | Pennsylvania. |
| Reeves Bank | Beaver | Do. |
| Bernville Bank, N.A. | Bernville | Do. |
| Founders' Bank | Bryn Mawr | Do. |
| Pennsylvania State Bank | Camp Hill | Do. |
| First Carnegie Deposit | Carnegie | Do. |
| Coatesville Savings Bank | Coatesville | Do. |
| Slovenian S&LA of Franklin-Conemaugh | Conemaugh | Do. |
| First National Community Bank | Dunmore | Do. |
| Halifax National Bank | Halifax | Do. |
| Peoples National Bank | Hallstead | Do. |
| Keystone Financial Bank, N.A. | Harrisburg | Do. |
| Polonia Bank | Huntingdon Valley | Do. |
| Mauch Chunk Trust Company | Jim Thorpe | Do. |
| First Summit Bank | Johnstown | Do. |
| First National Bank of McConnellsburg | McConnellsburg | Do. |
| Mifflinburg Bank and Trust Company | Mifflinburg | Do. |
| Community Banks, N.A. | Millersburg | Do. |
| Union National Community Bank | Mount Joy | Do. |
| The Muncy Bank and Trust Company | Muncy | Do. |
| First Penn Bank | Philadelphia | Do. |
| Eureka Bank | Pittsburgh | Do. |
| Iron and Glass Bank | Pittsburgh | Do. |

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| Name | City | State |
|---|---|---|
| Pittsburgh Home Savings Bank | Pittsburgh | Do. |
| Slovak Savings Bank | Pittsburgh | Do. |
| United-American Savings Bank | Pittsburgh | Do. |
| Berks County Bank | Reading | Do. |
| Merchants Bank of Pennsylvania | Shenandoah | Do. |
| Northwest Savings Bank | Warren | Do. |
| Peoples State Bank of Wyalusing | Wyalusing | Do. |
| Drovers & Mechanics Bank | York | Do. |
| York Federal Savings and Loan Association | York | Do. |
| City National Bank of West Virginia | Charleston | West Virginia. |
| Citizens Bank of Morgantown, Inc. | Morgantown | Do. |
| One Valley Bank Morgantown | Morgantown | Do. |
| First National Bank | Ronceverte | Do. |
| Advance Financial Savings Bank | Wellsburg | Do. |
| **Federal Home Loan Bank of Atlanta—District 4** | | |
| The Exchange Bank of Alabama | Altoona | Alabama. |
| Bank of Alabama | Birmingham | Do. |
| First Commercial Bank | Birmingham | Do. |
| New South Federal Savings Bank | Birmingham | Do. |
| First National Bank | Brewton | Do. |
| Central State Bank | Calera | Do. |
| Camden National Bank | Camden | Do. |
| The Peoples Bank | Clio | Do. |
| Commercial Bank of Demopolis | Demopolis | Do. |
| Southland Bank | Dothan | Do. |
| The Southern Bank Company | Gadsden | Do. |
| First National Bank of Hamilton | Hamilton | Do. |
| Headland National Bank | Headland | Do. |
| Valley National Bank | Lanett | Do. |
| First State Bank of Clay County | Lineville | Do. |
| First Citizens Bank | Luverne | Do. |
| Bank of Prattville | Prattville | Do. |
| Citizens' Bank, Inc. | Robertsdale | Do. |
| Slocomb National Bank | Slocomb | Do. |
| First Tuskegee Bank | Tuskegee | Do. |
| The Citizens Bank of Valley Head | Valley Head | Do. |
| First Liberty National Bank | Washington | DC. |
| Riggs Bank N.A. | Washington | Do. |
| Pointe Bank | Boca Raton | Florida |
| BankUnited, FSB | Coral Gables | Do. |
| BankAtlantic | Fort Lauderdale | Do. |
| Natbank N.A | Hollywood | Do. |
| American Bank and Trust of Polk County | Lake Wales | Do. |
| Florida First Bank | Lakeland | Do. |
| Eagle National Bank of Miami | Miami | Do. |
| Kislak National Bank | Miami Lakes | Do. |
| Metro Savings Bank, FSB | Orlando | Do. |
| First Federal Bank of North Florida | Palatka | Do. |
| Bay Bank and Trust Company | Panama City | Do. |
| UniBank | Pinecrest | Do. |
| Sarasota Bank | Sarasota | Do. |
| Capital City Bank | Tallahassee | Do. |
| Bay Financial Savings Bank, F.S.B | Tampa | Do. |
| City First Bank | Tampa | Do. |
| Columbia Bank | Tampa | Do. |
| Manufacturers Bank of Florida | Tampa | Do. |
| Republic Security Bank | West Palm Beach | Do. |
| Federal Trust Bank | Winter Park | Do. |
| Bank of Alapaha | Alapaha | Georgia |
| The Summit National Bank | Atlanta | Do. |
| Georgia Bank and Trust Company of Augusta | Augusta | Do. |
| The First Bank of Brunswick | Brunswick | Do. |
| First Georgia Bank, F.S.B | Brunswick | Do. |
| Bank of Canton | Canton | Do. |
| White County Bank | Cleveland | Do. |
| Newton Federal Savings and Loan Association | Covington | Do. |
| Hardwick Bank and Trust Company | Dalton | Do. |
| Southeastern Bank | Darien | Do. |
| First National Bank of Coffee County | Douglas | Do. |
| Elberton Federal Savings and Loan Association | Elberton | Do. |
| Farmers and Merchants Bank | Eatonton | Do. |
| Fairburn Banking Company | Fairburn | Do. |



| Name | City | State |
|---|---|---|
| Citizens Union Bank | Greensboro | Do. |
| The Coastal Bank | Hinesville | Do. |
| Crescent Bank and Trust Company | Jasper | Do. |
| Peoples Bank | Lavonia | Do. |
| Embry National Bank | Lawrenceville | Do. |
| Pineland State Bank | Metter | Do. |
| First National Bank of the South | Milledgeville | Do. |
| Gateway Bank and Trust | Ringgold | Do. |
| First Floyd Bank | Rome | Do. |
| Farmers and Merchants Bank | Statesboro | Do. |
| Spivey State Bank | Swainsboro | Do. |
| Thomaston Federal Savings Bank | Thomaston | Do. |
| Commercial Bank | Thomasville | Do. |
| Tucker Federal Bank | Tucker | Do. |
| First Federal Savings and Loan | Valdosta | Do. |
| Citizens Bank | Warrenton | Do. |
| Severn Savings Bank, FSB | Annapolis | Maryland. |
| Advance Bank | Baltimore | Do. |
| Baltimore American Savings Bank, FSB | Baltimore | Do. |
| Baltimore County Savings Bank, F.S.B | Baltimore | Do. |
| Bohemian American FS&LA | Baltimore | Do. |
| Fraternity Federal Savings and Loan | Baltimore | Do. |
| Hamilton Federal Savings and Loan Association | Baltimore | Do. |
| Leeds Federal Savings Bank | Baltimore | Do. |
| Madison and Bradford FS&LA | Baltimore | Do. |
| Saint Casimirs Savings Bank | Baltimore | Do. |
| Presidential Bank, FSB | Bethesda | Do. |
| Peoples Bank of Kent County | Chestertown | Do. |
| The Talbot Bank of Easton | Easton | Do. |
| Peoples Bank of Elkton | Elkton | Do. |
| The Bank of Fruitland | Fruitland | Do. |
| Eastern Savings Bank, FSB | Hunt Valley | Do. |
| Wyman Park FS&LA | Lutherville | Do. |
| Key Bank and Trust | Owings Mills | Do. |
| Enterprise Federal Savings Bank | Oxon Hill | Do. |
| Valley Bank of Maryland | Pikesville | Do. |
| American Bank | Rockville | Do. |
| Wilmington Trust FSB | Salisbury | Do. |
| First Shore FS&LA | Salisbury | Do. |
| Sykesville Federal Savings Association | Sykesville | Do. |
| Provident Bank of Maryland | Towson | Do. |
| Ashburton Federal Savings & Loan Association | Westminster | Do. |
| Equitable Federal Savings Bank | Wheaton | Do. |
| Home Savings Bank, SSB of Eden | Eden | North Carolina. |
| Gaston Federal Bank | Gastonia | Do. |
| High Point Bank and Trust Company | High Point | Do. |
| The Community Bank | Pilot Mountain | Do. |
| Roanoke Valley Savings Bank, SSB | Roanoke Rapids | Do. |
| Centura Bank | Rocky Mount | Do. |
| First Savings Bank of Moore County | Southern Pines | Do. |
| Piedmont Federal Savings & Loan Association | Winston-Salem | Do. |
| Perpetual Bank, FSB | Anderson | South Carolina |
| First Palmetto Savings Bank | Camden | Do. |
| Spratt Savings and Loan Association | Chester | Do. |
| Peoples Federal Savings & Loan | Conway | Do. |
| Greenville National Bank | Greenville | Do. |
| Heritage Federal Bank | Laurens | Do. |
| Plantation Federal Savings Bank, Inc. | Pawleys Island | Do. |
| Woodruff Federal Savings and Loan | Woodruff | Do. |
| Shore Bank | Accomac | Virginia |
| Virginia Commerce Bank | Arlington | Do. |
| Bedford Federal Savings Bank | Bedford | Do. |
| Fredericksburg Savings Bank | Fredericksburg | Do. |
| First and Citizens Bank | Monterey | Do. |
| Farmers&MerchantsBank—Eastern Shore | Onley | Do. |
| First Federal Savings Bank of Virginia | Petersburg | Do. |
| Southwest Virginia Savings Bank, FSB | Roanoke | Do. |
| Community Bank | Staunton | Do. |
| Southside Bank | Tappahannock | Do. |
| **Federal Home Loan Bank of Cincinnati—District 5** | | |
| Kentucky Home Bank, Inc. | Bardstown | Kentucky. |
| Bank of Clarkson | Clarkson | Do. |

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| Name | City | State |
|---|---|---|
| Clinton Bank | Clinton | Do. |
| Citizens Federal Savings and Loan Association | Covington | Do. |
| Heritage Community Bank | Danville | Do. |
| South Central Savings Bank, F.S.B | Edmonton | Do. |
| The Peoples Bank of Fleming County | Flemingsburg | Do. |
| State National Bank of Frankfort | Frankfort | Do. |
| Fredonia Valley Bank | Fredonia | Do. |
| First Southern National Bank—Garrard County | Lancaster | Do. |
| Citizens Bank & Trust Company of Grayson Co | Leitchfield | Do. |
| Bank of the Bluegrass and Trust Company | Lexington | Do. |
| Peoples Security Bank | Louisa | Do. |
| First Capital Bank of Kentucky | Louisville | Do. |
| First FS&LA of Morehead | Morehead | Do. |
| Commonwealth Bank, F.S.B | Mt. Sterling | Do. |
| Mount Sterling National Bank | Mt. Sterling | Do. |
| Traditional Bank, Inc | Mt. Sterling | Do. |
| Peoples Bank of Tompkinsville | Tompkinsville | Do. |
| Farmers National Bank | Walton | Do. |
| Belmont Savings Bank | Bellaire | Ohio. |
| Citizen's National Bank | Bluffton | Do. |
| Brookville Building and Savings Association | Brookville | Do. |
| First FS&LA of Bucyrus | Bucyrus | Do. |
| First Federal Savings and Loan Association | Centerburg | Do. |
| Columbia Savings Bank | Cincinnati | Do. |
| Franklin Savings and Loan Company | Cincinnati | Do. |
| Market Bank | Cincinnati | Do. |
| New Foundation Loan and Building Company | Cincinnati | Do. |
| Warsaw Federal Savings and Loan Association | Cincinnati | Do. |
| Charter One Bank, F.S.B | Cleveland | Do. |
| Third FS&LA of Cleveland | Cleveland | Do. |
| The Cortland Savings and Banking Company | Cortland | Do. |
| Heartland Bank | Croton | Do. |
| United Midwest Savings Bank | DeGraff | Do. |
| Hicksville Building Loan and Savings Bank | Hicksville | Do. |
| Merchants National Bank | Hillsboro | Do. |
| NCB Savings Bank, FSB | Hillsboro | Do. |
| Home Savings Bank | Kent | Do. |
| Home S&L Company of Kenton, Ohio | Kenton | Do. |
| Kenwood Savings Bank | Kenwood | Do. |
| First FS&LA of Lakewood | Lakewood | Do. |
| Fairfield Federal Savings & Loan Association | Lancaster | Do. |
| First National Bank | Lebanon | Do. |
| Leesburg Federal Savings Bank | Leesburg | Do. |
| The First-Knox National Bank of Mount Vernon | Mount Vernon | Do. |
| New Carlisle Federal Savings Bank | New Carlisle | Do. |
| Park National Bank | Newark | Do. |
| First Savings Bank | Norwood | Do. |
| The Oakwood Deposit Bank Company | Oakwood | Do. |
| The Citizens Savings Bank Company | Pemberville | Do. |
| Third Savings and Loan Company | Piqua | Do. |
| American Savings Bank | Portsmouth | Do. |
| Home City Federal Savings Bank | Springfield | Do. |
| Belmont National Bank | St. Clairsville | Do. |
| Steel Valley Bank NA | Tiltonsville | Do. |
| Perpetual Federal Savings Bank | Urbana | Do. |
| First FS&LA of Warren | Warren | Do. |
| First Federal Savings Bank | Washington C.H | Do. |
| Liberty Savings Bank, F.S.B | Wilmington | Do. |
| North Valley Bank | Zanesville | Do. |
| Farmers & Merchants Bank | Adamsville | Tennessee. |
| Bank of Alamo | Alamo | Do. |
| Peoples Bank | Barretville | Do. |
| First South Credit Union | Bartlett | Do. |
| Bank of Belfast | Belfast | Do. |
| Bank of Crockett | Bells | Do. |
| First Bank of Polk County | Copperhill | Do. |
| Decatur County Bank | Decaturville | Do. |
| First Independent Bank | Gallatin | Do. |
| Trust One Bank | Germantown | Do. |
| Andrew Johnson Bank | Greeneville | Do. |
| Chester County Bank | Henderson | Do. |
| Lewis County Bank | Hohenwald | Do. |
| The Bank of Jackson | Jackson | Do. |
| People's Community Bank | Johnson City | Do. |



| Name | City | State |
|---|---|---|
| Wilson Bank and Trust | Lebanon | Do. |
| First National Bank of the Cumberlands | Livingston | Do. |
| Citizens Bank | New Tazewell | Do. |
| Newport Federal Savings & Loan Association | Newport | Do. |
| Citizens National Bank | Sevierville | Do. |
| **Federal Home Loan Bank of Indianapolis—District 6** | | |
| Independent Federal Credit Union | Anderson | Indiana. |
| Boonville Federal Savings Bank | Boonville | Do. |
| First State Bank | Brazil | Do. |
| Riddell National Bank | Brazil | Do. |
| Union Savings and Loan Association | Connersville | Do. |
| Union FS&LA | Crawfordsville | Do. |
| First Federal Savings Bank | Evansville | Do. |
| Citizens Savings Bank of Frankfort | Frankfort | Do. |
| Pacesetter Bank of Hartford City | Hartford City | Do. |
| MetroBank | Indanapolis | Do. |
| Indiana Corp. Federal Credit Union | Indanapolis | Do. |
| Kentland Federal Savings and Loan Association | Kentland | Do. |
| The LaPorte Savings Bank | LaPorte | Do. |
| Logansport Savings Bank, FSB | Logansport | Do. |
| Home Bank, S.B | Martinsville | Do. |
| Peoples Bank SB | Munster | Do. |
| Farmers State Bank | New Ross | Do. |
| First Bank Richmond, S.B | Richmond | Do. |
| Mid-Southern Savings Bank, FSB | Salem | Do. |
| Owen County State Bank | Spencer | Do. |
| Grant County State Bank | Swayzee | Do. |
| First State Bank, Southwest Indiana | Tell City | Do. |
| Liberty Savings Bank, FSB | Whiting | Do. |
| Homestead Savings Bank, FSB | Albion | Michigan. |
| Commercial Bank | Alma | Do. |
| Paramount Bank | Bingham Farms | Do. |
| Fidelity Bank | Birmingham | Do. |
| Tri County Bank | Brown City | Do. |
| Branch County FS&LA | Coldwater | Do. |
| Select Bank | Grand Rapids | Do. |
| Peoples State Bank | Hamtramck | Do. |
| Union Bank | Lake Odessa | Do. |
| Marshall Savings Bank, FSB | Marshall | Do. |
| Peoples State Bank of Munising | Munising | Do. |
| New Buffalo Savings Bank | New Buffalo | Do. |
| Thumb National Bank and Trust Company | Pigeon | Do. |
| Citizens First Savings Bank | Port Huron | Do. |
| LaSalle Federal Savings Bank | St. Joseph | Do. |
| First National Bank of Three Rivers | Three Rivers | Do. |
| First National Bank of Wakefield | Wakefield | Do. |
| **Federal Home Loan Bank of Chicago—District 7** | | |
| First Community Bank and Trust | Beecher | Illinois. |
| First State Bank of Beecher City | Beecher City | Do. |
| Greater Chicago Bank | Bellwood | Do. |
| First National Bank and Trust Company | Carbondale | Do. |
| The First National Bank in Carlyle | Carlyle | Do. |
| Centralia Savings Bank | Centralia | Do. |
| BankChampaign, N.A | Champaign | Do. |
| Community Savings Bank | Chicago | Do. |
| Illinois Service FS&LA | Chicago | Do. |
| Labe Bank | Chicago | Do. |
| Mid Town Bank & Trust Company of Chicago | Chicago | Do. |
| Preferred Savings Bank | Chicago | Do. |
| Pulaski Savings Bank | Chicago | Do. |
| NAB Bank | Chicago | Do. |
| North Federal Savings Bank | Chicago | Do. |
| Oak Bank | Chicago | Do. |
| South Central Bank and Trust Company | Chicago | Do. |
| Washington Federal Bank for Savings | Chicago | Do. |
| Family Federal Savings of Illinois | Cicero | Do. |
| West Town Savings Bank | Cicero | Do. |
| The John Warner Bank | Clinton | Do. |
| Home FS & LA of Elgin | Elgin | Do. |
| The Elizabeth State Bank | Elizabeth | Do. |

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| Name | City | State |
|---|---|---|
| Flora Bank and Trust | Flora | Do. |
| Community Bank Wheaton/Glen Ellyn | Glen Ellyn | Do. |
| Liberty Federal Bank | Hinsdale | Do. |
| Illinois State Bank of Lake in the Hills | Lake in the Hills | Do. |
| Heritage National Bank | Lawrenceville | Do. |
| Fairfield Savings Bank, F.S.B | Long Grove | Do. |
| First State Bank of Mason City | Mason City | Do. |
| Mazon State Bank | Mazon | Do. |
| McHenry Savings Bank | McHenry | Do. |
| City National Bank | Metropolis | Do. |
| First National Bank | Moline | Do. |
| Marquette Bank Monmouth | Monmouth | Do. |
| Wabash Savings Bank | Mt Carmel | Do. |
| The Farmers Bank of Mt. Pulaski | Mt. Pulaski | Do. |
| Regency Savings Bank, FSB | Naperville | Do. |
| Superior Bank FSB | Oak Brook Terrace | Do. |
| BankFinancial, FSB | Olympia Fields | Do. |
| Pekin Savings Bank | Pekin | Do. |
| Herget National Bank | Pekin | Do. |
| Peru Federal Savings Bank | Peru | Do. |
| National Bank of Petersburg | Petersburg | Do. |
| Citizens State Bank of Shipman | Shipman | Do. |
| Farmers State Bank of Somonauk | Somonauk | Do. |
| Town and Country Bank of Springfield | Springfield | Do. |
| Marine Bank, Springfield | Springfield | Do. |
| Tremont Savings Bank | Tremont | Do. |
| Banner Banks | Birnamwood | Wisconsin. |
| Community First Bank | Boscobel | Do. |
| North Shore Bank, FSB | Brookfield | Do. |
| Dorchester State Bank | Dorchester | Do. |
| Mid America Bank | Footville | Do. |
| Premier Bank | Fort Atkinson | Do. |
| Capital Bank | Green Bay | Do. |
| Greenleaf Wayside Bank | Greenleaf | Do. |
| Hustisford State Bank | Hustisford | Do. |
| Union State Bank | Kewaunee | Do. |
| Bank of Lake Mills | Lake Mills | Do. |
| Bank of Little Chute | Little Chute | Do. |
| Rural American Bank—Luck | Luck | Do. |
| AnchorBank, S.S.B | Madison | Do. |
| Associated Bank South Central | Madison | Do. |
| Home Savings Bank | Madison | Do. |
| Bremer Bank | Menomonie | Do. |
| The Peoples State Bank | Mazomanie | Do. |
| Middleton Community Bank | Middleton | Do. |
| First Community Bank | Milton | Do. |
| Milton Savings Bank | Milton | Do. |
| Mutual Savings Bank | Milwaukee | Do. |
| West Pointe Bank | Oshkosh | Do. |
| Wisconsin State Bank | Random Lake | Do. |
| The Reedsburg Bank | Reedsburg | Do. |
| Dairy State Bank | Rice Lake | Do. |
| Community Business Bank | Sauk City | Do. |
| PyraMax Bank, S.S.B | South Milwaukee | Do. |
| Baylake Bank | Sturgeon Bay | Do. |
| Superior Savings Bank | Superior | Do. |
| Farmers & Merchants Bank | Tomah | Do. |
| Bank of Waunakee | Waunakee | Do. |
| Maritime Savings Bank | West Allis | Do. |
| West Bend Savings Bank | West Bend | Do. |
| The First Citizens State Bank of Whitewater | Whitewater | Do. |

**Federal Home Loan Bank of Des Moines—District 8**

| | | |
|---|---|---|
| Raccoon Valley State Bank | Adel | Iowa. |
| Peoples State Bank | Albia | Do. |
| Community Bank | Alton | Do. |
| Bank Altoona | Altoona | Do. |
| First National Bank of Ames | Ames | Do. |
| Farmers & Traders Savings Bank | Bancroft | Do. |
| Chelsea Savings Bank | Belle Plaine | Do. |
| Bennett State Bank | Bennett | Do. |
| Boone Bank & Trust Company | Boone | Do. |
| Prairie State Bank | Brunsville | Do. |



| Name | City | State |
|---|---|---|
| Guaranty Bank and Trust Company | Cedar Rapids | Do. |
| Cherokee State Bank | Cherokee | Do. |
| First State Bank | Conrad | Do. |
| Dubuque Bank and Trust Company | Dubuque | Do. |
| Exchange State Bank | Exira | Do. |
| First Federal Savings Bank of Iowa | Fort Dodge | Do. |
| Gibson Savings Bank | Gibson | Do. |
| Mills County State Bank | Glenwood | Do. |
| Security State Bank | Guttenburg | Do. |
| Farmers Savings Bank | Halbur | Do. |
| Farmers State Bank | Hawarden | Do. |
| First State Bank | Hawarden | Do. |
| Humboldt Trust & Savings Bank | Humboldt | Do. |
| State Central Bank | Keokuk | Do. |
| Heritage Bank | Marion | Do. |
| F&M Bank—Iowa Central | Marshalltown | Do. |
| Security State Bank | Red Oak | Do. |
| Lincoln Savings Bank | Reinbeck | Do. |
| Sibley State Bank | Sibley | Do. |
| Security State Bank | Stuart | Do. |
| First State Bank | Sumner | Do. |
| Farmers Savings Bank & Trust | Vinton | Do. |
| Webster City Federal Savings Bank | Webster City | Do. |
| Community State Bank | West Branch | Do. |
| Citizens State Bank | Wyoming | Do. |
| Farmers State Bank of Adams | Adams | Minnesota. |
| Bremer Bank, NA | Alexandria | Do. |
| State Bank of Aurora | Aurora | Do. |
| State Bank of Bellingham | Bellingham | Do. |
| Star Bank, NA | Bertha | Do. |
| Farmers & Merchants State Bank | Blooming Prairie | Do. |
| First National Bank | Blue Earth | Do. |
| Canton State Bank | Canton | Do. |
| First National Bank of Deer River | Deer River | Do. |
| The First National Bank of Deerwood | Deerwood | Do. |
| State Bank of Kimball | Kimball | Do. |
| Lake Elmo Bank | Lake Elmo | Do. |
| First National Bank Le Center | Le Center | Do. |
| First State Bank of LeRoy | LeRoy | Do. |
| Community Federal Savings & Loan Association | Little Falls | Do. |
| Prairie State Bank | Milan | Do. |
| Peoples National Bank | Mora | Do. |
| First Federal Savings Bank | Morris | Do. |
| Community National Bank | North Branch | Do. |
| Northwoods Bank of Minnesota, fsb | Park Rapids | Do. |
| Pine City State Bank | Pine City | Do. |
| Prior Lake State Bank | Prior Lake | Do. |
| Minnesota Valley Bank | Redwood Falls | Do. |
| First Independent Bank | Russell | Do. |
| United Prairie Bank | Spicer | Do. |
| First National Bank | Thief River Falls | Do. |
| State Bank of Tower | Tower | Do. |
| Security State Bank of Wanamingo | Wanamingo | Do. |
| Winona National and Savings Bank | Winona | Do. |
| Belgrade State Bank | Belgrade | Missouri. |
| Ozark Mountain Bank | Branson | Do. |
| O'Bannon Banking Company | Buffalo | Do. |
| First National Bank | Camdenton | Do. |
| Horizon State Bank | Cameron | Do. |
| Bank 21 | Carrollton | Do. |
| State Bank of Missouri | Concordia | Do. |
| Eminence Security Bank | Emminence | Do. |
| Rockwood Bank | Eureka | Do. |
| Peoples Bank of Fordland | Fordland | Do. |
| Allen Bank and Trust Company | Harrisonville | Do. |
| Sun Security Bank of Mid-America | Holts Summit | Do. |
| Jonesburg State Bank | Jonesburg | Do. |
| Blue Ridge Bank and Trust Company | Kansas City | Do. |
| Missouri Bank and Trust of Kansas City | Kansas City | Do. |
| Kearney Commercial Bank | Kearney | Do. |
| Neosho Savings and Loan Association | Neosho | Do. |
| Bank of New Madrid | New Madrid | Do. |
| Charter 1 Bank | Owensville | Do. |
| Ozark Bank | Ozark | Do. |

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| Name | City | State |
|---|---|---|
| Progressive Ozark Bank, fsb | Salem | Do. |
| First National Bank of Sarcoxie | Sarcoxie | Do. |
| Security Bank and Trust Company | Scott City | Do. |
| Community State Bank | Shelbina | Do. |
| Central West End Bank, A FSB | St. Louis | Do. |
| Missouri State Bank and Trust Company | St. Louis | Do. |
| South Side National Bank in St. Louis | St. Louis | Do. |
| Security Bank of Pulaski County | St. Robert | Do. |
| Community Bank, NA | Summersville | Do. |
| Peoples Bank and Trust Company | Troy | Do. |
| The Bank of Urbana | Urbana | Do. |
| The Missouri Bank | Warrenton | Do. |
| Farmers and Merchants Bank of Wright City | Wright City | Do. |
| First State Bank of North Dakota | Arthur | North Dakota. |
| First National Bank | Bowbells | Do. |
| Security State Bank of North Dakota | Hannaford | Do. |
| The Goose River Bank | Mayville | Do. |
| The First State Bank of Munich | Munich | Do. |
| Liberty State Bank | Powers Lake | Do. |
| Farmers & Merchants Bank of Valley City | Valley City | Do. |
| Dakota Heritage State Bank | Chancellor | South Dakota. |
| The First Western Bank Custer | Custer | Do. |
| Valley Bank, N.A | Elk Point | Do. |
| Reliabank Dakota | Estelline | Do. |
| Campbell County Bank, Inc | Herreid | Do. |
| Bank of Hoven | Hoven | Do. |
| First State Bank of Miller | Miller | Do. |
| CorTrust Bank | Mitchell | Do. |
| American State Bank | Oldham | Do. |
| American State Bank of Pierre | Pierre | Do. |
| Farmers and Merchants State Bank | Plankinton | Do. |
| First PREMIER Bank | Sioux Falls | Do. |
| First Western Bank Sturgis | Sturgis | Do. |
| Commercial State Bank | Wagner | Do. |
| First Western Bank Wall | Wall | Do. |

**Federal Home Loan Bank of Dallas—District 9**

| | | |
|---|---|---|
| Elk Horn Bank and Trust Company | Arkadelphia | Arkansas. |
| The Union Bank of Bryant | Bryant | Do. |
| First National Bank of Howard County | Dierks | Do. |
| Merchants & Farmers Bank | Dumas | Do. |
| Planters and Merchants Bank | Gillett | Do. |
| Calhoun County Bank | Hampton | Do. |
| Community First Bank | Harrison | Do. |
| The Cleburne County Bank | Heber Springs | Do. |
| One Bank & Trust | Little Rock | Do. |
| Pinnacle Bank | Little Rock | Do. |
| Pulaski Bank and Trust Company | Little Rock | Do. |
| Farmers Bank and Trust Company | Magnolia | Do. |
| Union Bank and Trust Company | Monticello | Do. |
| Newport Federal Savings Bank | Newport | Do. |
| Priority Bank | Ozark | Do. |
| First Community Bank | Pocahontas | Do. |
| United Bank | Springdale | Do. |
| Farmers and Merchants Bank | Stuttgart | Do. |
| First Federal Savings and Loan Association | Texarkana | Do. |
| Abbeville Building and Loan | Abbeville | Louisiana. |
| The Business Bank of Baton Rouge | Baton Rouge | Do. |
| Community Trust Bank | Choudrant | Do. |
| Crowley Building and Loan Association | Crowley | Do. |
| United Community Bank | Gonzales | Do. |
| Central Progressive Bank | Hammond | Do. |
| The Union Bank | Marksville | Do. |
| Horizons Bank | Monroe | Do. |
| IberiaBank | New Iberia | Do. |
| Fidelity Homestead Association | New Orleans | Do. |
| Crescent Bank and Trust | New Orleans | Do. |
| Citizens Bank and Trust Company | Plaquemine | Do. |
| Iberville Building & Loan Association | Plaquemine | Do. |
| Bank of Zachary | Zachary | Do. |
| Magnolia State Bank | Bay Springs | Mississippi. |
| The Valley Bank | Greenwood | Do. |
| The First National Bank of South Mississippi | Hattiesburg | Do. |



| Name | City | State |
|---|---|---|
| Grand Bank for Savings, FSB | Hattiesburg | Do. |
| OmniBank | Jackson | Do. |
| Trustmark National Bank | Jackson | Do. |
| Citizens Bank and Trust Company | Louisville | Do. |
| BankFirst Financial | Macon | Do. |
| Bank of New Albany | New Albany | Do. |
| Bank of Okalona | Okalona | Do. |
| First Federal Savings and Loan | Pascagoula | Do. |
| Bank of Yazoo City | Yazoo City | Do. |
| Union Savings Bank | Albuquerque | New Mexico. |
| Western Bank of Clovis | Clovis | Do. |
| Gallup Federal Savings Bank | Gallup | Do. |
| Citizens Bank of Las Cruces | Las Cruces | Do. |
| The Bank of Las Vegas | Las Vegas | Do. |
| Bank of Santa Fe | Santa Fe | Do. |
| Century Bank, FSB | Santa Fe | Do. |
| Franklin Bank, SSB | Austin | Texas. |
| IBM Texas Employees Federal Credit Union | Austin | Do. |
| Lamar Bank | Beaumont | Do. |
| First National Bank of Beeville | Beeville | Do. |
| Bonham State Bank | Bonham | Do. |
| First State Bank of North Texas | Cedar Hill | Do. |
| Shelby Savings Bank; ssb | Center | Do. |
| Chappell Hill Bank | Chappell Hill | Do. |
| Charter Bank Northwest | Corpus Christi | Do. |
| Nueces National Bank | Corpus Christi | Do. |
| First Security State Bank | Cranfils Gap | Do. |
| First National Bank of Crockett | Crockett | Do. |
| First National Bank in Dalhart | Dalhart | Do. |
| Inwood National Bank | Dallas | Do. |
| First Command Bank | Fort Worth | Do. |
| Pioneer National Bank | Fredericksburg | Do. |
| First State Bank | Happy | Do. |
| Henderson Savings & Loan | Henderson | Do. |
| Coastal Bank ssb | Houston | Do. |
| Community State Bank | Houston | Do. |
| First Heights Bank, fsb | Houston | Do. |
| Guardian Savings and Loan Association | Houston | Do. |
| Heritage Bank | Houston | Do. |
| Riverway Bank | Houston | Do. |
| State Bank | La Grange | Do. |
| Bayshore National Bank of La Porte | La Porte | Do. |
| Spring Hill State Bank | Longview | Do. |
| Angelina Savings Bank, FSB | Lufkin | Do. |
| Guaranty Bank | Mount Pleasant | Do. |
| Olympic Savings Association | Refugio | Do. |
| First State Bank | Stratford | Do. |
| Alliance Bank | Sulphur Springs | Do. |
| First State Bank | Temple | Do. |
| First FS&LA of Tyler | Tyler | Do. |
| First National Bank of Weatherford | Weatherford | Do. |
| Horizon Capital Bank | Webster | Do. |

**Federal Home Loan Bank of Topeka—District 10**

| | | |
|---|---|---|
| Colorado Central Credit Union | Arvada | Colorado. |
| Valley Bank and Trust | Brighton | Do. |
| Farmers State Bank of Calhan | Calhan | Do. |
| First National Bank of Canon City | Canon City | Do. |
| Bank West | Castle Rock | Do. |
| Castle Rock Bank | Castle Rock | Do. |
| FirstBank Colorado Springs | Colardo Springs | Do. |
| The First National Bank of Durango | Durango | Do. |
| Colorado Federal Savings Bank | Englewood | Do. |
| The First National Bank of Flagler | Flagler | Do. |
| Morgan Federal Bank | Fort Morgan | Do. |
| Colorado East Bank and Trust | Lamar | Do. |
| First National Bank in Lamar | Lamar | Do. |
| First National Bank of Anthony | Anthony | Kansas. |
| Valley State Bank | Atchison | Do. |
| Peoples Exchange Bank | Belleville | Do. |
| Guaranty State Bank and Trust Company | Beloit | Do. |
| Beverly State Bank | Beverly | Do. |
| Caldwell State Bank | Caldwell | Do. |

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| Name | City | State |
|---|---|---|
| Elk State Bank | Clyde | Do. |
| Citizens National Bank | Fort Scott | Do. |
| Central Bank and Trust Company | Hutchinson | Do. |
| Inter-State FS&LA of Kansas City | Kansas City | Do. |
| State Bank of Kingman | Kingman | Do. |
| Citizens Savings and Loan Association, F.S.B | Leavenworth | Do. |
| First Savings Bank F.S.B | Manhattan | Do. |
| First State Bank | Norton | Do. |
| First FS&LA of Olathe | Olathe | Do. |
| First Option Bank | Osawatomie | Do. |
| The Roxbury Bank | Roxbury | Do. |
| The Columbian Bank and Trust Company | Topeka | Do. |
| First National Bank of Ainsworth | Ainsworth | Nebraska. |
| Community Bank | Alma | Do. |
| First Western Bank, NA | Atkinson | Do. |
| Auburn State Bank | Auburn | Do. |
| Bruning State Bank | Bruning | Do. |
| Butte State Bank | Butte | Do. |
| South Central State Bank | Campbell | Do. |
| First National Bank of Columbus | Columbus | Do. |
| City Bank and Trust Company | Crete | Do. |
| Cedar Security Bank | Fordyce | Do. |
| Fort Calhoun State Bank | Fort Calhoun | Do. |
| Security Home Bank | Malmo | Do. |
| Commercial Federal Bank | Omaha | Do. |
| Security National Bank of Omaha | Omaha | Do. |
| Pinnacle Bank | Papillion | Do. |
| First National Bank of Stromsburg | Stromsburg | Do. |
| Lancaster County Bank | Waverly | Do. |
| Bank of Yutan | Yutan | Do. |
| First National Bank & Trust Company | Ardmore | Oklahoma. |
| Citizens Security Bank and Trust Company | Bixby | Do. |
| Chickasha Bank and Trust Company | Chickasha | Do. |
| First National Bank and Trust in Clinton | Clinton | Do. |
| First Bank of Haskell | Haskell | Do. |
| Republic Bank of Norman | Norman | Do. |
| Lakeside State Bank | Oologah | Do. |
| First National Bank of Oklahoma | Ponca | Do. |
| First American Bank and Trust Company | Purcell | Do. |
| Sulphur Community Bank | Sulphur | Do. |
| Arvest State Bank | Tulsa | Do. |

**Federal Home Loan Bank of San Francisco—District 11**

| | | |
|---|---|---|
| Bank of Stockdale | Bakersfield | California. |
| California National Bank | Beverly Hills | Do. |
| Pacific Business Bank | Carson | Do. |
| Valley Independent Bank | El Centro | Do. |
| Xerox Federal Credit Union | El Segundo | Do. |
| North County Bank | Escondido | Do. |
| Fremont Bank | Fremont | Do. |
| Fidelity Federal Bank, FSB | Glendale | Do. |
| American First Federal Credit Union | La Habra | Do. |
| International City Bank, N.A | Long Beach | Do. |
| First Commerce Bank | Los Angeles | Do. |
| National Bank of California | Los Angeles | Do. |
| Preferred Bank | Los Angeles | Do. |
| U.S. Trust Company, N.A | Los Angeles | Do. |
| Modesto Commerce Bank | Modesto | Do. |
| Vintage Bank | Napa | Do. |
| Oak Valley Community Bank | Oakdale | Do. |
| United Labor Bank, FSB | Oakland | Do. |
| World Savings and Loan Association | Oakland | Do. |
| Palm Desert National Bank | Palm Desert | Do. |
| Mid-Peninsula Bank | Palo Alto | Do. |
| PFF Bank and Trust | Pomona | Do. |
| Commercial Capital Bank, FSB | Riverside | Do. |
| Summit State Bank | Rohnert Park | Do. |
| Malaga Bank, ssb | Rolling Hills Estate | Do. |
| California Savings & Loan, a F.A | San Francisco | Do. |
| Commercial Bank of San Francisco | San Francisco | Do. |
| Westcoast Savings and Loan Association | Seal Beach | Do. |
| Monterey Bank Bay | Watsonville | Do. |



| Name | City | State |
|---|---|---|
| **Federal Home Loan Bank of Seattle—District 12** | | |
| Northrim Bank | Anchorage | Alaska. |
| Northern Schools FCU | Fairbanks | Do. |
| Bank Pacific | Agana | Guam. |
| Finance Factors, Limited | Honolulu | Hawaii. |
| Hawaii State Federal Credit Union | Honolulu | Do. |
| The Bank of Commerce | Idaho Falls | Idaho. |
| Ireland Bank | Malad | Do. |
| First Federal Savings Bank of Twin Falls | Twin Falls | Do. |
| United Banks, N.A. | Absarokee | Montana. |
| Pioneer Federal Savings and Loan Association | Dillon | Do. |
| Pacific Continental Bank | Eugene | Oregon. |
| First FS&LA of McMinnville | McMinnville | Do. |
| Albina Community Bank | Portland | Do. |
| Community First | Prineville | Do. |
| Bank of American Fork | American Fork | Utah. |
| Home Credit Bank | Salt Lake City | Do. |
| TransWest Credit Union | Salt Lake City | Do. |
| Heritage Savings Bank | St. George | Do. |
| Horizon Bank, a Savings Bank | Bellingham | Washington. |
| Commercial Bank of Everett | Everett | Do. |
| Bank of Fairfield | Fairfield | Do. |
| Timberland Savings Bank | Hoquiam | Do. |
| Kitsap Bank | Port Orchard | Do. |
| Puyallup Valley Bank | Puyallup | Do. |
| First Savings Bank of Renton | Renton | Do. |
| HomeStreet | Seattle | Do. |
| Washington First International Bank | Seattle | Do. |
| Bank of Star Valley | Afton | Wyoming. |
| Wyoming Bank & Trust Company, N.A | Buffalo | Do. |
| Pinnacle Bank | Cody | Do. |
| Oregon Trail Bank | Guernsey | Do. |
| First National Bank and Trust | Powell | Do. |
| First State Bank of Thermopolis | Thermopolis | Do. |
| First National Bank, Torrington | Torrington | Do. |
| Pinnacle Bank, Wyoming | Torrington | Do. |

To encourage the submission of public comments on the community support performance of Bank members, on or before October 27, 2000, each Bank will notify its Advisory Council and nonprofit housing developers, community groups, and other interested parties in its district of the members selected for community support review in the 2000–01 third quarter review cycle. 12 CFR 944.2(b)(2)(ii). In reviewing a member for community support compliance, the Finance Board will consider any public comments it has received concerning the member. 12 CFR 944.2(d). To ensure consideration by the Finance Board, comments concerning the community support performance of members selected for the 2000–01 third quarter review cycle must be delivered to the Finance Board on or before the November 27, 2000 deadline for submission of Community Support Statements.

By the Federal Housing Finance Board.

**James L. Bothwell,**

*Managing Director.*

[FR Doc. 00–25651 Filed 10–12–00; 8:45 am]

BILLING CODE 6725–01–P

## FEDERAL RESERVE SYSTEM

### Government in the Sunshine Meeting Notice

**TIME AND DATE:** 10 a.m., Wednesday, October 18, 2000.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW, Washington, DC 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Lynn S. Fox, Assistant to the Board; 202–452–3204.

**SUPPLEMENTARY INFORMATION:** You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: October 11, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00–26460 Filed 10–11–00; 11:28 am]

BILLING CODE 6210–01–P

## FEDERAL TRADE COMMISSION

### Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. § 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section

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7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

| Transaction No. | Acquiring | Acquired | Entities |
|---|---|---|---|
| **Transactions Granted Early Termination—08/07/2000** | | | |
| 20004239 | Advanced Energy Industries, Inc | Dr. Ray R. Dils | Sekidenko, Inc. |
| 20004266 | HealthCentral.com | Drug Emporium, Inc. | Drug Emporium, Inc. |
| 20004267 | Andersen Consulting LLP | Henry E. Asher | eData.com, Inc. |
| 20004283 | Wilbur-Ellis Company | Don & Irene Gragnani | Helm Fertilizers, Inc. |
| 20004284 | Caxton Global Investments Limited | Buffets, Inc. | Buffets, Inc. |
| 20004285 | American United Insurance Company. | CNL Financial Corporation | CNL Financial Corporation |
| 20004290 | CyberSource Corporation | PaylinX Corporation | PaylinX Corporation |
| 20004291 | Cypress Semiconductor Corporation | Silicon Light Machines | Silicon Light Machines |
| 20004292 | Halpern Denny Fund II, L.P | F. Andrew Welcher | Jackson Oil Products Company, Inc. |
| 20004296 | UnitedHealth Group Incorporated | Familymeds Group, Inc. | Resources Recovery, Inc.<br>Familymeds Group, Inc. |
| 20004301 | Quanta Services, Inc | James & Laura Woods | Woods Electrical Co., Inc.<br>Woods Network Services, Inc. |
| 20004302 | Key Components, LLC | Acme Electric Corporation | Acme Electric Corporation |
| 20004303 | Commerce One, Inc. | AppNet, Inc. | AppNet, Inc. |
| 20004304 | Kenneth R. Thomson | Physicians World Communications Group. | Physicians World Communications Group |
| 20004305 | Warburg, Pincus, Equity Partners, L.P. | The Cobalt Group | The Cobalt Group |
| 20004310 | Sidney B. DeBoer | Terry L. Schulte | Terry Schulte Automotive, Inc. |
| 20004312 | American Home Products Corporation. | Aventis | Aventis Pharamaceuticals Products, Inc.<br>Rhone-Poulenc Rorer Inc. |
| 20004315 | United Auto Group, Inc | Kevin Rinke | Rinke Cadillac Co.<br>The Rinke Pontiac-GMC Company |
| 20004319 | Elisabeth Badinter | Saatchi & Saatchi plc | Saatchi & Saatchi plc |
| 20004320 | Cordiant Communications Group plc | Lighthouse Global Network, Inc. | Lighthouse Global Network, Inc. |
| 20004324 | Jon M. Huntsman | Rohm and Haas Company | Rohm and Haas Company |
| 20004325 | GTCR Fund VII, L.P | Schubert Family Trust | National Alarm Computer Center, Inc. |
| **Transactions Granted Early Termination—08/08/2000** | | | |
| 20004222 | Deutsche Bank | AlphaBlox Corporation | AlphaBlox Corporation |
| 20004205 | Metris Companies Inc | Popular, Inc | Banco Popular North America |
| **Transactions Granted Early Termination—08/09/2000** | | | |
| 20004118 | Land O' Lakes, Inc | ConAgra, Inc | Beatrice Group, Inc. |
| 20004120 | Kyle W. Mussman | Marie Balitsos | BCK/Rivgam, L.L.C. |
| 20004145 | Rogers Group, Inc | Hanson PLC | Hanson Aggregates East, Inc. |
| 20004146 | Hanson PLC | Rogers Group, Inc | Rogers Group, Inc. |
| 20004168 | First Union Corporation | Gabriel Communications, Inc | Gabriel Communications, Inc. |
| 20004201 | Invensys plc | John E. Conley | Cactus Integration Group, LLC |
| 20004204 | Summer M. Redstone | Raycom Media, Inc | Raycom America, Inc. |
| 20004223 | Provident Financial Group, Inc | Bank One Corporation | Banc One Capital Holdings Corp.,<br>Banc One Capital Funding<br>Banc One Neighborhood, Banc One Captial Markets |
| 20004225 | America Online | TiVo Inc | TiVo Inc. |
| 20004311 | General Motors Corporation | FINOVA Capital Corporation | FINOVA Capital Corporation |
| 20004363 | Jerome H. Kern | AT&T Corporation | On Command Corporation |
| **Transactions Granted Early Termination—08/10/2000** | | | |
| 20004260 | Gramercy Communications Partners (Cayman), L.P. | Z-Tel Technologies, Inc | Z-Tel Technologies, Inc. |
| 20004313 | UBS AG | Paine Webber Group, Inc | Paine Webber Group, Inc. |
| **Transactions Granted Early Termination—08/11/2000** | | | |
| 20004227 | Gramercy Communications Partners, L.P. | Charles M. Piluso | North American Telecommunications Corporation. |
| 20004234 | Team Health Holdings, LLC | Laidlaw Inc | EmCare Holdings, Inc. |
| 20004331 | VS&A Communications Partners III, L.P. | Gilbert Global Equity partners, L.P | Ionex Telecommunications, Inc. |



| Transaction No. | Acquiring | Acquired | Entities |
|---|---|---|---|
| 20004341 | Ron W. Arder, Jr | Flextronics International Ltd | Flextronics International Ltd. |
| 20004342 | Flextronics International Ltd | Ron W. Arder, Jr | Lightning Manufacturing Solutions Texas, L.L.C. |
| 20004343 | Frank J. Dotzler | Flextronics International Ltd | Flextronics International Ltd. |
| 20004344 | Flextronics International Ltd | Frank J. Dotzler | Lightning Manufacturing Solutions Texas, L.L.C. |
| 20004351 | Flextronics International Ltd | Lightning Metal Specialties, Inc | Lightning Metal Specialties, Inc. |
| 20004358 | Teradyne, Inc. a Massachusetts Corporation. | Robert S. Herring, Sr | Herco Technology Incorporated.<br>Perception Laminates, Inc. |
| 20004499 | Hilite Holdings L.L.C | Northern Stamping, Inc | Northern Stamping, Inc. |
| 20004308 | Lloyd J. Baretz | National Data Corporation | C-Care, Inc. d/b/a The MARS Group<br>EE&C Financial Services, Inc. H.O.P.E. Enterprises Group, Inc. National Data Corporation PhyServ Solutions, Inc. Professional Medical Recovery Services, Inc. |
| 20004354 | TNT Post Group N.V. | G3 World Mail B.V.i.o | G3 World Mail B.V.i.o. |
| **Transactions Granted Early Termination—08/15/2000** | | | |
| 20003988 | Stephen J. Luczo | VERITAS Software Corporation | VERITAS Software Corporation |
| 20004132 | Premdor Inc | General Electric Company | Wing Industries, Inc. |
| 20004164 | H Group Holding, Inc | Novartis AG | Novartis AG |
| 20004176 | Asworth Corporation | Novartis AG | Novartis AG |
| 20004206 | Carl C. Icahn | VISX, Inc | VISX, Inc. |
| 20004213 | Wells Fargo & Company | Life Time Fitness, Inc. | Life Time Fitness, Inc. |
| 20004228 | Clear Channel Broadcasting, Inc | Sunburst Media, L.P. | Sunburst Media, L.P. |
| 20004253 | Lehman Brothers Blount Investment SPV LLC. | Robin A. Peterson | Fabtek, Inc. |
| 20004255 | Hitachi, Ltd | Elpida Memory (USA) Inc. | Elipda Memory (USA) Inc. |
| 20004256 | NEC Corporation | Elpida Memory (USA) Inc. | Elpida Memory (USA) Inc. |
| 20004257 | J.H. Whitney IV, L.P | MetroPCS, Inc. | MetroPCS, Inc. |
| 20004258 | The Chase Manhattan Corporation | MetroPCS, Inc. | MetroPCS, Inc. |
| 20004269 | Dassault Systems, S.A | Spatial Technology Inc. | Spatial Components, LLC. |
| 20004271 | Ford Motor Company | Vastera, Inc | Vastera, Inc. |
| 20004288 | Mediacom Communications Corporation. | Illinet Communications, L.L.C. | Illini Cable Holding, Inc.<br>Illini Cablevision of Illinois, Inc.<br>Illini Communications of Central Illinois, LLC. |
| 20004289 | BP Amoco p.l.c | Century Partners-Idaho Limited Partnership. | IGI Resources, Inc. |
| 20004299 | Alltel Corporation | Alltel Corporation | Florida RSA #1B (Naples) Limited Partnership. |
| 20004306 | John R. Eckel, Jr | N.V. Koninklijke Nederlandsche Petroleum Maatschappij. | N.V. Koninklijke Nederlandsche Petroleum Maatschappij |
| 20004314 | PowerGen plc | Ameren Corp. | Electric Energy, Inc. |
| 20004317 | DLJ Merchant Banking Partners II, L.P. | Insilco Holding Co | Great Lake, Inc., Steel Parts Corporation.<br>Insilco Corporation.<br>Thermal Components, Inc., Thermal Transfer Products, Ltd. |
| 20004318 | Paul M. Montrone | Bayberry Trust | Northern Lights Cable, Inc.<br>Prestolite Wire Corporation.<br>Prestolite Wire Pacific Rim, PTE, Ltd. |
| 20004337 | Flextronics International Ltd | Chatham Technologies, Inc | Chatham Technologies, Inc. |
| 20004425 | Rhodia | ChiRex Inc | ChiRex Inc. |
| 20004445 | General Electric Company | Dominion Resources, Inc | First Source Financial LLP. |
| **Transactions Granted Early Termination—08/16/2000** | | | |
| 20004190 | J.P. Morgan & Co. Incorporated | RiskMetrics Group, Inc. (The) | RiskMetrics Group, Inc. (The). |
| 20004240 | Tosco Corporation | BP Amoco p.l.c | BP Exploration & Oil Inc.<br>BP Oil Pipeline Company |
| 20004328 | Carso Global Telecom, S.A. de C.V | Home Wireless Networks, Inc. | Home Wireless Networks, Inc. |
| 20004335 | Eastman Kodak Company | David M. Stern | Research Systems, Inc. |
| 20004336 | CheckFree Holdings Corporation | Bank of America Corporation | Bank of America Corporation |
| 20004339 | Sonera Corporation | James O. Hayles, Jr. and Myna C. Hayles, (husband & wife). | Eliska Wireless Ventures I, Inc. |
| 20004345 | University Community Hospital, Inc | Tarpon Springs Hospital Foundation, Inc. | Tarpon Springs Hospital Foundation, Inc. |
| 20004349 | TH Lee.Putnam Internet Partners, LP. | United Shipping & Technology, Inc | United Shipping & Technology, Inc. |
| 20004350 | TH Lee.Putnam Internet Parallel Partners, L.P. | United Shipping & Technology, Inc | United Shipping & Technology, Inc. |
| 20004357 | Powertel, Inc. | James O. Hayles, Jr. and Myna C. Hayles (husband and wife). | Eliska Wireless Ventures I, Inc. |
| 20004359 | Sonera Corporation | Powertel, Inc | Powertel, Inc. |
| 20004364 | Stork N.V. | H&E Machinery, Inc | H&E Machinery, Inc.<br>H&E Turbo Components, Inc.<br>M&E Turbo Machinery, Inc. |

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| Transaction No. | Acquiring | Acquired | Entities |
|---|---|---|---|
| 20004365 | Marubeni Corporation | PLM International Inc | PLM International, Inc. |
| 20004366 | Intel Corporation | Trillium Digital Systems, Inc | Trillium Digital Systems, Inc. |
| 20004369 | Andrea L. Cunningham | Incepta Group Plc | Incepta Group Plc. |
| 20004370 | Incepta Group Plc | Andrea L. Cunningham | Cunningham Communications, Inc. |
| 20004371 | Insilco Holding Co | Dale Fleming | Precision Cable Manufacturing Corporation. |
| 20004372 | American Reprographics Holdings, L.L.C. | The Sandpoint Charitable Trust | Wilco Reprographics, Inc. |
| 20004378 | James L. Barksdale | Webvan Group, Inc | Webvan Group, Inc. |
| 20004380 | Kan S. Bajaj | Commerce One, Inc | Commerce One, Inc. |
| 20004382 | Sapa AB | Anodizing, Inc | Anodizing, Inc. |
| 20004421 | Reuters Group PLC | The RiskMetrics Group, Inc | The RiskMetrics Group, Inc. |
| **Transactions Granted Early Termination—08/17/2000** | | | |
| 20002951 | Healtheon/WebMD Corporation | Medical Manager Corporation | Medical Manager Corporation |
| 20004169 | Hanover Compressor Company | Ingersoll-Rand Company | Dresser-Rand Company |
| 20004279 | Warburg, Pincus Ventures, L.P | Scientific Learning Corporation | Scientific Learning Corporation |
| 20004390 | Merrill Lynch & Co., Inc | Level 8 Systems, Inc | Level 8 Systems, Inc. |
| 20004397 | Pearson plc | National Computer Systems, Inc | National Computer Systems, Inc. |
| 20004423 | Marubeni Corporation | David W. Spiegel | Gallery Automotive Group, Inc. |
| 20004427 | Internet Capital Group, Inc | BuyMedia, Inc | BuyMedia, Inc. |

**FOR FURTHER INFORMATION CONTACT:**
Sandra M. Peay or Parcellena P. Fielding, Contract Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 00–26341 Filed 10–12–00; 8:45 am]

BILLING CODE 6750–01–M

## FEDERAL TRADE COMMISSION

### Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. § 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION 08/21/2000–09/01/2000

| Transaction No. | Acquiring | Acquired | Entities |
|---|---|---|---|
| **Transactions Granted Early Termination-08/21/2000** | | | |
| 20004248 | E–T–T, Inc | Jackpot Enterprises, Inc | Cardivan Company/Corral Coin Inc. |
| | | | Corral Country Coin, Inc. |
| 20004282 | ABS Capital Partners III, L.P | @Road, Inc | @Road, Inc. |
| 20004321 | Pfizer Inc | Virbac S.A | Virbac S.A. |
| 20004346 | BASF Aktiengesellschaft | Takeda Chemical Industries, Ltd | Takeda Vitamin & Food USA, Inc. |
| 20004348 | Skanska AB | Barclay White, Inc | Barclay White, Inc. |
| 20004379 | Mary Alice Taylor | Webvan Group, Inc | Webvan Group, Inc. |
| 20004383 | Silgan Holdings Inc | OCM Opportunities Fund, L.P | RXI Holdings, Inc. |
| 20004384 | Aon Corporation | divine interVentures, Inc | divine interVentures, Inc. |
| 20004385 | Apollo Investment Fund IV, L.P | Royal Dutch Petroleum Company | Shell Epoxy Resins Inc. |
| 20004387 | Broadcom Corporation | Altima Communications, Inc | Altima Communications, Inc. |
| 20004394 | Cisco Systems, Inc | Komodo Technology, Inc | Komodo Technology, Inc. |
| 20004395 | Partek Oyj Abp | Terex Corporation | Terex Corporation. |
| 20004396 | UtiliCorp United Inc | The Empire District Electric Company. | The Empire District Electric Company. |
| 20004400 | The TriZetto Group, Inc | IMS Health Incorporated | ERISCO Managed Care Technologies, Inc. |
| 20004401 | IMS Health Incorporated | The TriZetto Group, Inc | The TriZetto Group, Inc. |
| 20004402 | Marshall W. Pagon | SRT Communications, Inc | Souris River Television, Inc. |
| | | | SRT Communications, Inc. |
| 20004403 | Linc. net, Inc | InterCon Construction, Inc | InterCon Construction, Inc. |
| 20004404 | Metacreations Corporation | Computer Associates International, Inc. | Viewpoint Digital, Inc. |
| 20004405 | Robert J. McGovern | Tribune Company | Career Holdings, Inc. |
| 20004406 | Robert J. McGovern | Knight-Ridder, Inc | Career Holding, Inc. |
| 20004409 | Health Management Associates, Inc | Charterhouse Equity Partners II, L.P | NetCare Health Systems, Inc. |



TRANSACTIONS GRANTED EARLY TERMINATION 08/21/2000–09/01/2000—Continued

| Transaction No. | Acquiring | Acquired | Entities |
|---|---|---|---|
| 20004410 | ABRY Broadcast Partners II, L.P | Walter E. Hussman Jr. Family Trust | KTAL–TV, Inc. |
| 20004414 | Rural Cellular Corporation | Saco River Telegraph and Telephone Company. | Saco River Telegraph and Telephone Company. |
| 20004419 | Brockway Moran & Partners Fund, L.P. | DCS Holdings, Inc | Dynamic Cooking Systems, Inc. |
| 20004420 | Lucent Technologies, Inc | Spring Tide Networks, Inc | Spring Tide Networks, Inc. |
| 20004426 | Safeguard Scientifics, Inc | Kanbay International, Inc | Kanbay International, Inc. |
| 20004430 | Wind Point Partners IV, L.P | Twitchell Holding Corporation | Twitchell Holding Corporation. |
| 20004432 | UBS AG, a Swiss Banking Corporation. | Xelus, Inc | Xelus, Inc. |
| 20004435 | TCV IV, L.P | Microsoft Corporation | Expedia, Inc. |
| 20004436 | Arthur J. Gallagher & Co | John P. & Barbara A. Woods | John P. Woods Co., Inc. |
| 20004437 | John P. & Barabara A. Woods | Arthur J. Gallagher & Co | Arthur J. Gallagher & Co. |
| 20004438 | Berkshire Fund V, Limited Partnership. | U.S. Can Corporation | U.S. Can Corporation. |
| 20004441 | The SK Equity Fund, L.P | Roundhouse, Inc | Roundhouse, Inc. |
| 20004442 | VNU N.V | United News & Media plc | MFI Holdings, Inc. |
| 20004443 | Internet Capital Group, Inc | Robert K. Kraft | PaperExchange.com, Inc. |
| 20004444 | Robert K. Kraft | Internet Capital Group, Inc | Internet Capital Group, Inc. |
| 20004446 | Long Point Capital Fund, L.P | FCP Investors V, L.P | Colibri Holding Corporation. |
| 20004447 | John Wood Group, PLC | Mustang Engineering, Inc | Mustang Engineering, Inc. |
| 20004483 | Hattiesburg Clinic Professional Association. | PhyCor, Inc | PhyCor of Hattiesburg, Inc. |
| **Transactions Granted Early Termination—08/22/2000** | | | |
| 20004416 | Alaska Power & Telephone Company. | Bell Atlantic Corporation | GTE Alaska Incorporated d/b/a Verizon Alaska. |
| 20004448 | Kenneth R. Thomson | WebCT, Inc | WebCT, Inc. |
| 20004460 | ENEL S.p.A | Echelon Corporation | Echelon Corporation. |
| 20004467 | Zoho Holding Corporation | Starwood Hotels & Resorts Worldwide, Inc. | Starwood Hotels & Resorts Worldwide, Inc. |
| 20004468 | Starwood Hotels & Resorts Worldwide, Inc. | Zoho Holding Corporation | Zoho Holding Corporation. |
| 20004484 | TPG Partners II, L.P | DoveBid, Inc | DoveBid, Inc. |
| 20004494 | ITXC Corp | eFusion, Inc | eFusion, Inc. |
| **Transactions Granted Early Termination—08/23/2000** | | | |
| 20004242 | Summit Capital II, L.P | Switch & Data Facilities Company, Inc. | Switch & Data Facilities Comopany, Inc. |
| 20004431 | Eaton Corporation | Patrick P. Lee | Air-Dro Cylinders, Inc. |
| | | | Hydro-Line, Inc. |
| 20004449 | Conso International Corporation | Charles S. Meyer | Lending Textile Co., Inc. |
| | | | Wm. E. Wright Limited Partnership. |
| 20004453 | Health Care Service Corporation, a Mutual Legal Reserve Co. | New Mexico Blue Cross and Blue Shield, Inc. | HMO New Mexico, Inc. |
| | | | New Mexico Blue Cross and Blue Shield, Inc. |
| 20004455 | Oak Investment Partners VIII, L.P | Xelus, Inc | Xelus, Inc. |
| 20004461 | The Bear Sterns Companies Inc., BSCC Employee Fund III, LP. | Manville Personal Injury Settlement Trust. | Johns Manville Corporation. |
| 20004462 | Bear Stearns Merchant Banking Partners II, L.P. | Manville Personal Injury Settlement Trust. | Johns Manville Corporation. |
| 20004463 | HMTF Bridge Partners, L.P. or Hicks, Muse, Tate & Furst. | Manville Personal Injury Settlement Trust. | Johns Manville Corporation. |
| 20004465 | Riverdeep Group, plc | International Business Machines Corporation. | Edmark Corporation. |
| 20004466 | International Business Machines Corporation. | Riverdeep Group, plc | Riverdeep Group, plc |
| 20004469 | InfoSpace, Inc | Go2Net, Inc. | Go2Net, Inc. |
| 20004473 | ce Consumer Electronic AG | SND Electronics, Inc | SND Electronics, Inc. |
| 20004474 | IDX Systems Corporation | Allscripts, Inc. | Allscripts Holding, Inc |
| 20004475 | Allscripts, Inc. | IDX Systems Corporation | Channelhealth Incorporated. |
| 20004476 | Prudential plc | AmSouth Bancorporation | IFC Holdings, Inc. |
| 20004477 | Telelogic A. B | QSS, Inc | QSS, Inc. |
| 20004479 | Paul G. Allen | InfoSpace, Inc | InfoSpace, Inc. |
| 20004480 | Russell C. Horowitz | InfoSpace, Inc | InfoSpace, Inc. |
| 20004481 | Chicago Bridge & Iron Company N.V. | Mr. Issam M. Fares | Howe-Baker International, Inc. |
| 20004482 | Issam M. Fares | Chicago Bridge & Iron Company N.V. | Chicago Bridge & Iron Company N.V. |
| 20004490 | SCI Systems, Inc | Koor Industries, Ltd | Telrad Networks Ltd. |

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TRANSACTIONS GRANTED EARLY TERMINATION 08/21/2000–09/01/2000—Continued

| Transaction No. | Acquiring | Acquired | Entities |
|---|---|---|---|
| 20004491 | Grand Pacific Petrochemical Corp | Hyundai Electronics Industries Co., Ltd. | MMC Technology, Inc. |
| 20004493 | Donald M. Tribus | First Union Corporation | First Union Corporation. |
| 20004497 | Debt Strategies Fund II, Inc | Debt Strategies Fund III, Inc | Debt Strategies Fund III, Inc. |
| 20004499 | Debt Strategies Fund II, Inc | Debt Strategies Fund, Inc | Debt Strategies Fund, Inc. |
| 20004524 | American International Group, Inc | DQE, Inc | Duquesne Energy, Inc. |
| 20004532 | Madison Dearborn Capital Partners III, L.P. | Jeffrey A. Wolfson | Pax Holding Corporation. |
| 20004550 | Michael E. Heisley | WordPort Communications, Inc | WorldPort Communications, Inc. |

**Transactions Granted Early Termination—08/24/2000**

| | | | |
|---|---|---|---|
| 20004252 | Veritas Capital Fund, L.P. (The) | Tech-Sym Corporation | Tech-Sym Corporation. |
| 20004347 | Advance Paradigm, Inc | Rite Aid Corporation | PCS Holding Corporation. |
| 20004375 | Cephalon, Inc | Anesta Corp | Anesta Corp. |
| 20004381 | MediaNews Group, Inc | Kenneth R. Thomson | Thomson Holdings Inc. |
| 20004439 | MDU Resources Group, Inc | Stephen J. Loosley | Roseburg Paving Company.<br>Teeco Corporation. |
| 20004440 | MDU Resources Group, Inc | Judy Sweeney | Roseburg Paving Company.<br>Teeco Corporation. |
| 20004500 | Lincolnshire Equity Fund II, L.P | Lincolnshire Equity Fund I, L.P | Visual Products Corp. |
| 20004501 | Regal-Beloit Corporation | Leeson Electric Corporation | Leeson Electric Corporation. |
| 20004502 | Prison Realty Trust, Inc | Corrections Corporation of America | Corrections Corporation of America. |
| 20004505 | Reed International P.L.C | eCompanies LLC | Business.Com, Inc. |
| 20004506 | Elsevier NV | eCompanies LLC | Business.Com, Inc. |
| 20004507 | Centennial Communications Corp | Bell Atlantic Corporation d/b/a Verizon communications. | Subsidiary Corporation. |
| 20004508 | Hagemeyer N.V | Cameron & Barkley Company | Cameron & Barkley Company |
| 20004510 | Pearson plc | eCompanies LLC | Business.Com, Inc. |
| 20004511 | Allied Zurich p.l.c | Zurich Allied AG | Zurich Allied AG. |
| 20004513 | Forest Oil Corporation | Forcenergy Inc | Forcenergy Inc. |
| 20004517 | AXA | Sanford C. Bernstein Inc | Bernstein Technologies, Inc. |
| 20004519 | Citigroup Inc | George Karfunkel | AST StockPlan, Inc. |
| 20004520 | Citigroup Inc | Michael Karfunkel | AST StockPlan, Inc. |
| 20004521 | Hong Kong Electric Holdings Limited. | ScottishPower plc | Eastern Investment Company.<br>Pan Pacific Global Corporation. |
| 20004522 | Hutchison Whampoa Limited | ScottishPower plc | Eastern Investment Company.<br>Pan Pacific Global Corporation. |
| 20004525 | Overseas Partners Ltd | Reliance Group Holdings, Inc | Reliance Reinsurance Company. |
| 20004528 | Illinois Tool Works Inc | Huhtamaki Van Leer Oyj | Van Leer Flexibles (Texas), Inc.<br>Van Leer Flexibles LP.<br>VLF Holding, Inc. |
| 20004535 | The Boeing Company | M. Francois Pinault | Continental Graphics Holdings, Inc. |
| 20004537 | Bank One Corporation | BISSELL, Inc | AbilityOne Corporation. |
| 20004540 | TCV IV, L.P | CosmoCom, Inc | CosmoCom, Inc. |
| 20004542 | Universal Compression Holdings, Inc. | Reuben James Helton | Gas Compression Services, Inc. |
| 20004543 | Interpool, Inc | Aegon N.V | Transamerica Leasing Inc. |

**Transactions Granted Early Termination—08/25/2000**

| | | | |
|---|---|---|---|
| 20003983 | BP Amoco p.l.c | Aerie Networks, Inc | Aerie Networks, Inc. |
| 20004147 | Richland Ventures II, L.P | Gabriel Communications, Inc | Gabriel Communications, Inc. |
| 20004148 | Richland Ventures III, L.P | Gabriel Communications, Inc | Gabriel Communications, Inc. |
| 20004153 | Steinway Musical Instruments, Inc | Bernhard Muskantor | United Musical Instruments Holdings, Inc. |
| 20004322 | Intel Corporation | Newco | Newco. |
| 20004368 | Westgate Equity Partners, L.P | Eagle OPG, Inc | Eagle OPG, Inc. |
| 20004451 | MasTec, Inc | Floyd Flaire Ferrell, Jr | Flaire, Inc. |
| 20004457 | Syncor International Corporation | US Diagnostic Inc | US Diagnostic, Inc. |
| 20004478 | M.D. Sass Corporate Resurgence Partners, L.P. | Seaman Furniture Company, Inc | Seaman Furniture Company, Inc. |
| 20004489 | Kurt Abrahamson | Media Metrix, Inc | Media Metrix, Inc. |
| 20004512 | Everett R. Dobson Irrevocable Family Trust. | MJ Cellular, Inc | MJ Cellular, Inc. |
| 20004529 | DDI Corporation | KDD Corporation | KDD America, Inc. |
| 20004531 | Clear Channel Communications, Inc | Stephens Group, Inc | DR Partners. |
| 20004533 | Mattson Technology, Inc | CFM Technologies, Inc | CFM Technologies, Inc. |
| 20004536 | The Southern Company | The Southern Company | Southern Company Energy Marketing G.P., L.L.C.<br>Southern Company Energy Marketing, L.P. |
| 20004551 | Gene DeRose | Media Metrix, Inc | Media Metrix, Inc. |



TRANSACTIONS GRANTED EARLY TERMINATION 08/21/2000–09/01/2000—Continued

| Transaction No. | Acquiring | Acquired | Entities |
|---|---|---|---|
| 20004552 | Accel VIII L.P | Comstellar Technologies, Inc | Comstellar Technologies, Inc. |
| 20004553 | New Enterprise Associates 9, Limited Partnership. | Comstellar Technologies, Inc | Comstellar Technologies, Inc. |
| 20004558 | GTCR Fund VII, L.P | InfoHighway Communications Corporation. | InfoHighway Communications Corporation. |
| 20004560 | Eltrax Systems, Inc | Cereus Technology Partners, Inc | Cereus Technology Partners, Inc. |
| 20004564 | Marmon Holdings, Inc | Aegon, N.V | Trans Ocean Tank Services Corporation.<br>Transamerica Leasing Inc. |
| 20004570 | iBeam Broadcasting Corporation | NextVenue Inc | NextVenue Inc. |
| 20004574 | Illinois Tool Works Inc | Hampshire Holographic Manufacturing Corporation. | Hampshire Holographic Manufacturing Corporation. |
| 20004602 | SC VIII Management, LLC | Yahoo! Inc | Yahoo! Inc. |

**Transactions Granted Early Termination—08/28/2000**

| | | | |
|---|---|---|---|
| 20004270 | Intuit Inc | Princes Gate Investors II, L.P | Venture Finance Software Corp. |
| 20004373 | The Williams Companies, Inc | Stanford N. Phelps | Wyatt Energy, Incorporated<br>Wyco New Haven, Inc.<br>Wyn Corporation. |
| 20004579 | Nortel Networks Corporation | Alteon WebSystems, Inc | Alteon WebSystems, Inc. |
| 20004655 | MapleWood Equity Partners LP | HoldCo | HoldCo. |

**Transactions Granted Early Termination—08/30/2000**

| | | | |
|---|---|---|---|
| 20000801 | Clear Channel Communications, Inc | AMFM Inc | AMFM Inc. |
| 20001205 | Thomas O. Hicks | Clear Channel Communications, Inc | Clear Channel Communications, Inc. |
| 20001208 | Hicks, Muse, Tate & Furst Equity Fund III, L.P. | Clear Channel Communications, Inc | Clear Channel Communications, Inc. |
| 20004297 | Colonial Pipe Line Company | BP Amoco p.l.c | BP Exploration & Oil Inc.<br>BP Oil Pipeline Company. |
| 20004447 | VantagePoint Venture Partners III (Q), L.P. | Aerie Networks, Inc | Aerie Networks, Inc. |
| 20004509 | Liberty Mutual Insurance Company | Wagner Asset Management, L.P | Wagner Asset Management, L.P. |
| 20004514 | Martin J. Wygod | Healtheon/WebMD Corporation | Healtheon/WebMD Corporation. |
| 20004515 | Michael A. Singer | Healtheon/WebMD Corporation | Healtheon/WebMD Corporation. |
| 20004557 | Freedom Communications, Inc | Warburg, Pincus Capital Company, L.P. | Journal Company, Inc., Journal Register Supply, Inc.<br>Journal Company, Inc., Journal Register Supply, Inc. |
| 20004559 | Western Wireless Corporation | Hickory Tech Corporation | Hickory Tech Corporation. |
| 20004563 | IFCO Systems, N.V | Texas Pallet, L.P | Texas Pallet, L.P. |
| 20004565 | Garfield Weston Charitable Foundation. | Procter & Gamble Company, (The) | Procter & Gamble Company, (The). |
| 20004566 | Broadcom Corporation | Silicon Spice Inc | Silicon Spice Inc. |
| 20004567 | Mr. Vinod Dham | Broadcom Corporation | Broadcom Corporation. |
| 20004573 | Cisco Systems, Inc | Cap Gemini, S.A | Cap Gemini, S.A. |
| 20004583 | The Emerging Markets Infrastructure Fund, Inc. | The Emerging Markets Telecommunications Fund, Inc. | The Emerging Markets Telecommunications Fund, Inc. |
| 20004584 | The Latin America Investment Fund, Inc. | The Latin America Equity Fund, Inc | The Latin America Equity Fund, Inc. |
| 20004590 | Citigroup Inc | Titan International, Inc | Titan International, Inc. |
| 20004591 | Citigroup Inc | Delco Remy International, Inc | Delco Remy International, Inc. |
| 20004596 | Wells Fargo & Company | General Electric Corporation | GE Capital Mortgage Services, Inc. |
| 20004597 | Bain Capital Fund VII, L.P | Intira Corporation | Intira Corporation. |
| 20004598 | Phone.com, Inc | Software.com, Inc | Software.com, Inc. |
| 20004601 | John Menzies plc | Ogden Corporation | Ogden Asia Pacific Services, Inc.<br>Ogden Aviation Service Company of Texas, Inc.<br>Ogden Aviation Service Company of Washington, Inc.<br>Ogden Aviation Services (Chile) Ltda.<br>Ogden Aviation Services (Venezuela), S.A.<br>Ogden Aviation Services Dominicana, S.A.<br>Ogden Cargo Limited.<br>Ogden Central and South America, Inc.<br>Ogden Ground Services (Canada) Ltd.<br>Ogden Ground Services de Mexico, S.A. de C.V.<br>Ogden Ground Services, Inc.<br>Ogden Holdings B.V.<br>Ogden Peru, S.R.L.<br>Ogden-Servicos de Atendimento Aeroterrestre Ltda. |

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TRANSACTIONS GRANTED EARLY TERMINATION 08/21/2000–09/01/2000—Continued

| Transaction No. | Acquiring | Acquired | Entities |
|---|---|---|---|
| 20004607 | Church & Dwight Co., Inc | USA Detergents; Inc | SEITSA Leasing, S.A. de C.V.<br>Armus, LLC.<br>USA Detergents, Inc. |
| 20004620 | United Rentals, Inc | Naru Investment Trust | Horizon High Reach, Inc. |
| 20004623 | Brian L. Roberts | CAT Partnership | CAT Partnership. |
| 20004625 | Time Warner Inc | Time Warner Inc | Time Warner Entertainment Company, L.P.<br>Time Warner Entertainment-Advance/ Newhouse. |
| 20004629 | Internet Captial Group, Inc | inOvate Communications Group, Inc | inOvate Communications Group, Inc. |
| 20004630 | Apollo Investment Fund IV, LP | Patrick Nolan | GTS Transportation Services, Inc. |
| 20004631 | Apollo Investment Fund IV, LP | Jeffrey Roths | GTS Transportation Services, Inc. |
| 20004641 | Lehman Brothers Holdings Inc | Societe Generale | SG Cowen Securities Corporation. |
| 20004642 | Warburg, Pincus Equity Partners, L.P. | Lucent Technologies Inc | Avaya, Inc. |
| 20004643 | Fortis (B) | Service Corporation International | American Memorial Life Insurance Company. |
| 20004644 | Fortis (NL) N.V | Service Corporation International | American Memorial Life Insurance Company. |
| 20004651 | Zale Corporation | Piercing Pagoda, Inc | Piercing Pagoda, Inc. |
| 20004652 | PETsMART, Inc | PETsMART.com, Inc | PETsMART.com, Inc. |
| 20004658 | Chrion Corporation | PathoGenesis Corporation | PathoGenesis Corporation. |
| 20004660 | JOMED N.V | EndoSonics Corporation | EndoSonics Corporation. |
| **Transactions Granted Early Termination—08/31/2000** | | | |
| 20004621 | Lancaster Colony Corporation | Patricia W. Barnes | Sister Schubert's Homemade Rolls, Inc. |
| **Transactions Granted Early Termination—09/01/2000** | | | |
| 20003182 | BAE Systems plc | Lockheed Martin Corporation | Lockheed Martin Corporation. |
| 20003972 | Winn-Dixie Stores, Inc | Gooding's Supermarkets, Inc | Gooding's Supermarkets, Inc. |
| 20004495 | Rentokil Initial plc | The ServiceMaster Company | TruGreen Limited Partnership. |
| 20004562 | H.F. Johnson Distributing Trust of the Benefit of Samuel J. | Charles & Jane Butcher | The Butcher Company. |

FOR FURTHER INFORMATION CONTACT:
Sandra M. Peay or Parcellena P. Fielding, Contact Representatives, Federal Trade Commission Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580; (202) 326–3100.

By Direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 00–26342 Filed 10–12–00; 8:45 am]

BILLING CODE 6750–01–M

## FEDERAL TRADE COMMISSION

### Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. § 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the permerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION 09/05/2000–09/15/2000

| Transaction No. | Acquiring | Acquired | Entities |
|---|---|---|---|
| **Transactions Granted Early Termination—09/05/2000** | | | |
| 20004539 | Community Newspapers, Inc., a South Carolina corporation. | New York Times Company (The) | NYT Florida Holdings, Inc. |
| 20004576 | Private Equity Investors IV, L.P | NT Corporation | NT Corporation. |
| 20004577 | The 1818 Fund III, L.P | NT Corporation | NT Corporation. |
| 20004578 | Wind Point Partners IV, L.P | NT Corporation | NT Corporation. |
| 20004595 | California Physicians' Service | UnitedHealth Group Incorporated | United Healthcare Insurance Company.<br>United Healthcare of California, Inc.<br>UnitedHealth Networks, Inc. |
| 20004600 | Siebel Systems, Inc | Sierra Ventures VI, L.P | OnLink Technologies, Inc. |
| 20004604 | Rodney L. Grimm Stock Trust | Daniel C. & Susie G. Duncan | Healthy Fresh, Inc./Organic Choice, LLC.<br>Tri-Duncan Farms. |
| 20004605 | Robert A. Grimm Stock Trust | Daniel C. & Susie G. Duncan | Healthy Fresh, Inc./Organic Choice, LLC. |



TRANSACTIONS GRANTED EARLY TERMINATION 09/05/2000–09/15/2000—Continued

| Transaction No. | Acquiring | Acquired | Entities |
|---|---|---|---|
| 20004609 | Rodney L. Grimm Stock Trust | Michael B. & Jennifer D. Duncan | Tri-Duncan Farms.<br>Healthy Fresh, Inc./Organic Choice, LLC. |
| 20004610 | Robert A. Grimm Stock Trust | Michael B. & Jennifer D. Duncan | Healthy Fresh, Inc./Organic Choice, LLC. |
| 20004649 | TSG3 L.P | Buyco, Inc | Organic Choice, LLC.<br>Mauna Loa Macadamia Nut Corporation. |
| 20004672 | Warburg, Pincus Equity Partners, L.P. | Phycom Corporation | Phycom Corporation. |
| 20004704 | Bill Gross | Paytru$t, Inc | Paytru$t, Inc. |
| **Transactions Granted Early Termination—09/06/2000** | | | |
| 20004487 | VantagePoint Communications Partners, L.P. | Aerie Networks, Inc | Aerie Networks, Inc. |
| 20004582 | Aventis | Aventis | Carderm Capital, L.P. |
| 20004592 | Voting Trust dated December 4, 1968 of v/s of Hallmark Cards. | Voting Trust dated December 4, 1968 of v/s of Hallmark Cards. | Odyessey Holdings, LLC. |
| 20004611 | Deutsche Bank AG | Trust u/w Frederick C. Wappler, dec'd. | Sebec Securities, Inc. |
| 20004615 | The Boeing Company | Tribune Company | Jeppesen GmbH.<br>Jeppesen Sanderson, Inc., Jeppesen UK Limited. |
| 20004636 | PeopleFirst.com Inc | DaimlerChrysler AG | giggo.com, inc. |
| 20004637 | DaimlerChrysler AG | PeopleFirst.com Inc | PeopleFirst.com Inc. |
| 20004638 | McDonald's Corporation | eMac Digital Corporation | eMac Digital Corporation. |
| 20004639 | Accel-AKI Ivestors, L.L.C | eMac Digital Corporation | eMac Digital Corporation. |
| 20004647 | General Motors Corporation | First Citizens BancShares, Inc | First-Citizens Bank & Trust Company. |
| 20004650 | American Capital Strategies, Ltd | Intermet Corporation | Iowa Mold Tooling Co., Inc. |
| 20004657 | Aya and Ofer Azielant | Colin Horowitz | I. Kurgan & Co., Inc. a California corporation. |
| 20004659 | Crescendo IV, L.P | Relera, Inc | Relera, Inc. |
| 20004661 | Koch Industries Inc | Gordon-Piatt Energy Group, Inc | Gordon-Piatt Energy Group, Inc. |
| 20004662 | Sodexho Alliance, S.A | Prison Realty Trust, Inc | Prison Realty Trust, Inc. |
| 20004665 | M. Francois Pinault | Westbume Inc | Westbume Inc. |
| 20004666 | Uproar Inc | iwin.com, Inc | iwin.com,Inc. |
| 20004667 | Frederick R. Krueger | Uproar Inc | Uproar Inc. |
| 20004670 | Kuoni Reisen Holding AG | Mr. Kerrin M. Behrend | T.PRO, Inc. |
| 20004673 | Bank Of America Corporation | RELERA, Inc | RELERA, Inc. |
| 20004676 | Station Casinos, Inc | Trust # 1 of George J. Maloof, Sept. 1, 1978. | Fiesta Hotel & Casino. |
| 20004679 | Hanny Holdings Limited | Scott A. Blum Separate Property Trust U/D/T 8/2/95. | eDevelopments.com Inc. |
| 20004684 | The Lamson & Sessions Co | Pyramid Industries, Inc | Pyramid Industries, Inc. |
| 20004685 | Human Genome Sciences, Inc | HealthCare Ventures V, L.P | Principia Pharmaceutical Corporation. |
| 20004688 | Bank of New York Company, Inc., (The). | Howard Wohl | Ivy Asset Management Corp. |
| 20004690 | Larry Van Tuyl | Frank M. Late | Midway Chevrolet Company.<br>Midway Holdings, Inc.<br>Midwest Unlimited, Inc. |
| 20004691 | Grover C. Coors Trust | Graphic Packaging International Corporation. | Graphic Packaging International Corporation. |
| 20004696 | Littlejohn Fund II, L.P | Pameco Corporation | Pameco Corporation. |
| 20004701 | Sun Microsystems, Inc | Resonate Inc | Resonate Inc. |
| 20004707 | Sanmina Corporation | Lucent Technologies, Inc | Octel Communications Corporation. |
| 20004709 | Penton Media, Inc | Duke Communications International, L.L.L.P. | Duke Communications International, L.L.L.P. |
| 20004746 | Intertape Polymer Group Inc | A. Dennis Murphy | Olympian Tape Sales, Inc. |
| **Transactions Granted Early Termination—09/07/2000** | | | |
| 20004712 | Critical Path, Inc | PeerLogic, Inc | PeerLogic, Inc. |
| **Transactions Granted Early Termination—09/08/2000** | | | |
| 20004099 | Kenneth R. Thomson | David Geliebter | The Carson Group, Inc. |
| 20004332 | Castle Harlan Partners II, L.P | David Dunn | Advance Tool, Inc. |
| 20004408 | ALLTEL Corporation | SBC Communications Inc | Radiofone, Inc. |
| 20004411 | Triad Hospitals, Inc | Charterhouse Equity Partners II, L.P | NetCare Health Systems, Inc. |
| 20004612 | WPS Resources Corporation | Wisconsin Fuel & Light Company | Wisconsin Fuel & Light Company. |
| 20004616 | Navidec, Inc | CarPoint, Inc | CarPoint, Inc. |
| 20004617 | Wells Fargo & Company | CarPoint, Inc | CarPoint, Inc. |
| 20004618 | Microsoft Corporation | CarPoint, Inc | CarPoint, Inc. |
| 20004626 | Dynegy Inc | Extant, Inc | Extant, Inc. |
| 20004627 | Lawrence A. McLemon | Dynegy Inc | Dynegy Inc. |

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TRANSACTIONS GRANTED EARLY TERMINATION 09/05/2000–09/15/2000—Continued

| Transaction No. | Acquiring | Acquired | Entities |
|---|---|---|---|
| 20004640 | KKR–AKI Investors, L.L.C | eMac Digital Corporation | eMac Digital Corporation. |
| 20004646 | Aether Systems, Inc | Cerulean Technology, Inc | Cerulean Technology, Inc. |
| 20004648 | Hologic, Inc | Thermo Electron Corporation | Trex Medical Corporation. |
| 20004653 | Bouygues S.A | Gordon P. Hayes, Jr | Aggregate Products, Inc., aan Alaska corporation.<br>Hayden & Hayes Company, an Alaska General Partnership.<br>Quality Asphalt Paving, Inc., an Alaska corporation. |
| 20004664 | New Enterprise Associates VIII, L.P | Intira Corporation | Intira Corporation. |
| 20004668 | Crosspoint Venture Partner 2000 Q LP. | Petrocosm Corporation | Petrocosm Corporation. |
| 20004680 | Northern Border Partners, L.P | Enron Corp. | Enron North America Corp. |
| 20004702 | Toshiba Corporation | General Electric Company | General Electric Company. |
| 20004703 | AXA | InFlow, Inc | InFlow, Inc. |
| 20004708 | Sinclair Broadcast Group, Inc | Milton Grant | Grant Television Inc., Grant Television II LLC. |
| 20004713 | Berwind Group Partners | Bruce Garland | Priority Air Express, Inc., PAX Network Inc. |
| 20004723 | CVS Corporation | Hubert G. Phipps | Fedco Drugs, Inc. |
| 20004724 | Kellwood Company | Richard L. Golden | Dorby Frocks, Ltd. |
| 20004725 | Coca-Cola Enterprises Inc | J. Frank Harrison, Jr | Coca-Cola Bottling Co. of Roanoke, Inc.<br>ROBC, Inc., WVBC, Inc.<br>The Coca-Cola Bottling Co. of West Virginia, Inc. |
| 20004726 | MBNA Corporation | First Union Corporation | First Union Direct Bank, N.A.<br>First Union National Bank. |
| 20004728 | William Blair Capital Partners V, L.P | Wyndham Travel Holding, Inc | Wyndham Travel Holding, Inc. |
| 20004729 | U.S. Bancorp | Marvin M. Schwan Great Grandchildren's Trust. | Lyon Financial Services, Inc. |
| 20004737 | Koninklijke Philips Electronics N.V | Optiva Corporation | Optiva Corporation. |
| 20004739 | TransCanada PipeLines Limited | TransCanada PipeLines Limited | Ocean State Power.<br>Ocean State Power II. |
| 20004740 | Linc.net, Inc | Telpro Technologies, Inc | Telpro Technologies, Inc. |
| 20004742 | Penn National Gaming, Inc | CRC Holdings, Inc | CRC Holdings, Inc. |
| 20004744 | Corning Incorporated | James F. Moore | Champion Products, Inc. |
| 20004747 | The Home Depot, Inc | NCH Corporation | N–E Thing Supply Company, Inc. |

**Transactions Granted Early Termination—09/11/2000**

| | | | |
|---|---|---|---|
| 20003681 | Ford Motor Company | Covisint | Covisint. |
| 20003682 | General Motors Corporation | Covisint | Covisint. |
| 20003683 | Daimler-Chrysler AG | Covisint | Covisint. |
| 20003684 | Renault SA | Covisint | Covisint. |
| 20003685 | Nissan Motor Co., Ltd | Covisint | Covisint. |
| 20003686 | Oracle Corporation | Covisint | Covisint. |
| 20003687 | Commerce One, Inc | Covisint | Covisint. |
| 20004663 | Chase Manhattan Corporation, (The). | Intira Corporation | Intira Corporation. |
| 20004678 | Zurich Allied AG | GE—Zurich Warranty Management, Inc. | GE–Zurich Warranty Management, Inc. |
| 20004697 | medibuy.com, Inc | HCA—The Healthcare Company | BNA Associates, Inc. |
| 20004714 | Royal Dutch Petroleum Company | InterGen N.V | InterGen N.V. |
| 20004715 | Bechtel Group, Inc | InterGen N.V | InterGen N.V. |
| 20004760 | Stonington Capital Appreciation 1994 Fund, L.P. | GSI Lumonics, Inc | GSI Lumonics Life Science Trust. |

**Transactions Granted Early Termination—09/12/2000**

| | | | |
|---|---|---|---|
| 20004516 | Marshall W. Pagon | Northeast Oklahoma Electric Cooperative. | Northeast Rural Services, Inc. |
| 20004698 | HCA—The Healthcare Company | medibuy.com, Inc | medibuy.com, Inc. |
| 20004710 | HCA—The Healthcare Company | BNA Associates, Inc | BNA Associates, Inc. |
| 20004720 | Hellman & Friedman Capital Partners III, L.P. | Heath Thompson | ThoughtMill Corporation. |
| 20004721 | Heath Thompson | Hellman & Friedman Capital Partners III, L.P. | Digitas, Inc. |
| 20004731 | Crescendo III, L.P | Innuity, Inc | Innuity, Inc. |
| 20004732 | Marathon Fund Limited Partnership IV. | Thermo Electron Corporation | Thermo Analytical Inc. |
| 20004738 | Hanover Compressor Company | OEC Compression Company | OEC Compression Company. |
| 20004750 | Consolidated Engineering Services Partnership. | Alan L. Barnes, Sr | Aircond Corporation. |
| 20004762 | Mitsui Mining & Smelting Co., Ltd | Honeywell International Inc | Oak-Mitsui. |



TRANSACTIONS GRANTED EARLY TERMINATION 09/05/2000–09/15/2000—Continued

| Transaction No. | Acquiring | Acquired | Entities |
|---|---|---|---|
| 20004763 | Ontario Municipal Employees Retirement Board. | Gerald W. Schwartz | Oak-Mitsui, Inc.<br>ClientLogic Corporation. |
| 20004765 | Ubi Soft Entertainment S.A | Thomas L. Clancy, Jr | Red Storm Entertainment, Inc. |
| 20004767 | Barlow Limited | Barton Freightliner, Inc | Barton Freightliner, Inc. |
| 20004768 | Celanese AG | Air Products and Chemicals, Inc | Air Products and Chemicals, Inc. |
| 20004771 | Foster's Brewing Group Limited | TPG Partners, L.P | Beringer Wine Estates Holdings, Inc. |
| 20004773 | Reed International P.L.C | SRI International | SRI Consulting, Inc. |
| 20004774 | Elsevier NV | SRI International | SRI Consulting, Inc. |
| 20004779 | Lions Gate Entertainment Corp | Trimark Holdings, Inc | Trimark Holdings, Inc. |
| 20004780 | NCR Corporation | 4Front Technologies, Inc | 4Front Technologies, Inc. |
| 20004781 | Quanta Services, Inc. | Randall E. Soule | Network Electric Company. |
| 20004784 | Vincor International Inc | R.H. Phillips, Inc | R.H. Phillips, Inc. |
| 20004820 | Duke Energy Corporation | NiSource Inc | Market Hub Partners, Inc., Energy USA–TCP Corp. |
| 20004823 | The Noorda Family Trust | Caldera Holding, Inc | Caldera Holding, Inc. |
| 20004824 | The Santa Cruz Operation, Inc | Caldera Holding, Inc | Caldera Holding, Inc. |
| 20004825 | Thomas H. Sullivan | Alfred A. Angelo | Beta Communications, L.L.C. |
| 20004826 | Gerald T. Vento | Alfred A. Angelo | Beta Communications, L.L.C. |
| 20004828 | Motorola, Inc | Lineo, Inc | The Canopy Group, Inc., Caldera Systems, Inc. |
| 20004830 | Telephone and Data Systems, Inc. Voting Trust. | Telephone and Data Systems, Inc. Voting Trust. | Oregon RSA No. 2 Limited Partnership. |
| 20004831 | O. Bruton Smith | Timothy Cashman | Cashman Cadillac, Inc. |
| 20004833 | FleetBoston Financial Corporation | M.J. Meehan & Co., LLC | M.J. Meehan & Co., LLC. |
| 20004834 | Boston Ventures Limited Partnership VI. | Macromedia, Incorporated | Gateway Communications, Inc. |
| 20004836 | JMW Holding LLC | Bcom3 Group, Inc | Giant Step Productions, L.L.C. |
| 20004837 | Cisco Systems, Inc | Oplink Communications, Inc | Oplink Communications, Inc. |
| 20004839 | Kelmscott Communications, L.L.C | PrintSource USA, Inc | PrintSource USA, Inc. |
| 20004841 | Hicks, Muse, Tate & Furst Equity Fund V, L.P. | RealPulse.com, Inc | RealPulse.com, Inc. |
| 20004842 | Accrue Software, Inc | Tom T. Gores | Aviator Holding Corporation. |
| 20004845 | Amazon.com, Inc | wine.com, Inc | wine.com, Inc. |
| 20004846 | Dominic P. Orr | Nortel Networks Corporation | Nortel Networks Corporation. |
| 20004849 | Cendant Corporation | Amerihost Properties, Inc | Amerihost Properties, Inc. |
| 20004852 | Keppel Corporation | Philip Friedman | Computer Generated Solutions, Inc. |
| 20004854 | W.M. Hawkins, III | The 3DD Company | The 3DD Company. |
| 20004855 | Thomas Jefferson University | Will of James Wills | Wills Eye Hospital. |
| 20004856 | Sabre Holdings Corporation | GetThere Inc | GetThere Inc. |
| 20004857 | Rocco B. Commisso | Satelite Cable Services, Inc | Satelite Cable Services, Inc. |
| 20004861 | AutoNation, Inc | James B. Bryan, III | JBH of Longwood, Inc. d/b/a Jimmy Bryan Honda.<br>Jimmy Bryan Toyota, Inc. d/b/a Jimmy Bryan Toyota. |
| 20004874 | Internet Capital Group, Inc | CommerceQuest, Inc | CommerceQuest, Inc. |
| 20004876 | Internet Capital Group, Inc | Newco | Newco. |

**Transactions Granted Early Termination—09/13/2000**

| | | | |
|---|---|---|---|
| 20004700 | Wind Point Partners IV, L.P | J.F. Lehman Equity Investors, I, L.P | McCormick Selph Holdings, Inc.<br>Scot Incorporated. |

**Transactions Granted Early Termination—09/14/2000**

| | | | |
|---|---|---|---|
| 20004456 | Haemonetics Corporation | Transfusion Technologies Corporation. | Transfusion Technologies Corporation. |
| 20004711 | Western Wireless Corporation | Centennial Communications Corp | Centennial Communications Corp. |
| 20004776 | Wolverine Tube, Inc | Engelhard Corporation | Engelhard Corporation. |
| 20004786 | Royal Bank of Canada | AMRESCO, INC. | AMRESCO Builders Group, Inc.<br>AMRESCO Commercial Finance, Inc. |
| 20004787 | Toshiba Corporation | Harison Electric Company, Ltd | Harison Electric Company, Ltd. |
| 20004789 | Lou L. Pai | TNPC, Inc | TNPC, Inc., a Delaware corporation. |
| 20004790 | Wind Point Partners III, L.P | SPX Corporation | Metal Forge Company, Inc.<br>MF Development Corporation. |
| 20004791 | American Manufacturing Corporation. | Samuel J. Heyman | LL Building Products Inc. |
| 20004804 | Nortel Networks Corporation | Sonoma Systems | Sonoma Systems. |
| 20004807 | Aon Corporation | ASA Acquisition Corp. | ASA Acquisition Corp. |
| 20004809 | Asbury Automotive Group, L.L.C | Charles D. Troncalli | Troncalli Jaguar, Inc. |
| 20004811 | West Florida Medical Center Clinic, a Florida prof assoc. | PhyCor, Inc., a Tennessee corporation. | PhyCor of Pensacola, Inc. |
| 20004814 | AAR Corp | Honeywell International Inc | Hermetic Aircraft International Corp. |

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TRANSACTIONS GRANTED EARLY TERMINATION 09/05/2000–09/15/2000—Continued

| Transaction No. | Acquiring | Acquired | Entities |
|---|---|---|---|
| 20004815 | Spectrum Equity Investors III, L.P | Intira Corporation | Intira Corporation. |
| 20004816 | Mayfield X, L.P | Intira Corporation | Intira Corporation. |
| 20004817 | SPX Corporation | CVI Holding Corporation | Copes-Vulcan, Inc., Copes-Vulcan, Limited. |
| **Transactions Granted Early Termination—09/15/2000** | | | |
| 20003123 | SBC Communications Inc | BellSouth Corporation | BellSouth Corporation. |
| 20004541 | First Reserve Fund VIII, L.P | Chicago Bridge & Iron Company N.V. | Chicago Bridge & Iron Company N.V. |
| 2004587 | Pikington plc | Newco | Newco. |
| 20004622 | Bell Atlantic Corporation d/b/a Verizon Communications. | James A. Otterbeck | OnePoint Communications Corp. |
| 20004687 | Bank of New York Company, Inc., (The). | Lawrence Simon | Ivy Asset Management Corp. |
| 20004692 | General Motors Corporation | HomeAdvisor Technologies, Inc | HomeAdvisor Technologies, Inc. |
| 20004693 | The Chase Manhattan Corporation | HomeAdvisor Technologies, Inc | HomeAdvisor Technologies, Inc. |
| 20004694 | Microsoft Corporation | HomeAdvisor Technologies, Inc | HomeAdvisor Technologies, Inc. |
| 20004788 | DLJ Merchant Banking Partners, II, L.P. | TNPC, Inc | TNPC, Inc., a Delaware corporation. |
| 20004793 | PG&E Corporation | Duke Energy Corporation | Duke Energy Corporation. |
| 20004799 | Edward M. Philip | Telefonica S.A | Terra Networks, S.A. |
| 20004800 | Robert J. Davis | Telefonica S.A | Terra Networks, S.A. |
| 20004812 | Telephone and Data System, Inc. Voting Trust. | Telephone and Data Systems, Inc. Voting Trust. | Oregon RSA No. 3 Limited Partnership. |
| 20004877 | Edward L. Maletis Childrens Trust | Gary P. Raden, SR | G. Raden & Sons, Inc. |

**FOR FURTHER INFORMATION CONTACT:** Sandra M. Peay or Parcellena P. Fielding, Contact Representatives, Federal Trade Commission Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580; (202) 326–3100.

By Direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 00–26343 Filed 10–12–00; 8:45 am]

BILLING CODE 6750–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 91F–0170]**

### W.R. Grace & Co.; Withdrawal of Food Additive Petition

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a food additive petition (FAP 1B4257) proposing that the food additive regulations be amended to provide for the safe use of styrene-*n*-butyl acrylate-acrylic acid terpolymer, 1,2-benzisothiazolin-3-one, and sulfosuccinic acid 4-ester with polyethylene glycol dodecyl ether, disodium salt as components in can end cements in contact with food.

**FOR FURTHER INFORMATION CONTACT:** Andrew J. Zajac, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3095.

**SUPPLEMENTARY INFORMATION:** In a notice published in the **Federal Register** of July 16, 1991 (56 FR 32435), FDA announced that a food additive petition (FAP 1B4257) had been filed by W.R. Grace, Ltd., Cromwell Rd., St. Neots, Huntingdon, Cambridgeshire PE 19 1QL, England (now W.R. Grace & Co., Darex Container Products, 62 Whittemore Ave., Cambridge, MA 02140). The petition proposed to amend the food additive regulations in § 175.300 *Resinous and polymeric coatings* (21 CFR 175.300) to provide for the safe use of styrene-*n*-butyl acrylate-acrylic acid terpolymer, 1,2-benzisothiazolin-3-one, and sulfosuccinic acid 4-ester with polyethylene glycol dodecyl ether, disodium salt as components in can end cements in contact with food. W.R. Grace & Co. has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: September 26, 2000.

**Alan M. Rulis,**

*Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.*

[FR Doc. 00–26250 Filed 10–12–00; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 94G–0267]**

### Fuji Oil Co., Ltd.; Withdrawal of GRAS Affirmation Petition

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a petition (GRASP 4G0407) proposing to affirm that the use of a triglyceride containing behenic and oleic acids is generally recognized as safe (GRAS) as a tempering aid and as an antibloom agent in chocolate and chocolate coatings.

**FOR FURTHER INFORMATION CONTACT:** Parvin M. Yasaei, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3023.

**SUPPLEMENTARY INFORMATION:** In a notice published in the **Federal Register** of August 17, 1994 (59 FR 42278), FDA announced that a petition (GRASP 4G0407) had been filed by Fuji Oil Co., Ltd., Osaka, Japan. This petition proposed that the use of a triglyceride containing behenic and oleic acids as a tempering aid and as an antibloom agent in chocolate and chocolate coatings be affirmed as GRAS. Fuji Oil Co., Ltd., has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: September 27, 2000.

**Alan M. Rulis,**

*Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.*

[FR Doc. 00–26252 Filed 10–12–00; 8:45 am]

BILLING CODE 4160–01–F



## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

**[Document Identifier: HCFA–10006]**

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

*Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* TWWIIA Demonstration to Maintain Independence and Employment Grants; *Form No.:* HCFA–10006 (OMB# 0938–0799); *Use:* Section 204 of the Ticket to Work and Work Incentives Act provides for the establishment of grants for States that develop and implement demonstration programs designed to support working people with physical or mental impairments that without medical assistance will result in disability. State agencies will be applying for these grants; *Frequency:* Annually; *Affected Public:* State, local, or tribal gov't; *Number of Respondents:* 56; *Total Annual Responses:* 56; *Total Annual Hours:* 5,600.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Julie Brown, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: October 4, 2000.

**John P. Burke III,**

*Reports Clearance Officer, Security and Standards Group, Division of HCFA Enterprise Standards.*

[FR Doc. 00–26273 Filed 10–12–00; 8:45 am]

BILLING CODE 4120–03–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

**[Document Identifier: HCFA–10012]**

### Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

**AGENCY:** Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

We are, however, requesting an emergency review of the Information collections referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed prior to the expiration of the normal time limits under OMB's regulations at 5 C.F.R., Part 1320. This collection of information will be used to test the effectiveness of three possible Medicare smoking cessation benefits and to make inferences that are generalizable to the Medicare program. Using a comparison trial with restricted randomization of study locales, this study will compare three variations in a potential Medicare smoking cessation benefit on smoking cessation and abstinence rates. Smoking cessation for seniors is currently receiving attention from Congress and the White House. Senator Graham (D–FL) has proposed a smoking cessation Medicare benefit, while the White House provides for a smoking cessation demonstration in the President's Plan to Modernize and Strengthen Medicare for the 21st Century. In response to this White House initiative, HCFA is launching this demonstration to test smoking cessation as a possible covered benefit under the Medicare program. If this information is not collected, public harm is likely to occur. Considerable evidence indicates that much greater improvement in health status could be accomplished if currently existing, effective and commonly available preventative practices and services were implemented more widely; therefore, this demonstration could help improve the health of the Medicare population.

HCFA is requesting OMB review and approval of this collection by October 31, 2000, with a 180-day approval period. Written comments and recommendations will be accepted from the public if received by the individuals designated below by October 27, 2000. During this 180-day period, we will publish a separate **Federal Register** notice announcing the initiation of an extensive 60-day agency review and public comment period on these requirements. We will submit the requirements for OMB review and an extension of this emergency approval.

*Type of Information Collection Request:* New Collection;

*Title of Information Collection:* Healthy Aging Smoking Cessation Demonstration;

*Form No.:* HCFA–10012 (OMB# 0938–NEW);

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*Use:* The goals of the Healthy Aging Project are to test the effectiveness of three possible Medicare smoking cessation benefits and to make inferences that are generalizable to the Medicare program. Using a comparison trial with restricted randomization of study locales, this study will compare three variations in a potential Medicare smoking cessation benefit on smoking cessation and abstinence rates;

*Frequency:* Semi-annually;

*Affected Public:* Individuals or Households;

*Number of Respondents:* 43,500;

*Total Annual Responses:* 130,500;

*Total Annual Hours:* 58,000.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of Information requirements. However, as noted above, comments on these Information collection and recordkeeping requirements must be mailed and/or faxed to the designees referenced below, by October 27, 2000: Health Care Financing Administration, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Melissa Musotto, HCFA–10012, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850 and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Fax Number: (202) 395–6974 or (202) 395–5167, Attn: Allison Herron Eydt, HCFA Desk Officer.

Dated: September 29, 2000.

**John P. Burke III,**

*HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.*

[FR Doc. 00–26274 Filed 10–12–00; 8:45 am]

BILLING CODE 4120–03–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

**Proposed Project: The Ricky Ray Hemophilia Relief Fund Program (OMB No. 0915–0244)—Revision**

The Ricky Ray Hemophilia Relief Fund Act of 1998 (Pub. L. 105–369) established a trust fund to provide for compassionate payments with regard to certain individuals with blood-clotting disorders, such as hemophilia, who contracted HIV due to contaminated antihemophilic factor within specified time periods. The statute mandated payments to any individual with HIV who has any blood-clotting disorder and was treated with antihemophilic factor any time between July 1, 1982, and December 31, 1987. The Act also provides for payments to certain persons who contracted HIV from the foregoing individuals. Specified survivors of these categories of individuals may also receive payments. In order to receive a payment, either the individual who is eligible for payment, or his or her personal representative, must file a petition for payment with sufficient documentation to prove that he or she meets the requirements of the statute. This data collection is required to provide the necessary medical and legal documentation that establishes eligibility for payment.

The estimated annual response burden is as follows:

| Form | Number of respondents | Responses per respondent | House per response | Total hour burden |
|---|---|---|---|---|
| Petition form and Supporting Documentation | 1,350 | 1 | 3 | 4,050 |
| Physician Documentation | 675 | 1 | 1 | 675 |
| Total | 2,025 | | | 4,725 |

Send comments to: John Morrall, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC, 20503. Written comments should be received within 30 days of this notice.

Dated: October 6, 2000.

**Jane Harrison,**

*Director, Division of Policy Review and Coordination.*

[FR Doc. 00–26330 Filed 10–12–00; 8:45 am]

BILLING CODE 4160–15–U

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4557–N–41]**

### Federal Property Suitable as Facilities To Assist the Homeless

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

**EFFECTIVE DATE:** October 13, 2000.

**FOR FURTHER INFORMATION CONTACT:** Clifford Taffet, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

**SUPPLEMENTARY INFORMATION:** In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: October 5, 2000.

**John D. Garrity,**

*Director, Office of Special Needs Assistance Programs.*

[FR Doc. 00–26104 Filed 10–12–00; 8:45 am]

BILLING CODE 4210–29–M



## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Notice of Receipt of Applications for Permit

**Endangered Species**

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

*Applicant:* Richard P. Rechter, Bloomington, IN, PRT–034428.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

*Applicant:* Chicago Zoological Park, Brookfield Zoo, Brookfield, IL PRT–805165.

The applicant requests a permit to import blood and fecal samples from the following animals: Black rhinoceros (*Diceros bicornis*), African wild dog (*Lycaon pictus*), and cheetah (*Acinonyx jabatus*). Samples are being collected by the Ministry of Environment and Tourism, Windhoek, Namibia and will be imported for the purpose of scientific research. This notice covers activities under this permit for a period of five years. Permit subject to annual renewal.

*Applicant:* Samuel F. La Porte, Glendora, CA, PRT–034374.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

*Applicant:* Coronas Entertainment, Bradenton, FL, PRT–023228.

The applicant requests an amendment to their initial request published April 25, 2000, in Vol. 65, No. 80 to export and re-import African leopard, and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. The applicant would like to amend the permit to include captive born tigers (*Panthera tigris*).

*Applicant:* Betty Young dba Riverglen Feline Conservation Park, West Fork, AK, PRT–824228.

On October 6, 2000, the U.S. Fish and Wildlife Service (Service) re-issued PRT–824228 to Betty J. Young dba Riverglen Feline Conservation Park, Mountainburg, Arkansas for the re-import of their tiger (*Panthera tigris*) "Adonis" from Aruba. The 30-day public comment period required by section 10(c) of the Endangered Species Act was waived. The Service determined that an emergency affecting the care and health of the tiger existed and that no reasonable alternative was available to the applicant.

**Marine Mammals**

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR part 18).

*Applicant:* Monterey Bay Aquarium, Monterey, California, PRT–032027.

*Permit Type:* Take for scientific research and enhancement.

*Name and Number of Animals:* Southern Sea Otter (*Enhydra lutris nereis*), up to 50 animals per year.

*Summary of Activity To Be Authorized:* The applicant requests a permit to rescue, provide medical treatment, instrument with telemetry equipment, release, relocate, re-capture for the purposes of rehabilitation, and conduct post-release monitoring and long-term health assessment of Southern sea otters to further the knowledge of the ecology, biology, and movements of these animals and enhance the survival of this species.

*Source of Marine Mammals:* The natural range of Southern sea otters.

*Period of Activity:* Up to 5 years, if issued.

Concurrent with the publication of this notice in the **Federal Register**, the Division of Management Authority is forwarding copies of these applications to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

The U.S. Fish and Wildlife has information collection approval from OMB through February 28, 2001. OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: October 6, 2000.

**Charlie Chandler,**

*Chief, Branch of Permits, Division of Management Authority.*

[FR Doc. 00–26355 Filed 10–12–00; 8:45 am]

BILLING CODE 4310–55–U

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Aquatic Nuisance Species Task Force Ballast Water and Shipping Committee Meeting

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice announces a meeting of the Ballast Water and Shipping Committee of the Aquatic Nuisance Species Task Force. The meeting topics are identified in the **SUPPLEMENTARY INFORMATION**.

**DATES:** The Committee will meet from 10:00 a.m. to 4:00 p.m., Monday, October 30, 2000 and from 9:00 a.m. to 3:00 p.m., Tuesday, October 31, 2000.

**ADDRESSES:** The meeting will be held at the Coast Guard Headquarters, Room

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2415, 2100 Second Street, SW, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** LT Mary Pat McKeown, U.S. Coast Guard, Chair, Ballast Water and Shipping Committee, at 202–267–0500 or by e-mail at mmckeown@comdt.uscg.mil or Sharon Gross, Executive Secretary, Aquatic Nuisance Species Task Force at 703–358–2308 or by e-mail at: sharon_gross@fws.gov

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Aquatic Nuisance Species Task Force Ballast Water and Shipping Committee. The Task Force was established by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4701–4741). Topics to be addressed at this meeting include: updates from the AD–Hoc Environmental Soundness Working Group and the Ad-Hoc Workgroup on Ballast Water Treatment Standards; and the present and future role and purpose of the committee.

Minutes of the meeting will be maintained by the Executive Secretary, Aquatic Nuisance Species Task Force, Suite 851, 4401 North Fairfax Drive, Arlington, Virginia 22203–1622, and the Chair of the Ballast Water and Shipping Committee at the Environmental Standards Division, Office of Operations and Environmental Standards, U.S. Coast Guard (G–MSO–4), 2100 Second Street, SW, room 1309, Washington, DC 20593–0001. Minutes for the meetings will be available at these locations for public inspection during regular business hours, Monday through Friday.

Dated: October 6, 2000.

**Cathleen I. Short,**

*Co-Chair, Aquatic Nuisance Species Task Force, Assistant Director—Fisheries.*

[FR Doc. 00–26348 Filed 10–12–00; 8:45 am]

**BILLING CODE 4310–55–M**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[UT–050–1430–DB–24–1A]**

### Notice of Availability

**AGENCY:** Bureau of Land Management (BLM), Interior.

**ACTION:** Notice of Availability of Environmental Assessment (EA)/ Finding of No Significant Impact (FONSI) for a Proposed Plan Amendment to the Mountain Valley Management Framework Plan (MFP).

**SUMMARY:** The Utah BLM Richfield Field Office has completed a Proposed Plan Amendment/EA/FONSI for the Mountain Valley MFP. All public lands and the mineral estate have been analyzed. The Environmental Assessment (EA) revealed no significant impact from the proposed action. The Mountain Valley MFP would be amended to identify the following public lands suitable for direct sale to Mr. Earl Sudweeks: T. 30 S., R. 3 W., Section 21, Lots 2 and 5, Salt Lake Meridian, Utah, containing a total of 23.09 acres. All minerals in the lands would be reserved to the United States.

**DATES:** The 30 day protest period for the proposed plan amendment will commence with the publication of this notice. Protests must be received on or before November 13, 2000.

**ADDRESSES:** Protests on the planning decision must be received by the Director (W–210), Bureau of Land Management, Attn: Brenda Williams, 1849 C Street, NW., Washington, DC 20240 within 30 days after the date of publication of this Notice of Availability.

**FOR FURTHER INFORMATION CONTACT:** Jerry Goodman, Richfield Field Office Manager, 150 East 900 North, Richfield, Utah 84701 or telephone (435) 896–1500. Copies of the proposed plan amendment/EA/FONSI are available at the Utah BLM Richfield Field Office and at the BLM Utah State Office, 324 South State Street, P.O. Box 45155, Salt Lake City, Utah 84145–0155 (telephone: 801–539–4001).

**SUPPLEMENTARY INFORMATION:** A Notice of Intent proposing to amend the MFP was published in the **Federal Register**. on February 1, 2000. This plan amendment would allow the Richfield Field Office to sell the identified public land, at fair market value, pursuant to Section 203 of the Federal Land Policy and Management Act (FLPMA) of 1976 (90 stat. 2750, 43 U.S.C. 1713), and Title 43 CFR Part 2710.

The plan amendment is subject to protest from any adversely affected party who participated in the planning process. Protests must be made in accordance with provisions of 43 CFR 1610.5–2, as follows:

—The name, mailing address, phone number, and interest of the person filing the protest.
—A statement of the issue(s) being protested.
—A statement of the part(s) of the proposed amendment being protested and citing pages, paragraphs, maps, etc., of the proposed plan amendment.
—A copy of all documents addressing the issue(s) submitted by the protestor during the planning process or a reference to the date when the protester discussed the issue(s) for the record.
—A concise statement as to why the protester believes the proposed decision of the BLM State Director is incorrect.

**Linda S. Colville,**

*Acting State Director.*

[FR Doc. 00–26304 Filed 10–12–00; 8:45 am]

**BILLING CODE 4310–$$–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[OR–130–2810–HT; GP1–0004]**

### Fire Closure Regulated and Public Lands Restrictions Lifted: Washington

**AGENCY:** Bureau of Land Management, Spokane District.

**NOTICE:** Notice of Regulated Fire Closure and Restrictions For Bureau of Land Management Public Lands in the State of Washington are Lifted.

**SUMMARY:** Pursuant to 43 CFR 9212 and the **Federal Register** Notice dated July 28, 2000 (FR–0307), fire restrictions are lifted on public lands within the Spokane District, Bureau of Land Management (BLM) including Juniper Forest/Juniper Dunes Recreation Area, and areas surrounding Hog Canyon, Miller Ranch/Fishtrap, Pacific Lake, Twin Lakes, Coffeepot, Yakima River Canyon, Douglas Creek, Chopaka/ Palmer Mountain, Split Rock, Liberty, Saddle Mountains, Lakeview Ranch/ Lake Creek, Boundary Dam, and Escure Ranch/Rock Creek recreation sites.

**FOR FURTHER INFORMATION CONTACT:** Scott Boyd, Fire Management Officer, Bureau of Land Management, Spokane District Officer, 1103 N. Fancher Road, Spokane Washington, 99212; or call (509) 536–1200.

Dated: October 6, 2000.

**Joseph K. Buesing,**

*District Manager.*

[FR Doc. 00–26306 Filed 10–12–00; 8:45 am]

**BILLING CODE 4310–33–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[OR–130–1020–XU; GP1–0008]**

### Notice of Meeting; Resource Advisory Councils; Eastern Washington

**AGENCY:** Bureau of Land Management, Spokane District, Interior.

**NOTICE:** Notice of the Meeting of the Eastern Washington Advisory Council; November 2, 2000, in Spokane, Washington.

**SUMMARY:** A meeting of the Eastern Washington Resource Advisory Council will be held on November 2, 2000. The meeting will convene at 9 a.m., at the Spokane District Office, Bureau of Land Management, 1103 North Fancher Road, Spokane, Washington, 99212–1275. The meeting will adjourn upon conclusion of business, but no later than 4 p.m. Public comments will be heard from 10 a.m. until 10:30 a.m. If necessary, to accommodate all wishing to make public comments, a time limit may be placed upon each speaker. At an appropriate time, the meeting will adjourn for approximately one hour for lunch. Topics to be discussed include welcome of new members, FY2000 accomplishments, FY2001 work priorities, and development of the FY2001 meeting schedule.

**FOR FURTHER INFORMATION CONTACT:** Bureau of Land Management, Spokane District Office, 1103 N. Fancher Road, Spokane, Washington, 99212; or call 509–536–1200.

Dated: October 6, 2000.

**Joseph K. Buesing,**

*District Manager.*

[FR Doc. 00–26307 Filed 10–12–00; 8:45 am]

**BILLING CODE 4310–33–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[OR–958–1430–ET; HAG01–0003; OR–55645]**

### Proposed Withdrawal and Opportunity for Public Meeting; Oregon

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Correction.

**SUMMARY:** In the Notice of Proposed Withdrawal, published August 10, 2000, as FR Doc. 00–20235, the following corrections are made:

On page 49010, "(insert date signed)", is hereby corrected to read, "July 14, 2000". In addition, "For a period of 2 years from the date of publication of the original notice (May 14, 1998), ", is hereby corrected to read, "For a period of 2 years from the date of publication of this notice,'.

Dated: October 4, 2000.

**Sherrie L. Reid,**

*Acting, Chief Branch of Realty and Records Services, Oregon/Washington.*

[FR Doc. 00–26275 Filed 10–12–00; 8:45 am]

**BILLING CODE 4310–33–P**



## DEPARTMENT OF THE INTERIOR

### National Park Service

### Funding Assistance for Non-Federal Acquisition of Civil War Battlefield Land

**AGENCY:** National Park Service, Interior.

**ACTION:** Availability of Funding for Acquisition of Civil War Battlefield Land.

**SUMMARY:** The National Park Service (NPS) announces the availability of funds to assist States and local communities in acquiring for permanent protection lands, or interests in lands, at significant Civil War battlefield sites.

**ADDRESSES:** Funding proposals should be mailed to: Hampton Tucker, National Park Service, Heritage Preservation Services, 1849 C Street, NW., NC 200, Washington, DC 20240, telephone (202) 343–3580.

**FOR FURTHER INFORMATION CONTACT:** Hampton Tucker, National Park Service, Heritage Preservation Services, 1849 C Street, NW., NC 200, Washington, DC 20240, telephone (202) 343–3580.

**SUPPLEMENTARY INFORMATION:** Under the 1999 Interior Appropriations Act (Public Law 105–83), Congress appropriated $8 million from the Land & Water Conservation Fund to assist non-Federal efforts to acquire and preserve Civil War battlefield lands. The Congress assigned most of these funds to specific projects. At this time, a portion of these funds will be left unspent and will be reassigned to other worthy projects. NPS seeks proposals from State and local governments—or from qualified non-profit historic preservation organizations acting through an agency of State or local government—for the non-federal acquisition of significant Civil War battlefield land.

Project proposals are subject to the following requirements.

1. The 1999 Appropriations Act requires that these funds be matched on a two-for-one basis with non-federal dollars. That is, the federal dollars can pay for no more that one-third of the acquisition cost.

2. The purchase price must be supported by a qualified appraisal that has been approved by NPS as meeting the Uniform Appraisal Standards for Federal Land Acquisitions.

3. The battlefield land acquired with the assistance of these funds must be permanently protected from inappropriate development either through public ownership or through conveyance of a perpetual easement to a public historic preservation agency.

NPS will give priority to acquisition of land, or interests in land, within the "core" areas of Priority I and Priority II battlefields, as identified by the Congressionally-chartered Civil War Sites Advisory Commission (see list below). Among potential projects NPS will give highest priority to acquisition projects that can be completed within the immediate future.

Proposals should be submitted by November 15, 2000, and must include:

1. A carefully drawn map (preferably on a U.S.G.S. Quadrangle Map) that sets out the boundaries of the battlefield and identifies within those boundaries the specific lands to be acquired.

2. The number of acres of land to be acquired.

3. A description of the battle-related events that occurred on the land.

4. A statement of whether the owner of the land to be acquired has indicated a willingness to sell the land.

5. A statement of the owner's asking price and/or the estimated fair market value of the land to be acquired.

6. A statement of how much federal assistance from this program the applicant is requesting.

7. A statement of how much matching share is already on hand or firmly pledged.

**Priority I Civil War Battlefields:**

*Alabama* Mobile Bay (Ft Morgan & Blakeley); *Arkansas* Prairie Grove; *Georgia* Allatoona, Chickamauga Kennesaw Mountain, Ringgold Gap; *Kentucky* Mill Springs, Perryville; *Louisiana* Port Hudson; *Maryland* Antietam, Monocacy, South Mountain; *Mississippi* Brices Cross Roads, Chickasaw Bayou, Corinth, Port Gibson, Raymond, Vicksburg; *Missouri* Byram's Ford, Fort Davidson, Newtonia; *New Mexico* Glorieta Pass; *North Carolina* Bentonville, Fort Fisher; *Oklahoma* Honey Springs; *Pennsylvania* Gettysburg; *South Carolina* Secessionville; *Tennessee* Chattanooga, Fort Donelson, Spring Hill; *Virginia* Boydton Plank Road, Brandy Station, Bristoe Station, Cedar Creek, Chaffin's Farm/New Market Heights, Chancellorsville, Cold Harbor, Deep Bottom II, Fisher's Hill, Gaines' Mill, Glendale, Kernstown I, Malvern Hill, Manassas, Second Mine Run, North Anna, Petersburg, Richmond, Spotsylvania Court House, White Oak Road, Wilderness; *West Virginia* Harpers Ferry, Rich Mountain.

**Priority II Civil War Battlefields**

*Arkansas* Chalk Bluff, Devil's Backbone, Elkin's Ferry, Marks' Mills, Prairie D'an; *Colorado* Sand Creek; *Georgia* Dalton I, Davis' Cross Road,

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Griswoldville, Kolb's Farm, Lovejoy's Station, New Hope Church, Resaca, Rocky Face Ridge; *Kentucky* Cynthiana, Munfordville, Richmond; *Louisiana* Fort De Russy, Irish Bend, LaFourche Crossing, Mansfield, Mansura; *Maryland* Boonsborough; *Mississippi* Big Black River Bridge, Champion Hill, Grand Gulf, Okolona, Snyder's Bluff; *Missouri* Carthage, Fredericktown, Lexington, Lone Jack, Newtonia; *New Mexico* Valverde; *North Carolina* Monroe's Cross Roads, Roanoke Island, Wyse Fork; *Oklahoma* Chustenahlah; *South Carolina* Grimball's Landing, Honey Hill; *Tennessee* Brentwood, Fair Garden, Murfreesborough, Parker's Cross Roads, Thompson's Station; *Texas* Sabine Pass II; *Virginia* Aquia Creek, Berryville, Buckland Mills, Cedar Mountain, Cool Springs, Cross Keys, Cumberland Church, Dinwiddie Courthouse, 1st Deep Bottom, Hampton Roads, Hatcher's Run, Haw's Shop, Lewis' Farm, Peebles' Farm, Piedmont, Port Republic, Port Walthall Junction, Ream's Station, Rice's Station, Sailor's Creek, Saltville, Suffolk (Hill's Point), Sutherland's Station, Swift Creek, Tom's Brook, Trevilian Station, Ware Bottom Church, White Oak Swamp; *West Virginia* Hoke's Run, Smithfield Crossing, Summit Point .

Dated: October 10, 2000.

**Paul Hawke,**

*Chief, American Battlefield Protection Program.*

[FR Doc. 00–26347 Filed 10–12–00; 8:45 am]

BILLING CODE 4310–70–P

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Buffalo Bill Historical Center, Cody, WY

**AGENCY:** National Park Service

**ACTION:** Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Buffalo Bill Historical Center, Cody, WY.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by Buffalo Bill Historical Center professional staff in consultation with representatives of the Northern Cheyenne Tribe of the Northern Cheyenne Indian and the Cheyenne-Arapaho Tribes of Oklahoma.

In 1876, human remains representing one individual were removed by "Buffalo Bill" Cody during the Battle of Hat Creek, near present-day Montrose, NE. In 1957, the grandchildren of Mr. Cody, Fred H. Garlow, William Joseph Garlow, and Mrs. Jane Cody Garlow Mallehan, sold the remains to the Buffalo Bill Historical Center. The remains, a scalp, were identified by Mr. Cody as belonging to Yellow Hair, a Cheyenne Indian. The remains are tied with two leather strips. No associated funerary objects are present.

Based on the above-mentioned information, officials of the Buffalo Bill Historical Center have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains described above represent the physical remains of one individual of Native American ancestry. While the likely identity of the individual reported in this notice has been determined, officials of the Buffalo Bill Historical Center have not been able to trace a direct and unbroken line of descent to a particular individual, pursuant to 43 CFR 10.2 (b)(1). However, officials of the Buffalo Bill Historical Center have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and the Northern Cheyenne Tribe of the Northern Cheyenne Indian and the Cheyenne-Arapaho Tribes of Oklahoma. Officials of the Buffalo Bill Historical Center also have determined that the two leather strips holding the braids of the hair, though not considered funerary objects, sacred objects, or objects of cultural patrimony, should be repatriated with the remains.

This notice has been sent to officials of the Northern Cheyenne Tribe of the Northern Cheyenne Indian, and the Cheyenne-Arapaho Tribes of Oklahoma. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Emma I. Hansen, Buffalo Bill Historical Center, 720 Sheridan Avenue, Cody, WY 82414, telephone (307) 587–4771, before November 13, 2000. Repatriation of the human remains to the Northern Cheyenne Tribe of the Northern Cheyenne Indian and the Cheyenne-Arapaho Tribes of Oklahoma may begin after that date if no additional claimants come forward.

Dated: September 26, 2000.

**John Robbins,**

*Assistant Director, Cultural Resources Stewardship and Partnerships.*

[FR Doc. 00–26345 Filed 10–12–00; 8:45 am]

BILLING CODE 4310–70–F

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of Mendocino National Forest, USDA-Forest Service, Willows, CA

**AGENCY:** National Park Service.

**ACTION:** Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of Mendocino National Forest, USDA-Forest Service, Willows, CA

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by Mendocino National Forest professional staff in consultation with representatives of Berry Creek Rancheria of Maidu Indians of California; Enterprise Rancheria of Maidu Indians of California; Mechoopda Indian Tribe of Chico Rancheria, California; Mooretown Rancheria of Maidu Indians of California; and Round Valley Indian Tribes of the Round Valley Reservation, California.

Between 1976 and 1977, human remains representing four individuals were excavated from site CA–BUT–296 in Butte County, CA by field crews from California State University, Chico. The university was contracted by the Mendocino National Forest in 1976 after accidentally discovering the remains during mechanical trenching for an irrigation pipeline at a tree nursery. No known individuals were identified. The 66 associated funerary objects include a stone bead, bear claws, bone awls or hairpins, a bone tube fragment, a perforated bone artifact fragment, a quartz crystal, and flaked stone artifacts.

Based on the condition of the remains and material culture found with the burials, these individuals have been identified as Native American. The remains were determined to date to the late prehistoric period. Ethnographic, historical, and geographic information establishes that the Konkow Maidu people were occupants of the region at the time of contact and European colonization. Oral history of the Maidu Indians also indicates they were in the region prior to contact and European colonization.

Based on the above-mentioned information, officials of the Mendocino National Forest, USDA-Forest Service have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of four individuals of Native American ancestry. Officials of the Mendocino National Forest, USDA-Forest Service also have determined that, pursuant to 43 CFR 10.2 (d)(2), the 66 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Mendocino National Forest, USDA-Forest Service have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Berry Creek Rancheria of Maidu Indians of California; Enterprise Rancheria of Maidu Indians of California; Mechoopda Indian Tribe of Chico Rancheria, California; Mooretown Rancheria of Maidu Indians of California; and Round Valley Indian Tribe of the Round Valley Reservation, California.

This notice has been sent to officials of the Berry Creek Rancheria of Maidu Indians of California; Enterprise Rancheria of Maidu Indians of California; Mechoopda Indian Tribe of Chico Rancheria, California; Mooretown Rancheria of Maidu Indians of California; and Round Valley Indian Tribe of the Round Valley Reservation, California. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact James D. Fenwood, Forest Supervisor, Mendocino National Forest, 825 North Humboldt Avenue, Willows, CA, telephone (530) 934–3316, before November 13, 2000. Repatriation of the human remains and associated funerary objects to the Mechoopda Indian Tribe of Chico Rancheria, California may begin after that date if no additional claimants come forward.

Dated: October 5, 2000.

**John Robbins,**

*Assistant Director, Cultural Resources Stewardship and Partnerships.*

[FR Doc. 00–26346 Filed 10–12–00; 8:45 am]

BILLING CODE 4310–70–F



## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 731–TA–556 (Review)]**

### Dynamic Random Access Memory Semiconductors of One Megabit and Above From Korea

**AGENCY:** United States International Trade Commission.

**ACTION:** Termination of five-year review.

**SUMMARY:** The subject five-year review was initiated in November 1999 to determine whether revocation of the antidumping duty order on dynamic random access memory semiconductors of one megabit and above from Korea would be likely to lead to continuation or recurrence of dumping and of material injury to a domestic industry. On October 5, 2000, the Department of Commerce published notice that it was revoking the order "[b]ecause no domestic interested party is now participating in this sunset review" (65 FR 59391). Accordingly, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)), the subject review is terminated.

**EFFECTIVE DATE:** October 5, 2000.

**FOR FURTHER INFORMATION CONTACT:** Bonnie Noreen (202–205–3167), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

**Authority:** This review is being terminated under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.69 of the Commission's rules (19 CFR 207.69).

Dated: October 6, 2000.

By order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 00–26277 Filed 10–12–00; 8:45 am]

BILLING CODE 7010–02–P

## INTERNATIONAL TRADE COMMISSION

**[Inv. No. 337–TA–438]**

### In the Matter of Certain Plastic Molding Machines With Control Systems Having Programmable Operator Interfaces Incorporating General Purpose Computers, and Components Thereof; Notice of Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Institution of investigation pursuant to 19 U.S.C. 1337.

**SUMMARY:** Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on September 8, 2000, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Milacron Inc. of Cincinnati, Ohio. Supplements to the complaint were filed on September 25 and 27, 2000. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain plastic molding machines with control systems having programmable operator interfaces incorporating general purpose computers, and components thereof, by reason of infringement of claims 1–4 and 9–13 of U.S. Letters Patent 5,062,052, as amended by Reexamination Certificate B1 5,062,052. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and a permanent cease and desist order.

**ADDRESSES:** The complaint and supplements, except for any confidential information contained therein, are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Room 112, Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons

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with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may be obtained by accessing its internet server (http://www.usitc.gov).

**FOR FURTHER INFORMATION CONTACT:** Steven A. Glazer, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2577.

**Authority:** The authority for Institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2000).

**Scope of Investigation**

Having considered the complaint, the U.S. International Trade Commission, on October 6, 2000, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine:

(a) Whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain plastic molding machines with control systems having programmable operator interfaces incorporating general purpose computers, or components thereof, by reason of infringement of claims 1, 2, 3, 4, 9, 10, 11, 12, or 13 of U.S. Letters Patent 5,062,052, as amended by Reexamination Certificate B1 5,062,052, and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is Milacron Inc., 2090 Florence Avenue, Cincinnati, Ohio 45206.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Ube Industries, Ltd., Tokyo Head Office, Seavans North Bldg., 1–2–1, Shibaura, Minato-Ku, Tokyo, Japan 140–8449

Ube Machinery, Inc., 5700 S. State Street, Ann Arbor, Michigan 48108

(c) Steven A. Glazer, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, S.W., Room 401–K, Washington, D.C. 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Sidney Harris is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a) of the Commission's Rules, such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

Issued: October 6, 2000.

By order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 00–26278 Filed 10–12–00; 8:45 am]

BILLING CODE 7020–02–P

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Manufacturer of Controlled Substances; Notice of Application

Pursuant to section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on August 11, 2000, B.I. Chemical, Inc., 2820 N. Normandy Drive, Petersburg, Virginia 23805, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

| Drug | Schedule |
|---|---|
| Amphetamine (1100) | II |
| Methadone (9250) | II |
| Methadone-intermediate (9254) | II |
| Levo-alphacetylmethadol (LAAM) (9648). | II |

The firm plans to bulk manufacture the listed controlled substances for formulation into finished pharmaceuticals.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than December 12, 2000.

Dated: September 28, 2000.

**John H. King,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 00–26370 Filed 10–12–00; 8:45 am]

BILLING CODE 4410–09–M

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Importation of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(I)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance and opportunity for a hearing.

Therefore, in accordance with Section 1301.34 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on August 11, 2000, B.I. Chemical, Inc., 2820 N. Normandy Drive, Petersburg, Virginia 23805, made application by renewal to the Drug Enforcement Administration to be registered as an importer of phenylacetone (8501), a basic class of controlled substance listed in Schedule II.

The firm plans to import the phenylacetone for the bulk manufacture of amphetamine.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register representative (CCR), and must be filed no later than November 13, 2000.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: September 26, 2000.

**John H. King,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 00–26372 Filed 10–12–00; 8:45 am]

BILLING CODE 4410–09–M



## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Manufacturer of Controlled Substances; Notice of Registration

By Notice dated May 19, 2000, and published in the **Federal Register** on May 30, 2000, (65 FR 34498), Chemic Laboratories, Inc., 480 Neponset Street, Building 7C, Canton, Massachusetts 02021, made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of cocaine (9041), a basic class of controlled substance listed in Schedule II.

The firm plans to bulk manufacture small quantities of cocaine derivative for a customer.

DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Chemic Laboratories, Inc. to manufacture is consistent with the public interest at this time. DEA has investigated Chemic Laboratories, Inc. to ensure that the company's registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: August 18, 2000.

**John H. King,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 00–26366 Filed 10–12–00; 8:45 am]

BILLING CODE 4410–09–M

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Importer of Controlled Substances; Notice of Registration

By Notice dated July 11, 2000, and published in the **Federal Register** on August 1, 2000, (65 FR 46951), Chiragene, Inc., 7 Powder Horn Drive, Warren, New Jersey 07059, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of phenylacetone (8501), a basic class of controlled substance listed in Schedule II.

The firm plans to import the phenylacetone to manufacture amphetamine.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Chiragene, Inc. to import phenylacetone is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Chiragene, Inc. on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to Section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, Section 1301.34, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: October 4, 2000.

**John H. King,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 00–26368 Filed 10–12–00; 8:45 am]

BILLING CODE 4410–09–M

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Importation of Controlled Substances; Notice of Withdrawal

As set forth in the **Federal Register** (FR Doc. 00–7870) Vol. 65, No. 62 at page 16963, dated March 30, 2000, Chirex Technology Center, Inc., DBA Chirex Cauldron, 383 Phoenixville Pike, Malvern, Pennsylvania 19355, made application to the Drug Enforcement Administration to be registered as an importer of amphetamine (1100).

Two registered bulk manufacturers of amphetamine requested a hearing to deny the proposed registration of Chirex Technology Center, Inc. Chirex Technology Center, Inc. requested by letter that its application be withdrawn. Therefore, Chirex Technology Center, Inc,'s application to import amphetamine is hereby with drawn.

Dated: September 26, 2000.

**John H. King,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 00–26374 Filed 10–12–00; 8:45 am]

BILLING CODE 4410–09–M

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Manufacturer of Controlled Substances; Notice of Registration

By Notice dated May 1, 2000, and published in the **Federal Register** on May 12, 2000, (65 FR 30614), Dupont Pharmaceuticals, 1000 Stewart Avenue, Garden City, New York 11530, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of

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the basic classes of controlled substances listed below:

| Drug | Schedule |
|---|---|
| Oxycodone (9143) | II |
| Hydrocodone (9193) | II |
| Oxymorphone (9652) | II |

The firm plans to manufacture the listed controlled substances to make finished products.

DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Dupont Pharmaceuticals to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Dupont Pharmaceuticals on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: August 18, 2000.

**John H. King,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 00–26367 Filed 10–12–00; 8:45 am]

BILLING CODE 4410–09–M

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Manufacturer of Controlled Substances; Notice of Application

Pursuant to section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on August 3, 2000, Guilford Pharmaceuticals, Inc., 6611 Tributary Street, Baltimore, Maryland 21224, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of cocaine (9041) a basic class of controlled substance listed in Schedule II.

The firm plans to manufacture methyl-3-beta-(4-trimethylstannylphenyl)-tropane-2-carboxylate as a final intermediate for the production of dopascan injection.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than December 12, 2000.

Dated: September 26, 2000.

**John H. King,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 00–26373 Filed 10–12–00; 8:45 am]

BILLING CODE 4410–09–M

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Manufacturer of Controlled Substances; Notice of Application

Pursuant to section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on August 4, 2000, Irix Pharmaceuticals, Inc., 101 Technology Place, Florence, South Carolina 29501, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of methylphenidate (1724), a basic class of controlled substance listed in Schedule II.

The firm plans to manufacture methylphenidate for demonstration purposes and for dosage form development and stability studies.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than December 12, 2000.

Dated: September 28, 2000.

**John H. King,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 00–26371 Filed 10–12–00; 8:45 am]

BILLING CODE 4410–09–M

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Manufacturer of Controlled Substances; Notice of Registration

By Notice dated June 21, 2000, and published in the **Federal Register** on July 3, 2000 (65 FR 41093), ISP Freetown Chemicals, Inc., 2328 South Main Street, Assonet, Massachusetts 02702, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

| Drug | Schedule |
|---|---|
| Amphetamine (1100) | II |
| Phenylacetone (8501) | II |

The firm plans to bulk manufacture amphetamine for a customer and to bulk manufacture the phenylacetone for the manufacture of the amphetamine.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of ISP Freetown Chemicals, Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated ISP Freetown Chemicals, Inc. to ensure that the company's registration is consistent with the public interest.

This investigation included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the a basic classes of controlled substances listed above is granted.

Dated: October 4, 2000.

**John H. King,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 00–26369 Filed 10–12–00; 8:45 am]

BILLING CODE 4410–09–M



## DEPARTMENT OF LABOR

### Employment and Training Administration

### Public Meeting; Federal Committee on Registered Apprenticeship

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to section 10 of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. APP.1), notice is hereby given of a meeting of the Federal Committee on Registered Apprenticeship (FCRA).

*Time and Date:* The meeting will begin at 9:00 a.m. Thursday, October 26, 2000, and will continue until approximately 5:00 p.m. The meeting will reconvene at 9:00 a.m. on Friday, October 27, 2000, and will continue until approximately 12 noon.

*Place:* The Capital Hilton, 1001–16th Street NW, Washington, D.C. (202) 393–1000.

**FOR FURTHER INFORMATION CONTACT:** Mr. Anthony Swoope, Administrator, Office of Apprenticeship Training, Employer and Labor Services, Employment and Training Administration, U.S. Department of Labor, Room N–4649, 200 Constitution Avenue, NW, Washington, DC 20210. Telephone: (202) 693–2796, (this is not a toll-free number).

**Matters To Be Considered**

The agenda will focus on the following topics:

(1) Reports on the FCRA Work Groups:
- Marketing
- Quality
- Diversity
- Resources/Data
- Legislative

(2) School to Work Technical Assistance Providers Bank

(3) Discuss FCRA Recommendations for submission to the Secretary of Labor

(4) Progress Report on OATELS/BAT activities

(5) Next Meeting Dates and Location

(6) Public Comment

**Status**

Members of the public are invited to attend the proceedings. Individuals with disabilities should contact Marion Winters at (202) 219–5921 no later than October 16, 2000, if special accommodations are needed.

Any member of the public who wishes to file written data or comments pertaining to the agenda may do so by sending it to Mr. Anthony Swoope, Administrator, Office of Apprenticeship Training, Employer and Labor Services, Employment and Training Administration, U.S. Department of Labor, Room N–4649, 200 Constitution Avenue, NW, Washington, DC 20210. Such submissions should be sent by October 16, 2000, to be included in the record for the meeting.

Any member of the public who wishes to speak at the meeting should indicate the nature of the intended presentation and the amount of time needed by furnishing a written statement to the Designated Federal Official by October 16, 2000. The chairperson will announce at the beginning of the meeting the extent to which time will permit the granting of such request.

Signed at Washington, DC, this 10th day of October 2000.

**Raymond L. Bramucci,**

*Assistant Secretary of Employment and Training.*

[FR Doc. 00–26430 Filed 10–12–00; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment Standards Administration, Wage and Hour Division

### Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

**New General Wage Determination Decision**

The number of the decision added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-

VOL
65
ISS
199
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13
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Bacon And Related Acts" are listed by Volume and States:

*Volume V*

Nebraska
NE000058 (Oct. 13, 2000)

**Withdrawal General Wage Determination Decision**

This is to advise all interested parties that the Department of Labor is withdrawing, from the date of this notice, General Wage Determination No. PA000017, dated February 11, 2000. See PA000002.

Contracts for which bids have been opened shall not be affected by this notice. Also, consistent with 29 CFR 1.6(c)(2)(i)(A), when the opening of bids is less than ten (10) days from the date of this notice, this action shall be effective unless the agency finds that there is insufficient time to notify bidders of the change and the finding is documented in the contract file.

**Modifications to General Wage Determination Decisions**

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis—Bacon And Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

*Volume I*

New York
NY000002 (Feb. 11, 2000)
NY000003 (Feb. 11, 2000)
NY000004 (Feb. 11, 2000)
NY000005 (Feb. 11, 2000)
NY000006 (Feb. 11, 2000)
NY000007 (Feb. 11, 2000)
NY000008 (Feb. 11, 2000)
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GA000003 (Feb. 11, 2000)
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GA000032 (Feb. 11, 2000)
GA000033 (Feb. 11, 2000)
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GA000073 (Feb. 11, 2000)
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GA000089 (Feb. 11, 2000)
GA000093 (Feb. 11, 2000)
GA000094 (Feb. 11, 2000)

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MI000035 (Feb. 11, 2000)
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MI000049 (Feb. 11, 2000)
MI000050 (Feb. 11, 2000)
Minnesota
MN000005 (Feb. 11, 2000)
MN000007 (Feb. 11, 2000)
MN000008 (Feb. 11, 2000)
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MN000061 (Feb. 11, 2000)
Wisconsin
WI000052 (Feb. 11, 2000)

*Volume V*

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KS000069 (Feb. 11, 2000)
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Nebraska
NE000011 (Feb. 11, 2000)
Texas
TX000003 (Feb. 11, 2000)
TX000096 (Feb. 11, 2000)

*Volume VI*

Alaska
AK000001 (Feb. 11, 2000)
Colorado
CO000002 (Feb. 11, 2000)
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CO000009 (Feb. 11, 2000)
CO000016 (Feb. 11, 2000)
CO000024 (Feb. 11, 2000)
CO000025 (Feb. 11, 2000)
Wyoming
WY000009 (Feb. 11, 2000)

*Volume VII*

None

**General Wage Determination Publication**

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board system of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of the interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC this fifth day of October, 2000.

**Carl J. Poleskey,**

*Chief, Branch of Construction Wage Determinations.*

[FR Doc. 00–26164 Filed 10–12–00; 8:45 am]

BILLING CODE 4510–27–M



## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice 00–125]**

### Aerospace Safety Advisory Panel; Meeting

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of Meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the Aerospace Safety Advisory Panel.

**DATES:** Friday, November 10, 2000, 10 a.m. to 12:30 p.m.

**ADDRESSES:** National Aeronautics and Space Administration, 300 E Street, SW., Room 5W40, Washington, DC 20546.

**FOR FURTHER INFORMATION CONTACT:** Notify Ms. Suzanne E. Hilding, Code Q–1, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–1455, if you plan to attend.

**SUPPLEMENTARY INFORMATION:** The Aerospace Safety Advisory Panel will meet to deliberate topics for inclusion in its Annual Report for 1999. This is pursuant to carrying out its statutory duties for which the Panel reviews, identifies, evaluates, and advises on those program activities, systems, procedures, and management activities that can contribute to program risk. Priority is given to those programs that involve the safety of human flight. The Aerospace Safety Advisory Panel is currently chaired by Richard D. Blomberg and is composed of 9 members and 8 consultants. The meeting will be open to the public up to the capacity of the room (approximately 40 persons including members of the Panel).

Dated: October 5, 2000.

**Beth M. McCormick,**

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

[FR Doc. 00–26301 Filed 10–12–00; 8:45 am]

BILLING CODE 7510–01–P

## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Bioengineering and Environmental Systems: Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Special Emphasis Panel in Bioengineering and Environmental Systems (1189).

*Date and Time:* October 31, 2000; 8:00 am–5:00 pm.

*Place:* National Science Foundation, 4201 Wilson Blvd., Room 370, Arlington, VA.

*Type of Meeting:* Closed.

*Contact Person:* A. Frederick Thompson and Nicholas L. Clesceri, Program Directors, Division of Bioengineering and Environmental Systems, National Science Foundation; 4201 Wilson Boulevard; Arlington, Virginia 22230; Telephone: (703) 292–8320.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate Environmental Engineering Unsolicited proposals as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 10, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–26316 Filed 10–12–00; 8:45 am]

BILLING CODE 7555–01–M

## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Bioengineering and Environmental Systems: Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Special Emphasis Panel in Bioengineering and Environmental Systems (1189).

*Date and Time:* November 30–December 1, 2000; 8:00 am–5:00 pm.

*Place:* National Science Foundation, 4201 Wilson Blvd, Room 580, Arlington, VA.

*Type of Meeting:* Closed.

*Contact Person:* Fred G. Heineken and Dewey Ryu, Program Directors, Division of Bioengineering and Environmental Systems, National Science Foundation; 4201 Wilson Boulevard; Arlington, Virginia 22230; Telephone: (703) 292–8320.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate Biochemical Engineering/Biotechnology CAREER proposals as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 10, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–26317 Filed 10–12–00; 8:45 am]

BILLING CODE 7555–01–M

## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Chemical and Transport Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Special Emphasis Panel in Chemical and Transport Systems (1190).

*Date and Time:* October 30, 2000; 8 a.m. to 5 p.m.

*Place:* National Science Foundation, 4201 Wilson Blvd., Room 310, Arlington, VA.

*Type of Meeting:* Closed.

*Contact Person:* Dr. M. C. Roco, Program Director, Division of Chemical and Transport Systems (CTS), Room 525, (703) 292–8370.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate nominations for the FY 2000 Career Panel of proposals as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 10, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–26323 Filed 10–12–00; 8:45 am]

BILLING CODE 7555–01–M

## NATIONAL SCIENCE FOUNDATION

### Advisory Panel for Cognitive, Psychological and Language Sciences; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meetings of the Advisory Panel for Cognitive, Psychological and Language Sciences (#1758);

*Date & Time:* November 9–10, 2000; 8:30 a.m.–5:00 p.m.

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*Place:* National Science Foundation, 4201 Wilson Blvd, Room 880, Arlington, VA.

*Contact Person:* Dr. Rodney R. Cocking, Program Director for Child Learning and Development, National Science Foundation, 4201 Wilson Boulevard, Suite 995, Arlington, VA 22230. Telephone: (703) 292–8732.

*Agenda:* To review and evaluate child learning and development proposals as part of the selection process for awards.

*Date & Time:* November 29–December 01, 2000; 8:30 a.m.–5:00 p.m.

*Place:* National Science Foundation, 4201 Wilson Blvd, Room 770, Arlington, VA.

*Contact Person:* Dr. Joseph L. Young, Program Director for Human Cognition and Perception, National Science Foundation, 4201 Wilson Boulevard, Suite 995, Arlington, VA 22230. Telephone: (703) 292–8732.

*Agenda:* To review and evaluate human cognition and perception proposals as part of the selection process for awards.

*Date & Time:* November 30–December 01, 2000; 8:30 a.m.–5:00 p.m.

*Place:* National Science Foundation, 4201 Wilson Blvd, Room 880, Arlington, VA.

*Contact Person:* Dr. Steven J. Breckler, Program Director for Social Psychology, National Science Foundation, 4201 Wilson Boulevard, Suite 995, Arlington, VA 22230. Telephone: (703) 292–8728.

*Agenda:* To review and evaluate social psychology proposals as part of the selection process for awards.

*Type of Meetings:* Closed.

*Purpose of Meetings:* To provide advice and recommendations concerning support for research proposals submitted to the NSF for financial support.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 10, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–26314 Filed 10–12–00; 8:45 am]

BILLING CODE 7555–01–M

## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Special Emphasis Panel in Design, Manufacture, and Industrial Innovation (1194).

*Date and Time:* November 3, 2000, 8:00 am–5:30 pm.

*Place:* National Science Foundation, 4201 Wilson Blvd, Room 340, Arlington, VA.

*Type of Meeting:* Closed.

*Contact Person:* Dr. Ronald Rardin, Program Directors, DMII, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. (703) 292–8330.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate CAREER proposals as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters that are exempt under 5 U.S.C. 522b(c), (4) and (6) of the Government in the Sunshine Act.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–26322 Filed 10–12–00; 8:45 am]

BILLING CODE 7555–01–M

## NATIONAL SCIENCE FOUNDATION

### Advisory Committee for Education and Human Resources; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub.L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Advisory Committee for Education and Human Resources (#1119).

*Date & Time:* November 8—8:30 am–6:30 pm; November 9—8:30 am–3:00 pm.

*Place:* National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

*Type of Meeting:* Part Open; Closed November 9—12:00 Noon–12:30 pm; Discussion of Personnel Issues.

*Contact Person:* John B. Hunt, Senior Liaison, ACEHR, Directorate for Education and Human Resources, National Science Foundation, 4201 Wilson Boulevard, Room 805, Arlington, VA 22230, 703–292–8602.

*Summary Minutes:* May be obtained from contact person listed above.

*Purpose of Meeting:* To provide advice and recommendations concerning NSF support for Education and Human Resources.

*Agenda:* Review of FY2000 Programs and discussion of National Science Foundation niche in science, mathematics, and engineering technology education.

*Reason for Closing:* The information being discussed includes personnel issues involving specific individuals. These matters are exempt under 5 U.S.C. 552b(c)(6) of the Government in the Sunshine Act.

Dated: October 10, 2000.

**Karen J. York,**

*Committee Management Officer, HRM.*

[FR Doc. 00–26318 Filed 10–12–00; 8:45 am]

BILLING CODE 7555–01–M

## NATIONAL SCIENCE FOUNDATION

### Advisory Committee for Geosciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Advisory Committee for Geosciences (1755).

*Dates/Times:* November 6, 2000; 8:30 a.m.–5:30 p.m.; November 7, 2000; 8 a.m.–4 p.m.

*Place:* National Science Foundation, 4201 Wilson Blvd., Room 375, Arlington, VA.

*Type of Meeting:* Open.

*Contact Person:* Dr. Thomas Spence, Directorate for Geosciences, National Science Foundation, Suite 705, 4201 Wilson Boulevard, Arlington, Virginia 22230, Phone 703–292–8500.

*Minutes:* May be obtained from the contact person listed above.

*Purpose of Meeting:* To provide advice, recommendations, and oversight concerning support for research, education, and human resources development in the geosciences.

*Agenda*

Day 1: Report from Advisory Committee Chairs meeting, Mathematical Sciences Initiative, Nanotechnology Initiative.

Day 2: GEO Education, Human Resources and Diversity, Divisional Subcommittee Meetings, GPRA.

Dated: October 10, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–26325 Filed 10–12–00; 8:45 am]

BILLING CODE 7555–01–M

## NATIONAL SCIENCE FOUNDATION

### Advisory Panel for Methods, Cross-Directorate, and Science and Society Programs; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meetings of the COV Advisory Panel for Infrastructure, Methods & Science Studies (#1760):

*Date and Time:* November 13–14, 2000.

*Rooms:* 309/209 Maingate Building-Tucson, Arizona.

*Place:* University of Arizona.

*Contact Person:* Dr. Rachelle Hollander, Program Director for SDEST, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 292–8763.

*Agenda:* To review and evaluate SDEST proposals as part of the selection process for awards.

*Date & Time:* October 27–28, 2000.

*Place:* National Science Foundation, 4201 Wilson Blvd, Room 310, Arlington, VA.

*Contact Person:* Dr. Bruce Seely, Program Director for Science & Technology Studies,



National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 292–8763.

*Agenda:* To review and evaluate STS proposals as part of the selection process for awards.

*Date & Time:* December 1, 2000.

*Place:* National Science Foundation, 4201 Wilson Blvd, Room 370, Arlington, VA.

*Contact Person:* Dr. Cheryl L. Eavey, Program Director for Methods, Measurement & Statistics, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 292–8763.

*Agenda:* To review and evaluate MMS proposals as part of the selection process for awards.

*Types of Meetings:* Closed.

*Purpose of Meeting:* To provide advice and recommendations concerning support for research proposals submitted to the NSF for financial support.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 10, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–26320 Filed 10–12–00; 8:45 am]

BILLING CODE 7555–01–M

## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Physics; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Special Emphasis Panel in Physics (1208).

*Date and Time:* November 1–3, 2000 at 8 a.m. to 5 p.m.

*Place:* National Science Foundation, 4201 Wilson Blvd., Room 1020, Arlington, VA.

*Type of Meeting:* Closed.

*Contact Person:* Dr. John Lightbody, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 292–4628.

*Purpose of Meeting:* To provide advice and recommendations concerning pre-proposals submitted in response to the Physics Centers proposal solicitation (NSF 00–108).

*Agenda:* To review and evaluate pre-proposals as part of the selection process for awards.

*Reason for Closing:* The pre-proposals being reviewed include information of a proprietary or confidential nature, including technical information; information on personnel and proprietary date for present and future subcontracts. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 10, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–26321 Filed 10–12–00; 8:45 am]

BILLING CODE 7555–01–M

## NATIONAL SCIENCE FOUNDATION

### Office of Polar Programs' Office Advisory Committee; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Office of Polar Programs' Office Advisory Committee (1130).

*Date and Time:* November 6–7, 2000; 8:30 a.m. to 5:00 p.m.

*Place:* National Science Foundation, 4201 Wilson Blvd., Room 1235, Arlington, VA.

*Type of Meeting:* Open, with the exception of discussions about any parts of the Committee of Visitors meeting which could include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act. Specific times of closed sessions may be obtained from the contact person listed below prior to meeting date.

*Contact Person:* Brenda Williams, Office of Polar Programs, National Science Foundation, 4201 Wilson Blvd., Suite 775, Arlington, VA 22230. Telephone: (703) 306–1030.

*Minutes:* May be obtained from the contact person listed above.

*Purpose of Meeting:* To advise NSF on the impact of its policies, programs and activities on the polar research community; to provide advice to the Director of OPP on issues related to long range planning, and to form *ad hoc* subcommittees to carry out needed studies and tasks.

*Agenda:* Discussion of NSF-wide initiatives, long-range planning, Committee of Visitors Report, and GPRA.

Dated: October 10, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–26315 Filed 10–12–00; 8:45 am]

BILLING CODE 7555–01–M

## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Research Evaluation and Communication; Notice of Meeting

In accordance with Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Special Emphasis Panel in Research Evaluation and Communication (1210).

*Date/Time:* October 23, 2000—Room 310 & 360; 8:30 a.m.–5 p.m.; October 24, 2000—Room 310 & 360; 8:30 a.m.–5:00 p.m.

*Place:* National Science Foundation, 4201 Wilson Boulevard, Arlington, VA.

*Type of Meeting:* Closed.

*Contact Person:* Elizabeth VanderPutten, Program Director, Research Evaluation and Communication Division, National Science Foundation, Room 855, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 292–8650.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate CAREER Proposals as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 10, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–26327 Filed 10–12–00; 8:45 am]

BILLING CODE 7555–01–M

## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel on Research, Evaluation and Communication; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

*Name:* Special Emphasis Panel on Research, Evaluation and Communication (1210).

*Date and Time:*

January 25, 2001 (8 a.m.–7 p.m.) Room 310 and 365

January 26, 2001 (8 a.m.–7 p.m.) Room 310 and 365

January 29, 2001 (7:30 a.m.–6 p.m.) Room 310, 340, and 360

January 30, 2001 (7:30 a.m.–6 p.m.) Room 310, 340, and 360

*Place:* National Science Foundation, 4201 Wilson Boulevard, Arlington, VA.

*Type of Meeting:* Closed.

*Contact Person:* Kenneth Whang, Program Director; Research on Learning and Education (ROLE) Program, Division of Research, Evaluation and Communication (REC), Room 855, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: 703/292–8650.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

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*Agenda:* To review and evaluate formal proposals submitted to the ROLE Program as a part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a propriety or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 522b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 10, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–26319 Filed 10–12–00; 8:45 am]

BILLING CODE 7555–01–M

## NATIONAL SCIENCE FOUNDATION

### Advisory Committee for Small Business Industrial Innovation; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Advisory Committee for Small Business Industrial Innovation (61).

*Date/Time:* November 2, 3, 14, 15, and 16, 2000, 8:30 a.m.–5 p.m.

*Place:* National Science Foundation, 4201 Wilson Blvd., Room 130, Arlington, VA.

*Type of Meeting:* Closed.

*Contact Person:* Joseph Hennessey, Acting Director, Small Business Innovation Research and Small Business Technology Transfer Programs, Room 590, Division of Design, Manufacturing, and Industrial Innovation, National Science Foundation, 4201 Wilson Boulevard, VA 22230. Telephone (703) 292–7069.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate proposals submitted to the Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Programs as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 522b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 10, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–26324 Filed 10–12–00; 8:45 am]

BILLING CODE 7555–01–M

## NATIONAL SCIENCE FOUNDATION

### Advisory Panel for Social and Political Sciences; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, and amended), the National Science Foundation announces the following meetings of the Advisory Panel for Social and Political Sciences (1761).

*Date and Time:* November 15–16; 9 am to 5 pm.

*Place:* National Science Foundation, 4201 Wilson Boulevard, Room 920, Arlington, VA.

*Contact Person:* Dr. Frank Scioli and Dr. Marianne Stewart, Program Directors for Political Science, National Science Foundation. Telephone: (703) 292–8762.

*Agenda:* To review and evaluate the political science proposals as a part of the selection process for awards.

*Date and Time:* November 5–6; 9 am to 5 pm.

*Place:* National Science Foundation, 4201 Wilson Boulevard, Room 970, Arlington, VA.

*Contact Person:* Dr. Marie Provine, Program Director, Law and Social Science, National Science Foundation. Telephone: (703) 292–8762.

*Agenda:* To review and evaluate the Law and Science Proposals as a part of the selection process for awards.

*Date and Time:* December 11–12; 9 am to 5 pm.

*Place:* National Science Foundation, 4201 Wilson Boulevard, Room 970, Arlington, VA.

*Contact Person:* Dr. Patricia White and Dr. Fred Pampel, Department of Sociology, National Science Foundation. Telephone: (703) 292–8762.

*Agenda:* To review and evaluate the Sociology proposals as a part of the selection process for awards.

*Type of Meetings:* Closed.

*Purpose of Meeting:* To provide advice and recommendations concerning support for research proposals submitted to the NSF for financial support.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 10, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–26326 Filed 10–12–00; 8:45 am]

BILLING CODE 7555–01–M

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–361 and 50–362]**

### Southern California Edison Company; San Onofre Nuclear Generating Station, Units 2 and 3; Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License No. NPF–10 and Facility Operating License No. NPF–15 for San Onofre Nuclear Generating Station (SONGS), Units 2 and 3, respectively.

The proposed amendments would revise the SONGS Units 2 and 3 technical specifications (TSs) applicable in shutdown MODES relating to positive reactivity additions. For a summary of specific proposed TS changes, see Tables 1 and 2 of the licensee's application dated September 22, 2000 (PCN–520). The licensee's proposal generally conforms to industry Technical Specification Task Force (TSTF), TSTF–286, Revision 2.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendments request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of any accident previously evaluated?

Response: No.

The proposed change would revise 14 specific Limiting Conditions For Operation (LCOs) of the Technical Specifications (TS) for San Onofre Nuclear Generating Station Units 2 and 3 (SONGS 2 & 3) as itemized in Table 1 [See application dated September 22, 2000]. The intent is to clarify those specifications involving positive reactivity additions to the shutdown reactor so that small, controlled, safe insertions of positive reactivity will be allowed where they are now categorically prohibited, posing operational difficulties. This amendment application conforms to TSTF–286 Revision 2 of the industry Technical Specification Task Force, with the exception of the plant-specific differences identified in Table 2. The proposed change does not permit the shutdown margin required by the TS to be reduced. While the proposed change will permit reductions in the discretionary shutdown margin above the TS requirements, this excess margin is not credited in the safety analyses. Therefore, the probability or consequences of any accident previously evaluated will not be significantly increased by the proposed change.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

This amendment request allows for minor plant operational perturbations without adversely impacting the safety analysis required shutdown margin. It does not involve any change to plant equipment or the shutdown margin requirements in the TS. Therefore, it will not create the possibility of a new or different kind of accident from any previously evaluated.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

Response: No.

This amendment request does not change the manner in which safety limits or limiting safety settings are determined.

The proposed change will permit reductions in discretionary shutdown margin, above the TS requirements, that are now prohibited. However, the reductions are not deemed significant because the shutdown margin required by the TS will be preserved.

Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendments until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendments before the expiration of the 30-day notice period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below. By November 13, 2000, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings," in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding, (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding, and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

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Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendments request involves no significant hazards consideration, the Commission may issue the amendments and make them immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

If the final determination is that the amendments request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendments.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Douglas K. Porter, Esquire, Southern California Edison Company, 2244 Walnut Grove Avenue, Rosemead, California 91770, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendments dated September 22, 2000 (ADAMS Accession No. ML003753695), which is available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 6th day of October 2000.

For the Nuclear Regulatory Commission.

**L. Raghavan,**

*Senior Project Manager, Section 2, Project Directorate IV and Decommissioning, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 00–26340 Filed 10–12–00; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–373 and 50–374]**

## Commonwealth Edison Company; LaSalle County Station, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from certain requirements of 10 CFR 50.60(a) for Facility Operating Licenses Nos. NPF–11 and NPF–18, issued to Commonwealth Edison Company (ComEd, or the licensee) for operation of LaSalle County Station, Units 1 and 2, located in LaSalle County, Illinois.

### Environmental Assessment

*Identification of the Proposed Action*

10 CFR Part 50, Appendix G, requires that pressure-temperature (P–T) limits be established for reactor pressure vessels (RPVs) during normal operating and hydrostatic or leak rate testing conditions. Specifically, 10 CFR Part 50, Appendix G, states, "The appropriate requirements on both the pressure-temperature limits and the minimum permissible temperature must be met for all conditions." Appendix G of 10 CFR Part 50 specifies that the requirements for these limits are the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code (Code), Section XI, Appendix G Limits.

To address provisions of amendments to the technical specifications (TS) P–T limits, the licensee requested in its submittal dated February 29, 2000, that the staff exempt ComEd from application of specific requirements of 10 CFR Part 50, Section 50.60(a) and Appendix G, and substitute use of ASME Code Cases N–588 and N–640. Code Case N–588 permits the postulation of a circumferentially-oriented flaw (in lieu of an axially-oriented flaw) for the evaluation of the circumferential welds in RPV P–T limit curves. Code Case N–640 permits the use of an alternate reference fracture toughness ($K_{IC}$ fracture toughness curve instead of $K_{Ia}$ fracture toughness curve) for reactor vessel materials in determining the P–T limits. Since the pressure stresses on a circumferentially-oriented flaw are lower than the pressure stresses on an axially-oriented flaw by a factor of two, using Code Case N–588 for establishing the P–T limits would be less conservative than the methodology currently endorsed by 10 CFR Part 50, Appendix G and, therefore, an exemption to apply the Code Case would be required by 10 CFR 50.60(b). Likewise, since the $K_{IC}$ fracture toughness curve shown in ASME Section XI, Appendix A, Figure A–2200–1 (the $K_{IC}$ fracture toughness curve) provides greater allowable fracture toughness than the corresponding $K_{Ia}$ fracture toughness curve of ASME Section XI, Appendix G, Figure G–2210–1 (the $K_{Ia}$ fracture toughness curve), using Code Case N–640 for establishing the P–T limits would be less conservative than the methodology currently endorsed by 10 CFR Part 50, Appendix G and, therefore, an exemption to apply the Code Case would also be required by 10 CFR 50.60(b).

The proposed action is in accordance with the licensee's application for exemption dated February 29, 2000.

*The Need for the Proposed Action*

The proposed exemption is needed to allow the licensee to implement ASME Code Case N–588 and Code Case N–640 in order to revise the method used to determine the reactor coolant system (RCS) P–T limits, because continued use of the present curves unnecessarily restricts the P–T operating window. Since the RCS P–T operating window is defined by the P–T operating and test limit curves developed in accordance with the ASME Section XI, Appendix G procedure, continued operation of LaSalle with these P–T curves without the relief provided by ASME Code Case N–640 would unnecessarily require the RPV to maintain a temperature exceeding 212 degrees Fahrenheit in a limited operating window during the pressure test. Consequently, steam vapor hazards would continue to be one of the safety concerns for personnel conducting inspections in primary containment. Implementation of the proposed P–T curves, as allowed by ASME Code Cases N–588 and N–640, does not significantly reduce the margin of safety and would eliminate steam vapor hazards by allowing inspections in primary containment to be conducted at a lower coolant temperature.

In the associated exemption, the staff has determined that, pursuant to 10 CFR 50.12(a)(2)(ii), the underlying purpose of the regulation will continue to be served by the implementation of these Code Cases.

*Environmental Impacts of the Proposed Action*

The Commission has completed its evaluation of the proposed action and concludes that there are no significant adverse environmental impacts associated with the proposed action.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological environmental impacts, the proposed action does not involve any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological impacts associated with the proposed action.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

*Alternatives to the Proposed Action*

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

*Alternative Use of Resources*

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for LaSalle County Station, Units 1 and 2.

*Agencies and Persons Consulted*

In accordance with its stated policy, on July 19, 2000, the staff consulted with the Illinois State official, Frank Niziolek of the Illinois Department of Nuclear Safety, regarding the environmental impact of the proposed action. The State official had no comments.

### Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated February 29, 2000, which is available for public inspection at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, *http:\\www.nrc.gov* (the Electronic Reading Room).

Dated at Rockville, Maryland, this 5th day of October 2000.

For the Nuclear Regulatory Commission.

**Anthony J. Mendiola,**

*Chief, Section 2, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 00–26339 Filed 10–12–00; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–247]**

## Consolidated Edison Company of New York, Inc.; Indian Point Nuclear Generating Unit No. 2; Issuance of Director's Decision Under 10 CFR 2.206

By letter dated March 14, 2000, Mr. David A. Lochbaum, on behalf of the Union of Concerned Scientists, the Nuclear Information & Resource Service, the PACE Law School Energy Project, and Public Citizen's Critical Mass Energy Project (Petitioners), pursuant to Section 2.206 of Title 10 of the *Code of Federal Regulations* (10 CFR 2.206), requested that the U.S. Nuclear Regulatory Commission (Commission or NRC) take action with regard to the Indian Point Nuclear Generating Unit No. 2, (IP2), owned and operated by the Consolidated Edison Company of New York, Inc. (Con Ed). The Petitioners requested that the NRC issue an order to the licensee preventing the restart of IP2, or modifying the license for IP2 to limit it to zero power, until (1) all four steam generators are replaced, (2) the steam generator tube integrity concerns identified in Dr. Joram Hopenfeld's differing professional opinion (DPO) and in Generic Safety Issue 163 (GSI–163) are resolved, and (3) potassium iodide tablets are distributed to residents and businesses within the 10-mile emergency planning zone (EPZ) or stockpiled in the vicinity of IP2. (The DPO process provides for the review of concerns raised by individual NRC employees who disagree with a position adopted by the NRC staff.)

In a letter dated April 5, 2000, the Acting Director of the Office of Nuclear Reactor Regulation acknowledged receipt of the Petition of March 14, 2000. In the April 5, 2000, letter, the Petitioners were informed that the request concerning replacement of the IP2 steam generators met the criteria for review under 10 CFR 2.206, but the staff had determined that the request relating to the resolution of the concerns raised in Dr. Hopenfeld's DPO and GSI–163 and distribution or stockpiling of potassium iodide tablets did not meet the criteria for review under 10 CFR 2.206. The basis for this determination was that they raise generic issues for which the Petitioners had not provided sufficient facts specific to IP2 restart to support their request. However, as a result of information provided at an April 7, 2000, meeting, and a supplement to their Petition dated April 12, 2000, the staff determined that the request that the NRC issue an order to prevent Con Ed from restarting IP2, or modify the license for IP2 to limit it to zero power, until potassium iodide tablets are distributed to people and businesses within the 10-mile EPZ or stockpiled in the vicinity of IP2 met the criteria of 10 CFR 2.206. However, the additional information provided in a supplement dated April 14, 2000, still did not provide plant-specific information necessary to consider Dr. Hopenfeld's DPO under the 2.206 process. The Petitioners were informed of these determinations in a letter dated June 26, 2000. In letters dated June 12, June 29, and July 13, 2000, the Petitioners further supplemented the Petition. In the June 12, 2000, supplement, it was requested that IP2 not be allowed to restart until concerns identified in an internal Federal Emergency Management Agency (FEMA) memorandum dated May 12, 2000, were addressed. In the July 13, 2000, supplement, the Petitioners requested reinstatement of their request that Dr. Hopenfeld's DPO be resolved prior to allowing IP2 to restart. In a letter dated August 31, 2000, the Petitioners were informed that neither of these issues met the criteria for review under 10 CFR 2.206, and indicated the basis for that determination.

In the June 29, 2000, letter, the Petitioners stated that 10 CFR Part 50, Appendix E requires each licensee at each site to conduct a full participation biennial exercise. Since the two nuclear units at the Indian Point site are owned by different licensees, the Petitioners stated that the regulations would require

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each licensee to conduct a full-participation exercise every 2 years. This issue was accepted for review under 10 CFR 2.206, as stated in a letter dated August 31, 2000.

The Director of the Office of Nuclear Reactor Regulation has addressed the technical concerns provided by the Petitioner. The licensee prepared and submitted to the NRC for staff review an extensive operational assessment. However, since the licensee voluntarily made the decision to replace the IP2 steam generators prior to plant restart, there was no need to complete a review of the ConEd report for the purpose of determining whether the plant could restart and operate with the existing steam generators. Therefore, the intent of this part of the Petition was, in effect, granted. The NRC and Federal Emergency Management Agency have concluded that the onsite and offsite emergency plans for IP2, including the provisions for potassium iodide, provide reasonable assurance that appropriate protective measures can be taken to protect the health and safety of the public in the event of a radiological emergency at the site. Therefore, there is no basis to order the licensee to take additional measures to distribute or stockpile potassium iodide tablets in the vicinity of IP2. Finally, the NRC staff has determined that the full-participation exercise conducted by IP2 on June 24, 1998, met the biennial requirement for both onsite and offsite participation. Therefore, these two requests are not granted. The complete explanation of the staff's conclusions is contained in the "Director's Decision Pursuant to 10 CFR 2.206" (DD–00–04).

The complete text of the Director's Decision is available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and will be accessible electronically from the agencywide documents access and management system (ADAMS) public library component on the NRC web site, *http://www.nrc.gov* (the electronic reading room).

A copy of the Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206(c) of the Commission's regulations. As provided for by this regulation, the Decision will constitute the final action of the Commission 25 days after the date of issuance of the Decision unless the Commission, on its own motion, institutes a review of the Decision within that time.

Dated at Rockville, Maryland, this 6th day of October 2000.

For the Nuclear Regulatory Commission.

**Samuel J. Collins,**

*Director, Office of Nuclear Reactor Regulation.*

[FR Doc. 00–26338 Filed 10–12–00; 8:45 am]

BILLING CODE 7590–01–P

## PENSION BENEFIT GUARANTY CORPORATION

### Interest Assumption for Determining Variable-Rate Premium; Interest on Late Premium Payments; Interest on Underpayments and Overpayments of Single-Employer Plan Termination Liability and Multiemployer Withdrawal Liability; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Notice of interest rates and assumptions.

**SUMMARY:** This notice informs the public of the interest rates and assumptions to be used under certain Pension Benefit Guaranty Corporation regulations. These rates and assumptions are published elsewhere (or are derivable from rates published elsewhere), but are collected and published in this notice for the convenience of the public. Interest rates are also published on the PBGC's web site (www.pbgc.gov).

**DATES:** The interest rate for determining the variable-rate premium under part 4006 applies to premium payment years beginning in October 2000. The interest assumptions for performing multiemployer plan valuations following mass withdrawal under part 4281 apply to valuation dates occurring in November 2000. The interest rates for late premium payments under part 4007 and for underpayments and overpayments of single-employer plan termination liability under part 4062 and multiemployer withdrawal liability under part 4219 apply to interest accruing during the fourth quarter (October through December) of 2000.

**FOR FURTHER INFORMATION CONTACT:** Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (For TTY/TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

**SUPPLEMENTARY INFORMATION:**

### Variable-Rate Premiums

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 (ERISA) and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe use of an assumed interest rate in determining a single-employer plan's variable-rate premium. The rate is the "applicable percentage" (currently 85 percent) of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid (the "premium payment year"). The yield figure is reported in Federal Reserve Statistical Releases G.13 and H.15.

The assumed interest rate to be used in determining variable-rate premiums for premium payment years beginning in October 2000 is 4.96 percent (*i.e.*, 85 percent of the 5.83 percent yield figure for September 2000).

The following table lists the assumed interest rates to be used in determining variable-rate premiums for premium payment years beginning between November 1999 and October 2000.

| For premium payment years beginning in: | The assumed interest rate is: |
|---|---|
| November 1999 | 5.32 |
| December 1999 | 5.23 |
| January 2000 | 5.40 |
| February 2000 | 5.64 |
| March 2000 | 5.30 |
| April 2000 | 5.14 |
| May 2000 | 4.97 |
| June 2000 | 5.23 |
| July 2000 | 5.04 |
| August 2000 | 4.97 |
| September 2000 | 4.86 |
| October 2000 | 4.96 |

### Late Premium Payments; Underpayments and Overpayments of Single-Employer Plan Termination Liability

Section 4007(b) of ERISA and § 4007.7(a) of the PBGC's regulation on Payment of Premiums (29 CFR part 4007) require the payment of interest on late premium payments at the rate established under section 6601 of the Internal Revenue Code. Similarly, § 4062.7 of the PBGC's regulation on Liability for Termination of Single-Employer Plans (29 CFR part 4062) requires that interest be charged or credited at the section 6601 rate on underpayments and overpayments of employer liability under section 4062 of ERISA. The section 6601 rate is established periodically (currently quarterly) by the Internal Revenue Service. The rate applicable to the fourth quarter (October through December) 2000, as announced by the IRS, is 9 percent.

The following table lists the late payment interest rates for premiums and employer liability for the specified time periods:

| From— | Through— | Interest rate (percent) |
|---|---|---|
| 10/1/94 | 3/31/95 | 9 |
| 4/1/95 | 6/30/95 | 10 |
| 7/1/95 | 3/31/96 | 9 |
| 4/1/96 | 6/30/96 | 8 |
| 7/1/96 | 3/31/98 | 9 |
| 4/1/98 | 12/31/98 | 8 |
| 1/1/99 | 3/31/99 | 7 |
| 4/1/99 | 3/31/00 | 8 |
| 4/1/00 | 12/31/00 | 9 |

### Underpayments and Overpayments of Multiemployer Withdrawal Liability

Section 4219.32(b) of the PBGC's regulation on Notice, Collection, and Redetermination of Withdrawal Liability (29 CFR part 4219) specifies the rate at which a multiemployer plan is to charge or credit interest on underpayments and overpayments of withdrawal liability under section 4219 of ERISA unless an applicable plan provision provides otherwise. For interest accruing during any calendar quarter, the specified rate is the average quoted prime rate on short-term commercial loans for the fifteenth day (or the next business day if the fifteenth day is not a business day) of the month preceding the beginning of the quarter, as reported by the Board of Governors of the Federal Reserve System in Statistical Release H.15 ("Selected Interest Rates"). The rate for the fourth quarter (October through December) of 2000 (*i.e.*, the rate reported for September 15, 2000) is 9.50 percent.

The following table lists the withdrawal liability underpayment and overpayment interest rates for the specified time periods:

| From— | Through— | Interest rate (percent) |
|---|---|---|
| 10/1/94 | 12/31/94 | 7.75 |
| 1/1/95 | 3/31/95 | 8.50 |
| 4/1/95 | 9/30/95 | 9.00 |
| 10/1/95 | 3/31/96 | 8.75 |
| 4/1/96 | 6/30/97 | 8.25 |
| 7/1/97 | 12/31/98 | 8.50 |
| 1/1/99 | 9/30/99 | 7.75 |
| 10/1/99 | 12/31/99 | 8.25 |
| 1/1/00 | 3/31/00 | 8.50 |
| 4/1/00 | 6/30/00 | 8.75 |
| 7/1/00 | 12/31/00 | 9.50 |

### Multiemployer Plan Valuations Following Mass Withdrawal

The PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) prescribes the use of interest assumptions under the PBGC's regulation on Allocation of Assets in Single-employer Plans (29 CFR part 4044). The interest assumptions applicable to valuation dates in November 2000 under part 4044 are contained in an amendment to part 4044 published elsewhere in today's **Federal Register**. Tables showing the assumptions applicable to prior periods are codified in appendix B to 29 CFR part 4044.

Issued in Washington, DC, on this 6th day of October 2000.

**John Seal,**

*Acting Executive Director, Pension Benefit Guaranty Corporation.*

[FR Doc. 00–26329 Filed 10–12–00; 8:45 am]

BILLING CODE 7708–01–P

## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 30d–2, SEC File No. 270–437, OMB Control No. 3235–0494.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (the "Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Section 30(e) of the Investment Company Act of 1940 [15 U.S.C. 80a–29(e)] (the "Investment Company Act" or "Act") and rule 30d–2 [1] thereunder [17 CFR 270.30d–2] require unit investment trusts ("UITs") that invest substantially all of their assets in securities of a management investment company ("fund") to send a report to shareholders at least semi-annually containing financial information on the underlying fund.[2] Rule 30d–2 requires that the reports contain the financial statements that are required by rule 30d–1 [17 CFR 270.30d–1] to be included in the report of the underlying fund for the same fiscal period. Rule 30d–1 requires that the reports contain the financial statements required by a fund's registration form. Rule 30d–2, however, permits, under certain conditions, delivery of a single shareholder report to investors who share an address ("householding") to satisfy the delivery requirements of the rule. The purpose of the householding provisions of the rule is to reduce the amount of duplicative reports delivered to investors sharing the same address.

Rule 30d–2 permits householding of annual and semi-annual reports by UITs to satisfy the delivery requirements of rule 30d–2 if, in addition to the other conditions set forth in the rule, the UIT has obtained from each investor written or implied consent to the householding of shareholder reports. The rule requires UITs that wish to household shareholder reports with implied consent to send a notice to each investor stating that the investors in the household will receive one report in the future unless the investors provide contrary instructions. In addition, at least once a year, UITs relying on the rule for householding must explain to investors who have provided written or implied consent how they can revoke their consent. Preparing and sending the initial notice and the annual explanation of the right to revoke are collections of information.

The rule requires UITs that invest substantially all of their assets in securities of a fund to transmit to shareholders at least semi-annually reports containing financial statements and certain other information in order to apprise current shareholders of the operational and financial condition of the UIT. Absent the requirement to disclose all material information in reports, investors would be unable to obtain accurate information upon which to base investment decisions and consumer confidence in the securities industry might be adversely affected. Requiring the submission of these reports to the Commission permits us to verify compliance with securities law requirements.

Rule 30d–2 allows UITs to household shareholder reports if certain conditions

[1] The Commission has proposed that rule 30d–2 be redesignated as rule 30e–2. See Role of Independent Directors of Investment Companies, Securities Act Rel. No. 7754; Exchange Act Rel. No. 42007; Investment Company Act Rel. No. 24082 (Oct. 14, 1999) [64 FR 59826 (Nov. 3, 1999)]. The proposal has not been adopted as of the date of this notice.

[2] Management investment companies are defined in section 4(3) of the Investment Company Act as any investment company other than a face-amount certificate company or a unit investment trust, as those terms, are defined in sections 4(1) and 4(2) of the Investment Company Act. See 15 U.S.C. 80a–4.

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are met. Among the conditions with which a UIT must comply are providing notice to each investor that only one report will be sent to the household and providing to each investor that consents to householding an annual explanation of the right to revoke consent to the delivery of a single shareholder report to multiple investors sharing an address. The purpose of the notice and annual explanation requirements associated with the householding provisions of the rule is to ensure that investors who wish to receive individual copies of shareholder reports are able to do so.

The Commission estimates that as of December 1999, approximately 655 UITs were subject to the provisions of rule 30d–2. The Commission further estimates that the annual burden associated with rule 30d–2 is 121 hours for each UIT, including an estimated 20 hours associated with the notice requirement for householding and an estimated 1 hour associated with the explanation of the right to revoke consent to householding, for a total of 79,255 burden hours.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

In addition to the burden hours, the Commission estimates that the cost of contracting for outside services associated with complying with rule 30d–2 is $12,000 per respondent (80 hours times $150 per hour for independent auditor services), for a total of $7,860,000 ($12,000 per respondent times 655 respondents).

Written comments are invited on: (a) Whether the collections of information are necessary for the proper performance of the functions of the Commission, including whether the information has practical utility, (b) the accuracy of the Commission's estimate of the burden of the collections of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collections of information on respondents, including through the use of automated collection techniques or other forms of information technology. The Commission will consider comments and suggestions submitted in writing within 60 days after this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: October 4, 2000.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–26376 Filed 10–12–00; 8:45 am]

BILLING CODE 8010–01–M

## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 154, SEC File No. 270–438, OMB Control No. 3235–0495.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (the "Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

The federal securities laws generally prohibit an issuer, underwriter, or dealer from delivering a security for sale unless a prospectus meeting certain requirements accompanies or precedes the security. Rule 154 [17 CFR 230.154] under the Securities Act of 1933 [15 U.S.C. 77a] (the "Securities Act") permits, under certain circumstances, delivery of a single prospectus to investors who purchase securities from the same issuer and share the same address ("householding") to satisfy the applicable prospectus delivery requirements.[1] The purpose of rule 154 is to reduce the amount of duplicative prospectuses delivered to investors sharing the same address.

Under rule 154, a prospectus is considered delivered to all investors at a shared address, for purposes of the federal securities laws, if the person relying on the rule delivers the prospectus to the share address and the investors consent to the delivery of a single prospectus. The rule applies to prospectuses and prospectus supplements. Currently, the rule permits householding of all prospectuses except those required to be delivered for business combinations, exchange offers, or reclassifications of securities.[2] Rule 154 permits householding of prospectuses by an issuer, underwriter, or dealer relying on the rule if, in addition to the other conditions set forth in the rule, the issuer, underwriter, or dealer has obtained from each investor written or implied consent to householding.[3] The rule requires issuers, underwriters, or dealers that wish to household prospectuses with implied consent to send a notice to each investor stating that the investors in the household will receive one prospectus in the future unless the investors provide contrary instructions. In addition, at least once a year, issuers, underwriters, or dealers, relying on rule 154 for the householding of prospectuses, must explain to investors who have provided written or implied consent how they can revoke their consent. Preparing and sending the initial notice and the annual explanation of the right to revoke are collections of information.

The rule allows issuers, underwriters, or dealers to household prospectuses and prospectus supplements if certain conditions are met. Among the conditions with which a person relying on the rule must comply are providing notice to each investor that only one prospectus will be sent to the household and providing to each investor who consents to householding an annual explanation of the right to revoke consent to the delivery of a single prospectus to multiple investors sharing an address. The purpose of the notice and annual explanation requirements of the rule is to ensure that investors who wish to receive individual copies of shareholder reports are able to do so.

Although rule 154 is not limited to investment companies, the Commission believes that it is used mainly by mutual funds and by broker-dealers that deliver mutual fund prospectuses. The Commission is unable to estimate the number of issuers other than mutual funds that rely on the rule.

[1] The Securities Act requires the delivery of prospectuses to investors who buy securities from an issuer or from underwriters or dealers who participate in a registered distribution of securities. See Securities Act sections 2(a)(10), 4(1), 4(3), 5(b), [15 U.S.C. 77b(a)(10), 77d(1), 77d(3), 77e(b); see also rule 174 under the Securities Act [17 CFR 230.174] (regarding the prospectus delivery obligation of dealers); rule 15c2–8 under the Securities and Exchange Act of 1934 [17 CFR 240.15c2–8] (prospectus delivery obligations of brokers and dealers).

[2] The Commission has proposed an amendment to rule 154 that would permit the householding of prospectuses required to be delivered for business combinations, exchange offers, or reclassifications of securities. See Delivery of Proxy and Information Statements to Households, Securities Act Rel. No. 7767; Securities Exchange Act Rel. No. 42102; Investment Company Act Rel. No. 24124 (Nov. 4, 1999) [64 FR 62548 (Nov. 16, 1999)]. The proposed amendment has not been adopted as of the date of this notice.

[3] Rule 154 permits the householding of prospectuses that are delivered electronically to investors only if delivery is made to a shared electronic address and the investors give written consent to householding. Implied consent is not permitted in such a situation. See rule 154(b)(4).



The Commission estimates that there are approximately 3,000 mutual funds, approximately 545 of which engage in direct marketing and therefore deliver their own prospectuses. The Commission estimates that each direct-marketed mutual fund will spend an average of 20 hours per year complying with the notice requirement of the rule, for a total of 10,900 hours. The Commission estimates that each direct-marketed fund will spend 1 hour complying with the explanation of the right to revoke requirement of the rule, for a total of 545 hours. The Commission estimates that as of year-end 1998, there were approximately 300 broker-dealers that carry customer accounts and, therefore, may be required to deliver mutual fund prospectuses. The Commission estimates that each affected broker-dealer will spend, on average, approximately 20 hours complying with the notice requirement of the rule, for a total of 6,000 hours. Each broker-dealer will also spend 1 hour complying with the annual explanation of the right to revoke requirement, for a total of 300 hours. Therefore, the total number of respondents for rule 154 is 845 (5454 mutual funds plus 300 broker-dealers), and the estimated total hour burden is 17,745 hours (11,445 hours for mutual funds plus 6,300 hours for broker-dealers).

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

Written comments are invited on: (a) Whether the collections of information are necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burden of the collections of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collections of information on respondents, including through the use of automated collection techniques or other forms of information technology. The Commission will consider comments and suggestions submitted in writing within 60 days after this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: October 5, 2000.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–26377 Filed 10–12–00; 8:45 am]

BILLING CODE 8010–01–M

## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

Upon Written Request, Copies Available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 206(4)–2, SEC File No. 270–217, OMB Control No. 3235–0241.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 206(4)–2 governs the custody or possession of funds or securities by Commission-registered investment advisers. Rule 206(4)–2 makes it a fraudulent, deceptive or manipulative act, practice or course of business for any investment adviser who has custody or possession of funds or securities of its clients to do any act or take any action with respect to any such funds or securities unless (1) the securities are properly segregated and safely kept; (2) the funds are held in one or more specially designated client accounts with the adviser named as trustee; (3) the adviser promptly notifies the client as to the place and manner of safekeeping; (4) the adviser sends a detailed written statement to each client at least once every three months; and (5) at least once each year, on an unannounced basis, an independent public accountant verifies by actual examination the clients' funds and securities and files a certificate with the Commission describing the examination. The rule does not apply to an investment adviser that is also registered as a broker-dealer under the Securities Exchange Act of 1934, provided the adviser is in compliance with Rule 15c3–1 under the Exchange Act, or, if a member of an exchange, in compliance with exchange requirements with respect to financial responsibility and the segregation of funds or securities carried for the account of customers.

The Commission uses the information required by Rule 206(4)–2 in connection with its investment adviser examination program to ensure that advisers are in compliance with the rule. Clients also use the information required by paragraphs (3) and (4) of the rule. Without the information collected under the rule, the Commission would be less efficient and effective in its inspection program and clients would not have information valuable for monitoring an adviser's handling of their accounts.

The respondents to this information collection are investment advisers registered with the Commission (except those that are also registered as broker-dealers) and that have custody of clients' funds or securities. The Commission estimates that 173 advisers would be subject to Rule 206(4)–2.

The number of responses under Rule 206(4)–2 will vary considerably depending on the number of clients for which an adviser has custody or possession of funds or securities. It is estimated that the average number of responses annually, 250, and the average time of .5 hours per response, would remain the same. The total time burden for each respondent is estimated to be the same—125 hours. The annual aggregate burden for all respondents to the requirements of Rule 206(4)–2 is estimated to be 21,625 hours.

This collection of information is found at 17 CFR 275.206(4)–2 and is mandatory Commission-registered investment advisers are required to maintain and preserve certain information required under Rule 206(4)–2 for five year. The long-term retention of these records is necessary for the Commission's examination program to ascertain compliance with the Investment Advisers Act.

The estimated average burden hours are made solely for the purposes of Paperwork Reduction Act and are not derived from a comprehensive or even representative survey or study of the cost of Commission rules and forms.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

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Dated: October 5, 2000.
**Margaret H. McFarland,**
*Deputy Secretary.*
[FR Doc. 00–26375 Filed 10–12–00; 8:45 am]
**BILLING CODE 8010–01–M**

## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 23c–1, SEC File No. 270–253, OMB Control No. 3235–0260.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the "Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 23c–1 under the Investment Company Act of 1940, among other things, permits a closed-end fund to repurchase its securities for cash if in addition to the other requirements set forth in the rule: (i) payment of the purchase price is accompanied or preceded by a written confirmation of the purchase; (ii) the asset coverage per unit of the security to be purchased is disclosed to the seller or his agent; and (iii) if the security is a stock, the fund has, within the preceding six months, informed stockholders of its intention to purchase stock. The Commission staff estimates that approximately 19 closed-end funds rely on Rule 23c–1 annually to undertake approximately 115 repurchases of their securities. The Commission staff estimates that, on average, a fund spends approximately 2.5 hours on complying with the paperwork requirements listed above each time it undertakes a security repurchase under the rule. The total annual burden of the rule's paperwork requirements thus is estimated to be 287.5 hours.

In addition, the fund must file with the Commission, during the first ten days of the calendar month following any month in which a purchase permitted by Rule 23c–1 occurs, two copies of a report of purchases made during the month, together with a copy of any written solicitation to purchase securities given by or on behalf of the fund to 10 or more persons. The burden associated with filing Form N–23C–1, the form for this report, has been addressed in the submission for that form.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

Complying with the collection of information requirements of the rule is mandatory. The filings that the rule requires to be made with the Commission are available to the public. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: October 6, 2000.
**Margaret H. McFarland,**
*Deputy Secretary.*
[FR Doc. 00–26378 Filed 10–12–00; 8:45 am]
**BILLING CODE 8010–01–M**

## SECURITIES AND EXCHANGE COMMISSION

**[Rel. No. IC–24679; File No. 812–12026]**

### WM Variable Trust, et al., Notice of Application

October 5, 2000.

**AGENCY:** Securities and Exchange Commission ("SEC" or "Commission").

**ACTION:** Notice of Application for an order of exemption under Section 6(c) of the Investment Company Act of 1940 ("the Act") for exemptions from the provisions of Sections 9(a), 13(a), 15(a) and 15(b) of the Act and Rules 6e-2(b)(15) and 6e-3(T)(b)(15) thereunder.

*Summary of Application:* WM Variable Trust (the "Trust") and WM Advisors, Inc. (the "Adviser") (collectively, "Applicants") seek an Order exempting them from Sections 9(a), 13(a), 15(a), and 15(b) of the Act and Rules 6e-2(b)(15) and 6e-3(T)(b)(15) thereunder to permit shares of the Trust and any other investment company that is designed for fund insurance products and for which the Adviser or its affiliates many serve as investment manager, investment adviser, investment sub-adviser, administrator, manager, principal underwriter or sponsor ("Future Trusts") to be sold to and held by (1) variable annuity and variable life insurance separate accounts of both affiliated and unaffiliated life insurance companies; (2) qualified pension and retirement plans outside of the separate account context; and (3) the Trust's or Future Trust's investment adviser (representing seed money investments in the Trust or Future Trust).

*Applicants:* WM Variable Trust (the "Trust") and WM Advisors, Inc. (the "Adviser") are, collectively, referred to herein as the "Applicants."

*Filing Date:* The Application was filed on March 15, 2000, and amended on July 26, 2000 and September 27, 2000.

*Hearing or Notification of Hearing:* An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on the application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, in person or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on October 30, 2000, and accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the interest, the reason for the request, and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o John T. West, WM Advisors, Inc., 1201 Third Avenue, 22nd Floor, Seattle, WA 98101.

**FOR FURTHER INFORMATION CONTACT:** Rebecca A. Marquigny, Senior Counsel, or Keith Carpenter, Branch Chief, Office of Insurance Products, Divison of Investment Management, at (202) 942–0670.

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application; the complete application is available for a fee from the SEC's Public Reference Branch.

### Applicants' Representations

1. The Trust is a business trust organized under the laws of Massachusetts on January 29, 1993. On March 20, 1998, the Trust's name was changed from Sierra Variable Trust to WM Variable Trust. The Trust filed its registration under the Act as an open-end management investment company on February 2, 1993. The Trust is currently comprised of fifteen investment portfolios (the "Funds"), although the Trust may create additional investment portfolios and issue shares representing beneficial interests therein from time to time.[1] On February 2, 1993, the Trust filed a Registration Statement on Form N–1A under the Act and the Securities Act of 1933, as amended (the "1933 Act"), to register the sale of the Funds' shares. At the current time, the Trust has issued only one class of shares of the Funds, but may in the future offer two or more classes of shares of the Funds. The Trust may offer each series of its shares to separate accounts, including Separate Account D of American General Life Insurance Company (the "Separate Account"), the sole separate account currently investing in the Funds ("Participating Separate Accounts"), of various other life insurance companies ("Participating Insurance Companies") and to pension and retirement plans qualified under Section 401(a) of the Internal Revenue Code of 1986, as amended (the "Code") ("Qualified Plans"). Such Participating Insurance Companies and Qualified Plans are described below. The Trust many also offer each series of its shares to the Adviser pursuant to Treasury Regulations §1.817(f)(3)(ii).

2. Each variable life insurance account ("VLI Account") and variable annuity account ("VA Account") has been or will be established as a segregated asset account by a Participating Insurance Company pursuant to the insurance law of such insurance company's state of domicile. As such, the assets of each are or will be the property of the Participating Insurance Company and the portion of the assets of such an account equal to the reserves and other contract liabilities with respect to the account are not and/or will not be chargeable with liabilities arising out of any other business that the insurance company may conduct. The income, gains and losses, realized or unrealized, from such an account's assets are and/or will be credited to or charged against the account without regard to other income, gains or losses of the insurance company. If, like the Separate Account, a VA Account of a life insurance company is registered as an investment company, it will be a "separate account" as defined by Rule 0-1(e) (or any successor rule) under the Act and will be registered as a unit investment trust ("UIT"). If a VLI Account is registered as an investment company, it will be a separate account as described in Rule 6e-2(a) or Rule 6e-3(T)(a) and will be registered as a UIT. For purposes of the Act, the life insurance company that establishes such a registered VLI Account or VA Account, like American General Life Insurance Company ("AGL"), is the depositor and sponsor of the account as those terms have been interpreted by the Commission with respect to variable life insurance and variable annuity separate accounts.

3. The Qualified Plans will be pension or retirement plans intended to qualify under Sections 401(a) and 501(a) of the Code. Many of the Qualified Plans will include a cash or deferred arrangement (permitting salary reduction contributions) intended to qualify under Section 401(k) of the Code. The Qualified Plans will also be subject to, and will be designed to comply with, the provisions of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). The Qualified Plans therefore will be subject to regulatory provisions under the Code and ERISA regarding, for example, reporting and disclosure, participation and vesting, funding, fiduciary responsibility, and enforcement.

4. The Adviser, which is registered as an investment adviser under the Investment Advisers Act of 1940, is the investment adviser of the Fund. As investment adviser to the Fund, the Adviser has been engaged to continuously furnish an investment program for the Fund and to make or cause to be made investment decisions on behalf of the Fund and place or cause to be placed all others for the purchase and sale of portfolio securities.

5. The Trust proposes to offer and sell shares of the Fund to Participating Insurance Companies as an investment vehicle for their VLI Accounts and VA Accounts (collectively, "Variable Accounts")(hereinafter, the term "Trust" refers to the Trust and/or any Future Trust, as applicable). As described more fully below, the Trust will only sell its shares to registered VLI Accounts and registered VA Accounts if each Participating Insurance Company sponsoring such a VLI Account or VA Account enters into a participation agreement with the Trust. The participation agreements will define the relationship between the Trust and each Participating Insurance Company and will memorialize, among other matters, the fact that, except where the agreement specifically provides otherwise, the Participating Insurance Company will remain responsible for establishing and maintaining any VLI Account or VA Account covered by the agreement and for complying with all applicable requirements of state and federal law pertaining to such accounts and to the sale and distribution of variable life insurance contracts ("VLI Contracts") and variable annuity contracts ("VA Contracts," and together with VLI Contracts, "Variable Contracts") issued through such accounts. The participation agreements also will memorialize, among other matters, the fact that, with regard to compliance with federal securities laws, unless the agreement specifically states otherwise, the Trust's obligations relate solely to offering and selling its shares to VLI Accounts and VA Accounts covered by the agreement and to compliance with the conditions states in this application.

6. The use of a common management investment company (or investment portfolio thereof) as an investment medium for both VLI Accounts and VA Accounts of the same insurance company, or of two or more insurance companies that are affiliated persons of each other, is referred to herein as "mixed funding." The use of a common management investment company (or investment portfolio thereof) as an investment medium for VLI Accounts and/or VA Accounts of two or more insurance companies that are not affiliated persons of each other, is referred to herein as "shared funding."

7. The Trust may sell its shares directly to Qualified Plans. Changes in the federal tax law several years ago made it possible for investment companies such as the Trust to sell shares to Qualified Plans to addition to VLI Accounts and VA Accounts. Section 817(h) of the Code imposes certain diversification standards on the assets underlying Variable Contracts, such as those in the Trust. The Code provides that Variable Contracts will not be treated as annuity contracts or life insurance contracts, as the case may be, for any period (or any subsequent period) for which the underlying assets are not adequately diversified in accordance with regulations issued by the Treasury Department. On March 1, 1989, the Treasury Department adopted regulations (Treas. Reg. 1.817–5) (the "Regulations") which established specific diversification requirements for investment portfolios underlying Variable Contracts. The Regulations generally provide that, in order to meet these diversification requirements, all of the beneficial interests in the investment company must be held by the segregated asset accounts of one or more life insurance companies.

[1] Hereinafter, the term "Funds" means the Funds and/or any future series of the Trust or a Future Trust, as applicable.

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Notwithstanding this, the Regulations contain an exception to this requirement that permits trustees of a qualified pension or retirement plan to hold shares of an investment company, the shares of which are also held by insurance company segregated asset accounts, without adversely affecting the status of the investment company as an adequately diversified underlying investment for Variable Contracts issued through such segregated asset accounts (Treas. Reg. 1.817–5(f)(3)(iii)).

8. As a result, Qualified Plans may select the Trust as an investment option without endangering the tax status of Variable Contracts as life insurance or annuities. Trust shares sold to the Qualified Plans would be held by the Trustees of the Qualified Plans as required by Section 403(a) of ERISA. The Trustees or other fiduciaries of the Qualified Plans may vote Trust shares held by their Qualified Plans in their own discretion or, if the applicable Qualified Plan so provides, vote such shares in accordance with instructions from participants in such Plans. The use of a common management investment company (or investment portfolio thereof) as an investment medium for VLI Accounts, VA Accounts and Qualified Plans is referred to herein as "extended mixed funding."

**Applicants' Legal Analysis**

1. Rule 6e–2(b)(15) under the Act provides partial exemptions for (1) Section 9(a), which makes it unlawful for certain individuals and companies to act in certain capacities with respect to registered investment companies, and (2) Section 13(a), 15(a), and 15(b) of the Act to the extent that those sections might be deemed to require "pass-through" voting with respect to the shares of a registered management investment company underlying a UIT (an "underlying fund") to VLI Accounts supporting scheduled premium VLI Contracts and to their life insurance company depositors, investment advisers, and principal underwriters. The exemptions granted by the Rule are available, however, only where the Trust offers its shares exclusively to VLI Accounts of a single Participating Insurance Company or an affiliated insurance company, and then, only where scheduled premium VLI Contracts are issued through such VLI Accounts. Therefore, the relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium VLI Account that owns shares of an underlying fund that engages in mixed funding by also offering its shares to a VA Account or to a flexible premium VLI Account of the same company or of an affiliated life insurance company. In addition, the relief granted by Rule 6e–2(b)(15) is not available if the underlying fund engages in shared funding by offering its shares to VA Accounts of VLI Accounts of unaffiliated life insurance companies. Furthermore, Rule 6e–2(b)(15) does not contemplate that shares of the underlying fund might also be sold to Qualified Plans, that is, that the underlying fund will engage in extended mixed funding.

2. Rule 6e–3(T)(b)(15) under the Act provides partial exemptions from Sections 9(a), 13(a), 15(a), and 15(b) of the Act to VLI Accounts supporting flexible premium variable life insurance contracts and their life insurance company depositors, investment advisers and principal underwriters. The exemptions granted by the Rule are available, however, only where the Trust offers its shares exclusively to separate accounts of the Participating Insurance Company, or of any affiliated insurance company, offering either scheduled premium contracts or flexible premium contracts, or both, or which also offer their shares to VA Accounts of the Participating Insurance Company or of an affiliated life insurance company. Therefore, Rule 6e–3(T)(b)(15) permits mixed funding with respect to a flexible premium VLI Account, subject to certain conditions. However, Rule 6e–3(T)(b)(15) does not permit shared funding because the relief granted is not available with respect to a VLI Account that owns shares of an underlying fund that also offers its shares to separate accounts (including VA Accounts and flexible premium and scheduled premium VLI Accounts) of unaffiliated Participating Insurance Companies. Also, Rule 6e–3(T)(b)(15) does not contemplate extended mixed funding.

3. In general, Section 9(a) of the Act disqualifies any person convicted of certain offenses and any person enjoined from engaging in certain activities because of misconduct, and any company affiliated with any such person, from acting or serving in various capacities with respect to a registered investment company. More specifically, Section 9(a)(3) provides that it is unlawful for any company to serve as investment adviser or principal underwriter for any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Sections 9(a)(1) or (2).

4. Rule 6e–2(b)(15) and Rule 6e–3(T)(b)(15) limit the application of the eligibility restrictions of Section 9(a) to affiliated persons of a life insurer who directly participate in the management of the underlying registered management investment company under certain circumstances, subject to limitations on mixed and shared funding. The relief provided by Rule 6e–2(b)(15)(i) and Rule 6e–3(T)(b)(15)(i) permits persons who are affiliated persons of a life insurer or its affiliates who otherwise would be disqualified under Section 9(a) to serve as an officer, director, or employee of an underlying fund, so long as any such person does not participate directly in the management or administration of such underlying fund. In addition, Rule 6e–2(b)(15)(ii) and Rule 6e–3(T)(b)(15)(ii) permit a Participating Insurance Company to serve as the underlying fund's investment adviser or principal underwriter, provided that none of the insurance company's personnel who are ineligible pursuant to Section 9(a) of the Act participate in the management or administration of the underlying fund.

5. In effect, the partial relief provided by Rules 6e–2(b)(15) and 6e–3(T)(b)(15) from the requirements of Section 9 limits the amount of monitoring of a Participating Insurance Company's personnel that is necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of Section 9. Rules 6e–2(b)(15) and 6e–3(T)(b)(15) recognize that applying the provisions of Section 9 to the many individuals in a large insurance company complex, most of whom typically will have no involvement in matters pertaining to investment companies funding the Participating Separate Accounts, is not necessary or appropriate in the public interest nor is it necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the Act. In addition, if the eligibility restrictions of Section 9(a) were to apply to the Participating Insurance Companies, the increased costs of ensuring compliance with Section 9 would reduce the net rates of return realized by contract owners. Thus, the cost of compliance with Section 9 would exceed the benefits, if any, provided by compliance with such eligibility restrictions. Moreover, disallowing the relief permitted by Rules 6e–2(b)(15) and Rule 6e–3(T)(b)(15) because the underlying fund engages in extended mixed funding would serve no regulatory purpose. The sale of shares of an underlying fund to Qualified Plans does not change the fact that the purposes of the Act are not advanced by applying the prohibitions of Section 9(a) to individuals who may be involved in a life insurance complex but have no involvement in the underlying fund.



6. Rule 6e–2(b)(15)(iii) and Rule 6e–3(T)(b)(15)(iii) provide partial exemptions from Sections 13(a), 15(a), and 15(b) of the Act to the extent that those sections might be deemed to require "pass-through" voting with respect to the shares of an underlying fund, by allowing an insurance company to disregard the voting instructions of contract owners with respect to several significant matters, assuming the limitations on mixed and shared funding are observed. Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A) provide that a Participating Insurance Company may disregard the voting instructions of its contract owners if such instructions would require an underlying fund's shares to be voted to cause such underlying fund to make (or to refrain from making) certain investments which would result in changes in the subclassification or investment objectives of such underlying fund or to approve or disapprove any contract between such underlying fund and an investment adviser when required to do so by an insurance regulatory authority (subject to the provisions of paragraphs (b)(5)(i) and (b)(7)(ii)(A) of the Rules).

7. Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(A)(2) provide that a Participating Insurance Company may disregard contract owners' voting instructions if the contract owners initiate any change in the underlying fund's investment objectives, principal underwriter or any investment adviser (provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraph (b)(5)(ii) and (b)(7)(ii)(B) and (C) of the Rules).

8. Rules 6e–2(b)(15) and 6e–3(T)(b)(15) recognize that a Variable Contract is primarily an insurance contract, and as such is subject to extensive state insurance regulation. In adopting Rule 6e–2(b)(15)(iii), the Commission recognized that state insurance regulators have authority, pursuant to state insurance laws or regulations, to disapprove or require changes in the underlying fund's investment policies, investment advisers, or principal underwriters.

9. If the Trust serves as an investment vehicle for mixed funding, extended mixed funding or shared funding, the exemptions otherwise provided by Rule 6e–2(b)(15) would not be available to VLI Accounts and their Participating Insurance Company depositors and principal underwriters. Likewise, if the Trust serves as an investment vehicle for extended mixed funding or shared funding, the exemptions otherwise provided by Rule 6e–3(T)(b)(15) would not be available to VLI Accounts and their Participating Insurance Companies and principal underwriters. Section 6(c) of the Act authorizes the Commission to exempt any person, security or transaction or any class of persons, securities or transactions from any provision or provisions of the Act and/or any rule under it if, and to the extent that, such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

10. Applicants submit that the requested exemptions are necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

11. Applicants submit that the presence of both VLI Accounts and VA Accounts as shareholders of an underlying fund will not lead to a greater probability of material irreconcilable conflicts than if the underlying fund did not engage in mixed funding. Similarly, shared funding does not present any issues that do not already exist where an underlying fund sells its shares to a single insurance company which sells contracts in several states.

12. The presence of both VLI Accounts and VA Accounts as shareholders of an underlying fund will not lead to a greater probability of material irreconcilable conflicts than if the underlying fund did not engage in mixed funding. Each type of insurance product is designed as a long-term investment program. There is not reason to believe that different features of various types of contracts, including the "minimum death benefit" guarantee under certain VLI Contracts, will lead to different investment policies for different types of Variable Contracts. To the extent that the degree of risk may differ as between VA Contracts and VLI Contracts, the differing insurance charges imposed, in effect, adjust any such differences and equalize the insurers' exposure in either case.

13. In addition, if an underlying fund engages in mixed funding, there is no reason why the underlying fund would be managed to favor one class of investors over another. No one investment strategy can be identified as appropriate to a particular insurance product. Each pool of VA and VLI Contract owners is composed of individuals of diverse financial status, age, and insurance and investment goals. An underlying fund supporting even one type of insurance product must accommodate those differences to attract and retain purchasers.

14. Regardless of the type of shareholder in the Trust, the investment manager is or would be contractually and otherwise obligated to manage the Fund solely and exclusively in accordance with that Fund's investment objectives, policies and restrictions as well as any guidelines established by the Board of Trustees responsible for such Fund (the "Board"). Thus, the Fund will be managed in the same manner as any other mutual funds and there is not incentive for the Fund's investment manager to invest to benefit a particular class of shareholders. In addition, the Board has a fiduciary duty to oversee the Fund's investment adviser and ensure that the Fund is managed in a way that does not discriminate against any of the Fund's shareholders.

15. Applicants maintain that qualified retirement plan investors in the Trust would have substantially the same interests as do VLI Contract owners and VA Contract owners. Like VLI and VA Contract owners, qualified retirement plan investors are long-term investors. Therefore, most can be expected not to withdraw their assets from the Qualified Plans. Indeed, while they may utilize more than one investment option under a Variable Contract or the Qualified Plans, both Variable Contract owners and participants would make certain sacrifices and face certain hurdles in surrendering a contract or withdrawing assets from a Qualified Plan. Variable Contract owners in many circumstances would sacrifice tax benefits, pay a penalty tax under Section 72(q) of the Code, and/or pay a surrender charge if they surrender their contracts. Similarly, participants may be permitted to withdraw Qualified Plan assets only in limited circumstances, would sacrifice tax benefits on such withdrawals, and may incur other economic penalties under the terms of the Qualified Plan. In addition, Section 72(t) of the Code may impose a tax penalty on certain withdrawals from a Qualified Plan even where permitted. Of course, Variable Contract owners may exchange one VLI Contract or VA Contract for another without losing possible tax benefits and participants may generally transfer or roll over vested Qualified Plan assets with the same result, but both types of transactions require significant contract owner or Qualified Plan investor initiative and can only be accomplished in certain circumstances pursuant to specific procedures.

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16. In addition, neither VLI and VA Contract owners on the one hand nor Qualified Plan investors on the other would be taxed on the investment return of their respective investments in the Trust. Therefore, they would share a strong interest in the Trust operating in a manner that preserves this tax status. For example, material conflicts between these two groups of investors regarding capital transactions would be unlikely to occur. In this regard, ERISA imposes general diversification requirements on qualified pension or retirement plan investments that are wholly consistent with those required of each Fund of the Trust under Section 817(h) of the Code.

17. VLI Accounts, VA Accounts and the Qualified Plans are governed in similar ways. Qualified Plan committees (and other Qualified Plan fiduciaries) have a fiduciary duty to participants that is similar to the obligations that a Participating Insurance Company has to look after the interests of its VLI Contract owners and VA Contract owners. In this respect, applicants note that Participating Insurance Companies and their VLI Accounts would not require any exemptions from the Act other than those necessary for mixed funding and shared funding if participants in certain qualified pension and retirement plans invest indirectly in the Trust when their Qualified Plan purchases a variable annuity contract offered by a Participating Insurance Company in the Qualified Plan market. The various Qualified Plans may or may not offer an annuity option.

18. In light of the fact that Qualified Plan investors would have beneficial interests in the Trust very similar to those of VLI Contract owners and VA Contract owners, applicants assert that, provided that they (and VLI Accounts and Participating Insurance Companies) comply with the conditions explained below, the addition of the Qualified Plans as shareholders of the Trust and the addition of participants as persons having beneficial interests in the Trust should not increase the risk of material irreconcilable conflicts among and between investors. Applicants further assert that even if a material irreconcilable conflict involving the Qualified Plans or participants arose, the trustees (or other fiduciaries) of the Qualified Plans, unlike Participating Insurance Companies, can, if their fiduciary duty to the participants requires it, redeem the shares of the Trust held by the Qualified Plans and make alternative investments without obtaining prior regulatory approval. Similarly, most, if not all, of the Qualified Plans, unlike the VLI Accounts or the VA Accounts, may hold cash or other liquid assets pending their reinvestment in a suitable alternative investment.

19. Applicants maintain that VLI Contract owners and VA Contract owners would benefit from the expected increase in net assets of the Funds of the Trust occasioned by participant investments. Not only should such additional investments not increase the likelihood of material irreconcilable conflicts of interest between or among different types of investors, but such additional investments should reduce some of the costs of investing for Variable Contract owners. In particular, additional investments would promote economies of scale, permit increased safety through greater portfolio diversification, provide each Fund's investment adviser with greater flexibility due to a larger portfolio and make the addition of future new Funds more feasible.

20. When the Commission last revised Rule 6e–3(T) in 1987, the Treasury Department had not issued the current regulations (Treas. Reg. 1.817–5) which make it possible for the Trust to sell shares to qualified pension or retirement plans without adversely affecting the tax status of VLI Contracts and VA Contracts. Applicants submit that, although proposed regulations had been published, the Commission did not envision this possibility when it last examined paragraph (b)(15) of the Rule and might well have broadened the exclusivity provision of that paragraph at that time to include plans such as the Qualified Plans had this possibility been apparent. In this regard, the Commission has recently issued several orders under Section 6(c) granting the same exemptions requested herein to other applicants in very similar circumstances.

21. In light of the fact that the proposed Qualified Plan investments in the Trust should not increase the likelihood of material irreconcilable conflicts and would otherwise benefit VA Contract owners and VLI Contract owners, and in light of the recent supporting precedent, applicants believe that the Commission should grant the requested exemptions.

22. Applicants submit that the sale of the shares of the Trust to Qualified Plans will not increase the potential for material irreconcilable conflicts of interest between or among different types of investors. Moreover, in considering the appropriateness of the requested relief, an analysis of the following issues leads to the conclusion that there are either no conflicts of interest or that there exists the ability by the affected parties to resolve the issues without harm to the contract owners in the Participating Separate Accounts or to the participants under the Qualified Plans.

23. Section 817(h) imposes certain diversification standards on the underlying assets of VA Contracts and VLI Contracts held in the portfolios of management investment companies. Treasury Regulation 1.817–5(f)(3)(iii), which established diversification requirements for such portfolios, specifically permits, among other things, "qualified pension or retirement plans" and separate accounts to invest in the same underlying fund without jeopardizing the tax status of VLI and VA Accounts. Therefore, neither the Code, the Treasury Regulations, nor Revenue Rulings thereunder present any inherent conflicts of interest if Qualified Plans, VA Accounts and VLI Accounts all invest in the same underlying fund.

24. While there are differences in the manner in which distributions are taxed for VA Contracts, VLI Contracts and Qualified Plans, the differing tax consequences do not raise any conflicts of interest. When distributions are to be made and the Participating Separate Account or the Qualified Plan cannot net purchase payments to make the distributions, the Participating Separate Account or the Qualified Plan will redeem shares of the Fund at their net asset value. The Qualified Plan then will make distributions in accordance with the terms of the Qualified Plan and the Participating Insurance Company will make distributions in accordance with the terms of the Variable Contract. Therefore, distributions and dividends will be declared and paid by the Fund without regard to the character of the shareholder.

25. The ability of the Trust to sell its shares directly to Qualified Plans does not create a "senior security" as such terms is defined under Section 18(g) of the Act, with respect to any contract owner as opposed to a participant under a Qualified Plan. As noted above, regardless of the rights and benefits of participants under the Qualified Plans, or Variable Contract owners, the Qualified Plans and the Participating Separate Accounts have rights only with respect to their respective shares of the Trust. They can only redeem such shares at their net assets value. No shareholder of the Trust will have any preference over any other shareholder with respect to distribution of assets or payment of dividends.

26. With respect to voting rights, it is possible to provide an equitable means of giving such voting rights to Variable Contract owners and to the trustees of Qualified Plans. The transfer agent for the Fund will inform each Participating Insurance Company of its share ownership in each Participating Separate Account, as well as inform the trustees of Qualified Plans of their holdings. Each Participating Insurance Company then will solicit voting instructions in accordance with Rules 6e–2 and 6e–3(T), as applicable, and its participation agreement with the relevant Fund. Shares held by Qualified Plans will be voted in accordance with applicable law. The voting rights provided to Qualified Plans with respect to shares of the Trust will be no different from the voting rights that are provided to Qualified Plans with respect to shares of funds sold to the general public.



27. In addition, the veto power of state insurance commissioners over an underlying fund's investment objectives does not create any inherent conflicts of interest between the contract owners of the Participating Separate Accounts and Qualified Plan participants. Applicants note that the basic premise of corporate democracy and shareholder voting is that not all shareholders may agree with a particular proposal. Although the interests and opinions of shareholders may differ, this does not mean that inherent conflicts of interest exist between or among such shareholders. State insurance commissioners have been given the veto power in recognition of the fact that insurance companies usually cannot simply redeem their separate accounts out of one fund and invest in another. Generally, time-consuming, complex transactions must be undertaken to accomplish such redemptions and transfers. In contract, the trustees of Qualified Plans or the participants in participant-directed Qualified Plans can quickly decide to redeem their interest in the Trust and reinvest in another funding vehicle without the same regulatory impediments faced by separate accounts or, as is the case with most Qualified Plans, even hold cash pending suitable investment. Thus, even if there should arise issues where the interests of contract owners and the interests of Qualified Plans are in conflict, the issues can be almost immediately resolved since the trustees of (or participants in) the Qualified Plan can, on their own, redeem their shares from the Trust.

28. The holding of Trust shares by separate accounts of unaffiliated insurance companies would not entail greater potential for material irreconcilable conflicts arising between or among the interests of VLI Contact owners and VA Contract owners than would mixed funding. Likewise, the holding of Trust shares by separate accounts of unaffiliated insurance companies would not entail greater potential for material irreconcilable conflicts arising between or among the interests of VLI Contract owners, VA Contract owners and Qualified Plan investors than would extended mixed funding where only separate accounts of affiliated Participating Insurance Companies held such shares.

29. Historically, concern existed that greater potential existed for material irreconcilable conflicts between or among the interests of VLI Contract owners or VA Contract owners of unaffiliated insurance companies because such companies were more likely than affiliated companies to be domiciled in different states and the different state insurance regulators could impose divergent requirements on such insurers with regard to investments supporting Variable Contracts. It was also believed by some that unaffiliated insurance companies were less likely than affiliated companies to find ways to reconcile material conflicts of interest that might arise from conflicting state regulation. In fact, shared funding by unaffiliated companies does not increase the potential for such material conflicts of interest beyond that which would otherwise exist for a single insurance company that is licensed in many states and therefore subject to the insurance regulations of such jurisdictions. A particular state insurance regulator could require action of an insurer domiciled or licensed in its jurisdiction that conflicts with or is inconsistent with the regulatory requirements of or actions required by the regulator of another state where that insurer is domiciled or licensed. The fact that different insurance companies are domiciled in different states does not enlarge or create significantly different issues in connection with conflicting state regulatory requirements. Affiliation among or between such insurance companies does not diminish the potential for such issues to arise nor, in light of the source of such issues, does it dramatically increase the likelihood of their being resolved.

30. Historically, concern also existed that material irreconcilable conflicts between or among the interests of VLI Contract owners and/or VA Contract owners of unaffiliated insurance companies were more likely to arise in the event that such companies exercised their limited right to disregard VLI owner voting instructions than would be the case between or among affiliated companies. In fact, the right of an insurance company to disregard VLI owner voting instructions does not raise any issues different from those raised by the authority of different state insurance regulators over separate accounts. Similarly, affiliation between or among insurance companies does not diminish or eliminate the potential for divergent judgments by such companies as to the advisability or legality of a change in investment policies, principal underwriter or investment adviser of a mutual fund in which their separate account invests. Applicants believe that the potential for disagreement between or among insurance companies is limited by requirements in Rule 6e–2 and Rule 6e–3(T) that a company's disregard of voting instructions be reasonable and based on specific good faith determinations. Moreover, in the event that a decision by a participating life insurance company to disregard VLI Contract owners' voting instructions represents a minority position or would preclude a majority vote at a Trust shareholder's meeting, the company could be required by the Trust's Board of Trustees to withdraw from the Trust.

31. Various factors, including the costs of organizing and operating a funding medium, the lack of expertise with respect to investment management (principally with respect to stock and money market investments) and the lack of name recognition by the public of certain insurers as investment experts to whom the public feels comfortable entrusting their investment dollars, have limited the number of insurance companies that offer VA Contracts and VLI Contracts. In particular, some smaller life insurance companies may not find it economically feasible, or within their investment or administrative expertise, to enter the Variable Contract business on their own. Use of the Funds of the Trust as a mixed funding and shared funding vehicle for Variable Contracts would reduce or eliminate such concerns for small life insurance companies.

32. Applicants submit that use of the Trust as a common investment vehicle for Variable Contracts would reduce or alleviate the above-mentioned concerns and that mixed and shared funding will provide several benefits. Participating Insurance Companies will benefit not only from the investment and administrative expertise of the Trust's investment adviser, but also from the cost efficiencies and investment flexibility afforded by a larger pool of funds. Therefore, making the Trust available for mixed and shared funding may encourage more insurance companies to offer Variable Contract design and pricing, which can be

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expected to result in greater product variation and lower charges. In addition, Variable Contract owners would benefit from the reduced costs to Participating Insurance Companies of establishing and administering separate accounts.

33. Regardless of the type of shareholder in the Trust, the investment manager is or would be contractually and otherwise obligated to manage the Fund solely and exclusively in accordance with that Fund's investment objectives, policies and restrictions as well as any guidelines established by the Board of Trustees responsible for such Fund (the "Board"). Thus, the Fund will be managed in the same manner as any other mutual fund, and there is no incentive for the Fund's investment manager to invest to benefit a particular class of shareholders. In addition, the Board has a fiduciary duty to oversee the Fund's investment adviser and ensure that the Fund is managed in a way that does not discriminate against any of the Fund's shareholders.

34. Applicants see no legal impediment to permitting the Trust to serve as a vehicle for mixed funding, extended mixed funding and shared funding. The Commission has issued numerous orders permitting mixed funding, extended mixed funding and shared funding. Therefore, applicants believe that granting the exemptions requested herein is in the public interest and will not compromise the regulatory purposes of Section 9(a), 13(a), 15(a) or 15(b) of the Act or of Rules 6e–2 and 6e–3(T) thereunder.

35. The Commission's authority under Section 6(c) of the Act to grant exemptions from various provisions of the Act and rules thereunder is broad enough to permit orders of exemption that cover classes of unidentified parties. Applicants request an order of the Commission that would exempt VLI Accounts and their Participating Insurance Companies and principal underwriters as a class from the provisions of Sections 9(a), 13(a), 15(a) and 15(b) of the Act and Rule 6e–2 or Rule 6e–3(T)(b)(15) thereunder. The exemption of these classes of parties is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act because all of the potential members of the class could obtain the foregoing exemptions for themselves on the same basis as the applicants, but only at a cost to each of them that is not justified by any public policy purpose. As discussed below, the requested exemptions would only extend to VLI Accounts whose Participating Insurance Companies enter into participation agreements with the Trust; which agreements would subject such VLI Accounts to the conditions discussed below. The Commission staff also would have the opportunity to review compliance with these conditions by Participating Insurance Companies when it reviews the 1933 Act registration statements filed by each VLI Account and VA Account before the account could issue any Variable Contracts. The Commission has previously granted exemptions to classes of similarly situated parties in various contexts and from a wide variety of circumstances, including class exemptions in the context of mixed funding, extended mixed funding and shared funding.

**Applicant's Conditions**

1. Applicants have consented to the following conditions:

a. A majority of the Board of Trustees of the Trust shall consist of persons who are not "interested persons" of such Trust, as defined by Section 2(a)(19) of the Act, and rules thereunder, as modified by any applicable orders of the Commission, except that if this condition is not met by reason of the death, disqualification, or bona fide resignation of any Trustee, then the operation of this condition shall be suspended for: (a) A period of 45 days if the vacancy or vacancies may be filled by the Board, (b) a period of 60 days if a vote of shareholders is required to fill the vacancy or vacancies, or (c) such longer period as the Commission may prescribe by order upon application.

b. The Board of Trustees will monitor the Funds for the existence of any material irreconcilable conflict among the interests of the contract holders of all Participating Separate Accounts and of participants of Qualified Plans investing in such Fund(s) and determine what action, if any, should be taken in response to those conflicts. A material irreconcilable conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority, (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretive letter, or any similar action by insurance, tax, or securities regulatory authorities, (c) an administrative or judicial decision in any relevant proceeding, (d) the manner in which the investments of any Fund are being managed, (e) a difference in voting instructions given by VLI Contract owners, VA Contract owners and Qualified Plan investors or the Trustees of Qualified Plans that do not provide voting rights to their investors, (f) a decision by a Participating Insurance Company to disregard VLI Contractor or VA Contract owner voting instructions and (g) a decision by a Plan trustee (or other plan fiduciary) to disregard voting instructions of Plan participants.

c. The Funds' prospectus shall disclose that (1) its shares are offered in connection with mixed funding, extended mixed funding and shared funding, (2) due to differences in tax treatment and other considerations mixed funding, extended mixed funding and shared funding may present certain conflicts of interest between VA Contract owners, VLI Contract owners and Qualified Plan investors and (3) the Trust's Board of Trustees will monitor the Funds for the existence of any material irreconcilable conflict of interest and determine what action, if any, should be taken in response to such a conflict. The Trust shall also notify the Qualified Plan trustees and Participating Insurance Companies that similar prospectus disclosure may be appropriate in Participating Separate Account prospectuses or any Plan prospectuses or other Plan disclosure documents.

d. The Trust will comply with all of the provisions of the Act relating to security holder (*i.e.*, persons such as VLI Contract owners and VA Contract owners or participants in Plans that provide participants with voting rights) voting including Section 16(a), 16(b) (when applicable) and 16(c) (even though the Trust is not a trust of the type described therein).

e. The Adviser will report any material irreconcilable conflicts or any potential material irreconcilable conflicts between or among the interests of VLI Contract owners, VA Contract owners and Plan participants to the Trust's Board of Trustees and will assist the Board in carrying out the Board's responsibilities under these conditions. Such assistance will include, but not be limited to, providing the Board, at least annually, with all information reasonably necessary for the Board to consider any issues raised by such existing or potential conflicts. Any shares of a Fund purchased by the Adviser or its affiliates will be automatically redeemed if and when the Adviser's investment advisory agreement terminates, to the extent required by applicable Treasury regulations.

f. For so long as the Commission interprets the Act to require "pass-through" voting privileges for Contract owners whose Contracts are funded through a separate account, the Adviser, or if applicable any of its affiliates, will vote its shares of any Fund in the same proportion as all Contract owners having voting rights with respect to the Fund; provided, however, that the Adviser or any such affiliate shall vote its shares in such other manner as may be required by the Commission staff.

g. The Trust shall promptly notify the Adviser, each Participating Insurance Company and Qualified Plan in writing of any determination of a material irreconcilable conflict and its implications. All reports sent by Participating Insurance Companies or Qualified Plans to the Board of Trustees of the Trust or notices sent by the Board of Trustees to Participating Insurance Companies or Qualified Plans notifying the recipient of the existence of or potential for a material irreconcilable conflict between the interests of VA Contract owners, VLI Contract owners and Plan participants as well as Board deliberations regarding such conflicts or such potential conflicts shall be recorded in the board meeting minutes of the Trust or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

h. The Adviser, each Participating Insurance Company and each Qualified Plan owning more than 10% of the outstanding shares of a Fund shall have a contractual obligation, under the agreements governing their participation in the Funds, to provide at least annually such reports and other information relating to potential conflicts as the Board may reasonably request.

2. In addition to the foregoing conditions, applicants consent to the following conditions and represent and agree that if the exemptions requested herein are granted, the Trust will not sell shares to any VLI Account unless the account's Participating Insurance Company enters into a participation agreement with the Trust containing provisions that require the following:

a. A majority vote of the disinterested trustees of the Trust shall represent a conclusive determination as to the existence of a material irreconcilable conflict between or among the interests of VLI Contract owners, VA Contract owners and Qualified Plan investors. For the purpose of number 5 below, a majority vote of the disinterested trustees of the Trust shall represent a conclusive determination as to whether any proposed action adequately remedies any material irreconcilable conflict between or among the interests of VLI Contract owners, VA Contract owners and Qualified Plan investors.

b. Each Participating Insurance Company will monitor its operations and those of the Trust for the purpose of identifying any material irreconcilable conflicts or potential material irreconcilable conflicts between or among the interests of Qualified Plan investors, VA Contract owners and VLI Contract owners.

c. Each Participating Insurance Company will report any such conflicts or potential conflicts to the Trust's Board of Trustees and will provide the Board, at least annually, with all information reasonably necessary for the Board to consider any issues raised by such existing or potential conflicts or by these conditions. Each Participating Insurance Company will also assist the Board in carrying out its responsibilities under these conditions including, but not limited to: (a) Informing the Board whenever it disregards VLI Contract owner or VA Contract owner voting instructions, and (b) providing, at least annually, such other information and reports as the Board may reasonably request. Each Participating Insurance Company will carry out these obligations with a view only to the interests of owners of its VLI Contracts and VA Contracts.

d. Each Participating Insurance Company will provide "pass-through" voting privileges to owners of registered VA Contracts and registered VLI Contracts as long as the Act requires such privileges in such cases. Accordingly, such Participating Insurance Companies, where applicable, will vote Trust shares held in their Participating Separate Accounts in a manner consistent with voting instructions timely received from owners of such VLI and VA Contracts. Each Participating Insurance Company will vote Trust shares owned by itself (*i.e.*, that are not attributable to VA Contract or VLI Contract reserves) in the same proportion as instructions received in a timely fashion from VA Contract owners and VLI Contract owners and shall be responsible for ensuring that it and other Participating Insurance Companies calculate "pass-through" votes for VLI Accounts and VA Accounts in a consistent manner. Each participating Issurance Company also will vote Trust shares held in any registered VLI Account or registered VA account for which it has not received timely voting instructions in the same proportion as instructions received in a timely fashion from VA Contract owners and VLI Contract owners.

e. In the event that a material irreconcilable conflict of interest arises between VA Contract owners or VLI Contract owners and Qualified Plan participants, each Participating Insurance Company will, at its own expense, take whatever action is necessary to remedy such conflict as it adversely affects owners of its VA Contracts or VLI Contracts up to and including, (1) establishing a new registered management investment company, and (2) withdrawing assets attributable to reserves for the VA contracts or VLI Contracts subject to the conflict from the Trust and reinvesting such assets in a different investment medium (including another Fund of the Trust) or submitting the question of whether such withdrawal should be implemented to a vote of all affected VA Contract owners or VLI Contract owners, and, as appropriate, segregating the assets supporting the contracts of any group of such owners that votes in favor of such withdrawal, or offering to such owners the option of making such a change. Each Participating Insurance Company will carry out the responsibility to take the foregoing action with a view only to the interests of owners of its VA Contracts and VLI Contracts. Notwithstanding the foregoing, each Participating Insurance Company will not be obligated to establish a new funding medium for any group of VA Contracts or VLI Contracts if an offer to do so has been declined by a vote of a majority of the VA Contract owners or VLI Contract owners adversely affected by the conflict.

f. If a material irreconcilable conflict arises because of a Participating Insurance Company's decision to disregard the voting instructions of VLI Contract owners or VA Contract owners and that decision represents a minority position or would preclude a majority vote at any Fund shareholding meeting, then, at the request of the Trust's Board of Trustees, the Participating Insurance Company will redeem the shares of the Trust to which the disregarded voting instructions relate. No charge or penalty, however, will be imposed in connection with such a redemption.

g. Each Participating Insurance Company and VLI Account will continue to rely on Rule 6e–2(b)(15) and/or Rule 6e–3(T)(b)(15), as appropriate, and to comply with all of the appropriate Rule's conditions. In the event that Rule 6e–2 and/or Rule 6e–3(T) is amended, or any successor rule is adopted, each Participating Insurance Company and VLI Account will instead comply with such amended or successor rule.

h. Each participating insurance company will maintain at its home office available to the Commission a list of its officers, directors and employees who participate directly in the

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management and administration of any separate account organized as a UIT or of any Fund. These individuals will continue to be subject to the automatic disqualification provisions of Section 9(a).

3. In addition to the foregoing conditions, applicants consent to the following conditions and represent and agree that if the exemptions requested herein are granted, the Trust will not sell shares of any Fund to a Qualified Plan if such sale would result in the Qualified Plan owning 10% or more of that Fund's outstanding shares unless the Qualified Plan first enters into a participation agreement with the Trust containing provisions that require the following:

a. The trustees or plan committees of the Qualified Plan will: (a) Monitor the Qualified Plan's operations and those of the Trust for the purpose of identifying any material irreconcilable conflicts or potential material irreconcilable conflicts between or among the interests of Qualified Plan participants, VA Contract owners and VLI Contract owners, (b) report any such conflicts or potential conflicts to the Trust's Board of Trustees, (c) provide the Board, at least annually, with all information reasonably necessary for the Board to consider any issues raised by such existing or potential conflicts and any other information and reports that the Board may reasonably request, (d) inform the Board whenever it (or another fiduciary) disregards the voting instructions of Qualified Plan participants (of a Qualified Plan that provides voting rights to its participants), and (e) ensure that the Qualified Plan votes Trust shares as required by applicable law and governing Qualified Plan documents. The trustees or plan committees of the Qualified Plan will carry out these obligations with a view only to the interests of Qualified Plan participants in its Qualified Plan.

b. In the event that a material irreconcilable conflict of interest arises between Qualified Plan investors and VA Contract owners, VLI Contract owners or other investors in the Trust, each Qualified Plan will, at its own expense, take whatever action is necessary to remedy such conflict as it adversely affects that Qualified Plan or participants in that Qualified Plan up to and including (1) establishing a new registered management investment company, and (2) withdrawing Qualified Plan assets subject to the conflict from the Trust and reinvesting such assets in a different investment medium (including another Fund of the Trust) or submitting the question of whether such withdrawal should be implemented to a vote of all affected Quality Plan investors, and, as appropriate, segregating the assets of any group of such participants that votes in favor of such withdrawal, or offering to such participants the option of making such a change. Each Qualified Plan will carry out the responsibility to take the foregoing action with a view only to the interests of Qualified Plan investors in its Qualified Plan. Notwithstanding the foregoing, no Qualified Plan will be obligated to establish a new funding medium for any group of participants or Qualified Plan investors if an offer to do so has been declined by a vote of a majority of the Qualified Plan's participants or Qualified Plan investors adversely affected by the conflict.

c. If a material irreconcilable conflict arises because of a Qualified Plan trustee's (or other fiduciary's) decision to disregard the voting instructions of Qualified Plan participants (of a Qualified Plan that provides voting rights to its participants) and that decision represents a minority position or would preclude a majority vote at any shareholder meeting, then, at the request of the Trust's Board of Trustees, the Qualified Plan will redeem the shares of the Trust to which the disregarded voting instructions relate. No charge or penalty, however, will be imposed in connection with such a redemption.

4. Applicants also represent and agree that if the exemptions requested herein are granted, the Trust will not sell shares of any Fund to a Qualified Plan until the Qualified Plan executes an application containing an acknowledgment of the condition that the Trust cannot sell shares of any Fund to such Qualified Plan if such sale would result in that Qualified Plan owning 10% or more of that Fund's outstanding shares unless that Qualified Plan first enters into a participation agreement as described above.

**Conclusion**

For the reasons and upon the facts stated above, Applicants assert that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–26279 Filed 10–12–00; 8:45 am]

BILLING CODE 8010–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 35–27244]**

## Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

October 6, 2000.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by October 31, 2000, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549–0609, and serve a copy on the relevant application(s) and/or declaration(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After October 31, 2000, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

**Scottish Power plc, et al. (70–9669)**

Scottish Power plc ("Scottish Power"), a foreign registered public utility holding company; Scottish Power UK plc, a first-tier utility subsidiary of Scottish Power ("SPUK");[1] Scottish Power NA 1 Limited, Scottish Power NA 2 Limited, and NA General Partnership (together, "Intermediate Companies"), each of which is a subsidiary of Scottish Power, all located at 1 Atlantic Quay, Glasgow G2 8SP, Scotland, United Kingdom; PacifiCorp, an electric utility subsidiary of Scottish Power; and PacifiCorp's nonutility subsidiaries ("PacifiCorp Subsidiaries"), Centralia Mining Company, Energy West Mining Company, Glenrock Coal Company, Interwest Mining Company, Pacific Minerals, Inc., PacifiCorp Environmental Remediation Company, PacifiCorp Investment Management, Inc., PacifiCorp Group Holdings Company ("PGHC"), New Energy Holdings Inc., PACE Group, PacifiCorp Energy, Inc., PacifiCorp Energy Services, Inc., PacifiCorp Energy Ventures, Inc., PacifiCorp International Group Holdings Company, PacifiCorp Power Marketing, Inc., PacifiCorp Trans, Inc., PacifiCorp Financial Services, Inc., Eastern Investment Company, and Pan Pacific Global Corporation, all located at Suite 2000, 825 N.E. Multnomah Street, Portland, OR 97232 (collectively, "Applicants"), have filed an application-declaration under sections 6(a), 7, 9(a), 10, 12, 13(b) and 33 of the Act and rules 42, 43, 45, 53, 54, 83, 87, 90, and 91 under the Act.

[1] Scottish Power's other operations have been segregated under SPUK, which is a foreign utility company within the meaning of section 33 of the Act.



**I. Introduction, Background and Summary**

Scottish Power registered as a holding company under the Act following its acquisition of PacifiCorp on November 29, 1999 ("Merger").[2] As discussed more fully below, Scottish Power and PacifiCorp, together with the Intermediate Companies and the PacifiCorp Subsidiaries, now request authority to engage in a variety of financing transactions. In summary, Applicants seek authority to engage in the following transactions through March 31, 2004 ("Authorization Period"): (1) External financings by Scottish Power; (2) certain external financings by PacifiCorp and the PacifiCorp Subsidiaries ("PacifiCorp Group"); (3) certain intrasystem financings, including the creation of two new PacifiCorp money pools ("Money Pools"), and guarantees of the obligations of the PacifiCorp Subsidiaries and of the subsidiaries of Scottish Power's foreign utility subsidiary, Scottish Power UK plc ("SPUK" and, together with its subsidiaries, the "SPUK Group"); (4) the payment by the PacifiCorp Subsidiaries and, in certain circumstances, by PacifiCorp, of dividends out of capital or unearned surplus; (5) increases in the number of shares authorized by PacifiCorp or by any of the PacifiCorp Subsidiaries with respect to any capital security[3] of the company, as well as alteration of the terms of any capital security, without further Commission authorization; (6) the formation of financing entities and the issuance by such entities of securities otherwise authorized to be issued and sold under the authority requested in this filing; (7) the formation of a holding company ("Nevada Holdco") to act as a pass through entity regarding the shares of both PacifiCorp and PGHC;[4] and (8) the execution of a system tax allocation agreement. In addition, Applicants propose to engage in various intrasystem transactions. Applicants further request that the Commission reserve jurisdiction over certain transactions, as described below.

Applicants state that the proceeds from the sale of securities in external financing transactions will be used for the acquisition, retirement or redemption of securities issued by Scottish Power and its subsidiaries ("Scottish Power System"), without the need for prior Commission approval and for necessary general corporate purposes including: (a) The financing, in part, of the capital expenditures of the Scottish Power System; (b) the financing of working capital requirements of the Scottish Power System; and (iii) other lawful general purposes. The proceeds of external financings will be allocated to companies in the Scottish Power System in various ways through the proposed intrasystem financing discussed below.

In addition, Scottish Power seeks authority to invest in exempt wholesale generators ("EWGs") and foreign utility companies ("FUCOs"), as those terms are defined in sections 32 and 33 of the Act, respectively, up to an aggregate outstanding amount equal to 154% of its consolidated retained earnings at any one time during the Authorization Period. Further, Scottish Power seeks authority to use its ordinary shares (or associated American Depository Shares ("ADSs") or American Depositary receipts ("ADRs")) as consideration for acquisitions that are otherwise authorized under the Act or exempt under the Act, and to provide shares for various award and shareholder investment programs.

**II. General Terms and Conditions of Financing**

Financings by each Applicant will be subject to the following general terms and conditions ("Financing Conditions"): (1) During the Authorization Period, Scottish Power's total common equity ("Total Common Equity")[5] will be at least 30% of its total capitalization ("Total Capitalization"),[6] and PacifiCorp's total Common Equity will be at least 30% of its Total Capitalization; (2) Scottish Power will maintain its and PacifiCorp's long-term debt ratings at an investment grade level through the Authorization Period; (3) the cost of money on debt financings of Scottish Power at the date of issuance will not exceed 300 basis points over that for comparable term U.S. treasury securities or government benchmark for the currency concerned; (4) the cost of money on preferred securities of Scottish Power at the date of issuance will not exceed 500 basis points over that for comparable term U.S. treasury securities or government benchmark for the currency concerned; (5) the aggregate amount of external debt and equity issued by Scottish Power under the authority requested in this application-declaration will not exceed $6 billion at any one time outstanding; (6) Scottish Power's aggregate investment in EWGs and FUCOs, as defined in rule 53 under the Act, will not exceed, without prior Commission approval, 154% of the consolidated retained earnings of the Scottish Power System; and (7) the proceeds from the sale of securities in external financing transactions will be used for the acquisition, retirement or redemption of securities issued by the Scottish Power System, without the need for prior Commission approval and for necessary general corporate purposes including (i) the financing, in part, of the capital expenditures of the Scottish Power System, (ii) the financing of working capital requirements of the Scottish Power System, and (iii) other lawful general purposes.

Specifically, Applicants seek authority for the following:

**III. Existing Financing Arrangements**

Applicants request Commission authorization to maintain in effect through the Authorization Period all existing financing arrangements of

[2] Scottish Power field with the Commission a Notification of Registration on Form U5A on November 30, 1999, and a Registration Statement on Form U5B on March 7, 2000.

[3] Capital stock includes common stock, preferred stock, other preferred securities, options and/or warrants convertible into common or preferred stock, rights, and similar securities.

[4] PGHC is the holding company for PacifiCorp's principal subsidiaries. Through its subsidiary companies, PGHC is engaged in the acquisition or development of electrical power projects or systems internationally, and leveraged lease tax-advantages investments. Nevada Holdco will be authorized to issue 1000 shares of common stock, par value $.01 per share. Nevada Holdco proposes to issue its common shares to NA General Partnership and, accordingly, NA General Partnership proposes to acquire all of the outstanding common shares of Nevada Holdco.

[5] Total Common Equity includes common stock, retained earnings, and accumulated other comprehensive income, presented in accordance with U.S. generally accepted accounting practices ("U.S. GAAP").

[6] Total Capitalization means the sum of Total Common Equity, preferred stock, short-term debt, and long-term debt, including current maturities.

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Scottish Power, the Intermediate Companies and the PacifiCorp Group, to the extent the Commission has jurisdiction over these existing arrangements.[7] Applicants represent that all existing PacifiCorp Group financings qualify for exemptions from the Act under rules 45(b) and 52.[8]

**IV. Scottish Power External Financing**

*A. Introduction*

Scottish Power proposes to issue equity and debt securities, in amounts that would not aggregate more than $6 billion at any one time outstanding during the Authorization Period ("Aggregate Limitation"). [9] These shares could include, but would not necessarily be limited to, ordinary shares, preferred shares, options, warrants, long- and short-term debt (including commercial paper), convertible securities, subordinated debt, bank borrowings and securities with call or put options. In addition, Scottish Power may enter into currency and interest rate swaps as described below.

Scottish Power proposes that the various securities to be issued would fall within the following limits, but would not in the aggregate exceed the Aggregate Limitation stated above:

| Type of debt | Amount (In billions) |
|---|---|
| Equity, including options and warrants | $3.0 |
| Preferred Stock | 1.0 |
| Bank Debt | 1.0 |
| Commercial Paper | 1.0 |
| Bond Issues—Straight | 3.0 |
| Bond Issues—Convertible | 3.0 |

*B. Ordinary Shares*

1. General

Scottish Power's common equity consists of ordinary shares, with a par value of 50 pence each, that are listed on the London Stock Exchange. Scottish Power currently has a small number of ADs in the U.S. that trade as ADRs, and represent four ordinary shares each. Scottish Power has established a sponsored ADR program in the U.S. and has its ADRs listed on the New York Stock Exchange and registered under the Securities Act of 1933, as amended. As a result, Scottish Power has registered under the Securities Exchange Act of 1934, as amended, and files the periodic disclosure reports required of a foreign issuer with the Commission. The request contained in this application-declaration with respect to ordinary shares refers to the issuance of ordinary shares directly or through the ADR program and, for purposes of this request, the ADSs and ADRs are not considered separate securities from the underlying ordinary shares. Scottish Power requests authority to issue up to $3 billion in equity [10] through the Authorization Period ("Equity Limitation").

Scottish Power seeks authority to use its ordinary shares (or associated ADSs or ADRs) as consideration for acquisitions that are otherwise authorized under the Act. Among other things, transactions may involve the exchange of parent company equity securities for securities of the company being acquired in order to provide the seller with certain tax advantages. The Scottish Power ordinary shares to be exchanged may, among other things, be purchased on the open market under rule 42 or may be original issue. For purposes of the Aggregate Limitation, Scottish Power ordinary shares used to fund an acquisition of a company through the exchange of Scottish Power equity for securities being acquired would be valued at market value based upon the closing price of the ordinary shares on the London Stock Exchange on the day before closing of the sale or issuance.

2. Employee Benefit Plans

In addition to other general corporate purposes, the ordinary shares will be used to fund employee benefit plans. More particularly, Scottish Power intends to issue ADRs to U.S. employees through PacifiCorp's Stock Incentive Plan, Compensation Reduction Plan and K Plus Employee Savings and Stock Ownership Plan ("U.S. Plans"). Scottish Power states that it may develop other share-based plans to motivate and retain key executives. Scottish Power also intends to issue ordinary shares, or certain conditional rights relating to ordinary shares, to its U.K. personnel through its Long Term Incentive Plan [11] and Scottish Power Sharesave Scheme ("U.K. Plans").[12] Scottish Power requests authority to issue approximately 39.1 million ordinary shares to employees under the U.S. Plans, the U.K. Plans, and those additional plans ("Additional Plans", and, together with the U.S. Plans and the U.K. Plans, "Plans") that may be developed for the purposes stated above. All shares issued under the Plans will be subject to the Aggregate Limitation. Securities issued under the Plans will be valued, if ordinary shares, at market value based on the closing price on the London Stock Exchange on the day before the award. Securities issued by Scottish Power that are not ordinary shares will be valued based on a reasonable and consistent method applied at the time of the award. Scottish Power requests that the Commission reserve jurisdiction over the Additional Plans, pending completion of the record.

*C. Preferred Stock*

Scottish Power proposes to issue preferred stock from time to time during the Authorization Period. The aggregate outstanding amount of preferred stock would not exceed $1 billion. Any issuance of preferred stock would have dividend rates or methods of determining dividend rates, redemption provisions, conversion or put terms and other terms and conditions as Scottish Power may determine at the time of issuance; provided, however, that the cost of money on preferred stock of Scottish Power, when issued, will not exceed 500 basis points over that for comparable term U.S. treasury securities or government benchmark for the currency concerned.

*D. Debt*

Scottish Power proposes to issue debt securities from time to time during the Authorization Period. Subject to the following conditions, any issuance of debt securities would have the designation, aggregate principal amount, interest rate(s) or method of determining interest rate(s), terms of payment of interest, redemption provisions, non-refunding provisions, sinking fund terms, conversion or put terms and other terms and conditions as are deemed appropriate at the time of issuance.

The cost of money on debt financings of Scottish Power will not exceed 300 basis points over that for comparable term U.S. treasury securities or government benchmark for the currency concerned. The maturity of any debt security will not exceed 50 years.

Parent-level debt may be issued for the acquisition, retirement or redemption of securities issued by a Scottish Power System company, and for necessary and urgent general and corporate purposes, including the financing of capital expenditures, the financing of working capital requirements, and other lawful general corporate purposes.

*E. Interest Rate and Currency Risk Management Devices*

In order to protect the Scottish Power System from adverse interest rate movements, the interest rate on the debt portfolio is managed through the use of fixed-rate debt, combined with interest rate and cross currency swaps, options and option-related instruments with a view to maintaining a significant proportion of fixed rates over the medium term. Scottish Power seeks authority to continue to engage in interest rate and cross currency swaps, options, option-related instruments, forward exchange contracts, and similar instruments through the Authorization Period. Scottish Power states that these transactions will meet the criteria established by the Financial Accounting Standards Board in order to qualify for hedge-accounting treatment or will so qualify under generally accepted accounting principles in the United Kingdom ("U.K. GAAP"). In the event transactions in financial instruments or products are qualified for hedge accounting treatment under U.K. GAAP, but not under U.S. GAAP, Scottish Power's financial statements filed in accordance with Form 20–F will contain a reconciliation of the difference between the two methods of accounting treatment.

*F. Guarantees and Loans*

Applicants request authorization to enter into guarantees, obtain letters of credit, enter into guaranty-type agreements or otherwise provide credit support with respect to the obligations of the PacifiCorp Group, and of SPUK and the SPUK Subsidiaries ("SPUK Group"), as may be appropriate to enable these system companies to carry on their respective authorized or permitted businesses. This credit support may be in the form of committed bank lines of credit. Guarantees entered into by Scottish Power would not be subject to the Aggregate Limitation, but instead would be subject to a separate $6 billion limit ("Scottish Power Guarantee Limitation"), based on the amount at risk.[13] Any guarantees and credit support entered into by Scottish Power that support obligations of the SPUK Group will be included as part of Scottish Power's aggregate investment in FUCOs and EWGs for purposes of rule 53 under the Act.

Scottish Power also proposes to make loans or capital contributions to the SPUK Group from time to time up to an aggregate principal amount of $3 billion through the Authorization Period. Loans made to the SPUK Group will be of a short-term nature, payable on demand and will carry an interest rate of Royal Bank of Scotland Base plus one percent. These loans and capital contributions will be included as part of Scottish Power's aggregate investment in FUCOs and EWGs, as that term is defined in rule 53 under the Act.

**V. PacifiCorp Group Financings**

*A. Existing Intercompany Loans*

PacifiCorp and the PacifiCorp subsidiaries currently participate in an intercompany loan agreement ("PacifiCorp Loan Agreement") allowing PacifiCorp to loan up to $200 million to certain of its subsidiaries, and allowing these subsidiaries to loan unlimited amounts to PacifiCorp.[14] Loans made under the PacifiCorp Loan Agreement are payable on demand, are evidenced by notes and bear interest at PacifiCorp's short-term borrowing rate whether the loan is to or from PacifiCorp. PGHC also participates in an intercompany borrowing agreement ("PGHC Loan Agreement", and, collectively, "Loan Agreements") allowing up to $350 million in loans to be made among PGHC and its subsidiaries, and among PGHC and certain other direct subsidiaries of PacifiCorp, including PacifiCorp Environmental Remediation Company, PacifiCorp Minerals, Inc., and PacifiCorp Investment Management, Inc. Loans made under the PGHC Loan Agreement are payable on demand and, if from PGHC, bear interest at a negotiated rate [15] or at PGHC's short-term borrowing rate if the borrower is PGHC. Since completion of the Merger, all loans under both the PacifiCorp Loan Agreement and the PGHC Loan Agreement have been made on an interest-free basis. Applicants request authorization to maintain these Loan Agreements through the Authorization Period, to the extent the Loan Agreements are not exempt under rule 52.

*B. Intrasystem Non-Money Pool Financing*

Each of the Intermediate Companies is seeking authorization to issue and sell securities to, and acquire securities from, its immediate parent, subsidiary companies, and other Intermediate Companies, respectively. Each of the Intermediate companies and Scottish Power is also seeking authorization to issue guarantees and other forms of credit support to direct and indirect subsidiaries. In no case would the Intermediate Companies or Scottish Power borrow, or receive any extension of credit indemnity from any of their respective direct or indirect subsidiaries.

*C. Subsidiary Money Pools*

In addition to the above-described intercompany arrangements, Applicants request authority to create two new money pools that will be administered by PacifiCorp. One money pool will be exclusively for certain of the nonutility subsidiaries of PGHC ("Nonutility Money Pool"),[16] and the second money pool will be for PacifiCorp and certain of the PacifiCorp Subsidiaries ("Utility Money Pool", and, together with the Nonutility Money Pool, "Money Pools").[17] The funds available to the Utility Money Pool will be loaned on a short-term basis and will come from the Utility Money Pool participants

[7] As of March 31, 2000, Scottish Power has approximately $6.9 billion of long-term debt, $1.1 billion of short-term debt, and $11.2 billion in common equity outstanding, calculated in accordance with U.S. GAAP.

[8] PacifiCorp's presently outstanding securities include preferred stock, first mortgage bonds, subordinated debt, pollution control revenue bond financings, and short-term debt, including commercial paper. Members of the PacifiCorp Group also participate in a variety of interest rate and currency exchange swap agreements.

[9] The Aggregate Limitation is in addition to Scottish Power's current outstanding equity and debt securities, described above.

[10] This would include stock options or warrants that Scottish Power may issue from time to time.

[11] Scottish Power also operates the Scottish Power Executive Share Option Scheme which applies to executive directors and certain senior managers. All future grants under this plan have been replaced by the company's Long Term Incentive Plan. Existing options remain exercisable.

[12] In order for Scottish Power to provide ordinary shares to participants in the U.K. Plans when they are entitled to exercise their share options, Scottish Power states that it must provide a loan to the trustee, or equivalent ("Trustee"), of the employee share plans to allow the Trustee to acquire Scottish Power's ordinary shares on the open market on behalf of the eligible participants. On exercise of the share options by the eligible participants, the option price money payable by the share option holder is applied by the Trustee to reduce the loan amount from Scottish Power. Scottish Power proposes to engage in these transactions, in order to provide ordinary shares to its employees under the U.K. Plans.

[13] Scottish Power currently has approximately $568 million in Guarantees outstanding. Applicants state that the Scottish Power Guarantee Limitation is in addition to these existing guarantees.

[14] The PacifiCorp Loan Agreement was approved by the Oregon Public Utility Commission.

[15] Borrowings from PGHC will bear interest on the outstanding principal amount thereof, for each day from the date such borrowing is made until it becomes due, at a rate per annum equal to the prime rate for such day plus a margin (depending on the ratings of the borrower) as agreed to from time to time by PGHC and the borrower and set forth in the ledger maintained by PGHC. However, in no event will the borrower's rate exceed PGHC's cost of short-term funds for such day plus 3/8%.

[16] Foreign EWGs, exempt telecommunications companies ("ETCs"), as that term is defined in section 34 of the Act, and FUCOs will not be participants in the Utility Money Pool, and ETCs and FUCOs will not participate in the Nonutility Money Pool.

[17] The names of the PacifiCorp Subsidiaries participating in each of the Money Pools are set forth in Scottish Power's application-declaration.

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themselves.[18] Scottish Power and/or PacifiCorp will make available short-term funds from time to time to the Utility Money Pool in amounts up to $800 million. Scottish Power also will make available short-term funds from time to time for the Nonutility Money Pool in amounts not to exceed $800 million. Applicants state that Scottish Power will participate in the Money Pools only to the extent that it has funds available for lending. Under no circumstances will Scottish Power borrow from either of the Money Pools. Funds will be made available from such sources in such order as PacifiCorp, as administrator of the Money Pools, may determine will result in a lower cost of borrowing, consistent with the individual borrowing needs and financial standing of the participating Subsidiaries.

If at any time there are funds remaining in the Money Pools after satisfaction of the borrowing needs of the participating Subsidiaries, PacifiCorp, as the agent of the Money Pools, will invest these funds appropriately and consistent with applicable state and federal regulations and allocate the earnings on any of these investments between or among those participants within each respective Money Pool according to the amount of excess funds provided by each respective participant. PacifiCorp will administer the Money Pools on an "at cost" basis. PacifiCorp will maintain separate records for each Money Pool and funds in each Money Pool will be separately invested. Applicants request that the Commission reserve jurisdiction over the participation by future companies formed or acquired by Scottish Power in the relevant Money Pool, until a specific post-effective amendment is filed that seeks authority to add any specific Subsidiary as a participant in that Money Pool.

*D. Short-term Debt*

PacifiCorp requests authority to issue commercial paper and promissory notes in an aggregate amount not to exceed $1.5 billion to be outstanding at any one time during the Authorization Period. Applicants state that this commercial paper will be sold to or through dealers at discount rates or bearing interest rates per annum prevailing at the date of issuance for commercial paper of comparable quality and maturity.

[18] PacifiCorp proposes to borrow up to $800 million under the Utility Money Pool.

**VI. Payment of Dividends Out of Capital or Unearned Surplus**

Applicants state that there may be situations in which one or more PacifiCorp Subsidiaries will have unrestricted cash available for distribution in excess of current and retained earnings. Accordingly, Applicants propose that current and future PacifiCorp Subsidiaries be permitted to pay dividends out of capital and unearned surplus through the Authorization Period. Without further approval of the Commission, no PacifiCorp Subsidiary will declare or pay any dividend out of capital or unearned surplus if that PacifiCorp Subsidiary derives any material part of its revenues from the sale of goods, services or electricity to PacifiCorp ("Non-Exempt PacifiCorp Subsidiaries"). Scottish Power requests that the Commission reserve jurisdiction over dividends paid by any Non-Exempt PacifiCorp Subsidiary.

Applicants also request authority for PacifiCorp to pay dividends out of capital and unearned surplus up to the lesser of $900 million or to the extent of the proceeds it receives from the sale of assets outside of its regulated utility business.[19]

**VII. Approval of Amended Tax Allocation Agreement**

Applicants request approval of an amended agreement for the allocation of consolidated tax among the Intermediate Companies and the PacifiCorp Group ("Tax Allocation Agreement"). Applicants state that the Tax Allocation Agreement will enable Scottish Power to receive payment for certain tax losses of subsidiary companies in order to obtain appropriate tax credits under United Kingdom law for non-United Kingdom taxes paid on subsidiary operations. Accordingly, Applicants seeks an exemption from the provisions of rule 45(c)(5) under the Act, which would otherwise require that these losses be retained by the subsidiary companies without payment.

**VIII. Changes in Capital Stock of Subsidiaries**

Applicants state that the portion of an individual PacifiCorp Subsidiary's aggregate financing to be effected through the sale of equity securities to its immediate parent company during the Authorization Period may in some cases exceed the then authorized capital stock of that PacifiCorp Subsidiary. In addition, that PacifiCorp Subsidiary may choose to use other forms of capital securities.[20] Each PacifiCorp Subsidiary requests authority to increase the amount or change the terms of any of its authorized capital securities, without additional Commission approval, as needed to accommodate the sale of additional equity.[21] The terms that may be changed include dividend rates, conversion rates and dates, and expiration dates. These proposed changes to the terms of and increases in the amounts of capital securities affect only the manner in which financing is conducted by the PacifiCorp Subsidiaries and will not alter the terms or limits proposed in the application.

**IX. Financing Entities**

Applicants seek authority, through the Authorization Period, for Scottish Power and the PacifiCorp Group to organize new corporations, trusts, partnerships or other entities ("Financing Entities") created for the purpose of facilitating financings through their issuance to third parties of income preferred securities or other securities authorized under this filing or issued under an applicable exemption. Applicants also seek authority for the Financing Entities to issue these securities to third parties in the event these issuances are not exempt under rule 52. In addition, authority is requested for: (1) The issuance of debentures or other evidences of indebtedness by any of Scottish Power or the PacifiCorp Group to a Financing Entity in return for the proceeds of the financing; (2) the acquisition by any of Scottish Power or the PacifiCorp Group of voting interests or equity securities issued by the Financing Entity to establish ownership of that Financing Entity; and (3) the guaranty by the Applicants of that Financing Entity's obligations in connection with its voting interests or equity securities. Each of Scottish Power and the PacifiCorp Group also may enter into expense agreements with its respective Financing Entity, under which it would agree to pay all expenses of that Financing Entity.

Any amounts issued by a Financing Entity to third parties under this authorization will be included in the proposed external financing limits applicable to the immediate parent of that Financing Entity. However, Applicants request that the underlying intrasystem mirror debt and parent guaranty not be included in that limitation or the separate Scottish Power Guarantee Limitation.

[19] PacifiCorp recently completed the sale of its FUCO investments in Australia. The requested authority would allow the proceeds from any such sale to be distributed by PacifiCorp to its shareholders.

[20] As noted above, these securities include common stock, preferred stock, other preferred securities, options and/or warrants convertible into common or preferred stock, rights, and similar securities.

[21] Applicants request that the Commission reserve jurisdiction over changes to the capital stock of PacifiCorp.



**X. Proposed Corporate Restructuring**

Scottish Power proposes to engage in corporate restructuring or reorganization of the SPUK Group without prior Commission approval.[22] Scottish Power further states that, as it continues to review the combined operations of the Scottish Power System, it may prove prudent to reorganize its nonutility companies to merge current FUCO investments held in the PacifiCorp Group with those of SPUK. Scottish Power also requests authorization to consolidate or otherwise reorganize a nonutility subsidiary if the acquisition of the securities of that nonutility subsidiary is exempt from prior Commission approval. Scottish Power requests that the Commission reserve jurisdiction, pending completion of the record, over any other consolidation or reorganization of its direct or indirect ownership interests in any nonutility company.

**XI. EWG/FUCO-related Financings**

As a general matter, Scottish Power intends to fund its FUCO activities at the level of its first-tier subsidiary, SPUK, or at the level of the Intermediate Companies. However, it may be desirable from time to time for Scottish Power to provide some investment capital or credit support for FUCO acquisitions or operations. To that end, Scottish Power is seeking authority to finance EWG and FUCO investments and operations up to an amount equal to 154% of its consolidated retained earnings ("CRE") at any one time outstanding during the Authorization Period.[23] Applicants state that, as of March 31, 2000, Scottish Power's CRE on a U.S. GAAP basis was $3,116 million. Applicants further state that, as of March 31, 2000, the Scottish Power System had an existing "aggregate investment," as that term is defined in rule 53 under the Act, in EWGs and FUCOs of an amount equal to 104% of Scottish Power's CRE, subject to an adjustment based on the sale of PacifiCorp's Australian FUCO assets.[24] Therefore, Scottish Power's request for an additional investment authorization would result in an aggregate investment of approximately 154% of Scottish Power's CRE, or approximately $4,797 million.

**XII. Affiliate Transactions**

*A. Existing Intrasystem Arrangements*

PacifiCorp has been providing administrative, management, technical, legal and other support services to its subsidiaries for many years.[25] In addition, there have been occasions when subsidiaries of PacifiCorp have provided services to PacifiCorp or to other PacifiCorp Subsidiaries. Accordingly, PacifiCorp now proposes to continue these arrangements, with PacifiCorp providing services to the PacifiCorp Subsidiaries and on occasion the PacifiCorp Subsidiaries providing services to PacifiCorp and other associate companies in the Scottish Power System. All service transactions will be priced at cost in accordance with section 13(b) of the Act and the rules under the Act.[26]

In addition, SPUK, or another member of the SPUK Group, proposes to perform, on a limited basis, services for the PacifiCorp Group. These services may include: (1) Transition plan preparation and implementation; (2) network performance and customer service improvements; and (3) corporate services. These service transactions also will be priced at cost in accordance with section 13(b) of the Act and the rules under the Act.[27] Applicants state that the costs of services provided by SPUK, or a SPUK, Subsidiary, to the PacifiCorp Group will be directly attributed to PacifiCorp. In the alternative, whenever it is possible to do so accurately, these costs will be attributed to a specific PacifiCorp Subsidiary.

Scottish Power further states that a PacifiCorp Group member may provide incidental services to SPUK or a SPUK Subsidiary at other than cost in compliance with rule 90(d)(1) under the Act. The PacifiCorp Subsidiaries also request authority to provide services and sell goods to SPUK and the SPUK Subsidiaries at fair market prices, under certain circumstances, to any nonutility associates company in the Scottish Power System.

For the Commission by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–26379 Filed 10–12–00; 8:45 am]

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[22] Scottish Power has given commitments to regulators in the U.K. regarding the reorganization of SPUK and its subsidiaries, including the incorporation of divisions of SPUK's business.

[23] Applicants state that Scottish Power's status as a foreign company makes it commercially impossible for it to comply fully with some of the technical requirements of rule 53. In particular, since Scottish Power has pre-existing foreign utility operations, Applicants states that it would be unreasonable to require that Scottish Power maintain the books and records of its FUCOs in accordance with U.S. GAAP, although it will provide reconciliation as required in Form 20–F.

[24] As of March 31, 2000, the Scottish Power System had an aggregate investment of $3,239 million in EWGs and FUCOs.

[25] All affiliate transactions among Scottish Power, PacifiCorp, and the PacifiCorp Subsidiaries are subject to review by all of the state utility commissions that regulate PacifiCorp, including the Idaho Public Utilities Commission, the Public Service Commission of Utah, the Washington Utilities and Transportation Commission, the Public Service Commission of Wyoming, the Oregon Public Utility Commission, and the California Public Utilities Commission.

[26] In the event that the market rate for these service transactions is less than the cost of these services, neither PacifiCorp nor the PacifiCorp Subsidiaries will provide these services.

[27] Scottish Power estimates that the total charges by SPUK to PacifiCorp for the provision of anticipated services will be approximately $12 million annually.

## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 24680; 812–12094]**

## Vanguard Index Funds, et al.; Notice of Application

October 6, 2000.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 ("Act") for exemption from sections 2(a)(32), 18(f)(1), 18(i), 22(d), and 24(d) of the Act and rule 22c–1 under the Act, and under sections 6(c) and 17(b) of the Act for exemption from sections 17(a)(1) and (a)(2) of the Act.

*Summary of Application:* Applicants request an order that would permit each of certain registered open-end management investment companies whose portfolios consist of the component securities of certain indices to issue a new class of shares with limited redeemability. The requested order would permit transactions in the shares of the new classes at negotiated prices in the secondary market and would allow dealers to sell the shares to secondary market purchasers unaccompanied by a prospectus, when prospectus delivery is not required by the Securities Act of 1933. The requested order also would permit certain affiliated persons of the investment companies to deposit securities into, and receive securities from, the investment companies in connection with the purchase and redemption of aggregations of shares of the new classes.

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*Applicants:* Vanguard Index Funds ("Index Trust"), The Vanguard Group, Inc. ("VGI"), and Vanguard Marketing Corporation ("VMC").

*Filing Dates:* The application was filed on May 12, 2000 and was amended on July 12, 2000.

*Hearing or Notification of Hearing:* An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 31, 2000 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants, P.O. Box 2600, Valley Forge, PA 19482.

**FOR FURTHER INFORMATION CONTACT:** Rachel H. Graham, Senior Counsel, or Michael W. Mundt, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (tel. 202–942–8090).

### Applicants' Representations

1. Index Trust is an open-end management investment company registered under the Act and organized as a Delaware business trust. Index Trust offers nine investment portfolios (each a "Fund" and, collectively, the "Funds"). Currently, eight of the Funds offer separate classes of shares for retail and institutional investors, and the remaining Fund offers retail shares only (shares of the retail and institutional classes of the Funds collectively are referred to as "Conventional Shares").

2. VGI is a Pennsylvania corporation that is wholly and jointly owned by the Vanguard family of mutual funds ("Vanguard Fund Complex"). VGI is registered as an investment adviser under the Investment Advisers Act of 1940 and as a transfer agent under the Securities Exchange Act of 1934 ("Exchange Act"). VGI provides each Vanguard fund (including the Funds) with corporate management, administrative, and transfer agency services at cost. VGI also provides advisory services at cost to certain Vanguard funds, including each Fund. VMC is a wholly owned subsidiary of VGI and is registered as a broker-dealer under the Exchange Act. VMC provides all distribution and marketing services at cost to the Vanguard funds including each Fund.

3. Each Fund seeks to tract, as closely as possible, the performance of a specified domestic securities index (each an "Index" and, collectively, the "Indices").[1] A Fund will utilize as an investment approach either a replication strategy or a representative sampling strategy. A Fund using a replication strategy will hold each of the component securities in its Index in about the same proportion as represented in the Index itself. A Fund using a representative sampling strategy will hold a representative sample of the component securities of its Index that resembles the entire Index in terms of industry weightings, market capitalization, price/earnings ratio, dividend yield, and other characteristics. Applicants state that the difference between the performance of a Fund and that of its Index generally has been significantly less than one percentage point. Applicants expect that the Funds will continue to track the Indices with the same degree of precision in the future.

4. Applicants state that some investors trade in and out of the Funds' Conventional Shares frequently, often as part of a market timing strategy, to the detriment of the Funds' long-term shareholders. Applicants state that the purchase and redemption requests of market timers increase a Fund's realization of capital gains, increase Fund expenses, and hinder a Fund's ability to achieve its investment objective of tracking its Index as closely as possible. According to applicants, Index Trust has adopted policies designed to deter short-term investors, but these efforts have proven insufficient.

5. Each Fund proposes to create a class of shares (Vanguard Index Participation Equity Receipts, or "VIPER Shares") that would be listed on a national securities exchange ("Exchange") and would trade in the secondary market at negotiated prices. Applicants state that, by creating exchange-traded classes of shares, the Funds hope to provide short-term investors with an attractive means of purchasing Fund shares that can be bought and sold continuously throughout the day at market prices.[2] Applicants further assert that the new classes of VIPER Shares would benefit holders of Conventional Shares by reducing the portfolio disruption and transaction costs caused by market timing activity.

6. Except in connection with the Exchange Option (defined below), the Funds will sell VIPER Shares in aggregations of a specified number ranging from 20,000 to 200,000 shares ("Creation Units"), depending on the Fund. The price of a Creation Unit will range from about $2,000,000 to $6,000,000.[3] Creation Units may be purchased only by or through (i) a participant in the Continuous Net Settlement System of the National Securities Clearing Corporation ("NSCC") or (ii) a Depository Trust Company ("DTC") participant. In either case, the participant must enter into a participant agreement with VMC. Creation Units will be issued in exchange for an in-kind deposit of securities and cash. An investor wishing to purchase a Creation Unit from a Fund will have to transfer to the Fund a "Portfolio Deposit" consisting of (i) a basket of securities selected by VGI from among the securities contained in the Fund's portfolio ("Deposit Securities"),[4] and (ii) a cash payment to equalize any difference between (a) the total aggregate market value of the Deposit Securities and (b) the NAV per Creation Unit of the Fund ("Balancing Amount").[5] An investor purchasing a

[1] The Indices are the Standard & Poor's ("S&P") 500 Composite Stock Price Index, S&P MidCap 400 Index, S&P 500/BARRA Growth Index, S&P 500/BARRA Value Index, S&P Small Cap 600/BARRA Growth Index, S&P Small Cap 600/BARRA Value Index, Wilshire 5000 Total Market Index, Wilshire 4500 Completion Index, and Russell 200 Index. No entity that creates, complies, sponsors, or maintains an Index is an affiliated person, as defined in section 2(a)(3) of the Act, or an affiliated person of an affiliated person, of the Funds, VGI, or VMC.

[2] Transactions in each Fund's Conventional Shares would continue to be priced at that day's net asset value ("NAV"), which is calculated once per day at the close of trading on the New York Stock Exchange.

[3] A Fund may require that an investor purchase a minimum number of Creation Units.

[4] Applicants state that, for Funds holding fewer than approximately one thousand portfolio securities, the Deposit Securities typically will be identical to the Fund's portfolio. For Funds holding more than that number of portfolio securities, VGI will select a subset of the Fund's portfolio using a representative sampling strategy.

[5] On each business day, VGI will make available through the NSCC, prior to the opening of trading on the Exchange, the list of the names and the required number of shares of each Deposit Security for each Fund. In addition, each Fund reserves the right to permit or require the substitution of an amount of cash to be added to the Balancing Amount, or of a different security, to replace any Deposit Security in certain circumstances.



Creation Unit from a Fund will be charged a fee ("Transaction Fee") to prevent the dilution of the interests of the remaining shareholders resulting from the Fund incurring costs in connection with the purchase of the Creation Units.[6] Each purchaser of a Creation Unit will reveive a prospectus for the VIPER Shares ("VIPER Shares Prospectus") that contains complete disclosure about the Transaction Fee. A Fund's Conventional Shares will be covered by a separate prospectus ("Conventional Shares Prospectus").

7. Orders to purchase Creation Units will be placed with VMC, which will be responsible for transmitting the orders to the applicable Fund. VMC will maintain a record of Creation Unit purchasers and will send out a VIPER Shares Prospectus and confirmation to purchasers whose orders have been accepted by the Fund.

8. Purchasers of Creation Units may separate a Creation Unit into individual VIPER Shares.[7] VIPER Shares will be listed on an Exchange and traded in the secondary market in the same manner as other equity securities. One or more Exchange specialists will be assigned to make a market in VIPER Shares. The price of VIPER Shares traded on an Exchange will be based on a current bid/offer market, and each VIPER Share is expected to have a market value of between $10 and $150. Transactions involving the sale of VIPER Shares in the secondary market will be subject to customary brokerage commissions and charges.

9. Applicants expect that purchasers of Creation Units will include institutional investors and arbitrageurs. An Exchange specialist, in providing for a fair and orderly secondary market for VIPER Shares, also may purchase Creation Units for use in its market-making activities on the Exchange. Applicants expect that secondary market purchasers of VIPER Shares will include both institutional and retail investors.[8] Applicants believe that arbitrageurs will purchase or redeem Creation Units to take advantage of discrepancies between the VIPER Shares' market price and the VIPER Shares' underlying NAV. Applicants expect that this arbitrage activity will provide a market "discipline" that will result in a close correspondence between the price at which the VIPER Shares trade and their NAV. In other words, applicants do not expect the VIPER Shares to trade at a significant premium or discount to their NAV.[9]

10. Applicants will make available a VIPER Shares product description ("Product Description") for distribution in accordance with an Exchange rule requiring Exchange members and member organizations effecting transactions in a Fund's VIPER Shares to deliver a Product Description to investors purchasing VIPER Shares. Applicants state that any other Exchange that applies for unlisted trading privileges in VIPER Shares will have to adopt a similar rule. The Product Description will provide a plain English overview of a Fund, including its investment objective and investment strategies and the material risks and potential rewards of investing in the Fund. The Product Description also will provide a brief, plain English description of the salient aspects of the Fund's VIPER Shares. The Product Description will advise investors that a VIPER Shares Prospectus and the Fund's Statement of Additional Information ("SAI") may be obtained, without charge, from the investor's broker or from VMC. The Product Description also will provide a website address (in most cases to a website maintained by the sponsor of the relevant Index) where investors can obtain information about the composition and compilation methodology of the Index. Applicants expect that the number of purchases of VIPER Shares in which an investor will not receive a Product Description will not constitute a significant portion of the market activity in VIPER Shares.

11. Except in connection with the liquidation of a Fund or a Fund's VIPER Share class, VIPER Shares will not be individually redeemable. VIPER Shares will only be redeemable in Creation Unit aggregations through each Fund.[10] To redeem, an investor will have to accumulate enough VIPER Shares to constitute a Creation Unit. An investor redeeming a Creation Unit generally will receive (i) a basket of securities ("Redemption Securities") that in most cases will be the same as the Deposit Securities required of investors purchasing Creation Units on the same day, and (ii) a cash payment that generally will be the same as that day's Balancing Amount. An investor also may receive the cash equivalent of a Redemption Security if the Fund determines that such alternative is warranted, such as a case in which the investor is not permitted to own a particular Redemption Security by regulation or policy. A redeeming investor will pay a Transaction Fee to cover the Fund's transaction costs.

12. A Fund may offer holders of its Conventional Shares (except those holding Conventional Shares through a 401(k) or other participant-directed employer-sponsored retirement plan) the opportunity to exchange some or all of those shares for the Fund's VIPER Shares ("Exchange Option").[11] Applicants state that the Exchange Option would facilitate the movement of investors currently holding Conventional Shares, but desiring intraday trading flexibility, out of the Conventional Shares and into VIPER Shares in an expeditious and tax

[6] In situations where a Fund permits a purchaser to substitute cash for one or more Deposit Securities, the purchaser will be assessed a higher Transaction Fee to offset the increased cost to the Fund of buying those particular Deposit Securities.

[7] Applicants state that persons purchasing Creation Units will be cautioned in the VIPER Shares Prospectus that some activities on their part may, depending on the circumstances, result in their being deemed statutory underwriters and subject them to the prospectus delivery and liability provisions of the Securities Act of 1933 ("Securities Act"). For example, a broker-dealer firm may be deemed a statutory underwriter if it purchases Creation Units from a Fund, breaks them down into the constituent VIPER Shares, and sells VIPER Shares directly to its customers; or if it chooses to couple the purchase of a supply of new VIPER Shares with an active selling effort involving solicitation of secondary market demand for VIPER Shares. The VIPER Shares Prospectus will state that whether a person is an underwriter depends upon all the facts and circumstances pertaining to that person's activities. The VIPER Shares Prospectus also will state that broker-dealer firms should note that dealers who are not "underwriters" but are participating in a distribution (as contrasted to ordinary secondary trading transactions), and thus dealing with VIPER Shares that are part of an "unsold allotment" within the meaning of section 4(3)(C) of the Securities Act, would be unable to take advantage of the prospectus delivery exemption provided by section 4(3) of the Securities Act.

[8] VIPER Shares will be registered in book-entry form only. DTC or its nominee will be the registered owner of all outstanding VIPER Shares. Records reflecting the beneficial owners of VIPER Shares will be maintained by DTC or its participants.

[9] Every fifteen seconds throughout the trading day, the Exchange will disseminate (i) via the facilities of the Consolidated Tape Association, the market value of a VIPER Share; and (ii) separately from the consolidated tape, a calculation of the estimated NAV of a VIPER Share, which estimate is expected to be accurate to within a few basis points. Applicants state that an investor comparing the two figures will be able to determine whether, and to what extent, VIPER Shares are selling at a premium or discount to NAV.

[10] Creation Units may be redeemed through either NSCC or DTC. Investors who redeem through DTC will pay a higher Transaction Fee.

[11] The terms of an exchange made pursuant to the Exchange Option will comply with section 11(a) of the Act and rule 11a–3 under the Act. The Exchange Option would offer a "one way" exchange only. Therefore, a holder of a Fund's VIPER Shares who wishes to shift his or her investment to the Fund's Conventional Shares would have to sell the VIPER Shares in the secondary market and use the sale proceeds (less brokerage commissions) to purchase Conventional Shares from the Fund. The sale of the VIPER Shares would be a taxable event.

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efficient manner.[12] Around the time that the Fund's VIPER Shares begin trading, VGI will send to existing holders of the Fund's Conventional Shares a notice describing the Exchange Option and explaining the process by which an investor may exchange his or her Conventional Shares for VIPER Shares. The notice will comply with section 10(b) of the Securities Act and rule 482 under the Securities Act, and will highlight the key differences between the Fund's VIPER Shares and Conventional Shares. Comparable information about a Fund's Exchange Option also would be contained in a separate section of the Conventional Shares Prospectus. To effect an exchange through the Exchange Option, the investor must have a brokerage account and must contact his or her broker to initiate the exchange. The investor will receive a VIPER Shares Prospectus in connection with the exchange transaction, as required by the Securities Act. Subsequent to the exchange, the investor would have to contact his or her broker for account information relating to his or her VIPER Share holdings or to sell the VIPER Shares.

**Applicants' Legal Analysis**

1. Applicants request an order under section 6(c) of the Act for exemption from sections 2(a)(32), 18(f)(1), 18(i), 22(d), and 224(d) of the Act and rule 22c–1 under the Act; and under sections 6(c) and 17(b) of the Act for exemption from sections 17(a)(1) and (a)(2) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction, or any class of persons, securities, or transactions, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

*Section 2(a)(32) of the Act*

3. Section 2(a)(32) of the Act defines a "redeemable security" as any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent. Applicants request an order under section 6(c) of the Act to permit VIPER Shares to be redeemed in Creation Unit aggregations only. Applicants note that because of the arbitrage possibilities created by the redeemability of Creation Units, it is expected that the market price of a VIPER Share will not vary much from its NAV.

*Sections 18(f)(1) and 18(i) of the Act*

4. Section 18(f)(1) of the Act, in relevant part, prohibits a registered open-end company from issuing any class of "senior security," which is defined in section 18(g) of the Act to include any stock of a class having a priority over any other class as to the distribution of assets or payment of dividends. Section 18(i) of the Act requires that every share of stock issued by a registered management company be voting stock, with the same voting rights as every other outstanding voting stock. Rule 18f–3 under the Act permits an open-end fund to issue multiple classes of shares representing interests in the same portfolio without seeking exemptive relief from sections 18(f)(1) and 18(i), provided that the fund complies with certain requirements. Applicants state that they will comply in all respects with rule 18f–3, except the requirements that (i) other than the differences allowed by the rule, each class must have the same rights and obligations as each other class, and (ii) if a class has a different distribution arrangement, the class must pay all of the expenses of that arrangement. Because they may not rely on rule 18f–3, applicants request an exemption under section 6(c) from sections 18(f)(1) and 18(i).

5. Applicants state that there are three ways in which the Conventional Shares and VIPER Shares of each Fund will have different rights: (i) Conventional Shares will be individually redeemable from the Fund, while VIPER Shares will be redeemable only in Creation Unit aggregations; (ii) VIPER Shares will be traded on an Exchange, while Conventional Shares will not; and (iii) Conventional Shares may be exchanged for VIPER Shares, but VIPER Shares may not be exchanged for Conventional Shares. Applicants assert that these different rights are necessary if their proposal is to have the desired benefits. Applicants note that a Fund's VIPER Shares will be tradable on an Exchange and redeemable only in large aggregations, and that its Conventional Shares will be exchangeable for VIPER Shares, in order to encourage short-term investors to conduct their trading activities in a vehicle that will not disrupt management of the Fund. Applicants assert that there is no reason to make Conventional Shares tradable and that it would be counterproductive to facilitate the ability of market timers to disrupt a Fund by making VIPER Shares individually redeemable or exchangeable for Conventional Shares.

6. Applicants assert that the different rights do not implicate the concerns underlying section 18 of the Act, including conflicts of interest and investor confusion. With respect to the potential for investor confusion, applicants will take a variety of steps to ensure that investors understand the key differences between a Fund's classes of VIPER Shares and Conventional Shares. Applicants state that the VIPER Shares will not be marketed as a mutual fund investment. Marketing materials may refer to VIPER Shares as an interest in an investment company or fund, but will not make reference to an "open-end fund" or "mutual fund" except to compare or contrast the VIPER Shares with the shares of a conventional open-end management investment company. Any marketing or advertising materials addressed primarily to prospective investors will emphasize that (i) VIPER Shares are not redeemable from a Fund other than in Creation Unit aggregations; (ii) VIPER Shares, other than in Creation Unit aggregations, may be sold only through a broker, and the shareholder may have to pay brokerage commissions in connection with the sale; and (iii) the shareholder may receive less than NAV in connection with the sale of VIPER Shares. The same type of disclosure will be provided in the Conventional Shares Prospectus, VIPER Shares Prospectus, Product Description, SAI, and reports to shareholders. Applicants also note that (i) all references to a Fund's exchange-traded class of shares will use a form of the name "VIPERS" rather than the Fund name; (ii) the cover and summary page of the VIPER Shares Prospectus will state that the VIPER Shares are listed on an Exchange and are not individually redeemable; (iii) VMC will not market Conventional Shares and VIPER Shares in the same advertisement or marketing material; and (iv) applicants will prepare educational materials describing the VIPER Shares.

7. Applicants currently allocate distribution expenses among all funds in the Vanguard Fund Complex according to a cost-sharing formula approved by the Commission in 1981 as part of an order allowing the Vanguard Fund Complex to internalize its

[12] An exchange of Conventional Shares for VIPER Shares of the same Fund generally is not a taxable transaction. Applicants note that because DTC's systems currently are unable to handle fractional shares, exchange requests will be rounded down to the nearest whole VIPER Share. If an investor wishes to exchange all of his or her Conventional Shares for VIPER Shares, however, any fractional VIPER Share that results from the exchange would be liquidated and the cash sent to the investor's broker for the benefit of the investor.



distribution services ("1981 Order").[13] For those funds in the Vanguard Fund Complex offering multiple classes of shares (including eight of the Funds), applicants apply the formula in the 1981 Order by treating each class as a separate fund ("Multi-Class Distribution Formula"). Applicants state that the Multi-Class Distribution Formula currently is applied in a manner that is consistent with rule 18f–3 because each class currently has the same distribution arrangement and, accordingly, the rule does not require that each class pay its actual distribution expenses.

8. Applicants propose to apply the Multi-Class Distribution Formula to each Fund's class of VIPER Shares. Applicants acknowledge that, because VIPER Shares may have a distribution arrangement that differs from that for Conventional Shares, the proposed allocation method may be inconsistent with the rule. Applicants contend, however, that the Multi-Class Distribution Formula is a fundamental feature of Vanguard's unique internally managed structure, and that the proposed allocation method is consistent with the method approved by the Commission in the 1981 Order. Applicants represent that prior to the application of the Multi-Class Distribution Formula to a class of VIPER Shares, the board of trustees of Index Trust ("Board"), including a majority of trustees who are not interested persons of Index Trust, as defined in section 2(a)(19) of the Act, will determine for each Fund that the proposed allocation is in the best interests of each class and of the Fund as a whole. As a condition to the order, the Board would be required to make a similar finding for each Fund on an annual basis.

*Section 22(d) of the Act and Rule 22c–1 Under the Act*

9. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security that is currently being offered to the public by or through an underwriter, except at a current public offering price described in the prospectus. Rule 22c–1 under the Act generally requires that a dealer selling, redeeming, or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in VIPER Shares will take place at negotiated prices, not at a current offering price described in the VIPER Shares Prospectus, and not at a price based on NAV. Thus, purchases and sales of VIPER Shares in the secondary market will not comply with section 22(d) and rule 22c–1. Applicants accordingly request an exemption under section 6(c) of the Act from these provisions.

10. Applicants assert that the sale of VIPER Shares at negotiated prices does not present the opportunity for any of the abuses that section 22(d) and rule 22c–1 were designed to prevent. Applicants maintain that while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c–1, appear to have been designed to (i) prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers; (ii) prevent unjust discrimination or preferential treatment among buyers resulting from sales at different prices; and (iii) assure an orderly distribution of investment company shares by eliminating price competition from dealers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price. Applicants state that secondary market trading in VIPER Shares would not cause dilution for existing Fund shareholders because such transactions would not directly or indirectly affect the Fund's assets. Applicants further state that secondary market trading in VIPER Shares would not lead to discrimination or preferential treatment among purchases because, to the extent different prices exist during a given trading day or from day to day, these variances will occur as a result of market forces. Finally, applicants contend that the proposed distribution system will be orderly because arbitrage activity will ensure that the difference between the market price of VIPER Shares and their NAV remains narrow.

*Section 24(d) of the Act*

11. Section 24(d) of the Act provides, in relevant part, that the prospectus delivery exemption provided to dealer transactions by section 4(3) of the Securities Act does not apply to any transaction in a redeemable security issued by an open-end investment company. Applicants request an exemption under section 6(c) of the Act from section 24(d) to permit dealers selling VIPER Shares to rely on the prospectus delivery exemption provided by section 4(3) of the Securities Act.[14]

12. Applicants state that VIPER Shares will be listed on an Exchange and will be traded in a manner similar to other equity securities, including the shares of closed-end investment companies. Applicants note that dealers selling shares of closed-end investment companies in the secondary market generally are not required to deliver a prospectus to the purchaser.

13. Applicants contend that VIPER Shares, as a listed security, merit a reduction in the compliance costs and regulatory burdens resulting from the imposition of prospectus delivery obligations in the secondary market. Because VIPER Shares will be exchange-listed, prospective investors will have access to several types of market information about the VIPER Shares. Applicants state that information regarding market price and volume will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. The previous day's price and volume information also will be published daily in the financial section of newspapers.

14. Investors also will receive a Product Description describing the Fund and its VIPER Shares. Applicants state that, while not intended as a substitute for a prospectus, the Product Description will contain information about VIPER Shares that is tailored to meet the needs of investors purchasing VIPER Shares in the secondary market.

*Sections 17(a)(1) and (a)(2) of the Act*

15. Sections 17(a)(1) and (a)(2) of the Act generally prohibit an affiliated person of a registered investment company, or an affiliated person of such person, from selling any security to or purchasing any security from the company. Section 2(a)(3)(A) of the Act defines "affiliated person" as any person owning five percent or more of an issuer's outstanding voting securities. Applicants state that large institutional investors may be affiliated persons of a Fund under section 2(a)(3)(A) and, because purchases and redemptions of Creation Units would be "in-kind" transactions, those investors would be precluded by sections 17(a)(1) and (a)(2) from purchasing or redeeming Creation Units from the Fund. Applicants accordingly request an exemption under sections 6(c) and 17(b) of the Act to permit these affiliated persons to

[13] Investment Company Act Rel. No. 11645 (Feb. 25, 1981) (Opinion of the Commission and Final Order). Under the formula, each fund's contribution is based 50% on the fund's average month-end net assets during the preceding quarter relative to the average month-end net assets of the other Vanguard funds, and 50% on the fund's sales of new shares relative to the sales of new shares of the other Vanguard funds during the preceding 24 months. So that a new fund is not unduly burdened, the formula caps each fund's contribution at 125% of the average expenses of the Vanguard funds collectively, with any amounts above the cap redistributed among the other Vanguard funds. In addition, no fund may pay more than 0.2% of its average month-end net assets for distribution.

[14] Applicants do not seek relief from the prospectus delivery requirement for non-secondary market transactions, including purchases of Creation Units or those involving an underwriter and transactions pursuant to the Exchange Option.

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purchase and redeem Creation Units from the Fund.

16. Section 17(b) authorizes the Commission to exempt a proposed transaction from section 17(a) if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. Applicants contend that no useful purpose would be served by prohibiting persons affiliated with a Fund, as described above, from purchasing or redeeming Creation Units from the Fund. Applicants represent that Fund affiliates making in-kind purchases and redemptions would be treated no differently from non-affiliates making the same types of transactions. Applicants state that all purchases and redemptions of Creation Units would be at the Fund's next calculated NAV. Applicants also state that, in all cases, Deposit Securities and Redemption Securities will be valued in the same manner, using the same standards, as those securities are valued for purposes of calculating the Fund's NAV. Applicants assert that, for these reasons, the requested relief meets the standards of sections 6(c) and 17(b).

**Applicants' Conditions**

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. No portfolio of Index Trust other than the Funds will issue a class of VIPER Shares unless applicants have requested and received with respect to such portfolio either exemptive relief from the Commission or a no-action letter from the Division of Investment Management of the Commission.

2. The VIPER Shares Prospectus and the Product Description for each Fund will clearly disclose that, for purposes of the Act, VIPER Shares are issued by the Fund and that the acquisition of VIPER Shares by investment companies is subject to the restrictions of section 12(d)(1) of the Act.

3. As long as a Fund operates in reliance on the requested order, the VIPER Shares will be listed on an Exchange.

4. The VIPER Shares of a Fund will not be advertised or marketed as shares of an open-end investment company or mutual fund. The VIPER Shares Prospectus of each Fund will prominently disclose that VIPER Shares are not individually redeemable and will disclose that holders of VIPER Shares may acquire those shares from the Fund and tender those shares for redemption to the Fund in Creation Unit aggregations only. Any advertised material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that VIPER Shares are not individually redeemable and that holders of VIPER Shares may acquire those shares from the Fund and tender those shares for redemption to the Fund in Creation Unit aggregations only.

5. Before a Fund may rely on the order, the Commission will have approved, pursuant to rule 19b–4 under the Securities Exchange Act of 1934, an Exchange rule requiring Exchange members and member organizations effecting transactions in VIPER Shares to deliver a Product Description to purchasers of VIPER Shares.

6. On an annual basis, the Board, including a majority of trustees who are not interested persons of Index Trust, must determine, for each Fund, that the allocation of distribution expenses among the classes of Conventional Shares and VIPER Shares in accordance with the Multi-Class Distribution Formula is in the best interests of each class and of the Fund as a whole. Index Trust will preserve for a period of not less than six years from the date of a Board determination, the first two years in an easily accessible place, a record of the determination and the basis and information upon which the determination was made. This record will be subject to examination by the Commission and its staff.

7. For six years following the issuance of a Fund's VIPER Shares, the Fund will (i) record and preserve any investor complaints or reports of confusion concerning the Exchange Option that are communicated to the Fund, VGI, and/or VMC; and (ii) record data tracking the number of investors that, after VIPER Shares are offered, purchase the Fund's Conventional Shares and, within 90 days, exchange those shares for VIPER Shares. The Fund will preserve this information in an easily accessible place, and the information will be subject to examination by the Commission and its staff.

8. Applicant's website, which is and will be publicly accessible at no charge, will contain the following information, on a per VIPER Share Basis, for each Fund: (i) The prior business day's NAV and the closing market price, and a calculation of the premium or discount of the closing market price in relation to the NAV; and (ii) data for a period covering at least the four previous calendar quarters (or the life of a Fund, if shorter) indicating how frequently each Fund's VIPER Shares traded at a premium or discount to NAV based on daily closing market price, and the magnitude of such premiums and discounts. In addition, the Product Description for each Fund will state that applicants' website has information about the premiums and discounts at which the Fund's VIPER Shares have traded.

9. The VIPER Shares Prospectus and annual report will include, for each Fund: (i) the information listed in condition 8(ii), (a) in the case of the VIPER Shares Prospectus, for the most recently completed calendar year (and the most recently completed quarter or quarters, as applicable), and (b) in the case of the annual report, for no less than the immediately preceding five fiscal years (or the life of the Fund, if shorter); and (ii) the cumulative total return and the average annual total return for one, five, and ten year periods (or the life of the Fund, if shorter) of (a) a VIPER Share based on NAV and market price, and (b) the Fund's Index.

By the Commission.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 00–26380 Filed 10–12–00; 8:45 am]

BILLING CODE 8010–01–M

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

**Agency Meeting**

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of October 16, 2000.

A closed meeting will be held on Tuesday, October 17, 2000 at 10:30 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(A) and (10), permit consideration for the scheduled matters at the closed meeting.

The subject matters of the closed meeting scheduled Tuesday, October 17, 2000 will be:

Institution and settlement of injunctive actions; and



Institution and settlement of administrative proceedings of an enforcement nature

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: October 10, 2000.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 00–26461 Filed 10–11–00; 11:29 am]

BILLING CODE 8010–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43420; File No. SR–NASD–00–50]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Definition of "Public Offering" for Purposes of Nasdaq's Shareholder Approval Rules

October 6, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on August 11, 2000, The National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD.[2] On October 4, 2000, the Nasdaq filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is filing with the Commission a proposed rule change regarding the adoption of interpretive material defining "Public Offering" for purposes of Nasdaq's shareholder approval rules. Below is the text of the proposed rule change. All text is being added.

* * * * *

**IM–4310–2. Definition of a Public Offering**

Marketplace Rules 4310(c)(25)(G)(i)(d), 4320(e)(21)(G)(i)(d), and 4460(i)(1)(D) provide that shareholder approval is required for the issuance of common stock (or securities convertible into or exercisable for common stock) equal to 20 percent or more of the common stock or 20 percent or more of the voting power outstanding before the issuance for less than the greater of book or market value of the stock. Under these rules, however, shareholder approval is not required for a "public offering."

Issuers are encouraged to consult with Nasdaq staff in order to determine if a particular offering is a "public offering" for purposes of the shareholder approval rules. Generally, a firm commitment underwritten securities offering registered with the Commission will be considered a public offering for these purposes. Likewise, any other securities offering which is registered with the Commission and which is publicly disclosed and distributed in the same general manner and extent as a firm commitment underwritten securities offering will be considered a public offering for purposes of the shareholder approval rules. However, Nasdaq staff will not treat an offering as a "public offering" for purposes of the shareholder approval rules merely because they are registered with the Commission prior to the closing of the transaction.

When determining whether an offering is a "public offering" for purposes of these rules, Nasdaq staff will consider all relevant factors, including but not limited to:

(i) the type of offering (including whether the offering is conducted by an underwriter on a firm commitment basis, or an underwriter or placement agent on a best-efforts basis, or whether the offering is self-directed by the issuer);

(ii) the manner in which the offering is marketed (including the number of investors offered securities, how those inventors were chosen, and the breadth of the marketing effort);

(iii) the extent of the offering's distribution (including the number and identity of the investors who participate in the offering and whether any prior relationship existed between the issuer and those investors);

(iv) the offering price (including the extent of any discount to the market price of the securities offered); and

(v) the extent to which the issuer controls the offering and its distribution.

* * * * *

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statement may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

(a) Purpose

Nasdaq rules require shareholder approval for stock issuances of 20 percent or more of an issuer's total shares outstanding, offered at less than the greater of book or market value. The applicable rules further provide, however, that shareholder approval is not required for a "public offering," although that term is not defined in the rules. Recently, a number of issuers have inquired as to whether certain large, below-market offerings were "public offerings" because the transactions, which were initiated pursuant to exceptions to the registration requirements, were registered with the Commission prior to closing the transactions.[4] Historically, for purposes of assessing the applicability of the shareholder approval rules, Nasdaq staff has interpreted "public offering" as a broadly distributed, registered offering based on a firm commitment underwriting. Conversely, staff does not consider a transaction to be a "public offering" for these purposes when the transaction is of limited distribution and/or is not based on a firm commitment underwriting, even if the offering was registered. Because the offerings described had limited distributions and, in some cases, the offerees were pre-determined by the issuer, Nasdaq believed that these transactions were not "public offerings" for purposes of the shareholder approval rules.

In order to ensure that all issuers understand how Nasdaq will determine whether a transaction is a "public offering" for purposes of the shareholder approval rules, Nasdaq has prepared the proposed Interpretative Material. Determinations as to whether a transaction is a "public offering" for purposes of these rules will be made based on the facts and circumstances surrounding each particular transaction.

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[1] 15 U.S.C. 78s(b)(1).

[2] The American Stock Exchange, Inc. has filed a similar proposed rule change SR-Amex-00–46. *See* Securities Exchange Act Release No. 43419 (Oct. 6, 2000).

[3] Amendment No. 1 changes the section under which the proposed rule change was filed from Section 19(b)(3) to Section 19(b)(2) of the Act and made other technical changes. *See* Letter from Edward Knight, Executive Vice President and Chief Legal Officer, Nasdaq, to Katherine A. England, Assistant Director, SEC (Oct. 2, 2000).

[4] Nasdaq understands that the Commission believes that this activity is not appropriate under Section 5 of the Securities Act of 1933. *See* 15 U.S.C. 77e.

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The proposed Interpretative Material identifies a number of factors that will be considered when determining whether an offering is a "public offering," including: the type of offering; the marketing of the offering; the extent of the offering's distribution; the offering price; and the extent to which the issuer controls the offering and its distribution.

(b) Statutory Basis

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6)[5] of the Act, which requires, among other things, that the Association's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Interpretative Material is designed to educate issuers and other interested parties as to how Nasdaq defines a "public offering" in order to ensure that issuers are aware as to which transactions require shareholder approval under the NASD's rules, thus promoting just and equitable principles of trade and protecting investors and the public interest.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

[5] 15 U.S.C. 78o–3(b)(6).

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–00–50 and should be submitted by November 3, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–26381 Filed 10–12–00; 8:45 am]

BILLING CODE 8010–01–M

[6] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43417; File No. SR–NASD–00–16]**

## Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 3 to Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Amendments to Minimum Listing Requirements for the Inclusion and Maintenance of Open and Closed-End Funds in Nasdaq's Mutual Fund Quotation Service

October 5, 2000.

**I. Introduction**

On April 4, 2000, the National Association of Securities Dealers, Inc. ("NASD") through its wholly owned subsidiary The Nasdaq Stock Market, Inc. ("Nasdaq") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to amendments to the minimum listing requirements for the inclusion and maintenance of open and closed-end funds in Nasdaq's Mutual Fund Quotation Service ("MFQS" or "Service").[3] On May 16, 2000, the Nasdaq submitted Amendment No. 2 to the proposed rule change.[4] The proposed rule change was published in the **Federal Register** on June 5, 2000.[5] On September 29, 2000, the Nasdaq submitted Amendment No. 3 to the proposed rule change.[6] No comments were received on the proposal. This order approves the proposed rule change, as amended. Also, Amendment No. 3 is approved on an accelerated basis.

**II. Description of the Proposal**

Nasdaq proposes to amend NASD Rule 6800 regarding the minimum listing requirements for the inclusion and maintenance of open and closed-end funds in Nasdaq's Mutual Fund Quotation Service ("MFQS"). Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

6800. MUTUAL FUND QUOTATION SERVICE

(a)–(b) No Change.

(c) News Media Lists.

(1)(A) An eligible open end fund shall be authorized for inclusion in the News Media List released by the Association if it has at least 1,000 shareholders or $25 million in net assets.

(B) An eligible closed-end fund shall be authorized for inclusion in the News Media List released by the Association if it has at least *$60* [100] million in net assets.

(C) Compliance with subparagraphs (1)(A) and (B) shall be certified by the fund to the Association at the time of initial application for inclusion in the List.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The NASD filed its proposed rule change on March 31, 2000. On April 4, 2000, the NASD filed Amendment No. 1 that entirely replaced the original rule filing.

[4] *See* Letter from Rober E. Aber, General Counsel and Senior Vice President, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission (May 16, 2000). Amendment No. 2 corrected a typographical error that appeared in the proposed rule language and clarified that the Mutual Fund Quotation Service includes only 73.8% of the total open-end and closed-end fund population.

[5] Securities Exchange Act Release No. 42831 (May 25, 2000), 65 FR 35693.

[6] *See* Letter from Edward S. Knight, General Counsel and Senior Vice President, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission (September 29, 2000). Amendment No. 3 amended the language of proposed NASD Rule 6800(d)(3) to replace the phrase "investment management firm managing the fund" with "investment adviser" and make other technical corrections.



(2)(A) An authorized open-end fund shall remain included in the New Media List if it has either 750 shareholders or $15 million in net assets.

(B) An authorized closed-end fund shall remain included in the News Media List if it has *$30* [60] million in net assets.

(C) Compliance with subparagraphs (2)(A) and (B) shall be certified to the Association upon written request by the Association.

(d) Supplemental List.

An eligible open-end or closed-end fund shall be authorized for inclusion in the Supplemental List released to vendors of Nasdaq Level 1 Service if *it meets one of the criteria set out in subparagraph (1), subparagraph (2), or subparagraph (3) below:*

(1) The fund has net assets of $10 million or more; or

(2) *The fund* has had two full years of operation; *or*

*(3) The fund's investment adviser:*

*(A) Is the investment adviser of at least one other fund that is listed on the Mutual Fund Quotation Service and that has net assets of $10 million or more; and*

*(B) Has at least $15 million in total ossets of open-end and closed-end funds under management.*

(e) No Change.

* * * * *

The MFQS was created to collect daily price and related data for mutual funds and money market funds and to disseminate that information to the news media and market data vendors.[7] Currently, the MFQS disseminates the valuation data for over 11,000 funds. This information dissemination process is facilitated by the use of web browser-based technology, which enables funds included in the Service, or the pricing agents designated by such funds, to transmit directly to Nasdaq a multitude of pricing information, including information about a fund's net asset value, offer price, and closing market price.

Funds must meet minimum eligibility criteria in order to be included in the MFQS.[8] The MFQS has two "lists" in which a fund may be included—the News Media List and the supplemental List—and each list has its own initial inclusion requirements.[9] The News Media List also has maintenance/continued inclusion requirements. If a fund qualifies for the News Media List, pricing information about the fund is eligible for inclusion in the fund tables of newspapers and is also eligible for dissemination over Nasdaq's Level 1 Service, which is distributed by market data vendors.[10] If a fund qualifies for the Supplemental List, the pricing information about that fund generally is not included in newspaper fund tables, but is disseminated over Nasdaq's Level 1 Service. The Supplemental List thus provides significant visibility for funds that do not otherwise qualify for inclusion in the News Media List. Each fund incurs an annual fee for inclusion in the Service.[11]

Nasdaq proposes to amend the MFQS inclusion criteria for both the Supplemental and News Media List by expanding the universe of funds that are eligible for inclusion in the Service. The proposal lowers both the initial and maintenance requirements for closed-end funds to participate in the News Media List. Currently, in order to qualify initially for inclusion in the News Media List, a closed-end fund must have at least $100 million in net assets. To remain in the News Media List, a closed-end fund must maintain at least $60 million in net assets. The proposal would lower the net asset requirement for a closed-end fund to qualify initially for inclusion in the News Media List to at least $60 million in net assets. The net asset requirement for a closed-end fund to remain included in the News Media List would be lowered to at least $30 million.

Nasdaq also proposes to amend the inclusion criteria for the Supplemental List by providing an alternative means for a fund to be included in the Service. Under this alternative, a fund would qualify for the MFQS if the investment adviser is the investment adviser of at least one other fund listed on MFQS that has $10 million in net assets. In addition, the firm must have at least $15 million from open-end and closed-end funds under management. Nasdaq notes that manages assets from other sources—such as pension funds—would not be included for purposes of determining whether the investment firm meets the requirement that it manage at least $15 million in fund-related assets.

**III. Decision**

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association,[12] and in particular, the requirements of Section 15A(b)(6)[13] of the Act, because it is designed to foster cooperation and coordination with persons engaged in processing information with respect to securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the proposal will protest investors and the public interest by promoting better processing of fund pricing information. Specifically, the Commission notes that in Section 11A(a)(1)(C),[14] Congress found that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations and transactions in securities. The Commission also believes that the proposed new listing criteria will provide greater transparency to the markets by providing pricing information for a broader base of funds for which there is significant investor interest. Further, by providing listed status to investment companies with a sufficient investor base and trading interest, the proposed new listing standards will continue to serve as a means for the marketplace to screen issuers and maintain fair and orderly markets.

The Commission also finds good cause for approving proposed Amendment No. 3 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Proposed Amendment No. 3 provides clarity to the rule.[15] It replaces the term "investment management firm and managing the fund" in NASD Rule 6800(d)(3) with "investment adviser," a term which is defined in the Investment Advisers Act of 1940.[16]

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 3. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any other person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be

[7] *See* Securities Exchange Act Release No. 22264 (July 23, 1985), 50 FR 30899 (July 29, 1985).

[8] *See* NASD Rule 6800.

[9] *See id.*

[10] *See* NASD Rule 7010.

[11] *See* NASD Rule 7090.

[12] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78o–3(b)(6).

[14] 15 U.S.C. 78k–1(a)(1)(C).

[15] *See supra* n. 6.

[16] 15 U.S.C. 80b–2(a)(11).

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available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Association. All submissions should refer to the File No. SR–NASD–00–16 and should be submitted by November 3, 2000.

**V. Conclusion**

For the reasons discussed above, the Commission finds that the proposal is consistent with the Act and the rules and regulations thereunder.

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[17] that the proposed rule change, SR–NASD–00–16, as amended, be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–26281 Filed 10–12–00; 8:45 am]

BILLING CODE 8010–01–M

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43415; File No. SR–PHLX–00–52]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Review of Decisions of the Exchange's Business Conduct Committee

October 4, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 18, 2000, the Philadelphia Stock Exchange Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Phlx proposes to amend the text of Phlx Rule 960.9 to incorporate procedures for the hearing of appeals in disciplinary matters. Specifically, the procedures would be divided into four categories: (a) Petition by Respondent; (b) Conduct of Review, (c) Review on Motion by Board of Governors; and (d) Petition by Enforcement Staff.

First, with respect to petitions by a Respondent, the proposed rule provides that a Respondent's petition for appeal must be in writing and filed with the Secretary of the Exchange within 10 days after service of notice and a copy of the decision of the Business Conduct Committee, and that it specify the findings and conclusions that are the subject of the petition along with the reasons for review thereof. Exchange Enforcement Staff will then have 15 days to file a written response, with the Respondent receiving 15 days after service of the Enforcement Staff's response to file a response thereto.

Second, paragraph (b) of the proposed rule, "Conduct of Review," provides that the review is to be conducted by the Exchange's Board of Governors ("Board"), or an Advisory Committee made up of three Governors, with at least one being a non-industry Governor appointed by the Chairman of the Board. No Governor who was a member of the hearing panel below may participate in the hearing on review. The review shall be based solely on the record below, unless the Board of Governors or Advisory Committee hearing the review allows oral argument after receiving a written request for one. If an Advisory committee hears the review, it is to submit a written report to the Board.

The proposed rule sets forth guidelines that the Board or an Advisory committee must follow in making the decision on review. The decision of the business Conduct Committee can be affirmed, reversed or modified, in whole or in part. A modification may include an increase or decrease of the sanction. The findings, conclusions, and decision of the Business Conduct Committee may not be reversed, or modified, in whole or in part, if the factual conclusions in the decision are supported by substantial evidence, and such decision is not arbitrary, capricious or an abuse of discretion. The Board must serve its written decision on the petitioner.

Paragraph (c) of the proposed rule includes procedures for a review by the Board of Governors on its own initiative. The review would follow the previously described procedure.

Finally, paragraph (d) of the proposed rule sets forth procedures by which the Exchange's Enforcement Staff, within 10 days after service of notice and a copy of the decision of the Business Conduct Committee, may petition the Board for permission to appeal, by presenting to the Board a petition specifying the findings and conclusions that are subject of the petition, along with the reasons the staff is petitioning for review. Should the Board grant permission, Exchange Enforcement Staff shall serve a copy of the petition on the Respondent within 5 days. Respondent then has 15 days to file a written response with the Board, and Exchange Enforcement Staff then has 15 days to file a reply.

The proposed rule language follows. Additions are italicized; deletions are bracketed.

**Rule 960.9. Review**

(a) *Petition by Respondent.* A Respondent shall have 10 days after service of notice and a copy of a decision made pursuant to Rules 960.6(c) and 960.8 to appeal such decision to the Board of Governors in accordance with By-Law Article XI, Section [11–1] *11–3. Such petition shall be in writing and shall specify the findings and conclusions of the Business Conduct Committee which is the subject of the petition, together with the reasons that Respondent petitions for review of these findings and conclusions. Any objections to a decision not specified in the petition for review shall be thereafter waived. Within 15 days after a Respondent's petition for review has been filed with the Secretary of the Exchange pursuant By-Law Article XI, Section 11–1(a), Enforcement staff may submit to the Secretary a written response to the petition. A copy of the response must be served upon the Respondent. A Respondent has 15 days from the service of the response to file a reply with the Secretary and the Enforcement staff.*

(b) *Conduct of Review.*

(i) *The review shall be conducted by the Board of Governors or an Advisory Committee thereof pursuant to By-Law Article XI, Section 11–3. If an Advisory Committee is appointed to conduct the review, it shall be composed pursuant to By-Law Article XI, Section 11–2. Any Board member who participated in a matter before the Business Conduct Committed may not participate in any review of that matter by the Board of Governors or an Advisory Committee. Unless the Board of Governors or the Advisory Committee shall decide to hear oral argument, such review shall be based solely upon the record and the written exceptions filed by the parties. The review shall be heard as soon as practicable.*

(ii) *Should the Board of Governors conduct the review, then based upon such review, the Board of Governors by a majority vote of its members, shall decide to affirm, reverse or modify, in whole or in part the decision of the Business Conduct Committee. Such modification may include any increase or decrease of the sanction. The Board of Governors may not reverse, or modify, in whole or in part, the findings, conclusions and decision of the Business Conduct Committee if the factual conclusions in the decision are supported by substantial evidence and such decision is not arbitrary, capricious or an abuse of discretion. The decision of the Board shall be in writing, shall be promptly served on the Respondent in accordance with Rule 960.11, and shall be final and conclusive subject to Rule 960.9(c) and (d), as well as the provisions of the Securities Exchange Act of 1934.*

(iii) *Should the review be conducted by an Advisory Committee, the Advisory Committee shall submit a written report to the Board of Governors. In such report, the Advisory Committed shall recommend to affirm, reverse or modify, in whole or in part, the decision of the Business Conduct Committee. Such modification may include an increase or decrease of the sanction. The Advisory Committee may not reverse, or modify, in whole or in part, the findings, conclusions or decision of the Business Conduct Committee if the factual conclusions in the decision are supported by substantial evidence and such decision is not arbitrary, capricious or an abuse of discretion. The Board of Governors by a majority vote of its members, shall decide to affirm, reject or modify, in whole or in part the recommendations of the Advisory Committee. Such modification may include an increase or decrease of the sanction. The Board of Governors may not reverse, or modify, in whole or in part, the findings, conclusions and decision of the Advisory Committee if the factual conclusions in the decision are supported by substantial evidence and such decision is not arbitrary, capricious or an obuse of discretion. The decision of the Board shall be in writing, shall be promptly served on the Respondent in accordance with Rule 960.11, and shall be final and conclusive subject to Rule 960.9(c) and (d), as well as to the provisions of the Securities Exchange Act of 1934.*

(c) *Review on Motion of Board Governors. The Board of Governors may on its own initiative order review of a decision made pursuant to rules 960.6(c) or 960.8 within 20 days after notice of the decision has been served on the Respondent. Such review shall be conducted in accordance with the procedure set forth in paragraph (b) of this Rule. Should the Board of Governors vote to disapprove this modification or reversal, the Board shall make its own findings and issue a final decision of the Exchange. An Advisory Committee appointed by the Board of Governors may conduct such a review pursuant to By-Law Article XI, Section 11–3 and in accordance with the provisions of Rule 960.9.*

(d) *Petition by Enforcement Staff.* An appeal of a decision made pursuant to Rules 960.6(c) or 960.8 may also be taken by the Enforcement staff by petitioning the Board of Governors, within 10 days after service of notice and a copy of a decision, for permission to proceed with such appeal in accordance with By-Law Article XI, Section 11–3. Such petition shall be in writing and shall specify the findings and conclusions of the Business Conduct Committee which are the subject of the petition, together with the reasons that Enforcement staff petitions for review of these findings and conclusions. Any objections to a decision not specified in the petition for review shall be thereafter waived. If permission to appeal is granted, staff shall serve a copy of the petition on the Respondent within five days of permission to appeal being granted. Within 15 days Respondent may submit to the Board of Governors a written response to the petition. A copy of the response must be served upon the Exchange's Enforcement staff, who then has 15 days from the service of the response to file a reply with the Board of Governors and the Respondent.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The test of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to adopt specific procedures for the hearing of appeals of decisions rendered by the Exchange's Business Conduct Committee pursuant to Phlx Rules 960.6(c) and 960.8 to ensure that appeals of disciplinary matters are accomplished in a consistent and orderly fashion.

(a) Background

Currently, Phlx Rule 960.9 states that a Respondent has 10 days after service of notice and a copy of the decision of the Business Conduct Committee within which to request an appeal to the Exchange Board of Governors pursuant to Exchange By-law Article XI, Section 11–1. Exchange By-law Article XI, Section 11–1 states that an appeal to the Board of Governors may be taken from a decision of a Standing Committee by a member or member organization interested therein by filing a written notice of appeal with the Secretary of the Exchange within 10 days after the decision has been rendered. Section 11–2 states that an appeal to the Exchange Board of Governors from a decision of a Standing Committee shall be heard by an Advisory Committee of three Governors, with at least one being a non-industry Governor appointed by the Chairman of the Board, and that the Advisory Committee shall examine the record on appeal and give an advisory opinion to the Board of Governors. Section 11–3 specifically addresses appeals from decisions of the Business Conduct Committee. Sub-section (a) of Section 11–3 reiterates the Respondent's right to appeal as previously stated in Section 11–1 (a); however, it also allows for Exchange staff to petition the Board of Governors within 10 days after the decision, for permission to appeal. Sub-section (b) of Section 11–3 dictates that the appeal shall be based on the written record; however, it gives the parties the right to request oral argument before the Board of Governors or the Advisory Committee.

(b) Proposal

The proposed revisions to Phlx Rule 960.9 have been developed to apply to disciplinary matters, which have unique issues. The procedures currently encompassed in Exchange by-laws were not formulated strictly for disciplinary matters, and, as a result, were often silent to those unique issues. The proposed revisions to Phlx Rule 960.9 set forth detailed procedures for hearing of an appeal from a Business Conduct Committee decision.

The proposed amendment to sub-paragraph (a) of Phlx Rule 960.9 states that the Respondent's petition for appeal must be in writing and filed with the Secretary of the Exchange within 10 days after service of notice and a copy of the decision of the Business Conduct Committee. The petition must specify the findings and conclusions that are the subject of the petition, along with the reasons the Respondent is petitioning for review. Exchange Enforcement Staff will have 15 days after a Respondent files its petition to file a written response. The Respondent may file a reply within 15 days after service of the Enforcement Staff's response. These provisions are intended to provide time guidelines for requesting an appeal.

Sub-paragraph (b)(i) of the proposed rule provides that the review shall be conducted by the Exchange's Board of Governors, or an Advisory Committee made up of three Governors, with at least one being a non-industry Governor appointed by the Chairman of the Board. No Governor who was a member of the hearing panel below may participate in the hearing on review. This is intended to establish who hears the appeal.

Unless the Board of Governors or Advisory Committee hearing the review allows oral argument, the review shall be based solely on the record below. If an Advisory Committee hears the review, it shall submit a written report to the Board. Sub-paragraphs (b)(ii) and (iii) of the proposed rule set forth the guidelines that the Board or an Advisory

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[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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Committee must follow in making the decision on review. The Board in its decision, or the Advisory Committee in its report to the Board, shall affirm, reverse or modify, in whole or in part, the decision of the Business Conduct Committee. A modification may include an increase or decrease of the sanction. However, neither the Board nor the Advisory Committee reverse, or modify, in whole or in part, the findings, conclusions, and decision of the Business Conduct Committee, if the factual conclusions in the decision are supported by substantial evidence, and such decision is not arbitrary, capricious or an abuse of discretion. A written decision of the Board must be served on the petitioner.

The proposed rule change also includes procedures for a review by the Board of Governors on its own initiative in sub-paragraph (c). The review would follow the procedure set forth in sub-paragraph (b) of the proposed rule. Together, these provisions are intended to establish a standard and process of review.

Finally, sub-paragraph (d) of the proposed rule sets forth the procedures by which the Exchange's Enforcement staff, within 10 days after service of notice and a copy of the decision of the Business Conduct Committee, may petition the Board for permission to appeal. The petition must specify the findings and conclusions that are subject to the petition, along with the reasons for review thereof. If permission is granted, the staff must serve a copy of the petition on the Respondent within 5 days. Respondent then has 15 days to file a written response with the Board, and the staff would have 15 days of service of the Respondent's initial response to file a reply. This paragraph is intended to expressly cover staff appeals.[3]

The Exchange believes that the proposed revisions, which have been developed specifically for issues unique to disciplinary matters, should facilitate appeals being processed in a systematical fashion. Furthermore, the Exchange believes that the proposed rule should promote an objective, consistent appeals procedure for both members of the Exchange and for the Exchange's Enforcement Staff. The provisions should also prevent undue delay, and any inconvenience that affects the parties as a direct result of such a delay. Finally, the proposed revisions will provide the Board of the Advisory Committee with a precise procedure to apply to such a hearing.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,[4] in general, and Sections 6(b)(6) and 6(b)(7),[5] in particular, in that it is designed to ensure that Exchange members and persons associated with members are appropriately disciplined for violations of the provisions of the Act, the rules and regulations thereunder, or the rules of the Exchange, as well as providing a fair procedure for the disciplining of Exchange members and persons associated with members.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has neither solicited nor received written comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change an Timing for Commission Action**

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PHLX. All submissions should refer to File No. SR–PHLX–00–52 and should be submitted by November 3, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–26280 Filed 10–12–00; 8:45 am]

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[3] Review of appeals initiated by the Exchange's Enforcement staff will be conducted in accordance with the procedure set forth in paragraph (b) of the proposed rule. Telephone conversation between Charles Falgie, Director of Enforcement, Phlx, and Anitra Cassas, Attorney, Division of Market Regulation, Commission, on October 3, 2000.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b) and 15 U.S.C. 78f(b)(7).

[6] 17 CFR 200.30–3(a)(12).

## SMALL BUSINESS ADMINISTRATION

### Data Collection Available for Public Comments and Recommendations

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

**DATES:** Submit comments on or before December 12, 2000.

**ADDRESSES:** Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimate is accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Delorice P. Ford, Associate Administrator/BD, Office of Business Development, Office of Government Contracting and Business Development, Small Business Administration, 409 3rd Street, SW., Suite 8000.

**FOR FURTHER INFORMATION CONTACT:** Delorice P. Ford, Associate Administrator/BD, 202–205–5852 or Curtis B. Rich, Management Analyst, (202) 205–7030.

**SUPPLEMENTARY INFORMATION:**

*Title:* Small Disadvantaged Business(SDB) Recertification Application.

*Form No.:* 2179

*Description of Respondents:* Small Disadvantaged Business (SDB) eligible companies.

*Annual Responses:* 1,785.

*Annual Burden:* 3,000.

**Curtis B. Rich,**

*Acting Chief, Administrative Information Branch.*

[FR Doc. 00–26276 Filed 10–12–00; 8:45 am]

BILLING CODE 8025–01–U



## SMALL BUSINESS ADMINISTRATION

**[License No. 09/71–0378]**

### Housatonic Equity Investors SBIC, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Housatonic Equity Investors SBIC, L.P., 88 Kearney St. Suite 1610, San Francisco, CA 94108, a Federal Licensee under the Small Business Investment Act of 1958, as amended ("the Act"), in connection with the financing of a small concern, has sought an exemption under section 312 of the Act and section 107.730. Financings which Constitute Conflicts of Interest of the Small Business Administration ("SBA") rules and regulations (13 CFR 107.730 (2000)). Houstonic Equity Investors SBIC, L.P. proposes to provide equity financing to ArchivesOne, Inc., 200 Commercial Street, Watertown, CT 06795. The financing is contemplated for the acquisition of selected assets of an existing business.

The financing is brought within the purview of Sec. 107.730(a)(1) of the Regulations because Houstonic Equity Investors, L.P., an Associate of Houstonic Equity Investors SBIC, L.P., currently owns greater than 10 percent of ArchivesOne, Inc. and therefore ArchivesOne, Inc. is considered an Associate of Housatonic Equity Investors, L.P. as defined in Sec. 107.50 of the regulations.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW, Washington, DC 20416.

**Don A. Christensen,**

*Associate Administrator for Investment.*

[FR Doc. 00–26246 Filed 10–12–00; 8:45 am]

BILLING CODE 8025–01–P

## SMALL BUSINESS ADMINISTRATION

**[Declaration of Disaster #3291]**

### State of Idaho; Amendment #2

In accordance with a notice from the Federal Emergency Management Agency, dated September 26, 2000, the above-numbered Declaration is hereby amended to establish the incident period for this disaster as beginning on July 27, 2000 and continuing through September 26, 2000.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is October 31, 2000 and for economic injury the deadline is June 1, 2001.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 29, 2000.

**Herbert L. Mitchell,**

*Acting Associate Administrator for Disaster Assistance.*

[FR Doc. 00–26245 Filed 10–12–00; 8:45 am]

BILLING CODE 8025–01–P

## SOCIAL SECURITY ADMINISTRATION

### The Ticket to Work and Work Incentives Advisory Panel Meeting

**AGENCY:** Social Security Administration (SSA).

**ACTION:** Notice of Quarterly Meeting.

**DATES:**
November 13, 2000, 9 a.m.–5 p.m.
November 14, 2000, 9 a.m.–5 p.m.
November 15, 2000, 9 a.m.–5 p.m.

**ADDRESSES:** Embassy Suites at Chevy Chase Pavilion, 4300 Military Road, NW, Washington, DC 20015, (202) 362–9300, (202) 686–3405 Fax.

The hotel is located on the corner of Wisconsin Avenue and Military Road and directly above the Friendship Heights Metro station.

**SUPPLEMENTARY INFORMATION:**

*Type of meeting:* The quarterly meeting is open to the public. The public is invited to participate by coming to the address listed above. The public is also invited to submit comments in writing at any time on or before November 13, 2000.

*Purpose:* In accordance with section 10(a)(2) of the Federal Advisory Committee Act, the Social Security Administration (SSA) announces a quarterly meeting of the Ticket to Work and Work Incentives Improvement Act (TWWIIA) Advisory Panel (the Panel). Section 101(f) of Public Law 106–170 establishes the Panel to advise the Commissioner of SSA, the President, and the Congress on issues related to work incentives programs, planning and assistance for individuals with disabilities as provided under section 101(f)(2)(A) of the TWWIIA. The Panel is also to advise the Commissioner on matters specified in section 101(f)(2)(B) of that Act, including certain issues related to the Ticket to Work and Self-Sufficiency Program established under section 101(a) of that Act.

Interested parties are invited to attend the meeting. The Panel will use this time to receive public testimony, hear presentations on the implementation of TWWIIA, conduct workgroups and full Panel deliberations, receive briefings and conduct a business meeting. The Panel will meet commencing Monday, November 13, 2000 at 9 a.m. to 5 p.m.; Tuesday, November 14, 2000 at 9 a.m. to 5 p.m. and Wednesday, November 15, 2000 at 9 a.m. to 5 p.m.

*Agenda:* Public testimony will be heard in person and via teleconference on Monday, November 13, 2000. Individuals interested in providing testimony in person or by telephone should contact the Panel staff as outlined below to schedule time slots. Members of the public must schedule a timeslot in order to comment.

Each presenter will be called on by the Chair in the order in which they are scheduled to testify and is limited to a maximum five-minute verbal presentation. Full written testimony on TWWIIA Implementation, no longer than 5 pages, may be submitted in person or by mail, fax or email on an on-going basis to the Panel for consideration.

In the event that the public comments do not take up the scheduled time period for each topic, the Panel will use that time to deliberate and conduct other Panel business.

Since seating may be limited, persons interested in providing testimony or in attending this meeting should contact the Panel staff by E-mailing Kristen M. Breland, at "kristen.m.breland@ssa.gov" or calling (410) 966–7225.

The full agenda for the meeting follows this announcement. The agenda is also posted on the Internet at *http://www.ssa.gov/work/Resources/Toolkit/* or can be received in advance electronically or by fax upon request. Seating may be limited so persons interested in attending this meeting should contact the Panel staff by e-mail or telephone.

*Contact Information:* Anyone requiring information regarding the Panel should contact the TWWIIA Panel staff. Records are being kept of all Panel proceedings and will be available for public inspection by appointment at the Panel office. Anyone requiring

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information regarding the Panel should contact the Panel staff by:

- Mail addressed to Social Security Administration, Ticket to Work and Work Incentives Advisory Panel Staff, 107 Altmeyer Building, 6401 Security Boulevard, Baltimore MD, 21235
- Telephone contact with Kristen Breland at (410) 966–7225
- Fax at (410) 965–9063
- E-mail to TWWIIAPanel@ssa.gov

Dated: October 5, 2000.

**Deborah M. Morrison,**

*Designated Federal Officer.*

**Ticket to Work and Work Incentives Advisory Panel—Public Meeting**

Embassy Suites at Chevy Chase Pavilion, 4300 Military Road, NW, Washington, DC 20015, (202) 362–9300, (202) 686–3405 Fax.

The hotel is located on the corner of Wisconsin Avenue and Military Road and directly above the Friendship Heights Metro station.

November 13–15, 2000

**Monday, November 13, 2000, Day 1**

9:00 AM Meeting Called to Order by Deborah Morrison, Designated Federal Officer

*Welcome—Sarah Mitchell, Presiding*

Introductions

Update on TWWIIA Implementation

9:30 to 12:00 AM
Public Testimony Comment Periods Addressing Specific Topics

9:30 to 10:30
Who Gets a Ticket? The Definition of a Ticket.

10:30 to 11:00
Break

11:00 to 12:00
Qualifications of Employment Networks

12:00 to 1:30 PM
Lunch (On Your Own)

1:30 PM
Meeting Reconvenes, Sarah Mitchell, Presiding

1:30 to 2:30 PM
Public Testimony Comment Periods Addressing Specific Topics

1:30 to 2:30
Design of Outcome and Milestone Payment Methods

2:30 to 3:00
Break

3:00 to 4:00
TWWIIA Implementation

4:00 to 5:00
Telephone Call-in Public Comment Period on any TWWIIA Implementation Topic

Please note: If time allotted for public comment exceeds the time required, the Panel will use the time to deliberate on TWWIIA implementation.

5:00 PM
Adjournment

**Tuesday, November 14, 2000, Day 2**

9:00 to 12:00 AM
Panel Workgroup Deliberations

12:00 to 1:30 PM
Lunch (On Your Own)

1:30 PM
Meeting Reconvenes Sarah Mitchell, Presiding

1:30 to 3:30 PM
Panel Workgroups Reports

3:30 to 3:45 PM
Break

3:45 to 5:30 PM
Full Panel Deliberations

5:00 PM
Adjournment

**Wednesday, November 15, 2000, Day 3**

9:00 AM
Meeting Convenes, Sarah Mitchell, Presiding

9:00—11:00 AM
Update on TWWIIA Implementation Office of Employment Support Program Office of Policy

11:00 to 12:00
Briefing on the Federal Advisory Committee Act

12:00 to 1:30
Lunch (On Your Own)

1:30 to 4:00 PM
Business Meeting

5:00 PM
Adjournment by Designated Federal Officer

[FR Doc. 00–26311 Filed 10–12–00; 8:45 am]

BILLING CODE 4191–02–P

## SOCIAL SECURITY ADMINISTRATION

### The Ticket to Work and Work incentives Advisory Panel Meeting

**AGENCY:** Social Security Administration (SSA).

**ACTION:** Notice of Teleconference Meeting.

**DATES:** November 8, 2000, 1:30 p.m.–4:00 p.m.

**ADDRESSES:** Social Security Administration, International Trade Center, 500 E St. SW, 8th Floor, Theatre Room, Washington, D.C. 20254.

**SUPPLEMENTARY INFORMATION:**

*Type of Meeting:* This teleconference meeting is open to the public. The public is invited to participate by coming to the address listed above or calling in to the scheduled teleconference. The meeting will include an opportunity for public comment.

*Purpose:* In accordance with section 10(a)(2) of the Federal Advisory Committee Act, the Social Security Administration (SSA) announces a public meeting of the Ticket to Work and Work Incentives Advisory Panel (the Panel). Section 101(f) of Public Law 106–170, the Ticket to Work and Work Incentives Improvement Act of 1999 (TWWIIA), establishes the Panel to advise the Commissioner of SSA, the President, and the Congress on issues related to work incentives programs, planning and assistance for individuals with disabilities as provided under section 101(f)(2)(A) of the TWWIIA. The Panel is also to advise the Commissioner on matters specified in section 101(f)(2)(B) of that Act, including certain issues related to the Ticket to Work and Self-Sufficiency Program established under section 101(a) of that Act.

The Panel teleconference meeting will be devoted to public comment and discussion on the subject of the implementation of TWWIIA. The Panel also invites the public to submit comments on the subject in writing for this meeting. The Panel will accept written comments on the implementation of TWWIIA no longer than 5 pages, either in person or by mail, fax or e-mail until November 13, 2000. (See detailed contact information below.)

*Agenda:* The meeting will commence on Tuesday, November 8, 2000 at 1:30 p.m. From 1:30 p.m. to 3:00 p.m., the Panel will hear public testimony on the implementation of TWWIIA, including implementation of mandated protection and advocacy (P&A) services. The Panel will be particularly interested in hearing and discussing views on the following P&A issues—

1. Should P&A services be available to all beneficiaries regardless of whether or not they are ticket users or living in a ticket roll-out state?
2. Should mediation be a part of the dispute resolution process?
3. Should there be an external appeals process available to beneficiaries who have disputes?

Individuals interested in providing testimony at the meeting on these or other TWWIIA implementation topics can do so in person or by teleconference by contacting the Panel staff to schedule time slots for presentation.

The Chair will call on each presenter in the order in which they are scheduled to present verbal testimony. Each presenter will be invited to address the Panel for a maximum of five (5) minutes.

From 3:00 p.m. to 4:00 p.m. there will be deliberation by the Panel on the implementation of TWWIIA. The Panel will also use any time available between 1:30 p.m. and 3:00 p.m. to deliberate in the event the time allotted for public comment exceeds the time required.

The agenda is also posted on the Internet at *http://www.ssa.gov/work/ResourcesToolkit/* or can be received in advance electronically or by fax upon request. (See contact information below.)

*Contact Information:* Individuals interested in providing testimony must contact the Panel staff for the call-in teleconference number and to schedule presentation time slots. Since seating and telephone lines may be limited, persons interested in providing testimony or in attending this meeting should contact the Panel staff by E-mailing Kristen M. Breland, at "kristen.m.breland@ssa.gov" or calling (410) 966–7225.

Anyone requiring information regarding the Panel should contact the TWWIIA Panel staff. Records are being kept of all Panel proceedings and will be available for public inspection by appointment at the Panel office. Anyone requiring information regarding the Panel should contact the Panel staff by:

- Mail addressed to Social Security Administration, Ticket to Work and Work Incentives Advisory Panel Staff, 107 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD, 21235
- Telephone at (410) 966–7225 (Kristen Breland)
- Fax at (410) 965–9063
- E-mail to TWWIIAPanel@ssa.gov

Dated: October 5, 2000.

**Deborah M. Morrison,**

*Designated Federal Officer.*

[FR Doc. 00–26312 Filed 10–12–00; 8:45 am]

BILLING CODE 4191–02–P

## SOCIAL SECURITY ADMINISTRATION

### Ticket to Work and Work Incentives Advisory Panel Teleconference Meeting

**AGENCY:** Social Security Administration (SSA).

**ACTION:** Notice of teleconference meeting.

**DATES:** November 27, 2000 1:30 p.m.–3:30 p.m.

**ADDRESSES:** Social Security Administration, International Trade Center, 500 E St. SW, 8th Floor, Theatre Room, Washington, D.C. 20254.

**SUPPLEMENTARY INFORMATION:**

*Type of meeting:* The Teleconference is open to the public. The public is invited to participate by coming to the address listed above. Only members of the panel will participate in deliberations by telephone.

*Purpose:* In accordance with section 10(a)(2) of the Federal Advisory Committee Act, the Social Security Administration (SSA) announces a Teleconference meeting of the Ticket to Work and Work Incentives Advisory Panel (the Panel). Section 101(f) of the Ticket to Work and Work Incentives Improvement Act of 1999 (TWWIIA), Public Law 106–170, establishes the Panel to advise the Commissioner of Social Security, the President, and the Congress on issues related to work incentives programs, planning, and assistance for individuals with disabilities as provided under section 101(f)(2)(A) of TWWIIA. The Panel is also to advise the Commissioner on matters specified in section 101(f)(2)(B) of that Act, including certain issues related to the Ticket to Work and Self-Sufficiency Program established under section 101(a) of that Act.

This is a deliberative teleconference meeting of the Panel. The Panel will meet to discuss the status of the TWWIIA implementation. Public testimony will not be heard at this meeting. Any interested citizen is encouraged to submit written comments concerning this topic in advance of or at the meeting for the Panel's consideration.

*Agenda:* The teleconference will commence Monday, November 27, 2000 at, 1:30 p.m.–3:30 p.m. At this teleconference, the Panel will use this time to discuss the status of TWWIIA implementation. Since seating may be limited, persons interested in attending this meeting should contact the Panel staff by E-mailing Kristen Breland, at "kristen.breland@ssa.gov" or calling (410) 966–7225.

A copy of the agenda follows this announcement. A copy of the agenda may also be obtained from the Internet at the web site of SSA's Office of Employment Support Programs at "http://*www.ssa.gov/work/resources/toolkit.*" or by contacting the Panel staff at the mailing address, Email address, telephone and FAX number shown below.

Requests for materials in alternate formats, i.e., large print, Braille, computer disc, etc. may be made to the Panel staff at the addresses and numbers shown below.

Records are being kept of all Panel proceedings and will be available for public inspection at the Office of Employment Support Programs' web site at *"http://www.ssa.gov/work"* or by appointment at the office of the Ticket to Work and Work Incentives Advisory Panel Staff, 107 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235. Anyone requiring information regarding the Panel should contact the Panel staff by:

- Mail addressed to Social Security Administration, Ticket to Work and Work Incentives Advisory Panel Staff, 107 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235;
- Telephone at (410) 965–9063;
- FAX at (410) 966–8597; or
- Email to Kristen Breland, at "kristen.breland@ssa.gov."

Dated: October 5, 2000.

**Deborah M. Morrison,**

*Designated Federal Officer.*

**Ticket to Work and Work Incentives, Advisory Panel, Teleconference Meeting AGENDA**

**Social Security Administration, 8th Floor Theatre Room, 500 E Street, SW, Washington, DC 20254, Monday, November 27, 2000**

1:30 p.m.
Meeting Convened, Presiding: Sarah Mitchell, Chair

1:30—3:15
Deliberations on the Implementation of Ticket to Work and Work Incentives Improvement Act

3:15—3:30
Administrative Issues

3:30 p.m.
Adjournment

[FR Doc. 00–26313 Filed 10–12–00; 8:45 am]

BILLING CODE 4191–02–P

## DEPARTMENT OF STATE

### Bureau of Oceans, International Environmental and Scientific Affairs

**[Public Notice No. 3441]**

### Public Meeting to Discuss Progress on International Harmonization of Chemical Hazard Classification and Labeling

**SUMMARY:** The United States government is preparing for a series of international meetings to further develop a globally harmonized system (GHS) of chemical hazard classification and labeling. The Department of State will hold a public meeting to update recent activities and preview upcoming international meetings on chemical hazard communication and GHS implementation.

The public meeting will take place on Tuesday, October 24, 2000, from 1:00 pm until 3:00 pm, in Room N5437 B&C, at the U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC. Attendees should use the entrance at C and Third Streets NW. No advance registration is necessary. However, attendees should bring picture identification with them. For further information, please contact Marie Ricciardone, U.S. Department of State, Office of Environmental Policy (OES/ENV), Room 4325, 2201 C Street NW, Washington, DC 20520; telephone (202) 736–4660; fax (202) 647–5947; e-mail RicciardoneMD@state.gov.

**SUPPLEMENTARY INFORMATION:** The U.S. Department of State is issuing this

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notice to help ensure that interested organizations and individuals are informed about efforts to internationally harmonize chemical hazard classification and labeling, and have an opportunity to offer comments. Agencies participating in the U.S. government interagency group include: Department of State, Environmental Protection Agency, Department of Transportation, Occupational Safety and Health Administration, Consumer Product Safety Commission, Food and Drug Administration, Department of Commerce, Department of Agriculture, Department of Energy, Office of the U.S. Trade Representative, and National Institute of Environmental Health Sciences. For more complete information on the GHS process, please refer to State Department Public Notice 2526, pages 15951–15957 of the **Federal Register** of April 3, 1997.

This meeting will summarize the GHS meetings that have taken place since the previous public meeting on August 10, 2000 (see Department of State Public Notice 3367 on pages 15951–15957 of the **Federal Register** of July 21, 2000):

- The Seventh Meeting of the Organization for Economic Cooperation and Development (OECD) Extended Expert Group on Aquatic Environmental Hazards (Paris, September 4–5) developed guidance for applying harmonized hazard classification criteria for the aquatic toxicity of chemical substances and further developed harmonized criteria for chemical mixtures.
- The Tenth Meeting of the OECD Task Force on Harmonization of Classification and Labeling (Paris, September 6–8) reached agreement on harmonized hazard classification criteria for several health effects for chemical mixtures; approved hazard classification criteria for target organ and systemic toxicity; and agreed to initiate the development of hazard classification criteria for aspiration hazards, water-activated corrosivity and toxicity, and respiratory irritation.

Members of the interagency working group will also outline U.S. preparations for upcoming international meetings:

- The Sixth Meeting of the International Labor Organization (ILO) Working Group of Hazard Communication, October 30–November 2, Rome, Italy will develop and refine options for harmonized chemical hazard communication, such as labels and material safety data sheets.
- The Seventeenth Consultation of the IOMC Coordinating Group for the Harmonization of Chemical Classification Systems, November 2–3, Rome, Italy will consider the need for GHS guidance and other implementation issues.
- The Twenty-first Session of the United Nations Committee of Experts on the Transport of Dangerous Goods, December 5–14, Geneva, Switzerland will host a working group on classification criteria for physical hazards, focusing on aerosol flammability.

Interested organizations and individuals are invited to present their views orally and/or in writing at the public meeting. Participants may address other topics relating to harmonization of chemical hazard classification and labeling systems, and identify issues of concern. Those organizations/individuals that cannot attend the October 24th meeting, but wish to submit a written comment, should provide Eunice Mourning, Office of Environmental Policy, U.S. Department of State (telephone 202–647–9266; fax 202–647–5947) with their statement and/or name, organization, address, telephone and fax numbers, and e-mail address. All written comments will be placed in the OSHA public docket (H–022H), which is open Monday through Friday, from 10 am until 4 pm, at the Department of Labor, Room 2625, 200 Constitution Avenue NW, Washington, DC; telephone 202–219–7894; fax: 202–219–5046. Interested organizations /individuals that wish to receive future notifications of GHS-related developments by email should contact Mary Frances Lowe of the U.S. Environmental Protection Agency at "lowe.maryfrances@epa.gov".

Dated: October 2, 2000.

**Daniel T. Fantozzi,**

*Director, Office of Environmental Policy, Department of State*

[FR Doc. 00–26363 Filed 10–12–00; 8:45 am]

BILLING CODE 4710–06–U

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Docket No. AB–303 (Sub–No. 21X)]**

### Wisconsin Central Ltd.—Abandonment Exemption—In Marquette County, MI

Wisconsin Central Ltd. (WCL) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon an approximately 8.84-mile line of its railroad between milepost 154 and milepost 162.84 in Marquette County, MI. The line traverses United States Postal Service Zip Codes 49855 and 49866.

WCL has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.G.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on November 14, 2000, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by October 23, 2000. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by November 2, 2000, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Michael J. Barron, Jr., Wisconsin Central Ltd., P.O. Box 5062, Rosemont, IL 60017–5062.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1000. *See* 49 CFR 1002.2(f)(25).



WCL has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by October 18, 2000. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), WCL shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by WCL's filing of a notice of consummation by October 13, 2001, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: October 4, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 00–26070 Filed 10–12–00; 8:45 am]

BILLING CODE 4915–00–P

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

October 3, 2000.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

**DATES:** Written comments should be received on or before November 13, 2000 to be assured of consideration.

**Internal Revenue Service (IRS)**

*OMB Number:* 1545–1546.

*Revenue Procedure Number:* Revenue Procedure 97–33.

*Type of Review:* Extension.

*Title:* EFTPS (Electronic Federal Tax Payment System).

*Description:* Some taxpayers are required by regulations issued under § 6302(h) of the Internal Revenue Code to make Federal Tax Deposits (FTDs) using the Electronic Federal Tax Payment System (EFTPS). Other taxpayers may choose to voluntarily participate in EFTPS. EFTPS requires that a taxpayer complete an enrollment form to provide the information the IRS needs to properly credit the taxpayer's account. Revenue 97–33 provides procedures and information that will help taxpayers to electronically make FTDs and tax payments through EFTPS.

*Respondents:* Business or other for-profit, Individuals or households, Not-for-profit institutions, Farms, Federal Government, State, Local or Tribal Government.

*Estimated Number of Recordkeepers:* 557,243.

*Estimated Burden Hours Per Recordkeeper:* 30 minutes.

*Frequency of Response:* On occasion, Weekly, Monthly, Quarterly, Semi-annually, Annually, Biennially.

*Estimated Total Recordkeeping Burden:* 278,622 hours.

*Clearance Officer:* Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224.

*OMB Reviewer:* Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports Management Officer.*

[FR Doc. 00–26295 Filed 10–12–00; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

October 6, 2000.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

**DATES:** Written comments should be received on or before November 13, 2000 to be assured of consideration.

**Internal Revenue Service (IRS)**

*OMB Number:* 1545–1694.

*Revenue Ruling Number:* Revenue Ruling 2000–35.

*Type of Review:* Extension.

*Title:* Automatic Enrollment in Section 403(b) Plans.

*Description:* Revenue Ruling 2000–35 describes certain criteria that must be met before an employee's compensation can be reduced and contributed to an employer's section 403(b) plan in the absence of an affirmative election by the employee.

*Respondents:* Not-for-profit institutions, State, Local or Tribal Government.

*Estimated Number of Respondents:* 100.

*Estimated Burden Hours Per Respondent:* 1 hour, 45 minutes.

*Frequency of Response:* On occasion, Annually.

*Estimated Total Recordkeeping Burden:* 175 hours.

*OMB Number:* 1545–1695.

*Revenue Ruling Number:* Revenue Ruling 2000–33.

*Type of Review:* Extension.

*Title:* Deferred Compensation Plans of State and Local Governments and Tax-Exempt Organizations.

*Description:* This revenue ruling specifies the conditions the plan sponsor should meet to automatically defer a certain percentage of its employees' compensation into their accounts in an eligible deferred compensation plan.

*Respondents:* Not-for-profit institutions, State, Local or Tribal Government.

*Estimated Number of Respondents:* 500.

*Estimated Burden Hours Per Respondent:* 1 hour.

*Frequency of Response:* On occasion, Annually.

*Estimated Total Recordkeeping Burden:* 500 hours.

*Clearance Officer:* Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224.

*OMB Reviewer:* Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New

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Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports, Management Officer.*

[FR Doc. 00–26296 Filed 10–12–00; 8:45 am]

BILLING CODE 4830–01–M

## DEPARTMENT OF VETERANS AFFAIRS

### Privacy Act of 1974; Computer Matching Program

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Notice of Computer Matching Program.

**SUMMARY:** Notice is hereby given that the Department of Veterans Affairs (VA) intends to conduct a recurring computer program matching records from the Bureau of Prisons (BOP) of the Department of Justice with VA compensation pension and dependency and indemnity compensation (DIC) records.

The purpose of the match is to verify continuing eligibility for Federal benefit programs of those who are confined for a period exceeding 60 days due to a conviction for a felony or misdemeanor. VA has the obligation to reduce or suspend compensation, pension, and dependency and indemnity compensation benefit payments to veterans and VA beneficiaries on the 61st day following conviction and incarceration in the Federal institution for a felony or misdemeanor. VA also has the obligation to reduce educational assistance to any recipient who is incarcerated for a felony conviction.

VA plans to match records of VA beneficiaries with those reported by BOP as being incarcerated and to adjust their VA benefits accordingly. VA will use the BOP records provided in the match to update the master records of VA beneficiaries and to adjust their VA benefits, accordingly, if needed.

**Records To Be Matched**

The VA records involved in the match are the VA system of records, Compensation, Pension, Education and Rehabilitation Records—VA (58 VA 21/22) first published at 41 FR 9294, March 3, 1976 and last amended at 65 FR 37605 (June 15, 2000). The data elements provided to VA will be taken from BOP's Inmate Central Records System, Justice/BOP–005, published on June 7, 1884. In accordance with Title 5 U.S.C. subsection 552a(o)(2) and (r), copies of the agreement are being sent to both Houses of Congress and to the Office of Management and Budget (OMB).

This notice is provided in accordance with the provisions of the Privacy Act of 1974 as amended by Public Law 100–503.

**DATES:** The match will start no sooner than 30 days after publication in the **Federal Register** and end not more than 18 months after the agreement is properly implemented by the parties. The involved agencies' Data Integrity Boards (DIB) may extend this match for 12 months provided the agencies certify to their DIBs within three months of the ending date of the original match that the matching program will be conducted without change and that the matching program has been conducted in compliance with the original matching program.

**ADDRESSES:** Interested individuals may submit written comments to the Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue, NW, Room 1154, Washington, DC 20420. Comments will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between 8 a.m. and 4:30 p.m., Mondays through Fridays, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Paul Trowbridge (212), (202) 273–7318.

**SUPPLEMENTARY INFORMATION:** This information is required by Title 5 U.S.C. subsection 552a(e)(12), the Privacy Act of 1974. A copy of this notice has been provided to both House of Congress and OMB.

Approved: September 29, 2000.

**Hershel W. Gober,**

*Acting Secretary of Veterans Affairs.*

[FR Doc. 00–26293 Filed 10–12–00; 8:45 am]

BILLING CODE 8320–01–M

## DEPARTMENT OF VETERANS AFFAIRS

### Privacy Act of 1974; System of Records

**AGENCY:** Department of Veterans Affairs (VA).

**ACTION:** Notice of Amendment to System of Records—Veterans, Dependents of Veterans, and VA Beneficiary Survey Records—VA (43VA008) (formerly 43VA71).

**SUMMARY:** The Privacy Act of 1974 (5 U.S.C. 552(e)(4)) requires that all agencies publish in the **Federal Register** a notice of the existence and character of their system of records. Notice is hereby given that VA is amending a system of records entitled "Veterans, Dependents of Veterans, and VA Beneficiary Survey Records (43VA71)" as set forth in the **Federal Register** 40 FR 38095 (August 26, 1975) and amended at 48 FR 52798 (November 22, 1983) and 54 FR 20667 (May 12, 1989). VA is amending the system number and the paragraphs on System Location; Categories of Records in the System; Authority for Maintenance of the System; Policies and Practices for Storing, Retrieving, Accessing, Retaining, and Disposing of Records in the System; including Safeguards; System Manager(s) and Address; and Record Source Categories. VA is adding paragraphs on Purpose(s) and Routine Uses of Records Maintained in the System, including Categories of Users and the Purpose of Such Uses.

**DATES:** Comments on the establishment of this amended system of records must be received no later than November 13, 2000. If no public comment is received during the period allowed for comment or unless otherwise published in the **Federal Register** by VA, the system will become effective November 13, 2000.

**ADDRESSES:** Comments may be submitted to Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Comments will be available for public inspection at the above address in the Office of Regulations Management, Room 1154, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Susan Krumhaus, Department of Veterans Affairs, Program Analysis Service (008A1), 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–5108.

**SUPPLEMENTARY INFORMATION:** The number of the system is changed to 43VA008 to reflect the new designation for the Office of the Assistant Secretary for Planning and Analysis.

The system location is changed to reflect the new name of VA Data Processing Center in Austin, Texas, which is now known as the Austin Automation Center (AAC).

The paragraph concerning the categories of records in the system has been amended to more accurately reflect the records maintained in the system. Additionally, VA is amending the categories of records to reflect the fact that VA may also include information obtained from other VA systems of records, the Department of Defense (DoD), and the Department of Health and Human Services (HHS).

Information in this system of records is obtained from survey questionnaire data provided by veterans, dependents, or VA beneficiaries in a survey sample and from veterans, dependents, or VA beneficiaries on specific VA benefit rolls. Information may also be obtained from the Patient Medical Records System (24VA136); the Patient Fee Basis Medical and Pharmacy Records (23VA136); Veterans and Beneficiaries Identification and Records Location Subsystem (38VA23); Compensation, Pension, Education and Rehabilitation Records (58VA21/22); and Health Care Eligibility Center Records (89VA19); DoD utilization files and Defense Eligibility Enrollment Reporting System (DEERS); HHS records; Department of Commerce (DOC) records; and the Health Care Financing Administration (HCFA) Denominator file, Standard Analytical files (inpatient, outpatient, physician supplier, nursing home, hospice, home care, durable medical equipment) and Group Health Plan.

Specific request files, referred to as finder files, will be created for use in submitting requests for veteran-specific data from HHS, HCFA, DoD, or other non-VA data sources. Survey records will be supplemented by including information from the matched HCFA and DoD data records.

Data in the system of records may include:

1. Personal identifiers (respondents' names, addresses, social security numbers, phone numbers, employer identification numbers);
2. Demographic and socioeconomic characteristics (date of birth, sex, race/ethnicity, education, marital status, employment and earnings, financial information, business ownership information);
3. Military service information;
4. Health status information (diagnostic, health care utilization cost, and third-party health plan information); and
5. VA benefit information (VA medical and other benefit eligibility and usage, data on access and barriers to VA benefits or services, data on satisfaction with VA benefits or services).

The records may also include information about DoD military personnel from two categories of DoD files:

1. Utilization files that contain inpatient and outpatient records; and
2. Eligibility files from DEERS, which include data about all military personnel including those discharged from the armed services since 1972.

The records may include information on Medicare beneficiaries from HCFA databases:

1. Denominator file (identifies the population being studied);
2. Standard Analytical files (inpatient, outpatient, physician supplier, nursing home, hospice, home care, durable medical equipment); and
3. Group Health Plan.

VA is amending the authority for maintaining the records to reflect the statutory authority after recodification of Title 38, United States Code, as well as legislation enacted since the system notice was previously published.

VA is adding a paragraph stating the purposes for which VA is gathering and maintaining the records in this system of records.

Under section 527 of Title 38, U.S.C. and the Government Performance and Results Act of 1993, Public Law 103–62, VA is required to measure and evaluate, on an ongoing basis, the effectiveness of VA benefit programs and services. To do this function, VA must collect data through surveys that may be augmented from existing VA systems of records and with information from non-VA sources to:

1. Conduct statistical studies and analyses relevant to VA programs and services for America's veterans. Statistical reports will not contain personal identifiers.
2. Plan and improve services provided to America's veterans;
3. Decide about VA policies, programs, and services for veterans;
4. Study VA's role in the use of VA and non-VA benefits and services by America's veterans; and
5. Study the relationship between the use of VA benefits and services by veterans and their use of related benefits and services from non-VA sources.

VA will not use this system, to take any adverse action against, or to change the benefits of, an individual veteran.

VA is proposing to establish the following routine use disclosures of information maintained in the system:

1. Disclosure of identifying information such as names, social security numbers, demographic and utilization data may be made to Federal agencies such as the DoD, DOC, and HHS to augment or validate survey data for use in statistical studies such as describing VA's role in total benefit coverage and forecasting future demand for VA benefits and services.
2. Disclosure of identifying information such as the employer identification number may be made to the DOC to receive summary business data to study the growth of veteran-owned businesses by area and industry.
3. Disclosure may be made to the National Archives and Records Administration (NARA) and the General Services Administration (GSA) for records management inspections conducted under the authority of Title 44, United States Code.
4. Disclosure may be made to individuals, organizations, private or public agencies, etc. with whom VA has a contract or agreement for the contractor or subcontractor to perform the services of the contract or agreement. VA must be able to provide information to contractors or subcontractors with whom VA has a contract or agreement in order to perform the services of the contract or agreement.

Release of information from these records will be made for research and administrative uses. The Privacy Act permits VA to disclose information about individuals without their consent for routine uses when the information will be used for purposes that are compatible with the purposes for which VA collected the information. In all of the routine use disclosures described above, either the recipient of the information will use the information in connection with a matter relating to one of VA's programs, will use the information to provide a benefit to VA, or disclosure is required by law. VA has determined that release of information for these purposes is a necessary and proper use of information and that specific routine uses for transfer of this information are appropriate.

VA is amending the policies and practices of the agency concerning storage of the data to reflect technological changes.

VA is amending the retrieval paragraph to more concisely state VA's retrieval practice for this system of records.

VA is amending the safeguards paragraph to more fully describe its security procedures for protecting the records, as well as reflect procedures adopted since last publication.

VA is amending the retention and disposal paragraph to reflect that VA's retention and disposal policy has been approved by the Archivist of the United States.

VA is amending the system manager paragraph to reflect the change in the agency official responsible for maintaining the system of records as a result of a reorganization of this office.

VA is amending the paragraph listing the records source categories to include the various sources that VA will use to gather information for this system of records. The rationale for gathering records from these sources is stated in the earlier discussion of the purpose for maintaining these records.

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Approved: September 29, 2000.
**Hershel W. Gober,**
*Acting Secretary of Veterans Affairs.*

**43VA008**

**SYSTEM NAME:**

Veterans, Dependents of Veterans, and VA Beneficiary Survey Records.

**SYSTEM LOCATION:**

Computerized records will be maintained at the following computer site locations: VA Austin Automation Center, 1615 Woodward Street, Austin, Texas 78722; VA Central Office, 810 Vermont Avenue, NW, Washington, DC 20420; or with private contractors acting as agents of VA. Paper records are stored at the Washington National Records Center (WNRC) or with private contractors acting as agents of VA.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

The following categories of individuals are covered by this system:
1. Veterans,
2. Dependents of veterans, and
3. Other VA Beneficiaries.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

The categories of records in the system may include:
1. Personal identifiers (respondents' names, addresses, phone numbers, social security numbers, employer identification numbers);
2. Demographic and socioeconomic characteristics (*e.g.*, date of birth, sex, race/ethnicity, education, marital status, employment and earnings, financial information, business ownership information);
3. Military service information;
4. Health status information (diagnostic, health care utilization cost, and third-party health plan information); and
5. VA benefit information (VA medical and other benefit eligibility and use, data on access and barriers to VA benefits of services, data about satisfaction with VA benefits or services).

The records may also include information about DoD military personnel from two categories of DoD files:
1. Utilization files that contain inpatient and outpatient records, and
2. Eligibility files from DEERS which includes data about all military personnel including those discharged from the armed services since 1972.

The records may include information on Medicare beneficiaries from HCFA databases:
1. Denominator file (identifies the population being studied);
2. Standard Analytical files (inpatient, outpatient, physician supplier, nursing home, hospice, home care, durable medical equipment); and
3. Group Health Plan.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Under section 527 of Title 38 U.S.C. and the Government Performance and Results Act of 1993, Public Law 103–62.

**PURPOSE(S):**

The purpose of this system of records is to collect data about the characteristics of America's veteran population through surveys that may be augmented with information from several existing VA systems of records and with information from non-VA sources to:
1. Conduct statistical studies and analyses relevant to VA programs and services for America's veterans.
2. Plan and improve services provided to America's veterans;
3. Decide about VA policies, programs, and services for veterans;
4. Study VA's role in the use of VA and non-VA benefits and services by America's veterans; and
5. Study the relationship between the use of VA benefits and services by veterans and their use of related benefits and services from non-VA sources. These types of studies are needed for VA to forecast future demand for VA benefits and services.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:**

Information from this system of records may be disclosed in accordance with the following routine uses:
1. Disclosure of identifying information such as names, social security numbers, and demographic and utilization data may be made to Federal agencies such as the DoD, DOC, and HHS to augment or validate survey data for use in statistical studies such as describing VA's role in total benefit coverage and forecasting future demand for VA benefits or services.
2. Disclosure of identifying information such as the employer identification number may be made to the DOC to receive summary business data to study the growth of veteran-owned businesses by area and industry.
3. Disclosure may be made to the NARA and the GSA for records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.
4. Disclosure may be made to individuals, organizations, private or public agencies, etc. with whom VA has a contract or agreement for the contractor or subcontractor to perform the services of the contract or agreement.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM STORAGE:**

Electronic data are maintained on magnetic tape, disk, or laser optical media. Records may also be stored on paper documents.

**RETRIEVABILITY:**

Records may be retrieved by name, address, social security number, date of birth, or a combination of identifiers that are unique when used in combination.

**SAFEGUARDS**

1. Access to and use of these records are limited to those persons whose official duties require such access. Personnel screening is employed to prevent unauthorized disclosure.
2. Access to Automated Data Processing (ADP) files is controlled by using an individual unique password entered in combination with an individually unique user identification code.
3. Access to automated records containing identification codes and codes used to access various VA automatic communications systems and records systems, as well as security profiles and possible security violations, is limited to designated automated systems security personnel who need to know the information in order to maintain and monitor the security of VA's automated communications and veteran's claim records systems. Access to these records in automated form is controlled by individually unique passwords/codes. Agency personnel have access to the information on a need to know basis when necessary to advise agency security personnel, to suspend or revoke access privileges, or to make disclosures authorized by a routine use.
4. Access to VA facilities where identification codes, passwords, security profiles and possible security violations are maintained is controlled at all hours by the Federal Protective Service, VA, or other security personnel and security access control devices.
5. Public use files prepared for purposes of research and analysis are purged of personal identifiers.
6. Paper records, when they exist, are maintained in a locked room at the WNRC. The Federal Protective Service protects paper records from unauthorized access.
7. Both paper and electronic data maintained by contractors are held in equally secure conditions.



**RETENTION AND DISPOSAL:**

Records will be maintained and disposed of in accordance with the records disposal authority approved by the Archivist of the United States and the NARA and published in Agency Records Control Schedules.

**SYSTEM MANAGER(S) AND ADDRESS:**

Director, Department of Veterans Affairs, Program Analysis Service (008A1), 810 Vermont Avenue, NW, Washington, DC 20420.

**NOTIFICATION PROCEDURE:**

An individual who wants to determine whether the Director, Program Analysis Service (008A1) is maintaining a record under the individual's name or other personal identifier or wants to determine the content of such records must submit a written request to the Director, Program Analysis Service (008A1). The individual seeking this information must prove his or her identity and provide the name of the survey in question, approximate date of the survey, social security number, full name, and date of birth

**RECORDS ACCESS PROCEDURES:**

An individual who seeks access to records maintained under his or her name or other personal identifier may write the System Manager named above and specify the information being requested or contested.

**CONTESTING RECORD PROCEDURES:**

(See Records Access Procedures.)

**RECORDS SOURCE CATEGORIES:**

Information in this system of records is obtained from survey questionnaire data provided by veterans, dependents, or VA beneficiaries in a survey sample and from veterans, dependents, or beneficiaries on specific VA benefit rolls. Information may also be obtained from the Patient Medical Records System (24VA136), the Patient Fee Basis Medical and Pharmacy Records (23VA136); Veterans and Beneficiaries Identification and Records Location Subsystem (38VA23); Compensation, Pension, Education, and Rehabilitation Records (58VA21/22); Health Care Eligibility Center Records (89VA19); DoD utilization files and DEERS files; and HCFA Denominator file, Standard Analytical files (inpatient, outpatient, physician supplier, nursing home, hospice, home care, durable medical equipment) and Group Health Plan.

[FR Doc. 00–26294 Filed 10–12–00; 8:45 am]
**BILLING CODE 8320–01–M**

VOL
65
ISS
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OC
13
2000
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Federal Register

Friday,
October 13, 2000

Part II

# State Justice Institute

Grant Guideline; Notice

VOL
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ISS
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## STATE JUSTICE INSTITUTE

### Grant Guideline

**AGENCY:** State Justice Institute.
**ACTION:** Final Grant Guideline.

**SUMMARY:** This Guideline sets forth the administrative, programmatic, and financial requirements attendant to Fiscal Year 2001 State Justice Institute grants, cooperative agreements, and contracts.

**EFFECTIVE DATE:** October 13, 2000.

**FOR FURTHER INFORMATION CONTACT:** David I. Tevelin, Executive Director, or Kathy Schwartz, Deputy Director, State Justice Institute, 1650 King Street (Suite 600), Alexandria, VA 22314, (703) 684–6100.

**SUPPLEMENTARY INFORMATION:** Pursuant to the State Justice Institute Act of 1984, 42 U.S.C. 10701, *et seq.*, as amended, the Institute is authorized to award grants, cooperative agreements, and contracts to State and local courts, nonprofit organizations, and others for the purpose of improving the quality of justice in the State courts of the United States. Complete information about the Institute and its grant program, as well as forms and instructions for all grant applications, can be found at http://www.statejustice.org.

**Types of Grants Available and Funding Schedules**

The SJI grant program is designed to be responsive to the most important needs of the State courts. To meet the full range of the courts' diverse needs, the Institute offers five different categories of grants. The types of grants available in FY 2001 and the funding cycles for each program are provided below:

*Project Grants.* These grants are awarded to support innovative education, research, demonstration, and technical assistance projects that can improve the administration of justice in State courts nationwide. Except for "Single Jurisdiction" project grants awarded under II.D. (see below), project grants are intended to support innovative projects of national significance. As provided in section V.C.1. of the Guideline, project grants may ordinarily not exceed $200,000 a year; however, grants in excess of $150,000 are likely to be rare, and awarded only to support projects likely to have a significant national impact.

Applicants must submit a concept paper (see section VI.) and, ordinarily, an application (see section VII.) in order to obtain a project grant. As indicated in Section VI.C.1., the Board may make an "accelerated" grant of less than $40,000 on the basis of the concept paper alone when the need for the project is clear and little additional information about the operation of the project would be provided in an application.

The FY 2001 mailing deadline for project grant concept papers is November 22, 2000. Papers must be postmarked or bear other evidence of submission by that date. The Board of Directors will meet in early March 2001 to invite formal applications based on the most promising concept papers. Applications must be sent by April 25, 2001 and awards will be approved by the Board in late June. See section VII.A. for Project Grant application procedures.

*Single Jurisdiction Project Grants.* Section II.D. reserves up to $300,000 for projects addressing a critical need of a single state or local jurisdiction. To receive a grant under this program, an applicant must demonstrate that (1) the proposed project is essential to meeting a critical need of the jurisdiction and (2) the need cannot be met solely with State and local resources within the foreseeable future (sections II.D.1. and 2.). See section VII.A. for Single Jurisdiction Grant application procedures.

*Technical Assistance Grants.* Section II.E. reserves up to $400,000 for Technical Assistance Grants. Under this program, a State or local court may receive a grant of up to $30,000 to engage outside experts to provide technical assistance to diagnose, develop, and implement a response to a jurisdiction's problems.

Letters of application for a Technical Assistance grant may be submitted at any time. Applicants submitting letters between June 12 and September 29, 2000 will be notified of the Board's decision by December 8, 2000; those submitting letters between September 30, 2000 and January 12, 2001 will be notified by March 23, 2001; those submitting letters between January 13, 2001 and March 9, 2001 will be notified by May 11, 2001; and those submitting letters between March 10, 2001 and June 8, 2001 will be notified by August 3, 2001. Applicants submitting letters between June 11 and September 28, 2001 will be notified of the Board's decision by December 14, 2001. See section VII.D. for Technical Assistance Grant application procedures.

*Curriculum Adaptation Grants.* A grant of up to $20,000 may be awarded to a State or local court to replicate or modify a model training program developed with SJI funds. The Guideline allocates up to $200,000 for these grants in FY 2001.

Letters requesting Curriculum Adaptation grants may be submitted at any time during the fiscal year. However, in order to permit the Institute sufficient time to evaluate these proposals, letters must be submitted no later than 90 days before the projected date of the training program. See section VII.E. for Curriculum Adaptation Grant application procedures.

*Scholarships.* The Guideline allocates up to $200,000 of FY 2001 funds for scholarships to enable judges and court managers to attend out-of-State education and training programs.

Scholarships for eligible applicants are approved largely on a "first come, first served" basis, although the Institute may approve or disapprove scholarship requests in order to achieve appropriate balances on the basis of geography, program provider, and type of court or applicant (*e.g.*, trial judge, appellate judge, trial court administrator). Scholarships will be approved only for programs that either (1) address topics included in the Guideline's Special Interest categories (section II.B.); (2) enhance the skills of judges and court managers; or (3) are part of a graduate program for judges or court personnel.

Applicants interested in obtaining a scholarship for a program beginning between January 1 and March 31, 2001 must submit their applications and any required accompanying documents between October 2 and December 1, 2000. For programs beginning between April 1 and June 30, 2001, the applications and documents must be submitted between January 5 and March 5, 2001. For programs beginning between July 1 and September 30, 2001, the applications and documents must be submitted between April 2 and June 1, 2001. For programs beginning between October 1 and December 31, 2001, the applications and documents must be submitted between July 5 and September 3, 2001. For programs beginning between January 1 and March 31, 2002, the applications and documents must be submitted between October 1 and November 30, 2001. See section VII.F. for Scholarship application procedures.

*Continuation and Ongoing Support Grants.* Continuation grants (see sections III.F., V.B.2., and VII.B.) are intended to enhance the specific program or service begun during the initial grant period. Ongoing support grants (see sections III.P., V.B.3., and VII.C.) may be awarded for up to a three-year period to support national-scope projects that provide the State courts with critically needed services, programs, or products.



The Guideline establishes a target for continuation and ongoing support grants of approximately 25% of the total amount projected to be available for grants in FY 2001. Grantees should accordingly be aware that the award of a grant to support a project does not constitute a commitment to provide either continuation funding or ongoing support.

An applicant for a continuation or ongoing support grant must submit a letter notifying the Institute of its intent to seek such funding, no later than 120 days before the end of the current grant period. The Institute will then notify the applicant of the deadline for submission of its grant application.

**Special Interest Categories**

The Guideline includes nine Special Interest categories, *i.e.*, those project areas that the Board has identified as being of particular importance to the State courts this year. The selection of these categories was based on the Board and staff's experience and observations over the past year; the recommendations received from judges, court managers, lawyers, members of the public, and other groups interested in the administration of justice; and the issues identified in recent years' concept papers and applications.

Section II.B. of the Proposed Guideline includes the following Special Interest categories:.

Improving Public Confidence in the Courts;
Education and Training for Judges and Other Key Court Personnel;
Dispute Resolution and the Courts;
Application of Technology;
Court Planning, Management, and Financing;
Substance Abuse;
Children and Families in Court;
Improving the Courts' Response to Domestic Violence; and
The Relationship Between State and Federal Courts.

**Recommendations to Grantwriters**

Recommendations to Grantwriters may be found in Appendix A.

**Comments**

In response to comments, the "Children and Families in Court" Special Interest category (section II.B.2.g.) was amended to specifically include projects to develop materials and strategies to implement the judicial requirements of the Adoption and Safe Families Act, and projects to develop collaborative approaches to improve family courts. Otherwise, only grammatical and technical changes were made in the Final Guideline. The following Grant Guideline is adopted by the State Justice Institute for FY 2001:

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## I. The Mission of the State Justice Institute

The Institute was established by Pub. L. 98–620 to improve the administration of justice in the State courts of the United States. Incorporated in the State of Virginia as a private, nonprofit corporation, the Institute is charged, by statute, with the responsibility to:

A. Direct a national program of financial assistance designed to assure that each citizen of the United States is provided ready access to a fair and effective system of justice;

B. Foster coordination and cooperation with the Federal judiciary;

C. Promote recognition of the importance of the separation of powers doctrine to an independent judiciary; and

D. Encourage education for judges and support personnel of State court systems through national and State organizations, including universities.

To accomplish these broad objectives, the Institute is authorized to provide funds to State courts, national organizations which support and are supported by State courts, national judicial education organizations, and other organizations that can assist in improving the quality of justice in the State courts.

The Institute is supervised by an 11-member Board of Directors appointed by the President, by and with the consent of the Senate. The Board is statutorily composed of six judges, a State court administrator, and four members of the public, no more than two of whom can be of the same political party.

Through the award of grants, contracts, and cooperative agreements, the Institute is authorized to perform the following activities:

A. Support research, demonstrations, special projects, technical assistance, and training to improve the administration of justice in the State courts;

B. Provide for the preparation, publication, and dissemination of information regarding State judicial systems;

C. Participate in joint projects with Federal agencies and other private grantors;

D. Evaluate or provide for the evaluation of programs and projects funded by the Institute to determine their impact upon the quality of criminal, civil, and juvenile justice and the extent to which they have contributed to improving the quality of justice in the State courts;

E. Encourage and assist in furthering judicial education;

F. Encourage, assist, and serve in a consulting capacity to State and local justice system agencies in the development, maintenance, and coordination of criminal, civil, and juvenile justice programs and services; and

G. Be responsible for the certification of national programs that are intended to aid and improve State judicial systems.

## II. Scope of the Program

During FY 2001, the Institute will consider applications for funding support that address any of the areas specified in its enabling legislation. The Board, however, has designated nine program categories as being of special interest. See section II.B.

*A. Authorized Program Areas*

The Institute is authorized to fund projects addressing one or more of the following program areas listed in the State Justice Institute Act, the Battered Women's Testimony Act, the Judicial Training and Research for Child Custody Litigation Act, and the International Parental Kidnapping Crime Act:

1. Assistance to State and local court systems in establishing appropriate procedures for the selection and removal of judges and other court personnel and in determining appropriate levels of compensation;

2. Education and training programs for judges and other court personnel for the performance of their general duties and for specialized functions, and

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national and regional conferences and seminars for the dissemination of information on new developments and innovative techniques;

3. Research on alternative means for using judicial and nonjudicial personnel in court decisionmaking activities, implementation of demonstration programs to test such innovative approaches, and evaluations of their effectiveness;

4. Studies of the appropriateness and efficacy of court organizations and financing structures in particular States, and support to States to implement plans for improved court organization and financing;

5. Support for State court planning and budgeting staffs and the provision of technical assistance in resource allocation and service forecasting techniques;

6. Studies of the adequacy of court management systems in State and local courts, and implementation and evaluation of innovative responses to records management, data processing, court personnel management, reporting and transcription of court proceedings, and juror utilization and management;

7. Collection and compilation of statistical data and other information on the work of the courts and on the work of other agencies which relates to and affects the work of courts;

8. Studies of the causes of trial and appellate court delay in resolving cases, and establishing and evaluating experimental programs for reducing case processing time;

9. Development and testing of methods for measuring the performance of judges and courts, and experiments in the use of such measures to improve the functioning of judges and the courts;

10. Studies of court rules and procedures, discovery devices, and evidentiary standards to identify problems with the operation of such rules, procedures, devices, and standards, and the development of alternative approaches to better reconcile the requirements of due process with the need for swift and certain justice, and testing of the utility of those alternative approaches;

11. Studies of the outcomes of cases in selected areas to identify instances in which the substance of justice meted out by the courts diverges from public expectations of fairness, consistency, or equity, and the development, testing, and evaluation of alternative approaches to resolving cases in such problem areas;

12. Support for programs to increase court responsiveness to the needs of citizens through citizen education, improvement of court treatment of witnesses, victims, and jurors, and development of procedures for obtaining and using measures of public satisfaction with court processes to improve court performance;

13. Testing and evaluating experimental approaches to provide increased citizen access to justice, including processes which reduce the cost of litigating common grievances, and alternative techniques and mechanisms for resolving disputes between citizens;

14. Collection and analysis of information regarding the admissibility and quality of expert testimony on the experiences of battered women offered as part of the defense in criminal cases under State law, as well as sources of and methods to obtain funds to pay costs incurred to provide such testimony, particularly in cases involving indigent women defendants;

15. Development of training materials to assist battered women, operators of domestic violence shelters, battered women's advocates, and attorneys to use expert testimony on the experiences of battered women in appropriate cases, and individuals with expertise in the experiences of battered women to develop skills appropriate to providing such testimony;

16. Research regarding State judicial decisions relating to child custody litigation involving domestic violence;

17. Development of training curricula to assist State courts to develop an understanding of, and appropriate responses to child custody litigation involving domestic violence;

18. Dissemination of information and training materials and provision of technical assistance regarding the issues listed in paragraphs 14–17 above;

19. Development of national, regional, and in-State training and educational programs dealing with criminal and civil aspects of interstate and international parental child abduction; and

20. Other programs, consistent with the purposes of the State Justice Institute Act, as may be deemed appropriate by the Institute, including projects dealing with the relationship between Federal and State court systems, such as where there is concurrent State-Federal jurisdiction and where Federal courts, directly or indirectly, review State court proceedings.

Funds will not be made available for the ordinary, routine operation of court systems or programs in any of these areas.

*B. Special Interest Program Categories*

1. General Description

The Institute is interested in funding both innovative programs and programs of proven merit that can be replicated in other jurisdictions. The Institute is especially interested in funding projects that:

a. Formulate new procedures and techniques, or creatively enhance existing arrangements to improve the courts;

b. Address aspects of the State judicial systems that are in special need of serious attention;

c. Have national significance by developing products, services, and techniques that may be used in other States; and

d. Create and disseminate products that effectively transfer the information and ideas developed to relevant audiences in State and local judicial systems, or provide technical assistance to facilitate the adaptation of effective programs and procedures in other State and local jurisdictions.

A project will be identified as a *Special Interest* project if it meets the four criteria set forth above and (1) it falls within the scope of the *Special Interest* program areas designated below, or (2) information coming to the attention of the Institute from the State courts, their affiliated organizations, the research literature, or other sources demonstrates that the project responds to another special need or interest of the State courts.

Concept papers and applications which address a *Special Interest* category will be accorded a preference in the rating process. (See the selection criteria listed in sections VI.C.2. and VIII.B.

2. Specific Categories

The Board has designated the areas set forth below as *Special Interest* program categories. The order of listing does not imply any ordering of priorities among the categories. For a complete list of projects supported in previous years in each of these categories, please visit the Institute's Internet homepage at http://www.statejustice.org/and click on Grants by Category.

a. Improving Public Confidence in the Courts

This category includes demonstration, evaluation, research, and education projects designed to improve the responsiveness of courts to public concerns regarding the fairness, equity, accessibility, timeliness, and comprehensibility of the court process, and test innovative methods for



increasing the public's trust and confidence in the State courts.

(1) The Institute is particularly interested in supporting innovative projects that:

• Develop national strategies to promote the progress of State court task forces and other court-sponsored programs to eliminate race and ethnic bias in the courts; implement task force recommendations at the State and local level; evaluate the impact of court strategies to address racial and ethnic bias in jurisdictions in which task force recommendations have been implemented; establish mentoring relationships with States that have successfully implemented recommendations to learn from their experiences; develop products that highlight effective model programs and best practices; and educate judges and court personnel about relevant products developed in different States (*e.g.*, model judicial education curricula, bench books, court conduct handbooks, codes of ethics, and relevant legislation);

• Address court-community problems resulting from the influx of legal and illegal immigrants, including projects to inform judges about the effects of recent Federal and State legislation and judicial decisions regarding immigrants;

• Demonstrate and evaluate approaches to implement the concept of restorative justice that ensure residents' and businesses' safety and restore the offender's positive relationship with the community, including methods for involving the community in the sentencing process, and programs that involve education and mentoring by positive role models;

• Evaluate long-term court-based programs that actively involve citizen volunteers in a range of roles, and compile information on "best practices" with respect to the effective use of volunteers in the court environment;

• Educate and clearly communicate information to litigants and the public about judicial decisions, the trial and appellate court process, and court operations, and the standards courts maintain with respect to timeliness, access, and the elimination of bias; and

• Assure that judges and court employees meet the highest ethical standards and that judicial disciplinary procedures are known, fair, and effective.

(2) The Institute also is interested in supporting projects that promote public trust and confidence in the courts. In particular, the Institute seeks to support projects that would:

• Compile and disseminate information about practices being used by courts around the country that show the promise of enhancing public trust and confidence in the justice system; and

• Test and evaluate approaches designed to enhance public access to the courts, including demonstrations of innovative collaborative efforts between courts and community institutions (*e.g.*, schools and public libraries) to enhance access to courts by those who are not computer-literate and for whom it would be a hardship to travel to a courthouse.

Applicants should be aware that the Institute will not support new surveys to determine the sources of the public's dissatisfaction with the courts.

(3) The Institute also continues to be interested in supporting State and local court projects to implement the action plans developed by the teams that participated in the Institute-supported National Conference on Self-Represented Litigants Appearing in Court held in Scottsdale, Arizona, on November 18–21, 1999. In this regard, however, applicants are advised that Institute funds may not be used to directly or indirectly support legal representation of individuals in specific cases.

b. Education and Training for Judges and Other Key Court Personnel

The Institute is interested in supporting an array of projects that will continue to strengthen and broaden the availability of court education programs at the State, regional, and national levels. This category is divided into three subsections: (1) Innovative Educational Programs; (2) Curriculum Adaptation Projects; and (3) Scholarships.

(1) *Innovative Educational Programs.* This category includes support for the development and pilot-testing of innovative, high-quality educational programs for trial and appellate judges or court personnel that address key substantive and administrative issues of concern to the nation's courts, or help local courts or State court systems develop or enhance their capacity to deliver quality continuing education. Programs may be designed for presentation at the local, State, regional, or national level. Ordinarily, court education programs should be based on some form of assessment of the needs of the target audience; include clearly stated learning objectives that delineate the new knowledge or skills that participants will acquire (as opposed to a description of what will be taught); incorporate adult education principles and multiple teaching/learning methods; and result in the development of a disseminable curriculum as defined in section III.G.

(a) The Institute is particularly interested in the development of education programs that:

• Include innovative self-directed learning packages for use by appellate, trial, juvenile and family court judges and personnel, and distance-learning approaches for these audiences to assist those who do not have ready access to classroom-centered programs. These packages and approaches should include the appropriate use of various media and technologies such as Internet-based programming, interactive CD–ROM or computer disk-based programs, videos, or other audio and visual media, supported by written materials or manuals. They also should include a meaningful program evaluation and a self-evaluation process that assesses pre- and post-program knowledge and skills;

• Familiarize faculty with the effective use of innovative instructional technology, including methods for presenting information through web-based and other distance learning approaches such as videos and satellite teleconferences;

• Develop and test innovative methods to evaluate the effectiveness of web-based and distance education programs;

• Assist local courts, State court systems, and court systems in a geographic region to develop or enhance a comprehensive program of continuing education, training, and career development for judges and court personnel as an integral part of court operations;

• Test the effectiveness of including a variety of experiential instructional approaches in judicial branch education programs such as field studies and interchanges with community programs, organizations, and institutions;

• Encourage intergovernmental team-building, collaboration, and planning among the judicial, executive, and legislative branches of government, or courts within a metropolitan area or multi-State region; and

• Develop and test innovative short (one-half or one full day) educational programs on events on issues of critical importance to local courts or courts in a particular region.

(b) The Institute also continues to be very interested in supporting projects that would implement action plans and strategies developed by the State teams at the National Symposium on the Future of Judicial Branch Education held in St. Louis, Missouri, on October 7–9, 1999, as well as proposals from other applicants designed to assist in

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implementing and disseminating the findings and strategies discussed at the Conference.

(c) The Institute also is interested in supporting the development and testing of curricula on issues of critical importance to the courts, including those listed in the other Special Interest categories described in this Chapter, and the following:

- Materials and curricula for appellate, trial, and juvenile and family court judges addressing adolescent and youth development, including the role and impact of youth culture (cults and gangs), and the impact that exposure to violence at home, in school, and in the community has on children;
- The specific knowledge and skills needed to manage drug court programs for adults, juveniles, or families;
- Federal and State environmental laws and the effect those laws have on trial and appellate court processes in the impacted jurisdictions; and
- Training to enhance the ability of court personnel to protect their safety and that of jurors, litigants, witnesses, and other members of the public in court facilities, and in managing cases involving individuals or organizations unwilling to cooperate with legal or administrative procedures.

(2) *Curriculum Adaptation Projects.* The Board is reserving up to $200,000 to support projects that adapt a model curriculum previously developed with SJI funds and to pilot-test it to determine its appropriateness, quality, and effectiveness for inclusion in the jurisdiction's judicial branch education program. An illustrative but non-inclusive list of the curricula that may be appropriate for adaptation is contained in Appendix E.

The goal of the Curriculum Adaptation program is to provide State and local courts with sufficient support to modify a model curriculum, course module, or national or regional conference program developed with SJI funds to meet a particular State's or local jurisdiction's educational needs; pilot-test it to determine its appropriateness, quality, and effectiveness; and train instructors to present portions or all of the curriculum. It is anticipated that the adapted curriculum will become part of the grantee's ongoing educational offerings.

Only State or local courts may apply for Curriculum Adaptation funding. Application procedures may be found in Section VII.E.

(3) *Scholarships for Judges and Court Personnel.* The Institute is reserving up to $200,000 to support a scholarship program for State judges and court managers. The purposes of the Institute scholarship program are to:

- Enhance the skills, knowledge, and abilities of judges and court managers;
- Enable State court judges and court managers to attend out-of-State educational programs sponsored by national and State providers that they could not otherwise attend because of limited State, local and personal budgets; and
- Provide States, judicial educators, and the Institute with evaluative information on a range of judicial and court-related education programs.

Scholarships will be granted to individuals only for the purpose of attending an out-of-State educational program within the United States. Application procedures may be found in Section VII.F.

c. Dispute Resolution and the Courts

This category includes research, evaluation, and demonstration projects to evaluate or enhance the effectiveness of court-connected dispute resolution programs. The Institute is interested in projects that facilitate comparison among research studies by using similar measures and definitions; address the nature and operation of ADR programs within the context of the court system as a whole; and compare dispute resolution processes to attorney settlement as well as trial. Specific topics of interest include:

- Examining the timing for referrals to dispute resolution services, and the effect of different referral methods on case outcomes and time to disposition;
- Evaluating innovative court-connected dispute resolution programs for resolving complex and multi-party litigation, environmental hazards, managed health care, minor criminal cases, probate proceedings, and land-use disputes;
- Testing innovative approaches involving community partnerships, particularly in the contexts of juvenile and restorative justice, and examining the benefits such partnerships offer in ensuring the quality of dispute resolution programs;
- Evaluating innovative applications of technology to facilitate dispute resolution processes; and
- Developing methods to eliminate race, ethnic, or gender bias in court-connected dispute resolution programs, testing approaches for assuring that such programs are open to all members of the community served by the court, and assessing whether having a mediator pool that reflects the diversity of the community it serves has an impact on the use of mediation by minorities and its effectiveness.

Applicants should be aware that the Institute will not provide operational support for ongoing ADR programs or start-up costs of non-innovative ADR programs. Courts also should be advised that it is preferable for an applicant to use its own funds to support the operational costs of an innovative program and request Institute funds to support related technical assistance, training, and evaluation elements of the program.

d. Application of Technology

This category includes the testing of innovative applications of technology to improve the operation of court management systems and judicial practices at both the trial and appellate court levels.

The Institute seeks to support local experiments with promising but untested applications of technology in the courts that include an evaluation of the impact of the technology in terms of costs, benefits, and staff workload, and a training component to assure that staff is appropriately educated about the purpose and use of the new technology. In this context, "untested" includes novel applications of technology developed for the private sector that have not previously been applied to the courts.

The Institute is particularly interested in supporting efforts to:

- Test and evaluate technologies that, if successfully implemented, would significantly re-engineer the way that courts currently do business;
- Develop and test standards governing electronic access to court records by the public;
- Evaluate approaches for electronically filing pleadings, briefs, and other documents; approaches to integrate electronic filing and electronic document management; and the impact of electronic court record systems on case management and court procedures;
- Develop model rules or standards to govern the use of electronic filing and electronic court records;
- Test innovative applications of voice recognition in the adjudication process;
- Demonstrate and evaluate the use of technology to assist judicial decisionmaking;
- Evaluate the use of digital audio and video technology in making a record of court proceedings;
- Demonstrate and evaluate the use of videoconferencing technology to present testimony by witnesses in remote locations, and appellate arguments (but see the limitations specified below);
- Test and evaluate the effectiveness of automated systems that would enable courts and other justice agencies to measure their performance with respect to internal processes and customer service against benchmarks and strategic goals;
- Assess the impact of the use of multimedia CD–ROM-based briefs on the courts, parties, counsel, and the trial or appellate process; and
- Evaluate innovative applications of technology designed to prevent courthouse incidents that endanger the lives and property of judges, court personnel, and courtroom participants.

Ordinarily, the Institute will not provide support for the purchase of equipment or software to implement a technology that is commonly used by courts, such as videoconferencing between courts and jails, optical imaging for recordkeeping, and automated management information systems. (See also section X.I.2.b. regarding other limits on the use of grant funds to purchase equipment and software.)

e. Court Planning, Management, Financing

The Institute is interested in supporting projects that explore emerging issues that will affect the State courts as they enter the 21st Century, as well as projects that develop and test innovative and collaborative problem-solving approaches for managing the courts; for securing, managing, and demonstrating the effective use of the resources required to fully meet the responsibilities of the judicial branch; and for institutionalizing long-range planning processes. In particular, the Institute is interested in demonstration, evaluation, education, research, and technical assistance projects to:

- Facilitate collaboration, communication, information-sharing, and coordination between the juvenile and criminal courts, between courts and criminal justice agencies, and between courts and court users;
- Identify and assess the effects of collaborative problem-solving approaches designed to assure quality services to court users;
- Strengthen judge and court manager skills in leadership, collaborative planning, case management, facilitation, and human resource development;
- Assess the effects of innovative management approaches designed to assure quality services to court users;
- Enhance the core competencies required of court managers and staff;
- Document and evaluate effective intergovernmental team-building, collaboration, and planning among the judicial, executive, and legislative branches of government, or courts within a metropolitan area or multi-State region;
- Facilitate, demonstrate, and assess the effective use of judge-staff teams for implementing change and encouraging excellence in court operations; and
- Prevent harassment, threats, and incidents endangering the lives and property of judges, court employees, jurors, litigants, witnesses, and other members of the public in court facilities.

f. Substance Abuse

This category includes education, technical assistance, research, and evaluation projects to assist courts in handling a large volume of substance abuse-related criminal, civil, juvenile, and domestic relations cases fairly and expeditiously. (It does not include providing support for planning, establishing, operating, or enhancing a local drug court. Applicants interested in obtaining grants to plan, implement, operate, or enhance a drug court program should contact the Drug Court Program Office, Office of Justice Programs, U.S. Department of Justice.)

The Institute is particularly interested in projects to:

- Identify and test innovative methods to provide appropriate drug treatment and services to juveniles transferred to adult criminal court;
- Evaluate the effectiveness of "family drug court" programs (i.e., specialized calendars that provide intensely supervised, court-enforced substance abuse treatment and other services to families involved in child neglect, child abuse, domestic violence, or other family cases);
- Document public sector and private sector managed care programs that effectively provide court-ordered treatment and other services to adults and juveniles; and
- Develop and test State, regional, and local educational programs for judges and court staff on the implications of managed care for the provision of drug and alcohol treatment, mental health treatment, and other services to adult and juvenile offenders, neglected and abused children and their families, and persons subject to civil commitment.

g. Children and Families in Court

This category includes education, demonstration, evaluation, technical assistance, and research projects to identify and inform judges of innovative, effective approaches for handling cases involving children and families. The Institute is particularly interested in projects to:

- Develop and test guidelines, curricula, and other materials for judges that address the implications of sentencing juveniles as adults, including the need for age-appropriate services like schooling, sentencing alternatives and guidelines, and pre-trial services;
- Develop and test materials, strategies, and methods to facilitate implementation of the judicial requirements of the Adoption and Safe Families Act (ASFA);
- Develop and test collaborative approaches involving community agencies and members of the public to improve policies, procedures, rules, laws and services that affect families involved with the courts;
- Develop and test innovative protocol, procedures, educational programs, and other measures to determine and address the service needs of children exposed to family violence and the methods for mitigating those effects when issuing protection, custody, visitation, or other orders;
- Develop guidelines and materials to assist judges and other court officers and personnel in critically analyzing psychological evaluations of children and the credibility of clinical experts, their reports, and methods of evaluating children;
- Compile and distribute information about innovative and successful approaches to sentencing and treatment alternatives for serious youthful offenders;
- Develop and test restorative justice approaches that include victims of offenses committed by youthful offenders in the juvenile court process (other than victim-offender mediation programs);
- Create and test educational programs, guidelines, and monitoring systems to assure that the juvenile justice system meets the needs of girls and children of color;
- Develop and test innovative techniques for enhancing collaboration, communication, information-sharing, and coordination of juvenile and criminal courts and divisions;
- Design or evaluate information systems that not only provide aggregate data, but also are able to track individual cases, individual juveniles, and specific families, so that judges and court managers can manage their caseloads effectively, track placement and service delivery, and coordinate orders in different proceedings involving members of the same family; and
- Develop and test educational programs to assure that everyone coming into contact with courts serving children and families is treated with dignity, respect, and courtesy.

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h. Improving the Courts' Response to Domestic Violence

This category includes innovative education, demonstration, technical assistance, evaluation, and research projects to improve the fair and effective processing, consideration, and disposition of cases concerning domestic violence and gender-related violent crimes, including projects to:

- Strengthen judges' skills in leadership, collaborative planning, and facilitation of community efforts to reduce and prevent domestic violence;
- Train custody evaluators, guardians ad litem, and other independent professionals appearing in custody and visitation cases about domestic violence and the impact witnessing such violence has on children;
- Coordinate juvenile, family, and criminal court management of domestic violence cases;
- Evaluate the effectiveness of domestic violence courts (*i.e.*, specialized calendars or divisions for considering domestic violence cases and related matters), including their impact on victims, offenders, and court operations;
- Develop guidelines, curricula, or other materials that address the appropriate role of probation in monitoring domestic violence offenders;
- Assess the effectiveness of including jurisdiction over family violence in a unified family court;
- Demonstrate effective ways to encourage collaboration among courts, criminal justice agencies, and social services programs in responding to domestic violence and gender-related crimes of violence, and to assure that the courts are fully accessible to victims of domestic violence and other gender-related violent crimes;
- Develop and test methods for facilitating recognition and enforcement of protection orders issued by a State, Federal, or tribal court in another jurisdiction;
- Determine the effective use of information contained in protection order files stored in court electronic databases, consistent with the protection of the privacy and safety of victims of violence;
- Test the effectiveness of innovative sentencing and treatment approaches in cases involving domestic violence and other gender-related crimes, including sentences that incorporate regular or periodic judicial review or restorative justice measures; and
- Implement recommendations or action plans addressing the co-occurrence of domestic violence and child maltreatment that stem from the conference on Domestic Violence and Child Maltreatment—co-sponsored by SJI, the Department of Health and Human Services, and the Ford Foundation—to be held September 29–30, 2000, in Jackson, Wyoming.

Institute funds may not be used to provide operational support to programs offering direct services or compensation to victims of crimes. (Applicants interested in obtaining such operational support should contact the Office for Victims of Crime (OVC), Office of Justice Programs, U.S. Department of Justice, or the agency in their State that awards OVC funds to State and local victim assistance and compensation programs.)

i. The Relationship Between State and Federal Courts

This category includes education, research, demonstration, and evaluation projects designed to facilitate appropriate and effective communication, cooperation, and coordination between State and Federal courts. The Institute is particularly interested in innovative projects that:

(1) Develop and test curricula and disseminate information regarding effective methods being used at the trial court, State, and Circuit levels to coordinate cases and administrative activities, and share facilities; and

(2) Develop and test new approaches to:

(a) Implement the habeas corpus provisions of the Anti-Terrorism Act of 1996;

(b) Coordinate and process mass tort cases fairly and efficiently at the trial and appellate levels;

(c) Handle capital habeas corpus cases fairly and efficiently; and

(d) Share facilities, jury pools, alternative dispute resolution programs, information regarding persons on pretrial release or probation, and court services; and

(3) Involve judges in any systemic effort to examine the efficacy, fairness, and speed of capital litigation.

*C. "Think Pieces"*

This category addresses the development of essays of publishable quality directed to the court community. The essays should explore emerging issues that could result in significant changes in court process or judicial administration and their implications for the future for judges, court managers, policy-makers, and the public. Grants supporting such projects are limited to no more than $10,000. Applicants should follow the procedures for concept papers requesting an accelerated award of a grant of less than $40,000, which are explained in Section VI.A.3.(b) of this Guideline.

Possible topics include, but are not limited to:

- The impact of the "digital divide" on pro se litigants who do not have access to computers, particularly as it relates to increasing electronic access to court documents and placing court services and processes on-line;
- The implications for determining court jurisdiction in a cyberworld that may transcend State and national or other boundaries;
- An examination of the implications of cybercrime on the courts as potential victims suffering violations of privacy, security, and confidentiality;
- The implications of increasing commerce via the Internet for the State courts, including unique problems that may arise and the new rules and procedures that may be needed to address them;
- An exploration of issues related to privacy, data security, and public access to court records in our increasingly technological society;
- The potential for the creation of "cybercourts" through the use of the Internet—a "courthouseless court" instead of a paperless court—and how the courts would have to be re-engineered to accommodate such a development;
- The implications of changing expectations about the proper role of judges—from adjudicators to problem-solvers—on court procedures, court operations, and judicial selection; and
- The potential use of local court advisory councils rooted in the community as a method of promoting public trust and confidence in the court.

*D. Single Jurisdiction Projects*

The Board will set aside up to $300,000 to support projects proposed by State or local courts that address the needs of only the applicant State or local jurisdiction. A project under this section may address any of the topics included in the Special Interest Categories or Statutory Program Areas, but it need not be innovative. The Board is particularly interested in supporting projects to replicate programs, procedures, or strategies that have been developed, demonstrated, or evaluated through an SJI grant. An evaluation component is not required if a grant is awarded to replicate another successful SJI project; however, grants to support replications are subject to the same limits on amount and duration as other project grants. (See section V.) Ordinarily, the Institute will not provide support solely for the purchase of equipment or software.

Concept papers for single jurisdiction projects may be submitted by a State court system, an appellate court, or a limited or general jurisdiction trial court. All awards under this category are subject to the matching requirements set forth in sections III.O. and IX.A.8.a.

The application procedures for Single Jurisdiction grants are the same as the procedures for Project Grants (see section VII.A); however, in addition to the information presented in the program narrative, Single Jurisdiction grant applicants must also demonstrate that:

1. The proposed project is essential to meeting a critical need of the jurisdiction; and

2. The need cannot be met solely with State and local resources within the foreseeable future.

*E. Technical Assistance Grants*

The Board will set aside up to $400,000 to support the provision of technical assistance to State and local courts. The program is designed to provide State and local courts with sufficient support to obtain technical assistance to diagnose a problem, develop a response to that problem, and implement any needed changes. The Institute will reserve sufficient funds each quarter to assure the availability of technical assistance grants throughout the year.

Technical Assistance grants are limited to no more than $30,000 each, and may cover the cost of obtaining the services of expert consultants; travel by a team of officials from one court to examine a practice, program, or facility in another jurisdiction that the applicant court is interested in replicating; or both. Technical assistance grant funds ordinarily may not be used to support production of a videotape. Normally, the technical assistance must be completed within 12 months after the start-date of the grant.

Only a State or local court may apply for a Technical Assistance grant. The application procedures may be found in section VII.D.

**III. Definitions**

The following definitions apply for the purposes of this Guideline:

*A. Accelerated Award*

A grant of up to $40,000 awarded on the basis of a concept paper (including a budget and budget narrative) when the need for and benefits of the proposed project are clear and an application would not be needed to provide additional information about the project's methodology and budget. See section VI.C.1. for more information about accelerated awards.

*B. Acknowledgment of SJI Support*

The prominent display of the SJI logo on the front cover of a written product or in the opening frames of a videotape developed with Institute support, and inclusion of a brief statement on the inside front cover or title page of the document or the opening frames of the videotape identifying the grant number. See section IX.A.11.a.(2) for the precise wording of the statement.

*C. Application*

A formal request for an Institute grant that is invited by the Board of Directors after approval of a concept paper. A complete application consists of: Form A—Application; Form B—Certificate of State Approval (for applications from local trial or appellate courts or agencies—see Appendix H); Form C—Project Budget/Tabular Format or Form C1—Project Budget/Spreadsheet Format; Form D—Assurances; Disclosure of Lobbying Activities; a detailed 25-page description of the need for the project and all related tasks, including the time frame for completion of each task, and staffing requirements; and a detailed budget narrative that provides the basis for all costs.

See section VII. for a complete description of application submission requirements.

*D. Close-Out*

The process by which the Institute determines that all applicable administrative and financial actions and all required grant work have been completed by both the grantee and the Institute.

*E. Concept Paper*

A proposal of no more than eight double-spaced pages that outlines the nature and scope of a project that would be supported with State Justice Institute funds, accompanied by a preliminary budget. See section VI. for a complete description of concept paper submission requirements.

*F. Continuation Grant*

A grant lasting no longer than 15 months to permit completion of activities initiated under an existing Institute grant or enhancement of the products or services produced during the prior grant period. See section VII.B for a complete description of continuation application requirements.

*G. Curriculum*

The materials needed to replicate an education or training program developed with grant funds including, but not limited to: The learning objectives; the presentation methods; a sample agenda or schedule; an outline of presentations and relevant instructors' notes; copies of overhead transparencies or other visual aids; exercises, case studies, hypotheticals, quizzes, and other materials for involving the participants; background materials for participants; evaluation forms; and suggestions for replicating the program, including possible faculty or the preferred qualifications or experience of those selected as faculty.

*H. Curriculum Adaptation Grant*

A grant of up to $20,000 to support an adaptation and pilot test of an educational program previously developed with SJI funds. See section VII.E. for a complete description of curriculum grant application requirements.

*I. Designated Agency or Council*

The office or judicial body which is authorized under State law or by delegation from the State Supreme Court to approve applications for funds and to receive, administer, and be accountable for those funds.

*J. Disclaimer*

A brief statement that must be included at the beginning of a document or in the opening frames of a videotape produced with State Justice Institute funding that specifies that the points of view expressed in the document or tape do not necessarily represent the official position or policies of the Institute. See section IX.A.11.a.(2) for the precise wording of this statement.

*K. Grant Adjustment*

A change in the design or scope of a project from that described in the approved application, acknowledged in writing by the Institute. See section XI.A. for a list of the types of changes requiring a formal grant adjustment. Ordinarily, changes requiring a Grant Adjustment (including budget reallocations between direct cost categories that individually or cumulatively exceed five percent of the approved original budget or the most recently approved revised budget) should be requested at least 30 days in advance of the implementation of the requested change.

*L. Grantee*

The organization, entity, or individual to which an award of Institute funds is made. For a grant based on an application from a State or local court,

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*grantee* refers to the State Supreme Court or its designee.

*M. Human Subjects*

Individuals who are participants in an experimental procedure or who are asked to provide information about themselves, their attitudes, feelings, opinions, and/or experiences through an interview, questionnaire, or other data collection technique.

*N. Institute*

The State Justice Institute.

*O. Match*

The portion of project costs not borne by the Institute. Courts or other units of State or local government (not including publicly supported institutions of higher education) must provide a match from private or public sources of not less than 50% of the total amount of the Institute's award. 42 U.S.C. 10705(d). Match includes both in-kind and cash contributions. Cash match is the direct outlay of funds by the grantee to support the project. In-kind match consists of contributions of time, services, space, supplies, etc., made to the project by the grantee or others (*e.g.*, advisory board members) working directly on the project. Under normal circumstances, allowable match may be incurred only during the project period. When appropriate, and with the prior written permission of the Institute, match may be incurred from the date of the Board of Directors' approval of an award. Match does not include project-related income such as tuition or revenue from the sale of grant products, or the time of participants attending an education program. Amounts contributed as cash or in-kind match must be reported quarterly in the same manner as grant funds on the Institute's Financial Status Report. Cash or in-kind match may not be recovered through the sale of grant products during or following the grant period.

*P. Ongoing Support Grant*

A grant lasting 36 months to support a project that is national in scope and that provides the State courts with services, programs or products for which there is a continuing important need. See section VII.C. for a complete description of ongoing support application requirements.

*Q. Products*

Tangible materials resulting from funded projects including, but not limited to: Curricula; monographs; reports; books; articles; manuals; handbooks; benchbooks; guidelines; videotapes; audiotapes; computer software; and CD–ROM disks.

*R. Project Grant*

An initial grant lasting up to 15 months to support an innovative education, research, demonstration, or technical assistance project that can improve the administration of justice in State courts nationwide. Ordinarily, a project grant may not exceed $200,000 a year; however, a grant in excess of $150,000 is likely to be rare and awarded only to support highly promising projects that will have a significant national impact. See section VII.A. for a complete description of project grant application requirements.

*S. Project-Related Income*

Interest, royalties, registration and tuition fees, proceeds from the sale of products, and other earnings generated as a result of a State Justice Institute grant. Project-related income must be used to offset project year-to-date expenses and may not be counted as match. For a more complete description of different types of project-related income, see section X.G.

*T. Scholarship*

A grant of up to $1,500 awarded to a judge or court employee to cover the cost of tuition for and transportation to and from an out-of-State educational program within the United States. See section VII.F. for a complete description of scholarship application requirements.

*U. Single Jurisdiction Project Grant*

A grant that addresses a critical but not necessarily innovative need of a single State or local jurisdiction that cannot be met solely with State and/or local resources within the foreseeable future. See section II.D. for a description of single jurisdiction projects and sections VI. and VII.A. for a complete description of single jurisdiction project application requirements.

*V. Special Condition*

A requirement attached to a grant award that is unique to a particular project.

*W. State Supreme Court*

The highest appellate court in a State, or, for the purposes of the Institute program, a constitutionally or legislatively established judicial council that acts in place of that court. In States having more than one court with final appellate authority, *State Supreme Court* means that court which also has administrative responsibility for the State's judicial system. *State Supreme Court* also includes the office of the court or council, if any, it designates to perform the functions described in this Guideline.

*X. Subgrantee*

A State or local court which receives Institute funds through the State Supreme Court.

*Y. Technical Assistance Grant*

A grant, lasting up to 12 months, of up to $30,000 to a State or local court to support outside expert assistance in diagnosing a problem and developing and implementing a response to that problem. See section VII.D. for a complete description of technical assistance grant application requirements.

**IV. Eligibility for Award**

The Institute is authorized by Congress to award grants, cooperative agreements, and contracts to the following entities and types of organizations:

A. *State and local courts and their agencies (42 U.S.C. 10705(b)(1)(A)).* Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court or its designated agency or council. The latter shall receive all Institute funds awarded to such courts and be responsible for assuring proper administration of Institute funds, in accordance with section X.C.2. of this Guideline. A list of persons to contact in each State regarding approval of applications from State and local courts and administration of Institute grants to those courts is contained in Appendix C.

B. *National nonprofit organizations controlled by, operating in conjunction with, and serving the judicial branches of State governments (42 U.S.C. 10705(b)(1)(B)).*

C. *National nonprofit organizations for the education and training of judges and support personnel of the judicial branch of State governments (42 U.S.C. 10705(b)(1)(C)).* An applicant is considered a national education and training applicant under section 10705(b)(1)(C) if:

1. the principal purpose or activity of the applicant is to provide education and training to State and local judges and court personnel; and

2. the applicant demonstrates a record of substantial experience in the field of judicial education and training.

D. *Other eligible grant recipients (42 U.S.C. 10705(b)(2)(A)–(D)).*

1. Provided that the objectives of the project can be served better, the Institute is also authorized to make awards to:



a. Nonprofit organizations with expertise in judicial administration;

b. Institutions of higher education;

c. Individuals, partnerships, firms, corporations (for-profit organizations must waive their fees); and

d. Private agencies with expertise in judicial administration.

2. The Institute may also make awards to Federal, State or local agencies and institutions other than courts for services that cannot be adequately provided through nongovernmental arrangements (42 U.S.C. 10705(b)(3)).

E. *Inter-agency Agreements.* The Institute may enter into inter-agency agreements with Federal agencies (42 U.S.C. 10705(b)(4)) and private funders to support projects consistent with the purposes of the State Justice Institute Act.

**V. Types of Projects and Grants; Size of Awards**

*A. Types of Projects*

The Institute supports the following general types of projects:

1. Education and training;
2. Research and evaluation;
3. Demonstration; and
4. Technical assistance.

*B. Types of Grants*

The Institute supports the following types of grants:

1. Project Grants.

See sections II.B. and D., VI., and VII.A. The Institute places no annual limitations on the overall number of project grant awards or the number of awards in each special interest category.

2. Continuation Grants.

See sections III.F. and VII.B. In FY 2001, the Institute is allocating no more than 25% of available grant funds for continuation and ongoing support grants.

3. Ongoing Support Grants.

See sections III.P. and VII.C. See Continuation Grants above for limitations on funding availability in FY 2001.

4. Technical Assistance Grants.

See section II.E. In FY 2001, the Institute is reserving up to $400,000 for these grants.

5. Curriculum Adaptation Grants.

See sections II.B.2.b.(2), III.G., and VII.E. In FY 2001, the Institute is reserving up to $200,000 for adaptations of curricula previously developed with SJI funding.

6. Scholarships.

See section II.B.2.b.(3), III.T, and VII.F. In FY 2001, the Institute is reserving up to $200,000 for scholarships for judges and court employees. The Institute will reserve sufficient funds each quarter to assure the availability of scholarships throughout the year.

*C. Maximum Size of Awards*

1. Except as specified below, applicants for new project grants and continuation grants may request funding in amounts up to $200,000 for 15 months, although new and continuation awards in excess of $150,000 are likely to be rare and to be made, if at all, only for highly promising proposals that will have a significant impact nationally.

2. Applicants for ongoing support grants may request funding in amounts up to $600,000 over three years, although awards in excess of $450,000 are likely to be rare. The Institute will ordinarily release funds for the second and third years of ongoing support grants on the following conditions: (1) The project is performing satisfactorily; (2) appropriations are available to support the project that fiscal year; and (3) the Board of Directors determines that the project continues to fall within the Institute's priorities.

3. Applicants for technical assistance grants may request funding in amounts up to $30,000.

4. Applicants for curriculum adaptation grants may request funding in amounts up to $20,000.

5. Applicants for scholarships may request funding in amounts up to $1,500.

*D. Length of Grant Periods*

1. Grant periods for all new and continuation projects ordinarily may not exceed 15 months.

2. Grant periods for ongoing support grants ordinarily may not exceed 36 months.

3. Grant periods for technical assistance grants and curriculum adaptation grants ordinarily may not exceed 12 months.

**VI. Concept Papers**

Concept papers are an extremely important part of the application process because they enable the Institute to learn the program areas of primary interest to the courts and to explore innovative ideas, without imposing heavy burdens on prospective applicants. The use of concept papers also permits the Institute to better project the nature and amount of grant awards. The concept paper requirement and the submission deadlines for concept papers and applications may be waived by the Executive Director for good cause (*e.g.*, the proposed project could provide a significant benefit to the State courts or the opportunity to conduct the project did not arise until after the deadline).

*A. Format and Content*

All concept papers must include a cover sheet, a program narrative, and a preliminary budget.

1. The Cover Sheet

The cover sheet for all concept papers must contain:

a. A title that clearly describes the proposed project;

b. The name and address of the court, organization, or individual submitting the paper;

c. The name, title, address (if different from that in b.), and telephone number of a contact person who can provide further information about the paper;

d. The letter of the Special Interest Category (see section II.B.2.) or the number of the statutory Program Area (see section II.A.) that the proposed project addresses most directly; and

e. The estimated length of the proposed project.

Applicants requesting the Board to waive the application requirement and approve a grant of less than $40,000 based on the concept paper should add APPLICATION WAIVER REQUESTED to the information on the cover page.

2. The Program Narrative

The program narrative of a concept paper should be no longer than necessary, but must not exceed 8 double-spaced pages on 8½ by 11 inch paper. Margins must be at least 1 inch and type size must be at least 12 point and 12 cpi. The pages should be numbered. The narrative should describe:

a. *Why is this project needed and how would it benefit State courts?* If the project is to be conducted in a specific location(s), applicants should discuss the particular needs of the project site(s) to be addressed by the project, why those needs are not being met through the use of existing materials, programs, procedures, services, or other resources, and the benefits that would be realized by the proposed site(s).

If the project is not site-specific, applicants should discuss the problems that the proposed project would address, why existing materials, programs, procedures, services, or other resources cannot adequately resolve those problems, and the benefits that would be realized from the project by State courts generally.

b. *What would be done if a grant is awarded?* Applicants should include a summary description of the project to be conducted and the approach to be taken, including the anticipated length of the

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grant period. Applicants requesting a waiver of the application requirement for a grant of less than $40,000 should explain the proposed methods for conducting the project as fully as space allows, and include a detailed task schedule as an attachment to the concept paper.

c. *How would the effects and quality of the project be determined?* Applicants should include a summary description of how the project would be evaluated, including the criteria that would be used to measure its success or impact.

d. *How would others find out about the project and be able to use the results?* Applicants should describe the products that would result, the degree to which they would be applicable to courts across the nation, and to whom the products and results of the project would be disseminated in addition to the SJI-designated libraries (*e.g.*, State chief justices, specified groups of trial judges, State court administrators, specified groups of trial court administrators, State judicial educators, or other audiences). Applicants proposing to develop web-based products should provide for sending a hard-copy document to the SJI-designated libraries and other appropriate audiences to alert them to the availability of the web site or electronic product (*e.g.*, a written report with a reference to the web site, a press release with the web site address and screens printed from the web site, etc.).

3. The Budget

a. *Preliminary Budget.* A preliminary budget must be attached to the narrative that includes the information specified on Form E included in Appendix G of this Guideline. Applicants should be aware that prior written Institute approval is required for any consultant rate in excess of $300 per day and that Institute funds may not be used to pay a consultant in excess of $900 per day.

b. *Concept Papers Requesting Accelerated Award of a Grant of Less than $40,000.* Applicants requesting a waiver of the application requirement and approval of a grant based on a concept paper under C. in this section must attach to Form E (see Appendix G) a budget narrative that explains the basis for each of the items listed and indicates whether the costs would be paid from grant funds, through a matching contribution, or from other sources. Courts requesting an accelerated award must also attach a Certificate of State Approval—Form B (Appendix H) signed by the Chief Justice of the State Supreme Court or the Chief Justice's designee.

4. Letters of Cooperation or Support

The Institute encourages concept paper applicants to attach letters of cooperation and support from the courts and related agencies that would be involved in or directly affected by the proposed project. Letters of support may be sent under separate cover; however, to ensure sufficient time to bring them to the Board's attention, support letters sent under separate cover must be received no later than January 5, 2001.

5. Page Limits

a. The Institute will not accept concept papers with program narratives exceeding eight double-spaced pages (see A.2. of this section). This page limit does not include the cover page, budget form, letters of cooperation or support, or, for papers requesting accelerated awards, the budget narrative and task schedule. Additional material should not be attached unless it is essential to impart a clear understanding of the project.

b. Applicants submitting more than one concept paper may include material that would be identical in each concept paper in a cover letter. This material will be incorporated by reference into each paper and counted against the eight-page limit for each. A copy of the cover letter should be attached to each copy of each concept paper.

6. Sample Concept Papers

Sample concept papers from previous funding cycles are available from the Institute upon request.

*B. Submission Requirements*

An original and three copies of all concept papers submitted for consideration in Fiscal Year 2001 must be sent by first class or overnight mail or by courier (but not by fax or e-mail) no later than November 22, 2000.

A postmark or courier receipt will constitute evidence of the submission date. All envelopes containing concept papers should be marked CONCEPT PAPER and sent to: State Justice Institute, 1650 King Street, Suite 600, Alexandria, Virginia 22314.

Receipt of each concept paper will be acknowledged by the Institute in writing. Extensions of the deadlines for submission of concept papers will not be granted.

*C. Institute Review*

1. Review Process

Concept papers will be reviewed competitively by the Institute's Board of Directors. Institute staff will prepare a narrative summary and a rating sheet assigning points for each relevant selection criterion for those concept papers which fall within the scope of the Institute's funding program and merit serious consideration by the Board. Staff will also prepare a list of those papers that, in the judgment of the Executive Director, propose projects that lie outside the scope of the Institute's program or are not likely to merit serious consideration by the Board. The narrative summaries, rating sheets, and list of non-reviewed papers will be presented to the Board for its review. Committees of the Board will review concept paper summaries within assigned program areas and prepare recommendations for the full Board. The full Board of Directors will then decide which concept paper applicants will be invited to submit formal applications for funding. The decision to invite an application is solely that of the Board of Directors.

The Board may waive the application requirement and approve a grant based on a concept paper for a project requiring less than $40,000 when the need for and benefits of the project are clear and the methodology and budget require little additional explanation. Applicants considering whether to request consideration for an accelerated award should make certain that the proposed budget is sufficient to accomplish the project objectives in a quality manner. Because the Institute's experience has been that projects to conduct empirical research or a program evaluation ordinarily require a more thorough explanation of the methodology to be used than can be provided within the space limitations of a concept paper, the Board is unlikely to waive the application requirement for such projects.

2. Selection Criteria

a. All concept papers will be evaluated on the basis of the following criteria:

(1) The demonstration of need for the project;

(2) The soundness and innovativeness of the approach described;

(3) The benefits to be derived from the project;

(4) The reasonableness of the proposed budget;

(5) The proposed project's relationship to one of the "Special Interest" categories set forth in section II.B; and

(6) The degree to which the findings, procedures, training, technology, or other results of the project can be transferred to other jurisdictions.

Single jurisdiction concept papers will be rated on the proposed project's relation to one of the "Special Interest"



categories set forth in section II.B. and the special requirements listed in section II.D. and VII.A.

b. In determining which concept papers will be approved for award or selected for development into full applications, the Institute will also consider the availability of financial assistance from other sources for the project; the amount and nature (cash or in-kind) of the applicant's anticipated match; whether the applicant is a State court, a national court support or education organization, a non-court unit of government, or another type of entity eligible to receive grants under the Institute's enabling legislation (see 42 U.S.C. 10705(b)), as amended, and section IV of this Grant Guideline); the extent to which the proposed project would also benefit the Federal courts or help the State courts enforce Federal constitutional and legislative requirements; and the level of appropriations available to the Institute in the current year and the amount expected to be available in succeeding fiscal years.

3. Notification to Applicants

The Institute will send written notice to all persons submitting concept papers, informing them of the Board's decisions regarding their papers and of the key issues and questions that arose during the review process. A decision by the Board not to invite an application may not be appealed, but applicants may resubmit the concept paper or a revision thereof in a subsequent funding cycle. The Institute will also notify the relevant State contact (see Appendix C) when the Board invites applications submitted by courts within that State or that specify a participating site within that State.

**VII. Applications**

*A. Project Grants*

An application for a Project Grant must include an application form; budget forms (with appropriate documentation); a project abstract and program narrative; a disclosure of lobbying form, when applicable; and certain certifications and assurances. The Institute will send the required application forms to applicants invited to submit a full application.

1. Forms

a. Application Form (FORM A)

The application form requests basic information regarding the proposed project, the applicant, and the total amount of funding requested from the Institute. It also requires the signature of an individual authorized to certify on behalf of the applicant that the information contained in the application is true and complete; that submission of the application has been authorized by the applicant; and that if funding for the proposed project is approved, the applicant will comply with the requirements and conditions of the award, including the assurances set forth in Form D.

b. Certificate of State Approval (FORM B)

An application from a State or local court must include a copy of FORM B signed by the State's Chief Justice or Chief Judge, the director of the designated agency, or the head of the designated council. The signature denotes that the proposed project has been approved by the State's highest court or the agency or council it has designated. It denotes further that if funding for the project is approved by the Institute, the court or the specified designee will receive, administer, and be accountable for the awarded funds.

c. Budget Forms (FORM C or C1)

Applicants may submit the proposed project budget either in the tabular format of FORM C or in the spreadsheet format of FORM C1. Applicants requesting $100,000 or more are strongly encouraged to use the spreadsheet format. If the proposed project period is for more than a year, a separate form should be submitted for each year or portion of a year for which grant support is requested, as well as for the total length of the project.

In addition to FORM C or C1, applicants must provide a detailed budget narrative providing an explanation of the basis for the estimates in each budget category. (See 4. below in this section.)

If funds from other sources are required to conduct the project, either as match or to support other aspects of the project, the source, current status of the request, and anticipated decision date must be provided.

d. Assurances (FORM D)

This form lists the statutory, regulatory, and policy requirements with which recipients of Institute funds must comply.

e. Disclosure of Lobbying Activities

Applicants other than units of State or local government are required to disclose whether they, or another entity that is part of the same organization as the applicant, have advocated a position before Congress on any issue, and to identify the specific subjects of their lobbying efforts. (See section IX.A.7.)

2. Project Abstract

The abstract should highlight the purposes, goals, methods and anticipated benefits of the proposed project. It should not exceed 1 single-spaced page on 8½ by 11 inch paper.

3. Program Narrative

The program narrative for an application may not exceed 25 double-spaced pages on 8½ by 11 inch paper. Margins must be at least 1 inch, and type size must be at least 12-point and 12 cpi. The pages should be numbered. This page limit does not include the forms, the abstract, the budget narrative, and any appendices containing resumes and letters of cooperation or endorsement. Additional background material should be attached only if it is essential to impart a clear understanding of the proposed project. Numerous and lengthy appendices are strongly discouraged.

The program narrative should address the following topics:

a. Project Objectives

The applicant should include a clear, concise statement of what the proposed project is intended to accomplish. In stating the objectives of the project, applicants should focus on the overall programmatic objective (*e.g.*, to enhance understanding and skills regarding a specific subject, or to determine how a certain procedure affects the court and litigants) rather than on operational objectives (*e.g.*, provide training for 32 judges and court managers, or review data from 300 cases).

b. Program Areas To Be Covered

The applicant should note the Special Interest Category or Categories that are addressed by the proposed project (see section II.B.). If the proposed project does not fall within one of the Institute's Special Interest Categories, the applicant should list the Statutory Program Area or Areas that are addressed by the proposed project. (See section II.A.)

c. Need for the Project

If the project is to be conducted in a specific location(s), the applicant should discuss the particular needs of the project site(s) to be addressed by the project and why those needs are not being met through the use of existing materials, programs, procedures, services, or other resources.

If the project is not site-specific, the applicant should discuss the problems that the proposed project would address, and why existing materials, programs, procedures, services, or other resources cannot adequately resolve

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those problems. The discussion should include specific references to the relevant literature and to the experience in the field.

d. Tasks, Methods and Evaluation

(1) *Tasks and Methods.* The applicant should delineate the tasks to be performed in achieving the project objectives and the methods to be used for accomplishing each task. For example:

(a) *For research and evaluation projects,* the applicant should include the data sources, data collection strategies, variables to be examined, and analytic procedures to be used for conducting the research or evaluation and ensuring the validity and general applicability of the results. For projects involving human subjects, the discussion of methods should address the procedures for obtaining respondents' informed consent, ensuring the respondents' privacy and freedom from risk or harm, and the protection of others who are not the subjects of research but would be affected by the research. If the potential exists for risk or harm to the human subjects, a discussion should be included that explains the value of the proposed research and the methods to be used to minimize or eliminate such risk.

(b) *For education and training projects,* the applicant should include the adult education techniques to be used in designing and presenting the program, including the teaching/learning objectives of the educational design, the teaching methods to be used, and the opportunities for structured interaction among the participants; how faculty would be recruited, selected, and trained; the proposed number and length of the conferences, courses, seminars, or workshops to be conducted and the estimated number of persons who would attend them; the materials to be provided and how they would be developed; and the cost to participants.

(c) *For demonstration projects,* the applicant should include the demonstration sites and the reasons they were selected, or if the sites have not been chosen, how they would be identified and their cooperation obtained; and how the program or procedures would be implemented and monitored.

(d) *For technical assistance projects,* the applicant should explain the types of assistance that would be provided; the particular issues and problems for which assistance would be provided; how requests would be obtained and the type of assistance determined; how suitable providers would be selected and briefed; how reports would be reviewed; and the cost to recipients.

(2) *Evaluation.* Every project design must include an evaluation plan to determine whether the project met its objectives. The evaluation should be designed to provide an objective and independent assessment of the effectiveness or usefulness of the training or services provided; the impact of the procedures, technology, or services tested; or the validity and applicability of the research conducted. In addition, where appropriate, the evaluation process should be designed to provide ongoing or periodic feedback on the effectiveness or utility of the project in order to promote its continuing improvement. The plan should present the qualifications of the evaluator(s); describe the criteria that would be used to evaluate the project's effectiveness in meeting its objectives; explain how the evaluation would be conducted, including the specific data collection and analysis techniques to be used; discuss why this approach would be appropriate; and present a schedule for completion of the evaluation within the proposed project period.

The evaluation plan should be appropriate to the type of project proposed. For example:

(a) *Research.* An evaluation approach suited to many research projects is a review by an advisory panel of the research methodology, data collection instruments, preliminary analyses, and products as they are drafted. The panel should be comprised of independent researchers and practitioners representing the perspectives affected by the proposed project.

(b) *Education and Training.* The most valuable approaches to evaluating educational or training programs reinforce the participants' learning experience while providing useful feedback on the impact of the program and possible areas for improvement. One appropriate evaluation approach is to assess the acquisition of new knowledge, skills, attitudes or understanding through participant feedback on the seminar or training event. Such feedback might include a self-assessment on what was learned along with the participant's response to the quality and effectiveness of faculty presentations, the format of sessions, the value or usefulness of the material presented, and other relevant factors. Another appropriate approach would be to use an independent observer who might request both verbal and written responses from participants in the program. When an education project involves the development of curricular materials, an advisory panel of relevant experts can be coupled with a test of the curriculum to obtain the reactions of participants and faculty as indicated above.

(c) *Demonstration.* The evaluation plan for a demonstration project should encompass an assessment of program effectiveness (*e.g.,* how well did it work?); user satisfaction, if appropriate; the cost-effectiveness of the program; a process analysis of the program (*e.g.,* was the program implemented as designed, and/or did it provide the services intended to the targeted population?); the impact of the program (*e.g.,* what effect did the program have on the court, and/or what benefits resulted from the program?); and the replicability of the program or components of the program.

(d) *Technical Assistance.* For technical assistance projects, applicants should explain how the quality, timeliness, and impact of the assistance provided would be determined, and develop a mechanism for feedback from both the users and providers of the technical assistance.

Evaluation plans involving human subjects should include a discussion of the procedures for obtaining respondents' informed consent, ensuring the respondents' privacy and freedom from risk or harm, and the protection of others who are not the subjects of evaluation but would be affected by it. Other than the provision of confidentiality to respondents, human subject protection issues ordinarily are not applicable to participants evaluating an education program.

e. Project Management

The applicant should present a detailed management plan, including the starting and completion date for each task; the time commitments to the project of key staff and their responsibilities regarding each project task; and the procedures that would ensure that all tasks are performed on time, within budget, and at the highest level of quality. In preparing the project time line, Gantt Chart, or schedule, applicants should make certain that all project activities, including publication or reproduction of project products and their initial dissemination, would occur within the proposed project period. The management plan must also provide for the submission of Quarterly Progress and Financial Reports within 30 days after the close of each calendar quarter (*i.e.,* no later than January 30, April 30, July 30, and October 30).

Applicants should be aware that the Institute is unlikely to approve more than one limited extension of the grant period. Therefore, the management plan should be as realistic as possible and fully reflect the time commitments of the proposed project staff and consultants.



f. Products

The program narrative in the application should contain a description of the products to be developed (*e.g.,* training curricula and materials, videotapes, articles, manuals, or handbooks), including when they would be submitted to the Institute. The budget should include the cost of producing and disseminating the product to each in-State SJI library, State chief justice, State court administrator, and other judges or court personnel.

(1) *Dissemination Plan.* The application must explain how and to whom the products would be disseminated; describe how they would benefit the State courts, including how they could be used by judges and court personnel; identify development, production, and dissemination costs covered by the project budget; and present the basis on which products and services developed or provided under the grant would be offered to the courts community and the public at large (*i.e.,* whether products would be distributed at no cost to recipients, or if costs are involved, the reason for charging recipients and the estimated price of the product). (See section IX.A.11.b.) Ordinarily, applicants should schedule all product preparation and distribution activities within the project period.

A copy of each product must be sent to the library established in each State to collect the materials developed with Institute support. (A list of these libraries is contained in Appendix D.) Applicants proposing to develop web-based products should provide for sending a hard-copy document to the SJI-designated libraries and other appropriate audiences to alert them to the availability of the web site or electronic product (*e.g.,* a written report with a reference to the web site, a press release with the web site address and screens printed from the web site, etc.).

Seventeen (17) copies of all project products must be submitted to the Institute. A master copy of each videotape, in addition to 17 copies of each videotape product, must also be provided to the Institute.

(2) *Types of Products and Press Releases.* The type of product to be prepared depends on the nature of the project. For example, in most instances, the products of a research, evaluation, or demonstration project should include an article summarizing the project findings that is publishable in a journal serving the courts community nationally, an executive summary that would be disseminated to the project's primary audience, or both. Applicants proposing to conduct empirical research or evaluation projects with national import should describe how they would make their data available for secondary analysis after the grant period. (See section IX.A.14.a.).

The curricula and other products developed by education and training projects should be designed for use outside the classroom so that they may be used again by original participants and others in the course of their duties.

In addition, recipients of project grants must prepare a press release describing the project and announcing the results, and distribute the release to a list of national and State judicial branch organizations. SJI will provide press release guidelines and a list of recipients to grantees at least 30 days before the end of the grant period.

(3) *Institute Review.* Applicants must submit a final draft of all written grant products to the Institute for review and approval at least 30 days before the products are submitted for publication or reproduction. For products in a videotape or CD–ROM format, applicants must provide for incremental Institute review of the product at the treatment, script, rough-cut, and final stages of development, or their equivalents. No grant funds may be obligated for publication or reproduction of a final grant product without the written approval of the Institute. (See section IX.A.11.e.)

(4) *Acknowledgment, Disclaimer, and Logo.* Applicants must also include in all project products a prominent acknowledgment that support was received from the Institute and a disclaimer paragraph based on the example provided in section IX.A.11.a.(2) of the Guideline. The "SJI" logo must appear on the front cover of a written product, or in the opening frames of a video, unless the Institute approves another placement.

g. Applicant Status

An applicant that is not a State or local court and has not received a grant from the Institute within the past two years should state whether it is either a national non-profit organization controlled by, operating in conjunction with, and serving the judicial branches of State governments; or a national non-profit organization for the education and training of State court judges and support personnel. See section IV. If the applicant is a nonjudicial unit of Federal, State, or local government, it must explain whether the proposed services could be adequately provided by non-governmental entities.

h. Staff Capability

The applicant should include a summary of the training and experience of the key staff members and consultants that qualify them for conducting and managing the proposed project. Resumes of identified staff should be attached to the application. If one or more key staff members and consultants are not known at the time of the application, a description of the criteria that would be used to select persons for these positions should be included. The applicant also should identify the person who would be responsible for managing and reporting on the finances of the proposed project.

i. Organizational Capacity

Applicants that have not received a grant from the Institute within the past two years should include a statement describing their capacity to administer grant funds, including the financial systems used to monitor project expenditures (and income, if any), and a summary of their past experience in administering grants, as well as any resources or capabilities that they have that would particularly assist in the successful completion of the project.

Unless requested otherwise, an applicant that has received a grant from the Institute within the past two years should describe only the changes in its organizational capacity, tax status, or financial capability that may affect its capacity to administer a grant.

If the applicant is a non-profit organization (other than a university), it must also provide documentation of its 501(c) tax-exempt status as determined by the Internal Revenue Service and a copy of a current certified audit report. For purposes of this requirement, "current" means no earlier than two years prior to the present calendar year.

If a current audit report is not available, the Institute will require the organization to complete a financial capability questionnaire which must be signed by a Certified Public Accountant. Other applicants may be required to provide a current audit report, a financial capability questionnaire, or both, if specifically requested to do so by the Institute.

j. Statement of Lobbying Activities

Non-governmental applicants must submit the Institute's Disclosure of Lobbying Activities Form, which documents whether they, or another entity that is a part of the same organization as the applicant, have advocated a position before Congress on

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any issue, and identifies the specific subjects of their lobbying efforts.

k. Letters of Cooperation or Support

If the cooperation of courts, organizations, agencies, or individuals other than the applicant is required to conduct the project, the applicant should attach written assurances of cooperation and availability to the application, or send them under separate cover. To ensure sufficient time to bring them to the Board's attention, letters of support sent under separate cover must be received no more than 30 days after the deadline for mailing the application.

4. Budget Narrative

The budget narrative should provide the basis for the computation of all project-related costs. When the proposed project would be partially supported by grants from other funding sources, applicants should make clear what costs would be covered by those other grants. Additional background or schedules may be attached if they are essential to obtaining a clear understanding of the proposed budget. Numerous and lengthy appendices are strongly discouraged.

The budget narrative should cover the costs of all components of the project and clearly identify costs attributable to the project evaluation. Under OMB grant guidelines incorporated by reference in this Guideline, grant funds may not be used to purchase alcoholic beverages.

a. Justification of Personnel Compensation

The applicant should set forth the percentages of time to be devoted by the individuals who would staff the proposed project, the annual salary of each of those persons, and the number of work days per year used for calculating the percentages of time or daily rates of those individuals. The applicant should explain any deviations from current rates or established written organizational policies. If grant funds are requested to pay the salary and related costs for a current employee of a court or other unit of government, the applicant should explain why this would not constitute a supplantation of State or local funds in violation of 42 U.S.C. 10706 (d)(1). An acceptable explanation may be that the position to be filled is a new one established in conjunction with the project or that the grant funds would support only the portion of the employee's time that would be dedicated to new or additional duties related to the project.

b. Fringe Benefit Computation

The applicant should provide a description of the fringe benefits provided to employees. If percentages are used, the authority for such use should be presented, as well as a description of the elements included in the determination of the percentage rate.

c. Consultant/Contractual Services and Honoraria

The applicant should describe the tasks each consultant would perform, the estimated total amount to be paid to each consultant, the basis for compensation rates (*e.g.*, the number of days multiplied by the daily consultant rates), and the method for selection. Rates for consultant services must be set in accordance with section X.I.2.c. Honorarium payments must be justified in the same manner as other consultant payments. Prior written Institute approval is required for any consultant rate in excess of $300 per day; Institute funds may not be used to pay a consultant more than $900 per day.

d. Travel

Transportation costs and per diem rates must comply with the policies of the applicant organization. If the applicant does not have an established travel policy, then travel rates must be consistent with those established by the Institute or the Federal Government. (A copy of the Institute's travel policy is available upon request.) The budget narrative should include an explanation of the rate used, including the components of the per diem rate and the basis for the estimated transportation expenses. The purpose of the travel should also be included in the narrative.

e. Equipment

Grant funds may be used to purchase only the equipment necessary to demonstrate a new technological application in a court or that is otherwise essential to accomplishing the objectives of the project. Equipment purchases to support basic court operations ordinarily will not be approved. The applicant should describe the equipment to be purchased or leased and explain why the acquisition of that equipment is essential to accomplish the project's goals and objectives. The narrative should clearly identify which equipment is to be leased and which is to be purchased. The method of procurement should also be described. Purchases for automatic data processing equipment must comply with section X.I.2.b.

f. Supplies

The applicant should provide a general description of the supplies necessary to accomplish the goals and objectives of the grant. In addition, the applicant should provide the basis for the amount requested for this expenditure category.

g. Construction

Construction expenses are prohibited except for the limited purposes set forth in section IX.A.16.b. Any allowable construction or renovation expense should be described in detail in the budget narrative.

h. Telephone

Applicants should include anticipated telephone charges, distinguishing between monthly charges and long distance charges in the budget narrative. Also, applicants should provide the basis used to calculate the monthly and long distance estimates.

i. Postage

Anticipated postage costs for project-related mailings, including distribution of the final product(s), should be described in the budget narrative. The cost of special mailings, such as for a survey or for announcing a workshop, should be distinguished from routine operational mailing costs. The bases for all postage estimates should be included in the budget narrative.

j. Printing/Photocopying

Anticipated costs for printing or photocopying project documents, reports, and publications should be included in the budget narrative, along with the bases used to calculate these estimates.

k. Indirect Costs

Applicants should describe the indirect cost rates applicable to the grant in detail. If costs often included within an indirect cost rate are charged directly (*e.g.*, a percentage of the time of senior managers to supervise project activities), the applicant should specify that these costs are not included within its approved indirect cost rate. These rates must be established in accordance with section X.I.4. If the applicant has an indirect cost rate or allocation plan approved by any Federal granting agency, a copy of the approved rate agreement should be attached to the application.

l. Match

The applicant should describe the source of any matching contribution and the nature of the match provided. Any additional contributions to the project



should be described in this section of the budget narrative as well. If in-kind match is to be provided, the applicant should describe how the amount and value of the time, services, or materials actually contributed would be documented for audit purposes. Applicants should be aware that the time spent by participants in education courses does not qualify as in-kind match.

Applicants that do not contemplate making matching contributions continuously throughout the course of the project or on a task-by-task basis must provide a schedule within 30 days after the beginning of the project period indicating at what points during the project period the matching contributions would be made. (See sections II.O., IX.A.8., and X.E.1.) Match must be reported quarterly in the same manner as grant funds on the Institute's Financial Status Report.

5. Submission Requirements

a. Every applicant must submit an original and four copies of the application package consisting of FORM A; FORM B, if the application is from a State or local court, or a Disclosure of Lobbying Form, if the applicant is not a unit of State or local government; the Budget Forms (either FORM C or C–1); the Application Abstract; the Program Narrative; the Budget Narrative; and any necessary appendices.

All applications invited by the Institute's Board of Directors must be sent by first class or overnight mail or by courier no later than April 25, 2001. A postmark or courier receipt will constitute evidence of the submission date. Please mark APPLICATION on the application package envelope and send it to: State Justice Institute, 1650 King Street, Suite 600, Alexandria, VA 22314.

Receipt of each application will be acknowledged in writing. Extensions of the deadline for submission of applications will not be granted. See 3.k. above in this section for deadlines for letters of support.

b. Applicants submitting more than one application may include material that would be identical in each application in a cover letter. This material will be incorporated by reference into each application and counted against the 25-page limit for the program narrative. A copy of the cover letter should be attached to each copy of each application.

*B. Continuation Grant Applications*

1. Purpose and Scope

Continuation grants are intended to support projects with a limited duration that involve the same type of activities as the previous project. They are intended to enhance the specific program or service produced or established during the prior grant period. They may be used, for example, when a project is divided into two or more sequential phases, for secondary analysis of data obtained in an Institute-supported research project, or for more extensive testing of an innovative technology, procedure, or program developed with SJI grant support. Continuation grants should be distinguished from ongoing support grants, which are awarded to support critically needed long-term national scope projects. See C. below in this section.

The award of an initial grant to support a project does not constitute a commitment by the Institute to continue funding. For a project to be considered for continuation funding, the grantee must have completed all project tasks and met all grant requirements and conditions in a timely manner, absent extenuating circumstances or prior Institute approval of changes to the project design. Continuation grants are not intended to provide support for a project for which the grantee has underestimated the amount of time or funds needed to accomplish the project tasks.

2. Letters of Intent

In lieu of a concept paper, a grantee seeking a continuation grant must inform the Institute, by letter, of its intent to submit an application for such funding as soon as the need for continued funding becomes apparent but no less than 120 days before the end of the current grant period.

a. A letter of intent must be no more than 3 single-spaced pages on 8½ by 11 inch paper and contain a concise but thorough explanation of the need for continuation; an estimate of the funds to be requested; and a brief description of anticipated changes in the scope, focus, or audience of the project.

b. Within 30 days after receiving a letter of intent, Institute staff will review the proposed activities for the next project period and inform the grantee of specific issues to be addressed in the continuation application and the date by which the application must be submitted.

3. Application Format

An application for a continuation grant must include an application form, budget forms (with appropriate documentation), a project abstract conforming to the format set forth in A.2. of this section, a program narrative, a budget narrative, a Certificate of State Approval—FORM B (Appendix H) if the applicant is a State or local court, a Disclosure of Lobbying Activities form (from applicants other than units of State or local government), and any necessary appendices.

The program narrative should conform to the length and format requirements set forth in A.3. of this section. However, rather than the topics listed there, the program narrative of a continuation application should include:

a. *Project Objectives.* The applicant should clearly and concisely state what the continuation project is intended to accomplish.

b. *Need for Continuation.* The applicant should explain why continuation of the project is necessary to achieve the goals of the project, and how the continuation would benefit the participating courts or the courts community generally, by explaining, for example, how the original goals and objectives of the project would be unfulfilled if it were not continued; or how the value of the project would be enhanced by its continuation.

c. *Report of Current Project Activities.* The applicant should discuss the status of all activities conducted during the previous project period. Applicants should identify any activities that were not completed, and explain why.

d. *Evaluation Findings.* The applicant should present the key findings, impact, or recommendations resulting from the evaluation of the project, if available, and how they would be addressed during the proposed continuation. If the findings are not yet available, the applicant should provide the date by which they would be submitted to the Institute. Ordinarily, the Board will not consider an application for continuation funding until the Institute has received the evaluator's report.

e. *Tasks, Methods, Staff and Grantee Capability.* The applicant should fully describe any changes in the tasks to be performed, the methods to be used, the products of the project, and how and to whom those products would be disseminated, as well as any changes in the assigned staff or the grantee's organizational capacity. Applicants should include, in addition, the criteria and methods by which the proposed continuation project would be evaluated.

f. *Task Schedule.* The applicant should present a detailed task schedule and timeline for the next project period.

g. *Other Sources of Support.* The applicant should indicate why other sources of support would be inadequate, inappropriate, or unavailable.

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4. Budget and Budget Narrative

The applicant should provide a complete budget and budget narrative conforming to the requirements set forth in A.4. in this section. Changes in the funding level requested should be discussed in terms of corresponding increases or decreases in the scope of activities or services to be rendered. In addition, the applicant should estimate the amount of grant funds that would remain unobligated at the end of the current grant period.

5. References to Previously Submitted Material

A continuation application should not repeat information contained in a previously approved application or other previously submitted materials, but should provide specific references to such materials where appropriate.

6. Submission Requirements

The submission requirements set forth in A.5. in this section, other than the mailing deadline, apply to continuation applications.

*C. Ongoing Support Grants*

1. Purpose and Scope

Ongoing support grants are intended to support projects that are national in scope and provide the State courts with services, programs or products for which there is a continuing critical need. An ongoing support grant may also be used to fund longitudinal research that directly benefits the State courts. Ongoing support grants are subject to the limits on size and duration set forth in V.C.2. and V.D.2. The Board will consider awarding an ongoing support grant for a period of up to 36 months. The total amount of the grant will be fixed at the time of the initial award. Funds ordinarily will be made available in annual increments as specified in section V.C.2.

The award of an initial grant to support a project does not constitute a commitment by the Institute to provide ongoing support at the end of the original project period. A project is eligible for consideration for an ongoing support grant if:

a. The project is supported by and has been evaluated under a grant from the Institute;

b. The project is national in scope and provides a significant benefit to the State courts;

c. There is a continuing critical need for the services, programs or products provided by the project, indicated by the level of use and support by members of the court community;

d. The project is accomplishing its objectives in an effective and efficient manner; and

e. It is likely that the service or program provided by the project would be curtailed or significantly reduced without Institute support.

Each ongoing support application must include an evaluation component assessing its effectiveness and operation throughout the grant period. The evaluation should be independent but may be designed collaboratively by the evaluator and the grantee. The design should call for regular feedback from the evaluator to the grantee throughout the project period concerning recommendations for mid-course corrections or improvement of the project, as well as periodic reports to the Institute at relevant points in the project.

An interim evaluation report must be submitted 18 months into the 3-year grant period. The decision to release Institute funds to support the third year of the project will be based on the interim evaluation findings and the applicant's response to any deficiencies noted in the report, as well as the availability of appropriations and the project's consistency with the Institute's priorities.

A final evaluation assessing the effectiveness, operation of, and continuing need for the project must be submitted 90 days before the end of the 3-year project period. In addition, a detailed annual task schedule must be submitted not later than 45 days before the end of the first and second years of the grant period, along with an explanation of any necessary revisions in the projected costs for the remainder of the project period.

2. Letters of Intent

In lieu of a concept paper, an applicant seeking an ongoing support grant must inform the Institute, by letter, of its intent to submit an application for such funding as soon as the need for continuing funding becomes apparent but no less than 120 days before the end of the current grant period. The letter of intent should be in the same format as that prescribed for continuation grants in B.2. of this section.

3. Format

An application for an ongoing support grant must include an application form; budget forms (with appropriate documentation); a Certificate of State Approval—FORM B (Appendix H) if the applicant is a State or local court; a Disclosure of Lobbying Activities form (from applicants other than units of State or local government); a project abstract conforming to the format set forth in A.2. of this section; a program narrative; a budget narrative; and any necessary appendices.

The program narrative should conform to the length and format requirements set forth in A.3. of this section; however, rather than the topics listed there, the program narrative of applications for ongoing support grants. should address:

a. *Description of Need for and Benefits of the Project.* The applicant should provide a detailed discussion of the benefits provided by the project to State courts around the country, including the degree to which State courts, State court judges, or State court managers and personnel are using the services or programs provided by the project.

b. *Demonstration of Court Support.* The applicant should demonstrate support for the continuation of the project from the courts community.

c. *Report on Current Project Activities.* The applicant should discuss the extent to which the project has met its goals and objectives, identify any activities that have not been completed, and explain why they have not been completed.

d. *Evaluation Findings.* The applicant should attach a copy of the final evaluation report regarding the effectiveness, impact, and operation of the project, specify the key findings or recommendations resulting from the evaluation, and explain how they would be addressed during the next three years. Ordinarily, the Board will not consider an application for ongoing support until the Institute has received the evaluator's report.

e. *Objectives, Tasks, Methods, Staff and Grantee Capability.* The applicant should describe fully any changes in the objectives; tasks to be performed; the methods to be used; the products of the project; how and to whom those products would be disseminated; the assigned staff; and the grantee's organizational capacity. The grantee also should describe the steps it would take to obtain support from other sources for the continued operation of the project.

f. *Task Schedule.* The applicant should present a general schedule for the full proposed project period and a detailed task schedule for the first year of the proposed new project period.

g. *Other Sources of Support.* The applicant should describe what efforts it has taken to secure support for the project from other sources.



4. Budget and Budget Narrative

The applicant should provide a complete three-year budget and budget narrative conforming to the requirements set forth in A.4. of this section, and estimate the amount of grant funds that would remain unobligated at the end of the current grant period. Changes in the funding level requested should be discussed in terms of corresponding increases or decreases in the scope of activities or services to be rendered. A complete budget narrative should be provided for the full project as well as for each year, or portion of a year, for which grant support is requested. The budget should provide for realistic cost-of-living and staff salary increases over the course of the requested project period. Applicants should be aware that the Institute is unlikely to approve a supplemental budget increase for an ongoing support grant in the absence of well-documented, unanticipated factors that would clearly justify the requested increase.

5. References to Previously Submitted Material

An application for an ongoing support grant should not repeat information contained in a previously approved application or other previously submitted materials, but should provide specific references to such materials where appropriate.

6. Submission Requirements

The submission requirements set forth in A.5. of this section, other than the mailing deadline, apply to applications for ongoing support grants.

*D. Technical Assistance Grants*

1. Purpose and Scope

Technical assistance grants are awarded to State and local courts to obtain the assistance of outside experts in diagnosing, developing, and implementing a response to a particular problem in a jurisdiction.

2. Application Procedures

In lieu of formal applications, applicants for Technical Assistance grants may submit, at any time, an original and three copies of a detailed letter describing the proposed project. Letters from an individual trial or appellate court must be signed by the presiding judge or manager of that court. Letters from the State court system must be signed by the Chief Justice or State Court Administrator.

3. Application Format

Although there is no prescribed form for the letter nor a minimum or maximum page limit, letters of application should include the following information:

a. *Need for Funding.* What is the critical need facing the court? How would the proposed technical assistance help the court meet this critical need? Why cannot State or local resources fully support the costs of the required consultant services?

b. *Project Description.* What tasks would the consultant be expected to perform, and how would they be accomplished? Which organization or individual would be hired to provide the assistance, and how was this consultant selected? If a consultant has not yet been identified, what procedures and criteria would be used to select the consultant? (Applicants are expected to follow their jurisdictions' normal procedures for procuring consultant services.) What is the time frame for completion of the technical assistance? How would the court oversee the project and provide guidance to the consultant, and who at the court would be responsible for coordinating all project tasks and submitting quarterly progress and financial status reports?

If the consultant has been identified, the applicant should provide a letter from that individual or organization documenting interest in and availability for the project, as well as the consultant's ability to complete the assignment within the proposed time frame and for the proposed cost. The consultant must agree to submit a detailed written report to the court and the Institute upon completion of the technical assistance.

c. *Likelihood of Implementation.* What steps have been or would be taken to facilitate implementation of the consultant's recommendations upon completion of the technical assistance? For example, if the support or cooperation of specific court officials or committees, other agencies, funding bodies, organizations, or a court other than the applicant would be needed to adopt the changes recommended by the consultant and approved by the court, how would they be involved in the review of the recommendations and development of the implementation plan?

d. *Support for the Project from the State Supreme Court or its Designated Agency or Council.* Written concurrence on the need for the technical assistance must be submitted. This concurrence may be a copy of SJI Form B (see Appendix H) signed by the Chief Justice of the State Supreme Court or the Chief Justice's designee, or a letter from the State Chief Justice or designee. The concurrence may be submitted with the applicant's letter or under separate cover prior to consideration of the application. The concurrence also must specify whether the State Supreme Court would receive, administer, and account for the grant funds, if awarded, or would designate the local court or a specified agency or council to receive the funds directly.

4. Budget and Matching State Contribution

A completed Form E, Preliminary Budget (see Appendix G) and budget narrative must be included with the letter requesting technical assistance. The estimated cost of the technical assistance services should be broken down into the categories listed on the budget form rather than aggregated under the Consultant/Contractual category. As with other awards to State or local courts, cash or in-kind match must be provided in an amount equal to at least 50% of the grant amount requested. Cash and in-kind matching contributions should be listed in the appropriate columns and categories on Form E.

The budget narrative should provide the basis for all project-related costs, including the basis for determining the estimated consultant costs, if compensation of the consultant is required (*e.g.*, the number of days per task times the requested daily consultant rate). Applicants should be aware that consultant rates above $300 per day must be approved in advance by the Institute, and that no consultant will be paid more than $900 per day. In addition, the budget should provide for submission of two copies of the consultant's final report to the Institute.

Recipients of technical assistance grants do not have to submit an audit but must maintain appropriate documentation to support expenditures. (See IX.A.3.)

5. Submission Requirements

Letters of application may be submitted at any time; however, all of the letters received during a calendar quarter will be considered at one time. Applicants submitting letters between June 12 and September 29, 2000 will be notified of the Board's decision by December 8, 2000; those submitting letters between September 30, 2000 and January 12, 2001 will be notified by March 23, 2001; those submitting letters between January 13, 2001 and March 9, 2001 will be notified by May 11, 2001; and those submitting letters between

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March 10, 2001 and June 8, 2001 will be notified by August 3, 2001. Applicants submitting letters between June 11 and September 28, 2001 will be notified of the Board's decision by December 14, 2001.

If the support or cooperation of agencies, funding bodies, organizations, or courts other than the applicant would be needed in order for the consultant to perform the required tasks, written assurances of such support or cooperation should accompany the application letter. Support letters also may be submitted under separate cover; however, to ensure that there is sufficient time to bring them to the attention of the Board's Technical Assistance Committee, letters sent under separate cover must be received not less than three weeks prior to the Board meeting at which the technical assistance requests will be considered (*i.e.*, by October 20, 2000, and February 9, April 13, July 9, and October 26, 2001).

**E. Curriculum Adaptation Grants**

1. Purpose and Scope

Curriculum Adaptation grants are awarded to State and local courts to support replication or modification of a model training program originally developed with Institute funds. Ordinarily, the Institute will support the adaptation of a curriculum once (*i.e.*, with one grant) in a given State.

2. Application Procedures

In lieu of concept papers and formal applications, applicants should submit an original and three photocopies of a detailed letter.

3. Application Format

Although there is no prescribed format for the letter, or a minimum or maximum page limit, letters of application should include the following information:

a. *Project Description.* What is the title of the model curriculum to be adapted and who developed it? Why is this education program needed at the present time? What are the project's goals? What are the learning objectives of the adapted curriculum? What program components would be implemented, and what types of modifications, if any, are anticipated in length, format, learning objectives, teaching methods, or content? Who would be responsible for adapting the model curriculum? Who would the participants be, how many would there be, how would they be recruited, and from where would they come (*e.g.*, from across the State, from a single local jurisdiction, from a multi-State region)?

b. *Need for Funding.* Why are sufficient State or local resources unavailable to fully support the modification and presentation of the model curriculum? What is the potential for replicating or integrating the program in the future using State or local funds, once it has been successfully adapted and tested?

c. *Likelihood of Implementation.* What is the proposed timeline, including the project start and end dates and the date(s) the program would be presented? What process would be used to modify and present the program? Who would serve as faculty, and how were they selected? What measures would be taken to facilitate subsequent presentations of the program? (Ordinarily, an independent evaluation of a curriculum adaptation project is not required; however, the results of any evaluation should be included in the final report.)

d. *Expressions of Interest by Judges and/or Court Personnel.* Does the proposed program have the support of the court system leadership, and of judges, court managers, and judicial education personnel who are expected to attend? (This may be demonstrated by attaching letters of support.)

e. *Chief Justice's Concurrence.* Local courts should attach a concurrence form signed by the Chief Justice of the State or his or her designee. (See Form B, Appendix H.)

4. Budget and Matching State Contribution

Applicants should attach a copy of budget Form E (see Appendix G) and a budget narrative (see A.4. in this section) that describes the basis for the computation of all project-related costs and the source of the match offered. As with other awards to State or local courts, cash or in-kind match must be provided in an amount equal to at least 50% of the grant amount requested. Cash and in-kind matching contributions should be listed in the appropriate columns and categories on Form E.

5. Submission Requirements

Letters of application may be submitted at any time. However, applicants should allow at least 90 days between the date of submission and the date of the proposed program to allow sufficient time for needed planning.

*F. Scholarships*

1. Purpose and Scope

The purposes of the Institute scholarship program are to enhance the skills, knowledge, and abilities of judges and court managers; enable State court judges and court managers to attend out-of-State educational programs sponsored by national and State providers that they could not otherwise attend because of limited State, local and personal budgets; and provide States, judicial educators, and the Institute with evaluative information on a range of judicial and court-related education programs.

Scholarships will be granted to individuals only for the purpose of attending an educational program in another State. An applicant may apply for a scholarship for only one educational program during any one application cycle.

Scholarship funds may be used only to cover the costs of tuition and transportation expenses. Transportation expenses may include round-trip coach airfare or train fare. Scholarship recipients are strongly encouraged to take advantage of excursion or other special airfares (*e.g.*, reductions offered when a ticket is purchased 21 days in advance of the travel date or because the traveler is staying over a Saturday night) when making their travel arrangements. Recipients who drive to a program site may receive $.325/mile up to the amount of the advanced-purchase round-trip airfare between their homes and the program sites. Funds to pay tuition and transportation expenses in excess of $1,500 and other costs of attending the program—such as lodging, meals, materials, transportation to and from airports, and local transportation (including rental cars)—at the program site must be obtained from other sources or borne by the scholarship recipient. Scholarship applicants are encouraged to check other sources of financial assistance and to combine aid from various sources whenever possible.

A scholarship is not transferable to another individual. It may be used only for the course specified in the application unless attendance at a different course that meets the eligibility requirements is approved in writing by the Institute. Decisions on such requests will be made within 30 days after the receipt of the request letter.

2. Eligibility Requirements

a. *Recipients.* Scholarships can be awarded only to full-time judges of State or local trial and appellate courts; full-time professional, State or local court personnel with management responsibilities; and supervisory and management probation personnel in judicial branch probation offices. Senior judges, part-time judges, quasi-judicial hearing officers including referees and commissioners, State administrative law judges, staff attorneys, law clerks, line staff, law enforcement officers, and other executive branch personnel are not eligible to receive a scholarship.

b. *Courses.* A Scholarship can be awarded only for a course presented in a State other than the one in which the applicant resides or works that is designed to enhance the skills of new or experienced judges and court managers; address any of the topics listed in the Institute's Special Interest categories; or is offered by a recognized graduate program for judges or court managers. The annual or mid-year meeting of a State or national organization of which the applicant is a member does not qualify as an out-of-State educational program for scholarship purposes, even though it may include workshops or other training sessions.

Applicants are encouraged not to wait for the decision on a scholarship to register for an educational program they wish to attend.

3. Forms

a. Scholarship Application—FORM S–1 (Appendix F)

The application form requests basic information about the applicant and the educational program the applicant would like to attend. It also addresses the applicant's commitment to share the skills and knowledge gained with local court colleagues and to submit an evaluation of the program the applicant attends. The Scholarship Application must bear the original signature of the applicant. Faxed or photocopied signatures will not be accepted.

b. Scholarship Application Concurrence—FORM S–2 (Appendix F)

Judges and court managers applying for Scholarships must submit the written concurrence of the Chief Justice of the State's Supreme Court (or the Chief Justice's designee) on the Institute's Judicial Education Scholarship Concurrence form (see Appendix F). The signature of the presiding judge of the applicant's court cannot be substituted for that of the Chief Justice or the Chief Justice's designee. Court managers, other than elected clerks of court, also must submit a letter of support from their immediate supervisors.

4. Submission Requirements

Scholarship applications must be submitted during the periods specified below:

October 2 and December 1, 2000, for programs beginning between January 1 and March 31, 2001;

January 5 and March 5, 2001, for programs beginning between April 1 and June 30, 2001;

April 2 and June 1, 2001, for programs beginning between July 1 and September 30, 2001;

July 5 and September 3, 2001, for programs beginning between October 1 and December 31, 2001; and

October 1 and November 30, 2001, for programs beginning between January 1 and March 31, 2002.

No exceptions or extensions will be granted. Applications sent prior to the beginning of an application period will be treated as having been sent one week *after the beginning of that application period.* All the required items must be received for an application to be considered. If the Concurrence form or letter of support is sent separately from the application, the postmark date of the last item to be sent will be used in applying the above criteria.

All applications should be sent by mail or courier (not fax or e-mail) to: Scholarship Program Coordinator, State Justice Institute, 1650 King Street, Suite 600, Alexandria, VA 22314.

**VIII. Application Review Procedures**

*A. Preliminary Inquiries*

The Institute staff will answer inquiries concerning application procedures. The staff contact will be named in the Institute's letter acknowledging receipt of the application.

*B. Selection Criteria*

1. Project, Continuation, and Ongoing Support Grant Applications

a. All applications will be rated on the basis of the criteria set forth below. The Institute will accord the greatest weight to the following criteria:

(1) The soundness of the methodology;

(2) The demonstration of need for the project;

(3) The appropriateness of the proposed evaluation design;

(4) The applicant's management plan and organizational capabilities;

(5) The qualifications of the project's staff;

(6) The products and benefits resulting from the project including the extent to which the project will have long-term benefits for State courts across the nation;

(7) The degree to which the findings, procedures, training, technology, or other results of the project can be transferred to other jurisdictions;

(8) The reasonableness of the proposed budget;

(9) The demonstration of cooperation and support of other agencies that may be affected by the project; and

(10) The proposed project's relationship to one of the "Special Interest" categories set forth in section II.B.

b. For continuation and ongoing support grant applications, the key findings and recommendations of evaluations and the proposed responses to those findings and recommendations also will be considered.

c. In determining which applicants to fund, the Institute will also consider whether the applicant is a State court, a national court support or education organization, a non-court unit of government, or other type of entity eligible to receive grants under the Institute's enabling legislation (see 42 U.S.C. 10705(6) (as amended) and Section IV. above); the availability of financial assistance from other sources for the project; the amount and nature (cash or in-kind) of the applicant's match; the extent to which the proposed project would also benefit the Federal courts or help State courts enforce Federal constitutional and legislative requirements; and the level of appropriations available to the Institute in the current year and the amount expected to be available in succeeding fiscal years.

2. Technical Assistance Grant Applications

Technical Assistance grant applications will be rated on the basis of the following criteria:

a. Whether the assistance would address a critical need of the court;

b. The soundness of the technical assistance approach to the problem;

c. The qualifications of the consultant(s) to be hired, or the specific criteria that will be used to select the consultant(s);

d. Commitment on the part of the court to act on the consultant's recommendations; and

e. The reasonableness of the proposed budget.

The Institute also will consider factors such as the level and nature of the match that would be provided, diversity of subject matter, geographic diversity, the level of appropriations available to the Institute in the current year, and the amount expected to be available in succeeding fiscal years.

3. Curriculum Adaptation Grant Applications

Curriculum Adaptation grant applications will be rated on the basis of the following criteria:

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a. The goals and objectives of the proposed project;

b. The need for outside funding to support the program;

c. The appropriateness of the approach in achieving the project's educational objectives;

d. The likelihood of effective implementation and integration into the State's or local jurisdiction's ongoing educational programming; and

e. Expressions of interest by the judges and/or court personnel who would be directly involved in or affected by the project.

The Institute will also consider factors such as the reasonableness of the amount requested, compliance with match requirements, diversity of subject matter, geographic diversity, the level of appropriations available in the current year, and the amount expected to be available in succeeding fiscal years.

4. Scholarships

Scholarships will be awarded on the basis of:

a. The date on which the application and concurrence (and support letter, if required) were mailed (documented by the postmark);

b. The unavailability of State or local funds to cover the costs of attending the program or scholarship funds from another source;

c. The absence of educational programs in the applicant's State addressing the topic(s) covered by the educational program for which the scholarship is being sought;

d. Geographic balance among the recipients;

e. The balance of scholarships among educational programs;

f. The balance of scholarships among the types of courts represented; and

g. The level of appropriations available to the Institute in the current year and the amount expected to be available in succeeding fiscal years.

The postmark or courier receipt will be used to determine the date on which the application form and other required items were sent.

*C. Review and Approval Process*

1. Project, Continuation, and Ongoing Support Grant Applications

Applications will be reviewed competitively by the Board of Directors. The Institute staff will prepare a narrative summary of each application and a rating sheet assigning points for each relevant selection criterion. When necessary, applications may also be reviewed by outside experts. Committees of the Board will review applications within assigned program categories and prepare recommendations to the full Board. The full Board of Directors will then decide which applications to approve for grants. The decision to award a grant is solely that of the Board of Directors.

Awards approved by the Board will be signed by the Chairman of the Board on behalf of the Institute.

2. Technical Assistance and Curriculum Adaptation Grant Applications

The Institute staff will prepare a narrative summary of each application and a rating sheet assigning points for each relevant selection criterion. Applications will be reviewed competitively by a committee of the Board of Directors. The Board of Directors has delegated its authority to approve Technical Assistance and Curriculum Adaptation grants to the committee established for each program.

Approved awards will be signed by the Chairman of the Board on behalf of the Institute.

3. Scholarships

Scholarship applications are reviewed quarterly by a committee of the Institute's Board of Directors. The Board of Directors has delegated its authority to approve Scholarships to the committee established for the program.

Approved awards will be signed by the Chairman of the Board on behalf of the Institute.

*D. Return Policy*

Unless a specific request is made, unsuccessful applications will not be returned. Applicants are advised that Institute records are subject to the provisions of the Federal Freedom of Information Act, 5 U.S.C. 552.

*E. Notification of Board Decision*

1. The Institute will send written notice to applicants concerning all Board decisions to approve, defer, or deny their respective applications. For all except Scholarship applications, the Institute also will convey the key issues and questions that arose during the review process. A decision by the Board to deny an application may not be appealed, but it does not prohibit resubmission of a proposal based on that application in a subsequent funding cycle. With respect to awards other than Scholarships, the Institute will also notify the designated State contact listed in when grants are approved by the Board to support projects that will be conducted by or involve courts in that State.

2. The Board anticipates acting upon Curriculum Adaptation grant applications within 45 days after receipt. Grant funds will be available only after Board approval and negotiation of the final terms of the grant.

3. The Institute intends to notify each Scholarship applicant of the Board committee's decision within 30 days after the close of the relevant application period.

*F. Response to Notification of Approval*

With the exception of those approved for Scholarships, applicants have 30 days from the date of the letter notifying them that the Board has approved their application to respond to any revisions requested by the Board. If the requested revisions (or a reasonable schedule for submitting such revisions) have not been submitted to the Institute within 30 days after notification, the approval may be automatically rescinded and the application presented to the Board for reconsideration.

## IX. Compliance Requirements

The State Justice Institute Act contains limitations and conditions on grants, contracts, and cooperative agreements awarded by the Institute. The Board of Directors has approved additional policies governing the use of Institute grant funds. These statutory and policy requirements are set forth below.

*A. Recipients of Project Grants*

1. Advocacy

No funds made available by the Institute may be used to support or conduct training programs for the purpose of advocating particular nonjudicial public policies or encouraging nonjudicial political activities. 42 U.S.C. 10706(b).

2. Approval of Key Staff

If the qualifications of an employee or consultant assigned to a key project staff position are not described in the application or if there is a change of a person assigned to such a position, the recipient must submit a description of the qualifications of the newly assigned person to the Institute. Prior written approval of the qualifications of the new person assigned to a key staff position must be received from the Institute before the salary or consulting fee of that person and associated costs may be paid or reimbursed from grant funds.

3. Audit

Recipients of project grants must provide for an annual fiscal audit which includes an opinion on whether the financial statements of the grantee present fairly its financial position and financial operations are in accordance with generally accepted accounting principles. (See section X.K. of the Guideline for the requirements of such audits.) Recipients of scholarships or curriculum adaptation or technical assistance grants are not required to submit an audit, but must maintain appropriate documentation to support all expenditures.

4. Budget Revisions

Budget reallocations between direct cost categories that individually or cumulatively exceed five percent of the approved original budget or the most recently approved revised budget require prior Institute approval. Ordinarily, such budget revisions should be requested at least 30 days in advance of the transfer of grant funds among direct cost categories.

5. Conflict of Interest

Personnel and other officials connected with Institute-funded programs must adhere to the following requirements:

a. No official or employee of a recipient court or organization shall participate personally through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise in any proceeding, application, request for a ruling or other determination, contract, grant, cooperative agreement, claim, controversy, or other particular matter in which Institute funds are used, where, to his or her knowledge, he or she or his or her immediate family, partners, organization other than a public agency in which he or she is serving as officer, director, trustee, partner, or employee or any person or organization with whom he or she is negotiating or has any arrangement concerning prospective employment, or has a financial interest.

b. In the use of Institute project funds, an official or employee of a recipient court or organization shall avoid any action which might result in or create the appearance of:

(1) Using an official position for private gain; or

(2) Affecting adversely the confidence of the public in the integrity of the Institute program.

c. Requests for proposals or invitations for bids issued by a recipient of Institute funds or a subgrantee or subcontractor will provide notice to prospective bidders that the contractors who develop or draft specifications, requirements, statements of work, and/or requests for proposals for a proposed procurement will be excluded from bidding on or submitting a proposal to compete for the award of such procurement.

6. Inventions and Patents

If any patentable items, patent rights, processes, or inventions are produced in the course of Institute-sponsored work, such fact shall be promptly and fully reported to the Institute. Unless there is a prior agreement between the grantee and the Institute on disposition of such items, the Institute shall determine whether protection of the invention or discovery shall be sought. The Institute will also determine how the rights in the invention or discovery, including rights under any patent issued thereon, shall be allocated and administered in order to protect the public interest consistent with "Government Patent Policy" (President's Memorandum for Heads of Executive Departments and Agencies, February 18, 1983, and statement of Government Patent Policy).

7. Lobbying

a. Funds awarded to recipients by the Institute shall not be used, indirectly or directly, to influence Executive Orders or similar promulgations by Federal, State or local agencies, or to influence the passage or defeat of any legislation by Federal, State or local legislative bodies. 42 U.S.C. 10706(a).

b. It is the policy of the Board of Directors to award funds only to support applications submitted by organizations that would carry out the objectives of their applications in an unbiased manner. Consistent with this policy and the provisions of 42 U.S.C. 10706, the Institute will not knowingly award a grant to an applicant that has, directly or through an entity that is part of the same organization as the applicant, advocated a position before Congress on the specific subject matter of the application.

8. Matching Requirements

a. All awards to courts or other units of State or local government (not including publicly supported institutions of higher education) require a match from private or public sources of not less than 50% of the total amount of the Institute's award. For example, if the total cost of a project is anticipated to be $150,000, a State court or executive branch agency may request up to $100,000 from the Institute to implement the project. The remaining $50,000 (50% of the $100,000 requested from SJI) must be provided as a match. A cash match, non-cash match, or both may be provided, but the Institute will give preference to those applicants that provide a cash match to the Institute's award. (For a further definition of match, see section III.O.)

b. The requirement to provide match may be waived in exceptionally rare circumstances upon the request of the Chief Justice of the highest court in the State and approval by the Board of Directors. 42 U.S.C. 10705(d).

c. Other eligible recipients of Institute funds are not required to provide a match, but are encouraged to contribute to meeting the costs of the project. In instances where match is proposed, the grantee is responsible for ensuring that the total amount proposed is actually contributed. Cash and in-kind matching contributions must be reported quarterly in the same manner as grant funds on the Institute's Financial Status Report. If a proposed contribution is not fully met, the Institute may reduce the award amount accordingly, in order to maintain the ratio originally provided for in the award agreement (see section X.E).

9. Nondiscrimination

No person may, on the basis of race, sex, national origin, disability, color, or creed be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under any program or activity supported by Institute funds. Recipients of Institute funds must immediately take any measures necessary to effectuate this provision.

10. Political Activities

No recipient may contribute or make available Institute funds, program personnel, or equipment to any political party or association, or the campaign of any candidate for public or party office. Recipients are also prohibited from using funds in advocating or opposing any ballot measure, initiative, or referendum. Officers and employees of recipients shall not intentionally identify the Institute or recipients with any partisan or nonpartisan political activity associated with a political party or association, or the campaign of any candidate for public or party office. 42 U.S.C. 10706(a).

11. Products

a. Acknowledgment, Logo, and Disclaimer

(1) Recipients of Institute funds must acknowledge prominently on all products developed with grant funds that support was received from the Institute. The "SJI" logo must appear on the front cover of a written product, or in the opening frames of a video product, unless another placement is approved in writing by the Institute. This includes final products printed or

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otherwise reproduced during the grant period, as well as reprintings or reproductions of those materials following the end of the grant period. A camera-ready logo sheet is available from the Institute upon request.

(2) Recipients also must display the following disclaimer on all grant products: "This [document, film, videotape, etc.] was developed under [grant/cooperative agreement] number SJI-[insert number] from the State Justice Institute. The points of view expressed are those of the [author(s), filmmaker(s), etc.] and do not necessarily represent the official position or policies of the State Justice Institute."

b. Charges for Grant-Related Products/ Recovery of Costs

(1) When Institute funds fully cover the cost of developing, producing, and disseminating a product (*e.g.*, a report, curriculum, videotape or software), the product should be distributed to the field without charge. When Institute funds only partially cover the development, production, or dissemination costs, the grantee may, with the Institute's prior written approval, recover its costs for developing, producing, and disseminating the material to those requesting it, to the extent that those costs were not covered by Institute funds or grantee matching contributions.

(2) Applicants should disclose their intent to sell grant-related products in both the concept paper and the application. Grantees must obtain the written prior approval of the Institute of their plans to recover project costs through the sale of grant products. Written requests to recover costs ordinarily should be received during the grant period and should specify the nature and extent of the costs to be recouped, the reason that such costs were not budgeted (if the rationale was not disclosed in the approved application), the number of copies to be sold, the intended audience for the products to be sold, and the proposed sale price. If the product is to be sold for more than $25, the written request also should include a detailed itemization of costs that will be recovered and a certification that the costs were not supported by either Institute grant funds or grantee matching contributions.

(2) In the event that the sale of grant products results in revenues that exceed the costs to develop, produce, and disseminate the product, the revenue must continue to be used for the authorized purposes of the Institute-funded project or other purposes consistent with the State Justice Institute Act that have been approved by the Institute. See sections III.S. and X.G. for requirements regarding project-related income realized during the project period.

c. Copyrights

Except as otherwise provided in the terms and conditions of an Institute award, a recipient is free to copyright any books, publications, or other copyrightable materials developed in the course of an Institute-supported project, but the Institute shall reserve a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the materials for purposes consistent with the State Justice Institute Act.

d. Distribution

In addition to the distribution specified in the grant application, grantees shall send:

(1) Seventeen (17) copies of each final product developed with grant funds to the Institute, unless the product was developed under either a Curriculum Adaptation or a Technical Assistance grant, in which case submission of 2 copies is required.

(2) A master copy of each videotape produced with grant funds to the Institute.

(3) One copy of each final product developed with grant funds to the library established in each State to collect materials prepared with Institute support. (A list of the libraries is contained in Appendix D. Labels for these libraries are available from the Institute upon request.) Grantees that develop web-based electronic products must send a hard-copy document to the SJI-designated libraries and other appropriate audiences to alert them to the availability of the web site or electronic product. Recipients of curriculum adaptation and technical assistance grants are not required to submit final products to State libraries.

(4) A press release describing the project and announcing the results to a list of national and State judicial branch organizations provided by the Institute.

e. Institute Approval

No grant funds may be obligated for publication or reproduction of a final product developed with grant funds without the written approval of the Institute. Grantees shall submit a final draft of each written product to the Institute for review and approval. These drafts shall be submitted at least 30 days before the product is scheduled to be sent for publication or reproduction to permit Institute review and incorporation of any appropriate changes agreed upon by the grantee and the Institute. Grantees shall provide for timely reviews by the Institute of videotape or CD–ROM products at the treatment, script, rough cut, and final stages of development or their equivalents, prior to initiating the next stage of product development.

f. Original Material

All products prepared as the result of Institute-supported projects must be originally-developed material unless otherwise specified in the award documents. Material not originally developed that is included in such products must be properly identified, whether the material is in a verbatim or extensive paraphrase format.

12. Prohibition Against Litigation Support

No funds made available by the Institute may be used directly or indirectly to support legal assistance to parties in litigation, including cases involving capital punishment.

13. Reporting Requirements

a. Recipients of Institute funds other than Scholarships must submit Quarterly Progress and Financial Reports within 30 days of the close of each calendar quarter (that is, no later than January 30, April 30, July 30, and October 30). Two copies of each report must be sent. The Quarterly Progress Reports shall include a narrative description of project activities during the calendar quarter, the relationship between those activities and the task schedule and objectives set forth in the approved application or an approved adjustment thereto, any significant problem areas that have developed and how they will be resolved, and the activities scheduled during the next reporting period.

b. The quarterly financial status report must be submitted in accordance with section X.H.2. of this Guideline. A final project progress report and financial status report shall be submitted within 90 days after the end of the grant period in accordance with X.L.1. of this Guideline.

14. Research

a. Availability of Research Data for Secondary Analysis

Upon request, grantees must make available for secondary analysis a diskette(s) or data tape(s) containing research and evaluation data collected under an Institute grant and the accompanying code manual. Grantees may recover the actual cost of duplicating and mailing or otherwise transmitting the data set and manual from the person or organization requesting the data. Grantees may provide the requested data set in the format in which it was created and analyzed.

b. Confidentiality of Information

Except as provided by Federal law other than the State Justice Institute Act, no recipient of financial assistance from SJI may use or reveal any research or statistical information furnished under the Act by any person and identifiable to any specific private person for any purpose other than the purpose for which the information was obtained. Such information and copies thereof shall be immune from legal process, and shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action, suit, or other judicial, legislative, or administrative proceedings.

c. Human Subject Protection

All research involving human subjects shall be conducted with the informed consent of those subjects and in a manner that will ensure their privacy and freedom from risk or harm and the protection of persons who are not subjects of the research but would be affected by it, unless such procedures and safeguards would make the research impractical. In such instances, the Institute must approve procedures designed by the grantee to provide human subjects with relevant information about the research after their involvement and to minimize or eliminate risk or harm to those subjects due to their participation.

15. State and Local Court Applications

Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court, or its designated agency or council. The Supreme Court or its designee shall receive, administer, and be accountable for all funds awarded on the basis of such an application. 42 U.S.C. 10705(b)(4). Appendix C to this Guideline lists the person to contact in each State regarding the administration of Institute grants to State and local courts.

16. Supplantation and Construction

To ensure that funds are used to supplement and improve the operation of State courts, rather than to support basic court services, funds shall not be used for the following purposes:

a. To supplant State or local funds supporting a program or activity (such as paying the salary of court employees who would be performing their normal duties as part of the project, or paying rent for space which is part of the court's normal operations);

b. To construct court facilities or structures, except to remodel existing facilities or to demonstrate new architectural or technological techniques, or to provide temporary facilities for new personnel or for personnel involved in a demonstration or experimental program; or

c. Solely to purchase equipment.

17. Suspension of Funding

After providing a recipient reasonable notice and opportunity to submit written documentation demonstrating why fund termination or suspension should not occur, the Institute may terminate or suspend funding of a project that fails to comply substantially with the Act, the Guideline, or the terms and conditions of the award. 42 U.S.C. 10708(a).

18. Title to Property

At the conclusion of the project, title to all expendable and nonexpendable personal property purchased with Institute funds shall vest in the recipient court, organization, or individual that purchased the property if certification is made to and approved by the Institute that the property will continue to be used for the authorized purposes of the Institute-funded project or other purposes consistent with the State Justice Institute Act. If such certification is not made or the Institute disapproves such certification, title to all such property with an aggregate or individual value of $1,000 or more shall vest in the Institute, which will direct the disposition of the property.

*B. Recipients of Curriculum Adaptation and Technical Assistance Grants*

In addition to the compliance requirements in A. in this section, recipients of Curriculum Adaptation and Technical Assistance grants must comply with the following requirements.

1. Curriculum Adaptation Grantees

Recipients of Curriculum Adaptation grants must:

a. Comply with the same quarterly reporting requirements as other Institute grantees (see A.13. above in this section);

b. Include in each grant product a prominent acknowledgment that support was received from the Institute, along with the "SJI" logo and a disclaimer paragraph (see A.11.a. above in this section); and

c. Submit one copy of the manuals, handbooks, or conference packets developed under the grant at the conclusion of the grant period, along with a final report that includes any evaluation results and explains how the grantee intends to present the program in the future.

2. Technical Assistance Grantees

Recipients of Technical Assistance grants must:

a. Comply with the same quarterly reporting requirements as other Institute grantees (see A.13. above in this section);

b. Ensure that each technical assistance report prepared by a consultant includes a prominent acknowledgment that support was received from the Institute, along with the "SJI" logo and a disclaimer paragraph (see A.11.a. above in this section);

c. Submit to the Institute one copy of a final report that explains how it intends to act on the consultant's recommendations, as well as a copy of the consultant's written report; and

d. Complete a Technical Assistance Evaluation Form at the conclusion of the grant period.

*C. Scholarship Recipients*

1. Scholarship recipients are responsible for disseminating the information received from the course to their court colleagues locally and if possible, throughout the State (*e.g.*, by developing a formal seminar, circulating the written material, or discussing the information at a meeting or conference).

Recipients also must submit to the Institute a certificate of attendance at the program, an evaluation of the educational program they attended, and a copy of the notice of any scholarship funds received from other sources. A copy of the evaluation must be sent to the Chief Justice of their State. A State or local jurisdiction may impose additional requirements on scholarship recipients.

2. To receive the funds authorized by a scholarship award, recipients must submit a Scholarship Payment Voucher (Form S3) together with a tuition statement from the program sponsor, and a transportation fare receipt (or statement of the driving mileage to and from the recipient's home to the site of the educational program).

Scholarship Payment Vouchers should be submitted within 90 days after the end of the course which the recipient attended.

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2. Scholarship recipients are encouraged to check with their tax advisors to determine whether the scholarship constitutes taxable income under Federal and State law.

**X. Financial Requirements**

*A. Purpose*

The purpose of this section is to establish accounting system requirements and offer guidance on procedures to assist all grantees, subgrantees, contractors, and other organizations in:

1. Complying with the statutory requirements for the award, disbursement, and accounting of funds;
2. Complying with regulatory requirements of the Institute for the financial management and disposition of funds;
3. Generating financial data to be used in planning, managing, and controlling projects; and
4. Facilitating an effective audit of funded programs and projects.

*B. References*

Except where inconsistent with specific provisions of this Guideline, the following regulations, directives and reports are applicable to Institute grants and cooperative agreements under the same terms and conditions that apply to Federal grantees. The following circulars supplement the requirements of this section for accounting systems and financial recordkeeping and provide additional guidance on how these requirements may be satisfied. (Circulars may be obtained from OMB by calling 202–395–3080 or visiting the OMB website at www.whitehouse.gov/OMB.)

1. Office of Management and Budget (OMB) Circular A–21, Cost Principles for Educational Institutions.
2. Office of Management and Budget (OMB) Circular A–87, Cost Principles for State and Local Governments.
3. Office of Management and Budget (OMB) Circular A–88 (revised), Indirect Cost Rates, Audit and Audit Follow-up at Educational Institutions.
4. Office of Management and Budget (OMB) Circular A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.
5. Office of Management and Budget (OMB) Circular A–110, Grants and Agreements with Institutions of Higher Education, Hospitals and other Non-Profit Organizations.
6. Office of Management and Budget (OMB) Circular A–128, Audits of State and Local Governments.
7. Office of Management and Budget (OMB) Circular A–122, Cost Principles for Non-profit Organizations.
8. Office of Management and Budget (OMB) Circular A–133, Audits of Institutions of Higher Education and Other Non-profit Institutions.

*C. Supervision and Monitoring Responsibilities*

1. Grantee Responsibilities

All grantees receiving awards from the Institute are responsible for the management and fiscal control of all funds. Responsibilities include accounting for receipts and expenditures, maintaining adequate financial records, and refunding expenditures disallowed by audits.

2. Responsibilities of State Supreme Court

a. Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court, or its designated agency or council. (See III.I.)

b. The State Supreme Court or its designee shall receive all Institute funds awarded to such courts; be responsible for assuring proper administration of Institute funds; and be responsible for all aspects of the project, including proper accounting and financial recordkeeping by the subgrantee. These responsibilities include:

(1) *Reviewing Financial Operations.* The State Supreme Court or its designee should be familiar with, and periodically monitor, its subgrantees' financial operations, records system, and procedures. Particular attention should be directed to the maintenance of current financial data.

(2) *Recording Financial Activities.* The subgrantee's grant award or contract obligation, as well as cash advances and other financial activities, should be recorded in the financial records of the State Supreme Court or its designee in summary form. Subgrantee expenditures should be recorded on the books of the State Supreme Court *or* evidenced by report forms duly filed by the subgrantee. Non-Institute contributions applied to projects by subgrantees should likewise be recorded, as should any project income resulting from program operations.

(3) *Budgeting and Budget Review.* The State Supreme Court or its designee should ensure that each subgrantee prepares an adequate budget as the basis for its award commitment. The detail of each project budget should be maintained on file by the State Supreme Court.

(4) *Accounting for Non-Institute Contributions.* The State Supreme Court or its designee will ensure, in those instances where subgrantees are required to furnish non-Institute matching funds, that the requirements and limitations of the SJI Grant Guideline are applied to such funds.

(5) *Audit Requirement.* The State Supreme Court or its designee is required to ensure that subgrantees have met the necessary audit requirements set forth by the Institute (see sections K. below and IX.A.3.)

(6) *Reporting Irregularities.* The State Supreme Court, its designees, and its subgrantees are responsible for promptly reporting to the Institute the nature and circumstances surrounding any financial irregularities discovered.

*D. Accounting System*

The grantee is responsible for establishing and maintaining an adequate system of accounting and internal controls for itself and for ensuring that an adequate system exists for each of its subgrantees and contractors. An acceptable and adequate accounting system:

1. Properly accounts for receipt of funds under each grant awarded and the expenditure of funds for each grant by category of expenditure (including matching contributions and project income);
2. Assures that expended funds are applied to the appropriate budget category included within the approved grant;
3. Presents and classifies historical costs of the grant as required for budgetary and evaluation purposes;
4. Provides cost and property controls to assure optimal use of grant funds;
5. Is integrated with a system of internal controls adequate to safeguard the funds and assets covered, check the accuracy and reliability of the accounting data, promote operational efficiency, and assure conformance with any general or special conditions of the grant;
6. Meets the prescribed requirements for periodic financial reporting of operations; and
7. Provides financial data for planning, control, measurement, and evaluation of direct and indirect costs.

*E. Total Cost Budgeting and Accounting*

Accounting for all funds awarded by the Institute must be structured and executed on a *total project cost* basis. That is, total project costs, including Institute funds, State and local matching shares, and any other fund sources included in the approved project budget serve as the foundation for fiscal administration and accounting. Grant applications and financial reports require budget and cost estimates on the basis of total costs.



1. Timing of Matching Contributions

Matching contributions need not be applied at the exact time of the obligation of Institute funds; however, grantees must report match quarterly in the same manner as grant funds on the Institute's Financial Status Report. Ordinarily, the full matching share must be obligated during the award period; however, with the prior written permission of the Institute, contributions made following approval of the grant by the Institute's Board of Directors but before the beginning of the grant may be counted as match. Grantees that do not contemplate making matching contributions continuously throughout the course of a project, or on a task-by-task basis, are required to submit a schedule within 30 days after the beginning of the project period indicating at what points during the project period the matching contributions will be made. If a proposed cash match is not fully met, the Institute may reduce the award amount accordingly to maintain the ratio of grant funds to matching funds stated in the award agreement.

2. Records for Match

All grantees must maintain records which clearly show the source, amount, and timing of all matching contributions. In addition, if a project has included, within its approved budget, contributions which exceed the required matching portion, the grantee must maintain records of those contributions in the same manner as it does Institute funds and required matching shares. For all grants made to State and local courts, the State Supreme Court has primary responsibility for grantee/subgrantee compliance with the requirements of this section. (See C.2. above in this section.)

*F. Maintenance and Retention of Records*

All financial records, supporting documents, statistical records, and all other records pertinent to grants, subgrants, cooperative agreements, or contracts under grants must be retained by each organization participating in a project for at least three years for purposes of examination and audit. State Supreme Courts may impose record retention and maintenance requirements in addition to those prescribed in this section.

1. Coverage

The retention requirement extends to books of original entry, source documents supporting accounting transactions, the general ledger, subsidiary ledgers, personnel and payroll records, canceled checks, and related documents and records. Source documents include copies of all grant and subgrant awards, applications, and required grantee/subgrantee financial and narrative reports. Personnel and payroll records shall include the time and attendance reports for all individuals reimbursed under a grant, subgrant or contract, whether they are employed full-time or part-time. Time and effort reports will be required for consultants.

2. Retention Period

The three-year retention period starts from the date of the submission of the final expenditure report or, for grants which are renewed annually, from the date of submission of the annual expenditure report.

3. Maintenance

Grantees and subgrantees are expected to see that records of different fiscal years are separately identified and maintained so that requested information can be readily located. Grantees and subgrantees are also obligated to protect records adequately against fire or other damage.

When records are stored away from the grantee's/subgrantee's principal office, a written index of the location of stored records should be on hand, and ready access should be assured.

4. Access

Grantees and subgrantees must give any authorized representative of the Institute access to and the right to examine all records, books, papers, and documents related to an Institute grant.

*G. Project-Related Income*

Records of the receipt and disposition of project-related income must be maintained by the grantee in the same manner as required for the project funds that gave rise to the income and must be reported to the Institute. (See H.2. below in this section) The policies governing the disposition of the various types of project-related income are listed below.

1. Interest

A State and any agency or instrumentality of a State, including institutions of higher education and hospitals, shall not be held accountable for interest earned on advances of project funds. When funds are awarded to subgrantees through a State, the subgrantees are not held accountable for interest earned on advances of project funds. Local units of government and nonprofit organizations that are grantees must refund any interest earned. Grantees shall ensure minimum balances in their respective grant cash accounts.

2. Royalties

The grantee/subgrantee may retain all royalties received from copyrights or other works developed under projects or from patents and inventions, unless the terms and conditions of the grant provide otherwise.

3. Registration and Tuition Fees

Registration and tuition fees shall be used to pay project-related costs not covered by the grant, or to reduce the amount of grant funds needed to support the project. Registration and tuition fees may be used for other purposes only with the prior written approval of the Institute. Estimates of registration and tuition fees, and any expenses to be offset by the fees, should be included in the application budget forms and narrative.

4. Income From the Sale of Grant Products

a. When grant funds fully cover the cost of producing and disseminating a limited number of copies of a product, the grantee may, with the written prior approval of the Institute, sell additional copies reproduced at its expense at a reasonable market price, as long as the income is applied to court improvement projects consistent with the State Justice Institute Act. When grant funds only partially cover the costs of developing, producing and disseminating a product, the grantee may, with the written prior approval of the Institute, recover costs for developing, reproducing, and disseminating the material to the extent that those costs were not covered by Institute grant funds or grantee matching contributions. If the grantee recovers its costs in this manner, then amounts expended by the grantee to develop, produce, and disseminate the material may not be considered match.

b. If the sale of products occurs during the project period, the costs and income generated by the sales must be reported on the Quarterly Financial Status Reports and documented in an auditable manner. Whenever possible, the intent to sell a product should be disclosed in the concept paper and application or reported to the Institute in writing once a decision to sell products has been made. The grantee must request approval to recover its product development, reproduction, and

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dissemination costs as specified in section IX.A.11.b.

5. Other

Other project income shall be treated in accordance with disposition instructions set forth in the grant's terms and conditions.

*H. Payments and Financial Reporting Requirements*

1. Payment of Grant Funds

The procedures and regulations set forth below are applicable to all Institute grant funds and grantees.

a. *Request for Advance or Reimbursement of Funds.* Grantees will receive funds on a "check-issued" basis. Upon receipt, review, and approval of a Request for Advance or Reimbursement by the Institute, a check will be issued directly to the grantee or its designated fiscal agent. A request must be limited to the grantee's immediate cash needs. The Request for Advance or Reimbursement, along with the instructions for its preparation, will be included in the official Institute award package.

b. *Continuation and Ongoing Support Awards.* For purposes of submitting Requests for Advance or Reimbursement, recipients of continuation and ongoing support grants should treat each grant as a new project and number the requests accordingly (*i.e.*, on a grant rather than a project basis). The first Request for Advance or Reimbursement submitted after a continuation grant has been awarded, or funds have been approved for the next year of an ongoing support grant, should reflect the grant number with the new extension (*e.g.*, SJI–99–N–xxx–C01–1). This Request would be number 1, the second number 2, etc. If another continuation or increment of an ongoing support grant is awarded, the next series of Requests for Advance or Reimbursement would reflect the grant number with the new extension (*e.g.*, SJI–99–N–xxx–C02–1), and the numbering would begin again. (See Appendix B, Questions Frequently Asked by Grantees.)

c. *Termination of Advance and Reimbursement Funding.* When a grantee organization receiving cash advances from the Institute:

(1) Demonstrates an unwillingness or inability to attain program or project goals, or to establish procedures that will minimize the time elapsing between cash advances and disbursements, or cannot adhere to guideline requirements or special conditions;

(2) Engages in the improper award and administration of subgrants or contracts; or

(3) Is unable to submit reliable and/or timely reports; the Institute may terminate advance financing and require the grantee organization to finance its operations with its own working capital. Payments to the grantee shall then be made by check to reimburse the grantee for actual cash disbursements. In the event the grantee continues to be deficient, the Institute may suspend reimbursement payments until the deficiencies are corrected.

d. *Principle of Minimum Cash on Hand.* Grantees should request funds based upon immediate disbursement requirements. Grantees should time their requests to ensure that cash on hand is the minimum needed for disbursements to be made immediately or within a few days. Idle funds in the hands of subgrantees impair the goals of good cash management.

2. Financial Reporting

a. *General Requirements.* To obtain financial information concerning the use of funds, the Institute requires that grantees/subgrantees submit timely reports for review.

b. Two copies of the Financial Status Report are required from all grantees, other than scholarship recipients, for each active quarter on a calendar-quarter basis. This report is due within 30 days after the close of the calendar quarter. It is designed to provide financial information relating to Institute funds, State and local matching shares, project income, and any other sources of funds for the project, as well as information on obligations and outlays. A copy of the Financial Status Report, along with instructions for its preparation, is included in each official Institute Award package. If a grantee requests substantial payments for a project prior to the completion of a given quarter, the Institute may request a brief summary of the amount requested, by object class, to support the Request for Advance or Reimbursement.

c. *Additional Requirements for Continuation and Ongoing Support Grants.* Grantees receiving continuation or ongoing support grants should number their quarterly Financial Status Reports on a grant rather than a project basis. The first quarterly report submitted after a continuation grant has been awarded, or funds have been approved for the next year of an ongoing support grant, should reflect the grant number with the new extension (*e.g.*, SJI–99–N–xxx–C01–1). This report would be number 1, the second number 2, etc. If another continuation grant is awarded, the next series of quarterly reports would reflect the grant number with the new extension (*e.g.*, SJI–99–N–xxx–C02–1), and the numbering would begin again.

3. Consequences of Non-Compliance With Submission Requirement

Failure of the grantee to submit required financial and progress reports may result in suspension or termination of grant payments.

*I. Allowability of Costs*

1. General

Except as may be otherwise provided in the conditions of a particular grant, cost allowability is determined in accordance with the principles set forth in *OMB Circular A–87*, Cost Principles for State and Local Governments; *A–21*, Cost Principles Applicable to Grants and Contracts with Educational Institutions; and *A–122*, Cost Principles for Non-Profit Organizations. No costs may be recovered to liquidate obligations incurred after the approved grant period. Circulars may be obtained from OMB by calling 202–395–3080 or visiting the OMB website at www.whitehouse.gov/OMB.

2. Costs Requiring Prior Approval

a. *Pre-agreement Costs.* The written prior approval of the Institute is required for costs considered necessary to the project but which occur prior to the award date of the grant.

b. *Equipment.* Grant funds may be used to purchase or lease only that equipment essential to accomplishing the goals and objectives of the project. The written prior approval of the Institute is required when the amount of automated data processing (ADP) equipment to be purchased or leased exceeds $10,000 or software to be purchased exceeds $3,000.

c. *Consultants.* The written prior approval of the Institute is required when the rate of compensation to be paid a consultant exceeds $300 a day. Institute funds may not be used to pay a consultant more than $900 per day.

d. *Budget Revisions.* Budget revisions among direct cost categories that individually or cumulatively exceed five percent of the approved original budget or the most recently approved revised budget require prior Institute approval.

3. Travel Costs

Transportation and per diem rates must comply with the policies of the grantee. If the grantee does not have an established written travel policy, then travel rates must be consistent with those established by the Institute or the Federal Government. Institute funds may not be used to cover the transportation or per diem costs of a member of a national organization to attend an annual or other regular meeting of that organization.



4. Indirect Costs

These are costs of an organization that are not readily assignable to a particular project but are necessary to the operation of the organization and the performance of the project. The cost of operating and maintaining facilities, depreciation, and administrative salaries are examples of the types of costs that are usually treated as indirect costs. The Institute's policy requires all costs to be budgeted directly; however, if a grantee has an indirect cost rate approved by a Federal agency as set forth below, the Institute will accept that rate.

a. *Approved Plan Available.*

(1) The Institute will accept an indirect cost rate or allocation plan approved for a grantee during the preceding two years by any Federal granting agency on the basis of allocation methods substantially in accord with those set forth in the applicable cost circulars. A copy of the approved rate agreement must be submitted to the Institute.

(2) Where flat rates are accepted in lieu of actual indirect costs, grantees may not also charge expenses normally included in overhead pools, *e.g.*, accounting services, legal services, building occupancy and maintenance, etc., as direct costs.

(3) When utilizing total direct costs as the base, organizations with approved indirect cost rates usually exclude contracts under grants from any overhead recovery. The negotiated agreement will stipulate that contracts are excluded from the base for overhead recovery.

b. *Establishment of Indirect Cost Rates.* To be reimbursed for indirect costs, a grantee must first establish an appropriate indirect cost rate. To do this, the grantee must prepare an indirect cost rate proposal and submit it to the Institute within three months after the start of the grant period to assure recovery of the full amount of allowable indirect costs. The rate must be developed in accordance with principles and procedures appropriate to the type of grantee institution involved as specified in the applicable OMB Circular.

c. *No Approved Plan.* If an indirect cost proposal for recovery of actual indirect costs is not submitted to the Institute within three months after the start of the grant period, indirect costs will be irrevocably disallowed for all months prior to the month that the indirect cost proposal is received.

*J. Procurement and Property Management Standards*

1. Procurement Standards

For State and local governments, the Institute has adopted the standards set forth in Attachment O of *OMB Circular A–102*. Institutions of higher education, hospitals, and other non-profit organizations will be governed by the standards set forth in Attachment O of *OMB Circular A–110*.

2. Property Management Standards

The property management standards as prescribed in Attachment N of *OMB Circulars A–102* and *A–110* apply to all Institute grantees and subgrantees except as provided in section IX.A.18. All grantees/subgrantees are required to be prudent in the acquisition and management of property with grant funds. If suitable property required for the successful execution of projects is already available within the grantee or subgrantee organization, expenditures of grant funds for the acquisition of new property will be considered unnecessary.

*K. Audit Requirements*

1. Implementation

Each recipient of a grant from the Institute other than a scholarship, curriculum adaptation, or technical assistance grant must provide for an annual fiscal audit. This requirement also applies to a State or local court receiving a subgrant from the State Supreme Court. The audit may be of the entire grantee or subgrantee organization or of the specific project funded by the Institute. Audits conducted in accordance with the Single Audit Act of 1984 and *OMB Circular A–128*, or *OMB Circular A–133*, will satisfy the requirement for an annual fiscal audit. The audit must be conducted by an independent Certified Public Accountant, or a State or local agency authorized to audit government agencies. Grantees must send two copies of the audit report to the Institute. Grantees that receive funds from a Federal agency and satisfy audit requirements of the cognizant Federal agency must submit two copies of the audit report prepared for that Federal agency to the Institute in order to satisfy the provisions of this section. Cognizant Federal agencies do not send reports to the Institute. Therefore, each grantee must send copies of this report directly to the Institute.

2. Resolution and Clearance of Audit Reports

Timely action on recommendations by responsible management officials is an integral part of the effectiveness of an audit. Each grantee must have policies and procedures for acting on audit recommendations by designating officials responsible for: follow-up; maintaining a record of the actions taken on recommendations and time schedules; responding to and acting on audit recommendations; and submitting periodic reports to the Institute on recommendations and actions taken.

3. Consequences of Non-Resolution of Audit Issues

Ordinarily, the Institute will not make a new grant award to an applicant that has an unresolved audit report involving Institute awards. Failure of the grantee to resolve audit questions may also result in the suspension or termination of payments for active Institute grants to that organization.

*L. Close-Out of Grants*

1. Grantee Close-Out Requirements

Within 90 days after the end date of the grant or any approved extension thereof (see L.2. below in this section), the following documents must be submitted to the Institute by grantees (other than scholarship recipients):

a. *Financial Status Report.* The final report of expenditures must have no unliquidated obligations and must indicate the exact balance of unobligated funds. Any unobligated/unexpended funds will be deobligated from the award by the Institute. Final payment requests for obligations incurred during the award period must be submitted to the Institute prior to the end of the 90-day close-out period. Grantees on a check-issued basis, who have drawn down funds in excess of their obligations/expenditures, must return any unused funds as soon as it is determined that the funds are not required. In no case should any unused funds remain with the grantee beyond the submission date of the final financial status report.

b. *Final Progress Report.* This report should describe the project activities during the final calendar quarter of the project and the close-out period, including to whom project products have been disseminated; provide a summary of activities during the entire project; specify whether all the objectives set forth in the approved application or an approved adjustment have been met and, if any of the objectives have not been met, explain why not; and discuss what, if anything,

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could have been done differently that might have enhanced the impact of the project or improved its operation.

These reporting requirements apply at the conclusion of any non-scholarship grant, even when the project will continue under a continuation or ongoing support grant.

2. Extension of Close-Out Period

Upon the written request of the grantee, the Institute may extend the close-out period to assure completion of the grantee's close-out requirements. Requests for an extension must be submitted at least 14 days before the end of the close-out period and must explain why the extension is necessary and what steps will be taken to assure that all the grantee's responsibilities will be met by the end of the extension period.

**XI. Grant Adjustments**

All requests for programmatic or budgetary adjustments requiring Institute approval must be submitted in a timely manner (ordinarily 30 days prior to the implementation of the adjustment being requested) by the project director. All requests for changes from the approved application will be carefully reviewed for both consistency with this Guideline and the enhancement of grant goals and objectives.

*A. Grant Adjustments Requiring Prior Written Approval*

There are several types of grant adjustments that require the prior written approval of the Institute. Examples of these adjustments include:

1. Budget revisions among direct cost categories that individually or cumulatively exceed five percent of the approved original budget or the most recently approved revised budget. See section X.I.2.d.

For continuation and ongoing support grants, funds from the original award may be used during the new grant period and funds awarded through a continuation or ongoing support grant may be used to cover project-related expenditures incurred during the original award period, with the prior written approval of the Institute.

2. A change in the scope of work to be performed or the objectives of the project (see D. below in this section).

3. A change in the project site.

4. A change in the project period, such as an extension of the grant period and/or extension of the final financial or progress report deadline (see E. below).

5. Satisfaction of special conditions, if required.

6. A change in or temporary absence of the project director (see F. and G. below).

7. The assignment of an employee or consultant to a key staff position whose qualifications were not described in the application, or a change of a person assigned to a key project staff position (see section IX.A.2.).

8. A change in or temporary absence of the person responsible for managing and reporting on the grant's finances.

9. A change in the name of the grantee organization.

10. A transfer or contracting out of grant-supported activities (see H. below).

11. A transfer of the grant to another recipient.

12. Preagreement costs (see section X.I.2.a.).

13. The purchase of automated data processing equipment and software (see section X.I.2.b.).

14. Consultant rates (see section X.I.2.c.).

15. A change in the nature or number of the products to be prepared or the manner in which a product would be distributed.

*B. Requests for Grant Adjustments*

All grantees and subgrantees must promptly notify their SJI program managers, in writing, of events or proposed changes that may require adjustments to the approved project design. In requesting an adjustment, the grantee must set forth the reasons and basis for the proposed adjustment and any other information the program manager determines would help the Institute's review.

*C. Notification of Approval/Disapproval*

If the request is approved, the grantee will be sent a Grant Adjustment signed by the Executive Director or his designee. If the request is denied, the grantee will be sent a written explanation of the reasons for the denial.

*D. Changes in the Scope of the Grant*

Major changes in scope, duration, training methodology, or other significant areas must be approved in advance by the Institute. A grantee may make minor changes in methodology, approach, or other aspects of the grant to expedite achievement of the grant's objectives with subsequent notification of the SJI program manager.

*E. Date Changes*

A request to change or extend the grant period must be made at least 30 days in advance of the end date of the grant. A revised task plan should accompany a request for a no-cost extension of the grant period, along with a revised budget if shifts among budget categories will be needed. A request to change or extend the deadline for the final financial report or final progress report must be made at least 14 days in advance of the report deadline (see section X.L.2.).

*F. Temporary Absence of the Project Director*

Whenever an absence of the project director is expected to exceed a continuous period of one month, the plans for the conduct of the project director's duties during such absence must be approved in advance by the Institute. This information must be provided in a letter signed by an authorized representative of the grantee/subgrantee at least 30 days before the departure of the project director, or as soon as it is known that the project director will be absent. The grant may be terminated if arrangements are not approved in advance by the Institute.

*G. Withdrawal of/Change in Project Director*

If the project director relinquishes or expects to relinquish active direction of the project, the Institute must be notified immediately. In such cases, if the grantee/subgrantee wishes to terminate the project, the Institute will forward procedural instructions upon notification of such intent. If the grantee wishes to continue the project under the direction of another individual, a statement of the candidate's qualifications should be sent to the Institute for review and approval. The grant may be terminated if the qualifications of the proposed individual are not approved in advance by the Institute.

*H. Transferring or Contracting Out of Grant-Supported Activities*

No principal activity of a grant-supported project may be transferred or contracted out to another organization without specific prior approval by the Institute. All such arrangements must be formalized in a contract or other written agreement between the parties involved. Copies of the proposed contract or agreement must be submitted for prior approval of the Institute at the earliest possible time. The contract or agreement must state, at a minimum, the activities to be performed, the time schedule, the policies and procedures to be followed, the dollar limitation of the agreement, and the cost principles to be followed in determining what costs, both direct and indirect, will be allowed. The contract or other written agreement must not affect the grantee's overall responsibility for the direction of the project and accountability to the Institute.



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**David I. Tevelin,**
*Executive Director.*

**Appendix A—Recommendations to Grant Writers**

Over the past 14 years, Institute staff have reviewed approximately 3,800 concept papers and 1,700 applications. On the basis of those reviews, inquiries from applicants, and the views of the Board, the Institute offers the following recommendations to help potential applicants present workable, understandable proposals that can meet the funding criteria set forth in this Guideline.

The Institute suggests that applicants make certain that they address the questions and issues set forth below when preparing a concept paper or application. Concept papers and applications should, however, be presented in the formats specified in sections VI. and VII. of the Guideline, respectively.

1. What is the subject or problem you wish to address?

Describe the subject or problem and how it affects the courts and the public. Discuss how your approach will improve the situation or advance the state of the art or knowledge, and explain why it is the most appropriate approach to take. When statistics or research findings are cited to support a statement or position, the source of the citation should be referenced in a footnote or a reference list.

2. What do you want to do?

Explain the goal(s) of the project in simple, straightforward terms. The goals should describe the intended consequences or expected overall effect of the proposed project (*e.g.*, to enable judges to sentence drug-abusing offenders more effectively, or to dispose of civil cases within 24 months), rather than the tasks or activities to be conducted (*e.g.*, hold three training sessions, or install a new computer system).

To the greatest extent possible, an applicant should avoid a specialized vocabulary that is not readily understood by the general public. Technical jargon does not enhance a paper, nor does a clever but uninformative title.

3. How will you do it?

Describe the methodology carefully so that what you propose to do and how you would do it are clear. All proposed tasks should be set forth so that a reviewer can see a logical progression of tasks, and relate those tasks directly to the accomplishment of the project's goal(s). When in doubt about whether to provide a more detailed explanation or to assume a particular level of knowledge or expertise on the part of the reviewers, provide the additional information. A description of project tasks also will help identify necessary budget items. All staff positions and project costs should relate directly to the tasks described. The Institute encourages applicants to attach letters of cooperation and support from the courts and related agencies that will be involved in or directly affected by the proposed project.

4. How will you know it works?

Include an evaluation component that will determine whether the proposed training, procedure, service, or technology accomplished the objectives it was designed to meet. Concept papers and applications should present the criteria that will be used to evaluate the project's effectiveness; identify program elements which will require further modification; and describe how the evaluation will be conducted, when it will occur during the project period, who will conduct it, and what specific measures will be used. In most instances, the evaluation should be conducted by persons not connected with the implementation of the procedure, training, service, or technique, or the administration of the project.

The Institute has also prepared a more thorough list of recommendations to grant writers regarding the development of project evaluation plans. Those recommendations are available from the Institute upon request.

5. How will others find out about it?

Include a plan to disseminate the results of the training, research, or demonstration beyond the jurisdictions and individuals directly affected by the project. The plan should identify the specific methods which will be used to inform the field about the project, such as the publication of law review or journal articles, or the distribution of key materials. A statement that a report or research findings "will be made available to" the field is not sufficient. The specific means of distribution or dissemination as well as the types of recipients should be identified. Reproduction and dissemination costs are allowable budget items.

6. What are the specific costs involved?

The budget in both concept papers and applications should be presented clearly. Major budget categories such as personnel, benefits, travel, supplies, equipment, and indirect costs should be identified separately. The components of "Other" or "Miscellaneous" items should be specified in the application budget narrative, and should not include set-asides for undefined contingencies.

7. What, if any, match is being offered?

Courts and other units of State and local government (not including publicly-supported institutions of higher education) are required by the State Justice Institute Act to contribute a match (cash, non-cash, or both) of at least 50 percent of the grant funds requested from the Institute. All other applicants also are encouraged to provide a matching contribution to assist in meeting the costs of a project.

The match requirement works as follows: If, for example, the total cost of a project is anticipated to be $150,000, a State or local court or executive branch agency may request up to $100,000 from the Institute to implement the project. The remaining $50,000 (50% of the $100,000 requested from SJI) must be provided as match.

Cash match includes funds directly contributed to the project by the applicant, or by other public or private sources. It does not include income generated from tuition fees or the sale of project products. Non-cash match refers to in-kind contributions by the applicant, or other public or private sources. This includes, for example, the monetary value of time contributed by existing personnel or members of an advisory committee (but not the time spent by participants in an educational program attending program sessions). When match is offered, the nature of the match (cash or in-kind) should be explained and, at the application stage, the tasks and line items for which costs will be covered wholly or in part by match should be specified.

8. Which of the two budget forms should be used?

Section VII.A.1.c. of the SJI Grant Guideline encourages use of the spreadsheet format of Form C1 if the application requests $100,000 or more. Form C1 also works well for projects with discrete tasks, regardless of the dollar value of the project. Form C, the tabular format, is preferred for projects lacking a number of discrete tasks, or for projects requiring less than $100,000 of Institute funding. Generally, use the form that best lends itself to representing most accurately the budget estimates for the project.

9. How much detail should be included in the budget narrative?

The budget narrative of an application should provide the basis for computing all project-related costs, as indicated in VII.A.4. of the Guideline. To avoid common shortcomings of application budget narratives, applicants should include the following information:

Personnel estimates that accurately provide the amount of time to be spent by personnel involved with the project and the total associated costs, including current salaries

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for the designated personnel (*e.g.*, Project Director, 50% for one year, annual salary of $50,000 = $25,000). If salary costs are computed using an hourly or daily rate, the annual salary and number of hours or days in a work-year should be shown.

Estimates for supplies and expenses supported by a complete description of the supplies to be used, the nature and extent of printing to be done, anticipated telephone charges, and other common expenditures, with the basis for computing the estimates included (*e.g.*, 100 reports × 75 pages each × .05/page = $375.00). Supply and expense estimates offered simply as "based on experience" are not sufficient.

In order to expedite Institute review of the budget, make a final comparison of the amounts listed in the budget narrative with those listed on the budget form. In the rush to complete all parts of the application on time, there may be many last-minute changes; unfortunately, when there are discrepancies between the budget narrative and the budget form or the amount listed on the application cover sheet, it is not possible for the Institute to verify the amount of the request. A final check of the numbers on the form against those in the narrative will preclude such confusion.

10. What travel regulations apply to the budget estimates?

Transportation costs and per diem rates must comply with the policies of the applicant organization, and a copy of the applicant's travel policy should be submitted as an appendix to the application. If the applicant does not have a travel policy established in writing, then travel rates must be consistent with those established by the Institute or the Federal Government (a copy of the Institute's travel policy is available upon request). The budget narrative should state which policies apply to the project.

The budget narrative also should include the estimated fare, the number of persons traveling, the number of trips to be taken, and the length of stay. The estimated costs of travel, lodging, ground transportation, and other subsistence should be listed and explained separately. It is preferable for the budget to be based on the actual costs of traveling to and from the project or meeting sites. If the points of origin or destination are not known at the time the budget is prepared, an average airfare may be used to estimate the travel costs. For example, if it is anticipated that a project advisory committee will include members from around the country, a reasonable airfare from a central point to the meeting site, or the average of airfares from each coast to the meeting site may be used. Applicants should arrange travel so as to be able to take advantage of advance-purchase price discounts whenever possible.

11. May grant funds be used to purchase equipment?

Generally, grant funds may be used to purchase only the equipment that is necessary to demonstrate a new technological application in a court, or that is otherwise essential to accomplishing the objectives of the project. The budget narrative must list the equipment to be purchased and explain why the equipment is necessary to the success of the project. Written prior approval is required when the amount of computer hardware to be purchased or leased exceeds $10,000, or the software to be purchased exceeds $3,000.

12. To what extent may indirect costs be included in the budget estimates?

It is the policy of the Institute that all costs should be budgeted directly; however, if an indirect cost rate has been approved by a Federal agency within the last two years, an indirect cost recovery estimate may be included in the budget. A copy of the approved rate agreement should be submitted as an appendix to the application.

If an applicant does not have an approved rate agreement and cannot budget directly for all costs, an indirect cost rate proposal should be prepared in accordance with X.I.4. of the Guideline, based on the applicant's audited financial statements for the prior fiscal year. (Applicants lacking an audit should budget all project costs directly.)

13. What meeting costs may be covered with grant funds?

SJI grant funds may cover the reasonable cost of meeting rooms, necessary audio-visual equipment, meeting supplies, and working meals.

14. Does the budget truly reflect all costs required to complete the project?

After preparing the program narrative portion of the application, applicants may find it helpful to list all the major tasks or activities required by the proposed project, including the preparation of products, and note the individual expenses, including personnel time, related to each. This will help to ensure that, for all tasks described in the application (*e.g.*, development of a videotape, research site visits, distribution of a final report), the related costs appear in the budget and are explained correctly in the budget narrative.

## Appendix B—Questions Frequently Asked by Grantees

The Institute's staff works with grantees to help assure the smooth operation of the project and compliance with the Guideline. On the basis of monitoring more than 1,000 grants, the Institute staff offers the following suggestions to aid grantees in meeting the administrative and substantive requirements of their grants.

1. After the grant has been awarded, when are the first quarterly reports due?

Quarterly Progress Reports and Financial Status Reports must be submitted within 30 days after the end of every calendar quarter—*i.e.*, no later than January 30, April 30, July 30, and October 30—regardless of the project's start date. The reporting periods covered by each quarterly report end 30 days before the respective deadline for the report. When an award period begins December 1, for example, the first quarterly progress report describing project activities between December 1 and December 31 will be due on January 30. A financial status report should be submitted even if funds have not been obligated or expended.

By documenting what has happened over the past three months, quarterly progress reports provide an opportunity for project staff and Institute staff to resolve any questions before they become problems, and make any necessary changes in the project time schedule, budget allocations, etc. The quarterly progress report should describe project activities, their relationship to the approved timeline, and any problems encountered and how they were resolved, and outline the tasks scheduled for the coming quarter. It is helpful to attach copies of relevant memos, draft products, or other requested information. An original and one copy of a quarterly progress report and attachments should be submitted to the Institute.

Additional quarterly progress report or financial status report forms may be obtained from the grantee's Program Manager at SJI, or photocopies may be made from the supply received with the award.

2. Do reporting requirements differ for continuation and ongoing support grants?

Recipients of continuation or ongoing support grants are required to submit quarterly progress and financial status reports on the same schedule and with the same information as recipients of grants for single new projects.

A continuation grant and each yearly grant under an ongoing support award should be considered as a separate phase of the project. The reports should be numbered on a grant rather than project basis. Thus, the first quarterly report filed under a continuation grant or a yearly increment of an ongoing support award should be designated as number one, the second as number two, and so on, through the final progress and financial status reports due within 90 days after the end of the grant period.

3. What information about project activities should be communicated to SJI?

In general, grantees should provide prior notice of critical project events such as advisory board meetings or training sessions so that the Institute Program Manager can attend, if possible. If methodological, schedule, staff, budget allocations, or other significant changes become necessary, the grantee should contact the Program Manager prior to implementing any of these changes, so that possible questions may be addressed in advance. Questions concerning the financial requirements, quarterly financial reporting, or payment requests should be addressed to the Institute's Grants Financial Manager listed in the award letter.

It is helpful to include the grant number assigned to the award on all correspondence to the Institute.

4. Why are special conditions attached to the award document?

In some instances, a list of special conditions is attached to the award document. Special conditions may be imposed to establish a schedule for reporting certain key information, assure that the Institute has an opportunity to offer suggestions at critical stages of the project, and provide reminders of some (but not necessarily all) of the requirements contained in the Grant Guideline. Accordingly, it is important for grantees to check the special conditions carefully and discuss with their Program Managers any questions or problems they may have with the conditions. Most concerns about timing, response time, and the level of detail required can be resolved in advance through a telephone conversation. The Institute's primary concern is to work with grantees to assure that their projects accomplish their objectives, not to enforce rigid bureaucratic requirements. However, if a grantee fails to comply with a special condition or with other grant requirements, the Institute may, after proper notice, suspend payment of grant funds or terminate the grant.

Sections IX., X., and XI. of the Grant Guideline contain the Institute's administrative and financial requirements. Institute Finance Division staff is always available to answer questions and provide assistance regarding these provisions.

5. What is a Grant Adjustment?

A Grant Adjustment is the Institute's form for acknowledging the satisfaction of special conditions, or approving changes in grant activities, schedule, staffing, sites, or budget allocations requested by the project director. It also may be used to correct errors in grant documents or deobligate funds from the grant.

6. What schedule should be followed in submitting requests for reimbursements or advance payments?

Requests for reimbursements or advance payments may be made at any time after the project start date and before the end of the 90-day close-out period. However, the Institute follows the U.S. Treasury's policy limiting advances to the minimum amount required to meet immediate cash needs. Given normal processing time, grantees should not seek to draw down funds for periods greater than 30 days from the date of the request.

7. Do procedures for submitting requests for reimbursement or advance payment differ for continuation or ongoing support grants?

The basic procedures are the same for any grant. A continuation grant or the yearly grant under an ongoing support award should be considered as a separate phase of the project. Payment requests should be numberad on a grant rather than a project basis. The first request for funds from a continuation grant or a yearly increment under an ongoing support award should be designated as number one, the second as number two, and so on through the final payment request for that grant.

8. If things change during the grant period, can funds be reallocated from one budget category to another?

The Institute recognizes that some flexibility is required in implementing a project design and budget. Thus, grantees may shift funds among direct cost budget categories. When any one reallocation or the cumulative total of reallocations is expected to exceed five percent of the approved project budget, a grantee must specify the proposed changes, explain the reasons for the changes, and request Institute approval.

The same standard applies to continuation and ongoing support grants. In addition, prior written Institute approval is required to shift leftover funds from the original award to cover activities to be conducted under the renewal award, or to use renewal grant monies to cover costs incurred during the original grant period.



9. What is the 90-day close-out period?

Following the last day of the grant, a 90-day period is provided to allow for all grant-related bills to be received and posted, and grant funds drawn down to cover these expenses. No obligations of grant funds may be incurred during this period. The last day on which an expenditure of grant funds can be obligated is the end date of the grant period. Similarly, the 90-day period is not intended as an opportunity to finish and disseminate grant products. This should occur before the end of the grant period.

During the 90 days following the end of the award period, all monies that have been obligated should be expended. All payment requests must be received by the end of the 90-day "close-out-period." Any unexpended monies held by the grantee that remain after the 90-day follow-up period must be returned to the Institute. Any funds remaining in the grant that have not been drawn down by the grantee will be deobligated.

10. Are funds granted by SJI "Federal" funds?

The State Justice Institute Act provides that, except for purposes unrelated to this question, "the Institute shall not be considered a department, agency, or instrumentality of the Federal Government." 42 U.S.C.10704(c)(1). Because SJI receives appropriations from Congress, some grantee auditors have reported SJI grants funds as "Other Federal Assistance." This classification is acceptable to SJI but is not required.

11. If SJI is not a Federal Agency, do OMB circulars apply with respect to audits?

Unless they are inconsistent with the express provisions of the SJI Grant Guideline, Office of Management and Budget (OMB) Circulars A–110, A–21, A–87, A–88, A–102, A–122, A–128 and A–133 are incorporated into the Grant Guideline by reference. Because the Institute's enabling legislation specifically requires the Institute to "conduct, or require each recipient to provide for, an annual fiscal audit" (see 42 U.S.C. 10711(c)(1)), the Grant Guideline sets forth options for grantees to comply with this statutory requirement. (See Section X.K.)

SJI will accept audits conducted in accordance with the Single Audit Act of 1984 and OMB Circulars A–128 or A–133 to satisfy the annual fiscal audit requirement. Grantees that are required to undertake these audits in conjunction with Federal grants may include SJI funds as part of the audit even if the receipt of SJI funds would not require such audits. This approach gives grantees an option to fold SJI funds into the governmental audit rather than to undertake a separate audit to satisfy SJI's Guideline requirements.

In sum, educational and nonprofit organizations that receive payments from the Institute that are sufficient to meet the applicability thresholds of OMB Circular A–133 must have their annual audit conducted in accordance with Government Auditing Standards issued by the Comptroller General of the United States rather than with generally accepted auditing standards. Grantees in this category that receive amounts below the minimum threshold referenced in Circular A–133 must also submit an annual audit to SJI, but they would have the option to conduct an audit of the entire grantee organization in accordance with generally accepted auditing standards; include SJI funds in an audit of Federal funds conducted in accordance with the Single Audit Act of 1984 and OMB Circulars A–128 or A–133; or conduct an audit of only the SJI funds in accordance with generally accepted auditing standards. (See Guideline section X.K.) Circulars may be obtained from OMB by calling 202–395–3080 or visiting the OMB website at www.whitehouse.gov/OMB.

12. Does SJI have a CFDA number?

Auditors often request that a grantee provide the Institute's Catalog of Federal Domestic Assistance (CFDA) number for guidance in conducting an audit in accordance with Government Accounting Standards.

Because SJI is not a Federal agency, it has not been issued such a number, and there are no additional compliance tests to satisfy under the Institute's audit requirements beyond those of a standard governmental audit.

Moreover, because SJI is not a Federal agency, SJI funds should not be aggregated with Federal funds to determine if the applicability threshold of Circular A–133 has been reached. For example, if in fiscal year 1999 grantee "X" received $10,000 in Federal funds from a Department of Justice (DOJ) grant program and $20,000 in grant funds from SJI, the minimum A–133 threshold would not be met. The same distinction would preclude an auditor from considering the additional SJI funds in determining what Federal requirements apply to the DOJ funds.

Grantees who are required to satisfy either the Single Audit Act, OMB Circulars A–128 or A–133, and who include SJI grant funds in those audits, need to remember that because of its status as a private non-profit corporation, SJI is not on routing lists of cognizant Federal agencies. Therefore, the grantee needs to submit a copy of the audit report prepared for such a cognizant Federal agency directly to SJI. The Institute's audit requirements may be found in section X.K. of the Grant Guideline.

## Appendix C—List of State Contacts Regarding Administration of Institute Grants to State and Local Courts

Mr. Frank Gregory, Administrative Director, Administrative Office of the Courts, 300 Dexter Avenue, Montgomery, AL 36104, (334) 242–0300

Ms. Stephanie J. Cole, Administrative Director of the Courts, Alaska Court System, 303 K Street, Anchorage, AK 99501, (907) 264–0547

Mr. Eliu F. Paopao, Court Administrator, High Court of American Samoa, P.O. Box 309, Pago Pago, AS 96799, 011 (684) 633–1150

Mr. David K. Byers, Administrative Director of the Courts, Supreme Court of Arizona, 1501 West Washington Street, Suite 411, Phoenix, AZ 85007, (602) 542–9301

Mr. James D. Gingerich, Director, Administrative Office of the Courts, Supreme Court of Arkansas, Justice Building, Little Rock, AR 72201, (501) 682–9400

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Mr. Daniel J. Tydingco, Executive Officer, Supreme Court of Guam, Guam Judicial Center, Suite 300, 120 West O'Brien Drive, Hagatna, Guam 96910–5174, 011 (671) 475–3278
Mr. Michael F. Broderick, Administrative Director of the Courts, The Judiciary, State of Hawaii, 417 S. King Street, Room 206, Honolulu, HI 96813, (808) 539–4900
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Ms. Cicely Jaracz Lambert, Director, Administrative Office of the Courts, 100 Millcreek Park, Frankfort, KY 40601–9230, (502) 573–2350
Dr. Hugh M. Collins, Judicial Administrator, Supreme Court of Louisiana, 1555 Poydras Street, Suite 1540, New Orleans, LA 70112–3701, (504) 568–5747
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Mr. Frank Broccolina, State Court Administrator, Administrative Office of the Courts, Maryland Judicial Center, 580 Taylor Avenue, Annapolis, MD 21401, (410) 260–1290
Honorable Barbara A. Dortch-Okara, Chief Justice for Administration and Management, Administrative Office of the Trial Courts, Two Center Plaza, Fifth Floor, Boston, MA 02108, (617) 742–8575
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Ms. Sue K. Dosal, State Court Administrator, Supreme Court of Minnesota, 25 Constitution Avenue, St. Paul, MN 55155, (651) 296–2474
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Mr. Michael L. Buenger, State Court Administrator, Supreme Court of Missouri, P.O. Box 104480, Jefferson City, MO 65110, (573) 751–3585
Mr. Patrick A. Chenovick, State Court Administrator, Office of the Court Administrator, Supreme Court of Montana, Justice Building, Room 315, 215 North Sanders, Post Office Box 203002, Helena, MT 59620–3002, (406) 444–2621
Mr. Joseph C. Steele, State Court Administrator, Administrative Office of the Courts/Probation, State Capitol Building, Room 1220, Post Office Box 98910, Lincoln, NE 68509–8910, (404) 471–3730
Ms. Karen Kavanau, State Court Administrator, Administrative Office of the Courts, Supreme Court Building, 201 South Carson Street, Suite 250, Carson City, NV 89701–4702, (775) 684–1717
Mr. Donald Goodnow, Director, Administrative Office of the Courts, Two Noble Drive, Concord, NH 03301, (603) 271–2521
Honorable Richard J. Williams, Acting Administrative Director, Administrative Office of the Courts, Post Office Box 037 RJH Justice Complex 25 Market Street, Trenton, NJ 08625, (609) 292–1747
Mr. John M. Greacen, Director, Administrative Office of the Courts 237 Don Gaspar, Room 25, Sante Fe, NM 87501–2178, (505) 827–4800
Honorable Jonathan Lippman, Chief Administrative Judge, New York State Unified Court System, Office of Court Administration, 25 Beaver Street, New York, NY 10004, (212) 428–2100
Honorable Thomas W. Ross, Administrative Director of the Courts, North Carolina Administrative Office of the Courts, 2 East Morgan Street (Zip Code 27601), Post Office Box 2448, Raleigh, NC 27602, (919) 733–7107
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Mr. Howard W. Conyers, Administrative Director of the Courts, 1925 N. Stiles, Suite 305, Oklahoma City, OK 73105, (405) 521–2450
Ms. Kingsley W. Click, State Court Administrator, Office of the State Court Administrator, Supreme Court Building, Salem, OR 97310, (503) 986–5900
Mr. Zygmont A. Pines, Acting Court Administrator, Administrative Office of Pennsylvania Courts, Supreme Court of Pennsylvania 1515 Market Street, Suite 1414, Philadelphia, PA 19102, (215) 560–6337
Ms. Mercedes M. Bauermeister, Administrative Director of the Courts, General Court of Justice, Office of Court Administration, 6 Vela Street, Post Office Box 190917, Hato Rey, PR 00919, (787) 763–3358
Dr. Robert C. Harrall, State Court Administrator, Supreme Court of Rhode Island, 250 Benefit Street, Providence, RI 02903, (401) 277–3263
Ms. Rosalyn Woodson Frierson, Director, South Carolina Court Administration, 1015 Sumter Street, Suite 200, Columbia, SC 29201, (803) 734–1800
Mr. Daniel Schenk, Acting State Court Administrator, Unified Judicial System, 500 East Capitol Avenue, Pierre, SD 57501, (605) 773–3474
Ms. Cornelia A. Clark, Director, Administrative Office of the Courts, Tennessee Supreme Court, 511 Union Street, Suite 600, Nashville, TN 37243–0607, (615) 741–2687
Mr. Jerry L. Benedict, Administrative Director, Office of Court Administration, Tom C. Clark State Courts Building, Post Office Box 12066 (Zip Code 78711–2066), 205 West 14th Street, Suite 600, Austin, TX 78701, (512) 463–1625
Mr. Daniel Becker, State Court Administrator, 450 South State, Post Office Box 140241, Salt Lake City, UT 84114–0241, (801) 578–3806
Mr. Lee Suskin, Court Administrator, Supreme Court of Vermont, 109 State Street, Montpelier, VT 05609–0701, (802) 828–3278
Ms. Glenda L. Lake, Territorial Court of the Virgin Islands, P.O. Box 70, Charlotte Amalie, St. Thomas, Virgin Islands 00804, (340) 774–6680
Mr. Robert N. Baldwin, State Court Administrator, Supreme Court of Virginia, 100 North Ninth Street, 3rd Floor, Richmond, VA 23219, (804) 786–6455
Ms. Mary Campbell McQueen, State Court Administrator, Supreme Court of Washington, Temple of Justice, P.O. Box 41174, Olympia, WA 98504–1174, (360) 357–2121
Mr. James M. Albert, Administrative Director, West Virginia Supreme Court of Appeals, E–100, State Capitol Bldg., 1900 Kanawha Blvd. East, Charleston, WV 25305–0833, (304) 558–0145
Mr. J. Denis Moran, Director of State Courts, Room LL2, 119 Martin Luther King Jr. Blvd. (Zip Code 53703), Post Office Box 1688, Madison, WI 53702, (608) 266–6828
Ms. Holly A. Hansen, State Court Administrator, Supreme Court of Wyoming, Supreme Court Building, 2301 Capital Avenue, Cheyenne, WY 82002, (307) 777–7480



## Appendix D—SJI Libraries: Designated Sites and Contacts

*Alabama*

Supreme Court Library

Mr. Timothy A. Lewis, State Law Librarian, Alabama Supreme Court Building, 300 Dexter Avenue, Montgomery, AL 36104, (334) 242–4347

*Alaska*

Anchorage Law Library

Ms. Cynthia S. Fellows, State Law Librarian, Alaska Court Libraries, 820 W. Fourth Ave., Anchorage, AK 99501, (907) 264–0583

*Arizona*

State Law Library

Ms. Gladys A. Wells, Collection Dev., Research Division, AZ Dept. of Library, Archives, and Public Records, State Law Library, 1501 W. Washington, Phoenix, AZ 85007, (602) 542–4035

*Arkansas*

Administrative Office of the Courts

Mr. James D. Gingerich, Director, Administrative Office of the Courts, Supreme Court of Arkansas, Justice Building, 625 Marshall Street, Little Rock, AR 72201–1078, (501) 682–9400

*California*

Administrative Office of the Courts

Mr. William C. Vickrey, State Court Administrator, Administrative Office of the Courts, 455 Golden Gate Avenue, San Francisco, CA 94102, (415) 865–4200

*Colorado*

Supreme Court Library

Ms. Lois Calvert, Supreme Court Law Librarian, Colorado Supreme Court Library, Colorado State Judicial Building, 2 East 14th Avenue, Denver, CO 80203, (303) 837–3720

*Connecticut*

State Library

Ms. Denise D. Jernigan, State Librarian, Connecticut State Library, 231 Capital Avenue, Hartford, CT 06106, (860) 566–2516

*Delaware*

Administrative Office of the Courts

Mr. Dennis B. Jones, Director, Administrative Office of the Courts, Carvel State Office Building, 820 N. French, 11th Floor, Box 8911, Wilmington, DE 19801, (302) 577–2480

*District of Columbia*

Executive Office, District of Columbia Courts

Ms. Anne B. Wicks, Acting Executive Officer, Courts of the District of Columbia, 500 Indiana Avenue NW., Room 1500, Washington, DC 20001, (202) 879–1700

*Florida*

Administrative Office of the Courts

Mr. Kenneth R. Palmer, State Courts Administrator, Florida State Courts System, Supreme Court Building, 500 South Duval Street, Tallahassee, FL 32399–1900, (850) 922–5081

*Georgia*

Administrative Office of the Courts

Mr. Jay Martin, Interim Director, Administrative Office of the Courts, 47 Trinity Avenue Suite 414, Atlanta, GA 30334

*Hawaii*

Supreme Court Library

Ms. Ann S. Koto, State Law Librarian, The Supreme Court Law Library, 417 South King Street, Honolulu, HI 96813, (808) 539–4965

*Idaho*

AOC Judicial Education Library/State Law Library

Ms. Beth Peterson, State Law Librarian, Idaho State Law Library, 451 West State Street, Boise, ID 83720, (208) 334–3316

*Illinois*

Supreme Court Library

Ms. Brenda I. Larison, State Law Librarian, Supreme Court Library, Supreme Court Building, 200 E. Capitol, Springfield, IL 62701–1791, (217) 782–2424

*Indiana*

Supreme Court Library

Mr. Dennis Lager, Supreme Court Librarian, Supreme Court Library, State House, Room 316, Indianapolis, IN 46204, (317) 232–2557

*Iowa*

Administrative Office of the Court

Dr. Jerry K. Beatty, Executive Director Education, Office of the State Court Administrator, 700 3rd. St. Upper Level, Des Moines, IA 50309, (515) 281–8279

*Kansas*

Supreme Court Library

Mr. Fred Knecht, Law Librarian, Kansas Supreme Court Library, 301 West 10th Street, Topeka, KS 66612, (913) 296–3257

*Kentucky*

State Law Library

Ms. Marge Jones, State Law Librarian, State Law Library, State Capital Room 200–A, 700 Capital Avenue, Frankfort, KY 40601, (502) 564–4848

*Louisiana*

State Law Library

Ms. Carol D. Billings, Director, Louisiana Law Library, Supreme Court of Louisiana, 301 Loyola Avenue, Room 301, New Orleans, LA 70112, (504) 568–5705

*Maine*

State Law and Legislative Reference Library

Ms. Lynn E. Randall, State Law Librarian, State Law & Legislative Reference Library, State House Station 43, Augusta, ME 04333, (207) 287–1600

*Maryland*

State Law Library

Mr. Michael S. Miller, Director, Maryland State Law Library, Court of Appeal Building, 361 Rowe Blvd., Annapolis, MD 21401, (410) 260–1430

*Massachusetts*

Middlesex Law Library

Ms. Sandra Lindheimer, Library Director, Middlesex Law Library, Superior Court House, 40 Thorndike Street, Cambridge, MA 02141, (617) 494–4148

*Michigan*

Michigan Judicial Institute

Mr. Kevin J. Bowling, Director, Michigan Judicial Institute, P.O. Box 30205, 222 Washington Square North Suite 220, Lansing, MI 48909–7705, (517) 334–7805 Ext 112

*Minnesota*

State Law Library (Minnesota Judicial Center)

Mr. Marvin R. Anderson, State Law Librarian, Minnesota Judicial Center, 25 Constitution Avenue, St. Paul, MN 55155, (612) 297–2084

*Mississippi*

Mississippi Judicial College

Mr. Leslie G. Johnson, Executive Director, Mississippi Judicial College, University of Mississippi, P.O. Box 8850, University, MS 38677, (662) 915–5955

*Montana*

State Law Library

Ms. Judith Meadows, State Law Librarian, State Law Library of Montana, Justice Building, 215 North Sanders, Helena, MT 59620, (406) 444–3660

*Nebraska*

Administrative Office of the Courts

Mr. Joseph C. Steele, State Court Administrator, Administrative Office of the Courts/Probation, State Capitol Building, Room 1220, Lincoln, NE 68509, (402) 471–3730

*Nevada*

National Judicial College

Ms. Clara Kelly, Law Librarian, National Judicial College, Judicial College Building, University of Nevada, Reno, NV 89550, (702) 784–6747

*New Jersey*

New Jersey State Library

Ms. Marjorie Garwig, Supervising Law Librarian, NJ State Law Library, 185 West State St., P.O. Box 520, Trenton, NJ 08625, (609) 292–6230

*New Mexico*

Supreme Court Library

Mr. Thaddeus Bejnar, Librarian, New Mexico Supreme Court Library, P.O. Drawer L, Santa Fe, NM 87504, (505) 827–4850

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*New York*

Supreme Court Library

Ms. Colleen Stella, Principal Law Librarian, New York State Supreme Court Law Library, Onondaga County Court House, 401 Montgomery Street, Syracuse, NY 13202, (315) 435–2063

*North Carolina*

Supreme Court Library

Mr. Thomas P. Davis, Librarian, NC State Law Library 2 East Morgan Street, P.O. Box 28006, Raleigh, NC 27601, (919) 733–3425

*North Dakota*

Supreme Court Library

Ms. Marcella Kramer, Assistant Law Librarian, Supreme Court Law Library, 600 East Boulevard Ave., 2nd Floor, Judicial Wing, Bismarck, ND 58505–0530, (701) 328–2229

*Northern Mariana Islands*

Supreme Court of the Northern Mariana Islands

Hon. Miguel Sablan Demapan, Chief Justice, Supreme Court of the Northern Mariana Islands, P.O. Box 2165 C.K., Saipan, MP 96950, (670) 236–9700

*Ohio*

Supreme Court Library

Mr. Paul S. Fu, Law Librarian, Supreme Court Law Library, Supreme Court of Ohio, 30 East Broad Street, Columbus, OH 43266–0419, (614) 466–2044

*Oklahoma*

Administrative Office of the Courts

Mr. Howard W. Conyers, Administrative Director of the Courts, 1915 North Stiles, Suite 305, Oklahoma City, OK 73105, (405) 521–2450

*Oregon*

Administrative Office of the Courts

Ms. Kingsley W. Click, State Court Administrator, Supreme Court of Oregon, Supreme Court Building, Salem, OR 97310, (503) 986–5900

*Pennsylvania*

State Library of Pennsylvania

Ms. Kathy Hale, Collection Management, State Library of Pennsylvania, Room G–48 Forum Building, P.O. Box 1601, Harrisburg, PA 17105–1601, (717) 787–5718,

*Puerto Rico*

Office of Court Administration

Mr. Alfredo Rivera-Mendoza, Director, Office of Court Administration, P.O. Box 917, Hato Rey, PR 00919

*Rhode Island*

Roger Williams Law School Library

Ms. Gail Winson, Director of the Library, Roger Williams University, School of Law Library 10 Metacom Avenue, Bristol, RI 02809, (401) 254–4546

*South Carolina*

Coleman Karesh Law Library (University of South Carolina School of Law)

Mr. Steve Hinckley, Library Director, Coleman Karesh Law Library, U.S.C. Law Center, University of South Carolina, Columbia, SC 29208, (803) 777–5944

*South Dakota*

State Law Library

Librarian, Supreme Court of South Dakota, 500 East Capitol, Pierre, SD 57501, (605) 773–4898

*Tennessee*

Tennessee State Law Library

Hon. Cornelia A. Clark, State Court Administrator, Administrative Office of the Courts, 511 Union Street, Suite 600, Nashville, TN 37243–0607, (615) 741–2687

*Texas*

State Law Library

Ms. Kay Schleuter, Director, State Law Library, P.O. Box 12367, Austin, TX 78711, (512) 463–1722

*US Virgin Islands*

Library of the Territorial Court of the Virgin Islands (St. Thomas)

Ms. Glenda L. Lake, Court Administrator, Territorial Court of the Virgin Islands, PO Box 70, Charlotte Amalie, St. Thomas, VI 00804

*Utah*

Utah State Judicial Administration Library

Ms. Debbie Christiansen, Librarian, Administrative Office of the Courts Library, 450 South State, PO Box 140241, Salt Lake City, UT 84114–0241, (801) 578–3832

*Vermont*

Supreme Court of Vermont

Mr. Paul J. Donovan, Law Librarian, Department of Libraries, 109 State Street, Montpelier, VT 05609, (802) 828–3268

*Virginia*

Administrative Office of the Courts

Mr. Robert N. Baldwin, State Court Administrator, Supreme Court of Virginia, 100 North Ninth Street, Third Floor, Richmond, VA 23219, (804) 786–6455

*Washington*

Washington State Law Library

Ms. Deborah Norwood, State Law Librarian, Washington State Law Library, Temple of Justice, P.O. Box 40751, Olympia, WA 98504–0751, (360) 357–2136

*West Virginia*

Administrative Office of the Courts

Law Librarian, West Virginia Supreme Court of Appeals, State Capitol, Capitol E–404, 1900 Kanawha, Charleston, WV 25305–0830, (304) 558–2607

*Wisconsin*

State Law Library

Ms. Jane Colwin, Director of Public Services, State Law Library, 310 East State Capitol, P.O. Box 7881, Madison, WI 53707, (608) 261–2340

*Wyoming*

Wyoming State Law Library

Ms. Kathleen B. Carlson, Law Librarian, Wyoming State Law Library, Supreme Court Building 2301 Capitol Avenue, Cheyenne, WY 82002, (307) 777–7509

**National**

*American Judicature Society*

Ms. Clara Wells, Information and Library Services, American Judicature Society, 180 North Michigan Avenue, Room 600, Chicago, IL 60601–7401, (312) 558–6900

*National Center for State Courts*

Ms. Peggy Rogers, Acquisitions/Serials Librarian, National Center for State Courts, P.O. Box 8798, 300 Newport Avenue, Williamsburg, VA 23187–8798, (757) 259–1857

*JERITT*

Dr. Maureen Conner, Executive Director, JERITT Project, Suite 330 Nisbet, 1407 S. Harrison, East Lansing, MI 48824–5239, (517) 353–8603, (517) 432–3965 (fax) e-mail: connerm@msu.edu, website: http://jeritt.msu.edu

## Appendix E—Illustrative List of Model Curricula

The following list includes examples of model SJI-supported curricula that State judicial educators may wish to adapt for presentation in education programs for judges and other court personnel with the assistance of a Curriculum Adaptation Grant. *Please refer to* section VII.E. *for information on submitting a letter applicotion for a Curriculum Adaptation Grant.* A list of all SJI-supported education projects is available on the SJI website (http://www.statejustice.org/). Please also check with the JERITT project (517/353–8603) or and with your State SJI-designated library (see Appendix D) for information on other SJI-supported curricula that may be appropriate for in-State adaptation.

**Alternative Dispute Resolution**

Judicial Settlement Manual (National Judicial College: SJI–89–089)
Improving the Quality of Dispute Resolution (Ohio State University College of Law: SJI–93–277)
Comprehensive ADR Curriculum for Judges (American Bar Association: SJI–95–002)
Domestic Violence and Custody Mediation (American Bar Association: SJI–96–038)

**Court Coordination**

Bankruptcy Issues for State Trial Court Judges (American Bankruptcy Institute: SJI–91–027)
Intermediate Sanctions Handbook: Experiences and Tools for Policymakers (Center for Effective Public Policy: IAA–88–NIC–001)
Regional Conference Cookbook: A Practical Guide to Planning and Presenting a Regional Conference on State-Federal Judicial Relationships (U.S. Court of Appeals for the 9th Circuit: SJI–92–087)



Bankruptcy Issues and Domestic Relations Cases (American Bankruptcy Institute: SJI–96–175)

**Court Management**

Managing Trials Effectively: A Program for State Trial Judges (National Center for State Courts/National Judicial College: SJI–87–066/067, SJI–89–054/055, SJI–91–025/026)
Caseflow Management Principles and Practices (Institute for Court Management/National Center for State Courts: SJI–87–056)
A Manual for Workshops on Processing Felony Dispositions in Limited Jurisdiction Courts (National Center for State Courts: SJI–90–052)
Managerial Budgeting in the Courts; Performance Appraisal in the Courts; Managing Change in the Courts; Court Automation Design; Case Management for Trial Judges; Trial Court Performance Standards (Institute for Court Management/National Center for State Courts: SJI–91–043)
Strengthening Rural Courts of Limited Jurisdiction and Team Training for Judges and Clerks (Rural Justice Center: SJI–90–014, SJI–91–082)
Interbranch Relations Workshop (Ohio Judicial Conference: SJI–92–079)
Integrating Trial Management and Caseflow Management (Justice Management Institute: SJI–93–214)
Leading Organizational Change (California Administrative Office of the Courts: SJI–94–068)
Privacy Issues in Computerized Court Record Keeping: An Instructional Guide for Judges and Judicial Educators (National Judicial College: SJI–94–015)
Managing Mass Tort Cases (National Judicial College: SJI–94–142)
Employment Responsibilities of State Court Judges (National Judicial College: SJI–95–025)
Dealing with the Common Law Courts: A Model Curriculum for Judges and Court Staff (Institute for Court Management/National Center for State Courts: SJI–96–159)
Caseflow Management (Justice Management Institute: SJI–98–041)

**Courts and Communities**

A National Program for Reporting on the Courts and the Law (American Judicature Society: SJI–88–014)
Victim Rights and the Judiciary: A Training and Implementation Project (National Organization for Victim Assistance: SJI–89–083)
National Guardianship Monitoring Project: Trainer and Trainee's Manual (American Association of Retired Persons: SJI–91–013)
Access to Justice: The Impartial Jury and the Justice System and When Implementing the Court-Related Needs of Older People and Persons with Disabilities: An Instructional Guide (National Judicial College: SJI–91–054)
You Are the Court System: A Focus on Customer Service (Alaska Court System: SJI–94–048)
Serving the Public: A Curriculum for Court Employees (American Judicature Society: SJI–96–040)
Courts and Their Communities: Local Planning and the Renewal of Public Trust and Confidence: A California Statewide Conference (California Administrative Office of the Courts: SJI–98–008)
Public Trust and Confidence in the Courts (Mid-Atlantic Association for Court Management: SJI–98–208)
Trial Court Judicial Leadership Program: Judges and Court Administrators Serving the Courts and Community (National Center for State Courts: SJI–98–268)
ACA National Conference: Public Trust and Confidence (Arizona Courts Association: SJI–99–063)

**Criminal Process**

Search Warrants: A Curriculum Guide for Magistrates (American Bar Association Criminal Justice Section: SJI–88–035)

**Diversity, Values, and Attitudes**

Troubled Families, Troubled Judges (Brandeis University: SJI–89–071)
The Crucial Nature of Attitudes and Values in Judicial Education (National Council of Juvenile and Family Court Judges: SJI–90–058)
Enhancing Diversity in the Court and Community (Institute for Court Management/National Center for State Courts: SJI–91–043)
Cultural Diversity Awareness in Nebraska Courts from Native American Alternatives to Incarceration Project (Nebraska Urban Indian Health Coalition: SJI–93–028)
Race Fairness and Cultural Awareness Faculty Development Workshop (National Judicial College: SJI–93–063)
A Videotape Training Program in Ethics and Professional Conduct for Nonjudicial Court Personnel and The Ethics Fieldbook: Tool For Trainers (American Judicature Society: SJI–93–068)
Court Interpreter Training Course for Spanish Interpreters (International Institute of Buffalo: SJI–93–075)
Doing Justice: Improving Equality Before the Law Through Literature-Based Seminars for Judges and Court Personnel (Brandeis University: SJI–94–019)
Multi-Cultural Training for Judges and Court Personnel (St. Petersburg Junior College: SJI–95–006)
Ethical Standards for Judicial Settlement: Developing a Judicial Education Module (American Judicature Society: SJI–95–082)
Code of Ethics for the Court Employees of California (California Administrative Office of the Courts: SJI 95–245)
Workplace Sexual Harassment Awareness and Prevention (California Administrative Office of the Courts: SJI 96–089)
Just Us On Justice: A Dialogue on Diversity Issues Facing Virginia Courts (Virginia Supreme Court: SJI–96–150)
When Bias Compounds: Insuring Equal Treatment for Women of Color in the Courts (National Judicial Education Program: SJI 96–161)
When Judges Speak Up: Ethics, the Public, and the Media (American judicature Society: SJI–96–152)

**Family Violence and Gender-Related Violent Crime**

National Judicial Response to Domestic Violence: Civil and Criminal Curricula (Family Violence Prevention Fund: SJI–87–061, SJI–89–070, SJI–91–055)
Domestic Violence: A Curriculum for Rural Courts (Rural Justice Center: SJI–88–081)
Judicial Training Materials on Spousal Support; Judicial Training Materials on Child Custody and Visitation (Women Judges' Fund for Justice: SJI–89–062)
Judicial Response to Stranger and Nonstranger Rape and Sexual Assault (National Judicial Education Program: SJI–92–003)
Domestic Violence & Children: Resolving Custody and Visitation Disputes (Family Violence Prevention Fund: SJI–93–255)
Adjudicating Allegations of Child Sexual Abuse When Custody Is In Dispute (National Judicial Education Program: SJI 95–019)
Handling Cases of Elder Abuse: Interdisciplinary Curricula for Judges and Court Staff (American Bar Association: SJI–93–274)

**Health and Science**

Environmental Law Resource Handbook (University of New Mexico Institute for Public Law: SJI–92–162)
A Judge's Deskbook on the Basic Philosophies and Methods of Science: Model Curriculum (University of Nevada, Reno: SJI–97–030)

**Judicial Education for Appellate Court Judges**

Career Writing Program for Appellate Judges (American Academy of Judicial Education: SJI–88–086)
Civil and Criminal Procedural Innovations for Appellate Courts (National Center for State Courts: SJI–94–002)

**Judicial Education Faculty, and Program Development**

The Leadership Institute in Judicial Education and The Advanced Leadership Institute in Judicial Education (University of Memphis: SJI–91–021)
"Faculty Development Instructional Program" from Curriculum Review (National Judicial College: SJI–91–039)
Resource Manual and Training for Judicial Education Mentors (National Association of State Judicial Educators: SJI–95–233)
Institute for Faculty Excellence in Judicial Education, (National Council of Juvenile and Family Court Judges: SJI–96–042)

**Orientation, Mentoring, and Continuing Professional Education of Judges and Court Personnel**

Legal Institute for Special and Limited Jurisdiction Judges (National Judicial College: SJI–89–043, SJI–91–040)
Pre-Bench Training for New Judges (American Judicature Society: SJI–90–028)
A Unified Orientation and Mentoring Program for New Judges of All Arizona Trial Courts (Arizona Supreme Court: SJI–90–078)
Court Organization and Structure (Institute for Court Management/National Center for State Courts: SJI–91–043)

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Judicial Review of Administrative Agency Decisions (National Judicial College: SJI–91–080)
New Employee Orientation Facilitators Guide (Minnesota Supreme Court: SJI–92–155)
Magistrates Correspondence Course (Alaska Court System: SJI–92–156)
Computer-Assisted Instruction for Court Employees (Utah Administrative Office of the Courts: SJI–94–012)
Bench Trial Skills and Demeanor: An Interactive Manual (National Judicial College: SJI 94–058)
Ethical Issues in the Election of Judges (National Judicial College: SJI–94–142)
Professional Development for Court Managers: Educational Criteria in the 21st Century (National Association for Court Management: SJI–96–148)
Innovative Approaches to Improving Competencies of General Jurisdiction Judges (National Judicial College: SJI–98–001)

**Juveniles and Families in Court**

Fundamental Skills Training Curriculum for Juvenile Probation Officers (National Council of Juvenile and Family Court Judges: SJI–90–017)
Child Support Across State Lines: The Uniform Interstate Family Support Act from Uniform Interstate Family Support Act: Development and Delivery of a Judicial Training Curriculum (ABA Center on Children and the Law: SJI 94–321)

**Strategic and Futures Planning**

Minding the Courts into the Twentieth Century (Michigan Judicial Institute: SJI–89–029)
An Approach to Long-Range Strategic Planning in the Courts (Center for Public Policy Studies: SJI–91–045)

**Substance Abuse**

Effective Treatment for Drug-Involved Offenders: A Review & Synthesis for Judges and Court Personnel (Education Development Center, Inc.: SJI–90–051)
Good Times, Bad Times: Drugs, Youth, and the Judiciary (Professional Development and Training Center, Inc.: SJI–91–095)
Gaining Momentum: A Model Curriculum for Drug Courts (Florida Office of the State Courts Administrator: SJI–94–291)
Judicial Response to Substance Abuse: Children, Adolescents, and Families (National Council of Juvenile and Family Court Judges: SJI–95–030)

BILLING CODE 6820–SC–P



## Appendix F

(Form S1)

**STATE JUSTICE INSTITUTE**

**SCHOLARSHIP APPLICATION**

*This application does not serve as a registration for the course. Please contact the education provider.*

**APPLICANT INFORMATION:**

1. Applicant Name: _____
(Last) (First) (M)

2. Position: _____

3. Name of Court: _____

4. Address: _____
Street/P.O. Box

_____
City State Zip Code

5. Telephone No. _____ 6. Congressional District: _____

**PROGRAM INFORMATION:**

7. Course Name: _____

8. Course Dates: _____

9. Course Provider: _____

10. Location Offered: _____

**ESTIMATED EXPENSES**: (Please note, scholarships are limited to tuition and transportation expenses to and from the site of the course up to a maximum of $1,500.)

Tuition: $_____ Transportation: $_____
(Airfare, train fare, or, if you plan to drive, an amount equal to the approximate distance and mileage rate)

Amount Requested: $_____

SJI

1650 King Street, Suite 600, Alexandria, Virginia 22314 (703) 684-6100

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**ADDITIONAL INFORMATION: Please attach a current resume or professional summary, and answer the following questions. (You may attach additional pages if necessary.)**

1. How will taking this course benefit you, your court, and the State's courts generally?

2. Is there any education or training currently available through your State on this topic?

3. How will you apply what you have learned? Please include any plans you may have to develop/teach a course on this topic in your jurisdiction/State, provide in-service training, or otherwise disseminate what you have learned to colleagues.

4. Are State or local funds available to support your attendance at the proposed course? If so, what amount(s) will be provided?

5. How long have you served as a judge or court manager?

6. How long do you anticipate serving as a judge or court manager, assuming reelection or reappointment?

7. What continuing professional education programs have you attended in the past year? Please indicate which were mandatory (M) and which were non-mandatory (V).

**STATEMENT OF APPLICANT'S COMMITMENT**

If a scholarship is awarded, I will submit an evaluation of the educational program to the State Justice Institute and to the Chief Justice of my State.

_____ _____

Signature Date

*Please return this form and Form S-2 to: State Justice Institute, 1650 King Street, Suite 600, Alexandria Virginia 22314*



(Form S2)

**STATE JUSTICE INSTITUTE**

**SCHOLARSHIP APPLICATION**

**CONCURRENCE**

I, _____,

**Name of Chief Justice (or Chief Justice's Designee)**

have reviewed the application for a scholarship to attend the program entitled

_____,

prepared by _____,

**Name of Applicant**

and concur in its submission to the State Justice Institute. The applicant's participation in the program would benefit the State; the applicant's absence to attend the program would not present an undue hardship to the court; and receipt of a scholarship would not diminish the amount of funds made available by the State for judicial education.

_____

***Signature***

_____

***Name***

_____

***Title***

_____

***Date***

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## Appendix G

(Form E)

**STATE JUSTICE INSTITUTE**

**LINE-ITEM BUDGET FORM**

For Concept Papers, Curriculum Adaptation & Technical Assistance Grant Requests

| Category | SJI Funds | Cash Match | In-Kind Match |
|---|---|---|---|
| Personnel | $_____ | $_____ | $_____ |
| Fringe Benefits | $_____ | $_____ | $_____ |
| Consultant/Contractual | $_____ | $_____ | $_____ |
| Travel | $_____ | $_____ | $_____ |
| Equipment | $_____ | $_____ | $_____ |
| Supplies | $_____ | $_____ | $_____ |
| Telephone | $_____ | $_____ | $_____ |
| Postage | $_____ | $_____ | $_____ |
| Printing/Photocopying | $_____ | $_____ | $_____ |
| Audit | $_____ | $_____ | $_____ |
| Other | $_____ | $_____ | $_____ |
| Indirect Costs (%) | $_____ | $_____ | $_____ |
| TOTAL | $_____ | $_____ | $_____ |

**PROJECT TOTAL** $_____

Financial assistance has been or will be sought for this project from the following other sources:

_____

_____

* Concept papers requesting an accelerated award, Curriculum Adaptation grant requests, and Technical Assistance grant requests should be accompanied by a budget narrative explaining the basis for each line-item listed in the proposed budget.



## Appendix H

(Form B)

**STATE JUSTICE INSTITUTE**

**Certificate of State Approval**

The _____
Name of State Supreme Court or Designated Agency or Council

has reviewed the application entitled _____

prepared by _____
Name of Applicant

approves its submission to the State Justice Institute, and

[ ] agrees to receive and administer and be accountable for all funds awarded by the Institute pursuant to the application.

[ ] designates _____
Name of Trial or Appellate Court or Agency

as the entity to receive, administer, and be accountable for all funds awarded by the Institute pursuant to the application.

_____ _____
*Signature* *Date*

_____
*Name*

_____
*Title*

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## INSTRUCTIONS

The State Justice Act requires that:

Each application for funding by a State or local court shall be approved, consistent with State law, by the State's Supreme Court, or its designated agency or council, which shall receive, administer, and be accountable for all funds awarded by the Institute to such courts. 42 U.S.C. 10705(b)(4).

FORM B should be signed by the Chief Judge or Chief Justice of the State Supreme Court, or by the director of the designated agency or chair of the designated council. If the designated agency or council differs from the designee listed in Appendix I to the State Justice Institute grant Guideline, evidence of the new or additional designation should be attached.

The term "State Supreme Court' refers to the court of last resort of a State. "Designated agency or council" refers to the office or judicial body which is authorized under State law or by delegation from the State Supreme Court to approve applications for funds and to receive, administer and be accountable for those funds.

[FR Doc. 00–26071 Filed 10–12–00; 8:45]
BILLING CODE 6820–SC–C

Federal Register

Friday,
October 13, 2000

Part III

# Department of Housing and Urban Development

24 CFR Part 200, et al.
Increased Distributions to Owners of Certain HUD-Assisted Multifamily Rental Projects; Final Rule

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**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**24 CFR Parts 200, 236, 880, 881 and 883**

**[Docket No. FR–4532–F–01]**

**RIN 2502–AH46**

## Increased Distributions to Owners of Certain HUD-Assisted Multifamily Rental Projects

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

**ACTION:** Final rule.

**SUMMARY:** This final rule adds an exception to current limits on distributions to owners for HUD-assisted multifamily rental projects. HUD may now permit increased distributions for owners of projects with section 8 project-based assistance and below-market rents, if such increases are necessary to ensure continued participation of the owners in the section 8 program.

**EFFECTIVE DATE:** November 13, 2000.

**FOR FURTHER INFORMATION CONTACT:** Willie Spearmon, Director, Office of Housing Assistance and Grants Administration, Department of Housing and Urban Development, 451 7th St. SW, Washington DC 20410, 202–708–2866. (This not a toll-free number.) For hearing- and speech-impaired persons, these numbers may be accessed via TTY by calling the Federal Information Relay Service at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:**

### Background

On June 16, 1999, the Department issued Notice H 99–15, *Emergency Initiative to Preserve Below-Market Project-Based Section 8 Multifamily Housing Stock.* The Notice identified a class of HUD-assisted multifamily projects that were most at risk of "opting-out" of section 8 project-based assistance when contracts expired, and provided inducements for the owners of at-risk projects to renew the expiring contracts.

Most importantly, the Notice provided for "marking up" of rent levels for certain projects at risk of opting out, as permitted by section 524 of the Multifamily Affordable Housing Reform and Affordability Act of 1997 (MAHRA), to comparable market rents (or 150% of Fair Market Rent, if lower). Section 524 was recently amended by Public Law 106–74 to mandate marking up in certain circumstances, and the Department is addressing those amendments in a separate rulemaking proceeding involving 24 CFR part 402.

Notice H 99–15 also announced that HUD would waive regulations to permit owners of the at-risk projects to take distributions in excess of the limits stated in regulations. This waiver approach is continued for FY 2000 by HUD Notice H 99–36 issued on December 29, 1999. Limits on distributions are not set by statute and are not directly affected by the recent legislation on "marking up". However, the Department expects to continue to permit increased distributions along the lines of Notices H 99–15 and H 99–36 in connection with "marking up" under amended section 524 of MAHRA. Because this will become a permanent policy, it would be inappropriate to continue to rely indefinitely on the use of waivers of relevant regulatory restrictions. This final rule makes continued reliance on waivers unnecessary.

### Changes to Parts 236, 880, 881, and 883 Made in This Rule

Notice H 99–15 refers to five regulatory provisions of title 24 that limit distributions to project owners: §§ 221.532(a) (1995), 236.50(a)(2) (1995), 880.205(b), 881.205(b), and 883.306(b). This rule adds language to the latter four provisions to authorize HUD to allow distributions of surplus cash, in excess of the amounts usually permitted by such provisions, for project owners who participate in a HUD-approved initiative or program to preserve assisted housing stock with below-market rates, such as the Emergency Initiative begun by Notice H 99–15. Consistent with the regulation waivers that HUD has already granted, the increased distributions will be limited to a maximum amount based on market rents and calculated according to HUD instructions. Any increased limits on distributions, or changes in those limits, will be announced in a widely-distributed HUD issuance such as a HUD Notice (which will also be available on HUD's Internet website), but the limits will not be required to be published in the **Federal Register**. The new language also clarifies that any excess rental charges that a section 236 project owner is authorized to retain under section 236(g) of the National Housing Act (which was amended after Notice 99–15 was issued) are not considered distributions.

For part 236, we have clarified the language of the "savings provision" of § 236.1(c), which preserves language predating a 1996 regulatory "streamlining" effort. No substantive change is intended. In addition, we added a new § 236.2 that is substantively the same as the additions to §§ 880.205, 881.205, and 883.306 described above.

### Changes to Part 200 Made in This Rule

Although the waiver mentioned § 221.532(a) (1995), that provision is not amended by this final rule because it is no longer in effect as such. Section 221.532(a) was removed by a streamlining rule published on April 1, 1996, without any express savings provision. In lieu of matters that formerly appeared in subpart C of part 221 (including specific limits on distributions), § 221.501 now refers the reader to subpart A of part 200. That subpart is a restatement of eligibility requirements (including continued general authority for mortgagor supervision by HUD) for FHA multifamily and health care mortgage insurance programs. Current § 200.105 contains general regulatory authority for HUD's mortgagor supervision policies and permits regulation to be by a regulatory agreement or other means prescribed by the Secretary. This general authority is supplemented by § 200.106, which specifically permits HUD to regulate as limited dividend mortgagors projects receiving government "assistance" as defined in regulations implementing the Department of Housing and Urban Development Reform Act of 1990 (as explained below, there is no longer any such definition and correction is needed). Section 200.106 permits HUD to continue to impose additional regulation for mortgagors of assisted projects beyond those applicable to all multifamily mortgagors.

The preamble to the streamlining rule made it clear that the replacement of certain part 221 provisions with those now in part 200 was not intended to affect substantive policy. Because the focus of current subpart A is on the eligibility requirements for origination of new mortgages, however, subpart A lacks some of the previous specifics on certain matters of mortgagor regulation covered in former subpart C that continue to be relevant after the mortgage origination is completed.

We are taking this opportunity to amend part 200 in several respects. Most importantly, the final rule adds language (new § 200.106(b)) that is similar to the language added to the other four sections amended by the final rule. The previous language of § 200.106 is now designated as § 200.106(a) and is revised in several respects. First, the reference in § 200.106 to the definition of "assistance" is brought up to date. It appears to have been intended as a reference to a defined term that formerly appeared in 24 CFR parts 4 and 12 before those parts were streamlined and combined in 1996 into the current 24 CFR part 4. Part 4 now uses several different definitions to encompass the concept formerly conveyed by the single defined term "assistance". Of these definitions, we have chosen to reference in § 200.106 the defined phrase "assistance within the jurisdiction of the Department to any housing project" from § 4.3. That phrase includes existing section 221 projects held by limited distribution mortgagors.

Second, we have clarified several points in what is now redesignated as § 200.106(a). The revised language expressly recognizes that regulation of limited distribution mortgagors for assisted projects may be by regulation or otherwise and is in addition to any regulation of mortgagors under § 200.105. This approach makes it clear that § 201.106 is consistent with § 201.105. Further, the revised language expressly includes regulation of the amount of the permissible distribution as an example of permissible regulation. Prior to streamlining, this and other matters especially applicable to assisted projects were spelled out in regulations, but they are now continued in force by HUD by virtue of the more general language of §§ 200.105 and 200.106.

On the technical corrections level, we have deleted from the redesignated § 200.106(a) a confusing reference to the Low-Income Housing Tax-Credit program. Existing § 200.105(b) is also revised to correct errors.

### Pre-emption

Public Law 106–74 also added a new section 524(f) to MAHRA that preempts State and local laws and regulations that limit or restrict project distributions to an amount less than that provided for under regulations of the Secretary. The preemption is limited to projects which have section 8 contracts renewed under section 524 of MAHRA and which have distributions of surplus funds accruing after October 20, 1999. Preemption does not apply to State-financed projects. An owner may elect to waive the preemption. Each section of the regulations that is amended as discussed above to permit increased distributions is also covered by the statutory preemption, both with respect to distribution limits expressly set forth in regulations and to any increased amounts permitted by HUD pursuant to this final rule.

### Justification for Final Rulemaking

It is the general practice of the Department to provide a 60-day public comment period on all rules in accordance with 24 CFR part 10. However, a prior public comment procedure may be omitted under § 10.1 if the Department determines that is impracticable, unnecessary, or contrary to the public interest.

The Department has determined that prior public comment for these provisions regarding increased limits on distributions is unnecessary because these provisions do not adversely affect the interests of any person. Most of the rule simply permits HUD to continue existing practices that provide for the preservation of certain below-market projects as affordable housing resources. It is also unnecessary to seek public comment on the preemption language of the rule because this language simply sets forth a statutory provision with some interpretation of its effect. As such, that language is an interpretative rule. HUD's rulemaking procedures do not require a notice and comment procedure for interpretive rules (see 24 CFR 10.1). Additionally, the rule makes certain technical corrections and clarifications to existing regulations that do not have any substantive effect.

### Findings and Certifications

*Environmental Impact*

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 implementing section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the Office of the Rules Docket Clerk, 451 Seventh Street, SW, Room 10276, Washington, DC 20410–0500.

*Regulatory Flexibility Act*

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule will not have a significant economic impact on a substantial number of small entities. The final rule codifies long-established existing practices that provide for the preservation of certain below-market projects as affordable housing resources. The rule also includes a statutorily required provision on preemption and makes certain technical corrections and clarifications to existing regulations that do not have any substantive effect.

*Executive Order 13132, Federalism*

This final rule does not have Federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

*Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule does not impose a Federal mandate that will result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

*Catalog of Federal Domestic Assistance*

The Catalog of Federal Domestic Assistance program number is 14.134.

### List of Subjects

*24 CFR Part 200*

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Home improvement, Housing standards, Lead poisoning, Loan programs—housing and community development, Minimum property standards, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

*24 CFR Part 236*

Grant programs—housing and community development, Low and moderate income housing, Mortgage insurance, Rent subsidies, Reporting and recordkeeping requirements.

*24 CFR Part 880*

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

*24 CFR Part 881*

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

*24 CFR Part 883*

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, chapter II of title 24 of the Code of Federal Regulations is amended as follows:

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## PART 200—INTRODUCTION TO FHA PROGRAMS

1. The authority citation for part 200 is revised to read as follows:

**Authority:** 12 U.S.C. 1702–1715z–21; 42 U.S.C. 3535(d).

2. Section 200.105 is amended by revising paragraph (b) to read as follows:

**§ 200.105 Mortgagor supervision.**

* * * * *

(b) The Commissioner may delegate to the mortgagee or other party the Commissioner's authority, in whole or in part, in accordance with the terms, conditions and standards established by the Commissioner in any executed Regulatory Agreement or other instrument granting the Commissioner supervision of the mortgagor.

3. Section 200.106 is revised to read as follows:

**§ 200.106 Projects with limited distribution mortgagors and program assistance.**

(a) *Regulation as limited distribution mortgagors.* In addition to regulation under § 200.105, limited distribution mortgagors for projects receiving "assistance within the jurisdiction of the Department" (as defined in § 4.3 of this title) may be regulated by the Commissioner as to additional matters, by regulation or otherwise, including as to the amount of the permissible distribution to the mortgagor.

(b) *Increased distributions.* The Commissioner may permit increased distributions of surplus cash, in excess of the amounts the Commissioner otherwise permits for limited distribution mortgagors, to a limited distribution mortgagor who participates in a HUD-approved initiative or program to preserve housing stock with below-market rents as affordable housing. The increased distribution will be limited to a maximum amount based on market rents and calculated according to HUD instructions. Funds that the mortgagor is authorized to retain under section 236(g)(2) of the National Housing Act are not considered distributions to the mortgagor.

(c) *Pre-emption.* Any State or local law or regulation that restricts distributions to an amount lower than permitted by the Commissioner under authority of this section is preempted to the extent provided in section 524(f) of the Multifamily Assisted Housing Reform and Affordability Act of 1997.

## PART 236—MORTGAGE INSURANCE AND INTEREST REDUCTION PAYMENTS FOR RENTAL PROJECTS

4. The authority citation for this part continues to read as follows:

**Authority:** 12 U.S.C. 1715b and 1715z-1; 42 U.S.C. 3535(d).

5. Section 236.1(c) is revised to read as follows:

**§ 236.1 Applicability, cross-reference and savings clause.**

* * * * *

(c) *Savings provision.* Any mortgage approved by the Commissioner for insurance pursuant to sections 236(j) or 236(n) of the National Housing Act is governed by subpart A of this part as in effect immediately before May 1, 1996, contained in the April 1, 1995 edition of 24 CFR, parts 220 to 499, and by subparts B through E of this part, except as otherwise provided in this subpart.

6. A new § 236.2 is added to read as follows:

**§ 236.2 Increased distributions to certain limited distribution mortgagors.**

(a) *Increased distributions.* The Commissioner may permit increased distributions of surplus cash in excess of the amounts otherwise permitted by subpart A of this part to limited distribution mortgagors who participate in a HUD-approved initiative or program to preserve below-market housing stock. The increased distributions will be limited to a maximum amount based on market rents and calculated according to HUD instructions. Funds that the mortgagor is authorized to retain under section 236(g)(2) of the National Housing Act are not considered distributions to the mortgagor.

(b) *Pre-emption.* Any State or local law or regulation that restricts distributions to an amount lower than permitted by subpart A of this part as in effect immediately before May 1, 1996, contained in the April 1, 1995 edition of 24 CFR, parts 220 to 499, or permitted by the Commissioner under this section is preempted to the extent provided by section 524(f) of the Multifamily Assisted Housing Reform and Affordability Act of 1997.

## PART 880—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR NEW CONSTRUCTION

7. The authority citation for part 880 continues to read as follows:

**Authority:** 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), 12701, and 13611–13619.

8. Section 880.205 is amended by adding new paragraphs (h) and (i) to read as follows:

**§ 880.205 Limitation on distributions.**

* * * * *

(h) HUD may permit increased distributions of surplus cash, in excess of the amounts otherwise permitted, to profit-motivated owners who participate in a HUD-approved initiative or program to preserve below-market housing stock. The increased distributions will be limited to a maximum amount based on market rents and calculated according to HUD instructions. Funds that the owner is authorized to retain under section 236(g)(2) of the National Housing Act are not considered distributions to the owner.

(i) Any State or local law or regulation that restricts distributions to an amount lower than permitted by this section or permitted by the Commissioner under this paragraph (i) is preempted to the extent provided by section 524(f) of the Multifamily Assisted Housing Reform and Affordability Act of 1997.

## PART 881—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR SUBSTANTIAL REHABILITATION

9. The authority citation for part 881 continues to read as follows:

**Authority:** 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), 12701, and 13611–13619.

10. Section 881.205 is amended by adding new paragraphs (h) and (i) to read as follows:

**§ 881.205 Limitation on distributions.**

* * * * *

(h) HUD may permit increased distributions of surplus cash, in excess of the amounts otherwise permitted, to profit-motivated owners who participate in a HUD-approved initiative or program to preserve below-market housing stock. The increased distributions will be limited to a maximum amount based on market rents and calculated according to HUD instructions. Funds that the owner is authorized to retain under section 236(g)(2) of the National Housing Act are not considered distributions to the owner.

(i) Any State or local law or regulation that restricts distributions to an amount lower than permitted by this section or permitted by the Commissioner under this paragraph (i) is preempted to the extent provided by section 524(f) of the Multifamily Assisted Housing Reform and Affordability Act of 1997.



## PART 883—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—STATE HOUSING AGENCIES

11. The authority citation for part 881 continues to read as follows:

**Authority:** 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611–13619.

12. Section 883.306 is amended by adding new paragraph (g) and (h) to read as follows:

**§ 883.205 Limitation on distributions.**

* * * * *

(g) HUD may permit increased distributions of surplus, in excess of the amounts otherwise permitted, to profit-motivated owners who participate in a HUD-approved initiative or program to preserve below-market housing stock. The increased distributions will be limited to a maximum amount based on market rents and calculated according to HUD instructions. Funds that the owner is authorized to retain under section 236(g)(2) of the National Housing Act are not considered distributions to the owner.

(h) Any State or local law or regulation that restricts distributions to an amount lower than permitted by this section or permitted by the Commissioner under this paragraph (h) is preempted as provided by section 524(f) of the Multifamily Assisted Housing Reform and Affordability Act of 1997.

Dated: July 7, 2000.

**William C. Apgar,**

*Assistant Secretary for Housing-Federal Housing Commissioner.*

[FR Doc. 00–26247 Filed 10–12–00; 8:45 am]

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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**Export Administration Bureau**
Export licensing:
High performance computers; License Exception CTP revisions; published 10-13-00

**COMMERCE DEPARTMENT**
**National Oceanic and Atmospheric Administration**
Fishery conservation and management:
Caribbean, Gulf, and South Atlantic fisheries—
South Atlantic snapper-grouper; published 9-13-00
West Coast States and Western Pacific fisheries—
Pacific Coast groundfish; published 9-13-00

**DEFENSE DEPARTMENT**
**Navy Department**
Organization, functions, and authority delegations:
Admiralty and Maritime Law Division; name change from Admiralty Division, etc.; published 10-13-00

**ENVIRONMENTAL PROTECTION AGENCY**
Air quality implementation plans; approval and promulgation; various States:
Pennsylvania; published 8-14-00
Wisconsin; published 9-13-00
Superfund progrsm:
National oil and hazardous substances contingency plan—
National priorities list update; published 8-14-00
Water supply:
Safe Drinking Water Act—
Clean and drinking water State revolving funds; transfer and cross-collaterization; published 10-13-00

**HEALTH AND HUMAN SERVICES DEPARTMENT**
**Food and Drug Administration**
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**HOUSING AND URBAN DEVELOPMENT DEPARTMENT**
**Federal Housing Enterprise Oversight Office**
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**INTERIOR DEPARTMENT**
**Fish and Wildlife Service**
Endangered and threatened species:
Black-footed ferrets; nonessential experimental population establishment in north-central South Dakota; published 10-13-00

**INTERIOR DEPARTMENT**
**Minerals Management Service**
Outer Continental Shelf; oil, gas, and sulphur operations:
Well control and production safety training; lessee and contractor employees; published 8-14-00

**SECURITIES AND EXCHANGE COMMISSION**
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**TRANSPORTATION DEPARTMENT**
**Federal Aviation Administration**
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**Fiscal Service**
Bonds secured by government obligations; acceptance in lieu of bonds with securities; published 9-13-00
Federal taxes payment and Treasury Tax and Loan Program; published 9-13-00
Financial management services:
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Government Depositaries and Financial Agents; published 9-13-00

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Palletized standard mail and bound printed matter, etc.; preparation changes; published 5-19-00

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**Agricultural Marketing Service**
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**AGRICULTURE DEPARTMENT**
**Animal and Plant Health Inspection Service**
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**COMMERCE DEPARTMENT**
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Gulf of Mexico shrimp; comments due by 10-19-00; published 9-19-00
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**DEFENSE DEPARTMENT**
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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

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**H.R. 999/P.L. 106–284**
Beaches Environmental Assessment and Coastal Health Act of 2000 (Oct. 10, 2000; 114 Stat. 870)

**H.R. 2647/P.L. 106–285**
To amend the Act entitled "An Act relating to the water rights of the Ak-Chin Indian Community" to clarify certain provisions concerning the leasing of such water rights, and for other purposes. (Oct. 10, 2000; 114 Stat. 878)

**H.R. 4444/P.L. 106–286**
To authorize extension of nondiscriminatory treatment (normal trade relations treatment) to the People's Republic of China, and to establish a framework for relations between the United States and the People's Republic of China. (Oct. 10, 2000; 114 Stat. 880)

**H.R. 4700/P.L. 106–287**
To grant the consent of the Congress to the Kansas and Missouri Metropolitan Culture District Compact. (Oct. 10, 2000; 114 Stat. 909)

**H.J. Res. 72/P.L. 106–288**
Granting the consent of the Congress to the Red River Boundary Compact. (Oct. 10, 2000; 114 Stat. 919)

**S. 1295/P.L. 106–289**
To designate the United States Post Office located at 3813 Main Street in East Chicago, Indiana, as the "Lance Corporal Harold Gomez Post Office". (Oct. 10, 2000; 114 Stat. 920)

**S. 1324/P.L. 106–290**
To expand the boundaries of the Gettysburg National Military Park to include the Wills House, and for other purposes. (Oct. 10, 2000; 114 Stat. 921)

**H.R. 4578/P.L. 106–291**
Department of the Interior and Related Agencies Appropriations Act, 2001 (Oct. 11, 2000; 114 Stat. 922)

**Last List October 11, 2000**



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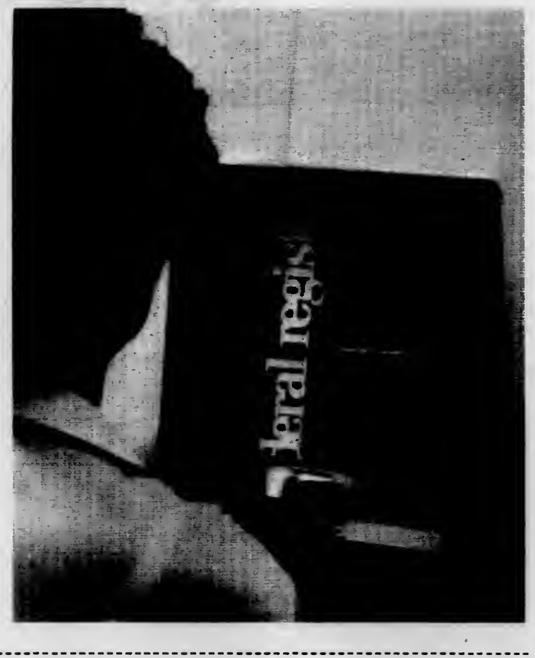
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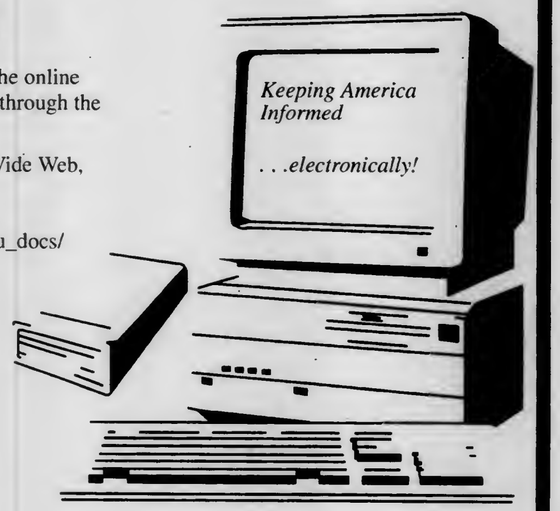
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# Federal Register

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Vol. 65 No. 200 Oct. 16, 2000
Pages 61077–61254

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# Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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**DEPARTMENT OF AGRICULTURE**

**Animal and Plant Health Inspection Service**

**7 CFR Part 301**

**[Docket No. 00–037–1]**

**RIN 0579–AB15**

## Citrus Canker; Payments for Commercial Citrus Tree Replacement

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Interim rule and request for comments.

**SUMMARY:** We are amending our citrus canker regulations to establish provisions under which eligible owners of commercial citrus groves may receive payments to replace commercial citrus trees removed because of citrus canker. The payment of these funds is necessary in order to reduce the economic effect of the citrus canker quarantine on affected commercial citrus growers.

**DATES:** This interim rule is effective October 16, 2000. We invite you to comment on this docket. We will consider all comments that we receive by December 15, 2000.

**ADDRESSES:** Please send your comment and three copies to: Docket No. 00–037–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Please state that your comment refers to Docket No. 00–037–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

**FOR FURTHER INFORMATION CONTACT:** Mr. Stephen Poe, Operations Officer, Program Support Staff, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–8247.

**SUPPLEMENTARY INFORMATION:**

### Background

Citrus canker is a plant disease that affects plants and plant parts, including fresh fruit, of citrus and citrus relatives (Family Rutaceae). Citrus canker can cause defoliation and other serious damage to the leaves and twigs of susceptible plants. It can also cause lesions on the fruit of infected plants, which renders the fruit unmarketable, and cause infected fruit to drop from the trees before reaching maturity. The aggressive A (Asiatic) strain of citrus canker can infect susceptible plants rapidly and lead to extensive economic losses in commercial citrus-producing areas.

The regulations to prevent the interstate spread of citrus canker are contained in 7 CFR 301.75–1 through 301.75–14 (referred to below as the regulations). The regulations restrict the interstate movement of regulated articles from and through areas quarantined because of citrus canker and provide conditions under which regulated fruit may be moved into, through, and from quarantined areas for packing. The regulations currently list parts of Broward, Collier, Dade, Hendry, Hillsborough, and Manatee Counties, FL, as quarantined areas for citrus canker.

In this document, we are amending the regulations to provide for the payment of tree replacement funds to eligible owners of commercial citrus groves who have had citrus trees destroyed because of citrus canker. The provisions for the commercial citrus tree replacement program are contained in a new section, § 301.75–15, which is explained in detail below.

*Definitions (§ 301.75–1)*

We are amending § 301.75–1, which provides definitions for the terms used in Subpart—Citrus Canker, by adding definitions for *commercial citrus grove* and *public order*, two terms that are used in new § 301.75–15.

We have defined *commercial citrus grove* as "An establishment maintained for the primary purpose of producing citrus fruit for commercial sale." This definition is intended to distinguish commercial citrus groves from "dooryard" or residential citrus trees. This distinction between commercial and dooryard citrus is necessitated by the language contained in the two acts cited above that provide the funding for the tree replacement payments provided for by this rule. Specifically, the Consolidated Appropriations Act for FY 2000 provides for the use of funds "to replace commercial citrus trees" and the Agricultural Risk Protection Act directs the use of funds to compensate "commercial producers." Although the Florida Department of Food and Consumer Services' Division of Plant Industry (DPI) defines a commercial citrus grove as "a solid set planting of 40 or more citrus trees," our definition of the term in this interim rule omits the 40-tree threshold in recognition of the possibility that there may be some small groves of fewer than 40 trees that were, prior to being destroyed because of citrus canker, maintained by their owners for the purpose of producing citrus fruit for commercial sale. If, during the processing of an application for tree replacement funds, a question arises as to whether or not a small grove was maintained for commercial purposes, we will ask the grove owner to produce documentation to support his or her claim that the grove was maintained for commercial purposes. The supporting documents that we expect a person engaged in the commercial production of citrus could provide are records of production expenses incurred, records of income derived from direct sales to consumers or from the consignment of harvested fruit to a packer or juicing operation, and tax records showing losses or gains in income resulting from the production and sale of the fruit.

We have defined *public order* as "either an 'Agreement to Destroy and Covenant Not to Sue' signed by the grove owner and the Florida Department

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of Food and Consumer Services' Division of Plant Industry (DPI) or an 'Immediate Final Order' issued by DPI, both of which identify citrus trees infected with or exposed to citrus canker and order their destruction." This State-issued order serves as the official means by which the owner of a commercial citrus grove is notified of the need to destroy citrus trees because of citrus canker.

*Funds for the Replacement of Commercial Citrus Trees*

The introductory text of § 301.75–15 provides that the payment of tree replacement funds is contingent upon the availability of funds appropriated for that purpose. The funding for the tree replacement payments provided for by this rule currently comes from two sources. The Consolidated Appropriations Act for FY 2000 (Pub. L. 106–113) directs the Secretary of Agriculture to use not more than $9 million of Commodity Credit Corporation funds for a cooperative program with the State of Florida to replace commercial citrus trees removed to control citrus canker until the earlier of December 31, 1999, or the date crop insurance coverage is made available with respect to citrus canker. We will draw from that $9 million to pay claims for the majority of the trees destroyed before December 31, 1999. Claims resulting from the destruction of any trees for which crop insurance was available, as well as for any trees destroyed after December 31, 1999, will be paid with a portion of the funds made available by the Agricultural Risk Protection Act of 2000 (Pub. L. 106–224), which provides that $25 million shall be used by the Secretary to compensate commercial growers for losses due to plum pox, Pierce's disease, and citrus canker.

*Eligibility*

Under paragraph (a) of new § 301.75–15, the owner of a commercial citrus grove may be eligible to receive funds to replace commercial citrus trees removed to control citrus canker if the trees were removed pursuant to a public order after September 28, 1995, which is the date that the current citrus canker infestation was detected in Florida. This interim rule also provides for the payment of tree replacement funds for trees destroyed between 1986 and 1990 because the State of Florida has identified five commercial citrus groves in Manatee and Highlands Counties that were destroyed to control citrus canker during a limited outbreak of the disease during that period. Prior to the effective date of this interim rule, no provision had been made for the payment of tree replacement funds or other compensation to the owners of those five groves.

*Tree Replacement Payments*

We consider that trees infected with or exposed to citrus canker, because of the destructive nature of the disease, have no value. Thus, the tree replacement payments provided for by this interim rule are intended to provide eligible growers with the funds necessary to establish new plantings, rather than to pay for the trees destroyed because of citrus canker. In calculating the replacement costs for commercial citrus trees, we considered the costs of land preparation, the replacement tree, labor for planting, and maintenance until the tree becomes productive. In developing the Florida Fruit Tree Pilot Crop Insurance Program, which includes coverage for the loss of commercial citrus trees due to citrus canker, the U.S. Department of Agriculture's (USDA's) Risk Management Agency (RMA) calculated the cost of replacing commercial citrus trees to be $26 per tree. This amount is applicable for all varieties of citrus trees for which coverage is offered, i.e., grapefruit, lemon, lime, orange, and "all other citrus" (tangerine, tangelo, temple orange, and murcott), and considers the costs of land preparation, tree planting, and grove care expenses. Information gathered from industry sources confirms the cost of replanting commercial citrus trees. The cost of tree replacement as calculated by RMA is consistent with APHIS' estimate of costs for the first 6 years of production, or until trees become productive and earn an income. For all categories of citrus, these costs are estimated to be $25.51 per tree. Therefore, § 301.75–15(b) provides that the owner of a commercial citrus grove who is eligible to receive funds to replace commercial citrus trees will, upon approval of his or her application, receive a payment of $26 per tree up to a maximum of between $2,704 and $4,004 per acre, depending on the variety of the trees removed. Specifically, the per-acre caps, which were calculated by multiplying $26 by the varietal average number of trees per acre reported by the Florida citrus industry to the USDA's National Agricultural Statistics Service through the Florida Agriculture Statistics Service, are as follows:

| Variety | Average number of trees per acre | Maximum payment per acre |
|---|---|---|
| Grapefruit, red seedless | 104 | $2,704 |
| Orange, Valencia | 123 | 3,198 |
| Orange, early/midseason/ navel | 118 | 3,068 |
| Tangelo | 114 | 2,964 |
| Lime | 154 | 4,004 |
| Other or mixed citrus [1] | 104 | 2,704 |

[1] Approximately 32 acres of "other, unidentified" citrus trees are reported as having been destroyed in the information furnished by the State of Florida. Since that initial information was provided by Florida, we have been able to determine that the "other, unidentified" category of citrus groves is a mix of trees not conveniently categorized. The mix of trees may include grapefruit, oranges, and specialty crops. Based on the fact that 82 percent of the destroyed acres were red seedless grapefruit, APHIS used the average per-acres tree density for red seedless grapefruit to set the per-acre cap for those "other, unidentified" groves.

We anticipate that additional funds will be made available for USDA to provide payments to the owners of commercial citrus groves for losses in production income resulting from the destruction of trees due to citrus canker. Because output per acre is approximately the same, regardless of the number of trees per acre, capping the tree replacement payments provided for by this rule based on the average number of trees per acre for each variety will ensure that no grower receives combined payments (i.e., tree replacement and lost production) that exceed the total estimated per-acre loss.

*How To Apply*

Paragraph (c) of § 301.75–15 provides information on how to apply for commercial citrus tree replacement funds. This paragraph states that the form necessary to apply for tree replacement funds may be obtained from any local citrus canker program office or from the USDA Citrus Canker Eradication Project office in Miami, FL. Completed claim forms must be sent to the USDA Citrus Canker Eradication Project office in Winter Haven, FL, which is where the DPI records necessary to validate claims are located. When the completed application is submitted, it should be accompanied by a copy of the public order that directed the destruction of the trees, the order's accompanying inventory that describes the number and variety of trees removed, and documentation verifying that the destruction of trees has been completed and the date of that destruction. Claims for trees destroyed on or before the effective date of this rule must be received within 60 days after the effective date of this rule, and claims for trees destroyed after the effective date of this rule must be received within 60 days after the destruction of the trees.



**Immediate Action**

Immediate action is necessary to reduce the economic effect of the citrus canker eradication program on affected commercial citrus growers, thus ensuring the continued cooperation of commercial growers with the survey and eradication activities being conducted by the State of Florida and APHIS. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

**Executive Order 12866 and Regulatory Flexibility Act**

This rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

The following economic analysis provides a cost-benefit analysis as required by Executive Order 12866 and an analysis of the potential economic effects on small entities as required by the Regulatory Flexibility Act.

This rule amends the citrus canker regulations to establish provisions under which eligible owners of commercial citrus groves may receive payments to replace commercial citrus trees removed because of citrus canker. The payment of these tree replacement funds is necessary as a first step toward reducing the economic effect of the citrus canker quarantine on affected commercial citrus growers. As for the second step, we anticipate that additional funds will be made available for USDA to provide payments to growers for losses in production income resulting from the destruction of trees due to citrus canker. In order to make those funds available, we expect to publish a proposed rule that details our estimates of per-acre losses and discusses the information and methodology upon which those estimates are based.

The value of citrus produced in the United States in 1998 was $2.6 billion, and Florida produced a substantial share of the total. In 1997–1998, Florida accounted for 43.67 percent of U.S. orange production, 76.2 percent of grapefruit production, 72.72 percent of lime production, 63.41 percent of tangerine production, and 100 percent of both temple and K-Early citrus production (USDA, National Agricultural Statistics Service, *Agricultural Statistics*, 1999). Removing the infected and exposed trees protects a substantial investment in other citrus groves. While the entire value of citrus produced is not at risk immediately from citrus canker, the disease would, if left unchecked, continue to spread. In time, the entire industry would be at risk.

According to the data provided to APHIS by the State of Florida, during the current citrus canker outbreak, approximately 484,900 commercial citrus trees were removed to control citrus canker by July 19, 2000, and another 238,900 commercial citrus trees are expected to be destroyed by September 30, 2000. Paid at the rate of $26 per tree, the costs of replacing those 723,800 trees would be approximately $18.8 million. However, we expect that the actual amount paid out will be lower due to the per-acre cap on tree replacement payments provided for by this interim rule; as noted previously, we have placed this cap on tree replacement payments in order to ensure that no grower receives combined tree replacement and lost production payments that exceed the total estimated per-acre loss. The State of Florida has also identified another 87,731 trees from 5 groves in Manatee and Highlands Counties that were destroyed because of citrus canker between 1986 and 1990 (i.e., before the start of the current outbreak); the costs of replacing those trees at $26 per tree would be approximately $2.28 million. Again, we expect that the per-acre cap on tree replacement payments provided for by this interim rule will result in the actual amount paid out being lower.

*Effects on Small Entities*

This rule establishes provisions under which eligible owners of commercial citrus groves could, subject to the availability of appropriated funds, receive payments to replace commercial citrus trees removed because of citrus canker. Therefore, the entities who will be affected by this rule are commercial citrus growers. The Regulatory Flexibility Act requires that the Agency specifically consider the economic effects of its rules on small entities. The Small Business Administration (SBA) defines a firm engaged in agriculture as "small" if it has less than $500,000 in annual receipts. While the majority of citrus growers in Florida would be considered small entities under those SBA guidelines, those growers who would not be classified as small entities account for the majority of the citrus-growing acreage in the State. Based on available information, it appears that most of the citrus-canker-related losses in Florida have been incurred by those larger citrus producers. Regardless of the size of the entities affected, we expect that this rule will benefit those commercial citrus growers who are eligible for tree replacement payments by helping to defray some of the losses and expenses that they have incurred as a result of the ongoing State and Federal efforts to eradicate citrus canker in Florida.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

**Executive Order 12372**

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

**Executive Order 12988**

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

**Paperwork Reduction Act**

In accordance with section 3507(j) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection and recordkeeping requirements included in this interim rule have been submitted for emergency approval to the Office of Management and Budget (OMB). OMB has assigned control number 0579–0163 to the information collection and recordkeeping requirements.

We plan to request continuation of that approval for 3 years. Please send written comments on the 3-year approval request to the following addresses: (1) Office of Information and

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Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503, and (2) Docket No. 00–037–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 00–037–1 and send your comments within 60 days of publication of this rule.

This rule amends the citrus canker regulations to establish provisions under which eligible owners of commercial citrus groves may receive payments to replace commercial citrus trees removed because of citrus canker. Implementing this program would necessitate the use of an information collection activity in the form of an application for funds.

We are soliciting comments from the public concerning our information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses).

*Estimate of burden:* Public reporting burden for this collection of information is estimated to average 0.21 hours per response.

*Respondents:* Eligible commercial citrus grove owners in Florida.

*Estimated annual number of respondents:* 65.

*Estimated annual number of responses per respondent:* 1.08.

*Estimated annual number of responses:* 70.

*Estimated total annual burden on respondents:* 15 hours.

(Due to rounding, the total annual burden hours may not equal the product of the annual number of responses multiplied by the average reporting burden per response.)

Copies of this information collection can be obtained by calling Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

**List of Subjects in 7 CFR Part 301**

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR part 301 is amended as follows:

## PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 is revised to read as follows:

**Authority:** Title IV, Pub. L. 106–224, 114 Stat. 438, 7 U.S.C. 7701–7772; 7 U.S.C. 166; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293, and sec. 203, title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

2. Section 301.75–1 is amended by adding, in alphabetical order, definitions of the terms *commercial citrus grove* and *public order* to read as follows:

**§ 301.75–1 Definitions.**

* * * * *

*Commercial citrus grove.* An establishment maintained for the primary purpose of producing citrus fruit for commercial sale.

* * * * *

*Public order.* Either an "Agreement to Destroy and Covenant Not to Sue" signed by the grove owner and the Florida Department of Food and Consumer Services, Division of Plant Industry (DPI), or an "Immediate Final Order" issued by DPI, both of which identify citrus trees infected with or exposed to citrus canker and order their destruction.

* * * * *

3. In Subpart—Citrus Canker, a new § 301.75–15 is added to read as follows:

**§ 301.75–15 Funds for the replacement of commercial citrus trees.**

Subject to the availability of appropriated funds, the owner of a commercial citrus grove may be eligible to receive funds to replace commercial citrus trees in accordance with the provisions of this section.

(a) *Eligibility.* The owner of a commercial citrus grove may be eligible to receive funds to replace commercial citrus trees removed to control citrus canker if the trees were removed pursuant to a public order between 1986 and 1990 or on or after September 28, 1995.

(b) *Tree replacement payments.* The owner of a commercial citrus grove who is eligible under paragraph (a) of this section to receive funds to replace commercial citrus trees will, upon approval of an application submitted in accordance with paragraph (c) of this section, receive a payment of $26 per tree up to the following per-acre maximum payments:

| Variety | Maximum payment per acre |
|---|---|
| Grapefruit, red seedless | $2,704 |
| Orange, Valencia | 3,198 |
| Orange, early/midseason/navel | 3,068 |
| Tangelo | 2,964 |
| Lime | 4,004 |
| Other or mixed citrus | 2,704 |

(c) *How to apply for tree replacement funds.* The form necessary to apply for funds to replace commercial citrus trees may be obtained from any local citrus canker eradication program office in Florida, or from the USDA Citrus Canker Project, 10300 SW 72nd Street, Suite 150, Miami, FL 33173. The completed application should be accompanied by a copy of the public order directing the destruction of the trees and its accompanying inventory that describes the number and the variety of trees removed. Your completed application must be sent to the USDA Citrus Canker Eradication Project, Attn: Commercial Tree Replacement Program, c/o Division of Plant Industry, 3027 Lake Alfred Road, Winter Haven, FL 33881. Claims for trees destroyed on or before the effective date of this rule must be received within 60 days after the effective date of this rule. Claims for trees destroyed after the effective date of this rule must be received within 60 days after the destruction of the trees.

(Approved by the Office of Management and Budget under control number 0579–0163.)

Done in Washington, DC, this 12th day of October 2000.

**Charles P. Schwalbe,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 00–26591 Filed 10–13–00; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 956

**[Docket No. FV00–956–1 IFR]**

## Sweet Onions Grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon; Revision of Administrative Rules and Regulations

**AGENCY:** Agricultural Marketing Service, USDA.



**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This rule modifies the handler assessment and reporting requirements under the Walla Walla sweet onion marketing order. The marketing order regulates the handling of sweet onions grown in the Walla Walla Valley and is administered locally by the Walla Walla Sweet Onion Marketing Committee (Committee). For sweet onions handled during the period September 1 through May 31 of each fiscal period, this rule provides dates by which handlers must pay assessments and furnish reports to the Committee that reflect new cultural and storage practices that have extended the traditional mid-summer marketing season.

**DATES:** Effective October 17, 2000; comments received by December 15, 2000 will be considered prior to issuance of a final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698, or E-mail: moab.docketclerk@usda.gov. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: http://www.ams.usda.gov/fv/moab.html.

**FOR FURTHER INFORMATION CONTACT:** Robert J. Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, suite 385, Portland, Oregon 97204–2807; telephone: (503) 326–2724, Fax: (503) 326–7440; or George Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement and Order No. 956, as amended (7 CFR part 956), regulating the handling of sweet onions grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule provides dates by which handlers must pay assessments and furnish reports to the Committee that reflect new cultural and storage practices for sweet onions handled during the period September 1 through May 31 of each fiscal period. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Section 956.41 of the order provides the Committee with the authority to establish an annual budget of expenditures and § 956.42 provides authority for the Committee to levy assessments upon handlers of Walla Walla sweet onions to provide adequate funds to defray such expenditures. Section 956.202 establishes the current assessment rate of $0.21 per 50-pound bag of Walla Walla sweet onions handled. Section 956.42 also provides the Committee with the authority to impose an interest charge on any handler who fails to pay any assessment in a timely manner, and § 956.142 of the order's administrative rules and regulations establishes rate of interest and the date such interest charge begins to accrue. Section 956.80 establishes the authority for the Committee to require handler reports, while § 956.180 provides the rules and regulations necessary for the Committee to implement and administer such reporting requirements.

For sweet onions handled on or after September 1, this rule modifies the date handlers must pay assessments and furnish reports to the Committee. These changes recognize new cultural and storage practices that have extended the traditional mid-summer marketing season. The changes provide dates by which handlers must pay assessments and submit reports on shipments made in September or later. This rule was unanimously recommended by the Committee on August 15, 2000.

Sections 956.142 (interest charges) and 956.180 (reports) were established in August 1996 to foster prompt assessment payments and to ensure that adequate funds would be available to cover budgeted expenses incurred by the Committee under the order. Section 956.180 established reporting requirements for providing the Committee with statistical information regarding total industry shipments and is used as a basis for assessment collection. This information also is useful for the development of a budget and in making marketing and promotion plans for the upcoming season. Section 956.142 establishes an assessment due date and an interest charge on any handler who fails to pay his or her assessments within thirty days of the due date. The assessment due date is September 1, and the monthly interest charge on delinquent assessments is 1.5 percent.

Historically, Walla Walla sweet onions have been planted in the fall, then harvested and marketed from late June to early August. Due to the short shelf life of this traditionally non-storage, summer onion, the marketing season has closely followed the annual harvest. However, recent changes in cultural and storage practices within the Walla Walla sweet onion industry are lengthening the marketing season for some of the sweet onions produced in the Walla Walla Valley. A few producers have been planting sweet onions in the spring, thereby extending the traditional mid-summer harvest into late summer or early fall. In addition, Controlled Atmosphere (CA) storage has been introduced this season, and the potential now exists for extending the marketing season further into the fall and early winter season.

By extending the due dates for assessments and reports on sweet onions handled on or after September 1, this action provides Walla Walla sweet

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onion handlers more time to comply with these requirements. This will enable them to take advantage of the expanding marketing season. The Committee will continue to require that assessments be paid and reports submitted by September 1 for onions handled in June, July, and August.

For assessments due on sweet onions handled prior to September 1, the monthly interest charge of 1.5 percent will continue to accrue after September 30. For assessments due on sweet onions handled during the period September 1 through May 31 of each fiscal period, interest charges will begin accruing 30 days after the handler's report of shipments is due.

Handlers marketing their sweet onions prior to September 1 will continue to submit reports (Committee Form No. 1's) showing weekly and seasonal totals by September 1, and assessments for their shipments to the Committee no later than September 30 to avoid late payment interest charges. For shipments during the period September 1 through May 31 of each fiscal period, handlers will submit a separate report, along with the appropriate assessment payment, for each monthly period that they continue to make shipments. Such report will be due at the office of the Committee no later than 30 days following the end of the month in which shipments were made. Assessments will be due within thirty (30) days of the last day of the month in which the shipments are made. For example, a handler shipping Walla Walla sweet onions anytime during the month of September would furnish the shipment report to the Committee no later than October 30. In this example, the report would contain the number of 50-pound equivalents of Walla Walla sweet onions shipped by such handler during each week in September, along with the monthly total of shipments and a check for the appropriate assessment amount. This reporting and payment schedule continues for each monthly period Walla Walla sweet onions are handled after September 1.

With the introduction of spring planting and CA storage for Walla Walla sweet onions and the associated extension of the traditional marketing season, this action is necessary to ensure that adequate Committee operating funds are obtained in a timely manner, that producers and handlers are treated equitably and have the needed flexibility to produce and market their crop as they desire, and that consumers have an extended season in which to purchase Walla Walla sweet onions.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, the AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 30 handlers of Walla Walla sweet onions who are subject to regulation under the order and approximately 60 sweet onion producers in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000.

The Committee estimates that all of the handlers of Walla Walla sweet onions ship under $5,000,000 worth of sweet onions on an annual basis. In addition, based on acreage, production, and producer prices reported by the National Agricultural Statistics Service, and the total number of onion producers in the regulated production area, the average gross annual producer revenue from sweet onions was about $117,000 in 1999, the most recent year statistics are available. Based on this information, it can be concluded that the majority of Walla Walla sweet onion handlers and producers may be classified as small entities, excluding receipts from other sources.

Based on authority in §§ 956.42 and 956.80, the Committee unanimously recommended this action at a public meeting on August 15, 2000. Specifically, for sweet onions handled on or after September 1, this rule modifies the date handlers must pay assessments (§ 956.142) and furnish reports (§ 956.180) to the Committee. These changes are being made to recognize new cultural and storage practices that will extend the traditional mid-summer marketing season to mid-winter, and would provide handlers more time to pay assessments and file reports on these later shipments.

Regarding the impact of this action on affected entities, sweet onion handlers will not be forced into noncompliance because they will be able to pay assessments and submit shipment reports later than currently provided. When the current deadlines were established, the Committee did not envision shipments being made in September or later. Walla Walla sweet onions have a relatively high market value, but generally must be harvested and sold within a short time period between late June and early August. By extending the marketing season, producers and handlers hope to increase their returns while providing consumers with unique, highly demanded sweet onions during a period of time such onions are usually not available.

The Committee estimates that during the current marketing season only a limited amount of sweet onions may be handled on or after September 1 and into early winter. The Committee has been informed, however, that an additional 1,300 acres of sweet onions may be planted for the 2001 marketing season with many of the onions possibly going into CA storage. Approximately 800 acres of Walla Walla sweet onions were planted for the 2000 season.

The Committee discussed alternatives to the recommendation, including leaving the regulations unmodified. However, the Committee decided that it did not have the option of leaving the regulations unmodified because some handler assessment obligations are expected to accrue during the period September 1 through May 31 of each fiscal period. Another alternative discussed would have changed the regulations to require the submission of reports and assessments for the entire crop, regardless of when marketed, within 30 to 60 days of the date of shipment. The Committee rejected this option because it felt that the bulk of the Walla Walla sweet onion crop will continue to be marketed during the traditional mid-summer season, and it wants to ensure that an adequate income is received early in the fiscal period to offset expenditures. The fiscal period begins June 1 and ends May 31.

The Committee uses Form No. 1, Handler's Statement of Walla Walla Sweet Onion Shipments, for collecting assessments and statistical data. This form has traditionally been mailed to handlers in mid-August with the requirement that it be returned by September 1. Handler assessments are due within 30 days of September 1 to avoid imposition of the 1.5 percent per month interest charge for overdue assessments. The Committee has revised Form No. 1 to reflect the changes made herein.

The Committee estimates that only two of the currently regulated handlers in the Walla Walla sweet onion production area may initially ship sweet onions on or after September 1. The Committee also estimates that the revised Form No. 1 will continue to take approximately 25 minutes to complete. With only two handlers submitting reports on October 31 and possibly again on November 30, for example, the total additional burden on the industry for the information reporting requirements for sweet onions shipped on or after September 1 would approximate 100 minutes per year. Thus, while this rule will impose some additional reporting requirements, the burden is currently approved under OMB No. 0581–0078 by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The Agricultural Marketing Service has notified the Office of Management and Budget of this change in burden.

As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, the Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

The Committee's meeting was widely publicized throughout the Walla Walla sweet onion industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the August 15, 2000, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Further, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: http://www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

This rule invites comments on providing handlers more time to meet assessment and reporting requirements for Walla Walla sweet onions handled during the period September 1 through May 31 of each fiscal period. Any comments received will be considered prior to finalization of this rule.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule provides relaxed assessment and reporting requirements for Walla Walla sweet onions handled during the period September 1 through May 31 of each fiscal period; (2) this rule needs to be effective promptly so handlers will be able to market their sweet onions on or after September 1, 2000, and be in compliance with order requirements; (3) the Committee unanimously recommended this change at a public meeting, and interested parties had an opportunity to provide input; and (4) this rule provides a 60-day comment period, and any comments received will be considered prior to finalization of this rule.

**List of Subjects in 7 CFR Part 956**

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 956 is amended as follows:

## PART 956—SWEET ONIONS GROWN IN THE WALLA WALLA VALLEY OF SOUTHEAST WASHINGTON AND NORTHEAST OREGON

1. The authority citation for 7 CFR part 956 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. Section 956.142 is revised to read as follows:

**§ 956.142 Interest charges.**

For Walla Walla Sweet Onions handled prior to September 1, the Committee shall impose an interest charge on any handler who fails to pay his or her annual assessments within thirty (30) days of the due date of September 1. For Walla Walla Sweet Onions handled during the period September 1 through May 31 of each fiscal period, the Committee shall impose an interest charge on any handler who fails to pay his or her assessments within thirty (30) days of the last day of the month in which such shipments are made. The interest charge shall be 1½ percent of the unpaid assessment balance. In the event the handler fails to pay the delinquent assessment amount within 60 days following the due date, the 1½ percent interest charge shall be applied monthly thereafter to the unpaid balance, including any accumulated interest. Any amount paid by a handler as an assessment, including any charges imposed pursuant to this paragraph, shall be credited when the payment is received in the Committee office.

3. In § 956.180, the introductory text is revised to read as follows:

**§ 956.180 Reports.**

Each handler shall furnish to the Committee a report containing the information in paragraphs (a), (b), and (c) of this section, except that gift box and roadside stand sales shall be exempt from paragraph (b) of this section: *Provided*, That for Walla Walla Sweet Onions handled prior to September 1, such report shall be furnished to the Committee by September 1, and that for Walla Walla Sweet Onions handled during the period September 1 through May 31 of each fiscal period, such report shall be furnished to the Committee no later than thirty (30) days after the end of the month in which such sweet onions were handled:

* * * * *

Dated: October 10, 2000.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 00–26487 Filed 10–13–00; 8:45 am]

BILLING CODE 3410–02–P



## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 2000–NM–312–AD; Amendment 39–11928; AD 2000–20–03 R1]**

**RIN 2120–AA64**

## Airworthiness Directives; Bombardier Model CL–600–2B19 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment revises an existing airworthiness directive (AD), applicable to certain Bombardier Model CL–600–2B19 series airplanes, that currently requires installation of shields for the aileron quadrants in the wheel bay of the main landing gear (MLG). This amendment revises the compliance time for the requirements of that AD. The actions specified in this AD are intended to prevent accumulation of

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water, ice, or slush on the aileron quadrants and control cable pulleys in the wheel bay of the MLG, which could freeze and result in reduced controllability of the airplane.

**DATES:** Effective October 2, 2000.

The incorporation by reference of certain publications listed in the regulations was approved previously by the Director of the Federal Register as of October 2, 2000 (65 FR 57944, September 27, 2000).

Comments for inclusion in the Rules Docket must be received on or before October 23, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–312–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-iarcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–312–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Daniel Parrillo, Aerospace Engineer, Airframe and Propulsion Branch, ANE–172, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7505; fax (516) 568–2716.

**SUPPLEMENTARY INFORMATION:** On September 22, 2000, the FAA issued AD 2000–20–03, amendment 39–11914 (65 FR 57944, September 27, 2000), applicable to certain Bombardier Model CL–600–2B19 series airplanes, to require installation of shields for the aileron quadrants and control cable pulleys in the wheel bay of the main landing gear (MLG). The actions required by that AD are intended to prevent accumulation of water, ice, or slush on the aileron quadrants and control cable pulleys in the wheel bay of the MLG, which could freeze and result in reduced controllability of the airplane.

**Actions Since Issuance of Previous Rule**

Since the issuance of that AD, the FAA has determined that an incorrect compliance time for the installation of the shields was inadvertently specified in AD 2000–20–03. Instead of "within 30 days after the effective date of this AD," the compliance time should read "within 45 days after the effective date of this AD."

**FAA's Findings**

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada Civil Aviation (TCAA) has kept the FAA informed of the situation described above. The FAA has examined the findings of the TCAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

**Explanation of Requirements of Rule**

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD revises AD 2000–20–03 to require installation of shields for the aileron quadrants in the wheel bay of the MLG within 45 days after October 2, 2000 (the effective date of AD 2000–20–03).

**Determination of Rule's Effective Date**

Since a situation still exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause still exists for making this amendment effective in less than 30 days.

**Comments Invited**

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–312–AD." The postcard will be date stamped and returned to the commenter.

**Regulatory Impact**

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

**PART 39—AIRWORTHINESS DIRECTIVES**

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by removing amendment 39–11914 (65 FR 57944, September 27, 2000), and by adding a new airworthiness directive (AD), amendment 39–11928, to read as follows:

**2000–20–03 R1 Bombardier, Inc. (Formerly Canadair):** Amendment 39–11928. Docket 2000–NM–312–AD. Revises AD 2000–20–03, Amendment 39–11914.

*Applicability:* Model CL–600–2B19 series airplanes, serial numbers 7003 through 7323 inclusive, certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent reduced controllability of the airplane due to an accumulation of water, ice, and slush on the aileron quadrants and control cable pulleys in the wheel bay of the main landing gear (MLG); accomplish the following:

**Installation**

(a) Within 45 days after October 2, 2000 (the effective date of AD 2000–20–03), install splash shields in the wheel bay of the MLG in accordance with Bombardier Service Bulletin 601R–27–104, dated October 15, 1999.

**Alternative Methods of Compliance**

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

**Special Flight Permits**

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

**Incorporation by Reference**

(d) The installation shall be done in accordance with Bombardier Service Bulletin 601R–27–104, dated October 15, 1999. This incorporation by reference was approved previously by the Director of the **Federal Register** as of October 2, 2000 (65 FR 57944, September 27, 2000). Copies may be obtained from Bombardier Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Note 3:** The subject of this AD is addressed in Canadian airworthiness directive CF–2000–28, dated August 28, 2000.

**Effective Date**

(e) This amendment becomes effective on October 2, 2000.

Issued in Renton, Washington, on October 4, 2000.

**Donald L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–26092 Filed 10–13–00; 8:45 am]

**BILLING CODE 4910–13–P**



**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. 2000–SW–25–AD; Amendment 39–11931; AD 2000–20–19]**

**RIN 2120–AA64**

## Airworthiness Directives; Eurocopter France Model AS–350B, BA, B1, B2, B3, C, D, and D1, and AS–355E, F, F1, F2 and N Helicopters

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment supersedes an existing airworthiness directive (AD) for Eurocopter France Model AS–350B, BA, B1, B2, C, D, and D1, and AS–355E, F, F1, and F2 helicopters. That AD currently requires inspections of the main rotor head components, the main gearbox (MGB) suspension bars, and the ground resonance prevention system components. This amendment requires those same inspections, but would also apply to Model AS–350B3 and AS–355N helicopters. This amendment is prompted by the inadvertent omission of those model helicopters from the previous AD. The actions specified by this AD are intended to prevent ground resonance due to reduced structural stiffness, which could lead to failure of a main rotor head or MGB suspension component and subsequent loss of control of the helicopter.

**DATES:** Effective November 20, 2000.

The incorporation by reference of certain publications listed in the regulations was approved previously by the Director of the Federal Register as of May 23, 2000 (65 FR 20721, April 18, 2000).

**ADDRESSES:** The service information referenced in this AD may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Jim Grigg, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5490, fax (817) 222–5961.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal

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Aviation Regulations (14 CFR part 39) by superseding AD 86–15–10 R2, Amendment 39–11681 (65 FR 20721), which applies to Eurocopter France Model AS–350B, BA, B1, B2, B3, C, D, and D1, and AS–355E, F, F1, F2 and N helicopters was published in the **Federal Register** on July 20, 2000 (65 FR 44995). That action proposed to require an initial inspection within 10 hours time-in-service (TIS) and thereafter, repetitive inspections of the main rotor head components, the MGB suspension bars, and the ground resonance prevention system components at intervals not to exceed 500 hours TIS.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 586 helicopters of U.S. registry will be affected by this AD, that it will take approximately 8 work hours per helicopter to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $480 per helicopter, or $281,280 for the entire fleet.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

**PART 39—AIRWORTHINESS DIRECTIVES**

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by removing Amendment 39–11681 (65 FR 20721, April 18, 2000), Amendment 39–6515 (55 FR 5833, February 20, 1990) and Amendment 39–5517 (52 FR 13233, April 22, 1987) and by adding a new airworthiness directive (AD), Amendment 39–11931, to read as follows:

**2000–20–19 Eurocopter France:** Amendment 39–11931. Docket No. 2000–SW–25–AD. Supersedes AD 86–15–10 R2, Amendment 39–11681, Docket No. 98–SW–82–AD; AD 86–15–10R1, Amendment 39–6515, Docket No. 86–ASW–22; and AD 86–15–10, Amendment 39–5517, Docket No. 86–ASW–22.

*Applicability:* Model AS–350B, BA, B1, B2, B3, C, D, and D1, and AS–355E, F, F1, F2 and N helicopters, certificated in any category.

**Note 1:** This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent ground resonance due to reduced structural stiffness, which could lead to failure of a main rotor head or main gearbox (MGB) suspension component and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 10 hours time-in-service (TIS):

(1) For Model AS–350B, BA, B1, B2, B3, C, D, and D1 helicopters, inspect the main rotor head components, the MGB suspension bars (struts), and the landing gear ground resonance prevention components (aft spring blades and hydraulic shock absorbers) in accordance with paragraph CC.3 of Aerospatiale Service Bulletin (SB) No. 01.17a (not dated).

(2) For Model AS–355E, F, F1, F2, and N helicopters, inspect the main rotor head components, the MGB suspension bars (struts), and the landing gear ground resonance prevention components (aft spring blades and hydraulic shock absorbers) in accordance with paragraph CC.3 of SB No. 01.14a (not dated).

(b) Rework or replace damaged components in accordance with SB No. 01.17a or SB No. 01.14a, as applicable.

(c) Repeat the inspections and rework required by paragraphs (a) and (b) of this AD at intervals not to exceed 500 hours TIS.

(d) If the helicopter is subjected to a hard landing or to high surface winds when parked without effective tiedown straps installed, repeat the inspections required by paragraph (a) of this AD for the main rotor head star arms and the MGB suspension bars (struts) before further flight.

(e) After a landing with abnormal self-sustained dynamic vibrations (ground resonance type vibrations), repeat all the inspections required by paragraph (a) of this AD.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(h) The inspections shall be done in accordance with paragraph CC.3 of Aerospatiale Service Bulletin No. 01.17a (not dated) or No. 01.14a (not dated), as applicable. The rework or replacement, if necessary, shall be done in accordance with Aerospatiale Service Bulletin No. 01.17a or No. 01.14a (neither is dated), as applicable. The incorporation by reference of those documents was previously approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of May 23, 2000 (65 FR 20721, April 18, 2000). Copies may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment becomes effective on November 20, 2000.



Issued in Fort Worth, Texas, on September 29, 2000.

**Henry A. Armstrong,**

*Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 00–26234 Filed 10–13–00; 8:45 am]

BILLING CODE 4910–13–U

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 71**

**[Airspace Docket No. 00–ACE–22]**

**Amendment to Class E Airspace; Elkhart, KS**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Direct final rule; confirmation of effective date.

**SUMMARY:** This document confirms the effective date of a direct final rule which revises Class E airspace at Elkhart, KS.

**DATES:** The direct final rule published at 65 FR 45707 is effective on 0901 UTC, November 30, 2000.

**FOR FURTHER INFORMATION CONTACT:** Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

**SUPPLEMENTARY INFORMATION:** The FAA published this direct final rule with a request for comments in the **Federal Register** on July 25, 2000 (65 FR 45707). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on November 30, 2000. No adverse comments were received, and thus this document confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on September 28, 2000.

**Herman J. Lyons, Jr.,**

*Manager, Air Traffic Division, Central Region.*

[FR Doc. 00–26525 Filed 10–13–00; 8:45 am]

BILLING CODE 4910–13–M

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 71**

**[Airspace Docket No. 00–ACE–21]**

**Amendment to Class E Airspace; Columbia, MO**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Direct final rule; confirmation of effective date.

**SUMMARY:** This document confirms the effective date of a direct final rule which revises Class E airspace at Columbia, MO.

**DATES:** The direct final rule published at 65 FR 43686 is effective on 0901 UTC, November 30, 2000.

**FOR FURTHER INFORMATION CONTACT:** Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

**SUPPLEMENTARY INFORMATION:** The FAA published this direct final rule with a request for comments in the **Federal Register** on July 14, 2000 (65 FR 43686). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on November 30, 2000. No adverse comments were received, and thus this document confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on September 28, 2000.

**Herman J. Lyons, Jr.,**

*Manager, Air Traffic Division, Central Region.*

[FR Doc. 00–26526 Filed 10–13–00; 8:45 am]

BILLING CODE 4910–13–M

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 71**

**[Airspace Docket No. 00–ASW–6]**

**Amendment of Federal Airways in the Vicinity of Dallas/Fort Worth; TX**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action amends thirteen Federal airways in the vicinity of Dallas/Fort Worth, TX. In the NPRM for this action, the FAA proposed to modify 14 airways. However, after considering aircraft routing through the Shreveport, LA, Approach Control terminal airspace and retention of transition fixes for the Shreveport Regional Airport and Barksdale Air Force Base (AFB), the FAA has decided not to make the proposed modification of V–566. The FAA is taking this action to simplify the airway structure, thereby, enhancing the management of aircraft operations in the area.

**EFFECTIVE DATE:** 0901 UTC, November 30, 2000.

**FOR FURTHER INFORMATION CONTACT:** Bil Nelson, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

**SUPPLEMENTARY INFORMATION:**

**Background**

As a result of a recent airspace review, the FAA has determined that airways in the vicinity of Dallas/Fort Worth, TX, should be amended to improve management of the aircraft operations. On June 12, 2000, the FAA published in the **Federal Register** (65 FR 36805) a proposal to amend fourteen Federal airways. However, after considering aircraft routing through the Shreveport, LA, Approach Control terminal airspace and retention of transition fixes for the Shreveport Regional Airport and Barksdale AFB, the FAA decided not to make the proposed modification of V–566.

Interested parties were invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. No comments were received. Except for editorial changes, and the decision not to amend V–566, this amendment is the same as that proposed in the NPRM.

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**The Rule**

The FAA is amending part 71 of Title 14 Code of Federal Regulations to revise thirteen Federal airways in the vicinity of Dallas/Fort Worth, TX. The rule amends the following Federal airways: V–15, V–16, and V–17 by modifying the route descriptions; V–63, V–69, V–131, V–305, V–507, V–573 by amending the start points; and V–66, V–163, V–358, and V–407 by modifying the end points. The FAA is taking this action to simplify the airway structure, thereby, enhancing the management of aircraft operations in the area.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Federal airways are published in paragraph 6010(a) of FAA Order 7400.9H dated September 1, 2000, and effective September 16, 2000, which is incorporated by reference in 14 CFR 71.1. The Federal airways listed in this document will be published subsequently in the Order.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Amendment**

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E, AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9H, Airspace Designations and Reporting Points, dated September 1, 2000, and effective September 16, 2000, is amended as follows:

*Paragraph 6010(a) Domestic VOR Federal Airways*

* * * * *

**V–15 [Revised]**

From Hobby, TX, via Navasota, TX; College Station, TX; Waco, TX; Cedar Creek, TX; Bonham, TX; McAlester, OK; Okmulgee, OK; to Neosho, MO. From Sioux City, IA; INT Sioux City 340° and Sioux Falls, SD, 169° radials; Sioux Falls; Huron, SD; Aberdeen, SD; Bismarck, ND; to Minot, ND.

**V–16 [Revised]**

From Los Angeles, CA; Paradise, CA; Palm Springs, CA; Blythe, CA; Buckeye, AZ; Phoenix, AZ; INT Phoenix 155° and Stanfield, AZ, 105° radials; Tucson, AZ; Cochise, AZ; Columbus, NM; El Paso, TX; Salt Flat, TX; Wink, TX; INT Wink 066° and Big Spring, TX, 260° radials; Big Spring; Abilene, TX; Bowie, TX; Bonham, TX; Paris, TX; Texarkana, AR; Pine Bluff, AR; Marvell, AR; Holly Springs, MS; Jacks Creek, TN; Shelbyville, TN; Hinch Mountain, TN; Volunteer, TN; Holston Mountain, TN; Pulaski, VA; Roanoke, VA; Lynchburg, VA; Flat Rock, VA; Richmond, VA; INT Richmond 039° and Patuxent, MD, 228° radials; Patuxent; Smyrna, DE; Cedar Lake, NJ; Coyle, NJ; INT Coyle 036° and Kennedy, NY, 209° radials; Kennedy; Deer Park, NY; Calverton, NY; Norwich, CT; Boston, MA. The airspace within Mexico and the airspace below 2,000 feet MSL outside the United States is excluded. The airspace within Restricted Areas R–5002A, R–5002C, and R–5002D is excluded during their times of use. The airspace within Restricted Areas R–4005 and R–4006 is excluded.

**V–17 [Revised]**

From Brownsville, TX, via Harlingen, TX; McAllen, TX; 29 miles 12 AGL, 34 miles 25 MSL, 37 miles 12 AGL; Laredo, TX; Cotulla, TX; INT Cotulla 046° and San Antonio, TX, 198° radials; San Antonio; Centex, TX; Waco, TX; Glen Rose, TX; Millsap, TX; Bowie, TX; Ardmore, OK; Will Rogers, OK; Gage, OK; Garden City, KS; to Goodland, KS.

* * * * *

**V–63 [Revised]**

From Bowie, TX; Texoma, OK; McAlester, OK; Razorback, AR; Springfield, MO; Hallsville, MO; Quincy, IL; Burlington, IA; Moline, IL; Davenport, IA; Rockford, IL; Janesville, WI; Badger, WI; Oshkosh, WI; Stevens Point, WI; Wausau, WI; Rhinelander, WI; to Houghton, MI. Excluding that airspace at and above 10,000 feet MSL from 5 NM north to 46 NM north of Quincy during the time that the Howard West MOA is activated by NOTAM.

* * * * *

**V–66 [Revised]**

From Mission Bay, CA; Imperial, CA; 13 miles, 24 miles, 25 MSL; Bard, AZ; 12 miles, 35 MSL; INT Bard 089° and Gila Bend, AZ, 261° radials; 46 miles, 35 MSL; Gila Bend; Tucson, AZ, 7 miles wide (3 miles south and 4 miles north of centerline); Douglas, AZ; INT Douglas 064° and Columbus, NM, 277° radials; Columbus; El Paso, TX; 6 miles wide; INT El Paso 109° and Hudspeth 287° radials; 6 miles wide; Hudspeth; Pecos, TX; Midland, TX; INT Midland 083° and Abilene, TX, 252° radials; Abilene; to Millsap, TX.

* * * * *

**V–69 [Revised]**

From El Dorado, AR; Pine Bluff, AR; INT Pine Bluff 038° and Walnut Ridge, AR, 187° radials; Walnut Ridge; Farmington, MO; Troy, IL; Capital, IL; Pontiac, IL; to Joliet, IL.

* * * * *

**V–131 [Revised]**

From Okmulgee, OK; Tulsa, OK; Chanute, KS; to Topeka, KS.

* * * * *

**V–163 [Revised]**

From Matamoros, Mexico; via Brownsville, TX; 27 miles standard width, 37 miles 7 miles wide (3 miles E and 4 miles W of centerline); Corpus Christi, TX; Three Rivers, TX; INT Three Rivers 345° and San Antonio, TX, 168° radials; San Antonio; Lampasas, TX; to Glen Rose, TX.

* * * * *

**V–305 [Revised]**

From El Dorado, AR; Little Rock, AR; Walnut Ridge, AR; Malden, MO; Cunningham, KY; Pocket City, IN; INT Pocket City 046° and Hoosier, IN, 205° radials; Hoosier; INT Hoosier 025° and Brickyard, IN, 185° radials; Brickyard; INT Brickyard 038° and Kokomo, IN, 182° radials; Kokomo.

* * * * *

**V–358 [Revised]**

From San Antonio, TX, via Stonewall, TX; Lampasas, TX; INT Lampasas 041° and Waco, TX, 249° radials; Waco.

* * * * *

**V–407 [Revised]**

From Harlingen, TX; via INT Harlingen 006° and Corpus Christi, TX, 193° radials; Corpus Christi; via INT Corpus Christi 039° and Palacios, TX, 241° radials; Palacios; via INT Palacios 017° and Humble, TX, 242° radials; Humble; Daisetta, TX; Lufkin, TX; Elm Grove, LA; to El Dorado, AR.

* * * * *

**V–507 [Revised]**

From Ardmore, OK; Will Rogers, OK, via INT Will Rogers 284° and Gage, OK, 152° radials; Gage; Liberal, KS; to Garden City, KS.

* * * * *

**V–573 [Revised]**

From Will Rogers, OK; INT Will Rogers 195° and Ardmore, OK, 327° radials; Ardmore; Bonham, TX; Sulpher Springs, TX; Texarkana, AR; INT Texarkana 037° and Hot Springs, AR, 225° radials; Hot Springs; to Little Rock, AR.

* * * * *

Issued in Washington, DC, on October 5, 2000.

**Reginald C. Matthews,**

*Manager, Airspoce and Rules Division.*

[FR Doc. 00–26512 Filed 10–13–00; 8:45 am]

**BILLING CODE 4910–13–P**



## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### 14 CFR Part 383

**[Docket No. OST 2000–8058]**

**RIN 2105–AC92**

## Civil Penalties

**AGENCY:** Office of the Secretary, DOT.

**ACTION:** Final rule.

**SUMMARY:** The Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21) revised several civil penalty provisions applicable to violations of the aviation economic requirements of Title 49. By this rule, the Department of Transportation (Department) is modifying its regulations to reflect these revised civil penalties. This rule also reviews those civil penalties unaffected by the recent statutory amendments to determine whether they should be adjusted to recognize inflation that has occurred since the adoption of part 383 in 1997. This review is required under the Federal Civil Penalties Inflation Adjustment Act of 1990 and the Debt Collection Improvement Act of 1996.

**EFFECTIVE DATE:** This rule is effective on November 15, 2000. However, the statutory amendments it reflects became effective on April 5, 2000, by their own terms.

**FOR FURTHER INFORMATION CONTACT:** Nicholas Lowry, Attorney, Office of Aviation Enforcement and Proceedings (C–70), Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–9349.

**SUPPLEMENTARY INFORMATION:**

**I. Civil Penalty Adjustments Required by AIR 21.**

The Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21) among other things amended the statutory provisions proscribing discriminatory practices in air transportation and the civil penalties for violations of those provisions. Section 706 of AIR 21 creates a new section 40127 of Title 49 which specifically prohibits discrimination by air carriers or foreign air carriers on the basis of race, color, national origin, religion, sex or ancestry. In addition, section 707(a) of AIR 21 extended the anti-discrimination provisions of 49 U.S.C. 41705, the Air Carrier Access Act, which formerly applied only to air carriers, to foreign air carriers, as well.

With respect to the civil penalties the Department may impose, section 707(b) of AIR 21 amended the provisions of 49 U.S.C. 46301(a)(3) to apply a $10,000 maximum civil penalty to each violation of section 41705. In addition, section 222 of AIR 21 established $2,500 as the maximum civil penalty amount for each violation of section 40127 or 41712 (the latter of which prohibits unfair and deceptive trade practices and unfair methods of competition).

The recent legislation does not affect the civil penalty provisions applicable to violations of all other aviation economic requirements, or Department rules or orders not proscribed or issued under section 40127, 41705 or 41712. For example, penalties for violations of reporting requirements, cases involving certain unauthorized operations, or cases involving violations of other Department orders or rules not issued pursuant to the authority of 49 U.S.C. 40127, 41705, or 41712, remain at the current level of $1,100 per violation under AIR 21.

**II. Inflation Adjustment of Other Civil Penalty Provisions**

The Debt Collection Improvement Act of 1996 (Pub. L. 104–134, sec. 31001) requires each agency to adjust each civil monetary penalty within its jurisdiction by the inflation adjustment described in section 5 of the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410). Section 5 requires the adjustment to be rounded to the nearest multiple of $1,000 for penalties greater than $1,000 and less than or equal to $10,000. The adjustment is to be the percentage increase in the Consumer Price Index (CPI) from June of the calendar year in which the penalty was last adjusted to June of the year preceding the year in which the revision is proposed. Under the 1996 act, agencies are to review civil penalties which they administer at least once every four years. The civil penalties to which the adjustment would apply here are those civil penalty provisions not affected by AIR 21, that is, penalties for all violations other than cases involving 49 U.S.C. 40127, 41705, or 41712 or regulations or orders issued thereunder.

Since the total inflation as measured by the CPI between June 1997 and June 2000 was approximately 7 percent, an appropriate increase in the civil penalty amount would be $77. In view of the rounding provision of the statute, therefore, no adjustment of the civil penalty amount is warranted at this time.

**III. Waiver of Notice of Proposed Rulemaking**

In developing this final rule, we are waiving the usual notice of proposed rulemaking and public comment procedures set forth in the Administrative Procedure Act (APA) (5 U.S.C. 553). The APA provides an exception to the notice and comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary or contrary to the public interest. We have determined that under 5 U.S.C. 553(b)(3)(B) good cause exists for dispensing with the notice of proposed rulemaking and public comment procedures for this rule. Specifically, this rulemaking is required by the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, the Federal Civil Penalties Inflation Adjustment Act of 1990, and the Debt Collection Improvement Act of 1996, with no issues of policy discretion. Accordingly, we believe that opportunity for prior comment is unnecessary and contrary to the public interest, and are issuing these revised regulations as a final rule.

**IV. Regulatory Impact Statement**

*Executive Order 12866 and DOT Regulatory Policies and Procedures*

This final rule has been evaluated in accordance with the existing policies and procedures and is considered to be not significant under both Executive Order 12866 and DOT Regulatory Policies and Procedures. The final rule is exempt from review by the Office of Management and Budget (OMB) in accordance with the provisions of Executive Order 12866, because it is limited to the adoption of statutory language, without interpretation. This final rule amends the regulations implementing the civil penalty provisions to comply with AIR–21 and reviews the civil penalties unaffected by the recent statutory amendments to determine if inflation adjustments are necessary in accordance with Federal Civil Penalties Inflation Adjustment Act and the Debt Collection Improvement Act. This rule simply adjusts or sets penalties for those who violate the regulations. As a result, we have determined that there are no economic consequences flowing from this rule.

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Indeed, to avoid any costs, regulated entities need only comply with the law.

*Regulatory Flexibility Act*

The Regulatory Flexibility Act of 1980 requires an assessment of the impacts of proposed and final rule on small entities. An agency must prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (5 U.S.C. 601–612), unless the agency can certify that a regulation will not have a significant economic impact on a substantial number of small entities. This rule imposes no substantive burden and merely amends the existing penalties for those who engage in prohibited conduct to reflect statutory changes. The civil penalties will affect only those who engage in conduct prohibited by statute or related regulations. Those who comply with the law will not be affected by the civil penalties. Accordingly, the Office of the Secretary certifies that this action will not have a significant economic impact on a substantial number of small entities.

*Paperwork Reduction Act*

This final rule imposes no new reporting or record keeping requirements necessitating clearance by OMB.

**List of Subjects in 14 CFR Part 383**

Administrative practice and procedure, Penalties.

Accordingly, the Department of Transportation revises Part 383 of Title 14, as set forth below:

## PART 383—CIVIL PENALTIES

Sec.
§ 383.1 Basis and purpose.
§ 383.2 Amount of penalty.

**Authority:** Secs. 222, 706, 707(b), Pub. L. 106–181, 114 Stat. 61; Pub. L. 101–410, 104 Stat. 890, as amended by sec. 31001, Pub. L. 104–134, 110 Stat 1321.

### § 383.1 Basis and purpose.

(a) *Basis.* This part implements the civil penalty provisions of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21, Pub. L. 106–181; 114 Stat. 61; April 5, 2000, sections 222, 706, 707(b)), and the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134, section 31001). The Debt Collection Improvement Act requires each agency head to adjust by regulation each civil monetary penalty provided by law by the inflation adjustment described under section 5 of the Federal Civil Penalties Inflation Adjustment Act. We have applied these guidelines to the civil penalty amounts that were not affected by AIR 21 and, taking into account the inflation that has occurred since the most recent adjustment, have found that no further adjustment is warranted as of June 2000.

(b) *Purpose.* This part states the civil penalty amounts with respect to violations of 49 U.S.C. 40127, 41705 and 41712 and other civil penalties provided in 49 U.S.C. 46301 (a)(1) for violations covered by this chapter.

### § 383.2 Amount of penalty.

A person is liable to the United States Government for a civil penalty of not more than $10,000 for each violation of 49 U.S.C. 41705 and a civil penalty of not more than $2,500 for each violation of 49 U.S.C. 40127 or 41712. For other violations of this chapter within the scope of 49 U.S.C. 46301, the civil penalty amount is $1,100.

* * * * *

Issued this 20th day of September, 2000, at Washington, D.C.

**Rodney E. Slater,**

*Secretary of Transportation.*

[FR Doc. 00–26197 Filed 10–13–00; 8:45 am]

BILLING CODE 4910–62–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 522

### Implantation or Injectable Dosage Form New Animal Drugs; Levamisole Phosphate Injection

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Agri Laboratories, Ltd. The ANADA provides for use of levamisole phosphate solution by subcutaneous injection for the treatment of various species of gastrointestinal parasites in cattle.

**DATES:** This rule is effective October 16, 2000.

**FOR FURTHER INFORMATION CONTACT:** Lonnie W. Luther, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0209.

**SUPPLEMENTARY INFORMATION:** Agri Laboratories, Ltd., P.O. Box 3103, St. Joseph, MO 64503, filed ANADA 200–271 for LEVAMISOLE PHOSPHATE Injectable Solution, 13.65%. The ANADA provides for use of levamisole phosphate solution by subcutaneous injection for the treatment of various species of gastrointestinal parasites in cattle. The ANADA is approved as a generic copy of Schering-Plough Animal Health's NADA 126–742 for LEVASOLE® Injection. ANADA 200–271 is approved as of September 7, 2000, and the regulations are amended in 21 CFR 522.1244 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

**List of Subjects in 21 CFR Part 522**

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

## PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

**Authority:** 21 U.S.C. 360b.

### § 522.1244 [Amended]

2. Section 522.1244 *Levamisole phosphate injection* is amended in paragraph (b) by removing "No. 000061" and by adding in its place "Nos. 000061 and 057561".



Dated: October 6, 2000.

**Stephen F. Sundlof,**

*Director, Center for Veterinary Medicine.*

[FR Doc. 00–26403 Filed 10–13–00; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Parts 526 and 556

### Intramammary Dosage Form New Animal Drugs; Pirlimycin Hydrochloride

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Pharmacia and Upjohn Co. The supplemental NADA provides for use of a sterile solution of pirlimycin hydrochloride for intramammary treatment of clinical and subclinical staphylococcal and streptococcal mastitis in lactating dairy cows, for reduction in the preslaughter withdrawal period, and for revision of the milk discard statement in labeling to state the milk discard time only (i.e., to remove reference to the number of milkings).

**DATES:** This rule is effective October 16, 2000.

**FOR FURTHER INFORMATION CONTACT:** Naba K. Das, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7569.

**SUPPLEMENTARY INFORMATION:** Pharmacia and Upjohn Co., 7000 Portage Rd., Kalamazoo, MI 49001–0199, filed a supplemental application to NADA 141–036 that provides for use of PIRSUE® (pirlimycin hydrochloride) Sterile Solution for intramammary treatment of clinical and subclinical mastitis in lactating dairy cattle caused by *Staphylococcus* species, such as *Staphylococcus aureus*; and *Streptococcus* species, such as *Streptococcus agalactiae, Streptococcus dysgalactiae*, and *Streptococcus uberis;* for reduction in the preslaughter withdrawal period from 28 days to 9 days; and for revision of the milk discard statement in labeling to state the 36-hour milk discard time only (i.e., to remove reference to the number of milkings). The supplemental NADA is approved as of September 7, 2000, and the regulations are amended in 21 CFR 526.1810 to reflect the approval.

In addition, the regulations are amended in (21 CFR 556.515) to add the previously established acceptable daily intake for total residues of pirlimycin, to add a tolerance for residues of pirlimycin in cattle muscle and, editorially, to reflect current format.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this approval for food-producing animals qualifies for 3 years of marketing exclusivity beginning September 7, 2000, because the application contains substantial evidence of the effectiveness of the drug involved, any studies of animal safety, or, in the case of food-producing animals, human food safety studies (other than bioequivalence or residue studies) required for the approval and conducted or sponsored by the applicant. The 3 years of marketing exclusivity applies only to the new formulation for which the supplemental application was approved.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

**List of Subjects**

*21 CFR Part 526*

Animal drugs.

*21 CFR Part 556*

Animal drugs, Foods.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 526 and 556 are amended as follows:

## PART 526—INTRAMAMMARY DOSAGE FORM

1. The authority citation for 21 CFR part 526 continues to read as follows:

**Authority:** 21 U.S.C. 360b.

### § 526.1810 [Amended]

2. Section 526.1810 *Pirlimycin hydrochloride aqueous gel* is amended by removing "aqueous gel" from the section heading, by removing "(three milkings)" from the first sentence in paragraph (d)(3), by removing "28" from the second sentence in paragraph (d)(3) and by adding in its place "9", and by removing the third sentence of paragraph (d)(3).

## PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

1. The authority citation for 21 CFR part 556 continues to read as follows:

**Authority:** 21 U.S.C. 342, 360b, 371.

2. Section 556.515 is revised to read as follows:

### § 556.515 Pirlimycin.

(a) *Acceptable daily intake (ADI).* The ADI for total residues of pirlimycin is 0.01 milligrams per kilogram of body weight per day.

(b) *Tolerances*—(1) *Cattle*—(i) *Liver (the target tissue).* The tolerance for parent pirlimycin (the marker residue) is 0.5 part per million (ppm).

(ii) *Muscle.* The tolerance for parent pirlimycin (the marker residue) is 0.3 ppm.

(iii) *Milk.* The tolerance for parent pirlimycin (the marker residue in cattle milk) is 0.4 ppm.

(2) [Reserved]

Dated: October 6, 2000.

**Stephen F. Sundlof,**

*Director, Center for Veterinary Medicine.*

[FR Doc. 00–26404 Filed 10–13–00; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 1

**[TD 8897]**

**RIN 1545–AQ91**

### Rules for Property Produced in a Farming Business; Correction

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correction of final regulations.

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**SUMMARY:** This document contains corrections to final regulations relating to the application of section 263A of the Internal Revenue Code to property produced in the trade or business of farming. This document was published in the **Federal Register** on August 21, 2000 (65 FR 50638).

**EFFECTIVE DATE:** August 21, 2000.

**FOR FURTHER INFORMATION CONTACT:** Grant D. Anderson (202) 622–4970 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**Need for Correction**

As published, the final regulations (TD 8897) contain errors that may prove to be misleading and are in need of clarification.

**Correction of Publication**

Accordingly, the publication of the final regulations (TD 8897), which were the subject of FR Doc. 00–21103, is corrected as follows:

1. On page 50638, column 3, in the preamble under the paragraph heading, "Background", line 3, the language "proposed rulemaking (REG–208151–91)" is corrected to read "proposed rulemaking (REG–209316–86)".

2. On page 50640, column 3, paragraph 1, line 14, the language "I.R.B. (Sept. 5, 2000)) issued" is corrected to read "I.R.B. 256 (Sept. 5, 2000)) issued".

**PART 1—[CORRECTED]**

**§ 1.263A–1 [Corrected]**

3. On page 50644, column 2, in amendatory instruction Par. 5., remove item designations for items "1." and "2." and correctly designate the items "2." and "3.", respectively. Add new item "1." to read as follows:

1. The last sentence of paragraph (a)(3)(v) is revised.

4. On page 50644, column 2, § 1.263A–1, remove the five asterisks following the section heading and add the following language for the last sentence of paragraph (a)(3)(v) to read as follows:

**§ 1.263A–1 Uniform capitalization of costs.**

(a) * * *

(3) * * *

(v) * * * See sections 263A(d) and 263A(e) and § 1.263A–4 for rules relating to taxpayers engaged in a farming business.

* * * * *

**§ 1.263A–4 [Corrected]**

5. On page 50644, column 3, § 1.263A–4, paragraph (a)(2)(i)(B), line 3, the language "disbursements method under section" is corrected to read "disbursements method of accounting (cash method) under section".

6. On page 50648, column 3, § 1.263A–4, paragraph (d)(2), line 5 from the top of the column, the language "required to use the accrual method" is corrected to read "required to use an accrual method".

**Cynthia E. Grigsby,**

*Chief, Regulations Unit, Office of Special Counsel (Modernization & Strategic Planning).*

[FR Doc. 00–25998 Filed 10–13–00; 8:45 am]

BILLING CODE 4830–01–P

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**DEPARTMENT OF DEFENSE**

**Department of the Navy**

**32 CFR Part 706**

**Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972**

**AGENCY:** Department of the Navy, DOD.

**ACTION:** Final rule.

**SUMMARY:** The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law) has determined that USS *Zephyr* (PC 8) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

**EFFECTIVE DATE:** June 5, 2000.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Commander Gregg A. Cervi, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), Office of the Judge Advocate General, Washington Navy Yard, DC 20374–5066, Telephone number: (202) 685–5040.

**SUPPLEMENTARY INFORMATION:** Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS *Zephyr* (PC 8) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Rule 21(c) pertaining to the placement of the stern light as nearly as practicable at the stern. The Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law) has also certified that the light involved is located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

**List of Subjects in 32 CFR Part 706**

Marine safety, Navigation (water), and Vessels.

Accordingly, 32 CFR part 706 is amended as follows:

**PART 706—[AMENDED]**

1. The authority citation for 32 CFR part 706 continues to read as follows:

**Authority:** 33 U.S.C. 1605.

2. Table 3 of § 706.2 is amended by revising the entry for USS *Zephyr* to read as follows:

**§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.**

* * * * *



TABLE 3

| Vessel | No. | Masthead lights are arc of visibility; rule 21(a) | Side lights arc of visibility; rule 21(b) | Stern lights arc of visibility; rule 21(c) | Side lights distance inboard of ship's sides in meters 3(b) annex 1 | Stern light, distance forward of stern in meters, rule 21(c) | Forward anchor light, height above hull in meters, 2(K) annex 1 | Anchor lights relationship of aft light to forward light in meters 2(K) annex 1 |
|---|---|---|---|---|---|---|---|---|
| USS *Zephyr* | PC–8 | | | | | [1] 28.26 | 3.01 | 1.1 below |

[1] Only when towing.

* * * * *

Approved: June 5, 2000.

**G.A. Cervi,**

*Lieutenant Commander, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law).*

[FR Doc. 00–26268 Filed 10–13–00; 8:45 am]

BILLING CODE 3810–FF–P

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**DEPARTMENT OF DEFENSE**

**Department of the Navy**

**32 CFR Part 706**

**Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972**

**AGENCY:** Department of the Navy, DOD.

**ACTION:** Final rule.

**SUMMARY:** The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law) has determined that USS *Bonhomme Richard* (LHD 6) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

**EFFECTIVE DATE:** November 9, 1999.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Commander Gregg A. Cervi, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, Washington Navy Yard, Washington, DC 20374–5066, Telephone number: (202) 685–5040.

**SUPPLEMENTARY INFORMATION:** Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS *Bonhomme Richard* (LHD 6) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I paragraph 2(f)(i) pertaining to the placement of the masthead lights above and clear of all obstructions. The Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

**List of Subjects in 32 CFR Part 706**

Marine safety, Navigation (water), and Vessels.

Accordingly, 32 CFR part 706 is amended as follows:

**PART 706—[AMENDED]**

1. The authority citation for 32 CFR part 706 continues to read as follows:

**Authority:** 33 U.S.C. 1605.

2. Table 4, paragraph 6, of § 706.2 is amended by adding, in numerical order, the following entry for USS *Bonhomme Richard*:

**§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.**

* * * * *

| | |
|---|---|
| USS *Bonhomme Richard* (LHD 6) | 1°12′ |

* * * * *

Approved: November 9, 1999.

**G. A. Cervi,**

*Lieutenant Commander, JAGC, U.S. Navy, Deputy Assistant Judge Advocate, General (Admiralty and Maritime Law).*

**Editorial Note:** This document was received at the Office of the Federal Register October 6, 2000.

[FR Doc. 00–26267 Filed 10–13–00; 8:45 am]

BILLING CODE 3810–FF–P

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**DEPARTMENT OF DEFENSE**

**Department of the Navy**

**32 CFR Part 706**

**Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972**

**AGENCY:** Department of the Navy, DOD.

**ACTION:** Final rule.

**SUMMARY:** The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law) has determined that USS *Shamal* (PC 13) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

**EFFECTIVE DATE:** May 4, 2000.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Commander Gregg A. Cervi,

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JAGC, U.S. Navy Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), Office of the Judge Advocate General, Washington Navy Yard, DC 20374–5066, Telephone number: (202) 685–5040.

**SUPPLEMENTARY INFORMATION:** Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS *Shamal* (PC 13) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Rule 21(c) pertaining to the placement of the stern light as nearly as practicable at the stern. The Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law) has also certified that the light involved is located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

**List of Subjects in 32 CFR Part 706**

Marine safety, Navigation (water), and Vessels.

Accordingly, 32 CFR part 706 is amended as follows:

**PART 706—[AMENDED]**

1. The authority citation for 32 CFR part 706 continues to read as follows:

**Authority:** 33 U.S.C. 1605.

2. Table 3 of § 706.2 is amended by revising the entry for USS *Shamal* to read as follows:

**§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.**

* * * * *

TABLE 3

| Vessel | No. | Masthead lights arc of visibility; rule 21(a) | Side lights arc of visibility; rule 21(b) | Stern light arc of visibility; rule 21(c) | Side lights distance inboard of ship's sides in meters 3(b) annex 1 | Stern light, distance forward of stern in meters; rule 21(c) | Forward anchor light, height above hull in meters; 2(K) annex 1 | Anchor lights relationship of aft light to forward light in meters 2(K) annex 1 |
|---|---|---|---|---|---|---|---|---|
| USS *Shamal* | PC–13 | | | | | 28.26 [1] | 3.01 | 1.1 below |

[1] Only when towing.

Approved: May 4, 2000.

**G.A. Cervi,**

*Lieutenant Commander, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law).*

[FR Doc. 00–26266 Filed 10–13–00; 8:45 am]

**BILLING CODE 3810–FF–P**

**DEPARTMENT OF DEFENSE**

**Department of the Navy**

**32 CFR Part 706**

**Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972**

**AGENCY:** Department of the Navy, DOD.

**ACTION:** Final rule.

**SUMMARY:** The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law) has determined that USS *Stethem* (DDG 63) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I paragraph 3(a) pertaining to the horizontal distance between the forward and after masthead lights. The Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

**List of Subjects in 32 CFR Part 706**

Marine safety, Navigation (water), and Vessels.



Accordingly, 32 CFR part 706 is amended as follows:

**PART 706—[AMENDED]**

1. The authority citation for 32 CFR part 706 continues to read as follows:

**Authority:** 33 U.S.C. 1605.

2. Table 5 of § 706.2 is amended by revising the entry for USS *Stethem* to read as follows:

**§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.**

* * * * *

TABLE 5

| Vessel | No. | Masthead lights not over all other lights and obstructions. annex I, sec. 2(f) | Forward masthead light not in forward quarter of ship. annex I, sec. 3(a) | After masthead light less than ½ ship's length aft of forward masthead light. annex I, sec. 3(a) | Percentage horizontal separation attained |
|---|---|---|---|---|---|
| USS *Stethem* | DDG 63 | X | X | X | 20.8 |

Approved: May 4, 2000.

**G.A. Cervi,**

*Lieutenant Commander, JAGC, U.S. Navy, Deputy Assistant Judge Advocate, General (Admiralty and Maritime Law).*

[FR Doc. 00–26265 Filed 10–13–00; 8:45 am]

**BILLING CODE 3810–FF–P**

**DEPARTMENT OF DEFENSE**

**Department of the Navy**

**32 CFR Part 706**

**Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972**

**AGENCY:** Department of the Navy, DOD.

**ACTION:** Final rule.

**SUMMARY:** The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law) has determined that USS *Enterprise* (CVN 65) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

**EFFECTIVE DATE:** April 18, 2000.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Commander Gregg A. Cervi, JAGC, U.S. Navy Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), Office of the Judge Advocate General, Navy Department, Washington Navy Yard, DC 20374–5066, Telephone number: (202) 685–5040.

**SUPPLEMENTARY INFORMATION:** Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS *Enterprise* (CVN 65) is a vessel of the Navy which, due to its special construction and purpose, could not fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Rule 30(a)(i) and (ii), and Rule 21(e), concerning placement of the anchor lights. The particular deviations have been corrected and The Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law) has also certified that the specific lights mentioned are now located in compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on achieved compliance.

**List of Subjects in 32 CFR Part 706**

Marine safety, Navigation (water), and Vessels.

Accordingly, 32 CFR part 706 is amended as follows:

**PART 706—[AMENDED]**

1. The authority citation for 32 CFR part 706 continues to read as follows:

**Authority:** 33 U.S.C. 1605.

2. Table 2 of § 706.2 is amended by revising the entry for USS *Enterprise* to read as follows:

**§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.**

* * * * *

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TABLE 2

| Vessel | Number | Masthead lights, distance to stbd of keel in meters; Rule 21(a) | Forward anchor light, distance below flight dk in meters; §2(K), Annex I | Forward anchor light, number of; Rule 30(a)(i) | AFT anchor light, distance below flight dk in meters; Rule 21(e), Rule 30(a)(ii) | AFT anchor light, number of; Rule 30(a)(ii) | Side lights, distance below flight dk in meters; §2(g), Annex I | Side lights, distance forward of forward masthead light in meters; §3(b), Annex I | Side lights, distance inboard of ship's sides in meters; §3(b), Annex I |
|---|---|---|---|---|---|---|---|---|---|
| USS *Enterprise* ..... | CVN–65 | 28.0 | ..... | ..... | ..... | ..... | 0.4 | ..... | ..... |

* * * * *

Approved: April 8, 2000.

**G.A. Cervi,**

*Lieutenant Commander, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law).*

[FR Doc. 00–26264 Filed 10–13–00; 8:45 am]

BILLING CODE 3810–FF–P

## DEPARTMENT OF DEFENSE

### Department of the Navy

### 32 CFR Part 706

### Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

**AGENCY:** Department of the Navy, DOD.

**ACTION:** Final rule.

**SUMMARY:** The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law) has determined that USS *Roosevelt* (DDG 80) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

**EFFECTIVE DATE:** February 4, 2000.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Commander Gregg A. Cervi, JAGC, U.S. Navy Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), Office of the Judge Advocate General, Navy Department, Washington Navy Yard, Washington, DC 20374–5066, Telephone number: (202) 685–5040.

**SUPPLEMENTARY INFORMATION:** Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS *Roosevelt* (DDG 80) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 2(f)(i) pertaining to placement of the masthead light or lights above and clear of all other lights and obstructions, Annex I paragraph 2(f)(ii) pertaining to the vertical placement of the task lights, Annex I paragraph 3(a) pertaining to the location of the forward masthead light in the forward quarter of the vessel, and the horizontal distance between the forward and after masthead lights, and Annex I paragraph 3(c) pertaining to the horizontal placement of the task lights. The Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

**List of Subjects in 32 CFR Part 706**

Marine safety, Navigation (water), and Vessels.

Accordingly, 32 CFR part 706 is amended as follows:

**PART 706—[AMENDED]**

1. The authority citation for 32 CFR part 706 continues to read as follows:

**Authority:** 33 U.S.C. 1605.

2. Table 4, paragraph 15 of § 706.2 is amended by adding, in numerical order, the following entry for USS *Roosevelt:*

**§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.**

* * * * *

TABLE 4

| Vessel | Number | Horizontal distance from the fore and aft centerline of the vessel in the athwartship direction |
|---|---|---|
| USS *Roosevelt* ..... | DDG 80 | 1.90 meters |



* * * * *

3. Table 4, paragraph 16 of § 706.2 is amended by adding, in numerical order, the following entry for USS *Roosevelt:*

**§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.**

* * * * *

TABLE 4

| Vessel | Number | Obstruction angle relative ship's headings |
|---|---|---|
| USS *Roosevelt* ..... | DDG 80 | 101.70 thru 112.50° |

* * * * *

4. Table 5 of § 706.2 is amended by adding, in numerical order, the following entry for USS *Roosevelt:*

**§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.**

* * * * *

TABLE 5

| Vessel | No. | Masthead lights not over all other lights and obstructions. annex I, sec. 2(f) | Forward masthead light not in forward quarter of ship. annex I, sec. 3(a) | After masthead light less than ½ ship's length aft of forward masthead light. annex I, sec. 3(a) | Percentage horizontal separation attained. |
|---|---|---|---|---|---|
| USS *Roosevelt* ..... | DDG 80 | X | X | X | 13.7 |

Approved: February 4, 2000.

**G.A. Cervi,**

*Lieutenant Commander, JAGC, U.S. Navy,, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law).*

**Editorial Note:** This document was received at the Office of the Federal Register October 6, 2000.

[FR Doc. 00–26262 Filed 10–13–00; 8:45 am]

BILLING CODE 3810–FF–P

## DEPARTMENT OF DEFENSE

### Department of the Navy

### 32 CFR Part 706

### Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

**AGENCY:** Department of the Navy, DOD.

**ACTION:** Final rule.

**SUMMARY:** The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law) has determined that USS *Tornado* (PC 14) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

**EFFECTIVE DATE:** January 24, 2000.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Commander Gregg A. Cervi, JAGC, U.S. Navy Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), Office of the Judge Advocate General, Navy Department, Washington Navy Yard, Washington, DC 20374–5066, Telephone number: (202) 685–5040.

**SUPPLEMENTARY INFORMATION:** Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS *Tornado* (PC 14) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Rule 23(a)(ii) pertaining to vessels more than 50 meters in length exhibiting a second masthead light; Annex I paragraph 2(k) pertaining to placement of the forward anchor light not less than six meters above the hull and not less than 4.5 meters above the after anchor light; and, Rule 21(c) pertaining to the placement of the stern light as nearly as practicable at the stern. The Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is

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impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

**List of Subjects in 32 CFR Part 706**

Marine safety, Navigation (water), and Vessels.

Accordingly, 32 CFR part 706 is amended as follows:

**PART 706—[AMENDED]**

1. The authority citation for 32 CFR part 706 continues to read as follows:

**Authority:** 33 U.S.C. 1605.

2. Table 3 of § 706.2 is amended by adding, in numerical order, the following entry for USS *Tornado*:

**§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.**

* * * * *

TABLE 3

| Vessel | No. | Masthead lights arc of visibility; rule 21(a) | Side lights arc of visibility; rule 21(b) | Stern light arc of visibility; rule 21(c) | Side lights distance inboard of ship's sides in meters 3(b) annex 1 | Stern light, distance forward of stern in meters; rule 21(c) | Forward anchor light, height above hull in meters; 2(K) annex 1 | Anchor lights relationship of aft light to forward light in meters 2(K) annex 1 |
|---|---|---|---|---|---|---|---|---|
| USS *Tornado* | PC–14 | | | | | 27.8[1] | 3.01 | 1.1 below |

[1] Only when towing.

* * * * *

Approved: January 24, 2000.

**G.A. Cervi,**

*Lieutenant Commander, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law).*

**Editorial Note:** This document was received at the Office of the Federal Register October 6, 2000.

[FR Doc. 00–26261 Filed 10–13–00; 8:45 am]

BILLING CODE 3810–FF–P

## DEPARTMENT OF DEFENSE

### Department of the Navy

### 32 CFR Part 706

### Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

**AGENCY:** Department of the Navy, DOD.

**ACTION:** Final rule.

**SUMMARY:** The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy has determined that USS *Benfold* (DDG 65) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

**EFFECTIVE DATE:** June 5, 2000.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Commander G. A. Cervi, JAGC, U.S. Navy Deputy Assistant Judge Advocate (Admiralty and Maritime Law), Office of the Judge Advocate General, Navy, Department, Washington Navy Yard, DC 20374–5066, Telephone number: (202) 685–5040.

**SUPPLEMENTARY INFORMATION:** Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS *Benfold* (DDG 65) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 3(a) pertaining to the horizontal distance between the forward and after masthead lights. The Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest because it is based on technical findings that the placement of lights on this vessel in a manner different from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

**List of Subjects in 32 CFR part 706**

Marine safety, Navigation (water), and Vessels.

**PART 706—[AMENDED]**

Accordingly, 32 CFR part 706 is amended as follows:

1. The authority citation for 32 CFR part 706 continues to read as follows:

**Authority:** 33 U.S.C. 1605.

2. Table 5 of § 706.2 is amended by revising the entry for USS *Benfold* to read as follows:

**§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.**

* * * * *



TABLE 5

| Vessel | No. | Masthead lights not over all otehr lights and obstructions. annex I, sec. 2(f) | Forward masthead light not in forward quarter of ship. annex I, sec. 3(a) | After masthead light less than ½ ship's length aft of forward masthead light. annex I, sec. 3(a) | Percentage horizontal separation attained. |
|---|---|---|---|---|---|
| USS *Benfold* | DDG 65 | X | X | X | 20.0 |

Approved: June 5, 2000.

**G.A. Cervi,**

*Lieutenant Commander, JAGC, U.S. Navy,, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law).*

[FR Doc. 00–26260 Filed 10–13–00; 8:45 am]

BILLING CODE 3810–FF–P

## DEPARTMENT OF DEFENSE

### Department of the Navy

### 32 CFR Part 706

### Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

**AGENCY:** Department of the Navy, DOD.

**ACTION:** Final rule.

**SUMMARY:** The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law) has determined that USS *Winston S. Churchill* (DDG 81) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

**EFFECTIVE DATE:** March 7, 2000.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Commander Gregg A. Cervi, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), Office of the Judge Advocate General, Navy Department, Washington Navy Yard, Washington, DC 20374–5066; telephone number: (202) 685–5040.

**SUPPLEMENTARY INFORMATION:** Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS *Winston S. Churchill* (DDG 81) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 2(f)(i) pertaining to placement of the masthead light or lights above and clear of all other lights and obstructions, Annex I paragraph 2(f)(ii) pertaining to the vertical placement of the task lights, Annex I paragraph 3(a) pertaining to the location of the forward masthead light in the forward quarter of the vessel, and the horizontal distance between the forward and after masthead lights, and Annex I paragraph 3(c) pertaining to the horizontal placement of the task lights. The Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

**List of Subjects in 32 CFR Part 706**

Marine safety, Navigation (water), and Vessels.

Accordingly, 32 CFR part 706 is amended as follows:

**PART 706—[AMENDED]**

1. The authority citation for 32 CFR part 706 continues to read as follows:

**Authority:** 33 U.S.C. 1605.

2. Table 4, paragraph 15 of § 706.2 is amended by adding, in numerical order, the following entry for USS *Winston S. Churchill:*

**§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.**

* * * * *

TABLE 4

| Vessel | Number | [1] Horizontal distance from the fore and aft centerline of the vessel in the athwartship direction |
|---|---|---|
| USS *Winston S. Churchill* | DDG 81 | 1.87 meters. |

* * * * *

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3. Table 4, paragraph 16 of § 706.2 is amended by adding, in numerical order, the following entry for USS *Winston S. Churchill:*

**§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.**

* * * * *

TABLE 4

| Vessel | Number | Obstruction angle relative ship's headings |
|---|---|---|
| USS *Winston S. Churchill* | DDG 81 | 101.96 thru 112.50°. |
| . . . . . | . | . |

4. Table 5 of § 706.2 is amended by adding, in numerical order, the following entry for USS *Winston S. Churchill:*

**§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.**

* * * * *

TABLE 5

| Vessel | Number | Masthead lights not over all other lights and obstructions. annex I, sec. 2 (f) | Forward masthead light not in forward quarter of ship. annex I, sec. 3(a) | After masthead light less than ½ ship's length aft of forward masthead light. annex I, sec. 3(a) | Percentage horizontal separation attained |
|---|---|---|---|---|---|
| USS *Winston S. Churchill* | DDG 81 | X | X | X | 13.8 |
| . . . . . | . | . | . | . | . |

* * * * *

Approved: March 7, 2000.

**G.A. Cervi,**

*Lieutenant Commander, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law).*

[FR Doc. 00–26417 Filed 10–13–00; 8:45 am]

BILLING CODE 3810–FF–P

## DEPARTMENT OF DEFENSE

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 21

**RIN 2900–AI68**

## Reservists Education: Monthly Verification of Enrollment and Other Reports

**AGENCIES:** Department of Defense, Department of Transportation (Coast Guard), and Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** This document amends the educational assistance and educational benefit regulations of the Department of Veterans Affairs (VA). It expands the current requirement that some reservists receiving educational assistance under the Montgomery GI Bill—Selected Reserve (MGIB–SR) verify their pursuit of a program of education monthly to include those reservists who are pursuing a standard college degree. At the same time the document reduces the number of reports VA receives from educational institutions. We believe this is a cost-effective way to reduce overpayments.

**DATES:** *Effective Date:* June 1, 2001.

**FOR FURTHER INFORMATION CONTACT:** William G. Susling, Jr., Education Adviser, Education Service (225C), Veterans Benefits Administration, (202) 273–7187.

**SUPPLEMENTARY INFORMATION:** In a document published in the **Federal Register** on March 31, 1998 (63 FR 15341), VA, the Department of Defense (DOD), and the Department of Transportation (Coast Guard) proposed withholding monthly payments of educational assistance under the MGIB–SR until VA receives the reservist's monthly certification of enrollment in and satisfactory pursuit of a program of education. In addition, in keeping with statutory provisions, VA, DOD, and the Coast Guard proposed that when a reservist withdraws from one or more courses with mitigating circumstances, VA would reduce or discontinue his or her educational assistance on the effective date of the reduction in training. Furthermore, we proposed that an educational institution had to report changes and interruptions in a reservist's training to VA without delay. We sought comments under the Paperwork Reduction Act concerning the collections of information in proposed §§ 21.7654 and 21.7656.

We gave interested persons 60 days to submit comments. We received no comments.

As proposed, the rule would have authorized the Secretary to permit submission of the monthly certification in writing or by telephone. Although we received no formal comments, we have concluded that there is no reason that the rule should not also authorize VA to allow the reservist to submit the monthly verification electronically. Accordingly, the final rule makes a change to proposed § 21.7654 by adding the words "or electronically." Based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposed rule as a final rule, with this change; with nonsubstantive changes for the purpose of clarification; and with a change to display the currently valid Office of Management and Budget control numbers assigned to approved collections of information in §§ 21.7654 and 21.7656.

DOD, the Coast Guard, and VA are jointly issuing this final rule since it pertains to the MGIB–SR. DOD and the Coast Guard fund this program, and VA administers it.

### Paperwork Reduction Act of 1995

The Office of Management and Budget (OMB) has approved the information collection requirements in this final rule concerning §§ 21.7654 and 21.7654(a) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and has assigned OMB control number 2900–0597. The provisions of §§ 21.7654 and 21.7656(a) require a reservist to certify monthly his or her continued enrollment in and satisfactory pursuit of a program of education. This is permitted by 10 U.S.C. 16136(b) and 38 U.S.C. 3684.

OMB has also approved the information collection requirements in this final rule concerning § 21.7656(b) under the provisions of the Paperwork Reduction Act of 1995 and has assigned OMB control number 2900–0612. The provisions of § 21.7656(b) require an educational institution to report changes, including interruptions and terminations, in a reservist's training to VA without delay. This is required by 10 U.S.C. 16136(b) and 38 U.S.C. 3684.

OMB assigns a control number for each collection of information it approves. VA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The valid OMB control number assigned to each collection of information in this final rule is displayed at the end of each of the affected sections of the regulations.

### Regulatory Flexibility Act

The signers of this document hereby certify that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This final rule may affect some educational institutions that are small entities. However, educational institutions are paid a reporting fee for making required reports to VA. Furthermore, VA does not believe that a burden of less than two hours annually would result in a significant economic impact. Pursuant to 5 U.S.C. 605(b), this final rule, therefore, is exempt from both the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

There is no Catalog of Federal Domestic Assistance number for the program affected by this final rule.

### List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Defense Department, Education, Employment, Grant programs-education, Grant programs-veterans, Health programs, Loan programs-education, Loan programs-veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocation rehabilitation.

Approved: April 28, 2000.

**Togo D. West, Jr.,**

*Secretary of Veterans Affairs.*

Approved: August 3, 2000.

**Charles L. Cragin,**

*Principal Deputy Assistant Secretary of Defense for Reserve Affairs.*

Approved: September 26, 2000.

**F.L. Ames,**

*Rear Admiral, U.S. Coast Guard, Assistant Commandant for Human Resources.*

For the reasons set out above, 38 CFR part 21 (subpart L) is amended as follows:

## PART 21—VOCATIONAL REHABILITATION AND EDUCATION

### Subpart L—Educational Assistance for Members of the Selected Reserve

1. The authority citation for part 21, subpart L continues to read as follows:

**Authority:** 10 U.S.C. ch. 1606; 38 U.S.C. 501(a), 512, ch. 36, unless otherwise noted.

2. In § 21.7635, paragraph (c)(1) introductory text is revised to read as follows:

**§ 21.7635 Discontinuance dates.**

* * * * *

(c) * * *

(1) If the reduction in the rate of training occurs other than on the first date of the term, VA will reduce the reservist's educational assistance effective on the date the reduction occurred when:

* * * * *

3. Section 21.7654 is amended by:

A. Adding introductory text.

B. Revising paragraph (a).

C. Redesignating paragraph (b) as paragraph (c).

D. Adding a new paragraph (b).

E. Revising the parenthetical at the end of the section.

The additions and revisions read as follows:

**§ 21.7654 Pursuit and absences.**

Except as provided in this section, a reservist must submit a verification to VA each month of his or her enrollment during the period for which the reservist is to be paid. This verification shall be in a form prescribed by the Secretary.

(a) *Exceptions to the monthly verification requirement.* A reservist does not have to submit a monthly verification as described in the introductory text of this section when the reservist—

(1) Is enrolled in a correspondence course; or

(2) Has received an advance payment for the training completed during a month.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3680(a), (g))

(b) *Items to be reported on all monthly verifications.* (1) The monthly verification for all reservists will include a report on the following items when applicable:

(i) Continued enrollment in and actual pursuit of the course;

(ii) The date of interruption or termination of training;

(iii) Except as provided in § 21.7656(a), changes in the number of credit hours or in the number of clock hours of attendance;

(iv) Nonpunitive grades; and

(v) Any other changes or modifications in the course as certified at enrollment.

(2) The verification of enrollment must:

(i) Contain the information required for release of payment;

(ii) If required or permitted by the Secretary to be submitted on paper, be signed by the reservist on or after the final date of the reporting period, or if permitted by the Secretary to be submitted by telephone or electronically in a manner designated by the Secretary, be submitted in the form and manner prescribed by the Secretary on or after the final date of the reporting period; and

(iii) If submitted on paper, clearly show the date on which it was signed.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3680(g))

* * * * *

(The Office of Management and Budget has approved information collection requirements in this section under control number 2900–0597.)

4. Section 21.7656 is amended by:

A. Revising the section heading.

B. Removing the introductory text.

C. Redesignating paragraphs (a), (a)(1), (a)(2), (a)(3) and (b) as paragraphs (b), (b)(3), (b)(4), (b)(5), and (c), respectively.

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D. Revising the heading of newly designated paragraph (b).

E. Adding new paragraphs (a), (b)(1), and (b)(2).

F. Revising newly redesignated paragraph (b)(3).

G. Revising the authority citation for the newly redesignated paragraph (b).

H. Revising the parenthetical at the end of the section.

The additions and revisions read as follows:

**§ 21.7656 Other required reports.**

(a) *Reports from reservists.* (1) A reservist enrolled full time in a program of education for a standard term, quarter, or semester must report without delay to VA:

(i) A change in his or her credit hours or clock hours of attendance if that change would result in less than full-time enrollment;

(ii) Any change in his or her pursuit that would result in less than full-time enrollment; and

(iii) Any interruption or termination of his or her attendance.

(2) A reservist not described in paragraph (a)(1) of this section must report without delay to VA:

(i) Any change in his or her credit hours or clock hours of attendance;

(ii) Any change in his or her pursuit; and

(iii) Any interruption or termination of his or her attendance.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3684)

(b) *Interruptions, terminations or changes in hours of credit or attendance.* * * *

(1) Except as provided in paragraph (b)(2) of this section, an educational institution must report without delay to VA each time a reservist:

(i) Interrupts or terminates his or her training for any reason; or

(ii) Changes his or her credit hours or clock hours of attendance.

(2) An educational institution does not need to report a change in a reservist's hours of credit or attendance when:

(i) The reservist is enrolled full time in a program of education for a standard term, quarter, or semester before the change; and

(ii) The reservist continues to be enrolled full time after the change.

(3) If the change in status or change in number of credit hours or clock hours of attendance occurs on a day other than one indicated by paragraph (b)(4) or (b)(5) of this section, the educational institution will initiate a report of the change in time for VA to receive it within 30 days of the date on which the change occurs.

* * * * *

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3684)

* * * * *

(The Office of Management and Budget has approved information collection requirements in this section under control numbers 2900–0612 and 2900–0597.)

[FR Doc. 00–26437 Filed 10–13–00; 8:45 am]

BILLING CODE 8320–01–U

## POSTAL SERVICE

### 39 CFR Part 111

### New Pallet Height Limitation for Anchorage and Fairbanks, AK

**AGENCY:** Postal Service.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends section M041 of the Domestic Mail Manual (DMM). Due to the limitations of aircraft used to transport mail, the Postal Service is lowering the maximum pallet height from 77 inches to 72 inches for Periodicals, Standard Mail (A), and Standard Mail (B) entered at Anchorage and Fairbanks, Alaska.

**EFFECTIVE DATE:** November 2, 2000.

**FOR FURTHER INFORMATION CONTACT:** RoseMarie Gay (202) 268–7810.

**SUPPLEMENTARY INFORMATION:** Since most Periodicals, Standard Mail (A), and Standard Mail (B) mail for delivery in Alaska is transported by air due to prevailing operating conditions, mail must be prepared to facilitate air transportation. Pallets that are between 72 and 77 inches high do not satisfy this requirement, although heights within this range are currently permitted under Domestic Mail Manual (DMM) standards.

The problem is that pallets between 72 and 77 inches high do not fit through aircraft doors, forcing Alaskan air carriers to re-stack the pallets. To remedy this situation, the Postal Service is lowering the maximum height from 77 inches to 72 inches for mail on pallets (mail and pallet combined) that is entered at Anchorage and Fairbanks, Alaska. The change will allow mail on pallets to be shipped as originally prepared, which will eliminate the risk of mail damage or delay caused by additional handling to load and unload aircraft.

Because the operational circumstances dictating a lower pallet height are not within the control of the Postal Service, the Postal Service finds no need to solicit comments or to delay implementation of the new pallet height specification.

**List of Subjects in 39 CFR Part 111**

Administrative practice and procedure, Postal Service.

For the reasons discussed above, the Postal Service hereby adopts the following amendments to the Domestic Mail Manual (DMM), which is incorporated by reference in the Code of Federal Regulations (see 39 CFR part 111).

### PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

**Authority:** 5 U.S.C. 552 (a): 39 U.S.C 101, 401, 403, 404, 414, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Amend the Domestic Mail Manual (DMM) as follows:

**M Mail Preparation and Sortation**

**M000 General Preparation Standards**

* * * * *

*M040 Pallets*

* * * * *

*M041 General Standards*

* * * * *

3.0 STACKING PALLETS

[Amend 3.1f to read as follows:]

**3.1 Stacking Up to Four Tiers**

Pallets may be stacked two, three, or four tiers high if:

* * * * *

f. The combined height of the stacked pallets and their loads does not exceed 84 inches. Exception: Pallets prepared for entry at Anchorage and Fairbanks, Alaska, may not measure more than 72 inches in height, mail and pallet combined.

* * * * *

5.0 PREPARATION

* * * * *

**5.5 Maximum Load**

* * * * *

[Add new last sentence to 5.5 to read as follows:]

* * * Exception: A single pallet that is prepared for entry at Anchorage or Fairbanks, Alaska, has a maximum height of 72 inches, mail and pallet combined.

* * * * *

An appropriate amendment to 39 CFR 111 will be published in the **Federal Register** to reflect these changes.

**Stanley F. Mires,**

*Chief Counsel, Legislative.*

[FR Doc. 00–26407 Filed 10–13–00; 8:45 am]

BILLING CODE 7710–12–P



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

**[AR–8–1–7409; FRL–6885–1]**

### Approval and Promulgation of Implementation Plans; Arkansas; Regulation 19 and 26

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The EPA is approving the recodification of and revisions to the Arkansas State Implementation Plan (SIP or plan). The Arkansas Department of Environmental Quality (ADEQ) adopted revisions to Regulation 19 on January 22, 1999. The Governor of Arkansas submitted these revisions to EPA on March 5, 1999. The EPA also incorporates into the Arkansas SIP portions of Arkansas' regulation for its Operating Permits Program (Regulation 26) which relate to the construction and modification of major sources. This is necessary because the submitted SIP revision incorporates these provisions to ensure that major sources which must receive an operating permit meet the Federal requirements relating to the construction and modification of major sources as defined under title I of the Clean Air Act (Act).

Furthermore, EPA approves revisions to Arkansas' program for the prevention of significant deterioration (PSD) of air quality to replace the increments for total suspended particulates (TSP) with increments for particulate matter less than 10 micrometers (PM–10). In conjunction with this action, EPA also removes the TSP area designation tables in title 40 of the CFR part 81 for Arkansas. The EPA is taking no action on Chapter 8 of Regulation 19 which pertains to designated facilities. The EPA will act on Chapter 8 in a separate action.

This action also recodifies, with minor revisions, several provisions of its current SIP into Chapters 1, 2, 3, 5, 6, 7, and 10.

The EPA approves these revisions based upon a finding that the regulations meet the requirements of the Act pertaining to the approval of SIPs and the Federal regulations which describe the requirements that a SIP must meet.

**EFFECTIVE DATE:** This rule is effective on November 15, 2000.

**ADDRESSES:** Copies of documents relevant to this action, including the Technical Support Document (TSD), are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at lease two working days in advance.

EPA, Region 6, Air Permits Section (6PD–R), 1445 Ross Avenue, Dallas, Texas 75202–2733.

ADEQ, Division of Air Pollution Control, 8001 National Drive, P.O. Box 8913, Little Rock, Arkansas 72219–8913.

**FOR FURTHER INFORMATION CONTACT:** Stanley M. Spruiell of the EPA Region 6 Air Permits Section at (214) 665–7212 at the address above or at spruiell.stanley@epa.gov.

**SUPPLEMENTARY INFORMATION:** Throughout this document "we," "us," or "our" means EPA.

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I. What Action Are We Taking?
II. What Is the Background for This Action?
III. Are There Provisions of Regulation 19 That We Are Not Acting on in Today's Action?
IV. Prevention of Significant Determination (PSD) of Air Quality.
V. Major Source Permitting Procedures.
VI. Sources Subject to Provisions of Sections 111 and 112 of the Act.
VII. Final Action.
VIII. Administrative Requirements.

### I. What Action Are We Taking?

We are finalizing our approval of Regulation 19 of ADEQ, except for Chapter 8—Designated Facilities. Regulation 19 revises and recodifies the Arkansas SIP. The submitted regulation includes provisions which address the requirements of the Act and ensures the attainment and maintenance of the National Ambient Air Quality Standards (NAAQS) that we promulgated under section 109 of the Act. The ADEQ adopted and submitted Regulation 19 under section 110 of the Act. The regulation includes:

- Enforceable emission limitations and other control measures and techniques,
- A program for enforcement of such measures,
- Provisions for the regulation of the modification and construction of stationary sources, and;
- Other measures required under section 110 of the Act.

We are also finalizing the approval of the SIP portions of Arkansas Regulation 26—Regulation of the Arkansas Operating Permit Program, adopted July 23, 1993, and submitted to EPA on October 29, 1993. This action approves the provisions of Regulation 26 that are incorporated by reference by Regulation 19, Chapter 11. The provisions of Regulation 26 so incorporated are the provisions of Regulation 26 that meet the Federal requirements applicable to new and modified major sources that are permitted under Regulation 26.

We have reviewed the submittal and determined that Regulation 19 and the incorporated provisions of Regulation 26 meet the requirements of the Act.

Furthermore, we approve revisions to Arkansas' program for PSD to replace the increments for TSP with increments for PM–10. In conjunction with this action, we are removing the TSP area designation tables in 40 CFR part 81 for Arkansas.

We are taking no action on Chapter 8 of Regulation 19 which pertains to designated facilities. We will act on Chapter 8 in a separate action.

We have also prepared a TSD which contains a detailed analysis of our evaluation and proposed approval of Regulation 19. The TSD is included as part of the public docket and is available at the addresses listed above.

### II. What Is the Background for This Action?

On May 9, 2000, we published a notice of proposed rulemaking (NPR) proposing approval of Regulation 19 and the incorporated provisions of Regulation 26. In the NPR, we determined that Regulation 19 and the incorporated portions of Regulation 26 meet the requirements of the Act. The NPR provided opportunity for the public to comment on the proposed action. The public comment period for our proposed action ended June 8, 2000. We received no comments on the NPR. As a result, we are finalizing our proposed approval without changes. For more details on these submittals, please refer to the proposed rulemaking and the TSD.

### III. Are There Provisions of Regulation 19 That We Are Not Acting on in Today's Action?

We are taking no action on Chapter 8—Designated Facilities. Designated facilities are regulated under section 111(d) of the Act. Under section 111(d), emission standards are to be adopted by the States and submitted to EPA for approval. These standards limit the emissions of designated pollutants from existing facilities which, if new, would

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be subject to the New Source Performance Standards promulgated by EPA under section 111 of the Act and in 40 CFR part 60. The procedures under which States submit these plans to control existing sources are defined in 40 CFR part 60, subpart B. The submittal and review process of these State Plans is carried out separately from other SIP activities. We are thus taking no action on Chapter 8 in today's action.

**IV. Prevention of Significant Deterioration (PSD) of Air Quality**

Arkansas recodified its PSD program into Regulation 19, Chapter 9. Chapter 9 recodifies the PSD regulations without substantive change except as discussed below. Arkansas revised Chapter 9 to incorporate the PSD increments for PM–10 promulgated by EPA on July 3, 1993. Arkansas changed the date of which the Federal regulations are incorporated by reference from June 28, 1989, to June 3, 1994 (the effective date of the PM–10 increments).

We have reviewed this revision and found that it addresses all of the required regulatory revisions for PM–10 increments. In today's action, we approve the recodification of Arkansas' PSD program and the revisions to incorporate the PM–10 increments into the SIP. Consistent with Arkansas' revisions, we are also removing the TSP area designation tables in 40 CFR part 81 for Arkansas. The NPR and the TSD contain a more detailed analysis of the changes that Arkansas made to its PSD regulations.

**V. Major Source Permitting Procedures**

Chapter 11 of Regulation 19 addresses the permitting procedures for major sources which are also subject to Regulation 26—Regulations of the Arkansas Operating Permit Program. Regulation 26 is Arkansas' regulation for its Operating Permit Program under title V of the Act.[1] Chapter 9 of Regulation 19 contains the process, already approved by EPA [2] for issuance of a new major source or a major modification of an existing source which is major for purposes of PSD by virtue of incorporation by reference of the provisions of 40 CFR 52.21(b)–(r).[3] Chapter 11 requires major sources which are subject to Regulation 26 to also have their permit applications processed in accordance with the procedures contained in Regulation 26, which are incorporated by reference. Thus, Chapter 11 creates the connection between the PSD and title V programs to allow Arkansas to issue one permit to its sources which are defined as major under both programs.

For minor sources, the permitting process is contained in Chapter 4 of Regulation 19 which complies with 40 CFR 51.160–51.164. Chapters 4 and 9 of Regulation 19 do not, however, fully cover all sources defined as major sources under section 302(j) of the Act. Chapter 11 is necessary to provide a process for permitting the following:

- Sources which are major for purposes of PSD but undergo a physical change or change in the method of operation which does not result in a significant net emission increase, *i.e.*, minor modifications. Such change therefore is not subject to PSD review.[4] Subpart I, however, applies to the construction and modification of all sources, including major and minor sources. Such change, therefore, must meet the applicable requirements of subpart I, sections 51.160–51.164. Regulation 26 contains the provisions which satisfy these provisions of subpart I.[5] These provisions are incorporated into Regulation 19 by Chapter 11.
- A source which is major for title V but not major for PSD. This would include a source whose potential to emit is 100 tons per year (TPY) or more but less than 250 TPY and is not one of the source types listed in 40 CFR 52.21(b)(1).[6] Although a new or modified source which is not a PSD major source is not subject to PSD, the applicable requirements of subpart I, sections 51.160–51.164 nonetheless continue to apply as explained above. Regulation 26 contains the provisions which satisfy these provisions of subpart I.[7] These provisions are incorporated into Regulation 19 by Chapter 11.

Chapter 11 incorporates the applicable requirements of 40 CFR part 51, subpart I [8] (subpart I) that are in Regulation 26 into Regulation 19, which we are approving into the SIP. By approving Chapter 11, we are approving the subpart I provisions of Regulation 26 which are incorporated by reference.

Through Chapter 11, Arkansas will ensure that the construction and modification of sources subject to the preconstruction review requirements of the Act will meet the applicable requirements of subpart I. The NPR and TSD include our analysis of the provisions of Regulation 26 which ADEQ incorporates by reference into Regulation 19. The TSD describes how Regulation 26 meets the requirements of subpart I. It further demonstrates that the procedures in Regulation 26 will ensure that modifications which occur at title V sources will satisfy the requirements of the Act and subpart I.

Our analysis of these provisions of Regulation 26 are from the version of Regulation 26 which Arkansas adopted July 23, 1993, and submitted to us on October 29, 1993. We approved this version of Regulation 26 at 60 FR 46171 (September 8, 1995) as satisfying the requirements for interim approval under 40 CFR part 70. We will need to reexamine our analysis if Arkansas adopts Regulation 26 with significant changes, and Arkansas may need to make further revisions to its SIP.

[1] This refers to the provisions of title V (Permits) of the Act (42 U.S.C. 7661, 7661a–7661f) and the implementing regulations under 40 CFR part 70 (State Operating Permit Programs). These provisions establish the elements that an Operating Permits Program must meet under part 70. Arkansas' Regulation 26 contains the requirements of its Operating Permits Program. Arkansas currently operates its title V program under an interim approval. *See* 60 **Federal Register** 46171 (September 8, 1995). On August 4, 2000, Arkansas submitted revisions to Regulation 26 in response to the interim approval deficiencies identified by EPA. The EPA is currently reviewing this submittal.

[2] *See* section IV in this preamble for a description of our approval of Arkansas' PSD program and of our evaluation of Chapter 9.

[3] Chapter 9, section 19.904(A) incorporates the provisions of 40 CFR 52.21(b) through (r).

[4] For purposes of PSD, 40 CFR 52.21(i)(1) provides that no stationary source or modification to which the paragraphs (j)–(r) apply shall begin actual construction without a permit which states that the source or modification meets such requirements. The provisions of § 52.21(j)–(r) apply to the construction of major sources and major modifications. "Major stationary source" is defined in § 52.21(b)(1) and "major modification" is defined in § 52.21(b)(2). A major modification is a physical change or change in the method of operation at a major stationary source which results in a significant net emissions increase. "Net emissions increase" is defined in § 52.21(b)(3) which describes how the net emissions increase is determined. Such increase is significant if it equals or exceeds the significance thresholds in § 52.21(b)(23). Thus, minor modifications at major stationary sources do not fall within the purview of the PSD requirements.

[5] According to Regulation 26, section 26.2(e), "applicable requirement" is defined as "Any standard or other requirements provided for in the applicable implementation plan approved or promulgated by the EPA through rulemaking under title I of the Act * * *" (PSD *inter alia*) (this includes Regulation 19, Chapter 3 which requires protection of the NAAQS).

[6] Section 52.21(b)(1) is the definition of "major stationary source." Under this definition, a source is major for PSD if its potential to emit (PTE) is 100 TPY or more *and* the source belongs to one of the source categories listed in § 52.21(b)(1)(i)(a). Otherwise, a source is a PSD major only if its PTE is 250 TPY or more, pursuant to § 52.21(b)(1)(i)(*b*). Under section 302(j) of the Act and 40 CFR part 70, a "major source" includes any stationary source with a PTE of 100 TPY or more.

[7] See footnote 5.

[8] 40 CFR part 51, subpart I contains the requirements that a SIP-approved program for review of new and modified sources must meet. The subpart consists of sections 51.160–51–166. The TSD and NPR contain a detailed analysis which demonstrates how Arkansas submitted SIP revisions meet the requirements of subpart I.



**VI. Sources Subject to Provisions of Sections 111 and 112 of the Act**

The NPR included references to provisions of Regulation 19 which require a source to meet the applicable requirements of section 111 of the Act (Standards of Performance for New Stationary Sources) and section 112 of the Act (National Emission Standards for Hazardous Air Pollutants). We regulate the requirements of section 111 of the Act under 40 CFR part 60 and the provisions of section 112 of the Act under 40 CFR parts 61 and 63. As worded in the NPR, a reader may mistakenly conclude that we were approving the requirements of 40 CFR parts 60, 61, and 63 into the SIP. This is not the case. We were stating that Regulation 19 identifies these requirements as the Federal programs that ADEQ implements and that sources subject to the requirements of sections 111 and 112 of the Act must continue to meet these requirements in the context of permitting under Regulation 19.

**VII. Final Action**

In today's action, we are promulgating final approval of Regulations 19 and 26 as described in Table 1 below.

TABLE 1.—CHAPTERS AND APPENDICES IN REGULATIONS 19 AND 26 APPROVED IN TODAY'S ACTION

| Chapter | Title |
|---|---|
| Regulation 19—Regulations of the Arkansas Plan of Implementation for Air Pollution Control (Submitted January 22, 1999) | |
| Chapter 1 | Title, Intent, and Purpose. |
| Chapter 2 | Definitions. |
| Chapter 3 | Protection of the NAAQS. |
| Chapter 4 | Minor Source Review. |
| Chapter 5 | General Emission Limitations Applicable to Equipment. |
| Chapter 6 | Upset and Emergency Conditions. |
| Chapter 7 | Sampling, Monitoring, and Reporting Requirements. |
| Chapter 9 | Prevention of Significant Deterioration. |
| Chapter 10 | Regulations for the Control of Volatile Organic Compounds. |
| Chapter 11 | Major Source Permitting Procedures. |
| Appendix A | Insignificant Activities List. |
| Regulation 26—Regulations of the Arkansas Operating Air Permit Program (Adopted July 23, 1993) | |
| Section 26.3 | Requirement for a Permit, Applicability. |
| Subsection 26.3(a) | Requirement for a permit. |
| Subsection 26.3(b) | Sources subject to permitting. |
| Section 26.4 | Applications for Permits. |
| Subsection 26.4(a) | Duty to apply. |
| Subsection 26.4(b) | Standard application form and required information. |
| Subsection 26.4(h) | Complete application. |
| Subsection 26.4(j) | Applicant's duty to supplement application. |
| Subsection 26.4(k) | Certification by responsible official. |
| Section 26.5 | Action on Application. |
| Subsection 26.5(a)(1), (3)–(4). | Action on part 70 applications. |
| Subsection 26.5(b) | Final action on permit application. |
| Section 26.6 | Permit Review by the Public, Affected States, and EPA. |
| Subsection 26.6(a) | Untitled. |
| Subsection 26.6(b)(1)(i)–(ii), (v), (b)(4). | Public participation. |
| Subsection 26.6(c)(1)–(2) | Transmission of permit information to the Administrator. |
| Subsection 26.6(d)(1)–(2) | Review of draft permit by affected States. |

We are taking no action on Chapter 8—Designated Facilities—in today's proposal. As discussed in section III, we review and approve the State plans for designated facilities under subpart B of 40 CFR part 60. We will review and process Chapter 8 of Regulation 19 in a separate action.

**VIII. Administrative Requirements**

*A. Executive Order 12866*

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

*B. Executive Order 13132*

Executive 13132, entitled "Federalism" (64 FR 43255, August 10, 1999) revokes and replaces Executive Order 12612, "Federalism," and Executive Order 12875, "Enhancing the Intergovernmental Partnership." Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal

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government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

*C. Executive Order 13045*

Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885,April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This final rule is not subject to Executive Order 13045 because it approves a State program.

*D. Executive Order 13084*

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

*E. Regulatory Flexibility Act*

The Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *See Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

*F. Unfunded Mandates*

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

*G. Submission to Congress and the Comptroller General*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule can not take effect until 60 days after it is published in the **Federal Register**. This action is not a "major" rule as defined by 5 U.S.C. 804(2). This rule will be effective November 15, 2000.

*H. Petitions for Judicial Review*

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 15, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).



**List of Subjects**

*40 CFR Part 52*

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Lead, Nitrogen oxides, Ozone, Particulate matter, Sulfur oxides, Volatile organic compounds.

*40 CFR Part 81*

Environmental protection, Air pollution control, National parks, Wilderness areas.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: October 3, 1999,

**Myron O. Knudson,**

*Acting Regional Administrator, Region 6.*

Parts 52 and 81, chapter I, title 40 of the CFR is amended as follows:

**PART 52—[AMENDED]**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

**Subpart E—Arkansas**

2. In § 52.170(c), the first table is deleted and replaced with a new table to read as follows:

**§ 52.170 Identification of plan.**

* * * * *

(c) EPA approved regulations

EPA APPROVED REGULATIONS IN THE ARKANSAS SIP

| State citation | Title/subject | State submittal/effective date | EPA approval date | Comments |
|---|---|---|---|---|
| **Regulation 19: Regulations of the Arkansas Plan of Implementation for Air Pollution Control** | | | | |
| **Chapter 1: Title, Intent and Purpose** | | | | |
| Section 19.101 | Title | 01/22/99 | 10/16/00 (65 FR 61108) | |
| Section 19.102 | Applicability | 01/22/99 | 10/16/00 (65 FR 61108) | |
| Section 19.103 | Intent and Construction | 01/22/99 | 10/16/00 (65 FR 61108) | |
| Section 19.104 | Severability | 01/22/99 | 10/16/00 (65 FR 61108) | |
| **Chapter 2: Definitions** | | | | |
| Chapter 2 | Definitions | 01/22/99 | 10/16/00 (65 FR 61108) | |
| **Chapter 3: Protection of the NAAQS** | | | | |
| Section 19.301 | Purpose | 01/22/99 | 10/16/00 (65 FR 61108) | |
| Section 19.302 | Department Responsibilities | 01/22/99 | 10/16/00 (65 FR 61108) | |
| Section 19.303 | Regulated Sources Responsibilities. | 01/22/99 | 10/16/00 (65 FR 61108) | |
| Section 19.304 | Delegated Federal Programs | 01/22/99 | 10/16/00 (65 FR 61108) | |
| **Chapter 4: Minor Source Review** | | | | |
| Section 19.401 | General Applicability | 01/22/99 | 10/16/00 (65 FR 61108) | |
| Section 19.402 | Approval Criteria | 01/22/99 | 10/16/00 (65 FR 61108) | |
| Section 19.403 | Owner/Operator's Responsibilities. | 01/22/99 | 10/16/00 (65 FR 61108) | |
| Section 19.404 | Required Information | 01/22/99 | 10/16/00 (65 FR 61108) | |
| Section 19.405 | Action on Application | 01/22/99 | 10/16/00 (65 FR 61108) | |
| Section 19.406 | Public Participation | 01/22/99 | 10/16/00 (65 FR 61108) | |
| Section 19.407 | Permit Amendments | 01/22/99 | 10/16/00 (65 FR 61108) | |
| Section 19.408 | Exemption from Permitting | 01/22/99 | 10/16/00 (65 FR 61108) | |
| Section 19.409 | Transition | 01/22/99 | 10/16/00 (65 FR 61108) | |
| Section 19.410 | Permit Revocation and Cancellation. | 01/22/99 | 10/16/00 (65 FR 61108) | |
| Section 19.411 | General Permits | 01/22/99 | 10/16/00 (65 FR 61108) | |
| Section 19.412 | Dispersion Modeling | 01/22/99 | 10/16/00 (65 FR 61108) | |
| Section 19.413 | Confidentiality | 01/22/99 | 10/16/00 (65 FR 61108) | |
| **Chapter 5: General Emission Limitations Applicable to Equipment** | | | | |
| Section 19.501 | Purpose | 01/22/99 | 10/16/00 (65 FR 61108) | |
| Section 19.502 | General Regulations | 01/22/99 | 10/16/00 (65 FR 61108) | |
| Section 19.503 | Visible Emission Regulations | 01/22/99 | 10/16/00 (65 FR 61108) | |
| Section 19.504 | Stack Height/Dispersion Regulations. | 01/22/99 | 10/16/00 (65 FR 61108) | |
| Section 19.505 | Revised Emission Limitation | 01/22/99 | 10/16/00 (65 FR 61108) | |
| **Chapter 6: Upset and Emergency Conditions** | | | | |
| Section 19.601 | Upset Conditions | 01/22/99 | 10/16/00 (65 FR 61108) | |
| Section 19.602 | Emergency Conditions | 01/22/99 | 10/16/00 (65 FR 61108) | |

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EPA APPROVED REGULATIONS IN THE ARKANSAS SIP—Continued

| State citation | Title/subject | State submittal/effective date | EPA approval date | Comments |
|---|---|---|---|---|
| **Chapter 7: Sampling, Monitoring, and Reporting Requirements** | | | | |
| Section 19.701 | Purpose | 01/22/99 | 10/16/00 (65 FR 61108) | |
| Section 19.702 | Air Emission Sampling | 01/22/99 | 10/16/00 (65 FR 61108) | |
| Section 19.703 | Continuous Emission Monitoring | 01/22/99 | 10/16/00 (65 FR 61108) | |
| Section 19.704 | Notice of Completion | 01/22/99 | 10/16/00 (65 FR 61108) | |
| Section 19.705 | Recordkeeping and Reporting Requirements. | 01/22/99 | 10/16/00 (65 FR 61108) | |
| Section 19.706 | Public Availability of Emissions Data. | 01/22/99 | 10/16/00 (65 FR 61108) | |
| **Chapter 9: PSD** | | | | |
| Section 19.901 | Title | 01/22/99 | 10/16/00 (65 FR 61108) | |
| Section 19.902 | Purposes | 01/22/99 | 10/16/00 (65 FR 61108) | |
| Section 19.903 | Definitions | 01/22/99 | 10/16/00 (65 FR 61108) | |
| Section 19.904 | Adoption of Regulations | 01/22/99 | 10/16/00 (65 FR 61108) | |
| **Chapter 10: Regulations for the Control of Volatile Organic Compounds** | | | | |
| Section 19.1001 | Title | 01/22/99 | 10/16/00 (65 FR 61108) | |
| Section 19.1002 | Purpose | 01/22/99 | 10/16/00 (65 FR 61108) | |
| Section 19.1003 | Definitions | 01/22/99 | 10/16/00 (65 FR 61108) | |
| Section 19.1004 | General Provisions | 01/22/99 | 10/16/00 (65 FR 61108) | |
| Section 19.1005 | Provisions for Specific Processes. | 01/22/99 | 10/16/00 (65 FR 61108) | |
| Section 19.1006 | Severability | 01/22/99 | 10/16/00 (65 FR 61108) | |
| **Chapter 11: Major Source Permitting Procedures** | | | | |
| Chapter 11 | Major Source Permitting Procedures. | 01/22/99 | 10/16/00 (65 FR 61108) | |
| **Appendix A: Insignificant Activities List** | | | | |
| Appendix A: | Insignificant Activities List | 01/22/99 | 10/16/00 (65 FR 61108) | |
| **Regulation 26: Regulations of the Arkansas Operating Permit Program** | | | | |
| Section 3 | Requirements for Permit Applicability. | 07/23/93 | 10/16/00 (65 FR 61108) | Subsections (a) and (b) only. |
| Section 4 | Applications for Permits | 07/23/93 | 10/16/00 (65 FR 61108) | Subsections (a)–(b), (h), and (j)–(k) only. |
| Section 5 | Action on Application | 07/23/93 | 10/16/00 (65 FR 61108) | Subsections (a)(1), (a)(3)–(4), and (b) only. |
| Section 6 | Permit Review by the Public, Affected States, and EPA. | 07/23/93 | 10/16/00 (65 FR 61108) | Subsections (a), (b)(1)(i)–(ii), (b)(1)(v), (b)(4), (c)(1)–(2), and (d)(1)–(2) only. |

3. Section 52.181 is amended by revising paragraph (a) to read as follows:

**§ 52.181 Significant deterioration of air quality.**

(a) The plan submitted by the Governor of Arkansas as follows:

(1) April 23, 1981—submittal of the PSD Supplement Arkansas Plan of Implementation for Pollution Control (the "PSD Supplement") submitted April 23, 1981 (as adopted by the Arkansas Commission on Pollution Control and Ecology (ACPCE) on April 10, 1981);

(2) June 3, 1988—submittal of revisions to the PSD Supplement (revised and adopted by the ACPCE on March 25, 1988);

(3) June 19, 1990—submittal of revisions to the PSD Supplement (revised and adopted by the ACPCE on May 25, 1990), and;

(4) March 5, 1999—submittal of Regulation 19, Chapter 9, Prevention of Significant Deterioration which recodified Arkansas' PSD regulations (as adopted by the Arkansas Pollution Control and Ecology Commission on January 22, 1999)

* * * * *

**PART 81—[AMENDED]**

1. The authority citation for part 81 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*



**Subpart C—Section 107 Attainment Status Designations**

**§ 81.304 Arkansas.**

* * * * *

2. Section 81.304 is amended by removing the table for TSP and adding a table for PM–10 to read as follows:

ARKANSAS—PM–10

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date | Type | Date | Type |
| AQCR 016 Central Arkansas Intrastate | | Unclassifiable | | Unclassifiable. |
| AQCR 017 Metropolitan Fort Smith Interstate | | Unclassifiable | | Unclassifiable. |
| AQCR 018 Metropolitan Memphis Intrastate | | Unclassifiable | | Unclassifiable. |
| AQCR 019 Monroe (Louisiana)-El Dorado Interstate | | Unclassifiable | | Unclassifiable. |
| AQCR 020 Northeast Arkansas Intrastate | | Unclassifiable | | Unclassifiable. |
| AQCR 021 Northwest Arkansas Intrastate | | Unclassifiable | | Unclassifiable. |
| AQCR 022 Shreveport-Texarkana-Tyler Interstate | | Unclassifiable | | Unclassifiable. |

[FR Doc. 00–26509 Filed 10–13–00; 8:45 am]
BILLING CODE 6560–50–P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 271**

**[FRL–6885–5]**

## Utah: Final Authorization of State Hazardous Waste Management Program Revision

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Immediate final rule.

**SUMMARY:** Utah has applied to EPA for Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these changes satisfy all requirements needed to qualify for Final authorization, and is authorizing the State's changes through this immediate final action. EPA is publishing this rule to authorize the changes without a prior proposal because we believe this action is not controversial. Unless we get written comments which oppose this authorization during the comment period, the decision to authorize Utah's changes to their hazardous waste program will take effect. If we get comments that oppose this action, we will publish a document in the **Federal Register** withdrawing this rule before it takes effect and a separate document in the proposed rules section of this **Federal Register** will serve as a proposal to authorize the changes.

**DATES:** This Final authorization will become effective on January 16, 2001 unless EPA receives adverse written comment by November 30, 2000. If EPA receives such comment, it will publish a timely withdrawal of this immediate final rule in the **Federal Register** and inform the public that this authorization will not take effect.

**ADDRESSES:** Copies of the Utah program revision applications and the materials which EPA used in evaluating the revisions are available for inspection and copying at the following locations: EPA Region VIII Library, from Noon to 4 p.m., 999 18th Street, Suite 500, Denver, Colorado 80202–2466, contact: Environmental Information Service Center (EISC), phone number: (303) 312–6312; or Utah Department of Environmental Quality (UDEQ), from 8 a.m. to 5 p.m., 288 North 1460 West, Salt Lake City, Utah 84114–4880, contact: Susan Toronto, phone number: (801) 538–6776. Send written comments to Kris Shurr, 8P–HW, U.S. EPA, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466, phone number: (303) 312–6139.

**FOR FURTHER INFORMATION CONTACT:** Kris Shurr, 8P–HW, U.S. EPA, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466, phone number: (303) 312–6139.

**SUPPLEMENTARY INFORMATION:**

### A. Why Are Revisions to State Programs Necessary?

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

### B. What Decisions Have We Made in This Rule?

We conclude that Utah's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant Utah Final authorization to operate its hazardous waste program with the changes described in the authorization application. Utah has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders, except in Indian Country, and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in Utah, including issuing permits, until the State is granted authorization to do so.

### C. What Is the Effect of Today's Authorization Decision?

This decision means that a facility in Utah subject to RCRA will now have to comply with the authorized State requirements instead of the equivalent Federal requirements in order to comply with RCRA. Utah has enforcement responsibilities under its State hazardous waste program for violations of such program, but EPA retains its authority under RCRA sections 3007,

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3008, 3013, and 7003, which include, among others, authority to:

do inspections, and require monitoring, tests, analyses or reports;
enforce RCRA requirements and suspend or revoke permits;
and take enforcement actions regardless of whether the State has taken its own actions.

This action does not impose additional requirements on the regulated community because the regulations for which Utah is being authorized by today's action are already effective and are not changed by today's action.

**D. Why Wasn't There a Proposed Rule Before Today's Rule?**

EPA did not publish a proposal before today's rule because we view this as a routine program change. We are providing an opportunity for the public to comment now. In addition to this rule, in the proposed rules section of today's **Federal Register** we are publishing a separate document that proposes to authorize the State program changes.

**E. What Happens if EPA Receives Comments That Oppose This Action?**

If EPA receives comments that oppose this authorization, we will withdraw this rule by publishing a document in the **Federal Register** before the rule becomes effective. EPA will base any further decision on the authorization of the State program changes on the proposal mentioned in the previous paragraph. We will then address all public comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

If we receive comments that oppose only the authorization of a particular change to the State hazardous waste program, we will withdraw that part of this rule but the authorization of the program changes that the comments do not oppose will become effective on the date specified above. The **Federal Register** withdrawal document will specify which part of the authorization will become effective, and which part is being withdrawn.

**F. What Has Utah Previously Been Authorized for?**

Utah initially received Final Authorization on October 10, 1984, effective October 24, 1984 (49 FR 39683) to implement its base hazardous waste management program. Utah received authorization for revisions to its program on February 21, 1989, effective March 7, 1989 ( 54 FR 7417); May 23, 1991 (56 FR 23648) and August 6, 1991 (56 FR 37291, both effective July 22, 1991; May 15, 1992, effective July 14, 1992 (57 FR 20770); February 12, 1993 (58 FR 8232) and May 5, 1993 (58 FR 26689), both effective April 13, 1993; October 14, 1994, effective December 13, 1994 (59 FR 52084); May 20, 1997 (62 FR 27501), effective July 21, 1997; and January 13, 1999, effective March 15, 1999 (64 FR 02144).

**G. What Changes Are We Authorizing With Today's Action?**

On April 4, 2000, Utah submitted a final complete program revision application, seeking authorization of their changes in accordance with 40 CFR 271.21. We now make an immediate final decision, subject to receipt of written comments that oppose this action, that Utah's hazardous waste program revision satisfies all of the requirements necessary to qualify for Final authorization. Therefore, we grant Utah Final authorization for the following program changes:

| Federal citation | State analog [1] |
|---|---|
| Removal of Legally Obsolete Rules [60 FR 33912, 06/29/95) (Checklist 144). | R315–1–1; R315–2–10; R315–3–3; R315–14–7. |
| Liquids in Landfills III [60 FR 35703, 07/11/95] (Checklist 145) | R315–7–21; R315–8–14. |
| RCRA Expanded Public Participation [60 FR 63417, 12/11/95] (Checklist 148). | R315–1–1; R315–3–5; R315–3–10; R315–3–19; R315–3–20; R315–3–37; R315–3–38. |
| Amendments to the Definition of Solid Waste; Amendment II [61 FR 13103, 03/26/96] (Checklist 150). | R315–2–4. |
| Land Disposal Restrictions Phase III-Decharacterized Wastewaters, Carbamate Wastes, & Spent Potliners [61 FR 15566, 08/08/96, as amended thru 62 FR 07502, 02/09/97] (Checklists 151 thru 151.6). | R315–13–1. |
| Imports & Exports of Hazardous Waste: Implementation of OECD Council Decision [61 FR 16290, 04/12/96] (Checklist 152). | R315–2–6; R315–4–3; R315–4–4; R315–5–1; R315–5–13; R315–5–15; R315–6–1; R315–7–9.3; R315–7–12.2; R315–8–2.3; R315–14–5; R315–16–2.11; R315–16–3.11; R315–16–4.7; R315–16–6. |
| Conditionally Exempt Small Quantity Generator Disposal Options Under Subtitle D [61 FR 34252, 07/01/96] (Checklist 153). | R315–2–5. |
| Consolidated Organic Air Emission Standards for Tanks, Surface Impoundments, & Containers [59 FR 62896, 12/06/94, as amended thru 61 FR 59997, 11/25/96] (Checklists 154 thru 154.6). | R307–210–1; R315–1–2; R315–2–6; R315–3–5; R315–3–6; R315–3–13; R315–5–10; R315–7–8; R315–7–9; R315–7–12; R315–7–16; R315–7–17; R315–7–18; R315–7–26; R315–7–27; R315–7–30; R315–8–2; R315–8–5; R315–8–9; R315–8–10; R315–8–11; R315–8–16; R315–8–17; R315–8–18; R315–8–22; R315–50–17. |
| Land Disposal Restrictions Phase III—Emergency Extension of the K088 Capacity Variance [62 FR 01992, 01/14/97] (Checklist 155). | R315–13–1. |
| Land Disposal Restrictions Phase IV—Treatment Standards for Wood Preserving Wastes, Paperwork Reduction & Streamlining, Exemptions from RCRA for Certain Processed Materials; & Miscellaneous Hazardous Waste Provisions [62 FR 25998, 05/12/97] (Checklist 157). | R315–1–1; R315–2–2; R315–2–4; R315–2–6; R315–13–1. |
| Testing & Monitoring Activities Amendment III [62 FR 32452, 06/13/97] (Checklist 158). | R315–1–2; R315–7–26; R315–7–27; R315–8–17; R315–8–18; R315–14–7; R315–50–14. |
| Conformance with the Carbamate Vacature [62 FR 01992, 05/29/97] (Checklist 159). | R315–2–10; R315–2–11; R315–13–1; R315–50–9; R315–50–10. |
| Land Disposal Restrictions Phase III—Emergency Extension of the K088 National Capacity Variance, Amendment [60 FR 37694, 07/14/97] (Checklist 160). | R315–13–1. |



| Federal citation | State analog [1] |
|---|---|
| Emergency Revision of the Carbamate Land Disposal Restrictions [62 FR 45568, 08/28/97] (Checklist 161). | R315–13–1. |

[1] Utah Administrative Code, revised December 15, 1999.

**H. Where Are the Revised State Rules Different From the Federal Rules?**

We consider the following State requirements to be more stringent than the Federal requirements: R315–8–2.3(a)(2), R315–4–4(e), R315–7–9.3(a)(2), and R315–7–12.2(d) because the State requires that notification also be given to the Utah Division of Solid and Hazardous Waste, as well as, the Federal entities.

These requirements are part of Utah's authorized program and are Federally enforceable.

Utah's rules, promulgated pursuant to this application, contain several errors which may create confusion within the regulated community. EPA has determined that the errors associated with the issues do not pose implementation or enforcement problems. Therefore, EPA will proceed to approve this application with the understanding that the State will correct these items during its next rulemaking. These errors are at the following citation within the Utah Administrative Code, revised December 15, 1999: R315–3–20(d).

**I. Who Handles Permits After the Authorization Takes Effect?**

Utah will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits which we issued prior to the effective date of this authorization until Utah has equivalent instruments in place. We will not issue any new permits or new portions of permits for the provisions listed in the Table above after the effective date of this authorization. EPA has previously suspended issuance of permits for other provisions on October 24, 1984, the effective date of Utah's Final Authorization for the RCRA base program. EPA will continue to implement and issue permits for HSWA requirements for which Utah is not yet authorized.

**J. How Does Today's Action Affect Indian Country (18 U.S.C. 1151) in Utah?**

This program revision does not extend to "Indian Country" as defined in 18 U.S.C. 1151. Indian Country includes lands within the exterior boundaries of the following Indian reservations located within or abutting the State of Utah:

1. Goshute Indian Reservation
2. Navajo Indian Reservation
3. Northwestern Band of Shoshoni Nation of Utah (Washakie) Indian Reservation
4. Paiute Indian Tribe of Utah Indian Reservation
5. Skull Valley Band of Goshute Indians of Utah Indian Reservation
6. Uintah and Ouray Indian Reservation (see below)
7. Ute Mountain Indian Reservation

With respect to the Uintah & Ouray Indian Reservation, Federal courts have determined that certain lands within the exterior boundaries of the Reservation do not constitute Indian Country. This State program revision approval will extend to those lands which the courts have determined are not Indian Country.

In excluding Indian Country from the scope of this program revision, EPA is not making a determination that the State either has adequate jurisdiction or lacks jurisdiction over sources in Indian Country. Should the State of Utah choose to seek program authorization within Indian Country, it may do so without prejudice. Before EPA would approve the State's program for any portion of Indian Country, EPA would have to be satisfied that the State has authority, either pursuant to explicit Congressional authorization or applicable principles of Federal Indian law, to enforce its laws against existing and potential pollution sources within any geographical area for which it seeks program approval and that such approval would constitute sound administrative practice.

**K. What Is Codification and Is EPA Codifying Utah's Hazardous Waste Program as Authorized in This Rule?**

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. We do this by referencing the authorized State rules in 40 CFR part 272. We reserve the amendment of 40 CFR part 272, subpart TT for the codification of Utah's program until a later date.

**L. Administrative Requirements**

The Office of Management and Budget has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. This action authorizes State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this action also does not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government; as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks.

Under RCRA 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and

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Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This action will be effective January 16, 2001.

**List of Subjects in 40 CFR Part 271**

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

**Authority:** This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: October 5, 2000.

**William P. Yellowtail,**

*Regional Administrator, Region VIII.*

[FR Doc. 00–26503 Filed 10–13–00; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Part 300**

**[FRL–6886–4]**

### National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Withdrawal of direct final deletion of the Warwick Landfill Site from the National Priorities List.

**SUMMARY:** On August 15, 2000, EPA published a direct final deletion (65 FR 49739) to delete the Warwick Landfill Superfund Site (Site) from the National Priorities List. The EPA is withdrawing this final action due to adverse comments that were received during the public comment period. After consideration of the comments received, if appropriate, EPA will publish a notice of deletion in the **Federal Register** based on the parallel notice of proposed deletion (65 FR 49776 dated August 15, 2000) and place a copy of the final deletion package, including a Responsiveness Summary in the Site repositories.

**DATES:** The direct final action amending 40 CFR part 300, published on August 15, 2000 (65 FR 49739), is withdrawn as of October 16, 2000.

**ADDRESSES:** Comprehensive information on the Site, as well as the comments that were received during the comment period, are available through the public docket contained at: U.S. Environmental Protection Agency, Superfund Records Center, Region II, Superfund Records Center, 290 Broadway, Room 1828, New York, New York 10007–1866, (212) 637–4308, Hours: 9:00 a.m. to 5:00 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Damian J. Duda, Remedial Project Manager, Emergency and Remedial Response Division, U.S. Environmental Protection Agency, Region II, 290 Broadway, 20th Floor, New York, New York 10007–1866, (212) 637–4269 and Fax: (212) 637–3966.

**SUPPLEMENTARY INFORMATION:**

**Information Repositories**

Repositories have been established to provide detailed information concerning this decision at the following addresses: Warwick Town Hall, 132 Kings Highway, Warwick, New York 10990, (914) 986–1120 and the Greenwood Lake Village Hall, Church Street, Greenwood Lake, New York 10925, (914) 477–9215.

**Authority:** 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Dated: October 5, 2000.

**William J. Muszynski,**

*Acting Regional Administrator, Region II.*

[FR Doc. 00–26530 Filed 10–13–00; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

**Health Care Financing Administration**

**42 CFR Parts 413, 489, and 498**

**[HCFA–1155–N]**

### Medicare Program; Open Town Hall Meeting to Discuss Implementation of Provider-Based Regulations; October 31, 2000

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice announces a town hall meeting for all interested parties to discuss specific issues related to implementation of the provider-based status regulations published in a final rule on April 7, 2000 (65 FR 18434). Those regulations established requirements for facilities or organizations seeking provider-based status under Medicare.

**DATES:** This meeting is scheduled for October 31, 2000, from 9 a.m. until 4:30 P.M., E.S.T.

**ADDRESSES:** The meeting will be held in the HCFA Central Office Main Auditorium, 7500 Security Boulevard, Baltimore, Maryland 21244.

**FOR FURTHER INFORMATION CONTACT:** Beverly Parker at 410–786–5320.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On April 7, 2000, we published in the **Federal Register** (65 FR 18434), a final rule with comment period entitled "Prospective Payment System for Hospital Outpatient Services". Among the regulatory provisions included were new §§ 413.24(d)(6) and 413.65 and revisions to §§ 489.24, 498.2, and 498.3. These regulations established requirements for facilities or organizations that seek provider-based status. The effective date of the provider-based regulations, as stated in the April 2000 rule, was October 10, 2000. On October 3, 2000, we published a notice in the **Federal Register** (65 FR 58919) that delayed the effective date of these provider-based regulations from



October 10, 2000 to the first day of each provider's first cost reporting period beginning on or after January 10, 2001. In addition, we made a conforming change in new § 413.65(i)(2). In the October 3, 2000 notice, we explained that a major purpose of the delay was to allow time for clarification of administrative, procedural, and technical issues relating to implementation of the regulations.

We also stated our intent to host a town hall meeting to discuss specific aspects of the provider-based regulations. The subjects to be discussed will be the ways that a facility or organization can demonstrate that it serves the same patient population as the main provider (§ 413.65(d)(7)(i)), and the applicability of provisions on management contracts to certain on-campus hospital departments (§ 413.65(f)). We will also provide clarification of the administrative procedures that we will follow in making provider-based determinations. The purpose of the meeting is to solicit suggestions that will lead to more effective implementation of these regulations in their current form.

**II. Format of Meeting**

Following introductory remarks, we will begin the meeting with a brief overview of the application process that we are developing and plan to have in place before January 10, 2001. This overview will describe the procedures we will follow in making provider-based determinations, and identify those types of facilities or organizations for which no determinations are needed, as described on page 18506 of the April 7, 2000 regulations. We will then hold two separate, consecutive sessions. The first session will concern the ways that a facility or organization can demonstrate that it serves the same patient population as the main provider (§ 413.65(d)(7)(i)). The second session will focus on the applicability of provisions on management contracts to certain on-campus hospital departments (§ 413.65(f)). Each session will include a specified amount of time for a limited number of public presentations by participants.

**III. Registration**

Individuals may register to attend the meeting by contacting Ms. Sue Panchit, JW Associates, LLC, either by telephone at 301–495–9471, by mail, at 850 Sligo Avenue, Silver Spring, Maryland 20910, by fax, at 301–495–5989, or electronically at www.hcfa.gov, which includes a link to www.hcfa.gov/medlearn/event.htm. Please provide, as applicable, your name, title, firm name, address, telephone number, fax number, and electronic mailing address.

Requests to attend the meeting should be submitted as soon as possible, but must be received by Ms. Sue Panchit no later than October 24, 2000. We will notify persons who have been selected to attend. Participants who wish to make a presentation at the meeting are asked to contact Ms. Beverly Parker at 410–786–5320 or via E-mail at BParker@hcfa.gov as soon as possible. Requests to make a presentation must be received by Ms. Parker no later than October 17, 2000. Please identify the topic(s) for your presentation.

Due to time constraints, we may need to limit the number of individuals who make presentations and the time allowed for each presentation. We will notify participants who have been selected to make a presentation. We will assign presentation times before the meeting. While the meeting is open to the public, attendance is limited to the space available. On a general note, JW Associates, LLC, will confirm receipt of registrations and notify individuals as to whether their registration has been accepted.

We will accept written questions, comments, or other materials, before and during the meeting, or up to 3 days after the meeting. Address comments to: DHHS, HCFA, ATTN: Beverly Parker, Room C4–07–07, 7500 Security Boulevard, Baltimore, Maryland 21244–1850, Telephone Number: (410) 786–5320, Fax Number: (410) 786–0169, E-mail: BParker@hcfa.gov. Although there is no special format for the materials, we request that commenters be clear about the issue or aspect of the proposed process on which they have a question, comment, or suggestion.

**Authority:** Sections 1102 and 1871 of the Act (42 U.S.C. 1302 and 1395hh).

(Catalog of Federal Domestic Assistance Program No. 98.773, Medicare-Hospital Insurance; and Program No. 93.774, Medicare-Supplementary Medicare insurance Program)

Dated: October 10, 2000.

**Michael M. Hash,**

*Acting Administrator, Health Care Financing Administration.*

[FR Doc. 00–26489 Filed 10–13–00; 8:45 am]

BILLING CODE 4120–01–P

## FEDERAL COMMUNICATIONS COMMISSION

**47 CFR Part 73**

**[DA No. 00–2227, MM Docket No. 00–37; RM–9749]**

### Radio Broadcasting Services; New Richmond, WI, Coon Rapids and Moose Lake, MN

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document substitutes Channel 296C2 for Channel 296C3 at New Richmond, Wisconsin, reallots Channel 296C2 to Coon Rapids, Minnesota, and modifies the license for Station WIXK–FM to specify operation on Channel 296C2 at Coon Rapids in response to a petition filed by Smith Broadcasting Company, Inc. *See* 65 FR 13261, March 13, 2000. The coordinates for Channel 296C2 at Coon Rapids are 45–11–42 and 93–05–14. To accommodate the allotment for Coon Rapids, we shall also substitute Channel 295A for Channel 296A at Moose Lake, Minnesota, and modify the authorization for Station KBFH to specify operation on Channel 295A at coordinates 46–27–30 and 92–39–10. Canadian concurrence has been received for the allotment of Channel 295A at Moose Lake.

**DATES:** Effective November 13, 2000.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 00–37, adopted September 20, 2000, and released September 29, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

**PART 73—[AMENDED]**

1. The authority citation for part 73 continues to read as follows:

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**Authority:** 47 U.S.C. 154, 303, 334 and 336.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Wisconsin, is amended by removing New Richmond, Channel 296C3.

3. Section 73.202(b), the Table of FM Allotments under Minnesota, is amended by adding Coon Rapids, Channel 296C2, and by removing Channel 296A and adding Channel 295A at Moose Lake.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 00–26453 Filed 10–13–00; 8:45 am]

**BILLING CODE 6712–01–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 622

**[Docket No. 000616183-0278-02; I.D. 053000E]**

**RIN 0648-AN35**

## Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery of the South Atlantic; Special Management Zones

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** In accordance with the framework procedure of the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP), NMFS issues this final rule to establish 12 new special management zones (SMZs) at the sites of artificial reefs (ARs) in the exclusive economic zone (EEZ) off Georgia; to revise the boundaries of the 7 existing SMZs that are in the EEZ off Georgia; to restrict fishing gear in the new and revised SMZs to handline, rod and reel, and spearfishing gear, including powerheads; and within these SMZs, to limit the harvest and possession of South Atlantic snapper-grouper taken by powerheads to the applicable bag limits. This rule also establishes a 30-day deadline for resolving deficiencies related to a permit application and a 60-day deadline for correcting deficiencies regarding automatic renewals of permits. The intended effects of this rule are to promote orderly use of the fishery resources on and around the ARs and SMZs, to maintain the socioeconomic benefits of the ARs and SMZs to the maximum extent practicable, and to improve the procedure for issuance of permits.

**DATES:** This final rule is effective November 15, 2000.

**ADDRESSES:** Comments regarding the collection-of-information requirements contained in this rule should be sent to Roy Crabtree, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

Comments on any ambiguity or unnecessary complexity arising from the language used in this rule should be directed to Rod Dalton, Southeast Regional Office, NMFS, at the above address.

**FOR FURTHER INFORMATION CONTACT:** Dr. Peter J. Eldridge, telephone: 727-570-5305, fax: 727-570-5583, e-mail Peter.Eldridge@noaa.gov.

**SUPPLEMENTARY INFORMATION:** The fisheries for snapper-grouper species in the EEZ off the southern Atlantic states are regulated pursuant to the FMP. The South Atlantic Fishery Management Council (Council) prepared, and NMFS approved, the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations implementing the FMP appear at 50 CFR part 622.

In accordance with the framework procedure of the FMP, the Council recommended, and NMFS published, a proposed rule (65 FR 41041, July 3, 2000) to establish 12 new SMZs at the sites of ARs in the EEZ off Georgia; to revise the boundaries of the 7 existing SMZs that are in the EEZ off Georgia; to restrict fishing gear in the new and revised SMZs to handline, rod-and-reel, and spearfishing gear, including powerheads; and within these SMZs, to limit the harvest and possession of South Atlantic snapper-grouper taken by powerheads to the applicable bag limits. The proposed rule described the need and rationale for these measures.

### Comments and Responses

NMFS received two public comments on the proposed rule.

*Comment 1*: One commenter supported all of the proposed measures.

*Response*: NMFS agrees.

*Comment 2*: One commenter supported the proposed measures but wanted to exclude the use of powerheads on SMZs. He wanted divers to have powerheads for protection while on SMZs, but he did not want them to be able to fish with powerheads because he believed that they would take too many fish.

*Response*: Pursuant to the Magnuson-Stevens Act, NMFS can only approve, partially approve, or disapprove a management measure proposed by a Fishery Management Council; NMFS cannot substitute different management measures. In this case, the Council recommended, and NMFS approved, imposing the bag limit on the use of powerhead gear in the SMZs to ensure that divers with powerhead gear would not obtain a disproportionate share of the catch.

### Changes From the Proposed Rule

In § 622.35(e)(1)(xiv), the northern boundary coordinate for Artificial Reef—G has been corrected to read 31°00.0' N. lat..

In the proposed rule (65 FR 41041, July 3, 2000), the preamble stated that fishing in the 12 new SMZs and the 7 revised SMZs off Georgia would be restricted to rod and reel and spearfishing gear, including powerheads. The codified text of the proposed rule did not establish this gear restriction for the 12 new SMZs. Further, the Council did not intend to exclude the use of handline gear in the 12 new SMZs or in the 7 revised SMZs. Therefore, this final rule revises § 622.35(e)(2) to restrict allowable fishing gear in the 12 new SMZs and in the 7 revised SMZs to handline, rod and reel, and spearfishing gear, including powerheads. In addition, to make the varying fishing restrictions within different SMZs more understandable to the reader, § 622.35(e)(2) has been revised to present the applicable information in a table.

### Classification

This final rule has been determined to be not significant for purposes of Executive Order 12866.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection-of-information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid OMB control number.

This final rule makes minor revisions to an existing collection-of-information requirement subject to review and approval by OMB under Control Number 0648-0205. This requirement has been approved by OMB under Control Number 0648-0205. Public reporting burden for submitting permit applications is estimated to average 20 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS and OMB (see **ADDRESSES**).

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration when this rule was proposed that it would not have a significant economic impact on a substantial number of small entities. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not prepared.

The President has directed Federal agencies to use plain language in their communications with the public, including regulations. To comply with this directive, we seek public comment on any ambiguity or unnecessary complexity arising from the language used in this rule. Such comments should be sent to the Southeast Regional Office (see **ADDRESSES**).

### List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: October 5, 2000.

**William T. Hogarth,**

*Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

## PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

2. In § 622.4, paragraph (h) is revised to read as follows:

**§ 622.4 Permits and fees.**

* * * * *

(h) *Renewal.* Although a permit, license, or endorsement required by this section is issued on an annual basis, an application for its renewal is required only every 2 years. In the interim years, renewal is automatic (without application) for a vessel owner or dealer who has met the specific requirements for the requested permit, license, or endorsement; who has submitted all reports required under the Magnuson-Stevens Act; and who is not subject to a sanction or denial under paragraph (j) of this section. An owner or dealer whose permit, license, or endorsement is expiring will be mailed a notification by the RA approximately 2 months prior to its expiration. That notification will advise the status of the renewal. That is, the notification will advise that the renewal will be issued without further action by the owner or dealer (automatic renewal); that the permit, license, or endorsement is ineligible for automatic renewal; or that a new application is required.

(1) *If eligible for automatic renewal.* If the RA's notification indicates that the owner's or dealer's permit, license, or endorsement is eligible for automatic renewal, the RA will mail the automatically renewed permit, license, or endorsement approximately 1 month prior to expiration of the old permit, license, or endorsement.

(2) *If ineligible for automatic renewal.* If the RA's notification indicates that the owner's or dealer's permit, license, or endorsement is ineligible for automatic renewal, the notification will specify the reasons and will provide an opportunity for correction of any deficiencies. If the owner or dealer does not correct such deficiencies within 60 days after the date of the RA's notification, the renewal will be considered abandoned. A permit, license, or endorsement that is not renewed within the applicable deadline will not be reissued.

(3) *If new application is required.* If the RA's notification indicates that a new application is required, the notification will include a preprinted renewal application. If the RA receives an incomplete application, the RA will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 30 days of the date of the RA's letter of notification, the application will be considered abandoned. A permit, license, or endorsement that is not renewed within the applicable deadline will not be reissued.

(4) *If notification is not received.* A vessel owner or dealer who does not receive a notification from the RA regarding status of renewal of a permit, license, or endorsement by 45 days prior to expiration of the current permit must contact the RA.

* * * * *

3. In § 622.35, paragraphs (e)(1)(xii) through (e)(1)(xviii) are revised, paragraphs (e)(1)(xl) through (e)(1)(li) are added, and paragraph(e)(2) is revised to read as follows:



**§ 622.35 South Atlantic EEZ seasonal and/or area closures.**

* * * * *

(e) * * *

(1) * * *

(xii) Artificial Reef—A is bounded on the north by 30°57.4' N. lat.; on the south by 30°55.4' N. lat.; on the east by 81°13.9' W. long.; and on the west by 81°16.3' W. long.

(xiii) *Artificial Reef—C* is bounded on the north by 30°52.0' N. lat.; on the south by 30°50.0' N. lat.; on the east by 81°08.5' W. long.; and on the west by 81°10.9' W. long.

(xiv) *Artificial Reef— G* is bounded on the north by 31°00.0' N. lat.; on the south by 30°58.0' N. lat.; on the east by 80°56.8' W. long.; and on the west by 80°59.2' W. long.

(xv) *Artificial Reef—F* is bounded on the north by 31°06.8' N. lat.; on the south by 31°04.8' N. lat.; on the east by 81°10.5' W. long.; and on the west by 81°13.4' W. long.

(xvi) *Artificial Reef—J* is bounded on the north by 31°36.7' N. lat.; on the south by 31°34.7' N. lat.; on the east by 80°47.3' W. long.; and on the west by 80°50.1' W. long.

(xvii) *Artificial Reef— L* is bounded on the north by 31°46.0' N. lat.; on the south by 31°44.0' N. lat.; on the east by 80°34.7' W. long.; and on the west by 80°37.1' W. long.

(xviii) *Artificial Reef— KC* is bounded on the north by 31°51.2' N. lat.; on the south by 31°49.2' N. lat.; on the east by 80°45.3' W. long.; and on the west by 80°47.7' W. long.

* * * * *

(xl) *Artificial Reef— ALT* is bounded on the north by 31°18.6' N. lat.; on the south by 31°16.6' N. lat.; on the east by 81°07.0' W. long.; and on the west by 81°09.4' W. long.

(xli) *Artificial Reef— CAT* is bounded on the north by 31°40.2' N. lat.; on the south by 31°38.2' N. lat.; on the east by 80°56.2' W. long.; and on the west by 80°58.6' W. long.

(xlii) *Artificial Reef— CCA* is bounded on the north by 31°43.7' N. lat.; on the south by 31°41.7' N. lat.; on the east by 80°40.0' W. long.; and on the west by 80°42.3' W. long.

(xliii) *Artificial Reef— DRH* is bounded on the north by 31°18.0' N. lat.; on the south by 31°16.0' N. lat.; on the east by 80°56.6' W. long.; and on the west by 80°59.0' W. long.

(xliv) *Artificial Reef— DUA* is bounded on the north by 31°47.8' N. lat.; on the south by 31°45.8' N. lat.; on the east by 80°52.1' W. long.; and on the west by 80°54.5' W. long.

(xlv) *Artificial Reef— DW* is bounded on the north by 31°22.8' N. lat.; on the

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south by 31°20.3' N. lat.; on the east by 79°49.8' W. long.; and on the west by 79°51.1' W. long.

(xlvi) *Artificial Reef— KBY* is bounded on the north by 30°48.6' N. lat.; on the south by 30°46.6' N. lat.; on the east by 81°15.0' W. long.; and on the west by 81°17.4' W. long.

(xlvii) *Artificial Reef— KTK* is bounded on the north by 31°31.3' N. lat.; on the south by 31°29.3' N. lat.; on the east by 80°59.1' W. long.; and on the west by 81°01.5' W. long.

(xlviii) *Artificial Reef— MRY* is bounded on the north by 30°47.5' N. lat.; on the south by 30°45.5' N. lat.; on the east by 81°05.5' W. long.; and on the west by 81°07.8' W. long.

(xlix) *Artificial Reef— SAV* is bounded on the north by 31°55.4' N. lat.; on the south by 31°53.4' N. lat.; on the east by 80°45.2' W. long.; and on the west by 80°47.6' W. long.

(l) *Artificial Reef— SFC* is bounded on the north by 31°00.8' N. lat.; on the south by 30°59.8' N. lat.; on the east by 81°02.2' W. long.; and on the west by 81°03.4' W. long.

(li) *Artificial Reef— WW* is bounded on the north by 31°43.5' N. lat.; on the south by 31°42.2' N. lat.; on the east by 79°57.7' W. long.; and on the west by 79°59.3' W. long.

(2) To determine what restrictions apply in the SMZs listed in § 622.35(e)(1), follow this table:

| IN SMZs SPECIFIED IN THE FOLLOWING PARAGRAPHS OF § 622.35 | THESE RESTRICTIONS APPLY |
|---|---|
| (e)(1)(i) through (x), (e)(1)(xx), and (e)(1)(xxii) through (xxxix) | Use of a powerhead to take South Atlantic snapper-grouper is prohibited. Possession of a powerhead and a mutilated South Atlantic snapper-grouper in, or after having fished in, one of these SMZs constitutes *prima facie* evidence that such fish was taken with a powerhead in the SMZ. |
| (e)(1)(i) through (xviii) and (e)(1)(xxii) through (li) | Fishing may only be conducted with handline, rod and reel, and spearfishing gear. |
| (e)(1)(i) through (li) | Use of a sea bass pot or bottom longline is prohibited. |
| (e)(1)(xii) through (xviii) and (e)(1)(xl) through (li) | Possession of South Atlantic snapper-grouper taken with a powerhead is limited to the bag limits specified in § 622.39(d)(1). |
| (e)(1)(xix) and (e)(1)(xx) | A hydraulic or electric reel that is permanently affixed to the vessel is prohibited when fishing for South Atlantic snapper-grouper. |
| (e)(1)(xix) and (e)(1)(xxi) | Use of spearfishing gear is prohibited. |

* * * * *

4. In § 622.39, paragraph (a)(4) is added to read as follows:

**§ 622.39 Bag and possession limits.**

(a) * * *

(4) Paragraph (a)(1) of this section notwithstanding, a person aboard a vessel for which a commercial permit for South Atlantic snapper-grouper has been issued must comply with the bag limits specified in paragraph (d)(1) of this section for South Atlantic snapper-grouper taken with a powerhead, regardless of where taken, when such snapper-grouper are possessed in an SMZ specified in § 622.35(e)(1)(xii) through (e)(1)(xviii) or (e)(1)(xl) through (e)(1)(li).

* * * * *

**§§ 622.17 and 622.41 [Amended]**

5. In addition to the amendments set forth above, in 50 CFR part 622, remove the telephone number, "813-570-5344", and add in its place "727-570-5344" in the following places:

(a) Section 622.17(b)(1) introductory text; and

(b) Section 622.41(a)(4) introductory text.

[FR Doc. 00–26359 Filed 10–13–00; 8:45 am]
BILLING CODE: 3510–22–S

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 697**

**[Docket No. 000824246-0246-01; I.D. - 062700F]**

**RIN 0648-AO33**

## Horseshoe Crab; Interstate Fishery Management Plans

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Declaration of a moratorium; interim final rule.

**SUMMARY:** In accordance with the Atlantic Coastal Fisheries Cooperative Management Act (Act), as amended, NMFS, determined, on July 7, 2000, that the Commonwealth of Virginia is not in compliance with Addendum 1 to the Atlantic States Marine Fisheries Commission's (Commission) Interstate Fishery Management Plan (ISFMP) for horseshoe crab and has failed to implement measures necessary for the conservation of the fishery in question. Pursuant to the Act, NMFS hereby declares a Federal moratorium on fishing for horseshoe crabs in Virginia waters and issues regulations prohibiting the possession of horseshoe crabs in Virginia waters and the landing of horseshoe crabs in Virginia, regardless of where they were caught. The purpose of this action is to support the interstate fishery management system and to encourage the implementation and enforcement of the Commission's ISFMP on horseshoe crabs.

**DATES:** Effective October 23, 2000.

**ADDRESSES:** Copies of an Environmental Assessment and Regulatory Impact Review (EA/RIR) are available from Richard H. Schaefer, Chief, Staff Office for Intergovernmental and Recreational Fisheries, NMFS, 8484 Georgia Avenue, Silver Spring, Maryland 20910.

**FOR FURTHER INFORMATION CONTACT:** Paul Perra, Staff Office for Intergovernmental and Recreational Fisheries, NMFS, Headquarters 301-427-2014.

**SUPPLEMENTARY INFORMATION:**

### Background

The Atlantic Coastal Fisheries Cooperative Management Act, as amended in 1996 (Act), 16 U.S.C. 5101 *et seq.*, was enacted to support and encourage the development, implementation, and enforcement of the Commission's ISFMPs to conserve and manage Atlantic coastal fishery resources. Section 806 of the Act specifies that, after notification by the Commission that an Atlantic coastal state is not in compliance with an ISFMP of the Commission, the Secretary of Commerce (Secretary) shall make a



finding, no later than 30 days after receipt of the Commission's notification, on: (1) Whether the state has failed to carry out its responsibilities to implement and enforce the Commission's ISFMP; and (2) whether the measures that the state has failed to implement and enforce are necessary for the conservation of the fishery in question. In making such a finding, the Act requires the Secretary to give careful consideration to the comments of the Commission, the Atlantic coastal state found out of compliance by the Commission, and the appropriate Regional Fishery Management Councils. If the Secretary finds that the state is not in compliance with the Commission's ISFMP, and that the measures the state has failed to implement are necessary for the conservation of the fishery, the Secretary must declare a moratorium on fishing in that fishery within the waters of the noncomplying state. The Secretary must specify the moratorium's effective date, which may be any date within 6 months after the declaration of the moratorium, and may issue regulations necessary to implement the moratorium. The Secretary has delegated this decision-making authority to NMFS.

### Commission Finding of Noncompliance

Because of concern that the horseshoe crab population may be in the process of being depleted and the need to collect comprehensive information on the horseshoe crab fishery, the Commission adopted an ISFMP to improve data collection programs for horseshoe crabs in 1999. In February 2000, after extensive review of historical information on the fishery, the Commission adopted Addendum 1 to the ISFMP. Addendum 1 to the ISFMP for horseshoe crab is viewed by the Commission as a risk-averse, cooperative State/Federal means of controlling fishing effort on horseshoe crabs. The Commission used average landings over a base period of years to reduce each state's landings for horseshoe crab commercial bait fisheries by 25 percent for the 2000 fishing year. Addendum 1 caps the Atlantic coast state landings in the year 2000 at 2,275,296 horseshoe crabs; the Commonwealth of Virginia is allowed a landings quota of 152,495 horseshoe crabs – a 25-percent reduction from the average calculated using 1995-1997 as the base period.

Rather than implementing the 152,495 horseshoe crab quota by May 1, 2000, Virginia maintained an annual quota of 710,000 horseshoe crabs until July 28, 2000. The Commission found that the Commonwealth of Virginia has not implemented and is not enforcing the Commission's ISFMP for horseshoe crab because it has failed to establish a quota on commercial horseshoe crab landings of 152,495 horseshoe crabs as specified in Addendum 1. The Commission notified the Secretary of its finding in a letter on June 9, 2000. Since that time, Virginia implemented through emergency regulations on July 28, 2000, an annual quota of 355,000 horseshoe crabs and a requirement for fishermen to use only one-half of a female horseshoe crab or two-halves of a male horseshoe crab in a bait bag if they use horseshoe crabs as bait.

### NMFS Determination Regarding Compliance by the Commonwealth of Virginia

On July 7, 2000, based on a careful analysis of all relevant information, and taking into account comments presented by the Commission and the Commonwealth of Virginia, NMFS found that the Commonwealth of Virginia is not in compliance with the Commission's ISFMP for horseshoe crab based on Virginia's failure to implement and enforce the commercial quota specified in Addendum 1, and that the measure Virginia failed to implement and enforce is necessary for the conservation of the horseshoe crab fishery.

### Whether Virginia Implemented and is Enforcing Addendum 1

Addendum 1 requires Virginia to implement a quota of 152,495 horseshoe crab by May 1, 2000. Instead, Virginia maintained its 710,000 horseshoe crab annual quota until July 28, 2000, when it reduced its quota to 355,000 horseshoe crabs by emergency regulations. Therefore, Virginia has failed to carry out its responsibility under 16 U.S.C. 5104 to implement and enforce Addendum 1 of the ISFMP for horseshoe crabs.

### Whether the Measure is Necessary for Conservation

"Conservation" is defined in the Act as "the restoring, rebuilding, and maintaining of any coastal fishery resource and the marine environment, in order to assure the availability of coastal fishery resources on a long-term basis." The best available scientific information suggests that the horseshoe crab population is at risk of decline. If the population is in decline, the ability to restore, rebuild, and maintain the population to assure the availability of horseshoe crabs on a long-term basis is compromised, especially in light of the fact that horseshoe crabs are extremely vulnerable to overexploitation. They are easily harvested and breed only once a year after reaching maturity at 10 years of age. Furthermore, all states in the Delaware Bay area – New Jersey, Maryland, Pennsylvania, and Delaware – have reduced horseshoe crab landings in line with Addendum 1, yet Virginia has not. As a result, the fishery has merely shifted landings to Virginia, thereby negating any conservation benefits of the other states' reductions in allowable landings. For these reasons, Virginia's implementation of the quota specified in Addendum 1 is necessary to support the interstate fishery management system designed to promote conservation of coastal fishery resources in a cooperative manner and to allow the Commission to assure the availability of horseshoe crabs on a long-term basis through further study and management measures, rather than risk depletion.

### Declaration of a Moratorium and Issuance of Regulations

An Environmental Assessment and Regulatory Impact Review (EA/RIR) were completed to analyze the impacts caused by various alternatives for the implementation of a moratorium and necessary regulations. After a thorough review of the EA/RIR, NMFS is hereby declaring, pursuant to subsection 806(c) of the Act, a Federal moratorium on fishing for horseshoe crabs in Virginia waters and issuing, pursuant to subsection 806(d) of the Act, regulations that contain measures necessary to implement section 806, both to be effective October 23, 2000, unless Virginia is found in compliance with the Commission's ISFMP for horseshoe crabs by that time. The moratorium on fishing for horseshoe crabs includes the statutory prohibitions listed in subsection 806(e) of the Act (16 U.S.C. 5106(e)). Subsection 806(e) states: "During the time in which a moratorium under this section is in effect, it is unlawful for any person to - (1) violate the terms of the moratorium or of any implementing regulation issued under subsection 806(d) of this section; (2) engage in fishing for any species of fish to which the moratorium applies within the waters of the State subject to the moratorium; (3) land, attempt to land, or possess fish that are caught, taken, or harvested in violation of the moratorium or of any implementing regulation issued under subsection (d) of this section; (4) fail to return to the water immediately, with a minimum of injury, any fish to which the moratorium applies that are taken incidental to fishing for species other than those to which the moratorium applies, except as provided by regulations issued under

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subsection (d) of this section; (5) refuse to permit any officer authorized to enforce the provisions of this chapter to board a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of this chapter; (6) forcibly assault, resist, oppose, impede, intimidate, or interfere with any such authorized officer in the conduct of any search or inspection under this chapter; (7) resist a lawful arrest for any act prohibited by this section; (8) ship, transport, offer for sale, sell, purchase, import, or have custody, control or possession of, any fish taken or retained in violation of this chapter; or (9) interfere with, delay, or prevent, by any means, the apprehension or arrest of another person, knowing that such person has committed any act prohibited by this section."

The measures in this rule, which are necessary to implement section 806, are: (1) a prohibition on the possession of horseshoe crabs in Virginia waters regardless of where they are caught, and (2) a prohibition on landing horseshoe crabs in Virginia regardless of where they are caught. These measures are necessary to implement section 806, because they enable the effective enforcement of the statutory prohibitions on fishing for horseshoe crabs within Virginia waters and on landing and possessing horseshoe crabs caught in violation of the moratorium. Because enforcement agents enforcing the moratorium in Virginia waters would be unable to determine whether a horseshoe crab was caught in Virginia waters or in the EEZ and brought into Virginia waters, it is necessary to prohibit the possession of any horseshoe crabs in Virginia waters and the landing of horseshoe crabs in Virginia, regardless of where they were caught.

If the Commonwealth of Virginia implements and enforces measures bringing them into compliance, the Secretary will publish an appropriate announcement in the **Federal Register** rescinding the moratorium and this rule with respect to the Commonwealth of Virginia.

The agency is implementing the moratorium immediately because Virginia most likely has already exceeded its quota. Landings data from 1999 show that 152,495 horseshoe crabs – the equivalent of Virginia's quota for year 2000 under Addendum 1 – were landed by the first week in May 1999. Assuming the same rate of landings applies in 2000 as in 1999, Virginia has most likely landed more horseshoe crabs than its allocation under Addendum 1 by this time. Further, in anticipation of the declaration of a moratorium on fishing for horseshoe crabs in Virginia waters, fishermen may have increased horseshoe crab landings in Virginia over the past couple months since the Commission voted to find Virginia out of compliance. As a result, there is reason to believe that the horseshoe crab landings rate in 2000 is higher than it was in 1999.

**Classification**

This declaration of a moratorium and rule are consistent with section 806 of the Atlantic Coastal Fisheries Cooperative Management Act.

The Assistant Administrator for Fisheries, NOAA (AA), finds that providing prior public notice and opportunity for comment is contrary to the public interest. Providing prior notice and opportunity for comment would be contrary to the public interest, because Virginia most likely has already exceeded its quota. Landings data from 1999 show that 152,495 horseshoe crabs – the equivalent of Virginia's quota for year 2000 under Addendum 1 – were landed by the first week in May 1999. Assuming the same rate of landings applies in 2000 as in 1999, Virginia has most likely landed more horseshoe crabs than its allocation under Addendum 1 by this time. Further, in anticipation of the declaration of a moratorium on fishing for horseshoe crabs in Virginia waters, fishermen may have increased horseshoe crab landings in Virginia over the past couple months since the Commission voted to find Virginia out of compliance. As a result, there is reason to believe that the horseshoe crab landings rate in 2000 is higher than it was in 1999. Given the fact that Virginia most likely has landed its horseshoe crab quota already, providing prior notice and opportunity for comment would be contrary to the public interest because it would allow Virginia to continue to land more horseshoe crabs than what should be its quota under Addendum 1, thereby frustrating achievement of conservation goals in Addendum 1. Therefore, the AA, under 5 U.S.C. 553(b)(B), finds that good cause exists to waive the requirement for prior notice and opportunity for comment.

Because Virginia most likely has already landed the equivalent number of horseshoe crabs as its quota under Addendum 1, given last year's landing rate, the AA finds that it is contrary to the public interest to delay for 30 days the effectiveness of this moratorium and this rule. Therefore, the AA, under 5 U.S.C. 553(d)(3), finds that good cause exists not to delay for 30 days the effective date of this rule. However, because fishermen need time to return to port or leave Virginia waters if they have horseshoe crabs on board, the AA is delaying the effectiveness of the moratorium and this rule until October 23, 2000.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

**Federalism Summary Impact Statement**

The Act does not explicitly preempt state law. Rather, section 806 of the Act provides clear evidence that Congress intended the Secretary to have the authority to preempt state law. That authority has been delegated from the Secretary to the NMFS. NMFS has met the special requirements for preemption under section 4 of Executive Order 13132. The agency, in declaring a moratorium on fishing for horseshoe crabs and issuing this interim final rule, has restricted the preemption of state law to the minimum level necessary to achieve the objectives of the statute. As described in the following text, NMFS notified the Commonwealth of Virginia of the possibility of a moratorium and met with state officials to discuss the issues involved.

The AA wrote to the Governor of Virginia notifying him of the Commission's non-compliance determination, and the possibility that a moratorium may be declared, and offering him an opportunity to meet and present comments on these issues. In response, the Virginia Secretary of Natural Resources requested a meeting with the Secretary. On July 3, 2000 Virginia's representatives met with Deputy Secretary Robert Mallett and NOAA personnel.

Virginia representatives stated that the Commonwealth is managing the horseshoe crab fishery responsibly and noted that Virginia has implemented a number of strong conservation regulations on horseshoe crabs within its waters. They stated that the quota reduction required by Addendum 1 to the Commission's ISFMP for horseshoe crabs could not be implemented by the Virginia Marine Resources Commission (VMRC), because it did not meet Virginia's standards on preventing overfishing, achieving optimum yield, using the best scientific and biological information, managing interrelated stocks, and allocating fishing privileges among user groups with which VMRC's fisheries regulations must be consistent. They submitted a memorandum from VMRC stating that it could not ignore the mandates of Virginia law and implement a quota that may negatively affect their whelk/conch (whelk) fishery.



Virginia's representatives further stated that the state legislature could act to implement the quota, but it is out of session until January 2001. They also noted that VMRC is in the process of requiring that bait bags be used in the Virginia whelk fishery and that the bait bag requirement should cut Virginia's need for horseshoe crabs in half. They also suggested that once the bait bag regulation goes in place, and if the Commission allowed unused horseshoe crab quota from other states to be transferred to Virginia, these actions should meet Virginia's bait needs without Virginia taking more than its Commission-allotted quota.

The Virginia representatives further said that under the ISFMP, Virginia is the only state to experience what it believes to be severe economic impact. Virginia has the market for horseshoe crab, which is used as bait in the Virginia eel and whelk/conch fisheries. Bait for these fisheries was shipped into Virginia, but since other states have restricted landings, Virginia's horseshoe crab landings have gone up. Virginia representatives felt that the state should not be found out of compliance. But if it is found out of compliance, it should be allowed time for the state legislature to act. Alternatively, Virginia believes that the moratorium should not go into effective until the entire coastwide quota for the ISFMP is exceeded.

On July 11, the AA informed Virginia that NMFS agrees with the Commission that Virginia is not in compliance with the ISFMP, and found that the measures Virginia has failed to implement for horseshoe crab management are necessary for conservation. In order to come back into compliance, Virginia must take action to reduce its commercial horseshoe crab fishery in line with the ISFMP. In response to Virginia's comments about the timing of a moratorium and the pending implementation of further horseshoe regulations by Virginia, and in light of the amount of horseshoe crabs most likely already landed in Virginia over its Addendum 1 quota, NMFS believes it is inadvisable to wait for the state legislature to address the issue in 2001 in a regular session. Also, any difficulties Virginia faces in light of Virginia State law and legislative scheduling do not override the Federal government's responsibility to implement Federal law. If Virginia is found in compliance by October 23, 2000, the moratorium and this rule will be rescinded. If Virginia is found in compliance after that date, the moratorium will be lifted and the rule repealed.

**Coastal Zone Management Act (CZMA)**

*Substantive Considerations*

The CZMA requires that "[e]ach Federal agency activity within or outside the coastal zone that affects any land or water use or natural resource of the coastal zone shall be carried out in a manner which is consistent to the maximum extent practicable with the enforceable policies of approved State management programs." (16 U.S.C. 1456(c)(1)(A)). NMFS reviewed the list of policies contained in Executive Order 23 (1998) on the Virginia Coastal Resources Management Program, the United States Department of Commerce Final Environmental Impact Statement and the Virginia Coastal Resources Management Program (reprinted in 1994), a summary of the regulatory programs that comprise Virginia's coastal program, which included the Virginia Code citations for the legal authorities.

According to Chapter III of the United States Department of Commerce Final Environmental Impact Statement and the Virginia Coastal Resources Management Program, dated July 1985 and reprinted in 1994, the Fisheries Management Regulatory Program, which is part of Virginia's coastal management program, contains the following applicable policy and citation:

> It shall be the goal of fisheries management within the Commonwealth of Virginia to conserve and enhance finfish and shellfish resources, and to preserve and promote both commercial and recreational fisheries, and, thereby, to maximize food production and recreational opportunities. The marine resources of the Commonwealth shall be managed for their maximum benefit and long-term use by present and future generations. The fishery management plans prepared and implemented according to law shall also have as a goal the preservation of the Commonwealth's exclusive right to manage the fisheries within its territorial jurisdiction.
>
> Fishery management shall be based on the best scientific, economic, biological, and sociological information available, shall be responsive to the needs of interested and affected citizens, shall promote efficiency in the utilization of the resources, and shall draw upon all available capabilities in carrying out research, administration, management, and enforcement. (§ 28.1-23.1).

United States Department of Commerce Final Environmental Impact Statement and the Virginia Coastal Resources Management Program, Chapter III, July 1985, reprinted in 1994, at III-2. This policy was certified by the Attorney General's Office of Virginia as being enforceable. However, this policy appeared at Virginia Code §28.1-23.1, which was repealed in 1992.

Nevertheless, NMFS finds that the Federal moratorium action is consistent to the maximum extent practicable with the enforceable policies of Virginia's approved coastal zone program. The Act states that upon finding that (1) a State has failed to implement and enforce a coastal fishery management plan and (2) the measures the State has failed to implement and enforce are necessary for the conservation of the fishery in question, the Secretary must declare a moratorium on fishing in the fishery in question. (16 U.S.C. 1506(c).) Once the factual findings are made, the Secretary does not have the discretion to decline to declare a moratorium. Nor does he have the discretion to modify the acts listed in §5106(e) that are prohibited during a moratorium. The Secretary does have the discretion to issue regulations necessary to implement the moratorium, and in this case, he has chosen to exercise that discretion. However, these two regulations make the moratorium enforceable; without them the declaration of a moratorium effectively would be meaningless, given that most horseshoe crabs landed in Virginia are caught outside of Virginia waters. According to the CZMA regulations, "consistent to the maximum extent practicable" describes the requirement for Federal activities affecting the coastal zone of States with approved management programs to be "fully consistent with such programs unless compliance is prohibited based on the requirements of existing law applicable to the Federal agency's operations." (15 CFR §930.32(a).) Because the Secretary lacks discretion under the Act in declaring a moratorium and identifying the main prohibited acts during the moratorium, the Secretary's action is consistent to the maximum extent practicable with Virginia's approved coastal management program. To the extent the Secretary's action is inconsistent with the enforceable policies of Virginia's approved coastal zone program, full consistency is prohibited by the requirements of the Act.

Even if the requirements of the Act did not prohibit consistency with the enforceable policies of Virginia's approved coastal management program, and assuming the policy formerly at Virginia Code §28.1-23.1 is an enforceable policy of Virginia's approved coastal management program, while also noting the standards for fishery management in Virginia Code §28.2-203, NMFS determines that this action is consistent to the maximum extent practicable. The goal of this

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action is to support Addendum 1 to the Commission's ISFMP for horseshoe crab, which addresses concerns about localized depletion of horseshoe crabs by conserving and enhancing the horseshoe crab resource through a state by state quota system. Virginia is a participating member of the Commission, which acts under the authority of the Act, and has full knowledge of the moratorium provision in that statute. Therefore, this moratorium action is consistent with Virginia's desire to preserve the Commonwealth's exclusive right to manage fisheries within its jurisdiction to the same extent to which Virginia has retained such a right in light of its voluntary participation in the Commission.

While horseshoe crabs are neither finfish nor shellfish, but arthropods closely related to arachnids, they are a marine organism for which there is a fishery. NMFS' support of Addendum 1 through this non-allocative moratorium action is designed to prevent overfishing and assure achievement of optimum yield for a variety of user groups, which include the medical industry and commercial fishermen. The best available scientific information suggests that the horseshoe crab population is at risk of decline. If the population is in decline, the Commission's ability to restore, rebuild, and maintain the population to assure the availability of horseshoe crabs on a long-term basis is compromised, especially in light of the fact that horseshoe crabs are extremely vulnerable to overexploitation. They are easily harvested and breed only once a year after reaching maturity at 10 years of age. Furthermore, all states in the Delaware Bay area – New Jersey, Maryland, Pennsylvania, and Delaware – have reduced horseshoe crab landings in line with Addendum 1, yet Virginia has not. As a result, the fishery has merely shifted landings to Virginia, thereby negating any conservation benefits of the other states' reductions in allowable landings.

Landings data from 1999 show that 152,495 horseshoe crabs the equivalent of Virginia's quota for year 2000 under Addendum 1 - were landed by the first week in May 1999. Assuming the same rate of landings applies in 2000 as in 1999, Virginia has most likely landed more horseshoe crabs than its allocation under Addendum 1 by this time. Therefore, this moratorium action, designed to support and encourage implementation of Addendum 1, is necessary to allow the Commission to assure the availability of horseshoe crabs for present and future generations, including commercial fishermen, through further study and management, rather than risk depletion by overfishing.

A recreational fishery for horseshoe crabs does not exist. Yet, by issuing regulations regarding possession and landing of horseshoe crabs regardless of where they are harvested, NMFS has taken into account the variation in Virginia's horseshoe crab fishery as it is prosecuted in both Virginia waters and the exclusive economic zone (EEZ). The acts prohibited during the moratorium are defined by the Act; therefore, NMFS cannot reduce the burden on fishermen. The regulations NMFS is issuing pursuant to 16 U.S.C. 5106(d) are the minimum necessary to implement the moratorium, and still allow horseshoe crabs to be harvested and used by Virginia's whelk fishermen in the EEZ. Therefore, NMFS has minimized the regulatory burden on fishermen where practicable.

*Procedural Considerations*

For the following legal and factual reasons, NMFS is proceeding with the declaration of the moratorium and issuance of regulations necessary to implement the moratorium prior to the end of the 90-day CZMA time period. First, the Act states in section 804 that "the [Atlantic States Marine Fisheries] Commission shall prepare and adopt coastal fishery management plans to provide for the conservation of coastal fishery resources," and mandates in section 806 that the Secretary enforce such conservation efforts by declaring a moratorium on a fishery upon finding that a state has failed to implement and enforce measures in the applicable coastal fishery management plan that are necessary for conservation. "Conservation" is defined in the Act as "the restoring, rebuilding, and maintaining of any coastal fishery resource and the marine environment, in order to assure the availability of coastal fishery resources on a long-term basis." (Section 802(4).) The best available scientific information suggests that the horseshoe crab population is at risk of decline. If the population is in decline, the Commission's ability to restore, rebuild, and maintain the population to assure the availability of horseshoe crabs on a long-term basis is compromised, especially in light of the fact that horseshoe crabs are extremely vulnerable to overexploitation. They are easily harvested and breed only once a year after reaching maturity at 10 years of age. Furthermore, all states in the Delaware Bay area – New Jersey, Maryland, Pennsylvania, and Delaware – have reduced horseshoe crab landings in line with Addendum 1 to the Horseshoe Crab Plan, yet Virginia has not. As a result, the fishery has merely shifted landings to Virginia, thereby negating any conservation benefits of the other states' reductions in allowable landings.

In Section 802(a) of the Act, Congress found:

(3) Because no single governmental entity has exclusive management authority for Atlantic coastal fishery resources, harvesting of such resources [is] frequently subject to disparate, inconsistent, and intermittent State and Federal regulation that has been detrimental to the conservation and sustainable use of such resources and to the interests of fishermen and the Nation as a whole.

(4) The responsibility for managing Atlantic coastal fisheries rests with the States, which carry out a cooperative program of fishery oversight and management through the Atlantic States Marine Fisheries Commission. It is the responsibility of the Federal Government to support such cooperative interstate management of coastal fishery resources.

(5) The failure by one or more Atlantic States to fully implement a coastal fishery management plan can affect the status of Atlantic coastal fisheries, and can discourage other States from fully implementing coastal fishery management plans.

(6) It is in the national interest to provide for more effective Atlantic State fishery resource conservation and management.

The purpose of the Act as stated in Section 802(b) "is to support and encourage the development, implementation, and enforcement of effective interstate conservation and management Atlantic coastal fishery resources."

Given these findings and purposes, Congress clearly intended to address the type of situation presented by Virginia's refusal to implement and enforce Addendum 1 to the Commission's ISFMP for horseshoe crab. In the Act, Congress established procedures for quick action regarding the declaration of a Federal moratorium to support and encourage the development, implementation, and enforcement of effective interstate conservation and management of Atlantic coastal fishery resources. This interpretation is supported by the plain language of section 805, which allows the Commission only 10 working days to notify the Secretary that a state is not in compliance with a coastal fishery management plan; and by section 806, which allows the Secretary only 30 days to solicit and consider comments by the state and fishery management councils, make an independent determination of whether the State is in compliance and, if not, determine whether the measures the state has failed to implement and enforce are necessary for conservation.



Furthermore, section 806 also states that the Secretary must implement the moratorium within 6 months after its declaration. While the Act does not explicitly state a limit on the length of time that may elapse between the Secretary's finding and his declaration of the moratorium, NMFS believes, based on the language of sections 805 and 806, that that time period must be as short as possible.

Furthermore, landings data from 1999 show that 152,495 horseshoe crabs – the equivalent of Virginia's quota for year 2000 under Addendum 1 – were landed by the first week in May 1999. Assuming the same rate of landings applies in 2000 as in 1999, Virginia has most likely landed more horseshoe crabs than its allocation under Addendum 1 by this time, further supporting implementation of a moratorium without further delay.

Because of these legal and factual reasons, and the need to promote the conservation of the resource, NMFS' action is consistent to the maximum extent practicable with the Virginia Coastal Management Program under 15 CFR 930.32(a). Moreover, NMFS is authorized to act prior to the end of the CZMA statutory and regulatory time periods pursuant to 15 CFR 930.32(b), otherwise NMFS would fail to meet its statutory responsibilities.

The interim final rule has been determined to be significant for purposes of Executive Order 12866.

**List of Subjects in 50 CFR Part 697**

Fisheries, Fishing, Intergovernmental relations.

Dated: October 10, 2000.

**William T. Hogarth,**

*Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR Chapter VI, part 697, is amended as follows:

## PART 697—ATLANTIC COASTAL FISHERIES COOPERATIVE MANAGEMENT

1. The authority citation for 50 CFR part 697 continues to read as follows:

**Authority:** 16 U.S.C. 5101 *et seq.*

2. In § 697.2, the definition for "Horseshoe crab" is added in alphabetical order to read as follows:

**§ 697.2 Definitions.**

* * * * *

*Horseshoe crab* means members of stocks or populations of the species *Limulus polyphemus.*

* * * * *

3. In § 697.7, paragraph (e) is added to read as follows:

**§ 697.7 Prohibitions.**

* * * * *

(e) *Atlantic Coast horseshoe crab fishery.* In addition to the prohibitions set forth in § 600.725 of this chapter and 16 U.S.C. 5106(e), it is unlawful for any person to do any of the following:

(1) Possess any horseshoe crabs in Virginia waters, regardless of where they were harvested.

(2) Land any horseshoe crabs in Virginia, regardless of where they were harvested.

[FR Doc. 00–26499 Filed 10–11–00; 4:11 pm]

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# Proposed Rules

Federal Register
Vol. 65, No. 200
Monday, October 16, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 1210**

**[FV–00–703 PR]**

## Watermelon Research and Promotion Plan; Redistricting and Adding Two Importer Members to the National Watermelon Promotion Board

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** This proposed rule invites comments on changing the boundaries of all seven districts under the Watermelon Research and Promotion Plan (Plan) to apportion producer and handler membership on the National Watermelon Promotion Board (Board). This would make all districts equal according to the assessments collected in each district. Pursuant to the provisions of the Plan and regulations, we would also add two importer members to the Board to ensure that representation of importers is proportionate to the percentage of assessments importers pay to the Board. These changes are based on a review of the production and assessments paid in each district and the amount of watermelon import assessments, which the Plan requires at least every five years.

**DATES:** Comments must be received by November 15, 2000.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposed rule to the Docket Clerk, Research and Promotion Branch, Fruit and Vegetable Programs (FV), Agricultural Marketing Service (AMS), USDA, Stop 0244, Room 2535–S, 1400 Independence Avenue, SW., Washington, DC 20250–0244. Comments should be submitted in triplicate and will be made available for public inspection at the above address during regular business hours. Comments may also be submitted electronically to: *malinda.farmer@usda.gov*. All comments should reference the docket number and the date and page number of this issue of the **Federal Register**. A copy of this rule may be found at *www.ams.usda.gov/fv/rpdocketlist.htm*.

Also, pursuant to the Paperwork Reduction Act (PRA), you may send comments regarding the merits of the burden estimate, ways to minimize the burden, including the use of automated collection techniques of other forms of information technology, or any other aspect of the collection of information contained in this proposed rule to the above address. Comments concerning the information collection under the PRA should also be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Kathie Birdsell, Research and Promotion Branch, FV, AMS, USDA, Room 2535–S, Stop 0244, Washington, DC 20250–0244; telephone (202) 720–6930 or (888) 720–9917 (toll free); e-mail to kathie.birdsell@usda.gov.

**SUPPLEMENTARY INFORMATION:** This proposed rule is issued under the Watermelon Research and Promotion Plan (Plan) [7 CFR Part 1210]. The Plan is authorized under the Watermelon Research and Promotion Act (Act) [7 U.S.C. 4901–4916].

### Question and Answer Overview

*Why Does the U.S. Department of Agriculture (USDA or the Department) Want To Take This Action?*

Section 1210.320(d) of the Plan requires the National Watermelon Promotion Board (Board) to review the alignment of the seven districts and importer representation every five years. The Board conducted a review in 1999. Therefore, USDA is publishing this proposed rule which is based upon the Board's recommendations to obtain public input before finalizing any changes.

*What Is the Size and Composition of the Board?*

The Plan divides the United States into seven districts of comparable watermelon production. Each district is allocated two producer members and two handler members. The Plan also requires the number of importer members on the Board to be proportionate to the percentage of assessments paid by importers. In addition, one public member should serve on the Board. The Board currently has 33 members: 14 producers, 14 handlers, 4 importers, and 1 public member. However, two importer positions and the public member position are currently vacant.

*What Data Is Used by the Board To Conduct the Review?*

The Board is required to base its recommendations on the most recent three years of USDA production reports or Board assessment reports. In this instance, the Board used assessment reports for 1996, 1997, and 1998 because USDA production reports were available for only 16 of the 35 states in which watermelons are produced.

*What Was the Outcome of the 1999 Redistricting Review?*

The 1999 review indicated that the boundaries of the districts needed to be adjusted in order for there to be an equal amount of assessments paid by the producers and handlers in the districts and that two additional importers needed to be added to the Board.

*How Would the Size and Composition of the Board Change if This Action Is Approved?*

The number of producer and handler members would not be changed. However, the number of importer positions on the Board would be increased from four to six.

*How Would This Action Affect the Current Assessment Rates Paid by Importers? By Producers and Handlers?*

This action will not have any impact on the assessment rates paid by producers, handlers, and importers.

*Why Is the USDA Inviting Comments on This Proposed Rule Before Taking Further Action?*

The USDA is required to provide to all interested parties a 60-day comment period before USDA makes a final decision on this proposed rule. The comment period gives an opportunity to all producers, handlers, and importers that are subject to the Plan to convey their opinions and concerns on the proposed changes. Your participation is greatly appreciated and significant to the outcome of this action.



### Executive Orders 12886 and 12988

This rule has been determined "not significant" for purposes of Executive Order (E.O.) 2866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

In addition, this rule has been reviewed under E.O. 12988, Civil Justice Reform. The rule is not intended to have retroactive effect and will not affect or preempt any other State or Federal law authorizing promotion or research relating to an agricultural commodity.

The Act allows producers, producer-packers, handlers, and importers (if covered by the program) to file a written petition with the Secretary of Agriculture (Secretary) if they believe that the Plan, any provision of the Plan, or any obligation imposed in connection with the Plan, is not established in accordance with law. In any petition, the person may request a modification of the Plan or an exemption from the Plan. The petitioner will have the opportunity for a hearing on the petition. Afterwards, an Administrative Law Judge (ALJ) will issue a decision. If the petitioner disagrees with the ALJ's ruling, the petitioner has 30 days to appeal to the Judicial Officer, who will issue a ruling on behalf of the Secretary. If the petitioner disagrees with the Secretary's ruling, the petitioner may file, within 20 days, an appeal in the U.S. District Court for the district where the petitioner resides or conducts business.

### Regulatory Flexibility Act and Paperwork Reduction Act

*Initial Regulatory Flexibility Analysis*

In accordance with the Regulatory Flexibility Act [5 U.S.C. 601 *et seq.*], AMS has examined the economic impact of this rule on the small producers, handlers, and importers that would be affected by this rule.

The Small Business Administration defines, in 13 CFR Part 121, small agricultural producers as those having annual receipts of no more than $500,000 and small agricultural service firms (handlers and importers) as those having annual receipts of no more than $5 million. Under these definitions, the majority of the producers, handlers, and importers that would be affected by this rule would be considered small entities. Producers of less than 10 acres of watermelons are exempt from this program. Importers of less than 150,000 pounds of watermelons per year are also exempt.

According to the Board, there are approximately 2,219 non-exempt producers, 619 handlers, and 278 importers who are eligible to serve on the Board.

The Plan requires producers to be nominated by producers, handlers to be nominated by handlers, and importers to be nominated by importers. This would not change. Because some current members are in states or counties which would be moved to other districts under this proposed rule, at least one producer member vacancy in Districts 1, 6, and 7 and one handler member vacancy in District 6 would be created if this rule is adopted. Nomination meetings would have to be held in the new districts to fill these vacancies.

The overall impact would be favorable for producers and handlers because the proposed district boundaries would provide more equitable representation for the producers and handlers who pay assessments in the various districts. For importers, too, the overall impact would be favorable because they would be provided two additional seats on the Board and more equitable representation on the Board.

The Board considered several alignments of the districts in an effort to provide balanced representation for each district. The Board selected the alignment described in this rule as it will provide proportional representation on the Board of producers, handlers, and importers.

The addition of two importer seats on the Board would mean four additional nominees. This is because two nominees must be submitted for each position. The estimated additional annual cost of providing nomination information by four persons eligible to be nominated to serve as importer members on the Board would be $6.00 or $1.50 per importer. The increase of .06 hours has been added to the burden previously approved under OMB No. 0505–0001.

There are no federal rules that duplicate, overlap, or conflict with this rule.

*Paperwork Reduction Act*

This rule would increase the information collection burden previously approved by OMB for the Board nominee background information form under OMB Number 0505–0001. This is because there would be two additional importers on the Board. Since two nominees must be submitted to the Secretary for each position, there is the potential for four additional background forms to be submitted under this proposed rule. As required by OMB regulations [5 CFR part 1320], the revised burden, as described below, has been submitted to OMB.

*Title:* National Research, Promotion, and Consumer Information Programs.

*OMB Number:* 0505–0001.

*Expiration Date of Approval:* July 31, 2001.

*Type of Request:* Revision of a currently approved information collection for research and promotion programs.

*Abstract:* The information collection requirements in this request are essential to carry out the intent of the Act. The increase in burden associated with the background form is as follows:

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 0.50 hours per response.

*Respondents:* Importers.

*Estimated Number of Respondents:* 4.

*Estimated Number of Responses per Respondent:* 1 every 3 years (0.3).

*Estimated Total Annual Burden on Respondents:* 0.6 hours.

The estimated additional annual cost of providing nomination information by four persons eligible to be nominated to serve as importer members on the Board would be $6.00 or $1.50 per importer. The increase of .06 hours has been added to the burden previously approved under OMB No. 0505–0001.

### Background

Under the Plan, the Board administers a nationally coordinated program of research, development, advertising, and promotion designed to strengthen the watermelon's position in the market place and to establish, maintain, and expand markets for watermelons. This program is financed by assessments on producers growing 10 acres or more of watermelons, handlers of watermelons, and importers of 150,000 pounds of watermelons or more per year. The Plan specifies that handlers are responsible for collecting and submitting both the producer and handler assessments to the Board, reporting their handling of watermelons, and maintaining records necessary to verify their reporting(s). Importers are responsible for payment of assessments to the Board on watermelons imported into the United States through the U.S. Customs Service.

Domestic membership on the Board is determined on the basis of two producers and two handlers for each of the seven districts established by the Plan. The Board should also include at least one representative of importers and one public member. There are currently four importer positions on the Board.

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The current U.S. districts were established in 1994. They are:

*District 1*—South Florida, including all south areas of State Highway 50.

*District 2*—North Florida, including all north areas of State Highway 50.

*District 3*—Alabama, Georgia, and Mississippi.

*District 4*—Connecticut, Delaware, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, Washington, D.C., and West Virginia.

*District 5*—Alaska, Arkansas, Colorado, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Minnesota, Mississippi, Missouri, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Tennessee, and Wisconsin.

*District 6*—Arkansas, Louisiana, and Texas.

*District 7*—Arizona, California, Idaho, Montana, Nevada, Oregon, Utah, Washington, and Wyoming.

The Plan provides that two years after its effective date (June 8, 1989), and at least every five years thereafter, the Board should review the districts to determine whether realignment of the districts is necessary.

When making a review, the Plan specifies that the Board should consider factors such as the most recent three years of USDA production reports or Board assessment reports if USDA production reports are unavailable, shifts and trends in quantities of watermelons produced, and any other relevant factors. In reviewing importer representation, the Board should review a three-year average of watermelon import assessments.

The Plan further specifies that, as a result of a review, the Board may recommend realignment of the districts and a change in the number of importer members subject to the approval of the Secretary. Any realignment should be recommended by the Board at least six months prior to the date of the call for nominations and should become effective at least 30 days prior to this date.

On November 8, 1999, the Board appointed a subcommittee to begin reviewing the U.S. districts and to determine whether realignment was necessary based on production and assessment collections in the current districts. During the review, as prescribed by the Plan, the subcommittee reviewed USDA's Annual Crop Summary reports for 1996 through 1998, which provide figures for the top 16 watermelon producing states, and the Board's assessment collection records for 1996 through 1998, including assessments collected at the county level for California and Florida.

The subcommittee recommended to the Board that the boundaries of Districts 3 through 7 be changed and that Districts 1 and 2 be defined by Florida counties, rather than using Route 50 as the boundary line.

The subcommittee also determined that assessments on imports represented 20 percent of the Board's assessment income during 1996–1998. The Plan requires that importers have proportionate representation on the Board. Therefore, importers should have 20 percent of the seats on the Board. Currently, the four importer positions represent only 12.5 percent of the 32 industry seats on the Board. Adding two more importer member positions would give importers approximately 20 percent of the seats on the Board. Because the Plan and regulations are self-executing in this regard, no change to the regulations is needed.

Subsequently, the realignment was approved by Board at its February 15–16, 2000, meeting, with slight modification. Under the proposed realignment, each district would represent, on average, 14 percent of total U.S. production.

Therefore, this proposal would realign the districts as follows:

*District 1*—The Florida counties of Brevard, Broward, Collier, Dade, Glades, Hardee, Hendry, Highlands, Indian River, Lee, Martin, Monroe, Okeechobee, Osceola, Palm Beach, Polk, and St. Lucie.

*District 2*—The Florida counties of Alachula, Baker, Bay, Bradford, Calhoun, Charlotte, Citrus, Clay, Columbia, Desoto, Dixie, Duval, Escambia, Flagler, Franklin, Gadsden, Gilchrist, Gulf, Hamilton, Hernando, Hillsborough, Holmes, Jackson, Jefferson, Lafayette, Lake, Leon, Levy, Liberty, Madison, Manatee, Marion, Nassau, Okaloosa, Orange, Pasco, Pinnellas, Putnam, Santa Rosa, Sarasota, Seminole, St. Johns, Sumter, Suwannee, Taylor, Union, Volusia, Wakulla, Walton, and Washington.

*District 3*—Alabama, Arkansas, Georgia, Louisiana, Mississippi, South Carolina, and Tennessee.

*District 4*—Connecticut, Delaware, Illinois, Indiana, Iowa, Kansas, Kentucky, Massachusetts, Maryland, Maine, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Vermont, Virginia, Washington, D.C., West Virginia, and Wisconsin.

*District 5*—Alaska, Colorado, Hawaii, Idaho, Montana, Nevada, Oregon, Utah, Washington, Wyoming and the California counties of Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Fresno, Glenn, Humboldt, Inyo, Kern, Kings, Lake, Lassen, Madera, Marin, Mariposa, Mendocino, Merced, Modoc, Mono, Monterey, Napa, Nevada, Placer, Plumas, Sacramento, San Benito, San Francisco, San Joaquin, San Luis Obispo, San Mateo, Santa Barbara, Santa Clara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tulare, Toulumne, Venture, Yolo, and Yuba.

*District 6*—Texas.

*District 7*—Arizona, New Mexico, and the California counties of Imperial, Los Angeles, Orange, Riverside, San Bernardino, and San Diego.

Under this proposed realignment: (1) South Carolina and Tennessee would be moved from District 4 to District 3; (2) Arkansas and Louisiana would be moved from District 6 to District 3; (3) Illinois, Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, Oklahoma, South Dakota, and Wisconsin would be moved from District 5 to District 4; (4) four California counties would be moved from District 7 to District 5; and (5) only Texas would remain in District 6.

This would create one producer vacancy in Districts 1, 6, and 7 and one handler in District 6. Current Board members would be affected because their states or counties would be moved to other districts. Nomination meetings would have to be held in the new districts to fill the vacancies.

**List of Subjects in 7 CFR Part 1210**

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Reporting and recordkeeping requirements, Watermelon promotion.

For the reasons set forth in the preamble, Part 1210, Chapter XI of Title 7 is proposed to be amended as follows:

## PART 1210—WATERMELON RESEARCH AND PROMOTION PLAN

1. The authority citation for 7 CFR Part 1210 continues to read as follows:

**Authority:** 7 U.S.C. 4901–4916.

2. Section 1210.501 is revised to read as follows:

**§ 1210.501 Realignment of districts.**

Pursuant to § 1210.320(c) of the Plan, the districts shall be as follows:

*District 1*—The Florida counties of Brevard, Broward, Collier, Dade, Glades, Hardee, Hendry, Highlands, Indian River, Lee, Martin, Monroe, Okeechobee, Osceola, Palm Beach, Polk, and St. Lucie.

*District 2*—The Florida counties of Alachula, Baker, Bay, Bradford, Calhoun, Charlotte, Citrus, Clay, Columbia, Desoto, Dixie, Duval, Escambia, Flagler, Franklin, Gadsden, Gilchrist, Gulf, Hamilton, Hernando, Hillsborough, Holmes, Jackson, Jefferson, Lafayette, Lake, Leon, Levy, Liberty, Madison, Manatee, Marion, Nassau, Okaloosa, Orange, Pasco, Pinnellas, Putnam, Santa Rosa, Sarasota, Seminole, St. Johns, Sumter, Suwannee, Taylor, Union, Volusia, Wakulla, Walton, and Washington.

*District 3*—Alabama, Arkansas, Georgia, Louisiana, Mississippi, South Carolina, and Tennessee.

*District 4*—Connecticut, Delaware, Illinois, Indiana, Iowa, Kansas, Kentucky, Massachusetts, Maryland, Maine, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Vermont, Virginia, Washington, D.C., West Virginia, and Wisconsin.

*District 5*—Alaska, Colorado, Hawaii, Idaho, Montana, Nevada, Oregon, Utah, Washington, Wyoming, and the California counties of Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Fresno, Glenn, Humboldt, Inyo, Kern, Kings, Lake, Lassen, Madera, Marin, Mariposa, Mendocino, Merced, Modoc, Mono, Monterey, Napa, Nevada, Placer, Plumas, Sacramento, San Benito, San Francisco, San Joaquin, San Luis Obispo, San Mateo, Santa Barbara, Santa Clara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tulare, Toulumne, Venture, Yolo, and Yuba.

*District 6*—Texas.

*District 7*—Arizona, New Mexico, and the California counties of Imperial, Los Angeles, Orange, Riverside, San Bernardino and San Diego.

Dated: October 10, 2000.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 00–26488 Filed 10–13–00; 8:45 am]

BILLING CODE 3410–02–U



## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Parts 36

**[Docket No. FAA–2000–7958; Notice No. 00–12]**

**RIN 2120–AH10**

### Noise Certification Regulations for Helicopters; Correction

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM); correction.

**SUMMARY:** This document contains a correction to the notice of proposed rulemaking, published in the **Federal Register** on October 5, 2000 (65 FR 59634). That NPRM proposed changes to the noise certification regulations for helicopters. Those proposed changes are based on a joint effort by the FAA, the European Joint Aviation Authorities (JAA), and Aviation Rulemaking Advisory Committee (ARAC), to harmonize the U.S. noise certification regulations and the European Joint Aviation Requirements (JAR) for helicopter. The harmonization of the noise certification standards would simplify airworthiness approvals for import and export purposes.

**FOR FURTHER INFORMATION CONTACT:** Sandy Liu, (202) 493–4864.

**Correction of Publication**

In NPRM FR Doc. 00–24634, beginning on page 59634 in the **Federal Register** issue of October 5, 2000, make the following corrections:

1. On page 59634, in column 1, in the heading section, beginning on line 4, correct "Notice No. 00–11" to read "Notice No. 00–12".

Issued in Washington, DC on October 10, 2000.

**Donald P. Byrne,**

*Assistant Chief Counsel, Regulations Division.*

[FR Doc. 00–26513 Filed 10–13–00; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Airspace Docket No. 00–ANM–14]**

### Proposed Establishment of Class E Airspace, Prineville, OR

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of Proposed Rulemaking (NPRM).

**SUMMARY:** This action proposes to establish Class E airspace at Prineville, OR. New Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAP) to Runway (RWY) 10, RNAV RWY 28, and Non-Directional Beacon (NDB) RWY 10 SIAP at Prineville Airport has made this proposal necessary. Class E 700 foot, and 1,200 foot controlled airspace, above the surface of the earth is required to contain aircraft executing the NDB RWY 10, RNAV RWY 10, and RNAV RWY 28 SIAPs to Prineville Airport. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Prineville Airport, Prineville, OR.

**DATES:** Comments must be received on or before November 30, 2000.

**ADDRESSES:** Send comments on the proposal in triplicate to: Manager, Airspace Branch, ANM–520, Federal Aviation Administration, Docket No. 00–ANM–14, 1601 Lind Avenue SW, Renton, Washington 98055–4056.

The official docket may be examined in the Office of the Regional Counsel for the Northwest Mountain Region at the same address.

An informal docket may also be examined during normal business hours in the office of the Manager, Air Traffic Division, Airspace Branch, at the address listed above.

**FOR FURTHER INFORMATION CONTACT:** Brian Durham, ANM–520.7, Federal Aviation Administration, Docket No. 00–ANM–14, 1601 Lind Avenue SW, Renton, Washington 98055–4056: telephone number: (425) 227–2527.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit, with those comments, a self-addressed

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stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 00–ANM–14." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRM's**

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Airspace Branch, ANM–520, 1601 Lind Avenue SW, Renton, Washington 98055–4056. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) by establishing Class E airspace at Prineville, OR. Newly developed RNAV SIAPs to RWY 10, RWY 28, and NDB RWY 10 approaches at Prineville Airport have made this proposal necessary. Controlled airspace from 700 feet, and 1,200 feet, above the surface is required to contain aircraft executing the NDB RWY 10, RNAV RWY 28, and RNAV RWY 10 SIAPs. The FAA establishes Class E airspace where necessary to contain aircraft transitioning between the terminal and en route environments. The intended effect of this proposal is designed to provide for the safe and efficient use of the navigable airspace. This proposal would promote safe flight operations under IFR at the Prineville Airport and between the terminal and en route transition stages.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above the surface of the earth, are published in Paragraph 6005, of FAA Order 7400.9H dated September 1, 2000, and effective September 16, 2000, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11013; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

**PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS**

1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9H, Airspace Designations and Reporting Points, dated September 1, 2000, and effective September 16, 2000, is amended as follows:

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

* * * * *

**ANM OR E5 Prineville, OR [New]**

Prineville Municipal Airport, OR
(Lat. 44°17′13″ N., long. 120°54′14″ W.)

That airspace extending upward from 700 feet above the surface within a 4.6-mile radius of the airport, and extending from 2.7 miles south of the 281° bearing from the airport to 12.2 miles, then in an arc clockwise to a point 2 miles north of the 287° bearing then to the airport, and extending from 3 miles each side of the 121° bearing from the airport to 7.2 miles; that airspace extending upward from 1,200 feet above the surface within a 9.2-miles radius of the airport clockwise from the 320° bearing to the 190° bearing, and extending to 18.2 miles in an arc clockwise to the 230° bearing, then extending to 28.3 miles in an arc clockwise to the 320° bearing, and extending 6 miles each side of the 121° bearing from the airport to 22.9 miles; excluding that airspace within Federal Airways; the Redmond, OR Class D and E airspace; the Bend, OR; Sunriver, OR; and Madras, OR Class E airspace.

* * * * *

Issued in Seattle, Washington, on September 15, 2000.

**Daniel A. Boyle,**

*Assistant Manager, Air Traffic Division, Northwest Mountain Region.*

[FR Doc. 00–26522 Filed 10–13–00; 8:45 am]

**BILLING CODE 4910–13–M**

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 71**

**[Airspace Docket No. 00–ANM–17]**

**Proposed Revision of Class E Airspace, Roosevelt, UT**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of Proposed Rulemaking (NPRM).

**SUMMARY:** This action proposes to revise Class E airspace at Roosevelt, UT. The development of a new Area Navigation (RNAV) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 25 at Roosevelt Airport has made this proposal necessary. Class E 700 foot, and 1,200 foot controlled airspace, above the surface of the earth is required to contain aircraft executing the RNAV RWY 25 SIAP to Roosevelt Airport. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Roosevelt Airport, Roosevelt, UT.

**DATES:** Comments must be received on or before November 30, 2000.

**ADDRESSES:** Send comments on the proposal in triplicate to: Manager, Airspace Branch, ANM–520, Federal Aviation Administration, Docket No. 00–ANM–17, 1601 Lind Avenue SW, Renton, Washington 98055–4056.

The official docket may be examined in the Office of the Regional Counsel for the Northwest Mountain Region at the same address.



An informal docket may also be examined during normal business hours in the office of the Manager, Air Traffic Division, Airspace Branch, at the address listed above.

**FOR FURTHER INFORMATION CONTACT:** Brian Durham, ANM–520.7, Federal Aviation Administration, Docket No. 00–ANM–17, 1601 Lind Avenue SW, Renton, Washington 98055–4056; telephone number: (425) 227–2527.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above.

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit, with those comments, a self-addressed stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 00–ANM–17." The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRM's**

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Airspace Branch, ANM–520, 1601 Lind Avenue SW, Renton, Washington 98055–4056. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) by revising Class E airspace at Roosevelt, UT. Newly developed RNAV SIAP to RWY 25 at Roosevelt Airport has made this proposal necessary. Controlled airspace from 700 feet, and 1,200 feet, above the surface is required to contain aircraft executing the RNAV RWY 25 SIAP. The FAA establishes Class E airspace where necessary to contain aircraft transitioning between the terminal and en route environments. The intended effect of this proposal is designed to provide for the safe and efficient use of the navigable airspace. This proposal would promote safe flight operations under IFR at the Roosevelt Airport and between the terminal and en route transition stages.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above the surface of the earth, are published in Paragraph 6005, of FAA Order 7400.9H dated September 1, 2000, and effective September 16, 2000, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11013; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

**PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS**

1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9H, Airspace Designations and Reporting Points, dated September 1, 2000, and effective September 16, 2000, is amended as follows:

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

* * * * *

**ANM UT E5 Roosevelt, UT [Revised]**

Roosevelt Municipal Airport, UT
(Lat. 40°16′42″ N., long 110°03′05″ W.)
Myton VORTAC
(Lat. 40°08′42″ N., long 110°07′40″ W.)

That airspace extending from 700 feet above the surface within a 6.5-mile radius of the Roosevelt Municipal Airport and within 8 miles east and 5 miles west of the Myton VORTAC 024° and 154° radials extending from the 6.5-mile radius of the airport to 17 miles south of the VORTAC; that airspace extending upward from 1,200 feet above the surface bounded by a line beginning at lat. 39°52′04″ N., long. 110°15′12″ W.; to lat. 40°27′47″ N., long. 110°16′01″ W.; to lat. 40°19′27″ N., long. 109°33′53″ W.; to lat. 40°03′27″ N., long. 109°24′49″ W.; to lat. 40°04′04″ N., long. 109°44′52″ W.; to lat. 39°52′27″ N., long. 109°44′36″ W., to the point of beginning.

* * * * *

Issued in Seattle, Washington, on September 27, 2000.

**Daniel A. Boyle,**

*Assistant Manager, Air Traffic Division, Northwest Mountain Region.*

[FR Doc. 00–26523 Filed 10–13–00; 8:45 am]

**BILLING CODE 4910–13–M**

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 71**

**[Airspace Docket No. 00–ANM–21]**

**Proposed Modification of Class E Airspace, Astoria, OR**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

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**SUMMARY:** This action proposes to modify the Class E airspace at Astoria, OR. An operational need in support of military operations at the Oregon Air National Guard (ORANG) Camp Rilea Heliport has made this proposal necessary. A modification to the Astoria Class E surface area is required to allow less restrictive air operations to and from Camp Rilea Heliport. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Astoria Municipal Airport, Astoria, OR, and allow the ORANG to conduct air operations at Camp Rilea without impacting civil air traffic.

**DATES:** Comments must be received on or before November 30, 2000.

**ADDRESSES:** Send comments on the proposal in triplicate to: Manager, Airspace Branch, ANM–520, Federal Aviation Administration, Docket No. 00–ANM–21, 1601 Lind Avenue SW, Renton, Washington 98055–4056.

The official docket may be examined in the Office of the Regional Counsel for the Northwest Mountain Region at the same address.

An informal docket may also be examined during normal business hours in the office of the Manager, Air Traffic Division, Airspace Branch, at the address listed above.

**FOR FURTHER INFORMATION CONTACT:** Brian Durham, ANM–520.7, Federal Aviation Administration, Docket No. 00–ANM–21, 1601 Lind Avenue SW, Renton, Washington 98055–4056: telephone number: (425) 227–2527.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit, with those comments, a self-addressed stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 00–ANM–21." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRM's**

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Airspace Branch, ANM–520, 1601 Lind Avenue SW, Renton, Washington 98055–4056. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) by modifying Class E airspace at Astoria, OR. An operational need in support of military operations at the Oregon Air National Guard (ORANG) Camp Rilea Heliport has made this proposal necessary. A revision to the Astoria Class E surface area is required to allow less restrictive air operations to and from Camp Rilea Heliport. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Astoria Municipal Airport, Astoria, OR, and allow the ORANG to conduct air operations at Camp Rilea without impacting civil air traffic. The FAA establishes Class E airspace where necessary to contain aircraft transitioning between the terminal and en route environments. The intended effect of this proposal is designed to provide for the safe and efficient use of the navigable airspace. This proposal would promote safe flight operations under IFR at the Astoria Municipal Airport and between the terminal and en route transition stages and permit military operations from Camp Rilea Heliport.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designated as surface area for an airport are published in Paragraph 6002, of FAA Order 7400.9H dated September 1, 2000, and effective September 16, 2000, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9H, Airspace Designations and Reporting Points, dated September 1, 2000, and effective September 16, 2000, is amended as follows:

*Paragraph 6002 Class E airspace areas designated as surface area for an airport.*

* * * * *

**ANM OR E2 Astoria, OR [Revised]**

Astoria, Port of Astoria Airport, OR
(Lat. 46°09′28″ N, long. 123°52′44″ W)
Astoria VOR/DME
(Lat. 46°09′42″ N, long. 123°52′50″ W)
Karpen NDB
(Lat. 46°08′22″ N, long. 123°35′14″ W)
Astoria ILS Localizer
(Lat. 46°09′35″ N, long. 123°53′28″ W)
Camp Rilea Heliport
(Lat. 46°06′59″ N, long. 123°55′54″ W)

Within a 4-mile radius of the Port of Astoria Airport, and within 1.8 miles each side of the Astoria VOR/DME 268° radial extending from the 4-mile radius to 7 miles west of the VOR/DME, and within 1.8 miles each side of the Astoria ILS localizer east course extending from the 4-mile radius to the Karpen NDB, excluding the airspace within a wedge south of Camp Rilea Heliport, from the 120 bearing clockwise to the 225 bearing of the Camp Rilea Heliport.

* * * * *

Issued in Seattle, Washington, on September 27, 2000.

**Daniel A. Boyle,**

*Assistant Manager, Air Traffic Division, Northwest Mountain Region.*

[FR Doc. 00–26524 Filed 10–13–00; 8:45 am]

**BILLING CODE 4910–13–M**



## DEPARTMENT OF THE TREASURY

### Bureau of Alcohol, Tobacco and Firearms

### 27 CFR Part 9

**[Notice No. 904]**

**RIN 1512–AA07**

## West Elks Viticultural Area

**AGENCY:** Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Bureau of Alcohol, Tobacco and Firearms (ATF) is requesting comments concerning the proposed establishment of a viticultural area to be known as "West Elks," located in Delta County, Colorado. This notice responds to a petition filed on behalf of several grape growers and winery owners in the area.

**DATES:** Written comments must be received by December 15, 2000.

**ADDRESSES:** Send written comments to: Chief, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091–0221 (Attention: Notice No. 904). See "Public Participation" section of this notice if you want to comment by facsimile or e-mail.

**FOR FURTHER INFORMATION CONTACT:** Lisa M. Gesser, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, N.W., Washington, DC 20226 (202–927–9347).

**SUPPLEMENTARY INFORMATION:**

**1. Background on Viticultural Areas**

*What Is ATF's Authority To Establish a Viticultural Area?*

On August 23, 1978, ATF published Treasury Decision ATF–53 (43 FR 37672, 54624). This decision revised the regulations in 27 CFR part 4, Labeling and Advertising of Wine, to allow the establishment of definitive viticultural areas. The regulations allow the name of an approved viticultural area to be used as an appellation of origin in the labeling and advertising of wine.

On October 2, 1979, ATF published Treasury Decision ATF–60 (44 FR 56692) which added a new part 9 to 27 CFR, American Viticultural Areas, for providing the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

*What Is the Definition of an American Viticultural Area?*

Section 4.25a(e)(1), title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features. Viticultural features such as soil, climate, elevation, topography, etc., distinguish it from surrounding areas.

*What Is Required To Establish a Viticultural Area?*

Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

- Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;
- Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;
- Evidence relating to the geographical features (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;
- A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and
- A copy of the appropriate U.S.G.S. map(s) with the boundaries prominently marked.

**2. West Elks Petition**

ATF has received a petition from Barbara E. Heck proposing to establish a viticultural area in Delta County, Colorado, known as "West Elks." The proposed area encompasses approximately 75 square miles. Over 84 acres of vineyards are currently planted in "West Elks" and the area presently boasts eighteen vineyard and/or winery businesses.

*What Name Evidence Has Been Provided?*

The name of the proposed "West Elks" viticultural area was well documented by the petitioner. "West Elks" takes its name from the West Elk Mountains located just east of the area. The petitioner states that each vineyard in the area has a magnificent view of the West Elk Mountains. The following was submitted as evidence of name recognition:

- Brochure from the U.S. Department of Agriculture Forest Service indicating that the proposed "West Elks" viticulture area is known as West Elk Wilderness;
- Brochure from the Colorado State Historical Society and Delta County Tourism mapping the West Elk Loop which runs through the proposed "West Elks" viticultural area;
- Delta County Area Map on which the West Elk Mountains are prominently labeled; and
- United States Department of the Interior topographic map on which the West Elk Wilderness and the West Elk Mountains are prominently labeled.
- News article from the *Delta County Independent* which depicts a 1855 map on which the Elk Mountains are prominently labeled;
- Delta County Historical Society map which also shows the Elk Mountains;

*What Boundary Evidence Has Been Provided?*

According to the petitioner, the proposed "West Elks" viticultural area is located on mesa lands. Its borders are the West Elk Mountains to the east and the higher Grand Mesa to the north. To the south, Crawford and Fruitland Mesa have a higher elevation and the plateau climbs until it reaches the north rim of the Black Canyon of the Gunnison. To the west lie the Adobe Badlands in which very little grows.

*What Evidence Relating to Geographical Features Has Been Provided?*

- Soil

The petitioner asserts that the soils of the proposed "West Elks" viticultural area distinguish it from the surrounding areas. The petitioner provided a General Soil Map which indicates that the proposed "West Elks" viticultural area is comprised mostly of Aqua Fria-Saration soils which are deep and moderately deep well-drained stony.

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soils that formed in outwash alluvium derived from igneous rock. To the north of the proposed viticultural area the soils change to Delson-Cerro soils and to the east the soils are Fughes-Bulkley, Absarokee-Beenom and Delson-Cerro. Billings-Gullied land soils are found to the south of the proposed area.

• Elevation

The petitioner states that the boundaries of the proposed "West Elks" viticultural area are defined by elevation. The far eastern boundary, Juanita Junction, sits at 5942 feet. The eastern line sits mainly at 6200 feet. The southern borders of the proposed area follows section lines of the U.S.G.S. maps that have elevations that range from 5300 to over 5800 feet. The northern border has an elevation range from 6900 to 5900 feet.

According to the petitioner, the elevations of the areas surrounding "West Elks" are much higher. Mountains surround "West Elks" to the east with elevations reaching 11,000 feet. The Grand Mesa is located to the north of "West Elks" with elevations reaching 10,000 feet at the top. To the south, Crawford and Fruitland Mesa have higher elevations and the plateau climbs until it reaches the north rim of the Black Canyon of the Gunnison. To the west, the Adobe Badlands, on which very little grows, and the Redlands Mesa, which sits above 6200 feet, separate "West Elks" from Delta, Cedaredge and the Surface Creek areas. The farming area to the east of Delta sits under 5000 feet elevation, which indicates a longer growing season than that of the proposed "West Elks" viticultural area.

The petitioner asserts that the high elevation of the proposed area creates a fruit that has tremendous flavor. The area is completely protected and sheltered by lofty mesas and mountain ranges. The elevations of the surrounding areas help protect "West Elks" from severe storms and climatic disturbances, which often injure or destroy fruit.

Climate

According to the petitioner, the climate of the proposed "West Elks" viticultural area is rather mild. With over 300 full sun days a year, sugar contents are high. The West Elk Loop Scenic and Historical Byway brochure states "* * * warm days, cool nights, and the so-called Million Dollar Breeze which flows down valley enhance the growing season." The areas surrounding the "West Elks" are much cooler due to their higher elevation.

**3. Regulatory Analyses and Notices**

*Is This a Significant Regulatory Action as Defined by Executive Order 12866?*

It has been determined that this proposed regulation is not a significant regulatory action as defined in Executive Order 12866. Accordingly, this proposal is not subject to the analysis required by this Executive Order.

*How Does the Regulatory Flexibility Act Apply to This Proposed Rule?*

ATF certifies that the proposed regulations will not have a significant economic impact on a substantial number of small entities. The establishment of a viticultural area is neither an endorsement or approval by ATF of the quality of wine produced in the area, but rather an identification of an area that is distinct from surrounding areas. ATF believes that the establishment of viticultural areas merely allows wineries to more accurately describe the origin of their wines to consumers, and helps consumers identify the wines they purchase. Thus, any benefit derived from the use of a viticultural area name is the result of the proprietor's own efforts and consumer acceptance of wines from that area.

No new requirements are proposed. Accordingly, a regulatory flexibility analysis is not required.

*Does the Paperwork Reduction Act Apply to This Proposed Rule?*

The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this notice of proposed rulemaking because the proposed regulation is not proposing new or revised record keeping or reporting requirements.

**4. Public Participation and Request for Comments**

*Who May Comment on This Notice?*

ATF requests comments from all interested parties. In addition, ATF specifically requests comments on the clarity of this proposed rule and how it may be made easier to understand. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so. However, assurance of consideration can only be given to comments received on or before the closing date.

*Can I Review Comments Received?*

Copies of the petition, the proposed regulations, the appropriate maps, and any written comments received will be available for public inspection during normal business hours at the ATF Reading Room, Office of Liaison and Public Information, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC 20226. For information on filing a Freedom of Information Act request for a copy of the comments, please refer to the internet address: http://www.atf.treas.gov/about/foia/foia.htm.

*Will ATF Keep My Comments Confidential?*

ATF will not recognize any comment as confidential. All comments and materials will be disclosed to the public. If you consider your material to be confidential or inappropriate for disclosure to the public, you should not include it in the comments. We will also disclose the name of any person who submits a comment.

During the comment period, any person may request an opportunity to present oral testimony at a public hearing. However, the Director reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

*How Do I Send Facsimile Comments?*

You may submit comments by facsimile transmission to (202) 927–8525. Facsimile comments must:

- Be legible.
- Reference this notice number.
- Be on paper 8½″ × 11″ in size.
- Contain a legible written signature.
- Be not more than three pages.

We will not acknowledge receipt of facsimile transmissions. We will treat facsimile transmissions as originals.

*How Do I Send Electronic Mail (E-Mail) Comments?*

You may submit comments by e-mail by sending the comments to nprm@atfhq.atf.treas.gov. You must follow these instructions. E-mail comments must:

- Contain your name, mailing address, and e-mail address.
- Reference this notice number.
- Be legible when printed on not more than three pages, 8½″ × 11″ in size.

We will not acknowledge receipt of e-mail. We will treat comments submitted by e-mail as originals.

*How Do I Send Comments to the ATF Internet Web Site?*

You may also submit comments using the comment form provided with the online copy of the proposed rule on the ATF internet web site at http://www.atf.treas.gov.



**5. Drafting Information**

The principal author of this document is Lisa M. Gesser, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

**List of Subjects in 27 CFR Part 9**

Administrative practice and procedure, Alcohol and alcoholic beverages, Consumer protection, and Wine.

**Authority and Issuance**

Title 27, Code of Federal Regulations, Part 9, American Viticultural Areas, is proposed to be amended as follows:

## PART 9—AMERICAN VITICULTURAL AREAS

**Paragraph 1.** The authority citation for part 9 continues to read as follows:

**Authority:** 27 U.S.C. 205.

### Subpart C—Approved American Viticultural Areas

**Par. 2.** Subpart C is amended by adding § 9.172 to read as follows:

* * * * *

**§ 9.172 West Elks**

(a) *Name.* The name of the viticultural area described in this section is "West Elks."

(b) *Approved Maps.* The appropriate maps for determining the boundary of the West Elks viticultural area are four United States Geological Survey (U.S.G.S.) topographic maps (Scale: 1:250,000). They are titled:

(1) Lazear Quadrangle (Colorado-Delta Co. 1955 (photorevised 1978));

(2) Hotchkiss Quadrangle (Colorado-Delta Co. 1965 (photorevised 1979));

(3) Paonia Quadrangle (Colorado-Delta Co. 1965 (photorevised 1979); and

(4) Bowie Quadrangle (Colorado-Delta Co. 1965 (photorevised 1978).

(c) *Boundaries.* The West Elks viticultural area is located in eastern Delta County, Colorado. The beginning point is found on the "Bowie Quadrangle" U.S.G.S. map at the ¼ corner common to Sections 19 and 20, Township 13 South, Range 91 West (T. 13 S., R. 91 W.);

(1) The boundary proceeds east following the center subdivision lines of Sections 20 and 21 to its intersection with Colorado Highway 133;

(2) Then northeasterly following Colorado Highway 133 to its intersection with the N–S center subdivision line of Section 14, T. 13 S., R. 91 W., near Juanita Junction;

(3) Then south following the center subdivision line to its intersection with the North Fork of the Gunnison River;

(4) Then southwesterly following the North Fork of the Gunnison River to its intersection with the Stewart Ditch in the extreme southern part of Section 15, T. 13 S., R. 91 W.;

(5) Then southwesterly following the Stewart Ditch to its intersection with the section line common to Sections 21 and 28, T. 13 S., R. 91 W.;

(6) Then east following the section line common to Sections 21 and 28 to its intersection with the 6000 foot contour;

(7) Then southerly following the 6000 foot contour to its second intersection with the section line common to Sections 3 and 4, T. 14 S., R. 91 W., located on the Paonia, Colo. U.S.G.S. map;

(8) Then south following the section line common to Sections 3 and 4 to its intersection with the 6200 foot contour;

(9) Then southerly following the 6200 foot contour to its intersection with the section line common to Sections 16 and 17, T. 14 S., R. 91 W.;

(10) Then south following the section line common to Sections 16 and 17 to the point of intersection of Sections 16, 17, 20 and 21;

(11) Then west following the section line common to Sections 17 and 20 to the point of intersection of Sections 17, 18, 19 and 20;

(12) Then south following the section line common to Sections 19 and 20 to the N1/16 corner common to Sections 19 and 20;

(13) Then west following the subdivision line across Section 19 to the N1/16 corner common to Section 19, T. 14 S., R. 91 W. and Section 24, T. 14 S., R. 92 W.;

(14) Then south following the range line between R. 91 W. and R. 92 W. to the point of intersection between Sections 19 and 30, T. 14 S., R. 91 W. and Sections 24 and 25, T. 14 S., R. 92 W.;

(15) Then west following the section line common to Sections 24 and 25 to the point of intersection between Sections 23, 24, 25 and 26, located on the Hotchkiss, Colo. U.S.G.S. map;

(16) Then south following the section line common to Sections 25 and 26 to the point of intersection between Sections 25, 26, 35 and 36;

(17) Then west following the section lines common to Sections 26 and 35 and Sections 27 and 34 to the point of intersection between Sections 27, 28, 33 and 34;

(18) Then south following the section line common to Sections 33 and 34 to the point of intersection between Sections 33 and 34, T. 14 S., R. 92 W. and Sections 3 and 4, T. 15 S., R. 92 W.;

(19) Then west following the township line between T. 14 S. and T. 15 S. approximately three miles to the point of intersection between Section 31, T. 14 S., R. 92 W., Section 6, T. 15 S., R. 92 W., Section 1, T. 15 S., R. 93 W., and Section 36, T. 14 S., R. 93 W.;

(20) Then south following the range line between R. 92 W. and R. 93 W. to the point of intersection between Sections 6 and 7, T. 15 S., R. 92 W. and Sections 1 and 12, T. 15 S., R. 93 W.;

(21) Then west following the section lines common to Sections 1 and 12 and Sections 2 and 11 to its intersection with the North Fork of the Gunnison River, located on the Lazear, Colo. U.S.G.S. map;

(22) Then westerly following the North Fork of the Gunnison River to its intersection with Big Gulch in the extreme northeastern corner of Section 6, T. 15 S., R. 93 W.;

(23) Then northerly following Big Gulch to its intersection with the section line common to Sections 17 and 18, T. 14 S., R. 93 W.;

(24) Then north following the section lines common to Sections 17 and 18, Sections 7 and 8, and Sections 5 and 6 to the point of intersection between Sections 5 and 6, T. 14 S., R. 93 W. and Sections 31 and 32, T. 13 S., R. 93 W.;

(25) Then east following the township line between T. 13 S. and T. 14 S. approximately two miles to the point of intersection between Sections 3 and 4, T. 14 S., R. 93 W. and Sections 33 and 34, T. 13 S., R. 93 W.;

(26) Then south following the section line common to Sections 3 and 4 to the point of intersection between Sections 3, 4, 9 and 10;

(27) Then east following the section lines for approximately 6 miles to the point of intersection between Sections 3, 4, 9 and 10, T. 14 S., R. 92 W., located on the Hotchkiss, Colo. U.S.G.S. map;

(28) Then north following the section line common to Sections 3 and 4 to the point of intersection between Sections 3 and 4, T. 14 S., R. 92 W. and Sections 33 and 34, T. 13 S., R. 92 W.;

(29) Then east following the township line between T. 13 S. and T. 14 S. to its intersection with the Fire Mountain Canal in the southwestern corner of Section 35, T. 13 S., R. 92 W.;

(30) Then northeasterly following the Fire Mountain Canal through the extreme northwest corner of the Paonia, Colo. U.S.G.S. map to its intersection with the section line common to Sections 29 and 30, T. 13 S., R. 91 W., located on the Bowie, Colo. U.S.G.S. map;

(31) Then north following the section lines common to Sections 29 and 30 and Sections 19 and 20 to the ¼ corner

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common to Sections 19 and 20, the point of beginning.

**Bradley A. Buckles,**

*Director.*

[FR Doc. 00–26454 Filed 10–13–00; 8:45 am]

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## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 3

**RIN 2900–AK00**

### Post-Traumatic Stress Disorder Claims Based on Personal Assault

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes to amend Department of Veterans Affairs (VA) adjudication regulations concerning the proof necessary to establish occurrence of a stressor in claims for service connection of post-traumatic stress disorder (PTSD) resulting from personal assault. This amendment would provide that evidence other than the veteran's service records may be sufficient to establish the occurrence of the stressor. The proposed regulation also would require that VA not deny such claims without first advising claimants that evidence from sources other than a veteran's service records may prove the stressor occurred. This would make claimants aware of the types of evidence which might support their claims, and would give them an opportunity to obtain and submit such evidence. It would also ensure that VA will not deny claims simply because the claimants did not realize that certain types of evidence may be relevant and therefore failed to submit such evidence to VA.

**DATES:** Comments must be received on or before December 15, 2000.

**ADDRESSES:** Mail or hand-deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1154, Washington, DC 20420; or fax comments to (202) 273–9289; or e-mail comments to "*OGCRegulations@mail.va.gov*". Comments should indicate that they are submitted in response to "RIN 2900–AK00." All comments received will be available for public inspection in the Office of Regulations Management, Room 1158, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays).

**FOR FURTHER INFORMATION CONTACT:** Bill Russo, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420; telephone (202) 273–7210.

**SUPPLEMENTARY INFORMATION:** Section 3.304(f) of 38 CFR states that service connection for PTSD requires medical evidence diagnosing the condition; a link, established by medical evidence, between current symptoms and an in-service stressor; and credible supporting evidence that the claimed in-service stressor occurred.

A claim for PTSD may be based upon a personal assault, including sexual assault. Many incidents of in-service personal assault are not officially reported, and veterans may find it difficult to produce evidence to prove the occurrence of this type of stressor. This proposed amendment addresses this difficulty by specifying that evidence from sources other than the veteran's service records may constitute credible supporting evidence of the in-service stressor, where the alleged stressor is a personal assault.

VA's Adjudication Procedure Manual, M21–1, discusses the types of evidence which may be credible supporting evidence that the stressor occurred for PTSD claims involving an in-service personal assault. M21–1, Part III, par. 5.14c. and Part VI, par. 11.38. In *Patton* v. *West*, 12 Vet. App. 272, 283 (1999), the U.S. Court of Appeals for Veterans Claims discussed paragraph 5.14c. of M21–1, Part III, referring to it as a "regulatory provision [ ]." We are proposing to amend VA's adjudication regulations at § 3.304(f) to specify the types of evidence, other than a veteran's service records, which may establish the occurrence of a personal assault during service.

This proposed amendment would recognize that in PTSD claims based on in-service assault, evidence from sources other than a veteran's service records may constitute credible supporting evidence of the stressor. Examples of such evidence include, but are not limited to: Records from law enforcement authorities, rape crisis centers, mental health counseling centers, hospitals or physicians; and statements from family members, roommates, fellow service members or clergy.

Evidence from these sources might include, for example, evidence of behavior changes following the personal assault. Examples of behavior changes that might result from a personal assault include, but are not limited to: A request by the veteran for a transfer to another military duty assignment; a change in work performance; substance abuse; episodes of depression, panic attacks or anxiety where there is no identifiable reason for the episodes; or unexplained economic or social behavior changes.

The proposed regulation would also provide that VA will not deny a PTSD claim which is based on personal assault without first advising the claimant that evidence from alternative sources or evidence of behavior changes may constitute credible supporting evidence of the stressor. This would ensure that claimants are aware of the types of evidence which might support their claims and would give them an opportunity to obtain and submit such evidence. It would also ensure that VA will not deny claims simply because the claimants did not realize that certain types of evidence may be relevant and therefore failed to submit such evidence to VA.

The proposed amendment also would state that VA may submit any evidence that it receives to an appropriate medical professional for an opinion as to whether it indicates that a personal assault occurred. Such an opinion may be necessary when evidence requires medical interpretation and analysis based on the portion of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, which concerns PTSD.

This proposed amendment would also divide current § 3.304(f), regarding PTSD claims, into two new sub-paragraphs, one involving PTSD claims by combat veterans and the other concerning PTSD claims by former prisoners-of-war. No substantive change would be made by this aspect of the proposal.

### OMB Review

This proposed rule has been reviewed by OMB under Executive Order 12866.

### Regulatory Flexibility Act

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that these amendments would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance program numbers are 64.100, 64.101, 64.104, 64.105, 64.106, 64.109, and 64.110.

### List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans, Vietnam.

Approved: July 17, 2000.

**Togo D. West, Jr.,**

*Secretary of Veterans Affairs.*

For the reasons set forth in the preamble, 38 CFR part 3 is proposed to be amended as follows:

## PART 3—ADJUDICATION

### Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

**Authority:** 38 U.S.C. 501(a), unless otherwise noted.

2. In § 3.304, paragraph (f) is revised to read as follows:

**§ 3.304 Direct service connection; wartime and peacetime.**

* * * * *

(f) *Post-traumatic stress disorder.* Service connection for post-traumatic stress disorder requires medical evidence diagnosing the condition in accordance with § 4.125(a) of this chapter; a link, established by medical evidence, between current symptoms and an in-service stressor; and credible supporting evidence that the claimed in-service stressor occurred.

(1) If the evidence establishes that the veteran engaged in combat with the enemy and the claimed stressor is related to that combat, in the absence of clear and convincing evidence to the contrary, and provided that the claimed stressor is consistent with the circumstances, conditions, or hardships of the veteran's service, the veteran's lay testimony alone may establish the occurrence of the claimed in-service stressor.

(2) If the evidence establishes that the veteran was a prisoner-of-war under the provisions of § 3.1(y) of this part and the claimed stressor is related to that prisoner-of-war experience, in the absence of clear and convincing evidence to the contrary, and provided that the claimed stressor is consistent with the circumstances, conditions, or hardships of the veteran's service, the veteran's lay testimony alone may establish the occurrence of the claimed in-service stressor.

(3) If a post-traumatic stress disorder claim is based on in-service personal assault, evidence from sources other than the veteran's service records may constitute credible supporting evidence of the stressor. Examples of such evidence include, but are not limited to: Records from law enforcement authorities, rape crisis centers, mental health counseling centers, hospitals or physicians; and statements from family members, roommates, fellow service members or clergy. Evidence of behavior changes following the claimed assault is one type of relevant evidence which may be found in these sources. Examples of behavior changes that may constitute credible supporting evidence of the stressor include, but are not limited to: A request for a transfer to another military duty assignment; deterioration in work performance; substance abuse; episodes of depression, panic attacks, or anxiety without an identifiable cause; or unexplained economic or social behavior changes. VA will not deny a post-traumatic stress disorder claim which is based on in-service personal assault without first advising the claimant that evidence from sources other than the veteran's service records or evidence of behavior changes may constitute credible supporting evidence of the stressor and allowing him or her the opportunity to furnish this type of evidence or advise VA of potential sources of such evidence. VA may submit any evidence that it receives to an appropriate medical professional for an opinion as to whether it indicates that a personal assault occurred.

(Authority: 38 U.S.C. 501(a), 1154(b))

[FR Doc. 00–26450 Filed 10–13–00; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[CA 030–EOC; FRL–6885–8]**

### Revisions to the California State Implementation Plan, Bay Area Air Quality Management District; Extension of Comment Period

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule; extension of comment period.

**SUMMARY:** EPA is extending the comment period for action proposed on September 18, 2000 (65 FR 56284).

**DATE:** Any comments on this proposal must arrive by November 17, 2000.

**ADDRESSES:** Mail comments to David Wampler, Permits Office (Air-3), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

**FOR FURTHER INFORMATION CONTACT:** David Wampler, Permits Office (Air-3), U.S. Environmental Protection Agency, Region IX, (415) 744–1256.

**SUPPLEMENTARY INFORMATION:** On September 18, 2000, EPA proposed the following revisions to the California State Implementation Plan (SIP).

| Local agency | Rule No. | Proposed action |
|---|---|---|
| Bay Area AQMD | Regulation 1 | Approval. |
| Bay Area AQMD | Regulation 2, Rules 1, 2, and 4 | Limited Approval/Disapproval. |

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The proposed action provided a 30-day public comment period. In response to a request from California Council for Environmental and Economic Balance submitted by telephone and in writing on September 28, 2000, EPA is extending the comment period for an additional 30 days.

Dated: October 3, 2000.

**Felicia Marcus,**

*Regional Administrator, Region IX.*

[FR Doc. 00–26506 Filed 10–13–00; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[FRL–6886–7]**

### Supplemental Information to Support Proposed Approvals of One-Hour Ozone Attainment Demonstrations for Serious Ozone Nonattainment Areas

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of availability and reopening of comment period.

**SUMMARY:** Notice is hereby given that EPA has performed an analysis to evaluate emission levels of oxides of nitrogen ( $NO_X$) and volatile organic compounds (VOC) and their relationships to the application of current and anticipated control measures expected to be implemented in four serious one-hour ozone nonattainment areas. This analysis was done to determine if additional reasonably available control measures (RACM) are available after adoption of Clean Air Act (Act) required measures for the following serious ozone nonattainment areas: Greater Connecticut, New York-New Jersey-Connecticut; Springfield, Massachusetts; Washington, D.C.-Virginia-Maryland; and Atlanta, Georgia. The EPA performed this analysis in response to comments that were submitted on the proposals on these areas' one-hour ozone attainment demonstrations. The EPA took action to propose approval (and disapproval in the alternative) of these areas' State implementation plans (SIPs) on December 16, 1999 (Greater Connecticut (64 FR 70332); Springfield (64 FR 70319); Metropolitan Washington (64 FR 70460); and Atlanta (64 FR 70478)). This information supplements the December 16, 1999 proposals.

**DATES:** The EPA is establishing a comment period, ending on October 31, 2000. All comments should be sent to the appropriate regional office as listed in the **ADDRESSES** section by that date.

**ADDRESSES:** Written comments on the Greater Connecticut and Springfield SIPs should be sent (in duplicate if possible) to: David B. Conroy, EPA Region I (New England) Office, One Congress Street, Suite 1100–CAQ, Boston, Massachusetts 02114–2023. Copies of the Connecticut and Massachusetts State submittals and EPA's technical support document are available for public inspection during normal business hours at the following address: U.S. Environmental Protection Agency, Region 1 (New England), One Congress St., 11th Floor, Boston, Massachusetts, telephone (617) 918–1664. Please telephone in advance before visiting.

Written comments on the Washington, D.C.-Virginia-Maryland submittals should be submitted (in duplicate if possible) to: David L. Arnold, Chief, Ozone and Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region 3, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following address: Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103, and the docket numbers are DC039–2019, VA090–5036 and MD073–3045.

Written comments on the Atlanta SIP should be submitted (in duplicate if possible) to: Scott M. Martin, EPA Region 4, Air Planning Branch, 61 Forsyth Street, S.W., Atlanta, Georgia 30303. Copies of the State submittal are available at the following address for inspection during normal business hours: Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, S.W., Atlanta, Georgia 30303–8960, and the docket number is GA–47–200002.

**FOR FURTHER INFORMATION CONTACT:** For general questions on the RACM analysis for mobile sources, contact Mr. Mark Simons at either 734–214–4420 or by e-mail *simons.mark@epa.gov*. For general questions on the RACM analysis for stationary sources, contact Mr. John Silvasi at either (919) 541-5666 or by e-mail *silvasi.john@epa.gov*. For specific questions on the Greater Connecticut and Springfield SIPs, contact Mr. Richard Burkhart at (617) 918–1664 or by e-mail *burkhart.richard@epa.gov*. For specific questions on the Washington, D.C., SIP, contact Mr. David Arnold at (215) 814–2172 or by e-mail *arnold.dave@epa.gov*. For specific questions on the Atlanta SIP, contact Mr. Scott Martin at (404) 562–9036 or by e-mail *martin.scott@epa.gov*.

**SUPPLEMENTARY INFORMATION:** Section 172(c)(1) of the Act requires SIPs to contain reasonably available control measures (RACM) as necessary to provide for attainment as expeditiously as practicable. Several commenters have stated that there is no evidence in the four serious ozone attainment demonstrations that were proposed on December 16, 1999 that they have adopted all RACM, and a commenter further stated that the mobile source emission budgets in the SIPs are inadequate by definition because the SIPs do not demonstrate timely attainment or contain the emission reductions required for all RACM. In addition, some commenters stated that for all potential RACM measures not adopted into the SIP, the State must provide a justification for why they were determined not to be RACM.

The analysis EPA conducted demonstrates that a number of possible emission control measures have been evaluated for their emission reductions. It further demonstrates that the measures evaluated either (a) are likely to require an intensive and costly effort for numerous small area sources, or (b) do not advance the attainment dates for the four areas, and therefore would not be considered RACM under the Act.

EPA has previously provided guidance interpreting the RACM requirements of 172(c)(1). See 57 FR 13498, 13560. In that guidance, EPA indicated its interpretation that potentially available measures that would not advance the attainment date for an area would not be considered RACM. EPA concluded that a measure would not be reasonably available if it would not advance attainment. EPA also indicated in that guidance that States should consider all potentially available measures to determine whether they were reasonably available for implementation in the area, and whether they would advance the attainment date. Further, States should indicate in their SIP submittals whether measures considered were reasonably available or not, and if measures are reasonably available they must be adopted as RACM. Finally, EPA indicated that States could reject potential RACM measures either because they would not advance the attainment date, would cause substantial widespread and long-term adverse impacts, or for various reasons related to local conditions, such as economics or implementation concerns.



The EPA also issued a recent memorandum on this topic, "Guidance on the Reasonably Available Control Measures (RACM) Requirement and Attainment Demonstration Submissions for Ozone Nonattainment Areas." John S. Seitz, Director, Office of Air Quality Planning and Standards, dated November 30, 1999. A copy can be obtained from *www.epa.gov/ttn/oarpg/t1pgm.html*.

In response to public comments received on the proposed rulemakings in December, EPA has reviewed the SIP submittals for the four serious areas and determined that they did not include sufficient documentation concerning available RACM measures. Therefore, EPA has itself reviewed numerous potential RACM measures, as documented in the available analysis. Based on this analysis, EPA concluded that these measures would either (a) likely require an intensive and costly effort for numerous small area sources, or (b) not advance the attainment date in any of the four areas and, therefore, would not be considered RACM.

Although EPA encourages areas to implement available RACM measures as potentially cost effective methods to achieve emissions reductions in the short term, EPA does not believe that section 172(c)(1) requires implementation of potential RACM measures that either require costly implementation efforts or produce relatively small emissions reductions that will not be sufficient to allow any of the four areas to achieve attainment in advance of full implementation of all other required measures.

Electronic Availability—An electronic version of EPA's RACM analysis can be downloaded at *www.epa.gov/ttn/rto* under "What's New."

For those persons without electronic capability, a copy of this analysis may be obtained from Ms. Linda Lassiter at (919) 541–5526.

The official record for these proposed actions have been established under individual dockets which are located at the Regional office address in the **ADDRESSES** section at the beginning of this document. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect file format or ASCII file format. All comments and data in electronic form must be identified by the docket number associated with the individual state proposal.

Dated: October 10, 2000.

**Henry C. Thomas,**

*Acting Director, Office of Air Quality Planning and Standards.*

[FR Doc. 00–26612 Filed 10–13–00; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 271

**[FRL–6885–4]**

### Utah: Final Authorization of State Hazardous Waste Management Program Revision

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The EPA proposes to grant Final authorization to the hazardous waste program changes submitted by Utah. In the "Rules" section of this **Federal Register**, we are authorizing the State's program changes as an immediate final rule without a prior proposed rule because we believe this action is not controversial. Unless we get written comments opposing this authorization during the comment period, the immediate final rule will become effective and the Agency will not take further action on this proposal. If we receive comments that oppose this action, we will publish a document in the **Federal Register** withdrawing this rule before it takes effect. EPA will address public comments in a later final rule based on this proposal. EPA may not provide further opportunity for comment. Any parties interested in commenting on this action must do so at this time.

**DATES:** We must receive your comments by November 30, 2000.

**ADDRESSES:** Send written comments to Kris Shurr, 8P–HW, U.S. EPA, Region VIII, 999 18th St, Ste 500, Denver, Colorado 80202–2466, phone number: (303) 312–6139. You can view and copy Utah's application at the following addresses: Utah Department of Environmental Quality (UDEQ), from 8:00 AM to 5:00 PM, 288 North 1460 West, Salt Lake City, Utah 84114–4880, contact: Susan Toronto, phone number: (801) 538–6776. and EPA Region VIII, from 8:00 AM to 3:00 PM, 999 18th Street, Suite 500, Denver, Colorado 80202–2466, contact: Kris Shurr, phone number: (303) 312–6139.

**FOR FURTHER INFORMATION CONTACT:** Kris Shurr, EPA Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466, phone number: (303) 312–6139.

**SUPPLEMENTARY INFORMATION:** For additional information, please see the immediate final rule published in the "Rules" section of this **Federal Register**.

Dated: October 5, 2000.

**William P. Yellowtail,**

*Regional Administrator, Region VIII.*

[FR Doc. 00–26504 Filed 10–13–00; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 697

**[Docket No. 000412106-0262-02; I.D. 032200A]**

**RIN 0648-AO02**

### Atlantic Coastal Fisheries Cooperative Management Act Provisions; Horseshoe Crab Fishery; Closed Area

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes to prohibit fishing for horseshoe crabs and limit possession of them in an area in the exclusive economic zone (EEZ) encompassing a 30-nautical mile (nm) radius (in a shape roughly equivalent to a rectangle) seaward from the midpoint of the territorial sea line at the mouth of Delaware Bay. The intent of this proposed rule is to provide protection for the Atlantic coast stock of horseshoe crab, and to promote the effectiveness of the Atlantic States Marine Fisheries Commission's (Commission) Interstate Fishery Management Plan (ISFMP) for horseshoe crab.

**DATES:** Written comments must be received on or before October 31, 2000.

**ADDRESSES:** Comments on the proposed rule should be sent to, and copies of an Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA), are available from, Richard H. Schaefer, Chief, Staff Office for Intergovernmental and Recreational Fisheries, National Marine Fisheries Service, 8484 Georgia Avenue, Suite 425, Silver Spring, MD 20910. Comments regarding the collection-of-information requirement contained in this proposed rule should be sent to Richard H. Schaefer and to the Office of Information and Regulatory Affairs attention: NOAA Desk Officer, Office of Management and Budget, Washington D.C. 20503.

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**FOR FURTHER INFORMATION CONTACT:** Paul Perra, 301-427-2014.

**SUPPLEMENTARY INFORMATION:**

**Proposed Action**

NMFS is proposing Federal horseshoe crab conservation measures in the EEZ under the authority of section 803(b) of the Atlantic Coastal Fisheries Cooperative Management Act (ACFCMA), 16 U.S.C. 5101 *et seq.*, which states that, in the absence of an approved and implemented Fishery Management Plan under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U.S.C. 1801 *et seq.*) and after consultation with the appropriate Fishery Management Council(s), the Secretary of Commerce may implement regulations to govern fishing in the EEZ, i.e., from 3 to 200 nm offshore. These regulations must be (1) compatible with the effective implementation of an ISFMP developed by the Commission, and (2) consistent with the national standards set forth in section 301 of the Magnuson-Stevens Act.

The proposed rule would prohibit fishing for and limit the possession of horseshoe crabs in an area in the EEZ encompassing a 30-nm radius (in a shape roughly equivalent to a rectangle) seaward from the midpoint of the territorial sea line at the mouth of Delaware Bay. The proposed rule would also allow whelk fishing vessels to possess horseshoe crabs as bait on board in the closed area as long as the vessels do not have commercial fishing gear on board aside from whelk fishing traps. Other commercial gears (e.g., trawls, dredges, gill nets) would be prohibited on vessels in the closed area with horseshoe crabs on board. As a consequence of not allowing other commercial gears on the whelk vessels in the closed area, whelk vessels would not be able to fish for species other than whelks in the closed area. NMFS does not know the number of whelk vessels that may fish in the closed area or if they conduct other fishing activities in conjunction with their whelk fishing trips, but assumes from discussions with the ASMFC Horseshoe Crab Plan Monitoring Team that combined whelk and other species trips do not take place or are minimal. The proposed rule would also require fishermen to return to the water all horseshoe crabs caught in the closed area incidental to any fishing operations, including whelk fishing.

The proposed closed area in the EEZ off Delaware Bay would be bounded as follows: (1) On the north by a straight line connecting points 39°14.6'N. lat., 74°30.9'W. long. (3 nm off of Peck Beach, New Jersey) and 39°14.6'N lat., 74°22.5'W. long.; (2) On the east by a straight line connecting points 39°14.6'N. lat., 74°22.5'W. long. and 38°22.0'N. lat., 74°22.5'W. long.; (3) On the south side by a straight line connecting points 38°22.0'N. lat., 74°22.5'W. long. and 38°22.0'N. lat., 75°00.4'W. long. (3 nm off of Ocean City, MD); and (4) On the west by state waters.

**The Horseshoe Crab Fishery**

Horseshoe crabs are used as bait in American eel, whelk, and catfish fisheries, and are utilized by the biomedical industry. Also, horseshoe crabs play an important ecological role because they are a food source for loggerhead sea turtles, and their eggs are an important food source for migratory shorebirds. They have been directly harvested by hand and by various gears including gill nets, traps, pound nets, otter trawls, and seines. There is no evidence that a recreational fishery ever developed for horseshoe crab. While no complete coastwide assessment exists for horseshoe crabs, some mid-Atlantic surveys show several cases of localized horseshoe crab population declines that are of concern.

Estimated total landings of horseshoe crabs for bait from 1993 to 1997 increased from 1,906,059 lb (864.6 metric tons) to 6,146,487 lb (2788 metric tons). These numbers are probably an underestimation of landings for these years because all horseshoe crab landings have not been reported due to a lack of reporting requirements in some states. Improvements in the collection of landings data in recent years could account for some of the increase in landings. However, estimates of landings in Delaware, Maryland, New Jersey, New York, and Rhode Island indicate a rapid growth in the fishery due primarily to the increased use of horseshoe crab as bait in the American eel, whelk, and catfish fisheries, and a shift in fishing pressure from declining traditional fisheries to the horseshoe crab fishery. The current estimate for total Atlantic coast horseshoe crab bait landings for 1998, based on a 1998/99 NMFS/Commission Horseshoe Crab Technical Committee harvest survey, is 8,995,700 lb (4080.4 metric tons).

**Addendum 1 to the ISFMP for Horseshoe Crabs**

Historically, horseshoe crabs were managed by individual states until 1998 when the Commission adopted an ISFMP for horseshoe crab in response to concerns of possible localized declines in the Atlantic Coast horseshoe crab stock. The Commission approved and implemented Addendum 1 to the Commission's ISFMP for horseshoe crab in February 2000. Addendum 1's intent is to protect and maintain horseshoe crab spawning stock at levels that can sustain fisheries and that will provide an abundance of horseshoe crab eggs as a food source for migratory shorebirds. Addendum 1 mandates that all Atlantic coastal states implement their portion of a Commission quota system for the bait harvest of horseshoe crabs and implement a stock and fishery monitoring program as established by the Commission. In addition, Addendum 1 requests that NMFS prohibit the transfer of horseshoe crabs in Federal waters, and establish an offshore horseshoe crab sanctuary in Federal waters within a 30-nautical mile radius off the mouth of the Delaware Bay.

To support the Commission's horseshoe crab management efforts under Addendum 1, NMFS published an Advance Notice of Proposed Rulemaking (ANPR)(65 FR 25698, May 3, 2000), to ask the public to consider the establishment of an offshore horseshoe crab closed area in the EEZ encompassing a 30-nm radius off the mouth of the Delaware Bay. Because of the difficulty in enforcing a semi-circular closed area, NMFS proposes establishing a closed area in Federal waters that would be roughly equivalent in area to a semi-circle with a 30-nm radius, but roughly in the shape of a rectangle. The comment period closed on June 2, 2000. Public response was overwhelming for proceeding with a proposed rule to implement the closed area. Two-hundred-eighty-one comments were received in favor of continuing the rulemaking process, and one was against. Thirteen conservation organizations, whose combined membership is estimated at over one million people, wrote in support of the closure. The States of Delaware, Maryland, and New Jersey also sent in letters supporting the closure. The one letter opposing the closure was written on behalf of two Virginia conch processing companies. It stated that a closed area in addition to the other measures in the Commission's ISFMP for horseshoe crabs is not scientifically justified. The commenter felt that the closed area will force the harvest of horseshoe crabs from more offshore areas to more nearshore areas where female horseshoe crabs tend to be more prominent, which would be detrimental to the protection of the stock.

NMFS feels the closed area is a risk-averse (i.e., minimizes the risk to the horseshoe crab resource) measure that is based on the best available scientific information and designed to protect the horseshoe crabs in the Delaware Bay area. Furthermore, the closed area, in conjunction with current state laws including the Atlantic coast states' implementation of their quotas in Addendum 1, is part of a comprehensive management program that will control fishing effort on horseshoe crabs in nearshore areas and the EEZ off Delaware Bay. Addendum 1 is adequate to protect horseshoe crabs because it will reduce fishing effort on both male and female horseshoe crabs by protecting them when they are concentrated in the closed area and by reducing state quotas.



**The Need for a Closed Area Off Delaware Bay**

Under Addendum 1, Atlantic coast states have recently implemented measures to control the harvest of horseshoe crabs as bait. As a result, more fishing for horseshoe crabs is taking place in the EEZ, particularly in the mid-Atlantic area. Therefore, efforts to support the Commission's management plan and provide adequate conservation measures for horseshoe crabs by implementing compatible management measures in the EEZ are a very important part of the coastwide management program for horseshoe crab.

Addendum 1 manages horseshoe crabs as a coastwide stock from Maine through Florida, but pays particular attention to protecting the localized Delaware Bay population of horseshoe crabs by recommending a closed area to horseshoe crab fishing in the EEZ encompassing a 30-nm radius off the mouth of Delaware Bay. Since there are no Federal laws restricting harvest for horseshoe crab in EEZ waters adjoining Delaware Bay, horseshoe crabs in the Delaware Bay area can be legally caught in the EEZ, and landed in other states that have less strict conservation measures for horseshoe crabs than the Delaware Bay states. Under current state laws, all Atlantic coast states monitor and manage fishing for horseshoe crabs in state waters. The states of New Jersey, Delaware, and Maryland have implemented especially strong conservation measures to protect horseshoe crabs in the Delaware Bay area, such as restricting the types of gear used, number of vessels that can harvest horseshoe crabs, and the amounts of horseshoe crabs that can be harvested from their waters. While some fishing may be allowed in state waters near the mouth of Delaware Bay, it is very closely controlled by state regulations. However, adjoining EEZ waters have no Federal restrictions on horseshoe crab harvest.

This special concern for horseshoe crabs in the Delaware Bay area arises because the Delaware Bay area is the epicenter of abundance for the Atlantic coast horseshoe crab stock and concentrated fishing effort in the EEZ near the mouth of Delaware Bay could deplete the horseshoe crab population in the Delaware Bay area. Maintaining the abundance of horseshoe crabs in the Delaware Bay is important because migratory shorebirds stop in the Delaware Bay area where they depend on horseshoe crab eggs as an important food source at a critical time during their migrations. Also, the Delaware Bay area supports horseshoe crab fisheries that harvest horseshoe crabs for whelk and eel bait, and for medical use. The increased landings of horseshoe crabs from the EEZ has caused concern for the ability of the mid-Atlantic horseshoe crab population to continue to provide enough eggs for migratory shorebird needs as well as maintaining a sustainable fisheries over the long term. The proposed closed area will give added protection to the localized population of horseshoe crabs that tend to concentrate near the mouth of the Delaware Bay. Horseshoe crabs have been found as far as 35 nm from shore. They tend to concentrate nearshore in the spring and move further offshore into deeper water in the fall and winter. The proposed closed area is known to have high concentrations of horseshoe crabs and is large enough to protect horseshoe crabs in the shallow and deeper waters adjacent to Delaware Bay as they move inshore and offshore throughout the year. The proposed closed area will serve as an integral part of the comprehensive State/Federal management program detailed in Addendum 1.

In addition to this proposed rule, NMFS intends to propose, under a separate rulemaking, a rule to establish reporting and permitting requirements, and prohibit transfers at sea of horseshoe crabs by federally permitted vessels, as recommended to NMFS by the Commission.

Additional background for the proposed rule for the closed area is available and contained in a EA/RIR/IRFA prepared by NMFS (see **ADDRESSES**).

**Changes from ANPR**

The following are minor adjustments to the closed area's latitude and longitude readings identified in the ANPR:

39°15.0'N. lat., has been changed to 39°14.6'N. lat.; 74°32.66'W. long., has been changed to 74°30.9'W. long.; 74°22.0'W. long., has been changed to 74°22.5'W. long.; and 75°35.46'W. long., has been changed to 75°00.4'W. long.

**Classification**

NMFS prepared an initial regulatory flexibility analysis (IRFA) that describes the impact this proposed rule, if adopted, would have on small entities. A summary of the IRFA is as follows:

This proposed rule is published under the authority of section 803 of the ACFCMA. The purpose of the proposed rule is to improve cooperative management for the Atlantic coast horseshoe crab (*Limulus polyphemus*) and to provide protection to the Delaware Bay population of horseshoe crabs to support conservation of the resource and help assure an adequate supply of horseshoe crab eggs for migrating shorebirds as well as an adequate supply of horseshoe crabs for bait and medical purposes over time. The need for the closed area is explained in the preamble to this proposed rule and is not repeated here. The proposed rule is estimated to affect 18 fishing vessels, all of which are small businesses; effects on them are expected to be minor. Of these 18 vessels, 8 target horseshoe crabs directly and 10 land horseshoe crabs caught incidentally while targeting other species. This proposed rule may also affect vessels that fish for whelks and other species on the same trip in the closed area. However, it is unknown whether any vessels make such trips in the closed area and, if so, how many. NMFS requests comments on this issue.

There is an application requirement for persons or vessels seeking to obtain an exempted fishing permit under 50 CFR sections 697.22 and 600.745. No special skills are required to complete the application for an exempted fishing permit. The response time to complete the application is estimated to be 1 hour per vessel. No other Federal rules duplicate or conflict with the proposed action. Six alternatives were examined counting the proposed action. They were: Alternative 1: no action; Alternative 2: a closed area using a radius of 30 nm, prohibition on possession of horseshoe crabs; Alternative 3: a closed area using a radius of 30 nm, limited possession of horseshoe crabs by whelk fishermen allowed; Alternative 4: a closed area using a radius of 15 nm, prohibition on possession of horseshoe crabs; Alternative 5: a closed area using a radius of 15 nm, limited possession of horseshoe crabs by whelk fishermen; and Alternative 6: a closed area using a

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radius of 60 nm, limited possession of horseshoe crabs by whelk fishermen.

The preferred alternative would close an area encompassing a 30-nm radius off the mouth of Delaware Bay to horseshoe crab fishing, and allow limited possession of horseshoe crabs in the closed area by whelk vessels. Of the 18 vessels affected, 8 direct effort on horseshoe crabs, and 10 harvest and sell horseshoe crabs that were caught incidently while directing effort on other species. The reduction in annual total revenue for the 8 vessels that conduct directed fishing trips is likely to be much lower than the $694,650, which is the total 1998 EEZ horseshoe crab combined dockside landings for Maryland, Delaware, and Virginia). Since these vessels would be able to continue to fish for horseshoe crabs in adjoining areas, NMFS assumes they would do so with a reduction in efficiency because the density of horseshoe crabs decreases as you move further away from the mouth of Delaware Bay. For the purpose of our analysis, we assumed that efficiency is reduced by 10 percent, which is likely since NMFS trawl surveys show horseshoe crabs to be less dense in areas outside the closed areas. A corresponding 10-percent reduction in landings value would be about $69,465. The reduction in annual revenue for the 10 vessels that incidently harvest horseshoe crabs is expected to be less than $3,000 per vessel or about $30,000.

Analysis for the non-preferred alternatives as compared to the preferred alterative is as follows:

The no action alternative would not reduce revenue to any vessels in the short term, but may reduce future ex-vessel revenues if taking no action results in a decline in the horseshoe crab resource off Delaware Bay. Alternative 2 to close an area encompassing a 30-nm radius off of mouth of Delaware Bay to horseshoe crab fishing and to prohibit possession of horseshoe crabs would affect the same number of vessels that harvest horseshoe crabs by either directed effort or incidental catch and have the same associated revenue reduction for those vessels as the preferred Alternative 3 ($30,000 for the 10 vessels that have incidental harvest, and less than $69,465 for the 8 vessels that make directed horseshoe crab trips). Also, under Alternative 2 all whelk vessels that fish in the proposed area and use horseshoe crabs for bait would be affected. Under Alternative 3, they could continue to fish for whelks with horseshoe crabs. It is not known how many whelk vessels fish in the proposed area but it is assumed that some whelk vessels would have to use alternate baits or search for other fishing areas under Alternative 2. Therefore, revenue would be reduced for some of the whelk fishing fleet. Alternative 4 to close an area encompassing a radius of 15 nm and prohibit possession of horseshoe crabs would have lower economic impacts on vessels that harvest horseshoe crabs than the preferred Alternative 3 because the area is smaller. However, impacts on whelk fishermen under Alternative 4 may be greater than those on whelk fishermen under Alternative 3 because whelk fishermen would have to travel around the Alternative 4 closed area if they have horseshoe crabs on board. Under Alternative 4, as in Alternative 2, whelk vessels would be prevented from using horseshoe crabs as bait in the closed area. For Alternative 5 to close an area using a radius of 15 nm with limited possession of horseshoe crabs, economic impacts are expected to be similar to or slightly lower than those for the preferred Alternative 3 because the closed area is smaller than under the preferred alternative. For Alternative 6 to close an area using a radius of 60 nm while allowing limited possession of horseshoe crabs, economic impacts are expected to be similar but more than those for the preferred alternative, because the closed area is larger than the preferred alternative. A copy of the IRFA is available from NMFS (see **ADDRESSES**).

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number.

This rule contains a collection-of-information requirement subject to the PRA. That collection of information requirement is for persons or vessels requesting an exempted fishing permit subject to § 697.22 and § 600.745 to complete and submit an application. The response time to complete the application is estimated to be 1 hour per vessel. The collection of this information has been approved by the OMB under OMB Control Number 0648-0309. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS and OMB (see **ADDRESSES**).

This proposed rule has been determined to be significant for purposes of Executive Order 12866.

**List of Subjects in 50 CFR Part 697**

Fisheries, Fishing.

Dated: October 10, 2000.

**William T. Hogarth,**

*Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR chapter VI, part 697, is proposed to be amended as follows:

## PART 697—ATLANTIC COASTAL FISHERIES COOPERATIVE MANAGEMENT

1. The authority citation for part 697 is revised to read as follows:

**Authority:** 16 U.S.C. 5101 *et seq.*

2. In § 697.2, the definitions for "Whelk" and "Whelk trap" are added alphabetically to read as follows:

**§ 697.2 Definitions.**

* * * * *

*Whelk* means *Busycon* sp.

*Whelk trap* means any structure or device, other than a net or a dredge, that is placed or designed to be placed on the ocean bottom, is designed for or is capable of catching whelks, and has an unobstructed opening on its top of not less than eight inches (20.3 cm) square or nine inches (22.9 cm) in diameter through which whelks may pass.

* * * * *

3. Section 697.7, paragraphs (e) (3) through (5) are added to read as follows:

**§ 697.7 Prohibitions.**

* * * * * *

(e) * * *

(3) Fish for horseshoe crabs in the Carl N. Shuster Jr., Horseshoe Crab Reserve described in § 697.23(f)(1).

(4) Possess any horseshoe crabs in the area described in § 697.23(f)(1), except as allowed by § 697.23(f)(2).

(5) Fail to return immediately to the water horseshoe crabs caught in the area described in § 697.23(f)(1).

4. Section 697.22 is revised to read as follows:

**§ 697.22 Exempted fishing.**

The Regional Administrator may exempt any person or vessel from the requirements of this part for the conduct of exempted fishing beneficial to the management of the American lobster, weakfish, Atlantic striped bass, Atlantic sturgeon, or horseshoe crab, resource or fishery pursuant to the provisions of § 600.745 of this chapter.



(a) The Regional Administrator may not grant such exemption unless it is determined that the purpose, design, and administration of the exemption is consistent with the objectives of any applicable stock rebuilding program, the provisions of the ACFCMA, the Magnuson-Stevens Act, and other applicable law, and that granting the exemption will not:

(1) Have a detrimental effect on the American lobster, Atlantic striped bass, weakfish, Atlantic sturgeon, or horseshoe crab resource or fishery; or

(2) Create significant enforcement problems.

(b) Each vessel participating in any exempted fishing activity is subject to all provisions of this part, except those explicitly relating to the purpose and nature of the exemption. The exemption will be specified in a letter issued by the Regional Administrator to each vessel participating in the exempted activity. This letter must be carried aboard the vessel seeking the benefit of such exemption. Exempted fishing activity shall be authorized pursuant to and consistent with § 600.745 of this chapter.

5. Section 697.23, paragraph (f) is added to read as follows:

**§ 697.23 Restricted gear areas.**

* * * * *

(f) Carl N. Schuster Jr., Horseshoe Crab Reserve— (1) No fishing vessel or person on a fishing vessel may fish for or possess horseshoe crabs in the area known as the Carl N. Shuster Jr., Horseshoe Crab Reserve bounded as follows:

(i) On the north by a straight line connecting points 39°14.6'N. lat., 74°30.9'W. long. (3 nm off of Peck Beach, NJ) and 39°14.6'N lat., 74°22.5'W. long.

(ii) On the east by a straight line connecting points 39°14.6'N. lat., 74°22.5'W. long. and 38°22.0'N. lat., 74°22.5'W. long.

(iii) On the south side by a straight line connecting points 38°22.0'N. lat., 74°22.5'W. long. and 38°22.0'N. lat., 75°00.4'W. long. (3 nm off of Ocean City, MD).

(iv) On the west by state waters.

(2) Paragraph (f)(1) of this section does not apply to fishing vessels or persons on fishing vessels fishing with whelk traps or with whelk traps on board, provided that no other commercial fishing gear aside from whelk traps is on board or is being used.

(3) Horseshoe crabs caught in the area described in paragraph (f)(1) of this section must be returned immediately to the water.

[FR Doc. 00–26498 Filed 10–11–00; 4:11 pm]

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# Notices

Federal Register
Vol. 65, No. 200
Monday, October 16, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT

### Notice of Public Information Collection Requirements Submitted to OMB for Review

**SUMMARY:** U.S. Agency for International Development (USAID) has submitted the following information collections to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding this information collection are best assured of having their full effect if received within 30 days of this notification. Comments should be addressed to: Desk Officer for USAID, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503. Copies of submission may be obtained by calling (202) 712–1365.

**SUPPLEMENTARY INFORMATION:**

*OMB Number:* OMB 0412–0536.
*Form Number:* AID 1420–62.
*Title:* AID Contractor Employee Physical Examination Form.
*Type of Submission:* Renewal of Information Collection.
*Purpose:* When USAID hires contractor personnel for overseas assignments, the contractors are required to obtain a physician's certification that they are physically qualified to engage in the type of activity for which they will be employed. Physicians who do not regularly deal with patients going to lesser-developed countries do not appreciate the difficulties of providing even the most basic medical services in many such areas. This form requests the minimum information needed in order to make a determination as to whether or not the individual should travel to the post in question. The State Department's Office of Medical Services (M/MED) reviews the form prior to departure to insure the Mission or Embassy medical facility can meet special medical needs of the contractor. Thus the need for future medical evacuations would be reduced, since M/MED would find most existing medical problems that could not be dealt with locally and the individual would then most likely be denied approval to post.
*Annual Reporting burden:*
*Respondents:* 3,300.
*Total annual responses:* 3,300.
*Total annual hours requested:* 13,200 hours.

Dated: October 4, 2000.

**Joanne Paskar,**
*Chief, Information and Records Division, Office of Administrative Services, Bureau for Management.*

[FR Doc. 00–26421 Filed 10–13–00; 8:45 am]
**BILLING CODE 6116–01–M**

## DEPARTMENT OF AGRICULTURE

### Rural Housing Service

### Rural Business-Cooperative Service

### Rural Utilities Service

### Farm Service Agency

### Notice of Request for Extension of a Currently Approved Information Collection

**AGENCY:** Rural Housing Service (RHS), Rural Business-Cooperative Service (RBS), Rural Utilities Service (RUS), and Farm Service Agency (FSA), USDA.

**ACTION:** Proposed collection; Comments requested.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing Service's intention to request an extension for a currently approved information collection in support of the Real Estate Title Clearance and Loan Closing regulation.

**DATES:** Comments on this notice must be received by December 15, 2000 to be assured of consideration.

**FOR FURTHER INFORMATION CONTACT:** Carolyn L. Bell, Senior Loan Specialist, Single Family Housing Direct Loan Division, RHS, U.S. Department of Agriculture, STOP 0783, 1400 Independence Avenue, SW., Washington, DC 20250–0783. Telephone (202) 720–1532.

**SUPPLEMENTARY INFORMATION:**

*Title:* 7 CFR 1927–B, Real Estate Title Clearance and Loan Closing.
*OMB Number:* 0575–0147.
*Expiration Date of Approval:* November 30, 2000.
*Type of Request:* Extension of a currently approved information collection.

*Abstract:* Section 501 of Title V of the Housing Act of 1949, as amended, authorizes the Secretary of Agriculture to extend financial assistance to construct, improve, alter, repair, replace or rehabilitate dwellings, farm buildings and/or related facilities to provide decent, safe, and sanitary living conditions and adequate farm buildings and other structures in rural areas. Title Clearance is required to assure the Agency(s) that the loan is legally secured and has the required lien priority.

The Agency will be collecting information to assure that those participating in this program remain eligible to proceed with loan closing and to ensure that loans made with Federal funds are legally secured. The respondents are individuals or households, farms, businesses, and nonprofit institutions. The information required is used by Agency personnel to verify that the required lien position has been obtained. The information is collected at the field office responsible for processing a loan application through loan closing. The information is also used to insure the program is administered in a manner consistent with legislative and administrative requirements. If not collected, the Agency would be unable to determine if the loan is adequately and legally secured.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average .23 hours per response.

*Respondents:* Individuals or households, farms, business, non-profit institutions.

*Estimated Number of Respondents:* 32,000.

*Estimated Number of Responses per Respondent:* 5.38.

*Estimated Number of Responses:* 172,000.

*Estimated Total Annual Burden on Respondents:* 39,466 hours.

Copies of this information collection can be obtained from Tracy Gillin, Regulations and Paperwork Management Branch, at (202) 692–0039.



**Comments**

*Comments are invited on:* (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to Tracy Gillin, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave. SW, Washington, DC 20250. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: October 4, 2000.

**Jill Long Thompson,**
*Under Secretary, Rural Development.*

Dated: October 5, 2000.

**Thomas I. Grau,**
*Acting Under Secretary, Farm and Foreign Agricultural Services.*

[FR Doc. 00–26414 Filed 10–13–00; 8:45 am]
**BILLING CODE 3410–XV–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Oregon Coast Provincial Advisory Committee Meeting

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Oregon Coast Provincial Advisory Committee (PAC) will meet at the Florence Convention & Performing Arts Center, at 715 Quince Street, Florence, OR, on October 26, 2000. The meeting will begin at 9 a.m. and end at 4 p.m. The agenda will include 303–D Listed Streams, public comments, and round-robin information sharing. Two fifteen-minute open public forums are scheduled at 11:30 a.m. and 3:45 p.m. Interested citizens are encouraged to attend. The committee welcomes the publics' written comments on committee business at any time.

**FOR FURTHER INFORMATION CONTACT:** Joni Quarnstrom, Public Affairs Specialist, Siuslaw National Forest, 541/750–7075 or write to Acting Forest Supervision, Siuslaw National Forest, P.O. Box 1148, Corvallis, OR 97339.

Dated: October 3, 2000.

**Y. Robert Iwamoto,**
*Acting Forest Supervisor.*

[FR Doc. 00–26468 Filed 10–13–00; 8:45 am]
**BILLING CODE 3410–11–M**

## DEPARTMENT OF AGRICULTURE

### Rural Utilities Service

### Elk Mound Combustion Turbine Project, Notice of Finding of No Significant Impact

**AGENCY:** Rural Utilities Service, USDA.

**ACTION:** Notice of finding of no significant impact.

**SUMMARY:** Notice is hereby given that the Rural Utilities Service (RUS), pursuant to the National Environmental Policy Act of 1969, as amended, the Council on Environmental Quality regulations (40 CFR parts 1500–1508), and RUS Environmental Policies and Procedures (7 CFR part 1794), has made a finding of No Significant Impact (FONSI) with respect to a project proposed by Dairyland Power Cooperative (DPC) of La Crosse, Wisconsin. The proposed project will have a total of two combustion turbine units. Each turbine unit will have a maximum rating of 49 MW. DPC proposes to construct the facility in Wheaton Township in Chippewa County, Wisconsin. The site is located adjacent to DPC's Elk Mound Substation, which is located north of Highway 29. The primary purpose of the facility is to meet DPC's peak electrical load. The facility will require approximately 5 acres of land. However, DPC wants to purchase up to 60 acres in order to provide sufficient construction lay-down area and to maintain an appropriate distance between the facility and its neighbors. The primary fuel for the facility will be natural gas that will be obtained from the Viking Gas Transmission Company pipeline that is located approximately 2.2 miles north of the plant site. A 6-inch lateral pipeline will connect the Viking pipeline with the plant site. No new electric transmission lines will be required.

RUS has concluded that the impacts from the proposed project would not be significant and that the proposed action is not a major federal action significantly affecting the quality of the human environment. Therefore, the preparation of an environmental impact statement is not necessary.

**FOR FURTHER INFORMATION CONTACT:** Nurul Islam, Environmental Protection Specialist, Rural Utilities Service, Engineering and Environmental Staff, Stop 1571, 1400 Independence Avenue, SW, Washington, DC 20250–1571, telephone: (202) 720–1414. His e-mail address is nislam@rus.usda.gov. Information is also available from Mr. George L. Johnston, Senior Environmental Biologist, DPC, 3200 East Avenue South, La Crosse, Wisconsin 54601, telephone (608) 787–1322, FAX: (608) 787–1241. His e-mail address is: glj@dairynet.com.

**SUPPLEMENTARY INFORMATION:** RUS, in accordance with its environmental policies and procedures, required that DPC prepare an Environmental Analysis (EVAL) reflecting the potential impacts of the proposed facilities. The EVAL, which includes input from federal, state, and local agencies, has been reviewed and accepted as RUS' Environmental Assessment (EA) for the project in accordance with § 1794.41. RUS and DPC published notices of the availability of the EA and solicit public comments per § 1794.42. No responses were received from the public or any agencies and also no objections were raised to the project. Based on the EA, RUS has concluded that the proposed action will not have a significant effect to various resources, including important farmland, floodplains, wetlands, cultural resources, threatened and endangered species and their critical habitat, air and water quality, and noise. RUS has also determined that there would be no negative impacts of the proposed project on minority communities and low-income communities as a result of the construction of the project.

Copies of the EA and FONSI can be reviewed at the headquarters of DPC and RUS, at the addresses provided above in this notice.

Dated: October 10, 2000.

**George J. Bagnall,**
*Acting Assistant Administrator, Electric Program.*

[FR Doc. 00–26459 Filed 10–13–00; 8:45 am]
**BILLING CODE 3410–15–P**

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–827]

## Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Butt-Weld Pipe Fittings From Germany

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: October 16, 2000.

FOR FURTHER INFORMATION CONTACT: Carrie Blozy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0165.

### The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR part 351 (April 1999).

### Final Determination

We determine that stainless steel butt-weld pipe fittings from Germany are being, or are likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the "Continuation of Suspension of Liquidation" section of this notice.

### Case History

The preliminary determination in this investigation was published on August 2, 2000. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Butt-Weld Pipe Fittings from Germany*, 65 FR 47384 (August 2, 2000) ("*Preliminary Determination*"). No interested parties have provided comments on the *Preliminary Determination* and no request for a hearing has been received by the Department.

### Period of Investigation

The period of investigation is October 1, 1998 through September 30, 1999.

### Scope of Investigation

For purposes of this investigation, the product covered is certain stainless steel butt-weld pipe fittings. Certain stainless steel butt-weld pipe fittings are under 14 inches in outside diameter (based on nominal pipe size), whether finished or unfinished. The product encompasses all grades of stainless steel and "commodity" and "specialty" fittings. Specifically excluded from the definition are threaded, grooved, and bolted fittings, and fittings made from any material other than stainless steel.

The fittings subject to this investigation are generally designated under specification ASTM A403/A403M, the standard specification for Wrought Austenitic Stainless Steel Piping Fittings, or its foreign equivalents (*e.g.*, DIN or JIS specifications). This specification covers two general classes of fittings, WP and CR, of wrought austenitic stainless steel fittings of seamless and welded construction covered by the latest revision of ANSI B16.9, ANSI B16.11, and ANSI B16.28. Pipe fittings manufactured to specification ASTM A774, or its foreign equivalents, are also covered by this investigation.

This investigation does not apply to cast fittings. Cast austenitic stainless steel pipe fittings are covered by specifications A351/A351M, A743/743M, and A744/A744M.

The stainless steel butt-weld pipe fittings subject to this investigation are currently classifiable under subheading 7307.23.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

### Facts Available

In the *Preliminary Determination*, the Department based the margins for Hage Fittings GmbH ("Hage Fittings") and Nirobo Metalverarbeitungs GmbH ("Nirobo Metalverarbeitungs") on facts otherwise available under sections 776(a)(2)(A) and (C) of the Act because Hage Fittings and Nirobo Metalverarbeitungs failed to respond to our questionnaires, thus significantly impeding the investigation, and because subsection 782(d) of the Act therefore did not apply. *See Preliminary Determination* at 65 FR 47385. Also, in the *Preliminary Determination*, the Department based the margin for Wilh. Schulz GmbH ("Schulz") on facts otherwise available under sections 776(a)(2)(A) and (C) of the Act because the Department had no data on the record for Schulz upon which to base its margin calculation since the Department returned all of Schulz's business proprietary information at Schulz's request. *Id.*

Section 776(b) of the Act provides that, in selecting from among the facts available, the Department may employ adverse inferences when an interested party has failed to cooperate by not acting to the best of its ability to comply with requests for information. *See* also "Statement of Administrative Action" accompanying the URAA, H.R. Rep. No. 103–316, 870 (1994) ("SAA"). Based on the failure of Hage Fittings and Nirobo Metalverarbeitungs to respond to the Department's antidumping questionnaire and Schulz's subsequent withdrawal of its business proprietary data, we have determined that Hage Fittings, Nirobo Metalverarbeitungs, and Schulz have not acted to the best of their ability to comply with the Department's information requests.

Therefore, pursuant to 776(b) of the Act, we used an adverse inference in selecting a margin from the facts available. As adverse facts available, the Department has applied a margin of 76.24 percent, the highest margin alleged in the petition. As discussed in the *Preliminary Determination*, the Department has, to the extent practicable, corroborated the information used as adverse facts available. *Id.*, at 65 FR 47385–86. Since then, no interested parties have provided comments on the *Preliminary Determination* and no request for a hearing has been received by the Department. Therefore, we are continuing to use as adverse facts available the highest margin alleged by petitioners.

### Critical Circumstances

No comments were received regarding the Department's preliminary critical circumstances determination, and the Department has not made any changes to this determination. For the reasons given in the *Preliminary Determination*, the Department continues to find that critical circumstances exist with respect to stainless steel butt-weld pipe fittings imported from Hage Fittings, Nirobo Metalverarbeitungs, and Schulz, in accordance with section 733(e)(1) of the Act. *Id.*, at 65 FR 47386. As set forth in our *Preliminary Determination*, because the massive imports criterion necessary to find critical circumstances has not been met with respect to firms other than Hage Fittings, Nirobo Metalverarbeitungs, and Schulz, the Department continues to find, for the purposes of this final determination, that critical circumstances do not exist for imports of stainless steel butt-weld pipe fittings for the "all others" category in this case.

### The All-Others Rate

No interested parties have filed case briefs or rebuttal briefs on this issue.



Accordingly, the Department is continuing to base the all-others rate on a weighted-average of all the margins alleged in the petition. As a result, the all-others rate is 51.34 percent.

### Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act for Hage Fittings, Nirobo Metalverarbeitungs and Schulz we are directing the Customs Service to continue to suspend liquidation of all entries of subject merchandise from Germany that are entered, or withdrawn from warehouse, for consumption on or after the date 90 days prior date of publication of the *Preliminary Determination* in the **Federal Register**. For all other companies, we are directing the Customs Service to continue suspend liquidation of entries of subject merchandise from Germany that are entered, or withdrawn from warehouse, for consumption on or after August 2, 2000 (the date of publication of the *Preliminary Determination* in the **Federal Register**). We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the normal value exceeds the U.S. price, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

| Exporter/manufacturer | Weighted-average margin (percent) |
|---|---|
| Hage Fittings | 76.24 |
| Nirobo Metalverarbeitungs | 76.24 |
| Schulz | 76.24 |
| All Others | 51.34 |

### ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission ("ITC") of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered for consumption on or after the effective date of the suspension of liquidation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: October 10, 2000.

**Troy H. Cribb,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 00–26520 Filed 10–13–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–810, A–583–815]

## Continuation of Antidumping Duty Orders: Certain Welded Stainless Steel Pipe from South Korea and Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Continuation of Antidumping Duty Orders: Certain Welded Stainless Steel Pipe from South Korea and Taiwan.

SUMMARY: On February 4, 2000, the Department of Commerce ("the Department"), pursuant to sections 751(c) and 752 of the Tariff Act of 1930, as amended ("the Act"), determined that revocation of the antidumping duty orders on certain welded stainless steel pipe from South Korea and Taiwan is likely to lead to continuation or recurrence of dumping. See 65 FR 5607 (February 4, 2000).

On October 2, 2000, the International Trade Commission ("the Commission"), pursuant to section 751(c) of the Act, determined that revocation of the antidumping duty orders on certain welded stainless steel pipe from South Korea and Taiwan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. See 65 FR 58806 (October 2, 2000). Therefore, pursuant to 19 CFR 351.218(f)(4), the Department is publishing notice of continuation of the antidumping duty orders on certain welded stainless steel pipe from South Korea and Taiwan.

EFFECTIVE DATE: *Effective Date of Continuation:* October 16, 2000.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit or James P. Maeder, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW, Washington, DC 20230; telephone: (202) 482–5050 or (202) 482–3330, respectively.

SUPPLEMENTARY INFORMATION:

### Background

On July 1, 1999, the Department initiated, and the Commission instituted, sunset reviews (64 FR 35588 and 64 FR 35694) of the antidumping duty orders on certain welded stainless steel pipe from South Korea and Taiwan pursuant to section 751(c) of the Act. As a result of its reviews, the Department found on February 4, 2000, that revocation of the antidumping duty orders on certain welded stainless steel pipe from South Korea and Taiwan would likely lead to continuation or recurrence of dumping and notified the Commission of the magnitude of the margins likely to prevail were the orders revoked. See 65 FR 5607 (February 4, 2000).

On October 2, 2000, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty orders on certain welded stainless steel pipe from South Korea and Taiwan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. See Certain Welded Stainless Steel Pipe from Korea and Taiwan, 65 FR 58806 (October 2, 2000) and USITC Publication 3351, Investigation Nos. 731–TA–540 and 541 (Review) (October 2000).

### Scope of the Orders

The merchandise subject to these orders are certain welded austenitic stainless steel pipe that meets the standards and specifications set forth by the American Society for Testing and Materials ("ASTM") for the welded form of chromium-nickel pipe designated ASTM A–312. The merchandise covered by the scope of these orders also includes austenitic welded stainless steel made according to the standards of other nations which are comparable to ASTM A–312. Pipes are produced by forming stainless steel flat-rolled products into a tubular configuration and welding along the seam. Pipes are a commodity product generally used as a conduit to transmit liquids or gases. Major applications for pipes include, but are not limited to, digester lines, blow lines, pharmaceutical lines, petrochemical stock lines, brewery process and transport lines, general food processing lines, automotive paint lines, and paper process machines. Imports are currently classifiable under the following Harmonized Tariff Schedule of the United States ("HTSUS") subheadings:

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7306.40.5005, 7306.40.5015, 7306.40.5040, 7306.40.5065, and 7306.40.5085. Although these subheadings include both pipes and tubes, the scope of these orders is limited to welded austenitic stainless steel. Although the HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope of these orders are dispositive.

**Determination**

As a result of the determination by the Department and the Commission that revocation of the antidumping duty orders on certain welded stainless steel pipe from South Korea and Taiwan would be likely to lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act and 19 CFR 351.222(i)(1), the Department hereby orders the continuation of the antidumping duty orders on certain welded stainless steel pipe from South Korea and Taiwan. The Department will instruct the Customs Service to continue to collect antidumping duty deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of continuation of these orders will be the date of publication in the **Federal Register** of this notice. Pursuant to section 751(c)(2) and 751(c)(6) of the Act, the Department intends to initiate the next five-year review of the orders on certain welded stainless steel pipe from South Korea and Taiwan not later than September 2005.

Dated: October 10, 2000.

**Troy H. Cribb,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 00–26519 Filed 10–13–00; 8:45 am]

**BILLING CODE 3510–DS–M**

## DEPARTMENT OF COMMERCE

### International Trade Administration

### North American Free-Trade Agreement, Article 1904 NAFTA Panel Reviews; Request for Panel Review

**AGENCY:** NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

**ACTION:** Notice of first request for panel review.

**SUMMARY:** On September 22, 2000, Whirlpool Corporation and Inglis Limited filed a First Request for Panel Review with the Canadian Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Panel review was requested of the final injury determination made by the Canadian International Trade Tribunal, respecting Certain Refrigerators, Dishwashers and Dryers, Originating in or Exported from the United States of America and Produced by, or on Behalf of, White Consolidated Industries, Inc. and Whirlpool Corporation, their Respective Affiliates, Successors and Assigns. This determination was published in the *Canada Gazette*, Part I, (Vol. 134, No. 35, pp. 2694) on August 26, 2000. The NAFTA Secretariat has assigned Case Number CDA–USA–00–1904–04 to this request.

**FOR FURTHER INFORMATION CONTACT:** Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, D.C. 20230, (202) 482–5438.

**SUPPLEMENTARY INFORMATION:** Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686).

A first Request for Panel Review was filed with the Canadian Section of the NAFTA Secretariat, pursuant to Article 1904 of the Agreement, on September 22, 2000, requesting panel review of the final determination described above.

The Rules provide that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is October 23, 2000);

(b) A Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is November 06, 2000); and

(c) The panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: September 26, 2000.

**Caratina L. Alston,**

*United States Secretary, NAFTA Secretariat.*

[FR Doc. 00–26415 Filed 10–13–00; 8:45 am]

**BILLING CODE 3510–GT–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 101000D]**

### Raised Footrope Whiting Trawl Exemption Requests and Notifications

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA).

**ACTION:** Proposed collection; comment request.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments must be submitted on or before December 15, 2000.

**ADDRESSES:** Direct all written comments to Madeleine Clayton, Departmental Forms Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at MClayton@doc.gov).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Peter Christopher, NMFS, 1 Blackburn Drive, Gloucester, MA 01930 (phone 978-281-9288).

**SUPPLEMENTARY INFORMATION:**



**I. Abstract**

The Massachusetts Division of Marine Fisheries has been conducting an experimental fishery, referred to as the Raised Footrope Whiting Trawl Experimental Fishery (Raised Footrope Experiment), to allow trawlers to target whiting, red hake, dogfish and other small mesh species using a raised footrope trawl. The experiment was designed to assess the effectiveness of a raised footrope small mesh otter trawl in reducing bycatch of regulated multispecies. Framework Adjustment 35 to the Multispecies Fishery Management Plan made the Raised Footrope Experiment a multispecies exempted fishery. The collection-of-information requirements are: (1) a request for a certificate to fish in the Raised Footrope Whiting Trawl Exemption, and (2) a notification of intention to withdraw from the Raised Footrope Whiting Trawl Exemption. Requests for a certificate identify the person, the vessel name, the permit number, and how long he/she intends to fish in the exemption area (no less than 7 days but not more than 4 months). These collection-of-information requirements were approved by OMB under emergency procedures for 6 months; NOAA is soliciting comments on its intent to request a 3-year Paperwork Reduction Act approval for the requirements.

**II. Method of Collection**

Requests and notifications are made by telephone.

**III. Data**

*OMB Number*: 0648-0422.
*Form Number*: None.
*Type of Review*: Regular submission.
*Affected Public*: Business and other for-profit (commercial fishermen) organizations.
*Estimated Number of Respondents*: 288.
*Estimated Time Per Response*: 2 minutes.
*Estimated Total Annual Burden Hours*: 230 hours.
*Estimated Total Annual Cost to Public*: $27.

**IV. Request for Comments**

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and /or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: October 6, 2000.

**Madeleine Clayton,**

*Departmental Forms Clearance Officer, Office of the Chief Information Officer.*

FR Doc. 00–26406 Filed 10–13–00; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 101000A]**

### Foreign Fishing Reporting Requirements

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA).

**ACTION:** Proposed collection; comment request.

**SUMMARY:**

The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments must be submitted on or before December 15, 2000.

**ADDRESSES:** Direct all written comments to Madeleine Clayton, Departmental Forms Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at MClayton@doc.gov).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Bob Dickinson, Office of Sustainable Fisheries, International Fisheries Division, 1315 East West Highway, Silver Spring, Maryland 20910, (301-713-2276).

**SUPPLEMENTARY INFORMATION:**

**I. Abstract**

Foreign fishing activities can be authorized under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*). Collection of information from permitted foreign vessels is necessary to monitor their activities and whereabouts in U.S. waters. Reports are also necessary to monitor the amounts of fish, if any, such vessels receive from U.S. vessels in joint venture operations, wherein U.S. vessels catch and transfer at-sea to permitted foreign vessels certain species for which U.S. demand is low relative to the abundance of the species.

**II. Method of Collection**

Activity reports are made by radio when fishing begins or ceases, to report on the transfers of fish, and to file weekly reports on the catch and receipt of fish. Foreign vessels are also subject to recordkeeping requirements. These include a communications log, a transfer log, a daily fishing log, a consolidated fishing or joint venture log, and a daily joint venture log. These records must be maintained for three years.

**III. Data**

*OMB Number*: 0648-0075.
*Form Number*: None.
*Type of Review*: Regular submission.
*Affected Public*: Business and other for-profit organizations.
*Estimated Number of Respondents*: 25.
*Estimated Time Per Response*: 6 minutes for radio reports, 30 minutes per day for recordkeeping by a fishing vessel, and 7.5 minutes per day for recordkeeping by transport vessels.
*Estimated Total Annual Burden Hours*: 425.
*Estimated Total Annual Cost to Public*: $500.

**IV. Request for Comments**

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and /or

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included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: October 6, 2000.

**Madeleine Clayton,**

*Departmental Forms Clearance Officer, Office of the Chief Information Officer.*

FR Doc. 00–26408 Filed 10–13–00; 8:45 am]

BILLING CODE 3510–22–S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### National Estuarine Research Reserve System

**AGENCY:** Estuarine Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

**ACTION:** Notice of approval and availability of revision to the Final Revised Management Plan for the Old Woman Creek National Estuarine Research Reserve, 2000–2005.

**SUMMARY:** Notice is hereby given that the Estuarine Reserves Division, Office of Ocean and Coastal Resource Management, has approved the revised Management Plan for the Old Woman Creek National Estuarine Research Reserve (OWCNERR). The OWCNERR was designated in 1980 and has been operating under a Management Plan approved in 1983. Pursuant to section 315 of the Coastal Zone Management Act, 16 U.S.C. 1461, and section 921.33(c) of the implementing regulations, a state must revise its management plan at least every five years, or more often if necessary. This revision is Ohio's effort to comply with this requirement.

**FOR FURTHER INFORMATION CONTACT:** Nathalie Peter, OCRM, Estuarine Reserves Division, 1305 East-West Highway, 11th Floor (N/ORM5), Silver Spring, Maryland 20910. (301) 713–3155, Extension 119.

**SUPPLEMENTARY INFORMATION:** The Management Plan contains the program mission, goals and objectives of the OWCNERR and State Natural Preserve, and establishes policies that will protect the natural resources and ecological integrity of the reserve. It provides guidance for administration of the reserve's operation, management, research, education and public outreach for the next five years.

The Management Plan also describes the necessary elements of site ecological management: (1) To identify key natural resources; (2) to determine the appropriate level of human use for the sites and these resources; and (3) to foster their long-term protection.

The chief areas of concentration for the OWCNERR in the next five years are as follows:

1. Refining the OWCNERR Program, particularly in the areas of research and monitoring.

2. Encouraging community stewardship of the estuary, watershed and near-shore Lake Erie coast through an expanded outreach program.

3. Protecting the core estuaries area, through buffer land acquisition, conservation easements or cooperative agreements.

4. Improving the transfer of estuarine information between reserve programs (*i.e.* research, monitoring, education, and resource management) and external groups (*e.g.* local neighbors, regional decision-makers in the scientific, governmental and educational communities).

Copies of the document can be obtained from the Old Woman Creek National Estuarine Research Reserve, Department of Natural Resources, 2514 Cleveland Road, Huron, Ohio 44839. (419) 433–4601.

Dated: October 4, 2000.

**Captain Ted Lillestolen,**

*Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.*

[FR Doc. 00–26449 Filed 10–13–00; 8:45 am]

BILLING CODE 3510–08–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[Docket No. 000616180–0269–02]

RIN 0648

### NOAA Climate and Global Change Program, Program Announcement

**AGENCY:** Office of Global Programs (OGP), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Revisions to the Notice from NOAA Climate and Global Change Program, CLIVAR Element, FOR FY 2001; invitation to submit proposals.

**SUMMARY:** NOAA amends the notice published in the **Federal Register** on August 25, 2000, regarding the NOAA Climate and Global Change Program to change the dates for receipt of Letters of Intent and Full Proposals (see **DATES**). NOAA also invites the submission of proposals.

**DATES:** Letters of Intent must be received no later than November 13, 2000, with full proposals postmarked on or before January 26, 2001.

**ADDRESSES:** Proposals should be sent to Office of Global Programs, National Oceanic and Atmospheric Administration, 1100 Wayne Avenue, Suite 1201, Silver Spring, MD 20910–5603.

**FOR FURTHER INFORMATION CONTACT:** Irma duPree at the above address or at phone: (301) 427–2089 ext 107, Internet: irma.dupree@noaa.gov.

**SUPPLEMENTARY INFORMATION:** The NOAA Office of Global Programs published a notice describing the Climate and Global Change Program, and funding area descriptions on August 25, 2000. (65 FR 51799.) The program description, evaluation criteria, selection process, background and requirements, as well as guidelines for applications are in that notice and are not repeated here. The Office hereby revises the dates for the submission of the LOI and full proposals (See **DATES**). The office invites the submission of proposals for CLIVAR.

**Program authority:** 49 U.S.C. 44720 (b); 33 U.S.C. 883D; 15 U.S.C. 2904; 15 U.S.C. 2931 *et seq.;* (CFDA No. 11.431)—Climate and Atmospheric Research.

Dated: October 10, 2000.

**David L. Evans,**

*Assistant Administrator, OAR.*

[FR Doc. 00–26463 Filed 10–13–00; 8:45 am]

BILLING CODE 3510–KB–M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 091400B]

### Taking and Importing of Marine Mammals

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of embargo for Spain.

**SUMMARY:** The Assistant Administrator for Fisheries, NMFS, (Assistant Administrator) issued an embargo for the Government of Spain under the Marine Mammal Protection Act (MMPA) on October 6, 2000. This embargoes the importation into the United States of yellowfin tuna and yellowfin tuna products harvested in the eastern tropical Pacific Ocean (ETP) after March 3, 1999, by Spanish-flag purse seine vessels or vessels operating under Spanish jurisdiction and all other yellowfin tuna harvested by purse seine in the ETP exported from Spain. This embargo determination was made after considering documentary evidence submitted by the Government of Spain and obtained from the Inter-American Tropical Tuna Commission (IATTC). This embargo remains in effect until further notice.



**DATES:** Effective October 6, 2000.

**ADDRESSES:** Copies of this notice may be obtained by writing to Regional Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, California 90802-4213.

**FOR FURTHER INFORMATION CONTACT:** Regional Administrator; Phone 562-980-4000; Fax 562-980-4018.

**SUPPLEMENTARY INFORMATION:** The MMPA, 16 U.S.C. 1361 *et seq.*, as amended by the International Dolphin Conservation Program Act (IDCPA) (Pub. L. 105-42), allows the entry into the United States of yellowfin tuna harvested by purse seine vessels in the ETP under certain conditions. If requested by the harvesting nation, the Assistant Administrator will determine whether to make an affirmative finding based upon documentary evidence provided by the government of the harvesting nation, by the International Dolphin Conservation Program (IDCP), the IATTC, and/or the Department of State. An affirmative finding will remain valid for 1 year (generally April 1 through March 31) or for such other period as the Assistant Administrator may determine. The harvesting nation must submit an application directly to the Assistant Administrator for the first affirmative finding. The Assistant Administrator may require the submission of additional supporting documentation or verification of statements made in connection with requests to allow importations. An affirmative finding applies to tuna and tuna products that were harvested in the ETP by purse seine vessels of the nation, and applies to any yellowfin tuna harvested in the ETP purse seine fishery after March 3, 1999, the effective date of the IDCPA.

The affirmative finding process requires that the harvesting nation meet several conditions related to compliance with the IDCP. To issue an annual affirmative finding NMFS must receive the following information:

1. A statement requesting an affirmative finding;

2. Evidence of membership in the IATTC;

3. Evidence that a nation is meeting its obligations to the IATTC, including financial obligations;

4. Evidence that a nation is complying with the IDCP. For example, national laws or regulations implementing the Agreement on the IDCP and information that the nation is enforcing those laws and regulations;

5. Evidence of a tuna tracking and verification program comparable to the U.S. tracking and verification regulations at 50 CFR 216.94;

6. Evidence that the national fleet dolphin mortality limits (DMLs) were not exceeded in the previous calendar year;

7. Evidence that the national fleet per-stock per-year mortality limits, if they are allocated to countries, were not exceeded in the previous calendar year;

8. Authorization for the IATTC to release to the Assistant Administrator complete, accurate and timely information necessary to verify and inspect Tuna Tracking Forms; and

9. Authorization for the IATTC to release to the Assistant Administrator information demonstrating whether the nation is meeting its obligations of membership to the IATTC and whether the nation is meeting its obligations under the IDCP including managing (not exceeding) its national fleet DMLs or its national fleet per-stock per-year mortality limits. A nation may opt to provide this information directly to NMFS on an annual basis or to authorize the IATTC to release the information to NMFS in years when NMFS will review and consider whether to issue an affirmative finding determination without an application from the harvesting nation.

An affirmative finding will be terminated, in consultation with the Secretary of State, if the Assistant Administrator determines that the requirements of 50 CFR 216.24(f)(9) are no longer being met or that a nation is consistently failing to take enforcement actions on violations which diminish the effectiveness of the IDCP. Every 5 years, the Government of the harvesting nation, must request an affirmative finding and submit the required documentary evidence directly to the Assistant Administrator.

The Assistant Administrator reviewed the application and documentary evidence submitted by the Government of Spain and determined that the requirements under the MMPA to receive an affirmative finding have not been met. On October 6, 2000, after consultation with the Department of State, NMFS issued an embargo on yellowfin tuna and products derived from yellowfin tuna harvested in the ETP by Spanish-flag purse seine vessels or vessels under Spanish jurisdiction after March 3, 1999, and all other yellowfin tuna harvested by purse seine in the ETP exported from Spain to be imported into the United States.

The Assistant Administrator may reconsider a finding upon request from, and the submission of additional information by, a harvesting nation, if the information indicates that the nation has met the requirements under 50 CFR 216.24(f)(9).

Dated: October 6, 2000.

**William T. Hogarth,**

*Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.*

[FR Doc. 00–26405 Filed 10–13–00; 8:45 am]

BILLING CODE 3510–22–S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Science Advisory Board

**AGENCY:** Office of Oceanic and Atmospheric Research, NOAA, DOC.

**ACTION:** Notice of open meeting.

**SUMMARY:** The Science Advisory Board (SAB) was established by a Decision Memorandum dated September 25, 1997, and is the only Federal Advisory Committee with responsibility to advise the Under Secretary of Commerce for Oceans and Atmosphere on long- and short-range strategies for research, education, and application of science to resource management. SAB activities and advice with provide necessary input to ensure that National Oceanic and Atmospheric Administration (NOAA) science programs are of the highest quality and provide optimal support to resource management.

**TIME AND DATE:** The meeting will be held Tuesday, October 31, 200, from 1 p.m. to 5 p.m., Wednesday, November 1, 2000, from 8:30 a.m. to 4:30 p.m., and Thursday, November 2, 2000, from 8 a.m to 12:30 p.m.

**PLACE:** The meeting on Tuesday, October 31 and Thursday, November 2 will be held at the DoubleTree Alana Waikiki Hotel, 1956 Ala Moana Boulevard, Honolulu, Hawaii. On Wednesday, November 1, the meeting will be held at the Hawaii Imin International Conference Center at The East-West Center, 1777 East-West Road, Honolulu, Hawaii.

**STATUS:** The meeting will be open to public participation with two 30-minute time periods set aside for direct verbal comments or questions from the public. The SAB expects that public statements

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presented at its meetings will not be repetitive of previously submitted verbal or written statements. In general, each individual or group making a vertab presentation will be limited to a total time of five (5) minutes. Written comments (at least 35 copies) should be received in the SAB Executive Director's Office by October 20, 2000, in order to provide sufficient time for SAB review. Written comments received by the SAB Executive Director after October 20 will be distributed to the SAB, but may not be reviewed prior to the meeting date. Approximately thirty (30) seats will be available for the public including five (5) seats reserved for the media. Seats will be available on a first-come, first-served basis.

**MATTERS TO BE CONSIDERED:** The meeting will include the following topics: (1) Overview of NOAA's Hawaiian and Pacific region science and research programs, (2) Presentation and SAB discussion of the University of Hawaii Sea Level Center and the Tsunami Warning Program, (3) Discussion of the Report of the Panel on Ocean Exploration, (4) Public Input Sessions with SAB discussion, (5) Presentation and SAB discussion of aquaculture in the Hawaii region, (6) SAB Sub-Committee and Working Group Reports, (7) SAB debriefing of NOAA response to SAB recommendations to the Under Secretary, (8) Presentations and SAB discussions of University of Hawaii Joint Institute for Marine and Atmospheric Research (JIMAR) major NOAA activities and research programs, (9) Update on Implementation of the Marine Protected Area Executive Order and SAB Discussion, and (10) Status report on the Aquatic Nuisance Species Task Force and Invasive Species Council.

**FOR FURTHER INFORMATION CONTACT:** Dr. Michael Uhart, Executive Director, Science Advisory Board, NOAA, Rm. 11142, 1315 East-West Highway, Silver Spring, Maryland 20910. (Phone: 301–713–9121, Fax: 301–713–3515, E-mail: *Michael.Uhart@noaa.gov*); or visit the NOAA SAB website at *http://www.sab.noaa.gov*.

Dated: October 10, 2000.

**David L. Evans,**

*Assistant Administrator, OAR.*

[FR Doc. 00–26462 Filed 10–13–00; 8:45 am]

**BILLING CODE 3510–12–M**

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Duty and Quota Free Imports of Apparel Articles Assembled From Regional and Other Fabric for Beneficiary Sub-Saharan African Countries

October 11, 2000.

**AGENCY:** Committee for the Implementation of Textile Agreements.

**ACTION:** Publishing the First 12-Month Cap on Duty and Quota Free Benefits.

**FOR FURTHER INFORMATION CONTACT:** Philip J. Martello, Director, Trade and Data Division, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Title I, Section 112(b)(3) of the Trade and Development Act of 2000, Presidential Proclamation 7350 of October 4, 2000 (65 FR 59321).

Title I of the Trade and Development Act of 2000 provides for duty and quota-free treatment for certain textile and apparel articles imported from designated beneficiary sub-Saharan African countries. Section 112(b)(3) of that Act provides duty and quota-free treatment for certain apparel articles assembled in beneficiary sub-Saharan African countries from fabric formed in one or more beneficiary countries. More specifically, this treatment is for apparel articles wholly assembled in one or more beneficiary sub-Saharan African countries from fabric wholly formed in one or more beneficiary countries from yarn originating in the U.S. or one or more beneficiary countries (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 and 5603 of the Harmonized Tariff Schedule of the United States and are wholly formed and cut in one or more beneficiary country).

Moreover, this preferential treatment is also available for apparel articles wholly assembled in one or more lesser-developed beneficiary sub-Saharan African countries, regardless of the country of origin of the fabric used to make such articles. This preferential treatment for lesser-developed countries applies through September 30, 2004.

This preferential tariff treatment is limited to imports of qualifying apparel articles in an amount not to exceed one and one-half percent of the aggregate square meter equivalents of all apparel articles imported into the United States in the preceding 12-month period for which data are available. For the purpose of this notice, the 12-month period for which data are available is the 12-month period ended July 31, 2000. In Presidential Proclamation 7350 (published in the Federal Register on October 4, 2000, 65 FR 59321), the President directs CITA to publish the aggregate quantity of imports allowed during each 12-month period, in the Federal Register.

For the one-year period, beginning on October 1, 2000, and extending through September 30, 2001, the aggregate quantity of imports eligible for preferential tariff treatment under these provisions is 246,500,393 square meter equivalents. This quantity will be recalculated for each subsequent year, under Section 112(b)(3)(A). Apparel articles entered in excess of this quantity shall be subject to otherwise applicable tariffs.

The amount is calculated using the aggregate square meter equivalents of all apparel articles imported into the United States, derived from the set of Harmonized Tariff Schedule (HTS) lines listed in the Annex to the World Trade Organization Agreement on Textiles and Clothing (ATC), and the conversion factors for units of measure into square meter equivalents used by the United States in implementing the ATC.

**Richard B. Steinkamp**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc.00–26518 Filed 10–13–00; 8:45 am]

**BILLING CODE 3510–DR–F**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Domestic Advisory Panel (DAP) on Early Intervention and Education for Infants, Toddlers, Preschool Children, and Children With Disabilities

**AGENCY:** Department of Defense Domestic Dependent Elementary and Secondary Schools (DDESS)

**ACTION:** Notice.

**SUMMARY:** Pursuant to Public Law 92–463, as amended (5 U.S.C. app. II), the Federal Advisory Committee Act, notice is hereby given that a meeting of the Domestic Advisory Panel (DAP) on Early Intervention and Education for Infants, Toddlers, Preschool Children, and Children with Disabilities is scheduled to be held from 8 a.m. to 3 p.m. on November 14–15, 2000. The meeting is open to the public and will be held at the Hilton Arlington Hotel, 950 N. Stafford Street, Arlington, VA 22203. The purpose of the meeting is to: (1) review the response to the panel's recommendations from its May 2000 meeting; (2) review and comment on data and information provided by the Department of Defense Domestic Dependent Elementary and Secondary Schools; and (3) establish subcommittees as necessary. Persons desiring to attend the meeting or desiring to make oral presentations or submit written statements for consideration by the panel must contact Dr. David V. Burket at (703) 696–4354, extension 1455.

Dated: October 10, 2000.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 00–26411 Filed 10–13–00; 8:45 am]

**BILLING CODE 5001–10–M**



## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Meeting To Discuss Gulf War Illness Research

**AGENCY:** Special Oversight Board for Department of Defense Investigations of Gulf War Chemical and Biological Incidents, Department of Defense.

**ACTION:** Notice.

**SUMMARY:** The Board will conduct a three-hour public meeting to receive a presentation by the Special Assistant for Gulf War Illnesses, Medical Readiness, and Military Deployments on the transition of his office from a Gulf War Illness-focused organization to one that also includes a force health protection orientation.

**DATES:** October 27, 2000.

**ADDRESSES:** Conference Room, 1401 Wilson Boulevard, Suite 400, Arlington, VA 22209.

**FOR FURTHER INFORMATION CONTACT:** CONTACT: Sandra Robinson, Administrative Assistant, Special Oversight Board, 1401 Wilson Blvd., Suite 401, Arlington, VA 22209, phone (703) 696–9477, fax (703) 696–4062, or via Email at *Gulfsyn@ods.pentagon.mil*

**SUPPLEMENTARY INFORMATION:** The hearing is scheduled from 9 a.m. until no later than 12 p.m. EDT. Seating is limited and will be available on a first-come, first-served basis beginning at 8:45 a.m. EDT.

Dated: October 10, 2000.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 00–26409 Filed 10–13–00; 8:45 am]

**BILLING CODE 5001–10–M**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Defense Science Board

**ACTION:** Notice of advisory committee meetings.

**SUMMARY:** The Defense Science Board (DSB) Task Force on High Energy Laser Weapon Systems Applications will meet in closed session on November 14–15, 2000; December 14–15, 2000; January 23–24, 2001; February 21–22, 2001; March 13–14, 2001; April 17–18, 2001; and May 15–16, 2001, at Strategic Analysis Inc., 3601 Wilson Boulevard, Arlington, VA 22201.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Task Force will review on-going or proposed programs in high energy laser (HEL) applications; examine recent supporting technology advancements and their applications with respect to supporting military HEL weapon system developments; develop potential military and strategic HEL system applications and identify processes required to implement these potentials; determine what needs to be done to weaponize these systems; and assess HEL operational concepts, impacts and limitations, considering legal, treaty and policy issues concerning HEL employment.

In accordance with Section 10(d) of the Federal Advisory Committee Act, P.L. No. 92–463, as amended (5 U.S.C. App. II, (1994)), it has been determined that these Defense Science Board meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly these meetings will be closed to the public.

Dated: October 10, 2000.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 00–26410 Filed 10–13–00; 8:45 am]

**BILLING CODE 5001–10–M**

## DEPARTMENT OF DEFENSE

### Department of the Army

### Advisory Committee Meeting Notice

**AGENCY:** U.S. Army Training and Doctrine Command (TRADOC).

**ACTION:** Notice of Meeting.

**SUMMARY:** In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–9463), announcement is made of the following meeting:

*Name of Committee:* Distance Learning/Training Technology Subcommittee of the Army Education Advisory Committee.

*Date:* 1–2 November 2000.

*Place:* Institute for Defense Analysis (IDA) Alexandria, Virginia.

*Time:* 0800–1630 on 1 November 2000; 0800–1400 on 2 November 2000.

*Proposed Agenda:* Discussions will Include: The Army University Access Online Program and Distance Learning, how the two programs are mutually supportive; the National Guard and Distance Learning; Army Research Institute (ARI), recent results on the long term effectiveness of DL and plans for collaborative learning in online training environments; Update on the status of the development and delivery of a learning (student) management system to support DL.

*Purpose of the Meeting:* The members will advise the Assistant Deputy Chief of Staff (ADCST), HQ Training and Doctrine Command (TRADOC), on matters pertaining to education and training technologies.

**FOR FURTHER INFORMATION CONTACT:** All communications regarding this subcommittee should be addressed to Mr. Richard Karpinski, at Commander, Headquarters TRADOC, ATTN: ATTG–CF (Mr. Karpinski), Fort Monroe, VA 23651–5000; telephone number (757) 728–5531.

**SUPPLEMENTARY INFORMATION:** Meeting of the advisory committee is open to the public. Because of restricted meeting space, attendance will be limited to those persons who have notified the Advisory Committee Management Office in writing at least five days prior to the meeting of their intention to attend. Contact Mr. Karpinski (757–728–5531) for meeting agenda and specific locations.

Any member of the public may file a written statement with the committee before, during, or after the meeting. To the extent that time permits, the committee chairman may allow public presentations or oral statements at the meeting.

**Robert E. Seger,**

*Senior Executive Service, Assistant Deputy Chief of Staff for Training.*

[FR Doc. 00–26492 Filed 10–13–00; 8:45 am]

**BILLING CODE 3710–08–M**

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## DEPARTMENT OF DEFENSE

### Department of the Army

### Army Science Board; Notice of Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee Meeting:

*Name of Committee:* Army Science Board (ASB).
*Date of Meeting:* 18 October 2000.
*Time of Meeting:* 0730–1700.
*Place:* Presidential Towers.
*Agenda:* The Army Science Board's (ASB) Study Group on "Countermine" will meet to have subgroup briefings and overall group discussion on October 18.. This meeting will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). (Please see attached Agendas.) The classified preclude opening any portion of this meeting. For further information, please contact Ms. Debbie Butler at (703) 601–1552.

**Wayne Joyner,**
*Program Support Specialist, Army Science Board.*

**Army Science Board Countermine Study—Presidential Towers, Crystal City, VA, 18 October 2000.**

*Agenda*

0800–0900—Introduction—CLASSIFIED—Frank Kendall
0900–0945—Wide Area Surveillance—CLASSIFIED—Dr. Irene Peden
0945–1030—Maneuver Unit Support and Route Clearing—CLASSIFIED—Joanna Lau
1030–1115—Physical Security and Humanitarian Demining—CLASSIFIED—Buddy Beck
1115–1230—LUNCH
1230–1315—Breaching—CLASSIFIED—Dr. Luyten
1315–1415—Basic Research and Phenomenology—CLASSIFIED—Dr. Canavan
1415–1515—Open Discussion/Closing Remarks—CLASSIFIED—Frank Kendall

[FR Doc. 00–26416 Filed 10–13–00; 8:45 am]
BILLING CODE 3710–08–M

## DEPARTMENT OF DEFENSE

### Department of the Army

### Privacy Act of 1974; System of Records

**AGENCY:** Department of the Army, DoD.
**ACTION:** Notice to amend systems of records.

**SUMMARY:** The Department of the Army is amending four systems of records notices in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

**DATES:** This proposed action will be effective without further notice on November 15, 2000 unless comments are received which result in a contrary determination.

**ADDRESSES:** Records Management Division, U.S. Army Records Management and Declassification Agency, ATTN: TAPC–PDD–RP, Stop 5603, Ft. Belvoir, VA 22060–5603.

**FOR FURTHER INFORMATION CONTACT:** Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390 or Ms. Christie King at (703) 806–3711 or DSN 656–3711.

**SUPPLEMENTARY INFORMATION:** The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records systems being amended are set forth below followed by the notices, as amended, published in their entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: October 10, 2000.

**L.M. Bynum,**
*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**A0056–9 TRADOC**

**SYSTEM NAME:**

Marine Qualification Records (February 1, 1996, 61 FR 3686).

**CHANGES:**

* * * * *

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Delete entry and replace with '10 U.S.C. 3013, Secretary of the Army; Army Regulation 600–88, Sea Duty; and E.O. 9397 (SSN).'

* * * * *

**STORAGE:**

Delete entry and replace with 'Electronic storage medium, paper records in file folders and on microfiche.'

* * * * *

**SAFEGUARDS:**

Delete entry and replace with 'Records are maintained in locked file cabinets in a secure building and are accessible only to authorized personnel in their official capacity.'

**RETENTION AND DISPOSAL:**

Delete entry and replace with 'DA Form 3068–1 and related records are maintained for 40 years then destroyed. Registers are destroyed 40 years after the date of the last entry in the register.'

* * * * *

**A0056–9 TRADOC**

**SYSTEM NAME:**

Marine Qualification Records (February 1, 1996, 61 FR 3686).

**SYSTEM LOCATION:**

Director, Office of the Chief of Transportation, 705 Read Street, Room 12, Fort Eustis, VA 23604–5407.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

MILITARY AND CIVILIAN EMPLOYEES OF THE ARMY.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Marine Service Record (DA Form 3068–1), individual's request for examination, test results, character and suitability statements, physical qualification reports, experience qualifications and evaluations, commander's recommendation, Marine Qualification Board recommendation and final action thereon, U.S. Army Marine Licenses (DA Forms 4309 and 4309–1), and similar relevant documents.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C. 3013, Secretary of the Army; Army Regulation 600–88, Sea Duty; and E.O. 9397 (SSN).

**PURPOSE(S):**

To evaluate and recommend appropriate action concerning the issuance, denial, suspension, or revocation of U.S. Army Marine Licenses; to award certification to individuals passing the marine qualification examination; to monitor test content and procedures to ensure that tests are valid and current; to award Special Qualification Identifiers to appointed Marine Qualification Field Examiners; to review marine casualty reports, incident reports, and investigations to re-evaluate qualifications of persons involved; and to maintain Marine Service Records.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The U.S. Coast Guard, Department of Transportation may be furnished information concerning certification and licensing of individuals.

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of system of record notices apply to this record system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Electronic storage medium, paper records in file folders and on microfiche.

**RETRIEVABILITY:**

By individual's surname and Social Security Number.

**SAFEGUARDS:**

Records are maintained in locked file cabinets in a secure building and are accessible only to authorized personnel in the their official capacity.

**RETENTION AND DISPOSAL:**

DA Form 3068–1 and related records are maintained for 40 years then destroyed. Registers are destroyed 40 years after the date of the last entry in the register.

**SYSTEM MANAGER(S) AND ADDRESS:**

Commander, U.S. Army Transportation Center, Privacy Act Officer, 667 Monroe Avenue, Fort Eustis, VA 23604–5040.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Director, Office of the Chief Transportation, 705 Read Street, Room 12, Fort Eustis, VA 23604–5407.

Individual should furnish name, Social Security Number, address and enough pertinent details that will facilitate locating the information. Request must be signed.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Director, Office of the Chief Transportation, 705 Read Street, Room 12, Fort Eustis, VA 26304–6507.

Individual should furnish name, Social Security Number, address and enough pertinent details that will facilitate locating the information. Request must be signed.

**CONTESTING RECORD PROCEDURES:**

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

From the individual, military and civilian personnel records and reports, civilian maritime records, U.S. Coast Guard, commanders and vessel masters, and other appropriate sources able to furnish relevant information.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

**A0351–1a TRADOC**

**SYSTEM NAME:**

Automated Instructional Management System-Redesign (AIMS–R) (February 2, 1998, 63 FR 5365).

**CHANGES:**

* * * * *

**SYSTEM LOCATION:**

Delete entry and replace with 'Headquarters, Training and Doctrine Command (TRADOC); TRADOC Service Schools; and Army Training Centers. Addresses for the above may be obtained from the Commander U.S. Army Training Center, 2787 Madison Avenue, Fort Eustis, VA 23604–5166.'

* * * * *

**STORAGE:**

Replace 'Microfiche' with 'CD-ROM'.

**SAFEGUARDS:**

Delete entry and replace with 'Access to system is restricted to authorized personnel only with sign-on and password authorization.'

**RETENTION AND DISPOSAL:**

Delete entry and replace with 'Records are maintained for 40 years then destroyed. However, records on extension courses are maintained for 3 years in current file area, transferred to the records holding area for 2 years then finally retired to the National Personnel Records Center, 9700 Page Avenue, St. Louis, MO 63132–5100.'

* * * * *

**A0351–1a TRADOC**

**SYSTEM NAME:**

Automated Instructional Management System-Redesign (AIMS–R).

**SYSTEM LOCATION:**

Headquarters, Training and Doctrine Command (TRADOC); TRADOC Service Schools; and Army Training Centers. Addresses for the above may be obtained from the Commander U.S. Army Training Center, 2787 Madison Avenue, Fort Eustis, VA 23604–5166.

Categories of individuals covered by the system: Military members of the Army, Navy, Marine Corps, and Air Force, and civilians employed by the U.S. Government, and approved foreign military personnel enrolled in a resident course at a U.S. Army service school.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Course data to include scheduling, testing, academic, graduation, personnel and attrition data.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C. 3013, Secretary of the Army; Army Regulation 351–1, Individual Military Education and Training; and E.O. 9397 (SSN).

**PURPOSE(S):**

To automate those processes associated with the scheduling, management, testing, and tracking of resident student training. This TRADOC standard management system is composed of several subsystems which perform functions for personnel, student load management, academic records management, test creation, scoring and grading, student critique, resource scheduling and utilization, and query.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

**STORAGE:**

CD–ROM, computer discs, and paper printouts.

**RETRIEVABILITY:**

Retrieved by Social Security Number and course/class number.

**SAFEGUARDS:**

Access to system is restricted to authorized personnel only with sign-on and password authorization.

**RETENTION AND DISPOSAL:**

Records are maintained for 40 years then destroyed. However, records on extension courses are maintained for 3

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years in current file area, transferred to the records holding area for 2 years then finally retired to the National Personnel Records Center, 9700 Page Avenue, St. Louis, MO 63132–5100.

**SYSTEM MANAGER(S) AND ADDRESS:**

Commander, U.S. Army Training Support Center, Privacy Act Officer, 667 Monroe Avenue, Fort Eustis, VA 26604.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine if information about themselves is contained in this system should address written inquiries to the Commander, U.S. Army Training Support Center, 2787 Madison Avenue, Fort Eustis, VA 23604–5166.

Individual should provide the full name, Social Security Number, and military status or other information verifiable from the record itself.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, U.S. Army Training Support Center, 2787 Madison Avenue, Fort Eustis, VA 23604–5166.

Individual should provide the full name, Social Security Number, and military status or other information verifiable from the record itself.

**CONTESTING RECORD PROCEDURES:**

The Army's rules for accessing records, contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

Information is received from the individual, DoD staff, Personnel and Training systems, and faculty.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None

**A0600–85f DAPE**

**SYSTEM NAME:**

ADAPCP Clinical Certification Program Application File (January 12, 1993, 58 FR 3938).

**CHANGES:**

* * * * *

**SYSTEM LOCATION:**

Delete entry and replace with 'U.S. Army Medical Command, Army Substance Abuse Program, Clinical Certification 2050 Worth Road, Suite 10, Fort Sam Houston, TX 78234–6010.'

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Delete entry and replace with 'Department of the Army Civilian Psychologists, Social Workers, Drug and Alcohol Program Specialists, Social Services Representatives/Assistance, Psychology Technicians, and enlisted military counselors (Behavioral Science Specialists) employed or assigned to the Alcohol and Drug Abuse Prevention and Control Program (ADAPCP) Community Counseling Centers or Residential Treatment Facilities who provide counseling services to ADAPCP clients.'

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Delete entry and replace with 'Copies of candidate Application Portfolio with education and employment history and related documents that include Social Security Numbers, are required for each certification candidate. A signed copy of the Sobriety Statement is included in the application portfolio. Copies of course certificates and/or official college transcripts are also required in the candidate's file. Certification examination results and correspondence pertaining to the application status, certification renewal and Board decisions are also maintained in the candidate's file. In addition to a roster of all certified personnel; examination failures; previously certified personnel; and other program status information.'

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Delete entry and replace with '10 U.S.C. 3013, Secretary of the Army; Army Regulation 600–85, Alcohol and Drug Abuse Prevention and Control Program; and E.O. 9397 (SSN).'

**PURPOSE(S):**

Delete entry and replace with 'To receive, evaluate, and maintain, re-certification applications for Alcohol and Drug Abuse Prevention and Control Program Clinical Certification Staff; process information routinely used to verify and ensure accuracy of education, Continuing Education Unites (CEUs), employment or assignment records; ensure incumbents are qualified to provide quality care to Alcohol and Drug Abuse Prevention and Control Program clients; and provide statistical information for program analysis.'

* * * * *

**RETENTION AND DISPOSAL:**

Delete entry and replace with 'Records will be maintained during individual's tenure and 5 years beyond the date of departure from the program then destroyed. Individuals who transfer to another ADAPCP organization records transfer also.'

* * * * *

**A0600–85f DAPE**

**SYSTEM NAME:**

ADAPCP Clinical Certification Program Application File.

**SYSTEM LOCATION:**

U.S. Army Medical Command, Army Substance Abuse Program, Clinical Certification 2050 Worth Road, Suite 10, Fort Sam Houston, TX 78234–6010.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Department of the Army Civilian Psychologists, Social Workers, Drug and Alcohol Program Specialists, Social Services Representatives/Assistance, Psychology Technicians, and enlisted military counselors (Behavioral Science Specialists) employed or assigned to the Alcohol and Drug Abuse Prevention and Control Program (ADAPCP) Community Counseling Centers or Residential Treatment Facilities who provide counseling services to ADAPCP clients.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Copies of candidate Application Portfolio with education and employment history and related documents that include Social Security Numbers, are required for each certification candidate. A signed copy of the Sobriety Statement is included in the application portfolio. Copies of course certificates and/or official college transcripts are also required in the candidate's file. Certification examination results and correspondence pertaining to the application status, certification renewal and Board decisions are also maintained in the candidate's file. In addition to a roster of all certified personnel; examination failures; previously certified personnel; and other program status information.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C. 3013, Secretary of the Army; Army Regulation 600–85, Alcohol and Drug Abuse Prevention and Control Program; and E.O. 9397 (SSN).

**PURPOSE(S):**

To receive, evaluate, and maintain, re-certification applications for Alcohol and Drug Abuse Prevention and Control Program Clinical Certification Staff; process information routinely used to verify and ensure accuracy of education, Continuing Education Units (CEUs), employment or assignment records; ensure incumbents are qualified to provide quality care to Alcohol and Drug Abuse Prevention and Control



Program clients; and provide statistical information for program analysis.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To qualified personnel conducting scientific research, management, or financial audits or program evaluations. All personal identifiers are removed from data.

In response to a court order based on the showing of good cause in which the need for disclosure and the public's interest is necessary to support clinical competence.

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of system of records notices also apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS:**

**STORAGE:**

Electronic storage medium and file folders in secured file cabinets.

**RETRIEVABILITY:**

Retrieved by the surname, applicant file number, and social security number.

**SAFEGUARDS:**

All information is maintained in secured areas accessible only to designated individuals having official need therefor in the performance of official duties.

**RETENTION AND DISPOSAL:**

Records will be maintained during individual's tenure and 5 years beyond the date of departure from the program then destroyed. Individuals who transfer to another ADAPCP organization records transfer also.

**SYSTEM MANAGER(S) AND ADDRESS:**

Commander, U.S. Army Medical Command, Army Substance Abuse Program Clinical Certification, 2050 Worth Road, Suite 10, Fort Sam Houston, Texas 78234–6010.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Commander, U.S. Army Medical Command, Army Substance Abuse Program Clinical Certification, 2050 Worth Road, Suite 10, Fort Sam Houston, Texas 78234–6010.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to Commander, U.S. Army Medical Command, Army Substance Abuse Program Clinical Certification, 2050 Worth Road, Suite 10, Fort Sam Houston, Texas 78234–6010.

**CONTESTING RECORD PROCEDURES:**

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

From the individuals employed by or assigned to the Army Alcohol and Drug Abuse Prevention and Control Program who submit requested information to apply for ADAPCP Clinical Certification as a condition of continuing employment or otherwise.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

**A0608–25 CFSC**

**SYSTEM NAME:**

Chief of Staff, Army Retiree Council Files (July 27, 1993, 58 FR 40115).

**CHANGES:**

**SYSTEM IDENTIFIER:**

Delete entry and replace with 'A0600–8–7 DAPE".

* * * * *

**SYSTEM LOCATION:**

Delete Community and Family Support Center, 2461 Eisenhower Avenue, Alexandria, VA 22331–0500 and replace.

* * * * *

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Delete entry and replace with '10 U.S.C. 3013, Secretary of the Army; 10 U.S.C. 1588 and 3966; Army Regulation 600–8–7, Retirement Service Program; and E.O. 9397 (SSN).'

* * * * *

**RETENTION AND DISPOSAL:**

Delete entry and replace with 'Paper records relevant to the retiree volunteer waivers and claims are maintained for 6 years then destroyed. Statements of employment are maintained until the death of the individual then destroyed. Retirement service control cards, pre-retirement counseling and related documents are maintained for 1 year after the departure of individual from the installation or retirement then destroyed. Maintain for 1 year then destroy individual retirement cases, includes information related to processing of and providing assistance to personnel planning to retire.'

* * * * *

**A0600–8–7 DAPE**

**SYSTEM NAME:**

Chief of Staff, Army Retiree Council Files.

**SYSTEM LOCATION:**

Chief, Office of the Deputy Chief of Staff for Personnel, Army Retirement Services, 200 Stovall Street, Alexandria, VA 22332–0470. Segments of this system exist at Headquarters, U.S. Army Forces Command, Fort McPherson, GA; U.S. Army Training and Doctrine Command, Fort Monroe, VA; Headquarters, Military District of Washington; and installations operating retiree councils. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Retired Army personnel who have been nominated to serve and those who have been nominated and appointed to serve on the Chief of Staff, Army Retiree Council.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Retiree's name, grade, retirement class/date/code, Social Security Number, branch of service, date of birth, component, years of service, percentage of disability, sex, and home address; biographical sketch of retirees seeking appointment to the Chief of Staff, Army Retiree Council, comprising much of the above information and supplemented by description of involvement in military and civic affairs since retirement, statement of willingness to serve pursuant to Army Regulation 600–8–7, Retirement Services Program, correspondence between Army and applicant regarding acceptance/non-selection, active duty training orders; and similar relevant documents.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C. 3013, Secretary of the Army; 10 U.S.C. 1588 and 3966; Army, Army Regulation 600–8–7, Retirement Service Program; and E.O. 9397 (SSN).

**PURPOSE(S):**

To provide the Active Army with insight into problems and needs of the retirees.

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**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Paper records in file folders.

**RETRIEVABILITY:**

By individual's surname.

**SAFEGUARDS:**

Records are maintained in secure area accessible only to designated individuals in the performance of their duties.

**RETENTION AND DISPOSAL:**

Paper records relevant to the retiree volunteer waivers and claims are maintained for 6 years then destroyed. Statements of employment are maintained until the death of the individual then destroyed. Retirement service control cards, pre-retirement counseling and related documents are maintained for 1 year after the departure of individual from the installation or retirement then destroyed. Maintain for 1 year then destroy individual retirement cases, includes information related to processing of and providing assistance to personnel planning to retire.

**SYSTEM MANAGER(S) AND ADDRESS:**

Chief, Office Deputy Chief of Staff for Personnel, Army Retirement Services, 200 Stovall Street, Alexandria, VA 22332–0470.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Chief, Office Deputy Chief of Staff for Personnel, Army Retirement Services, 200 Stovall Street, Alexandria, VA 22332–0470.

Individuals should provide the full name, current address and telephone number, and any details that would help locate the record.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to records about themselves contained in this record system should address written inquires to the Chief, Office Deputy Chief of Staff for Personnel, Army Retirement Services, 200 Stovall Street, Alexandria, VA 22332–0470.

Individuals should provide the full name, current address and telephone number, and any details that would help locate the record.

**CONTESTING RECORD PROCEDURES:**

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

From the individual; Army records and reports.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. 00–26412 Filed 10–13–00; 8:45 am]

BILLING CODE 5001–01–M

## DEPARTMENT OF EDUCATION

**[CFDA No: 84.184N]**

### Office of Elementary and Secondary Education—Safe and Drug-Free Schools and Communities National Programs—Federal Activities—Alcohol and Other Drug Prevention Models on College Campuses Grant Competition; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2001

*Purpose of Program:* The Alcohol and Other Drug Prevention Models on College Campuses Grant Competition provides awards to maintain, improve, further evaluate, and disseminate models of alcohol and other drug prevention at institutions of higher education.

*Eligible Applicants:* Institutions of higher education (IHEs). To be eligible, an IHE must not have received an award under this competition (under either CFDA 84.116X or 84.184N) during the previous two fiscal years.

*Applications Available:* October 16, 2000.

*Deadline for Transmittal of Applications:* December 13, 2000.

*Deadline for Intergovernmental Review:* February 13, 2001.

*Estimated Available Funds:* $600,000. The estimated amount of funds available under this competition is based on the Administration's budget request for this program for FY 2001. The actual level of funding, if any, is contingent upon final Congressional action.

*Estimated Range of Awards:* $60,000–$100,000.

*Estimated Average Size of Awards:* $85,000.

*Estimated Number of Awards:* 7.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 12 months.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86, 97, 98, and 99; and (b) the notice of final priority, eligible applicants, and selection criteria, as published in the **Federal Register** on April 6, 2000 (65 FR 18204–18205).

*For Applications and Further Information Contact:* Kimberly Light, U.S. Department of Education, Safe and Drug-Free Schools Program, 400 Maryland Avenue, SW, Room 3E222, Washington, DC 20202–6123. Telephone: (202) 260–2647. Facsimile: (202) 260–7767. Email: kimberly_light@ed.gov.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at (800) 877–8339.

Individuals with disabilities may obtain a copy of this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under *For Applications and Further Information Contact.* Individuals with disabilities may also obtain a copy of the application package in an alternative format by contacting that person. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

*INSTRUCTIONS FOR TRANSMITTAL OF APPLICATIONS*

**Note:** Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

**Pilot Project for Electronic Submission of Applications**

The U.S. Department of Education is expanding its pilot project of electronic submission of applications to include certain formula grant programs, as well as additional discretionary grant competitions. The Alcohol and Other Drug Prevention Models on College Campuses Grant Competition (CFDA #84.184N) is one of the programs included in the pilot project. If you are an applicant under this program, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-APPLICATION, formerly e-GAPS) portion of the Grant Administration and Payment System (GAPS). We request your participation in this pilot project. We shall continue to evaluate its success and solicit suggestions for improvement.

If you participate in this e-APPLICATION pilot, please note the following:

- Your participation is voluntary.
- You will not receive any additional point value or penalty because you submit a grant application in electronic or paper format.
- You can submit all documents electronically, including the Application for Federal Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Fax a signed copy of the Application for Federal Assistance (ED 424) after following these steps:

1. Print ED 424 from the -e-APPLICATION system.
2. Make sure that the institution's Authorizing Representative signs this form.
3. Before faxing this form, submit your electronic application via the -e-APPLICATION system. You will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
4. Place the PR/Award number in the upper right haNd corner of ED 424.
5. Fax ED 424 to the Application Control Center within three working days of submitting your electronic application. We will indicate a fax number in e-APPLICATION at the time of your submission.

- We may request that you give us original signatures on all other forms at a later date.

You may access the electronic grant application for the Alcohol and Other Drug Prevention Models on College Campuses Grant Competition at:

http://e-grants.ed.gov

We have included additional information about the e-APPLICATION pilot project (see *Parity Guidelines between Paper and Electronic Applications*) in the application package.



(A) *If You Send Your Application by Mail:*

You must mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: CFDA #84.184N, Washington, DC 20202–4725.

You must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

If you mail an application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

(B) *If You Deliver Your Application by Hand:*

You or your courier must hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: CFDA #84.184N, Room 3633, Regional Office Building 3, 7th and D Streets, SW, Washington, DC.

The Application Control Center accepts application deliveries daily between 8:00 a.m. and 4:30 p.m. (Washington, DC time), except Saturdays, Sundays, and Federal holidays. The Center accepts application deliveries through the D Street entrance only. A person delivering an application must show identification to enter the building.

**Notes:** (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

(2) If you send your application by mail or deliver it by hand or by a courier service, the Application Control Center will mail a Grant Application Receipt Acknowledgment to you. If you do not receive the notification of application receipt within 15 days from the date of mailing the application, you should call the U.S. Department of Education Application Control Center at (202) 708–9493.

(3) You must indicate on the envelope and—if not provided by the Department—in Item 3 of the Application for Federal Education Assistance (ED 424; revised November 12, 1999) the CFDA number—and suffice letter—of the competition under which you are submitting your application.

(4) If you submit your application through the Internet via the e-grants Web site, you will receive an automatic acknowledgment when we receive your application.

**Electronic Access to This Document**

You may view this document, as well as all other Department of Education documents published in the **Federal Register,** in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use PDF, you must have Adobe Acrobat Reader, which is available free at either of the previous sites. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

**Note:** The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at:

http://www.access.gpo.gov/nara/index.htm

**Program Authority:** 20 U.S.C. 7131.

Dated: October 12, 2000.

**Michael Cohen,**

*Assistant Secretary for Elementary and Secondary Education.*

[FR Doc. 00–26592 Filed 10–13–00; 8:45 am]

BILLING CODE 4000–01–M

## DEPARTMENT OF EDUCATION

### Arbitration Panel Decision Under the Randolph-Sheppard Act

**AGENCY:** Department of Education.

**ACTION:** Notice of arbitration panel decision under the Randolph-Sheppard Act.

**SUMMARY:** Notice is hereby given that on January 10, 2000, an arbitration panel rendered a decision in the matter of *Donald Schone and Ray Fitzpatrick* v. *Illinois Office of Rehabilitation Services, Department of Human Services (Docket No. R-S/97–10).* This panel was convened by the U.S. Department of Education pursuant to 20 U.S.C. 107d–1(b) upon receipt of a complaint filed by petitioners, Donald Schone and Ray Fitzpatrick.

**FOR FURTHER INFORMATION CONTACT:** A copy of the full text of the arbitration panel decision may be obtained from George F. Arsnow, U.S. Department of Education, 400 Maryland Avenue, SW., room 3230, Mary E. Switzer Building, Washington DC 20202–2738. Telephone: (202) 205–9317. If you use a telecommunications device for the deaf (TDD) you may call the TDD number at (202) 205–8298.

Individuals with disabilities may obtain this document in an alternate

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format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

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http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use PDF you must have Adobe Acrobat Reader, which is available free at either of the previous sites. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html

**SUPPLEMENTARY INFORMATION:** Pursuant to the Randolph-Sheppard Act (20 U.S.C. 107d-2(c)) (the Act), the Secretary publishes in the **Federal Register** a synopsis of each arbitration panel decision affecting the administration of vending facilities on Federal and other property.

**Background**

This dispute concerns the alleged improper denial of the vendors' request to be transferred to another facility by the Illinois Office of Rehabilitation Services, Department of Human Services, the State licensing agency (SLA).

A summary of the facts is as follows: In 1990, complainants Mr. Donald Schone and Mr. Ray Fitzpatrick signed separate operating agreements with the SLA to manage vending facilities #405 and #406 at the Old Post Office Building, 433 West Van Buren Street, Chicago, Illinois. In approximately 1992, the SLA was informed by the United States Postal Service that this location was to be closed and a New Post Office was to be constructed across the street at 433 West Harrison. Complainants contended that they should not be required to bid on other locations, but rather that the SLA should transfer them to the New Post Office at 433 West Harrison Street to operate the two vending facilities available at that location.

The complainants requested and received a State fair hearing concerning their complaint regarding the SLA's transfer and promotion policies. The Hearing Officer ruled that the SLA was not required to transfer Mr. Schone and Mr. Fitzpatrick to the New Post Office vending facilities without the bidding process. On April 22, 1997, the SLA adopted the Hearing Officer's ruling as final agency action. It was this decision that the complainants sought to have reviewed by a Federal arbitration panel. An arbitration hearing on this matter was held on June 17, 1999.

**Arbitration Panel Decision**

The central issue before the arbitration panel was whether the SLA was required by the Act (20 U.S.C. 107 *et seq.*), the implementing regulations (34 CFR part 395), and applicable State rules and regulations to transfer Mr. Donald Schone and Mr. Ray Fitzpatrick to the vending facilities in the New Post Office at 433 West Harrison Street without bidding or other procedures after the closing of the Old Post Office at 433 West Van Buren Street.

The majority of the panel found that the complainants' rights and entitlement flowed from the terms of their vendor operating agreements, which were very specific and limited. Those agreements provided rights to the operation of vending facilities located at the Old Post Office, 433 West Van Buren Street. The panel further determined that, for reasons unrelated to the actions of the SLA, the United States Postal Service closed this Federal property. Therefore, the majority of the panel ruled that the operating agreements signed by the complainants to operate vending facilities at the Old Post Office, 433 West Van Buren Street, did not give them transfer rights to the New Post Office vending facilities at 433 West Harrison.

Based upon the evidence presented, the majority of the panel rejected complainants' reliance upon the fact that a new permit had not been obtained by the SLA for the New Post Office location. The panel reasoned that the vendor operating agreements signed by the complainants in 1990 were not tied to a specific permit that would somehow give Mr. Schone and Mr. Fitzpatrick transfer rights to the New Post Office. Instead, the panel concluded that the 1990 agreements were tied to a specific location, the Old Post Office at 433 West Van Buren, which no longer existed.

One panel member dissented.

The views and opinions expressed by the panel do not necessarily represent the views and opinions of the U.S. Department of Education.

Dated: October 6, 2000.

**Judith E. Heumann,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 00–26413 Filed 10–13–00; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Hanford; Notice of Open Meeting

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Hanford. The Federal Advisory Committee Act (Pub.L. No. 92–463, 86 Stat. 770) requires that public notice of these meeting be announced in the **Federal Register.**

**DATES:** Thursday, November 2, 2000, 9 a.m.–5 p.m., Friday, November 3, 2000, 8:30 a.m.–4 p.m.

**ADDRESSES:** Double Tree Inn, 2525 North 20th Avenue, Pasco, WA (509) 547–0701.

**FOR FURTHER INFORMATION CONTACT:** Gail McClure, Public Involvement Program Manager, Department of Energy Richland Operations Office, P.O. Box 550 (A7–75), Richland, WA, 99352; Phone: (509) 373–5647; Fax: (509) 376–1563.

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Board:* The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

*Tentative Agenda*

Thursday, November 2, 2000

1. Tri-Party Agreement (TPA): Regulating for Success
   a. Discussion of the TPA in the context of the following programs: Spent Fuel Tanks, Waste Management and Environmental Restoration
   b. For each program, there will be a discussion related to: 1) FY 2000 TPA Accomplishments; 2) Identification of important milestones in the next five years; and 3) Identification of potential schedule impacts
   c. Discussion of recent modifications to the Tanks Interim Stabilization Consent Decree
   d. Proposed Changes to M–45; Single Shell Tank Waste Retrieval Actions; Associated Leak Detection; Monitoring and Mitigation; and Single-Shell Tank Farm Closure Activities
2. Informational Discussion on the DOE-Richland Vision: Done in a Decade
3. Introduction of Draft Advice from Dollars and Sense Committee on Contracting Criteria
4. Re-introduction of FY 2001 Performance Measures Advice (#111)
5. Initiate discussion of Hanford Advisory Board Chair Selection

Friday, November 3, 2000

1. Hanford Advisory Board Sounding Board on Department of Energy-Richland Vision
2. Possible adoption of Draft Advice from Dollars and Sense Committee on Contracting Criteria
3. Formal adoption of FY2001 Performance Measures Advice (#111)
4. Continued Discussion on the selection of Hanford Advisory Board Chair
5. Board Discussion on Headquarters Structure and Guidance of Site-Specific Advisory Board

*Updates*

Denver Stewardship Workshop
Washington State Department of Ecology Tank Waste Workshop
Fourth National Department of Energy Radioactive Waste Tank Closure Workshop

*Public Participation:* The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Gail McClure's office at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided equal time to present their comments.

*Minutes:* The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4:00 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Gail McClure, Department of Energy Richland Operations Office, P.O. Box 550, Richland, WA 99352, or by calling her at (509) 373–5647.

Issued at Washington, DC on October 11, 2000.

**Rachel M. Samuel,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 00–26456 Filed 10–13–00; 8:45 am]

BILLING CODE 6450–01–U



## DEPARTMENT OF ENERGY

### Office of Fossil Energy; National Coal Council Advisory Committee

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the National Coal Council Advisory Committee. Federal Advisory Committee Act (Public Law 92–463,86 Stat. 770) requires notice of these meetings be announced in the **Federal Register.**

**DATES:** Thursday, November 9, 2000, 9 a.m. to 12 N.

**ADDRESSES:** Crowne Plaza Hotel, 14th & K Streets, NW, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy, Washington, DC 20585. Phone: 202/586–3867.

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Committee:* To provide advice, information, recommendations to the Secretary of Energy on matters relating to coal and coal industry issues.

*Tentative Agenda*

- Call to order Mr. Steven F. Leer, Chairman.
- Remarks by Secretary of Energy, Bill Richardson (invited).
- Remarks by Mr. Robert S. Kripowicz, Acting Assistant Secretary for Fossil Energy.
- Administrative business.
- Presentation by Dr. Peter Jaffe, Princeton University, on Carbon Mitigation Initiatives.
- Presentation by Mr. Stuart Dalton, Electric Power Research Institute (EPRI), on EPRI's Global Coal Initiative.
- Presentation by Ms. Ann Cecchetti on Politics—Results of November 7 Election and Expectations for the Future.
- Other business.
- Adjournment.

*Public Participation:* The meeting is open to the public. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Margie D. Biggerstaff at the address or telephone number listed above. You must make your request for an oral statement at least five business days prior to the meeting, and reasonable provisions will be made to include the presentation on the agenda. Public comment will follow the 10 minute rule.

*Transcripts:* The transcript will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on October 11, 2000.

**Rachel M. Samuel,**

*Deputy Advisory Committee, Management Officer.*

[FR Doc. 00–26455 Filed 10–13–00; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Energy Information Administration

### American Statistical Association Committee on Energy Statistics

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the American Statistical Association Committee on Energy Statistics, a utilized Federal Advisory Committee. The Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register.**

*Date and Time:*

Thursday, November 2, 2000, 8:30 am–4:45 pm; Friday, November 3, 2000, 8:30 am–12:00 noon.

*Place:* U. S. Department of Energy, Forrestal Building, 1000 Independence Ave., S.W., Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:** Mr. William I. Weinig, EI–70, Committee Liaison, Energy Information Administration, U.S. Department of Energy, Washington, DC 20585, Telephone: (202) 426–1101. Alternately, Mr. Weinig may be contacted by email at william.weinig@eia.doe.gov or by FAX at (202) 426–1083.

*Purpose of Committee:* To advise the Department of Energy, Energy Information Administration (EIA), on EIA technical statistical issues and to enable the EIA to benefit from the

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Committee's knowledge concerning other energy-related statistical matters.

*Tentative Agenda*

Thursday, November 2, 2000

A. Opening Remarks by the Chair, Room 8E–089
B. Major Topics
1. Opening Remarks by EIA's Acting Administrator, Room 8E–089
2. A Briefing: EIA's New Approach to Long-Term International Energy Forecasting, 8E–089
3. Some Challenges in Long-Term International Energy Modeling, Room GH–019
4. Implementing a New Sampling Technique for Monthly Electric Power Data Collections , GH–027
5. Survey Design for Residential and Commercial Consumption Surveys, GH–035
6. Summary of the Previous Three Break-Out Sessions by EIA Presenters, 8E–089
7. New Ways to Process, Store and Make EIA Data Accessible, 8E–089
8. Estimating Procedures to Reduce Data Reporting Lags, 8E–089
9. Interactive Session: Cognitive Testing of Potential EIA Graphic Standards Redesign, 8E–089

Friday, November 3, 2000

C. Major Topics
1. Monte Carlo Analysis of Uncertainty in $CO_2$ Emissions, Room 8E–089
2. Optimization and Visualization of the North American Eastern Interconnect Power Market, Room 8E–089
3. The Feasibility Study for Surveying Industrial Natural Gas Consumers, Room 8E–089
4. A Briefing: Winter Energy Assessment for the U.S., 8E–089
5. Public Comment, 8E–089

D. Closing Remarks by the Chair, 8E–089

*Public Participation:* The meeting is open to the public. The Chair of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Written statements may be filed with the committee either before or after the meeting. If there are any questions, please contact Mr. William I. Weinig, EIA Committee Liaison, at the address or telephone number listed above.

*Minutes:* Available for public review and copying at the Public Reading Room, (Room 1E–190), 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–3142, between the hours of 9 a.m. and 4 p.m., Monday through Friday.

Issued at Washington, DC, on October 11, 2000.

**Rachel M. Samuel,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 00–26457 Filed 10–13–00; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. EL00–109–001]**

### Alternate Power Source, Inc., Complainant v. ISO New England, Inc., Respondent; Notice of Amendment to Complaint

October 10, 2000.

Take notice that on October 4, 2000, Alternate Power Source, Inc. (APS), tendered for filing an Amended Complaint under Section 206 and 306 of the Federal Power Act in which APS petitions the Commission for an order directing ISO New England, Inc. (ISO–NE) to suspend the April, 2000 ICAP auction "clearing price"; cease and desist from requiring APS to pay into escrow $700,000 for the month of April, 2000; refund all late fees and interest charges regarding the disputed April ICAP deficiency charge; cease and desist from "settling" the ICAP prices for the months of May, June and July, 2000, and from requiring any payments into escrow until a thorough investigation of all conduct and actions is completed; and if, after an investigation, there is a finding of anomalous conduct in the so-called ICAP auction "market" for the months April through July, 2000, direct ISO–NE to mitigate ICAP prices for those months.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before October 16, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222) for assistance. Answers to the complaint shall also be due on or before October 16, 2000.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–26443 Filed 10–13–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP00–40–002]**

### Florida Gas Transmission Company; Notice of Application

October 10, 2000.

Take notice that on September 29, 2000, Florida Gas Transmission Company (FGT), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP00–40–002 an amendment to its application in Docket Nos. CP00–40–000 and 001, pursuant to Section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Federal Energy Regulatory Commission's (Commission) Regulations, to: (1) Re-route approximately six miles of the Bayside Lateral, in Hillsborough County, FL; (2) eliminate approximately 24 miles of the previously proposed mainline Loops D and E in Suwannee, Columbia, Bradford, Clay, and Putnam Counties, FL, and, instead, increase the horsepower installed at Compressor Station No. 17, in Marion County, FL; (3) make minor modifications to the beginning of West Leg Loop J, in Gilchrist County, FL, and the ending of West Leg Loop K, in Levy County, FL; and (4) slightly decrease the horsepower to be installed at Compressor Stations 15A, 16, 26, and 27, in Taylor, Bradford, Citrus, and Hillsborough Counties, FL, respectively, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

FGT continues to request that the Commission find that the costs of the proposed Phase V Expansion can be rolled-in to establish rates for service under its incrementally priced Rate Schedule FTS–2. FGT states that the maximum rates applicable to Rate Schedule FTS–2 are expected to be lower as a result of such rolling-in of costs and thus, will not require subsidies from existing shippers.

FGT states that the proposed revisions to facilities will result in no changes to the proposed service, but are made in order to reduce the environmental impact and capital cost of the Phase V Expansion project. For the total Phase V Expansion as amended, FGT proposes to: (1) Acquire an undivided interest in Koch Gateway Pipeline Company's (Koch Gateway) Mobile Bay Lateral in Mobile County, Alabama that will give FGT capacity of 300,000 MMBtu per day; (2) construct approximately 167.1 miles of various diameter pipeline, additional compression totaling 132,615 horsepower, three delivery points, one new supply measurement station, and various other miscellaneous facilities. The proposed Phase V Expansion will add an incremental capacity of approximately 305,819 MMBtu per day, on an annual daily average basis (net of turn-back). FGT estimates the total cost to be $462 million, including an estimated $10 million for the proposed acquisition of an interest in the Mobile Bay Lateral.

FGT requests that the Commission issue a preliminary determination on non-environmental issues by November 2000, and a final determination on call certificate issues on or before April 15, 2001.

Any questions regarding the application should be directed to Mr. Stephen T. Veatch, Director of Certificates and Regulatory Reporting, Suite 3997, 1400 Smith Street, Houston, Texas 77002 or call (713) 853–6549.

Any person desiring to participate in the hearing process or to make any protests with reference to said application should on or before October 31, 2000, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or parties directly involved. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order.

However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties, or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure provided for, unless otherwise advised, it will be unnecessary for FGT to appear or be represented at the hearing.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–26444 Filed 10–13–00; 8:45 am]

BILLING CODE 6717–01–M



## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Application for Amendment of License, and Soliciting Comments, Motions To Intervene, and Protests

October 10, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of License.

b. *Project No.:* 2169–017.

c. *Date Filed:* July 12, 2000.

d. *Applicant:* Alcoa Power Generating Inc., (APGI), Tapoco Division.

e. *Name of Project:* Tapoco Hydroelectric Project.

f. *Location:* The Project is located on the Cheoah and Little Tennessee Rivers, in Blount and Monroe Counties, Tennessee, and Graham and Swain Counties, North Carolina. The project utilizes approximately 370 acres Nantahala National Forest lands. The project consists of four developments: Chilhowee, Cheoah, Santeetlah, and Calderwood.

g. *File Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant's Contact:* B. Julian Polk, Alcoa Power Generating Inc., Tapoco Division, 300 North Hall Road, Alcoa, TN 37701–2516, Tel: (865) 977–3321.

i. *FERC Contact:* Any questions on this notice should be addressed to Ms. Doan Pham at (202) 219–2851 or at e-mail address *doan.pham@ferc.fed.us.*

j. *Deadline for filing comments, motions to intervene, or protests:* November 13, 2000.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Please include the Project Number (2169–017) on any comments, protests, or motions filed.

k. *Description of Amendment:* APGI proposes to remove certain transmission lines, identified as the Calderwood Line No. 1 (28 miles long), No. 2 (32 miles long) and No. 3 (22 miles long), and related electrical and non-electrical equipment necessary for the operation of these lines. APGI asserts that due to increased in connectivity between the Tapoco project developments and an interconnection facilities of the Tennessee Valley Authority and Duke Energy Corporation, these transmission facilities function as part of the integrated regional transmission system.

l. *Locations of the Application:* A copy of the application is available for

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inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE, Room 2A, Washington, DC, 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

**Comments, Protests, or Motions to Intervene**

Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

**Filing and Service of Responsive Documents**

Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

**Agency Comments**

Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–26445 Filed 10–13–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Settlement Agreement and Soliciting Comments

October 10, 2000.

Take notice that the following Settlement Agreement has been filed with the Commission and is available for public inspection:

a. *Type:* Settlement Agreement on New License Application.

b. *Project No.:* 1962–000.

*Project Name:* Rock Creek-Cresta.

*Applicant:* Pacific Gas and Electric Company.

c. *Date Settlement Agreement Filed:* September 29, 2000.

d. *Location:* On the North Fork Feather River, in Butte and Plumas countries, California. About 228 acres of the project area occupy lands of the United States, primarily within the Lassen and Plumas National Forests.

e. *Filed Pursuant to:* Rule 602 of the Commission's Rules of Practice and Procedure, 18 CFR 385.602.

f. *Applicant's Contact:* Tom Jereb, Pacific Gas and Electric Company, Mail Code N11C, P.O. Box 770000, San Francisco, CA 94177; (415) 973–9320.

g. *FERC Contact:* Dianne Rodman (202) 219–2830, Email: dianne.rodman@ferc.fed.us

h. *Deadline Dates:* Comments due November 30, 2000, or 30 days after the filing of the supporting documentation, whichever comes later; reply comments due December 14, 2000, or 45 days after the filing of the supporting documentation, whichever comes later.

i. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Filing:* Pacific Gas and Electric Company (PG&E) filed the Settlement Agreement on behalf of itself and the U.S. Department of Agriculture Forest Service, U.S. Fish and Wildlife Service, California Department of Fish and Game, California State Water Resources Control Board, Natural Heritage Institute, Friends of the River, Plumas County, California Outdoors, California Trout, Chico Paddleheads, American Whitewater, and Shasta Paddlers. The purpose of the Settlement Agreement is to resolve among the signatories all issues associated with issuance of a new license for the project regarding sediment management, water quality, instream flows, fish habitat, and recreation. PG&E requests that the Commission accept and incorporate into any new license for the project the protection, mitigation, and enhancement measures stated in Appendix A of the Settlement Agreement. Comments and reply comments on the Settlement Agreement and supporting documentation are due on the dates listed above.

k. Copies of the Settlement Agreement are available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance) or at the address listed in item f above.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–26486 Filed 10–13–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Western Area Power Administration

### Sundance Energy Project

**AGENCY:** Western Area Power Administration, DOE.

**ACTION:** Notice of public scoping meeting on the Sundance Energy Project environmental impact statement (EIS).

**SUMMARY:** The Western Area Power Administration (Western) is holding a public scoping meeting public on the proposed Sundance Energy Project, Pinal County, Arizona. The scoping process includes notifying the general public and Federal, State, local, and tribal agencies of the proposed action. The purpose of the scoping meeting is to identify public and agency concerns and alternatives to be considered in the EIS.

One informal public scoping meeting has been scheduled for October 18, 2000, starting at 7 p.m. at Coolidge Unified School District Auditorium. This meeting has been advertised in local newspapers.

**DATES:** Comments on the scope of the EIS for the proposed transmission interconnection and electric generating facility must be received by October 31, 2000, to be considered in the EIS.

**ADDRESSES:** Coolidge Unified School District Auditorium, 800 West Northern Avenue, Coolidge, AZ 85228. Written comments may be hand-delivered, mailed, e-mailed, or faxed to Mr. John Holt, NEPA Compliance Officer, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, telephone (602) 352–2592, fax (602) 352–2780 or (602) 352–2956, e-mail holt@wapa.gov. All documentation developed or retained by Western during the course of this public process will be available for inspection and copying at this address.

**FOR FURTHER INFORMATION CONTACT:** Mr. John Holt, NEPA Compliance Officer, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, telephone (602) 352–2592, fax (602) 352–2956, e-mail holt@;wapa.gov.

Mr. John Bridges, NEPA Document Manager, Corporate Services Office, Western Area Power Administration, P.O. Box 281213, Lakewood, CO 80228–8213, telephone (720) 962–7255, fax (720) 962–7263, e-mail bridges@wapa.gov.

For general information on the U.S. Department of Energy's National Environmental Policy Act (NEPA) review procedures or status of a NEPA review contact Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance, EH–42, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, telephone (202) 586–4600 or (800) 472–2756.

**SUPPLEMENTARY INFORMATION:** Western intends to prepare an EIS regarding the proposal by PPL Global to construct an electric generating facility on private property and to interconnect this facility with an existing Western transmission line and Western's grid in the vicinity of Coolidge, Arizona. Two 4.5-mile long transmission lines would connect the proposed power generating facility with a point of interconnection on Western's Liberty-Coolidge 230 kilovolt (kV) transmission line west of Coolidge. In addition, a 1.5 mile, 230-kV transmission line would connect the powerplant with Western's Signal Substation. An existing 115-kV transmission line from Signal Substation would be upgraded to 230-kV and other work inside Signal Substation would be required.

PPL Global proposes to construct the Sundance Energy Project on private lands in Pinal County, approximately 5 miles southwest of Coolidge, Arizona. The Project would be a nonutility merchant plant that would sell power during peak demand periods to wholesale-only contract or spot market customers. All economic costs of the project will be born by PPL Global.

The Project would consist of a nominal 600-megawatt natural gas-fired simple-cycle peaking facility and on-site supporting infrastructure including: an administration building, warehouse storage, water treatment facilities, inlet air cooling system to optimize inlet air combustion, gas conditioning equipment, and new on-site access roads. The Project would be designed to operate primarily during on-peak hours. The Project's water consumption would be about 600 acre/feet per year. The water source would be excess Central Arizona Project water delivered through an existing irrigation canal at the site, a new groundwater well, or a combination of both. The generating facility and infrastructure would occupy less than 40 acres of a 280-acre parcel of rural property controlled by PPL Global. Additional proposed on-site facilities would include an interconnection with an existing natural gas transmission pipeline that runs through the Project property and the construction of 14 miles of natural gas pipeline to connect with another existing natural gas transmission pipeline southwest of the proposed powerplant.

The Project would entail construction of new 230-kV transmission lines and the upgrade of Western's existing Signal-Coolidge 115–kV transmission line to 230-kV to interconnect with Western's existing Liberty-Coolidge 230-kV transmission line.

Because of the potential for incorporating new generation into Western's system, and the proposed interconnections with the existing system, Western has determined it must prepare an EIS in accordance with the U.S. Department of Energy's (DOE) NEPA Implementing Procedures found at 10 CFR 1021, Appendix D6 to Subpart D. Although State and local agencies are responsible for the siting and permitting of the proposed electric generating facility, the EIS will include the analysis of effects from construction and operation of the generating facility as part of the proposed action.

The EIS will be prepared in accordance with the requirement of NEPA and DOE's NEPA Implementing Procedures in conjunction with the Council on Environmental Quality regulations. Full public participation and disclosure are planned for the entire EIS process. Western anticipates the EIS process will take about 15 months. It will include public information/scoping meetings; coordination and involvement with appropriate Federal, State, local, and tribal governments; public review and hearing on the published draft EIS; a published final EIS; and a Record of Decision (ROD). Publication of the ROD is anticipated in the fall of 2001.

Dated: September 29, 2000.

**Michael S. Hacskaylo,**

*Administrator.*

[FR Doc. 00–26458 Filed 10–13–00; 8:45 am]

BILLING CODE 6450–01–P



## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–66280; FRL–6747–5]**

### Notice of Receipt of Requests To Voluntarily Cancel CertainPesticide Registrations

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In accordance with section 6(f)(1) ofthe Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended,EPA is issuing a notice of receipt of requests by registrants tovoluntarily cancel certain pesticide registrations.

**DATES:** Unless a request is withdrawn by, April 16, 2001, unless indicated otherwise, orders will be issued canceling all of these registrations.

**FOR FURTHER INFORMATION CONTACT:** By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 1200 Pennsylvania Avenue, N.W., Washington, DC 20460.Office location for commercial courier delivery, telephonenumber and e-mail address: Rm. 224, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–5761;e-mail: hollins.james@epa.gov.

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this apply to me?*

This action is directed to the public in general. Although thisaction may be

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of particular interest to persons who produce or usepesticides, the Agency has not attempted to describe all thespecific entities that may be affected by this action. If you haveany questions regarding the information in this notice, consult theperson listed under **FOR FURTHER INFORMATION CONTACT.**

*B. How can I get additional information or copies of support documents?*

1. *Electronically.* You may obtainelectronic copies of this document and certain other related documents that might be available electronically, from the EPA Internet Home Page athttp://www.epa.gov. To access this document, on the Home Page select "Laws and Regulations" "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listing at http://www.epa.gov/fedrgstr/.

2. *In person.* Contact James A.Hollins at 1921 Jefferson Davis Highway, Crystal Mall 2, Rm. 224,Arlington, VA, telephone number (703) 305–5761. Available from7:30 a.m. to 4:45 p.m., Monday thru Friday, excluding legalholidays.

## II. What Action is the Agency Taking?

This notice announces receipt by the Agency of applicationsfrom registrants to cancel some 47 pesticide products registeredunder section 3 or 24(c) of FIFRA. These registrations are listedin sequence by registration number (or company number and 24(c)number) in the following Table 1:

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

| Registration No. | Product Name | Chemical Name |
|---|---|---|
| 000004–00156 | Bonide Weed Seedling Killer | *S*-Ethyl dipropylthiocarbamate |
| 000070–00190 | Kill-Ko Fruit Tree Spray | Methoxychlor (2,2-bis(*p*-methoxyphenyl)-1,1,1-trichloroethane) |
| | | *O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate |
| | | cis-*N*-Trichloromethylthio-4-cyclohexene-1,2-dicarboximide |
| 000241–00315 | Pursuit Plus Herbicide | *N*-(1-Ethylpropyl)-3,4-dimethyl-2,6-dinitrobenzenamine |
| | | Ammonium salt of (+/−)-2-(4,5-dihydro-4-methyl-4-(1-methylethyl)-5- |
| 000264 WA–95–0019 | Betamix Herbicide | Methyl m-hydroxycarbanilate m-methylcarbanilate |
| | | Ethyl m-hydroxycarbanilate carbanilate |
| 000572–00185 | Rockland General Purpose Dust | Methoxychlor (2,2-bis(*p*-methoxyphenyl)-1,1,1-trichloroethane) |
| | | *O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate |
| | | cis-*N*-Trichloromethylthio-4-cyclohexene-1,2-dicarboximide |
| 000655–00577 | Prentox Residual Insect Spray #2 | *N*-Octyl bicycloheptene dicarboximide |
| | | *O,O*-Diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate |
| | | (Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% |
| | | Pyrethrins |
| 000655–00739 | Prentox Pyrifos 0.5 Water Base Insecticide | *O,O*-Diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate |
| 000655–00743 | Prentox Pyrifos 1E | *O,O*-Diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate |
| 000769–00603 | R & M Dog & Cat Repellent Spray | Methyl nonyl ketone |
| 000769–00901 | Science Multi-Purpose Spray | Methoxychlor (2,2-bis(p-methoxyphenyl)-1,1,1-trichloroethane) |
| | | *O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate |
| | | cis-*N*-Trichloromethylthio-4-cyclohexene-1,2-dicarboximide |
| 000802–00235 | Miller's Captan 5D | cis-*N*-Trichloromethylthio-4-cyclohexene-1,2-dicarboximide |
| 002935 WI–88–0009 | Red Top Diazinon 14 G | *O,O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate |
| 003125 ND–93–0006 | Sencor Solupak 75% Dry Flowable Herbicide | 1,2,4-Triazin-5(4*H*)-one, 4-amino-6-(1,1-dimethylethyl)-3-(methylthio)- |
| 003125 TX–81–0045 | Def 6 Emulsifiable Defoliant | *S,S,S*-Tributyl phosphorotrithioate |
| 003125 WA–97–0004 | Sencor Solupak 75% Dry Flowable Herbicide | 1,2,4-Triazin-5(4*H*)-one, 4-amino-6-(1,1-dimethylethyl)-3-(methylthio)- |
| 003876–00061 | Slimicide C–30 | Bis(trichloromethyl) sulfone |
| | | Methylene bis(thiocyanate) |
| 005481–00317 | Methoxychlor-2 | Methoxychlor (2,2-bis(*p*-methoxyphenyl)-1,1,1-trichloroethane) |
| 005481–00320 | Hornfly Dust | Methoxychlor (2,2-bis(*p*-methoxyphenyl)-1,1,1-trichloroethane) |
| 005481–00326 | Methoxychlor 50 WP | Methoxychlor (2,2-bis(*p*-methoxyphenyl)-1,1,1-trichloroethane) |
| 005887–00064 | Black Leaf Dog & Cat Repellent | Methyl nonyl ketone |
| 006557–00017 | Coronado Exterior Preservative Wood Stain | *N*-((Trichloromethyl)thio)phthalimide |
| | | Bis(tributyltin) oxide |



TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

| Registration No. | Product Name | Chemical Name |
|---|---|---|
| 007401–00059 | Ferti-Lome Special Pecan and Other Nut Tree Spray | *O,O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate |
| 007401–00066 | Ferti-Lome Diazinon Lawn & Garden Insect Spray | *O,O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate |
| 010163 AZ–92–0010 | Gowan Dimethoate 4 | *O,O*-Dimethyl *S*-((methylcarbamoyl)methyl) phosphorodithioate |
| 010182 ID–96–0014 | Diquat Herbicide | 6,7-Dihydrodipyrido(1,2-a:2',1'-c)pyrazinediium dibromide |
| 010182 OR–96–0034 | Diquat Herbicide | 6,7-Dihydrodipyrido(1,2-a:2',1'-c)pyrazinediium dibromide |
| 010806–00021 | Contact Hospi Spray Disinfectant | Isopropanol |
| | | Alkyl* dimethyl benzyl ammonium chloride *(60%$C_{14}$, 30%$C_{16}$, 5%$C_{18}$, 5%$C_{12}$) |
| | | Alkyl* dimethyl ethylbenzyl ammonium chloride *(68%$C_{12}$, 32%$C_{14}$) |
| 011556–00034 | Tiguvon Brand of Fenthion Swine Insecticide Pour-On | *O,O*-Dimethyl *O*-(4-(methylthio)-m-tolyl) phosphorothioate |
| 011556–00036 | Tiguvon (Fenthion) Technical Grade 100 | *O,O*-Dimethyl *O*-(4-(methylthio)-m-tolyl) phosphorothioate |
| 011556–00037 | Spotton (Fenthion) Cattle Insecticide 20% Ready-To-Use | *O,O*-Dimethyl *O*-(4-(methylthio)-m-tolyl) phosphorothioate |
| 011556–00048 | Lysoff Pour-On for Lice and Horn Flies | *O,O*-Dimethyl *O*-(4-(methylthio)-m-tolyl) phosphorothioate |
| 011556–00105 | Cutter Blue Insecticide Cattle Ear Tag | *O,O*-Dimethyl *O*-(4-(methylthio)-m-tolyl) phosphorothioate |
| | | (Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% |
| 034704–00208 | Clean Crop Betasan 7—G | *S*-(*O,O*-Diisopropyl phosphorodithioate) ester of *N*-(2-mercaptoethyl)benzenesulfonamide |
| 034704–00209 | Clean Crop Betasan 12.5G | *S*-(*O,O*-Diisopropyl phosphorodithioate) ester of *N*-(2-mercaptoethyl)benzenesulfonamide |
| 034704–00211 | Clean Crop Betasan 4—E | *S*-(*O,O*-Diisopropyl phosphorodithioate) ester of *N*-(2-mercaptoethyl)benzenesulfonamide |
| 034704–00216 | Betasan 36 Weed & Feed | *S*-(*O,O*-Diisopropyl phosphorodithioate) ester of *N*-(2-mercaptoethyl)benzenesulfonamide |
| 045017–00013 | Betz Slime-Trol RX—32 | Methylene bis(thiocyanate) |
| 045017–00043 | Dearcide 709 | Methylene bis(thiocyanate) |
| 059144–00031 | Pennington Penn-Kil Granular Nonselective Weed and Gras | Sodium metaborate ($NaB_{O2}$) |
| | | 5-Bromo-3-sec-butyl-6-methyluracil |
| | | Sodium chlorate |
| 066330–00003 | Captan 80 Seed Protectant for Seed Disease Control | cis-*N*-Trichloromethylthio-4-cyclohexene-1,2-dicarboximide |
| 066330–00009 | Clean Crop Captan WSP Seed Protectant Fungicide | cis-*N*-Trichloromethylthio-4-cyclohexene-1,2-dicarboximide |
| 066330–00011 | Captan 7.5 Dust | cis-*N*-Trichloromethylthio-4-cyclohexene-1,2-dicarboximide |
| 066330–00017 | Captan 5 Dust Fungicide | cis-*N*-Trichloromethylthio-4-cyclohexene-1,2-dicarboximide |
| 066330–00018 | Captan 10 Dust Fungicide | cis-*N*-Trichloromethylthio-4-cyclohexene-1,2-dicarboximide |
| 066330–00020 | Captan Moly Soybean Seed Protectant | cis-*N*-Trichloromethylthio-4-cyclohexene-1,2-dicarboximide |
| 066330–00022 | Captan Vitavax 20–20 Seed Protectant | cis-*N*-Trichloromethylthio-4-cyclohexene-1,2-dicarboximide |
| | | 5,6-Dihydro-2-methyl-1,4-oxathiin-3-carboxanalide |
| 066330 CA–99–0011 | Captan 50—Wp | cis-*N*-Trichloromethylthio-4-cyclohexene-1,2-dicarboximide |

NOTE: Registrants requested a 30–day comment period for thefollowing EPA Registration Numbers: 000655–00577, 000655–00739,000655–00743, 007401–00059, 000–7401–00066, 011556–00034, 011556– 00036, 011556–00037, 011556–00048, 011556–00105.

Unless a request is withdrawn by the registrant within180 days (30 days when requested by registrant) of publication ofthis notice, orders will be issued canceling all of theseregistrations.Users of these pesticides or anyone else desiring the retention ofa registration should contact the applicable registrant during thiscomment period.

The following Table 2 includes the names and addresses ofrecord for all registrants of the products in Table 1, in sequenceby EPA company number:

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TABLE 2. — REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

| EPA Company No. | Company Name and Address |
|---|---|
| 000004 | Bonide Products Inc., 2 Wurz Ave., Yorkville, NY 13495. |
| 000070 | Verdant Brands, Inc., Agent For: Verdant Brands, Inc., 213 S.W. Columbia St., Bend, OR 97702. |
| 000241 | BASF Corp., Box 13528, Research Triangle Park, NC 27709. |
| 000264 | Aventis Cropscience USA LP, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. |
| 000572 | Rockland Corp., 686 Passaic Ave., Box 809, West Caldwell, NJ 07007. |
| 000655 | Prentiss Inc., C.B. 2000, Floral Park, NY 11001. |
| 000769 | Verdant Brands, Inc., Agent For: Verdant Brands, Inc., 213 S.W., Columbia St., Bend, OR 97702. |
| 000802 | The Garden Grow Co., 6500 Hanna Rd., Box 100, Independence, OR 97351. |
| 002935 | Wilbur Ellis Co., 191 W. Shaw Ave, #107, Fresno, CA 93704. |
| 003125 | Bayer Corp., Agriculture Division, 8400 Hawthorn Rd., Box 4913, Kansas City, MO 64120. |
| 003876 | Betzdearborn (Attn: Kevin Manning), Division of Hercules Inc., 4636 Somerton Rd., Trevose, PA 19053. |
| 005481 | AMVAC Chemical Corp., Attn: Jon C. Wood, 4695 Macarthur Ct., Suite 1250, Newport Beach, CA 92660. |
| 005887 | Verdant Brands, Inc., Agent For: Verdant Brands, Inc., 213 S.W., Columbia St., Bend, OR 97702. |
| 006557 | Coronado Paint Co., P. O. Box 308, Edgewater, FL 32132. |
| 007401 | Brazos Associates, Inc., Agent For: Voluntary Purchasing Group In, c/o Voluntary Purchasing Groups, Inc., Box 460, Bonham, TX 75418. |
| 010163 | Gowan Co., Box 5569, Yuma, AZ 85366. |
| 010182 | Zeneca Ag Products, Inc., 1800 Concord Pike, Wilmington, DE 19850. |
| 010806 | Contact Industries, Div of Safeguard Chemical Corp., 411 Wales Ave, Bronx, NY 10454. |
| 011556 | Bayer Corp., Agriculture Division, Animal Health, Box 390, Shawnee Mission, KS 66201. |
| 034704 | Jane Cogswell, Agent For: Platte Chemical Co Inc., Box 667, Greeley, CO 80632. |
| 045017 | Hercules Incorporated (Attn: Kevin Manning), Pulp & Paper Division., 4636 Somerton Rd., Trevose, PA 19053. |
| 059144 | Gro Tec Inc., Box 290, Madison, GA 30650. |
| 066330 | Tomen Agro Inc., 100 First Street, Suite 1610, San Francisco, CA 94105. |

**III. What is the Agency's Authority for Taking this Action?**

Section 6(f)(1) of FIFRA provides that a registrant of apesticide product may at any time request that any of itspesticide registrations be amended to delete one or more uses.The Act further provides that, before acting on the request, EPAmust publish a notice of receipt of any such request in the**Federal Register**. Thereafter, the Administrator may approve such a request.

**IV. Procedures for Withdrawal of Request**

Registrants who choose to withdraw a request forcancellation must submit such withdrawal in writing to James A.Hollins, at the address given above, postmarked before April 16, 2001, unless indicated otherwise. This written withdrawal of therequest for cancellation will apply only to the applicable6(f)(1) request listed in this notice. If the product(s) havebeen subject to a previous cancellation action, the effectivedate of cancellation and all other provisions of any earliercancellation action are controlling. The withdrawal request mustalso include a commitment to pay any reregistration fees due, andto fulfill any applicable unsatisfied data requirements.

**V. Provisions for Disposition of Existing Stocks**

The effective date of cancellation will be the date of thecancellation order. The orders effecting these requestedcancellations will generally permit a registrant to sell ordistribute existing stocks for 1 year after the date thecancellation request was received by the Agency. This policy isin accordance with the Agency's statement of policy as prescribedin **Federal Register** (56 FR 29362) June 26, 1991; (FRL 3846–4).Exception to this general rule will be made if a product poses arisk concern, or is in noncompliance with reregistrationrequirements, or is subject to a data call-in. In all cases,product-specific disposition dates will be given in thecancellation orders.

Existing stocks are those stocks of registered pesticide productswhich are currently in the United States and which have beenpackaged, labeled, and released for shipment prior to theeffective date of the cancellation action. Unless the provisionsof an earlier order apply, existing stocks already in the handsof dealers or users can be distributed, sold or used legallyuntil they are exhausted, provided that such further sale and usecomply with the EPA-approved label and labeling of the affectedproduct(s). Exceptions to these general rules will be made inspecific cases when more stringent restrictions on sale,distribution, or use of the products or their ingredients havealready been imposed, as in Special Review actions, or where theAgency has identified significant potential risk concerns associated with a particular chemical.

**List of Subjects**

Environmental protection, Pesticides and pests, Product registrations.

Dated: October 2, 2000.

**Richard D. Schmitt,**

*Associate Director, Information Resourcesand Services Division, Office of Pesticide Programs.*

[FR Doc 00–26510 Filed 10–13–00; 8:45 a.m.]

BILLING CODE 6560–50–S



**ENVIRONMENTAL PROTECTION AGENCY**

**[FRL–6885–2]**

**Proposed Cercla Agreement and Administrative Order by Consent for Clean Up And Costs**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed CERCLA Agreement and Administrative Order by Consent.

**SUMMARY:** EPA is proposing to execute an Agreement and Administrative Order by Consent (AOC) under sections 106(a) and 122(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). The AOC requires Potentially Responsible Parties (PRPs) to conduct a clean up of the Ramona Park Battery Casing Area Superfund Site and reimburse the EPA Hazardous Substances Superfund for all EPA costs of overseeing the clean up (not to exceed $400,000). As part of this settlement, EPA will agree not to pursue from these PRPs approximately $286,836 in past response costs incurred prior to May 14, 1998. It is this portion of the settlement that EPA seeks public comment. In exchange for completing the work required and paying the oversight costs, EPA will provide the PRPs with a covenant not to sue and contribution protection for all costs associated with the Site. EPA is today proposing to accept this agreement because it forwards the Agency's public policy of protecting human health and the environment and recovers a fair and reasonable amount of costs incurred and to be incurred by EPA.

**DATES:** Comments on the past response cost component of this proposed settlement must be received on or before November 15, 2000.

**ADDRESSES:** Copies of the proposed settlement are available at the following address for review: (It is recommended that you telephone Mr. Stuart Hill at (312) 886–0689 before visiting the Region 5 Office).

Mr. Stuart Hill, Community Involvement Coordinator, Office of Public Affairs, U.S. Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard (P–19J), Chicago, Illinois 60604 (312) 886–0689.

Comments on this proposed settlement should be addressed to: Mr. Stuart Hill, Community Involvement Coordinator, Office of Public Affairs, U.S. Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard (P–19J), Chicago, Illinois 60604, (312) 886–0689. (Please submit an original and three copies, if possible).

**FOR FURTHER INFORMATION CONTACT:** Mr. Stuart Hill, Office of Public Affairs, at (312) 886–0689.

**SUPPLEMENTARY INFORMATION:** The Site is an approximately five and one-half acre area located in a residential-recreational area at 6255 Auburn Road in Utica, Macomb County, Michigan. The Site is situated in the flood plain of the Clinton River and contains a significant quantity of lead-acid battery casings. The PRPs that have signed this AOC include the current property owner and parties that are alleged to have arranged for the disposal of lead batteries through a lead reclaiming operation which disposed of the contaminated casings at the Site. These PRPs are Ameritech Corporation (Michigan Bell Telephone), Auburn Supply Company, DaimlerChrysler Corporation, Detroit Edison Company, Exide Corporation, Ford Motor Corporation, General Motors Corporation, and NL Industries, Inc. A federal government agency, the Defense Logistics Agency, is also signing this AOC, and is referred to in the AOC as the Settling Federal Agency.

The proposed AOC requires the Respondents to excavate, treat and dispose off-site in appropriate landfills all soil and other debris on-site containing lead in concentrations of equal to or greater than 400 parts per million (ppm). Respondents will also conduct post removal testing for lead on-site to demonstrate that the removal action achieved the clean-up goal. Respondents will reimburse EPA for all costs of overseeing the removal action (since July 9, 1999) up to a cap of $400,000. The Settling Federal Agency will pay $50,000 to the Respondents for use on the removal action and $50,000 to the Hazardous Substances Superfund for future oversight costs. As part of the settlement, EPA will not pursue its past response costs (incurred prior to May 14, 1998) of $286,836.25 from the Respondents or the Settling Federal Agency.

**William E. Muno,**

*Director, Superfund Division, Environmental Protection Agency.*

[FR Doc. 00–26507 Filed 10–13–00; 8:45 am]

BILLING CODE 6560–50–U

**ENVIRONMENTAL PROTECTION AGENCY**

**[FRL–6885–9; MM–HQ–2000–0006]**

**Clean Water Act Class II: Proposed Administrative Settlement, Penalty Assessment and Opportunity To Comment Regarding AirTouch Communications, Inc.**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has entered into a consent agreement with AirTouch Communications, Inc. to resolve violations of the Clean Water Act ("CWA"), and its implementing regulations. AirTouch failed to prepare Spill Prevention Control and Countermeasure ("SPCC") plans for ten facilities where they stored diesel oil in above ground tanks. EPA, as authorized by CWA section 311(b)(6), 33 U.S.C. 1321(b)(6), has assessed a civil penalty for these violations. The Administrator, as required by CWA section 311(b)(6)(C), 33 U.S.C. 1321(b)(6)(C), is hereby providing public notice of, and an opportunity for interested persons to comment on, this consent agreement and proposed final order.

**DATES:** Comments are due on or before November 15, 2000.

**ADDRESSES:** Mail written comments to the Enforcement & Compliance Docket and Information Center (2201A), Docket Number EC–2000–009, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Mail Code 2201A, Washington, DC 20460. (Comments may be submitted on disk in WordPerfect 8.0 or earlier versions.) Written comments may be delivered in person to: Enforcement and Compliance Docket Information Center, U.S. Environmental Protection Agency, Rm. 4033, Ariel Rios Bldg., 1200 Pennsylvania Avenue, NW., Washington, DC. Submit comments electronically to *docket.oeca@epa.gov*. Electronic comments may be filed online at many Federal Depository Libraries.

The consent agreement, the proposed final order, and public comments, if any, may be reviewed at the Enforcement and Compliance Docket Information Center, U.S. Environmental Protection Agency, Rm. 4033, Ariel Rios Bldg., 1200 Pennsylvania Avenue, NW., Washington, DC. Persons interested in reviewing these materials must make arrangements in advance by calling the docket clerk at 202–564–2614. A reasonable fee may be charged by EPA for copying docket materials.

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**FOR FURTHER INFORMATION CONTACT:** Beth Cavalier, Multimedia Enforcement Division (2248–A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone (202) 564–3271; fax: (202) 564–9001; e-mail: cavalier.beth@epa.gov.

**SUPPLEMENTARY INFORMATION:** *Electronic Copies:* Electronic copies of this document are available from the EPA Home Page under the link "Laws and Regulations" at the **Federal Register**—Environmental Documents entry (http://www.epa.gov/fedrgstr).

**I. Background**

AirTouch Communications, Inc., a telecommunications company incorporated in the State of Delaware and located at One California Street, San Francisco, California 94111 failed to prepare SPCC plans for ten facilities. AirTouch Communications, Inc. disclosed, pursuant to the EPA "Incentives for Self-Policing: Discovery, Disclosures, Correction and Prevention of Violations" ("Audit Policy"), 60 FR 66,706 (December 22, 1995), that they failed to prepare SPCC plans for ten facilities where they stored diesel oil in above ground storage tanks, in violation of the CWA section 311(b)(3) and 40 CFR part 112. EPA determined that AirTouch met the criteria set out in the Audit Policy for a 100% waiver of the gravity component of the penalty. As a result, EPA waived the gravity based penalty ($47,625.00) and proposed a settlement penalty amount of fifty-two thousand, six hundred and thirty-six dollars ($52,636.00). This is the amount of the economic benefit gained by AirTouch, attributable to their delayed compliance with the SPCC regulations. AirTouch Communications, Inc. has agreed to pay this amount in civil penalties. EPA and AirTouch negotiated and signed an administrative consent agreement, following the Consolidated Rules of Procedure, 40 CFR 22.13, on September 28, 2000 (*In Re: AirTouch Communications, Inc.*, Docket No. MM–HQ–2000–0006). This consent agreement is subject to public notice and comment under CWA section 311(b)(6), 33 U.S.C. section 1321(b)(6).

Under CWA section 311(b)(6)(A), 33 U.S.C. 1321 (b)(6)(A), any owner, operator, or person in charge of a vessel, onshore facility, or offshore facility from which oil is discharged in violation of the CWA section 311 (b)(3), 33 U.S.C. 1321 (b)(3), or who fails or refuses to comply with any regulations that have been issued under CWA section 311 (j), 33 U.S.C. 1321(j), may be assessed an administrative civil penalty of up to $137,500 by EPA. Class II proceedings under CWA section 311(b)(6) are conducted in accordance with 40 CFR part 22.

The procedures by which the public may comment on a proposed Class II penalty order, or participate in a Clean Water Act Class II penalty proceeding, are set forth in 40 CFR 22.45. The deadline for submitting public comment on this proposed final order is November 15, 2000. All comments will be transferred to the Environmental Appeals Board ("EAB") of EPA for consideration. The powers and duties of the EAB are outlined in 40 CFR 22.04(a).

Pursuant to CWA section 311(b)(6)(C), EPA will not issue an order in this proceeding prior to the close of the public comment period.

**List of Subjects**

Environmental protection.

Dated: October 3, 2000.

**David A. Nielsen,**

*Director, Multimedia Enforcement Division, Office of Enforcement and Compliance Assurance.*

[FR Doc. 00–26505 Filed 10–13–00; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6884–9]**

## Virginia State Prohibition on Discharges of Vessel Sewage; Final Affirmative Determination

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Notification is hereby given that the Regional Administrator, Environmental Protection Agency (EPA) Region III has affirmatively determined, pursuant to section 312(f) of Public Law 92–500, as amended by Public Law 95–217 and Public Law 100–4 (the Clean Water Act), that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the navigable waters of Smith Mountain Lake, Bedford, Franklin and Pittsylvania Counties, Virginia.

**FOR FURTHER INFORMATION CONTACT:** Edward Ambrogio, U.S. Environmental Protection Agency, Region III, Office of Ecological Assessment and Management, 1650 Arch Street, Philadelphia, PA 19103. Telephone: (215) 814–2758. Fax: (215) 814–2782. Email: ambrogio.edward@epa.gov.

**SUPPLEMENTARY INFORMATION:** This petition was made by the Office of the Secretary of Natural Resources on behalf of the Virginia Department of Environmental Quality (VADEQ). Upon receipt of this affirmative determination, Virginia will completely prohibit the discharge of sewage, whether treated or not, from any vessel in Smith Mountain Lake in accordance with section 312(f)(3) of the Clean Water Act and 40 CFR 140.4(a). Notice of the Receipt of Petition and Tentative Determination was published in the **Federal Register** on August 22, 2000 (65 FR 50988, Aug. 22, 2000). Comments on the tentative determination were accepted during the comment period which closed on September 21, 2000. No comments were received. The remainder of this Notice summarizes the location of the no discharge zone (NDZ), the available pumpout facilities and related information.

Smith Mountain Lake, named after the mountain located at its southeastern edge, is an inland reservoir located in the Piedmont physiographic province of west central Virginia. The lake is situated in the Roanoke River Basin and fed by two main tributaries, the Roanoke River and the Blackwater River, as well as other minor tributaries. It was formed in 1965 after the completion of the Smith Mountain Hydroelectric Dam by Appalachian Power Company and reached full pond in 1966. The lake is approximately 20,000 acres in area, forms 500 miles of shoreline, and is bordered by the three counties of Bedford, Franklin and Pittsylvania. It flows into another large reservoir, Leesville Lake. The two lakes form a pumped storage facility for hydroelectric power generation during peak demand periods. Bedford County has been using the lake as a drinking water source since March 31, 1999. The water treatment plant is now withdrawing an annual average of approximately 20,000 gallons per day. The water intake for this facility is located on the north side of the Roanoke River arm of the lake, approximately two miles east of the Hales Ford Bridge, directly across the lake from Becky's Creek. The NDZ includes Smith Mountain Lake, from Smith Mountain Dam (Gap of Smith Mountain) upstream to the 795.0 foot contour (normal pool elevation) in all tributaries, including waters to above the confluence with Back Creek in the Roanoke River arm, and to the Brooks Mill Bridge (Route 834) on the Blackwater River arm.

Information submitted by the Commonwealth of Virginia states that there are 17 waterfront facilities that operate pumpout facilities in the Smith Mountain Lake NDZ. Twelve of these 17 also provide dump stations, and there are 15 additional dump stations located at 14 other marinas for a total of 27 dump stations. There is one proposed pumpout and a mobile pumpout operated by Ferrum College. Also, funding is being sought by the Virginia Department of Health to provide a mobile "floating" pumpout facility to operate on the lake. Details of these facilities' location, availability and hours of operation are as follows:

Virginia Dare Marina is located on State Route 853 in Bedford County. The marina currently operates one stationary pumpout facility accessible to all boaters. The pumpout facility is also a reception facility for portable toilet sanitary wastes. The marina has received approval of Clean Vessel Act funding for a pumpout facility upgrade. The marina's sewage disposal hours of operation are 10 am–4 pm, April through October.

Campers Paradise Marina is located off State Route 122, one mile north of Hales Ford Bridge that connects Bedford County and Franklin County. The marina currently operates one stationary pumpout facility accessible to all boaters. A drive by dump station on-site acts as a receptacle for sanitary waste from portable toilets. The marina's sewage disposal hours of operation are 7 am–7 pm, 11 months per year.

Lake Haven Marina is located off State Route 626 in southeast Bedford County. The marina currently operates one stationary pumpout facility located in the middle of a dock allowing equal access to all boaters. The dump station is located on land next to the septic tank and drainfield. The marina's sewage disposal hours of operation are 8 am–4 pm, April through October.

Mitchell Point Marina is located at the end of State Route 734 in southeast Bedford County. The marina currently operates a mobile pumpout unit attached to a trailer mechanism accessible to all boaters. The dump station is located next to the septic tank and drainfield. The marina's sewage disposal hours of operation are 7 am–4 pm, May through October.

Saunders Parkway Marina is located off State Route 626 in southeast Bedford County. The marina currently operates one stationary pumpout facility located on a fixed pier allowing equal access to all boaters. The dump station is located on land next to the boat repair facility. The marina's sewage disposal hours of operation are 9 am–5 pm, June through September.

Smith Mountain Lake Yacht Club is located off State Route 823 in Bedford County. The yacht club has recently completed construction of a new, state-of the-art pumpout system accessible to all boaters. The marina's sewage disposal hours of operation are 9 am–5 pm, 12 months per year.

Waterwheel Marina is located off State Route 821 in Bedford County. The marina operates a mobile unit attached to a trailer mechanism accessible to all boaters. The marina's sewage disposal hours of operation are 9 am–3 pm, 5 months per year.

Webster Marine Center is located off State Route 122 in Bedford County. The marina operates one stationary pumpout facility located on a floating pier allowing equal access to all boaters. The dump station is located next to the septic tank. The marina has received approval of Clean Vessel Act funding for a pumpout facility upgrade. The marina's sewage disposal hours of operation are 8 am–3 pm, 8 months per year.

Smith Mountain Lake State Park facility is owned by the State of Virginia and operated by the Department of Conservation and Recreation. The Department applied for and was awarded Clean Vessel Act funds for the installation of a sanitary waste pumpout unit and dump station. The facility is expected to be functional in 2001. A drive by dump station on-site currently acts as a receptacle for sanitary waste from portable toilets.

Bay Roc Marina is located off State Route 634 in Franklin County. The marina operates one stationary pumpout facility located on land near the mooring pier accessible to all boaters. The dump station is located behind the marina restroom facilities. The marina is open all year.

Boats at Smith Mountain Lake, Inc. is located off State Route 122 in Franklin County. The marina operates one stationary pumpout facility located on a mooring pier accessible to all boaters. The dump station is located between the pumpout facility and marina store. The marina's sewage disposal hours of operation are 8 am–4 pm, 7 months per year.

Bridgewater Plaza Marina is located off State Route 122 in Franklin County. The marina operates one stationary pumpout facility located on the fuel dock accessible to all boaters. The marina's sewage disposal hours of operation are 7 am–11 pm, March through November.

Crazy Horse Marina is located off State Route 616 in Franklin County. The marina operates one stationary pumpout facility located on the fuel dock accessible to all boaters. The marina's sewage disposal hours of operation are 8 am–8 pm, April through October.

Pelican Point Yacht Club located off State Route 957 in Union Hall in Franklin County. The marina operates a mobile pumpout unit attached to a trailer mechanism accessible to all boaters. A recreation vehicle dump station on-site acts as a receiving facility for sanitary waste from portable toilets. The marina's sewage disposal hours of operation are 9 am–4 pm, 10 months per year.

Shoreline Marina is located off State Route 949 in Franklin County. The marina operates a stationary pumpout unit located on the fuel dock accessible to all boaters. The dump station is located next to the marina store. This marina has utilized Clean Vessel Act funding to upgrade its sanitary waste handling capacity. The marina's sewage disposal hours of operation are 9 am–5 pm, year round.

Lakeside Marina is located off State Route 626 in Pittsylvania County. The marina operates a stationary pumpout unit located on the fuel dock accessible to all boaters. The dump station is located on land near the septic tank and drainfield. The marina's sewage disposal hours of operation are 8 am–4 pm, 6 months per year.

Lumpkin Marina is located off State Route 626 in Pittsylvania County. The marina completed construction of a new pumpout system accessible to all boaters in the 1999 season using Clean Vessel Act funding. It provides a dump station facility for portable toilets at the septic tank behind the boathouse. The marina's sewage disposal hours of operation are 8 am–7 pm, May through October.

Smith Mountain Dock & Lodge is located off State Route 626 in Pittsylvania County. The marina operates a stationary pumpout unit located on the fuel dock accessible to all boaters. The marina uses existing sanitary facilities as a dump station. These facilities are located on a fixed pier next to the boating facility. The marina's sewage disposal hours of operation are 8 am–9 pm, April through October.

The Virginia Department of Health Marina Regulations address treatment of collected vessel sewage from pumpouts and dump stations (found at 12 VAC 5–570–180 C.5 and 12 VAC 5–570–190 C, respectively). No public sewer systems are available to service the above described marina facilities. All wastes from these marinas are treated by on-site septic systems and the treatment of collected sewage is in compliance with federal, state and local regulations.

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According to the State's petition, there are a total of 18,840 vessels registered in Virginia where the principal area of usage is in one of the three counties surrounding Smith Mountain Lake. This assumes that (1) when boats are used in one of the three counties they are used on Smith Mountain Lake and that, (2) the boats may be stored anywhere in Virginia but are principally used on Smith Mountain Lake, so a good number of regular transient vessels are included in the figure. Most of the recreational vessel population is limited to the season from April to October. Transient boats from other states and Virginia registered boats that are principally used elsewhere, but may at times be brought to Smith Mountain Lake, are not included in this number. An assumption can be made that the majority of such boats would be trailerable. This is supported by Health Department marina inspection slip counts which indicate only 53 out of 2,417 slips or moorings at commercial marinas are designated as transient vessel slips. Low demand for transient slips probably indicates boats are trailered and ramp launched. Most of the trailerable boats would not be of a size expected to have a holding tank. All 18,840 vessels would not occupy the lake at the same time. The information suggests that as far as simultaneous occupancy of the lake this number is high, or more likely, it is very high for the smaller, easily trailered boats, and somewhat more accurate for the larger, site-committed boats. The vessel population based on length is 4,705 vessels less than 16 feet in length, 13,309 vessels between 16 feet and 26 feet in length, 749 vessels between 26 feet and 40 feet in length, and 77 vessels greater than 40 feet in length. Based on number and size of boats, and using various methods to estimate the number of holding tanks, it is estimated that six pumpouts and seven dump stations are needed for Smith Mountain Lake. As described above, there are currently 17 operational pumpout facilities and 27 operational dump stations in Smith Mountain Lake.

The EPA hereby makes a final affirmative determination that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for Smith Mountain Lake, Bedford, Franklin and Pittsylvania Counties, Virginia. This final determination will result in a Virginia State prohibition of any sewage discharges from vessels in Smith Mountain Lake.

Dated: September 29, 2000.

**Bradley M. Campbell,**

*Regional Administrator, Region III.*

[FR Doc. 00–26508 Filed 10–13–00; 8:45 am]

BILLING CODE 6560–50–U

## EXPORT-IMPORT BANK

### Notice of Open Special Meeting of the Advisory Committee of the Export-Import Bank of the United States (Export-Import Bank)

**SUMMARY:** The Advisory Committee was established by P.L. 98–181, November 30, 1983, to advise the Export-Import Bank on its programs and to provide comments for inclusion in the reports of the Export-Import Bank of the United States to Congress.

*Time and Place:* Thursday, November 9, 2000, at 9:30 a.m. to 12:30 p.m. The meeting will be held at the Export-Import Bank in Room 1143, 811 Vermont Avenue, NW., Washington, DC 20571.

*Agenda:* This meeting will include a follow-up discussion of the Institute of International Economics study titled "The Future of the U.S. Ex-Im Bank", issues raised in this study, and other matters.

*Public Participation:* The meeting will be open to public participation, and the last 10 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please contact, prior to November 3, 2000, Nichole Westin, Room 1257, 811 Vermont Avenue, NW., Washington, DC 20571, Voice: (202) 565–3542 or TDD (202) 565–3377.

*For Further Information Contact:* For further information, contact Nichole Westin, Room 1257, 811 Vermont Ave., NW., Washington, DC 20571, (202) 565–3542.

**John M. Niehuss,**

*General Counsel.*

[FR Doc. 00–26490 Filed 10–13–00; 8:45 am]

BILLING CODE 6690–01–M

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:30 a.m. on Tuesday, October 17, 2000, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, pursuant to sections 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of Title 5, Unites States Code, to consider matters relating to the Corporation's corporate and supervisory activities.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: October 12, 2000.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. 00–26667 Filed 10–12–00; 8:45 am]

BILLING CODE 6714–01–M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–1344–DR]**

### Florida; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of Florida (FEMA–1344–DR), dated October 3, 2000, and related determinations.

**EFFECTIVE DATE:** October 3, 2000.

**FOR FURTHER INFORMATION CONTACT:** Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated October 3, 2000, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Florida, resulting from Tropical Storm Helene beginning on September 21, 2000, and continuing is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the Stafford Act). I, therefore, declare that such a major disaster exists in the State of Florida.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The State Emergency Management Agency (SEMA) will manage the Public Assistance operation, including project eligibility reviews, process control, and resource allocation. FEMA will retain obligation authority, the final approval of environmental and historic preservation reviews, and will assist SEMA to the extent that such assistance is necessary and is specifically requested by SEMA.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Charles M. Butler of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Florida to have been affected adversely by this declared major disaster:

Bay, Calhoun, Escambia, Franklin, Gulf, Jefferson, Leon, Okaloosa, and Walkulla Counties for Public Assistance.

All counties within the State of Florida are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

**James L. Witt,**

*Director.*

[FR Doc. 00–26533 Filed 10–13–00; 8:45 am]

BILLING CODE 6718–02–P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–1344–DR]**

### Florida; Amendment No. 1 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Florida (FEMA–1344–DR), dated October 3, 2000, and related determinations.

**EFFECTIVE DATE:** October 5, 2000.

**FOR FURTHER INFORMATION CONTACT:** Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the incident period for this disaster is closed effective October 4, 2000.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

**Lacy E. Suiter,**

*Executive Associate Director, Response and Recovery Directorate.*

[FR Doc. 00–26534 Filed 10–13–00; 8:45 am]

BILLING CODE 6718–02–P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–1345–DR]**

### Florida; Amendment No. 1 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Florida, (FEMA–1345–DR), dated October 4, 2000, and related determinations.

**EFFECTIVE DATE:** October 6, 2000.

**FOR FURTHER INFORMATION CONTACT:** Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster for the State of Florida is hereby amended to include the Public Assistance program to the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 4, 2000:

Miami-Dade and Broward Counties for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

**Larry Zensinger,**

*Division Director, Human Services Division.*

[FR Doc. 00–26535 Filed 10–13–00; 8:45 am]

BILLING CODE 6718–02–P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–1292–DR]**

### North Carolina; Amendment No. 6 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of North Carolina (FEMA–1292–DR), dated September 16, 1999, and related determinations.

**EFFECTIVE DATE:** September 29, 2000.

**FOR FURTHER INFORMATION CONTACT:** Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated September 29, 2000, the President amended the cost-sharing arrangements concerning Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 51521 *et seq.*), in a letter to James L. Witt, Director of the Federal Emergency Management Agency, as follows:

I have determined that the damage in North Carolina resulting from Hurricane Floyd beginning on September 15, 1999, and continuing through November 2, 1999, is of sufficient severity and magnitude that special conditions are warranted regarding the cost-sharing arrangements concerning Federal funds provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the Stafford Act).

Therefore, I amend my previous declaration to authorize Federal funds for Public Assistance at 90 percent of total eligible costs.

This adjustment to State and local cost sharing applies only to Public Assistance costs eligible for such adjustment under the law. The law specifically prohibits a similar

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adjustment for funds provided to the State for the Individual and Family Grant program, mobile home group site development under Section 408, Temporary Housing, and Hazard Mitigation Assistance. These funds will continue to be reimbursed at 75 percent of total eligible costs.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

**James L. Witt,**

*Director.*

[FR Doc. 00–26531 Filed 10–13–00; 8:45 am]

BILLING CODE 6718–02–P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–1343–DR]**

### Ohio; Amendment No. 1 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Ohio, (FEMA–1343–DR), dated September 26, 2000, and related determinations.

**EFFECTIVE DATE:** October 4, 2000.

**FOR FURTHER INFORMATION CONTACT:** Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster for the State of Ohio is hereby amended to include Public Assistance for the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 26, 2000:

Greene County for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

**James L. Witt,**

*Director.*

[FR Doc. 00–26532 Filed 10–13–00; 8:45 am]

BILLING CODE 6718–02–P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### Notice of Adjustment of Disaster Grant Amounts

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** FEMA gives notice that we are increasing the statewide per capita impact indicator under the Public Assistance program for disasters declared on or after October 1, 2000.

**EFFECTIVE DATE:** October 1, 2000.

**FOR FURTHER INFORMATION CONTACT:** Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

**SUPPLEMENTARY INFORMATION:** 44 CFR 206.48 prescribes that we (FEMA) must adjust the statewide per capita impact indicator under the Public Assistance program to reflect changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor.

We give notice that we are increasing the statewide per capita impact indicator to $1.04 for all disasters declared on or after October 1, 2000.

We base the adjustments on an increase in the Consumer Price Index for All Urban Consumers of 3.4 percent for the 12-month period ended in August 2000. The Bureau of Labor Statistics of the U.S. Department of Labor released the information on September 15, 2000.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Dated: October 6, 2000.

**James L. Witt,**

*Director.*

[FR Doc. 00–26536 Filed 10–13–00; 8:45 am]

BILLING CODE 6718–02–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

### Findings of Scientific Misconduct

**AGENCY:** Office of the Secretary, HHS.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the Office of Research Integrity (ORI) and the Assistant Secretary for Health have taken final action in the following case:

*Randall P. French, Ph.D., Fox Chase Cancer Center:* Based on the report of an investigation conducted by the Fox Chase Cancer Center (FCCC) and additional analysis conducted by ORI in its oversight review, the U.S. Public Health Service (PHS) finds that Dr. French, postdoctoral associate, FCCC, engaged in scientific misconduct by fabricating published research supported by National Cancer Institute (NCI), National Institutes of Health (NIH), grants T32 CA09035 and P30 CA06927.

Specifically, Dr. French fabricated research results published in Developmental Biology 217:62–76, 2000, by falsely claiming in the text and Table 1 that he had assayed mouse embryos transgenic for a modified DNA construct (cG5/lacZ-F) for a study on the expression of cGATA–5 transcription factor during heart development in mice. An erratum replacing the fabricated data was published by the authors in Developmental Biology 223:463, 2000.

Dr. French has accepted the PHS finding and has entered into a Voluntary Exclusion Agreement with PHS in which he has voluntarily agreed for a period of three (3) years, beginning on September 28, 2000:

(1) To exclude himself from serving in any advisory capacity to PHS, including but not limited to service on any PHS advisory committee, board, and/or peer review committee;

(2) That any institution that submits an application for PHS support for a research project on which Dr. French's participation is proposed or that uses Dr. French in any capacity on PHS supported research, or that submits a report of PHS-funded research in which Dr. French is involved, must concurrently submit a plan for supervision of his duties to the funding agency for approval. The supervisory plan must be designed to ensure the scientific integrity of Dr. French's research contribution. The institution must also submit a copy of the supervisory plan to ORI.

**FOR FURTHER INFORMATION CONTACT:** Director, Division of Investigative Oversight, Office of Research Integrity, 5515 Security Lane, Suite 700, Rockville, MD 20852, (301) 443–5330.

**Chris Pascal,**

*Director, Office of Reseorch Integrity.*

[FR Doc. 00–26538 Filed 10–13–00; 8:45 am]

BILLING CODE 4160–17–P



## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

**[Document Identifier: HCFA–1728–94]**

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** Health Care Financing Administration, HHS. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

*Type of Information Collection Request:* Revision of a currently approved collection.

*Title of Information Collection:* Home Health Agency Cost Report and Supporting Regulations in 42 CFR 413.20, 413.24, and 413.106.

*Form No.:* HCFA–1728–94 (OMB 0938–0022).

*Use:* Form HCFA–1728–94 is the form used by HHAs participating in the Medicare program. This form reports the health care costs used to determine the amount of reimbursable costs for services rendered to Medicare beneficiaries.

*Frequency:* Annually.

*Affected Public:* Businesses or other for-profit; not-for-profit institutions.

*Number of Respondents:* 8,950.

*Total Annual Responses:* 8,950.

*Total Annual Hours:* 1,599,700.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326.

Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Wendy Taylor, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: October 6, 2000.

**John P. Burke III,**

*HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.*

[FR Doc. 00–26418 Filed 10–13–00; 8:45 am]

BILLING CODE 4120–03–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

**[Document Identifier: HCFA–437]**

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

*Type of Information Collection Request:* Extension of a currently approved collection.

*Title of Information Collection:* Psychiatric Unit Criteria Worksheet, Rehabilitation Unit Criteria Worksheet, and Rehabilitation Hospital Criteria Worksheet, and Supporting Regulations at 42 CFR 412.20–412.30.

*Form No.:* HCFA–437, 437A, and 437B (OMB # 0938–0358).

*Use:* The rehabilitation hospital/unit and psychiatric unit criteria worksheets are necessary to verify and reverify that these facilities/units comply and remain in compliance with the exclusion criteria for the Medicare prospective payment system.

*Frequency:* Annually.

*Affected Public:* Business or other for-profit, not-for-profit institutions, State, local, or tribal government.

*Number of Respondents:* 2,580.

*Total Annual Responses:* 2,580.

*Total Annual Hours:* 645.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Wendy Taylor, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: October 5, 2000.

**John P. Burke III,**

*HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.*

[FR Doc. 00–26419 Filed 10–13–00; 8:45 am]

BILLING CODE 4120–03–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

**[Document Identifier: HCFA–R–0094]**

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions;

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(2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

*Type of Information Collection Request:* Extension of a currently approved collection.

*Title of Information Collection:* Sterilization Regulations and Consent Form.

*Form No.:* HCFA–R–0094 (OMB# 0938–0481).

*Use:* All Medicaid-eligible individuals seeking sterilization are required to provide informed consent, acknowledging that they understand the risks and benefits.

*Frequency:* On occasion.

*Affected Public:* Individuals or households; State, local or tribal gov't.

*Number of Respondents:* 135,923.

*Total Annual Responses:* 135,923.

*Total Annual Hours:* 169,903.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Wendy Taylor, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: October 5, 2000.

**John P. Burke III,**

*HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.*

[FR Doc. 00–26420 Filed 10–13–00; 8:45 am]

BILLING CODE 4120–03–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of Inspector General

### Program Exclusions: September 2000

**AGENCY:** Office of Inspector General, HHS.

**ACTION:** Notice of program exclusions.

During the month of September 2000, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, and all Federal Health Care programs. In addition, no program payment is made to any business or facility, e.g., a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

| Subject, city, state | Effective date |
|---|---|
| **PROGRAM-RELATED CONVICTIONS** | |
| ANDERSON, RICHARD JOHN<br>TREMPEALEAU, WI | 10/19/2000 |
| ARANZAZU, YOLANDA QUINTANA<br>MIAMI, FL | 10/19/2000 |
| ARENAS, ARNOLFO CARSON JR<br>GLENDALE, CA | 10/19/2000 |
| BAIRES, DOUGLAS ARTURO<br>SOUTH GATE, CA | 10/19/2000 |
| BERNAL, LUCILA<br>KEY BISCAYNE, FL | 10/19/2000 |
| BERNARDO, CAROL JOYCE<br>PROVIDENCE, RI | 10/19/2000 |
| BRAILOVSKAIA, POLINA<br>WEST HOLLYWOOD, CA | 10/19/2000 |
| CARNEY, EDWARD A<br>CAMP HILL, PA | 10/19/2000 |
| CHANG, CANDACE<br>CHOWCHILLA, CA | 10/19/2000 |
| CONWAY, JOHN W<br>LEXINGTON, KY | 10/19/2000 |
| CROWN MEDICAL SERVICES INC<br>PROVIDENCE, RI | 10/19/2000 |
| ELLSWORTH, GILBERT<br>COCONUT CREEK, FL | 10/19/2000 |
| GILBERT, JAMES ANDREW<br>EL RENO, OK | 10/19/2000 |
| GODZHOYAN, SARKIS<br>GLENDALE, CA | 10/19/2000 |
| GOLDSTAR HEALTHCARE INC<br>TAMPA, FL | 05/19/2000 |
| GORODETSKY, GEORGE<br>LOS ANGELES, CA | 10/19/2000 |
| GUPTA, RAMESH KUMAR<br>TROY, MI | 10/19/2000 |
| HAUSER, GREGORY LEE<br>ARROYO GRANDE, CA | 10/19/2000 |
| HEIBLUM, MIRIAM<br>MIAMI, FL | 10/19/2000 |
| HERMES, HARRY HERMAN III<br>FLORENCE, CO | 10/19/2000 |
| ILORI, CLEMENT OLUWOLE<br>PROVIDENCE, RI | 10/19/2000 |
| JRL HEALTH ASSOCIATES, LTD<br>WOOD RIDGE, NJ | 10/19/2000 |
| KORANTENG, EILEEN<br>PEEKSKILL, NY | 10/19/2000 |
| LACEY, JOAN R<br>WOOD RIDGE, NJ | 10/19/2000 |
| LAWSON, DONNIE W<br>ASHLAND, KY | 10/19/2000 |
| LEHRMAN, NORMAN P<br>DEVENS, MA | 10/19/2000 |
| MAJOR, JEFFERY ALLAN<br>SACRAMENTO, CA | 10/19/2000 |
| MANZO, SUZANNE MARIE<br>BRUNSWICK, ME | 10/19/2000 |
| MATRIX BIOKINETICS, INC<br>LAS VEGAS, NV | 10/19/2000 |
| MCKEAN, J D JR<br>EDMOND, OK | 10/19/2000 |
| MCLEE-BERGERON, MARIE LOUISE<br>VISALIA, CA | 10/19/2000 |
| MICHAEL, SAMI ISAAC<br>STEUBENVILLE, OH | 10/19/2000 |
| NGUYEN, PHUONG THI<br>LAKE FOREST, CA | 10/19/2000 |
| NGUYEN, LY QUANG<br>LOMPOC, CA | 10/19/2000 |
| NICHOLS, MARYELLEN<br>COLUMBUS, OH | 10/19/2000 |
| O'CONNOR, ANN M<br>BRONXVILLE, NY | 10/19/2000 |
| PACE, CECILIA JOHNECE<br>GLADEWATER, TX | 10/19/2000 |
| RODRIGUEZ, ELENA<br>MIAMI, FL | 10/19/2000 |
| SAFONOVA, NATALIYA<br>BROOKLYN, NY | 10/19/2000 |
| SALERA, SHEILA M<br>CRANSTON, RI | 10/19/2000 |
| SAMARITAN HEALTH SYSTEMS, INC<br>LEXINGTON, KY | 10/19/2000 |
| SCHWARTZ, DUANE EDWARD<br>LIBERTY, ME | 10/19/2000 |
| SCOTTI, WILLIAM J<br>MARGATE, FL | 10/19/2000 |
| SLEETH, ELVIN<br>TAMPA, FL | 05/10/2000 |
| SORGNARD, RICHARD<br>N LAS VEGAS, NV | 10/19/2000 |
| SUMBLIN, DELISA ANTOINETTE<br>SACRAMENTO, CA | 10/19/2000 |
| SY, EVANICA<br>CHOWCHILIA, CA | 10/19/2000 |
| TABLEMAN, BETH C<br>OLD TOWN, ME | 10/19/2000 |
| TER-ORGANESYAN, ABRAM<br>RESEDA, CA | 10/19/2000 |
| THURSTON, MICHAEL ALLAN<br>WHITE DEER, PA | 10/19/2000 |
| TOBIAS, SHERYL LAVERNE<br>WEST COVINA, CA | 10/19/2000 |
| VICTOR, ALEXANDRIA<br>NAGEEZI, NM | 10/19/2000 |
| WICK, CARMEN<br>DUBLIN, CA | 10/19/2000 |
| ZARRINNAM, MAJID<br>LOS ANGELES, CA | 10/19/2000 |



| Subject, city, state | Effective date |
|---|---|
| **FELONY CONVICTION FOR HEALTH CARE FRAUD** | |
| CLIFTON, MARVIN DEMENTREOUS<br>BATON ROUGE, LA | 10/19/2000 |
| MCGINNIS, KIMBERLY ANN<br>AUBURN, CA | 10/19/2000 |
| SERIO, KARLEATHA D<br>PHOENIX, AZ | 10/19/2000 |
| **FELONY CONTROL SUBSTANCES CONVICTION** | |
| ANDERSON, GERALD MARVIN<br>LONG BEACH, CA | 10/19/2000 |
| COCKERHAM JASS, JACQUELINE<br>PEKIN, IL | 10/19/2000 |
| DOSKOCIL, THOMAS ANTON<br>BEAUMONT, TX | 10/19/2000 |
| LOGAN, JOSEPH LEROY<br>WARREN, OH | 10/19/2000 |
| SMIRNOFF, GEORGE<br>MARION, OH | 10/19/2000 |
| **PATIENT ABUSE/NEGLECT CONVICTIONS** | |
| AGGETT, BRIAN THOMAS<br>YAKIMA, WA | 10/19/2000 |
| BEHRMAN, EDWARD<br>WAYNE, NJ | 10/19/2000 |
| BELL, DORETHA C<br>TALLULAH, LA | 10/19/2000 |
| CASTRO, RAMON<br>ARLETA, CA | 10/19/2000 |
| GREEN, JULES RAY<br>ALEXANDRIA, LA | 10/19/2000 |
| KELLY, SONYA R<br>SPRINGFIELD, OH | 10/19/2000 |
| MERCADEL, MORRIS HENRY III<br>LOS ANGELES, CA | 10/19/2000 |
| MOSES, LAURA MAY<br>CHARLESTON, NH | 10/19/2000 |
| MURRAY, BRUCE WAYNE<br>ENID, OK | 10/19/2000 |
| NALAM, CALIXTRO LATOGA<br>SHELTON, WA | 10/19/2000 |
| OISAMAIYE, JAMES O<br>PROVIDENCE, RI | 10/19/2000 |
| PETERSON, ELISA DEAINE<br>WASHOUGAL, WA | 10/19/2000 |
| PIKE, MICHAEL ANTHONY<br>HOUSTON, TX | 10/19/2000 |
| REID, CARL D<br>PENDLETON, OR | 10/19/2000 |
| SHEEHAN, EDWARD F<br>POULTNEY, VT | 10/19/2000 |
| SILVA, DANE DRAKE<br>KAILUA, HI | 10/19/2000 |
| SIMMONS, LINDA<br>JACKSON, MS | 10/19/2000 |
| TOMBLIN, DONALD G JR<br>KISTLER, WV | 10/19/2000 |
| WHISNANT, JOYCE A<br>CINCINNATI, OH | 10/19/2000 |
| TRAMMEL, DARLENE<br>LAS VEGAS, NV | 10/19/2000 |
| WISE, KENNETH EUGENE JR<br>BELTON, TX | 10/19/2000 |
| **CONTROLLED SUBSTANCE CONVICTIONS** | |
| ZUCKER, ARNOLD HARRIS<br>PELHAM, NY | 10/19/2000 |
| **LICENSE REVOCATION/SUSPENSION/ SURRENDERED** | |
| ADIONG, THELMA ROBLE<br>STOCKTON, CA | 10/19/2000 |
| ALDAY, ATHENA S<br>MARIANNA, FL | 10/19/2000 |
| ALI, HONOR CHRISTIAN PICKETT<br>CLARKSVILLE, IN | 10/19/2000 |
| ANDREWS, MOLLY C<br>CHICAGO, IL | 10/19/2000 |
| APPLEBY, CHRISTINA LYONS<br>BETHEL, VT | 10/19/2000 |
| ASHTON, TRINA M<br>COLLINSVILLE, CT | 10/19/2000 |
| BAKER, MARK A<br>VENICE, IL | 10/19/2000 |
| BATTALINO, BARBARA ANN<br>LOS OSO, CA | 10/19/2000 |
| BELT, STELLA LOUISE<br>GOLCONDA, IL | 10/19/2000 |
| BIRDWELL, LINDA KAY<br>BONHAM, TX | 10/19/2000 |
| BLAIR, TOM E<br>JENKINS, KY | 10/19/2000 |
| BLISSARD, LINDA DIANE<br>CHANDLER, AZ | 10/19/2000 |
| BRADTL, ANNETTE LEA<br>CAPO BEACH, CA | 10/19/2000 |
| BURNS, JANICE A<br>ENDFIELD, NH | 10/19/2000 |
| BURT, JOSEPH MARK<br>LANSING, MI | 10/19/2000 |
| BUSENBARK-GARDNER, LINDA B<br>WOODINVILLE, WA | 10/19/2000 |
| BYRAM, BARRY RAY<br>COSTA MESA, CA | 10/19/2000 |
| CAIROLI, JOSEFINA<br>W COVINA, CA | 10/19/2000 |
| CARTER, KATHLEEN<br>CHICAGO, IL | 10/19/2000 |
| CASH, ELEANOR IWALANI<br>STOCKTON, CA | 10/19/2000 |
| CHAHIL, AMARJIT SINGH<br>TRACY, CA | 10/19/2000 |
| CHEATHAM, SHANTELL LASHAWN<br>AURORA, CO | 10/19/2000 |
| CHEIN, EDMUND<br>PALM SPRINGS, CA | 10/19/2000 |
| CIACCIA, MICHAEL J<br>LANCASTER, PA | 10/19/2000 |
| CICINELLI, RICHARD RAY<br>NEW ORLEANS, LA | 10/19/2000 |
| CLARK, BRUCE A<br>LOUISVILLE, KY | 10/19/2000 |
| CLYDE, KEVIN JAMES<br>SAN DIEGO, CA | 10/19/2000 |
| COLE, MARJORIE JOSEPH<br>BLAINE, MN | 10/19/2000 |
| CONARY, JANICE L<br>DES MOINES, IA | 10/19/2000 |
| COPELAND, GERARD CLARENCE<br>BELLWOOD, IL | 10/19/2000 |
| COPENHAVER, JOHN MICHAEL<br>MARIETTA, GA | 10/19/2000 |
| COPP, JERRY A<br>FARMINGTON, ME | 10/19/2000 |
| COPPOLA, JANET R<br>N BENNINGTON, VT | 10/19/2000 |
| COTA, DANIEL JESUS<br>SANTA MONICA, CA | 10/19/2000 |
| COX, MARLANDA DAMARI OWENS<br>LOUISVILLE, KY | 10/19/2000 |
| DANIELS, ALVIN J<br>LONG BEACH, NY | 10/19/2000 |
| DEAETT, JILL M<br>HINSDALE, NH | 10/19/2000 |
| DEGREEF, CONNY<br>SAN JUAN CAPISTRANO, CA | 10/19/2000 |
| DELONG, RONALD ALLEN<br>NEW ALBANY, IN | 10/19/2000 |
| DENNIS, MICHAEL HOWARD<br>MARTINDALE, TX | 10/19/2000 |
| DESANTO, VICTORIA<br>HAVERTOWN, PA | 10/19/2000 |
| DION, JAMI R<br>EXETER, NH | 10/19/2000 |
| DOBBS, MELISSA FAY<br>MUSTANG, OK | 10/19/2000 |
| EDGAR, CONNIE SUE<br>PASO ROBLES, CA | 10/19/2000 |
| EVITTS, MARSHA LYNN<br>AURORA, IL | 10/19/2000 |
| FAY, SUSAN EDITH<br>THREE OAKS, MI | 10/19/2000 |
| FERLAND, ARMAND PHILIPPE<br>EDEN, VT | 10/19/2000 |
| FORD, SHELBY J<br>BUENA VISTA, VA | 10/19/2000 |
| FOSTER, MARY KIZER<br>RALEIGH, NC | 10/19/2000 |
| FOSTER, ROBERT N<br>PRESTON, MD | 10/19/2000 |
| GREEDY, JACQUELINE MAGNER<br>CARSON CITY, NV | 10/19/2000 |
| GROGANS, EDWARD ERNEST<br>SANTA ROSA, CA | 10/19/2000 |
| GUSTAFSON, SARA MARIE<br>ORLANDO, FL | 10/19/2000 |
| HAGEN, DAVID LAWRENCE<br>LAFAYETTE, CA | 10/19/2000 |
| HAND, ROBERT ALDRIDGE<br>AUGUSTA, GA | 10/19/2000 |
| HEAPS, ERIC KEN<br>ROHNERT PARK, CA | 10/19/2000 |
| HEMSLEY, HENRY W<br>NORWICH, NY | 10/19/2000 |
| HENNING, STEVEN MICHAEL<br>GRETNA, LA | 10/19/2000 |
| HO, SHING CHAU<br>NESCONSET, NY | 10/19/2000 |
| HOFFSCHNEIDER, DOLORES<br>CLEVELAND, TX | 10/19/2000 |
| HOLLAND, BRIAN DOUGLAS<br>AVAWAM, KY | 10/19/2000 |
| HOUSEMAN, HEATHER LYNN<br>CARROLLTON, IL | 10/19/2000 |
| HOUSTON, JULIE C<br>GALESBURG, IL | 10/19/2000 |
| HOWARD, REBECCA J | 10/19/2000 |

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| Subject, city, state | Effective date |
|---|---|
| SARDIS, TN | |
| IMONDI, MARY CHRISTINE | 10/19/2000 |
| WARWICK, RI | |
| JOHNSON, TERESA W | 10/19/2000 |
| CANAL WINCHESTER, OH | |
| JOHNSON, CHARLES L | 10/19/2000 |
| LOS ANGELES, CA | |
| JOYNER, JEFFREY E | 10/19/2000 |
| MCDONALD, TN | |
| KEEN, MONTE S | 10/19/2000 |
| DEMAREST, NJ | |
| KENNA, JOHN F | 10/19/2000 |
| PALOS HILLS, IL | |
| KEYS, HERBERT LOUIS | 10/19/2000 |
| AURORA, CO | |
| KINDLER, JAMES D | 10/19/2000 |
| DES MOINES, IA | |
| KLIMAS, RICHARD ALAN | 10/19/2000 |
| DECATUR, AL | |
| KNEZEVICH, STEPHEN D | 10/19/2000 |
| CHATSWORTH, CA | |
| KOPPES, MOTY | 10/19/2000 |
| NEWPORT BEACH, CA | |
| LINKSWILER, SANDRA CAROLE | 10/19/2000 |
| SALEM, VA | |
| LOVELL, DEAN RALPH | 10/19/2000 |
| BIDDEFORD, ME | |
| MALONE, COLLEEN MARIE | 10/19/2000 |
| AMSTERDAM, NY | |
| MARTIN, TIMOTHY P | 10/19/2000 |
| NARRAGANSETT, RI | |
| MASTEJ, RYAN THOMAS | 10/19/2000 |
| WEST HAVEN, CT | |
| MAUN, LORENZO PAYABYAB | 10/19/2000 |
| LAKE FOREST, CA | |
| MAZZEO, MICHAEL JOHN | 10/19/2000 |
| PIERMONT, NY | |
| MCCARTHY, SUE ANNE | 10/19/2000 |
| BUFFALO, NY | |
| MILLER, EDGAR | 10/19/2000 |
| CLINTON, MS | |
| MILLER, SAMUEL J | 10/19/2000 |
| ELWOOD, IL | |
| MONTGOMERY, TERRY GLENN | 10/19/2000 |
| GUNNISSON, UT | |
| MOORHEAD, JAMES FRANKLIN | 10/19/2000 |
| COLLEGE PARK, GA | |
| MORANO, CAROL RUTH | 10/19/2000 |
| BRIDGEPORT, CT | |
| NAGLE, BONNIE VAN ALLEN | 10/19/2000 |
| OXON HILL, MD | |
| NAJI-TALAKAR, BAHMAN | 10/19/2000 |
| PHOENIX, AZ | |
| NILSSON, JERRY D | 10/19/2000 |
| STANTON, CA | |
| NOVICK, PHILIP B | 10/19/2000 |
| FISHKILL, NY | |
| NYGREN, NANETTE LOUISE | 10/19/2000 |
| PHOENIX, AZ | |
| OLIVER, WILLIAM PETER | 10/19/2000 |
| MANCHESTER, NH | |
| OWENS, KELLE PRICE | 10/19/2000 |
| SPRINGFIELD, VA | |
| PEARSON, MICHAEL D | 10/19/2000 |
| ANCHORAGE, AK | |
| PECKLER, JOHN E | 10/19/2000 |
| FRESON, CA | |
| PERRY, KENNETH B | 10/19/2000 |
| ST PETERSBURG, FL | |
| PESESKY, ELIZABETH ANN | 10/19/2000 |
| ELMIRA HEIGHTS, NY | |
| PORCHE, RENEE LOUISE | 10/19/2000 |
| OAKLAND, CA | |
| POST, DAVID LAWRENCE | 10/19/2000 |
| SAN RAMON, CA | |
| POWELL, LAURIE | 10/19/2000 |
| LOS ANGELES, CA | |
| POWELL, GWENDOLYN FAYE | 10/19/2000 |
| JONESBORO, AK | |
| PRATER, LINDA ANDERSON | 10/19/2000 |
| WINCHESTER, KY | |
| PROCTOR, MICHELLE LEE | 10/19/2000 |
| FORNEY, TX | |
| PRYCE, LLOYD ALEXANDER | 10/19/2000 |
| DUNCANVILLE, TX | |
| PUNG, LARRY J | 10/19/2000 |
| COOKEVILLE, TN | |
| REDDING, CAROL A | 10/19/2000 |
| STONY BROOK, NY | |
| RODGERS, JEFFREY DRAKE | 10/19/2000 |
| DANVILLE, VA | |
| ROGERS, MATTHEW SEBASTIAN | 10/19/2000 |
| NAVASOTA, TX | |
| ROMERO, IRAIDA | 10/19/2000 |
| MIAMI, FL | |
| ROYSTON, LAURA | 10/19/2000 |
| RICHMOND, CA | |
| RUSHING, ROSETTA M | 10/19/2000 |
| HAMPTON, VA | |
| SAID, ELIAS | 10/19/2000 |
| GRAYSON, GA | |
| SCHULTE, JEROME LEWIS | 10/19/2000 |
| ATASCADERO, CA | |
| SHAH, SURESHCHANDRA C | 10/19/2000 |
| PALM DESERT, CA | |
| SHETTY, NAGESH | 10/19/2000 |
| COSTA MESA, CA | |
| SIROIS, BRENDA JANE | 10/19/2000 |
| MILFORD, NH | |
| SKILLION, ANTHONY | 10/19/2000 |
| NASHVILLE, TN | |
| SMITH, BRUCE W | 10/19/2000 |
| SAN BERNARDINO, CA | |
| SMITH, BELINDA A | 10/19/2000 |
| ROOSEVELT, NY | |
| ST LUCIA, STEVEN ANTHONY | 10/19/2000 |
| SCHENECTADY, NY | |
| STODDART, JAMES EDWARD | 10/19/2000 |
| SAN DIEGO, CA | |
| TALVY, LOURDES DAMO | 10/19/2000 |
| E ROCKAWAY, NY | |
| THOMASSEN, JOHN ARTHUR | 10/19/2000 |
| STOCKTON, CA | |
| TOMLIN, CYNTHIA EARLENE | 10/19/2000 |
| BAKERSFIELD, CA | |
| TORBERT, DARRELL WAYNE | 10/19/2000 |
| SOMERSET, KY | |
| VOLK, KAREN A | 10/19/2000 |
| ROSLYN, PA | |
| VON HERZEN, BRUCE ALEXANDER | 10/19/2000 |
| SAN JUAN, CAPISTRANO, CA | |
| WACTOR, JAMES DAREN | 10/19/2000 |
| KESWICK, VA | |
| WARDLAW, JOE ROY | 10/19/2000 |
| BOGART, GA | |
| WAYNE, BRYAN MATTHEW | 10/19/2000 |
| HOUSTON, TX | |
| WHITE, HOLLY BETH | 10/19/2000 |
| LAGUNA BEACH, CA | |
| WICKERD, RONALD GAYLE | 10/19/2000 |
| MORENO VALLEY, CA | |
| WILLARD, AMBER S | 10/19/2000 |
| BARRE, VT | |
| WINSTEAD, ARTHUR NICK III | 10/19/2000 |
| BAKERSFIELD, CA | |
| WISIAN, NORA LORETTA | 10/19/2000 |
| DALLAS, TX | |
| WOODS, JANET ROSE | 10/19/2000 |
| ALTON, NH | |
| WOODWARD, WILLOW MARGARET | 10/19/2000 |
| NIAGARA FALLS, NY | |
| YING, LLOYD | 10/19/2000 |
| CANTON, MI | |

**FEDERAL/STATE EXCLUSION/ SUSPENSION**

| | |
|---|---|
| ADAJAR, MARIO ADA | 10/19/2000 |
| CHICAGO, IL | |
| BARB CORP | 10/19/2000 |
| DES PLAINES, IL | |
| CASTEN, CHRIS PETER | 10/19/2000 |
| RIVER FOREST, IL | |
| CHAJET, ROBERTA | 10/19/2000 |
| NORTHBROOK, IL | |
| CHAJET, BARRY | 10/19/2000 |
| NORTHBROOK, IL | |
| DONNARUMMA, CHRISTINE ELIZABETH | 10/19/2000 |
| FORKED RIVER, NJ | |
| FAMILY CARE PHARMACY | 10/19/2000 |
| PHILADELPHIA, PA | |
| JACOBSON, CRAIG STEVEN | 10/19/2000 |
| HILLSIDE, NJ | |
| PATEL, BABUBHAI PRAHLADBHAI | 10/19/2000 |
| ADDISON, IL | |
| QUEEN'S MEDICAL SUPPLY | 10/19/2000 |
| HUNTINGTON PARK, CA | |
| SUN REHAB, INC | 10/19/2000 |
| MULLICA HILL, NJ | |
| VAUGHAN'S PHARMACY, INC | 10/19/2000 |
| WOLCOTT, CT | |

**FRAUD/KICKBACKS**

| | |
|---|---|
| LEVIN, GERALD A | 05/01/2000 |
| INDIANAPOLIS, IN | |
| TARAVELLA, LORETTA CAPP | 12/28/1999 |
| TAMPA, FL | |

**OWNED/CONTROLLED BY CONVICTED EXCLUDED**

| | |
|---|---|
| AMIABLE PHARMACY | 10/19/2000 |
| BROOKLYN, NY | |
| CENTRE CHIROPRACTIC ASSOC | 10/19/2000 |
| STATE COLLEGE, PA | |
| DANIELS DRUG HEALTHMART | 10/19/2000 |
| MALTA, MT | |
| DENTURE SHOP | 10/19/2000 |
| AUSTIN, TX | |
| GEMSTAR OXIMETRY INC. | 10/19/2000 |
| DENVER, CO | |
| GRAND COTEAU PRESCRIPTION | 10/19/2000 |
| GRAN COTEAU, LA | |
| HEALTH PARTNERS, P C | 10/19/2000 |
| EVANSVILLE, IN | |
| HOLISTIC HEALTH CENTER | 10/19/2000 |



| Subject, city, state | Effective date |
|---|---|
| TUSTIN, CA | |
| OBATA CHIROPRACTIC CLINIC, P C | 10/19/2000 |
| COLLEGE PARK, GA | |
| PAUNOVIC & PAUNOVIC | 10/19/2000 |
| NEWBURGH, NY | |
| PROMETEO COUNSELING CTR, INC | 10/19/2000 |
| MIAMI, FL | |
| TURNER CHIROPRACTIC & FITNESS | 10/19/2000 |
| SALLISAW, OK | |

**DEFAULT ON HEAL LOAN**

| | |
|---|---|
| AL-AMIN, IHSAAN | 10/19/2000 |
| RINGGOLD, GA | |
| BARATTA, GEORGE A JR | 10/19/2000 |
| DANVILLE, CA | |
| BARGHOUTI, TARIQ A | 10/19/2000 |
| PORTLAND, OR | |
| BECK, MARK L | 8/21/2000 |
| WASHINGTON, DC | |
| BERGHERM, BRENT G | 10/19/2000 |
| CARTERSVILLE, GA | |
| BERNARDONE, JEFFREY J | 10/19/2000 |
| MANSFIELD, MA | |
| BLISS, CHRISTOPHER E | 10/19/2000 |
| ATTLEBORO, MA | |
| BOWER, DIAN L | 10/19/2000 |
| NORMAN, OK | |
| BROUSSARD, CHARLOTTE R | 10/19/2000 |
| OKLAHOMA CITY, OK | |
| CHICCHETTI, CHRISTOPHER R | 10/19/2000 |
| WEST PALM BEACH, FL | |
| CRAFTON, DENHAM B II | 10/19/2000 |
| TUCSON, AZ | |
| DACOSTA, MICHAEL P | 10/19/2000 |
| MIAMI, FL | |
| FOLLINI, CHRISTOPHER L | 10/19/2000 |
| YORKTOWN HGTS, NY | |
| FONTENOT, TOM R | 10/19/2000 |
| GROVES, TX | |
| GONZALEZ, STELLA R | 10/19/2000 |
| TOLEDO, OH | |
| GUARNERA, JOSEPH E | 10/19/2000 |
| ARLINGTON, TX | |
| HASS, KURT B | 10/19/2000 |
| SIMI VALLEY, CA | |
| HIBBERT, HAROLD H | 10/19/2000 |
| PALO ALTO, CA | |
| HINDS, THOMAS E | 8/31/2000 |
| S SIOUX CITY, NE | |
| HOLDCROFT, MICHAEL P | 10/19/2000 |
| ALLISON PARK, PA | |
| HUTCHES, MERILYN M | 10/19/2000 |
| DETROIT LAKES, MN | |
| JOHNSON, RICHARD K | 10/19/2000 |
| INGLEWOOD, CA | |
| JULIA, GIL M | 10/19/2000 |
| DALLAS, TX | |
| KASCIUS, LAUREN | 10/19/2000 |
| JULIAN, CA | |
| LAWRENCE, ROBERT DONALD | 10/19/2000 |
| SAN FRANCISCO, CA | |
| LEONARDI, VICTOR L | 10/19/2000 |
| PEORIA, AZ | |
| LONG, TIMOTHY J | 10/19/2000 |
| PALMYRA, PA | |
| LUEKE, CARL H | 10/19/2000 |
| KEARNEY, MO | |
| LYVAN, KIM | 10/19/2000 |
| NEW YORK, NY | |
| MASRI, NASSER M | 10/19/2000 |
| PATERSON, NJ | |
| MCCONNELL, DWAIN E | 10/19/2000 |
| AURORA, CO | |
| MCCOY, SHAWN D | 10/19/2000 |
| BELLEVUE, NE | |
| MCGEE, ARNIE D | 10/19/2000 |
| GORE, OK | |
| MILLWARD, DENNIS E | 10/19/2000 |
| SAN FRANCISCO, CA | |
| MONTALVO, EDWIN R | 10/19/2000 |
| SAN GERMAN, PR | |
| MORITZ, GREGORY M | 10/19/2000 |
| DOUGLASVILLE, GA | |
| NOWAK, OWEN B | 10/19/2000 |
| LINCOLNWOOD, IL | |
| OLIVER, MARC L | 10/19/2000 |
| NASHVILLE, TN | |
| PEREZ, REINALDO R | 10/19/2000 |
| CAROLINA, PR | |
| PHUNG, SON H | 10/19/2000 |
| CHICAGO, IL | |
| RITCHIE, WILLIAM N III | 10/19/2000 |
| STRATFORD, NJ | |
| RIVERA-RIGAU, LESTER R | 10/19/2000 |
| CABO ROJO, PR | |
| ROBINSON, ADDIE HILDA | 10/19/2000 |
| COLUMBIA, MD | |
| SARIEDDINE, AELIS L | 10/19/2000 |
| RIO PIEDRAS, PR | |
| SCHOURUP, JULIE A | 10/19/2000 |
| MCNEAL, AZ | |
| STAFFORD, JERRY LEE JR | 10/19/2000 |
| BOISE, ID | |
| STARK, KIMBERLY D | 10/19/2000 |
| RIVERDALE, NJ | |
| SUMINSKI, MICHAEL T | 10/19/2000 |
| BORING, OR | |
| TURNER, DORIAN R | 10/19/2000 |
| TAHLEQUAH, OK | |
| TURNER, MARSHA R | 10/19/2000 |
| SALLISAW, OK | |
| WEISSE, CARL E | 10/19/2000 |
| PHILADELPHIA, PA | |
| WILHELM, STEPHEN J | 10/19/2000 |
| CARNEGIE, PA | |
| YAHNIAN, LAWRENCE D | 10/19/2000 |
| DENVER, CO | |
| YOUNG, HENRY L JR | 10/19/2000 |
| GOODLETTSVILLE, TN | |

**OWNERS OF EXCLUDED ENTITIES**

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|---|---|
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| COLORADO SPRINGS, CO | |

Dated: October 5, 2000.

**Calvin Anderson, Jr.,**

*Director, Health Care Administrative Sanctions, Office of Inspector General.*

[FR Doc. 00–26469 Filed 10–13–00; 8:45 am]

BILLING CODE 4150–04–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Agency Information Collection Activities Under Emergency Review by the Office of Management and Budget

The Substance Abuse and Mental Health Services Administration (SAMHSA) has submitted the following request (see below) for emergency OMB review under the Paperwork Reduction Act (44 U.S.C. Chapter 35). OMB approval has been requested by November 1, 2000. A copy of the information collection plans may be obtained by calling the SAMHSA Reports Clearance Officer on (301) 443–7978.

*Title:* 2001 National Household Survey on Drug Abuse Incentive Experiment.

*OMB Number:* 0930–0110 (Revision).

*Frequency:* Single time.

*Affected public:* Individuals or households.

SAMHSA's National Household Survey on Drug Abuse (NHSDA) is a survey of the civilian, noninstitutionalized population of the United States 12 years old and older. The data are used to determine the prevalence of use of tobacco products, alcohol, illicit substances, and illicit use of prescription drugs. The results are used by SAMHSA, ONDCP, Federal government agencies, and other organizations and researchers to establish policy, direct program activities, and better allocate resources.

As part of the 2001 NHSDA, an incentive experiment is planned for the first two quarters of the year (January through June). The goal of the experiment is to determine whether response rates for the NHSDA can be increased without negatively affecting the quality of the data collected or significantly increasing the cost of the data collection. Despite utilization of all usual, non-monetary methods to maximize response rates, the overall national response rate for the 2000 NHSDA remains below the Office of Management and Budget standard of 80 percent and the response rates for the states vary greatly.

Improvements in the response rates are expected to generate more precise estimates and are expected to reduce bias and mean squared error for both the national and state level estimates. Because of the importance of achieving the maximum practical response rates across all states, and because we have already implemented all known

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alternative methods to increase the response rates, it is critical that this incentive experiment be conducted as quickly as possible so that the findings can be considered in plans for the 2002 NHSDA (or sooner, if possible).

Households included in this experiment will be selected randomly from among the households already selected for the 2001 NHSDA. Once assigned to the experiment, households will be assigned to one of three treatment groups: a $40 incentive, a $20 incentive, or no incentive.

Respondents who take part in the incentive experiment will complete exactly the same questionnaire as that used for the main 2001 NHSDA. The sample size for the incentive experiment will be sufficient to assess the effectiveness of the incentive as described above. A sample of approximately 2,500 completed interviews is planned. No additional burden will be realized for this experiment beyond what was originally calculated for the main 2001 NHSDA data collection activities because the experiment will be conducted among households selected for the national survey.

Written comments and recommendations concerning the proposed information collection should be sent within two weeks of this notice to: Stuart Shapiro, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: October 10, 2000.

**Patricia S. Bransford,**

*Acting Executive Officer, SAMHSA.*

[FR Doc. 00–26451 Filed 10–13–00; 8:45 am]

**BILLING CODE 4162–20–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Receipt of Application for Endangered Species Permit

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of receipt of application for endangered species permit.

**SUMMARY:** The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

If you wish to comment, you may submit comments by any one of several methods. You may mail comments to the Service's Regional Office (see **ADDRESSES**). You may also comment via the internet to "victoria_davis@fws.gov". Please submit comments over the internet as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your internet message. If you do not receive a confirmation from the Service that we have received your internet message, contact us directly at either telephone number listed below (see **FURTHER INFORMATION**). Finally, you may hand deliver comments to either Service office listed below (see **ADDRESSES**). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the administrative record. We will honor such requests to the extent allowable by law. There may also be other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. We will not; however, consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

**DATES:** Written data or comments on these applications must be received, at the address given below, by November 15, 2000.

**ADDRESSES:** Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Victoria Davis, Permit Biologist). Telephone: 404/679–4176; Facsimile: 404/679–7081.

**FOR FURTHER INFORMATION CONTACT:** Victoria Davis, Telephone: 404/679–4176; Facsimile: 404/679–7081.

**SUPPLEMENTARY INFORMATION:**

*Applicant:* Dan L. Wilkinson, Geo-Marine, INC., Plano, Texas, TE032771–0.

The applicant requests authorization to harass (survey) Hawksbill sea turtle, *Eretmochelys imbricata*, Kemp's (Atlantic) Ridley Sea Turtle, *Lepidochelys kempii*, Leatherback Sea Turtle, *Dermochelys coriacea*, Virgin Islands boa, *Epicrates monensis granti*, Culebra Island giant anole, *Anolis roosevelti*, Roseate tern *Sterna dogallii*, and brown pelican, *Pelicanus occidentalis occidentalis* throughout the species range on U.S. Navy land at U.S. Naval Station Roosevelt Roads and on the Island of Vieques, Puerto Rico, for the purpose of the enhancement of the Survival of the species.

Dated: October 5, 2000.

**H. Dale Hall,**

*Acting Regional Director.*

[FR Doc. 00–26438 Filed 10–13–00; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Availability of a Habitat Conservation Plan and Receipt of an Application for an Incidental Take Permit for Cabin Timber Harvest Plan, Napa County, CA

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability.

**SUMMARY:** This notice advises the public that the California Baptist Foundation (CBF) has applied to the Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The proposed permit would authorize the incidental take of one pair of northern spotted owls (*Strix occidentalis caurina*), federally listed as a threatened species, that may result due to habitat modification within the nest stand. The permit would be in effect for 5 years.

The Service announces the receipt of CBF's incidental take permit application and the availability of the proposed Cabin Habitat Conservation Plan (Plan), for public comment. The Plan fully describes the proposed project and the measures CBF will undertake to minimize and mitigate project impacts to the northern spotted owl. The Service has determined that the Cabin Timber Harvest Plan (THP)/Plan qualifies as a "Low Effect" Plan as defined by the Service's Habitat Conservation Planning Handbook (November 1996). The Service has further determined that approval of the Plan qualifies as a categorical exclusion under the National Environmental Policy Act, as provided by the Department of Interior Manual (516 DM2, Appendix 1 and 516 DM 6, Appendix 1). The basis for this determination is discussed in a Low-effect Screening form, which is also available for public review. This notice is provided pursuant to section 10(c) of the Act.

**DATES:** Written comments on the permit application and Plan should be received on or before November 15, 2000.

**ADDRESSES:** Comments regarding the permit application, low-effect screening form, or the Plan should be addressed to the Fish and Wildlife Service, Habitat Conservation Planning Team, 1829 S. Oregon Street, Yreka, CA 96097. Individuals wishing copies of the application, screening form, and Plan for review should immediately contact the above office. The Plan may be obtained from the following website: *www.ccfwo.r1.fws.gov/completedPlans.html*. Documents also will be available for public inspection, by appointment, during normal business hours at the above address. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

**FOR FURTHER INFORMATION CONTACT:** Mr. Phil Detrich, Fish and Wildlife Service, Yreka Fish and Wildlife Office, telephone (530) 842–4471.

**SUPPLEMENTARY INFORMATION:** Section 9 of the Act and Federal regulation prohibits the "taking" of a species listed as endangered or threatened. Take of listed fish or wildlife is defined under the Act to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or to attempt to engage in any such conduct. However, the Service, under limited circumstances, may issue permits to "incidentally take" listed species, which is take that is incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for threatened and endangered species are promulgated in 50 CFR 17.32 and 50 CFR 17.22, respectively.

#### Background

The CBF has applied to the Service for a section 10(a)(1)(B) incidental take permit for northern spotted owls, on the Cabin Plan area in Napa County, California. The term of the permit would be 5 years. The Cabin Plan area consists of 15 acres of privately owned land located approximately one mile north of Mt. Veeder, and 5 miles west of the cities of Yountville and Napa in Napa County, California. A THP for the site has previously been approved by the State of California (THP 1–97–201–NAP). The area was partially harvested in 1997, and the CBF currently wish to complete timber harvesting on this property. Completion of the THP will entail a selected harvest of 25 trees from an area approximately 2 acres in size located within the nest stand of a pair of northern spotted owls. A nest stand is defined as the nest tree and the adjoining area up to 500 feet from the nest tree.

The Cabin Plan area is composed of pure hardwood stands, mixed conifer/hardwood stands, and conifer stands occurring mostly as clumps of Douglas-fir and redwood. Habitat in the surrounding area is highly fragmented as a result of conversion from foothill woodlands to vineyards and home sites.

Timber harvest will consist of single tree selection (25 trees within approximately 2 acres). The area will remain in a forested condition following the harvest. There will be no new roads built and existing landing and skid trails will be used. The goals of the Cabin Plan are to allow for the completion of the Cabin THP while protecting any reproductive effort of northern spotted owl pairs resident within the THP boundaries and avoiding adverse effects to aquatic resources for the five year duration of the permit.

As described in the Plan, the applicant proposes the following measures to minimize and mitgate the anticipated project impacts: (A) Retention of existing habitat as functional roosting habitat containing an average of 65 percent canopy closure post-harvest; (B) No trees to be removed are closer than 50 feet to the current nest tree. All trees to be removed shall be directionally felled away from the nest tree. The down logs shall be tractor skidded from existing skid trails to an existing landing outside the nest grove; (C) Operations to complete the Cabin THP shall not occur during the northern spotted owl breeding season (February 1 through July 31) unless it is conclusively demonstrated to the Service that active breeding is not occurring within 1,000 feet of the area of operations.

Monitoring of the known northern spotted owl nest site within the Plan area shall be conducted each spring beginning after March 1 during the permit period by a qualified wildlife biologist to assess continued owl residency and nesting status. If the owls are not detected in the current nest tree, the Cabin Plan area and lands surrounding the Plan area out to ¼ mile will be surveyed in accordance with the guidelines specified in the Protocol for Surveying Proposed Management Activities That May Impact Northern Spotted Owls (USDI Fish and Wildlife Service 1992b). If the Service adjusts the dates of protocol application, the CBF will be entitled to use those dates. Should the Service revise the northern spotted owl survey protocol, the CBF may elect to adopt the new protocol, or continue to use the protocol currently in place.

The Service has determined that the Cabin Plan qualifies as a "Low Effect" Plan as defined by the Service's Habitat Conservation Planning Handbook. Low Effect Plans are those involving: (1) Minor or negligible effects on federally listed and candidate species and their habitats; and (2) minor or negligible effects on other environmental values or resources. The Cabin Plan qualifies as a Low Effect Plan for the following reasons:

1. Approval of the Plan will result in minor or negligible effects on the northern spotted owl. The Service does not anticipate that significant direct or cumulative effects to the owl will result from the proposed 2 acres of selection harvest. No other federally listed, proposed, or candidate species are known or expected to occur within or immediately adjacent to the proposed harvest, and the National Marine Fisheries Service has determined that, as a result of incorporation of aquatic protection measures, the project is not likely to adversely affect listed salmomids that may occur in the watershed below the project area.

2. The proposed harvest will not have adverse effects on unique geographic, historic or cultural sites, or involve unique or unknown environmental risks.

3. Approval of the Plan will not result in any cumulative or growth inducing impacts and, therefore, will not result in significant adverse effects on public health or safety.

4. The project does not require compliance with Executive Order 11988 (Floodplain Management), Executive Order 11990 (Protection of Wetlands), or the Fish and Wildlife Coordination Act, nor does it threaten to violate a Federal, State, local or tribal law or requirement imposed for the protection of the environment.

5. Approval of this Plan will not establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.

The Service has therefore determined that approval of the Cabin THP/Plan qualifies as a categorical exclusion under the National Environmental Policy Act, as provided by the Department of Interior Manual (516 DM2, Appendix 1 and 516 DM 6, Appendix 1). No further National Environmental Policy Act documentation will therefore be prepared. This notice is provided

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pursuant to section 10(c) of the Act. The Service will evaluate the permit application, Plan, and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Act. If it is determined that the requirements are met, a permit will be issued for the incidental take of the northern spotted owl. The final permit decision will be made no sooner than 30 days from the date of this notice.

Dated: October 10, 2000.

**Elizabeth H. Stevens,**

*Deputy Manager, California/Nevada Operations Office, Sacramento, California.*

[FR Doc. 00–26537 Filed 10–13–00; 8:45 am]

BILLING CODE 4130–55–P

## DEPARTMENT OF THE INTERIOR

### U.S. Geological Survey

### Request for Public Comments on Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

A request extending the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the USGS Clearance Officer at the phone number listed below. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days; therefore, public comments should be submitted to OMB within 30 days in order to assure their maximum consideration. Comments and suggestions on the requirement should be made directly to the Desk Officer for the Interior Department, Office of Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to the USGS Clearance Officer, U.S. Geological Survey, 807 National Center, Reston, VA 20192.

As required by OMB regulations at CFR 1320.8(d)(1), the U.S. Geological Survey solicits specific public comments regarding the proposed information collection as to:

1. Whether the collection of information is necessary for the proper performance of the functions of the USGS, including whether the information will have practical utility;
2. The accuracy of the USGS estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
3. The utility, quality, and clarity of the information to be collected; and,
4. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

*Title:* Mine, Development, and Mineral Exploration Supplement. Current OMB approval number: 1028–0060.

*Abstract:* Respondents supply the U.S. Geological Survey with domestic production, exploration, and mine development data on nonfuel mineral commodities. This information will be published as an Annual Report for use by Government agencies, industry, and the general public.

*Bureau Form Numbers:* 9–4000–A.

*Frequency:* Annual.

*Description of Respondents:* Nonfuel Mineral and Uranium Producers, Development and Exploration Operations.

*Annual Responses:* 739.

*Annual Burden Hours:* 555.

*Bureau Clearance Officer:* John Cordyack, 703–648–7313.

**John H. DeYoung, Jr.,**

*Chief Scientist, Minerals Information Team.*

[FR Doc. 00–26402 Filed 10–13–00; 8:45 am]

BILLING CODE 4310–Y7–M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[MT–010–1220–HA]**

### Notice of Closure of Certain Public Lands to the Use of Motorized Vehicles

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of closure of certain public lands to the use of motorized vehicles.

**SUMMARY:** Notice is hereby given that motorized vehicle use is allowed only on Crooked Creek Road and the parking lot of the 17-Mile Area. The remaining lands at the 17-Mile Area are closed to motorized vehicle use. The 17-Mile Area is located 12 miles north of Billings, Montana on Crooked Creek Road west of Montana Highway 87. This closure is necessary for public safety and resource protection on lands used for firearms target practice.

Designation and location of public lands:

Open to motorized vehicle use: Crooked Creek Road and the adjoining parking lot,

T. 3 N., R. 26 E., P.M.M.,
Sec. 9, E½SE¼SE¼;
Sec. 10, S½S½SW¼.

Closed to motorized vehicle use:

T. 3 N., R. 26 E., P.M.M.,
Sec 4, all;
Sec. 8, W½. SE¼;
Sec. 9, NE¼, W½, NE¼SE¼, W½SE¼, W½SE¼SE¼;
Sec 10. NW¼, N½SW¼, N½S½SW¼.

Exempted from this closure are Bureau of Land Management employees on official business, firefighting forces, law enforcement officers, or persons with a permit or written authorization allowing the otherwise prohibited act.

**Authority:** Authority for this action is outlined in sections 302, 303, and 310 of the Federal Land Policy and Management Act (43 USC 1716) and Title 43 Code of Federal Regulations, subpart 8341 (43 CFR 8341.2) and subpart 8364 (43 CFR 8364.1). Any person who fails to comply with this closure is subject to arrest and a fine of up to $1,000 or imprisonment not to exceed 12 months, or both.

**EFFECTIVE DATE:** This closure is effective year-around upon the date of publication.

**FOR FURTHER INFORMATION CONTACT:** Sandra S. Brooks, Field Manager, BLM, Billings Field Office, 5001 Southgate Drive, P.O. Box 36800, Billings, Montana 59107–6800 or call 406–896–5013.

Dated: October 6, 2000.

**Sandra S. Brooks,**

*Field Manager.*

[FR Doc. 00–26440 Filed 10–13–00; 8:45 am]

BILLING CODE 4310–$$–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[MT–010–1220–AA]**

### Notice of Closure of Certain Public Lands to the Discharge of Firearms, Pellet Guns, and Paint-Ball Guns

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of closure of certain public lands to the discharge of firearms, pellet guns, and paint-ball guns.

**SUMMARY:** Notice is hereby given that on all public lands in the South Hills Area, located two miles south of Billings, Montana; and 16.88 acres of land, located two miles southeast of Laurel, Montana, situated on the right bank of the Clarks Fork of the Yellowstone River, directly across the river from the Sundance Lodge Recreation Area, are closed to the discharge of firearms, pellet guns, and paint-ball guns. This closure is necessary for public safety and resource protection of public and private lands.

Public lands closed to the discharge of firearms, pellet guns, and paint-ball guns:

T. 1 S., R. 26 E., P.M.M., South Hills Area,
Sec. 14, lot 3, SE¼NW¼, E½SW¼, S½SE¼;
Sec. 21, NE¼NE¼, S½NE¼, SE¼NW¼;
Sec. 22, SW¼NE¼, NW¼, N½SW¼, N½SE¼;
Sec. 23, N½NE¼, NE¼NW¼;
Sec. 24, W½W½;
Sec. 25, NW¼NW¼;
Sec. 26, E½NE¼.
T. 2 S., R. 24 E., P.M.M., adjoining the Sundance Lodge Recreation Area,
Sec. 23, lot 5aa;
secs. 23 and 24, lot 5b.

Exempted from this closure are law enforcement officers, or persons with written authorization allowing the otherwise prohibited act.

**Authority:** Authority for this action is outlined sections 302, 303, and 310 of the Federal Land Policy and Management Act (43 USC 1716) and Title 43 Code of Federal Regulations, Subpart 8364 (43 CFR 8364.1). Any person who fails to comply with this closure is subject to arrest and a fine up to $1,000 or imprisonment not to exceed 12 months, or both.

**EFFECTIVE DATE:** This closure is effective year-round upon the date of publication.

**FOR FURTHER INFORMATION CONTACT:** Sandra S. Brooks, Field Manager, BLM, Billings Field Office, 5001 Southgate Drive, P.O. Box 36800, Billings, Montana 59107–6800, or call (406) 896–5013.

Dated: October 6, 2000.

**Sandra S. Brooks,**

*Field Manager.*

[FR Doc. 00–26441 Filed 10–13–00; 8:45 am]

BILLING CODE 4310–$$–P



## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[MT–020–1010–AA]**

### Notice of Meeting

**AGENCY:** Bureau of Land Management (BLM), Montana, Billings and Miles City Field Offices, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** The Eastern Montana Resource Advisory Council will have a meeting on November 16 at the Hampton Inn Conference Room, 5110 Southgate Drive, Billings, Montana starting at 8 a.m. Primary agenda topics include updates on coalbed methane development, Pompeys Pillar, Weatherman Draw, continued discussion on access, and an update on the fire season.

The meeting is open to the public and the public comment period is set for 11 a.m. The public may make oral statements before the Council or file written statements for the Council to consider. Depending on the number of persons wishing to make an oral statement, a per person time limit may be established. Summary minutes of the meeting will be available for public inspection and copying during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Marilyn Krause, Public Affairs Specialist, Miles City Field Office, 111 Garryowen Road, Miles City, Montana 59301, telephone (406) 233–2831.

**SUPPLEMENTARY INFORMATION:** The purpose of the Council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management. The 15 member Council includes individuals who have expertise, education, training or practical experience in the planning and management of public lands and their resources and who have a knowledge of the geographical jurisdiction of the Council.

Dated: October 4, 2000.

**Aden L. Seidlitz,**

*Associate Field Manager.*

[FR Doc. 00–26424 Filed 10–13–00; 8:45 am]

BILLING CODE 4310–$$–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[MT–070–01–2810–PD]**

### Designation Order: MT–070–0001; Emergency Off-Road Vehicle Closure Designation, Butte Field Office, Montana

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Emergency off-road closure to all motorized vehicles.

**SUMMARY:** Final notice is hereby given that effective immediately all public BLM lands burned in the Bucksnort Fire (Spokane Hills) and the Boulder Hill Complex Fire (High Ore/Wickes and Muskrat Creek areas) are temporarily closed to all off-road motorized vehicle uses year-long. The use of existing roads will be allowed to continue. Lands affected are in:

**Principal Meridian, Montana**

T. 6 N., R. 4 W.
Sec. 1, 5–8, and 18
T. 6 N., R. 5 W.
Sec. 1–3, and 10–15
T. 7 N., R 4 W.
Sec. 16, 20–22, 27–29, and 31–33
T. 9 N., R. 1 E.
Sec. 18 and 19
T. 9 N., R. 1 W.
Sec. 1, 3, 11 and 12
T. 10 N., R. 1 W.
Sec. 21, 26–28, 34 and 35

The Spokane Hills are located about 15 miles East of Helena and immediately West of Canyon Ferry Lake. The High Ore/Wicks area is about 20 miles south of Helena and 3 miles North of Boulder on the West side of I–15. A small portion of the Muskrat Creek area in Section 1, currently open under the Elkhorns Travel Management Plan, is located about 5 miles NNE of Boulder and East of I–15.

The purpose of this post-burn, emergency area closure is to protect soils and vegetation. This closure will also help to reduce the spread of noxious weeds and public safety hazards within the affected areas. BLM will be conducting post-burn rehabilitation treatments this fall and next year. The bureau's use of motorized equipment in these areas will be limited to that which is essential for project completion. Specific use exceptions to these closures will be considered on a case by case basis subject to reasonable needs and resource impacts. This decision is consistent with the Headwaters Resource Management Plan and is authorized under 43 CFR 8342. These post-burn closures will remain in effect until rescinded or modified by the authorized official.

**FOR FURTHER INFORMATION CONTACT:** Dave Pacioretty, Assistant Manager, Butte Field Office, P.O. Box 3388, Butte, Montana 59702, 406–494–5059.

Dated: October 3, 2000.

**Richard M. Hotaling,**

*Field Manager.*

[FR Doc. 00–26428 Filed 10–13–00; 8:45 am]

BILLING CODE 4310–DN–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[WY–920–1310–01; WYW142079]**

### Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

October 5, 2000.

Pursuant to the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW142079 for lands in Johnson County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

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The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $158 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW142079 effective July 1, 2000, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

**Theresa M. Stevens,**

*Acting Chief, Leasable Minerals Section.*

[FR Doc. 00–26422 Filed 10–13–00; 8:45 am]

**BILLING CODE 4316–22–M**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[WY–920–1310–01; WYW142080]**

### Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

October 5, 2000.

Pursuant to the provisions of 30 U.S.C. 188(d) and (e), an 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW 142080 for lands in Campbell and Johnson Counties, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $158 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW142080 effective July 1, 2000, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

**Theresa M. Stevens,**

*Acting Chief, Leasable Minerals Section.*

[FR Doc. 00–26423 Filed 10–13–00; 8:45 am]

**BILLING CODE 4310–22–M**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[WY–920–1310–01; WYW142081]**

### Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

Pursuant to the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW142081 for lands in Campbell County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $158 to reimburse the Department of the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW142081 effective July 1, 2000, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

**Theresa M. Stevens,**

*Acting Chief, Leasable Minerals Section.*

[FR Doc. 00–26433 Filed 10–13–00; 8:45 am]

**BILLING CODE 4310–22–M**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[AZA 30749]**

### Public Land Order No. 7467; Withdrawal of National Forest System Lands for San Francisco Peaks/Mount Elden Recreation Area; Arizona

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public land order.

**SUMMARY:** This order withdraws 74,380.50 acres of National Forest System lands from location and entry under the United States mining laws for 20 years to protect the San Francisco Peaks/Mount Elden Recreation Area. An additional 320 acres of non-Federal lands within the San Francisco Peaks/Mount Elden Recreation Area would become subject to the withdrawal if acquired by the United States.

**EFFECTIVE DATE:** October 16, 2000.

**FOR FURTHER INFORMATION CONTACT:** Cliff Yardley, BLM Arizona State Office, 222 North Central Avenue, Phoenix, Arizona 85004–2203; 602–417–9437.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Subject to valid existing rights, the following described National Forest System lands are hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. Ch. 2 (1994)), to protect the San Francisco Peaks/Mount Elden Recreation Area:

**Gila and Salt River Meridian**

*Coconino National Forest*

T. 21 N., R. 7 E.,
Sec. 1, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 2, lots 1 to 8, inclusive, S½NW¼, S½SE¼, and SW¼, excluding HES 86.
T. 21 N., R. 8 E.,
Sec. 6, lots 1 to 7, inclusive, SW¼NE¼, NE¼NE¼SE¼NE¼,W½E½SE¼NE¼, W½SE¼NE¼, SE¼NW¼, NE¼SW¼; NW¼SE¼SW¼, N½SW¼SE¼SW¼, NW¼SE¼, N½NE¼SE¼, SW¼NE¼SE¼, N½SE¼NE¼SE¼, SW¼SE¼NE¼SE¼, NW¼SE¼SE¼NE¼SE¼, and W½SW¼SE¼SE¼NE¼SE¼.
T. 22 N., R. 6 E.,
Sec. 1, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 2, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 3, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 4, lots 1 to 4, inclusive, S½NE¼, SW¼NW¼, and S½;
Secs. 9 to 11, inclusive;
Sec. 12, E½ and SW¼;
Sec. 13, N½;
Secs. 14 and 15;
Sec. 16, E½.
T. 22 N., R. 7 E.,
Sec. 1, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 2, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 3, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 4;
Sec. 5, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 7, lots 1 to 4, inclusive, E½, and E½W½;
Secs. 8 to 17, inclusive;
Sec. 18, lots 1 to 4, inclusive, E½, and E½W½;
Secs. 20 to 23, inclusive;
Sec. 24, lots 1 to 16, inclusive;
Sec. 25, lots 1 to 16, inclusive;
Sec. 26, lots 1 to 16, inclusive;
Sec. 27, NW¼ and S½;
Secs. 28 and 29;
Sec. 32, N½;



Sec. 33, N½, N½S½, SW¼SE¼, and W½W½W½SE¼SE¼;
Sec. 34, N½, N½SW¼, E½SW¼SW¼, and NW¼SE¼;
Sec. 35, lots 1 to 4, inclusive, W½E½, and W½;
Sec. 36.
T. 22 N., R. 8 E.,
Sec. 5, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, W½SW¼, and SE¼;
Sec. 7, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 8, N½, SW¼, and W½SE¼;
Sec. 17, S½N½NE¼NE¼, S½NE¼NE¼, W½NE¼, SE¼NE¼, W½, and SE¼;
Sec. 18, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 19, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 20, N½NE¼NE¼, N½S½NE¼NE¼, SW¼SW¼NE¼NE¼, W½NE¼, S½SE¼NE¼, NW¼, and S½;
Sec. 29, N½, SW¼, N½SE¼, SW¼SE¼, N½SE¼SE¼, and W½SW¼SE¼SE¼;
Sec. 30, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 31, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 32, N½, N½S½, SW¼SW¼, W½SE¼SW¼, N½N½NE¼SE¼SW¼, N½N½NW¼SW¼SE¼, E½SW¼SE¼, and SE¼SE¼.
T. 23 N., R. 6 E.,
Sec. 8, lots 1, 2, 7, and 8;
Sec. 9, lots 1 to 8, inclusive, and N½;
Sec. 10, NE¼, NE¼NE¼NW¼, NE¼NW¼NE¼NW¼, S½NE¼NW¼, NW¼NW¼NW¼NW¼, S½NW¼NW¼NW¼, SW¼NW¼NW¼, S½NW¼, and S½;
Sec. 11, E½, NW¼, W½SW¼, N½NE¼SW¼, SW¼NE¼SW¼, N½SE¼NE¼SW¼, SW¼SE¼NE¼SW¼, E½SE¼SE¼NE¼SW¼, W½NE¼SE¼SW¼, W½SE¼SW¼, E½E½NE¼SE¼SW¼, and E½E½SE¼SE¼SW¼;
Sec. 12;
Sec. 13, lots 1 to 4, inclusive, N½NE¼NE¼, SE¼SE¼NE¼NE¼, N½NW¼NE¼, SW¼NW¼NE¼, S½NE¼SW¼NE¼, NW¼SW¼NE¼, S½S½NE¼, NE¼SE¼NE¼, S½NW¼SE¼NE¼, and W½;
Sec. 14, S½N½S½N½N½, S½S½N½N½, S½N½, E½SW¼, NW¼SW¼, and SE¼;
Sec. 15, N½, SW¼, N½SE¼, and SW¼SE¼;
Sec. 16;
Sec. 17, lots 1 to 8, inclusive, and S½;
Secs. 20 and 21;
Sec. 22, W½NE¼, SE¼NE¼, N½SW¼, N½SW¼SW¼, N½N½SE¼SW¼, SE¼NE¼SE¼SW¼, E½SE¼SE¼SW¼, and SE¼;
Sec. 23, NE¼, E½NW¼, SW¼NW¼, N½SW¼, N½NE¼SW¼SW¼, SE¼NE¼SW¼SW¼, NW¼SW¼SW¼, N½SW¼SW¼, N½SE¼SW¼SW¼, N½SE¼, N½SW¼SE¼, SE¼SW¼SE¼, and SE¼SE¼;
Sec. 24, lots 1 to 8, inclusive, and W½;
Sec. 25, lots 1 to 8, inclusive, and W½;
Sec. 26, E½E½NE¼, NW¼NE¼NE¼, N½SW¼NE¼NE¼, SW¼SW¼NE¼NE¼, S½N½NW¼NE¼, S½NW¼NE¼, SW¼NE¼, NW¼NW¼SE¼NE¼, S½NW¼SE¼NE¼, SW¼SE¼NE¼, S½SW¼, and SE¼;
Sec. 27, N½NE¼NE¼, SW¼NE¼NE¼, W½SE¼NE¼NE¼, N½NE¼SE¼NE¼NE¼, NW¼NE¼, E½W½SW¼NE¼, E½SW¼NE¼, W½SE¼NE¼, W½NE¼SE¼NE¼, S½NE¼NE¼SE¼NE¼, SE¼NE¼SE¼NE¼, SE¼SE¼NE¼, S½SW¼NW¼NW¼, SW¼SE¼NW¼NW¼, W½NE¼SW¼NW¼, W½SW¼NW¼, SE¼SW¼NW¼, SW¼SE¼NW¼, N½S½NE¼SW¼, W½W½SW¼, SE¼SW¼SW¼, S½SE¼SW¼, N½N½SE¼, S½NE¼SE¼SE¼, N½S½NW¼SE¼, SW¼SW¼SE¼, W½SE¼SW¼SE¼, E½SE¼SE¼, and reconveyed portion of NW¼ (AZA 28296);
Secs. 28, 29, 32, and 33;
Sec. 34, SW¼NW¼NE¼, NW¼, and SE¼;
Sec. 35, N½NE¼, E½W½SE¼NE¼, E½SE¼NE¼, N½N½NW¼, SW¼NW¼NW¼, W½SW¼NW¼, N½S½, N½SW¼SW¼, S½SE¼, reconveyed portion of NW¼ known as Parcels 1, 2, and 4 of Snow Bowl Estates (AZA 26537), and SE¼SW¼ excluding patented land;
Sec. 36.
T. 23 N., R. 7 E.,
Sec. 7, lots 1 to 4, inclusive, E½, and E½W½;
Secs. 8 to 11, inclusive;
Sec. 12, lots 1 to 4, inclusive, W½E½, and W½;
Sec. 13, lots 1 to 4, inclusive, W½E½, NW¼, N½SW¼, SW¼SW¼, and N½SE¼SW¼, less and except MS 4652;
Secs. 14 and 15;
Sec. 16, lots 1 to 8, inclusive, and N½;
Sec. 17;
Sec. 18, lots 3, 4, and 5, E½, N½NE¼NW¼, SE¼NE¼NW¼, N½NE¼NW¼NW¼, E½SE¼NW¼, S½SW¼SE¼NW¼, and E½SW¼;
Sec. 19, lots 1 to 4, inclusive, E½, and E½W½;
Secs. 20 and 21;
Sec. 22, lots 1 to 12, inclusive, and NE¼;
Sec. 23;
Sec. 24, lots 1 to 4, inclusive, N½NW¼NE¼, SE¼NW¼NE¼, E½SW¼NW¼NE¼, E½W½SW¼NW¼NE¼, E½W½W½SW¼NW¼NE¼, E½SW¼NE¼, E½NW¼SW¼NE¼, E½W½NW¼SW¼NE¼, W½SW¼NW¼NE¼, W½W½W½SW¼NE¼NW¼, W½NW¼, W½W½W½NW¼SE¼NW¼, S½SE¼NW¼, SW¼, and W½SE¼;
Sec. 25, lots 1 to 4, inclusive, W½E½, and W½;
Sec. 26;
Sec. 27, lots 1 to 4, inclusive, W½E½, and W½;
Secs. 28 and 29;
Sec. 30, lots 1 to 12, inclusive, and E½W½;
Sec. 31, lots 1 to 10, inclusive, E½NE¼, and E½W½;
Sec. 32, lots 1 to 4, inclusive, N½, and N½S½;
Sec. 33, lots 1 to 4, inclusive, N½, and N½S½;
Sec. 34, lots 1 to 7, inclusive, W½NE¼, NW¼, N½SW¼, and NW¼SE¼;
Sec. 35, lots 3 to 7, inclusive, N½, N½SW¼, and NE¼SE¼, excluding 50′ R/W for railroad pipeline;
Sec. 36, lots 1 to 7, inclusive, W½NE¼, NW¼, N½SW¼, and NW¼SE¼.
T. 23 N., R. 8 E.,
Sec. 7, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 17, SW¼;
Sec. 18, lots 1 to 4, inclusive, NE¼NE¼, S½NE¼, E½W½, and SE¼;
Sec. 19, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 20, W½;
Sec. 29, N½, SW¼, E½NE¼SE¼, E½NW¼NE¼SE¼, W½E½NW¼SE¼, W½W½SE¼, W½NE¼SW¼SE¼, and N½NE¼SE¼SE¼;
Sec. 30, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 31, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 32, W½NW¼NE¼, W½SE¼NW¼NE¼, S½NE¼, W½, and SE¼.

The areas described aggregate 74,380.50 acres in Coconino County.

2. The following non-Federal lands are located within the San Francisco Peaks/Mount Elden Recreation Area. In the event these lands return to Federal ownership, they would be subject to the terms and conditions of this withdrawal as described in Paragraph 1:

**Gila and Salt River Meridian**

T. 22 N., R. 6 E.,
Sec. 12, NW¼.
T. 22 N., R. 7 E.,
Sec. 27, NE¼.

The areas described aggregate 320 acres in Coconino County.

3. The withdrawal made by this order does not alter the applicability of those land laws governing the use of the National Forest System lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

4. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1994), the Secretary determines that the withdrawal shall be extended.

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Dated: October 3, 2000.

**Sylvia V. Baca,**

*Assistant Secretary of the Interior.*

[FR Doc. 00–26435 Filed 10–13–00; 8:45 am]

BILLING CODE 3410–11–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[CO–935–1430–ET; COC–017768]**

### Notice of Proposed Extension of Withdrawal; Opportunity for Public Meeting; Colorado

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The Bureau of Land Management proposes to extend Public Land Order No. 5979 for a 20-year period. This order withdrew public lands from operation of the public land laws, including location and entry under the U.S. mining laws, to protect two administrative sites. The lands have been and remain open to mineral leasing. This notice also gives an opportunity to comment on the proposed action and to request a public meeting.

**DATES:** Comments and requests for a public meeting must be received by January 16, 2001.

**ADDRESSES:** Comments and meeting requests should be sent to the Colorado State Director, 2850 Youngfield Street, Lakewood, Colorado 80215–7093.

**FOR FURTHER INFORMATION CONTACT:** Doris E. Chelius at 303–239–3706.

**SUPPLEMENTARY INFORMATION:** The Uncompaphgre Field Office and the Little Snake Field Office have requested that Public Land Order No. 5979 be extended for a 20-year period. This withdrawal was made to protect constructed improvements and equipment storage at two Bureau of Land Management administrative sites. This withdrawal will expire September 2, 2001.

The withdrawal comprises two sites. One is approximately 0.688 acres of public land near the town of Norwood in Section 27, T. 45 N., R. 13 W., New Mexico Principal Meridian, San Miguel County, Colorado. The second site is 1 acre of public land in the town of Craig in section 35, T. 7 N., R 91 W., Sixth Principal Meridian, Moffat County, Colorado. A complete description of the lands can be provided by the Colorado State Office at the address shown above.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed extension, or to request a public meeting may present their views in writing to the Colorado State Director at the address shown above.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with this proposed extension. Any interested persons who desire a public meeting for the purpose of being heard on this proposed action should submit a written request to the Colorado State Director within 90 days from the date of publication of this notice. If the authorized officer determines that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days prior to the scheduled date of the meeting.

This extension will be processed in accordance with the regulations set forth in 43 CFR 2310.4.

**Jenny L. Saunders,**

*Realty Officer.*

[FR Doc. 00–26432 Filed 10–13–00; 8:45 am]

BILLING CODE 4310–JB–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[CO–930–1430–ET; COC–63081]**

### Public Land Order No. 7466; Withdrawal of Public Lands and Minerals for the Upper Colorado River Special Recreation Management Area; Colorado

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public Land Order.

**SUMMARY:** This order withdraws 12,237 acres of public lands from surface entry and mining and 1,020 acres of reserved Federal mineral interest from mining for 20 years to protect scenic and recreation values in the Upper Colorado River Special Recreation Management Area. In addition, 7,020 acres of non-Federal lands, if acquired by the United States, would also be withdrawn by this order. The lands have been and will remain open to mineral leasing.

**EFFECTIVE DATE:** October 16, 2000.

**FOR FURTHER INFORMATION CONTACT:** Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7093, 303–239–3706.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Subject to valid existing rights, the following described public lands are hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2 (1994)), but not from leasing under the mineral leasing laws to protect scenic, wildlife, and recreation values in the Upper Colorado River Special Recreation Management Area:

**Sixth Principal Meridian**

T. 1 N., R. 79 W.,
- Sec. 8, S½SW¼;
- Sec. 17, NW¼ and N½SW¼;
- Sec. 18, lot 3.

T. 1 N., R. 80 W.,
- Sec. 13, lots 1 to 4, inclusive;
- Sec. 14, SW¼SE¼ and a reconveyed parcel of land in the S½SW¼;
- Sec. 15, lots 9 and 11, S½S½, and a reconveyed parcel of land in the N½SW¼;
- Sec. 16, a reconveyed parcel of land in the S½S½;
- Sec. 19, NE¼SE¼ and a reconveyed parcel in the N½NE¼;
- Sec. 20, lots 2 and 3, S½N½, and NE¼SW¼;
- Sec. 21, N½NE¼, S½NW¼, and a reconveyed parcel of land in the N½N½NW¼;
- Sec. 22, lots 1 to 4, inclusive.

T. 1 N., R. 81 W.,
- Sec. 13, SW¼SW¼;
- Sec. 23, SE¼NW¼, NE¼SW¼, and NE¼SE¼;
- Sec. 24, S½N½ and N½SE¼;
- Sec. 27, N½, SW¼, and NW¼SE¼;
- Sec. 28, SE¼ and SE¼SW¼;
- Sec. 32, E½ and SW¼;
- Sec. 33, N½NE¼, SW¼NE¼, and W½.

T. 1 S., R. 81 W.,
- Sec. 5, lots 8 and 9;
- Sec. 6, lots 6, 7, and lots 9 to 18, inclusive;
- Sec. 7, lots 5 to 19, inclusive;
- Sec. 18, lots 1 and 2, and E½NW¼.

T. 1 S., R. 82 W.,
- Sec. 12, lots 1 to 5, inclusive, SW¼NE¼, E½SW¼, SW¼SW¼, and W½SE¼;
- Sec. 13, lots 1 to 9, inclusive, W½SW¼ and that portion of Tract 53 lying westerly of the centerline of the Colorado River;
- Sec. 14, SE¼SW¼, E½SE¼, and SW¼SE¼;
- Sec. 22, SE¼;
- Sec. 23, NE¼, E½NW¼, N½S½, and S½SW¼;
- Sec. 24, lots 1, 2, and 3, NW¼NW¼, and S½NW¼;
- Sec. 27, W½NW¼, SW¼SW¼, and reconveyed parcels in the W½NE¼ and the E½NW¼;
- Sec. 28, lots 4 to 6, inclusive, NE¼NE¼, S½NE¼, NE¼SW¼, NW¼SE¼, and SE¼SE¼;
- Sec. 32, lots 1, 3, 4, 5, and 8, SW¼SE¼, those portions of unpatented Mineral Survey No.13963 lying within the E½ of sec. 32, and that portion of Tract 82 within the E½;



- Sec. 33, lots 1, 3, 4, 5, and 6, lots 8 to 11, inclusive, NE¼, E½NW¼, SW¼NW¼, and the Bona Dea Placer;
- Sec. 34, lot 1 and NW¼NW¼.

T. 2 S., R. 82 W.,
- Sec. 4, lots 12, 14, 15, 17, 18, and 19, lots 26 to 30, inclusive, S½NW¼, NW¼SW¼, and Bona Dea Placer;
- Sec. 5, lots 5, 6, and 11, lots 14 to 23, inclusive, lots 25 and 26, S½NE¼, and N½SE¼;
- Sec. 6, lots 20, 30, 31, 32, 37, and 38, S½NE¼, E½SW¼, SE¼NW¼, and SE¼;
- Sec. 7, lots 5 to 7, inclusive, lots 11 to 21, inclusive, NE¼NE¼, SE¼SW¼, and SW¼SE¼;
- Sec. 18, lots 5 to 12, inclusive, and lots 14 to 17, inclusive.

T. 2 S., R. 83 W.,
- Sec. 12, lot 4;
- Sec. 13, lots 1 to 4, inclusive, W½E½, and E½SW¼;
- Sec. 23, E½NE¼, S½SW¼, SW¼SE¼, NE¼SE¼, N½SE¼SE¼, and N½S½SE¼SE¼;
- Sec. 24, lot 1, W½E½ and W½;
- Sec. 25, NW¼;
- Sec. 26, NW¼NW¼NE¼, S½NW¼NE¼, S½NE¼, and NW¼.

The areas described aggregate approximately 12,237 acres in Grand and Eagle Counties.

2. Subject to valid existing rights, the reserved Federal mineral interest in the following described lands is hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. Ch. 2 (1994)), but not from leasing under the mineral leasing laws, to protect scenic, wildlife, and recreation values in the Upper Colorado River Special Recreation Management Area:

**Sixth Principal Meridian**

T. 1 N., R. 80 W.,
- Sec. 20, NW¼NW¼.

T. 1 N., R. 81 W.,
- Sec. 28, N½SW¼ and SW¼SW¼;
- Sec. 29, SE¼SE¼.

T. 1 S., R. 82 W.,
- Sec. 14, SW¼SW¼;
- Sec. 22, N½NE¼, SW¼NE¼, and SW¼;
- Sec. 23, NW¼NW¼;
- Sec. 26, lot 1 and SW¼NW¼;
- Sec. 27, lots 1 and 2, and N½SE¼;
- Sec. 33, that portion of Tract 70 lying within the NW¼NW¼.

T. 2 S., R. 82 W.,
- Sec. 4, lot 22;
- Sec. 7, that portion of Tract 41 lying in sec. 7.

The areas described aggregate approximately 1,020 acres in Grand and Eagle Counties.

3. The following described non-Federal lands, if acquired by the United States, will be subject to the terms and conditions of this withdrawal:

**Sixth Principal Meridian**

T. 1 N., R. 79 W.,
- Sec. 7, lot 4, SE¼SW¼, and S½SE¼;
- Sec. 18, lots 1 and 2, NE¼, E½NW¼, NE¼SW¼, and N½SE¼.

T. 1 N., R. 80 W.,
- Sec. 12, S½S½;
- Sec. 13, N½ and SW¼;
- Sec. 14, N½, N½S½, N½S½SW¼, and SE¼SE¼;
- Sec. 15, lots 8 and 10, S½NE¼, N½SE¼, N½NW¼SW¼, and S½NE¼SW¼;
- Sec. 16, N½S½, exclusive of a reconveyed parcel of land;
- Sec. 17, S½;
- Sec. 18, lots 2, 3, and 4, SE¼NW¼, E½SW¼, and SE¼;
- Sec. 19, lots 1 to 3, inclusive, W½NE¼, SE¼NE¼, E½NW¼, NE¼SW¼, and NW¼SE¼;
- Sec. 20, N½N½, SE¼SW¼, and W½SW¼;
- Sec. 21, N½NW¼.

T. 1 N., R. 81 W.,
- Sec. 13, S½NE¼, N½SW¼, SE¼SW¼, and SE¼;
- Sec. 14, SE¼ and E½SW¼;
- Sec. 22, NE¼NE¼, S½NE¼, S½SW¼, and SE¼;
- Sec. 23, NE¼, N½NW¼, SW¼NW¼, W½SW¼, SE¼SW¼, W½SE¼, and SE¼SE¼;
- Sec. 24, N½N½;
- Sec. 26, NW¼;
- Sec. 28, N½SW¼ and SW¼SW¼;
- Sec. 29, SE¼SE¼.

T. 1 S., R. 81 W.,
- Sec. 6, lots 4 and 5;
- Sec. 7, lot 1.

T. 1 S., R. 82 W.,
- Sec. 12, NW¼SW¼ and that portion of Tract 37 in the NE¼;
- Sec. 13, that portion of Tract 53 lying easterly of the centerline of the Colorado River, and all of Tract 54;
- Sec. 14, SW¼SW¼ and NW¼SE¼;
- Sec. 22, NE¼ and SW¼;
- Sec. 23, W½NW¼;
- Sec. 24, Tract 76 lying in the E½NE¼;
- Sec. 26, NW¼NW¼;
- Sec. 27, lots 1 and 2, E½NE¼, N½SW¼, SE¼SW¼, N½SE¼, and those portions of W½NE¼ and E½NW¼ exclusive of reconveyed land;
- Sec. 28, NE¼SE¼ and Tract 81 lying in the SW¼SE¼;
- Sec. 32, Mineral Survey Nos. 13963, 18347A, and 18671;
- Sec. 33, Mineral Survey Nos. 18801, 18671, 18347A and B, and that portion of Tract 70 lying within the NW¼NW¼.

T. 2 S., R. 82 W.,
- Sec. 4, lot 22;
- Sec. 5, that portion of Tract 39 lying within the S½SW¼NW¼ and NW¼SW¼;
- Sec. 7, Tract 38 and that portion of Tract 41 in sec. 7.

T. 2 S., R. 83 W.,
- Sec. 23, S½S½SE¼SE¼;
- Sec. 26, NE¼NE¼ and NE¼NW¼NE¼.

The areas described aggregate approximately 7,020 acres in Grand and Eagle Counties.

4. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the land under lease, license, or permit, or governing the disposal of the mineral or vegetative resources other than under the mining laws.

5. This withdrawal will expire 20 years from the effective date of this order, unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1994), the Secretary determines that the withdrawal shall be extended.

Dated: October 3, 2000.

**Sylvia V. Baca,**

*Assistant Secretary of the Interior.*

[FR Doc. 00–26434 Filed 10–13–00; 8:45 am]

BILLING CODE 4310–JB–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[MT–924–1430–ET; MTM 40641 et. al.]**

### Public Land Order No. 7465; Revocation of 13 Executive Orders; Montana

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public land order.

**SUMMARY:** This order revokes 13 Executive orders in their entirety as they affect approximately 4,649,902 acres of public and National Forest System lands withdrawn for coal and phosphate classification purposes. The lands are no longer needed for the purpose for which they were withdrawn. This action will open the public lands to surface entry and nonmetalliferous mining subject to other segregations of record. The lands located within the National Forests will be opened to such forms of disposition as may by law be made of National Forest System lands and nonmetalliferous mining subject to other segregations of record. All of the lands have been and remain open to metalliferous mining and mineral leasing.

**EFFECTIVE DATE:** November 15, 2000.

**FOR FURTHER INFORMATION CONTACT:** Sandra Ward, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406–896–5052. Copies of the Executive orders listed in Paragraph 1 are available from this location.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. The following Executive orders, which withdrew public and National Forest System lands for coal and

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phosphate classification purposes, are hereby revoked in their entirety:

(a) July 9, 1910, Coal Reserve Montana No. 1 (MTM 40641);

(b) July 29, 1910, Coal Reserve Montana No. 3 (MTM 41512);

(c) November 25, 1910, Coal Reserve Montana No. 6 (MTM 41124);

(d) January 12, 1911, Phosphate Reserve No. 7 (MTM 41533);

(e) December 21, 1911, Coal Reserve Montana No. 8 (MTM 41180);

(f) April 29, 1912, Phosphate Reserve No. 10, Montana No. 2 (MTM 41814);

(g) June 10, 1912, Phosphate Reserve No. 12, Montana No. 3 (MTM 41561);

(h) July 14, 1913, Phosphate Reserve No. 20, Montana No. 4 (MTM 41564);

(i) June 6, 1914, Phosphate Reserve No. 21, Montana No. 5 (MTM 41815);

(j) October 9, 1917, Phosphate Reserve No. 30, Montana No. 7 (MTM 41179);

(k) October 20, 1917, Phosphate Reserve No. 29, Montana No. 6 (MTM 41887);

(l) December 22, 1919, Coal Reserve Montana No. 14 (MTM 41679);

(m) June 6, 1929, Coal Reserve No. 1, Montana No. 1 (MTM 40935).

The areas within the above orders aggregate approximately 4,649,902 acres in Beaverhead, Big Horn, Blaine, Carbon, Carter, Cascade, Chouteau, Custer, Dawson, Deer Lodge, Fergus, Flathead, Gallatin, Garfield, Granite, Jefferson, Lewis and Clark, Madison, Missoula, Park, Pondera, Powder River, Powell, Prairie, Ravalli, Richland, Rosebud, Silver Bow, Stillwater, Sweet Grass, Teton, and Treasure Counties, Montana.

2. At 9 a.m. on November 15, 2000, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law, the public lands withdrawn by the Executive orders listed in Paragraph 1 shall be opened to the operation of the public land laws generally and the National Forest System lands withdrawn by the Executive orders listed in Paragraph 1 shall be opened to such forms of disposition as may by law be made of National Forest System lands. All valid applications received at or prior to 9 a.m. on November 15, 2000, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 9 a.m. on November 15, 2000, the lands withdrawn by the Executive orders listed in Paragraph 1 shall be opened to location and entry under the United States mining laws for nonmetalliferous minerals, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of the lands that were withdrawn pursuant to the Executive orders listed in Paragraph 1 under the general mining laws for nonmetalliferous mining prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1994), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: September 15, 2000.

**Sylvia V. Baca,**

*Assistant Secretary of the Interior.*

[FR Doc. 00–26427 Filed 10–13–00; 8:45 am]

BILLING CODE 4310–DN–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[WY–950–1420–00–P]**

### Filing of Plats of Survey; Nebraska

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The plats of the following described lands were officially filed in the Wyoming State Office, Bureau of Land Management, Cheyenne, Wyoming, effective 10:00 a.m., September 28, 2000.

The plat representing the dependent resurvey of portions of the North boundary of the Winnebago Indian Reservation, through Range 8 East, the First Guide Meridian East, through Township 27 North, between Ranges 8 and 9 East, the South boundary, the subdivisional lines and the subdivision of Sections 33 and 36, and the survey of the subdivision of Sections 33 and 36, T. 27 N., R. 8 E., Sixth Principal Meridian, Nebraska, Group No. 148, was accepted September 22, 2000.

The plat representing the dependent resurvey of a portion of the subdivisional lines and the subdivision of Sections 10 and 11, and the survey of Sections 10 and 11, T. 25 N., R. 9 E., Sixth Principal Meridian, Nebraska, Group No. 148, was accepted September 22, 2000.

Dated: September 28, 2000.

**John P. Lee,**

*Chief Cadastral Survey Group.*

[FR Doc. 00–26431 Filed 10–13–00; 8:45 am]

BILLING CODE 4310–22–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[OR–957–00–1420–BJ: GPO–0385]**

### Filing of Plats of Survey: Oregon/Washington

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

**Willamette Meridian**

**Oregon**

T. 18 S., R. 1 E., accepted September 5, 2000.
T. 2 N., R. 35 E., accepted September 5, 2000

**Washington**

T. 8 N., R. 11 E., accepted September 5, 2000
T. 16 N., R. 5 W., accepted September 5, 2000
T. 16 N., R. 4 W., accepted September 5, 2000
T. 15 N., R. 4 W., accepted September 5, 2000
Tps. 23 & 24 N., Rs. 10 & 10½ W., accepted September 22, 2000
T. 32 N., R. 15 W., accepted September 22, 2000
T. 23 N., R. 12 W., accepted September 22, 2000
T. 23 N., R. 11 W., accepted September 22, 2000

If protests against a survey, as shown on any of the above plat(s), are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land Management, 1515 S.W. 5th Avenue, Portland, Oregon 97201, and will be available to the public as a matter of information only. Copies of the plat(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey, and subdivision.

**FOR FURTHER INFORMATION CONTACT:** Bureau of Land Management, (1515 S.W. 5th Avenue) P.O. Box 2965, Portland, Oregon 97208.

Dated: September 29, 2000.

**Sherrie L. Reid,**

*Branch of Realty and Records Services.*

[FR Doc. 00–26470 Filed 10–13–00; 8:45 am]

BILLING CODE 4310–33–M



## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[WY–950–1420–00–P]**

### Filing of Plats of Survey; Wyoming

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

The plats of the following described lands were officially filed in the Wyoming State Office, Bureau of Land Management, Cheyenne, Wyoming, effective 10 a.m., September 28, 2000.

The plat representing the dependent resurvey of a portion of the Thirteenth Standard Parallel North, through Range 75 West, the East and North boundaries and the subdivisional lines, T. 53 N., R. 75 W., Sixth Principal Meridian, Wyoming, Group No. 595, was accepted September 22, 2000.

The plat representing the dependent resurvey of a portion of the Thirteenth Standard Parallel North, through Range 74 West, a portion of the East boundary, the North boundary, and the subdivisional lines, T. 53 N., R. 74 W., Sixth Principal Meridian, Wyoming, Group No. 595, was accepted September 22, 2000.

The plat representing the corrective dependent resurvey of a portion of the subdivisional lines, T. 33 N., R. 118 W., Sixth Principal Meridian, Wyoming, Group No. 632, was accepted September 22, 2000.

The plat representing the dependent resurvey of a portion of the North boundary and the subdivisional lines, T. 49 N., R. 74 W., Sixth Principal Meridian, Wyoming, Group No. 634, was accepted September 22, 2000.

The plat representing the dependent resurvey of a portion of the West boundary, a portion of the subdivisional lines, and the subdivision of Section 30, T. 15 N., R. 107 W., Sixth Principal Meridian, Wyoming, Group No. 659, was accepted September 22, 2000.

The plat representing the dependent resurvey of a portion of the subdivisional lines, and the subdivision of Section 28, T. 19 N., R. 105 W., Sixth Principal Meridian, Wyoming, Group No. 665, was accepted September 22, 2000.

The plat representing the dependent resurvey of a portion of the subdivisional lines, T. 23 N., R. 86 W., Sixth Principal Meridian, Wyoming, Group No. 668, was accepted September 22, 2000.

The plat representing the subdivision of Section 35, T. 25 N., R. 85 W., Sixth Principal Meridian, Wyoming, Group No. 669, was accepted September 22, 2000.

Dated: September 28, 2000.

**John P. Lee,**

*Chief Cadastral Survey Group.*

[FR Doc. 00–26429 Filed 10–13–00; 8:45 am]

BILLING CODE 4310–22–P

## DEPARTMENT OF THE INTERIOR

### National Park Service

### 30 Day Federal Register Notice of Submission of Network to Freedom Application Package to Office of Management and Budget; Opportunity for Public Comment

**AGENCY:** Department of the Interior; National Park Service; and National Underground Railroad Network to Freedom Program.

**ACTION:** Notice and request for comments.

**ABSTRACT:** Public Law 105–203 authorizes the National Underground Railroad Network to Freedom Program (NURNFP) to develop and administer the Network to Freedom, a nationwide collection of governmental and nongovernmental properties facilities, and programs associated with the historic Underground Railroad movement. The NURNFP is developing an application process through which associated elements can be included in the Network to Freedom. The information collection will (a) verify associations to the Underground Railroad, (b) measure minimum levels of standards for inclusion in the Network, and (c) identify general element activities.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 and 5 CFR parts 1320, Reporting and Record Keeping Requirements, the NPS invites public comment on the proposed information collection request (ICR). Comments are invited on: (1) The need for the information including whether the information has practical utility, (2) the accuracy of the reporting burden estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. The purpose of the proposed ICR is to evaluate sites, facilities, and programs that are applying for inclusion in the Underground Railroad Network to Freedom. The information will be used by the National Park Service to determine if sites, facilities, and programs seeking inclusion in the Network to Freedom meet the minimum elements criteria.

There were no public comments received as a result of publishing in the **Federal Register** a 60 day notice of intention to request clearance of information collection for this survey.

**DATES:** Public comments will be accepted on or before November 15, 2000.

**SEND COMMENTS TO:** The Office of Information and Regulatory Affairs of OMB, Attention Desk Officer for the Interior Department, Office of Management and Budget, Washington, D.C. 20530. Please also send comments to Diane Miller, National Coordinator, Underground Railroad Network to Freedom Program, National Park Service, Midwest Regional Office, 1709 Jackson St., Omaha, Nebraska 68102.

Public comments, including names and addresses of respondents, may be made available for public review. Individual respondents may request that their address be withheld from the public comment record. This will be honored to the extent allowable by law. There also may be circumstances in which a respondent's identity would be withheld from the public comment record, as allowable by law. If you wish to withhold your name and/or address, you must stat this prominently at the beginning of your comment. Anonymous comments will not be considered. Comments from organizations or businesses, and from individuals or businesses may be made available for public inspection in their entirety.

Copies of the proposed ICR requirements can be obtained from Diane Miller, National Coordinator, Underground Railroad Network to Freedom Program, National Park Service, Midwest Regional Office, 1709 Jackson St., Omaha, Nebraska 68102.

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The OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive comments 30 days from the date of publication in the **Federal Register**.

**FOR FURTHER INFORMATION OR A COPY OF THE STUDY PACKAGE SUBMITTED FOR OMB REVIEW, CONTACT:** Diane Miller, phone: 402–221–3749, or Aaron Mahr, 505–988–6736.

**SUPPLEMENTARY INFORMATION:**

*Title:* Underground Railroad Network to Freedom Application.

*Form Number:* Not applicable.

*OMB Number:* To be assigned.

*Expiration Date:* To be assigned.

*Type of Request:* Request for new clearance.

*Description of Need:* The National Underground Railroad Network to Freedom Program is identifying guidelines and criteria for associated elements to enter the Network to Freedom. The Application documents sites, facilities, and programs, and demonstrates that they meet the criteria established for inclusion. The documentation will be incorporated into a database that will be available to the general public for information purposes.

The proposed information to be collected regarding these sites, facilities, or programs is not available from existing records, sources, or observations.

*Automated Data Collection:* Respondents must verify associations and characteristics through descriptive texts that are the result of historical research. Evaluations are based on subjective analysis of the information provided. At the present time there is no automated way to gather this information.

*Description of Respondents:* The affected public is state, tribal, and local governments, federal agencies, businesses, non-profit organizations, and individuals, throughout the United States. Applications to the Network to Freedom are voluntary.

*Estimated Average Number of Respondents:* 100.

*Estimated Average Number of Responses:* Each respondent will respond only one time, so the numbers of responses will be the same as the number of respondents.

*Estimated Average Burden Hours per Response:* 10 hours.

*Frequency of Response:* One time per respondent.

*Estimated Annual Reporting Burden:* 1000 hours.

Leonard E. Stowe, Information Collections Clearance Officer, WASO Administrative Program Center, National Park Service.

Dated: September 29, 2000.

**Betsy Chittenden,**

*Acting Manager, Administrative Program Center, WASO, NPS.*

[FR Doc. 00–26442 Filed 10–13–00; 8:45 am]

**BILLING CODE 4310–70–M**

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## DEPARTMENT OF THE INTERIOR

### National Park Service

### National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before October 7, 2000. Pursuant to § 60.13 of 36 CFR part 60, written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW., NC400, Washington, DC 20240. Written comments should be submitted by October 31, 2000.

**Marilyn Harper,**

*Acting Keeper of the National Register.*

**Florida**

*Holmes County*

Keith Cabin, 1320 FL 179, Pittman, 00001281

*Manatee County*

Souder, Paul M., House, (Whitfield Estates Subdivision MPS), 242 Greenwood Ave., Sarasota, 00001282

**Georgia**

*Lamar County*

Johnstonville—Goggins Historic District, Johnstonville Road W of I 75, Johnstonville, 00001283

**Hawaii**

*Maui County*

Bank of Hawaii—Haiku Branch, 771 Haiku Rd., Haiku, 00001284

**Maryland**

*Caroline County*

West Denton Warehouse—Wharf, 10215 River Landing Rd., West Denton, 00001285

**Massachusetts**

*Worcester County*

Corner Lunch, (Diners of Massachusetts MPS), 133 Lamartine St., Worcester, 00001286

**New Hampshire**

*Merrimack County*

Hay Estate, NH 103A, 2.2 mi. N of jct. of NH 103 and NH 103A, Newbury, 00001288

**New Mexico**

*Mora County*

Tipton—Black Willor Ranch Historic District, 3 mi. E of Watrous, Watrous, 00001287

**New York**

*Steuben County*

Germania Wine Cellars, 8299 Pleasant Valley Rd., Hammondsport, 00001289

Town Line Church and Cemetery, Cty Rte. 119, Cameron Mills, 00001317

*Tioga County*

Waits Methodist Episcopal Church and Cemetery, Waite Rd., Owego, 00001290

**North Carolina**

*Mecklenburg County*

McCoy, Albert, Farm (Rural Mecklenburg County MPS), 10401 McCoy Rd., Huntersville, 00001291

*Surry County*

Downtown Elkin Historic District, Roughly bounded by Market St., Hugh Chatham Bridge, Standard St., and Front St., Elkin, 00001292

**Ohio**

*Cuyahoga County*

Courtland, The, 5403 Detroit Ave., Cleveland, 00001296

*Hamilton County*

Miller, Thomas, House, 11294 US 50, Elizabethtown, 00001294

Wilson, Samuel and Sally, House, 1502 Aster Place, Cincinnati, 00001295

**Oregon**

*Multnomah County*

Alphabet Historic District, Roughly bounded by NW Lovejoy St., NW Marshall St., NW 17th Ave., W. Burnside St., and NW 24th Ave., Portland, 00001293

Vincent, Howard G., and Patrick J. Bannon House, (Eliot Neighborhood MPS), 27 NE Thompson St., Portland, 00001297

**Utah**

*Salt Lake County*

Crescent Elementary School (Sandy City MPS), 11020 S. State St., Sandy, 00001303

Cushing, Arthur and Ellen, House, (Sandy City MPS), 123 E. Pioneer, Sandy, 00001304

Dowding, Hannah Nash, House, (Sandy City MPS), 8830 S 60 E, Sandy, 00001305

Dowding—Rasmussen House, (Sandy City MPS), 98 E. Main St., Sandy, 00001306

Ford Motor Company Service Building, (Sandy City MPS), 280 S 400 W, Salt Lake City, 00001302

Jensen, Amos and Ida, House, (Sandy City MPS), 387 E 8800 S, Sandy, 00001307

Jensen—Clark House, (Sandy City MPS), 32 E. Main St., Sandy, 00001298

Jensen—Jensen House, (Sandy City MPS), 55 E. Pioneer Ave., Sandy, 00001299

Marriott, Anne P., House, (Sandy City MPS), 8543 S 100 E, Sandy, 00001300

Parmley, Mary Ellen, House, (Sandy City MPS), 5580 S 220 E, Sandy, 00001301

Sandy LDS Stake Recreation Hall (Sandy City MPS), 295 E 8800 S Sandy, 00001316

**West Virginia**

*Berkeley County*

Boggs, William, Farm, WV 7, Hedgesville, 00001310

*Cobell County Foster Memorial Home, 700 Madison Ave., Huntington, 00001311*

*Hancock County*

First National Bank—Graham Building, 100 N. Chester St., New Cumberland, 00001312

*Jefferson County*

Charles Town, Old, Historic District, Norfolk & Western RR, Charles Town line, Hessey Pl., North St., US 340, S. Charles St., Water St., and W. Washington St, Charles Town, 00001308

**Kanawha County**

St. Albans Main Street Historic District, Roughly bounded by Main St. bet. Second St. and B St., St. Albans, 00001315

*Morgan County*

Berkeley Springs Train Depot, 504 N. Washington St., Berkeley Springs, 00001313

*Nicholas County*

Nicholas County Bank, 800 Main St., Summerville, 00001314

*Raleigh County*

Beckley Feed and Hardware Company, 405 Prince St., Beckley, 00001309

A request for a MOVE has been made for the following resource:

**Virginia**

*Halifax County*

VA 622 W side, 1.5 mi. N of jct with VA 659 Elmo vicinity, 93000824

[FR Doc. 00–26511 Filed 10–13–00; 8:45 am]

**BILLING CODE 4310–70–P**

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## DEPARTMENT OF THE INTERIOR

### Bureau of Reclamation

### Quarterly Status Report of Water Service, Repayment, and Other Water-Related Contract Negotiations

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of proposed contractual actions that are new, modified, discontinued, or completed since the last publication of this notice on July 21, 2000. The January 21, 2000, notice should be used as a reference point to identify changes. This annual notice should be used as a point of reference to identify changes in future notices. This notice is one of a variety of means used to inform the public about proposed contractual actions for capital recovery and management of project resources and facilities. Additional Bureau of Reclamation (Reclamation) announcements of individual contract actions may be published in the **Federal Register** and in newspapers of general circulation in the areas determined by Reclamation to be affected by the proposed action. Announcements may be in the form of news releases, legal notices, official letters, memorandums, or other forms of written material. Meetings, workshops, and/or hearings may also be used, as appropriate, to provide local publicity. The public participation procedures do not apply to proposed contracts for sale of surplus or interim irrigation water for a term of 1 year or less. Either of the contracting parties may invite the public to observe contract proceedings. All public participation procedures will be coordinated with those involved in complying with the National Environmental Policy Act.

**ADDRESSES:** The identity of the approving officer and other information pertaining to a specific contract proposal may be obtained by calling or writing the appropriate regional office at the address and telephone number given for each region in the supplementary information.

**FOR FURTHER INFORMATION CONTACT:** Sandra L. Simons, Manager, Water Contracts and Repayment Office, Bureau of Reclamation, PO Box 25007, Denver, Colorado 80225–0007; telephone 303–445–2902.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 226 of the Reclamation Reform Act of 1982 (96 Stat. 1273) and 43 CFR 426.20 of the rules and regulations published in *52 FR 11954*, Apr. 13, 1987, Reclamation will publish notice of the proposed or amendatory contract actions for any contract for the delivery of project water for authorized uses in newspapers of general circulation in the affected area at least 60 days prior to contract execution. Pursuant to the "Final Revised Public Participation Procedures" for water resource-related contract negotiations, published in *47 FR 7763*, Feb. 22, 1982, a tabulation is provided of all proposed contractual actions in each of the five Reclamation regions. Each proposed action is, or is expected to be, in some stage of the contract negotiation process in 2000. When contract negotiations are completed, and prior to execution, each proposed contract form must be approved by the Secretary of the Interior, or pursuant to delegated or redelegated authority, the Commissioner of Reclamation or one of the regional directors. In some instances, congressional review and approval of a report, water rate, or other terms and conditions of the contract may be involved.

Public participation in and receipt of comments on contract proposals will be facilitated by adherence to the following procedures:

1. Only persons authorized to act on behalf of the contracting entities may negotiate the terms and conditions of a specific contract proposal.

2. Advance notice of meetings or hearings will be furnished to those parties that have made a timely written request for such notice to the appropriate regional or project office of Reclamation.

3. Written correspondence regarding proposed contracts may be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act (80 Stat. 383), as amended.

4. Written comments on a proposed contract or contract action must be submitted to the appropriate regional officials at the locations and within the time limits set forth in the advance public notices.

5. All written comments received and testimony presented at any public hearings will be reviewed and summarized by the appropriate regional office for use by the contract approving authority.

6. Copies of specific proposed contracts may be obtained from the appropriate regional director or his designated public contact as they become available for review and comment.

7. In the event modifications are made in the form of a proposed contract, the appropriate regional director shall determine whether republication of the notice and/or extension of the comment period is necessary.

Factors considered in making such a determination shall include, but are not limited to: (i) The significance of the modification, and (ii) the degree of public interest which has been expressed over the course of the negotiations. As a minimum, the regional director shall furnish revised contracts to all parties who requested the contract in response to the initial public notice.

**Acronym Definitions Used Herein**

(BON) Basis of Negotiation
(BCP) Boulder Canyon Project
(CAP) Central Arizona Project
(CUP) Central Utah Project
(CVP) Central Valley Project
(CRSP) Colorado River Storage Project
(D&MC) Drainage and Minor Construction
(FR) Federal Register

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(IDD) Irrigation and Drainage District
(ID) Irrigation District
(M&I) Municipal and Industrial
(NEPA) National Environmental Policy Act
(O&M) Operation and Maintenance
(P-SMBP) Pick-Sloan Missouri Basin Program
(PPR) Present Perfected Right
(RRA) Reclamation Reform Act
(R&B) Rehabilitation and Betterment
(SOD) Safety of Dams
(SRPA) Small Reclamation Projects Act
(WCUA) Water Conservation and Utilization Act
(WD) Water District

*Pacific Northwest Region:* Bureau of Reclamation, 1150 North Curtis Road, Suite 100, Boise, Idaho 83706–1234, telephone 208–378–5346.

New contract actions:

17. Farmer's Ditch Association and Buck and Jones Ditch Association, Rogue River Basin Project, Oregon: Long-term irrigation water service contract for provision of up to 4,475 acre-feet of stored water from Applegate Reservoir (a COE project) in exchange for the assignment of Little Applegate River natural flow rights to Reclamation for instream flow use.

18. Ochoco ID, Crooked River Project, Oregon: Contract for the deferment of the District's annual installment due December 31, 2000, and 2001, under the Ochoco Dam, SOD repayment contract.

Modified contract action:

9. North Unit ID, Deschutes Project, Oregon: Repayment contract for reimbursable cost of dam safety repairs to Wickiup Dam under the SOD program.

Discontinued contract action:

15. Milner ID, Minidoka-Palisades Projects, Idaho: Amendment of storage contracts to reduce the District's spaceholding in Palisades Reservoir by up to 5,162 acre-feet, thereby allowing use of this space by Reclamation for flow augmentation.

*Mid-Pacific Region:* Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825–1898, telephone 916–978–5250.

New contract actions:

42. Madera-Chowchilla Water and Power Authority, CVP, California: Agreement to transfer the operation, maintenance, and replacement and certain financial and administrative activities related to the Madera Canal and associated works.

43. Truckee-Carson ID, Newlands Project, Nevada: Amendment to O&M contract No. 7–07–20-X0348 to include mutually agreed upon Consumer Price Index (CPI) for the current year and incorporation of a new CPI as determined by the Contracting Officer applicable to Fallon, Nevada (or the nearest urban area in the event that such index is not determined for Fallon, Nevada).

Modified contract action:

23. Warren Act Contracts, CVP, California: Execution of long-term Warren Act contracts with various entities for conveyance of non-project water in the Delta-Mendota Canal and Warren Act contracts (up to 25 years) for conveyance of non-project water in the Friant Division facilities.

Discontinued contract action:

25. Sierra Pacific Power Company, Town of Fernley, State of California, City of Reno, City of Sparks, Washoe County, State of Nevada, Truckee-Carson ID, and any other local interest or Native-American Tribal interest, who may have negotiated rights under Public Law 101–618; Nevada and California: Contract for the storage of non-Federal water in Truckee River reservoirs as authorized by Public Law 101–618 and the Preliminary Settlement Agreement. The contracts shall be consistent with the Truckee River Water Quality Settlement Agreement and the terms and conditions of the proposed Truckee River Operating Agreement.

*Lower Colorado Region:* Bureau of Reclamation, PO Box 61470 (Nevada Highway and Park Street), Boulder City, Nevada 89006–1470, telephone 702–293–8536.

New contract actions:

65. Arizona State Land Department, CAP, Arizona: Proposed assignment of 1,000 acre-feet of ASLD's CAP M&I water entitlement to the City of Peoria.

66. City of Chandler, CAP, Arizona: Proposed amendment of CAP water delivery subcontract to delete provision requiring offsetting reduction of Chandler's CAP water entitlement for quantities of water received in a direct effluent exchange with an Indian Community.

67. City of Mesa, CAP, Arizona: Proposed amendment of CAP water delivery subcontract to delete provision requiring offsetting reduction of Mesa's CAP water entitlement for quantities of water received in a direct effluent exchange with an Indian Community.

Completed contract action:

36. Arizona Public Service Company and Imperial ID, BCP, Arizona and California: Delivery contract for up to 1,500 acre-feet of unused Arizona entitlement and/or surplus water.

*Upper Colorado Region:* Bureau of Reclamation, 125 South State Street, Room 6107, Salt Lake City, Utah 84138–1102, telephone 801–524–4419.

New contract action:

1. Individual irrigators, M&I, and miscellaneous water users, Initial Units, CRSP; Utah, Wyoming, Colorado, and New Mexico: Temporary (interim) water service contracts for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 10 years; long-term contracts for similar service for up to 1,000 acre-feet of water annually.

(g) James F. Squirrell, Aspinall Unit, CRSP, Colorado: Ten-year contract for 23 acre-feet of M&I water to support the augmentation plan. Mr. Squirrell has filed a Finding of Fact and Ruling of Referee with the Division 4 Water Court of the State of Colorado, case No. 97–CW–223, dated July 7, 1999. The augmentation plan requires Mr. Squirrell to augment out-of-priority depletions caused by the operation of the Arrowhead Subdivision's potable water supply system.

*Great Plains Region:* Bureau of Reclamation, PO Box 36900, Federal Building, 316 North 26th Street, Billings, Montana 59107–6900, telephone 406–247–7730.

New contract actions:

42. Fryingpan-Arkansas Project, Colorado: Pueblo Board of Water Works, long-term conveyance contract. (Inadvertently listed under modified contract actions in the July 21, 2000, notice.)

43. Tom Green County Water Control and Improvement District No. 1, San Angelo Project, Texas: The District has requested a deferment of its 2001 construction payment.

Modified contract actions:

5. City of Rapid City and Rapid Valley Water Conservancy District, Rapid Valley Unit, P–SMBP, South Dakota: Contract renewal for storage capacity in Pactola Reservoir.

7. Northern Cheyenne Indian Reservation, Yellowtail Unit, Lower Bighorn Division, P–SMBP, Montana: The Northern Cheyenne Reserved Water Rights Settlement Act of 1992 allocates to the Tribe 30,000 acre-feet of water per year stored at Bighorn Reservoir, Montana. In accordance with section 9 of the Act, Reclamation and the Tribe must negotiate an agreement for the water. The Tribe is to pay the United States both capital and O&M costs for water the Tribe uses or sells from this storage for M&I purposes. Reclamation and the Tribe are continuing to negotiate the terms of the Agreement. The agreement has been sent to the Tribe for signature. A date for execution has not been scheduled.

9. Angostura ID, Angostura Unit, P–SMBP, South Dakota: Another interim 3-year contract was executed on June 9, 2000, to provide for a continuing water supply and allow adequate time for completion of the Environmental Impact Statement for long-term contract renewal. A BON for a long-term contract renewal has been sent to the Denver Office for review/approval by the Commissioner's Office.

14. P–SMBP, Kansas: Anticipate initiating negotiations for renewal of long-term water service contracts with the Kirwin and Webster IDs in the Solomon River Basin in Kansas which were extended for a period of 4 years in accordance with Public Law 104–326 enacted October 19, 1996. Water service contracts will be renewed prior to expiration.

Completed contract actions:

11. P–SMBP, Kansas and Nebraska: Long-term water supply renewal contracts with Kansas-Bostwick, Bostwick ID in Nebraska, Frenchman Valley, Frenchman-Cambridge, and Almena IDs were executed on July 25, 2000. The renewed long-term water service contracts will take effect January 1, 2001.

34. Tom Green County Water Control and Improvement District No. 1, San Angelo Project, Texas: The District requested deferment of its 2000 construction payment. The deferment has been approved by the Secretary of the Interior. A public notice for this action was printed in the San Angelo Times. The 60-day comment period ended July 3, 2000. The deferment of the 2000 construction payment was signed on July 11, 2000.

Dated: October 6, 2000.

**Wayne O. Deason,**

*Associate Director,, Office of Policy.*

[FR Doc. 00–26452 Filed 10–13–00; 8:45 am]

BILLING CODE 4310–MN–P

## DEPARTMENT OF JUSTICE

### Parole Commission

### Sunshine Act Meeting

*Public Announcement*

Pursuant To The Government In the Sunshine Act (Public Law 94–409) [5 U.S.C. Section 522b].

*Agency Holding Meeting:* Department of Justice, United States Parole Commission.

*Time and Date:* 9:30 a.m., Tuesday, October 17, 2000.

*Place:* 5550 Friendship Blvd., Fourth Floor, Chevy Chase, MD 20815.

*Status:* Open.

*Matters to be Considered:* The following matters have been placed on the agenda for the open Parole Commission meeting:

1. Approval of minutes of previous Commission meeting.

2. Reports from the Chairman, Commissioners, Legal, Chief of Staff, Case Operations, and Administrative Sections.

3. Discussion of the proposed Interim Rules for District of Columbia Supervised Release.

*Agency Contact:* Sam Robertson, Case Operations, United States parole Commission, (301) 492–5962.

Dated: October 10, 2000.

**Michael A. Stover,**

*General Counsel, U.S. Parole Commission.*

[FR Doc. 00–26564 Filed 10–12–00; 11:04 am]

BILLING CODE 4410–31–M

## DEPARTMENT OF JUSTICE

### Parole Commission

### Sunshine Act Meeting

*Public Announcement*

Pursuant To The Government In the Sunshine Act (Public Law 94–409) [5 U.S.C. Section 552b].

*Agency Holding Meeting:* Department of Justice, United States Parole Commission.

*Time and Date:* 12 p.m., Tuesday, October 17, 2000.

*Place:* U.S. Parole Commission, 5550 Friendship Boulevard, 4th Floor, Chevy Chase, Maryland 20815.

*Status:* Closed—Meeting.

*Matters Considered:* The following matter will be considered during the closed portion of the Commission's Business Meeting:

Appeals to the Commission involving approximately three cases decided by the National Commissioners pursuant to a reference under 28 CFR 2.27. These cases were originally heard by an examiner panel wherein inmates of Federal prisons have applied for parole or are contesting revocation of parole or mandatory release.

*Agency Contact:* Sam Robertson, Case Operations, United States Parole Commission, (301) 492–5962.

Dated: October 10, 2000.

**Michael A. Stover,**

*General Counsel, U.S. Parole Commission.*

[FR Doc. 00–26565 Filed 10–12–00; 11:05 am]

BILLING CODE 4410–31–M

## DEPARTMENT OF JUSTICE

### Office for Victims of Crime

**[OJP(OVC)–1300]**

### Children's Justice Act Partnerships for Indian Communities

**AGENCY:** Office of Justice Programs, Office for Victims of Crime, Justice.

**ACTION:** Notice of availability of funds.

**SUMMARY:** The Office for Victims of Crime (OVC) is publishing this notice to announce a $500,000 discretionary grant program for federally recognized Indian tribal governments and tribal organizations designed to improve the handling of severe child abuse cases, particularly cases of child sexual abuse, in a manner which limits additional trauma to the child while improving the investigation and prosecution of these cases.

**DATES:** Applications must be received by 5:00 p.m. ET on Thursday, November 30, 2000.

**ADDRESSES:** All application packages should be sent to the Office for Victims of Crime, Federal Crime Victims Division, 810 Seventh Street, NW., Washington, DC 20531. If sending applications by express mail, the zip code should be 20001.

**FOR FURTHER INFORMATION CONTACT:** For a copy of the solicitation or for information about application procedures, please call Cathy Sanders at (202) 616–3578 or e-mail at <cathy@ojp.usdoj.gov>.

**SUPPLEMENTARY INFORMATION:**

#### Statutory Authority

This action is authorized by the Victims of Crime Act of 1984 (VOCA), as amended, 42 U.S.C. 10601 *et seq.* The Act established a Crime Victims Fund in the Department of the Treasury made up of monies received from federal criminal fines; special penalty assessments; forfeited appearance bonds, bail bonds and collateral security; and literary profits due convicted federal defendants. Under the provisions of 42 U.S.C. 10601 (d)(2), the first $20,000,000 deposited in the Fund in a particular year shall be available for grants as provided in 42 U.S.C. 10603(a). Under 42 U.S.C. 10601 (g)(1) the Attorney General, acting through the Director of OVC, is authorized to use 15 percent of these funds for the purposes of assisting Indian tribes in developing, establishing, and operating programs designed to improve the handling, investigation, and prosecution of child abuse cases, especially child sexual abuse cases. OVC has labeled this program as the Children's Justice Act Partnerships for Indian Communities Discretionary Grant Program (CJA).

#### Background

The Children's Justice and Assistance Act was passed in 1986 to provide funds to states to establish programs to effectively handle child abuse cases. In 1988, the Anti-Drug Abuse Act amended

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the Victims of Crime Act of 1984, authorizing the use of a portion of the State CJA funds to assist Indian Tribes in developing, establishing and operating programs to improve the handling, investigation, and prosecution of child abuse cases, particularly child sexual abuse cases.

Since 1989, OVC has provided CJA funding to approximately 45 tribes. The tribal programs have made a number of systemic improvements in the handling of child abuse cases. They have established, expanded, and trained multidisciplinary and child protection teams; revised tribal codes and procedures to address child sexual abuse; provided child advocacy services for children involved in court proceedings; created protocols for reporting, investigating, and prosecuting cases of child sexual abuse; developed working agreements that minimize the number of child interviews; enhanced case management and treatment services; offered specialized training for prosecutors, judges, investigators and other professionals who handle child sexual abuse cases; created special child-centered interview rooms; and hired specialized staff to handle child victim cases.

**Goal**

The goal of the program is to improve tribal criminal justice systems for handling cases of severe physical abuse and/or child sexual abuse in Indian communities.

**Purpose**

The purpose of the program is to assist Indian communities in developing, establishing, and operating partnership programs to improve the investigation, prosecution, and overall handling of cases of child sexual abuse and severe physical abuse, in a manner that increases support for and lessens trauma to child victims.

**Program Strategy**

This solicitation invites applicants to conceptualize, develop, and implement a CJA partnership program which will improve the investigation and prosecution of child abuse cases, particularly child sexual abuse cases. However, the partnership program is not intended to fund separate programs within tribal governments. Rather, it is intended to improve the capacity of existing tribal systems to handle severe child abuse cases by developing specialized services and procedures to address the needs of American Indian child victims. The program focuses on developing strategies to handle cases of child sexual abuse from the initial disclosure, through the investigation and prosecution, to the resolution of the case in an effective and timely manner.

The organizational structure and staffing pattern described in the application must be implemented as soon as possible after award of grant funds. Applicants are, therefore, encouraged to discuss the proposed partnership with their Tribal Chairman, Tribal Council, and other tribal agencies prior to submission of the application, and to solicit their support and approval of the partnership for the life of the program.

A Tribal Resolution must be included with the application, which approves commitments and activities for the first year of the grant. For years two and three, the activities or implementation plan should be outlined in sufficient detail to show that the proposed program will contribute to the development of a strong partnership.

The strategy for establishing a fully functioning partnership program consists of three stages of project implementation over a three year grant period. An in-kind or hard match is required each year. (See "Award Amount" for an explanation of the in-kind match requirements.) The three stages of implementation are:

1. *Stage I—Assessment and Partnership Development.* During Stage I, the grantee is expected to assess its current tribal system and its resources for implementing a partnership program and determine what additional resources and system changes are needed to deal effectively with child abuse cases. The assessment should examine the current procedures for responding to child abuse, procedures for interviewing child victims, the delivery of services to victims and their non-offending family members, training for social service, criminal justice, and medical and mental health personnel, and community awareness efforts. The grantee should hire and train key staff to handle and process cases through the tribal system. Training for multidisciplinary teams, prosecutors, law enforcement personnel, judges, advocates, medical, mental health and social service professionals may be required. There may also be a need to revise existing procedures for handling child abuse cases, interviewing child victims, providing court advocacy, and providing treatment services.

The products of this stage include the following: (a) Job descriptions and resumés for key staff hired or contracted under the grant; (b) a report of the findings and recommendations from the assessment, which describes the additional changes and resources needed to implement an efficient project; (c) activity reports that summarize major activities and accomplishments of the grant to be submitted to OVC semi-annually during this stage; and (d) a service delivery plan and agendas for the training of personnel involved in handling serious child abuse cases, if appropriate at this stage.

2. *Stage II—Implementation of Partnership Program and Development of Training and Resource Materials.* In implementing the project, the grantee should revise existing materials or develop new ones, such as interagency protocols, reporting procedures, partnership agreements with federal, state, and/or other tribal agencies, and tribal codes that address child sexual abuse (including definitions, sentencing guidelines, and maximum penalties for offenders). Other materials might include descriptions of training curricula and practices that assist and support children who must participate in tribal judicial proceedings. These materials can be used by the grantee and may be of value to other tribes seeking culturally appropriate materials to assist them in following similar practices on behalf of child victims.

The grantee may find it useful to obtain materials from other tribal agencies, organizations, and current CJA programs that will help them improve their response to child sexual abuse cases. The grantee should integrate these practices into its current system and develop its capacity to provide training and technical assistance to other tribes.

The products of this stage would include the following: (a) A compilation of the materials gathered by the grantee from within the tribe and from other sources; (b) training curricula; (c) a brochure and/or resource directory, which advertises the availability of the tribe's resources, services, and training opportunities that can be distributed to the tribal community; and (d) progress reports that summarize major activities and accomplishments of the grant. The progress reports must be submitted to OVC semi-annually during this stage of program activities.

3. *Stage III—Delivery of Services.* During the third stage, the partnership program is expected to be fully functional and capable of providing effective services to sexually abused child victims. The program can serve as a model for: (a) Illustrating effective approaches to handling serious child abuse cases; (b) coordinating with various tribal, state and federal agencies; (c) meeting the needs of American Indian child abuse victims and their families; and (d) communicating with tribal councils and other bodies in responding effectively to child abuse. Materials such as diagrams, flow charts, and descriptions of program models can be shared with other tribes to demonstrate how to make similar changes on behalf of abused child victims. The materials and descriptions should include information on developing proper interviewing procedures, providing court advocacy, and making other improvements that adapt investigative and judicial procedures to address the needs and abilities of abused child victims.

The products of this stage could include the following: (a) illustrative materials on program implementation and training; (b) reports describing the training provided by the tribe; (c) recommendations for and descriptions of training workshops that might be offered in OVC-sponsored conferences for assisting abused child victims in Indian communities; (d) semi-annual progress reports that summarize major activities and accomplishments of the grant; and (e) a final narrative report.

From time to time, partnership program staff may be asked to participate in OVC-sponsored conferences and training sessions to demonstrate model practices, provide program materials and handouts, serve as trainers, or participate on discussion groups and panels. Consequently, applicants should include travel expenses for two key staff to attend at a minimum one OVC-sponsored national conference and one post-awards planning conference.

OVC recognizes that jurisdictional authority over child sexual abuse cases varies greatly among tribes. Hence, we seek innovative projects based on the unique jurisdictional characteristics of a particular tribal criminal justice and service delivery system. OVC expects tribes that receive these grants to be actively involved in determining the manner in which these cases are administratively and judicially processed at the tribal, state and federal levels. Tribes should coordinate child sexual abuse case referrals with the appropriate state and federal authorities for prosectuion and follow-up with tribal prosecution when appropriate.

In addition, OVC encourages the use of multidisciplinary teams (known in many Indian communities as Child Protection Teams) to respond to cases of child sexual abuse. This could also include specialized prosecutorial units for the investigation, referral, and prosecution of child abuse cases. Mulitdisciplinary teams which are developed or expanded as a result of this grant must include representatives from the tribal, state and federal agencies that provide services to the tribe. These multidisciplinary teams should assist in clarifying roles and responsibilities of all authorities involved in these cases, including social and medical services, law enforcement officials, and prosecutors. Project funds shall not be used to replace or serve as a substitute for funds already used for existing multidisciplinary teams or child protective agencies, (known as supplanting).

**Eligibility Requirements**

Eligible applicants are federally recognized Indian tribes and tribal organizations. Grant awards will be limited to tribal organizations as defined in the Indian Self-Determination and Education Assistance Act, P.L. 93–638, 25 U.S.C., Section 450(b). Under this provision, the definition of "tribal organization" is the recognized governing body of any Indian tribe, to include any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities. Applications must be signed by the leader or chief executive of the tribe. In cases where the Tribal Council serves as the governing body, the application must be signed by the Chairman or other recognized leader of the Council.

**Selection Criteria**

Applications that are determined to be in compliance with this announcement will be reviewed by panels of experts in criminal justice procedures, social services, victim assistance, and related disciplines. Panels will be composed of staff from federal, state, tribal, or local agencies; colleges; national organizations; and other nongovernmental agencies. Applications will be reviewed and evaluated competitively against the following criteria:

1. *The Problem to be Addressed* (15 points) This criterion addresses how well the applicant described the need for such a program, including the problems experienced and the issues related to severe child physical abuse and sexual abuse in the community. The application must include a description of the agencies involved (tribal, local, state and federal) and where possible, statistics on the number of cases reported, investigated and substantiated, referred for services, and prosecuted in tribal or federal court.

2. *Partnership Strategy/Design* (35 points) This criterion measures how well the project design supports the purpose and goals of the partnership. The applicant's strategy or design must clearly address the identified problem, and provide a clear description of how the project will achieve the stated goals and objectives (15 points). The applicant must demonstrate that the proposed partnership program has been discussed with and approved by the Chairman and Tribal Council, including a Tribal Resolution and allocation of the in-kind match (15 points). If an applicant proposes using employees or other professionals, (*i.e.*, forensic interviewer, law enforcement officer, IHS doctor), who will be detailed or loaned to the partnership as in-kind match, letters of support or other documentation must be included to support the detail. All in-kind match must be described in the project narrative and budget narrative. A Tribal Resolution is a strong indicator of Tribal Council approval and will be used by OVC as an assurance of tribal support for the partnership.

The project strategy must include a description of project stages, tasks, activities, timelines, and a clear description of interim deliverables and final products (5 points).

3. *Organizational Capability* (20 points): This criterion will demonstrate the applicant's capability for developing and packaging a comprehensive program that addresses the investigation, prosecution, case handling and treatment of child physical and sexual abuse. The organizational capability will be assessed on the basis of: (a) the applicant's described management structure and partnership management plan (10 points); and (b) the applicant's discussion and documentation of key staff members' qualifications to perform the assigned tasks and responsibilities (10 points). In instances where the applicant has previously received CJA funds, the progress made under the previous grant must be discussed.

4. *Budget* (15 points): Points will be assigned based on the applicant's demonstration that sufficient staff and time have been allocated to the project to accomplish the proposed tasks and that the budgeted costs are reasonable, cost-effective, and accurately reflect how grant funds will be used. All in-kind or hard match must be described in the budget narrative.

5. *Plan for Measuring Progress and Outcome* (15 points): This criterion will evaluate the applicant's plan for

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assessing the impact of the project in improving the investigation, prosecution and overall handling of child sexual abuse cases. Applicants should describe the criteria and units of measurement which will be used to assess the partnership's effectiveness, such as number of abused victims served, number of individuals trained, positive changes that the child protection team has made as a result of having been trained, any new capacity or improved response to child victims that was developed as a result of the training or the partnership program, the number and type of products disseminated, user satisfaction data, and the number of community awareness programs presented. Requests for materials and for repeat training are also strong indicators of success.

**Application Submission**

Applicants should submit an original and two (2) copies of the proposal to the Office for Victims of Crime, Federal Crime Victims Division, 810 Seventh Street, N.W., Washington, D.C. 20531; phone: (202) 616–3578. All submissions must include:

1. A completed and signed Application for Federal Assistance, Standard Form 424, (SF–424 Rev. 4/88), including the Certified Assurances.
2. OJP Form 4061/6 (Certification Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Work Place Requirements).
3. A proposed budget outlining all costs for personnel, fringe benefits, travel, equipment, supplies, other (*e.g.*, telephone, postage) and the in-kind match. See the section on Dollar Amounts for an explanation of In-kind Match. Funds should also be budgeted for travel to at least two OVC sponsored cluster meetings or conferences. For planning purposes, travel should be estimated for one trip to Washington, D.C. for 3 days and one trip to San Diego, CA or the National Indian Nations Conference for 5 days. Federal per diem rates will be used.
4. An abstract of the full proposal, not to exceed one page.
5. A program narrative of *not more than 20 double-spaced typed pages*. The narrative should include the following information:

(a) A clear, concise statement of the problems experienced by the tribe in handling, investigating and prosecuting cases of serious child abuse.

(b) A description of how child abuse and child sexual abuse cases are currently handled, by law enforcement, social services, etc. and the Child Protection Team (CPT), if it is operational. This description should depict the system currently in place and include the role of all tribal, federal and state agencies in investigating, referring, treating and prosecuting serious child abuse cases.

(c) The data and statistics required by the selection criteria.

(d) A clear statement of the project objectives, including a listing of the major events, activities, products and a timetable for completion.

(e) A clear explanation of how this project will result in systemic improvement in the investigation and prosecution of child sexual abuse cases while limiting trauma to child victims.

(f) The proposed management and staffing plan.

(g) The method of evaluating the proposed program.

6. Attachments to the narrative should include:

(a) Letters of support from agencies at the Federal, state and local levels that are also involved in handling, investigating and/or prosecuting child abuse cases.

(b) A brief history of all grants the tribe has received over the past 2 years related to: domestic violence, child abuse, family violence, sexual assault, law enforcement and/or victimization.

(c) Copies of resumes for the proposed professional staff which summarize education and professional experience.

*Special Instructions:* In order to facilitate handling, please do not bind the applications at the spine, use spiral binders, or tabs. Please number the pages.

Application forms may be obtained by writing or telephoning: Federal Crime Victims Division, OVC, 810 Seventh Street, NW, Washington, D.C. 20531; phone: (202) 616–3578.

**Award Amounts**

Grants will be awarded at $60,000 for the first year with continuation funding in the second and third year, contingent upon the grantee's performance, the success of the project, and the availability of federal funds.

OVC has allocated up to $500,000 for this initiative in FY2001, and anticipates supporting up to 10 grant awards. Funding support will be provided for up to three years with an "in-kind" match requirement each year. The purpose of the "in-kind" match is to obtain tribal investment into the partnership from the beginning of the grant award, thereby enhancing the tribe's ability to institutionalize the program after OVC funding ends. The in-kind match must be in the form of staff time, facilities, office space and utilities, employee details/loans, and agency partnerships. Hard match is allowable in lieu of in-kind match. Volunteer time cannot be used as match.

The first year award will be limited to $60,000 per grantee and will require a 10% in-kind match. The second year of funding will be $75,000 with a 15% in-kind match, and the third year of funding will be $75,000 with a 25% in-kind match.

**Award Period**

The grants will be for 12 months, with potential continuations for two additional years.

Dated: October 11, 2000.

**Carolyn Hightower,**

*Deputy Director, Office for Victims of Crime.*

[FR Doc. 00–26467 Filed 10–13–00; 8:45 am]

BILLING CODE 4410–18–P

## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

### Agency Information Collection Activities; Announcement of OMB Approval; Corrected Notice Published in Full

**AGENCY:** Pension and Welfare Benefits Administration, Department of Labor.

**ACTION:** Notice.

**SUMMARY:** The Pension and Welfare Benefits Administration (PWBA) is announcing that a collection of information has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) for the Application for EFAST Electronic Signature and Codes for EFAST Transmitters and Software Developers (Form EFAST–1). This notice announces the OMB approval number and expiration date.

**FOR FURTHER INFORMATION CONTACT:** Address requests for copies of the information collection request (ICR) to Gerald B. Lindrew, U.S. Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW., Room N–5647, Washington, DC 20210. Telephone: (202) 219–4782. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** On March 9, 2000, PWBA published a notice in the **Federal Register** (65 FR 12577) announcing its intent to request renewal of approval under the PRA for the Application for EFAST Electronic Signature and Codes for EFAST Transmitters and Software Developers (Form EFAST–1). On September 25, 2000, OMB renewed its approval of the ICR under OMB control number 1210–0117. The approval will expire on March 31, 2002.

PWBA previously published a notice in the **Federal Register** (65 FR 58822, October 2, 2000) announcing the control number and expiration date for OMB approval of EFAST–1. However, the expiration date indicated in that notice was incorrect. A subsequent Correction published on October 6, 2000 (65 FR 59877) also included an inadvertent error with respect to the expiration date.[1]

In order to clarify that the actual expiration date of OMB's approval of the Form EFAST–1 is March 31, 2002, PWBA is publishing this corrected notice in full.

Under 5 CFR 1320.5(b), an Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Dated: October 10, 2000.

**Gerald B. Lindrew,**

*Deputy Director, Office of Policy and Research, Pension and Welfare Benefits Administration.*

[FR Doc. 00–26491 Filed 10–13–00; 8:45 am]

BILLING CODE 4510–29–M

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### Federal Council on the Arts and the Humanities; Arts and Artifacts Indemnity Panel Advisory Committee; Notice of Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463 as amended) notice is hereby given that a meeting of the Arts and Artifacts Indemnity Panel of the Federal Council on the Arts and the Humanities will be held at 1100 Pennsylvania Avenue, NW., Washington, DC 20506, in Room 714, from 9 a.m. to 5 p.m., on Thursday, November 9, 2000.

The purpose of the meeting is to review applications for Certificates of Indemnity submitted to the Federal Council on the Arts and the Humanities for exhibitions beginning after January 1, 2001.

Because the proposed meeting will consider financial and commercial data and because it is important to keep values of objects, methods of transportation and security measures confidential, pursuant to the authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated July 19, 1993, I have determined that the meeting would fall within exemption (4) of 5 U.S.C. 552(b) and that it is essential to close the meeting to protect the free exchange of views and to avoid interference with the operations of the Committee.

It is suggested that those desiring more specific information contact the Advisory Committee Management Officer, Laura S. Nelson, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, or call 202/606–8322.

**Laura S. Nelson,**

*Advisory Committee Management Officer.*

[FR Doc. 00–26517 Filed 10–13–00; 8:45 am]

BILLING CODE 7036–01–M

[1] Incorrect dates printed in these notices were March 3, 2002 and March 31, 2000, respectively.



## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–461]**

### In the Matter of AmerGen Energy Company, LLC (Clinton Power Station); Order Approving Application Regarding Proposed Corporate Restructuring

**I.**

AmerGen Energy Company (AmerGen, the licensee) is the holder of Facility Operating License No. NPF–62, which authorizes AmerGen to possess, use, and operate Clinton Power Station (the facility). The facility is located at the licensee's site in DeWitt County, Illinois. British Energy, Inc., and PECO Energy Company (PECO) each own 50 percent of AmerGen.

**II.**

By application dated July 19, 2000, AmerGen requested approval of the indirect transfer of the facility operating license to Exelon Corporation, to the extent such would occur upon PECO becoming a subsidiary of Exelon Corporation, a new corporation to be formed in connection with the proposed merger of Unicom Corporation (Unicom), the parent of Commonwealth Edison Company, and PECO. Supplemental information was provided by a submittal dated September 15, 2000.

Under the proposed merger, PECO will become a direct or indirect subsidiary of Exelon Corporation. The merger was previously the subject of an AmerGen application dated February 28, 2000, in which AmerGen requested approval of the indirect transfer of the Clinton license (and certain other licenses held by AmerGen) that would occur as a result of a proposed transfer of PECO's 50 percent interest in AmerGen to Exelon Generation Company, LLC (EGC). EGC is to be formed in connection with the merger between Unicom and PECO referred to above, and will also become a subsidiary of Exelon Corporation. British Energy, Inc., is not involved in the merger, and its interest in AmerGen will remain unchanged. The February 28, 2000, application is still under review.

According to the July 19, 2000, application, the transfer of PECO's 50 percent interest in AmerGen to EGC may be delayed beyond the closing of the merger. During this interim period, Exelon Corporation would become and continue to be the direct parent of PECO pending the receipt of necessary approvals to allow PECO's generating assets, including its interest in AmerGen, to be transferred to EGC; PECO would continue to hold its 50 percent interest in AmerGen, which will continue to be the sole owner and operator of Clinton.

Approval of the indirect transfer of the facility operating license that would occur under the immediately preceding circumstances was requested by AmerGen pursuant to 10 CFR 50.80. Notice of the request for approval and an opportunity for a hearing was published in the **Federal Register** on August 31, 2000 (65 FR 53035 ). The Commission received no comments or requests for hearing pursuant to such notice.

Under 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information in the July 19, 2000, application by AmerGen, the September 15, 2000, supplement, and other information before the Commission, the NRC staff has determined that the proposed corporate restructuring under which Exelon Corporation will become the parent of PECO while PECO continues to hold its ownership interest in AmerGen, will not affect the qualifications of AmerGen as holder of the license described above, and that the indirect transfer of the license, to the extend effected by the proposed corporate restructuring, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the condition set forth below.

The findings set forth above are supported by a safety evaluation dated October 5, 2000.

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III.

Accordingly, pursuant to Sections 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(b), 2201(i), and 2234; and 10 CFR 50.80, *It Is Hereby Ordered* that the application regarding the indirect license transfer related to the proposed corporate restructuring is approved, subject to the following condition:

(1) Should the proposed merger and restructuring not be completed by October 5, 2001, this Order shall become null and void, provided, however, upon written application and for good cause shown, such date may in writing be extended.

This Order is effective upon issuance.

For further details with respect to this Order, see the application dated July 19, 2000, supplemental submittal dated September 15, 2000, and the safety evaluation dated October 5, 2000, which are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 5th day of October 2000.

For the Nuclear Regulatory Commission.

**Samuel J. Collins,**

*Director, Office of Nuclear Reactor Regulation.*

[FR Doc. 00–26475 Filed 10–13–00; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–219]**

### In the Matter of AmerGen Energy Company, LLC (Oyster Creek Nuclear Generating Station); Order Approving Application Regarding Proposed Corporate Restructuring

I

AmerGen Energy Company, LLC (AmerGen, the licensee) is the holder of Facility Operating License No. DPR–16, which authorizes AmerGen to possess, use, and operate Oyster Creek Nuclear Generating Station (Oyster Creek or the facility). The facility is located at the licensee's site in Ocean County, New Jersey. British Energy, Inc., and PECO Energy Company (PECO) each own 50 percent of AmerGen.

II

By application dated July 19, 2000, AmerGen requested approval of the indirect transfer of the facility operating license to Exelon Corporation, to the extent such would occur upon PECO becoming a subsidiary of Exelon Corporation, a new corporation to be formed in connection with the proposed merger of Unicom Corporation (Unicom), the parent of Commonwealth Edison Company, and PECO. Supplemental information was provided by a submittal dated September 15, 2000.

Under the proposed merger, PECO will become a direct or indirect subsidiary of Exelon Corporation. The merger was previously the subject of an AmerGen application dated February 28, 2000, in which AmerGen requested approval of the indirect transfer of the Oyster Creek license (and certain other licenses held by AmerGen) that would occur as a result of a proposed transfer of PECO's 50 percent interest in AmerGen to Exelon Generation Company, LLC (EGC). EGC is to be formed in connection with the merger between Unicom and PECO referred to above, and will also become a subsidiary of Exelon Corporation. British Energy, Inc., is not involved in the merger, and its interest in AmerGen will remain unchanged. The February 28, 2000, application is still under review.

According to the July 19, 2000, application, the transfer of PECO's 50 percent interest in AmerGen to EGC may be delayed beyond the closing of the merger. During this interim period, Exelon Corporation would become and continue to be the direct parent of PECO pending the receipt of necessary approvals to allow PECO's generating assets, including its interest in AmerGen, to be transferred to EGC; PECO would continue to hold its 50 percent interest in AmerGen, which will continue to be the sole owner and operator of Oyster Creek.

Approval of the indirect transfer of the facility operating license that would occur under the immediately preceding circumstances was requested by AmerGen pursuant to 10 CFR 50.80. Notice of the request for approval and an opportunity for a hearing was published in the **Federal Register** on August 31, 2000 (65 FR 53034). The Commission received no comments or requests for hearing pursuant to such notice.

Under 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information in the July 19, 2000, application by AmerGen, the September 15, 2000, supplement, and other information before the Commission, the NRC staff has determined that the proposed corporate restructuring under which Exelon Corporation will become the parent of PECO while PECO continues to hold its ownership interest in AmerGen, will not affect the qualifications of AmerGen as holder of the license described above, and that the indirect transfer of the license, to the extent effected by the proposed corporate restructuring, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the condition set forth below.

The findings set forth above are supported by a safety evaluation dated October 5, 2000.

III

Accordingly, pursuant to Sections 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended, 42 USC 2201(b), 2201(i), and 2234; and 10 CFR 50.80, *It Is Hereby Ordered* that the application regarding the indirect license transfer related to the proposed corporate restructuring is approved, subject to the following condition:

(1) Should the proposed merger and restructuring not be completed by October 5, 2001, this Order shall become null and void, provided, however, upon written application and for good cause shown, such date may in writing be extended.

This Order is effective upon issuance.

For further details with respect to this Order, see the application dated July 19, 2000, supplemental submittal dated September 15, 2000, and the safety evaluation dated October 5, 2000, which are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site *(http://www.nrc.gov)*.

Dated at Rockville, Maryland, this 5th day of October 2000.

For the Nuclear Regulatory Commission.

**Samuel J. Collins,**

*Director, Office of Nuclear Reactor Regulation.*

[FR Doc. 00–26480 Filed 10–13–00; 8:45 am]

BILLING CODE 7590–01–P



## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–289]**

### In the Matter of AmerGen Energy Company, LLC (Three Mile Island Nuclear Station, Unit 1); Order Approving Application Regarding Proposed Corporate Restructuring

I

AmerGen Energy Company, LLC (AmerGen, the licensee) is the holder of Facility Operating License No. DPR–50, which authorizes AmerGen to possess, use, and operate Three Mile Island Nuclear Station, Unit 1 (TMI–1 or the facility). The facility is located at the licensee's site in Dauphin County, Pennsylvania. British Energy, Inc., and PECO Energy Company (PECO) each own 50 percent of AmerGen.

II

By application dated July 19, 2000, AmerGen requested approval of the indirect transfer of the facility operating license to Exelon Corporation, to the extent such would occur upon PECO becoming a subsidiary of Exelon Corporation, a new corporation to be formed in connection with the proposed merger of Unicom Corporation (Unicom), the parent of Commonwealth Edison Company, and PECO. Supplemental information was provided by a submittal dated September 15, 2000.

Under the proposed merger, PECO will become a direct or indirect subsidiary of Exelon Corporation. The merger was previously the subject of an AmerGen application dated February 28, 2000, in which AmerGen requested approval of the indirect transfer of the TMI–1 license (and certain other licenses held by AmerGen) that would occur as a result of a proposed transfer of PECO's 50 percent interest in AmerGen to Exelon Generation Company, LLC (EGC). EGC is to be formed in connection with the merger between Unicom and PECO referred to above, and will also become a subsidiary of Exelon Corporation. British Energy, Inc., is not involved in the merger and its interest in AmerGen will remain unchanged. The February 28, 2000, application is still under review.

According to the July 19, 2000, application, the transfer of PECO's 50 percent interest in AmerGen to EGC may be delayed beyond the closing of the merger of Unicom and PECO. During this interim period, Exelon Corporation would become and continue to be the direct parent of PECO pending the receipt of necessary approvals to allow PECO's generating assets, including its interest in AmerGen, to be transferred to EGC; PECO would continue to hold its 50 percent interest in AmerGen, which will continue to be the sole owner and operator of TMI–1.

Approval of the indirect transfer of the facility operating license that would occur under the immediately preceding circumstances was requested by AmerGen pursuant to 10 CFR 50.80. Notice of the request for approval and an opportunity for a hearing was published in the **Federal Register** on August 31, 2000 (65 FR 53036). The Commission received no comments or requests for hearing pursuant to such notice.

Under 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information in the July 19, 2000, application by AmerGen, the September 15, 2000, supplement, and other information before the Commission, the NRC staff has determined that the proposed corporate restructuring under which Exelon Corporation will become the parent of PECO while PECO continues to hold its ownership interest in AmerGen, will not affect the qualifications of AmerGen as holder of the license described above, and that the indirect transfer of the license, to the extent effected by the proposed corporate restructuring, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the condition set forth below.

The findings set forth above are supported by a safety evaluation dated October 5, 2000.

III

Accordingly, pursuant to Sections 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. §§ 2201(b), 2201(i), and 2234; and 10 CFR 50.80, *It is Hereby Ordered* that the application regarding the indirect license transfer related to the proposed corporate restructuring is approved, subject to the following condition:

(1) Should the proposed merger and restructuring not be completed by October 5, 2001, this Order shall become null and void, provided, however, upon written application and for good cause shown, such date may in writing be extended.

This Order is effective upon issuance.

For further details with respect to this Order, see the application dated July 19, 2000, the supplemental submittal dated September 15, 2000, and the safety evaluation dated October 5, 2000, which are available for public inspection at the Commission's Public Document Room located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (*http://www.nrc.gov*).

Dated at Rockville, Maryland, this 5th day of October 2000.

For the Nuclear Regulatory Commission.

**Samuel J. Collins,**

*Director, Office of Nuclear Reactor Regulation.*

[FR Doc. 00–26481 Filed 10–13–00; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**Docket Nos. 50–295, 50–304**

### In the Matter of Commonwealth Edison Company (Zion Nuclear Power Station, Units 1 and 2); Order Approving Application Regarding Proposed Corporate Restructuring

I

Commonwealth Edison Company (ComEd, the licensee) is the holder of Facility Operating Licenses Nos. DPR–39 and DPR–48 for the Zion Nuclear Power Station, Units 1 and 2 (the facility). The facility was shut down permanently in February 1997. ComEd certified the permanent shutdown on February 13, 1998, and certified that all fuel had been removed from the reactor vessels on March 9, 1998. In accordance with 10 CFR 50.82(a)(2), the facility operating licenses no longer authorize ComEd to operate the reactors or to load fuel in the reactor vessels. The facility is located at the licensee's site in Lake County, Illinois.

II

By application dated July 7, 2000, ComEd requested approval of the proposed indirect transfer of the facility operating licenses to the extent now held by ComEd to Exelon Corporation, to be formed in connection with the proposed merger of Unicom Corporation (Unicom), the parent of ComEd, and PECO Energy Company (PECO). Supplemental information was provided by submittals dated July 13 and September 1, 2000. Hereinafter, the July 7, 2000, application and supplemental information will be referred to collectively as the "application."

Under the proposed merger, ComEd will become a direct or indirect subsidiary of Exelon Corporation. The

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merger was previously the subject of an order dated August 3, 2000, by which the U. S. Nuclear Regulatory Commission approved the transfer of the Zion licenses to Exelon Generation Company, LLC (EGC). EGC will be formed in connection with the merger as an indirect subsidiary of Exelon Corporation to acquire the generating assets of PECO and ComEd. The August 3, 2000, order effectively allows ComEd's Zion assets to be transferred to EGC. According to the application here, the transfer of these assets may be delayed beyond the closing of the merger. During this interim period, Exelon Corporation would be the direct parent of ComEd as ComEd continues to hold the Zion facility pending the receipt of necessary approvals to allow the facility to be transferred to EGC. Specifically, ComEd would continue to be the sole owner of, and be authorized to maintain Zion, Units 1 and 2.

By a separate application dated July 7, 2000, PECO requested approval of the indirect transfer of the facility operating licenses that it holds to Exelon Corporation, which would occur under circumstances similar to the above for ComEd. That application is being addressed separately.

Approval of the indirect transfer of the facility operating licenses was requested by ComEd pursuant to 10 CFR 50.80. Notice of the request for approval and an opportunity for a hearing was published in the **Federal Register** on August 31, 2000 (65 FR 53041). The Commission received no comments or requests for hearing pursuant to such notice.

Under 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information in the application by ComEd, and other information before the Commission, the NRC staff has determined that the proposed corporate restructuring under which Exelon Corporation will become the parent of ComEd will not affect the qualifications of ComEd as holder of the licenses described above, and that the indirect transfer of the licenses, to the extent effected by the proposed corporate merger, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth below.

The findings set forth above, are supported by a safety evaluation dated October 5, 2000.

III

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended, 42 USC 2201(b), 2201(i), 2201(o), and 2234; and 10 CFR 50.80, *It Is Hereby Ordered* that the application regarding the indirect license transfers related to the proposed corporate restructuring is approved, subject to the following conditions:

(1) ComEd shall provide the Director of the Office of Nuclear Reactor Regulation a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from ComEd to its proposed parent, or to any other affiliated company, facilities for the production, transmission, or distribution of electric energy having a depreciated book value exceeding ten percent (10%) of ComEd's consolidated net utility plant, as recorded on ComEd's books of account, provided, however, this condition shall apply only for so long as ComEd holds a license issued pursuant to 10 CFR Part 50.

(2) Should the proposed merger and restructuring not be completed by October 5, 2001, this Order shall become null and void, provided, however, upon written application and for good cause shown, such date may in writing be extended.

This Order is effective upon issuance.

For further details with respect to this Order, see the initial application dated July 7, 2000, and supplemental submittals dated July 13 and September 1, 2000, and the safety evaluation dated October 5, 2000, which are available for public inspection at the Commission's Public Document Room located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 5th day of October 2000.

For the Nuclear Regulatory Commission.

**Samuel J. Collins,**

*Director, Office of Nuclear Reactor Regulation*

[FR Doc. 00–26474 Filed 10–13–00; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

### In the Matter of Commonwealth Edison Company (Byron Station, Units 1 and 2) Order Approving Application Regarding Proposed Corporate Restructuring

Docket Nos. STN 50–454, STN 50–455

I

Commonwealth Edison Company (ComEd, the licensee) is the holder of Facility Operating Licenses Nos. NPF–37 and NPF–66, which authorize the possession, use, and operation of the Byron Station, Units 1 and 2 (the facility). The facility is located at the licensee's site in Ogle County, Illinois.

II

By application dated July 7, 2000, ComEd requested approval of the proposed indirect transfer of the facility operating licenses to the extent now held by ComEd to Exelon Corporation, to be formed in connection with the proposed merger of Unicom Corporation (Unicom), the parent of ComEd, and PECO Energy Company (PECO). Supplemental information was provided by letters dated July 13 and September 1, 2000. Hereinafter, the July 7, 2000, application and supplemental information will be referred to collectively as the "application."

Under the proposed merger, ComEd will become a direct or indirect subsidiary of Exelon Corporation. The merger was previously the subject of an order dated August 3, 2000, by which the U. S. Nuclear Regulatory Commission approved the transfer of the Byron licenses to Exelon Generation Company, LLC (EGC). EGC will be formed in connection with the merger as an indirect subsidiary of Exelon Corporation to acquire the generating assets of PECO and ComEd. The August 3, 2000, order effectively allows ComEd's Byron assets to be transferred to EGC. According to the application here, the transfer of these assets may be delayed beyond the closing of the merger. During this interim period, Exelon Corporation would be the direct parent of ComEd as ComEd continues to hold the Byron and other generating assets pending the receipt of necessary approvals to allow the generating assets to be transferred to EGC. Specifically, ComEd would continue to be the sole owner and operator of Byron, Units 1 and 2.

By a separate application dated July 7, 2000, PECO requested approval of the indirect transfer of the facility operating licenses that it holds to Exelon Corporation, which would occur under circumstances similar to the above for ComEd. That application is being addressed separately.

Approval of the indirect transfer of the facility operating licenses was requested by ComEd pursuant to 10 CFR 50.80. Notice of the request for approval and an opportunity for a hearing was published in the **Federal Register** on August 31, 2000 (65 FR 53043). The Commission received no comments or requests for hearing pursuant to such notice.



Under 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information in the application by ComEd, and other information before the Commission, the NRC staff has determined that the proposed corporate restructuring under which Exelon Corporation will become the parent of ComEd will not affect the qualifications of ComEd as holder of the licenses described above, and that the indirect transfer of the licenses, to the extent effected by the proposed corporate restructuring, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth below.

The findings set forth above, are supported by a safety evaluation dated October 5, 2000.

III

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(b), 2201(i), 2201(o), and 2234; and 10 CFR 50.80, *It Is Hereby Ordered* that the application regarding the indirect license transfers related to the proposed corporate restructuring is approved, subject to the following conditions:

(1) ComEd shall provide the Director of the Office of Nuclear Reactor Regulation a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from ComEd to its proposed parent, or to any other affiliated company, facilities for the production, transmission, or distribution of electric energy having a depreciated book value exceeding ten percent (10%) of ComEd's consolidated net utility plant, as recorded on ComEd's books of account, provided, however, this condition shall apply only for so long as ComEd holds a license issued pursuant to 10 CFR Part 50.

(2) Should the proposed merger and restructuring not be completed by October 5, 2001, this Order shall become null and void, provided, however, upon written application and for good cause shown, such date may in writing be extended.

This Order is effective upon issuance.

For further details with respect to this Order, see the initial application dated July 7, 2000, and supplemental submittals dated July 13 and September 1, 2000, and the safety evaluation dated October 5, 2000, which are available for public inspection at the Commission's Public Document Room located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (*http://www.nrc.gov*).

Dated at Rockville, Maryland, this 5th day of October 2000.

For the Nuclear Regulatory Commission.

**Samuel J. Collins,**

*Director, Office of Nuclear Reactor Regulation.*

[FR Doc. 00–26476 Filed 10–13–00; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–10, 50–237, 50–249]**

### In the Matter of Commonwealth Edison Company (Dresden Nuclear Power Station, Units 1, 2, and 3); Order Approving Application Regarding Proposed Corporate Restructuring

I

Commonwealth Edison Company (ComEd, the licensee) is the holder of Facility Operating License No. DPR–2, which authorizes possession and maintenance but not operation of Dresden Nuclear Power Station, Unit 1, and Facility Operating Licenses Nos. DPR–19 and DPR–25, which authorize the possession, use, and operation of the Dresden Nuclear Power Station, Units 2 and 3. The facility (Dresden, Units 1, 2, and 3) is located at the licensee's site in Grundy County, Illinois.

II

By application dated July 7, 2000, ComEd requested approval of the proposed indirect transfer of the facility operating licenses to the extent now held by ComEd to Exelon Corporation, to be formed in connection with the proposed merger of Unicom Corporation (Unicom), the parent of ComEd, and PECO Energy Company (PECO). Supplemental information was provided by submittals dated July 13 and September 1, 2000. Hereinafter, the July 7, 2000, application and supplemental information will be referred to collectively as the "application."

Under the proposed merger, ComEd will become a direct or indirect subsidiary of Exelon Corporation. The merger was previously the subject of an order dated August 3, 2000, by which the U. S. Nuclear Regulatory Commission approved the transfer of the Dresden licenses to Exelon Generation Company, LLC (EGC). EGC will be formed in connection with the merger as an indirect subsidiary of Exelon Corporation to acquire the generating assets of PECO and ComEd. The August 3, 2000, order effectively allows ComEd's Dresden assets to be transferred to EGC. According to the application here, the transfer of these assets may be delayed beyond the closing of the merger. During this interim period, Exelon Corporation would be the direct parent of ComEd as ComEd continues to hold the Dresden and other generating assets pending the receipt of necessary approvals to allow the generating assets to be transferred to EGC. Specifically, ComEd would continue to be the sole owner of, and be authorized to maintain Dresden, Unit 1, and would continue to be the sole owner and operator of Dresden, Units 2 and 3.

By a separate application dated July 7, 2000, PECO requested approval of the indirect transfer of the facility operating licenses that it holds to Exelon Corporation, which would occur under circumstances similar to the above for ComEd. That application is being addressed separately.

Approval of the indirect transfer of the facility operating licenses was requested by ComEd pursuant to 10 CFR 50.80. Notice of the request for approval and an opportunity for a hearing was published in the **Federal Register** on August 31, 2000 (65 FR 53038). The Commission received no comments or requests for hearing pursuant to such notice.

Under 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information in the application by ComEd, and other information before the Commission, the NRC staff has determined that the proposed corporate restructuring under which Exelon Corporation will become the parent of ComEd will not affect the qualifications of ComEd as holder of the licenses described above, and that the indirect transfer of the licenses, to the extent effected by the proposed corporate restructuring, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth below.

The findings set forth above, are supported by a safety evaluation dated October 5, 2000.

III

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(b), 2201(i), 2201(o), and 2234; and 10 CFR 50.80, *It Is Hereby Ordered* that the application regarding the indirect license transfers related to the proposed corporate restructuring is

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approved, subject to the following conditions:

(1) ComEd shall provide the Director of the Office of Nuclear Reactor Regulation a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from ComEd to its proposed parent, or to any other affiliated company, facilities for the production, transmission, or distribution of electric energy having a depreciated book value exceeding ten percent (10%) of ComEd's consolidated net utility plant, as recorded on ComEd's books of account, provided, however, this condition shall apply only for so long as ComEd holds a license issued pursuant to 10 CFR Part 50.

(2) Should the proposed merger and restructuring not be completed by October 5, 2001, this Order shall become null and void, provided, however, upon written application and for good cause shown, such date may in writing be extended. This Order is effective upon issuance.

For further details with respect to this Order, see the initial application dated July 7, 2000, and supplemental submittals dated July 13 and September 1, 2000, and the safety evaluation dated October 5, 2000, which are available for public inspection at the Commission's Public Document located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (*http://www.nrc.gov*).

Dated at Rockville, Maryland, this 5th day of October 2000.

For the Nuclear Regulatory Commission.

**Samuel J. Collins,**

*Director, Office of Nuclear Reactor Regulation.*

[FR Doc. 00–26477 Filed 10–13–00; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–373, 50–374]**

### In the Matter of Commonwealth Edison Company (LaSalle County Station, Units 1 and 2); Order Approving Application Regarding Proposed Corporate Restructuring

I

Commonwealth Edison Company (ComEd, the licensee) is the holder of Facility Operating Licenses Nos. NPF–11 and NPF–18, which authorize the possession, use, and operation of the LaSalle County Station, Units 1 and 2 (the facility). The facility is located at the licensee's site in LaSalle County, Illinois.

II

By application dated July 7, 2000, ComEd requested approval of the proposed indirect transfer of the facility operating licenses to the extent now held by ComEd to Exelon Corporation, to be formed in connection with the proposed merger of Unicom Corporation (Unicom), the parent of ComEd, and PECO Energy Company (PECO). Supplemental information was provided by submittals dated July 13 and September 1, 2000. Hereinafter, the July 7, 2000, application and supplemental information will be referred to collectively as the "application."

Under the proposed merger, ComEd will become a direct or indirect subsidiary of Exelon Corporation. The merger was previously the subject of an order dated August 3, 2000, by which the U. S. Nuclear Regulatory Commission approved the transfer of the LaSalle licenses to Exelon Generation Company, LLC (EGC). EGC will be formed in connection with the merger as an indirect subsidiary of Exelon Corporation to acquire the generating assets of PECO and ComEd. The August 3, 2000, order effectively allows ComEd's LaSalle assets to be transferred to EGC. According to the application here, the transfer of these assets may be delayed beyond the closing of the merger. During this interim period, Exelon Corporation would be the direct parent of ComEd as ComEd continues to hold the LaSalle and other generating assets pending the receipt of necessary approvals to allow the generating assets to be transferred to EGC. Specifically, ComEd would continue to be the sole owner and operator of LaSalle, Units 1 and 2.

By a separate application dated July 7, 2000, PECO requested approval of the indirect transfer of the facility operating licenses that it holds to Exelon Corporation, which would occur under circumstances similar to the above for ComEd. That application is being addressed separately.

Approval of the indirect transfer of the facility operating licenses was requested by ComEd pursuant to 10 CFR 50.80. Notice of the request for approval and an opportunity for a hearing was published in the **Federal Register** on August 31, 2000 (65 FR 53039). The Commission received no comments or requests for hearing pursuant to such notice.

Under 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information in the application by ComEd, and other information before the Commission, the NRC staff has determined that the proposed corporate restructuring under which Exelon Corporation will become the parent of ComEd will not affect the qualifications of ComEd as holder of the licenses described above, and that the indirect transfer of the licenses, to the extent effected by the proposed corporate restructuring, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth below.

The findings set forth above, are supported by a safety evaluation dated October 5, 2000.

III

Accordingly, pursuant to sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended, 42 USC 2201(b), 2201(i), 2201(o), and 2234; and 10 CFR 50.80, *It Is Hereby Ordered* that the application regarding the indirect license transfers related to the proposed corporate restructuring is approved, subject to the following conditions:

(1) ComEd shall provide the Director of the Office of Nuclear Reactor Regulation a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from ComEd to its proposed parent, or to any other affiliated company, facilities for the production, transmission, or distribution of electric energy having a depreciated book value exceeding ten percent (10%) of ComEd's consolidated net utility plant, as recorded on ComEd's books of account, provided, however, this condition shall apply only for so long as ComEd holds a license issued pursuant to 10 CFR Part 50.

(2) Should the proposed merger and restructuring not be completed by October 5, 2001, this Order shall become null and void, provided, however, upon written application and for good cause shown, such date may in writing be extended.

This Order is effective upon issuance.

For further details with respect to this Order, see the initial application dated July 7, 2000, and supplemental submittals dated July 13 and September 1, 2000, and the safety evaluation dated October 5, 2000, which are available for public inspection at the Commission's Public Document Room located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (*http://www.nrc.gov*).



Dated at Rockville, Maryland, this 5th day of October 2000.

For the Nuclear Regulatory Commission.

**Samuel J. Collins,**

*Director, Office of Nuclear Reactor Regulation.*

[FR Doc. 00–26478 Filed 10–13–00; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–254, 50–265]**

### In the Matter of Commonwealth Edison Company (Quad Cities Nuclear Power Station, Units 1 and 2); Order Approving Application Regarding Proposed Corporate Restructuring

I

Commonwealth Edison Company (ComEd, the licensee) owns 75 percent of the Quad Cities Nuclear Power Station, Units 1 and 2 ( the facility) and is the licensed operator of both stations. MidAmerican Energy Company (MidAmerican) owns the remaining interest. Facility Operating Licenses Nos. DPR–29 and DPR–30 authorize ComEd, acting for itself and as agent for MidAmerican to possess, use, and operate the facility. The facility is located at ComEd's site in Rock Island County, Illinois.

II

By application dated July 7, 2000, ComEd requested approval of the proposed indirect transfer of the facility operating licenses to the extent now held by ComEd to Exelon Corporation, to be formed in connection with the proposed merger of Unicom Corporation (Unicom), the parent of ComEd, and PECO Energy Company (PECO). Supplemental information was provided by submittals dated July 13 and September 1, 2000. Hereinafter, the July 7, 2000, application and supplemental information will be referred to collectively as the "application."

Under the proposed merger, ComEd will become a direct or indirect subsidiary of Exelon Corporation. The merger was previously the subject of an order dated August 3, 2000, by which the U. S. Nuclear Regulatory Commission approved the transfer of the Quad Cities licenses, to the extent now held by ComEd, to Exelon Generation Company, LLC (EGC). EGC will be formed in connection with the merger as an indirect subsidiary of Exelon Corporation to acquire the generating assets of PECO and ComEd. The August 3, 2000, order effectively allows ComEd's Quad Cities assets to be transferred to EGC. According to the application here, the transfer of these assets may be delayed beyond the closing of the merger. During this interim period, Exelon Corporation would be the direct parent of ComEd as ComEd continues to hold its interest in the Quad Cities and other generating assets pending the receipt of necessary approvals to allow the generating assets to be transferred to EGC. Specifically, ComEd would continue to hold a partial ownership interest in Quad Cities, Units 1 and 2, and would continue to be the sole operator of Quad Cities, Units 1 and 2. The application does not involve any change with respect to the non-operating ownership interest held by MidAmerican.

By a separate application dated July 7, 2000, PECO requested approval of the indirect transfer of the facility operating licenses that it holds to Exelon Corporation, which would occur under circumstances similar to the above for ComEd. That application is being addressed separately.

Approval of the indirect transfer of the facility operating licenses was requested by ComEd pursuant to 10 CFR 50.80. Notice of the request for approval and an opportunity for a hearing was published in the **Federal Register** on August 31, 2000 (65 FR 53040). The Commission received no comments or requests for hearing pursuant to such notice.

Under 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information in the application by ComEd, and other information before the Commission, the NRC staff has determined that the proposed corporate restructuring under which Exelon Corporation will become the parent of ComEd will not affect the qualifications of ComEd as holder of the licenses described above, and that the indirect transfer of the licenses, to the extent effected by the proposed corporate restructuring, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth below.

The findings set forth above, are supported by a safety evaluation dated October 5, 2000.

III

Accordingly, pursuant to sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(b), 2201(i), 2201(o), and 2234; and 10 CFR 50.80, *It Is Hereby Ordered* that the application regarding the indirect license transfers related to the proposed corporate restructuring is approved, subject to the following conditions:

(1) ComEd shall provide the Director of the Office of Nuclear Reactor Regulation a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from ComEd to its proposed parent, or to any other affiliated company, facilities for the production, transmission, or distribution of electric energy having a depreciated book value exceeding ten percent (10%) of ComEd's consolidated net utility plant, as recorded on ComEd's books of account, provided, however, this condition shall apply only for so long as ComEd holds a license issued pursuant to 10 CFR Part 50.

(2) Should the proposed merger and restructuring not be completed by October 5, 2001, this Order shall become null and void, provided, however, upon written application and for good cause shown, such date may in writing be extended.

This Order is effective upon issuance.

For further details with respect to this Order, see the initial application dated July 7, 2000, and supplemental submittals dated July 13 and September 1, 2000, and the safety evaluation dated October 5, 2000, which are available for public inspection at the Commission's Public Document Room located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site *(http://www.nrc.gov)*.

Dated at Rockville, Maryland, this 5th day of October 2000.

For the Nuclear Regulatory Commission.

**Samuel J. Collins,**

*Director, Office of Nuclear Reactor Regulation.*

[FR Doc. 00–26479 Filed 10–13–00; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. STN 50–456, STN 50–457]**

### In the Matter of Commonwealth Edison Company (Braidwood Station, Units 1 and 2) Order Approving Application Regarding Proposed Corporate Restructuring

I

Commonwealth Edison Company (ComEd, the licensee) is the holder of Facility Operating Licenses Nos. NPF–72 and NPF–77, which authorize the

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possession, use, and operation of the Braidwood Station, Units 1 and 2 (the facility). The facility is located at the licensee's site in Will County, Illinois.

II

By application dated July 7, 2000, ComEd requested approval of the proposed indirect transfer of the facility operating licenses to the extent now held by ComEd to Exelon Corporation, to be formed in connection with the proposed merger of Unicom Corporation (Unicom), the parent of ComEd, and PECO Energy Company (PECO). Supplemental information was provided by letters dated July 13 and September 1, 2000. Hereinafter, the July 7, 2000, application and supplemental information will be referred to collectively as the "application."

Under the proposed merger, ComEd will become a direct or indirect subsidiary of Exelon Corporation. The merger was previously the subject of an order dated August 3, 2000, by which the U.S. Nuclear Regulatory Commission approved the transfer of the Braidwood licenses to Exelon Generation Company, LLC (EGC). EGC will be formed in connection with the merger as an indirect subsidiary of Exelon Corporation to acquire the generating assets of PECO and ComEd. The August 3, 2000, order effectively allows ComEd's Braidwood assets to be transferred to EGC. According to the application here, the transfer of these assets may be delayed beyond the closing of the merger. During this interim period, Exelon Corporation would be the direct parent of ComEd as ComEd continues to hold the Braidwood and other generating assets pending the receipt of necessary approvals to allow the generating assets to be transferred to EGC. Specifically, ComEd would continue to be the sole owner and operator of Braidwood, Units 1 and 2.

By a separate application dated July 7, 2000, PECO requested approval of the indirect transfer of the facility operating licenses that it holds to Exelon Corporation, which would occur under circumstances similar to the above for ComEd. That application is being addressed separately.

Approval of the indirect transfer of the facility operating licenses was requested by ComEd pursuant to 10 CFR 50.80. Notice of the request for approval and an opportunity for a hearing was published in the **Federal Register** on August 31, 2000 (65 FR 53042). The Commission received no comments or requests for hearing pursuant to such notice.

Under 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information in the application by ComEd, and other information before the Commission, the NRC staff has determined that the proposed corporate restructuring under which Exelon Corporation will become the parent of ComEd will not affect the qualifications of ComEd as holder of the licenses described above, and that the indirect transfer of the licenses, to the extent effected by the proposed corporate restructuring, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth below.

The findings set forth above, are supported by a safety evaluation dated October 5, 2000.

III

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(b), 2201(i), 2201(o), and 2234; and 10 CFR 50.80, *It Is Hereby Ordered* that the application regarding the indirect license transfers related to the proposed corporate restructuring is approved, subject to the following conditions:

(1) ComEd shall provide the Director of the Office of Nuclear Reactor Regulation a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from ComEd to its proposed parent, or to any other affiliated company, facilities for the production, transmission, or distribution of electric energy having a depreciated book value exceeding ten percent (10%) of ComEd's consolidated net utility plant, as recorded on ComEd's books of account, provided, however, this condition shall apply only for so long as ComEd holds a license issued pursuant to 10 CFR Part 50.

(2) Should the proposed merger and restructuring not be completed by October 5, 2001, this Order shall become null and void, provided, however, upon written application and for good cause shown, such date may in writing be extended.

This Order is effective upon issuance.

For further details with respect to this Order, see the initial application dated July 7, 2000, and supplemental submittals dated July 13 and September 1, 2000, and the safety evaluation dated October 5, 2000, which are available for public inspection at the Commission's Public Document located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site *(http://www.nrc.gov)*.

Dated at Rockville, Maryland, this 5th day of October 2000.

For the Nuclear Regulatory Commission.

**Samuel J. Collins,**

*Director, Office of Nuclear Reactor Regulation.*

[FR Doc. 00–26485 Filed 10–13–00; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–266 and 50–301]**

**In the Matter of Nuclear Management Company, LLC (Point Beach Nuclear Plant, Units 1 and 2); Exemption**

I

The Nuclear Management Company, LLC (the licensee) is the holder of Facility Operating License Nos. DPR–24 and DPR–27, which authorize operation of the Point Beach Nuclear Plant (PBNP), Units 1 and 2. The licenses provide, among other things, that PBNP is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facility consists of two pressurized-water reactors (Units 1 and 2) located on the licensee's Point Beach site in Two Rivers, Wisconsin. This exemption refers to both units.

II

Title 10 of the Code of Federal Regulations (10 CFR), Section 50.60, and 10 CFR Part 50, require that pressure-temperature (P–T) limits be established for reactor pressure vessels (RPVs) during normal operating and hydrostatic or leak rate testing conditions. Specifically, 10 CFR Part 50, Appendix G, states that "The appropriate requirements on both the pressure-temperature limits and the minimum permissible temperature must be met for all conditions." Appendix G of 10 CFR Part 50 specifies that the requirements for these limits are the American Society of Mechanical Engineers Code (ASME Code), Section XI, Appendix G, limits.

By letter dated July 14, 2000, the licensee submitted a request for exemption from the requirements of 10 CFR 50.60 and Appendix G to Part 50, to allow the use of ASME Code, Section XI, Code Case N–641, for PBNP, Units 1 and 2. Code Case N–641 combines former Code Cases N–514, N–588, and N–640, and provides guidelines for the



appropriate use of the three former Code Cases in combination.

Code Case N–641, similar to former Code Case N–588, permits the postulation of a circumferentially oriented flaw (in lieu of an axially oriented flaw) for the evaluation of the circumferential welds in RPV P–T limit curves. Also, Code Case N–641, similar to former Code Case N–640, permits the use of an alternate reference fracture toughness ($K_{Ia}$ fracture toughness curve instead of $K_{Ia}$ fracture toughness curve) for reactor vessel materials in determining the P–T limits. Since the pressure stresses on a circumferentially oriented flaw are lower than the pressure stresses on an axially oriented flaw by a factor of 2, postulating a circumferentially oriented flaw for the evaluation of the circumferential welds (as permitted by Code Case N–641) in establishing the P–T limits would be less conservative than the methodology currently endorsed by 10 CFR Part 50, Appendix G. Further, since the $K_{IC}$ fracture toughness curve shown in ASME Code, Section XI, Appendix A, Figure A–2200–1, provides greater allowable fracture toughness than the corresponding $K_{Ia}$ fracture toughness curve of ASME Code, Section XI, Appendix G, Figure G–2210–1, using the $K_{IC}$ fracture toughness (as permitted by Code Case N–641) in establishing the P–T limits would be less conservative than the methodology currently endorsed by 10 CFR Part 50, Appendix G. Considering both, an exemption to apply Code Case N–641 would be required by 10 CFR 50.60.

*Postulation of Circumferential Flaws in Circumferential Welds (formerly Code Case N–588)*

The licensee proposed to revise the P–T limits in the pressure-temperature limits report (PTLR) for PBNP, Units 1 and 2, using the postulation of a circumferentially oriented reference flaw as the limiting flaw in an RPV circumferential weld in lieu of an axially oriented flaw required by the 1995 edition (1996 addenda) of ASME Code, Section XI, Appendix G.

Postulating the Appendix G reference flaw (an axially oriented flaw) in a circumferential weld is physically unrealistic and overly conservative because the length of the flaw is 1.5 times the vessel's thickness, which is much longer than the width of the reactor vessel girth weld. Industry experience with the repair of weld indications found during preservice inspections, and data taken from destructive examinations of actual vessel welds, confirms that all detected flaws are small, laminar in nature, and do not transverse the weld bead orientation. Therefore, any potential defects introduced during the fabrication process that are not detected during subsequent nondestructive examinations would only be expected to be oriented in the direction of weld fabrication. For circumferential welds, this indicates a postulated defect with a circumferential orientation.

An analysis provided to the ASME Code's Working Group on Operating Plant Criteria (WGOPC) (in which the former Code Case N–588 was developed) indicated that if an axial flaw is postulated on a circumferential weld, then based on the stress magnification factors ($M_m$) given in the Code Case for the inside diameter circumferential (0.443) and axial (0.926) flaw orientations, it is equivalent to applying a safety factor of 4.18 on the pressure loading under normal operating conditions. Appendix G requires a safety factor of 2 on the contribution of the pressure load in the case of an axially oriented flaw in an axial weld, shell plate, or forging. By postulating a circumferentially oriented flaw on a circumferential weld and using the appropriate stress magnification factor, the margin of 2 is maintained for the contribution of the pressure load to the integrity calculation of the circumferential weld. Consequently, the staff determined that the postulation of an axially oriented flaw on a circumferential RPV weld is a level of conservatism that is not required to establish P–T limits to protect the RCS pressure boundary from failure during hydrostatic testing, heatup, and cooldown.

The staff also noted that former Code Case N–588 includes a revised methodology for determining the thermal stress intensity, $K_{IT}$, which was later incorporated into Section XI of the 1995 edition (1996 addenda) of the ASME Code. The licensee used this methodology to calculate $K_{IT}$.

In summary, the ASME Code, Section XI, Appendix G, procedure was developed for axially oriented flaws, which is physically unrealistic and overly conservative for postulating flaws of this orientation to exist in circumferential welds. Hence, the NRC staff agrees that relaxation of the requirements of ASME Code, Section XI, Appendix G, by postulating a circumferentially oriented flaw for the evaluation of the circumferential welds (as permitted by Code Case N–641) is acceptable and would maintain, pursuant to 10 CFR 50.12(a)(2)(ii), the underlying purpose of the ASME Code and the NRC regulations to ensure an acceptable margin of safety.

*Using the $K_{IC}$ Fracture Toughness Curve (formerly Case N–640)*

The licensee proposed to revise the P–T limits in the PTLR for PBNP, Units 1 and 2, using the $K_{IC}$ fracture toughness curve in lieu of the $K_{Ia}$ fracture toughness curve as the lower bound for fracture toughness.

Use of the $K_{IC}$ curve in determining the lower bound fracture toughness in the development of the P–T operating limits curve is more technically correct than the $K_{Ia}$ curve since the rate of loading during a heatup or cooldown is slow and is more representative of a static condition than a dynamic condition. The $K_{IC}$ curve appropriately implements the use of static initiation fracture toughness behavior to evaluate the controlled heatup and cooldown process of a reactor vessel. The staff has required use of the initial conservatism of the $K_{Ia}$ curve since 1974, when the curve was codified. This initial conservatism was necessary due to the limited knowledge of RPV materials. Since 1974, additional knowledge has been gained about RPV materials, which demonstrates that the lower bound on fracture toughness provided by the $K_{Ia}$ curve is well beyond the margin of safety required to protect the public health and safety from potential RPV failure. In addition, P–T curves based on the $K_{IC}$ curve will enhance overall plant safety by opening the P–T operating window with the greatest safety benefit in the region of low temperature operations.

In summary, the ASME Code, Section XI, Appendix G, procedure was conservatively developed based on the level of knowledge existing in 1974 concerning RPV materials and the estimated effects of operation. Since 1974, the level of knowledge about these topics has been greatly expanded. The NRC staff agrees that this increased knowledge permits relaxation of the requirements of ASME Code, Section XI, Appendix G, by applying the $K_{IC}$ fracture toughness (as permitted by Code Case N–641) while maintaining, pursuant to 10 CFR 50.12(a)(2)(ii), the underlying purpose of the ASME Code and the NRC regulations to ensure an acceptable margin of safety.

III

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and

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(2) when special circumstances are present. The staff accepts the licensee's determination that an exemption from 10 CFR 50.60 and Appendix G to Part 50 would be required to approve the use of Code Case N–641. The staff examined the licensee's rationale to support the exemption request and agrees that the use of Code Case N–641 would meet the underlying intent of these regulations. Based upon a consideration of the conservatism that is explicitly incorporated into the methodologies of (1) 10 CFR Part 50, Appendix G, (2) Appendix G of the ASME Code, and (3) Regulatory Guide 1.99, Revision 2, the staff concludes that application of Code Case N–641, as described above, would provide an adequate margin of safety against brittle failure of the RPV. This is also consistent with the determination that the staff has reached for other licensees under similar conditions based on the same considerations. Therefore, the staff concludes that requesting exemption under the special circumstances of 10 CFR 50.12(a)(2)(ii) is appropriate and that the methodology of Code Case N–641 may be used to revise the P–T limits in the current and the proposed TSs for PBNP, Units 1 and 2.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not endanger life or property or common defense and security, and is, otherwise, in the public interest. Therefore, the Commission hereby grants the licensee an exemption from the requirements of 10 CFR 50.60(a), and 10 CFR Part 50, Appendix G, for PBNP, Units 1 and 2.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (65 FR 59472).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 6th day of October 2000.

For the Nuclear Regulatory Commission.

**Suzanne C. Black,**

*Deputy Director Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 00–26472 Filed 10–13–00; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–352, 50–353]**

**In the Matter of PECO Eenergy Company (Limerick Generating Station, Units 1 and 2) Order Approving Application Regarding Proposed Corporate Restructuring**

I

PECO Energy Company (PECO, the licensee) is the holder of Facility Operating Licenses Nos. NPF–39 and NPF–85, which authorize the possession, use, and operation of the Limerick Generating Station (Limerick), Units 1 and 2 (the facility). The facility is located at the licensee's site in Montgomery County, Pennsylvania.

II

By application dated July 7, 2000, PECO requested approval of the proposed indirect transfer of the facility operating licenses to Exelon Corporation, to be formed in connection with the proposed merger of Unicom Corporation (Unicom), the parent of Commonwealth Edison Company and PECO. Supplemental information was provided by submittals dated July 13 and September 1, 2000. Hereinafter, the July 7, 2000, application and supplemental information will be referred to collectively as the "application."

Under the proposed merger, PECO will become a direct or indirect subsidiary of Exelon Corporation. The merger was previously the subject of an order dated August 3, 2000, by which the U. S. Nuclear Regulatory Commission approved the direct transfer of the Limerick licenses to Exelon Generation Company, LLC (EGC). EGC will be formed in connection with the merger as an indirect subsidiary of Exelon Corporation to acquire the generating assets of PECO and Commonwealth Edison Company. The August 3, 2000, order effectively allows PECO's Limerick assets to be transferred to EGC. According to the application here, the transfer of these assets may be delayed beyond the closing of the merger. During this interim period, Exelon Corporation would be the direct parent of PECO as PECO continues to hold the Limerick and other generating assets pending the receipt of necessary approvals to allow the generating assets to be transferred to EGC. Specifically, PECO would continue to be the sole owner and operator of Limerick, Units 1 and 2.

By a separate application dated July 7, 2000, Commonwealth Edison Company requested approval of the indirect transfer of the facility operating licenses that it holds to Exelon Corporation, which would occur under circumstances similar to the above for PECO. That application is being addressed separately.

Approval of the indirect transfer of the facility operating licenses was requested by PECO pursuant to 10 CFR 50.80. Notice of the request for approval and an opportunity for a hearing was published in the **Federal Register** on August 31, 2000 (65 FR 53045). The Commission received no comments or requests for hearing pursuant to such notice.

Under 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information in the application by PECO, and other information before the Commission, the NRC staff has determined that the proposed corporate restructuring under which Exelon Corporation will become the parent of PECO will not affect the qualifications of PECO as holder of the licenses described above, and that the indirect transfer of the licenses, to the extent effected by the proposed corporate restructuring, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth below.

The findings set forth above are supported by a safety evaluation dated October 5, 2000.

III

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended, 42 USC 2201(b), 2201(i), 2201(o), and 2234; and 10 CFR 50.80, *It Is Hereby Ordered* that the application regarding the indirect license transfers related to the proposed corporate restructuring is approved, subject to the following conditions:

(1) PECO shall provide the Director of the Office of Nuclear Reactor Regulation a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from PECO to its proposed parent, or to any other affiliated company, facilities for the production, transmission, or distribution of electric energy having a depreciated book value exceeding ten percent (10%) of PECO's consolidated net utility plant, as recorded on PECO's books of account, provided, however, this condition shall apply only for so long as PECO holds a license issued pursuant to 10 CFR Part 50.



(2) Should the proposed merger and restructuring not be completed by October 5, 2001, this Order shall become null and void, provided, however, upon written application and for good cause shown, such date may in writing be extended.

This Order is effective upon issuance.

For further details with respect to this Order, see the initial application dated July 7, 2000, and supplemental submittals dated July 13 and September 1, 2000, and the safety evaluation dated October 5, 2000, which are available for public inspection at the Commission's Public Document Room, One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site *(http://www.nrc.gov)*.

Dated at Rockville, Maryland, this 5th day of October 2000.

For the Nuclear Regulatory Commission.

**Samuel J. Collins,**

*Director, Office of Nuclear Reactor Regulation.*

[FR Doc. 00–26482 Filed 10–13–00; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–171, 50–277, 50–278]**

**In the Matter of PECO Energy Company (Peach Bottom Atomic Power Station, Units 1, 2 and 3) Order Approving Application Regarding Proposed Corporate Restructuring**

I

PECO Energy Company (PECO, the licensee) is the holder of Facility Operating License No. DPR–12, which authorizes possession and maintenance, but not operation of Peach Bottom Atomic Power Station, Unit 1, and is a co-holder of Facility Operating Licenses Nos. DPR–44, and DPR–56, which authorize the possession, use, and operation of the Peach Bottom Atomic Power Station, Units 2 and 3. PECO is the licensed operator of Units 2 and 3. All three units (the facility) are located at the licensee's site in York County, Pennsylvania.

II

By application dated July 7, 2000, PECO requested approval of the proposed indirect transfer of the facility operating licenses to the extent now held by PECO to Exelon Corporation, to be formed in connection with the proposed merger of Unicom Corporation (Unicom), the parent of Commonwealth Edison Company and PECO. Supplemental information was provided by submittals dated July 13 and September 1, 2000. Hereinafter, the July 7, 2000, application and supplemental information will be referred to collectively as the "application."

Under the proposed merger, PECO will become a direct or indirect subsidiary of Exelon Corporation. The merger was previously the subject of an order dated August 3, 2000, by which the U. S. Nuclear Regulatory Commission approved the direct transfer of the Peach Bottom licenses, to the extent held by PECO, to Exelon Generation Company, LLC (EGC). EGC will be formed in connection with the merger as an indirect subsidiary of Exelon Corporation to acquire the generating assets of PECO and Commonwealth Edison Company. The August 3, 2000, order effectively allows PECO's Peach Bottom assets to be transferred to EGC. According to the application here, the transfer of these assets may be delayed beyond the closing of the merger. During this interim period, Exelon Corporation would be the direct parent of PECO as PECO continues to hold the Peach Bottom and other generating assets pending the receipt of necessary approvals to allow the generating assets to be transferred to EGC. Specifically, PECO would continue to be the sole owner of Peach Bottom, Unit 1, and would continue to hold a partial ownership interest in Peach Bottom, Units 2 and 3. PECO would continue to be authorized to maintain Peach Bottom, Unit 1, and would continue to be the sole operator of Peach Bottom, Units 2 and 3. The application does not involve any change with respect to the other co-holders of the licenses for Peach Bottom, Units 2 and 3, PSEG Nuclear LLC, Delmarva Power and Light Company, and Atlantic City Electric Company, which hold ownership interests in these units.

By a separate application dated July 7, 2000, Commonwealth Edison Company requested approval of the indirect transfer of the facility operating licenses that it holds to Exelon Corporation, which would occur under circumstances similar to the above for PECO. That application is being addressed separately.

Approval of the indirect transfer of the facility operating licenses was requested by PECO pursuant to 10 CFR 50.80. Notice of the request for approval and an opportunity for a hearing was published in the **Federal Register** on August 31, 2000 (65 FR 53044). The Commission received no comments or requests for hearing pursuant to such notice.

Under 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information in the application by PECO, and other information before the Commission, the NRC staff has determined that the proposed corporate restructuring under which Exelon Corporation will become the parent of PECO will not affect the qualifications of PECO as holder of the licenses described above, and that the indirect transfer of the licenses, to the extent effected by the proposed corporate restructuring, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth below.

The findings set forth above are supported by a safety evaluation dated October 5, 2000.

III

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended, 42 USC §§ 2201(b), 2201(i), 2201(o), and 2234; and 10 CFR 50.80, *It is hereby ordered* that the application regarding the indirect license transfers related to the proposed corporate restructuring is approved, subject to the following conditions:

(1) PECO shall provide the Director of the Office of Nuclear Reactor Regulation and the Director of the Office of Nuclear Material Safety and Safeguards a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from PECO to its proposed parent, or to any other affiliated company, facilities for the production, transmission, or distribution of electric energy having a depreciated book value exceeding ten percent (10%) of PECO's consolidated net utility plant, as recorded on PECO's books of account, provided, however, this condition shall apply only for so long as PECO holds a license issued pursuant to 10 CFR Part 50.

(2) Should the proposed merger and restructuring not be completed by October 5, 2001, this Order shall become null and void, provided, however, upon written application and for good cause shown, such date may in writing be extended.

This Order is effective upon issuance.

For further details with respect to this Order, see the initial application dated July 7, 2000, and supplemental submittals dated July 13 and September 1, 2000, and the safety evaluation dated October 5, 2000, which are available for public inspection at the Commission's Public Document Room, One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site

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(*http://www.nrc.gov*).

Dated at Rockville, Maryland, this 5th day of October 2000.

For the Nuclear Regulatory Commission.

**Samuel J. Collins,**

*Director, Office of Nuclear Reactor Regulation.*

[FR Doc. 00–26483 Filed 10–13–00; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–272, 50–311]**

### In the Matter of PECO Energy Company (Salem Nuclear Generating Station, Units 1 and 2) Order Approving Application Regarding Proposed Corporate Restructuring

I

PECO Energy Company (PECO) owns 42.59 percent of Salem Nuclear Generating Station, Units 1 and 2 (the facility) and in connection therewith is a co-holder of Facility Operating Licenses Nos. DPR–70 and DPR–75, which authorize possession, use, and operation of the facility. PSEG Nuclear LLC, another co-owner of the facility, is the licensed operator. The facility is located in Salem County, New Jersey.

II

By application dated July 7, 2000, PECO requested approval of the proposed indirect transfer of the facility operating licenses to the extent now held by PECO to Exelon Corporation, to be formed in connection with the proposed merger of Unicom Corporation (Unicom), the parent of Commonwealth Edison Company and PECO. Supplemental information was provided by submittals dated July 13 and September 1, 2000. Hereinafter, the July 7, 2000, application and supplemental information will be referred to collectively as the "application."

Under the proposed merger, PECO will become a direct or indirect subsidiary of Exelon Corporation. The merger was previously the subject of an order dated August 3, 2000, by which the U. S. Nuclear Regulatory Commission approved the transfer of the Salem licenses, to the extent held by PECO, to Exelon Generation Company, LLC (EGC). EGC will be formed in connection with the merger as an indirect subsidiary of Exelon Corporation to acquire the generating assets of PECO and Commonwealth Edison Company. The August 3, 2000, order effectively allows PECO's Salem assets to be transferred to EGC. According to the application here, the transfer of these assets may be delayed beyond the closing of the merger. During this interim period, Exelon Corporation would be the direct parent of PECO as PECO continues to hold the Salem and other generating assets pending the receipt of necessary approvals to allow the generating assets to be transferred to EGC. Specifically, PECO would continue to hold a partial ownership interest in Salem, Units 1 and 2. PSEG Nuclear LLC would continue to be the sole operator of Salem, Units 1 and 2. The application does not involve any change with respect to the remaining ownership interests in the facility held by PSEG Nuclear LLC, Delmarva Power and Light Company, and Atlantic City Electric Company.

By a separate application dated July 7, 2000, Commonwealth Edison Company requested approval of the indirect transfer of the facility operating licenses that it holds to Exelon Corporation, which would occur under circumstances similar to the above for PECO. That application is being addressed separately.

Approval of the indirect transfer of the facility operating licenses was requested by PECO pursuant to 10 CFR 50.80. Notice of the request for approval and an opportunity for a hearing was published in the **Federal Register** on August 31, 2000 (65 FR 53046). The Commission received no comments or requests for hearing pursuant to such notice.

Under 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information in the application by PECO, and other information before the Commission, the NRC staff has determined that the proposed corporate restructuring under which Exelon Corporation will become the parent of PECO will not affect the qualifications of PECO as a co-holder of the licenses described above, and that the indirect transfer of the licenses, to the extent effected by the proposed corporate restructuring, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth below.

The findings set forth above are supported by a safety evaluation dated October 5, 2000.

III

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. §§ 2201(b), 2201(i), 2201(o), and 2234; and 10 CFR 50.80, *It is hereby ordered* that the application regarding the indirect license transfers related to the proposed corporate restructuring is approved, subject to the following conditions:

(1) PECO shall provide the Director of the Office of Nuclear Reactor Regulation a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from PECO to its proposed parent, or to any other affiliated company, facilities for the production, transmission, or distribution of electric energy having a depreciated book value exceeding ten percent (10%) of PECO's consolidated net utility plant, as recorded on PECO's books of account, provided, however, this condition shall apply only for so long as PECO holds a license issued pursuant to 10 CFR Part 50.

(2) Should the proposed merger and restructuring not be completed by October 5, 2001, this Order shall become null and void, provided, however, upon written application and for good cause shown, such date may in writing be extended.

This Order is effective upon issuance.

For further details with respect to this Order, see the initial application dated July 7, 2000, and supplemental submittals dated July 13 and September 1, 2000, and the safety evaluation dated October 5, 2000, which are available for public inspection at the Commission's Public Document Room, One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (*http://www.nrc.gov*).

Dated at Rockville, Maryland, this 5th day of October 2000.

For the Nuclear Regulatory Commission.

**Samuel J. Collins,**

*Director, Office of Nuclear Reactor Regulation*

[FR Doc. 00–26484 Filed 10–13–00; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[50–461]**

### AmerGen Energy Company, LLC; Clinton Power Station Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the NRC) is considering issuance of a license amendment to and exemptions from certain requirements of Title 10 of the Code of Federal Regulations (10 CFR) Part 50, Section 50.60(a) for Facility Operating License No. NPF–62, issued to AmerGen Energy Company, LLC (the licensee), for operation of the Clinton Power Station (CPS), located in DeWitt County, Illinois.



**Environmental Assessment**

*Identification of the Proposed Action*

10 CFR Part 50, Appendix G, requires that pressure-temperature (P–T) limits be established for reactor pressure vessels (RPVs) during normal operating and hydrostatic or leak rate testing conditions. Specifically, 10 CFR Part 50, Appendix G, states, "The appropriate requirements on both the pressure-temperature limits and the minimum permissible temperature must be met for all conditions." Appendix G of 10 CFR Part 50 specifies that the requirements for these limits are the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code (Code), Section XI, Appendix G Limits.

The licensee requested in its submittal that the staff exempt CPS from application of specific requirements of 10 CFR Part 50, Section 50.60(a) and Appendix G, and substitute use of ASME Code Cases N–588 and N–640. Code Case N–588 permits the postulation of a circumferentially-oriented flaw (in lieu of an axially-oriented flaw) for the evaluation of the circumferential welds in RPV P–T limit curves. Code Case N–640 permits the use of an alternate reference fracture toughness ($K_{IC}$ fracture toughness curve instead of $K_{Ia}$ fracture toughness curve) for reactor vessel materials in determining the P–T limits. Since the pressure stresses on a circumferentially-oriented flaw are lower than the pressure stresses on an axially-oriented flaw by a factor of 2, using Code Case N–588 for establishing the P–T limits would be less conservative than the methodology currently endorsed by 10 CFR Part 50, Appendix G, and therefore, an exemption to apply the Code Case would be required by 10 CFR 50.60. Likewise, since the $K_{IC}$ fracture toughness curve shown in ASME Section XI, Appendix A, Figure A–2200–1 (the $K_{IC}$ fracture toughness curve) provides greater allowable fracture toughness than the corresponding $K_{Ia}$ fracture toughness curve of ASME Section XI, Appendix G, Figure G–2210–1 (the $K_{Ia}$ fracture toughness curve), using Code Case N–640 for establishing the P–T limits would be less conservative than the methodology currently endorsed by 10 CFR Part 50, Appendix G, and therefore, an exemption to apply the Code Case would also be required by 10 CFR 50.60. It should be noted that, although Code Case N–640 was incorporated into the ASME Code recently, an exemption is still needed because the proposed P–T limits (excluding Code Cases N–588 and N–640) are based on the 1989 edition of the ASME Code.

The new P/T limits calculated by the methodologies that are subject to the exemptions, are requested to be incorporated into the CPS Technical Specifications by the associated proposed license amendment.

The proposed action is in accordance with the licensee's application for exemption and amendment dated August 25, 2000, as supplemented September 21, 2000.

*The Need for the Proposed Action*

The revised P/T limits are desired to allow required reactor vessel hydrostatic and leak tests to be performed at a significantly lower temperature. These tests are to be performed during the upcoming refueling outage scheduled to commence in October, 2000. The lower temperature for the tests can reduce refueling outage critical path time by reducing or eliminating the heatup time to achieve required test conditions.

*Environmental Impacts of the Proposed Action*

The Commission has evaluated the proposed action and concludes that the exemptions and associated license amendment described above would provide an adequate margin of safety against brittle failure of the CPS reactor vessel. The lower temperature, is also safer for test inspectors due to lower ambient drywell temperature and could result in lower radiological dose due to increased inspection effectiveness at the lower temperature.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not involve any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

*Alternatives to the Proposed Action*

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

*Alternative Use of Resources:*

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Clinton Power Station.

*Agencies and Persons Consulted:*

In accordance with its stated policy, on September 28, 2000, the staff consulted with the Illinois State official, Frank Niziolek, of the Illinois Department of Nuclear Safety, regarding the environmental impact of the proposed action. The State official had no comments.

**Finding of No Significant Impact**

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letters dated August 25 and September 21, 2000. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

Dated at Rockville, Maryland, this 10th day of October 2000.

For the Nuclear Regulatory Commission.

**Jon B. Hopkins,**

*Senior Project Manager, Section 2 Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 00–26473 Filed 10–13–00; 8:45 am]

BILLING CODE 7590–01–P

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43419; File No. SR–Amex–00–46]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC Adopting Commentary to Section 713 That Defines "Public Offering" for Purposes of Shareholder Approval Rules

October 6, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 16, 2000, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.[4]

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to adopt Commentary .01 to Section 713, to define the term "public offering" for purposes of the Exchange's shareholder approval rules. Below is the text of the proposed rule change, which is entirely new.

* * * * *

**Amex Rules, Sec. 713. Other Transactions, Commentary .01**

Section 713 provides that shareholder approval is required for "a transaction involving the sale or issuance by the company of common stock (or securities convertible into or exercisable for common stock) equal to 20 percent or more of presently outstanding stock for less than the greater of book or market value of the stock." Under this rule, shareholder approval is not required for a "public offering."

Issuers are encouraged to consult with Exchange staff in order to determine if a particular offering is a "public offering" for purposes of the shareholder approval rules. Generally, a firm commitment underwritten securities offering registered with the Securities and Exchange Commission will be considered a public offering for these purposes. Likewise, any other securities offering which is registered with the Securities and Exchange Commission and which is publicly disclosed and distributed in the same general manner and extent as a firm commitment underwritten securities offering will be considered a public offering for purposes of the shareholder approval rules. However, Exchange staff will not treat an offering as a "public offering" for purposes of the shareholder approval rules merely because they are registered with the Commission prior to the closing of the transaction.

When determining whether an offering is a "public offering" for purposes of these rules, Exchange staff will consider all relevant factors, including but not limited to:

(i) The type of offering (including whether the offering is conducted by an underwriter on a firm commitment basis, or an underwriter or placement agent on a best-efforts basis, or whether the offering is self-directed by the issuer);

(ii) The manner in which the offering is marketed (including the number of investors offered securities, how those investors were chosen, and the breadth of the marketing effort);

(iii) The extent of the offering's distribution (including the number and identify of the investors who participate in the offering and whether any prior relationship existed between the issuer and those investors);

(iv) The offering price (including the extent of any discount to the market price of the securities offered); and

(v) The extent to which the issuer controls the offering and its distribution.

* * * * *

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

Section 713 of the Amex Company Guide requires shareholder approval for stock issuances of 20 percent or more of an issuer's total shares outstanding, offered at less than the greater of book or market value. The applicable rules further provide, however, that shareholder approval is not required for a "public offering," although that term is not defined in the rules. The Exchange proposes to adopt Commentary .01 to Section 713, to clarify the definition of "public offering" for issuers and interested parties. According to the Amex, a number of issuers have recently inquired as to whether certain large, below-market offerings were "public offerings" because the transactions were registered with the Commission prior to closing the transactions.[5] The Exchange notes that historically, for purposes of assessing the applicability of the shareholder approval rules, it has interpreted "public offering" as a broadly distributed, registered offering based on a firm commitment underwriting. Conversely, the Exchange does not consider a transaction to be a "public offering" for these purposes when the transaction is of limited distribution and/or is not based on a firm commitment underwriting, even if the offering was registered. Because the offerings described above had limited distributions and, in some cases, offerees that were pre-determined by the issuer, the Exchange believes that these transactions were not "public offerings" for purposes of the shareholder approval rules.

The Amex expects that proposed Commentary .01 will ensure issuer understanding of how Amex determines whether a transaction is a "public offering" for purposes of the shareholder approval rules. The proposed Commentary identifies a number of factors that will be considered in establishing the existence of a "public offering." Such factors include the type of offering; the marketing of the offering; the extent of the offering's distribution; the offering price; and the extent to which the issuer controls the offering and its distribution. Decisions as to whether a transaction is a "public offering" for purposes of these rules will be based on the facts and circumstances surrounding each particular transaction.

2. Statutory Basis

The Exchange believes that the proposed Commentary to Section 713 is designed to educate issuers and other interested parties as to how the Exchange defines a "public offering" and ensure that issuers recognize which transactions require shareholder approval under the Exchange's rules. For this reason, the Exchange represents that the proposed rule change is consistent with Section 6(b) of the Act[6] in general, and furthers the objectives of Section 6(b)(5)[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Amex does not believe that the proposed rule change will impose any burden on competition that is not necessary

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Amex filed its proposed rule change on August 16, 2000. On September 29, 2000, the Amex filed Amendment No. 1 that entirely replaced the original rule filing. *See* Letter from Michael J. Ryan, Senior Vice President, Chief of Staff and Senior Legal Officer, Amex, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission (September 29, 2000) ("Amendment No. 1"). In Amendment No. 1, the Amex also designated SR–Amex–00–46 as a proposed rule change under Section 19(b)(2) of the Act. 15 U.S.C. 78s(b)(2).

[4] The National Association of Securities Dealers, Inc., through its wholly owned subsidiary The Nasdaq Stock Market Inc., has filed a similar proposed rule change (SR–NASD–00–50). *See* Securities Exchange Act Release No. 43420 (October 6, 2000).

[5] It is the Exchange's understanding that the Commission believes that this activity is not appropriate under Section 5 of the Securities Act of 1933. *See* 15 U.S.C. 77e

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).



or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has neither solicited nor received comments on the proposed rule change.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to the File No. SR–Amex–00–46 and should be submitted by November 6, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–26465 Filed 10–13–00; 8:45 am]

BILLING CODE 8010–01–M

[8] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43421; File No. SR–PHLX–00–05]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment Nos. 1–4 by the Philadelphia Stock Exchange, Inc. Relating to Decimal Pricing

October 6, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 10, 2000, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the PHLX. On August 7, 2000, the Exchange filed an amendment to the proposed rule change, which amendment completely replaced and superseded the original filing.[3] Subsequently, the PHLX filed three additional amendments to the proposed rule change.[4] The PHLX filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[5] and Rule 19b–4(f)(6) thereunder,[6] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PHLX proposes to amend its rules to provide for the implementation of decimal pricing, in accordance with the joint submission to the Commission by the PHLX and other interested parties dated July 24, 2000, entitled "Decimals Implementation Plan for the Equities and Options Markets" ("Decimal Plan").

Proposed new PHLX Rule 134 establishes that, during the decimalization phase-in period established by the Decimals Plan, securities will be priced in fractions and in decimals, and that the Exchange may issue decimalization guidelines to its members, member organizations, participants, and participant organizations regarding, among other things, what equities and options on equities will be quoted in decimals and when, the timing of partial or full conversion to decimal pricing, and open order conversion and dividend processing.

In addition, the PHLX proposes to amend the following Options Advices: A–9, All-or-None Option Orders; A–11, Responsibility to Make Ten-Up Markets; B–11, Crossing, Facilitation and Solicited Orders; and F–6, Option Quote Parameters. The Exchange believes that the proposed amendments to these provisions are non-controversial in nature, and are necessary for the Exchange to convert from fraction to decimal pricing in accordance with the Decimals Plan.

Finally, the PHLX proposes to amend Rule 2001 to conform to the rule to amendments made to the Intermarket Trading System Plan.

The text of the proposed rule change, as amended, is available at the PHLX and at the Commission.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PHLX included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The PHLX has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* August 4, 2000 letter from Jurij Trypupenko, Esq. ("Trypupenko"), PHLX, to Alton S. Harvey ("Harvey"), Division of Market Regulation ("Division"), SEC, and attachment ("Amendment No. 1"). Amendment No. 1 converts the original filing to a non-controversial proposal pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder, which renders the proposal effective upon filing with the Commission. The Commission accepts the original proposal as notice of the PHLX's intention to file the proposed rule change as a non-controversial proposal. *See* 15 U.S.C. 78s(b)(3)(A) and 17 CFR 240.19b–4(f)(6)(iii).

[4] *See* August 31, 2000 letter from Trypupenko, PHLX, to Harvey, Division, SEC and attachment ("Amendment No. 2"). In Amendment No. 2, the PHLX deleted references to decimal "trading" and added language to refer to "quoting" and "pricing" in decimals. Amendment No. 2 also included proposed language to reflect an amendment to the Intermarket Trading System Plan regarding decimal pricing. *See also* September 7, 2000 letter from Trypupenko, PHLX, to Harvey, Division, SEC ("Amendment No. 3"). In Amendment No. 3, the Exchange deleted section (c) of proposed Rule 1034. *See also* October 6, 2000 letter from Trypupenko, PHLX, to Harvey, Division, SEC ("Amendment No. 4"). In Amendment No. 4, the PHLX made minor, technical corrections to certain proposed rule language.

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(6).

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*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The PHLX proposes to amend certain Exchange Rules and Options Advices to comply with the implementation of decimal pricing pursuant to the Commission's June 8, 2000 Order.[7] The PHLX believes these changes are needed to implement decimal pricing on August 28, 2000, and thereafter in phases in accordance with the Decimals Plan.

The proposed amendments to certain Rules and Options Advices would clarify existing language that refers only to pricing in fractions. The PHLX proposes to add language that is applicable to both fractional and decimal pricing. Other PHLX Rules and Options Advices contain examples in fractions. The Exchange proposes to add decimal equivalents.

The proposed rule changes incorporate the quoting increment requirements of the Decimals Plan. Thus, the proposed amendment to PHLX Rule 125 establishes the $.01 Minimum Price Variation ("MPV") for equities pricing in decimals. The proposed amendment to PHLX Rule 1034 establishes the $3.00 or higher and the $.05 MPV for options quoting at under $3.00, while PHLX Rule 1014 establishes quote spread parameters in fractions and decimals. Proposed PHLX Rule 134 allows the Exchange to issue guidelines to members as needed throughout the decimalization phase-in period.

2. Statutory Basis

The PHLX believes that the proposal is consistent with Section 6 of the Act[8] in general, and with the provisions of Section 6(b)(5) of the Act[9] in particular, in that it is designed to promote just and equitable principals of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

[7] Securities Exchange Act Release No. 42914 (June 8, 2000), 65 FR 38010 (June 19, 2000).

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(5).

*C. Self-Regulatory Organization's Statement on Comment on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The PHLX has requested that the Commission accelerate the operative date. The Commission finds good cause to designate the proposal, as amended, to become immediately operative upon filing, because such designation is consistent with the protection of investors and the public interest.[12]

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] The Decimals Plan contemplates that the options exchanges may wish to consider a pilot program for one-cent minimum price variations for quoting in a limited number of options ("Penny Pilot") at some point in the implementing process. The Commission expects that, before implementing a Penny Pilot, the options exchanges will carefully coordinate on such issues as the selection and number of options to be included in the pilot to ensure the continued orderly operation of the markets and clearing organizations. In particular, the Commission expects that the options exchanges will consult with the Commission regarding the impact on market-wide capacity. Before implementing a Penny Pilot, each options exchange should also submit appropriate rule filings to the Commission under Section 19(b) of the Exchange Act.

The Decimals Plan provides for minimum price variations for equities and options of no less than one cent. The Commission's June 8th Order requires the Participants to submit joint or individual studies two months after Full Implementation (as defined in the Decimals Plan) regarding the impact of decimal pricing on systems capacity, liquidity, and trading behavior, including an analysis of whether there should be a uniform minimum quoting increment. If a Participant wishes to move to quoting in an increment of less than one cent, the Participant should include in its study a full analysis of the potential impact of such trading on the Participant's market and the markets as a whole. Within thirty days after submitting the study, and absent Commission act, the Participants individually must submit for notice, comment, and Commission action, proposed rule changes under Section 19(b) of the Act to establish their individual choice of minimum increments by which equities or options are quoted on their respective markets.

Acceleration of the operative date will ensure that the PHLX is able to operate in accordance with the terms and conditions of the Decimals Plan. For these reasons, the Commission finds good cause to designate that the proposal, as amended, become operative immediately upon filing.[13]

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PHLX. All submissions should refer to file number SR–PHLX–00–05 and should be submitted by November 6, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–26464 Filed 10–13–00; 8:45 am]

BILLING CODE 8010–01–M

[13] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f). For purposes of calculating the 60-day abrogation period, the Commission considers the period to begin as of the date of filing of the most recent substantive amendment, September 7, 2000.

[14] 17 CFR 200.30–3(a)(12).



**DEPARTMENT OF STATE**

**[Public Notice 3443]**

**Culturally Significant Objects Imported for Exhibition; Determinations: "The Majesty of Spain Exhibition: Royal Collections From the Museo del Prado & Patrimonio Nacional"**

**AGENCY:** Department of State.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition "The Majesty of Spain Exhibition: Royal Collections from the Museo del Prado & Patrimonio Nacional" imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with a foreign lender. I also determine that the exhibition or display of the exhibit objects at the Mississippi Arts Pavilion, Jackson, Mississippi, from March 1, 2001, through September 3, 2001, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of exhibit objects, contact Jacqueline Caldwell, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/619–6982). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: October 8, 2000.

**William B. Bader,**

*Assistant Secretary for Educational and Cultural Affairs, Department of State.*

[FR Doc. 00–26497 Filed 10–13–00; 8:45 am]

BILLING CODE 4710–08–U

**DEPARTMENT OF STATE**

**[Public Notice No. 3433]**

**Shipping Coordinating Committee; Notice of Meeting**

The U.S. Shipping Coordinating Committee (SHC) will conduct an open meeting at 10 a.m. on Wednesday, November 8, 2000, in Room 6319 at U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC. The purpose of this meeting is to report the results of the Eighty-Second Session of the International Maritime Organization (IMO) Legal Committee (LEG 82) and the results of the meeting of the Joint International Maritime Organization/International Labor Organization Ad Hoc Expert Working Group on Liability and Compensation Regarding Claims for Death, Personal Injury and Abandonment of Seafarers (IMO/ILO Ad Hoc Expert Working Group).

At LEG 82, the Legal Committee will continue work on a draft protocol to the Athens Convention Relating to the Carriage of Passengers and Their Luggage by Sea, and on the draft Wreck Removal Convention. The Committee will also consider a proposal to increase the limits of compensation under the 1992 protocols to the 1969 International Convention on Civil Liability for Oil Pollution Damage and the 1971 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage. The Legal Committee will then turn its attention to the implementation of the International Convention on Liability and Compensation for Damage in Connection With the Carriage of Hazardous and Noxious Substances by Sea, and time will also be allotted to address any other issues on the Legal Committee's work program on which there are questions or comments.

The IMO/ILO Ad Hoc Expert Working Group continue to examine the issue of financial security for seafarers and their dependents with regard to compensation in cases of personal injury, death and abandonment. During this meeting, the group will review and analyze information received in response to a questionnaire sent to member states.

Members of the public are invited to attend the SHC meeting up to the seating capacity of the room. For further information, or to submit views in advance of the meeting, please contact Captain Joesph F. Ahern or Lieutenant Daniel J. Goettle, U.S. Coast Guard, Office of Maritime and International Law (G–LMI), 2100 Second Street, SW., Washington, DC 20593–0001; telephone (202) 267–1527; fax (202) 267–4496.

Dated: October 10, 2000.

**Stephen M. Miller,**

*Executive Secretary, Shipping Coordinating Committee.*

[FR Doc. 00–26493 Filed 10–13–00; 8:45 am]

BILLING CODE 4710–07–P

**DEPARTMENT OF STATE**

**Public Notice No. 3434]**

**Shipping Coordinating Committee; Notice of Meeting**

The Shipping Coordinating Comniittee (SHC) will conduct an open meeting at 1 p.m. on Friday, November 3, in Room 24115, at U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001. The purpose of the meeting is to finalize preparations for the 49th Session of the Technical Cooperation Committee (TCC 49) and 85th Session of Council of the International Maritime Organization (IMO).

The TCC 49 meeting will be held at IMO Headquarters from 15–16 November 2000. The Technical Cooperation Committee will discuss the Integrated Technical Co-operation Program (ITCP) for 2002–2003. The committee will also discuss the Partnerships for Progress and the status of technical assistance activities provided by member States. Elections will be held for Chairman and Vice-Chairman for 2001.

The 85th Session of the Council is scheduled for 13–17 November 2000, at the IMO Headquarters in London. Items of interest include Committees reports; the Report on the International Conference on the Revision of the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971; Work Program and Budget for 2001; and a review of the Organization's financial framework in accordance with Assembly resolution A.877(21).

Members of the public may attend these meetings up to the seating capacity of the room. Interested persons may seek information by writing: Director, International Affairs, U. S. Coast Guard Headquarters, Commandant (G–CI), Room 2114, 2100 Second Street, SW., Washington, DC 20593–0001 or by calling: (202) 267–2280.

Dated: October 10, 2000.

**Stephen M. Miller,**

*Executive Secretary, Shipping Coordinating Committee.*

[FR Doc. 00–26494 Filed 10–13–00; 8:45 am]

BILLING CODE 4710–07–U

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## DEPARTMENT OF STATE

[Publice Notice No. 3435]

### Shipping Coordinating Committee, Subcommittee on Ship Design and Equipment; Meeting Notice

The Shipping Coordinating Committee will conduct an open meeting at 9:30 am on Thursday, November 16, 2000, in Room 6319, at U.S. Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001. The purpose of the meeting is to prepare for the forty-fourth session of the Subcommittee on Ship Design and Equipment of the International Maritime Organization (IMO) which is scheduled for March 5–9, 2001, at IMO Headquarters in London, England.

Among other things, items of particular interest are: revision of resolutions MEPC.60(33) and A.586(14) regarding pollution prevention equipment; asbestos-related problems on board ships; casualty analysis; development of guidelines for ships operating in ice-covered waters; low-powered radio homing devices for liferafts on ro-ro passenger ships; use of desalinators on liferafts and lifeboats; improved thermal protection; amendments to resolution A.744(18) regarding guidelines on the enhanced program of inspections during surveys of bulk carriers and oil tankers; revision of the Interim Standards for ship maneuverability; and guidelines under Annex VI of the International Convention for the Prevention of Pollution from Ships (MARPOL).

IMO works to develop international agreements, guidelines, and standards for the marine industry. In most cases, these form the basis for class society rules and national standards/regulations. Such an open meeting supports the U.S. Representative to the IMO Subcommittee in developing the U.S. position on those issues raised at the IMO Subcommittee meetings. This open meeting serves as an excellent forum for the public to express their ideas and participate in the international rulemaking process. All members of the public are encouraged to attend or send representatives to participate in the development of U.S. positions on those issues affecting your maritime industry and remain abreast of all activities ongoing within the IMO.

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing: Mr. Wayne Lundy, U.S. Coast Guard Headquarters, Commandant (G–MSE–3), 2100 2nd Street, SW., Washington, DC 20593–0001 or by calling: (202) 267–2206.

Dated: October 10, 2000.

**Stephen Miller,**

*Executive Secretary, Shipping Coordinating Committee.*

[FR Doc. 00–26495 Filed 10–13–00; 8:45 am]

BILLING CODE 4710–07–U

## DEPARTMENT OF STATE

[Public Notice No. 3436]

### Shipping Coordinating Committee; Maritime Safety Committee; Notice of Meeting

The Shipping Coordinating Committee will conduct an open meeting at 9:30 a.m. on Tuesday, November 21, 2000, in Room 2415, at U.S. Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001. The purpose of this meeting will be to finalize preparations for the 73rd Session of the Maritime Safety Committee, and associated bodies of the International Maritime Organization (IMO), which is scheduled for November 27—December 6, 2000, at IMO Headquarters in London. At this meeting, papers received and the draft U.S. positions will be discussed.

Among other things, the items of particular interest are:

- Large passenger ship safety.
- Adoption of amendments to the International Convention for Safety of Life at Sea.
- Bulk carrier safety.
- Mandatory application of the International Maritime Dangerous Goods (IMDG) Code.
- Piracy and armed robbery against ships.
- Reports of five subcommittees-Flag State implementation; Bulk liquids and gases; Safety of navigation; ship design and equipment; and stability, loadlines and fishing vessels.

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing to Mr. Joseph J. Angelo, Commandant (G–MS), U.S. Coast Guard Headquarters, 2100 2nd Street, SW., Room 1218, Washington, DC 20593–0001 or by calling (202) 267–2970.

Dated: October 10, 2000.

**Stephen Miller,**

*Executive Secretary, Shipping Coordinating Committee.*

[FR Doc. 00–26496 Filed 10–13–00; 8:45 am]

BILLING CODE 4710–07–U

## TENNESSEE VALLEY AUTHORITY

### Meeting of the Regional Resource Stewardship Council

**AGENCY:** Tennessee Valley Authority (TVA).

**ACTION:** Notice of meeting.

**SUMMARY:** The Regional Resource Stewardship Council (Regional Council) will hold a meeting to consider various matters. Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2 (FACA).

The meeting agenda includes the following/briefings:

1. GAO's report on alternative river management operations.
2. Impact of environmental stewardship decision on distributor customers.
3. Public comments.
4. Impact of instream flows upon navigation.
5. Impact of land management practices on water quality.

It is the Regional Council's practice to provide an opportunity for members of the public to make oral public comments at its meetings. Public comment session is scheduled from 11 a.m.—noon EDT. Members of the public who wish to make oral public comments may do so during the Public comments portion of the agenda. Up to one hour will be allotted for the public comments with participation available on a first-come, first-served basis. Speakers addressing the Council are requested to limit their remarks to no more than 5 minutes. Persons wishing to speak register at the door and are then called on by the Council Chair during the public comment period. Hand-out materials should be limited to one printed page.

Written comments are also invited and may be mailed to the Regional Resource Stewardship Council, Tennessee Valley Authority, 400 West Summit Hill Drive, WT 11A, Knoxville, Tennessee 37902.

**DATES:** The meeting will be held on Wednesday, November 1, 2000, from 8:30 a.m. to 5:00 p.m. EDT.

**ADDRESSES:** The meeting will be held in Knoxville, Tennessee, at the Tennessee Valley Authority, West Tower, First Floor, Auditorium, 400 West Summit Hill Drive, Knoxville, Tennessee 37902, and will be open to the public. Anyone needing special access or accommodations should let the contact below know at least a week in advance.

**FOR FURTHER INFORMATION CONTACT:** Sandra L. Hill, 400 West Summit Hill Drive, WT 11A, Knoxville, Tennessee 37902, (865) 632–2333.



Dated: October 2, 2000.

**Kathryn J. Jackson**

*Executive Vice President, River System Operations & Environment Tennessee Valley Authority.*

[FR Doc. 00–26436 Filed 10–13–00; 8:45 am]

BILLING CODE 8120–08–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

[Docket No. FAA–2000–8080]

### Draft Advisory Circular (AC) No. 120–29A, Criteria for Approval of Non-Precision, Category I and Category II Weather Minima for Takeoff, Approach, and Landing

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of availability of a draft advisory circular.

**SUMMARY:** This notice announces the availability of a draft AC which provides an acceptable means, but not the only means, of obtaining and maintaining approval of operations in Non-Precision, Category I and II Weather Minima, including installation and approval of associated aircraft systems. It includes additional or revised Category I and II criteria for use in conjunction with heads-up displays, use of required navigation performance, satellite navigation sensors, and 'engine inoperative' Category II criteria. This draft AC would replace AC 120–29, dated September 25, 1970, and represents the first steps of harmonization efforts of the Federal Aviation Administration, the European Joint Aviation Authority, and other regulatory authorities.

**DATES:** Comments on the draft AC must be received on or before October 31, 2000.

**ADDRESSES:** Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2000–8080 at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to http://dms.dot.gov. You may review the public docket containing comments to this AC in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

**FOR FURTHER INFORMATION CONTACT:** Richard Temple, Flight Technologies and Procedures Division (AFS–400), Room 1132, Federal Aviation Administration, 600 Independence Ave., SW., Washington, DC 20591; telephone: (202) 267–5824.

#### Availability of the Advisory Circular

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) web page (http://dms.dot.gov/search).

(2) On the search page type in the last four digits of the Docket number shown at the beginning of this notice. Click on "search."

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the document number of the item you wish to view.

You can also get an electronic copy using the Internet through FAA's web page at http://www.faa/gov/AVR/afs/afs410/afs410.htm.

#### Background

An initial draft of this AC was received from the Aviation Rulemaking Advisory committee (ARAC) in August 1998 and a notice of availability was published in the **Federal Register** in October 1998. The notice of availability stated that the FAA was reviewing the ARAC recommendation and that it may make revisions to the document before it is issued. The notice also stated that if the FAA decides to make any substantive changes in the draft AC, the revised document would be made available again for comment before final issuance. Subsequently, an internal FAA coordination process began in January 2000 and was completed in September 2000. This draft revision incorporates changes resulting from that review, as well as the ARAC recommendations and are the first steps toward international all weather operations criteria harmonization taken by the FAA, JAA and several other regulatory authorities. Comments received in response to this notice will be considered before a final AC is issued. This draft AC should be reviewed in conjunction with the regulatory requirements of 14 CFR parts 121, 125, and 135, as applicable. This draft AC would not change, add, or delete any regulatory requirement or authorize any deviation from parts 121, 125, or 135.

Issued in Washington, DC on October 6, 2000.

**L. Nicholas Lacey,**

*Director, Flight Standards.*

[FR Doc. 00–26514 Filed 10–13–00; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Intent To Rule on Application 00–05–C–00–DBQ To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Dubuque Regional Airport, Dubuque, IA

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of intent to rule on application.

**SUMMARY:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Dubuque Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

**DATES:** Comments must be received on or before November 15, 2000.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Central Region, Airports Division, 901 Locust, Kansas City, MO 64106.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Kenneth J. Kraemer, A.A.E., Airport Manager, Dubuque Regional Airport, at the following address: 11000 Airport Road, Dubuque, IA 52003.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Dubuque Airport Commission, Dubuque Regional Airport, under section 158.23 of Part 158.

**FOR FURTHER INFORMATION CONTACT:** Lorna Sandridge, PFC Program Manager, FAA, Central Region, 901 Locust, Kansas City, MO 64106, (816) 329–2641. The application may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comment on the application to impose

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and use the revenue from a PFC at the Dubuque Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On September 30, 2000, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Dubuque Airport Commission, Dubuque, Iowa, was substantially complete within the requirements of section 158.25 of part 158. the FAA will approve or disapprove the application, in whole or in part, no later than December 30, 2000.

The following is a brief overview of the application.

*Level of the proposed PFC:* $4.50.

*Proposed charge effective date:* April, 2001.

*Proposed charge expiration date:* June, 2003.

*Total estimated PFC revenue:* $631,592.

*Brief description of proposed project(s):* Runway 18/36 extension paving and lighting, construct parallel taxiway and commence instrumentation of Runway 18/36; rehabilitate Runway 18/36, including grading of the northerly runway safety area and partial installation of the instrument landing system (ILS), phase 1; install ILS and medium-intensity approach lighting system with runway alignment indicator lights (MALSR) for Runway 36; install an airfield operations area wildlife fence.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Dubuque Regional Airport.

Issued in Kansas City, Missouri, on September 29, 2000.

**George A. Hendon,**

*Manager, Airports Division, Central Region.*

[FR Doc. 00–26527 Filed 10–13–00; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Savannah International Airport, Savannah, Georgia

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of intent to rule on application.

**SUMMARY:** The FAA proposes to rule and invites public comment on the. application to impose and use the revenue from a PFC at the Savannah International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

**DATES:** Comments must be received on or before November 15, 2000.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Atlanta Airports District Office, 1701 Columbia Avenue, Suite 2–260, College Park, Georgia 30337–2747.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Patrick S. Graham, Executive Director of the Savannah Airport Commission at the following address: Savannah Airport Commission, 400 Airways Avenue, Savannah, Georgia 31408.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Savannah Airport Commission under § 158.23 of part 158.

**FOR FURTHER INFORMATION CONTACT:** Daniel Gaetan, Program Manager, Atlanta Airports District Office, Atlanta Airports District Office, 1701 Columbia Avenue, Suite 2–260, College Park, Georgia 30337–2747, (404) 305–7146. The application may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the Savannah International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On October 3, 2000, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Savannah Airport Commission was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than January 3, 2001.

The following is a brief overview of the application.

*PFC Application No.:* PFC No. 00–04–C–00–SAV.

*Level of the proposed PFC:* $4.50.

*Proposed charge effective date:* January 1, 2010.

*Proposed charge expiration date:* December 31, 2010.

*Total estimated net PFC revenue:* $4,223,048.

*Brief description of proposed project(s):*

Sweeper
Loading Bridges
Airfield Lighting Control
Taxiway Extension
Construct Connector Taxiway
Access Road to Southwest Quadrant
Install Additional Gates in Concourse
Install Escalator
Install Elevator
Extend Terminal Apron
PFC Administration

*Class or classes of air carriers that the public agency has requested not be required to collect PFCs:* Air taxi/Commercial operators (ATCO) filing form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Savannah Airport Commission.

Issued in College Park, Georgia, on October 5, 2000.

**Rans D. Black,**

*Acting Manager, Atlanta Airports District Office, Southern Region.*

[FR Doc. 00–26516 Filed 10–13–00; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Public Notice for Waiver of Aeronautical Land-Use Assurance, Rhinelander-Oneida County Airport, Rhinelander, WI

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of intent of waiver with respect to land.

**SUMMARY:** The Federal Aviation Administration (FAA) is giving notice that a portion of the airport property containing 52.95 acres located in the south-southwest corner of the airport is not needed for aeronautical use as currently identified on the Airport Layout Plan.



The majority of the acreage comprising this parcel was originally acquired through Grant No. FAAP–9–47–027–C603 in 1965 to protect the approach to Runway 5/23. The remainder of the acreage within this parcel was acquired by the airport sponsor and State of Wisconsin at that same time. The parcel is presently wooded and undeveloped. Runway 5/23 was officially and permanently closed on April 8, 1998. The land comprising this parcel is, therefore, no longer needed for aeronautical purposes. The airport wishes to transfer ownership of the land to facilitate future industrial development in the vicinity of the airport. Income from the sale will be used to improve the airport. There are no impacts to the airport by allowing the airport to dispose of the property.

In accordance with section 47107(h) of title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

**DATES:** Comments must be received on or before November 15, 2000.

**FOR FURTHER INFORMATION CONTACT:** Mr. Daniel J. Millenacker, Program Manager, Federal Aviation Administration, Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, MN 55450–2706. Telephone Number (612) 713–4359/FAX Number (612) 713–4364. Documents reflecting this FAA action may be reviewed at this same location or at the Rhinelander-Oneida County Airport, Rhinelander, WI.

**SUPPLEMENTARY INFORMATION:** This notice announces that the FAA intends to authorize the disposal of the subject airport property at Rhinelander-Oneida County Airport, Rhinelander, WI. Approval does not constitute a commitment by the FAA to financially assist in the disposal of the subject airport property nor a determination that all measures covered by the program are eligible for Airport Improvement Program funding from the FAA. The disposition of proceeds from the disposal of the airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999.

Issued in Minneapolis, MN, on September 26, 2000.

**Robert Huber,**

*Acting Manager, Minneapolis Airports District Office, FAA, Great Lakes Region.*

[FR Doc. 00–26515 Filed 10–13–00; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Finance Docket No. 33934]**

### The Canadian American Railroad Company—Acquisition and Operation Exemption—Green Mountain Railroad Corporation

The Canadian American Railroad Company (CDAC), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire and operate Green Mountain Railroad Company's (GMRC) exclusive freight railroad operations easement (easement) over approximately 40.3 route miles of rail line (line) owned by the State of Vermont (State).[1] The line extends from White River Jct., VT, to Wells River, VT, between milepost 123.2 and milepost 163.5.

Because CDAC's projected annual revenues will exceed $5 million, CDAC has certified to the Board on September 18, 2000 that the required notice of the transaction was posted at the workplace of the employees on the affected line on September 15, 2000. *See* 49 CFR 1150.42(e). According to CDAC's certification, the employees on the affected line are not represented by a labor organization and therefore no notice to labor organizations was required. CDAC stated in its verified notice that the transaction was scheduled to be consummated ten days after the effective date of the approval of the conveyance of the easement by the Board.[2]

[1] The Board had previously approved GMRC's acquisition of the easement in *Green Mountain Railroad Corporation—Acquisition and Operation Exemption—Certain Rights of Boston and Maine Corporation*, STB Finance Docket No. 33829 (STB served Dec. 20, 1999). According to the verified notice in STB Finance Docket No. 33934, the State, pursuant to the easement and an operating agreement between the State and GMRC, has the power to cause GMRC to convey the easement to CDAC.

[2] Due to timing of CDAC's certification to the Board, effectiveness of the exemption under normal circumstances would have been delayed until November 17, 2000 (60 days after CDAC's certification to the Board that it had complied with the Board's rule at 49 CFR 1150.42(e)). In a decision in this proceeding served on October 10, 2000, however, the Board granted the request by CDAD for waiver of the remainder of the 60-day period, as measured from the certification date to the Board, to allow the exemption to become effective on October 10, 2000.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33934, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on John Broadley, Esq., John H. Broadley & Associates, 1054 31st Street, NW., Suite 200, Washington, DC 20007.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Dated: October 10, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 00–26500 Filed 10–13–00; 8:45 am]

**BILLING CODE 4915–00–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Privacy Act of 1974: Computer Matching Program

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Notice.

**SUMMARY:** Pursuant to section 552a(e)(12) of the Privacy Act of 1974, as amended, and the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs, notice is hereby given of the conduct of the Internal Revenue Service Taxpayer Address Request (TAR) Computer Matching Program. The matching activities are conducted in accordance with pertinent provisions of section 6103 of the Internal Revenue Code of 1986.

**EFFECTIVE DATE:** This notice will be effective November 15, 2000.

**ADDRESSES:** Inquiries may be mailed to the Director, Governmental Liaison and Disclosure, Internal Revenue Service, 1111 Constitution Ave., NW. Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** M.R. Taylor, Project Manager, Office of Governmental Liaison, Internal Revenue Service, 202–622–5145.

**SUPPLEMENTARY INFORMATION:** The computer matching programs provide Federal, State, and local agencies with

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tax information from IRS records to assist them in administering the programs and activities described below. The purpose of these programs is to prevent or reduce fraud and abuse in certain Federally assisted benefit programs and facilitate the settlement of government claims while protecting the privacy interest of the subjects of the match.

The matches are conducted on an on-going basis in accordance with the terms of the Computer Matching Agreement in effect with each participant as approved by the Data Integrity Boards of the Federal agencies, and for the period of time specified in such agreement. Members of the public desiring specific information concerning an on-going matching activity may request a copy of the agreement at the address provided above.

**Matches Conducted Pursuant to IRC 6103(m)(2)**

(A) In general, except as provided in subparagraph (B), the Service may, upon written request, disclose the mailing address of a taxpayer for use by officers, employees, or agents of a Federal agency for purposes of locating such taxpayer to collect or compromise a Federal claim against the taxpayer in accordance with sections 3711, 3717, and 3718 of title 31.

(B) In the case of an agent of a Federal agency which is a consumer reporting agency (within the meaning of section 603(f) of the Fair Credit Reporting Act, (15 U.S.C. 1681a(f)), the mailing address of a taxpayer may be disclosed to such agent under subparagraph (A) only for the purpose of allowing such agent to prepare a commercial credit report on the taxpayer for use by such Federal agency in accordance with sections 3711, 3717, and 3718 of title 31.

The IRS information provided is extracted weekly from the Individual Master File (IMF) (Treasury IRS 24.030).

Federal agencies expected to participate in (m)(2) matches and their Privacy Act systems of records are:

1. Department of Housing and Urban Development Albany Financial Operations Center, Accounting Records (HUD/DEPT–2);
2. U.S. Department of Justice, Debt Collection and Management System (JUSTICE/JMD–006);
3. Department of Veterans Affairs, Accounts Receivable Records—VA (88VA244);
4. Social Security Administration Master Beneficiary Record (HHS/SSA/OSR 09–60–0090); and the Supplemental Security Income Record and Special Veterans Benefits (SSA/OSR 60–0103); and
5. U.S. Department of Education Student Financial Assistance Collection Files (18–11–07).

**Matches Conducted Pursuant to IRC 6103(m)(4)**

In general, upon written request from the Secretary of Education, the Service may disclose the mailing address of any taxpayer who owes an overpayment of a grant awarded to such taxpayer under subpart 1 of part A of title IV of the Higher Education Act of 1965, or who has defaulted on a loan made under part B, D, or E of title IV of the Higher Education Act of 1965, or made pursuant to section 3(a)(1) of the Migration and Refugee Assistance Act of 1962 to a student at an institution of higher education.

This section further provides for the redisclosure by the Secretary of Education of a taxpayer's mailing address to any lender, or any State or nonprofit guarantee agency, participating under part (B) or (D) of title IV of the Higher Education Act of 1965, or any educational institution with which the Secretary of Education has an agreement under subpart 1 of part A, or part D, or E, of title IV of such Act. Redisclosure is made by the Secretary of Education for use only by officers, employees, or agents of such lender, guarantee agency, or institution whose duties relate to the collection of student loans for purposes of locating individuals who have defaulted on student loans made under such program for purposes of collecting such overpayment or loan.

The IRS information provided is extracted from the IMF (Treasury IRS 24.030). The U.S. Department of Education matches the title IV Program File [18–40–0024] with the IMF.

**Matches Conducted Pursuant to IRC 6103(m)(5)**

Upon written request from the Secretary of Health and Human Services (HHS), the Service may disclose the mailing address of any taxpayer who has defaulted on a loan made under part C of title VII of the Public Health Service Act or under subpart II of part B of title VIII of such Act, for use only by officers, employees, or agents of the Department of Health and Human Services for purposes of locating such taxpayer for purposes of collecting such loans. At this time there is no agreement to disclose information pursuant to IRC 6103(m)(5).

**Beginning and Completion Dates**

The matches are conducted on an ongoing basis in accordance with the terms of the computer matching agreement in effect with each participant as approved by the Data Integrity Boards of both agencies. The term of these agreements is expected to cover the 18-month period, September 1, 2000 through February 28, 2002. Ninety days prior to expiration of the agreement, the parties to the agreement may request a 12-month extension in accordance with 5 U.S.C. 552a(o). The extension would cover the period March 1, 2002 through February 28, 2003.

Dated: September 29, 2000.

**W. Earl Wright, Jr.,**

*Chief Management and Administrative Programs Officer.*

[FR Doc. 00–25569 Filed 10–13–00; 8:45 am]

BILLING CODE 4830–01–P

## UTAH RECLAMATION MITIGATION AND CONSERVATION COMMISSION

### Notice of Intent To Prepare an Environmental Impact Statement for Constructing a Warm-Water Sportfish and Native Aquatic Species Hatchery in Millard County, Utah

**AGENCY:** The Utah Reclamation Mitigation and Conservation Commission.

**ACTION:** Notice of intent to conduct scoping and prepare an Environmental Impact Statement (EIS).

**SUMMARY:** The Utah Reclamation Mitigation and Conservation Commission with cooperating agencies: Utah Division of Wildlife Resources, U.S. Department of the Interior, Office of the Secretary, U. S. Bureau of Land Management (BLM), and U. S. Fish and Wildlife Service will prepare an EIS on a proposal to construct a warm-water sportfish and native aquatic species hatchery near Gandy Warm Springs in Millard County, Utah. The site is located on federal land managed by the BLM. The BLM intends to use this Notice of Intent and EIS for their Record of Decision for any required land transaction.

Species to be propagated include the channel catfish, June sucker, least chub, leatherside chub, roundtail chub, boreal toad, and spotted frog.

Facilities to be constructed include: water systems—control structures, supply/drain lines, effluent treatment; rearing facilities—earthen, concrete and plastic ponds, raceways or tanks; buildings—hatchery/lab/office, shop, service/storage, residences, visitors' facilities.

The Central Utah Project Completion Act of 1992 (Act) authorized funding to improve existing hatchery facilities or construct new ones to increase production of warm water and cold water fish for the areas affected by the Colorado River Storage Project (CRSP) in Utah. In compliance with the Act, a Fish Hatchery Production Plan (Plan) and Environmental Assessment (EA) on the Plan were completed in 1995. The Plan was revised in 1998 based on updated information. The Plan identifies long-term warm water sportfish and native aquatic species stocking needs for meeting management objectives in CRSP-affected area waters, and recommends construction of a warm water hatchery. The Mitigation Commission accepted the revised Plan, and issued a Finding of No Significant Impact on implementation of the Plan.

Three possible alternatives have been identified: 1. No Action—build no facility; 2. Use an existing hatchery facility; and 3. Construct a new facility at the Gandy Warm Springs site (proposed action).

The No Action Alternative would be no new construction, but the use of a small, existing warm-water culture effort. The Existing Hatchery System Alternative would be an evaluation of a facility or facilities within the existing hatchery system for possible improvements for warm-water culture.

The Proposed Action Alternative would be the new facility construction at the Gandy Warm Springs site, Millard County, Utah. It would include a land transaction by the BLM under the Recreation and Public Purposes Act (68 Statute 173; 43 USC 869 *et seq.*).

**DATES:** 1. Submit scoping comments on or before November 10, 2000.

2. An open house will be held October 30, 2000, 6 to 9 p.m., local time.

**ADDRESSES:** 1. Address all comments to Maureen Wilson, Project Coordinator, Utah Reclamation Mitigation and Conservation Commission, 102 West 500 South, #315, Salt Lake City, Utah 84101. Submit electronic comments to *mwilson@uc.usbr.gov.*

2. The open house location is the Community Center in Baker, Nevada 89311

**FOR FURTHER INFORMATION CONTACT:** Maureen Wilson, 801–524–3146.

**SUPPLEMENTARY INFORMATION:** An initial scoping was completed in May, 2000. Over 160 scoping notices were mailed or posted. A public meeting was held in Trout Creek, in Millard Co. on May 25, 2000. Responses from 27 individuals and agencies were received.

Issues identified to date include: escapement of exotic species, site-specific construction impacts, protection of existing water rights, quality of hatchery effluent discharge, impact on historical and recreational use of the area.

Comments should address environmental issues to be considered, feasible alternatives to examine, possible mitigation, and information relevant to the Proposed Action. A public meeting will be held in Baker, Nevada during this scoping period.

It is important that comments be received by the close of the formal scoping period so they can be considered in a meaningful manner in the draft EIS.

Tentative Project Schedule: Begin comment period: May 2000; Scoping and Issue Identification Period Ends: November 2000; Draft EIS: October 2001; Final EIS and Record of Decision: January 2002.

Dated: October 3, 2000.

**Michael C. Weland,**

*Executive Director.*

[FR Doc. 00–26471 Filed 10–13–00; 8:45 am]

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# Corrections

Federal Register
Vol. 65, No. 200
Monday, October 16, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–583–827]**

### Static Random Access Memory Semiconductors from Taiwan: Notice of Court Decision and Suspension of Liquidation

*Correction*

In notice document 00–24954 on page 58263 in the issue of Thursday, September 28, 2000, the **EFFECTIVE DATE:** is corrected to read "September 28, 2000."

[FR Doc. C0–24954 Filed 10–13–00; 8:45 am]
BILLING CODE 1505–01–D

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**14 CFR Part 39**

**[Docket No. 2000–NE–38–AD; Amendment 39–11913; AD 2000–20–02]**

### Airworthiness Directives; General Electric Company CF6-50 Series Turbofan Engines

*Correction*

In rule document 00–24901, beginning on page 58645, in the issue of Monday, October 2, 2000, make the following correction:

**§39.13 [Corrected]**

1.On page 58646, in the second column, under the heading **Initial Inspection of Stage 2 LPT Nozzle Lock Assemblies**, in paragraph (a), the fourth line, "information" should read "Information".

2. On page 58646, in the third column, under the heading **Repetitive Inspection of Stage 2 LPT Nozzle Lock Assemblies**, in paragraph (c), the fourth line, "information" should read " Information".

3. On page 58646, in the third column, in paragraph (d), the second line, "place" should read "replace".

[FR Doc. C0–24901 Filed 10–13–00; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Monday,
October 16, 2000

Part II

# Department of the Interior

Fish and Wildlife Service

50 CFR Part 17
Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the Bay Checkerspot Butterfly (*Euphydryas editha bayensis*); Proposed Rule

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH61

## Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the Bay Checkerspot Butterfly (*Euphydryas editha bayensis*)

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), propose to designate critical habitat pursuant to the Endangered Species Act of 1973, as amended (Act), for the bay checkerspot butterfly (*Euphydryas editha bayensis*) (bay checkerspot). A total of approximately 10,597 hectares (26,182 acres) of land falls within the boundaries of the proposed critical habitat designation. Proposed critical habitat is located in San Mateo and Santa Clara Counties, California. If this proposal is made final, section 7 of the Act requires Federal agencies to insure that any activity they fund, authorize, or carry out does not result in the destruction or adverse modification of critical habitat. Section 4 of the Act requires us to consider economic and other impacts of specifying any particular area as critical habitat. We solicit data and comments from the public on all aspects of this proposal, including data on the economic and other impacts of the designation. We may revise this proposal to incorporate or address new information received during the comment period.

**DATES:** We will accept comments until December 15, 2000. We will hold a public hearing in Newark, California, on October 30, 2000, from 1:00 p.m. to 3:00 p.m. and from 6:00 p.m. to 8:00 p.m.

**ADDRESSES:** *Comment Submission:* If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods.

(1) You may mail written comments to the Field Supervisor, Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Suite W 2605, Sacramento, California 95825.

(2) You may send comments by electronic mail (e-mail) to fw1baycheckerspot@fws.gov. See the Public Comments Solicited section below for file format and other information about electronic filing.

(3) You may hand-deliver comments to our Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Suite W 2605, Sacramento, California 95825.

*Public Hearing:* We will hold the Newark hearing at the Hilton Newark/Fremont, 39900 Balentine Drive, Newark, California.

*Document Availability:* Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at the address listed under (3) above.

**FOR FURTHER INFORMATION CONTACT:** David Wright or Ken Sanchez at telephone 916/414–6600.

**SUPPLEMENTARY INFORMATION:**

### Background

The bay checkerspot is a medium-sized butterfly with a wingspan of about 5 centimeters (2 inches). The forewings have black bands along all the veins on the upper wing surface, contrasting sharply with bright red, yellow, and white spots. The bay checkerspot differs from LuEsther's checkerspot (*Euphydryas editha luestherae*) (a later-flying, *Pedicularis*-feeding subspecies of Inner Coast Range chaparral in central California) by being darker, and by lacking a relatively uninterrupted red band demarcating the outer wing third. The black banding on the forewings of the bay checkerspot gives a more checkered appearance than in other subspecies, such as the smaller Quino checkerspot (*Euphydryas editha quino*) of southern California, or the montane subspecies (for example, the Mono checkerspot, *Euphydryas editha monoensis*) (Service 1998).

Recent publications have advocated renaming the bay checkerspot, *Euphydryas editha bayensis*, as *Euphydryas editha editha* for reasons of historical precedence (Mattoni *et al.* 1997; Emmel *et al.* 1998). Mattoni and co-authors (1997) have also suggested that *Euphydryas editha editha* ranges from the San Francisco Bay area south to Santa Barbara County in California, and includes both the populations commonly known as the bay checkerspot and several populations south of Santa Clara County whose subspecific status has been uncertain. If this expanded subspecific assignment is accepted by the scientific community, it would represent a range extension for the bay checkerspot. Until such time as we make any new or revised determination on the taxonomy, and in this proposed rule, we treat the threatened bay checkerspot as occurring in San Francisco Bay area counties, notably the Counties of San Mateo and Santa Clara.

The bay checkerspot formerly occurred around San Francisco Bay, from Twin Peaks and San Bruno Mountain (west of the Bay) and Contra Costa County (east of the Bay) south through Santa Clara County. Before the introduction of invasive Eurasian grasses and other weeds in the 1700s, its distribution may have been wider (Service 1998). In the decades preceding listing, the decline of the bay checkerspot was primarily attributed to loss of habitat and fragmentation of habitat due to increasing urbanization. Drought and other extremes of weather have also been implicated in bay checkerspot population declines (Service 1998). Recent research has tentatively identified excess nitrogen deposition from polluted air as a threat to bay checkerspot habitats, due to its fertilizing effect enhancing the growth of invasive nonnative plants even in serpentine soil areas (Weiss 1999).

The known range of the bay checkerspot is now reduced to Santa Clara and San Mateo Counties, and the butterfly is patchily distributed in these locales. Studies of the bay checkerspot have described its distribution as an example of a metapopulation (see literature cited in Service 1998). A metapopulation is a group of spatially separated populations that can occasionally exchange dispersing individuals. The populations in a metapopulation are usually thought of as undergoing interdependent extinction and colonization, where individual populations may go extinct, but later recolonize from another population. Bay checkerspot populations may also exhibit "pseudo-extinction," where the species is not found, but nonetheless continues to inhabit a site and reappears in a subsequent year. Larvae that diapause (spend a period of dormancy as larvae (caterpillars)), under rocks and deep in soil cracks for more than 1 year may be responsible for pseudo-extinctions, since dormant larvae are essentially undetectable in surveys. Because of pseudo-extinction and metapopulation dynamics, even sites that in some years apparently lack the bay checkerspot can be important to the survival and recovery of the species.

Bay checkerspot butterfly populations vary greatly from year to year. Many or most individuals of the species live only a single year, and with high fecundity (fertility), high mortality, and sensitivity to weather and perhaps other ecological conditions, large population swings are common for the bay checkerspot. Fluctuations of more than 100-fold have been observed. These fluctuations are not always in synchrony among populations at different sites.



Habitat of the bay checkerspot exists on shallow, serpentine-derived or similarly droughty or infertile soils, which support the butterfly's larval food plants as well as nectar sources for adults. Serpentine soils are high in magnesium and low in calcium, and are a strong indicator of habitat value for the butterfly. The primary larval host plant of the bay checkerspot is *Plantago erecta* (dwarf plantain), an annual, native plantain. The butterfly usually is found associated with *Plantago erecta* in grasslands on serpentine soils, such as soils in the Montara series. In Santa Clara County, the Inks and Climara soil series are related soils and often have inclusions of Montara (U.S. Soil Conservation Service 1974). Henneke and other serpentine soils also occur within the range of the butterfly. Populations of the bay checkerspot formerly occurred on San Bruno Mountain and other locations with soils that are not serpentine. We believe this indicates that, with otherwise suitable habitat conditions, the bay checkerspot is capable of living in nonserpentine soil areas.

In many years, bay checkerspot larvae may use a secondary host plant species, for instance, when dwarf plantain dries up while prediapause larvae are still feeding. *Castilleja (Orthocarpus) densiflora* (purple owl's-clover) and *Castilleja exserta* (*Orthocarpus purpurascens*) (exserted paintbrush) are known secondary host plants that often remain edible later in the season than dwarf plantain. Bay checkerspot adults also visit flowers for nectar. Nectar plants commonly visited include *Lomatium* spp. (desert parsley), *Lasthenia californica (= chrysostoma)* (California goldfields), *Layia platyglossa* (tidy-tips), *Muilla maritima*, and others. Moderate grazing is normally compatible with habitat for the bay checkerspot, since grazing can reduce the density and height of nonnative plants that compete with the native plants supporting the butterfly.

Adult bay checkerspots are capable of dispersing over long distances. Movements of more than 5.6 kilometers (km) (3.5 miles (mi)) have been documented (Harrison 1989; Service 1998). In all dispersal observations and experiments, long-distance movements are hard to detect, and thus their frequency and importance are difficult to quantify. Long-distance dispersal, especially by fertilized females carrying eggs, is likely to be important to the natural reestablishment of bay checkerspot populations that have disappeared. Qualitative observations suggest that bay checkerspots move readily over suitable grassland habitat, but are more reluctant to cross scrub, woodland, or other unsuitable habitat. Roads, especially those traveled more heavily and at higher speeds, present a risk of death or injury to dispersing bay checkerspots. Where corridors that facilitate dispersal exist, they may support the persistence of bay checkerspot populations.

The bay checkerspot's life cycle is closely tied to host plant biology. Host plants germinate anytime from early October to late December, and senesce (dry up and die) from early April to mid May. Most of the active parts of the bay checkerspot life cycle also occur during this period. Adults emerge from pupae (a transitional stage between caterpillar and adult butterfly) in early spring, and feed on nectar, mate, and lay eggs during a flight season that typically lasts for 4 to 6 weeks in the period between late February to early May. The eggs hatch and the tiny larvae feed for about 2 to 3 weeks before entering diapause (a temporary cessation of development) in mid to late spring. The postdiapause larvae emerge after winter rains stimulate germination of *Plantago*, and feed and bask until they are large enough to pupate and emerge as adults (Service 1998).

### Previous Federal Action

On October 21, 1980, we were petitioned by Dr. Bruce O. Wilcox, Dennis D. Murphy, and Dr. Paul R. Ehrlich to list the bay checkerspot as an endangered species. We published a Notice of Status Review on February 13, 1981 (46 FR 12214). Following our status review, we found that listing the bay checkerspot was warranted but precluded by other pending listing actions (49 FR 2485). We proposed the bay checkerspot for listing as endangered with critical habitat on September 11, 1984 (49 FR 35665), and listed the species as threatened on September 18, 1987 (52 FR 35366). At the time of listing, because of difficulty in resolving the value of specific habitats to the species and assessing the activities being conducted in those areas, we concluded that critical habitat was not determinable. We published a Recovery Plan for Serpentine Soil Species of the San Francisco Bay Area (Recovery Plan) in September 1998 that includes the bay checkerspot (Service 1998), as required under section 4(f) of the Endangered Species Act of 1973, as amended (Act) (16 U.S. C. 1531 *et seq.*).

On June 30, 1999, the Center for Biological Diversity filed a complaint against us challenging our critical habitat findings for seven species, including the bay checkerspot. On August 30, 2000, the United States District Court for the Northern District of California (*Southwest Center for Biological Diversity* v. *Bruce Babbitt, et al.*, CIV 99–3202 SC) ruled on several of the species involved, including the bay checkerspot. The court ordered us to propose critical habitat within 60 days of the ruling and to finalize the designation within 120 days of the proposed designation.

### Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management consideration or protection, and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures that are necessary to bring an endangered species or a threatened species to the point at which listing under the Act is no longer necessary.

Section 4(b)(2) of the Act requires that we base critical habitat proposals upon the best scientific and commercial data available, after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude areas from critical habitat designation when the benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in the extinction of the species (section 4(b)(2) of the Act).

Designation of critical habitat can help focus conservation activities for a listed species by identifying areas that contain the physical and biological features essential for the conservation of that species. Designation of critical habitat alerts the public as well as land-managing agencies to the importance of these areas.

Critical habitat also identifies areas that may require special management considerations or protection, and may provide protection to areas where significant threats to the species have been identified. Critical habitat receives protection from destruction or adverse

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modification through required consultation under section 7 of the Act with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences on Federal actions that are likely to result in the adverse modification or destruction of proposed critical habitat. Aside from the protection that may be provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat.

Section 7(a)(2) of the Act requires Federal agencies to consult with us to ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a threatened or endangered species, or result in the destruction or adverse modification of critical habitat. In 50 CFR 402.02, "jeopardize the continued existence" (of a species) is defined as engaging in an activity likely to result in an appreciable reduction in the likelihood of survival and recovery of a listed species. "Destruction or adverse modification" (of critical habitat) is defined as a direct or indirect alteration that appreciably diminishes the value of critical habitat for the survival and recovery of the listed species for which critical habitat was designated. Thus, the definitions of "jeopardy" to the species and "adverse modification" of critical habitat are nearly identical.

Critical habitat identifies specific areas that have features that are essential to the conservation of a listed species and that may require special management considerations or protection. The proposed critical habitat areas are considered essential to the conservation of the bay checkerspot butterfly as described in the Recovery Plan (Service 1998). However, designating critical habitat does not, in itself, lead to recovery of a listed species. Designation does not create a management plan, establish numerical population goals, or prescribe specific management actions (inside or outside of critical habitat). Specific management recommendations for areas designated as critical habitat are most appropriately addressed in recovery, conservation, and management plans, and through section 7 consultations and section 10 permits.

### Methods

In determining areas that are essential to conserve the bay checkerspot, we used the best scientific information available to us. This information included habitat suitability and site-specific species information. We have emphasized areas of current and historical bay checkerspot occurrences, especially larger sites in proximity to known occurrences. To maintain genetic and demographic interchange that will help maintain the viability of a regional metapopulation, we included corridor areas that allow movement between populations. Dispersal is a crucial function for a species with metapopulation dynamics like the bay checkerspot.

We used data on known and historic locations and maps of serpentine soils to identify potentially important areas. Then, through the use of 1990s digital orthophotos available through the Bay Area Digital GeoResource (BADGER) website (http://badger.parl.com), and limited ground checking, we estimated the current extent of suitable breeding habitat. We included in critical habitat both suitable habitat and areas that link suitable breeding habitat, since these links facilitate movement of individuals between habitat areas, and are important for dispersal and gene flow and thus to the conservation of the species.

Our 1984 proposal to list the bay checkerspot butterfly with critical habitat (49 FR 35665) proposed five critical habitat zones. Four of the five are included in this proposal, with modifications based on improved knowledge of the biology and habitat of the species. Since the original proposal, the fifth zone (Woodside Zone) has been mostly converted to housing, so we are no longer proposing it for designation as critical habitat. Since 1984, a great deal of literature on the bay checkerspot butterfly, both published and unpublished, has added to our understanding of the species (see literature cited in Service 1998; Weiss 1999; Weiss and Launer 2000). Based on this expanded information, we have been able to identify habitats and populations that were poorly documented before the mid-1980s, and assess their significance. Besides the four previously identified critical habitat zones, this critical habitat proposal identifies 11 additional habitat units essential to the conservation of the bay checkerspot, for a total of 15 critical habitat units.

### Primary Constituent Elements

In accordance with section 3(5)(A)(I) of the Act and regulations at 50 CFR 424.12(b), in determining which areas to propose as critical habitat, we must consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species. These include, but are not limited to space for individual and population growth and for normal behavior; food, water, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing of offspring; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

The primary constituent elements of critical habitat for the bay checkerspot are those habitat components that are essential for the primary biological needs of foraging, sheltering, breeding, maturation, and dispersal. The areas we propose to designate as critical habitat provide some or all of the known primary constituent elements for the species, which include: areas of open grassland; stands of *Plantago erecta, Castilleja exserta,* or *Castilleja densiflora;* spring flowers providing nectar; pollinators of the bay checkerspot's food and nectar plants; soils derived from serpentinic rock; stable holes or cracks in the soil and surface rocks or rock outcrops; wetlands providing moisture during times of spring drought; and space for dispersal between habitable areas. In addition, topography with varied slopes and aspects is a primary constituent element to be conserved when it is present in combination with one or more of the primary constituent elements above.

Appropriate grassland vegetation provides cover for larvae, pupae and adults, egg-laying stimuli and sites for females, and adequate open ground for larvae to be able to crawl efficiently in search of foraging, basking, diapause, or pupation sites (Service 1998). Stands of food plants, including nectar plants, are important in the butterfly's life cycle. The bay checkerspot's primary larval food plant is *Plantago erecta,* an annual, native plantain. The larvae also often use a secondary food plant species, usually either *Castilleja (Orthocarpus) densiflora* (purple owl's-clover) or *Castilleja exserta (Orthocarpus purpurascens)* (exserted paintbrush). These secondary food plants tend to remain edible later in the season than the plantain. Bay checkerspot adults benefit from visiting flowers for nectar. Nectar plants commonly visited include *Lomatium* spp. (desertparsley), *Lasthenia californica (= chrysostoma)* (California goldfields), *Layia platyglossa* (tidy-tips), *Muilla maritima,* and others.

Adequate native pollinators to sustain populations of *Castilleja* and nectar species, including but not limited to such groups as bumblebees and solitary bees, are important to the value of critical habitat because these plants are dependent on pollinators to reproduce and perpetuate their populations in the area. *Plantago erecta* is thought to be self-pollinating.



The butterfly usually is found associated with grasslands on serpentine soils, such as the Montara soil series. In Santa Clara County, the Inks and Climara soil series are related soils and often have inclusions of Montara (U.S. Soil Conservation Service 1974). Henneke and other serpentine soils also occur within the range of the butterfly. Serpentine soils often support other primary constituent elements, but they are not limited to serpentine soils. Soil structure with stable holes or cracks and surface rocks or rock outcrops provide cover and shelter for bay checkerspot larvae seeking diapause sites and basking sites.

Bay checkerspot adults have been observed to fly considerable distances during drought conditions to draw water or solutes from moist soils around wetlands ("puddling," Launer *et al.* 1993). Triggering of the puddling behavior by drought conditions suggests it is a directed, adaptive behavior, and that the butterflies are seeking out moist areas during times of water or heat stress to obtain essential nutrients or water.

Adult bay checkerspots are capable of dispersing over long distances. Movements of more than 5.6 kilometers (km) (3.5 miles (mi)) have been documented (see Service 1998), and longer movements are possible. Adult dispersal, especially by fertilized females carrying eggs, is vital to the maintenance of natural bay checkerspot metapopulation structure, which requires reestablishment or replenishment of populations that are at or near local extinction. Roads, especially those traveled more heavily and at higher speeds, present a risk of death or injury to dispersing bay checkerspots. Where open spaces exist that facilitate dispersal, they may support the persistence of bay checkerspot populations and metapopulations. Some habitats or land uses are thought to be more suitable for dispersal than others; for example, grassland may be more readily crossed than woodland or landscaped areas. But documented long-distance movements demonstrate that the butterfly is sometimes capable of crossing a variety of substrates (Service 1998).

Topographic diversity provides opportunities for early season warmth as well as cool north- and east-facing slopes that are a refuge for the species during droughts. Bay checkerspot larvae develop more rapidly when they can bask in sunlight that penetrates short-statured grassland vegetation. Adults also use warm exposures for basking, and find early season nectar plants on warm south- and west-facing slopes.

### Criteria Used To Identify Critical Habitat

In an effort to map areas that have the features essential to the conservation of the species, we used data on known bay checkerspot locations and conservation planning areas that were identified in the final recovery plan (Service 1998) as essential for the recovery of the species.

We also considered the existing status of lands in designating areas as critical habitat. The bay checkerspot is known to occur on State, county, and private lands. The range of critical habitat extends in the south from the San Martin area, in Santa Clara County, north to San Bruno Mountain in San Mateo County. We could not depend on Federal lands for critical habitat designation because we are not currently aware of any Federal lands within the range of the bay checkerspot that can be inhabited by the butterfly. We are not aware of any Tribal lands in or near our proposed critical habitat units for the bay checkerspot. However, should we learn of any Tribal lands in the vicinity of the critical habitat designation subsequent to this proposal, we will coordinate with the Tribes before making a final determination as to whether any Tribal lands should be included as critical habitat for the bay checkerspot.

Section 10(a) of the Act authorizes us to issue permits to take listed species incidental to otherwise lawful activities. An incidental take permit application must be supported by a habitat conservation plan (HCP) that identifies conservation measures that the permittee agrees to implement for the species to minimize and mitigate the impacts of the requested incidental take. One small, short-term HCP covers the bay checkerspot in about 10 acres of critical habitat through November 2001. This HCP permits temporary project-related impacts from electric transmission line work. To date, project construction anticipated to affect the bay checkerspot is substantially complete (see the Relationship to Habitat Conservation Plans section below for additional information on the relationship between HCPs and critical habitat designation).

In defining critical habitat boundaries, we made an effort to avoid developed areas, such as towns and other similar lands, that are unlikely to contribute to bay checkerspot conservation. However, the minimum mapping unit that we used did not allow us to exclude all developed areas, such as towns, or housing developments, or other lands unlikely to contain the primary constituent elements essential for conservation of the bay checkerspot. Existing features and structures within the boundaries of the mapped units, such as buildings, roads, aqueducts, railroads, airports, other paved areas, lawns, and other urban landscaped areas will not contain one or more of the primary constituent elements. Federal actions limited to those areas, therefore, would not trigger a section 7 consultation, unless they affect the species and/or primary constituent elements in adjacent critical habitat.

### Proposed Critical Habitat Designation

The approximate area encompassing proposed critical habitat by land ownership is shown in Table 1. Lands proposed are under private and State and local ownership. The species is not known to occur or to have historically occurred on Federal lands. Lands proposed as critical habitat have been divided into 15 Critical Habitat Units. Critical habitat proposed for the bay checkerspot includes 10,597 hectares (ha) (26,182 acres (ac)), with 806 ha (1,992 ac) in San Mateo County and 9,791 ha (24,190 ac) in Santa Clara County. Because the bay checkerspot is nearly confined to island-like patches of habitat, its critical habitat is easily categorized into separate areas or units (see maps). We present brief descriptions of each unit, and our reasons for proposing it as critical habitat, below.

Conserving the butterfly includes the need to reestablish historic populations of the species to areas within several of the units, in order to secure the butterfly in representative sites in its former range, and in a range of habitat and climate conditions. Returning the butterfly to good representatives of its former diversity of sites and habitat and climate conditions is necessary to reduce the long-term risk of range-wide extinction of the species (Service 1998).

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TABLE 1.—APPROXIMATE CRITICAL HABITAT IN HECTARES (HA) AND ACRES (AC) BY COUNTY AND LAND OWNERSHIP

[Area estimates reflect critical habitat unit boundaries; however, not all the areas within those broad boundaries, such as cities, towns, or other developments, contain habitat features considered essential to the survival of the bay checkerspot butterfly]

| County | Federal | Local/State | Private | Total |
|---|---|---|---|---|
| San Mateo | 0 | 519 ha (1,283 ac) | 287 ha (709 ac) | 806 ha (1,992 ac) |
| Santa Clara | 0 | 1,704 ha (4,210 ac) | 8,087 ha (19,980 ac) | 9,791 ha (24,190 ac) |
| Total | 0 | 2,223 ha (5,493 ac) | 8,374 ha (20,689 ac) | 10,597 ha (26,182 ac) |

*Unit 1. Edgewood Park/Triangle Unit*

Occurring in San Mateo County, this unit comprises 217 ha (535 ac) in T.5 S., R.4 W. (Mount Diablo meridian/base line). Included is most of Edgewood Natural Preserve, a county park southeast of the junction of Edgewood Road and I–280, and watershed lands of the San Francisco Water Department within the triangle formed by I–280, Edgewood Road, and Canada Road, as well as a small additional area of serpentine soil on the west side of Canada Road. Much of this area also falls within the San Francisco State Fish and Game Refuge. The area supports the Edgewood population of the butterfly discussed in the species' recovery plan, which is the main population of the San Mateo metapopulation of the bay checkerspot (Service 1998). Without the Edgewood population the San Mateo metapopulation would almost certainly go extinct, resulting in the loss of one of only two metapopulations of the bay checkerspot and a significant range reduction for the species. This population is also the northernmost remaining population of the species. The unit contains considerable areas of good habitat, although additional management attention may be needed for the butterfly to thrive here.

*Unit 2. Jasper Ridge Unit*

Occurring within San Mateo County, the unit covers 287 ha (709 ac) in Stanford University's Jasper Ridge Biological Preserve, in T.6 S., R.3 W. (Mount Diablo meridian/base line). There are decades of data and dozens of published scientific papers about the Jasper Ridge population of the bay checkerspot. The population has declined severely in recent years, and may now be extirpated. However, we are confident that a stable population of the species can be restored to Jasper Ridge. The Jasper Ridge population is essential as a supporting element of the San Mateo metapopulation, and a backup to the Edgewood and prospective San Bruno Mountain populations.

*Unit 3. San Bruno Mountain Unit*

This unit also occurs in San Mateo County, with approximately 303 ha (749 ac) in T.3 S., R.5 W. (Mount Diablo meridian/base line), above the 152 m (500 ft) elevation contour and east of the western Pacific Gas and Electric transmission corridor on San Bruno Mountain. This unit is mostly within San Bruno Mountain State and County Park, and is inside the boundaries of the San Bruno Mountain Area Habitat Conservation Plan area. The bay checkerspot formerly inhabited this area, but is believed to have been extirpated around 1986 by a combination of factors, including over-collection and a fire that burned its habitat. However, this unit has supported a substantial bay checkerspot population in the past, and it is reasonable to expect that the butterfly can be reestablished here.

San Bruno Mountain represents the most northerly part of the species' former range on the San Francisco peninsula with reasonably good conditions to support the butterfly. The San Bruno Mountain unit is essential as a supporting element of the San Mateo metapopulation and a backup to the Edgewood and Jasper Ridge populations.

*Unit 4. Bear Ranch Unit*

The Bear Ranch unit, totaling 250 ha (618 ac), lies west of Coyote Lake (Coyote Reservoir) in the eastern hills of the Santa Clara Valley, in southern Santa Clara County (T.9 S., R.4 E. and T.10 S., R.4 E., Mount Diablo meridian/base line). The unit is named for a ranching property that partly occurs in the unit. The ranch and lands, including and surrounding the unit, are now owned and managed by the Santa Clara County Parks and Recreation Department. This location represents one of the most recent population discoveries of the bay checkerspot and has been documented for several years as a persistent population. The population is also one of the most southerly occurrences of the butterfly. It lies about 10 km (6 mi) southeast of the Kirby core population area described in the recovery plan, with some intervening habitable areas and adequate dispersal corridors. Over 40 ha (100 ac) of mapped serpentine soils in several large to small patches occur within the unit. In addition to the significance of its position establishing the outer perimeter of the range of the species, the recovery plan makes the protection of large, good quality habitat areas near core populations, such as this, a high priority (Service 1998).

*Unit 5. San Martin Unit*

This unit includes 237 ha (586 ac) west of San Martin, in the western foothills of the Santa Clara Valley in southern Santa Clara County (T.9 S., R.3 E). Included in the designated critical habitat are extensive areas of serpentine soils and intervening areas that may support habitat or be needed for dispersal. Regular occupation of the unit by the bay checkerspot has been documented, although no recent quantitative surveys are available of this population. The unit lies entirely on private lands in unincorporated Santa Clara County, about 6.4 km (4 mi) west-southwest of the Bear Ranch unit and 11 km (7 mi) south of the Kirby core area. This is the second population at the southern periphery of the range. The recovery plan makes the protection of large, good quality habitat areas near core populations, such as this, a high priority (Service 1998). We are not aware of any public lands in the unit.

*Unit 6. Communications Hill Unit*

Communications Hill, and adjacent hilltops in south-central San Jose, are formed by outcroppings of serpentine rock, with grasslands capable of supporting the bay checkerspot. This unit occurs in Santa Clara County and covers 179 ha (443 ac) of mostly undeveloped land. It also crosses a major road and railroad tracks, and includes a quarry that we believe, after appropriate reclamation, could be restored to bay checkerspot habitat. The butterfly has been documented on Communications Hill in the past, but no recent comprehensive surveys for the species have been conducted in the area. Whether the unit is currently occupied is not known. The recovery plan calls for conservation of larger habitat areas currently or historically occupied by the bay checkerspot. This location also represents the northwestern-most remnant of the Santa Clara County metapopulation. The unit is surrounded by Curtner Avenue, Almaden Expressway, Hillsdale Avenue, and Monterey Road (T.7 S., R.1 E., Mount Diablo meridian/base line).

Much of this unit lies on private lands within unincorporated lands, with a smaller area in the City of San Jose. Portions of a Santa Clara County communications facility and a San Jose water company facility may fall within the unit. Only currently undeveloped areas supporting the primary constituent elements of habitat for the butterfly would be subject to regulatory oversight of any Federal actions.



*Unit 7. Kalana Hills Unit*

The Kalana Hills unit in Santa Clara County comprises 240 ha (592 ac) on the southwest side of the Santa Clara Valley between Laguna Avenue and San Bruno Avenue (T.9 S., R.2 E, Mount Diablo meridian/base line). Four serpentine outcrops form hills or hillsides in this area. At least one population of the bay checkerspot has been documented on one or all of these outcrops in recent surveys. This unit also includes intervening areas that connect the outcrops. The Coyote Ridge unit lies about 3.2 km (2 mi) to the northeast, the Santa Teresa unit about 2 km (1.2 mi) to the northwest, the San Vicente-Calero unit about 3.2 km (2 mi) to the west, and the Morgan Hill unit about 3.2 km (2 mi) to the southeast. Because of its proximity to several other, large population centers for the butterfly, we expect the Kalana Hills unit to be regularly occupied by the species. If, as is possible given the bay checkerspot's large population swings, the butterfly's population in the unit were to die out, it is likely to be quickly reestablished by bay checkerspots immigrating from adjacent sites. We are not aware of any public lands in the unit. A portion of the largest and northernmost serpentine outcrop is within the limits of the City of San Jose; the remainder of the unit is on private lands in unincorporated Santa Clara County.

*Unit 8. Kirby Unit*

The Kirby critical habitat unit includes 2,855 ha (7,053 ac) along the southern portion of "Coyote Ridge" in Santa Clara County (T.8 S., R.2 E., T.8 S., R.3 E., and T.9 S., R.3 E., Mount Diablo meridian/base line). It contains the Kirby area for the bay checkerspot discussed in the species' Recovery Plan (Service 1998). The ridge, informally known as Coyote Ridge, runs northwest to southeast, parallel to and east of Highway 101 from Yerba Buena Road to Anderson Reservoir in Santa Clara County, and forms the eastern slope of the Santa Clara Valley (U.S. Geological Survey (USGS) 7.5 minute quadrangles San Jose East, Lick Observatory, Santa Teresa Hills, and Morgan Hill. The ridge is not named on these maps). Coyote Ridge also parallels the Silver Creek Fault and Silver Creek itself. Extensive serpentine soil areas, and four population areas for the bay checkerspot (Kirby, Metcalf, San Felipe, and Silver Creek Hills), lie on or adjacent to this ridge and fault system (Service 1998). Metcalf Canyon, Silver Creek, and nonserpentine soil areas create natural divisions among these four population areas. The Kirby unit is the southernmost of four critical habitat units corresponding to the four population areas along Coyote Ridge, and runs along this ridge east of Highway 101 and Coyote Creek from Metcalf Canyon south to Anderson Lake. The northern boundary of the Kirby unit abuts the Metcalf unit. The northwest tip of the Kirby unit also connects to the Tulare Hill Corridor unit.

The Kirby critical habitat unit regularly supports one of the largest populations of the bay checkerspot, and is considered one of the centers of the species' Santa Clara County metapopulation. The recovery plan considers protection of the area of the highest priority for conservation of the species. The unit contains several hundred acres of diverse serpentine grassland habitat as well as nectaring areas, seasonal wetlands, and dispersal areas. The unit includes lands within the limits of the City of San Jose, private lands in unincorporated Santa Clara County, and small areas in the City of Morgan Hill. Public lands in this unit include the Santa Clara County Field Sports Park and portions of Santa Clara County Motorcycle Park, Anderson Lake County Park, Coyote Creek Park, and lands of the Santa Clara Valley Water District. A 101 ha (250 ac) reserve, leased by Waste Management Inc. on behalf of the Kirby Conservation Trust to further conservation of the bay checkerspot, also falls within the unit. The Kirby Conservation Trust has funded extensive research on the bay checkerspot for more than a decade at the lease site, greatly improving our understanding of the ecology, population dynamics, and conservation needs of the species (see literature cited in Service 1998).

*Unit 9. Morgan Hill Unit*

The Morgan Hill unit in Santa Clara County includes 374 ha (925 ac) northwest of the City of Morgan Hill in Santa Clara County (T.9 S., R.2 E., T.9 S., R.3 E., Mount Diablo meridian/base line) . It lies less than 3.2 km (2 mi) southwest of the Coyote Ridge unit and about 3.2 km (2 mi) southeast of the Kalana Hills unit. This is the area described as "north of Llagas Avenue" in our 1998 recovery plan. The unit is partly within the limits of the City of Morgan Hill and partly on private lands in unincorporated Santa Clara County. Murphy Springs Park, a small city park, is within the unit. The Morgan Hill unit has large areas of serpentine soils and grassland with a variety of slope exposures, suitable for the bay checkerspot. The unit has been documented to be occupied by the butterfly in the past, as well as in more recent surveys in the past 2 to 3 years. Because of its large habitat area and proximity to core populations of the bay checkerspot, the recovery plan considers protection of this area essential to the conservation of the species (Service 1998).

*Unit 10. Metcalf Unit*

This unit includes 1,616 ha (3,994 ac) in Santa Clara County, east of Highway 101, south of Silver Creek Valley Road, north of Metcalf Canyon, and west of Silver Creek (T.8 S., R.2 E., Mount Diablo meridian/base line). The unit contains the Metcalf population area for the bay checkerspot, one of the four largest habitat areas and three largest current population centers for the butterfly (Service 1998). Hundreds of acres of serpentine soils and thousands of bay checkerspots occur within the unit. This area is considered one of the centers of the species' Santa Clara County metapopulation. The recovery plan considers protection of the area of the highest priority for conservation of the butterfly. This unit adjoins the Kirby unit to the south, San Felipe unit to the east, Silver Creek Hills unit to the north, and Tulare Hill Corridor unit to the west, and provides crucial habitat connectivity for butterfly dispersal among these areas. The Metcalf unit lies in the City of San Jose and on private lands in unincorporated Santa Clara County. Portions of Santa Clara County Motorcycle Park, Coyote Creek Park, and lands of Santa Clara Valley Water District fall within the unit.

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*Unit 11. San Felipe Unit*

This unit includes 404 ha (998 ac) in Santa Clara County, southwest of San Felipe Road and north of Metcalf Road (T.8 S., R.2 E., Mount Diablo meridian/base line), primarily on private lands in unincorporated county lands, but also within San Jose city limits. The unit contains the San Felipe population area for the bay checkerspot, one of the four largest habitat areas and three largest current population centers for the butterfly (Service 1998). This area is considered one of the centers of the species' Santa Clara County metapopulation. The recovery plan considers protection of the area of the highest priority for conservation of the butterfly. Several hundred acres of serpentine soils occur within the unit with nectaring and dispersal areas. We are not aware of any public lands in the unit.

*Unit 12. Silver Creek Unit*

The Silver Creek unit comprises 700 ha (1,730 ac), primarily within the limits of the City of San Jose, but with some area on private lands in unincorporated Santa Clara County (T.7 S., R.1 E., T.7 S., R.2 E., T.8 S., R.2 E., Mount Diablo meridian/base line). This unit is surrounded by Highway 101 and Coyote Creek on the west, Yerba Buena Road on the north, Silver Creek on the east and northeast, and Silver Creek Valley Road on the south. The unit includes the Silver Creek Hills population area for the bay checkerspot (Service 1998). It includes nearly 400 ha (1,000 ac) of contiguous serpentine soils, as well as other scattered serpentine outcrops, as well as habitat less suitable for breeding but needed for nectar-feeding or dispersal. Small areas of public lands in this unit include portions of Coyote Creek Park and Silver Creek Linear Park. A 52 ha (128 ac) private bay checkerspot preserve dedicated by Shea Homes, the Silver Creek Valley Country Club Butterfly Habitat Reserve, lies within this unit. Also included is the proposed Ranch on Silver Creek development, a 28 ha (70 ac) preserve proposed by William Lyon Homes (former Presley Homes), and the proposed Ryland Homes Silver Ridge development and private open space. Several electric transmission lines and two major natural gas lines cross the unit. Not all of the area within the unit is capable of supporting the butterfly or its primary constituent elements, and such areas would not be subject to section 7 consultation. However, we have included these areas in the critical habitat designation in the interests of having a clear boundary that is readily located on the ground, or because of mapping uncertainties.

In the last several years, a small population of the bay checkerspot has been documented in the Silver Creek unit, and the area has a long history of much larger populations. Portions of the unit known to have been inhabited by the butterfly in the past have not been surveyed recently, or are currently in degraded condition, or both. We believe that the Silver Creek Hills population is likely to increase, and that much of the degraded area could be restored to useful breeding habitat. The Silver Creek unit has extensive, diverse, and high-quality habitat, and represents the northernmost unit of the Santa Clara County metapopulation. The Silver Creek unit provides a population reservoir critical to the survival of the Santa Clara County metapopulation of bay checkerspots—the larger and more viable of the two remaining metapopulations (Service 1998).

*Unit 13. San Vicente-Calero Unit*

The San Vicente-Calero unit contains 759 ha (1,875 ac) within and to the west of Calero County Park, Santa Clara County (T.8 S., R.1 E., T.8 S., R.2 E., T.9 S., R.1 E., and T.9 S., R.2 E., Mount Diablo meridian/base line). This area supports a known population of the bay checkerspot in a large area of good-quality habitat; other areas within the unit that are apparently suitable for the butterfly have not been surveyed. The unit is also within butterfly dispersal distance of the Santa Teresa Hills unit (see below), which we consider to be capable of supporting a very large population of the butterfly, and the Kalana Hills unit (number 9, above), which are themselves accessible to and from other units. Therefore we believe the San Vicente-Calero population can contribute significantly to maintaining the Santa Clara County metapopulation of the bay checkerspot. For all these reasons the recovery plan considers protection of this area essential to the conservation of the species. The unit is south of McKean Road and east of the town of New Almaden, Almaden Road, and Alamitos Creek. It lies about 1.6 km (1 mi) south of the Santa Teresa unit and about 3.2 km (2 mi) west of the Kalana Hills unit. Portions of the unit outside the county park are within the limits of the City of San Jose.

*Unit 14. Santa Teresa Hills Unit*

The Santa Teresa Hills unit includes 1,821 ha (4,500 ac) in Santa Clara County (T.8 S., R.1 E. and T.8 S., R.2 E., Mount Diablo meridian/base line) with extensive areas of serpentine soils. Portions of the Santa Teresa Hills are known to support the butterfly now, and have supported the species in the past, but no current comprehensive survey of the butterfly in the area is available. We believe that the Santa Teresa Hills could support a significant population of bay checkerspots. In addition to adding a fifth substantial population to the Santa Clara County metapopulation, conservation and management of the Santa Teresa Hills population would support development of a strong population of the butterfly in a slightly cooler, moister area of the county, at a site that may experience less air pollution than the more eastern units. The Santa Teresa Hills critical habitat unit is intended to include most undeveloped habitat in the area, as well as intervening areas that are unsurveyed or less suitable but needed for dispersal among higher-quality areas. The unit lies north of Bailey Avenue, McKean Road, and Almaden Road, south of developed areas of the city of Santa Clara, and west of Santa Teresa Boulevard. The unit abuts the Tulare Hill Corridor unit.

*Unit 15. Tulare Hill Corridor Unit*

The Tulare Hill Corridor unit, 355 ha (876 ac) in Santa Clara County, connects the Coyote Ridge (Kirby and Metcalf, and through them, San Felipe and Silver Creek) and Santa Teresa units. Tulare Hill is a prominent serpentine hill that rises from the middle of the Santa Clara Valley in southern San Jose, west of the crossing of Metcalf Road and Highway 101 (T.8 S., R.2 E., Mount Diablo meridian/base line). Extensive habitat on the hill is currently occupied by the bay checkerspot, and is essential both as a population center and for dispersal across the valley. The Metcalf and Kirby populations of the bay checkerspot lie less than 1 kilometer (0.62 mi) to the northeast, separated by a major highway and a narrow band of other unfavorable habitat. The Santa Teresa Hills population area for the species lies about 2 km (1.2 mi) to the southwest, with dispersal habitat in between. We believe the long-term viability of the bay checkerspot depends on the presence of a corridor for dispersal of adults to and from the Santa Teresa Hills and Coyote Ridge (Service 1998). Tulare Hill is an ideal location for such a corridor because of the narrow extent of the valley and the development in this location, the presence of high elevations on the hill that may attract butterflies over busy roads and developed areas, and the presence of suitable habitat on Tulare Hill itself. Migrant butterflies from either Santa Teresa Hills or Coyote Ridge may settle on Tulare Hill, contributing individuals and genetic diversity to the population there, and adults from Tulare Hill may migrate to the adjacent habitat areas.

Public lands within the designated unit include parts of Coyote Creek Park, Metcalf Park, and Santa Teresa County Park. Roughly half of Tulare Hill itself is within the limits of the City of San Jose, the remainder on private lands in unincorporated Santa Clara County. Several major electrical transmission lines cross the unit. Some areas within the unit are not inhabited by bay checkerspot individuals but can function as dispersal corridor.



**Effects of Critical Habitat Designation**

*Section 7 Consultation*

Section 7(a) of the Act requires that Federal agencies, including the Service, must ensure that actions they fund, authorize, or carry out do not destroy or adversely modify critical habitat to the extent that the action appreciably diminishes the value of the critical habitat for the survival and recovery of the species. Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Under section 7(a) of the Act, Federal agencies, including the Service, evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) and regulations at 50 CFR 402.10 requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory.

We may issue a formal conference report if requested by a Federal agency. Formal conference reports on proposed critical habitat contain a biological opinion that is prepared according to 50 CFR 402.14, as if critical habitat were designated. If such designation occurs, we may adopt the formal conference report as a biological opinion, if no significant new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)).

When a species is listed or critical habitat is designated, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with us. Through this consultation, we would advise the agencies whether the permitted actions would likely jeopardize the continued existence of the species or destroy or adversely modify critical habitat.

When we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid the likelihood of jeopardizing the continued existence of listed species or resulting in the destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conferencing with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat.

Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers (Corps) under section 404 of the Clean Water Act, or a section 10(a)(1)(B) permit from the Service, or some other Federal action, including funding (*e.g.*, from the Federal Highway Administration (FHWA) or Federal Emergency Management Agency (FEMA)) will also be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat, and actions on non-Federal lands that are not federally funded, authorized, or permitted do not require section 7 consultation. Not all of the areas within some of the units are capable of supporting the butterfly or its primary constituent elements, and such areas would not be subject to section 7 consultation. However, in the interests of having a clear boundary that is readily located on the ground, or because of mapping uncertainties, we have included some areas that may not be critical habitat within some units described below.

To properly portray the effects of critical habitat designation, we must first compare the section 7 requirements for actions that may affect critical habitat with the requirements for actions that may affect a listed species. Section 7 prohibits actions funded, authorized, or carried out by Federal agencies from jeopardizing the continued existence of a listed species or destroying or adversely modifying the listed species' critical habitat. Actions likely to "jeopardize the continued existence" of a species are those that would appreciably reduce the likelihood of the species' survival and recovery. Actions likely to "destroy or adversely modify" critical habitat are those that would appreciably reduce the value of critical habitat for the survival and recovery of the listed species.

Common to both definitions is an appreciable detrimental effect on both survival and recovery of a listed species. Given the similarity of these definitions, actions likely to destroy or adversely modify critical habitat would almost always result in jeopardy to the species concerned, particularly when the area of the proposed action is occupied by the species concerned. Designation of critical habitat in areas occupied by the bay checkerspot is not likely to result in a significant regulatory burden above that already in place due to the presence of the listed species. For some previously reviewed actions in instances where critical habitat is subsequently designated. In those cases where activities occur on designated critical habitat where bay checkerspot are not found at the time of the action, an additional section 7 consultation with the Service not previously required may be necessary for actions funded, authorized, or carried out by Federal agencies.

Section 4(b)(8) of the Act requires us to briefly describe and evaluate in any proposed or final regulation that

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designates critical habitat those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation. When determining whether any of these activities may adversely modify critical habitat, we base our analysis on the effects of the action on the entire critical habitat area and not just on the portion where the activity will occur. Adverse effects on constituent elements or segments of critical habitat generally do not result in an adverse modification determination unless that loss, when added to the environmental baseline, is likely to appreciably diminish the capability of the critical habitat to satisfy essential requirements of the species. In other words, activities that may destroy or adversely modify critical habitat include those that alter the primary constituent elements (defined above) to an extent that the value of critical habitat for both the survival and recovery of the bay checkerspot is appreciably diminished.

Activities that, when carried out, funded, or authorized by a Federal agency, may affect critical habitat and require that a section 7 consultation be conducted include, but are not limited to:

(1) Ground disturbance, including but not limited to, grading, discing, ripping and tilling;

(2) Removing, destroying, or altering vegetation (*e.g.*, including altering grazing practices and seeding);

(3) Water contracts, transfers, diversion, impoundment, application, or conveyance, groundwater pumping, irrigation, or other activity that wets or inundates habitat, creates barriers or deterrents to dispersal, or results in habitat being converted to lower values for the butterfly (*e.g.*, conversion to urban development, vineyards, landscaping, etc.);

(4) Sale, exchange, or lease of critical habitat that is likely to result in the habitat being destroyed or degraded;

(5) Recreational activities that significantly deter the use of critical habitat by bay checkerspots or alter habitat through associated maintenance activities (*e.g.*, off-road vehicle parks, golf courses, trail construction or maintenance);

(6) Construction activities that destroy or degrade critical habitat (*e.g.*, urban and suburban development, building of recreational facilities such as off-road vehicle parks and golf courses, road building, drilling, mining, quarrying and associated reclamation activities); and

(7) Application of pesticides, herbicides, fertilizers, or other chemicals or biological agents.

Any of the above activities that appreciably diminish the value of critical habitat to the degree that they affect the survival and recovery of the bay checkerpot may be considered an adverse modification of critical habitat. We note that such activities may also jeopardize the continued existence of the species.

If you have questions regarding whether specific activities will constitute destruction or adverse modification of critical habitat resulting from a Federal action, contact the Field Supervisor, Sacramento Fish and Wildlife Office (see **ADDRESSES** section). Requests for copies of the regulations on listed wildlife, and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Branch of Endangered Species, 911 N.E. 11th Ave, Portland, OR 97232 (telephone 503/231–2063; facsimile 503/231–6243).

**Relationship to Habitat Conservation Plans**

Section 4(b)(2) of the Act allows us broad discretion to exclude from critical habitat designation areas where the benefits of exclusion outweigh the benefits of designation, provided the exclusion will not result in the extinction of the species. We believe that in most instances the benefits of excluding HCPs from critical habitat designations will outweigh the benefits of including them.

The benefits of including HCP lands in critical habitat are normally small. Activities in designated critical habitat that may affect critical habitat require consultation under section 7 of the Act. This is the major benefit of designating lands as critical habitat. Consultation would ensure that adequate protection is provided to avoid adverse modification of critical habitat. However, our experience indicates that where HCPs are in place, this benefit is small or non-existent. Currently approved and permitted HCPs are designed to ensure the long-term survival of covered species within the plan area. The lands that we would find essential for the conservation of the species, and thus fall under the first prong of the definition of critical habitat would, where we have approved HCPs and the species is a covered species under the HCP, normally be protected in reserves and other conservation lands. HCPs and their implementation agreements outline management measures and protections for conservation lands that are crafted to protect, restore, and enhance their value as habitat for covered species.

In addition, an HCP application must itself be consulted upon. While this consultation will not look specifically at the issue of adverse modification of critical habitat, it will look at the very similar concept of jeopardy to the listed species in the plan area. Since HCPs, particularly large regional HCPs, address land use within the plan boundaries, habitat issues within the plan boundaries have been thoroughly addressed in the HCP and the consultation on the HCP. Our experience is that under most circumstances consultations under the jeopardy standard will reach the same result as consultations under the adverse modification standard. Additional measures to protect the habitat from adverse modificationare not likely to be required.

Further, HCPs typically provide for greater conservation benefits to a covered species than section 7 consultations because HCPs assure the long term protection and management of a covered species and its habitat, and funding for such management through the standards found in the 5-Point Policy for HCPs (64 FR 35242) and the HCP No Surprises regulation (63 FR 8859). Such assurances are typically not provided by section 7 consultations which, in contrast to HCPs, often do not commit the project proponent to long term special management or protections. Thus the lands covered by a consultation typically will not provide the extensive benefits of an HCP.

The development and implementation of HCPs provide other important conservation benefits, including the development of biological information to guide conservation efforts and assist in species recovery and the creation of innovative solutions to conserve species while allowing for development. The educational benefits of critical habitat, including informing the public of areas that are important for the long-term survival and conservation of the species, are essentially the same as those that would occur from the public notice and comment procedures required to establish an HCP, as well as the public participation that occurs in the development of many regional HCPs. For these reasons, then, we believe that designation of critical habitat has little benefit in areas covered by HCPs.

In contrast, the benefits of excluding HCPs from being designated as critical habitat are more significant. In response to other critical habitat proposals, we have received comments about the additional regulatory and economic burden of designating critical habitat. These include the need for additional consultation with the Service and the need for additional surveys and information gathering to complete these consultations. HCP applicants have also stated that they are concerned that third parties may challenge HCPs on the basis that they result in adverse modification or destruction of critical habitat.



The benefits of excluding HCPs include relieving landowners, communities and counties of any additional minor regulatory review that might be imposed by critical habitat. This benefit is important given our past representations that once an HCP is negotiated and approved by us after public comment, activities consistent with the plan will satisfy the requirements of section 10(a)(1)(B) of the Act. Many HCPs, particularly large regional HCPs, take many years to develop and, upon completion, become regional conservation plans that are consistent with the recovery of covered species. Many of these regional plans benefit many species, both listed and unlisted. Imposing an additional regulatory review after HCP completion not only results in minor, if any, additional benefit to the species, it may jeopardize conservation efforts and partnerships in many areas and could be viewed as a disincentive to those developing HCPs. Excluding HCPs provides us with an opportunity to streamline regulatory compliance and confirms regulatory assurances for HCP participants.

Another benefit of excluding HCPs is that it would encourage the continued development of partnerships with HCP participants, including states, local governments, conservation organizations, and private landowners, that together can implement conservation actions we would be unable to accomplish alone. By excluding areas covered by HCPs from critical habitat designation, we preserve these partnerships, and, we believe, set the stage for more effective conservation actions in the future.

In general, then we believe the benefits of critical habitat designation to be small in areas covered by approved HCPs. We also believe that the benefits of excluding HCPs from designation are small, but significant. Because we believe that, the small benefits of inclusion weighed against the benefits of exclusion, including the benefits of relieving property owners of an additional layer of approvals and regulation, together with the encouragement of conservation partnerships would generally result in HCPs being excluded from critical habitat designation under Section 4(b)(2) of the Act.

Given this general analysis, we expect to analyze the specific benefits in each particular critical habitat designation because not all HCPs are alike with regard to species coverage and design. Within this designation we need to evaluate completed and legally operative HCPs in the range of the California gnatcatcher to determine whether the benefits of excluding these particular areas outweigh the benefits of including them.

The San Bruno Mountain Area HCP overlaps with the proposed critical habitat designation on San Bruno Mountain. The butterfly is believed to have been extirpated from the mountain since about 1986. The San Bruno Mountain Area HCP does not discuss the bay checkerspot in detail, and the Incidental Take Permit for this HCP currently does not include the bay checkerspot butterfly. Therefore, we have not excluded the area covered by this HCP from the proposed critical habitat designation. Any future Service involvement in activities on San Bruno Mountain, such as habitat restoration, may require section 7 consultation if there are likely to be effects on bay checkerspot critical habitat.

The Pacific Gas & Electric (PG & E) Metcalf-Edenvale/Metcalf-Mont Vista HCP covers only about 4 ha (10 ac) in the Santa Teresa Hill, San Vicente-Calero, and Tulare Hill Corridor proposed critical habitat units. Because the HCP expires in November 2001, and the permitted project is expected to be complete before any final critical habitat designation, we are not excluding lands covered under this short-term HCP from our critical habitat proposal. We reviewed the project with PG & E and determined that the remaining work under the HCP will not cause destruction or adverse modification of proposed critical habitat; therefore, no formal conference on the remaining work will be necessary.

In the event that future HCPs covering the bay checkerspot are developed within the boundaries of designated critical habitat, we will work with applicants to ensure that the HCPs provide for protection and management of habitat areas essential for the conservation of the bay checkerspot by either directing development and habitat modification to nonessential areas or appropriately modifying activities within essential habitat areas so that such activities will not adversely modify the primary constituent elements. The HCP development process provides an opportunity for more intensive data collection and analysis regarding the use of particular habitat areas by the bay checkerspot. The process also enables us to conduct detailed evaluations of the importance of such lands to the long term survival of the species in the context of constructing a biologically configured system of interlinked habitat blocks.

We will provide technical assistance and work closely with applicants throughout the development of future HCPs to identify lands essential for the long-term conservation of the bay checkerspot and appropriate management for those lands. Preliminary HCPs are being discussed for listed and non-listed species within the range of the bay checkerspot in areas proposed herein as critical habitat. These HCPs, coupled with appropriate adaptive management, should provide for the conservation of the species.

**Economic Analysis**

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of the exclusions outweigh the benefits of specifying the areas as critical habitat. We cannot exclude the areas from critical habitat when the exclusion will result in the extinction of the species. We will conduct an analysis of the economic impacts of designating these areas as critical habitat prior to making a final determination. When completed, we will announce the availability of this economic analysis with a notice in the **Federal Register**; if necessary, we will reopen the comment period at that time.

**Public Comments Solicited**

We intend that any final action resulting from this proposal be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

(1) The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefits of designation will outweigh any benefits of exclusion;

(2) Specific information on the amount and distribution of bay checkerspot butterflies and their habitat, and what habitat is essential to the conservation of the species and why;

(3) Land use practices and current or planned activities in the subject areas

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and their possible impacts on proposed critical habitat;

(4) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, in particular, any impacts on small entities or families; and

(5) Economic and other values associated with designating critical habitat for the bay checkerspot such as those derived from nonconsumptive uses (*e.g.*, hiking, camping, birdwatching, enhanced watershed protection, improved air quality, increased soil retention, "existence values," and reductions in administrative costs).

Our practice is to make comments available for public review during regular business hours, including names and home addresses of respondents. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

**Peer Review**

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of this review is to ensure listing decisions are based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designation of critical habitat.

We will consider all comments and information received during the 60-day comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

**Public Hearings**

The Act provides for one or more public hearings on this proposal, if requested. Given the high likelihood of a request for a hearing and the need to publish a final determination within 120 days of this proposed rule, we scheduled a public hearing (see **DATES** and **ADDRESSES** sections).

Written comments submitted during the comment period receive equal consideration with those comments presented at a public hearing.

**Clarity of the Rule**

Executive Order 12866 requires each agency to write regulations/notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the proposed rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? What else could we do to make the proposed rule easier to understand? Send any comments that concern how we could make this proposed rule easier to understand to the Field Supervisor, Sacramento Fish and Wildlife Office (see **ADDRESSES** section of this rule).

**Required Determinations**

*Regulatory Planning and Review*

In accordance with Executive Order 12866, this document is a significant rule and was reviewed by the Office of Management and Budget (OMB). We are preparing a draft analysis of this proposed action, which will be available for public comment, to determine the economic consequences of designating the specific areas as critical habitat. The availability of the draft economic analysis will be announced in the **Federal Register** and in local newspapers so that it is available for public review and comments.

(a) This rule will not have an annual economic effect of $100 million or more or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. The bay checkerspot butterfly was listed as a threatened species in 1987. In fiscal years 1987 through 1999, we conducted 4 formal section 7 consultations with Federal agencies to ensure that their actions would not jeopardize the continued existence of the butterfly.

Under the Act, critical habitat may not be adversely modified by a Federal agency action; critical habitat does not impose any restrictions on non-Federal persons unless they are conducting activities funded or otherwise sponsored, authorized, or permitted by a Federal agency (see Table 2 below). Section 7 requires Federal agencies to ensure that they do not jeopardize the continued existence of the species. Based upon our experience with the species and its needs, we conclude that any Federal action or authorized action that could potentially cause an adverse modification of the proposed critical habitat would currently be considered as "jeopardy" under the Act in areas occupied by the bay checkerspot. Accordingly, the designation of currently occupied areas as critical habitat does not have any incremental impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons that receive Federal authorization or funding. Designation of unoccupied areas as critical habitat may have impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons who receive Federal authorization or funding. We will evaluate any impact through our economic analysis (under section 4 of the Act; see Economic Analysis section of this rule). Non-Federal persons that do not have a Federal "sponsorship" of their actions are not restricted by the designation of critical habitat (however, they continue to be bound by the provisions of the Act concerning "take" of the species).



TABLE 2.—IMPACTS OF BAY CHECKERSPOT BUTTERFLY LISTING AND CRITICAL HABITAT DESIGNATION

| Categories of activities | Activities potentially effected by species listing only | Additional activities potentially affected by critical habitat designation[1] |
|---|---|---|
| Federal Activities Potentially Affected[2]. | Activities conducted by the Army Corps of Engineers, Bureau of Reclamation, Environmental Protection Agency, Federal Highway Administration. | Activities by these Federal Agencies in any unoccupied critical habitat areas. |
| Private or other non-Federal Activities Potentially Affected[3]. | Activities that require a Federal action (permit, authorization, or funding) and may remove or destroy bay checkerspot butterfly habitat by mechanical, chemical, or other means (*e.g.*, grading, discing, ripping, and tilling, water diversion, impoundment, groundwater pumping, irrigation, construction, road building, herbicide application, recreational use, etc.) or appreciably decrease habitat value or quality through indirect effects (*e.g.*, edge effects, invasion of exotic plants or animals, fragmentation of habitat). | Funding, authorization, or permitting actions by Federal Agencies in any unoccupied critical habitat areas. |

[1] This column represents activities potentially affected by the critical habitat designation in addition to those activities potentially affected by listing the species.
[2] Activities initiated by a Federal agency.
[3] Activities initiated by a private or other non-Federal entity that may need Federal authorization or funding.

(b) This rule will not create inconsistencies with other agencies' actions. As discussed above, Federal agencies have been required to ensure that their actions do not jeopardize the continued existence of the bay checkerspot since the listing in 1987. The prohibition against adverse modification of critical habitat is not expected to impose any additional restrictions to those that currently exist in areas of occupied habitat. We will evaluate any impact of designating unoccupied habitat areas through our economic analysis. Because of the potential for impacts on other Federal agency activities, we will continue to review this proposed action for any inconsistencies with other Federal agency actions.

(c) This proposed rule, if made final, will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Federal agencies are currently required to ensure that their activities do not jeopardize the continued existence of the species, and, as discussed above, we do not anticipate that the adverse modification prohibition (resulting from critical habitat designation) will have any incremental effects in areas of occupied habitat.

(d) This rule will not raise novel legal or policy issues. The proposed rule follows the requirements for determining critical habitat contained in the Act.

*Regulatory Flexibility Act (5 U.S.C. 601 et seq.)*

In the economic analysis (required under section 4 of the Act), we will determine whether designation of critical habitat will have a significant effect on a substantial number of small entities. As discussed under Regulatory Planning and Review above, this rule is not expected to result in any restrictions in addition to those currently in existence for areas of occupied critical habitat. We will also evaluate whether critical habitat designation of unoccupied areas will significantly affect a substantial number of small entities. As indicated on Table 1 (see Proposed Critical Habitat Designation section), we designated property owned by State and local governments, and private property.

Within these areas, the types of Federal actions or authorized activities that we have identified as potential concerns are:

(1) Regulation of activities affecting waters of the United States by the Corps under section 404 of the Clean Water Act;

(2) Regulation of water flows, execution of water contracts, water delivery, transfer of Federal project water, damming, diversion, and channelization by the Bureau of Reclamation or the Corps;

(3) Pesticide and air quality regulation by the Environmental Protection Agency; and

(4) Funding and regulation of road construction by the FHWA.

Many of these activities sponsored by Federal agencies within the proposed critical habitat areas are carried out by small entities (as defined by the Regulatory Flexibility Act) through contract, grant, permit, or other Federal authorization. As discussed above, these actions are currently required to comply with the listing protections of the Act, and the designation of critical habitat is not anticipated to have any additional effects on these activities.

For actions on non-Federal property that do not have a Federal connection (such as funding or authorization), the current restrictions concerning take of the species remain in effect, and this rule will have no additional restrictions.

*Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))*

In the economic analysis, we will determine whether designation of critical habitat will cause (a) any effect on the economy of $100 million or more, (b) any increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. As discussed above, we anticipate that the designation of critical habitat will not have any additional effects on these activities in areas of critical habitat occupied by the species. Designation of unoccupied areas as critical habitat may have impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons who receive Federal authorization or funding. We will evaluate any impact through our economic analysis.

*Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)*

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 August 25, 2000 *et seq.*):

(a) We believe this rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. Small governments will be affected only to the extent that any programs having Federal funds, permits, or other authorized activities must ensure that their actions will not adversely affect the critical habitat. However, as discussed above, these actions are currently subject to equivalent restrictions through the

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listing protections of the species, and no further restrictions are anticipated to result from critical habitat designation of occupied areas. In our economic analysis, we will evaluate whether designation of unoccupied areas has any significant effect on small governments.

(b) This rule will not produce a Federal mandate of $100 million or greater in any year; that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments.

*Takings*

In accordance with Executive Order 12630, this rule does not have significant takings implications. A takings implication assessment is not required. As discussed above, the designation of critical habitat affects only Federal agency actions. The rule will not increase or decrease the current restrictions on private property concerning take of the bay checkerspot. Due to current public knowledge of the species' protection under the Act, the prohibition against take of the species both within and outside of the designated areas, and the fact that critical habitat provides no incremental restrictions in areas of occupied critical habitat, we do not anticipate that property values will be affected by the critical habitat designation. Additionally, critical habitat designation does not preclude development of habitat conservation plans and issuance of incidental take permits. Landowners in areas that are included in the designated critical habitat will continue to have opportunity to utilize their property in ways consistent with the survival of the bay checkerspot butterfly.

*Federalism*

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from and coordinated development of this critical habitat proposal with appropriate State resource agencies in California. The designation of critical habitat in areas currently occupied by the bay checkerspot imposes no additional restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are specifically identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

*Civil Justice Reform*

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We propose to designate critical habitat in accordance with the provisions of the Act and plan a public hearing on the proposed designation during the comment period. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the bay checkerspot butterfly.

*Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)*

This rule does not contain any information collection requirements that requires Office of Management and Budget approval under the Paperwork Reduction Act.

*National Environmental Policy Act*

We determined that we do not need to prepare an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

*Government-to-Government Relationship With Tribes*

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2, we understand that Federally recognized Tribes must be related to on a Government-to-Government basis.

We are not aware of any Tribal lands essential for the conservation of the bay checkerspot. Therefore, we are not proposing to designate critical habitat for the bay checkerspot butterfly on Tribal lands.

**References Cited**


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U.S. Fish and Wildlife Service. 1998. Recovery plan for serpentine soil species of the San Francisco Bay area. U.S. Fish and Wildlife Service, Portland, Oregon. 330+ pp.

Weiss, S. B. 1999. Cars, cows, and checkerspot butterflies: nitrogen deposition and management of nutrient-poor grasslands for a threatened species. Conservation Biology 13:1476–1486.

Weiss, S. B., and A. E. Launer. 2000. Annual report to the trustees of the Kirby Canyon Conservation Agreement—Summary of activities conducted in 1999 and early spring 2000. Unpublished report, on file at Sacramento Fish and Wildlife Office.


**Authors**

The primary authors of this notice are the staff of the Sacramento Fish and Wildlife Office (see **ADDRESSES** section).

**List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

**Proposed Regulation Promulgation**

For the reasons given in the preamble above, we propose to amend 50 CFR part 17 as set forth below:

**PART 17—[AMENDED]**

1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.11(h) revise the entry for "Butterfly, bay checkerspot," under "INSECTS," to read as follows:



**§ 17.11 Endangered and threatened wildlife.**

* * * * *

(h) * * *

| Species | | Historic range | Vertebrate population where endangered or threatened | Status | When listed | Critical habitat | Special rules |
|---|---|---|---|---|---|---|---|
| Common name | Scientific name | | | | | | |
| INSECTS | | | | | | | |
| Butterfly, bay checkerspot. | *Euphydryas editha bayensis.* | U.S.A. (CA) | NA | T | 288 | 17.95(i) | NA |

3. Amend § 17.95(i) by adding critical habitat for the bay checkerspot butterfly (*Euphydryas editha bayensis*) in the same alphabetical order as this species occurs in § 17.11(h), to read as follows:

**§ 17.95 Critical habitat—fish and wildlife.**

* * * * *

(i) *Insects*

Bay Checkerspot Butterfly (*Euphydryas editha bayensis*)

1. Critical habitat units are depicted for San Mateo and Santa Clara counties, California, on the maps below.

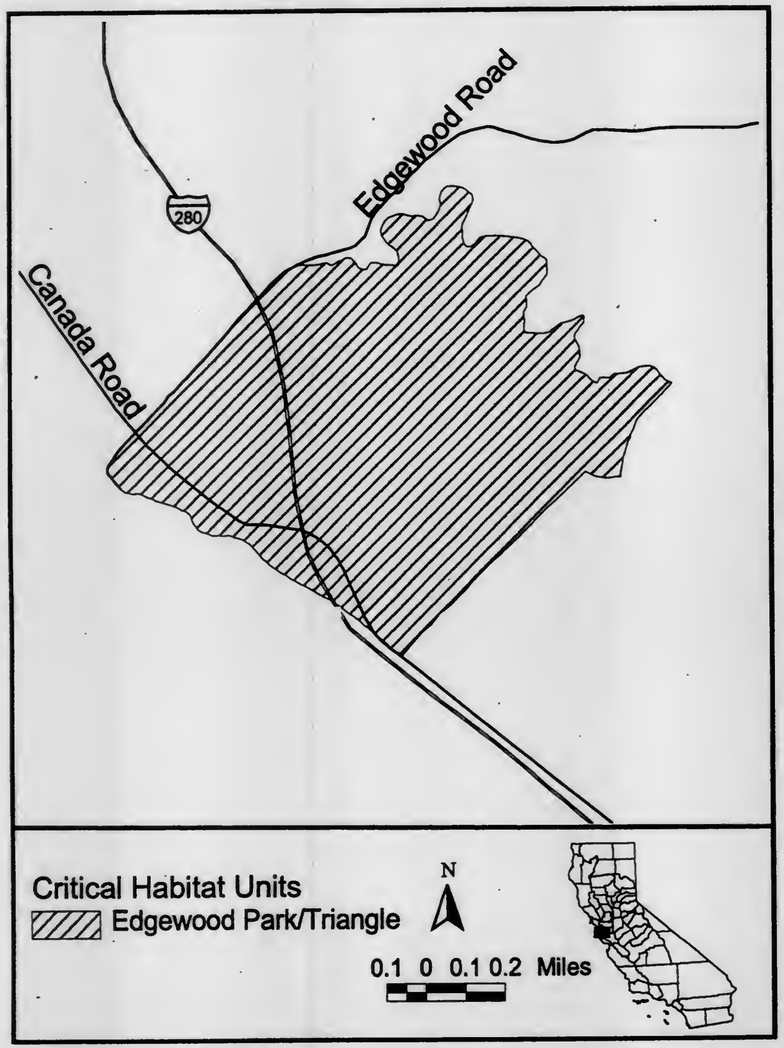
2. Within these areas, the primary constituent elements are those habitat components that are essential for the primary biological needs of foraging, sheltering, breeding, maturation and dispersal. The primary constituent elements are areas of open grassland; stands of *Plantago erecta, Castilleja exserta,* or *Castilleja densiflora*; spring flowers providing nectar; pollinators of the bay checkerspot's food and nectar plants; soils derived from serpentinic rock; stable holes or cracks in the soil and surface rocks or rock outcrops; wetlands providing moisture during times of spring drought; and space for dispersal between habitable areas. In addition, topography with varied slopes and aspects is a primary constituent element to be conserved when it is present in combination with one or more of the primary constituent elements above.

3. Within these areas, existing features and structures, such as buildings, roads, railroads, urban development, and other features not containing primary constituent elements, are not considered critical habitat.

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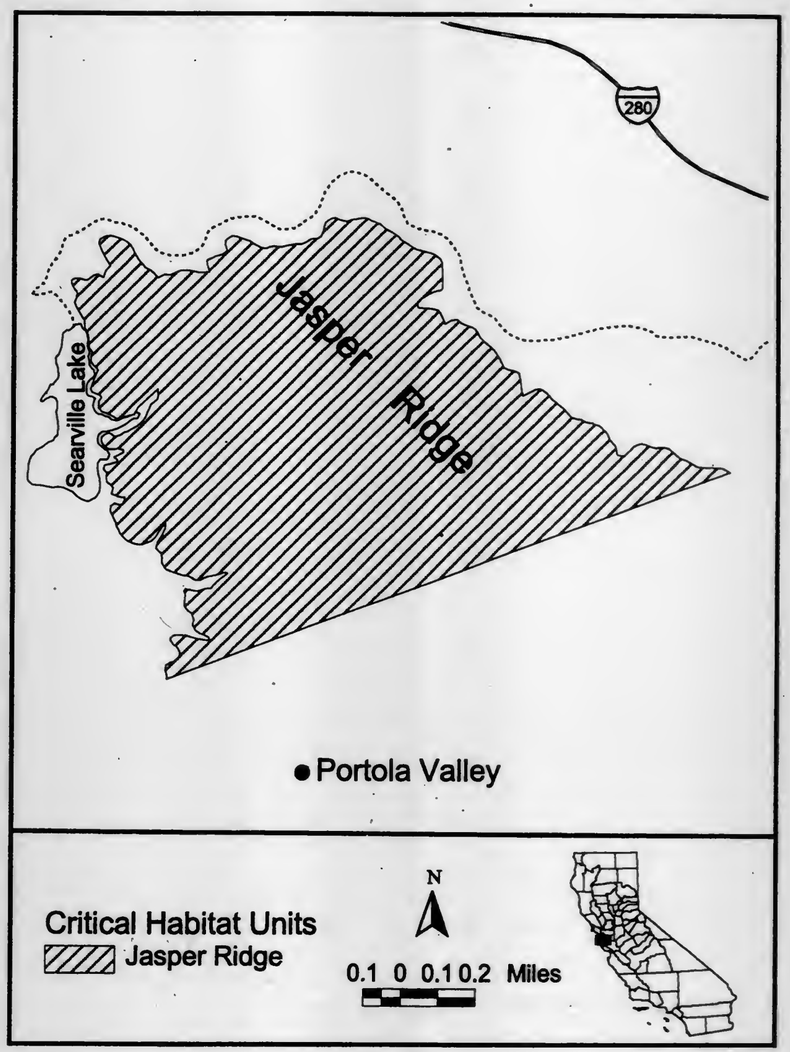


Unit 1 (Edgewood Park/Triangle Unit): San Mateo County, California. Bounded as follows: beginning at the intersection of Edgewood Road and Cañada Road; southwesterly, south, and southeasterly along the light-duty extension of Edgewood Road southwest of Cañada Road to its intersection with an unnamed intermittent drainage tributary to Upper Crystal Springs Reservoir as shown on the USGS Woodside 7.5 minute quadrangle (1961, photorevised 1968 and 1973); then southwesterly along this drainage to its intersection with I–280; then southeasterly along the eastern edge of pavement of I–280 to a point due southwest of the southernmost corner of Edgewood Natural Preserve (this just south of a substation shown on the Woodside quadrangle, where the State Fish and Game Refuge boundary meets Cañada Road and an elevation of 161 m (528 ft) is marked); then due northeast to the southernmost corner of Edgewood Natural Preserve; then northeast along the southeast boundary of Edgewood Natural Preserve to the 159 m (520 ft) elevation contour as shown on the Woodside quadrangle; then northwesterly along this contour to its intersection with Edgewood Road; then southwesterly along the south edge of pavement of Edgewood Road to the starting point.





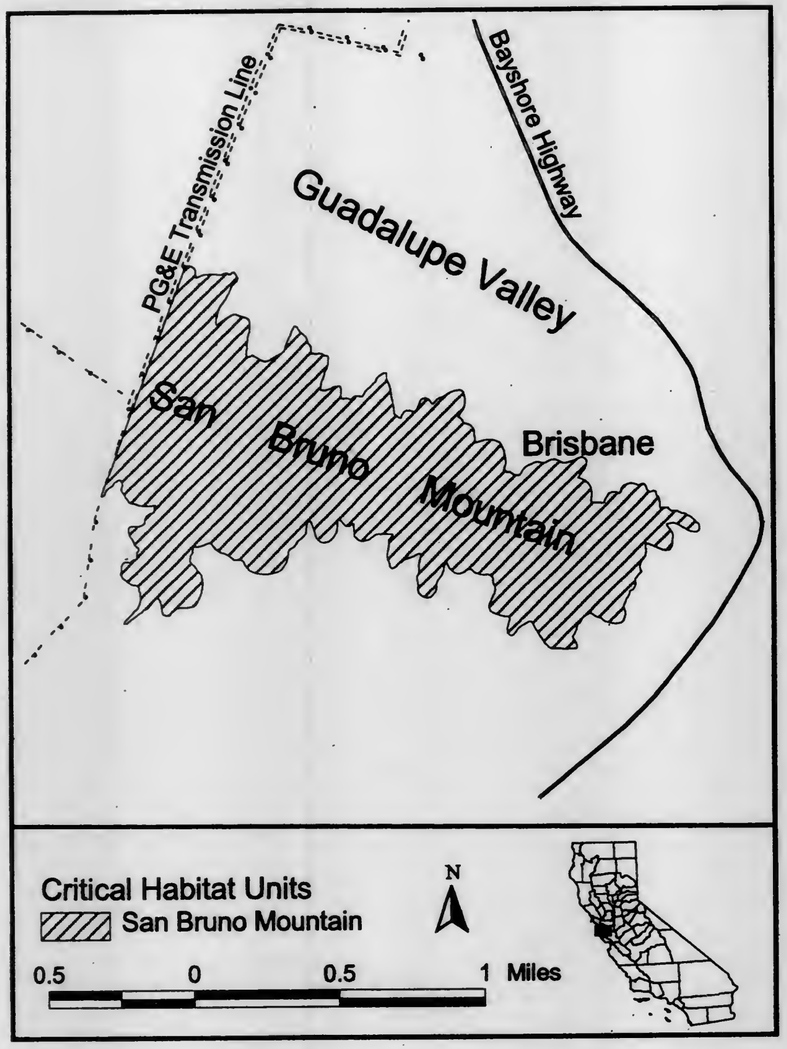

Unit 2 (Jasper Ridge Unit): San Mateo County, California. Bounded as follows: to the east, north, and west by the 110 m (360 ft) elevation contour around Jasper Ridge (USGS Palo Alto 7.5 minute quadrangle, 1991); and to the south by the current boundary of the Jasper Ridge Biological Reserve, which is largely coincident with the northern boundary of the town of Portola Valley.



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Unit 3 (San Bruno Mountain Unit): San Mateo County, California. All area on San Bruno Mountain above the 152 m (500 ft) elevation contour and east of the western Pacific Gas and Electric transmission corridor (this transmission corridor runs south to southwesterly from the west end of Guadalupe Valley to the South San Francisco/Colma City border) as shown on the USGS San Francisco South 7.5 minute quadrangle, 1956).



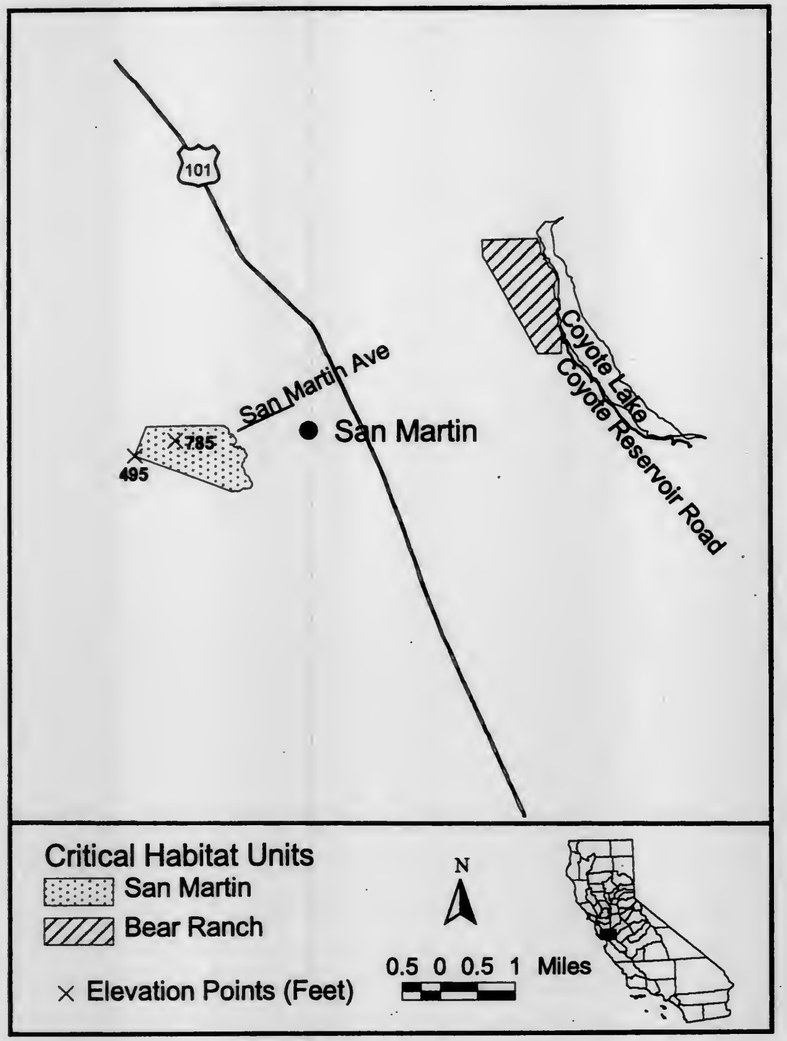



Unit 4 (Bear Ranch Unit): Santa Clara County, California. Those portions of section 32, T.9 S., R.4 E. and section 5, T.10 S., R.4 E., westerly of Coyote Reservoir Road—a light-duty road shown but not named on the USGS Gilroy 7.5 minute quadrangle (1955, photorevised 1968 and 1973).

Unit 5 (San Martin Unit): Santa Clara County, California. Bounded on the north by a line running due east-west through a point 305 m (1000 ft) due north of a hilltop marked 239 m (785 ft) in elevation on the USGS Mt. Madonna 7.5 minute quadrangle (1955, photorevised 1968). This hilltop is near latitude 37 degrees 4 minutes 42 seconds north, longitude 121 degrees 38 minutes 19 seconds west (Hayes Lane, not shown on the Mt. Madonna quadrangle, also runs in the vicinity of this hilltop). The north boundary runs as far east as its intersection with the 97 m (320 ft) elevation contour west of Coolidge Avenue as shown on the Mt. Madonna quadrangle. From this point the boundary runs southeasterly, southerly, and westerly following this contour, continuing onto the USGS Gilroy 7.5 minute quadrangle (1955, photorevised 1968 and 1973) and back to its intersection with longitude 121 degrees 37 minutes 30 seconds west (the junction between the two quadrangles). The unit is bounded on the south-southwest by a straight line running from this latter point for a distance of about 2,228 m (7,310 ft) slightly south of west-northwest (bearing 291.5 degrees) to a hilltop labeled 152 m (495 ft) in elevation on the Mt. Madonna quadrangle. The west boundary of the unit runs from this hilltop due north-northeast (bearing 22.5 degrees) to the north boundary.

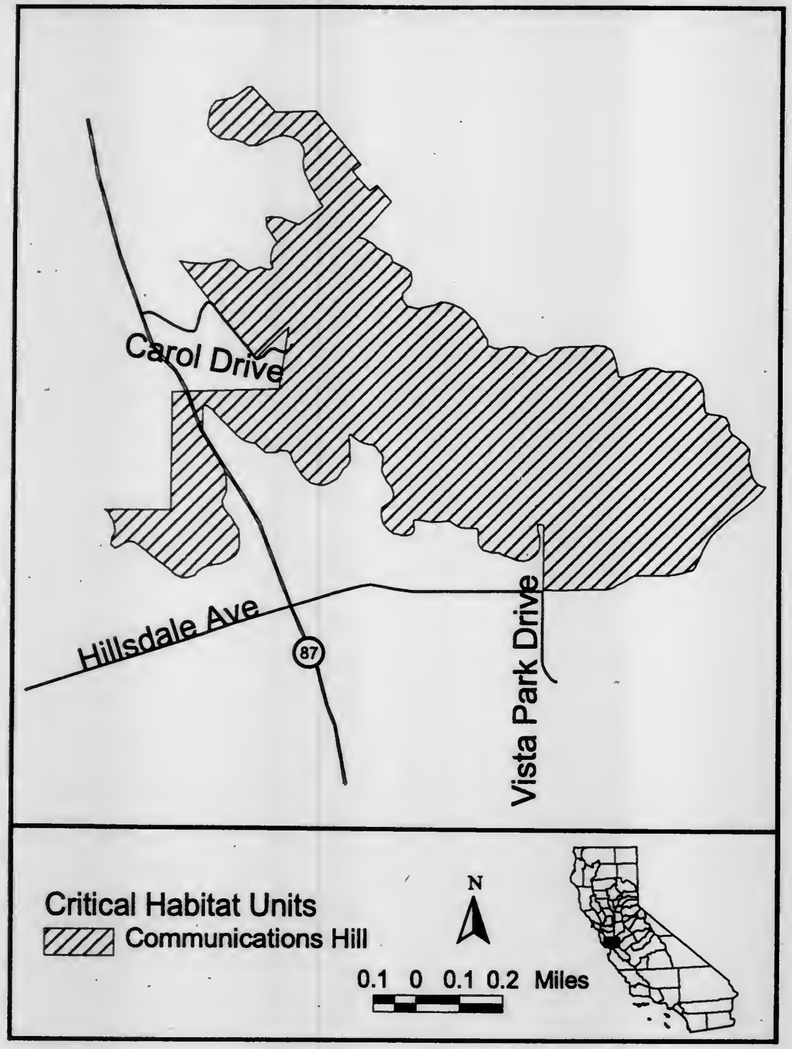
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Unit 6 (Communications Hill Unit): Santa Clara County, California. Starting at a point on the 73 m (240 ft) elevation contour due south of the 133 m (435 ft) summit of Communications Hill, the Communications Hill unit is bounded to the south by the 73 m (240 ft) elevation contour as shown on the USGS San Jose East 7.5 minute quadrangle map (1961, photorevised 1980; the hill is not named on this map but the county communications center is shown), as far west as its intersection with Highway 87 (this highway is not shown on the San Jose East quadrangle); then south along Highway 87 (west edge of pavement) to the 55 m (180 ft) elevation contour (all contours in this description are as shown on the San Jose East quadrangle); then south, west, and north along this contour to a point due west of the southernmost point of the southern of the two water tanks on the top of the hill west of Highway 87; then due east for a distance of about 238 m (780 ft) to a point due south of the easternmost point of the eastern of the two water tanks; then due north for about 439 m (1,440 ft) to the intersection with the 85 m (280 ft) elevation contour; then slightly north of east on a straight line to the southern corner of the property of the county communications facility; then on a line to the northern corner of this property; then due southwest to Carol Drive (not named on the San Jose East quadrangle); then slightly north of northwest (bearing 322 degrees) to the 55 m (180 ft) elevation contour; then along this contour easterly and northeasterly until it reaches the second dirt road as shown on the San Jose East quadrangle; then due northeast across the Southern Pacific railroad tracks to the 55 m (180 ft) elevation contour; then northwesterly and northeasterly along this contour to the boundary of Oak Hill Memorial Park cemetery; then following the cemetery boundary southeasterly, skirting a hill summit marked 98 m (323 ft) on the San Jose East quadrangle, to the first 67 m (220 ft) elevation contour southeast of this summit; then due southwest to the 49 m (160 ft) elevation contour immediately west of the railroad tracks; then southeasterly along this contour as shown on the 1961 San Jose East quadrangle to its intersection with Hillsdale Avenue; then southwesterly along Hillsdale Avenue (north edge of pavement) to its intersection with Vista Park Drive (not shown on the San Jose East quadrangle); then due north to the 73 m (240 ft) elevation contour; then westerly along this contour to the starting point.






Unit 7 (Kalana Hills Unit): Santa Clara County, California. Bounded as follows: beginning at the intersection of San Bruno Avenue and the 94 m (310 ft) elevation contour as shown on USGS Morgan Hill 7.5 minute topographic quadrangle (1955, photorevised 1968); by a line running due northwest to the 79 m (260 ft) elevation contour; then due west for 419 m (1,375 ft) (approximately to the second intersection with a canal); then due south for about 1 km (0.6 mi) to an unnamed intermittent stream shown on the Morgan Hill quadrangle; then by a straight line slightly east of southeast to the westernmost point on the intermittent stream draining San Bruno Canyon (this point is nearly on a line between hilltop elevations marked 227 m (744 ft) and 230 m (756 ft), to the east and the west, respectively, on the Morgan Hill quadrangle); then by a line running north of northeast back to the starting point on San Bruno Avenue.

Unit 8 (Kirby Unit): Santa Clara County, California. Beginning at the intersection of the intermittent creek draining Metcalf Canyon (Metcalfe Canyon on the USGS Morgan Hill 7.5 minute quadrangle, 1955, photorevised 1980) with Highway 101 (current alignment, not shown on Morgan Hill quadrangle), the unit is bounded on the east, southeast, and south by Highway 101 (east edge of pavement, current alignment, not shown on the Morgan Hill quadrangle), south to where it crosses Coyote Creek. From there the boundary runs southeasterly up along Coyote Creek to the Anderson Lake dam; then east-northeasterly up the face of the dam to Anderson Lake (Anderson Reservoir). The unit is bounded on the southeast by Anderson Lake. From the northernmost tip of Anderson Lake (at latitude 37 degrees 12 minutes 15 seconds north) the boundary runs slightly north of west for a distance of about 1,097 m (3,600 ft) to a hilltop marked 379 m (1,243 ft) in elevation on the Morgan Hill quadrangle; then slightly west of northwest for a distance of about 1,707 m (5,600 ft) to a hilltop marked 411 m (1,347 ft) in elevation on the Morgan Hill quadrangle; then slightly north of northwest for a distance of about 2,886 m (9,470 ft) to a hilltop marked 444 m (1,457 ft) in elevation on the Morgan Hill quadrangle; then on a line running from this hilltop south of west-southwest (bearing 237 degrees) to the intersection of the Metcalf Canyon drainage with the 354 m (1,160 ft) elevation contour as shown on the Morgan Hill quadrangle. The north boundary of the unit then continues westerly down the Metcalf Canyon drainage to the starting point.

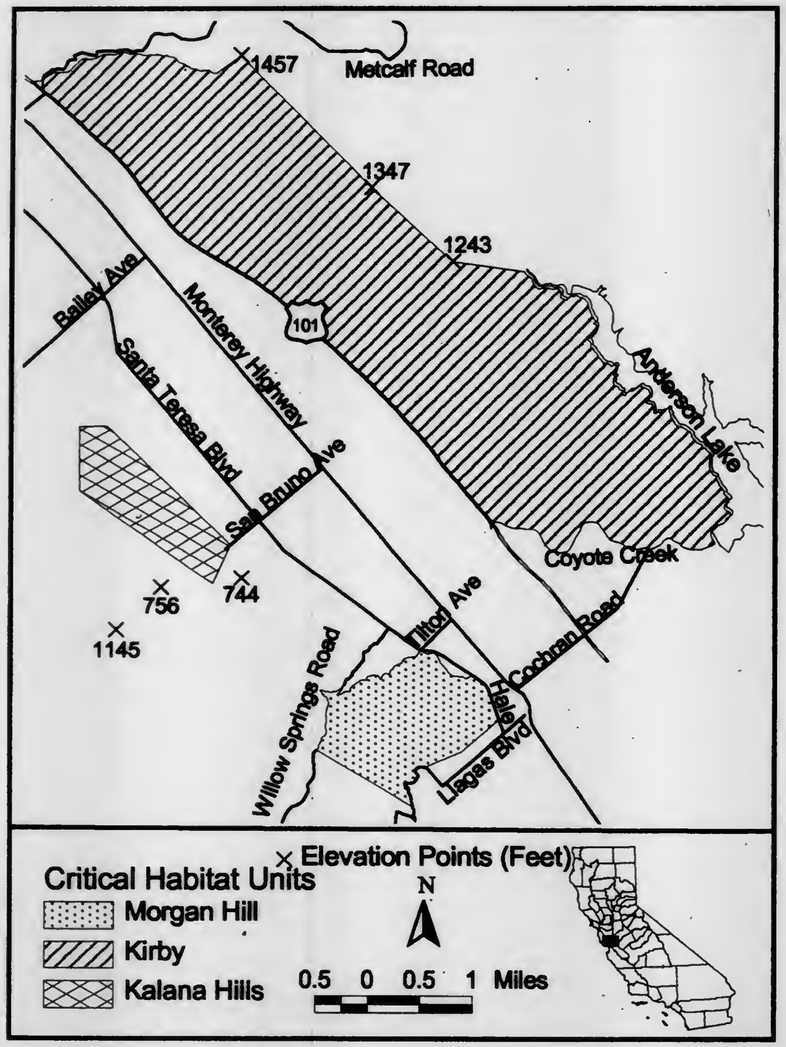
Unit 9 (Morgan Hill Unit): Santa Clara County, California. Bounded as follows: beginning at the intersection of the 107 m (350 ft) elevation contour (USGS Morgan Hill 7.5 minute quadrangle, 1955, photorevised 1968) with Hale Road east of the intersection of Cochrane Road and Monterey Highway; running north-northwesterly along this contour to where it again meets Hale Avenue near the intersection of Hale Avenue with Tilton Avenue (these roads are not named on the Morgan Hill quadrangle); then on a line due southwest to the 122 m (400 ft) elevation contour; then west-southwesterly along this contour to its intersection with Willow Springs Road; then along Willow Springs Road southwesterly to the land survey line running approximately east-southeast from Laurel Hill (elevation marked 349 m (1,145 ft) on the Morgan Hill quadrangle); then east-southeasterly along this land survey line to its end at the R.2 E./R.3 E. dividing line (Mount Diablo meridian/base line); then continuing from this point along the same bearing as the land survey line to Llagas Road (called Llagas Avenue on the Morgan Hill quadrangle); then northeasterly along Llagas Road to its intersection with Castle Lake Drive (not shown on the Morgan Hill quadrangle); then east-northeasterly along a straight line connecting this intersection and the intersection of Christeph Drive and Llagas Vista Drive (not shown on the Morgan Hill quadrangle); then northeasterly parallel to Llagas Road to Hale Avenue; then north-northwesterly along Hale Avenue to the starting point.

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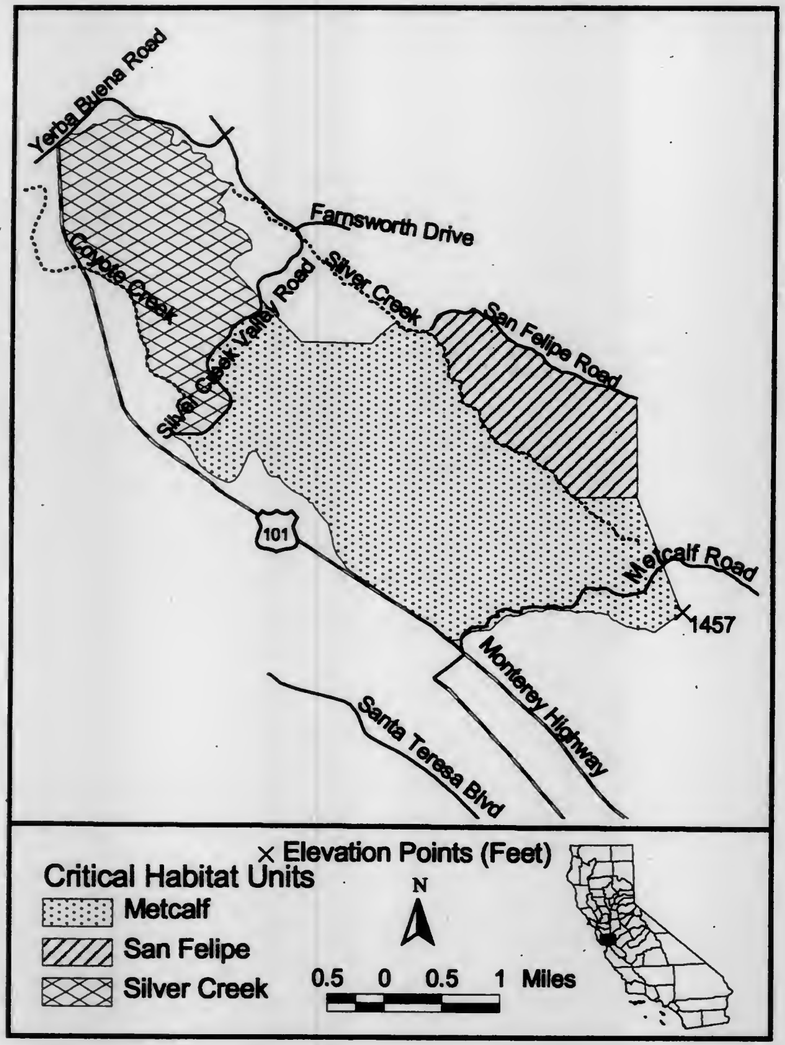



Unit 10 (Metcalf Unit): Santa Clara County, California. This unit shares its southern border with the northern border of the Kirby unit, running from Highway 101 (current alignment, not shown on USGS Morgan Hill 7.5 minute quadrangle, 1955, photorevised 1980) up the Metcalf Canyon drainage and to the 444 m (1,457 ft) peak of the ridge as described for the Kirby unit. The Metcalf unit boundary then runs north-northeasterly from this hilltop for a distance of about 1,740 m (5,710 ft) to a hilltop marked 440 m (1,445 ft) in elevation on the Morgan Hill quadrangle (this segment crosses Metcalf Road (appears as Metcalfe Road on the Morgan Hill quadrangle) about 0.5 km (0.3 mi) easterly of the high point of this road over Coyote Ridge). The Metcalf unit boundary then continues, abutting the San Felipe unit, from this hilltop due west to Silver Creek; then northwesterly down Silver Creek to the first intersection with Silver Creek Road (sic) (T.8 S., R.2 E; USGS San Jose East 7.5 minute quadrangle, 1961, photorevised 1980) (see San Felipe unit description). From this crossing of Silver Creek Road over Silver Creek, the Metcalf unit boundary follows Silver Creek Road west-northwesterly to the 152 m (500 ft) elevation contour as shown on the San Jose East quadrangle (just north of a benchmark labeled 153 m (502 ft) on the quadrangle); then continues due southwest for about 445 m (1,460 ft) to a fence line marked on the San Jose East quadrangle; then slightly north of west following that fence line as shown for a distance of about 1,027 m (3,370 ft) to its second (westerly) intersection with the 226 m (740 ft) elevation contour as shown on the San Jose East quadrangle; then northwest in a straight line to the intersection of Silver Creek Valley Road (sic) (not shown on the San Jose East quadrangle) with the 195 m (640 ft) elevation contour as shown on the San Jose East quadrangle; then southwesterly along Silver Creek Valley Road to Coyote Creek; then southeasterly along Coyote Creek to its first undercrossing of Highway 101 (current alignment, not shown but would fall on USGS Santa Teresa Hills 7.5 minute quadrangle, 1953, photorevised 1980); then southerly along Highway 101 (current alignment, east edge of pavement, not shown on USGS 7.5 minute quadrangles) to the Metcalf Canyon drainage.

Unit 11 (San Felipe Unit): Santa Clara County, California. The east boundary of the San Felipe critical habitat unit begins at the 440 m (1,445 ft) hilltop identified in the northeast boundary of the Metcalf unit (this peak is labeled on the USGS Morgan Hill 7.5 minute quadrangle (1955, photorevised 1980), near latitude 37 degrees 15 minutes north, longitude 121 degrees 43 minutes west); and proceeds from that hilltop due north to San Felipe Road at an elevation of about 296 m (970 ft) (USGS Lick Observatory 7.5 minute quadrangle, 1955, photorevised 1968); then west-northwesterly along San Felipe Road (southwest edge of pavement) for a distance of about 2.7 km (1.7 mi) to Silver Creek Road (sic). The north boundary is formed by Silver Creek Road (south edge of pavement) from San Felipe Road to Silver Creek (the creek crossing is on the USGS San Jose East 7.5 minute quadrangle, 1961, photorevised 1980). The west boundary, which abuts the Metcalf unit, runs from Silver Creek Road southeasterly along Silver Creek (mostly on Lick Observatory quadrangle). The south boundary also abuts the Metcalf unit, and runs from Silver Creek (Morgan Hill quadrangle) due east to the starting point.

Unit 12 (Silver Creek Unit): Santa Clara County, California. Bounded as follows: on the west by Highway 101 (east edge of pavement, current alignment) from Yerba Buena Road in San Jose south to the crossing of Coyote Creek (Yerba Buena Road and the full current alignment of Highway 101 are not shown on the USGS San Jose East 7.5 minute quadrangle, 1961, photorevised 1980); then by Coyote Creek southeasterly from this crossing south to Silver Creek Valley Road (not shown on the San Jose East quadrangle); then by Silver Creek Valley Road from Coyote Creek northeasterly to its intersection with the 195 m (640 ft) elevation contour shown on the San Jose East quadrangle (this segment abuts the northwestern boundary of the Metcalf unit); then due northwest to the boundary of the Silver Creek Valley Country Club Butterfly Habitat Reserve at an elevation of about 226 m (740 ft); then generally northeast, north, and northwest along the boundary of the reserve to a fence line shown on the San Jose East quadrangle at an elevation of about 168 m (550 ft); then northeasterly following that fence line as shown to Silver Creek at an elevation of about 93 m (305 ft); then northwesterly and westerly following Silver Creek to Yerba Buena Road where Silver Creek passes under it approximately 216 m (710 ft) northeast of Highway 101; then along Yerba Buena Road (south edge of pavement) to Highway 101.

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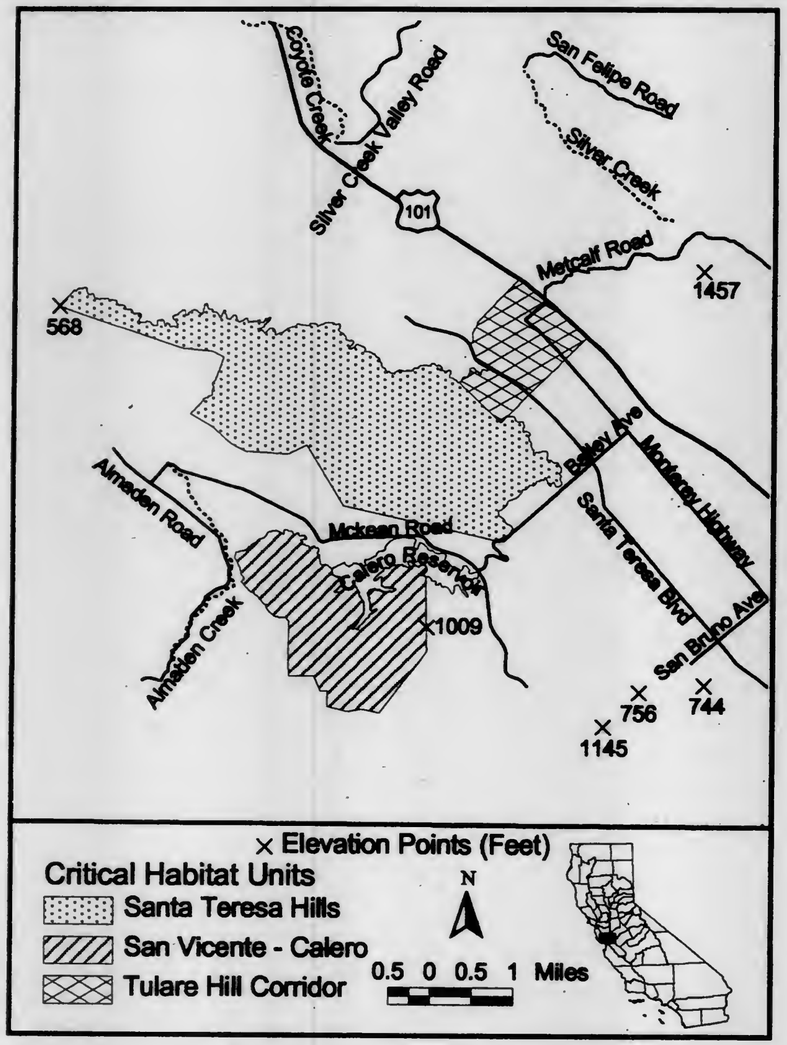

Unit 13 (San Vicente-Calero Unit): Santa Clara County, California. Bounded on the north and northwest by Calero Reservoir, by the canal and siphon running westerly of the main reservoir dam (dam on the Arroyo Calero), and by the city boundary of the City of San Jose, which follows the canal at an elevation of roughly 152 m (500 ft), as far as its intersection with Chilanian Gulch. The boundary then runs generally southeast following Chilanian Gulch to its intersection with the R.1 E./R.2 E. (Mount Diablo meridian/base line) dividing line, then due south to the Calero County Park border. The park boundary forms the rest of the western, southern, and southeastern border of the unit. The eastern border of the unit is formed by a line running due north from the southern Calero County Park boundary through a hilltop elevation labeled 307 m (1,009 ft) on the USGS Santa Teresa Hills 7.5 minute quadrangle (1953, photorevised 1980) to Calero Reservoir. This hilltop is near latitude 37 degrees 10 minutes 15 seconds north, longitude 121 degrees 46 minutes 15 seconds west.

Unit 14 (Santa Teresa Hills Unit): Santa Clara County, California. The east and southeast boundary runs as follows, beginning at the westernmost corner of the Tulare Hill Corridor unit: due southeast and then northeast along the Tulare Hill Corridor unit boundary, to the 85 m (280 ft) elevation contour (USGS Santa Teresa Hills 7.5 minute quadrangle, 1953, photorevised 1980); then southeasterly, south, and southwesterly along this elevation contour (continues onto USGS Morgan Hill 7.5 minute quadrangle, 1955, photorevised 1980, and back) to its intersection with Bailey Avenue. The south, southwest, and western border of the unit then continues from this point, along a line running west-southwesterly (bearing 248 degrees) for a distance of about 325 m (1,065 ft) to a bench mark north of Bailey Avenue labeled 108 m (354 ft) in elevation on the Santa Teresa Hills quadrangle; then north of east (bearing 284 degrees) for a distance of about 3,030 m (9,940 ft) to the intersection of a land grant boundary with a transmission line shown on the 1980 photorevised Santa Teresa Hills quadrangle at an elevation of about 152 m (500 ft); then north-northwesterly along this land grant line to the intersection with Fortini Road; then generally west-southwest and west along Fortini Road to the intersection with San Vicente Avenue (these road names do not appear on the Santa Teresa quadrangle); then westerly along San Vicente Avenue to where it turns south south-west; then continuing westerly and northwesterly from this point along a land grant boundary shown on the Santa Teresa Hills quadrangle to its intersection with both Henwood Drive (road name does not appear on the Santa Teresa quadrangle) and an unnamed intermittent drainage (tributary to Arroyo Calero); then northeasterly and northerly up this drainage as marked on the Santa Teresa Hills quadrangle to the 183 m (600 ft) elevation contour; then due north-northeast for a distance of about 424 m (1,390 ft) to the first intersection with the 280 m (920 ft) elevation contour; then west-northwest for a distance of about 265 m (870 ft) to a hilltop over 280 m (920 ft) in elevation, then slightly north of west (bearing 276 degrees) for a distance of about 543 m (1,780 ft) to the end of a dirt road as marked on the 1980 photorevised Santa Teresa Hills quadrangle; then slightly south of west-northwest (bearing 290 degrees) for a distance of about 2,551 (8,370 ft) to a hilltop marked 173 m (568 ft) in elevation on the Santa Teresa Hills quadrangle; then due northeast to the 73 m (240 ft) elevation contour as shown on the Santa Teresa Hills quadrangle. The northern boundary of the unit is formed by the 73 m (240 ft) elevation contour as shown on the Santa Teresa Hills quadrangle.

Unit 15 (Tulare Hill Corridor Unit): Santa Clara County, California. Bounded on the northeast by the most northeasterly edge of pavement of Highway 101 (*i.e.*, the highway itself is included, and the unit abuts the Kirby and Metcalf units). Bounded on the northwest, west, and southwest by a line extending due southwest from the northeast boundary to the corner of Cheltenham Way and Coburn Court, then southwesterly along Cheltenham Way from Coburn Court to the intersection with Santa Teresa Boulevard, then southeasterly along Santa Teresa Boulevard to the 73 m (240 ft) elevation contour as shown on the USGS Santa Teresa Hills 7.5 minute quadrangle (1953, photorevised 1980), then southwesterly along this contour to the border of Santa Teresa County Park, then along a line due southeast to the southeast border of the unit. Bounded on the southeast by a line running due northeast-southwest through the southeastern-most point of the 85 m (280 ft) contour of Tulare Hill, as shown on the Morgan Hill quadrangle.

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Dated: October 10, 2000.

**Kenneth L. Smith,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 00–26448 Filed 10–12–00; 8:45 am]

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Federal Register

Monday,
October 16, 2000

Part III

# Department of Education

**Office of Elementary and Secondary Education; Safe and Drug-Free Schools and Communities National Programs; Grant Competition To Prevent High-Risk Drinking and Violent Behavior Among College Students; Models on College Campuses Grant Competition; Notices**

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## DEPARTMENT OF EDUCATION

### Office of Elementary and Secondary Education—Safe and Drug-Free Schools and Communities National Programs—Federal Activities—Grant Competition To Prevent High-Risk Drinking and Violent Behavior Among College Students

**AGENCY:** Office of Elementary and Secondary Education, Department of Education

**ACTION:** Notice of Proposed Priorities and Proposed Selection Criteria for Fiscal Year (FY) 2001 and Subsequent Years.

**SUMMARY:** The Assistant Secretary for the Office of Elementary and Secondary Education proposes priorities and selection criteria under the Safe and Drug-Free Schools and Communities National Programs—Federal Activities—Grant Competition to Prevent High-Risk Drinking and Violent Behavior Among College Students. The Assistant Secretary may use these priorities and selection criteria for competitions in fiscal year (FY) 2001 and later years.

**DATES:** We must receive your comments on or before November 15, 2000.

**ADDRESSES:** Address all comments about these proposed priorities and proposed selection criteria to Richard Lucey, Jr., U.S. Department of Education, 400 Maryland Avenue, S.W., Room 3E252, Washington, DC 20202–6123. If you prefer to send your comments through the Internet, use the following address: richard_lucey@ed.gov

You must include the phrase "Grant Competition to Prevent High-yRisk Drinking and Violent Behavior Among College Students" in the subject line of your electronic message.

**FOR FURTHER INFORMATION CONTACT:** Richard Lucey, Jr., (202) 205–5471. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at (800) 877–8339. Individuals with disabilities may obtain this document in an alternate format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

**SUPPLEMENTARY INFORMATION:**

#### Invitation To Comment

We invite you to submit comments regarding these proposed priorities and proposed selection criteria.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed priorities and proposed selection criteria. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these proposed priorities and proposed selection criteria in Room 3E252, 400 Maryland Avenue, SW, Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

#### Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed priorities and proposed selection criteria. If you want to schedule an appointment for this type of aid, you may call (202) 205–8113 or (202) 260–9895. If you use a TDD, you may call the Federal Information Relay Service (FIRS) at (800) 877–8339.

#### General

In making awards under this grant program, the Assistant Secretary may take into consideration the geographic distribution of the projects in addition to the rank order of applicants.

Contingent upon the availability of funds, the Assistant Secretary may make additional awards in FY 2002 from the rank-ordered list of nonfunded applications from this competition.

#### Discussion of Priorities

We will announce the final priorities and selection criteria in a notice in the **Federal Register**. We will determine the final priorities and selection criteria after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing or funding additional priorities, subject to meeting applicable rulemaking requirements.

**Note:** This notice does not solicit applications. In any year in which the Assistant Secretary chooses to use these proposed priorities and proposed selection criteria, we invite applications through a notice in the **Federal Register**.

#### Definitions

"*High-risk drinking*" is defined as those situations that may involve but not be limited to: binge drinking (commonly defined as five or more drinks on any one occasion); underage drinking; drinking and driving; drinking in conjunction with situations when one's condition is already impaired by another cause, such as depression or emotional stress; or combining alcohol and medications, such as tranquilizers, sedatives, and antihistamines.

"*Specific student populations*" can include but not be limited to student athletes, members of fraternities and sororities, students attending two-year institutions of higher education, and first-year students.

*Priorities:* Under 34 CFR 75.105(c)(3) and the Safe and Drug-Free Schools and Communities Act of 1994, the Assistant Secretary proposes to give an absolute preference to applications that meet either of the following priorities, and would fund under this competition only those applications that meet either of the following absolute priorities:

*Absolute Priority #1—Develop or Enhance, Implement, and Evaluate Campus-and/or Community-Based Strategies to Prevent High-Risk Drinking Among College Students.* Under this proposed priority, applicants would be required to propose projects that:

(1) Identify a specific student population to be served by the grant and provide a justification for its selection;

(2) Provide evidence that a needs assessment has been conducted on campus to document prevalence rates related to high-risk drinking by the population selected;

(3) Set measurable goals and objectives for the proposed project and provide a description of how progress toward achieving goals will be measured annually;

(4) Design and implement prevention strategies, using student input and participation, that research has shown to be effective in preventing high-risk drinking by the target population;

(5) Use a qualified evaluator to design and implement an evaluation of the project using outcomes-based (summative) performance indicators related to behavioral change and process (formative) measures that assess and document the strategies used; and

(6) Demonstrate the ability to start the project within 60 days after receiving Federal funding in order to maximize the time available to show impact within the grant period.

*Absolute Priority #2—Develop or Enhance, Implement, and Evaluate Campus-and/or Community-Based Strategies to Prevent Violent Behavior Among College Students.* Under this proposed priority, applicants would be required to propose projects that:



(1) Identify a specific student population to be served by the grant and provide a justification for its selection;

(2) Provide evidence that a needs assessment has been conducted on campus to document prevalence rates related to violent behavior;

(3) Set measurable goals and objectives for the proposed project and provide a description of how progress toward achieving goals will be measured annually;

(4) Design and implement prevention strategies, using student input and participation, that research has shown to be effective in preventing violent behavior among college students;

(5) Use a qualified evaluator to design and implement an evaluation of the project using outcomes-based (summative) performance indicators related to behavioral change and process (formative) measures that assess and document the strategies used; and

(6) Demonstrate the ability to start the project within 60 days after receiving Federal funding in order to maximize the time available to show impact within the grant period.

*Selection Criteria:* The Assistant Secretary proposes to use the following selection criteria to evaluate applications for new grants under this competition. The maximum score for all of these criteria is 100 points. The maximum score for each criterion or factor under that criterion is indicated in parentheses.

(1) Need for project (15 points)

In determining the need for the proposed project, the following factors are considered:

(a) The magnitude or severity of the problem to be addressed by the proposed project. (10 points)

(b) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses. (5 points)

(2) Significance (20 points)

In determining the significance of the proposed project, the following factors are considered:

(a) The likelihood that the proposed project will result in system change or improvement. (5 points)

(b) The potential contribution of the proposed project to the development and advancement of theory, knowledge, and practices in the field of study. (10 points)

(c) The extent to which the proposed project involves the development or demonstration of promising new strategies that build on, or are alternatives to, existing strategies. (5 points)

(3) Quality of the project design (30 Points)

In determining the quality of the design of the proposed project, the following factors are considered:

(a) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable. (10 points)

(b) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs. (5 points)

(c) The extent to which the design of the proposed project reflects up-to-date knowledge from research and effective practice. (10 points)

(d) The extent to which the proposed project will establish linkages with other appropriate agencies and organizations providing services to the target population. (5 points)

(4) Quality of project personnel (10 points)

In determining the quality of project personnel, the following factors are considered:

(a) The extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. (3 points)

(b) The qualifications, including relevant training and experience, of key project personnel. (7 points)

(5) Quality of the project evaluation (25 points)

In determining the quality of the evaluation, the following factors are considered:

(a) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project. (10 points)

(b) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible. (10 points)

(c) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes. (5 points)

#### Intergovernmental Review

This program is subject to Executive order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

*Applicable Program Regulations:* The Education Department General Administrative Regulations in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86, 97, 98, and 99.

**Program Authority:** 20 U.S.C. 7131.

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(Catalog of Federal Domestic Assistance Number 84.184H Office of Elementary and Secondary Education—Safe and Drug-Free Schools and Communities National Programs—Federal Activities—Grant Competition to Prevent High-Risk Drinking and Violent Behavior Among College Students)

Dated: October 12, 2000.

**Michael Cohen,**

*Assistant Secretary for Elementary and Secondary Education.*

[FR Doc. 00–26593 Filed 10–13–00; 8:45 am]

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Part IV

# The President

Executive Order 13171—Hispanic Employment in the Federal Government

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# Presidential Documents

Title 3—

The President

## Executive Order 13171 of October 12, 2000

## Hispanic Employment in the Federal Government

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to improve the representation of Hispanics in Federal employment, within merit system principles and consistent with the application of appropriate veterans' preference criteria, to achieve a Federal workforce drawn from all segments of society, it is hereby ordered as follows:

**Section 1.** *Policy.* It is the policy of the executive branch to recruit qualified individuals from appropriate sources in an effort to achieve a workforce drawn from all segments of society. Pursuant to this policy, this Administration notes that Hispanics remain underrepresented in the Federal workforce: they make up only 6.4 percent of the Federal civilian workforce, roughly half of their total representation in the civilian labor force. This Executive Order, therefore, affirms ongoing policies and recommends additional policies to eliminate the underpresentation of Hispanics in the Federal workforce.

**Sec. 2.** *Responsibilities of Executive Departments and Agencies.* The head of each executive department and agency (agency) shall establish and maintain a program for the recruitment and career development of Hispanics in Federal employment. In its program, each agency shall:

(a) provide a plan for recruiting Hispanics that creates a fully diverse workforce for the agency in the 21st century;

(b) assess and eliminate any systemic barriers to the effective recruitment and consideration of Hispanics, including but not limited to:

(1) broadening the area of consideration to include applicants from all appropriate sources;

(2) ensuring that selection factors are appropriate and achieve the broadest consideration of applicants and do not impose barriers to selection based on nonmerit factors; and

(3) considering the appointment of Hispanic Federal executives to rating, selection, performance review, and executive resources panels and boards;

(c) improve outreach efforts to include organizations outside the Federal Government in order to increase the number of Hispanic candidates in the selection pool for the Senior Executive Service;

(d) promote participation of Hispanic employees in management, leadership, and career development programs;

(e) ensure that performance plans for senior executives, managers, and supervisors include specific language related to significant accomplishments on diversity recruitment and career development and that accountability is predicated on those plans;

(f) establish appropriate agency advisory councils that include Hispanic Employment Program Managers;

(g) implement the goals of the Government-wide Hispanic Employment Initiatives issued by the Office of Personnel Management (OPM) in September 1997 (Nine-Point Plan), and the Report to the President's Management Council on Hispanic Employment in the Federal Government of March 1999;

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(h) ensure that managers and supervisors receive periodic training in diversity management in order to carry out their responsibilities to maintain a diverse workforce; and

(i) reflect a continuing priority for eliminating Hispanic underrepresentation in the Federal workforce and incorporate actions under this order as strategies for achieving workforce diversity goals in the agency's Government Performance and Results Act (GPRA) Annual Performance Plan.

**Sec. 3.** *Cooperation.* All efforts taken by heads of agencies under sections 1 and 2 of this order shall, as appropriate, further partnerships and cooperation among Federal, public, and private sector employers, and appropriate Hispanic organizations whenever such partnerships and cooperation are possible and would promote the Federal employment of qualified individuals. In developing the long-term comprehensive strategies required by section 2 of this order, agencies shall, as appropriate, consult with and seek information and advice from experts in the areas of special targeted recruitment and diversity in employment.

**Sec. 4.** *Responsibilities of the Office of Personnel Management.* The Office of Personnel Management is required by law and regulations to undertake a Government-wide minority recruitment effort. Pursuant to that on-going effort and in implementation of this order, the Director of OPM shall:

(a) provide Federal human resources management policy guidance to address Hispanic underrepresentation where it occurs;

(b) take the lead in promoting diversity to executive agencies for such actions as deemed appropriate to promote equal employment opportunity;

(c) within 180 days from the date of this order, prescribe such regulations as may be necessary to carry out the purposes of this order;

(d) within 60 days from the date of this order, establish an Interagency Task Force, chaired by the Director and composed of agency officials at the Deputy Secretary level, or the equivalent. This Task Force shall meet semi-annually to:

(1) review best practices in strategic human resources management planning, including alignment with agency GPRA plans;

(2) assess overall executive branch progress in complying with the requirements of this order;

(3) provide advice on ways to increase Hispanic community involvement; and

(4) recommend any further actions, as appropriate, in eliminating the underrepresentation of Hispanics in the Federal workforce where it occurs; and

(e) issue an annual report with findings and recommendations to the President on the progress made by agencies on matters related to this order. The first annual report shall be issued no later than 1 year from the date of this order.

**Sec. 5.** *Judicial Review.* This order is intended only to improve the internal management of the executive branch. It does not create any right or benefit, substantive or procedural, enforceable in law or equity except as may be identified in existing laws and regulations, by a party against the United States, its agencies, its officers or employees, or any other person.



William J. Clinton

THE WHITE HOUSE,
*October 12, 2000.*

[FR Doc. 00–26716
Filed 10–13–00; 11:14 am]
Billing code 3195–01–P.

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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## LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

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**H.R. 999/P.L. 106–284**
Beaches Environmental Assessment and Coastal Health Act of 2000 (Oct. 10, 2000; 114 Stat. 870)

**H.R. 2647/P.L. 106–285**
To amend the Act entitled "An Act relating to the water rights of the Ak-Chin Indian Community" to clarify certain provisions concerning the leasing of such water rights, and for other purposes. (Oct. 10, 2000; 114 Stat. 878)

**H.R. 4444/P.L. 106–286**
To authorize extension of nondiscriminatory treatment (normal trade relations treatment) to the People's Republic of China, and to establish a framework for relations between the United States and the People's Republic of China. (Oct. 10, 2000; 114 Stat. 880)

**H.R. 4700/P.L. 106–287**
To grant the consent of the Congress to the Kansas and Missouri Metropolitan Culture District Compact. (Oct. 10, 2000; 114 Stat. 909)

**H.J. Res. 72/P.L. 106–288**
Granting the consent of the Congress to the Red River Boundary Compact. (Oct. 10, 2000; 114 Stat. 919)

**S. 1295/P.L. 106–289**
To designate the United States Post Office located at 3813 Main Street in East Chicago, Indiana, as the "Lance Corporal Harold Gomez Post Office". (Oct. 10, 2000; 114 Stat. 920)

**S. 1324/P.L. 106–290**
To expand the boundaries of the Gettysburg National Military Park to include the Wills House, and for other purposes. (Oct. 10, 2000; 114 Stat. 921)

**H.R. 4578/P.L. 106–291**
Department of the Interior and Related Agencies Appropriations Act, 2001 (Oct. 11, 2000; 114 Stat. 922)

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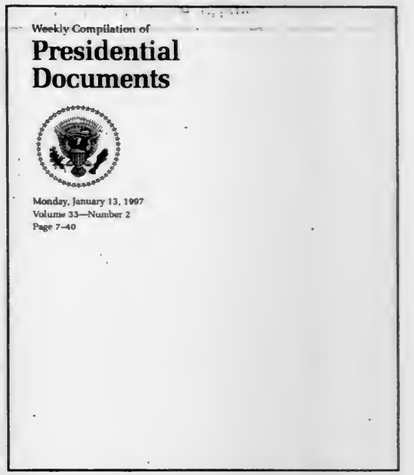
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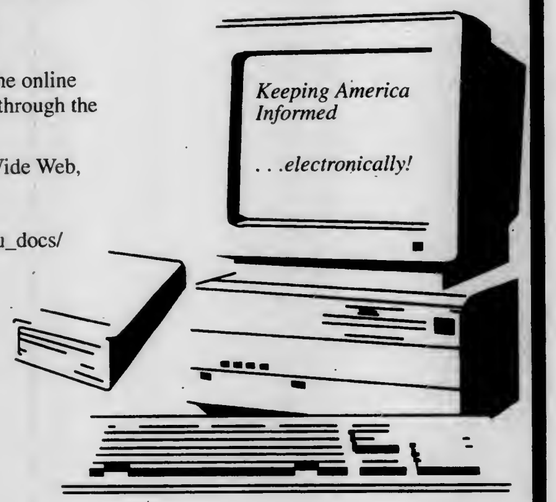
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# Federal Register

10–17–00 Tuesday
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Pages 61255–62274

184-001-D-00 Signature 1

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# Presidential Documents

Title 3—

The President

**Proclamation 7362 of October 12, 2000**

## Death of American Servicemembers Aboard the United States Ship Cole

**By the President of the United States of America**

**A Proclamation**

As a mark of respect for those who died on the United States Ship COLE, I hereby order, by the authority vested in me as President of the United States by the Constitution and the laws of the United States of America, that the flag of the United States shall be flown at half-staff upon all public buildings and grounds, at all military posts and naval stations, and on all naval vessels of the Federal Government in the District of Columbia and throughout the United States and its Territories and possessions until sunset, Monday, October 16, 2000. I also direct that the flag shall be flown at half-staff for the same length of time at all United States embassies, legations, consular offices, and other facilities abroad, including all military facilities and naval vessels and stations.

IN WITNESS WHEREOF, I have hereunto set my hand this twelfth day of October, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fifth.

William J Clinton

[FR Doc. 00–26770
Filed 10–16–00; 8:45 am]
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## Presidential Documents

**Proclamation 7363 of October 12, 2000**

# 100th Anniversary of the U.S. Navy Submarine Force, 2000

**By the President of the United States of America**

**A Proclamation**

On October 12, 1900, the United States Navy commissioned its first submarine, the U.S.S. *Holland*. Few people realized that this vessel would be the first in a long line of innovative and technically sophisticated ships that would launch a new era in our national defense.

Although early-20th century submarines were small, cramped, and somewhat limited in use, a few visionary American naval leaders recognized their great potential as both offensive and defensive weapons. By the end of World War I, American submarines were patrolling our Nation's coasts and supporting Allied efforts to keep the sea lanes open along the European coast and around the British Isles. In the 1930s, thanks to the determination of submarine force leaders and notable improvements by ship designers and builders, U.S. submarines evolved into a powerful offensive force, equipped with enough fuel, food, and weapons to sustain long-range, independent, open-sea patrols.

In 1941, when Imperial Japanese forces destroyed much of the U.S. battle fleet in the surprise attack on Pearl Harbor, the U.S. Navy Submarine Force stepped into the breach and played a pivotal role in winning the war in the Pacific. With submerged attacks during daylight hours and surface attacks at night, U.S. submarines inflicted a devastating toll on the Japanese Imperial Navy and merchant marine. By war's end, our submarine force had sunk 30 percent of the enemy's naval force and 60 percent of their merchant ships. But this impressive victory came at a heavy price: the submarine force suffered the highest casualty rate of any component of the U.S. Armed Services. Of the 16,000 Americans who served in submarines during the war, more than 3,500 gave their lives.

As the Cold War dawned, the U.S. Submarine Force once again helped to turn the tide of history, this time by deterring war. In 1954, under the leadership of Admiral Hyman G. Rickover, nuclear power was introduced to the fleet on the U.S.S. *Nautilus*. Together with advances in hull design, silencing techniques, and sonic detection, nuclear power dramatically improved the speed, stealth, and range of U.S. submarines. By the 1960s, when ballistic missiles were successfully launched from submerged submarines, the U.S. Navy Submarine Force helped protect the Free World from Soviet aggression by conducting reconnaissance missions and by ensuring that the United States could retaliate effectively against any nuclear attack from the Soviet Union or its allies.

The end of the Cold War, however, did not bring an end to the challenges facing our submarine force, as the outbreak of regional disturbances replaced the threat of all-out nuclear conflict. Modern submarines, with their ability to remain submerged for long periods of time, excel at gathering timely and accurate information about potential trouble spots around the globe. Should the need arise, our submarine force can also exercise powerful offensive capabilities, as it did during Operation Desert Storm in Kuwait and Iraq and Operation Allied Force in Kosovo. Today's submariners continue to build on a proud tradition of service by protecting U.S. interests, defending

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our freedom and that of our allies, and helping to shape a more peaceful world in the 21st century.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim October 12, 2000, as the 100th Anniversary of the U.S. Navy Submarine Force. I call upon all Americans to observe this centennial celebration with appropriate programs, ceremonies, and activities in honor of those patriots, past and present, who have played a part in the rich history of the U.S. Navy Submarine Force—from ship designers and builders to logisticians and support personnel to submarine crews and their families—and in tribute to those who gave their lives for our freedom. Because of the vision, dedication, courage, and selflessness of generations of these brave Americans, the United States today has a submarine force second to none, whose unprecedented contributions to intelligence, deterrence, and offensive military capability will continue to serve as a strong pillar of our Nation's security in the years to come.

IN WITNESS WHEREOF, I have hereunto set my hand this twelfth day of October, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fifth.

William J. Clinton

[FR Doc. 00–26771
Filed 10–16–00; 8:45 am]
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# Rules and Regulations

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Tuesday, October 17, 2000

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**DEPARTMENT OF JUSTICE**

**Immigration and Naturalization Service**

**8 CFR Part 299**

**[INS No. 2017–99]**

**RIN 1115–AF66**

## Duplication and Electronic Generation of Forms

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Final rule.

**SUMMARY:** This rule amends the Immigration and Naturalization Service (Service) regulations regarding duplication and electronic generation of public use forms by public and private entities. This rule eliminates the requirement that duplicated and electronically generated forms be produced on the same color paper and in the same printing configuration that is used for the official Service forms. This rule also removes the requirement that duplicated and electronically generated copies of forms made by public and private entities be submitted for Service review and approval. The Service is eliminating these requirements to make it easier for public and private entities to take advantage of existing technology in the marketplace and on the Service's Internet Website.

**DATES:** This final rule is effective October 17, 2000.

**FOR FURTHER INFORMATION CONTACT:** Ann Palmer, Adjudications Officer, Immigration Services Division, Immigration and Naturalization Service, 800 K Street, NW., 10th Floor, Techworld Plaza, Washington, DC 20001; telephone (202) 514–6442.

**SUPPLEMENTARY INFORMATION:**

### Why Does the Service Accept Duplicated and Electronically Generated Forms?

The Service developed standards for accepting electronically generated forms to make it easier for public and private entities to take advantage of the automated technology available in the marketplace to reproduce certain immigration and naturalization forms.

On May 17, 1994, the Service published an interim rule in the **Federal Register** at 59 FR 25555 providing the standards for acceptance of duplicated and electronically generated forms. On September 11, 1996, the Service published a final rule in the **Federal Register** at 61 FR 47799, formally adopting these standards.

### What Requirements for Acceptance of Duplicated and Electronically Generated Forms Is the Service Removing?

Currently, the standard for acceptance of duplicated and electronically generated forms include the requirements that public or private entities reproduce the forms on: (1) The same color paper; and (2) in the same printing configuration that is used for the official Service forms. Printing configuration means only whether a multi-page form is printed head-to-head or head-to-foot. The Service is removing these two requirements. In addition, the Service is removing the requirement that duplicated and electronically generated public use forms produced by public and private entities be submitted to the Director, Policy Directives and Instructions Branch (HQPDI) for approval.

### Why Is the Service Removing These Requirements?

Acceptance of duplicated and electronically generated forms by the Service was intended to be a benefit to the public. The requirements that duplicated and electronically generated forms must be reproduced on the same color paper and in the same printing configuration as the official form was for administrative convenience of the Service in sorting different forms. Unfortunately, the color paper used for some of the official forms is no readily available in the marketplace, and some of the printing configurations of the official forms are difficult to reproduce with standard electronic printers. As a result, it has been difficult for some public and private entities to comply with the standard for acceptance of duplicated and electronically generated forms. This is particularly true for public and private entities that wish to generate forms now available on the Service's Internet Website. Therefore, the Service is eliminating these two requirements to make the use of electronically generated forms more convenient.

In addition, having the Director, HQPDI approve the final form has caused unnecessary delays for public and private entities wishing to duplicate or electronically generate public use forms. As long as public and private entities follow the standards contained in § 299.4, there is not need to submit samples to the Director, HQPDI for approval.

### What Changes Is the Service Making to the Regulations?

In § 299.4, paragraphs (a)(2) and (b)(1) are being amended to remove the requirements that private entities electronically generating certain immigration forms reproduce the forms on the same color paper and in the same printing configuration as the official forms. In § 299.4, paragraph (b)(3) is being removed.

### Good Cause Exception

The Service's implementation of this rule as a final rule without first publishing a proposed rule is based on the "good cause" exceptions found at 5 U.S.C. 553(b)(B), (d)(1) and (d)(3). The reasons and the necessity for issuing a final rule without prior notice and comment are as follows: This rule removes a restriction and provides a benefit to the public by allowing them to take advantage of existing technology available in the marketplace and on the Service's Internet Website to electronically reproduce certain immigration and naturalization forms. Therefore, issuing this rule as a proposed rule with request for comments would delay implementation and would be unnecessary and contrary to the public interest.

### Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by

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approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule is primarily administrative in nature and is intended to benefit small entities and private individuals by simplifying the requirements that, if followed, would enable them to take advantage of the technology available in the marketplace and on the Service's Internet Website to electronically generate certain immigration and naturalization forms. The number of small entities affected by this rule will not be substantial.

**Unfunded Mandates Reform Act of 1995**

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1-year, and it will not significantly or uniquely effect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

**Small Business Regulatory Enforcement Fairness Act of 1996**

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

**Executive Order 12866**

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

**Executive Order 13132**

This regulation will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

**Executive Order 12988 Civil Justice Reform**

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

**List of Subjects in 8 CFR Part 299**

Immigration, Reporting and recordkeeping requirements.

Accordingly, part 299 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

## PART 299—IMMIGRATION FORMS

1. The authority citation for part 299 continues to read as follows:

**Authority:** 8 U.S.C. 1101, 1103; 8 CFR part 2.

2. Section 299.4, is amended by:

a. Revising paragraph (a)(2)(iv);

b. Revising the seventh sentence in paragraph (b)(1);

c. Removing paragraph (b)(3);

d. Revising the phrase "Room 5307" to "Room 4034" in paragraph (e).

The revisions read as follows:

**§ 299.4 Reproduction of Public Use Forms by public and private entities.**

(a) * * *

(2) * * *

(iv) Paper specifications (White, standard copier or typing paper).

(b) * * *

(1) * * * An electronic reproduction of a multi page form does not need to match the head-to-head or head-to-foot printing configuration of the official form. * * *

* * * * * *

Dated: October 4, 2000.

**Doris Meissner,**

*Commissioner, Immigration and Naturalization Services.*

[FR Doc. 00–26621 Filed 10–16–00; 8:45 am]

**BILLING CODE 4410–10–M**

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## DEPARTMENT OF THE TREASURY

### Office of Thrift Supervision

### 12 CFR Parts 509 and 510

**[Docket No. 2000–89]**

**RIN 1550–AB41**

### Rules of Practice and Procedure for Adjudicatory Proceedings; Civil Money Penalty Inflation Adjustment

**AGENCY:** Office of Thrift Supervision, Treasury.

**ACTION:** Final rule.

**SUMMARY:** The Federal Civil Monetary Penalty Inflation Adjustment Act of 1990 requires all federal agencies with statutory authority to impose civil money penalties (CMPs) to evaluate and adjust those CMPs every four years. OTS last adjusted its CMP statutes in 1996. Consequently, OTS is issuing this final rule to implement the required adjustments to its CMP statutes. OTS is also moving its chart displaying adjusted CMPs to the part containing OTS's procedural rules for adjudicatory proceedings.

**EFFECTIVE DATE:** October 17, 2000.

**FOR FURTHER INFORMATION CONTACT:** Timothy P. Leary, Counsel (Banking & Finance), (202) 906–7170, Regulations and Legislation Division, Office of the Chief Counsel, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

**SUPPLEMENTARY INFORMATION:**

### I. Background

The Federal Civil Monetary Penalties Inflation Adjustment Act of 1990 [1] (FCMPIAA) requires each agency to make inflationary adjustments to the CMPs in statutes that it administers. [2] Under the FCMPIAA, agencies must make those adjustments at least once every four years. OTS last adjusted its CMPs in 1996. [3] An increased CMP applies only to violations that occur after the increase takes effect.

While the CMP statutes of many agencies provide for minimum and maximum penalty amount, all of OTS's CMP statutes provide only for a daily maximum amount. Today's rule therefore refers only to maximum CMPs. Today's increases in maximum CMPs may not necessarily affect the amount of any CMP that OTS may seek for a particular violation. OTS calculates each CMP on a case-by-case basis based upon a variety of factors (including the gravity of the violation, whether the violation was willful or recurring, and any harm to the depository institution). As a result, the maximums merely serve as a cap.

Under the statute, the agency determines the inflation adjustment by increasing the maximum CMP by a "cost-of-living" adjustment. The "cost-of-living" adjustment is the percentage by which the Consumer Price Index (CPI) for the month of June of the calendar year preceding the adjustment exceeds the CPI for the month of June of the calendar year in which the amount of the CMP was last set or adjusted. OTS must use the CPI for All Urban Consumers (CPI–U) published by the Department of Labor.

The statute contains specific rules for rounding any increase based on the size of the CMP. Agencies do not have discretion in choosing whether to adjust a maximum CMP, how much to adjust a maximum CMP, or the methods used to determine the adjustment.

[1] 28 U.S.C. 2461 note.

[2] Some of OTS's CMPs are in a commonly administered statute, 12 U.S.C. 1818. Each agency that administers this statute is making identical adjustments.

[3] 12 CFR 510.6; 61 FR 56118 (October 31, 1996).



### II. Summary of Calculation

To explain the inflation adjustment calculation for CMP amounts that were last adjusted in 1996, we will use the following example. Under 12 U.S.C. 1818(i), as adjusted under 12 CFR 510.6, OTS may impose a daily maximum third-tier CMP not to exceed $1,100,000 for violations of certain banking laws.

First, we determine the appropriate CPI–Us. The statute requires OTS to use the CPI–U for June of the calendar year preceding the year of adjustment. Here, because we are adjusting CMPs in 2000, we use the CPI–U for June 1999, which was 166.2. We must also determine the CPI–U for June of the year the CMP was last set by law or adjusted for inflation. Because OTS last adjusted the CMPs under 12 U.S.C. 1818 in 1996, we use the CPI–U for June 1996, which was 156.7.

Second, we calculate the cost of living adjustment or inflation factor. To do this, we divide the CPI–U for June 1999 (166.2) by the CPI–U for June 1996 (156.7). Our result is 1.061 (*i.e.*, a 6.1 percent increase).

Third, we calculate the raw inflation adjustment. To do this, we multiply the maximum penalty amounts by the inflation factor. In our example, $1,100,000 multiplied by the inflation factor of 1.061 equals $1,167,100.

Fourth, we round the raw inflation amounts according to the rounding rules in section 5(a) of the FCMPIAA. Since we round only the increased amount, we calculate the increased amount by the subtracting the current maximum penalty amounts from the raw maximum inflation adjustments. Accordingly, the increased amount for the maximum penalty in our example is $67,100 (*i.e.*, $1,167,100 less $1,100,000). Under the rounding rules, if the penalty is greater than $200,000, we round the increase to the nearest multiple of $25,000. Therefore, the maximum penalty increase for our example is $75,000.

Fifth, we add the rounded increase to the maximum penalty amount last set or adjusted. In our example, $1,100,000 plus $75,000 yields a maximum inflation adjusted penalty amount of $1,175,000.[4] Today's chart also corrects minor errors in our earlier rule. The chart accompanying the 1996 adjustment misstated the amount of the CMP under 12 U.S.C. 1467a(i)(3) for violations of the Holding Company Act. The correct CMP in section 1467a(i)(3) is $25,000, not $5,000. The 1996 rule should have adjusted this $25,000 amount to $27,500. That figure is unchanged by today's computation. We have also added new references to two CMPs that were inadvertently omitted from the 1996 chart. These include CMPs under section 1467a (i)(2) (authorizing a CMP of $25,000, which has been adjusted to $27,500) and 12 U.S.C. 1884 (authorizing a CMP of $100, which has been adjusted to $110).

Finally, we have moved the CMP inflation adjustment regulation from 12 CFR Part 510 (Miscellaneous Organizational Regulations) to 12 CFR Part 509 (Rules of Practice and Procedure in Adjudicatory Proceedings). This relocation should make the chart easier to find.[5]

[4] Three CMPs are subject to a slightly different treatment because the statutorily mandated computation and the rounding rules did not result in any adjustment in 1996. This effects the $2,000 penalties under 12 U.S.C. 1464(v)(4) and 1467a(r)(1), and the $350 penalty under 42 U.S.C. 4012a(f). Under the statute, we must use the CPI–U for June of the year when the penalty was "last set or adjusted." Because these penalties were not adjusted in 1996, we must use the CPI–U for year in which the CMP was last set by an enactment. The statute also limits the amount of the first adjustment to a maximum 10 percent increase

The CMPs in sections 1464(v)(4) and 1467a(r)(1) were enacted as part of the Financial Institutions Reforms, Recovery, and Enforcement Act of 1989. Pub. L. No. 101–73, 103 Stat. 183 (August 9, 1989). The CPI–U for June 1989 was 124.1. Dividing the CPI–U for June 1999 (166.2) by 124.1 yields 1.3392. This factor applied to the $2,000 CMP yields $2,678, an increased penalty of $678. Under the rounding rules, this increase must be rounded to the nearest $1,000. Because this is the first time we have adjusted these CMPs, however, our adjustment cannot exceed 10% of the original CMP. Accordingly, we have increased the CMPs in sections 1464(v)(4) and 1467a(r)(1) by 10%, resulting in new CMPs of $2,200.

The $350 penalty in 42 U.S.C. 4012a(f) was enacted in the Riegle Community Development and Regulatory Improvement Act of 1994. Pub. L. No. 103–325, 108 Stat. 2160 (September 23, 1994). The CPI–U for June 1994 was 148.0. Dividing the CPI–U for June 1999 (166.2) by 148.0 yields 1.1229. This factor applied to the $350 CMP yields $393, an increased penalty of $43. Under the rounding rules, this increase must be rounded to the nearest multiple of $100. Because the nearest multiple of $100 is zero, there is no adjustment.

[5] The other federal banking agencies include their CMP inflation adjustment regulations in their rules of practice and procedure. *See* 12 CFR 19.240 (Office of the Comptroller of the Currency); 12 CFR 263.65 (Federal Reserve); 12 CFR 308.116 and 308.132 (Federal Deposit Insurance Corporation); 12 CFR 747.1001 (National Credit Union Administration).

### III. Need for an Immediately Effective Final Rule

To issue a final rule without public notice and comment, an agency must find good cause that notice and comment are impracticable, unnecessary, or contrary to the public interest.[6] To issue a rule that is immediately effective, the agency must also find good cause for dispensing with the 30-day delay required by the Administrative Procedure Act.[7] Moreover, section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 [8] states that a final rule imposing new requirements must take effect on the first day of a calendar quarter following its publication. That section provides, however, that an agency may determine that the rule should take effect earlier upon a finding of good cause.

Under the statute, agencies must make the required CMP inflation adjustments: (1) According to the very specific formula in the statute; and (2) within four years of the last inflation adjustment, or by October 31, 2000. Agencies have no discretion as to the amount or timing of the adjustment. The regulation is ministerial, technical, and noncontroversial. Accordingly, OTS believes that notice and comment are unnecessary. For these same reasons, OTS believes that there is good cause to make this rule effective immediately upon publication.

### IV. Regulatory Flexibility Act

An initial regulatory flexibility analysis under the Regulatory Flexibility Act (RFA) is required only when an agency must publish a general notice of proposed rulemaking.[9] As already noted, OTS has determined that publication of a notice of proposed rulemaking is not necessary for this final rule. Accordingly, the RFA does not require an initial regulatory flexibility analysis. Nevertheless, OTS has considered the likely impact of the rule on small entities and believes that the rule will not have a significant impact on a substantial number of small entities.

### V. Executive Order 12866

OTS has determined that this final rule does not constitute a "significant regulatory action" for purposes of Executive Order 12866.

[6] 5 U.S.C. 553(b).

[7] *id.*

[8] 12 U.S.C. 4802.

[9] 5 U.S.C. 603.

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**VI. Unfunded Mandates Act of 1995**

OTS had determined that the final rule will not result in expenditures by state, local, or tribal governments or by the private sector of $100 million or more. Accordingly, this rulemaking is not subject to section 202 of the Unfunded Mandates Act.

**List of Subjects**

*12 CFR Part 509*

Administrative practice and procedure, Penalties.

*12 CFR Part 510*

Administrative practice and procedure.

Accordingly, OTS amends chapter V, title 12, Code of Federal Regulations as set forth below:

## PART 509—RULES OF PRACTICE AND PROCEDURE IN ADJUDICATORY PROCEEDINGS

1. The authority citation for part 509 is revised to read as follows:

**Authority:** 5 U.S.C. 504, 554–557; 12 U.S.C. 1464, 1467, 1467a, 1468, 1817(j), 1818, 3349, 4717; 15 U.S.C. 78(l), 78o–5, 78u–2; 28 U.S.C. 2461 note; 31 U.S.C. 5321; 42 U.S.C. 4012a.

2. In § 509.103, add paragraph (c) to read as follows:

**§ 509.103 Civil money penalties.**

* * * * *

(c) *Inflation adjustment.* Under the Federal Civil Monetary Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note), OTS must adjust for inflation the civil monetary penalties in statutes that it administers. The following chart displays the adjusted civil money penalties. The amounts in this chart apply to violations that occur after October 17, 2000:

| U.S. Code citation | CMP description | New maximum amount |
|---|---|---|
| 12 U.S.C. 1464(v)(4) | Reports of Condition—1st Tier | $2,200 |
| 12 U.S.C. 1464(v)(5) | Reports of Condition—2nd Tier | 22,000 |
| 12 U.S.C. 1464(v)(6) | Reports of Condition—3rd Tier | 1,175,000 |
| 12 U.S.C. 1467(d) | Refusal to Cooperate in Exam | 5,500 |
| 12 U.S.C. 1467a(i)(2) | Holding Company Act Violation | 27,500 |
| 12 U.S.C. 1467a(i)(3) | Holding Company Act Violation | 27,500 |
| 12 U.S.C. 1467a(r)(1) | Late/Inaccurate Reports—1st Tier | 2,200 |
| 12 U.S.C. 1467a(r)(2) | Late/Inaccurate Reports—2nd Tier | 22,000 |
| 12 U.S.C. 1467a(r)(3) | Late/Inaccurate Reports—3rd Tier | 1,175,000 |
| 12 U.S.C. 1817(j)(16)(A) | Change in Control—1st Tier | 5,500 |
| 12 U.S.C. 1817(j)(16)(B) | Change in Control—2nd Tier | 27,500 |
| 12 U.S.C. 1817(j)(16)(C) | Change in Control—3rd Tier | 1,175,000 |
| 12 U.S.C. 1818(i)(2)(A) | Violation of Law or Unsafe or Unsound Practice—1st Tier | 5,500 |
| 12 U.S.C. 1818(i)(2)(B) | Violation of Law or Unsafe or Unsound Practice—2nd Tier | 27,500 |
| 12 U.S.C. 1818(i)(2)(C) | Violation of Law or Unsafe or Unsound Practice—3rd Tier | 1,175,000 |
| 12 U.S.C. 1884 | Violation of Security Rules | 110 |
| 12 U.S.C. 3349(b) | Appraisals Violation—1st Tier | 5,500 |
| 12 U.S.C. 3349(b) | Appraisals Violation—2nd Tier | 27,500 |
| 12 U.S.C. 3349(b) | Appraisals Violation—3rd Tier | 1,175,000 |
| 42 U.S.C. 4012a(f) | Flood Insurance | 350/115,000 |

## PART 510—MISCELLANEOUS ORGANIZATIONAL REGULATIONS

3. The authority citation for part 510 continues to read as follows:

**Authority:** 12 U.S.C. 1462a, 1463, 1464; Pub. L. 101–410, 104 Stat. 890; Pub. L. 104–134, 110 Stat. 1321–358.

**§ 510.6 [Removed]**

4. Section 510.6 is removed.

Dated: October 4, 2000.
By the Office of Thrift Supervision.
**Ellen Seidman,**
*Director.*
[FR Doc. 00–26336 Filed 10–16–00; 8:45 am]
**BILLING CODE 6720–01–P**

## DEPARTMENT OF TRANSPORTATION

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. 2000–CE–01–AD; Amendment 39–11923; AD 2000–20–12]**

**RIN 2120–AA64**

## Airworthiness Directives; Aerotechnik s.r.o. Model L 13 SEH VIVAT Sailplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that applies to all Aerotechnik s.r.o. (Aerotechnik) Model L 13 SEH VIVAT sailplanes. This AD requires you to inspect the tail-fuselage hinge for strength requirements and damage, and also requires you to replace any hinge with damage or that does not meet strength requirements. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the Czech Republic. The actions specified by this AD are intended to detect and correct any tail-fuselage hinge that is damaged or has inadequate material characteristics. Any tail-fuselage hinge with damage or inadequate material characteristics could fail and result in loss of controlled flight.

**DATES:** This AD becomes effective on November 27, 2000.

The Director of the **Federal Register** approved the incorporation by reference of certain publications listed in the regulations as of November 27, 2000.

**ADDRESSES:** You may get the service information referenced in this AD from Aerotechnik s.r.o., 686 04 Kunovic, Czech Republic; telephone: +420 632 537 111; facsimile: +420 632 537 900. You may examine this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–01–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC 20001.



**FOR FURTHER INFORMATION CONTACT:** Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; facsimile: (816) 329–4090.

**SUPPLEMENTARY INFORMATION:**

**Discussion**

*What events have caused this AD?* The Civil Aviation Authority (CAA), which is the airworthiness authority for the Czech Republic, recently notified the FAA that an unsafe condition may exist on all Aerotechnik Model L 13 SEH VIVAT sailplanes. The CAA reports an incident involving one of the affected sailplanes where the tail-fuselage attachment fitting was damaged. Further analysis reveals that the material characteristics of the tail-fuselage attachment fitting were inadequate.

*What are the consequences if the condition is not corrected?* The tail-fuselage attachment fitting is a primary structural element within the empennage. Failure of this part, if not detected and corrected, could result in loss of controlled flight.

*Has FAA taken any action to this point?* We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Aerotechnik Model L 13 SEH VIVAT sailplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on August 9, 2000 (65 FR 48646). The NPRM proposed to require you to inspect the tail-fuselage hinge for strength requirements and damage, and would require you to replace any hinge with damage or that does not meet strength requirements.

*Was the public invited to comment?* Interested persons were afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

**The FAA's Determination**

*What is FAA's Final Determination on this Issue?* After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We determined that these minor corrections:

- Will not change the meaning of the AD; and
- Will not add any additional burden upon the public than was already proposed.

**Cost Impact**

*How many sailplanes does this AD impact?* We estimate that this AD affects 20 sailplanes in the U.S. registry.

*What is the cost impact of the inspection for the affected sailplanes on the U.S. Register?* We estimate that it will take approximately 4 workhours per sailplane to accomplish the inspection, at an average labor rate of $60 an hour. Based on the cost factors presented above, we estimate the total cost impact of the inspection on U.S. operators to be $4,800, or $240 per sailplane.

*What is the cost impact of the replacement for the affected sailplanes on the U.S. Register?* We estimate that it will take approximately 16 workhours per sailplane to accomplish the replacement (as necessary), at an average labor rate of $60 an hour. The manufacturer will provide the replacement attachment fittings at no cost. Based on the cost factors presented above, we estimate the total labor cost impact of the replacement on U.S. operators to be $960 per sailplane.

**Regulatory Impact**

*Does this AD impact various entities?* The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

*Does this AD involve a significant rule or regulatory action?* For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by Reference, Safety.

**Adoption of the Amendment**

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. FAA amends Section 39.13 by adding a new AD to read as follows:

**2000–20–12 Aerotechnik S.R.O.:** Amendment 39–11923; Docket No. 2000–CE–01–AD.

(a) *What sailplanes are affected by this AD?* This AD applies to Model L 13 SEH VIVAT sailplanes, all serial numbers, certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above sailplanes on the U.S. Register must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent the tail-fuselage hinge failing and consequent loss of controlled flight.

(d) *What must I do to address this problem?* To address this problem, you must accomplish the following actions:

| Actions | Compliance times | Procedures |
|---|---|---|
| (1) Inspect the tail-fuselage attachment fitting, part number (P/N) A 102 021N, for damage and material hardness. | Within the next 60 days after November 27, 2000 (the effective date of this AD). | Follow the procedures in the Aerotechnik Service Bulletin SEH 13–005a, dated November 18, 1999. |
| (2) If the tail-fuselage attachment fitting is damaged or the material does not meet the hardness requirements specified in the service bulletin, you must replace the tail-fuselage attachment fitting. | Before further flight after the inspection | You must notify Aerotechnik and request they send the replacement part with installation instructions. |

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| Actions | Compliance times | Procedures |
|---|---|---|
| (3) Do not install, on any sailplane, a P/N A 102 021N attachment fitting that has not passed the inspection requirements specified in paragraph (d)(1) of this AD. | As of November 27, 2000 (the effective date of this AD. | Inspect any attachment fitting in accordance with the previously referenced service bulletin. |

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Small Airplane Directorate approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106.

**Note 1:** This AD applies to each sailplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For sailplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; facsimile: (816) 329–4090.

(g) *What if I need to fly the sailplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your sailplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Aerotechnik CZ Service Bulletin SEH 13–005a, dated November 18, 1999. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from Aerotechnikcz s.r.o., 686 04 Kunovic, Czech Republic; telephone: +420 632 537 111; facsimile: +420 632 537 900. You can look at copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC 20001.

(i) *When does this amendment become effective?* This amendment becomes effective on November 27, 2000.

**Note 2:** The subject of this AD is addressed in Czech Republic AD Number CAA–AD–T–112/1999, dated November 18, 1999.

Issued in Kansas City, Missouri, on September 28, 2000.

**Michael Gallagher,**

*Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–25553 Filed 10–16–00; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 15 CFR Part 902

## 50 CFR Part 679

**[Docket No. 000524152–0274–02; I.D. 030100C]**

**RIN 0648–AM34**

## Fisheries of the Exclusive Economic Zone Off Alaska; Vessel Monitoring System (VMS)

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule; VMS component notice of approval.

**SUMMARY:** NMFS issues a final rule requiring vessels participating in the directed fishery for Atka mackerel in the Aleutian Islands subarea (AI) of the Bering Sea and Aleutian Islands Area to carry and use a Vessel Monitoring System (VMS) transmitter, and revising regulations governing Atka mackerel harvest in the Community Development Quota (CDQ) fisheries. Additionally, NMFS issues notification of the approval of VMS components for use off Alaska. These actions are necessary to enhance monitoring of fishery activities within critical habitat areas. They are intended to further the conservation goals and objectives of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP).

**DATES:** Effective November 11, 2000.

**ADDRESSES:** Copies of the Regulatory Impact Review/Final Regulatory Flexibility Analysis (RIR/FRFA) prepared for this action may be obtained from Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel, or by calling the Alaska Region, NMFS, at 907–586–7228. Send comments on any ambiguity or unnecessary complexity arising from the language used in this final rule to the Regional Administrator at the same address. Send comments on collection-of-information requirements to the same address and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington DC 20503 (Attn: NOAA Desk Officer).

For ArgoNet Mar"GE information, contact NACLS Inc., 9200 Basil Court, Suite 306, Largo, MD 20774; phone 301–341–1814.

To obtain copies of the list of approved VMS components, VMS installation instructions, or to apply to have a VMS component approved for use off Alaska, contact Guy Holt, Enforcement Division, Alaska Region, NMFS, P.O. Box 21767, Juneau, AK 99802–1668; phone (907)–586-9353..

**FOR FURTHER INFORMATION CONTACT:** Alan Kinsolving, 907–586–7228.

**SUPPLEMENTARY INFORMATION:**

### Background

NMFS notes as an initial point that as a result of a U.S. District Court Order, NMFS has closed waters within critical habitat to all trawling. An interim rule implementing this closure was published on August 15, 2000 (65 FR 49766). While this closure is in effect, no trawling for Atka mackerel may occur inside critical habitat and no Atka mackerel catch should accrue against the inside critical habitat portion of the quota, unless it is harvested by non-trawl gear. This rule does not affect that closure.

In 1997, NMFS listed the western stock of Steller sea lions (*Eumetopias jubatus*) as an endangered species. A statutory requirement of the Endangered Species Act is that Federal actions taken within the critical habitat of a listed species must not jeopardize the continued existence of the populations of those species or adversely affect or modify their critical habitat. Because Atka mackerel are an important prey species for Steller sea lions, the Atka mackerel fishery must be managed to avoid potential jeopardy to Steller sea lions.



On January 22, 1999, NMFS published a final rule that reduced the percentage of Atka mackerel taken from Steller sea lion critical habitat over a 4-year period in the Western and Central Districts of the AI (64 FR 3446). The regulations implemented by that final rule prohibit all trawling for groundfish within areas designated as Steller sea lion critical habitat when NMFS determines that the harvest of Atka mackerel has reached the applicable limits specified in the regulations for the year and district. A critical habitat trawl closure remains in effect until NMFS closes the Atka mackerel fishery in that area.

When critical habitat areas are closed, continued Atka mackerel fishing takes place very close or adjacent to the closed critical habitat areas. The boundaries of these areas are complex, the areas are remote, and the weather is frequently poor. Ensuring that no fishing is taking place inside critical habitat using traditional methods of enforcement, such as aerial surveillance, is difficult and costly. Effective enforcement of these closures would be enhanced if vessels participating in the fishery use a VMS transmitter that automatically and frequently transmits vessel position to NMFS so that vessels fishing near critical habitat can be monitored closely.

This final rule requires vessels participating in a directed fishery for Atka mackerel in the AI to have an operating NMFS-approved VMS transmitter on board. These transmitters automatically determine the vessel's location several times per hour using Global Positioning System (GPS) satellites and send the position information to NMFS via a mobile communication service provider. The VMS transmitters are designed to be tamper-resistant and automatic. The vessel owner should be unaware of exactly when the unit is transmitting and will be unable to alter the signal or the time of transmission.

This rule requires the owner of a vessel participating in the AI Atka mackerel fishery to obtain and install a NMFS-approved VMS transmitter. The rule also requires the use of the transmitter at all times when engaging in directed fishing for Atka mackerel. The rule prohibits trawl vessels not carrying properly installed and operating VMS units from retaining Atka mackerel at more than the maximum retainable amount of 20 percent established in regulations at § 679.20(e) and (f) while fishing in the AI subarea.

This rule also revises regulations governing Atka mackerel harvest in the CDQ fisheries. Current regulations prohibit any trawling by a CDQ group inside critical habitat after the specified percent of the group's annual Atka mackerel CDQ has been reached. This action will change these requirements so that each CDQ group may harvest no more than the specified percentage of their Atka mackerel CDQ inside the critical habitat areas. This will provide more flexibility to the CDQ groups for management of their Atka mackerel CDQs.

### Response to Comments

NMFS received two letters of comment on the proposed rule that was published June 12, 2000, for a 30-day comment period (65 FR 36810). Both letters indicated support for the action but expressed concerns or suggested clarifications; these comments are summarized below followed by NMFS' responses.

*Comment 1.* The proposed rule states that installation of a VMS transmitter would take less than 6 hours and estimates that 4 hours per year will be required to maintain the unit. Under most circumstances, the installation of the Argos MAR GE requires less than 2 hours. The unit has a lifetime of 5 years and should require no annual maintenance.

*Response.* Comment noted. However, NMFS attempts to estimate conservatively the burden that a regulation may impose on the public. In this case, NMFS believes that in some circumstances the installation of a VMS transmitter could take as much as 6 hours. Further, NMFS believes that annual maintenance could be required in some circumstances.

*Comment 2.* VMS transmitters should only be required in the Western and Central Districts of the AI. Because there is no separate apportionment of the Atka mackerel TAC to critical habitat areas in the Eastern District of the AI, there is no need to require VMS transmitters in that district. Requiring VMS transmitters in the Eastern AI would impose an unnecessary burden on vessels that fish for Atka mackerel in the Eastern AI, but do not fish for Atka mackerel in the Central or Western AI.

*Response.* NMFS disagrees. Though there is not a separate apportionment of TAC to critical habitat areas in the Eastern AI, there are critical habitat areas in the Eastern AI that are closed to directed fishing for Atka mackerel and preventing illegal fishing activity in those areas is just as difficult. Thus, NMFS believes that allowing some vessels to fish for Atka mackerel in the AI without VMS transmitters would unnecessarily complicate enforcement. Second, NMFS believes that the number of vessels that target Atka mackerel in the Eastern AI that do not also target Atka mackerel in the Central or Western AI is not significant. Based on Weekly Production Report Data from 1998 and 1999, only one vessel reported landings from the Eastern AI in an Atka mackerel target that did not also report landings in an Atka mackerel target in the Western or Central AI. Based on 1999 observer data from vessels that did not retain Atka mackerel in excess of the maximum retainable bycatch (MRB) amount in the Central and Western AI, only two hauls were made in the Eastern AI where the amount of retained Atka mackerel exceeded the MRB amount. These data indicate that virtually no targeting of Atka mackerel in the Eastern AI by vessels that do not also target Atka mackerel occurs in the Central or Western AI.

*Comment 3.* Vessel personnel should have the ability to monitor the VMS unit's GPS reading.

*Response.* The type approval specifications for VMS units do not prevent the unit from displaying the location so long as the vessel operator cannot determine when the unit is transmitting a location. If sufficient market demand exists, transmitter providers could offer this feature. However, this feature should not be necessary for achieving NMFS' monitoring and enforcement goals. Until recently, the Department of Defense deliberately degraded the GPS signal so that it was only accurate to within +/- 100m. However, as of May 1, 2000, deliberate degrading of the GPS system has been stopped and different GPS units should agree with each other within +/- 20 meters.

*Comment 4.* NMFS needs to develop a waiver system to allow vessels with inoperative VMS transmitters to continue fishing.

*Response.* NMFS disagrees and believes that granting of waivers would unnecessarily complicate enforcement. In comparison to the size of the fishery and the gross revenues of the vessels that participate in it, the cost of a transmitter is quite low. Vessel owners must balance the approximate $1,800 cost of a backup transmitter with the risk of lost fishing time in the event of transmitter failure.

After consideration of the comments received, NMFS approves this final rule. No changes in the regulatory text were made between the proposed and final rule.

### Notice of VMS Component Approval

In the proposed rule to require VMS in the Atka mackerel fishery (65 FR

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36810, June 12, 2000), NMFS set forth criteria for the approval of VMS components. These criteria were based on national standards published in the **Federal Register** on March 31, 1994 (59 FR 15180).

Based on the information reviewed to date, NMFS approves the ArgoNet Mar GE transmitter, for which North American Collection and Location by Satellite, Inc. (NACLS) is the sole communications service provider.

The MAR GE transmitter also has been approved for use in the Atlantic Highly Migratory Species Fisheries. Additional details concerning this transmitter may be found in the notice of approval published in the **Federal Register** on September 9, 1999 (64 FR 48988).

A vessel owner wishing to purchase this transmitter should contact the provider (see **ADDRESSES**).

At this time, NMFS believes that only one vendor produces VMS components that provide seamless and transparent communications from all areas off Alaska. However, other vendors that manufacture or distribute VMS components that meet the approval criteria set out in the proposed rule, are encouraged to contact NMFS. As additional components are approved, notification will be published in the **Federal Register**.

**Small Entity Compliance Guide**

The following information satisfies the Small Business Regulatory Enforcement Fairness Act of 1996, which requires a plain language guide to compliance with this final rule by affected small entities.

*What is a VMS?* A VMS consists of a transmitter, installed on the vessel, and a communications service provider that relays the transmitter's signal to NMFS. The transmitter determines the vessel's position using GPS satellites and automatically transmits the position to the communications service provider.

*Who must carry a VMS transmitter?* A vessel that engages in directed fishing for Atka mackeral in the AI must carry an operating VMS transmitter. You must receive confirmation from NMFS that the transmitter is operating before you start directed fishing, and you must continue to use the VMS transmitter until the Atka mackerel season has ended unless your vessel is in port.

*How do I obtain, install, and activate my VMS transmitter?* For complete instructions on how to install and operate your VMS transmitter, contact Guy Holt, Enforcement Division, Alaska Region, NMFS, P.O. Box 21767, Juneau, AK 99802—1668; phone (907)—586-9353. At this time, the only VMS transmitter approved for use off Alaska is the ArgoNet Mar GE. Vessel owners wishing to purchase the Mar GE transmitter may contact NACLS Inc., 9200 Basil Court, Suite 306, Largo, MD 20774; phone 301—341—1814. When purchasing a transmitter, the vessel owner should request a unit configured for use by vessels off Alaska. The vessel owner will also need to complete an ArgoNet contract with NACLS and establish credit with ArgoNet. The transmitter will automatically begin transmitting position reports when the power is connected. Vessel owners should confirm that the position reports are being received prior to directed fishing for Atka mackerel, by calling NMFS Enforcement Division.

*When can I turn my transmitter off?* Your transmitter will automatically reduce the frequency of transmission to once per week when your vessel is stationary. You may disconnect the transmitter when the Atka mackerel fishery in which you participated has closed.

*What should I do if my transmitter stops working?* The ArgoNet Mar GE is equipped with an alarm to alert you if it is unable to transmit. If the unit stops working, you must stop directed fishing for Atka mackerel until the unit is repaired or replaced. Though VMS transmitters have shown themselves to be reliable, we recommend that vessel owners consider carrying a backup transmitter.

**Classification**

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection-of-information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection-of-information displays a currently valid OMB control number.

This final rule contains a new collection-of-information requirement that was approved by the OMB under the PRA and issued OMB control number 0648–0417. The new information requirements include the requirement to install, maintain, and use a NMFS-approved VMS unit. The public reporting burden for this collection of information is estimated to average 6 hours to install the unit, 4 hours per year to maintain the unit, and 5 seconds per response to transmit data. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding this burden estimate or any other aspect of the collection of information to NMFS at the previously listed ADDRESS, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attn: NOAA Desk Officer).

NMFS prepared a Final Regulatory Flexibility Analysis (FRFA) describing the impact of the action on small entities. A summary of the FRFA follows.

This action requires that factory trawlers participating in the Aleutian Islands Atka mackerel fishery carry and use a VMS unit. It is necessary to ensure that NMFS does not violate a statutory requirement of the ESA that federally managed fisheries not adversely affect designated critical habitat, and it is being promulgated under the authority of the Magnuson-Stevens Act. This action will have a small but negative impact on the approximately 13 factory trawlers that fish for Atka mackerel in the Aleutian Islands. Four of these vessels caught and processed only small amounts of Atka mackerel and it constituted less than 5 percent of their retained catch. The other 9 vessels caught and processed over 95 percent of the Atka mackerel that was harvested. During 1998, these 9 vessels caught and processed 137,790 mt of groundfish off Alaska. Based on 1997 ex-vessel price data, this catch had an approximate value of $41 million prior to processing. The additional value added by at-sea processing is not known. None of the 9 vessels had gross revenues of less than $3 million, the threshold established by the SBA for 'small' fish harvesting businesses. NMFS believes that none of the vessels that fish for Atka mackerel in the Aleutian Islands would qualify as small entities.

The preferred alternative would impose new reporting and recordkeeping requirements on these vessels of approximately 12.1 hours per year per vessel. It would not duplicate, overlap, or conflict with existing Federal rules. In addition to the preferred alternative, the analysis considered a "no action" alternative (status quo) that would not require the use of VMS units for vessels engaged in directed fishing for Atka mackerel in the Aleutian Islands. This alternative was rejected because it would fail to meet NMFS' need to facilitate monitoring and enforcement of Steller sea lion protective measures. Maintaining the status quo could have minimized impacts on small entities. However, that alternative would not have achieved the objectives of this action.



A copy of the RIR/FRFA can be obtained from NMFS (see **ADDRESSES**).

This final rule has been determined to be not significant for purposes of E.O. 12866.

The President has directed Federal agencies to use plain language in their communication with the public, including regulations. To comply with this directive, we seek public comment on any ambiguity or unnecessary complexity arising from the language used in this final rule. Such comments should be sent to the Alaska Regional Administrator (see **ADDRESSES**).

**List of Subjects in 15 CFR Part 902**

Reporting and recordkeeping requirements.

**List of Subjects in 50 CFR Part 679**

Alaska Fisheries, Reporting and recordkeeping requirements.

Dated: October 10, 2000.

**William T. Hogarth,**

*Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For the reasons set out in the preamble, 15 CFR part 902, chapter IX, and 50 CFR part 679 are amended as follows:

## PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT; OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:

**Authority:** 44 U.S.C. 3501 *et seq.*

2. In § 902.1, the table in paragraph (b) is amended by adding under 50 CFR the following entries in numerical order:

**§ 902.1 OMB Control numbers assigned pursuant to the Paperwork Reduction Act.**

* * * * *

(b) * * *

| CFR part or section where the information collection requirement is located | Current OMB control number the information (All numbers begin with 0648–) |
|---|---|
| * * * * | * |
| 50 CFR | |
| * * * * | * |
| 679.28(f)(3)(i) | –0417 |
| 679.28(f)(3)(ii) | –0417 |
| 679.28(f)(3)(iii) | –0417 |
| * * * * | * |

## PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

**Authority:** 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

2. In § 679.7, paragraph (a)(2) is revised and a new paragraph (c)(3) is added to read as follows:

**§ 679.7 Prohibitions.**

(a) * * *

(2) Conduct any fishing contrary to notification of inseason action, closure, or adjustment issued under § 679.20, § 679.21, § 679.22, § 679.25.

* * * * *

(c) * * *

(3) Use a vessel to participate in a directed fishery for Atka mackerel in the Aleutian Islands subarea unless that vessel carries a NMFS-approved Vessel Monitoring System (VMS) transmitter and complies with the requirements described at § 679.28(f).

* * * * *

3. In § 679.22, paragraph (a)(8)(iii)(D) is revised to read as follows:

**§ 679.22 Closures.**

(a) * * *

(8) * * *

(iii) * * *

(D) CDQ fishing. A CDQ group is prohibited from exceeding the percentage of the annual Atka mackerel CDQ for Steller sea lion critical habitat in the Western and/or Central Districts of the AI specified at paragraph (a)(8)(iii)(B) of this section (see Table 1, Table 2, and Figure 4 to part 226 of this title).

* * * * *

4. In § 679.28, paragraph (a) is revised and a new paragraph (f) is added to read as follows:

**§ 679.28 Equipment and operational requirements.**

(a) *Applicability.* This section contains the requirements for scales, observer sampling stations, bins for volumetric estimates, and vessel monitoring system hardware. This section does not require any vessel or processor to provide this equipment. Such requirements appear elsewhere in this part.

* * * * *

(f) *Vessel Monitoring System (VMS) Requirements*--(1) *What is a VMS?* A VMS consists of a NMFS-approved VMS transmitter that automatically determines the vessels position and transmits it to a NMFS-approved communications service provider. The communications service provider receives the transmission and relays it to NMFS.

(2) *How are VMS transmitters and communications service providers approved by NMFS?* (i) NMFS publishes type approval specifications for VMS components in the **Federal Register**.

(ii) Transmitter manufacturers or communication service providers may submit products or services to NMFS for evaluation based on the published specifications.

(iii) NMFS will publish a list of NMFS–approved transmitters and communication service providers in the **Federal Register**. As necessary, NMFS will publish amendments to the list of approved components in the **Federal Register**.

(3) *What are the vessel owner's responsibilities?* If you are a vessel owner that must participate in a VMS, you or your crew must:

(i) Obtain a NMFS-approved VMS transmitter and have it installed onboard your vessel in accordance with the instructions provided by NMFS. You may get a copy of the VMS installation and operation instructions from the Regional Administrator upon request.

(ii) Activate the VMS transmitter and receive confirmation from NMFS that the VMS transmissions are being received before participating in a fishery requiring the VMS.

(iii) Continue the VMS transmissions until the fishery requiring VMS has closed or until notified by NMFS staff that you may stop transmissions.

(iv) Stop fishing immediately if informed by NMFS staff or an authorized officer that NMFS is not receiving position reports from the VMS transmitter.

(v) Make the VMS transmitter available for inspection by NMFS personnel, observers or an authorized officer.

(vi) Ensure that the VMS transmitter is not tampered with, disabled, destroyed or operated improperly.

(vii) Pay all charges levied by the communication service provider.

[FR Doc. 00–26656 Filed 10–16–00; 8:45 am]

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**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Parts 1 and 602**

**[TD 8905]**

**RIN 1545–AW74**

## Preparer Due Diligence Requirements for Determining Earned Income Credit Eligibility

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations and removal of temporary regulations.

**SUMMARY:** This document contains final regulations relating to the due diligence requirements under section 6695(g) of the Internal Revenue Code for paid preparers of Federal income tax returns or claims for refund involving the earned income credit (EIC). These regulations reflect changes to the law made by the Taxpayer Relief Act of 1997. The regulations provide guidance to paid preparers who prepare Federal income tax returns or claims for refund claiming the earned income credit.

**DATES:** *Effective Date.* These regulations are effective October 17, 2000.

*Applicability Date.* For dates of applicability, see § 1.6695–2(d) of these regulations.

**FOR FURTHER INFORMATION CONTACT:** Andrea Tucker, (202) 622–4940 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### Paperwork Reduction Act

The collection of information in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) under control number 1545–1570. This information is required by the IRS to determine preparer due diligence compliance for purposes of the penalty imposed under section 6695(g). Responses to this collection of information are mandatory.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by the Office of Management and Budget.

The estimated annual burden per recordkeeper varies depending on individual circumstances. The estimated total annual recordkeeping burden: 507,136 hours with the estimated average annual burden hours per recordkeeper: 5 hours 4 minutes (40 minutes per return or claim for refund, 7.6 returns per preparer). The estimated number of recordkeepers: 100,000.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to this collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

### Background

Section 6695(g) was added by section 1085(a)(2) of the Taxpayer Relief Act of 1997, Public Law 105–34 (11 Stat. 788, 955 (1997)) (the Act), effective for taxable years beginning after December 31, 1996. Section 6695(g) imposes a $100 penalty for each failure by an income tax return preparer to meet the due diligence requirements set forth in regulations prescribed by the Secretary.

On December 22, 1997, the IRS published Notice 97–65 (1997–2 C.B. 326), in which the IRS set forth the preparer due diligence requirements for 1997 returns and claims for refund involving the EIC. To avoid the imposition of the penalty under section 6695(g) for 1997 returns and claims for refund, Notice 97–65 required preparers to meet four requirements: (1) Complete the Earned Income Credit Eligibility Checklist attached to Notice 97–65 (Eligibility Checklist), or otherwise record the information necessary to complete the Eligibility Checklist; (2) complete the Earned Income Credit Worksheet (Computation Worksheet), as contained in the 1997 Form 1040 instructions, or otherwise record the computation and information necessary to complete the Computation Worksheet; (3) not know or have reason to know that any information used by the preparer in determining eligibility for, and the amount of, the EIC is incorrect; and (4) retain for three years the Eligibility Checklist and Computation Worksheet (or alternative records), and a record of how and when the information used to determine eligibility for, and the amount of, the EIC was obtained by the preparer. This information may be retained as a paper record, in magnetic media format, or in an electronic storage media system, consistent with applicable IRS revenue procedures.

On December 21, 1998, temporary regulations (TD 8798, 1999–1 C.B. 804) under section 6695(g) were published in the **Federal Register** (63 FR 70339). A notice of proposed rulemaking (REG–120168–97, 1999–1 C.B. 809) cross-referencing the temporary regulations was published in the **Federal Register** (63 FR 70357) on that same date. The text of the temporary regulations served as the text of the proposed regulations. The requirements set forth in the temporary regulations were substantially similar to those in Notice 97–65.

The notice of proposed rulemaking solicited comments from the public. One comment was received, but no public hearing was requested or held. After consideration of the comment received, the proposed regulations under section 6695(g) are adopted by this Treasury decision, and the corresponding temporary regulations are removed.

### Summary of Comments

The commentator expressed concern that requiring the completion of an eligibility checklist and a computation worksheet impose additional recordkeeping burdens on tax return preparers. The commentator did not suggest alternative due diligence requirements.

The additional recordkeeping required by the regulations is necessary to implement congressional intent with respect to section 6695(g). The legislative history accompanying the Act explains that Congress "believes that more thorough efforts by return preparers are important to improving EIC compliance." H.R. Rep. No. 148, 105th Cong., 1st Sess. 512 (1997) and S. Rep. No. 29, 105th Cong., 1st Sess. 125 (1997). The additional information gathering and recordkeeping required by these regulations are intended to ensure that preparers are thorough when determining whether a taxpayer qualifies to claim the EIC credit. Further, the regulations allow preparers the flexibility to use either the prescribed forms or alternative records containing the same information as the prescribed forms to meet the due diligence requirements.

### Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Further, it is hereby certified, pursuant to sections 603(a) and 605(b) of the Regulatory Flexibility Act, that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that the amount of time necessary to record and retain the required information will be nominal for those income tax return preparers that choose to use the Alternative Eligibility Record and Alternative Computation Record. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking that preceded these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.



### Drafting Information

The principal author of these regulations is Andrea Tucker, Office of Associate Chief Counsel, Procedure and Administration (Administrative Provisions and Judicial Practice Division). However, other personnel from the IRS and Treasury Department participated in their development.

### List of Subjects

*26 CFR Part 1*

Income taxes, Reporting and recordkeeping requirements.

*26 CFR Part 602*

Reporting and recordkeeping requirements.

### Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

## PART 1—INCOME TAXES

**Paragraph 1.** The authority citation for part 1 is amended by removing the entry for "Section 1.6695–2T" and adding an entry in numerical order to read in part as follows:

**Authority:** 26 U.S.C. 7805 * * *. Section 1.6695–2 also issued under 26 U.S.C. 6695(g). * * *

**Par. 2.** Section 1.6695–2 is added to read as follows:

### § 1.6695–2 Preparer due diligence requirements for determining earned income credit eligibility.

(a) *Penalty for failure to meet due diligence requirements.* A person who is an income tax return preparer (preparer) of an income tax return or claim for refund under subtitle A of the Internal Revenue Code with respect to determining the eligibility for, or the amount of, the earned income credit (EIC) under section 32 and who fails to satisfy the due diligence requirements of paragraph (b) of this section will be subject to a penalty of $100 for each such failure. However, no penalty will be imposed under section 6695(g) on a person who is an income tax return preparer solely by reason of—

(1) Section 301.7701–15(a)(2) and (b) of this chapter, on account of having given advice on specific issues of law; or

(2) Section 301.7701–15(b)(3) of this chapter, on account of having prepared the return solely because of having prepared another return that affects amounts reported on the return.

(b) *Due diligence requirements.* A preparer must satisfy the following due diligence requirements:

(1) *Completion of eligibility checklist.* (i) The preparer must either—

(A) Complete Form 8867, "Paid Preparer's Earned Income Credit Checklist," or such other form and such other information as may be prescribed by the Internal Revenue Service (IRS) (Eligibility Checklist); or

(B) Otherwise record in the preparer's paper or electronic files the information necessary to complete the Eligibility Checklist (Alternative Eligibility Record). The Alternative Eligibility Record may consist of one or more documents containing the required information.

(ii) The preparer's completion of the Eligibility Checklist or Alternative Eligibility Record must be based on information provided by the taxpayer to the preparer or otherwise reasonably obtained by the preparer.

(2) *Computation of credit.* (i) The preparer must either—

(A) Complete the Earned Income Credit Worksheet in the Form 1040 instructions or such other form and such other information as may be prescribed by the IRS (Computation Worksheet); or

(B) Otherwise record in the preparer's paper or electronic files the preparer's EIC computation, including the method and information used to make the computation (Alternative Computation Record). The Alternative Computation Record may consist of one or more documents containing the required information.

(ii) The preparer's completion of the Computation Worksheet or Alternative Computation Record must be based on information provided by the taxpayer to the preparer or otherwise reasonably obtained by the preparer.

(3) *Knowledge.* The preparer must not know, or have reason to know, that any information used by the preparer in determining the taxpayer's eligibility for, or the amount of, the EIC is incorrect. The preparer may not ignore the implications of information furnished to, or known by, the preparer, and must make reasonable inquiries if the information furnished to, or known by, the preparer appears to be incorrect, inconsistent, or incomplete.

(4) *Retention of records.* (i) The preparer must retain—

(A) A copy of the completed Eligibility Checklist or Alternative Eligibility Record;

(B) A copy of the Computation Worksheet or Alternative Computation Record; and

(C) A record of how and when the information used to complete the Eligibility Checklist or Alternative Eligibility Record and the Computation Worksheet or Alternative Computation Record was obtained by the preparer, including the identity of any person furnishing the information.

(ii) The items in paragraph (b)(4)(i) of this section must be retained for three years after the June 30th following the date the return or claim for refund was presented to the taxpayer for signature, and may be retained on paper or electronically in the manner prescribed in applicable regulations, revenue rulings, revenue procedures, or other appropriate guidance (see § 601.601(d)(2) of this chapter).

(c) *Exception to penalty.* The section 6695(g) penalty will not be applied with respect to a particular income tax return or claim for refund if the preparer can demonstrate to the satisfaction of the IRS that, considering all the facts and circumstances, the preparer's normal office procedures are reasonably designed and routinely followed to ensure compliance with the due diligence requirements of paragraph (b) of this section, and the failure to meet the due diligence requirements of paragraph (b) of this section with respect to the particular return or claim for refund was isolated and inadvertent.

(d) *Effective date.* This section applies to income tax returns and claims for refund due on or after October 17, 2000.

### § 1.6695–2T [Removed]

**Par. 3.** Section 1.6695–2T is removed.

## PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

**Par. 4.** The authority citation for part 602 continues to read as follows:

**Authority:** 26 U.S.C. 7805.

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**Par. 5.** In § 602.101, paragraph (b) is amended by removing the entry for "1.6695–2T" and adding the following entry in numerical order to the table to read as follows:

**§ 602.101 OMB Control numbers.**

* * * * *

(b) * * *

| CFR part or section where identified and described | Current OMB control No. |
|---|---|
| . . . . . | |
| 1.6695–2 | 1545–1570 |
| . . . . . | |

Approved: October 6, 2000.

**Robert E. Wenzel,**

*Deputy Commissioner of Internal Revenue.*

**Jonathan Talisman,**

*Acting Assistant Secretary of the Treasury.*

[FR Doc. 00–26521 Filed 10–16–00; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

### 30 CFR Parts 56, 57, 62, 70 and 71

RIN 1219–AA53

### Health Standards for Occupational Noise Exposure; Correction

**AGENCY:** Mine Safety and Health Administration (MSHA), Labor.

**ACTION:** Final rule; corrections.

**SUMMARY:** This document contains corrections to preamble to the final rule which were published in the **Federal Register** of Monday, September 13, 1999 (64 FR 49548). The rule related to the health standards for occupational noise exposure.

**DATES:** Effective October 17, 2000.

**FOR FURTHER INFORMATION CONTACT:** Carol J. Jones, Director, Office of Standards, Regulations, and Variances, MSHA, (703) 235–1910 (not a toll-free call).

**SUPPLEMENTARY INFORMATION:** As published, the preamble contains errors which may prove to be misleading and which need to be corrected.

Accordingly, the preamble is corrected as follows:

1. On page 49551, in "Chart 1: General Requirements" under the heading Noise level, the phrase "At or above 105 dBA (dual hearing protection level)" should read "Above 105 dBA (dual hearing protection level)."

2. On page 49551, in "Comparison Chart 2: General Features" under the heading Final rule, the third entry should read "80 dBA for action level and 90 dBA for PEL."

3. On page 49558, in the second column, in the last sentence, the word "tone" should be deleted to make the sentence read "Most definitions of hearing impairment are based solely on pure audiometry, in which an audiometer is used to measure an individual's threshold hearing level—the lowest level of discrete frequency tones that he or she can hear."

4. On page 49590, in the second column, in the first paragraph, in the last sentence, the word "regulations" should be changed to "standards" to make the sentence read "Accordingly, MSHA has concluded that noise falls within the scope of section 103(c) of the Mine Act, and that MSHA has the authority to establish standards that provide miners and their representatives access to noise exposure monitoring conducted by mine operators."

5. On page 49607, in the third column, in the first full paragraph, in the first full sentence, the words "equals or" should be inserted so that the sentence reads "The final rule, like the proposal, requires mine operators to offer miners whose noise exposure equals or exceeds the action level the opportunity for audiometric . . ."

6. On page 49608, in the second column, in the first full paragraph, in the first sentence, the words "equals or" should be inserted so that the sentence reads "Under § 62.120 of the final rule, mine operators must enroll miners whose exposure to noise equals or exceeds the action level in a hearing conservation program . . ."

7. On page 49627, in the first column, in the first full paragraph, in the fourth sentence, the term "Paragraph (c)" should be changed to "Paragraph (b)." In the second full paragraph, in the first sentence, the term "Paragraph (a)(3)" should be changed to "Paragraph (b)." In the third full paragraph, in the first sentence, the term "Paragraph (b)(1)" should be changed to "Paragraph (c)(1)." In the last paragraph, in the last sentence, the term "Paragraph (b)(1)" should be changed to "Paragraph (c)(1)." In the second column, in the first full paragraph, in the first sentence, the term "Paragraph (b)(2)" should be changed to "Paragraph (c)(2)," and in the last sentence the term "Paragraph (b)(2)" should be changed to "Paragraph (c)(2)."

Dated: September 28, 2000.

**J. Davitt McAteer,**

*Assistant Secretary for Mine Safety and Health.*

[FR Doc. 00–26620 Filed 10–16–00; 8:45 am]

BILLING CODE 4510–43–U

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[OPP–301049; FRL–6742–9]

RIN 2070–AB78

### Azoxystrobin; Pesticide Tolerances for Emergency Exemptions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes a time-limited tolerance for residues of azoxystrobin or methyl (*E*)-2-2-[6-(2-cyanophenoxy)pyrimidin-4-yloxy]phenyl-3-methoxyacrylate) and its *Z* isomer in or on brassica leafy vegetable. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on brassica leafy vegetable. This regulation establishes a maximum permissible level for residues of azoxystrobin in this food commodity. The tolerance will expire and is revoked on December 31, 2001.

**DATES:** This regulation is effective October 17, 2000. Objections and requests for hearings, identified by docket control number OPP–301049, must be received by EPA on or before December 18, 2000.

**ADDRESSES:** Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VII. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301049 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** By mail: Jacqueline E. Gwaltney, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703 305–6792; and e-mail address: gwaltney.jackie@epa.gov.

**SUPPLEMENTARY INFORMATION:**



## I. General Information

*A. Does this Action Apply to Me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

| Categories | NAICS codes | Examples of potentially affected entities |
|---|---|---|
| Industry | 111<br>112<br>311<br>32532 | Crop production<br>Animal production<br>Food manufacturing<br>Pesticide manufacturing |

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

*B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?*

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–301049. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

## II. Background and Statutory Findings

EPA, on its own initiative, in accordance with sections 408 (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing a tolerance for residues of the fungicide azoxystrobin or methyl (*E*)-2-2-[6-(2-cyanophenoxy)pyrimidin-4-yloxy]phenyl-3-methoxyacrylate) and its *Z* isomer, in or on brassica leafy vegetable at 25.0 parts per million (ppm). This tolerance will expire and is revoked on December 31, 2001. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on section 18 related tolerances to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by the Food Quality Protection Act (FQPA). EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

## III. Emergency Exemption for Azoxystrobin on Brassica Leafy Vegetable and FFDCA Tolerances

Georgia has also requested the use of azoxystrobin to control leaf spots of leafy greens caused by *Cercospora brassicicola* and *cercosporella brassica*. Losses due to these fungal pathogens have increased in recent year and, in some cases, entire fields are destroyed because leaves of greens are unmarketable due to spotting.

EPA has authorized under FIFRA section 18 the use of azoxystrobin on brassica leafy vegetable. After having reviewed the submission, EPA concurs that emergency conditions exist for this State.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of azoxystrobin in or on brassica leafy vegetable. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment as provided in section 408(l)(6). Although these tolerances will expire and are revoked on December 31, 2001, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on brassica leafy vegetable after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by this tolerance at the time of that application. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this

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pesticide indicate that the residues are not safe.

Because these tolerances are being approved under emergency conditions, EPA has not made any decisions about whether azoxystrobin meets EPA's registration requirements for use on brassica leafy vegetable or whether a permanent tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that this tolerance serves as a basis for registration of azoxystrobin by a State for special local needs under FIFRA section 24(c). Nor does this tolerance serve as the basis for any State other than to use this pesticide on this crop under section 18 of FIFRA without following all provisions of EPA's regulations implementing section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for azoxystrobin, contact the Agency's Registration Division at the address provided under FOR FURTHER INFORMATION CONTACT.

**IV. Aggregate Risk Assessment and Determination of Safety**

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of azoxystrobin and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a time-limited tolerances for residues of azoxystrobin in or on brassica leafy vegetable at 25.0 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

*A. Toxicological Endpoints*

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological endpoint. However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intra species differences. Discuss any additional uncertainty factors (other than the FQPA SF) used in the assessment.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD=NOAEL/UF). Where an additional safety factor is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA Safety Factor.

For non-dietary risk assessments (other than cancer) the UF is used to determine the level of concern (LOC). For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE)=NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as $1 \times 10^{-6}$ or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a "point of departure" is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure ($MOE_{cancer}$ = point of departure/exposures) is calculated. A summary of the toxicological endpoints for azoxystrobin used for human risk assessment is shown in the following Table 1:

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR AZOXYSTROBIN FOR USE IN HUMAN RISK ASSESSMENT

| Endpoint | Dose (mg/kg/day) | TES/RfD/FQPA Committee Determinations | Conclusion |
|---|---|---|---|
| Acute Dietary | | No appropriate endpoint was identified for this exposure scenario. No developmental toxicity was observed in the rabbit and rat studies reviewed. Effects seen in the acute neurotoxicity study were due to abdominal discomfort, not primary neurotoxicity (TES Committee, 12/10/96). | This risk assessment is not required. |
| Chronic Dietary | NOAEL = 18.2 UF = 100 | The RfD was established based on a chronic toxicity study (MRID143678139) in rats with a NOAEL of 18.2 mg/kg/day. Reduced body weights and bile duct lesions were observed at the LOAEL of 34 mg/kg/day. An uncertainty factor of 100 was used to account for both the inter-species extrapolation and the intra-species variability (see Memo, RfD Committee, 11/7/96). | This risk assessment is required. Chronic RfD =0.18 mg/kg/day. |



TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR AZOXYSTROBIN FOR USE IN HUMAN RISK ASSESSMENT—Continued

| Endpoint | Dose (mg/kg/day) | TES/RfD/FQPA Committee Determinations | Conclusion |
|---|---|---|---|
| FQPA Safety Factor | | The FQPA Safety Factor Committee recommended that the10x Safety Factor be removed for the following reasons: 1) the toxicology data base is complete; 2) the developmental and reproductive toxicity data did not indicate increased susceptibility of rats or rabbits to in utero and/or postnatal exposure; 3) unrefined chronic dietary exposure estimates (assuming all commodities contain tolerance level residues) will overestimate dietary exposure; 4) modeling data are used for ground and surface source drinking water exposure assessments resulting in estimates considered to be upper-bound concentrations; and 5) there are currently no registered residential uses for Azoxystrobin (FQPA document, 9/3/98). | 10x Safety Factor was removed. The chronic population adjusted dose is equivalent to the chronic RfD (cPAD = cRfD). |
| Carcinogenicity | | The HED RfD/Peer Review Committee determined that azoxystrobin should be classified as "Not Likely" to be a human carcinogen according to the proposed revised Cancer Guidelines (See TES Document, 12/10/96). | A cancer risk assess-ment is not required. |

*B. Residue Information*

Tolerances for azoxystrobin (including time-limited tolerances) are published in 40 CFR 180.507. The tree nuts tolerance of 0.01 ppm which is listed in the 40 CFR was amended to 0.02 ppm.

For this analysis, tolerance level residues and 100 percent crop treated assumptions were made for all commodities. Processing studies show that residues do not concentrate in the following foods: citrus juice, grapes-raisins, plums-prunes (dried), potatoes-white (dry), grape juice, tomato juice, and tomatoes-puree. As a result, DEEM default processing factors (adjustment factors #1) were set to 1.0 for these commodities. The concentration factors for the following juice concentrates were changed to preserve the concentration ratio from juice to concentrate: grapes (3.6 to 3.0), grapefruit (8.3 to 3.9), lemons (11.4 to 5.7), limes (6 to 3), oranges (6.7 to 3.7), and tangerines (7.4 to 3.2).* The reference to the FQPA Safety Factor refers to any additional safety factor retained due to concerns unique to the FQPA.

*C. Exposure Assessment*

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.507) for the residues of azoxystrobin, in or on a variety of raw agricultural commodities at levels ranging from 0.010 ppm in tree nuts to 20 ppm in rice hulls. Included in these tolerances are numerous ones for animal commodities which were established in conjunction with tolerances for rice and wheat commodities. Risk assessments were conducted by EPA to assess dietary exposures from azoxystrobin in food as follows:

i. *Acute risk.* No toxicological effects which could be attributed to a single dietary exposure were observed, including developmental and neurotoxic effects in the appropriate studies. The Dietary Exposure Evaluation Model (DEEM ) analysis evaluated the individual food consumption as reported by respondents in the USDA nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments:

ii. *Chronic risk.* (Chronic RfD = 0.18 mg/kg/day) In conducting this chronic dietary risk assessment, HED has made very conservative assumptions: 100% of Brassica vegetables and turnip tops and all other commodities having azoxystrobin tolerances will contain azoxystrobin residues, and those residues will be at the level of the tolerance. Default concentration factors have been removed (i.e., set to 1) for the following commodities: grapes-juice, grapes-raisins, tomatoes-juice, tomatoes-puree, and potatoes-white (dry). Concentration factors were removed because data which were previously submitted show no concentration of residues into raisins, tomato juice and puree or potatoes. The default ratio between grape juice and juice concentrate was retained.

The Novigen DEEM (Dietary Exposure Evaluation Model) system was used for this chronic dietary exposure analysis. The analysis evaluates individual food consumption as reported by respondents in the USDA Continuing Surveys of Food Intake by Individuals conducted in 1989 through 1991. The model accumulates exposure to the chemical for each commodity and expresses risk as a function of dietary exposure.

The existing azoxystrobin tolerances (published, pending, and including the necessary Section 18 tolerance(s)) result in a theoretical maximum residue contribution (TMRC) that is equivalent to the following percentages of the Chronic RfD. As the 10x safety factor was removed, the chronic RfD is equal to the PAD (population-adjusted dose). As a result, the exposure given as a percentage of the total allowable exposure is reported as %PAD, as shown in the following Table 2:

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TABLE 2.—SUMMARY: CHRONIC EXPOSURE ANALYSIS BY THE DEEM SYSTEMS

| Population Subgroup | Exposure (mg/kg/day) | Percent Reference Dose [1] (%Chronic PAD/RfD) |
|---|---|---|
| U.S. Population (total) | 0.012207 | 7.4% |
| All Infants (less than 1 year old) | 0.014855 | 11.5% |
| Nursing Infants (less than 1 year old) | 0.003915 | 3.1% |
| Non-Nursing Infants (less than 1 year old) | 0.019460 | 14.0% |
| Children (1-6 years old) | 0.021949 | 12.1% |
| Children (7-12 years old) | 0.012950 | 7.7% |
| Non-Hispanic Blacks | 0.016431 | 9.1% |
| Non-Hispanic/ non- white/ non-black | 0.020967 | 14.8% |
| Females (13+/ nursing) | 0.014210 | 8.8% |
| Seniors 55+ | 0.013462 | 7.5% |

[1] Percentage reference dose (% Chronic PAD) = Exposure/Chronic PAD x 100% (as RfD=PAD in this case)

The subgroups listed above are: (1) the U.S. Population (total); (2) those for infants and children; and, (3) the other subgroups (except regions and seasons) for which the percentage of the Chronic PAD occupied is greater than that occupied by the subgroup U.S. Population (total).

iii. *Anticipated residue and percent crop treated information.* The Agency used percent crop treated (PCT) information as follows:

A routine chronic dietary exposure analysis for the wheat hybridizing agent X was based on 0.1% of wheat crop treated, and 0.1% of the cereal grains group (except rice, wild rice, sweet corn, and wheat) and soybeans as rotated crops in fields previously containing wheat treated with chemical X. PCT of 0.1% was based on the petitioner's expectations that up to 35,000 acres of wheat grown for seed will be treated annually, which amounts to 0.05% of the 70,000,000 acres of wheat grown in the United States. The reason for using 0.1% instead of 0.05% is to allow expansion of use if other conditions of registration are satisfied. Before expansion beyond 0.1% is allowed, reevaluation of the dietary exposure may be performed using all available information.

The Agency believes that the three conditions previously discussed have been met. With respect to Condition 1, EPA finds that the PCT information described above for chemical X used on wheat grown for seed is reliable and has a valid basis. Chemical X is a hybridizing agent specific for sterilizing the male organ of the wheat plant in seed production. The majority of seed will be used planting purposes, and not directly as food or feed. Before the petitioner can increase production of product for treatment of greater than 35,000 acres per year, permission from the Agency must be obtained. As to Conditions 2 and 3, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which pesticide X may be applied in a particular area.

2. *Dietary exposure from drinking water.* Azoxystrobin is persistent and mobile. There is no established Maximum Contaminant Level for residues of azoxystrobin in drinking water. No health advisory levels for azoxystrobin in drinking water have been established (EPA Safe Drinking Water Hotline, 1 (800) 426–4791, 4/15/99). EFED has supplied RAB2 with estimates for the concentration of azoxystrobin in surface water based on GENEEC (Generic Estimated Environmental Concentration) modeling and in ground water based on SCI-GROW modeling.

*Chronic risk.* Estimated environmental concentrations (EECs) using GENEEC for azoxystrobin on bananas, grapes, peaches, peanuts, pecans, tomatoes, and wheat are listed in the SWAT Team Second Interim Report (6/20/97).

The highest EEC for azoxystrobin in surface water (39 µg/L) is from the application of azoxystrobin to grapes. The EEC for ground water is 0.064 µg/L resulting from use on turf. For purposes of risk assessment, the maximum EEC for azoxystrobin in drinking water (39 µg/L) should be used for comparison to the back-calculated human health drinking water levels of comparison (DWLOC) for the chronic (non-cancer) endpoint. These DWLOCs for various population categories are summarized in the following Table 3:

TABLE 3.—DRINKING WATER LEVELS OF COMPARISON FOR CHRONIC EXPOSURE[1]

| Population Category[2] | Chronic RfD (mg/kg/day) | Food Exposure (mg/kg/day) | Max. Water Exposure[3] (mg/kg/day) | DWLOC [4,5,6] (µg/L) |
|---|---|---|---|---|
| U.S. Population (total) | 0.18 | 0.0122 07 | 0.168 | 5,900 |
| Females (13+ years, nursing) | 0.18 | 0.0142 10 | 0.166 | 5,000 |
| Non-nursing Infants (less than 1 year old) | 0.18 | 0.0194 60 | 0.161 | 1,600 |

[1] Values are expressed to 2 significant figures.
[2] Within each of these categories, the subgroup with the highest food exposure was selected.
[3] Maximum Water Exposure (Chronic) (mg/kg/day) = Chronic RfD (mg/kg/day) - Food Exposure (mg/kg/day).
[4] DWLOC(µg/L) = Max. water exposure (mg/kg/day) x body wt (kg) ÷ ($10^{-3}$ mg/µg) * water consumed daily (L/day).
[5] Default body weights are: General U.S. Population, 70 kg; Males (13+ years old), 70 kg; Females (13+ years old), 60 kg; Other Adult Populations, 70 kg; and, All Infants/Children, 10 kg.
[6] Default daily drinking rates are 2 L/day for adults and 1 L/day for children.



The estimated maximum concentrations of azoxystrobin in surface water and ground water are less than EPA's levels of comparison for azoxystrobin in drinking water as a contribution to chronic aggregate exposure. Therefore, taking into account the present uses and uses proposed in this Section 18 and the fact that GENEEC can substantially overestimate (by up to 3x) true pesticide concentrations in drinking water, EPA concludes with reasonable certainty that residues of azoxystrobin in drinking water (when considered along with other sources of chronic exposure for which EPA has reliable data) would not result in an unacceptable estimate of chronic (non-cancer) aggregate human health risk at this time.

EPA bases this determination on a comparison of estimated average concentrations of azoxystrobin in surface and ground water to back-calculated DWLOCs for azoxystrobin in drinking water. These levels of comparison in drinking water were determined after HED considered all other non-occupational human exposures for which it has reliable data, including all current uses, and the use considered in this action. The estimate of azoxystrobin in surface water is derived from a water quality model that uses conservative assumptions (health-protective) regarding the pesticide transport from the point of application to surface and ground water. Because EPA considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, EPA will reassess the potential impacts of azoxystrobin in drinking water as a part of the chronic (non-cancer) aggregate risk assessment process.

The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for azoxystrobin in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of azoxystrobin.

The Agency uses the Generic Estimated Environmental Concentration (GENEEC) or the Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS) to estimate pesticide concentrations in surface water and SCI-GROW, which predicts pesticide concentrations in groundwater. In general, EPA will use GENEEC (a tier 1 model) before using PRZM/EXAMS (a tier 2 model) for a screening-level assessment for surface water. The GENEEC model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. GENEEC incorporates a farm pond scenario, while PRZM/EXAMS incorporate an index reservoir environment in place of the previous pond scenario. The PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to azoxystrobin they are further discussed in the aggregate risk sections below.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Azoxystrobin is currently registered for use on the following residential non-dietary sites: ornamental turf. The risk assessment was conducted using the following exposure assumptions: Short-term exposure may occur for residential handlers and for postapplication activities. Because the TES Committee (11/12/96) did not select applicable acute dietary or short-term dermal or inhalation endpoints, a short-term risk assessment is not required. No toxicity was observed at the limit dose (1,000 mg/kg body wt/day) in a 21-day dermal study and an acute inhalation study indicated low toxicity. Intermediate-term and chronic exposures are not expected for residential use.

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether azoxystrobin has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, azoxystrobin does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that azoxystrobin has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

*D. Safety Factor for Infants and Children*

*Safety factor for infants and children—In general.* FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

*E. Aggregate Risks and Determination of Safety*

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water.

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DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water e.g., allowable chronic water exposure (mg/kg/day)= cPAD - (average food+ chronic non-dietary, non-occupational exposure). This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the USEPA Office of Water are used to calculate DWLOCs: 2L/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and groundwater are less than the calculated DWLOCs, EPA concludes with reasonable certainty that exposures to azoxystrobin in drinking water (when considered along with other sources of exposure for which EPA has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because EPA considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, EPA will reassess the potential impacts of azoxystrobin on drinking water as a part of the aggregate risk assessment process.

1. *Chronic risk.* Using the conservative TMRC exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to azoxystrobin from food will utilize 11.6% of the cPAD for the U.S. population, 2.2% of the cPAD for infant subpopulations at greatest exposure and 12.2% of the cPAD for children subpopulation at greatest exposure. Based the use pattern, chronic residential exposure to residues of the azoxystrobin is not expected. In addition, despite the potential for chronic dietary exposure to azoxystrobin in drinking water, after calculating the DWLOCs and comparing them to conservative model estimated environmental concentrations of azoxystrobin in surface and ground water. EPA does not expect the aggregate exposure to exceed 100% of the cPAD.

2. *Short-term risk.* There are no applicable endpoints for short-term exposure; therefore, a short-term aggregate risk assessment is not required. Intermediate-term exposure is not expected for registered residential uses; therefore, an intermediate-term risk assessment is not required.

Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Though residential exposure could occur with the use of azoxystrobin, the potential short-term exposures were not aggregated with chronic dietary food and water exposures because the toxic effects are different. Therefore, based on the best available data and current policies, potential risks do not exceed the Agency's level of concern.

3. *Aggregate cancer risk for U.S. population.* The EPA RfD/Peer Review Committee (November 7, 1998) determined that azoxystrobin should be classified as "Not Likely" to be a human carcinogen according to the proposed revised Cancer Guidelines. Therefore, a cancer risk assessment is not required.

4. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to azoxystrobin residues.

## V. Other Considerations

### A. Analytical Enforcement Methodology

An adequate analytical method is available for enforcement of the proposed tolerances. Method RAM 243 (GC/NPD) can be used for the commodities in crop groups 2 and 5. The limit of quantitation for spinach and leaf lettuce was 0.01 ppm and the LOQ for head lettuce was either 0.02 ppm or 0.05 ppm (depending on laboratory). This method has been validated by the Agency's Analytical Chemistry Laboratory and will be submitted to FDA for inclusion in PAM II.

The method may be requested from: Calvin Furlow, PIRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone number: (703) 305–5229; e-mail address: furlow.calvin@epa.gov.

### B. International Residue Limits

There are no CODEX, Canadian, or Mexican Maximum Residue Limits (MRL) for azoxystrobin.

### C. Conditions

No special conditions, other than this tolerance are in conjunction with a Section 18 specific exemption.

## VI. Conclusion

Therefore, the tolerance is established for residues of azoxystrobin in or on brassica leafy vegetable at 25.0 ppm ppm.

## VII. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

### A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301049 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before December 18, 2000, Federal Register].

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by the docket control number OPP–301049, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

### B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

## VIII. Regulatory Assessment Requirements

This final rule establishes a time-limited tolerance under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 petition under FFDCA section 408, such as the tolerance/exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

## IX. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final

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rule is not a "major rule" as defined by 5 U.S.C. 804(2).

**List of Subjects in 40 CFR Part 180**

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 28, 2000.

**James Jones,**

*Director, Registration Division, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I is amended as follows:

**PART 180— [AMENDED]**

1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), (346a) and 371.

2. Section 180.507 is amended by alphabetically adding commodities to the table in paragraph (b) to read as follows:

**§ 180.507 Azoxystrobin; tolerances for residues.**

* * * * *

(b)* * *

| Commodity | Parts per million | Expiration/Revocation Date |
|---|---|---|
| * * * * * | | |
| Brassica leafy vegetable | 25.0 | 12/31/01 |
| * * * * * | | |

* * * * *

[FR Doc. 00–26638 Filed 10–16–00; 8:45 am]

BILLING CODE 6560–50–S

**FEDERAL EMERGENCY MANAGEMENT AGENCY**

**44 CFR Part 64**

**[Docket No. FEMA–7736]**

**List of Communities Eligible for the Sale of Flood Insurance**

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Final rule.

**SUMMARY:** This rule identifies communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

**EFFECTIVE DATES:** The dates listed in the third column of the table.

**ADDRESSES:** Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: Post Office Box 6464, Rockville, MD 20849, (800) 638–6620.

**FOR FURTHER INFORMATION CONTACT:** Donna M. Dannels, Branch Chief, Policy, Assessment and Outreach Division, Mitigation Directorate, 500 C Street SW., room 411, Washington, DC 20472, (202) 646–3098.

**SUPPLEMENTARY INFORMATION:** The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Associate Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM). The date of the flood map, if one has been published, is indicated in the fourth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012(a), requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard areas shown on the map.

The Associate Director finds that the delayed effective dates would be contrary to the public interest. The Associate Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

*National Environmental Policy Act.* This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

*Regulatory Flexibility Act.* The Associate Director certifies that this rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the rule creates no additional burden, but lists those communities eligible for the sale of flood insurance.

*Regulatory Classification.* This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

*Paperwork Reduction Act.* This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

*Executive Order 12612, Federalism.* This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

*Executive Order 12778, Civil Justice Reform.* This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

**List of Subjects in 44 CFR Part 64.**

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

**PART 64—[AMENDED]**

1. The authority citation for Part 64 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

**§ 64.6 [Amended]**

2. The tables published under the authority of § 64.6 are amended as follows:



| State/location | Community No. | Effective date of eligibility | Current effective map date |
|---|---|---|---|
| **NEW ELIGIBLES—Emergency Program** | | | |
| North Carolina: Norwood, town of, Stanley County. | 370509 | May 17, 2000 | |
| Texas: | | | |
| Jones County, unincorporated areas | 480884 | June 15, 2000 | |
| Lamb County, unincorporated areas | 480893 | .....do. | |
| Navarro County, unincorporated areas. | 480950 | .....do. | December 27, 1977. |
| Riverside, city of, Walker County ..... | 481044 | June 26, 2000 ..... | November 19, 1976. |
| Georgia: Candler County, unincorporated areas. | 130574 | June 27, 2000 | |
| North Carolina: Aulander, town of, Bertie County. | 370018 | .....do. | |
| South Carolina: Sycamore, town of, Allendale County. | 450011 | .....do. | |
| Wyoming: Basin, town of, Big Horn County. | 560069 | June 30, 2000 | |
| **NEW ELIGIBLES**—Regular Program | | | |
| Texas: Krugerville, city of, Denton County | 481661 | June 6, 2000 ..... | April 2, 1997. |
| Minnesota: Becker, city of, Sherburne County[1]. | 270710 | June 12, 2000 ..... | May 4, 2000. |
| Texas: Mustang Ridge, city of, Travis and Caldwell Counties[2]. | 481687 | June 15, 2000 ..... | May 5, 2000. |
| Georgia: | | | |
| Brooks, town of, Fayette County ..... | 130430 | June 27, 2000 ..... | March 18, 1996. |
| Colquitt County, unincorporated areas. | 130058 | .....do ..... | July 16, 1997. |
| North Carolina: | | | |
| Clemmons, village of, Forsyth County[3]. | 370531 | .....do ..... | October 20, 1998. |
| Kernersville, town of, Forsyth County | 370309 | .....do ..... | October 20, 1998. |
| St. James, town of, Brunswick County[4]. | 370530 | .....do ..... | August 18, 1992. |
| **REINSTATMENTS** | | | |
| Iowa: Clutier, city of, Tama County ..... | 190514 | October 6, 1976 Emer ..... August 19, 1985 Reg June 3, 1988 Susp June 12, 2000 Rein | August 19, 1985. |
| Virginia: Nottoway County, unincorporated areas. | 510307 | May 7, 1975 Emer ..... September 1, 1987 Reg September 1, 1987 Susp June 27, 2000 Rein | September 1, 1987. |
| **REGULAR PROGRAM CONVERSIONS** | | | |
| **Region I** | | | |
| New Hampshire: | | | |
| Brentwood, town of, Rockingham County. | 330125 | May 4, 2000 Suspension Withdrawn | May 4, 2000. |
| Charlestown, town of, Sullivan County. | 330153 | .....do ..... | Do. |
| Walpole, town of, Cheshire County ... | 330027 | .....do ..... | Do. |
| **Region II** | | | |
| New York: | | | |
| Cooperstown, village of, Otsego County. | 360665 | .....do ..... | Do. |
| Greenwich, village of, Washington County. | 360887 | .....do ..... | Do. |
| New Bremen, town of, Lewis County | 360373 | .....do ..... | Do. |
| New York Mills, village of, Oneida County. | 360537 | .....do ..... | Do. |
| Whitesboro, village of, Oneida County. | 360566 | .....do ..... | Do. |
| Whitestown, town of, Oneida County | 360567 | .....do ..... | Do. |
| Yorkville, village of, Oneida County .. | 360568 | .....do ..... | Do. |
| **Region III** | | | |
| West Virginia: Grant County, unincorporated areas. | 540038 | .....do ..... | Do. |
| **Region IV** | | | |
| North Carolina: Spring Lake, town of, Cumberland County. | 370484 | .....do ..... | Do. |

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| State/location | Community No. | Effective date of eligibility | Current effective map date |
|---|---|---|---|
| **Region V** | | | |
| Minnesota: | | | |
| Elk River, city of, Sherburne County | 270436 | .....do ..... | Do. |
| Sherburne County, unincorporated areas. | 270435 | .....do ..... | Do. |
| **Region X** | | | |
| Washington: Aberdeen, city of, Grays Harbor County. | 530058 | .....do ..... | Do. |
| **Region II** | | | |
| New York: | | | |
| Clarkstown, town of, Rockland County. | 360679 | May 18, 2000 Suspension Withdrawn. | May 18, 2000. |
| Painted Post, village of, Steuben County. | 360779 | .....do ..... | Do. |
| **Region III** | | | |
| West Virginia: | | | |
| Logan County, unincorporated areas | 545536 | .....do ..... | Do. |
| Morgan County, unincorporated areas. | 540144 | .....do ..... | Do. |
| **Region V** | | | |
| Wisconsin: Crawford County, unincorporated areas. | 555551 | .....do ..... | Do. |

[1] The City of Becker adopted Sherburne County's (CID #270435) Flood Insurance Rate Map (FIRM), dated May 4, 2000, panels 0220E, 0240E, 0310E, 0330E and 0335E.
[2] The City of Mustang Ridge adopted Travis County's (CID #481026) FIRM, dated June 5, 1997, panels 0140E, 0145E, 0180E, 0185E and the FIRM for Caldwell County (CID #480094), panel 0025C.
[3] The Village of Clemmons adopted Forsyth County's (CID #375349) FIRM, dated October 20, 1998, panel 242H.
[4] The Town of St. James adopted Brunswick County's (CID #370295) FIRM, dated August 18 1992, panels 360C and 380E.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Rein.—Reinstatement; Susp.—Suspension; With.—Withdrawn; NSFHA—Non Special Flood Hazard Area.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Issued: September 26, 2000.

**Michael J. Armstrong,**

*Associate Director for Mitigation.*

[FR Doc. 00–26602 Filed 10–16–00; 8:45 am]

BILLING CODE 6718–05–P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### 44 CFR Part 64

**[Docket No. FEMA–7745]**

### Suspension of Community Eligibility

**AGENCY:** Federal Emergency Management Agency, FEMA.

**ACTION:** Final rule.

**SUMMARY:** This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

**EFFECTIVE DATES:** The effective date of each community's suspension is the third date ("Susp.") listed in the third column of the following tables.

**ADDRESSES:** If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

**FOR FURTHER INFORMATION CONTACT:** Mike Robinson, Branch Chief, Policy, Assessment and Outreach Division, Mitigation Directorate, 500 C Street, SW., Room 411, Washington, DC 20472, (202) 646–3098.

**SUPPLEMENTARY INFORMATION:** The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 *et seq.*, unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Associate Director finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

*National Environmental Policy Act.* This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

*Regulatory Flexibility Act.* The Associate Director has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

*Regulatory Classification.* This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

*Paperwork Reduction Act.* This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

*Executive Order 12612, Federalism.* This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

*Executive Order 12778, Civil Justice Reform.* This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

**List of Subjects in 44 CFR Part 64**

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

**PART 64—[AMENDED]**

1. The authority citation for Part 64 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

**§ 64.6 [Amended]**

2. The tables published under the authority of § 64.6 are amended as follows:



**64.6 LIST OF ELIGIBLE COMMUNITIES**

| State and Location | Community No. | Effective date authorization/cancellation of sale of flood insurance in community | Current effective map date | Date certain Federal assistance no longer available in special flood hazard areas |
|---|---|---|---|---|
| **Region III** | | | | |
| Delaware: | | | | |
| Ardentown, village of, New Castle County. | 100058 | January 28, 1997; Reg., October 6, 2000; Susp. | 10–06–00 ..... | 10–06–00 |
| Delaware City, city of, New Castle County. | 100022 | December 17, 1973; Emerg.; February 16, 1977; Reg. October 6, 2000. | .....do ..... | .....do. |
| New Castle, city of, New Castle County | 100026 | June 6, 1970, Emerg.; December 26, 1975; Reg. October 6, 2000. | .....do ..... | .....do. |
| New Castle County, unincorporated areas. | 105085 | June 6, 1970, Emerg.; December 3, 1971; Reg. October 6, 2000. | .....do ..... | .....do. |
| Wilmington, city of, New Castle County | 100028 | December 19, 1973, Emerg.; May 2, 1977, Reg.; October 6, 2000. | .....do ..... | .....do. |
| Pennsylvania: | | | | |
| Blooming Grove, township of, Pike County. | 421962 | December 2, 1976, Emerg.; October 18, 1988, Reg.; October 6, 2000. | .....do ..... | .....do. |
| Delaware, township of, Pike County ..... | 421963 | September 10, 1975, Emerg.; December 4, 1985, Reg.; October 6, 2000. | .....do ..... | .....do. |
| Dingman, township of, Pike County ..... | 421964 | March 6, 1979, Emerg.; December 4, 1985; Reg. October 6, 2000. | .....do ..... | .....do. |
| Greene, township of, Pike County ..... | 421965 | August 6, 1975, Emerg.; October 18, 1988, Reg. October 6, 2000. | .....do ..... | .....do. |
| Lackawaxen, township of, Pike County | 421966 | July 7, 1975, Emerg.; August 4, 1988; Reg. October 6, 2000. | .....do ..... | .....do. |
| Lehman, township of, Pike County ..... | 421967 | February 3, 1976, Emerg.; June 19, 1989; Reg. October 6, 2000. | .....do ..... | .....do. |
| Matamoras, borough of, Pike County ... | 420758 | October 28, 1975, Emerg.; January 5, 1989; Reg. October 6, 2000. | .....do ..... | .....do. |
| Milford, borough of, Pike County ..... | 420759 | July 23, 1975, Emerg.; June 1, 1989; Reg. October 6, 2000. | .....do ..... | .....do. |
| Milford, township of, Pike County ..... | 422642 | March 11, 1976, Emerg.; December 4, 1985; Reg. October 6, 2000. | .....do ..... | .....do. |

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64.6 LIST OF ELIGIBLE COMMUNITIES—Continued

| State and Location | Community No. | Effective date authorization/cancellation of sale of flood insurance in community | Current effective map date | Date certain Federal assistance no longer available in special flood hazard areas |
|---|---|---|---|---|
| Palmyra, township of, Pike County | 421968 | May 20, 1981, Emerg.; November 19, 1982; Reg. October 6, 2000. | .....do | .....do. |
| Porter, township of, Pike County | 422500 | August 17, 1979, Emerg.; October 15, 1985; Reg. October 6, 2000. | .....do | .....do. |
| Shohola, township of, Pike County | 421969 | August 17, 1975, Emerg.; July 15, 1988; Reg. October 6, 2000. | .....do | .....do. |
| Westfall, township of, Pike County | 421970 | July 30, 1975, Emerg.; February 2, 1989; Reg. October 6, 2000. | .....do | .....do. |
| South Buffalo, township of, Armstrong County. | 421210 | April 17, 1975, Emerg.; June 18, 1987; Reg. October 6, 2000. | .....do | .....do. |
| **Region IV** | | | | |
| North Carolina: | | | | |
| Oakboro, town of, Stanly County | 370493 | July 9, 1997, Emerg.; October 6, 2000; Reg. October 6, 2000. | .....do | .....do. |
| **Region V** | | | | |
| Ohio: | | | | |
| Harbor View, village of, Lucas County | 390702 | October 8, 1976, Emerg.; May 25, 1978; Reg. October 6, 2000. | .....do | .....do. |
| Lucas County, unincorporated areas | 390359 | March 9, 1977, Emerg.; March 16, 1983; Reg. October 6, 2000. | .....do | .....do. |
| Maumee, city of, Lucas County | 390360 | July 25, 1975; Emerg.; March 28, 1980; Reg. October 6, 2000. | .....do | .....do. |
| Oregon, city of, Lucas County | 390361 | March 16, 1973, Emerg.; March 15, 1978; Reg. October 6, 2000. | .....do | .....do. |
| Ottawa Hills, village of, Lucas County | 390362 | October 24, 1975, Emerg.; June 4, 1980; Reg. October 6, 2000. | .....do | .....do. |
| Sylvania, city of, Lucas County | 390364 | February 18, 1972, Emerg.; July 5, 1977; Reg. October 6, 2000. | .....do | .....do. |
| Toledo, city of, Lucas County | 395373 | December 18, 1970; Emerg.; June 4, 1980; Reg. October 6, 2000. | .....do | .....do. |
| Waterville, village of, Lucas County | 390637 | April 9, 1975; Emerg.; January 2, 1981; Reg. October 6, 2000. | .....do | .....do. |
| Whitehouse, village of, Lucas County | 390639 | August 27, 1975; Emerg.; May 19, 1981; Reg. October 6, 2000. | .....do | .....do. |
| **Region X** | | | | |
| Washington: | | | | |
| North Bonneville, city of, Skamania County. | 530256 | January 19, 1976, Emerg.; May 28, 1984; Reg. October 6, 2000. | .....do | .....do. |

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: October 3, 2000.

**Michael J. Armstrong,**

*Associate Director for Mitigation.*

[FR Doc. 00–26603 Filed 10–16–00; 8:45 am]

BILLING CODE 6718–05–P



# Proposed Rules

Federal Register

Vol. 65, No. 201

Tuesday, October 17, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 140

**[Docket No. PRM–140–1]**

**RIN 3150–AB01**

### Criteria for an Extraordinary Nuclear Occurrence; Withdrawal of Proposed Rule and Denial of Petition for Rulemaking Submitted by the Public Citizen Litigation Group and Critical Mass Energy Project

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Withdrawal of a proposed rule and denial of a petition for rulemaking.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is withdrawing a proposed rule that would have amended regulations concerning the criteria for an extraordinary nuclear occurrence (ENO) and is denying a petition for rulemaking (PRM–140–1) submitted by the Public Citizen Litigation Group and the Critical Mass Energy Project on this matter. This action is taken because the Commission has determined that the current criteria for determining that an ENO has occurred are adequate and are consistent with the intent of Congress, and that none of the options in the proposed rule is acceptable.

**ADDRESSES:** Copies of the petition for rulemaking, the public comments received, and the NRC's letters to the petitioners are available for public inspection or copying for a fee in the NRC Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. These documents are also available at the NRC's rulemaking website at *http://www.ruleform.llnl.gov.*

**FOR FURTHER INFORMATION CONTACT:** Harry S. Tovmassian, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; 301–415–3092 (email HST@NRC.GOV).

**SUPPLEMENTARY INFORMATION:**

### The Petition

By letter dated July 24, 1979, the Public Citizen Litigation Group and the Critical Mass Energy Project petitioned the NRC to take two actions pertaining to a determination whether events at nuclear reactors are ENOs within the meaning of 10 CFR 140.81. The petition was submitted on behalf of five individuals who were residents of Middletown, Pennsylvania, at the time of the March 28, 1979, accident at the Three Mile Island, Unit 2, nuclear reactor (TMI–2), and who claimed that they were harmed by that accident.

The petitioners' first request was that the NRC make a determination that the March 28, 1979, accident at TMI–2 was an ENO, within the meaning of 10 CFR 140.81. The NRC treated this portion of the petition as a response to its request for public comment on its July 23, 1979, **Federal Register** notice (44 FR 50419) of its decision to initiate "the making of a determination as to whether the recent accident at TMI–2 constitutes an extraordinary nuclear occurrence." On April 23, 1980 (45 FR 27593), the NRC published its finding that the accident at TMI–2 was not an ENO. That action constituted the Commission's denial of the petitioners' request for NRC to determine that the TMI–2 accident was an ENO.

The petitioners further requested that, regardless of its finding on the TMI–2 accident, the Commission alter or amend the criteria it uses for making a determination that an event is an ENO.

### Basis for Request

If the Commission determines that a particular accident is an ENO, persons indemnified under the Price-Anderson Act (Section 170.n.1.) of the Atomic Energy Act of 1954, as amended (AEA), (42 U.S.C. 2210n(1)) waive certain legal defenses. Current NRC requirements in 10 CFR 140.81(b)(3) establish a two-part test for making a determination that an accident at a nuclear reactor or at a plutonium processing or fuel fabrication plant constitutes an ENO. This two-part test is specifically contemplated by Section 11.j. of the AEA. Section 11.j. defines an ENO as an event: (1) Causing an offsite discharge of certain radioactive material or offsite radiation levels that are deemed to be substantial; and (2) that has resulted in, or probably will result in, substantial damages to persons or property offsite. Thus, applying the criteria specified in 10 CFR 140.84, the NRC first must find that a substantial offsite discharge of radioactive material has occurred or a substantial offsite radiation level has resulted. Second, the NRC must make a finding that substantial damages to persons or property offsite have been or probably will be incurred. If both findings are made, the Commission then must find that the event is an ENO.

With respect to their first request, the petitioners cite certain occurrences as the basis for their belief that the TMI–2 accident should be deemed an ENO: the evacuation of area residents with the concomitant harm to area businesses, large initial payments to victims, lawsuits filed, and radiological releases.

In support of their second request that the Commission change the criteria for making a determination that an event is an ENO, the petitioners state that the Joint Committee on Atomic Energy (JCAE) "established that the purpose of designating certain accidents as extraordinary nuclear occurrences is to distinguish a serious accident from an event in which nothing untoward or unusual occurred in the conduct of nuclear activities.[1] The petitioners assert that the NRC has the power and discretion to make the definition of an ENO responsive to the circumstances and needs of the public. Also, according to the petitioners, accidents of far less consequence than the one at TMI–2 could be designated as ENOs in conformity with the legislative intent of the Price-Anderson Act, as amended. The petitioners believe that it is appropriate and necessary that the criteria for the determination of an ENO be revised, altered, or amended to respond effectively to those circumstances and demonstrated needs.

### Commission Response to Petition

On July 23, 1979 (44 FR 43128), the NRC published a notice in the **Federal Register** of its intent to make a determination as to whether the TMI–2 accident was an ENO. A notice of the filing of the petition from the Public Citizen Litigation Group and the Critical Mass Energy Project was published in the **Federal Register** on August 28, 1979 (44 FR 50419). The notice stated that the NRC intended to treat the petitioners'

[1] William B. Schultz, et al., Public Citizen Litigation Group and Critical Mass Energy Project, Petition for Rulemaking, July 24, 1979, p. 10.

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first request (to find the TMI–2 accident an ENO) as a response to its request for public comment on its July 1979 notice. The notice further stated that the petitioners' second request (to change the criteria for an ENO finding) would be treated as a petition for rulemaking. Both the July 1979 and the August 1979 notices invited interested persons to submit written comments or suggestions.

**Petitioners' First Request**

The NRC considered comments on the petitioner's first request and in response to its July 1979 notice. For the reasons stated in its of April 23, 1980, **Federal Register** notice (45 FR 27590), the Commission determined that the March 28, 1979, accident at TMI–2 was not an ENO. Therefore, the petitioners' first request was denied.

**Petitioners' Second Request**

One comment was received on the second request, from an official of a nuclear utility. The commenter stated that the current criteria for determining that an accident was an ENO were consistent with the intent of Congress that the waiver of certain legal defenses triggered by an ENO determination be limited to incidents resulting in significant injury or loss. The commenter also stated that lowering the threshold for an ENO would lead to higher premiums for insurance coverage and could at some point endanger the availability of this coverage.

Although the Commission agreed with the commenter that the existing ENO criteria are consistent with the intent of Congress, it decided that these criteria should be reexamined because of difficulties in applying them after the TMI–2 accident. The primary difficulties cited stemmed from the fact that: (1) One criterion is based on "objective clinical evidence of radiation injury"; however, tests for evidence of such injury are not conclusive; and (2) monetary damages were difficult, if not impossible, to evaluate accurately in a timely manner (e.g., lower property values, business losses, evacuation costs). The Commission also cited a third difficulty with the existing ENO determination criteria that did not relate to problems encountered in the TMI–2 determination (i.e., the existing criteria are numerically inconsistent with the Environmental Protection Agencies (EPA) Protective Action Guidelines (PAG)).

Another factor that influenced the Commission's decision to reevaluate the ENO determination criteria was that when Congress first enacted the waiver of defenses provisions of the Price-Anderson Act, as amended, the conventional belief was that an accident at a nuclear facility would be catastrophic with large releases of radioactive material in a short time. The accident at TMI–2 suggested that a more slowly developing accident could be catastrophic enough to be considered an ENO. Thus, the Commission decided that it would be worthwhile to examine whether the criteria it uses to determine whether an accident is an ENO adequately address a broad range of accident scenarios.

**Proposed Rule**

On April 9, 1985 (50 FR 13978), the Commission published proposed amendments to 10 CFR Part 140 that posed three options that were under consideration for revised criteria for making an ENO determination, and solicited public comment on these options. These options used estimates of offsite doses and ground contamination as indicators of "substantial releases." As to "substantial damages," the options avoided the measurement problems encountered in applying the present criteria by focusing on costs, which can be readily counted or estimated. The dose limits for "substantial releases" were set at values in the range of occupational dose limits but substantially above the doses to the general public expected from the normal operation of NRC-licensed facilities. Like the existing criteria, Options 1 and 2 had separate criteria for substantial discharges of radioactive material or substantial radiation levels offsite.

Option 1 would modify § 140.84(a) to provide that a finding of a substantial discharge of radioactive material or substantial radiation level offsite should be based on a determination "that one or more persons offsite have been or probably will be exposed to radiation or radioactive materials that would result in estimated doses" in excess of certain specified limits. Option 2 had the same dose limits of Option 1 but specified that the finding must be that any of the doses "were or could have been received by a person or persons located on or near any site boundary throughout the duration of the accident."

Options 1 and 2 also differed with respect to the threshold for "substantial damage" to persons or property offsite. One of the thresholds in Option 1 replaced the existing "substantial damage" threshold of "objective clinical evidence of physical injury from exposure" with a dose-equivalent in the range that would produce symptoms of radiation sickness (i.e., 100 rads) in five or more exposed persons. Option 2 had neither the current "objective clinical evidence of physical injury" threshold nor the Option 1 threshold of a high dose to a few people. The Option 2 threshold was that a "calculated collective dose" (i.e., 100,000 person-rem) has been delivered within a 50-mile radius during the course of an accident. Both options replaced the present reference to the monetary value of property damage in Criterion II of the existing rule with effects that could be readily assessed within a relatively short period of time after an accident. Such effects include tax assessments, the number of people unemployed, and the number of people evacuated.

Option 3 departs from the two-part test required in the current criteria and the other options. Rather than requiring a Commission finding that the event resulted or probably would result in monetary damages exceeding certain thresholds, this option called for identifying conditions which had led or could lead to injury or damages. This option specified one set of criteria for substantial releases and levels of radiation offsite such that substantial injuries or substantial damages have resulted or will probably result. These criteria were expressed in terms of an integrated air dose that could be received by an individual over a 24-hour period in excess of 10 rads, or radioactive contamination levels offsite at which real and personal property are rendered unfit for normal use.

**Public Comments on the Proposed Rule**

The Commission received 27 letters commenting on the proposed rule. Although some commenters expressed their views about the merits of the various options proposed, there was no preponderance of support by the commenters for any of the options.

Ten commenters expressed an opinion on whether the criteria for making a determination that an ENO had occurred should be changed. Two commenters recommended changing the criteria. The Illinois Department of Nuclear Safety said that it did not believe that the two-pronged process of declaring a significant release and then determining that substantial damages were sustained was necessary and agreed with then-NRC Commissioner Bernthal's recommendation to use a single-criterion method. The commenter further stated that the existing process was complicated and time consuming and had inherent problems regarding accuracy and subjectivity but gave no rationale for these views. The Mississippi State Department of Health said that it favored Option 3 and that any of the options were more acceptable than the existing rule but did not give a basis for this view.



Eight commenters, representing approximately 21 separate entities,[2] recommended not changing the criteria. (Some commenters submitted the consolidated comments from other entities; other commenters endorsed these consolidated comments and submitted additional comments of their own.) The eight commenters stated that the existing ENO criteria were adequate and that no changes were required. Some commenters pointed out that the NRC's difficulties in applying the ENO criteria to the TMI–2 accident arose not from the criteria, but from the fact that the accident was not serious enough to meet the statutory requirements of substantial offsite releases and substantial offsite damages. Some commenters also pointed out that no change in the regulatory criteria would relieve the Commission of the statutory obligation to determine whether both the offsite release and the offsite damages were substantial, even if such a determination proves to be difficult on occasion.

Several commenters who opposed changing the criteria stated that the NRC had not adequately justified reducing the threshold for a substantial release finding from 20 rem to 5 rem. They asserted that this reduction would increase the likelihood that an event would be declared an ENO.

Some commenters also questioned the NRC rationale for changing the criteria to be consistent with the EPA PAGs. According to the commenters, these guidelines are intended for emergency planning purposes and to protect the population at risk from the onset of release of radioactivity; they were not intended as baseline criteria for ENO determinations.

Some commenters who opposed changing the criteria stated that the reduction of the dose level to sustain a finding of a substantial offsite release of radioactivity to 5 rem was inconsistent with the intent of Congress, and that the proposed rule would permit the Commission to define as an ENO an event near the range of radiological exposures from anticipated occurrences and involving doses within or near permissible limits. One commenter quoted the authors of the "Joint Committee on Atomic Energy's Report (JAEC) Accompanying Bills to Amend Price-Anderson Act to Provide Immediate Financial Assistance to Claimants and to Require Waiver of Defenses:" "[T]here is no pressing need to invoke the mechanisms and procedures in situations which are not exceptional and which can well be taken care of by the traditional system of tort law."[3]

Another commenter gave the following opinion:

> These proposed reductions would lower the existing dose levels to values not much different from the current 10 CFR 20 limits. We believe that these level reductions seriously lower the threshold of an ENO and that the original purpose may be somewhat diminished by the adoption of these reduced limits. In the original conception of 10 CFR 140, "Congress intended that the waiver of defenses be limited to incidents resulting in significant injury or loss" and that current ENO criteria should be consistent with this. It is possible that the seriousness or significance of an ENO may be lessened somewhat by these lower criteria.[4]

Another commenter expressed the same view:

> The legislative history is clear that Congress, in amending the Atomic Energy Act to incorporate the ENO concept, wished to establish a threshold to prevent the waiver of defenses provision from applying in cases "where nothing untoward or unusual has occurred in the conduct of nuclear activities."[5]

**Discussion**

The Commission finds that the arguments for retaining the existing criteria are persuasive. The Commission intended to simplify the application of the ENO criteria, but is now convinced by arguments of the public commenters that none of these options would accomplish this intent without undermining the purposes for which the ENO criteria were established.

In addition, section 11.j. of the AEA indicates that the dual criteria for findings of substantial releases and findings of substantial damages are to be used. Section 11.j. of the AEA has the following passage:

> The term extraordinary nuclear occurrence means any event causing a discharge or dispersal of source, special nuclear, or byproduct material from its intended place of confinement in amounts off-site, or causing radiation levels off-site, which the Nuclear Regulatory Commission or the Secretary of Energy, as appropriate, determines to be substantial, *and* which the Nuclear Regulatory Commission or the Secretary of Energy, as appropriate, determines has resulted or will probably result in substantial damages to persons off-site or property off-site. [emphasis added].

The Commission interprets this provision to mean that the determination that an ENO has occurred requires findings of substantial releases and of substantial damages.

**Conclusions on Problems Cited in 1985 Federal Register Notice**

With respect to the difficulties with the ENO determination criteria cited in the 1985 **Federal Register** notice (discussed earlier), the Commission now believes that these are not as serious as were once thought:

(1) Experience gained as a result of the TMI–2 accident suggests that the Criterion II threshold, requiring objective clinical evidence of radiation injury (10 CFR 140.85(a)(1)) to five or more individuals offsite, may not be as important to an ENO determination as the other findings in Criterion II. A second threshold in this criterion, a finding that $5 million or more in damage offsite has been or probably will be sustained (10 CFR 140.85(a)(2)), would appear to trigger an ENO determination before the radiation injury finding would. After the TMI–2 accident, no deaths or injury due to the accident were reported. However, to date, more than $70 million has been paid out in damages and expenses (mostly attributable to evacuation costs). If an accident occurred, the monetary damage estimate would apparently trigger the ENO determination before the death or injury threshold did. Thus the likelihood that the Commission would ever need to rely solely on 10 CFR 140.85(a)(1) to make a "substantial damages" to persons or property offsite finding is very small.

(2) The difficulty in estimating monetary damages does not seem to be as great as previously believed. The Commission now believes that timely and accurate estimates of monetary damages is possible. There exists a body of literature in which models for estimating such parameters and performing relevant studies are described. One study conducted by Mountain West Research, Inc., investigated the social and economic effects of the TMI–2 accident on the surrounding community.[6] The Commission is confident that, should an event meriting an ENO determination occur again, experts from the relevant disciplines can be assembled to estimate

[2] For example, the Law Offices of Bishop, Lieberman, Cook, Purcell & Reynolds made comments on behalf of Boston Edison Co., Carolina Power & Light Co., Commonwealth Edison Co, Florida Power Corp., Middle South Services Inc., Ohio Edison Company, Pennsylvania Power & Light Co., Southern California Edison Co., and Virginia Electric & Power Co.

[3] Peter F. Riehm, KMC, Inc., September 6, 1985, p. 2.

[4] Joseph F. Tiernan, Baltimore Gas and Electric, July 22, 1985, p. 2.

[5] Bishop *et al.*, August 7, 1985, p. 2.

[6] C.B. Flynn, J.A. Chalmers, "The Social and Economic Effects of the Accident at Three Mile Island," NUREG–CR–1215, January 1980.

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monetary damages. Furthermore, the legislative history of the modifications to the "waiver of defenses" provisions of the Price-Anderson Act (where the ENO concept was introduced) indicates that Congress was mindful that criteria to implement such an approach would be difficult to apply. In its September 14, 1966, report accompanying House of Representatives Bill No. 17685,[7] the former JCAE stated: "[T]he committee recognizes that inclusion of the 'extraordinary nuclear occurrence concept' in this bill adds very considerably to the complexity of implementing the proposed legislation."[8] Thus, the difficulty of applying the criteria does not justify changing them.

(3) The fact that existing ENO determination criteria are not numerically consistent with PAGs, which was cited in the **Federal Register** notice for the 1985 proposed rule, was not seen so much as a difficulty with applying ENO criteria to TMI–2, but, rather was seen as a perceived inadequacy of the ENO criteria. But the PAGs were established with different objectives than the ENO criteria. The purpose of the PAGs is to reduce the radiation exposure of the public by setting predetermined action levels for implementing planned protective actions, such as evacuations. These action levels are established with public health and safety as the main objective. "The concept of PAGs was introduced to radiological emergency response planning to assist public health and other governmental authorities in deciding how much of a radiation hazard in the environment constitutes a basis for initiating emergency protective actions."[9] In contrast, as stated in 10 CFR 140.81(b), the ENO regulations set forth the criteria which the Commission will follow to determine whether there has been an ENO. The Commission has taken the position that health and safety regulations have been conservatively determined and for a different purpose and are not appropriate for use as ENO thresholds. Section 140.81(b)(1) sets forth the scope of the ENO criteria as follows:

> The various limits in present NRC regulations are not appropriate for direct application in the determination of an "extraordinary nuclear occurrence" for they were arrived at with other purposes in mind, and those limits have been set at a level which is conservatively arrived at by incorporating a significant safety factor. Thus, a discharge or dispersal which exceeds the limits in NRC regulations, or in license conditions, although possible cause for concern, is not one which would be expected to cause substantial injury or damage unless it exceeds by some significant multiple the appropriate regulatory limit. Accordingly, in arriving at the values in the criteria to be deemed "substantial" it is more appropriate to adopt values separate from NRC health and safety regulations, and of course, the selection of these values will not in any way affect such regulations.

Thus, for the reasons stated, the Commission believes that lowering the thresholds for ENO determinations is not appropriate.

**Summary of Commission Findings**

The Commission has considered the comments in favor of modifying the criteria for determining that an ENO has occurred along the lines of the options presented in the proposed rule and those comments in favor of retaining the existing criteria. The Commission finds the latter more persuasive. Specifically, the Commission finds that:

(1) Although the existing criteria for determining that an ENO has occurred may be difficult to apply, they are consistent with the intent of Congress and need not be modified. The Commission believes that, contrary to the **Federal Register** notice for the proposed rule, the derivation of timely and accurate estimates of monetary damages is possible. The Commission is confident that, should an event meriting an ENO determination occur again, individuals and consulting firms with experience in estimating evacuation costs, changes in property values, loss of time from work, and other parameters can be assembled to make estimates of monetary damages. Moreover, as previously noted, the legislative history of the amendments to the "waiver of defenses" provisions of the Price-Anderson Act (where the ENO concept was introduced) indicates that Congress was mindful that criteria to implement such an approach would be difficult to apply. The difficulty of applying the criteria does not justify changing them.

(2) None of the options offered by the Commission in the 1985 proposed rule satisfies the legislative intent of Congress in defining an ENO. Under Option 1, a "substantial release" is an exposure to one or more persons offsite. Option 2 specifies a "substantial release" as an exposure to one or more persons located on or near any site boundary during the accident. However, both options would lower the "substantial release thresholds" from a whole body dose of 20 rem to 5 rem and similarly lower individual organ thresholds. At that level, individuals would not normally experience symptoms of radiation sickness. Thus, if Option 1 or Option 2 were adopted, a "substantial release" determination could be made for releases unlikely to produce detectable radiation injuries offsite. The rationale for lowering of the dose limits from 20 rem to 5 rem (i.e., numerical consistency with EPA's PAGs) failed to consider the fact that the PAGs are for initiating emergency response actions. The PAGs have no bearing on the dose levels at which the "waiver of defenses" provisions should be invoked. Therefore, the Commission finds that lowering "substantial releases" thresholds for ENO determinations is not warranted.

(3) As noted previously, Option 3 differs from the existing criteria and the other two options. Option 3 relies upon the probability that substantial injury or damages will be the consequence of some threshold dose exposure rate or contamination level and eliminates the need to estimate actual or probable damages and injuries. For example, one of the thresholds in Option 3 is that if the integrated air dose to an individual over any 24-hour period exceeds 10 rads, the Commission would find that "substantial releases" and "substantial injuries" have probably resulted and declare the event an ENO, even if no injuries or damages are sustained or projected. In effect, this option uses a single criterion for "substantial release" and "substantial damage" and thus is inconsistent with the two-part test for ENO determinations defined in Section 11.j. of the AEA. Therefore, the Commission finds that Option 3 of the proposed rule is also not appropriate.

**Commission Action**

Several factors contributed to the delay in completing the resolution of this petition until this time. The Commission dealt with the central request of the petitioners (i.e., to declare the TMI–2 accident an ENO) in a timely fashion. The petition was received on July 25, 1979, and the NRC published its finding that the accident was not an ENO in the **Federal Register** on April 23, 1980. In announcing its finding, the Commission did not specifically deny the petitioners' request to declare the TMI–2 accident an ENO.

The other request of the petitioners, to modify the ENO determination criteria, was considered to be of secondary importance. The Commission decided to consider this proposal but accorded it a low priority because of resource considerations and the existence of higher priority rulemaking actions. In the meantime, in light of the public comments received, the Commission has reexamined its reasoning for the need for modification of the ENO criteria and the options that it proposed in the **Federal Register** notice for the proposed rule (50 FR 13978). The Commission also considered the legislative history of the Price-Anderson Act in arriving at its finding in this matter.

Because the current criteria for determining that an ENO has occurred are consistent with the intent of Congress and none of the options proposed in the 1985 rulemaking are deemed acceptable, the Commission now finds that revision of these criteria is not warranted. For these reasons, the second request in the petition for rulemaking (PRM–140–1) from the Public Citizen Litigation Group and the Critical Mass Energy Project is denied and the April 9, 1985, proposed rule is withdrawn.

Dated at Rockville, Maryland, this 11th day of October 2000.

For the Nuclear Regulatory Commission.

**Annette L. Vietti-Cook,**

*Secretary of the Commission.*

[FR Doc. 00–26642 Filed 10–16–00; 8:45 am]

BILLING CODE 7590–01–U

[7] The Senate version of the bill, S–3830, was identical.

[8] House Report No. 2043, supra, n.1, p. 11.

[9] "Planning Basis for the Development of State and Local Government Radiological Emergency Response Plans in Support of Light Water Nuclear Power Plants," NUREG–0396 (EPA 520/1–78–016), December 1978, p. 3.



## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 97–NM–201–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Dornier Model 328–100 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Dornier Model 328–100 series airplanes. This proposal would require revising the Airworthiness Limitations Section of the Instructions for Continued Airworthiness to incorporate life limits for certain items and inspections to detect fatigue cracking in certain structures. This proposal is prompted by issuance of new revisions to the Dornier 328 Airworthiness Limitations Document. The actions specified by the proposed AD are intended to ensure that fatigue cracking of certain structural elements is detected and corrected; such fatigue cracking could adversely affect the structural integrity of these airplanes.

**DATES:** Comments must be received by November 16, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–201–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 97–NM–201–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Fairchild Dornier, Dornier Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–201–AD." The postcard will be date stamped and returned to the commenter.

**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–201–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

**Discussion**

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, has notified the FAA that a new Revision 13 of the Dornier 328 Airworthiness Limitations Document (ALD), and new Temporary Revisions (TR's) to the ALD have been issued. [The FAA refers to the information included in Revision 13 of the ALD and in the new TR documents as the Airworthiness Limitations Section (ALS).] These new revisions to the ALD and TR documents affect all Dornier Model 328–100 series airplanes. These new revisions provide mandatory replacement times and structural inspection intervals approved under section 25.571 of the Joint Aviation Requirements and the Federal Aviation Regulations (14 CFR 25.571). As airplanes gain service experience, or as results of post-certification testing and evaluation are obtained, it may become necessary to add additional life limits or structural inspections in order to ensure the continued structural integrity of the airplane.

The LBA advises that compliance with the tasks, intervals, and life limits specified in Revision 13 of the ALD and in the TR documents is required to ensure continuing compliance with the airworthiness standards of the type

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approval/type certification for Dornier Model 328 series airplanes. In addition, the LBA advises that certain life limits must be imposed for various components on these airplanes to preclude the onset of fatigue cracking in those components. Such fatigue cracking, if not corrected, could adversely affect the structural integrity of these airplanes.

**Explanation of Relevant Service Information**

Dornier has issued Dornier 328 Airworthiness Limitations Document, TM–ALD–010693–ALL, Revision 13, dated July 25, 1997, and a number of TR documents to amend certain sections of the ALD. Paragraph (a) of this AD includes a table that lists the TR documents and dates of issue. These documents include the following:

1. Life limit times for certain structural components, or other components or equipment.
2. Structural inspection times to detect fatigue cracking of certain Structural Significant Items (SSI).

Revision 13 of the ALD, and the TR documents, describe new inspections and compliance times for inspection and replacement actions. Accomplishment of the actions specified in those documents will preclude the onset of fatigue cracking of certain structural elements of the airplane.

The LBA has approved the previously referenced ALD and TR documents to assure the continued airworthiness of these airplanes in Germany. The LBA has not issued a corresponding airworthiness directive, although accomplishment of the additional life limits and structural inspections contained in the document described previously may be considered mandatory for operators of these airplanes in Germany.

**FAA's Conclusions**

The FAA has reviewed the previously referenced ALD and TR documents, and all available information, and has determined that AD action is necessary for products of this type design that are certificated for operation in the United States. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above. These airplane models are manufactured in Germany and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. The FAA has determined that the previously referenced ALD and corresponding TR's must be incorporated into the ALS of the Instructions for Continued Airworthiness.

**Explanation of Requirements of Proposed Rule**

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require revising the ALS of the Instructions for Continued Airworthiness to incorporate life limits for certain items and inspections to detect fatigue cracking in certain structures that are specified in the previously referenced ALD and TR documents.

**Explanation of Action Taken by the FAA**

In accordance with airworthiness standards requiring "damage tolerance assessments" for transport category airplanes [section 25.1529 of the Federal Aviation Regulations (14 CFR 25.1529), and the Appendices referenced in that section], all products certificated to comply with that section must have Instructions for Continued Airworthiness (or, for some products, maintenance manuals) that include an ALS. That section must set forth:

- Mandatory replacement times for structural components,
- Structural inspection intervals, and
- Related approved structural inspection procedures necessary to show compliance with the damage-tolerance requirements.

Compliance with the terms specified in the ALS is required by sections 43.16 (for persons maintaining products) and 91.403 (for operators) of the Federal Aviation Regulations (14 CFR 43.16 and 91.403).

In order to require compliance with these inspection intervals and life limits, the FAA must engage in rulemaking, namely the issuance of an AD. For products certificated to comply with the referenced part 25 requirements, it is within the authority of the FAA to issue an AD requiring a revision to the ALS that includes reduced life limits, or new or different structural inspection requirements. These revisions then are mandatory for operators under section 91.403(c) of the Federal Aviation Regulations (14 CFR 91.403), which prohibits operation of an airplane for which airworthiness limitations have been issued unless the inspection intervals specified in those limitations have been complied with.

After that document is revised, as required, and the AD has been fully complied with, the life limit or structural inspection change remains enforceable as a part of the airworthiness limitations. (This is analogous to AD's that require changes to the Limitations Section of the Airplane Flight Manual.)

Requiring a revision of the airworthiness limitations, rather than requiring individual inspections, is advantageous for operators because it allows them to record AD compliance status only once—at the time they make the revision—rather than after every inspection. It also has the advantage of keeping all airworthiness limitations, whether imposed by original certification or by AD, in one place within the operator's maintenance program, thereby reducing the risk of non-compliance because of oversight or confusion.

**Cost Impact**

The FAA estimates that 50 Dornier Model 328–100 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $3,000, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

**Regulatory Impact**

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**



**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

**PART 39—AIRWORTHINESS DIRECTIVES**

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Dornier Luftfahrt GMBH:** Docket 97-NM–201-AD.

*Applicability:* All Model 328–100 series airplanes, certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To ensure continued structural integrity of these airplanes, accomplish the following:

**Airworthiness Limitations Revision**

(a) Within 30 days after the effective date of this AD, revise the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness by incorporating Revision 13 of the Dornier 328 Airworthiness Limitations Document (ALD), TM-ALD–010693–ALL, dated July 25, 1997, and the Temporary Revision (TR) documents listed in the following table into the Airworthiness Limitations Section (ALS):

| TR Number | Date of issue |
|---|---|
| TR ALD–042 | January 31, 1997. |
| TR ALD–048 | May 12, 1998. |
| TR ALD–050 | October 2, 1997. |
| TR ALD–052 | December 11, 1997. |
| TR ALD–053 | April 29, 1998. |
| TR ALD–054 | May 12, 1998. |
| TR ALD–055 | May 26, 1998. |
| TR ALD–056 | July 22, 1998. |
| TR ALD–057 | October 23, 1998. |
| TR ALD–059 | December 11, 1998. |
| TR ALD–062 | May 18, 1999. |
| TR ALD–063 | August 10, 1999. |
| TR ALD–064 | October 10, 1999. |
| TR ALD–065 | November 26, 1999. |
| TR ALD–067 | February 7, 2000. |
| TR ALD–068 | February 4, 2000. |
| TR ALD–070 | May 25, 2000. |

**Note 2:** When the TR documents have been incorporated into the latest issue of the general revisions of the ALD, the general revisions may be incorporated into the ALS, provided that the information contained in the general revisions is identical to that specified in the TR documents.

(b) Except as provided in paragraph (c) of this AD: After the actions specified in paragraph (a) of this AD have been accomplished, no alternative inspections or inspection intervals may be approved for the structural elements specified in the documents listed in paragraph (a) of this AD.

**Alternative Methods of Compliance**

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

**Special Flight Permits**

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on October 11, 2000.

**Donald L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–26594 Filed 10–16–00; 8:45 am]

BILLING CODE 4910–13–P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. 2000–NM–295–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 737–200 and –300 Series Airplanes Equipped with a Main Deck Cargo Door Installed in Accordance with Supplemental Type Certificate (STC) SA2969SO

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 737–200 and –300 series airplanes, that currently requires a one-time inspection to detect cracks of the lower frames and reinforcing angles of the main deck cargo door where the door latch fittings attach between certain fuselage stations and water lines, and replacement of any cracked part with a new part having the same part number. That AD was prompted by reports that, during the inspections required by the existing AD, cracks were found in the reinforcing angles of the main deck cargo door frame. This action would require, among other actions, an inspection to detect cracks of the lower frames and reinforcing angles of the main deck cargo door; replacement of any lower frame or reinforcing angle of the main deck cargo door when it has reached its maximum life limit. The actions specified by the proposed AD are intended to detect and correct cracking of the lower portion of the main deck cargo door frames, which could result in sudden depressurization, loss or opening of the main deck cargo door during flight, and loss of control of the airplane.

**DATES:** Comments must be received by November 16, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–295–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-

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nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–295–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Pemco World Air Services, 100 Pemco Drive, Dothan, AL 36303. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Rany Azzi, Aerospace Engineer, Airframe and Propulsion Branch, ACE–117A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30337–2748, telephone (770) 703–6083; fax (770) 703–6097.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–295–AD." The postcard will be date stamped and returned to the commenter.

**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–295–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

**Discussion**

On August 18, 2000, the FAA issued AD 2000–17–51, amendment 39–11877 (65 FR 51752, August 25, 2000), applicable to certain Boeing Model 737–200 and –300 series airplanes, to require a one-time inspection to detect cracks of the lower frames and reinforcing angles of the main deck cargo door where the door latch fittings attach between certain fuselage stations (FS) and water lines (WL), and replacement of any cracked part with a new part having the same part number. That action was prompted by reports that, during the inspections required by the existing AD, cracks were found in the reinforcing angles of the main deck cargo door frame. The requirements of that AD are intended to detect and correct cracking of the lower portion of the main deck cargo door frames, which could result in sudden depressurization, loss or opening of the main deck cargo door during flight, and loss of control of the airplane.

In the preamble of AD 2000–17–51, the FAA indicated that the actions required by that AD were considered "interim action" and that further rulemaking action was being considered to supersede that AD to require replacement of the main deck cargo door frames and reinforcing angles that have accumulated 7,000 or more total flight cycles with new parts. The FAA now has determined that further rulemaking action is indeed necessary, and this proposed AD follows from that determination.

**Actions Since Issuance of Previous Rule**

Since the issuance of that AD, the FAA has reviewed and approved Pemco Service Bulletin 737–52–0037, Revision 2, dated September 13, 2000, including Attachment 1, dated August 10, 2000. The service bulletin describes the following procedures:

- A high frequency eddy current (HFEC) inspection to detect cracks of the lower frames and reinforcing angles of the main deck cargo door where the door latch fittings attach between FS 361.87 and FS 498.12 and WL 202.35 and WL 213.00;
- Repetitive HFEC inspections of existing and replaced parts; and
- Replacement of any lower frame or reinforcing angle of the main deck cargo door, if cracks are detected or when the frame or angle has reached its maximum life limit (i.e. 7,000 flight cycles), with a new part having the same part number.

Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

**Explanation of Requirements of Proposed Rule**

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 2000–17–51 to require accomplishment of the actions specified in the service bulletin described previously.

**Cost Impact**

There are approximately 35 Model 737–200 and -300 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 2 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 500 work hours per airplane to accomplish the proposed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $60,000, or $30,000 per airplane.

It would take approximately 128 work hours per airplane to accomplish the proposed replacement, at an average labor rate of $60 per work hour. Required parts would cost approximately $15,521 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $46,402, or $23,201 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.



**Regulatory Impact**

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by removing amendment 39–11877 (65 FR 51752, August 25, 2000), and by adding a new airworthiness directive (AD), to read as follows:

**Boeing:** Docket 2000–NM–295–AD. Supersedes AD 2000–17–51, Amendment 39–11877.

*Applicability:* Model 737–200 and –300 series airplanes, equipped with a main deck cargo door installed in accordance with Supplemental Type Certificate (STC) SA2969SO; certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To detect and correct cracking of the lower portion of the main deck cargo door frames, which could result in sudden depressurization, loss or opening of the main deck cargo door during flight, and loss of control of the airplane, accomplish the following:

**Actions Addressing Door Frames or Reinforcing Angles That Have Been Replaced**

(a) For airplanes on which any door frame or reinforcing angle at the location where the door latch fittings attach between fuselage station (FS) 361.86 and FS 298.12 and water line (WL) 202.35 and WL 213.00 has been replaced before the effective date of this AD: Do the actions specified in paragraphs (a)(1) and (a)(2) of this AD per the Accomplishment Instructions of Pemco Service Bulletin 737–52–0037, Revision 2, dated September 13, 2000, including Attachment 1, dated August 10, 2000.

(1) Within 3,000 flight cycles after accomplishment of the replacement, do a high frequency eddy current (HFEC) inspection to detect cracks of the replaced lower frames or replaced reinforcing angles of the main deck cargo door, as applicable.

(i) If no crack is detected, repeat the HFEC inspection thereafter at intervals of 1,300 flight cycles on the replaced part.

(ii) If any crack is detected, before further flight, replace the cracked part with a new part having the same part number per the service bulletin. Within 3,000 flight cycles after accomplishment of the replacement, do the HFEC inspection required by paragraph (a)(1) of this AD.

(2) Before or upon the accumulation of 7,000 total flight cycles on any lower frame or reinforcing angle of the main deck cargo door, replace the lower frame or reinforcing angle, as applicable, with new parts. Within 3,000 flight cycles after accomplishment of the replacement, do the HFEC inspection required by paragraph (a)(1) of this AD.

**Actions Addressing Door Frames or Reinforcing Angles That Have Not Been Replaced**

(b) For airplanes on which any door frame or reinforcing angle at the location where the door latch fittings attach between FS 361.86 and FS 298.12 and WL 202.35 and WL 213.00 has NOT been replaced before the effective date of this AD: Within 1,300 flight cycles after accomplishment of the HFEC inspection required by AD 2000–17–51, amendment 39–11877, do the action specified in either paragraph (b)(1) or (b)(2) of this AD, as applicable, per the Accomplishment Instructions of Pemco Service Bulletin 737–52–0037, Revision 2, dated September 13, 2000, including Attachment 1, dated August 10, 2000.

(1) For airplanes that have accumulated less than 7,000 total flight cycles since installation of STC SA2969SO: Do an HFEC inspection to detect cracks of the lower frames and reinforcing angles of the main deck cargo door where the door latch fittings attach between FS 361.87 and FS 498.12 and WL 202.35 and WL 213.00.

(i) If no crack is detected, do the actions specified in paragraphs (b)(1)(i)(A) and (b)(1)(i)(B) of this AD.

(A) Repeat the HFEC inspection thereafter at intervals of 1,300 flight cycles on the airplane, but not to exceed the accumulation of 7,000 total flight cycles on the airplane.

(B) Before the accumulation of 7,000 total flight cycles on the airplane, replace the lower frame and reinforcing angle with new parts per the service bulletin. Within 3,000 flight cycles after accomplishment of the replacement, do the HFEC inspection required by paragraph (a)(1) of this AD.

(ii) If any crack is detected, before further flight, replace the cracked part with a new part having the same part number per the service bulletin. Within 3,000 flight cycles after accomplishment of the replacement, do the HFEC inspection required by paragraph (a)(1) of this AD.

(2) For airplanes that have accumulated 7,000 or more total flight cycles since installation of STC SA2969SO: Replace the lower frames and reinforcing angles with new parts. Within 3,000 flight cycles after accomplishment of the replacement, do the HFEC inspection required by paragraph (a)(1) of this AD.

**Alternative Methods of Compliance**

(c)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta

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Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 2000–17–51, amendment 39–11877, are approved as alternative methods of compliance with the initial HFEC inspection required by paragraph (a)(1) of this AD.

**Special Flight Permits**

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on October 11, 2000.

**Donald L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–26595 Filed 10–16–00; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Parts 1, 5f, and 31

**[REG–246249–96]**

**RIN 1545–AW48**

## Information Reporting Requirements for Certain Payments Made on Behalf of Another Person, Payments to Joint Payees, and Payments of Gross Proceeds From Sales Involving Investment Advisers

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Withdrawal of previous notice of proposed rulemaking; notice of proposed rulemaking; and notice of public hearing.

**SUMMARY:** This document withdraws a previous notice of proposed rulemaking (LR–62–84) published May 29, 1984 (49 FR 22343). This document contains proposed regulations under section 6041 that clarify who is the payee for information reporting purposes if a check or other instrument is made payable to joint payees, provide information reporting requirements for escrow agents and other persons making payments on behalf of another person, and clarify that the amount to be reported paid is the gross amount of the payment. This document also contains proposed regulations under section 6045 that remove investment advisers from the list of exempt recipients. In addition, this document provides notice of a public hearing on these proposed regulations.

**DATES:** Written or electronic comments must be received by January 17, 2001. Requests to speak (with outlines of oral comments) at a public hearing scheduled for February 7, 2001, at 10 a.m. must be submitted by January 24, 2001.

**ADDRESSES:** Send submissions to: CC:M&SP:RU (REG–246249–96), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:M&SP:RU (REG–246249–96), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically via the IRS Internet site at http://www.irs.gov/tax_regs/regslist.html. The public hearing will be held in the IRS Auditorium, Seventh Floor, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Concerning the regulations, Nancy L. Rose, (202) 622–4910; concerning submission of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Guy R. Traynor, (202) 622–7190 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

### Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:FP:S:O, Washington, DC 20224. Comments on the collection of information should be received by December 19, 2000. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper operation of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The collection of information in these proposed regulations is in §§ 1.6041–1(e) and 1.6045–1(c)(3). This information is required to determine if taxpayers have properly reported amounts received as income. The collection of information is mandatory. The likely respondents are businesses and other for-profit institutions.

The estimate of the reporting burden in proposed § 1.6041–1 is reflected in the burden of Form 1099-MISC, Miscellaneous Income, which is currently 14 minutes per form. The estimate of the reporting burden in proposed § 1.6045–1 is reflected in the burden of Form 1099-B, Proceeds of Broker and Barter Exchange Transactions, which is currently 15 minutes per form.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to the collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

### Background and Explanation of Provisions

*1. Proposed Regulations Under Section 6041*

Section 6041 provides that all persons engaged in a trade or business that make certain payments in the course of that trade or business to another person of $600 or more in a taxable year must report the amount of the payments and the name and address of the recipient.

Section 3406(a) provides that a payor must withhold tax from reportable payments under certain circumstances, for example, if the payee has failed to furnish a valid taxpayer identification number to the payor in the manner required. "Reportable payments" include payments that are required to be reported under sections 6041 and 6045. Section 3406(b)(3)(A) and (C). The party that is responsible for reporting the payments under sections 6041 and 6045 is also responsible for any backup withholding required under section 3406.

These proposed regulations address certain issues identified by the Commissioner's Information Reporting Program Advisory Committee (IRPAC) and take into account comments and information provided by IRPAC members representing the banking, real estate, insurance, and securities industries.

a. Payments to Joint Payees

The proposed regulations clarify the definition of fixed and determinable income in § 1.6041–1(c) when a payment is made payable to joint payees. This issue was discussed in papers presented at IRPAC meetings in May 1994 and May 1995. The regulations provide that a payment made jointly to two or more payees may be fixed and determinable income to one payee even though the payment is not fixed and determinable income to another payee. For example, when a payment in consideration for services is made payable to joint payees, one of whom is the service provider, an information return must be made showing the service provider as the payee if the payment is fixed and determinable income to the service provider, even if the payment is not fixed and determinable income to the other payee. See, *e.g.*, Situation 2 of Rev. Rul. 70–608 (1970–2 C.B. 286).

b. Identification of Payor

A payment reportable under section 6041 may be made by a person on behalf of another person that is the actual source of the funds. Under certain circumstances this so-called middleman, and not the person that provided the funds, is the payor obligated to report the payment under section 6041. See, *e.g.*, Rev. Rul. 93–70 (1993–2 C.B. 294).

Consistent with Rev. Rul. 93–70, the proposed regulations add a new paragraph (e)(1) to § 1.6041–1 that provides that a person that makes a payment on behalf of another person and performs a management or oversight function in connection with, or has a significant economic interest in, the payment must report under section 6041. A management or oversight function is an activity that is more than merely administrative or ministerial. For example, a person that merely writes checks at the direction of others in connection with a transaction, sometimes referred to as a paying agent, is performing only an administrative or ministerial function and is not a payor. In contrast, a person that exercises discretion or supervision in connection with a payment is performing a management or oversight function and is a payor. A significant economic interest in a payment is an economic interest that would be compromised if the payment were not made. For example a bank has a significant economic interest in a payment to a contractor when damage occurs to property securing a mortgage held by the bank. With this standard, which was also discussed in the IRPAC papers of May 1994 and May 1995, the proposed regulations attempt to replace disparate revenue rulings with a consistent and easily administrable rule that can be applied to a variety of factual situations involving middlemen.

Section 1.6041–1(e)(2) of the proposed regulations provides an exception to the general rule of § 1.6041–1(e)(1) by referencing the procedures in Rev. Proc. 84–33 (1984–1 C.B. 502) for an optional method for payors to designate a paying agent to file information returns and backup withhold.

The proposed regulations include examples, derived primarily from revenue rulings and private letter rulings, which are intended to be all-inclusive. Rulings that are factually encompassed by the proposed regulations will be obsoleted. Comments are requested identifying other factually relevant rulings or suggesting appropriate additional examples.

The proposed regulations make two changes to § 1.6041–3 (to be effective January 1, 2001). They revise § 1.6041–3(d) to conform the cross-reference to § 1.6041–1 to the language effective January 1, 2001, and to clarify the current rule that real estate agents who manage rental property and make payments of rent to landlords are payors and continue to be subject to the general requirements of § 1.6041–1. The proposed regulations also remove § 1.6041–3(n), which provides an exception to the information reporting requirements of section 6041 for amounts that a bank or similar institution collects on behalf of, and pays over or credits to the account of, the actual owner of the funds, but only if it does not collect the items on a regular and continuing basis. Rev. Rul. 77–53 (1977–1 C.B. 368) further restricted this limitation to banks that collect items on a regular and continuing basis and also assume a management function or perform more than the mere collection and payment or crediting of funds to a customer's account. This holding is consistent with the "management and oversight" standard of the proposed regulations. Accordingly, *Example 11* of the proposed regulations preserves the holding of Rev. Rul. 77–53. Section 1.6041–3(n) is removed to avoid confusion and redundancy. However, its removal will change current requirements by imposing a reporting requirement on a bank that collects and pays or credits funds on behalf of a customer on an infrequent or isolated basis if it performs a management or oversight function in connection with the payment, a transaction that is currently within the § 1.6041–3(n) exception.

The proposed regulations also remove paragraphs (b) and (c) of § 31.3406(a)–2. These paragraphs provide a standard for information reporting by a so-called middleman that is inconsistent with the standard in the proposed regulations. As amended, § 31.3406(a)–2 reiterates the general rule of section 3406(h) (also stated in § 35a.9999–3, Q & A 1) that the definition of payor for information reporting purposes determines who is the payor for backup withholding purposes as well.

c. Amount To Be Reported When Fees, Expenses or Commissions are Deducted From a Payment

The proposed regulations add a new paragraph (f) to § 1.6041–1 that clarifies that the amount to be reported as paid to a payee is the gross amount of the payment or payments before fees, commissions, expenses, or other amounts owed by the payee to another person have been deducted. See, *e.g.*, Rev. Rul. 67–197 (1967–1 C.B. 319); Rev. Rul. 54–571 (1954–2 C.B. 235). The rule, which applies whether the payment is made jointly or separately to the payee and another person, is also cross-referenced in *Example 6* and *Example 8* of § 1.6041–1(e)(3).

The rule of § 1.6041–1(f) is illustrated by two examples involving payment of taxable damages by a defendant to a plaintiff. These examples, read with *Example 8* of § 1.6041–1(e)(3), are, in part, inconsistent with *Example 2* of the proposed regulations at § 1.6045–5(f), published on May 21, 1999 (64 FR 27730). *Example 2* states that a defendant that pays a settlement to a plaintiff and knows the amount of the plaintiff's attorney fees included in the

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payment is required to report the payment of the attorney fees under section 6041 and not the gross proceeds under section 6045(f). However, under § 1.6041–1(e) of these regulations, the defendant is not exercising management or oversight in connection with, and therefore is not required to make an information return under section 6041 for, the payment to the attorney. The plaintiff, not the defendant, is required to report the payment of attorney fees to plaintiff's attorney under section 6041 (assuming that the payment is made in the course of the plaintiff's trade or business and that the other requirements of section 6041 apply). Accordingly, *Example 2* in the final regulations under section 6045(f) will be revised to provide that the defendant is not required to make an information return under section 6041 but is required to make an information return under section 6045(f), even if the defendant knows the amount of plaintiff's attorney fees.

d. Revenue Rulings To Become Obsolete

As discussed above, the proposed regulations apply to the factual situations addressed in the following revenue rulings, which will become obsolete:

Rev. Rul. 93–70 (1993–2 C.B. 294)
Rev. Rul. 85–50 (1985–1 C.B. 345)
Rev. Rul. 77–53 (1977–1 C.B. 368)
Rev. Rul. 73–232 (1973–1 C.B. 541)
Rev. Rul. 70–608, Situations 1, 2, and 5 (1970–2 C.B. 286)
Rev. Rul. 69–595 (1969–2 C.B. 242)
Rev. Rul. 67–197 (1967–1 C.B. 319)
Rev. Rul. 65–129 (1965–1 C.B. 519)
Rev. Rul. 64–36 (1964–1 C.B. 446)
Rev. Rul. 59–328 (1959–2 C.B. 379)
Rev. Rul. 55–606 (1955–2 C.B. 489)
Rev. Rul. 54–571 (1954–2 C.B. 235)

*2. Proposed Regulations Under Section 6045*

Section 6045 provides that a broker must file an information return showing the name and address of the broker's customer and other details, such as the amount of the gross proceeds of the transaction, as the Secretary may require. Section 6045(c) defines a broker as a dealer, a barter exchange, or any other person who, for a consideration, regularly acts as a middleman with respect to property or services.

Section 1.6045–1(a)(2) provides that a customer is the person who makes a sale effected by a broker, if the broker acts as (i) an agent for the customer in the sale, (ii) a principal in the sale, or (iii) the party in the sale responsible for paying or crediting the proceeds to the customer. Under § 1.6045–1(h), a broker must treat the person whose name appears on the broker's books and records as the principal.

Section 5f.6045–1(c)(3), also published as proposed regulations (49 FR 22343), provides that no return of information is required with respect to a sale effected for a customer that is an exempt recipient. Among the categories of exempt recipients is a person registered under the Investment Advisers Act of 1940 who regularly acts as a broker (an investment adviser).

Section 5f.6045–1(c)(3)(iii) provides that, in a cash on delivery or similar transaction, only the broker that receives the gross proceeds against delivery of the securities sold is required to report a sale, unless the broker's customer is another broker (a second-party broker) that is an exempt recipient. In that case, only the second-party broker is required to report.

One effect of these provisions is to shift the reporting requirement in a cash on delivery transaction from the broker that receives the gross proceeds against delivery of the securities to an investment adviser. For example, in § 5f.6045–1(c)(4) *Example (4)*, an investment adviser instructs a broker/dealer to sell securities owned by the investment adviser's customer and to pay the proceeds of the sale to a custodian bank. The custodian bank is instructed to deliver the securities to the broker/dealer against delivery of the proceeds of the sale. The investment adviser, and not the broker/dealer or the custodian bank, is required to report the payment of the proceeds of the sale to the investment adviser's customer, because (1) the broker/dealer paid the gross proceeds of the sale to the custodian bank against delivery of the securities sold, and (2) the custodian bank's customer was the investment adviser, an exempt recipient.

Commentators on the proposed regulations objected to the imposition of the reporting obligation under section 6045(a) on investment advisers because (1) investment advisers generally do not have first-hand knowledge that a sale has been completed, and (2) investment advisers generally do not handle the proceeds of a sale and, consequently, cannot comply with the backup withholding requirements of section 3406. Investment adviser reporting issues were also the subject of IRPAC papers presented at meetings in November 1995 and October 1997.

These proposed regulations withdraw the 1984 proposed regulations. In general, they propose to incorporate the provisions of § 5f.6045–1 into § 1.6045–1(c)(3) and (4). The proposed regulations also remove investment advisers from the list of exempt recipients and revise current § 5f.6045–1(c)(4) *Examples 4* and *5* to clarify that, under the revised rules, an investment adviser that initiates a sale on behalf of a customer is required to make a return of information only if the sale relates to an investment account in the investment adviser's name (i.e., the identity of the customer is not disclosed to the account custodian).

**Proposed Effective Date**

The provisions of these regulations under sections 6041 and 3406 are proposed to be applicable for payments made on or after the beginning of the first calendar year that begins after these regulations are published in the **Federal Register** as final regulations. The provisions of these regulations under section 6045 are proposed to be applicable for sales effected on or after the beginning of the first calendar year that begins after the date these regulations are published in the **Federal Register** as final regulations.

**Special Analyses**

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. An initial regulatory flexibility analysis has been prepared for the collection of information in this notice of proposed rulemaking under 5 U.S.C. section 603. The analysis is set forth in this preamble under the heading "Initial Regulatory Flexibility Analysis." Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

**Initial Regulatory Flexibility Analysis**

The collection of information proposed in § 1.6041–1(e) is needed to clarify the requirements for filing an information return under section 6041 when a person makes a payment on behalf of another person or to joint payees. The objectives of the proposed regulations are to provide uniform, practicable, and administrable rules under section 6041 for persons making payments on behalf of another person or to joint payees. The types of small entities to which the proposed regulations may apply are small businesses. An estimate of the number of small entities affected is not feasible because of the large variety of entities and transactions to which the proposed regulations may apply. However, in 1997 a total of 73,273,621 Forms 1099–MISC were filed with the IRS. The number of 1997 Forms 1099–MISC that related to transactions that involved payments made on behalf of another person or to joint payees cannot be determined. The current estimated reporting burden relating to Form 1099–MISC is 14 minutes per form. No special professional skills are necessary for preparation of the reports or records. There are no known Federal rules that duplicate, overlap, or conflict with these proposed regulations. The regulations proposed are considered to have the least economic impact on small entities of all alternatives considered.

The collection of information in proposed § 1.6045–1(c)(3) will not have a significant economic impact on a substantial number of small entities. The proposed regulations will relieve investment advisers of the requirement to make information returns under section 6045(a), and few, if any, financial custodians that may be affected by the regulations are small entities.

**Comments and Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic or written comments (a signed original and eight (8) copies) that are submitted timely (in the manner described in the **ADDRESSES** caption) to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for February 7, 2001, beginning at 10 a.m. in the IRS Auditorium, Seventh Floor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building.

Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of the preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by January 24, 2001. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

**Drafting Information**

The principal author of these regulations is Donna M. Crisalli, Office of the Associate Chief Counsel (Income Tax & Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

**List of Subjects**

*26 CFR Parts 1 and 5f*

Income taxes, Reporting and recordkeeping requirements.

*26 CFR Part 31*

Employment taxes, Income taxes, Penalties, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

**Proposed Amendments to the Regulations**

Accordingly, under the authority of 26 U.S.C. 7805, the notice of proposed rulemaking (LR–62–84) amending 26 CFR part 1 that was published in the **Federal Register** on May 29, 1984 (49 FR 22343) is withdrawn. In addition, 26 CFR parts 1, 5f, and 31 are proposed to be amended as follows:

**PART 1—INCOME TAXES**

**Paragraph 1.** The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

**Authority:** 26 U.S.C. 7805 * * *.
Section 1.6041–1 also issued under 26 U.S.C. 6041(a). * * *

**Par. 2.** Section 1.6041–1 is amended by:

1. Removing the language "paragraph (g)" in the second sentence of paragraph (b)(1) and adding the language "paragraph (i)" in its place.
2. Adding two sentences after the fourth sentence of paragraph (c).
3. Redesignating paragraphs (e) through (g) as paragraphs (g) through (i).
4. Adding new paragraphs (e) and (f), and (j).

The additions and revisions read as follows:



**§ 1.6041–1 Return of information as to payments of $600 or more.**

* * * * *

(c) * * * A payment made jointly to two or more payees may be fixed and determinable income to one payee even though the payment is not fixed and determinable income to another payee. For example, property insurance proceeds paid jointly to the owner of damaged property and to a contractor that repairs the property may be fixed and determinable income to the contractor but not fixed and determinable income to the owner.

* * *

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(e) *Payment made on behalf of another person*—(1) *In general.* A person that makes a payment in the course of its trade or business on behalf of another person is the payor that must make a return of information under this section with respect to that payment if the payment is described in paragraph (a) of this section and, under all the facts and circumstances, that person—

(i) Performs management or oversight functions (*i.e.*, performs more than mere administrative or ministerial functions) in connection with the payment; or

(ii) Has a significant economic interest in the payment.

(2) *Optional method to report.* A person that makes a payment on behalf of another person but is not required to make an information return under paragraph (e)(1) of this section may elect to do so pursuant to the procedures established in Rev. Proc. 84–33 (1984–1 C.B. 502) (optional method for a paying agent to report and deposit amounts withheld for payors under the statutory provisions of backup withholding) (see § 601–601(d)(2) of this chapter).

(3) *Examples.* The provisions of this paragraph (e) are illustrated by the following examples:

*Example 1.* Bank B provides financing to C, a real estate developer, for a construction project. B puts the funds in an escrow account and makes disbursements from the account for labor, materials, services, and other expenses related to the construction project. In connection with the payments, B performs the following functions on behalf of C: approves payments to the general contractor or subcontractors; ensures that loan proceeds are properly applied and that all approved bills are properly paid to avoid mechanics or materialmen's liens; conducts site inspections to determine whether work has been completed (but does not check the quality of the work); evaluates and assesses the cost of the project, including costs of changes; and communicates resulting concerns to C or to the general contractor so that modifications can be made or additional funding obtained. B is performing

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management or oversight functions in connection with the payment and is subject to the information reporting requirements of section 6041 with respect to payments from the escrow fund.

*Example 2.* Mortgage company D holds a mortgage on business property owned by E. When the property is damaged by a storm E's insurance company issues a check payable to both D and E in settlement of E's claim. Pursuant to the contract between D and E, D holds the insurance proceeds in an escrow account and makes disbursements according to E's instructions to contractors and subcontractors performing repairs on the property. D is not performing management or oversight functions, but D has a significant economic interest in the payments because the purpose of the arrangement is to ensure that property on which D holds a mortgage is repaired or replaced. D is subject to the information reporting requirements of section 6041 with respect to the payments to contractors.

*Exomple 3.* Settlement agent F provides real estate closing services to real estate brokers and agents. F deposits money received from the buyer or lender in an escrow account and makes payments from the account to real estate agents or brokers, appraisers, land surveyors, building inspectors, or similar service providers according to the provisions of the real estate contract and written instructions from the lender. F may also make disbursements pursuant to verbal instructions of the seller or purchaser at closing. F is not performing management or oversight functions and does not have a significant economic interest in the payments, and is not subject to the information reporting requirements of section 6041. For the rules relating to F's obligation to report the gross proceeds of the sale, see section 6045(e) and § 1.6045–4.

*Example 4.* Assume the same facts as in *Example 3*, except that the seller instructs F to hire a contractor to perform repairs on the property. F selects the contractor, negotiates the cost, monitors the progress of the project, and inspects the work to ensure it complies with the contract. With respect to the payments to the contractor, F is performing management or oversight functions and is subject to the information reporting requirements of section 6041.

*Example 5.* Real estate agent G manages certain rental property on behalf of property owner H. In addition to collecting the rent G arranges for various services that are needed to maintain the property (e.g., painting, repairs, lawn mowing, etc.), determines that the services have been satisfactorily performed, and pays the service providers. G is performing management or oversight functions and is subject to the information reporting requirements of section 6041 with respect to the payments to the service providers. With respect to the payments of rent to H, see § 1.6041–3(d).

*Example 6.* Literary agent J receives a payment from publisher L of fees earned by J's client, author K. J deposits the payment into a bank account in J's name and pays K the net amount after subtracting J's commission. From time to time and as directed by K, J also makes payments to attorneys, managers, and other third parties from these funds for services rendered to K. J does not order or direct the provision of services by the third parties to K, and J exercises no discretion in making the payments to them. J is not performing management or oversight functions and does not have a significant economic interest in the payments, and is not subject to the information reporting requirements of section 6041 in connection with the payments to K or to the third parties. For the rules relating to L's obligation to report the payment of the fees to K, see paragraphs (a)(1)(i) and (f) of this section. For the rules relating to K's obligation to report the payment of the commission to J and the payments to the third parties for services, see paragraphs (a)(1)(i) and (d)(2) of this section.

*Example 7.* Attorney P deposits into a client trust fund a settlement payment from R, the defendant in a breach of contract action for lost profits in which P represented plaintiff Q. P makes payments from the client trust fund to service providers such as expert witnesses and private investigators for expenses incurred in the litigation. P decides whom to hire, negotiates the amount of payment, and determines that the services have been satisfactorily performed. In the event of a dispute with a service provider, P withholds payment until the dispute is settled. With respect to payments to the service providers P is performing management or oversight functions and is subject to the information reporting requirements of section 6041.

*Example 8.* Assume the same facts as in *Example 7*, except that after paying the service providers and deducting his legal fee, P pays Q the remaining funds that P had received from the settlement with R. With respect to the payment to Q, P is not performing management or oversight functions and does not have a significant economic interest in the payment, and is not subject to the information reporting requirements of section 6041. For the rules relating to R's obligation to report the payment of the settlement proceeds to P, see section 6045(f) and § 1.6045–5. For the rules relating to R's obligation to report the payment of the settlement proceeds to Q, see paragraphs (a)(1)(i) and (f) of this section. For the rules relating to Q's obligation to report the payment of attorney fees to P, see paragraphs (a)(1)(i) and (d)(2) of this section.

*Example 9.* Medical insurer S operates as the administrator of a health care program under a contract with a state. S makes payments of government funds to health care providers who provide care to eligible patients. S receives and reviews claims submitted by patients or health care providers, determines if the claims meet all the requirements of the program (e.g., that the care is authorized and that the patients are eligible beneficiaries), and determines the amount of payment. S is performing management or oversight functions and is subject to the information reporting requirements of section 6041 with respect to the payments.

*Example 10.* Race track employee T holds deposits made by horse owner U in a special escrow account in U's name. U enters into a contract with jockey V to ride U's horse in a race at the track. As directed by U, T pays V the fee for riding U's horse from U's escrow account. T is not performing management or oversight functions and does not have a significant economic interest in the payment, and is not subject to the information reporting requirements of section 6041. For the rules relating to U's obligation to report the payment of the fee to V, see paragraph (a)(1)(i) of this section.

*Example 11.* Bank W collects payments from mortgagors and remits the amounts to the mortgagees or credits their accounts. W performs no other task with respect to the mortgage payments and has no other interest in the accounts. Although W collects payments on a regular and continuing basis, W is not performing management or oversight functions and does not have a significant economic interest in the payments, and is not subject to the information reporting requirements of section 6041 with respect to the payments.

(f) *Amount to be reported when fees, expenses or commissions are deducted*—(1) *In general.* The amount to be reported as paid to a payee is the gross amount of the payment or payments before fees, commissions, expenses, or other amounts owed by the payee to another person have been deducted, whether the payment is made jointly or separately to the payee and the other person.

(2) *Examples.* The provisions of this paragraph (f) are illustrated by the following examples:

*Example 1.* Attorney P represents client Q in a breach of contract action for lost profits against defendant R. R settles the case for $100,000 damages and $40,000 for attorney fees. R issues a check payable to P and Q in the amount of $140,000. R is required to make an information return reporting a payment to Q in the amount of $140,000.

*Example 2.* Assume the same facts as in Example 1, except that R issues a check to Q for $100,000 and a separate check to P for $40,000. R is required to make an information return reporting a payment to Q in the amount of $140,000.

* * * * *

(j) *Effective date.* The provisions of paragraphs (b), (c), (e), and (f) of this section apply to payments made on or after the beginning of the first calendar year that begins after these regulations are published in the **Federal Register** as final regulations.

**§ 1.6041–3 [Amended]**

**Par. 3.** Section 1.6041–3, as in effect on January 1, 2001, is amended as follows:

1. In paragraph (d), removing the language "(but the agent is subject to the requirements of paragraph (a)(1)(ii) and (2)(ii) of § 1.6041–1)" and adding the language "(but the agent is required to report payments of rent to the landlord in accordance with § 1.6041–1(a)(1)(i)(B) and (2)" in its place.

2. Removing paragraph (n) and redesignating paragraphs (o) through (q) as paragraphs (n) through (p).

**Par. 4.** Section 1.6045–1, as in effect on January 1, 2001, is amended as follows:

1. Revising paragraph (a) introductory text.

2. Revising paragraphs (c)(3) and (c)(4).

3. Removing the language "5f.6045–1(c)(3)(ii) of this chapter" and adding the language "paragraph (c)(3)(iii) of this section" in its place in each place it appears in paragraph (g)(4) *Examples 1, 4, 5, 6,* and *7*(i).

The revisions read as follows:

**§ 1.6045–1 Returns of information of brokers and barter exchanges.**

(a) *Definitions.* The following definitions apply for purposes of this section and § 1.6045–2:

* * * * *

(c) * * *

(3) *Exceptions*—(i) *Sales effected for exempt recipients*—

(A) *In general.* No return of information is required with respect to a sale effected for a customer that is an exempt recipient under paragraph (c)(3)(i)(B) of this section.

(B) *Exempt recipient defined.* The term *exempt recipient* means—

(*1*) A corporation as defined in section 7701(a)(3), whether domestic or foreign;

(*2*) An organization exempt from taxation under section 501(a) or an individual retirement plan;

(*3*) The United States or a State, the District of Columbia, a possession of the United States, a political subdivision of any of the foregoing, a wholly-owned agency or instrumentality of any one or more of the foregoing, or a pool or partnership composed exclusively of any of the foregoing;

(*4*) A foreign government, a political subdivision thereof, an international organization, or any wholly-owned agency or instrumentality of the foregoing;

(*5*) A foreign central bank of issue as defined in § 1.895–1(b)(1) (i.e., a bank that is by law or government sanction the principal authority, other than the government itself, issuing instruments intended to circulate as currency);

(*6*) A dealer in securities or commodities registered as such under the laws of the United States or a State;

(*7*) A futures commission merchant registered as such with the Commodity Futures Trading Commission;

(*8*) A real estate investment trust (as defined in section 856);

(*9*) An entity registered at all times during the taxable year under the Investment Company Act of 1940 (15 U.S.C. 80a–1, *et seq.*);

(*10*) A common trust fund (as defined in section 584(a)); or

(*11*) A financial institution such as a bank, mutual savings bank, savings and loan association, building and loan association, cooperative bank, homestead association, credit union, industrial loan association or bank, or other similar organization.

(C) *Exemption certificate.* A broker may treat a person described in paragraph (c)(3)(i)(B) of this section as an exempt recipient based on a properly completed exemption certificate (as provided in § 31.3406(h)–3) of this chapter or on the broker's actual knowledge that the payee is a person described in paragraph (c)(3)(i)(B) of this section. A broker may require an exempt recipient to file a properly completed exemption certificate and may treat an exempt recipient that fails to do so as a recipient that is not exempt.

(ii) *Excepted sales.* No return of information is required with respect to a sale effected by a broker for a customer if the sale is an excepted sale. For this purpose, a sale is an excepted sale if it is so designated by the Internal Revenue Service in a revenue ruling or revenue procedure (see § 601.601(d)(2) of this chapter).

(iii) *Multiple brokers.* If a broker is instructed to initiate a sale by a person that is an exempt recipient described in paragraph (c)(3)(i)(B)(*6*), (*7*), or (*11*) of this section, no return of information is required with respect to the sale by that broker. In a redemption of stock or retirement of securities, only the broker responsible for paying the holder redeemed or retired, or crediting the gross proceeds on the sale to that holder's account, is required to report the sale.

(iv) *Cash on delivery transactions.* In the case of a sale of securities through a cash on delivery account, a delivery versus payment account, or other similar account or transaction, only the broker that receives the gross proceeds from the sale against delivery of the securities sold is required to report the sale. If, however, the broker's customer is another broker (second-party broker) that is an exempt recipient, then only the second-party broker is required to report the sale.

(v) *Fiduciaries and partnerships.* No return of information is required with respect to a sale effected by a custodian or trustee in its capacity as such or a redemption of a partnership interest by a partnership provided the sale is otherwise reported by the custodian or trustee on a properly filed Form 1041, or the redemption is otherwise reported by the partnership on a properly filed Form 1065, and all Schedule K–1 reporting requirements are satisfied.

(vi) *Sales at issue price.* No return of information is required with respect to a sale of an interest in a regulated investment company (within the meaning of section 851) that computes its current price per share for purposes of distributions, redemptions, and purchases so as to stabilize the price per share at a constant amount that approximates its issue price or the price at which it was originally sold to the public.

(vii) *Obligor payments on certain obligations.* No return of information is required with respect to payments representing obligor payments on—

(A) Nontransferable obligations (including savings bonds, savings accounts, checking accounts, and NOW accounts);

(B) Obligations as to which the entire gross proceeds are reported by the broker on Form 1099 under provisions of the Internal Revenue Code other than section 6045 (including stripped coupons issued prior to July 1, 1982); or

(C) Retirement of short-term obligations (*i.e.*, obligations with a fixed maturity date not exceeding 1 year from the date of issue) that have original issue discount, as defined in section 1273(a)(1).

(viii) *Callable obligations.* No return of information is required with respect to payments representing obligor payments on demand obligations that also are callable by the obligor and that have no premium or discount.

(ix) *Foreign currency.* No return of information is required with respect to a sale of foreign currency other than a sale pursuant to a forward contract or regulated futures contract that requires delivery of foreign currency.

(x) *Fractional share.* No return of information is required with respect to a sale of a fractional share of stock if the gross proceeds on the sale of the fractional share are less than $20.

(xi) *Certain retirements.* No return of information is required from an issuer or its agent with respect to the retirement of book entry or registered form obligations as to which the relevant books and records indicate that no interim transfers have occurred.

(xii) *Cross reference.* For an exception for certain sales of agricultural commodities and certificates issued by the Commodity Credit Corporation after January 1, 1993, see paragraph (c)(7) of this section.

(xiii) *Effective date.* The provisions of this paragraph (c)(3) apply for sales effected on or after the beginning of the

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first calendar year that begins after the date these regulations are published in the **Federal Register** as final regulations.

(4) *Examples.* The following examples illustrate the application of the rules in paragraph (c)(3) of this section:

*Example 1.* P, an individual who is not an exempt recipient, places an order with B, a person generally known in the investment community to be a federally registered broker/dealer, to sell P's stock in a publicly traded corporation. B, in turn, places an order to sell the stock with C, a second broker, which will execute the sale. B discloses to C the identity of the customer placing the order. C is not required to make a return of information with respect to the sale because C was instructed by B, an exempt recipient as defined in paragraph (c)(3)(i)(B)(*6*) of this section, to initiate the sale. B is required to make a return of information with respect to the sale because P is B's customer and is not an exempt recipient.

*Example 2.* Assume the same facts as in Example 1 except that B has an omnibus account with C so that B does not disclose to C whether the transaction is for a customer of B or for B's own account. C is not required to make a return of information with respect to the sale because C was instructed by B, an exempt recipient as defined in paragraph (c)(3)(i)(B)(*6*) of this section, to initiate the sale. B is required to make a return of information with respect to the sale because P is B's customer and is not an exempt recipient.

*Example 3.* D, an individual who is not an exempt recipient, enters into a cash on delivery stock transaction by instructing K, a federally registered broker/dealer, to sell stock owned by D, and to deliver the proceeds to L, a custodian bank. Concurrently with the above instructions, D instructs L to deliver D's stock to K (or K's designee) against delivery of the proceeds from K. The records of both K and L with respect to this transaction show an account in the name of D. Pursuant to paragraph (h)(1) of this section, D is considered the customer of K and L. Under paragraph (c)(3)(iv) of this section, K is not required to make a return of information with respect to the sale because K will pay the gross proceeds to L against delivery of the securities sold. L is required to make a return of information with respect to the sale because D is L's customer and is not an exempt recipient.

*Example 4.* Assume the same facts as in Example 3 except that E, a federally registered investment adviser, instructs K to sell stock owned by D and to deliver the proceeds to L. Concurrently with the above instructions, E instructs L to deliver D's stock to K (or K's designee) against delivery of the proceeds from K. The records of both K and L with respect to the transaction show an account in the name of D. Pursuant to paragraph (h)(1) of this section, D is considered the customer of K and L. Under paragraph (c)(3)(iv) of this section, K is not required to make a return of information with respect to the sale because K will pay the gross proceeds to L against delivery of the securities sold. L is required to make a return of information with respect to the sale because D is L's customer and is not an exempt recipient.

*Example 5.* Assume the same facts as in Example 4 except that the records of both K and L with respect to the transaction show an account in the name of E. Pursuant to paragraph (h)(1) of this section, E is considered the customer of K and L. Under paragraph (c)(3)(iv) of this section, K is not required to make a return of information with respect to the sale because K will pay the gross proceeds to L against delivery of the securities sold. L is required to make a return of information with respect to the sale because E is L's customer and is not an exempt recipient. E is required to make a return of information with respect to the sale because D is E's customer and is not an exempt recipient.

*Example 6.* F, an individual who is not an exempt recipient, owns bonds that are held by G, a federally registered broker/dealer, in an account for F with G designated as nominee for F. Upon the retirement of the bonds, the gross proceeds are automatically credited to the account of F. G is required to make a return of information with respect to the retirement because G is the broker responsible for making payments of the gross proceeds to F.

* * * * *

**§ 1.6045–2 [Amended]**

**Par. 5.** In § 1.6045–2, paragraph (b)(2)(ii), is amended by removing the language "§ 5f.6045–1(c)(3)(i)(B) of the Temporary Income Tax Regulations under the Tax Equity and Fiscal Responsibility Act of 1982" and adding the language "§ 1.6045–1(c)(3)(i)(B)" in its place.

**Par. 6.** In § 1.6049–4, as in effect on January 1, 2001, paragraph (a)(2) is revised to read as follows:

**§ 1.6049–4 Return of information as to interest paid and original issue discount includible in gross income after December 31, 1982.**

(a) * * *

(2) *Payor.* For payments made on or after the beginning of the first calendar year that begins after the date these regulations are published in the **Federal Register** as final regulations, a payor is a person described in paragraph (a)(2)(i) or (ii) of this section.

(i) Every person who makes a payment of the type and of the amount subject to reporting under this section (or under an applicable section under this chapter) to any other person during a calendar year.

(ii) Every person who collects on behalf of another person payments of the type and of the amount subject to reporting under this section (or under an applicable section under this chapter), or who otherwise acts as a middleman (as defined in paragraph (f)(4) of this section) with respect to such payment.

* * * * *

**PART 5f—TEMPORARY INCOME TAX REGULATIONS UNDER THE TAX EQUITY AND FISCAL RESPONSIBILITY ACT OF 1982**

**Par. 7.** The authority citation for part 5f is amended by removing the authority citation for Sec. 5f.6045–1 to read in part as follows:

**Authority:** 26 U.S.C. 7805 * * *

**§ 5f.6045–1 [Removed]**

**Par. 8.** Section 5f.6045–1 is removed.

**PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE**

**Par. 9.** The authority citation for part 31 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 * * *

**Par. 10.** Section 31.3406–0 is amended by:

1. Revising the entry for § 31.3406(a)–2, paragraph (b).

2. Adding an entry for § 31.3406(a)–2, paragraph (d).

The revision and addition read as follows:

**§ 31.3406–0 Outline of the backup withholding regulations.**

* * * * *

**§ 31.3406(a)–2 Definition of payors obligated to backup withhold.**

* * * * *

(b) Persons treated as payors.

* * * * *

(d) Effective date.

* * * * *

**Par. 11.** Section 31.3406(a)–2 is revised to read as follows:

**§ 31.3406(a)–2 Definition of payors obligated to backup withhold.**

(a) *In general. Payor* means the person that is required to make an information return under section 6041, 6041A(a), 6042, 6044, 6045, 6049, 6050A, or 6050N, with respect to any reportable payment (as described in section 3406(b)), or that is described in paragraph (b) of this section.

(b) *Persons treated as payors.* The following persons are treated as payors for purposes of section 3406—

(1) A grantor trust established after December 31, 1995, all of which is owned by two or more grantors, and for this purpose spouses filing a joint return are considered to be one grantor;

(2) A grantor trust with ten or more grantors established on or after January 1, 1984 but before January 1, 1996;



(3) A common trust fund; and

(4) A partnership or an S corporation that makes a reportable payment.

(c) *Persons not treated as payors.* The following persons are not treated as payors for purposes of section 3406 if the person does not have a reporting obligation under the section on information reporting to which the payment relates—

(1) A trust (other than a grantor trust as described in paragraph (b)(1) or (2) of this section) that files a Form 1041 containing information required to be shown on an information return, including amounts withheld under section 3406; or

(2) A partnership making a payment of a distributive share or an S corporation making a similar distribution.

(d) *Effective date.* The provisions of this section apply to payments made on or after the beginning of the first calendar year that begins after these regulations are published in the **Federal Register** as final regulations.

**§ 31.3406(a)–4 [Amended]**

**Par. 12.** Section 31.3406(a)–4 is amended as follows:

1. In paragraph (c)(1), first sentence, removing the language "Any middleman (as defined in § 31.3406(a)–2(b))" and adding the language "A middleman payor (as defined in § 31.3406(a)–2(b) or in the section on information reporting to which the payment relates)" in its place.

2. In paragraph (c)(3), first sentence, removing the language "§ 31.3406(a)–2(b)(4)" and adding the language "§ 31.3406(a)–2(b)(1) or (2)" in its place.

**§ 31.3406(b)(3)–2 [Amended]**

**Par. 13.** In § 31.3406(b)(3)–2, paragraph (b)(5) is amended by removing the language "§ 5f.6045–1(c)(3)(ix)" and adding the language "§ 1.6045–1(c)(3)(x)" in its place.

**§ 31.3406(d)–4 [Amended]**

**Par. 14.** In § 31.3406(d)–4, paragraph (a)(1) introductory text is amended by removing the language "the payor of the instrument (as defined in § 31.3406(a)–2(b)(3))," and adding the language "a broker holding a security (including stock) for a customer in street name," in its place.

**§ 31.3406(h)–1 [Amended]**

**Par. 15.** In § 31.3406(h)–1, paragraph (c), second sentence, is amended by removing the language "§ 5f.6045–1(c)(3)(ii) and (iii)" and adding the language "§ 1.6045–1(c)(3)(iii) and (iv)" in its place.

**§ 31.3406(h)–2 [Amended]**

**Par. 16.** Section 31.3406(h)–2 is amended as follows:

1. In paragraph (c), third sentence, removing the language "with two or more grantors described in § 31.3406(a)–2(b)(*4*), which is treated as a middleman payor" and adding the language "described in § 31.3406(a)–2(b)(1) or (2), which is treated as a payor" in its place.

2. In paragraph (d), first sentence, removing the language "A middleman payor (as defined in § 31.3406(a)–2(b)" and adding the language "A middleman payor (as defined in § 31.3406(a)–2(b) or in the section on information reporting to which the payment relates)" in its place.

3. In paragraph (f)(6), removing the language "§ 31.3406(a)–2(a)" and adding the language "§ 31.3406(a)–2" in its place.

Robert E. Wenzel,

*Deputy Commissioner of Internal Revenue.*

[FR Doc. 00–26204 Filed 10–16–00; 8:45 am]

BILLING CODE 4830–01–U

## FEDERAL COMMUNICATIONS COMMISSION

**47 CFR Part 73**

**[DA 00–2303, MM Docket No. 00–198, RM–9980]**

**Digital Television Broadcast Service; Corpus Christi, TX**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by KVOA Communications, Inc., licensee of station KRIS–TV, NTSC Channel 6, Corpus Christi, Texas, requesting the substitution of DTV 13 for station KRIS–TV's assigned DTV Channel 50. DTV Channel 13 can be allotted to Corpus Christi, Texas, in compliance with the principle community coverage requirements of section 73.625(a) at reference coordinates 27–44–28 N and 97–36–08 W with a power of 160 (kW) and a height above average terrain (HAAT) of 291 meters. However, since the community of Corpus Christi is located within 275 kilometers of the U.S.-Mexican border, concurrence by the Mexican government must be obtained for this allotment.

**DATES:** Comments must be filed on or before December 4, 2000, and reply comments on or before December 19, 2000.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Scott S. Patrick, Dow, Lohnes & Albertson, 1200 New Hampshire Avenue, NW., Suite 800, Washington, DC 20036–6802 (Counsel for KVOA Communications, Inc.).

**FOR FURTHER INFORMATION CONTACT:** Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–198, adopted October 12, 2000, and released October 13, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

Federal Communications Commission.

**Barbara A. Kreisman,**

*Chief, Video Services Division, Mass Media Bureau.*

[FR Doc. 00–26666 Filed 10–16–00; 8:45 am]

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# Notices

Federal Register
Vol. 65, No. 201
Tuesday, October 17, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Office of the Secretary

### Notice of Solicitation for Membership to the National Agricultural Research, Extension, Education, and Economics Advisory Board

**AGENCY:** Research, Education, and Economics, USDA.

**ACTION:** Solicitation for membership.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, 5 U.S.C. app., the United States Department of Agriculture announces the appointments to the 10 vacancies on the National Agricultural Research, Extension, Education, and Economics Advisory Board.

**DATES:** Appointments are for a 3-year term, effective from October 1, 2000, until September 30, 2003 (pending reauthorization of the Advisory Board beyond September 30, 2002, Pub. L. 104–127, Sec. 802).

**SUPPLEMENTARY INFORMATION:** Section 802 of the Federal Agricultural Improvement and Reform Act of 1996 (The Farm Bill) authorized the creation of the National Agricultural Research, Extension, Education, and Economics Advisory Board. The Board is composed of 30 members, each representing a specific category related to farming or ranching, food production and processing, forestry research, crop and animal science, land-grant institutions, food retailing and marketing, rural economic development, and natural resource and consumer interest groups, among many others. The Board was first appointed in September 1996 and one-third of the 30 members were appointed for a 1, 2, and 3-year term, respectively.

As a result of the staggered appointments, the terms for 10 of the 30 members who represent 10 specific categories expired September 30, 2000. The Secretary of Agriculture made 3-year appointments for all 10 of the vacant categories. Appointees by category of the 10 new members are as follows: Representing Category A, National Farm Organization, Ronald R. Warfield, President of the Illinois Farm Bureau and Director of the American Farm Bureau Federation Executive Committee, was reappointed to a second term, Bloomington, Illinois; Category C. Food Animal Commodity Producer, Patricia Blum, beef rancher for 40 years and past President of South Dakota Beef Industry Council, Reliance, South Dakota; Category F. National Crop Commodity Organization, Marc S. Curtis, National and State President of the American Soybean Association, and farmer of rice, wheat, corn and soybeans, Leland, Mississippi; Category K. National Human Health Association, Judith S. Stern, Professor, Department of Internal Medicine, Division of Endocrinology, Clinical Nutrition and Vascular Medicine, University of California-Davis, California; Category P. Hispanic-Serving Institutions, John Cordova, President, South Mountain Community College, Maricopa Community College System, Phoenix, Arizona; Category Q. American Colleges of Veterinary Medicine, Oscar J. Fletcher, Dean, College of Veterinary Medicine and Professor of Farm Animal Health and Resource Management, North Carolina State University, Raleigh, North Carolina; Category S. Transportation of Food and Agricultural Products to Domestic and Foreign Markets, Emma Jean Cervantes, President of Cervantes Enterprises/Agribusiness, 35-year producer of chile peppers, cotton, alfalfa, vegetables, and pecans, La Mesa, New Mexico, previously appointed to a 1-year term and was reappointed to a full term; Category U. Food and Fiber Processors, John Rogers Farquharson, President of the International Food Safety Council, and Executive Emeritus, ARAMARK Corporation, Sewell, New Jersey, was reappointed to a second term; Category Z. Private Sector Organization involved in International Development, Shirley Dunlap Bowser, a diversified family farmer, engaged in the international dimension of agriculture, and Chair of W.K. Kellogg Foundation Board, Williamsport, Ohio; and Category CC. National Social Science Association, Jean Clarkson-Frisbie, Pratt County Extension Agent, Family and Consumer Sciences & R-H and Youth, Cooperative Extension Service, Kansas State University, Pratt, Kansas. Appointees term will begin on October 1, 2000 and end September 30, 2003 (pending reauthorization of the Advisory Board beyond September 30, 2002). They will actively participate in their first meeting October 16–18, 2000, beginning at 9 a.m. October 16–17 and from 8 a.m.–12 noon October 18, at the Loew's L'Enfant Plaza Hotel, Ballroom A, Section A, 480 L'Enfant Plaza, SW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Deborah Hanfman, Executive Director, National Agricultural Research, Extension, Education, and Economics Advisory Board, Research, Education, and Economics Advisory Board Office, Room 344A, Jamie L. Whitten Building, U.S. Department of Agriculture, STOP: 2255, 1400 Independence Avenue, SW., Washington, DC 20250–2255. Telephone: 202–720–3684. Fax: 202–720–6199, or e-mail: lshea@reeusda.gov.

**Eileen Kennedy,**
*Deputy Under Secretary, Research, Education, and Economics.*

[FR Doc. 00–26650 Filed 10–16–00; 8:45 am]

**BILLING CODE 3410–22–P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Research Service

### Notice of Federal Invention Available for Licensing and Intent To Grant Exclusive License

**AGENCY:** Agricultural Research Service, USDA.

**ACTION:** Notice of availability and intent.

**SUMMARY:** Notice is hereby given that the table grape variety designated "Summer Royal" is available for licensing and that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to the California Table Grape Commission of Fresno, California, an exclusive license to this variety in selected countries outside the United States where breeder's rights are available.

**DATES:** Comments must be received on or before January 16, 2001.

**ADDRESSES:** Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Rm. 4–1158, Beltsville, Maryland 20705–5131.

**FOR FURTHER INFORMATION CONTACT:** June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5257.

**SUPPLEMENTARY INFORMATION:** The Federal Government's intellectual property rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as the California Table Grape Commission has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within ninety (90) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

**Richard M. Parry, Jr.,**
*Assistant Administrator.*

[FR Doc. 00–26651 Filed 10–16–00; 8:45 am]

**BILLING CODE 3410–03–P**



## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

**[Docket No. 98–057–2]**

### Availability of Draft Pest Risk Assessment for the Importation of Solid Wood Packing Materials Into the United States

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** We are advising the public that a draft pest risk assessment has been prepared by the Animal and Plant Health Inspection Service for the importation of solid wood packing materials into the United States. We are making this draft pest risk assessment available to the public for review and comment.

**DATES:** We invite you to comment on the draft pest risk assessment. We will consider all comments that we receive by February 15, 2001.

**ADDRESSES:** Please send your comment and three copies to: Docket No. 98–057–2, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238

Please state that your comment refers to Docket No. 98–057–2.

You may also file comments on this docket electronically, and review comments filed electronically, at the World Wide Web site http://comments.aphis.usda.gov.

A copy of the draft pest risk assessment, and any comments that we receive on it, may be reviewed in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

**FOR FURTHER INFORMATION CONTACT:** Dr. Judith E. Pasek, Center for Plant Health Science and Technology, PPQ, APHIS, 1017 Main Campus Drive, Suite 2500, Raleigh, NC 27606–5202; (919) 513–2400.

**SUPPLEMENTARY INFORMATION:** The Animal and Plant Health Inspection Service (APHIS) is considering amending the regulations on the importation of logs, lumber, and other unmanufactured wood articles to decrease the risk of solid wood packing material (*e.g.*, crates, dunnage, wooden spools, pallets, packing blocks) introducing exotic plant pests into the United States. The regulations in 7 CFR 319.40–1 through 319.40–11 (referred to below as the regulations) are intended to mitigate the plant pest risk presented by the importation of logs, lumber, and other unmanufactured wood articles, including solid wood packing material (SWPM). Introductions into the United States of exotic plant pests such as the pine shoot beetle and the Asian longhorned beetle have been linked to the importation of SWPM. These and other plant pests that could be carried by imported SWPM pose a serious threat to U.S. agriculture and to natural, cultivated, and urban forests.

On January 20, 1999, we published an advance notice of proposed rulemaking in the **Federal Register** (64 FR 3049–3052, Docket No. 98–057–1) to seek information and develop regulatory options on the general problem of plant pests in SWPM imported from any country. In the notice, we requested public comment on what actions would be most effective and appropriate to further reduce the risk of SWPM introducing exotic plant pests into the United States. We received 102 comments in response to the advance notice of proposed rulemaking.

To evaluate the risks associated with the importation of solid wood packing materials so that we can propose regulations that are consistent with those risks, we have prepared a draft pest risk assessment entitled "Pest Risk Assessment for the Importation of Solid Wood Packing Materials Into the United States."

The specific objectives of this pest risk assessment are to:

- Describe the means by which pests could potentially be transported via SWPM (*i.e.*, pathways);
- Assess the potential for insect and pathogenic pests that may be transported with SWPM to enter the United States and become established; and
- Estimate the potential economic and environmental consequences these pests may have on forest and tree resources if they become established in the United States.

We are making this draft pest risk assessment available to the public for review and comment. In particular, we request feedback on the risk factors, methodology, and documentation used in the draft pest risk assessment. We will consider all comments that we receive by the date listed under the heading **DATES** at the beginning of this notice.

The draft pest risk assessment is available in our reading room (information on the location and hours of the reading room is listed under the heading **ADDRESSES** at the beginning of this notice) or on the Internet at *http://www.aphis.usda.gov/ppq/pra/swpm*. You may also request that a copy be mailed to you by registering at *http://www.aphis.usda.gov/ppq/pra/swpm* or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** If you request that a copy be mailed to you, please specify whether you desire a printed copy or a copy on compact disk.

**Authority:** Title IV, Pub. L. 106–224, 114 Stat. 438, 7 U.S.C. 7701–7772; 7 U.S.C. 166 and 450; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 11th day of October 2000.

**Craig A. Reed,**
*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 00–26652 Filed 10–16–00; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

### Forest Service

### Newspapers Used for Publication of Legal Notice of Appealable Decisions for the Northern Region; Idaho, Montana, North Dakota, and Portions of South Dakota and Eastern Washington

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice.

**SUMMARY:** This notice lists the newspapers that will be used by all Ranger Districts, Forests, and the Regional Office of the Northern Region to publish legal notice of all decisions subject to appeal under 36 CFR 215 and 217 and to publish notices for public comment and notice of decision subject to the provisions of 36 CFR 215. The intended effect of this action is to inform interested members of the public which newspapers will be used to publish legal notices for public comment or decisions; thereby allowing them to receive constructive notice of a decision, to provide clear evidence of timely notice, and to achieve consistency in administering the appeals process.

**DATES:** Publication of legal notices in the listed newspapers will begin with decisions subject to appeal that are made on or after October 15, 2000. The list of newspapers will remain in effect until another notice is published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Interregional NEPA, Appeals and Litigation Leader; Northern Region; P.O. Box 7669; Missoula, Montana 59807. Phone: (406) 329–3647.

The newspapers to be used are as follows:

**Northern Regional Office**

*Regional Forester decisions in Montana*: The Missoulian, Great Falls Tribune, and The Billings Gazette.

*Regional Forester decisions in Northern Idaho and Eastern Washington*: The Spokesman Review.

*Regional Forester decisions in North Dakota*: Bismarck Tribune.

*Regional Forester decisions in South Dakota*: Rapid City Journal.

*Beaverhead/Deerlodge*—Montana Standard
*Bitterroot*—Ravalli Republic
*Clearwater*—Lewiston Morning Tribune
*Custer*—Billings Gazette (Montana), Rapid City Journal (South Dakota)
*Dakota Prairie National Grasslands*—Bismarck Tribune (North Dakota), Rapid City Journal (South Dakota)
*Flathead*—Daily Interlake
*Gallatin*—Bozeman Chronicle
*Helena*—Independent Record
*Idaho Panhandle*—Spokesman Review
*Kootenai*—Daily Interlake
*Lewis & Clark*—Great Falls Tribune
*Lolo*—Missoulina
*Nez Perce*—Lewiston Morning Tribune

Supplemental notices may be placed in any newspaper, but time frames/deadlines will be calculated based upon notices in newspapers of record listed above.

Dated: October 10, 2000.

**Kathleen A. McAllister,**

*Deputy Regional Forester.*

[FR Doc. 00–26587 Filed 10–16–00; 8:45 am]

BILLING CODE 3410–11–M

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Application of Notice, Comment, and Appeal Procedures for Certain Projects and Activities

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice.

**SUMMARY:** Pending the adoption of an interim final rule, the Forest Service will apply the notice, comment, and appeal procedures in 36 CFR part 215 to certain project and activity decisions. This action is required by the terms of a settlement agreement of litigation between the U.S. Forest Service and Heartwood, Incorporated.

**EFFECTIVE DATE:** Notice, comment, and appeal procedures apply to those project and activity decisions identified in the settlement agreement and made after October 24, 2000.

**ADDRESSES:** Written inquiries, as well as requests for the settlement agreement, may be sent to the Director, Ecosystem Management Coordination Staff, USDA Forest Service, P.O. Box 96090, Washington, DC 20090–6090.

**FOR FURTHER INFORMATION CONTACT:** Steve Segovia, Assistant Director for Appeals and Litigation, telephone (202) 205–1066; FAX (202) 205–1012.

**SUPPLEMENTARY INFORMATION:** In the matter of *Heartwood, Inc.* v. *U.S. Forest Service*, Civ. No. 99–4255 (S.D. Ill. Sept. 15, 2000), the agency and plaintiff entered a settlement agreement that the agency would promulgate an interim final rule settling forth the notice, comment, and appeal procedures at 36 CFR part 215 for the following projects and activities:

(1) Projects involving the use of prescribed burning;

(2) Projects involving the creation or maintenance of wildlife openings;

(3) The designation of travel routes for off-highway vehicle (OHV)( use which is not conducted through the travel management planning process as part of the forest planning process;

(4) The construction of new OHV routes and facilities intended to support OHV use;

(5) The upgrading, widening, or modification of OHV routes to increase either the levels or types of use by OHVs (but not projects performed for the maintenance of existing routes);

(6) The issuance or reissuance of special use permits for OHV activities conducted on areas, trails, or roads that are not designated for such activities;

(7) Projects in which the cutting of trees for thinning or wildlife purposes occurs over an area greater than 5 contiguous acres;

(8) Gathering geophysical data using shorthole, vibroseis, or surface charge;

(9) Trenching to obtain evidence of mineralization;

(10) Clearing vegetation for sight paths from areas used for mineral, energy, or geophysical investigation or support facilities for such activities.

At the time of publication of the interim rule, the agency also will invite public comment for consideration in adopting a final rule.

Pending adoption of this interim rule, the agency agreed to give notice in the **Federal Register** that it would apply these notice, comment, and appeal procedures as of the effective date given in the notice.

A copy of the settlement agreement is available by writing the address listed earlier in this notice or by logging onto the "NEPA, NFMA and Appeals" page of the Forest Service homepage of the World Wide Web, the address for which is http://www.fs.fed.us/forum/nepa.

Dated: October 11, 2000.

**James R. Furnish,**

*Deputy Chief for National Forest System.*

[FR Doc. 00–26567 Filed 10–16–00; 8:45 am]

BILLING CODE 3410–11–M

## DEPARTMENT OF AGRICULTURE

### Natural Resources Conservation Service

### Notice of Proposed Changes to Section IV of the Field Office Technical Guide (FOTG) of the Natural Resources Conservation Service in Indiana

**AGENCY:** Natural Resources Conservation Service (NRCS).

**ACTION:** Notice of availability of proposed changes in Section IV of the FOTG of the NRCS in Indiana for review and comment.



**SUMMARY:** It is the intention of NRCS in Indiana to issue a revised conservation practice standard in Section IV of the FOTG. The revised standard is Wetland Enhancement (Code 659). This practice may be used in conservation systems that treat highly erodible land and/or wetlands.

**DATES:** Comments will be received on or before November 16, 2000.

**ADDRESSES:** Address all requests and comments to Jane E. Hardisty, State Conservationist, Natural Resources Conservation Service (NRCS), 6013 Lakeside Blvd., Indianapolis, Indiana 46278. Copies of this standard will be made available upon written request. You may submit your electronic requests and comments to darrell.brown@in.usda.gov.

**FOR FURTHER INFORMATION CONTACT:** Jane E. Hardisty, 317–290–3200.

**SUPPLEMENTARY INFORMATION:** Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that after enactment of the law, revisions made to NRCS state technical guides used to carry out highly erodible land and wetland 2 provisions of the law, shall be made available for public review and comment. For the next 30 days, the NRCS in Indiana will receive comments relative to the proposed changes. Following that period, a determination will be made by the NRCS in Indiana regarding disposition of those comments and a final determination of changes will be made.

Dated: October 2, 2000.

**Ron Lauster,**

*State Resource Conservationist, Indianapolis, Indiana.*

[FR Doc. 00–26561 Filed 10–16–00; 8:45 am]

BILLING CODE 3410–16–P

## COMMISSION ON CIVIL RIGHTS

### Agenda and Notice of Public Meeting of the Florida Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Florida Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 5 p.m. on Tuesday, November 14, 2000, at the Wyndham Orlando Hotel, 8001 International Drive, Orlando, Florida 32819. The purpose of the meeting is to provide new member orientation and discuss such topics as affirmative action in Florida, the Governor's "One Florida Plan," immigration, education, and other current civil rights issues.

Persons desiring additional information or planning a presentation to the Committee should contact Bobby D. Doctor, Director of the Southern Regional Office, 404–562–7000 (TDD 404–562–7004). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, October 11, 2000.

**Lisa M. Kelly,**

*Special Assistant to the Staff Director, Regional Programs Coordination Unit.*

[FR Doc. 00–26636 Filed 10–16–00; 8:45 am]

BILLING CODE 6335–01–P

## DEPARTMENT OF COMMERCE

### Bureau of the Census

**[Docket Number 000913261–0261–01]**

### Change In Report Series From Print Publication to Internet Access

**AGENCY:** Bureau of the Census, Department of Commerce.

**ACTION:** Notice of publication program change.

**SUMMARY:** The Bureau of the Census (Census Bureau) will cease printed publication of the "Monthly Product Announcement" (MPA) with the December 2000 edition. The publication's information and additional data will be available at <www.census.gov> and as a free Internet subscription.

**EFFECTIVE DATE:** December 31, 2000.

**FOR FURTHER INFORMATION CONTACT:** Les Solomon, Marketing Services Office, Customer Services Center, Census Bureau, Washington, DC 20233, telephone: 301–457–1224.

**SUPPLEMENTARY INFORMATION:** The MPA lists all Census Bureau publications and data files for a 30-day period. It includes product ordering information and order forms. The MPA does not describe every data product, but usually does discuss one or two new ones in each issue.

The Census Bureau has decided to provide product information to the customer on a more timely basis. The new format will give the customer product information daily and allow the customer to purchase products immediately. We believe that changing to Internet access will not significantly affect the MPA's users. We will, however, address the needs of customers adversely affected by this change. Customers may request a paper copy that lists the Census Bureau's monthly releases by contacting the Customer Services Center at 301–457–4100.

Dated: October 11, 2000.

**Kenneth Prewitt,**

*Director, Bureau of the Census.*

[FR Doc. 00–26641 Filed 10–16–00; 8:45 am]

BILLING CODE 3510–01–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–862]**

### Initiation of Antidumping Duty Investigation: Foundry Coke Products From the People's Republic of China

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** October 17, 2000.

**FOR FURTHER INFORMATION CONTACT:** James Doyle, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0159.

**Initiation of Investigation**

**The Applicable Statute and Regulations**

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("Act") by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department of Commerce's ("Department") regulations are to 19 CFR part 351 (2000).

**The Petition**

On September 20, 2000, the Department received a petition on imports of foundry coke products from the People's Republic of China ("PRC") filed in proper form by ABC Coke, Citizens Gas and Coke Utility, Erie Coke, Tonawanda Coke Corporation, and United Steelworkers of America, AFL–CIO, hereinafter referred to as "the petitioners." On September 25, 2000, the Department received a supplement to the petition. On September 27, 2000, the Department requested clarification of certain areas of the petition and received a response on October 2, 2000.

In accordance with section 732(b) of the Act, the petitioners allege that imports of foundry coke products from

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the PRC are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring and threaten to injure an industry in the United States.

The Department finds that the petitioners filed this petition on behalf of the domestic industry because they are interested parties as defined in section 771(9)(C) and (D) of the Act and they have demonstrated sufficient industry support with respect to the antidumping duty investigation they are requesting the Department to initiate (*see* "Determination of Industry Support for the Petition" below).

**Scope of Investigation**

For purposes of this investigation, the product covered is coke larger than 100 mm (4 inches) in maximum diameter and at least 50 percent of which is retained on a 100-mm (4 inch) sieve, of a kind used in foundries.

The foundry coke products subject to this investigation are currently classifiable under subheading 2704.00.00.10 of the *Harmonized Tariff Schedules of the United States* (HTSUS). Although the HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope of this investigation is dispositive.

During our review of the petition, we discussed the scope with the petitioners to ensure that it accurately reflects the product for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the Department's regulations (62 FR 27323), we are setting aside a period for interested parties to raise issues regarding product coverage. The Department encourages all interested parties to submit such comments within 20 calender days of publication of this notice. Comments should be addressed to Import Administration's Central Records Unit at Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with interested parties prior to the issuance of the preliminary determinations.

**Determination of Industry Support for the Petition**

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (1) At least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition.

Section 771(4)(A) of the Act defines the "industry" as the producers as a whole of a domestic like product. Thus, to determine whether the petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission ("ITC"), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While the Department and the ITC must apply the same statutory definition regarding the domestic like product (*see* section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the domestic like product, such differences do not render the decision of either agency contrary to law.[1]

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation," *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

In this case, the domestic like product referred to in the petition is the single domestic like product defined in the "Scope of Investigation" section, above. At this time, the Department has no basis on the record to find the petition's definition of the domestic like product to be inaccurate. The Department, therefore, has adopted the domestic like product definition set forth in the petition.

Moreover, the Department has determined that the petition contains adequate evidence of industry support; therefore, polling was not unnecessary (*see Initiation Checklist* Re: Industry Support, October 10, 2000) ("*Initiation Checklist*"). To the best of the Department's knowledge, producers supporting the petition represent over 50 percent of total production of the domestic like product. Additionally, no person who would qualify as an interested party pursuant to section 771(9) (A), (C), (D), (E), or (F) of the Act has expressed opposition to the petition.

Accordingly, the Department determines that this petition is filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

**Export Price and Normal Value**

The following is a description of the allegation of sales at less than fair value upon which the Department based its decision to initiate this investigation. The sources of data for the deductions and adjustments relating to U.S. price and factors of production are also discussed in the *Initiation Checklist*. Should the need arise to use any of this information as facts available under section 776 of the Act in our preliminary or final determination, we may reexamine the information and revise the margin calculations, if appropriate.

Based on information obtained from the ITC's section 332 study on the foundry coke industries in the United States and the PRC, *Foundry Coke: A Review of the Industries in the United States and China*, July 2000 ("*332 Study*"), the petitioners identified the following PRC companies as major producers of foundry coke products in the PRC: Ying Xian, Top Reach (De-Rui), Ju Fu, Xiao Shan, Sanjia, Yuan Hui, Feng Yang Wen Feng, Ping Yao Feng Yang, Shuang Fa, Zhong Pu, Bai Zhang, Jin Yang, Military Farmland, Huang He, Jia Wei, Liangyu, Ping Yao Hua Feng, San Sheng, Tang Xin, Ying Xing, Wen Fei, Ying Dong, Fu You, Bao Wan, and Yao Long. Of these 25 companies the petitioners identified Ying Xian, Top Reach (De-Rui), Ju Fu, and Xiao Shan as the producers of a large quantity of foundry coke products exported to the United States.

The petitioners based export price ("EP") on import values declared to the U.S. Customs Service. In calculating import values declared to the U.S. Customs Service, the petitioners used the HTSUS category under which subject merchandise is currently classified (*i.e*, 2704.00.00.10). The petitioners calculated one EP based on the average unit values for entries of subject merchandise during February and March 2000. In order to obtain ex-factory prices, the petitioners deducted foreign inland freight from the Customs value. According to the ITC's *332 study* on the foundry coke industries in the United States and the PRC, in the PRC foundry coke is transported to the port by either truck or train. For purposes of calculating foreign inland freight, the petitioners used the surrogate value for rail because of the large distances involved and the lower expense of shipping by rail, as compared to shipments by truck. For purposes of initiation we have found that this is a conservative estimate. We relied on the data in the petition except for valuing foreign inland freight. *See Initiation Checklist*.

The petitioners assert that the Department considers the PRC to be a non-market economy country ("NME") and, therefore, constructed normal value ("NV") based on the factors of production methodology pursuant to section 773(c) of the Act. In previous cases, the Department has determined that the PRC is an NME country. *See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from the People's Republic of China* ("*Cold-Rolled Steel from China*"), 65 FR 34660 (May 31, 2000). In accordance with section 771(18)(c)(i) of the Act, the NME status remains in effect until revoked by the Department. The NME status of the PRC has not been revoked by the Department and, therefore, remains in effect for purposes of the initiation of this investigation. Accordingly, the NV of the product appropriately is based on factors of production valued in a surrogate market economy country in accordance with section 773(c) of the Act. In the course of this investigation, all parties will have the opportunity to provide relevant information related to the issues of the PRC's NME status and the granting of separate rates to individual exporters.

As required by 19 CFR 351.202(b)(7)(i)(C), the petitioners provided a dumping margin calculation using the Department's NME methodology described in 19 CFR 351.408. For the NV calculation, the petitioners based the factors of production, as defined by section 773(c)(3) of the Act (raw materials, labor, energy and capital cost), for foundry coke products on the quantities of inputs used by one of the petitioning firms, Citizens Gas & Coke. *See Initiation Checklist*

The petitioners selected India as their surrogate country. Citing the Department's recent determination in cold-rolled steel from the PRC, the petitioners stated that India is comparable to the PRC in its level of economic development and is a significant producer of foundry coke products. Based on the information provided by the petitioners, we believe that the petitioners' use of India as a surrogate country is appropriate for purposes of initiation of this investigation. *See Initiation Checklist*.

In accordance with section 773(c)(4) of the Act, the petitioners valued factors of production for foundry coke products, where possible, on reasonably available, public surrogate country data. To value coal (the sole raw material input), the petitioners used a value for coking coal as reported in the *Monthly Statistics of Foreign Trade of India*, Vol. II—Imports, Directorate General of Commercial Intelligence & Statistics, Ministry of Commerce, Government of India, Calcutta. Labor was valued using the regression-based wage rate for the PRC, in accordance with 19 CFR 351.408(c)(3). Energy (coke oven gas) was valued using an Indian surrogate value for natural gas, adjusted for the relative difference in heating values between natural gas and coke oven gas. For overhead, SG&A and profit, the petitioners applied rates derived from the publicly available annual report of an Indian producer of comparable merchandise, Tata Iron and Steel Co., Ltd.

Based on comparisons of EP to NV, calculated in accordance with section 773(c) of the Act, the estimated dumping margin for foundry coke products from the PRC is 226.38 percent.

**Fair Value Comparisons**

Based on the data provided by the petitioners, there is reason to believe that imports of foundry coke products from the PRC are being, or are likely to be, sold in the United States at less than fair value.

**Allegations and Evidence of Material Injury and Causation**

The petition alleges that the U.S. industry producing the domestic like product is being materially injured and is threatened with material injury, by reason of the imports of the subject merchandise sold at less than NV. The petitioners contend that the industry's injured condition is evident in the declining trends in: (1) U.S. market share, (2) domestic production, (3) shipments, (4) capacity utilization, (5) employment, and (6) profit margins.

The allegations of injury and causation are supported by relevant evidence including ITC section 332 import data, lost sales, and pricing information. The Department assessed the allegations and supporting evidence regarding material injury and causation and determined that these allegations are supported by accurate and adequate evidence and meet the statutory requirements for initiation (see Attachments to *Initiation Checklist*, Re: Material Injury).

**Initiation of Antidumping Investigation**

Based upon our examination of the petition on foundry coke imports from the PRC, we find that the petition meets the requirements of section 732 of the Act. Therefore, we are initiating an antidumping duty investigation to determine whether imports of foundry coke products from the PRC are being, or are likely to be, sold in the United States at less than fair value. Unless postponed, we will make our preliminary determination no later than 140 days after the date of this initiation.

**Distribution of Copies of the Petition**

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the petition has been provided to the representatives of the PRC. We will attempt to provide a copy of the public version of the petition to each exporter named in the petition, as appropriate.

**International Trade Commission Notification**

We have notified the ITC of our initiation, as required by section 732(d) of the Act.

**Preliminary Determination by the ITC**

The ITC will preliminarily determine, no later than November 6, 2000, whether there is a reasonable indication that imports of foundry coke products from the PRC are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination will result in this investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 777(i) of the Act.

Dated: October 10, 2000.

**Troy H. Cribb,**

*Acting Assistant Secretory for Import Administration.*

[FR Doc. 00–26654 Filed 10–16–00; 8:45 am]

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[1] *See Algoma Steel Corp. Ltd., v. United States*, 688 F. Supp. 639, 642–44 (CIT 1988); High Information Content Flat Panel Displays and Display Glass from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition, 56 FR 32376, 32380–81 (July 16, 1991).



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**DEPARTMENT OF COMMERCE**

**International Trade Administration**

**Office of Information Technologies; Meeting**

**AGENCY:** International Trade Administration, Trade Development, Commerce.

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**ACTION:** Notice of meeting and opportunity for collaboration.

**SUMMARY:** The Office of Information Technologies in the U.S. Department of Commerce's International Trade Administration will conduct a public meeting on Wednesday, November 8, 2000 at 9 a.m., in room 3407, Herbert C. Hoover Building, 14th and Constitution Avenue NW., Washington, DC 20230. The purpose of the meeting is to introduce to U.S. information technology (IT) suppliers the IT Management Planning Tool, a new product for developing IT markets overseas, and to explore ways to collaborate in disseminating this product to potential users. Seating is limited. Those planning on attending the meeting should inform the Office of Information Technologies by October 27, 2000.

**FOR FURTHER INFORMATION CONTACT:** Tu-Trang Phan or Raymond Cho in the Office of Information Technologies at 202–482–0571 (phone), 202–482–3002 (fax), or by e-mail at ExportIT@ita.doc.gov.

**SUPPLEMENTARY INFORMATION:** The Office of Information Technologies in the U.S. Department of Commerce's International Trade Administration will conduct a public meeting on Wednesday, November 8, 2000 at 9 a.m., in room 3407, Herbert C. Hoover Building, 14th and Constitution Avenue NW., Washington, DC 20230. The purpose of the meeting is to introduce to U.S. information technology (IT) suppliers a new approach to IT market development overseas and explore ways to collaborate in this effort. There will be a demonstration and discussion of the IT Management Planning Tool, which was created to serve as a market stimulator for U.S. suppliers to generate demand for their IT products and services overseas. The IT Tool is a software application which helps management of businesses and government agencies assess their current IT usage and plan for future IT investments that can improve their operations. Because the IT Tool is intended for overseas audiences, the contents of the Tool will be localized and translated into several languages, including Spanish, Portuguese, Russian, Simplified Chinese, and Traditional Chinese. U.S. information technology suppliers and service providers interested in partnering with the U.S. Department of Commerce in this unique overseas market development effort should attend the meeting.

The meeting is open to the public, however, seating in room 3407 is limited and is available on a first come, first served basis. Those planning on attending the meeting should inform the Office of Information Technologies by October 27, 2000. To request further information concerning the meeting or to request a copy of the Information Technology Planning Tool, contact Tu-Trang Phan or Raymond Cho in the Office of Information Technologies at 202–482–0571 by phone, 202–482–3002 by fax, or by e-mail at ExportIT@ita.doc.gov.

Dated: October 12, 2000.

**John E. McPhee,**

*Director, Office of Information Technologies.*

[FR Doc. 00–26659 Filed 10–16–00; 8:45 am]

BILLING CODE 3510–DR–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 091400A]**

### Marine Mammals

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Issuance of photography permit no. 986-1592-00.

**SUMMARY:** Pandion Enterprises, P.O. Box 545, Summerland, California 93067, [Permit Holder: Bruce Reitherman], has been issued a permit to take by Level B harassment one species, elephant seal(Mirounga angustirostris), of non-threatened, non-endangered marine mammals for purposes of commercial photography.

**ADDRESSES:** The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS,1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713-2289); and

Regional Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Long Beach, California 90802-4213, (562/980-4000).

**SUPPLEMENTARY INFORMATION:** On August 9, 2000, notice was published in the **Federal Register**(65 FR 48679) that the above-named applicant had submitted a request for a permit to take one species of marine mammals by Level B harassment during the course of commercial photographic activities in Piedras Blancas and Ano Nuevo, California. The requested permit has been issued, under the authority of §104(c)(6) of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*).

Dated: October 5, 2000.

**Ann D. Terbush,**

*Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 00–26655 Filed 10–16–00; 8:45 am]

BILLING CODE 3510–22–S

## DEPARTMENT OF COMMERCE

### United States Patent and Trademark Office

**RIN 0651–AB25**

### Request for Comments on Preliminary Draft Convention on Jurisdiction and Foreign Judgments in Civil and Commercial Matters

**AGENCY:** United States Patent and Trademark Office, Commerce.

**ACTION:** Request for comments.

**SUMMARY:** The Hague Conference on Private International Law is negotiating a convention designed to create common jurisdiction rules for international civil and commercial cases and to provide for international recognition and enforcement of judgments issued under these rules. A Diplomatic Conference to conclude these negotiations is scheduled to begin in June 2001, with a final session sometime in early 2002. The United States Patent and Trademark Office (USPTO) is seeking views of the public on this effort and the consequent potential changes to United States law and practice.

**DATES:** Comments should be submitted on or before December 1, 2000.

**ADDRESSES:** Persons wishing to offer written comments should address those comments to Director of the United States Patent and Trademark Office, Box 4, United States Patent and Trademark Office, Washington, DC 20231, marked to the attention of Elizabeth Shaw. Comments may also be submitted by facsimile transmission to (703) 305–7575 or by electronic mail through the Internet to *elizabeth.shaw2@uspto.gov*. All comments will be maintained for public inspection in Room 902 of Crystal Park II, 2121 Crystal Drive, Arlington, Virginia.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Lucas by telephone at (703) 305–9300; by facsimile at (703) 305–8885; by electronic mail to jennifer.lucas@uspto.gov; or by mail marked to the attention of Jennifer Lucas, Attorney-Advisor, addressed to Director of the United States Patent and Trademark Office, Box 4, Washington, DC 20231.



**SUPPLEMENTARY INFORMATION:**

### Background

The Hague Conference on Private International Law is in the process of negotiating a new convention on jurisdiction and the recognition and enforcement of foreign judgments in civil and commercial matters. The draft convention would create jurisdictional rules governing international lawsuits and provide for recognition and enforcement of judgments by the courts of Member States. Member States would be required to recognize and enforce judgments covered by the Convention if the jurisdiction in the court rendering the judgment were founded on one of the bases of jurisdiction required by the Convention.

Discussions began in 1992, at the request of the United States. The impetus behind the request was to gain recognition and enforcement of U.S. judgments in other countries. While U.S. courts generally recognize and enforce judgments from other countries, U.S. judgments do not always receive the same treatment abroad.

The Hague Conference is planning a two-part Diplomatic Conference to finalize the draft convention. The first session would take place in June 2001, followed by a second session in late 2001 or early 2002.

The text of the proposed convention and other documents relating to the proposal are available via the Hague Conference's web site at *http://www.hcch.net/e/workprog/jdgm.html*.

### Brief Summary of Draft Convention

The draft convention would create three categories of jurisdiction: (1) required bases for jurisdiction (generally Articles 3–16); (2) prohibited bases for jurisdiction (Article 18); and (3) everything else not covered by (1) or (2) (Article 17).

Articles 3–16 set out jurisdictional rules for specific types of actions that the courts in Contracting States must provide, and from which any resulting judgment may gain the benefits of the recognition and enforcement provisions of the Convention.

Article 12 creates exclusive jurisdiction for certain actions that "have as their object" the registration, validity, nullity, and possibly revocation or infringement of patents, trademarks, or other similar rights required to be deposited or registered, in the courts of the country in which the deposit or registration has been applied for or has occurred. Copyrights are excluded from the exclusive jurisdiction rule; however, actions concerning copyrights could fall under the other non-exclusive required jurisdictional provisions.

Specifically, Article 12 provides:

"4. In proceedings which have as their object the registration, validity, [or] nullity [, or revocation or infringement] of patents, trade marks, designs or other similar rights required to be deposited or registered, the courts of the Contracting State in which the deposit or registration has been applied for, has taken place or, under the terms of an international convention, is deemed to have taken place, have exclusive jurisdiction. This shall not apply to copyright or any neighboring rights, even though registration or deposit of such rights is possible.

[5. In relation to proceedings which have as their object the infringement of patents, the preceding paragraph does not exclude the jurisdiction of any other court under the Convention or under the national law of a Contracting State.]

[6. The previous paragraphs shall not apply when the matters referred to therein arise as incidental questions.]"

The brackets identify potential language alternatives to be considered and discussed in detail during the Diplomatic Conference.

Article 4 provides that parties may enter into agreements designating a choice of court; however, such agreements shall be without effect if they conflict with the provisions of Article 12. In addition, Article 5, which confers jurisdiction on a court when the defendant proceeds on the merits without contesting jurisdiction, is subject to Article 12 as well.

Article 10 defines jurisdictional rules for tort actions. This provision would cover copyright infringement proceedings. It also could apply to patent and trademark infringement proceedings if the bracketed language in Article 12(4) is not approved. Article 10 provides for jurisdiction either in the State in which the act or omission causing injury occurred, or the State in which the injury arose so long as the injury in that State was reasonably foreseeable. Article 10(4) would limit available damages, where jurisdiction is founded on the place of injury, to the damage suffered in the place the suit is filed unless that is also the plaintiff's habitual residence.

Article 18 defines grounds of jurisdiction that are prohibited in Contracting States. Article 18(1) would place a general limitation on the exercise of jurisdiction based on the absence of a "substantial connection between that State and the dispute." Article 18(2)(e) is of particular interest to U.S. litigants because it states that jurisdiction cannot be based solely on the fact that the defendant carries on commercial or other activities in that State, except where the dispute is directly related to those activities. This provision would prohibit the exercise of general "doing business" jurisdiction as currently recognized under U.S. law. Article 18(2) also would prohibit the exercise of "tag" jurisdiction in a court based on service upon the defendant in the State.

Everything that does not fall under either of these categories is included in the "gray area" as defined in Article 17. With some exceptions, countries can continue to act as they normally do under their national law; however, judgments resulting from actions covered by this provision will not get the benefits of recognition and enforcement under the Convention.

Chapter III provides rules for the recognition and enforcement of judgments based on a ground of jurisdiction provided for in Articles 3–16.

### Current U.S. Jurisdictional Law

U.S. courts must have both personal jurisdiction over the parties and subject matter jurisdiction over the case before a court can act on a dispute.

#### I. Personal Jurisdiction

Generally, in order to exercise personal jurisdiction over a nonresident defendant, district courts interpret the long-arm statute of the state in which they reside, as restricted by the limitations imposed by the due process clause of the U.S. Constitution.

Courts first apply the state long-arm statute, which defines what types of conduct would bring a nonresident defendant within the boundaries of the court's reach. Activities that can create jurisdiction under most long-arm statutes include transacting business, committing a tortious act within the forum, or committing a tortious act outside the forum that has an effect within the forum.

Once the court finds that the exercise of jurisdiction over the nonresident defendant is consistent with the relevant long-arm statute, the court then must determine whether the due process requirements are satisfied. The due process rule of the U.S. Constitution requires that a nonresident defendant have "minimum contacts with [the forum] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *International Shoe Co.* v. *Washington*, 326 U.S. 310, 316 (1945) (quoting *Milliken* v. *Meyer*, 311 U.S. 457, 463 (1940)). In evaluating whether minimum contacts have been established in a given case, the courts ask if a

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nonresident defendant, through his conduct and connection with the forum, "purposefully avails itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws." *Burger King Corp.* v. *Rudzewicz*, 471 U.S. 462, 475 (1985) (quoting *Hanson* v. *Denckla*, 357 U.S. 235, 253 (1958)).

A court must establish that it has either general or specific jurisdiction over a defendant before it can proceed with an action against the defendant. General jurisdiction is personal jurisdiction exercised over a defendant when the cause of action is unrelated to the defendant's contacts, but the defendant has sufficient contacts with the forum. Specific jurisdiction arises out of, or is related to, the defendant's contacts with the forum. *See Helicopteros Nacionales de Colombia* v. *Hall*, 466 U.S. 408, 414 (1984).

General jurisdiction has been found where the defendant was engaging in "continuous and systematic [though unrelated to the cause of action] business." *Perkins* v. *Benguet Consolidated Mining Co.*, 342 U.S. 437, 438 (1952). To assert specific jurisdiction, a court is required to find that the defendant purposefully directed activities at residents in the forum, the claim arose out of those activities, and the assertion of personal jurisdiction is fair and reasonable. *See Burger King*, 471 U.S. at 471–76.

Courts are cautious in exercise of jurisdiction over foreign defendants. *See Asahi Metal Industry Co.* v. *Superior Court*, 480 U.S. 102, 114 (1987) (holding "unique burdens placed upon one who must defend oneself in a foreign legal system should have significant weight in assessing the reasonableness of stretching the long arm of personal jurisdiction over national borders."). Considered critical to due process analysis is whether the foreseeability exhibited by defendant's conduct and its connections with the forum State demonstrate that the defendant would reasonably anticipate being brought into the forum court. *See World-Wide Volkswagen Corp.* v. *Woodson*, 444 U.S. 286, 297–298 (1980).

With respect to Internet-related cases, the law of personal jurisdiction is in flux. The traditional minimum contacts approach has been used to determine whether a court has jurisdiction over a non-resident defendant in Internet-related intellectual property disputes. In such cases, the courts have looked to a variety of factors, including but not limited to the level of interactivity of the Web site; whether the tortious act was committed in state or out-of-state with impact in the state; the number of hits on the Web site; or the foreseeability of use by forum residents. *See, e.g., Cybersell, Inc.* v. *Cybersell, Inc.*, 130 F.3d 414 (9th Cir. 1997); *Zippo Mfg. Co.* v. *Zippo Dot Com*, 952 F. Supp. 1119 (W.D. Pa. 1997); *Eskofot A/S* v. *E.I. Du Pont De Nemours & Co.*, 872 F. Supp. 81 (S.D.N.Y. 1995).

*II. Subject Matter Jurisdiction*

Federal district courts have jurisdiction over civil actions involving patents, trademarks and copyrights pursuant to 28 U.S.C. 1338(a), which provides: "The district courts shall have original jurisdiction of any civil action arising under any Act of Congress relating to patents, * * * copyrights and trademarks. Such jurisdiction shall be exclusive of the courts of the states in patent * * * and copyright cases."

A. Patents

As mentioned above, federal courts have exclusive jurisdiction over all suits "arising under any Act of Congress relating to patents." This includes all patent validity and infringement actions. Jurisdiction under this section extends "only to those cases in which a well-pleaded complaint establishes either that federal patent law creates the cause of action or that the plaintiff's right to relief necessarily depends on resolution of a substantial question of federal patent law." *Christianson* v. *Colt Industries Operating Corp.*, 486 U.S. 800, 809 (1988).

B. Trademarks

Actions involving trademark infringement under the Lanham Act can be heard in either state or federal courts in the United States. However, most trademark actions arising out of the Lanham Act take place in federal court. Federal district courts have subject matter jurisdiction over all actions arising under the Lanham Act pursuant to § 39 of that Act, 15 U.S.C. 1121, as well as 28 U.S.C. 1338(a).

Section 14 of the Lanham Act creates an administrative proceeding within the USPTO where a party can petition to cancel a registered trademark. 15 U.S.C. 1064. Federal courts have concurrent jurisdiction with the USPTO to hear proceedings to cancel a mark, so long as the challenge arises from an existing trademark-related proceeding, as a result of § 37 of the Lanham Act. 15 U.S.C. 1119. Section 37 provides that a court may order the cancellation of a trademark registration "[i]n any action involving a registered trademark." This section, however, does not create an independent ground for exercising jurisdiction over an action—the court must have subject matter jurisdiction based on another ground before considering cancellation of a registered trademark. *See* 5 J. Thomas McCarthy, *McCarthy on Trademarks and Unfair Competition*, § 30:110, pp. 30–186–88 (4th ed. 2000).

C. Copyrights

Federal courts have exclusive jurisdiction over actions based on the Copyright Act, including copyright infringement proceedings. 28 U.S.C. 1338(a).

**Issues for Public Comment**

The USPTO is interested in assessing support for or opposition to the effort to negotiate a convention on jurisdiction and enforcement of judgments and in obtaining comments on the proposed convention as it relates to intellectual property. Interested members of the public are invited to present written comments on any issues they believe to be relevant to protection of intellectual property or any aspect of the proposed convention as it relates to intellectual property. Comments also are welcome on the following specific issues:

1. What are your experiences in having judgments involving intellectual property from one jurisdiction recognized in a foreign court?
2. Have you had different experiences in having those judgments recognized in U.S. courts?
3. Are uniform rules for international enforcement of judgments desirable?
4. Do you support or oppose the United States becoming party to a jurisdiction/enforcement of judgments convention?
5. What would be the benefits or drawbacks of the United States becoming a party to the proposed Hague convention?
6. Would the elimination of tag or general "doing business" jurisdiction have any impact on intellectual property owners' ability to protect their rights either domestically or internationally?
7. What other changes to U.S. law would be needed to implement the proposed convention? Please identify any drawbacks and/or advantages to such changes.
8. What effect, if any, could this Convention have on other international intellectual property obligations, including, but not limited to, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), the Paris Convention, and the Berne Convention?
9. What effect, if any, could this Convention have on the enforcement of intellectual property with respect to the Internet?
10. Would application of Article 10 change existing jurisdictional principles as applied to intellectual property infringement actions? If yes, please describe any changes in detail and provide any relevant legal authority.
11. Would the limitation of worldwide damages in Article 10(4) have any significant impact in cases involving worldwide infringement of trademark or other intellectual property rights?
12. With respect to Article 12(4), under what circumstances would application of this subsection change existing jurisdictional principles, with and without the bracketed language included? Please describe any changes in detail and provide any relevant legal authority.
13. What effect, if any, would Article 12(4) have on trademark owners seeking to litigate rights related to registered versus common law marks?
14. Is exclusive jurisdiction needed for infringement and/or validity actions involving patents, trademarks, and/or copyrights?
15. What changes, if any, should be made to the proposed Convention? Please describe any changes in detail and provide any relevant legal authorities that support such suggestions.
16. Please identify any other potential concerns or advantages raised by the proposed convention.

In your response, please include the following: (1) clearly identify the matter being addressed; (2) provide examples, where appropriate, of the matter being addressed; (3) identify any relevant legal authorities applicable to the matter being addressed; and (4) provide suggestions regarding how the matter should be addressed by the United States.

Dated: October 11, 2000.

**Q. Todd Dickinson,**

*Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.*

[FR Doc. 00–26634 Filed 10–16–00; 8:45 am]

BILLING CODE 3510–16–P



## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Bahrain

October 11, 2000.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs establishing limits.

**EFFECTIVE DATE:** January 1, 2001.

**FOR FURTHER INFORMATION CONTACT:** Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Bahrain and exported during the period January 1, 2001 through December 31, 2001 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the limits for the 2001 period.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Information regarding the 2001 CORRELATION will be published in the **Federal Register** at a later date.

**Richard B. Steinkamp,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

October 11, 2000.

Commissioner of Customs,

*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2001, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textile products in the following categories, produced or manufactured in Bahrain and exported during the twelve-month period beginning on January 1, 2001 and extending through December 31, 2001, in excess of the following levels of restraint:

| Category | Twelve-month restraint limit |
|---|---|
| Group I<br>237, 239pt.[1], 331–336, 338, 339, 340–342, 345, 347, 348, 350–352, 359pt.[2], 431, 433–436, 438, 440, 442–448, 459pt.[3], 631, 633–636, 638, 639, 640–647, 648, 649, 650–652, 659pt.[4], 831, 833–836, 838, 840, 842–847, 850–852, 858 and 859pt.[5], as a group. | 56,846,705 square meters equivalent. |
| Sublevels in Group I | |
| 338/339 | 789,896 dozen. |
| 340/640 | 378,978 dozen of which not more than 284,233 dozen shall be in Categories 340–Y/640–Y[6]. |

[1] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[2] Category 359pt.: all HTS numbers except 6406.99.1550.

[3] Category 459pt.: all HTS numbers except 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[4] Category 659pt.: all HTS numbers except 6406.99.1510 and 6406.99.1540.

[5] Category 859pt.: only HTS numbers 6115.19.8040, 6117.10.6020, 6212.10.5030, 6212.10.9040, 6212.20.0030, 6212.30.0030, 6212.90.0090, 6214.10.2000 and 6214.90.0090.

[6] Category 340–Y: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060; Category 640–Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

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The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2000 shall be charged to the applicable category limits for that year (see directive dated December 10, 1999) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

**Richard B. Steinkamp,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 00–26608 Filed 10–16–00; 8:45 am]

BILLING CODE 3510–DR–F

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the Republic of Korea

October 11, 2000.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs adjusting limits.

**EFFECTIVE DATE:** October 17, 2000.

**FOR FURTHER INFORMATION CONTACT:** Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted, variously, for swing, carryover, carryforward, carryforward used and special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 68334, published on December 7, 1999.

**Richard B. Steinkamp,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

October 11, 2000.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 1, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Korea and exported during the period which began on January 1, 2000 and extends through December 31, 2000.

Effective on October 17, 2000, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

| Category | Adjusted limit [1] |
|---|---|
| Group I 200–223, 224–V [2], 224–O [3], 225–227, 300–326, 360–363, 369pt. [4], 400–414, 464, 469pt. [5], 600–629, 666, 669–P [6], 669pt. [7] and 670–O [8], as a group. | 420,482,425 square meters equivalent. |
| Group II 237, 239pt. [9], 331–348, 350–352, 359–H [10], 359pt. [11], 431, 433–438, 440–448, 459–W [12], 459pt. [13], 631, 633–652, 659–H [14], 659–S [15] and 659pt. [16], as a group. | 600,653,070 square meters equivalent. |
| Sublevels within Group II 333/334/335 | 325,193 dozen of which not more than 166,211 dozen shall be in Category 335. |
| 336 | 68,922 dozen. |
| 338/339 | 1,430,197 dozen. |
| 340 | 798,508 dozen of which not more than 422,170 dozen shall be in Category 340–D [17]. |
| 341 | 189,050 dozen. |
| 342/642 | 263,796 dozen. |
| 345 | 141,709 dozen. |
| 347/348 | 575,581 dozen. |
| 350 | 20,172 dozen. |
| 351/651 | 277,125 dozen. |
| 352 | 215,097 dozen. |
| 433 | 15,127 dozen. |
| 434 | 7,759 dozen. |
| 435 | 39,522 dozen. |
| 436 | 16,729 dozen. |
| 438 | 65,847 dozen. |
| 442 | 56,539 dozen. |
| 443 | 344,600 numbers. |
| 444 | 60,480 numbers. |
| 445/446 | 56,751 dozen. |
| 447 | 95,012 dozen. |
| 448 | 39,776 dozen. |
| 459–W | 107,596 kilograms. |
| 631 | 364,124 dozen pairs. |
| 633/634/635 | 1,425,286 dozen of which not more than 161,624 dozen shall be in Category 633 and not more than 602,324 dozen shall be in Category 635. |
| 636 | 309,393 dozen. |
| 638/639 | 5,456,769 dozen. |
| 640–D [18] | 3,002,692 dozen. |
| 640–O [19] | 2,837,492 dozen. |
| 641 | 1,164,074 dozen of which not more than 49,403 dozen shall be in Category 641–Y [20]. |
| 647/648 | 1,421,191 dozen. |
| 650 | 29,520 dozen. |
| 659–H | 1,497,317 kilograms. |
| 659–S | 217,092 kilograms. |
| Group III 831, 833–838, 840–844, 847–858 and 859pt. [21], as a group. | 17,653,944 square meters equivalent. |
| Sublevel within Group III 835 | 31,846 dozen. |
| Group VI 369–L/670–L/870 [22], as a group. | 70,506,099 square meters equivalent. |

[1] The limits have not been adjusted to account for any imports exported after December 31, 1999.

[2] Category 224–V: only HTS numbers 5801.21.0000, 5801.23.0000, 5801.24.0000, 5801.25.0010, 5801.25.0020, 5801.26.0010, 5801.26.0020, 5801.31.0000, 5801.33.0000, 5801.34.0000, 5801.35.0010, 5801.35.0020, 5801.36.0010 and 5801.36,0020.

[3] Category 224–O: all remaining HTS numbers in Category 224.

[4] Category 369pt.: all HTS numbers except 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3016, 4202.92.6091, 6307.90.9905, (Category 369–L); 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020 and 6406.10.7700.

[5] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010 and 6406.10.9020.

[6] Category 669–P: only HTS numbers 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020 and 6305.39.0000.

[7] Category 669pt.: all HTS numbers except 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020, 6305.39.0000 (Category 669–P); 5601.10.2000, 5601.22.0090, 5607.49.3000, 5607.50.4000 and 6406.10.9040.

[8] Category 670–O: All HTS numbers except only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3031, 4202.92.9026 and 6307.90.9907 (Category 670–L).

[9] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[10] Category 359–H: only HTS numbers 6505.90.1540 and 6505.90.2060.

[11] Category 359pt.: all HTS numbers except 6505.90.1540, 6505.20.2060 (Category 359–H); and 6406.99.1550.

[12] Category 459–W: only HTS number 6505.90.4090.

[13] Category 459pt.: all HTS numbers except 6505.90.4090 (Category 459–W); 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[14] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[15] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[16] Category 659pt.: all HTS numbers except 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010, 6211.12.1020 (Category 659–S); 6406.99.1510 and 6406.99.1540.

[17] Category 340–D: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2025 and 6205.20.2030.

[18] Category 640–D: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2030, 6205.30.2040, 6205.90.3030 and 6205.90.4030.

[19] Category 640–O: only HTS numbers 6203.23.0080, 6203.29.2050, 6205.30.1000, 6205.30.2050, 6205.30.2060, 6205.30.2070, 6205.30.2080 and 6211.33.0040.

[20] Category 641–Y: only HTS numbers 6204.23.0050, 6204.29.2030, 6206.40.3010 and 6206.40.3025.

[21] Category 859pt.: only HTS numbers 6115.19.8040, 6117.10.6020, 6212.10.5030, 6212.10.9040, 6212.20.0030, 6212.30.0030, 6212.90.0090, 6214.10.2000 and 6214.90.0090.

[22] Category 870; Category 369–L: only HTS numbers 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3016, 4202.92.6091 and 6307.90.9905; Category 670–L: only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3031, 4202.92.9026 and 6307.90.9907.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 00–26609 Filed 10–16–00; 8:45 am]

BILLING CODE 3510–DR–F

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of an Import Limit for Certain Wool Textile Products Produced or Manufactured in Romania

October 11, 2000.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs increasing a limit.

**EFFECTIVE DATE:** October 17, 2000.

**FOR FURTHER INFORMATION CONTACT:** Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Category 435 is being increased for carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 71116, published on December 20, 1999.

**Richard B. Steinkamp,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

October 11, 2000.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 14, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Romania and exported during the twelve-month period beginning on January 1, 2000 and extending through December 31, 2000.

Effective on October 17, 2000, you are directed to increase the current limit for Category 435 to 15,232 dozen,[1] as provided for under the Uruguay Round Agreement on Textiles and Clothing:

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 00–26610 Filed 10–16–00; 8:45 am]

BILLING CODE 3510–DR–F

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Thailand

October 11, 2000.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs adjusting limits.

**EFFECTIVE DATE:** October 17, 2000.

**FOR FURTHER INFORMATION CONTACT:** Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202)

[1] The limit has not been adjusted to account for any imports exported after December 31, 1999.

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927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted, variously for carryforward used, swing, carryover and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 68336, published on December 7, 1999.

**Richard B. Steinkamp,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

October 11, 2000.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 1, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Thailand and exported during the period which began on January 1, 2000 and extends through December 31, 2000.

Effective on October 17, 2000, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

| Category | Adjusted twelve-month limit [1] |
|---|---|
| Sublevels in Group II | |
| 338/339 | 2,388,501 dozen. |
| 340 | 365,813 dozen. |
| 342/642 | 817,249 dozen. |
| 345 | 401,886 dozen. |
| 351/651 | 317,277 dozen. |
| 438 | 20,397 dozen. |
| 638/639 | 2,502,116 dozen. |
| 647/648 | 1,468,242 dozen. |

[1] The limits have not been adjusted to account for any imports exported after December 31, 1999.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
Richard B. Steinkamp,
*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 00–26611 Filed 10–16–00; 8:45 am]
**BILLING CODE 3510–DR–F**

## CONSUMER PRODUCT SAFETY COMMISSION

### Sunshine Act Meeting

**AGENCY:** Consumer Product Safety Commission.

**TIME AND DATE:** Wednesday, October 25, 2000, 2:00 p.m.

**LOCATION:** Room 410, East West Towers, 4330 East West Highway, Bethesda, Maryland.

**STATUS:** Closed to the Public.

**MATTER TO BE CONSIDERED:**

**COMPLIANCE STATUS REPORT:** The staff will brief the Commission on the status of various compliance matters. For a recorded message containing the latest agenda information, call (301) 504–0709.

**CONTACT PERSON FOR ADDITIONAL INFORMATION:** Sayde E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: October 12, 2000.

**Sayde E. Dunn,**

*Secretary.*

[FR Doc. 00–26782 Filed 10–13–00; 3:03 pm]
**BILLING CODE 6355–01–M**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Submission for OMB Review; Comment Request

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction act (44 U.S.C. Chapter 35).

*Title, Form Number, and OMB Number:* Shipper's Export Declaration (SED) Program; ENG Form 7513; OMB Number 0710–[To be Determined].

*Type of Request:* New Collection.

*Number of Respondents:* 13,000.

*Responses Per Respondent:* 12.

*Annual Responses:* 164,367.

*Average Burden Per Response:* 11 minutes.

*Annual Burden Hours:* 29,737.

*Needs and Uses:* The data collected are movements of foreign cargo from one foreign country to another foreign country through a U.S. water port. Since goods are neither produced nor consumed in the U.S., they do not count in the balance of trade statistics, but are important from a water transportation standpoint. Vessels moving these goods are federally maintained channels, and these goods should be included in federal water transportation in multi-modal transportation analysis. The Army Corps of Engineers and Maritime Administration (MARAD) use the data from the program to satisfy the missions of their respective agencies. The Corps is responsible for the operation and maintenance of the nation's waterway system to ensure efficient and safe passage of commercial and recreation vessels. The support and management of economically sound navigation projects are dependent upon reliable navigation data mandated by the River and Harbor Appropriations Act of September 22, 1922 (42 Stat. 1043), as amended and codified in 33 U.S.C. 555.

*Affected Public:* Business or Other For-Profit.

*Frequency:* On occasion.

*Respondent's Obligation:* Mandatory.

*OMB Desk Officer:* Mr. Jim Laity.

Written comments and recommendations on the proposed information collection should be sent to Mr. Laity at the Office of Management and Budget, Desk Officer for the U.S. Army Corps of Engineers, Room 10202, New Executive Office Building, Washington, DC 20503.

*DOD Clearance Officer:* Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: October 11, 2000.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 00–26543 Filed 10–16–00; 8:45 am]
**BILLING CODE 5001–10–M**

## DEPARTMENT OF EDUCATION

### Submission for OMB Review; Comment Request

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before November 16, 2000.



**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address Lauren_Wittenberg@omb.eop.gov.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: October 11, 2000.

**John Tressler,**

*Leader, Regulatory Information Management, Office of the Chief Information Officer.*

### Office of Special Education and Rehabilitative Services

*Type of Review:* Extension.

*Title:* National Early Intervention Longitudinal Study (NEILS).

*Frequency:* Semi-Annually; Annually; Biennially.

*Affected Public:* Individuals or household; Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

*Reporting and Recordkeeping Hour Burden:*

*Responses:* 6,689;

*Burden Hours:* 5,072.

*Abstract:* NEILS will provide the first national picture of experiences and outcomes for infants and toddlers served in early intervention (EI) under Part C of Individuals with Disabilities Education Act (IDEA) and their families. Data are collected from families, service records, and service providers. Findings will inform special education policy and practice regarding early intervention for young children with disabilities and their families. The study will support Government Performance and Results Act (GPRA) measurement and IDEA reauthorization with data from parents, service providers and teachers of children who received early intervention services.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708–6287 or via her internet address Sheila_Carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–26547 Filed 10–16–00; 8:45 am]
**BILLING CODE 4000–01–U**

## DEPARTMENT OF EDUCATION

### Submission for OMB Review; Comment Request

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before November 16, 2000.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address Lauren_Wittenberg@omb.eop.gov.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: October 11, 2000.

**John Tressler,**

*Leader, Regulatory Information Management, Office of the Chief Information Officer.*

### Office of Vocational and Adult Education

*Type of Review:* New.

*Title:* New American High Schools Study—Phase I Activities.

*Frequency:* Annually.

*Affected Public:* Individuals or households.

*Reporting and Recordkeeping Hour Burden:*

*Responses:* 32.

*Burden Hours:* 144.

*Abstract:* The New American High Schools (NAHS) Study is a longitudinal research project. The overall goal of this effort is to document the practices and outcomes of a group of high schools engaged in whole-school improvement efforts in order to inform both policy debate and improve secondary education.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify

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the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708–6287 or via her internet address Sheila_Carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–26548 Filed 10–16–00; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF ENERGY

### Submission for OMB Review; Comment Request

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of Energy (DOE) has submitted the proposed information collection request (ICR) described in this notice to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13. 44 U.S.C. Chapter 35). The OMB is particularly interested in comments which evaluate: (1) whether the proposed collection of information is necessary to measure the progress and success of the Combined Heat and Power Registry, (2) the accuracy of DOE's estimate of the burden of the proposed information collection, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) ways to minimize the burden of the collection of information on those who choose to respond.

There were not any comments received during the 60 day notice period.

**DATES:** Comments regarding this collection of information should be received on or before November 16, 2000.

**ADDRESSES:** Comments should be sent to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: OMB Desk Officer for DOE, Room 10202, New Executive Office Building, 725 17th Street, NW., Washington DC. A copy of the comments should also be sent to Merrill Smith, Office of Power Technologies, Department of Energy, Room 5H–088, 1000 Independence Avenue, SW., Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:** A copy of the ICR, with applicable supporting documentation, may be obtained from: Merrill Smith, Office of Power Technologies, Department of Energy, Room 5H–088, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–3646; or e-mail to merrill.smith@ee.doe.gov.

**SUPPLEMENTARY INFORMATION:** The following proposed collection of information has been sent to OMB for clearance:

*Collection Title:* U.S. Department of Energy/Combined Heat and Power Registry

*Type of Review:* New collection.

*OMB Number:* None.

*Type of Respondents:* Individuals, Businesses, State and Local Governments.

*Estimated Number of Respondents:* 1,000.

*Estimated Total Burden Hours:* 500.

*Frequency of Response:* One time only.

**Abstract**

DOE plans to publicize widely the existence of the registry through it's Regional Support Offices, the CHP website, meetings, conferences and the like, and through its relationship with CHP organizations. Due to the recent high level of interest in CHP, DOE expects that many CHP installers, individuals, utilities, governments, and businesses will wish to register their CHP systems in order to gain recognition on the CHP webpage and also be potentially eligible for an award. Registration would take place electronically (a paper form would be available upon request) by responding to a series of very brief questions. If a system met the established criteria, a CHP certificate would be sent to the facility. Registration would take place one time only. DOE plans to aggregate the data and generate reports detailing the geographic distribution of systems and among other things, the sizes and types of systems. This data collection will assist DOE in its management of and planning for the continued success of the CHP initiative.

Issued in Washington, DC, on October 10, 2000.

**Dan W. Reicher,**

*Assistant Secretary, Energy Efficiency and Renewable Energy.*

[FR Doc. 00–26622 Filed 10–16–00; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Rocky Flats

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Rocky Flats. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meeting be announced in the **Federal Register**.

**DATES:** Thursday, November 2, 2000, 6 p.m. to 9:30 p.m.

**ADDRESSES:** College Hill Library, Front Range Community College, 3705 West 112th Avenue, Westminster, CO 80021.

**FOR FURTHER INFORMATION CONTACT:** Ken Korkia, Board/Staff Coordinator, Rocky Flats Citizens Advisory Board, 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO, 80021; telephone (303) 420–7855; fax (303) 420–7579.

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Board:* The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

**Tentative Agenda**

1. Quarterly update by Environmental Protection Agency, Region 8.
2. Discuss Board role in Radionuclide Soil Action Level review.
3. Environmental Protection Agency regulatory analysis for Radionuclide Soil Action Levels.
4. Department of Energy response to Kaiser-Hill Closure Project Baseline.
5. Update on Stewardship Workshop.
6. Other Board business may be conducted as necessary.

*Public Participation:* The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ken Korkia at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provisions will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

*Minutes:* The minutes of this meeting will be available for public review and copying at the Public Reading Room located at the Office of the Rocky Flats Citizens Advisory Board, 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021; telephone (303)420–7855. Hours of operations for the Public Reading Room are 9 a.m. to 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be made available by writing or calling Deb Thompson at the address or telephone number listed above.

Issued at Washington, DC on October 12, 2000.

**Rachel M. Samuel,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 00–26623 Filed 10–16–00; 8:45 am]

BILLING CODE 6450–01–P



## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project Nos. 2516 and 2517]**

### Allegheny Energy Supply; Notice of Meeting

October 11, 2000.

Allegheny Energy Supply, licensee for the Dam No. 4 Project No. 2516 and the Dam No. 5 Project No. 2517, currently is consulting with state and federal agencies concerning the relicensing of those projects. In this regard, Commission staff intends to participate with representatives of the licensee, resource agencies, and concerned non-governmental entities at a meeting to be held at the Hagerstown Corporate Center, 10435 Downsville Pike, Hagerstown, Maryland, at 10:00 a.m., Thursday, November 2, 2000. All interested persons are welcome to attend.

For further information, please contact Charles Simons, of Allegheny Energy Supply, on (724) 838–6397.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–26551 Filed 10–16–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. EL01–1–000]**

### California Municipal Utilities Association, Complainant

October 11, 2000.

California Municipal Utilities Association, Complainant, v. All Jurisdictional Sellers of Energy and Ancillary Services Into The Energy and Ancillary Services Markets Operated by the California Independent System Operator Corporation and the California Power Exchange; California Independent System Operator Corporation; and California Power Exchange Corporation, Respondents. San Diego Gas & Electric Company, Investigation of Practices of the California Independent System Operator and the California Power Exchange, California Electricity Oversight Board, Public Meeting in San Diego, California; Notice of Complaint

Take notice that on October 6, 2000, the California Municipal Utilities Association submitted a Complaint, Request to Institute Cost-Base Rates, and Motion To Consolidate. CMUA alleges that the markets for energy and ancillary services operated by the California Power Exchange Corporation (the PX) and the California Independent System Operator Corporation (the ISO) are not workably competitive and that the prices in those markets are unjust and unreasonable. Further, CMUA requests that the Commission order all sellers into those markets to tender cost-based filings, and that the Commission consolidate this docket with other dockets captioned above.

Copies of the filing were served upon the ISO, the PX, and the service lists in the above-captioned dockets, and transmitted electronically through ISO-compiled electronic mail lists.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before October 26, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222) for assistance. Answers to the complaint shall also be due on or before October 26, 2000.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–26616 Filed 10–16–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. EL01–2–000]**

### CAlifornians for Renewable Energy, Inc. (CARE), Complainant

October 11, 2000.

CAlifornians for Renewable Energy, Inc. (CARE), Complainant, v. Independent Energy Producers, Inc. and All Sellers of Energy and Ancillary Services Into the Energy and Ancillary Services Markets Operated by the California Independent System Operator Corporation and the California Exchange; All Scheduling Coordinators Acting On Behalf of the above Sellers; California Independent System Operator Corporation; and California Power Exchange Corporation, Respondents; Notice of Complaint

Take notice that on October 6, 2000, CAlifornians for Renewable Energy, Inc. (CARE), tendered for filing with the Federal Energy Regulatory Commission (Commission) a Complaint pursuant to Section 206 of the Federal power Act, U.S.C. § 824e, and Rule 206 of the Commission's Rules of Practice and Procedure, 18 CFR 385.206.

CARE requests that the Commission rectify unjust and unreasonable prices stemming from wholesale markets for energy and ancillary services operated by the California Independent System Operator (CALISO) and the California Power Exchange (CALPX). CARE further requests that the Commission find that the wholesale markets in California are not currently workably competitive. CARE also requests that the Commission investigate and make findings concerning the rolling power outages in the San Francisco Bay Area on June 14, 2000.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before October 26, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may also be viewed on the Internet at

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http://www.ferc.fed.us/online/rims.htm (call 202–208–2222) for assistance. Answers to the complaint shall also be due on or before October 26, 2000.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–26617 Filed 10–16–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP01–01–000]**

### Colorado Interstate Gas Company; Notice of Application

October 11, 2000.

Take notice that on October 2, 2000, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP01–001–000 an application pursuant to Sections 7(b) and 7(c) of the Natural Gas Act (NGA) and the Commission's Rules and Regulations for a certificate of public convenience and necessity authorizing CIG to construct and operate facilities and for authority to abandon certain facilities and base gas in order to: (i) Increase the deliverability of CIG's Storage Pool, and (ii) increase the capacity of its system southward out of the Cheyenne Compressor Station in Weld County, Colorado, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may be viewed at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–222 for assistance).

CIG states that Public Service Company of Colorado (PSCo) a local distribution company that serves the Denver metropolitan area, requires the deliverability and transportation capacity to replace deliverability lost by PSCo's pending abandonment of its Leyden Underground Natural Gas Storage Facility (Leyden) and to meet requirements for additional transportation capacity. In addition, CIG states that other transportation shippers have requested new services from CIG.

Specifically, CIG proposes to increase the working gas capacity and increase deliverability at the Fort Morgan Storage Field in Morgan County, Colorado by:

- Drilling one injection/withdrawal well (#34) and converting one observation well to a salt water disposal well (#18) with associated gathering and appurtenant facilities.
- Upgrading the two segments of the Fort Morgan Storage field gathering system from MAOPs of 1,800 psig and 2,000 psig to a single MAOP of 2,160 psig through hydrostatic testing and replacement of underrated equipment.
- Increasing the maximum allowed stored gas in place from 14,322 Mmcf to 14,858 Mmcf and increasing the average shut-in reservoir bottom hole pressure to a maximum of 2,390 psia.
- Converting 600 MMcf of base gas to working gas through modification of piping at the Fort Morgan Compressor Station.

CIG also proposes to abandon the Keyes Sand Reservoir and its associated base gas at the Boehm Storage Field in Morton County, Kansas and requests any necessary authority to sell the base gas. Specifically, CIG proposes to:

- Recomplete four injection/withdrawal wells from the Keyes Reservoir formation to the G reservoir formation and convert eight Keyes injection/withdrawal wells to observation wells with all associated gathering and appurtenant facilities.
- Install a 600 horsepower leased compressor unit in late summer 2002, along with hydrogen sulfide treatment and appurtenant facilities, to remove Keyes Reservoir base gas. The compressor will be used until such time as the pressure in the Keyes Sand Reservoir is too low to be effectively utilized. CIG will then abandon the compressor and attach the Keyes injection/withdrawal wells, utilized for depleting the reservoir, to the low pressure Greenwood Gathering system until the reservoir pressure is too low to produce any additional volumes. CIG anticipates that the reservoir will be depleted by 2006. CIG requests pre-granted abandonment authority for the 600 horsepower compressor unit and proposes to defer any issue concerning the treatment of revenues resulting from the sale of the base gas until its next rate case to be filed by the end of March, 2001.

In order to increase its mainline capacity south of the Cheyenne Compressor Station, CIG proposes to:

- Construct 26.2 miles of 24-inch diameter pipeline loop and appurtenant facilities commencing at CIG's existing Cheyenne Compressor Station in Weld County, Colorado and extending southward to terminate at CIG's existing Ault Meter Station in Weld County, Colorado. CIG also proposes to install an additional meter station at the Cheyenne Compressor Station.
- Construct the new Fort Lupton Compressor Station consisting of three nameplate rated 2,225 horsepower natural gas fired reciprocating compressor units and appurtenant facilities in Weld County, Colorado.
- Construct 27 miles of 24-inch diameter pipeline loop and appurtenant facilities commencing at the proposed Fort Lupton Compressor Station in Weld County, Colorado and extending southward to CIG's existing Watkins Compressor Station in Adams County, Colorado.
- Install miscellaneous facilities under 18 CFR 2.55(a) within the Watkins Compressor Station Yard, including yard piping, pipe valves, fittings, controls, regulation and measurement.

CIG states that the above listed modifications to its system will increase CIG's Storage Pool deliverability from 775 MMcf to 877 MMcf per day and allow CIG to transport 87.6 MMcf per day southward from the Cheyenne Compressor Station and an additional 61.9 MMcf per day southward from Fort Lupton Compressor Station. CIG asserts that the project is supported by firm agreements for almost all of the capacity. CIG estimates that the project will cost $58,180,300 and proposes rolled-in rate treatment for the project.

Any questions regarding this application should be directed to James R. West, Manager, Certificates, at (719) 520–4679, Colorado Interstate Gas Company, P.O. Box 1087, Colorado Springs, Colorado 80944.

Any person desiring to be heard or to protest with reference to said application should on or before November 1, 2000, file with the Federal Energy Regulatory Commission (Commission), 888 First Street, NE, Washington, DC 20426, a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practices and Procedure (18 CFR 385.211 and 385.214) and the regulations under the Natural Gas Act (NGA) (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding must file a motion to intervene in accordance with the Commission's rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents issued by the Commission, filed by the applicant, or filed by all other intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must serve copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as filing an original and 14 copies with the Commission.



A person does not have to intervene, however, in order to have comments considered, a person, instead, may submit two copies of such comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents, and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, Commenters will not receive copies of all documents filed by other parties or issued by the Commission, and will not have the right to seek rehearing or appeal the Commission's final order to a Federal court.

The Commission will consider all comments and concerns equally, whether filed by Commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Section 7 and 15 of the NGA and Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for CIG to appear or be represented at the hearing.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–26553 Filed 10–16–00; 8:45 am]

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP01–2–000]**

### Columbia Gas Transmission Corporation; Notice of Application

October 11, 2000.

Take notice that on October 4, 2000, Columbia Gas Transmission Corporation (Columbia), P.O. Box 1273, Charleston, West Virginia 25325–1273, filed in Docket No. CP01–2–000 an application pursuant to Section 7(b) of the Natural Gas (NGA) for permission and approval to abandon by sale, five natural gas storage fields located in various counties of West Virginia and Ohio. Columbia further requests authorization to abandon by sale the base gas in those fields, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

Columbia states that at the time of application, the purchasing parties are unknown and Columbia proposes to notify the Commission of the purchaser's identity within ten (10) days of signing a Purchase and Sale Agreement. Columbia further states that it does not propose the abandonment of service to any customer as a result of the Sale. It is said that no new or expanded services are proposed, nor is any construction or expansion of Columbia's facilities proposed in connection with the sale.

Any person desiring to be heard or any person desiring to make any protests with reference to said application should on or before November 1, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Columbia to appear or be represented at the hearing.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–26552 Filed 10–16–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ES01–3–000]**

### MDU Resources Group, Inc.; Notice of Application

October 10, 2000.

Take notice that on October 4, 2000, MDU Resources Group, Inc. (MDU Resources) submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to issue a combination of securities not to exceed in the aggregate $750,000,000 and not to exceed the following amounts:

(1) $750,000,000 of common stock;

(2) $112,500,000 of preferred stock;

(3) $225,000,000 of New Mortgage Bonds, Senior Notes, debentures, subordinated debentures, and/or guarantees from time to time;

(4) $225,000,000 of stock purchase contracts, stock purchase units, and/or warrants; and

(5) $225,000,000 of other securities, including hybrid securities or hybrid securities guaranties.

MDU Resources seeks authorization to vary the issuance amount for each of the above types of securities as long as the aggregate amount of MDU Resources' securities issued does not exceed $750,000,000. The securities are proposed to be issued from time to time over a two-year period.

MDU Resources seeks a waiver of the Commission's competitive bidding and

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negotiated placement requirements in 18 CFR 34.2.

MDU Resources also requests for this authorization to supercede and replace the authorizing granted in Docket Nos. ES99–18–000 and ES99–18–001.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before October 31, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–26556 Filed 10–16–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. EL01–3–000]**

### Morgan Stanley Capital Group Inc., Complainant v. PJM Interconnection, L.L.C., Respondent; Notice of Filing

October 11, 2000.

Take notice that on October 6, 2000, Morgan Stanley Capital Group Inc. (MSCG), tendered for filing a complaint pursuant to Section 206 of the Federal Power Act against PJM Interconnection, L.L.C. (PJM) alleging that, in order to advance the Commission's goal of regional uniformity and coordination and to avoid other market problems, PJM should eliminate (1) its bid cap by the end of October 2000, to coincide with the expiration of the New York and New England bid caps and (2) eliminate its ICAP requirement and deficiency charge commensurate with ISO–NE's actions to date. Given the immediacy of this date, MSCG requests fast track procession of its complaint by the Commission.

Copies of the filing were served upon PJM and other interested parties.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before October 25, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may also be viewed on the Internet a http://www.ferc.fed.us/online/rims.htm (call 202–208–2222) for assistance. Answers to the complaint shall also be due on or before October 26, 2000.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–26618 Filed 10–16–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. EG01–1–000]**

### Quinnipiac Energy, LLC; Notice of Application for Commission Determination of Exempt Wholesale Generator Status

October 10, 2000.

Take notice that on October 4, 2000, Quinnipiac Energy, LLC (Quinnipiac), with its address at 800 Village Walk #324, Guilford, CT 06437, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Quinnipiac is a Delaware limited liability company that will be engaged directly and exclusively in the business of owning or operating, or both owning and operating, all or part of one or more eligible facilities to be located in New Haven, Connecticut. The eligible facilities will consist of an approximately 75 MW oil-fired electric generation project and related interconnection facilities. The output of the eligible facilities will be sold at wholesale.

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before October 31, 2000, and must be served on the applicant. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection or on the Internet at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–2222 for assistance).

**David P. Boergers**

*Secretary*

[FR Doc. 00–26557 Filed 10–16–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. EC00–144–000]**

### Reliant Energy Coolwater, LLC, et al.; Notice of Filing

October 11, 2000.

Take notice that on September 27, 2000, Reliant Energy Coolwater, LLC, Reliant Energy Desert Basin, LLC, Reliant Energy Ellwood, LLC, Reliant Energy Etiwanda, LLC, Reliant Energy Indian River, LLC, Reliant Energy Mandalay, LLC, Reliant Energy Maryland Holdings, LLC, Reliant Energy Mid-Atlantic Power Holdings, LLC, Reliant Energy New Jersey Holdings, LLC, Reliant Energy Ormond Beach, LLC, Reliant Energy Osceola, LLC, Reliant Energy Shelby County, LP, Reliant Energy Services, Inc. and EL Dorado Energy, LLC (collectively, the Applicants), submitted an application pursuant to Section 203 of the Federal Power Act, seeking authorization for a proposed corporate restructuring and the resulting indirect transfer of jurisdictional facilities, and requesting expedited consideration and certain waivers.

The Applicants state that, as a result of a proposed corporate restructuring of certain of the Applicants' affiliates, there will be a transfer of indirect contol of Applicants' jurisdictional facilities. The Applicants further state that the proposed corporate Restructuring will have no effect on the jurisdictional facilities, nor will it have any effect on competition, rates or regulation.

Any person desiring to be heard or to protest such filing a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before October 18, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–26554 Filed 10–16–00; 8:45 am]

BILLING CODE 6717–01–M



## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket Nos. ER00–936–000 and ER00–936–003; ER00–937–000 and ER00–937–003]**

### Southern Energy Delta, L.L.C. and Southern Energy Potrero, L.L.C.; Notice of Filing

October 11, 2000.

Take notice that on September 28, 2000, Southern Energy Delta, L.L.C. (SE Delta) and Southern Energy Potrero, L.L.C. (SE Potrero) (collectively the Southern Parties) filed an Offer of Settlement which represents an integrated and complete resolution of issues in the above-captioned proceedings among and between the following parties (the Supporting Parties): the Southern Parties, the California Independent System Operator Corporation (CAISO), and Pacific Gas and Electric Company (PG&E).

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before October 19, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–26555 Filed 10–16–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. EL00–62–006, et al.]**

### ISO New England, Inc., et al.; Electric Rate and Corporate Regulation Filings

October 11, 2000.

Take notice that the following filings have been made with the Commission:

**1. ISO New England Inc.**

[Docket No. EL00–62–006]

Take notice that on October 5, 2000, the New England Power Pool (NEPOOL) and ISO New England Inc. filed its monthly update concerning its timetable for implementation of the various components of the Congestion Management and Multi-Settlement Systems, as directed by the Commission in its June 28, 2000 Order in this proceeding.

*Comment date:* November 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

**2. Cinergy Services, Inc.**

[Docket No. ER01–46–000]

Take notice that on October 5, 2000, Cinergy Services, Inc. (Cinergy), tendered for filing a Service Agreement under Cinergy's Resale, Assignment or Transfer of Transmission Rights and Ancillary Service Rights Tariff (the Tariff) entered into between Cinergy and Merchant Energy Group of the Americas, Inc. (MEGA). This Service Agreement has been executed by both parties and is to replace the existing unexecuted Service Agreement.

*Comment date:* October 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

**3. Cinergy Services, Inc.**

[Docket No. ER01–47–000]

Take notice that on October 5, 2000, Cinergy Services, Inc. (Cinergy), tendered for filing a Service Agreement under Cinergy's Resale, Assignment or Transfer of Transmission Rights and Ancillary Service Rights Tariff (the Tariff) entered into between Cinergy and Rainbow Energy Marketing Corporation (REMC). This Service Agreement has been executed by both parties and is to replace the existing unexecuted Service Agreement.

*Comment date:* October 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

**4. Powerex Corp.**

[Docket No. ER01–48–000]

Take notice that on October 5, 2000, Powerex Corp. tendered for filing Notice of Succession pursuant to 18 CFR 35.16 and 131.51 of the Commission's Regulations. Powerex Corp. is succeeding to the Rate Schedule FERC No. 1, Market-Based Rate Schedule filed by British Columbia Power Exchange Corporation in Docket No. ER97–4024–000, effective August 1, 1997.

*Comment date:* October 25, 2000, in accordance with Standard Paragraph E at the end of this notice.

**5. The Detroit Edison Company**

[Docket No. ER01–49–000]

Take notice that on October 5, 2000, The Detroit Edison Company (Detroit Edison), tendered for filing, Service Agreements (Service Agreements) for Short-Term Firm and Non-Firm Point-to-Point Transmission Service under the Open Access Transmission Tariff of Detroit Edison, FERC Electric Tariff No. 1. These Service Agreements are between Detroit Edison and DTE Energy Trading, dated as of September 27, 2000. The parties have not engaged in any transactions under the Service Agreements prior to thirty days to this filing.

Detroit Edison requests that the Service Agreements be made effective as rate schedules as of October 27, 2000.

*Comment date:* October 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

**6. California Independent System Operator Corporation**

[Docket No. ER01–50–000]

Take notice that on October 5, 2000, the California Independent System Operator Corporation (ISO), tendered for filing the Middle Fork-Ralston Physical Scheduling Plant Agreement (Agreement) between the ISO and Pacific Gas and Electric Company (PG&E), for acceptance by the Commission. The purpose of the Agreement is to govern the treatment of PG&E's Middle Fork-Ralston Units, which consists of three Generating

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Units, as a single Physical Scheduling Plant (PSP) for purposes of providing Regulation to the ISO. The ISO states that this filing has been served upon PG&E, the California Electricity Oversight Board, and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Agreement to be made effective as of October 21, 2000.

*Comment date:* October 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

**7. Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company**

[Docket No. ER01–51–000]

Take notice that on October 5, 2000, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (d/b/a GPU Energy), tendered for filing an executed Service Agreement between GPU Energy and Southern Company Energy Marketing L.P. (SCEM), dated October 4, 2000. This Service Agreement specifies that SCEM has agreed to the rates, terms and conditions of GPU Energy's Market-Based Sales Tariff (Sales Tariff) designated as FERC Electric Rate Schedule, Second Revised Volume No. 5. The Sales Tariff allows GPU Energy and SCEM to enter into separately scheduled transactions under which GPU Energy will make available for sale, surplus capacity and/or energy.

GPU Energy requests a waiver of the Commission's notice requirements for good cause shown and an effective date of October 4, 2000 for the Service Agreement.

GPU Energy has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

*Comment date:* October 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

**8. PJM Interconnection, L.L.C.**

[Docket No. ER01–52–000]

Take notice that on October 5, 2000, PJM Interconnection, L.L.C. (PJM), tendered for filing three service agreements with HIS Power & Water, L.L.C. (HIS Power): (1) an executed umbrella service agreement for short-term firm point-to-point transmission service, (2) an executed service agreement for non-firm point-to-point transmission service, and (3) an executed umbrella service agreement for network integration transmission service under state required retail access programs.

Copies of this filing were served upon HIS Power, and the state commissions within the PJM control area.

*Comment date:* October 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

**9. The Confederated Tribes of the Warm Springs Reservation of Oregon, a Federally Recognized Indian Tribe, and Warm Springs Power Enterprises, a Chartered Enterprise of the Confederated Tribes of the Warm Springs Reservation of Oregon**

[Docket No. ER01–53–000

Take notice that on October 5, 2000, the Confederated Tribes of the Warm Springs Reservation of Oregon (Tribe), a federally recognized Indian tribe, and Warm Springs Power Enterprises (WSPE), a chartered tribal enterprise, (jointly referred to as Petitioners) tendered for filing an application requesting the Commission to: (1) accept for filing WSPE's Rate Schedule No.1, which will permit the Petitioners to engage in wholesale electric power and energy transactions at market-based rates; and (2) grant such other waivers and blanket authorizations as have been granted to other power marketers. This Application is conditioned on the Commission's finding of public utility jurisdiction over the Petitioners. The Petitioners simultaneously request that FERC disclaim jurisdiction on the grounds that the Petitioners are instrumentalities of the federal government. Irrespective of whether Petitioners are deemed to be jurisdictional public utilities, Petitioners also request: blanket approval, under Parts 20 and 34 of the Commission's Regulations, of future issuances regarding securities and assumptions of liabilities, subject to objection by an interested party; and waiver of Parts 41, 101, and 141 with the exception of 18 CFR 141.14–141.15.

The Petitioners do not currently sell power to any person pursuant to the proposed rate schedule. A copy of their filing, however, has been served on the Oregon Public Utility Commission as a courtesy.

*Comment date:* October 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

**10. Southwest Power Pool, Inc.**

[Docket No. ER01–54–000]

Take notice that on October 5, 2000, Southwest Power Pool, Inc. (SPP), tendered for filing five executed service agreement for Firm Point-to-Point Transmission Service with Entergy Power Marketing Corporation, The Energy Authority, Inc., and Western Resources (collectively, the Transmission Customers).

Copies of this filing were served on the Transmission Customers.

*Comment date:* October 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

**11. Virginia Electric and Power Company**

[Docket No. ER01–55–000]

Take notice that on October 6, 2000, Virginia Electric and Power Company (Dominion Virginia Power or the Company), tendered for filing a Service Agreement for Long Term Firm Point-to-Point Transmission Service with Dominion Energy Clearinghouse. This Agreement will be designated as Service Agreement No. 303 under Company's FERC Electric Tariff, Revised Volume No. 5.

The foregoing Service Agreement is tendered for filing under the Open Access Transmission Tariff to Eligible Purchasers effective June 7, 2000. Under the tendered Service Agreement, Dominion Virginia Power will provide long term firm point-to-point service to the Transmission Customer under the rates, terms and conditions of the Open Access Transmission Tariff.

Dominion Virginia Power requests an effective date of October 6, 2000, the date of filing of the Service Agreement.

Copies of the filing were served upon Dominion Energy Clearinghouse, the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

*Comment date:* October 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

**12. DPL Energy**

[Docket No. ER01–56–000]

Take notice that on October 6, 2000, DPL Energy (DPLE), tendered for filing a long-term transaction agreement with The Dayton Power and Light Company.

*Comment date:* October 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

**13. Arizona Public Service Company**

[Docket No. ER01–57–000]

Take notice that on October 6, 2000, Arizona Public Service Company (APS), tendered for filing a revision to the Power Sale Agreement between APS and Citizens Utilities Company.

A copy of this filing has been served on Citizens Utilities Company and the Arizona Corporation Commission.

*Comment date:* October 27, 2000, in accordance with Standard Paragraph E at the end of this notice.



**14. Ameren Services Company**

[Docket No. ER01–58–000]

Take notice that on October 6, 2000, Ameren Services Company (ASC), tendered for filing Service Agreements for Firm Point-to-Point Transmission Service and Non-Firm Point-to-Point Transmission Service between ASC and NRG Power Marketing Inc., Ameren Energy Marketing Company and FPL Energy Power Marketing, Inc. ASC asserts that the purpose of the Agreements is to permit ASC to provide transmission services to the parties pursuant to Ameren's Open Access Transmission Tariff.

*Comment date:* October 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

**15. Cinergy Solutions Partners, LLC**

[Docket No. QF00–95–000]

Take notice that on October 4, 2000, Cinergy Solutions Partners, LLC (CSP) filed with the Federal Energy Regulatory Commission (Commission) supplemental information regarding its September 18, 2000 application for certification of a facility as a qualifying cogeneration facility pursuant to Section 292.207(b) of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility will be a topping cycle cogeneration facility, primarily fired by natural gas (the "Facility"). The thermal energy is used by an industrial food processing facility. The Facility, which will be located in Hamilton County, Ohio, will be owned by Initial Project Company, and indirectly owned by CSP. The interests in CSP pertaining to the Facility are owned by Cinergy Solutions, Inc., and IPP Ventures, LLC.

*Comment date:* November 3, 2000, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraphs**

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–26615 Filed 10–16–00; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. ER00–3216–002, et al.]**

## Mid-Atlantic Energy Development Company, et al.; Electric Rate and Corporate Regulation Filings

October 10, 2000

Take notice that the following filings have been made with the Commission:

**1. Mid-Atlantic Energy Development Company**

[Docket No. ER00–3216–002]

Take notice that on October 5, 2000, Mid-Atlantic Energy Development Company (Mid-Atlantic), tendered for filing an amendment to its application in this proceeding that included a revised Statement of Policy and Code of Conduct with Respect to the Relationship between Mid-Atlantic and the FirstEnergy Operating Companies. Mid-Atlantic requested that the revised Statement of Policy and Code of Conduct be substituted for that previously submitted on August 21, 2000.

*Comment date:* October 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

**2. Carolina Power & Light Company**

[Docket No. ER01–33–000]

Take notice that on October 4, 2000, Carolina Power & Light Company (CP&L), tendered for filing Service Agreements for Short-Term Firm and Non-Firm Point-to-Point Transmission Service with FirstEnergy Corp., and a Service Agreement for Non-Firm Point-to-Point Transmission Service with Oglethorpe Power Corporation. Service to each Eligible Customer will be in accordance with the terms and conditions of Carolina Power & Light Company's Open Access Transmission Tariff.

CP&L is requesting an effective date of September 25, 2000 for the Agreement with Oglethorpe and September 29, 2000 for the Agreements with FirstEnergy.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

*Comment date:* October 25, 2000, in accordance with Standard Paragraph E at the end of this notice.

**3. Pacific Gas and Electric Company**

[Docket No. ER01–34–000]

Take notice that on October 4, 2000, Pacific Gas and Electric Company (PG&E), tendered for filing a Generator Special Facilities Agreement, a Generator Interconnection Agreement, and a Supplemental Letter Agreement to GSFA for Sonoma Generating Facility Owned by Geysers Power Company, L.L.C. (collectively, the Agreements) between PG&E and the Geysers Power Company, L.L.C. (collectively, Parties) to correct the rate schedule designations on these Agreements in compliance with the Commission's Letter Order dated September 20, 2000. That Letter Order conditionally accepted these Agreements effective on March 1, 2000 provided that PG&E refile these Agreements with corrected rate schedule designations as required in Order No. 614, FERC Stats. & Regs. ¶31,096.

Copies of this filing have been served upon Geysers Power, Sacramento Municipal Utility District, and the California Public Utilities Commission.

*Comment date:* October 25, 2000, in accordance with Standard Paragraph E at the end of this notice.

**4. Cinergy Services, Inc.**

[Docket No. ER01–35–000]

Take notice that on October 4, 2000, Cinergy Services, Inc. (Cinergy) and Allegheny Power are requesting a cancellation of Service Agreement No. 6, under Cinergy Operating Companies, Resale of Transmission Rights and Ancillary Service Rights, FERC Electric Tariff Original Volume No. 8.

Cinergy requests an effective date of October 1, 2000.

*Comment date:* October 25, 2000, in accordance with Standard Paragraph E at the end of this notice.

**5. Puget Sound Energy, Inc.**

[Docket No. ER01–37–000]

Take notice that on October 4, 2000, Puget Sound Energy, Inc., as Transmission Provider tendered for filing a Service Agreement for Short-Term Firm Point-To-Point Transmission Service with the United States of America Department of Energy acting by and through the Bonneville Power Administration (Bonneville), as Transmission Customer.

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A copy of the filing was served upon Bonneville.

*Comment date:* October 25, 2000, in accordance with Standard Paragraph E at the end of this notice.

**6. Louisville Gas and Electric Company/ Kentucky Utilities Company**

[Docket No. ER01–38–000]

Take notice that on October 4, 2000, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies), tendered for filing an unexecuted unilateral Service Sales Agreement between Companies and PPL EnergyPlus, LLC under the Companies' Rate Schedule MBSS.

*Comment date:* October 25, 2000, in accordance with Standard Paragraph E at the end of this notice.

**7. Commonwealth Edison Company**

[Docket No. ER01–39–000]

Take notice that on October 4, 2000, Commonwealth Edison Company (ComEd) tendered for filing an executed service agreement for Conectiv Energy Supply, Inc. (Conectiv) under ComEd's FERC Electric Market Based-Rate Schedule for power sales.

ComEd requests an effective date of September 21, 2000, for the service agreement and accordingly seeks waiver of the Commission's notice requirements. Copies of this filing were served on Conectiv.

*Comment date:* October 25, 2000, in accordance with Standard Paragraph E at the end of this notice.

**8. Quinnipiac Energy, LLC**

[Docket No. ER01–40–000]

Take notice that on October 4, 2000, Quinnipiac Energy, LLC (Quinnipiac) tendered for filing an application under Section 205 of the Federal Power Act requesting approval of it proposed market-based rate, waiver of certain regulations, and blanket approvals. The proposed market-based rate governs Quinnipiac's sales of capacity and energy at wholesale, the sale of ancillary services and the sale, assignment or transfer of transmission capacity or other transmission service or rights of Quinnipiac.

*Comment date:* October 25, 2000, in accordance with Standard Paragraph E at the end of this notice.

**9. Sithe Fore River Development LLC**

[Docket No. ER01–41–000]

Take notice that on October 4, 2000, Sithe Fore River Development LLC (Sithe Fore River Development), tendered for filing an application (the Application) under Section 205 of the Federal Power Act petitioning the Commission for acceptance of its proposed FERC Electric Rate Schedules Nos. 1 and 2. Sithe Fore River Development requests authority to make wholesale power sales, including energy, capacity and ancillary services at market-based rates, requests certain blanket authorizations, and waiver of certain of the Commission's Regulations.

Sithe Fore River Development requests that the tendered rate schedules become effective as of the later of the closing date of the stock sale transaction by which 49.9 percent of the outstanding stock in Sithe Energies, Inc., is transferred to Exelon (Fossil) Holdings, L.L.C., and the closing date of the Sithe Boston Financing transaction, as described within the Application.

*Comment date:* October 25, 2000, in accordance with Standard Paragraph E at the end of this notice.

**10. Sithe Mystic Development LLC**

[Docket No. ER01–42–000]

Take notice that on October 4, 2000, Sithe Mystic Development LLC (Sithe Mystic Development), tendered for filing an application (the Application) under Section 205 of the Federal Power Act petitioning the Commission for acceptance of its proposed FERC Electric Rate Schedules Nos. 1 and 2. Sithe Mystic Development requests authority to make wholesale power sales, including energy, capacity and ancillary services at market-based rates, requests certain blanket authorizations, and waiver of certain of the Commission's Regulations.

Sithe Mystic Development requests that the tendered rate schedules become effective as of the later of the closing date of the stock sale transaction by which 49.9 percent of the outstanding stock in Sithe Energies, Inc., is transferred to Exelon (Fossil) Holdings, L.L.C., and the closing date of the Sithe Boston Financing transaction, as described within the Application.

*Comment date:* October 25, 2000, in accordance with Standard Paragraph E at the end of this notice.

**11. Cinergy Services, Inc.**

[Docket No. ER01–43–000]

Take notice that on October 5, 2000, Cinergy Services, Inc. (Cinergy), tendered for filing a Service Agreement under Cinergy's Resale, Assignment or Transfer of Transmission Rights and Ancillary Service Rights Tariff (the Tariff) entered into between Cinergy and Reliant Energy Services, Inc., (Reliant). This Service Agreement has been executed by both parties and is to replace the existing unexecuted Service Agreement.

*Comment date:* October 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

**12. Cinergy Services, Inc.**

[Docket No. ER01–44–000]

Take notice that on October 5, 2000, Cinergy Services, Inc. (Cinergy), tendered for filing a Service Agreement under Cinergy's Resale, Assignment or Transfer of Transmission Rights and Ancillary Service Rights Tariff (the Tariff) entered into between Cinergy and Commonwealth Edison Company (ComEd). This Service Agreement has been executed by both parties and is to replace the existing unexecuted Service Agreement.

*Comment date:* October 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

**13. Cinergy Services, Inc.**

[Docket No. ER01–45–000]

Take notice that on October 5, 2000, Cinergy Services, Inc. (Cinergy), tendered for filing a Service Agreement under Cinergy's Resale, Assignment or Transfer of Transmission Rights and Ancillary Service Rights Tariff (the Tariff) entered into between Cinergy and Griffin Energy Marketing, L.L.C., (Griffin). This Service Agreement has been executed by both parties and is to replace the existing unexecuted Service Agreement.

*Comment date:* October 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraphs**

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–26549 Filed 10–16–00; 8:45 am]

BILLING CODE 6717–01–P



**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

**[Docket No. ER00–3243–002, et al.]**

**West Texas Utilities Company, et al.; Electric Rate and Corporate Regulation Filings**

October 6, 2000.

Take notice that the following filings have been made with the Commission:

**1. West Texas Utilities Company**

[Docket No. ER00–3243–002]

Take notice that on October 3, 2000, West Texas Utilities Company (WTU) filed a copy of its Wholesale Power Choice Tariff (WPC Tariff). The Tariff is reformatted to conform with the requirements of Order No. 614 but there are no changes to the currently effective tariff language.

WTU seeks an effective date of June 15, 2000 and, accordingly, seeks waiver of the Commission's notice requirements.

Copies of the filing have been served on all of WTU's customers under the WPC Tariff and on the Public Utility Commission of Texas.

*Comment date:* October 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

**2. Sierra Pacific Power Company and Nevada Power Company**

[Docket No. ER00–2997–001]

Take notice that on October 4, 2000, Sierra Pacific Power Company and Nevada Power Company tendered for filing their compliance filing in the above-captioned docket.

This filing has been served on all parties on the official service list in this proceeding.

*Comment date:* October 25, 2000, in accordance with Standard Paragraph E at the end of this notice.

**3. Madison Gas & Electric Company, Wisconsin Public Service Corp., and American Transmission Company LLC**

[Docket No. EC00–136–000]

Take notice that on October 3, 2000, Madison Gas & Electric Company and Wisconsin Public Service Corp. filed supplemental information relating to their Section 203 Application for Authorization to Transfer Transmission Assets.

A copy of the filing has been served on the Public Service Commission of Wisconsin.

*Comment date:* October 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

**4. Cinergy Services, Inc.**

[Docket No. ER01–16–000]

Take notice that on October 3, 2000, Cinergy Services, Inc. (Cinergy) and South Jersey Energy Company filed a Notice of Cancellation of Service Agreement No. 127, under Cinergy Operating Companies, Resale of Transmission Rights and Ancillary Service Rights, FERC Electric Tariff Original Volume No. 8.

Cinergy requests an effective date of October 1, 2000.

*Comment date:* October 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

**5. Cinergy Services, Inc.**

[Docket No. ER01–17–000]

Take notice that on October 3, 2000, Cinergy Services, Inc. (Cinergy) and Wisconsin Power & Light Company filed a Notice of Cancellation of Service Agreement No. 148, under Cinergy Operating Companies, Resale of Transmission Rights and Ancillary Service Rights, FERC Electric Tariff Original Volume No. 8.

Cinergy requests an effective date of October 1, 2000.

*Comment date:* October 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

**6. Cinergy Services, Inc.**

[Docket No. ER01–18–000]

Take notice that on October 3, 2000, Cinergy Services, Inc. (Cinergy) and American Energy Trading, Inc. filed a Notice of Cancellation of Service Agreement No. 10, under Cinergy Operating Companies, Resale of Transmission Rights and Ancillary Service Rights, FERC Electric Tariff Original Volume No. 8.

Cinergy requests an effective date of October 1, 2000.

*Comment date:* October 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

**7. Cinergy Services, Inc.**

[Docket No. ER01–19–000]

Take notice that on October 3, 2000, Cinergy Services, Inc. (Cinergy) and Maine Public Service Company filed a Notice of Cancellation of Service Agreement No. 78, under Cinergy Operating Companies, Resale of Transmission Rights and Ancillary Service Rights, FERC Electric Tariff Original Volume No. 8.

Cinergy requests an effective date of October 1, 2000.

*Comment date:* October 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

**8. Cinergy Services, Inc.**

[Docket No. ER01–20–000]

Take notice that on October 3, 2000, Cinergy Services, Inc. (Cinergy) and Niagara Mohawk Power Corporation filed a Notice of Cancellation of Service Agreement No. 94, under Cinergy Operating Companies, Resale of Transmission Rights and Ancillary Service Rights, FERC Electric Tariff Original Volume No. 8.

Cinergy requests an effective date of October 1, 2000.

*Comment date:* October 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

**9. Cinergy Services, Inc.**

[Docket No. ER01–21–000]

Take notice that on October 3, 2000, Cinergy Services, Inc. (Cinergy) and Montaup Electric Company filed a Notice of Cancellation of Service Agreement No. 87, under Cinergy Operating Companies, Resale of Transmission Rights and Ancillary Service Rights, FERC Electric Tariff Original Volume No. 8.

Cinergy requests an effective date of October 1, 2000.

*Comment date:* October 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

**10. Cinergy Services, Inc.**

[Docket No. ER01–22–000]

Take notice that on October 3, 2000, Cinergy Services, Inc. (Cinergy) and IES Utilities, Inc. filed a Notice of Cancellation of Service Agreement No. 65, under Cinergy Operating Companies, Resale of Transmission Rights and Ancillary Service Rights, FERC Electric Tariff Original Volume No. 8.

Cinergy requests an effective date of October 1, 2000.

*Comment date:* October 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

**11. Cinergy Services, Inc.**

[Docket No. ER01–23–000]

Take notice that on October 3, 2000, Cinergy Services, Inc. (Cinergy) and South Carolina Public Service Authority filed a Notice of Cancellation of Service Agreement No. 126, under Cinergy Operating Companies, Resale of Transmission Rights and Ancillary Service Rights, FERC Electric Tariff Original Volume No. 8.

Cinergy requests an effective date of October 1, 2000.

*Comment date:* October 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

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**12. The Detroit Edison Company**

[Docket No. ER01–24–000]

Take notice that on October 3, 2000, The Detroit Edison Company (Detroit Edison) tendered for filing Service Agreements (Service Agreements) for Short-term Firm and Non-Firm Point-to-Point Transmission Service under the Joint Open Access Transmission Tariff of Consumers Energy Company and Detroit Edison, FERC Electric Tariff No. 1. These Service Agreements are between Detroit Edison and The Energy Authority, dated as of September 5, 2000. The parties have not engaged in any transactions under the Service Agreements prior to thirty days to this filing.

Detroit Edison requests that the Service Agreements be made effective as rate schedules as of October 5, 2000.

*Comment date:* October 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

**13. Alliant Energy Corporate Services, Inc.**

[Docket No. ER01–25–000]

Take notice that on October 3, 2000, Alliant Energy Corporate Services, Inc. (Alliant Energy) tendered for filing executed Service Agreements for short-term firm point-to-point transmission service and non-firm point-to-point transmission service, establishing Midwest Renewable Energy Corporation as a point-to-point Transmission Customer under the terms of the Alliant Energy Corporate Services, Inc. transmission tariff.

Alliant Energy Corporate Services, Inc. requests an effective date of September 25, 2000, and accordingly, seeks waiver of the Commission's notice requirements.

A copy of this filing has been served upon the Illinois Commerce Commission, the Minnesota Public Utilities Commission, the Iowa Department of Commerce, and the Public Service Commission of Wisconsin.

*Comment date:* October 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

**14. The Detroit Edison Company**

[Docket No. ER01–26–000]

Take notice that on October 3, 2000, The Detroit Edison Company (Detroit Edison) tendered for filing Service Agreements (Service Agreements) for Short-term Firm and Non-Firm Point-to-Point Transmission Service under the Joint Open Access Transmission Tariff of Consumers Energy Company and Detroit Edison, FERC Electric Tariff No. 1. These Service Agreements are between Detroit Edison and NRG Power Marketing, Inc., dated as of August 31, 2000. The parties have not engaged in any transactions under the Service Agreements prior to thirty days to this filing.

Detroit Edison requests that the Service Agreements be made effective as rate schedules as of September 29, 2000.

*Comment date:* October 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

**15. The Detroit Edison Company**

[Docket No. ER01–27–000]

Take notice that on October 3, 2000, The Detroit Edison Company (Detroit Edison) tendered for filing Service Agreements (Service Agreements) for Short-term Firm and Non-Firm Point-to-Point Transmission Service under the Joint Open Access Transmission Tariff of Consumers Energy Company and Detroit Edison, FERC Electric Tariff No. 1. These Service Agreements are between Detroit Edison and Coral Power, L.L.C., dated as of August 29, 2000. The parties have not engaged in any transactions under the Service Agreements prior to thirty days to this filing.

Detroit Edison requests that the Service Agreements be made effective as rate schedules as of September 29, 2000.

*Comment date:* October 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

**16. The Detroit Edison Company**

[Docket No. ER01–28–000]

Take notice that on October 3, 2000, The Detroit Edison Company (Detroit Edison) tendered for filing a Service Agreement (Service Agreement) for Firm Point-to-Point Transmission Service under the Joint Open Access Transmission Tariff of Consumers Energy Company and Detroit Edison, FERC Electric Tariff No. 1. The Service Agreement is between Detroit Edison and Nordic Marketing, L.L.C., dated as of July 25, 2000. The parties have not engaged in any transactions under the Service Agreements prior to thirty days to this filing.

Detroit Edison requests that the Service Agreements be made effective as rate schedules as of August 25, 2000.

*Comment date:* October 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

**17. Xcel Energy Services, Inc.**

[Docket No. ER01–29–000]

Take notice that on October 3, 2000, Xcel Energy Services, Inc. (XES), on behalf of Public Service Company of Colorado (Public Service), submitted for filing the Master Power Purchase and Sale Agreement between Public Service and Allegheny Energy Supply Company, LLC., which is an umbrella service agreement under Public Service's Rate Schedule for Market-Based Power Sales (Public Service FERC Electric Tariff, Original Volume No. 6).

XES requests that this agreement become effective on August 2, 2000.

*Comment date:* October 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

**18. Erie Boulevard Hydropower, L.P.**

[Docket No. ER01–30–000]

Take notice that on October 3, 2000, Erie Boulevard Hydropower, L.P. (Erie) tendered for filing an executed Temporary Facility Usage Agreement dated July 10, 2000 between Erie and Niagara Mohawk Power Corporation (NMPC). This agreement has been executed for the purpose of permitting NMPC to use, at no cost, Erie's substation at Erie's School Street hydro project for the purpose of delivering, on a temporary basis, the output of 6 MW generating station recently acquired from Erie by the Green Island Power Authority.

*Comment date:* October 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

**19. USPowerEnergy, LLC**

[Docket No. ER01–36–000]

Take notice that on October 3, 2000, USPowerEnergy, LLC (USPE) petitioned the Federal Energy Regulatory Commission (Commission) for acceptance of USPE Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

USPE intends to engage in wholesale electric power and energy purchases and sales as a marketer. USPE is not in the business of generating or transmitting electric power. USPE provides energy services primarily to commercial, institutional, and small industrial customers; and distributes energy efficiency equipment and supplies.

*Comment date:* October 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraphs**

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–26550 Filed 10–16–00; 8:45 am]

**BILLING CODE 6717–01–P**



## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6887–1]**

### Notice of Availability of Guidance for Controlling Nonpoint Source Pollution From Agriculture and Request for Comments

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has developed and is requesting comments on draft technical guidance for managing agricultural sources of nonpoint pollution. This guidance is intended to provide technical assistance to State program managers and others on the best available, economically achievable means of reducing nonpoint source pollution of surface and ground water from agriculture. The guidance provides background information about agricultural nonpoint source pollution, where it comes from and how it enters the Nation's waters, discusses the broad concepts of assessing and addressing water quality problems on a watershed level, and presents up-to-date technical information about how to reduce agricultural nonpoint source pollution.

Reviewers should note that the draft technical guidance is entirely consistent with the Guidance Specifying Management Measures for Sources of Nonpoint Pollution in Coastal Waters, which EPA published in January 1993 under section 6217(g) of the Coastal Zone Act Reauthorization Amendments of 1990 (CZARA). The draft document does not supplant or replace the requirements of the 1993 document. It enhances the technical information contained in the 1993 coastal guidance to include inland as well as coastal context and to provide updated technical information based on current understanding and implementation of best management practices. It does not set new or additional standards for either CZARA section 6217 or Clean Water Act section 319 programs.

**DATES:** Written comments must be postmarked no later than January 16, 2001.

**ADDRESSES:** Comments may be addressed to Sharon Buck, Assessment and Watershed Protection Division (4503–F), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; or electronically mailed to buck.sharon@epa.gov.

**FOR FURTHER INFORMATION CONTACT:** Persons requesting additional information or a complete draft of the document should contact Sharon Buck at (202) 260–0306; buck.sharon@epa.gov; or U.S. Environmental Protection Agency (4503–F), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. The complete text of the draft guidance is also available on EPA's Internet site on the Nonpoint Source Control Branch homepage <http://www.epa.gov/owow/nps/new.html>.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

In recent years, State, territory, and tribal water quality assessments have identified nonpoint source (NPS) pollution as the most significant cause of degradation in surveyed waters nationwide. In 1987, Congress enacted section 319 of the Clean Water Act to establish a national program to control nonpoint sources of water pollution. Under Section 319, States, territories, and tribes address NPS pollution by assessing the NPS pollution problems within the state, territory, or tribal lands, identifying the sources of pollution, and implementing management programs to control the NPS pollution. Section 319 also authorizes EPA to award grants to States and tribes to assist them in implementing management programs which have been approved by EPA. Program implementation includes non-regulatory and regulatory programs, technical assistance, financial assistance, education, training, technology transfer, and demonstration projects. In fiscal year 2000, Congress appropriated and EPA awarded $200 million dollars for nonpoint source management program grants. EPA has awarded a total of $1 billion under Section 319 to States, Territories, and Indian tribes since 1990.

In 1993, under the authority of section 6217(g) of the Coastal Zone Act Reauthorization Amendments, EPA issued *Guidance Specifying Management Measures for Sources of Nonpoint Pollution in Coastal Waters* (EPA840-B–92–002). That guidance document details management measures appropriate for the control of five sources of nonpoint pollution in the coastal zone: agriculture, forestry, urban areas, marinas and recreational boating, and hydromodification. The document also includes management measures for wetlands, riparian areas, and vegetated treatment systems as they are important to the abatement of nonpoint source pollution in coastal waters. State and Territory Coastal Nonpoint Pollution Control Programs were required to adopt measures "in conformity" with the coastal management measures guidance.

The 1993 management measures guidance focused on conditions and examples of management measure implementation from the coastal zone. To date, technical guidance on the best available, economically achievable measures for controlling nonpoint sources with a national scope has not been released. The draft national management measures guidance is intended to address this gap. While the practices detailed in the 1993 guidance generally apply to inland areas, EPA has recognized the utility of developing and publishing a technical guidance document that explicitly addresses nonpoint source pollution on a nationwide basis. Moreover, additional data and examples from inland regions are available to enrich the national guidance. In addition, significant changes have occurred in sectors of the agriculture industry since 1993. These changes have helped to prompt the revision and expansion of the agriculture chapter of the 1993 guidance.

**II. Scope of the Draft Guidance—Sources of Agricultural Nonpoint Pollution Addressed**

The draft technical guidance continues to focus on the major sources of agricultural pollution identified in the 1993 coastal guidance by EPA in consultation with a number of other federal agencies and other leading national experts, including several experts from State land grant universities. Specifically, the guidance identifies management measures for the following:

1. Nutrients;
2. Pesticides;

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3. Erosion and sediment;
4. Animal feeding operations;
5. Grazing; and
6. Irrigation water.

### III. Approach Used To Develop Guidance

The draft national management measures guidance is based in large part on the 1993 coastal guidance. The 1993 coastal guidance was developed using a workgroup approach to draw upon technical expertise within other Federal agencies as well as State water quality and coastal zone management agencies.

The 1993 text has been expanded to include more background information on standard agricultural practices (*e.g.*, why farmers irrigate, history of pesticides) and to address emerging issues in agriculture (*e.g.*, precision farming). The draft guidance also incorporates examples and data from the inland regions of the United States (*e.g.*, grazing in Colorado) in addition to improving the coverage of unique coastal environments (*e.g.*, Hawaii). The document also updates information on technologies and the costs of management measures where new data has become available since the publication of the coastal guidance.

Only one of the management measures from the 1993 document has been altered in substance: the management measure for animal feeding operations. The coastal guidance contained a management measure whose implementation involved storing facility wastewater and runoff from confined animal facilities for all storms up to and including a 25-year, 24-hour storm and the management of stored runoff and accumulated solids through an appropriate waste utilization system for operations of more than 300 animal units. The management measure in the 1993 coastal guidance does not involve the implementation of manure storage structures or areas, only the control of runoff from such areas. The draft guidance recommends implementation of adequate manure storage in addition to the management of runoff, diversion of clean water, application of manure in accordance with a nutrient management plan, and protection of land receiving wastes through the use of other management measures (*i.e.*, grazing, irrigation water, erosion control), as appropriate. Recent concern over the management of wastes from animal feeding operations, changes in standard practice within the livestock industry, the enactment and promulgation of many new State laws and regulations throughout the country, and the recent publication of the joint U.S. Department of Agriculture/U.S. Environmental Protection Agency Unified National Strategy for Animal Feeding Operations (March 1999) prompted the alterations to the management measure for animal feeding operations described above.

### IV. Request for Comments

EPA is soliciting comments on the draft guidance on management measures to control agricultural sources of nonpoint pollution. The Agency is soliciting additional information and supporting data on the measures specified in this guidance and on additional measures that may be as effective or more effective in controlling nonpoint source pollution from agriculture.

Dated: October 5, 2000.

**J. Charles Fox,**

*Assistant Administrator, Office of Water.*

[FR Doc. 00–26637 Filed 10–16–00; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

**[OPPTS–51953; FRL–6749–3]**

## Certain New Chemicals; Receipt and Status Information

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from August 28, 2000 to September 8, 2000, consists of the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

**ADDRESSES:** Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–51953 and the specific PMN number in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** Barbara Cunningham, Director, Office of Program Management and Evaluation, Office of Pollution Prevention and Toxics (7401), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

*B. How Can I Get Additional Information, Including copies of this Document and Other Related Documents?*

1. *Electronically.* You may obtain copies of this document and certain other available documents from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPPTS–51953. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA NonConfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the center is (202) 260–7099.



*C. How and to Whom Do I Submit Comments?*

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–51953 and the specific PMN number in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Document Control OffiCe (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: OPPT Document Control Office (DCO) in East Tower Rm. G–099, Waterside Mall, 401 M St., SW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 260–7093.

3. *Electronically.* You may submit your comments electronically by e-mail to: "oppt.ncic@epa.gov," or mail your computer disk to the address identified in this unit. Do not submit any information electronically that you consider to be CBI. Electronic Comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPPTS–51953 and the specific PMN number. Electronic comments may also be filed online at many Federal Depository Libraries.

*D. How Should I Handle CBI that I Want to Submit to the Agency?*

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

*E. What Should I consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice or collection activity.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

### II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from August 28, 2000 to September 8, 2000, consists of the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

### III. Receipt and Status Report for PMNs

This status report identifies the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available.

In table I, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 29 PREMANUFACTURE NOTICES RECEIVED FROM: 08/25/00 TO 09/08/00

| Case No. | Received Date | Projected Notice End Date | Manufacturer/Importer | Use | Chemical |
|---|---|---|---|---|---|
| P–00–1150 | 08/28/00 | 11/26/00 | Eastman Chemical Company | (S) Raw materials for hot-melt adhesives | (G) Poly(ester-ether) |
| P–00–1151 | 08/28/00 | 11/26/00 | Eastman Chemical Company | (S) Raw materials for hot-melt adhesives | (G) Poly(ester-ether) |
| P–00–1152 | 08/28/00 | 11/26/00 | CBI | (G) Component of coating with open use | (G) Ketimine |
| P–00–1153 | 08/28/00 | 11/26/00 | CBI | (G) Component of coating with open use | (G) Ketimine |
| P–00–1154 | 08/28/00 | 11/26/00 | CBI | (G) Component of coating with open use | (G) Ketimine |

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I. 29 PREMANUFACTURE NOTICES RECEIVED FROM: 08/25/00 TO 09/08/00—Continued

| Case No. | Received Date | Projected Notice End Date | Manufacturer/Importer | Use | Chemical |
|---|---|---|---|---|---|
| P–00–1155 | 08/28/00 | 11/26/00 | CBI | (G) Component of coating with open use | (G) Ketimine |
| P–00–1156 | 08/28/00 | 11/26/00 | CBI | (G) Component of coating with open use | (G) Amino functional polymer |
| P–00–1157 | 08/28/00 | 11/26/00 | CBI | (G) Component of coating with open use | (G) Amino functional polymer |
| P–00–1158 | 08/28/00 | 11/26/00 | CBI | (G) Component of coating with open use | (G) Amino functional polymer |
| P–00–1159 | 08/28/00 | 11/26/00 | CBI | (G) Component of coating with open use | (G) Amino functional polymer |
| P–00–1160 | 08/29/00 | 11/27/00 | CBI | (G) Polymeric binder | (G) Styrene-methacrylate copolymer |
| P–00–1161 | 08/31/00 | 11/29/00 | CBI | (G) Open, non-dispersive (resin) | (G) Polyether acrylate |
| P–00–1162 | 08/31/00 | 11/29/00 | CBI | (G) Rubber additive | (G) Metallic methacrylate |
| P–00–1163 | 08/31/00 | 11/29/00 | Vantico Inc., North America | (S) Hardener for epoxy dielectric insulation;hardener for pipe bonding | (S) Oxiranemethanamine, *n,n'*-(methylenedi-4,1-phenylene)bis[*n*-(oxiranylmethyl)-, polymer with 4,4'-methylenebis[2-methylcyclohexanamine]* |
| P–00–1164 | 08/31/00 | 11/29/00 | Warner-Jenkinson Co., Inc. | (S) Technical dye | (S) 1h-pyrazole-3-Carboxylic acid, 4,5-dihydro-5oxo-1-(4-sulfoophenyl)-=4-[(sulfophenyl)azo]-, compd. with 2-aminoethanol* |
| P–00–1165 | 08/31/00 | 11/29/00 | CBI | (G) Surface active agent | (G) Fluoropolyether derivative |
| P–00–1166 | 09/01/00 | 11/30/00 | BASF Corporation | (S) Processing aid for leather finishing | (G) Aromatic silicone derivative, compds with aromatic amine |
| P–00–1167 | 09/01/00 | 11/30/00 | CBI | (G) Coating component | (G) Acrylic solution polymer |
| P–00–1168 | 09/01/00 | 11/30/00 | CBI | (G) Raw material; processing aid | (G) Alkanepolyol monoether |
| P–00–1169 | 09/01/00 | 11/30/00 | CBI | (G) Raw material; processing aid | (G) Alkanepolyol diether |
| P–00–1170 | 09/05/00 | 12/04/00 | NICCA U.S.A., Inc. | (S) Monomer for nylon dye fix | (S) Phenol, 4,4'-sulfonylbis-, monosodium salt* |
| P–00–1171 | 09/05/00 | 12/04/00 | The Dow Chemical Company | (G) Thermoplastic parts | (G) Hydrogenated polymer |
| P–00–1172 | 09/05/00 | 12/04/00 | CBI | (G) Intermediate for solvent based coatings | (G) Polyurethane polymer |
| P–00–1173 | 09/01/00 | 11/30/00 | Dow Corning Corporation | (S) Adhesion promoter | (G) Bis[(alkoxysilyl)alkyl]polysulfide |
| P–00–1174 | 09/01/00 | 11/30/00 | Dow Corning Corporation | (S) Adhesion promoter | (G) Bis[(alkoxysilyl)alkyl]polysulfide |
| P–00–1175 | 09/07/00 | 12/06/00 | CBI | (G) Component of coating with open use | (G) Aliphatic polyurea |
| P–00–1176 | 09/08/00 | 12/07/00 | CBI | (S) Polyol for polyurethane manufacture | (G) Polyester polyol |
| P–00–1177 | 09/08/00 | 12/07/00 | CBI | (S) Intermediate for polyurethane manufacture | (G) Functionalized polyether |
| P–00–1178 | 09/08/00 | 12/07/00 | CBI | (G) Open, non-dispersive (resin) | (G) Aliphatic polyisocyanate |

In table II, EPA provides the following information (to the extent that such information is not claimed as CBI) on the TMEs received:

II. 1 TEST MARKETING EXEMPTION NOTICES RECEIVED FROM: 08/28/00 TO 09/08/00

| Case No. | Received Date | Projected Notice End Date | Manufacturer/Importer | Use | Chemical |
|---|---|---|---|---|---|
| T–00–0006 | 09/05/00 | 10/20/00 | CBI | (S) As an ingredient in a new human antipersoirant formulation | (G) Alkyl epoxide |

In table III, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:



III. 36 NOTICES OF COMMENCEMENT FROM: 08/28/00 TO 09/08/00

| Case No. | Received Date | Commencement/ Import Date | Chemical |
|---|---|---|---|
| P–00–0194 | 08/28/00 | 08/15/00 | (G) Amine functional acrylic polymer |
| P–00–0308 | 08/29/00 | 08/07/00 | (S) Hexanedioic acid, polymer with 2,2-dimethyl-1,3-propanediol, 2-ethyl-2-(hydroxymethyl)-1,3-propanediol, 1,6-hexanediol, 3-hydroxy-2-(hydroxymethyl)-2-methylpropanoic acid, 1,1'-methylenebis[4-isocyanatoyclohexane] and 2-methyl-1,5-pentanediamine, compd. with *n,n*-diethylethanamine* |
| P–00–0318 | 09/05/00 | 08/15/00 | (G) Cuprate(6-), [2-[[[[3-[[4-fluoro-6-[[2-[[4-fluoro-6-[[4-[(sulfonated alkyl) azo]phenyl] amino]-1,3,5-triazin-2-yl]amino]-1-methylethyl]amino]-1,3,5-triazin-2-yl] amino]-2-(hydroxy-.kappa.0)-5-sulfophenyl]azo-.kappa.n2] phenylmethyl] azo-.kappa.n1]-4-sulfobenzoate(8-)]-, potassium sodium* |
| P–00–0340 | 08/28/00 | 08/12/00 | (S) 2-propenoic acid, 2-methyl-, 2-hydroxyethyl ester, polymer with ethene, ethenyl acetate and 2-ethylhexyl 2-propenoate* |
| P–00–0358 | 09/05/00 | 08/04/00 | (G) Triphenylamine derivative |
| P–00–0364 | 08/28/00 | 07/28/00 | (G) Copper complex of (substituted sulfonaphthyl azo substituted phenyl) disulfonaphthyl azo, amine salt |
| P–00–0365 | 08/28/00 | 07/28/00 | (G) Copper complex of (substituted sulfonaphthyl azo substituted phenyl) disulfonaphthyl azo, salt |
| P–00–0379 | 09/06/00 | 07/29/00 | (G) Blocked polyurethane resin, amine salt |
| P–00–0448 | 09/08/00 | 08/11/00 | (G) Titanium-aluminum complex on amorphous silica |
| P–00–0454 | 08/28/00 | 08/10/00 | (G) Acrylate copolymer |
| P–00–0470 | 08/30/00 | 08/17/00 | (G) Polyurethane |
| P–00–0477 | 08/29/00 | 08/15/00 | (G) Fatty acids, tall-oil, polymers with 5-amino-1,3,3-trimethylcyclohexanemethanamine, dicarboxylic acid, fumarated rosin and pentaerythritol |
| P–00–0490 | 09/01/00 | 08/10/00 | (G) Substituted acrylamides copolymer |
| P–00–0529 | 08/31/00 | 07/29/00 | (G) Terpolyamide or copolyamide |
| P–00–0542 | 09/06/00 | 08/09/00 | (G) Modified phenol formaldehyde resin |
| P–00–0559 | 08/28/00 | 06/02/00 | (G) Solvent blue 43 |
| P–00–0637 | 08/30/00 | 08/09/00 | (G) Substituted alkyl salt of halogentated organoborate |
| P–00–0638 | 08/30/00 | 08/03/00 | (G) Alkali metal salt of halogenated organoborate |
| P–00–0782 | 08/30/00 | 08/23/00 | (G) Fatty acid polymer with alkyl diols, isocyanic acid, ester, alkoxylated polyether diolsulfonate, 2-oxepanone and alkyl diamine |
| P–95–1213 | 09/07/00 | 05/12/00 | (G) Hydroxy terminated polyester |
| P–97–0296 | 09/05/00 | 08/02/00 | (G) Alkyl benzene sulfonic acids, amine salts |
| P–97–0299 | 09/05/00 | 08/01/00 | (G) Alkyl ether sulfates, amine salts |
| P–97–0441 | 08/28/00 | 07/26/00 | (S) Fatty acids, tall-oil, reaction products with bisphenol a, bu glycidyl ether, epichlohydrin and triethlenetetramine* |
| P–98–0052 | 08/30/00 | 07/27/00 | (G) Metal phenate-sulfonate complex |
| P–98–0961 | 08/29/00 | 08/19/00 | (S) Hexadecanol, branched* |
| P–98–0962 | 08/29/00 | 08/19/00 | (S) Heptadecanol, branched* |
| P–99–0561 | 09/07/00 | 11/03/99 | (G) Hydroxyl terminated polyester |
| P–99–1050 | 09/05/00 | 07/24/00 | (G) 1,7-naphthalenedisulfonic acid, 2-[[substituted-1,3,5-triazin-2-yl]amino]-5-hydroxy-6-substituted-, salt |
| P–99–1098 | 09/06/00 | 08/02/00 | (G) Hydroxyfunctional acrylic copolymer with ethanol, 2-(dimethylamino)- |
| P–99–1166 | 09/05/00 | 08/25/00 | (G) Stilbene disulfonic acid triazine derivative |
| P–99–1310 | 08/28/00 | 08/03/00 | (G) Polyol |
| P–99–1328 | 09/06/00 | 08/02/00 | (G) Modified melamine resin |
| P–99–1368 | 09/05/00 | 08/11/00 | (G) Alpha olefin - maleic anhydride copolymer, alkyl esters |

**List of Subjects**

Environmental Protection, Chemicals, Premanufacturer notices.

Dated:September 21, 2000.

**Deborah A. Williams,**

*Director, Information Management Division, Office of Pollution Prevention and Toxics.*

[FR Doc. 00–26640 Filed 10–16–00; 8:45 am]
BILLING CODE 6560–50–S

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

October 3, 2000.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of

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information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Written comments should be submitted on or before November 16, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *lesmith@fcc.gov*.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at *lesmith@fcc.gov*.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060–0816.

*Title:* Local Competition and Broadband Reporting, CC Docket No. 99–301.

*Form Number:* FCC Report 477.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit entities.

*Number of Respondents:* 255.

*Estimate Time Per Response:* 58.67 hours (avg.).

*Frequency of Response:* Semi-annual reporting requirement.

*Total Annual Burden:* 29,924 hours.

*Total Annual Costs:* None.

*Needs and Uses:* The FCC Form 477 seeks to gather information on the development of local competition and deployment of broadband service also known as advanced telecommunications services. The data are necessary to evaluate the status of developing competition in local exchange telecommunications markets and to evaluate the status of broadband deployment. The Commission staff uses the information to advise the Commission about the efficacy of the FCC rules and policies adopted to implement the Telecommunications Act of 1996.

*OMB Control Number:* 3060–XXXX.

*Title:* Notification of Emergency Alert System Status.

*Form Number:* N/A.

*Type of Review:* New collection.

*Respondents:* Business or other for-profit entities; Not-for-profit institutions; and State, local, or tribal government.

*Number of Respondents:* 125.

*Estimate Time Per Response:* 30 minutes.

*Frequency of Response:* On occasion reporting requirement.

*Total Annual Burden:* 62 hours.

*Total Annual Costs:* None.

*Needs and Uses:* Due to the state's size, remoteness, and isolation, it is difficult for the resident agent of the FCC's Alaska office to make on-the-scene inspections to insure that the FM translators are in compliance with the Emergency Alert System (EAS) rules adopted on January 1, 1997. The agent is, therefore, developing a survey to determine whether the FM translators are either rebroadcasting local programming in their entirety, including the EAS warnings, or, if not, then whether the FM translator station has EAS equipment installed and working properly. FM translator stations that are not in compliance could present a safety-of-life issue to the listening public.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 00–26598 Filed 10–16–00; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[CC Docket No. 96–45; FCC 00J–3]**

### Federal-State Joint Board on Universal Service Seeks Comment on Rural Task Force Recommendation

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice; solicitation of comments.

**SUMMARY:** In a Public Notice in this proceeding released on October 4, 2000, the Federal-State Joint Board on Universal Service sought comment on the Rural Task Force recommendation for universal service reform for rural carriers.

**DATES:** Submit comments on or before November 3, 2000 and reply comments on or before November 30, 2000.

**ADDRESSES:** See Supplementary Information section for where and how to file comments.

**FOR FURTHER INFORMATION CONTACT:** Gene Fullano (202) 418–7400 TTY: (202) 418–0484.

**SUPPLEMENTARY INFORMATION:** In the May 1997 *Universal Service Order*, 62 FR 32862 (June 17, 1997), the Commission, acting on the recommendation of the Federal-State Joint Board on Universal Service (the Joint Board), encouraged the Joint Board to establish a Rural Task Force to "provide valuable assistance in identifying the issues unique to rural carriers and analyzing the appropriateness of proxy cost models for rural carriers." On September 17, 1997, the Joint Board announced the creation of the Rural Task Force and directed it to present a report to the Joint Board making specific recommendations on the establishment of a forward-looking economic cost mechanism for rural telephone companies. The Joint Board will consider this report in formulating a recommendation to the Commission for universal service reform for rural carriers.

On September 29, 2000, the Rural Task Force submitted the Rural Task Force Recommendation To The Federal-State Joint Board On Universal Service. This recommendation, as well as supporting materials, are available on the Joint Board's Web page at *http://www.fcc.gov/ccb/universal service/joint.html* and the Rural Task Force's Web site at *http://www.wutc.wa.gov/rtf*. Consistent with the procedures outlined below, the Joint Board seeks comment on the recommendation.

Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before November 3, 2000, and reply comments on or before November 30, 2000. All filings should reference *Federal-State Joint Board On Universal Service*, CC Docket No. 96–45, *Comments on the Rural Task Force Recommendation* and should include the FCC number shown on this Public Notice. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998). Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit electronic comments by Internet e-mail. To receive filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

Parties should also send three paper copies of their filing to Sheryl Todd, Accounting Policy Division, Common Carrier Bureau, Federal Communications Commission, 445 Twelfth Street SW., Room 5–B540, Washington, DC 20554 and to the individuals listed on the attached service list. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20037.

Dated: October 11, 2000.

**Magalie Roman Salas,**

*Secretary.*

**Service List**

The Honorable Susan Ness, Commissioner, FCC Joint Board Chair, Federal Communications Commission, 445 12th Street, SW, Rm. 8–B115H, Washington, DC 20554

The Honorable Harold Furchtgott-Roth, Commissioner, Federal Communications Commission 445 12th Street, S.W., Rm. 8–B115H, Washington, DC 20554

The Honorable Gloria Tristani, Commissioner, Federal Communications Commission, 445 12th Street, S.W., Rm. 8–B115H, Washington, DC 20554

The Honorable Laska Schoenfelder, Commissioner, State Joint Board Chair, South Dakota Public Utilities Commission, State Capitol, 500 East Capitol Street, Pierre, SD 57501–5070

The Honorable Martha Hogerty, Public Counsel, Missouri Office of Public Counsel, 301 West High St., Suite 250, Truman Building, P.O. Box 7800, Jefferson City, MO 65102

The Honorable Bob Rowe, Commissioner, Montana Public Service Commission, 1701 Prospect Avenue, P.O. Box 202601, Helena, MT 59620–2601

The Honorable Patrick H.Wood, III, Chairman, Texas Public Utility Commission, 1701 North Congress Avenue, P.O. Box 13326, Austin, TX 78711–3326

The Honorable Nanette G. Thompson, Chair, Regulatory Commission of Alaska 1016 West Sixth Avenue, Suite 400, Anchorage, AK 99501–1693



Rowland Curry, Chief Engineer, Texas Public Utility Commission, 1701 North Congress Avenue, P.O. Box 13326, Austin, TX 78701–3326

Greg Fogleman, Economic Analyst, Florida Public Service Commission, 2540 Shumard Oak Blvd., Gerald Gunter Bldg., Tallahassee, FL 32399–0850

Mary E.Newmeyer, Federal Affairs Advisor, Alabama Public Service Commission, 100 N. Union Street, Ste. 800, Montgomery, AL 36104

Joel Shifman, Senior Advisor, Maine Public Utilities Commission, 242 State Street, State House Station 18, Augusta ME 04333–0018

Peter Bluhm, Director of Policy Research, Vermont Public Service Board, Drawer 20, 112 State St., 4th Floor, Montpielier, VT 05620–2701

Charlie Bolle, Policy Advisor, Nevada Public Utilities Commission, 1150 E. Williams Street, Carson City, NV 89701–3105

Carl Johnson, Telecom Policy Analyst, New York Public Service Commission, 3 Empire State Plaza, Albany, NY 12223–1350

Lori Kenyon, Common Carrier Specialist, Regulatory Commission of Alaska, 1016 West 6th Ave, Suite 400, Anchorage, AK 99501

Susan Stevens Miller, Assistant General Counsel, Maryland Public Service Commission, 16th Floor, 6 Paul Street, Baltimore, MD 21202–6806

Tom Wilson, Economist, Washington Utilities & Transportation Commission, 1300 Evergreen Park Drive, S.W., P.O. Box 47250, Olympia, WA 98504–7250

Philip McClelland, Senior Assistant Consumer Advocate, PA Office of Consumer Advocate, 555 Walnut Street, Forum Place, 5th Floor, Harrisburg, PA 17101–1923

Barbara Meisenheimer, Consumer Advocate, Missouri Office of Public Counsel, 301 West High St., Suite 250, Truman Building, P.O. Box 7800, Jefferson City, MO 65102

Earl Poucher, Legislative Analyst, Office of the Public Counsel, 111 West Madison, Rm. 812, Tallahassee, FL 32399–1400

Ann Dean, Assistant Director, Maryland Public Service Commission, 16th Floor, 6 Paul Street, Baltimore, MD 21202–6806

David Dowds, Public Utilities Supervisor, Florida Public Service Commission, 2540 Shumard Oaks Blvd., Gerald Gunter Bldg., Tallahassee, FL 32399–0850

[FR Doc. 00–26599 Filed 10–16–00; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[Report No. AUC–36–C (Auction No. 36); DA 00–2260]**

### Auction of Licenses for 800 MHz Specialized Mobile Radio (SMR) Service Frequencies in the Lower 80 Channels; Status of FCC Form 175 Applications To Participate in the Auction

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** This document announces 20 applicants whose short-form auction applications for the 800 MHz SMR Auction (Auction No. 36) are accepted for filing and instructs those applicants on upfront payment information, bidding software and other pertinent information in reference to the auction. Also, this document identifies the 19 incomplete applicants and 1 rejected applicant reported for this auction.

**DATES:** Auction No. 36 is scheduled to begin on Wednesday, November 1, 2000.

**FOR FURTHER INFORMATION CONTACT:** M. Nicole Oden, Auctions Legal Branch at (202) 418–0660 (regarding legal questions); Linda Sanderson, Auctions Operations (regarding bidding and general filing status) at (717) 338–2888. For questions about payment or instructions for wiring upfront payments, contact Gail Glasser or Tim Dates, Auctions Accounting Group, at (202) 418–1995.

**SUPPLEMENTARY INFORMATION:** This is a summary of a public notice released October 6, 2000 ("Auction No. 36 Public Notice"). The complete text of the *"Auction No. 36 Public Notice,"* including all attachments, is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW, Washington, DC. It may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (ITS, Inc.) 1231 20th Street, NW, Washington, DC 20036, (202) 857–3800. It is also available on the Commission's website at *http://www.fcc.gov/wtb/auctions*. List of Attachments available at the FCC:

Attachment A—List of Accepted Applicants

Attachment B—List of Incomplete Applicants

Attachment C—List of Rejected Applicants

1. The Federal Communications Commission ("FCC") has received 40

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FCC Form 175 applications to participate in Auction No. 36 scheduled to begin on Wednesday, November 1, 2000, for 2,800 licenses in the 800 MHz Band. The applications have been reviewed for completeness and compliance with the Commission's rules, and have been classified into the following categories:

*Accepted for Filing:* 20 Applications.

*Incomplete:* 19 Applications.

*Rejected:* 1 Application.

*Accepted:* Applications accepted for filing are listed alphabetically in Attachment A of the *Auction No. 36 Public Notice.* These applicants will become qualified bidders upon receipt of the required upfront payment due by 6:00 p.m. ET on Monday, October 16, 2000. *See* 47 CFR 1.2106. With respect to the FCC Form 175 applications, these applicants need take no further action except as may be necessary to maintain the accuracy of their applications. *See* 47 CFR 1.65. Also, applicants are advised that Attachment A includes FCC account numbers that were automatically created by the FCC software system for each applicant, and which are applicable for bidding only.

*Incomplete:* Applications found to be incomplete are listed alphabetically in Attachment B of the *Auction No. 36 Public Notice.* Applicants whose FCC Form 175 applications have been deemed incomplete will receive overnight correspondence indicating what information is required to make the applications acceptable for filing. These applicants may become qualified bidders only if they: (i) Resubmit their applications by 6:00 p.m. ET on Monday, October 16, 2000, to correct the minor deficiencies indicated; and (ii) make the required upfront payments by 6:00 p.m. ET on Monday, October 16, 2000. Applicants must also maintain the accuracy of their FCC Form 175 applications as required by the Commission's rules. In addition, applicants are advised that Attachment B includes FCC account numbers that were automatically created by the FCC software system for each applicant. These account numbers are applicable for bidding purposes only, should the applicant become eligible to participate in Auction No. 36.

2. The filing window for resubmitting FCC Form 175 applications is now open. Corrected applications must be filed no later than 6:00 p.m. ET on Monday, October 16, 2000. This will be the only opportunity to cure FCC Form 175 defects; late resubmissions will not be accepted. In addition, if an application remains incomplete or otherwise deficient after the resubmission deadline has passed, the application will be rejected.

*Rejected:* The application(s) classified as rejected are listed in Attachment C. Applicants whose applications have been rejected are disqualified from participation in Auction No. 36.

**Upfront Payment Deadline**

3. Upfront payments and accompanying FCC Remittance Advice (FCC Form 159) for Auction No. 36 are due and must be received at Mellon Bank, Pittsburgh, Pennsylvania, no later than 6:00 p.m. ET on Monday, October 16, 2000. Payments must be made by wire transfer and applicants must include their Taxpayer Identification Numbers (TIN). No other payment method is acceptable for this auction. Applicants are reminded to use their TIN and not their FCC Account Numbers on the FCC Remittance Advice (FCC Form 159).

4. Applicants that have filed applications deemed to be incomplete, as noted in this public notice, must submit timely and sufficient upfront payments before the Commission will review their resubmitted applications. If such an application remains incomplete following its resubmission, the application will be dismissed. If the applicant has provided its Taxpayer Identification Number (TIN) and wire transfer instructions, the upfront payment will be refunded automatically.

**Other Important Information**

5. *Qualified Bidders:* Approximately one week after upfront payments have been received, resubmitted FCC Form 175 applications have been processed and reviewed, and the correlation of payments and applications have been made, a public notice listing all applicants qualified to bid in the auction will be released. The same public notice will also include instructions on how to access the auction tracking tool software, a bidding schedule for the Mock auction, and the bidding schedule for the first day of the auction.

6. *Prohibition of Collusion:* Bidders are reminded that § 1.2105(c) of the Commission's Rules prohibits applicants for the same geographic license area from communicating with each other during the auction about bids, bidding strategies, or settlements unless they have identified each other as parties with whom they have entered into agreements under § 1.2105(a)(2)(viii). For Auction No. 36, this prohibition became effective at the filing deadline of short-form applications on Friday, September 29, 2000, and will end on the post-auction down payment due date. The post-auction down payment due date will be announced in a future public notice. If parties had agreed in principle on all material terms, those parties must have been identified on the short-form application under § 1.2105(c), even if the agreement had not been reduced to writing. If parties had not agreed in principle by the filing deadline, an applicant should not have included the names of those parties on its application, and must not have continued negotiations with other applicants for licenses in the same geographic area. For further details regarding the prohibition against collusion, refer to the *Auction No. 36 Public Notice.*

7. In addition, applicants are reminded that they are subject to the antitrust laws, which are designed to prevent anti-competitive behavior in the marketplace. Winning bidders will be required to disclose in their long-form applications the specific terms, conditions and parties involved in all bidding consortia, joint ventures, partnerships, and other arrangements entered into relating to the competitive bidding process. Bidders found to have violated the anti-collusion rule may be subject to sanctions.

8. *Ex Parte Rule:* Applicants should also be aware that the Commission has generally exempted auction proceedings from the strict requirements of the *ex parte* rule found in 1.2106 of the Commission's rules.

9. *Mock Auction:* All applicants found to be qualified bidders are eligible to participate in a mock electronic auction on Monday, October 30, 2000. In the *Qualified Bidders Public Notice,* the Bureau will announce when software for the mock auction will be posted on the World Wide Web.

10. *Remote Bidding Software:* Applicants are reminded that qualified bidders are eligible to bid either electronically or telephonically. To bid electronically, applicants should complete the software order form included in the *Auction No. 36 Public Notice,* or contact the Auctions Hotline at (717) 338–2888. To ensure timely delivery of remote bidding software before the auction begins, the Commission requests receipt of software orders by 6:00 p.m. ET on Tuesday, October 17, 2000. The minimum hardware and software specifications required for the FCC remote bidding system are listed:

- CPU: Intel ® Pentium or above
- RAM: 16 MB (more recommended if you have multiple applications open)
- Hard Disk: 33 MB available disk space
- 1.44 MB Floppy Drive or CD–ROM Drive (to install the Remote Bidding System)
- Modem: v.32bis 28.8 kbps Hayes© compatible modem (56.6 kbps recommended)
- Monitor: VGA or above
- Mouse or other pointing device
- Microsoft® Windows ™ 95™ or 98™
- We recommend that you use Netscape® Communicator ™ 4.73. However, you can also use Netscape Communicator 4.7 or 4.72.

To download Netscape Communicator 4.73 free of charge, access the Netscape download site at http://home.netscape.com/download/.

**Note:** The FCC Remote Bidding System has not been tested in a Macintosh, OS/2, or Windows NT™ environment. Therefore, the FCC will not support operating systems other than Microsoft Windows 95 or 98. This includes any other emulated Windows environment.

11. *Long-Form Applications:* All applicants should be aware that at the long-form application stage, they will be subject to the more extensive reporting requirements contained in the Commission's Part 1 ownership disclosure rule.

12. *Bidder Alerts:* All applicants must certify on their FCC Form 175 applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license, and not in default on any payment for Commission licenses (including down payments) or delinquent on any non-tax debt owed to any Federal agency. Prospective bidders are reminded that submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

13. Information about deceptive telemarketing investment schemes is available from the FTC at (202) 326–2222 and from the SEC at (202) 942–7040. Complaints about specific deceptive telemarketing investment schemes should be directed to the FTC, the SEC, or the National Fraud Information Center at (800) 876–7060. Consumers who have concerns about specific proposals may also call the FCC Consumer Center at (888) CALL–FCC ((888) 225–5322).

Federal Communications Commission.

**Margaret Wiener,**

*Deputy Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau.*

[FR Doc. 00–26597 Filed 10–16–00; 8:45 am]

BILLING CODE 6712–01–P



## FEDERAL COMMUNICATIONS COMMISSION

### Sunshine Act Meeting

October 12, 2000.

**Deletion of Agenda Item From the October 12 Open Meeting**

The following item has been deleted from the list of agenda items scheduled for consideration at the October 12, 2000, Open Meeting and previously listed in the Commission's Notice of October 5, 2000.

Item No. 3.

*Bureau:* Wireless Telecommunications.

*Title:* Promotion of Competitive Networks in Local Telecommunications Markets (WT Docket No. 99–217); Wireless Communications Association International, Inc., Petition for Rule Making to Amend Section 1.4000 of the Commission's Rules to Preempt Restrictions on Subscriber Premises Reception or Transmission Antennas Designed to Provide Fixed Wireless Services; Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 (CC Docket No. 96–98); and Review of Sections 68.104, and 68.213 of the Commission's Rules Concerning Connection of Simple Inside Wiring to Telephone Network (CC Docket No. 88–57).

*Summary:* The Commission will consider a First Report and Order and Further Notice of Proposed Rule Making in WT Docket No. 99–217, a Fourth Report and Order and Memorandum Opinion and Order in CC Docket No. 96–98, and a Memorandum Opinion and Order in CC Docket No. 88–57), regarding obstacles to consumer's choice of telecommunications providers in multiple tenant environments.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 00–26781 Filed 10–13–00; 2:49 pm]

BILLING CODE 6712–01–M

## FEDERAL COMMUNICATIONS COMMISSION

**[Report No. 2446]**

### Petitions for Reconsideration and Clarification of Action in Rulemaking Proceeding

October 11, 2000.

Petitions for Reconsideration and Clarification have been filed in the Commission's rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of this document is available for viewing and copying in Room CY–A257, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed by November 1, 2000. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions have expired.

*Subject:* Deployment of Wireline Services Offering Advanced Telecommunications Capability (CC Docket No. 98–147); and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 (CC Docket No. 96–98).

*Number of Petitions Filed:* 4.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 00–26596 Filed 10–16–00; 8:45 am]

BILLING CODE 6712–01–M

## FEDERAL COMMUNICATIONS COMMISSION

**[Report No. 2445]**

### Petitions for Reconsideration and Clarification of Action in Rulemaking Proceeding

October 12, 2000.

Petitions for Reconsideration and Clarification have been filed in the Commission's rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of this document is available for viewing and copying in Room CY–A257, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, ITC, Inc. (202) 857–3800. Oppositions to these petitions must be filed by November 1, 2000. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions have expired.

*Subject:* Federal-State Joint Board on Universal Service (CC Docket No. 96–45), Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission.

*Number of Petitions Filed:* 2.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 00–26600 Filed 10–16–00; 8:45 am]

BILLING CODE 6712–01–M

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## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 31, 2000.

**A. Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

*1. Gene Allen Van Meter*, Beaumont, Texas; Barbara Van Meter, Beaumont, Texas; Gene Allen Van Meter, Jr. , Lumberton, Texas; and Gary Stephen Van Meter, Beaumont, Texas all to acquire additional voting shares of Lamar Bancshares, Inc., Beaumont, Texas, and thereby indirectly acquire additional voting shares of Lamar Bank, Beaumont, Texas.

Board of Governors of the Federal Reserve System, October 11, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00–26542 Filed 10–16–00; 8:45 am]

BILLING CODE 6210–01–P

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 00–25132) published on page 58771 of the issue for Monday, October 2, 2000.

Under the Federal Reserve Bank of Kansas City heading, the entry for Sturm Financial Group, Inc., Denver, Colorado, is revised to read as follows:

**A. Federal Reserve Bank of Kansas City** (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

*1. Sturm Financial Group, Inc.*, Denver, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of Sturm Banks of Colorado, Inc., Denver, Colorado, and thereby indirectly acquire Bank of Cherry Creek N.A., Boulder, Colorado, Bank of Cherry Creek N.A., Denver, Colorado, Mesa National Bank, Grand Junction, Colorado, Western National Bank of Colorado, Colorado Springs, Colorado; Sturm Banks of Wyoming, Inc., Denver, Colorado, and thereby indirectly acquire American National Bank of Cheyenne, Cheyenne, Wyoming, Wyoming Bank & Trust Company N.A., Buffalo, Wyoming, Stockgrowers State Bank N.A., Worland, Wyoming, Bank of Laramie N.A., Laramie, Wyoming; and Sturm Banks of Kansas City, Inc., Denver, Colorado, and thereby indirectly acquire Premier Bank, Lenexa, Kansas.

In connection with this application, Applicant also has applied to acquire Community First Data Services, Inc., Cheyenne, Wyoming, and thereby engage in data processing activities, pursuant to 225.28(b)(14) of Regulation Y.

In addition to this application, Sturm Financial Group, Inc., Denver, Colorado and Sturm Banks of Kansas City, Inc., Denver, Colorado also have applied to engage in lending activities, pursuant to 225.28(b)(1) of Regulation Y.

Comments on this application must be received by October 26, 2000.

Board of Governors of the Federal Reserve System, October 11, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00–26541 Filed 10–16–00; 8:45 am]

BILLING CODE 6210–01–P

## FEDERAL RESERVE SYSTEM

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Board of Governors of the Federal Reserve System.

**TIME AND DATE:** 11 a.m., Monday, October 23, 2000.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Lynn S. Fox, Assistant to the Board; 202–452–3204.

**SUPPLEMENTARY INFORMATION:** You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: October 13, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00–26784 Filed 10–13–00; 3:25 pm]

BILLING CODE 6210–01–P

## FEDERAL TRADE COMMISSION

### Agency Information Collection Activities; Proposed Collection; Comment Request

**AGENCY:** Federal Trade Commission (FTC).

**ACTION:** Notice.

**SUMMARY:** The FTC has investigated several cases in which manufacturers of pharmaceutical drug products and generic competitors have allegedly entered into anticompetitive agreements to delay generic entry. These cases may foreshadow similar anticompetitive agreements that may eliminate the benefits to consumers of generic drug competition. The FTC is considering a study to investigate how generic drug competition has developed in light of certain provisions in the Hatch-Waxman Act that govern entry of generic drug products. Before investigating whether these provisions of the Hatch-Waxman Act encourage generic competition or facilitate the use of anticompetitive strategies, the FTC seeks public comments on its proposed information requests to firms in the pharmaceutical drug industry. Comments will be considered before the FTC submits a request for Office of Management and Budget (OMB) review under the Paperwork Reduction Act.

**DATES:** Comments must be submitted on or before December 18, 2000.

**ADDRESSES:** Send written comments to Secretary, Federal Trade Commission, Room H–159, 600 Pennsylvania Avenue, NW., Washington, DC 20580, or by e-mail to <*generic drugstudy@ftc.gov*>. The submissions should include the submitter's name, address, telephone number, and, if available, FAX number and e-mail address. All submissions should be captioned "Generic Drug Study—FTC File No. V000014."



**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be addressed to Michael S. Wroblewski, Advocacy Coordinator, Policy Planning, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580; telephone (202) 326–2155, e-mail <*mwroblewski@ftc.gov*>.

**SUPPLEMENTARY INFORMATION:** Over the next five years, brand-name drugs with combined U.S. sales approaching $20 billion will go off patent.[1] Manufacturers seeking to protect the sales of branded drug products may have an incentive and ability to enter into agreements with would-be generic competitors that would slow or thwart the entry of competing generic drug products approved by the Food and Drug Administration pursuant to its authority under the Drug Price Competition and Patent Term Restoration Act of 1984 (the Hatch-Waxman Act).

The FTC invites comment on: (1) Whether the proposed collections of information are necessary for the proper performance of the functions of the FTC, including whether the information will have practical utility; (2) the accuracy of the FTC's estimate of the burden of the proposed collections of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of collecting the information on those who are to respond, including through the use of collection techniques or other form of information technology, *e.g.*, permitting electronic submissions of responses. The FTC will submit the proposed information collection requirements to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

#### A. Description of the Collection of Information and Proposed Use

The FTC proposes to send information requests to approximately 30 innovator drug companies (*i.e.*, brand-name drug manufacturers) and 60 generic drug companies to examine their use of agreements and other strategies that may affect generic drug competition. The companies to which the information requests would be sent include name-brand pharmaceutical drug companies that have received notice of the filing of an Abbreviated New Drug Application (ANDA), as defined by 21 U.S.C. 355(j), and generic drug companies that have filed such ANDAs since January 1, 1991. In addition to routine questions about the name, address, and incorporation date of the responding company and its subsidiaries, and the name, business address, and official capacity of the official supervising the company's response, the FTC will ask innovator drug companies to provide answers to the following four questions:

1. Submit all agreements between the company and any person[2] (including corporations or other business entities acquired since the agreement(s) was (were) executed) executed after January 1, 1991, relating to[3] an ANDA, involving any Drug Product.[4] Examples of such agreements include, but are not limited to: (a) Patent litigation settlements (full or partial) between the company and persons that have filed an ANDA involving any Drug Product; (b) agreements related to the filing (or non-filing) of an ANDA by any applicant (or potential applicant) involving any Drug Product; (c) licensing agreements between the company and persons that have filed an ANDA involving any Drug Product; and (d) agreements related to any acquisition, divestiture, joint venture, alliance, license or merger by the company of any business involving the research, development, manufacture or sale of any Drug Product that is the subject of an ANDA. The company is not required to submit purchase orders for base active materials, equipment and facility contracts, and employment contracts. For any such agreement submitted, also submit all studies, surveys, analyses and reports which were prepared by or for any officer(s) or director(s) of the company (or, in the case of unincorporated entities, individuals exercising similar functions) that evaluate or analyze the reasons for making such agreement (or any of the provisions in such agreement), and indicate (if not contained in the document itself) the date of preparation, and the name and title of each individual who prepared each such document.

2. Identify all patents that the company has filed in the Orange Book and the date of listing (regardless of whether they are currently listed in the Orange Book) relating to any Drug Product for which the company has been notified of the filing of an ANDA by another person. Also indicate if the patent(s) was (were) filed after the company received approval of the New Drug Application, as defined under 21 U.S.C. 355(b) *et seq.*, for the Drug Product. Also submit a copy of each such patent identified and identify whether the patent is owned by, assigned to, or licensed to the company.

3. Identify and list all lawsuits since January 1, 1991 (including the court, date filed, docket number, parties, current or final status (including dates), current or final docket sheet, and any reporter cites) to which the company is or was a party that involve an ANDA paragraph IV certification related to any Drug Product. Submit the complaint, the answer, any motion(s) for summary judgment, and any court orders for each such lawsuit.

4. For each Drug Product for which the company has been notified that an ANDA containing a paragraph IV certification had been filed with the FDA, state the company's sales,[5] in units and dollars, by dosage for each calendar year since, and including, the year the company was notified of the filing of such ANDA.

In addition to routine questions about the name, address, and incorporation date of the responding company and its subsidiaries, and the name, business address, and official capacity of the official supervising the company's response, the FTC will ask generic drug companies to provide answers to the following five questions:

1. Submit all agreements between the company and any other person[6] (including corporations or other business entities acquired since the agreement(s) was (were) executed) executed after January 1, 1991, relating to[7] any ANDA involving any Drug Product.[8] Examples of such agreements

[1] National Institute for Health Care Management, "Prescription Drugs and Intellectual Property Protection" at 3 (August 2000).

[2] The term "person" means any natural person, corporate entity, partnership, association, joint venture, or trust which is engaged in research and development, planning and design, production and manufacturing, distribution, or sales and marketing of any Drug Product.

[3] The term "relating to" means in whole or in part constituting, containing, concerning, discussing, describing, analyzing, identifying or stating.

[4] The term "Drug Product" includes any pharmaceutical drug substance the company has listed in the publication "Approved Drug Products with Therapeutic Equivalence Evaluations" (the "Orange Book") (regardless of whether the Drug Product is currently listed in the Orange Book) and specifically includes, but is not limited to, drug products which contain certain active ingredients. (A list of such active ingredients will be tailored specifically for each company based on whether the company has been notified that a paragraph IV ANDA has been submitted against it for such drug product.)

[5] The term "sales" means net sales, *i.e.*, total sales after deducting discounts, returns, allowances and excise taxes. "Sales" includes sales of the Drug Product whether manufactured by the company itself or purchased from sources outside the company and resold by the company in the same manufactured form as purchased.

[6] *See* n. 2 supra.

[7] *See* n. 3 supra.

[8] The term "Drug Product" includes any pharmaceutical drug substance listed in the Orange Book (regardless of whether the Drug Product is

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include, but are not limited to: (a) Patent litigation settlements (either full or partial) between the company and any Innovator Company; [9] (b) agreements between the company and any other person related to the filing (or non-filing) of an ANDA by the company involving any Drug Product; (c) licensing agreements entered into with any Innovator Company; and (d) agreements related to any acquisition, divestiture, joint venture, alliance, license or merger by the company of any business involving the research, development, manufacture or sale of any Drug Product that is the subject of an ANDA. The company is not required to submit purchase orders for base active materials, equipment and facility contracts, and employment contracts. For any such agreement submitted, also submit all studies, surveys, analyses and reports which were prepared by or for any officer(s) or director(s) (or, in the case of unincorporated entities, individuals exercising similar functions) that evaluate or analyze the reasons for making such agreement (or any of the provisions in such agreement), and indicate (if not contained in the document itself) the date of preparation, and the name and title of each individual who prepared each such document.

2. Identify and list all lawsuits since January 1, 1991 (including the court, date filed, docket number, parties, current or final status (including dates), current or final docket sheet, and any reporter cites) to which the company is or was a party involving an ANDA paragraph IV certification. In those cases in which the company is not the sole defendant, describe how litigation expenses are or have been distributed among the parties.

3. Identify when the company began first commercial marketing of a generic version of any Drug Product approved by the FDA since January 1, 1991 in those instances in which the Innovator Company brought an action for infringement of a patent against the company or any other ANDA applicant (or, if applicable, indicate that no such commercial marketing has occurred). Identify when the company received tentative and final approvals from the Food and Drug Administration (FDA) for such Drug Product.

4. Identify each instance in which the company has asserted before a court or before the FDA that a patent was improperly or untimely listed as defined in 21 U.S.C. 355(b) or (c). For each such assertion, submit the pleading(s) in which such assertion was made and any responsive pleading(s).

5. For each Drug Product for which the company has filed an ANDA containing a paragraph IV certification, state the company's sales [10] (if any), in units and dollars, by dosage for each calendar year since, and including, the year the company received approval of such ANDA.

The FTC will obtain the information sought by interrogatories and document requests under section 6(b) of the FTC Act, 15 U.S.C. 46(b). The documents and information obtained through these orders will help the FTC determine whether agreements or other strategies are being used to delay generic drug competition and thus may merit law enforcement action, and to evaluate the effectiveness of the generic drug provisions of the Hatch-Waxman Act. It should be noted that subsequent to this notice any destruction, removal, mutilation, alteration, or falsification of documentary evidence that may be responsive to this information collection within the possession or control of a person, partnership or corporation subject to the FTC Act is subject to criminal prosecution. 15 U.S.C. 50; *see also* 18 U.S.C. § 1505.

**B. Estimated Burden Hours**

The FTC will ask members of the pharmaceutical industry to answer several written questions and to produce documents related to the answers provided. Because the responses will necessarily vary depending upon the extent to which drug companies have entered into such agreements, listed patents in the Orange Book, engaged in litigation related to ANDAs containing a paragraph IV certification, and commercially marketed particular generic drug products, the FTC has provided a range of estimated response times from 90 hours to 400 hours. The total estimated burden of answering the questions and producing documents per respondent is based on the following:

*Organize document and information retrieval:* 15–50 hours.

*Identify requested information:* 15–150 hours.

*Retrieve responsive information:* 20–80 hours.

*Copy requested information:* 20–40 hours.

*Prepare response:* 20–80 hours.

Thus, the cumulative hours burden to produce documents and prepare the response sought will be between 8,100 hours (90 hours × 90 companies) and 36,000 hours (400 hours × 90 companies).

**C. Estimated Cost Burden**

It is not possible to calculate with precision the labor costs associated with answering the questions and producing the documents requested, as responses will entail participation by management and/or support staff at various compensation levels among many different companies. Individuals among some or all of those labor categories may be involved in the information collection process. Nonetheless, the FTC has assumed that mid-management personnel will handle most of the tasks involved in gathering and producing the responsive information, and has applied an average hourly wage of $150/hour for their labor. The FTC also has applied an average hourly wage of $10 for the labor of clerical employees who will copy the responsive materials. Thus, the labor costs per company should range between $10,700 [(70 hours × $150/hour) + (20 hours × $10/hour)] and $53,000 [(350 hours × $150/hour) + (50 hours × $10/hour)].

The FTC estimates that the capital or other non-labor costs associated with the information requests will be minimal. Although the information requests may require that respondent retain copies of the information provided to the Commission, industry members should already have in place the means to store information of the volume requested. In addition, respondents may have to purchase office supplies such as file folders, computer diskettes, photocopier toner, or paper in order to comply with the Commission's requests. The FTC estimates that each respondent will spend $500 for such costs regarding the information request, for a total additional non-labor cost burden of $45,000 ($500 × 90 companies).

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 00–26649 Filed 10–16–00; 8:45 am]

BILLING CODE 6750–01–P

currently listed in the Orange Book) and specifically includes drug product containing certain active ingredients. (A list of such active ingredients will be tailored specifically for each company based on whether the company has submitted a paragraph IV ANDA for such drug product.)

[9] The term "Innovator Company" means each company (including its predecessors in interest, subsidiaries, affiliates, successors, and assigns) that has filed a New Drug Application, as defined under 21 U.S.C. 355(b) *et seq.* for any Drug Product.

[10] *See* n. 5 supra.



**FEDERAL TRADE COMMISSION.**

**[File No. 982 3035]**

**Weider Nutrition International, Inc.; Analysis to Aid Public Comment**

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement.

**SUMMARY:** The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

**DATES:** Comments must be received on or before November 6, 2000.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW., Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** Richard Cleland or Lemuel Dowdy, FTC/S–4002, 600 Pennsylvania Ave., NW., Washington, DC 20580; (202) 326–3088 or 326–2981.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commisison's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for October 5, 2000), on the World Wide Web, at "http://www.ftc.gov/os/2000/09/index.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue NW., Washington, DC 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania. Ave., NW., Washington, DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible by a 3½-inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

**Analysis of Proposed Consent Order To Aid Public Comment**

The Federal Trade Commission has accepted an agreement to a proposed consent order from Weider Nutrition International, Inc. (hereinafter "Weider").

The proposed consent order has been placed on the public record for thirty (30) days for the reception of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and any comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

This matter involves advertisements for a dietary supplement called PhenCal or PhenCal 106. Advertisements claimed that PhenCal and PhenCal 106 have been proven to cause weight loss and to prevent the regaining of lost weight. These advertisements appeared in major newspapers such as the New York Times, the Washington Post, and USA Today.

The proposed complaint alleges that Weider could not substantiate claims that PhenCal and PhenCal 106: (1) Cause significant weight loss; (2) significantly increase a person's ability to maintain a reduced caloric diet and exercise program; (3) significantly reduce food cravings and eating binges; (4) prevent the regaining of lost weight; (5) are as effective as the prescription weight loss treatment commonly known as "Phen-Fen"; and (6) are safe when used to promote or maintain weight loss. The complaint also alleges that Weider made false representations that claims (1), (3), (4), (5), and (6) above, had been scientifically proven.

The proposed consent order contains provisions designed to prevent the respondent from engaging in similar acts and practices in the future.

Part I of the proposed order requires respondent, when advertising any food, drug, dietary supplement or program, to possess competent and reliable scientific evidence before making claims (1) through (6) above.

Part II of the proposed order requires respondent, when advertising any food, drug, dietary supplement, or program, to possess competent and reliable scientific evidence before making claims relating to—

A. The safety of such product or program;

B. The effect of such product or program on any disease; or

C. The comparative or superior health benefit of such product or program with respect to any other product or program.

Part III prohibits respondent from misrepresenting the existence, contents, validity, results, conclusions, or interpretations of any test, study or research in an advertisement for any food, drug, dietary supplement or program.

Part IV allows the respondent to make representations for any drug that are permitted in labeling for that drug under any tentative final or final Food and Drug Administration ("FDA") standard or under any new drug application approved by the FDA.

Part V allows the respondent to make representations for any product that are specifically permitted in labeling for that product by regulations issued by the FDA under the Nutrition Labeling and Education Act of 1990.

Part VI requires respondent to pay $400,000 to the Commission. These funds will be used for consumer redress or, if that is impracticable, the funds will be paid to the United States Treasury.

Part VII requires respondent to retain, and make available to the Commission, upon request, all advertisements and promotional materials containing any representation covered by the order, as well as any materials that it relied upon in disseminating the representation and any materials that contradict, qualify, or call into question the representation.

The remainder of the proposed order contains standard requirements that the respondent distribute the order to relevant personnel, that respondent notify the Commission of any changes in corporate structure that might affect compliance with the order and that the respondent file one or more reports detailing its compliance with the order.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order, or to modify in any way its terms.

By direction of the Commission.

**C. Landis Plummer,**

*Acting Secretary.*

[FR Doc. 00–26648 Filed 10–16–00; 8:45 am]

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**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Notice of a Meeting of the National Bioethics Advisory Commission (NBAC)**

**SUMMARY:** Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is given of a meeting of the National Bioethics Advisory Commission. The Commission will discuss its ongoing project ethical and policy issues in the oversight of human subjects research in the United States. Some Commission members may participate by telephone conference. The meeting is open to the public and opportunities for statements by the public will be provided on October 24 from 1:30–2:00 pm.

*Date, Time, and Location*

October 24, 2000, 8:30 a.m.–5:00 p.m.
Embassy Suites Hotel, Downtown Salt Lake City, 110 West 600 South, Salt Lake City, Utah 84101
October 25, 2000, 8:00 a.m.–12:00 p.m.
Same Location as Above

**SUPPLEMENTARY INFORMATION:** The President established the National Bioethics Advisory Commission (NBAC) on October 3, 1999 by Executive Order 12975 as amended. The mission of the NBAC is to advise and make recommendations to the National Science and Technology Council, its Chair, the President, and other entities on bioethical issues arising from the research on human biology and behavior, and from the applications of that research.

**Public Participation**

The meeting is open to the public with attendance limited by the availability of space on a first come, first serve basis. Members of the public who wish to present oral statements should contact Ms. Jody Crank by telephone, fax machine, or mail as shown below as soon as possible, at least 4 days before the meeting. The Chair will reserve time for presentations by persons requesting to speak and asks that oral statements be limited to five minutes. The order of persons wanting to make a statement will be assigned in the order in which requests are received. Individuals unable to make oral presentations can mail or fax their written comments to the NBAC staff office at least five business days prior to the meeting for distribution to the Commission and inclusion in the public record. The Commission also accepts general comments at its website at bioethics.gov. Persons needing special assistance, such as sign language interpretation or other special accommodations, should contact NBAC staff at the address or telephone number listed below as soon as possible.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jody Crank, National Bioethics Advisory Commission, 6705 Rockledge Drive, Suite 700, Bethesda, Maryland 20892–7979, telephone (301) 402–4242, fax number (301) 480–6900.

Dated: October 11, 2000.

**Eric M. Meslin,**

*Executive Director, National Bioethics Advisory Commission.*

[FR Doc. 00–26558 Filed 10–16–00; 8:45 am]

**BILLING CODE 4167–01–P**

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**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Disease Control and Prevention**

**Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy Sites: Savannah River Site Health Effects Subcommittee**

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), the Centers for Disease Control and Prevention (CDC) and the Agency for Toxic Substances and Disease Registry (ATSDR) announce the following meeting.

*Name:* Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy (DOE) Sites: Savannah River Site Health Effects Subcommittee (SRSHES).

*Times and Dates:*
8:30 a.m.–5 p.m., November 2, 2000.
8:30 a.m.–12 noon, November 3, 2000.

*Place:* Westin on Hilton Head Island, Two Grasslawn Avenue, Hilton Head Island, South Carolina 29928–5536, telephone 843/681–4000, fax 843/681–1087.

*Status:* Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

*Background:* Under a Memorandum of Understanding (MOU) signed in December 1990 with DOE and replaced by an MOU signed in 1996, the Department of Health and Human Services (HHS) was given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production use. HHS delegated program responsibility to CDC.

In addition, a memo was signed in October 1990 and renewed in November 1992 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund"). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions form the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

*Purpose:* This subcommittee is charged with providing advice and recommendations to the Director, CDC, and the Administrator, ATSDR, pertaining to CDC's and ATSDR's public health activities and research at this DOE site. The purpose of this meeting is to provide a forum for community interaction and serve as a vehicle for community concern to be expressed as advice and recommendations to CDC and ATSDR.

*MAtters to be Discussed:* Agenda items include presentations from the National Center for Environmental Health (NCEH) and ATSDR on updates regarding progress of current studies. Agenda items are subject to change as priorities dictate.

*Contact Person for more Information:* Paul G. Renard, Executive Secretary, SRSHES, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, Building 6, Room T004, 1600 Clifton Road, NE (E–39), Atlanta, GA 30333, telephone 404/639–2550, fax 404/639–2575.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and ATSDR.

Dated: October 4, 2000.

**Carolyn J. Russell,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 00–26588 Filed 10–16–00; 8:45 am]

**BILLING CODE 4163–18–P**



**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Administration for Children and Families**

**Submission for OMB Review; Comment Request**

*Title:* Annual Survey of Refugees (ASR).

*OMB No.:* 0970–0033.

*Description:* The Refugee Act of 1980, and the Refugee Assistance amendments enacted in 1982 and 1986, stress the achievement of employment and self-sufficiency by refugees as soon as possible after their arrival in the U.S. The Annual Survey of Refugees collects information on the economic circumstances of a random sample of refugees, Amerasians, and entrants who arrived in the U.S. during the previous five years focusing on their education, training, labor force participation, and welfare utilization rates. From their responses, ORR reports on the economic adjustment of refugees to the American economy. These data are used by Congress in its annual deliberations of refugee admissions and funding and by program managers in formulating policies for the future direction of the Refugee Resettlement Program.

*Respondents:* Approximately 2,000 refugees.

ANNUAL BURDEN ESTIMATES

| Instrument | Number of respondents | Number of responses per respondents | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| ASR Telephone Survey | 2,000 | 1 | 40 minutes | 1,350 |
| Estimated Total Annual Burden Hours: | | | | 1,350 |

*Additional Information:* Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

*OMB Comment:* OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for ACF.

Dated: October 11, 2000.

**Bob Sargis,**

*Reports Clearance Officer.*

[FR Doc. 00–26657 Filed 10–16–00; 8:45 am]

**BILLING CODE 4184–01–M**

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**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**[Docket No. 00N–1379]**

**Agency Information Collection Activities; Submission for OMB Review; Comment Request; Procedures for the Safe Processing and Importing of Fish and Fishery Products**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

**DATES:** Submit written comments on the collection of information by November 16, 2000.

**ADDRESSES:** Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Wendy Taylor, Desk Officer for FDA.

**FOR FURTHER INFORMATION CONTACT:** Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

**Procedures for the Safe Processing and Importing of Fish and Fishery Products (OMB Control Number 0910–0354)—Extension**

FDA regulations in part 123 (21 CFR part 123) mandate the application of Hazard Analysis and Critical Control Point (HACCP) principles to the processing of seafood. HACCP is a preventive system of hazard control designed to help ensure the safety of foods. The regulations were issued under FDA's statutory authority to regulate food safety, including section 402(a)(1) and (a)(4) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342(a)(1) and (a)(4)), and became effective on December 18, 1997.

Certain provisions in part 123 require that processors and importers of seafood collect and record information. The HACCP records compiled and maintained by a seafood processor primarily consist of the periodic observations recorded at selected monitoring points during processing and packaging operations, as called for in a processor's HACCP plan (e.g., the values for processing times, temperatures, acidity, etc. as observed at critical control points). The primary purpose of HACCP records is to permit a processor to verify that products have been produced within carefully established processing parameters (critical limits) that ensure that hazards have been avoided. HACCP records are normally reviewed by appropriately trained employees at the end of a production lot or at the end of a day or week of production to verify that control limits have been maintained, or that appropriate corrective actions were taken if the critical limits were not maintained. Such verification activities are essential to ensure that the HACCP system is working as planned. A review of these records during the conduct of periodic plant inspections also permits FDA to determine whether the products have been consistently processed in conformance with appropriate HACCP food safety controls.

Section 123.12 requires that importers of seafood products take affirmative steps and maintain records that verify that the fish and fishery products they offer for import into the United States

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were processed in accordance with the HACCP and sanitation provisions set forth in part 123. These records are also to be made available for review by FDA as provided in § 123.12(c).

The time and costs of these recordkeeping activities will vary considerably among processors and importers of fish and fishery products, depending on the type and number of products involved, and the nature of the equipment or instruments required to monitor critical control points. The burdens have been estimated using typical small seafood processing firms as a model because these firms represent a significant proportion of the industry.

The burden estimate in table 1 includes only those collections of information under the seafood HACCP regulations that are not already required under other statutes and regulations. For example, the current good manufacturing practices provisions in 21 CFR part 110 already require that all food processors ensure good sanitary practices and conditions, monitor the quality of incoming materials, monitor and control food temperatures to prevent bacterial growth, and perform certain corrective actions and verification procedures. Furthermore, the estimate does not include collections of information that are a usual and customary part of businesses' normal activities. For example, the tagging and labeling of molluscan shellfish (21 CFR 1240.60) is a customary and usual practice among seafood processors. Consequently the estimates in table 1 account only for new information collection and recording requirements attributable to part 123.

In the **Federal Register** of July 21, 2000 (65 FR 45382), the agency requested comments on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

| 21 CFR Section | No. of Recordkeepers | Annual Frequency per Recordkeeping[2] | Total Annual Records | Hours per Recordkeeper[3] | Total Hours | Total Operating and Maintenance Costs |
|---|---|---|---|---|---|---|
| 123.6(a), (b), and (c) | 243 | 1 | 243 | 16 | 3,888 | $58,320 |
| 123.6(c)(5) | 4,850 | 4 | 19,400 | 0.30 | 5,820 | $87,300 |
| 123.8(a)(1) and (c) | 4,850 | 1 | 4,850 | 4 | 19,400 | $291,000 |
| 123.12(a)(2)(ii) | 1,000 | 80 | 80,000 | 0.20 | 16,000 | $240,000 |
| 123.6(c)(7) | 4,850 | 280 | 1,358,000 | 0.30 | 407,400 | $6,111,000 |
| 123.7(d) | 1,940 | 4 | 7,760 | 0.10 | 1,940 | $29,100 |
| 123.8(d) | 4,850 | 47 | 227,950 | 0.10 | 227,795 | $341,925 |
| 123.11(c) | 4,850 | 280 | 1,358,000 | 0.10 | 135,800 | $2,037,000 |
| 123.12(c) | 1,000 | 80 | 80,000 | 0.10 | 8,000 | $120,000 |
| 123.12(a)(2) | 50 | 1 | 50 | 4 | 200 | $3,000 |
| 123.10 | 243 | 1 | 24 | 24 | 5,832 | $87,480 |
| Total | | | | | 627,075 | $9,406,125 |

[1] There are no capital costs associated with this collection of information.
[2] Based on an estimated 280 working days per year.
[3] Estimated average time per 8-hour work day unless one time response.
The above estimates include the information collection requirements in the following sections:
§ 123.16 Smoked Fish—process controls (see § 123.6(b)),
§ 123.28(a) Source Controls—molluscan shellfish (see § 123.6(b)), and
§ 123.28(c), (d) Records—molluscan shellfish (see § 123.6(c)(7)).

Dated: October 6, 2000.
**Margaret M. Dotzel,**
*Associate Commissioner for Policy.*
[FR Doc. 00–26607 Filed 10–16–00; 8:45 am]
BILLING CODE 4160–01–F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Advisory Committee for Pharmaceutical Science; Notice of Meeting

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

*Name of Committee:* Advisory Committee for Pharmaceutical Science.

*General Function of the Committee:* To provide advice and recommendations to the agency on FDA's regulatory issues.

*Date and Time:* The meeting will be held on November 15 and 16, 2000, from 8:30 a.m. to 5:30 p.m.

*Location:* University of Maryland, Shady Grove Campus, Auditorium, 9640 Gudelsky Dr., Rockville, MD 20850.

*Contact Person:* Nancy Chamberlin, Center for Drug Evaluation and Research (HFD 21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, or e-mail: CHAMBERLINN@cder.fda.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12539. Please call the Information Line for up-to-date information on this meeting.

*Agenda:* On November 15, 2000, the committee will: (1) Discuss approaches to reducing the regulatory burden for chemistry, manufacturing, and controls supplements; and (2) hear reports and provide direction to the Advisory Committee for Pharmaceutical Science's Subcommittee on Orally Inhaled and Nasal Drug Products, and to the Subcommittee on Nonclinical Studies. On November 16, 2000, the committee will: (1) Discuss the FDA guidance entitled "A Guidance for Industry, Waiver of In Vivo Bioavailability and Bioequivalence Studies for Immediate-Release Solid Oral Dosage Forms Based on a Biopharmaceutics Classification System," see the FDA Internet web address www.fda.gov/cder/guidance/3618fnl.htm under the heading of "Biopharmaceutic Guidances;" the FDA draft guidance entitled "A Guidance for Industry, BA and BE Studies for Orally Administered Drug Products-General Considerations," see the FDA Internet web address www.fda.gov/cder/guidance/2762dft.htm under the heading of "Biopharmaceutic Draft Guidances;" and the FDA draft guidance entitled "A Guidance for Industry, Average, Population, and Individual Approaches to Establishing Bioequivalence," see the FDA Internet web address www.fda.gov/cder/guidance/1716dft.htm under the heading of "Biopharmaceutic Draft Guidances;" (2) provide comments and advice to the Clinical Pharmacology Modeling and Simulation Working Group; (3) receive updates on both FDA intramural research and the Product Quality Research Institute; and (4) provide advice on scientific issues specific to generic drugs.

*Procedure:* Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by November 6, 2000. Oral presentations from the public will be scheduled between approximately 1 p.m. to 2 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before November 6, 2000, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: October 5, 2000.
**Bernard A. Schwetz,**
*Acting Deputy Commissioner.*
[FR Doc. 00–26606 Filed 10–16–00; 8:45 am]
BILLING CODE 4160–01–F



## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Proposed Collection; Comment Request; Survey of IRB Chairs Concerning the Implementation of Pediatric Research Regulations

**SUMMARY:** In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

**Proposed Collection**

*Title:* Survey of IRB Chairs Concerning the Implementation of Pediatric Research Regulations.

*Type of Information Collection Request:* New.

*Need and Use of Information Collection:* In order to assess the protection of children who are enrolled in clinical research, it is important to determine how Institutional Review Boards (IRBs) reviewing such research interpret and implement the Federal Regulations for research with children set forth in 45 CFR 46 Subpart D. This study aims to gather this information through telephone interviews with chairpersons of IRBs that review clinical research with children. In addition, we will solicit background information on each IRB from the IRB coordinator. In particular, the survey aims to assess how IRBs assess risk/benefit levels of research with children, when IRBs permit children's assent to be waived, what information IRBs require children to be presented during the asset process, and which children are excluded from participation in riskier research. In addition, the survey will attempt to determine how the recent NIH Policy and Guidelines on the Inclusion of Children as Participants in Research Involving Human Subjects has affected IRB review. *Frequency of Response:* Once. *Affected Public:* Individuals. *Type of Respondents:* IRB chairpersons and IRB coordinators. The annual reporting burden follows in the table below. The annualized cost to respondents is estimated at: $10,000. There are no Capital Costs to report. There are no Operating or Maintenance Cost to report.

RESPONDENT AND BURDEN ESTIMATE INFORMATION

| Type of respondents | Estimated number of respondents | Estimated number of responses per respondent | Average burden hours per response | Estimated total annual burden hours requested |
|---|---|---|---|---|
| IRB chairs | 200 | 1 | 0.5 | 100 |
| IRB coordinators | 200 | 1 | 0.5 | 100 |
| Total | | | | 200 |

**Request for Comments**

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

**FOR FURTHER INFORMATION CONTACT:** To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Dave Wendler, Ph.D., Head, Unit on Vulnerable Populations, Department of Clinical Bioethics, NIH, Building 10, Room 1C118, 9000 Rockville Pike, Bethesda, MD 20892, or call non-toll-free number (301) 435–8726 or e-mail your request, including your address, to: DWendler@cc.nih.gov.

**Comments Due Date**

Comments regarding this information collection are best assured of having their full effect if received on or before December 18, 2000.

Dated: October 4, 2000.
**Ezekiel Emanuel,**
*Chief, Department of Clinical Bioethics.*
[FR Doc. 00–26581 Filed 10–16–00; 8:45 am]
BILLING CODE 4140–01–M

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**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**National Institutes of Health**

**Proposed Collection; Comment Request; The National Epidemiologic Survey on Alcohol and Related Conditions**

**SUMMARY:** In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Institute on Alcohol Abuse and Alcoholism (NIAAA), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

**Proposed Collection**

*Title:* The National Epidemiologic Survey on Alcohol and Related Conditions. *Type of Information Collect Request:* New. *Need and Use of Information Collection:* This study will determine the incidence and prevalence of alcohol used disorders in a representative sample of the United States population with the primary purpose of estimating the extent and distribution of alcohol consumption, alcohol use disorders and their associated psychological and medical disabilities across major sociodemographic subgroups. The primary objectives of this first wave of this longitudinal study is to understand the relationships between alcohol consumption, alcohol use disorders and their related disabilities with a view towards designing more effective treatment and intervention programs. The findings will provide valuable information concerning: (1) Trends in alcohol use disorders and their related disabilities in subgroups of the population of special concern; (2) identification of subgroups at high risk for alcohol use disorders that may be complicated by associated psychological and medical disabilities; (3) incidence of alcohol use disorders and their Associated disabilities with a view toward understanding their natural history; (4) treatment utilization of alcohol use disorders in order to determine unmet treatment need and linguistic, social, economic and cultural barriers to treatment; (5) the college-aged segment of the population at high risk for binge drinking and its adverse consequences; and (6) the identification of safe and hazardous levels of drinking as they relate to the development of alcohol use disorders and their associated disabilities. *Frequency of Response:* On occasion. *Affected Public:* Individuals *Type of Respondents:* Adults. *Estimated Number of Respondents:* 48,000; Estimated Number of Responses per Respondent: 1; *Average Burden Hours Per Response:* 1.00; and *Estimated Total Annual Burden Hours Requested:* 48,000. The annualized cost to respondents is estimated at: $576,000.00. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

**Request for Comments**

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collection; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electric, mechanical, or other technical collection techniques or other forms of information technology.

**FOR FURTHER INFORMATION CONTACT:** To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Dr. Bridget Grant, Chief, Biometry Branch, Division of Biometry and Epidemiology, NIAAA, NIH, Willco Building, Suite 514, 6000 Executive Boulevard, Bethesda, Maryland 20892–7003, or call non-toll-free number (301) 443–7370 or E-mail your request, including your address to *Bgrant@willco.niaaa.nih.gov.*

**Comments Due Date:**

Comments regarding this information collection are best assured of having their full effect if received on or before December 18, 2000.

Dated: October 4, 2000.

**Stephen Long,**

*Executive Officer, NIAAA.*

[FR Doc. 00–26583 Filed 10–16–00; 8:45 am]

**BILLING CODE 4140–01–M**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**National Institutes of Health**

**Proposed Collection; Comment Requested; Evaluation of National Youth Anti-Drug Media Campaign**

**SUMMARY:** In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Institute on Drug Abuse of the National Institutes of Health will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget for review and approval.

**Proposed Collection**

*Title:* Evaluation of National Youth Anti-Drug Media Campaign. *Type of Information Collection Request:* Revision. *Need and Use of Information Collection:* In 1998, the White House Office of National Drug Control Policy transferred funds to NIDA to conduct an independent, scientifically designed and implemented evaluation of the National Youth Anti-Drug Media Campaign, the first prevention campaign to use paid advertising to discourage youth from drug use. The study is assessing the outcomes and impact of the national campaign in reducing illegal drug use among children and adolescents.

In the first year, two surveys were conducted: (1) The National Survey of Parents and Youth (NSPY), a cross-sectional household survey; and (2) the Community Longitudinal Study of Parents and Youth (CLSPY) in four communities with an ethnographic component. The purpose of this revision is to discontinue the CLSPY and incorporate its longitudinal component into the NSPY to maximize resources and strengthen analytic ability. The revised NSPY will be the first to measure the effectiveness of a media campaign by following a large nationally-representative cohort of parents and children from the same household as they are exposed to a media campaign over time. All data will continue to be collected using a combination of computer-assisted personal interviews (CAPI) and audio computer-assisted self-interviews (ACASI). The findings form the basis of semiannual and annual reports on campaign progress. These reports provide assistance in improving the national campaign, and will help to establish a rich data base of information about the process involved in changing attitudes and behaviors by the mass media.

*Frequency of Response:* The revised NSPY data collection will continue over a four-year period, ending in June 2003. Each data collection wave will last approximately 6 months. *Affected public:* Individuals and households.

*Type of Respondents:* Children and parents. The annual reporting burden, which will drop substantially from the original design, is as follows:

RESPONDENT AND BURDEN ESTIMATE

| Type of respondents | Estimated number of respondents | Estimated number of responses per respondent | Average burden hours per response | Estimated total burden hours requested | Estimated annualized burden 1/1/01–5/31/02 |
|---|---|---|---|---|---|
| **Revised National Survey of Youth and Parents (Baseline 1/1/01–5/31/01)** | | | | | |
| Screener Respondent | 15,498 | 1 | .06 | 930 | [1] 620 |
| Youth 9–11 | 738 | 1 | .60 | 443 | [1] 295 |
| Teens 12–18 | 1,189 | 1 | .73 | 868 | [1] 579 |
| Parents | 1,369 | 1 | .92 | 1,259 | [1] 840 |
| **National Survey of Parents and Youth (Longitudinal 1/1/01–5/31/02)** | | | | | |
| Screener Respondent | 4,739 | 1.2 | .06 | 341 | [3] 227 |
| Youth 9–11 | 1,403 | 1.2 | .60 | 1,010 | [3] 673 |
| Adolescents 12–18 | 4,553 | 1.2 | .90 | 3,934 | [3] 2,622 |
| Parents | 4,334 | 1.2 | .90 | 4,680 | [3] 3,120 |
| Total | [2] 33,823 | | .26 | 13,465 | 8,976 |

[1] Interviewing of revised NSPY baseline respondents begins 1/01; earlier baseline data collected from 11/99–12/00.
[2] Some number of screener respondents are later also selected for a parent interview. The exact overlapping proportion cannot be estimated at this time.
[3] Follow-up of NSPY respondents from the earlier baseline data collected (11/99–12/00) begins 1/01.

There are no Capital Costs to report. There are no Operating or Maintenance Costs to report. Because of the sensitivity of collecting data from families in households involving children as young as 9 years old, and the importance of minimizing costs for repetitive, return visits to obtain respondent cooperation, IDA provides a reasonable cost incentive to reimburse respondents for their time, as approved by OMB.

**REQUEST FOR COMMENTS:** Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed revision in the data collection is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed revision, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

**FOR FURTHER INFORMATION CONTACT:** To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Susan David, Project Officer; Division of Services, Epidemiology and Prevention Research, National Institute on Drug Abuse, Room 5153, MSC 9589, 6001 Executive Blvd., Bethesda, MD 20892–9589; or call non-toll-free number (301) 443–6504; or fax to (301) 443–2636; or email your request, including your address, to: Sdavid@nida.nih.gov.

**COMMENTS DUE DATE:** Comments regarding this information collection are best assured of having their full effect if received on or before December 18, 2000.

Dated: October 2, 2000.

**Laura Rosenthal,**

*Executive Officer, NIDA.*

[FR Doc. 00–26584 Filed 10–16–00; 8:45 am]

**BILLING CODE 4140–01–M**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**National Institutes of Health**

**Government-Owned Inventions; Availability for Licensing**

**AGENCY:** National Institutes of Health, Public Health Service, DHHS.

**ACTION:** Notice.

**SUMMARY:** The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

**ADDRESSES:** Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

**Virus-Like Particles as Unlinked Adjuvants**

John Schiller, Bryce Chackerian, Joseph Lee, Douglas Lowy (NCI), DHHS Reference No. E–231–00/0 filed 20 Jul 2000.

*Licensing Contact:* Peter Soukas; 301/496–7056 ext. 268; e-mail: soukasp@od.nih.gov

This invention claims immunostimulating or vaccine compositions in which non-infectious virus-like particles (VLPs) serve as unlinked adjuvants. Co-administration of VLPs with an antigen enhances induction of high titer IgG antibodies to self or foreign antigens and promotes T cell responses to foreign antigens. The

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VLP-target antigen combination can be administered alone or with a traditional adjuvant. The VLPs of the current invention are contemplated to comprise capsid protein(s) of a virus assembled into a shell resembling a virion, but not containing pathogenic viral DNA or RNA. The VLPs are unlinked, rather than physically linked to the antigen because this may reduce the manufacturing complexity of the vaccine. Unlinked VLP adjuvants, for example papillomavirus VLPs, of the invention have a number of advantages: (1) They are non-inflammatory in humans, (2) are potent at amplifying IgG antibody responses to self antigens, (3) induce a pronounced Th1 type of T cell response, and (4) may provide two-fold protection, against the virus corresponding to the VLP type, as well as against the disease associated with the other component in the VLP-target antigen combination.

**System and Method for Representing Knowledge in a Distributed System**

Stephen J. Shaw (NCI), Serial No. 09/470,684 filed 23 Dec 1999.
*Licensing Contact:* Dale Berkley; 301/496–7735 ext. 223; e-mail: berkleyd@od.nih.gov

This invention relates to a knowledge base (KB) system for storing data in a computer system. More specifically, this invention relates to systems and methods for representing, manipulating, and displaying knowledge consisting of categories, entities and relationships stored in a plurality of databases. The invention contemplates providing a user-friendly computer-based distributed system of databases which enables its users to create, use and share a knowledge base of information consisting of diverse entities related to each other by semantically meaningful links. The system generates a knowledge base that allows individuals to store information on a virtually unlimited range of entities. Due to its design as a distributed system, it is well suited to preserve the autonomy and portability of data belonging to each individual and workgroup, while maintaining links of that data to publicly available data elsewhere in the system and even links to information on entities external to the system. Diverse strategies are employed to simplify the implementation and use of the system. Some unique features of this software-based invention are: (1) The ability to handle any number of conceptually distinct categories of items (such as people, events, institutions, tasks, concepts, processes, document types); (2) tools for creating relationships between any two or more objects, with the ability to categorize types of relationships and decide which categories they apply to; (3) use of parent-child relationships to organize, view and navigate information; (4) flexibility in adding diverse categories of objects and relationships, while maintaining a simple underlying data structure and programming environment; and (5) the ability to view complex relationships in flexible and informative ways; (6) tools for managing names which are indispensable for finding the relevant objects; and (7) efficient ways to search information and filter retrievals to limit to relevant information.

**Peptides that Stabilize Protein Antigens and Enhance Presentation to CD8+ T Cells**

Roger Kurlander, Elizabeth Chao, Janet Fields (CC), DHHS Reference No. E–172–99/0 filed 06 Dec 1999.
*Licensing Contact:* Peter Soukas; 301/496–7056, ext. 268; e-mail: soukasp@od.nih.gov

This invention relates to compositions and methods for stabilizing an antigen against proteolytic degradation and enhancing its presentation to CD8+ cells. The invention claims "fusion agents," isolated molecules comprising a hydrophobic peptide joined to an epitope to which a CD8+ T cell response is desired. Also claimed in the invention are the nucleic acid sequences that encode the fusion agents.

Recently, there has been great interest in developing vaccines to induce protective CD8+ T cell responses, however, there are practical obstacles to this goal. Although purified antigenic peptides are effectively presented *in vitro*, introduced in a purified form they often do not stimulate effective T cell responses *in vivo* because the antigens are insufficiently immunogenic and too easily degraded. Adjuvants or infectious "carriers" often can enhance these immune responses, however, these added agents can cause unacceptable local or systemic side effects. The present invention increases antigen stability and promotes *in vivo* responses in the absence of an adjuvant or active infection.

The invention describes three variants of lemA, an antigen recognized by CD8+ cells in mice infected with *Listeria monocytogenes*. The antigenic and stabilizing properties of lemA can be accounted for by the covalent association of the immunogenic aminoterminal hexapeptide with the protease resistant scaffolding provided by amino acids 7 to 33 of the lemA sequence ($lemA_{(7-33)}$). Variants t-lemA, and s-lemA bearing an antigenic sequence immediately preceding $lemA_{(7-33)}$, and lemS containing an immunogenic sequence immediately after $lemA_{(7-33)}$, each induce a CD8+ T cell response and protect the crucial immunogenic oligopeptide from protease degradation. The site of antigen insertion relative to $lemA_{(7-33)}$ can influence antigen processing by preferentially promoting processing either in the cytoplasm or endosomal compartment. Therefore, several embodiments of the invention involve the construction of antigen processing protein molecules and their methods of use. Alternatively, a DNA sequence coding $lemA_{(7-33)}$ may be inserted at an appropriate site to enhance the immunogenicity of the antigenic element coded by a DNA vaccine. In sum, this invention is an attractive, nontoxic alternative to protein/adjuvant combinations in eliciting CD8 responses *in vivo* and a useful element for enhancing the efficiency with which products coded by DNA vaccines are processed and presented *in vivo*. Because $lemA_{(7-33)}$ is particularly effective in protecting oligopeptides from proteases, this invention may have particular usefulness in enhancing local T cell at sites such as mucosal surfaces where there may be high proteolytic activity.

For more specific information about the invention or to request a copy of the patent application, please contact Peter Soukas at the telephone number or e-mail listed above. Additionally, please see a related article published in the Journal of Immunology at: 1999;163:6741–6747.

**Major Neutralization Site of Hepatitis E Virus and Use of this Neutralization Site in Methods of Vaccination**

Darren Schofield, Suzanne U. Emerson, Robert H. Purcell (NIAID), DHHS Reference No. E–043–00/0 filed 01 Dec 1999.
*Licensing Contact:* Carol Salata; 301/496–7735 ext. 232; e-mail: salatac@od.nih.gov

Hepatitis E is endemic in many countries throughout the developing world, in particular on the continents of Africa and Asia. The disease generally affects young adults and has a very high mortality rate, up to 20%, in pregnant women. This invention relates to the identification of a neutralization site of hepatitis E virus (HEV) and neutralizing antibodies that react with it. The neutralization site is located on a polypeptide from the ORF2 gene (capsid gene) of HEV. This neutralization site was identified using a panel of chimpanzee monoclonal antibodies that are virtually identical to human antibodies. Since this neutralization site is conserved among genetically divergent strains of HEV, the neutralizing monoclonal antibodies may be useful in the diagnosis, treatment and/or prevention of hepatitis E. Furthermore, immunogens that encompass this neutralization site may be used in vaccination to effectively prevent, and/or reduce the incidence of HEV infection. Polypeptides containing this neutralization site may be useful in evaluating vaccine candidates for the production of neutralizing antibodies to HEV.

**Viral Glycoprotein Subunit Vaccine**

Richard Compans, Ranjit Ray, U.S. Patent 4,790,987 issued 13 Dec 1988.
*Licensing Contact:* Peter Soukas; 301/496–7056 ext. 268; e-mail: soukasp@od.nih.gov

The present invention relates to a vaccine composition useful in the prevention of virus-caused disease comprising as its active agent at least one immunogenically effective amount of immunogenic viral envelope glycoprotein complexed with a lipid. These subunit vaccine compositions are useful for the prevention of viral infections including influenza virus, parainfluenza virus, herpes virus, paramyxoviruses, rabies virus, and human T-cell lymphotrophic viruses. The patent also discloses a method for preparing the vaccine compositions. A novel feature of the invention is the utilization of a dialyzable detergent for solubilization of the active component, which allows a relatively simple purification process on a large scale. Thus, these vaccines are easier to prepare than other glycoprotein subunit vaccines and retain their antigenicity to a greater extent than formalin-inactivated subunit vaccines.

Dated: October 5, 2000.

**Jack Spiegel,**

*Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.*

[FR Doc. 00–26585 Filed 10–16–00; 8:45 am]

BILLING CODE 4140–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Center for Research Resources; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Center for Research Resources Special Emphasis Panel Comparative Medicine.

*Date:* October 24, 2000.

*Time:* 3 pm to 4 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Office of Review, National Center for Research Resources, 6705 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Sybil A. Wellstood, PhD, Scientific Review Administrator, Office of Review, National Center for Research Resources, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892–7965, 301–435–0814.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333; 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS)

Dated: October 5, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–26569 Filed 10–16–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Center for Research Resources; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Center for Research Resources Special Emphasis Panel, Comparative Medicine.

*Date:* October 27, 2000.

*Time:* 3 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Office of Review, National Center for Research Resources, 6705 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Sybil A. Wellstood, PHD, Scientific Review Administrator, Office of Review, National Center for Research Resources, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892–7965, 301–435–0814.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333; 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS)

Dated: October 4, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–26573 Filed 10–16–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Human Genome Research Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Human Genome Research Institute Special Emphasis Panel.

*Date:* October 27, 2000.

*Time:* 8 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

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*Place:* Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Ken D. Nakamura, PhD, Scientific Review Administrator, Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Bethesda, MD 20892, 301–402–0838.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* National Human Genome Research Institute Initial Review Group, Genome Research Review Committee.

*Date:* November 13, 2000.

*Time:* 9 a.m. to 2 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Arlington Hyatt, 1325 Wilson Boulevard, Arlington, VA 22209.

*Contact Person:* Rudy O. Pozzatti, Scientific Review Administrator, Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Bethesda, MD 20892, 301–402–0838.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: October 6, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–26574 Filed 10–16–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(56), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

*Date:* October 12, 2000.

*Time:* 12 p.m. to 1 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Willco Building, Suite 409, 6000 Executive Boulevard, Rockville, MD 20892, (Telephone Conference Call).

*Contact Person:* Mark R. Green, PhD, Chief, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., Bethesda, MD 20892, 301–443–2860, mgreen@niaaa.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

*Date:* November 6, 2000.

*Time:* 9:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Courtyard By Marriott, 805 Russell Avenue, Gaithersburg, MD 20879.

*Contact Person:* Terri B. Pike, BS, Grants Technical Assistant, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., Bethesda, MD 20892–7003, 301–443–4623, tpike@niaaa.nih.gov.

*Name of Committee:* National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

*Date:* December 8, 2000.

*Time:* 8 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

*Contact Person:* Ronald Suddendorf, PhD, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Boulevard, Bethesda, MD 20892–7003, 301–443–2926.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: October 4, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–26571 Filed 10–16–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Mental Health Special Emphasis Panel.

*Date:* October 24–25, 2000.

*Time:* 8:30 am to 5:00 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Ramada Inn, 8400 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Henry J. Haigler, PHD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6150, MSC 9608, Bethesda, MD 20892–9608, 301/443–7216.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: October 4, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–26572 Filed 10–16–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.



*Name of Committee:* National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

*Date:* October 19–20, 2000.

*Time:* 8:30 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Ramada Inn, 1775 Rockville Pike, Rockville, MD 20852.

*Contact Person:* Katherine Woodbury, PhD, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

*Date:* October 24, 2000.

*Time:* 2 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Lillian M. Pubols, PhD, Chief, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223, lp28e@nih.gov

*Name of Committee:* National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

*Date:* November 27, 2000.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

*Contact Person:* Katherine Woodbury, PhD, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529 301–496–9223.

*Name of Committee:* National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

*Date:* November 28, 2000.

*Time:* 8 a.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20853.

*Contact Person:* Alan L. Willard, PhD, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

*Name of Committee:* National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

*Date:* December 8, 2000.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Capitol Holiday Inn, C and 6th Street, SW., Washington, DC 20024.

*Contact Person:* Raul A. Saavedra, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: October 6, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–26576 Filed 10–16–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Child Health and Human Development Initial Review Group, Medical Rehabilitation Research Subcommittee.

*Date:* October 23–24, 2000.

*Time:* 8 am to 5 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Woodfin Suites Hotel, Conference Room, 1380 Piccard Drive, Rockville, MD 20850.

*Contact Person:* Anne Krey, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health, and Human Development, National Institutes of Health, 6100 Executive Blvd., Rm. 5E03, Bethesda, MD 20892, 301–435–6908.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: October 6, 2000.

**Anna P. Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–26579 Filed 10–16–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Child Health and Human Development Initial Review Group, Mental Retardation Research Subcommittee, Mental Retardation Research Subcommittee.

*Date:* October 19–20, 2000.

*Time:* 7:30 am to 5 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Georgetown Suites, 1000 29th Street, N.W., Washington, DC 20007.

*Contact Person:* Norman Chang, PhD, Scientific Review Administrator, National Institute of Child Health and Human Development, National Institutes of Health, PHS, DHHS, Bethesda, MD 20892.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

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Dated: October 6, 2000.

**Anna P. Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–26580 Filed 10–16–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Library of Medicine; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Biomedical Library Review Committee.

*Date:* November 1–2, 2000.

*Closed:* November 1, 2000, 8:30 am to 11:30 am.

*Agenda:* To review and evaluate grant applications.

*Place:* National Library of Medicine, Board Room, Bldg 38, 2E–09, 8600 Rockville Pike, Bethesda, MD 20894.

*Open:* November 1, 2000, 11:30 am to 1:30 pm.

*Agenda:* Administrative Reports and Program Development.

*Place:* National Library of Medicine, Board Room, Bldg 38, 2E–09, 8600 Rockville Pike, Bethesda, MD 20894.

*Closed:* November 1, 2000, 1:30 pm to 5:30 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* National Library of Medicine, Board Room, Bldg 38, 2E–09, 8600 Rockville Pike, Bethesda, MD 20894.

*Open:* November 2, 2000, 8:30 am to 9 am.

*Agenda:* Administrative Reports and Program Development.

*Place:* National Library of Medicine, Board Room, Bldg 38, 2E–09, 8600 Rockville Pike, Bethesda, MD 20894.

*Closed:* November 2, 20900, 9 am to 1:30 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* National Library of Medicine, Board Room, Bldg 38, 2E–09, 8600 Rockville Pike, Bethesda, MD 20894.

*Contact Person:* Sharee Pepper, PHD, Scientific Review Administrator, Heath Scientist Administrator, Office of Extramural Programs, National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892, (301) 594–4933.

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: October 4, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–26570 Filed 10–16–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute clearly unwarranted invasion of personal privacy.

*Name of Committee:* Pathophysiological Sciences Integrated Review Group, Alcohol and Toxicology Subcommittee 4.

*Date:* October 23–24, 2000.

*Time:* 8 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

*Contact Person:* Mushtaq A. Khan, DVM, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2176, MSC 7818, Bethesda, MD 20892; (301) 435–1778, khanm@csr.nih.gov.

*Name of Committee:* Musculoskeletal and Dental Sciences Integrated Review Group, Oral Biology and Medicine Subcommittee 2.

*Date:* October 23–24, 2000.

*Time:* 8 a.m. and 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Old Town Alexandria; 480 King Street, Alexandria, VA 22314.

*Contact Person:* Priscilla Chen, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435–1787.

*Name of Committee:* Musculoskeletal and Dental Sciences Integrated Review Group, Orthopedics and Musculoskeletal Study Section.

*Date:* October 23–24, 2000.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Gaithersburg Holiday Inn, Gaithersburg, MD 20879.

*Contact Person:* Daniel F. McDonald, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7814, Bethesda, MD 20892; (301) 435–1215.

*Name of Committee:* Cardiovascular Sciences Integrated Review Group, Experimental Cardiovascular Sciences Study Section.

*Date:* October 23–24, 2000.

*Time:* 8 a.m. to 2:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda Holiday Inn, Bethesda, MD 20017.

*Contact Person:* Anshumali Chaudhari, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4124, MSC 7802, Bethesda, MD 20892; (301) 435–1210.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* October 23–24, 2000.

*Time:* 8 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Nadarajen A. Vydelingum, Scientific Review Administrator, Special Study Section—8, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, MSC 7854, RM 5122, Bethesda, MD 20892; (301) 435–1176, vydelinn@csr.nih.gov.

*Name of Committee:* Cardiovascular Sciences Integrated Review Group, Cardiovascular and Renal Study Section.

*Date:* October 23–24, 2000.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Russell T. Dowell, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr., Rm. 2180, MSC 7818, Bethesda, MD 20892; (301) 435–1169, dowellr@csr.nih.gov.

*Name of Committee:* Biophysical and Chemical Sciences Integrated Review Group, Physical Biochemistry Study Section.



*Date:* October 23–24, 2000.

*Time:* 8:30 a.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

*Contact Person:* Gopa Rakhit, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4154, MSC 7806, Bethesda, MD 20892; (301) 435–1721, rakhitg@csr.nih.gov.

*Name of Committee:* Nutritional and Metabolic Sciences Integrated Review Group, Nutrition Study Section.

*Date:* October 23–24, 2000.

*Time:* 8:30 a.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn—Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Sooja K. Kim, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6158, MSC 7892, Bethesda, MD 20892; (301) 435–1780.

*Name of Committee:* Oncological Sciences Integrated Review Group, Experimental Therapeutics Subcommittee 2.

*Dote:* October 23–25, 2000.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Marcia Litwack, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4150, MSC 7804, Bethesda, MD 20892; (301) 435–1719.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* October 23–24, 2000.

*Time:* 9 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn, 5520 Wisconsin Ave, Chevy Chase, MD 20815.

*Contact Person:* Julian L. Azorlosa, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3190, MSC 7848, Bethesda, MD 20892, (301) 435–1507.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* October 24, 2000.

*Time:* 2 p.m. to 3:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Syed Amir, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6168, MSC 7892, Bethesda, MD 20892; (301) 435–1043.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* October 23, 2000.

*Time:* 1 to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* John Bishop, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250.

*Name of Committee:* Cardiovascular Sciences Integrated Review Group Pathology A Study Section.

*Date:* October 24–25, 2000.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The Virginia Suites, 1500 Arlington Blvd., Arlington, VA 22209.

*Contact Person:* Larry Pinkus, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4132, MSC 7802, Bethesda, MD 20892, (301) 435–1214.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* October 24–25, 2000.

*Time:* 9 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

*Contact Person:* Richard Marcus, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5168, MSC 7844, Bethesda, MD 20892, (301) 435–1245, richard.marcus@nih.gov.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* October 24, 2000.

*Time:* 11 a.m. to 12:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Dennis Leszczynski, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5168, MSC 7892, Bethesda, MD 20892, (301) 435–1044.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* October 24, 2000.

*Time:* 11 to 11:59 a.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn—Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20892.

*Contact Person:* Sooja K. Kim, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6178, MSC 7892, Bethesda, MD 20892, (301) 435–1780.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* October 24, 2000.

*Time:* 2 p.m. to 3:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Syed Amir, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6168, MSC 7892, Bethesda, MD 20892; (301) 435–1043.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 4, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–26568 Filed 10–16–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* October 11, 2000.

*Time:* 4 pm to 6 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Chase Park Plaza, 212–232 N. Kingshighway Blvd., St. Louis, MO 63108.

*Contact Person:* Zakir Bengali, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5150, MSC 7842, Bethesda, MD 20892, (301) 435–1742.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* October 12, 2000.

*Time:* 10:30 am to 12 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Chase Park Plaza, 212–232 N. Kingshighway Blvd., St. Louis, MO 63108.

*Contact Person:* Zakir Bengali, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5150, MSC 7842, Bethesda, MD 20892, (301) 435–1742.

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This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.
*Date:* October 16–17, 2000.
*Time:* 8 am to 5 pm.
*Agenda:* To review and evaluate grant applications.
*Place:* Embassy Suites, Chevy Chase Pavillion, 4300 Military Rd., Wisconsin at Western Ave., Washington, DC 20015.
*Contact Person:* Michael A. Lang, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7850, Bethesda, MD 20892, (301) 435–1265.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Pathophysiological Sciences Integrated Review Group, Lung Biology and Pathology Study Section.
*Date:* October 25–26, 2000.
*Time:* 8:30 am to 5 pm.
*Agenda:* To review and evaluate grant applications.
*Place:* St. James Hotel, 950 24th Street, NW., Washington, DC 20037.
*Contact Person:* George M. Barnas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2180, MSC 7818, Bethesda, MD 20892, (301) 435–0696, george_barnas@nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Social Sciences, Nursing, Epidemiology and Methods Integrated Review Group Nursing Research Study Section.
*Date:* October 25–27, 2000.
*Time:* 8 am to 3 pm.
*Agenda:* To review and evaluate grant applications.
*Place:* Holiday Inn, Tysons Corner, 1960 Chain Bridge Road, McLaan, VA 22102.
*Contact Person:* Gertrude McFarland, DNSC, FAAN, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4110, MSC 7816, Bethesda, MD 20892, (301) 435–1784.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Infectious Diseases and Microbiology Integrated Review Group, Microbial Physiology and Genetics Subcommittee 1.
*Date:* October 25–26, 2000.
*Time:* 8:30 am to 6 pm.
*Agenda:* To review and evaluate grant applications.
*Place:* One Washington Circle Hotel, Conference Center, One Washington Circle, Washington, DC 20037.
*Contact Person:* Martin L. Slater, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4184, MSC 7808, Bethesda, MD 20892, (301) 435–1149.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.
*Date:* October 25, 2000.
*Time:* 8:30 am to 5 pm.
*Agenda:* To review and evaluate grant applications.
*Place:* Holiday Inn—Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.
*Contact Person:* Ann A. Jerkins, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6154, MSC 7892, Bethesda, MD 20892, (301) 435–4414.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.
*Date:* October 25–26, 2000.
*Time:* 8:30 am to 5 pm.
*Agenda:* To review and evaluate grant applications.
*Place:* Jurys Washington Hotel, Washington, DC 20036.
*Contact Person:* Syed Husain, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5216, MSC 7850, Bethesda, MD 20892–7850, (301) 435–1224, husains@csr.nih.gov

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.
*Date:* October 25, 2000.
*Time:* 10 am to 1 pm.
*Agenda:* To review and evaluate grant applications.
*Place:* NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
*Contact Person:* John Bishop, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.
*Date:* October 25, 2000.
*Time:* 1:30 pm to 3 pm.
*Agenda:* To review and evaluate grant applications.
*Place:* NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
*Contact Person:* Sally Ann Amero, PhD, Scientific Review Administrator, Center for Scientific Review, Genetic Sciences Integrated Review Group, National Institutes of Health, 6701 Rockledge Drive, Room 2206, MSC 7890, Bethesda, MD 20892–7890, (301) 435–1159, ameros@csr.nih.gov

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.
*Date:* October 25, 2000.
*Time:* 2 pm to 4 pm.
*Agenda:* To review and evaluate grant applications.
*Place:* NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
*Contact Person:* Gamil C. Debbas PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7844, Bethesda, MD 20892, (301) 435–1018.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.
*Date:* October 25, 2000.
*Time:* 12 pm to 1 pm.
*Agenda:* To review and evaluate grant applications.
*Place:* NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
*Contact Person:* Chhanda L. Ganguly, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7842, Bethesda, MD 20892, (301) 435–1739.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Integrative, Functional and Cognitive Neuroscience Integrated Review Group Alcohol and Toxicology Subcommittee 3.
*Date:* October 26–27, 2000.
*Time:* 8 am to 5 pm.
*Agenda:* To review and evaluate grant applications.
*Place:* The Washington Monarch Hotel, 2401 M Street NW, Washington, DC 20037.
*Contact Person:* Christine Melchior, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4102, MSC 7816, Bethesda, MD 20892, (301) 435–1713.

*Name of Committee:* Endocrinology and Reproductive Sciences Integrated Review Group, Human Embryology and Development Subcommittee 1.
*Date:* October 26–27, 2000.
*Time:* 8 am to 11 am.
*Agenda:* To review and evaluate grant applications.
*Place:* Embassy Suites, Chevy Chase Pavilion, 4300 Military Rd., Wisconsin at Western Ave., Washington, DC 20015.
*Contact Person:* Michael Knecht, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6176, MSC 7892, Bethesda, MD 20892, (301) 435–1046.



*Name of Committee:* National and Metabolic Sciences Integrated Review Group, Metabolism Study Section.
*Date:* October 26–27, 2000.
*Time:* 8 am to 6 pm.
*Agenda:* To review and evaluate grant applications.
*Place:* Holiday Inn, Bethesda, MD 20814.
*Contact Person:* Krish Krishnan, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, (301) 435–1041.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.
*Date:* October 26–27, 2000.
*Time:* 8 am to 5 pm.
*Agenda:* To review and evaluate grant applications.
*Place:* Grand Westin Hotel, 2350 M Street, Washington, DC 20037–1417.
*Contact Person:* Marjam G. Behar, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4178, MSC 7806, Bethesda, MD 20892, (301) 435–1180.

*Name of Committee:* Biophysical and Chemical Sciences Integrated Review Group, Molecular and Cellular Biophysics Study Section.
*Date:* October 26–27, 2000.
*Time:* 8 am to 6 pm.
*Agenda:* To review and evaluate grant applications.
*Place:* Hotel Sofitel, 1914 Connecticut Ave., NW, Washington, DC 20009.
*Contact Person:* Nancy Lamontagne, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4170, MSC 7806, Bethesda, MD 20892, (301) 435–1726.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.
*Date:* October 26, 2000.
*Time:* 8 am to 11 am.
*Agenda:* To review and evaluate grant applications.
*Place:* St. James Hotel, 950 24th Street, NW, Washington, DC 20037.
*Contact Person:* Everett E. Sinnett, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2178, MSC 7818, Bethesda, MD 20892, (301) 435–1016, sinnett@nih.gov

*Name of Committee:* Genetic Sciences Integrated Review Group, Mammalian Genetics Study Section.
*Date:* October 26–27, 2000.
*Time:* 8 am to 5 pm.
*Agenda:* To review and evaluate grant applications.
*Place:* The Governor's House Hotel, 1615 Rhode Island Avenue, NW., Washington, DC 20036.
*Contact Person:* Camilla Day, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2208, MSC 7890, Bethesda, MD 20892, (301) 435–1037, dayc@drg.nih.gov

*Name of Committee:* Biochemical Sciences Integrated Review Group, Physiological Chemistry Study Section.
*Date:* October 26–27, 2000.
*Time:* 8 am to 1 pm.
*Agenda:* To review and evaluate grant applications.
*Place:* Washington Plaza Hotel, 10 Thomas Circle, NW., Washington, DC 20005.
*Contact Person:* Richard Panniers, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, MSC 7842, Bethesda, MD 20892, (301) 435–1741.

*Name of Committee:* Immunological Sciences Integrated Review Group, Immunological Sciences Study Section.
*Date:* October 26–27, 2000.
*Time:* 8 am to 3 pm.
*Agenda:* To review and evaluate grant applications.
*Place:* Holiday Inn, 2 Montgomery Village Avenue, Gaithersburg, MD 20879.
*Contact Person:* Alexander D. Politis, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4204, MSC 7812, Bethesda, MD 20892, (301) 435–1225.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.
*Date:* October 26–27, 2000.
*Time:* 8:30 am to 4 pm.
*Agenda:* To review and evaluate grant applications.
*Place:* Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.
*Contact Person:* Michael Micklin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848 Bethesda, MD 20892, (301) 435–1258, micklinm@csr.nih.gov.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.
*Date:* October 26, 2000.
*Time:* 8:30 am to 5 pm.
*Agenda:* To review and evaluate grant applications.
*Place:* Ramada Inn Rockville, 1775 Rockville Pike, Rockville, MD 20852.
*Contact Person:* Prabha L. Atreya, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5152, MSC 7842, Bethesda, MD 20892, (301) 435–8367.

*Name of Committee:* Social Sciences, Nursing, Epidemiology and Methods Integrated Review Group, Epidemiology and Disease Control Subcommittee 2.
*Date:* October 26–27, 2000.
*Time:* 8:30 am to 5 pm.
*Agenda:* To review and evaluate grant applications.
*Place:* George Washington University Inn, 824 New Hampshire Ave, NW., Washington, DC 20037.
*Contact Person:* David M. Monsees, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3150, MSC 7848, Bethesda, MD 20892, (301) 435–0684, monseesd@drg.nih.gov.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.
*Date:* October 26–27, 2000.
*Time:* 8:30 am to 4 pm.
*Agenda:* To review and evaluate grant applications.
*Place:* Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.
*Contact Person:* Gloria B. Levin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7848, Bethesda, MD 20892, (301) 435–1017, leving@csr.nih.gov.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.
*Date:* October 26–27, 2000.
*Time:* 9 am to 5 pm.
*Agenda:* To review and evaluate grant applications.
*Place:* Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
*Contact Person:* Cheri Wiggs, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3180, MSC 7848, Bethesda, MD 20892, (301) 435–1261.

*Name of Committee:* Biophysical and Chemical Sciences Integrated Review Group, Bio-Organic and Natural Products Chemistry Study Section.
*Date:* October 26–27, 2000.
*Time:* 9 am to 5 pm.
*Agenda:* To review and evaluate grant applications.
*Place:* Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
*Contact Person:* Mike Radtke, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4176, MSC 7806, Bethesda, MD 20892, 301–435–1728, radtkem@csr.hih.gov.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.
*Date:* October 26, 2000.
*Time:* 11 am to 1 pm.
*Agenda:* To review and evaluate grant applications.
*Place:* NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
*Contact Person:* John Bishop, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 6, 2000.

**LaVerne Y. Stringfield,**

*director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–26575 Filed 10–16–00; 8:45 am]
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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, September 26, 2000, 12:30 p.m. to September 26, 2000 2:30 p.m., NIH, Rockledge 2, Bethesda, MD 20892 which was published in the **Federal Register** on September 21, 2000, 65 FR 57201–57202.

The meeting will be held October 24, 2000, from 11 a.m. to 12:30 p.m. The location remains the same. The meeting is closed to the public.

Dated: October 6, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–26577 Filed 10–16–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Diagnostic Radiology Study Section, October 16, 2000, 8 am to October 17, 2000, 5 pm, Georgetown Holiday Inn, 2101 Wisconsin Avenue, NW, Washington, DC 20007 which was published in the **Federal Register** on October 5, 2000, 65 FR 59454–59456.

The meeting will be held at the Georgetown Suites, 1111 30th Street, NW, Washington, DC. The dates and time remain the same. The meeting is closed to the public.

Dated: October 6, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–26578 Filed 10–16–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Prospective Grant of Exclusive License: Insulin Producing Cells Differentiated from Non-Insulin Producing Cells by GLP–1 and Exendin–4 and Use Thereof

**AGENCY:** National Institutes of Health, Public Health Service, DHHS.

**ACTION:** Notice.

**SUMMARY:** This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive license worldwide to practice the invention embodied in: PCT Patent Application Serial Number PCT/US99/180899 (PHS Ref. E–151–97/1) entitled "Insulin Producing Cells Differentiated from Non-Insulin Producing Cells by GLP–1 and Exendin–4 and Use Thereof" filed on August 18, 1999, claiming priority of August 10, 1998, to Amylin Pharmaceuticals, Inc., having a place of business in San Diego, CA. The patent rights in this invention have been assigned to the United States America.

**DATES:** Only written comments and/or application for a license which are received by the NIH Office of Technology Transfer on or before December 18, 2000 will be considered.

**ADDRESSES:** Requests for a copy of the patent applications, inquiries, comments and other materials relating to the contemplated license should be directed to: John Rambosek, Ph.D., Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Email: jr312d@nih.gov; Telephone: (301) 496–7056, ext. 270; Facsimile: (301) 402–0220.

**SUPPLEMENTARY INFORMATION:** The patent application relates to a population of insulin producing cells differentiated from non-insulin producing cells by contacting the non-insulin producing cells with Glucagon-like peptide–1 (GLP–1), Exendin–4, or related peptides. The application also relates to the methods for obtaining the insulin producing cells and therapeutic uses in the treatment of diabetes mellitus.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be limited to the field of use for development of products and methods for treatment of diabetes. The field for use would include development, use, manufacture, distribution, import, export, marketing and sale of the licensed invention, throughout the world. The prospective exclusive license may be granted unless, within 60 days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: October 5, 2000.

**Jack Spiegel,**

*Director, Division of Technology Development and Transfer, Office of Technology Transfer.*

[FR Doc. 00–26582 Filed 10–16–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Public Health Service

### National Toxicology Program; National Toxicology Program (NTP) Board of Scientific Counselors' Meeting; Review of Nominations for Listing in the 10th Report on Carcinogens

Pursuant to Public Law 92–463, notice is hereby given of the next meeting of the NTP Board of Scientific Counselors' Report on Carcinogens (RoC) Subcommittee to be held on December 13, 14, and 15, 2000, at the Wyndham City Center, 1143 New Hampshire Ave., Washington, DC 20037. On December 13, registration will begin at 9 a.m. and the meeting will begin at 9:30 a.m. On December 14 and 15, the meeting will begin at 8:30 a.m. Pre-registration is not required; however, persons requesting time to make oral, public comments are asked to notify Dr. Mary S. Wolfe, Executive Secretary, prior to the meeting (contact information given below). The agenda covers the peer review of agents, substances, mixtures, or exposure circumstances nominated for listing in the 10th Report on Carcinogens, and includes an opportunity for public input.

#### Background

The Department of Health and Human Services (DHHS) Report on Carcinogens



(RoC) is a public information document prepared for the U.S. Congress by the National Toxicology Program (NTP) in response to Section 301(b)(4) of the Public Health Service Act, as amended. The intent of the document is to provide a listing of those agents, substances, mixtures or exposure circumstances that are either "known" or "reasonably anticipated" to cause cancer in humans and to which a significant number of people in the United States are exposed. The process for preparation of the RoC has three levels of scientific peer review. Central to the evaluations of the review groups is the use of criteria for inclusion in or removal of listings from the Report. The current criteria for listing in or delisting from the Report were approved by the Secretary, DHHS, in September 1996. The major change in the RoC, which occurred as a result of the criteria revision, was to include consideration of all relevant information, including mechanistic data, in the decision to list in or delist from future editions. The review process for listing in or delisting from the RoC begins with initial scientific review by the National Institute of Environmental Health Sciences (NIEHS)/NTP Report on Carcinogens Review Committee (RG1), which is comprised of NIEHS/NTP staff scientists. The second scientific review group (RG2) is comprised of representatives from the Federal health research and regulatory agencies that are members of the NTP Executive Committee. The third is external public peer review by the NTP Board of Scientific Counselors (BSC) RoC Subcommittee. Following completions of these reviews and solicitation of public comments through announcements in the **Federal Register** and other media, the independent recommendations of the three scientific peer review groups and all public comments are presented to the NTP Executive Committee for review and comment. All recommendations and public comments are submitted to the Director, NTP, who reviews them and makes a final recommendation to the Secretary, DHHS, concerning the listing or delisting of chemicals or exposure circumstances in the RoC. The Secretary has final review and approval for the Tenth Report.

#### Agenda

The meeting of the NTP RoC Subcommittee is scheduled for December 13, 14 and 15, 2000. Tentatively scheduled to be peer reviewed are eight nominated chemicals or exposure circumstances. These nominations are listed alphabetically in the attached table, along with supporting information and a tentative order of presentation and review. Background summary documents for each of the nominations are available to the public and include a summary of the scientific data and information used to evaluate the nomination. A copy of the draft background summary document for each of these nominations is available electronically on the NTP web homepage at http://ntp-server.niehs.nih.gov/ and the Environmental Health Information Service website at http://ehis.niehs.nih.gov/ or can be obtained in hard copy, as available, from: Dr. C.W. Jameson, Report on Carcinogens, NIEHS, MD EC–14, 79 Alexander Drive, Building 4401, Room 3118, P.O. Box 12233, Research Triangle Park, NC 27709 (919/541–4096; FAX 919/541–2242; email *jameson@niehs.nih.gov*).

The April 5, 2000 **Federal Register** Announcement (Volume 65, Number 66, Page 17889–17891) calling for public comments on the nominations to be reviewed in 2000 for listing in the 10th RoC, indicated that Human Papillomaviruses and Lead and Lead Compounds would be among the nominations to be reviewed. The initial review of these two nominations by NTP staff found an extensive published database for each nomination and there was insufficient time to prepare adequately a comprehensive summary background document on each for review in 2000. Therefore, the nominations of Human Papillomaviruses and Lead and Lead Compounds are deferred for review until 2001.

Solar Radiation and Exposure to Sunlamps and Sunbeds was nominated by a private individual for review and delisting from the RoC. In addition the Suntanning Association for Education also nominated Exposure to Sunlamps and Sunbeds for review and delisting from the RoC. As outlined in the published listing/delisting procedures for the RoC, the RG1 reviewed these nominations and the data provided by the nominators. Based on its review of the available information concerning the carcinogenicity of Solar Radiation and Exposure to Sunlamps and Sunbeds, the RG1 determined that no new information was provided by the nominators that was not already considered during the listing procedure and recommended that, due to the lack of any significant new data to support this delisting, the nomination to delist should not proceed any further through the review process. Therefore, the delisting of Solar Radiation and Exposure to Sunlamps and Sunbeds is not on the agenda for review at the December 13th–15th RoC Subcommittee meeting. The nominators have been notified of this action and invited to resubmit the nomination to delist Solar Radiation and Exposure to Sunlamps and Sunbeds from the RoC providing additional justification and relevant new data to support the nomination.

#### Solicitation of Public Comment

The NTP Board of Scientific Counselors RoC Subcommittee meeting is open to the public, and time will be provided for public comment on each of the nominations under review. In order to facilitate planning for the meeting, persons requesting time for an oral presentation regarding a particular nomination should notify the Executive Secretary, Dr. Mary S. Wolfe, P.O. Box 12233, A3–07, Research Triangle Park, NC 27709 (telephone 919/541–3971; FAX 919/541–0295; email wolfe@niehs.nih.gov) no later than December 1, 2000. Persons registering to make comments are asked to provide, if possible, a written copy of their statement by December 1st so copies can be made and distributed to Subcommittee members for their timely review prior to the meeting. Written statements can supplement and expand the oral presentation, and each speaker is asked to provide his/her name, affiliation, mailing address, phone, fax, e-mail and supporting organization (if any). At least seven minutes will be allotted to each speaker, and if time permits, can be extended to 10 minutes. Individuals who register to make oral presentations by December 1st will be notified about the time available for their presentation at least one week prior to the meeting. Registration for making public comments will also be available on-site. Time allowed for presentation by on-site registrants may be less then that for preregistered speakers and will be determined by the number who register at the meeting. If registering on-site to speak and reading oral comments from printed copy, the speaker is asked to bring 25 copies of the text. These copies will be distributed to the Chair and Subcommittee members and supplement the record.

Written comments, in lieu of making oral comments, are welcome. All comments must include name, affiliation, mailing address, phone, fax, e-mail and sponsoring organization (if any) and should be received by December 1st for distribution to the Subcommittee. Written comments received after December 1st will not be considered by Subcommittee members in their reviews.

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**Solicitation of Additional Information**

The NTP would welcome receiving information from completed human or experimental animal cancer studies or studies of mechanism of cancer formation, as well as current production data, human exposure information, and use patterns for any of the nominations listed in this announcement. Organizations or individuals that wish to provide information should contact Dr. C.W. Jameson at the address given above.

The agenda and a roster of Subcommittee members will be available prior to the meeting on the NTP web homepage at *http://ntp_server.niehs.nih.gov/* and upon request from Dr. Wolfe. Summary minutes from the previous meeting are available on the NTP web homepage and upon request from Dr. Wolfe.

Dated: October 6, 2000.

**Kenneth Olden,**

*Director, National Toxicology Program.*

SUMMARY DATA FOR NOMINATIONS TENTATIVELY SCHEDULED FOR REVIEW AT THE MEETING OF THE NTP BOARD OF SCIENTIFIC COUNSELORS' REPORT ON CARCINOGENS SUBCOMMITTEE DECEMBER 13, 14, & 15, 2000

| Nomination to be reviewed/ CAS number | Primary uses or exposures | To be reviewed for | Tentative review order |
|---|---|---|---|
| Broad Spectrum UV Radiation and UVA, UVB and UVC. | Solar and artificial sources of ultraviolet radiation. | Listing in the 10th Report | 1 |
| Chloramphenicol/(56–75–7) | Used widely as an antibiotic since the 1950s | Listing in the 10th Report | 6 |
| Estrogens, Steroidal | Estrogens are widely used in post-menopausal therapy and in oral contraceptives for women. | Listing in the 10th Report | 5 |
| Metallic Nickel & Nickel Alloys | Widely used in commercial applications for over 100 years. | Listing in the 10th Report | 4 |
| Methyleugenol/(93–15–2) | Flavoring agent used in jellies, baked goods, nonalcoholic beverages, chewing gum, candy, and ice cream. Also used as a fragrance for many perfumes, lotions, detergents and soaps. | Listing in the 10th Report | 3 |
| Talc/(14807–96–6) (Asbestiform and (Non-Asbestiform). | Asbestiform talc (i.e. talc containing asbestiform (fibers) occurs in various geological settings around the world. Occupational exposure occurs during mining, milling and processing. Non-asbestiform talc (i.e. talc not containing asbestiform fibers) occurs in various geological settings around the world. Occupational exposure occurs during mining, milling and processing. Exposure to general population occurs through use of products such as cosmetics. | Listing in the 10th Report | 7 |
| Trichloroethylene (TCE)/(79–01–6). | Trichloroethylene is widely used as a solvent with 80–90% used worldwide for degreasing metals. | Upgrade to Known | 2 |
| Wood Dust | It is estimated that at least two million people are routinely exposed occupationally to wood dust worldwide. Non-occupational exposure also occurs. The highest exposures have generally been reported in wood furniture and cabinet manufacture, especially during machine sanding and similar operations. | Listing in the 10th Report | 8 |

[FR Doc. 00–26586 Filed 10–16–00; 8:45 am]

BILLING CODE 4140–01–P

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR 4563–N–17]**

**Office of the Assistant Secretary for Public and Indian Housing; Notice of Proposed Information Collection for Public Comment; Certificate of Completion—Consolidated**

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** Comments due: December 18, 2000.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4238, Washington, DC 20410–5000.

**FOR FURTHER INFORMATION CONTACT:** Mildred M. Hamman, (202) 708–3642, extension 4128, for copies of the proposed forms and other available documents. (This is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

*Title of Proposal:* Certificate of Completion—Consolidated.

*OMB Control Number:* None.

*Description of the need for the information and proposed use:* HUD needs the information on the Certificate of Completion-Consolidated because it transmits information from the Public Housing Agencies (PHAs) to HUD concerning the completion of construction contracts; this information is needed so that HUD may authorize payment of funds due the contractor or developer. The information is supplied by the project architect, assembled and forwarded by the PHA.

*Agency form number:* None.

*Members of affected public:* State or local government.

*Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:* On a once per project basis, 147 respondents, one response per project, 147 total responses, one hour per response, 147 total burden hours.

*Status of the proposed information collection:* Extension, without change.

**Authority:** Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: October 10, 2000.

**Harold Lucas,**

*Assistant Secretary for Public and Indian Housing.*

[FR Doc. 00–26546 Filed 10–16–00; 8:45 am]

BILLING CODE 4210–33–M



## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**Notice To Extend the Public Comment Period for the Technical/Agency Draft Revised Recovery Plan for the Red-Cockaded Woodpecker (Picoides borealis)**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of extension of public comment period.

**SUMMARY:** The Fish and Wildlife Service gives notice that the comment period announced in the September 13, 2000, notice of availability of the Technical/Agency Draft Revised Recovery Plan for the red-cockaded woodpecker, will be extended an additional 30 days until December 13, 2000. The Service is providing this extension because of the extensive nature of the draft recovery plan revision and requests by one federal agency and one private organization for an extension. The red-cockaded woodpecker is a bird species endemic to the southeastern United States. The Service extends the current 60-day comment period and solicits review and comment from the public on this draft recovery plan revision.

**DATES:** Comments on the draft recovery plan revision received by December 13, 2000 will be considered by the Service.

**ADDRESSES:** You may obtain a copy of the draft recovery plan by contacting Ralph Costa, Clemson Field Office, U.S. Fish and Wildlife Service, Clemson University, Clemson, South Carolina 29634 (telephone 864/656–2432). Send written comments and materials regarding the plan to the Field Supervisor at the above address. Comments and materials received are available upon request for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ralph Costa at the above address and telephone number.

**SUPPLEMENTARY INFORMATION:**

**Background**

Restoring endangered or threatened animals or plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of our endangered species program. To help guide the recovery effort, we are working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that a public notice and an opportunity for public review and comment be provided during recovery plan development. We will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. We and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

Red-cockaded woodpeckers are endemic to mature pine woodlands of the southeastern United States. Because of habitat loss and alteration, the species suffered severe declines throughout the first three quarters of the twentieth century. We officially listed the red-cockaded woodpecker as an endangered species in 1970 (35 FR 16047). Intensive research has greatly increased our understanding of the ecology of red-cockaded woodpeckers and has provided powerful management tools that have been highly successful in reversing the widespread declines of past decades. With appropriate management, the species can achieve full recovery. This draft revised recovery plan describes in detail the ecology and management of red-cockaded woodpeckers, and outlines a mechanism to recover the species based on new insight into population and species viability. We will use comments and information provided during this review in preparing the final recovery plan.

**Public Comments Solicited**

We solicit written comments on the recovery plan described. We will consider all comments received by the date specified above prior to approval of the plan.

**Authority:** The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533 (f).

Dated: October 10, 2000.

**Ralph Costa,**

*Field Supervisor.*

[FR Doc. 00–26589 Filed 10–16–00; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[RIN 1018–AG47]

## Draft Policy on Maintaining the Ecological Integrity of the National Wildlife Refuge System; Notice

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice.

**SUMMARY:** We (U.S. Fish and Wildlife Service) propose to establish an internal policy to guide personnel of the National Wildlife Refuge System (Refuge System) in implementing the clause of the National Wildlife Refuge System Improvement Act of 1997 (Refuge Improvement Act) that calls for maintaining the "biological integrity, diversity, and environmental health" of the Refuge System. The holistic integration of these three qualities constitutes ecological integrity. The concept of ecological integrity requires a frame of reference for natural conditions. Our frame of reference extends from 800 AD to 1800 AD. The former date marked the beginning of an ecological transformation associated with higher temperatures; the latter approximates the advent of the industrial era, including drastic and widespread habitat loss. In areas where pre-industrial European settlement was particularly intensive, however, our frame of reference may be shorter. Natural conditions also include those that would have persisted or evolved to the present time if European settlement and industrialization had not occurred. At each refuge, we ascertain natural conditions, assess current conditions, and strive to decrease the difference. However, we are especially concerned with ecological integrity of the Refuge System as a whole, which can conflict with the maintenance of ecological integrity at individual refuges. In some cases, we may compromise the ecological integrity of a refuge for the sake of maintaining a higher level of ecological integrity at the Refuge System scale.

**DATES:** Submit comments on or before December 1, 2000.

**ADDRESSES:** Send comments or questions concerning the draft ecological integrity policy via mail, fax, or email to: Elizabeth Souheaver, Chief, Branch of Wildlife Resources, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 670, Arlington, Virginia 22203; fax (703) 358–2248; e-mail Ecointegrity__ policy_comments@fws.gov.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Souheaver, Chief, Branch of Wildlife Resources, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 670, Arlington, Virginia 22203; telephone (703) 358–1744.

**SUPPLEMENTARY INFORMATION:**

*Disposition.* The policy presented in this notice is a draft policy that may be modified pursuant to public comment. The finalized policy will constitute Part 601 Chapter 3 of the Fish and Wildlife Service Manual.

*Comment Solicitation.* We seek public comments on this draft policy and will consider all comments received during the 45-day comment period. You may submit comments by any one of several methods:

- You may mail comments to: Elizabeth Souheaver, Branch Chief of Wildlife Resources, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 670, Arlington, VA 22203.
- You may fax comments to: Elizabeth Souheaver, Chief, Branch of Wildlife Resources, National Wildlife Refuge System, (703) 358–2248.

You may comment via the Internet to: *Ecointegrity__policy__comments@fws.gov.*

- You may hand-deliver comments to the U.S. Fish and Wildlife Service, National Wildlife Refuge System, Room 670, 4401 North Fairfax Drive, Arlington, VA.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we take the initiative to withhold from the record a respondent's identity, as allowable by law. If you wish that we withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

We published a notice in the **Federal Register** on January 23, 1998 (63 FR 3583) notifying the public that we would be revising the Fish and Wildlife Service Manual, establishing regulations as they relate to the Refuge Improvement Act, and offering to send copies of specific draft Fish and Wildlife Service Manual chapters to anyone who would like to receive them. We will mail a copy of this draft Fish and Wildlife Service Manual ecological integrity chapter to those who requested one. In addition, this draft Fish and Wildlife Service Manual ecological integrity chapter will be available on the National Wildlife Refuge System web site (http://refuges.fws.gov) during the 45-day comment period.

### Ecological Integrity Draft Policy (Fish and Wildlife Service Manual, Part 601, Draft Chapter 3)

*3.1 What Is the Purpose of This Chapter?*

This chapter provides policy for maintaining and restoring the biological integrity, biological diversity, and environmental health of the National Wildlife Refuge System. Throughout this policy, we use the term "ecological integrity" to refer to biological integrity, biological diversity, and environmental health.

*3.2 What Is the Scope of This Policy?*

This policy applies to the National Wildlife Refuge System as a whole and to all individual units within the System.

*3.3 What Is the Ecological Integrity Policy?*

We will, first and foremost, maintain existing levels of ecological integrity at all landscape scales. In addition, we will restore lost elements of ecological integrity at all landscape scales where it is consistent with refuge purposes.

*3.4 What Are the Objectives of This Policy?*

A. Provide guidelines for determining what conditions constitute ecological integrity.

B. Provide guidelines for determining how to maintain existing levels of ecological integrity.

C. Provide guidelines for determining how and when to restore lost elements of ecological integrity.

*3.5 What Is the Authority for This Policy?*

The authority for this draft policy is the National Wildlife Refuge System Administration Act of 1966 as amended by the National Wildlife Refuge System Improvement Act of 1997, 16 U.S.C. 668dd–668ee (Refuge Administration Act). This law states that "In administering the System, the Secretary shall—(A) Provide for the conservation of fish, wildlife, and plants, and their habitats within the System; (B) ensure that the biological integrity, diversity, and environmental health of the System are maintained for the benefit of present and future generations of Americans; (C) plan and direct the continued growth of the System in a manner that is best designed to accomplish the mission of the System, to contribute to the conservation of the ecosystems of the United States, to complement efforts of States and other Federal agencies to conserve fish and wildlife and their habitats, and to increase support for the System and participation from conservation partners and the public; (D) ensure that the mission of the System described in paragraph (2) and the purposes of each refuge are carried out, except that if a conflict exists between the purposes of a refuge and the mission of the System, the conflict shall be resolved in a manner that first protects the purposes of the refuge, and, to the extent practicable, that also achieves the mission of the System; * * *" The law also provides that, in administering the National Wildlife Refuge System, "* * * the Secretary is authorized to * * * Issue regulations to carry out this Act."



*3.6 What Do These Terms Mean?*

A. *Biological diversity.* The variety of life and its processes, including the variety of living organisms, the genetic differences among them, and communities and ecosystems in which they occur.

B. *Biological integrity.* Biotic composition, structure, and functioning at genetic, organism, and community levels consistent with natural conditions, including the natural biological processes that shape genomes, organisms, and communities.

C. *Ecological integrity.* Biological diversity, biological integrity, and environmental health.

D. *Environmental health.* Composition, structure, and functioning of soil, water, air, and other abiotic features consistent with natural conditions, including the natural abiotic processes that shape the environment.

E. *Native.* Not introduced. Present under natural conditions.

F. *Natural conditions.* Composition, structure, and functioning of ecosystems thought to exist during a reference period from approximately 800 AD to the onset of European settlement or the industrial era and that would have persisted or evolved to the present time if European settlement had not occurred or the industrial era had not arrived. Our assessment of natural conditions is based on sound professional judgment.

G. *Sound professional judgment.* A finding, determination, or decision that is consistent with principles of sound fish and wildlife management and administration, available science and resources, and adherence to the requirements of the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee), and other applicable laws. Included in this finding, determination, or decision is a refuge manager's field experience and knowledge of the particular refuge's resources.

*3.7 What Are the Principles Underlying This Policy?*

A. Wildlife First

The Refuge Administration Act clearly establishes that wildlife conservation is the singular National Wildlife Refuge System mission. House Report 105–106 accompanying the National Wildlife Refuge System Improvement Act of 1997 states "* * * the fundamental mission of our Refuge System is wildlife conservation: wildlife and wildlife conservation must come first." Maintaining biological integrity, biological diversity, and environmental health are integral and high priority components of wildlife conservation.

B. Maintaining Ecological Integrity of the System and Accomplishing Refuge Purposes

Each refuge will be managed to fulfill refuge purposes as well as to help fulfill the System mission. If a conflict exists between managing for refuge purposes and the System mission, the conflict will be resolved in a manner that first protects the refuge purposes, and, to the extent practicable, that also achieves the System mission. Likewise, if a conflict exists between managing for refuge purposes and maintaining or restoring the ecological integrity of the System, the conflict will be resolved in a manner that first protects the refuge purposes, and, to the extent practicable, that also maintains or restores the ecological integrity of the System. When refuge managers select management actions that fulfill refuge purposes, they will follow as closely as possible the guidelines provided in this ecological integrity policy so as to maximize our ability to maintain the ecological integrity of the System while fulfilling refuge purposes. These decisions are based on sound professional judgment.

C. Ecological Integrity in a Landscape Context

Biological integrity, biological diversity, and environmental health occur at various landscape scales from local to ecosystem, national, and international. All refuges have varying levels of biological integrity, biological diversity, and environmental health, and they contribute to ecological integrity at multiple landscape scales. At the local landscape scale, ecological integrity varies at individual refuges to the extent that refuge habitats have been altered and natural conditions have been compromised. Also, refuges contribute to ecological integrity at other landscape scales, especially when they provide for populations and habitats that have been lost at the larger landscape scales. When determining strategies to maintain and restore ecological integrity, we consider refuges in the context of multiple landscape scales from local to international.

D. Maintenance and Restoration of Ecological Integrity

We will, first and foremost, maintain existing levels of ecological integrity at all landscape scales. In addition, we will restore lost elements of ecological integrity at all landscape scales where it is consistent with refuge purposes. Maintaining and restoring ecological integrity helps to minimize the effects of further loses of natural conditions at all landscape scales.

E. Management Based on Goals and Objectives

Refuge purposes and the System mission serve as the basis for goals and objectives at all levels of the System (*e.g.*, System, Regional, ecosystem, and refuge level). When we develop these goals and objectives we include goals and objectives for maintaining and restoring the ecological integrity of the System as described in this policy.

F. Wildlife and Habitat Management

Refuge management ranging from preservation to active manipulation of habitats and populations is necessary to maintain ecological integrity. We favor management that mimics natural processes to achieve refuge purposes, goals and objectives, and to help fulfill the System mission, goals and objectives. Our management may differ from the frequency and timing of natural processes when necessary to compensate for the loss of habitat that existed under natural conditions at landscape scales beyond the refuge boundaries.

G. Adaptive Management

We make management decisions based on sound professional judgment and we evaluate the effectiveness of these decisions by comparing results to desired outcomes. If the results are unsatisfactory, we assess the causes of failure and adapt our management decisions accordingly. In part, we base management decisions on natural resource related research that has been

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conducted on refuges. This type of research adds to the general body of information related to natural resource management and aids us in continually adapting our management decisions. We generally encourage natural resource related research on refuges.

H. Sound Professional Judgment

We use sound professional judgment to determine what conditions constitute ecological integrity, how to maintain existing levels of ecological integrity; and how and when to restore lost elements of ecological integrity. These determinations are inherently complex and require us to consider our field experiences and knowledge of refuge resources, particularly biological resources, and make conclusions that are consistent with principles of sound fish and wildlife management and administration, available scientific information, and applicable laws. We consult with others inside and outside the Service as necessary.

*3.8 What are our responsibilities?*

A. Director

(1) Provides national policy, goals and objectives for maintaining and restoring the ecological integrity of the System.

(2) Ensures that national plans and partnerships support maintaining and restoring the ecological integrity of the System.

(3) Ensures that the national land acquisition strategy for the System is designed to maintain the ecological integrity of the System at all landscape scales.

B. Regional Director

(1) Provides regional policy, goals and objectives for maintaining and restoring the ecological integrity of the System. Regional policy will include guidance pertaining to the relative merits of pursuing ecological integrity on a particular refuge versus pursuing ecological integrity for other landscape scales.

(2) Ensures that regional and ecosystem plans, and regional partnerships support the maintenance and restoration of Refuge System ecological integrity.

(3) Resolves conflicts that arise between maintaining ecological integrity at the refuge landscape scale and maintaining ecological integrity at larger landscape scales.

C. Regional Refuge Chief

(1) Ensures that individual refuge Comprehensive Conservation Plans support the maintenance and restoration of Refuge System ecological integrity.

(2) Reviews and ensures that refuge management programs that occur on many refuges (*e.g.*, fire management) are consistent with this policy.

D. Refuge Manager

(1) Follows the procedure outlined in section 3.9 of this chapter.

(2) Incorporates the principles of this policy into all refuge management plans and actions.

(3) Ensures that refuge management plans, goals and objectives are consistent with System, regional and ecosystem goals and objectives to maintain ecological integrity.

*3.9 How do we implement this policy?*

The Director, regional directors, regional chiefs and refuge managers carry out their responsibilities as specified in section 3.8 of this chapter. In addition, refuge managers:

A. Identify the refuge's purposes.

B. Ascertain natural conditions for the refuge, including representative successional stages.

C. Assess current conditions and compare them to natural conditions to determine the most appropriate management strategies for maintaining and restoring ecological integrity. This assessment includes determining the capabilities and limitations of the refuge to maintain and restore ecological integrity.

D. Consider the refuge's importance to local, ecosystem, national and international landscape scales of ecological integrity.

E. Identify the refuge's roles and responsibilities within the Regional and System administrative levels.

F. Consider the relationships among biological integrity, biological diversity and environmental health, and resolve conflicts that may result when attempting to maintain and restore all three.

G. Consider refuge purposes and, in coordination with the comprehensive conservation planning process, prescribe appropriate wildlife and habitat management to maintain and restore ecological integrity at the appropriate landscape scales.

H. Evaluate the effectiveness of our management by comparing results to desired outcomes. If the results of our management strategies are unsatisfactory, assess the causes of failure and adapt our strategies accordingly.

*3.10 What factors do we consider when maintaining and restoring ecological integrity?*

This section provides guidance for maintaining and restoring each component of ecological integrity; that is, biological integrity, biological diversity, and environmental health. We plan for the maintenance and restoration of each component, while considering all three components in an integrated and holistic manner.

A. Biological Integrity

We evaluate biological integrity by examining the extent to which biological composition, structure, and function have been altered from natural conditions. Biological composition refers to biological components such as genes, populations, species, and communities. Biological structure refers to the organization of biological components, such as gene frequencies, social structures of populations, food webs of species, and niche partitioning within communities. Biological function refers to the processes undergone by biological components, such as genetic recombination, population migration, the evolution of species, and community succession.

Biological integrity lies along a continuum from a biological system completely altered by industrial development to a completely natural system. No landscape retains absolute biological integrity. However, we strive to prevent the further loss of natural biological features and processes; that is, biological integrity.

Maintaining or restoring biological integrity is not the same as maximizing biological diversity. Maintaining biological integrity may entail managing for a single species or community at some refuges and combinations of species or communities at other refuges. For example, a refuge may contain critical habitat for an endangered species. Maintaining that habitat (and, therefore, that species), even though it may reduce biological diversity at the local landscape scale, helps maintain biological integrity and biological diversity at the national landscape scale.

In deciding which management activities to conduct to accomplish refuge purposes while maintaining biological integrity, we start by considering how the ecosystem functioned under natural conditions. For example, we consider the natural frequency and timing of processes such as flooding, fires, and migration. Our management will mimic these natural processes in natural frequencies and timing at the local landscape scale, where they support accomplishing refuge purposes.

We may find it necessary to modify the frequency and timing of natural processes at the local landscape scale to fulfill refuge purposes or to contribute to ecological integrity at larger landscape scales. For example, under natural conditions, an area may have flooded only a few times per decade. Migratory birds dependent upon wetlands may have used the area in some years, and used other areas that flooded in other years. Because many wetlands have been converted to agriculture or other land uses, the remaining wetlands must produce more habitat, more consistently, to support wetland-dependent migratory birds. Therefore, to conserve biological integrity at larger landscape scales we may flood areas more frequently and for longer periods of time than they were flooded under natural conditions.



B. Biological diversity

We evaluate biological diversity at various taxonomic levels, including class, order, family, genus, species, subspecies, and—for purposes of Endangered Species Act implementation—distinct population. These evaluations of biological diversity begin with population surveys and studies of flora and fauna. The System's focus is on native species and natural communities.

We also evaluate biological diversity at various landscape scales, including local, ecosystem, national, and international. On refuges, we typically focus our evaluations of biological diversity at the local scale; however, these local evaluations can contribute to assessments at larger landscape scales.

We strive to maintain populations of breeding individuals that are genetically viable and functional. We provide for the breeding, migrating, and wintering needs of migratory species. We also strive to maximize the size of habitat blocks and maintain connectivity between blocks of habitats, unless such connectivity causes adverse effects on wildlife or habitat (*e.g.*, by facilitating the spread of invasive species).

At the community level, the most reliable indicator of biological diversity is plant community composition. We use the National Vegetation Classification System to identify biological diversity at this level.

C. Environmental Health.

We evaluate environmental health by examining the extent to which environmental composition, structure, and function have been altered from natural conditions. Environmental composition refers to abiotic components such as air, water, and soils, all of which are generally interwoven with biotic components (*e.g.*, decomposers live in soils). Environmental structure refers to the organization of abiotic components, such as atmospheric layering, aquifer structure, and topography. Environmental function refers to the processes undergone by abiotic components, such as wind, evaporation, and erosion. A diversity of abiotic composition, structure, and function tends to support a diversity of biological composition, structure, and function.

Environmental health affects biological integrity at all levels. Consistent with the wildlife first principle, we are especially concerned with environmental features as they affect living organisms. For example, at the genetic level, we manage for environmental health by preventing chemical contamination of air, water, and soils that may interfere with reproductive physiology or stimulate high rates of mutation. Such contamination includes carcinogens and other toxic substances that are released within or outside of refuges.

At the population and community levels, we consider the habitat components of food, water, cover, and space. Food and water may become contaminated with chemicals that are not naturally present. Activities such as logging and mining or structures such as buildings and fences may modify security or thermal cover. Unnatural noise and light pollution also compromise security. Unnatural physical structures, including buildings, reservoirs, and other infrastructure, may displace space. Refuge facility construction and maintenance projects necessary to accomplish refuge purposes should be designed to minimize their impacts on the environmental health of the refuge.

*3.11 How Do We Apply Our Management Strategies to Maintain and Restore Ecological Integrity?*

We strive to manage for ecological integrity in a holistic manner by optimizing the combination of biological integrity, biological diversity, and environmental health. We balance these three components of ecological integrity by considering refuge purposes, landscape scales, and the wildlife first principle. Considered independently, management strategies to maintain and restore biological integrity, biological diversity, and environmental health may conflict.

For example, physical structures and chemical applications are often necessary to maintain biological integrity and to fulfill refuge purposes. We may use dikes and water control structures to maintain and restore natural hydrological cycles, or use rotenone to eliminate invasive carp from a pond. These unnatural physical alterations and chemical applications would compromise environmental health if considered in isolation, but they may be appropriate management actions for maintaining ecological integrity when they are essential for maintaining biological integrity and accomplishing refuge purposes.

We may remove physical structures to promote endangered species recovery in some areas, or we may remove plants or animals (*e.g.*, beavers) to protect structures (*e.g.*, dikes), depending upon refuge purposes. Unless we determine that a species was present in the area of a refuge under natural conditions, we will not introduce or maintain the presence of that species for the purpose of biological diversity. We may make exceptions where areas are essential for the conservation of a threatened or endangered species and suitable habitats are not available elsewhere. In such cases, we strive to minimize unnatural effects and to restore or maintain natural processes and ecosystem components to the extent practicable without jeopardizing refuge purposes.

*3.12 What Do We Use as a Frame of Reference for Natural Conditions?*

We examine the time period from 800 AD to European settlement or to the industrial era to choose a timeframe that is appropriate for determining natural conditions for a given area of the country. In each area of the country, the timeframe for determining natural conditions must be long enough to define the full range of an area's plant community succession, fire regimes, hydrology, and climatic cycles. Natural conditions also may include those natural evolutionary forces and events, such as range expansions, that would have occurred if European settlement had not occurred or the industrial era had not arrived.

We use 800 AD as the starting point for natural conditions because it marks a major ecological transition in North America. The period from 800 AD to the industrial era includes warm, cool, and moderate climates that supported a variety of naturally occurring ecosystems. We use both European settlement and the industrial era as end points for determining natural conditions because we recognize both for causing landscape alterations. European settlers cleared land, established farms, and built towns and cities. Their impacts on the landscape varied, depending on density and land use. During the industrial era, the use of intensive energy sources, such as fossil fuels, have resulted in degradation and

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elimination of habitats, exterpitation of species, and created a need for both local and landscape level conservation efforts.

In the United States, European settlement and the industrial era began approximately 1600 AD and 1800 AD, respectively. In some areas the land use changes that degrade or destroy wildlife habitat did not begin until much later than 1800, particularly in Alaska. In these areas, we may extend the frame of reference for natural conditions beyond 1800.

In some cases, non-natural and irreversible changes have occurred since the industrial era. For example, some areas have been converted to urban or industrial uses, some species have been driven to extinction, and widespread phenomena like global warming may increasingly impact ecosystems. We acknowledge the existence of such irreversible, non-natural changes and strive to maintain remaining levels of ecological integrity without investing resources in futile management activities. However, where feasible we will attempt to mimic the structure, composition and function of natural conditions.

*3.13 Where Do We Get Information on Natural Conditions?*

Information on natural conditions may be ethnographic, historical, archeological, or paleoecological. Ethnographic information consists primarily of Native American oral traditions and belongings passed down through many generations. Historical information includes the written and, in some cases, the pictographic accounts of explorers, surveyors, traders, and others present in the United States prior to the industrial era. Archeological information comes from collections of cultural artifacts maintained by scientific institutions. Paleoecological information comes from a variety of ecological artifacts including fossils, packrat middens, pollen cores, soil sediments, and tree rings.

We obtain information on natural conditions from our investigations and from partners in academia, conservation organizations, and other Federal, State, Tribal, and local government agencies. In many cases, we use historical vegetation maps to provide data on natural conditions. Such historical maps are usually drawn at relatively coarse scales, perhaps to the level of vegetation alliance. Small areas such as bogs would have gone undocumented or undetected in the historical or paleoecological records, and generally a comprehensive list of plant and animal species is not available or necessary. The determination of natural species and ecosystem composition will be based on sound professional judgment. We periodically update our information on natural conditions with results from ongoing archeological and paleoecological studies.

When information on natural conditions is not available for a particular area, we obtain information on natural conditions of nearby areas that have similar environmental traits at a broad scale, including topography, geology, soils, and climate. We use these conditions as a proxy for natural conditions of the area in question.

*3.14 How Do We Incorporate Information From the Natural Conditions Reference Period Into Our Management Decisions?*

Maintaining biological integrity, biological diversity, and environmental health requires an ecological frame of reference. This frame of reference allows us to contrast current conditions with the natural conditions that existed prior to European settlement and the advent of the industrial era. The reference period guides us in two ways. It provides information on how the landscape looked prior to changes in land use that destroyed and fragmented habitats and resulted in diminished wildlife populations and the extirpation or extinction of species. It also allows us to examine how natural ecosystems function and maintain themselves. We use these conditions as a frame of reference in which to set current management goals.

We use the natural conditions frame of reference to identify composition, structure, and functional processes that naturally shaped ecosystems. We especially seek to identify keystone species, indicator species, and types of communities that occurred during the frame of reference. We also seek to ascertain basic information on natural structures such as predator/prey relationships and topography. Finally, we seek to identify the scale and frequency of processes that accompanied these components and structures, such as fire regimes, flooding events, and plant community succession. Where feasible, we also pursue ecological integrity by eliminating unnatural biotic and abiotic features and processes not necessary to accomplish refuge purposes.

We do not expect, however, to reconstruct a complete inventory of components, structures, and functions for any successional stage occurring during the frame of reference. Rather, we use sound professional judgment to fit the pieces together as if building a puzzle. For example, if there is fossilized evidence that beavers lived in an area, then we may conclude that there were beaver dams with associated floral and faunal components, community structure, and hydrological functions. Similarly, if tree ring analysis indicates a highly regular fire regime of every 10–15 years in a ponderosa pine forest, we may conclude that this functioned to maintain an understory with a relatively open structure, with a community of plants and animals typical of open-structured ponderosa pine forests.

We ensure that our management activities result in the establishment of a community that fits within the natural successional series, unless doing so conflicts with accomplishing refuge purposes. For example, if we determine that an area in question was an aspen parkland in 1800, we may manage for aspen parkland or any other community that fits within the natural successional series, with a focus on natural communities and ecological processes that are rare, declining, or unique. We often choose to maintain non-climax communities pursuant to refuge purposes or to contribute to ecological integrity at the regional, national, or international landscape scale. We favor techniques such as fire or flooding that mimic or result in natural processes to maintain these non-climax communities. However, where not precluded by refuge purposes, we allow or, if necessary, encourage natural successional processes.

If there is evidence that certain successional stages naturally were precluded, we do not attempt to manage for those stages. For example, if a volcanic eruption in the 12th century impounded water that flooded a forest, creating a lake in the process, we would not drain the lake to reproduce the forest. Reproducing conditions that naturally ceased to exist compromises ecological integrity.

*3.15 How Do We Manage Populations To Maintain and Restore Ecological Integrity?*

We maintain, or contribute to the maintenance of, viable populations of native species. We design our wildlife population management strategies to support accomplishing refuge purposes while maintaining or restoring ecological integrity. We formulate refuge goals and objectives for population management to maintain natural densities, social structures, and population dynamics at the local level, except where precluded by refuge purposes or by population objectives set by national plans and programs—such as the North American Waterfowl Management Plan—in which the System is a partner.

Natural densities are relatively stable for some species and variable for others. We manage populations for natural densities and levels of variation, while assuring that densities of endangered or otherwise rare species are sufficient for maintaining viable populations.

On some refuges, including many of those having the purpose of migratory bird conservation, we establish goals and objectives to maintain densities higher than those that would naturally occur at the refuge level because of the loss of surrounding habitats. By maintaining higher densities at the refuge level, we more closely approximate natural levels at larger landscape scales such as flyways. We try to prevent, however, densities at excessive levels that result in adverse effects on wildlife and habitat. The effects of producing densities that are too high may include disease, excessive nutrient accumulation and the competitive exclusion of other species. We use sound professional judgment to determine prudent limits to densities.

We consider population parameters such as sex ratios and age class distributions when managing populations to maintain and restore ecological integrity. Within the constraints of refuge purposes, we set our goals and objectives for these parameters within the range of values occurring under natural conditions, especially for resident populations. For example, ungulate populations with natural social structures are characterized by a high percentage of males with significant horns or antlers that are attractive to hunters and the viewing public alike. Population management plans, goals, and objectives for migratory populations generally are set at ecological scales broader than the refuge level, although refuges may play important roles in these efforts.

We encourage cooperation and coordination with State fish and wildlife management agencies in setting refuge population management goals and objectives. Regulations permitting hunting and fishing within the System will be, to the extent consistent with this policy, in keeping with State fish and wildlife laws, regulations, and management plans.

We support the reintroduction of extirpated native species. We consider such reintroduction in the context of surrounding landscapes. We do not introduce species on refuges outside their historic range or introduce species if we determine that they were naturally extirpated, unless such introduction is essential for the survival of a species and prescribed in an endangered species recovery plan, or is essential for the control of an invasive species and prescribed in an integrated pest management plan.

*3.16 How Do We Manage Habitats To Maintain and Restore Ecological Integrity?*

We maintain existing levels of ecological integrity at all landscape scales. In addition, we will restore lost elements of ecological integrity at all landscape scales where it is consistent with refuge purposes. Maintaining and restoring ecological integrity helps to minimize the effects of further loses of natural conditions at all landscape scales.

Our habitat management plans call for the appropriate management strategies that mimic natural conditions and accomplish refuge objectives. For example, prescribed burning to maintain natural fire regimes or water level management to mimic natural hydrological cycles are often necessary to maintain natural plant and animal communities in fragmented landscapes. Farming, haying, logging, livestock grazing, and other extractive activities are permissible habitat management practices only when prescribed in plans to meet wildlife or habitat management objectives, and only when more natural methods, such as fire or grazing by native herbivores, are not feasible.

We do not allow refuge uses or management practices that result in the maintenance of non-native plant communities unless we determine that there is no other feasible alternative for accomplishing refuge purposes. For example, where we do not require farming to accomplish refuge purposes, we cease farming and strive to restore natural habitats. Generally, farming must be identified as an important contribution to ecological integrity at larger ecosystem, regional, or national scales. Where past land uses and management practices have modified habitats, and where restoration is feasible, we restore natural habitats in the pursuit of ecological integrity. We use native seed sources in ecological restoration. We do not use genetically modified organisms in refuge management unless we determine their use essential to accomplishing refuge purposes and the Director approves the use.

*3.17 How Do We Manage Non-Native Species To Maintain and Restore Ecological Integrity?*

We prevent the introduction of invasive species, detect and control populations of invasive species, and provide for restoration of native species and habitat conditions in invaded ecosystems. We develop integrated pest management strategies that incorporate the most effective combination of mechanical, chemical, biological, and cultural controls while considering the effects on environmental health.

We require no action to reduce or eradicate self-sustaining populations of non-native, non-invasive species (e.g., pheasants) unless those species interfere with accomplishing refuge purposes. We do not, however, manage habitats to increase populations of these species unless such habitat management supports accomplishing refuge purposes.

*3.18 How Does This Policy Affect The Acquisition Of Lands For The System?*

We consider the mission, goals, and objectives of the System in planning for its strategic growth. We will take a proactive approach to identifying lands, from national and regional perspectives, that are critical for maintaining or restoring the ecological integrity of the System. We will integrate this approach into all Service strategies and initiatives related to the strategic growth of the System. We incorporate the guidance in this chapter when we evaluate the potential of an area to contribute to the conservation of the ecosystems of the United States. When evaluating potential new refuges, we consider how such refuges will contribute to maintaining the ecological integrity of the System.

We use the Land Acquisition Priority System to rank potential acquisitions once the Director approves significant expansions or new refuges. Our Land Acquisition Priority System includes components that gauge the contributions of refuges to maintaining and restoring ecological integrity.

*3.19 What Is The Relationship Between Ecological Integrity And Compatibility?*

When completing compatibility determinations, refuge managers use sound professional judgment to determine if a refuge use will materially interfere with or detract from the fulfillment of the System mission or the refuge purposes. Inherent in fulfilling the System mission is not degrading the ecological integrity of the refuge and the System. Refuge uses that we reasonably may anticipate to conflict with maintaining the ecological integrity of the refuge or the System are contrary to fulfilling the System mission and are therefore not compatible. Specific policy for compatibility is found in 603 FW 2.

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*3.20 What Is The Relationship Between Ecological Integrity and Comprehensive Conservation Planning?*

We integrate the principles of this policy into all aspects of comprehensive conservation planning as we write plans to direct long range refuge management and identify desired future conditions for planned refuges (602 FW 1.7 D).

*3.21 How Do We Protect Ecological Integrity From Actions Outside Of Refuges?*

When actions of others that occur off refuge lands or waters that injure or destroy the natural resources of a refuge, refuge managers should address those problems as soon as possible to protect the property of the United States and to protect the biological integrity, biological diversity, and environmental health of the refuge and the System. The refuge manager should first inform the person or entity responsible and request cooperation. Our first effort to avoid and rectify injury should always be partnerships or voluntary cooperation with adjacent landowners and others. If these efforts fail to protect the refuge, refuge managers should request the Office of the Solicitor for assistance in pursuing civil remedies, such as an injunction or damages, just as any other landowner would.

**Primary Author:** Brian Czech, Conservation Biologist, Branch of Wildlife Resources, National Wildlife Refuge System, U.S. Fish and Wildlife Service, is the primary author of this notice.

Dated: September 24, 2000.

**Jamie Rappaport Clark,**

*Director, U.S. Fish and Wildlife Service.*

[FR Doc. 00–26398 Filed 10–16–00; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[MT–921–01–1320–EL–P; MTM 88405]**

### Notice of Competitive Coal Lease Offering by Sealed Bid

**AGENCY:** Bureau of Land Management, Montana State Office

**ACTION:** Notice of competitive coal lease offering by sealed bid MTM 88405.

**SUMMARY:** Notice is hereby given that the coal resources in the lands described below in Big Horn County, Montana, will be offered for competitive lease by sealed bid. This offering is being made as a result of an application filed by Spring Creek Coal Company, in accordance with the provisions of the Mineral Leasing Act of 1920, as amended (41 Stat. 437; 30 U.S.C. 181 *et seq.*).

The lease sale will be held at 11:00 a.m., Monday, November 27, 2000, in the main conference room, side B, at the Bureau of Land Management, 5001 Southgate Drive, Billings, Montana 59102. Bids for the tract will be in the form of sealed bids. Sealed bids clearly marked "Sealed Bid for MTM 88405 Coal Sale—Not to be opened before 11:00 a.m., Monday, November 27, 2000" must be submitted on or before 10:00 a.m., November 27, 2000, to the cashier, Bureau of Land Management, Montana State Office, 5001 Southgate Drive, Post Office Box 36800, Billings, Montana 59107–6800.

An Environmental Assessment of the proposed coal development and related requirements for consultation, public involvement, and hearings have been completed in accordance with 43 CFR 3425. The results of these activities were a finding of no significant environmental impact.

The coal resource to be offered consists of all recoverable reserves in the following-described lands:

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Sec. 14: S½SW¼NE¼SE¼, S½NE¼SE¼SE¼, NW¼NE¼SE¼SE¼, S½SE¼SE¼, NW¼SE¼SE¼
Sec. 23: NE¼NE¼, SE¼SW¼NW¼NE¼, N½SW¼NW¼NE¼, E½NW¼NE¼
Sec. 24: NW¼SE¼NW¼NW¼, N½SW¼NW¼NW¼, N½NW¼NW¼
Containing 150.00 acres, Big Horn County, Montana.

The tract in this lease offering contains split estate lands. The surface is not held by a qualified surface owner as defined in the regulations, 43 CFR 3400.0–5.

**SUPPLEMENTARY INFORMATION:** The tract will be leased to the qualified bidder of the highest cash amount provided that the high bid meets the fair market value of the coal resource. The minimum bid for the tract is $100 per acre or fraction thereof. No bid that is less that $100 per acre, or fraction thereof, will be considered. The bids should be sent by certified mail, return receipt requested, or be hand-delivered. The cashier will issue a receipt for each hand-delivered bid. *Bids received after 10:00 a.m., Monday, November 27, 2000, will not be considered.* The minimum bid is not intended to represent fair market value. The fair market value will be determined by the authorized officer after the sale.

If identical high bids are received, the tying high bidders will be requested to submit follow-up sealed bids until a high bid is received. All tie-breaking sealed bids must be submitted within 15 minutes following the Sale Official's announcement at the sale that identical high bids have been received.

A lease issued as a result of this offering will provide for payment of an annual rental of $3 per acre, or fraction thereof; and a royalty payable to the United States of 12.5 percent of the value of coal mined by surface methods and 8.0 percent of the value of coal mined by underground methods. The value of the coal shall be determined in accordance with 30 CFR 206.250.

Bidding instructions for the tract offered and the terms and conditions of the proposed coal lease are included in the Detailed Statement of Lease Sale. Copies of the statement and the proposed coal lease are available at the Montana State Office. Casefile MTM 88405 is also available for public inspection at the Montana State Office.

**FOR FURTHER INFORMATION CONTACT:** Bettie Schaff, Land Law Examiner or Rebecca Good, Coal Coordinator at (406) 896–5063 or 896–5080, respectively.

Dated: October 11, 2000.

**Randy D. Heuscher,**

*Chief, Branch of Solid Minerals.*

[FR Doc. 00–26560 Filed 10–16–00; 8:45 am]

BILLING CODE 4310–$$–P

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Lower St. Croix National Scenic Riverway; Environmental Impact Statement

**AGENCY:** National Park Service, Minnesota Department of Natural Resources, Wisconsin Department of Natural Resources.

**ACTION:** Notice of availability of the final cooperative management plan/final environmental impact statement for the Lower St. Croix National Scenic Riverway, Minnesota and Wisconsin.

**SUMMARY:** Pursuant to section 102(2) of the National Environmental Policy Act of 1969, the National Park Service, Minnesota Department of Natural Resources, and Wisconsin Department of Natural Resources announce the availability of the final cooperative management plan/final environmental impact statement (FCMP/FEIS) for the Lower St. Croix National Scenic Riverway.

The purpose of the cooperative management plan is to set forth the basic management philosophy for the riverway and to provide the strategies for addressing issues and achieving identified management objectives. The FCMP/FEIS describes and analyzes the environmental impacts of a proposed action and four action alternatives for the future management direction of the riverway. The FCMP/FEIS also evaluates a preferred management structure and two management structure options for the riverway. No action alternatives are evaluated for both management direction and management structure.

The responsible officials are Mr. William Schenk, Midwest Regional Director, National Park Service; Mr. Allen Garber, Commissioner, Minnesota Department of Natural Resources; and Mr. George Meyer, Secretary, Wisconsin Department of Natural Resources.

**DATES:** The no-action period on this FEIS will expire 30 days after the Environmental Protection Agency has published a notice of availability of the FEIS in the **Federal Register**.

**ADDRESSES:** Copies of the FCMP/FEIS are available by request by writing the Superintendent, Lower St. Croix National Scenic Riverway, P.O. Box 708, St. Croix Falls, WI 54024–0708, by telephone at 715–483–3284, extension 625 or by e-mail from SACN_Superintendent@nps.gov. The document can be picked-up in person at the Lower St. Croix National Scenic Riverway headquarters at 401 Hamilton Street North, St. Croix Falls, WI.

**FOR FURTHER INFORMATION CONTACT:** Superintendent, Lower St. Croix National Scenic Riverway at the address and telephone listed above.

**SUPPLEMENTARY INFORMATION:** The Lower St. Croix National Scenic Riverway is a narrow corridor that runs for 52 miles along the boundary of Minnesota and Wisconsin, from St. Croix Falls/Taylors Falls to the confluence with the Mississippi River at Prescott/Point Douglas. The National Park Service manages a portion of the upper 27 miles of lands and waters of this corridor. The states of Minnesota and Wisconsin administer the lower 25 miles. The states and the federal government jointly conduct planning for the riverway.

The Draft Cooperative Management Plan and Draft Environmental Impact Statement (DCMP/DEIS) for the Lower St. Croix National Scenic Riverway was released to the public on September 17, 1999. The public comment period ended November 30, 1999. About 650 copies of the document were distributed during this period. The managing agencies received almost 900 written responses during the public review period.



Modifications to the DGMP/DEIS have been made based on public comment received and on further impact analysis.

Dated: October 5, 2000.

**William W. Schenk,**

*Regional Director, Midwest Region.*

[FR Doc. 00–26604 Filed 10–16–00; 8:45 am]

BILLING CODE 4310–70–P

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Official Underground Railroad Network to Freedom Symbol

**SUMMARY:** This notice establishes the official National Park Service symbol with the incorporating words "Underground Railroad Network to Freedom" carrying out the provisions of the National Underground Railroad Network to Freedom Act.

**DATES:** This action is effective October 17, 2000.

**FOR FURTHER INFORMATION CONTACT:** Diane Miller, National Coordinator, National Underground Railroad Network to Freedom Program, 1709 Jackson Street, Omaha, Nebraska 68102, telephone 402–221–3749.

**SUPPLEMENTARY INFORMATION:** The National Park Service has designated an official National Park Service symbol with the words "Underground Railroad Network to Freedom" fulfilling the mandate of the National Underground Railroad Network to Freedom Act. You may obtain a copy of the image incorporating the words "Underground Railroad Network to Freedom" from the National Coordinator at the address listed above. Notice is given that whoever manufactures, sells, or possesses this symbol embossed image, or any colorable limitation thereof, or photographs, prints or in any other manner makes or executes any engraving photograph or print, or impression in the likeness of this symbol, or any colorable imitation thereof, without authorization from the United States Department of the Interior is subject to the penalty provisions of section 701, Title 18 of the United States Code.

Dated: October 15, 2000.

**William W. Schenk,**

*Regional Director, Midwest Region.*

[FR Doc. 00–26605 Filed 10–16–00; 8:45 am]

BILLING CODE 4310–70–M

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

### Notice of Proposed Information Collection

**AGENCY:** Office of Surface Mining Reclamation and Enforcement.

**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request approval for the collection of information for the permanent program performance standards—surface mining activities at 30 CFR part 816.

**DATES:** Comments on the proposed information collection must be received by December 18, 2000, to be assured of consideration.

**ADDRESSES:** Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW, Room 210—SIB, Washington, DC 20240. Comments may also be submitted electronically to jtreleas@osmre.gov.

**FOR FURTHER INFORMATION CONTACT:** To request a copy of the information collection request, explanatory information and related form, contact John A. Trelease, at (202) 208–2783.

**SUPPLEMENTARY INFORMATION:** The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies information collections that OSM will be submitting to OMB for extension. These collections are contained in 30 CFR 816.

OSM has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on reestimates of burden or respondents. OSM will request a 3-year term of approval for this information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such

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as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB.

This notice provides the public with 60 days in which to comment on the following information collection activity:

*Title:* Permanent Program Performance Standards—Surface Mining Activities, 30 CFR Part 816.

*OMB Control Number:* 1029–0047.

*Summary:* Section 525 of the Surface Mining Control and Reclamation Act of 1977 provides that permittees conducting surface coal mining operations shall meet all applicable performance standards of the Act. The information collected is used by the regulatory authority in monitoring and inspecting surface coal mining activities to ensure that they are conducted in compliance with the requirements of the Act.

*Bureau Form Number:* None.

*Frequency of Collection:* Once, on occasion, quarterly and annually.

*Description of Respondents:* Surface coal mining operators.

*Total Annual Responses:* 731,787.

*Total Annual Burden House:* 355,405.

Dated: October 11, 2000.

**Richard G. Bryson,**

*Chief, Division of Regulatory Support.*

[FR Doc. 00–26559 Filed 10–16–00; 8:45 am]

BILLING CODE 4310–05–M

## DEPARTMENT OF LABOR

### Office of the Secretary

### Submission for OMB Review; Comment Request

October 11, 2000.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation for BLS, ETA, PWBA, and OASAM contact Karin Kurz ((202) 693–4127 or by E-mail to Kurz-Karin@dol.gov). To obtain documentation for ESA, MSHA, OSHA, and VETS contact Darrin King ((202) 693–4129 or by E-Mail to King-Darrin@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**. The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

*Type of Review:* Extension of a currently approved collection.

*Agency:* Employment Standards Agency (ESA).

*Title:* Authorization for Release of Medical Information.

*OMB Number:* 1215–0057.

*Affected Public:* Individuals or households.

*Frequency:* Once.

*Number of Respondents:* 2,700.

*Number of Annual Responses:* 2,700.

*Estimated Time Per Response:* 5 minutes.

*Total Burden Hours:* 225.

*Total Annualized Capital/Startup Costs:* $0.

*Total Annual Costs (operating/maintaining systems or purchasing services):* $0.

*Description:* The CM–936 is used to obtain a claimant's authorization for the Division of Coal Mine Workers' Compensation to obtain medical evidence in support of a black lung claim.

*Type of Review:* Extension of a currently approved collection.

*Agency:* Employment Standards Agency (ESA).

*Title:* Recordkeeping and Reporting Requirements, Construction.

*OMB Number:* 1215–0163.

*Affected Public:* Business or other for-profit and Not-for-profit institutions.

*Frequency:* Quarterly.

*Number of Respondents:* 100,000.

*Number of Annual Responses:* 103,711.

**Estimated Time Per Response**

*Recordkeeping*

Records Maintenance: 8 to 24 hours
Affirmative Action Plan, Initial Development: 18 hours
Affirmative Action Plan, Annual Update: 7.5 hours
Affirmative Action Plan, Maintenance: 7.5 hours

**Reporting**

CC–41 Quarterly Administrative Committee Report: 25 minutes
Compliance Reviews: 1–2 hours

*Total Burden Hours:* 4,841,475.

*Total Annualized Capital/Startup Costs:* $0.

*Total Annual Costs (operating/maintaining systems or purchasing services):* $0.

*Description:* Recordkeeping and reporting by Federal and Federally-assisted construction contractors and subcontractors is necessary to substantiate compliance with nondiscrimination and affirmative action contractual obligations.

**Ira L. Mills,**

*Department Clearance Officer.*

[FR Doc. 00–26635 Filed 10–16–00; 8:45 am]

BILLING CODE 4510–48–M

## NATIONAL CREDIT UNION ADMINISTRATION

### Sunshine Act Meeting

*Time and Date:* 10:00 a.m., Thursday, October 19, 2000.

*Place:* Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

*Status:* Open.

*Matters To Be Considered*

1. Final IRPS 00–1, Amendments to NCUA's Chartering and Field of Membership Policies.
2. Requests from Three (3) Federal Credit Unions to Convert to Community Charters.
3. Request from a Federal Credit Union to Expand its Community Charter.
4. Delegations of Authority Related to the Prompt Corrective Action Regulations.
5. Proposed Interpretive Ruling and Policy Statement (IRPS) with Request for Comments Regarding Central Liquidity Facility (CLF).
6. Proposed Rule: Sections 706.6 through 706.17, NCUA's Rules and Regulations, Fair Credit Reporting.



7. Final Rule: Amendment to Part 792, Subparts C and E, NCUA's Rules and Regulations, Privacy Act.
8. NCUA's Overhead Transfer Rate for 2001.

*Recess:* 11:15 a.m.

*Time and Date:* 11:30 a.m., Thursday, October 19, 2000.

*Place:* Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

*Status:* Closed.

*Matters To Be Considered*

1. Budget Reprogramming. Closed pursuant to exemptions (4) and (6).
2. Two (2) Personnel Matters. Closed pursuant to exemptions (2) and (6).

**FOR FURTHER INFORMATION CONTACT:** Becky Baker, Secretary of the Board, Telephone 703–518–6304.

**Becky Baker,**

*Secretary of the Board*

[FR Doc. 00–26717 Filed 10–13–00; 11:06 am]

BILLING CODE 7535–01–M

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### National Endowment for the Arts; Leadership Initiatives Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that two meetings of the Leadership Initiatives Advisory Panel (AccessAbility and Arts Education sections) to the National Council on the Arts will be held on October 20, 2000 and October 25, 2000 respectively. The panels will meet by teleconference as follows:

AccessAbility Section: from 1 p.m. to 2:30 p.m. in Room 528

Arts Education Section: from 4:30 p.m. to 5:30 p.m. in Room 703 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC, 20506.

These meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of May 12, 2000, these sessions will be closed to the public pursuant to subsection (c)(4),(6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5691.

Dated: October 13, 2000.

**Kathy Plowitz-Worden,**

*Panel Coordinator, Panel Operations, National Endowment for the Arts.*

[FR Doc. 00–26754 Filed 10–16–00; 8:45 am]

BILLING CODE 7537–01–U

## NATIONAL SCIENCE FOUNDATION

### Notice of Permits Issued Under the Antarctic Conservation Act of 1978

**AGENCY:** National Science Foundation.

**ACTION:** Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95–541.

**SUMMARY:** The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

**FOR FURTHER INFORMATION CONTACT:** Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

**SUPPLEMENTARY INFORMATION:** On August 29, 2000, the National Science Foundation published a notice in the **Federal Register** of permit applications received. Permits were issued on October 5, 2000 to the following applicants:

Terry J. Wilson Permit No. 2001–009
Mahlon C. Kennicutt Permit No. 2001–012
Brenda Hall Permit No. 2001–013
William Swanson Permit No. 2001–019
Richard M. Jones Permit No. 2001–020

**Nadene G. Kennedy,**

*Permit Officer.*

[FR Doc. 00–26647 Filed 10–16–00; 8:45 am]

BILLING CODE 7555–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–250 and 50–251; License Nos. DPR–31 and DPR–41]**

### In the Matter of Florida Power & Light Company (Turkey Point Units 3 and 4); Confirmatory Order Modifying Post-Three Mile Island Requirements Pertaining to Containment Hydrogen Monitors

I

Florida Power & Light Company (FPL or the licensee) is the holder of Facility Operating License Nos. DPR–31 and DPR–41 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR part 50. The licenses authorize the operation of Turkey Point, Units 3 and 4, located in Dade County, Florida.

II

As a result of the accident at Three Mile Island, Unit 2 (TMI–2), the NRC issued NUREG–0737, "Clarification of TMI Action Plan Requirements," in November 1980. Generic Letters 82–05 and 82–10, issued on March 17 and May 5, 1982, respectively, requested licensees of operating power reactors to furnish information pertaining to their implementation of specific TMI Action Plan items described in NUREG–0737. Orders were issued to licensees confirming their commitments made in response to the generic letters. The Confirmatory Order that was issued to FPL on March 14, 1983, required the licensee to implement and maintain the various TMI Action Plan Items, including Item II.F.1 Attachment 6, pertaining to monitoring of the hydrogen concentration in the containment following a safety injection.

The Confirmatory Order of March 14, 1983, imposed requirements upon the licensee to have continuous monitoring of containment hydrogen concentration provided in the control room, as described by TMI Action Plan Item II.F.1, Attachment 6. Information about hydrogen concentration supports the licensee's assessments of the degree of core damage and whether a threat to the integrity of the containment may be posed by hydrogen gas combustion. TMI Action Item II.F.1, Attachment 6 states:

> If an indication is not available at all times, continuous indication and recording shall be functioning within 30 minutes of the initiation of safety injection.

The requirement to have monitoring of the hydrogen concentration in the containment within 30 minutes following the start of safety injection has defined both design and operating characteristics for hydrogen monitoring systems at nuclear power plants since the implementation of NUREG–0737. In addition, the technical specifications of most nuclear power plants and NRC regulation 10 CFR 50.44, "Standards for Combustible Gas Control System in Light-Water-Cooled Power Reactors," require availability of hydrogen monitors.

By letter dated June 21, 2000, FPL requested relief for the two Turkey Point units from the requirement to have indication of hydrogen concentration in the containment within 30 minutes of the initiation of safety injection.

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Specifically, FPL requests relief from the requirement of establishing monitoring of hydrogen concentration in the containment within 30 minutes of the initiation of safety injection, and proposes that, in lieu of the current 30-minute time limit, risk-informed insights be used to determine the functional requirements for monitoring of containment hydrogen concentration that would allow extending the monitoring requirement time limit to more than 30 minutes following initiation of safety injection. The basis for this request was that the additional time would allow the operators to complete their initial accident assessment and mitigation duties before redirecting their attention to the relatively longer-term recovery actions, such as actuating the hydrogen recombiners that are not needed for more than 24 hours after an accident.

Significant improvements have been achieved since the TMI accident, in the areas of understanding risks associated with nuclear plant operations and developing better strategies for managing the response to potential severe accidents at nuclear power plants. Recent insights pertaining to plant risks and severe accident assessment tools have led the NRC staff to conclude that some TMI Action Plan items can be revised without reducing, and perhaps even enhancing the ability of licensees to respond to severe accidents. The NRC's efforts to understand the risks associated with commercial nuclear power plant operations more effectively and to reduce unnecessary regulatory burden on licensees and the public have prompted the NRC's decision to revise the post-TMI requirement to monitor containment hydrogen concentration.

Based on the staff's evaluation of the justification provided by the licensee, and on improved understanding of insights pertaining to plant risks, severe accident assessment, and emergency planning since the TMI–2 accident, the staff has concluded that the licensee's request should be approved. Giving the licensee the flexibility and responsibility for determining the appropriate time limit for establishing monitoring of containment hydrogen concentration will preclude control room personnel from being distracted from various important tasks in the early phases of accident mitigation, while allowing cognizant personnel, mostly outside the control room, to be aware of hydrogen concentration based on a risk-informed functional assessment at a reasonable time following an accident. Because the appropriate balance between control room activities and longer-term management of the response to severe accidents can best be determined by the licensee, the NRC staff has determined that the licensee may elect to either maintain the 30-minute time limit for monitoring of hydrogen in containment, as described by TMI Action Plan Item II.F.1, Attachment 6, in NUREG–0737, and required by the Confirmatory Order of March 14, 1983, or modify the time limit in the manner specified in the functional requirement described below:

Procedures shall be established for ensuring that monitoring of hydrogen concentration in the containment atmosphere is available in a sufficiently timely manner to support the implementation of the Turkey Point Units 3 and 4 Emergency Plan (and related procedures) and related activities such as guidance for severe accident management. Hydrogen monitoring will be initiated based on: (1) the appropriate priority for establishing monitoring of hydrogen concentration within the containment in relation to other activities in the control room; (2) the use of the monitoring of hydrogen concentration by decision makers for severe accident management and emergency response; and (3) insights from experience or evaluation pertaining to possible scenarios that result in significant generation of hydrogen that would be indicative of core damage or a potential threat to the integrity of the containment building. Affected licensing basis documents and other related documents will be appropriately revised and/or updated in accordance with applicable NRC regulations.

The licensee's Post-Accident Monitoring Instrumentation Technical Specifications and 10 CFR 50.44 require the licensee to maintain the ability to monitor hydrogen concentration in the containment. However, the details pertaining to the design and manner of operation of the hydrogen monitoring system are determined by the licensee.

**III**

Accordingly, pursuant to Sections 103, 104b, 161b, 161i, 161o, and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR part 50, *it is hereby ordered* that NRC License Nos. DPR–31 and DPR–41 are modified as follows:

The licensee may elect to either maintain the 30-minute time limit for monitoring of hydrogen in the containment, as described by TMI Action Plan Item II.F.1, Attachment 6, in NUREG–0737 and required by the Confirmatory Order of March 18, 1983, or modify the time limit in the manner specified in Section II of this Order.

The Director, Office of Nuclear Reactor Regulation, may, in writing, relax or rescind any of the above conditions upon demonstration by the licensee of good cause.

**IV**

Any person adversely affected by this Confirmatory Order, other than the licensee, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extend the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, ATTN: Chief, Rulemakings and Adjudications Staff, Washington, DC 20555–0001. Copies of the hearing request shall also be sent to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, to the Regional Administrator, NRC Region II, Atlanta Federal Center, 23 T 85, 61 Forsyth Street, SW., Atlanta, Georgia 30303–3415, and to M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420, attorney for the licensee. If such a person requests a hearing, that person will set forth with particularity the manner in which his interest is adversely affected by this Order and will address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing will be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above will be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV will be final when the extension expires if a hearing request has not been received.

Dated at Rockville, Maryland, this 5th day of October 2000.

For the Nuclear Regulatory Commission.

**Samuel J. Collins,**

*Director, Office of Nuclear Reactor Regulation.*

[FR Doc. 00–26644 Filed 10–16–00; 8:45 am]

BILLING CODE 7590–01–P



## NUCLEAR REGULATORY COMMISSION

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Nuclear Regulatory Commission.

**DATE:** Weeks of October 16, 23, 30, November 6, 13, and 20, 2000.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Public and Closed.

**MATTERS TO BE CONSIDERED:**

**Week of October 16**

*Tuesday, October 17*

11:25 a.m.
Affirmation Session (Public Meeting) (If needed)

**Week of October 23—Tentative**

*Monday, October 23*

1:55 p.m.
Affirmation Session (Public Meeting) (If needed)

**Week of October 30—Tentative**

There are no meetings scheduled for the Week of October 30.

**Week of November 6—Tentative**

There are no meetings scheduled for the Week of November 6.

**Week of November 13—Tentative**

*Friday, November 17*

9:25 a.m.
Affirmation Session (Public Meeting) (If needed)
9:30 a.m.
Briefing on Risk-Informed Regulation Implementation Plan (Public Meeting) (Contact: Tom King, 301–415–5790)

This meeting will be webcast live at the Web address: *www.nrc.gov/live.html.*

**Week of November 20—Tentative**

There are no meetings scheduled for the Week of November 20.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292.

**CONTACT PERSON FOR MORE INFORMATION:** Bill Hill (301) 415–1661.

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, DC 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: October 13, 2000.

**William M. Hill, Jr.,**

*Secy Tracking Officer, Office of the Secretary.*

[FR Doc. 00–26783 Filed 10–13–00; 3:04 p.m.]

BILLING CODE 7590–01–M

## NUCLEAR REGULATORY COMMISSION

### Availability of NUREG–1307, Revision 9, "Report on Waste Burial Charges. Changes in Decommissioning Waste Disposal Costs at Low-Level Waste Burial Facilities"

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of availability.

**SUMMARY:** The Nuclear Regulatory Commission is announcing the completion and availability of NUREG–1307, Revision 9, "Report on Waste Burial Charges," dated September 2000.

**ADDRESSES:** NUREG–1307 may be purchased from The Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20402–9328; *www.access.gpo.gov/sudocs;* 202–512–1800; or The National Technical Information Service, Springfield, Virginia 22161–0002; *www.ntis.gov;* 1–800–553–6847 or, locally, 703–605–6000.

You may also electronically access NUREG—series publications and other NRC records at NRC's Public Electronic Reading Room at *www.nrc.gov/NRC/ADAMS/index.html.*

This publication is also posted at NRC's Web site address *www.nrc.gov/NRC/NUREGS/indexnum.html.*

**FOR FURTHER INFORMATION CONTACT:** David J. Wrona, Division of Licensing Project Management, Office of Nuclear Reactor Regulation, Washington, DC 20555–0001 (telephone 301–415–1924).

**SUPPLEMENTARY INFORMATION:** Nuclear power reactor licensees are required, per 10 CFR 50.75, to adjust annually the estimated decommissioning costs of their nuclear facilities in order to ensure adequate funds are available for decommissioning. The regulation references NUREG–1307 as the appropriate source for obtaining the adjustment factor for waste burial/disposition costs; this Revision 9 of NUREG–1307 provides the current waste burial costs at the Washington and South Carolina disposal sites. In addition, this revision provides costs for low-level radioactive waste disposition using waste vendors. Licensees can factor these numbers into the adjustment formula, as specified in 10 CFR 50.75(c)(2), to determine the minimum decommissioning fund requirement for their nuclear facilities.

Dated at Rockville, Maryland, this 6th day of October 2000.

For the Nuclear Regulatory Commission.

**Michael T. Masnik,**

*Chief, Decommissioning Section, Project Directorate IV & Decommissioning, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 00–26643 Filed 10–16–00; 8:45 am]

BILLING CODE 7590–01–M

## SECURITIES AND EXCHANGE COMMISSION

**(Release No. 34–43426; File No. SR–MSRB–00–08)**

### Self-Regulatory (Organizations; Municipal Securities Rulemaking Board; Order Approving Proposed Rule Change Relating to Reports of Sales and Purchases, Pursuant to Rule G–14

October 10, 2000.

**I. Introduction**

On June 15, 2000, the Municipal Securities Rulemaking Board ("MSRB" or "Board") submitted to the Securities and Exchange Commission ("SEC" or "Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to reports of sales and purchases, pursuant to MSRB Rule G–14. The proposed rule change was published for comment in the **Federal Register** on July 27, 2000.[3] The Commission received one comment letter on the proposal.[4] This order approves the Board's proposal.

**II. Description of the Proposal**

*a. Introduction*

According to the Board, one of its long-standing policies is to increase price transparency in the municipal

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 43060 (July 23, 2000), 65 FR 46188.

[4] *See* letter from Lynette K. Holchkiss, Vice President and Associate General Counsel, The Bond Market Association, to Jonathan G. Katz, Secretary, SEC, dated August 11, 2000.

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securities market. Since 1995, the Board has expanded the scope of public transparency in several steps.[5] Each step has provided industry participants and the public successively more information about the market.

The Board's reports currently provide information about "frequently traded" municipal securities. "Frequently traded" municipal securities are those municipal securities that trade four or more times on a given business day. The existing reports are produced daily on a T + 1 basis, *i.e.*, with information for trades effected during the proceeding day.

In designing the first T + 1 transparency report and subsequent enhanced versions, the Board adopted the threshold of four trades a day because of its concern that an isolated transaction may not necessarily provide a reliable indicator of "market price"and might be misleading to an observer not familiar with the market. At the same time, the Board committed to review the use of these reports and eventually to move to a more contemporaneous and comprehensive price transparency report.[6]

*b. Proposed Report*

The Board is now proposing to make publicly available a Comprehensive Transaction Report that would include information on all individual municipal securities transactions. For each trade, the proposed Report would show the trade date, the CUSIP number of the issue traded, a short description of the issue, the par value traded, the time of the trade report by the dealer, the price of the transaction, and the reported yield of transaction, if any. Each transaction would be categorized as a sale by a dealer to a customer, a purchase from a customer, or an inter-dealer trade.

In addition to information on infrequently traded issues, the proposed Report would provide information on two other types of trades not in the current Daily Transaction Reports: trades reported late (after trade date), and corrected trades (trades reported incorrectly on trade date that subsequently are corrected by the dealer.[7]

The proposed Comprehensive Transaction Report would be made available once a month to subscribers. The Board would send subscribers each month a compact disk containing all trades effected during the previous calender month. The Board plans to make sample disks with a single month's data available to prospective users without charge, so that they may determine whether they wish to subscribe.

The Board is proposing to establish a fee of $2,000 for an annual subscription. According to the Board, the proposed fee is structured to defray the Board's cost for production of 12 monthly data sets, transcription to compact disks, mailing, and subscription maintenance.

## III. Summary of Comment Letters

The Commission received one comment letter regarding the proposed rule change.[8] The following summarizes the issues raised in the comment letter and the MSRB's response.[9]

The commenter generally supported the Board's goal of providing comprehensive and contemporaneous transaction reports but provided several suggestions that it believed would increase the utility of the proposed Comprehensive Transaction Report. First, the commenter suggested that the Board release transaction data for trades that occur 30 days prior on a daily basis rather than a cumulative monthly basis at the end of the following month. The commenter noted that the proposed dissemination system could result in data that was 60 days old by the time of dissemination, limiting the usefulness of the data. Second, the commenter suggested that the Board make the data available over the Internet on secure, password protected sites, rather that solely in compact disk format. The commenter believes that an Internet delivery system would be more easily downloaded and used by subscribers and would reduce the cost of the service. Finally, the commenter sought confirmation that the annual subscription fee charged for the service was directly related to the actual cost of disseminating the data to ensure that the service would not become a profit center for the Board.

In response, the Board noted that releasing data on a monthly basis is currently the most cost-effective and technologically efficient method. The Board recognizes that some data will be over a month old at the time of its release but noted that it is evaluating the means to release the data more contemporaneously in the future. With respect to the commenter's suggestion that the Board make the historical transaction data available via the Internet, the Board noted that to do so would require an extremely large file that would take a prohibitively long time to download. The Board stated that providing the historical data via the Internet also would create technical and technical-support issues for the Board. The Board noted, however, that it would continue to consider alternative delivery methods in the future.

Finally, in response to the commenter's request for confirmation regarding the subscription fees proposed to be charged for the historical data, the Board stated that the subscription fees will not be so high as to create a profit center for the Board, nor so low that the service would require a subsidy from dealer assessments. The Board reiterated that it is attempting to defray the approximate cost of disseminating the data and of establishing and maintaining subscriber accounts.

## IV. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the Board.[10] In particular, the Commission believes the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act,[11] which requires, among other things, that the rules of the Board be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The Commission finds that the proposed Comprehensive Transaction Report is consistent with the Act because it will enhance transparency in the municipal securities market. The proposed Report will provide municipal securities participants with more transaction information about issues currently being traded. In particular, the MSRB represents that participants will now have access to three times as many transactions as are included in the current T + 1 daily reports. According to the MSRB, on average, 29,000 transactions would be reported per day. Also, the MSRB represents that the number of issues reported would increase from about 1,600 on a typical day to about 14,000.[12] Furthermore, the proposed Report expands the current T + 1 reports by also including trades reported late and corrected trades. Thus, this detailed Report will allow municipal securities market participants to monitor and analyze individual trades in infrequently traded securities, which should better assist them in making informed investment decisions.

The proposed Report should also enhance the price discovery process by providing a more complete picture of the municipal securities market. The proposed Report will contain detailed price information regarding frequently traded issues as well as detailed price information regarding infrequently traded municipal securities, *i.e.*, those traded once, twice, or three times in a given day.

The Commission commends the MSRB's efforts to increase municipal market transparency by looking for means to update its reporting programs and systems. The Commission, however, believes that the MSRB should continue to work towards including more information on infrequently traded issues on a T + 1 basis, by shortening the delay for publication of the Comprehensive Transaction Report, or by other collection and dissemination methods. The Commission supports the MSRB's goal to ultimately provide comprehensive and contemporaneous transaction reports to the market.

The Commission is satisfied with the Board's response to the comment letter. While the comment letter provided valid and helpful suggestions, the Board stated that it could not undertake the changes relating to the delivery method and the timing of delivery of the historical data at this time due to technology and cost constraints. The Board did commit, however, to consider the suggestions in the future once the service becomes operative and the Board has more experience with the needs of subscribers. The Commission believes that it would not be in the public interest to postpone the dissemination of the historical data as proposed until the delivery method and time of delivery could be modified to satisfy the commenter's suggestions. Finally, the Commission believes that the Board's statement that the subscription fees will neither generate profits for the Board nor create the need for dealers to subsidize its operations is consistent with the requirements of Section 15B(b)(2)(C) of the Act.[13]

In conclusion, the Commission finds that the proposed rule change is consistent with the Act because it provides municipal securities market participants with more detailed market data upon which they will be able to make more informed investment decisions. Thus, the proposed rule change should enhance the transparency of the municipal securities market.

## V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–MSRB–00–08) is hereby approved.

By the Commission, for the Division of Market Regulation, pursuant to delegated authority.[15]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–26545 Filed 10–16–00; 8:45 am]

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[5] The Board began distributing a report summarizing prices for issues that are frequently traded on the inter-dealer market in 1995; in 1998, dealer-customer prices were added in a second summary report; and in January 2000, a report with details of trades in frequently traded issues was added. *See* Securities Exchange Act Release No. 42241 (December 16, 1999), 64 FR 72123 (December 23, 1999). The proposed rule change would not affect the summary and detailed public reports of frequently traded issues.

[6] *See, e.g.*, "Board to Proceed with Pilot Program to Disseminate Inter-Dealer Transaction Information," *MSRB Reports*, Vol. 14, No. 1 (January 1994). In its approval order for the Inter-Dealer Daily Report, the SEC noted that the Board, in proceeding to subsequent levels of transparency, "should continue to work toward publicly disseminating the maximum level of useful information to the public while ensuring that the information and manner in which it is presented is not misleading." *See* Securities Exchange Act Release No. 34955 (November 9, 1994), 59 FR 59810 (November 18, 1994).

[7] To enable the Board to compile a comprehensive trade database for enforcement purposes, dealers report certain data after trade date. These data are not available to the Board in time to be included in the T + 1 daily reports. The post-T data also include "corrections" to trades that were initially reported inaccurately with regard to price, par, etc. Corrected and late trades in frequently traded issues amount to about 6 percent of the number of trades included in the current T + 1 daily reports.

[8] *See supra* note 4.

[9] See letter from Larry Lawrence, Policy and Technical Advisor, MSRB, to Kelly Riley, Division of Market Regulation, SEC, dated September 1, 2000.

[10] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78o–4(b)(2)(C).

[12] These trade volume statistics are based on February 2000 market activity.

[13] 15 U.S.C. o–4(b)(2)(C).

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).



**PORTIONS CLOSED TO THE PUBLIC:** Discussion of internal personnel matters.

**CONTACT PERSON:** David Tevelin, Executive Director, State Justice Institute, 1650 King Street, Suite 600, Alexandria, VA 22314, (703) 684–6100.

**David I. Tevelin,**

*Executive Director.*

[FR Doc. 00–26735 Filed 10–13–00; 2:48 pm]

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## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Environmental Impact Statement; City of Missoula, Montana

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of intent.

**SUMMARY:** The FHWA hereby gives notice that it intends to prepare an Environmental Impact Statement (EIS) for an urban corridor (involving Russell Street and South 3rd Street) all within the limits of the City of Missoula, Missoula County, Montana. The study will evaluate possible improvements to these existing roadways and all practical alignment alternatives.

**FOR FURTHER INFORMATION CONTACT:** Mr. Dale Paulson, Program Development Engineer, Federal Highway Administration, 2880 Skyway Drive, Helena, Montana 59602; Telephone: (406) 449–5303 ext. 239; Mr. Joel M. Marshik, Manager, Environmental Services, Montana Department of Transportation, 2701 Prospect Avenue, Helena, Montana 59602; Telephone: (406) 444–7632; or Mr. Joe Oliphant, Project Development Coordinator, City of Missoula, 435 Ryman Street, Missoula, Montana 59802–4207, Telephone: (406) 523–2877.

**SUPPLEMENTARY INFORMATION:**

#### Electronic Access

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at http://www.nara.gov/fedreg/ and the Government Printing Office's database at http://www.access.gpo.gov.

#### Background

The FHWA, in cooperation with the Montana Department of Transportation (MDT) and the City of Missoula, will

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## STATE JUSTICE INSTITUTE

### Notice of Public Meeting

**DATE:** Friday, November 10, 2000, 9 a.m.–5 p.m.

**PLACE:** La Costa Hotel, Carlsbad, CA.

**MATTERS TO BE CONSIDERED:** Consideration of proposals submitted for Institute funding and internal Institute business.

**PORTIONS OPEN TO THE PUBLIC:** Consideration of proposals submitted for Institute funding.

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prepare an EIS in response to the need for upgrading sections of two urban arterials (Russell Street and South 3rd Street) all within the limits of the City of Missoula, Missoula County, Montana. The Russell Street section begins at the intersection of Mount Avenue, and extends approximately 2.44 km (1.52 mi) northerly to the intersection of West Broadway Street. The South 3rd Street section begins at its intersection with Reserve Street and continues easterly for a distance of approximately 1.60 km (1.0 mi) until it intersects with Russell Street.

The project is needed to meet current and future demand of motorized vehicles, bicycles, pedestrians, and to improve safety. Alternatives are expected to include taking no action; widening of Russell Street; and widening of South 3rd Street. Other alternatives may become evident as a result of public and agency input during the scoping process. All build alternatives will include improvements to non-motorized facilities and will consider a range of transportation system management (TSM) and transportation demand management (TDM) measures. Possible configurations of the Russell Street bridge across the Clark Fork River, will also be considered in the study.

The EIS will examine the short and long-term impacts on the natural and built environment. The impact assessment will include (but not be limited to): Impacts on the social environment; changes in land use; aesthetics; changes in traffic; economic consequences; air, noise and water quality, wildlife, and fisheries. In addition, environmental justice aspects will be addressed as part of the impact assessment. The EIS will also examine measures to mitigate significant adverse impacts resulting from the proposed action.

Comments are being solicited from Federal, State, and local agencies, Tribes and from private organizations and citizens who have interest in this proposal. Public information meetings, feedback sessions, and other outreach efforts will be conducted to discuss the potential alignments.

The draft EIS will be available for public and agency review, and a public hearing will be held to receive comments. Public notice will be given of the time and place of all meetings and hearings. Comments and/or suggestions from all interested parties are requested, to ensure that the full range of all issues, and significant social and environmental issues in particular, are identified and reviewed. Comments or questions concerning this proposed action and/or its EIS should be directed to the FHWA, MDT or the City of Missoula at the addresses listed previously.

**Authority:** 23 U.S.C. 315; 49 CFR 1.48.

Issued on: October 11, 2000.

**Dale W. Paulson,**

*Program Development Engineer, Federal Highway Administration.*

[FR Doc. 00–26563 Filed 10–16–00; 8:45 am]

**BILLING CODE 4910–22–P**

## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

**[Docket No. RSPA–00–7906 (PDA–27(R))]**

### Application by ATOFINA Chemicals, Inc. for a Preemption Determination as to Louisiana Requirements for Hazardous Materials Incident Notification

**AGENCY:** Research and Special Programs Administration (RSPA), DOT.

**ACTION:** Public notice and invitation to comment.

**SUMMARY:** Interested parties are invited to submit comments on an application by ATOFINA Chemicals, Inc. (ATOFINA) for an administrative determination whether Federal hazardous material transportation law preempts certain Louisiana requirements concerning hazardous materials incident notification and reporting.

**DATES:** Comments received on or before December 1, 2000, and rebuttal comments received on or before January 16, 2001, will be considered before an administrative ruling is issued by RSPA's Associate Administrator for Hazardous Materials Safety. Rebuttal comments may discuss only those issues raised in comments received during the initial comment period and may not discuss new issues.

**ADDRESSES:** The application and all comments received may be reviewed in the Dockets Office, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. The application and all comments are also available on-line through the home page of DOT's Docket Management System, at "http://dms.dot.gov."

Comments must refer to Docket No. RSPA–00–7906 and may be submitted to the Dockets Office either in writing or electronically. Send three copies of each written comment to the Dockets Office at the above address. If you wish to receive confirmation of receipt of your comments, include a self-addressed, stamped postcard. To submit comments electronically, log onto the Docket Management System website at "http://dms.dot.gov" and click on "Help & Information" to obtain instructions.

A copy of each comment must also be sent to (1) Ms. Karen P. Flynn, Associate General Counsel, ATOFINA Chemicals, Inc., 2000 Market Street, Philadelphia, PA 19103–3222, and (2) Mr. Paul Schexnayder (Attorney 3), State of Louisiana, Department of Public Safety and Corrections, Office of Legal Affairs, P.O. Box 66614, Baton Rouge, LA 70896–6614. A certification that a copy has been sent to these persons must also be included with the comment. (The following format is suggested: "I certify that copies of this comment have been sent to Ms. Flynn and Mr. Schexnayder at the addresses specified in the **Federal Register**.")

A list and subject matter index of hazardous materials preemption cases, including all inconsistency rulings and preemption determinations issued, are available through the home page of RSPA's Office of the Chief Counsel, at "http://rspa-atty.dot.gov." You may obtain a paper copy of this list and index by contacting Donna O'Berry by mail or telephone as provided below under the heading "For Further Information Contact."

**FOR FURTHER INFORMATION CONTACT:** Donna L. O'Berry, Office of the Chief Counsel, Research and Special Programs Administration, 400 Seventh Street, SW., Washington, DC 20590–0001 (Tel. No. 202–366–4400).

**SUPPLEMENTARY INFORMATION:**

### I. Application for a Preemption Determination

ATOFINA has applied for a determination that Federal hazardous material transportation law, 49 U.S.C. 5101 *et seq.*, preempts the requirements in Title 32 section 1510 of Louisiana Revised Statutes (32:1510) applicable to the oral and written reporting of incidents, accidents and cleanups. The text of ATOFINA's application is set forth in Appendix A to this Notice. A paper copy of ATOFINA's application (which has been placed in the public docket) will be provided at no cost upon request to Ms. O'Berry, at the address and telephone number set forth in "For Further Information Contact" above.

In the application for preemption, ATOFINA's challenges section 32:1510, which provides, in part, that:

A. Each person involved in an incident, accident, or the cleanup of an incident or accident during the transportation, loading, unloading, or related storage in any place of



a hazardous material subject to this Chapter shall report immediately by telephone to the department if that incident, accident, or cleanup of an incident or accident involves:

(1) A fatality due to fire, explosion, or exposure to any hazardous material.

(2) The hospitalization of any person due to fire, explosion, or exposure to any hazardous material.

(3) A continuing danger to life, health, or property at the place of the incident or accident.

(4) An estimated property damage of more than ten thousand dollars.

B. A written report shall be submitted to the department on an approved form. Each report submitted shall contain the time and date of the incident or accident, a description of any injuries to persons or property, any continuing danger to life at the place of the accident or incident, the identity and classification of the material, and any other pertinent details.

C. In the case of an incident or accident involving hazardous materials which is not subject to this Chapter but which is subject to Title 49 and Title 46 of the Code of Federal Regulations, the carrier shall send a copy of the report filed with the United States Department of Transportation to the department.

ATOFINA argues that the reporting requirements in section 32:1510 are preempted because they concern "the written notification, recording, and reporting of the unintentional release in transportation of hazardous material" and are not substantively the same as the requirements in 49 CFR 171.15 and 171.16. Section 171.15 contains the Federal requirements for immediate notification of certain hazardous materials incidents, and § 171.16 contains the Federal requirements for submitting detailed hazardous materials incident reports to DOT. ATOFINA states that §§ 171.15 and 171.16 require the carrier to provide immediate notification of certain hazardous materials incidents, whereas Louisiana's statute is much broader and requires that each person involved in certain hazardous material incidents or accidents immediately notify the state. ATOFINA asserts that there can be many persons involved in an incident, such as a carrier or the owner of the goods, and that this "duplicate reporting" could be confusing to the people responding to the incident. Finally, ATOFINA contends that it is impractical to apply section 32:1510 to manufacturers and that it will be difficult for manufacturers to comply with the requirement. ATOFINA contends that manufacturers and carriers do make arrangements to ensure that the carrier has the responsibility for making the immediate notification required under Federal regulations.

ATOFINA indicates that it has received a Notice of Violation of section 32:1510 from the Louisiana State Police. ATOFINA states that it believed the carrier would make the notification since the carrier was directly involved with the incident. ATOFINA argues that to the extent Louisiana believes that immediate notification is necessary for emergency response purposes, the State's concern is satisfied by imposing the immediate notification requirement on the carrier and not on each person involved in the incident. ATOFINA asserts that it is impractical and a burden on interstate commerce to require a large national company to comply with a multitude of different reporting requirements in different jurisdictions, particularly those which impose the same duty on multiple parties.

### II. Federal Preemption

Section 5125 of Title 49 U.S.C. contains the preemption provisions that are relevant to ATOFINA's application. Subsection (a) provides that—in the absence of a waiver of preemption by DOT under section 5125(e) or specific authority in another Federal law—a requirement of a State, political subdivision of a State, or Indian tribe is preempted if:

(1) Complying with a requirement of the State, political subdivision or tribe and a requirement of this chapter or a regulation issued under this chapter is not possible; or

(2) The requirement of the State, political subdivision, or Indian tribe, as applied or enforced, is an obstacle to the accomplishing and carrying out this chapter or a regulation prescribed under this chapter.

These two paragraphs reflect the "dual compliance" and "obstacle" criteria which RSPA had applied in issuing inconsistency rulings before 1990, under the original preemption provisions in the Hazardous Materials Transportation Act (HMTA). Pub. L. 93–633 112(a), 88 Stat. 2161 (1975). The dual compliance and obstacle criteria are based on U.S. Supreme Court decisions on preemption. *Hines* v. *Davidowitz*, 312 U.S. 52 (1941); *Florida Lime & Avocado Growers, Inc.* v. *Paul*, 373 U.S. 132 (1963); *Ray* v. *Atlantic Richfield, Inc.*, 435 U.S. 151 (1978).

Subsection (b)(1) of 49 U.S.C. 5125 provides that a non-Federal requirement concerning any of the following subjects, that is not "substantively the same as" a provision of Federal hazardous materials transportation law or a regulation prescribed under that law, is preempted unless it is authorized by another Federal law or DOT grants a waiver of preemption:

(A) The designation, description, and classification of hazardous material.

(B) The packing, repacking, handling, labeling, marking, and placarding of hazardous material.

(C) The preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents.

(D) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material.

(E) The design, manufacturing, fabricating, marking, maintenance, reconditioning, repairing, or testing of a packaging or a container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

To be "substantively the same" the non-Federal requirement must conform "in every significant respect to the Federal requirement. Editorial and other similar *de minimis* changes are permitted." 49 CFR 107.202(d).

These preemption provisions in 49 U.S.C. 5125 carry out Congress' view that a single body of uniform Federal regulations promotes safety in the transportation of hazardous materials. In considering the HMTA, the Senate Commerce Committee "endorse[d] the principle of preemption in order to preclude a multiplicity of State and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous materials transportation." S. Rep. No. 1102, 93rd Cong. 2nd Sess. 37 (1974). When it amended the HMTA in 1990, Congress specifically found that:

(3) Many States and localities have enacted laws and regulations which vary from Federal laws and regulations pertaining to the transportation of hazardous materials, thereby creating the potential for unreasonable hazards in other jurisdictions and confounding shippers and carriers which attempt to comply with multiple and conflicting registration, permitting, routing, notification, and other regulatory requirements,

(4) Because of the potential risks to life, property, and the environment posed by unintentional releases of hazardous materials, consistency in laws and regulations governing the transportation of hazardous materials is necessary and desirable,

(5) In order to achieve greater uniformity and to promote the public health, welfare, and safety at all levels, Federal standards for regulating the transportation of hazardous materials in intrastate, interstate, and foreign commerce are necessary and desirable.

Pub. L. 101–615 Section 2, 104 Stat. 3244. A Federal Court of Appeals has found that uniformity was the "linchpin" in the design of the HMTA, including the 1990 amendments which expanded the preemption provisions. *Colorado Pub. Util. Comm'n* v. *Harmon*, 951 F.2d 1571, 1575 (10th Cir. 1991). (In 1994, Congress revised, codified and

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enacted the HMTA "without substantive change," at 49 U.S.C. Chapter 51. Pub. L. 103–272, 108 Stat. 745.)

### III. Preemption Determinations

Under 49 U.S.C. 5125(d)(1), any directly affected person may apply to the Secretary of Transportation for a determination whether a State, political subdivision or Indian tribe requirement is preempted. The Secretary of Transportation has delegated authority to RSPA to make determinations of preemption, except for those that concern highway routing, which have been delegated to the Federal Motor Carrier Safety Administration. 49 CFR 1.53(b).

Section 5125(d)(1) requires that notice of an application for a preemption determination must be published in the **Federal Register**. Following the receipt and consideration of written comments, RSPA will publish its determination in the **Federal Register**. *See* 49 CFR 107.209(d). A short period of time is allowed for filing petitions for reconsideration. 49 CFR 107.211. Any party to the proceeding may seek judicial review in a Federal district court. 49 U.S.C. 5125(f).

Preemption determinations do not address issues of preemption arising under the Commerce Clause, the Fifth Amendment or other provisions of the Constitution or under statutes other than the Federal hazardous materials transportation law unless it is necessary to do so in order to determine whether a requirement is authorized by another Federal law. A State, local or Indian tribe requirement is not authorized by another Federal law merely because it is not preempted by another Federal statue. *Colorado Pub. Util. Comm'n* v. *Harmon*, above, 951 F2d at 1581 n.10.

In making preemption determinations under 49 U.S.C. 5125(d), RSPA is guided by the principles and policy set forth in Executive Order No. 13132, entitled "Federalism" (64 FR 43255, August 4, 1999). Section 4(a) of that Executive Order authorizes preemption of State laws only when a statute contains an express preemption provision, there is other clear evidence of Congress intent to preempt State law, or the exercise of State authority directly conflicts with the exercise of Federal authority. Section 5125 contains express preemption provisions, which RSPA has implemented through its regulations.

### IV. Public Comment

All comments should be limited to the issue of whether 49 U.S.C. 5125 preempts the Louisiana requirements applicable to the oral and written reporting of certain hazardous materials incidents. Comments should specifically address the preemption criteria detailed in Part II, above, and set forth in detail the manner in which the Louisiana requirements are applied and enforced.

Persons intending to comment should review the standards and procedures governing consideration of applications for preemption determinations, set forth at 49 CFR 107.201–107.211.

Issued in Washington, DC, on September 29, 2000.

**Robert A. McGuire,**

*Associate Administrator for Hazardous Materials Safety, Research and Special Programs Administration.*

### Appendix A

August 30, 2000

*Associate Administrator for Hazardous Materials Safety, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590–0001, Attn: Hazardous Materials Preemption Docket*

Dear Sir or Madam: Enclosed is ATOFINA Chemicals, Inc.'s Application for Determination of Preemption. If you need additional information, please feel free to contact me.

Sincerely,

Karen P. Flynn,

*Associate General Counsel.*

cc: William Oister (w/ encl.)
Andrea E. Utecht, Esq., (w/o encl.)

**Application for Determination of Preemption**

Pursuant to 49 CFR 107.203, ATOFINA Chemicals, Inc. (formerly known as Elf Atochem North America, Inc.) is making an application for a determination that 49 CFR 171.15 and 171.16 preempt La. R. S. § 32:1510.

*I. Applicable State Statute*

La. R. S. § 32:1510 states as follows:

Reporting of Incidents, Accidents, and Cleanups

A. Each person involved in an incident, accident, or the cleanup of an incident or accident during the transportation, loading, unloading, or related storage in any place of a hazardous material subject to this Chapter shall report immediately by telephone to the department if that incident, accident, or cleanup of an incident or accident involves:

1. A fatality due to fire, explosion, or exposure to any hazardous material;

2. The hospitalization of any person due to fire, explosion, or exposure to any hazardous material;

3. A continuing danger to life, health, or property at the place of the incident or accident;

4. An estimated property damage of more than ten thousand dollars.

B. A written report shall be submitted to the department on an approved form. Each report submitted shall contain the time and date of the incident or accident, a description of any injuries to persons or property, any continuing danger to life at the place of the accident or incident, the identity and classification of the material, and any other pertinent details.

C. In the case of an incident or accident involving hazardous materials which is not subject to this Chapter but which is subject to Title 49 and Title 46 of the Code of Federal Regulations, the carrier shall send a copy of the report filed with the United States Department of Transportation to the department.

D. The secretary shall adopt and promulgate rules and regulations in accordance with the Administrative Procedures Act to coordinate the implementation of a Transportation emergency response system.

E. 1. Notwithstanding any other provision of law to the contrary, the provisions of this Section shall not apply to any incidents, accidents, or cleanup of incidents or accidents that occur within a facility that is subject to the release reporting requirements of R.S. 30:2373(B) and is engaged in activities defined or classified under one or more of the following subsectors, industry groups, or industries of the 1997 North American Industry Classification System (NAICS):

a. 211 (oil and gas extraction).
b. 22111 (electric power generation).
c. 3221 (pulp, paper and paperboard mills).
d. 324 (petroleum and coal products manufacturing).
e. 325 (chemical manufacturing).
f. 326 (plastics and rubber products manufacturing).
g. 331 (primary metal manufacturing).
h. 4953 (refuse systems).
i. 4212 (local trucking without storage).
j. 4789 (trucking without storage).

2. Notwithstanding the provisions of Paragraph 1 of this Subsection, this Section shall apply to any carrier involved in any incident, accident, or clean up of an incident or accident which occurs outside the perimeter of any facility exempted from this Section pursuant to Paragraph 1 of this Subsection.

3. The secretary may develop rules and regulations to implement and clarify the reporting requirements of this Subsection and to address any changes in federal law, rules, or regulations.

*II. Applicable Federal Regulations*

Section 171.15 of Title 49 of the Code of Federal Regulations provides as follows:

**§ 171.15 IMMEDIATE NOTICE OF THE CERTAIN HAZARDOUS MATERIALS INCIDENTS.**

(a) At the earliest practicable moment, each carrier who transports hazardous materials (including hazardous wastes) shall give notice in accordance with paragraph

(b) of this section after each incident that occurs during the course of transportation (including loading, unloading and temporary storage) in which—

(1) As a direct result of hazardous materials—

(i) A person is killed; or

(ii) A person received injuries requiring his or her hospitalization; or

(iii) Estimated carrier or other property damage exceeds $50,000; or



(iv) An evacuation of the general public occurs lasting one or more hours; or

(v) One or more major transportation arteries or facilities are closed or shut down for one hour or more; or

(vi) The operational flight pattern or routine of an aircraft is altered; or

(2) Fire, breakage, spillage, or suspected radioactive contamination occurs involving shipment of radioactive material (see also §§ 174.45, 176.48, and 177.807 of this subchapter); or

(3) Fire, breakage, spillage, or suspected contamination occurs involving shipment of infectious substances (etiologic agents); or

(4) There has been a release of a marine pollutant in a quantity exceeding 450 L (119 gallons) for liquids or 400 kg (882 pounds) for solids; or

(5) A situation exists of such a nature (*e.g.*, a continuing danger to life exists at the scene of the incident) that, in the judgment of the carrier, it should be reported to the Department even though it does not meet the criteria of paragraph (a) (1), (2) or (3) of this section.

(b) Except for transportation by aircraft, each notice required by paragraph (a) of this section shall be given to the Department by telephone (toll-free) on 800–424–8802. Notice involving shipments transported by aircraft must be given to the nearest FAA Civil Aviation Security Office by telephone at the earliest practical moment after each incident in place of the notice to the Department. Notice involving etiologic agents may be given to the Director, Centers for Disease Control, U. S. Public Health Service, Atlanta, GA (800) 232–0124, in place of the notice to the Department or (toll call) on 202–267–2675. Each notice must include the following information:

(1) Name of reporter;

(2) Name and address of carrier represented by reporter;

(3) Phone number where reporter can be contacted;

(4) Date, time, and location of incident;

(5) The extent of injuries, if any;

(6) Classification, name, and quantity of hazardous materials involved, if such information is available;

(7) Type of incident and nature of hazardous material involvement and whether a continuing danger to life exists at the scene.

(c) Each carrier making a report under this section shall also make the report required by § 171.16.

Section 171.16 of Title 49 of the Code of Federal Regulations provides as follows:

**§ 171.16 DETAILED HAZARDOUS MATERIALS INCIDENT REPORTS.**

(a) Each carrier who transports hazardous materials shall report in writing, in duplicate, on DOT Form F 5800.1 (Rev. 6/89) to the Department within 30 days of the date of discovery, each incident that occurs during the course of transportation (including loading, unloading, and temporary storage) in which any of the circumstances set forth in 171.15(a) occurs or there has been an unintentional release of hazardous materials from a package (including a tank) or any quantity of hazardous waste has been discharged during transportation. If a report pertains to a hazardous waste discharge:

(1) A copy of the hazardous waste manifest for the waste must be attached to the report; and

(2) An estimate of the quantity of the waste removed from the scene, the name and address of the facility to which it was taken, and the manner of disposition of any removed waste must be entered in Section IX of the report form (Form F 5800.1) (Rev. 6/89).

(b) Each carrier making a report under this section shall send the report to the Information Systems Manager, DHM–63, Research and Special Programs Administration, Department of Transportation, Washington, DC 20590–0001; and, for incidents involving transportation by aircraft, a copy of the report shall also be sent to the FAA Civil Aviation Security Office nearest the location of the incident. A copy of the report shall be retained for a period of two years, at the carrier's principal place of business, or at other places as authorized and approved in writing by an agency of the Department of Transportation.

(c) Except as provided in paragraph (d) of this section, the requirements of paragraph (a) of this section do not apply to incidents involving the unintentional release of a hazardous material—

(1) Transported under one of the following proper shipping names:

i. Consumer commodity;

ii. Battery, electric storage, wet, filled with acid or alkali;

iii. Paint and paint related material when shipped in packaging of five gallons or less.

(2) Prepared and transported as a limited quantity shipment in accordance with this subchapter .

(d) The exceptions to incident reporting provided in paragraph (c) of this section do not apply to:

(1) Incidents required to be reported under § 171.15(a);

(2) Incidents involving transportation aboard aircraft;

(3) Except for consumer commodities, materials in Packing Group I; or

(4) Incidents involving the transportation of hazardous waste.

*III. Basis for Preemption*

Subsection (b)(1) of 49 U.S.C. 5125 provides that a non-federal requirement concerning "(D) the written notification, recording, and reporting of the unintentional release in transportation of hazardous material" is preempted if "it is not substantively the same as" a provision of federal transportation law or a regulation prescribed under that law. La. R. S. § 32:1510 is a non-federal requirement relating to the written notification and reporting of an unintentional release in transportation of hazardous materials that is not "substantively the same as" the federal regulations.

The federal regulations in 49 CFR 171.15 and 171.16 clearly require "the carrier" to fulfill the immediate reporting requirements for hazardous material accidents. The Louisiana statute is much broader and requires that "each person involved in an incident" make an immediate report to the state police. There can be many persons involved in an incident, such as the carrier, the owner of the goods, or agents of each of them. Thus, the Louisiana statute requires duplicate reporting which could be confusing to those who may have to respond to the incident. From the standpoint of the manufacturer of the goods, it is an impractical regulation and will be difficult to achieve compliance. Arrangements are made between the manufacturer and the carrier to make sure that the carrier has the responsibility to make the immediate notification required under the federal regulations. The Louisiana requirement is much broader than the applicable federal requirement. Thus, La. R.S. § 32:1510 does not "conform in every significant respect to the Federal requirement," 49 CFR 107.202(d). As such, it is not substantively the same and should be preempted.

ATOFINA Chemicals, Inc. requests this preemption determination because it received a Notice of Violation from the Louisiana State Police identifying a violation of La. R. S. § 32:1510. For the incident in question, ATOFINA believed that the carrier would make any necessary notification since it was directly present on the scene. Thus, to the extent that Louisiana believes that immediate notification is necessary for emergency response purposes, that concern is satisfied by imposing the immediate notification obligation on the carrier rather than on each person involved in the incident, some of whom may not be present at the scene and who would be making a notification based on second hand information received from those at the scene. It would be impractical and a burden on interstate commerce to require a large national company to comply with a multitude of different reporting requirements in the different state jurisdictions, particularly those like Louisiana's which impose the same duty on multiple parties. Procedures would become so cumbersome that ultimately they would not be useful at all. Therefore, ATOFINA Chemicals, Inc. requests that a determination be made that La. R. S. § 32:1510 is preempted by 49 CFR 171.15 and 171.16.

[FR Doc. 00–25589 Filed 10–16–00; 8:45 am]

BILLING CODE 4910–60–P

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## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Finance Docket No. 33931]**

### Massachusetts Central Railroad Corporation—Acquisition and Operation Exemption—New York Central Lines LLC and CSX Transportation, Inc.

Massachusetts Central Railroad Corporation (MCER), a Class III railroad, has filed a notice of exemption under 49 CFR 1150.41 to acquire from New York Central Lines LLC and CSX Transportation, Inc. (collectively CSX) and operate approximately 1.4 miles ±

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of line from milepost QBR 0.205 to milepost QBR 1.605, in Palmer, MA.[1]

The earliest the transaction could be consummated was October 6, 2000, the effective date of the exemption (7 days after the exemption was filed). Counsel for MCER has been contacted by telephone and has acknowledged that the transaction could not be consummated until October 6, 2000.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33931, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on James E. Howard, Esq., One Thompson Square, Suite 201, Charlestown, MA 02129.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: October 10, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 00–26653 Filed 10–16–00; 8:45 am]

BILLING CODE 4915–00–P

[1] MCER states that it currently leases the line from CSX and operates it.

## DEPARTMENT OF THE TREASURY

### Bureau of Alcohol, Tobacco and Firearms

### Proposed Collection; Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Letterhead Applications and Notices Filed by Brewers.

**DATES:** Written comments should be received on or before December 18, 2000.

**ADDRESSES:** Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form(s) and instructions should be directed to William H. Foster, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8374.

**SUPPLEMENTARY INFORMATION:**

*Title:* Letterhead Applications and Notices Filed by Brewers.

*OMB Number:* 1512–0045.

*Form Number:* ATF F 5130.10.

*Recordkeeping Requirement ID Number:* ATF REC 5130/2.

*Abstract:* The Internal Revenue Code requires brewers to file a notice of intent to operate a brewery. ATF F 5130.10 is similar to a permit and, when approved by ATF, is a brewer's authorization to operate. Letterhead applications and notices are necessary to identify brewery activities so that ATF may insure that proposed operations do not jeopardize Federal revenues. Brewers must keep general required records for ongoing brewery operations for a period of 3 years. However, the brewer must keep certain documents for an indefinite period. Qualifying documents are the permission to operate. So, as long as the brewery is in operation, the brewer must keep the pertinent qualifying documents, including the Brewer's Notice and other notices and applications.

*Current Actions:* The form has been rewritten in plain language style which makes it more easily understood. Also, the revised form has combined many letterhead instructions and attachments where previously the brewer would have to generate the attachments for the application. The number of breweries has increased substantially but the burden to complete the form has been reduced by 1 hour.

*Type of Review:* Extension with changes.

*Affected Public:* Business or other for-profit.

*Estimated Number of Respondents:* 1,750.

*Estimated Time Per Respondent:* 3 hours for the form and 30 minutes for notices and applications.

*Estimated Total Annual Burden Hours:* 9,625.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: October 10, 2000.

**William T. Earle,**

*Assistant Director (Management) CFO.*

[FR Doc. 00–26624 Filed 10–16–00; 8:45 am]

BILLING CODE 4810–31–P

## DEPARTMENT OF THE TREASURY

### Bureau of Alcohol, Tobacco and Firearms

### Proposed Collection; Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Firearms Transaction Record, Part II Non-Over-The-Counter.

**DATES:** Written comments should be received on or before December 18, 2000.

**ADDRESSES:** Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form(s) and instructions should be directed to Gary Thomas, Chief, Firearms Programs Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–7770.

**SUPPLEMENTARY INFORMATION:**

*Title:* Firearms Transaction Record, Part II Non-Over-The-Counter.

*OMB Number:* 1512–0130.

*Form Number:* ATF F 4473 (5300.9) Part II.

*Abstract:* ATF F 4473 (5300.9) Part II is used to determine the eligibility under the Gun Control Act (GCA) of a person to receive a firearm from a Federal firearms licensee. It is also used to establish the identity of the buyer. The form is also used in law enforcement in investigations/inspections to trace firearms or to confirm criminal activity of persons violating the GCA. The record retention requirement for this information collection is 20 years.

*Current Actions:* There are no changes to this information collection and it is being submitted for extension purposes only.

*Type of Review:* Extension.

*Affected Public:* Individuals or households.

*Estimated Number of Respondents:* 20,900.

*Estimated Time Per Respondent:* 6 minutes.

*Estimated Total Annual Burden Hours:* 9,057.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: October 10, 2000.

**William T. Earle,**

*Assistant Director (Management) CFO.*

[FR Doc. 00–26625 Filed 10–16–00; 8:45 am]

BILLING CODE 4810–31–P



## DEPARTMENT OF THE TREASURY

### Bureau of Alcohol, Tobacco and Firearms

### Proposed Collection; Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Licensed Firearms Records of Acquisition, Disposition and Supporting Data.

**DATES:** Written comments should be received on or before December 18, 2000.

**ADDRESSES:** Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8310.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form(s) and instructions should be directed to Gary Thomas, Chief, Firearms Programs Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–7770.

**SUPPLEMENTARY INFORMATION:**

*Title:* Licensed Firearms Dealers Records of Acquisition, Disposition and Supporting Data.

*OMB Number:* 1512–0490.

*Form Number:* ATF F 4473 (5300.24) Part I(LV), Firearms Transaction Record Part I Low Volume, Over-the-Counter and ATF F 4473 (5300.25) Part II(LV), Firearms Transaction Record Part II Low Volume, Intra-State Non-Over-the-Counter.

*Recordkeeping Requirement ID Number:* ATF REC 7570/2.

*Abstract:* These records furnish specific information indispensable to ATF's mission to enforce the firearms laws and regulations. The low volume forms are used only by Federal firearms licensees disposing of 50 or fewer firearms per 12-month period. They are kept at the licensee's option, in lieu of ATF F 4473 and records of acquisition and disposition. The record retention requirement for this information collection is 20 years.

*Current Actions:* There are no changes to this information collection and it is being submitted for extension purposes only.

*Type of Review:* Extension.

*Affected Public:* Business or other for-profit, individuals or households.

*Estimated Number of Respondents:* 5,000.

*Estimated Time Per Respondent:* 6 minutes.

*Estimated Total Annual Burden Hours:* 1,042.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

Dated: October 10, 2000.

**William T. Earle,**

*Assistant Director (Management) CFO.*

[FR Doc. 00–26626 Filed 10–16–00; 8:45 am]

BILLING CODE 4810–31–P

## DEPARTMENT OF THE TREASURY

### Bureau of Alcohol, Tobacco and Firearms

### Proposed Collection; Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is

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soliciting comments concerning the Bond-Export Warehouse Proprietor, Export Bond-Customs Bonded Cigar Manufacturing Warehouse, Extension of Coverage of Bond, Bond Under 26 U.S.C. 6423, Bond-Manufacturer of Tobacco Products.

**DATES:** Written comments should be received on or before December 18, 2000.

**ADDRESSES:** Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form(s) and instructions should be directed to Cliff Mullen, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8181.

**SUPPLEMENTARY INFORMATION:**

*Title*: Bond-Export Warehouse Proprietor, ATF F 2103 (5220.5), Export Bond-Customs Bonded Cigar Manufacturing Warehouse, ATF F 2104 (5200.15), Extension of Coverage of Bond, ATF F 2105 (5000.7), Bond Under 26 U.S.C. 6423, ATF F 2490 (5620.10), Bond-Manufacturer of Tobacco Products, ATF F 3070 (5210.13).

*OMB Number*: 1512–0534.

*Form Number*: See Titles.

*Abstract*: These forms provide an efficient method of collecting the required information for the excise tax on wine, and provides a statutory system of controls for securing payment of taxes properly due. The record retention requirement for this information collection is 2 years.

*Current Actions*: There are no changes to this information collection and it is being submitted for extension purposes only.

*Type of Review:* Extension.

*Affected Public:* Business or other for-profit.

*Estimated Number of Respondents*: 15.

*Estimated Time Per Respondent*: 1 hour and 40 minutes.

*Estimated Total Annual Burden Hours*: 25.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: October 10, 2000.

**William T. Earle,**

*Assistant Director (Management) CFO.*

[FR Doc. 00–26627 Filed 10–17–00; 8:45 am]

**BILLING CODE 4810–31–P**

## DEPARTMENT OF THE TREASURY

### Bureau of Alcohol, Tobacco and Firearms

### Proposed Collection; Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Principal Place of Business on Beer Labels.

**DATES:** Written comments should be received on or before December 18, 2000 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form(s) and instructions should be directed to Richard Mascolo, Chief, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

**SUPPLEMENTARY INFORMATION:**

*Title:* Principal Place of Business on Beer Labels.

*OMB Number:* 1512–0474.

*Recordkeeping Requirement ID Number:* ATF Reporting Requirement 5130/5.

*Abstract:* ATF regulations require the name and address of the brewer to appear on labels of kegs, bottles, and cans of domestic beer. The regulations permit domestic brewers who operate more than one one brewery to show as their address on labels and kegs of beer, their (principal place of business) address. This label option may be used in lieu of showing the actual place of production on the label or of listing all of the brewer's locations on the label. There is no period of retention prescribed for this reporting requirement since the requirement is to provide identification of the brewer through labeling.

*Current Actions:* There are no changes to this information collection and it is being submitted for extension purposes only.

*Type of Review:* Extension.

*Affected Public:* Business or other for-profit.

*Estimated Number of Respondents:* 1,200.

*Estimated Time Per Respondent:* 0.

*Estimated Total Annual Burden Hours:* 1.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: October 10, 2000.

**William T. Earle,**

*Assistant Director (Management) CFO.*

[FR Doc. 00–26628 Filed 10–16–00; 8:45 am]

**BILLING CODE 4810–31–P**



## DEPARTMENT OF THE TREASURY

### Bureau of Alcohol, Tobacco and Firearms

### Proposed Collection; Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Records of Acquisition and Disposition, Collectors of Firearms.

**DATES:** Written comments should be received on or before December 18, 2000.

**ADDRESSES:** Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form(s) and instructions should be directed to Gary Thomas, Chief, Firearms Program Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–7770.

**SUPPLEMENTARY INFORMATION:**

*Title:* Records of Acquisition and Disposition, Collectors of Firearms

*Title:* Records of Acquisition and Disposition, Collectors of Firearms.

*OMB Number:* 1512–0387.

*Recordkeeping Requirement ID Number:* ATF REC 7570/2 and ATF REC 7570/3.

*Abstract:* These records are used by ATF in criminal investigations and compliance inspections in fulfilling the Bureau's mission to enforce the gun control laws. The record retention requirement for this information collection is 20 years.

*Current Actions:* There are no changes to this information collection and it is being submitted for extension purposes only.

*Type of Review:* Extension

*Affected Public:* Business or other for-profit

*Estimated Number of Respondents:* 172,250

*Estimated Time Per Respondent:* 3 hours

*Estimated Total Annual Burden Hours:* 559,791

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: October 10, 2000.

**William T. Earle,**

*Assistant Director (Management) CFO.*

[FR Doc. 00–26629 Filed 10–16–00; 8:45 am]

**BILLING CODE 4810–31–P**

## DEPARTMENT OF THE TREASURY

### Bureau of Alcohol, Tobacco and Firearms

### Proposed Collection; Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Application for License Under 18 U.S.C. Chapter 44, Firearms.

**DATES:** Written comments should be received on or before December 18, 2000.

**ADDRESS:** Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form(s) and instructions should be directed to Gary Thomas, Chief, Firearms Programs Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–7770.

**SUPPLEMENTARY INFORMATION:** *Title:* Application for License Under 18 U.S.C. Chapter 44, Firearms

*OMB Number:* 1512–0042.

*Form Number:* ATF F 7 (5310.12).

*Abstract:* This form is used by the public when applying for a Federal firearms license as a dealer, importer, or manufacturer. The information requested on the form establishes eligibility for the license. There is no record retention requirement associated with this form due to the fact that there is no regulatory requirement to maintain records.

*Current Actions:* There are no changes to this information collection and it is being submitted for extension purposes only.

*Type of Review:* Extension

*Affected Public:* Business or other for-profit, individuals or households.

*Estimated Number of Respondents:* 10,000.

*Estimated Time Per Respondent:* 1 hour and 15 minutes.

*Estimated Total Annual Burden Hours:* 12,500.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: October 10, 2000.

**William T. Earle,**

*Assistant Director (Management) CFO.*

[FR Doc. 00–26630 Filed 10–16–00; 8:45 am]

**BILLING CODE 4810–31–P**

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**DEPARTMENT OF THE TREASURY**

**Bureau of Alcohol, Tobacco and Firearms**

**Proposed Collection; Comment Request**

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Application to Make and Register a Firearm.

**DATES:** Written comments should be received on or before December 18, 2000.

**ADDRESSES:** Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form(s) and instructions should be directed to Gary Schaible, National Firearms Act Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, 927–8330.

**SUPPLEMENTARY INFORMATION:**

*Title:* Application to Make and Register a Firearm.

*OMB Number:* 1512–0024.

*Form Number:* ATF F 1 (5320.1).

*Abstract:* ATF F 1 (5320.1) is used by persons applying to make and register a firearm that falls within the purview of the National Firearms Act. The information supplied by the applicant on the form helps to establish the applicant's eligibility.

*Current Actions:* The form 1 application has been revised to include updated information, provide additional information relating to post-registration changes, and make the instructions consistent with other forms.

*Type of Review:* Extension with changes.

*Affected Public:* Individuals or households, Business or other for-profit, State, Local or Tribal Government.

*Estimated Number of Respondents:* 1,071.

*Estimated Time Per Respondent:* 4 hours.

*Estimated Total Annual Burden Hours:* 4,271.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: October 10, 2000.

**William T. Earle,**

*Assistant Director (Management) CFO.*

[FR Doc. 00–26631 Filed 10–16–00; 8:45 am]

**BILLING CODE 4810–31–P**

**DEPARTMENT OF THE TREASURY**

**Bureau of Alcohol, Tobacco and Firearms**

**Proposed Collection; Comment Request**

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Bond Covering Removal To and Use of Wine At Vinegar Plant.

**DATES:** Written comments should be received on or before December 18, 2000.

**ADDRESSES:** Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form(s) and instructions should be directed to Rich Mascolo, Chief, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

**SUPPLEMENTARY INFORMATION:**

*Title:* Bond Covering Removal To and Use of Wine At Vinegar Plant.

*OMB Number:* 1512–0529.

*Form Number:* ATF F 1676 (5510.2).

*Abstract:* ATF F 1676 (5510.2) is a bond form which serves as a contact between the proprietor of a vinegar plant and a surety. The bond coverage stated on the form is in an amount sufficient to cover the federal excise tax on wine in transit to and stored on the vinegar plant premises until the wine becomes vinegar.

*Current Actions:* There are no changes to this information collection and it is being submitted for extension purposes only.

*Type of Review:* Extension

*Affected Public:* Business or other for profit.

*Estimated Number of Respondents:* 25.

*Estimated Time Per Respondent:* 1 hour.

*Estimated Total Annual Burden Hours:* 25.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: October 10, 2000.

**William T. Earle,**

*Assistant Director (Management) CFO.*

[FR Doc. 00–26632 Filed 10–16–00; 8:45 am]

**BILLING CODE 4810–31–P**



**DEPARTMENT OF THE TREASURY**

**Bureau of Alcohol, Tobacco and Firearms**

**Proposed Collection; Comment Request**

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Letter Application to Obtain Authorization for the Assembly of a Nonsporting Rifle or Nonsporting Shotgun for the Purpose of Testing and Evaluation.

**DATES:** Written comments should be received on or before December 18, 2000.

**ADDRESSES:** Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form(s) and instructions should be directed to Dottie Morales, Firearms Programs Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–7770.

**SUPPLEMENTARY INFORMATION:**

*Title:* Letter Application to Obtain Authorization for the Assembly of a Nonsporting Rifle or Nonsporting Shotgun for the Purpose of Testing and Evaluation.

*OMB Number:* 1512–0510.

*Abstract:* This information collection is required by ATF to provide a means to obtain authorization for the assembly of a nonsporting rifle or nonsporting shotgun for the purpose of testing or evaluation.

*Current Actions:* There are no changes to this information collection and it is being submitted for extension purposes only.

*Type of Review:* Extension.

*Affected Public:* Business or other for-profit, individuals or households.

*Estimated Number of Respondents:* 5.

*Estimated Time Per Respondent:* 30 minutes.

*Estimated Total Annual Burden Hours:* 3.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the informtion shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: October 10, 2000.

**William T. Earle,**

*Assistant Director (Management) CFO.*

[FR Doc. 00–26633 Filed 10–16–00; 8:45 am]

**BILLING CODE 4810–31–P**

**DEPARTMENT OF VETERANS AFFAIRS**

**[OMB Control No. 2900–0021]**

**Proposed Information Collection Activity: Proposed Collection; Comment Request**

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine whether supplemental servicing might justify the extension of forbearance to the veteran-borrower as opposed to foreclosure.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before December 18, 2000.

**ADDRESSES:** Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900–0021" in any correspondence.

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Titles and Form Numbers:* Notice of Default, VA Form 26–6850, Notice of Default and Intention to Foreclose, VA Form 26–6850a and Notice of Intention to Foreclose, VA Form 26–6851.

*OMB Control Number:* 2900–0021.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* Holders of guaranteed loans are required to notify VA within 45 days of a loan default by reason of nonpayment of any installment for a period of 60 days from the date of the first uncured default of their intention to foreclose. After delivery of such notice to VA, 30 days must pass before the holder can begin court proceedings or give notice of sale under power of sale or otherwise take steps to terminate the debtor's rights in the security. Many times, defaults are determined insoluble by holders at the time the notice of default is to be filed with VA. In such cases, the holders are requested to file VA Form 26–6850a, which will provide both notices of default and intent to foreclose together on one form. VA

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Form 26–6850a requires that servicing efforts be fully explained so that VA can determine whether supplemental servicing could develop further information which might justify the extension of forbearance to the veteran-borrower as opposed to foreclosure. The information provided is used to coordinate the actions of VA and the holder to ensure that all legal requirements regarding foreclosure and claim payment are met.

*Affected Public:* Individuals or households, Business or other for profit.

*Estimated Annual Burden:* 66,166.

a. VA Form 26–6850—20,166 hours.
b. VA Form 26–6850a—26,000 hours.
c. VA Form 26–6851—20,000 hours.

*Estimated Average Burden Per Respondent:*

a. VA Form 26–6850—10 minutes.
b. VA Form 26–6850a—20 minutes.
c. VA Form 26–6851—15 minutes.

*Frequency of Response:* On occasion.

*Estimated Number of Respondents:* 279,000 hours.

a. VA Form 26–6850—121,000 hours.
b. VA Form 26–6850a—78,000 hours.
c. VA Form 26–6851—80,000 hours.

Dated: September 22, 2000.

By direction of the Acting Secretary.

**Donald L. Neilson,**

*Director, Information Management Service.*

[FR Doc. 00–26663 Filed 10–16–00; 8:45 am]

BILLING CODE 8320–01–P

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0300]**

### Proposed Information Collection Activity: Proposed Collection; Comment Request

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to authorize assistance to disabled veterans acquiring special housing adaptations.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before December 18, 2000.

**ADDRESSES:** Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Please refer to "OMB Control No. 2900–0300" in any correspondence.

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501—3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Title:* Veterans Application for Assistance in Acquiring Special Housing Adaptations, VA Form 26–4555d.

*OMB Control Number:* 2900–0300.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* VA Form 26–4555d is used by disabled veterans in applying for special housing and adaptations to dwellings. Grants are available to assist disabled veterans in making adaptations to their current residences or one, which they intend to live in as long as the veteran or a member of the veteran's family owns the home. It also provides information for use in approving or disapproving a veteran's application for a grant.

*Affected Public:* Individuals or households.

*Estimated Annual Burden:* 25 hours.

*Estimated Average Burden Per Respondent:* 20 minutes.

*Frequency of Response:* On occasion.

*Estimated Number of Respondents:* 75.

Dated: September 22, 2000.

By direction of the Acting Secretary.

**Donald L. Neilson,**

*Director, Information Management Service.*

[FR Doc. 00–26664 Filed 10–16–00; 8:45 am]

BILLING CODE 8320–01–P

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0386]**

### Agency Information Collection Activities Under OMB Review

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before November 16, 2000.

*For Further Information or a Copy of the Submission Contact:* Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981. Please refer to "OMB Control No. 2900–0386."

**SUPPLEMENTARY INFORMATION:**

*Title:* Interest Rate Reduction Refinancing Loan Worksheet, VA Form 26–8923.

*OMB Control Number:* 2900–0386.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* Lenders are required to submit the form when requesting guaranty on an interest rate reduction refinancing loan. VA loan examiners must assure that the requirements of the Deficit Reduction of 1984 and applicable VA regulations have been met before the issuance of guaranty. The form ensures that lenders correctly compute the funding fee and the maximum permissible loan amount for interest rate reduction refinancing loans.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on June 23, 2000, at page 39231.

*Affected Public:* Business or other for-profit.

*Estimated Annual Burden:* 8,333 hours.

*Estimated Average Burden Per Respondent:* 10 minutes.

*Frequency of Response:* On occasion.

*Estimated Number of Respondents:* 50,000.

Send comments and recommendations concerning any aspect of the information collection to VA's Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0386" in any correspondence.

Dated: September 22, 2000.

By direction of the Acting Secretary.

**Donald L. Neilson,**

*Director, Information Management Service.*

[FR Doc. 00–26660 Filed 10–16–00; 8:45 am]

BILLING CODE 8320–01–P



## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0394]**

### Agency Information Collection Activities Under OMB Review

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before November 16, 2000.

*For Further Information or a Copy of the Submission Contact:* Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981. Please refer to "OMB Control No. 2900–0394."

**SUPPLEMENTARY INFORMATION:**

*Title:* Certification of School Attendance—REPS, VA Form 21–8926.

*OMB Control Number:* 2900–0394.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* VA Form 21–8926, Certification of School Attendance—REPS is used to verify that an individual who is receiving REPS benefits based on schoolchild status is in fact enrolled full-time in an approved school and is otherwise eligible for continued benefits. The program pays VA benefits to certain surviving spouses and children of veterans who died in service prior to August 13, 1981 or who died as a result of a service-connected disability incurred or aggravated prior to August 13, 1981.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on July 14, 2000 at page 43838.

*Affected Public:* Individuals or households.

*Estimated Annual Burden:* 300 hours.

*Estimated Average Burden Per Respondent:* 15 minutes.

*Frequency of Response:* On occasion.

*Estimated Number of Respondents:* 1,200.

Send comments and recommendations concerning any aspect of the information collection to VA's Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0394" in any correspondence.

Dated: September 22, 2000.

By direction of the Acting Secretary.

**Donald L. Neilson,**

*Director, Information Management Service.*

[FR Doc. 00–26661 Filed 10–16–00; 8:45 am]

BILLING CODE 8320–01–P

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0459]**

### Agency Information Collection Activities Under OMB Review

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before November 16, 2000.

*For Further Information or a Copy of the Submission Contact:* Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981. Please refer to "OMB Control No. 2900–0459."

**SUPPLEMENTARY INFORMATION:**

*Title:* Property Management Consolidated Invoice, VA Form 26–8974.

*OMB Control Number:* 2900–0459.

*Type of Review:* Reinstatement, with change, of a previously approved collection for which approval has expired.

*Abstract:* The Consolidated Property Management Invoice is computer-generated by VA and sent to management brokers monthly to obtain management brokers' bills for reimbursement of expenses and payment of fees associated with management of VA-acquired properties.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on November 29, 1999, at page 66696.

*Affected Public:* Business or other for-profit.

*Estimated Annual Burden:* 44,000 hours.

*Estimated Average Burden Per Respondent:* 10 minutes.

*Frequency of Response:* Monthly.

*Estimated Number of Respondents:* 1,080.

*Estimated Number of Responses:* 22,000.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 12035, Washington, DC 20503 (202) 395–4650. Please refer to "OMB Control No. 2900–0459" in any correspondence.

Dated: September 20, 2000.

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By direction of the Acting Secretary.
**Donald L. Neilson,**
*Director, Information Management Service.*
[FR Doc. 00–26662 Filed 10–16–00; 8:45 am]
BILLING CODE 8320–01–P

## DEPARTMENT OF VETERANS AFFAIRS

### Advisory Committee on Women Veterans, Notice of Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463 that a meeting of the Advisory Committee on Women Veterans will be held on October 24–26, 2000, at the Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC. All meetings will be held in conference room 230.

The purpose of the Committee is to advise the Secretary of Veterans Affairs regarding the needs of women veterans with respect to health care, rehabilitation, compensation, outreach, and other programs and activities administered by the Department of Veterans Affairs designed to meet such needs. The Committee will make recommendations to the Secretary regarding such activities.

All sessions will be open to the public. Those who plan to attend should contact Ms. Maryanne Carson, Department of Veterans Affairs, Center for Women Veterans, 810 Vermont Avenue, NW, Washington, DC 20420, at (202) 273–6193. Tentative agenda follows:

**Tuesday, October 24**

8:30a: Welcome and Introduction of New Members, Ms. Joan Furey
9:00a: Presentation of Appointment Certificates, The Honorable Hershel Gober, Acting Secretary of Veterans Affairs (Tentative)
9:30a–12n: Completion of 2000 Report
12n: Lunch
1:30p: Review of Agenda, Chair, Karen Ray, Col., USA (Ret)
2:00p: Role of the Advisory Committee in the Development of VA Programs for Women, Princess Aisha of Jordan (Tentative)
2:45p: Break
3:00p: Committee Update, Col. Ray
3:30p: Center for Women Veterans Update, Ms. Furey
4:15p: General Discussion, Committee
5:00p: Adjourn

**Wednesday, October 25**

8:30a: Persian Gulf Research Initiatives, Dr. Kelly Brix
9:15a: Veterans Health Administration, Ms. Carole Turner, Director, Women Veterans' Health Programs
10:15a: Break
10:30a: Veterans Benefits Administration, Ms. Lynda Petty, Women Veterans Coordinator
11:00a: Women Veterans Homeless Initiative, Ms. Gay Koerber and Dr. Robert Rosenheck
12n: Lunch
1:30p: Services for Women, Dr. Alfonso Batres, Director, Readjustment and Counseling Service
2:15p: Providing Services for African American Women Veterans: Factors to Consider, Col. Ray
3:00p: Break
3:15p: Providing Services for Hispanic Women Veterans: Factors to Consider, Committee Members: Ms. Consuelo Kickbusch and Ms. Bertha Cruz Hall
4:00p: General Discussion, Committee
5:00p: Adjourn

**Thursday, October 26**

9:00a: Planning Session: Committee
- Review 2000 Report
- FY 2001 Objectives
- Subcommittee Assignments
- Site Visit Designation
- Set Date for Next Meeting

1:00p: Adjourn

By direction of the Secretary.

Dated: October 10, 2000.

**Marvin R. Eason, By direction of the Secretary.**
*Committee Management Officer.*
[FR Doc. 00–26665 Filed 10–16–00; 8:45 am]
BILLING CODE 8320–01–M

Federal Register

Tuesday,
October 17, 2000

Part II

# Environmental Protection Agency

40 CFR Part 60, 61, and 63
Amendments for Testing and Monitoring Provisions; Final Rule

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 60, 61, and 63**

**[FRL–6523–6]**

**RIN 2060–AG21**

## Amendments for Testing and Monitoring Provisions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule: amendments.

**SUMMARY:** In this rule, we, the Environmental Protection Agency (EPA) are making final minor amendments to our stationary source testing and monitoring rules. These amendments include miscellaneous editorial changes and technical corrections that are needed. We are also promulgating Performance Specification 15, which contains the criteria for certifying continuous emission monitoring systems (CEMS) that use fourier transform infrared spectroscopy (FTIR). In addition, we are changing the outline of the test methods and CEMS performance specifications already listed in Parts 60, 61, and 63 to fit a new format recommended by the Environmental Monitoring Management Council (EMMC). The editorial changes and technical corrections update the rules and help maintain their original intent. Performance Specification 15 will provide the needed acceptance criteria for FTIR CEMS as they emerge as a new technology. We are reformatting the test methods and performance specifications to make them more uniform in content and interchangeable with other Agency methods. The amendments apply to a large number of industries that are already subject to the current provisions of Parts 60, 61, and 63. Therefore, we have not listed specific affected industries or their Standard Industrial Classification codes here.

**DATES:** *Effective Date.* This regulation is effective October 17, 2000. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of October 17, 2000.

**ADDRESSES:** *Docket.* Docket No. A–97–12, contains information relevant to this rule. You can read and copy it between 8 a.m. and 5:30 p.m., Monday through Friday, (except for Federal holidays), at our Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; telephone (202) 260–7548. Go to Room M–1500, Waterside Mall (ground floor). The docket office may charge a reasonable fee for copying.

*Summary of Comments and Responses Document.* You may obtain the Summary of Comments and Responses Document over the Internet at http://www.epa.gov/ttn/emc; choose the "Methods" menu, then choose the "Summary of Comments and Responses" hypertext under Category A.

**FOR FURTHER INFORMATION CONTACT:** Mr. Foston Curtis, Emission Measurement Center (MD–19), Emissions, Monitoring, and Analysis Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone (919) 541–1063; facsimile number (919) 541–1039; electronic mail address "curtis.foston@epamail.epa.gov".

**SUPPLEMENTARY INFORMATION:** *Outline.* The information presented in this preamble is organized as follows:

I. Why were these amendments made?
II. What does the new EMMC Format for methods look like?
III. What were the significant public comments and what resulting changes were made since proposal?
A. Updates to the ASTM Methods
B. Performance requirements for continuous instrumental methods of Part 60—Methods 3A, 6C, 7E, 10, and 20
C. Method 18 (Part 60)
D. Method 25 (Part 60)
E. Performance Specification 15 (Part 60)
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H. Executive Order 13084—Protection of Children from Environmental Health Risks and Safety Risks
I. Submission to Congress and the General Accounting Office
J. National Technology Transfer and Advancement Act
K. Plain Language in Government Writing

## I. Why Were These Amendments Made?

We have compiled miscellaneous errors and editions that are needed for the test methods, performance specifications, and associated regulations in 40 CFR Parts 60, 61, and 63. The corrections and revisions consist primarily of typographical errors, technical errors in equations and diagrams, and narrative that is no longer applicable or is obsolete. Some of the revisions were brought to our attention by the public. The major changes to the rule proposed on August 27, 1997 that resulted from public comments are discussed in Section III. Please note that, although numerous technical corrections were made to Parts 60, 61, and 63 rules, none affected a compliance standard or reporting or recordkeeping requirement. Revisions were only made to sections that pertain to source testing or monitoring of emissions and operations.

## II. What Does the New EMMC Format for Methods Look Like?

The new EMMC format we have adopted for analytical methods was developed by consensus and will help integrate make consistent the test methods written by different EPA programs. The test methods and performance specifications being restructured in the new format are shown in Table 1.

TABLE 1.—TEST METHODS AND PERFORMANCE SPECIFICATIONS RESTRUCTURED IN THE EMMC FORMAT

| 40 CFR 60 App. A | 40 CFR 60 App. B | 40 CFR 61 | 40 CFR 63 |
|---|---|---|---|
| 1, 1A | PS–2 | 101, 101A | 303, 303A |
| 2, 2A, 2B, 2C, 2D, 2E | PS–3 | 102 | 304A, 304B |
| 3, 3A, 3B | PS–4, PS–4A | 103 | 305 |
| 4 | PS–5 | 104 | 306, 306A, 306B |
| 5, 5A, 5B, 5D, 5E, 5F, 5G, 5H | PS–6 | 105 | |
| 6, 6A, 6B, 6C | | 106 | |
| 7, 7A 7B, 7C, 7D, 7E | | 107, 107A | |
| 8 | | 108, 108A, 108B, 108C | |
| 10, 10A, 10B | | 111 | |
| 11 | | | |
| 12 | | | |



TABLE 1.—TEST METHODS AND PERFORMANCE SPECIFICATIONS RESTRUCTURED IN THE EMMC FORMAT—Continued

| 40 CFR 60 App. A | 40 CFR 60 App. B | 40 CFR 61 | 40 CFR 63 |
|---|---|---|---|
| 13A, 13B | | | |
| 14 | | | |
| 15, 15A | | | |
| 16, 16A, 16B | | | |
| 17 | | | |
| 18 | | | |
| 19 | | | |
| 20 | | | |
| 21 | | | |
| 22 | | | |
| 23 | | | |
| 24, 24A | | | |
| 25, 25A, 25B, 25C, 25D, 25E | | | |
| 26, 26A | | | |
| 27 | | | |
| 28, 28A | | | |
| 29 | | | |

The methods and specifications listed in Table 1 were restructured in the format shown in Table 2. Only in a few instances were there deviations from this recommended format.

TABLE 2.—EMMC FORMAT

| Section No. | Section heading |
|---|---|
| 1.0 | Scope and Application. |
| 2.0 | Summary of the Method. |
| 3.0 | Definitions. |
| 4.0 | Interferences. |
| 5.0 | Safety. |
| 6.0 | Equipment and Supplies. |
| 7.0 | Reagents and Standards. |
| 8.0 | Sample Collection, Preservation, Storage and Transport. |
| 9.0 | Quality Control. |
| 10.0 | Calibration and Standardization. |
| 11.0 | Analytical Procedure. |
| 12.0 | Calculations and Data Analysis. |
| 13.0 | Method Performance. |
| 14.0 | Pollution Prevention. |
| 15.0 | Waste Management. |
| 16.0 | References. |
| 17.0 | Tables, Diagrams, Flowcharts, and Validation Data. |

## III. What Were the Significant Public Comments and What Resulting Changes Were Made Since Proposal?

We asked that public comments on the August 27, 1997 proposal (62 FR 45369) be submitted by October 27, 1997. On November 18, 1997, we reopened (62 FR 61483) the comment period to allow additional time for review and comment. We received comments from facility owners and operators, trade associations, State and Local air pollution control agencies, environmental consultants, and private citizens. Their comments were considered in developing this final action. A detailed discussion of all comments are contained in the Summary of Comments and Responses Document (see **ADDRESSES** section of this preamble). The major public comments and the Agency's responses are summarized below.

### *A. Update to ASTM Methods*

Several commenters supported our updating the references to ASTM Standards to include the dates of the most recent versions. However, some were concerned that updated standards not supplant the versions previously allowed and those promulgated with the original regulation. The ASTM recommended we follow the tradition of other governmental agencies and list only the latest version of each standard. This would present the latest, most improved standard. They felt that previously approved versions would still be acceptable for future use, and this could be noted in the preamble to the final rule.

On January 14, 1998, we published a supplementary **Federal Register** notice to solicit public comments on this idea. We received three comment letters. All commenters objected to the idea of listing only the latest version of the ASTM standard. The commenters noted problems that would be encountered with State Implementation Plans (SIP) wherein only the specific ASTM standards listed in the subparts would be allowed. They feared that listing only the latest version of the standard would change the current allowance to use earlier versions. This could potentially change the intent of the original emission standard. Most commenters didn't think a preamble explanation was sufficient assurance for continued allowance of earlier versions since preambles are not published in the Code of Federal Regulations. There were additional concerns for laboratories using currently acceptable versions who would need to upgrade their practice to reflect the latest version of a standard. The commenters were not amenable to only listing the latest standard unless

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language were added to the General Provisions of each part stating that previously allowed versions of the standards were still allowed at the discretion of the source. We feel the commenters have valid concerns and have decided to continue the convention of listing all acceptable versions of the ASTM standards including the new updates. The intent of this action is to allow any of the yearly-designated versions of a specific standard to be used in the applications where cited.

*B. Performance Requirements for Continuous Instrumental Methods of Part 60—Methods 3A, 6C, 7E, 10, and 20*

Several commenters thought the preamble language for this proposal gave inadequate notice of the changes being made. Commenters stated that, in the proposal, we did not provide an adequate basis and purpose statement and misled the readers into thinking that the proposal contained no substantive changes to these test methods. Based on the number of substantive changes in this proposal, and in light of the Section 307(d) requirements, the commenters felt that we must address these issues in a new proposal before the revisions can go final with the rest of the package. We agree with the commenters that the preamble to the proposed rule may not have given adequate public notice for some of the revisions. The revisions to the continuous instrumental methods (Methods 3A, 6C, 7E, 10, and 20) may be considered substantive, but were not enumerated in the preamble nor was a supporting rationale given. Therefore, the revisions to Methods 3A, 6C, 7E, 10, and 20 will be reproposed as a separate rule. The comments already received on the proposal of these methods will be held for consideration with any future comments that result from the reproposal.

*C. Method 18 (Part 60, Appendix A)*

One commenter thought Method 18 was difficult to follow. The commenter suggested that, to simplify organization of the method, we should divide the method into five categories. Each title would begin with "Measurement of Gaseous Organic Compounds by Gas Chromatography" but have the following subtitles:

18A—Evacuated container sampling procedure.
18B—Bag sampling procedure.
18C—Direct interface procedure.
18D—Dilution interface procedure.
18E—Adsorption tube sampling procedure.

Another commenter suggested dividing the method into two different methods, one for the direct extractive technique, and the other for sample collection into bags, flasks, or adsorbents.

The method is currently divided according to the various sampling procedures; for example, Section 8.2.2 is the Direct Interface Sampling and Analysis Procedures, Section 8.2.3 is Dilution Interface Sampling and Analysis Procedures, and so on. We do not believe that multiple sampling procedures warrant dividing Method 18 into separate methods. We feel a single method allowing different procedures offers the source greater flexibility than citing specific procedures for particular situations. One commenter noted that the proposed method requires triplicate injections for analysis of the calibration standards used for preparing the pre-test calibration curve, triplicate injections of the test samples, and triplicate injections for construction of the post-test calibration curve. The commenter questioned the additional accuracy expected for the extra hours spent in sample analysis and calibration while in the field conducting a source test compared to the current method which requires two consecutive analyses for pre- and post-test calibration and sample analyses meeting the same criteria for acceptance. We are increasing the calibration requirement to triple injections to tighten the method's quality assurance procedures. Triplicate calibration injections is the normal procedure prevalent in the analytical community, as well as in other Agency methodologies. It is difficult to establish precision and accuracy with duplicate injections. However, triplicate injections provide a reasonable measure of analytical precision without being overly burdensome. We do not feel the increase in time and costs associated with the third injection will significantly affect a typical test, considering the added benefits to data quality that are gained.

Several commenters asked us to revise and clarify various aspects of Section 10. We have made these modifications to address their concerns.

Regarding Section 13.1, one commenter noted that Method 18 is not a method in the general sense, but is more of a guideline on how to develop and document a test method. The commenter therefore felt that any prospective method should be written up and submitted to us along with the proper documentation that includes recovery study results. We disagree with this commenter. Method 18, which has been cited and used for many years, is a specific gas chromatography method with specific sampling, analytical, and data quality requirements. The method was written to accomodate many test sites having many possible target compounds and gas matrices. The tester has been given numerous sampling, separation, and analytical system options to make the method adaptable to the needs of various compliance demonstrations.

Several commenters asked us to clarify the 5 to 10 percent relative standard deviation (RSD) requirement for calibration standards in Section 13.1.

We have added clarity to Section 13.1. The 5 to 10 percent RSD is not a precision criterion for calibration standards but a typical precision range for analyzing field samples. Five percent RSD is required for triplicate injections of calibration standards.

*D. Method 25 (Part 60, Appendix A)*

One commenter noted that Method 25 has limitations due to conditions that may exist in stack gas. If such conditions exist, the commenter recommends interfacing a nonmethane analyzer directly to the source or use Method 25A or 25B to measure the emissions. The commenter recommended modifying Method 25 to allow instruments that are able to determine the methane and nonmethane portions using components different from those described by Method 25 when the analyzer is directly interfaced to the source. The commenter feels that Method 25 would be more practical for determining methane/nonmethane emissions at the field site if the method could be modified to allow these other analyzers. The commenter feels that it will also be necessary that fixed performance specifications be defined in the method, such as those for Method 6C. We believe these comments address method changes that are beyond those covered in the proposal and are, therefore, beyond the scope of this action. The commenter is encouraged to pursue these method changes through other appropriate channels such as submitting a request to use them as an alternative method.

*E. Performance Specification 15 (Part 60, Appendix B)*

One commenter noted that the statement of applicability for the demonstration is limited to the criteria we gave. The commenter stated that, with performance based measurement systems, the focus is on data quality objectives (DQO) where the performance specifications are coupled with the DQO. We believe the purpose of reference methods and, in this case



performance specifications, is to provide standard procedures for sources to follow in order to provide quality emission data. However, we do provide latitude to sources by publishing performance-based methods and PS whenever possible. This performance specification is one such procedure; as long as an FTIR sampling system meets the requirements of the performance specifications, it can be used for any regulated pollutant.

Based on public comments and upon further deliberation, we have removed the system calibration requirement from Section 10.3 of PS–15. Since both a system calibration and the calibration transfer standard measurement basically test instrument function, having both of these requirements in the performance specifications is redundant.

One commenter felt that the number of runs should be given as "guidance" rather than made a requirement. We set the requirement for nine runs (when comparing the FTIR to a reference method) and 10 runs (when comparing the FTIR to a reference monitor) because these are standard prodedures for performance specifications. We note that this performance specification also allows analyte spiking as an option; therefore, a revision on this point is not necessary.

One commenter noted that Section 11.1.1.4.3 states "if the RM is a CEM, synchronize the sampling flow rates of the RM and the FTIR CEM." The commenter noted that instrumental analyzers are currently used for reference methods. EPA Methods 6C, 7E, 3A, and 10 measure $SO_2$, $NO_X$, $O_2$, $CO_2$, and CO on a continuous basis for a short period of time and are referred to as instrumental analyzers and not CEMs. The commenter felt the statement should read "if the reference method is an instrumental analyzer, synchronize the sampling flow rates of the RM and the FTIR." We agree with the commenter and have made the noted change.

**IV. What Revisions Were Made That Were Not in the Proposed Rule?**

A revision was made to Section 6.6 of Method 21 of Part 60 to clarify the VOC monitoring instrument specifications. The requirement for the instrument to be intrinsically safe for Classes 1 and 2, Division 1 conditions has been amended to require them to be intrinsically safe for Class 1 and/or Class 2, Division 1 conditions, as appropriate. The performance test provisions of § 60.754(d) for determining control device efficiency when combusting landfill gas were amended to allow the use of Method 25 as an alternative to Methods 18 and 25C. The tester has the option of using either Method 18, 25, or 25C in this case. These amendments were not published in the proposed rule.

**V. Administrative Requirements**

*A. Docket*

Docket A–97–12 is an organized and complete file of all information submitted to us or otherwise considered in the development of this final rulemaking. The principal purposes of the docket are: (1) to allow interested parties to identify and locate documents so that they can effectively participate in the rulemaking process, and (2) to serve as the record in case of judicial review (except for interagency review materials) [Clean Air Act Section 307(d)(7)(A), 42 U.S.C. 7607(d)(7)(A)].

*B. Office of Management and Budget Review*

Under Executive Order 12866 (58 FR 51735 October 4, 1993), we must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of this Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, Local, or Tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

We have determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review. We have determined that this regulation would result in none of the economic effects set forth in Section 1 of the Order because it does not impose emission measurement requirements beyond those specified in the current regulations, nor does it change any emission standard.

*C. Regulatory Flexibility Act Compliance*

We have determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. We have also determined that this rule will not have a significant economic impact on a substantial number of small businesses. This rulemaking does not impose emission measurement requirements beyond those specified in the current regulations, nor does it change any emission standard.

*D. Paperwork Reduction Act*

This rule does not impose or change any information collection requirements. The Paperwork Reduction Act of 1980, 44 U.S.C. 3501, *et seq.*, is not required.

*E. Unfunded Mandates Reform Act*

Title II of the unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory action on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, we generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, Section 205 of the UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of Section 205 do not apply when they are inconsistent with applicable law. Moreover, Section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before we establish any regulatory requirement that may significantly or uniquely affect small governments, including tribal governments, we must develop a small government agency plan as required under Section 203 of the UMRA. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of our regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory

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provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. We have determined that today's rule does not include a Federal mandate because it imposes no enforceable duty on any State, local, and tribal governments, or the private sector. Today's rule simply makes corrections and minor revisions to current testing requirements and promulgates a monitoring specification that can be used to support future monitoring rules. For the same reason we have also determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

*F. Executive Order 13132 (Federalism)*

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to the Office of Management and Budget (OMB), in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's prior consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, EPA must include a certification from the agency's Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

This final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This final rule simply makes corrections and minor revisions to current testing requirements and promulgates a monitoring specification that can be used to support future monitoring rules. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

*G. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments*

Under Executive Order 13084, we may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or we consult with those governments. If we comply by consulting, Executive Order 13094 requires us to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of our prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires us to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This rule only amends regulatory requirements that are already in effect and adds no additional requirements. Accordingly, the requirements of Section 3(b) of Executive Order 13084 do not apply to this rule.

*H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks*

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives we considered.

We interpret E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to E.O. 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

*I. Submission to Congress and the General Accounting Office*

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. We will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States before it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective October 17, 2000.

*J. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), P.L. 104–113 (15 U.S.C. 272), directs us to use voluntary consensus standards (VCSs) in our regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by VCS bodies.



The NTTAA requires us to provide Congress, through OMB, explanations when we decide not to use available and applicable VCSs.

This rulemaking involves technical standards. Specifically, this rule makes technical corrections to portions of the subparts in Parts 60, 61, and 63 pertaining to source testing or monitoring of emissions and operations. The rule does not, however, change the nature of any of the technical standards currently in use. Moreover, many of the technical standards currently in use are VCSs developed by the American Society for Testing and Materials (ASTM). In fact, we have taken the opportunity presented by this rulemaking to update the references to the ASTM standards to include the dates of the most recent versions of these standards (see Section III.A. of the preamble for a full discussion). A complete list of the ASTM standards updated by this rule can be found in Part 60.17. Thus, today's action is consistent with our obligation to use VCSs in our regulatory activities whenever practicable.

Finally, we are promulgating PS–15, which identifies certification criteria for continuous emission monitoring systems (CEMS) using fourier transform infrared spectroscopy (FTIR). PS–15 is a performance specification that is being issued as an example procedure for use by industry and regulatory agencies as appropriate. While there are no underlying national EPA standards that will require the use of this procedure at this time, we conducted a search for VCS FTIR performance specifications and found none. We plan to periodically conduct rulemaking to make minor updates to test methods and performance specifications. In these rulemakings, we will review updates to VCS incorporated by reference and consider VCSs that may be used in lieu of EPA reference methods. We plan to provide the opportunity for public comment during these update rulemakings in part to allow VCS organizations to suggest where VCSs may be available for our use.

*K. Plain Language in Government Writing*

This rule is not written in the plain language format. In most cases, the rule corrects errors and makes updates to small portions of existing regulations that are not in plain language. The new plain language format was not used to keep the language of the amended sections consistent with that of the unamended rules. Also, the test methods were reformatted and proposed before the plain language provisions were mandated. Due to their volume, the time and costs associated with the magnitude of effort required to rewrite the final methods in plain language is prohibitive. However, this preamble is written in plain language, and we believe the amendments and reformatted test methods have been written clearly.

**List of Subjects**

*40 CFR Part 60*

Environmental protection, Administrative practice and procedure, Air pollution control, Continuous emission monitors, Incorporation by reference.

*40 CFR Part 61*

Environmental protection, Air pollution control, Incorporation by reference.

*40 CFR Part 63*

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Incorporation by reference, Reporting and recordkeeping requirements.

Dated: January 10, 2000.

**Carol M. Browner,**

*Administrator.*

For the reasons stated in the preamble, The Environmental Protection Agency amends title 40, chapter I of the Code of Federal Regulations as follows:

## PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

1. The authority citation for part 60 continues to read as follows:

**Authority:** 42 U.S.C. 7401, 7411, 7413, 7414, 7416, 7601, and 7602.

**§ 60.11 [Amended]**

2. Amend § 60.11 by:

a. In paragraphs (b) and (e)(1), by revising the words "Reference Method 9" to read "Method 9" wherever they occur;

b. In paragraph (e)(5), revise the words "to determine opacity compliance" in the last sentence to read "to determine compliance with the opacity standard."

**§ 60.13 [Amended]**

3. Amend § 60.13 by:

a. Revising the last two sentences in paragraph (d)(1), revising paragraph (g), and revising the first sentence in paragraph (j)(2).

b. Revising the words "ng/J of pollutant" to read "ng of pollutant per J of heat input" in the sixth sentence of paragraph (h).

c. Revising the words "with the effluent gases" to read "in the effluent gases" in paragraph (i)(1).

d. Revising the words "effluent from two or more affected facilities are released" to read "effluent from two or more affected facilities is released" in paragraph (i)(9).

e. Revising the words "relative accuracy test" to read "relative accuracy (RA) test" in the paragraph (j) introductory text.

f. Revising the words "relative accuracy" to read "RA" in paragraphs (j)(1) and (2).

g. Revising the section references "section 7" and "section 10" to read "Section 8.4" and "Section 16.0," respectively, in paragraphs (j)(1) and (2).

The revisions read as follows:

**§ 60.13 Monitoring requirements.**

* * * * *

(d) * * *

(1) * * * For continuous monitoring systems measuring opacity of emissions not using automatic zero adjustments, the optical surfaces exposed to the effluent gases shall be cleaned prior to performing the zero and span drift adjustments. For systems using automatic zero adjustments, the optical surfaces shall be cleaned when the cumulative automatic zero compensation exceeds 4 percent opacity.

* * * * *

(g)(1) When more than one continuous monitoring system is used to measure the emissions from only one affected facility (*e.g.*, multiple breechings, multiple outlets), the owner or operator shall report the results as required from each continuous monitoring system. When the effluent from one affected facility is released to the atmosphere through more than one point, the owner or operator shall install an applicable continuous monitoring system on each separate effluent unless installation of fewer systems is approved by the Administrator.

(2) When the effluents from two or more affected facilities subject to the same opacity standard are combined before being released to the atmosphere, the owner or operator may either install a continuous opacity monitoring system at a location monitoring the combined effluent or install an opacity combiner system comprised of opacity and flow monitoring systems on each stream, and shall report as per § 60.7(c) on the combined effluent. When the affected facilities are not subject to the same opacity standard, the owner or operator shall report the results as per § 60.7(c) on the combined effluent against the most stringent opacity standard

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applicable, except for documented periods of shutdown of the affected facility, subject to the most stringent opacity standard. During such times, the next most stringent opacity standard shall apply.

(3) When the effluents from two or more affected facilities subject to the same emissions standard, other than opacity, are combined before being released to the atmosphere, the owner or operator may install applicable continuous emission monitoring systems on each effluent or on the combined effluent. The owner or operator may report the results as required for each affected facility or for the combined effluent. When the affected facilities are not subject to the same emissions standard, separate continuous emission monitoring systems shall be installed on each effluent and the owner or operator shall report as required for each affected facility.

* * * * *

(j) * * *

(2) The waiver of a CEMS RA test will be reviewed and may be rescinded at such time, following successful completion of the alternative RA procedure, that the CEMS data indicate that the source emissions are approaching the level. * * *

* * * * *

**§ 60.14 [Amended]**

4. In § 60.14, paragraph (b)(1) is amended by revising the words "utilization of emission factors demonstrate" to read "utilization of emission factors demonstrates."

**§ 60.17 [Amended]**

5. Amend § 60.17 by:

a. Revising paragraphs (a), (i), and (j).

b. In paragraph (b)(1), revise the words "§§ 60.204(d)(2), 60.214(d)(2), 60.224(d)(2), 60.234(d)(2)" to read "§§ 60.204(b)(3), 60.214(b)(3), 60.224(b)(3), 60.234(b)(3)."

c. In paragraph (d), by revising the words "IBR approved January 27, 1983 for § 60.285(d)(4)" to read "IBR approved January 27, 1983 for § 60.285(d)(3)."

The revisions read as follows:

**§ 60.17 Incorporation by reference.**

* * * * *

(a) The following materials are available for purchase from at least one of the following addresses: American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, PA 19103; or University Microfilms International, 300 North Zeeb Road, Ann Arbor, MI 48106.

(1) ASTM A99–76, 82 (Reapproved 1987), Standard Specification for Ferromanganese, incorporation by reference (IBR) approved January 27, 1983 for § 60.261.

(2) ASTM A100–69, 74, 93, Standard Specification for Ferrosilicon, IBR approved January 27, 1983 for § 60.261.

(3) ASTM A101–73, 93, Standard Specification for Ferrochromium, IBR approved January 27, 1983 for § 60.261.

(4) ASTM A482–76, 93, Standard Specification for Ferrochromesilicon, IBR approved January 27, 1983 for § 60.261.

(5) ASTM A483–64, 74 (Reapproved 1988), Standard Specification for Silicomanganese, IBR approved January 27, 1983 for § 60.261.

(6) ASTM A495–76, 94, Standard Specification for Calcium-Silicon and Calcium Manganese-Silicon, IBR approved January 27, 1983 for § 60.261.

(7) ASTM D86–78, 82, 90, 93, 95, 96, Distillation of Petroleum Products, IBR approved for §§ 60.562–2(d), 60.593(d), and 60.633(h).

(8) ASTM D129–64, 78, 95, Standard Test Method for Sulfur in Petroleum Products (General Bomb Method), IBR approved for Appendix A: Method 19, Section 12.5.2.2.3; and § 60.106(j)(2).

(9) ASTM D240–76, 92, Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter, IBR approved January 27, 1983 for §§ 60.46(c), 60.296(b), and Appendix A: Method 19, Section 12.5.2.2.3.

(10) ASTM D270–65, 75, Standard Method of Sampling Petroleum and Petroleum Products, IBR approved January 27, 1983 for Appendix A: Method 19, Section 12.5.2.2.1.

(11) ASTM D323–82, 94, Test Method for Vapor Pressure of Petroleum Products (Reid Method), IBR approved April 8, 1987 for §§ 60.111(l), 60.111a(g), 60.111b(g), and 60.116b(f)(2)(ii).

(12) ASTM D388–77, 90, 91, 95, 98, 98a, Standard Specification for Classification of Coals by Rank, IBR approved for §§ 60.41(f), 60.45(f)(4)(i), 60.45(f)(4)(ii), 60.45(f)(4)(vi), 60.41a, 60.41b, and 60.251(b) and (c).

(13) ASTM D396–78, 89, 90, 92, 95, 96, 97, 98, Standard Specification for Fuel Oils, IBR approved for §§ 60.41b, 60.41c, 60.111(b), and 60.111a(b).

(14) ASTM D975–78, 96, 98, 98a, Standard Specification for Diesel Fuel Oils, IBR approved January 27, 1983 for §§ 60.111(b) and 60.111a(b).

(15) ASTM D1072–80, 90 (Reapproved 1994), Standard Method for Total Sulfur in Fuel Gases, IBR approved July 31, 1984 for § 60.335(d).

(16) ASTM D1137–53, 75, Standard Method for Analysis of Natural Gases and Related Types of Gaseous Mixtures by the Mass Spectrometer, IBR approved January 27, 1983 for § 60.45(f)(5)(i).

(17) ASTM D1193–77, 91, Standard Specification for Reagent Water, IBR approved for Appendix A: Method 5, Section 7.1.3; Method 5E, Section 7.2.1; Method 5F, Section 7.2.1; Method 6, Section 7.1.1; Method 7, Section 7.1.1; Method 7C, Section 7.1.1; Method 7D, Section 7.1.1; Method 10A, Section 7.1.1; Method 11, Section 7.1.3; Method 12, Section 7.1.3; Method 13A, Section 7.1.2; Method 26, Section 7.1.2; Method 26A, Section 7.1.2; and Method 29, Section 7.2.2.

(18) ASTM D1266–87, 91, 98, Standard Test Method for Sulfur in Petroleum Products (Lamp Method), IBR approved August 17, 1989 for § 60.106(j)(2).

(19) ASTM D1475–60, 80, 90, Standard Test Method for Density of Paint, Varnish Lacquer, and Related Products, IBR approved January 27, 1983 for § 60.435(d)(1), Appendix A: Method 24, Section 6.1; and Method 24A, Sections 6.5 and 7.1.

(20) ASTM D1552–83, 95, Standard Test Method for Sulfur in Petroleum Products (High Temperature Method), IBR approved for Appendix A: Method 19, Section 12.5.2.2.3; and § 60.106(j)(2).

(21) ASTM D1826–77, 94, Standard Test Method for Calorific Value of Gases in Natural Gas Range by Continuous Recording Calorimeter, IBR approved January 27, 1983 for §§ 60.45(f)(5)(ii), 60.46(c)(2), 60.296(b)(3), and Appendix A: Method 19, Section 12.3.2.4.

(22) ASTM D1835–82, 86, 87, 91, 97, Standard Specification for Liquefied Petroleum (LP) Gases, approved for §§ 60.41b and 60.41c.

(23) ASTM D1945–64, 76, 91, 96, Standard Method for Analysis of Natural Gas by Gas Chromatography, IBR approved January 27, 1983 for § 60.45(f)(5)(i).

(24) ASTM D1946–77, 90 (Reapproved 1994), Standard Method for Analysis of Reformed Gas by Gas Chromatography, IBR approved for §§ 60.45(f)(5)(i), 60.18(f)(3), 60.614(e)(2)(ii), 60.614(e)(4), 60.664(e)(2)(ii), 60.664(e)(4), 60.564(f)(1), 60.704(d)(2)(ii), and 60.704(d)(4).

(25) ASTM D2013–72, 86, Standard Method of Preparing Coal Samples for Analysis, IBR approved January 27, 1983, for Appendix A: Method 19, Section 12.5.2.1.3.

(26) ASTM D2015–77 (Reapproved 1978), 96, Standard Test Method for Gross Calorific Value of Solid Fuel by the Adiabatic Bomb Calorimeter, IBR



approved January 27, 1983 for § 60.45(f)(5)(ii), 60.46(c)(2), and Appendix A: Method 19, Section 12.5.2.1.3.

(27) ASTM D2016–74, 83, Standard Test Methods for Moisture Content of Wood, IBR approved for Appendix A: Method 28, Section 16.1.1.

(28) ASTM D2234–76, 96, 97a, 97b, 98, Standard Methods for Collection of a Gross Sample of Coal, IBR approved January 27, 1983 for Appendix A: Method 19, Section 12.5.2.1.1.

(29) ASTM D2369–81, 87, 90, 92, 93, 95, Standard Test Method for Volatile Content of Coatings, IBR approved January 27, 1983 for Appendix A: Method 24, Section 6.2.

(30) ASTM D2382–76, 88, Heat of Combustion of Hydrocarbon Fuels by Bomb Calorimeter (High-Precision Method), IBR approved for §§ 60.18(f)(3), 60.485(g)(6), 60.614(e)(4), 60.664(e)(4), 60.564(f)(3), and 60.704(d)(4).

(31) ASTM D2504–67, 77, 88 (Reapproved 1993), Noncondensable Gases in $C_3$ and Lighter Hydrocarbon Products by Gas Chromatography, IBR approved for § 60.485(g)(5).

(32) ASTM D2584–68 (Reapproved 1985), 94, Standard Test Method for Ignition Loss of Cured Reinforced Resins, IBR approved February 25, 1985 for § 60.685(c)(3)(i).

(33) ASTM D2622–87, 94, 98, Standard Test Method for Sulfur in Petroleum Products by X-Ray Spectrometry, IBR approved August 17, 1989 for § 60.106(j)(2).

(34) ASTM D2879–83, 96, 97, Test Method for Vapor Pressure-Temperature Relationship and Initial Decomposition Temperature of Liquids by Isoteniscope, IBR approved April 8, 1987 for §§ 60.485(e)(1), 60.111b(f)(3), 60.116b(e)(3)(ii), and 60.116b(f)(2)(i).

(35) ASTM D2880–78, 96, Standard Specification for Gas Turbine Fuel Oils, IBR approved January 27, 1983 for §§ 60.111(b), 60.111a(b), and 60.335(d).

(36) ASTM D2908–74, 91, Standard Practice for Measuring Volatile Organic Matter in Water by Aqueous-Injection Gas Chromatography, IBR approved for § 60.564(j).

(37) ASTM D2986–71, 78, 95a, Standard Method for Evaluation of Air, Assay Media by the Monodisperse DOP (Dioctyl Phthalate) Smoke Test, IBR approved January 27, 1983 for Appendix A: Method 5, Section 7.1.1; Method 12, Section 7.1.1; and Method 13A, Section 7.1.1.2.

(38) ASTM D3031–81, Standard Test Method for Total Sulfur in Natural Gas by Hydrogenation, IBR approved July 31, 1984 for § 60.335(d).

(39) ASTM D3173–73, 87, Standard Test Method for Moisture in the Analysis Sample of Coal and Coke, IBR approved January 27, 1983 for Appendix A: Method 19, Section 12.5.2.1.3.

(40) ASTM D3176–74, 89, Standard Method for Ultimate Analysis of Coal and Coke, IBR approved January 27, 1983 for § 60.45(f)(5)(i) and Appendix A: Method 19, Section 12.3.2.3.

(41) ASTM D3177–75, 89, Standard Test Method for Total Sulfur in the Analysis Sample of Coal and Coke, IBR approved January 27, 1983 for Appendix A: Method 19, Section 12.5.2.1.3.

(42) ASTM D3178–73 (Reapproved 1979), 89, Standard Test Methods for Carbon and Hydrogen in the Analysis Sample of Coal and Coke, IBR approved January 27, 1983 for § 60.45(f)(5)(i).

(43) ASTM D3246–81, 92, 96, Standard Method for Sulfur in Petroleum Gas by Oxidative Microcoulometry, IBR approved July 31, 1984 for § 60.335(d).

(44) ASTM D3270–73T, 80, 91, 95, Standard Test Methods for Analysis for Fluoride Content of the Atmosphere and Plant Tissues (Semiautomated Method), IBR approved for Appendix A: Method 13A, Section 16.1.

(45) ASTM D3286–85, 96, Standard Test Method for Gross Calorific Value of Coal and Coke by the Isoperibol Bomb Calorimeter, IBR approved for Appendix A: Method 19, Section 12.5.2.1.3.

(46) ASTM D3370–76, 95a, Standard Practices for Sampling Water, IBR approved for § 60.564(j).

(47) ASTM D3792–79, 91, Standard Method for Water Content of Water-Reducible Paints by Direct Injection into a Gas Chromatograph, IBR approved January 27, 1983 for Appendix A: Method 24, Section 6.3.

(48) ASTM D4017–81, 90, 96a, Standard Test Method for Water in Paints and Paint Materials by the Karl Fischer Titration Method, IBR approved January 27, 1983 for Appendix A: Method 24, Section 6.4.

(49) ASTM D4057–81, 95, Standard Practice for Manual Sampling of Petroleum and Petroleum Products, IBR approved for Appendix A: Method 19, Section 12.5.2.2.3.

(50) ASTM D4084–82, 94, Standard Method for Analysis of Hydrogen Sulfide in Gaseous Fuels (Lead Acetate Reaction Rate Method), IBR approved July 31, 1984 for § 60.335(d).

(51) ASTM D4177–95, Standard Practice for Automatic Sampling of Petroleum and Petroleum Products, IBR approved for Appendix A: Method 19, 12.5.2.2.1.

(52) ASTM D4239–85, 94, 97, Standard Test Methods for Sulfur in the Analysis Sample of Coal and Coke Using High Temperature Tube Furnace Combustion Methods, IBR approved for Appendix A: Method 19, Section 12.5.2.1.3.

(53) ASTM D4442–84, 92, Standard Test Methods for Direct Moisture Content Measurement in Wood and Wood-base Materials, IBR approved for Appendix A: Method 28, Section 16.1.1.

(54) ASTM D4444–92, Standard Test Methods for Use and Calibration of Hand-Held Moisture Meters, IBR approved for Appendix A: Method 28, Section 16.1.1.

(55) ASTM D4457–85 (Reapproved 1991), Test Method for Determination of Dichloromethane and 1, 1, 1-Trichloroethane in Paints and Coatings by Direct Injection into a Gas Chromatograph, IBR approved for Appendix A: Method 24, Section 6.5.

(56) ASTM D4809–95, Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter (Precision Method), IBR approved for §§ 60.18(f)(3), 60.485(g)(6), 60.564(f)(3), 60.614(d)(4), 60.664(e)(4), and 60.704(d)(4).

(57) ASTM D5403–93, Standard Test Methods for Volatile Content of Radiation Curable Materials. IBR approved September 11, 1995 for Appendix A: Method 24, Section 6.6.

(58) ASTM D5865–98, Standard Test Method for Gross Calorific Value of Coal and Coke. IBR approved for § 60.45(f)(5)(ii), 60.46(c)(2), and Appendix A: Method 19, Section 12.5.2.1.3.

(59) ASTM E168–67, 77, 92, General Techniques of Infrared Quantitative Analysis, IBR approved for §§ 60.593(b)(2) and 60.632(f).

(60) ASTM E169–63, 77, 93, General Techniques of Ultraviolet Quantitative Analysis, IBR approved for §§ 60.593(b)(2) and 60.632(f).

(61) ASTM E260–73, 91, 96, General Gas Chromatography Procedures, IBR approved for §§ 60.593(b)(2) and 60.632(f).

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(i) Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846 Third Edition (November 1986), as amended by Updates I (July 1992), II (September 1994), IIA (August, 1993), IIB (January 1995), and III (December 1996). This document may be obtained from the U.S. EPA, Office of Solid Waste and Emergency Response, Waste Characterization Branch, Washington, DC 20460, and is incorporated by reference for Appendix A to Part 60,

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Method 29, Sections 7.5.34; 9.2.1; 9.2.3; 10.2; 10.3; 11.1.1; 11.1.3; 13.2.1; 13.2.2; 13.3.1; and Table 29–3.

(j) "Standard Methods for the Examination of Water and Wastewater," 16th edition, 1985. Method 303F: "Determination of Mercury by the Cold Vapor Technique." This document may be obtained from the American Public Health Association, 1015 18th Street, NW., Washington, DC 20036, and is incorporated by reference for Appendix A to Part 60, Method 29, Sections 9.2.3; 10.3; and 11.1.3.

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**§ 60.18 [Amended]**

6. Amend § 60.18 as follows:

a. In paragraph (f)(1), the first sentence is amended by revising "Reference Method 22" to read "Method 22 of Appendix A to this part."

b. In paragraph (f)(3), the definition of "$C_i$" is amended by revising "ASTM D1946–77" to read "ASTM D1946–77 or 90 (Reapproved 1994)."

c. In paragraph (f)(3), the definition of "$H_i$" is amended by revising "ASTM D2382–76" to read "ASTM D2382–76 or 88 or D4809–95."

**§ 60.41 [Amended]**

7. In § 60.41, paragraph (f) is amended by revising the words "the American Society and Testing and Materials, Designation D388–77" to read "ASTM D388–77, 90, 91, 95, or 98a."

**§ 60.42 [Amended]**

8. In § 60.42, paragraphs (b)(1) and (b)(2), are amended by removing the symbol "%" wherever it appears, and adding "percent" in its place.

**§ 60.45 [Amended]**

9. Amend § 60.45 as follows:

a. In paragraph (b)(2) by removing the words "under paragraph (d) of this section."

b. In paragraphs (f)(4)(i), (f)(4)(ii), and (f)(4)(vi) by revising the words "ASTM D388–77" to read "ASTM D388–77, 90, 91, 95, or 98a."

c. In paragraph (f)(5)(i) by revising the words "ASTM method D1137–53, (75), D1945–64(76), or D1946–77" to read "ASTM D1137–53 or 75, D1945–64, 76, 91, or 96 or D1946–77 or 90 (Reapproved 1994)."

d. In paragraph (f)(5)(i) by revising the words "ASTM method D3178–74 or D3176" to read "ASTM D3178–73 (Reapproved 1979), 89, or D3176–74 or 89."

e. In paragraph (f)(5)(ii) by revising the words "ASTM D1826–77" to read "ASTM D1826–77 or 94."

f. In paragraph (f)(5)(ii) by revising the words "ASTM D2015–77" to read "ASTM D2015–77 (Reapproved 1978), 96, or D5865–98."

**§ 60.46 [Amended]**

10. Amend § 60.46 as follows:

a. In paragraph (b)(2)(i), the second sentence is amended by revising the words "in the sampling train may be set to provide a gas temperature no greater than" to read "in the sampling train shall be set to provide an average gas temperature of."

b. In paragraph (b)(2)(ii), the third sentence is amended by revising the words "the arithmetic mean of all the individual $O_2$ sample concentrations at each traverse point" to read "the arithmetic mean of the sample $O_2$ concentrations at all traverse points."

c. Paragraph (c)(2) is amended by revising the words "D2015–77" to read "D2015–77 (Reapproved 1978), 96, or D5865–98".

d. Paragraph (c)(2) is further amended by revising the words "D240–76" to read "D240–76 or 92."

e. In paragraph (c)(2) is further amended by revising the words "D1826–77" to read "D1826–77 or 94."

**§ 60.41a [Amended]**

11. Amend § 60.41a as follows:

a. In the definitions for "subbituminous coal" and "lignite," by revising "D388–77" to read "D388–77, 90, 91, 95, or 98a."

b. In paragraph (a)(2) of the definition of "potential combustion concentration" by revising "75 ng/J" to read "73 ng/J."

**§ 60.43a [Amended]**

12. In § 60.43a, paragraph (d)(2), revising the words "resource recovery facility" to read "resource recovery unit."

**§ 60.47a [Amended]**

13. Amend § 60.47a as follows:

a. In paragraph (b)(3) by removing the words "(appendix A)."

b. In the first sentence of paragraph (g) by revising the words "lbs/million Btu" to read "lb/million Btu."

c. In the second sentence of paragraph (h)(3) by revising the words "309 minutes in each hour" to read "30 minutes in each hour."

d. In paragraph (i)(1) by revising the words "6, 7, and 3B, as applicable, shall be used to determine $O_2$, $SO_2$, and $NO_X$ concentrations" to read "3B, 6, and 7 shall be used to determine $O_2$, $SO_2$, and $NO_X$ concentrations, respectively."

**§ 60.48a [Amended]**

14. Amend § 60.48a as follows:

a. In paragraph (b)(2)(ii), in the fourth sentence by revising the words "the arithmetic mean of all the individual $O_2$ concentrations at each traverse point." to read "the arithmetic mean of the sample $O_2$ concentrations at all traverse points."

b. In paragraph (c)(3), in the first sentence by adding a closing parenthesis after the abbreviation "($\%R_g$" so that it now reads "($\%R_g$)".

c. In paragraph (f), in the first and second sentences by removing the words "(appendix A)."

**§ 60.40b [Amended]**

15. § 60.40b is amended by adding paragraph (j) as follows:

**§ 60.40b Applicability and delegation of authority.**

* * * * *

(j) Any affected facility meeting the applicability requirements under paragraph (a) of this section and commencing construction, modification, or reconstruction after June 19, 1986 is not subject to Subpart D (Standards of Performance for Fossil-Fuel-Fired Steam Generators, § 60.40).

* * * * *

**§ 60.41b [Amended]**

16. Amend § 60.41b as follows:

a. In the definition for "coal" by revising "ASTM D388–77" to read "ASTM D388–77, 90, 91, 95, or 98a."

b. In the definition for "distillate oil" by revising "ASTM D396–78" to read "ASTM D396–78, 89, 90, 92, 96, or 98."

c. In the definition for "lignite" by revising "ASTM D388–77" to read "ASTM D388–77, 90, 91, 95, or 98a."

d. In the definition for "natural gas" by revising "ASTM D1835–82" to read "ASTM D1835–82, 86, 87, 91, or 97."

**§ 60.42b [Amended]**

17. In § 60.42b, paragraph (d), the second sentence is amended by revising the words "facilities under this paragraph" to read "facilities under paragraphs (d)(1), (2), or (3)."

**§ 60.43b [Amended]**

18. In § 60.43b, paragraph (a)(1) is amended by revising the words "22 ng/J (0.05 lb/million Btu)" to read "22 ng/J (0.051 lb/million Btu)."

**§ 60.46b [Amended]**

19. Amend § 60.46b as follows:

a. In paragraph (d)(4) by revising the words "160 °C (320 °F)" to read "160±14 °C (320±25 °F)."

b. In paragraph (d)(6)(iii) by removing the words "(appendix A)."

**§ 60.41c [Amended]**

20. Amend § 60.41c as follows:

a. In the definition for "natural gas" by revising "D1835–86" to read "D1835–86, 87, 91, or 97."



b. In the definitions for "distillate oil" and "residual oil" by revising "D396–78" to read "D396–78, 89, 90, 92, 96, or 98."

**§ 60.42c [Amended]**

21. Amend § 60.42c as follows:

a. In paragraph (a), in the first sentence by revising the words "the owner the operator" to read "the owner or operator."

b. In paragraph (c), in the second sentence by revising the words "facilities under this paragraph" to read "facilities under paragraphs (c)(1), (2), (3), or (4)."

**§ 60.43c [Amended]**

22. In § 60.43c, paragraph (a)(1) is amended by revising the words "22 ng/J (0.05 lb/million Btu)" to read "22 ng/J (0.051 lb/million Btu)."

**§ 60.44c [Amended]**

23. In § 60.44c, paragraph (i), the third sentence is amended by revising the words "24-hour averaged" to read "24-hour average."

**§ 60.45c [Amended]**

24. Amend § 60.45c as follows:

a. Redesignate paragraphs (a)(5) through (a)(7) as paragraphs (a)(6) through (a)(8), respectively.

b. Revise paragraphs (a)(1) through (a)(4) and add paragraph (a)(5).

The redesignation, revisions and addition read as follows:

**§ 60.45c Compliance and performance test methods and procedures for particulate matter.**

(a) * * *

(1) Method 1 shall be used to select the sampling site and the number of traverse sampling points.

(2) Method 3 shall be used for gas analysis when applying Method 5, Method 5B, or Method 17.

(3) Method 5, Method 5B, or Method 17 shall be used to measure the concentration of PM as follows:

(i) Method 5 may be used only at affected facilities without wet scrubber systems.

(ii) Method 17 may be used at affected facilities with or without wet scrubber systems provided the stack gas temperature does not exceed a temperature of 160 °C (320 °F). The procedures of Sections 8.1 and 11.1 of Method 5B may be used in Method 17 only if Method 17 is used in conjunction with a wet scrubber system. Method 17 shall not be used in conjunction with a wet scrubber system if the effluent is saturated or laden with water droplets.

(iii) Method 5B may be used in conjunction with a wet scrubber system.

(4) The sampling time for each run shall be at least 120 minutes and the minimum sampling volume shall be 1.7 dry standard cubic meters (dscm) [60 dry standard cubic feet (dscf)] except that smaller sampling times or volumes may be approved by the Administrator when necessitated by process variables or other factors.

(5) For Method 5 or Method 5B, the temperature of the sample gas in the probe and filter holder shall be monitored and maintained at 160±14 °C (320±25 °F).

* * * * *

**§ 60.46c [Amended]**

25. In § 60.46c, paragraphs (b) and (d) are amended by revising the abbreviation "CEM" to read "CEMS" wherever it appears.

**§ 60.47c [Amended]**

26. In § 60.47c, paragraphs (a) and (b) are amended by revising the abbreviation "CEMS" to read "COMS" wherever it appears.

**§ 60.48c [Amended]**

27. In § 60.48c, paragraph (b) is amended by replacing the abbreviation "CEMS" with the words "CEMS and/or COMS."

**§ 60.52 [Amended]**

28. In § 60.52, paragraph (a) is amended by revising the words "the performance test required to be conducted by § 60.8 is completed" to read "the initial performance test is completed or required to be completed under § 60.8 of this part, whichever date comes first."

**§ 60.54 [Amended]**

29. Amend § 60.54 as follows:

a. In paragraph (b)(1) by revising the words "The emission rate ($c_{12}$)" to read "The concentration ($c_{12}$)."

b. In paragraph (b)(3)(i), in the third sentence by revising the words "the arithmetic mean of all the individual $CO_2$ sample concentrations at each traverse point" to read "the arithmetic mean of the sample $CO_2$ concentrations at all traverse points."

**§ 60.51a [Amended]**

30. Section 60.51a is amended by adding a new difinition in alphabetical order to read as follows:

**§ 60.51a Definitions.**

* * * * *

*Continuous monitoring system* means the total equipment used to sample and condition (if applicable), to analyze, and to provide a permanent record of emissions or process parameters.

* * * * *

**§ 60.58a [Amended]**

31. Amend § 60.58a as follows:

a. In paragraph (b)(3), in the first sentence by revising the words "particulate matter emission standard" to read "particulate matter emission limit."

b. In paragraph (b)(3), in the third sentence by revising the words "a gas temperature no greater than" to read "a gas temperature of."

c. In paragraph (b)(8) by revising the words "operate a CEMS for measuring opacity" to read "operate a continuous opacity monitoring system (COMS)."

d. In paragraph (e)(10) by revising the word "Section" to read "section."

e. In paragraph (e)(14) by revising the words "outlet to" to read "outlet of."

f. In paragraph (f)(2) by revising the words "Method 26" to read "Method 26 or 26A."

**§ 60.58b [Amended]**

32–36. Amend § 60.58b as follows:

a. In paragraph (b)(1) by revising the words "(or carbon dioxide)" to read "(or 20 percent carbon dioxide)" each place it appears.

b. In paragraph (f)(1), in the second sentence by removing the words "for Method 26."

c. In paragraph (f)(2) by removing the words "Method 26."

**§ 60.56c [Amended]**

37. Amend § 60.56c as follows:

a. In paragraph (b)(4), in the first and second sentences by revising the words "Method 3 or 3A" to read "Method 3, 3A, or 3B."

b. In paragraph (b)(10), in the first sentence by revising the words "Method 26" to read "Method 26 or 26A."

**§ 60.64 [Amended]**

38. Amend § 60.64(b)(1) as follows:

a. In the definition of the term "$c_s$", "(g/dscf)" is revised to read "(gr/dscf)."

b. In the definition of the term "K", "(453.6 g/lb)" is revised to read "(7000 gr/lb)."

**§ 60.84 [Amended]**

39. Amend § 60.84 as follows:

a. In paragraph (d), in the third sentence by revising the words "monitoring of" to read "monitoring systems for measuring."

b. In paragraph (d), in the fourth sentence by revising the words "this $SO_2$" to read "the $SO_2$."

**§ 60.102 [Amended]**

40. In § 60.102, paragraph (a)(1) is amended by revising the words "1.0 kg/

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1000 kg (1.0 lb/1000 lb)" to read "1.0 kg/Mg (2.0 lb/ton).

**§ 60.104 [Amended]**

41. In § 60.104, paragraph (b)(2) is amended by revising the words "9.8 kg/1,000 kg" to read "9.8 kg/Mg (20 lb/ton)."

**§ 60.105 [Amended]**

42. Amend § 60.105 by:

a. In paragraphs (a)(3)(iii) and (a)(5)(ii), the words "Methods 6 and 3" in the second sentence are revised to read "Methods 6 or 6C and 3 or 3A."

b. In paragraph (a)(4)(iii), the words "Method 11 shall be used for conducting the relative accuracy evaluations" are revised to read "Method 11, 15, 15A, or 16 shall be used for conducting the relative accuracy evaluations."

c. In paragraphs (a)(3)(i), (a)(5)(i), (a)(6)(i), and (a)(7)(i), "10" is revised to read "25."

d. In paragraph (a)(6)(ii), the first sentence and paragraphs (a)(8), (a)(9), and (a)(12) are revised.

e. In paragraph (a)(10), the abbreviation "vppm" is revised to read "ppmv".

f. In paragraph (c), "(thousands of kilograms per hour)" is revised to read "(Mg (tons) per hour)."

g. In paragraph (d), the words "(liters/hr or kg/hr)" are removed.

The revisions read as follows:

**§ 60.105 Monitoring of emissions and operations.**

(a) * * *

(6) * * *

(ii) The performance evaluations for this reduced sulfur (and $O_2$) monitor under § 60.13(c) shall use Performance Specification 5 of Appendix B of this Part (and Performance Specification 3 of Appendix B of this Part for the $O_2$ analyzer). * * *

* * * * *

(8) An instrument for continuously monitoring and recording concentrations of $SO_2$ in the gases at both the inlet and outlet of the $SO_2$ control device from any fluid catalytic cracking unit catalyst regenerator for which the owner or operator seeks to comply with § 60.104 (b)(1).

(i) The span value of the inlet monitor shall be set 125 percent of the maximum estimated hourly potential $SO_2$ emission concentration entering the control device, and the span value of the outlet monitor shall be set at 50 percent of the maximum estimated hourly potential sulfur dioxide emission concentration entering the control device.

(ii) The performance evaluations for these $SO_2$ monitors under § 60.13(c) shall use Performance Specification 2. Methods 6 or 6C and 3 or 3A shall be used for conducting the relative accuracy evaluations.

(9) An instrument for continuously monitoring and recording concentrations of $SO_2$ in the gases discharged into the atmosphere from any fluid catalytic cracking unit catalyst regenerator for which the owner or operator seeks to comply specifically with the 50 ppmv emission limit under § 60.104 (b)(1).

(i) The span value of the monitor shall be set at 50 percent of the maximum hourly potential $SO_2$ emission concentration of the control device.

(ii) The performance evaluations for this $SO_2$ monitor under § 60.13 (c) shall use Performance Specification 2. Methods 6 or 6C and 3 or 3A shall be used for conducting the relative accuracy evaluations.

* * * * *

(12) The owner or operator shall use the following procedures to evaluate the continuous monitoring systems under paragraphs (a)(8), (a)(9), and (a)(10) of this section.

(i) Method 3 or 3A and Method 6 or 6C for the relative accuracy evaluations under the § 60.13(e) performance evaluation.

(ii) Appendix F, Procedure 1, including quarterly accuracy determinations and daily calibration drift tests.

* * * * *

**§ 60.106 [Amended]**

43. Amend § 60.106 by:

a. In paragraphs (b)(1), (b)(3), (c)(1), (i)(9) by revising the equations and definitions.

b. In paragraph (b)(3)(ii) by revising the words "Method 3" to read "Method 3B."

c. Revising paragraph (e).

d. Revising paragraph (f)(1).

e. In paragraph (f)(3) by revising the words "Method 3" to read "Method 3 or 3A" and by revising "(h)(3)" to read "(h)(6)."

$$R_c = K_1 Q_r (\%CO_2 + \%CO) - (K_2 Q_a - K_3 Q_r)((\%CO/2) + (\%CO_2 + \%O_2))$$

Where:

$R_c$ = Coke burn-off rate, Mg/hr (ton/hr).

$Q_r$ = Volumetric flow rate of exhaust gas from catalyst regenerator before entering the emission control system, dscm/min (dscf/min).

d. In paragraph (g), in the first sentence by revising the words "the applicable test methods and procedures specified in this section" to read "Method 6 or 6C and Method 3 or 3A."

e. In paragraphs (h)(1), (h)(3), and (h)(4) by revising the abbreviation "vppm" to read "ppmv" wherever it occurs.

f. In paragraph (i)(2)(i) by revising the words "for the concentration of sulfur oxides calculated as sulfur dioxide and moisture content" to read "for moisture content and for the concentration of sulfur oxides calculated as sulfur dioxide."

g. Revising paragraph (i)(9) following the introductory text and paragraph (i)(10).

h. In paragraph (i)(11) by revising the words "per 1,000 kg of coke burn-off" to read "per Mg (ton) of coke burn-off."

i. In paragraph (j)(2) by revising the words "ASTM D129–64 (Reapproved 1978)" to read "ASTM D129–64, 78, or 95."

j. In paragraph (j)(2) by revising the words "ASTM D1552–83" to read "ASTM D1552–83 or 95."

k. In paragraph (j)(2) by revising the words "ASTM D2622–87" to read "ASTM D2622–87, 94, or 98."

l. In paragraph (j)(2) by revising the words "ASTM D1266–87" to read "ASTM D1266–87, 91, or 98."

The revisions read as follows:

**§ 60.106 Test methods and procedures.**

* * * * *

(b) * * *

(1) * * *

$$E = \frac{c_s Q_{sd}}{K R_c}$$

Where:

E = Emission rate of PM, kg/Mg (lb/ton) of coke burn-off.

$c_s$ = Concentration of PM, g/dscm (gr/dscf).

$Q_{sd}$ = Volumetric flow rate of effluent gas, dscm/hr (dscf/hr).

$R_c$ = Coke burn-off rate, Mg/hr (ton/hr) coke.

K=Conversion factor, 1,000 g/kg (7,000 gr/lb).

* * * * *

(3) * * *



$Q_a$ = Volumetric flow rate of air to FCCU regenerator, as determined from the fluid catalytic cracking unit control room instrumentation, dscm/min (dscf/min).

$\%CO_2$ = Carbon dioxide concentration, percent by volume (dry basis).

%CO = Carbon monoxide concentration, percent by volume (dry basis).

$\%O_2$ = Oxygen concentration, percent by volume (dry basis).

$K_1$ = Material balance and conversion factor, $2.982 \times 10^{-4}$ (Mg-min)/(hr-dscm-%) [$9.31 \times 10^{-6}$ (ton-min)/(hr-dscf-%)].

$K_2$ = Material balance and conversion factor, $2.088 \times 10^{-3}$ (Mg-min)/(hr-dscm-%) [$6.52 \times 10^{-5}$ (ton-min)/(hr-dscf-%)].

$K_3$ = Material balance and conversion factor, $9.94 \times 10^{-5}$ (Mg-min)/(hr-dscm-%) [$3.1 \times 10^{-6}$ (ton-min)/(hr-dscf-%)].

* * * * *

(c) * * *

(1) * * *

$$E_s = F + A\,(H/R_c)$$

Where:

$E_s$ = Emission rate of PM allowed, kg/Mg (lb/ton) of coke burn-off in catalyst regenerator.

F=Emission standard, 1.0 kg/Mg (2.0 lb/ton) of coke burn-off in catalyst regenerator.

A = Allowable incremental rate of PM emissions, $7.5 \times 10^{-4}$ kg/million J (0.10 lb/million Btu).

H = Heat input rate from solid or liquid fossil fuel, million J/hr (million Btu/hr).

$R_c$ = Coke burn-off rate, Mg coke/hr (ton coke/hr).

* * * * *

(e)(1) The owner or operator shall determine compliance with the $H_2S$ standard in § 60.104(a)(1) as follows: Method 11, 15, 15A, or 16 shall be used to determine the $H_2S$ concentration. The gases entering the sampling train should be at about atmospheric pressure. If the pressure in the refinery fuel gas lines is relatively high, a flow control valve may be used to reduce the pressure. If the line pressure is high enough to operate the sampling train without a vacuum pump, the pump may be eliminated from the sampling train. The sample shall be drawn from a point near the centroid of the fuel gas line.

(i) For Method 11, the sampling time and sample volume shall be at least 10 minutes and 0.010 dscm (0.35 dscf). Two samples of equal sampling times shall be taken at about 1-hour intervals. The arithmetic average of these two samples shall constitute a run. For most fuel gases, sampling times exceeding 20 minutes may result in depletion of the collection solution, although fuel gases containing low concentrations of $H_2S$ may necessitate sampling for longer periods of time.

(ii) For Method 15 or 16, at least three injects over a 1-hour period shall constitute a run.

(iii) For Method 15A, a 1-hour sample shall constitute a run.

(2) Where emissions are monitored by § 60.105(a)(3), compliance with § 60.105(a)(1) shall be determined using Method 6 or 6C and Method 3 or 3A. A 1-hour sample shall constitute a run. Method 6 samples shall be taken at a rate of approximately 2 liters/min. The ppm correction factor (Method 6) and the sampling location in paragraph (f)(1) of this section apply. Method 4 shall be used to determine the moisture content of the gases. The sampling point for Method 4 shall be adjacent to the sampling point for Method 6 or 6C.

(f) * * *

(1) Method 6 shall be used to determine the $SO_2$ concentration. The concentration in mg/dscm obtained by Method 6 or 6C is multiplied by 0.3754 to obtain the concentration in ppm. The sampling point in the duct shall be the centroid of the cross section if the cross-sectional area is less than 5.00 $m^2$ (53.8 $ft^2$) or at a point no closer to the walls than 1.00 m (39.4 in.) if the cross-sectional area is 5.00 $m^2$ or more and the centroid is more than 1 m from the wall. The sampling time and sample volume shall be at least 10 minutes and 0.010 dscm (0.35 dscf) for each sample. Eight samples of equal sampling times shall be taken at about 30-minute intervals. The arithmetic average of these eight samples shall constitute a run. For Method 6C, a run shall consist of the arithmetic average of four 1-hour samples. Method 4 shall be used to determine the moisture content of the gases. The sampling point for Method 4 shall be adjacent to the sampling point for Method 6 or 6C. The sampling time for each sample shall be equal to the time it takes for two Method 6 samples. The moisture content from this sample shall be used to correct the corresponding Method 6 samples for moisture. For documenting the oxidation efficiency of the control device for reduced sulfur compounds, Method 15 shall be used following the procedures of paragraph (f)(2) of this section.

* * * * *

(i) * * *

(9) * * *

$$E_{so_x} = C_{so_x} Q_{sd} / K$$

Where:

$E_{SO_x}$ = sulfur oxides emission rate calculated as sulfur dioxide, kg/hr (lb/hr)

$C_{SO_x}$ = sulfur oxides emission concentration calculated as sulfur dioxide, g/dscm (gr/dscf)

$Q_{sd}$ = dry volumetric stack gas flow rate corrected to standard conditions, dscm/hr (dscf/hr)

K=1,000 g/kg (7,000 gr/lb)

(10) Sulfur oxides emissions calculated as sulfur dioxide shall be determined for each test run by the following equation:

$$R_{so_x} = \left(E_{so_x}/R_c\right)$$

Where:

$R_{SO_x}$ = Sulfur oxides emissions calculated as kg sulfur dioxide per Mg (lb/ton) coke burn-off.

$E_{SO_x}$ = Sulfur oxides emission rate calculated as sulfur dioxide, kg/hr (lb/hr).

$R_c$ = Coke burn-off rate, Mg/hr (ton/hr).

* * * * *

**§ 60.107 [Amended]**

44. Section 60.107 is amended by revising paragraphs (c)(5) and (c)(6) as follows:

**§ 60.107 Reporting and recordkeeping requirements.**

* * * * *

(c) * * *

(5) If subject to § 60.104(b)(2), for each day in which a Method 8 sample result required by § 60.106(i) was not obtained, the date for which and brief explanation as to why a Method 8 sample result was not obtained, for approval by the Administrator.

(6) If subject to § 60.104(b)(3), for each 8-hour period in which a feed sulfur measurement required by § 60.106(j) was not obtained, the date for which and brief explanation as to why a feed sulfur measurement was not obtained, for approval by the Administrator.

* * * * *

**§ 60.111 [Amended]**

45. Section 60.111 is amended as follows:

a. In paragraph (b) by revising "ASTM D396–78" to read "ASTM D396–78, 89, 90, 92, 96, or 98."

b. In paragraph (b) by revising "ASTM D2880–78" to read "ASTM D2880–78 or 96."

c. In paragraph (b) by revising "ASTM D975–78" to read "ASTM D975–78, 96, or 98a."

d. In paragraph (l) by revising "ASTM D323–82" to read "ASTM D323–82 or 94."

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**§ 60.111a [Amended]**

46. Section 60.111a is amended as follows:

a. In paragraph (b) by revising "ASTM D396–78" to read "D396–78, 89, 90, 92, 96, or 98."

b. In paragraph (b) by revising "ASTM D2880–78" to read "ASTM D2880–78 or 96"; and by revising "ASTM D975–78" to read "ASTM D975–78, 96, or 98a."

c. In paragraph (g) by revising "ASTM D323–82" to read "ASTM D323–82 or 94."

**§ 60.111b [Amended]**

47. Section 60.111b is amended as follows:

a. In paragraph (f)(3) by revising "ASTM Method D2879–83" to read "ASTM D2879–83, 96, or 97."

b. In paragraph (g) by revising "ASTM D323–82" to read "ASTM D323–82 or 94."

**§ 60.116b [Amended]**

48. Section 60.116b is amended as follows:

a. In paragraph (e)(3)(ii) by revising "ASTM Method D2879–83" to read "ASTM D2879–83, 96, or 97."

b. In paragraph (f)(2)(i) by revising "ASTM Method D2879–83" to read "ASTM D2879–83, 96, or 97."

c. In paragraph (f)(2)(ii) by revising "ASTM Method D323–82" to read "ASTM D323–82 or 94."

**§ 60.121 [Amended]**

49. In § 60.121, paragraph (d) is added as follows:

**§ 60.121 Definitions.**

* * * * *

(d) *Blast furnace* means any furnace used to recover metal from slag.

* * * * *

**§ 60.133 [Amended]**

50. In § 60.133, paragraph (b)(1), the first sentence is amended by revising the words "pouring of the heat" to read "pouring of part of the production cycle."

**§ 60.144 [Amended]**

51. In § 60.144, paragraph (c) is revised to read as follows:

**§ 60.144 Test methods and procedures.**

* * * * *

(c) The owner or operator shall use the monitoring devices of § 60.143(b)(1) and (2) for the duration of the particulate matter runs. The arithmetic average of all measurements taken during these runs shall be used to determine compliance with § 60.143(c).

* * * * *

**§ 60.143a [Amended]**

52. Amend § 60.143a, paragraph (c) as follows:

a. The words "All monitoring devices" in the first sentence are revised to read "All monitoring devices required by paragraph (a) of this section."

b. The words "EPA Reference Method 2" in the first sentence are revised to read "Method 2 of Appendix A of this part."

c. The words "EPA Reference Method 2" in the second sentence are revised to read "Method 2."

**§ 60.144a [Amended]**

53. In § 60.144a, paragraph (d) is amended by revising it to read as follows:

**§ 60.144a Test methods and procedures.**

* * * * *

(d) To comply with § 60.143a(d) or (e), the owner or operator shall use the monitoring device of § 60.143a(a) to determine the exhaust ventilation rates or levels during the particulate matter runs. Each owner or operator shall then use these rates or levels to determine the 3-hour averages required by § 60.143a(d) and (e).

* * * * *

**§ 60.145a [Amended]**

54. In § 60.145a, paragraph (f), in the first sentence by revising the words "Reference Method 5" to read "Method 5."

**§ 60.153 [Amended]**

55. Amend § 60.153 as follows:

a. In paragraph (b)(3) by revising the word "thermocouple" or "thermocouples" to read "temperature measuring device" or "temperature measuring devices" wherever it occurs.

b. In paragraph (b)(5), in the second sentence by revising the words "with the method specified under § 60.154(c)(2)" to read "with the method specified under § 60.154(b)(5)."

**§ 60.154 [Amended]**

56. In § 60.154, paragraphs (b)(1) and (b)(3) are revised, and in paragraph (b)(4), the equations and definitions are revised as follows:

**§ 60.154 Test methods and procedures.**

* * * * *

(b) * * *

(1) The emission rate (E) of particulate matter for each run shall be computed using the following equation:

$$E = \frac{c_s Q_{sd}}{KS}$$

Where:

E = Emission rate of particulate matter, g/kg (lb/ton) of dry sludge input.

$c_s$ = Concentration of particulate matter, g/dscm (gr/dscf).

$Q_{sd}$ = Volumetric flow rate of effluent gas, dscm/hr (dscf/hr).

S = Charging rate of dry sludge during the run, kg/hr (ton/hr).

K = Conversion factor, 1.0 g/g (7,000 gr/lb).

* * * * *

(3) The dry sludge charging rate (S) for each run shall be computed using either of the following equations:

$$S = S_m R_{dm} / \Theta$$

$$S = S_v R_{dv} / K_v \Theta$$

Where:

S = Charging rate of dry sludge, kg/hr (ton/hr).

$S_m$ = Total mass of sludge charge, kg (ton).

$R_{dm}$ = Average mass of dry sludge per unit mass of sludge charged, kg/kg (ton/ton).

$\theta$ = Duration of run, hr.

$S_v$ = Total volume of sludge charged, $m^3$ (gal).

$R_{dv}$ = Average mass of dry sludge per unit volume of sludge charged, kg/$m^3$ (lb/gal).

$K_v$ = Conversion factor, 1 g/g (2,000 lb/ton).

(4) * * *

$$S_m = \sum_{i=1}^{n} Q_{mi} \theta_i$$

$$S_v = \sum_{i=1}^{n} \frac{Q_{vi}}{\theta_i}$$

Where:

$S_m$ = Total mass of sludge charged to the incinerator during the test run.

$S_v$ = Total volume of sludge charged to the incinerator during the test run.

$Q_{mi}$ = Average mass flow rate calculated by averaging the flow rates at the beginning and end of each interval "i," kg/hr (ton/hr).

$Q_{vi}$ = Average volume flow rate calculated by averaging the flow rates at the beginning and end of each interval "i," $m^3$/hr (gal/hr).

$\theta_i$ = Duration of interval "i," hr.

* * * * *

57. Paragraph (b)(5)(iii) is amended by revising the words "mg/liter (lb/$ft^3$) or mg/mg (lb/lb)" to read "kg/$m^3$ (lb/gal) or kg/kg (ton/ton)."

**§ 60.165 [Amended]**

58. In § 60.165, paragraph (d)(2) is amended by revising the words



"installed under § 60.163" to read "installed under paragraph (b) of this section."

**§ 60.192 [Amended]**

59. In § 60.192, paragraph (a) is amended by revising the words "according to § 60.8 above" to read "according to § 60.195."

**§ 60.195 [Amended]**

60. Amend § 60.195 as follows:

a. In paragraph (b)(1) by revising the words "(mg/dscf)" in the definition of the term "$c_s$" to read "(gr/dscf)"; and revising the words "(453,600 mg/lb)" in the definition of the term "K" to read "(7,000 gr/lb)."

b. In paragraph (b)(2) by revising the words "(mg/dscf)" in the definition of the symbol "$c_s$" to read "(gr/dscf)"; and revising the words "(453,600 mg/lb)" in the definition of the symbol "K" to read "(7,000 gr/lb)."

**§ 60.201 [Amended]**

61. In § 60.201 by revising paragraph (c) to read as follows:

**§ 60.201 Definitions.**

* * * * *

(c) *Equivalent $P_2O_5$ feed* means the quantity of phosphorus, expressed as phosphorus pentoxide, fed to the process.

* * * * *

**§ 60.202 [Amended]**

62. In § 60.202, paragraph (a) is amended by revising the words "metric ton" to read "Mg."

**§ 60.203 [Amended]**

63. In § 60.203, paragraph (b) is amended by revising the words "metric ton" to read "Mg."

**§ 60.204 [Amended]**

64. Amend § 60.204 as follows:

a. In paragraph (b)(1) by revising the words "metric ton" in the definition of the term "E" to read "Mg"; revising the words "(mg/dscf)" in the definition of the term "$c_{si}$" to read "(gr/dscf)"; revising the words "metric ton" in the definition of the term "P" to read "Mg"; and revising the words "(453,600 mg/lb)" in the definition of the term "K" to read "(7,000 gr/lb)."

b. In paragraph (b)(3) by revising the words "metric ton" in the definition of the term "$M_p$" to read "Mg."

**§ 60.211 [Amended]**

65. In § 60.211 by revising paragraph (c) to read as follows:

**§ 60.211 Definitions.**

* * * * *

(c) *Equivalent $P_2O_5$ feed* means the quantity of phosphorus, expressed as phosphorus pentoxide, fed to the process.

* * * * *

**§ 60.212 [Amended]**

66. In § 60.212, paragraph (a) is amended by revising the words "metric ton" to read "megagram (Mg)."

**§ 60.213 [Amended]**

67. In § 60.213, paragraph (b) is amended by revising the words "metric ton" to read "Mg."

**§ 60.214 [Amended]**

68. Amend § 60.214 as follows:

a. In paragraph (b)(1) by revising the words "metric ton" in the definition of the term "E" to read "Mg"; revising the words "(mg/dscf)" in the definition of the term "$c_{si}$" to read "(gr/dscf)"; revising the words "metric ton" in the definition of the term "P" to read "Mg"; and revising the words "(453,600 mg/lb)" in the definition of the term "K" to read "(7,000 gr/lb)."

b. In paragraph (b)(3) by revising the words "metric ton" in the definition of the term "$M_p$" to read "Mg."

**§ 60.222 [Amended]**

69. In § 60.222, paragraph (a) is amended by revising the words "metric ton" to read "megagram (Mg)."

**§ 60.223 [Amended]**

70. Amend § 60.223 as follows:

a. In paragraph (b) by revising the words "metric ton" to read "Mg."

b. In paragraph (c), in the first sentence by revising the word "part" to read "subpart."

**§ 60.224 [Amended]**

71. Amend § 60.224 as follows:

a. In paragraph (b)(1) by revising the words "metric ton" in the definition of the term "E" to read "Mg"; revising the words "(mg/dscf)" in the definition of the term "$c_{si}$" to read "(gr/dscf)"; revising the words "metric ton" in the definition of the term "P" to read "Mg"; and revising the words "(453,600 mg/lb)" in the definition of the term "K" to read "(7,000 gr/lb)."

b. In paragraph (b)(3) by revising the words "metric ton" in the definition of the term "$M_p$" to read "Mg."

**§ 60.232 [Amended]**

72. § 60.232 is amended by removing the paragraph designation and by revising the words "metric ton" to read "megagram (Mg)."

**§ 60.233 [Amended]**

73. § 60.233 is amended by removing the paragraph designation and by revising the words "metric ton" to read "Mg."

**§ 60.234 [Amended]**

74. Amend § 60.234 as follows:

a. In paragraph (b)(1) by revising the words "metric ton" in the definition of the term "E" to read "Mg"; revising the words "(mg/dscf)" in the definition of the term "$c_{si}$" to read "(gr/dscf)"; revising the words "metric ton" in the definition of the term "P" to read "Mg"; and revising the words "(453,600 mg/lb)" in the definition of the term "K" to read "(7,000 gr/lb)."

b. In paragraph (b)(3) by revising the words "metric ton" in the definition of the term "$M_p$" to read "Mg."

**§ 60.241 [Amended]**

75. In § 60.241, paragraph (c) is amended by italicizing the word "stored."

**§ 60.242 [Amended]**

76–77. In § 60.242, paragraph (a) is amended by revising the words "metric ton" to read "megagram (Mg)."

**§ 60.244 [Amended]**

78. Amend § 60.244 as follows:

a. In paragraph (c)(1) by revising the words "metric ton" in the definition of the term "E" to read "Mg"; revising the words "(mg/dscf)" in the definition of the term "$c_{si}$" to read "(gr/dscf)"; revising the words "metric ton" the words "(453,600 mg/lb)" in the definition of the term "K" to read "(7,000 gr/lb)."

b. In paragraph (b)(3) by revising the words "metric ton" in the definition of the term "$M_p$"to read "Mg."

**§ 60.250 [Amended]**

79. In § 60.250, paragraph (a) is amended by revising the words "200 tons" to read "181 Mg (200 tons)."

**§ 60.251 [Amended]**

80. In § 60.251, paragraphs (b) and (c) are amended by revising "D388–77" to read "D388–77, 90, 91, 95, or 98a."

**§ 60.252 [Amended]**

81. In § 60.252, paragraph (b)(1) is amended by revising the words "0.040 g/dscm (0.018 gr/dscf)" to read "0.040 g/dscm (0.017 gr/dscf)."

**§ 60.253 [Amended]**

82. Amend § 60.253 as follows:

a. In paragraph (a)(1), the second sentence is amended by revising the words "±3° Fahrenheit" to read "±1.7 °C (±3 °F)."

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b. In paragraph (a)(2)(i), the second sentence is amended by revising the word "gage" to read "gauge."

**§ 60.261 [Amended]**

83. Amend § 60.261 as follows:

a. Paragraph (n) is amended by revising "ASTM Designation A99–76" to read "ASTM Designation A99–76 or 82 (Reapproved 1987)."

b. Paragraphs (s) and (w) are amended by revising "ASTM Designation A100–69 (Reapproved 1974)" to read "ASTM Designation A100–69, 74, or 93."

c. Paragraph (q) is amended by revising "ASTM Designation A101–73" to read "ASTM Designation A101–73 or 93."

d. Paragraph (t) is amended by revising "ASTM Designation A482–76" to read "ASTM Designation A482–76 or 93."

e. Paragraph (o) is amended by revising "ASTM Designation A483–64 (Reapproved 1974)" to read "ASTM Designation A483–64 or 74 (Reapproved 1988)."

f. Paragraph (v) is amended by revising "ASTM Designation A495–76" to read "ASTM Designation A495–76 or 94."

**§ 60.266 [Amended]**

84. Amend § 60.266 as follows:

a. Paragraph (c)(1) is amended by revising the words "emissions is quantified" in the definition of the term "n" to read "emissions are quantified"; revising the words "(g/dscf)" in the definition of the term "$c_{si}$" to read "(gr/dscf)"; and revising the words "(453.6 g/lb)" in the definition of the term "K" to read "(7000 gr/lb)."

b. Paragraph (c)(2)(ii) is amended by revising the words "5.70 dscm (200 dscf)" to read "5.66 dscm (200 dscf)."

**§ 60.274 [Amended]**

85. Amend § 60.274 as follows:

a–b. Paragraph (a)(4) is amended by revising the words "under paragraph (e) of this section" to read "under paragraph (f) of this section."

c. In § 60.274, paragraph (i), the first sentence is amended by revising the words "required by § 60.275(c)" to read "required by § 60.276(c)."

d. In § 60.274, by revising paragraph (i)(4) to read as follows:

**§ 60.274 Monitoring of operations.**

* * * * *

(i) * * *

(4) Continuous opacity monitor or Method 9 data.

* * * * *

**§ 60.275 [Amended]**

86: Amend § 60.275 as follows:

a. Paragraph (e)(2) is amended by revising the words "more then one control" to read "more than one control."

b. Paragraph (e)(4) is amended by revising the words "the test runs shall be conducted concurrently" to read "the Method 9 test runs shall be conducted concurrently with the particulate matter test runs."

c. In paragraph (i), the fifth sentence is amended by revising the words "In the case, Reference Method 9" to read "In this case, Method 9."

**§ 60.276 [Amended]**

87. Amend § 60.276 by:

a. Paragraphs (a) and (c)(6)(iv) are revised.

b. In paragraph (b), the second sentence is amended by revising the words "postmarked 30 days prior" to read "postmarked at least 30 days prior."

The revisions read as follows:

**§ 60.276 Recordkeeping and reporing requirements.**

(a) Operation at a furnace static pressure that exceeds the value established under § 60.274(g) and either operation of control system fan motor amperes at values exceeding ±15 percent of the value established under § 60.274(c) or operation at flow rates lower than those established under § 60.274(c) may be considered by the Administrator to be unacceptable operation and maintenance of the affected facility. Operation at such values shall be reported to the Administrator semiannually.

* * * * *

(c) * * *

(6) * * *

(iv) Continuous opacity monitor or Method 9 data.

* * * * *

**§ 60.274a [Amended]**

88. Amend § 60.274a by:

a. In paragraph (c), the first sentence is revised, and paragraph (h)(4) is revised.

b. Paragraph (f) is amended by adding the following sentence after the first sentence: "The pressure shall be recorded as 15-minute integrated averages."

c. In paragraph (h), the first sentence is amended by revising the words "required by § 60.275a(d)" to read "required by § 60.276a(f)."

The revisions read as follows:

**§ 60.274a Monitoring of operations.**

* * * * *

(c) When the owner or operator of an EAF is required to demonstrate compliance with the standards under § 60.272a(a)(3), and at any other time that the Administrator may require (under section 114 of the Act, as amended), either the control system fan motor amperes and all damper positions or the volumetric flow rate through each separately ducted hood shall be determined during all periods in which a hood is operated for the purpose of capturing emissions from the affected facility subject to paragraph (b)(1) or (b)(2) of this section. * * *

* * * * *

(h) * * *

(4) Continuous opacity monitor or Method 9 data.

* * * * *

**§ 60.275a [Amended]**

89. In § 60.275a, paragraph (e)(4) is amended by revising the words "the test runs shall be conducted concurrently" to read "the Method 9 test runs shall be conducted concurrently with the particulate matter test runs."

**§ 60.276a [Amended]**

90. Amend § 60.276a as follows:

a. In paragraph (e), the second sentence is amended by revising the words "postmarked 30 days prior" to read "postmarked at least 30 days prior."

b. Paragraph (f)(6)(iv) is amended by revising as follows:

**§ 60.276a Recordkeeping and reporting requirements.**

* * * * *

(f) * * *

(iv) Continuous opacity monitor or Method 9 data.

* * * * *

**§ 60.281 [Amended]**

91. Amend § 60.281 as follows:

a. In paragraph (c) by revising the words "Reference Method 16" to read "Method 16."

b. In paragraph (d) by revising the words "below tank(s)" to read "blow tank(s)."

c. In paragraph (e) by revising the words "digestion system" to read "digester system."

**§ 60.282 [Amended]**

92. In § 60.282, paragraph (a)(3)(i) is amended by revising the words "0.15 g/dscm (0.067 gr/dscf)" to read "0.15 g/dscm (0.066 gr/dscf)."

**§ 60.283 [Amended]**

93. Amend § 60.283 as follows:

a. In paragraph (a)(1)(iii) by revising the words "1200°F." to read "650 °C (1200 °F)."



b. In paragraph (a)(1)(v), in the second sentence by revising the words "5 ppm by volume on a dry basis, corrected to the actual oxygen content of the untreated gas stream" to read "5 ppm by volume on a dry basis, uncorrected for oxygen content."

c. In paragraph (a)(1)(vi) by revising the words "0.005 g/kg ADP" to read "0.005 g/kg air dried pulp (ADP)."

**§ 60.284 [Amended]**

94. Amend § 60.284 by:

a. In paragraph (a)(2)(ii) by revising the words "20 percent" to read "25 percent"

b. Revising paragraph (c) introductory text.

c. In paragraph (c)(3) by revising the words "Correct all 12-hour average TRS concentrations to 10 volume percent oxygen, except that all 12-hour average TRS concentration from a recovery furnace shall be corrected to 8 volume percent using the following equation:" to read "Using the following equation, correct all 12-hour average TRS concentrations to 10 volume percent oxygen, except that all 12-hour average TRS concentrations from a recovery furnace shall be corrected to 8 volume percent oxygen instead of 10 percent, and all 12-hour average TRS concentrations from a facility to which the provisions of § 60.283(a)(1)(v) apply shall not be corrected for oxygen content:"

d. Paragraph (d)(3)(ii) is amended by revising the words "1200°F" to read "650 °C (1200 °F)."

e. Adding paragraph (f).

The revisions and addition read as follows:

**§ 60.284 Monitoring of emissions and operations.**

* * * * *

(c) Any owner or operator subject to the provisions of this subpart shall, except where the provisions of § 60.283(a)(1)(iii) or (iv) apply, perform the following:

* * * * *

(f) The procedures under § 60.13 shall be followed for installation, evaluation, and operation of the continuous monitoring systems required under this section.

(1) All continuous monitoring systems shall be operated in accordance with the applicable procedures under Performance Specifications 1, 3, and 5 of appendix B to this part.

(2) Quarterly accuracy determinations and daily calibration drift tests shall be performed in accordance with Procedure 1 of appendix F to this part.

**§ 60.285 [Amended]**

95. Amend § 60.285 as follows:

a. In paragraph (c)(1) by revising the definition of the term "$c_s$" to read "$c_s$ = Concentration of particulate matter, g/dscm (lb/dscf)."

b. In paragraph (d)(3) by revising the equation used to calculate "GLS" as follows:

$$GLS = 100\ C_{Na_2S} / \left( C_{Na_2S} C_{NaOH} C_{Na_2CO_3} \right)$$

c. In paragraph (e)(1) by revising the definition of "F" to read "F = conversion factor, 0.001417 g $H_2S/m^3$-ppm ($8.846 \times 10^{-8}$ lb $H_2S/ft^3$-ppm)."

d. In paragraph (f)(1) by revising the words "205 °C (400 °F)" to read "204 °C (400 °F)."

e. Revising paragraph (f)(2).

The revisions read as follows:

**§ 60.285 Test methods and procedures.**

* * * * *

(f) * * *

(2) In place of Method 16, Method 16A or 16B may be used.

* * * * *

**§ 60.290 [Amended]**

96. In § 60.290, paragraph (c) is amended by revising the words "4,550 kilograms" to read "4.55 Mg (5 tons)."

**§ 60.291 [Amended]**

97. Amend § 60.291 as follows:

a. The second sentence of the definition of the term "Glass melting furnace" is amended by revising the word "appendaees" to read "appendages."

b. The definition of the term "lead recipe" is amended by revising the chemical formula "$Na_2M$" to read "$Na_2O$."

c. The second sentence of the definition of the term "rebricking" is amended by revising the word "replacment" to read "replacement."

**§ 60.292 [Amended]**

98. In § 60.292, paragraph (a)(2), the definition of the term STD is amended by revising the words "g of particulate/kg" to read "g of particulate/kg (lb of particulate/ton)."

**§ 60.293 [Amended]**

99. Amend § 60.293 as follows:

a. In paragraph (d)(1) by revising the words "specified in paragraph (b)(1) of this section" to read "specified in paragraph (b) of this section."

b. Paragraph (e) is redesignated as paragraph (f).

c. Paragraph (d)(3) introductory text is redesignated as paragraph (e); paragraphs (d)(3)(i), (ii), and (iii) are redesignated as paragraphs (e)(1), (2), and (3).

d. Newly designated paragraph (f) is amended by revising the words "120±14°C" to read "120±14°C (248±25°F).

**§ 60.296 [Amended]**

100. Amend § 60.296 as follows:

In paragraph (b)(3) by revising the words "American Society of Testing and Materials (ASTM) Method D240–76" to read "ASTM Method D240–76 or 92" and by revising "D1826–77" to read "D1826–77 or 94."

**§ 60.301 [Amended]**

101. In § 60.301, the first paragraph is amended by revising the words "the act" to read "the Act."

**§ 60.313 [Amended]**

102. Amend § 60.313 as follows:

a. Paragraph (c)(1) is amended by revising the words "Reference Method 24" to read "Method 24" wherever they occur.

b. In paragraph (c)(1)(i)(B), the third sentence is amended by revising the words "other transfer efficiencies other than" to read "transfer efficiencies other than."

c. Paragraph (c)(2)(i) is amended by revising the words "in (c)(2)(i)(A), (B), and (C)" to read "in paragraphs (c)(2)(i)(A), (B), and (C)" wherever they occur.

**§ 60.315 [Amended]**

103. In § 60.315, paragraph (a)(2) is amended by revising the words "Reference Method 24" to read "Method 24."

**§ 60.330 [Amended]**

104. In § 60.330, paragraph (a) is amended by revising the words "10.7 gigajoules" to read "10.7 gigajoules (10 million Btu)."

**§ 60.331 [Amended]**

105. In § 60.331, paragraph (s) is removed.

**§ 60.332 [Amended]**

106. In § 60.332, paragraph (a) is amended by revising the words "the date of the performance test" to read "the date on which the performance test."

**§ 60.334 [Amended]**

107. In § 60.334, paragraph (c)(3), the first sentence is amended by revising the words "provided in § 60.332(g)" to read "provided in § 60.332(f)."

**§ 60.335 [Amended]**

108. Amend § 60.335 by:

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a. Paragraph (c)(1) is amended by revising the words

"$NO_X$ = emission rate of $NO_X$ at 15 percent $O_2$ and ISO standard ambient conditions, volume percent.

$NO_X$ = observed $NO_X$ concentration, ppm by volume."

to read

"$NO_X$ = emission rate of $NO_X$ at 15 percent O2 and ISO standard ambient conditions, ppm by volume.

$NO_X$ = observed $NO_X$ concentration, ppm by volume at 15 percent $O_2$."

b. Paragraph (d) is revised.

c. In paragraph (f)(1), the first sentence is amended by revising the words "in paragraph (b)(1) of this section" to read "in paragraph (c)(1) of this section."

The revisions read as follows:

**§ 60.335 Test methods and procedures.**

* * * * *

(d) The owner or operator shall determine compliance with the sulfur content standard in § 60.333(b) as follows: ASTM D 2880–71, 78, or 96 shall be used to determine the sulfur content of liquid fuels and ASTM D 1072–80 or 90 (Reapproved 1994), D 3031–81, D 4084–82 or 94, or D 3246–81, 92, or 96 shall be used for the sulfur content of gaseous fuels (incorporated by reference-see § 60.17). The applicable ranges of some ASTM methods mentioned above are not adequate to measure the levels of sulfur in some fuel gases. Dilution of samples before analysis (with verification of the dilution ratio) may be used, subject to the approval of the Administrator.

* * * * *

**§ 60.343 [Amended]**

109. In § 60.343, paragraph (e), the first sentence is amended by revising the words "in which the scrubber pressure drop is greater than 30 percent below the rate established during the performance test" to read "in which the scrubber pressure drop or scrubbing liquid supply pressure is greater than 30 percent below that established during the performance test."

**§ 60.344 [Amended]**

110. Amend § 60.344 as follows:

a. In paragraph (b)(1), the definition of the term "$c_s$" is amended by revising the words "(g/dscf)" to read "(gr/dscf)."

b. In paragraph (b)(1), the definition of the term "K" is amended by revising the words "(453.6 g/lb)" to read "(7000 gr/lb)."

c. In paragraph (b)(2), the first sentence is amended by revising the words "Method 5D shall be used as positive-pressure fabric filters" to read "Method 5D shall be used at positive-pressure fabric filters."

**§ 60.372 [Amended]**

111. Amend § 60.372 as follows;

a. In paragraph (a)(1) by revising the words "0.40 milligram of lead per dry standard cubic meter of exhaust (0.000176 gr/dscf)" to read "0.40 milligram of lead per dry standard cubic meter of exhaust (0.000175 gr/dscf)."

b. In paragraph (a)(2) by revising the words "1.00 milligram of lead per dry standard cubic meter of exhaust (0.00044 gr/dscf)" to read "1.00 milligram of lead per dry standard cubic meter of exhaust (0.000437 gr/dscf)."

c. In paragraph (a)(3) by revising the words "1.00 milligram of lead per dry standard cubic meter of exhaust (0.00044 gr/dscf)" to read "1.00 milligram of lead per dry standard cubic meter of exhaust (0.000437 gr/dscf)."

d. In paragraph (a)(5) by revising the words "4.50 milligrams of lead per dry standard cubic meter of exhaust (0.00198 gr/dscf)" to read "4.50 milligrams of lead per dry standard cubic meter of exhaust (0.00197 gr/dscf)."

e. In paragraph (a)(6) by revising the words "1.00 milligram per dry standard cubic meter of exhaust (0.00044 gr/dscf)" to read "1.00 milligram of lead per dry standard cubic meter of exhaust (0.000437 gr/dscf)."

**§ 60.374 [Amended]**

112. Amend § 60.374 as follows:

a. In paragraph (c)(1), in the definition of the term "$C_{Pbi}$" by revising the words "mg/dscm" to read "mg/dscm (gr/dscf)."

b. In paragraph (c)(1), in the definition of the term "K" by revising the words "453,600 mg/lb" to read "7000 gr/lb)."

**§ 60.381 [Amended]**

113. In § 60.381, in the definition of the term "storage bin" by revising the words "or metallic minerals" to read "of metallic minerals."

**§ 60.382 [Amended]**

114. In § 60.382, paragraph (a)(1) is amended by revising the words "0.05 grams per dry standard cubic meter" to read "0.05 grams per dry standard cubic meter (0.02 g/dscm)."

**§ 60.385 [Amended]**

115. In § 60.385, paragraph (c) is amended by revising the words "scrubber pressure loss (or gain) and liquid flow rate" to read "scrubber pressure loss (or gain) or liquid flow rate".

**§ 60.386 [Amended]**

116. In § 60.386, paragraph (c) is amended by revising the words "§ 60.3284(a) and (b)" to read "§ 60.384(a) and (b)."

**§ 60.391 [Amended]**

117. Amend § 60.391 as follows:

a. In paragraph (b), the definition of "E" is amended by revising the words "destruction efficiency" to read "destruction or removal efficiency."

b. In paragraph (b), the eleventh definition is amended by revising the words

"$L_{ci}$] = Volume of each coating (i) consumed by each application method (l), as received liters)"

to read

"$L_{ci}$] = Volume of each coating (i) consumed by each application method (l), as received (liters)."

**§ 60.393 [Amended]**

118. Amend § 60.393 as follows:

a. In paragraph (c)(1)(i) by revising the words "Reference Method 24" to read "Method 24" wherever they occur.

b. Paragraph (c)(2)(ii)(A) is amended by revising the term to read as follows:

$$\sum_{I=1}^{n}$$

to read as follows:

$$\sum_{i=1}^{n}$$

**§ 60.395 [Amended]**

119. In § 60.395, paragraph (d) is amended by revising the words "Reference Method 25" to read "Method 25."

**§ 60.396 [Amended]**

120. In § 60.396, paragraphs (a)(1), (a)(2), (b), and (c) are amended by revising the words "Reference Method" to read "Method."

**§ 60.401 [Amended]**

121. In § 60.401, paragraph (b) is amended by revising the words "unit including, moisture" to read "unit, including moisture."

**§ 60.402 [Amended]**

122. In § 60.402, paragraph (a)(2)(i) is amended by revising the word "Contains" to read "Contain."

**§ 60.424 [Amended]**

123. Amend § 60.424 to read as follows:

a. In the first paragraph (b)(3), in the first sentence by revising the words



"scales or computed from material balance shall" to read "scales, or the result of computations using a material balance, shall."

b. The second paragraph (b)(3) is redesignated as (b)(4).

**§ 60.431 [Amended]**

124. In § 60.431, paragraph (b), the definition of the term "$L_{di}$" is amended by adding the words "the subject facility (or facilities)" to the end of the definition.

**§ 60.433 [Amended]**

125. Amend § 60.433 as follows:

a. In paragraph (a)(5), the first sentence is amended by revising the words "material or on at least" to read "material on at least."

b. Paragraph (a)(5)(ii) is amended by revising the punctuation at the end of the paragraph. The words "according to § 60.435." are revised to read "according to § 60.435;"

c. Paragraphs(b)(1), (b)(2), (b)(3), (b)(5), (c)(2)(ii), and (c)(2)(iii) are amended by adding an "=" between the "i" and the "1" under the summation sign.

d. Paragraph (c)(2)(v) is amended by replacing the "e" subscript with "a" wherever it occurs.

e. Paragraph (e)(5)(ii) is amended by replacing the "a" subscript with "e" wherever it occurs.

**§ 60.435 [Amended]**

126. Amend § 60.435 as follows:

a. Paragraphs (a)(1), (a)(2), and (b) are amended by revising the words "Reference Method" to read "Method" wherever they occur.

b. Paragraph (d)(1) is amended by revising the words "ASTM D1475–60 (Reapproved 1980)" to read "ASTM D1475–60, 80, or 90."

**§ 60.440 [Amended]**

127. In § 60.440, paragraph (b) is amended by revising the words "45 Mg" to read "45 Mg (50 tons)" wherever they occur.

**§ 60.441 [Amended]**

128. In § 60.441, paragraphs (a) and (b) are amended by revising the words "Reference Method" to read "Method" wherever they occur.

**§ 60.443 [Amended]**

129. Amend § 60.443 as follows:

a. In paragraph (b) by revising the words "$R_q$ less" to read "$R_q$ is less."

b. In paragraph (d) by revising the words "in paragraph (b)(1) of this section" to read "in paragraph (b) of this section."

c. In paragraph (e), in the third sentence by revising the words "38°C (50°F)" to read "28°C (50°F)."

d. In paragraph (i) by revising the word "devices" to read "device(s)."

**§ 60.446 [Amended]**

130. In § 60.446, paragraphs (a) and (b) are amended by revising the words "Reference Method" to read "Method" wherever they occur.

**§ 60.453 [Amended]**

131. Amend § 60.453 as follows:

a. In paragraph (b) by revising the words "performance text" to read "performance test."

b. In paragraph (b)(1) by revising the words "Reference Method" to read "Method" wherever they occur.

c. In paragraph (b)(1)(i)(B) by revising the word "coatings" to read "coating."

d. In paragraph (b)(1)(i)(C) by revising equation (3).

e. In paragraphs (b)(2)(i)(A) and (b)(2)(i)(B) by revising Equations (6) and (7).

f. In paragraph (b)(2)(i)(B) by removing Equation (7) and its nomenclature, adding them to the end of paragraph (b)(2)(i)(A), and redesignating the equation as Equation (6).

g. In paragraph (b)(3)(i) by revising the word "assumed" to read "consumed."

The revisions reads as follows:

**§ 60.453 Test methods and procedures.**

* * * * *

(b) * * *

(1) * * *

(i) * * *

(C) * * *

$$T = \frac{\sum_{i=1}^{n}\sum_{k=1}^{m} L_{cik}\, V_{sik}\, T_k}{L_s} \qquad (3)$$

* * * * *

(2) * * *

(i) * * *

(A) * * *

$$F = \frac{\sum_{i=1}^{n} Q_{bi} C_{bi}}{\sum_{i=1}^{n} Q_{bi} C_{bi} + \sum_{k=1}^{p} Q_{fk} C_{fk}} \qquad (6)$$

* * * * *

(B) * * *

$$E = \frac{\sum_{i=1}^{n} Q_{bi} C_{bi} - \sum_{j=1}^{m} Q_{aj} C_{aj}}{\sum_{i=1}^{n} Q_{bi}}$$

* * * * *

**§ 60.454 [Amended]**

132. In § 60.454, paragraph (a)(2) is amended by revising the words "of the greater of 0.75 percent of the temperature being measured expressed in degrees Celsius or ±2.5°C" to read "of 0.75 percent of the temperature being measured, expressed in degrees Celsius, or ±2.5 °C, whichever is greater."

**§ 60.455 [Amended]**

133. Amend § 60.455 as follows:

a. Paragraphs (c)(1) and (c)(2) are amended by revising the words "28 °C" to read "28 °C" (50 °F)" wherever they occur.

b. In paragraph (d), the first sentence is amended by revising the word "opreator" to read "operator."

**§ 60.456 [Amended]**

134. Amend § 60.456 as follows:

a. In paragraph (a)(1), the second sentence is amended by revising the words "Reference Method 24" to read "Method 24."

b. In paragraph (a)(1), the third sentence is amended by revising the words "subsection 4.4 of Method 24" to read "Section 12.6 of Method 24."

c. Paragraph (a)(4) is amended by revising the word "volocity" to read "velocity."

d. Paragraph (c) is amended by revising the words "0.003 dscm" to read "0.003 dscm (0.1 dscf)."

**§ 60.463 [Amended]**

135. Amend § 60.463 as follows:

a. Paragraph (c)(1) is amended by revising the words "Reference Method 24" to read "Method 24" wherever they occur.

b. Paragraph (c)(3)(iii) is amended by revising the word "computation" to read "computations."

c. Paragraph (c)(4)(ii) is amended by revising the defined term "m" to read "n."

**§ 60.464 [Amended]**

136. In § 60.464, paragraph (c), the second sentence is amended by revising the words "which is greater" to read "whichever is greater."

**§ 60.465 [Amended]**

137. Amend § 60.465 as follows:

a. In paragraph (c), the first sentence is amended by revising the reference "§ 69.462" to read "§ 60.462."

b. In paragraph (d), the first sentence is amended by revising the reference "§ 69.464" to read "§ 60.464."

**§ 60.466 [Amended]**

138. Amend § 60.466 as follows:

a. Paragraphs (a)(1) and (a)(2) are amended by revising the words

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"Reference Method" to read "Method" wherever they occur.

b. In paragraph (a)(1), the first sentence is amended by revising the words "coating for determining the VOC content" to read "coating, shall be used for determining the VOC content."

c. In paragraph (a)(1), the third sentence is amended by revising the words "section 4.4" to read "Section 12.6."

d. Paragraph (c) is amended by revising the words "0.003 dry standard cubic meter (DSCM)" to read "0.003 dscm (0.11 dscf)."

**§ 60.471 [Amended]**

139. In § 60.471, the definition of the term "Catalyst" is amended by revising the words "means means" to read "means."

**§ 60.472 [Amended]**

140. Amend § 60.472 as follows:

a. Paragraph (a)(1)(i) is amended by revising the words "0.04 kilograms of particulate per megagram" to read "0.04 kg/Mg (0.08 lb/ton)."

b. Paragraph (a)(1)(ii) is amended by revising the words "0.04 kilograms per megagram" to read "0.04 kg/Mg (0.08 lb/ton)."

c. Paragraph (b)(1) is amended by revising the words "0.67 kilograms of particulate per megagram" to read "0.67 kg/Mg (1.3 lb/ton)."

d. Paragraph (b)(2) is amended by revising the words "0.71 kilograms of particulate per megagram" to read "0.71 kg/Mg (1.4 lb/ton)."

e. Paragraph (b)(3) is amended by revising the words "0.60 kilograms of particulate per megagram" to read "0.60 kg/Mg (1.2 lb/ton)."

f. Paragraph (b)(4) is amended by revising the words "0.64 kilograms of particulate per megagram" to read "0.64 kg/Mg (1.3 lb/ton)."

g. Paragraph (b)(5) is amended by revising the words "procedures in § 60.474(k)" to read "procedures in § 60.474(g)."

**§ 60.473 [Amended]**

141. Amend § 60.473 as follows:

a. In paragraph (a), the second sentence is amended by revising the words "±15°C" to read "±15°C (±25°F)."

b. In paragraph (b), the second sentence is amended by revising the words "±10 °C" to read "±10 °C (±18 °F)."

c. In paragraph (c), the first sentence is amended by revising the words "(a) and (b)" to read "(a) or (b)"

**§ 60.474 [Amended]**

142. Amend § 60.474 as follows:

a. In paragraph (c)(1), the definition of the term "E" is amended by revising the words "kg/Mg" to read "kg/Mg (lb/ton)."

b. In paragraph (c)(1), the definition of the term "$c_s$" is amended by revising the words "(g/dscf)" to read "(gr/dscf)."

c. In paragraph (c)(1), the definition of the term "K" is amended by revising the words "907.2/(g-Mg)/(kg-ton)" to read "7000 gr/lb)."

d. In paragraph (c)(4), the definition of the term "d" is amended by revising the words "llb/ft³" to read "lb/ft³."

e. Paragraphs (c)(4)(ii) and (f) are revised.

The revisions read as follows:

**§ 60.474 Test methods and procedures.**

* * * * *

(c) * * *

(4) * * *

(ii) The density (d) of the asphalt shall be computed using the following equation:

$$d = K_1 - K_2 T_i$$

Where:

d = Density of the asphalt, kg/m³ (lb/ft³)
$K_1$ = 1056.1 kg/m³ (metric units)
= 64.70 lb/ft³ (English Units)
$K_2$ = 0.6176 kg/(m³ °C) (metric units)
= 0.0694 lb/(ft³ °F) (English Units)
$T_i$ = temperature at the start of the blow, °C (°F)

* * * * *

(f) If at a later date the owner or operator believes that the emission limits in § 60.472(a) and (b) are being met even though one of the conditions listed in this paragraph exist, he may submit a written request to the Administrator to repeat the performance test and procedure outlined in paragraph (c) of this section.

(1) The temperature measured in accordance with § 60.473(a) is exceeding that measured during the performance test.

(2) The temperature measured in accordance with § 60.473(b) is lower than that measured during the performance test.

* * * * *

**§ 60.480 [Amended]**

143. In § 60.480(d)(2), line 3, revise the words "1,000 Mg/yr" to read "1,000 Mg/yr (1,102 ton/yr)"

**§ 60.481 [Amended]**

144. Amend § 60.481 as follows:

a. Paragraph (a)(1) under the definition of "Capital expenditure" is amended by revising the words "repair allowance, B, as reflected" to "repair allowance, B, divided by 100 as reflected"

b. The definition for "In vacuum service" is amended by revising the words "5 kilopascals (kPa)" to "5 kilopascals (kPa)(0.7 psia)."

c. The definition of the term "Repaired" is amended by revising the words "instrument reading or 10,000 ppm or greater" to read "instrument reading of 10,000 ppm or greater."

**§ 60.482–2 [Amended]**

145. Amend § 60.482–2 as follows:

a. Paragraph (e) is amended by revising the words "(a), (c), and (d) if the pump" to read "(a), (c), and (d) of this section if the pump."

b. Paragraph (e)(3) is amended by revising the words "paragraph (e)(2)" to read "paragraph (e)(2) of this section."

c. Paragraph (f) is amended by revising the words "exempt from the paragraphs (a) through (e)" to read "exempt from paragraphs (a) through (e) of this section."

**§ 60.482–3 [Amended]**

146. In § 60.482–3, paragraph (i)(2) is amended by revising the words "paragraph (i)(1)" to read "paragraph (i)(1) of this section."

**§ 60.482–4 [Amended]**

147. In § 60.482–4, paragraph (c) is amended by revising the words "paragraphs (a) and (b)" to read "paragraphs (a) and (b) of this section."

**§ 60.482–5 [Amended]**

148. In § 60.482–5, paragraph (c) is amended by revising the words "paragraphs (a) and (b)." to read "paragraphs (a) and (b) of this section."

**§ 60.482–7 [Amended]**

149. In § 60.482–7, paragraph (f)(3) is amended by revising the words "paragraph (f)(2)" to read "paragraph (f)(2) of this section."

**§ 60.482–10 [Amended]**

150. In § 60.482–10, paragraph (c) is amended by revising the words "temperature of 816 °C" to read "temperature of 816 °C (1500 °F)."

**§ 60.483–1 [Amended]**

151. In § 60.483–1, paragraph (b)(1) is amended by revising the words "specified in § 60.487(b)" to read "specified in § 60.487(d)."

**§ 60.483–2 [Amended]**

152. In § 60.483–2, paragraph (a)(2) is amended by revising the words "specified in § 60.487(b)" to read "specified in § 60.487(d)."

**§ 60.484 [Amended]**

153. In § 60.484, paragraph (f)(2) is amended by revising the words "paragraphs (b), (c), (d), and (e)" to read "paragraphs (b), (c), (d), and (e) of this section."



**§ 60.485 [Amended]**

154. Amend § 60.485 as follows:

a. In paragraph (c)(2), in the third sentence by revising the word "indicates" is revised to read "indicated."

b. In paragraph (d), in the first sentence by revising the words "in VOC series" to read "in VOC service."

c. In paragraph (d)(1) by revising the words "ASTM E–260, E–168, E–169" to read "ASTM E260–73, 91, or 96, E168–67, 77, or 92, E169–63, 77, or 93."

d. In paragraphs (e)(1) and (e)(2) by revising the words "0.3 kPa at 20°C" to read "0.3 kPa at 20 °C (1.2 in. $H_2O$ at 68 °F)" wherever they occur.

e. In paragraph (e)(1) by revising "ASTM D–2879" to read "ASTM D2879–83, 96, or 97."

f. In paragraph (f) by revising the words "paragraphs (d), (e), and (g)" to read "paragraphs (d), (e), and (g) of this section."

g. Paragraphs (g)(3) and (g)(4) are revised.

h. In paragraph (g)(5) by revising "ASTM D 2504–67" to read "ASTM D2504–67, 77, or 88 (Reapproved 1993)."

i. In paragraph (g)(6) by revising "ASTM D 2382–76" to read "ASTM D2382–76 or 88 or D4809–95."

The revisions read as follows:

**§ 60.485 Test methods and procedures.**

* * * * *

(g) * * *

(3) The maximum permitted velocity for air assisted flares shall be computed using the following equation:

$$V_{max} = K_1 + K_2 H_T$$

Where:

$V_{max}$ = Maximum permitted velocity, m/sec (ft/sec)
$H_T$ = Net heating value of the gas being combusted, MJ/scm (Btu/scf).
$K_1$ = 8.706 m/sec (metric units)
= 28.56 ft/sec (English units)
$K_2$ = 0.7084 m⁴/(MJ-sec) (metric units)
= 0.087 ft⁴/(Btu-sec) (English units)

(4) The net heating value (HT) of the gas being combusted in a flare shall be computed using the following equation:

$$H_T = K \sum_{i=1}^{n} C_i H_i$$

Where:

K = Conversion constant, $1.740 \times 10^7$ (g-mole)(MJ)/ (ppm-scm-kcal) (metric units)
= $4.674 \times 10^8$ [(g-mole)(Btu)/(ppm-scf-kcal)] (English units)
$C_i$ = Concentration of sample component "i," ppm
$H_i$ = net heat of combustion of sample component "i" at 25 °C and 760 mm Hg (77 °F and 14.7 psi), kcal/g-mole

* * * * *

**§ 60.486 [Amended]**

155. In § 60.486, paragraph (c)(8) is amended by revising the word "shutdown" to read "shutdowns."

**§ 60.487 [Amended]**

156. In § 60.487, paragraph (d) is amended by revising the words "An owner or operator electing to comply with the provisions of §§ 60.483–1 and 60.483–2" to read "An owner or operator electing to comply with the provisions of §§ 60.483–1 or 60.483–2."

**§ 60.489 [Amended]**

157. Amend the table in § 60.489 as follows:

a. Revise the chemical name "Chlorbenzoyl chloride" to read "Chlorobenzoyl chloride;"

b. Revise the chemical name "Chloronapthalene" to read "Chloronaphthalene;"

c. Revise the CAS No. for diethylene glycol monobutyl ether acetate to read 124–17–4;

d. Revise the chemical name "Ethylne carbonate" to read "Ethylene carbonate;"

e. Revise the chemical name "Ethylene glycol monoethy ether" to read "Ethylene glycol monoethyl ether;"

f. Revise the chemical name "Propional dehyde" to read "Propionaldehyde;" and

g. Revise the chemical name "Tetrahydronapthalene" to read "Tetrahydronaphthalene."

**§ 60.491 [Amended]**

158. In § 60.491, paragraphs (a)(6) and (b) are amended by revising the word "litre" or "litres" to read "liter" or "liters" wherever it occurs.

**§ 60.493 [Amended]**

159. Amend § 60.493 as follows:

a. Paragraph (b)(1) is amended by revising the words "Reference Method" to read "Method" wherever they occur.

b. Paragraph (b)(1)(i)(C) is amended by revising the words "volume-weighed average" to read "volume-weighted average."

c. In paragraph (b)(1)(i)(C), equation 3 is revised.

d. Paragraph (b)(1)(iii) is amended by revising the words "weighted average of mass of VOC" to read "weighted average mass of VOC."

The revisions read as follows:

**§ 60.493 Performance test and compliance provisions.**

* * * * *

(b) * * *

(1) * * *

(i) * * *

(C) * * *

$$G = \frac{M_o + M_d}{L_s} \qquad (3)$$

* * * * *

**§ 60.494 [Amended]**

160. In § 60.494, paragraph (b), the second sentence is amended by revising the words "accuracy the greater of ±0.75 percent of the temperature being measured expressed in degrees Celsius or ±2.5°C to read "accuracy of 0.75 percent of the temperature being measured, expressed in degrees Celsius, or ±2.5°C, whichever is greater."

**§ 60.495 [Amended]**

161. In § 60.495, paragraph (a)(1) is amended by revising the words "from data determined using Reference Method 24 or supplies" to read "from data determined using Method 24 or supplied."

**§ 60.496 [Amended]**

162. Revise § 60.496 as follows:

a. Paragraph (a)(1) is revised.

b. In paragraphs (a)(2), (b), and (c) by revising the words "Reference Method" to read "Method" wherever they occur.

c. In paragraph (a)(2) by revising the words "30 days in advance" to read "at least 30 days in advance."

The revisions read as follows:

**§ 60.496 Test methods and procedures.**

(a) * * *

(1) Method 24, an equivalent or alternative method approved by the Administrator, or manufacturers' formulation data from which the VOC content of the coatings used for each affected facility can be calculated. In the event of a dispute, Method 24 data shall govern. When VOC content of water-borne coatings, determined from data generated by Method 24, is used to determine compliance of affected facilities, the results of the Method 24 analysis shall be adjusted as described in Section 12.6 of Method 24.

* * * * *

**§ 60.501 [Amended]**

163. In § 60.501, the definition of "Vapor-tight gasoline tank truck" is amended by revising the words "Reference Method" to read "Method."

**§ 60.531 [Amended]**

164. Amend § 60.531 as follows:

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a. Under the definition of "Coal-only heater", the alphabetical designations of paragraphs (a) through (e) are removed and numerical designations (1) through (5) are added.

b. Under the definition of "Cookstove", the alphabetical designations of paragraphs (a) through (g) are removed and numerical designations (1) through (7) are added.

c. Under the definition of "Wood heater", paragraph (2) is amended by revising the words "20 cubic feet" to read "0.57 cubic meters (20 cubic feet)."

d. Under the definition of "Wood heater", paragraph (3) is amended by revising the words "5 kg/hr" to read "5 kg/hr (11 lb/hr)."

e. Under the definition of "Wood heater", paragraph (4) is amended by revising the words "800 kg" to read "800 kg (1,760 lb)."

**§ 60.532 [Amended]**

165. Amend § 60.532 as follows:

a. In paragraph (b)(1) by revising the words "4.1 g/hr" to read "4.1 g/hr (0.009 lb/hr)."

b. Paragraphs (b)(1)(i), (b)(1)(ii), and (b)(2) are revised.

The revisions read as follows:

**§ 60.532 Standards for particulate matter.**

* * * * *

(b) * * *

(1) * * *

(i) At burn rates less than or equal to 2.82 kg/hr (6.2 lb/hr),

$$C = K_1 BR + K_2$$

Where:

BR = Burn rate in kg/hr (lb/hr)

$K_1$ = 3.55 g/kg (0.00355 lb/lb)

$K_2$ = 4.98 g/hr (0.0.011 lb/hr)

(ii) At burn rates greater than 2.82 kg/hr (6.2 lb/hr), C = 15 g/hr (0.033 lb/hr).

(2) An affected facility not equipped with a catalytic combustor shall not discharge into the atmosphere any gases which contain particulate matter in excess of a weighted average of 7.5 g/hr (0.017 lb/hr). Particulate emissions shall not exceed 15 g/hr (0.033 lb/hr) during any test run at a burn rate less than or equal to 1.5 kg/hr (3.3 lb/hr) that is required to be used in the weighted average and particulate emissions shall not exceed 18 g/hr (0.040 lb/hr) during any test run at a burn rate greater than 1.5 kg/hr (3.3 lb/hr) that is required to be used in the weighted average.

* * * * *

**§ 60.533 [Amended]**

166. Amend § 60.533 as follows:

a. In paragraph (k)(1), the third sentence is amended by revising the words "The grant of such a waiver" to read "The granting of such a waiver."

b. Paragraph (k)(2) is amended by revising the words "± ¼ inch" to read "± 0.64 cm (± ¼ inch)."

c. In paragraph (o)(4), the first sentence is amended by revising the word "indicate" to read "indicates."

d. In paragraph (o)(4), the first sentence is amended by revising the words "comply with applicable emission limit" to read "comply with the applicable emission limit."

e. In paragraph (p)(4)(ii)(A), the second sentence is amended by revising the words "± 1 gram per hour" to read "± 1 gram per hour (± 0.0022 lb per hour)."

**§ 60.535 [Amended]**

167. In § 60.535, paragraph (b)(9) is amended by revising the words "a reporting and recordkeeping requirements" to read "reporting and recordkeeping requirements."

**§ 60.536 [Amended]**

168. Amend § 60.536 as follows:

a. Paragraph (a)(3)(ii) and the equation in (i)(4)(ii) are revised.

b. Paragraph (j)(2)(v) is amended by revising the words "five inches by seven inches" to read "12.7 centimeters by 17.8 centimeters (5 inches by 7 inches)."

The revisions read as follows:

**§ 60.536 Permanent label, temporary label, and owner's manual.**

(a) * * *

(3) * * *

(ii) Be at least 8.9 cm long and 5.1 cm wide (3½ inches long and 2 inches wide).

* * * * *

(i) * * *

(4) * * *

(ii) * * *

$HO_E = H_v \times$ (Estimated overall efficiency/100) × BR

Where:

$HO_E$ = Estimated heat output in Btu/hr

$H_v$ = Heating value of fuel, 19,140 Btu/kg (8,700 Btu/lb)

BR = Burn rate of dry test fuel per hour, kg (lb)

* * * * *

**§ 60.541 [Amended]**

169. Amend § 60.541 as follows:

a. In paragraph (b), the definitions of the terms "$D_c$" and "$D_r$" are amended by revising the words "(grams per liter)" to read "(grams per liter (lb per gallon))."

b. In paragraph (b), the definitions of the terms "G" and "N" are amended by revising the words "(grams per tire)" to read "(grams (lb) per tire)."

c. In paragraph (b), the definitions of the terms "$G_b$" and "$N_b$" are amended by revising the words "(grams per bead)" to read "(grams (lb) per bead)."

d. In paragraph (b), the definitions of the terms "$L_c$" and "$L_r$" are amended by revising the word "(liters)" to read "(liters (gallons))."

e. In paragraph (b), the definitions of the terms "M", "$M_o$", and "$M_r$" are amended by revising the word "(grams)" to read "(grams (lb))."

f. In paragraph (b), the definitions of the terms "$Q_a$", "$Q_b$", and "$Q_f$" are amended by revising the words "(dry standard cubic meters per hour)" to read "(dry standard cubic meters (dry standard cubic feet) per hour)."

**§ 60.542 [Amended]**

170. Amend § 60.542 as follows:

a. Paragraphs (a)(1)(ii)(A) through (E), (a)(2)(ii)(A) through (E), (a)(6)(ii)(A) through (E), (a)(8)(ii)(A) through (E), and (a)(9)(ii)(A) through (E) are revised.

b. In paragraph (a)(3) by revising the words "no more than 10 grams of VOC per tire (g/tire)" to read "no more than 10 grams (0.022 lb) of VOC per tire."

c. In paragraph (a)(4) by revising the words "no more than 5 grams of VOC per bead (g/bead)" to read "no more than 5 grams (0.011 lb) of VOC per bead."

d. In paragraph (a)(5)(i) by revising the words "1.2 grams of VOC per tire" to read "1.2 grams (0.0026 lb) of VOC per tire."

e. In paragraph (a)(5)(ii) by revising the words "9.3 grams of VOC per tire" to read "9.3 grams (0.021 lb) of VOC per tire."

f. In paragraph (a)(7)(i) by revising the words "1.2 grams of VOC per tire" to read "1.2 grams (0.0026 lb) of VOC per tire."

g. In paragraph (a)(7)(ii) by revising the words "9.3 grams of VOC per tire" to read "9.3 grams (0.021 lb) of VOC per tire."

The revisions read as follows:

**§ 60.542 Standards for volatile organic compounds.**

(a) * * *

(1) * * *

(ii) * * *

(A) 3,870 kg (8,531 lb) of VOC per 28 days,

(B) 4,010 kg (8,846 lb) of VOC per 29 days,

(C) 4,150 kg (9,149 lb) of VOC per 30 days,

(D) 4,280 kg (9,436 lb) of VOC per 31 days, or

(E) 4,840 kg (10,670 lb) of VOC per 35 days.

* * * * *

(2) * * *



(ii) * * *

(A) 3,220 kg (7,099 lb) of VOC per 28 days,

(B) 3,340 kg (7,363 lb) of VOC per 29 days,

(C) 3,450 kg (7,606 lb) of VOC per 30 days,

(D) 3,570 kg (7,870 lb) of VOC per 31 days, or

(E) 4,030 kg (8,885 lb) of VOC per 35 days.

* * * * *

(6) * * *

(ii) * * *

(A) 3,220 kg (7,099 lb) of VOC per 28 days,

(B) 3,340 kg (7,363 lb) of VOC per 29 days,

(C) 3,450 kg (7,606 lb) of VOC per 30 days,

(D) 3,570 kg (7,870 lb) of VOC per 31 days, or

(E) 4,030 kg (8,885 lb) of VOC per 35 days.

* * * * *

(8) * * *

(ii) * * *

(A) 1,570 kg (3,461 lb) of VOC per 28 days,

(B) 1,630 kg (3,593 lb) of VOC per 29 days,

(C) 1,690 kg (3,726 lb) of VOC per 30 days,

(D) 1,740 kg (3,836 lb) of VOC per 31 days, or

(E) 1,970 kg (4,343 lb) of VOC per 35 days.

* * * * *

(9) * * *

(ii) * * *

(A) 1,310 kg (2,888 lb) of VOC per 28 days,

(B) 1,360 kg (2,998 lb) of VOC per 29 days,

(C) 1,400 kg (3,086 lb) of VOC per 30 days,

(D) 1,450 kg (3,197 lb) of VOC per 31 days, or

(E) 1,640 kg (3,616 lb) of VOC per 35 days.

* * * * *

**§ 60.542a [Amended]**

171. In § 60.542a, paragraph (a) is amended by revising the words "25 grams" to read "25 grams (0.055 lb)" wherever they occur.

**§ 60.543 [Amended]**

172. Amend § 60.543 as follows:

a. In paragraph (c), the first sentence is amended by deleting the abbreviation "(kg/mo)."

b. Paragraph (d) is amended by revising the words "the g/tire limit" to read "the VOC emission per tire limit."

c. Paragraph (e) is amended by revising the words "g/bead limit" to read "VOC emission per bead limit."

d. Paragraph (f) is amended by revising the words "operation that use" to read "operation that uses."

e. Paragraphs (f)(2)(iv)(G) and (f)(2)(iv)(H) are amended by revising the definitions of the terms "W", "V", "$Q_i$", and "$M_i$" following the equations as follows:

W = Molecular weight of the single VOC, mg/mg-mole (lb/lb-mole).

V = The volume occupied by one mole of ideal gas at standard conditions [20°C, 760 mm Hg] on a wet basis, $2.405 \times 10^{-5}$ $m^3$/mg-mole (385.3 $ft^3$/lb-mole).

$Q_i$ = Volumetric flow in the capture system during run i, on a wet basis, adjusted to standard conditions, $m^3$ ($ft^3$) (see § 60.547(a)(5)).

$M_i$ = Mass of the single VOC used during run i, mg (lb).

f. Paragraphs (g) and (i) are amended by revising the words "operation that use" to read "operation that uses" wherever they occur.

g. Paragraphs (j)(4) and (j)(5)(ii) are amended by revising the words "100 feet per minute" to read "30.5 meters (100 feet) per minute" wherever they occur.

h. Paragraphs (n) and (n)(5) are amended by revising the words "25 g/tire limit" to read "VOC emission per tire limit" wherever they occur.

**§ 60.544 [Amended]**

173. In § 60.544, paragraph (a)(2) is amended by revising the word "temperatrue" to read "temperature."

**§ 60.545 [Amended]**

174. Amend § 60.545 as follows:

a. Paragraph (b) is amended by revising the words "28 °C" to read "28 °C (50 °F)."

b. Paragraph (d) is amended by revising the words "specified kg/mo uncontrolled VOC use" to read "specified VOC monthly usage."

c. Paragraph (f) is amended by revising the citation "§ 60.543(B)(4)" to read "§ 60.543(b)(4)."

**§ 60.546 [Amended]**

175. Amend § 60.546 as follows:

a. Paragraph (a) is amended by revising the words "green tires spraying operation where organic solvent-based spray are used" to read "green tire spraying operation where organic solvent-based sprays are used."

b. Paragraph (c)(1) is amended by revising the words "kg/mo uncontrolled VOC use" to read "VOC monthly usage."

c. Paragraph (c)(1) is amended by revising the words "the number days" to read "the number of days."

d. Paragraphs (c)(2), (c)(3), and (c)(5) are amended by revising the words "g/tire or g/bead limit" to read "VOC emission limit per tire or per bead" wherever they occur.

e. In paragraph (d), the second sentence is amended by revising the words "(kg/hr)" to read "(kg/hr or lb/hr)."

f. Paragraph (f)(1) is amended by revising the words "g/tire or g/bead limit" to read "VOC emission limit per tire or per bead."

g. Paragraph (f)(2) is amended by revising the words "kg/mo VOC use" to read "monthly VOC usage."

h. In paragraph (j), the second sentence is amended by revising the words "shall be reported within 30 days" to read "shall be reported within 30 days of the change."

**§ 60.547 [Amended]**

176. Amend § 60.547 as follows:

a. Paragraphs (a)(2) and (a)(5) are amended by revising the words "notify the Administrator 30 days in advance" to read "notify the Administrator at least 30 days in advance" wherever they occur.

b. Paragraphs (a)(2) and (a)(5) are amended by revising the words "1 meter" to read "1.0 meter (3.3 feet)" wherever they occur.

c. Paragraphs (a)(2) and (a)(5)(i) are amended by revising the words "0.003 dry standard cubic meter" to read "0.003 dry standard cubic meter (dscm) (0.11 dry standard cubic feet (dscf))" wherever they occur.

**§ 60.560 [Amended]**

177. Amend § 60.560 as follows:

a. Paragraph (a)(4)(i) is amended by revising the words "1,000 Mg/yr" to read "1,000 Mg/yr (1,102 ton/yr)."

b. In paragraph (b), Table 1 is revised to read as follows:

| Polymer | Production process(es) | Process section | Emissions | |
|---|---|---|---|---|
| | | | Continuous | Intermittent |
| Polypropylene | Liquid Phase | Raw Materials Preparation | | X |
| | | Polymerization Reaction | X | |

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| Polymer | Production process(es) | Process section | Emissions | |
|---|---|---|---|---|
| | | | Continuous | Intermittent |
| Polypropylene | Gas Phase | Material Recovery | X | X |
| | | Product Finishing | X | |
| | | Product Storage | | |
| | | Raw Materials Preparation | | |
| | | Polymerization Reaction | | X |
| | | Material Recovery | X | |
| | | Product Finishing | | |
| | | Product Storage | | |
| Low Density Polyethylene | High Pressure | Raw Materials Preparation | | X |
| | | Polymerization Reaction | | X |
| | | Material Recovery | | X |
| | | Product Finishing | | X |
| | | Product Storage | | X |
| Low Density Polyethylene | Low Pressure | Raw Materials Preparation | X | X |
| High Density Polyethylene | Gas Phase | Polymerization Reaction | | X |
| | | Material Recovery | | |
| | | Product Finishing | X | |
| | | Product Storage | | |
| High Density Polyethylene | Liquid Phase Slurry | Raw Materials Preparation | | X |
| | | Polymerization Reaction | | |
| | | Material Recovery | X | |
| | | Product Finishing | X | |
| | | Product Storage | | |
| High Density Polyethylene | Liquid Phase Solution. | Raw Materials Preparation | X | X |
| | | Polymerization Reaction | | X |
| | | Material Recovery | X | X |
| | | Product Finishing | | |
| | | Product Storage | | |

c. In paragraph (d), Table 2 is revised.

d. Paragraph (g) is amended by revising the words "1.6 Mg/yr" to read "1.6 Mg/yr (1.76 ton/yr)" wherever they occur.

The revision reads as follows:

**§ 60.560 Applicability and designation of affected facilities.**

* * * * * * * *

(d) * * *

TABLE 2.—MAXIMUM UNCONTROLLED THRESHOLD EMISSION RATES [a]

| Production process | Process section | Uncontrolled emission rate, kg TOC/Mg product (See associated footnote) |
|---|---|---|
| Polypropylene, liquid phase process | Raw Materials Preparation | 0.15 [b] |
| | Polymerization Reaction | 0.14 [b], 0.24 [c] |
| | Material Recovery | 0.19 [b] |
| | Product Finishing | 1.57 [b] |
| Polypropylene, gas phase process | Polymerization Reaction | 0.12 [c] |
| | Material Recovery | 0.02 [b] |
| Low Density Polyethylene, low pressure process | Raw Materials Preparation | 0.41 [d] |
| | Polymerization Reaction | (e) |
| | Material Recovery | (e) |
| | Product Finishing | (e) |
| | Product Storage | (e) |
| Low Density Polythylene, low pressure process | Raw Materials Preparation | 0.05 [f] |
| | Polymerization Reaction | 0.03 [g] |
| | Product Finishing | 0.01 [b] |
| High Density Polyethylene, liquid phase slurry process | Raw Materials Preparation | 0.25 [c] |
| | Material Recovery | 0.11 [b] |
| | Product Finishing | 0.41 [b] |
| High Density Polyethylene, liquid phase solution process | Raw Materials Preparation | 0.24 [f] |
| | Polymerization Reaction | 0.16 [c] |
| | Material Recovery | 1.68 [f] |
| High Density Polyethylene, gas phase process | Raw Materials Preparation | 0.05 [f] |
| | Polymerization Reaction | 0.03 [g] |



TABLE 2.—MAXIMUM UNCONTROLLED THRESHOLD EMISSION RATES [a]—Continued

| Production process | Process section | Uncontrolled emission rate, kg TOC/Mg product (See associated footnote) |
|---|---|---|
| Polystyrene, continuous process | Product Finishing | 0.01 [b] |
| | Material Recovery | 0.05 [b, h] |
| Poly(ethylene terephalate), dimethyl terephthalate process | Material Recovery | 0.12 [b, h] |
| | Polymerization Reaction | 1.80 [h, i, j, l] |
| Poly(ethlyene terephthalate), terephthalic acid process | Raw Materials Preparation | (l) |
| | Polymerization Reaction | 1.80 [h, j, m] |
| | | 3.92 [h, k, m] |

[a] "Uncontrolled emission rate" refers to the emission rate of a vent stream that vents directly to the atmosphere and to the emission rate of a vent stream to the atmosphere that would occur in the absence of any add-on control devices but after any material recovery devices that constitute part of the normal material recovery operations in a process line where potential emissions are recovered for recycle or resale.

[b] Emission rate applies to continuous emissions only.

[c] Emission rate applies to intermittent emissions only.

[d] Total emission rate for non-emergency intermittent emissions from raw materials preparation, polymerization reaction, material recovery, product finishing, and product storage process sections.

[e] See footnote d.

[f] Emission rate applies to both continuous and intermittent emissions.

[g] Emission rate applies to non-emergency intermittent emissions only.

[h] Applies to modified or reconstructed affected facilities only.

[i] Includes emissions from the cooling water tower.

[j] Applies to a process line producing low viscosity poly(ethylene terephthlalate).

[k] Applies to a process line producing high viscosity poly(ethylene terephathalate).

[l] See footnote m.

[m] Applies to the sum of emissions to the atmosphere from the polymerization reaction section (including emissions from the cooling tower) and the raw materials preparation section (i.e., the esterifiers).

* * * * *

**§ 60.561 [Amended]**

178. Amend § 60.561 as follows:

a. The definition of "End finisher" is amended as revising the words "2 torr" in the first sentence to read "2 mm Hg (1 in. $H_2O$)"; and by revising the words "between 5 and 10 torr" in the second sentence to read "between 5 and 10 mm Hg (3 and 5 in. $H_2O$)."

b. The definition of "High density polyethylene (HDPE)" is amended by revising the words "0.940 g/cm³" to read "0.940 gm/cm³3 (58.7 lb/ft³)."

c. The definition of "High pressure process" is amended by revising the words "15,000 psig" to read "15,000 psig (103,000 kPa gauge)."

d. The definition of "Low density polyethylene (LDPE)" is amended by revising the words "0.940 g/cm³" to read "0.940 g/cm³ (58.7 lb/ft³)."

e. The definition of "Low pressure process" is amended by revising the words "300 psig" to read "300 psig (2,070 kPa gauge)."

**§ 60.562–1 [Amended]**

179. Amend § 60.562–1 as follows:

a. In paragraph (a)(1)(iii), the second sentence is amended by revising the words "18.2 Mg/yr" to read "18.2 Mg/yr (20.1 ton/yr)."

b. Paragraph (b)(1)(i) is amended by revising the words "0.0036 kg TOC/Mg" to read "0.0036 kg TOC/Mg (0.0072 lb TOC/ton)."

c. Paragraph (c)(1)(i)(A) is amended by revising the words "0.018 kg TOC/Mg" to read "0.018 kg TOC/Mg (0.036 lb TOC/ton)."

d. Paragraph (c)(1)(ii)(A) is amended by revising the words "0.02 kg TOC/Mg" to read "0.02 kg TOC/Mg (0.04 lb TOC/ton)."

e. Paragraph (c)(1)(ii)(C) is amended by inserting a comma after the word "weight".

f. Paragraph (c)(2)(i) is amended by revising the words "0.04 kg TOC/Mg" to read "0.04 kg TOC/Mg (0.08 lb TOC/ton)."

g. Paragraph (c)(2)(ii)(A) is amended by revising the words "0.02 kg TOC/Mg" to read "0.02 kg TOC/Mg (0.04 lb TOC/ton)."

h. Paragraph (c)(2)(ii)(C) is amended by inserting a comma after the word "weight".

**§ 60.562–2 [Amended]**

180. In § 60.562–2, paragraph (d) is amended by revising the words "150 °C as determined by ASTM Method D86–78" to read "150 °C (302 °F) as determined by ASTM Method D86–78, 82, 90, 95, or 96."

**§ 60.564 [Amended]**

181. Amend § 60.564 as follows:

a. In paragraph (c)(1), the definitions of the terms "$E_{inlet}$" and "$E_{outlet}$" are amended by revising the words "kg TOC/hr" to read "kg TOC/hr (lb TOC/hr)" wherever they occur.

b. In Paragraphs (d)(1), (f) introductory text, and (j)(1)(iv), the equations and definitions are revised; and paragraphs (g)(2) and (g)(3) are revised.

c. Paragraph (f)(1) is amended by revising "ASTM D1946–77" to read "ASTM D1946–77 or 90 (Reapproved 1994)."

d. Paragraph (f)(3) is amended by revising "ASTM D2382–76" to read "ASTM D2382–76 or 88 or D4809–95."

e. In paragraph (h) designate the second paragraph as (h)(1), redesignate existing paragraphs (h)(1) and (h)(2) as paragraphs (h)(2) and (h)(3) and revise the equations and definitions in newly redesignated paragraph (h)(1).

f. Paragraph (h)(3) is amended by revising the words "The rate of polymer produced, $P_p$ (kg/hr), shall be determined by dividing the weight of polymer pulled in kilograms (kg) from the process line during the performance test by the number of hours (hr) taken to perform the performance test. The polymer pulled, in kilograms, shall" to read "The rate of polymer production, $P_p$, shall be determined by dividing the weight of polymer pulled (in kg (lb)) from the process line during the performance test by the number of hours taken to perform the performance test. The weight of polymer pulled shall."

g. Paragraph (j)(1) introductory text is amended by revising "ASTM D2908–74" to read "ASTM D2908–74 or 91."

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h. Paragraph (j)(1)(i) is amended by revising "ASTM D3370–76" to read "ASTM D3370–76 or 96a."

The revisions read as follows:

**§ 60.564 Test methods and procedures.**

* * * * *

(d) * * *

(1)

$$E_{unc} = K_2\left(\sum_{j=1}^{n} C_j M_j\right) Q \times 8{,}600$$

Where:

$E_{unc}$ = uncontrolled annual emissions, Mg/yr (ton/yr)

$C_j$ = concentration of sample component j of the gas stream, dry basis, ppmv

$M_j$ = molecular weight of sample component j of the gas stream, g/g-mole (lb/lb-mole)

Q = flow rate of the gas stream, dscm/hr (dscf/hr)

$K_2 = 4.157 \times 10^{-11}$ [(Mg)(g-mole)]/[(g)(ppm)(dscm)] (metric units)
$= 1.298 \times 10^{-12}$ [(ton)(lb-mole)]/[(lb)(ppm)(dscf)] (English units)

8,600 = operating hours per year

* * * * *

(f) * * *

$$H_T = K_3\left(\sum_{j=1}^{n} C_j J_j\right)$$

Where:

$H_T$ = Vent stream net heating value, MJ/scm (Btu/scf), where the net enthalpy per mole of offgas is based on combustion at 25 °C and 760 mm Hg (68 °F and 30 in. Hg), but the standard temperature for determining the volume corresponding to one mole is 20 °C (68 °F).

$K_3 = 1.74 \times 10^{-7}$ (1/ppm)(g-mole/scm)(MJ/kcal) (metric units), where standard temperature for (g-mole/scm) is 20°C.
$= 4.67 \times 10^{-6}$ (1/ppm)(lb-mole/scf)(Btu/kcal) (English units) where standard temperature for (lb/mole/scf) is 68 °F.

$C_j$ = Concentration on a wet basis of compound j in ppm.

$H_j$ = Net heat of combustion of compound j, kcal/(g-mole) (kcal/(lb-mole)), based on combustion at 25 °C and 760 mm Hg (77 °F and 30 in. Hg).

* * * * *

(g) * * *

(2) If applicable, the maximum permitted velocity ($V_{max}$) for steam-assisted and nonassisted flares shall be computed using the following equation:

$$\text{Log}_{10}(V_{max}) = (H_T + K_4)/K_5$$

Where:

$V_{max}$ = Maximum permitted velocity, m/sec (ft/sec)

$K_4$ = 28.8 (metric units), 1212 (English units)

$K_5$ = 31.7 (metric units), 850.8 (English units)

$H_T$ = The net heating value as determined in paragraph (f) of this section, MJ/scm (Btu/scf).

(3) The maximum permitted velocity, $V_{max}$, for air-assisted flares shall be determined by the following equation:

$$V_{max} = K_6 + K_7 H_T$$

Where:

$V_{max}$ = Maximum permitted velocity, m/sec (ft/sec).

$K_6$ = 8.706 m/sec (metric units)
= 28.56 ft/sec (English units)

$K_7$ = 0.7084 [(m/sec)/MJ/scm)] (metric units)
= 0.00245 [(ft/sec)/Btu/scf)] (English units)

$H_T$ = The net heating value as determined in paragraph (f) of this section, MJ/scm (Btu/scf).

* * * * *

(h) * * *

(i) * * *

$$ER_{TOC} = K_5 \frac{E_{TOC}}{P_p}$$

Where:

$ER_{TOC}$ = Emission rate of total organic compounds (minus methane and ethane), kg TOC/Mg (lb TOC/ton) product

$E_{TOC}$ = Emission rate of total organic compounds (minus methane and ethane) in the sample, kg/hr (lb/hr)

$P_p$ = The rate of polymer production, kg/hr (lb/hr)

$K_5$ = 1,000 kg/Mg (metric units)
= 2,000 lb/ton (English units)

* * * * *

(j) * * *

(1) * * *

(iv) * * *

$$CI_{95} = \frac{\sum_{i=1}^{n} X_i}{n} + 2\sqrt{\frac{n\sum_{i=1}^{n} X_i^2 - \left(\sum_{i=1}^{n} X_i\right)^2}{n(n-1)}}$$

Where:

$X_i$ = daily ethylene glycol concentration for each day used to calculate the 14-day rolling average used in test results to justify implementing the reduced testing program.

n = number of ethylene glycol concentrations.

* * * * *

**§ 60.565 [Amended]**

182. Amend § 60.565 as follows:

a. In paragraph (a)(1)(ii), the first sentence is amended by revising the words "kilograms TOC (minus methane and ethane) per megagram of product" to read "kg TOC (minus methane and ethane) per Mg (lb TOC/ton) of product."

b. In paragraph (a)(2)(ii) by revising the word "boiler" to read "boilers."

c. In paragraph (f)(1)(i) by removing the words "are exceeded."

**§ 60.581 [Amended]**

183. Amend § 60.581 as follows:

a. In paragraph (a), the definition of the term "ink solids" is amended by revising the words "Reference Method" to read "Method."

b. In paragraph (b), the definitions of the terms "$W_{oi}$", "$W_{si}$", and "$W_{oj}$" are amended by revising the words "Reference Method" to read "Method" wherever they occur.

**§ 60.583 [Amended]**

184. Amend § 60.583 as follows:

a. In paragraph (a) introductory text by revising the words "Reference Methods" to read "Methods."

b. In paragraphs (a)(1), (b)(4), (b)(5), (c)(2), (c)(3), and (c)(4) by revising the words "Reference Method" to read "Method" wherever they occur.

**§ 60.584 [Amended]**

185. Amend § 60.584 as follows:

a. In paragraphs (b)(1) and (c)(1) by revising the words "of ±0.75 percent of the temperature being measured or ±2.5° C" to read "of ±0.75 percent of the temperature being measured, expressed in degrees Celsius, or ±2.5° C."

b. In paragraph (b)(2) by revising the words "more than 28° C" to read "more than 28° C (50° F)."

**§ 60.593 [Amended]**

186. Amend § 60.593 as follows:

a. In paragraph (b)(2) by revising "ASTM E–260, E–168, or E–169" to read "ASTM E260–73, 91, or 96, E168–67, 77, or 92, or E169–63, 77, or 93."

b. In paragraph (d) by revising "ASTM Method D86" to read "ASTM Method D86–78, 82, 90, 95, or 96."

**§ 60.600 [Amended]**

187. In § 60.600, paragraph (a) is amended by revising the words "500 megagrams" to read "500 Mg (551 ton)."

**§ 60.602 [Amended]**

188. Amend § 60.602 as follows:

a. By removing the paragraph designation "(a)".

b. In the first sentence, by revising the words "10 kilograms (kg) VOC per megagram (Mg)" to read "10 kg/Mg (20 lb/ton)."



c. In the second sentence, by revising the words "10 kg VOC per Mg" to read "10 kg/Mg (20 lb/ton)."

d. In the third sentence by revising the words "17 kg VOC per Mg" to read "17 kg/Mg (34 lb/ton)."

**§ 60.603 [Amended]**

189. Amend § 60.603 as follows:

a. In paragraph (b) introductory text, the first sentence is amended by revising the words "VOC emissions per Mg solvent feed" to read "VOC emissions per unit mass solvent feed."

b. In paragraph (b)(2) by revising the second equation and by revising the definitions following the equations.

c. Paragraph (b)(2)(i) is redesignated as paragraph (b)(3), and newly redesignated paragraph (b)(3) is amended by revising the words "13 kg per Mg solvent feed" to read "13 kg/Mg (26 lb/ton) solvent feed."

The revisions read as follows:

**§ 60.603 Performance test and compliance provisions.**

* * * * *

(b) * * *

(2) * * *

$$S_W = \frac{S_V S_P D}{K}$$

E = VOC Emissions, in kg/Mg (lb/ton) solvent;

$S_V$ = Measured or calculated volume of solvent feed, in liters (gallons);

$S_W$ = Weight of solvent feed, in Mg (ton);

$M_V$ = Measured volume of makeup solvent, in liters (gallons);

$M_W$ = Weight of makeup, in kg (lb);

N = Allowance for nongaseous losses, 13 kg/Mg (26 lb/ton) solvent feed;

$S_P$ = Fraction of measured volume that is actual solvent (excludes water);

D = Density of the solvent, in kg/liter (lb/gallon);

K = Conversion factor, 1,000 kg/Mg (2,000 lb/ton);

I = Allowance for solvent inventory variation or changes in the amount of solvent contained in the affected facility, in kg/Mg (lb/ton) solvent feed (may be positive or negative);

$I_S$ = Amount of solvent contained in the affected facility at the beginning of the test period, as determined by the owner or operator, in kg (lb);

$I_E$ = Amount of solvent contained in the affected facility at the close of the test period, as determined by the owner or operator, in kg (lb).

* * * * *

**§ 60.604 [Amended]**

190. In § 60.604, paragraph (b) is amended by revising the words "500 megagrams" to read "500 Mg (551 ton)" wherever they occur.

**§ 60.613 [Amended]**

191. Amend § 60.613 as follows:

a. In paragraph (c) introductory text by revising the words "in the following equipment" to read "the following equipment."

b. Paragraphs (d) and (e) are redesignated as (e) and (f).

c. Paragraph (c)(3) is redesignated as paragraph (d).

**§ 60.614 [Amended]**

192. Amend § 60.614 as follows:

a. In paragraph (b)(4)(ii), the definitions of the terms "$E_i$" and "$E_o$" are amended by revising the term "kg TOC/hr" to read "kg/hr (lb/hr)."

b. In paragraph (b)(4)(iii), the definition of the terms "$Q_i$, $Q_o$" is amended by revising the units "dscf/hr" to read "dscf/min."

c. In paragraph (b)(4)(iii), the definition of the term "$K_2$" is revised.

d. Paragraphs (b)(5), (c), (d), (e), and (f) are redesignated as paragraphs (c), (d), (e), (f), and (g), respectively.

e. In newly redesignated paragraph (e)(1)(i), the second sentence is amended by revising "§ 60.614(d)(2) and (3)" to read "§ 60.614(e)(2) and (3)" and by revising the section reference "(d)(1)(ii)" to read "(e)(1)(ii)."

f. In newly redesignated paragraph (e)(1)(i), the last sentence is amended by revising the words "4 inches" to read "10 centimeters (4 inches)."

g. In newly redesignated paragraph (e)(1)(ii)(C), the second sentence is amended by revising "§ 60.614(d)(4) and (5)" to read "§ 60.614(e)(4) and (5)."

h. Newly redesignated paragraph (e)(2)(ii) is amended by revising "ASTM D1946–77" to read "D1946–77, or 90 (Reapproved 1994)."

i. In newly redesignated paragraphs (e)(4) and (e)(5), the definitions of the equation terms are revised.

j. Newly redesignated paragraphs (f)(1)(i), including Table 1, and (f)(1)(ii) are revised.

k. In newly redesignated paragraph (f)(2) the definitions of the equation terms and Table 2 are revised.

The revisions read as follows:

**§ 60.614 Test methods and procedures.**

* * * * *

(b) * * *

(4) * * *

(iii) * * *

$K_2 = 2.494 \times 10^{-6}$ (1/ppm)(g-mole/scm)(kg/g)(min/hr) (metric units), where standard temperature for (g-mole/scm) is 20°C.
$= 1.557 \times 10^{-7}$ (1/ppm)(lb-mole/scf)(min/hr) (English units), where standard temperature for (lb-mole/scf) is 68°F.

* * * * *

(e) * * *

(4) * * *

$H_T$ = Net heating value of the sample, MJ/scm (Btu/scf), where the net enthalpy per mole of vent stream is based on combustion at 25°C and 760 mm Hg (77°F and 30 in. Hg), but the standard temperature for determining the volume corresponding to one mole is 20°C (68°F).

$K_1 = 1.74 \times 10^{-7}$ (1/ppm)(g-mole/scm)(MJ/kcal) (metric units), where standard temperature for (g-mole/scm) is 20°C.
$= 1.03 \times 10^{-11}$ (1/ppm)(lb-mole/scf)(Btu/kcal) (English units) where standard temperature for (lb/mole/scf) is 68°F.

$C_j$ = Concentration on a wet basis of compound j in ppm, as measured for organics by Method 18 and measured for hydrogen and carbon monoxide by ASTM D1946–77, 90, or 94 (incorporation by reference as specified in § 60.17 of this part) as indicated in § 60.614(e)(2).

$H_j$ = Net heat of combustion of compound j, kcal/(g-mole) [kcal/(lb-mole)], based on combustion at 25°C and 760 mm Hg (77 °F and 30 in. Hg).

(5) * * *

$E_{TOC}$ = Measured emission rate of TOC, kg/hr (lb/hr).

$K_2 = 2.494 \times 10^{-6}$ (1/ppm)(g-mole/scm)(kg/g)(min/hr) (metric units), where standard temperature for (g-mole/scm) is 20°C.
$= 1.557 \times 10^{-7}$ (1/ppm)(lb-mole/scf)(min/hr) (English units), where standard temperature for (lb-mole/scf) is 68°F.

$C_j$ = Concentration on a wet basis of compound j in ppm, as measured by Method 18 as indicated in § 60.614(e)(2).

$M_j$ = Molecular weight of sample j, g/g-mole (lb/lb-mole).

$Q_s$ = Vent stream flow rate, scm/hr (scf/hr), at a temperature of 20°C (68°F).

* * * * *

(f) * * *

(1) * * *

(i) Where for a vent stream flow rate that is greater than or equal to 14.2 scm/min (501 scf/min) at a standard temperature of 20 °C (68 °F):

TRE = TRE index value.

$Q_s$ = Vent stream flow rate, scm/min (scf/min), at a temperature of 20°C (68 °F).

$H_T$ = Vent stream net heating value, MJ/scm (Btu/scf), where the net enthalpy per mole of vent stream is

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based on combustion at 25°C and 760 mm Hg (68°F and 30 in. Hg), but the standard temperature for determining the volume corresponding to one mole is 20°C (68°F) as in the definition of $Q_s$.

$Y_s = Q_s$ for all vent stream categories listed in Table 1 except for Category E vent streams where $Y_s = Q_s H_T / 3.6$.

$E_{TOC}$ = Hourly emissions of TOC, kg/hr (lb/hr). a, b, c, d, e, and f are coefficients.

The set of coefficients which apply to a vent stream shall be obtained from Table 1.

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TABLE 1. AIR OXIDATION NSPS TRE COEFFICIENTS FOR VENT STREAMS CONTROLLED BY AN INCINERATOR

DESIGN CATEGORY A1. FOR HALOGENATED PROCESS VENT STREAMS, IF 0 ≤ NET HEATING VALUE (MJ/scm) ≤ 3.5 OR IF 0 ≤ NET HEATING VALUE (Btu/scf) ≤ 94:

| $Q_s$ = Vent Stream Flow rate scm/min (scf/min) | a | b | c | d | e | f |
|---|---|---|---|---|---|---|
| $14.2 \le Q_s \le 18.8$ | 19.18370 | 0.27580 | 0.75762 | -0.13064 | 0 | 0.01025 |
| $(501 \le Q_s \le 664)$ | (42.29238) | (0.017220) | (0.072549) | (-0.00030361) | (0) | (0.003803) |
| $18.8 < Q_s \le 699$ | 20.00563 | 0.27580 | 0.30387 | -0.13064 | 0 | 0.01025 |
| $(664 < Q_s \le 24{,}700)$ | (44.10441) | (0.017220) | (0.029098) | (-0.00030361) | (0) | (0.003803) |
| $699 < Q_s \le 1400$ | 39.87022 | 0.29973 | 0.30387 | -0.13064 | 0 | 0.01449 |
| $(24{,}700 < Q_s \le 49{,}000)$ | (87.89789) | (0.018714) | (0.029098) | (-0.00030361) | (0) | (0.005376) |
| $1400 < Q_s \le 2100$ | 59.73481 | 0.31467 | 0.30387 | -0.13064 | 0 | 0.01775 |
| $(49{,}000 < Q_s \le 74{,}000)$ | (131.6914) | (0.019647) | (0.029098) | (-0.00030361) | (0) | (0.006585) |
| $2100 < Q_s \le 2800$ | 79.59941 | 0.32572 | 0.30387 | -0.13064 | 0 | 0.02049 |
| $(74{,}000 < Q_s \le 99{,}000)$ | (175.4849) | (0.020337) | (0.029098) | (-0.00030361) | (0) | (0.007602) |
| $2800 < Q_s \le 3500$ | 99.46400 | 0.33456 | 0.30387 | -0.13064 | 0 | 0.02291 |
| $(99{,}000 < Q_s \le 120{,}000)$ | (219.2783) | (0.020888) | (0.029098) | (-0.00030361) | (0) | (0.008500) |

DESIGN CATEGORY A2. FOR HALOGENATED PROCESS VENT STREAMS, IF NET HEATING VALUE < 3.5 (MJ/scm) OR IF NET HEATING VALUE < 94 (Btu/scf):

| $Q_s$ = Vent Stream Flow rate scm/min(scf/min) | a | b | c | d | e | f |
|---|---|---|---|---|---|---|
| $14.2 \le Q_s \le 18.8$ | 18.84466 | 0.26742 | -0.20044 | 0 | 0 | 0.01025 |
| $(501 \le Q_s \le 664)$ | (41.54494) | (0.016696) | (-0.019194) | (0) | (0) | (0.003803) |
| $18.8 < Q_s \le 699$ | 19.66658 | 0.26742 | -0.25332 | 0 | 0 | 0.01025 |
| $(664 < Q_s \le 24{,}700)$ | (43.35694) | (0.016696) | (-0.024258) | (0) | (0) | (0.003803) |
| $699 < Q_s \le 1400$ | 39.19213 | 0.29062 | -0.25332 | 0 | 0 | 0.01449 |
| $(24{,}700 < Q_s \le 49{,}000)$ | (86.40297) | (0.018145) | (-0.024258) | (0) | (0) | (0.005376) |
| $1400 < Q_s \le 2100$ | 58.71768 | 0.30511 | -0.25332 | 0 | 0 | 0.01775 |
| $(49{,}000 < Q_s \le 74{,}000)$ | (129.4490) | (0.019050) | (-0.024258) | (0) | (0) | (0.006585) |
| $2100 < Q_s \le 2800$ | 78.24323 | 0.31582 | -0.25332 | 0 | 0 | 0.02049 |
| $(74{,}000 < Q_s \le 99{,}000)$ | (172.4950) | (0.019718) | (-0.024258) | (0) | (0) | (0.007602) |
| $2800 < Q_s \le 3500$ | 97.76879 | 0.32439 | -0.25332 | 0 | 0 | 0.02291 |
| $(99{,}000 < Q_s \le 120{,}000)$ | (215.5411) | (0.020253) | (-0.024258) | (0) | (0) | (0.008500) |

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DESIGN CATEGORY B. FOR NONHALOGENATED PROCESS VENT STREAMS, IF 0 ≤ NET HEATING VALUE (MJ/scm) ≤ 0.48 OR IF 0 ≤ NET HEATING VALUE (Btu/scf) ≤ 13:

| $Q_s$ = Vent Stream Flow rate scm/min(scf/min) | a | b | c | d | e | f |
|---|---|---|---|---|---|---|
| $14.2 \le Q_s \le 1340$ | 8.54245 | 0.10555 | 0.09030 | -0.17109 | 0 | 0.01025 |
| $(501 \le Q_s \le 47{,}300)$ | (18.83268) | (0.0065901) | (0.008647) | (-0.00039762) | (0) | (0.003803) |
| $1340 < Q_s \le 2690$ | 16.94386 | 0.11470 | 0.09030 | -0.17109 | 0 | 0.01449 |
| $(47{,}300 < Q_s \le 95{,}000)$ | (37.35443) | (0.0071614) | (0.008647) | (-0.00039762) | (0) | (0.005376) |
| $2690 < Q_s \le 4040$ | 25.34528 | 0.12042 | 0.09030 | -0.17109 | 0 | 0.01775 |
| $(95{,}000 < Q_s \le 143{,}000)$ | (55.87620) | (0.0075185) | (0.008647) | (-0.00039762) | (0) | (0.00658 |

DESIGN CATEGORY C. FOR NONHALOGENTED PROCESS VENT STREAMS, IF 0.48 < NET HEATING VALUE (MJ/scm) ≤ 1.9 OR IF 13 < NET HEATING VALUE (Btu/scf) ≤ 51:

| $Q_s$ = Vent Stream Flow rate scm/min(scf/min) | a | b | c | d | e | f |
|---|---|---|---|---|---|---|
| $14.2 \le Q_s \le 1340$ | 9.25233 | 0.06105 | 0.31937 | -0.16181 | 0 | 0.01025 |
| $(501 \le Q_s \le 47{,}300)$ | (20.39769) | (0.003812) | (0.030582) | (-0.00037605) | (0) | (0.003803) |
| $1340 < Q_s \le 2690$ | 18.36363 | 0.06635 | 0.31937 | -0.16181 | 0 | 0.01449 |
| $(47{,}300 < Q_s \le 95{,}000)$ | (40.48446) | (0.004143) | (0.030582) | (-0.00037605) | (0) | (0.005376) |
| $2690 < Q_s \le 4040$ | 27.47492 | 0.06965 | 0.31937 | -0.16181 | 0 | 0.01775 |
| $(95{,}000 < Q_s \le 143{,}000)$ | (60.57121) | (0.004349) | (0.030582) | (-0.00037605) | (0) | (0.006585) |

DESIGN CATEGORY D. FOR NONHALOGENATED PROCESS VENT STREAMS, IF 1.9 < NET HEATING VALUE (MJ/scm) ≤ 3.6 OR IF 51 < NET HEATING VALUE (Btu/scf) ≤ 97:

| $Q_s$ = Vent Stream Flow rate scm/min(scf/min) | a | b | c | d | e | f |
|---|---|---|---|---|---|---|
| $14.2 \le Q_s \le 1180$ | 6.67868 | 0.06943 | 0.02582 | 0 | 0 | 0.01025 |
| $(501 \le Q_s \le 41{,}700)$ | (14.72382) | (0.004335) | (0.002472) | (0) | (0) | (0.003803) |
| $1180 < Q_s \le 2370$ | 13.21633 | 0.07546 | 0.02582 | 0 | 0 | 0.01449 |
| $(41{,}700 < Q_s \le 83{,}700)$ | (29.13672) | (0.004711) | (0.002472) | (0) | (0) | (0.005376) |
| $2370 < Q_s \le 3550$ | 19.75398 | 0.07922 | 0.02582 | 0 | 0 | 0.01775 |
| $(83{,}700 < Q_s \le 125{,}000)$ | (43.54962) | (0.004946) | (0.002472) | (0) | (0) | (0.00658 |

| $Q_s$ = Vent Stream Flow rate scm/min(scf/min) | a | b | c | d | e | f |
|---|---|---|---|---|---|---|
| $14.2 \le Y_s \le 1180$ | 6.67868 | 0 | 0 | -0.00707 | 0.02220 | 0.01025 |
| $(501 \le Y_s \le 41{,}700)$ | (14.72382) | (0) | (0) | (-0.0000164) | (0.0001174) | (0.003803) |
| $1180 < Y_s \le 2370$ | 13.21633 | 0 | 0 | -0.00707 | 0.02412 | 0.01449 |
| $(41{,}700 < Y_s \le 83{,}700)$ | (29.13672) | (0) | (0) | (-0.0000164) | (0.0001276) | (0.005376) |
| $2370 < Y_s \le 3550$ | 19.75398 | 0 | 0 | -0.00707 | 0.02533 | 0.01775 |
| $(83{,}700 < Y_s \le 125{,}000)$ | (43.54962) | (0) | (0) | (-0.0000164) | (0.0001340) | (0.006585) |

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(ii) Where for a vent stream flow rate that is less than 14.2 scm/min (501 scf/min) at a standard temperature of 20°C (68°F):

TRE = TRE index value.
$Q_s$ = 14.2 scm/min (501 scf/min).
$H_T$ = (FLOW)(HVAL)/$Q_s$.

Where the following inputs are used:

FLOW = Vent stream flow rate, scm/min (scf/min), at a temperature of 20 °C (68 °F).
HVAL = Vent stream net heating value, MJ/scm (Btu/scf), where the net enthalpy per mole of vent stream is based on combustion at 25 °C and 760 mm Hg (68 °F and 30 in. Hg), but the standard temperature for determining the volume corresponding to one mole is 20 °C (68 °F) as in the definition of $Q_s$.
$Y_s$ = $Q_s$ for all vent stream categories listed in Table 1 except for Category E vent streams where $Y_s = Q_s H_T/3.6$.
$E_{TOC}$ = Hourly emissions of TOC, kg/hr (lb/hr).

a, b, c, d, e, and f are coefficients.

The set of coefficients that apply to a vent stream can be obtained from Table 1.

(2) * * *

TRE = TRE index value.
$E_{TOC}$ = Hourly emissions of TOC, kg/hr (lb/hr).
$Q_s$ = Vent stream flow rate, scm/min (scf/min), at a standard temperature of 20 °C (68 °F).
$H_T$ = Vent stream net heating value, MJ/scm (Btu/scf), where the net enthalpy per mole of vent stream is based on combustion at 25 °C and 760 mm Hg (68 °F and 30 in. Hg), but the standard temperature for determining the volume corresponding to one mole is 20 °C (68 °F) as in the definition of $Q_s$.

a, b, c, d, and e are coefficients.

* * * * *

TABLE 2.—AIR OXIDATION PROCESSES NSPS TRE COEFFICIENTS FOR VENT STREAMS CONTROLLED BY A FLARE

| | a | b | c | d | e |
|---|---|---|---|---|---|
| $H_T$ < 11.2 MJ/scm | 2.25 | 0.288 | −0.193 | (−0.0051 | 2.08 |
| ($H_T$ < 301 Btu/scf) | (0.140) | (0.0367) | (−0.000448) | (−0.0051) | (4.59) |
| $H_T \ge$ 11.2 MJ/scm | 0.309 | 0.0619 | −0.0043 | −0.0034 | 2.08 |
| $H_T \ge$ 301 Btu/scf) | (0.0193) | (0.00788) | (−0.000010) | (−0.0034) | (4.59) |

* * * * *

**§ 60.615 [Amended]**

193. Amend § 60.615 as follows:

a. In paragraph (e), the first sentence is amended by revising the words "44 MW" to read "44 MW (150 million Btu/hour)."

b. In paragraph (g), the first sentence is amended by revising "§ 60.613(c)" to read "§ 60.613(e)."

**§ 60.620 [Amended]**

194. In § 60.620, paragraph (b), the second sentence is amended by revising the words "4,700 gallons" to read "17,791 liters (4,700 gallons)."

**§ 60.624 [Amended]**

195. In § 60.624, the third sentence is amended by revising the words "is from the outlet" to read "is the outlet."

**§ 60.632 [Amended]**

196. Amend § 60.632 as follows:

a. In paragraph (f), the second sentence is amended by revising the words "percent VOC content" to read "VOC content."

b. Paragraph (f) is amended by revising "ASTM Methods E169, E168, or E260" to read "ASTM E169–63, 77, or 93, E168–67, 77, or 92, or E260–73, 91, or 96."

**§ 60.633 [Amended]**

197. Amend § 60.633 as follows:

a. Paragraph (b)(4)(i) is amended by revising "§ 60.482–(b)(1)" to read "§ 60.482–4(b)(1)."

b. Paragraph (d) is amended by revising the words "283,000 standard cubic meters per day (scmd) (10 million standard cubic feet per day (scfd))" to read "283,200 standard cubic meters per day (10 million standard cubic feet per day)."

c. Paragraphs (h)(1) and (2) are amended by revising the words "at 150 °C" to read "at 150 °C (302 °F)."

d. Paragraphs (h)(1) and (2) are amended by revising the words "ASTM Method D86" to read "ASTM Method D86–78, 82, 90, 95, or 96."

**§ 60.641 [Amended]**

198. Amend § 60.641 as follows:

a. The definition for "Total $SO_2$" is amended by revising the words "(ppmv or kg/DSCM)" to read "(ppmv or kg/dscm (lb/dscf))."

b. The definitions for "E", "S", and "X" are amended to read as follows:

**§ 60.641 Definitions.**

* * * * *

E = The sulfur emission rate expressed as elemental sulfur, kilograms per hour (kg/hr) [pounds per hour (lb/hr)], rounded to one decimal place.

* * * * *

S = The sulfur production rate, kilograms per hour (kg/hr) [pounds per hour (lb/hr)], rounded to one decimal place.

X = The sulfur feed rate from the sweetening unit (i.e., the $H_2S$ in the acid gas), expressed as sulfur, Mg/D(LT/D), rounded to one decimal place.

* * * * *

**§ 60.644 [Amended]**

199. Amend § 60.644 as follows:

a. Paragraphs (b)(1), (c)(3), and (c)(4)(iii) are revised.

b. In paragraph (b)(2), the first sentence is amended by revising the words "dscf/day" to read "dscm/day (dscf/day)."

c. In paragraph (c)(2), the second sentence is amended by revising the words "kg/hr" to read "kg/hr (lb/hr)."

d. In the paragraph (c)(4) introductory text, the first sentence is revised.

e. Paragraph (c)(4)(i) is amended by deleting the words "in mg/dscm" in the third sentence and by revising the last sentence.

f. In paragraph (c)(4)(ii), the last sentence is revised.

g. In paragraph (c)(4)(iv), the fifth sentence is amended by revising the words "(0.35 dscf)" to read "(3.5 dscf)."

h. Paragraph (d) is amended by revising the words "(b) of (c)" to read "(b) or (c)."

The revisions read as follows:

**§ 60.644 Test methods and procedures.**

* * * * *

(b) * * *

(1) The average sulfur feed rate (X) shall be computed as follows:

$$X = KQ_a Y$$

Where:

X = average sulfur feed rate, Mg/D (LT/D).
$Q_a$ = average volumetric flow rate of acid gas from sweetening unit, dscm/day (dscf/day).
Y = average $H_2S$ concentration in acid gas feed from sweetening unit, percent by volume, expressed as a decimal.

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K = (32 kg S/kg-mole)/((24.04 dscm/kg-mole)(1000 kg S/ Mg)) = $1.331 \times 10^{-3}$ Mg/dscm, for metric units
= (32 lb S/lb-mole)/((385.36 dscf/lb-mole)(2240 lb S/long ton))
= $3.707 \times 10^{-5}$ long ton/dscf, for English units.

* * * * *

(c) * * *

(3) The emission rate of sulfur shall be computed for each run as follows:

$$E = C_e Q_{sd} / K_1$$

Where:

E = emission rate of sulfur per run, kg/hr,

$C_e$ = concentration of sulfur equivalent ($SO_2$ + reduced sulfur), g/dscm (lb/dscf).

$Q_{sd}$ = volumetric flow rate of effluent gas, dscm/hr (dscf/hr).

$K_1$ = conversion factor, 1000 g/kg (7000 gr/lb).

(4) The concentration of sulfur equivalent ($C_e$) shall be the sum of the $SO_2$ and reduced sulfur concentrations, after being converted to sulfur equivalents. * * *

(i) * * * The concentration shall be multiplied by $0.5 \times 10^{-3}$ to convert the results to sulfur equivalent.

(ii) * * * The concentration in ppm reduced sulfur as sulfur shall be multiplied by $1.333 \times 10^{-3}$ to convert the results to sulfur equivalent.

(iii) Method 16A or 15 shall be used to determine the reduced sulfur concentration from oxidation-type devices or where the oxygen content of the effluent gas is greater than 1.0 percent by volume. Eight samples of 20 minutes each shall be taken at 30-minute intervals. The arithmetic average shall be the concentration for the run. The concentration in ppm reduced sulfur as sulfur shall be multiplied by $1.333 \times 10^{-3}$ to convert the results to sulfur equivalent.

* * * * *

**§ 60.646 [Amended]**

200. Amend § 60.646 as follows:

a. In paragraph (b)(1), the second sentence is amended by revising the words "(kg/hr)" to read "(kg/hr (lb/hr))."

b. In paragraph (c), the second sentence is amended by revising the words "(kg/hr)" to read "(kg/hr (lb/hr))."

c. In paragraph (e), the first sentence is amended by revising the words "150 LT/D" to read "152 Mg/D (150 LT/D)."

d. In paragraph (e), the equation and definitions are amended by revising as follows:

**§ 60.646 Monitoring of emissions and operations.**

* * * * *

(e) * * *

$$R = \frac{K_2 S}{X}$$

Where:

R = The sulfur dioxide removal efficiency achieved during the 24-hour period, percent.

$K_2$ = Conversion factor, 0.02400 Mg/D per kg/hr (0.01071 LT/D per lb/hr).

S = The sulfur production rate during the 24-hour period, kg/hr (lb/hr).

X = The sulfur feed rate in the acid gas, Mg/D (LT/D).

* * * * *

**§ 60.663 [Amended]**

201. Amend § 60.663 as follows:

a. In paragraph (c) introductory text by revising the words "in the following equipment" to read "the following equipment."

b. Paragraphs (d) and (e) are redesignated as (e) and (f) and paragraph (c)(3) is redesignated as paragraph (d).

c. In newly redesignated paragraph (f) by revising the words "carbon absorber" to read "carbon adsorber."

**§ 60.664 [Amended]**

202. Amend § 60.664 as follows:

a. In paragraph (b)(4)(ii), the definitions of the terms "$E_i$" and "$E_o$" are amended by revising the term "kg TOC/hr" to read "kg/hr (lb/hr)."

b. In paragraph (b)(4)(iii), the definitions of the terms "$Q_i$" and "$Q_o$" are amended by revising the units "dscf/hr" to read "dscf/min."

c. In paragraph (b)(4)(iii), the definition of the term "$K_2$" is revised.

d. Paragraphs (b)(5), (c), (d), (e), (f), and (g) are redesignated as paragraphs (c), (d), (e), (f), (g), and (h), respectively.

e. In newly redesignated paragraph (e)(1)(i), the second sentence is amended by revising "§ 60.664(d)(2) and (3)" to read "§ 60.664(e)(2) and (3)."

f. In newly redesignated paragraph (e)(1)(i), the second sentence is amended by revising "(d)(1)(ii)" to read "(e)(1)(ii)."

g. In newly redesignated paragraph (e)(1)(i), the third sentence is amended by revising the words "4 inches" to read "10 centimeters (4 inches)."

h. In newly redesignated paragraph (e)(1)(ii)(C), the second sentence is amended by revising "§ 60.664(d)(4) and (5)" to read "§ 60.664(e)(4) and (5)."

i. Newly redesignated paragraph (e)(2)(ii) is amended by revising "ASTM D1946–77" to read "ASTM D1946–77 or 90 (Reapproved 1994)."

j. In newly redesignated paragraphs (e)(4), (e)(5) and (f)(2), the equation definitions are revised; and newly redesignated paragraphs (f)(1)(i), (f)(1)(ii) including Table 1, and Table 2 of (f)(2)are revised.

k. The last sentence in the newly redesignated paragraph (e)(4) is amended by revising "ASTM D2382–76" to read "ASTM D2382–76 or 88 or D4809–95."

The revisions read as follows:

**§ 60.664 Test methods and procedures.**

* * * * *

(b) * * *

(4) * * *

(iii) * * *

$K_2 = 2.494 \times 10^{-6}$ (1/ppm)(g-mole/scm) (kg/g) (min/hr) (metric units), where standard temperature for (g-mole/scm) is 20 °C.
= $1.557 \times 10^{-7}$ (1/ppm) (lb-mole/scf) (min/hr) (English units), where standard temperature for (lb-mole/scf) is 68 °F.

* * * * *

(e) * * *

(4) * * *

$H_T$ = Net heating value of the sample, MJ/scm (Btu/scf), where the net enthalpy per mole of vent stream is based on combustion at 25 °C and 760 mm Hg (77 °F and 30 in. Hg), but the standard temperature for determining the volume corresponding to one mole is 20 °C (68 °F).

$K_1 = 1.74 \times 10^{-7}$ (1/ppm) (g-mole/scm) (MJ/kcal) (metric units), where standard temperature for (g-mole/scm) is 20 °C.
= $1.03 \times 10^{-11}$ (1/ppm) (lb-mole/scf) (Btu/kcal) (English units) where standard temperature for (lb/mole/scf) is 68 °F.

$C_j$ = Concentration on a wet basis of compound j in ppm, as measured for organics by Method 18 and measured for hydrogen and carbon monoxide by ASTM D1946–77 or 90 (Reapproved 1994) (incorporation by reference as specified in § 60.17 of this part) as indicated in § 60.664(e)(2).

$H_j$ = Net heat of combustion of compound j, kcal/(g-mole) [kcal/(lb-mole)], based on combustion at 25 °C and 760 mm Hg (77 °F and 30 in. Hg).

* * * * *

(5) * * *

$E_{TOC}$ = Measured emission rate of TOC, kg/hr (lb/hr).

$K_2 = 2.494 \times 10^{-6}$ (1/ppm) (g-mole/scm) (kg/g) (min/hr) (metric units), where standard temperature for (g-mole/scm) is 20 °C.
= $1.557 \times 10^{-7}$ (1/ppm) (lb-mole/scf) (min/hr) (English units), where



standard temperature for (lb-mole/scf) is 68 °F.

$C_j$ = Concentration on a wet basis of compound j in ppm, as measured by Method 18 as indicated in § 60.664(e)(2).

$M_j$ = Molecular weight of sample j, g/g-mole (lb/lb-mole).

$Q_s$ = Vent stream flow rate, scm/min (scf/min), at a temperature of 20 °C (68 °F).

* * * * *

(f) * * *

(1) * * *

(i) Where for a vent stream flow rate that is greater than or equal to 14.2 scm/min (501 scf/min) at a standard temperature of 20 °C (68 °F):

TRE = TRE index value.

$Q_s$ = Vent stream flow rate, scm/min (scf/min), at a temperature of 20 °C (68 °F).

$H_T$ = Vent stream net heating value, MJ/scm (Btu/scf), where the net enthalpy per mole of vent stream is based on combustion at 25 °C and 760 mm Hg (68 °F and 30 in. Hg), but the standard temperature for determining the volume corresponding to one mole is 20 °C (68 °F) as in the definition of $Q_s$.

$Y_s$ = $Q_s$ for all vent stream categories listed in Table 1 except for Category E vent streams where $Y_s = Q_s H_T / 3.6$.

$E_{TOC}$ = Hourly emissions of TOC, kg/hr (lb/hr).

a, b, c, d, e, and f are coefficients.

The set of coefficients that apply to a vent stream can be obtained from Table 1.

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TABLE 1. DISTILLATION NSPS TRE COEFFICIENTS FOR VENT STREAMS CONTROLLED BY AN INCINERATOR

DESIGN CATEGORY A1. FOR HALOGENATED PROCESS VENT STREAMS, IF 0 ≤ NET HEATING VALUE (MJ/scm) ≤ 3.5 OR IF 0 ≤ NET HEATING VALUE (Btu/scf) ≤ 94:

| $Q_s$ = Vent Stream Flow rate scm/min (scf/min) | a | b | c | d | e | f |
|---|---|---|---|---|---|---|
| $14.2 \le Q_s \le 18.8$ | 18.84466 | 0.26742 | -0.20044 | 0 | 0 | 0.01025 |
| $(501 \le Q_s \le 664)$ | (41.54494) | (0.016696) | (-0.019194) | (0) | (0) | (0.003803) |
| $18.8 < Q_s \le 699$ | 19.66658 | 0.26742 | -0.25332 | 0 | 0 | 0.01025 |
| $(664 < Q_s \le 24{,}700)$ | (43.35694) | (0.016696) | (-0.024258) | (0) | (0) | (0.003803) |
| $699 < Q_s \le 1400$ | 39.19213 | 0.29062 | -0.25332 | 0 | 0 | 0.01449 |
| $(24{,}700 < Q_s \le 49{,}000)$ | (86.40297) | (0.018145) | (-0.024258) | (0) | (0) | (0.005376) |
| $1400 < Q_s \le 2100$ | 58.71768 | 0.30511 | -0.25332 | 0 | 0 | 0.01775 |
| $(49{,}000 < Q_s \le 74{,}000)$ | (129.4490) | (0.019050) | (-0.024258) | (0) | (0) | (0.006585) |
| $2100 < Q_s \le 2800$ | 78.24323 | 0.31582 | -0.25332 | 0 | 0 | 0.02049 |
| $(74{,}000 < Q_s \le 99{,}000)$ | (172.4950) | (0.019718) | (-0.024258) | (0) | (0) | (0.007602) |
| $2800 < Q_s \le 3500$ | 97.76879 | 0.32439 | -0.25332 | 0 | 0 | 0.02291 |
| $(99{,}000 < Q_s \le 120{,}000)$ | (215.5411) | (0.020253) | (-0.024258) | (0) | (0) | (0.008500) |

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DESIGN CATEGORY A2. FOR HALOGENATED PROCESS VENT STREAMS, IF NET HEATING VALUE < 3.5 (MJ/scm) OR IF NET HEATING VALUE < 94 (Btu/scf):

| $Q_s$ = Vent Stream Flow rate scm/min(scf/min) | a | b | c | d | e | f |
|---|---|---|---|---|---|---|
| $14.2 \le Q_s \le 18.8$ | 18.84466 | 0.26742 | -0.20044 | 0 | 0 | 0.01025 |
| $(501 \le Q_s \le 664)$ | (41.54494) | (0.016696) | (-0.019194) | (0) | (0) | (0.003803) |
| $18.8 < Q_s \le 699$ | 19.66658 | 0.26742 | -0.25332 | 0 | 0 | 0.01025 |
| $(664 < Q_s \le 24,700)$ | (43.35694) | (0.016696) | (-0.024258) | (0) | (0) | (0.003803) |
| $699 < Q_s \le 1400$ | 39.19213 | 0.29062 | -0.25332 | 0 | 0 | 0.01449 |
| $(24,700 < Q_s \le 49,000)$ | (86.40297) | (0.018145) | (-0.024258) | (0) | (0) | (0.005376) |
| $1400 < Q_s \le 2100$ | 58.71768 | 0.30511 | -0.25332 | 0 | 0 | 0.01775 |
| $(49,000 < Q_s \le 74,000)$ | (129.4490) | (0.019050) | (-0.024258) | (0) | (0) | (0.006585) |
| $2100 < Q_s \le 2800$ | 78.24323 | 0.31582 | -0.25332 | 0 | 0 | 0.02049 |
| $(74,000 < Q_s \le 99,000)$ | (172.4950) | (0.019718) | (-0.024258) | (0) | (0) | (0.007602) |
| $2800 < Q_s \le 3500$ | 97.76879 | 0.32439 | -0.25332 | 0 | 0 | 0.02291 |
| $(99,000 < Q_s \le 120,000)$ | (215.5411) | (0.020253) | (-0.024258) | (0) | (0) | (0.008500) |

DESIGN CATEGORY B. FOR NONHALOGENATED PROCESS VENT STREAMS, IF $0 \le$ NET HEATING VALUE (MJ/scm) $\le 0.48$ OR IF $0 \le$ NET HEATING VALUE (Btu/scf) $\le 13$:

| $Q_s$ = Vent Stream Flow rate scm/min(scf/min) | a | b | c | d | e | f |
|---|---|---|---|---|---|---|
| $14.2 \le Q_s \le 1340$ | 8.54245 | 0.10555 | 0.09030 | -0.17109 | 0 | 0.01025 |
| $(501 \le Q_s \le 47,300)$ | (18.83268) | (0.0065901) | (0.008647) | (-0.00039762) | (0) | (0.003803) |
| $1340 < Q_s \le 2690$ | 16.94386 | 0.11470 | 0.09030 | -0.17109 | 0 | 0.01449 |
| $(47,300 < Q_s \le 95,000)$ | (37.35443) | (0.0071614) | (0.008647) | (-0.00039762) | (0) | (0.005376) |
| $2690 < Q_s \le 4040$ | 25.34528 | 0.12042 | 0.09030 | -0.17109 | 0 | 0.01775 |
| $(95,000 < Q_s \le 143,000)$ | (55.87620) | (0.0075185) | (0.008647) | (-0.00039762) | (0) | (0.006585) |



DESIGN CATEGORY C. FOR NONHALOGENTED PROCESS VENT STREAMS, IF 0.48 < NET HEATING VALUE (MJ/scm) $\le 1.9$ OR IF 13 < NET HEATING VALUE (Btu/scf) $\le 51$:

| $Q_s$ = Vent Stream Flow rate scm/min(scf/min) | a | b | c | d | e | f |
|---|---|---|---|---|---|---|
| $14.2 \le Q_s \le 1340$ | 9.25233 | 0.06105 | 0.31937 | -0.16181 | 0 | 0.01025 |
| $(501 \le Q_s \le 47,300)$ | (20.39769) | (0.003812) | (0.030582) | (-0.00037605) | (0) | (0.003803) |
| $1340 < Q_s \le 2690$ | 18.36363 | 0.06635 | 0.31937 | -0.16181 | 0 | 0.01449 |
| $(47,300 < Q_s \le 95,000)$ | (40.48446) | (0.004143) | (0.030582) | (-0.00037605) | (0) | (0.005376) |
| $2690 < Q_s \le 4040$ | 27.47492 | 0.06965 | 0.31937 | -0.16181 | 0 | 0.01775 |
| $(95,000 < Q_s \le 143,000)$ | (60.57121) | (0.004349) | (0.030582) | (-0.00037605) | (0) | (0.006585) |

DESIGN CATEGORY D. FOR NONHALOGENATED PROCESS VENT STREAMS, IF 1.9 < NET HEATING VALUE (MJ/scm) $\le 3.6$ OR IF 51 < NET HEATING VALUE (Btu/scf) $\le 97$:

| $Q_s$ = Vent Stream Flow rate scm/min(scf/min) | a | b | c | d | e | f |
|---|---|---|---|---|---|---|
| $14.2 \le Q_s \le 1180$ | 6.67868 | 0.06943 | 0.02582 | 0 | 0 | 0.01025 |
| $(501 \le Q_s \le 41,700)$ | (14.72382) | (0.004335) | (0.002472) | (0) | (0) | (0.003803) |
| $1180 < Q_s \le 2370$ | 13.21633 | 0.07546 | 0.02582 | 0 | 0 | 0.01449 |
| $(41,700 < Q_s \le 83,700)$ | (29.13672) | (0.004711) | (0.002472) | (0) | (0) | (0.005376) |
| $2370 < Q_s \le 3550$ | 19.75398 | 0.07922 | 0.02582 | 0 | 0 | 0.01775 |
| $(83,700 < Q_s \le 125,000)$ | (43.54962) | (0.004946) | (0.002472) | (0) | (0) | (0.006585) |

DESIGN CATEGORY E. FOR NONHALOGENATED PROCESS VENT STREAMS, IF NET HEATING VALUE > 3.6 MJ/scm OR IF NET HEATING VALUE > 97 (Btu/scf):

| $Q_s$ = Vent Stream Flow rate scm/min(scf/min) | a | b | c | d | e | f |
|---|---|---|---|---|---|---|
| $14.2 \le Y_s \le 1180$ | 6.67868 | 0 | 0 | -0.00707 | 0.02220 | 0.01025 |
| $(501 \le Y_s \le 41,700)$ | (14.72382) | (0) | (0) | (-0.0000164) | (0.0001174) | (0.003803) |
| $1180 < Y_s \le 2370$ | 13.21633 | 0 | 0 | -0.00707 | 0.02412 | 0.01449 |
| $(41,700 < Y_s \le 83,700)$ | (29.13672) | (0) | (0) | (-0.0000164) | (0.0001276) | (0.005376) |
| $2370 < Y_s \le 3550$ | 19.75398 | 0 | 0 | -0.00707 | 0.02533 | 0.01775 |
| $(83,700 < Y_s \le 125,000)$ | (43.54962) | (0) | (0) | (-0.0000164) | (0.0001340) | (0.006585) |

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(ii) Where for a vent stream flow rate that is less than 14.2 scm/min (501 scf/min) at a standard temperature of 20 °C (68 °F):

TRE = TRE index value.

$Q_s$ = 14.2 scm/min (501 scf/min).

$H_T$ = (FLOW) (HVAL)/$Q_s$.

Where the following inputs are used:

FLOW = Vent stream flow rate, scm/min (scf/min), at a temperature of 20 °C (68 °F).

HVAL = Vent stream net heating value, MJ/scm (Btu/scf), where the net enthalpy per mole of vent stream is based on combustion at 25 °C and 760 mm Hg (68 °F and 30 in. Hg), but the standard temperature for determining the volume corresponding to one mole is 20 °C (68 °F) as in the definition of $Q_s$.

$Y_s$ = $Q_s$ for all vent stream categories listed in Table 1 except for Category E vent streams where $Y_s = Q_s H_T/3.6$.

$E_{TOC}$ = Hourly emissions of TOC, kg/hr (lb/hr).

a, b, c, d, e, and f are coefficients

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The set of coefficients that apply to a vent stream can be obtained from Table 1.

(2) * * *

TRE = TRE index value.

$E_{TOC}$ = Hourly emissions of TOC, kg/hr (lb/hr).

$Q_s$ = Vent stream flow rate, scm/min (scf/min), at a standard temperature of 20 °C (68 °F).

$H_T$ = Vent stream net heating value, MJ/scm (Btu/scf), where the net enthalpy per mole of vent stream is based on combustion at 25 °C and 760 mm Hg (68 °F and 30 in. Hg), but the standard temperature for determining the volume corresponding to one mole is 20 °C (68 °F) as in the definition of $Q_s$.

a, b, c, d, and e are coefficients.

TABLE 2.—DISTILLATION NSPS TRE COEFFICIENTS FOR VENT STREAMS CONTROLLED BY A FLARE

| | a | b | c | d | e |
|---|---|---|---|---|---|
| $H_T$ < 11.2 MJ/scm | 2.25 | 0.288 | −0.193 | −0.0051 | 2.08 |
| ($H_T$ < 301 Btu/scf) | (0.140) | (0.0367) | (−0.000448) | (−0.0051) | (4.59) |
| $H_T$ ≥ 11.2 MJ/scm | 0.309 | 0.0619 | −0.0043 | −0.0034 | 2.08 |
| ($H_T$ ≥ 301 Btu/scf) | (0.0193) | (0.00788) | (−0.0000010) | (−0.0034) | (4.59) |

* * * * *

**§ 60.665 [Amended]**

203. Amend § 60.665 as follows:

a. Paragraph (b)(4)(i) is amended by revising the word "adsorbing" to read "absorbing."

b. In paragraph (e), the first sentence is amended by revising the words "44 MW" to read "44 MW (150 million Btu/hour)."

c. In paragraph (g), the first sentence is amended by revising the section reference "§ 60.663(d)" to read "§ 60.663(e)."

d. Paragraph (i) is amended by revising the words "0.008 $m^3$/min" to read "0.008 scm/min (0.3 scf/min)."

e. In paragraph (l)(6), the fourth sentence is amended by revising the words "vent stream flow rate, heating value, $E_{TOC}$" to read "vent stream flow rate, heating value, and $E_{TOC}$."

f. Paragraph (n) is amended by revising the word "capcity" to read "capacity."

**§ 60.672 [Amended]**

204. In § 60.672, paragraph (a)(1) is amended by revising the words "0.05 g/dscm" to read "0.05 g/dscm (0.022 gr/dscf)."

**§ 60.676 [Amended]**

205. In § 60.676, paragraphs (a)(1)(i), (a)(4)(i), and (a)(4)(ii) are amended by revising the word "tons" to read "megagrams or tons" wherever it occurs.

**§ 60.685 [Amended]**

206. Amend § 60.685 as follows:

a. In paragraph (c)(1), the equation definitions are revised.

b. In paragraph (c)(2) by revising the words "2.55 dscm (90 dscf)" to read "2.55 dscm (90.1 dscf)."

c. In paragraph (c)(3)(i) by revising the words "ASTM Standard Test Method D2584–68 (Reapproved 1979)" to read "ASTM D2584–68 (Reapproved 1985) or 94."

The revisions read as follows:

**§ 60.685 Test methods and procedures.**

* * * * *

(c) * * *

(1) * * *

E = emission rate of particulate matter, kg/Mg (lb/ton).

$C_t$ = concentration of particulate matter, g/dscm (gr/dscf).

$Q_{sd}$ = volumetric flow rate of effluent gas, dscm/hr (dscf/hr).

$P_{avg}$ = average glass pull rate, Mg/hr (ton/hr).

K = 1,000 g/kg (7,000 gr/lb).

* * * * *

**§ 60.692–3 [Amended]**

207. In § 60.692–3, paragraph (b) is amended by revising the words "16 liters per second (250 gpm)" to read "16 liters per second (250 gallons per minute (gpm))."

**§ 60.695 [Amended]**

208. In § 60.695, paragraphs (a)(1) and (2) are amended by revising the words "an accuracy of 1 percent of the temperature being measured in °C or ±0.5 °C (±1.0 °F), whichever is greater" to read "an accuracy of ±1 percent of the temperature being measured, expressed in °C, or ±0.5 °C (0.9 °F), whichever is greater."

**§ 60.697 [Amended]**

209. Amend § 60.697 by adding paragraph (k) as follows:

**§ 60.697 Recordkeeping requirements.**

* * * * *

(k) For oil-water separators subject to § 60.693–2, the location, date, and corrective action shall be recorded for inspections required by §§ 60.693–2(a)(1)(iii)(A) and (B), and shall be maintained for the time period specified in paragraphs (k)(1) and (2) of this section.

(1) For inspections required by § 60.693-2(a)(1)(iii)(A), ten years after the information is recorded.

(2) For inspections required by § 60.693–2(a)(1)(iii)(B), two years after the information is recorded.

**§ 60.704 [Amended]**

210. Amend § 60.704 as follows:

a. Paragraph (d)(2)(ii) is amended by revising "ASTM D1946–77" to read "ASTM D1946–77 or 90 (Reapproved 1994)."

b. The definition of "$C_j$" in paragraph (d)(4) is amended by revising "ASTM D1946–77" to read "ASTM D1946–77 or 90 (Reapproved 1994)."

c. The definition of "$H_j$" in paragraph (d)(4) is amended by revising "ASTM D2382–76" to read "ASTM D2382–76 or 88 or D4809–95."

**§ 60.723 [Amended]**

211. In § 60.723, paragraph (b)(1) is amended by revising the words "Reference Method" to read "Method" wherever they occur.

**§ 60.724 [Amended]**

212. In § 60.724, paragraph (a)(2) is amended by revising the words "Reference Method" to read "Method."

**§ 60.732 [Amended]**

213. In § 60.732, paragraph (a) is amended by revising the words "0.057 g/dscm for dryers" to read "0.057 g/dscm (0.025 gr/dscf) for dryers."

**§ 60.753 [Amended]**

214. In § 60.753, paragraph (c)(2) introductory text is amended by revising the words "Method 3A" to read "Method 3A or 3C."

**§ 60.754 [Amended]**

215. Amend § 60.754 as follows;

a. In paragraphs (a)(1)(i) and (a)(1)(ii), the equations are amended by revising "$C_{NMOC}$" to read "$C_{NMOC}$."



b. In paragraph (a)(3), the introductory text is revised; and in paragraph (d), the first sentence is removed and three sentences are added in its place to read as follows:

**§ 60.754 Test methods and procedures.**

(a) * * *

(3) *Tier 2.* The landfill owner or operator shall determine the NMOC concentration using the following sampling procedure. The landfill owner or operator shall install at least two sample probes per hectare of landfill surface that has retained waste for at least 2 years. If the landfill is larger than 25 hectares in area, only 50 samples are required. The sample probes should be located to avoid known areas of nondegradable solid waste. The owner or operator shall collect and analyze one sample of landfill gas from each probe to determine the NMOC concentration using Method 25 or 25C of Appendix A of this part. Method 18 of Appendix A of this part may be used to analyze the samples collected by the Method 25 or 25C sampling procedure. Taking composite samples from different probes into a single cylinder is allowed; however, equal sample volumes must be taken from each probe. For each composite, the sampling rate, collection times, beginning and ending cylinder vacuums, or alternative volume measurements must be recorded to verify that composite volumes are equal. Composite sample volumes should not be less than one liter unless evidence can be provided to substantiate the accuracy of smaller volumes. Terminate compositing before the cylinder approaches ambient pressure where measurement accuracy diminishes. If using Method 18, the owner or operator must identify all compounds in the sample and, as a minimum, test for those compounds published in the most recent Compilation of Air Pollutant Emission Factors (AP–42), minus carbon monoxide, hydrogen sulfide, and mercury. As a minimum, the instrument must be calibrated for each of the compounds on the list. Convert the concentration of each Method 18 compound to $C_{NMOC}$ as hexane by multiplying by the ratio of its carbon atoms divided by six. If more than the required number of samples are taken, all samples must be used in the analysis. The landfill owner or operator must divide the NMOC concentration from Method 25 or 25C of Appendix A of this part by six to convert from $C_{NMOC}$ as carbon to $C_{NMOC}$ as hexane. If the landfill has an active or passive gas removal system in place, Method 25 or 25C samples may be collected from these systems instead of surface probes provided the removal system can be shown to provide sampling as representative as the two sampling probe per hectare requirement. For active collection systems, samples may be collected from the common header pipe before the gas moving or condensate removal equipment. For these systems, a minimum of three samples must be collected from the header pipe.

* * * * *

(d) For the performance test required in § 60.752(b)(2)(iii)(B), Method 25, 25C, or Method 18 of Appendix A of this part must be used to determine compliance with the 98 weight-percent efficiency or the 20 ppmv outlet concentration level, unless another method to demonstrate compliance has been approved by the Administrator as provided by § 60.752(b)(2)(i)(B). Method 3 or 3A shall be used to determine oxygen for correcting the NMOC concentration as hexane to 3 percent. In cases where the outlet concentration is less than 50 ppm NMOC as carbon (8 ppm NMOC as hexane), Method 25A should be used in place of Method 25. * * *

* * * * *

216. In Part 60, Appendix A is amended by revising Methods 1, 1A, 2, 2A, 2B, 2C, 2D, 2E, 3, 3B, 4, 5, 5A, 5B, 5D, 5E, 5F, 5G, 5H, 6, 6A, 6B, 7, 7A, 7B, 7C, 7D, 8, 10A, 10B, 11, 12, 13A, 13B, 14, 15, 15A, 16, 16A, 16B, 17, 18, 19, 21, 22, 24, 24A, 25, 25A, 25B, 25C, 25D, 25E, 26, 26A, 27, 28, 28A, and 29 to read as follows:

**METHOD 1—Sample and Velocity Traverses for Stationary Sources**

**Note:** This method does not include all of the specifications (*e.g.*, equipment and supplies) and procedures (*e.g.*, sampling) essential to its performance. Some material is incorporated by reference from other methods in this part. Therefore, to obtain reliable results, persons using this method should have a thorough knowledge of at least the following additional test method: Method 2.

*1.0 Scope and Application*

1.1 Measured Parameters. The purpose of the method is to provide guidance for the selection of sampling ports and traverse points at which sampling for air pollutants will be performed pursuant to regulations set forth in this part. Two procedures are presented: a simplified procedure, and an alternative procedure (see Section 11.5). The magnitude of cyclonic flow of effluent gas in a stack or duct is the only parameter quantitatively measured in the simplified procedure.

1.2 Applicability. This method is applicable to gas streams flowing in ducts, stacks, and flues. This method cannot be used when: (1) the flow is cyclonic or swirling; or (2) a stack is smaller than 0.30 meter (12 in.) in diameter, or 0.071 $m^2$ (113 $in.^2$) in cross-sectional area. The simplified procedure cannot be used when the measurement site is less than two stack or duct diameters downstream or less than a half diameter upstream from a flow disturbance.

1.3 Data Quality Objectives. Adherence to the requirements of this method will enhance the quality of the data obtained from air pollutant sampling methods.

**Note:** The requirements of this method must be considered before construction of a new facility from which emissions are to be measured; failure to do so may require subsequent alterations to the stack or deviation from the standard procedure. Cases involving variants are subject to approval by the Administrator.

*2.0 Summary of Method*

2.1 This method is designed to aid in the representative measurement of pollutant emissions and/or total volumetric flow rate from a stationary source. A measurement site where the effluent stream is flowing in a known direction is selected, and the cross-section of the stack is divided into a number of equal areas. Traverse points are then located within each of these equal areas.

*3.0 Definitions [Reserved]*

*4.0 Interferences [Reserved]*

*5.0 Safety*

5.1 Disclaimer. This method may involve hazardous materials, operations, and equipment. This test method may not address all of the safety problems associated with its use. It is the responsibility of the user of this test method to establish appropriate safety and health practices and determine the applicability of regulatory limitations prior to performing this test method.

*6.0 Equipment and Supplies.*

6.1 Apparatus. The apparatus described below is required only when utilizing the alternative site selection procedure described in Section 11.5 of this method.

6.1.1 Directional Probe. Any directional probe, such as United Sensor Type DA Three-Dimensional Directional Probe, capable of measuring both the pitch and yaw angles of gas flows is acceptable. Before using the probe, assign an identification number to the directional probe, and permanently mark or engrave the number on the body of the probe. The pressure holes of directional probes are susceptible to

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plugging when used in particulate-laden gas streams. Therefore, a procedure for cleaning the pressure holes by "back-purging" with pressurized air is required.

6.1.2 Differential Pressure Gauges. Inclined manometers, U-tube manometers, or other differential pressure gauges (*e.g.*, magnehelic gauges) that meet the specifications described in Method 2, Section 6.2.

**Note:** If the differential pressure gauge produces both negative and positive readings, then both negative and positive pressure readings shall be calibrated at a minimum of three points as specified in Method 2, Section 6.2.

*7.0 Reagents and Standards [Reserved]*

*8.0 Sample Collection, Preservation, Storage, and Transport [Reserved]*

*9.0 Quality Control [Reserved]*

*10.0 Calibration and Standardization [Reserved]*

*11.0 Procedure*

11.1 Selection of Measurement Site.

11.1.1 Sampling and/or velocity measurements are performed at a site located at least eight stack or duct diameters downstream and two diameters upstream from any flow disturbance such as a bend, expansion, or contraction in the stack, or from a visible flame. If necessary, an alternative location may be selected, at a position at least two stack or duct diameters downstream and a half diameter upstream from any flow disturbance.

11.1.2 An alternative procedure is available for determining the acceptability of a measurement location not meeting the criteria above. This procedure described in Section 11.5 allows for the determination of gas flow angles at the sampling points and comparison of the measured results with acceptability criteria.

11.2 Determining the Number of Traverse Points.

11.2.1 Particulate Traverses.

11.2.1.1 When the eight- and two-diameter criterion can be met, the minimum number of traverse points shall be: (1) twelve, for circular or rectangular stacks with diameters (or equivalent diameters) greater than 0.61 meter (24 in.); (2) eight, for circular stacks with diameters between 0.30 and 0.61 meter (12 and 24 in.); and (3) nine, for rectangular stacks with equivalent diameters between 0.30 and 0.61 meter (12 and 24 in.).

11.2.1.2 When the eight- and two-diameter criterion cannot be met, the minimum number of traverse points is determined from Figure 1–1. Before referring to the figure, however, determine the distances from the measurement site to the nearest upstream and downstream disturbances, and divide each distance by the stack diameter or equivalent diameter, to determine the distance in terms of the number of duct diameters. Then, determine from Figure 1–1 the minimum number of traverse points that corresponds: (1) to the number of duct diameters upstream; and (2) to the number of diameters downstream. Select the higher of the two minimum numbers of traverse points, or a greater value, so that for circular stacks the number is a multiple of 4, and for rectangular stacks, the number is one of those shown in Table 1–1.

11.2.2 Velocity (Non-Particulate) Traverses. When velocity or volumetric flow rate is to be determined (but not particulate matter), the same procedure as that used for particulate traverses (Section 11.2.1) is followed, except that Figure 1–2 may be used instead of Figure 1–1.

11.3 Cross-Sectional Layout and Location of Traverse Points.

11.3.1 Circular Stacks.

11.3.1.1 Locate the traverse points on two perpendicular diameters according to Table 1–2 and the example shown in Figure 1–3. Any equation (see examples in References 2 and 3 in Section 16.0) that gives the same values as those in Table 1–2 may be used in lieu of Table 1–2.

11.3.1.2 For particulate traverses, one of the diameters must coincide with the plane containing the greatest expected concentration variation (*e.g.*, after bends); one diameter shall be congruent to the direction of the bend. This requirement becomes less critical as the distance from the disturbance increases; therefore, other diameter locations may be used, subject to the approval of the Administrator.

11.3.1.3 In addition, for elliptical stacks having unequal perpendicular diameters, separate traverse points shall be calculated and located along each diameter. To determine the cross-sectional area of the elliptical stack, use the following equation:

Square Area = $D_1 \times D_2 \times 0.7854$

Where: $D_1$ = Stack diameter 1

$D_2$ = Stack diameter 2

11.3.1.4 In addition, for stacks having diameters greater than 0.61 m (24 in.), no traverse points shall be within 2.5 centimeters (1.00 in.) of the stack walls; and for stack diameters equal to or less than 0.61 m (24 in.), no traverse points shall be located within 1.3 cm (0.50 in.) of the stack walls. To meet these criteria, observe the procedures given below.

11.3.2 Stacks With Diameters Greater Than 0.61 m (24 in.).

11.3.2.1 When any of the traverse points as located in Section 11.3.1 fall within 2.5 cm (1.0 in.) of the stack walls, relocate them away from the stack walls to: (1) a distance of 2.5 cm (1.0 in.); or (2) a distance equal to the nozzle inside diameter, whichever is larger. These relocated traverse points (on each end of a diameter) shall be the "adjusted" traverse points.

11.3.2.2 Whenever two successive traverse points are combined to form a single adjusted traverse point, treat the adjusted point as two separate traverse points, both in the sampling and/or velocity measurement procedure, and in recording of the data.

11.3.3 Stacks With Diameters Equal To or Less Than 0.61 m (24 in.). Follow the procedure in Section 11.3.1.1, noting only that any "adjusted" points should be relocated away from the stack walls to: (1) a distance of 1.3 cm (0.50 in.); or (2) a distance equal to the nozzle inside diameter, whichever is larger.

11.3.4 Rectangular Stacks.

11.3.4.1 Determine the number of traverse points as explained in Sections 11.1 and 11.2 of this method. From Table 1–1, determine the grid configuration. Divide the stack cross-section into as many equal rectangular elemental areas as traverse points, and then locate a traverse point at the centroid of each equal area according to the example in Figure 1–4.

11.3.4.2 To use more than the minimum number of traverse points, expand the "minimum number of traverse points" matrix (see Table 1–1) by adding the extra traverse points along one or the other or both legs of the matrix; the final matrix need not be balanced. For example, if a $4 \times 3$ "minimum number of points" matrix were expanded to 36 points, the final matrix could be $9 \times 4$ or $12 \times 3$, and would not necessarily have to be $6 \times 6$. After constructing the final matrix, divide the stack cross-section into as many equal rectangular, elemental areas as traverse points, and locate a traverse point at the centroid of each equal area.

11.3.4.3 The situation of traverse points being too close to the stack walls is not expected to arise with rectangular stacks. If this problem should ever arise, the Administrator must be contacted for resolution of the matter.

11.4 Verification of Absence of Cyclonic Flow.

11.4.1 In most stationary sources, the direction of stack gas flow is essentially parallel to the stack walls. However, cyclonic flow may exist (1) after such devices as cyclones and inertial demisters following venturi scrubbers, or (2) in stacks having tangential inlets or other duct configurations which tend to induce swirling; in these instances, the presence or absence of cyclonic flow at the sampling location must be determined. The following techniques are acceptable for this determination.

11.4.2 Level and zero the manometer. Connect a Type S pitot tube to the manometer and leak-check system. Position the Type S pitot tube at each traverse point, in succession, so that the planes of the face openings of the pitot tube are perpendicular to the stack cross-sectional plane; when the Type S pitot tube is in this position, it is at "0° reference." Note the differential pressure ($\Delta p$) reading at each traverse point. If a null (zero) pitot reading is obtained at 0° reference at a given traverse point, an acceptable flow condition exists at that point. If the pitot reading is not zero at 0° reference, rotate the pitot tube (up to ±90° yaw angle), until a null reading is obtained. Carefully determine and record the value of the rotation angle ($\alpha$) to the nearest degree. After the null technique has been applied at each traverse point, calculate the average of the absolute values of $\alpha$; assign $\alpha$ values of 0° to those points for which no rotation was required, and include these in the overall average. If the average value of $\alpha$ is greater than 20°, the overall flow condition in the stack is unacceptable, and alternative methodology, subject to the approval of the Administrator, must be used to perform accurate sample and velocity traverses.

11.5 The alternative site selection procedure may be used to determine the rotation angles in lieu of the procedure outlined in Section 11.4.

11.5.1 Alternative Measurement Site Selection Procedure. This alternative applies to sources where measurement locations are less than 2 equivalent or duct diameters downstream or less than one-half duct diameter upstream from a flow disturbance. The alternative should be limited to ducts larger than 24 in. in diameter where blockage and wall effects are minimal. A directional flow-sensing probe is used to measure pitch and yaw angles of the gas flow at 40 or more traverse points; the resultant angle is calculated and compared with acceptable criteria for mean and standard deviation.

**Note:** Both the pitch and yaw angles are measured from a line passing through the traverse point and parallel to the stack axis. The pitch angle is the angle of the gas flow component in the plane that INCLUDES the traverse line and is parallel to the stack axis. The yaw angle is the angle of the gas flow component in the plane PERPENDICULAR to the traverse line at the traverse point and is measured from the line passing through the traverse point and parallel to the stack axis.

11.5.2 Traverse Points. Use a minimum of 40 traverse points for circular ducts and 42 points for rectangular ducts for the gas flow angle determinations. Follow the procedure outlined in Section 11.3 and Table 1–1 or 1–2 for the location and layout of the traverse points. If the measurement location is determined to be acceptable according to the criteria in this alternative procedure, use the same traverse point number and locations for sampling and velocity measurements.

11.5.3 Measurement Procedure.

11.5.3.1 Prepare the directional probe and differential pressure gauges as recommended by the manufacturer. Capillary tubing or surge tanks may be used to dampen pressure fluctuations. It is recommended, but not required, that a pretest leak check be conducted. To perform a leak check, pressurize or use suction on the impact opening until a reading of at least 7.6 cm (3 in.) $H_2O$ registers on the differential pressure gauge, then plug the impact opening. The pressure of a leak-free system will remain stable for at least 15 seconds.

11.5.3.2 Level and zero the manometers. Since the manometer level and zero may drift because of vibrations and temperature changes, periodically check the level and zero during the traverse.

11.5.3.3 Position the probe at the appropriate locations in the gas stream, and rotate until zero deflection is indicated for the yaw angle pressure gauge. Determine and record the yaw angle. Record the pressure gauge readings for the pitch angle, and determine the pitch angle from the calibration curve. Repeat this procedure for each traverse point. Complete a "back-purge" of the pressure lines and the impact openings prior to measurements of each traverse point.

11.5.3.4 A post-test check as described in Section 11.5.3.1 is required. If the criteria for a leak-free system are not met, repair the equipment, and repeat the flow angle measurements.

11.5.4 Calibration. Use a flow system as described in Sections 10.1.2.1 and 10.1.2.2 of Method 2. In addition, the flow system shall have the capacity to generate two test-section velocities: one between 365 and 730 m/min (1,200 and 2,400 ft/min) and one between 730 and 1,100 m/min (2,400 and 3,600 ft/min).

11.5.4.1 Cut two entry ports in the test section. The axes through the entry ports shall be perpendicular to each other and intersect in the centroid of the test section. The ports should be elongated slots parallel to the axis of the test section and of sufficient length to allow measurement of pitch angles while maintaining the pitot head position at the test-section centroid. To facilitate alignment of the directional probe during calibration, the test section should be constructed of plexiglass or some other transparent material. All calibration measurements should be made at the same point in the test section, preferably at the centroid of the test section.

11.5.4.2 To ensure that the gas flow is parallel to the central axis of the test section, follow the procedure outlined in Section 11.4 for cyclonic flow determination to measure the gas flow angles at the centroid of the test section from two test ports located 90° apart. The gas flow angle measured in each port must be ±2° of 0°. Straightening vanes should be installed, if necessary, to meet this criterion.

11.5.4.3 Pitch Angle Calibration. Perform a calibration traverse according to the manufacturer's recommended protocol in 5° increments for angles from −60° to +60° at one velocity in each of the two ranges specified above. Average the pressure ratio values obtained for each angle in the two flow ranges, and plot a calibration curve with the average values of the pressure ratio (or other suitable measurement factor as recommended by the manufacturer) versus the pitch angle. Draw a smooth line through the data points. Plot also the data values for each traverse point. Determine the differences between the measured data values and the angle from the calibration curve at the same pressure ratio. The difference at each comparison must be within 2° for angles between 0° and 40° and within 3° for angles between 40° and 60°.

11.5.4.4 Yaw Angle Calibration. Mark the three-dimensional probe to allow the determination of the yaw position of the probe. This is usually a line extending the length of the probe and aligned with the impact opening. To determine the accuracy of measurements of the yaw angle, only the zero or null position need be calibrated as follows: Place the directional probe in the test section, and rotate the probe until the zero position is found. With a protractor or other angle measuring device, measure the angle indicated by the yaw angle indicator on the three-dimensional probe. This should be within 2° of 0°. Repeat this measurement for any other points along the length of the pitot where yaw angle measurements could be read in order to account for

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variations in the pitot markings used to indicate pitot head positions.

*12.0 Data Analysis and Calculations*

12.1 Nomenclature.

L = length.
n = total number of traverse points.
$P_i$ = pitch angle at traverse point i, degree.
$R_{avg}$ = average resultant angle, degree.
$R_i$ = resultant angle at traverse point i, degree.
$S_d$ = standard deviation, degree.
W = width.
$Y_i$ = yaw angle at traverse point i, degree.

12.2 For a rectangular cross section, an equivalent diameter ($D_e$) shall be calculated using the following equation, to determine the upstream and downstream distances:

$$D_e = \frac{2(L)(W)}{L+W} \quad \text{Eq. 1-1}$$

12.3 If use of the alternative site selection procedure (Section 11.5 of this method) is required, perform the following calculations using the equations below: the resultant angle at each traverse point, the average resultant angle, and the standard deviation. Complete the calculations retaining at least one extra significant figure beyond that of the acquired data. Round the values after the final calculations.

12.3.1 Calculate the resultant angle at each traverse point:

$$R_i = \text{arc cosine}\left[(\text{cosine } Y_i)(\text{cosine } P_i)\right] \quad \text{Eq. 1-2}$$

12.3.2 Calculate the average resultant for the measurements:

$$R_{avg} = \sum R_i / n \quad \text{Eq. 1-3}$$

12.3.3 Calculate the standard deviations:

$$S_d = \sqrt{\frac{\sum_{i=1}^{n}\left(R_i - R_{avg}\right)^2}{(n-1)}} \quad \text{Eq. 1-4}$$

12.3.4 Acceptability Criteria. The measurement location is acceptable if $R_{avg} \leq 20°$ and $S_d \leq 10°$.

*13.0 Method Performance [Reserved]*

*14.0 Pollution Prevention [Reserved]*

*15.0 Waste Management [Reserved]*

*16.0 References*


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*17.0 Tables, Diagrams, Flowcharts, and Validation Data*

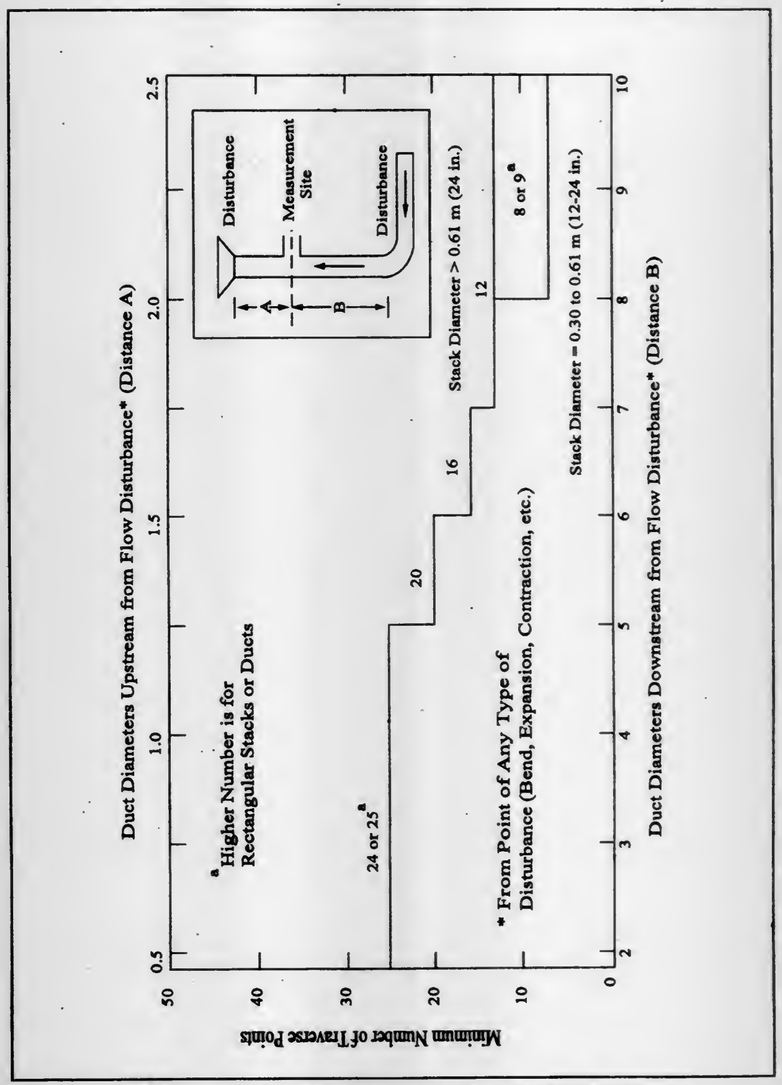



Figure 1-1. Minimum number of traverse points for particulate traverses.

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TABLE 1–1 CROSS-SECTION LAYOUT FOR RECTANGULAR STACKS

| Number of tranverse points layout | Matrix |
|---|---|
| 9 | 3×3 |
| 12 | 4×3 |
| 16 | 4×4 |
| 20 | 5×4 |
| 25 | 5×5 |
| 30 | 6×5 |
| 36 | 6×6 |
| 42 | 7×6 |
| 49 | 7×7 |



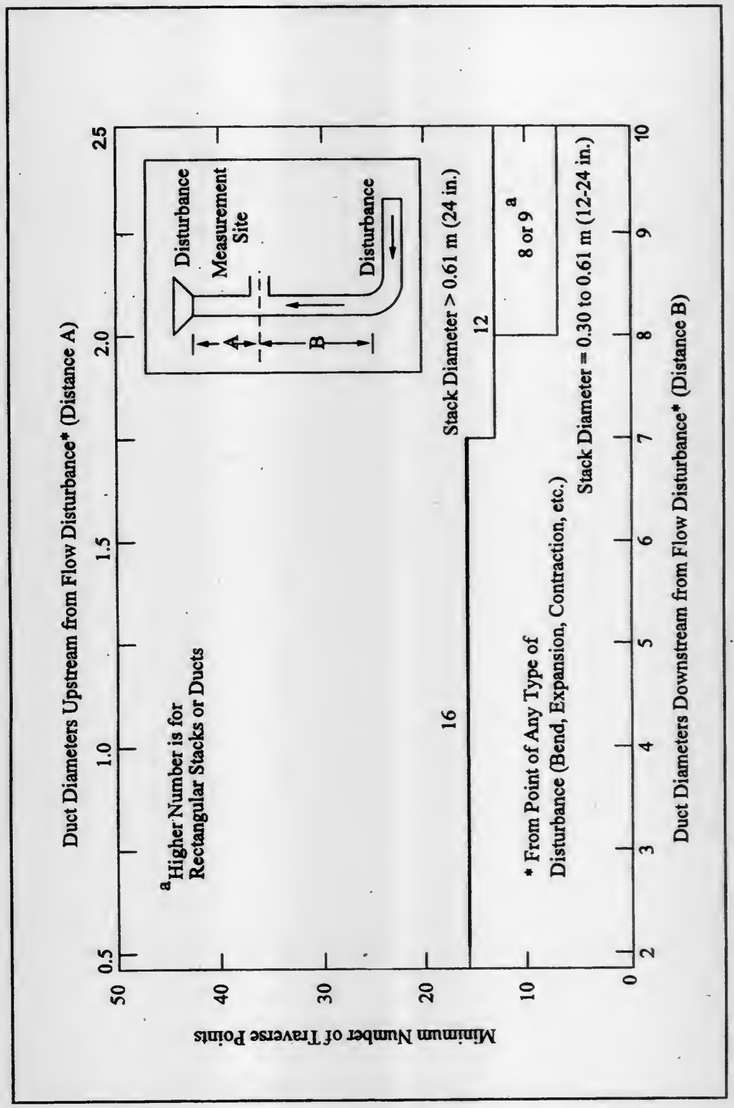



**Figure 1-2. Minimum number of traverse points for velocity (nonparticulate) traverses.**

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TABLE 1–2.—LOCATION OF TRAVERSE POINTS IN CIRCULAR STACKS

[Percent of stack diameter from inside wall to tranverse point]

| Traverse point number on a diameter | Number of traverse points on a diameter | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | 2 | 4 | 6 | 8 | 10 | 12 | 14 | 16 | 18 | 20 | 22 | 24 |
| 1 | 14.6 | 6.7 | 4.4 | 3.2 | 2.6 | 2.1 | 1.8 | 1.6 | 1.4 | 1.3 | 1.1 | 1.1 |
| 2 | 85.4 | 25.0 | 14.6 | 10.5 | 8.2 | 6.7 | 5.7 | 4.9 | 4.4 | 3.9 | 3.5 | 3.2 |
| 3 | | 75.0 | 29.6 | 19.4 | 14.6 | 11.8 | 9.9 | 8.5 | 7.5 | 6.7 | 6.0 | 5.5 |
| 4 | | 93.3 | 70.4 | 32.3 | 22.6 | 17.7 | 14.6 | 12.5 | 10.9 | 9.7 | 8.7 | 7.9 |
| 5 | | | 85.4 | 67.7 | 34.2 | 25.0 | 20.1 | 16.9 | 14.6 | 12.9 | 11.6 | 10.5 |
| 6 | | | 95.6 | 80.6 | 65.8 | 35.6 | 26.9 | 22.0 | 18.8 | 16.5 | 14.6 | 13.2 |
| 7 | | | | 89.5 | 77.4 | 64.4 | 36.6 | 28.3 | 23.6 | 20.4 | 18.0 | 16.1 |
| 8 | | | | 96.8 | 85.4 | 75.0 | 63.4 | 37.5 | 29.6 | 25.0 | 21.8 | 19.4 |
| 9 | | | | | 91.8 | 82.3 | 73.1 | 62.5 | 38.2 | 30.6 | 26.2 | 23.0 |
| 10 | | | | | 97.4 | 88.2 | 79.9 | 71.7 | 61.8 | 38.8 | 31.5 | 27.2 |
| 11 | | | | | | 93.3 | 85.4 | 78.0 | 70.4 | 61.2 | 39.3 | 32.3 |
| 12 | | | | | | 97.9 | 90.1 | 83.1 | 76.4 | 69.4 | 60.7 | 39.8 |
| 13 | | | | | | | 94.3 | 87.5 | 81.2 | 75.0 | 68.5 | 60.2 |
| 14 | | | | | | | 98.2 | 91.5 | 85.4 | 79.6 | 73.8 | 67.7 |
| 15 | | | | | | | | 95.1 | 89.1 | 83.5 | 78.2 | 72.8 |
| 16 | | | | | | | | 98.4 | 92.5 | 87.1 | 82.0 | 77.0 |
| 17 | | | | | | | | | 95.6 | 90.3 | 85.4 | 80.6 |
| 18 | | | | | | | | | 98.6 | 93.3 | 88.4 | 83.9 |
| 19 | | | | | | | | | | 96.1 | 91.3 | 86.8 |
| 20 | | | | | | | | | | 98.7 | 94.0 | 89.5 |
| 21 | | | | | | | | | | | 96.5 | 92.1 |
| 22 | | | | | | | | | | | 98.9 | 94.5 |
| 23 | | | | | | | | | | | | 96.8 |
| 24 | | | | | | | | | | | | 99.9 |



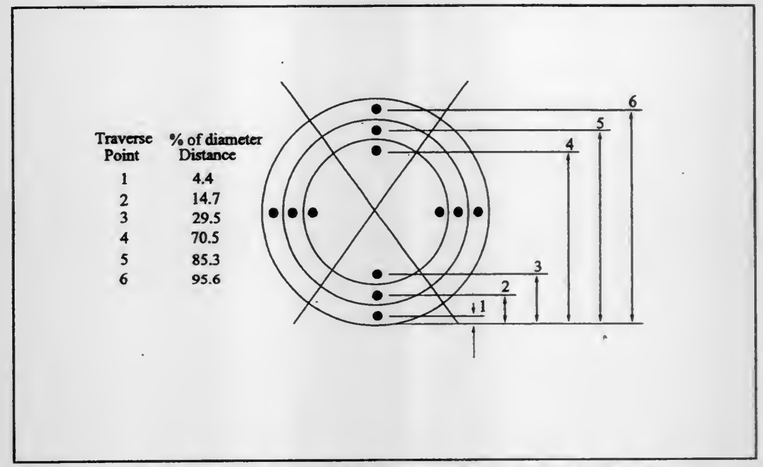



Figure 1-3. Example showing circular stack cross section divided into 12 equal areas, with location of traverse points.

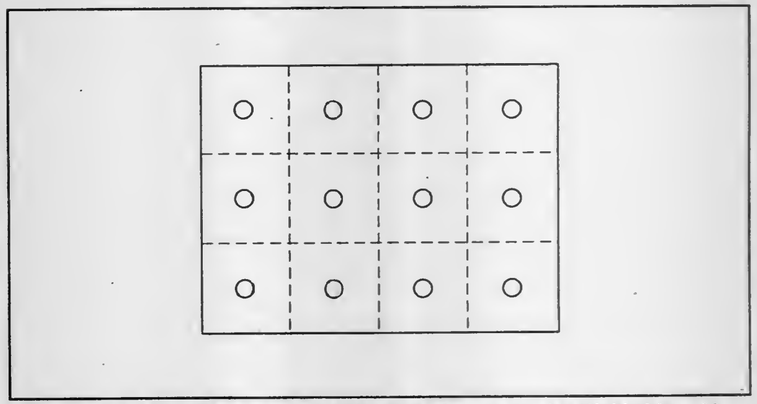


**Figure 1-4. Example showing rectangular stack cross section divided into 12 equal areas, with traverse points at centroid of each area.**

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**Method 1A—Sample and Velocity Traverses for Stationary Sources With Small Stacks or Ducts**

**Note:** This method does not include all of the specifications (*e.g.*, equipment and supplies) and procedures (*e.g.*, sampling) essential to its performance. Some material is incorporated by reference from other methods in this part. Therefore, to obtain reliable results, persons using this method should have a thorough knowledge of at least the following additional test method: Method 1.

*1.0 Scope and Application*

1.1 Measured Parameters. The purpose of the method is to provide guidance for the selection of sampling ports and traverse points at which sampling for air pollutants will be performed pursuant to regulations set forth in this part.

1.2 Applicability. The applicability and principle of this method are identical to Method 1, except its applicability is limited to stacks or ducts. This method is applicable to flowing gas streams in ducts, stacks, and flues of less than about 0.30 meter (12 in.) in diameter, or 0.071 $m^2$ (113 $in.^2$) in cross-sectional area, but equal to or greater than about 0.10 meter (4 in.) in diameter, or 0.0081 $m^2$ (12.57 $in.^2$) in cross-sectional area. This method cannot be used when the flow is cyclonic or swirling.

1.3 Data Quality Objectives. Adherence to the requirements of this method will enhance the quality of the data obtained from air pollutant sampling methods.

*2.0 Summary of Method*

2.1 The method is designed to aid in the representative measurement of pollutant emissions and/or total volumetric flow rate from a stationary source. A measurement site or a pair of measurement sites where the effluent stream is flowing in a known direction is (are) selected. The cross-section of the stack is divided into a number of equal areas. Traverse points are then located within each of these equal areas.

2.2 In these small diameter stacks or ducts, the conventional Method 5 stack assembly (consisting of a Type S pitot tube attached to a sampling probe, equipped with a nozzle and thermocouple) blocks a significant portion of the cross-section of the duct and causes inaccurate measurements. Therefore, for particulate matter (PM) sampling in small stacks or ducts, the gas velocity is measured using a standard pitot tube downstream of the actual emission sampling site. The straight run of duct between the PM sampling and velocity measurement sites allows the flow profile, temporarily disturbed by the presence of the sampling probe, to redevelop and stabilize.

*3.0 Definitions [Reserved]*

*4.0 Interferences [Reserved]*

*5.0 Safety*

5.1 Disclaimer. This method may involve hazardous materials, operations, and equipment. This test method may not address all of the safety problems associated with its use. It is the responsibility of the user of this test method to establish appropriate safety and health practices and determine the applicability of regulatory limitations prior to performing this test method.

*6.0 Equipment and Supplies [Reserved]*

*7.0 Reagents and Standards [Reserved]*

*8.0 Sample Collection, Preservation, Storage, and Transport [Reserved]*

*9.0 Quality Control [Reserved]*

*10.0 Calibration and Standardization [Reserved]*

*11.0 Procedure*

11.1 Selection of Measurement Site.

11.1.1 Particulate Measurements—Steady or Unsteady Flow. Select a particulate measurement site located preferably at least eight equivalent stack or duct diameters downstream and 10 equivalent diameters upstream from any flow disturbances such as bends, expansions, or contractions in the stack, or from a visible flame. Next, locate the velocity measurement site eight equivalent diameters downstream of the particulate measurement site (see Figure 1A–1). If such locations are not available, select an alternative particulate measurement location at least two equivalent stack or duct diameters downstream and two and one-half diameters upstream from any flow disturbance. Then, locate the velocity measurement site two equivalent diameters downstream from the particulate measurement site. (See Section 12.2 of Method 1 for calculating equivalent diameters for a rectangular cross-section.)

11.1.2 PM Sampling (Steady Flow) or Velocity (Steady or Unsteady Flow) Measurements. For PM sampling when the volumetric flow rate in a duct is constant with respect to time, Section 11.1.1 of Method 1 may be followed, with the PM sampling and velocity measurement performed at one location. To demonstrate that the flow rate is constant (within 10 percent) when PM measurements are made, perform complete velocity traverses before and after the PM sampling run, and calculate the deviation of the flow rate derived after the PM sampling run from the one derived before the PM sampling run. The PM sampling run is acceptable if the deviation does not exceed 10 percent.

11.2 Determining the Number of Traverse Points.

11.2.1 Particulate Measurements (Steady or Unsteady Flow). Use Figure 1–1 of Method 1 to determine the number of traverse points to use at both the velocity measurement and PM sampling locations. Before referring to the figure, however, determine the distances between both the velocity measurement and PM sampling sites to the nearest upstream and downstream disturbances. Then divide each distance by the stack diameter or equivalent diameter to express the distances in terms of the number of duct diameters. Then, determine the number of traverse points from Figure 1–1 of Method 1 corresponding to each of these four distances. Choose the highest of the four numbers of traverse points (or a greater number) so that, for circular ducts the number is a multiple of four; and for rectangular ducts, the number is one of those shown in Table 1–1 of Method 1. When the optimum duct diameter location criteria can be satisfied, the minimum number of traverse points required is eight for circular ducts and nine for rectangular ducts.

11.2.2 PM Sampling (Steady Flow) or only Velocity (Non-Particulate) Measurements. Use Figure 1–2 of Method 1 to determine number of traverse points, following the same procedure used for PM sampling as described in Section 11.2.1 of Method 1. When the optimum duct diameter location criteria can be satisfied, the minimum number of traverse points required is eight for circular ducts and nine for rectangular ducts.

11.3 Cross-sectional Layout, Location of Traverse Points, and Verification of the Absence of Cyclonic Flow. Same as Method 1, Sections 11.3 and 11.4, respectively.

*12.0 Data Analysis and Calculations [Reserved]*

*13.0 Method Performance [Reserved]*

*14.0 Pollution Prevention [Reserved]*

*15.0 Waste Management [Reserved]*

*16.0 References*

Same as Method 1, Section 16.0, References 1 through 6, with the addition of the following:

1. Vollaro, Robert F. Recommended Procedure for Sample Traverses in Ducts Smaller Than 12 Inches in Diameter. U.S. Environmental Protection Agency, Emission Measurement Branch, Research Triangle Park, North Carolina. January 1977.

*17.0 Tables, Diagrams, Flowcharts, and Validation Data*



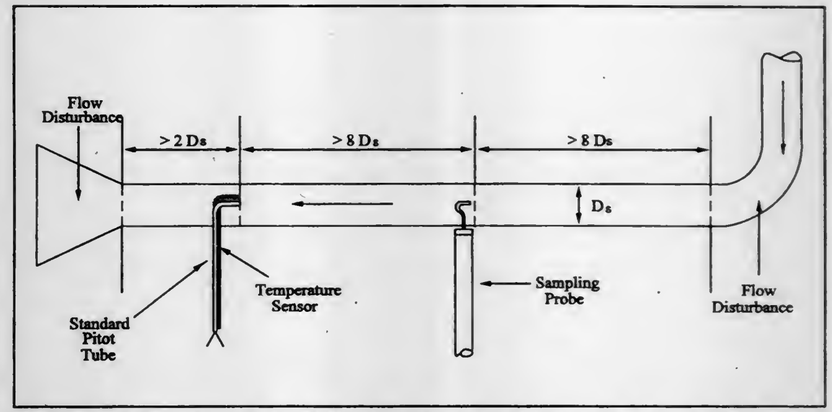



Figure 1A-1. Recommended sampling arrangement for small ducts

**Method 2—Determination of Stack Gas Velocity and Volumetric Flow Rate (Type S Pitot Tube)**

**Note:** This method does not include all of the specifications (*e.g.*, equipment and supplies) and procedures (*e.g.*, sampling) essential to its performance. Some material is incorporated by reference from other methods in this part. Therefore, to obtain reliable results, persons using this method should have a thorough knowledge of at least the following additional test method: Method 1.

*1.0 Scope and Application.*

1.1 This method is applicable for the determination of the average velocity and the volumetric flow rate of a gas stream.

1.2 This method is not applicable at measurement sites that fail to meet the criteria of Method 1, Section 11.1. Also, the method cannot be used for direct measurement in cyclonic or swirling gas streams; Section 11.4 of Method 1 shows how to determine cyclonic or swirling flow conditions. When unacceptable conditions exist, alternative procedures, subject to the approval of the Administrator, must be employed to produce accurate flow rate determinations. Examples of such alternative procedures are: (1) to install straightening vanes; (2) to calculate the total volumetric flow rate stoichiometrically, or (3) to move to another measurement site at which the flow is acceptable.

1.3 Data Quality Objectives. Adherence to the requirements of this method will enhance the quality of the data obtained from air pollutant sampling methods.

*2.0 Summary of Method.*

2.1 The average gas velocity in a stack is determined from the gas density and from measurement of the average velocity head with a Type S (Stausscheibe or reverse type) pitot tube.

*3.0 Definitions [Reserved]*

*4.0 Interferences [Reserved]*

*5.0 Safety*

5.1 Disclaimer. This method may involve hazardous materials, operations, and equipment. This test method may not address all of the safety problems associated with its use. It is the responsibility of the user of this test method to establish appropriate safety and health practices and determine the applicability of regulatory limitations prior to performing this test method.

*6.0 Equipment and Supplies*

Specifications for the apparatus are given below. Any other apparatus that has been demonstrated (subject to approval of the Administrator) to be capable of meeting the specifications will be considered acceptable.

6.1 Type S Pitot Tube.

6.1.1 Pitot tube made of metal tubing (*e.g.*, stainless steel) as shown in Figure 2–1. It is recommended that the external tubing diameter (dimension $D_t$, Figure 2–2b) be between 0.48 and 0.95 cm (3/16 and 3/8 inch). There shall be an equal distance from the base of each leg of the pitot tube to its face-opening plane (dimensions $P_A$ and $P_B$, Figure 2–2b); it is recommended that this distance be between 1.05 and 1.50 times the external tubing diameter. The face openings of the pitot tube shall, preferably, be aligned as shown in Figure 2–2; however, slight misalignments of the openings are permissible (see Figure 2–3).

6.1.2 The Type S pitot tube shall have a known coefficient, determined as outlined in Section 10.0. An identification number shall be assigned to the pitot tube; this number shall be permanently marked or engraved on the body of the tube. A standard pitot tube may be used instead of a Type S, provided that it meets the specifications of Sections 6.7 and 10.2. Note, however, that the static and impact pressure holes of standard pitot tubes are susceptible to plugging in particulate-laden gas streams. Therefore, whenever a standard pitot tube is used to perform a traverse, adequate proof must be furnished that the openings of the pitot tube have not plugged up during the traverse period. This can be accomplished by comparing the velocity head ($\Delta p$) measurement recorded at a selected traverse point (readable $\Delta p$ value) with a second $\Delta p$ measurement recorded after "back purging" with pressurized air to clean the impact and static holes of the standard pitot tube. If the before and

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after Δp measurements are within 5 percent, then the traverse data are acceptable. Otherwise, the data should be rejected and the traverse measurements redone. Note that the selected traverse point should be one that demonstrates a readable Δp value. If "back purging" at regular intervals is part of a routine procedure, then comparative Δp measurements shall be conducted as above for the last two traverse points that exhibit suitable Δp measurements.

6.2 Differential Pressure Gauge. An inclined manometer or equivalent device. Most sampling trains are equipped with a 10 in. (water column) inclined-vertical manometer, having 0.01 in. $H_20$ divisions on the 0 to 1 in. inclined scale, and 0.1 in. $H_20$ divisions on the 1 to 10 in. vertical scale. This type of manometer (or other gauge of equivalent sensitivity) is satisfactory for the measurement of Δp values as low as 1.27 mm (0.05 in.) $H_20$. However, a differential pressure gauge of greater sensitivity shall be used (subject to the approval of the Administrator), if any of the following is found to be true: (1) the arithmetic average of all Δp readings at the traverse points in the stack is less than 1.27 mm (0.05 in.) $H_20$; (2) for traverses of 12 or more points, more than 10 percent of the individual Δp readings are below 1.27 mm (0.05 in.) $H_20$; or (3) for traverses of fewer than 12 points, more than one Δp reading is below 1.27 mm (0.05 in.) $H_20$. Reference 18 (see Section 17.0) describes commercially available instrumentation for the measurement of low-range gas velocities.

6.2.1 As an alternative to criteria (1) through (3) above, Equation 2–1 (Section 12.2) may be used to determine the necessity of using a more sensitive differential pressure gauge. If T is greater than 1.05, the velocity head data are unacceptable and a more sensitive differential pressure gauge must be used.

**Note:** If differential pressure ganges other than inclined manometers are used (*e.g.*, magnehelic gauges), their calibration must be checked after each test series. To check the calibration of a differential pressure gauge, compare Δp readings of the gauge with those of a gauge-oil manometer at a minimum of three points, approximately representing the range of Δp values in the stack. If, at each point, the values of Δp as read by the differential pressure gauge and gauge-oil manometer agree to within 5 percent, the differential pressure gauge shall be considered to be in proper calibration. Otherwise, the test series shall either be voided, or procedures to adjust the measured Δp values and final results shall be used, subject to the approval of the Administrator.

6.3 Temperature Sensor. A thermocouple, liquid-filled bulb thermometer, bimetallic thermometer, mercury-in-glass thermometer, or other gauge capable of measuring temperatures to within 1.5 percent of the minimum absolute stack temperature. The temperature sensor shall be attached to the pitot tube such that the sensor tip does not touch any metal; the gauge shall be in an interference-free arrangement with respect to the pitot tube face openings (see Figure 2–1 and Figure 2–4). Alternative positions may be used if the pitot tube-temperature gauge system is calibrated according to the procedure of Section 10.0. Provided that a difference of not more than 1 percent in the average velocity measurement is introduced, the temperature gauge need not be attached to the pitot tube. This alternative is subject to the approval of the Administrator.

6.4 Pressure Probe and Gauge. A piezometer tube and mercury- or water-filled U-tube manometer capable of measuring stack pressure to within 2.5 mm (0.1 in.) Hg. The static tap of a standard type pitot tube or one leg of a Type S pitot tube with the face opening planes positioned parallel to the gas flow may also be used as the pressure probe.

6.5 Barometer. A mercury, aneroid, or other barometer capable of measuring atmospheric pressure to within 2.54 mm (0.1 in.) Hg.

**Note:** The barometric pressure reading may be obtained from a nearby National Weather Service station. In this case, the station value (which is the absolute barometric pressure) shall be requested and an adjustment for elevation differences between the weather station and sampling point shall be made at a rate of minus 2.5 mm (0.1 in.) Hg per 30 m (100 ft) elevation increase or plus 2.5 mm (0.1 in.) Hg per 30 m (100 ft.) for elevation decrease.

6.6 Gas Density Determination Equipment. Method 3 equipment, if needed (see Section 8.6), to determine the stack gas dry molecular weight, and Method 4 (reference method) or Method 5 equipment for moisture content determination. Other methods may be used subject to approval of the Administrator.

6.7 Calibration Pitot Tube. When calibration of the Type S pitot tube is necessary (see Section 10.1), a standard pitot tube shall be used for a reference. The standard pitot tube shall, preferably, have a known coefficient, obtained either (1) directly from the National Institute of Standards and Technology (NIST), Gaithersburg MD 20899, (301) 975–2002, or (2) by calibration against another standard pitot tube with an NIST-traceable coefficient. Alternatively, a standard pitot tube designed according to the criteria given in Sections 6.7.1 through 6.7.5 below and illustrated in Figure 2–5 (see also References 7, 8, and 17 in Section 17.0) may be used. Pitot tubes designed according to these specifications will have baseline coefficients of 0.99 ± 0.01.

6.7.1 Standard Pitot Design.

6.7.1.1 Hemispherical (shown in Figure 2–5), ellipsoidal, or conical tip.

6.7.1.2 A minimum of six diameters straight run (based upon D, the external diameter of the tube) between the tip and the static pressure holes.

6.7.1.3 A minimum of eight diameters straight run between the static pressure holes and the centerline of the external tube, following the 90° bend.

6.7.1.4 Static pressure holes of equal size (approximately 0.1 D), equally spaced in a piezometer ring configuration.

6.7.1.5 90° bend, with curved or mitered junction.

6.8 Differential Pressure Gauge for Type S Pitot Tube Calibration. An inclined manometer or equivalent. If the single-velocity calibration technique is employed (see Section 10.1.2.3), the calibration differential pressure gauge shall be readable to the nearest 0.127 mm (0.005 in.) $H_20$. For multivelocity calibrations, the gauge shall be readable to the nearest 0.127 mm (0.005 in.) $H_20$ for Δp values between 1.27 and 25.4 mm (0.05 and 1.00 in.) $H_20$, and to the nearest 1.27 mm (0.05 in.) $H_20$ for Δp values above 25.4 mm (1.00 in.) $H_20$. A special, more sensitive gauge will be required to read Δp values below 1.27 mm (0.05 in.) $H_20$ (see Reference 18 in Section 16.0).

*7.0 Reagents and Standards [Reserved]*

*8.0 Sample Collection and Analysis*

8.1 Set up the apparatus as shown in Figure 2–1. Capillary tubing or surge tanks installed between the manometer and pitot tube may be used to dampen Δp fluctuations. It is recommended, but not required, that a pretest leak-check be conducted as follows: (1) blow through the pitot impact opening until at least 7.6 cm (3.0 in.) $H_20$ velocity head registers on the manometer; then, close off the impact opening. The pressure shall remain stable for at least 15 seconds; (2) do the same for the static pressure side, except using suction to obtain the minimum of 7.6 cm (3.0 in.) $H_20$. Other leak-check procedures, subject to the approval of the Administrator, may be used.

8.2 Level and zero the manometer. Because the manometer level and zero may drift due to vibrations and temperature changes, make periodic checks during the traverse (at least once per hour). Record all necessary data on a form similar to that shown in Figure 2–6.



8.3 Measure the velocity head and temperature at the traverse points specified by Method 1. Ensure that the proper differential pressure gauge is being used for the range of Δp values encountered (see Section 6.2). If it is necessary to change to a more sensitive gauge, do so, and remeasure the Δp and temperature readings at each traverse point. Conduct a post-test leak-check (mandatory), as described in Section 8.1 above, to validate the traverse run.

8.4 Measure the static pressure in the stack. One reading is usually adequate.

8.5 Determine the atmospheric pressure.

8.6 Determine the stack gas dry molecular weight. For combustion processes or processes that emit essentially $CO_2$, $O_2$, CO, and $N_2$, use Method 3. For processes emitting essentially air, an analysis need not be conducted; use a dry molecular weight of 29.0. For other processes, other methods, subject to the approval of the Administrator, must be used.

8.7 Obtain the moisture content from Method 4 (reference method, or equivalent) or from Method 5.

8.8 Determine the cross-sectional area of the stack or duct at the sampling location. Whenever possible, physically measure the stack dimensions rather than using blueprints. Do not assume that stack diameters are equal. Measure each diameter distance to verify its dimensions.

*9.0 Quality Control*

| Section | Quality control measure | Effect |
|---|---|---|
| 10.1–10.4 | Sampling equipment calibration | Ensure accurate measurement of stack gas flow rate, sample volume. |

*10.0 Calibration and Standardization*

10.1 Type S Pitot Tube. Before its initial use, carefully examine the Type S pitot tube top, side, and end views to verify that the face openings of the tube are aligned within the specifications illustrated in Figures 2–2 and 2–3. The pitot tube shall not be used if it fails to meet these alignment specifications. After verifying the face opening alignment, measure and record the following dimensions of the pitot tube: (a) the external tubing diameter (dimension $D_t$, Figure 2–2b); and (b) the base-to-opening plane distances (dimensions $P_A$ and $P_B$, Figure 2–2b). If $D_t$ is between 0.48 and 0.95 cm 3/16 and 3/8 in.), and if $P_A$ and $P_B$ are equal and between 1.05 and 1.50 $D_t$, there are two possible options: (1) the pitot tube may be calibrated according to the procedure outlined in Sections 10.1.2 through 10.1.5, or (2) a baseline (isolated tube) coefficient value of 0.84 may be assigned to the pitot tube. Note, however, that if the pitot tube is part of an assembly, calibration may still be required, despite knowledge of the baseline coefficient value (see Section 10.1.1). If $D_t$, $P_A$, and $P_B$ are outside the specified limits, the pitot tube must be calibrated as outlined in Sections 10.1.2 through 10.1.5.

10.1.1 Type S Pitot Tube Assemblies. During sample and velocity traverses, the isolated Type S pitot tube is not always used; in many instances, the pitot tube is used in combination with other source-sampling components (e.g., thermocouple, sampling probe, nozzle) as part of an "assembly." The presence of other sampling components can sometimes affect the baseline value of the Type S pitot tube coefficient (Reference 9 in Section 17.0); therefore, an assigned (or otherwise known) baseline coefficient value may or may not be valid for a given assembly. The baseline and assembly coefficient values will be identical only when the relative placement of the components in the assembly is such that aerodynamic interference effects are eliminated. Figures 2–4, 2–7, and 2–8 illustrate interference-free component arrangements for Type S pitot tubes having external tubing diameters between 0.48 and 0.95 cm (3/16 and 3/8 in.). Type S pitot tube assemblies that fail to meet any or all of the specifications of Figures 2–4, 2–7, and 2-8 shall be calibrated according to the procedure outlined in Sections 10.1.2 through 10.1.5, and prior to calibration, the values of the intercomponent spacings (pitot-nozzle, pitot-thermocouple, pitot-probe sheath) shall be measured and recorded.

**Note:** Do not use a Type S pitot tube assembly that is constructed such that the impact pressure opening plane of the pitot tube is below the entry plane of the nozzle (see Figure 2–6B).

10.1.2 Calibration Setup. If the Type S pitot tube is to be calibrated, one leg of the tube shall be permanently marked A, and the other, B. Calibration shall be performed in a flow system having the following essential design features:

10.1.2.1 The flowing gas stream must be confined to a duct of definite cross-sectional area, either circular or rectangular. For circular cross sections, the minimum duct diameter shall be 30.48 cm (12 in.); for rectangular cross sections, the width (shorter side) shall be at least 25.4 cm (10 in.).

10.1.2.2 The cross-sectional area of the calibration duct must be constant over a distance of 10 or more duct diameters. For a rectangular cross section, use an equivalent diameter, calculated according to Equation 2–2 (see Section 12.3), to determine the number of duct diameters. To ensure the presence of stable, fully developed flow patterns at the calibration site, or "test section," the site must be located at least eight diameters downstream and two diameters upstream from the nearest disturbances.

**Note:** The eight- and two-diameter criteria are not absolute; other test section locations may be used (subject to approval of the Administrator), provided that the flow at the test site has been demonstrated to be or found stable and parallel to the duct axis.

10.1.2.3 The flow system shall have the capacity to generate a test-section velocity around 910 m/min (3,000 ft/min). This velocity must be constant with time to guarantee steady flow during calibration. Note that Type S pitot tube coefficients obtained by single-velocity calibration at 910 m/min (3,000 ft/min) will generally be valid to ±3 percent for the measurement of velocities above 300 m/min (1,000 ft/min) and to ±6 percent for the measurement of velocities between 180 and 300 m/min (600 and 1,000 ft/min). If a more precise correlation between the pitot tube coefficient, ($C_p$), and velocity is desired, the flow system should have the capacity to generate at least four distinct, time-invariant test-section velocities covering the velocity range from 180 to 1,500 m/min (600 to 5,000 ft/min), and calibration data shall be taken at regular velocity intervals over this range (see References 9 and 14 in Section 17.0 for details).

10.1.2.4 Two entry ports, one for each of the standard and Type S pitot tubes, shall be cut in the test section. The standard pitot entry port shall be located slightly downstream of the Type S port, so that the standard and Type S

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impact openings will lie in the same cross-sectional plane during calibration. To facilitate alignment of the pitot tubes during calibration, it is advisable that the test section be constructed of Plexiglas™ or some other transparent material.

10.1.3 Calibration Procedure. Note that this procedure is a general one and must not be used without first referring to the special considerations presented in Section 10.1.5. Note also that this procedure applies only to single-velocity calibration. To obtain calibration data for the A and B sides of the Type S pitot tube, proceed as follows:

10.1.3.1 Make sure that the manometer is properly filled and that the oil is free from contamination and is of the proper density. Inspect and leak-check all pitot lines; repair or replace if necessary.

10.1.3.2 Level and zero the manometer. Switch on the fan, and allow the flow to stabilize. Seal the Type S pitot tube entry port.

10.1.3.3 Ensure that the manometer is level and zeroed. Position the standard pitot tube at the calibration point (determined as outlined in Section 10.1.5.1), and align the tube so that its tip is pointed directly into the flow. Particular care should be taken in aligning the tube to avoid yaw and pitch angles. Make sure that the entry port surrounding the tube is properly sealed.

10.1.3.4 Read $\Delta p_{std}$, and record its value in a data table similar to the one shown in Figure 2–9. Remove the standard pitot tube from the duct, and disconnect it from the manometer. Seal the standard entry port.

10.1.3.5 Connect the Type S pitot tube to the manometer and leak-check. Open the Type S tube entry port. Check the manometer level and zero. Insert and align the Type S pitot tube so that its A side impact opening is at the same point as was the standard pitot tube and is pointed directly into the flow. Make sure that the entry port surrounding the tube is properly sealed.

10.1.3.6 Read $\Delta p_s$, and enter its value in the data table. Remove the Type S pitot tube from the duct, and disconnect it from the manometer.

10.1.3.7 Repeat Steps 10.1.3.3 through 10.1.3.6 until three pairs of $\Delta p$ readings have been obtained for the A side of the Type S pitot tube.

10.1.3.8 Repeat Steps 10.1.3.3 through 10.1.3.7 for the B side of the Type S pitot tube.

10.1.3.9 Perform calculations as described in Section 12.4. Use the Type S pitot tube only if the values of $\sigma_A$ and $\sigma_B$ are less than or equal to 0.01 and if the absolute value of the difference between $\bar{C}_{p(A)}$ and $\bar{C}_{p(B)}$ is 0.01 or less.

10.1.4 Special Considerations.

10.1.4.1 Selection of Calibration Point.

10.1.4.1.1 When an isolated Type S pitot tube is calibrated, select a calibration point at or near the center of the duct, and follow the procedures outlined in Section 10.1.3. The Type S pitot coefficients measured or calculated, (*i.e.* $\bar{C}_{p(A)}$ and $\bar{C}_{p(B)}$) will be valid, so long as either: (1) the isolated pitot tube is used; or (2) the pitot tube is used with other components (nozzle, thermocouple, sample probe) in an arrangement that is free from aerodynamic interference effects (see Figures 2–4, 2–7, and 2–8).

10.1.4.1.2 For Type S pitot tube-thermocouple combinations (without probe assembly), select a calibration point at or near the center of the duct, and follow the procedures outlined in Section 10.1.3. The coefficients so obtained will be valid so long as the pitot tube-thermocouple combination is used by itself or with other components in an interference-free arrangement (Figures 2–4, 2–7, and 2–8).

10.1.4.1.3 For Type S pitot tube combinations with complete probe assemblies, the calibration point should be located at or near the center of the duct; however, insertion of a probe sheath into a small duct may cause significant cross-sectional area interference and blockage and yield incorrect coefficient values (Reference 9 in Section 17.0). Therefore, to minimize the blockage effect, the calibration point may be a few inches off-center if necessary. The actual blockage effect will be negligible when the theoretical blockage, as determined by a projected-area model of the probe sheath, is 2 percent or less of the duct cross-sectional area for assemblies without external sheaths (Figure 2–10a), and 3 percent or less for assemblies with external sheaths (Figure 2–10b).

10.1.4.2 For those probe assemblies in which pitot tube-nozzle interference is a factor (i.e., those in which the pitot-nozzle separation distance fails to meet the specifications illustrated in Figure 2–7A), the value of $C_{p(s)}$ depends upon the amount of free space between the tube and nozzle and, therefore, is a function of nozzle size. In these instances, separate calibrations shall be performed with each of the commonly used nozzle sizes in place. Note that the single-velocity calibration technique is acceptable for this purpose, even though the larger nozzle sizes (>0.635 cm or ¼ in.) are not ordinarily used for isokinetic sampling at velocities around 910 m/min (3,000 ft/min), which is the calibration velocity. Note also that it is not necessary to draw an isokinetic sample during calibration (see Reference 19 in Section 17.0).

10.1.4.3 For a probe assembly constructed such that its pitot tube is always used in the same orientation, only one side of the pitot tube need be calibrated (the side which will face the flow). The pitot tube must still meet the alignment specifications of Figure 2–2 or 2–3, however, and must have an average deviation ($\sigma$) value of 0.01 or less (see Section 10.1.4.4).

10.1.5 Field Use and Recalibration.

10.1.5.1 Field Use.

10.1.5.1.1 When a Type S pitot tube (isolated or in an assembly) is used in the field, the appropriate coefficient value (whether assigned or obtained by calibration) shall be used to perform velocity calculations. For calibrated Type S pitot tubes, the A side coefficient shall be used when the A side of the tube faces the flow, and the B side coefficient shall be used when the B side faces the flow. Alternatively, the arithmetic average of the A and B side coefficient values may be used, irrespective of which side faces the flow.

10.1.5.1.2 When a probe assembly is used to sample a small duct, 30.5 to 91.4 cm (12 to 36 in.) in diameter, the probe sheath sometimes blocks a significant part of the duct cross-section, causing a reduction in the effective value of $C_{p(s)}$. Consult Reference 9 (see Section 17.0) for details. Conventional pitot-sampling probe assemblies are not recommended for use in ducts having inside diameters smaller than 30.5 cm (12 in.) (see Reference 16 in Section 17.0).

10.1.5.2 Recalibration.

10.1.5.2.1 Isolated Pitot Tubes. After each field use, the pitot tube shall be carefully reexamined in top, side, and end views. If the pitot face openings are still aligned within the specifications illustrated in Figure 2–2 and Figure 2–3, it can be assumed that the baseline coefficient of the pitot tube has not changed. If, however, the tube has been damaged to the extent that it no longer meets the specifications of Figure 2–2 and Figure 2–3, the damage shall either be repaired to restore proper alignment of the face openings, or the tube shall be discarded.

10.1.5.2.2 Pitot Tube Assemblies. After each field use, check the face opening alignment of the pitot tube, as in Section 10.1.5.2.1. Also, remeasure the intercomponent spacings of the assembly. If the intercomponent spacings have not changed and the face opening alignment is acceptable, it can be assumed that the coefficient of the assembly has not changed. If the face opening alignment is no longer within the specifications of Figure 2–2 and Figure 2–3, either repair the damage or replace the pitot tube (calibrating the new assembly, if necessary). If the intercomponent spacings have changed, restore the original spacings, or recalibrate the assembly.



10.2 Standard Pitot Tube (if applicable). If a standard pitot tube is used for the velocity traverse, the tube shall be constructed according to the criteria of Section 6.7 and shall be assigned a baseline coefficient value of 0.99. If the standard pitot tube is used as part of an assembly, the tube shall be in an interference-free arrangement (subject to the approval of the Administrator).

10.3 Temperature Sensors.

10.3.1 After each field use, calibrate dial thermometers, liquid-filled bulb thermometers, thermocouple-potentiometer systems, and other sensors at a temperature within 10 percent of the average absolute stack temperature. For temperatures up to 405 °C (761 °F), use an ASTM mercury-in-glass reference thermometer, or equivalent, as a reference. Alternatively, either a reference thermocouple and potentiometer (calibrated against NIST standards) or thermometric fixed points (*e.g.*, ice bath and boiling water, corrected for barometric pressure) may be used. For temperatures above 405°C (761 °F), use a reference thermocouple-potentiometer system calibrated against NIST standards or an alternative reference, subject to the approval of the Administrator.

10.3.2 The temperature data recorded in the field shall be considered valid. If, during calibration, the absolute temperature measured with the sensor being calibrated and the reference sensor agree within 1.5 percent, the temperature data taken in the field shall be considered valid. Otherwise, the pollutant emission test shall either be considered invalid or adjustments (if appropriate) of the test results shall be made, subject to the approval of the Administrator.

10.4 Barometer. Calibrate the barometer used against a mercury barometer.

*11.0 Analytical Procedure*

Sample collection and analysis are concurrent for this method (see Section 8.0).

*12.0 Data Analysis and Calculations*

Carry out calculations, retaining at least one extra significant figure beyond that of the acquired data. Round off figures after final calculation.

12.1 Nomenclature.

A = Cross-sectional area of stack, $m^2$ ($ft^2$).

$B_{ws}$ = Water vapor in the gas stream (from Method 4 (reference method) or Method 5), proportion by volume.

$C_p$ = Pitot tube coefficient, dimensionless.

$C_{p(s)}$ = Type S pitot tube coefficient, dimensionless.

$C_{p(std)}$ = Standard pitot tube coefficient; use 0.99 if the coefficient is unknown and the tube is designed according to the criteria of Sections 6.7.1 to 6.7.5 of this method.

$D_e$ = Equivalent diameter.

K = 0.127 mm $H_2O$ (metric units). 0.005 in. $H_2O$ (English units).

$K_p$ = Velocity equation constant.

L = Length.

$M_d$ = Molecular weight of stack gas, dry basis (see Section 8.6), g/g-mole (lb/lb-mole).

$M_s$ = Molecular weight of stack gas, wet basis, g/g-mole (lb/lb-mole).

n = Total number of traverse points.

$P_{bar}$ = Barometric pressure at measurement site, mm Hg (in. Hg).

$P_g$ = Stack static pressure, mm Hg (in. Hg).

$P_s$ = Absolute stack pressure ($P_{bar} + P_g$), mm Hg (in. Hg),

$P_{std}$ = Standard absolute pressure, 760 mm Hg (29.92 in. Hg).

$Q_{sd}$ = Dry volumetric stack gas flow rate corrected to standard conditions, dscm/hr (dscf/hr).

T = Sensitivity factor for differential pressure gauges.

$T_s$ = Stack temperature, °C (°F).

$T_{s(abs)}$ = Absolute stack temperature, °K (°R).

= 273 + $T_s$ for metric units,

= 460 + $T_s$ for English units.

$T_{std}$ = Standard absolute temperature, 293 °K (528 °R).

$V_s$ = Average stack gas velocity, m/sec (ft/sec).

W = Width.

$\Delta p$ = Velocity head of stack gas, mm $H_2O$ (in. $H_2o$).

$\Delta p_i$ = Individual velocity head reading at traverse point "i", mm (in.) $H_2O$.

$\Delta p_{std}$ = Velocity head measured by the standard pitot tube, cm (in.) $H_2O$.

$\Delta p_s$ = Velocity head measured by the Type S pitot tube, cm (in.) $H_2O$.

3600 = Conversion Factor, sec/hr.

18.0 = Molecular weight of water, g/g-mole (lb/lb-mole).

12.2 Calculate T as follows:

$$T = \frac{\sum_{i=1}^{n} \sqrt{\Delta p_i + K}}{\sum_{i=1}^{n} \sqrt{\Delta p_i}} \qquad \text{Eq. 2-1}$$

12.3 Calculate $D_e$ as follows:

$$D_e = \frac{2LW}{L+W} \qquad \text{Eq. 2-2}$$

12.4 Calibration of Type S Pitot Tube.

12.4.1 For each of the six pairs of $\Delta p$ readings (i.e., three from side A and three from side B) obtained in Section 10.1.3, calculate the value of the Type S pitot tube coefficient according to Equation 2–3:

$$C_{p(s)} = C_{p(std)} \sqrt{\frac{\Delta p_{std}}{\Delta p}} \qquad \text{Eq. 2-3}$$

12.4.2 Calculate $\bar{C}_{p(A)}$, the mean A-side coefficient, and $\bar{C}_{p(B)}$, the mean B-side coefficient. Calculate the difference between these two average values.

12.4.3 Calculate the deviation of each of the three A-side values of $C_{p(s)}$ from $\bar{C}_{p(A)}$, and the deviation of each of the three B-side values of $C_{p(s)}$ from $\bar{C}_{p(B)}$, using Equation 2–4:

$$\text{Deviation} = C_{p(s)} - \bar{C}_{p(A \text{ or } B)} \qquad \text{Eq. 2-4}$$

12.4.4 Calculate $\sigma$ the average deviation from the mean, for both the A and B sides of the pitot tube. Use Equation 2–5:

$$\sigma_{A \text{ or } B} = \frac{\sum_{i=1}^{3} \left| C_{p(s)} - \bar{C}_{p(A \text{ or } B)} \right|}{3} \qquad \text{Eq. 2-5}$$

12.5 Molecular Weight of Stack Gas.

$$M_s = M_d(1 - B_{ws}) + 18.0\, B_{ws} \qquad \text{Eq. 2-6}$$

12.6 Average Stack Gas Velocity.

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$$V_s = K_p C_p \sqrt{\Delta p_{avg}} \sqrt{\frac{T_{s(abs)}}{P_s M_s}} \qquad \text{Eq. 2-7}$$

$$34.97 \frac{m}{sec} \left[ \frac{(g/g \cdot mole)(mmHg)}{(°K)(mmH_2O)} \right]^{\frac{1}{2}} \qquad \text{Metric}$$

$$85.49 \frac{m}{sec} \left[ \frac{(lb/lb - mole)(in.\,Hg)}{(°R)(in.\,H_2O)} \right]^{\frac{1}{2}} \qquad \text{English}$$

12.7 Average Stack Gas Dry Volumetric Flow Rate.

$$Q = 3600(1 - B_{ws}) v_s A \left[ \frac{T_{std} P_s}{T_{s(abs)} P_{std}} \right] \qquad \text{Eq. 2-8}$$

*13.0 Method Performance [Reserved]*

*14.0 Pollution Prevention [Reserved]*

*15.0 Waste Management [Reserved]*

*16.0 References*


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*17.0 Tables, Diagrams, Flowcharts, and Validation Data*

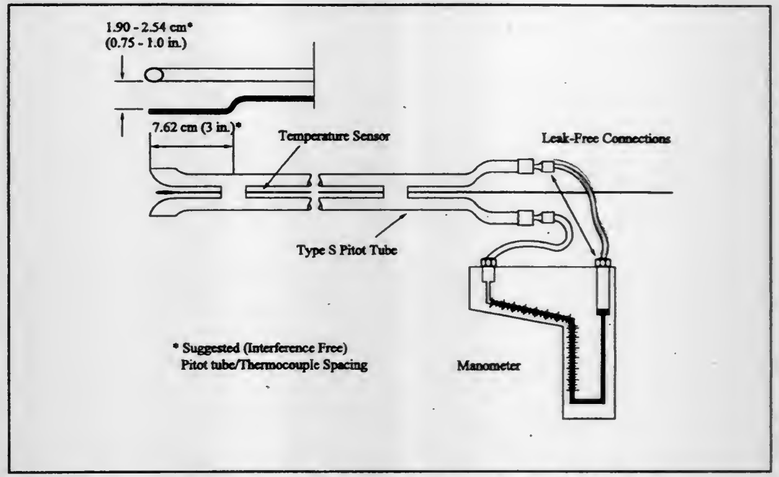



**Figure 2-1. Type S Pitot Tube Manometer Assembly.**

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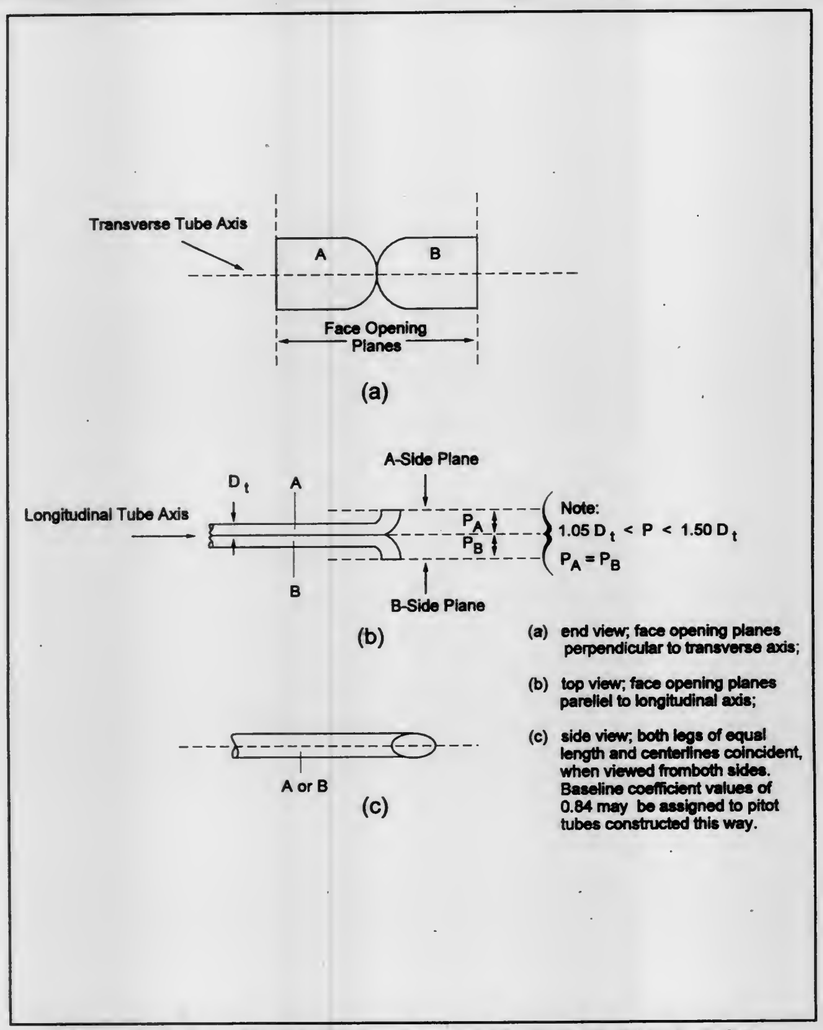



Figure 2-2. Properly Constructed Type S Pitot Tube.



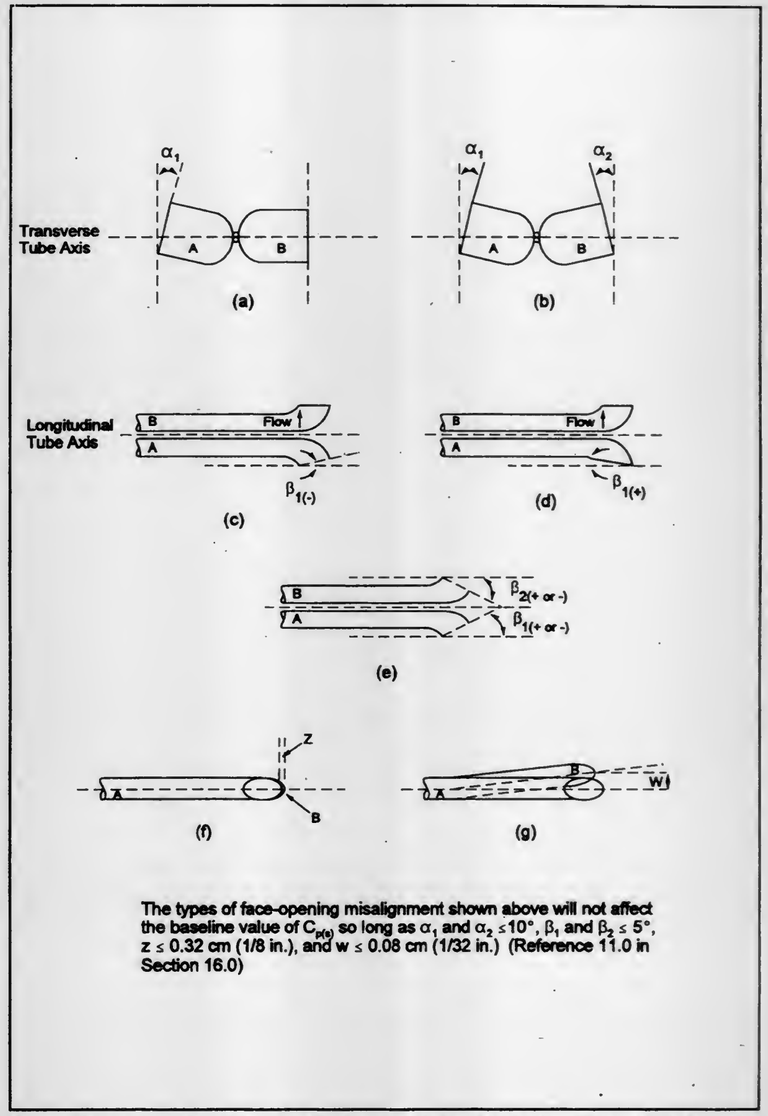



Figure 2-3. Types of face-opening misalignments that can result from field use or improper construction of type S pitot tubes.

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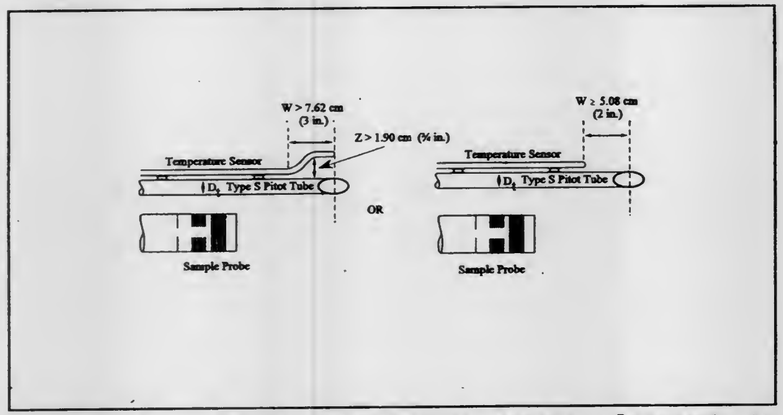



Figure 2-4. Proper temperature sensor placement to prevent interference; $D_t$ between 0.48 and 0.95 cm (3/16 and 3/8 in).



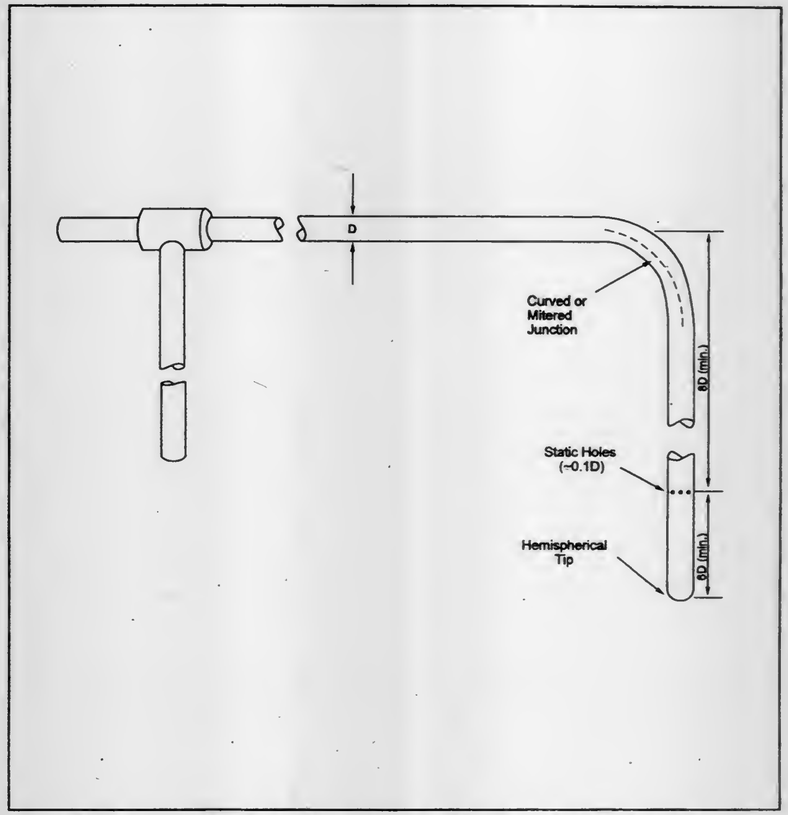



Figure 2-5. Standard pitot tube design specifications.

PLANT _____
DATE _____
RUN NO. _____
STACK DIA. OR DIMENSIONS, m (in.) _____
BAROMETRIC PRESS., mm Hg (in. Hg) _____
CROSS SECTIONAL AREA, $m^2$ ($ft^2$) _____
OPERATORS _____
PITOT TUBE I.D. NO. _____
AVG. COEFFICIENT, Cp = _____
LAST DATE CALIBRATED _____

SCHEMATIC OF STACK CROSS SECTION

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| Traverse Pt. No. | Vel. Hd., $\Delta p$ mm (in.) $H_2O$ | Stack temperature $T_s$, °C (°F) | Stack temperature $T_s$, °K (°R) | $P_g$ mm Hg (in. Hg) | $(\Delta p)^{1/2}$ |
|---|---|---|---|---|---|
| | | | | | |
| | | | | | |
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| | Average(1) | | | | |

Figure 2–6. Velocity Traverse Data

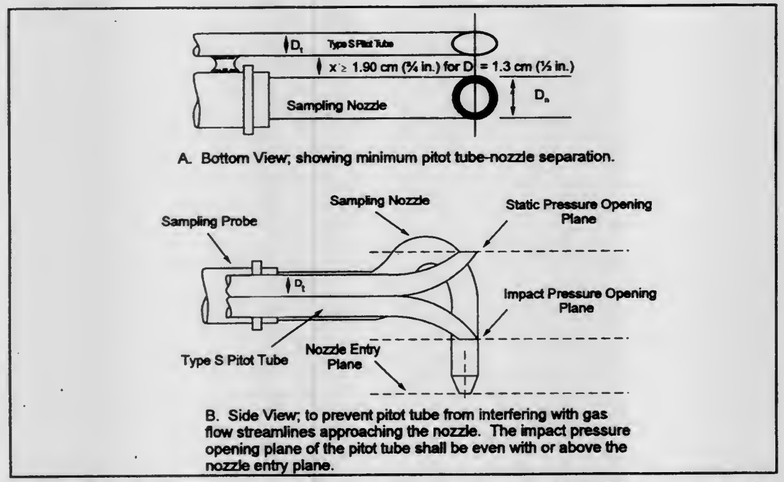



Figure 2-7. Proper pitot tube-sampling nozzle configuration.



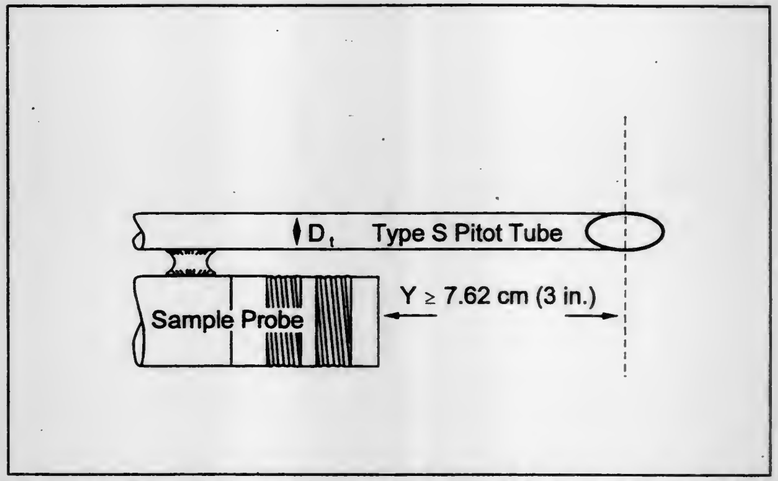



Figure 2-8. Minimum pitot-sample probe separation needed to prevent interference; $D_t$ between 0.48 and 0.95 cm (3/16 and 3/8 in).

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PITOT TUBE IDENTIFICATION NUMBER: _____
DATE: _____
CALIBRATED BY: _____

"A" SIDE CALIBRATION

| Run No. | $\Delta P_{std}$ cm $H_2O$ (in $H_2O$) | $\Delta P_{(s)}$ cm $H_2O$ (in $H_2O$) | $C_{p(s)}$ | Deviation $C_{p(s)}$—$C_p$(A) |
|---|---|---|---|---|
| 1 | | | | |
| 2 | | | | |
| 3 | | | | |
| | | $C_{p,\ avg}$ (SIDE A) | | |

"B" SIDE CALIBRATION

| Run No. | $\Delta P_{std}$ cm $H_2O$ (in $H_2O$) | $\Delta P_{(s)}$ cm $H_2O$ (in $H_2O$) | $C_{p(s)}$ | Deviation $C_{p(s)}$—$C_p$(B) |
|---|---|---|---|---|
| 1 | | | | |
| 2 | | | | |
| 3 | | | | |
| | | $C_{p,\ avg}$ (SIDE B) | | |

$$\sigma_{A\ or\ B} = \frac{\sum_{i=1}^{3}\left|C_{p(s)} - \overline{C}_{p(A\ or\ B)}\right|}{3} \qquad \text{Eq. 2-5}$$

[Cp, avg (side A)—Cp, avg (side B)]*

*Must be less than or equal to 0.01

Figure 2–9. Pitot Tube Calibration Data



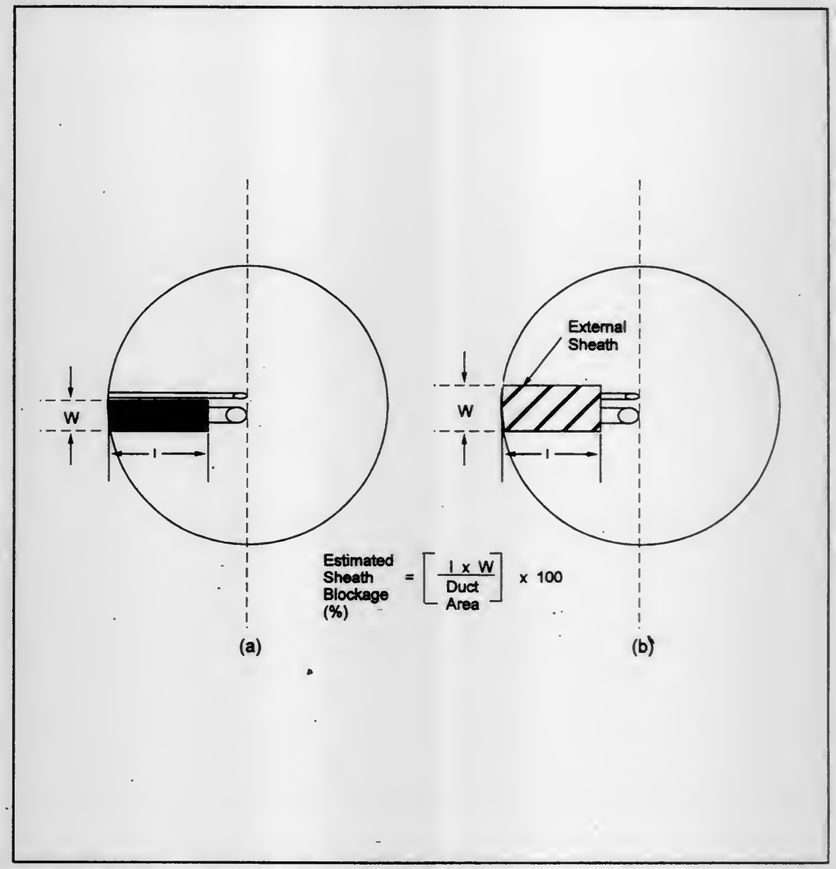



Figure 2-10. Projected-area models for typical pitot tube assemblies.

**Method 2A—Direct Measurement of Gas Volume Through Pipes and Small Ducts**

**Note:** This method does not include all of the specifications (*e.g.*, equipment and supplies) and procedures (*e.g.*, sampling) essential to its performance. Some material is incorporated by reference from other methods in this part. Therefore, to obtain reliable results, persons using this method should have a thorough knowledge of at least the following additional test methods: Method 1, Method 2.

*1.0 Scope and Application*

1.1 This method is applicable for the determination of gas flow rates in pipes and small ducts, either in-line or at exhaust positions, within the temperature range of 0 to 50 °C (32 to 122 °F).

1.2 Data Quality Objectives. Adherence to the requirements of this method will enhance the quality of the data obtained from air pollutant sampling methods.

*2.0 Summary of Method*

2.1 A gas volume meter is used to measure gas volume directly. Temperature and pressure measurements are made to allow correction of the volume to standard conditions.

*3.0 Definitions [Reserved]*

*4.0 Interferences [Reserved]*

*5.0 Safety*

5.1 Disclaimer. This method may involve hazardous materials, operations, and equipment. This test method may

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not address all of the safety problems associated with its use. It is the responsibility of the user of this test method to establish appropriate safety and health practices and determine the applicability of regulatory limitations prior to performing this test method.

*6.0 Equipment and Supplies*

Specifications for the apparatus are given below. Any other apparatus that has been demonstrated (subject to approval of the Administrator) to be capable of meeting the specifications will be considered acceptable.

6.1 Gas Volume Meter. A positive displacement meter, turbine meter, or other direct measuring device capable of measuring volume to within 2 percent. The meter shall be equipped with a temperature sensor (accurate to within ±2 percent of the minimum absolute temperature) and a pressure gauge (accurate to within ±2.5 mm Hg). The manufacturer's recommended capacity of the meter shall be sufficient for the expected maximum and minimum flow rates for the sampling conditions. Temperature, pressure, corrosive characteristics, and pipe size are factors necessary to consider in selecting a suitable gas meter.

6.2 Barometer. A mercury, aneroid, or other barometer capable of measuring atmospheric pressure to within ±2.5 mm Hg.

**Note:** In many cases, the barometric reading may be obtained from a nearby National Weather Service station, in which case the station value (which is the absolute barometric pressure) shall be requested and an adjustment for elevation differences between the weather station and sampling point shall be applied at a rate of minus 2.5 mm (0.1 in.) Hg per 30 m (100 ft) elevation increase or vice versa for elevation decrease.

6.3 Stopwatch. Capable of measurement to within 1 second.

*7.0 Reagents and Standards [Reserved]*

*8.0 Sample Collection and Analysis*

8.1 Installation. As there are numerous types of pipes and small ducts that may be subject to volume measurement, it would be difficult to describe all possible installation schemes. In general, flange fittings should be used for all connections wherever possible. Gaskets or other seal materials should be used to assure leak-tight connections. The volume meter should be located so as to avoid severe vibrations and other factors that may affect the meter calibration.

8.2 Leak Test.

8.2.1 A volume meter installed at a location under positive pressure may be leak-checked at the meter connections by using a liquid leak detector solution containing a surfactant. Apply a small amount of the solution to the connections. If a leak exists, bubbles will form, and the leak must be corrected.

8.2.2 A volume meter installed at a location under negative pressure is very difficult to test for leaks without blocking flow at the inlet of the line and watching for meter movement. If this procedure is not possible, visually check all connections to assure leak-tight seals.

8.3 Volume Measurement.

8.3.1 For sources with continuous, steady emission flow rates, record the initial meter volume reading, meter temperature(s), meter pressure, and start the stopwatch. Throughout the test period, record the meter temperatures and pressures so that average values can be determined. At the end of the test, stop the timer, and record the elapsed time, the final volume reading, meter temperature, and pressure. Record the barometric pressure at the beginning and end of the test run. Record the data on a table similar to that shown in Figure 2A–1.

8.3.2 For sources with noncontinuous, non-steady emission flow rates, use the procedure in Section 8.3.1 with the addition of the following: Record all the meter parameters and the start and stop times corresponding to each process cyclical or noncontinuous event.

*9.0 Quality Control*

| Section | Quality control measure | Effect |
|---|---|---|
| 10.1–10.4 | Sampling equipment calibration | Ensure accurate measurement of stack gas flow rate, sample volume. |

*10.0 Calibration and Standardization*

10.1 Volume Meter.

10.1.1 The volume meter is calibrated against a standard reference meter prior to its initial use in the field. The reference meter is a spirometer or liquid displacement meter with a capacity consistent with that of the test meter.

10.1.2 Alternatively, a calibrated, standard pitot may be used as the reference meter in conjunction with a wind tunnel assembly. Attach the test meter to the wind tunnel so that the total flow passes through the test meter. For each calibration run, conduct a 4-point traverse along one stack diameter at a position at least eight diameters of straight tunnel downstream and two diameters upstream of any bend, inlet, or air mover. Determine the traverse point locations as specified in Method 1. Calculate the reference volume using the velocity values following the procedure in Method 2, the wind tunnel cross-sectional area, and the run time.

10.1.3 Set up the test meter in a configuration similar to that used in the field installation (*i.e.*, in relation to the flow moving device). Connect the temperature sensor and pressure gauge as they are to be used in the field. Connect the reference meter at the inlet of the flow line, if appropriate for the meter, and begin gas flow through the system to condition the meters. During this conditioning operation, check the system for leaks.

10.1.4 The calibration shall be performed during at least three different flow rates. The calibration flow rates shall be about 0.3, 0.6, and 0.9 times the rated maximum flow rate of the test meter.

10.1.5 For each calibration run, the data to be collected include: reference meter initial and final volume readings, the test meter initial and final volume reading, meter average temperature and pressure, barometric pressure, and run time. Repeat the runs at each flow rate at least three times.

10.1.6 Calculate the test meter calibration coefficient as indicated in Section 12.2.

10.1.7 Compare the three $Y_m$ values at each of the flow rates tested and determine the maximum and minimum values. The difference between the maximum and minimum values at each flow rate should be no greater than 0.030. Extra runs may be required to complete this requirement. If this specification cannot be met in six successive runs, the test meter is not suitable for use. In addition, the meter coefficients should be between 0.95 and 1.05. If these specifications are met at all the flow rates, average all the $Y_m$ values from runs meeting the specifications to obtain an average meter calibration coefficient, $Y_m$.

10.1.8 The procedure above shall be performed at least once for each volume meter. Thereafter, an abbreviated calibration check shall be completed following each field test. The calibration of the volume meter shall be checked with the meter pressure set at the average value encountered during the field test. Three calibration checks (runs) shall be performed using this average flow rate value. Calculate the average value of the calibration factor. If the calibration has changed by more than 5 percent, recalibrate the meter over the full range of flow as described above.

**Note:** If the volume meter calibration coefficient values obtained before and after a test series differ by more than 5 percent, the test series shall either be voided, or calculations for the test series shall be performed using whichever meter coefficient value (*i.e.*, before or after) gives the greater value of pollutant emission rate.

10.2 Temperature Sensor. After each test series, check the temperature sensor at ambient temperature. Use an American Society for Testing and Materials (ASTM) mercury-in-glass reference thermometer, or equivalent, as a reference. If the sensor being checked agrees within 2 percent (absolute temperature) of the reference, the temperature data collected in the field shall be considered valid. Otherwise, the test data shall be considered invalid or adjustments of the results shall be made, subject to the approval of the Administrator.

10.3 Barometer. Calibrate the barometer used against a mercury barometer prior to the field test.

*11.0 Analytical Procedure*

Sample collection and analysis are concurrent for this method (see Section 8.0).

*12.0 Data Analysis and Calculations*

Carry out calculations, retaining at least one extra decimal figure beyond that of the acquired data. Round off figures after final calculation.

12.1 Nomenclature.

f = Final reading.

i = Initial reading.

$P_{bar}$ = Barometric pressure, mm Hg.

$P_g$ = Average static pressure in volume meter, mm Hg.

$Q_s$ = Gas flow rate, $m^3$/min, standard conditions.

s = Standard conditions, 20°C and 760 mm Hg.

$T_r$ = Reference meter average temperature, °K (°R).

$T_m$ = Test meter average temperature, °K (°R).

$V_r$ = Reference meter volume reading, $m^3$.

$V_m$ = Test meter volume reading, $m^3$.

$Y_m$ = Test meter calibration coefficient, dimensionless.

$\theta$ = Elapsed test period time, min.

12.2 Test Meter Calibration Coefficient.

$$Y_m = \frac{(V_{r_f} - V_{r_i})P_b T_{r(abs)}}{(V_{m_f} - V_{m_i})(P_b + P_g)T_{m(abs)}} \qquad \text{Eq. 2A-1}$$

12.3 Volume.

$$Y_{m_s} = Y_m\left[\frac{(P_{bar} + P_g)(V_{m_f} - V_{m_i})(293\ ^\circ K)}{(T_m)(760\ mmHg)}\right] \qquad \text{Eq. 2-2}$$

12.4 Gas Flow Rate.

$$Q_s = \frac{V_{m_s}}{\theta} \qquad \text{Eq. 2A-3}$$

*13.0 Method Performance. [Reserved]*

*14.0 Pollution Prevention. [Reserved]*

*15.0 Waste Management. [Reserved]*

*16.0 References*

1. Rom, Jerome J. Maintenance, Calibration, and Operation of Isokinetic Source Sampling Equipment. U.S. Environmental Protection Agency, Research Triangle Park, NC. Publication No. APTD–0576. March 1972.

2. Wortman, Martin, R. Vollaro, and P.R. Westlin. Dry Gas Volume Meter Calibrations. Source Evaluation Society Newsletter. Vol. 2, No. 2. May 1977.

3. Westlin, P.R., and R.T. Shigehara. Procedure for Calibrating and Using Dry Gas Volume Meters as Calibration Standards. Source Evaluation Society Newsletter. Vol. 3, No. 1. February 1978.

*17.0 Tables, Diagrams, Flowcharts, and Validation Data [Reserved]*

## Method 2B—Determination of Exhaust Gas Volume Flow Rate From Gasoline Vapor Incinerators

**Note:** This method does not include all of the specifications (*e.g.*, equipment and supplies) and procedures (*e.g.*, sampling and analytical) essential to its performance. Some material is incorporated by reference from other methods in this part. Therefore, to obtain reliable results, persons using this method should also have a thorough knowledge of at least the following additional test methods: Method 1, Method 2, Method 2A, Method 10, Method 25A, Method 25B.

*1.0 Scope and Application*

1.1 This method is applicable for the determination of exhaust volume flow rate from incinerators that process gasoline vapors consisting primarily of alkanes, alkenes, and/or arenes (aromatic hydrocarbons). It is assumed that the amount of auxiliary fuel is negligible.

1.2 Data Quality Objectives. Adherence to the requirements of this method will enhance the quality of the data obtained from air pollutant sampling methods.

*2.0 Summary of Method*

2.1 Organic carbon concentration and volume flow rate are measured at the incinerator inlet using either Method 25A or Method 25B and Method 2A, respectively. Organic carbon, carbon dioxide ($CO_2$), and carbon monoxide (CO) concentrations are measured at the outlet using either Method 25A or Method 25B and Method 10, respectively. The ratio of total carbon at the incinerator inlet and outlet is multiplied by the inlet volume to determine the exhaust volume flow rate.

*3.0 Definitions*

Same as Section 3.0 of Method 10 and Method 25A.

*4.0 Interferences*

Same as Section 4.0 of Method 10.

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*5.0 Safety*

5.1 This method may involve hazardous materials, operations, and equipment. This test method may not address all of the safety problems associated with its use. It is the responsibility of the user of this test method to establish appropriate safety and health practices and determine the applicability of regulatory limitations prior to performing this test method.

*6.0 Equipment and Supplies*

Same as Section 6.0 of Method 2A, Method 10, and Method 25A and/or Method 25B as applicable, with the addition of the following:

6.1 This analyzer must meet the specifications set forth in Section 6.1.2 of Method 10, except that the span shall be 15 percent $CO_2$ by volume.

*7.0 Reagents and Standards*

Same as Section 7.0 of Method 10 and Method 25A, with the following addition and exceptions:

7.1 Carbon Dioxide Analyzer Calibration. $CO_2$ gases meeting the specifications set forth in Section 7 of Method 6C are required.

7.2 Hydrocarbon Analyzer Calibration. Methane shall not be used as a calibration gas when performing this method.

7.3 Fuel Gas. If Method 25B is used to measure the organic carbon concentrations at both the inlet and exhaust, no fuel gas is required.

*8.0 Sample Collection and Analysis*

8.1 Pre-test Procedures. Perform all pre-test procedures (*e.g.*, system performance checks, leak checks) necessary to determine gas volume flow rate and organic carbon concentration in the vapor line to the incinerator inlet and to determine organic carbon, carbon monoxide, and carbon dioxide concentrations at the incinerator exhaust, as outlined in Method 2A, Method 10, and Method 25A and/or Method 25B as applicable.

8.2 Sampling. At the beginning of the test period, record the initial parameters for the inlet volume meter according to the procedures in Method 2A and mark all of the recorder strip charts to indicate the start of the test. Conduct sampling and analysis as outlined in Method 2A, Method 10, and Method 25A and/or Method 25B as applicable. Continue recording inlet organic and exhaust $CO_2$, CO, and organic concentrations throughout the test. During periods of process interruption and halting of gas flow, stop the timer and mark the recorder strip charts so that data from this interruption are not included in the calculations. At the end of the test period, record the final parameters for the inlet volume meter and mark the end on all of the recorder strip charts.

8.3 Post-test Procedures. Perform all post-test procedures (*e.g.*, drift tests, leak checks), as outlined in Method 2A, Method 10, and Method 25A and/or Method 25B as applicable.

*9.0 Quality Control*

Same as Section 9.0 of Method 2A, Method 10, and Method 25A.

*10.0 Calibration and Standardization*

Same as Section 10.0 of Method 2A, Method 10, and Method 25A.

**Note:** If a manifold system is used for the exhaust analyzers, all the analyzers and sample pumps must be operating when the analyzer calibrations are performed.

10.1 If an analyzer output does not meet the specifications of the method, invalidate the test data for the period. Alternatively, calculate the exhaust volume results using initial calibration data and using final calibration data and report both resulting volumes. Then, for emissions calculations, use the volume measurement resulting in the greatest emission rate or concentration.

*11.0 Analytical Procedure*

Sample collection and analysis are concurrent for this method (see Section 8.0).

*12.0 Data Analysis and Calculations*

Carry out the calculations, retaining at least one extra decimal figure beyond that of the acquired data. Round off figures after the final calculation.

12.1 Nomenclature.

$Co_e$ = Mean carbon monoxide concentration in system exhaust, ppm.

$(CO_2)_2$ = Ambient carbon dioxide concentration, ppm (if not measured during the test period, may be assumed to equal 300 ppm).

$(CO_2)_e$ = Mean carbon dioxide concentration in system exhaust, ppm.

$HC_e$ = Mean organic concentration in system exhaust as defined by the calibration gas, ppm.

$Hc_i$ = Mean organic concentration in system inlet as defined by the calibration gas, ppm.

$K_e$ = Hydrocarbon calibration gas factor for the exhaust hydrocarbon analyzer, unitless [equal to the number of carbon atoms per molecule of the gas used to calibrate the analyzer (2 for ethane, 3 for propane, etc.)].

$K_i$ = Hydrocarbon calibration gas factor for the inlet hydrocarbon analyzer, unitless.

$V_{es}$ = Exhaust gas volume, $m^3$.

$V_{is}$ = Inlet gas volume, $m^3$.

$Q_{es}$ = Exhaust gas volume flow rate, $m^3$/min.

$Q_{is}$ = Inlet gas volume flow rate, $m^3$/min.

$\theta$ = Sample run time, min.

s = Standard conditions: 20 °C, 760 mm Hg.

12.2 Concentrations. Determine mean concentrations of inlet organics, outlet $CO_2$, outlet CO, and outlet organics according to the procedures in the respective methods and the analyzers' calibration curves, and for the time intervals specified in the applicable regulations.

12.3 Exhaust Gas Volume. Calculate the exhaust gas volume as follows:

$$V_{es} = V_{is}\frac{K_i(HC_i)}{K_e(HC_e)+\left[(CO_2)_e-(CO_2)_a\right]+CO_e} \qquad \text{Eq. 2B-1}$$



12.4 Exhaust Gas Volume Flow Rate. Calculate the exhaust gas volume flow rate as follows:

$$Q_{es} = \frac{V_{es}}{\Theta} \qquad \text{Eq. 2B-2}$$

*13.0 Method Performance [Reserved]*

*14.0 Pollution Prevention [Reserved]*

*15.0 Waste Management [Reserved]*

*16.0 References*

Same as Section 16.0 of Method 2A, Method 10, and Method 25A.

*17.0 Tables, Diagrams, Flowcharts, and Validation Data [Reserved]*

**Method 2C—Determination of Gas Velocity and Volumetric Flow Rate in Small Stacks or Ducts (Standard Pitot Tube)**

**Note:** This method does not include all of the specifications (e.g., equipment and supplies) and procedures (e.g., sampling) essential to its performance. Some material is incorporated by reference from other methods in this part. Therefore, to obtain reliable results, persons using this method should also have a thorough knowledge of at least the following additional test methods: Method 1, Method 2.

*1.0 Scope and Application*

1.1 This method is applicable for the determination of average velocity and volumetric flow rate of gas streams in small stacks or ducts. Limits on the applicability of this method are identical to those set forth in Method 2, Section 1.0, except that this method is limited to stationary source stacks or ducts less than about 0.30 meter (12 in.) in diameter, or 0.071 $m^2$ (113 $in.^2$) in cross-sectional area, but equal to or greater than about 0.10 meter (4 in.) in diameter, or 0.0081 $m^2$ (12.57 $in.^2$) in cross-sectional area.

1.2 Data Quality Objectives. Adherence to the requirements of this method will enhance the quality of the data obtained from air pollutant sampling methods.

*2.0 Summary of Method*

2.1 The average gas velocity in a stack or duct is determined from the gas density and from measurement of velocity heads with a standard pitot tube.

*3.0 Definitions [Reserved]*

*4.0 Interferences [Reserved]*

*5.0 Safety*

5.1 This method may involve hazardous materials, operations, and equipment. This test method may not address all of the safety problems associated with its use. It is the responsibility of the user of this test method to establish appropriate safety and health practices and determine the applicability of regulatory limitations prior to performing this test method.

*6.0 Equipment and Supplies*

Same as Method 2, Section 6.0, with the exception of the following:

6.1 Standard Pitot Tube (instead of Type S). A standard pitot tube which meets the specifications of Section 6.7 of Method 2. Use a coefficient of 0.99 unless it is calibrated against another standard pitot tube with a NIST-traceable coefficient (see Section 10.2 of Method 2).

6.2 Alternative Pitot Tube. A modified hemispherical-nosed pitot tube (see Figure 2C–1), which features a shortened stem and enlarged impact and static pressure holes. Use a coefficient of 0.99 unless it is calibrated as mentioned in Section 6.1 above. This pitot tube is useful in particulate liquid droplet-laden gas streams when a "back purge" is ineffective.

*7.0 Reagents and Standards [Reserved]*

*8.0 Sample Collection and Analysis*

8.1 Follow the general procedures in Section 8.0 of Method 2, except conduct the measurements at the traverse points specified in Method 1A. The static and impact pressure holes of standard pitot tubes are susceptible to plugging in particulate-laden gas streams. Therefore, adequate proof that the openings of the pitot tube have not plugged during the traverse period must be furnished; this can be done by taking the velocity head ($\Delta p$) reading at the final traverse point, cleaning out the impact and static holes of the standard pitot tube by "back-purging" with pressurized air, and then taking another $\Delta p$ reading. If the $\Delta p$ readings made before and after the air purge are the same (within ±5 percent) the traverse is acceptable. Otherwise, reject the run. Note that if the $\Delta p$ at the final traverse point is unsuitably low, another point may be selected. If "back purging" at regular intervals is part of the procedure, then take comparative $\Delta p$ readings, as above, for the last two back purges at which suitably high $\Delta p$ readings are observed.

*9.0 Quality Control*

| Section | Quality control measure | Effect |
|---|---|---|
| 10.0 | Sampling equipment calibration | Ensure accurate measurement of stack gas velocity head. |

*10.0 Calibration and Standardization*

Same as Method 2, Sections 10.2 through 10.4.

*11.0 Analytical Procedure*

Sample collection and analysis are concurrent for this method (see Section 8.0).

*12.0 Calculations and Data Analysis*

Same as Method 2, Section 12.0.

*13.0 Method Performance [Reserved]*

*14.0 Pollution Prevention [Reserved]*

*15.0 Waste Management [Reserved]*

*16.0 References*

Same as Method 2, Section 16.0.

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*17.0 Tables, Diagrams, Flowcharts, and Validation Data*

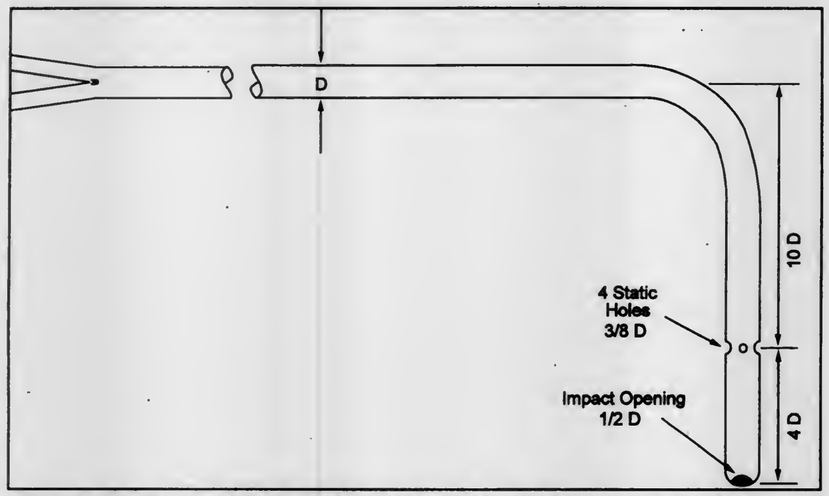



**Figure 2C-1. Modified Hemispherical-Nosed Pitot Tube.**

**Method 2D—Measurement of Gas Volume Flow Rates in Small Pipes and Ducts**

**Note:** This method does not include all of the specifications (*e.g.*, equipment and supplies) and procedures (e.g., sampling) essential to its performance. Some material is incorporated by reference from other methods in this part. Therefore, to obtain reliable results, persons using this method should also have a thorough knowledge of at least the following additional test methods: Method 1, Method 2, and Method 2A.

*1.0 Scope and Application*

1.1 This method is applicable for the determination of the volumetric flow rates of gas streams in small pipes and ducts. It can be applied to intermittent or variable gas flows only with particular caution.

1.2 Data Quality Objectives. Adherence to the requirements of this method will enhance the quality of the data obtained from air pollutant sampling methods.

*2.0 Summary of Method*

2.1 All the gas flow in the pipe or duct is directed through a rotameter, orifice plate or similar device to measure flow rate or pressure drop. The device has been previously calibrated in a manner that insures its proper calibration for the gas being measured. Absolute temperature and pressure measurements are made to allow correction of volumetric flow rates to standard conditions.

*3.0 Definitions. [Reserved]*

*4.0 Interferences. [Reserved]*

*5.0 Safety*

5.1 This method may involve hazardous materials, operations, and equipment. This test method may not address all of the safety problems associated with its use. It is the responsibility of the user of this test method to establish appropriate safety and health practices and determine the applicability of regulatory limitations prior to performing this test method.

*6.0 Equipment and Supplies*

Specifications for the apparatus are given below. Any other apparatus that has been demonstrated (subject to approval of the Administrator) to be capable of meeting the specifications will be considered acceptable.

6.1 Gas Metering Rate or Flow Element Device. A rotameter, orifice plate, or other volume rate or pressure drop measuring device capable of measuring the stack flow rate to within ±5 percent. The metering device shall be equipped with a temperature gauge accurate to within ±2 percent of the minimum absolute stack temperature and a pressure gauge (accurate to within ±5 mm Hg). The capacity of the metering device shall be sufficient for the expected maximum and minimum flow rates at the stack gas conditions. The magnitude and variability of stack gas flow rate, molecular weight, temperature, pressure, dewpoint, and corrosive characteristics, and pipe or duct size are factors to consider in choosing a suitable metering device.

6.2 Barometer. Same as Method 2, Section 6.5.

6.3 Stopwatch. Capable of measurement to within 1 second.

*7.0 Reagents and Standards. [Reserved]*

*8.0 Sample Collection and Analysis*

8.1 Installation and Leak Check. Same as Method 2A, Sections 8.1 and 8.2, respectively.

8.2 Volume Rate Measurement.

8.2.1 Continuous, Steady Flow. At least once an hour, record the metering device flow rate or pressure drop reading, and the metering device temperature and pressure. Make a minimum of 12 equally-spaced readings of each parameter during the test period. Record the barometric pressure at the beginning and end of the test period. Record the data on a table similar to that shown in Figure 2D–1.

8.2.2 Noncontinuous and Nonsteady Flow. Use volume rate devices with particular caution. Calibration will be affected by variation in stack gas temperature, pressure and molecular weight. Use the procedure in Section 8.2.1 with the addition of the following: Record all the metering device parameters on a time interval frequency sufficient to adequately profile each process cyclical or noncontinuous event. A multichannel continuous recorder may be used.



*9.0 Quality Control*

| Section | Quality control measure | Effect |
|---|---|---|
| 10.0 | Sampling equipment calibration | Ensure accurate measurement of stack gas flow rate or sample volume. |

*10.0 Calibration and Standardization*

Same as Method 2A, Section 10.0, with the following exception:

10.1 Gas Metering Device. Same as Method 2A, Section 10.1, except calibrate the metering device with the principle stack gas to be measured (examples: air, nitrogen) against a standard reference meter. A calibrated dry gas meter is an acceptable reference meter. Ideally, calibrate the metering device in the field with the actual gas to be metered. For metering devices that have a volume rate readout, calculate the test metering device calibration coefficient, $Y_m$, for each run shown in Equation 2D–2 Section 12.3.

10.2 For metering devices that do not have a volume rate readout, refer to the manufacturer's instructions to calculate the $V_{m2}$ corresponding to each $V_r$.

10.3 Temperature Gauge. Use the procedure and specifications in Method 2A, Section 10.2. Perform the calibration at a temperature that approximates field test conditions.

10.4 Barometer. Calibrate the barometer to be used in the field test with a mercury barometer prior to the field test.

*11.0 Analytical Procedure.*

Sample collection and analysis are concurrent for this method (see Section 8.0).

*12.0 Data Analysis and Calculations*

12.1 Nomenclature.

$P_{bar}$ = Barometric pressure, mm Hg (in. Hg).
$P_m$ = Test meter average static pressure, mm Hg (in. Hg).
$Q_r$ = Reference meter volume flow rate reading, $m^3$/min ($ft^3$/min).
$Q_m$ = Test meter volume flow rate reading, $m^3$/min ($ft^3$/min).
$T_r$ = Absolute reference meter average temperature, °K (°R).
$T_m$ = Absolute test meter average temperature, °K (°R).
$K_1$ = 0.3855 °K/mm Hg for metric units, = 17.65 °R/in. Hg for English units.

12.2 Gas Flow Rate.

$$Q_s = K_1 Y_m Q_m \frac{(P_{bar} + P_m)}{T_m} \qquad \text{Eq. 2D-1}$$

12.3 Test Meter Device Calibration Coefficient. Calculation for testing metering device calibration coefficient, $Y_m$.

$$Y_m = \frac{Q_r T_r P_{bar}}{Q_m T_m (P_{bar} + P_m)} \qquad \text{Eq. 2D-2}$$

*13.0 Method Performance [Reserved]*

*14.0 Pollution Prevention [Reserved]*

*15.0 Waste Management [Reserved]*

*16.0 References*

1. Spink, L.K. Principles and Practice of Flowmeter Engineering. The Foxboro Company. Foxboro, MA. 1967.

2. Benedict, R.P. Fundamentals of Temperature, Pressure, and Flow Measurements. John Wiley & Sons, Inc. New York, NY. 1969.

3. Orifice Metering of Natural Gas. American Gas Association. Arlington, VA. Report No. 3. March 1978. 88 pp.

*17.0 Tables, Diagrams, Flowcharts, and Validation Data*

Plant _____
Date _____
Run No. _____
Sample location _____
Barometric pressure (mm Hg):
Start _____
Finish _____
Operators _____
Metering device No. _____
Calibration coefficient _____
Calibration gas _____
Date to recalibrate _____

| Time | Flow rate reading | Static Pressure [mm Hg (in. Hg)] | Temperature | |
|---|---|---|---|---|
| | | | °C (°F) | °K (°R) |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| Average | | | | |

Figure 2D–1. Volume Flow Rate Measurement Data

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**Method 2E—Determination of Landfill Gas Production Flow Rate**

**Note:** This method does not include all of the specifications (*e.g.*, equipment and supplies) and procedures (*e.g.*, sampling and analytical) essential to its performance. Some material is incorporated by reference from other methods in this part. Therefore, to obtain reliable results, persons using this method should also have a thorough knowledge of at least the following additional test methods: Methods 2 and 3C.

*1.0 Scope and Application*

1.1 Applicability. This method applies to the measurement of landfill gas (LFG) production flow rate from municipal solid waste landfills and is used to calculate the flow rate of nonmethane organic compounds (NMOC) from landfills.

1.2 Data Quality Objectives. Adherence to the requirements of this method will enhance the quality of the data obtained from air pollutant sampling methods.

*2.0 Summary of Method*

2.1 Extraction wells are installed either in a cluster of three or at five dispersed locations in the landfill. A blower is used to extract LFG from the landfill. LFG composition, landfill pressures, and orifice pressure differentials from the wells are measured and the landfill gas production flow rate is calculated.

*3.0 Definitions [Reserved]*

*4.0 Interferences [Reserved]*

*5.0 Safety*

5.1 Since this method is complex, only experienced personnel should perform the test. Landfill gas contains methane, therefore explosive mixtures may exist at or near the landfill. It is advisable to take appropriate safety precautions when testing landfills, such as refraining from smoking and installing explosion-proof equipment.

*6.0 Equipment and Supplies*

6.1 Well Drilling Rig. Capable of boring a 0.61 m (24 in.) diameter hole into the landfill to a minimum of 75 percent of the landfill depth. The depth of the well shall not extend to the bottom of the landfill or the liquid level.

6.2 Gravel. No fines. Gravel diameter should be appreciably larger than perforations stated in Sections 6.10 and 8.2.

6.3 Bentonite.

6.4 Backfill Material. Clay, soil, and sandy loam have been found to be acceptable.

6.5 Extraction Well Pipe. Minimum diameter of 3 in., constructed of polyvinyl chloride (PVC), high density polyethylene (HDPE), fiberglass, stainless steel, or other suitable nonporous material capable of transporting landfill gas.

6.6 Above Ground Well Assembly. Valve capable of adjusting gas flow, such as a gate, ball, or butterfly valve; sampling ports at the well head and outlet; and a flow measuring device, such as an in-line orifice meter or pitot tube. A schematic of the aboveground well head assembly is shown in Figure 2E–1.

6.7 Cap. Constructed of PVC or HDPE.

6.8 Header Piping. Constructed of PVC or HDPE.

6.9 Auger. Capable of boring a 0.15- to 0.23-m (6-to 9-in.) diameter hole to a depth equal to the top of the perforated section of the extraction well, for pressure probe installation.

6.10 Pressure Probe. Constructed of PVC or stainless steel (316), 0.025-m (1-in.). Schedule 40 pipe. Perforate the bottom two-thirds. A minimum requirement for perforations is slots or holes with an open area equivalent to four 0.006-m (¼-in.) diameter holes spaced 90° apart every 0.15 m (6 in.).

6.11 Blower and Flare Assembly. Explosion-proof blower, capable of extracting LFG at a flow rate of 8.5 $m^3$/min (300 $ft^3$/min), a water knockout, and flare or incinerator.

6.12 Standard Pitot Tube and Differential Pressure Gauge for Flow Rate Calibration with Standard Pitot. Same as Method 2, Sections 6.7 and 6.8.

6.13 Orifice Meter. Orifice plate, pressure tabs, and pressure measuring device to measure the LFG flow rate.

6.14 Barometer. Same as Method 4, Section 6.1.5.

6.15 Differential Pressure Gauge. Water-filled U-tube manometer or equivalent, capable of measuring within 0.02 mm Hg (0.01 in. $H_2O$), for measuring the pressure of the pressure probes.

*7.0 Reagents and Standards. Not Applicable*

*8.0 Sample Collection, Preservation, Storage, and Transport*

8.1 Placement of Extraction Wells. The landfill owner or operator may install a single cluster of three extraction wells in a test area or space five equal-volume wells over the landfill. The cluster wells are recommended but may be used only if the composition, age of the refuse, and the landfill depth of the test area can be determined.

8.1.1 Cluster Wells. Consult landfill site records for the age of the refuse, depth, and composition of various sections of the landfill. Select an area near the perimeter of the landfill with a depth equal to or greater than the average depth of the landfill and with the average age of the refuse between 2 and 10 years old. Avoid areas known to contain nondecomposable materials, such as concrete and asbestos. Locate the cluster wells as shown in Figure 2E–2.

8.1.1.1 The age of the refuse in a test area will not be uniform, so calculate a weighted average age of the refuse as shown in Section 12.2.

8.1.2 Equal Volume Wells. Divide the sections of the landfill that are at least 2 years old into five areas representing equal volumes. Locate an extraction well near the center of each area.

8.2 Installation of Extraction Wells. Use a well drilling rig to dig a 0.6 m (24 in.) diameter hole in the landfill to a minimum of 75 percent of the landfill depth, not to extend to the bottom of the landfill or the liquid level. Perforate the bottom two thirds of the extraction well pipe. A minimum requirement for perforations is holes or slots with an open area equivalent to 0.01-m (0.5-in.) diameter holes spaced 90° apart every 0.1 to 0.2 m (4 to 8 in.). Place the extraction well in the center of the hole and backfill with gravel to a level 0.30 m (1 ft) above the perforated section. Add a layer of backfill material 1.2 m (4 ft) thick. Add a layer of bentonite 0.9 m (3 ft) thick, and backfill the remainder of the hole with cover material or material equal in permeability to the existing cover material. The specifications for extraction well installation are shown in Figure 2E–3.

8.3 Pressure Probes. Shallow pressure probes are used in the check for infiltration of air into the landfill, and deep pressure probes are use to determine the radius of influence. Locate pressure probes along three radial arms approximately 120° apart at distances of 3, 15, 30, and 45 m (10, 50, 100, and 150 ft) from the extraction well. The tester has the option of locating additional pressure probes at distances every 15 m (50 feet) beyond 45 m (150 ft). Example placements of probes are shown in Figure 2E–4. The 15-, 30-, and 45-m, (50-, 100-, and 150-ft) probes from each well, and any additional probes located along the three radial arms (deep probes), shall extend to a depth equal to the top of the perforated section of the extraction wells. All other probes (shallow probes) shall extend to a depth equal to half the depth of the deep probes.



8.3.1 Use an auger to dig a hole, 0.15- to 0.23-m (6-to 9-in.) in diameter, for each pressure probe. Perforate the bottom two thirds of the pressure probe. A minimum requirement for perforations is holes or slots with an open area equivalent to four 0.006-m (0.25-in.) diameter holes spaced 90° apart every 0.15 m (6 in.). Place the pressure probe in the center of the hole and backfill with gravel to a level 0.30 m (1 ft) above the perforated section. Add a layer of backfill material at least 1.2 m (4 ft) thick. Add a layer of bentonite at least 0.3 m (1 ft) thick, and backfill the remainder of the hole with cover material or material equal in permeability to the existing cover material. The specifications for pressure probe installation are shown in Figure 2E–5.

8.4 LFG Flow Rate Measurement. Place the flow measurement device, such as an orifice meter, as shown in Figure 2E–1. Attach the wells to the blower and flare assembly. The individual wells may be ducted to a common header so that a single blower, flare assembly, and flow meter may be used. Use the procedures in Section 10.1 to calibrate the flow meter.

8.5 Leak-Check. A leak-check of the above ground system is required for accurate flow rate measurements and for safety. Sample LFG at the well head sample port and at the outlet sample port. Use Method 3C to determine nitrogen ($N_2$) concentrations. Determine the difference between the well head and outlet $N_2$ concentrations using the formula in Section 12.3. The system passes the leak-check if the difference is less than 10,000 ppmv.

8.6 Static Testing. Close the control valves on the well heads during static testing. Measure the gauge pressure ($P_g$) at each deep pressure probe and the barometric pressure ($P_{bar}$) every 8 hours (hr) for 3 days. Convert the gauge pressure of each deep pressure probe to absolute pressure using the equation in Section 12.4. Record as $P_i$ (initial absolute pressure).

8.6.1 For each probe, average all of the 8-hr deep pressure probe readings ($P_i$) and record as $P_{ia}$ (average absolute pressure). $P_{ia}$ is used in Section 8.7.5 to determine the maximum radius of influence.

8.6.2 Measure the static flow rate of each well once during static testing.

8.7 Short-Term Testing. The purpose of short-term testing is to determine the maximum vacuum that can be applied to the wells without infiltration of ambient air into the landfill. The short-term testing is performed on one well at a time. Burn all LFG with a flare or incinerator.

8.7.1 Use the blower to extract LFG from a single well at a rate at least twice the static flow rate of the respective well measured in Section 8.6.2. If using a single blower and flare assembly and a common header system, close the control valve on the wells not being measured. Allow 24 hr for the system to stabilize at this flow rate.

8.7.2 Test for infiltration of air into the landfill by measuring the gauge pressures of the shallow pressure probes and using Method 3C to determine the LFG $N_2$ concentration. If the LFG $N_2$ concentration is less than 5 percent and all of the shallow probes have a positive gauge pressure, increase the blower vacuum by 3.7 mm Hg (2 in. $H_2O$), wait 24 hr, and repeat the tests for infiltration. Continue the above steps of increasing blower vacuum by 3.7 mm Hg (2 in. $H_2O$), waiting 24 hr, and testing for infiltration until the concentration of $N_2$ exceeds 5 percent or any of the shallow probes have a negative gauge pressure. When this occurs,reduce the blower vacuum to the maximum setting at which the $N_2$ concentration was less than 5 percent and the gauge pressures of the shallow probes are positive.

8.7.3 At this blower vacuum, measure atmospheric pressure ($P_{bar}$) every 8 hr for 24 hr, and record the LFG flow rate ($Q_s$) and the probe gauge pressures ($P_f$) for all of the probes. Convert the gauge pressures of the deep probes to absolute pressures for each 8-hr reading at $Q_s$ as shown in Section 12.4.

8.7.4 For each probe, average the 8-hr deep pressure probe absolute pressure readings and record as $P_{fa}$ (the final average absolute pressure).

8.7.5 For each probe, compare the initial average pressure ($P_{ia}$) from Section 8.6.1 to the final average pressure ($P_{fa}$). Determine the furthermost point from the well head along each radial arm where $P_{fa} \leq P_{ia}$. This distance is the maximum radius of influence ($R_m$), which is the distance from the well affected by the vacuum. Average these values to determine the average maximum radius of influence ($R_{ma}$).

8.7.6 Calculate the depth ($D_{st}$) affected by the extraction well during the short term test as shown in Section 12.6. If the computed value of $D_{st}$ exceeds the depth of the landfill, set $D_{st}$ equal to the landfill depth.

8.7.7 Calculate the void volume (V) for the extraction well as shown in Section 12.7.

8.7.8 Repeat the procedures in Section 8.7 for each well.

8.8 Calculate the total void volume of the test wells ($V_v$) by summing the void volumes (V) of each well.

8.9 Long-Term Testing. The purpose of long-term testing is to extract two void volumes of LFG from the extraction wells. Use the blower to extract LFG from the wells. If a single Blower and flare assembly and common header system are used, open all control valves and set the blower vacuum equal to the highest stabilized blower vacuum demonstrated by any individual well in Section 8.7. Every 8 hr, sample the LFG from the well head sample port, measure the gauge pressures of the shallow pressure probes, the blower vacuum, the LFG flow rate, and use the criteria for infiltration in Section 8.7.2 and Method 3C to test for infiltration. If infiltration is detected, do not reduce the blower vacuum, instead reduce the LFG flow rate from the well by adjusting the control valve on the well head. Adjust each affected well individually. Continue until the equivalent of two total void volumes ($V_v$) have been extracted, or until $V_t = 2V_v$.

8.9.1 Calculate $V_t$, the total volume of LFG extracted from the wells, as shown in Section 12.8.

8.9.2 Record the final stabilized flow rate as $Q_f$ and the gauge pressure for each deep probe. If, during the long term testing, the flow rate does not stabilize, calculate $Q_f$ by averaging the last 10 recorded flow rates.

8.9.3 For each deep probe, convert each gauge pressure to absolute pressure as in Section 12.4. Average these values and record as $P_{sa}$. For each probe, compare $P_{ia}$ to $P_{sa}$. Determine the furthermost point from the well head along each radial arm where $P_{sa} \leq P_{ia}$. This distance is the stabilized radius of influence. Average these values to determine the average stabilized radius of influence ($R_{sa}$).

8.10 Determine the NMOC mass emission rate using the procedures in Section 12.9 through 12.15.

*9.0 Quality Control*

9.1 Miscellaneous Quality Control Measures.

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| Section | Quality control measure | Effect |
|---|---|---|
| 10.1 | LFG flow rate meter calibration | Ensures accurate measurement of LFG flow rate and sample volume |

*10.0 Calibration and Standardization*

10.1 LFG Flow Rate Meter (Orifice) Calibration Procedure. Locate a standard pitot tube in line with an orifice meter. Use the procedures in Section 8, 12.5, 12.6, and 12.7 of Method 2 to determine the average dry gas volumetric flow rate for at least five flow rates that bracket the expected LFG flow rates, except in Section 8.1, use a standard pitot tube rather than a Type S pitot tube. Method 3C may be used to determine the dry molecular weight. It may be necessary to calibrate more than one orifice meter in order to bracket the LFG flow rates. Construct a calibration curve by plotting the pressure drops across the orifice meter for each flow rate versus the average dry gas volumetric flow rate in $m^3$/min of the gas.

*11.0 Procedures [Reserved]*

*12.0 Data Analysis and Calculations*

12.1 Nomenclature.

A = Age of landfill, yr.
$A_{avg}$ = Average age of the refuse tested, yr.
$A_i$ = Age of refuse in the ith fraction, yr.
$A_r$ = Acceptance rate, Mg/yr.
$C_{NMOC}$ = NMOC concentration, ppmv as hexane ($C_{NMOC} = C_t/6$).
$C_o$ = Concentration of $N_2$ at the outlet, ppmv.
$C_t$ = NMOC concentration, ppmv (carbon equivalent) from Method 25C.
$C_w$ = Concentration of $N_2$ at the wellhead, ppmv.
D = Depth affected by the test wells, m.
$D_{st}$ = Depth affected by the test wells in the short-term test, m.
e = Base number for natural logarithms (2.718).
f = Fraction of decomposable refuse in the landfill.
$f_i$ = Fraction of the refuse in the ith section.
k = Landfill gas generation constant, $yr^{-1}$.
$L_o$ = Methane generation potential, $m^3$/Mg.
$L_o'$ = Revised methane generation potential to account for the amount of nondecomposable material in the landfill, $m^3$/Mg.
$M_i$ = Mass of refuse in the ith section, Mg.
$M_r$ = Mass of decomposable refuse affected by the test well, Mg.
$P_{bar}$ = Atmospheric pressure, mm Hg.
$P_f$ = Final absolute pressure of the deep pressure probes during short-term testing, mm Hg.
$P_{fa}$ = Average final absolute pressure of the deep pressure probes during short-term testing, mm Hg.
$P_{gf}$ = final gauge pressure of the deep pressure probes, mm Hg.
$P_{gi}$ = Initial gauge pressure of the deep pressure probes, mm Hg.
$P_i$ = Initial absolute pressure of the deep pressure probes during static testing, mm Hg.
$P_{ia}$ = Average initial absolute pressure of the deep pressure probes during static testing, mm Hg.
$P_s$ = Final absolute pressure of the deep pressure probes during long-term testing, mm Hg.
$P_{sa}$ = Average final absolute pressure of the deep pressure probes during long-term testing, mm Hg.
$Q_f$ = Final stabilized flow rate, $m^3$/min.
$Q_i$ = LFG flow rate measured at orifice meter during the ith interval, $m^3$/min.
$Q_s$ = Maximum LFG flow rate at each well determined by short-term test, $m^3$/min.
$Q_t$ = NMOC mass emission rate, $m^3$/min.
$R_m$ = Maximum radius of influence, m.
$R_{ma}$ = Average maximum radius of influence, m.
$R_s$ = Stabilized radius of influence for an individual well, m.
$R_{sa}$ = Average stabilized radius of influence, m.
$t_i$ = Age of section i, yr.
$t_t$ = Total time of long-term testing, yr.
$t_{vi}$ = Time of the ith interval (usually 8), hr.
V = Void volume of test well, $m^3$.
$V_r$ = Volume of refuse affected by the test well, $m^3$.
$V_t$ = Total volume of refuse affected by the long-term testing, $m^3$.
$V_v$ = Total void volume affected by test wells, $m^3$.
WD = Well depth, m.
$\rho$ = Refuse density, Mg/$m^3$ (Assume 0.64 Mg/$m^3$ if data are unavailable).

12.2 Use the following equation to calculate a weighted average age of landfill refuse.

$$A_{avg} = \sum_{i=1}^{n} f_i A_i \qquad \text{Eq. 2E-1}$$

12.3 Use the following equation to determine the difference in $N_2$ concentrations (ppmv) at the well head and outlet location.

$$\text{Difference} = C_o - C_w \qquad \text{Eq. 2E-2}$$

12.4 Use the following equation to convert the gauge pressure ($P_g$) of each initial deep pressure probe to absolute pressure ($P_i$).

$$P_i = P_{bar} + P_{gi} \qquad \text{Eq. 2E-3}$$

12.5 Use the following equation to convert the gauge pressures of the deep probes to absolute pressures for each 8-hr reading at $Q_s$.

$$P_f = P_{bar} + P_{gf} \qquad \text{Eq. 2E-4}$$

12.6 Use the following equation to calculate the depth ($D_{st}$) affected by the extraction well during the short-term test.

$$D_{st} = WD + R_{ma} \qquad \text{Eq. 2E-5}$$

12.7 Use the following equation to calculate the void volume for the extraction well (V).

$$V = 0.40\,\Pi\,R_{ma}{}^2 D_{st} \qquad \text{Eq. 2E-6}$$

12.8 Use the following equation to calculate $V_t$, the total volume of LFG extracted from the wells.

$$V_t = \sum_{i=1}^{n} 60\,Q_i t_{vi} \qquad \text{Eq. 2E-7}$$

12.9 Use the following equation to calculate the depth affected by the test well. If using cluster wells, use the average depth of the wells for WD. If the value of D is greater than the depth of the landfill, set D equal to the landfill depth.

$$D = WD + R_{sa} \qquad \text{Eq. 2E-8}$$

12.10 Use the following equation to calculate the volume of refuse affected by the test well.

$$V_r = R_{sa}{}^2 \prod D \qquad \text{Eq. 2E-9}$$

12.11 Use the following equation to calculate the mass affected by the test well.

$$M_r = V_r \rho \qquad \text{Eq. 2E-10}$$

12.12 Modify $L_o$ to account for the nondecomposable refuse in the landfill.

$$L_o' = f L_o \qquad \text{Eq. 2E-11}$$

12.13 In the following equation, solve for k (landfill gas generation constant) by iteration. A suggested procedure is to select a value for k, calculate the left side of the equation, and if not equal to zero, select another value for k. Continue this process until the left hand side of the equation equals zero, ±0.001.

$$k_e{}^{-k}A_{avg} - \frac{Q_f}{2L_o'M_r} = 0 \qquad \text{Eq. 2E-12}$$

12.14 Use the following equation to determine landfill NMOC mass emission rate if the yearly acceptance rate of refuse has been consistent (10 percent) over the life of the landfill.

$$Q_t = 2L_o'A_r\left(1-e^{-kA}\right)C_{NMOC}\left(3.595\times10^{-9}\right) \qquad \text{Eq. 2E-13}$$

12.15 Use the following equation to determine landfill NMOC mass emission rate if the acceptance rate has not been consistent over the life of the landfill.

$$Q_t = 2k\,L_o'C_{NMOC}\left(3.595\times10^{-9}\right)\sum_{i=1}^{n} M_i e^{-kt_i} \qquad \text{Eq. 2E-14}$$

*13.0 Method Performance. [Reserved]*

*14.0 Pollution Prevention. [Reserved]*

*15.0 Waste Management. [Reserved]*

*16.0 References*

1. Same as Method 2, Appendix A, 40 CFR Part 60.

2. Emcon Associates, Methane Generation and Recovery from Landfills. Ann Arbor Science, 1982.

3. The Johns Hopkins University, Brown Station Road Landfill Gas Resource Assessment, Volume 1: Field Testing and Gas Recovery Projections. Laurel, Maryland: October 1982.

4. Mandeville and Associates, Procedure Manual for Landfill Gases Emission Testing.

5. Letter and attachments from Briggum, S., Waste Management of North America, to Thorneloe, S., EPA. Response to July 28, 1988 request for additional information. August 18, 1988.

6. Letter and attachments from Briggum, S., Waste Management of North America, to Wyatt, S., EPA. Response to December 7, 1988 request for additional information. January 16, 1989.

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*17.0 Tables, Diagrams, Flowcharts, and Validation Data*

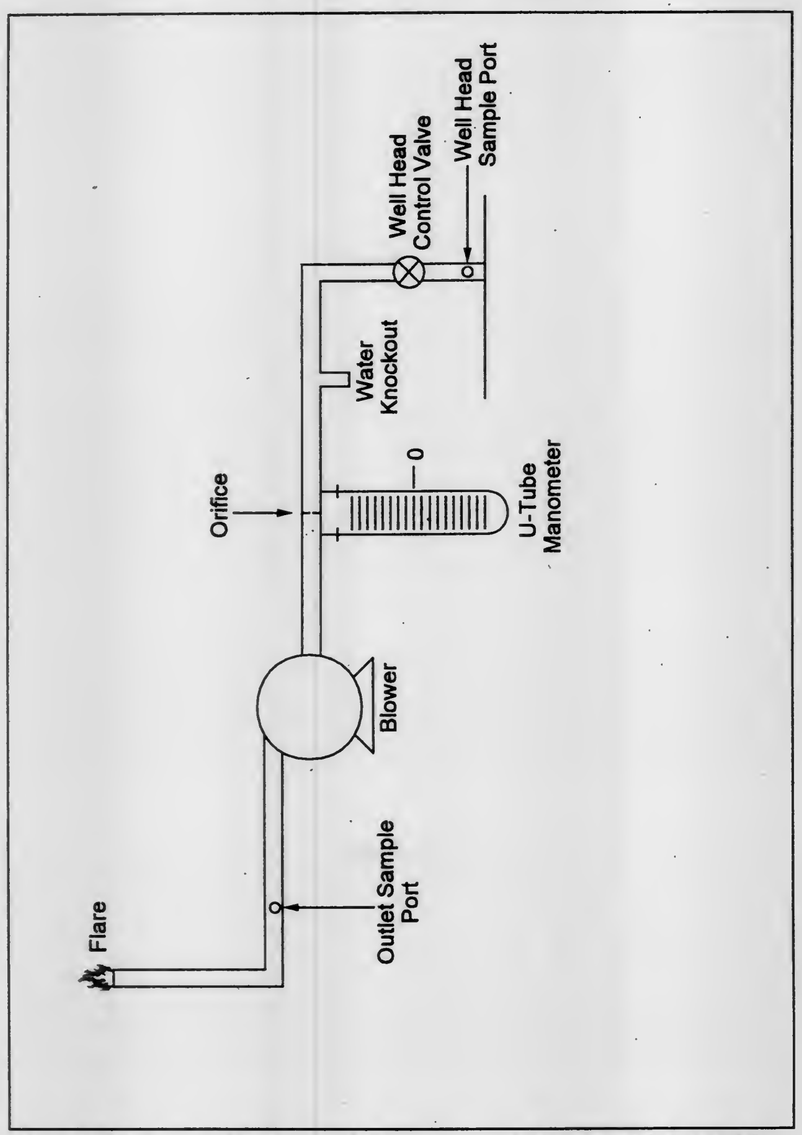



Figure 2E-1. Schematic of Aboveground Well Head Assembly.



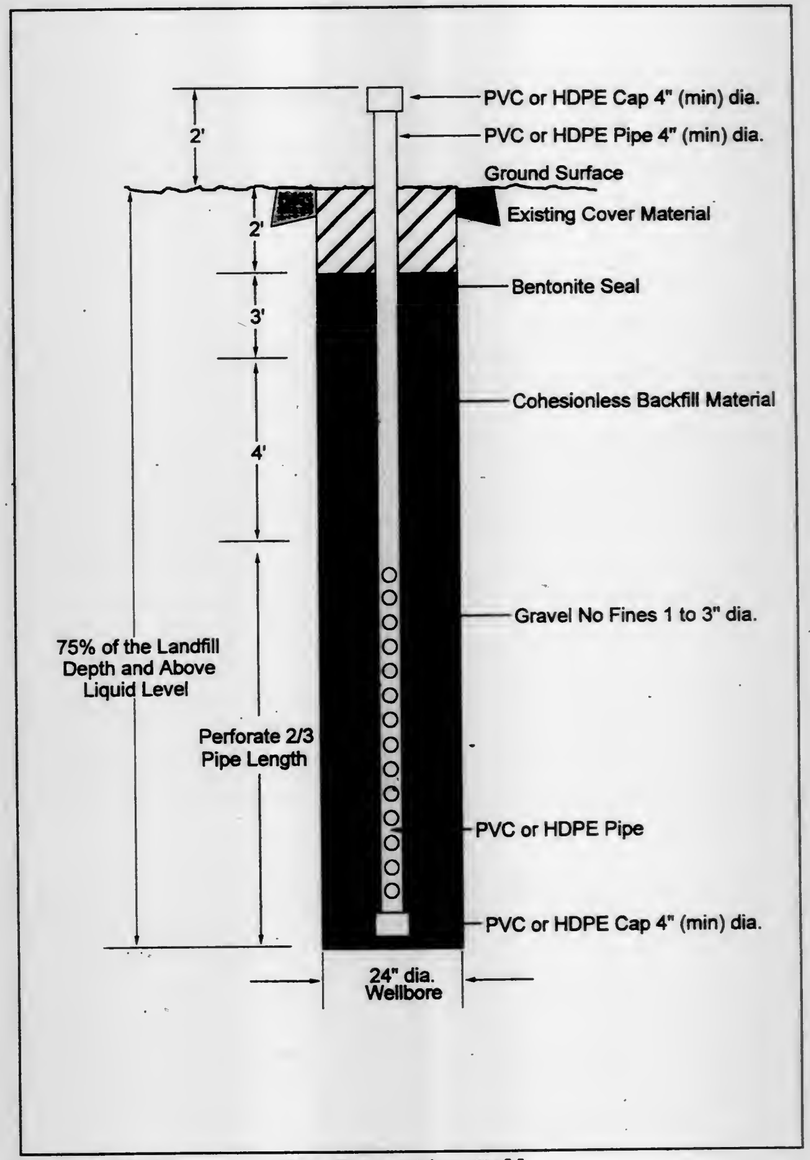



Figure 2E-3. Gas Extraction Well.

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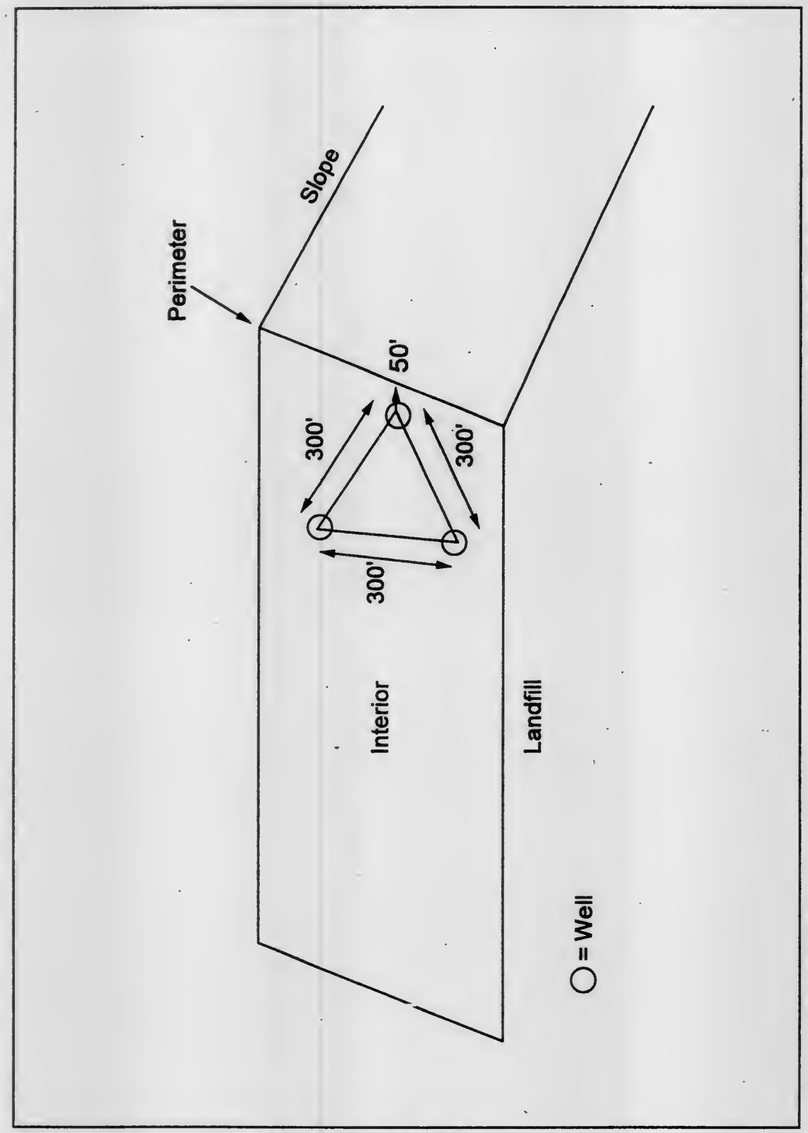



Figure 2E-2. Cluster Well Placement.



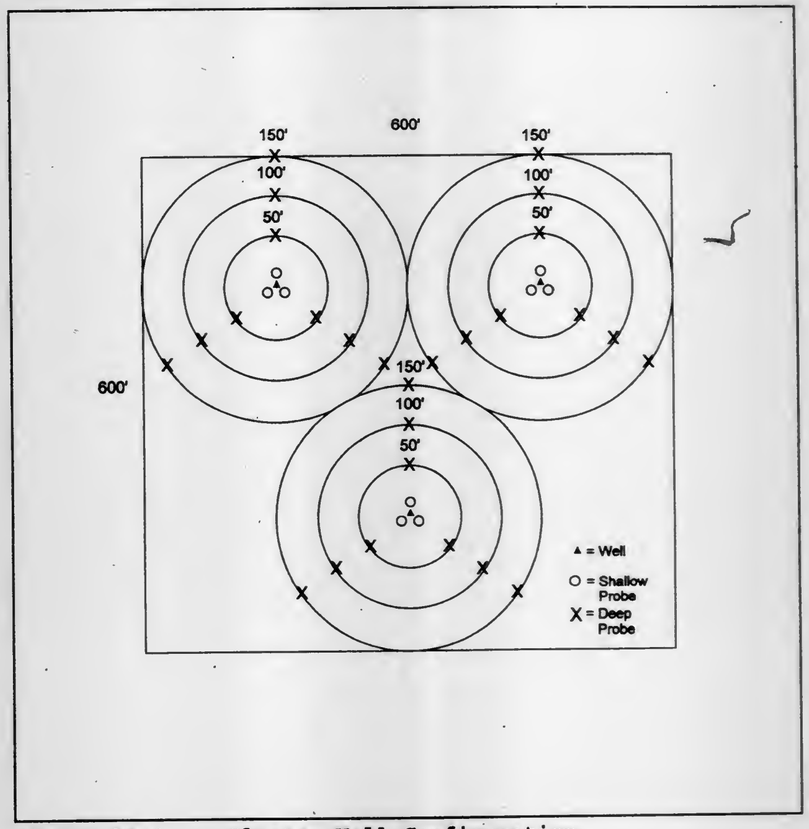



Figure 2E-4. Cluster Well Configuration.

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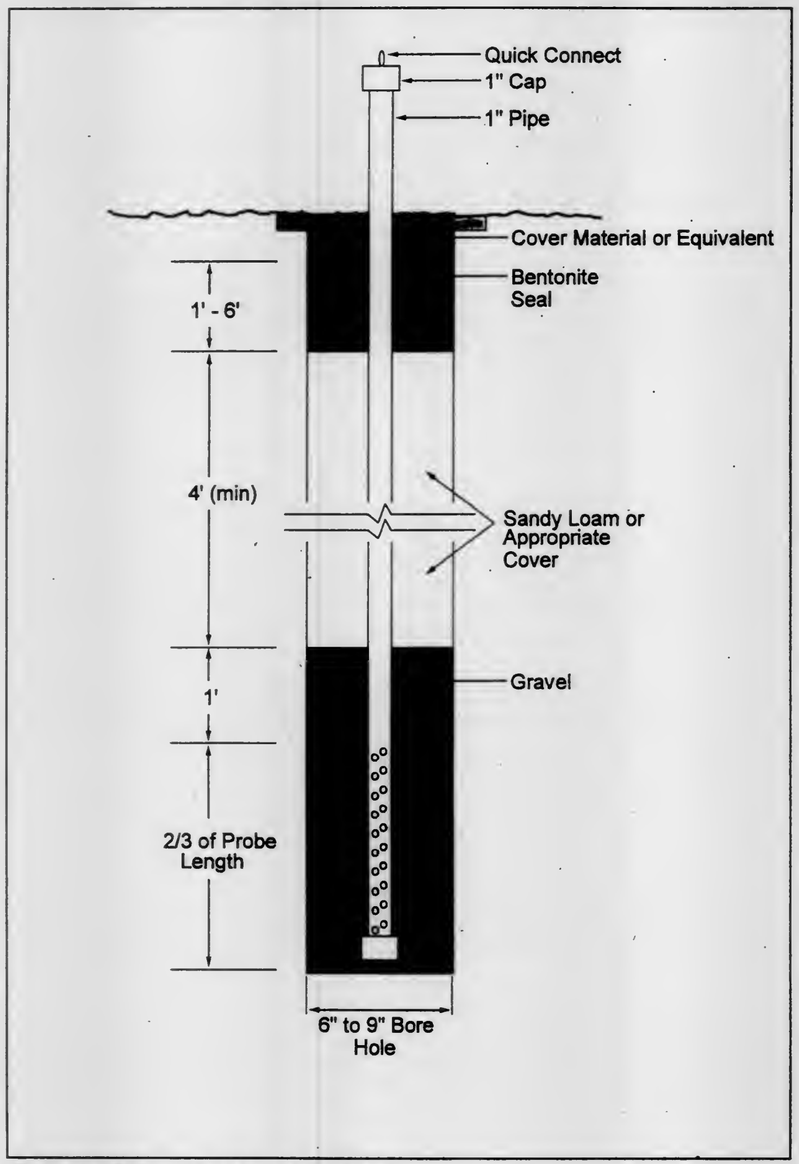



Figure 2E-5. Pressure Probe.

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**Method 3—Gas Analysis for the Determination of Dry Molecular Weight**

**Note:** This method does not include all of the specifications (*e.g.*, equipment and supplies) and procedures (*e.g.*, sampling) essential to its performance. Some material is incorporated by reference from other methods in this part. Therefore, to obtain reliable results, persons using this method should also have a thorough knowledge of Method 1.

*1.0 Scope and Application*

1.1 Analytes.

| Analytes | CAS No. | Sensitivity |
|---|---|---|
| Oxygen ($O_2$) | 7782–44–7 | 2,000 ppmv. |
| Nitrogen ($N_2$) | 7727–37–9 | N/A. |
| Carbon dioxide ($CO_2$) | 124–38–9 | 2,000 ppmv. |
| Carbon monoxide (CO) | 630–08–0 | N/A. |

1.2 Applicability. This method is applicable for the determination of $CO_2$ and $O_2$ concentrations and dry molecular weight of a sample from an effluent gas stream of a fossil-fuel combustion process or other process.

1.3 Other methods, as well as modifications to the procedure described herein, are also applicable for all of the above determinations. Examples of specific methods and modifications include: (1) A multi-point grab sampling method using an Orsat analyzer to analyze the individual grab sample obtained at each point; (2) a method for measuring either $CO_2$ or $O_2$ and using stoichiometric calculations to determine dry molecular weight; and (3) assigning a value of 30.0 for dry molecular weight, in lieu of actual measurements, for processes burning natural gas, coal, or oil. These methods and modifications may be used, but are subject to the approval of the Administrator. The method may also be applicable to other processes where it has been determined that compounds other than $CO_2$, $O_2$, carbon monoxide (CO), and nitrogen ($N_2$) are not present in concentrations sufficient to affect the results.

1.4 Data Quality Objectives. Adherence to the requirements of this method will enhance the quality of the data obtained from air pollutant sampling methods.

*2.0 Summary of Method*

2.1 A gas sample is extracted from a stack by one of the following methods: (1) single-point, grab sampling; (2) single-point, integrated sampling; or (3) multi-point, integrated sampling. The gas sample is analyzed for percent $CO_2$ and percent $O_2$. For dry molecular weight determination, either an Orsat or a Fyrite analyzer may be used for the analysis.

*3.0 Definitions [Reserved]*

*4.0 Interferences*

4.1 Several compounds can interfere, to varying degrees, with the results of Orsat or Fyrite analyses. Compounds that interfere with $CO_2$ concentration measurement include acid gases (*e.g.*, sulfur dioxide, hydrogen chloride); compounds that interfere with $O_2$ concentration measurement include unsaturated hydrocarbons (*e.g.*, acetone, acetylene), nitrous oxide, and ammonia. Ammonia reacts chemically with the $O_2$ absorbing solution, and when present in the effluent gas stream must be removed before analysis.

*5.0 Safety*

5.1 Disclaimer. This method may involve hazardous materials, operations, and equipment. This test method may not address all of the safety problems associated with its use. It is the responsibility of the user of this test method to establish appropriate safety and health practices and determine the applicability of regulatory limitations prior to performing this test method.

5.2 Corrosive Reagents.

5.2.1 A typical Orsat analyzer requires four reagents: a gas-confining solution, $CO_2$ absorbent, $O_2$ absorbent, and CO absorbent. These reagents may contain potassium hydroxide, sodium hydroxide, cuprous chloride, cuprous sulfate, alkaline pyrogallic acid, and/or chromous chloride. Follow manufacturer's operating instructions and observe all warning labels for reagent use.

5.2.2 A typical Fyrite analyzer contains zinc chloride, hydrochloric acid, and either potassium hydroxide or chromous chloride. Follow manufacturer's operating instructions and observe all warning labels for reagent use.

*6.0 Equipment and Supplies*

**Note:** As an alternative to the sampling apparatus and systems described herein, other sampling systems (*e.g.*, liquid displacement) may be used, provided such systems are capable of obtaining a representative sample and maintaining a constant sampling rate, and are, otherwise, capable of yielding acceptable results. Use of such systems is subject to the approval of the Administrator.

6.1 Grab Sampling (See Figure 3–1).

6.1.1 Probe. Stainless steel or borosilicate glass tubing equipped with an in-stack or out-of-stack filter to remove particulate matter (a plug of glass wool is satisfactory for this purpose). Any other materials, resistant to temperature at sampling conditions and inert to all components of the gas stream, may be used for the probe. Examples of such materials may include aluminum, copper, quartz glass, and Teflon.

6.1.2 Pump. A one-way squeeze bulb, or equivalent, to transport the gas sample to the analyzer.

6.2 Integrated Sampling (Figure 3–2).

6.2.1 Probe. Same as in Section 6.1.1.

6.2.2 Condenser. An air-cooled or water-cooled condenser, or other condenser no greater than 250 ml that will not remove $O_2$, $CO_2$, CO, and $N_2$, to remove excess moisture which would interfere with the operation of the pump and flowmeter.

6.2.3 Valve. A needle valve, to adjust sample gas flow rate.

6.2.4 Pump. A leak-free, diaphragm-type pump, or equivalent, to transport sample gas to the flexible bag. Install a small surge tank between the pump and rate meter to eliminate the pulsation effect of the diaphragm pump on the rate meter.

6.2.5 Rate Meter. A rotameter, or equivalent, capable of measuring flow rate to ± 2 percent of the selected flow rate. A flow rate range of 500 to 1000 ml/min is suggested.

6.2.6 Flexible Bag. Any leak-free plastic (*e.g.*, Tedlar, Mylar, Teflon) or plastic-coated aluminum (*e.g.*, aluminized Mylar) bag, or equivalent, having a capacity consistent with the selected flow rate and duration of the test run. A capacity in the range of 55 to 90 liters (1.9 to 3.2 $ft^3$) is suggested. To leak-check the bag, connect it to a water manometer, and pressurize the bag to 5 to 10 cm $H_2O$ (2 to 4 in. $H_2O$). Allow to stand for 10 minutes. Any displacement in the water manometer indicates a leak. An alternative leak-check method is to pressurize the bag to

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5 to 10 cm (2 to 4 in.) $H_2O$ and allow to stand overnight. A deflated bag indicates a leak.

6.2.7 Pressure Gauge. A water-filled U-tube manometer, or equivalent, of about 30 cm (12 in.), for the flexible bag leak-check.

6.2.8 Vacuum Gauge. A mercury manometer, or equivalent, of at least 760 mm (30 in.) Hg, for the sampling train leak-check.

6.3 Analysis. An Orsat or Fyrite type combustion gas analyzer.

*7.0 Reagents and Standards*

7.1 Reagents. As specified by the Orsat or Fyrite-type combustion analyzer manufacturer.

7.2 Standards. Two standard gas mixtures, traceable to National Institute of Standards and Technology (NIST) standards, to be used in auditing the accuracy of the analyzer and the analyzer operator technique:

7.2.1. Gas cylinder containing 2 to 4 percent $O_2$ and 14 to 18 percent $CO_2$.

7.2.2. Gas cylinder containing 2 to 4 percent $CO_2$ and about 15 percent $O_2$.

*8.0 Sample Collection, Preservation, Storage, and Transport*

8.1 Single Point, Grab Sampling Procedure.

8.1.1 The sampling point in the duct shall either be at the centroid of the cross section or at a point no closer to the walls than 1.0 m (3.3 ft), unless otherwise specified by the Administrator.

8.1.2 Set up the equipment as shown in Figure 3–1, making sure all connections ahead of the analyzer are tight. If an Orsat analyzer is used, it is recommended that the analyzer be leak-checked by following the procedure in Section 11.5; however, the leak-check is optional.

8.1.3 Place the probe in the stack, with the tip of the probe positioned at the sampling point. Purge the sampling line long enough to allow at least five exchanges. Draw a sample into the analyzer, and immediately analyze it for percent $CO_2$ and percent $O_2$ according to Section 11.2.

8.2 Single-Point, Integrated Sampling Procedure.

8.2.1 The sampling point in the duct shall be located as specified in Section 8.1.1.

8.2.2 Leak-check (optional) the flexible bag as in Section 6.2.6. Set up the equipment as shown in Figure 3–2. Just before sampling, leak-check (optional) the train by placing a vacuum gauge at the condenser inlet, pulling a vacuum of at least 250 mm Hg (10 in. Hg), plugging the outlet at the quick disconnect, and then turning off the pump. The vacuum should remain stable for at least 0.5 minute. Evacuate the flexible bag. Connect the probe, and place it in the stack, with the tip of the probe positioned at the sampling point. Purge the sampling line. Next, connect the bag, and make sure that all connections are tight.

8.2.3 Sample Collection. Sample at a constant rate (±10 percent). The sampling run should be simultaneous with, and for the same total length of time as, the pollutant emission rate determination. Collection of at least 28 liters (1.0 $ft^3$) of sample gas is recommended; however, smaller volumes may be collected, if desired.

8.2.4 Obtain one integrated flue gas sample during each pollutant emission rate determination. Within 8 hours after the sample is taken, analyze it for percent $CO_2$ and percent $O_2$ using either an Orsat analyzer or a Fyrite type combustion gas analyzer according to Section 11.3.

**Note:** When using an Orsat analyzer, periodic Fyrite readings may be taken to verify/confirm the results obtained from the Orsat.

8.3 Multi-Point, Integrated Sampling Procedure.

8.3.1 Unless otherwise specified in an applicable regulation, or by the Administrator, a minimum of eight traverse points shall be used for circular stacks having diameters less than 0.61 m (24 in.), a minimum of nine shall be used for rectangular stacks having equivalent diameters less than 0.61 m (24 in.), and a minimum of 12 traverse points shall be used for all other cases. The traverse points shall be located according to Method 1.

8.3.2 Follow the procedures outlined in Sections 8.2.2 through 8.2.4, except for the following: Traverse all sampling points, and sample at each point for an equal length of time. Record sampling data as shown in Figure 3–3.

*9.0 Quality Control*

| Section | Quality control measure | Effect |
|---|---|---|
| 8.2 | Use of Fyrite to confirm Orsat results | Ensures the accurate measurement of $CO_2$ and $O_2$. |
| 10.1 | Periodic audit of analyzer and operator technique. | Ensures that the analyzer is operating properly and that the operator performs the sampling procedure correctly and accurately. |
| 11.3 | Replicable analyses of integrated samples | Minimizes experimental error. |

*10.0 Calibration and Standardization*

10.1 Analyzer. The analyzer and analyzer operator's technique should be audited periodically as follows: take a sample from a manifold containing a known mixture of $CO_2$ and $O_2$, and analyze according to the procedure in Section 11.3. Repeat this procedure until the measured concentration of three consecutive samples agrees with the stated value ± 0.5 percent. If necessary, take corrective action, as specified in the analyzer users manual.

10.2 Rotameter. The rotameter need not be calibrated, but should be cleaned and maintained according to the manufacturer's instruction.

*11.0 Analytical Procedure*

11.1 Maintenance. The Orsat or Fyrite-type analyzer should be maintained and operated according to the manufacturers specifications.

11.2 Grab Sample Analysis. Use either an Orsat analyzer or a Fyrite-type combustion gas analyzer to measure $O_2$ and $CO_2$ concentration for dry molecular weight determination, using procedures as specified in the analyzer user's manual. If an Orsat analyzer is used, it is recommended that the Orsat leak-check, described in Section 11.5, be performed before this determination; however, the check is optional. Calculate the dry molecular weight as indicated in Section 12.0. Repeat the sampling, analysis, and calculation procedures until the dry molecular weights of any three grab samples differ from their mean by no more than 0.3 g/g-mole (0.3 lb/lb-mole). Average these three molecular weights, and report the results to the nearest 0.1 g/g-mole (0.1 lb/lb-mole).

11.3 Integrated Sample Analysis. Use either an Orsat analyzer or a Fyrite-type combustion gas analyzer to measure $O_2$ and $CO_2$ concentration for dry molecular weight determination, using procedures as specified in the analyzer user's manual. If an Orsat analyzer is used, it is recommended that the Orsat leak-check, described in Section 11.5, be performed before this determination; however, the check is optional. Calculate the dry molecular weight as indicated in Section 12.0. Repeat the analysis and calculation procedures until the individual dry molecular weights for any three analyses differ from their mean by no more than 0.3 g/g-mole (0.3 lb/lb-mole). Average these three molecular weights, and report the results to the nearest 0.1 g/g-mole (0.1 lb/lb-mole).

11.4 Standardization. A periodic check of the reagents and of operator technique should be conducted at least once every three series of test runs as outlined in Section 10.1.

11.5 Leak-Check Procedure for Orsat Analyzer. Moving an Orsat analyzer frequently causes it to leak. Therefore, an Orsat analyzer should be thoroughly leak-checked on site before the flue gas sample is introduced into it. The procedure for leak-checking an Orsat analyzer is as follows:

11.5.1 Bring the liquid level in each pipette up to the reference mark on the capillary tubing, and then close the pipette stopcock.



11.5.2 Raise the leveling bulb sufficiently to bring the confining liquid meniscus onto the graduated portion of the burette, and then close the manifold stopcock.

11.5.3 Record the meniscus position.

11.5.4 Observe the meniscus in the burette and the liquid level in the pipette for movement over the next 4 minutes.

11.5.5 For the Orsat analyzer to pass the leak-check, two conditions must be met:

11.5.5.1 The liquid level in each pipette must not fall below the bottom of the capillary tubing during this 4-minute interval.

11.5.5.2 The meniscus in the burette must not change by more than 0.2 ml during this 4-minute interval.

11.5.6 If the analyzer fails the leak-check procedure, check all rubber connections and stopcocks to determine whether they might be the cause of the leak. Disassemble, clean, and regrease any leaking stopcocks. Replace leaking rubber connections. After the analyzer is reassembled, repeat the leak-check procedure.

*12.0 Calculations and Data Analysis*

12.1 Nomenclature.

$M_d$ = Dry molecular weight, g/g-mole (lb/lb-mole).

$\%CO_2$ = Percent $CO_2$ by volume, dry basis.

$\%O_2$ = Percent $O_2$ by volume, dry basis.

%CO = Percent CO by volume, dry basis.

$\%N_2$ = Percent $N_2$ by volume, dry basis.

0.280 = Molecular weight of $N_2$ or CO, divided by 100.

0.320 = Molecular weight of $O_2$ divided by 100.

0.440 = Molecular weight of $CO_2$ divided by 100.

12.2 Nitrogen, Carbon Monoxide Concentration. Determine the percentage of the gas that is $N_2$ and CO by subtracting the sum of the percent $CO_2$ and percent $O_2$ from 100 percent.

12.3 Dry Molecular Weight. Use Equation 3–1 to calculate the dry molecular weight of the stack gas.

$$M_d = 0.440(\%CO_2) + 0.320(\%O_2) + 0.280(\%N_2 + \%CO) \quad \text{Eq. 3-1}$$

**Note:** The above Equation 3–1 does not consider the effect on calculated dry molecular weight of argon in the effluent gas. The concentration of argon, with a molecular weight of 39.9, in ambient air is about 0.9 percent. A negative error of approximately 0.4 percent is introduced. The tester may choose to include argon in the analysis using procedures subject to approval of the Administrator.

*13.0 Method Performance [Reserved]*

*14.0 Pollution Prevention [Reserved]*

*15.0 Waste Management [Reserved]*

*16.0 References*

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2. Conner, William D. and J.S. Nader. Air Sampling with Plastic Bags. Journal of the American Industrial Hygiene Association. *25*:291–297. 1964.

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5. Shigehara, R.T., R.M. Neulicht, and W.S. Smith. Validating Orsat Analysis Data from Fossil Fuel-Fired Units. Stack Sampling News. *4*(2):21–26. August 1976.

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*17.0 Tables, Diagrams, Flowcharts, and Validation Data*

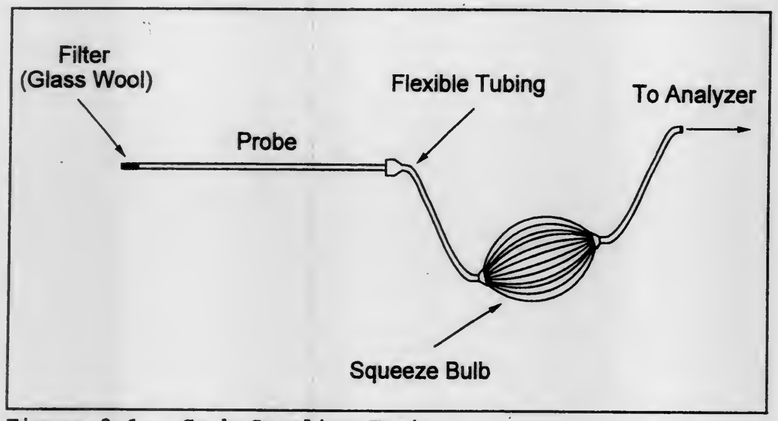



Figure 3-1. Grab-Sampling Train.



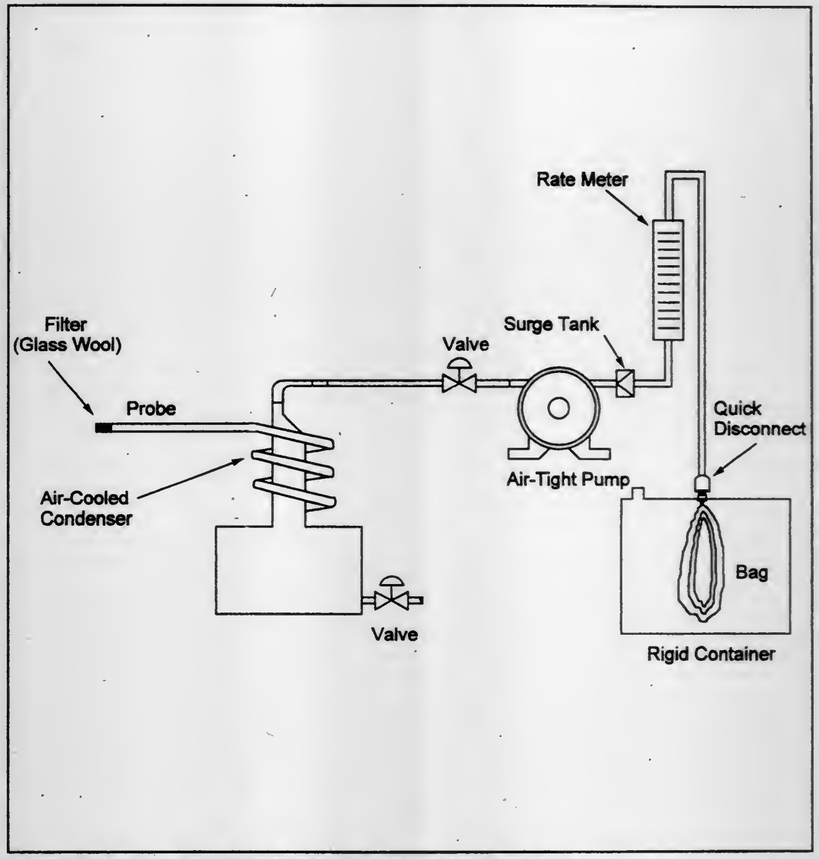



Figure 3-2. Integrated Gas-Sampling Train.

| Time | Traverse point | Q (liter/min) | % Deviation* |
|---|---|---|---|
| | | | |
| | | | |
| | | | |
| | | | |
| Average | | | |

*% Dev.=$[(Q-Q_{avg})/Q_{avg}]\times 100$ (Must be $\leq \pm 10\%$)

Figure 3–3. Sampling Rate Data

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**Method 3B—Gas Analysis for the Determination of Emission Rate Correction Factor or Excess Air**

**Note:** This method does not include all of the specifications (e.g., equipment and supplies) and procedures (e.g., sampling) essential to its performance. Some material is incorporated by reference from other methods in this part. Therefore, to obtain reliable results, persons using this method should have a thorough knowledge of at least the following additional test methods: Method 1 and 3.

*1.0 Scope and Application*

1.1 Analytes.

| Analyte | CAS No. | Sensitivity |
|---|---|---|
| Oxygen ($O_2$) | 7782–44–7 | 2,000 ppmv. |
| Carbon Dioxide ($CO_2$) | 124–38–9 | 2,000 ppmv. |
| Carbon Monoxide (CO) | 630–08–0 | N/A. |

1.2 Applicability. This method is applicable for the determination of $O_2$, $CO_2$, and CO concentrations in the effluent from fossil-fuel combustion processes for use in excess air or emission rate correction factor calculations. Where compounds other than $CO_2$, $O_2$, CO, and nitrogen ($N_2$) are present in concentrations sufficient to affect the results, the calculation procedures presented in this method must be modified, subject to the approval of the Administrator.

1.3 Other methods, as well as modifications to the procedure described herein, are also applicable for all of the above determinations. Examples of specific methods and modifications include: (1) A multi-point sampling method using an Orsat analyzer to analyze individual grab samples obtained at each point, and (2) a method using $CO_2$ or $O_2$ and stoichiometric calculations to determine excess air. These methods and modifications may be used, but are subject to the approval of the Administrator.

1.4 Data Quality Objectives. Adherence to the requirements of this method will enhance the quality of the data obtained from air pollutant sampling methods.

*2.0 Summary of Method*

2.1 A gas sample is extracted from a stack by one of the following methods: (1) Single-point, grab sampling; (2) single-point, integrated sampling; or (3) multi-point, integrated sampling. The gas sample is analyzed for percent $CO_2$, percent $O_2$, and, if necessary, percent CO using an Orsat combustion gas analyzer.

*3.0 Definitions [Reserved]*

*4.0 Interferences*

4.1 Several compounds can interfere, to varying degrees, with the results of Orsat analyses. Compounds that interfere with CO2 concentration measurement include acid gases (e.g., sulfur dioxide, hydrogen chloride); compounds that interfere with $O_2$ concentration measurement include unsaturated hydrocarbons (e.g., acetone, acetylene), nitrous oxide, and ammonia. Ammonia reacts chemically with the $O_2$ absorbing solution, and when present in the effluent gas stream must be removed before analysis.

*5.0 Safety*

5.1 Disclaimer. This method may involve hazardous materials, operations, and equipment. This test method may not address all of the safety problems associated with its use. It is the responsibility of the user of this test method to establish appropriate safety and health practices and determine the applicability of regulatory limitations prior to performing this test method.

5.2 Corrosive Reagents. A typical Orsat analyzer requires four reagents: a gas-confining solution, $CO_2$ absorbent, $O_2$ absorbent, and CO absorbent. These reagents may contain potassium hydroxide, sodium hydroxide, cuprous chloride, cuprous sulfate, alkaline pyrogallic acid, and/or chromous chloride. Follow manufacturer's operating instructions and observe all warning labels for reagent use.

*6.0 Equipment and Supplies*

**Note:** As an alternative to the sampling apparatus and systems described herein, other sampling systems (e.g., liquid displacement) may be used, provided such systems are capable of obtaining a representative sample and maintaining a constant sampling rate, and are, otherwise, capable of yielding acceptable results. Use of such systems is subject to the approval of the Administrator.

6.1 Grab Sampling and Integrated Sampling. Same as in Sections 6.1 and 6.2, respectively for Method 3.

6.2 Analysis. An Orsat analyzer only. For low $CO_2$ (less than 4.0 percent) or high $O_2$ (greater than 15.0 percent) concentrations, the measuring burette of the Orsat must have at least 0.1 percent subdivisions. For Orsat maintenance and operation procedures, follow the instructions recommended by the manufacturer, unless otherwise specified herein.

*7.0 Reagents and Standards*

7.1 Reagents. Same as in Method 3, Section 7.1.

7.2 Standards. Same as in Method 3, Section 7.2.

*8.0 Sample Collection, Preservation, Storage, and Transport*

**Note:** Each of the three procedures below shall be used only when specified in an applicable subpart of the standards. The use of these procedures for other purposes must have specific prior approval of the Administrator. A Fyrite-type combustion gas analyzer is not acceptable for excess air or emission rate correction factor determinations, unless approved by the Administrator. If both percent $CO_2$ and percent $O_2$ are measured, the analytical results of any of the three procedures given below may also be used for calculating the dry molecular weight (see Method 3).

*8.1 Single-Point, Grab Sampling and Analytical Procedure.*

8.1.1 The sampling point in the duct shall either be at the centroid of the cross section or at a point no closer to the walls than 1.0 m (3.3 ft), unless otherwise specified by the Administrator.

8.1.2 Set up the equipment as shown in Figure 3–1 of Method 3, making sure all connections ahead of the analyzer are tight. Leak-check the Orsat analyzer according to the procedure described in Section 11.5 of Method 3. This leak-check is mandatory.

8.1.3 Place the probe in the stack, with the tip of the probe positioned at the sampling point; purge the sampling line long enough to allow at least five exchanges. Draw a sample into the analyzer. For emission rate correction factor determinations, immediately analyze the sample for percent $CO_2$ or percent $O_2$, as outlined in Section 11.2. For excess air determination, immediately analyze the sample for percent $CO_2$, $O_2$, and CO, as outlined in Section 11.2, and calculate excess air as outlined in Section 12.2.

8.1.4 After the analysis is completed, leak-check (mandatory) the Orsat analyzer once again, as described in Section 11.5 of Method 3. For the results of the analysis to be valid, the Orsat analyzer must pass this leak-test before and after the analysis.

*8.2 Single-Point, Integrated Sampling and Analytical Procedure.*

8.2.1 The sampling point in the duct shall be located as specified in Section 8.1.1.

8.2.2 Leak-check (mandatory) the flexible bag as in Section 6.2.6 of Method 3. Set up the equipment as shown in Figure 3–2 of Method 3. Just before sampling, leak-check (mandatory) the train by placing a vacuum gauge at the condenser inlet, pulling a vacuum of at least 250 mm Hg (10 in. Hg), plugging the outlet at the quick disconnect, and then turning off the pump. The vacuum should remain stable for at least 0.5 minute. Evacuate the flexible bag. Connect the probe, and place it in the stack, with the tip of the probe positioned at the sampling point; purge the sampling line. Next, connect the bag, and make sure that all connections are tight.

8.2.3 Sample at a constant rate, or as specified by the Administrator. The sampling run must be simultaneous with, and for the same total length of time as, the pollutant emission rate determination. Collect at least 28 liters (1.0 $ft^3$) of sample gas. Smaller volumes may be collected, subject to approval of the Administrator.

8.2.4 Obtain one integrated flue gas sample during each pollutant emission rate determination. For emission rate correction factor determination, analyze the sample within 4 hours after it is taken for percent $CO_2$ or percent $O_2$ (as outlined in Section 11.2).

*8.3 Multi-Point, Integrated Sampling and Analytical Procedure.*

8.3.1 Unless otherwise specified in an applicable regulation, or by the Administrator, a minimum of eight traverse points shall be used for circular stacks having diameters less than 0.61 m (24 in.), a minimum of nine shall be used for rectangular stacks having equivalent diameters less than 0.61 m (24 in.), and a minimum of 12 traverse points shall be used for all other cases. The traverse points shall be located according to Method 1.

8.3.2 Follow the procedures outlined in Sections 8.2.2 through 8.2.4, except for the following: Traverse all sampling points, and sample at each point for an equal length of time. Record sampling data as shown in Figure 3–3 of Method 3.

*9.0 Quality Control*

9.1 Data Validation Using Fuel Factor. Although in most instances, only $CO_2$ or $O_2$ measurement is required, it is recommended that both $CO_2$ and $O_2$ be measured to provide a check on the quality of the data. The data validation procedure of Section 12.3 is suggested.

**Note:** Since this method for validating the $CO_2$ and $O_2$ analyses is based on combustion of organic and fossil fuels and dilution of the gas stream with air, this method does not apply to sources that (1) remove $CO_2$ or $O_2$ through processes other than combustion, (2) add $O_2$ (e.g., oxygen enrichment) and $N_2$ in proportions different from that of air, (3) add $CO_2$ (e.g., cement or lime kilns), or (4) have no fuel factor, $F_O$, values obtainable (e.g., extremely variable waste mixtures). This method validates the measured proportions of $CO_2$ and $O_2$ for fuel type, but the method does not detect sample dilution resulting from leaks during or after sample collection. The method is applicable for samples collected downstream of most lime or limestone flue-gas desulfurization units as the $CO_2$ added or removed from the gas stream is not significant in relation to the total $CO_2$ concentration. The $CO_2$ concentrations from other types of scrubbers using only water or basic slurry can be significantly affected and would render the fuel factor check minimally useful.

*10.0 Calibration and Standardization*

10.1 Analyzer. The analyzer and analyzer operator technique should be audited periodically as follows: take a sample from a manifold containing a known mixture of $CO_2$ and $O_2$, and analyze according to the procedure in Section 11.3. Repeat this procedure until the measured concentration of three consecutive samples agrees with the stated value ±0.5 percent. If necessary, take corrective action, as specified in the analyzer users manual.

10.2 Rotameter. The rotameter need not be calibrated, but should be cleaned and maintained according to the manufacturer's instruction.

*11.0 Analytical Procedure*

11.1 Maintenance. The Orsat analyzer should be maintained according to the manufacturers specifications.

11.2 Grab Sample Analysis. To ensure complete absorption of the $CO_2$, $O_2$, or if applicable, CO, make repeated passes through each absorbing solution until two consecutive readings are the same. Several passes (three or four) should be made between readings. (If constant readings cannot be obtained after three consecutive readings, replace the absorbing solution.) Although in most cases, only $CO_2$ or $O_2$ concentration is required, it is recommended that both $CO_2$ and $O_2$ be measured, and that the procedure in Section 12.3 be used to validate the analytical data.

**Note:** Since this single-point, grab sampling and analytical procedure is normally conducted in conjunction with a single-point, grab sampling and analytical procedure for a pollutant, only one analysis is ordinarily conducted. Therefore, great care must be taken to obtain a valid sample and analysis.

11.3 Integrated Sample Analysis. The Orsat analyzer must be leak-checked (see Section 11.5 of Method 3) before the analysis. If excess air is desired, proceed as follows: (1) within 4 hours after the sample is taken, analyze it (as in Sections 11.3.1 through 11.3.3) for percent $CO_2$, $O_2$, and CO; (2) determine the percentage of the gas that is $N_2$ by subtracting the sum of the percent $CO_2$, percent $O_2$, and percent CO from 100 percent; and (3) calculate percent excess air, as outlined in Section 12.2.

11.3.1 To ensure complete absorption of the $CO_2$, $O_2$, or if applicable, CO, follow the procedure described in Section 11.2.

**Note:** Although in most instances only $CO_2$ or $O_2$ is required, it is recommended that both $CO_2$ and $O_2$ be measured, and that the procedures in Section 12.3 be used to validate the analytical data.

11.3.2 Repeat the analysis until the following criteria are met:

11.3.2.1 For percent $CO_2$, repeat the analytical procedure until the results of any three analyses differ by no more than (a) 0.3 percent by volume when $CO_2$ is greater than 4.0 percent or (b) 0.2 percent by volume when $CO_2$ is less than or equal to 4.0 percent. Average three acceptable values of percent $CO_2$, and report the results to the nearest 0.2 percent.

11.3.2.2 For percent $O_2$, repeat the analytical procedure until the results of any three analyses differ by no more than (a) 0.3 percent by volume when $O_2$ is less than 15.0 percent or (b) 0.2 percent by volume when $O_2$ is greater than or equal to 15.0 percent. Average the three acceptable values of percent $O_2$, and report the results to the nearest 0.1 percent.

11.3.2.3 For percent CO, repeat the analytical procedure until the results of any three analyses differ by no more than 0.3 percent. Average the three acceptable values of percent CO, and

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report the results to the nearest 0.1 percent.

11.3.3 After the analysis is completed, leak-check (mandatory) the Orsat analyzer once again, as described in Section 11.5 of Method 3. For the results of the analysis to be valid, the Orsat analyzer must pass this leak-test before and after the analysis.

11.4 Standardization. A periodic check of the reagents and of operator technique should be conducted at least once every three series of test runs as indicated in Section 10.1.

*12.0 Calculations and Data Analysis*

12.1 Nomenclature. Same as Section 12.1 of Method 3 with the addition of the following:

%EA = Percent excess air.
0.264 = Ratio of $O_2$ to $N_2$ in air, v/v.

12.2 Percent Excess Air. Determine the percentage of the gas that is $N_2$ by subtracting the sum of the percent $CO_2$, percent CO, and percent $O_2$ from 100 percent. Calculate the percent excess air (if applicable) by substituting the appropriate values of percent $O_2$, CO, and $N_2$ into Equation 3B–1.

$$\%EA = \frac{\%O_2 - 0.5\ \%CO}{0.264\ \%N_2 - (\%O_2 - 0.5\ \%CO)} \times 100 \qquad \text{Eq. 3B-1}$$

**Note:** The equation above assumes that ambient air is used as the source of $O_2$ and that the fuel does not contain appreciable amounts of $N_2$ (as do coke oven or blast furnace gases). For those cases when appreciable amounts of $N_2$ are present (coal, oil, and natural gas do not contain appreciable amounts of $N_2$) or when oxygen enrichment is used, alternative methods, subject to approval of the Administrator, are required.

12.3 Data Validation When Both $CO_2$ and $O_2$ Are Measured.

12.3.1 Fuel Factor, $F_o$. Calculate the fuel factor (if applicable) using Equation 3B–2:

$$F_o = \frac{20.9 - \%O_2}{\%CO_2} \qquad \text{Eq. 3B-2}$$

Where:
$\%O_2$ = Percent $O_2$ by volume, dry basis.
$\%CO_2$ = Percent $CO_2$ by volume, dry basis.
20.9 = Percent $O_2$ by volume in ambient air.

If CO is present in quantities measurable by this method, adjust the $O_2$ and $CO_2$ values using Equations 3B–3 and 3B–4 before performing the calculation for $F_o$:

$$\%CO_2(adj) = \%CO_2 + \%CO \qquad \text{Eq. 3B-3}$$

$$\%O_2(adj) = \%O_2 - 0.5\ \%CO \qquad \text{Eq. 3B-4}$$

Where:
%CO = Percent CO by volume, dry basis.

12.3.2 Compare the calculated $F_o$ factor with the expected $F_o$ values. Table 3B–1 in Section 17.0 may be used in establishing acceptable ranges for the expected $F_o$ if the fuel being burned is known. When fuels are burned in combinations, calculate the combined fuel $F_d$ and $F_c$ factors (as defined in Method 19, Section 12.2) according to the procedure in Method 19, Sections 12.2 and 12.3. Then calculate the $F_o$ factor according to Equation 3B–5.

$$F_o = \frac{0.209\ F_d}{F_c} \qquad \text{Eq. 3B-5}$$

12.3.3 Calculated $F_o$ values, beyond the acceptable ranges shown in this table, should be investigated before accepting the test results. For example, the strength of the solutions in the gas analyzer and the analyzing technique should be checked by sampling and analyzing a known concentration, such as air; the fuel factor should be reviewed and verified. An acceptability range of ±12 percent is appropriate for the $F_o$ factor of mixed fuels with variable fuel ratios. The level of the emission rate relative to the compliance level should be considered in determining if a retest is appropriate; i.e., if the measured emissions are much lower or much greater than the compliance limit, repetition of the test would not significantly change the compliance status of the source and would be unnecessarily time consuming and costly.

*13.0 Method Performance. [Reserved]*

*14.0 Pollution Prevention. [Reserved]*

*15.0 Waste Management. [Reserved]*

*16.0 References*

Same as Method 3, Section 16.0.

*17.0 Tables, Diagrams, Flowcharts, and Validation Data*

TABLE 3B–1.—$F_o$ FACTORS FOR SELECTED FUELS

| Fuel type | $F_o$ range |
|---|---|
| Coal: | |
| Anthracite and lignite | 1.016–1.130 |
| Bituminous | 1.083–1.230 |
| Oil: | |
| Distillate | 1.260–1.413 |
| Residual | 1.210–1.370 |
| Gas: | |
| Natural | 1.600–1.836 |
| Propane | 1.434–1.586 |
| Butane | 1.405–1.553 |
| Wood | 1.000–1.120 |
| Wood bark | 1.003–1.130 |

* * * * *

**Method 4—Determination of Moisture Content in Stack Gases**

**Note:** This method does not include all the specifications (e.g., equipment and supplies) and procedures (e.g., sampling) essential to its performance. Some material is incorporated by reference from other methods in this part. Therefore, to obtain reliable results, persons using this method should have a thorough knowledge of at least the following additional test methods: Method 1, Method 5, and Method 6.

*1.0 Scope and Application*

1.1 Analytes.

| Analyte | CAS No. | Sensitivity |
|---|---|---|
| Water vapor ($H_2O$) | 7732–18–5 | N/A |

1.2 Applicability. This method is applicable for the determination of the moisture content of stack gas.

1.3 Data Quality Objectives. Adherence to the requirements of this method will enhance the quality of the data obtained from air pollutant sampling methods.



*2.0 Summary of Method*

2.1 A gas sample is extracted at a constant rate from the source; moisture is removed from the sample stream and determined either volumetrically or gravimetrically.

2.2 The method contains two possible procedures: a reference method and an approximation method.

2.2.1 The reference method is used for accurate determinations of moisture content (such as are needed to calculate emission data). The approximation method, provides estimates of percent moisture to aid in setting isokinetic sampling rates prior to a pollutant emission measurement run. The approximation method described herein is only a suggested approach; alternative means for approximating the moisture content (e.g., drying tubes, wet bulb-dry bulb techniques, condensation techniques, stoichiometric calculations, previous experience, etc.) are also acceptable.

2.2.2 The reference method is often conducted simultaneously with a pollutant emission measurement run. When it is, calculation of percent isokinetic, pollutant emission rate, etc., for the run shall be based upon the results of the reference method or its equivalent. These calculations shall not be based upon the results of the approximation method, unless the approximation method is shown, to the satisfaction of the Administrator, to be capable of yielding results within one percent $H_2O$ of the reference method.

*3.0 Definitions [Reserved]*

*4.0 Interferences*

4.1 The moisture content of saturated gas streams or streams that contain water droplets, as measured by the reference method, may be positively biased. Therefore, when these conditions exist or are suspected, a second determination of the moisture content shall be made simultaneously with the reference method, as follows: Assume that the gas stream is saturated. Attach a temperature sensor [capable of measuring to ±1 °C (2 °F)] to the reference method probe. Measure the stack gas temperature at each traverse point (see Section 8.1.1.1) during the reference method traverse, and calculate the average stack gas temperature. Next, determine the moisture percentage, either by: (1) Using a psychrometric chart and making appropriate corrections if the stack pressure is different from that of the chart, or (2) using saturation vapor pressure tables. In cases where the psychrometric chart or the saturation vapor pressure tables are not applicable (based on evaluation of the process), alternative methods, subject to the approval of the Administrator, shall be used.

*5.0 Safety*

5.1 Disclaimer. This method may involve hazardous materials, operations, and equipment. This test method may not address all of the safety problems associated with its use. It is the responsibility of the user of this test method to establish appropriate safety and health practices and determine the applicability of regulatory limitations prior to performing this test method.

*6.0 Equipment and Supplies*

6.1 Reference Method. A schematic of the sampling train used in this reference method is shown in Figure 4–1.

6.1.1 Probe. Stainless steel or glass tubing, sufficiently heated to prevent water condensation, and equipped with a filter, either in-stack (e.g., a plug of glass wool inserted into the end of the probe) or heated out-of-stack (e.g., as described in Method 5), to remove particulate matter. When stack conditions permit, other metals or plastic tubing may be used for the probe, subject to the approval of the Administrator.

6.1.2 Condenser. Same as Method 5, Section 6.1.1.8.

6.1.3 Cooling System. An ice bath container, crushed ice, and water (or equivalent), to aid in condensing moisture.

6.1.4 Metering System. Same as in Method 5, Section 6.1.1.9, except do not use sampling systems designed for flow rates higher than 0.0283 $m^3$/min (1.0 cfm). Other metering systems, capable of maintaining a constant sampling rate to within 10 percent and determining sample gas volume to within 2 percent, may be used, subject to the approval of the Administrator.

6.1.5 Barometer and Graduated Cylinder and/or Balance. Same as Method 5, Sections 6.1.2 and 6.2.5, respectively.

6.2. Approximation Method. A schematic of the sampling train used in this approximation method is shown in Figure 4–2.

6.2.1 Probe. Same as Section 6.1.1.

6.2.2 Condenser. Two midget impingers, each with 30-ml capacity, or equivalent.

6.2.3 Cooling System. Ice bath container, crushed ice, and water, to aid in condensing moisture in impingers.

6.2.4 Drying Tube. Tube packed with new or regenerated 6- to 16-mesh indicating-type silica gel (or equivalent desiccant), to dry the sample gas and to protect the meter and pump.

6.2.5 Valve. Needle valve, to regulate the sample gas flow rate.

6.2.6 Pump. Leak-free, diaphragm type, or equivalent, to pull the gas sample through the train.

6.2.7 Volume Meter. Dry gas meter, sufficiently accurate to measure the sample volume to within 2 percent, and calibrated over the range of flow rates and conditions actually encountered during sampling.

6.2.8 Rate Meter. Rotameter, or equivalent, to measure the flow range from 0 to 3 liters/min (0 to 0.11 cfm).

6.2.9 Graduated Cylinder. 25-ml.

6.2.10 Barometer. Same as Method 5, Section 6.1.2.

6.2.11 Vacuum Gauge. At least 760-mm (30-in.) Hg gauge, to be used for the sampling leak check.

*7.0 Reagents and Standards [Reserved]*

*8.0 Sample Collection, Preservation, Transport, and Storage*

8.1 Reference Method. The following procedure is intended for a condenser system (such as the impinger system described in Section 6.1.1.8 of Method 5) incorporating volumetric analysis to measure the condensed moisture, and silica gel and gravimetric analysis to measure the moisture leaving the condenser.

8.1.1 Preliminary Determinations.

8.1.1.1 Unless otherwise specified by the Administrator, a minimum of eight traverse points shall be used for circular stacks having diameters less than 0.61 m (24 in.), a minimum of nine points shall be used for rectangular stacks having equivalent diameters less than 0.61 m (24 in.), and a minimum of twelve traverse points shall be used in all other cases. The traverse points shall be located according to Method 1. The use of fewer points is subject to the approval of the Administrator. Select a suitable probe and probe length such that all traverse points can be sampled. Consider sampling from opposite sides of the stack (four total sampling ports) for large stacks, to permit use of shorter probe lengths. Mark the probe with heat resistant tape or by some other method to denote the proper distance into the stack or duct for each sampling point.

8.1.1.2 Select a total sampling time such that a minimum total gas volume of 0.60 scm (21 scf) will be collected, at a rate no greater than 0.021 $m^3$/min (0.75 cfm). When both moisture content and pollutant emission rate are to be determined, the moisture determination shall be simultaneous with, and for the same total length of time as, the pollutant emission rate run, unless otherwise specified in an applicable subpart of the standards.

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8.1.2 Preparation of Sampling Train.

8.1.2.1 Place known volumes of water in the first two impingers; alternatively, transfer water into the first two impingers and record the weight of each impinger (plus water) to the nearest 0.5 g. Weigh and record the weight of the silica gel to the nearest 0.5 g, and transfer the silica gel to the fourth impinger; alternatively, the silica gel may first be transferred to the impinger, and the weight of the silica gel plus impinger recorded.

8.1.2.2 Set up the sampling train as shown in Figure 4–1. Turn on the probe heater and (if applicable) the filter heating system to temperatures of approximately 120 °C (248 °F), to prevent water condensation ahead of the condenser. Allow time for the temperatures to stabilize. Place crushed ice and water in the ice bath container.

8.1.3 Leak Check Procedures. It is recommended, but not required, that the volume metering system and sampling train be leak-checked as follows:

8.1.3.1 Metering System. Same as Method 5, Section 8.4.1.

8.1.3.2 Sampling Train. Disconnect the probe from the first impinger or (if applicable) from the filter holder. Plug the inlet to the first impinger (or filter holder), and pull a 380 mm (15 in.) Hg vacuum. A lower vacuum may be used, provided that it is not exceeded during the test. A leakage rate in excess of 4 percent of the average sampling rate or 0.00057 $m^3$/min (0.020 cfm), whichever is less, is unacceptable. Following the leak check, reconnect the probe to the sampling train.

8.1.4 Sampling Train Operation. During the sampling run, maintain a sampling rate within 10 percent of constant rate, or as specified by the Administrator. For each run, record the data required on a data sheet similar to that shown in Figure 4–3. Be sure to record the dry gas meter reading at the beginning and end of each sampling time increment and whenever sampling is halted. Take other appropriate readings at each sample point at least once during each time increment.

**Note:** When Method 4 is used concurrently with an isokinetic method (*e.g.*, Method 5) the sampling rate should be maintained at isokinetic conditions rather than 10 percent of constant rate.

8.1.4.1 To begin sampling, position the probe tip at the first traverse point. Immediately start the pump, and adjust the flow to the desired rate. Traverse the cross section, sampling at each traverse point for an equal length of time. Add more ice and, if necessary, salt to maintain a temperature of less than 20 °C (68 °F) at the silica gel outlet.

8.1.4.2 After collecting the sample, disconnect the probe from the first impinger (or from the filter holder), and conduct a leak check (mandatory) of the sampling train as described in Section 8.1.3.2. Record the leak rate. If the leakage rate exceeds the allowable rate, either reject the test results or correct the sample volume as in Section 12.3 of Method 5.

8.2 Approximation Method.

**Note:** The approximation method described below is presented only as a suggested method (see Section 2.0).

8.2.1 Place exactly 5 ml water in each impinger. Leak check the sampling train as follows: Temporarily insert a vacuum gauge at or near the probe inlet. Then, plug the probe inlet and pull a vacuum of at least 250 mm (10 in.) Hg. Note the time rate of change of the dry gas meter dial; alternatively, a rotameter (0 to 40 ml/min) may be temporarily attached to the dry gas meter outlet to determine the leakage rate. A leak rate not in excess of 2 percent of the average sampling rate is acceptable.

**Note:** Release the probe inlet plug slowly before turning off the pump.

8.2.2 Connect the probe, insert it into the stack, and sample at a constant rate of 2 liters/min (0.071 cfm). Continue sampling until the dry gas meter registers about 30 liters (1.1 $ft^3$) or until visible liquid droplets are carried over from the first impinger to the second. Record temperature, pressure, and dry gas meter readings as indicated by Figure 4–4.

*9.0 Quality Control*

9.1 Miscellaneous Quality Control Measures.

| Section | Quality control measure | Effect |
|---|---|---|
| Section 8.1.1.4 | Leak rate of the sampling system cannot exceed four percent of the average sampling rate or 0.00057 $m^3$/min (0.020 cfm). | Ensures the accuracy of the volume of gas sampled. (Reference Method) |
| Section 8.2.1 | Leak rate of the sampling system cannot exceed two percent of the average sampling rate. | Ensures the accuracy of the volume of gas sampled. (Approximation Method) |

9.2 Volume Metering System Checks. Same as Method 5, Section 9.2.

*10.0 Calibration and Standardization*

**Note:** Maintain a laboratory log of all calibrations.

10.1 Reference Method. Calibrate the metering system, temperature sensors, and barometer according to Method 5, Sections 10.3, 10.5, and 10.6, respectively.

10.2 Approximation Method. Calibrate the metering system and the barometer according to Method 6, Section 10.1 and Method 5, Section 10.6, respectively.

*11.0 Analytical Procedure*

11.1 Reference Method. Measure the volume of the moisture condensed in each of the impingers to the nearest ml. Alternatively, if the impingers were weighed prior to sampling, weigh the impingers after sampling and record the difference in weight to the nearest 0.5 g. Determine the increase in weight of the silica gel (or silica gel plus impinger) to the nearest 0.5 g. Record this information (see example data sheet, Figure 4–5), and calculate the moisture content, as described in Section 12.0.

11.2 Approximation Method. Combine the contents of the two impingers, and measure the volume to the nearest 0.5 ml.

*12.0 Data Analysis and Calculations*

Carry out the following calculations, retaining at least one extra significant figure beyond that of the acquired data. Round off figures after final calculation.

12.1 Reference Method.

12.1.1 Nomenclature.

$B_{ws}$ = Proportion of water vapor, by volume, in the gas stream.

$M_w$ = Molecular weight of water, 18.0 g/g-mole (18.0 lb/lb-mole).

$P_m$ = Absolute pressure (for this method, same as barometric pressure) at the dry gas meter, mm Hg (in. Hg).

$P_{std}$ = Standard absolute pressure, 760 mm Hg (29.92 in. Hg).

R = Ideal gas constant, 0.06236 (mm Hg)($m^3$)/(g-mole)(°K) for metric units and 21.85 (in. Hg)($ft^3$)/(lb-mole)(°R) for English units.

$T_m$ = Absolute temperature at meter, °K (°R).

$T_{std}$ = Standard absolute temperature, 293 °K (528 °R).

$V_f$ = Final volume of condenser water, ml.

$V_i$ = Initial volume, if any, of condenser water, ml.

$V_m$ = Dry gas volume measured by dry gas meter, dcm (dcf).

$V_{m(std)}$ = Dry gas volume measured by the dry gas meter, corrected to standard conditions, dscm (dscf).

$V_{wc(std)}$ = Volume of water vapor condensed, corrected to standard conditions, scm (scf).

$V_{wsg(std)}$ = Volume of water vapor collected in silica gel, corrected to standard conditions, scm (scf).

$W_f$ = Final weight of silica gel or silica gel plus impinger, g.

$W_i$ = Initial weight of silica gel or silica gel plus impinger, g.

Y = Dry gas meter calibration factor.

$\Delta V_m$ = Incremental dry gas volume measured by dry gas meter at each traverse point, dcm (dcf).

$\rho_w$ = Density of water, 0.9982 g/ml (0.002201 lb/ml).

12.1.2 Volume of Water Vapor Condensed.

$$V_{wc(std)} = \frac{(V_f - V_i)\,\rho_w R\,T_{std}}{P_{std} M_W} = K_1 (V_f - V_i) \quad \text{Eq. 4-1}$$

Where:

$K_1$ = 0.001333 $m^3$/ml for metric units,
= 0.04706 $ft^3$/ml for English units.

12.1.3 Volume of Water Collected in Silica Gel.

$$V_{wsg(std)} = \frac{(W_f - W_i)\,R\,T_{std}}{P_{std} M_W K_2} = K_3 (W_f - W_i) \quad \text{Eq. 4-2}$$

Where:

$K_2$ = 1.0 g/g for metric units,
= 453.6 g/lb for English units.

$K_3$ = 0.001335 $m^3$/g for metric units,
= 0.04715 $ft^3$/g for English units.

12.1.4 Sample Gas Volume.

$$V_{m(std)} = \frac{V_m\,Y\,P_m\,T_{std}}{P_{std}\,T_m} = K_4\,Y\,\frac{V_m P_m}{T_m} \quad \text{Eq. 4-3}$$

Where:

$K_4$ = 0.3855 °K/mm Hg for metric units,
= 17.64 °R/in. Hg for English units.

**Note:** If the post-test leak rate (Section 8.1.4.2) exceeds the allowable rate, correct the value of Vm in Equation 4–3, as described in Section 12.3 of Method 5.

12.1.5 Moisture Content.

$$B_{ws} = \frac{V_{wc(std)} + V_{wsg(std)}}{V_{wc(std)} + V_{wsg(std)} + V_{m(std)}} \quad \text{Eq. 4-4}$$

12.1.6 Verification of Constant Sampling Rate. For each time increment, determine the $\Delta V_m$. Calculate the average. If the value for any time increment differs from the average by more than 10 percent, reject the results, and repeat the run.

12.1.7 In saturated or moisture droplet-laden gas streams, two calculations of the moisture content of the stack gas shall be made, one using a value based upon the saturated conditions (see Section 4.1), and another based upon the results of the impinger analysis. The lower of these two values of $B_{ws}$ shall be considered correct.

12.2 Approximation Method. The approximation method presented is designed to estimate the moisture in the stack gas; therefore, other data, which are only necessary for accurate moisture determinations, are not collected. The following equations adequately estimate the moisture content for the purpose of determining isokinetic sampling rate settings.

12.2.1 Nomenclature.

$B_{wm}$ = Approximate proportion by volume of water vapor in the gas stream leaving the second impinger, 0.025.

$B_{ws}$ = Water vapor in the gas stream, proportion by volume.

$M_w$ = Molecular weight of water, 18.0 g/g-mole (18.0 lb/lb-mole).

$P_m$ = Absolute pressure (for this method, same as barometric pressure) at the dry gas meter, mm Hg (in. Hg).

$P_{std}$ = Standard absolute pressure, 760 mm Hg (29.92 in. Hg).

R = Ideal gas constant, 0.06236 [(mm Hg)($m^3$)]/[(g-mole)(K)] for metric units and 21.85 [(in. Hg)($ft^3$)]/[(lb-mole)(°R)] for English units.

$T_m$ = Absolute temperature at meter, °K (°R).

$T_{std}$ = Standard absolute temperature, 293 °K (528 °R).

$V_f$ = Final volume of impinger contents, ml.

$V_i$ = Initial volume of impinger contents, ml.

$V_m$ = Dry gas volume measured by dry gas meter, dcm (dcf).

$V_{m(std)}$ = Dry gas volume measured by dry gas meter, corrected to standard conditions, dscm (dscf).

$V_{wc(std)}$ = Volume of water vapor condensed, corrected to standard conditions, scm (scf).

Y = Dry gas meter calibration factor.

$\rho_w$ = Density of water, 0.09982 g/ml (0.002201 lb/ml).

12.2.2 Volume of Water Vapor Collected.

$$V_{wc(std)} = \frac{(V_f - V_i)\,\rho_w R\,T_{std}}{P_{std} M_W} = K_5 (V_f - V_i) \quad \text{Eq. 4-5}$$

Where:

$K_5$ = 0.001333 $m^3$/ml for metric units,
= 0.04706 $ft^3$/ml for English units.

12.2.3 Sample Gas Volume.

$$V_{m(std)} = \frac{V_m\,Y\,P_m\,T_{std}}{P_{std}\,T_m} = K_6\,Y\,\frac{V_m P_m}{T_m} \quad \text{Eq. 4-6}$$

Where:

$K_6$ = 0.3855 °K/mm Hg for metric units,
= 17.64 °R/in. Hg for English units.

12.2.4 Approximate Moisture Content.

$$B_{ws} = \frac{V_{wc(std)}}{V_{wc(std)} + V_{m(std)}} + B_{wm} = \frac{V_{wc(std)}}{V_{wc(std)} + V_{m(std)}} + (0.025) \quad \text{Eq. 4-7}$$

*13.0 Method Performance [Reserved]*

*14.0 Pollution Prevention [Reserved]*

*15.0 Waste Management [Reserved]*

*16.0 Alternative Procedures*

The procedure described in Method 5 for determining moisture content is acceptable as a reference method.

*17.0 References*

1. Air Pollution Engineering Manual (Second Edition). Danielson, J.A. (ed.). U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards. Research Triangle Park, NC. Publication No. AP–40. 1973.

2. Devorkin, Howard, et al. Air Pollution Source Testing Manual. Air Pollution Control District, Los Angeles, CA. November 1963.

3. Methods for Determination of Velocity, Volume, Dust and Mist Content of Gases. Western Precipitation Division of Joy Manufacturing Co. Los Angeles, CA. Bulletin WP–50. 1968.

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*18.0 Tables, Diagrams, Flowcharts, and Validation Data*

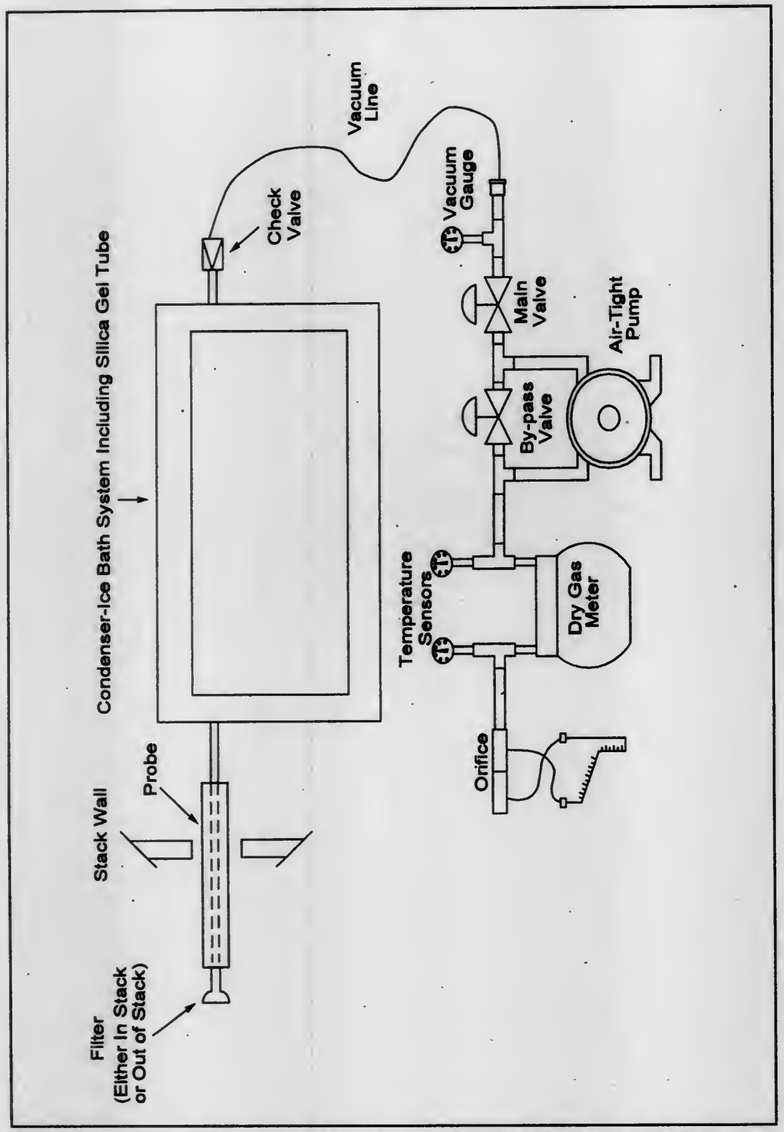



Figure 4-1. Moisture Sampling Train-Reference Method



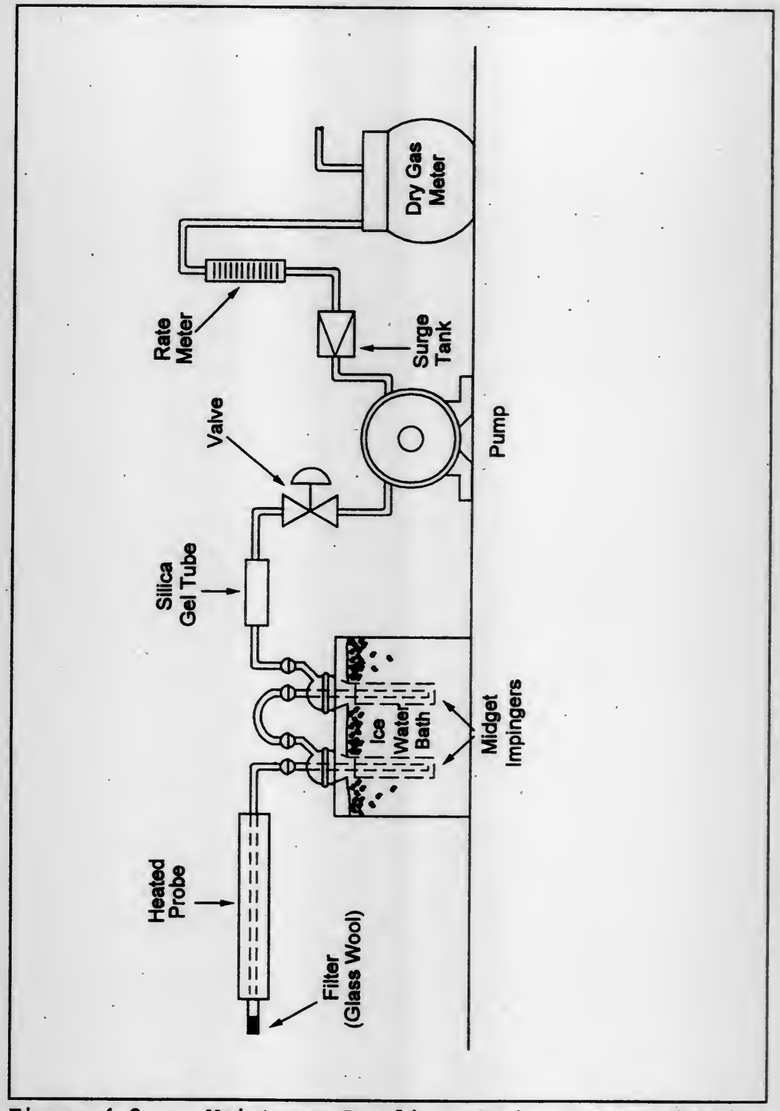



Figure 4-2. Moisture Sampling Train - Approximation Method.

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Plant _____
Location _____
Operator _____
Date _____
Run No. _____
Ambient temperature _____
Barometric pressure _____
Probe Length _____

**SCHEMATIC OF STACK CROSS SECTION**

| Traverse Pt. No. | Sampling time (Δ), min | Stack temperature °C (°F) | Pressure differential across orifice meter ΔH mm (in.) $H_2O$ | Meter reading gas sample volume $m^3$ ($ft^3$) | $\Delta V_m$ $m^3$ ($ft^3$) | Gas sample temperature at dry gas meter | | Temperature of gas leaving condenser or last impinger °C (°F) |
|---|---|---|---|---|---|---|---|---|
| | | | | | | Inlet $Tm_{in}$ °C (°F) | Outlet $Tm_{out}$ °C (°F) | |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
| Average | | | | | | | | |

Location _____
Test _____
Date _____
Operator _____
Barometric pressure _____
Comments: _____

Figure 4–3. Moisture Determination—Reference Method

| Clock time | Gas Volume through meter, ($V_m$), $m^3$ ($ft^3$) | Rate meter setting $m^3$/min ($ft^3$/min) | Meter temperature °C (°F) |
|---|---|---|---|
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

Figure 4–4. Example Moisture Determination Field Data Sheet—Approximation Method

| | Impinger volume, ml | Silica gel weight, g |
|---|---|---|
| Final | | |
| Initial | | |
| Difference | | |

Figure 4–5. Analytical Data—Reference Method

**Method 5—Determination of Particulate Matter Emissions From Stationary Sources**

**Note:** This method does not include all of the specifications (*e.g.*, equipment and supplies) and procedures (*e.g.*, sampling and analytical) essential to its performance. Some material is incorporated by reference from other methods in this part. Therefore, to obtain reliable results, persons using this method should have a thorough knowledge of at least the following additional test methods: Method 1, Method 2, Method 3.



*1.0 Scope and Application*

1.1 Analyte. Particulate matter (PM). No CAS number assigned.

1.2 Applicability. This method is applicable for the determination of PM emissions from stationary sources.

1.3 Data Quality Objectives. Adherence to the requirements of this method will enhance the quality of the data obtained from air pollutant sampling methods.

*2.0 Summary of Method*

Particulate matter is withdrawn isokinetically from the source and collected on a glass fiber filter maintained at a temperature of 120 ± 14°C (248 ± 25°F) or such other temperature as specified by an applicable subpart of the standards or approved by the Administrator for a particular application. The PM mass, which includes any material that condenses at or above the filtration temperature, is determined gravimetrically after the removal of uncombined water.

*3.0 Definitions [Reserved]*

*4.0 Interferences [Reserved]*

*5.0 Safety*

5.1 Disclaimer. This method may involve hazardous materials, operations, and equipment. This test method may not address all of the safety problems associated with its use. It is the responsibility of the user of this test method to establish appropriate safety and health practices and to determine the applicability of regulatory limitations prior to performing this test method.

*6.0 Equipment and Supplies*

6.1 Sample Collection. The following items are required for sample collection:

6.1.1 Sampling Train. A schematic of the sampling train used in this method is shown in Figure 5–1 in Section 18.0. Complete construction details are given in APTD–0581 (Reference 2 in Section 17.0); commercial models of this train are also available. For changes from APTD–0581 and for allowable modifications of the train shown in Figure 5–1, see the following subsections.

**Note:** The operating and maintenance procedures for the sampling train are described in APTD–0576 (Reference 3 in Section 17.0). Since correct usage is important in obtaining valid results, all users should read APTD–0576 and adopt the operating and maintenance procedures outlined in it, unless otherwise specified herein.

6.1.1.1 Probe Nozzle. Stainless steel (316) or glass with a sharp, tapered leading edge. The angle of taper shall be ≤30°, and the taper shall be on the outside to preserve a constant internal diameter. The probe nozzle shall be of the button-hook or elbow design, unless otherwise specified by the Administrator. If made of stainless steel, the nozzle shall be constructed from seamless tubing. Other materials of construction may be used, subject to the approval of the Administrator. A range of nozzle sizes suitable for isokinetic sampling should be available. Typical nozzle sizes range from 0.32 to 1.27 cm (⅛ to ½ in) inside diameter (ID) in increments of 0.16 cm (1/16 in). Larger nozzles sizes are also available if higher volume sampling trains are used. Each nozzle shall be calibrated, according to the procedures outlined in Section 10.1.

6.1.1.2 Probe Liner. Borosilicate or quartz glass tubing with a heating system capable of maintaining a probe gas temperature during sampling of 120 ± 14 °C (248 ± 25 °F), or such other temperature as specified by an applicable subpart of the standards or as approved by the Administrator for a particular application. Since the actual temperature at the outlet of the probe is not usually monitored during sampling, probes constructed according to APTD–0581 and utilizing the calibration curves of APTD–0576 (or calibrated according to the procedure outlined in APTD–0576) will be considered acceptable. Either borosilicate or quartz glass probe liners may be used for stack temperatures up to about 480 °C (900 °F); quartz glass liners shall be used for temperatures between 480 and 900 °C (900 and 1,650 °F). Both types of liners may be used at higher temperatures than specified for short periods of time, subject to the approval of the Administrator. The softening temperature for borosilicate glass is 820 °C (1500°F), and for quartz glass it is 1500 °C (2700 °F). Whenever practical, every effort should be made to use borosilicate or quartz glass probe liners. Alternatively, metal liners (e.g., 316 stainless steel, Incoloy 825 or other corrosion resistant metals) made of seamless tubing may be used, subject to the approval of the Administrator.

6.1.1.3 Pitot Tube. Type S, as described in Section 6.1 of Method 2, or other device approved by the Administrator. The pitot tube shall be attached to the probe (as shown in Figure 5–1) to allow constant monitoring of the stack gas velocity. The impact (high pressure) opening plane of the pitot tube shall be even with or above the nozzle entry plane (see Method 2, Figure 2–7) during sampling. The Type S pitot tube assembly shall have a known coefficient, determined as outlined in Section 10.0 of Method 2.

6.1.1.4 Differential Pressure Gauge. Inclined manometer or equivalent device (two), as described in Section 6.2 of Method 2. One manometer shall be used for velocity head (Δp) readings, and the other, for orifice differential pressure readings.

6.1.1.5 Filter Holder. Borosilicate glass, with a glass frit filter support and a silicone rubber gasket. Other materials of construction (*e.g.*, stainless steel, Teflon, or Viton) may be used, subject to the approval of the Administrator. The holder design shall provide a positive seal against leakage from the outside or around the filter. The holder shall be attached immediately at the outlet of the probe (or cyclone, if used).

6.1.1.6 Filter Heating System. Any heating system capable of maintaining a temperature around the filter holder of 120 ±14 °C (248 ±25 °F) during sampling, or such other temperature as specified by an applicable subpart of the standards or approved by the Administrator for a particular application.

6.1.1.7 Temperature Sensor. A temperature sensor capable of measuring temperature to within ±3 °C (5.4 °F) shall be installed so that the sensing tip of the temperature sensor is in direct contact with the sample gas, and the temperature around the filter holder can be regulated and monitored during sampling.

6.1.1.8 Condenser. The following system shall be used to determine the stack gas moisture content: Four impingers connected in series with leak-free ground glass fittings or any similar leak-free noncontaminating fittings. The first, third, and fourth impingers shall be of the Greenburg-Smith design, modified by replacing the tip with a 1.3 cm (½ in.) ID glass tube extending to about 1.3 cm (½ in.) from the bottom of the flask. The second impinger shall be of the Greenburg-Smith design with the standard tip. Modifications (e.g., using flexible connections between the impingers, using materials other than glass, or using flexible vacuum lines to connect the filter holder to the condenser) may be used, subject to the approval of the Administrator. The first and second impingers shall contain known quantities of water (Section 8.3.1), the third shall be empty, and the fourth shall contain a known weight of silica gel, or equivalent desiccant. A temperature sensor, capable of measuring temperature to within 1 °C (2 °F) shall be placed at the outlet of the fourth impinger for monitoring purposes. Alternatively, any system that cools the sample gas stream and allows

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measurement of the water condensed and moisture leaving the condenser, each to within 1 ml or 1 g may be used, subject to the approval of the Administrator. An acceptable technique involves the measurement of condensed water either gravimetrically or volumetrically and the determination of the moisture leaving the condenser by: (1) monitoring the temperature and pressure at the exit of the condenser and using Dalton's law of partial pressures; or (2) passing the sample gas stream through a tared silica gel (or equivalent desiccant) trap with exit gases kept below 20 °C (68 °F) and determining the weight gain. If means other than silica gel are used to determine the amount of moisture leaving the condenser, it is recommended that silica gel (or equivalent) still be used between the condenser system and pump to prevent moisture condensation in the pump and metering devices and to avoid the need to make corrections for moisture in the metered volume.

**Note:** If a determination of the PM collected in the impingers is desired in addition to moisture content, the impinger system described above shall be used, without modification. Individual States or control agencies requiring this information shall be contacted as to the sample recovery and analysis of the impinger contents.

6.1.1.9 Metering System. Vacuum gauge, leak-free pump, temperature sensors capable of measuring temperature to within 3 °C (5.4 °F), dry gas meter (DGM) capable of measuring volume to within 2 percent, and related equipment, as shown in Figure 5–1. Other metering systems capable of maintaining sampling rates within 10 percent of isokinetic and of determining sample volumes to within 2 percent may be used, subject to the approval of the Administrator. When the metering system is used in conjunction with a pitot tube, the system shall allow periodic checks of isokinetic rates.

6.1.1.10 Sampling trains utilizing metering systems designed for higher flow rates than that described in APTD–0581 or APTD–0576 may be used provided that the specifications of this method are met.

6.1.2 Barometer. Mercury, aneroid, or other barometer capable of measuring atmospheric pressure to within 2.5 mm Hg (0.1 in.).

**Note:** The barometric pressure reading may be obtained from a nearby National Weather Service station. In this case, the station value (which is the absolute barometric pressure) shall be requested and an adjustment for elevation differences between the weather station and sampling point shall be made at a rate of minus 2.5 mm Hg (0.1 in.) per 30 m (100 ft) elevation increase or plus 2.5 mm Hg (0.1 in) per 30 m (100 ft) elevation decrease.

6.1.3 Gas Density Determination Equipment. Temperature sensor and pressure gauge, as described in Sections 6.3 and 6.4 of Method 2, and gas analyzer, if necessary, as described in Method 3. The temperature sensor shall, preferably, be permanently attached to the pitot tube or sampling probe in a fixed configuration, such that the tip of the sensor extends beyond the leading edge of the probe sheath and does not touch any metal. Alternatively, the sensor may be attached just prior to use in the field. Note, however, that if the temperature sensor is attached in the field, the sensor must be placed in an interference-free arrangement with respect to the Type S pitot tube openings (see Method 2, Figure 2–4). As a second alternative, if a difference of not more than 1 percent in the average velocity measurement is to be introduced, the temperature sensor need not be attached to the probe or pitot tube. (This alternative is subject to the approval of the Administrator.)

6.2 Sample Recovery. The following items are required for sample recovery:

6.2.1 Probe-Liner and Probe-Nozzle Brushes. Nylon bristle brushes with stainless steel wire handles. The probe brush shall have extensions (at least as long as the probe) constructed of stainless steel, Nylon, Teflon, or similarly inert material. The brushes shall be properly sized and shaped to brush out the probe liner and nozzle.

6.2.2 Wash Bottles. Two Glass wash bottles are recommended. Alternatively, polyethylene wash bottles may be used. It is recommended that acetone not be stored in polyethylene bottles for longer than a month.

6.2.3 Glass Sample Storage Containers. Chemically resistant, borosilicate glass bottles, for acetone washes, 500 ml or 1000 ml. Screw cap liners shall either be rubber-backed Teflon or shall be constructed so as to be leak-free and resistant to chemical attack by acetone. (Narrow mouth glass bottles have been found to be less prone to leakage.) Alternatively, polyethylene bottles may be used.

6.2.4 Petri Dishes. For filter samples; glass or polyethylene, unless otherwise specified by the Administrator.

6.2.5 Graduated Cylinder and/or Balance. To measure condensed water to within 1 ml or 0.5 g. Graduated cylinders shall have subdivisions no greater than 2 ml.

6.2.6 Plastic Storage Containers. Air-tight containers to store silica gel.

6.2.7 Funnel and Rubber Policeman. To aid in transfer of silica gel to container; not necessary if silica gel is weighed in the field.

6.2.8 Funnel. Glass or polyethylene, to aid in sample recovery.

6.3 Sample Analysis. The following equipment is required for sample analysis:

6.3.1 Glass Weighing Dishes.

6.3.2 Desiccator.

6.3.3 Analytical Balance. To measure to within 0.1 mg.

6.3.4 Balance. To measure to within 0.5 g.

6.3.5 Beakers. 250 ml.

6.3.6 Hygrometer. To measure the relative humidity of the laboratory environment.

6.3.7 Temperature Sensor. To measure the temperature of the laboratory environment.

*7.0 Reagents and Standards*

7.1 Sample Collection. The following reagents are required for sample collection:

7.1.1 Filters. Glass fiber filters, without organic binder, exhibiting at least 99.95 percent efficiency (<0.05 percent penetration) on 0.3 micron dioctyl phthalate smoke particles. The filter efficiency test shall be conducted in accordance with ASTM Method D 2986–71, 78, or 95a (incorporated by reference—see § 60.17). Test data from the supplier's quality control program are sufficient for this purpose. In sources containing $SO_2$ or $SO_3$, the filter material must be of a type that is unreactive to $SO_2$ or $SO_3$. Reference 10 in Section 17.0 may be used to select the appropriate filter.

7.1.2 Silica Gel. Indicating type, 6 to 16 mesh. If previously used, dry at 175 °C (350 °F) for 2 hours. New silica gel may be used as received. Alternatively, other types of desiccants (equivalent or better) may be used, subject to the approval of the Administrator.

7.1.3 Water. When analysis of the material caught in the impingers is required, deionized distilled water (to conform to ASTM D 1193–77 or 91 Type 3 (incorporated by reference—see § 60.17)) shall be used. Run blanks prior to field use to eliminate a high blank on test samples.

7.1.4 Crushed Ice.

7.1.5 Stopcock Grease. Acetone-insoluble, heat-stable silicone grease. This is not necessary if screw-on connectors with Teflon sleeves, or similar, are used. Alternatively, other types of stopcock grease may be used, subject to the approval of the Administrator.

7.2 Sample Recovery. Acetone, reagent grade, ≤0.001 percent residue, in glass bottles, is required. Acetone from metal containers generally has a high



residue blank and should not be used. Sometimes, suppliers transfer acetone to glass bottles from metal containers; thus, acetone blanks shall be run prior to field use and only acetone with low blank values (≤0.001 percent) shall be used. In no case shall a blank value of greater than 0.001 percent of the weight of acetone used be subtracted from the sample weight.

7.3 Sample Analysis. The following reagents are required for sample analysis:

7.3.1 Acetone. Same as in Section 7.2.

7.3.2 Desiccant. Anhydrous calcium sulfate, indicating type. Alternatively, other types of desiccants may be used, subject to the approval of the Administrator.

*8.0 Sample Collection, Preservation, Storage, and Transport*

8.1 Pretest Preparation. It is suggested that sampling equipment be maintained according to the procedures described in APTD–0576.

8.1.1 Place 200 to 300 g of silica gel in each of several air-tight containers. Weigh each container, including silica gel, to the nearest 0.5 g, and record this weight. As an alternative, the silica gel need not be preweighed, but may be weighed directly in its impinger or sampling holder just prior to train assembly.

8.1.2 Check filters visually against light for irregularities, flaws, or pinhole leaks. Label filters of the proper diameter on the back side near the edge using numbering machine ink. As an alternative, label the shipping containers (glass or polyethylene petri dishes), and keep each filter in its identified container at all times except during sampling.

8.1.3 Desiccate the filters at 20 ± 5.6 °C (68 ± 10 °F) and ambient pressure for at least 24 hours. Weigh each filter (or filter and shipping container) at intervals of at least 6 hours to a constant weight (*i.e.*, ≤0.5 mg change from previous weighing). Record results to the nearest 0.1 mg. During each weighing, the period for which the filter is exposed to the laboratory atmosphere shall be less than 2 minutes. Alternatively (unless otherwise specified by the Administrator), the filters may be oven dried at 105 °C (220 °F) for 2 to 3 hours, desiccated for 2 hours, and weighed. Procedures other than those described, which account for relative humidity effects, may be used, subject to the approval of the Administrator.

8.2 Preliminary Determinations.

8.2.1 Select the sampling site and the minimum number of sampling points according to Method 1 or as specified by the Administrator. Determine the stack pressure, temperature, and the range of velocity heads using Method 2; it is recommended that a leak check of the pitot lines (see Method 2, Section 8.1) be performed. Determine the moisture content using Approximation Method 4 or its alternatives for the purpose of making isokinetic sampling rate settings. Determine the stack gas dry molecular weight, as described in Method 2, Section 8.6; if integrated Method 3 sampling is used for molecular weight determination, the integrated bag sample shall be taken simultaneously with, and for the same total length of time as, the particulate sample run.

8.2.2 Select a nozzle size based on the range of velocity heads, such that it is not necessary to change the nozzle size in order to maintain isokinetic sampling rates. During the run, do not change the nozzle size. Ensure that the proper differential pressure gauge is chosen for the range of velocity heads encountered (see Section 8.3 of Method 2).

8.2.3 Select a suitable probe liner and probe length such that all traverse points can be sampled. For large stacks, consider sampling from opposite sides of the stack to reduce the required probe length.

8.2.4 Select a total sampling time greater than or equal to the minimum total sampling time specified in the test procedures for the specific industry such that (l) the sampling time per point is not less than 2 minutes (or some greater time interval as specified by the Administrator), and (2) the sample volume taken (corrected to standard conditions) will exceed the required minimum total gas sample volume. The latter is based on an approximate average sampling rate.

8.2.5 The sampling time at each point shall be the same. It is recommended that the number of minutes sampled at each point be an integer or an integer plus one-half minute, in order to avoid timekeeping errors.

8.2.6 In some circumstances (*e.g.*, batch cycles) it may be necessary to sample for shorter times at the traverse points and to obtain smaller gas sample volumes. In these cases, the Administrator's approval must first be obtained.

8.3 Preparation of Sampling Train.

8.3.1 During preparation and assembly of the sampling train, keep all openings where contamination can occur covered until just prior to assembly or until sampling is about to begin. Place 100 ml of water in each of the first two impingers, leave the third impinger empty, and transfer approximately 200 to 300 g of preweighed silica gel from its container to the fourth impinger. More silica gel may be used, but care should be taken to ensure that it is not entrained and carried out from the impinger during sampling. Place the container in a clean place for later use in the sample recovery. Alternatively, the weight of the silica gel plus impinger may be determined to the nearest 0.5 g and recorded.

8.3.2 Using a tweezer or clean disposable surgical gloves, place a labeled (identified) and weighed filter in the filter holder. Be sure that the filter is properly centered and the gasket properly placed so as to prevent the sample gas stream from circumventing the filter. Check the filter for tears after assembly is completed.

8.3.3 When glass probe liners are used, install the selected nozzle using a Viton A O-ring when stack temperatures are less than 260 °C (500 °F) or a heat-resistant string gasket when temperatures are higher. See APTD–0576 for details. Other connecting systems using either 316 stainless steel or Teflon ferrules may be used. When metal liners are used, install the nozzle as discussed above or by a leak-free direct mechanical connection. Mark the probe with heat resistant tape or by some other method to denote the proper distance into the stack or duct for each sampling point.

8.3.4 Set up the train as shown in Figure 5–1, using (if necessary) a very light coat of silicone grease on all ground glass joints, greasing only the outer portion (see APTD–0576) to avoid the possibility of contamination by the silicone grease. Subject to the approval of the Administrator, a glass cyclone may be used between the probe and filter holder when the total particulate catch is expected to exceed 100 mg or when water droplets are present in the stack gas.

8.3.5 Place crushed ice around the impingers.

8.4 Leak-Check Procedures.

8.4.1 Leak Check of Metering System Shown in Figure 5–1. That portion of the sampling train from the pump to the orifice meter should be leak-checked prior to initial use and after each shipment. Leakage after the pump will result in less volume being recorded than is actually sampled. The following procedure is suggested (see Figure 5–2): Close the main valve on the meter box. Insert a one-hole rubber stopper with rubber tubing attached into the orifice exhaust pipe. Disconnect and vent the

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low side of the orifice manometer. Close off the low side orifice tap. Pressurize the system to 13 to 18 cm (5 to 7 in.) water column by blowing into the rubber tubing. Pinch off the tubing, and observe the manometer for one minute. A loss of pressure on the manometer indicates a leak in the meter box; leaks, if present, must be corrected.

8.4.2 Pretest Leak Check. A pretest leak check of the sampling train is recommended, but not required. If the pretest leak check is conducted, the following procedure should be used.

8.4.2.1 After the sampling train has been assembled, turn on and set the filter and probe heating systems to the desired operating temperatures. Allow time for the temperatures to stabilize. If a Viton A O-ring or other leak-free connection is used in assembling the probe nozzle to the probe liner, leak-check the train at the sampling site by plugging the nozzle and pulling a 380 mm (15 in.) Hg vacuum.

**Note:** A lower vacuum may be used, provided that it is not exceeded during the test.

8.4.2.2 If a heat-resistant string is used, do not connect the probe to the train during the leak check. Instead, leak-check the train by first plugging the inlet to the filter holder (cyclone, if applicable) and pulling a 380 mm (15 in.) Hg vacuum (see **Note** in Section 8.4.2.1). Then connect the probe to the train, and leak-check at approximately 25 mm (1 in.) Hg vacuum; alternatively, the probe may be leak-checked with the rest of the sampling train, in one step, at 380 mm (15 in.) Hg vacuum. Leakage rates in excess of 4 percent of the average sampling rate or 0.00057 $m^3$/min (0.020 cfm), whichever is less, are unacceptable.

8.4.2.3 The following leak-check instructions for the sampling train described in APTD–0576 and APTD–0581 may be helpful. Start the pump with the bypass valve fully open and the coarse adjust valve completely closed. Partially open the coarse adjust valve, and slowly close the bypass valve until the desired vacuum is reached. Do not reverse the direction of the bypass valve, as this will cause water to back up into the filter holder. If the desired vacuum is exceeded, either leak-check at this higher vacuum, or end the leak check and start over.

8.4.2.4 When the leak check is completed, first slowly remove the plug from the inlet to the probe, filter holder, or cyclone (if applicable), and immediately turn off the vacuum pump. This prevents the water in the impingers from being forced backward into the filter holder and the silica gel from being entrained backward into the third impinger.

8.4.3 Leak Checks During Sample Run. If, during the sampling run, a component (*e.g.*, filter assembly or impinger) change becomes necessary, a leak check shall be conducted immediately before the change is made. The leak check shall be done according to the procedure outlined in Section 8.4.2 above, except that it shall be done at a vacuum equal to or greater than the maximum value recorded up to that point in the test. If the leakage rate is found to be no greater than 0.00057 $m^3$/min (0.020 cfm) or 4 percent of the average sampling rate (whichever is less), the results are acceptable, and no correction will need to be applied to the total volume of dry gas metered; if, however, a higher leakage rate is obtained, either record the leakage rate and plan to correct the sample volume as shown in Section 12.3 of this method, or void the sample run.

**Note:** Immediately after component changes, leak checks are optional. If such leak checks are done, the procedure outlined in Section 8.4.2 above should be used.

8.4.4 Post-Test Leak Check. A leak check of the sampling train is mandatory at the conclusion of each sampling run. The leak check shall be performed in accordance with the procedures outlined in Section 8.4.2, except that it shall be conducted at a vacuum equal to or greater than the maximum value reached during the sampling run. If the leakage rate is found to be no greater than 0.00057 $m^3$ min (0.020 cfm) or 4 percent of the average sampling rate (whichever is less), the results are acceptable, and no correction need be applied to the total volume of dry gas metered. If, however, a higher leakage rate is obtained, either record the leakage rate and correct the sample volume as shown in Section 12.3 of this method, or void the sampling run.

8.5 Sampling Train Operation. During the sampling run, maintain an isokinetic sampling rate (within 10 percent of true isokinetic unless otherwise specified by the Administrator) and a temperature around the filter of 120 ± 14 °C (248 ± 25 °F), or such other temperature as specified by an applicable subpart of the standards or approved by the Administrator.

8.5.1 For each run, record the data required on a data sheet such as the one shown in Figure 5–3. Be sure to record the initial DGM reading. Record the DGM readings at the beginning and end of each sampling time increment, when changes in flow rates are made, before and after each leak check, and when sampling is halted. Take other readings indicated by Figure 5–3 at least once at each sample point during each time increment and additional readings when significant changes (20 percent variation in velocity head readings) necessitate additional adjustments in flow rate. Level and zero the manometer. Because the manometer level and zero may drift due to vibrations and temperature changes, make periodic checks during the traverse.

8.5.2 Clean the portholes prior to the test run to minimize the chance of collecting deposited material. To begin sampling, verify that the filter and probe heating systems are up to temperature, remove the nozzle cap, verify that the pitot tube and probe are properly positioned. Position the nozzle at the first traverse point with the tip pointing directly into the gas stream. Immediately start the pump, and adjust the flow to isokinetic conditions. Nomographs are available which aid in the rapid adjustment of the isokinetic sampling rate without excessive computations. These nomographs are designed for use when the Type S pitot tube coefficient ($C_p$) is 0.85 ± 0.02, and the stack gas equivalent density [dry molecular weight ($M_d$)] is equal to 29 ± 4. APTD–0576 details the procedure for using the nomographs. If $C_p$ and $M_d$ are outside the above stated ranges, do not use the nomographs unless appropriate steps (see Reference 7 in Section 17.0) are taken to compensate for the deviations.

8.5.3 When the stack is under significant negative pressure (*i.e.*, height of impinger stem), take care to close the coarse adjust valve before inserting the probe into the stack to prevent water from backing into the filter holder. If necessary, the pump may be turned on with the coarse adjust valve closed.

8.5.4 When the probe is in position, block off the openings around the probe and porthole to prevent unrepresentative dilution of the gas stream.

8.5.5 Traverse the stack cross-section, as required by Method 1 or as specified by the Administrator, being careful not to bump the probe nozzle into the stack walls when sampling near the walls or when removing or inserting the probe through the portholes; this minimizes the chance of extracting deposited material.

8.5.6 During the test run, make periodic adjustments to keep the temperature around the filter holder at the proper level; add more ice and, if necessary, salt to maintain a temperature of less than 20 °C (68 °F) at the condenser/silica gel outlet. Also, periodically check the level and zero of the manometer.

8.5.7 If the pressure drop across the filter becomes too high, making isokinetic sampling difficult to maintain, the filter may be replaced in the midst of the sample run. It is recommended that another complete filter assembly be used rather than attempting to change the filter itself. Before a new filter assembly is installed, conduct a leak check (see Section 8.4.3). The total PM weight shall include the summation of the filter assembly catches.

8.5.8 A single train shall be used for the entire sample run, except in cases where simultaneous sampling is required in two or more separate ducts or at two or more different locations within the same duct, or in cases where equipment failure necessitates a change of trains. In all other situations, the use of two or more trains will be subject to the approval of the Administrator.

**Note:** When two or more trains are used, separate analyses of the front-half and (if applicable) impinger catches from each train shall be performed, unless identical nozzle sizes were used on all trains, in which case, the front-half catches from the individual trains may be combined (as may the impinger catches) and one analysis of front-half catch and one analysis of impinger catch may be performed. Consult with the Administrator for details concerning the calculation of results when two or more trains are used.

8.5.9 At the end of the sample run, close the coarse adjust valve, remove the probe and nozzle from the stack, turn off the pump, record the final DGM meter reading, and conduct a post-test leak check, as outlined in Section 8.4.4. Also, leak-check the pitot lines as described in Method 2, Section 8.1. The lines must pass this leak check, in order to validate the velocity head data.

8.6 Calculation of Percent Isokinetic. Calculate percent isokinetic (see Calculations, Section 12.11) to determine whether the run was valid or another test run should be made. If there was difficulty in maintaining isokinetic rates because of source conditions, consult with the Administrator for possible variance on the isokinetic rates.

8.7 Sample Recovery.

8.7.1 Proper cleanup procedure begins as soon as the probe is removed from the stack at the end of the sampling period. Allow the probe to cool.

8.7.2 When the probe can be safely handled, wipe off all external PM near the tip of the probe nozzle, and place a cap over it to prevent losing or gaining PM. Do not cap off the probe tip tightly while the sampling train is cooling down. This would create a vacuum in the filter holder, thereby drawing water from the impingers into the filter holder.

8.7.3 Before moving the sample train to the cleanup site, remove the probe from the sample train, wipe off the silicone grease, and cap the open outlet of the probe. Be careful not to lose any condensate that might be present. Wipe off the silicone grease from the filter inlet where the probe was fastened, and cap it. Remove the umbilical cord from the last impinger, and cap the impinger. If a flexible line is used between the first impinger or condenser and the filter holder, disconnect the line at the filter holder, and let any condensed water or liquid drain into the impingers or condenser. After wiping off the silicone grease, cap off the filter holder outlet and impinger inlet. Either ground-glass stoppers, plastic caps, or serum caps may be used to close these openings.

8.7.4 Transfer the probe and filter-impinger assembly to the cleanup area. This area should be clean and protected from the wind so that the chances of contaminating or losing the sample will be minimized.

8.7.5 Save a portion of the acetone used for cleanup as a blank. Take 200 ml of this acetone directly from the wash bottle being used, and place it in a glass sample container labeled "acetone blank."

8.7.6 Inspect the train prior to and during disassembly, and note any abnormal conditions. Treat the samples as follows:

8.7.6.1 Container No. 1. Carefully remove the filter from the filter holder, and place it in its identified petri dish container. Use a pair of tweezers and/or clean disposable surgical gloves to handle the filter. If it is necessary to fold the filter, do so such that the PM cake is inside the fold. Using a dry Nylon bristle brush and/or a sharp-edged blade, carefully transfer to the petri dish any PM and/or filter fibers that adhere to the filter holder gasket. Seal the container.

8.7.6.2 Container No. 2. Taking care to see that dust on the outside of the probe or other exterior surfaces does not get into the sample, quantitatively recover PM or any condensate from the probe nozzle, probe fitting, probe liner, and front half of the filter holder by washing these components with acetone and placing the wash in a glass container. Deionized distilled water may be used instead of acetone when approved by the Administrator and shall be used when specified by the Administrator. In these cases, save a water blank, and follow the Administrator's directions on analysis. Perform the acetone rinse as follows:

8.7.6.2.1 Carefully remove the probe nozzle. Clean the inside surface by rinsing with acetone from a wash bottle and brushing with a Nylon bristle brush. Brush until the acetone rinse shows no visible particles, after which make a final rinse of the inside surface with acetone.

8.7.6.2.2 Brush and rinse the inside parts of the fitting with acetone in a similar way until no visible particles remain.

8.7.6.2.3 Rinse the probe liner with acetone by tilting and rotating the probe while squirting acetone into its upper end so that all inside surfaces will be wetted with acetone. Let the acetone drain from the lower end into the sample container. A funnel (glass or polyethylene) may be used to aid in transferring liquid washes to the container. Follow the acetone rinse with a probe brush. Hold the probe in an inclined position, squirt acetone into the upper end as the probe brush is being pushed with a twisting action through the probe; hold a sample container underneath the lower end of the probe, and catch any acetone and particulate matter that is brushed from the probe. Run the brush through the probe three times or more until no visible PM is carried out with the acetone or until none remains in the probe liner on visual inspection. With stainless steel or other metal probes, run the brush through in the above prescribed manner at least six times since metal probes have small crevices in which particulate matter can be entrapped. Rinse the brush with acetone, and quantitatively collect these washings in the sample container. After the brushing, make a final acetone rinse of the probe.

8.7.6.2.4 It is recommended that two people clean the probe to minimize sample losses. Between sampling runs, keep brushes clean and protected from contamination.

8.7.6.2.5 After ensuring that all joints have been wiped clean of silicone grease, clean the inside of the front half of the filter holder by rubbing the surfaces with a Nylon bristle brush and rinsing with acetone. Rinse each surface three times or more if needed to remove visible particulate. Make a final rinse of the brush and filter holder. Carefully rinse out the glass cyclone, also (if applicable). After all acetone washings and particulate matter have been collected in the sample container, tighten the lid on the sample container so that acetone will not leak out when it is shipped to the laboratory. Mark the height of the fluid level to allow determination of whether leakage

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occurred during transport. Label the container to identify clearly its contents.

8.7.6.3 Container No. 3. Note the color of the indicating silica gel to determine whether it has been completely spent, and make a notation of its condition. Transfer the silica gel from the fourth impinger to its original container, and seal. A funnel may make it easier to pour the silica gel without spilling. A rubber policeman may be used as an aid in removing the silica gel from the impinger. It is not necessary to remove the small amount of dust particles that may adhere to the impinger wall and are difficult to remove. Since the gain in weight is to be used for moisture calculations, do not use any water or other liquids to transfer the silica gel. If a balance is available in the field, follow the procedure for Container No. 3 in Section 11.2.3.

8.7.6.4 Impinger Water. Treat the impingers as follows: Make a notation of any color or film in the liquid catch. Measure the liquid that is in the first three impingers to within 1 ml by using a graduated cylinder or by weighing it to within 0.5 g by using a balance. Record the volume or weight of liquid present. This information is required to calculate the moisture content of the effluent gas. Discard the liquid after measuring and recording the volume or weight, unless analysis of the impinger catch is required (see NOTE, Section 6.1.1.8). If a different type of condenser is used, measure the amount of moisture condensed either volumetrically or gravimetrically.

8.8 Sample Transport. Whenever possible, containers should be shipped in such a way that they remain upright at all times.

*9.0 Quality Control*

9.1 Miscellaneous Quality Control Measures.

| Section | Quality control measure | Effect |
|---|---|---|
| 8.4, 10.1–10.6 | Sampling equipment leak check and calibration. | Ensures accurate measurement of stack gas flow rate, sample volume. |

9.2 Volume Metering System Checks. The following procedures are suggested to check the volume metering system calibration values at the field test site prior to sample collection. These procedures are optional.

9.2.1 Meter Orifice Check. Using the calibration data obtained during the calibration procedure described in Section 10.3, determine the ΔH@ for the metering system orifice. The ΔH@ is the orifice pressure differential in units of in. $H_2O$ that correlates to 0.75 cfm of air at 528 °R and 29.92 in. Hg. The ΔH@ is calculated as follows:

$$\Delta H@ = 0.0319\ \Delta H \frac{T_M \theta^2}{P_{bar} Y^2 V_m^2}$$

Where:

ΔH = Average pressure differential across the orifice meter, in. $H_2O$.

$T_m$ = Absolute average DGM temperature, °R.

$P_{bar}$ = Barometric pressure, in. Hg.

θ = Total sampling time, min.

Y = DGM calibration factor, dimensionless.

$V_m$ = Volume of gas sample as measured by DGM, dcf.

0.0319 = (0.0567 in. Hg/°R) (0.75 cfm)$^2$

9.2.1.1 Before beginning the field test (a set of three runs usually constitutes a field test), operate the metering system (*i.e.*, pump, volume meter, and orifice) at the ΔH@ pressure differential for 10 minutes. Record the volume collected, the DGM temperature, and the barometric pressure. Calculate a DGM calibration check value, $Y_c$, as follows:

$$Y_c = \frac{10}{V_m}\left[\frac{0.0319\ T_m}{P_{bar}}\right]^{\frac{1}{2}}$$

where:

$Y_c$ = DGM calibration check value, dimensionless.

10 = Run time, min.

9.2.1.2 Compare the $Y_c$ value with the dry gas meter calibration factor Y to determine that: $0.97Y < Y_c < 1.03Y$. If the $Y_c$ value is not within this range, the volume metering system should be investigated before beginning the test.

9.2.2 Calibrated Critical Orifice. A critical orifice, calibrated against a wet test meter or spirometer and designed to be inserted at the inlet of the sampling meter box, may be used as a check by following the procedure of Section 16.2.

*10.0 Calibration and Standardization*

**Note:** Maintain a laboratory log of all calibrations.

10.1 Probe Nozzle. Probe nozzles shall be calibrated before their initial use in the field. Using a micrometer, measure the ID of the nozzle to the nearest 0.025 mm (0.001 in.). Make three separate measurements using different diameters each time, and obtain the average of the measurements. The difference between the high and low numbers shall not exceed 0.1 mm (0.004 in.). When nozzles become nicked, dented, or corroded, they shall be reshaped, sharpened, and recalibrated before use. Each nozzle shall be permanently and uniquely identified.

10.2 Pitot Tube Assembly. The Type S pitot tube assembly shall be calibrated according to the procedure outlined in Section 10.1 of Method 2.

10.3 Metering System.

10.3.1 Calibration Prior to Use. Before its initial use in the field, the metering system shall be calibrated as follows: Connect the metering system inlet to the outlet of a wet test meter that is accurate to within 1 percent. Refer to Figure 5–4. The wet test meter should have a capacity of 30 liters/rev (1 ft$^3$/rev). A spirometer of 400 liters (14 ft$^3$) or more capacity, or equivalent, may be used for this calibration, although a wet test meter is usually more practical. The wet test meter should be periodically calibrated with a spirometer or a liquid displacement meter to ensure the accuracy of the wet test meter. Spirometers or wet test meters of other sizes may be used, provided that the specified accuracies of the procedure are maintained. Run the metering system pump for about 15 minutes with the orifice manometer indicating a median reading as expected in field use to allow the pump to warm up and to permit the interior surface of the wet test meter to be thoroughly wetted. Then, at each of a minimum of three orifice manometer settings, pass an exact quantity of gas through the wet test meter and note the gas volume indicated by the DGM. Also note the barometric pressure and the temperatures of the wet test meter, the inlet of the DGM, and the outlet of the DGM. Select the highest and lowest orifice settings to bracket the expected field operating range of the orifice. Use a minimum volume of 0.14 m$^3$ (5 ft$^3$) at all orifice settings. Record all the data on a form similar to Figure 5–5 and calculate Y, the DGM calibration factor, and $\Delta H_@$, the orifice calibration factor, at each orifice setting as shown on Figure 5–5. Allowable tolerances for individual Y and $\Delta H_@$ values are given in Figure 5–5. Use the average of the Y values in the calculations in Section 12.0.



10.3.1.1 Before calibrating the metering system, it is suggested that a leak check be conducted. For metering systems having diaphragm pumps, the normal leak-check procedure will not detect leakages within the pump. For these cases the following leak-check procedure is suggested: make a 10-minute calibration run at 0.00057 m$^3$/min (0.020 cfm). At the end of the run, take the difference of the measured wet test meter and DGM volumes. Divide the difference by 10 to get the leak rate. The leak rate should not exceed 0.00057 m$^3$/min (0.020 cfm).

10.3.2 Calibration After Use. After each field use, the calibration of the metering system shall be checked by performing three calibration runs at a single, intermediate orifice setting (based on the previous field test), with the vacuum set at the maximum value reached during the test series. To adjust the vacuum, insert a valve between the wet test meter and the inlet of the metering system. Calculate the average value of the DGM calibration factor. If the value has changed by more than 5 percent, recalibrate the meter over the full range of orifice settings, as detailed in Section 10.3.1.

**Note:** Alternative procedures (*e.g.*, rechecking the orifice meter coefficient) may be used, subject to the approval of the Administrator.

10.3.3 Acceptable Variation in Calibration. If the DGM coefficient values obtained before and after a test series differ by more than 5 percent, the test series shall either be voided, or calculations for the test series shall be performed using whichever meter coefficient value (*i.e.*, before or after) gives the lower value of total sample volume.

10.4 Probe Heater Calibration. Use a heat source to generate air heated to selected temperatures that approximate those expected to occur in the sources to be sampled. Pass this air through the probe at a typical sample flow rate while measuring the probe inlet and outlet temperatures at various probe heater settings. For each air temperature generated, construct a graph of probe heating system setting versus probe outlet temperature. The procedure outlined in APTD–0576 can also be used. Probes constructed according to APTD–0581 need not be calibrated if the calibration curves in APTD–0576 are used. Also, probes with outlet temperature monitoring capabilities do not require calibration.

**Note:** The probe heating system shall be calibrated before its initial use in the field.

10.5 Temperature Sensors. Use the procedure in Section 10.3 of Method 2 to calibrate in-stack temperature sensors. Dial thermometers, such as are used for the DGM and condenser outlet, shall be calibrated against mercury-in-glass thermometers.

10.6 Barometer. Calibrate against a mercury barometer.

*11.0 Analytical Procedure*

11.1 Record the data required on a sheet such as the one shown in Figure 5–6.

11.2 Handle each sample container as follows:

11.2.1 Container No. 1. Leave the contents in the shipping container or transfer the filter and any loose PM from the sample container to a tared glass weighing dish. Desiccate for 24 hours in a desiccator containing anhydrous calcium sulfate. Weigh to a constant weight, and report the results to the nearest 0.1 mg. For the purposes of this section, the term "constant weight" means a difference of no more than 0.5 mg or 1 percent of total weight less tare weight, whichever is greater, between two consecutive weighings, with no less than 6 hours of desiccation time between weighings. Alternatively, the sample may be oven dried at 104 °C (220 °F) for 2 to 3 hours, cooled in the desiccator, and weighed to a constant weight, unless otherwise specified by the Administrator. The sample may be oven dried at 104 °C (220 °F) for 2 to 3 hours. Once the sample has cooled, weigh the sample, and use this weight as a final weight.

11.2.2 Container No. 2. Note the level of liquid in the container, and confirm on the analysis sheet whether leakage occurred during transport. If a noticeable amount of leakage has occurred, either void the sample or use methods, subject to the approval of the Administrator, to correct the final results. Measure the liquid in this container either volumetrically to ±1 ml or gravimetrically to ±0.5 g. Transfer the contents to a tared 250 ml beaker, and evaporate to dryness at ambient temperature and pressure. Desiccate for 24 hours, and weigh to a constant weight. Report the results to the nearest 0.1 mg.

11.2.3 Container No. 3. Weigh the spent silica gel (or silica gel plus impinger) to the nearest 0.5 g using a balance. This step may be conducted in the field.

11.2.4 Acetone Blank Container. Measure the acetone in this container either volumetrically or gravimetrically. Transfer the acetone to a tared 250 ml beaker, and evaporate to dryness at ambient temperature and pressure. Desiccate for 24 hours, and weigh to a constant weight. Report the results to the nearest 0.1 mg.

**Note:** The contents of Container No. 2 as well as the acetone blank container may be evaporated at temperatures higher than ambient. If evaporation is done at an elevated temperature, the temperature must be below the boiling point of the solvent; also, to prevent "bumping," the evaporation process must be closely supervised, and the contents of the beaker must be swirled occasionally to maintain an even temperature. Use extreme care, as acetone is highly flammable and has a low flash point.

*12.0 Data Analysis and Calculations*

Carry out calculations, retaining at least one extra significant figure beyond that of the acquired data. Round off figures after the final calculation. Other forms of the equations may be used, provided that they give equivalent results.

12.1 Nomenclature.

$A_n$ = Cross-sectional area of nozzle, m$^2$ (ft$^2$).

$B_{ws}$ = Water vapor in the gas stream, proportion by volume.

$C_a$ = Acetone blank residue concentration, mg/mg.

$c_s$ = Concentration of particulate matter in stack gas, dry basis, corrected to standard conditions, g/dscm (gr/dscf).

I = Percent of isokinetic sampling.

$L_1$ = Individual leakage rate observed during the leak-check conducted prior to the first component change, m$^3$/min (ft$^3$/min)

$L_a$ = Maximum acceptable leakage rate for either a pretest leak-check or for a leak-check following a component change; equal to 0.00057 m$^3$/min (0.020 cfm) or 4 percent of the average sampling rate, whichever is less.

$L_i$ = Individual leakage rate observed during the leak-check conducted prior to the "$i^{th}$" component change (i = 1, 2, 3 . . . n), m$^3$/min (cfm).

$L_p$ = Leakage rate observed during the post-test leak-check, m$^3$/min (cfm).

$m_a$ = Mass of residue of acetone after evaporation, mg.

$m_n$ = Total amount of particulate matter collected, mg.

$M_w$ = Molecular weight of water, 18.0 g/g-mole (18.0 lb/lb-mole).

$P_{bar}$ = Barometric pressure at the sampling site, mm Hg (in. Hg).

$P_s$ = Absolute stack gas pressure, mm Hg (in. Hg).

$P_{std}$ = Standard absolute pressure, 760 mm Hg (29.92 in. Hg).

R = Ideal gas constant, 0.06236 ((mm Hg)(m$^3$))/((K)(g-mole)) {21.85 ((in. Hg) (ft$^3$))/((°R) (lb-mole))}.

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$T_m$ = Absolute average DGM temperature (see Figure 5–3), K (°R).
$T_s$ = Absolute average stack gas temperature (see Figure 5–3), K (°R).
$T_{std}$ = Standard absolute temperature, 293 K (528 °R).
$V_a$ = Volume of acetone blank, ml.
$V_{aw}$ = Volume of acetone used in wash, ml.
$V_{lc}$ = Total volume of liquid collected in impingers and silica gel (see Figure 5–6), ml.
$V_m$ = Volume of gas sample as measured by dry gas meter, dcm (dcf).
$V_{m(std)}$ = Volume of gas sample measured by the dry gas meter, corrected to standard conditions, dscm (dscf).
$V_{w(std)}$ = Volume of water vapor in the gas sample, corrected to standard conditions, scm (scf).
$V_s$ = Stack gas velocity, calculated by Method 2, Equation 2–7, using data obtained from Method 5, m/sec (ft/sec).
$W_a$ = Weight of residue in acetone wash, mg.
Y = Dry gas meter calibration factor.
$\Delta H$ = Average pressure differential across the orifice meter (see Figure 5–4), mm $H_2O$ (in. $H_2O$).
$\rho_a$ = Density of acetone, mg/ml (see label on bottle).
$\rho_w$ = Density of water, 0.9982 g/ml.(0.002201 lb/ml).
$\theta$ = Total sampling time, min.
$\theta_1$ = Sampling time interval, from the beginning of a run until the first component change, min.
$\theta_i$ = Sampling time interval, between two successive component changes, beginning with the interval between the first and second changes, min.
$\theta_p$ = Sampling time interval, from the final ($n^{th}$) component change until the end of the sampling run, min.
13.6 = Specific gravity of mercury.
60 = Sec/min.
100 = Conversion to percent.

12.2 Average Dry Gas Meter Temperature and Average Orifice Pressure Drop. See data sheet (Figure 5–3).

12.3 Dry Gas Volume. Correct the sample volume measured by the dry gas meter to standard conditions (20 °C, 760 mm Hg or 68 °F, 29.92 in. Hg) by using Equation 5–1.

$$V_{m(std)} = V_m Y \frac{T_{std}\left(P_{bar} + \frac{\Delta H}{13.6}\right)}{T_m P_{std}} \qquad \text{Eq. 5-1}$$

$$= K_1 V_m Y \frac{P_{bar} + \left(\frac{\Delta H}{13.6}\right)}{T_m}$$

Where:
$K_1$ = 0.3858 °K/mm Hg for metric units, = 17.64 °R/in. Hg for English units.

**Note:** Equation 5–1 can be used as written unless the leakage rate observed during any of the mandatory leak checks (*i.e.*, the post-test leak check or leak checks conducted prior to component changes) exceeds $L_a$. If $L_p$ or $L_i$ exceeds $L_a$, Equation 5–1 must be modified as follows:

(a) Case I. No component changes made during sampling run. In this case, replace $V_m$ in Equation 5–1 with the expression:

$$\left(V_m - \left(L_p - L_a\right)\theta\right)$$

(b) Case II. One or more component changes made during the sampling run. In this case, replace $V_m$ in Equation 5–1 by the expression:

$$\left[V_m - \left(L_1 - L_a\right)\theta_1 - \sum_{i=2}^{n}\left(L_1 - L_a\right)\theta_i - \left(L_p - L_a\right)\theta_p\right]$$

and substitute only for those leakage rates ($L_i$ or $L_p$) which exceed $L_a$.

12.4 Volume of Water Vapor Condensed.

$$V_{w(std)} = V_{lc}\frac{\rho_w R T_{std}}{M_w P_{std}} \qquad \text{Eq. 5-2}$$

$$= K_2 V_{lc}$$

Where:
$K_2$ = 0.001333 $m^3$/ml for metric units,
= 0.04706 $ft^3$/ml for English units.

12.5 Moisture Content.

$$B_{ws} = \frac{V_{w(std)}}{V_{m(std)} + V_{w(std)}} \qquad \text{Eq. 5-3}$$

**Note:** In saturated or water droplet-laden gas streams, two calculations of the moisture content of the stack gas shall be made, one from the impinger analysis (Equation 5–3), and a second from the assumption of saturated conditions. The lower of the two values of $B_{ws}$ shall be considered correct. The procedure for determining the moisture content based upon the assumption of saturated conditions is given in Section 4.0 of Method 4. For the purposes of this method, the average stack gas temperature from Figure 5–3 may be used to make this determination, provided that the accuracy of the in-stack temperature sensor is ± 1°C (2°F).

12.6 Acetone Blank Concentration.

$$C_a = \frac{m_a}{V_a \rho_a} \qquad \text{Eq. 5-4}$$

12.7 Acetone Wash Blank.

$$W_a = C_a V_{aw} \rho_a \qquad \text{Eq. 5-5}$$

12.8 Total Particulate Weight. Determine the total particulate matter catch from the sum of the weights obtained from Containers 1 and 2 less the acetone blank (see Figure 5–6).

**Note:** In no case shall a blank value of greater than 0.001 percent of the weight of acetone used be subtracted from the sample weight. Refer to Section 8.5.8 to assist in calculation of results involving two or more filter assemblies or two or more sampling trains.



12.9 Particulate Concentration.

$$C_s = \frac{K_3 m_n}{V_{m(std)}} \qquad \text{Eq. 5-6}$$

Where:
$K_3$ = 0.001 g/mg for metric units.
= 0.0154 gr/mg for English units.

12.10 Conversion Factors:

| From | To | Multiply by |
|---|---|---|
| $ft^3$ | $m^3$ | 0.02832 |
| gr | mg | 64.80004 |
| gr/$ft^3$ | mg/$m^3$ | 2288.4 |
| mg | g | 0.001 |
| gr | lb | $1.429 \times 10^{-4}$ |

12.11 Isokinetic Variation.

12.11.1 Calculation from Raw Data.

$$I = \frac{100 T_s\left[K_4 V_{lc} + \frac{(V_m Y)}{T_m}\left(P_{bar} + \frac{\Delta H}{13.6}\right)\right]}{60\theta v_s P_s A_n} \qquad \text{Eq. 5-7}$$

Where:
$K_4$ = 0.003454 ((mm Hg)($m^3$))/((ml)(°K)) for metric units,
= 0.002669 ((in. Hg)($ft^3$))/((ml)(°R)) for English units.

12.11.2 Calculation from Intermediate Values.

$$I = \frac{T_s V_{m(std)} P_{std} 100}{T_{std} v_s \theta A_n P_s 60\left(1 - B_{ws}\right)} \qquad \text{Eq. 5-8}$$

$$= K_5 \frac{T_s V_{m(std)}}{P_s v_s A_n \theta\left(1 - B_{ws}\right)}$$

Where:
$K_5$ = 4.320 for metric units,
= 0.09450 for English units.

12.11.3 Acceptable Results. If 90 percent ≤ I ≤ 110 percent, the results are acceptable. If the PM results are low in comparison to the standard, and "I" is over 110 percent or less than 90 percent, the Administrator may opt to accept the results. Reference 4 in Section 17.0 may be used to make acceptability judgments. If "I" is judged to be unacceptable, reject the results, and repeat the sampling run.

12.12 Stack Gas Velocity and Volumetric Flow Rate. Calculate the average stack gas velocity and volumetric flow rate, if needed, using data obtained in this method and the equations in Sections 12.3 and 12.4 of Method 2.

*13.0 Method Performance. [Reserved]*

*14.0 Pollution Prevention. [Reserved]*

*15.0 Waste Management. [Reserved]*

*16.0 Alternative Procedures*

16.1 Dry Gas Meter as a Calibration Standard. A DGM may be used as a calibration standard for volume measurements in place of the wet test meter specified in Section 10.3, provided that it is calibrated initially and recalibrated periodically as follows:

16.1.1 Standard Dry Gas Meter Calibration.

16.1.1.1. The DGM to be calibrated and used as a secondary reference meter should be of high quality and have an appropriately sized capacity (*e.g.*, 3 liters/rev (0.1 $ft^3$/rev)). A spirometer (400 liters (14 $ft^3$) or more capacity), or equivalent, may be used for this calibration, although a wet test meter is usually more practical. The wet test meter should have a capacity of 30 liters/rev (1 $ft^3$/rev) and capable of measuring volume to within 1.0 percent. Wet test meters should be checked against a spirometer or a liquid displacement meter to ensure the accuracy of the wet test meter. Spirometers or wet test meters of other sizes may be used, provided that the specified accuracies of the procedure are maintained.

16.1.1.2 Set up the components as shown in Figure 5–7. A spirometer, or equivalent, may be used in place of the wet test meter in the system. Run the pump for at least 5 minutes at a flow rate of about 10 liters/min (0.35 cfm) to condition the interior surface of the wet test meter. The pressure drop indicated by the manometer at the inlet side of the DGM should be minimized (no greater than 100 mm $H_2O$ (4 in. $H_2O$) at a flow rate of 30 liters/min (1 cfm)). This can be accomplished by using large diameter tubing connections and straight pipe fittings.

16.1.1.3 Collect the data as shown in the example data sheet (see Figure 5–8). Make triplicate runs at each of the flow rates and at no less than five different flow rates. The range of flow rates should be between 10 and 34 liters/min (0.35 and 1.2 cfm) or over the expected operating range.

16.1.1.4 Calculate flow rate, Q, for each run using the wet test meter volume, $V_w$, and the run time, $\theta$. Calculate the DGM coefficient, $Y_{ds}$, for each run. These calculations are as follows:

$$Q = K_1 \frac{P_{bar} V_w}{\left(T_w + T_{std}\right)\theta} \qquad \text{Eq. 5-9}$$

$$Y_{ds} = \frac{V_w\left(T_{ds} + T_{std}\right)P_{bar}}{V_{ds}\left(T_w + T_{std}\right)\left(P_{bar} + \frac{\Delta p}{13.6}\right)} \qquad \text{Eq. 5-10}$$

Where:
$K_1$ = 0.3858 °C/mm Hg for metric units=17.64 °F/in. Hg for English units.
$V_W$ = Wet test meter volume, liter ($ft^3$).
$V_{ds}$ = Dry gas meter volume, liter ($ft^3$).
$T_{ds}$ = Average dry gas meter temperature, °C (°F).
$T_{adj}$ = 273 °C for metric units = 460 °F for English units.
$T_W$ = Average wet test meter temperature, °C (°F)

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$P_{bar}$ = Barometric pressure, mm Hg (in. Hg).
$\Delta p$ = Dry gas meter inlet differential pressure, mm $H_2O$ (in. $H_2O$).
$\theta$ = Run time, min.

16.1.1.5 Compare the three $Y_{ds}$ values at each of the flow rates and determine the maximum and minimum values. The difference between the maximum and minimum values at each flow rate should be no greater than 0.030. Extra sets of triplicate runs may be made in order to complete this requirement. In addition, the meter coefficients should be between 0.95 and 1.05. If these specifications cannot be met in three sets of successive triplicate runs, the meter is not suitable as a calibration standard and should not be used as such. If these specifications are met, average the three $Y_{ds}$ values at each flow rate resulting in no less than five average meter coefficients, $Y_{ds}$.

16.1.1.6 Prepare a curve of meter coefficient, $Y_{ds}$, versus flow rate, Q, for the DGM. This curve shall be used as a reference when the meter is used to calibrate other DGMs and to determine whether recalibration is required.

16.1.2 Standard Dry Gas Meter Recalibration.

16.1.2.1 Recalibrate the standard DGM against a wet test meter or spirometer annually or after every 200 hours of operation, whichever comes first. This requirement is valid provided the standard DGM is kept in a laboratory and, if transported, cared for as any other laboratory instrument. Abuse to the standard meter may cause a change in the calibration and will require more frequent recalibrations.

16.1.2.2 As an alternative to full recalibration, a two-point calibration check may be made. Follow the same procedure and equipment arrangement as for a full recalibration, but run the meter at only two flow rates [suggested rates are 14 and 30 liters/min (0.5 and 1.0 cfm)]. Calculate the meter coefficients for these two points, and compare the values with the meter calibration curve. If the two coefficients are within 1.5 percent of the calibration curve values at the same flow rates, the meter need not be recalibrated until the next date for a recalibration check.

16.2 Critical Orifices As Calibration Standards. Critical orifices may be used as calibration standards in place of the wet test meter specified in Section 16.1, provided that they are selected, calibrated, and used as follows:

16.2.1 Selection of Critical Orifices.

16.2.1.1 The procedure that follows describes the use of hypodermic needles or stainless steel needle tubings which have been found suitable for use as critical orifices. Other materials and critical orifice designs may be used provided the orifices act as true critical orifices (*i.e.*, a critical vacuum can be obtained, as described in Section 16.2.2.2.3). Select five critical orifices that are appropriately sized to cover the range of flow rates between 10 and 34 liters/min (0.35 and 1.2 cfm) or the expected operating range. Two of the critical orifices should bracket the expected operating range. A minimum of three critical orifices will be needed to calibrate a Method 5 DGM; the other two critical orifices can serve as spares and provide better selection for bracketing the range of operating flow rates. The needle sizes and tubing lengths shown in Table 5–1 in Section 18.0 give the approximate flow rates.

16.2.1.2 These needles can be adapted to a Method 5 type sampling train as follows: Insert a serum bottle stopper, 13 by 20 mm sleeve type, into a ½-inch Swagelok (or equivalent) quick connect. Insert the needle into the stopper as shown in Figure 5–9.

16.2.2 Critical Orifice Calibration. The procedure described in this section uses the Method 5 meter box configuration with a DGM as described in Section 6.1.1.9 to calibrate the critical orifices. Other schemes may be used, subject to the approval of the Administrator.

16.2.2.1 Calibration of Meter Box. The critical orifices must be calibrated in the same configuration as they will be used (*i.e.*, there should be no connections to the inlet of the orifice).

16.2.2.1.1 Before calibrating the meter box, leak check the system as follows: Fully open the coarse adjust valve, and completely close the by-pass valve. Plug the inlet. Then turn on the pump, and determine whether there is any leakage. The leakage rate shall be zero (*i.e.*, no detectable movement of the DGM dial shall be seen for 1 minute).

16.2.2.1.2 Check also for leakages in that portion of the sampling train between the pump and the orifice meter. See Section 8.4.1 for the procedure; make any corrections, if necessary. If leakage is detected, check for cracked gaskets, loose fittings, worn O-rings, etc., and make the necessary repairs.

16.2.2.1.3 After determining that the meter box is leakless, calibrate the meter box according to the procedure given in Section 10.3. Make sure that the wet test meter meets the requirements stated in Section 16.1.1.1. Check the water level in the wet test meter. Record the DGM calibration factor, Y.

16.2.2.2 Calibration of Critical Orifices. Set up the apparatus as shown in Figure 5–10.

16.2.2.2.1 Allow a warm-up time of 15 minutes. This step is important to equilibrate the temperature conditions through the DGM.

16.2.2.2.2 Leak check the system as in Section 16.2.2.1.1. The leakage rate shall be zero.

16.2.2.2.3 Before calibrating the critical orifice, determine its suitability and the appropriate operating vacuum as follows: Turn on the pump, fully open the coarse adjust valve, and adjust the by-pass valve to give a vacuum reading corresponding to about half of atmospheric pressure. Observe the meter box orifice manometer reading, $\Delta H$. Slowly increase the vacuum reading until a stable reading is obtained on the meter box orifice manometer. Record the critical vacuum for each orifice. Orifices that do not reach a critical value shall not be used.

16.2.2.2.4 Obtain the barometric pressure using a barometer as described in Section 6.1.2. Record the barometric pressure, $P_{bar}$, in mm Hg (in. Hg).

16.2.2.2.5 Conduct duplicate runs at a vacuum of 25 to 50 mm Hg (1 to 2 in. Hg) above the critical vacuum. The runs shall be at least 5 minutes each. The DGM volume readings shall be in increments of complete revolutions of the DGM. As a guideline, the times should not differ by more than 3.0 seconds (this includes allowance for changes in the DGM temperatures) to achieve ± 0.5 percent in K′ (see Eq. 5–11). Record the information listed in Figure 5–11.

16.2.2.2.6 Calculate K′ using Equation 5–11.

$$K' = \frac{K_1 V_m Y \left(P_{bar} + \frac{\Delta H}{13.6}\right) T_{amb}^{1/2}}{P_{bar} T_m \theta} \qquad \text{Eq. 5-11}$$

Where:

K′ = Critical orifice coefficient, $[m^3)(°K)^{1/2}]/[(mm\ Hg)(min)]\ \{[(ft^3)(°R)^{1/2}]\ [(in.\ Hg)(min)]$.



$T_{amb}$ = Absolute ambient temperature, °K (°R).

Calculate the arithmetic mean of the K′ values. The individual K′ values should not differ by more than ±0.5 percent from the mean value.

16.2.3 Using the Critical Orifices as Calibration Standards.

16.2.3.1 Record the barometric pressure.

16.2.3.2 Calibrate the metering system according to the procedure outlined in Section 16.2.2. Record the information listed in Figure 5–12.

16.2.3.3 Calculate the standard volumes of air passed through the DGM and the critical orifices, and calculate the DGM calibration factor, Y, using the equations below:

$$V_{m(std)} = \frac{K_1 V_m \left[P_{bar} + \left(\frac{\Delta H}{13.6}\right)\right]}{T_m} \qquad \text{Eq. 5-12}$$

$$V_{cr(std)} = K_1 \frac{P_{bar} \Theta}{\sqrt{T_{amb}}} \qquad \text{Eq. 5-13}$$

$$Y = \frac{V_{cr\ (std)}}{V_{m(std)}} \qquad \text{Eq. 5-14}$$

Where:

$V_{cr(std)}$ = Volume of gas sample passed through the critical orifice, corrected to standard conditions, dscm (dscf).
$K_1$ = 0.3858 K/mm Hg for metric units
= 17.64 °R/in. Hg for English units.

16.2.3.4 Average the DGM calibration values for each of the flow rates. The calibration factor, Y, at each of the flow rates should not differ by more than ± 2 percent from the average.

16.2.3.5 To determine the need for recalibrating the critical orifices, compare the DGM Y factors obtained from two adjacent orifices each time a DGM is calibrated; for example, when checking orifice 13/2.5, use orifices 12/10.2 and 13/5.1. If any critical orifice yields a DGM Y factor differing by more than 2 percent from the others, recalibrate the critical orifice according to Section 16.2.2.

*17.0 References.*


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*18.0 Tables, Diagrams, Flowcharts, and Validation Data*

| Gauge/cm | Flow rate liters/min. | Gauge/cm | Flow rate liters/min. |
|---|---|---|---|
| 12/7.6 | 32.56 | 14/2.5 | 19.54 |
| 12/10.2 | 30.02 | 14/5.1 | 17.27 |
| 13/2.5 | 25.77 | 14/7.6 | 16.14 |
| 13/5.1 | 23.50 | 15/3.2 | 14.16 |
| 13/7.6 | 22.37 | 15/7.6 | 11.61 |
| 13/10.2 | 20.67 | 15/10.2 | 10.48 |

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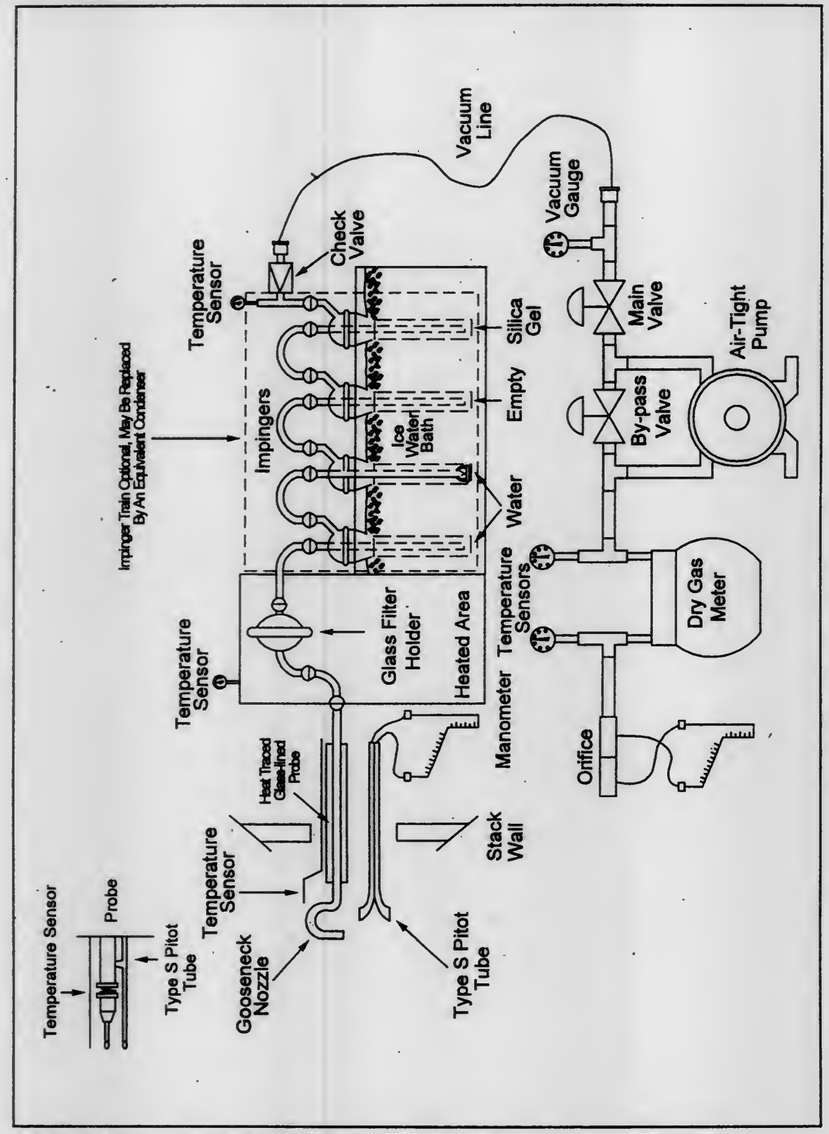



Figure 5-1. Particulate Sampling Train.



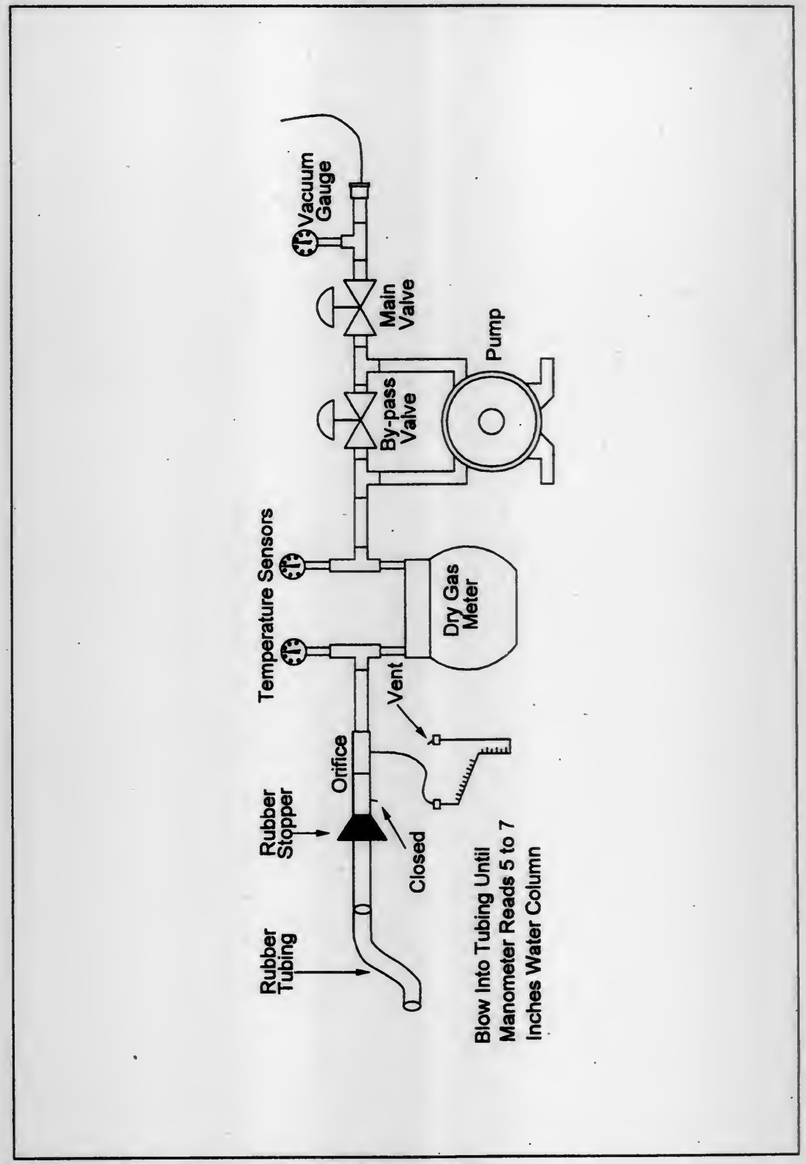



Figure 5-2. Leak Check of Meter Box.

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Ambient temperature
Barometric pressure
Assumed moisture, %
Probe length, (ft.)
Nozzle identification No.
Average calibrated nozzle diameter, (in.)
Probe heater setting
Leak rate, (cfm)
Static pressure, (in. Hg)
Filter No.

SCHEMATIC OF STACK CROSS SECTION

Plant
Location
Operator
Date
Run No.
Sample box No.
Meter box No.
Meter ΔH@
Cbadar
Pitot tube coefficient, Cp

| Traverse point number | Sampling time (min.) | Vacuum (in.Hg) | Stack temperature (Ts) (°F) | Velocity head ($\Delta P_g$) (in. H2O) | Pressure differential across orifice meter (in. H2O) | Gas meter reading (ft³) | Gas sample temperature at dry gas meter: Inlet (°F) | Gas sample temperature at dry gas meter: Outlet (°F) | Filter temperature (°F) | Temperature of gas leaving condenser or last impinger (°F) |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | | |
| | | | | | | | | | | |
| | | | | | | | | | | |
| | | | | | | | | | | |
| | | | | | | | | | | |
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| | | | | | | | | | | |
| | | | | | | | | | | |
| | | | | | | | | | | |
| | | | | | | | Avg. | Avg. | | |
| Total | | | | | | | | | | |
| Average | | | | | | | Avg. | | | |

Figure 5-3. Particulate Field Data.



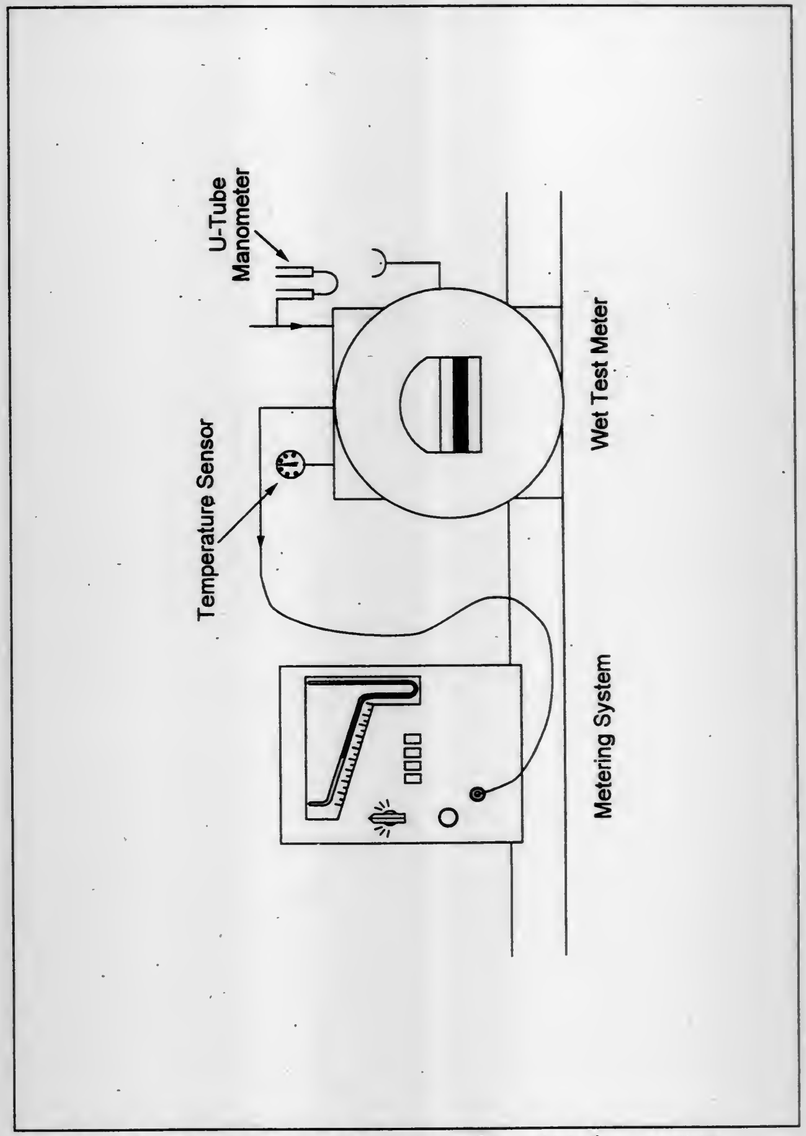



Figure 5-4. Equipment arrangement for metering system calibration.

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Date: _____ Metering System Identification: _____
Barometric pressure, $P_b$ = _____ in. Hg

| Orifice manometer setting ΔH in. $H_2O$ | Spirometer (wet meter) gas volume, $V_w$, $ft^3$ | Dry gas meter volume, $V_d$, $ft^3$ | Temperatures: Spirometer (wet meter) $T_w$ °F | Temperatures: Dry Gas Meter Inlet $T_i$ °F | Temperatures: Dry Gas Meter Outlet $T_o$ °F | Temperatures: Dry Gas Meter Average $T_d$ °F | Time θ min | Calculations Y | Calculations ΔH@ |
|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | |
| | | | | | | | | | |
| | | | | | | | | | |
| | | | | | | | | | |
| | | | | | | | | | |
| | | | | | | | | | |

| ΔH in $H_2O$ |
|---|
| |
| |
| |
| |
| |
| |

Average Y = _____ ΔH@ = _____

Ratio of reading of wet test meter to dry test meter; tolerance for individual values ± 0.02 from average.
Orifice pressure differential that equates to 0.75 cfm of air @ 68°F and 29.92 inches of mercury, in. $H_2O$; tolerance for individual values ± 0.20 from average.

Figure 5-5. Example Data Sheet for Calibration of Metering System (English Units).



Plant _____
Date _____
Run No. _____
Filter No. _____
Amount liquid lost during transport _____
Acetone blank volume, ml _____
Acetone blank concentration, mg/mg (Equation 5–4) _____
Acetone wash blank, mg (Equation 5–5) _____

| Container number | Weight of particulate collected, mg | | |
|---|---|---|---|
| | Final weight | Tare weight | Weight gain |
| 1. | | | |
| 2. | | | |
| Total: Less acetone blank. Weight of particulate matter. | | | |

| | Volume of liquid water collected | |
|---|---|---|
| | Impinger volume, ml | Silica gel weight, g |
| Final | | |
| Initial | | |
| Liquid collected | | |
| Total volume collected | | g* ml |

* Convert weight of water to volume by dividing total weight increase by density of water (1 g/ml).

Figure 5–6. Analytical Data Sheet

$$\frac{\text{Increase, g}}{(1\text{g/ml})} = \text{Volume water, ml}$$

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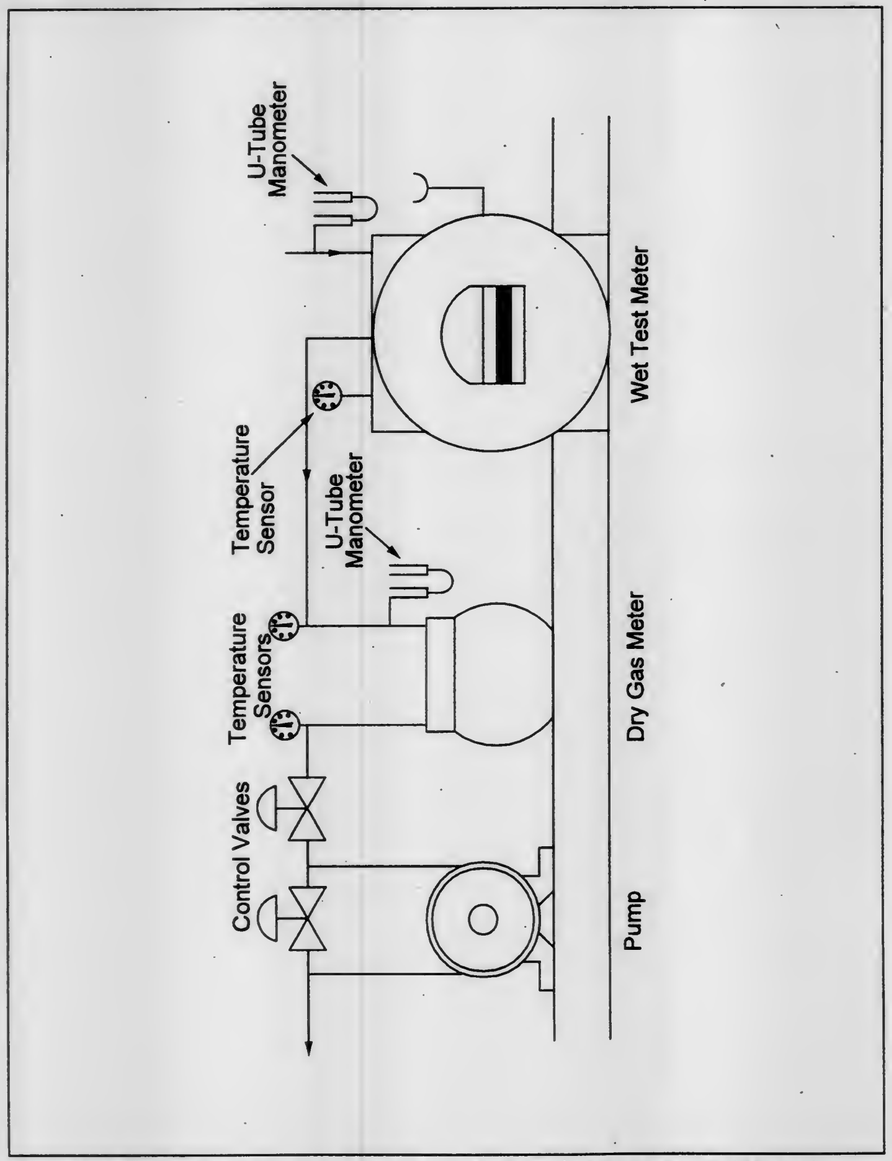



Figure 5-7. Equipment Arrangement for Dry Gas Meter Calibration.



Date: _____

Dry Gas Meter Identification: _____

Barometric Pressure (P): _____ in. Hg

| Approximate Flow Rate (Q) cfm | Spirometer (Wet Meter) Gas Volume ($V_s$) ft³ | Dry Gas Meter Volume ($V_{dg}$) ft³ | Temperatures: Spirometer (Wet Meter) ($t_s$) °F | Temperatures: Dry Gas Meter Inlet ($t_i$) °F | Temperatures: Dry Gas Meter Outlet ($t_o$) °F | Temperatures: Dry Gas Meter Average ($\bar{t}_d$) °F | Dry Gas Meter Pressure ($\Delta p$) in. $H_2O$ | Time ($\theta$) ft³ | Flow Rate (Q) cfm | Meter Coefficient ($Y_{ds}$) | Average Meter Coefficient ($\bar{Y}_{de}$) |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 0.40 | | | | | | | | | | | |
| 0.60 | | | | | | | | | | | |
| 0.80 | | | | | | | | | | | |
| 1.00 | | | | | | | | | | | |
| 1.20 | | | | | | | | | | | |

$$Q = K_1 \frac{P_{bar} V_w}{(T_w + T_{std}) Q}$$

$$Y_{ds} = \frac{V_w (T_{ds} + T_{std}) P_{bar}}{V_{ds} (T_w + T_{std}) (P_{bar} + \Delta P/13.6)}$$

Figure 5-8. Example Data Sheet for Calibration of a Standard Dry Gas Meter for Method 5 Sampling Equipment (English units).

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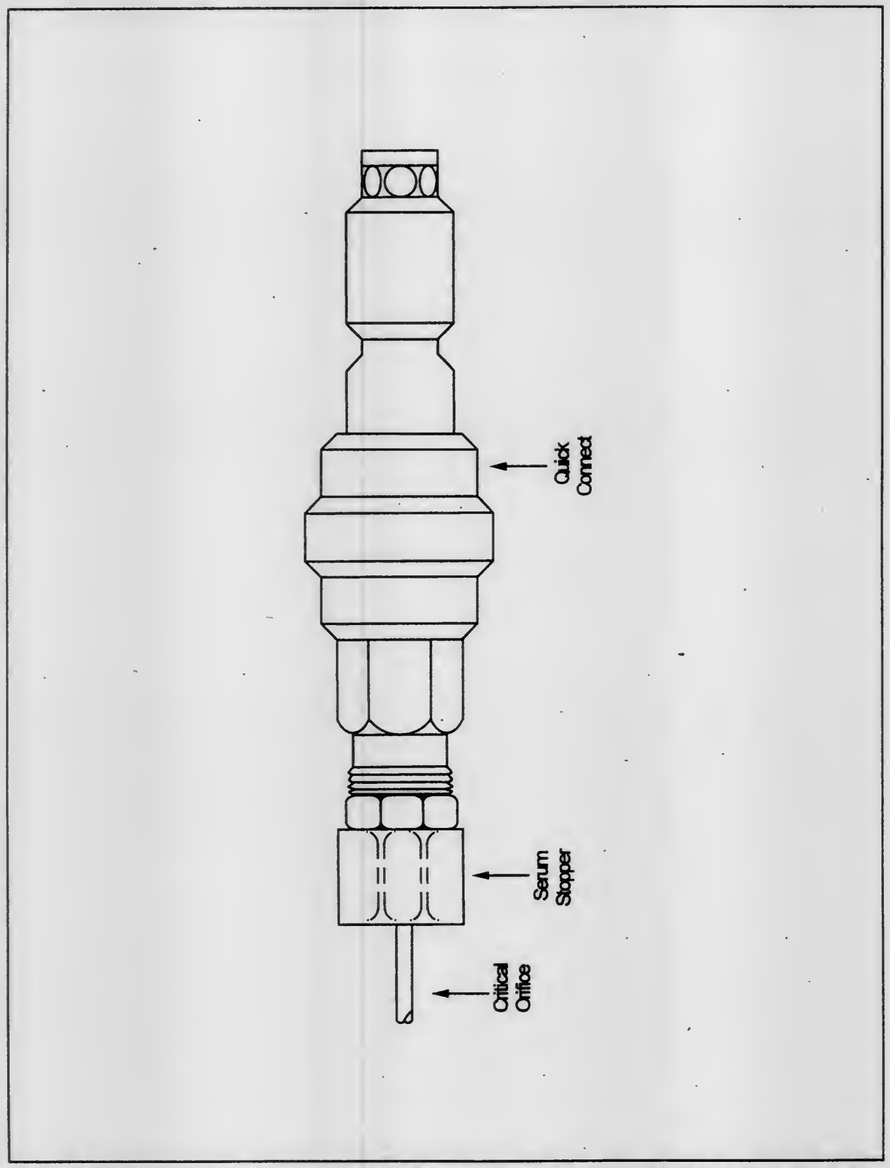



Figure 5-9. Critical Orifice Adaptation to Method 5 Metering System.



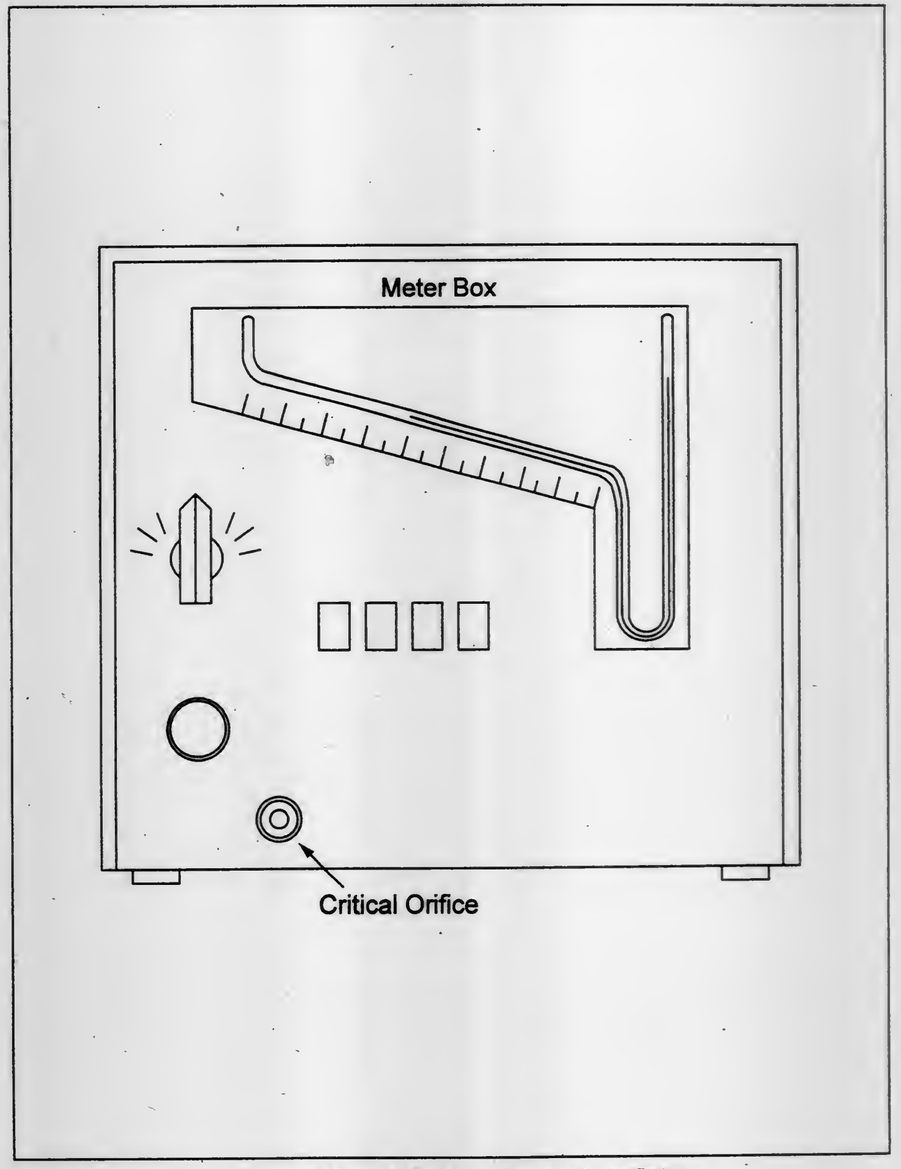



Figure 5-10. Apparatus Setup.

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Date _____
Train ID _____
DGM cal. factor _____
Critical orifice ID _____

| Dry gas meter | | Run No. 1 | Run No. 2 |
|---|---|---|---|
| Final reading | $m^3$ ($ft^3$) | | |
| Initial reading | $m^3$ ($ft^3$) | | |
| Difference, $V_m$ | $m^3$ ($ft^3$) | | |
| Inlet/Outlet | | | |
| Temperatures: | °C (°F) | / | / |
| Initial | °C (°F) | / | / |
| Final | min/sec | / | / |
| Av. Temeperature, $t_m$ | min | | |
| Time, θ | | | |
| Orifice man. rdg., ΔH | mm (in.) $H_2$ | | |
| Bar. pressure, $P_{bar}$ | mm (in.) Hg | | |
| Ambient temperature, $t_{amb}$ | mm (in.) Hg | | |
| Pump vacuum | | | |
| K' factor | | | |
| Average | | | |

Figure 5–11. Data sheet of determining K' factor.

Date _____
Train ID _____
Critical orifice ID _____
Critical orifice K' factor _____

| Dry gas meter | | Run No. 1 | Run No. 2 |
|---|---|---|---|
| Final reading | $m^3$ ($ft^3$) | | |
| Initial reading | $m^3$ ($ft^3$) | | |
| Difference, $V_m$ | $m^3$ ($ft^3$) | | |
| Inlet/outlet temperatures | °C (°F) | / | / |
| Initial | °C (°F) | / | / |
| Final | °C (°F) | | |
| Avg. Temperature, $t_m$ | min/sec | / | / |
| Time, θ | min | | |
| Orifice man. rdg., ΔH | min | | |
| Bar. pressure, $P_{bar}$ | mm (in.) $H_2O$ | | |
| Ambient temperature, $t_{amb}$ | mm (in.) Hg | | |
| Pump vacuum | °C (°F) | | |
| $V_{m(std)}$ | mm (in.) Hg | | |
| $V_{cr(std)}$ | $m^3$ ($ft^3$) | | |
| DGM cal. factor, Y | $m^3$ ($ft^3$) | | |

Figure 5–12. Data Sheet for Determining DGM Y Factor

**Method 5A—Determination of Particulate Matter Emissions From the Asphalt Processing and Asphalt Roofing Industry**

**Note:** This method does not include all of the specifications (*e.g.*, equipment and supplies) and procedures (*e.g.*, sampling and analytical) essential to its performance. Some material is incorporated by reference from other methods in this part. Therefore, to obtain reliable results, persons using this method should have a thorough knowledge of at least the following additional test methods: Method 1, Method 2, Method 3, and Method 5.

*1.0 Scope and Applications*

1.1 Analyte. Particulate matter (PM). No CAS number assigned.

1.2 Applicability. This method is applicable for the determination of PM emissions from asphalt roofing industry process saturators, blowing stills, and other sources as specified in the regulations.

1.3 Data Quality Objectives. Adherence to the requirements of this method will enhance the quality of the data obtained from air pollutant sampling methods.

*2.0 Summary of Method*

Particulate matter is withdrawn isokinetically from the source and collected on a glass fiber filter maintained at a temperature of 42 ± 10 °C (108 ± 18 °F). The PM mass, which includes any material that condenses at or above the filtration temperature, is determined gravimetrically after the removal of uncombined water.

*3.0 Definitions [Reserved]*

*4.0 Interferences [Reserved]*

*5.0 Safety*

5.1 Disclaimer. This method may involve hazardous materials, operations, and equipment. This test method may not address all of the safety problems associated with its use. It is the responsibility of the user of this test method to establish appropriate safety and health practices and to determine the applicability of regulatory limitations prior to performing this test method.

*6.0 Equipment and Supplies*

6.1 Sample Collection. Same as Method 5, Section 6.1, with the following exceptions and additions:

6.1.1 Probe Liner. Same as Method 5, Section 6.1.1.2, with the note that at high stack gas temperatures greater than 250 °C (480 °F), water-cooled probes may be required to control the probe exit temperature to 42 ± 10 °C (108 ± 18 °F).

6.1.2 Precollector Cyclone. Borosilicate glass following the construction details shown in Air Pollution Technical Document (APTD)–0581, "Construction Details of Isokinetic Source-Sampling Equipment" (Reference 2 in Method 5, Section 17.0).

**Note:** The cyclone shall be used when the stack gas moisture is greater than 10 percent, and shall not be used otherwise.

6.1.3 Filter Heating System. Any heating (or cooling) system capable of maintaining a sample gas temperature at the exit end of the filter holder during sampling at 42 ± 10 °C (108 ± 18 °F).

6.2 Sample Recovery. The following items are required for sample recovery:

6.2.1 Probe-Liner and Probe-Nozzle Brushes, Graduated Cylinder and/or Balance, Plastic Storage Containers, and Funnel and Rubber Policeman. Same as in Method 5, Sections 6.2.1, 6.2.5, 6.2.6, and 6.2.7, respectively.

6.2.2 Wash Bottles. Glass.

6.2.3 Sample Storage Containers. Chemically resistant 500-ml or 1,000-ml borosilicate glass bottles, with rubber-backed Teflon screw cap liners or caps that are constructed so as to be leak-free, and resistant to chemical attack by 1,1,1-trichloroethane (TCE). (Narrow-mouth glass bottles have been found to be less prone to leakage.)

6.2.4 Petri Dishes. Glass, unless otherwise specified by the Administrator.

6.2.5 Funnel. Glass.

6.3 Sample Analysis. Same as Method 5, Section 6.3, with the following additions:

6.3.1 Beakers. Glass, 250-ml and 500-ml.

6.3.2 Separatory Funnel. 100-ml or greater.

*7.0. Reagents and Standards*

7.1 Sample Collection. The following reagents are required for sample collection:

7.1.1 Filters, Silica Gel, Water, and Crushed Ice. Same as in Method 5, Sections 7.1.1, 7.1.2, 7.1.3, and 7.1.4, respectively.

7.1.2 Stopcock Grease. TCE-insoluble, heat-stable grease (if needed). This is not necessary if screw-on connectors with Teflon sleeves, or similar, are used.

7.2 Sample Recovery. Reagent grade TCE, ≤0.001 percent residue and stored in glass bottles. Run TCE blanks before field use, and use only TCE with low blank values (≤0.001 percent). In no case shall a blank value of greater than 0.001 percent of the weight of TCE used be subtracted from the sample weight.

7.3 Analysis. Two reagents are required for the analysis:

7.3.1 TCE. Same as in Section 7.2.

7.3.2 Desiccant. Same as in Method 5, Section 7.3.2.

*8.0. Sample Collection, Preservation, Storage, and Transport*

8.1. Pretest Preparation. Unless otherwise specified, maintain and calibrate all components according to the procedure described in APTD–0576, "Maintenance, Calibration, and Operation of Isokinetic Source-Sampling Equipment" (Reference 3 in Method 5, Section 17.0).

8.1.1 Prepare probe liners and sampling nozzles as needed for use. Thoroughly clean each component with soap and water followed by a minimum of three TCE rinses. Use the probe and nozzle brushes during at least one of the TCE rinses (refer to Section 8.7 for rinsing techniques). Cap or seal the open ends of the probe liners and nozzles to prevent contamination during shipping.

8.1.2 Prepare silica gel portions and glass filters as specified in Method 5, Section 8.1.

8.2 Preliminary Determinations. Select the sampling site, probe nozzle, and probe length as specified in Method 5, Section 8.2. Select a total sampling time greater than or equal to the minimum total sampling time specified in the "Test Methods and Procedures" section of the applicable subpart of the regulations. Follow the guidelines outlined in Method 5, Section 8.2 for sampling time per point and total sample volume collected.

8.3 Preparation of Sampling Train. Prepare the sampling train as specified in Method 5, Section 8.3, with the addition of the precollector cyclone, if used, between the probe and filter holder. The temperature of the precollector cyclone, if used, should be maintained in the same range as that of the filter, *i.e.*, 42 ± 10 °C (108 ± 18 °F). Use no stopcock grease on ground glass joints unless grease is insoluble in TCE.

8.4 Leak-Check Procedures. Same as Method 5, Section 8.4.

8.5 Sampling Train Operation. Operate the sampling train as described in Method 5, Section 8.5, except maintain the temperature of the gas exiting the filter holder at 42 ± 10 °C (108 ± 18 °F).

8.6 Calculation of Percent Isokinetic. Same as Method 5, Section 8.6.

8.7 Sample Recovery. Same as Method 5, Section 8.7.1 through 8.7.6.1, with the addition of the following:

8.7.1 Container No. 2 (Probe to Filter Holder).

8.7.1.1 Taking care to see that material on the outside of the probe or other exterior surfaces does not get into the sample, quantitatively recover PM or any condensate from the probe nozzle, probe fitting, probe liner, precollector cyclone and collector flask (if used), and front half of the filter holder by washing these components with TCE and placing the wash in a glass container. Carefully measure the total amount of TCE used in the rinses. Perform the TCE rinses as described in Method 5, Section 8.7.6.2, using TCE instead of acetone.

8.7.1.2 Brush and rinse the inside of the cyclone, cyclone collection flask, and the front half of the filter holder. Brush and rinse each surface three times or more, if necessary, to remove visible PM.

8.7.2 Container No. 3 (Silica Gel). Same as in Method 5, Section 8.7.6.3.

8.7.3 Impinger Water. Same as Method 5, Section 8.7.6.4.

8.8 Blank. Save a portion of the TCE used for cleanup as a blank. Take 200 ml of this TCE directly from the wash bottle being used, and place it in a glass sample container labeled "TCE Blank."

*9.0 Quality Control*

9.1 Miscellaneous Quality Control Measures.

| Section | Quality control measure | Effect |
|---|---|---|
| 8.4, 10.0 | Sampling equipment leak check and calibration. | Ensures accurate measurement of stack gas flow rate, sample volume. |

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9.2 A quality control (QC) check of the volume metering system at the field site is suggested before collecting the sample. Use the procedure outlined in Method 5, Section 9.2.

*10.0 Calibration and Standardization*

Same as Method 5, Section 10.0.

*11.0 Analytical Procedures*

11.1 Analysis. Record the data required on a sheet such as the one shown in Figure 5A–1. Handle each sample container as follows:

11.1.1 Container No. 1 (Filter). Transfer the filter from the sample container to a tared glass weighing dish, and desiccate for 24 hours in a desiccator containing anhydrous calcium sulfate. Rinse Container No. 1 with a measured amount of TCE, and analyze this rinse with the contents of Container No. 2. Weigh the filter to a constant weight. For the purpose of this analysis, the term "constant weight" means a difference of no more than 10 percent of the net filter weight or 2 mg (whichever is greater) between two consecutive weighings made 24 hours apart. Report the "final weight" to the nearest 0.1 mg as the average of these two values.

11.1.2 Container No. 2 (Probe to Filter Holder).

11.1.2.1 Before adding the rinse from Container No. 1 to Container No. 2, note the level of liquid in Container No. 2, and confirm on the analysis sheet whether leakage occurred during transport. If noticeable leakage occurred, either void the sample or take steps, subject to the approval of the Administrator, to correct the final results.

11.1.2.2 Add the rinse from Container No. 1 to Container No. 2 and measure the liquid in this container either volumetrically to ±1 ml or gravimetrically to ±0.5 g. Check to see whether there is any appreciable quantity of condensed water present in the TCE rinse (look for a boundary layer or phase separation). If the volume of condensed water appears larger than 5 ml, separate the oil-TCE fraction from the water fraction using a separatory funnel. Measure the volume of the water phase to the nearest ml; adjust the stack gas moisture content, if necessary (see Sections 12.3 and 12.4). Next, extract the water phase with several 25-ml portions of TCE until, by visual observation, the TCE does not remove any additional organic material. Transfer the remaining water fraction to a tared beaker and evaporate to dryness at 93 °C (200 °F), desiccate for 24 hours, and weigh to the nearest 0.1 mg.

11.1.2.3 Treat the total TCE fraction (including TCE from the filter container rinse and water phase extractions) as follows: Transfer the TCE and oil to a tared beaker, and evaporate at ambient temperature and pressure. The evaporation of TCE from the solution may take several days. Do not desiccate the sample until the solution reaches an apparent constant volume or until the odor of TCE is not detected. When it appears that the TCE has evaporated, desiccate the sample, and weigh it at 24-hour intervals to obtain a "constant weight" (as defined for Container No. 1 above). The "total weight" for Container No. 2 is the sum of the evaporated PM weight of the TCE-oil and water phase fractions. Report the results to the nearest 0.1 mg.

11.1.3 Container No. 3 (Silica Gel). This step may be conducted in the field. Weigh the spent silica gel (or silica gel plus impinger) to the nearest 0.5 g using a balance.

11.1.4 "TCE Blank" Container. Measure TCE in this container either volumetrically or gravimetrically. Transfer the TCE to a tared 250-ml beaker, and evaporate to dryness at ambient temperature and pressure. Desiccate for 24 hours, and weigh to a constant weight. Report the results to the nearest 0.1 mg.

**Note:** In order to facilitate the evaporation of TCE liquid samples, these samples may be dried in a controlled temperature oven at temperatures up to 38 °C (100 °F) until the liquid is evaporated.

*12.0 Data Analysis and Calculations*

Carry out calculations, retaining at least one extra significant figure beyond that of the acquired data. Round off figures after the final calculation. Other forms of the equations may be used as long as they give equivalent results.

12.1 Nomenclature. Same as Method 5, Section 12.1, with the following additions:

$C_t$ = TCE blank residue concentration, mg/g.
$m_t$ = Mass of residue of TCE blank after evaporation, mg.
$V_{pc}$ = Volume of water collected in precollector, ml.
$V_t$ = Volume of TCE blank, ml.
$V_{tw}$ = Volume of TCE used in wash, ml.
$W_t$ = Weight of residue in TCE wash, mg.
$\rho_t$ = Density of TCE (see label on bottle), g/ml.

12.2 Dry Gas Meter Temperature, Orifice Pressure Drop, and Dry Gas Volume. Same as Method 5, Sections 12.2 and 12.3, except use data obtained in performing this test.

12.3 Volume of Water Vapor.

$$V_{w(std)} = K_2\left(V_{lc} + V_{pc}\right) \qquad \text{Eq. 5A-1}$$

Where:

$K_2$ = 0.001333 $m^3$/ml for metric units.
= 0.04706 $ft^3$/ml for English units.

12.4 Moisture Content.

$$B_{ws} = \frac{V_{w(std)}}{V_{m(std)} + V_{w(std)}} \qquad \text{Eq. 5A-2}$$

**Note:** In saturated or water droplet-laden gas streams, two calculations of the moisture content of the stack gas shall be made, one from the impinger and precollector analysis (Equations 5A–1 and 5A–2) and a second from the assumption of saturated conditions. The lower of the two values of moisture content shall be considered correct. The procedure for determining the moisture content based upon assumption of saturated conditions is given in Section 4.0 of Method 4. For the purpose of this method, the average stack gas temperature from Figure 5–3 of Method 5 may be used to make this determination, provided that the accuracy of the in-stack temperature sensor is within 1 °C (2 °F).

12.5 TCE Blank Concentration.

$$C_t = \frac{m_t}{V_t \rho_t} \qquad \text{Eq. 5A-3}$$

**Note:** In no case shall a blank value of greater than 0.001 percent of the weight of TCE used be subtracted from the sample weight.

12.6 TCE Wash Blank.

$$W_t = C_t V_{tw} \rho_t \qquad \text{Eq. 5A-4}$$

12.7 Total PM Weight. Determine the total PM catch from the sum of the weights obtained from Containers 1 and 2, less the TCE blank.

12.8 PM Concentration.

$$c_s = K_3 \frac{m_n}{V_{m(std)}} \qquad \text{Eq. 5A-5}$$

Where:

$K_3$ = 0.001 g/mg for metric units
= 0.0154 gr/mg for English units

12.9 Isokinetic Variation. Same as in Method 5, Section 12.11.

*13.0 Method Performance [Reserved]*

*14.0 Pollution Prevention [Reserved]*

*15.0 Waste Management [Reserved]*

*16.0 References*

Same as Method 5, Section 17.0.

*17.0 Tables, Diagrams, Flowcharts, and Validation Data*



Plant _____
Date _____
Run No. _____
Filter No. _____
Amount liquid lost during transport _____
Acetone blank volume, ml _____
Acetone blank concentration, mg/mg (Equation 5–4) _____
Acetone wash blank, mg (Equation 5–5) _____

| Container number | Weight of particulate collected, mg | | |
|---|---|---|---|
| | Final weight | Tare weight | Weight gain |
| 1. | | | |
| 2. | | | |
| Total: Less acetone blank. Weight of particulate matter. | | | |

| | Volume of liquid water collected | |
|---|---|---|
| | Impinger volume, ml | Silica gel weight, g |
| Final | | |
| Initial | | |
| Liquid collected | | |
| Total volume collected | | g* ml |

* Convert weight of water to volume by dividing total weight increase by density of water (1 g/ml).

$$\frac{\text{Increase, g}}{(1\text{g/ml})} = \text{Volume water, ml}$$

**Method 5B—Determination of Nonsulfuric Acid Particulate Matter Emissions From Stationary Sources**

**Note:** This method does not include all of the specifications (*e.g.*, equipment and supplies) and procedures (*e.g.*, sampling and analytical) essential to its performance. Some material is incorporated by reference from other methods in this part. Therefore, to obtain reliable results, persons using this method should have a thorough knowledge of at least the following additional test methods: Method 1, Method 2, Method 3, Method 5.

*1.0 Scope and Application*

1.1 Analyte. Nonsulfuric acid particulate matter. No CAS number assigned.

1.2 Applicability. This method is determining applicable for the determination of nonsulfuric acid particulate matter from stationary sources, only where specified by an applicable subpart of the regulations or where approved by the Administrator for a particular application.

1.3 Data Quality Objectives. Adherence to the requirements of this method will enhance the quality of the data obtained from air pollutant sampling methods.

*2.0 Summary of Method*

Particulate matter is withdrawn isokinetically from the source and collected on a glass fiber filter maintained at a temperature of 160 ± 14 °C (320 ± 25 °F). The collected sample is then heated in an oven at 160 °C (320 °F) for 6 hours to volatilize any condensed sulfuric acid that may have been collected, and the nonsulfuric acid particulate mass is determined gravimetrically.

*3.0 Definitions [Reserved]*

*4.0 Interferences [Reserved]*

*5.0 Safety*

5.1 Disclaimer. This method may involve hazardous materials, operations, and equipment. This test method may not address all of the safety problems associated with its use. It is the responsibility of the user of this test method to establish appropriate safety and health practices and to determine the applicability of regulatory limitations prior to performing this test method.

*6.0 Equipment and Supplies*

Same as Method 5, Section 6.0, with the following addition and exceptions:

6.1 Sample Collection. The probe liner heating system and filter heating system must be capable of maintaining a sample gas temperature of 160 ± 14 °C (320 ± 25 °F).

6.2 Sample Preparation. An oven is required for drying the sample.

*7.0 Reagents and Standards*

Same as Method 5, Section 7.0.

*8.0 Sample Collection, Preservation, Storage, and Transport.*

Same as Method 5, with the exception of the following:

8.1 Initial Filter Tare. Oven dry the filter at 160 ± 5 °C (320 ± 10 °F) for 2 to 3 hours, cool in a desiccator for 2 hours, and weigh. Desiccate to constant weight to obtain the initial tare weight. Use the applicable specifications and techniques of Section 8.1.3 of Method 5 for this determination.

8.2 Probe and Filter Temperatures. Maintain the probe outlet and filter temperatures at 160 ± 14 °C (320 ± 25 °F).

*9.0 Quality Control*

Same as Method 5, Section 9.0.

*10.0 Calibration and Standardization*

Same as Method 5, Section 10.0.

*11.0 Analytical Procedure*

Same as Method 5, Section 11.0, except replace Section

11.2.2 With the following:

11.1 Container No. 2. Note the level of liquid in the container, and confirm on the analysis sheet whether leakage occurred during transport. If a noticeable amount of leakage has occurred, either void the sample or use methods, subject to the approval of the Administrator, to correct the final results. Measure the liquid in this container either volumetrically to ±1 ml or gravimetrically to ±0.5 g. Transfer the

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contents to a tared 250 ml beaker, and evaporate to dryness at ambient temperature and pressure. Then oven dry the probe and filter samples at a temperature of 160 ± 5 °C (320 ± 10 °F) for 6 hours. Cool in a desiccator for 2 hours, and weigh to constant weight. Report the results to the nearest 0.1 mg.

*12.0 Data Analysis and Calculations*

Same as in Method 5, Section 12.0.

*13.0 Method Performance [Reserved]*

*14.0 Pollution Prevention [Reserved]*

*15.0 Waste Management [Reserved]*

*16.0 References*

Same as Method 5, Section 17.0.

*17.0 Tables, Diagrams, Flowcharts, and Validation Data. [Reserved]*

* * * * *

**Method 5D—Determination of Particulate Matter Emissions from Positive Pressure Fabric Filters**

**Note:** This method does not include all of the specifications (e.g., equipment and supplies) and procedures (e.g., sampling and analytical) essential to its performance. Some material is incorporated by reference from other methods in this part. Therefore, to obtain reliable results, persons using this method should have a thorough knowledge of at least the following additional test methods: Method 1, Method 2, Method 3, Method 5, Method 17.

*1.0 Scope and Application*

1.1 Analyte. Particulate matter (PM). No CAS number assigned.

1.2 Applicability.

1.2.1 This method is applicable for the determination of PM emissions from positive pressure fabric filters. Emissions are determined in terms of concentration (mg/m³ or gr/ft³) and emission rate (kg/hr or lb/hr).

1.2.2 The General Provisions of 40 CFR part 60, § 60.8(e), require that the owner or operator of an affected facility shall provide performance testing facilities. Such performance testing facilities include sampling ports, safe sampling platforms, safe access to sampling sites, and utilities for testing. It is intended that affected facilities also provide sampling locations that meet the specification for adequate stack length and minimal flow disturbances as described in Method 1. Provisions for testing are often overlooked factors in designing fabric filters or are extremely costly. The purpose of this procedure is to identify appropriate alternative locations and procedures for sampling the emissions from positive pressure fabric filters. The requirements that the affected facility owner or operator provide adequate access to performance testing facilities remain in effect.

1.3 Data Quality Objectives. Adherence to the requirements of this method will enhance the quality of the data obtained from air pollutant sampling methods.

*2.0 Summary of Method*

2.1 Particulate matter is withdrawn isokinetically from the source and collected on a glass fiber filter maintained at a temperature at or above the exhaust gas temperature up to a nominal 120°C (248 ± 25°F). The particulate mass, which includes any material that condenses at or above the filtration temperature, is determined gravimetrically after the removal of uncombined water.

*3.0 Definitions [Reserved]*

*4.0 Interferences [Reserved]*

*5.0 Safety*

5.1 Disclaimer. This method may involve hazardous materials, operations, and equipment. This test method may not address all of the safety problems associated with its use. It is the responsibility of the user to establish appropriate safety and health practices and to determine the applicability of regulatory limitations prior to performing this test method.

*6.0 Equipment and Supplies*

Same as Section 6.0 of either Method 5 or Method 17.

*7.0 Reagents and Standards*

Same as Section 7.0 of either Method 5 or Method 17.

*8.0 Sample Collection, Preservation, Storage, and Transport*

Same Section 8.0 of either Method 5 or Method 17, except replace Section 8.2.1 of Method 5 with the following:

8.1 Determination of Measurement Site. The configuration of positive pressure fabric filter structures frequently are not amenable to emission testing according to the requirements of Method 1. Following are several alternatives for determining measurement sites for positive pressure fabric filters.

8.1.1 Stacks Meeting Method 1 Criteria. Use a measurement site as specified in Method 1, Section 11.1.

8.1.2 Short Stacks Not Meeting Method 1 Criteria. Use stack extensions and the procedures in Method 1. Alternatively, use flow straightening vanes of the "egg-crate" type (see Figure 5D–1). Locate the measurement site downstream of the straightening vanes at a distance equal to or greater than two times the average equivalent diameter of the vane openings and at least one-half of the overall stack diameter upstream of the stack outlet.

8.1.3 Roof Monitor or Monovent. (See Figure 5D–2). For a positive pressure fabric filter equipped with a peaked roof monitor, ridge vent, or other type of monovent, use a measurement site at the base of the monovent. Examples of such locations are shown in Figure 5D–2. The measurement site must be upstream of any exhaust point (*e.g.*, louvered vent).

8.1.4 Compartment Housing. Sample immediately downstream of the filter bags directly above the tops of the bags as shown in the examples in Figure 5D–2. Depending on the housing design, use sampling ports in the housing walls or locate the sampling equipment within the compartment housing.

8.2 Determination of Number and Location of Traverse Points. Locate the traverse points according to Method 1, Section 11.3. Because a performance test consists of at least three test runs and because of the varied configurations of positive pressure fabric filters, there are several schemes by which the number of traverse points can be determined and the three test runs can be conducted.

8.2.1 Single Stacks Meeting Method 1 Criteria. Select the number of traverse points according to Method 1. Sample all traverse points for each test run.

8.2.2 Other Single Measurement Sites. For a roof monitor or monovent, single compartment housing, or other stack not meeting Method 1 criteria, use at least 24 traverse points. For example, for a rectangular measurement site, such as a monovent, use a balanced 5×5 traverse point matrix. Sample all traverse points for each test run.

8.2.3 Multiple Measurement Sites. Sampling from two or more stacks or measurement sites may be combined for a test run, provided the following guidelines are met:

8.2.3.1 All measurement sites up to 12 must be sampled. For more than 12 measurement sites, conduct sampling on at least 12 sites or 50 percent of the sites, whichever is greater. The measurement sites sampled should be evenly, or nearly evenly, distributed among the available sites; if not, all sites are to be sampled.

8.2.3.2 The same number of measurement sites must be sampled for each test run.

8.2.3.3 The minimum number of traverse points per test run is 24. An exception to the 24-point minimum would be a test combining the sampling from two stacks meeting Method 1 criteria for acceptable stack length, and



Method 1 specifies fewer than 12 points per site.

8.2.3.4 As long as the 24 traverse points per test run criterion is met, the number of traverse points per measurement site may be reduced to eight.

8.2.3.5 Alternatively, conduct a test run for each measurement site individually using the criteria in Section 8.2.1 or 8.2.2 to determine the number of traverse points. Each test run shall count toward the total of three required for a performance test. If more than three measurement sites are sampled, the number of traverse points per measurement site may be reduced to eight as long as at least 72 traverse points are sampled for all the tests.

8.2.3.6 The following examples demonstrate the procedures for sampling multiple measurement sites.

8.2.3.6.1 Example 1: A source with nine circular measurement sites of equal areas may be tested as follows: For each test run, traverse three measurement sites using four points per diameter (eight points per measurement site). In this manner, test run number 1 will include sampling from sites 1,2, and 3; run 2 will include samples from sites 4, 5, and 6; and run 3 will include sites 7, 8, and 9. Each test area may consist of a separate test of each measurement site using eight points. Use the results from all nine tests in determining the emission average.

8.2.3.6.2 Example 2: A source with 30 rectangular measurement sites of equal areas may be tested as follows: For each of the three test runs, traverse five measurement sites using a 3×3 matrix of traverse points for each site. In order to distribute the sampling evenly over all the available measurement sites while sampling only 50 percent of the sites, number the sites consecutively from 1 to 30 and sample all the even numbered (or odd numbered) sites. Alternatively, conduct a separate test of each of 15 measurement sites using Section 8.2.1 or 8.2.2 to determine the number and location of traverse points, as appropriate.

8.2.3.6.3 Example 3: A source with two measurement sites of equal areas may be tested as follows: For each test of three test runs, traverse both measurement sites, using Section 8.2.3 in determining the number of traverse points. Alternatively, conduct two full emission test runs for each measurement site using the criteria in Section 8.2.1 or 8.2.2 to determine the number of traverse points.

8.2.3.7 Other test schemes, such as random determination of traverse points for a large number of measurement sites, may be used with prior approval from the Administrator.

8.3 Velocity Determination.

8.3.1 The velocities of exhaust gases from positive pressure baghouses are often too low to measure accurately with the type S pitot tube specified in Method 2 (*i.e.*, velocity head <1.3 mm $H_2O$ (0.05 in. $H_2O$)). For these conditions, measure the gas flow rate at the fabric filter inlet following the procedures outlined in Method 2. Calculate the average gas velocity at the measurement site as shown in Section 12.2 and use this average velocity in determining and maintaining isokinetic sampling rates.

8.3.2 Velocity determinations to determine and maintain isokinetic rates at measurement sites with gas velocities within the range measurable with the type S pitot tube (*i.e.*, velocity head greater than 1.3 mm $H_2O$ (0.05 in. $H_2O$)) shall be conducted according to the procedures outlined in Method 2.

8.4 Sampling. Follow the procedures specified in Sections 8.1 through 8.6 of Method 5 or Sections 8.1 through 8.25 in Method 17 with the exceptions as noted above.

8.5 Sample Recovery. Follow the procedures specified in Section 8.7 of Method 5 or Section 8.2 of Method 17.

*9.0 Quality Control*

9.1 Miscellaneous Quality Control Measures.

| Section | Quality control measure | Effect |
|---|---|---|
| 8.0, 10.0 | Sampling equipment leak check and calibration. | Ensures accurate measurement of stack gas flow rate, sample volume. |

9.2 Volume Metering System Checks. Same as Method 5, Section 9.2.

*10.0 Calibration and Standardization*

Same as Section 10.0 of either Method 5 or Method 17.

*11.0 Analytical Procedure*

Same as Section 11.0 of either Method 5 or Method 17.

*12.0 Data Analysis and Calculations*

Same as Section 12.0 of either Method 5 or Method 17 with the following exceptions:

12.1 Nomenclature.

$A_o$ = Measurement site(s) total cross-sectional area, m² (ft²).

$\overline{C}$ or $C_{avg}$ = Average concentration of PM for all n runs, mg/scm (gr/scf).

$Q_i$ = Inlet gas volume flow rate, m³/sec (ft³/sec).

$m_i$ = Mass collected for run i of n, mg (gr).

$T_o$ = Average temperature of gas at measurement site, °K (°R).

$T_i$ = Average temperature of gas at inlet, °K (°R).

$Vol_i$ = Sample volume collected for run i of n, scm (scf).

$\overline{v}$ = Average gas velocity at the measurement site(s), m/s (ft/s)

$Q_o$ = Total baghouse exhaust volumetric flow rate, m³/sec (ft³/sec).

$Q_d$ = Dilution air flow rate, m³/sec (ft³/sec).

Tamb = Ambient Temperature, (°K).

12.2 Average Gas Velocity. When following Section 8.3.1, calculate the average gas velocity at the measurement site as follows:

$$\overline{v} = \frac{Q_o}{A_o} \qquad \text{Eq. 5D-1}$$

12.3 Volumetric Flow Rate. Total volumetric flow rate may be determined as follows:

$$Q_o = Q_i + Q_d \qquad \text{Eq. 5D-2}$$

12.4 Dilution Air Flow Rate.

$$Q_d = \frac{Q_i (T_i - T_o)}{T_o - T_{amb}} \qquad \text{Eq. 5D-3}$$

12.5 Average PM Concentration. For multiple measurement sites, calculate the average PM concentration as follows:

$$C_{avg} \text{ or } \overline{C} = \frac{\sum_{i=1}^{n} m_i}{\sum_{i=1}^{n} Vol_i} \qquad \text{Eq. 5D-4}$$

*13.0 Method Performance. [Reserved]*

*14.0 Pollution Prevention. [Reserved]*

*15.0 Waste Management. [Reserved]*

*16.0 References*

Same as Method 5, Section 17.0.

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*17.0 Tables, Diagrams, Flowcharts, and Validation Data*

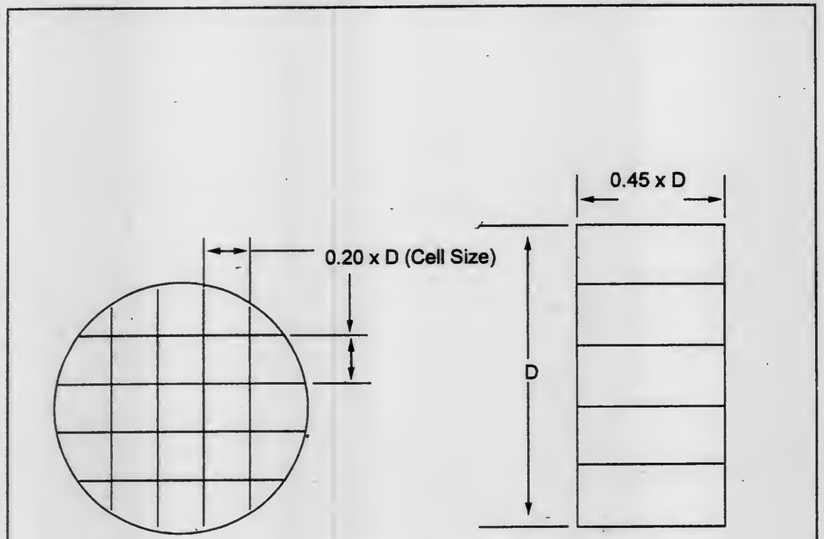



Figure 5D-1. Example of Flow Straightening Vanes.



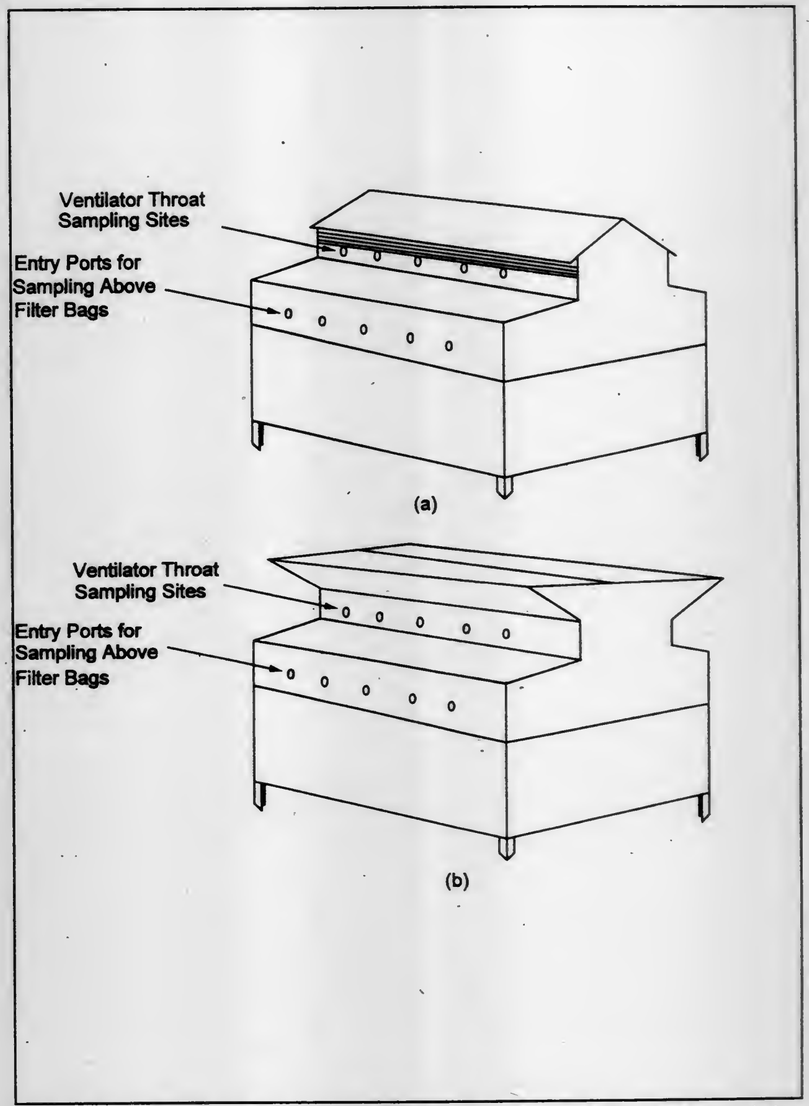



Figure 5D-2. Acceptable Sampling Site Locations for: (a) Peaked Roof; and (b) Ridge Vent Type Fabric Filters

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**Method 5E—Determination of Particulate Matter Emissions From the Wool Fiberglass Insulation Manufacturing Industry**

**Note:** This method does not include all of the specifications (*e.g.*, equipment and supplies) and procedures (*e.g.*, sampling and analytical) essential to its performance. Some material is incorporated by reference from other methods in this part. Therefore, to obtain reliable results, persons using this method should have a thorough knowledge of at least the following additional test methods: Method 1, Method 2, Method 3, and Method 5.

*1.0 Scope and Applications*

1.1 Analyte. Particulate matter (PM). No CAS number assigned.

1.2 Applicability. This method is applicable for the determination of PM emissions from wool fiberglass insulation manufacturing sources.

*2.0 Summary of Method*

Particulate matter is withdrawn isokinetically from the source and is collected either on a glass fiber filter maintained at a temperature in the range of 120 ± 14°C (248 ± 25°F) and in impingers in solutions of 0.1 N sodium hydroxide (NaOH). The filtered particulate mass, which includes any material that condenses at or above the filtration temperature, is determined gravimetrically after the removal of uncombined water. The condensed PM collected in the impinger solutions is determined as total organic carbon (TOC) using a nondispersive infrared type of analyzer. The sum of the filtered PM mass and the condensed PM is reported as the total PM mass.

*3.0 Definitions [Reserved]*

*4.0 Interferences [Reserved]*

*5.0 Safety*

5.1 Disclaimer. This method may involve hazardous materials, operations, and equipment. This test method may not address all of the safety problems associated with its use. It is the responsibility of the user of this test method to establish appropriate safety and health practices and to determine the applicability of regulatory limitations prior to performing this test method.

5.2 Corrosive Reagents. The following reagents are hazardous. Personal protective equipment and safe procedures are useful in preventing chemical splashes. If contact occurs, immediately flush with copious amounts of water at least 15 minutes. Remove clothing under shower and decontaminate. Treat residual chemical burn as thermal burn.

5.2.1 Hydrochloric Acid (HCl). Highly toxic. Vapors are highly irritating to eyes, skin, nose, and lungs, causing severe damage. May cause bronchitis, pneumonia, or edema of lungs. Exposure to concentrations of 0.13 to 0.2 percent in air can be lethal in minutes. Will react with metals, producing hydrogen.

5.2.2 Sodium Hydroxide (NaOH). Causes severe damage to eye tissues and to skin. Inhalation causes irritation to nose, throat, and lungs. Reacts exothermically with limited amounts of water.

*6.0 Equipment and Supplies*

6.1 Sample Collection. Same as Method 5, Section 6.1, with the exception of the following:

6.1.1 Probe Liner. Same as described in Section 6.1.1.2 of Method 5 except use only borosilicate or quartz glass liners.

6.1.2 Filter Holder. Same as described in Section 6.1.1.5 of Method 5 with the addition of a leak-tight connection in the rear half of the filter holder designed for insertion of a temperature sensor used for measuring the sample gas exit temperature.

6.2 Sample Recovery. Same as Method 5, Section 6.2, except three wash bottles are needed instead of two and only glass storage bottles and funnels may be used.

6.3 Sample Analysis. Same as Method 5, Section 6.3, with the additional equipment for TOC analysis as described below:

6.3.1 Sample Blender or Homogenizer. Waring type or ultrasonic.

6.3.2 Magnetic Stirrer.

6.3.3 Hypodermic Syringe. 0- to 100-µl capacity.

6.3.4 Total Organic Carbon Analyzer. Rosemount Model 2100A analyzer or equivalent and a recorder.

6.3.5 Beaker. 30-ml.

6.3.6 Water Bath. Temperature controlled.

6.3.7 Volumetric Flasks. 1000-ml and 500-ml.

*7.0 Reagents and Standards*

Unless otherwise indicated, it is intended that all reagents conform to the specifications established by the Committee on Analytical Reagents of the American Chemical Society, where such specifications are available; otherwise, use the best available grade.

7.1 Sample Collection. Same as Method 5, Section 7.1, with the addition of 0.1 N NaOH (Dissolve 4 g of NaOH in water and dilute to 1 liter).

7.2 Sample Recovery. Same as Method 5, Section 7.2, with the addition of the following:

7.2.1 Water. Deionized distilled to conform to ASTM Specification D 1193–77 or 91 Type 3 (incorporated by reference—see § 60.17). The potassium permanganate ($KMnO_4$) test for oxidizable organic matter may be omitted when high concentrations of organic matter are not expected to be present.

7.2.2 Sodium Hydroxide. Same as described in Section 7.1.

7.3 Sample Analysis. Same as Method 5, Section 7.3, with the addition of the following:

7.3.1 Carbon Dioxide-Free Water. Distilled or deionized water that has been freshly boiled for 15 minutes and cooled to room temperature while preventing exposure to ambient air by using a cover vented with an Ascarite tube.

7.3.2 Hydrochloric Acid. HCl, concentrated, with a dropper.

7.3.3 Organic Carbon Stock Solution. Dissolve 2.1254 g of dried potassium biphthalate ($HOOCC_6H_4COOK$) in $CO_2$-free water, and dilute to 1 liter in a volumetric flask. This solution contains 1000 mg/L organic carbon.

7.3.4 Inorganic Carbon Stock Solution. Dissolve 4.404 g anhydrous sodium carbonate ($Na_2CO_3$.) in about 500 ml of $CO_2$-free water in a 1-liter volumetric flask. Add 3.497 g anhydrous sodium bicarbonate ($NaHCO_3$) to the flask, and dilute to 1 liter with $CO_2$ -free water. This solution contains 1000 mg/L inorganic carbon.

7.3.5 Oxygen Gas. $CO_2$ -free.

*8.0 Sample Collection, Preservation, Storage, and Transport*

8.1 Pretest Preparation and Preliminary Determinations. Same as Method 5, Sections 8.1 and 8.2, respectively.

8.2 Preparation of Sampling Train. Same as Method 5, Section 8.3, except that 0.1 N NaOH is used in place of water in the impingers. The volumes of the solutions are the same as in Method 5.

8.3 Leak-Check Procedures, Sampling Train Operation, Calculation of Percent Isokinetic. Same as Method 5, Sections 8.4 through 8.6, respectively.

8.4 Sample Recovery. Same as Method 5, Sections 8.7.1 through 8.7.4, with the addition of the following:

8.4.1 Save portions of the water, acetone, and 0.1 N NaOH used for cleanup as blanks. Take 200 ml of each liquid directly from the wash bottles being used, and place in glass sample containers labeled "water blank," "acetone blank," and "NaOH blank," respectively.



8.4.2 Inspect the train prior to and during disassembly, and note any abnormal conditions. Treat the samples as follows:

8.4.2.1 Container No. 1. Same as Method 5, Section 8.7.6.1.

8.4.2.2 Container No. 2. Use water to rinse the sample nozzle, probe, and front half of the filter holder three times in the manner described in Section 8.7.6.2 of Method 5 except that no brushing is done. Put all the water wash in one container, seal, and label.

8.4.2.3 Container No. 3. Rinse and brush the sample nozzle, probe, and front half of the filter holder with acetone as described for Container No. 2 in Section 8.7.6.2 of Method 5.

8.4.2.4 Container No. 4. Place the contents of the silica gel impinger in its original container as described for Container No. 3 in Section 8.7.6.3 of Method 5.

8.4.2.5 Container No. 5. Measure the liquid in the first three impingers and record the volume or weight as described for the Impinger Water in Section 8.7.6.4 of Method 5. Do not discard this liquid, but place it in a sample container using a glass funnel to aid in the transfer from the impingers or graduated cylinder (if used) to the sample container. Rinse each impinger thoroughly with 0.1 N NaOH three times, as well as the graduated cylinder (if used) and the funnel, and put these rinsings in the same sample container. Seal the container and label to clearly identify its contents.

8.5 Sample Transport. Whenever possible, containers should be shipped in such a way that they remain upright at all times.

*9.0 Quality Control.*

9.1 Miscellaneous Quality Control Measures.

| Section | Quality control measure | Effect |
|---|---|---|
| 8.3, 10.0 | Sampling equipment leak-check and calibration. | Ensures accurate measurement of stack gas flow rate, sample volume. |
| 10.1.2, 11.2.5.3 | Repetitive analyses | Ensures precise measurement of total carbon and inorganic carbon concentration of samples, blank, and standards. |
| 10.1.4 | TOC analyzer calibration | Ensures linearity of analyzer response to standards. |

9.2 Volume Metering System Checks. Same as Method 5, Section 9.2.

*10.0 Calibration and Standardization*

Same as Method 5, Section 10.0, with the addition of the following procedures for calibrating the total organic carbon analyzer:

10.1 Preparation of Organic Carbon Standard Curve.

10.1.1 Add 10 ml, 20 ml, 30 ml, 40 ml, and 50 ml of the organic carbon stock solution to a series of five 1000-ml volumetric flasks. Add 30 ml, 40 ml, and 50 ml of the same solution to a series of three 500-ml volumetric flasks. Dilute the contents of each flask to the mark using $CO_2$-free water. These flasks contain 10, 20, 30, 40, 50, 60, 80, and 100 mg/L organic carbon, respectively.

10.1.2 Use a hypodermic syringe to withdraw a 20- to 50-µl aliquot from the 10 mg/L standard solution and inject it into the total carbon port of the analyzer. Measure the peak height. Repeat the injections until three consecutive peaks are obtained within 10 percent of their arithmetic mean. Repeat this procedure for the remaining organic carbon standard solutions.

10.1.3 Calculate the corrected peak height for each standard by deducting the blank correction (see Section 11.2.5.3) as follows:

$$\text{Corrected Peak Height} = A - B \qquad \text{Eq. 5E-1}$$

Where:

A = Peak height of standard or sample, mm or other appropriate unit.

B = Peak height of blank, mm or other appropriate unit.

10.1.4 Prepare a linear regression plot of the arithmetic mean of the three consecutive peak heights obtained for each standard solution against the concentration of that solution. Calculate the calibration factor as the inverse of the slope of this curve. If the product of the arithmetic mean peak height for any standard solution and the calibration factor differs from the actual concentration by more than 5 percent, remake and reanalyze that standard.

10.2 Preparation of Inorganic Carbon Standard Curve. Repeat the procedures outlined in Sections 10.1.1 through 10.1.4, substituting the inorganic carbon stock solution for the organic carbon stock solution, and the inorganic carbon port of the analyzer for the total carbon port.

*11.0 Analytical Procedure*

11.1 Record the data required on a sheet such as the one shown in Figure 5–6 of Method 5.

11.2 Handle each sample container as follows:

11.2.1 Container No. 1. Same as Method 5, Section 11.2.1, except that the filters must be dried at 20 ± 6 °C (68 ± 10 °F) and ambient pressure.

11.2.2 Containers No. 2 and No. 3. Same as Method 5, Section 11.2.2, except that evaporation of the samples must be at 20 ± 6 °C (68 ± 10 °F) and ambient pressure.

11.2.3 Container No. 4. Same as Method 5, Section 11.2.3.

11.2.4 "Water Blank" and "Acetone Blank" Containers. Determine the water and acetone blank values following the procedures for the "Acetone Blank" container in Section 11.2.4 of Method 5. Evaporate the samples at ambient temperature (20 ± 6 °C (68 ± 10 °F)) and pressure.

11.2.5 Container No. 5. For the determination of total organic carbon, perform two analyses on successive identical samples, *i.e.*, total carbon and inorganic carbon. The desired quantity is the difference between the two values obtained. Both analyses are based on conversion of sample carbon into carbon dioxide for measurement by a nondispersive infrared analyzer. Results of analyses register as peaks on a strip chart recorder.

11.2.5.1 The principal differences between the operating parameters for the two channels involve the combustion tube packing material and temperature. In the total carbon channel, a high temperature (950 °C (1740 °F)) furnace heats a Hastelloy combustion tube packed with cobalt oxide-impregnated asbestos fiber. The oxygen in the carrier gas, the elevated temperature, and the catalytic effect of the packing result in oxidation of both organic and inorganic carbonaceous material to $CO_2$, and steam. In the

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inorganic carbon channel, a low temperature (150 °C (300 °F)) furnace heats a glass tube containing quartz chips wetted with 85 percent phosphoric acid. The acid liberates $CO_2$ and steam from inorganic carbonates. The operating temperature is below that required to oxidize organic matter. Follow the manufacturer's instructions for assembly, testing, calibration, and operation of the analyzer.

11.2.5.2 As samples collected in 0.1 N NaOH often contain a high measure of inorganic carbon that inhibits repeatable determinations of TOC, sample pretreatment is necessary. Measure and record the liquid volume of each sample (or impinger contents). If the sample contains solids or immiscible liquid matter, homogenize the sample with a blender or ultrasonics until satisfactory repeatability is obtained. Transfer a representative portion of 10 to 15 ml to a 30-ml beaker, and acidify with about 2 drops of concentrated HCl to a pH of 2 or less. Warm the acidified sample at 50 °C (120 °F) in a water bath for 15 minutes.

11.2.5.3 While stirring the sample with a magnetic stirrer, use a hypodermic syringe to withdraw a 20-to 50-µl aliquot from the beaker. Analyze the sample for total carbon and calculate its corrected mean peak height according to the procedures outlined in Sections 10.1.2 and 10.1.3. Similarly analyze an aliquot of the sample for inorganic carbon. Repeat the analyses for all the samples and for the 0.1 N NaOH blank.

11.2.5.4 Ascertain the total carbon and inorganic carbon concentrations ($C_{TC}$ and $C_{IC}$, respectively) of each sample and blank by comparing the corrected mean peak heights for each sample and blank to the appropriate standard curve.

**Note:** If samples must be diluted for analysis, apply an appropriate dilution factor.

*12.0 Data Analysis and Calculations*

Same as Method 5, Section 12.0, with the addition of the following:

12.1 Nomenclature.

$C_c$ = Concentration of condensed particulate matter in stack gas, gas dry basis, corrected to standard conditions, g/dscm (gr/dscf).

$C_{IC}$ = Concentration of condensed TOC in the liquid sample, from Section 11.2.5, mg/L.

$C_t$ = Total particulate concentration, dry basis, corrected to standard conditions, g/dscm (gr/dscf).

$C_{TC}$ = Concentration of condensed TOC in the liquid sample, from Section 11.2.5, mg/L.

$C_{TOC}$ = Concentration of condensed TOC in the liquid sample, mg/L.

$m_{TOC}$ = Mass of condensed TOC collected in the impingers, mg.

$V_{m(std)}$ = Volume of gas sample measured by the dry gas meter, corrected to standard conditions, from Section 12.3 of Method 5, dscm (dscf).

$V_s$ = Total volume of liquid sample, ml.

12.2 Concentration of Condensed TOC in Liquid Sample.

$$C_{TOC} = C_{TC} - C_{IC} \qquad \text{Eq. 5E-2}$$

12.3 Mass of Condensed TOC Collected.

$$m_{TOC} = 0.001\, C_{TOC} V_s \qquad \text{Eq. 5E-3}$$

Where:

0.001 = Liters per milliliter.

12.4 Concentration of Condensed Particulate Material.

$$C_c = K_4 m_{TOC} / V_{m(std)} \qquad \text{Eq. 5E-4}$$

Where:

$K_4$ = 0.001 g/mg for metric units.
= 0.0154 gr/mg for English units.

12.5 Total Particulate Concentration.

$$C_t = C_s + C_c \qquad \text{Eq. 5E-4}$$

*13.0 Method Performance. [Reserved]*

*14.0 Pollution Prevention. [Reserved]*

*15.0 Waste Management. [Reserved]*

*16.0 References.*

Same as Section 17.0 of Method 5, with the addition of the following:

1. American Public Health Association, American Water Works Association, Water Pollution Control Federation. Standard Methods for the Examination of Water and Wastewater. Fifteenth Edition. Washington, D.C. 1980.

*17.0 Tables, Diagrams, Flowcharts, and Validation Data. [Reserved]*

**Method 5F—Determination of Nonsulfate Particulate Matter Emissions From Stationary Sources**

**Note:** This method does not include all of the specifications (*e.g.*, equipment and supplies) and procedures (*e.g.*, sampling and analytical) essential to its performance. Some material is incorporated by reference from other methods in this part. Therefore, to obtain reliable results, persons using this method should have a thorough knowledge of at least the following additional test methods: Method 1, Method 2, Method 3, and Method 5.

*1.0 Scope and Applications*

1.1 Analyte. Nonsulfate particulate matter (PM). No CAS number assigned.

1.2 Applicability. This method is applicable for the determination of nonsulfate PM emissions from stationary sources. Use of this method must be specified by an applicable subpart of the standards, or approved by the Administrator for a particular application.

1.3 Data Quality Objectives. Adherence to the requirements of this method will enhance the quality of the data obtained from air pollutant sampling methods.

*2.0 Summary of Method*

Particulate matter is withdrawn isokinetically from the source and collected on a filter maintained at a temperature in the range 160 ± 14 °C (320 ± 25 °F). The collected sample is extracted with water. A portion of the extract is analyzed for sulfate content by ion chromatography. The remainder is neutralized with ammonium hydroxide ($NH_4OH$), dried, and weighed. The weight of sulfate in the sample is calculated as ammonium sulfate ($(NH_4)_2SO_4$), and is subtracted from the total particulate weight; the result is reported as nonsulfate particulate matter.

*3.0 Definitions [Reserved]*

*4.0 Interferences [Reserved]*

*5.0 Safety*

5.1 Disclaimer. This method may involve hazardous materials, operations, and equipment. This test method may not address all of the safety problems associated with its use. It is the responsibility of the user of this test method to establish appropriate safety and health practices and to determine the applicability of regulatory limitations prior to performing this test method.

*6.0 Equipment and Supplies*

6.1 Sample Collection and Recovery. Same as Method 5, Sections 6.1 and 6.2, respectively.

6.2 Sample Analysis. Same as Method 5, Section 6.3, with the addition of the following:

6.2.1 Erlenmeyer Flasks. 125-ml, with ground glass joints.

6.2.2 Air Condenser. With ground glass joint compatible with the Erlenmeyer flasks.

6.2.3 Beakers. 600-ml.

6.2.4 Volumetric Flasks. 1-liter, 500-ml (one for each sample), 200-ml, and 50-ml (one for each sample and standard).

6.2.5 Pipet. 5-ml (one for each sample and standard).

6.2.6 Ion Chromatograph. The ion chromatograph should have at least the following components.

6.2.6.1 Columns. An anion separation column or other column capable of resolving the sulfate ion from other species present and a standard anion suppressor column. Suppressor columns are produced as proprietary items; however, one can be produced in the laboratory using the resin available from BioRad Company, 32nd and Griffin Streets, Richmond, California. Other systems which do not use suppressor columns may also be used.

6.2.6.2 Pump. Capable of maintaining a steady flow as required by the system.

6.2.6.3 Flow Gauges. Capable of measuring the specified system flow rate.

6.2.6.4 Conductivity Detector.

6.2.6.5 Recorder. Compatible with the output voltage range of the detector.

*7.0 Reagents and Standards*

Unless otherwise indicated, it is intended that all reagents conform to the specifications established by the Committee on Analytical Reagents of the American Chemical Society, where such specifications are available; otherwise, use the best available grade.

7.1 Sample Collection. Same as Method 5, Section 7.1.

7.2 Sample Recovery. Same as Method 5, Section 7.2, with the addition of the following:

7.2.1 Water. Deionized distilled, to conform to ASTM D 1193–77 or 91 Type 3 (incorporated by reference—see § 60.17). The potassium permanganate ($KMnO_4$) test for oxidizable organic matter may be omitted when high concentrations of organic matter are not expected to be present.

7.3 Analysis. Same as Method 5, Section 7.3, with the addition of the following:

7.3.1 Water. Same as in Section 7.2.1.

7.3.2 Stock Standard Solution, 1 mg $(NH_4)_2SO_4$/ml. Dry an adequate amount of primary standard grade ammonium sulfate ($(NH_4)_2SO_4$) at 105 to 110 °C (220 to 230 °F) for a minimum of 2 hours before preparing the standard solution. Then dissolve exactly 1.000 g of dried $(NH_4)_2SO_4$ in water in a 1-liter volumetric flask, and dilute to 1 liter. Mix well.

7.3.3 Working Standard Solution, 25 µg $(NH_4)_2SO_4$/ml. Pipet 5 ml of the stock standard solution into a 200-ml volumetric flask. Dilute to 200 ml with water.

7.3.4 Eluent Solution. Weigh 1.018 g of sodium carbonate ($Na_2CO_3$) and 1.008 g of sodium bicarbonate ($NaHCO_3$), and dissolve in 4 liters of water. This solution is 0.0024 M $Na_2CO_3$/0.003 M $NaHCO_3$. Other eluents appropriate to the column type and capable of resolving sulfate ion from other species present may be used.

7.3.5 Ammonium Hydroxide. Concentrated, 14.8 M.

7.3.6 Phenolphthalein Indicator. 3,3-Bis(4-hydroxyphenyl)-1-(3H)-isobenzofuranone. Dissolve 0.05 g in 50 ml of ethanol and 50 ml of water.

*8.0 Sample Collection, Preservation, Storage, and Transport*

Same as Method 5, Section 8.0, with the exception of the following:

8.1 Sampling Train Operation. Same as Method 5, Section 8.5, except that the probe outlet and filter temperatures shall be maintained at 160 ± 14 °C (320 ± 25 °F).

8.2 Sample Recovery. Same as Method 5, Section 8.7, except that the recovery solvent shall be water instead of acetone, and a clean filter from the same lot as those used during testing shall be saved for analysis as a blank.

*9.0 Quality Control*

9.1 Miscellaneous Quality Control Measures

| Section | Quality control measure | Effect |
|---|---|---|
| 8.3, 10.0 | Sampling equipment leak check and calibration. | Ensures accurate measurement of stack gas flow rate, sample volume. |
| 10.1.2, 11.2.5.3 | Repetitive analyses | Ensures precise measurement of total carbon and inorganic carbon concentration of samples, blank, and standards. |

9.2 Volume Metering System Checks. Same as Method 5, Section 9.2.

*10.0 Calibration and Standardization*

Same as Method 5, Section 10.0, with the addition of the following:

10.1 Determination of Ion Chromatograph Calibration Factor S. Prepare a series of five standards by adding 1.0, 2.0, 4.0, 6.0, and 10.0 ml of working standard solution (25 µg/ml) to a series of five 50-ml volumetric flasks. (The standard masses will equal 25, 50, 100, 150, and 250 µg.) Dilute each flask to the mark with water, and mix well. Analyze each standard according to the chromatograph manufacturer's instructions. Take peak height measurements with symmetrical peaks; in all other cases, calculate peak areas. Prepare or calculate a linear regression plot of the standard masses in µg (x-axis) versus their responses (y-axis). From this line, or equation, determine the slope and calculate its reciprocal which is the calibration factor, S. If any point deviates from the line by more than 7 percent of the concentration at that point, remake and reanalyze that standard. This deviation can be determined by multiplying S times the response for each standard. The resultant concentrations must not differ by more than 7 percent from each known standard mass (*i.e.*, 25, 50, 100, 150, and 250 µg).

10.2 Conductivity Detector. Calibrate according to manufacturer's specifications prior to initial use.

*11.0 Analytical Procedure*

11.1 Sample Extraction.

11.1.1 Note on the analytical data sheet, the level of the liquid in the container, and whether any sample was lost during shipment. If a noticeable amount of leakage has occurred, either void the sample or use methods, subject to the approval of the Administrator, to correct the final results.

11.1.2 Cut the filter into small pieces, and place it in a 125-ml Erlenmeyer flask with a ground glass joint equipped with an air condenser. Rinse the shipping container with water, and pour the rinse into the flask. Add additional water to the flask until it contains about 75 ml, and place the flask on a hot plate. Gently reflux the contents for 6 to 8 hours. Cool the solution, and transfer it to a 500-ml volumetric flask. Rinse the Erlenmeyer flask with water, and transfer the rinsings to the volumetric flask including the pieces of filter.

11.1.3 Transfer the probe rinse to the same 500-ml volumetric flask with the filter sample. Rinse the sample bottle with water, and add the rinsings to the volumetric flask. Dilute the contents of the flask to the mark with water.

11.1.4 Allow the contents of the flask to settle until all solid material is at the bottom of the flask. If necessary, remove and centrifuge a portion of the sample.

11.1.5 Repeat the procedures outlined in Sections 11.1.1 through 11.1.4 for each sample and for the filter blank.

11.2 Sulfate ($SO_4$) Analysis.

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11.2.1 Prepare a standard calibration curve according to the procedures outlined in Section 10.1.

11.2.2 Pipet 5 ml of the sample into a 50-ml volumetric flask, and dilute to 50 ml with water. (Alternatively, eluent solution may be used instead of water in all sample, standard, and blank dilutions.) Analyze the set of standards followed by the set of samples, including the filter blank, using the same injection volume used for the standards.

11.2.3 Repeat the analyses of the standards and the samples, with the standard set being done last. The two peak height or peak area responses for each sample must agree within 5 percent of their arithmetic mean for the analysis to be valid. Perform this analysis sequence on the same day. Dilute any sample and the blank with equal volumes of water if the concentration exceeds that of the highest standard.

11.2.4 Document each sample chromatogram by listing the following analytical parameters: injection point, injection volume, sulfate retention time, flow rate, detector sensitivity setting, and recorder chart speed.

11.3 Sample Residue.

11.3.1 Transfer the remaining contents of the volumetric flask to a tared 600-ml beaker or similar container. Rinse the volumetric flask with water, and add the rinsings to the tared beaker. Make certain that all particulate matter is transferred to the beaker. Evaporate the water in an oven at 105 °C (220 °F) until only about 100 ml of water remains. Remove the beakers from the oven, and allow them to cool.

11.3.2 After the beakers have cooled, add five drops of phenolphthalein indicator, and then add concentrated ammonium hydroxide until the solution turns pink. Return the samples to the oven at 105 °C (220 °F), and evaporate the samples to dryness. Cool the samples in a desiccator, and weigh the samples to constant weight.

*12.0 Data Analysis and Calculations*

Same as Method 5, Section 12.0, with the addition of the following:

12.1 Nomenclature.

$C_w$ = Water blank residue concentration, mg/ml.

F = Dilution factor (required only if sample dilution was needed to reduce the concentration into the range of calibration).

$H_s$ = Arithmetic mean response of duplicate sample analyses, mm for height or mm2 for area.

$H_b$ = Arithmetic mean response of duplicate filter blank analyses, mm for height or mm2 for area.

$m_b$ = Mass of beaker used to dry sample, mg.

$m_f$ = Mass of sample filter, mg.

$m_n$ = Mass of nonsulfate particulate matter in the sample as collected, mg.

$m_s$ = Mass of ammonium sulfate in the sample as collected, mg.

$m_t$ = Mass of beaker, filter, and dried sample, mg.

$m_w$ = Mass of residue after evaporation of water blank, mg.

S = Calibration factor, µg/mm.

$V_b$ = Volume of water blank, ml.

$V_S$ = Volume of sample collected, 500 ml.

12.2 Water Blank Concentration.

$$C_w = \frac{m_w}{V_b} \qquad \text{Eq. 5F-1}$$

12.3 Mass of Ammonium Sulfate.

$$m_s = \frac{(99)\,S\,(H_s - H_b)}{(1000)}\,F \qquad \text{Eq. 5F-2}$$

Where:

100 = Aliquot factor, 495 ml/5 ml

1000 = Constant, µg/mg

12.4 Mass of Nonsulfate Particulate Matter.

$$m_n = m_t - m_b - m_s - m_f - V_s C_w \qquad \text{Eq. 5F-3}$$

*13.0 Method Performance. [Reserved]*

*14.0 Pollution Prevention. [Reserved]*

*15.0 Waste Management. [Reserved]*

*16.0 Alternative Procedures*

16.1 The following procedure may be used as an alternative to the procedure in Section 11.0

16.1.1 Apparatus. Same as for Method 6, Sections 6.3.3 to 6.3.6 with the following additions.

16.1.1.1 Beakers. 250-ml, one for each sample, and 600-ml.

16.1.1.2 Oven. Capable of maintaining temperatures of 75 ±5 °C (167 ± 9 °F) and 105 ± 5 °C (221 ± 9 °F).

16.1.1.3 Buchner Funnel.

16.1.1.4 Glass Columns. 25-mm x 305-mm (1-in. x 12-in.) with Teflon stopcock.

16.1.1.5 Volumetric Flasks. 50-ml and 500-ml, one set for each sample, and 100-ml, 200-ml, and 1000-ml.

16.1.1.6 Pipettes. Two 20-ml and one 200-ml, one set for each sample, and 5-ml.

16.1.1.7 Filter Flasks. 500-ml.

16.1.1.8 Polyethylene Bottle. 500-ml, one for each sample.

16.1.2 Reagents. Same as Method 6, Sections 7.3.2 to 7.3.5 with the following additions:

16.1.2.1 Water, Ammonium Hydroxide, and Phenolphthalein. Same as Sections 7.2.1, 7.3.5, and 7.3.6 of this method, respectively.

16.1.2.2 Filter. Glass fiber to fit Buchner funnel.

16.1.2.3 Hydrochloric Acid (HCl), 1 m. Add 8.3 ml of concentrated HCl (12 M) to 50 ml of water in a 100-ml volumetric flask. Dilute to 100 ml with water.

16.1.2.4 Glass Wool.

16.1.2.5 Ion Exchange Resin. Strong cation exchange resin, hydrogen form, analytical grade.

16.1.2.6 pH Paper. Range of 1 to 7.

16.1.3 Analysis.

16.1.3.1 Ion Exchange Column Preparation. Slurry the resin with 1 M HCl in a 250-ml beaker, and allow to stand overnight. Place 2.5 cm (1 in.) of glass wool in the bottom of the glass column. Rinse the slurried resin twice with water. Resuspend the resin in water, and pour sufficient resin into the column to make a bed 5.1 cm (2 in.) deep. Do not allow air bubbles to become entrapped in the resin or glass wool to avoid channeling, which may produce erratic results. If necessary, stir the resin with a glass rod to remove air bubbles, after the column has been prepared, never let the liquid level fall below the top of the upper glass wool plug. Place a 2.5-cm (1-in.) plug of glass wool on top of the resin. Rinse the column with water until the eluate gives a pH of 5 or greater as measured with pH paper.

16.1.3.2 Sample Extraction. Followup the procedure given in Section 11.1.3 except do not dilute the sample to 500 ml.

16.1.3.3 Sample Residue.

16.1.3.3.1 Place at least one clean glass filter for each sample in a Buchner funnel, and rinse the filters with water. Remove the filters from the funnel, and dry them in an oven at 105 ± 5° C (221 ± 9 °F); then cool in a desiccator. Weigh each filter to constant weight according to the procedure in Method 5, Section 11.0. Record the weight of each filter to the nearest 0.1 mg.



16.1.3.3.2 Assemble the vacuum filter apparatus, and place one of the clean, tared glass fiber filters in the Buchner funnel. Decant the liquid portion of the extracted sample (Section 16.1.3.2) through the tared glass fiber filter into a clean, dry, 500-ml filter flask. Rinse all the particulate matter remaining in the volumetric flask onto the glass fiber filter with water. Rinse the particulate matter with additional water. Transfer the filtrate to a 500-ml volumetric flask, and dilute to 500 ml with water. Dry the filter overnight at 105 ± 5° C (221 ± 9°F), cool in a desiccator, and weigh to the nearest 0.1 mg.

16.1.3.3.3 Dry a 250-ml beaker at 75 ± 5° C (167 ± 9° F), and cool in a desiccator; then weigh to constant weight to the nearest 0.1 mg. Pipette 200 ml of the filtrate that was saved into a tared 250-ml beaker; add five drops of phenolphthalein indicator and sufficient concentrated ammonium hydroxide to turn the solution pink. Carefully evaporate the contents of the beaker to dryness at 75 ± 5° C (167 ± 9° F). Check for dryness every 30 minutes. Do not continue to bake the sample once it has dried. Cool the sample in a desiccator, and weigh to constant weight to the nearest 0.1 mg.

16.1.3.4 Sulfate Analysis. Adjust the flow rate through the ion exchange column to 3 ml/min. Pipette a 20-ml aliquot of the filtrate onto the top of the ion exchange column, and collect the eluate in a 50-ml volumetric flask. Rinse the column with two 15-ml portions of water. Stop collection of the eluate when the volume in the flask reaches 50-ml. Pipette a 20-ml aliquot of the eluate into a 250-ml Erlenmeyer flask, add 80 ml of 100 percent isopropanol and two to four drops of thorin indicator, and titrate to a pink end point using 0.0100 N barium perchlorate. Repeat and average the titration volumes. Run a blank with each series of samples. Replicate titrations must agree within 1 percent or 0.2 ml, whichever is larger. Perform the ion exchange and titration procedures on duplicate portions of the filtrate. Results should agree within 5 percent. Regenerate or replace the ion exchange resin after 20 sample aliquots have been analyzed or if the end point of the titration becomes unclear.

**Note:** Protect the 0.0100 N barium perchlorate solution from evaporation at all times.

16.1.3.5 Blank Determination. Begin with a sample of water of the same volume as the samples being processed and carry it through the analysis steps described in Sections 16.1.3.3 and 16.1.3.4. A blank value larger than 5 mg should not be subtracted from the final particulate matter mass. Causes for large blank values should be investigated and any problems resolved before proceeding with further analyses.

16.1.4 Calibration. Calibrate the barium perchlorate solutions as in Method 6, Section 10.5.

16.1.5 Calculations.

16.1.5.1 Nomenclature. Same as Section 12.1 with the following additions:

$m_a$ = Mass of clean analytical filter, mg.

$m_d$ = Mass of dissolved particulate matter, mg.

$m_e$ = Mass of beaker and dissolved particulate matter after evaporation of filtrate, mg.

$m_p$ = Mass of insoluble particulate matter, mg.

$m_r$ = Mass of analytical filter, sample filter, and insoluble particulate matter, mg.

$m_{bk}$ = Mass of nonsulfate particulate matter in blank sample, mg.

$m_n$ = Mass of nonsulfate particulate matter, mg.

$m_s$ = Mass of Ammonium sulfate, mg.

N = Normality of $Ba(ClO_4)$ titrant, meq/ml.

$V_a$ = Volume of aliquot taken for titration, 20 ml.

$V_c$ = Volume of titrant used for titration blank, ml.

$V_d$ = Volume of filtrate evaporated, 200 ml.

$V_e$ = Volume of eluate collected, 50 ml.

$V_f$ = Volume of extracted sample, 500 ml.

$V_i$ = Volume of filtrate added to ion exchange column, 20 ml.

$V_t$ = Volume of $Ba(C10_4)_2$ titrant, ml.

W = Equivalent weight of ammonium sulfate, 66.07 mg/meq.

16.1.5.2 Mass of Insoluble Particulate Matter.

$$m_p = m_r - m_a - m_f \qquad \text{Eq. 5F-4}$$

16.1.5.3 Mass of Dissolved Particulate Matter.

$$m_d = \left(m_e - \left(V_f / V_d\right) m_b\right) \qquad \text{Eq. 5F-5}$$

16.1.5.4 Mass of Ammonium Sulfate.

$$m_s = \frac{\left(V_t - V_c\right) N\, W\, V_e\, V_f}{V_a\, V_i} \qquad \text{Eq. 5F-6}$$

16.1.5.5 Mass of Nonsulfate Particulate Matter.

$$m_n = m_p + m_d - m_s - m_{bk} \qquad \text{Eq. 5F-7}$$

*17.0 References*

Same as Method 5, Section 17.0, with the addition of the following:

1. Mulik, J.D. and E. Sawicki. Ion Chromatographic Analysis of Environmental Pollutants. Ann Arbor, Ann Arbor Science Publishers, Inc. Vol. 2, 1979.

2. Sawicki, E., J.D. Mulik, and E. Wittgenstein. Ion Chromatographic Analysis of Environmental Pollutants. Ann Arbor, Ann Arbor Science Publishers, Inc. Vol. 1. 1978.

3. Siemer, D.D. Separation of Chloride and Bromide from Complex Matrices Prior to Ion Chromatographic Determination. Analytical Chemistry 52(12): 1874–1877. October 1980.

4. Small, H., T.S. Stevens, and W.C. Bauman. Novel Ion Exchange Chromatographic Method Using Conductimetric Determination. Analytical Chemistry. *47*(11):1801. 1975.

*18.0 Tables, Diagrams, Flowcharts, and Validation Data. [Reserved]*

**Method 5G—Determination of Particulate Matter Emissions From Wood Heaters (Dilution Tunnel Sampling Location)**

**Note:** This method does not include all of the specifications (e.g., equipment and supplies) and procedures (e.g., sampling and analytical) essential to its performance. Some material is incorporated by reference from other methods in this part. Therefore, to obtain reliable results, persons using this method should have a thorough knowledge of at least the following additional test methods: Method 1, Method 2, Method 3, Method 4, Method 5, Method 5H, and Method 28.

*1.0 Scope and Application*

1.1 Analyte. Particulate matter (PM). No CAS number assigned.

1.2 Applicability. This method is applicable for the determination of PM emissions from wood heaters.

1.3 Data Quality Objectives. Adherence to the requirements of this method will enhance the quality of the data obtained from air pollutant sampling methods.

*2.0 Summary of Method*

2.1 The exhaust from a wood heater is collected with a total collection hood, and is combined with ambient dilution air. Particulate matter is withdrawn proportionally from a single point in a sampling tunnel, and is collected on two glass fiber filters in series. The filters are maintained at a temperature of no greater than 32 °C (90 °F). The particulate mass is determined gravimetrically after the removal of uncombined water.

2.2 There are three sampling train approaches described in this method: (1) One dual-filter dry sampling train operated at about 0.015 $m^3$/min (0.5 cfm), (2) One dual-filter plus impingers sampling train operated at about 0.015 $m^3$/min (0.5 cfm), and (3) two dual-filter dry sampling trains operated simultaneously at any flow rate. Options

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(2) and (3) are referenced in Section 16.0 of this method. The dual-filter dry sampling train equipment and operation, option (1), are described in detail in this method.

*3.0 Definitions [Reserved]*

*4.0 Interferences [Reserved]*

*5.0 Safety*

5.1 Disclaimer. This method may involve hazardous materials, operations, and equipment. This test method may not address all of the safety problems associated with its use. It is the responsibility of the user of this test method to establish appropriate safety and health practices and to determine the applicability of regulatory limitations prior to performing this test method.

*6.0 Equipment and Supplies*

6.1 Sample Collection. The following items are required for sample collection:

6.1.1 Sampling Train. The sampling train configuration is shown in Figure 5G–1 and consists of the following components:

6.1.1.1 Probe. Stainless steel (*e.g.*, 316 or grade more corrosion resistant) or glass about 9.5 mm (3/8 in.) I.D., 0.6 m (24 in.) in length. If made of stainless steel, the probe shall be constructed from seamless tubing.

6.1.1.2 Pitot Tube. Type S, as described in Section 6.1 of Method 2. The Type S pitot tube assembly shall have a known coefficient, determined as outlined in Method 2, Section 10. Alternatively, a standard pitot may be used as described in Method 2, Section 6.1.2.

6.1.1.3 Differential Pressure Gauge. Inclined manometer or equivalent device, as described in Method 2, Section 6.2. One manometer shall be used for velocity head ($\Delta p$) readings and another (optional) for orifice differential pressure readings ($\Delta H$).

6.1.1.4 Filter Holders. Two each made of borosilicate glass, stainless steel, or Teflon, with a glass frit or stainless steel filter support and a silicone rubber, Teflon, or Viton gasket. The holder design shall provide a positive seal against leakage from the outside or around the filters. The filter holders shall be placed in series with the backup filter holder located 25 to 100 mm (1 to 4 in.) downstream from the primary filter holder. The filter holder shall be capable of holding a filter with a 100 mm (4 in.) diameter, except as noted in Section 16.

6.1.1.5 Filter Temperature Monitoring System. A temperature sensor capable of measuring temperature to within ± 3 °C (± 5 °F). The sensor shall be installed at the exit side of the front filter holder so that the sensing tip of the temperature sensor is in direct contact with the sample gas or in a thermowell as shown in Figure 5G–1. The temperature sensor shall comply with the calibration specifications in Method 2, Section 10.3. Alternatively, the sensing tip of the temperature sensor may be installed at the inlet side of the front filter holder.

6.1.1.6 Dryer. Any system capable of removing water from the sample gas to less than 1.5 percent moisture (volume percent) prior to the metering system. The system shall include a temperature sensor for demonstrating that sample gas temperature exiting the dryer is less than 20 °C (68 °F).

6.1.1.7 Metering System. Same as Method 5, Section 6.1.1.9.

6.1.2 Barometer. Same as Method 5, Section 6.1.2.

6.1.3 Dilution Tunnel Gas Temperature Measurement. A temperature sensor capable of measuring temperature to within ± 3 °C (± 5 °F).

6.1.4 Dilution Tunnel. The dilution tunnel apparatus is shown in Figure 5G–2 and consists of the following components:

6.1.4.1 Hood. Constructed of steel with a minimum diameter of 0.3 m (1 ft) on the large end and a standard 0.15 to 0.3 m (0.5 to 1 ft) coupling capable of connecting to standard 0.15 to 0.3 m (0.5 to 1 ft) stove pipe on the small end.

6.1.4.2 90° Elbows. Steel 90° elbows, 0.15 to 0.3 m (0.5 to 1 ft) in diameter for connecting mixing duct, straight duct and optional damper assembly. There shall be at least two 90° elbows upstream of the sampling section (see Figure 5G–2).

6.1.4.3 Straight Duct. Steel, 0.15 to 0.3 m (0.5 to 1 ft) in diameter to provide the ducting for the dilution apparatus upstream of the sampling section. Steel duct, 0.15 m (0.5 ft) in diameter shall be used for the sampling section. In the sampling section, at least 1.2 m (4 ft) downstream of the elbow, shall be two holes (velocity traverse ports) at 90° to each other of sufficient size to allow entry of the pitot for traverse measurements. At least 1.2 m (4 ft) downstream of the velocity traverse ports, shall be one hole (sampling port) of sufficient size to allow entry of the sampling probe. Ducts of larger diameter may be used for the sampling section, provided the specifications for minimum gas velocity and the dilution rate range shown in Section 8 are maintained. The length of duct from the hood inlet to the sampling ports shall not exceed 9.1 m (30 ft).

6.1.4.4 Mixing Baffles. Steel semicircles (two) attached at 90° to the duct axis on opposite sides of the duct midway between the two elbows upstream of sampling section. The space between the baffles shall be about 0.3 m (1 ft).

6.1.4.5 Blower. Squirrel cage or other fan capable of extracting gas from the dilution tunnel of sufficient flow to maintain the velocity and dilution rate specifications in Section 8 and exhausting the gas to the atmosphere.

6.2 Sample Recovery. The following items are required for sample recovery: probe brushes, wash bottles, sample storage containers, petri dishes, and funnel. Same as Method 5, Sections 6.2.1 through 6.2.4, and 6.2.8, respectively.

6.3 Sample Analysis. The following items are required for sample analysis: glass weighing dishes, desiccator, analytical balance, beakers (250-ml or smaller), hygrometer, and temperature sensor. Same as Method 5, Sections 6.3.1 through 6.3.3 and 6.3.5 through 6.3.7, respectively.

*7.0 Reagents and Standards*

7.1 Sample Collection. The following reagents are required for sample collection:

7.1.1 Filters. Glass fiber filters with a minimum diameter of 100 mm (4 in.), without organic binder, exhibiting at least 99.95 percent efficiency (<0.05 percent penetration) on 0.3-micron dioctyl phthalate smoke particles. Gelman A/E 61631 has been found acceptable for this purpose.

7.1.2 Stopcock Grease. Same as Method 5, Section 7.1.5. 7.2 Sample Recovery. Acetone-reagent grade, same as Method 5, Section 7.2.

7.3 Sample Analysis. Two reagents are required for the sample analysis:

7.3.1 Acetone. Same as in Section 7.2.

7.3.2 Desiccant. Anhydrous calcium sulfate, calcium chloride, or silica gel, indicating type.

*8.0 Sample Collection, Preservation, Transport, and Storage*

8.1 Dilution Tunnel Assembly and Cleaning. A schematic of a dilution tunnel is shown in Figure 5G–2. The dilution tunnel dimensions and other features are described in Section 6.1.4. Assemble the dilution tunnel, sealing joints and seams to prevent air leakage. Clean the dilution tunnel with an appropriately sized wire chimney brush before each certification test.

8.2 Draft Determination. Prepare the wood heater as in Method 28, Section 6.2.1. Locate the dilution tunnel hood centrally over the wood heater stack exhaust. Operate the dilution tunnel blower at the flow rate to be used during the test run. Measure the draft imposed on the wood heater by the dilution tunnel (*i.e.*, the difference in draft measured with and without the dilution tunnel operating) as described in Method 28, Section 6.2.3. Adjust the distance between the top of the wood heater stack exhaust and the dilution tunnel hood so that the dilution tunnel induced draft is less than 1.25 Pa (0.005 in. $H_2O$). Have no fire in the wood heater, close the wood heater doors, and open fully the air supply controls during this check and adjustment.

8.3 Pretest Ignition. Same as Method 28, Section 8.7.

8.4 Smoke Capture. During the pretest ignition period, operate the dilution tunnel and visually monitor the wood heater stack exhaust. Operate the wood heater with the doors closed and determine that 100 percent of the exhaust gas is collected by the dilution tunnel hood. If less than 100 percent of the wood heater exhaust gas is collected, adjust the distance between the wood heater stack and the dilution tunnel hood until no visible exhaust gas is escaping. Stop the pretest ignition period, and repeat the draft determination procedure described in Section 8.2.

8.5 Velocity Measurements. During the pretest ignition period, conduct a velocity traverse to identify the point of average velocity. This single point shall be used for measuring velocity during the test run.

8.5.1 Velocity Traverse. Measure the diameter of the duct at the velocity traverse port location through both ports. Calculate the duct area using the average of the two diameters. A pretest leak-check of pitot lines as in Method 2, Section 8.1, is recommended. Place the calibrated pitot tube at the centroid of the stack in either of the velocity traverse ports. Adjust the damper or similar device on the blower inlet until the velocity indicated by the pitot is approximately 220 m/min (720 ft/min). Continue to read the $\Delta p$ and temperature until the velocity has remained constant (less than 5 percent change) for 1 minute. Once a constant velocity is obtained at the centroid of the duct, perform a velocity traverse as outlined in Method 2, Section 8.3 using four points per traverse as outlined in Method 1. Measure the $\Delta p$ and tunnel temperature at each traverse point and record the readings. Calculate the total gas flow rate using calculations contained in Method 2, Section 12. Verify that the flow rate is 4 ± 0.40 dscm/min (140 ± 14 dscf/min); if not, readjust the damper, and repeat the velocity traverse. The moisture may be assumed to be 4 percent (100 percent relative humidity at 85 °F). Direct moisture measurements (*e.g.*, according to Method 4) are also permissible.

**Note:** If burn rates exceed 3 kg/hr (6.6 lb/hr), dilution tunnel duct flow rates greater than 4 dscm/min (140 dscfm) and sampling section duct diameters larger than 150 mm (6 in.) are allowed. If larger ducts or flow rates are used, the sampling section velocity shall be at least 220 m/min (720 fpm). In order to ensure measurable particulate mass catch, it is recommended that the ratio of the average mass flow rate in the dilution tunnel to the average fuel burn rate be less then 150:1 if larger duct sizes or flow rates are used.

8.5.2 Testing Velocity Measurements. After obtaining velocity traverse results that meet the flow rate requirements, choose a point of average velocity and place the pitot and temperature sensor at that location in the duct. Alternatively, locate the pitot and the temperature sensor at the duct centroid and calculate a velocity correction factor for the centroidal position. Mount the pitot to ensure no movement during the test run and seal the port holes to prevent any air leakage. Align the pitot opening to be parallel with the duct axis at the measurement point. Check that this condition is maintained during the test run (about 30-minute intervals). Monitor the temperature and velocity during the pretest ignition period to ensure that the proper flow rate is maintained. Make adjustments to the dilution tunnel flow rate as necessary.

8.6 Pretest Preparation. Same as Method 5, Section 8.1.

8.7 Preparation of Sampling Train. During preparation and assembly of the sampling train, keep all openings where contamination can occur covered until just prior to assembly or until sampling is about to begin.

Using a tweezer or clean disposable surgical gloves, place one labeled (identified) and weighed filter in each of the filter holders. Be sure that each filter is properly centered and that the gasket is properly placed so as to prevent the sample gas stream from circumventing the filter. Check each filter for tears after assembly is completed.

Mark the probe with heat resistant tape or by some other method to denote the proper distance into the stack or duct. Set up the train as shown in Figure 5G–1.

8.8 Leak-Check Procedures.

8.8.1 Leak-Check of Metering System Shown in Figure 5G–1. That portion of the sampling train from the pump to the orifice meter shall be leak-checked prior to initial use and after each certification or audit test. Leakage after the pump will result in less volume being recorded than is actually sampled. Use the procedure described in Method 5, Section 8.4.1. Similar leak-checks shall be conducted for other types of metering systems (*i.e.*, without orifice meters).

8.8.2 Pretest Leak-Check. A pretest leak-check of the sampling train is recommended, but not required. If the pretest leak check is conducted, the procedures outlined in Method 5, Section 8.4.2 should be used. A vacuum of 130 mm Hg (5 in. Hg) may be used instead of 380 mm Hg (15 in. Hg).

8.8.3 Post-Test Leak-Check. A leak-check of the sampling train is mandatory at the conclusion of each test run. The leak-check shall be performed in accordance with the procedures outlined in Method 5, Section 8.4.2. A vacuum of 130 mm Hg (5 in. Hg) or the highest vacuum measured during the test run, whichever is greater, may be used instead of 380 mm Hg (15 in. Hg).

8.9 Preliminary Determinations. Determine the pressure, temperature and the average velocity of the tunnel gases as in Section 8.5. Moisture content of diluted tunnel gases is assumed to be 4 percent for making flow rate calculations; the moisture content may be measured directly as in Method 4.

8.10 Sampling Train Operation. Position the probe inlet at the stack centroid, and block off the openings around the probe and porthole to prevent unrepresentative dilution of the gas stream. Be careful not to bump the probe into the stack wall when removing or inserting the probe through the porthole; this minimizes the chance of extracting deposited material.

8.10.1 Begin sampling at the start of the test run as defined in Method 28, Section 8.8.1. During the test run, maintain a sample flow rate proportional to the dilution tunnel flow rate (within 10 percent of the initial proportionality ratio) and a filter holder temperature of no greater than 32 °C (90 °F). The initial sample flow rate shall be approximately 0.015 $m^3$/min (0.5 cfm).

8.10.2 For each test run, record the data required on a data sheet such as the one shown in Figure 5G–3. Be sure to record the initial dry gas meter reading. Record the dry gas meter readings at the beginning and end of each sampling time increment and when sampling is halted. Take other readings as indicated on Figure 5G–3 at least once each 10 minutes during the test run. Since the manometer level and zero may drift because of vibrations and temperature changes, make periodic checks during the test run.

8.10.3 For the purposes of proportional sampling rate

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determinations, data from calibrated flow rate devices, such as glass rotameters, may be used in lieu of incremental dry gas meter readings. Proportional rate calculation procedures must be revised, but acceptability limits remain the same.

8.10.4 During the test run, make periodic adjustments to keep the temperature between (or upstream of) the filters at the proper level. Do not change sampling trains during the test run.

8.10.5 At the end of the test run (see Method 28, Section 6.4.6), turn off the coarse adjust valve, remove the probe from the stack, turn off the pump, record the final dry gas meter reading, and conduct a post-test leak-check, as outlined in Section 8.8.2. Also, leak-check the pitot lines as described in Method 2, Section 8.1; the lines must pass this leak-check in order to validate the velocity head data.

8.11 Calculation of Proportional Sampling Rate. Calculate percent proportionality (see Section 12.7) to determine whether the run was valid or another test run should be made.

8.12 Sample Recovery. Same as Method 5, Section 8.7, with the exception of the following:

8.12.1 An acetone blank volume of about 50-ml or more may be used.

8.12.2 Treat the samples as follows:

8.12.2.1 Container Nos. 1 and 1A. Treat the two filters according to the procedures outlined in Method 5, Section 8.7.6.1. The filters may be stored either in a single container or in separate containers. Use the sum of the filter tare weights to determine the sample mass collected.

8.12.2.3 Container No. 2.

8.12.2.3.1 Taking care to see that dust on the outside of the probe or other exterior surfaces does not get into the sample, quantitatively recover particulate matter or any condensate from the probe and filter holders by washing and brushing these components with acetone and placing the wash in a labeled glass container. At least three cycles of brushing and rinsing are required.

8.12.2.3.2 Between sampling runs, keep brushes clean and protected from contamination.

8.12.2.3.3 After all acetone washings and particulate matter have been collected in the sample containers, tighten the lids on the sample containers so that the acetone will not leak out when transferred to the laboratory weighing area. Mark the height of the fluid levels to determine whether leakage occurs during transport. Label the containers clearly to identify contents.

8.13 Sample Transport. Whenever possible, containers should be shipped in such a way that they remain upright at all times.

**Note:** Requirements for capping and transport of sample containers are not applicable if sample recovery and analysis occur in the same room.

*9.0 Quality Control*

9.1 Miscellaneous Quality Control Measures.

| Section | Quality control measure | Effect |
|---|---|---|
| 8.8, 10.1–10.4 | Sampling equipment leak check and calibration. | Ensures accurate measurement of stack gas flow rate, sample volume. |
| 10.5 | Analytical balance calibration | Ensure accurate and precise measurement of collected particulate. |
| 16.2.5 | Simultaneous, dual-train sample collection | Ensure precision of measured particulate concentration. |

9.2 Volume Metering System Checks. Same as Method 5, Section 9.2.

*10.0 Calibration and Standardization*

**Note:** Maintain a laboratory record of all calibrations.

10.1 Pitot Tube. The Type S pitot tube assembly shall be calibrated according to the procedure outlined in Method 2, Section 10.1, prior to the first certification test and checked semiannually, thereafter. A standard pitot need not be calibrated but shall be inspected and cleaned, if necessary, prior to each certification test.

10.2 Volume Metering System.

10.2.1 Initial and Periodic Calibration. Before its initial use and at least semiannually thereafter, calibrate the volume metering system as described in Method 5, Section 10.3.1, except that the wet test meter with a capacity of 3.0 liters/rev (0.1 $ft^3$/rev) may be used. Other liquid displacement systems accurate to within ±1 percent, may be used as calibration standards.

**Note:** Procedures and equipment specified in Method 5, Section 16.0, for alternative calibration standards, including calibrated dry gas meters and critical orifices, are allowed for calibrating the dry gas meter in the sampling train. A dry gas meter used as a calibration standard shall be recalibrated at least once annually.

10.2.2 Calibration After Use. After each certification or audit test (four or more test runs conducted on a wood heater at the four burn rates specified in Method 28), check calibration of the metering system by performing three calibration runs at a single, intermediate flow rate as described in Method 5, Section 10.3.2.

**Note:** Procedures and equipment specified in Method 5, Section 16.0, for alternative calibration standards are allowed for the post-test dry gas meter calibration check.

10.2.3 Acceptable Variation in Calibration. If the dry gas meter coefficient values obtained before and after a certification test differ by more than 5 percent, the certification test shall either be voided and repeated, or calculations for the certification test shall be performed using whichever meter coefficient value (*i.e.*, before or after) gives the lower value of total sample volume.

10.3 Temperature Sensors. Use the procedure in Method 2, Section 10.3, to calibrate temperature sensors before the first certification or audit test and at least semiannually, thereafter.

10.4 Barometer. Calibrate against a mercury barometer before the first certification test and at least semiannually, thereafter. If a mercury barometer is used, no calibration is necessary. Follow the manufacturer's instructions for operation.

10.5 Analytical Balance. Perform a multipoint calibration (at least five points spanning the operational range) of the analytical balance before the first certification test and semiannually, thereafter. Before each certification test, audit the balance by weighing at least one calibration weight (class F) that corresponds to 50 to 150 percent of the weight of one filter. If the scale cannot reproduce the value of the calibration weight to within 0.1 mg, conduct the multipoint calibration before use.

*11.0 Analytical Procedure*

11.1 Record the data required on a sheet such as the one shown in Figure 5G–4. Use the same analytical balance for determining tare weights and final sample weights.

11.2 Handle each sample container as follows:



11.2.1 Container Nos. 1 and 1A. Treat the two filters according to the procedures outlined in Method 5, Section 11.2.1.

11.2.2 Container No. 2. Same as Method 5, Section 11.2.2, except that the beaker may be smaller than 250 ml.

11.2.3 Acetone Blank Container. Same as Method 5, Section 11.2.4, except that the beaker may be smaller than 250 ml.

*12.0 Data Analysis and Calculations*

Carry out calculations, retaining at least one extra significant figure beyond that of the acquired data. Round off figures after the final calculation. Other forms of the equations may be used as long as they give equivalent results.

12.1 Nomenclature.

$B_{ws}$ = Water vapor in the gas stream, proportion by volume (assumed to be 0.04).
$c_s$ = Concentration of particulate matter in stack gas, dry basis, corrected to standard conditions, g/dscm (gr/dscf).
E = Particulate emission rate, g/hr (lb/hr).
$E_{adj}$ = Adjusted particulate emission rate, g/hr (lb/hr).
$L_a$ = Maximum acceptable leakage rate for either a pretest or post-test leak-check, equal to 0.00057 $m^3$/min (0.020 cfm) or 4 percent of the average sampling rate, whichever is less.
$L_p$ = Leakage rate observed during the post-test leak-check, $m^3$/min (cfm).
$m_a$ = Mass of residue of acetone blank after evaporation, mg.
$m_{aw}$ = Mass of residue from acetone wash after evaporation, mg.
$m_n$ = Total amount of particulate matter collected, mg.
$M_w$ = Molecular weight of water, 18.0 g/g-mole (18.0 lb/lb-mole).
$P_{bar}$ = Barometric pressure at the sampling site, mm Hg (in. Hg).
PR = Percent of proportional sampling rate.
$P_s$ = Absolute gas pressure in dilution tunnel, mm Hg (in. Hg).
$P_{std}$ = Standard absolute pressure, 760 mm Hg (29.92 in. Hg).
$Q_{sd}$ = Average gas flow rate in dilution tunnel, calculated as in Method 2, Equation 2–8, dscm/hr (dscf/hr).
$T_m$ = Absolute average dry gas meter temperature (see Figure 5G–3), °K (°R).
$T_{mi}$ = Absolute average dry gas meter temperature during each 10-minute interval, i, of the test run, °K (°R).
$T_s$ = Absolute average gas temperature in the dilution tunnel (see Figure 5G–3), °K (°R).
$T_{si}$ = Absolute average gas temperature in the dilution tunnel during each 10 minute interval, i, of the test run, °K (°R).
$T_{std}$ = Standard absolute temperature, 293 °K (528 °R).
$V_a$ = Volume of acetone blank, ml.
$V_{aw}$ = Volume of acetone used in wash, ml.
$V_m$ = Volume of gas sample as measured by dry gas meter, dcm (dcf).
$V_{mi}$ = Volume of gas sample as measured by dry gas meter during each 10-minute interval, i, of the test run, dcm.
$V_{m(std)}$ = Volume of gas sample measured by the dry gas meter, corrected to standard conditions, dscm (dscf).
$V_s$ = Average gas velocity in the dilution tunnel, calculated by Method 2, Equation 2–7, m/sec (ft/sec). The dilution tunnel dry gas molecular weight may be assumed to be 29 g/g mole (lb/lb mole).
$V_{si}$ = Average gas velocity in dilution tunnel during each 10-minute interval, i, of the test run, calculated by Method 2, Equation 2–7, m/sec (ft/sec).
Y = Dry gas meter calibration factor.
$\Delta H$ = Average pressure differential across the orifice meter, if used (see Figure 5G–2), mm $H^2O$ (in. $H^2O$).
U = Total sampling time, min.
10 = 10 minutes, length of first sampling period.
13.6 = Specific gravity of mercury.
100 = Conversion to percent.

12.2 Dry Gas Volume. Same as Method 5, Section 12.2, except that component changes are not allowable.

12.3 Solvent Wash Blank.

$$m_{aw} = \frac{m_a V_{aw}}{V_a} \qquad \text{Eq. 5G-1}$$

12.4 Total Particulate Weight. Determine the total particulate catch, mn, from the sum of the weights obtained from Container Nos. 1, 1A, and 2, less the acetone blank (see Figure 5G–4).

12.5 Particulate Concentration.

$$c_s = K_2 \frac{m_n}{V_{m(std)}} \qquad \text{Eq. 5G-2}$$

Where:

$K_2$ = 0.001 g/mg for metric units.
= 0.0154 gr/mg for English units.

12.6 Particulate Emission Rate.

$$E = C_s Q_{sd} \qquad \text{Eq. 5G-3}$$

**Note:** Particulate emission rate results produced using the sampling train described in Section 6 and shown in Figure 5G–1 shall be adjusted for reporting purposes by the following method adjustment factor:

$$E_{adj} = K_3 E^{0.83} \qquad \text{Eq. 5G-4}$$

Where:

$K_3$ = constant, 1.82 for metric units.
= constant, 0.643 for English units.

12.7 Proportional Rate Variation. Calculate PR for each 10-minute interval, i, of the test run.

$$PR = \left( \frac{\theta \left( V_{mi} V_s T_m T_{si} \right)}{10 \left( V_m V_{si} T_s T_{mi} \right)} \right) \times 100 \qquad \text{Eq. 5G-5}$$

Alternate calculation procedures for proportional rate variation may be used if other sample flow rate data (e.g., orifice flow meters or rotameters) are monitored to maintain proportional sampling rates. The proportional rate variations shall be calculated for each 10-minute interval by comparing the stack to nozzle velocity ratio for each 10-minute interval to the average stack to nozzle velocity ratio for the test run. Proportional rate variation may be calculated for intervals shorter than 10 minutes with appropriate revisions to Equation 5G–5. If no more than 10 percent of the PR values for all the intervals exceed 90 percent ≤ PR ≤ 110 percent, and if no PR value for any interval exceeds 80 percent ≤ PR ≤ 120 percent, the results are acceptable. If the PR values for the test run are judged to be unacceptable, report the test run emission results, but do not include the results in calculating the weighted average emission rate, and repeat the test run.

*13.0 Method Performance. [Reserved]*

*14.0 Pollution Prevention. [Reserved]*

*15.0 Waste Management. [Reserved]*

*16.0 Alternative Procedures*

16.1 Method 5H Sampling Train. The sampling train and sample collection, recovery, and analysis procedures described in Method 5H, Sections 6.1.1, 7.1, 7.2, 8.1, 8.10, 8.11, and 11.0, respectively, may be used in lieu of similar sections in Method 5G.

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Operation of the Method 5H sampling train in the dilution tunnel is as described in Section 8.10 of this method. Filter temperatures and condenser conditions are as described in Method 5H. No adjustment to the measured particulate matter emission rate (Equation 5G–4, Section 12.6) is to be applied to the particulate emission rate measured by this alternative method.

16.2 Dual Sampling Trains. Two sampling trains may be operated simultaneously at sample flow rates other than that specified in Section 8.10, provided that the following specifications are met.

16.2.1 Sampling Train. The sampling train configuration shall be the same as specified in Section 6.1.1, except the probe, filter, and filter holder need not be the same sizes as specified in the applicable sections. Filter holders of plastic materials such as Nalgene or polycarbonate materials may be used (the Gelman 1119 filter holder has been found suitable for this purpose). With such materials, it is recommended that solvents not be used in sample recovery. The filter face velocity shall not exceed 150 mm/sec (30 ft/min) during the test run. The dry gas meter shall be calibrated for the same flow rate range as encountered during the test runs. Two separate, complete sampling trains are required for each test run.

16.2.2 Probe Location. Locate the two probes in the dilution tunnel at the same level (see Section 6.1.4.3). Two sample ports are necessary. Locate the probe inlets within the 50 mm (2 in.) diameter centroidal area of the dilution tunnel no closer than 25 mm (1 in.) apart.

16.2.3 Sampling Train Operation. Operate the sampling trains as specified in Section 8.10, maintaining proportional sampling rates and starting and stopping the two sampling trains simultaneously. The pitot values as described in Section 8.5.2 shall be used to adjust sampling rates in both sampling trains.

16.2.4 Recovery and Analysis of Sample. Recover and analyze the samples from the two sampling trains separately, as specified in Sections 8.12 and 11.0, respectively.

16.2.4.1 For this alternative procedure, the probe and filter holder assembly may be weighed without sample recovery (use no solvents) described above in order to determine the sample weight gains. For this approach, weigh the clean, dry probe and filter holder assembly upstream of the front filter (without filters) to the nearest 0.1 mg to establish the tare weights. The filter holder section between the front and second filter need not be weighed. At the end of the test run, carefully clean the outside of the probe, cap the ends, and identify the sample (label). Remove the filters from the filter holder assemblies as described for container Nos. 1 and 1A in Section 8.12.2.1. Reassemble the filter holder assembly, cap the ends, identify the sample (label), and transfer all the samples to the laboratory weighing area for final weighing. Requirements for capping and transport of sample containers are not applicable if sample recovery and analysis occur in the same room.

16.2.4.2 For this alternative procedure, filters may be weighed directly without a petri dish. If the probe and filter holder assembly are to be weighed to determine the sample weight, rinse the probe with acetone to remove moisture before desiccating prior to the test run. Following the test run, transport the probe and filter holder to the desiccator, and uncap the openings of the probe and the filter holder assembly. Desiccate for 24 hours and weigh to a constant weight. Report the results to the nearest 0.1 mg.

16.2.5 Calculations. Calculate an emission rate (Section 12.6) for the sample from each sampling train separately and determine the average emission rate for the two values. The two emission rates shall not differ by more than 7.5 percent from the average emission rate, or 7.5 percent of the weighted average emission rate limit in the applicable subpart of the regulations, whichever is greater. If this specification is not met, the results are unacceptable. Report the results, but do not include the results in calculating the weighted average emission rate. Repeat the test run until acceptable results are achieved, report the average emission rate for the acceptable test run, and use the average in calculating the weighted average emission rate.

*17.0 References*

Same as Method 5, Section 17.0, References 1 through 11, with the addition of the following:

1. Oregon Department of Environmental Quality. Standard Method for Measuring the Emissions and Efficiencies of Woodstoves. June 8, 1984. Pursuant to Oregon Administrative Rules Chapter 340, Division 21.

2. American Society for Testing and Materials. Proposed Test Methods for Heating Performance and Emissions of Residential Wood-fired Closed Combustion-Chamber Heating Appliances. E–6 Proposal P 180. August 1986.

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*18.0 Tables, Diagrams, Flowcharts, and Validation Data*

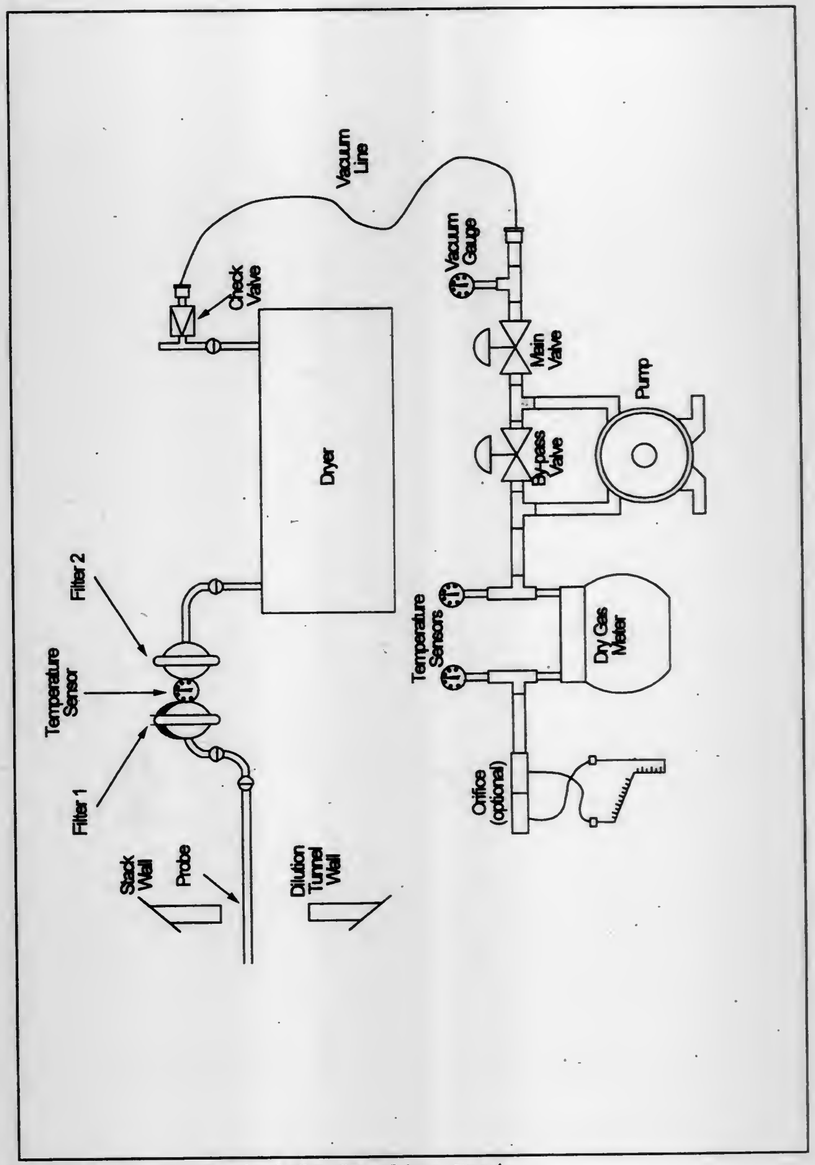



Figure 5G-1. Method 5G Sampling Train.

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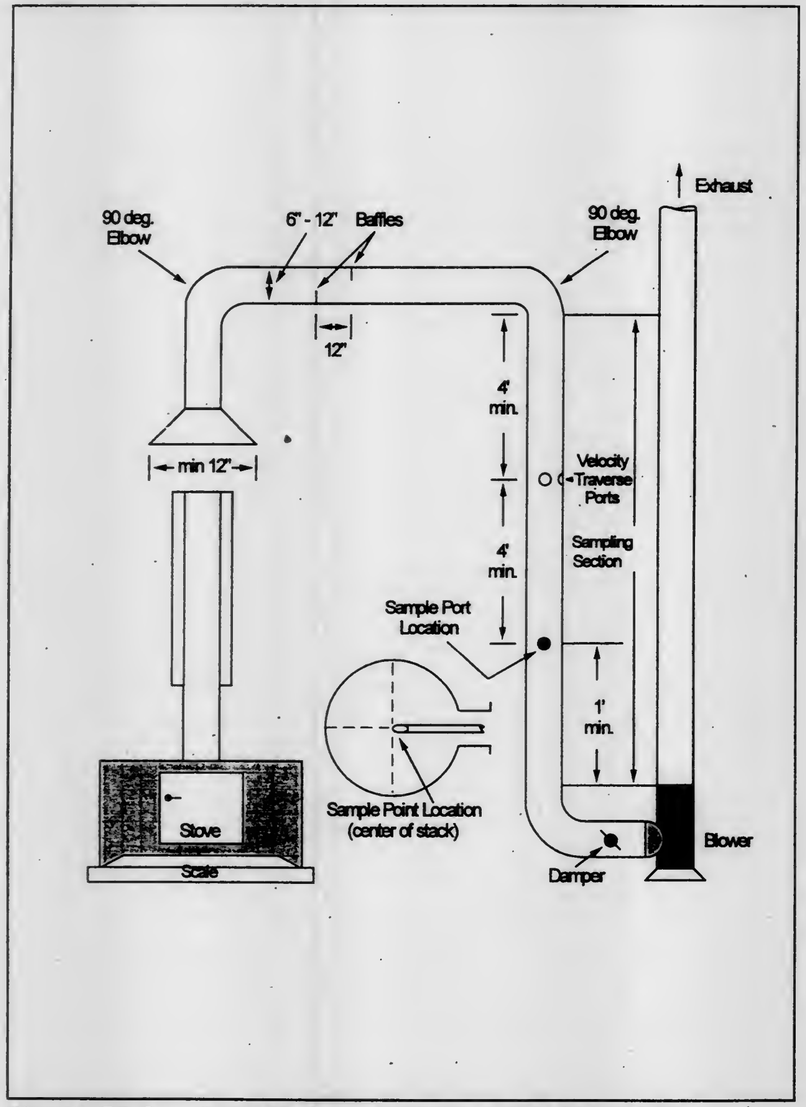



Figure 5G-2. Suggested Construction Details of the Dilution Tunnel.



Pitot tube coefficient, $C_p$ _____
Room temperature, °C (°F) _____
Barometric pressure mb (in. Hg) _____
Measured or assumed moisture, % _____
Final leak rate, $m^3$/min, (cfm) _____
Probe liner material _____
Draft or static pressure, mm $H_2O$ (in. $H_2O$) _____
Filter No. _____

Stove _____
Test Method _____
Operator _____
Date _____
Run No. _____
Start Time _____
Stop Time _____
Sample Box No. _____
Meter Box No. _____
Meter ΔH @ (optional) _____

| Clock time | Test run time (Θ) min. | Vacuum mm Hg (in. Hg) | Tunnel temp ($T_s$) °C (°F) | Velocity head ($\Delta P_s$) mm ($in. H_2O$) | Sample flow rate Indicator (orifice meter optional) mm $H_2O$ (in. $H_2O$) | Gas meter volume $m^3$ ($m^3$) | Gas sample temp at dry gas meter Inlet °C (°F) | Gas sample temp at dry gas meter Outlet °C (°F) | Filter holder temp °C (°F) | Temperature of gas leaving dryer or last impinger °C (°F) |
|---|---|---|---|---|---|---|---|---|---|---|
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| | | | | | | | Avg. | Avg. | | |
| Total | | | | | | | Avg. | | | |
| Average | | | | | | | | | | |

Figure 5G-3. Sampling Data Sheet.

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Stove _____
Date _____
Run No. _____
Filter Nos. _____
Liquid lost during transport, ml _____
Acetone blank volume, ml _____
Acetone wash volume, ml _____
Acetone blank concentration, mg/mg _____
Acetone wash blank, mg _____

| Container number | Weight of particulate collected, mg | |
|---|---|---|
| | Final weight | Tare weight |
| 1 _____ | | |
| 2 _____ | | |
| 3 _____ | | |
| Total | | |
| Less acetone blank | | |
| Weight of particulate matter | | |

Stack Moisture Measurement Data
(Optional)

| | Volume of liquid water collected | |
|---|---|---|
| | Implinger volume, ml | Silica gel weight, g |
| Final _____ | | |
| Initial _____ | | |
| Liquid collected _____ | | |
| Total volume collected _____ | | g[1] or ml |

[1]Convert weight of water to volume by dividing total weight increase by density of water (1 g/ml).

$$\frac{\text{Increase, g}}{\text{(1 g/ml)}} = \text{Volume water, ml}$$

Figure 5G-4. Analysis Data Sheet.

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**Method 5H—Determination of Particulate Matter Emissions From Wood Heaters From a Stack Location**

**Note:** This method does not include all of the specifications (*e.g.*, equipment and supplies) and procedures (*e.g.*, sampling and analytical) essential to its performance. Some material is incorporated by reference from other methods in this part. Therefore, to obtain reliable results, persons using this method should have a thorough knowledge of at least the following additional test methods: Method 2, Method 3, Method 5, Method 5G, Method 6, Method 6C, Method 16A, and Method 28.

*1.0 Scope and Application*

1.1 Analyte. Particulate matter (PM). No CAS number assigned.

1.2 Applicability. This method is applicable for the determination of PM and condensible emissions from wood heaters.

1.3 Data Quality Objectives. Adherence to the requirements of this method will enhance the quality of the data obtained from air pollutant sampling methods.

*2.0 Summary of Method*

2.1 Particulate matter is withdrawn proportionally from the wood heater exhaust and is collected on two glass fiber filters separated by impingers immersed in an ice water bath. The first filter is maintained at a temperature of no greater than 120 °C (248 °F). The second filter and the impinger system are cooled such that the temperature of the gas exiting the second filter is no greater than 20 °C (68 °F). The particulate mass collected in the probe, on the filters, and in the impingers is determined gravimetrically after the removal of uncombined water.

*3.0 Definitions*

Same as in Method 6C, Section 3.0.

*4.0 Interferences. [Reserved]*

*5.0 Safety*

5.1 Disclaimer. This method may involve hazardous materials, operations, and equipment. This test method may not address all of the safety problems associated with its use. It is the responsibility of the user of this test method to establish appropriate safety and health practices and to determine the applicability of regulatory limitations prior to performing this test method.

*6.0 Equipment and Supplies*

6.1 Sample Collection. The following items are required for sample collection:

6.1.1 Sampling Train. The sampling train configuration is shown in Figure 5H–1. Same as Method 5, Section 6.1.1, with the exception of the following:

6.1.1.1 Probe Nozzle. The nozzle is optional; a straight sampling probe without a nozzle is an acceptable alternative.

6.1.1.2 Probe Liner. Same as Method 5, Section 6.1.1.2, except that the maximum length of the sample probe shall be 0.6 m (2 ft) and probe heating is optional.

6.1.1.3 Filter Holders. Two each of borosilicate glass, with a glass frit or stainless steel filter support and a silicone rubber, Teflon, or Viton gasket. The holder design shall provide a positive seal against leakage from the outside or around the filter. The front filter holder shall be attached immediately at the outlet of the probe and prior to the first impinger. The second filter holder shall be attached on the outlet of the third impinger and prior to the inlet of the fourth (silica gel) impinger.

6.1.2 Barometer. Same as Method 5, Section 6.2.

6.1.3 Stack Gas Flow Rate Measurement System. A schematic of an example test system is shown in Figure 5H–2. The flow rate measurement system consists of the following components:

6.1.3.1 Sample Probe. A glass or stainless steel sampling probe.

6.1.3.2 Gas Conditioning System. A high density filter to remove particulate matter and a condenser capable of lowering the dew point of the gas to less than 5 °C (40 °F). Desiccant, such as Drierite, may be used to dry the sample gas. Do not use silica gel.

6.1.3.3 Pump. An inert (*e.g.*, Teflon or stainless steel heads) sampling pump capable of delivering more than the total amount of sample required in the manufacturer's instructions for the individual instruments. A means of controlling the analyzer flow rate and a device for determining proper sample flow rate (*e.g.*, precision rotameter, pressure gauge downstream of all flow controls) shall be provided at the analyzer. The requirements for measuring and controlling the analyzer flow rate are not applicable if data are presented that demonstrate that the analyzer is insensitive to flow variations over the range encountered during the test.

6.1.3.4 Carbon Monoxide (CO) Analyzer. Any analyzer capable of providing a measure of CO in the range of 0 to 10 percent by volume at least once every 10 minutes.

6.1.3.5 Carbon Dioxide ($CO_2$) Analyzer. Any analyzer capable of providing a measure of $CO_2$ in the range of 0 to 25 percent by volume at least once every 10 minutes.

**Note:** Analyzers with ranges less than those specified above may be used provided actual concentrations do not exceed the range of the analyzer.

6.1.3.6 Manifold. A sampling tube capable of delivering the sample gas to two analyzers and handling an excess of the total amount used by the analyzers. The excess gas is exhausted through a separate port.

6.1.3.7 Recorders (optional). To provide a permanent record of the analyzer outputs.

6.1.4 Proportional Gas Flow Rate System. To monitor stack flow rate changes and provide a measurement that can be used to adjust and maintain particulate sampling flow rates proportional to the stack gas flow rate. A schematic of the proportional flow rate system is shown in Figure 5H–2 and consists of the following components:

6.1.4.1 Tracer Gas Injection System. To inject a known concentration of sulfur dioxide ($SO_2$) into the flue. The tracer gas injection system consists of a cylinder of $SO_2$, a gas cylinder regulator, a stainless steel needle valve or flow controller, a nonreactive (stainless steel and glass) rotameter, and an injection loop to disperse the $SO_2$ evenly in the flue.

6.1.4.2 Sample Probe. A glass or stainless steel sampling probe.

6.1.4.3 Gas Conditioning System. A combustor as described in Method 16A, Sections 6.1.5 and 6.1.6, followed by a high density filter to remove particulate matter, and a condenser capable of lowering the dew point of the gas to less than 5 °C (40 °F). Desiccant, such as Drierite, may be used to dry the sample gas. Do not use silica gel.

6.1.4.4 Pump. Same as described in Section 6.1.3.3.

6.1.4.5 $SO_2$ Analyzer. Any analyzer capable of providing a measure of the $SO_2$ concentration in the range of 0 to 1,000 ppm by volume (or other range necessary to measure the $SO_2$ concentration) at least once every 10 minutes.

6.1.4.6 Recorder (optional). To provide a permanent record of the analyzer outputs.

**Note:** Other tracer gas systems, including helium gas systems, are acceptable for determination of instantaneous proportional sampling rates.

6.2 Sample Recovery. Same as Method 5, Section 6.2.

6.3 Sample Analysis. Same as Method 5, Section 6.3, with the addition of the following:

6.3.1 Separatory Funnel. Glass or Teflon, 500-ml or greater.

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*7.0 Reagents and Standards*

7.1 Sample Collection. Same as Method 5, Section 7.1, including deionized distilled water.

7.2 Sample Recovery. Same as Method 5, Section 7.2.

7.3 Sample Analysis. The following reagents and standards are required for sample analysis:

7.3.1 Acetone. Same as Method 5 Section 7.2.

7.3.2 Dichloromethane (Methylene Chloride). Reagent grade, <0.001 percent residue in glass bottles.

7.3.3 Desiccant. Anhydrous calcium sulfate, calcium chloride, or silica gel, indicating type.

7.3.4 Cylinder Gases. For the purposes of this procedure, span value is defined as the upper limit of the range specified for each analyzer as described in Section 6.1.3.4 or 6.1.3.5. If an analyzer with a range different from that specified in this method is used, the span value shall be equal to the upper limit of the range for the analyzer used (see **Note** in Section 6.1.3.5).

7.3.4.1 Calibration Gases. The calibration gases for the $CO_2$, CO, and $SO_2$ analyzers shall be $CO_2$ in nitrogen ($N_2$), CO in $N_2$, and $SO_2$ in $N_2$, respectively. $CO_2$ and CO calibration gases may be combined in a single cylinder. Use three calibration gases as specified in Method 6C, Sections 7.2.1 through 7.2.3.

7.3.4.2 $SO_2$ Injection Gas. A known concentration of $SO_2$ in $N_2$. The concentration must be at least 2 percent $SO_2$ with a maximum of 100 percent $SO_2$.

*8.0 Sample Collection, Preservation, Transport, and Storage*

8.1 Pretest Preparation. Same as Method 5, Section 8.1.

8.2 Calibration Gas and $SO_2$ Injection Gas Concentration Verification, Sampling System Bias Check, Response Time Test, and Zero and Calibration Drift Tests. Same as Method 6C, Sections 8.2.1, 8.2.3, 8.2.4, and 8.5, respectively, except that for verification of CO and $CO_2$ gas concentrations, substitute Method 3 for Method 6.

8.3 Preliminary Determinations.

8.3.1 Sampling Location. The sampling location for the particulate sampling probe shall be $2.45 \pm 0.15$ m ($8 \pm 0.5$ ft) above the platform upon which the wood heater is placed (*i.e.*, the top of the scale).

8.3.2 Sampling Probe and Nozzle. Select a nozzle, if used, sized for the range of velocity heads, such that it is not necessary to change the nozzle size in order to maintain proportional sampling rates. During the run, do not change the nozzle size. Select a suitable probe liner and probe length to effect minimum blockage.

8.4 Preparation of Particulate Sampling Train. Same as Method 5, Section 8.3, with the exception of the following:

8.4.1 The train should be assembled as shown in Figure 5H–1.

8.4.2 A glass cyclone may not be used between the probe and filter holder.

8.5 Leak-Check Procedures.

8.5.1 Leak-Check of Metering System Shown in Figure 5H–1. That portion of the sampling train from the pump to the orifice meter shall be leak-checked after each certification or audit test. Use the procedure described in Method 5, Section 8.4.1.

8.5.2 Pretest Leak-Check. A pretest leak-check of the sampling train is recommended, but not required. If the pretest leak-check is conducted, the procedures outlined in Method 5, Section 8.5.2 should be used. A vacuum of 130 mm Hg (5 in. Hg) may be used instead of 380 mm Hg (15 in. Hg).

8.5.2 Leak-Checks During Sample Run. If, during the sampling run, a component (*e.g.*, filter assembly or impinger) change becomes necessary, conduct a leak-check as described in Method 5, Section 8.4.3.

8.5.3 Post-Test Leak-Check. A leak-check is mandatory at the conclusion of each sampling run. The leak-check shall be performed in accordance with the procedures outlined in Method 5, Section 8.4.4, except that a vacuum of 130 mm Hg (5 in. Hg) or the greatest vacuum measured during the test run, whichever is greater, may be used instead of 380 mm Hg (15 in. Hg).

8.6 Tracer Gas Procedure. A schematic of the tracer gas injection and sampling systems is shown in Figure 5H–2.

8.6.1 $SO_2$ Injection Probe. Install the $SO_2$ injection probe and dispersion loop in the stack at a location $2.9 \pm 0.15$ m ($9.5 \pm 0.5$ ft) above the sampling platform.

8.6.2 $SO_2$ Sampling Probe. Install the $SO_2$ sampling probe at the centroid of the stack at a location $4.1 \pm 0.15$ m ($13.5 \pm 0.5$ ft) above the sampling platform.

8.7 Flow Rate Measurement System. A schematic of the flow rate measurement system is shown in Figure 5H–2. Locate the flow rate measurement sampling probe at the centroid of the stack at a location $2.3 \pm 0.3$ m ($7.5 \pm 1$ ft) above the sampling platform.

8.8 Tracer Gas Procedure. Within 1 minute after closing the wood heater door at the start of the test run (as defined in Method 28, Section 8.8.1), meter a known concentration of $SO_2$ tracer gas at a constant flow rate into the wood heater stack. Monitor the $SO_2$ concentration in the stack, and record the $SO_2$ concentrations at 10-minute intervals or more often. Adjust the particulate sampling flow rate proportionally to the $SO_2$ concentration changes using Equation 5H–6 (*e.g.*, the $SO_2$ concentration at the first 10-minute reading is measured to be 100 ppm; the next 10 minute $SO_2$ concentration is measured to be 75 ppm: the particulate sample flow rate is adjusted from the initial 0.15 cfm to 0.20 cfm). A check for proportional rate variation shall be made at the completion of the test run using Equation 5H–10.

8.9 Volumetric Flow Rate Procedure. Apply stoichiometric relationships to the wood combustion process in determining the exhaust gas flow rate as follows:

8.9.1 Test Fuel Charge Weight. Record the test fuel charge weight (wet) as specified in Method 28, Section 8.8.2. The wood is assumed to have the following weight percent composition: 51 percent carbon, 7.3 percent hydrogen, 41 percent oxygen. Record the wood moisture for each fuel charge as described in Method 28, Section 8.6.5. The ash is assumed to have negligible effect on associated C, H, and O concentrations after the test burn.

8.9.2 Measured Values. Record the CO and $CO_2$ concentrations in the stack on a dry basis every 10 minutes during the test run or more often. Average these values for the test run. Use as a mole fraction (*e.g.*, 10 percent $CO_2$ is recorded as 0.10) in the calculations to express total flow (see Equation 5H–6).

8.10 Sampling Train Operation.

8.10.1 For each run, record the data required on a data sheet such as the one shown in Figure 5H–3. Be sure to record the initial dry gas meter reading. Record the dry gas meter readings at the beginning and end of each sampling time increment, when changes in flow rates are made, before and after each leak-check, and when sampling is halted. Take other readings as indicated on Figure 5H–3 at least once each 10 minutes during the test run.

8.10.2 Remove the nozzle cap, verify that the filter and probe heating systems are up to temperature, and that the probe is properly positioned. Position the nozzle, if used, facing into gas stream, or the probe tip in the 50 mm (2 in.) centroidal area of the stack.

8.10.3 Be careful not to bump the probe tip into the stack wall when removing or inserting the probe through the porthole; this minimizes the chance of extracting deposited material.



8.10.4 When the probe is in position, block off the openings around the probe and porthole to prevent unrepresentative dilution of the gas stream.

8.10.5 Begin sampling at the start of the test run as defined in Method 28, Section 8.8.1, start the sample pump, and adjust the sample flow rate to between 0.003 and 0.014 $m^3$/min (0.1 and 0.5 cfm). Adjust the sample flow rate proportionally to the stack gas flow during the test run according to the procedures outlined in Section 8. Maintain a proportional sampling rate (within 10 percent of the desired value) and a filter holder temperature no greater than 120 °C (248 °F).

8.10.6 During the test run, make periodic adjustments to keep the temperature around the filter holder at the proper level. Add more ice to the impinger box and, if necessary, salt to maintain a temperature of less than 20 °C (68 °F) at the condenser/silica gel outlet.

8.10.7 If the pressure drop across the filter becomes too high, making proportional sampling difficult to maintain, either filter may be replaced during a sample run. It is recommended that another complete filter assembly be used rather than attempting to change the filter itself. Before a new filter assembly is installed, conduct a leak-check (see Section 8.5.2). The total particulate weight shall include the summation of all filter assembly catches. The total time for changing sample train components shall not exceed 10 minutes. No more than one component change is allowed for any test run.

8.10.8 At the end of the test run, turn off the coarse adjust valve, remove the probe and nozzle from the stack, turn off the pump, record the final dry gas meter reading, and conduct a post-test leak-check, as outlined in Section 8.5.3.

8.11 Sample Recovery. Same as Method 5, Section 8.7, with the exception of the following:

8.11.1 Blanks. The volume of the acetone blank may be about 50-ml, rather than 200-ml; a 200-ml water blank shall also be saved for analysis.

8.11.2 Samples.

8.11.2.1 Container Nos. 1 and 1A. Treat the two filters according to the procedures outlined in Method 5, Section 8.7.6.1. The filters may be stored either in a single container or in separate containers.

8.11.2.2 Container No. 2. Same as Method 5, Section 8.7.6.2, except that the container should not be sealed until the impinger rinse solution is added (see Section 8.10.2.4).

8.11.2.3 Container No. 3. Treat the impingers as follows: Measure the liquid which is in the first three impingers to within 1-ml by using a graduated cylinder or by weighing it to within 0.5 g by using a balance (if one is available). Record the volume or weight of liquid present. This information is required to calculate the moisture content of the effluent gas. Transfer the water from the first, second, and third impingers to a glass container. Tighten the lid on the sample container so that water will not leak out.

8.11.2.4 Rinse impingers and graduated cylinder, if used, with acetone three times or more. Avoid direct contact between the acetone and any stopcock grease or collection of any stopcock grease in the rinse solutions. Add these rinse solutions to sample Container No. 2.

8.11.2.5 Container No. 4. Same as Method 5, Section 8.7.6.3

8.12 Sample Transport. Whenever possible, containers should be transferred in such a way that they remain upright at all times.

**Note:** Requirements for capping and transport of sample containers are not applicable if sample recovery and analysis occur in the same room.

*9.0 Quality Control*

9.1 Miscellaneous Quality Control Measures.

| Section | Quality control measure | Effect |
|---|---|---|
| 8.2 | Sampling system bias check | Ensures that bias introduced by measurement system, minus analyzer, is no greater than 3 percent of span. |
| 8.2 | Analyzer zero and calibration drift tests | Ensures that bias introduced by drift in the measurement system output during the run is no greater than 3 percent of span. |
| 8.5, 10.1, 12.13 | Sampling equipment leak-check and calibration; proportional sampling rate verification. | Ensures accurate measurement of stack gas flow rate, sample volume. |
| 10.1 | Analytical balance calibration | Ensure accurate and precise measurement of collected particulate. |
| 10.3 | Analyzer calibration error check | Ensures that bias introduced by analyzer calibration error is no greater than 2 percent of span. |

9.2 Volume Metering System Checks. Same as Method 5, Section 9.2.

*10.0 Calibration and Standardization*

**Note:** Maintain a laboratory record of all calibrations.

10.1 Volume Metering System, Temperature Sensors, Barometer, and Analytical Balance. Same as Method 5G, Sections 10.2 through 10.5, respectively.

10.2 $SO_2$ Injection Rotameter. Calibrate the $SO_2$ injection rotameter system with a soap film flowmeter or similar direct volume measuring device with an accuracy of 2 percent. Operate the rotameter at a single reading for at least three calibration runs for 10 minutes each. When three consecutive calibration flow rates agree within 5 percent, average the three flow rates, mark the rotameter at the calibrated setting, and use the calibration flow rate as the $SO_2$ injection flow rate during the test run. Repeat the rotameter calibration before the first certification test and semiannually thereafter.

10.3. Gas Analyzers. Same as Method 6C, Section 10.0.

*11.0 Analytical Procedure*

11.1 Record the data required on a sheet such as the one shown in Figure 5H–4.

11.2 Handle each sample container as follows:

11.2.1 Container Nos. 1 and 1A. Treat the two filters according to the procedures outlined in Method 5, Section 11.2.1.

11.2.2 Container No. 2. Same as Method 5, Section 11.2.2, except that the beaker may be smaller than 250-ml.

11.2.3 Container No. 3. Note the level of liquid in the container and confirm on the analysis sheet whether leakage occurred during transport. If a noticeable amount of leakage has occurred, either void the sample or use methods, subject to the approval of the Administrator, to correct the final results. Determination of sample leakage is not applicable if sample recovery and analysis occur in the same room. Measure the liquid in this container either volumetrically to within 1-ml or gravimetrically to within 0.5 g. Transfer the contents to a 500-ml or larger separatory funnel. Rinse the container with water, and add to the separatory

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funnel. Add 25-ml of dichloromethane to the separatory funnel, stopper and vigorously shake 1 minute, let separate and transfer the dichloromethane (lower layer) into a tared beaker or evaporating dish. Repeat twice more. It is necessary to rinse Container No. 3 with dichloromethane. This rinse is added to the impinger extract container. Transfer the remaining water from the separatory funnel to a tared beaker or evaporating dish and evaporate to dryness at 104 °C (220 °F). Desiccate and weigh to a constant weight. Evaporate the combined impinger water extracts at ambient temperature and pressure. Desiccate and weigh to a constant weight. Report both results to the nearest 0.1 mg.

11.2.4 Container No. 4. Weigh the spent silica gel (or silica gel plus impinger) to the nearest 0.5 g using a balance.

11.2.5 Acetone Blank Container. Same as Method 5, Section 11.2.4, except that the beaker may be smaller than 250 ml.

11.2.6 Dichloromethane Blank Container. Treat the same as the acetone blank.

11.2.7 Water Blank Container. Transfer the water to a tared 250 ml beaker and evaporate to dryness at 104 °C (220 °F). Desiccate and weigh to a constant weight.

*12.0 Data Analysis and Calculations*

Carry out calculations, retaining at least one extra significant figure beyond that of the acquired data. Round off figures after the final calculation. Other forms of the equations may be used as long as they give equivalent results.

12.1 Nomenclature.

a = Sample flow rate adjustment factor.
BR = Dry wood burn rate, kg/hr (lb/hr), from Method 28, Section 8.3.
$B_{ws}$ = Water vapor in the gas stream, proportion by volume.
$C_s$ = Concentration of particulate matter in stack gas, dry basis, corrected to standard conditions, g/dscm (g/dscf).
E = Particulate emission rate, g/hr (lb/hr).
$\Delta H$ = Average pressure differential across the orifice meter (see Figure 5H–1), mm $H_2O$ (in. $H_2O$).
$L_a$ = Maximum acceptable leakage rate for either a post-test leak-check or for a leak-check following a component change; equal to 0.00057 cmm (0.020 cfm) or 4 percent of the average sampling rate, whichever is less.
$L_i$ = Individual leakage rate observed during the leak-check conducted before a component change, cmm (cfm).
$L_p$ = Leakage rate observed during the post-test leak-check, cmm (cfm).
$m_n$ = Total amount of particulate matter collected, mg.
$M_a$ = Mass of residue of solvent after evaporation, mg.
$N_C$ = Grams of carbon/gram of dry fuel (lb/lb), equal to 0.0425.
$N_T$ = Total dry moles of exhaust gas/kg of dry wood burned, g-moles/kg (lb-moles/lb).
PR = Percent of proportional sampling rate.
$P_{bar}$ = Barometric pressure at the sampling site, mm Hg (in.Hg).
$P_{std}$ = Standard absolute pressure, 760 mm Hg (29.92 in.Hg).
$Q_{sd}$ = Total gas flow rate, dscm/hr (dscf/hr).
$S_1$ = Concentration measured at the $SO_2$ analyzer for the first 10-minute interval, ppm.
$S_i$ = Concentration measured at the $SO_2$ analyzer for the "ith" 10 minute interval, ppm.
$T_m$ = Absolute average dry gas meter temperature (see Figure 5H–3), °K (°R).
$T_{std}$ = Standard absolute temperature, 293 °K (528 °R).
$V_a$ = volume of solvent blank, ml.
$V_{aw}$ = Volume of solvent used in wash, ml.
$V_{lc}$ = Total volume of liquid collected in impingers and silica gel (see Figure 5H–4), ml.
$V_m$ = Volume of gas sample as measured by dry gas meter, dcm (dcf).
$V_{m(std)}$ = Volume of gas sample measured by the dry gas meter, corrected to standard conditions, dscm (dscf).
$V_{mi(std)}$ = Volume of gas sample measured by the dry gas meter during the "ith" 10-minute interval, dscm (dscf).
$V_{w(std)}$ = Volume of water vapor in the gas sample, corrected to standard conditions, scm (scf).
$W_a$ = Weight of residue in solvent wash, mg.
Y = Dry gas meter calibration factor.
$Y_{CO}$ = Measured mole fraction of CO (dry), average from Section 8.2, g/g-mole (lb/lb-mole).
$Y_{CO2}$ = Measured mole fraction of $CO_2$ (dry), average from Section 8.2, g/g-mole (lb/lb-mole).
$Y_{HC}$ = Assumed mole fraction of HC (dry), g/g-mole (lb/lb-mole); = 0.0088 for catalytic wood heaters; = 0.0132 for non-catalytic wood heaters; = 0.0080 for pellet-fired wood heaters.
10 = Length of first sampling period, min.
13.6 = Specific gravity of mercury.
100 = Conversion to percent.
$\theta$ = Total sampling time, min.
$\theta_i$ = Sampling time interval, from the beginning of a run until the first component change, min.

12.2 Average Dry Gas Meter Temperature and Average Orifice Pressure Drop. See data sheet (Figure 5H–3).

12.3 Dry Gas Volume. Same as Method 5, Section 12.3.

12.4 Volume of Water Vapor.

$$V_{w(std)} = K_2 V_{lc} \qquad \text{Eq. 5H-1}$$

Where:

$K_2$ = 0.001333 $m^3$/ml for metric units.
$K_2$ = 0.04707 $ft^3$/ml for English units.

12.5 Moisture Content.

$$B_{ws} = \frac{V_{w(std)}}{V_{m(std)} + V_{w(std)}} \qquad \text{Eq. 5H-2}$$

12.6 Solvent Wash Blank.

$$W_a = \frac{M_a V_{aw}}{V_a} \qquad \text{Eq. 5H-3}$$

12.7 Total Particulate Weight. Determine the total particulate catch from the sum of the weights obtained from containers 1, 2, 3, and 4 less the appropriate solvent blanks (see Figure 5H–4).

**Note:** Refer to Method 5, Section 8.5 to assist in calculation of results involving two filter assemblies.

12.8 Particulate Concentration.

$$C_s = \frac{0.001 g}{mg} \frac{m_n}{V_{m(std)}} \qquad \text{Eq. 5H-4}$$

12.9 Sample Flow Rate Adjustment.

$$a = \frac{S_1}{S_i} \qquad \text{Eq. 5H-5}$$

12.10 Carbon Balance for Total Moles of Exhaust Gas (dry)/kg of Wood Burned in the Exhaust Gas.

$$N_T = \frac{K_3 N_C}{Y_{CO_2} + Y_{CO} + Y_{HC}} \qquad \text{Eq. 5H-6}$$

Where:

$K_3$ = 1000 g/kg for metric units.
$K_3$ = 1.0 lb/lb for English units.

**Note:** The $NO_X/SO_X$ portion of the gas is assumed to be negligible.

12.11 Total Stack Gas Flow Rate.

$$Q_{sd} = K_4 N_T BR \qquad \text{Eq. 5H-7}$$

Where:

$K_4$ = 0.02406 dscm/g-mole for metric units.
$K_4$ = 384.8 dscf/lb-mole for English units.

12.12 Particulate Emission Rate.

$$E = C_s Q_{sd} \qquad \text{Eq. 5H-8}$$



12.13 Proportional Rate Variation. Calculate PR for each 10-minute interval, i, of the test run.

$$PR = \frac{\theta S_i V_{mi(std)}}{10 \sum_{i=1}^{N} \left[ S_i V_{mi(std)} \right]} \times 100 \qquad \text{Eq. 5H-9}$$

12.14 Acceptable Results. If no more than 15 percent of the PR values for all the intervals fall outside the range 90 percent ≤ PR ≤ 110 percent, and if no PR value for any interval falls outside the range 75 ≤ PR ≤ 125 percent, the results are acceptable. If the PR values for the test runs are judged to be unacceptable, report the test run emission results, but do not include the test run results in calculating the weighted average emission rate, and repeat the test.

*13.0 Method Performance. [Reserved]*

*14.0 Pollution Prevention. [Reserved]*

*15.0 Waste Management. [Reserved]*

*16.0 References*

Same as Method 5G, Section 17.0.

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*17.0 Tables, Diagrams, Flowcharts, and Validation Data*

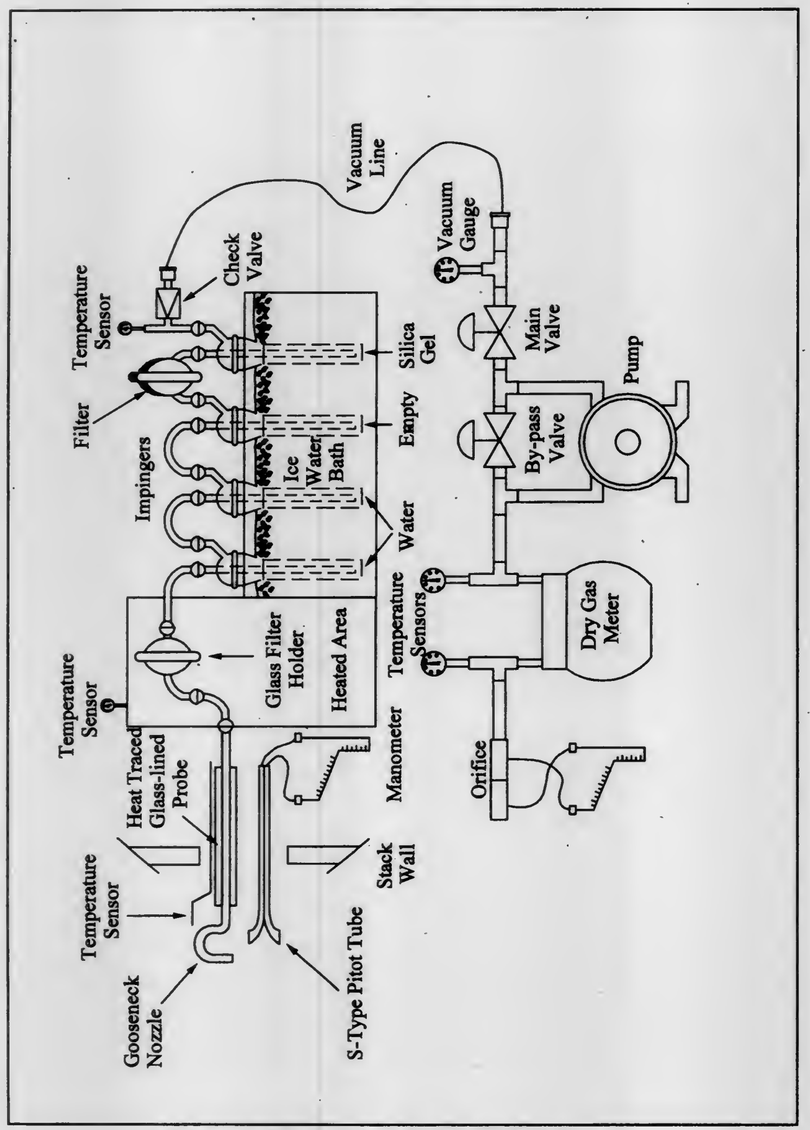



Figure 5H-1. Sampling Train.



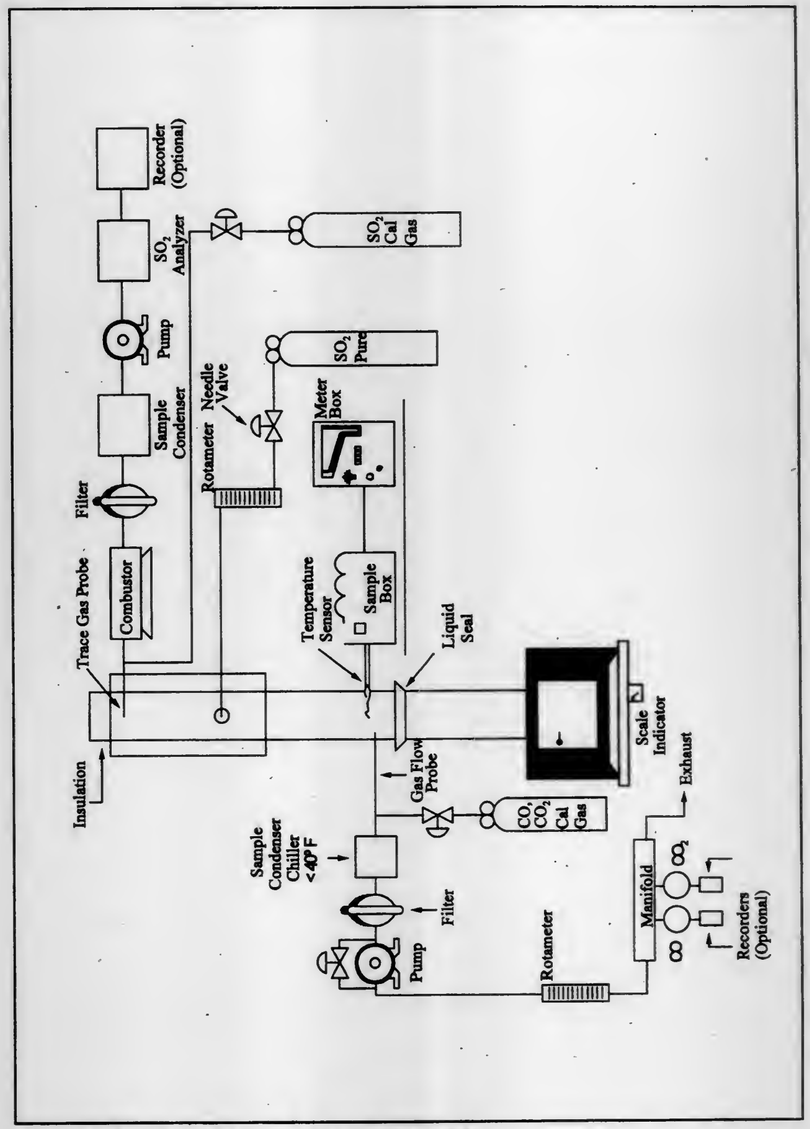



Figure 5H-2. Test System Schematic.

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Pitot tube coefficient, Cp _____
Room temperature, C°, (°F) _____
Barometric pressure mb (in. Hg) _____
Measured or assumed moisture, % _____
Nozzle identification No. _____
Average calibrated nozzle diameter, mm (in.) _____
Final leak rate, $m^3$/min, (cfm) _____
Probe liner material _____
Draft or static pressure, mm $H_2O$ (in. $H_2O$) _____
Filter Nos. _____

Stove _____
Test Method _____
Operator _____
Date _____
Run No. _____
Start Time _____
Stop Time _____
Sample Box No. _____
Meter Box No. _____
Meter ΔH @ (Optional) _____
C Factor _____

| Clock time | Test run time (q), min. | Vacuum mm Hg (in. Hg) | Fuel temperature ($T_s$) °C (°F) | Flow in Flue $m^3$/min (ft³/min) | Volume sample in period $m^3$(ft³) | Gas meter volume $m^3$ (ft³) | Gas sample temperature at dry gas meter °C (°F) | | Front filter holder temperature °C (°F) | Temperature of gas leaving dryer or last impinger °C (°F) |
|---|---|---|---|---|---|---|---|---|---|---|
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| | | | | | | | Avg. | Avg. | | |
| Total | | | | | | | | | | |
| Average | | | | | | | | | | |

Figure 5H-3. Sampling Data Sheet.



Stove _____
Date _____
Run No. _____
Filter Nos. _____
Amount liquid lost during transport, ml _____
Acetone blank volume, ml _____
Acetone wash volume, ml _____
Acetone blank concentration, mg/ml _____
Acetone wash blank, mg _____

Dichloromethane blank volume, ml _____
Dichloromethane wash volume, ml _____
Dichloromethane blank concentration, mg/ml _____
Dichloromethane wash blank, mg _____
Water blank volume, ml _____
Waster wash volume, ml _____
Water blank concentration, mg/ml _____
Water wash blank, mg _____

| Container number | Weight of particulate collected, mg | | |
|---|---|---|---|
| | Final weight | Tare weight | Weight gain |
| 1 _____ | | | |
| 2 _____ | | | |
| 3 _____ | | | |
| 4 _____ | | | |
| 5 _____ | | | |
| Total | | | |
| Less acetone blank | | | |
| Less dichloromethane blank | | | |
| Less water blank | | | |
| Weight of particulate matter | | | |

| | Volume of liquid water collected | |
|---|---|---|
| | Impinger volume, ml | Silica gel weight, g |
| Final _____ | | |
| Initial _____ | | |
| Liquid collected _____ | | |
| Total volume collected _____ | | g or ml |

* Convert weight of water to volume by dividing total weight increase by density of water (1 g/ml).

$$\frac{\text{Increase, g}}{(1\ \text{g/ml})} = \text{Volume water, ml}$$

Figure 5H-4. Analysis data sheet.

Figure 5H-4. Analysis Data Sheet.

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**Method 6—Determination of Sulfur Dioxide Emissions From Stationary Sources**

**Note:** This method does not include all of the specifications (*e.g.*, equipment and supplies) and procedures (*e.g.*, sampling and analytical) essential to its performance. Some material is incorporated by reference from other methods in this part. Therefore, to obtain reliable results, persons using this method should have a thorough knowledge of at least the following additional test methods: Method 1, Method 2, Method 3, Method 5, and Method 8.

*1.0 Scope and Application*

1.1 Analytes.

| Analyte | CAS No. | Sensitivity |
|---|---|---|
| $SO_2$ | 7449–09–5 | 3.4 mg $SO_2/m^3$ $(2.12 \times 10)_{-7}$ lb/$ft_3$. |

1.2 Applicability. This method applies to the measurement of sulfur dioxide ($SO^2$) emissions from stationary sources.

1.3 Data Quality Objectives. Adherence to the requirements of this method will enhance the quality of the data obtained from air pollutant sampling methods.

*2. 0 Summary of Method*

2.1 A gas sample is extracted from the sampling point in the stack. The $SO^2$ and the sulfur trioxide, including those fractions in any sulfur acid mist, are separated. The $SO^2$ fraction is measured by the barium-thorin titration method.

*3.0 Definitions. [Reserved]*

*4.0 Interferences*

4.1 Free Ammonia. Free ammonia interferes with this method by reacting with $SO^2$ to form particulate sulfite and by reacting with the indicator. If free ammonia is present (this can be determined by knowledge of the process and/or noticing white particulate matter in the probe and isopropanol bubbler), alternative methods, subject to the approval of the Administrator are required. One approved alternative is listed in Reference 13 of Section 17.0.

4.2 Water-Soluble Cations and Fluorides. The cations and fluorides are removed by a glass wool filter and an isopropanol bubbler; therefore, they do not affect the $SO_2$ analysis. When samples are collected from a gas stream with high concentrations of metallic fumes (*i.e.*, very fine cation aerosols) a high-efficiency glass fiber filter must be used in place of the glass wool plug (*i.e.*, the one in the probe) to remove the cation interferent.

*5.0 Safety*

5.1 Disclaimer. This method may involve hazardous materials, operations, and equipment. This test method may not address all of the safety problems associated with its use. It is the responsibility of the user to establish appropriate safety and health practices and determine the applicability of regulatory limitations before performing this test method.

5.2 Corrosive reagents. The following reagents are hazardous. Personal protective equipment and safe procedures are useful in preventing chemical splashes. If contact occurs, immediately flush with copious amounts of water for at least 15 minutes. Remove clothing under shower and decontaminate. Treat residual chemical burns as thermal burns.

5.2.1 Hydrogen Peroxide ($H_2O_2$). Irritating to eyes, skin, nose, and lungs. 30% $H_2O_2$ is a strong oxidizing agent. Avoid contact with skin, eyes, and combustible material. Wear gloves when handling.

5.2.2 Sodium Hydroxide (NaOH). Causes severe damage to eyes and skin. Inhalation causes irritation to nose, throat, and lungs. Reacts exothermically with limited amounts of water.

5.2.3 Sulfuric Acid ($H_2SO_4$). Rapidly destructive to body tissue. Will cause third degree burns. Eye damage may result in blindness. Inhalation may be fatal from spasm of the larynx, usually within 30 minutes. May cause lung tissue damage with edema. 1 mg/$m^3$ for 8 hours will cause lung damage or, in higher concentrations, death. Provide ventilation to limit inhalation. Reacts violently with metals and organics.

*6.0 Equipment and Supplies*

6.1 Sample Collection. The following items are required for sample collection:

6.1.1 Sampling Train. A schematic of the sampling train is shown in Figure 6–1. The sampling equipment described in Method 8 may be substituted in place of the midget impinger equipment of Method 6. However, the Method 8 train must be modified to include a heated filter between the probe and isopropanol impinger, and the operation of the sampling train and sample analysis must be at the flow rates and solution volumes defined in Method 8. Alternatively, $SO_2$ may be determined simultaneously with particulate matter and moisture determinations by either (1) replacing the water in a Method 5 impinger system with a 3 percent $H_2O_2$ solution, or (2) replacing the Method 5 water impinger system with a Method 8 isopropanol-filter-$H_2O_2$ system. The analysis for $SO_2$ must be consistent with the procedure of Method 8. The Method 6 sampling train consists of the following components:

6.1.1.1 Probe. Borosilicate glass or stainless steel (other materials of construction may be used, subject to the approval of the Administrator), approximately 6 mm (0.25 in.) inside diameter, with a heating system to prevent water condensation and a filter (either in-stack or heated out-of-stack) to remove particulate matter, including sulfuric acid mist. A plug of glass wool is a satisfactory filter.

6.1.1.2 Bubbler and Impingers. One midget bubbler with medium-coarse glass frit and borosilicate or quartz glass wool packed in top (see Figure 6–1) to prevent sulfuric acid mist carryover, and three 30-ml midget impingers. The midget bubbler and midget impingers must be connected in series with leak-free glass connectors. Silicone grease may be used, if necessary, to prevent leakage. A midget impinger may be used in place of the midget bubbler.

**Note:** Other collection absorbers and flow rates may be used, subject to the approval of the Administrator, but the collection efficiency must be shown to be at least 99 percent for each test run and must be documented in the report. If the efficiency is found to be acceptable after a series of three tests, further documentation is not required. To conduct the efficiency test, an extra absorber must be added and analyzed separately. This extra absorber must not contain more than 1 percent of the total $SO_2$.

6.1.1.3 Glass Wool. Borosilicate or quartz.

6.1.1.4 Stopcock Grease. Acetone-insoluble, heat-stable silicone grease may be used, if necessary.

6.1.1.5 Temperature Sensor. Dial thermometer, or equivalent, to measure temperature of gas leaving impinger train to within 1 °C (2 °F).

6.1.1.6 Drying Tube. Tube packed with 6- to 16- mesh indicating-type silica gel, or equivalent, to dry the gas sample and to protect the meter and pump. If silica gel is previously used, dry at 177 °C (350 °F) for 2 hours. New silica gel may be used as received. Alternatively, other types of desiccants (equivalent or better) may be used, subject to the approval of the Administrator.



6.1.1.7 Valve. Needle valve, to regulate sample gas flow rate.

6.1.1.8 Pump. Leak-free diaphragm pump, or equivalent, to pull gas through the train. Install a small surge tank between the pump and rate meter to negate the pulsation effect of the diaphragm pump on the rate meter.

6.1.1.9 Rate Meter. Rotameter, or equivalent, capable of measuring flow rate to within 2 percent of the selected flow rate of about 1 liter/min (0.035 cfm).

6.1.1.10 Volume Meter. Dry gas meter (DGM), sufficiently accurate to measure the sample volume to within 2 percent, calibrated at the selected flow rate and conditions actually encountered during sampling, and equipped with a temperature sensor (dial thermometer, or equivalent) capable of measuring temperature accurately to within 3 °C (5.4 °F). A critical orifice may be used in place of the DGM specified in this section provided that it is selected, calibrated, and used as specified in Section 16.0.

6.1.2 Barometer. Mercury, aneroid, or other barometer capable of measuring atmospheric pressure to within 2.5 mm Hg (0.1 in. Hg). See the **Note** in Method 5, Section 6.1.2.

6.1.3 Vacuum Gauge and Rotameter. At least 760-mm Hg (30-in. Hg) gauge and 0- to 40-ml/min rotameter, to be used for leak-check of the sampling train.

6.2 Sample Recovery. The following items are needed for sample recovery:

6.2.1 Wash Bottles. Two polyethylene or glass bottles, 500-ml.

6.2.2 Storage Bottles. Polyethylene bottles, 100-ml, to store impinger samples (one per sample).

6.3 Sample Analysis. The following equipment is needed for sample analysis:

6.3.1 Pipettes. Volumetric type, 5-ml, 20-ml (one needed per sample), and 25-ml sizes.

6.3.2 Volumetric Flasks. 100-ml size (one per sample) and 1000-ml size.

6.3.3 Burettes. 5- and 50-ml sizes.

6.3.4 Erlenmeyer Flasks. 250-ml size (one for each sample, blank, and standard).

6.3.5 Dropping Bottle. 125-ml size, to add indicator.

6.3.6 Graduated Cylinder. 100-ml size.

6.3.7 Spectrophotometer. To measure absorbance at 352 nm.

*7.0 Reagents and Standards*

**Note:** Unless otherwise indicated, all reagents must conform to the specifications established by the Committee on Analytical Reagents of the American Chemical Society. Where such specifications are not available, use the best available grade.

7.1 Sample Collection. The following reagents are required for sample collection:

7.1.1 Water. Deionized distilled to conform to ASTM Specification D 1193–77 or 91 Type 3 (incorporated by reference—see § 60.17). The $KMnO_4$ test for oxidizable organic matter may be omitted when high concentrations of organic matter are not expected to be present.

7.1.2 Isopropanol, 80 Percent by Volume. Mix 80 ml of isopropanol with 20 ml of water.

7.1.2.1 Check each lot of isopropanol for peroxide impurities as follows: Shake 10 ml of isopropanol with 10 ml of freshly prepared 10 percent potassium iodide solution. Prepare a blank by similarly treating 10 ml of water. After 1 minute, read the absorbance at 352 nm on a spectrophotometer using a 1-cm path length. If absorbance exceeds 0.1, reject alcohol for use.

7.1.2.2 Peroxides may be removed from isopropanol by redistilling or by passage through a column of activated alumina; however, reagent grade isopropanol with suitably low peroxide levels may be obtained from commercial sources. Rejection of contaminated lots may, therefore, be a more efficient procedure.

7.1.3 Hydrogen Peroxide ($H_2O_2$), 3 Percent by Volume. Add 10 ml of 30 percent $H_2O_2$ to 90 ml of water. Prepare fresh daily.

7.1.4 Potassium Iodide Solution, 10 Percent Weight by Volume (w/v). Dissolve 10.0 g of KI in water, and dilute to 100 ml. Prepare when needed.

7.2 Sample Recovery. The following reagents are required for sample recovery:

7.2.1 Water. Same as in Section 7.1.1.

7.2.2 Isopropanol, 80 Percent by Volume. Same as in Section 7.1.2.

7.3 Sample Analysis. The following reagents and standards are required for sample analysis:

7.3.1 Water. Same as in Section 7.1.1.

7.3.2 Isopropanol, 100 Percent.

7.3.3 Thorin Indicator. 1-(o-arsonophenylazo)-2-naphthol-3,6-disulfonic acid, disodium salt, or equivalent. Dissolve 0.20 g in 100 ml of water.

7.3.4 Barium Standard Solution, 0.0100 N. Dissolve 1.95 g of barium perchlorate trihydrate [$Ba(ClO_4)_2$ $3H_2O$] in 200 ml water, and dilute to 1 liter with isopropanol. Alternatively, 1.22 g of barium chloride dihydrate [$BaCl_2$ $2H_2O$] may be used instead of the barium perchlorate trihydrate. Standardize as in Section 10.5.

7.3.5 Sulfuric Acid Standard, 0.0100 N. Purchase or standardize to ±0.0002 N against 0.0100 N NaOH which has previously been standardized against potassium acid phthalate (primary standard grade).

7.3.6 Quality Assurance Audit Samples. When making compliance determinations, audit samples, if available must be obtained from the appropriate EPA Regional Office or from the responsible enforcement authority and analyzed in conjunction with the field samples.

**Note:** The responsible enforcement authority should be notified at least 30 days prior to the test date to allow sufficient time for sample delivery.

*8.0 Sample Collection, Preservation, Storage and Transport*

8.1 Preparation of Sampling Train. Measure 15 ml of 80 percent isopropanol into the midget bubbler and 15 ml of 3 percent $H_2O_2$ into each of the first two midget impingers. Leave the final midget impinger dry. Assemble the train as shown in Figure 6–1. Adjust the probe heater to a temperature sufficient to prevent water condensation. Place crushed ice and water around the impingers.

8.2 Sampling Train Leak-Check Procedure. A leak-check prior to the sampling run is recommended, but not required. A leak-check after the sampling run is mandatory. The leak-check procedure is as follows:

8.2.1 Temporarily attach a suitable (*e.g.*, 0- to 40- ml/min) rotameter to the outlet of the DGM, and place a vacuum gauge at or near the probe inlet. Plug the probe inlet, pull a vacuum of at least 250 mm Hg (10 in. Hg), and note the flow rate as indicated by the rotameter. A leakage rate in excess of 2 percent of the average sampling rate is not acceptable.

**Note:** Carefully (*i.e.*, slowly) release the probe inlet plug before turning off the pump.

8.2.2 It is suggested (not mandatory) that the pump be leak-checked separately, either prior to or after the sampling run. To leak-check the pump, proceed as follows: Disconnect the drying tube from the probe-impinger assembly. Place a vacuum gauge at the inlet to either the drying tube or the pump, pull a vacuum of 250 mm Hg (10 in. Hg), plug or pinch off the outlet of the flow meter, and then turn off the pump. The vacuum should remain stable for at least 30 seconds.

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If performed prior to the sampling run, the pump leak-check shall precede the leak-check of the sampling train described immediately above; if performed after the sampling run, the pump leak-check shall follow the sampling train leak-check.

8.2.3 Other leak-check procedures may be used, subject to the approval of the Administrator.

8.3 Sample Collection.

8.3.1 Record the initial DGM reading and barometric pressure. To begin sampling, position the tip of the probe at the sampling point, connect the probe to the bubbler, and start the pump. Adjust the sample flow to a constant rate of approximately 1.0 liter/min as indicated by the rate meter. Maintain this constant rate (± 10 percent) during the entire sampling run.

8.3.2 Take readings (DGM volume, temperatures at DGM and at impinger outlet, and rate meter flow rate) at least every 5 minutes. Add more ice during the run to keep the temperature of the gases leaving the last impinger at 20°C (68 °F) or less.

8.3.3 At the conclusion of each run, turn off the pump, remove the probe from the stack, and record the final readings. Conduct a leak-check as described in Section 8.2. (This leak-check is mandatory.) If a leak is detected, void the test run or use procedures acceptable to the Administrator to adjust the sample volume for the leakage.

8.3.4 Drain the ice bath, and purge the remaining part of the train by drawing clean ambient air through the system for 15 minutes at the sampling rate. Clean ambient air can be provided by passing air through a charcoal filter or through an extra midget impinger containing 15 ml of 3 percent $H_2O_2$. Alternatively, ambient air without purification may be used.

8.4 Sample Recovery. Disconnect the impingers after purging. Discard the contents of the midget bubbler. Pour the contents of the midget impingers into a leak-free polyethylene bottle for shipment. Rinse the three midget impingers and the connecting tubes with water, and add the rinse to the same storage container. Mark the fluid level. Seal and identify the sample container.

*9.0 Quality Control*

| Section | Quality control measure | Effect |
|---|---|---|
| 7.1.2 | Isopropanol check | Ensure acceptable level of peroxide impurities in isopropanol. |
| 8.2, 10.1–10.4 | Sampling equipment leak-check and calibration | Ensure accurate measurement of stack gas flow rate, sample volume. |
| 10.5 | Barium standard solution standardization | Ensure precision of normality determination. |
| 11.2.3 | Replicate titrations | Ensure precision of titration determinations |
| 11.3 | Audit sample analysis | Evaluate analyst's technique and standards preparation. |

*10.0 Calibration and Standardization*

10.1 Volume Metering System.

10.1.1 Initial Calibration.

10.1.1.1 Before its initial use in the field, leak-check the metering system (drying tube, needle valve, pump, rate meter, and DGM) as follows: Place a vacuum gauge at the inlet to the drying tube and pull a vacuum of 250 mm Hg (10 in. Hg). Plug or pinch off the outlet of the flow meter, and then turn off the pump. The vacuum must remain stable for at least 30 seconds. Carefully release the vacuum gauge before releasing the flow meter end.

10.1.1.2 Remove the drying tube, and calibrate the metering system (at the sampling flow rate specified by the method) as follows: Connect an appropriately sized wet-test meter (*e.g.*, 1 liter per revolution) to the inlet of the needle valve. Make three independent calibration runs, using at least five revolutions of the DGM per run. Calculate the calibration factor Y (wet-test meter calibration volume divided by the DGM volume, both volumes adjusted to the same reference temperature and pressure) for each run, and average the results ($Y_i$). If any Y-value deviates by more than 2 percent from ($Y_i$), the metering system is unacceptable for use. If the metering system is acceptable, use ($Y_i$) as the calibration factor for subsequent test runs.

10.1.2 Post-Test Calibration Check. After each field test series, conduct a calibration check using the procedures outlined in Section 10.1.1.2, except that three or more revolutions of the DGM may be used, and only two independent runs need be made. If the average of the two post-test calibration factors does not deviate by more than 5 percent from $Y_i$, then $Y_i$ is accepted as the DGM calibration factor (Y), which is used in Equation 6–1 to calculate collected sample volume (see Section 12.2). If the deviation is more than 5 percent, recalibrate the metering system as in Section 10.1.1, and determine a post-test calibration factor ($Y_f$). Compare $Y_i$ and $Y_f$; the smaller of the two factors is accepted as the DGM calibration factor. If recalibration indicates that the metering system is unacceptable for use, either void the test run or use methods, subject to the approval of the Administrator, to determine an acceptable value for the collected sample volume.

10.1.3 DGM as a Calibration Standard. A DGM may be used as a calibration standard for volume measurements in place of the wet-test meter specified in Section 10.1.1.2, provided that it is calibrated initially and recalibrated periodically according to the same procedures outlined in Method 5, Section 10.3 with the following exceptions: (a) the DGM is calibrated against a wet-test meter having a capacity of 1 liter/rev (0.035 $ft^3$/rev) or 3 liters/rev (0.1 $ft^3$/rev) and having the capability of measuring volume to within 1 percent; (b) the DGM is calibrated at 1 liter/min (0.035 cfm); and (c) the meter box of the Method 6 sampling train is calibrated at the same flow rate.

10.2 Temperature Sensors. Calibrate against mercury-in-glass thermometers.

10.3 Rate Meter. The rate meter need not be calibrated, but should be cleaned and maintained according to the manufacturer's instructions.

10.4 Barometer. Calibrate against a mercury barometer.

10.5 Barium Standard Solution. Standardize the barium perchlorate or chloride solution against 25 ml of standard sulfuric acid to which 100 ml of 100 percent isopropanol has been added. Run duplicate analyses. Calculate the normality using the average of duplicate analyses where the titrations agree within 1 percent or 0.2 ml, whichever is larger.

*11.0 Analytical Procedure*

11.1 Sample Loss Check. Note level of liquid in container and confirm whether any sample was lost during shipment; note this finding on the analytical data sheet. If a noticeable amount of leakage has occurred, either void the sample or use methods, subject to the approval of the Administrator, to correct the final results.

11.2 Sample Analysis.

11.2.1 Transfer the contents of the storage container to a 100-ml volumetric flask, dilute to exactly 100 ml with water, and mix the diluted sample.



11.2.2 Pipette a 20-ml aliquot of the diluted sample into a 250-ml Erlenmeyer flask and add 80 ml of 100 percent isopropanol plus two to four drops of thorin indicator. While stirring the solution, titrate to a pink endpoint using 0.0100 N barium standard solution.

11.2.3 Repeat the procedures in Section 11.2.2, and average the titration volumes. Run a blank with each series of samples. Replicate titrations must agree within 1 percent or 0.2 ml, whichever is larger.

**Note:** Protect the 0.0100 N barium standard solution from evaporation at all times.

11.3 Audit Sample Analysis.

11.3.1 When the method is used to analyze samples to demonstrate compliance with a source emission regulation, an audit sample, if available, must be analyzed.

11.3.2 Concurrently analyze the audit sample and the compliance samples in the same manner to evaluate the technique of the analyst and the standards preparation.

11.3.3 The same analyst, analytical reagents, and analytical system must be used for the compliance samples and the audit sample. If this condition is met, duplicate auditing of subsequent compliance analyses for the same enforcement agency within a 30-day period is waived. An audit sample set may not be used to validate different sets of compliance samples under the jurisdiction of separate enforcement agencies, unless prior arrangements have been made with both enforcement agencies.

11.4 Audit Sample Results.

11.4.1 Calculate the audit sample concentrations and submit results using the instructions provided with the audit samples.

11.4.2 Report the results of the audit samples and the compliance determination samples along with their identification numbers, and the analyst's name to the responsible enforcement authority. Include this information with reports of any subsequent compliance analyses for the same enforcement authority during the 30-day period.

11.4.3 The concentrations of the audit samples obtained by the analyst must agree within 5 percent of the actual concentration. If the 5 percent specification is not met, reanalyze the compliance and audit samples, and include initial and reanalysis values in the test report.

11.4.4 Failure to meet the 5-percent specification may require retests until the audit problems are resolved. However, if the audit results do not affect the compliance or noncompliance status of the affected facility, the Administrator may waive the reanalysis requirement, further audits, or retests and accept the results of the compliance test. While steps are being taken to resolve audit analysis problems, the Administrator may also choose to use the data to determine the compliance or noncompliance status of the affected facility.

*12.0 Data Analysis and Calculations*

Carry out calculations, retaining at least one extra significant figure beyond that of the acquired data. Round off figures after final calculation.

12.1 Nomenclature.

$C_a$ = Actual concentration of $SO_2$ in audit sample, mg/dscm.

$C_d$ = Determined concentration of $SO_2$ in audit sample, mg/dscm.

$C_{SO_2}$ = Concentration of $SO_2$, dry basis, corrected to standard conditions, mg/dscm (lb/dscf).

N = Normality of barium standard titrant, meq/ml.

$P_{bar}$ = Barometric pressure, mm Hg (in. Hg).

$P_{std}$ = Standard absolute pressure, 760 mm Hg (29.92 in. Hg).

RE = Relative error of QA audit sample analysis, percent

$T_m$ = Average DGM absolute temperature, °K (°R).

$T_{std}$ = Standard absolute temperature, 293 °K (528 °R).

$V_a$ = Volume of sample aliquot titrated, ml.

$V_m$ = Dry gas volume as measured by the DGM, dcm (dcf).

$V_{m(std)}$ = Dry gas volume measured by the DGM, corrected to standard conditions, dscm (dscf).

$V_{soln}$ = Total volume of solution in which the SO*2* sample is contained, 100 ml.

$V_t$ = Volume of barium standard titrant used for the sample (average of replicate titration), ml.

$V_{tb}$ = Volume of barium standard titrant used for the blank, ml.

Y = DGM calibration factor.

12.2 Dry Sample Gas Volume, Corrected to Standard Conditions.

$$V_{m(std)} = \frac{(V_m Y T_{std} P_{bar})}{(T_m P_{std})} = \frac{K_1 Y V_m P_{bar}}{T_m} \quad \text{Eq. 6-1}$$

Where:

$K_1$ = 0.3855 °K/mm Hg for metric units,

$K_1$ = 17.65 °R/in. Hg for English units.

12.3 $SO_2$ Concentration.

$$C_{so_2} = \frac{K_2 N (V_t - V_{tb})(V_{soln}/V_a)}{V_{m(std)}} \quad \text{Eq. 6-2}$$

Where:

$K_2$ = 32.03 mg $SO_2$/meq for metric units,

$K_2 = 7.061 \times 10^{-5}$ lb $SO_2$/meq for English units.

12.4 Relative Error for QA Audit Samples.

$$RE = \frac{100 (C_d - C_a)}{C_a} \quad \text{Eq. 6-3}$$

*13.0 Method Performance*

13.1 Range. The minimum detectable limit of the method has been determined to be 3.4 mg $SO_2/m^3$ ($2.12 \times 10^{-7}$ lb/$ft^3$). Although no upper limit has been established, tests have shown that concentrations as high as 80,000 mg/$m^3$ (0.005 lb/$ft^3$) of $SO_2$ can be collected efficiently at a rate of 1.0 liter/min (0.035 cfm) for 20 minutes in two midget impingers, each containing 15 ml of 3 percent $H_2O_2$. Based on theoretical calculations, the upper concentration limit in a 20 liter (0.7 $ft^3$) sample is about 93,300 mg/$m^3$ (0.00583 lb/$ft^3$).

*14.0 Pollution Prevention. [Reserved]*

*15.0 Waste Management. [Reserved]*

*16.0 Alternative Procedures*

16.1 Nomenclature. Same as Section 12.1, with the following additions:

$B_{wa}$ = Water vapor in ambient air, proportion by volume.

$M_a$ = Molecular weight of the ambient air saturated at impinger temperature, g/g-mole (lb/lb-mole).

$M_s$ = Molecular weight of the sample gas saturated at impinger temperature, g/g-mole (lb/lb-mole).

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$P_c$ = Inlet vacuum reading obtained during the calibration run, mm Hg (in. Hg).
$P_{sr}$ = Inlet vacuum reading obtained during the sampling run, mm Hg (in. Hg).
$Q_{std}$ = Volumetric flow rate through critical orifice, scm/min (scf/min).
$Q_{std}$ = Average flow rate of pre-test and post-test calibration runs, scm/min (scf/min).
$T_{amb}$ = Ambient absolute temperature of air, °K (°R).
$V_{sb}$ = Volume of gas as measured by the soap bubble meter, $m^3$ ($ft^3$).
$V_{sb(std)}$ = Volume of gas as measured by the soap bubble meter, corrected to standard conditions, scm (scf).
$\theta$ = Soap bubble travel time, min.
$\theta_s$ = Time, min.

16.2 Critical Orifices for Volume and Rate Measurements. A critical orifice may be used in place of the DGM specified in Section 6.1.1.10, provided that it is selected, calibrated, and used as follows:

16.2.1 Preparation of Sampling Train. Assemble the sampling train as shown in Figure 6–2. The rate meter and surge tank are optional but are recommended in order to detect changes in the flow rate.

**Note:** The critical orifices can be adapted to a Method 6 type sampling train as follows: Insert sleeve type, serum bottle stoppers into two reducing unions. Insert the needle into the stoppers as shown in Figure 6–3.

16.2.2 Selection of Critical Orifices.

16.2.2.1 The procedure that follows describes the use of hypodermic needles and stainless steel needle tubings, which have been found suitable for use as critical orifices. Other materials and critical orifice designs may be used provided the orifices act as true critical orifices, (*i.e.*, a critical vacuum can be obtained) as described in this section. Select a critical orifice that is sized to operate at the desired flow rate. The needle sizes and tubing lengths shown in Table 6–1 give the following approximate flow rates.

16.2.2.2 Determine the suitability and the appropriate operating vacuum of the critical orifice as follows: If applicable, temporarily attach a rate meter and surge tank to the outlet of the sampling train, if said equipment is not present (see Section 16.2.1). Turn on the pump and adjust the valve to give an outlet vacuum reading corresponding to about half of the atmospheric pressure. Observe the rate meter reading. Slowly increase the vacuum until a stable reading is obtained on the rate meter. Record the critical vacuum, which is the outlet vacuum when the rate meter first reaches a stable value. Orifices that do not reach a critical value must not be used.

16.2.3 Field Procedures.

16.2.3.1 Leak-Check Procedure. A leak-check before the sampling run is recommended, but not required. The leak-check procedure is as follows: Temporarily attach a suitable (*e.g.*, 0–40 ml/min) rotameter and surge tank, or a soap bubble meter and surge tank to the outlet of the pump. Plug the probe inlet, pull an outlet vacuum of at least 250 mm Hg (10 in. Hg), and note the flow rate as indicated by the rotameter or bubble meter. A leakage rate in excess of 2 percent of the average sampling rate ($Q_{std}$) is not acceptable. Carefully release the probe inlet plug before turning off the pump.

16.2.3.2 Moisture Determination. At the sampling location, prior to testing, determine the percent moisture of the ambient air using the wet and dry bulb temperatures or, if appropriate, a relative humidity meter.

16.2.3.3 Critical Orifice Calibration. At the sampling location, prior to testing, calibrate the entire sampling train (*i.e.*, determine the flow rate of the sampling train when operated at critical conditions). Attach a 500-ml soap bubble meter to the inlet of the probe, and operate the sampling train at an outlet vacuum of 25 to 50 mm Hg (1 to 2 in. Hg) above the critical vacuum. Record the information listed in Figure 6–4. Calculate the standard volume of air measured by the soap bubble meter and the volumetric flow rate using the equations below:

$$V_{sb(std)} = V_{sb}\left(T_{std}/T_{amb}\right)\left(P_{bar}/P_{std}\right) \quad \text{Eq. 6-4}$$

$$Q_{std} = \frac{V_{sb(std)}}{\theta} \quad \text{Eq. 6-5}$$

16.2.3.4 Sampling.

16.2.3.4.1 Operate the sampling train for sample collection at the same vacuum used during the calibration run. Start the watch and pump simultaneously. Take readings (temperature, rate meter, inlet vacuum, and outlet vacuum) at least every 5 minutes. At the end of the sampling run, stop the watch and pump simultaneously.

16.2.3.4.2 Conduct a post-test calibration run using the calibration procedure outlined in Section 16.2.3.3. If the $Q_{std}$ obtained before and after the test differ by more than 5 percent, void the test run; if not, calculate the volume of the gas measured with the critical orifice using Equation 6–6 as follows:

$$V_{m(std)} = \frac{\overline{Q}_{std}\,\theta_s\left(1-B_{wa}\right)\left(P_{bar}+P_{sr}\right)}{\left(P_{bar}+P_c\right)} \quad \text{Eq. 6-6}$$

16.2.3.4.3 If the percent difference between the molecular weight of the ambient air at saturated conditions and the sample gas is more that ± 3 percent, then the molecular weight of the gas sample must be considered in the calculations using the following equation:

$$_{(std)} = \frac{\overline{Q}_{std}\,\theta_s\left(1-B_{wa}\right)\left(P_{bar}+P_{sr}\right)\left(M_a/M_s\right)^1}{\left(P_{bar}+P_c\right)} \quad \text{Eq. 6-7}$$

**Note:** A post-test leak-check is not necessary because the post-test calibration run results will indicate whether there is any leakage.

16.2.3.4.4 Drain the ice bath, and purge the sampling train using the procedure described in Section 8.3.4.

16.3 Elimination of Ammonia Interference. The following alternative procedures must be used in addition to those specified in the method when sampling at sources having ammonia emissions.



16.3.1 Sampling. The probe shall be maintained at 275 °C (527 °F) and equipped with a high-efficiency in-stack filter (glass fiber) to remove particulate matter. The filter material shall be unreactive to $SO_2$. Whatman 934AH (formerly Reeve Angel 934AH) filters treated as described in Reference 10 in Section 17.0 of Method 5 is an example of a filter that has been shown to work. Where alkaline particulate matter and condensed moisture are present in the gas stream, the filter shall be heated above the moisture dew point but below 225 °C (437 °F).

16.3.2 Sample Recovery. Recover the sample according to Section 8.4 except for discarding the contents of the midget bubbler. Add the bubbler contents, including the rinsings of the bubbler with water, to a separate polyethylene bottle from the rest of the sample. Under normal testing conditions where sulfur trioxide will not be present significantly, the tester may opt to delete the midget bubbler from the sampling train. If an approximation of the sulfur trioxide concentration is desired, transfer the contents of the midget bubbler to a separate polyethylene bottle.

16.3.3 Sample Analysis. Follow the procedures in Sections 11.1 and 11.2, except add 0.5 ml of 0.1 N HCl to the Erlenmeyer flask and mix before adding the indicator. The following analysis procedure may be used for an approximation of the sulfur trioxide concentration. The accuracy of the calculated concentration will depend upon the ammonia to $SO_2$ ratio and the level of oxygen present in the gas stream. A fraction of the $SO_2$ will be counted as sulfur trioxide as the ammonia to $SO_2$ ratio and the sample oxygen content increases. Generally, when this ratio is 1 or less and the oxygen content is in the range of 5 percent, less than 10 percent of the $SO_2$ will be counted as sulfur trioxide. Analyze the peroxide and isopropanol sample portions separately. Analyze the peroxide portion as described above. Sulfur trioxide is determined by difference using sequential titration of the isopropanol portion of the sample. Transfer the contents of the isopropanol storage container to a 100-ml volumetric flask, and dilute to exactly 100 ml with water. Pipette a 20-ml aliquot of this solution into a 250-ml Erlenmeyer flask, add 0.5 ml of 0.1 N HCl, 80 ml of 100 percent isopropanol, and two to four drops of thorin indicator. Titrate to a pink endpoint using 0.0100 N barium perchlorate. Repeat and average the titration volumes that agree within 1 percent or 0.2 ml, whichever is larger. Use this volume in Equation 6–2 to determine the sulfur trioxide concentration. From the flask containing the remainder of the isopropanol sample, determine the fraction of $SO_2$ collected in the bubbler by pipetting 20-ml aliquots into 250-ml Erlenmeyer flasks. Add 5 ml of 3 percent $H_2O_2$, 100 ml of 100 percent isopropanol, and two to four drips of thorin indicator, and titrate as before. From this titration volume, subtract the titrant volume determined for sulfur trioxide, and add the titrant volume determined for the peroxide portion. This final volume constitutes $V_t$, the volume of barium perchlorate used for the $SO_2$ sample.

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12. Shigehara, R.T., and C.B. Sorrell. Using Critical Orifices as Method 5 CalibrationStandards. Source Evaluation Society Newsletter. *10*:4–15. August 1985.
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*18.0 Tables, Diagrams, Flowcharts and Validation Data*

TABLE 6–1.—APPROXIMATE FLOW RATES FOR VARIOUS NEEDLE SIZES

| Needle size (gauge) | Needle length (cm) | Flow rate (ml/min) |
|---|---|---|
| 21 | 7.6 | 1,100 |
| 22 | 2.9 | 1,000 |
| 22 | 3.8 | 900 |
| 23 | 3.8 | 500 |
| 23 | 5.1 | 450 |
| 24 | 3.2 | 400 |

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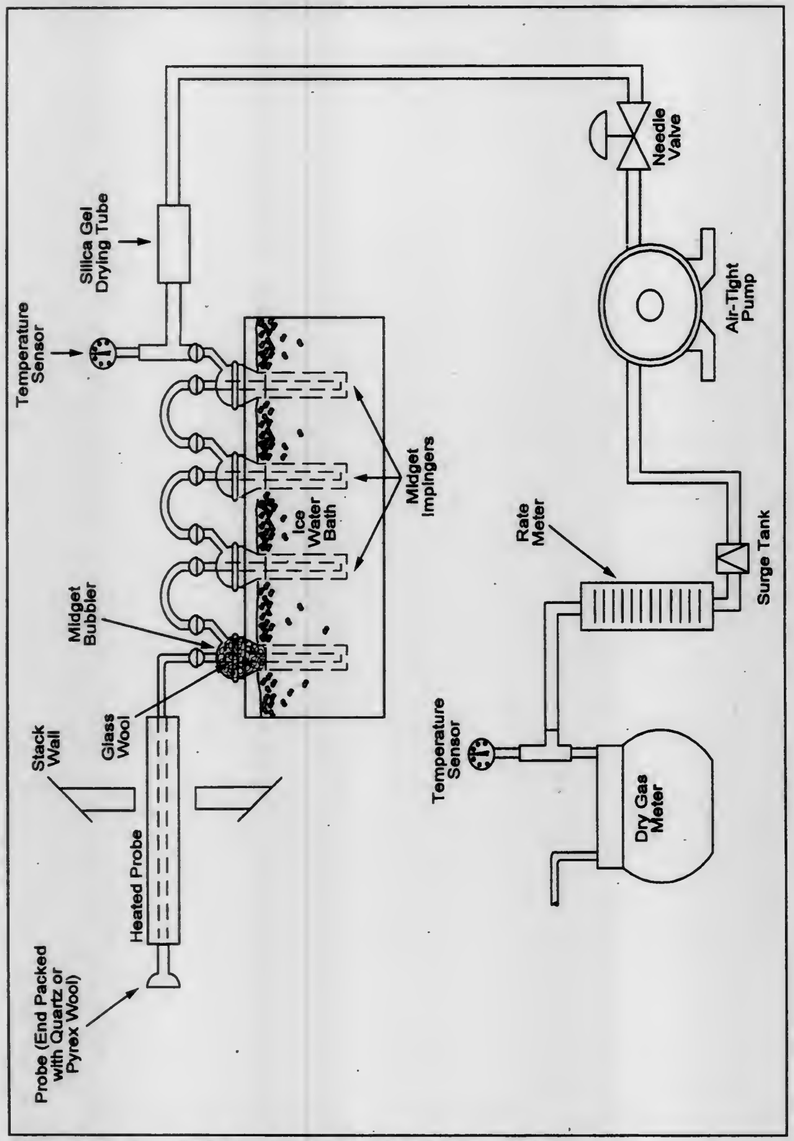



Figure 6-1. Sulfur Dioxide Sampling Train.



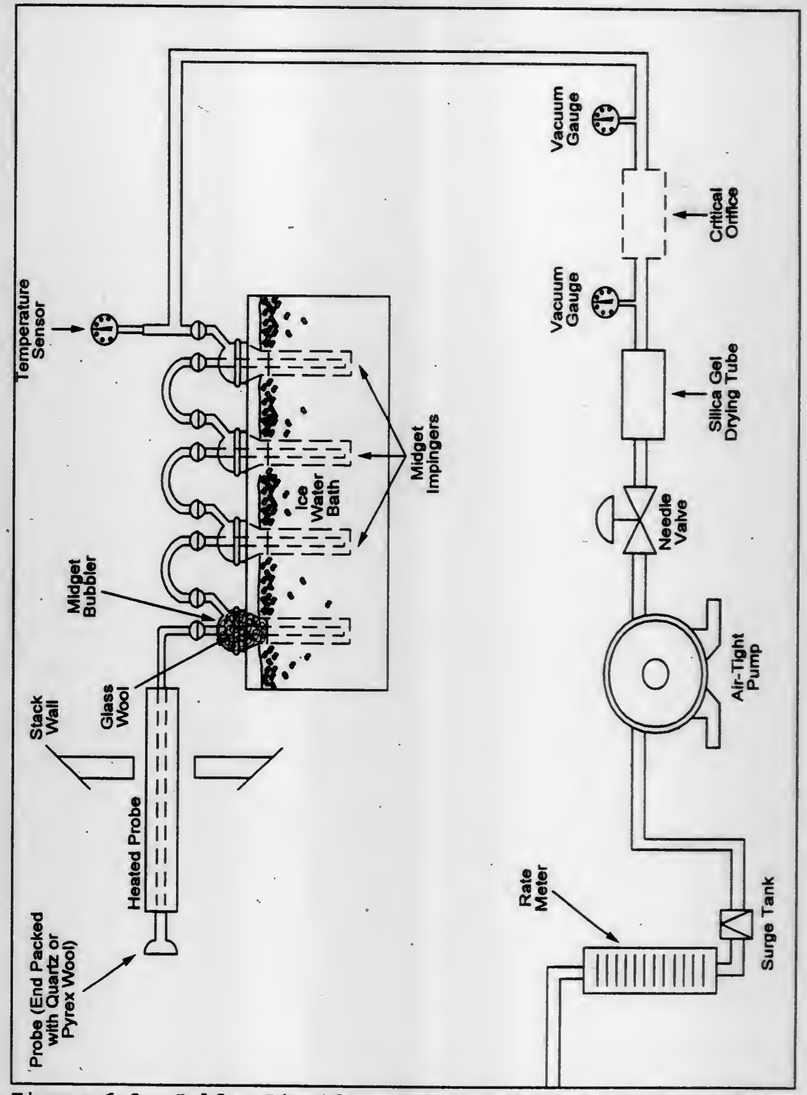



Figure 6-2. Sulfur Dioxide Sampling Train Using a Critical Orifice.

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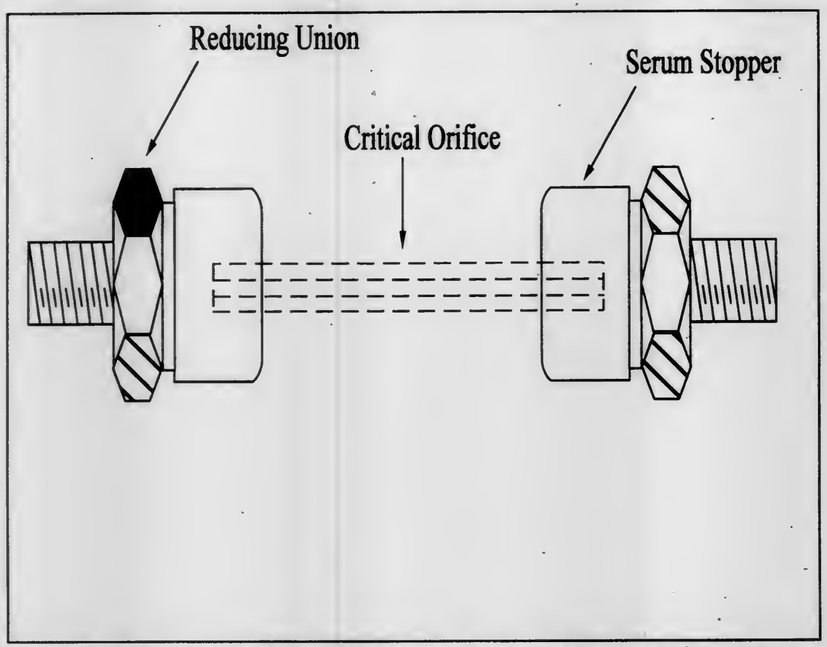



**Figure 6-3. Critical Orifice Adaptation for the Method 6 Sampling Train.**



Date _____ Train ID _____

Critical orifice size _____ Critical vacuum _____

| | | Pretest | Post-test |
|---|---|---|---|
| Soap bubble meter volume, $V_{sb}$ | cc | | |
| | $m^3$ ($ft^3$) | | |
| Time, $\theta$ | sec | | |
| | min | | |
| Barometric pressure, $P_{bar}$ | mm Hg (in. Hg) | | |
| Ambient temperature, $t_{amb}$ | °C (°F) | | |
| Inlet vacuum, $P_c$ | mm Hg (in. Hg) | | |
| Outlet vacuum | mm Hg (in. Hg) | | |
| $V_{sb(std)}$ | $m^3$ ($ft^3$) | | |
| Flow rate, $Q_{std}$ | $\frac{m^3}{min}\left(\frac{ft^3}{min}\right)$ | | |

**Figure 6-4. Critical Orifice Calibration Data Sheet.**

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## Method 6A—Determination of Sulfur Dioxide, Moisture, and Carbon Dioxide From Fossil Fuel Combustion Sources

**Note:** This method does not include all of the specifications (e.g., equipment and supplies) and procedures (*e.g.*, sampling and analytical) essential to its performance. Some material is incorporated by reference from other methods in this part. Therefore, to obtain reliable results, persons using this method should have a thorough knowledge of at least the following additional test methods: Method 1, Method 2, Method 3, Method 5, Method 6, and Method 19.

*1.0 Scope and Application*

1.1 Analytes.

| Analyte | CAS No. | Sensitivity |
|---|---|---|
| $SO_2$ | 7449–09–05 | 3.4 mg $SO_2/m^3$ ($2.12 \times 10^{-7}$ lb/ft$^3$) |
| $CO_2$ | 124–38–9 | N/A |
| $H_2O$ | 7732–18–5 | N/A |

1.2 Applicability. This method is applicable for the determination of sulfur dioxide ($SO_2$) emissions from fossil fuel combustion sources in terms of concentration (mg/dscm or lb/dscf) and in terms of emission rate (ng/J or lb/$10^6$ Btu) and for the determination of carbon dioxide ($CO_2$) concentration (percent). Moisture content (percent), if desired, may also be determined by this method.

1.3 Data Quality Objectives. Adherence to the requirements of this method will enhance the quality of the data obtained from air pollutant sampling methods.

*2.0 Summary of Method*

2.1 A gas sample is extracted from a sampling point in the stack. The $SO_2$ and the sulfur trioxide, including those fractions in any sulfur acid mist, are separated. The $SO_2$ fraction is measured by the barium-thorin titration method. Moisture and $CO_2$ fractions are collected in the same sampling train, and are determined gravimetrically.

*3.0 Definitions. [Reserved]*

*4.0 Interferences*

Same as Method 6, Section 4.0.

*5.0 Safety*

5.1 Disclaimer. This method may involve hazardous materials, operations, and equipment. This test method may not address all of the safety problems associated with its use. It is the responsibility of the user to establish appropriate safety and health practices and determine the applicability of regulatory limitations prior to performing this test method.

5.2 Corrosive reagents. Same as Method 6, Section 5.2.

*6.0 Equipment and Supplies*

6.1 Sample Collection. Same as Method 6, Section 6.1, with the exception of the following:

6.1.1 Sampling Train. A schematic of the sampling train used in this method is shown in Figure 6A–1.

6.1.1.1 Impingers and Bubblers. Two 30=ml midget impingers with a 1=mm restricted tip and two 30=ml midget bubblers with unrestricted tips. Other types of impingers and bubblers (*e.g.*, Mae West for $SO_2$ collection and rigid cylinders containing Drierite for moisture absorbers), may be used with proper attention to reagent volumes and levels, subject to the approval of the Administrator.

6.1.1.2 $CO_2$ Absorber. A sealable rigid cylinder or bottle with an inside diameter between 30 and 90 mm , a length between 125 and 250 mm, and appropriate connections at both ends. The filter may be a separate heated unit or may be within the heated portion of the probe. If the filter is within the sampling probe, the filter should not be within 15 cm of the probe inlet or any unheated section of the probe, such as the connection to the first bubbler. The probe and filter should be heated to at least 20 °C (68 °F) above the source temperature, but not greater than 120 °C (248 °F). The filter temperature (*i.e.*, the sample gas temperature) should be monitored to assure the desired temperature is maintained. A heated Teflon connector may be used to connect the filter holder or probe to the first impinger.

**Note:** For applications downstream of wet scrubbers, a heated out-of-stack filter (either borosilicate glass wool or glass fiber mat) is necessary.

6.2 Sample Recovery. Same as Method 6, Section 6.2.

6.3 Sample Analysis. Same as Method 6, Section 6.3, with the addition of a balance to measure within 0.05 g.

*7.0 Reagents and Standards*

**Note:** Unless otherwise indicated, all reagents must conform to the specifications established by the Committee on Analytical Reagents of the American Chemical Society. Where such specifications are not available, use the best available grade.

7.1 Sample Collection. Same as Method 6, Section 7.1, with the addition of the following:

7.1.1 Drierite. Anhydrous calcium sulfate ($CaSO_4$) desiccant, 8 mesh, indicating type is recommended.

**Note:** Do not use silica gel or similar desiccant in this application.

7.1.2 $CO_2$ Absorbing Material. Ascarite II. Sodium hydroxide-coated silica, 8- to 20-mesh.

7.2 Sample Recovery and Analysis. Same as Method 6, Sections 7.2 and 7.3, respectively.

*8.0 Sample Collection, Preservation, Transport, and Storage*

8.1 Preparation of Sampling Train.

8.1.1 Measure 15 ml of 80 percent isopropanol into the first midget bubbler and 15 ml of 3 percent hydrogen peroxide into each of the two midget impingers (the second and third vessels in the train) as described in Method 6, Section 8.1. Insert the glass wool into the top of the isopropanol bubbler as shown in Figure 6A–1. Place about 25 g of Drierite into the second midget bubbler (the fourth vessel in the train). Clean the outside of the bubblers and impingers and allow the vessels to reach room temperature. Weigh the four vessels simultaneously to the nearest 0.1 g, and record this initial weight ($m_{wi}$).

8.1.2 With one end of the $CO_2$ absorber sealed, place glass wool into the cylinder to a depth of about 1 cm (0.5 in.). Place about 150 g of $CO_2$ absorbing material in the cylinder on top of the glass wool, and fill the remaining space in the cylinder with glass wool. Assemble the cylinder as shown in Figure 6A–2. With the cylinder in a horizontal position, rotate it around the horizontal axis. The $CO_2$ absorbing material should remain in position during the rotation, and no open spaces or channels should be formed. If necessary, pack more glass wool into the cylinder to make the $CO_2$ absorbing material stable. Clean the outside of the cylinder of loose dirt and moisture and allow the cylinder to reach room temperature. Weigh the cylinder to the nearest 0.1 g, and record this initial weight ($m_{ai}$).



8.1.3 Assemble the train as shown in Figure 6A–1. Adjust the probe heater to a temperature sufficient to prevent condensation (see **Note** in Section 6.1). Place crushed ice and water around the impingers and bubblers. Mount the $CO_2$ absorber outside the water bath in a vertical flow position with the sample gas inlet at the bottom. Flexible tubing (*e.g.*, Tygon) may be used to connect the last $SO_2$ absorbing impinger to the moisture absorber and to connect the moisture absorber to the $CO_2$ absorber. A second, smaller $CO_2$ absorber containing Ascarite II may be added in-line downstream of the primary $CO_2$ absorber as a breakthrough indicator. Ascarite II turns white when $CO_2$ is absorbed.

8.2 Sampling Train Leak-Check Procedure and Sample Collection. Same as Method 6, Sections 8.2 and 8.3, respectively.

8.3 Sample Recovery.

8.3.1 Moisture Measurement. Disconnect the isopropanol bubbler, the $SO_2$ impingers, and the moisture absorber from the sample train. Allow about 10 minutes for them to reach room temperature, clean the outside of loose dirt and moisture, and weigh them simultaneously in the same manner as in Section 8.1. Record this final weight ($m_{wf}$).

8.3.2 Peroxide Solution. Discard the contents of the isopropanol bubbler and pour the contents of the midget impingers into a leak-free polyethylene bottle for shipping. Rinse the two midget impingers and connecting tubes with water, and add the washing to the same storage container.

8.3.3 $CO_2$ Absorber. Allow the $CO_2$ absorber to warm to room temperature (about 10 minutes), clean the outside of loose dirt and moisture, and weigh to the nearest 0.1 g in the same manner as in Section 8.1. Record this final weight ($m_{af}$). Discard used Ascarite II material.

*9.0 Quality Control*

Same as Method 6, Section 9.0.

*10.0 Calibration and Standardization*

Same as Method 6, Section 10.0.

*11.0 Analytical Procedure*

11.1 Sample Analysis. The sample analysis procedure for $SO_2$ is the same as that specified in Method 6, Section 11.0.

11.2 Quality Assurance (QA) Audit Samples. Analysis of QA audit samples is required only when this method is used for compliance determinations. Obtain an audit sample set as directed in Section 7.3.6 of Method 6. Analyze the audit samples, and report the results as directed in Section 11.3 of Method 6. Acceptance criteria for the audit results are the same as those in Method 6.

*12.0 Data Analysis and Calculations*

Same as Method 6, Section 12.0, with the addition of the following:

12.1 Nomenclature.

$C_w$ = Concentration of moisture, percent.

$C_{CO2}$ = Concentration of $CO_2$, dry basis, percent.

$E_{SO2}$ = Emission rate of $SO_2$, ng/J (lb/$10^6$ Btu).

$F_C$ = Carbon F-factor from Method 19 for the fuel burned, dscm/J (dscf/$10^6$ Btu).

$m_{wi}$ = Initial weight of impingers, bubblers, and moisture absorber, g.

$m_{wf}$ = Final weight of impingers, bubblers, and moisture absorber, g.

$m_{ai}$ = Initial weight of $CO_2$ absorber, g.

$m_{af}$ = Final weight of $CO_2$ absorber, g.

$m_{SO2}$ = Mass of $SO_2$ collected, mg.

$V_{CO2(std)}$ = Equivalent volume of $CO_2$ collected at standard conditions, dscm (dscf).

$V_{w(std)}$ = Equivalent volume of moisture collected at standard conditions, scm (scf).

12.2 $CO_2$ Volume Collected, Corrected to Standard Conditions.

$$V_{CO_2(std)} = K_3 \left(m_{af} - m_{ai}\right) \quad \text{Eq. 6A-1}$$

Where:

$K_3$ = Equivalent volume of gaseous $CO_2$ at standard conditions, $5.467 \times 10^{-4}$ dscm/g ($1.930 \times 10^{-2}$ dscf/g).

12.3 Moisture Volume Collected, Corrected to Standard Conditions.

$$V_{w(std)} = K_4 \left(m_{wf} - m_{wi}\right) \quad \text{Eq. 6A-2}$$

Where:

$K_4$ = Equivalent volume of water vapor at standard conditions, $1.336 \times 10^{-3}$ scm/g ($4.717 \times 10^{-2}$ scf/g).

12.4 $SO_2$ Concentration.

$$C_{so_2} = \frac{K_2 N \left(V_t - V_{tb}\right)\left(V_{soln}/V_a\right)}{V_{m(std)} + V_{co_2(std)}} \quad \text{Eq. 6A-3}$$

Where:

$K_2$ = 32.03 mg $SO_2$/meq. $SO_2$ ($7.061 \times 10^{-5}$ lb $SO_2$/meq. $SO_2$)

12.5 $CO_2$ Concentration.

$$C_{co_2} = \frac{V_{co_2(std)}}{V_{m(std)} + V_{co_2(std)}} \quad \text{Eq. 6A-4}$$

12.6 Moisture Concentration.

$$C_w = \frac{V_{w(std)}}{V_{m(std)} + V_{w(std)} + V_{co_2(std)}} \quad \text{Eq. 6A-5}$$

*13.0 Method Performance*

13.1 Range and Precision. The minimum detectable limit and the upper limit for the measurement of $SO_2$ are the same as for Method 6. For a 20-liter sample, this method has a precision of ±0.5 percent $CO_2$ for concentrations between 2.5 and 25 percent $CO_2$ and ±1.0 percent moisture for moisture concentrations greater than 5 percent.

*14.0 Pollution Prevention [Reserved]*

*15.0 Waste Management. [Reserved]*

*16.0 Alternative Methods*

If the only emission measurement desired is in terms of emission rate of $SO_2$ (ng/J or lb/$10^6$ Btu), an abbreviated

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procedure may be used. The differences between the above procedure and the abbreviated procedure are described below.

16.1 Sampling Train. The sampling train is the same as that shown in Figure 6A–1 and as described in Section 6.1, except that the dry gas meter is not needed.

16.2 Preparation of the Sampling Train. Follow the same procedure as in Section 8.1, except do not weigh the isopropanol bubbler, the $SO_2$ absorbing impingers, or the moisture absorber.

16.3 Sampling Train Leak-Check Procedure and Sample Collection. Leak-check and operate the sampling train as described in Section 8.2, except that dry gas meter readings, barometric pressure, and dry gas meter temperatures need not be recorded during sampling.

16.4 Sample Recovery. Follow the procedure in Section 8.3, except do not weigh the isopropanol bubbler, the $SO_2$ absorbing impingers, or the moisture absorber.

16.5 Sample Analysis. Analysis of the peroxide solution and QA audit samples is the same as that described in Sections 11.1 and 11.2, respectively.

16.6 Calculations.

16.6.1 $SO_2$ Collected.

$$m_{SO_2} = K_2 N (V_t - V_{tb})(V_{soln}/V_a) \qquad \text{Eq. 6A-6}$$

Where:

$K_2$ = 32.03 mg $SO_2$/meq. $SO_2$

$K_2 = 7.061 \times 10^{-5}$ lb $SO_2$/meq. $SO_2$

16.6.2 Sulfur Dioxide Emission Rate.

$$E_{SO_2} = K_5 F_c m_{so_2}/(m_{af} - m_{ai}) \qquad \text{Eq. 6A-7}$$

Where:

$K_5 = 1.829 \times 10^9$ mg/dscm

$K_2$ = 0.1142 lb/dscf

*17.0 References*

Same as Method 6, Section 17.0, References 1 through 8, with the addition of the following:

1. Stanley, Jon and P.R. Westlin. An Alternate Method for Stack Gas Moisture Determination. Source Evaluation Society Newsletter. *3*(4). November 1978.

2. Whittle, Richard N. and P.R. Westlin. Air Pollution Test Report: Development and Evaluation of an Intermittent Integrated $SO_2$/$CO_2$ Emission Sampling Procedure. Environmental Protection Agency, Emission Standard and Engineering Division, Emission Measurement Branch. Research Triangle Park, NC. December 1979. 14 pp.

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*18:0 Tables, Diagrams, Flowcharts, and Validation Data*

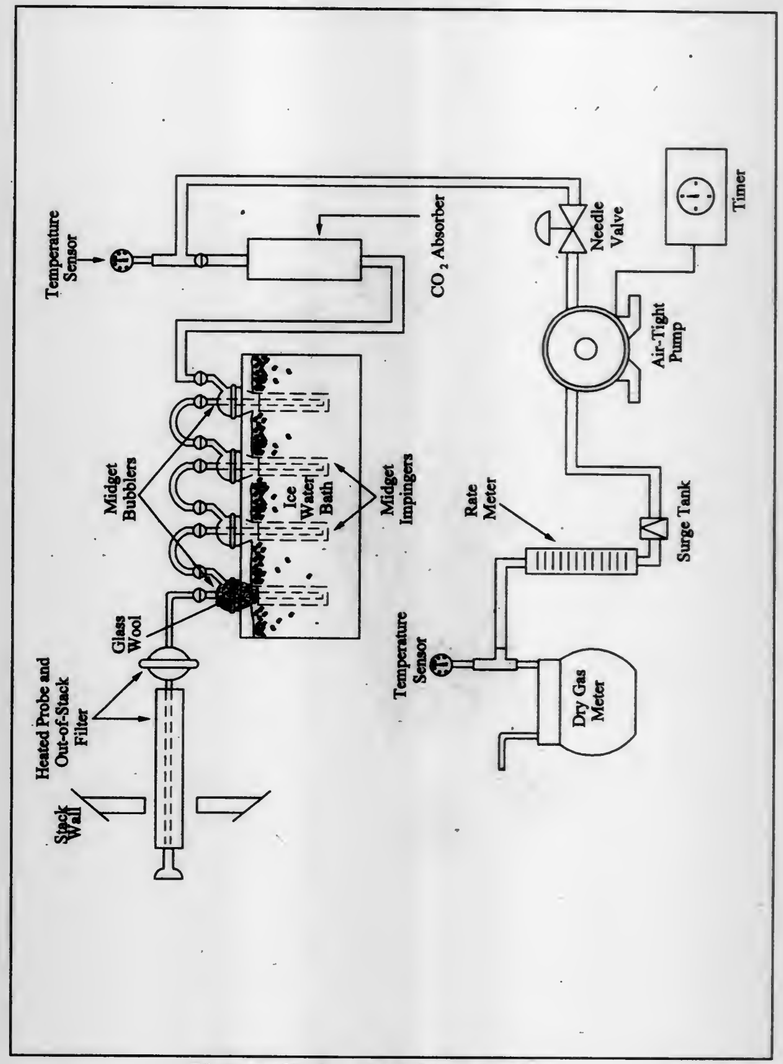



Figure 6A-1. Sampling train.

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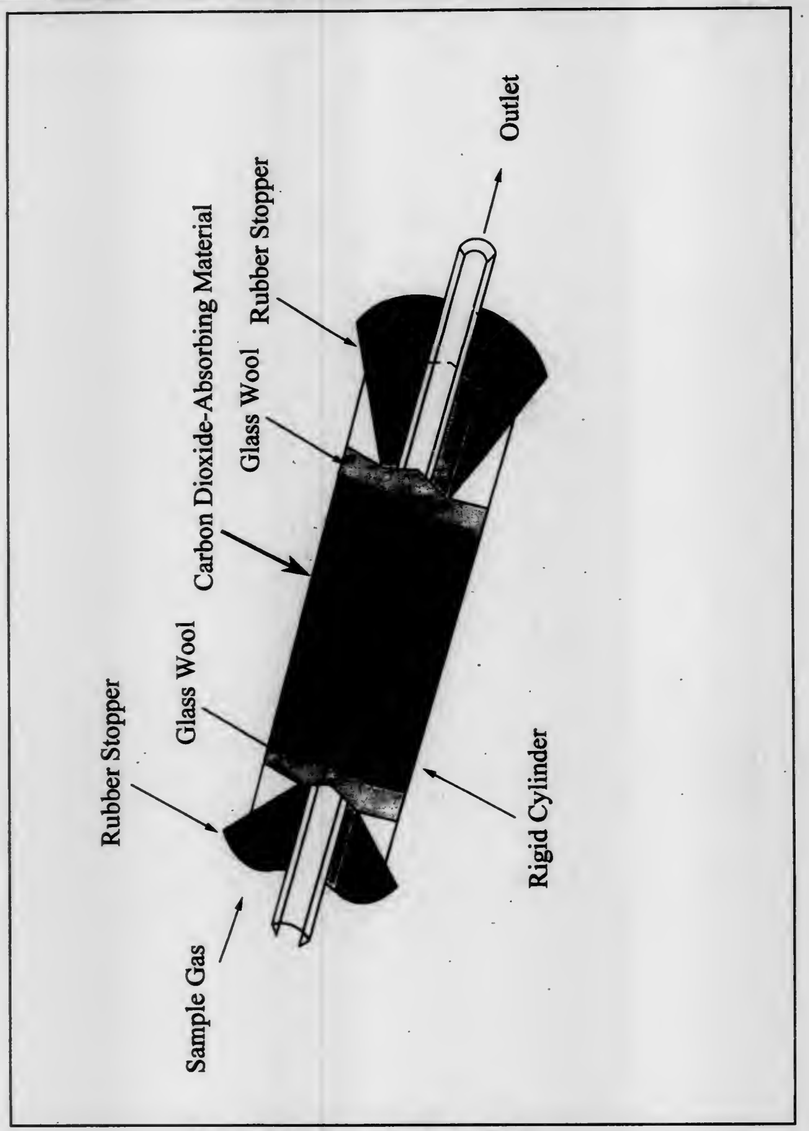



Figure 6A-2. $CO_2$ Absorber

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**Method 6B—Determination of Sulfur Dioxide and Carbon Dioxide Daily Average Emissions From Fossil Fuel Combustion Sources**

**Note:** This method does not include all of the specifications (*e.g.*, equipment and supplies) and procedures (*e.g.*, sampling and analytical) essential to its performance. Some material is incorporated by reference from other methods in this part. Therefore, to obtain reliable results, persons using this method should have a thorough knowledge of at least the following additional test methods: Method 1, Method 2, Method 3, Method 5, Method 6, and Method 6A.

| Analyte | CAS No. | Sensitivity |
|---|---|---|
| Sulfur dioxide ($SO_2$) | 7449–09–05 | 3.4 mg $SO_2/m^3$ ($2.12 \times 10^{-7}$ lb/ft$^3$) |
| Carbon dioxide ($CO_2$) | 124–38–9 | N/A |

*1.0 Scope and Application*

1.1 Analytes.

1.2 Applicability. This method is applicable for the determination of $SO_2$ emissions from combustion sources in terms of concentration (ng/dscm or lb/dscf) and emission rate (ng/J or lb/$10^6$ Btu), and for the determination of $CO_2$ concentration (percent) on a daily (24 hours) basis.

1.3 Data Quality Objectives. Adherence to the requirements of this method will enhance the quality of the data obtained from air pollutant sampling methods.

*2.0 Summary of Method*

2.1 A gas sample is extracted from the sampling point in the stack intermittently over a 24-hour or other specified time period. The $SO_2$ fraction is measured by the barium-thorin titration method. Moisture and $CO_2$ fractions are collected in the same sampling train, and are determined gravimetrically.

*3.0 Definitions. [Reserved]*

*4.0 Interferences*

Same as Method 6, Section 4.0.

*5.0 Safety*

5.1 Disclaimer. This method may involve hazardous materials, operations, and equipment. This test method may not address all of the safety problems associated with its use. It is the responsibility of the user to establish appropriate safety and health practices and determine the applicability of regulatory limitations prior to performing this test method.

5.2 Corrosive Reagents. Same as Method 6, Section 5.2.

*6.0 Equipment and Supplies*

Same as Method 6A, Section 6.0, with the following exceptions and additions:

6.1 The isopropanol bubbler is not used. An empty bubbler for the collection of liquid droplets, that does not allow direct contact between the collected liquid and the gas sample, may be included in the sampling train.

6.2 For intermittent operation, include an industrial timer-switch designed to operate in the "on" position at least 2 minutes continuously and "off" the remaining period over a repeating cycle. The cycle of operation is designated in the applicable regulation. At a minimum, the sampling operation should include at least 12, equal, evenly-spaced periods per 24 hours.

6.3 Stainless steel sampling probes, type 316, are not recommended for use with Method 6B because of potential sample contamination due to corrosion. Glass probes or other types of stainless steel, *e.g.*, Hasteloy or Carpenter 20, are recommended for long-term use.

**Note:** For applications downstream of wet scrubbers, a heated out-of-stack filter (either borosilicate glass wool or glass fiber mat) is necessary. Probe and filter heating systems capable of maintaining a sample gas temperature of between 20 and 120 °C (68 and 248 °F) at the filter are also required in these cases. The electric supply for these heating systems should be continuous and separate from the timed operation of the sample pump.

*7.0 Reagents and Standards*

Same as Method 6A, Section 7.0, with the following exceptions:

7.1 Isopropanol is not used for sampling.

7.2 The hydrogen peroxide absorbing solution shall be diluted to no less than 6 percent by volume, instead of 3 percent as specified in Methods 6 and 6A.

7.3 If the Method 6B sampling train is to be operated in a low sample flow condition (less than 100 ml/min or 0.21 ft$^3$/hr), molecular sieve material may be substituted for Ascarite II as the $CO_2$ absorbing material. The recommended molecular sieve material is Union Carbide 1/16 inch pellets, 5 A°, or equivalent. Molecular sieve material need not be discarded following the sampling run, provided that it is regenerated as per the manufacturer's instruction. Use of molecular sieve material at flow rates higher than 100 ml/min (0.21 ft$^3$/hr) may cause erroneous $CO_2$ results.

*8.0 Sample Collection, Preservation, Transport, and Storage*

8.1 Preparation of Sampling Train. Same as Method 6A, Section 8.1, with the addition of the following:

8.1.1 The sampling train is assembled as shown in Figure 6A–1 of Method 6A, except that the isopropanol bubbler is not included.

8.1.2 Adjust the timer-switch to operate in the "on" position from 2 to 4 minutes on a 2-hour repeating cycle or other cycle specified in the applicable regulation. Other timer sequences may be used with the restriction that the total sample volume collected is between 25 and 60 liters (0.9 and 2.1 ft$^3$) for the amounts of sampling reagents prescribed in this method.

8.1.3 Add cold water to the tank until the impingers and bubblers are covered at least two-thirds of their length. The impingers and bubbler tank must be covered and protected from intense heat and direct sunlight. If freezing conditions exist, the impinger solution and the water bath must be protected.

**Note:** Sampling may be conducted continuously if a low flow-rate sample pump [20 to 40 ml/min (0.04 to 0.08 ft$^3$/hr) for the reagent volumes described in this method] is used. If sampling is continuous, the timer-switch is not necessary. In addition, if the sample pump is designed for constant rate sampling, the rate meter may be deleted. The total gas volume collected should be between 25 and 60 liters (0.9 and 2.1 ft$^3$) for the amounts of sampling reagents prescribed in this method.

8.2 Sampling Train Leak-Check Procedure. Same as Method 6, Section 8.2.

8.3 Sample Collection.

8.3.1 The probe and filter (either in-stack, out-of-stack, or both) must be heated to a temperature sufficient to prevent water condensation.

8.3.2 Record the initial dry gas meter reading. To begin sampling, position the tip of the probe at the sampling point, connect the probe to the first impinger (or filter), and start the timer and the sample pump. Adjust the sample flow to

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a constant rate of approximately 1.0 liter/min (0.035 cfm) as indicated by the rotameter. Observe the operation of the timer, and determine that it is operating as intended (*i.e.*, the timer is in the "on" position for the desired period, and the cycle repeats as required).

8.3.3 One time between 9 a.m. and 11 a.m. during the 24-hour sampling period, record the dry gas meter temperature ($T_m$) and the barometric pressure ($P_{(bar)}$).

8.3.4 At the conclusion of the run, turn off the timer and the sample pump, remove the probe from the stack, and record the final gas meter volume reading. Conduct a leak-check as described in Section 8.2. If a leak is found, void the test run or use procedures acceptable to the Administrator to adjust the sample volume for leakage. Repeat the steps in Sections 8.3.1 to 8.3.4 for successive runs.

8.4 Sample Recovery. The procedures for sample recovery (moisture measurement, peroxide solution, and $CO_2$ absorber) are the same as those in Method 6A, Section 8.3.

*9.0 Quality Control*

Same as Method 6, Section 9.0., with the exception of the isopropanol-check.

*10.0 Calibration and Standardization*

Same as Method 6, Section 10.0, with the addition of the following:

10.1 Periodic Calibration Check. After 30 days of operation of the test train, conduct a calibration check according to the same procedures as the post-test calibration check (Method 6, Section 10.1.2). If the deviation between initial and periodic calibration factors exceeds 5 percent, use the smaller of the two factors in calculations for the preceding 30 days of data, but use the most recent calibration factor for succeeding test runs.

*11.0 Analytical Procedures*

11.1 Sample Loss Check and Analysis. Same as Method 6, Sections 11.1 and 11.2, respectively.

11.2 Quality Assurance (QA) Audit Samples. Analysis of QA audit samples is required only when this method is used for compliance determinations. Obtain an audit sample set as directed in Section 7.3.6 of Method 6. Analyze the audit samples at least once for every 30 days of sample collection, and report the results as directed in Section 11.3 of Method 6. The analyst performing the sample analyses shall perform the audit analyses. If more than one analyst performs the sample analyses during the 30-day sampling period, each analyst shall perform the audit analyses and all audit results shall be reported. Acceptance criteria for the audit results are the same as those in Method 6.

*12.0 Data Analysis and Calculations*

Same as Method 6A, Section 12.0, except that $P_{bar}$ and $T_m$ correspond to the values recorded in Section 8.3.3 of this method. The values are as follows:

$P_{bar}$ = Initial barometric pressure for the test period, mm Hg.

$T_m$ = Absolute meter temperature for the test period, °K.

*13.0 Method Performance*

13.1 Range.

13.1.1 Sulfur Dioxide. Same as Method 6.

13.1.2 Carbon Dioxide. Not determined.

13.2 Repeatability and Reproducibility. EPA-sponsored collaborative studies were undertaken to determine the magnitude of repeatability and reproducibility achievable by qualified testers following the procedures in this method. The results of the studies evolve from 145 field tests including comparisons with Methods 3 and 6. For measurements of emission rates from wet, flue gas desulfurization units in (ng/J), the repeatability (intra-laboratory precision) is 8.0 percent and the reproducibility (inter-laboratory precision) is 11.1 percent.

*14.0 Pollution Prevention. [Reserved]*

*15.0 Waste Management. [Reserved]*

*16.0 Alternative Methods*

Same as Method 6A, Section 16.0, except that the timer is needed and is operated as outlined in this method.

*17.0 References*

Same as Method 6A, Section 17.0, with the addition of the following:

1. Butler, Frank E., et. al. The Collaborative Test of Method 6B: Twenty-Four-Hour Analysis of $SO_2$ and $CO_2$. JAPCA. Vol. 33, No. 10. October 1983.

*18.0 Tables, Diagrams, Flowcharts, and Validation Data. [Reserved]*

* * * * *

## Method 7—Determination of Nitrogen Oxide Emissions From Stationary Sources

**Note:** This method does not include all of the specifications (*e.g.*, equipment and supplies) and procedures (*e.g.*, sampling and analytical) essential to its performance. Some material is incorporated by reference from other methods in this part. Therefore, to obtain reliable results, persons using this method should have a thorough knowledge of at least the following additional test methods: Method 1 and Method 5.

*1.0 Scope and Application*

1.1 Analytes.

| Analyte | CAS No. | Sensitivity |
|---|---|---|
| Nitrogen oxides ($NO_X$), as $NO_2$, including: | | |
| Nitric oxide (NO) | 10102–43–9 | |
| Nitrogen dioxide ($NO_2$) | 10102–44–0 | 2–400 mg/dscm |

1.2 Applicability. This method is applicable for the measurement of nitrogen oxides ($NO_X$) emitted from stationary sources.

1.3 Data Quality Objectives. Adherence to the requirements of this method will enhance the quality of the data obtained from air pollutant sample methods.

*2.0 Summary of Method*

A grab sample is collected in an evacuated flask containing a dilute sulfuric acid-hydrogen peroxide absorbing solution, and the nitrogen oxides, except nitrous oxide, are measured colorimetrically using the phenoldisulfonic acid (PDS) procedure.

*3.0 Definitions. [Reserved]*

*4.0 Interferences*

Biased results have been observed when sampling under conditions of high sulfur dioxide concentrations (above 2000 ppm).

*5.0 Safety*

5.1 Disclaimer. This method may involve hazardous materials, operations, and equipment. This test method may not address all of the safety problems associated with its use. It is the responsibility of the user to establish appropriate safety and health practices and to determine the applicability of regulatory limitations prior to performing this test method.

5.2 Corrosive Reagents. The following reagents are hazardous. Personal protective equipment and safe procedures are useful in preventing chemical splashes. If contact occurs, immediately flush with copious amounts of water for at least 15 minutes. Remove clothing under shower and decontaminate. Treat residual chemical burns as thermal burns.

5.2.1 Hydrogen Peroxide ($H_2O_2$). Irritating to eyes, skin, nose, and lungs.

5.2.2 Phenoldisulfonic Acid. Irritating to eyes and skin.

5.2.3 Sodium Hydroxide (NaOH). Causes severe damage to eyes and skin. Inhalation causes irritation to nose, throat, and lungs. Reacts exothermically with limited amounts of water.

5.2.4 Sulfuric Acid ($H_2SO_4$). Rapidly destructive to body tissue. Will cause third degree burns. Eye damage may result in blindness. Inhalation may be fatal from spasm of the larynx, usually within 30 minutes. May cause lung tissue damage with edema. 1 mg/m$^3$ for 8 hours will cause lung damage or, in higher concentrations, death. Provide ventilation to limit inhalation. Reacts violently with metals and organics.

5.2.5 Phenol. Poisonous and caustic. Do not handle with bare hands as it is absorbed through the skin.

*6.0 Equipment and Supplies*

6.1 Sample Collection. A schematic of the sampling train used in performing this method is shown in Figure 7–1. Other grab sampling systems or equipment, capable of measuring sample volume to within 2.0 percent and collecting a sufficient sample volume to allow analytical reproducibility to within 5 percent, will be considered acceptable alternatives, subject to the approval of the Administrator. The following items are required for sample collection:

6.1.1 Probe. Borosilicate glass tubing, sufficiently heated to prevent water condensation and equipped with an in-stack or heated out-of-stack filter to remove particulate matter (a plug of glass wool is satisfactory for this purpose). Stainless steel or Teflon tubing may also be used for the probe. Heating is not necessary if the probe remains dry during the purging period.

6.1.2 Collection Flask. Two-liter borosilicate, round bottom flask, with short neck and 24/40 standard taper opening, protected against implosion or breakage.

6.1.3 Flask Valve. T-bore stopcock connected to a 24/40 standard taper joint.

6.1.4 Temperature Gauge. Dial-type thermometer, or other temperature gauge, capable of measuring 1 °C (2 °F) intervals from −5 to 50 °C (23 to 122 °F).



6.1.5 Vacuum Line. Tubing capable of withstanding a vacuum of 75 mm (3 in.) Hg absolute pressure, with "T" connection and T-bore stopcock.

6.1.6 Vacuum Gauge. U-tube manometer, 1 meter (39 in.), with 1 mm (0.04 in.) divisions, or other gauge capable of measuring pressure to within 2.5 mm (0.10 in.) Hg.

6.1.7 Pump. Capable of evacuating the collection flask to a pressure equal to or less than 75 mm (3 in.) Hg absolute.

6.1.8 Squeeze Bulb. One-way.

6.1.9 Volumetric Pipette. 25-ml.

6.1.10 Stopcock and Ground Joint Grease. A high-vacuum, high-temperature chlorofluorocarbon grease is required. Halocarbon 25–5S has been found to be effective.

6.1.11 Barometer. Mercury, aneroid, or other barometer capable of measuring atmospheric pressure to within 2.5 mm (0.1 in.) Hg. See **NOTE** in Method 5, Section 6.1.2.

6.2 Sample Recovery. The following items are required for sample recovery:

6.2.1 Graduated Cylinder. 50-ml with 1 ml divisions.

6.2.2 Storage Containers. Leak-free polyethylene bottles.

6.2.3 Wash Bottle. Polyethylene or glass.

6.2.4 Glass Stirring Rod.

6.2.5 Test Paper for Indicating pH. To cover the pH range of 7 to 14.

6.3 Analysis. The following items are required for analysis:

6.3.1 Volumetric Pipettes. Two 1-ml, two 2-ml, one 3-ml, one 4-ml, two 10-ml, and one 25-ml for each sample and standard.

6.3.2 Porcelain Evaporating Dishes. 175- to 250-ml capacity with lip for pouring, one for each sample and each standard. The Coors No. 45006 (shallowform, 195-ml) has been found to be satisfactory. Alternatively, polymethyl pentene beakers (Nalge No. 1203, 150-ml), or glass beakers (150-ml) may be used. When glass beakers are used, etching of the beakers may cause solid matter to be present in the analytical step; the solids should be removed by filtration.

6.3.3 Steam Bath. Low-temperature ovens or thermostatically controlled hot plates kept below 70 °C (160 °F) are acceptable alternatives.

6.3.4 Dropping Pipette or Dropper. Three required.

6.3.5 Polyethylene Policeman. One for each sample and each standard.

6.3.6 Graduated Cylinder. 100-ml with 1-ml divisions.

6.3.7 Volumetric Flasks. 50-ml (one for each sample and each standard), 100-ml (one for each sample and each standard, and one for the working standard $KNO_3$ solution), and 1000-ml (one).

6.3.8 Spectrophotometer. To measure at 410 nm.

6.3.9 Graduated Pipette. 10-ml with 0.1-ml divisions.

6.3.10 Test Paper for Indicating pH. To cover the pH range of 7 to 14.

6.3.11 Analytical Balance. To measure to within 0.1 mg.

*7.0 Reagents and Standards*

Unless otherwise indicated, it is intended that all reagents conform to the specifications established by the Committee on Analytical Reagents of the American Chemical Society, where such specifications are available; otherwise, use the best available grade.

7.1 Sample Collection. The following reagents are required for sampling:

7.1.1 Water. Deionized distilled to conform to ASTM D 1193–77 or 91 Type 3 (incorporated by reference—see § 60.17). The $KMnO_4$ test for oxidizable organic matter may be omitted when high concentrations of organic matter are not expected to be present.

7.1.2 Absorbing Solution. Cautiously add 2.8 ml concentrated $H_2SO_4$ to a 1-liter flask partially filled with water. Mix well, and add 6 ml of 3 percent hydrogen peroxide, freshly prepared from 30 percent hydrogen peroxide solution. Dilute to 1 liter of water and mix well. The absorbing solution should be used within 1 week of its preparation. Do not expose to extreme heat or direct sunlight.

7.2 Sample Recovery. The following reagents are required for sample recovery:

7.2.1 Water. Same as in 7.1.1.

7.2.2 Sodium Hydroxide, 1 N. Dissolve 40 g NaOH in water, and dilute to 1 liter.

7.3 Analysis. The following reagents and standards are required for analysis:

7.3.1 Water. Same as in 7.1.1.

7.3.2 Fuming Sulfuric Acid. 15 to 18 percent by weight free sulfur trioxide. HANDLE WITH CAUTION.

7.3.3 Phenol. White solid.

7.3.4 Sulfuric Acid. Concentrated, 95 percent minimum assay.

7.3.5 Potassium Nitrate ($KNO_3$). Dried at 105 to 110 °C (221 to 230 °F) for a minimum of 2 hours just prior to preparation of standard solution.

7.3.6 Standard $KNO_3$ Solution. Dissolve exactly 2.198 g of dried $KNO_3$ in water, and dilute to 1 liter with water in a 1000-ml volumetric flask.

7.3.7 Working Standard $KNO_3$ Solution. Dilute 10 ml of the standard solution to 100 ml with water. One ml of the working standard solution is equivalent to 100 µg nitrogen dioxide ($NO_2$).

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7.3.8 Phenoldisulfonic Acid Solution. Dissolve 25 g of pure white phenol solid in 150 ml concentrated sulfuric acid on a steam bath. Cool, add 75 ml fuming sulfuric acid (15 to 18 percent by weight free sulfur trioxide—HANDLE WITH CAUTION), and heat at 100 °C (212 °F) for 2 hours. Store in a dark, stoppered bottle.

7.3.9 Concentrated Ammonium Hydroxide.

7.3.10 Quality Assurance Audit Samples. When making compliance determinations, and upon availability, audit samples may be obtained from the appropriate EPA Regional Office or from the responsible enforcement authority.

**Note:** The responsible enforcement authority should be notified at least 30 days prior to the test date to allow sufficient time for sample delivery.

*8.0 Sample Collection, Preservation, Storage and Transport*

8.1 Sample Collection.

8.1.1 Flask Volume. The volume of the collection flask and flask valve combination must be known prior to sampling. Assemble the flask and flask valve, and fill with water to the stopcock. Measure the volume of water to ±10 ml. Record this volume on the flask.

8.1.2 Pipette 25 ml of absorbing solution into a sample flask, retaining a sufficient quantity for use in preparing the calibration standards. Insert the flask valve stopper into the flask with the valve in the "purge" position. Assemble the sampling train as shown in Figure 7–1, and place the probe at the sampling point. Make sure that all fittings are tight and leak-free, and that all ground glass joints have been greased properly with a high-vacuum, high temperature chlorofluorocarbon-based stopcock grease. Turn the flask valve and the pump valve to their "evacuate" positions. Evacuate the flask to 75 mm (3 in.) Hg absolute pressure, or less. Evacuation to a pressure approaching the vapor pressure of water at the existing temperature is desirable. Turn the pump valve to its "vent" position, and turn off the pump. Check for leakage by observing the manometer for any pressure fluctuation. (Any variation greater than 10 mm (0.4 in.) Hg over a period of 1 minute is not acceptable, and the flask is not to be used until the leakage problem is corrected. Pressure in the flask is not to exceed 75 mm (3 in.) Hg absolute at the time sampling is commenced.) Record the volume of the flask and valve ($V_f$), the flask temperature ($T_i$), and the barometric pressure. Turn the flask valve counterclockwise to its "purge" position, and do the same with the pump valve. Purge the probe and the vacuum tube using the squeeze bulb. If condensation occurs in the probe and the flask valve area, heat the probe, and purge until the condensation disappears. Next, turn the pump valve to its "vent" position. Turn the flask valve clockwise to its "evacuate" position, and record the difference in the mercury levels in the manometer. The absolute internal pressure in the flask ($P_i$) is equal to the barometric pressure less the manometer reading. Immediately turn the flask valve to the "sample" position, and permit the gas to enter the flask until pressures in the flask and sample line (*i.e.*, duct, stack) are equal. This will usually require about 15 seconds; a longer period indicates a plug in the probe, which must be corrected before sampling is continued. After collecting the sample, turn the flask valve to its "purge" position, and disconnect the flask from the sampling train.

8.1.3 Shake the flask for at least 5 minutes.

8.1.4 If the gas being sampled contains insufficient oxygen for the conversion of NO to $NO_2$ (*e.g.*, an applicable subpart of the standards may require taking a sample of a calibration gas mixture of NO in $N_2$), then introduce oxygen into the flask to permit this conversion. Oxygen may be introduced into the flask by one of three methods: (1) Before evacuating the sampling flask, flush with pure cylinder oxygen, then evacuate flask to 75 mm (3 in.) Hg absolute pressure or less; or (2) inject oxygen into the flask after sampling; or (3) terminate sampling with a minimum of 50 mm (2 in.) Hg vacuum remaining in the flask, record this final pressure, and then vent the flask to the atmosphere until the flask pressure is almost equal to atmospheric pressure.

8.2 Sample Recovery. Let the flask sit for a minimum of 16 hours, and then shake the contents for 2 minutes.

8.2.1 Connect the flask to a mercury filled U-tube manometer. Open the valve from the flask to the manometer, and record the flask temperature ($T_f$), the barometric pressure, and the difference between the mercury levels in the manometer. The absolute internal pressure in the flask ($P_f$) is the barometric pressure less the manometer reading. Transfer the contents of the flask to a leak-free polyethylene bottle. Rinse the flask twice with 5 ml portions of water, and add the rinse water to the bottle. Adjust the pH to between 9 and 12 by adding 1 N NaOH, dropwise (about 25 to 35 drops). Check the pH by dipping a stirring rod into the solution and then touching the rod to the pH test paper. Remove as little material as possible during this step. Mark the height of the liquid level so that the container can be checked for leakage after transport. Label the container to identify clearly its contents. Seal the container for shipping.

*9.0 Quality Control*

| Section | Quality control measure | Effect |
|---|---|---|
| 10.1 | Spectrophotometer calibration | Ensure linearity of spectrophotometer response to standards. |
| 11.4 | Audit sample analysis | Evaluate analytical technique, preparation of standards. |

*10.0 Calibration and Standardization*

10.1 Spectrophotometer.

10.1.1 Optimum Wavelength Determination.

10.1.1.1 Calibrate the wavelength scale of the spectrophotometer every 6 months. The calibration may be accomplished by using an energy source with an intense line emission such as a mercury lamp, or by using a series of glass filters spanning the measuring range of the spectrophotometer. Calibration materials are available commercially and from the National Institute of Standards and Technology. Specific details on the use of such materials should be supplied by the vendor; general information about calibration techniques can be obtained from general reference books on analytical chemistry. The wavelength scale of the spectrophotometer must read correctly within 5 nm at all calibration points; otherwise, repair and recalibrate the spectrophotometer. Once the wavelength scale of the spectrophotometer is in proper calibration, use 410 nm as the optimum wavelength for the measurement of the absorbance of the standards and samples.

10.1.1.2 Alternatively, a scanning procedure may be employed to determine the proper measuring wavelength. If the instrument is a double-beam spectrophotometer, scan the spectrum between 400 and 415 nm using a 200 µg $NO_2$ standard solution in the sample cell and a blank solution in the reference cell. If a peak does not occur, the spectrophotometer is probably malfunctioning and should be repaired. When a peak is obtained within the 400 to 415 nm range, the wavelength at which this peak occurs shall be the optimum wavelength for the measurement of absorbance of both the standards and the samples. For a single-beam spectrophotometer, follow the scanning procedure described above, except scan separately the blank and standard solutions. The optimum wavelength shall be the wavelength at which the maximum difference in absorbance between the standard and the blank occurs.



10.1.2 Determination of Spectrophotometer Calibration Factor $K_c$. Add 0 ml, 2.0 ml, 4.0 ml, 6.0 ml, and 8.0 ml of the $KNO_3$ working standard solution (1 ml = 100 µg $NO_2$) to a series of five 50-ml volumetric flasks. To each flask, add 25 ml of absorbing solution and 10 ml water. Add 1 N NaOH to each flask until the pH is between 9 and 12 (about 25 to 35 drops). Dilute to the mark with water. Mix thoroughly, and pipette a 25-ml aliquot of each solution into a separate porcelain evaporating dish. Beginning with the evaporation step, follow the analysis procedure of Section 11.2 until the solution has been transferred to the 100-ml volumetric flask and diluted to the mark. Measure the absorbance of each solution at the optimum wavelength as determined in Section 10.2.1. This calibration procedure must be repeated on each day that samples are analyzed. Calculate the spectrophotometer calibration factor as shown in Section 12.2.

10.1.3 Spectrophotometer Calibration Quality Control. Multiply the absorbance value obtained for each standard by the $K_c$ factor (reciprocal of the least squares slope) to determine the distance each calibration point lies from the theoretical calibration line. The difference between the calculated concentration values and the actual concentrations (*i.e.*, 100, 200, 300, and 400 µg $NO_2$) should be less than 7 percent for all standards.

10.2 Barometer. Calibrate against a mercury barometer.

10.3 Temperature Gauge. Calibrate dial thermometers against mercury-in-glass thermometers.

10.4 Vacuum Gauge. Calibrate mechanical gauges, if used, against a mercury manometer such as that specified in Section 6.1.6.

10.5 Analytical Balance. Calibrate against standard weights.

*11.0 Analytical Procedures*

11.1 Sample Loss Check. Note the level of the liquid in the container, and confirm whether any sample was lost during shipment. Note this on the analytical data sheet. If a noticeable amount of leakage has occurred, either void the sample or use methods, subject to the approval of the Administrator, to correct the final results.

11.2 Sample Preparation. Immediately prior to analysis, transfer the contents of the shipping container to a 50 ml volumetric flask, and rinse the container twice with 5 ml portions of water. Add the rinse water to the flask, and dilute to mark with water; mix thoroughly. Pipette a 25-ml aliquot into the porcelain evaporating dish. Return any unused portion of the sample to the polyethylene storage bottle. Evaporate the 25-ml aliquot to dryness on a steam bath, and allow to cool. Add 2 ml phenoldisulfonic acid solution to the dried residue, and triturate thoroughly with a polyethylene policeman. Make sure the solution contacts all the residue. Add 1 ml water and 4 drops of concentrated sulfuric acid. Heat the solution on a steam bath for 3 minutes with occasional stirring. Allow the solution to cool, add 20 ml water, mix well by stirring, and add concentrated ammonium hydroxide, dropwise, with constant stirring, until the pH is 10 (as determined by pH paper). If the sample contains solids, these must be removed by filtration (centrifugation is an acceptable alternative, subject to the approval of the Administrator) as follows: Filter through Whatman No. 41 filter paper into a 100-ml volumetric flask. Rinse the evaporating dish with three 5-ml portions of water. Filter these three rinses. Wash the filter with at least three 15-ml portions of water. Add the filter washings to the contents of the volumetric flask, and dilute to the mark with water. If solids are absent, the solution can be transferred directly to the 100-ml volumetric flask and diluted to the mark with water.

11.3 Sample Analysis. Mix the contents of the flask thoroughly, and measure the absorbance at the optimum wavelength used for the standards (Section 10.2.1), using the blank solution as a zero reference. Dilute the sample and the blank with equal volumes of water if the absorbance exceeds $A_4$, the absorbance of the 400-µg $NO_2$ standard (see Section 10.2.2).

11.4 Audit Sample Analysis.

11.4.1 When the method is used to analyze samples to demonstrate compliance with a source emission regulation, an audit sample must be analyzed, subject to availability.

11.4.2 Concurrently analyze the audit sample and the compliance samples in the same manner to evaluate the technique of the analyst and the standards preparation.

11.4.3 The same analyst, analytical reagents, and analytical system must be used for the compliance samples and the audit sample. If this condition is met, duplicate auditing of subsequent compliance analyses for the same enforcement agency within a 30-day period is waived. An audit sample set may not be used to validate different sets of compliance samples under the jurisdiction of separate enforcement agencies, unless prior arrangements have been made with both enforcement agencies.

11.5 Audit Sample Results.

11.5.1 Calculate the audit sample concentrations and submit results using the instructions provided with the audit samples.

11.5.2 Report the results of the audit samples and the compliance determination samples along with their identification numbers, and the analyst's name to the responsible enforcement authority. Include this information with reports of any subsequent compliance analyses for the same enforcement authority during the 30-day period.

11.5.3 The concentrations of the audit samples obtained by the analyst must agree within 5 percent of the actual concentration. If the 5 percent specification is not met, reanalyze the compliance and audit samples, and include initial and reanalysis values in the test report.

11.5.4 Failure to meet the 5-percent specification may require retests until the audit problems are resolved. However, if the audit results do not affect the compliance or noncompliance status of the affected facility, the Administrator may waive the reanalysis requirement, further audits, or retests and accept the results of the compliance test. While steps are being taken to resolve audit analysis problems, the Administrator may also choose to use the data to determine the compliance or noncompliance status of the affected facility.

*12.0 Data Analysis and Calculations*

Carry out the calculations, retaining at least one extra significant figure beyond that of the acquired data. Round off figures after final calculations.

12.1 Nomenclature.

A = Absorbance of sample.

$A_1$ = Absorbance of the 100-µg $NO_2$ standard.

$A_2$ = Absorbance of the 200-µg $NO_2$ standard.

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$A_3$ = Absorbance of the 300-µg $NO_2$ standard.
$A_4$ = Absorbance of the 400-µg $NO_2$ standard.
C = Concentration of $NO_X$ as $NO_2$, dry basis, corrected to standard conditions, mg/dsm³ (lb/dscf).
$C_d$ = Determined audit sample concentration, mg/dscm.
$C_a$ = Actual audit sample concentration, mg/dscm.
F = Dilution factor (*i.e.*, 25/5, 25/10, etc., required only if sample dilution was needed to reduce the absorbance into the range of the calibration).
$K_c$ = Spectrophotometer calibration factor.
m = Mass of $NO_X$ as $NO_2$ in gas sample, µg.
$P_f$ = Final absolute pressure of flask, mm Hg (in. Hg).
$P_i$ = Initial absolute pressure of flask, mm Hg (in. Hg).
$P_{std}$ = Standard absolute pressure, 760 mm Hg (29.92 in. Hg).
RE = Relative error for QA audit samples, percent.
$T_f$ = Final absolute temperature of flask, °K (°R).
$T_i$ = Initial absolute temperature of flask, °K (°R).
$T_{std}$ = Standard absolute temperature, 293 °K (528 °R).
$V_{sc}$ = Sample volume at standard conditions (dry basis), ml.
$V_f$ = Volume of flask and valve, ml.
$V_a$ = Volume of absorbing solution, 25 ml.

$$K_c = 100\frac{A_1 + 2A_2 + 3A_3 + 4A_4}{A_1^2 + A_2^2 + A_3^2 + A_4^2} \quad \text{Eq. 7-1}$$

12.3 Sample Volume, Dry Basis, Corrected to Standard Conditions.

$$V_{sc} = (V_f - V_a)\frac{T_{std}}{P_{std}}\left[\frac{P_f}{T_f} - \frac{P_i}{T_i}\right] \quad \text{Eq. 7-2}$$

$$= K_1(V_f - 25)\left[\frac{P_f}{T_f} - \frac{P_i}{T_i}\right]$$

Where:
$K_1$ = 0.3858 °K/mm Hg for metric units,
$K_i$ = 17.65 °R/in. Hg for English units.

12.4 Total µg $NO_2$ per sample.

$$m = 2K_cAF \quad \text{Eq. 7-3}$$

Where:
2 = 50/25, the aliquot factor.

**Note:** If other than a 25-ml aliquot is used for analysis, the factor 2 must be replaced by a corresponding factor.

12.5 Sample Concentration, Dry Basis, Corrected to Standard Conditions.

$$C = K_2(m/V_{sc}) \quad \text{Eq. 7-4}$$

Where:
K2 = $10^3$ (mg/m³)/(µg/ml) for metric units,
$K_2 = 6.242 \times 10^{-5}$ (lb/scf)/(µg/ml) for English units.

12.6 Relative Error for QA Audit Samples.

$$RE = 100(C_d - C_a)/C_a \quad \text{Eq. 7-5}$$

*13.0 Method Performance*

13.1 Range. The analytical range of the method has been determined to be 2 to 400 milligrams $NO_X$ (as $NO_2$) per dry standard cubic meter, without having to dilute the sample.

*14.0 Pollution Prevention. [Reserved]*

*15.0 Waste Management. [Reserved]*

*16.0 References*

1. Standard Methods of Chemical Analysis. 6th ed. New York, D. Van Nostrand Co., Inc. 1962. Vol. 1, pp. 329–330.
2. Standard Method of Test for Oxides of Nitrogen in Gaseous Combustion Products (Phenoldisulfonic Acid Procedure). In: 1968 Book of ASTM Standards, Part 26. Philadelphia, PA. 1968. ASTM Designation D 1608–60, pp. 725–729.
3. Jacob, M.B. The Chemical Analysis of Air Pollutants. New York. Interscience Publishers, Inc. 1960. Vol. 10, pp. 351–356.
4. Beatty, R.L., L.B. Berger, and H.H. Schrenk. Determination of Oxides of Nitrogen by the Phenoldisulfonic Acid Method. Bureau of Mines, U.S. Dept. of Interior. R.I. 3687. February 1943.
5. Hamil, H.F. and D.E. Camann. Collaborative Study of Method for the Determination of Nitrogen Oxide Emissions from Stationary Sources (Fossil Fuel-Fired Steam Generators). Southwest Research Institute Report for Environmental Protection Agency. Research Triangle Park, NC. October 5, 1973.
6. Hamil, H.F. and R.E. Thomas. Collaborative Study of Method for the Determination of Nitrogen Oxide Emissions from Stationary Sources (Nitric Acid Plants). Southwest Research Institute Report for Environmental Protection Agency. Research Triangle Park, NC. May 8, 1974.
7. Stack Sampling Safety Manual (Draft). U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, NC. September 1978.

BILLING CODE 6560–50–P



*17.0 Tables, Diagrams, Flowcharts, and Validation Data*

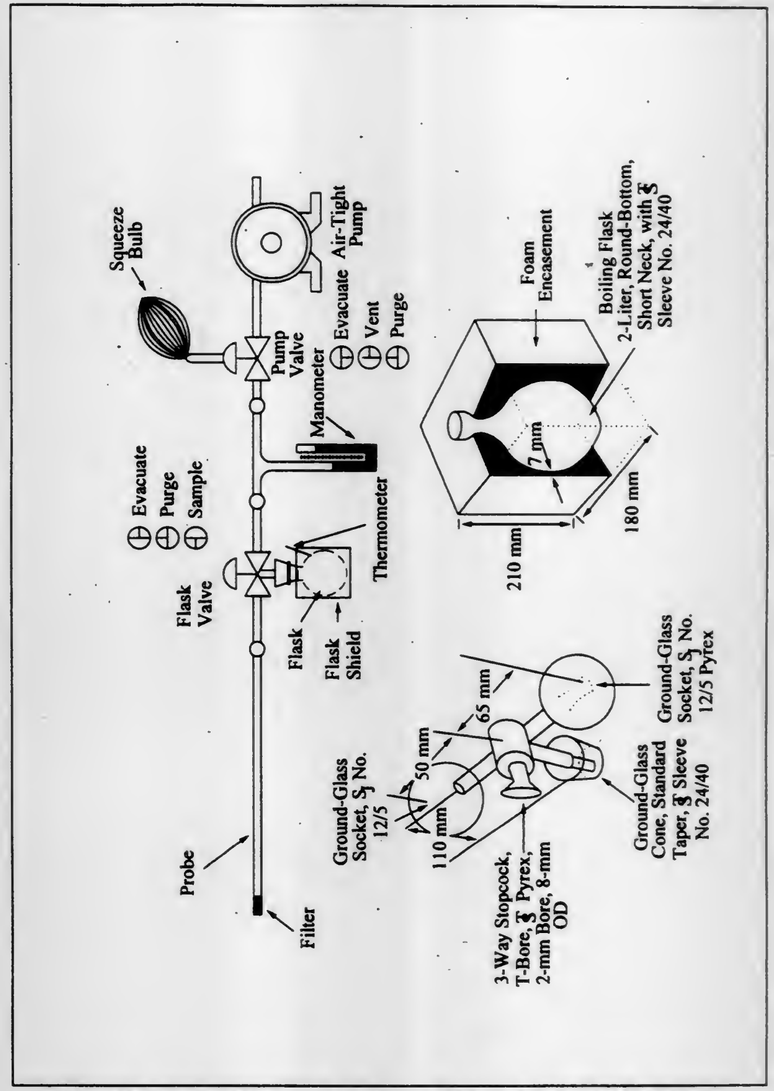



Figure 7-1. Sampling Train, Flask Valve, and Flask.

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**Method 7A—Determination of Nitrogen Oxide Emissions From Stationary Sources (Ion Chromatographic Method)**

**Note:** This method does not include all of the specifications (*e.g.*, equipment and supplies) and procedures (*e.g.*, sampling and analytical) essential to its performance. Some material is incorporated by reference from other methods in this part. Therefore, to obtain reliable results, persons using this method should have a thorough knowledge of at least the following additional test methods: Method 1, Method 3, Method 5, and Method 7.

*1.0 Scope and Application*

1.1 Analytes.

| Analyte | CAS No. | Sensitivity |
|---|---|---|
| Nitrogen oxides ($NO_X$), as $NO_2$, including: | | |
| Nitric oxide (NO) | 10102–43–9 | |
| Nitrogen dioxide ($NO_2$) | 10102–44–0 | 65–655 ppmv |

1.2 Applicability. This method is applicable for the determination of $NO_X$ emissions from stationary sources.

1.3 Data Quality Objectives. Adherence to the requirements of this method will enhance the quality of the data obtained from air pollutant sampling methods.

*2.0 Summary of Method*

A grab sample is collected in an evacuated flask containing a dilute sulfuric acid-hydrogen peroxide absorbing solution. The nitrogen oxides, excluding nitrous oxide ($N_2O$), are oxidized to nitrate and measured by ion chromatography.

*3.0 Definitions [Reserved]*

*4.0 Interferences*

Biased results have been observed when sampling under conditions of high sulfur dioxide concentrations (above 2000 ppm).

*5.0 Safety*

5.1 This method may involve hazardous materials, operations, and equipment. This test method may not address all of the safety problems associated with its use. It is the responsibility of the user of this test method to establish appropriate safety and health practices and to determine the applicability of regulatory limitations prior to performing this test method.

5.2 Corrosive reagents. The following reagents are hazardous. Personal protective equipment and safe procedures are useful in preventing chemical splashes. If contact occurs, immediately flush with copious amounts of water at least 15 minutes. Remove clothing under shower and decontaminate. Treat residual chemical burns as thermal burns.

5.2.1 Hydrogen Peroxide ($H_2O_2$). Irritating to eyes, skin, nose, and lungs.

5.2.2 Sulfuric Acid ($H_2SO_4$). Rapidly destructive to body tissue. Will cause third degree burns. Eye damage may result in blindness. Inhalation may be fatal from spasm of the larynx, usually within 30 minutes. May cause lung tissue damage with edema. 3 mg/m³ will cause lung damage in uninitiated. 1 mg/m³ for 8 hours will cause lung damage or, in higher concentrations, death. Provide ventilation to limit inhalation. Reacts violently with metals and organics.

*6.0 Equipment and Supplies*

6.1 Sample Collection. Same as in Method 7, Section 6.1.

6.2 Sample Recovery. Same as in Method 7, Section 6.2, except the stirring rod and pH paper are not needed.

6.3 Analysis. For the analysis, the following equipment and supplies are required. Alternative instrumentation and procedures will be allowed provided the calibration precision requirement in Section 10.1.2 and audit accuracy requirement in Section 11.3 can be met.

6.3.1 Volumetric Pipets. Class A; 1-, 2-, 4-, 5-ml (two for the set of standards and one per sample), 6-, 10-, and graduated 5-ml sizes.

6.3.2 Volumetric Flasks. 50-ml (two per sample and one per standard), 200-ml, and 1-liter sizes.

6.3.3 Analytical Balance. To measure to within 0.1 mg.

6.3.4 Ion Chromatograph. The ion chromatograph should have at least the following components:

6.3.4.1 Columns. An anion separation or other column capable of resolving the nitrate ion from sulfate and other species present and a standard anion suppressor column (optional). Suppressor columns are produced as proprietary items; however, one can be produced in the laboratory using the resin available from BioRad Company, 32nd and Griffin Streets, Richmond, California. Peak resolution can be optimized by varying the eluent strength or column flow rate, or by experimenting with alternative columns that may offer more efficient separation. When using guard columns with the stronger reagent to protect the separation column, the analyst should allow rest periods between injection intervals to purge possible sulfate buildup in the guard column.

6.3.4.2 Pump. Capable of maintaining a steady flow as required by the system.

6.3.4.3 Flow Gauges. Capable of measuring the specified system flow rate.

6.3.4.4 Conductivity Detector.

6.3.4.5 Recorder. Compatible with the output voltage range of the detector.

*7.0 Reagents and Standards*

Unless otherwise indicated, it is intended that all reagents conform to the specifications established by the Committee on Analytical Reagents of the American Chemical Society, where such specifications are available; otherwise, use the best available grade.

7.1 Sample Collection. Same as Method 7, Section 7.1.

7.2 Sample Recovery. Same as Method 7, Section 7.1.1.

7.3 Analysis. The following reagents and standards are required for analysis:

7.3.1 Water. Same as Method 7, Section 7.1.1.

7.3.2 Stock Standard Solution, 1 mg $NO_2$/ml. Dry an adequate amount of sodium nitrate ($NaNO_3$) at 105 to 110 °C (221 to 230 °F) for a minimum of 2 hours just before preparing the standard solution. Then dissolve exactly 1.847 g of dried $NaNO_3$ in water, and dilute to 1 liter in a volumetric flask. Mix well. This solution is stable for 1 month and should not be used beyond this time.

7.3.3 Working Standard Solution, 25 µg/ml. Dilute 5 ml of the standard solution to 200 ml with water in a volumetric flask, and mix well.

7.3.4 Eluent Solution. Weigh 1.018 g of sodium carbonate ($Na_2CO_3$) and 1.008 g of sodium bicarbonate ($NaHCO_3$), and dissolve in 4 liters of water. This solution is 0.0024 M $Na_2CO_3$/0.003 M $NaHCO_3$. Other eluents appropriate to the column type and capable of resolving nitrate ion from sulfate and other species present may be used.

7.3.5 Quality Assurance Audit Samples. Same as Method 7, Section 7.3.8.



*8.0 Sample Collection, Preservation, Storage, and Transport*

8.1 Sampling. Same as in Method 7, Section 8.1.

8.2 Sample Recovery. Same as in Method 7, Section 8.2, except delete the steps on adjusting and checking the pH of the sample. Do not store the samples more than 4 days between collection and analysis.

*9.0 Quality Control*

| Section | Quality control measure | Effect |
|---|---|---|
| 10.1 | Ion chromatograph calibration | Ensure linearity of ion chromatograph response to standards. |
| 11.3 | Audit sample analysis | Evaluate analytical technique, preparation of standards. |

*10.0 Calibration and Standardizations*

10.1 Ion Chromatograph.

10.1.1 Determination of Ion Chromatograph Calibration Factor S. Prepare a series of five standards by adding 1.0, 2.0, 4.0, 6.0, and 10.0 ml of working standard solution (25 µg/ml) to a series of five 50-ml volumetric flasks. (The standard masses will equal 25, 50, 100, 150, and 250 µg.) Dilute each flask to the mark with water, and mix well. Analyze with the samples as described in Section 11.2, and subtract the blank from each value. Prepare or calculate a linear regression plot of the standard masses in µg (x-axis) versus their peak height responses in millimeters (y-axis). (Take peak height measurements with symmetrical peaks; in all other cases, calculate peak areas.) From this curve, or equation, determine the slope, and calculate its reciprocal to denote as the calibration factor, S.

10.1.2 Ion Chromatograph Calibration Quality Control. If any point on the calibration curve deviates from the line by more than 7 percent of the concentration at that point, remake and reanalyze that standard. This deviation can be determined by multiplying S times the peak height response for each standard. The resultant concentrations must not differ by more than 7 percent from each known standard mass (*i.e.*, 25, 50, 100, 150, and 250 µg).

10.2 Conductivity Detector. Calibrate according to manufacturer's specifications prior to initial use.

10.3 Barometer. Calibrate against a mercury barometer.

10.4 Temperature Gauge. Calibrate dial thermometers against mercury-in-glass thermometers.

10.5 Vacuum Gauge. Calibrate mechanical gauges, if used, against a mercury manometer such as that specified in Section 6.1.6 of Method 7.

10.6 Analytical Balance. Calibrate against standard weights.

*11.0 Analytical Procedures*

11.1 Sample Preparation.

11.1.1 Note on the analytical data sheet, the level of the liquid in the container, and whether any sample was lost during shipment. If a noticeable amount of leakage has occurred, either void the sample or use methods, subject to the approval of the Administrator, to correct the final results. Immediately before analysis, transfer the contents of the shipping container to a 50-ml volumetric flask, and rinse the container twice with 5 ml portions of water. Add the rinse water to the flask, and dilute to the mark with water. Mix thoroughly.

11.1.2 Pipet a 5-ml aliquot of the sample into a 50-ml volumetric flask, and dilute to the mark with water. Mix thoroughly. For each set of determinations, prepare a reagent blank by diluting 5 ml of absorbing solution to 50 ml with water. (Alternatively, eluent solution may be used instead of water in all sample, standard, and blank dilutions.)

11.2 Analysis.

11.2.1 Prepare a standard calibration curve according to Section 10.1.1. Analyze the set of standards followed by the set of samples using the same injection volume for both standards and samples. Repeat this analysis sequence followed by a final analysis of the standard set. Average the results. The two sample values must agree within 5 percent of their mean for the analysis to be valid. Perform this duplicate analysis sequence on the same day. Dilute any sample and the blank with equal volumes of water if the concentration exceeds that of the highest standard.

11.2.2 Document each sample chromatogram by listing the following analytical parameters: injection point, injection volume, nitrate and sulfate retention times, flow rate, detector sensitivity setting, and recorder chart speed.

11.3 Audit Sample Analysis. Same as Method 7, Section 11.4.

*12.0 Data Analysis and Calculations*

Carry out the calculations, retaining at least one extra significant figure beyond that of the acquired data. Round off figures after final calculations.

12.1 Sample Volume. Calculate the sample volume Vsc (in ml), on a dry basis, corrected to standard conditions, using Equation 7–2 of Method 7.

12.2 Sample Concentration of $NO_X$ as $NO_2$.

12.2.1 Calculate the sample concentration C (in mg/dscm) as follows:

$$C = (H)(S)(F)\left(10^4\right)/V_{sc} \qquad \text{Eq. 7A-1}$$

Where:

H = Sample peak height, mm.

S = Calibration factor, µg/mm.

F = Dilution factor (required only if sample dilution was needed to reduce the concentration into the range of calibration), dimensionless.

$10^4$ = 1:10 dilution times conversion factor of: (mg/$10^3$ µg)($10^6$ ml/m³).

12.2.2 If desired, the concentration of $NO_2$ may be calculated as ppm $NO_2$ at standard conditions as follows:

$$\text{ppm } NO_2 = 0.5228C \qquad \text{Eq. 7A-2}$$

Where:

0.5228 = ml/mg $NO_2$.

*13.0 Method Performance*

13.1 Range. The analytical range of the method is from 125 to 1250 mg $NO_X$/m³ as $NO_2$ (65 to 655 ppmv), and higher concentrations may be analyzed by diluting the sample. The lower detection limit is approximately 19 mg/m³ (10 ppmv), but may vary among instruments.

*14.0 Pollution Prevention. [Reserved]*

*15.0 Waste Management. [Reserved]*

*16.0 References*

1. Mulik, J.D., and E. Sawicki. Ion Chromatographic Analysis of Environmental Pollutants. Ann Arbor, Ann Arbor Science Publishers, Inc. Vol. 2, 1979.

2. Sawicki, E., J.D. Mulik, and E. Wittgenstein. Ion Chromatographic Analysis of Environmental Pollutants. Ann Arbor, Ann Arbor Science Publishers, Inc. Vol. 1. 1978.

3. Siemer, D.D. Separation of Chloride and Bromide from Complex Matrices Prior to Ion Chromatographic Determination. Anal. Chem. *52*(12):1874–1877. October 1980.

4. Small, H., T.S. Stevens, and W.C. Bauman. Novel Ion Exchange Chromatographic Method Using Conductimetric Determination. Anal. Chem. *47*(11):1801. 1975.

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5. Yu, K.K., and P.R. Westlin. Evaluation of Reference Method 7 Flask Reaction Time. Source Evaluation Society Newsletter. 4(4). November 1979. 10 pp.

6. Stack Sampling Safety Manual (Draft). U.S. Environmental Protection Agency, Office of Air Quality Planning and Standard, Research Triangle Park, NC. September 1978.

*17.0 Tables, Diagrams, Flowcharts, and Validation Data. [Reserved]*

## Method 7B—Determination of Nitrogen Oxide Emissions From Stationary Sources (Ultraviolet Spectrophotometric Method)

**Note:** This method does not include all of the specifications (*e.g.*, equipment and supplies) and procedures (*e.g.*, sampling and analytical) essential to its performance. Some material is incorporated by reference from other methods in this part. Therefore, to obtain reliable results, persons using this method should have a thorough knowledge of at least the following additional test methods: Method 1, Method 5, and Method 7.

*1.0 Scope and Application*

1.1 Analytes.

| Analyte | CAS No. | Sensitivity |
|---|---|---|
| Nitrogen oxides ($NO_X$), as $NO_2$, including: | | |
| Nitric oxide (NO) | 10102–43–9 | |
| Nitrogen dioxide ($NO_2$) | 10102–44–0 | 30–786 ppmv |

1.2 Applicability. This method is applicable for the determination of $NO_X$ emissions from nitric acid plants.

1.3 Data Quality Objectives. Adherence to the requirements of this method will enhance the quality of the data obtained from air pollutant sampling methods.

*2.0 Summary of Method*

2.1 A grab sample is collected in an evacuated flask containing a dilute sulfuric acid-hydrogen peroxide absorbing solution; the $NO_X$, excluding nitrous oxide ($N_2O$), are measured by ultraviolet spectrophotometry.

*3.0 Definition. [Reserved]*

*4.0 Interferences. [Reserved]*

*5.0 Safety*

5.1 This method may involve hazardous materials, operations, and equipment. This test method may not address all of the safety problems associated with its use. It is the responsibility of the user of this test method to establish appropriate safety and health practices and to determine the applicability of regulatory limitations prior to performing this test method.

5.2 Corrosive reagents. The following reagents are hazardous. Personal protective equipment and safe procedures are useful in preventing chemical splashes. If contact occurs, immediately flush with copious amounts of water at least 15 minutes. Remove clothing under shower and decontaminate. Treat residual chemical burn as thermal burn.

5.2.1 Hydrogen Peroxide ($H_2O_2$). Irritating to eyes, skin, nose, and lungs.

5.2.2 Sodium Hydroxide (NaOH). Causes severe damage to eyes and skin. Inhalation causes irritation to nose, throat, and lungs. Reacts exothermically with limited amounts of water.

5.2.3 Sulfuric Acid ($H_2SO_4$). Rapidly destructive to body tissue. Will cause third degree burns. Eye damage may result in blindness. Inhalation may be fatal from spasm of the larynx, usually within 30 minutes. May cause lung tissue damage with edema. 3 mg/m$^3$ will cause lung damage in uninitiated. 1 mg/m$^3$ for 8 hours will cause lung damage or, in higher concentrations, death. Provide ventilation to limit inhalation. Reacts violently with metals and organics.

*6.0 Equipment and Supplies*

6.1 Sample Collection. Same as Method 7, Section 6.1.

6.2 Sample Recovery. The following items are required for sample recovery:

6.2.1 Wash Bottle. Polyethylene or glass.

6.2.2 Volumetric Flasks. 100-ml (one for each sample).

6.3 Analysis. The following items are required for analysis:

6.3.1 Volumetric Pipettes. 5-, 10-, 15-, and 20-ml to make standards and sample dilutions.

6.3.2 Volumetric Flasks. 1000- and 100-ml for preparing standards and dilution of samples.

6.3.3 Spectrophotometer. To measure ultraviolet absorbance at 210 nm.

6.3.4 Analytical Balance. To measure to within 0.1 mg.

*7.0 Reagents and Standards*

**Note:** Unless otherwise indicated, all reagents are to conform to the specifications established by the Committee on Analytical Reagents of the American Chemical Society, where such specifications are available. Otherwise, use the best available grade.

7.1 Sample Collection. Same as Method 7, Section 7.1. It is important that the amount of hydrogen peroxide in the absorbing solution not be increased. Higher concentrations of peroxide may interfere with sample analysis.

7.2 Sample Recovery. Same as Method 7, Section 7.2.

7.3 Analysis. Same as Method 7, Sections 7.3.1, 7.3.3, and 7.3.4, with the addition of the following:

7.3.1 Working Standard $KNO_3$ Solution. Dilute 10 ml of the standard solution to 1000 ml with water. One milliliter of the working standard is equivalent to 10 µg $NO_2$.

*8.0 Sample Collection, Preservation, Storage, and Transport*

8.1 Sample Collection. Same as Method 7, Section 8.1.

8.2 Sample Recovery.

8.2.1 Let the flask sit for a minimum of 16 hours, and then shake the contents for 2 minutes.

8.2.2 Connect the flask to a mercury filled U-tube manometer. Open the valve from the flask to the manometer, and record the flask temperature ($T_f$), the barometric pressure, and the difference between the mercury levels in the manometer. The absolute internal pressure in the flask ($P_f$) is the barometric pressure less the manometer reading.

8.2.3 Transfer the contents of the flask to a leak-free wash bottle. Rinse the flask three times with 10-ml portions of water, and add to the bottle. Mark the height of the liquid level so that the container can be checked for leakage after transport. Label the container to identify clearly its contents. Seal the container for shipping.

*9.0 Quality Control*



| Section | Quality control measure | Effect |
|---|---|---|
| 10.1 | Spectrophometer calibration | Ensures linearity of spectrophotometer response to standards. |
| 11.4 | Audit sample analysis | Evaluates analytical technique and preparation of standards. |

*10.0 Calibration and Standardizations*

Same as Method 7, Sections 10.2 through 10.5, with the addition of the following:

10.1 Determination of Spectrophotometer Standard Curve. Add 0 ml, 5 ml, 10 ml, 15 ml, and 20 ml of the $KNO_3$ working standard solution (1 ml = 10 µg $NO_2$) to a series of five 100-ml volumetric flasks. To each flask, add 5 ml of absorbing solution. Dilute to the mark with water. The resulting solutions contain 0.0, 50, 100, 150, and 200 µg $NO_2$, respectively. Measure the absorbance by ultraviolet spectrophotometry at 210 nm, using the blank as a zero reference. Prepare a standard curve plotting absorbance vs. µg $NO_2$.

**Note:** If other than a 20-ml aliquot of sample is used for analysis, then the amount of absorbing solution in the blank and standards must be adjusted such that the same amount of absorbing solution is in the blank and standards as is in the aliquot of sample used.

10.1.1 Calculate the spectrophotometer calibration factor as follows:

$$K_c = \frac{\sum_{i=1}^{n} M_i A_i}{\sum_{i=1}^{n} A_i^2} \qquad \text{Eq. 7B-1}$$

Where:

$M_i$ = Mass of $NO_2$ in standard i, µg.

$A_i$ = Absorbance of $NO_2$ standard i.

n = Total number of calibration standards.

10.1.2 For the set of calibration standards specified here, Equation 7B–1 simplifies to the following:

$$K_c = 50\frac{A_1 + 2A_2 + 3A_3 + 4A_4}{A_1^2 + A_2^2 + A_3^2 + A_4^2} \qquad \text{Eq. 7B-2}$$

10.2 Spectrophotometer Calibration Quality Control. Multiply the absorbance value obtained for each standard by the $K_c$ factor (reciprocal of the least squares slope) to determine the distance each calibration point lies from the theoretical calibration line. The difference between the calculated concentration values and the actual concentrations (*i.e.*, 50, 100, 150, and 200 µg $NO_2$) should be less than 7 percent for all standards.

*11.0 Analytical Procedures*

11.1 Sample Loss Check. Note the level of the liquid in the container, and confirm whether any sample was lost during shipment. Note this on the analytical data sheet. If a noticeable amount of leakage has occurred, either void the sample or use methods, subject to the approval of the Administrator, to correct the final results.

11.2 Sample Preparation. Immediately prior to analysis, transfer the contents of the shipping container to a 100-ml volumetric flask, and rinse the container twice with 5-ml portions of water. Add the rinse water to the flask, and dilute to mark with water.

11.3 Sample Analysis. Mix the contents of the flask thoroughly and pipette a 20 ml-aliquot of sample into a 100-ml volumetric flask. Dilute to the mark with water. Using the blank as zero reference, read the absorbance of the sample at 210 nm.

11.4 Audit Sample Analysis. Same as Method 7, Section 11.4, except that a set of audit samples must be analyzed with each set of compliance samples or once per analysis day, or once per week when averaging continuous samples.

*12.0 Data Analysis and Calculations*

Same as Method 7, Section 12.0, except replace Section 12.3 with the following:

12.1 Total µg $NO_2$ Per Sample.

$$m = 5\,K_c\,A\,F \qquad \text{Eq. 7B-3}$$

Where:

5 = 100/20, the aliquot factor.

**Note:** If other than a 20-ml aliquot is used for analysis, the factor 5 must be replaced by a corresponding factor.

*13.0 Method Performance*

13.1 Range. The analytical range of the method as outlined has been determined to be 57 to 1500 milligrams $NO_X$ (as $NO_2$) per dry standard cubic meter, or 30 to 786 parts per million by volume (ppmv) $NO_X$.

*14.0 Pollution Prevention. [Reserved]*

*15.0 Waste Management. [Reserved]*

*16.0 References*

1. National Institute for Occupational Safety and Health. Recommendations for Occupational Exposure to Nitric Acid. In: Occupational Safety and Health Reporter. Washington, D.C. Bureau of National Affairs, Inc. 1976. p. 149.

2. Rennie, P.J., A.M. Sumner, and F.B. Basketter. Determination of Nitrate in Raw, Potable, and Waste Waters by Ultraviolet Spectrophotometry. Analyst. *104*:837. September 1979.

*17.0 Tables, Diagrams, Flowcharts, and Validation Data. [Reserved]*

## Method 7C—Determination of Nitrogen Oxide Emissions From Stationary Sources (Alkaline Permanganate/Colorimetric Method)

**Note:** This method does not include all of the specifications (*e.g.*, equipment and supplies) and procedures (*e.g.*, sampling and analytical) essential to its performance. Some material is incorporated by reference from other methods in this part. Therefore, to obtain reliable results, persons using this method should have a thorough knowledge of at least the following additional test methods: Method 1, Method 3, Method 6 and Method 7.

*1.0 Scope and Application*

1.1 Analytes.

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| Analyte | CAS no. | Sensitivity |
|---|---|---|
| Nitrogen oxides ($NO_X$), as $NO_2$, including: | | |
| Nitric oxide (NO) | 10102–43–9 | |
| Nitrogen dioxide ($NO_2$) | 10102–44–07 | ppmv |

1.2 Applicability. This method applies to the measurement of $NO_X$ emissions from fossil-fuel fired steam generators, electric utility plants, nitric acid plants, or other sources as specified in the regulations.

1.3 Data Quality Objectives. Adherence to the requirements of this method will enhance the quality of the data obtained from air pollutant sampling methods.

*2.0 Summary of Method*

An integrated gas sample is extracted from the stack and passed through impingers containing an alkaline potassium permanganate solution; $NO_X$ ($NO + NO_2$) emissions are oxidized to $NO_2$ and $NO_3$. Then $NO_3^-$ is reduced to $NO_2^-$ with cadmium, and the $NO_2^-$ is analyzed colorimetrically.

*3.0 Definitions. [Reserved]*

*4.0 Interferences*

Possible interferents are sulfur dioxides ($SO_2$) and ammonia ($NH_3$).

4.1 High concentrations of $SO_2$ could interfere because $SO_2$ consumes $MnO_4$ (as does $NO_X$) and, therefore, could reduce the $NO_X$ collection efficiency. However, when sampling emissions from a coal-fired electric utility plant burning 2.1 percent sulfur coal with no control of $SO_2$ emissions, collection efficiency was not reduced. In fact, calculations show that sampling 3000 ppm $SO_2$ will reduce the $MnO_4$ concentration by only 5 percent if all the $SO_2$ is consumed in the first impinger.

4.2 Ammonia ($NH_3$) is slowly oxidized to $NO_3^-$ by the absorbing solution. At 100 ppm $NH_3$ in the gas stream, an interference of 6 ppm $NO_X$ (11 mg $NO_2/m^3$) was observed when the sample was analyzed 10 days after collection. Therefore, the method may not be applicable to plants using $NH_3$ injection to control $NO_X$ emissions unless means are taken to correct the results. An equation has been developed to allow quantification of the interference and is discussed in Reference 5 of Section 16.0.

*5.0 Safety*

5.1 Disclaimer. This method may involve hazardous materials, operations, and equipment. This test method may not address all of the safety problems associated with its use. It is the responsibility of the user of this test method to establish appropriate safety and health practices and to determine the applicability of regulatory limitations prior to performing this test method.

5.2 Corrosive Reagents. The following reagents are hazardous. Personal protective equipment and safe procedures are useful in preventing chemical splashes. If contact occurs, immediately flush with copious amounts of water for at least 15 minutes. Remove clothing under shower and decontaminate. Treat residual chemical burns as thermal burns.

5.2.1 Hydrochloric Acid (HCl). Highly toxic and corrosive. Causes severe damage to skin. Vapors are highly irritating to eyes, skin, nose, and lungs, causing severe damage. May cause bronchitis, pneumonia, or edema of lungs. Exposure to vapor concentrations of 0.13 to 0.2 percent can be lethal in minutes. Will react with metals, producing hydrogen.

5.2.2 Oxalic Acid ($(COOH)_2$). Poisonous. Irritating to eyes, skin, nose, and throat.

5.2.3 Sodium Hydroxide (NaOH). Causes severe damage to eye tissues and to skin. Inhalation causes irritation to nose, throat, and lungs. Reacts exothermically with small amounts of water.

5.2.4 Potassium Permanganate ($KMnO_4$). Caustic, strong oxidizer. Avoid bodily contact with.

*6.0 Equipment and Supplies*

6.1 Sample Collection and Sample Recovery. A schematic of the Method 7C sampling train is shown in Figure 7C–1, and component parts are discussed below. Alternative apparatus and procedures are allowed provided acceptable accuracy and precision can be demonstrated to the satisfaction of the Administrator.

6.1.1 Probe. Borosilicate glass tubing, sufficiently heated to prevent water condensation and equipped with an in-stack or heated out-of-stack filter to remove particulate matter (a plug of glass wool is satisfactory for this purpose). Stainless steel or Teflon tubing may also be used for the probe.

6.1.2 Impingers. Three restricted-orifice glass impingers, having the specifications given in Figure 7C–2, are required for each sampling train. The impingers must be connected in series with leak-free glass connectors. Stopcock grease may be used, if necessary, to prevent leakage. (The impingers can be fabricated by a glass blower if not available commercially.)

6.1.3 Glass Wool, Stopcock Grease, Drying Tube, Valve, Pump, Barometer, and Vacuum Gauge and Rotameter. Same as in Method 6, Sections 6.1.1.3, 6.1.1.4, 6.1.1.6, 6.1.1.7, 6.1.1.8, 6.1.2, and 6.1.3, respectively.

6.1.4 Rate Meter. Rotameter, or equivalent, accurate to within 2 percent at the selected flow rate of between 400 and 500 ml/min (0.014 to 0.018 cfm). For rotameters, a range of 0 to 1 liter/min (0 to 0.035 cfm) is recommended.

6.1.5 Volume Meter. Dry gas meter (DGM) capable of measuring the sample volume under the sampling conditions of 400 to 500 ml/min (0.014 to 0.018 cfm) for 60 minutes within an accuracy of 2 percent.

6.1.6 Filter. To remove $NO_X$ from ambient air, prepared by adding 20 g of 5-angstrom molecular sieve to a cylindrical tube (*e.g.*, a polyethylene drying tube).

6.1.7 Polyethylene Bottles. 1-liter, for sample recovery.

6.1.8 Funnel and Stirring Rods. For sample recovery.

6.2 Sample Preparation and Analysis.

6.2.1 Hot Plate. Stirring type with 50- by 10-mm Teflon-coated stirring bars.

6.2.2 Beakers. 400-, 600-, and 1000-ml capacities.

6.2.3 Filtering Flask. 500-ml capacity with side arm.

6.2.4 Buchner Funnel. 75-mm ID, with spout equipped with a 13-mm ID by 90-mm long piece of Teflon tubing to minimize possibility of aspirating sample solution during filtration.

6.2.5 Filter Paper. Whatman GF/C, 7.0-cm diameter.

6.2.6 Stirring Rods.

6.2.7 Volumetric Flasks. 100-, 200- or 250-, 500-, and 1000-ml capacity.

6.2.8 Watch Glasses. To cover 600- and 1000-ml beakers.

6.2.9 Graduated Cylinders. 50- and 250-ml capacities.

6.2.10 Pipettes. Class A.

6.2.11 pH Meter. To measure pH from 0.5 to 12.0.

6.2.12 Burette. 50-ml with a micrometer type stopcock. (The stopcock is Catalog No. 8225–t–05, Ace Glass, Inc., Post Office Box 996, Louisville, Kentucky 50201.) Place a glass wool plug in bottom of burette. Cut off burette at a height of 43 cm (17 in.) from the top of plug, and have a blower attach a glass funnel to top of burette such that the diameter of the burette remains essentially unchanged. Other means of attaching the funnel are acceptable.

6.2.13 Glass Funnel. 75-mm ID at the top.

6.2.14 Spectrophotometer. Capable of measuring absorbance at 540 nm; 1-cm cells are adequate.

6.2.15 Metal Thermometers. Bimetallic thermometers, range 0 to 150 °C (32 to 300 °F).

6.2.16 Culture Tubes. 20-by 150-mm, Kimax No. 45048.

6.2.17 Parafilm "M." Obtained from American Can Company, Greenwich, Connecticut 06830.

6.2.18 $CO_2$ Measurement Equipment. Same as in Method 3, Section 6.0.

*7.0 Reagents and Standards*

Unless otherwise indicated, it is intended that all reagents conform to the specifications established by the Committee on Analytical Reagents of the American Chemical Society, where such specifications are available; otherwise, use the best available grade.

7.1 Sample Collection.

7.1.1 Water. Deionized distilled to conform to ASTM Specification D 1193–77 or 91 Type 3 (incorporated by reference—see § 60.17).

7.1.2 Potassium Permanganate, 4.0 Percent (w/w), Sodium Hydroxide, 2.0 Percent (w/w) solution ($KMnO_4$/NaOH solution). Dissolve 40.0 g of $KMnO_4$ and 20.0 g of NaOH in 940 ml of water.

7.2 Sample Preparation and Analysis.

7.2.1 Water. Same as in Section 7.1.1.

7.2.2 Oxalic Acid Solution. Dissolve 48 g of oxalic acid [$(COOH)_2 \cdot 2H_2O$] in water, and dilute to 500 ml. Do not heat the solution.

7.2.3 Sodium Hydroxide, 0.5 N. Dissolve 20 g of NaOH in water, and dilute to 1 liter.

7.2.4 Sodium Hydroxide, 10 N. Dissolve 40 g of NaOH in water, and dilute to 100 ml.

7.2.5 Ethylenediamine Tetraacetic Acid (EDTA) Solution, 6.5 percent (w/v). Dissolve 6.5 g of EDTA (disodium salt) in water, and dilute to 100 ml. Dissolution is best accomplished by using a magnetic stirrer.

7.2.6 Column Rinse Solution. Add 20 ml of 6.5 percent EDTA solution to 960 ml of water, and adjust the pH to between 11.7 and 12.0 with 0.5 N NaOH.

7.2.7 Hydrochloric Acid (HCl), 2 N. Add 86 ml of concentrated HCl to a 500 ml-volumetric flask containing water, dilute to volume, and mix well. Store in a glass-stoppered bottle.

7.2.8 Sulfanilamide Solution. Add 20 g of sulfanilamide (melting point 165 to 167 °C (329 to 333 °F)) to 700 ml of water. Add, with mixing, 50 ml concentrated phosphoric acid (85 percent), and dilute to 1000 ml. This solution is stable for at least 1 month, if refrigerated.

7.2.9 N-(1-Naphthyl)-Ethylenediamine Dihydrochloride (NEDA) Solution. Dissolve 0.5 g of NEDA in 500 ml of water. An aqueous solution should have one absorption peak at 320 nm over the range of 260 to 400 nm. NEDA that shows more than one absorption peak over this range is impure and should not be used. This solution is stable for at least 1 month if protected from light and refrigerated.

7.2.10 Cadmium. Obtained from Matheson Coleman and Bell, 2909 Highland Avenue, Norwood, Ohio 45212, as EM Laboratories Catalog No. 2001. Prepare by rinsing in 2 N HCl for 5 minutes until the color is silver-grey. Then rinse the cadmium with water until the rinsings are neutral when tested with pH paper. CAUTION: $H_2$ is liberated during preparation. Prepare in an exhaust hood away from any flame or combustion source.

7.2.11 Sodium Sulfite ($NaNO_2$) Standard Solution, Nominal Concentration, 1000 μg $NO_2^-$/ml. Desiccate NaNO2 overnight. Accurately weigh 1.4 to 1.6 g of $NaNO_2$ (assay of 97 percent $NaNO_2$ or greater), dissolve in water, and dilute to 1 liter. Calculate the exact $NO_2$-concentration using Equation 7C–1 in Section 12.2. This solution is stable for at least 6 months under laboratory conditions.

7.2.12 Potassium Nitrate ($KNO_3$) Standard Solution. Dry $KNO_3$ at 110 °C (230 °F) for 2 hours, and cool in a desiccator. Accurately weigh 9 to 10 g of $KNO_3$ to within 0.1 mg, dissolve in water, and dilute to 1 liter. Calculate the exact $NO_3^-$ concentration using Equation 7C–2 in Section 12.3. This solution is stable for 2 months without preservative under laboratory conditions.

7.2.13 Spiking Solution. Pipette 7 ml of the $KNO_3$ standard into a 100-ml volumetric flask, and dilute to volume.

7.2.14 Blank Solution. Dissolve 2.4 g of $KMnO_4$ and 1.2 g of NaOH in 96 ml of water. Alternatively, dilute 60 ml of $KMnO_4$/NaOH solution to 100 ml.

7.2.15 Quality Assurance Audit Samples. Same as in Method 7, Section 7.3.10. When requesting audit samples, specify that they be in the appropriate concentration range for Method 7C.

*8.0 Sample Collection, Preservation, Storage, and Transport*

8.1 Preparation of Sampling Train. Add 200 ml of $KMnO_4$/NaOH solution (Section 7.1.2) to each of three impingers, and assemble the train as shown in Figure 7C–1. Adjust the probe heater to a temperature sufficient to prevent water condensation.

8.2 Leak-Checks. Same as in Method 6, Section 8.2.

8.3 Sample Collection.

8.3.1 Record the initial DGM reading and barometric pressure. Determine the sampling point or points according to the appropriate regulations (*e.g.*, § 60.46(b)(5) of 40 CFR Part 60). Position the tip of the probe at the sampling point, connect the probe to the first impinger, and start the pump. Adjust the sample flow to a value between 400 and 500 ml/min (0.014 and 0.018 cfm). CAUTION: DO NOT EXCEED THESE FLOW RATES. Once adjusted, maintain a constant flow rate during the entire sampling run. Sample for 60 minutes. For relative accuracy (RA) testing of continuous emission monitors, the minimum sampling time is 1 hour, sampling 20 minutes at each traverse point.

**Note:** When the $SO_2$ concentration is greater than 1200 ppm, the sampling time may have to be reduced to 30 minutes to eliminate plugging of the impinger orifice with $MnO_2$. For RA tests with $SO_2$ greater than 1200 ppm, sample for 30 minutes (10 minutes at each point).

8.3.2 Record the DGM temperature, and check the flow rate at least every 5 minutes. At the conclusion of each run, turn off the pump, remove the probe from the stack, and record the final readings. Divide the sample volume by the sampling time to determine the average flow rate. Conduct the mandatory post-test leak-check. If a leak is found, void the test run, or use procedures acceptable to the Administrator to adjust the sample volume for the leakage.

8.4 $CO_2$ Measurement. During sampling, measure the $CO_2$ content of the stack gas near the sampling point using Method 3. The single-point grab sampling procedure is adequate, provided the measurements are made at least three times (near the start, midway, and before the end of a run), and the average $CO_2$ concentration is computed. The Orsat or Fyrite analyzer may be used for this analysis.

8.5 Sample Recovery. Disconnect the impingers. Pour the contents of the impingers into a 1-liter polyethylene bottle using a funnel and a stirring rod (or other means) to prevent spillage. Complete the quantitative transfer by

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rinsing the impingers and connecting tubes with water until the rinsings are clear to light pink, and add the rinsings to the bottle. Mix the sample, and mark the solution level. Seal and identify the sample container.

*9.0 Quality Control*

| Section | Quality control measure | Effect |
|---|---|---|
| 8.2, 10.1–10.3 | Sampling equipment leak-check and calibration. | Ensure accurate measurement of sample volume. |
| 10.4 | Spectrophotometer calibration | Ensure linearity of spectrophotometer response to standards. |
| 11.3 | Spiked sample analysis | Ensure reduction efficiency of column. |
| 11.6 | Audit sample analysis | Evaluate analytical technique, preparation of standards. |

*10.0 Calibration and Standardizations*

10.1 Volume Metering System. Same as Method 6, Section 10.1. For detailed instructions on carrying out these calibrations, it is suggested that Section 3.5.2 of Reference 4 of Section 16.0 be consulted.

10.2 Temperature Sensors and Barometer. Same as in Method 6, Sections 10.2 and 10.4, respectively.

10.3 Check of Rate Meter Calibration Accuracy (Optional). Disconnect the probe from the first impinger, and connect the filter. Start the pump, and adjust the rate meter to read between 400 and 500 ml/min (0.014 and 0.018 cfm). After the flow rate has stabilized, start measuring the volume sampled, as recorded by the dry gas meter and the sampling time. Collect enough volume to measure accurately the flow rate. Then calculate the flow rate. This average flow rate must be less than 500 ml/min (0.018 cfm) for the sample to be valid; therefore, it is recommended that the flow rate be checked as above prior to each test.

10.4 Spectrophotometer.

10.4.1 Dilute 5.0 ml of the $NaNO_2$ standard solution to 200 ml with water. This solution nominally contains 25 µg $NO_2^-$/ml. Use this solution to prepare calibration standards to cover the range of 0.25 to 3.00 µg $NO_2^-$/ml. Prepare a minimum of three standards each for the linear and slightly nonlinear (described below) range of the curve. Use pipettes for all additions.

10.4.2 Measure the absorbance of the standards and a water blank as instructed in Section 11.5. Plot the net absorbance vs. µg $NO_2^-$/ml. Draw a smooth curve through the points. The curve should be linear up to an absorbance of approximately 1.2 with a slope of approximately 0.53 absorbance units/µg $NO_2^-$/ml. The curve should pass through the origin. The curve is slightly nonlinear from an absorbance of 1.2 to 1.6.

*11.0 Analytical Procedures*

11.1 Sample Stability. Collected samples are stable for at least four weeks; thus, analysis must occur within 4 weeks of collection.

11.2 Sample Preparation.

11.2.1 Prepare a cadmium reduction column as follows: Fill the burette with water. Add freshly prepared cadmium slowly, with tapping, until no further settling occurs. The height of the cadmium column should be 39 cm (15 in). When not in use, store the column under rinse solution.

**Note:** The column should not contain any bands of cadmium fines. This may occur if regenerated cadmium is used and will greatly reduce the column lifetime.

11.2.2 Note the level of liquid in the sample container, and determine whether any sample was lost during shipment. If a noticeable amount of leakage has occurred, the volume lost can be determined from the difference between initial and final solution levels, and this value can then be used to correct the analytical result. Quantitatively transfer the contents to a 1-liter volumetric flask, and dilute to volume.

11.2.3 Take a 100-ml aliquot of the sample and blank (unexposed $KMnO_4$/NaOH) solutions, and transfer to 400-ml beakers containing magnetic stirring bars. Using a pH meter, add concentrated $H_2SO_4$ with stirring until a pH of 0.7 is obtained. Allow the solutions to stand for 15 minutes. Cover the beakers with watch glasses, and bring the temperature of the solutions to 50 °C (122 °F). Keep the temperature below 60 °C (140 °F). Dissolve 4.8 g of oxalic acid in a minimum volume of water, approximately 50 ml, at room temperature. Do not heat the solution. Add this solution slowly, in increments, until the $KMnO_4$ solution becomes colorless. If the color is not completely removed, prepare some more of the above oxalic acid solution, and add until a colorless solution is obtained. Add an excess of oxalic acid by dissolving 1.6 g of oxalic acid in 50 ml of water, and add 6 ml of this solution to the colorless solution. If suspended matter is present, add concentrated $H_2SO_4$ until a clear solution is obtained.

11.2.4 Allow the samples to cool to near room temperature, being sure that the samples are still clear. Adjust the pH to between 11.7 and 12.0 with 10 N NaOH. Quantitatively transfer the mixture to a Buchner funnel containing GF/C filter paper, and filter the precipitate. Filter the mixture into a 500-ml filtering flask. Wash the solid material four times with water. When filtration is complete, wash the Teflon tubing, quantitatively transfer the filtrate to a 500-ml volumetric flask, and dilute to volume. The samples are now ready for cadmium reduction. Pipette a 50-ml aliquot of the sample into a 150-ml beaker, and add a magnetic stirring bar. Pipette in 1.0 ml of 6.5 percent EDTA solution, and mix.

11.3 Determine the correct stopcock setting to establish a flow rate of 7 to 9 ml/min of column rinse solution through the cadmium reduction column. Use a 50-ml graduated cylinder to collect and measure the solution volume. After the last of the rinse solution has passed from the funnel into the burette, but before air entrapment can occur, start adding the sample, and collect it in a 250-ml graduated cylinder. Complete the quantitative transfer of the sample to the column as the sample passes through the column. After the last of the sample has passed from the funnel into the burette, start adding 60 ml of column rinse solution, and collect the rinse solution until the solution just disappears from the funnel. Quantitatively transfer the sample to a 200-ml volumetric flask (a 250-ml flask may be required), and dilute to volume. The samples are now ready for $NO_2^-$ analysis.

**Note:** Two spiked samples should be run with every group of samples passed through the column. To do this, prepare two additional 50-ml aliquots of the sample suspected to have the highest $NO_2^-$ concentration, and add 1 ml of the spiking solution to these aliquots. If the spike recovery or column efficiency (see Section 12.2) is below 95 percent, prepare a new column, and repeat the cadmium reduction.



11.4 Repeat the procedures outlined in Sections 11.2 and 11.3 for each sample and each blank.

11.5 Sample Analysis. Pipette 10 ml of sample into a culture tube. Pipette in 10 ml of sulfanilamide solution and 1.4 ml of NEDA solution. Cover the culture tube with parafilm, and mix the solution. Prepare a blank in the same manner using the sample from treatment of the unexposed $KMnO_4$/NaOH solution. Also, prepare a calibration standard to check the slope of the calibration curve. After a 10-minute color development interval, measure the absorbance at 540 nm against water. Read µg $NO_2^-$/ml from the calibration curve. If the absorbance is greater than that of the highest calibration standard, use less than 10 ml of sample, and repeat the analysis. Determine the $NO_2^-$ concentration using the calibration curve obtained in Section 10.4.

**Note:** Some test tubes give a high blank $NO_2^-$ value but culture tubes do not.

11.6 Audit Sample Analysis. Same as in Method 7, Section 11.4.

*12.0 Data Analysis and Calculations*

Carry out calculations, retaining at least one extra significant figure beyond that of the acquired data. Round off figures after final calculation.

12.1 Nomenclature.

B = Analysis of blank, µg $NO_2^-$/ml.
C = Concentration of $NO_X$ as $NO_2$, dry basis, mg/dsm³.
E = Column efficiency, dimensionless
$K_2 = 10^{-3}$ mg/µg.
m = Mass of $NO_X$, as $NO_2$, in sample, µg.
$P_{bar}$ = Barometric pressure, mm Hg (in. Hg).
$P_{std}$ = Standard absolute pressure, 760 mm Hg (29.92 in. Hg).
s = Concentration of spiking solution, µg $NO_3$/ml.
S = Analysis of sample, µg $NO_2^-$/ml.
$T_m$ = Average dry gas meter absolute temperature, °K.
$T_{std}$ = Standard absolute temperature, 293 °K (528 °R).
$V_{m(std)}$ = Dry gas volume measured by the dry gas meter, corrected to standard conditions, dscm (dscf).
$V_m$ = Dry gas volume as measured by the dry gas meter, scm (scf).
x = Analysis of spiked sample, µg $NO_2^-$/ml.
X = Correction factor for $CO_2$ collection = 100/(100 − %$CO_2$(V/V)).
y = Analysis of unspiked sample, µg $NO_2^-$/ml.
Y = Dry gas meter calibration factor.
1.0 ppm NO = 1.247 mg NO/m³ at STP.
1.0 ppm $NO_2$ = 1.912 mg $NO_2$/m³ at STP.
1 ft³ = $2.832 \times 10^{-2}$ m³.

12.2 $NO_2$ Concentration. Calculate the $NO_2$ concentration of the solution (see Section 7.2.11) using the following equation:

$$\frac{\mu g\ NO_2^-}{ml} = g\ NaNO_2 \times \frac{purity,\ \%}{100} \times 10^3 \times \frac{46.01}{69.01} \quad \text{Eq. 7C-1}$$

12.3 $NO_3$ Concentration. Calculate the $NO_3$ concentration of the $KNO_3$ solution (see Section 7.2.12) using the following equation:

$$\frac{\mu g\ NO_3^-}{ml} = g\ KNO_3 \times (10^3) \times \frac{62.01}{101.10} \quad \text{Eq. 7C-2}$$

12.4 Sample Volume, Dry Basis, Corrected to Standard Conditions.

$$V_{m(std)} = V_m\ X\ Y \frac{T_{std}}{T_m} \frac{P_{bar}}{P_{std}} \quad \text{Eq. 7C-3}$$

$$= K_1\ X\ Y\ V_m \frac{P_{bar}}{T_m}$$

Where:
$K_1$ = 0.3855 °K/mm Hg for metric units.
$K_1$ = 17.65 °R/in. Hg for English units.

12.5 Efficiency of Cadmium Reduction Column. Calculate this value as follows:

$$E = \frac{200\ (x-y)}{1.0\ s\ \frac{46.01}{62.01}} = \frac{269.6\ (x-y)}{s} \quad \text{Eq. 7C-4}$$

Where:
200 = Final volume of sample and blank after passing through the column, ml.
1.0 = Volume of spiking solution added, ml.
46.01 = µg $NO_2^-$/µmole.
62.01 = µg $NO_3^-$/µmole.

12.6 Total µg $NO_2$.

$$m = 200 \left(\frac{500}{50}\right)\left(\frac{1000}{100}\right)\left(\frac{(S-B)}{E}\right) = \frac{(2\times10^4)(S-B)}{E} \quad \text{Eq. 7C-5}$$

Where:
500 = Total volume of prepared sample, ml.
50 = Aliquot of prepared sample processed through cadmium column, ml.
100 = Aliquot of $KMnO_4$/NaOH solution, ml.

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1000 = Total volume of $KMnO_4$/NaOH solution, ml.

12.7 Sample Concentration.

$$C = K_2 \frac{m}{V_{m(std)}} \qquad \text{Eq. 7C-6}$$

*13.0 Method Performance*

13.1 Precision. The intra-laboratory relative standard deviation for a single measurement is 2.8 and 2.9 percent at 201 and 268 ppm $NO_X$, respectively.

13.2 Bias. The method does not exhibit any bias relative to Method 7.

13.3 Range. The lower detectable limit is 13 mg $NO_X/m^3$, as $NO_2$ (7 ppm $NO_X$) when sampling at 500 ml/min for 1 hour. No upper limit has been established; however, when using the recommended sampling conditions, the method has been found to collect $NO_X$ emissions quantitatively up to 1782 mg $NO_X/m^3$, as $NO_2$ (932 ppm $NO_X$).

*14.0 Pollution Prevention. [Reserved]*

*15.0 Waste Management. [Reserved]*

*16.0 References*

1. Margeson, J.H., W.J. Mitchell, J.C. Suggs, and M.R. Midgett. Integrated Sampling and Analysis Methods for Determining $NO_X$ Emissions at Electric Utility Plants. U.S. Environmental Protection Agency, Research Triangle Park, NC. Journal of the Air Pollution Control Association. *32*:1210–1215. 1982.

2. Memorandum and attachment from J.H. Margeson, Source Branch, Quality Assurance Division, Environmental Monitoring Systems Laboratory, to The Record, EPA. March 30, 1983. $NH_3$ Interference in Methods 7C and 7D.

3. Margeson, J.H., J.C. Suggs, and M.R. Midgett. Reduction of Nitrate to Nitrite with Cadmium. Anal. Chem. *52*:1955–57. 1980.

4. Quality Assurance Handbook for Air Pollution Measurement Systems. Volume III—Stationary Source Specific Methods. U.S. Environmental Protection Agency. Research Triangle Park, NC. Publication No. EPA–600/4–77–027b. August 1977.

5. Margeson, J.H., *et al.* An Integrated Method for Determining $NO_X$ Emissions at Nitric Acid Plants. Analytical Chemistry. *47* (11):1801. 1975.

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*17.0 Tables, Diagrams, Flowcharts, and Validation Data*

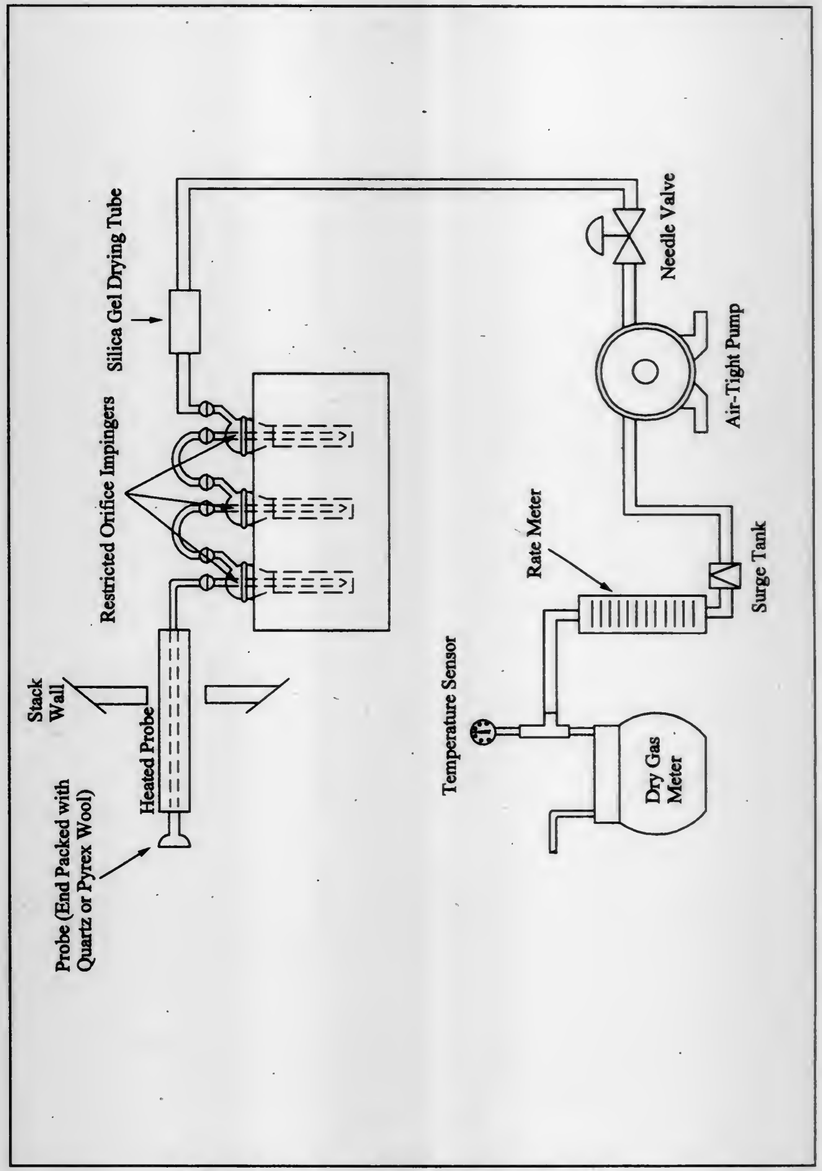



Figure 7C-1. $NO_x$ Sampling Train.

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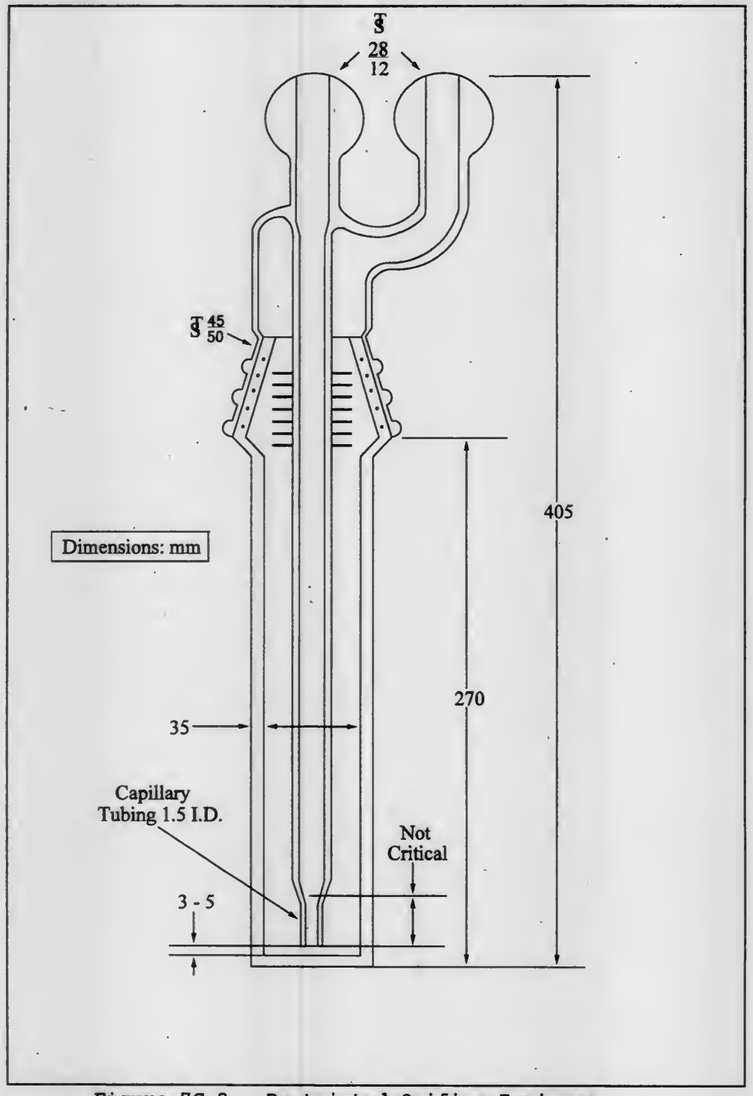



Figure 7C-2. Restricted-Orifice Impinger.



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## Method 7D—Determination of Nitrogen Oxide Emissions From Stationary Sources (Alkaline-Permanganate/Ion Chromatographic Method)

**Note:** This method is not inclusive with respect to specifications (*e.g.*, equipment and supplies) and procedures (*e.g.*, sampling and analytical) essential to its performance. Some material is incorporated by reference from other methods in this part. Therefore, to obtain reliable results, persons using this method should have a thorough knowledge of at least the following additional test methods: Method 1, Method 3, Method 6, Method 7, and Method 7C.

*1.0 Scope and Application*

1.1 Analytes.

| Analyte | CAS No. | Sensitivity |
|---|---|---|
| Nitrogen oxides ($NO_x$), as $NO_2$, including: | | |
| Nitric oxide (NO) | 10102–43–9 | |
| Nitrogen dioxide ($NO_2$) | 10102–44–0 | 7 ppmv |

1.2 Applicability. This method applies to the measurement of $NO_x$ emissions from fossil-fuel fired steam generators, electric utility plants, nitric acid plants, or other sources as specified in the regulations.

1.3 Data Quality Objectives. Adherence to the requirements of this method will enhance the quality of the data obtained from air pollutant sampling methods.

*2.0 Summary of Method*

An integrated gas sample is extracted from the stack and passed through impingers containing an alkaline-potassium permanganate solution; $NO_x$ ($NO + NO_2$) emissions are oxidized to $NO_3^-$. Then $NO_3^-$ is analyzed by ion chromatography.

*3.0 Definitions [Reserved]*

*4.0 Interferences*

Same as in Method 7C, Section 4.0.

*5.0 Safety*

5.1 Disclaimer. This method may involve hazardous materials, operations, and equipment. This test method may not address all of the safety problems associated with its use. It is the responsibility of the user of this test method to establish appropriate safety and health practices and to determine the applicability of regulatory limitations prior to performing this test method.

5.2 Corrosive reagents. The following reagents are hazardous. Personal protective equipment and safe procedures are useful in preventing chemical splashes. If contact occurs, immediately flush with copious amounts of water for at least 15 minutes. Remove clothing under shower and decontaminate. Treat residual chemical burns as thermal burns.

5.2.1 Hydrogen Peroxide ($H_2O_2$). Irritating to eyes, skin, nose, and lungs. 30% $H_2O_2$ is a strong oxidizing agent; avoid contact with skin, eyes, and combustible material. Wear gloves when handling.

5.2.2 Sodium Hydroxide (NaOH). Causes severe damage to eye tissues and to skin. Inhalation causes irritation to nose, throat, and lungs. Reacts exothermically with limited amounts of water.

5.2.3 Potassium Permanganate ($KMnO_4$). Caustic, strong oxidizer. Avoid bodily contact with.

*6.0 Equipment and Supplies*

6.1 Sample Collection and Sample Recovery. Same as Method 7C, Section 6.1. A schematic of the sampling train used in performing this method is shown in Figure 7C–1 of Method 7C.

6.2 Sample Preparation and Analysis.

6.2.1 Magnetic Stirrer. With 25- by 10-mm Teflon-coated stirring bars.

6.2.2 Filtering Flask. 500-ml capacity with sidearm.

6.2.3 Buchner Funnel. 75-mm ID, with spout equipped with a 13-mm ID by 90-mm long piece of Teflon tubing to minimize possibility of aspirating sample solution during filtration.

6.2.4 Filter Paper. Whatman GF/C, 7.0-cm diameter.

6.2.5 Stirring Rods.

6.2.6 Volumetric Flask. 250-ml.

6.2.7 Pipettes. Class A.

6.2.8 Erlenmeyer Flasks. 250-ml.

6.2.9 Ion Chromatograph. Equipped with an anion separator column to separate $NO_3^-$, $H_3^+$ suppressor, and necessary auxiliary equipment. Nonsuppressed and other forms of ion chromatography may also be used provided that adequate resolution of $NO_3^-$ is obtained. The system must also be able to resolve and detect $NO_2^-$.

*7.0 Reagents and Standards*

**Note:** Unless otherwise indicated, it is intended that all reagents conform to the specifications established by the Committee on Analytical Reagents of the American Chemical Society, where such specifications are available; otherwise, use the best available grade.

7.1 Sample Collection.

7.1.1 Water. Deionized distilled to conform to ASTM specification D 1193–77 or 91 Type 3 (incorporated by reference—see § 60.17).

7.1.2 Potassium Permanganate, 4.0 Percent (w/w), Sodium Hydroxide, 2.0 Percent (w/w). Dissolve 40.0 g of $KMnO_4$ and 20.0 g of NaOH in 940 ml of water.

7.2 Sample Preparation and Analysis.

7.2.1 Water. Same as in Section 7.1.1.

7.2.2 Hydrogen Peroxide ($H_2O_2$), 5 Percent. Dilute 30 percent $H_2O_2$ 1:5 (v/v) with water.

7.2.3 Blank Solution. Dissolve 2.4 g of $KMnO_4$ and 1.2 g of NaOH in 96 ml of water. Alternatively, dilute 60 ml of $KMnO_4$/NaOH solution to 100 ml.

7.2.4 $KNO_3$ Standard Solution. Dry $KNO_3$ at 110°C for 2 hours, and cool in a desiccator. Accurately weigh 9 to 10 g of $KNO_3$ to within 0.1 mg, dissolve in water, and dilute to 1 liter. Calculate the exact $NO_3^-$ concentration using Equation 7D–1 in Section 12.2. This solution is stable for 2 months without preservative under laboratory conditions.

7.2.5 Eluent, 0.003 M $NaHCO_3$/0.0024 M $Na_2CO_3$. Dissolve 1.008 g $NaHCO_3$ and 1.018 g $Na_2CO_3$ in water, and dilute to 4 liters. Other eluents capable of resolving nitrate ion from sulfate and other species present may be used.

7.2.6 Quality Assurance Audit Samples. Same as Method 7, Section 7.3.10. When requesting audit samples, specify that they be in the appropriate concentration range for Method 7D.

8.0 Sample Collection, Preservation, Transport, and Storage.

8.1 Sampling. Same as in Method 7C, Section 8.1.

8.2 Sample Recovery. Same as in Method 7C, Section 8.2.

8.3 Sample Preparation for Analysis.

**Note:** Samples must be analyzed within 28 days of collection.

8.3.1 Note the level of liquid in the sample container, and determine whether any sample was lost during shipment. If a noticeable amount of

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leakage has occurred, the volume lost can be determined from the difference between initial and final solution levels, and this value can then be used to correct the analytical result. Quantitatively transfer the contents to a 1-liter volumetric flask, and dilute to volume.

8.3.2 Sample preparation can be started 36 hours after collection. This time is necessary to ensure that all $NO_2^-$ is converted to $NO_3^-$ in the collection solution. Take a 50-ml aliquot of the sample and blank, and transfer to 250-ml Erlenmeyer flasks. Add a magnetic stirring bar. Adjust the stirring rate to as fast a rate as possible without loss of solution. Add 5 percent $H_2O_2$ in increments of approximately 5 ml using a 5-ml pipette. When the $KMnO_4$ color appears to have been removed, allow the precipitate to settle, and examine the supernatant liquid. If the liquid is clear, the $H_2O_2$ addition is complete. If the $KMnO_4$ color persists, add more $H_2O_2$, with stirring, until the supernatant liquid is clear.

**Note:** The faster the stirring rate, the less volume of $H_2O_2$ that will be required to remove the $KMnO_4$.) Quantitatively transfer the mixture to a Buchner funnel containing GF/C filter paper, and filter the precipitate. The spout of the Buchner funnel should be equipped with a 13-mm ID by 90-mm long piece of Teflon tubing. This modification minimizes the possibility of aspirating sample solution during filtration. Filter the mixture into a 500-ml filtering flask. Wash the solid material four times with water. When filtration is complete, wash the Teflon tubing, quantitatively transfer the filtrate to a 250-ml volumetric flask, and dilute to volume. The sample and blank are now ready for $NO_3^-$ analysis.

*9.0 Quality Control*

| Section | Quality control measure | Effect |
|---|---|---|
| 8.2, 10.1–10.3 | Sampling equipment leak-check and calibration. | Ensure accurate measurement of sample volume. |
| 10.4 | Spectrophotometer calibration | Ensure linearity of spectrophotometer response to standards. |
| 11.3 | Spiked sample analysis | Ensure reduction efficiency of column. |
| 11.6 | Audit sample analysis | Evaluate analytical technique, preparation of standards. |

*10.0 Calibration and Standardizations*

10.1 Dry Gas Meter (DGM) System.

10.1.1 Initial Calibration. Same as in Method 6, Section 10.1.1. For detailed instructions on carrying out this calibration, it is suggested that Section 3.5.2 of Citation 4 in Section 16.0 of Method 7C be consulted.

10.1.2 Post-Test Calibration Check. Same as in Method 6, Section 10.1.2.

10.2 Thermometers for DGM and Barometer. Same as in Method 6, Sections 10.2 and 10.4, respectively.

10.3 Ion Chromatograph.

10.3.1 Dilute a given volume (1.0 ml or greater) of the $KNO_3$ standard solution to a convenient volume with water, and use this solution to prepare calibration standards. Prepare at least four standards to cover the range of the samples being analyzed. Use pipettes for all additions. Run standards as instructed in Section 11.2. Determine peak height or area, and plot the individual values versus concentration in μg $NO_3^-$/ml.

10.3.2 Do not force the curve through zero. Draw a smooth curve through the points. The curve should be linear. With the linear curve, use linear regression to determine the calibration equation.

*11.0 Analytical Procedures*

11.1 The following chromatographic conditions are recommended: 0.003 M $NaHCO_3$/0.0024 $Na_2CO_3$ eluent solution (Section 7.2.5), full scale range, 3 μMHO; sample loop, 0.5 ml; flow rate, 2.5 ml/min. These conditions should give a $NO_3^-$ retention time of approximately 15 minutes (Figure 7D–1).

11.2 Establish a stable baseline. Inject a sample of water, and determine whether any $NO_3^-$ appears in the chromatogram. If $NO_3^-$ is present, repeat the water load/injection procedure approximately five times; then re-inject a water sample and observe the chromatogram. When no $NO_3^-$ is present, the instrument is ready for use. Inject calibration standards. Then inject samples and a blank. Repeat the injection of the calibration standards (to compensate for any drift in response of the instrument). Measure the $NO_3^-$ peak height or peak area, and determine the sample concentration from the calibration curve.

*11.3 Audit Analysis. Same as in Method 7, Section 11.4*

*12.0 Data Analysis and Calculations*

Carry out calculations, retaining at least one extra significant figure beyond that of the acquired data. Round off figures after final calculation.

12.1 Nomenclature. Same as in Method 7C, Section 12.1.

12.2 $NO_3^-$ concentration. Calculate the $NO_3^-$ concentration in the $KNO_3$ standard solution (see Section 7.2.4) using the following equation:

$$\frac{\mu g\ NO_3^-}{ml} = g\ of\ KNO_3 \times 10^3 \times \frac{62.01}{101.10} \qquad \text{Eq. 7D-1}$$

12.3 Sample Volume, Dry Basis, Corrected to Standard Conditions. Same as in Method 7C, Section 12.4.

12.4 Total μg $NO_2$ Per Sample.

$$m = 250\left(\frac{1000}{50}\right)\left(\frac{46.01}{62.01}\right)(S-B) \qquad \text{Eq. 7D-2}$$

$$= 3710\ (S-B)$$

Where:

250 = Volume of prepared sample, ml.
1000 = Total volume of $KMnO_4$ solution, ml.
50 = Aliquot of $KMnO_4$/NaOH solution, ml.
46.01 = Molecular weight of $NO_3^-$.
62.01 = Molecular weight of $NO_3^-$.

12.5 Sample Concentration. Same as in Method 7C, Section 12.7.



*13.0 Method Performance*

13.1 Precision. The intra-laboratory relative standard deviation for a single measurement is approximately 6 percent at 200 to 270 ppm $NO_x$.

13.2 Bias. The method does not exhibit any bias relative to Method 7.

13.3 Range. The lower detectable limit is similar to that of Method 7C. No upper limit has been established; however, when using the recommended sampling conditions, the method has been found to collect $NO_X$ emissions quantitatively up to 1782 mg $NO_X/m^3$, as $NO_2$ (932 ppm $NO_x$).

*14.0 Pollution Prevention. [Reserved]*

*15.0 Waste Management. [Reserved]*

*16.0 References*

Same as Method 7C, Section 16.0, References 1, 2, 4, and 5.

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*17.0 Tables, Diagrams, Flowcharts, and Validation Data*

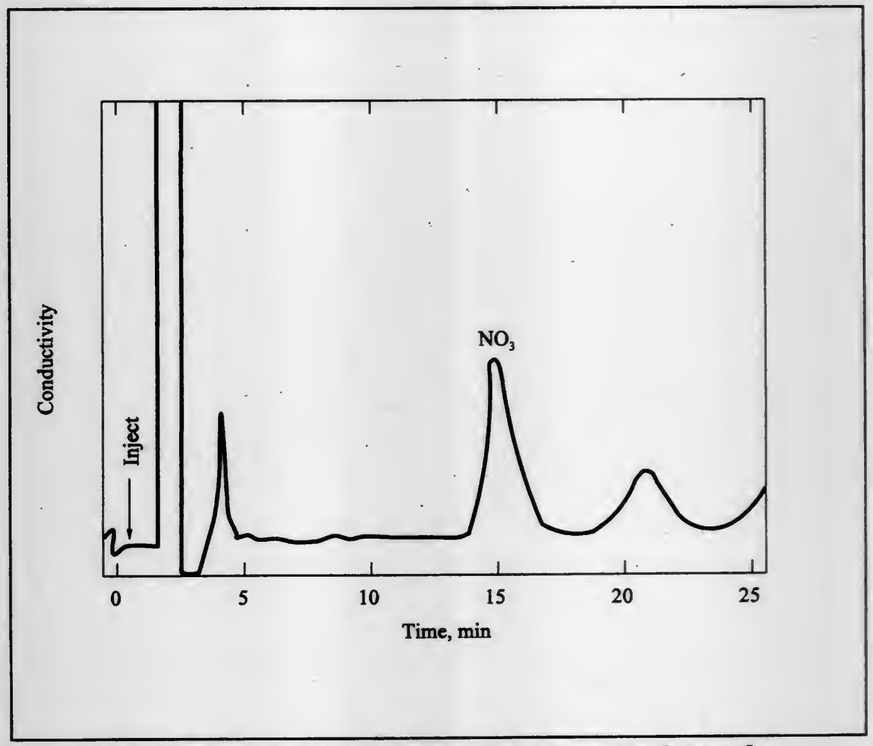



**Figure 7D-1. Ion Chromatograph of a Prepared Sample.**

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**Method 8—Determination of Sulfuric Acid and Sulfur Dioxide Emissions From Stationary Sources**

**Note:** This method does not include all of the specifications (*e.g.*, equipment and supplies) and procedures (*e.g.*, sampling and analytical) essential to its performance. Some material is incorporated by reference from other methods in this part. Therefore, to obtain reliable results, persons using this method should have a thorough knowledge

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of at least the following additional test methods: Method 1, Method 2, Method 3, Method 5, and Method 6.

| Analyte | CAS No. | Sensitivity |
|---|---|---|
| Sulfuric acid, including: Sulfuric acid ($H_2SO_4$) mist, Sulfur trioxide ($SO_3$). | 7664–93–9, 7449–11–9 | 0.05 mg/m³ ($0.03 \times 10^{-7}$ lb/ft³). |
| Sulfur dioxide ($SO_2$) | 7449–09–5 | 1.2 mg/m³ ($3 \times 10^{-9}$ lb/ft³). |

1.2 Applicability. This method is applicable for the determination of $H_2SO_4$ (including $H_2SO_4$ mist and $SO_3$) and gaseous $SO_2$ emissions from stationary sources.

**Note:** Filterable particulate matter may be determined along with $H_2SO_4$ and $SO_2$ (subject to the approval of the Administrator) by inserting a heated glass fiber filter between the probe and isopropanol impinger (see Section 6.1.1 of Method 6). If this option is chosen, particulate analysis is gravimetric only; sulfuric acid is not determined separately.

1.3 Data Quality Objectives. Adherence to the requirements of this method will enhance the quality of the data obtained from air pollutant sampling methods.

*2.0 Summary of Method*

A gas sample is extracted isokinetically from the stack. The $H_2SO_4$ and the $SO_2$ are separated, and both fractions are measured separately by the barium-thorin titration method.

*3.0 Definitions. [Reserved]*

*4.0 Interferences*

4.1 Possible interfering agents of this method are fluorides, free ammonia, and dimethyl aniline. If any of these interfering agents is present (this can be determined by knowledge of the process), alternative methods, subject to the approval of the Administrator, are required.

*5.0 Safety*

5.1 Disclaimer. This method may involve hazardous materials, operations, and equipment. This test method may not address all of the safety problems associated with its use. It is the responsibility of the user of this test method to establish appropriate safety and health practices and determine the applicability of regulatory limitations prior to performing this test method.

5.2 Corrosive reagents. Same as Method 6, Section 5.2.

*6.0 Equipment and Supplies*

6.1 Sample Collection. Same as Method 5, Section 6.1, with the following additions and exceptions:

6.1.1 Sampling Train. A schematic of the sampling train used in this method is shown in Figure 8–1; it is similar to the Method 5 sampling train, except that the filter position is different, and the filter holder does not have to be heated. See Method 5, Section 6.1.1, for details and guidelines on operation and maintenance.

6.1.1.1 Probe Liner. Borosilicate or quartz glass, with a heating system to prevent visible condensation during sampling. Do not use metal probe liners.

6.1.1.2 Filter Holder. Borosilicate glass, with a glass frit filter support and a silicone rubber gasket. Other gasket materials (*e.g.*, Teflon or Viton) may be used, subject to the approval of the Administrator. The holder design shall provide a positive seal against leakage from the outside or around the filter. The filter holder shall be placed between the first and second impingers. Do not heat the filter holder.

6.1.1.3 Impingers. Four, of the Greenburg-Smith design, as shown in Figure 8–1. The first and third impingers must have standard tips. The second and fourth impingers must be modified by replacing the insert with an approximately 13-mm (½-in.) ID glass tube, having an unconstricted tip located 13 mm (½ in.) from the bottom of the impinger. Similar collection systems, subject to the approval of the Administrator, may be used.

6.1.1.4 Temperature Sensor. Thermometer, or equivalent, to measure the temperature of the gas leaving the impinger train to within 1 °C (2 °F).

6.2 Sample Recovery. The following items are required for sample recovery:

6.2.1 Wash Bottles. Two polyethylene or glass bottles, 500-ml.

6.2.2 Graduated Cylinders. Two graduated cylinders (volumetric flasks may be used), 250-ml, 1-liter.

6.2.3 Storage Bottles. Leak-free polyethylene bottles, 1-liter size (two for each sampling run).

6.2.4 Trip Balance. 500-g capacity, to measure to ± 0.5 g (necessary only if a moisture content analysis is to be done).

6.3 Analysis. The following items are required for sample analysis:

6.3.1 Pipettes. Volumetric 10-ml, 100-ml.

6.3.2 Burette. 50-ml.

6.3.3 Erlenmeyer Flask. 250-ml (one for each sample, blank, and standard).

6.3.4 Graduated Cylinder. 100-ml.

6.3.5 Dropping Bottle. To add indicator solution, 125-ml size.

*7.0 Reagents and Standards*

**Note:** Unless otherwise indicated, all reagents are to conform to the specifications established by the Committee on Analytical Reagents of the American Chemical Society, where such specifications are available. Otherwise, use the best available grade.

7.1 Sample Collection. The following reagents are required for sample collection:

7.1.1 Filters and Silica Gel. Same as in Method 5, Sections 7.1.1 and 7.1.2, respectively.

7.1.2 Water. Same as in Method 6, Section 7.1.1.

7.1.3 Isopropanol, 80 Percent by Volume. Mix 800 ml of isopropanol with 200 ml of water.

**Note:** Check for peroxide impurities using the procedure outlined in Method 6, Section 7.1.2.1.

7.1.4 Hydrogen Peroxide ($H^2O^2$), 3 Percent by Volume. Dilute 100 ml of 30 percent $H_2O_2$) to 1 liter with water. Prepare fresh daily.

7.1.5 Crushed Ice.

7.2 Sample Recovery. The reagents and standards required for sample recovery are:

7.2.1 Water. Same as in Section 7.1.2.

7.2.2 Isopropanol, 80 Percent. Same as in Section 7.1.3.

7.3 Sample Analysis. Same as Method 6, Section 7.3.

7.3.1 Quality Assurance Audit Samples. When making compliance determinations, and upon availability, audit samples may be obtained from the appropriate EPA Regional Office or from the responsible enforcement authority.

**Note:** The responsible enforcement authority should be notified at least 30 days prior to the test date to allow sufficient time for sample delivery.

*8.0 Sample Collection, Preservation, Storage, and Transport*

8.1 Pretest Preparation. Same as Method 5, Section 8.1, except that filters should be inspected but need not be desiccated, weighed, or identified. If the effluent gas can be considered dry (i.e., moisture-free), the silica gel need not be weighed.

8.2 Preliminary Determinations. Same as Method 5, Section 8.2.

8.3 Preparation of Sampling Train. Same as Method 5, Section 8.3, with the following exceptions:

8.3.1 Use Figure 8–1 instead of Figure 5–1.

8.3.2 Replace the second sentence of Method 5, Section 8.3.1 with: Place 100 ml of 80 percent isopropanol in the first impinger, 100 ml of 3 percent $H_2O_2$ in both the second and third impingers; retain a portion of each reagent for use as a blank solution. Place about 200 g of silica gel in the fourth impinger.

8.3.3 Ignore any other statements in Section 8.3 of Method 5 that are obviously not applicable to the performance of Method 8.

**Note:** If moisture content is to be determined by impinger analysis, weigh each of the first three impingers (plus absorbing solution) to the nearest 0.5 g, and record these weights. Weigh also the silica gel (or silica gel plus container) to the nearest 0.5 g, and record.)

8.4 Metering System Leak-Check Procedure. Same as Method 5, Section 8.4.1.

8.5 Pretest Leak-Check Procedure. Follow the basic procedure in Method 5, Section 8.4.2, noting that the probe heater shall be adjusted to the minimum temperature required to prevent condensation, and also that verbage such as "* * * plugging the inlet to the filter holder * * * " found in Section 8.4.2.2 of Method 5 shall be replaced by " * * * plugging the inlet to the first impinger * * * ". The pretest leak-check is recommended, but is not required.

8.6 Sampling Train Operation. Follow the basic procedures in Method 5, Section 8.5, in conjunction with the following special instructions:

8.6.1 Record the data on a sheet similar to that shown in Figure 8–2 (alternatively, Figure 5–2 in Method 5 may be used). The sampling rate shall not exceed 0.030 m³/min (1.0 cfm) during the run. Periodically during the test, observe the connecting line between the probe and first impinger for signs of condensation. If condensation does occur, adjust the probe heater setting upward to the minimum temperature required to prevent condensation. If component changes become necessary during a run, a leak-check shall be performed immediately before each change, according to the procedure outlined in Section 8.4.3 of Method 5 (with appropriate modifications, as mentioned in Section 8.5 of this method); record all leak rates. If the leakage rate(s) exceeds the specified rate, the tester shall either void the run or plan to correct the sample volume as outlined in Section 12.3 of Method 5. Leak-checks immediately after component changes are recommended, but not required. If these leak-checks are performed, the procedure in Section 8.4.2 of Method 5 (with appropriate modifications) shall be used.

8.6.2 After turning off the pump and recording the final readings at the conclusion of each run, remove the probe from the stack. Conduct a post-test (mandatory) leak-check as outlined in Section 8.4.4 of Method 5 (with appropriate modifications), and record the leak rate. If the post-test leakage rate exceeds the specified acceptable rate, either correct the sample volume, as outlined in Section 12.3 of Method 5, or void the run.

8.6.3 Drain the ice bath and, with the probe disconnected, purge the remaining part of the train by drawing clean ambient air through the system for 15 minutes at the average flow rate used for sampling.

**Note:** Clean ambient air can be provided by passing air through a charcoal filter. Alternatively, ambient air (without cleaning) may be used.

8.7 Calculation of Percent Isokinetic. Same as Method 5, Section 8.6.

8.8 Sample Recovery. Proper cleanup procedure begins as soon as the probe is removed from the stack at the end of the sampling period. Allow the probe to cool. Treat the samples as follows:

8.8.1 Container No. 1.

8.8.1.1 If a moisture content analysis is to be performed, clean and weigh the first impinger (plus contents) to the nearest 0.5 g, and record this weight.

8.8.1.2 Transfer the contents of the first impinger to a 250-ml graduated cylinder. Rinse the probe, first impinger, all connecting glassware before the filter, and the front half of the filter holder with 80 percent isopropanol. Add the isopropanol rinse solution to the cylinder. Dilute the contents of the cylinder to 225 ml with 80 percent isopropanol, and transfer the cylinder contents to the storage container. Rinse the cylinder with 25 ml of 80 percent isopropanol, and transfer the rinse to the storage container. Add the filter to the solution in the storage container and mix. Seal the container to protect the solution against evaporation. Mark the level of liquid on the container, and identify the sample container.

8.8.2 Container No. 2.

8.8.2.1 If a moisture content analysis is to be performed, clean and weigh the second and third impingers (plus contents) to the nearest 0.5 g, and record the weights. Also, weigh the spent silica gel (or silica gel plus impinger) to the nearest 0.5 g, and record the weight.

8.8.2.2 Transfer the solutions from the second and third impingers to a 1-liter graduated cylinder. Rinse all connecting glassware (including back half of filter holder) between the filter and silica gel impinger with water, and add this rinse water to the cylinder. Dilute the contents of the cylinder to 950 ml with water. Transfer the solution to a storage container. Rinse the cylinder with 50 ml of water, and transfer the rinse to the storage container. Mark the level of liquid on the container. Seal and identify the sample container.

*9.0 Quality Control*

9.1 Miscellaneous Quality Control Measures.

| Section | Quality control measure | Effect |
|---|---|---|
| 7.1.3 | Isopropanol check | Ensure acceptable level of peroxide impurities in isopropanol. |
| 8.4, 8.5, 10.1 | Sampling equipment leak-check and calibration. | Ensure accurate measurement of stack gas flow rate, sample volume. |
| 10.2 | Barium standard solution standardization | Ensure normality determination. |
| 11.2 | Replicate titrations | Ensure precision of titration determinations. |
| 11.3 | Audit sample analysis | Evaluate analyst's technique and standards preparation. |

9.2 Volume Metering System Checks. Same as Method 5, Section 9.2.

*10.0 Calibration and Standardization*

10.1 Sampling Equipment. Same as Method 5, Section 10.0.

10.2 Barium Standard Solution. Same as Method 6, Section 10.5.

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*11.0 Analytical Procedure*

11.1. Sample Loss. Same as Method 6, Section 11.1.

11.2. Sample Analysis.

11.2.1 Container No. 1. Shake the container holding the isopropanol solution and the filter. If the filter breaks up, allow the fragments to settle for a few minutes before removing a sample aliquot. Pipette a 100-ml aliquot of this solution into a 250-ml Erlenmeyer flask, add 2 to 4 drops of thorin indicator, and titrate to a pink endpoint using 0.0100 N barium standard solution. Repeat the titration with a second aliquot of sample, and average the titration values. Replicate titrations must agree within 1 percent or 0.2 ml, whichever is greater.

11.2.2 Container No. 2. Thoroughly mix the solution in the container holding the contents of the second and third impingers. Pipette a 10-ml aliquot of sample into a 250-ml Erlenmeyer flask. Add 40 ml of isopropanol, 2 to 4 drops of thorin indicator, and titrate to a pink endpoint using 0.0100 N barium standard solution. Repeat the titration with a second aliquot of sample, and average the titration values. Replicate titrations must agree within 1 percent or 0.2 ml, whichever is greater.

11.2.3 Blanks. Prepare blanks by adding 2 to 4 drops of thorin indicator to 100 ml of 80 percent isopropanol. Titrate the blanks in the same manner as the samples.

11.3 Audit Sample Analysis.

11.3.1 When the method is used to analyze samples to demonstrate compliance with a source emission regulation, EPA audit samples must be analyzed, subject to availability.

11.3.2 Concurrently analyze audit samples and the compliance samples in the same manner to evaluate the technique of the analyst and the standards preparation.

**Note:** It is recommended that known quality control samples be analyzed prior to the compliance and audit sample analyses to optimize the system accuracy and precision. These quality control samples may be obtained by contacting the appropriate EPA regional Office or the responsible enforcement authority.

11.3.3 The same analyst, analytical reagents, and analytical system shall be used for the compliance samples and the EPA audit samples. If this condition is met, duplicate auditing of subsequent compliance analyses for the same enforcement agency within a 30-day period is waived. Audit samples may not be used to validate different compliance samples under the jurisdiction of separate enforcement agencies, unless prior arrangements have been made with both enforcement agencies.

11.4 Audit Sample Results.

11.4.1 Calculate the audit sample concentrations in mg/dscm and submit results using the instructions provided with the audit samples.

11.4.2 Report the results of the audit samples and the compliance determination samples along with their identification numbers, and the analyst's name to the responsible enforcement authority. Include this information with reports of any subsequent compliance analyses for the same enforcement authority during the 30-day period.

11.4.3 The concentrations of the audit samples obtained by the analyst shall agree within 5 percent of the actual concentrations. If the 5 percent specification is not met, reanalyze the compliance and audit samples, and include initial and reanalysis values in the test report.

11.4.4 Failure to meet the 5 percent specification may require retests until the audit problems are resolved. However, if the audit results do not affect the compliance or noncompliance status of the affected facility, the Administrator may waive the reanalysis requirement, further audits, or retests and accept the results of the compliance test. While steps are being taken to resolve audit analysis problems, the Administrator may also choose to use the data to determine the compliance or noncompliance status of the affected facility.

*12.0 Data Analysis and Calculations*

Carry out calculations retaining at least one extra significant figure beyond that of the acquired data. Round off figures after final calculation.

12.1 Nomenclature. Same as Method 5, Section 12.1, with the following additions and exceptions:

$C_a$ = Actual concentration of $SO_2$ in audit sample, mg/dscm.

$C_d$ = Determined concentration of $SO_2$ in audit sample, mg/dscm.

$C_{H2SO4}$ = Sulfuric acid (including $SO_3$) concentration, g/dscm (lb/dscf).

$C_{SO2}$ = Sulfur dioxide concentration, g/dscm (lb/dscf).

N = Normality of barium perchlorate titrant, meq/ml.

RE = Relative error of QA audit sample analysis, percent

$V_a$ = Volume of sample aliquot titrated, 100 ml for $H_2SO_4$ and 10 ml for $SO_2$.

$V_{soln}$ = Total volume of solution in which the sample is contained, 250 ml for the $SO_2$ sample and 1000 ml for the $H_2SO_4$ sample.

$V_t$ = Volume of barium standard solution titrant used for the sample, ml.

$V_{tb}$ = Volume of barium standard solution titrant used for the blank, ml.

12.2 Average Dry Gas Meter Temperature and Average Orifice Pressure Drop. See data sheet (Figure 8–2).

12.3 Dry Gas Volume. Same as Method 5, Section 12.3.

12.4 Volume of Water Vapor Condensed and Moisture Content. Calculate the volume of water vapor using Equation 5–2 of Method 5; the weight of water collected in the impingers and silica gel can be converted directly to milliliters (the specific gravity of water is 1 g/ml). Calculate the moisture content of the stack gas ($B_{ws}$) using Equation 5–3 of Method 5. The **Note** in Section 12.5 of Method 5 also applies to this method. Note that if the effluent gas stream can be considered dry, the volume of water vapor and moisture content need not be calculated.

12.5 Sulfuric Acid Mist (Including $SO_3$) Concentration.

$$C_{H_2SO_4} = K_3\left[N\left(V_t - V_{tb}\right)\left(V_{soln}/V_a\right)\right]/V_{m(std)} \qquad \text{Eq. 8-1}$$

Where:

$K_3$ = 0.04904 g/meq for metric units,

$K_3 = 1.081 \times 10^{-4}$ lb/meq for English units.

12.6 Sulfur Dioxide Concentration.

$$C_{SO_2} = K_4\left[N\left(V_t - V_{tb}\right)\left(V_{soln}/V_a\right)\right]/V_{m(std)} \qquad \text{Eq. 8-2}$$



Where:

$K_4$ = 0.03203 g/meq for metric units,

$K_4 = 7.061 \times 10^{-5}$ lb/meq for English units.

12.7 Isokinetic Variation. Same as Method 5, Section 12.11.

12.8 Stack Gas Velocity and Volumetric Flow Rate. Calculate the average stack gas velocity and volumetric flow rate, if needed, using data obtained in this method and the equations in Sections 12.6 and 12.7 of Method 2.

12.9 Relative Error (RE) for QA Audit Samples. Same as Method 6, Section 12.4.

*13.0 Method Performance*

13.1 Analytical Range. Collaborative tests have shown that the minimum detectable limits of the method are 0.06 mg/m³ ($4 \times 10^{-9}$ lb/ft³) for $H_2SO_4$ and 1.2 mg/m³ ($74 \times 10^{-9}$ lb/ft³) for $SO_2$. No upper limits have been established. Based on theoretical calculations for 200 ml of 3 percent $H_2O_2$ solution, the upper concentration limit for $SO_2$ in a 1.0 m³ (35.3 ft³) gas sample is about 12,000 mg/m³ ($7.7 \times 10^{-4}$ lb/ft³). The upper limit can be extended by increasing the quantity of peroxide solution in the impingers.

*14.0 Pollution Prevention. [Reserved]*

*15.0 Waste Management. [Reserved]*

*16.0 References*

Same as Section 17.0 of Methods 5 and 6.

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*17.0 Tables, Diagrams, Flowcharts, and Validation Data*

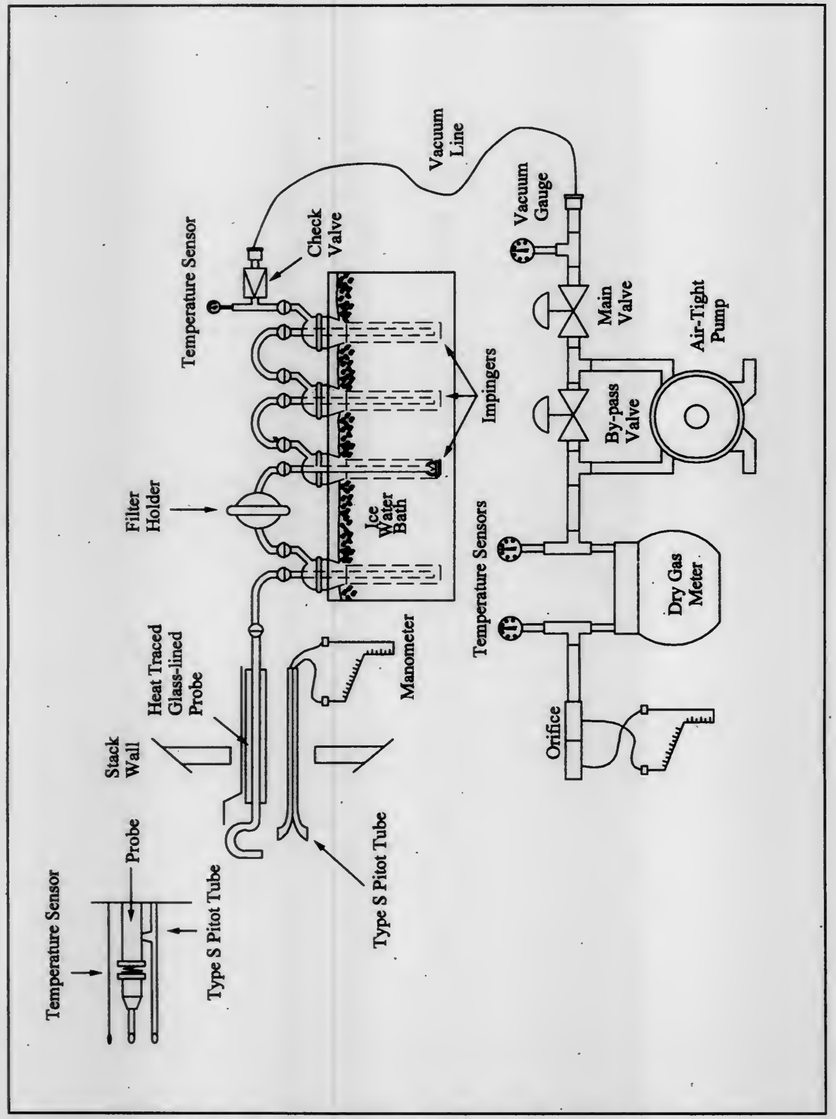



Figure 8-1. Sulfuric Acid Sampling Train.



Ambient temperature
Barometric pressure
Assumed moisture, %
Probe length, (ft.)
Nozzle identification No.
Average calibrated nozzle diameter, (in.)
Probe heater setting
Leak rate, (cfm)
Static pressure, (in. Hg)
Probe liner material
Filter No.

SCHEMATIC OF STACK CROSS SECTION

Plant
Location
Operator
Date
Run No.
Sample box No.
Meter box No.
Meter ΔH@
C factor
Pitot tube coefficient, $C_p$

| Traverse point number | Sampling time (min.) | Vacuum (in.Hg) | Stack temperature ($T_s$) (°F) | Velocity head ($\Delta P_g$) (in. $H_2O$) | Pressure differential across orifice meter (in. $H_2O$) | Gas meter reading ($ft^3$) | Gas sample temperature at dry gas meter Inlet (°F) | Gas sample temperature at dry gas meter Outlet (°F) | Filter temperature (°F) | Temperature of gas leaving condenser or last impinger (°F) |
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| Total | | | | | | | | | | |
| Average | | | | | | | Avg. | | | |

Figure 8-2. Field Data Sheet.

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**Method 10A—Determination of Carbon Monoxide Emissions in Certifying Continuous Emission Monitoring Systems at Petroleum Refineries**

**Note:** This method does not include all of the specifications (*e.g.*, equipment and supplies) and procedures (*e.g.*, sampling and analytical) essential to its performance. Some material is incorporated by reference from other methods in this part. Therefore, to obtain reliable results, persons using this method should have a thorough knowledge of at least the following additional test methods: Method 1, Method 4, and Method 5.

| Analyte | CAS No. | Sensitivity |
|---|---|---|
| Carbon monoxide (CO) | 630–08–0 | 3 ppmv |

*1.0 Scope and Application*

1.1 Analytes.

1.2 Applicability. This method is applicable for the determination of CO emissions at petroleum refineries. This method serves as the reference method in the relative accuracy test for nondispersive infrared (NDIR) CO continuous emission monitoring systems (CEMS) that are required to be installed in petroleum refineries on fluid catalytic cracking unit catalyst regenerators (§ 60.105(a)(2) of this part).

1.3 Data Quality Objectives. Adherence to the requirements of this method will enhance the quality of the data obtained from air pollutant sampling methods.

*2.0 Summary of Method*

An integrated gas sample is extracted from the stack, passed through an alkaline permanganate solution to remove sulfur oxides and nitrogen oxides, and collected in a Tedlar bag. The CO concentration in the sample is measured spectrophotometrically using the reaction of CO with *p*-sulfaminobenzoic acid.

*3.0 Definitions. [Reserved]*

*4.0 Interferences*

Sulfur oxides, nitric oxide, and other acid gases interfere with the colorimetric reaction. They are removed by passing the sampled gas through an alkaline potassium permanganate scrubbing solution. Carbon dioxide ($CO_2$) does not interfere, but, because it is removed by the scrubbing solution, its concentration must be measured independently and an appropriate volume correction made to the sampled gas.

*5.0 Safety*

5.1 Disclaimer. This method may involve hazardous materials, operations, and equipment. This test method may not address all of the safety problems associated with its use. It is the responsibility of the user of this test method to establish appropriate safety and health practices and determine the applicability of regulatory limitations prior to performing this test method. The analyzer users manual should be consulted for specific precautions to be taken with regard to the analytical procedure.

5.2 Corrosive reagents. The following reagents are hazardous. Personal protective equipment and safe procedures are useful in preventing chemical splashes. If contact occurs, immediately flush with copious amounts of water for at least 15 minutes. Remove clothing under shower and decontaminate. Treat residual chemical burns as thermal burns.

5.2.1 Sodium Hydroxide (NaOH). Causes severe damage to eyes and skin. Inhalation causes irritation to nose, throat, and lungs. Reacts exothermically with limited amounts of water.

*6.0 Equipment and Supplies*

6.1 Sample Collection. The sampling train shown in Figure 10A–1 is required for sample collection. Component parts are described below:

6.1.1 Probe. Stainless steel, sheathed Pyrex glass, or equivalent, equipped with a glass wool plug to remove particulate matter.

6.1.2 Sample Conditioning System. Three Greenburg-Smith impingers connected in series with leak-free connections.

6.1.3 Pump. Leak-free pump with stainless steel and Teflon parts to transport sample at a flow rate of 300 ml/min (0.01 $ft^3$/min) to the flexible bag.

6.1.4 Surge Tank. Installed between the pump and the rate meter to eliminate the pulsation effect of the pump on the rate meter.

6.1.5 Rate Meter. Rotameter, or equivalent, to measure flow rate at 300 ml/min (0.01 $ft^3$/min). Calibrate according to Section 10.2.

6.1.6 Flexible Bag. Tedlar, or equivalent, with a capacity of 10 liters (0.35 $ft^3$) and equipped with a sealing quick-connect plug. The bag must be leak-free according to Section 8.1. For protection, it is recommended that the bag be enclosed within a rigid container.

6.1.7 Valves. Stainless-steel needle valve to adjust flow rate, and stainless-steel three-way valve, or equivalent.

6.1.8 $CO_2$ Analyzer. Fyrite, or equivalent, to measure $CO_2$ concentration to within 0.5 percent.

6.1.9 Volume Meter. Dry gas meter, capable of measuring the sample volume under calibration conditions of 300 ml/min (0.01 $ft^3$/min) for 10 minutes.

6.1.10 Pressure Gauge. A water filled U-tube manometer, or equivalent, of about 30 cm (12 in.) to leak-check the flexible bag.

6.2 Sample Analysis.

6.2.1 Spectrophotometer. Single- or double-beam to measure absorbance at 425 and 600 nm. Slit width should not exceed 20 nm.

6.2.2 Spectrophotometer Cells. 1-cm pathlength.

6.2.3 Vacuum Gauge. U-tube mercury manometer, 1 meter (39 in.), with 1-mm divisions, or other gauge capable of measuring pressure to within 1 mm Hg.

6.2.4 Pump. Capable of evacuating the gas reaction bulb to a pressure equal to or less than 40 mm Hg absolute, equipped with coarse and fine flow control valves.

6.2.5 Barometer. Mercury, aneroid, or other barometer capable of measuring atmospheric pressure to within 1 mm Hg.

6.2.6 Reaction Bulbs. Pyrex glass, 100-ml with Teflon stopcock (Figure 10A–2), leak-free at 40 mm Hg, designed so that 10 ml of the colorimetric reagent can be added and removed easily and accurately. Commercially available gas sample bulbs such as Supelco Catalog No. 2–2161 may also be used.

6.2.7 Manifold. Stainless steel, with connections for three reaction bulbs and the appropriate connections for the manometer and sampling bag as shown in Figure 10A–3.

6.2.8 Pipets. Class A, 10–ml size.

6.2.9 Shaker Table. Reciprocating-stroke type such as Eberbach Corporation, Model 6015. A rocking arm or rotary-motion type shaker may also be used. The shaker must be large enough to accommodate at least six gas sample bulbs simultaneously. It may be necessary to construct a table top extension for most commercial shakers to provide sufficient space for the needed bulbs (Figure 10A–4).

6.2.10 Valve. Stainless steel shut-off valve.



6.2.11 Analytical Balance. Capable of weighing to 0.1 mg.

*7.0 Reagents and Standards*

Unless otherwise indicated, all reagents shall conform to the specifications established by the Committee on Analytical Reagents of the American Chemical Society, where such specifications are available; otherwise, the best available grade shall be used.

7.1 Sample Collection.

7.1.1 Water. Deionized distilled, to conform to ASTM D 1193–77 or 91, Type 3 (incorporated by reference—see § 60.17). If high concentrations of organic matter are not expected to be present, the potassium permanganate test for oxidizable organic matter may be omitted.

7.1.2 Alkaline Permanganate Solution, 0.25 M $KMnO_4$/1.5 M Sodium Hydroxide (NaOH). Dissolve 40 g $KMnO_4$ and 60 g NaOH in approximately 900 ml water, cool, and dilute to 1 liter.

7.2 Sample Analysis.

7.2.1 Water. Same as in Section 7.1.1.

7.2.2 1 M Sodium Hydroxide Solution. Dissolve 40 g NaOH in approximately 900 ml of water, cool, and dilute to 1 liter.

7.2.3 0.1 M NaOH Solution. Dilute 50 ml of the 1 M NaOH solution prepared in Section 7.2.2 to 500 ml.

7.2.4 0.1 M Silver Nitrate ($AgNO_3$) Solution. Dissolve 8.5 g $AgNO_3$ in water, and dilute to 500 ml.

7.2.5 0.1 M Para-Sulfaminobenzoic Acid (p-SABA) Solution. Dissolve 10.0 g p-SABA in 0.1 M NaOH, and dilute to 500 ml with 0.1 M NaOH.

7.2.6 Colorimetric Solution. To a flask, add 100 ml of 0.1 M p-SABA solution and 100 ml of 0.1 M $AgNO_3$ solution. Mix, and add 50 ml of 1 M NaOH with shaking. The resultant solution should be clear and colorless. This solution is acceptable for use for a period of 2 days.

7.2.7 Standard Gas Mixtures. Traceable to National Institute of Standards and Technology (NIST) standards and containing between 50 and 1000 ppm CO in nitrogen. At least two concentrations are needed to span each calibration range used (Section 10.3). The calibration gases must be certified by the manufacturer to be within 2 percent of the specified concentrations.

*8.0 Sample Collection, Preservation, Storage, and Transport*

8.1 Sample Bag Leak-Checks. While a bag leak-check is required after bag use, it should also be done before the bag is used for sample collection. The bag should be leak-checked in the inflated and deflated condition according to the following procedure:

8.1.1 Connect the bag to a water manometer, and pressurize the bag to 5 to 10 cm $H_2O$ (2 to 4 in $H_2O$). Allow the bag to stand for 60 minutes. Any displacement in the water manometer indicates a leak.

8.1.2 Evacuate the bag with a leakless pump that is connected to the downstream side of a flow indicating device such as a 0- to 100-ml/min rotameter or an impinger containing water. When the bag is completely evacuated, no flow should be evident if the bag is leak-free.

8.2 Sample Collection.

8.2.1 Evacuate the Tedlar bag completely using a vacuum pump. Assemble the apparatus as shown in Figure 10A–1. Loosely pack glass wool in the tip of the probe. Place 400 ml of alkaline permanganate solution in the first two impingers and 250 ml in the third. Connect the pump to the third impinger, and follow this with the surge tank, rate meter, and 3-way valve. Do not connect the Tedlar bag to the system at this time.

8.2.2 Leak-check the sampling system by plugging the probe inlet, opening the 3-way valve, and pulling a vacuum of approximately 250 mm Hg on the system while observing the rate meter for flow. If flow is indicated on the rate meter, do not proceed further until the leak is found and corrected.

8.2.3 Purge the system with sample gas by inserting the probe into the stack and drawing the sample gas through the system at 300 ml/min ± 10 percent for 5 minutes. Connect the evacuated Tedlar bag to the system, record the starting time, and sample at a rate of 300 ml/min for 30 minutes, or until the Tedlar bag is nearly full. Record the sampling time, the barometric pressure, and the ambient temperature. Purge the system as described above immediately before each sample.

8.2.4 The scrubbing solution is adequate for removing sulfur oxides and nitrogen oxides from 50 liters (1.8 $ft^3$) of stack gas when the concentration of each is less than 1,000 ppm and the $CO_2$ concentration is less than 15 percent. Replace the scrubber solution after every fifth sample.

8.3 Carbon Dioxide Measurement. Measure the $CO_2$ content in the stack to the nearest 0.5 percent each time a CO sample is collected. A simultaneous grab sample analyzed by the Fyrite analyzer is acceptable.

*9.0 Quality Control*

9.1 Miscellaneous Quality Control Measures.

| Section | Quality control measure | Effect |
|---|---|---|
| 8.1 | Sampling equipment leak-checks and calibration. | Ensure accuracy and precision of sampling measurements. |
| 10.3 | Spectrophotometer calibration | Ensure linearity of spectrophotometer response to standards. |

9.2 Volume Metering System Checks. Same as Method 5, Section 9.2.

*10.0 Calibration and Standardization*

**Note:** Maintain a laboratory log of all calibrations.

10.1 Gas Bulb Calibration. Weigh the empty bulb to the nearest 0.1 g. Fill the bulb to the stopcock with water, and again weigh to the nearest 0.1 g. Subtract the tare weight, and calculate the volume in liters to three significant figures using the density of water at the measurement temperature. Record the volume on the bulb. Alternatively, mark an identification number on the bulb, and record the volume in a notebook.

10.2 Rate Meter Calibration. Assemble the system as shown in Figure 10A–1 (the impingers may be removed), and attach a volume meter to the probe inlet. Set the rotameter at 300 ml/min, record the volume meter reading, start the pump, and pull ambient air through the system for 10 minutes. Record the final volume meter reading. Repeat the procedure and average the results to determine the volume of gas that passed through the system.

10.3 Spectrophotometer Calibration Curve.

10.3.1 Collect the standards as described in Section 8.2. Prepare at least two sets of three bulbs as standards to span the 0 to 400 or 400 to 1000 ppm range. If any samples span both concentration ranges, prepare a calibration curve for each range using separate reagent blanks. Prepare a set of three bulbs containing colorimetric reagent but no CO to serve as a reagent

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blank. Analyze each standard and blank according to the sample analysis procedure of Section 11.0 Reject the standard set where any of the individual bulb absorbances differs from the set mean by more than 10 percent.

10.3.2 Calculate the average absorbance for each set (3 bulbs) of standards using Equation 10A–1 and Table 10A–1. Construct a graph of average absorbance for each standard against its corresponding concentration. Draw a smooth curve through the points. The curve should be linear over the two concentration ranges discussed in Section 13.3.

*11.0 Analytical Procedure*

11.1 Assemble the system shown in Figure 10A–3, and record the information required in Table 10A–1 as it is obtained. Pipet 10.0 ml of the colorimetric reagent into each gas reaction bulb, and attach the bulbs to the system. Open the stopcocks to the reaction bulbs, but leave the valve to the Tedlar bag closed. Turn on the pump, fully open the coarse-adjust flow valve, and slowly open the fine-adjust valve until the pressure is reduced to at least 40 mm Hg. Now close the coarse adjust valve, and observe the manometer to be certain that the system is leak-free. Wait a minimum of 2 minutes. If the pressure has increased less than 1 mm Hg, proceed as described below. If a leak is present, find and correct it before proceeding further.

11.2 Record the vacuum pressure ($P_v$) to the nearest 1 mm Hg, and close the reaction bulb stopcocks. Open the Tedlar bag valve, and allow the system to come to atmospheric pressure. Close the bag valve, open the pump coarse adjust valve, and evacuate the system again. Repeat this fill/evacuation procedure at least twice to flush the manifold completely. Close the pump coarse adjust valve, open the Tedlar bag valve, and let the system fill to atmospheric pressure. Open the stopcocks to the reaction bulbs, and let the entire system come to atmospheric pressure. Close the bulb stopcocks, remove the bulbs, record the room temperature and barometric pressure ($P_{bar}$, to nearest mm Hg), and place the bulbs on the shaker table with their main axis either parallel to or perpendicular to the plane of the table top. Purge the bulb-filling system with ambient air for several minutes between samples. Shake the samples for exactly 2 hours.

11.3 Immediately after shaking, measure the absorbance (A) of each bulb sample at 425 nm if the concentration is less than or equal to 400 ppm CO or at 600 nm if the concentration is above 400 ppm.

**Note:** This may be accomplished with multiple bulb sets by sequentially collecting sets and adding to the shaker at staggered intervals, followed by sequentially removing sets from the shaker for absorbance measurement after the two-hour designated intervals have elapsed.

11.4 Use a small portion of the sample to rinse a spectrophotometer cell several times before taking an aliquot for analysis. If one cell is used to analyze multiple samples, rinse the cell with deionized distilled water several times between samples. Prepare and analyze standards and a reagent blank as described in Section 10.3. Use water as the reference. Reject the analysis if the blank absorbance is greater than 0.1. All conditions should be the same for analysis of samples and standards. Measure the absorbances as soon as possible after shaking is completed.

11.5 Determine the CO concentration of each bag sample using the calibration curve for the appropriate concentration range as discussed in Section 10.3.

*12.0 Calculations and Data Analysis*

Carry out calculations retaining at least one extra decimal figure beyond that of the acquired data. Round off figures after final calculation.

12.1 Nomenclature.

A = Sample absorbance, uncorrected for the reagent blank.
$A_r$ = Absorbance of the reagent blank.
$A_s$ = Average sample absorbance per liter, units/liter.
$B_w$ = Moisture content in the bag sample.
C = CO concentration in the stack gas, dry basis, ppm.
$C_b$ = CO concentration of the bag sample, dry basis, ppm.
$C_g$ = CO concentration from the calibration curve, ppm.
F = Volume fraction of $CO_2$ in the stack.
n = Number of reaction bulbs used per bag sample.
$P_b$ = Barometric pressure, mm Hg.
$P_v$ = Residual pressure in the sample bulb after evacuation, mm Hg.
$P_w$ = Vapor pressure of $H_2O$ in the bag (from Table 10A–2), mm Hg.
$V_b$ = Volume of the sample bulb, liters.
$V_r$ = Volume of reagent added to the sample bulb, 0.0100 liter.

12.2 Average Sample Absorbance per Liter. Calculate $A_s$ for each gas bulb using Equation 10A–1, and record the value in Table 10A–1. Calculate the average $A_s$ for each bag sample, and compare the three values to the average. If any single value differs by more than 10 percent from the average, reject this value, and calculate a new average using the two remaining values.

$$A_s = \frac{(A - A_r)(P_b)}{(V_b - V_r)(P_b - P_v)} \qquad \text{Eq. 10A-1}$$

**Note:** A and $A_r$ must be at the same wavelength.

12.3 CO Concentration in the Bag. Calculate $C_b$ using Equations 10A–2 and 10A–3. If condensate is visible in the Tedlar bag, calculate $B_w$ using Table 10A–2 and the temperature and barometric pressure in the analysis room. If condensate is not visible, calculate $B_w$ using the temperature and barometric pressure at the sampling site.

$$B_w = \frac{P_w}{P_b} \qquad \text{Eq. 10A-2}$$

$$C_b = \frac{C_g}{(1 - B_w)} \qquad \text{Eq. 10A-3}$$

12.4 CO Concentration in the Stack.

$$C = C_b\,(1 - F) \qquad \text{Eq. 10A-4}$$

*13.0 Method Performance*

13.1 Precision. The estimated intralaboratory standard deviation of the method is 3 percent of the mean for gas samples analyzed in duplicate in the concentration range of 39 to 412 ppm. The interlaboratory precision has not been established.

13.2 Accuracy. The method contains no significant biases when compared to an NDIR analyzer calibrated with NIST standards.

13.3 Range. Approximately 3 to 1800 ppm CO. Samples having concentrations below 400 ppm are analyzed at 425 nm, and samples having concentrations above 400 ppm are analyzed at 600 nm.

13.4 Sensitivity. The detection limit is 3 ppmv based on a change in concentration equal to three times the standard deviation of the reagent blank solution.

13.5 Stability. The individual components of the colorimetric reagent are stable for at least 1 month. The colorimetric reagent must be used within 2 days after preparation to avoid excessive blank correction. The samples in the Tedlar bag should be stable for at least 1 week if the bags are leak-free.

*14.0 Pollution Prevention. [Reserved]*

*15.0 Waste Management. [Reserved]*

*16.0 References*

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*17.0 Tables, Diagrams, Flowcharts, and Validation Data*



TABLE 10A–1.—DATA RECORDING SHEET FOR SAMPLES ANALYZED IN TRIPLICATE

| Sample No./type | Room temp °C | Stack %$CO_2$ | Bulb No. | Bulb vol. liters | Reagent vol. in bulb, liter | Partial pressure of gas in bulb, mm Hg | $P_b$, mm Hg | Shaking time, min | Abs versus water | A–$A_r$ | A, | Avg A, |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| blank | | | | | | | | | | | | |
| Std. 1 | | | | | | | | | | | | |
| | | | | | | | | | | | | |
| Std. 2 | | | | | | | | | | | | |
| | | | | | | | | | | | | |
| Sample 1 | | | | | | | | | | | | |
| | | | | | | | | | | | | |
| Sample 2 | | | | | | | | | | | | |
| | | | | | | | | | | | | |
| | | | | | | | | | | | | |
| Sample 3 | | | | | | | | | | | | |
| | | | | | | | | | | | | |
| | | | | | | | | | | | | |

TABLE 10A–2.—MOISTURE CORRECTION

| Temperature °C | Vapor pressure of $H_2O$, mm Hg | Temperature °C | Vapor pressure of $H_2$, mm Hg |
|---|---|---|---|
| 4 | 6.1 | 18 | 15.5 |
| 6 | 7.0 | 20 | 17.5 |
| 8 | 8.0 | 22 | 19.8 |
| 10 | 9.2 | 24 | 22.4 |
| 12 | 10.5 | 26 | 25.2 |
| 14 | 12.0 | 28 | 28.3 |
| 16 | 13.6 | 30 | 31.8 |

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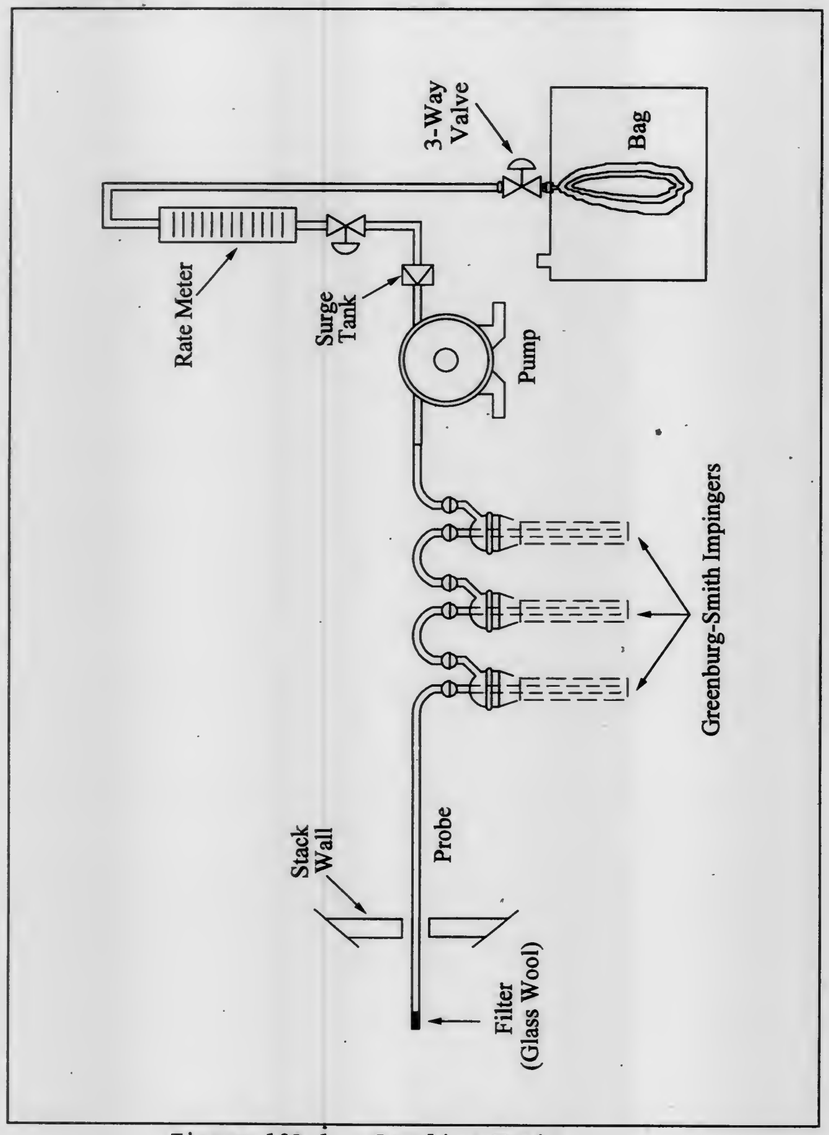



Figure 10A-1. Sampling Train.



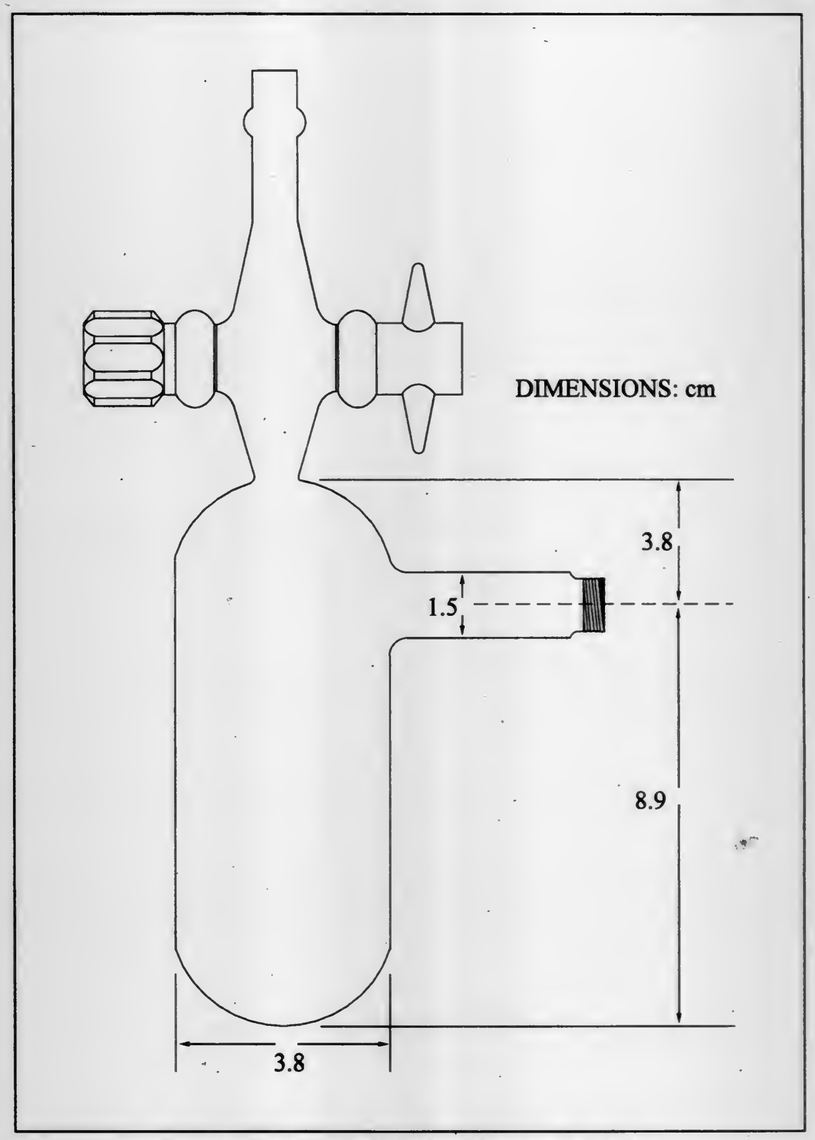



Figure 10A-2. Sample Reaction Bulbs.

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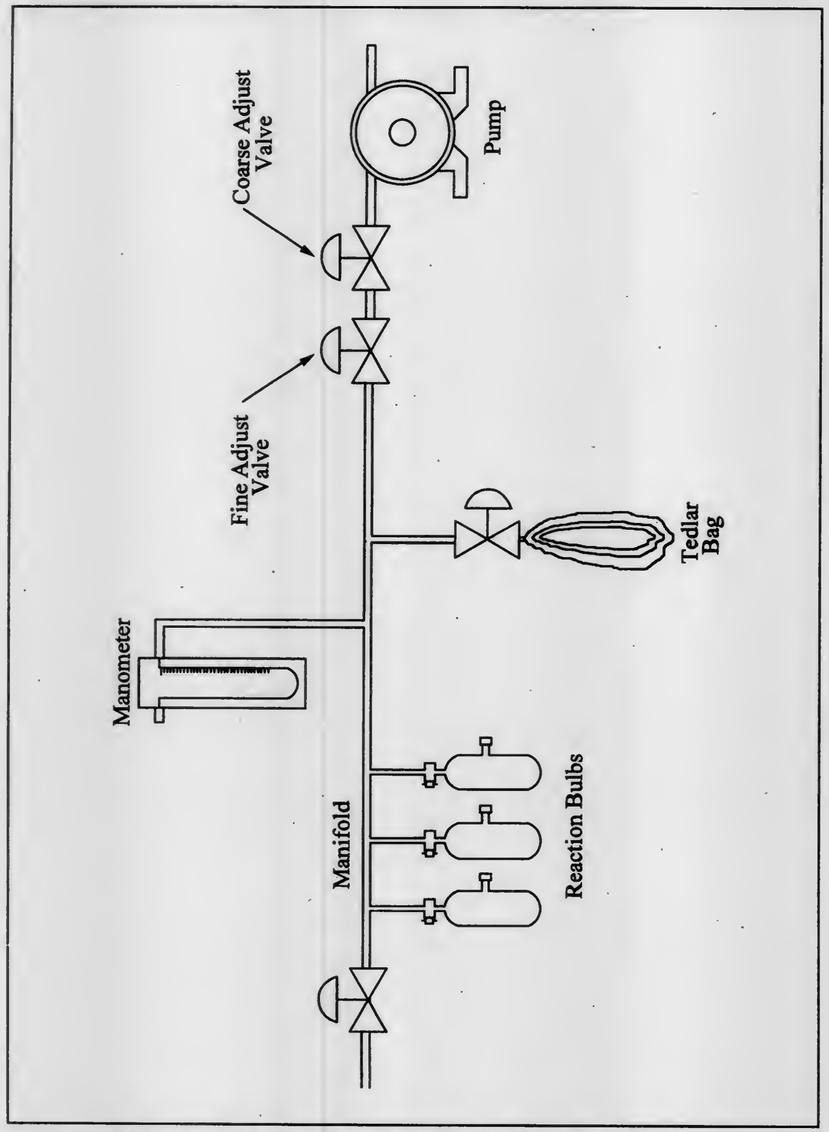



Figure 10A-3. Sample Bulb Filling System.



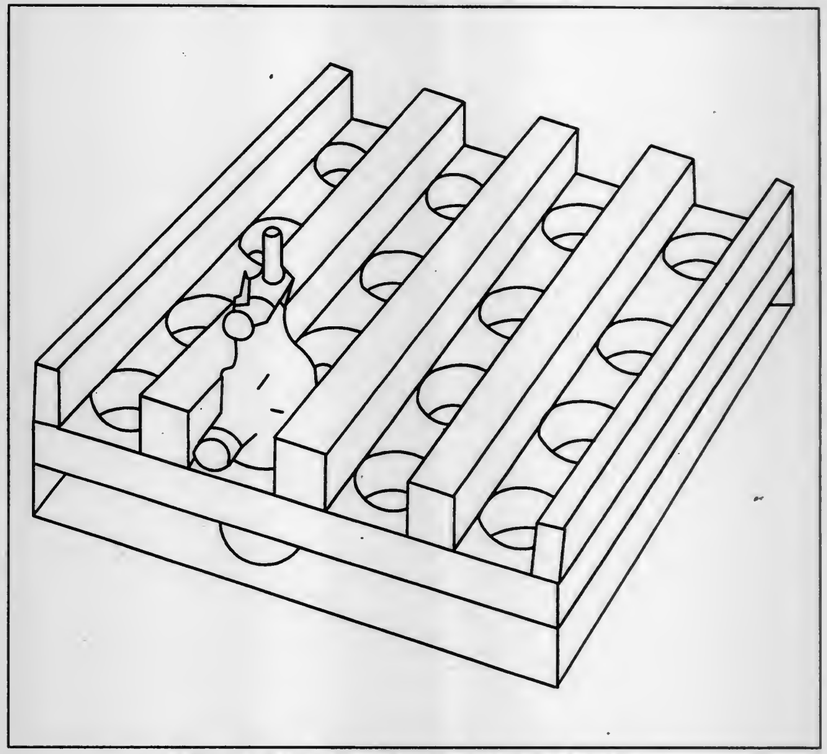


Figure 10A-4. Shaker Table Adapter.

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**Method 10B—Determination of Carbon Monoxide Emissions From Stationary Sources**

**Note:** This method is not inclusive with respect to specifications (*e.g.*, equipment and supplies) and procedures (*e.g.*, sampling and analytical) essential to its performance. Some material is incorporated by reference from other methods in this part. Therefore, to obtain reliable results, persons using this method should have a thorough knowledge of at least the following additional test methods: Method 1, Method 4, Method 10A, and Method 25.

*1.0 Scope and Application*

1.1 Analytes.

| Analyte | CAS No. | Sensitivity |
|---|---|---|
| Carbon monoxide (CO) | 630–08–0 | Not determined. |

1.2 Applicability. This method applies to the measurement of CO emissions at petroleum refineries and from other sources when specified in an applicable subpart of the regulations.

1.3 Data Quality Objectives. Adherence to the requirements of this method will enhance the quality of the data obtained from air pollutant sampling methods.

*2.0 Summary of Method*

2.1 An integrated gas sample is extracted from the sampling point, passed through a conditioning system to remove interferences, and collected in a Tedlar bag. The CO is separated from the sample by gas chromatography (GC) and catalytically reduced to methane ($CH_4$) which is determined by flame ionization detection (FID). The analytical portion of this method is identical to applicable sections in Method 25 detailing CO measurement.

*3.0 Definitions. [Reserved]*

*4.0 Interferences*

4.1 Carbon dioxide ($CO_2$) and organics potentially can interfere with the analysis. Most of the $CO_2$ is removed from the sample by the alkaline permanganate conditioning system; any

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residual $CO_2$ and organics are separated from the CO by GC.

*5.0 Safety*

5.1 Disclaimer. This method may involve hazardous materials, operations, and equipment. This test method may not address all of the safety problems associated with its use. It is the responsibility of the user of this test method to establish appropriate safety and health practices and determine the applicability of regulatory limitations prior to performing this test method. The analyzer users manual should be consulted for specific precautions concerning the analytical procedure.

*6.0 Equipment and Supplies*

6.1 Sample Collection. Same as in Method 10A, Section 6.1.

6.2 Sample Analysis. A GC/FID analyzer, capable of quantifying CO in the sample and consisting of at least the following major components, is required for sample analysis. [Alternatively, complete Method 25 analytical systems (Method 25, Section 6.3) are acceptable alternatives when calibrated for CO and operated in accordance with the Method 25 analytical procedures (Method 25, Section 11.0).]

6.2.1 Separation Column. A column capable of separating CO from $CO_2$ and organic compounds that may be present. A 3.2-mm (⅛-in.) OD stainless steel column packed with 1.7 m (5.5 ft.) of 60/80 mesh Carbosieve S–II (available from Supelco) has been used successfully for this purpose.

6.2.2 Reduction Catalyst. Same as in Method 25, Section 6.3.1.2.

6.2.3 Sample Injection System. Same as in Method 25, Section 6.3.1.4, equipped to accept a sample line from the Tedlar bag.

6.2.4 Flame Ionization Detector. Meeting the linearity specifications of Section 10.3 and having a minimal instrument range of 10 to 1,000 ppm CO.

6.2.5 Data Recording System. Analog strip chart recorder or digital integration system, compatible with the FID, for permanently recording the analytical results.

*7.0 Reagents and Standards*

7.1 Sample Collection. Same as in Method 10A, Section 7.1.

7.2 Sample Analysis.

7.2.1 Carrier, Fuel, and Combustion Gases. Same as in Method 25, Sections 7.2.1, 7.2.2, and 7.2.3, respectively.

7.2.2 Calibration Gases. Three standard gases with nominal CO concentrations of 20, 200, and 1,000 ppm CO in nitrogen. The calibration gases shall be certified by the manufacturer to be ± 2 percent of the specified concentrations.

7.2.3 Reduction Catalyst Efficiency Check Calibration Gas. Standard $CH_4$ gas with a nominal concentration of 1,000 ppm in air.

*8.0 Sample Collection, Preservation, Storage, and Transport*

Same as in Method 10A, Section 8.0.

*9.0 Quality Control*

| Section | Quality control measure | Effect |
|---|---|---|
| 8.0 | Sample bag/sampling system leak-checks | Ensures that negative bias introduced through leakage is minimized. |
| 10.1 | Carrier gas blank check | Ensures that positive bias introduced by contamination of carrier gas is less than 5 ppmv. |
| 10.2 | Reduction catalyst efficiency check | Ensures that negative bias introduced by inefficient reduction catalyst is less than 5 percent. |
| 10.3 | Analyzer calibration | Ensures linearity of analyzer response to standards. |
| 11.2 | Triplicate sample analyses | Ensures precision of analytical results. |

*10.0 Calibration and Standardization*

10.1 Carrier Gas Blank Check. Analyze each new tank of carrier gas with the GC analyzer according to Section 11.2 to check for contamination. The corresponding concentration must be less than 5 ppm for the tank to be acceptable for use.

10.2 Reduction Catalyst Efficiency Check. Prior to initial use, the reduction catalyst shall be tested for reduction efficiency. With the heated reduction catalyst bypassed, make triplicate injections of the 1,000 ppm $CH_4$ gas (Section 7.2.3) to calibrate the analyzer. Repeat the procedure using 1,000 ppm CO gas (Section 7.2.2) with the catalyst in operation. The reduction catalyst operation is acceptable if the CO response is within 5 percent of the certified gas value.

10.3 Analyzer Calibration. Perform this test before the system is first placed into operation. With the reduction catalyst in operation, conduct a linearity check of the analyzer using the standards specified in Section 7.2.2. Make triplicate injections of each calibration gas, and then calculate the average response factor (area/ppm) for each gas, as well as the overall mean of the response factor values. The instrument linearity is acceptable if the average response factor of each calibration gas is within 2.5 percent of the overall mean value and if the relative standard deviation (calculated in Section 12.8 of Method 25) for each set of triplicate injections is less than 2 percent. Record the overall mean of the response factor values as the calibration response factor (R).

*11.0 Analytical Procedure*

11.1 Preparation for Analysis. Before putting the GC analyzer into routine operation, conduct the calibration procedures listed in Section 10.0. Establish an appropriate carrier flow rate and detector temperature for the specific instrument used.

11.2 Sample Analysis. Purge the sample loop with sample, and then inject the sample. Analyze each sample in triplicate, and calculate the average sample area (A). Determine the bag CO concentration according to Section 12.2.

*12.0 Calculations and Data Analysis*

Carry out calculations retaining at least one extra significant figure beyond that of the acquired data. Round off results only after the final calculation.

12.1 Nomenclature.

A = Average sample area.
$B_w$ = Moisture content in the bag sample, fraction.
C = CO concentration in the stack gas, dry basis, ppm.
$C_b$ = CO concentration in the bag sample, dry basis, ppm.
F = Volume fraction of $CO_2$ in the stack, fraction.
$P_{bar}$ = Barometric pressure, mm Hg.
$P_w$ = Vapor pressure of the $H_2O$ in the bag (from Table 10A–2, Method 10A), mm Hg.
R = Mean calibration response factor, area/ppm.

12.2 CO Concentration in the Bag. Calculate $C_b$ using Equations 10B–1 and 10B–2. If condensate is visible in the Tedlar bag, calculate $B_w$ using Table 10A–2 of Method 10A and the temperature and barometric pressure in the analysis room. If condensate is not visible, calculate $B_w$ using the temperature and barometric pressure at the sampling site.

$$B_w = \frac{P_w}{P_{bar}} \qquad \text{Eq. 10B-1}$$

$$C_b = \frac{A}{R\,(1-B_w)} \qquad \text{Eq. 10B-2}$$

12.3 CO Concentration in the Stack

$$C = C_b\,(1-F) \qquad \text{Eq. 10B-3}$$

*13.0 Method Performance. [Reserved]*

*14.0 Pollution Prevention. [Reserved]*

*15.0 Waste Management. [Reserved]*

*16.0 References*

Same as in Method 25, Section 16.0, with the addition of the following:

1. Butler, F.E, J.E. Knoll, and M.R. Midgett. Development and Evaluation of Methods for Determining Carbon Monoxide Emissions. Quality Assurance Division, Environmental Monitoring Systems Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, NC. June 1985. 33 pp.

*17.0 Tables, Diagrams, Flowcharts, and Validation Data. [Reserved]*



**Method 11—Determination of Hydrogen Sulfide Content of Fuel Gas Streams in Petroleum Refineries**

*1.0 Scope and Application*

1.1 Analytes.

| Analyte | CAS No. | Sensitivity |
|---|---|---|
| Hydrogen sulfide ($H_2S$) | 7783–06–4 | 8 mg/m³—740 mg/m³, (6 ppm—520 ppm). |

1.2 Applicability. This method is applicable for the determination of the $H_2S$ content of fuel gas streams at petroleum refineries.

1.3 Data Quality Objectives. Adherence to the requirements of this method will enhance the quality of the data obtained from air pollutant sampling methods.

*2.0 Summary of Method*

2.1 A sample is extracted from a source and passed through a series of midget impingers containing a cadmium sulfate ($CdSO_4$) solution; $H_2S$ is absorbed, forming cadmium sulfide (CdS). The latter compound is then measured iodometrically.

*3.0 Definitions. [Reserved]*

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*4.0 Interferences*

4.1 Any compound that reduces iodine ($I_2$) or oxidizes the iodide ion will interfere in this procedure, provided it is collected in the $CdSO_4$ impingers. Sulfur dioxide in concentrations of up to 2,600 mg/m³ is removed with an impinger containing a hydrogen peroxide ($H_2O_2$) solution. Thiols precipitate with $H_2S$. In the absence of $H_2S$, only traces of thiols are collected. When methane-and ethane-thiols at a total level of 300 mg/m³ are present in addition to $H_2S$, the results vary from 2 percent low at an $H_2S$ concentration of 400 mg/m³ to 14 percent high at an $H_2S$ concentration of 100 mg/m³. Carbonyl sulfide at a concentration of 20 percent does not interfere. Certain carbonyl-containing compounds react with iodine and produce recurring end points. However, acetaldehyde and acetone at concentrations of 1 and 3 percent, respectively, do not interfere.

4.2 Entrained $H_2O_2$ produces a negative interference equivalent to 100 percent of that of an equimolar quantity of $H_2S$. Avoid the ejection of $H_2O_2$ into the $CdSO_4$ impingers.

*5.0 Safety*

5.1 Disclaimer. This method may involve hazardous materials, operations, and equipment. This test method may not address all of the safety problems associated with its use. It is the responsibility of the user of this test method to establish appropriate safety and health practices and determine the applicability of regulatory limitations prior to performing this test method.

5.2 Corrosive reagents. The following reagents are hazardous. Personal protective equipment and safe procedures are useful in preventing chemical splashes. If contact occurs, immediately flush with copious amounts of water for at least 15 minutes. Remove clothing under shower and decontaminate. Treat residual chemical burns as thermal burns.

5.2.1 Hydrogen Peroxide. Irritating to eyes, skin, nose, and lungs. 30% $H_2O_2$ is a strong oxidizing agent. Avoid contact with skin, eyes, and combustible material. Wear gloves when handling.

5.2.2 Hydrochloric Acid. Highly toxic. Vapors are highly irritating to eyes, skin, nose, and lungs, causing severe damage. May cause bronchitis, pneumonia, or edema of lungs. Exposure to concentrations of 0.13 to 0.2 percent can be lethal in minutes. Will react with metals, producing hydrogen.

*6.0 Equipment and Supplies*

6.1 Sample Collection. The following items are needed for sample collection:

6.1.1 Sampling Line. Teflon tubing, 6- to 7- mm (¼-in.) ID, to connect the sampling train to the sampling valve.

6.1.2 Impingers. Five midget impingers, each with 30-ml capacity. The internal diameter of the impinger tip must be 1 mm ± 0.05 mm. The impinger tip must be positioned 4 to 6 mm from the bottom of the impinger.

6.1.3 Tubing. Glass or Teflon connecting tubing for the impingers.

6.1.4 Ice Water Bath. To maintain absorbing solution at a low temperature.

6.1.5 Drying Tube. Tube packed with 6- to 16- mesh indicating-type silica gel, or equivalent, to dry the gas sample and protect the meter and pump. If the silica gel has been used previously, dry at 175 °C (350 °F) for 2 hours. New silica gel may be used as received. Alternatively, other types of desiccants (equivalent or better) may be used, subject to approval of the Administrator.

**Note:** Do not use more than 30 g of silica gel. Silica gel adsorbs gases such as propane from the fuel gas stream, and use of excessive amounts of silica gel could result in errors in the determination of sample volume.

6.1.6 Sampling Valve. Needle valve, or equivalent, to adjust gas flow rate. Stainless steel or other corrosion-resistant material.

6.1.7 Volume Meter. Dry gas meter (DGM), sufficiently accurate to measure the sample volume within 2 percent, calibrated at the selected flow rate (about 1.0 liter/min) and conditions actually encountered during sampling. The meter shall be equipped with a temperature sensor (dial thermometer or equivalent) capable of measuring temperature to within 3 °C (5.4 °F). The gas meter should have a petcock, or equivalent, on the outlet connector which can be closed during the leak-check. Gas volume for one revolution of the meter must not be more than 10 liters.

6.1.8 Rate Meter. Rotameter, or equivalent, to measure flow rates in the range from 0.5 to 2 liters/min (1 to 4 ft³/hr).

6.1.9 Graduated Cylinder. 25-ml size.

6.1.10 Barometer. Mercury, aneroid, or other barometer capable of measuring atmospheric pressure to within 2.5 mm Hg (0.1 in. Hg). In many cases, the barometric reading may be obtained from a nearby National Weather Service station, in which case, the station value (which is the absolute barometric pressure) shall be requested and an adjustment for elevation differences between the weather station and the sampling point shall be applied at a rate of minus 2.5 mm Hg (0.1 in Hg) per 30 m (100 ft) elevation increase or vice-versa for elevation decrease.

6.1.11 U-tube Manometer. 0-; to 30-cm water column, for leak-check procedure.

6.1.12 Rubber Squeeze Bulb. To pressurize train for leak-check.

6.1.13 Tee, Pinchclamp, and Connecting Tubing. For leak-check.

6.1.14 Pump. Diaphragm pump, or equivalent. Insert a small surge tank between the pump and rate meter to minimize the pulsation effect of the diaphragm pump on the rate meter. The pump is used for the air purge at the end of the sample run; the pump is not ordinarily used during sampling, because fuel gas streams are usually sufficiently pressurized to force sample gas through the train at the required flow rate. The pump need not be leak-free unless it is used for sampling.

6.1.15 Needle Valve or Critical Orifice. To set air purge flow to 1 liter/min.

6.1.16 Tube Packed with Active Carbon. To filter air during purge.

6.1.17 Volumetric Flask. One 1000-ml.

6.1.18 Volumetric Pipette. One 15-ml.

6.1.19 Pressure-Reduction Regulator. Depending on the sampling stream pressure, a pressure-reduction regulator may be needed to reduce the pressure of the gas stream entering the Teflon sample line to a safe level.

6.1.20 Cold Trap. If condensed water or amine is present in the sample stream, a corrosion-resistant cold trap shall be used immediately after the sample tap. The trap shall not be operated below 0 °C (32 °F) to avoid condensation of $C_3$ or $C_4$ hydrocarbons.

6.2 Sample Recovery. The following items are needed for sample recovery:

6.2.1 Sample Container. Iodine flask, glass-stoppered, 500-ml size.

6.2.2 Volumetric Pipette. One 50-ml.

6.2.3 Graduated Cylinders. One each 25- and 250-ml.

6.2.4 Erlenmeyer Flasks. 125-ml.

6.2.5 Wash Bottle.

6.2.6 Volumetric Flasks. Three 1000-ml.

6.3 Sample Analysis. The following items are needed for sample analysis:

6.3.1 Flask. Glass-stoppered iodine flask, 500-ml.



6.3.2 Burette. 50-ml.

6.3.3 Erlenmeyer Flask. 125-ml.

6.3.4 Volumetric Pipettes. One 25-ml; two each 50- and 100-ml.

6.3.5 Volumetric Flasks. One 1000-ml; two 500-ml.

6.3.6 Graduated Cylinders. One each 10- and 100-ml.

*7.0 Reagents and Standards*

**Note:** Unless otherwise indicated, it is intended that all reagents conform to the specifications established by the Committee on Analytical Reagents of the American Chemical Society, where such specifications are available. Otherwise, use the best available grade.

7.1 Sample Collection. The following reagents are required for sample collection:

7.1.1 $CdSO_4$ Absorbing Solution. Dissolve 41 g of $3CdSO_48H_2O$ and 15 ml of 0.1 M sulfuric acid in a 1-liter volumetric flask that contains approximately ¾ liter of water. Dilute to volume with deionized, distilled water. Mix thoroughly. The pH should be 3 ± 0.1. Add 10 drops of Dow-Corning Antifoam B. Shake well before use. This solution is stable for at least one month. If Antifoam B is not used, a more labor-intensive sample recovery procedure is required (see Section 11.2).

7.1.2 Hydrogen Peroxide, 3 Percent. Dilute 30 percent $H_2O_2$ to 3 percent as needed. Prepare fresh daily.

7.1.3 Water. Deionized distilled to conform to ASTM D 1193–77 or 91, Type 3 (incorporated by reference—see § 60.17). The $KMnO_4$ test for oxidizable organic matter may be omitted when high concentrations of organic matter are not expected to be present.

7.2 Sample Recovery. The following reagents are needed for sample recovery:

7.2.1 Water. Same as Section 7.1.3.

7.2.2 Hydrochloric Acid (HCl) Solution, 3 M. Add 240 ml of concentrated HCl (specific gravity 1.19) to 500 ml of water in a 1-liter volumetric flask. Dilute to 1 liter with water. Mix thoroughly.

7.2.3 Iodine ($I_2$) Solution, 0.1 N. Dissolve 24 g of potassium iodide (KI) in 30 ml of water. Add 12.7 g of resublimed iodine ($I_2$) to the KI solution. Shake the mixture until the $I_2$ is completely dissolved. If possible, let the solution stand overnight in the dark. Slowly dilute the solution to 1 liter with water, with swirling. Filter the solution if it is cloudy. Store solution in a brown-glass reagent bottle.

7.2.4 Standard $I_2$ Solution, 0.01 N. Pipette 100.0 ml of the 0.1 N iodine solution into a 1-liter volumetric flask, and dilute to volume with water. Standardize daily as in Section 10.2.1. This solution must be protected from light. Reagent bottles and flasks must be kept tightly stoppered.

7.3 Sample Analysis. The following reagents and standards are needed for sample analysis:

7.3.1 Water. Same as in Section 7.1.3.

7.3.2 Standard Sodium Thiosulfate Solution, 0.1 N. Dissolve 24.8 g of sodium thiosulfate pentahydrate ($Na_2S_2O_3·5H_2O$) or 15.8 g of anhydrous sodium thiosulfate ($Na_2S_2O_3$) in 1 liter of water, and add 0.01 g of anhydrous sodium carbonate ($Na_2CO_3$) and 0.4 ml of chloroform ($CHCl_3$) to stabilize. Mix thoroughly by shaking or by aerating with nitrogen for approximately 15 minutes, and store in a glass-stoppered, reagent bottle. Standardize as in Section 10.2.2.

7.3.3 Standard Sodium Thiosulfate Solution, 0.01 N. Pipette 50.0 ml of the standard 0.1 N $Na_2S_2O_3$ solution into a volumetric flask, and dilute to 500 ml with water.

**Note:** A 0.01 N phenylarsine oxide ($C_6H_5AsO$) solution may be prepared instead of 0.01 N $Na_2S_2O_3$ (see Section 7.3.4).

7.3.4 Standard Phenylarsine Oxide Solution, 0.01 N. Dissolve 1.80 g of ($C_6H_5AsO$) in 150 ml of 0.3 N sodium hydroxide. After settling, decant 140 ml of this solution into 800 ml of water. Bring the solution to pH 6–7 with 6 N HCl, and dilute to 1 liter with water. Standardize as in Section 10.2.3.

7.3.5 Starch Indicator Solution. Suspend 10 g of soluble starch in 100 ml of water, and add 15 g of potassium hydroxide (KOH) pellets. Stir until dissolved, dilute with 900 ml of water, and let stand for 1 hour. Neutralize the alkali with concentrated HCl, using an indicator paper similar to Alkacid test ribbon, then add 2 ml of glacial acetic acid as a preservative.

**Note:** Test starch indicator solution for decomposition by titrating with 0.01 N $I_2$ solution, 4 ml of starch solution in 200 ml of water that contains 1 g of KI. If more than 4 drops of the 0.01 N $I_2$ solution are required to obtain the blue color, a fresh solution must be prepared.

*8.0 Sample Collection, Preservation, Storage, and Transport*

8.1 Sampling Train Preparation. Assemble the sampling train as shown in Figure 11–1, connecting the five midget impingers in series. Place 15 ml of 3 percent $H_2O_2$ solution in the first impinger. Leave the second impinger empty. Place 15 ml of the $CdSO_4$ solution in the third, fourth, and fifth impingers. Place the impinger assembly in an ice water bath container, and place water and crushed ice around the impingers. Add more ice during the run, if needed.

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8.2 Leak-Check Procedure.

8.2.1 Connect the rubber bulb and manometer to the first impinger, as shown in Figure 11–1. Close the petcock on the DGM outlet. Pressurize the train to 25 cm water with the bulb, and close off the tubing connected to the rubber bulb. The train must hold 25 cm water pressure with not more than a 1 cm drop in pressure in a 1-minute interval. Stopcock grease is acceptable for sealing ground glass joints.

8.2.2 If the pump is used for sampling, it is recommended, but not required, that the pump be leak-checked separately, either prior to or after the sampling run. To leak-check the pump, proceed as follows: Disconnect the drying tube from the impinger assembly. Place a vacuum gauge at the inlet to either the drying tube or the pump, pull a vacuum of 250 mm Hg (10 in. Hg), plug or pinch off the outlet of the flow meter, and then turn off the pump. The vacuum should remain stable for at least 30 seconds. If performed prior to the sampling run, the pump leak-check should precede the leak-check of the sampling train described immediately above; if performed after the sampling run, the pump leak-check should follow the sampling train leak-check.

8.3 Purge the connecting line between the sampling valve and the first impinger by disconnecting the line from the first impinger, opening the sampling valve, and allowing process gas to flow through the line for one to two minutes. Then, close the sampling valve, and reconnect the line to the impinger train. Open the petcock on the dry gas meter outlet. Record the initial DGM reading.

8.4 Open the sampling valve, and then adjust the valve to obtain a rate of approximately 1 liter/min (0.035 cfm). Maintain a constant (±10 percent) flow rate during the test. Record the DGM temperature.

8.5 Sample for at least 10 minutes. At the end of the sampling time, close the sampling valve, and record the final volume and temperature readings. Conduct a leak-check as described in Section 8.2 above.

8.6 Disconnect the impinger train from the sampling line. Connect the charcoal tube and the pump as shown in Figure 11–1. Purge the train [at a rate of 1 liter/min (0.035 ft³/min)] with clean ambient air for 15 minutes to ensure that all $H_2S$ is removed from the $H_2O_2$. For sample recovery, cap the open ends, and remove the impinger train to a clean area that is away from sources of heat. The area should be well lighted, but not exposed to direct sunlight.

8.7 Sample Recovery.

8.7.1 Discard the contents of the $H_2O_2$ impinger. Carefully rinse with water the contents of the third, fourth, and fifth impingers into a 500-ml iodine flask.

**Note:** The impingers normally have only a thin film of CdS remaining after a water rinse. If Antifoam B was not used or if significant quantities of yellow CdS remain in the impingers, the alternative recovery procedure in Section 11.2 must be used.

8.7.2 Proceed to Section 11 for the analysis.

*9.0 Quality Control*

| Section | Quality control measure | Effect |
|---|---|---|
| 8.2, 10.1 | Sampling equipment leak-check and calibration | Ensure accurate measurement of sample volume. |
| 11.2 | Replicate titrations of blanks | Ensure precision of titration determinations. |

*10.0 Calibration and Standardization*

**Note:** Maintain a log of all calibrations.

10.1 Calibration. Calibrate the sample collection equipment as follows.

10.1.1 Dry Gas Meter.

10.1.1.1 Initial Calibration. The DGM shall be calibrated before its initial use in the field. Proceed as follows: First, assemble the following components in series: Drying tube, needle valve, pump, rotameter, and DGM. Then, leak-check the metering system as follows: Place a vacuum gauge (at least 760 mm Hg) at the inlet to the drying tube, and pull a vacuum of 250 mm Hg (10 in. Hg); plug or pinch off the outlet of the flow meter, and then turn off the pump. The vacuum shall remain stable for at least 30 seconds. Carefully release the vacuum gauge before releasing the flow meter end. Next, calibrate the DGM (at the sampling flow rate specified by the method) as follows: Connect an appropriately sized wet-test meter (*e.g.*, 1 liter per revolution) to the inlet of the drying tube. Make three independent calibration runs, using at least five revolutions of the DGM per run. Calculate the calibration factor, Y (wet-test meter calibration volume divided by the DGM volume, both volumes adjusted to the same reference temperature and pressure), for each run, and average the results. If any Y value deviates by more than 2 percent from the average, the DGM is unacceptable for use. Otherwise, use the average as the calibration factor for subsequent test runs.

10.1.1.2 Post-Test Calibration Check. After each field test series, conduct a calibration check as in Section 10.1.1.1, above, except for the following two variations: (a) three or more revolutions of the DGM may be used and (b) only two independent runs need be made. If the calibration factor does not deviate by more than 5 percent from the initial calibration factor (determined in Section 10.1.1.1), then the DGM volumes obtained during the test series are acceptable. If the calibration factor deviates by more than 5 percent, recalibrate the DGM as in Section 10.1.1.1, and for the calculations, use the calibration factor (initial or recalibration) that yields the lower gas volume for each test run.

10.1.2 Temperature Sensors. Calibrate against mercury-in-glass thermometers.

10.1.3 Rate Meter. The rate meter need not be calibrated, but should be cleaned and maintained according to the manufacturer's instructions.

10.1.4 Barometer. Calibrate against a mercury barometer.

10.2 Standardization.

10.2.1 Iodine Solution Standardization. Standardize the 0.01 N $I_2$ solution daily as follows: Pipette 25 ml of the $I_2$ solution into a 125-ml Erlenmeyer flask. Add 2 ml of 3 M HCl. Titrate rapidly with standard 0.01 N $Na_2S_2O_3$ solution or with 0.01 N $C_6H_5AsO$ until the solution is light yellow, using gentle mixing. Add four drops of starch indicator solution, and continue titrating slowly until the blue color just disappears. Record the volume of $Na_2S_2O_3$ solution used, $V_{SI}$, or the volume of $C_6H_5AsO$ solution used, $V_{AI}$, in ml. Repeat until replicate values agree within 0.05 ml. Average the replicate titration values which agree within 0.05 ml, and calculate the exact normality of the $I_2$ solution using Equation 11–3. Repeat the standardization daily.

10.2.2 Sodium Thiosulfate Solution Standardization. Standardize the 0.1 N $Na_2S_2O_3$ solution as follows: Oven-dry potassium dichromate ($K_2Cr_2O_7$) at 180 to 200 °C (360 to 390 °F). To the nearest milligram, weigh 2 g of the dichromate (W). Transfer the dichromate to a 500–ml volumetric flask, dissolve in water, and dilute to exactly 500 ml. In a 500–ml iodine flask, dissolve approximately 3 g of KI in 45 ml of water, then add 10 ml of 3 M HCl solution. Pipette 50 ml of the dichromate solution into this mixture. Gently swirl the contents of the flask once, and allow it to stand in the dark for 5 minutes. Dilute the solution with 100 to 200 ml of water, washing down the sides of the flask with part of the water. Titrate with 0.1 N $Na_2S_2O_3$ until the solution is light yellow. Add 4 ml of starch indicator and continue titrating slowly to a green end point. Record the volume of $Na_2S_2O_3$ solution used, $V_S$, in ml. Repeat until replicate values agree within 0.05 ml. Calculate the normality using Equation 11–1. Repeat the standardization each week or after each test series, whichever time is shorter.

10.2.3 Phenylarsine Oxide Solution Standardization. Standardize the 0.01 N $C_6H_5AsO$ (if applicable) as follows: Oven-dry $K_2Cr_2O_7$ at 180 to 200 °C (360 to 390 °F). To the nearest milligram, weigh 2 g of the dichromate (W). Transfer the dichromate to a 500–ml volumetric flask, dissolve in water, and dilute to exactly 500 ml. In a 500–ml iodine flask, dissolve approximately 0.3 g of KI in 45 ml of water, then add 10 ml of 3 M HCl. Pipette 5 ml of the dichromate solution into the iodine flask. Gently swirl the contents of the flask once, and allow it to stand in the dark for 5 minutes. Dilute the solution with 100 to 200 ml of water, washing down the sides of the flask with part of the water. Titrate with 0.01 N $C_6H_5AsO$ until the solution is light yellow. Add 4 ml of starch indicator, and continue titrating slowly to a green end point. Record the volume of $C_6H_5AsO$ used, $V_A$, in ml. Repeat until replicate analyses agree within 0.05 ml. Calculate the normality using Equation 11–2. Repeat the standardization each week or after each test series, whichever time is shorter.

*11.0 Analytical Procedure*

Conduct the titration analyses in a clean area away from direct sunlight.

11.1 Pipette exactly 50 ml of 0.01 N $I_2$ solution into a 125-ml Erlenmeyer flask. Add 10 ml of 3 M HCl to the solution. Quantitatively rinse the acidified $I_2$ into the iodine flask. Stopper the flask immediately, and shake briefly.

11.2 Use these alternative procedures if Antifoam B was not used or if significant quantities of yellow CdS remain in the impingers. Extract the remaining CdS from the third, fourth, and fifth impingers using the acidified $I_2$ solution. Immediately after pouring the acidified $I_2$ into an impinger, stopper it and shake for a few moments, then transfer the liquid to the iodine flask. Do not transfer any rinse portion from one impinger to another; transfer it directly to the iodine flask. Once the acidified $I_2$ solution has been poured into any glassware containing CdS, the container must be tightly stoppered at all times except when adding more solution, and this must be done as quickly and carefully as possible. After adding any acidified $I_2$ solution to the iodine flask, allow a few minutes for absorption of the $H_2S$ before adding any further rinses. Repeat the $I_2$ extraction until all CdS is removed from the impingers. Extract that part of the connecting glassware that contains visible CdS. Quantitatively rinse all the $I_2$ from the impingers, connectors, and the beaker into the iodine flask using water. Stopper the flask and shake briefly.

11.3 Allow the iodine flask to stand about 30 minutes in the dark for absorption of the $H_2S$ into the $I_2$, then complete the titration analysis as outlined in Sections 11.5 and 11.6.

**Note:** Iodine evaporates from acidified $I_2$ solutions. Samples to which acidified $I_2$ has been added may not be stored, but must be analyzed in the time schedule stated above.

11.4 Prepare a blank by adding 45 ml of $CdSO_4$ absorbing solution to an iodine flask. Pipette exactly 50 ml of 0.01 N $I_2$ solution into a 125-ml Erlenmeyer flask. Add 10 ml of 3 M HCl. Stopper the flask, shake briefly, let stand 30 minutes in the dark, and titrate with the samples.

**Note:** The blank must be handled by exactly the same procedure as that used for the samples.

11.5 Using 0.01 N $Na_2S_2O_3$ solution (or 0.01 N $C_6H_5AsO$, if applicable), rapidly titrate each sample in an iodine flask using gentle mixing, until solution is light yellow. Add 4 ml of starch indicator solution, and continue titrating slowly until the blue color just disappears. Record the volume of $Na_2S_2O_3$ solution used, $V_{TT}$, or the volume of $C_6H_5AsO$ solution used, $V_{AT}$, in ml.

11.6 Titrate the blanks in the same manner as the samples. Run blanks each day until replicate values agree within 0.05 ml. Average the replicate titration values which agree within 0.05 ml.

*12.0 Data Analysis and Calculations*

Carry out calculations, retaining at least one extra significant figure beyond that of the acquired data. Round off figures only after the final calculation.

12.1 Nomenclature.

$C_{H2S}$ = Concentration of $H_2S$ at standard conditions, mg/dscm.
$N_A$ = Normality of standard $C_6H_5AsO$ solution, g-eq/liter.
$N_I$ = Normality of standard $I_2$ solution, g-eq/liter.
$N_S$ = Normality of standard (≃0.1 N) $Na_2S_2O_3$ solution, g-eq/liter.
$N_T$ = Normality of standard (≃0.01 N) $Na_2S_2O_3$ solution, assumed to be 0.1 NS, g-eq/liter.
$P_{bar}$ = Barometric pressure at the sampling site, mm Hg.
$P_{std}$ = Standard absolute pressure, 760 mm Hg.
$T_m$ = Average DGM temperature, °K.
$T_{std}$ = Standard absolute temperature, 293 °K.
$V_A$ = Volume of $C_6H_5AsO$ solution used for standardization, ml.
$V_{AI}$ = Volume of standard $C_6H_5AsO$ solution used for titration analysis, ml.
$V_I$ = Volume of standard $I_2$ solution used for standardization, ml.
$V_{IT}$ = Volume of standard $I_2$ solution used for titration analysis, normally 50 ml.
$V_m$ = Volume of gas sample at meter conditions, liters.
$V_{m(std)}$ = Volume of gas sample at standard conditions, liters.
$V_{SI}$ = Volume of "0.1 N $Na_2S_2O_3$ solution used for standardization, ml.
$V_T$ = Volume of standard (≃0.01 N) $Na_2S_2O_3$ solution used in standardizing iodine solution (see Section 10.2.1), ml.
$V_{TT}$ = Volume of standard (–0.01 N) $Na_2S_2O_3$ solution used for titration analysis, ml.
W = Weight of $K_2Cr_2O_7$ used to standardize $Na_2s_2O_3$ or $C_6H_5AsO$ solutions, as applicable (see Sections 10.2.2 and 10.2.3), g.
Y = DGM calibration factor.

12.2 Normality of the Standard (≃0.1 N) Sodium Thiosulfate Solution.

$$N_S = \frac{2.039\ W}{V_S} \qquad \text{Eq. 11-1}$$

Where:
2.039 = Conversion factor = (6 g-eq $I_2$/mole $K_2Cr_2O_7$) (1,000 ml/liter)/(294.2 g $K_2Cr_2O_7$/mole) (10 aliquot factor)

12.3 Normality of Standard Phenylarsine Oxide Solution (if applicable).

$$N_A = \frac{0.2039\ W}{V_A} \qquad \text{Eq. 11-2}$$

Where:
0.2039 = Conversion factor. = (6 g-eq $I_2$/mole $K_2Cr_2O_7$) (1,000 ml/liter)/(294.2 g $K_2Cr_2O_7$/mole) (100 aliquot factor)

12.4 Normality of Standard Iodine Solution.

$$N_I = \frac{N_T V_T}{V_I} \qquad \text{Eq. 11-3}$$

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**Note:** If $C_6H_5AsO$ is used instead of $Na_2S_2O_3$, replace $N_T$ and $V_T$ in Equation 11–3 with $N_A$ and $V_{AS}$, respectively (see Sections 10.2.1 and 10.2.3).

12.5 Dry Gas Volume. Correct the sample volume measured by the DGM to standard conditions (20 °C and 760 mm Hg).

$$V_{m(std)} = V_m Y \frac{T_{std}}{T_m} \frac{P_{bar}}{P_{std}} \quad \text{Eq. 11-4}$$

12.6 Concentration of $H_2S$. Calculate the concentration of $H_2S$ in the gas stream at standard conditions using Equation 11–5:

$$C_{H_2S} = 17.04 \times 10^3 \frac{(V_{IT}N_I - V_{TT}N_T)_{sample} - (V_{IT}N_I - V_{TT}N_T)_{blank}}{V_{m(std)}} \quad \text{Eq. 11-5}$$

Where:

$17.04 \times 10^3$ = Conversion factor
= (34.07 g/mole $H_2S$) (1,000 liters/$m^3$) (1,000mg/g)/(1,000 ml/liter) ($2H_2S$ eq/mole)

**Note:** If $C_6H_5AsO$ is used instead of $NaS_2O_3$, replace $N_A$ and $V_{AT}$ in Equation 11–5 with $N_A$ and $V_{AT}$, respectively (see Sections 11.5 and 10.2.3).

*13.0 Method Performance*

13.1 Precision. Collaborative testing has shown the intra-laboratory precision to be 2.2 percent and the inter-laboratory precision to be 5 percent.

13.2 Bias. The method bias was shown to be −4.8 percent when only $H_2S$ was present. In the presence of the interferences cited in Section 4.0, the bias was positive at low $H_2S$ concentration and negative at higher concentrations. At 230 mg $H_2S/m^3$, the level of the compliance standard, the bias was +2.7 percent. Thiols had no effect on the precision.

*14.0 Pollution Prevention. [Reserved]*

*15.0 Waste Management. [Reserved]*

*16.0 References*

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2. Tentative Method of Determination of Hydrogen Sulfide and Mercaptan Sulfur in Natural Gas. Natural Gas Processors Association, Tulsa, OK. NGPA Publication No. 2265–65. 1965.

3. Knoll, J.D., and M.R. Midgett. Determination of Hydrogen Sulfide in Refinery Fuel Gases. Environmental Monitoring Series, Office of Research and Development, USEPA. Research Triangle Park, NC 27711. EPA 600/4–77–007.

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BILLING CODE 6560–50–P



*17.0 Tables, Diagrams, Flowcharts, and Validation Data*

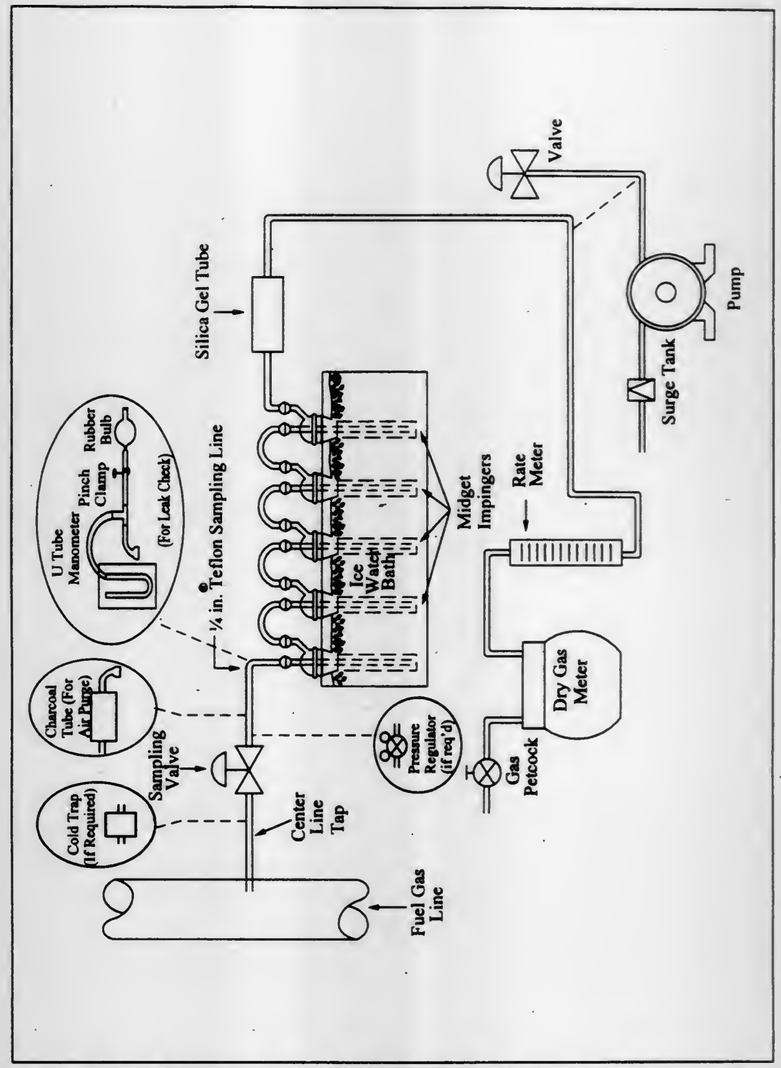



Figure 11-1. Hydrogen Sulfide Sampling Train.

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**Method 12—Determination of Inorganic Lead Emissions From Stationary Sources**

**Note:** This method does not include all of the specifications (e.g., equipment and supplies) and procedures (*e.g.*, sampling and analytical) essential to its performance. Some material is incorporated by reference from other methods in this part. Therefore, to obtain reliable results, persons using this method should have a thorough knowledge of at least the following additional test methods: Method 1, Method 2, Method 3, and Method 5.

*1.0 Scope and Application*

1.1 Analytes.

| Analyte | CAS No. | Sensitivity |
|---|---|---|
| Inorganic Lead Compounds as lead (Pb) | 7439–92–1 | see Section 13.3. |

1.2 Applicability. This method is applicable for the determination of inorganic lead emissions from stationary sources, only as specified in an applicable subpart of the regulations.

1.3 Data Quality Objectives. Adherence to the requirements of this method will enhance the quality of the data obtained from air pollutant sampling methods.

*2.0 Summary of Method*

2.1 Particulate and gaseous Pb emissions are withdrawn isokinetically from the source and are collected on a filter and in dilute nitric acid. The collected samples are digested in acid solution and are analyzed by atomic absorption spectrophotometry using an air/acetylene flame.

*3.0 Definitions. [Reserved]*

*4.0 Interferences*

4.1 Copper. High concentrations of copper may interfere with the analysis of Pb at 217.0 nm. This interference can be avoided by analyzing the samples at 283.3 nm.

4.2 Matrix Effects. Analysis for Pb by flame atomic absorption spectrophotometry is sensitive to the chemical composition and to the physical properties (*e.g.*, viscosity, pH) of the sample. The analytical procedure requires the use of the Method of Standard Additions to check for these matrix effects, and requires sample analysis using the Method of Standard Additions if significant matrix effects are found to be present.

*5.0 Safety*

5.1 Disclaimer. This method may involve hazardous materials, operations, and equipment. This test method may not address all of the safety problems associated with its use. It is the responsibility of the user of this test method to establish appropriate safety and health practices and to determine the applicability of regulatory limitations prior to performing this test method.

5.2 Corrosive Reagents. The following reagents are hazardous. Personal protective equipment and safe procedures are useful in preventing chemical splashes. If contact occurs, immediately flush with copious amounts of water at least 15 minutes. Remove clothing under shower and decontaminate. Treat residual chemical burn as thermal burn.

5.2.1 Hydrogen Peroxide ($H_2O_2$). Irritating to eyes, skin, nose, and lungs.

5.2.2 Nitric Acid ($HNO_3$). Highly corrosive to eyes, skin, nose, and lungs. Vapors cause bronchitis, pneumonia, or edema of lungs. Reaction to inhalation may be delayed as long as 30 hours and still be fatal. Provide ventilation to limit exposure. Strong oxidizer. Hazardous reaction may occur with organic materials such as solvents.

*6.0 Equipment and Supplies*

6.1 Sample Collection. A schematic of the sampling train used in performing this method is shown in Figure 12–1 in Section 18.0; it is similar to the Method 5 train. The following items are needed for sample collection:

6.1.1 Probe Nozzle, Probe Liner, Pitot Tube, Differential Pressure Gauge, Filter Holder, Filter Heating System, Temperature Sensor, Metering System, Barometer, and Gas Density Determination Equipment. Same as Method 5, Sections 6.1.1.1 through 6.1.1.7, 6.1.1.9, 6.1.2, and 6.1.3, respectively.

6.1.2 Impingers. Four impingers connected in series with leak-free ground glass fittings or any similar leak-free noncontaminating fittings are needed. For the first, third, and fourth impingers, use the Greenburg-Smith design, modified by replacing the tip with a 1.3 cm (½ in.) ID glass tube extending to about 1.3 cm (½ in.) from the bottom of the flask. For the second impinger, use the Greenburg-Smith design with the standard tip.

6.1.3 Temperature Sensor. Place a temperature sensor, capable of measuring temperature to within 1 °C (2 °F) at the outlet of the fourth impinger for monitoring purposes.

6.2 Sample Recovery. The following items are needed for sample recovery:

6.2.1 Probe-Liner and Probe-Nozzle Brushes, Petri Dishes, Graduated Cylinder and/or Balance, Plastic Storage Containers, and Funnel and Rubber Policeman. Same as Method 5, Sections 6.2.1 and 6.2.4 through 6.2.7, respectively.

6.2.2 Wash Bottles. Glass (2).

6.2.3 Sample Storage Containers. Chemically resistant, borosilicate glass bottles, for 0.1 N nitric acid ($HNO_3$) impinger and probe solutions and washes, 1000-ml. Use screw-cap liners that are either rubber-backed Teflon or leak-free and resistant to chemical attack by 0.1 N $HNO_3$. (Narrow mouth glass bottles have been found to be less prone to leakage.)

6.2.4 Funnel. Glass, to aid in sample recovery.

6.3 Sample Analysis. The following items are needed for sample analysis:

6.3.1 Atomic Absorption Spectrophotometer. With lead hollow cathode lamp and burner for air/acetylene flame.

6.3.2 Hot Plate.

6.3.3 Erlenmeyer Flasks. 125-ml, 24/40 standard taper.

6.3.4 Membrane Filters. Millipore SCWPO 4700, or equivalent.

6.3.5 Filtration Apparatus. Millipore vacuum filtration unit, or equivalent, for use with the above membrane filter.

6.3.6 Volumetric Flasks. 100-ml, 250-ml, and 1000-ml.

*7.0 Reagents and Standards*

**Note:** Unless otherwise indicated, it is intended that all reagents conform to the specifications established by the Committee on Analytical Reagents of the American Chemical Society, where such specifications are available; otherwise, use the best available grade.

7.1 Sample Collection. The following reagents are needed for sample collection:

7.1.1 Filter. Gelman Spectro Grade, Reeve Angel 934 AH, MSA 1106 BH, all with lot assay for Pb, or other high-purity glass fiber filters, without organic binder, exhibiting at least 99.95 percent efficiency (<0.05 percent penetration) on 0.3 micron dioctyl phthalate smoke particles. Conduct the filter efficiency test using ASTM D 2986–71, 78, or 95a (incorporated by reference—see § 60.17) or use test data from the supplier's quality control program.

7.1.2 Silica Gel, Crushed Ice, and Stopcock Grease. Same as Method 5, Sections 7.1.2, 7.1.4, and 7.1.5, respectively.



7.1.3 Water. Deionized distilled, to conform to ASTM D 1193–77 or 91, Type 3 (incorporated by reference—see § 60.17). If high concentrations of organic matter are not expected to be present, the potassium permanganate test for oxidizable organic matter may be omitted.

7.1.4 Nitric Acid, 0.1 N. Dilute 6.5 ml of concentrated $HNO_3$ to 1 liter with water. (It may be desirable to run blanks before field use to eliminate a high blank on test samples.)

7.2 Sample Recovery. 0.1 N $HNO_3$ (Same as in Section 7.1.4 above).

7.3 Sample Analysis. The following reagents and standards are needed for sample analysis:

7.3.1 Water. Same as in Section 7.1.3.

7.3.2 Nitric Acid, Concentrated.

7.3.3 Nitric Acid, 50 Percent (v/v). Dilute 500 ml of concentrated $HNO_3$ to 1 liter with water.

7.3.4 Stock Lead Standard Solution, 1000 µg Pb/ml. Dissolve 0.1598 g of lead nitrate [$Pb(NO_3)_2$] in about 60 ml water, add 2 ml concentrated $HNO_3$, and dilute to 100 ml with water.

7.3.5 Working Lead Standards. Pipet 0.0, 1.0, 2.0, 3.0, 4.0, and 5.0 ml of the stock lead standard solution (Section 7.3.4) into 250-ml volumetric flasks. Add 5 ml of concentrated $HNO_3$ to each flask, and dilute to volume with water. These working standards contain 0.0, 4.0, 8.0, 12.0, 16.0, and 20.0 µg Pb/ml, respectively. Prepare, as needed, additional standards at other concentrations in a similar manner.

7.3.6 Air. Suitable quality for atomic absorption spectrophotometry.

7.3.7 Acetylene. Suitable quality for atomic absorption spectrophotometry.

7.3.8 Hydrogen Peroxide, 3 Percent (v/v). Dilute 10 ml of 30 percent $H_2O_2$ to 100 ml with water.

*8.0 Sample Collection, Preservation, Storage, and Transport*

8.1 Pretest Preparation. Follow the same general procedure given in Method 5, Section 8.1, except that the filter need not be weighed.

8.2 Preliminary Determinations. Follow the same general procedure given in Method 5, Section 8.2.

8.3 Preparation of Sampling Train. Follow the same general procedure given in Method 5, Section 8.3, except place 100 ml of 0.1 N $HNO_3$ (instead of water) in each of the first two impingers. As in Method 5, leave the third impinger empty and transfer approximately 200 to 300 g of preweighed silica gel from its container to the fourth impinger. Set up the train as shown in Figure 12–1.

8.4 Leak-Check Procedures. Same as Method 5, Section 8.4.

8.5 Sampling Train Operation. Same as Method 5, Section 8.5.

8.6 Calculation of Percent Isokinetic. Same as Method 5, Section 8.6.

8.7 Sample Recovery. Same as Method 5, Sections 8.7.1 through 8.7.6.1, with the addition of the following:

8.7.1 Container No. 2 (Probe).

8.7.1.1 Taking care that dust on the outside of the probe or other exterior surfaces does not get into the sample, quantitatively recover sample matter and any condensate from the probe nozzle, probe fitting, probe liner, and front half of the filter holder by washing these components with 0.1 N $HNO_3$ and placing the wash into a glass sample storage container. Measure and record (to the nearest 2 ml) the total amount of 0.1 N $HNO_3$ used for these rinses. Perform the 0.1 N $HNO_3$ rinses as follows:

8.7.1.2 Carefully remove the probe nozzle, and rinse the inside surfaces with 0.1 N $HNO_3$ from a wash bottle while brushing with a stainless steel, Nylon-bristle brush. Brush until the 0.1 N $HNO_3$ rinse shows no visible particles, then make a final rinse of the inside surface with 0.1 N $HNO_3$.

8.7.1.3 Brush and rinse with 0.1 N $HNO_3$ the inside parts of the Swagelok fitting in a similar way until no visible particles remain.

8.7.1.4 Rinse the probe liner with 0.1 N $HNO_3$. While rotating the probe so that all inside surfaces will be rinsed with 0.1 N $HNO_3$, tilt the probe, and squirt 0.1 N $HNO_3$ into its upper end. Let the 0.1 N $HNO_3$ drain from the lower end into the sample container. A glass funnel may be used to aid in transferring liquid washes to the container. Follow the rinse with a probe brush. Hold the probe in an inclined position, squirt 0.1 N $HNO_3$ into the upper end of the probe as the probe brush is being pushed with a twisting action through the probe; hold the sample container underneath the lower end of the probe, and catch any 0.1 N $HNO_3$ and sample matter that is brushed from the probe. Run the brush through the probe three times or more until no visible sample matter is carried out with the 0.1 N $HNO_3$ and none remains on the probe liner on visual inspection. With stainless steel or other metal probes, run the brush through in the above prescribed manner at least six times, since metal probes have small crevices in which sample matter can be entrapped. Rinse the brush with 0.1 N $HNO_3$, and quantitatively collect these washings in the sample container. After the brushing, make a final rinse of the probe as described above.

8.7.1.5 It is recommended that two people clean the probe to minimize loss of sample. Between sampling runs, keep brushes clean and protected from contamination.

8.7.1.6 After ensuring that all joints are wiped clean of silicone grease, brush and rinse with 0.1 N $HNO_3$ the inside of the from half of the filter holder. Brush and rinse each surface three times or more, if needed, to remove visible sample matter. Make a final rinse of the brush and filter holder. After all 0.1 N $HNO_3$ washings and sample matter are collected in the sample container, tighten the lid on the sample container so that the fluid will not leak out when it is shipped to the laboratory. Mark the height of the fluid level to determine whether leakage occurs during transport. Label the container to identify its contents clearly.

8.7.2 Container No. 3 (Silica Gel). Note the color of the indicating silica gel to determine if it has been completely spent, and make a notation of its condition. Transfer the silica gel from the fourth impinger to the original container, and seal. A funnel may be used to pour the silica gel from the impinger and a rubber policeman may be used to remove the silica gel from the impinger. It is not necessary to remove the small amount of particles that may adhere to the walls and are difficult to remove. Since the gain in weight is to be used for moisture calculations, do not use any water or other liquids to transfer the silica gel. If a balance is available in the field, follow the procedure for Container No. 3 in Section 11.4.2.

8.7.3 Container No. 4 (Impingers). Due to the large quantity of liquid involved, the impinger solutions may be placed in several containers. Clean each of the first three impingers and connecting glassware in the following manner:

8.7.3.1. Wipe the impinger ball joints free of silicone grease, and cap the joints.

8.7.3.2. Rotate and agitate each impinger, so that the impinger contents might serve as a rinse solution.

8.7.3.3. Transfer the contents of the impingers to a 500-ml graduated cylinder. Remove the outlet ball joint cap, and drain the contents through this opening. Do not separate the impinger parts (inner and outer tubes) while transferring their contents to the cylinder. Measure the liquid volume to within 2 ml. Alternatively, determine the weight of the liquid to within 0.5 g. Record in the log the volume or weight of the liquid present, along with a

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notation of any color or film observed in the impinger catch. The liquid volume or weight is needed, along with the silica gel data, to calculate the stack gas moisture content (see Method 5, Figure 5–6).

8.7.3.4. Transfer the contents to Container No. 4.

**Note:** In Sections 8.7.3.5 and 8.7.3.6, measure and record the total amount of 0.1 N $HNO_3$ used for rinsing.

8.7.3.5. Pour approximately 30 ml of 0.1 N $HNO_3$ into each of the first three impingers and agitate the impingers. Drain the 0.1 N $HNO_3$ through the outlet arm of each impinger into Container No. 4. Repeat this operation a second time; inspect the impingers for any abnormal conditions.

8.7.3.6. Wipe the ball joints of the glassware connecting the impingers free of silicone grease and rinse each piece of glassware twice with 0.1 N $HNO_3$; transfer this rinse into Container No. 4. Do not rinse or brush the glass-fritted filter support. Mark the height of the fluid level to determine whether leakage occurs during transport. Label the container to identify its contents clearly.

8.8 Blanks.

8.8.1 Nitric Acid. Save 200 ml of the 0.1 N $HNO_3$ used for sampling and cleanup as a blank. Take the solution directly from the bottle being used and place into a glass sample container labeled "0.1 N $HNO_3$ blank."

8.8.2 Filter. Save two filters from each lot of filters used in sampling. Place these filters in a container labeled "filter blank."

*9.0 Quality Control*

9.1 Miscellaneous Quality Control Measures.

| Section | Quality control measure | Effect |
|---|---|---|
| 8.4, 10.1 | Sampling equipment leak-checks and calibration. | Ensure accuracy and precision of sampling measurements. |
| 10.2 | Spectrophotometer calibration | Ensure linearity of spectrophotometer response to standards. |
| 11.5 | Check for matrix effects | Eliminate matrix effects. |

9.2 Volume Metering System Checks. Same as Method 5, Section 9.2.

*10.0 Calibration and Standardizations*

**Note:** Maintain a laboratory log of all calibrations.

10.1 Sampling Equipment. Same as Method 5, Section 10.0.

10.2 Spectrophotometer.

10.2.1 Measure the absorbance of the standard solutions using the instrument settings recommended by the spectrophotometer manufacturer. Repeat until good agreement (±3 percent) is obtained between two consecutive readings. Plot the absorbance (y-axis) versus concentration in µg Pb/ml (x-axis). Draw or compute a straight line through the linear portion of the curve. Do not force the calibration curve through zero, but if the curve does not pass through the origin or at least lie closer to the origin than ±0.003 absorbance units, check for incorrectly prepared standards and for curvature in the calibration curve.

10.2.2 To determine stability of the calibration curve, run a blank and a standard after every five samples, and recalibrate as necessary.

*11.0 Analytical Procedures*

11.1 Sample Loss Check. Prior to analysis, check the liquid level in Containers Number 2 and Number 4. Note on the analytical data sheet whether leakage occurred during transport. If a noticeable amount of leakage occurred, either void the sample or take steps, subject to the approval of the Administrator, to adjust the final results.

11.2 Sample Preparation.

11.2.1 Container No. 1 (Filter). Cut the filter into strips and transfer the strips and all loose particulate matter into a 125-ml Erlenmeyer flask. Rinse the petri dish with 10 ml of 50 percent $HNO_3$ to ensure a quantitative transfer, and add to the flask.

**Note:** If the total volume required in Section 11.2.3 is expected to exceed 80 ml, use a 250-ml flask in place of the 125-ml flask.

11.2.2 Containers No. 2 and No. 4 (Probe and Impingers). Combine the contents of Containers No. 2 and No. 4, and evaporate to dryness on a hot plate.

11.2.3 Sample Extraction for Lead.

11.2.3.1 Based on the approximate stack gas particulate concentration and the total volume of stack gas sampled, estimate the total weight of particulate sample collected. Next, transfer the residue from Containers No. 2 and No. 4 to the 125-ml Erlenmeyer flask that contains the sampling filter using a rubber policeman and 10 ml of 50 percent $HNO_3$ for every 100 mg of sample collected in the train or a minimum of 30 ml of 50 percent $HNO_3$, whichever is larger.

11.2.3.2 Place the Erlenmeyer flask on a hot plate, and heat with periodic stirring for 30 minutes at a temperature just below boiling. If the sample volume falls below 15 ml, add more 50 percent $HNO_3$. Add 10 ml of 3 percent $H_2O_2$, and continue heating for 10 minutes. Add 50 ml of hot (80 °C, 176 °F) water, and heat for 20 minutes. Remove the flask from the hot plate, and allow to cool. Filter the sample through a Millipore membrane filter, or equivalent, and transfer the filtrate to a 250-ml volumetric flask. Dilute to volume with water.

11.2.4 Filter Blank. Cut each filter into strips, and place each filter in a separate 125-ml Erlenmeyer flask. Add 15 ml of 50 percent $HNO_3$, and treat as described in Section 11.2.3 using 10 ml of 3 percent $H_2O_2$ and 50 ml of hot water. Filter and dilute to a total volume of 100 ml using water.

11.2.5 Nitric Acid Blank, 0.1 N. Take the entire 200 ml of 0.1 N $HNO_3$ to dryness on a steam bath, add 15 ml of 50 percent $HNO_3$, and treat as described in Section 11.2.3 using 10 ml of 3 percent $H_2O_2$ and 50 ml of hot water. Dilute to a total volume of 100 ml using water.

11.3 Spectrophotometer Preparation. Turn on the power; set the wavelength, slit width, and lamp current; and adjust the background corrector as instructed by the manufacturer's manual for the particular atomic absorption spectrophotometer. Adjust the burner and flame characteristics as necessary.

11.4 Analysis.

11.4.1 Lead Determination. Calibrate the spectrophotometer as outlined in Section 10.2, and determine the absorbance for each source sample, the filter blank, and 0.1 N $HNO_3$ blank. Analyze each sample three times in this manner. Make appropriate dilutions, as needed, to bring all sample Pb concentrations into the linear absorbance range of the spectrophotometer. Because instruments vary between manufacturers, no detailed operating instructions will be given here. Instead, the instructions provided with the particular instrument should be followed. If the Pb concentration of a sample is at the low end of the calibration curve and high accuracy is required, the sample can be taken to dryness on a hot plate and the residue dissolved in the appropriate volume of water to bring it into the optimum range of the calibration curve.



11.4.2 Container No. 3 (Silica Gel). This step may be conducted in the field. Weigh the spent silica gel (or silica gel plus impinger) to the nearest 0.5 g; record this weight.

11.5 Check for Matrix Effects. Use the Method of Standard Additions as follows to check at least one sample from each source for matrix effects on the Pb results:

11.5.1 Add or spike an equal volume of standard solution to an aliquot of the sample solution.

11.5.2 Measure the absorbance of the resulting solution and the absorbance of an aliquot of unspiked sample.

11.5.3 Calculate the Pb concentration $C_m$ in µg/ml of the sample solution using Equation 12–1 in Section 12.5.

Volume corrections will not be required if the solutions as analyzed have been made to the same final volume. Therefore, $C_m$ and $C_a$ represent Pb concentration before dilutions.

Method of Standard Additions procedures described on pages 9–4 and 9–5 of the section entitled "General Information" of the Perkin Elmer Corporation Atomic Absorption Spectrophotometry Manual, Number 303–0152 (Reference 1 in Section 17.0) may also be used. In any event, if the results of the Method of Standard Additions procedure used on the single source sample do not agree to within ±5 percent of the value obtained by the routine atomic absorption analysis, then reanalyze all samples from the source using the Method of Standard Additions procedure.

*12.0 Data Analysis and Calculations*

12.1 Nomenclature.

$A_m$ = Absorbance of the sample solution.
$A_n$ = Cross-sectional area of nozzle, $m^2$ ($ft^2$).
$A_t$ = Absorbance of the spiked sample solution.
$B_{ws}$ = Water in the gas stream, proportion by volume.
$C_a$ = Lead concentration in standard solution, µg/ml.
$C_m$ = Lead concentration in sample solution analyzed during check for matrix effects, µg/ml.
$C_s$ = Lead concentration in stack gas, dry basis, converted to standard conditions, mg/dscm (gr/dscf).
I = Percent of isokinetic sampling.
$L_i$ = Individual leakage rate observed during the leak-check conducted prior to the first component change, $m^3$/min ($ft^3$/min)
$L_a$ = Maximum acceptable leakage rate for either a pretest leak-check or for a leak-check following a component change; equal to 0.00057 $m^3$/min (0.020 cfm) or 4 percent of the average sampling rate, whichever is less.
$L_i$ = Individual leakage rate observed during the leak-check conducted prior to the "ith" component change (i = 1, 2, 3 * * * n), $m^3$/min (cfm).
$L_p$ = Leakage rate observed during the post-test leak-check, $m^3$/min (cfm).
$m_t$ = Total weight of lead collected in the sample, µg.
$M_w$ = Molecular weight of water, 18.0 g/g-mole (18.0 lb/lb-mole).
$P_{bar}$ = Barometric pressure at the sampling site, mm Hg (in. Hg).
$P_s$ = Absolute stack gas pressure, mm Hg (in. Hg).
$P_{std}$ = Standard absolute pressure, 760 mm Hg (29.92 in. Hg).
R = Ideal gas constant, 0.06236 [(mm Hg) ($m^3$)]/[(°K) (g-mole)] {21.85 [(in. Hg) ($ft^3$)]/[(°R) (lb-mole)]}.
$T_m$ = Absolute average dry gas meter temperature (see Figure 5–3 of Method 5), °K (°R).
$T_{std}$ = Standard absolute temperature, 293 °K (528 °R).
$v_s$ = Stack gas velocity, m/sec (ft/sec).
$V_m$ = Volume of gas sample as measured by the dry gas meter, dry basis, $m^3$ ($ft^3$).
$V_{m(std)}$ = Volume of gas sample as measured by the dry gas meter, corrected to standard conditions, $m^3$ ($ft^3$).
$V_{w(std)}$ = Volume of water vapor collected in the sampling train, corrected to standard conditions, $m^3$ ($ft^3$).
Y = Dry gas meter calibration factor.
$\Delta H$ = Average pressure differential across the orifice meter (see Figure 5–3 of Method 5), mm $H_2O$ (in. $H_2O$).
$\theta$ = Total sampling time, min.
$\theta_i$ = Sampling time interval, from the beginning of a run until the first component change, min.
$\theta_i$ = Sampling time interval, between two successive component changes, beginning with the interval between the first and second changes, min.
$\theta_p$ = Sampling time interval, from the final ($n^{th}$) component change until the end of the sampling run, min.
$\rho_w$ = Density of water, 0.9982 g/ml (0.002201 lb/ml).

12.2 Average Dry Gas Meter Temperatures ($T_m$) and Average Orifice Pressure Drop ($\Delta H$). See data sheet (Figure 5–3 of Method 5).

12.3 Dry Gas Volume, Volume of Water Vapor, and Moisture Content. Using data obtained in this test, calculate $V_{m(std)}$, $V_{w(std)}$, and $B_{ws}$ according to the procedures outlined in Method 5, Sections 12.3 through 12.5.

12.4 Total Lead in Source Sample. For each source sample, correct the average absorbance for the contribution of the filter blank and the 0.1 N $HNO_3$ blank. Use the calibration curve and this corrected absorbance to determine the Pb concentration in the sample aspirated into the spectrophotometer. Calculate the total Pb content $m_t$ (in µg) in the original source sample; correct for all the dilutions that were made to bring the Pb concentration of the sample into the linear range of the spectrophotometer.

12.5 Sample Lead Concentration. Calculate the Pb concentration of the sample using the following equation:

$$C_m = C_a \frac{A_m}{A_t - A_m} \qquad \text{Eq. 12-1}$$

12.6 Lead Concentration. Calculate the stack gas Pb concentration $C_s$ using Equation 12–2:

$$C_s = K_3 \frac{m_t}{V_{m(std)}} \qquad \text{Eq. 12-2}$$

Where:

$K_3$ = 0.001 mg/µg for metric units.
= $1.54 \times 10^{-5}$ gr/µg for English units

12.7 Stack Gas Velocity and Volumetric Flow Rate. Calculate the average stack gas velocity and volumetric flow rate using data obtained in this method and the equations in Sections 12.2 and 12.3 of Method 2.

12.8 Isokinetic Variation. Same as Method 5, Section 12.11.

*13.0 Method Performance*

13.1 Precision. The within-laboratory precision, as measured by the coefficient of variation, ranges from 0.2 to 9.5 percent relative to a run-mean concentration. These values were based on tests conducted at a gray iron foundry, a lead storage battery manufacturing plant, a secondary lead smelter, and a lead recovery furnace of an alkyl lead manufacturing plant. The concentrations encountered during these tests ranged from 0.61 to 123.3 mg Pb/$m^3$.

13.2 Analytical Range. For a minimum analytical accuracy of ±10 percent, the lower limit of the range is 100 µg. The upper limit can be extended considerably by dilution.

13.3 Analytical Sensitivity. Typical sensitivities for a 1-percent change in absorption (0.0044 absorbance units) are 0.2 and 0.5 µg Pb/ml for the 217.0 and 283.3 nm lines, respectively.

*14.0 Pollution Prevention. [Reserved]*

*15.0 Waste Management. [Reserved]*

*16.0 Alternative Procedures*

16.1 Simultaneous Determination of Particulate and Lead Emissions. Method

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5 may be used to simultaneously determine Pb provided: (1) acetone is used to remove particulate from the probe and inside of the filter holder as specified by Method 5, (2) 0.1 N $HNO_3$ is used in the impingers, (3) a glass fiber filter with a low Pb background is used, and (4) the entire train contents, including the impingers, are treated and analyzed for Pb as described in Sections 8.0 and 11.0 of this method.

16.2 Filter Location. A filter may be used between the third and fourth impingers provided the filter is included in the analysis for Pb.

16.3 In-Stack Filter. An in-stack filter may be used provided: (1) A glass-lined probe and at least two impingers, each containing 100 ml of 0.1 N $HNO_3$ after the in-stack filter, are used and (2) the probe and impinger contents are recovered and analyzed for Pb. Recover sample from the nozzle with acetone if a particulate analysis is to be made.

*17.0 References*

Same as Method 5, Section 17.0, References 2, 3, 4, 5, and 7, with the addition of the following:

1. Perkin Elmer Corporation. Analytical Methods for Atomic Absorption Spectrophotometry. Norwalk, Connecticut. September 1976.

2. American Society for Testing and Materials. Annual Book of ASTM Standards, Part 31: Water, Atmospheric Analysis. Philadelphia, PA 1974. p. 40–42.

3. Kelin, R., and C. Hach. Standard Additions—Uses and Limitations in Spectrophotometric Analysis. Amer. Lab. 9:21–27. 1977.

4. Mitchell, W.J., and M.R. Midgett. Determining Inorganic and Alkyl Lead Emissions from Stationary Sources. U.S. Environmental Protection Agency. Emission Monitoring and Support Laboratory. Research Triangle Park, NC. (Presented at National APCA Meeting, Houston. June 26, 1978).

BILLING CODE 6560–50–P



*18.0 Tables, Diagrams, Flowcharts, and Validation Data*

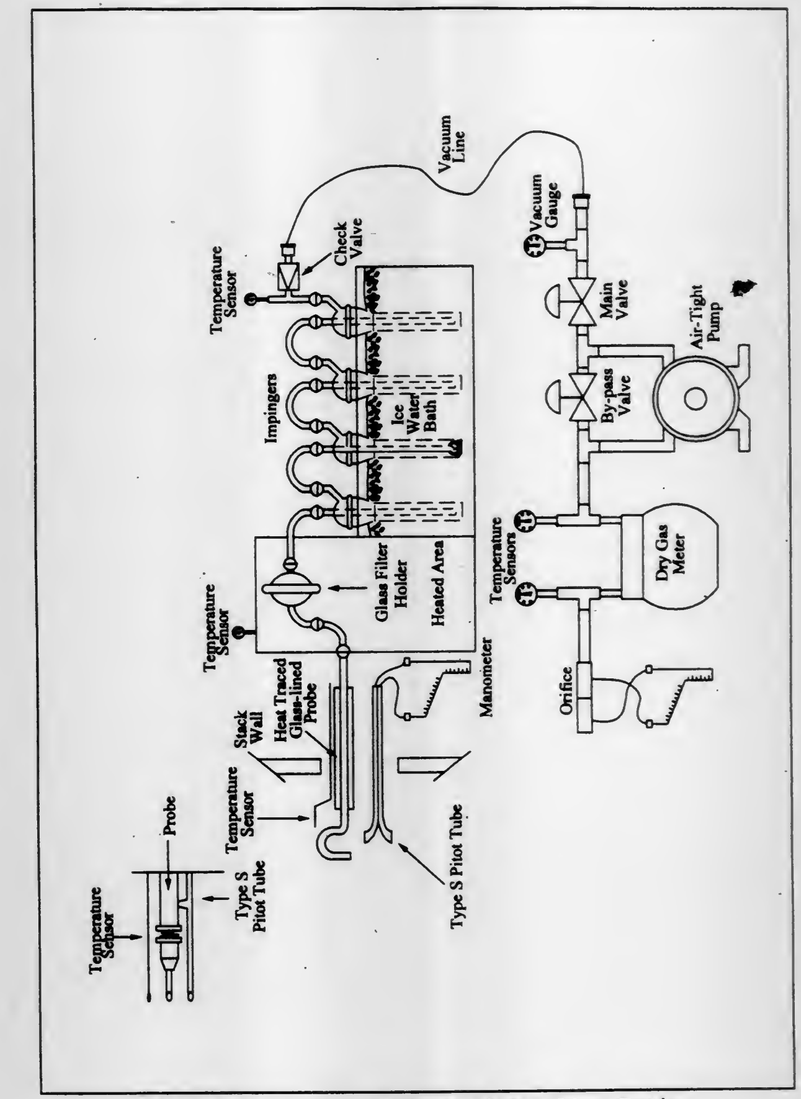



Figure 12-1. Inorganic Lead Sampling Train.

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**Method 13A—Determination of Total Fluoride Emissions From Stationary Sources (Spadns Zirconium Lake Method)**

**Note:** This method does not include all of the specifications (*e.g.*, equipment and supplies) and procedures (*e.g.*, sampling and analytical) essential to its performance. Some material is incorporated by reference from other methods in this part. Therefore, to obtain reliable results, persons using this method should have a thorough knowledge of at least the following additional test methods: Method 1, Method 2, Method 3, and Method 5.

*1.0 Scope and Application*

1.1 Analytes.

| Analyte | CAS No. | Sensitivity |
|---|---|---|
| Total fluorides as Fluorine | 7782–41–4 | Not determined. |

1.2 Applicability. This method is applicable for the determination of fluoride ($F^-$) emissions from sources as specified in the regulations. It does not measure fluorocarbons, such as Freons.

1.3 Data Quality Objectives. Adherence to the requirements of this method will enhance the quality of the data obtained from air pollutant sampling methods.

*2.0 Summary*

Gaseous and particulate $F^-$ are withdrawn isokinetically from the source and collected in water and on a filter. The total $F^-$ is then determined by the SPADNS Zirconium Lake Colorimetric method.

*3.0 Definitions [Reserved]*

*4.0 Interferences*

4.1 Chloride. Large quantities of chloride will interfere with the analysis, but this interference can be prevented by adding silver sulfate into the distillation flask (see Section 11.3). If chloride ion is present, it may be easier to use the specific ion electrode method of analysis (Method 13B).

4.2 Grease. Grease on sample-exposed surfaces may cause low $F^-$ results due to adsorption.

*5.0 Safety*

5.1 Disclaimer. This method may involve hazardous materials, operations, and equipment. This test method may not address all of the safety problems associated with its use. It is the responsibility of the user of this test method to establish appropriate safety and health practices and to determine the applicability of regulatory limitations prior to performing this test method.

5.2 Corrosive Reagents. The following reagents are hazardous. Personal protective equipment and safe procedures are useful in preventing chemical splashes. If contact occurs, immediately flush with copious amounts of water at least 15 minutes. Remove clothing under shower and decontaminate. Treat residual chemical burn as thermal burn.

5.2.1 Hydrochloric Acid (HCl). Highly toxic. Vapors are highly irritating to eyes, skin, nose, and lungs, causing severe damage. May cause bronchitis, pneumonia, or edema of lungs. Exposure to concentrations of 0.13 to 0.2 percent can be lethal in minutes. Will react with metals, producing hydrogen.

5.2.2 Sodium Hydroxide (NaOH). Causes severe damage to eye tissues and to skin. Inhalation causes irritation to nose, throat, and lungs. Reacts exothermically with limited amounts of water.

5.2.3 Sulfuric Acid ($H_2SO_4$). Rapidly destructive to body tissue. Will cause third degree burns. Eye damage may result in blindness. Inhalation may be fatal from spasm of the larynx, usually within 30 minutes. May cause lung tissue damage with edema. 1 mg/m³ for 8 hours will cause lung damage or, in higher concentrations, death. Provide ventilation to limit inhalation. Reacts violently with metals and organics.

*6.0 Equipment and Supplies*

6.1 Sample Collection. A schematic of the sampling train used in performing this method is shown in Figure 13A–1; it is similar to the Method 5 sampling train except that the filter position is interchangeable. The sampling train consists of the following components:

6.1.1 Probe Nozzle, Pitot Tube, Differential Pressure Gauge, Filter Heating System, Temperature Sensor, Metering System, Barometer, and Gas Density Determination Equipment. Same as Method 5, Sections 6.1.1.1, 6.1.1.3 through 6.1.1.7, 6.1.1.9, 6.1.2, and 6.1.3, respectively. The filter heating system and temperature sensor are needed only when moisture condensation is a problem.

6.1.2 Probe Liner. Borosilicate glass or 316 stainless steel. When the filter is located immediately after the probe, a probe heating system may be used to prevent filter plugging resulting from moisture condensation, but the temperature in the probe shall not be allowed to exceed 120 ± 14 °C (248 ± 25 °F).

6.1.3 Filter Holder. With positive seal against leakage from the outside or around the filter. If the filter is located between the probe and first impinger, use borosilicate glass or stainless steel with a 20-mesh stainless steel screen filter support and a silicone rubber gasket; do not use a glass frit or a sintered metal filter support. If the filter is located between the third and fourth impingers, borosilicate glass with a glass frit filter support and a silicone rubber gasket may be used. Other materials of construction may be used, subject to the approval of the Administrator.

6.1.4 Impingers. Four impingers connected as shown in Figure 13A–1 with ground-glass (or equivalent), vacuum-tight fittings. For the first, third, and fourth impingers, use the Greenburg-Smith design, modified by replacing the tip with a 1.3–cm (½ in.) ID glass tube extending to 1.3 cm (½ in.) from the bottom of the flask. For the second impinger, use a Greenburg-Smith impinger with the standard tip. Modifications (*e.g.*, flexible connections between the impingers or materials other than glass) may be used, subject to the approval of the Administrator. Place a temperature sensor, capable of measuring temperature to within 1 °C (2 °F), at the outlet of the fourth impinger for monitoring purposes.

6.2 Sample Recovery. The following items are needed for sample recovery:

6.2.1 Probe-liner and Probe-Nozzle Brushes, Wash Bottles, Graduated Cylinder and/or Balance, Plastic Storage Containers, Funnel and Rubber Policeman, and Funnel. Same as Method 5, Sections 6.2.1, 6.2.2 and 6.2.5 to 6.2.8, respectively.

6.2.2 Sample Storage Container. Wide-mouth, high-density polyethylene bottles for impinger water samples, 1 liter.

6.3 Sample Preparation and Analysis. The following items are needed for sample preparation and analysis:

6.3.1 Distillation Apparatus. Glass distillation apparatus assembled as shown in Figure 13A–2.

6.3.2 Bunsen Burner.



6.3.3 Electric Muffle Furnace. Capable of heating to 600 °C (1100 °F).

6.3.4 Crucibles. Nickel, 75- to 100-ml.

6.3.5 Beakers. 500-ml and 1500-ml.

6.3.6 Volumetric Flasks. 50-ml.

6.3.7 Erlenmeyer Flasks or Plastic Bottles. 500-ml.

6.3.8 Constant Temperature Bath. Capable of maintaining a constant temperature of ±1.0 °C at room temperature conditions.

6.3.9 Balance. 300-g capacity, to measure to ±0.5 g.

6.3.10 Spectrophotometer. Instrument that measures absorbance at 570 nm and provides at least a 1-cm light path.

6.3.11 Spectrophotometer Cells. 1-cm path length.

*7.0 Reagents and Standards*

Unless otherwise indicated, all reagents are to conform to the specifications established by the Committee on Analytical Reagents of the American Chemical Society, where such specifications are available. Otherwise, use the best available grade.

7.1 Sample Collection. The following reagents are needed for sample collection:

7.1.1 Filters.

7.1.1.1 If the filter is located between the third and fourth impingers, use a Whatman No. 1 filter, or equivalent, sized to fit the filter holder.

7.1.1.2 If the filter is located between the probe and first impinger, use any suitable medium (*e.g.*, paper, organic membrane) that can withstand prolonged exposure to temperatures up to 135 °C (275 °F), and has at least 95 percent collection efficiency (<5 percent penetration) for 0.3 µm dioctyl phthalate smoke particles. Conduct the filter efficiency test before the test series, using ASTM D 2986–71, 78, or 95a (incorporated by reference—see § 60.17), or use test data from the supplier's quality control program. The filter must also have a low $F^-$ blank value (<0.015 mg $F^-$/cm² of filter area). Before the test series, determine the average $F^-$ blank value of at least three filters (from the lot to be used for sampling) using the applicable procedures described in Sections 8.3 and 8.4 of this method. In general, glass fiber filters have high and/or variable $F^-$ blank values, and will not be acceptable for use.

7.1.2 Water. Deionized distilled, to conform to ASTM D 1193–77 or 91, Type 3 (incorporated by reference—see § 60.17). If high concentrations of organic matter are not expected to be present, the potassium permanganate test for oxidizable organic matter may be deleted.

7.1.3 Silica Gel, Crushed Ice, and Stopcock Grease. Same as Method 5, Sections 7.1.2, 7.1.4, and 7.1.5, respectively.

7.2 Sample Recovery. Water, as described in Section 7.1.2, is needed for sample recovery.

7.3 Sample Preparation and Analysis. The following reagents and standards are needed for sample preparation and analysis:

7.3.1 Calcium Oxide (CaO). Certified grade containing 0.005 percent $F^-$ or less.

7.3.2 Phenolphthalein Indicator. Dissolve 0.1 g of phenolphthalein in a mixture of 50 ml of 90 percent ethanol and 50 ml of water.

7.3.3 Silver Sulfate ($Ag_2SO_4$).

7.3.4 Sodium Hydroxide (NaOH), Pellets.

7.3.5 Sulfuric Acid ($H_2SO_4$), Concentrated.

7.3.6 Sulfuric Acid, 25 Percent (v/v). Mix 1 part of concentrated $H_2SO_4$ with 3 parts of water.

7.3.7 Filters. Whatman No. 541, or equivalent.

7.3.8 Hydrochloric Acid (HCl), Concentrated.

7.3.9 Water. Same as in Section 7.1.2.

7.3.10 Fluoride Standard Solution, 0.01 mg $F^-$/ml. Dry approximately 0.5 g of sodium fluoride (NaF) in an oven at 110 °C (230 °F) for at least 2 hours. Dissolve 0.2210 g of NaF in 1 liter of water. Dilute 100 ml of this solution to 1 liter with water.

7.3.11 SPADNS Solution [4,5 Dihydroxyl-3-(p-Sulfophenylazo)-2,7-Naphthalene-Disulfonic Acid Trisodium Salt]. Dissolve 0.960 ± 0.010 g of SPADNS reagent in 500 ml water. If stored in a well-sealed bottle protected from the sunlight, this solution is stable for at least 1 month.

7.3.12 Spectrophotometer Zero Reference Solution. Add 10 ml of SPADNS solution to 100 ml water, and acidify with a solution prepared by diluting 7 ml of concentrated HCl to 10 ml with deionized, distilled water. Prepare daily.

7.3.13 SPADNS Mixed Reagent. Dissolve 0.135 ± 0.005 g of zirconyl chloride octahydrate ($ZrOCl_2$ $8H_2O$) in 25 ml of water. Add 350 ml of concentrated HCl, and dilute to 500 ml with deionized, distilled water. Mix equal volumes of this solution and SPADNS solution to form a single reagent. This reagent is stable for at least 2 months.

*8.0 Sample Collection, Preservation, Storage, and Transport*

8.1 Pretest Preparation. Follow the general procedure given in Method 5, Section 8.1, except that the filter need not be weighed.

8.2 Preliminary Determinations. Follow the general procedure given in Method 5, Section 8.2, except that the nozzle size must be selected such that isokinetic sampling rates below 28 liters/min (1.0 cfm) can be maintained.

8.3 Preparation of Sampling Train. Follow the general procedure given in Method 5, Section 8.3, except for the following variation: Assemble the train as shown in Figure 13A–1 with the filter between the third and fourth impingers. Alternatively, if a 20-mesh stainless steel screen is used for the filter support, the filter may be placed between the probe and first impinger. A filter heating system to prevent moisture condensation may be used, but shall not allow the temperature to exceed 120 ± 14 °C (248 ± 25 °F). Record the filter location on the data sheet (see Section 8.5).

8.4 Leak-Check Procedures. Follow the leak-check procedures given in Method 5, Section 8.4.

8.5 Sampling Train Operation. Follow the general procedure given in Method 5, Section 8.5, keeping the filter and probe temperatures (if applicable) at 120 ± 14 °C (248 ± 25 °F) and isokinetic sampling rates below 28 liters/min (1.0 cfm). For each run, record the data required on a data sheet such as the one shown in Method 5, Figure 5–3.

8.6 Sample Recovery. Proper cleanup procedure begins as soon as the probe is removed from the stack at the end of the sampling period. Allow the probe to cool.

8.6.1 When the probe can be safely handled, wipe off all external particulate matter near the tip of the probe nozzle, and place a cap over it to keep from losing part of the sample. Do not cap off the probe tip tightly while the sampling train is cooling down as this would create a vacuum in the filter holder, thus drawing water from the impingers into the filter holder.

8.6.2 Before moving the sample train to the cleanup site, remove the probe from the sample train, wipe off any silicone grease, and cap the open outlet of the probe. Be careful not to lose any condensate that might be present. Remove the filter assembly, wipe off any silicone grease from the filter holder inlet, and cap this inlet. Remove the umbilical cord from the last impinger, and cap the impinger. After wiping off any silicone grease, cap off the filter holder outlet and any open impinger inlets and outlets. Ground-glass stoppers, plastic caps, or serum caps may be used to close these openings.

8.6.3 Transfer the probe and filter-impinger assembly to the cleanup area.

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This area should be clean and protected from the wind so that the chances of contaminating or losing the sample will be minimized.

8.6.4 Inspect the train prior to and during disassembly, and note any abnormal conditions. Treat the samples as follows:

8.6.4.1 Container No. 1 (Probe, Filter, and Impinger Catches).

8.6.4.1.1 Using a graduated cylinder, measure to the nearest ml, and record the volume of the water in the first three impingers; include any condensate in the probe in this determination. Transfer the impinger water from the graduated cylinder into a polyethylene container. Add the filter to this container. (The filter may be handled separately using procedures subject to the Administrator's approval.) Taking care that dust on the outside of the probe or other exterior surfaces does not get into the sample, clean all sample-exposed surfaces (including the probe nozzle, probe fitting, probe liner, first three impingers, impinger connectors, and filter holder) with water. Use less than 500 ml for the entire wash. Add the washings to the sample container. Perform the water rinses as follows:

8.6.4.1.2 Carefully remove the probe nozzle and rinse the inside surface with water from a wash bottle. Brush with a Nylon bristle brush, and rinse until the rinse shows no visible particles, after which make a final rinse of the inside surface. Brush and rinse the inside parts of the Swagelok fitting with water in a similar way.

8.6.4.1.3 Rinse the probe liner with water. While squirting the water into the upper end of the probe, tilt and rotate the probe so that all inside surfaces will be wetted with water. Let the water drain from the lower end into the sample container. A funnel (glass or polyethylene) may be used to aid in transferring the liquid washes to the container. Follow the rinse with a probe brush. Hold the probe in an inclined position, and squirt water into the upper end as the probe brush is being pushed with a twisting action through the probe. Hold the sample container underneath the lower end of the probe, and catch any water and particulate matter that is brushed from the probe. Run the brush through the probe three times or more. With stainless steel or other metal probes, run the brush through in the above prescribed manner at least six times since metal probes have small crevices in which particulate matter can be entrapped. Rinse the brush with water, and quantitatively collect these washings in the sample container. After the brushing, make a final rinse of the probe as described above.

8.6.4.1.4 It is recommended that two people clean the probe to minimize sample losses. Between sampling runs, keep brushes clean and protected from contamination.

8.6.4.1.5 Rinse the inside surface of each of the first three impingers (and connecting glassware) three separate times. Use a small portion of water for each rinse, and brush each sample-exposed surface with a Nylon bristle brush, to ensure recovery of fine particulate matter. Make a final rinse of each surface and of the brush.

8.6.4.1.6 After ensuring that all joints have been wiped clean of the silicone grease, brush and rinse with water the inside of the filter holder (front-half only, if filter is positioned between the third and fourth impingers). Brush and rinse each surface three times or more if needed. Make a final rinse of the brush and filter holder.

8.6.4.1.7 After all water washings and particulate matter have been collected in the sample container, tighten the lid so that water will not leak out when it is shipped to the laboratory. Mark the height of the fluid level to transport. Label the container clearly to identify its contents.

8.6.4.2 Container No. 2 (Sample Blank). Prepare a blank by placing an unused filter in a polyethylene container and adding a volume of water equal to the total volume in Container No. 1. Process the blank in the same manner as for Container No. 1.

8.6.4.3 Container No. 3 (Silica Gel). Note the color of the indicating silica gel to determine whether it has been completely spent, and make a notation of its condition. Transfer the silica gel from the fourth impinger to its original container, and seal. A funnel may be used to pour the silica gel and a rubber policeman to remove the silica gel from the impinger. It is not necessary to remove the small amount of dust particles that may adhere to the impinger wall and are difficult to remove. Since the gain in weight is to be used for moisture calculations, do not use any water or other liquids to transfer the silica gel. If a balance is available in the field, follow the analytical procedure for Container No. 3 in Section 11.4.2.

*9.0 Quality Control*

9.1 Miscellaneous Quality Control Measures.

| Section | Quality control measure | Effect |
|---|---|---|
| 8.4, 10.1 | Sampling equipment leak-check and calibration | Ensure accurate measurement of stack gas flow rate and sample volume. |
| 10.2 | Spectrophotometer calibration | Evaluate analytical technique, preparation of standards. |
| 11.3.3 | Interference/recovery efficiency check during distillation. | Minimize negative effects of used acid. |

9.2 Volume Metering System Checks. Same as Method 5, Section 9.2.

*10.0 Calibration and Standardization*

**Note:** Maintain a laboratory log of all calibrations.

10.1 Sampling Equipment. Calibrate the probe nozzle, pitot tube, metering system, probe heater, temperature sensors, and barometer according to the procedures outlined in Method 5, Sections 10.1 through 10.6. Conduct the leak-check of the metering system according to the procedures outlined in Method 5, Section 8.4.1.

10.2 Spectrophotometer.

10.2.1 Prepare the blank standard by adding 10 ml of SPADNS mixed reagent to 50 ml of water.

10.2.2 Accurately prepare a series of standards from the 0.01 mg $F^-$/ml standard fluoride solution (Section 7.3.10) by diluting 0, 2, 4, 6, 8, 10, 12, and 14 ml to 100 ml with deionized, distilled water. Pipet 50 ml from each solution, and transfer each to a separate 100-ml beaker. Then add 10 ml of SPADNS mixed reagent (Section 7.3.13) to each. These standards will contain 0, 10, 20, 30, 40, 50, 60, and 70 µg $F^-$ (0 to 1.4 µg/ml), respectively.

10.2.3 After mixing, place the blank and calibration standards in a constant temperature bath for 30 minutes before reading the absorbance with the spectrophotometer. Adjust all samples to this same temperature before analyzing.

10.2.4 With the spectrophotometer at 570 nm, use the blank standard to set the absorbance to zero. Determine the absorbance of the standards.

10.2.5 Prepare a calibration curve by plotting µg $F^-$/50 ml versus absorbance on linear graph paper. Prepare the standard curve initially and thereafter whenever the SPADNS mixed reagent is newly made. Also, run a calibration standard with each set of samples and, if it differs from the calibration curve by more than ±2 percent, prepare a new standard curve.

*11.0 Analytical Procedures*

11.1 Sample Loss Check. Note the liquid levels in Containers No. 1 and No. 2, determine whether leakage occurred during transport, and note this finding on the analytical data sheet. If noticeable leakage has occurred, either void the sample or use methods, subject to the approval of the Administrator, to correct the final results.

11.2 Sample Preparation. Treat the contents of each sample container as described below:

11.2.1 Container No. 1 (Probe, Filter, and Impinger Catches). Filter this container's contents, including the sampling filter, through Whatman No. 541 filter paper, or equivalent, into a 1500-ml beaker.

11.2.1.1 If the filtrate volume exceeds 900 ml, make the filtrate basic (red to phenolphthalein) with NaOH, and evaporate to less than 900 ml.

11.2.1.2 Place the filtered material (including sampling filter) in a nickel crucible, add a few ml of water, and macerate the filters with a glass rod.

11.2.1.2.1 Add 100 mg CaO to the crucible, and mix the contents thoroughly to form a slurry. Add two drops of phenolphthalein indicator. Place the crucible in a hood under infrared lamps or on a hot plate at low heat. Evaporate the water completely. During the evaporation of the water, keep the slurry basic (red to phenolphthalein) to avoid loss of $F^-$. If the indicator turns colorless (acidic) during the evaporation, add CaO until the color turns red again.

11.2.1.2.2 After evaporation of the water, place the crucible on a hot plate under a hood, and slowly increase the temperature until the Whatman No. 541 and sampling filters char. It may take several hours to char the filters completely.

11.2.1.2.3 Place the crucible in a cold muffle furnace. Gradually (to prevent smoking) increase the temperature to 600 °C (1100 °F), and maintain this temperature until the contents are reduced to an ash. Remove the crucible from the furnace, and allow to cool.

11.2.1.2.4 Add approximately 4 g of crushed NaOH to the crucible, and mix. Return the crucible to the muffle furnace, and fuse the sample for 10 minutes at 600 °C.

11.2.1.2.5 Remove the sample from the furnace, and cool to ambient temperature. Using several rinsings of warm water, transfer the contents of the crucible to the beaker containing the filtrate. To ensure complete sample removal, rinse finally with two 20-ml portions of 25 percent $H_2SO_4$, and carefully add to the beaker. Mix well, and transfer to a 1-liter volumetric flask. Dilute to volume with water, and mix thoroughly. Allow any undissolved solids to settle.

11.2.2 Container No. 2 (Sample Blank). Treat in the same manner as described in Section 11.2.1 above.

11.2.3 Adjustment of Acid/Water Ratio in Distillation Flask. Place 400 ml of water in the distillation flask, and add 200 ml of concentrated $H_2SO_4$. Add some soft glass beads and several small pieces of broken glass tubing, and assemble the apparatus as shown in Figure 13A–2. Heat the flask until it reaches a temperature of 175 °C (347 °F) to adjust the acid/water ratio for subsequent distillations. Discard the distillate.

**Caution:** Use a protective shield when carrying out this procedure. Observe standard precautions when mixing $H_2SO_4$ with water. Slowly add the acid to the flask with constant swirling.

11.3 Distillation.

11.3.1 Cool the contents of the distillation flask to below 80 °C (180 °F). Pipet an aliquot of sample containing less than 10.0 mg $F^-$ directly into the distillation flask, and add water to make a total volume of 220 ml added to the distillation flask. (To estimate the appropriate aliquot size, select an aliquot of the solution, and treat as described in Section 11.4.1. This will be an approximation of the $F^-$ content because of possible interfering ions.)

**Note:** If the sample contains chloride, add 5 mg of $Ag_2SO_4$ to the flask for every mg of chloride.

11.3.2 Place a 250-ml volumetric flask at the condenser exit. Heat the flask as rapidly as possible with a Bunsen burner, and collect all the distillate up to 175 °C (347 °F). During heatup, play the burner flame up and down the side of the flask to prevent bumping. Conduct the distillation as rapidly as possible (15 minutes or less). Slow distillations have been found to produce low $F^-$ recoveries. Be careful not to exceed 175 °C (347 °F) to avoid causing $H_2SO_4$ to distill over. If $F^-$ distillation in the mg range is to be followed by a distillation in the fractional mg range, add 220 ml of water and distill it over as in the acid adjustment step to remove residual $F^-$ from the distillation system.

11.3.3 The acid in the distillation flask may be used until there is carry-over of interferences or poor $F^-$ recovery. Check for interference and for recovery efficiency every tenth distillation using a water blank and a standard solution. Change the acid whenever the $F^-$ recovery is less than 90 percent or the blank value exceeds 0.1 µg/ml.

11.4 Sample Analysis.

11.4.1 Containers No. 1 and No. 2.

11.4.1.1 After distilling suitable aliquots from Containers No. 1 and No. 2 according to Section 11.3, dilute the distillate in the volumetric flasks to exactly 250 ml with water, and mix thoroughly. Pipet a suitable aliquot of each sample distillate (containing 10 to 40 µg $F^-$/ml) into a beaker, and dilute to 50 ml with water. Use the same aliquot size for the blank. Add 10 ml of SPADNS mixed reagent (Section 7.3.13), and mix thoroughly.

11.4.1.2 After mixing, place the sample in a constant-temperature bath containing the standard solutions for 30 minutes before reading the absorbance on the spectrophotometer.

**Note:** After the sample and colorimetric reagent are mixed, the color formed is stable for approximately 2 hours. Also, a 3 °C (5.4 °F) temperature difference between the sample and standard solutions produces an error of approximately 0.005 mg $F^-$/liter. To avoid this error, the absorbencies of the sample and standard solutions must be measured at the same temperature.

11.4.1.3 Set the spectrophotometer to zero absorbance at 570 nm with the zero reference solution (Section 7.3.12), and check the spectrophotometer calibration with the standard solution (Section 7.3.10). Determine the absorbance of the samples, and determine the concentration from the calibration curve. If the concentration does not fall within the range of the calibration curve, repeat the procedure using a different size aliquot.

11.4.2 Container No. 3 (Silica Gel). Weigh the spent silica gel (or silica gel plus impinger) to the nearest 0.5 g using a balance. This step may be conducted in the field.

*12.0 Data Analysis and Calculations*

Carry out calculations, retaining at least one extra significant figure beyond that of the acquired data. Round off figures after final calculation. Other forms of the equations may be used, provided that they yield equivalent results.

12.1 Nomenclature.

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$A_d$ = Aliquot of distillate taken for color development, ml.
$A_t$ = Aliquot of total sample added to still, ml.
$B_{ws}$ = Water vapor in the gas stream, portion by volume.
$C_s$ = Concentration of $F^-$ in stack gas, mg/dscm (gr/dscf).
$F_c$ = $F^-$ concentration from the calibration curve, µg.
$F_t$ = Total $F^-$ in sample, mg.
$T_m$ = Absolute average dry gas meter (DGM) temperature (see Figure 5–3 of Method 5), °K (°R).
$T_s$ = Absolute average stack gas temperature (see Figure 5–3 of Method 5), °K (°R).
$V_d$ = Volume of distillate as diluted, ml.
$V_{m(std)}$ = Volume of gas sample as measured by DGM at standard conditions, dscm (dscf).
$V_t$ = Total volume of $F^-$ sample, after final dilution, ml.
$V_{w(std)}$ = Volume of water vapor in the gas sample at standard conditions, scm (scf)

12.2 Average DGM Temperature and Average Orifice Pressure Drop (see Figure 5–3 of Method 5).

12.3 Dry Gas Volume. Calculate $V_{m(std)}$, and adjust for leakage, if necessary, using Equation 5–1 of Method 5.

12.4 Volume of Water Vapor and Moisture Content. Calculate $V_{w(std)}$ and $B_{ws}$ from the data obtained in this method. Use Equations 5–2 and 5–3 of Method 5.

12.5 Total Fluoride in Sample. Calculate the amount of $F^-$ in the sample using the following equation:

$$F_t = \frac{K\,V_t V_d F_c}{A_t A_d} \qquad \text{Eq. 13A-1}$$

Where:

$K = 10^{-3}$ mg/µg (metric units)
$= 1.54 \times 10^{-5}$ gr/µg (English units)

12.6 Fluoride Concentration in Stack Gas. Determine the $F^-$ concentration in the stack gas using the following equation:

$$C_f = \frac{F_t}{V_{m(std)}} \qquad \text{Eq. 13A-2}$$

12.7 Isokinetic Variation. Same as Method 5, Section 12.11.

*13.0 Method Performance*

The following estimates are based on a collaborative test done at a primary aluminum smelter. In the test, six laboratories each sampled the stack simultaneously using two sampling trains for a total of 12 samples per sampling run. Fluoride concentrations encountered during the test ranged from 0.1 to 1.4 mg $F^-/m^3$.

13.1 Precision. The intra- and inter-laboratory standard deviations, which include sampling and analysis errors, were 0.044 mg $F^-/m^3$ with 60 degrees of freedom and 0.064 mg $F^-/m^3$ with five degrees of freedom, respectively.

13.2 Bias. The collaborative test did not find any bias in the analytical method.

13.3 Range. The range of this method is 0 to 1.4 µg $F^-$/ml.

*14.0 Pollution Prevention. [Reserved]*

*15.0 Waste Management. [Reserved]*

*16.0 Alternative Procedures*

16.1 Compliance with ASTM D 3270–73T, 80, 91, or 95 (incorporated by reference—see § 60.17) "Analysis of Fluoride Content of the Atmosphere and Plant Tissues (Semiautomated Method)" is an acceptable alternative for the requirements specified in Sections 11.2, 11.3, and 11.4.1 when applied to suitable aliquots of Containers 1 and 2 samples.

*17.0 References*

1. Bellack, Ervin. Simplified Fluoride Distillation Method. J. of the American Water Works Association. 50:5306. 1958.

2. Mitchell, W.J., J.C. Suggs, and F.J. Bergman. Collaborative Study of EPA Method 13A and Method 13B. Publication No. EPA–300/4–77–050. U.S. Environmental Protection Agency, Research Triangle Park, NC. December 1977.

3. Mitchell, W.J., and M.R. Midgett. Adequacy of Sampling Trains and Analytical Procedures Used for Fluoride. Atm. Environ. 10:865–872. 1976.

BILLING CODE 6560–50–P



*18.0 Tables, Diagrams, Flowcharts, and Validation Data*

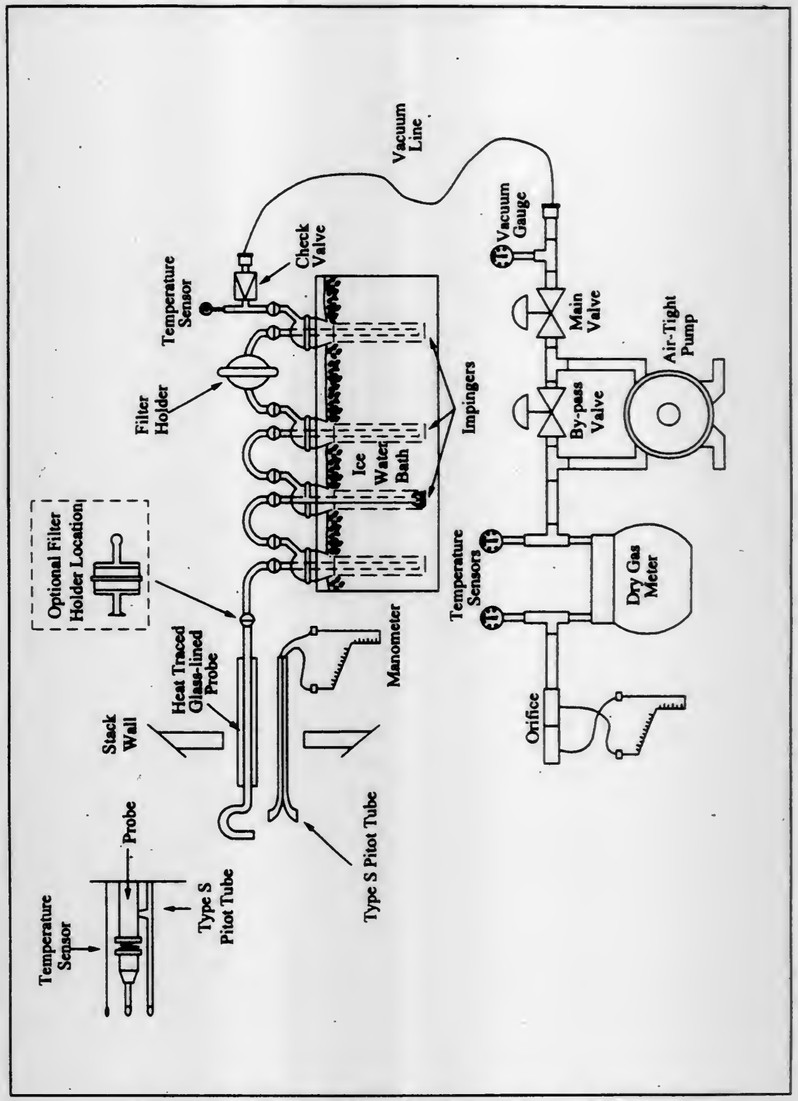



Figure 13A-1. Fluoride Sampling Train.

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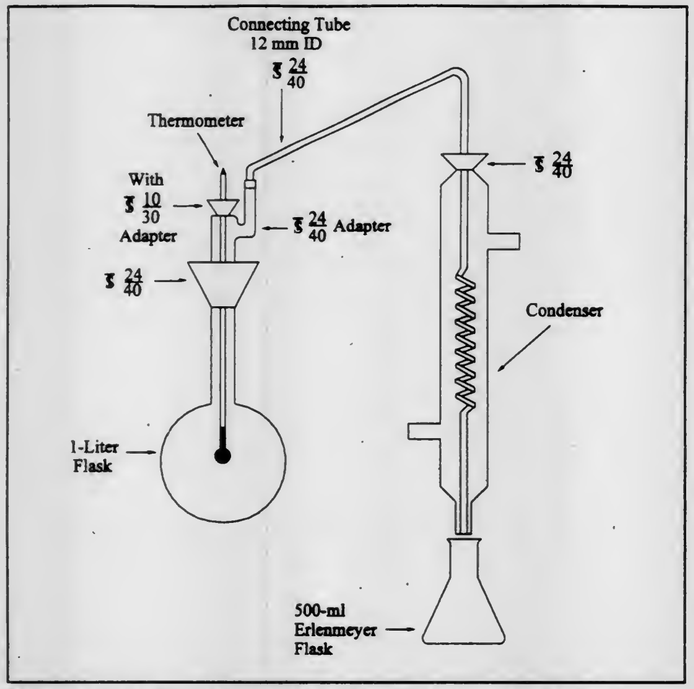



**Figure 13A-7. Fluoride Distillation Apparatus.**

BILLING CODE 6560-50-C

## Method 13B—Determination of Total Fluoride Emissions From Stationary Sources (Specific Ion Electrode Method)

**Note:** This method does not include all of the specifications (*e.g.*, equipment and supplies) and procedures (*e.g.*, sampling and analytical) essential to its performance. Some material is incorporated by reference from other methods in this part. Therefore, to obtain reliable results, persons using this method should have a thorough knowledge of at least the following additional test methods: Method 1, Method 2, Method 3, Method 5, and Method 13A.

*1.0 Scope and Application*

1.1 Analytes.

| Analyte | CAS No. | Sensitivity |
|---|---|---|
| Total fluorides as Fluorine | 7782–41–4 | Not determined. |

1.2 Applicability. This method is applicable for the determination of fluoride ($F^-$) emissions from sources as specified in the regulations. It does not measure fluorocarbons, such as Freons.

1.3 Data Quality Objectives. Adherence to the requirements of this method will enhance the quality of the data obtained from air pollutant sampling methods.

*2.0 Summary*

Gaseous and particulate $F^-$ are withdrawn isokinetically from the source and collected in water and on a filter. The total $F^-$ is then determined by the specific ion electrode method.

*3.0 Definitions. [Reserved]*

*4.0 Interferences*

Grease on sample-exposed surfaces may cause low $F^-$ results because of adsorption.

*5.0 Safety*

5.1 Disclaimer. This method may involve hazardous materials, operations, and equipment. This test method does not purport to address all of the safety problems associated with its use. It is the responsibility of the user of this test method to establish appropriate safety and health practices and to determine the applicability of regulatory limitations prior to performing this test method.

5.2 Corrosive Reagents. The following reagents are hazardous. Personal protective equipment and safe procedures are useful in preventing chemical splashes. If contact occurs, immediately flush with copious amounts of water at least 15 minutes. Remove clothing under shower and decontaminate. Treat residual chemical burn as thermal burn.

5.2.1 Sodium Hydroxide (NaOH). Causes severe damage to eye tissues and to skin. Inhalation causes irritation to nose, throat, and lungs. Reacts exothermically with limited amounts of water.

5.2.2 Sulfuric Acid ($H_2SO_4$). Rapidly destructive to body tissue. Will cause third degree burns. Eye damage may result in blindness. Inhalation may be fatal from spasm of the larynx, usually within 30 minutes. May cause lung tissue damage with edema. 1 mg/m³ for 8 hours will cause lung damage or, in higher concentrations, death. Provide ventilation to limit inhalation. Reacts violently with metals and organics.

*6.0 Equipment and Supplies*

6.1 Sample Collection and Sample Recovery. Same as Method 13A, Sections 6.1 and 6.2, respectively.

6.2 Sample Preparation and Analysis. The following items are required for sample preparation and analysis:

6.2.1 Distillation Apparatus, Bunsen Burner, Electric Muffle Furnace, Crucibles, Beakers, Volumetric Flasks, Erlenmeyer Flasks or Plastic Bottles, Constant Temperature Bath, and Balance. Same as Method 13A, Sections 6.3.1 to 6.3.9, respectively.

6.2.2 Fluoride Ion Activity Sensing Electrode.

6.2.3 Reference Electrode. Single junction, sleeve type.

6.2.4 Electrometer. A pH meter with millivolt-scale capable of ±0.1-mv resolution, or a specific ion meter made specifically for specific ion electrode use.

6.2.5 Magnetic Stirrer and Tetrafluoroethylene (TFE) Fluorocarbon-Coated Stirring Bars.

6.2.6 Beakers. Polyethylene, 100-ml.

*7.0 Reagents and Standards*

Unless otherwise indicated, all reagents are to conform to the specifications established by the Committee on Analytical Reagents of the American Chemical Society, where such specifications are available. Otherwise, use the best available grade.

7.1 Sample Collection and Sample Recovery. Same as Method 13A, Sections 7.1 and 7.2, respectively.

7.2 Sample Preparation and Analysis. The following reagents and standards are required for sample analysis:

7.2.1 Calcium Oxide (CaO). Certified grade containing 0.005 percent $F^-$ or less.

7.2.2 Phenolphthalein Indicator. Dissolve 0.1 g phenolphthalein in a mixture of 50 ml of 90 percent ethanol and 50 ml water.

7.2.3 Sodium Hydroxide (NaOH), Pellets.

7.2.4 Sulfuric Acid ($H_2SO_4$), Concentrated.

7.2.5 Filters. Whatman No. 541, or equivalent.

7.2.6 Water. Same as Section 7.1.2 of Method 13A.

7.2.7 Sodium Hydroxide, 5 M. Dissolve 20 g of NaOH in 100 ml of water.

7.2.8 Sulfuric Acid, 25 Percent (v/v). Mix 1 part of concentrated $H_2SO_4$ with 3 parts of water.

7.2.9 Total Ionic Strength Adjustment Buffer (TISAB). Place approximately 500 ml of water in a 1-liter beaker. Add 57 ml of glacial acetic acid, 58 g of sodium chloride, and 4 g of cyclohexylene dinitrilo tetraacetic acid. Stir to dissolve. Place the beaker in a water bath and cool to 20 °C (68 °F). Slowly add 5 M NaOH to the solution, measuring the pH continuously with a calibrated pH/reference electrode pair, until the pH is 5.3. Pour into a 1-liter volumetric flask, and dilute to volume with deionized, distilled water. Commercially prepared TISAB may be substituted for the above.

7.2.10 Fluoride Standard Solution, 0.1 M. Oven dry approximately 10 g of sodium fluoride (NaF) for a minimum of 2 hours at 110 °C (230 °F), and store in a desiccator. Then add 4.2 g of NaF to a 1-liter volumetric flask, and add enough water to dissolve. Dilute to volume with water.

*8.0 Sample Collection, Preservation, Storage, and Transport*

Same as Method 13A, Section 8.0.

*9.0 Quality Control*

9.1 Miscellaneous Quality Control Measures.

| Section | Quality control measure | Effect |
|---|---|---|
| 8.0, 10.1 | Sampling equipment leak-check and calibration | Ensure accurate measurement of stack gas flow rate and sample volume. |
| 10.2 | Fluoride electrode | Evaluate analytical technique, preparation of standards. |
| 11.1 | Interference/recovery efficiency-check during distillation. | Minimize negative effects of used acid. |

9.2 Volume Metering System Checks. Same as Method 5, Section 9.2.

*10.0 Calibration and Standardizations*

**Note:** Maintain a laboratory log of all calibrations.

10.1 Sampling Equipment. Same as Method 13A, Section 10.1.

10.2 Fluoride Electrode. Prepare fluoride standardizing solutions by serial dilution of the 0.1 M fluoride standard solution. Pipet 10 ml of 0.1 M fluoride standard solution into a 100-ml volumetric flask, and make up to the mark with water for a $10^{-2}$ M standard solution. Use 10 ml of $10^{-2}$ M solution to make a $10^{-3}$ M solution in the same manner. Repeat the dilution procedure, and make $10^{-4}$ and $10^{-5}$ M solutions.

10.2.1 Pipet 50 ml of each standard into a separate beaker. Add 50 ml of TISAB to each beaker. Place the electrode in the most dilute standard solution. When a steady millivolt reading is obtained, plot the value on the linear axis of semilog graph paper versus concentration on the log axis. Plot the nominal value for concentration of the standard on the log axis, (*e.g.*, when 50 ml of $10^{-2}$ M standard is diluted with 50 ml of TISAB, the concentration is still designated "$10^{-2}$ M").

10.2.2 Between measurements, soak the fluoride sensing electrode in water for 30 seconds, and then remove and blot dry. Analyze the standards going from dilute to concentrated standards. A straight-line calibration curve will be obtained, with nominal concentrations of $10^{-4}$, $10^{-3}$, $10^{-2}$, $10^{-1}$ fluoride molarity on the log axis plotted versus electrode potential (in mv) on the linear scale. Some electrodes may be slightly nonlinear between $10^{-5}$ and $10^{-4}$ M. If this occurs, use additional standards between these two concentrations.

10.2.3 Calibrate the fluoride electrode daily, and check it hourly. Prepare fresh fluoride standardizing solutions daily ($10^{-2}$ M or less). Store fluoride standardizing solutions in polyethylene or polypropylene containers.

**Note:** Certain specific ion meters have been designed specifically for fluoride electrode use and give a direct readout of fluoride ion concentration. These meters may be used in lieu of calibration curves for fluoride

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measurements over a narrow concentration ranges. Calibrate the meter according to the manufacturer's instructions.

*11.0 Analytical Procedures*

11.1 Sample Loss Check, Sample Preparation, and Distillation. Same as Method 13A, Sections 11.1 through 11.3, except that the **Note** following Section 11.3.1 is not applicable.

11.2 Analysis.

11.2.1 Containers No. 1 and No. 2. Distill suitable aliquots from Containers No. 1 and No. 2. Dilute the distillate in the volumetric flasks to exactly 250 ml with water, and mix thoroughly. Pipet a 25-ml aliquot from each of the distillate into separate beakers. Add an equal volume of TISAB, and mix. The sample should be at the same temperature as the calibration standards when measurements are made. If ambient laboratory temperature fluctuates more than ±2 °C from the temperature at which the calibration standards were measured, condition samples and standards in a constant-temperature bath before measurement. Stir the sample with a magnetic stirrer during measurement to minimize electrode response time. If the stirrer generates enough heat to change solution temperature, place a piece of temperature insulating material, such as cork, between the stirrer and the beaker. Hold dilute samples (below $10^{-4}$ M fluoride ion content) in polyethylene beakers during measurement.

11.2.2 Insert the fluoride and reference electrodes into the solution. When a steady millivolt reading is obtained, record it. This may take several minutes. Determine concentration from the calibration curve. Between electrode measurements, rinse the electrode with water.

11.2.3 Container No. 3 (Silica Gel). Same as in Method 13A, Section 11.4.2.

*12.0 Data Analysis and Calculations*

Carry out calculations, retaining at least one extra significant figure beyond that of the acquired data. Round off figures after final calculation.

12.1 Nomenclature. Same as Method 13A, Section 12.1, with the addition of the following:

M = $F^-$ concentration from calibration curve, molarity.

12.2 Average DGM Temperature and Average Orifice Pressure Drop, Dry Gas Volume, Volume of Water Vapor and Moisture Content, Fluoride Concentration in Stack Gas, and Isokinetic Variation. Same as Method 13A, Sections 12.2 to 12.4, 12.6, and 12.7, respectively.

12.3 Total Fluoride in Sample. Calculate the amount of $F^-$ in the sample using Equation 13B–1:

$$F_t = \frac{K V_t V_d M}{A_t} \qquad \text{Eq. 13B-1}$$

Where:

K = 19 [(mg·l)/(mole·ml)] (metric units) = 0.292 [(gr·l)/(mole·ml)] (English units)

*13.0 Method Performance*

The following estimates are based on a collaborative test done at a primary aluminum smelter. In the test, six laboratories each sampled the stack simultaneously using two sampling trains for a total of 12 samples per sampling run. Fluoride concentrations encountered during the test ranged from 0.1 to 1.4 mg $F^-/m^3$.

13.1 Precision. The intra-laboratory and inter-laboratory standard deviations, which include sampling and analysis errors, are 0.037 mg $F^-/m^3$ with 60 degrees of freedom and 0.056 mg $F^-/m^3$ with five degrees of freedom, respectively.

13.2 Bias. The collaborative test did not find any bias in the analytical method.

13.3 Range. The range of this method is 0.02 to 2,000 µg $F^-$/ml; however, measurements of less than 0.1 µg $F^-$/ml require extra care.

*14.0 Pollution Prevention. [Reserved]*

*15.0 Waste Management. [Reserved]*

*16.0 Alternative Procedures*

16.1 Compliance with ASTM D 3270–73T, 91, 95 "Analysis for Fluoride Content of the Atmosphere and Plant Tissues (Semiautomated Method)" is an acceptable alternative for the distillation and analysis requirements specified in Sections 11.1 and 11.2 when applied to suitable aliquots of Containers 1 and 2 samples.

*17.0 References*

Same as Method 13A, Section 16.0, References 1 and 2, with the following addition:

1. MacLeod, Kathryn E., and Howard L. Crist. Comparison of the SPADNS-Zirconium Lake and Specific Ion Electrode Methods of Fluoride Determination in Stack Emission Samples. Analytical Chemistry. 45:1272–1273. 1973.

*18.0 Tables, Diagrams, Flowcharts, and Validation Data. [Reserved]*

**Method 14—Determination of Fluoride Emissions From Potroom Roof Monitors for Primary Aluminum Plants**

**Note:** This method does not include all of the specifications (*e.g.*, equipment and supplies) and procedures (*e.g.*, sampling and analytical) essential to its performance. Some material is incorporated by reference from other methods in this part. Therefore, to obtain reliable results, persons using this method should have a thorough knowledge of at least the following additional test methods: Method 1, Method 2, Method 3, Method 5, Method 13A, and Method 13B.

*1.0 Scope and Application*

1.1 Analytes.

| Analyte | CAS No. | Sensitivity |
|---|---|---|
| Total fluorides as Fluorine | 7782–41–4 | Not determined. |

1.2 Applicability. This method is applicable for the determination of fluoride emissions from roof monitors at primary aluminum reduction plant potroom groups.

1.3 Data Quality Objectives. Adherence to the requirements of this method will enhance the quality of the data obtained from air pollutant sampling methods.

*2.0 Summary of Method*

2.1 Gaseous and particulate fluoride roof monitor emissions are drawn into a permanent sampling manifold through several large nozzles. The sample is transported from the sampling manifold to ground level through a duct. The fluoride content of the gas in the duct is determined using either Method 13A or Method 13B. Effluent velocity and volumetric flow rate are determined using anemometers located in the roof monitor.

*3.0 Definitions*

*Potroom* means a building unit which houses a group of electrolytic cells in which aluminum is produced.

*Potroom group* means an uncontrolled potroom, a potroom which is controlled individually, or a group of potrooms or potroom segments ducted to a common control system.



*Roof monitor* means that portion of the roof of a potroom where gases not captured at the cell exit from the potroom.

*4.0 Interferences*

Same as Section 4.0 of either Method 13A or Method 13B, with the addition of the following:

4.1 Magnetic Field Effects. Anemometer readings can be affected by potroom magnetic field effects. Section 6.1 provides for minimization of this interference through proper shielding or encasement of anemometer components.

*5.0 Safety*

5.1 Disclaimer. This method may involve hazardous materials, operations, and equipment. This test method may not address all of the safety problems associated with its use. It is the responsibility of the user of this test method to establish appropriate safety and health practices and to determine the applicability of regulatory limitations prior to performing this test method.

5.2 Corrosive Reagents. Same as Section 5.2 of either Method 13A or Method 13B.

*6.0 Equipment and Supplies*

Same as Section 6.0 of either Method 13A or Method 13B, as applicable, with the addition of the following:

6.1 Velocity Measurement Apparatus.

6.1.1 Anemometer Specifications. Propeller anemometers, or equivalent. Each anemometer shall meet the following specifications:

6.1.1.1 Its propeller shall be made of polystyrene, or similar material of uniform density. To ensure uniformity of performance among propellers, it is desirable that all propellers be made from the same mold.

6.1.1.2 The propeller shall be properly balanced, to optimize performance.

6.1.1.3 When the anemometer is mounted horizontally, its threshold velocity shall not exceed 15 m/min (50 ft/min).

6.1.1.4 The measurement range of the anemometer shall extend to at least 600 m/min (2,000 ft/min).

6.1.1.5 The anemometer shall be able to withstand prolonged exposure to dusty and corrosive environments; one way of achieving this is to purge the bearings of the anemometer continuously with filtered air during operation.

6.1.1.6 All anemometer components shall be properly shielded or encased, such that the performance of the anemometer is uninfluenced by potroom magnetic field effects.

6.1.1.7 A known relationship shall exist between the electrical output signal from the anemometer generator and the propeller shaft rpm (see Section 10.2.1). Anemometers having other types of output signals (*e.g.*, optical) may be used, subject to the approval of the Administrator. If other types of anemometers are used, there must be a known relationship between output signal and shaft rpm (see Section 10.2.2).

6.1.1.8 Each anemometer shall be equipped with a suitable readout system (see Section 6.1.3).

6.1.2 Anemometer Installation Requirements.

6.1.2.1 Single, Isolated Potroom. If the affected facility consists of a single, isolated potroom (or potroom segment), install at least one anemometer for every 85 m (280 ft) of roof monitor length. If the length of the roof monitor divided by 85 m (280 ft) is not a whole number, round the fraction to the nearest whole number to determine the number of anemometers needed. For monitors that are less than 130 m (430 ft) in length, use at least two anemometers. Divide the monitor cross-section into as many equal areas as anemometers, and locate an anemometer at the centroid of each equal area. See exception in Section 6.1.2.3.

6.1.2.2 Two or More Potrooms. If the affected facility consists of two or more potrooms (or potroom segments) ducted to a common control device, install anemometers in each potroom (or segment) that contains a sampling manifold. Install at least one anemometer for every 85 m (280 ft) of roof monitor length of the potroom (or segment). If the potroom (or segment) length divided by 85 m (280 ft) is not a whole number, round the fraction to the nearest whole number to determine the number of anemometers needed. If the potroom (or segment) length is less than 130 m (430 ft), use at least two anemometers. Divide the potroom (or segment) monitor cross-section into as many equal areas as anemometers, and locate an anemometer at the centroid of each equal area. See exception in Section 6.1.2.3.

6.1.2.3 Placement of Anemometer at the Center of Manifold. At least one anemometer shall be installed in the immediate vicinity (*i.e.*, within 10 m (33 ft)) of the center of the manifold (see Section 6.2.1). For its placement in relation to the width of the monitor, there are two alternatives. The first is to make a velocity traverse of the width of the roof monitor where an anemometer is to be placed and install the anemometer at a point of average velocity along this traverse. The traverse may be made with any suitable low velocity measuring device, and shall be made during normal process operating conditions. The second alternative is to install the anemometer half-way across the width of the roof monitor. In this latter case, the velocity traverse need not be conducted.

6.1.3 Recorders. Recorders that are equipped with suitable auxiliary equipment (*e.g.*, transducers) for converting the output signal from each anemometer to a continuous recording of air flow velocity or to an integrated measure of volumetric flowrate shall be used. A suitable recorder is one that allows the output signal from the propeller anemometer to be read to within 1 percent when the velocity is between 100 and 120 m/min (330 and 390 ft/min). For the purpose of recording velocity, "continuous" shall mean one readout per 15-minute or shorter time interval. A constant amount of time shall elapse between readings. Volumetric flow rate may be determined by an electrical count of anemometer revolutions. The recorders or counters shall permit identification of the velocities or flowrates measured by each individual anemometer.

6.1.4 Pitot Tube. Standard-type pitot tube, as described in Section 6.7 of Method 2, and having a coefficient of 0.99 ± 0.01.

6.1.5 Pitot Tube (Optional). Isolated, Type S pitot, as described in Section 6.1 of Method 2, and having a known coefficient, determined as outlined in Section 4.1 of Method 2.

6.1.6 Differential Pressure Gauge. Inclined manometer, or equivalent, as described in Section 6.1.2 of Method 2.

6.2 Roof Monitor Air Sampling System.

6.2.1 Manifold System and Ductwork. A minimum of one manifold system shall be installed for each potroom group. The manifold system and ductwork shall meet the following specifications:

6.2.1.1 The manifold system and connecting duct shall be permanently installed to draw an air sample from the roof monitor to ground level. A typical installation of a duct for drawing a sample from a roof monitor to ground level is shown in Figure 14–1 in Section 17.0. A plan of a manifold system that is located in a roof monitor is shown in Figure 14–2. These drawings represent a typical installation for a generalized roof monitor. The dimensions on these figures may be altered slightly to make the manifold system fit into a particular roof monitor, but the general configuration shall be followed.

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6.2.1.2 There shall be eight nozzles, each having a diameter of 0.40 to 0.50 m.

6.2.1.3 The length of the manifold system from the first nozzle to the eighth shall be 35 m (115 ft) or eight percent of the length of the potroom (or potroom segment) roof monitor, whichever is greater. Deviation from this requirement is subject to the approval of the Administrator.

6.2.1.4 The duct leading from the roof monitor manifold system shall be round with a diameter of 0.30 to 0.40 m (1.0 to 1.3 ft). All connections in the ductwork shall be leak-free.

6.2.1.5 As shown in Figure 14–2, each of the sample legs of the manifold shall have a device, such as a blast gate or valve, to enable adjustment of the flow into each sample nozzle.

6.2.1.6 The manifold system shall be located in the immediate vicinity of one of the propeller anemometers (see Section 8.1.1.4) and as close as possible to the midsection of the potroom (or potroom segment). Avoid locating the manifold system near the end of a potroom or in a section where the aluminum reduction pot arrangement is not typical of the rest of the potroom (or potroom segment). The sample nozzles shall be centered in the throat of the roof monitor (see Figure 14–1).

6.2.1.7 All sample-exposed surfaces within the nozzles, manifold, and sample duct shall be constructed with 316 stainless steel. Alternatively, aluminum may be used if a new ductwork is conditioned with fluoride-laden roof monitor air for a period of six weeks before initial testing. Other materials of construction may be used if it is demonstrated through comparative testing, to the satisfaction of the Administrator, that there is no loss of fluorides in the system.

6.2.1.8 Two sample ports shall be located in a vertical section of the duct between the roof monitor and the exhaust fan (see Section 6.2.2). The sample ports shall be at least 10 duct diameters downstream and three diameters upstream from any flow disturbance such as a bend or contraction. The two sample ports shall be situated 90° apart. One of the sample ports shall be situated so that the duct can be traversed in the plane of the nearest upstream duct bend.

6.2.2 Exhaust Fan. An industrial fan or blower shall be attached to the sample duct at ground level (see Figure 14–1). This exhaust fan shall have a capacity such that a large enough volume of air can be pulled through the ductwork to maintain an isokinetic sampling rate in all the sample nozzles for all flow rates normally encountered in the roof monitor. The exhaust fan volumetric flow rate shall be adjustable so that the roof monitor gases can be drawn isokinetically into the sample nozzles. This control of flow may be achieved by a damper on the inlet to the exhauster or by any other workable method.

6.3 Temperature Measurement Apparatus. To monitor and record the temperature of the roof monitor effluent gas, and consisting of the following:

6.3.1 Temperature Sensor. A temperature sensor shall be installed in the roof monitor near the sample duct. The temperature sensor shall conform to the specifications outlined in Method 2, Section 6.3.

6.3.2 Signal Transducer. Transducer, to change the temperature sensor voltage output to a temperature readout.

6.3.3 Thermocouple Wire. To reach from roof monitor to signal transducer and recorder.

6.3.4 Recorder. Suitable recorder to monitor the output from the thermocouple signal transducer.

*7.0 Reagents and Standards*

Same as Section 7.0 of either Method 13A or Method 13B, as applicable.

*8.0 Sample Collection, Preservation, Storage, and Transport*

8.1 Roof Monitor Velocity Determination.

8.1.1 Velocity Estimate(s) for Setting Isokinetic Flow. To assist in setting isokinetic flow in the manifold sample nozzles, the anticipated average velocity in the section of the roof monitor containing the sampling manifold shall be estimated before each test run. Any convenient means to make this estimate may be used (*e.g.*, the velocity indicated by the anemometer in the section of the roof monitor containing the sampling manifold may be continuously monitored during the 24-hour period before the test run). If there is question as to whether a single estimate of average velocity is adequate for an entire test run (*e.g.*, if velocities are anticipated to be significantly different during different potroom operations), the test run may be divided into two or more "sub-runs," and a different estimated average velocity may be used for each sub-run (see Section 8.4.2).

8.1.2 Velocity Determination During a Test Run. During the actual test run, record the velocity or volumetric flowrate readings of each propeller anemometer in the roof monitor. Readings shall be taken from each anemometer at equal time intervals of 15 minutes or less (or continuously).

8.2 Temperature Recording. Record the temperature of the roof monitor effluent gases at least once every 2 hours during the test run.

8.3 Pretest Ductwork Conditioning. During the 24-hour period immediately preceding the test run, turn on the exhaust fan, and draw roof monitor air through the manifold system and ductwork. Adjust the fan to draw a volumetric flow through the duct such that the velocity of gas entering the manifold nozzles approximates the average velocity of the air exiting the roof monitor in the vicinity of the sampling manifold.

8.4 Manifold Isokinetic Sample Rate Adjustment(s).

8.4.1 Initial Adjustment. Before the test run (or first sub-run, if applicable; see Sections 8.1.1 and 8.4.2), adjust the fan such that air enters the manifold sample nozzles at a velocity equal to the appropriate estimated average velocity determined under Section 8.1.1. Use Equation 14–1 (Section 12.2.2) to determine the correct stream velocity needed in the duct at the sampling location, in order for sample gas to be drawn isokinetically into the manifold nozzles. Next, verify that the correct stream velocity has been achieved, by performing a pitot tube traverse of the sample duct (using either a standard or Type S pitot tube); use the procedure outlined in Method 2.

8.4.2 Adjustments During Run. If the test run is divided into two or more "sub-runs" (see Section 8.1.1), additional isokinetic rate adjustment(s) may become necessary during the run. Any such adjustment shall be made just before the start of a sub-run, using the procedure outlined in Section 8.4.1 above.

**Note:** Isokinetic rate adjustments are not permissible during a sub-run.

8.5 Pretest Preparation, Preliminary Determinations, Preparation of Sampling Train, Leak-Check Procedures, Sampling Train Operation, and Sample Recovery. Same as Method 13A, Sections 8.1 through 8.6, with the exception of the following:

8.5.1 A single train shall be used for the entire sampling run. Alternatively, if two or more sub-runs are performed, a separate train may be used for each sub-run; note, however, that if this option is chosen, the area of the sampling nozzle shall be the same (±2 percent) for each train. If the test run is divided into sub-runs, a complete traverse of the duct shall be performed during each sub-run.

8.5.2 Time Per Run. Each test run shall last 8 hours or more; if more than one run is to be performed, all runs shall be of approximately the same (±10 percent) length. If questions exist as to the representativeness of an 8-hour test, a longer period should be selected. Conduct each run during a period when all normal operations are performed underneath the sampling manifold. For most recently-constructed plants, 24 hours are required for all potroom operations and events to occur in the area beneath the sampling manifold. During the test period, all pots in the potroom group shall be operated such that emissions are representative of normal operating conditions in the potroom group.



*9.0 Quality Control*

9.1 Miscellaneous Quality Control Measures.

| Section | Quality Control Measure | Effect |
|---|---|---|
| 8.0, 10.0 | Sampling equipment leak-check and calibration | Ensure accurate measurement of gas flow rate in duct and of sample volume. |
| 10.3, 10.4 | Initial and periodic performance checks of roof monitor effluent gas characterization apparatus. | Ensure accurate and precise measurement of roof monitor effluent gas temperature and flow rate. |
| 11.0 | Interference/recovery efficiency check during distillation. | Minimize negative effects of used acid. |

9.2 Volume Metering System Checks. Same as Method 5, Section 9.2.

*10.0 Calibration and Standardization*

Same as Section 10.0 of either Method 13A or Method 13B, as applicable, with the addition of the following:

10.1 Manifold Intake Nozzles. The manifold intake nozzles shall be calibrated when the manifold system is installed or, alternatively, the manifold may be preassembled and the nozzles calibrated on the ground prior to installation. The following procedures shall be observed:

10.1.1 Adjust the exhaust fan to draw a volumetric flow rate (refer to Equation 14–1) such that the entrance velocity into each manifold nozzle approximates the average effluent velocity in the roof monitor.

10.1.2 Measure the velocity of the air entering each nozzle by inserting a standard pitot tube into a 2.5 cm or less diameter hole (see Figure 14–2) located in the manifold between each blast gate (or valve) and nozzle. Note that a standard pitot tube is used, rather than a type S, to eliminate possible velocity measurement errors due to cross-section blockage in the small (0.13 m diameter) manifold leg ducts. The pitot tube tip shall be positioned at the center of each manifold leg duct. Take care to ensure that there is no leakage around the pitot tube, which could affect the indicated velocity in the manifold leg.

10.1.3 If the velocity of air being drawn into each nozzle is not the same, open or close each blast gate (or valve) until the velocity in each nozzle is the same. Fasten each blast gate (or valve) so that it will remain in position, and close the pitot port holes.

10.2 Initial Calibration of Propeller Anemometers.

10.2.1 Anemometers that meet the specifications outlined in Section 6.1.1 need not be calibrated, provided that a reference performance curve relating anemometer signal output to air velocity (covering the velocity range of interest) is available from the manufacturer. If a reference performance curve is not available from the manufacturer, such a curve shall be generated.

For the purpose of this method, a "reference" performance curve is defined as one that has been derived from primary standard calibration data, with the anemometer mounted vertically. "Primary standard" data are obtainable by: (a) direct calibration of one or more of the anemometers by the National Institute of Standards and Technology (NIST); (b) NIST-traceable calibration; or (c) Calibration by direct measurement of fundamental parameters such as length and time (*e.g.*, by moving the anemometers through still air at measured rates of speed, and recording the output signals).

10.2.2 Anemometers having output signals other than electrical (*e.g.*, optical) may be used, subject to the approval of the Administrator. If other types of anemometers are used, a reference performance curve shall be generated, using procedures subject to the approval of the Administrator.

10.2.3 The reference performance curve shall be derived from at least the following three points: 60 ± 15, 900 ± 100, and 1800 ± 100 rpm.

10.3 Initial Performance Checks. Conduct these checks within 60 days before the first performance test.

10.3.1 Anemometers. A performance-check shall be conducted as outlined in Sections 10.3.1.1 through 10.3.1.3. Alternatively, any other suitable method that takes into account the signal output, propeller condition, and threshold velocity of the anemometer may be used, subject to the approval of the Administrator.

10.3.1.1 Check the signal output of the anemometer by using an accurate rpm generator (see Figure 14–3) or. synchronous motors to spin the propeller shaft at each of the three rpm settings described in Section 10.2.3, and measuring the output signal at each setting. If, at each setting, the output signal is within 5 percent of the manufacturer's value, the anemometer can be used. If the anemometer performance is unsatisfactory, the anemometer shall either be replaced or repaired.

10.3.1.2 Check the propeller condition, by visually inspecting the propeller, making note of any significant damage or warpage; damaged or deformed propellers shall be replaced.

10.3.1.3 Check the anemometer threshold velocity as follows: With the anemometer mounted as shown in Figure 14–4(A), fasten a known weight (a straight-pin will suffice) to the anemometer propeller at a fixed distance from the center of the propeller shaft. This will generate a known torque; for example, a 0.1-g weight, placed 10 cm from the center of the shaft, will generate a torque of 1.0 g-cm. If the known torque causes the propeller to rotate downward, approximately 90° [see Figure 14–4(B)], then the known torque is greater than or equal to the starting torque; if the propeller fails to rotate approximately 90°, the known torque is less than the starting torque. By trying different combinations of weight and distance, the starting torque of a particular anemometer can be satisfactorily estimated. Once an estimate of the starting torque has been obtained, the threshold velocity of the anemometer (for horizontal mounting) can be estimated from a graph such as Figure 14–5 (obtained from the manufacturer). If the horizontal threshold velocity is acceptable [<15 m/min (50 ft/min), when this technique is used], the anemometer can be used. If the threshold velocity of an anemometer is found to be unacceptably high, the anemometer shall either be replaced or repaired.

10.3.2 Recorders and Counters. Check the calibration of each recorder and counter (see Section 6.1.2) at a minimum of three points, approximately spanning the expected range of velocities. Use the calibration

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procedures recommended by the manufacturer, or other suitable procedures (subject to the approval of the Administrator). If a recorder or counter is found to be out of calibration by an average amount greater than 5 percent for the three calibration points, replace or repair the system; otherwise, the system can be used.

10.3.3 Temperature Measurement Apparatus. Check the calibration of the Temperature Measurement Apparatus, using the procedures outlined in Section 10.3 of Method 2, at temperatures of 0, 100, and 150 °C (32, 212, and 302 °F). If the calibration is off by more than 5 °C (9 °F) at any of the temperatures, repair or replace the apparatus; otherwise, the apparatus can be used.

10.4 Periodic Performance Checks. Repeat the procedures outlined in Section 10.3 no more than 12 months after the initial performance checks. If the above systems pass the performance checks (*i.e.*, if no repair or replacement of any component is necessary), continue with the performance checks on a 12-month interval basis. However, if any of the above systems fail the performance checks, repair or replace the system(s) that failed, and conduct the periodic performance checks on a 3-month interval basis, until sufficient information (to the satisfaction of the Administrator) is obtained to establish a modified performance check schedule and calculation procedure.

**Note:** If any of the above systems fails the 12-month periodic performance checks, the data for the past year need not be recalculated.

*11.0 Analytical Procedures*

Same as Section 11.0 of either Method 13A or Method 13B.

*12.0 Data Analysis and Calculations*

Same as Section 12.0 of either Method 13A or Method 13B, as applicable, with the following additions and exceptions:

12.1 Nomenclature.

$A$ = Roof monitor open area, $m^2$ ($ft^2$).
$B_{ws}$ = Water vapor in the gas stream, portion by volume.
$C_s$ = Average fluoride concentration in roof monitor air, mg F/dscm (gr/dscf).
$D_d$ = Diameter of duct at sampling location, m (ft).
$D_n$ = Diameter of a roof monitor manifold nozzle, m (ft).
$F$ = Emission Rate multiplication factor, dimensionless.
$F_t$ = Total fluoride mass collected during a particular sub-run (from Equation 13A–1 of Method 13A or Equation 13B–1 of Method 13B), mg $F^-$ (gr $F^-$).
$M_d$ = Mole fraction of dry gas, dimensionless.
$P_{rm}$ = Pressure in the roof monitor; equal to barometric pressure for this application.
$Q_{sd}$ = Average volumetric flow from roof monitor at standard conditions on a dry basis, $m^3$/min.
$T_{rm}$ = Average roof monitor temperature (from Section 8.2), °C (°F).
$V_d$ = Desired velocity in duct at sampling location, m/sec.
$V_m$ = Anticipated average velocity (from Section 8.1.1) in sampling duct, m/sec.
$V_{mt}$ = Arithmetic mean roof monitor effluent gas velocity, m/sec.
$V_s$ = Actual average velocity in the sampling duct (from Equation 2–9 of Method 2 and data obtained from Method 13A or 13B), m/sec.

12.2 Isokinetic Sampling Check.

12.2.1 Calculate the arithmetic mean of the roof monitor effluent gas velocity readings ($v_m$) as measured by the anemometer in the section of the roof monitor containing the sampling manifold. If two or more sub-runs have been performed, the average velocity for each sub-run may be calculated separately.

12.2.2 Calculate the expected average velocity ($v_d$) in the duct, corresponding to each value of $v_m$ obtained under Section 12.2.1, using Equation 14–1.

$$V_d = \frac{8D_n^2 V_m}{60D_d^2} \qquad \text{Eq. 14-1}$$

Where:

8 = number of required manifold nozzles.
60 = sec/min.

12.2.3 Calculate the actual average velocity ($v_s$) in the sampling duct for each run or sub-run according to Equation 2–9 of Method 2, using data obtained during sampling (Section 8.0 of Method 13A).

12.2.4 Express each vs value from Section 12.2.3 as a percentage of the corresponding $v_d$ value from Section 12.2.2.

12.2.4.1 If vs is less than or equal to 120 percent of $v_d$, the results are acceptable (note that in cases where the above calculations have been performed for each sub-run, the results are acceptable if the average percentage for all sub-runs is less than or equal to 120 percent).

12.2.4.2 If $v_s$ is more than 120 percent of $v_d$, multiply the reported emission rate by the following factor:

$$F = 1 + \frac{\frac{100\,V_s}{V_d} - 120}{200} \qquad \text{Eq. 14-2}$$

12.3 Average Velocity of Roof Monitor Effluent Gas. Calculate the arithmetic mean roof monitor effluent gas velocity ($v_{mt}$) using all the velocity or volumetric flow readings from Section 8.1.2.

12.4 Average Temperature of Roof Monitor Effluent Gas. Calculate the arithmetic mean roof monitor effluent gas temperature ($T_m$) using all the temperature readings recorded in Section 8.2.

12.5 Concentration of Fluorides in Roof Monitor Effluent Gas.

12.5.1 If a single sampling train was used throughout the run, calculate the average fluoride concentration for the roof monitor using Equation 13A–2 of Method 13A.

12.5.2 If two or more sampling trains were used (*i.e.*, one per sub-run), calculate the average fluoride concentration for the run using Equation 14–3:

$$C_s = \frac{\sum_{i=1}^{n} (F_t)_i}{\sum_{i=1}^{n} \left(V_{m(std)}\right)_i} \qquad \text{Eq. 14-3}$$

Where:

n = Total number of sub-runs.

12.6 Mole Fraction of Dry Gas.

$$M_d = 1 - B_{ws} \qquad \text{Eq. 14-4}$$

12.7 Average Volumetric Flow Rate of Roof Monitor Effluent Gas. Calculate the arithmetic mean volumetric flow rate of the roof monitor effluent gases using Equation 14–5.

$$Q_{sd} = \frac{K_1\, V_{mt}\, M_d\, P_m\, A}{T_{rm}} \qquad \text{Eq. 14-5}$$

Where:

$K_1$ = 0.3858 K/mm Hg for metric units, = 17.64 °R/in. Hg for English units.

*13.0 Method Performance. [Reserved]*

*14.0 Pollution Prevention. [Reserved]*

*15.0 Waste Management. [Reserved]*

*16.0 References*

Same as Section 16.0 of either Method 13A or Method 13B, as applicable, with the addition of the following:

1. Shigehara, R.T. A Guideline for Evaluating Compliance Test Results (Isokinetic Sampling Rate Criterion). U.S. Environmental Protection Agency, Emission Measurement Branch, Research Triangle Park, NC. August 1977.

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*17.0 Tables, Diagrams, Flowcharts, and Validation Data*

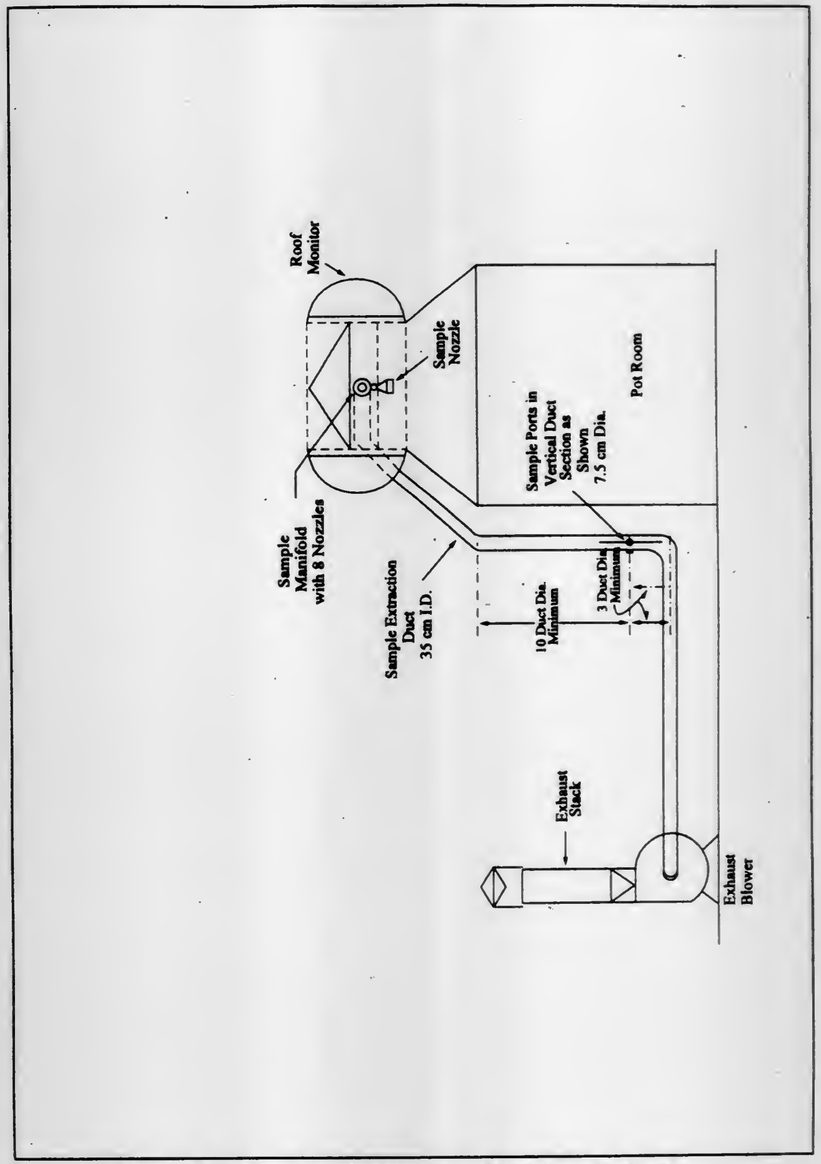



**Figure 14-1. Roof Monitor Sampling System.**

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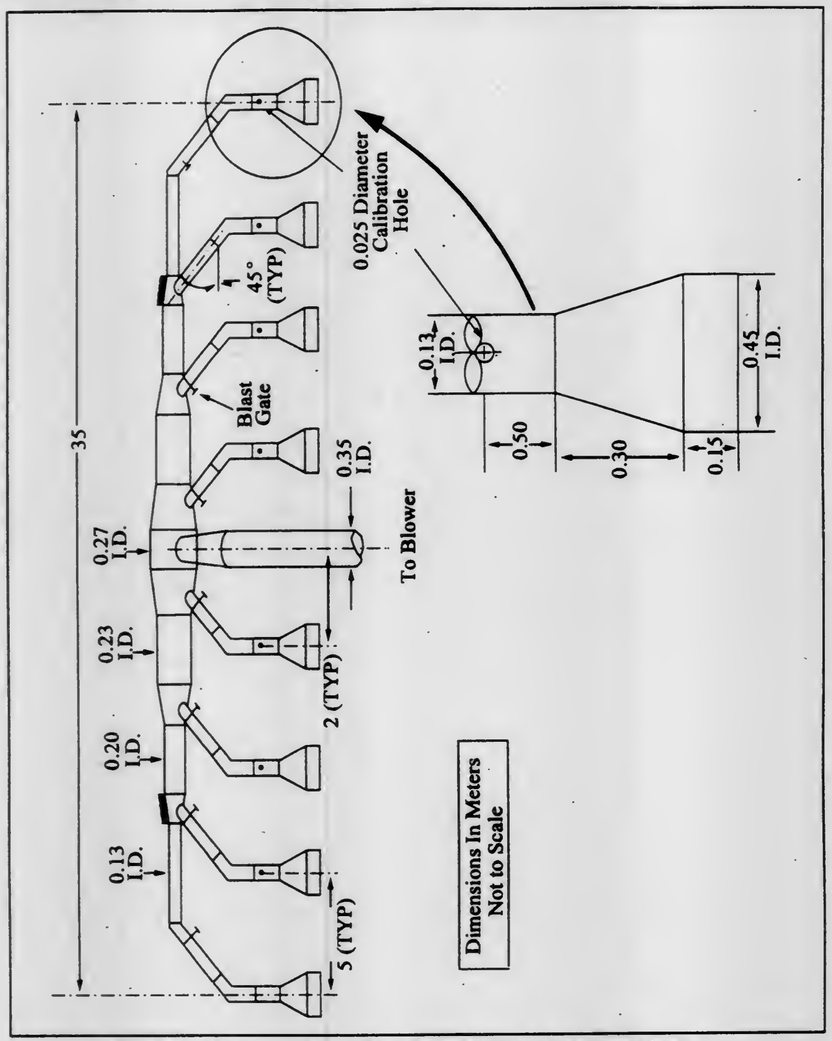



Figure 14-2. Sampling Manifold and Nozzles.



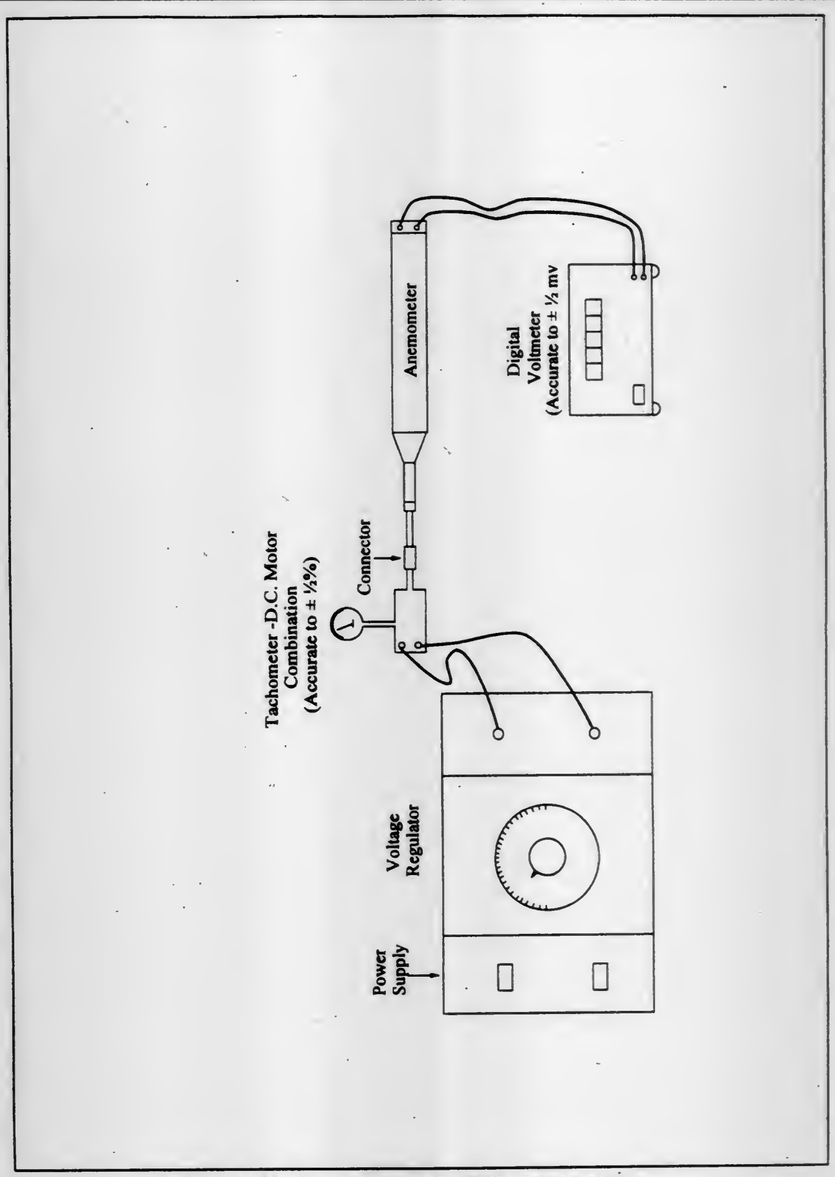



Figure 14-3. Typical RPM Generator.

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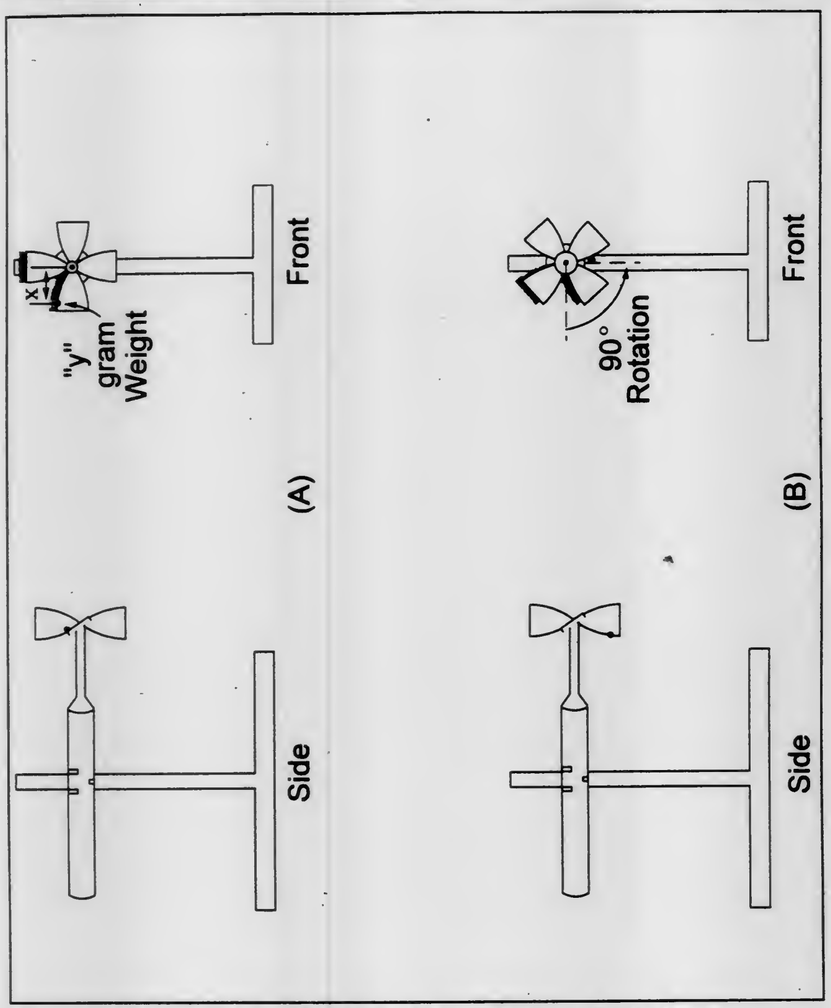



Figure 14-4. Check of Anemometer Starting Torque.



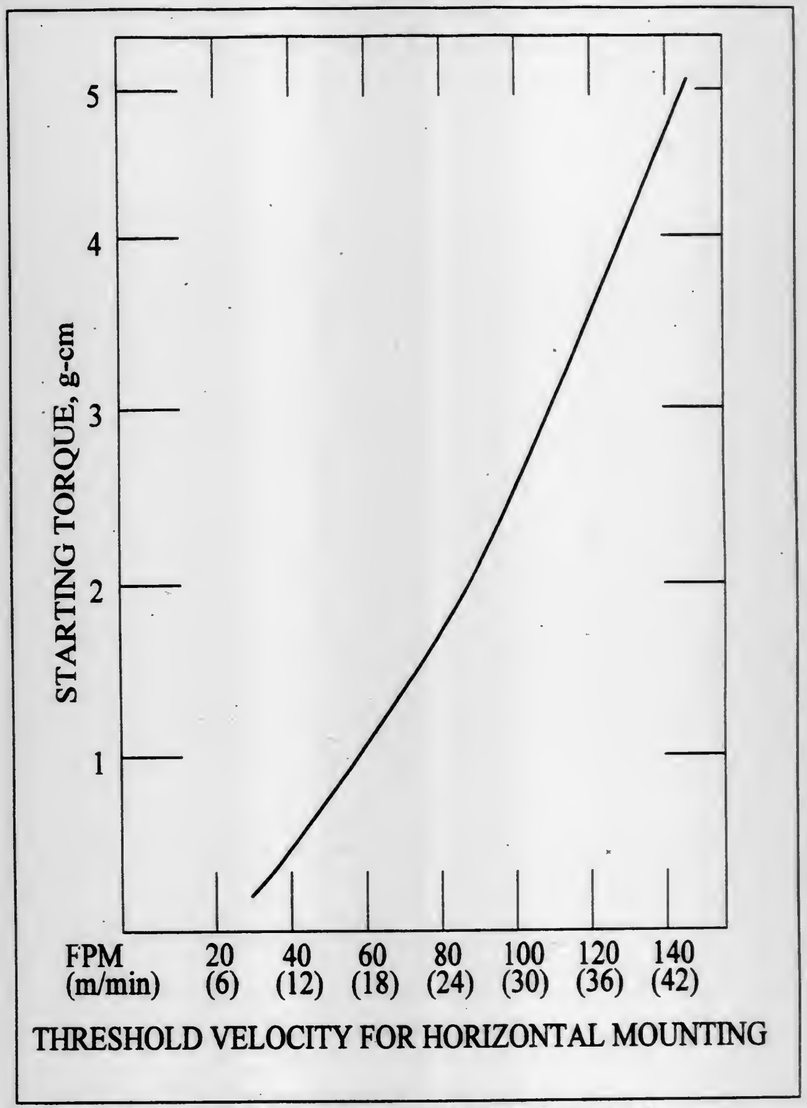



Figure 14-5. Typical Curve of Starting Torque vs. Horizontal Threshold Velocity for Propeller Anemometers.

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**Method 15—Determination of Hydrogen Sulfide, Carbonyl Sulfide, and Carbon Disulfide Emissions From Stationary Sources**

**Note:** This method is not inclusive with respect to specifications (*e.g.*, equipment and supplies) and procedures (*e.g.*, sampling and analytical) essential to its performance. Some material is incorporated by reference from other methods in this part. Therefore, to obtain reliable results, persons using this method should have a thorough knowledge of gas chromatography techniques.

| Analyte | CAS No. | Sensitivity (See Sec 13.2) |
|---|---|---|
| Carbon disulfide [$CS_2$] | 75–15–0 | 0.5 ppmv |
| Carbonyl sulfide [COS] | 463–58–1 | 0.5 ppmv |
| Hydrogen sulfide [$H_2S$] | 7783–06–4 | 0.5 ppmv |

*1.0 Scope and Application*

1.1 Analytes.

1.2 Applicability.

1.2.1 This method applies to the determination of emissions of reduced sulfur compounds from tail gas control units of sulfur recovery plants, $H_2S$ in fuel gas for fuel gas combustion devices, and where specified in other applicable subparts of the regulations.

1.2.2 The method described below uses the principle of gas chromatographic (GC) separation and flame photometric detection (FPD). Since there are many systems or sets of operating conditions that represent useable methods for determining sulfur emissions, all systems which employ this principle, but differ only in details of equipment and operation, may be used as alternative methods, provided that the calibration precision and sample-line loss criteria are met.

1.3 Data Quality Objectives. Adherence to the requirements of this method will enhance the quality of the data obtained from air pollutant sampling methods.

*2.0 Summary of Method*

2.1 A gas sample is extracted from the emission source and diluted with clean dry air (if necessary). An aliquot of the diluted sample is then analyzed for $CS_2$, COS, and $H_2S$ by GC/FPD.

*3.0 Definitions. [Reserved]*

*4.0 Interferences*

4.1 Moisture Condensation. Moisture condensation in the sample delivery system, the analytical column, or the FPD burner block can cause losses or interferences. This potential is eliminated by heating the probe, filter box, and connections, and by maintaining the $SO_2$ scrubber in an ice water bath. Moisture is removed in the $SO_2$ scrubber and heating the sample beyond this point is not necessary provided the ambient temperature is above 0 °C (32 °F). Alternatively, moisture may be eliminated by heating the sample line, and by conditioning the sample with dry dilution air to lower its dew point below the operating temperature of the GC/FPD analytical system prior to analysis.

4.2 Carbon Monoxide (CO) and Carbon Dioxide ($CO_2$). CO and $CO_2$ have substantial desensitizing effects on the FPD even after 9:1 dilution. (Acceptable systems must demonstrate that they have eliminated this interference by some procedure such as eluting CO and $CO_2$ before any of the sulfur compounds to be measured.) Compliance with this requirement can be demonstrated by submitting chromatograms of calibration gases with and without $CO_2$ in the diluent gas. The $CO_2$ level should be approximately 10 percent for the case with $CO_2$ present. The two chromatograms should show agreement within the precision limits of Section 13.3.

4.3 Elemental Sulfur. The condensation of sulfur vapor in the sampling system can lead to blockage of the particulate filter. This problem can be minimized by observing the filter for buildup and changing as needed.

4.4 Sulfur Dioxide ($SO_2$). $SO_2$ is not a specific interferent but may be present in such large amounts that it cannot be effectively separated from the other compounds of interest. The $SO_2$ scrubber described in Section 6.1.3 will effectively remove $SO_2$ from the sample.

4.5 Alkali Mist. Alkali mist in the emissions of some control devices may cause a rapid increase in the $SO_2$ scrubber pH, resulting in low sample recoveries. Replacing the $SO_2$ scrubber contents after each run will minimize the chances of interference in these cases.

*5.0 Safety*

5.1 Disclaimer. This method may involve hazardous materials, operations, and equipment. This test method may not address all of the safety problems associated with its use. It is the responsibility of the user of this test to establish appropriate safety and health practices and determine the applicability of regulatory limitations to performing this test.

*6.0 Equipment and Supplies*

6.1 Sample Collection. See Figure 15–1. The sampling train component parts are discussed in the following sections:

6.1.1 Probe. The probe shall be made of Teflon or Teflon-lined stainless steel and heated to prevent moisture condensation. It shall be designed to allow calibration gas to enter the probe at or near the sample point entry. Any portion of the probe that contacts the stack gas must be heated to prevent moisture condensation. The probe described in Section 6.1.1 of Method 16A having a nozzle directed away from the gas stream is recommended for sources having particulate or mist emissions. Where very high stack temperatures prohibit the use of Teflon probe components, glass or quartz-lined probes may serve as substitutes.

6.1.2 Particulate Filter. 50-mm Teflon filter holder and a 1- to 2-micron porosity Teflon filter (available through Savillex Corporation, 5325 Highway 101, Minnetonka, Minnesota 55343). The filter holder must be maintained in a hot box at a temperature of at least 120 °C (248 °F).

6.1.3 $SO_2$ Scrubber. Three 300-ml, Teflon segment impingers connected in series with flexible, thick-walled, Teflon tubing. (Impinger parts and tubing available through Savillex.) The first two impingers contain 100 ml of citrate buffer, and the third impinger is initially dry. The tip of the tube inserted into the solution should be constricted to less than 3-mm (⅛-in.) ID and should be immersed to a depth of at least 50 cm (2 in.). Immerse the impingers in an ice water bath and maintain near 0 °C. The scrubber solution will normally last for a 3-hour run before needing replacement. This will depend upon the effects of moisture and particulate matter on the solution strength and pH. Connections between the probe, particulate filter, and $SO_2$ scrubber shall be made of Teflon and as short in length as possible. All portions of the probe, particulate filter, and connections prior to the $SO_2$ scrubber (or alternative point of moisture removal) shall be maintained at a temperature of at least 120 °C (248 °F).



6.1.4 Sample Line. Teflon, no greater than 13–mm (½-in.) ID. Alternative materials, such as virgin Nylon, may be used provided the line-loss test is acceptable.

6.1.5 Sample Pump. The sample pump shall be a leakless Teflon-coated diaphragm type or equivalent.

6.2 Analysis. The following items are needed for sample analysis:

6.2.1 Dilution System. The dilution system must be constructed such that all sample contacts are made of Teflon, glass, or stainless steel. It must be capable of approximately a 9:1 dilution of the sample.

6.2.2 Gas Chromatograph (see Figure 15–2). The gas chromatograph must have at least the following components:

6.2.2.1 Oven. Capable of maintaining the separation column at the proper operating temperature ± 1 °C.

6.2.2.2 Temperature Gauge. To monitor column oven, detector, and exhaust temperature ± 1 °C.

6.2.2.3 Flow System. Gas metering system to measure sample, fuel, combustion gas, and carrier gas flows.

6.2.2.4 Flame Photometric Detector.

6.2.2.4.1 Electrometer. Capable of full scale amplification of linear ranges of $10^{-9}$ to $10^{-4}$ amperes full scale.

6.2.2.4.2 Power Supply. Capable of delivering up to 750 volts.

6.2.2.5 Recorder. Compatible with the output voltage range of the electrometer.

6.2.2.6 Rotary Gas Valves. Multiport Teflon-lined valves equipped with sample loop. Sample loop volumes shall be chosen to provide the needed analytical range. Teflon tubing and fittings shall be used throughout to present an inert surface for sample gas. The GC shall be calibrated with the sample loop used for sample analysis.

6.2.2.7 GC Columns. The column system must be demonstrated to be capable of resolving three major reduced sulfur compounds: $H_2S$, COS, and $CS_2$. To demonstrate that adequate resolution has been achieved, a chromatogram of a calibration gas containing all three reduced sulfur compounds in the concentration range of the applicable standard must be submitted. Adequate resolution will be defined as base line separation of adjacent peaks when the amplifier attenuation is set so that the smaller peak is at least 50 percent of full scale. Base line separation is defined as a return to zero (±5 percent) in the interval between peaks. Systems not meeting this criteria may be considered alternate methods subject to the approval of the Administrator.

6.3 Calibration System (See Figure 15–3). The calibration system must contain the following components:

6.3.1 Flow System. To measure air flow over permeation tubes within 2 percent. Each flowmeter shall be calibrated after each complete test series with a wet-test meter. If the flow measuring device differs from the wet-test meter by more than 5 percent, the completed test shall be discarded. Alternatively, use the flow data that will yield the lowest flow measurement. Calibration with a wet-test meter before a test is optional. Flow over the permeation device may also be determined using a soap bubble flowmeter.

6.3.2 Constant Temperature Bath. Device capable of maintaining the permeation tubes at the calibration temperature within 0.1 °C.

6.3.3 Temperature Sensor. Thermometer or equivalent to monitor bath temperature within 0.1 °C.

*7.0 Reagents and Standards*

7.1 Fuel. Hydrogen gas ($H_2$). Prepurified grade or better.

7.2 Combustion Gas. Oxygen ($O_2$) or air, research purity or better.

7.3 Carrier Gas. Prepurified grade or better.

7.4 Diluent. Air containing less than 0.5 ppmv total sulfur compounds and less than 10 ppmv each of moisture and total hydrocarbons.

7.5 Calibration Gases.

7.5.1 Permeation Devices. One each of $H_2S$, COS, and $CS_2$, gravimetrically calibrated and certified at some convenient operating temperature. These tubes consist of hermetically sealed FEP Teflon tubing in which a liquified gaseous substance is enclosed. The enclosed gas permeates through the tubing wall at a constant rate. When the temperature is constant, calibration gases covering a wide range of known concentrations can be generated by varying and accurately measuring the flow rate of diluent gas passing over the tubes. These calibration gases are used to calibrate the GC/FPD system and the dilution system.

7.5.2 Cylinder Gases. Cylinder gases may be used as alternatives to permeation devices. The gases must be traceable to a primary standard (such as permeation tubes) and not used beyond the certification expiration date.

7.6 Citrate Buffer. Dissolve 300 g of potassium citrate and 41 g of anhydrous citric acid in 1 liter of water. Alternatively, 284 g of sodium citrate may be substituted for the potassium citrate. Adjust the pH to between 5.4 and 5.6 with potassium citrate or citric acid, as required.

8.0 Sample Collection, Preservation, Transport, and Storage

8.1 Pretest Procedures. After the complete measurement system has been set up at the site and deemed to be operational, the following procedures should be completed before sampling is initiated. These procedures are not required, but would be helpful in preventing any problem which might occur later to invalidate the entire test.

8.1.1 Leak-Check. Appropriate leak-check procedures should be employed to verify the integrity of all components, sample lines, and connections. The following procedure is suggested: For components upstream of the sample pump, attach the probe end of the sample line to a manometer or vacuum gauge, start the pump and pull a vacuum greater than 50 mm (2 in.) Hg, close off the pump outlet, and then stop the pump and ascertain that there is no leak for 1 minute. For components after the pump, apply a slight positive pressure and check for leaks by applying a liquid (detergent in water, for example) at each joint. Bubbling indicates the presence of a leak. As an alternative to the initial leak-test, the sample line loss test described in Section 8.3.1 may be performed to verify the integrity of components.

8.1.2 System Performance. Since the complete system is calibrated at the beginning and end of each day of testing, the precise calibration of each component is not critical. However, these components should be verified to operate properly. This verification can be performed by observing the response of flowmeters or of the GC output to changes in flow rates or calibration gas concentrations, respectively, and ascertaining the response to be within predicted limits. If any component or the complete system fails to respond in a normal and predictable manner, the source of the discrepancy should be identified and corrected before proceeding.

*8.2 Sample Collection and Analysis*

8.2.1 After performing the calibration procedures outlined in Section 10.0, insert the sampling probe into the test port ensuring that no dilution air enters the stack through the port. Begin sampling and dilute the sample approximately 9:1 using the dilution system. Note that the precise dilution factor is the one determined in Section 10.4. Condition the entire system with sample for a minimum of 15 minutes before beginning the analysis. Inject aliquots of the sample into the GC/FPD analyzer for analysis.

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Determine the concentration of each reduced sulfur compound directly from the calibration curves or from the equation for the least-squares line.

8.2.2 If reductions in sample concentrations are observed during a sample run that cannot be explained by process conditions, the sampling must be interrupted to determine if the probe or filter is clogged with particulate matter. If either is found to be clogged, the test must be stopped and the results up to that point discarded. Testing may resume after cleaning or replacing the probe and filter. After each run, the probe and filter shall be inspected and, if necessary, replaced.

8.2.3 A sample run is composed of 16 individual analyses (injects) performed over a period of not less than 3 hours or more than 6 hours.

8.3 Post-Test Procedures.

8.3.1 Sample Line Loss. A known concentration of $H_2S$ at the level of the applicable standard, ±20 percent, must be introduced into the sampling system at the opening of the probe in sufficient quantities to ensure that there is an excess of sample which must be vented to the atmosphere. The sample must be transported through the entire sampling system to the measurement system in the same manner as the emission samples. The resulting measured concentration is compared to the known value to determine the sampling system loss. For sampling losses greater than 20 percent, the previous sample run is not valid. Sampling losses of 0–20 percent must be corrected by dividing the resulting sample concentration by the fraction of recovery. The known gas sample may be calibration gas as described in Section 7.5. Alternatively, cylinder gas containing $H_2S$ mixed in nitrogen and verified according to Section 7.1.4 of Method 16A may be used. The optional pretest procedures provide a good guideline for determining if there are leaks in the sampling system.

8.3.2 Determination of Calibration Drift. After each run, or after a series of runs made within a 24-hour period, perform a partial recalibration using the procedures in Section 10.0. Only $H_2S$ (or other permeant) need be used to recalibrate the GC/FPD analysis system and the dilution system. Compare the calibration curves obtained after the runs to the calibration curves obtained under Section 10.3. The calibration drift should not exceed the limits set forth in Section 13.4. If the drift exceeds this limit, the intervening run or runs should be considered invalid. As an option, the calibration data set which gives the highest sample values may be chosen by the tester.

*9.0 Quality Control*

| Section | Quality control measure | Effect |
|---|---|---|
| 8.3.1 | Sample line loss check | Ensures that uncorrected negative bias introduced by sample loss is no greater than 20 percent, and provides for correction of bias of 20 percent or less. |
| 8.3.2 | Calibration drift test | Ensures that bias introduced by drift in the measurement system output during the run is no greater than 5 percent. |
| 10.0 | Analytical calibration | Ensures precision of analytical results within 5 percent. |

*10.0 Calibration and Standardization*

Prior to any sampling run, calibrate the system using the following procedures. (If more than one run is performed during any 24-hour period, a calibration need not be performed prior to the second and any subsequent runs. However, the calibration drift must be determined as prescribed in Section 8.3.2 after the last run is made within the 24-hour period.)

**Note:** This section outlines steps to be followed for use of the GC/FPD and the dilution system. The calibration procedure does not include detailed instructions because the operation of these systems is complex, and it requires an understanding of the individual system being used. Each system should include a written operating manual describing in detail the operating procedures associated with each component in the measurement system. In addition, the operator should be familiar with the operating principles of the components, particularly the GC/FPD. The references in Section 16.0 are recommended for review for this purpose.

10.1 Calibration Gas Permeation Tube Preparation.

10.1.1 Insert the permeation tubes into the tube chamber. Check the bath temperature to assure agreement with the calibration temperature of the tubes within 0.1 °C. Allow 24 hours for the tubes to equilibrate. Alternatively, equilibration may be verified by injecting samples of calibration gas at 1-hour intervals. The permeation tubes can be assumed to have reached equilibrium when consecutive hourly samples agree within 5 percent of their mean.

10.1.2 Vary the amount of air flowing over the tubes to produce the desired concentrations for calibrating the analytical and dilution systems. The air flow across the tubes must at all times exceed the flow requirement of the analytical systems. The concentration in ppmv generated by a tube containing a specific permeant can be calculated using Equation 15–1 in Section 12.2.

10.2 Calibration of Analytical System. Generate a series of three or more known concentrations spanning the linear range of the FPD (approximately 0.5 to 10 ppmv for a 1-ml sample) for each of the three major sulfur compounds. Bypassing the dilution system, inject these standards into the GC/FPD and monitor the responses until three consecutive injections for each concentration agree within 5 percent of their mean. Failure to attain this precision indicates a problem in the calibration or analytical system. Any such problem must be identified and corrected before proceeding.

10.3 Calibration Curves. Plot the GC/FPD response in current (amperes) versus their causative concentrations in ppmv on log-log coordinate graph paper for each sulfur compound. Alternatively, a least-squares equation may be generated from the calibration data using concentrations versus the appropriate instrument response units.

10.4 Calibration of Dilution System. Generate a known concentration of $H_2S$ using the permeation tube system. Adjust the flow rate of diluent air for the first dilution stage so that the desired level of dilution is approximated. Inject the diluted calibration gas into the GC/FPD system until the results of three consecutive injections for each dilution agree within 5 percent of their mean. Failure to attain this precision in this step is an indication of a problem in the dilution system. Any such problem must be identified and corrected before proceeding. Using the calibration data for $H_2S$ (developed under Section 10.3), determine the diluted calibration gas concentration in ppmv. Then calculate the dilution factor as the ratio of the calibration gas concentration before dilution to the diluted calibration gas concentration determined under this section. Repeat this procedure for each stage of dilution required. Alternatively, the GC/FPD system may be calibrated by generating a series of three or more concentrations of each sulfur compound and diluting these samples before injecting them into the GC/FPD system. These data will then serve as the calibration data for the unknown samples and a separate determination of the dilution factor will not be necessary. However, the precision requirements are still applicable.



*11.0 Analytical Procedure*

Sample collection and analysis are concurrent for this method (see Section 8.0).

*12.0 Data Analysis and Calculations*

12.1 Nomenclature.

C = Concentration of permeant produced, ppmv.
COS = Carbonyl sulfide concentration, ppmv.
$CS_2$ = Carbon disulfide concentration, ppmv.
d = Dilution factor, dimensionless.
$H_2S$ = Hydrogen sulfide concentration, ppmv.
K = 24.04 L/g mole. (Gas constant at 20°C and 760 mm Hg)
L = Flow rate, L/min, of air over permeant 20°C, 760 mm Hg.
M = Molecular weight of the permeant, g/g-mole.
N = Number of analyses performed.
$P_r$ = Permeation rate of the tube, µg/min.

12.2 Permeant Concentration. Calculate the concentration generated by a tube containing a specific permeant (see Section 10.1) using the following equation:

$$C = \frac{KP_r}{ML} \qquad \text{Eq. 15-1}$$

12.3 Calculation of $SO_2$ Equivalent. $SO_2$ equivalent will be determined for each analysis made by summing the concentrations of each reduced sulfur compound resolved during the given analysis. The $SO_2$ equivalent is expressed as $SO_2$ in ppmv.

$$SO_2 \text{ equivalent}_i = \sum (H_2S, COS, 2CS_2)d \qquad \text{Eq. 15-2}$$

12.4 Average $SO_2$ Equivalent. This is determined using the following equation. Systems that do not remove moisture from the sample but condition the gas to prevent condensation must correct the average $SO_2$ equivalent for the fraction of water vapor present. This is not done under applications where the emission standard is not specified on a dry basis.

$$\text{Avg } SO_2 \text{ equivalent} = \frac{\sum_{i=1}^{n} SO_2 \text{ equivalent}_i}{N} \qquad \text{Eq. 15-3}$$

Where:

Avg $SO_2$ equivalent = Average $SO_2$ equivalent in ppmv, dry basis.
Average $SO_2$ equivalent $_i$ = $SO_2$ in ppmv as determined by Equation 15–2.

*13.0 Method Performance*

13.1 Range. Coupled with a GC system using a 1-ml sample size, the maximum limit of the FPD for each sulfur compound is approximately 10 ppmv. It may be necessary to dilute samples from sulfur recovery plants a hundredfold (99:1), resulting in an upper limit of about 1000 ppmv for each compound.

13.2 Sensitivity. The minimum detectable concentration of the FPD is also dependent on sample size and would be about 0.5 ppmv for a 1-ml sample.

13.3 Calibration Precision. A series of three consecutive injections of the same calibration gas, at any dilution, shall produce results which do not vary by more than 5 percent from the mean of the three injections.

13.4 Calibration Drift. The calibration drift determined from the mean of three injections made at the beginning and end of any run or series of runs within a 24-hour period shall not exceed 5 percent.

*14.0 Pollution Prevention. [Reserved]*

*15.0 Waste Management. [Reserved]*

*16.0 References.*

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*17.0 Tables, Diagrams, Flowcharts, and Validation Data*

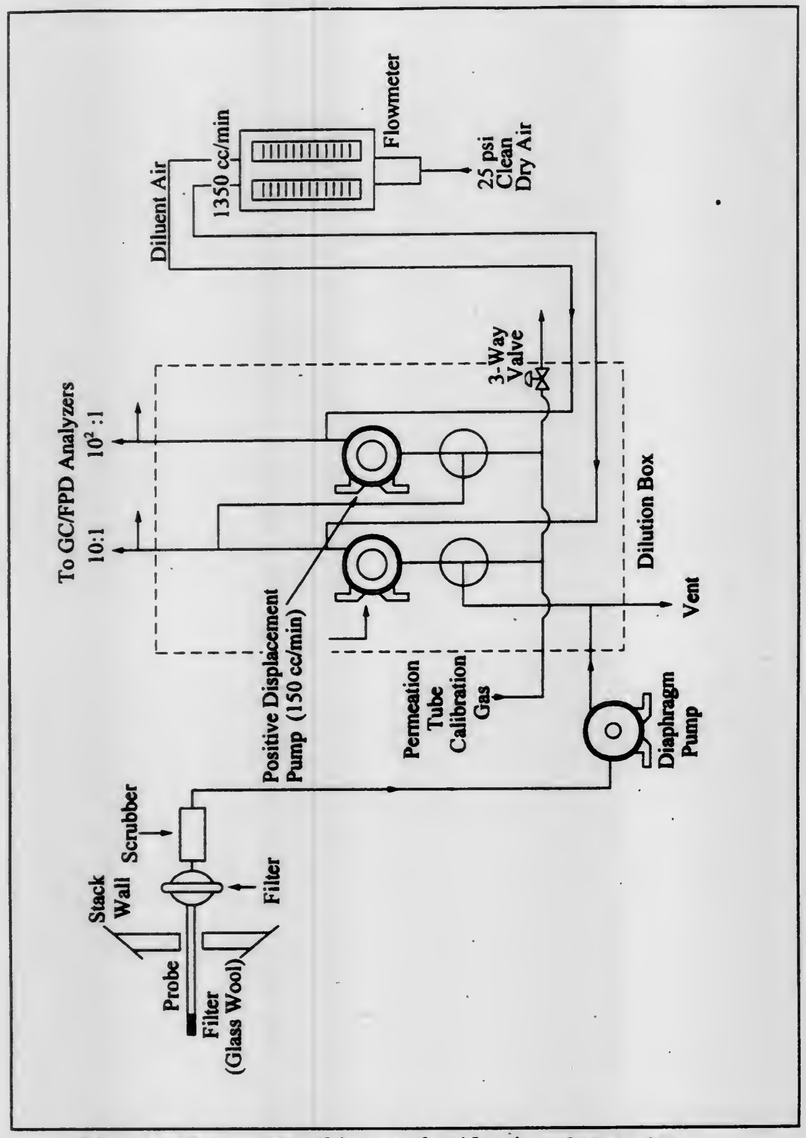



Figure 15-1. Sampling and Dilution Apparatus.



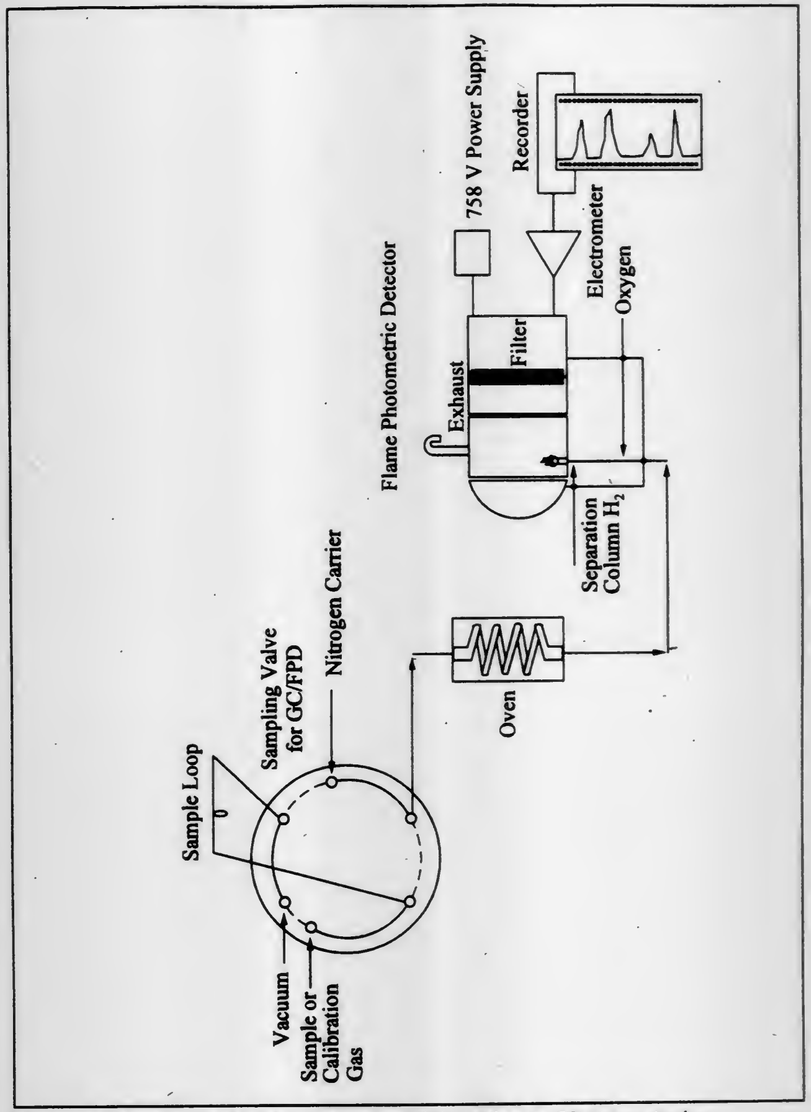



Figure 15-2. Gas Chromatographic Flame Photometric Analyzer.

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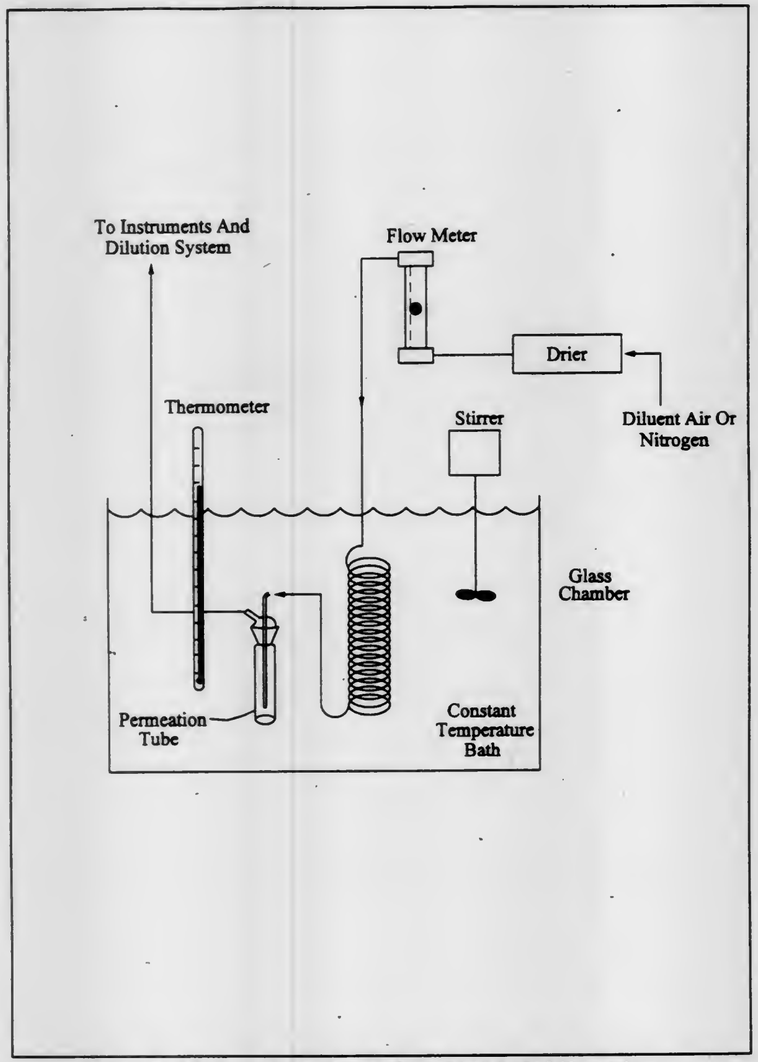



Figure 15-3. Apparatus for Field Calibration.

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**Method 15A—Determination of Total Reduced Sulfur Emissions From Sulfur Recovery Plants in Petroleum Refineries**

**Note:** This method does not include all of the specifications (*e.g.*, equipment and supplies) and procedures (*e.g.*, sampling and analytical) essential to its performance. Some material is incorporated by reference from other methods in this part. Therefore, to obtain reliable results, persons using this method should have a thorough knowledge of at least the following additional test methods: Method 1, Method 6, Method 15, and Method 16A.

*1.0 Scope and Application*

1.1 Analytes.

| Analyte | CAS No. | Sensitivity |
|---|---|---|
| Reduced sulfur compounds | None assigned | Not determined. |

1.2 Applicability. This method is applicable for the determination of emissions of reduced sulfur compounds from sulfur recovery plants where the emissions are in a reducing atmosphere, such as in Stretford units.

1.3 Data Quality Objectives. Adherence to the requirements of this method will enhance the quality of the data obtained from air pollutant sampling methods.

*2.0 Summary of Method*

2.1 An integrated gas sample is extracted from the stack, and combustion air is added to the oxygen ($O_2$)-deficient gas at a known rate. The reduced sulfur compounds [including carbon disulfide ($CS_2$), carbonyl sulfide (COS), and hydrogen sulfide ($H_2S$)] are thermally oxidized to sulfur dioxide ($SO_2$), which is then collected in hydrogen peroxide as sulfate ion and analyzed according to the Method 6 barium-thorin titration procedure.

*3.0 Definitions. [Reserved]*

*4.0 Interferences*

4.1 Reduced sulfur compounds, other than $CS_2$, COS, and $H_2S$, that are present in the emissions will also be oxidized to $SO_2$, causing a positive bias relative to emission standards that limit only the three compounds listed above. For example, thiophene has been identified in emissions from a Stretford unit and produced a positive bias of 30 percent in the Method 15A result. However, these biases may not affect the outcome of the test at units where emissions are low relative to the standard.

4.2 Calcium and aluminum have been shown to interfere in the Method 6 titration procedure. Since these metals have been identified in particulate matter emissions from Stretford units, a Teflon filter is required to minimize this interference.

4.3 Dilution of the hydrogen peroxide ($H_2O_2$) absorbing solution can potentially reduce collection efficiency, causing a negative bias. When used to sample emissions containing 7 percent moisture or less, the midget impingers have sufficient volume to contain the condensate collected during sampling. Dilution of the $H_2O_2$ does not affect the collection of $SO_2$. At higher moisture contents, the potassium citrate-citric acid buffer system used with Method 16A should be used to collect the condensate.

*5.0 Safety*

5.1 Disclaimer. This method may involve hazardous materials, operations, and equipment. This test method may not address all of the safety problems associated with its use. It is the responsibility of the user of this test method to establish appropriate safety and health practices and determine the applicability of regulatory limitations prior to performing this test method.

5.2 Corrosive reagents. The following reagents are hazardous. Personal protective equipment and safe procedures are useful in preventing chemical splashes. If contact occurs, immediately flush with copious amounts of water for at least 15 minutes. Remove clothing under shower and decontaminate. Treat residual chemical burns as thermal burns.

5.2.1 Hydrogen Peroxide ($H_2O_2$). Irritating to eyes, skin, nose, and lungs.

5.2.2 Sodium Hydroxide (NaOH). Causes severe damage to eyes and skin. Inhalation causes irritation to nose, throat, and lungs. Reacts exothermically with limited amounts of water.

5.2.3 Sulfuric Acid ($H_2SO_4$). Rapidly destructive to body tissue. Will cause third degree burns. Eye damage may result in blindness. Inhalation may be fatal from spasm of the larynx, usually within 30 minutes. May cause lung tissue damage with edema. 3 mg/m$^3$ will cause lung damage in uninitiated. 1 mg/m$^3$ for 8 hours will cause lung damage or, in higher concentrations, death. Provide ventilation to limit inhalation. Reacts violently with metals and organics.

*6.0 Equipment and Supplies*

6.1 Sample Collection. The sampling train used in performing this method is shown in Figure 15A–1, and component parts are discussed below. Modifications to this sampling train are acceptable provided that the system performance check is met.

6.1.1 Probe. 6.4-mm (¼-in.) OD Teflon tubing sequentially wrapped with heat-resistant fiber strips, a rubberized heating tape (with a plug at one end), and heat-resistant adhesive tape. A flexible thermocouple or some other suitable temperature-measuring device shall be placed between the Teflon tubing and the fiber strips so that the temperature can be monitored. The probe should be sheathed in stainless steel to provide in-stack rigidity. A series of bored-out stainless steel fittings placed at the front of the sheath will prevent flue gas from entering between the probe and sheath. The sampling probe is depicted in Figure 15A–2.

6.1.2 Particulate Filter. A 50-mm Teflon filter holder and a 1- to 2-mm porosity Teflon filter (available through Savillex Corporation, 5325 Highway 101, Minnetonka, Minnesota 55345). The filter holder must be maintained in a hot box at a temperature high enough to prevent condensation.

6.1.3 Combustion Air Delivery System. As shown in the schematic diagram in Figure 15A–3. The rate meter should be selected to measure an air flow rate of 0.5 liter/min (0.02 ft$^3$/min).

6.1.4 Combustion Tube. Quartz glass tubing with an expanded combustion chamber 2.54 cm (1 in.) in diameter and at least 30.5 cm (12 in.) long. The tube ends should have an outside diameter of 0.6 cm (¼ in.) and be at least 15.3 cm (6 in.) long. This length is necessary to maintain the quartz-glass connector near ambient temperature and thereby avoid leaks. Alternatively, the outlet may be constructed with a 90 degree glass elbow and socket that would fit directly onto the inlet of the first peroxide impinger.

6.1.5 Furnace. Of sufficient size to enclose the combustion tube. The furnace must have a temperature regulator capable of maintaining the temperature at 1100 ± 50 °C (2,012 ± 90 °F). The furnace operating temperature must be checked with a thermocouple to ensure accuracy. Lindberg furnaces have been found to be satisfactory.

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6.1.6 Peroxide Impingers, Stopcock Grease, Temperature Sensor, Drying Tube, Valve, Pump, and Barometer. Same as in Method 6, Sections 6.1.1.2, 6.1.1.4, 6.1.1.5, 6.1.1.6, 6.1.1.7, 6.1.1.8, and 6.1.2, respectively, except that the midget bubbler of Method 6, Section 6.1.1.2 is not required.

6.1.7 Vacuum Gauge and Rate Meter. At least 760 mm Hg (30 in. Hg) gauge and rotameter, or equivalent, capable of measuring flow rate to ±5 percent of the selected flow rate and calibrated as in Section 10.2.

6.1.8 Volume Meter. Dry gas meter capable of measuring the sample volume under the particular sampling conditions with an accuracy of 2 percent.

6.1.9 U-tube manometer. To measure the pressure at the exit of the combustion gas dry gas meter.

6.2 Sample Recovery and Analysis. Same as Method 6, Sections 6.2 and 6.3, except a 10-ml buret with 0.05-ml graduations is required for titrant volumes of less than 10.0 ml, and the spectrophotometer is not needed.

*7.0 Reagents and Standards*

**Note:** Unless otherwise indicated, all reagents must conform to the specifications established by the Committee on Analytical Reagents of the American Chemical Society. When such specifications are not available, the best available grade shall be used.

7.1 Sample Collection. The following reagents and standards are required for sample analysis:

7.1.1 Water. Same as Method 6, Section 7.1.1.

7.1.2 Hydrogen Peroxide ($H_2O_2$), 3 Percent by Volume. Same as Method 6, Section 7.1.3 (40 ml is needed per sample).

7.1.3 Recovery Check Gas. Carbonyl sulfide in nitrogen [100 parts per million by volume (ppmv) or greater, if necessary] in an aluminum cylinder. Concentration certified by the manufacturer with an accuracy of ±2 percent or better, or verified by gas chromatography where the instrument is calibrated with a COS permeation tube.

7.1.4 Combustion Gas. Air, contained in a gas cylinder equipped with a two-stage regulator. The gas shall contain less than 50 ppb of reduced sulfur compounds and less than 10 ppm total hydrocarbons.

7.2 Sample Recovery and Analysis. Same as Method 6, Sections 7.2 and 7.3.

*8.0 Sample Collection, Preservation, Storage, and Transport*

8.1 Preparation of Sampling Train. For the Method 6 part of the train, measure 20 ml of 3 percent $H_2O_2$ into the first and second midget impingers. Leave the third midget impinger empty and add silica gel to the fourth impinger. Alternatively, a silica gel drying tube may be used in place of the fourth impinger. Place crushed ice and water around all impingers. Maintain the oxidation furnace at 1100 ± 50 °C (2,012 ± 90 °F) to ensure 100 percent oxidation of COS. Maintain the probe and filter temperatures at a high enough level (no visible condensation) to prevent moisture condensation and monitor the temperatures with a thermocouple.

8.2 Leak-Check Procedure. Assemble the sampling train and leak-check as described in Method 6, Section 8.2. Include the combustion air delivery system from the needle valve forward in the leak-check.

8.3 Sample Collection. Adjust the pressure on the second stage of the regulator on the combustion air cylinder to 10 psig. Adjust the combustion air flow rate to 0.5 ± 0.05 L/min (1.1 ± 0.1 $ft^3$/hr) before injecting combustion air into the sampling train. Then inject combustion air into the sampling train, start the sample pump, and open the stack sample gas valve. Carry out these three operations within 15 to 30 seconds to avoid pressurizing the sampling train. Adjust the total sample flow rate to 2.0 ± 0.2 L/min (4.2 ± 0.4 $ft^3$/hr). These flow rates produce an $O_2$ concentration of 5.0 percent in the stack gas, which must be maintained constantly to allow oxidation of reduced sulfur compounds to $SO_2$. Adjust these flow rates during sampling as necessary. Monitor and record the combustion air manometer reading at regular intervals during the sampling period. Sample for 1 or 3 hours. At the end of sampling, turn off the sample pump and combustion air simultaneously (within 30 seconds of each other). All other procedures are the same as in Method 6, Section 8.3, except that the sampling train should not be purged. After collecting the sample, remove the probe from the stack and conduct a leak-check according to the procedures outlined in Section 8.2 of Method 6 (mandatory). After each 3-hour test run (or after three 1-hour samples), conduct one system performance check (see Section 8.5). After this system performance check and before the next test run, it is recommended that the probe be rinsed and brushed and the filter replaced.

**Note:** In Method 15, a test run is composed of 16 individual analyses (injects) performed over a period of not less than 3 hours or more than 6 hours. For Method 15A to be consistent with Method 15, the following may be used to obtain a test run: (1) Collect three 60-minute samples or (2) collect one 3-hour sample. (Three test runs constitute a test.)

8.4 Sample Recovery. Recover the hydrogen peroxide-containing impingers as detailed in Method 6, Section 8.4.

8.5 System Performance Check.

8.5.1 A system performance check is done (1) to validate the sampling train components and procedure (before testing, optional) and (2) to validate a test run (after a run, mandatory). Perform a check in the field before testing consisting of at least two samples (optional), and perform an additional check after each 3–hour run or after three 1–hour samples (mandatory).

8.5.2 The checks involve sampling a known concentration of COS and comparing the analyzed concentration with the known concentration. Mix the recovery gas with $N_2$ as shown in Figure 15A–4 if dilution is required. Adjust the flow rates to generate a COS concentration in the range of the stack gas or within 20 percent of the applicable standard at a total flow rate of at least 2.5 L/min (5.3 $ft^3$/hr). Use Equation 15A–4 (see Section 12.5) to calculate the concentration of recovery gas generated. Calibrate the flow rate from both sources with a soap bubble flow tube so that the diluted concentration of COS can be accurately calculated. Collect 30–minute samples, and analyze in the same manner as the emission samples. Collect the samples through the probe of the sampling train using a manifold or some other suitable device that will ensure extraction of a representative sample.

8.5.3 The recovery check must be performed in the field before replacing the particulate filter and before cleaning the probe. A sample recovery of 100 ± 20 percent must be obtained for the data to be valid and should be reported with the emission data, but should not be used to correct the data. However, if the performance check results do not affect the compliance or noncompliance status of the affected facility, the Administrator may decide to accept the results of the compliance test. Use Equation 15A–5 (see Section 12.6) to calculate the recovery efficiency.

*9.0 Quality Control*



| Section | Quality control measure | Effect |
|---|---|---|
| 8.5 | System performance check | Ensures validity of sampling train components and analytical procedure. |
| 8.2, 10.0 | Sampling equipment leak-check and calibration | Ensures accurate measurement of stack gas flow rate, sample volume |
| 10.0 | Barium standard solution standardization | Ensures precision of normality determination. |
| 11.1 | Replicate titrations | Ensures precision of titration determinations. |
| 11.2 | Audit sample analysis | Evaluates analyst's technique and standards preparation. |

*10.0 Calibration and Standardization*

10.1 Metering System, Temperature Sensors, Barometer, and Barium Perchlorate Solution. Same as Method 6, Sections 10.1, 10.2, 10.4, and 10.5, respectively.

10.2 Rate Meter. Calibrate with a bubble flow tube.

*11.0 Analytical Procedure*

11.1 Sample Loss Check and Sample Analysis. Same as Method 6, Sections 11.1 and 11.2.

11.2 Audit Sample Analysis. Same as Method 6, Section 11.3.

*12.0 Data Analysis and Calculations*

In the calculations, retain at least one extra decimal figure beyond that of the acquired data. Round off figures after final calculations.

12.1 Nomenclature.

$C_{COS}$ = Concentration of COS recovery gas, ppm.

$C_{RG(act)}$ = Actual concentration of recovery check gas (after dilution), ppm.

$C_{RG(m)}$ = Measured concentration of recovery check gas generated, ppm.

$C_{RS}$ = Concentration of reduced sulfur compounds as $SO_2$, dry basis, corrected to standard conditions, ppm.

N = Normality of barium perchlorate titrant, milliequivalents/ml.

$P_{bar}$ = Barometric pressure at exit orifice of the dry gas meter, mm Hg.

$P_{std}$ = Standard absolute pressure, 760 mm Hg.

$Q_{COS}$ = Flow rate of COS recovery gas, liters/min.

$Q_N$ = Flow rate of diluent $N_2$, liters/min.

R = Recovery efficiency for the system performance check, percent.

$T_m$ = Average dry gas meter absolute temperature, °K.

$T_{std}$ = Standard absolute temperature, 293 °K.

$V_a$ = Volume of sample aliquot titrated, ml.

$V_{ms}$ = Dry gas volume as measured by the sample train dry gas meter, liters.

$V_{mc}$ = Dry gas volume as measured by the combustion air dry gas meter, liters.

$V_{ms(std)}$ = Dry gas volume measured by the sample train dry gas meter, corrected to standard conditions, liters.

$V_{mc(std)}$ = Dry gas volume measured by the combustion air dry gas meter, corrected to standard conditions, liters.

$V_{soln}$ = Total volume of solution in which the sulfur dioxide sample is contained, 100 ml.

$V_t$ = Volume of barium perchlorate titrant used for the sample (average of replicate titrations), ml.

$V_{tb}$ = Volume of barium perchlorate titrant used for the blank, ml.

Y = Calibration factor for sampling train dry gas meter.

$Y_c$ = Calibration factor for combustion air dry gas meter.

32.03 = Equivalent weight of sulfur dioxide, mg/meq.

$$12025\frac{\mu l}{meq} = \frac{(32.03\,mg)}{meq}\frac{(24.051)}{mole}\frac{(mole)(1g)(10^3\,ml)(10^3\,\mu l)}{(64.06g)(10^3\,mg)(1)(ml)}$$

12.2 Dry Sample Gas Volume, Corrected to Standard Conditions.

$$V_{m(std)} = V_{ms}\,Y\frac{T_{std}\,P_{bar}}{T_m\,P_{std}} \qquad \text{Eq. 15A-1}$$

$$= K_1\,Y\frac{V_m\,P_{bar}}{T_m}$$

Where:

$K_1$ = 0.3855 °K/mm Hg for metric units,

= 17.65 °R/in. Hg for English units.

12.3 Combustion Air Gas Volume, corrected to Standard Conditions.

$$V_{mc(std)} = k_1 Y_c\frac{(V_{mc})(P_{bar})}{T_m} \qquad \text{Eq. 15A-2}$$

**NOTE:** Correct $P_{bar}$ for the average pressure of the manometer during the sampling period.

12.4 Concentration of reduced sulfur compounds as ppm $SO_2$.

$$C_{RS} = K_2\,N\frac{(V_t - V_{tb})(V_{soln}/V_a)}{V_{ms(std)} - V_{mc(std)}} \qquad \text{Eq. 15A-3}$$

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Where:

$$K_2 = 32.03 \frac{mg}{meq} \frac{24.05\ l}{mole} \frac{1\ mole}{64.06\ g} \frac{1\ g}{10^3\ mg} \frac{10^3\ ml}{l} \frac{10^3\ \mu l}{1\ ml}$$

$$= \frac{12025\ ml}{meq}$$

12.5 Concentration of Generated Recovery Gas.

$$C_{RG} = \frac{(C_{cos})(Q_{cos})}{Q_{cos} + Q_{N_2}} \quad \text{Eq. 15A-4}$$

12.6 Recovery Efficiency for the System Performance Check.

$$R = \frac{C_{RG(m)}}{C_{RG(act)}} \times 100 \quad \text{Eq. 15A-5}$$

*13.0 Method Performance*

13.1 Analytical Range. The lower detectable limit is 0.1 ppmv when sampling at 2 lpm for 3 hours or 0.3 ppmv when sampling at 2 lpm for 1 hour. The upper concentration limit of the method exceeds concentrations of reduced sulfur compounds generally encountered in sulfur recovery plants.

13.2 Precision. Relative standard deviations of 2.8 and 6.9 percent have been obtained when sampling a stream with a reduced sulfur compound concentration of 41 ppmv as $SO_2$ for 1 and 3 hours, respectively.

13.3 Bias. No analytical bias has been identified. However, results obtained with this method are likely to contain a positive bias relative to emission regulations due to the presence of nonregulated sulfur compounds (that are present in petroleum) in the emissions. The magnitude of this bias varies accordingly, and has not been quantified.

*14.0 Pollution Prevention. [Reserved]*

*15.0 Waste Management. [Reserved]*

*16.0 References*

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*17.0 Tables, Diagrams, Flowcharts, and Validation Data*

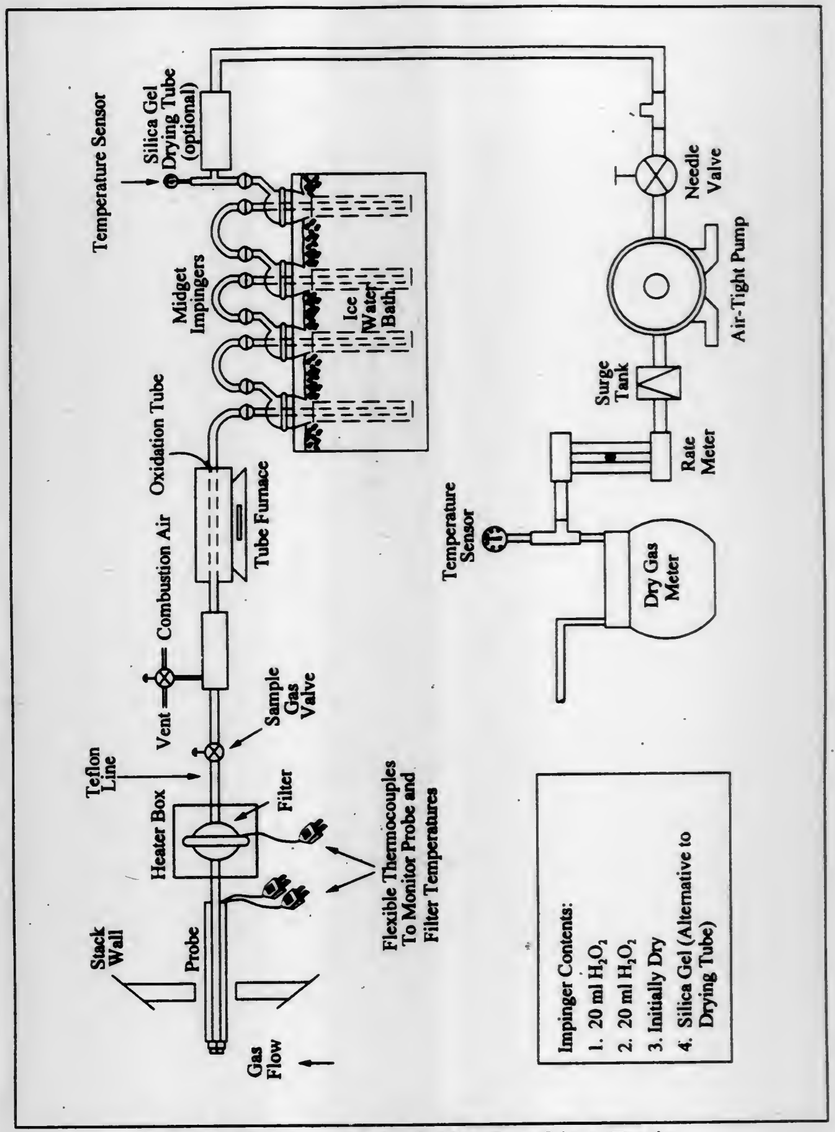



Figure 15A-1. Method 15A Sampling Train.

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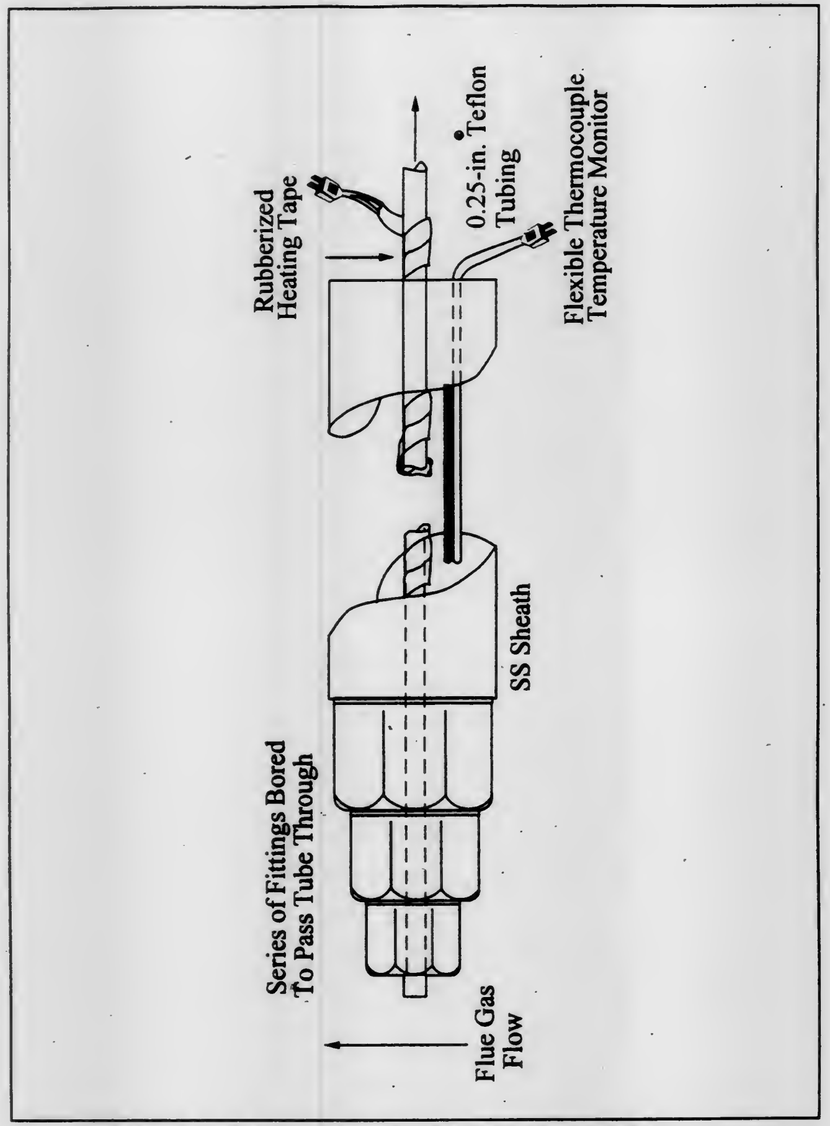



Figure 15A-2. Method 15A Sampling Probe.



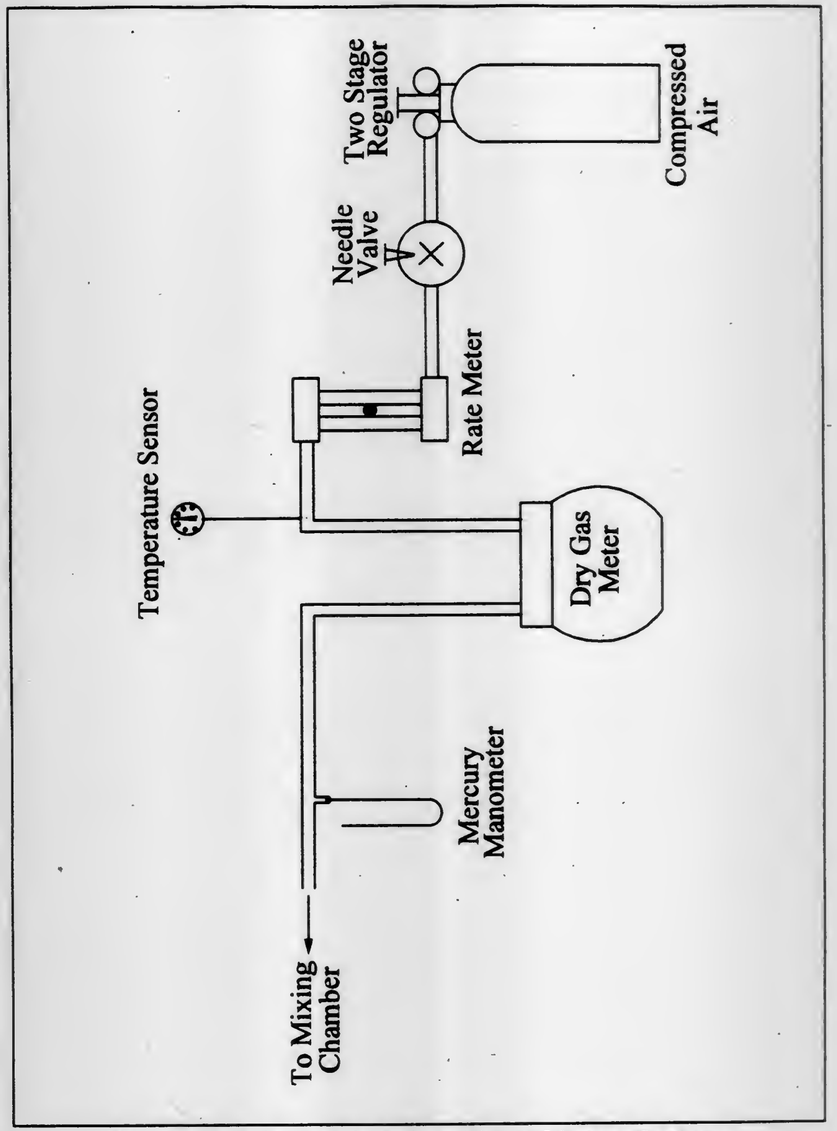



Figure 15A-3. Combustion Air Delivery System.

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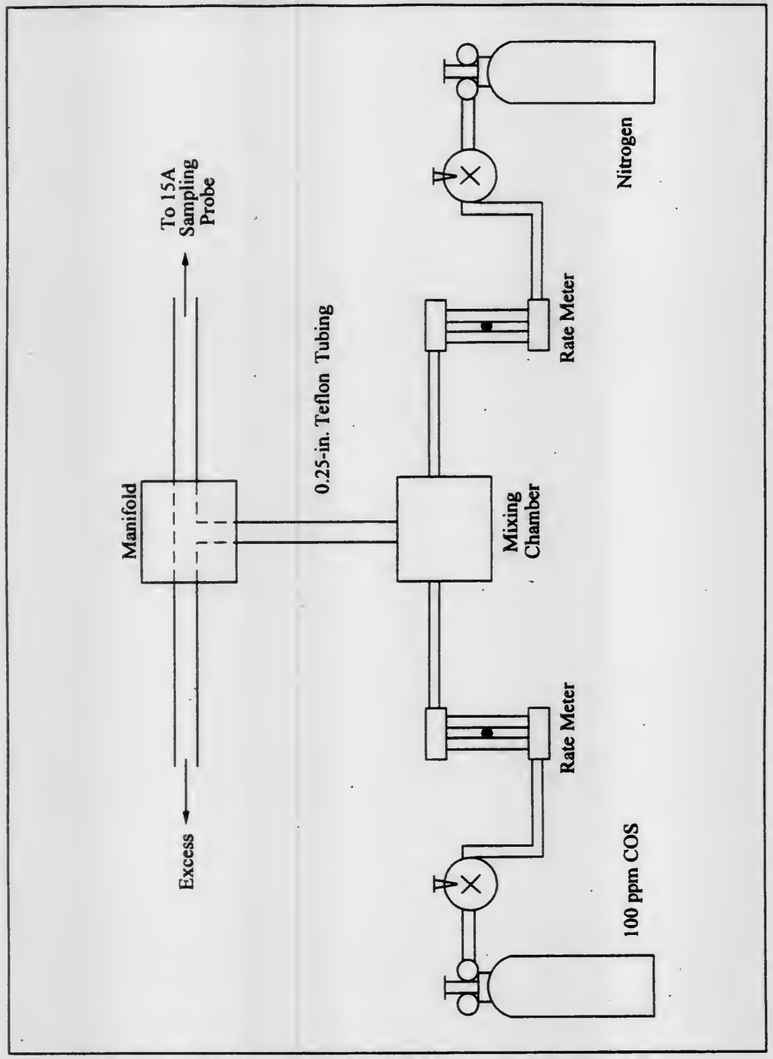



Figure 15A-4. Recovery Gas Generator System.

BILLING CODE 6560–50–C



**Method 16—Semicontinuous Determination of Sulfur Emissions From Stationary Sources**

**Note:** This method does not include all of the specifications (*e.g.*, equipment and supplies) and procedures (*e.g.*, sampling and analytical) essential to its performance. Some material is incorporated by reference from other methods in this part. Therefore, to obtain reliable results, persons using this method should have a thorough knowledge of at least the following additional test methods: Method 1, Method 4, Method 15, and Method 16A.

*1.0 Scope and Application*

1.1 Analytes.

| Analyte | CAS No. | Sensitivity |
|---|---|---|
| Dimethyl disulfide [$(CH_3)_2S_2$] | 62–49–20 | 50 ppb. |
| Dimethyl sulfide [$(CH_3)_2S$] | 75–18–3 | 50 ppb. |
| Hydrogen sulfide [$H_2S$] | 7783–06–4 | 50 ppb. |
| Methyl mercaptan [$CH_4S$] | 74–93–1 | 50 ppb. |

1.2 Applicability. This method is applicable for the determination of total reduced sulfur (TRS) compounds from recovery furnaces, lime kilns, and smelt dissolving tanks at kraft pulp mills and fuel gas combustion devices at petroleum refineries.

**Note:** The method described below uses the principle of gas chromatographic (GC) separation and flame photometric detection (FPD). Since there are many systems or sets of operating conditions that represent useable methods of determining sulfur emissions, all systems which employ this principle, but differ only in details of equipment and operation, may be used as alternative methods, provided that the calibration precision and sample line loss criteria are met.

1.3 Data Quality Objectives. Adherence to the requirements of this method will enhance the quality of the data obtained from air pollutant sampling methods.

*2.0 Summary of Method*

2.1 A gas sample is extracted from the emission source and an aliquot is analyzed for hydrogen sulfide ($H_2S$), methyl mercaptan (MeSH), dimethyl sulfide (DMS), and dimethyl disulfide (DMDS) by GC/FPD. These four compounds are known collectively as TRS.

*3.0 Definitions. [Reserved]*

*4.0 Interferences*

4.1 Moisture. Moisture condensation in the sample delivery system, the analytical column, or the FPD burner block can cause losses or interferences. This is prevented by maintaining the probe, filter box, and connections at a temperature of at least 120 °C (248 °F). Moisture is removed in the $SO_2$ scrubber and heating the sample beyond this point is not necessary when the ambient temperature is above 0 °C (32 °F). Alternatively, moisture may be eliminated by heating the sample line, and by conditioning the sample with dry dilution air to lower its dew point below the operating temperature of the GC/FPD analytical system prior to analysis.

4.2 Carbon Monoxide (CO) and Carbon Dioxide ($CO_2$). CO and $CO_2$ have a substantial desensitizing effect on the flame photometric detector even after dilution. Acceptable systems must demonstrate that they have eliminated this interference by some procedure such as eluting these compounds before any of the compounds to be measured. Compliance with this requirement can be demonstrated by submitting chromatograms of calibration gases with and without $CO_2$ in the diluent gas. The $CO_2$ level should be approximately 10 percent for the case with $CO_2$ present. The two chromatograms should show agreement within the precision limits of Section 10.2.

4.3 Particulate Matter. Particulate matter in gas samples can cause interference by eventual clogging of the analytical system. This interference is eliminated by using the Teflon filter after the probe.

4.4 Sulfur Dioxide ($SO_2$). Sulfur dioxide is not a specific interferant but may be present in such large amounts that it cannot effectively be separated from the other compounds of interest. The $SO_2$ scrubber described in Section 6.1.3 will effectively remove $SO_2$ from the sample.

*5.0 Safety*

5.1 Disclaimer. This method may involve hazardous materials, operations, and equipment. This test method may not address all of the safety problems associated with its use. It is the responsibility of the user of this test method to establish appropriate safety and health practices and determine the applicability of regulatory limitations prior to performing this test method.

5.2 Hydrogen Sulfide. A flammable, poisonous gas with the odor of rotten eggs. $H_2S$ is extremely hazardous and can cause collapse, coma, and death within a few seconds of one or two inhalations at sufficient concentrations. Low concentrations irritate the mucous membranes and may cause nausea, dizziness, and headache after exposure.

*6.0 Equipment and Supplies*

6.1. Sample Collection. The following items are needed for sample collection.

6.1.1 Probe. Teflon or Teflon-lined stainless steel. The probe must be heated to prevent moisture condensation. It must be designed to allow calibration gas to enter the probe at or near the sample point entry. Any portion of the probe that contacts the stack gas must be heated to prevent moisture condensation. Figure 16–1 illustrates the probe used in lime kilns and other sources where significant amounts of particulate matter are present. The probe is designed with the deflector shield placed between the sample and the gas inlet holes to reduce clogging of the filter and possible adsorption of sample gas. As an alternative, the probe described in Section 6.1.1 of Method 16A having a nozzle directed away from the gas stream may be used at sources having significant amounts of particulate matter.

6.1.2 Particulate Filter. 50–mm Teflon filter holder and a 1- to 2-micron porosity Teflon filter (available through Savillex Corporation, 5325 Highway 101, Minnetonka, Minnesota 55343). The filter holder must be maintained in a hot box at a temperature of at least 120 °C (248 °F).

6.1.3 $SO_2$ Scrubber. Three 300-ml Teflon segmented impingers connected in series with flexible, thick-walled, Teflon tubing. (Impinger parts and tubing available through Savillex.) The first two impingers contain 100 ml of citrate buffer and the third impinger is initially dry. The tip of the tube inserted into the solution should be constricted to less than 3 mm (⅛ in.) ID and should be immersed to a depth of at least 5 cm (2 in.). Immerse the impingers in an ice water bath and maintain near 0 °C (32 °F). The scrubber solution will normally last for a 3-hour run before needing replacement. This will depend upon the

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effects of moisture and particulate matter on the solution strength and pH. Connections between the probe, particulate filter, and $SO_2$ scrubber must be made of Teflon and as short in length as possible. All portions of the probe, particulate filter, and connections prior to the $SO_2$ scrubber (or alternative point of moisture removal) must be maintained at a temperature of at least 120 °C (248 °F).

6.1.4 Sample Line. Teflon, no greater than 1.3 cm (½ in.) ID. Alternative materials, such as virgin Nylon, may be used provided the line loss test is acceptable.

6.1.5 Sample Pump. The sample pump must be a leakless Teflon-coated diaphragm type or equivalent.

6.2 Analysis. The following items are needed for sample analysis:

6.2.1 Dilution System. Needed only for high sample concentrations. The dilution system must be constructed such that all sample contacts are made of Teflon, glass, or stainless steel.

6.2.2 Gas Chromatograph. The gas chromatograph must have at least the following components:

6.2.2.1 Oven. Capable of maintaining the separation column at the proper operating temperature ± 1 °C (2 °F).

6.2.2.2 Temperature Gauge. To monitor column oven, detector, and exhaust temperature ± 1 °C (2 °F).

6.2.2.3 Flow System. Gas metering system to measure sample, fuel, combustion gas, and carrier gas flows.

6.2.2.4 Flame Photometric Detector.

6.2.2.4.1 Electrometer. Capable of full scale amplification of linear ranges of $10^{-9}$ to $10^{-4}$ amperes full scale.

6.2.2.4.2 Power Supply. Capable of delivering up to 750 volts.

6.2.2.4.3 Recorder. Compatible with the output voltage range of the electrometer.

6.2.2.4.4 Rotary Gas Valves. Multiport Teflon-lined valves equipped with sample loop. Sample loop volumes must be chosen to provide the needed analytical range. Teflon tubing and fittings must be used throughout to present an inert surface for sample gas. The gas chromatograph must be calibrated with the sample loop used for sample analysis.

6.2.3 Gas Chromatogram Columns. The column system must be demonstrated to be capable of resolving the four major reduced sulfur compounds: $H_2S$, MeSH, DMS, and DMDS. It must also demonstrate freedom from known interferences. To demonstrate that adequate resolution has been achieved, submit a chromatogram of a calibration gas containing all four of the TRS compounds in the concentration range of the applicable standard. Adequate resolution will be defined as base line separation of adjacent peaks when the amplifier attenuation is set so that the smaller peak is at least 50 percent of full scale. Baseline separation is defined as a return to zero ±5 percent in the interval between peaks. Systems not meeting this criteria may be considered alternate methods subject to the approval of the Administrator.

6.3 Calibration. A calibration system, containing the following components, is required (see Figure 16–2).

6.3.1 Tube Chamber. Chamber of glass or Teflon of sufficient dimensions to house permeation tubes.

6.3.2 Flow System. To measure air flow over permeation tubes at ±2 percent. Flow over the permeation device may also be determined using a soap bubble flowmeter.

6.3.3 Constant Temperature Bath. Device capable of maintaining the permeation tubes at the calibration temperature within 0.1 °C (0.2 °F).

6.3.4 Temperature Gauge. Thermometer or equivalent to monitor bath temperature within 1 °C (2 °F).

*7.0 Reagents and Standards*

7.1 Fuel. Hydrogen ($H_2$), prepurified grade or better.

7.2 Combustion Gas. Oxygen ($O_2$) or air, research purity or better.

7.3 Carrier Gas. Prepurified grade or better.

7.4 Diluent (if required). Air containing less than 50 ppb total sulfur compounds and less than 10 ppmv each of moisture and total hydrocarbons.

*7.5 Calibration Gases*

7.5.1 Permeation tubes, one each of $H_2S$, MeSH, DMS, and DMDS, gravimetrically calibrated and certified at some convenient operating temperature. These tubes consist of hermetically sealed FEP Teflon tubing in which a liquified gaseous substance is enclosed. The enclosed gas permeates through the tubing wall at a constant rate. When the temperature is constant, calibration gases covering a wide range of known concentrations can be generated by varying and accurately measuring the flow rate of diluent gas passing over the tubes. These calibration gases are used to calibrate the GC/FPD system and the dilution system.

7.5.2 Cylinder Gases. Cylinder gases may be used as alternatives to permeation devices. The gases must be traceable to a primary standard (such as permeation tubes) and not used beyond the certification expiration date.

7.6 Citrate Buffer and Sample Line Loss Gas. Same as Method 15, Sections 7.6 and 7.7.

*8.0 Sample Collection, Preservation, Storage, and Transport*

Same as Method 15, Section 8.0, except that the references to the dilution system may not be applicable.

*9.0 Quality Control*

| Section | Quality control measure | Effect |
|---|---|---|
| 8.0 | Sample line loss check | Ensures that uncorrected negative bias introduced by sample loss is no greater than 20 percent, and provides for correction of bias of 20 percent or less. |
| 8.0 | Calibration drift test | Ensures that bias introduced by drift in the measurement system output during the run is no greater than 5 percent. |
| 10.0 | Analytical calibration | Ensures precision of analytical results within 5 percent. |

*10.0 Calibration and Standardization*

Same as Method 15, Section 10.0, with the following addition and exceptions:

10.1 Use the four compounds that comprise TRS instead of the three reduced sulfur compounds measured by Method 15.

10.2 Flow Meter. Calibration before each test run is recommended, but not required; calibration following each test series is mandatory. Calibrate each flow meter after each complete test series with a wet-test meter. If the flow measuring device differs from the wet-test meter by 5 percent or more, the completed test runs must be voided. Alternatively, the flow data that yield the lower flow measurement may be used. Flow over the permeation device may also be determined using a soap bubble flowmeter.



*11.0 Analytical Procedure*

Sample collection and analysis are concurrent for this method (see Section 8.0).

*12.0 Data Analysis and Calculations*

12.1 Concentration of Reduced Sulfur Compounds. Calculate the average concentration of each of the four analytes (*i.e.*, DMDS, DMS, $H_2S$, and MeSH) over the sample run (specified in Section 8.2 of Method 15 as 16 injections).

$$C = \frac{\sum_{i=1}^{N} S_i}{N} \qquad \text{Eq. 16-1}$$

Where:

$S_i$ = Concentration of any reduced sulfur compound from the $i^{th}$ sample injection, ppm.
C = Average concentration of any one of the reduced sulfur compounds for the entire run, ppm.
N = Number of injections in any run period.

12.2 TRS Concentration. Using Equation 16–2, calculate the TRS concentration for each sample run.

$$C_{TRS} = d\sum\left(C_{H_2S} + C_{MeSH} + C_{DMS} + 2C_{DMDS}\right) \qquad \text{Eq. 16-2}$$

Where:

$C_{TRS}$ = TRS concentration, ppmv.
$C_{H2S}$ = Hydrogen sulfide concentration, ppmv.
$C_{MeSH}$ = Methyl mercaptan concentration, ppmv.
$C_{DMS}$ = Dimethyl sulfide concentration, ppmv.
$C_{DMDS}$ = Dimethyl disulfide concentration, ppmv.
d = Dilution factor, dimensionless.

12.3 Average TRS Concentration. Calculate the average TRS concentration for all sample runs performed.

$$\text{Average TRS} = \frac{\sum_{i=1}^{n} TRS_i}{N\left(1 - B_{wo}\right)} \qquad \text{Eq. 16-3}$$

Where:

Average TRS = Average total reduced sulfur in ppm.
$TRS_i$ = Total reduced sulfur in ppm as determined by Equation 16–2.
N = Number of samples.
$B_{wo}$ = Fraction of volume of water vapor in the gas stream as determined by Method 4—Determination of Moisture in Stack Gases.

*13.0 Method Performance*

13.1 Analytical Range. The analytical range will vary with the sample loop size. Typically, the analytical range may extend from 0.1 to 100 ppmv using 10- to 0.1-ml sample loop sizes. This eliminates the need for sample dilution in most cases.

13.2 Sensitivity. Using the 10-ml sample size, the minimum detectable concentration is approximately 50 ppb.

*14.0 Pollution Prevention. [Reserved]*

*15.0 Waste Management. [Reserved]*

*16.0 References*

1. O'Keeffe, A.E., and G.C. Ortman. "Primary Standards for Trace Gas Analysis." Analytical Chemical Journal, 38,76. 1966.

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4. Devonald, R.H., R.S. Serenius, and A.D. McIntyre. "Evaluation of the Flame Photometric Detector for Analysis of Sulfur Compounds." Pulp and Paper Magazine of Canada, 73,3. March 1972.

5. Grimley, K.W., W.S. Smith, and R.M. Martin. "The Use of a Dynamic Dilution System in the Conditioning of Stack Gases for Automated Analysis by a Mobile Sampling Van." Presented at the 63rd Annual APCA Meeting, St. Louis, MO. June 14–19, 1970.

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*17.0 Tables, Diagrams, Flowcharts, and Validation Data*

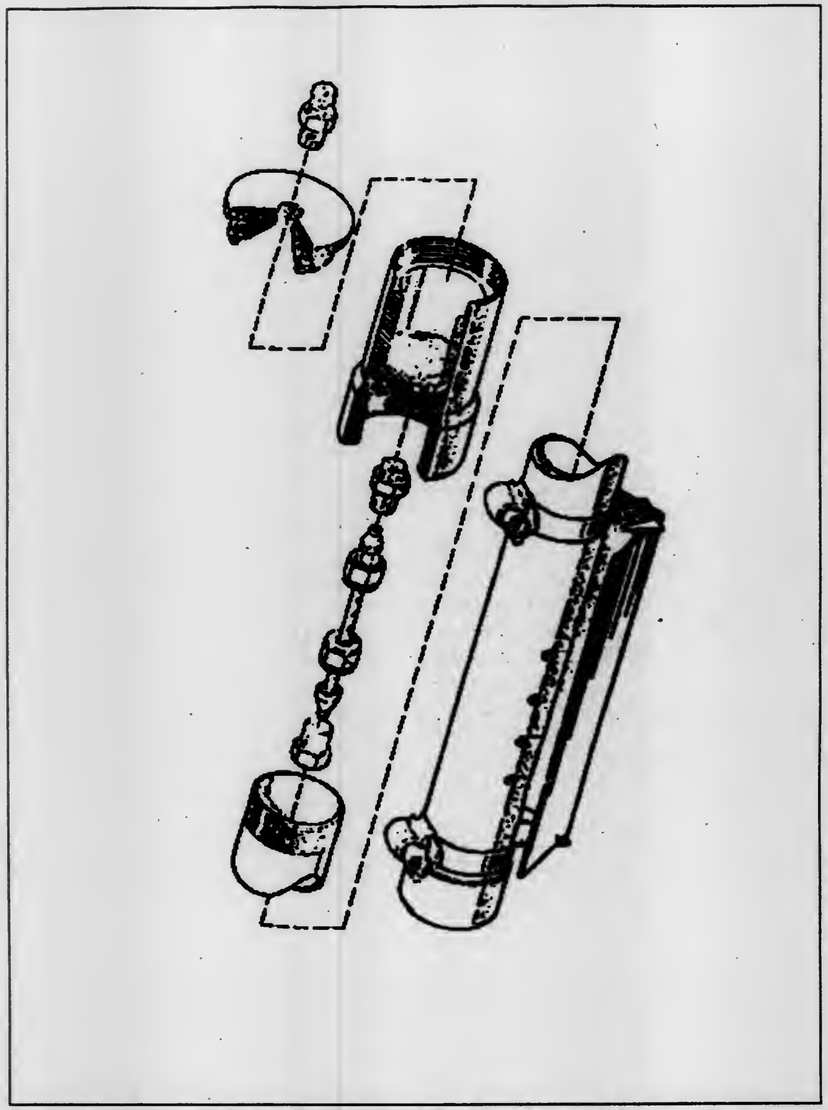


**Figure 16-1. Probe used for Sample Gas Containing High Particulate Matter Loading.**



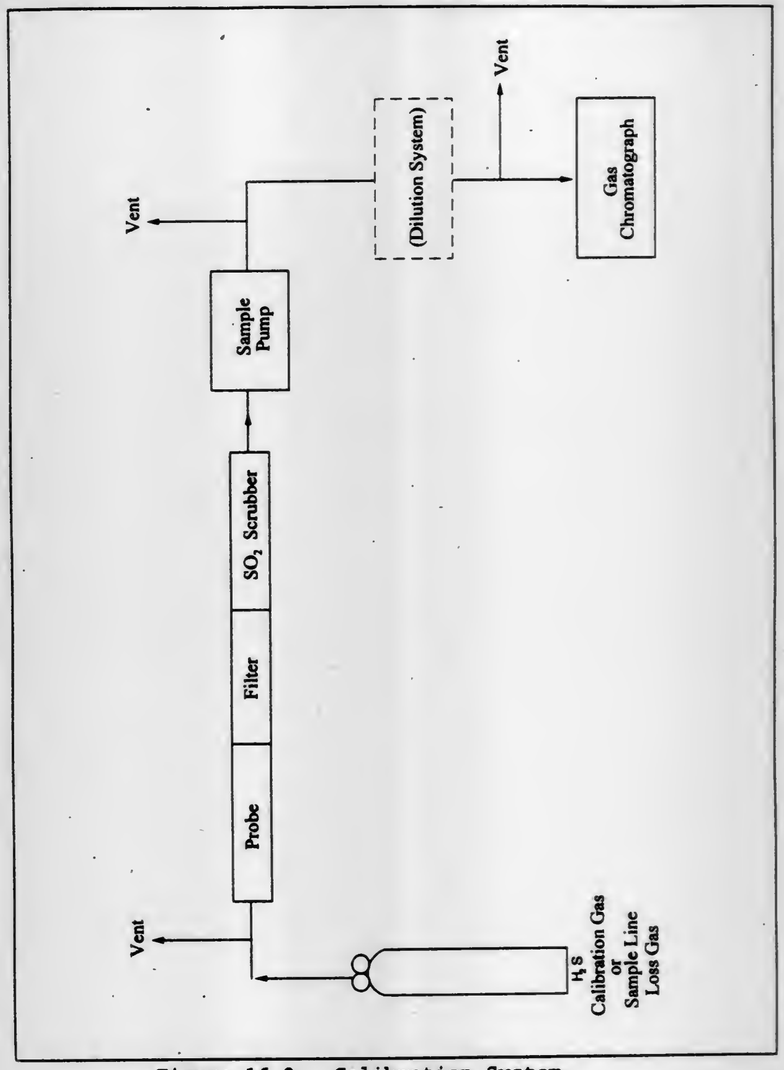



**Figure 16-2. Calibration System.**

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**Method 16A—Determination of Total Reduced Sulfur Emissions From Stationary Sources (Impinger Technique)**

**Note:** This method does not include all of the specifications (e.g., equipment and supplies) and procedures (e.g., sampling and analytical) essential to its performance. Some material is incorporated by reference from other methods in this part. Therefore, to obtain reliable results, persons using this method should have a thorough knowledge of at least the following additional test methods: Method 1, Method 6, and Method 16.

| Analyte | CAS No. | Sensitivity |
|---|---|---|
| Total reduced sulfur (TRS) including: | N/A | See Section 13.1. |
| Dimethyl disulfide [$(CH_3)_2S_2$] | 62–49–20 | |
| Dimethyl sulfide [$(CH_3)_2S$] | 75–18–3 | |
| Hydrogen sulfide [$H_2S$] | 7783–06–4 | |
| Methyl mercaptan [$CH_4S$] | 74–93–1 | |
| Reduced sulfur (RS) including: | N/A | |
| $H_2S$ | 7783–06–4 | |
| Carbonyl sulfide [COS] | 463–58–1 | |
| Carbon disulfide [$CS_2$] | 75–15–0 | |
| Reported as: Sulfur dioxide ($SO_2$) | 7449–09–5 | |

*1.0 Scope and Application*

1.1 Analytes.

1.2 Applicability. This method is applicable for the determination of TRS emissions from recovery boilers, lime kilns, and smelt dissolving tanks at kraft pulp mills, reduced sulfur compounds ($H_2S$, carbonyl sulfide, and carbon disulfide from sulfur recovery units at onshore natural gas processing facilities, and from other sources when specified in an applicable subpart of the regulations. The flue gas must contain at least 1 percent oxygen for complete oxidation of all TRS to $SO_2$.

1.3 Data Quality Objectives. Adherence to the requirements of this method will enhance the quality of the data obtained from air pollutant sampling methods.

*2.0 Summary of Method*

2.1 An integrated gas sample is extracted from the stack. $SO_2$ is removed selectively from the sample using a citrate buffer solution. TRS compounds are then thermally oxidized to $SO_2$, collected in hydrogen peroxide as sulfate, and analyzed by the Method 6 barium-thorin titration procedure.

*3.0 Definitions. [Reserved]*

*4.0 Interferences*

4.1 Reduced sulfur compounds other than those regulated by the emission standards, if present, may be measured by this method. Therefore, carbonyl sulfide, which is partially oxidized to $SO_2$ and may be present in a lime kiln exit stack, would be a positive interferant.

4.2 Particulate matter from the lime kiln stack gas (primarily calcium carbonate) can cause a negative bias if it is allowed to enter the citrate scrubber; the particulate matter will cause the pH to rise and $H_2S$ to be absorbed prior to oxidation. Furthermore, if the calcium carbonate enters the hydrogen peroxide impingers, the calcium will precipitate sulfate ion. Proper use of the particulate filter described in Section 6.1.3 will eliminate this interference.

*5.0 Safety*

5.1 Disclaimer. This method may involve hazardous materials, operations, and equipment. This test method may not address all of the safety problems associated with its use. It is the responsibility of the user of this test method to establish appropriate safety and health practices and determine the applicability of regulatory limitations prior to performing this test method.

5.2 Corrosive reagents. The following reagents are hazardous. Personal protective equipment and safe procedures are useful in preventing chemical splashes. If contact occurs, immediately flush with copious amounts of water for at least 15 minutes. Remove clothing under shower and decontaminate. Treat residual chemical burns as thermal burns.

5.2.1 Hydrogen Peroxide ($H_2O_2$). Irritating to eyes, skin, nose, and lungs.

5.2.2 Sodium Hydroxide (NaOH). Causes severe damage to eyes and skin. Inhalation causes irritation to nose, throat, and lungs. Reacts exothermically with limited amounts of water.

5.2.3 Sulfuric Acid ($H_2SO_4$). Rapidly destructive to body tissue. Will cause third degree burns. Eye damage may result in blindness. Inhalation may be fatal from spasm of the larynx, usually within 30 minutes. May cause lung tissue damage with edema. 3 mg/m$^3$ will cause lung damage in uninitiated. 1 mg/m$^3$ for 8 hours will cause lung damage or, in higher concentrations, death. Provide ventilation to limit inhalation. Reacts violently with metals and organics.

5.3 Hydrogen Sulfide ($H_2S$). A flammable, poisonous gas with the odor of rotten eggs. $H_2S$ is extremely hazardous and can cause collapse, coma, and death within a few seconds of one or two inhalations at sufficient concentrations. Low concentrations irritate the mucous membranes and may cause nausea, dizziness, and headache after exposure.

*6.0 Equipment and Supplies*

6.1 Sample Collection. The sampling train is shown in Figure 16A–1 and component parts are discussed below. Modifications to this sampling train are acceptable provided the system performance check is met (see Section 8.5).

6.1.1 Probe. Teflon tubing, 6.4-mm (¼-in.) diameter, sequentially wrapped with heat-resistant fiber strips, a rubberized heat tape (plug at one end), and heat-resistant adhesive tape. A flexible thermocouple or other suitable temperature measuring device should be placed between the Teflon tubing and the fiber strips so that the temperature can be monitored to prevent softening of the probe. The probe should be sheathed in stainless steel to provide in-stack rigidity. A series of bored-out stainless steel fittings placed at the front of the sheath will prevent moisture and particulate from entering between the probe and sheath. A 6.4-mm (¼-in.) Teflon elbow (bored out) should be attached to the inlet of the probe, and a 2.54 cm (1 in.) piece of Teflon tubing should be attached at the open end of the elbow to permit the opening of the probe to be turned away from the particulate stream; this will reduce the amount of particulate drawn into the sampling train. The probe is depicted in Figure 16A–2.

6.1.2 Probe Brush. Nylon bristle brush with handle inserted into a 3.2-mm (⅛-in.) Teflon tubing. The Teflon tubing should be long enough to pass the brush through the length of the probe.

6.1.3 Particulate Filter. 50-mm Teflon filter holder and a 1- to 2-μm porosity, Teflon filter (available through Savillex Corporation, 5325 Highway 101, Minnetonka, Minnesota 55343). The filter holder must be maintained in a hot box at a temperature sufficient to prevent moisture condensation. A temperature of 121 °C (250 °F) was found to be sufficient when testing a lime kiln under sub-freezing ambient conditions.

6.1.4 $SO_2$ Scrubber. Three 300-ml Teflon segmented impingers connected in series with flexible, thick-walled, Teflon tubing. (Impinger parts and tubing available through Savillex.) The first two impingers contain 100 ml of citrate buffer and the third impinger is initially dry. The tip of the tube inserted into the solution should be constricted to less than 3 mm (⅛-in.) ID and should be immersed to a depth of at least 5 cm (2 in.).

6.1.5 Combustion Tube. Quartz glass tubing with an expanded combustion chamber 2.54 cm (1 in.) in diameter and at least 30.5 cm (12 in.) long. The tube ends should have an outside diameter of 0.6 cm (¼ in.) and be at least 15.3 cm (6 in.) long. This length is necessary to maintain the quartz-glass connector near ambient temperature and thereby avoid leaks. Alternatively, the outlet may be constructed with a 90-degree glass elbow and socket that would fit directly onto the inlet of the first peroxide impinger.

6.1.6 Furnace. A furnace of sufficient size to enclose the combustion chamber of the combustion tube with a temperature regulator capable of maintaining the temperature at 800 ± 100 °C (1472 ± 180 °F). The furnace operating temperature should be checked with a thermocouple to ensure accuracy.

6.1.7 Peroxide Impingers, Stopcock Grease, Temperature Sensor, Drying Tube, Valve, Pump, and Barometer. Same as Method 6, Sections 6.1.1.2, 6.1.1.4, 6.1.1.5, 6.1.1.6, 6.1.1.7, 6.1.1.8, and 6.1.2, respectively, except that the midget bubbler of Method 6, Section 6.1.1.2 is not required.

6.1.8 Vacuum Gauge. At least 760 mm Hg (30 in. Hg) gauge.

6.1.9 Rate Meter. Rotameter, or equivalent, accurate to within 5 percent at the selected flow rate of approximately 2 liters/min (4.2 ft$^3$/hr).

6.1.10 Volume Meter. Dry gas meter capable of measuring the sample volume under the sampling conditions of 2 liters/min (4.2 ft$^3$/hr) with an accuracy of 2 percent.

6.2 Sample Recovery. Polyethylene Bottles, 250-ml (one per sample).

6.3 Sample Preparation and Analysis. Same as Method 6, Section 6.3, except a 10-ml buret with 0.05-ml graduations is required, and the spectrophotometer is not needed.

*7.0 Reagents and Standards*

**Note:** Unless otherwise indicated, all reagents must conform to the specifications established by the Committee on Analytical Reagents of the American Chemical Society. When such specifications are not available, the best available grade must be used.

7.1 Sample Collection. The following reagents are required for sample analysis:

7.1.1 Water. Same as in Method 6, Section 7.1.1.

7.1.2 Citrate Buffer. Dissolve 300 g of potassium citrate (or 284 g of sodium citrate) and 41 g of anhydrous citric acid in 1 liter of water (200 ml is needed per test). Adjust the pH to between 5.4 and 5.6 with potassium citrate or citric acid, as required.

7.1.3 Hydrogen Peroxide, 3 percent. Same as in Method 6, Section 7.1.3 (40 ml is needed per sample).

7.1.4 Recovery Check Gas. Hydrogen sulfide (100 ppmv or less) in nitrogen, stored in aluminum cylinders. Verify the concentration by Method 11 or by gas chromatography where the instrument is calibrated with an $H_2S$ permeation tube as described below. For Method 11, the relative standard deviation should not exceed 5 percent on at least three 20-minute runs.

**Note:** Alternatively, hydrogen sulfide recovery gas generated from a permeation device gravimetrically calibrated and certified at some convenient operating temperature may be used. The permeation rate of the device must be such that at a dilution gas flow rate of 3 liters/min (6.4 ft$^3$/hr), an $H_2S$ concentration in the range of the stack gas or within 20 percent of the standard can be generated.

7.1.5 Combustion Gas. Gas containing less than 50 ppb reduced sulfur compounds and less than 10 ppmv total hydrocarbons. The gas may be generated from a clean-air system that purifies ambient air and consists of the following components: Diaphragm pump, silica gel drying tube, activated charcoal tube, and flow rate measuring device. Flow from a compressed air cylinder is also acceptable.

7.2 Sample Recovery and Analysis. Same as Method 6, Sections 7.2.1 and 7.3, respectively.

*8.0 Sample Collection, Preservation, Storage, and Transport*

8.1 Preparation of Sampling Train.

8.1.1 For the $SO_2$ scrubber, measure 100 ml of citrate buffer into the first and second impingers; leave the third impinger empty. Immerse the impingers in an ice bath, and locate them as close as possible to the filter heat box. The connecting tubing should be free of loops. Maintain the probe and filter temperatures sufficiently high to prevent moisture condensation, and monitor with a suitable temperature sensor.

8.1.2 For the Method 6 part of the train, measure 20 ml of 3 percent hydrogen peroxide into the first and second midget impingers. Leave the third midget impinger empty, and place silica gel in the fourth midget impinger. Alternatively, a silica gel drying tube may be used in place of the fourth impinger. Maintain the oxidation furnace at 800 ± 100 °C (1472 ± 180 °F). Place crushed ice and water around all impingers.

8.2 Citrate Scrubber Conditioning Procedure. Condition the citrate buffer scrubbing solution by pulling stack gas through the Teflon impingers and bypassing all other sampling train components. A purge rate of 2 liters/min for 10 minutes has been found to be sufficient to obtain equilibrium. After the citrate scrubber has been conditioned, assemble the sampling train, and conduct (optional) a leak-check as described in Method 6, Section 8.2.

8.3 Sample Collection. Same as in Method 6, Section 8.3, except the sampling rate is 2 liters/min (±10 percent) for 1 or 3 hours. After the sample is collected, remove the probe from the stack, and conduct (mandatory) a post-test leak-check as described in Method 6, Section 8.2. The 15-minute purge of the train following collection should not be performed. After each 3-hour test run (or after three 1-hour samples), conduct one system performance check (see Section 8.5) to determine the reduced sulfur recovery efficiency through the sampling train. After this system performance check and before the next test run, rinse and brush the probe with water, replace the filter, and change the citrate scrubber (optional but recommended).

**Note:** In Method 16, a test run is composed of 16 individual analyses (injects) performed over a period of not less than 3 hours or more than 6 hours. For Method 16A to be consistent with Method 16, the following may be used to obtain a test run: (1) collect three 60-minute samples or (2) collect one 3-hour sample. (Three test runs constitute a test.)

8.4 Sample Recovery. Disconnect the impingers. Quantitatively transfer the contents of the midget impingers of the Method 6 part of the train into a leak-free polyethylene bottle for

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shipment. Rinse the three midget impingers and the connecting tubes with water and add the washings to the same storage container. Mark the fluid level. Seal and identify the sample container.

8.5 System Performance Check.

8.5.1 A system performance check is done (1) to validate the sampling train components and procedure (prior to testing; optional) and (2) to validate a test run (after a run). Perform a check in the field prior to testing consisting of at least two samples (optional), and perform an additional check after each 3 hour run or after three 1-hour samples (mandatory).

8.5.2 The checks involve sampling a known concentration of $H_2S$ and comparing the analyzed concentration with the known concentration. Mix the $H_2S$ recovery check gas (Section 7.1.4) and combustion gas in a dilution system such as that shown in Figure 16A–3. Adjust the flow rates to generate an $H_2S$ concentration in the range of the stack gas or within 20 percent of the applicable standard and an oxygen concentration greater than 1 percent at a total flow rate of at least 2.5 liters/min (5.3 ft³/hr). Use Equation 16A–3 to calculate the concentration of recovery gas generated. Calibrate the flow rate from both sources with a soap bubble flow meter so that the diluted concentration of $H_2S$ can be accurately calculated.

8.5.3 Collect 30-minute samples, and analyze in the same manner as the emission samples. Collect the sample through the probe of the sampling train using a manifold or some other suitable device that will ensure extraction of a representative sample.

8.5.4 The recovery check must be performed in the field prior to replacing the $SO_2$ scrubber and particulate filter and before the probe is cleaned. Use Equation 16A–4 (see Section 12.5) to calculate the recovery efficiency. Report the recovery efficiency with the emission data; do not correct the emission data for the recovery efficiency. A sample recovery of 100 ± 20 percent must be obtained for the emission data to be valid. However, if the recovery efficiency is not in the 100 ± 20 percent range but the results do not affect the compliance or noncompliance status of the affected facility, the Administrator may decide to accept the results of the compliance test.

*9.0 Quality Control*

| Section | Quality control measure | Effect |
|---|---|---|
| 8.5 | System performance check | Ensure validity of sampling train components and analytical procedure. |
| 8.2, 10.0 | Sampling equipment leak-check and calibration | Ensure accurate measurement of stack gas flow rate, sample volume. |
| 10.0 | Barium standard solution standardization | Ensure precision of normality determination. |
| 11.1 | Replicate titrations | Ensure precision of titration determinations. |
| 11.2 | Audit sample analysis | Evaluate analyst's technique and standards preparation. |

*10.0 Calibration*

Same as Method 6, Section 10.0.

*11.0 Analytical Procedure*

11.1 Sample Loss Check and Sample Analysis. Same as Method 6, Sections 11.1 and 11.2, respectively, with the following exception: for 1-hour sampling, take a 40-ml aliquot, add 160 ml of 100 percent isopropanol and four drops of thorin.

11.2 Audit Sample Analysis. Same as Method 6, Section 11.3.

*12.0 Data Analysis and Calculations*

In the calculations, at least one extra decimal figure should be retained beyond that of the acquired data. Figures should be rounded off after final calculations.

12.1 Nomenclature.

$C_{TRS}$ = Concentration of TRS as $SO_2$, dry basis corrected to standard conditions, ppmv.

$C_{RG(act)}$ = Actual concentration of recovery check gas (after dilution), ppm.

$C_{RG(m)}$ = Measured concentration of recovery check gas generated, ppm.

$C_{H2S}$ = Verified concentration of $H_2S$ recovery gas.

N = Normality of barium perchlorate titrant, milliequivalents/ml.

$P_{bar}$ = Barometric pressure at exit orifice of the dry gas meter, mm Hg (in. Hg).

$P_{std}$ = Standard absolute pressure, 760 mm Hg (29.92 in. Hg).

$Q_{H2S}$ = Calibrated flow rate of $H_2S$ recovery gas, liters/min.

$Q_{CG}$ = Calibrated flow rate of combustion gas, liters/min.

R = Recovery efficiency for the system performance check, percent.

$T_m$ = Average dry gas meter absolute temperature, °K (°R).

$T_{std}$ = Standard absolute temperature, 293 °K (528 °R).

$V_a$ = Volume of sample aliquot titrated, ml.

$V_m$ = Dry gas volume as measured by the dry gas meter, liters (dcf).

$V_{m(std)}$ = Dry gas volume measured by the dry gas meter, corrected to standard conditions, liters (dscf).

$V_{soln}$ = Total volume of solution in which the sulfur dioxide sample is contained, 100 ml.

$V_t$ = Volume of barium perchlorate titrant used for the sample, ml (average of replicate titrations).

$V_{tb}$ = Volume of barium perchlorate titrant used for the blank, ml.

Y = Dry gas meter calibration factor.

32.03 = Equivalent weight of sulfur dioxide, mg/meq.

12.2 Dry Sample Gas Volume, Corrected to Standard Conditions.

$$V_{m(std)} = V_m Y \frac{T_{std} P_{bar}}{T_m P_{std}} \qquad \text{Eq. 16A-1}$$

$$= K_1 Y \frac{V_m P_{bar}}{T_m}$$

Where:

$K_1$ = 0.3855 °K/mm Hg for metric units, = 17.65 °R/in. Hg for English units.

12.3 Concentration of TRS as ppm $SO_2$.

$$C_{TRS} = K_2 N \frac{(V_t - V_{tb})(V_{soln}/V_a)}{V_{m(std)}} \qquad \text{Eq. 16A-2}$$



Where:

$$K_2 = 32.03 \frac{mg}{meq} \frac{24.05L}{mole} \frac{1\,mole}{64.06g} \frac{1g}{10^3 mg} \frac{10^3 mL}{L} \frac{10^3 \mu L}{1mL}$$

$$= \frac{12025 \mu L}{meq}$$

12.4 Concentration of Recovery Gas Generated in the System Performance Check.

$$C_{RG} = \frac{Q_{H_2S} C_{H_2S}}{Q_{H_2S} + Q_{CG}} \qquad \text{Eq. 16A-3}$$

12.5 Recovery Efficiency for the System Performance Check.

$$R = \frac{C_{RG(m)}}{C_{RG(act)}} \times 100 \qquad \text{Eq. 16A-4}$$

*13.0 Method Performance*

13.1 Analytical Range. The lower detectable limit is 0.1 ppmv $SO_2$ when sampling at 2 liters/min (4.2 ft³/hr) for 3 hours or 0.3 ppmv when sampling at 2 liters/min (4.2 ft³/hr) for 1 hour. The upper concentration limit of the method exceeds the TRS levels generally encountered at kraft pulp mills.

13.2 Precision. Relative standard deviations of 2.0 and 2.6 percent were obtained when sampling a recovery boiler for 1 and 3 hours, respectively.

13.3 Bias.

13.3.1 No bias was found in Method 16A relative to Method 16 in a separate study at a recovery boiler.

13.3.2 Comparison of Method 16A with Method 16 at a lime kiln indicated that there was no bias in Method 16A. However, instability of the source emissions adversely affected the comparison. The precision of Method 16A at the lime kiln was similar to that obtained at the recovery boiler (Section 13.2.1).

13.3.3 Relative standard deviations of 2.7 and 7.7 percent have been obtained for system performance checks.

*14.0 Pollution Prevention. [Reserved]*

*15.0 Waste Management. [Reserved]*

*16.0 Alternative Procedures*

As an alternative to the procedures specified in Section 7.1.4, the following procedure may be used to verify the $H_2S$ concentration of the recovery check gas.

16.1 Summary. The $H_2S$ is collected from the calibration gas cylinder and is absorbed in zinc acetate solution to form zinc sulfide. The latter compound is then measured iodometrically.

16.2 Range. The procedure has been examined in the range of 5 to 1500 ppmv.

16.3 Interferences. There are no known interferences to this procedure when used to analyze cylinder gases containing $H_2S$ in nitrogen.

16.4 Precision and Bias. Laboratory tests have shown a relative standard deviation of less than 3 percent. The procedure showed no bias when compared to a gas chromatographic method that used gravimetrically certified permeation tubes for calibration.

16.5 Equipment and Supplies.

16.5.1 Sampling Apparatus. The sampling train is shown in Figure 16A–4. Its component parts are discussed in Sections 16.5.1.1 through 16.5.2.

16.5.1.1 Sampling Line. Teflon tubing (¼-in.) to connect the cylinder regulator to the sampling valve.

16.5.1.2 Needle Valve. Stainless steel or Teflon needle valve to control the flow rate of gases to the impingers.

16.5.1.3 Impingers. Three impingers of approximately 100-ml capacity, constructed to permit the addition of reagents through the gas inlet stem. The impingers shall be connected in series with leak-free glass or Teflon connectors. The impinger bottoms have a standard 24/25 ground-glass fitting. The stems are from standard 6.4-mm (¼-in.) ball joint midget impingers, custom lengthened by about 1 in. When fitted together, the stem end should be approximately 1.27 cm (½ in.) from the bottom (Southern Scientific, Inc., Micanopy, Florida: Set Number S6962–048). The third in-line impinger acts as a drop-out bottle.

16.5.1.4 Drying Tube, Rate Meter, and Barometer. Same as Method 11, Sections 6.1.5, 6.1.8, and 6.1.10, respectively.

16.5.1.5 Cylinder Gas Regulator. Stainless steel, to reduce the pressure of the gas stream entering the Teflon sampling line to a safe level.

16.5.1.6 Soap Bubble Meter. Calibrated for 100 and 500 ml, or two separate bubble meters.

16.5.1.7 Critical Orifice. For volume and rate measurements. The critical orifice may be fabricated according to Section 16.7.3 and must be calibrated as specified in Section 16.12.4.

16.5.1.8 Graduated Cylinder. 50-ml size.

16.5.1.9 Volumetric Flask. 1-liter size.

16.5.1.10 Volumetric Pipette. 15-ml size.

16.5.1.11 Vacuum Gauge. Minimum 20 in. Hg capacity.

16.5.1.12 Stopwatch.

16.5.2 Sample Recovery and Analysis.

16.5.2.1 Erlenmeyer Flasks. 125- and 250-ml sizes.

16.5.2.2 Pipettes. 2-, 10-, 20-, and 100-ml volumetric.

16.5.2.3 Burette. 50-ml size.

16.5.2.4 Volumetric Flask. 1-liter size.

16.5.2.5 Graduated Cylinder. 50-ml size.

16.5.2.6 Wash Bottle.

16.5.2.7 Stirring Plate and Bars.

16.6 Reagents and Standards. Unless otherwise indicated, all reagents must conform to the specifications established by the Committee on Analytical Reagents of the American Chemical Society, where such specifications are available. Otherwise, use the best available grade.

16.6.1 Water. Same as Method 11, Section 7.1.3.

16.6.2 Zinc Acetate Absorbing Solution. Dissolve 20 g zinc acetate in water, and dilute to 1 liter.

16.6.3 Potassium Bi-iodate [$KH(IO_3)_2$] Solution, Standard 0.100 N. Dissolve 3.249 g anhydrous $KH(IO_3)_2$ in water, and dilute to 1 liter.

16.6.4 Sodium Thiosulfate ($Na_2S_2O_3$) Solution, Standard 0.1 N. Same as Method 11, Section 7.3.2. Standardize according to Section 16.12.2.

16.6.5 $Na_2S_2O_3$ Solution, Standard 0.01 N. Pipette 100.0 ml of 0.1 N $Na_2S_2O_3$ solution into a 1-liter volumetric flask, and dilute to the mark with water.

16.6.6 Iodine Solution, 0.1 N. Same as Method 11, Section 7.2.3.

16.6.7 Standard Iodine Solution, 0.01 N. Same as in Method 11, Section 7.2.4. Standardize according to Section 16.12.3.

16.6.8 Hydrochloric Acid (HCl) Solution, 10 Percent by Weight. Add 230 ml concentrated HCl (specific gravity 1.19) to 770 ml water.

16.6.9 Starch Indicator Solution. To 5 g starch (potato, arrowroot, or soluble), add a little cold water, and grind in a mortar to a thin paste. Pour into 1 liter of boiling water, stir, and let settle overnight. Use the clear supernatant. Preserve with 1.25 g salicylic acid, 4 g zinc chloride, or a combination of 4 g sodium propionate and 2 g sodium

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azide per liter of starch solution. Some commercial starch substitutes are satisfactory.

16.7 Pre-test Procedures.

16.7.1 Selection of Gas Sample Volumes. This procedure has been validated for estimating the volume of cylinder gas sample needed when the $H_2S$ concentration is in the range of 5 to 1500 ppmv. The sample volume ranges were selected in order to ensure a 35 to 60 percent consumption of the 20 ml of 0.01 N iodine (thus ensuring a 0.01 N $Na_2S_2O_3$ titer of approximately 7 to 12 ml). The sample volumes for various $H_2S$ concentrations can be estimated by dividing the approximate ppm-liters desired for a given concentration range by the $H_2S$ concentration stated by the manufacturer. For example, for analyzing a cylinder gas containing approximately 10 ppmv $H_2S$, the optimum sample volume is 65 liters (650 ppm-liters/10 ppmv). For analyzing a cylinder gas containing approximately 1000 ppmv $H_2S$, the optimum sample volume is 1 liter (1000 ppm-liters/1000 ppmv).

| Approximate cylinder gas $H_2S$ concentration (ppmv) | Approximate ppm-liters desired |
|---|---|
| 5 to <30 | 650 |
| 30 to <500 | 800 |
| 500 to <1500 | 1000 |

16.7.2 Critical Orifice Flow Rate Selection. The following table shows the ranges of sample flow rates that are desirable in order to ensure capture of $H_2S$ in the impinger solution. Slight deviations from these ranges will not have an impact on measured concentrations.

| Cylinder gas $H_2S$ concentration (ppmv) | Critical orifice flow rate (ml/min) |
|---|---|
| 5 to 50 ppmv | 1500 ± 500 |
| 50 to 250 ppmv | 500 ± 250 |
| 250 to <1000 ppmv | 200 ± 50 |
| >1000 ppmv | 75 ± 25 |

16.7.3 Critical Orifice Fabrication. Critical orifice of desired flow rates may be fabricated by selecting an orifice tube of desired length and connecting 1/16-in. x 1/4-in. (0.16 cm x 0.64 cm) reducing fittings to both ends. The inside diameters and lengths of orifice tubes needed to obtain specific flow rates are shown below.

| Tube (in. OD) | Tube (in. ID) | Length (in.) | Flowrate (ml/min) | Altech Catalog No. |
|---|---|---|---|---|
| 1/16 | 0.007 | 1.2 | 85 | 301430 |
| 1/16 | 0.01 | 3.2 | 215 | 300530 |
| 1/16 | 0.01 | 1.2 | 350 | 300530 |
| 1/16 | 0.02 | 1.2 | 1400 | 300230 |

16.7.4 Determination of Critical Orifice Approximate Flow Rate. Connect the critical orifice to the sampling system as shown in Figure 16A–4 but without the $H_2S$ cylinder. Connect a rotameter in the line to the first impinger. Turn on the pump, and adjust the valve to give a reading of about half atmospheric pressure. Observe the rotameter reading. Slowly increase the vacuum until a stable flow rate is reached, and record this as the critical vacuum. The measured flow rate indicates the expected critical flow rate of the orifice. If this flow rate is in the range shown in Section 16.7.2, proceed with the critical orifice calibration according to Section 16.12.4.

16.7.5 Determination of Approximate Sampling Time. Determine the approximate sampling time for a cylinder of known concentration. Use the optimum sample volume obtained in Section 16.7.1.

$$\text{Approximate sampling time} = \frac{\text{Optimum volume}}{\text{Critical orifice flow rate}}$$

16.8 Sample Collection.

16.8.1 Connect the Teflon tubing, Teflon tee, and rotameter to the flow control needle valve as shown in Figure 16A–4. Vent the rotameter to an exhaust hood. Plug the open end of the tee. Five to 10 minutes prior to sampling, open the cylinder valve while keeping the flow control needle valve closed. Adjust the delivery pressure to 20 psi. Open the needle valve slowly until the rotameter shows a flow rate approximately 50 to 100 ml above the flow rate of the critical orifice being used in the system.

16.8.2 Place 50 ml of zinc acetate solution in two of the impingers, connect them and the empty third impinger (dropout bottle) and the rest of the equipment as shown in Figure 16A–4. Make sure the ground-glass fittings are tight. The impingers can be easily stabilized by using a small cardboard box in which three holes have been cut, to act as a holder. Connect the Teflon sample line to the first impinger. Cover the impingers with a dark cloth or piece of plastic to protect the absorbing solution from light during sampling.

16.8.3 Record the temperature and barometric pressure. Note the gas flow rate through the rotameter. Open the closed end of the tee. Connect the sampling tube to the tee, ensuring a tight connection. Start the sampling pump and stopwatch simultaneously. Note the decrease in flow rate through the excess flow rotameter. This decrease should equal the known flow rate of the critical orifice being used. Continue sampling for the period determined in Section 16.7.5.

16.8.4 When sampling is complete, turn off the pump and stopwatch. Disconnect the sampling line from the tee and plug it. Close the needle valve followed by the cylinder valve. Record the sampling time.

16.9 Blank Analysis. While the sample is being collected, run a blank as follows: To a 250-ml Erlenmeyer flask, add 100 ml of zinc acetate solution, 20.0 ml of 0.01 N iodine solution, and 2 ml HCl solution. Titrate, while stirring, with 0.01 N $Na_2S_2O_3$ until the solution is light yellow. Add starch, and continue titrating until the blue color disappears. Analyze a blank with each sample, as the blank titer has been observed to change over the course of a day.

**Note:** Iodine titration of zinc acetate solutions is difficult to perform because the solution turns slightly white in color near the end point, and the disappearance of the blue color is hard to recognize. In addition, a blue color may reappear in the solution about 30 to 45 seconds after the titration endpoint is reached. This should not be taken to mean the original endpoint was in error. It is recommended that persons conducting this test perform several titrations to be able to correctly identify the endpoint. The importance of this should be recognized because the results of this analytical procedure are extremely sensitive to errors in titration.



16.10 Sample Analysis. Sample treatment is similar to the blank treatment. Before detaching the stems from the bottoms of the impingers, add 20.0 ml of 0.01 N iodine solution through the stems of the impingers holding the zinc acetate solution, dividing it between the two (add about 15 ml to the first impinger and the rest to the second). Add 2 ml HCl solution through the stems, dividing it as with the iodine. Disconnect the sampling line, and store the impingers for 30 minutes. At the end of 30 minutes, rinse the impinger stems into the impinger bottoms. Titrate the impinger contents with 0.01 N $Na_2S_2O_3$. Do not transfer the contents of the impinger to a flask because this may result in a loss of iodine and cause a positive bias.

16.11 Post-test Orifice Calibration. Conduct a post-test critical orifice calibration run using the calibration procedures outlined in Section 16.12.4. If the $Q_{std}$ obtained before and after the test differs by more than 5 percent, void the sample; if not, proceed to perform the calculations.

16.12 Calibrations and Standardizations.

16.12.1 Rotameter and Barometer. Same as Method 11, Sections 10.1.3 and 10.1.4.

16.12.2 $Na_2S_2O_3$ Solution, 0.1 N. Standardize the 0.1 N $Na_2S_2O_3$ solution as follows: To 80 ml water, stirring constantly, add 1 ml concentrated $H_2SO_4$, 10.0 ml of 0.100 N $KH(IO_3)_2$ and 1 g potassium iodide. Titrate immediately with 0.1 N $Na_2S_2O_3$ until the solution is light yellow. Add 3 ml starch solution, and titrate until the blue color just disappears. Repeat the titration until replicate analyses agree within 0.05 ml. Take the average volume of $Na_2S_2O_3$ consumed to calculate the normality to three decimal figures using Equation 16A–5.

16.12.3 Iodine Solution, 0.01 N. Standardize the 0.01 N iodine solution as follows: Pipet 20.0 ml of 0.01 N iodine solution into a 125-ml Erlenmeyer flask. Titrate with standard 0.01 N $Na_2S_2O_3$ solution until the solution is light yellow. Add 3 ml starch solution, and continue titrating until the blue color just disappears. If the normality of the iodine tested is not 0.010, add a few ml of 0.1 N iodine solution if it is low, or a few ml of water if it is high, and standardize again. Repeat the titration until replicate values agree within 0.05 ml. Take the average volume to calculate the normality to three decimal figures using Equation 16A–6.

16.12.4 Critical Orifice. Calibrate the critical orifice using the sampling train shown in Figure 16A–4 but without the $H_2S$ cylinder and vent rotameter. Connect the soap bubble meter to the Teflon line that is connected to the first impinger. Turn on the pump, and adjust the needle valve until the vacuum is higher than the critical vacuum determined in Section 16.7.4. Record the time required for gas flow to equal the soap bubble meter volume (use the 100-ml soap bubble meter for gas flow rates below 100 ml/min, otherwise use the 500-ml soap bubble meter). Make three runs, and record the data listed in Table 16A–1. Use these data to calculate the volumetric flow rate of the orifice.

16.13 Calculations.

16.13.1 Nomenclature.

$B_{wa}$ = Fraction of water vapor in ambient air during orifice calibration.

$C_{H_2S}$ = $H_2S$ concentration in cylinder gas, ppmv.

$$K_2 = 32.03\frac{\text{mg}}{\text{meq}}\frac{24.05\text{L}}{\text{mole}}\frac{1\text{mole}}{64.06\text{g}}\frac{1\text{g}}{10^3\text{mg}}\frac{10^3\text{mL}}{\text{L}}\frac{10^3\mu\text{L}}{1\text{mL}} = \frac{12025\mu\text{L}}{\text{meq}}$$

$M_a$ = Molecular weight of ambient air saturated at impinger temperature, g/g-mole.

$M_s$ = Molecular weight of sample gas (nitrogen) saturated at impinger temperature, g/g-mole.

**Note:** (For tests carried out in a laboratory where the impinger temperature is 25 °C, $M_a$ = 28.5 g/g-mole and $M_s$ = 27.7 g/g-mole.)

$N_I$ = Normality of standard iodine solution (0.01 N), g-eq/liter.

$N_T$ = Normality of standard $Na_2S_2O_3$ solution (0.01 N), g-eq/liter.

$P_{bar}$ = Barometric pressure, mm Hg.

$P_{std}$ = Standard absolute pressure, 760 mm Hg.

$Q_{std}$ = Average volumetric flow rate through critical orifice, liters/min.

$T_{amb}$ = Absolute ambient temperature, °K.

$T_{std}$ = Standard absolute temperature, 293 °K.

$\theta_s$ = Sampling time, min.

$\theta_{sb}$ = Time for soap bubble meter flow rate measurement, min.

$V_{m(std)}$ = Sample gas volume measured by the critical orifice, corrected to standard conditions, liters.

$V_{sb}$ = Volume of gas as measured by the soap bubble meter, ml.

$V_{sb(std)}$ = Volume of gas as measured by the soap bubble meter, corrected to standard conditions, liters.

$V_I$ = Volume of standard iodine solution (0.01 N) used, ml.

$V_T$ = Volume of standard $Na_2S_2O_3$ solution (0.01 N) used, ml.

$V_{TB}$ = Volume of standard $Na_2S_2O_3$ solution (0.01 N) used for the blank, ml.

16.13.2 Normality of Standard $Na_2S_2O_3$ Solution (0.1 N).

$$N_T = \frac{1}{\text{mL } Na_2S_2O_3 \text{ consumed}} \qquad \text{Eq. 16A-5}$$

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16.13.3 Normality of Standard Iodine Solution (0.01 N).

$$N_I = \frac{N_T V_T}{V_I} \qquad \text{Eq. 16A-6}$$

16.13.4 Sample Gas Volume.

$$V_{m(std)} = \overline{Q}_{std}\Theta_s(1-B_{wa})\frac{M_a}{M_b} \qquad \text{Eq. 16A-7}$$

16.13.5 Concentration of $H_2S$ in the Gas Cylinder.

*17.0 References*

$$C_{H_2S} = \frac{K N_T (V_{TB} - V_T)}{V_{m(std)}} \qquad \text{Eq. 16A-8}$$


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BILLING CODE 6560–50–P



*18.0 Tables, Diagrams, Flowcharts, and Validation Data*

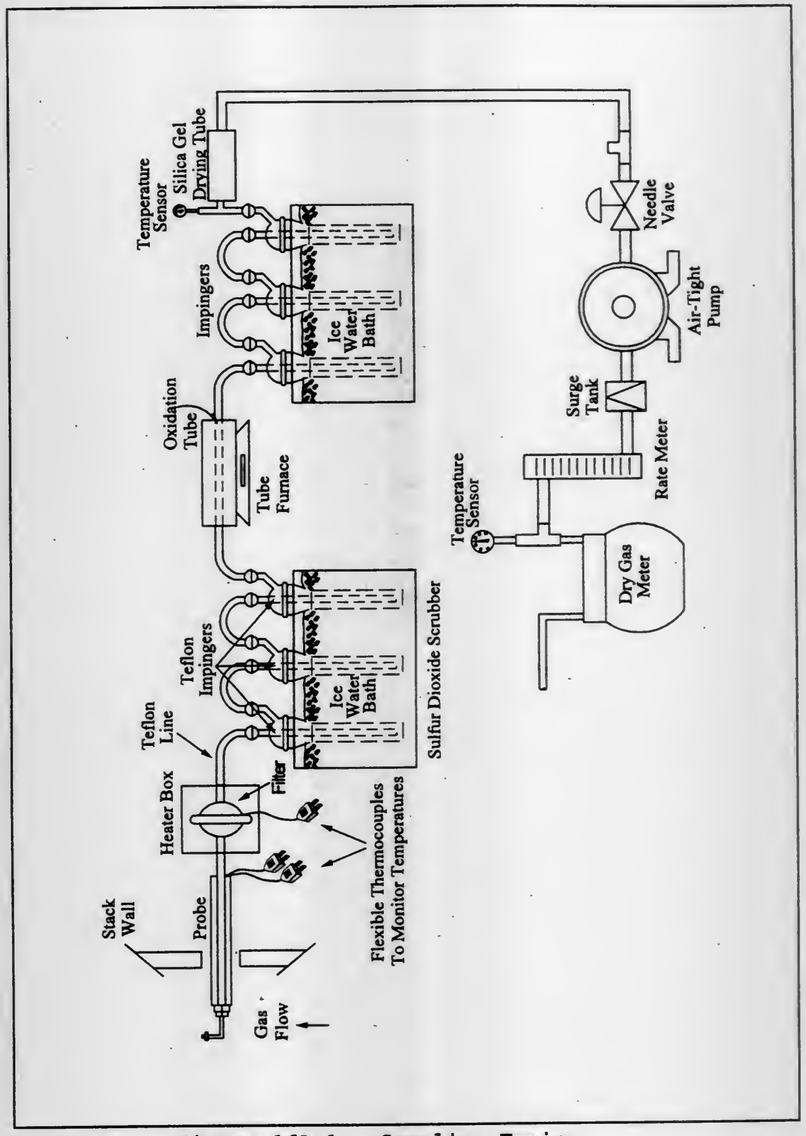



Figure 16A-1. Sampling Train.

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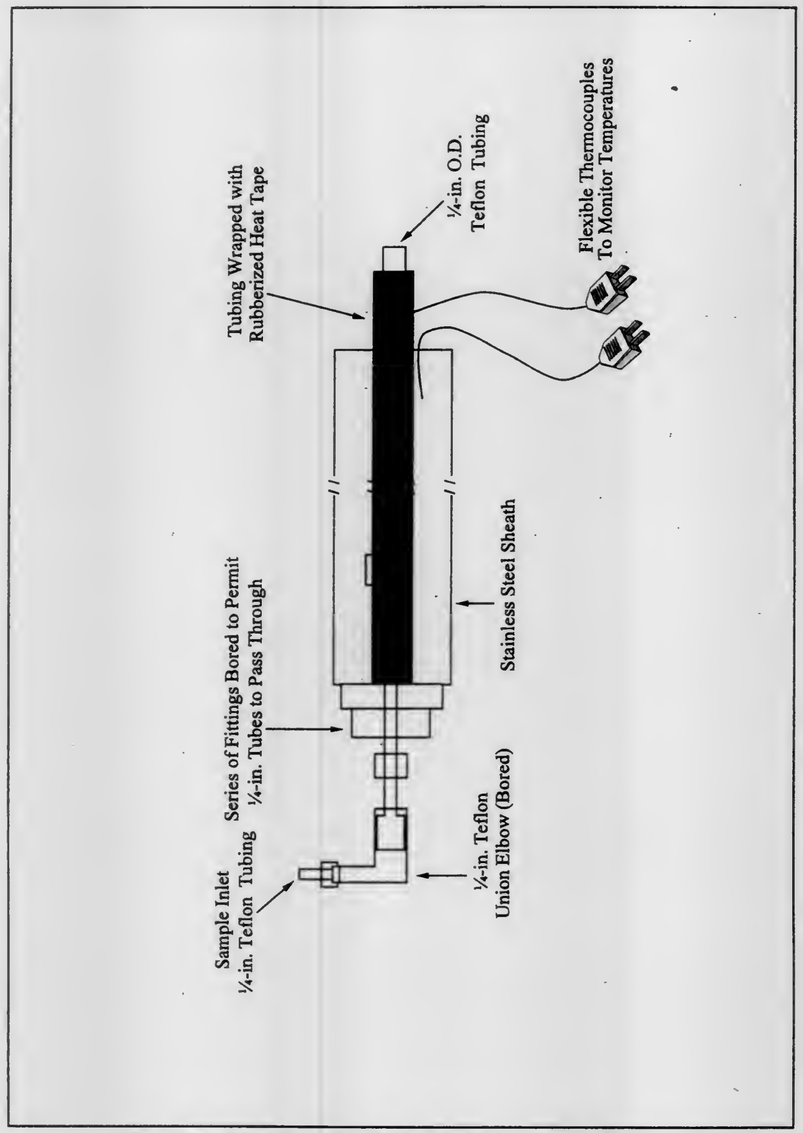



Figure 16A-2. Angled Sampling Probe.



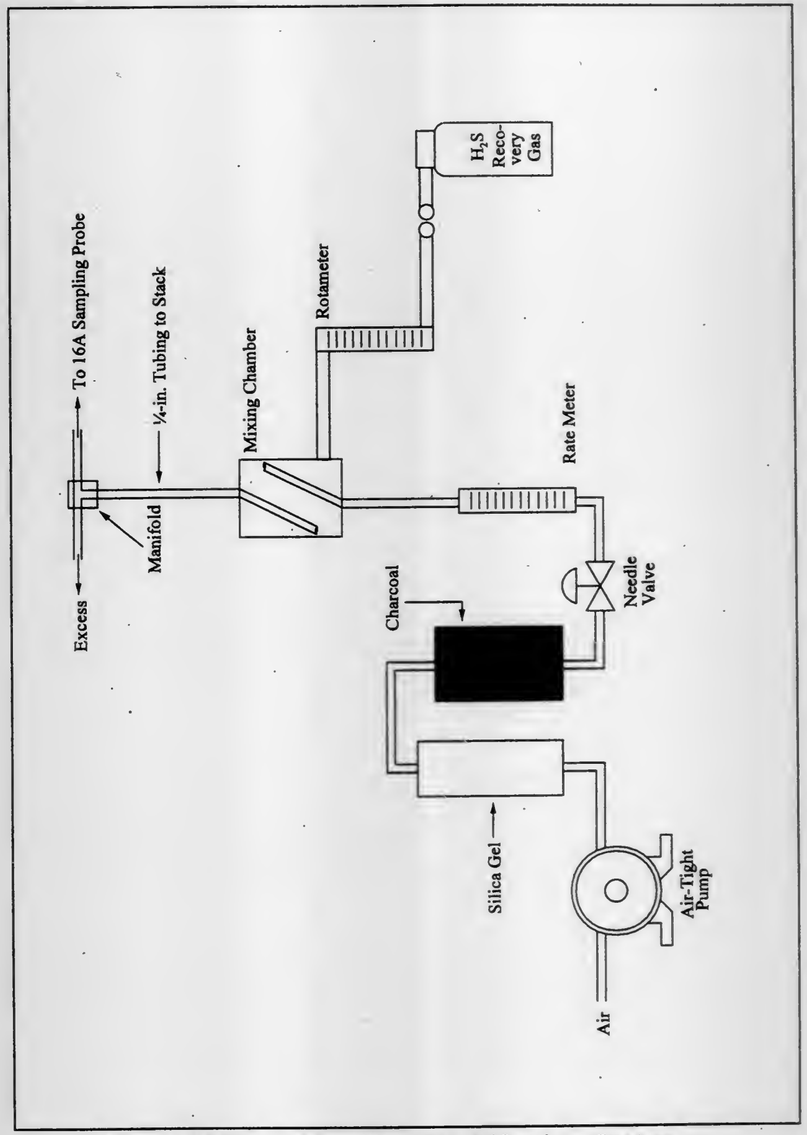



Figure 16A-3. Recovery Gas Dilution System.

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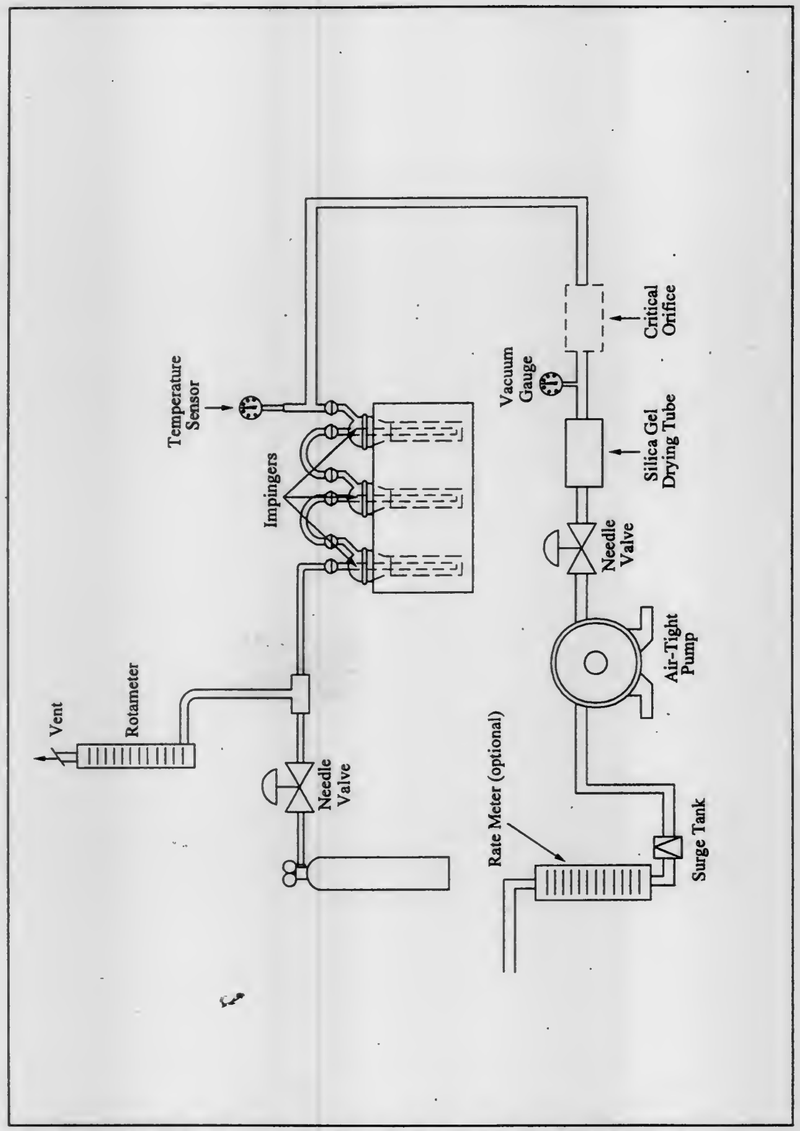



Figure 16A-4. Recovery Check Gas Sampling Train.

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Date _____
Critical orifice ID _____
Soap bubble meter volume, Vsb____ liters
Time, $\theta_{sb}$
Run no. 1 ____ min ____ sec
Run no. 2 ____ min ____ sec
Run no. 3 ____ min ____ sec
Average ____ min ____ sec
Covert the seconds to fraction of minute:
Time = ____ min + ____ Sec/60 = ____ min
Barometric pressure, $P_{bar}$ = ____ mm Hg
Ambient temperature, $t_{amb}$ = 273 + ____ °C = ____ °K = ____ mm Hg. (This should be approximately 0.4 times barometric pressure.)
Pump vacuum,

$$V_{sb(std)} = \frac{V_{sb} T_{std} P_{bar} (10^{-3})}{T_{amb} P_{std}}$$

= ---------- liters

$$Q_{std} = \frac{V_{sb(std)}}{\Theta_{sb}}$$

= ---------- liters/min

Table 16A–1. Critical Orifice Calibration Data

## Method 16B—Determination of Total Reduced Sulfur Emissions From Stationary Sources

**NOTE:** This method does not include all of the specifications (*e.g.*, equipment and supplies) and procedures (*e.g.*, sampling and analytical) essential to its performance. Some material is incorporated by reference from other methods in this part. Therefore, to obtain reliable results, persons using this method should have a knowledge of at least the following additional test methods: Method 6C, Method 16, and Method 16A.

### *1.0 Scope and Application*

1.1 Analytes.

| Analyte | CAS No. |
|---|---|
| Total reduced sulfur (TRS) including: | N/A |
| Dimethyl disulfide (DMDS), [$(CH_3)_2S_2$] | 62–49–20 |
| Dimethyl sulfide (DMS), [$(CH_3)_2S$] | 75–18–3 |
| Hydrogen sulfide ($H_2S$) | 7783–06–4 |
| Methyl mercaptan (MeSH), [$CH_4S$] | 74–93–1 |
| Reported as: Sulfur dioxide ($SO_2$) | 7449–09–5 |

1.2 Applicability. This method is applicable for determining TRS emissions from recovery furnaces (boilers), lime kilns, and smelt dissolving tanks at kraft pulp mills, and from other sources when specified in an applicable subpart of the regulations. The flue gas must contain at least 1 percent oxygen for complete oxidation of all TRS to $SO_2$.

1.3 Data Quality Objectives. Adherence to the requirements of this method will enhance the quality of the data obtained from air pollutant sampling methods.

### *2.0 Summary of Method*

2.1 An integrated gas sample is extracted from the stack. The $SO_2$ is removed selectively from the sample using a citrate buffer solution. The TRS compounds are then thermally oxidized to $SO_2$ and analyzed as $SO_2$ by gas chromatography (GC) using flame photometric detection (FPD).

### *3.0 Definitions. [Reserved]*

### *4.0 Interferences*

4.1 Reduced sulfur compounds other than those regulated by the emission standards, if present, may be measured by this method. Therefore, carbonyl sulfide, which is partially oxidized to $SO_2$ and may be present in a lime kiln exit stack, would be a positive interferant.

4.2 Particulate matter from the lime kiln stack gas (primarily calcium carbonate) can cause a negative bias if it is allowed to enter the citrate scrubber; the particulate matter will cause the pH to rise and $H_2S$ to be absorbed before oxidation. Proper use of the particulate filter, described in Section 6.1.3 of Method 16A, will eliminate this interference.

4.3 Carbon monoxide (CO) and carbon dioxide ($CO_2$) have substantial desensitizing effects on the FPD even after dilution. Acceptable systems must demonstrate that they have eliminated this interference by some procedure such as eluting these compounds before the $SO_2$. Compliance with this requirement can be demonstrated by submitting chromatograms of calibration gases with and without $CO_2$ in diluent gas. The $CO_2$ level should be approximately 10 percent for the case with $CO_2$ present. The two chromatograms should show agreement within the precision limits of Section 13.0.

### *5.0 Safety*

5.1 Disclaimer. This method may involve hazardous materials, operations, and equipment. This test method may not address all of the safety problems associated with its use. It is the

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responsibility of the user of this test method to establish appropriate safety and health practices and determine the applicability of regulatory limitations prior to performing this test method.

5.2 Hydrogen Sulfide ($H_2S$). A flammable, poisonous gas with the odor of rotten eggs. $H_2S$ is extremely hazardous and can cause collapse, coma, and death within a few seconds of one or two inhalations at sufficient concentrations. Low concentrations irritate the mucous membranes and may cause nausea, dizziness, and headache after exposure.

*6.0 Equipment and Supplies*

6.1 Sample Collection. The sampling train is shown in Figure 16B–1. Modifications to the apparatus are accepted provided the system performance check in Section 8.4.1 is met.

6.1.1 Probe, Probe Brush, Particulate Filter, $SO_2$ Scrubber, Combustion Tube, and Furnace. Same as in Method 16A, Sections 6.1.1 to 6.1.6.

6.1.2 Sampling Pump. Leakless Teflon-coated diaphragm type or equivalent.

6.2 Analysis.

6.2.1 Dilution System (optional), Gas Chromatograph, Oven, Temperature Gauges, Flow System, Flame Photometric Detector, Electrometer, Power Supply, Recorder, Calibration System, Tube Chamber, Flow System, and Constant Temperature Bath. Same as in Method 16, Sections 6.2.1, 6.2.2, and 6.3.

6.2.2 Gas Chromatograph Columns. Same as in Method 16, Section 6.2.3. Other columns with demonstrated ability to resolve $SO_2$ and be free from known interferences are acceptable alternatives. Single column systems such as a 7-ft Carbsorb B HT 100 column have been found satisfactory in resolving $SO_2$ from $CO_2$.

*7.0 Reagents and Standards*

Same as in Method 16, Section 7.0, except for the following:

7.1 Calibration Gas. $SO_2$ permeation tube gravimetrically calibrated and certified at some convenient operating temperature. These tubes consist of hermetically sealed FEP Teflon tubing in which a liquefied gaseous substance is enclosed. The enclosed gas permeates through the tubing wall at a constant rate. When the temperature is constant, calibration gases covering a wide range of known concentrations can be generated by varying and accurately measuring the flow rate of diluent gas passing over the tubes. In place of $SO_2$ permeation tubes, cylinder gases containing $SO_2$ in nitrogen may be used for calibration. The cylinder gas concentration must be verified according to Section 8.2.1 of Method 6C. The calibration gas is used to calibrate the GC/FPD system and the dilution system.

7.2 Recovery Check Gas.

7.2.1 Hydrogen sulfide [100 parts per million by volume (ppmv) or less] in nitrogen, stored in aluminum cylinders. Verify the concentration by Method 11, the procedure discussed in Section 16.0 of Method 16A, or gas chromatography where the instrument is calibrated with an $H_2S$ permeation tube as described below. For the wet-chemical methods, the standard deviation should not exceed 5 percent on at least three 20-minute runs.

7.2.2 Hydrogen sulfide recovery gas generated from a permeation device gravimetrically calibrated and certified at some convenient operation temperature may be used. The permeation rate of the device must be such that at a dilution gas flow rate of 3 liters/min (64 $ft^3$/hr), an $H_2S$ concentration in the range of the stack gas or within 20 percent of the emission standard can be generated.

7.3 Combustion Gas. Gas containing less than 50 ppbv reduced sulfur compounds and less than 10 ppmv total hydrocarbons. The gas may be generated from a clean-air system that purifies ambient air and consists of the following components: diaphragm pump, silica gel drying tube, activated charcoal tube, and flow rate measuring device. Gas from a compressed air cylinder is also acceptable.

*8.0 Sample Collection, Preservation, Storage, and Transport*

8.1 Pretest Procedures. Same as in Method 15, Section 8.1.

8.2 Sample Collection. Before any source sampling is performed, conduct a system performance check as detailed in Section 8.4.1 to validate the sampling train components and procedures. Although this test is optional, it would significantly reduce the possibility of rejecting tests as a result of failing the post-test performance check. At the completion of the pretest system performance check, insert the sampling probe into the test port making certain that no dilution air enters the stack though the port. Condition the entire system with sample for a minimum of 15 minutes before beginning analysis. If the sample is diluted, determine the dilution factor as in Section 10.4 of Method 15.

8.3 Analysis. Inject aliquots of the sample into the GC/FPD analyzer for analysis. Determine the concentration of $SO_2$ directly from the calibration curves or from the equation for the least-squares line.

8.4. Post-Test Procedures

8.4.1 System Performance Check. Same as in Method 16A, Section 8.5. A sufficient number of sample injections should be made so that the precision requirements of Section 13.2 are satisfied.

8.4.2 Determination of Calibration Drift. Same as in Method 15, Section 8.3.2.

*9.0 Quality Control*

| Section | Quality control measure | Effect |
|---|---|---|
| 8.2, 8.3 | System performance check | Ensure validity of sampling train components and analytical procedure. |
| 8.1 | Sampling equipment leak-check and calibration | Ensure accurate measurement of stack gas flow rate, sample volume. |
| 10.0 | Analytical calibration | Ensure precision of analytical results within 5 percent. |

*10.0 Calibration*

Same as in Method 16, Section 10, except $SO_2$ is used instead of $H_2S$.

*11.0 Analytical Procedure*

11.1 Sample collection and analysis are concurrent for this method (see section 8.3).

12.0 Data Analysis and Calculations

12.1 Nomenclature.

$C_{SO2}$ = Sulfur dioxide concentration, ppmv.

$C_{TRS}$ = Total reduced sulfur concentration as determined by Equation 16B–1, ppmv.



d = Dilution factor, dimensionless.

N = Number of samples.

12.2 $SO_2$ Concentration. Determine the concentration of $SO_2$, $C_{SO2}$, directly from the calibration curves. Alternatively, the concentration may be calculated using the equation for the least-squares line.

12.3 TRS Concentration.

$$C_{TRS} = C_{SO_2} d \qquad \text{Eq. 16B-1}$$

*12.4 Average TRS Concentration*

$$\text{Avg.}\, C_{TRS} = \frac{\sum_{i=1}^{n} C_{TRS}}{N} \qquad \text{Eq. 16B-2}$$

*13.0 Method Performance.*

13.1 Range and Sensitivity. Coupled with a GC using a 1-ml sample size, the maximum limit of the FPD for $SO_2$ is approximately 10 ppmv. This limit is extended by diluting the sample gas before analysis or by reducing the sample aliquot size. For sources with emission levels between 10 and 100 ppm, the measuring range can be best extended by reducing the sample size.

13.2 GC/FPD Calibration and Precision. A series of three consecutive injections of the sample calibration gas, at any dilution, must produce results which do not vary by more than 5 percent from the mean of the three injections.

13.3 Calibration Drift. The calibration drift determined from the mean of the three injections made at the beginning and end of any run or series of runs within a 24-hour period must not exceed 5 percent.

13.4 System Calibration Accuracy. Losses through the sample transport system must be measured and a correction factor developed to adjust the calibration accuracy to 100 percent.

13.5 Field tests between this method and Method 16A showed an average difference of less than 4.0 percent. This difference was not determined to be significant.

*14.0 Pollution Prevention. [Reserved]*

*15.0 Waste Management. [Reserved]*

*16.0 References*

1. Same as in Method 16, Section 16.0.

2. National Council of the Paper Industry for Air and Stream Improvement, Inc, A Study of TRS Measurement Methods. Technical Bulletin No. 434. New York, NY. May 1984. 12p.

3. Margeson, J.H., J.E. Knoll, and M.R. Midgett. A Manual Method for TRS Determination. Draft available from the authors. Source Branch, Quality Assurance Division, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711.

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*17.0 Tables, Diagrams, Flowcharts, and Validation Data*

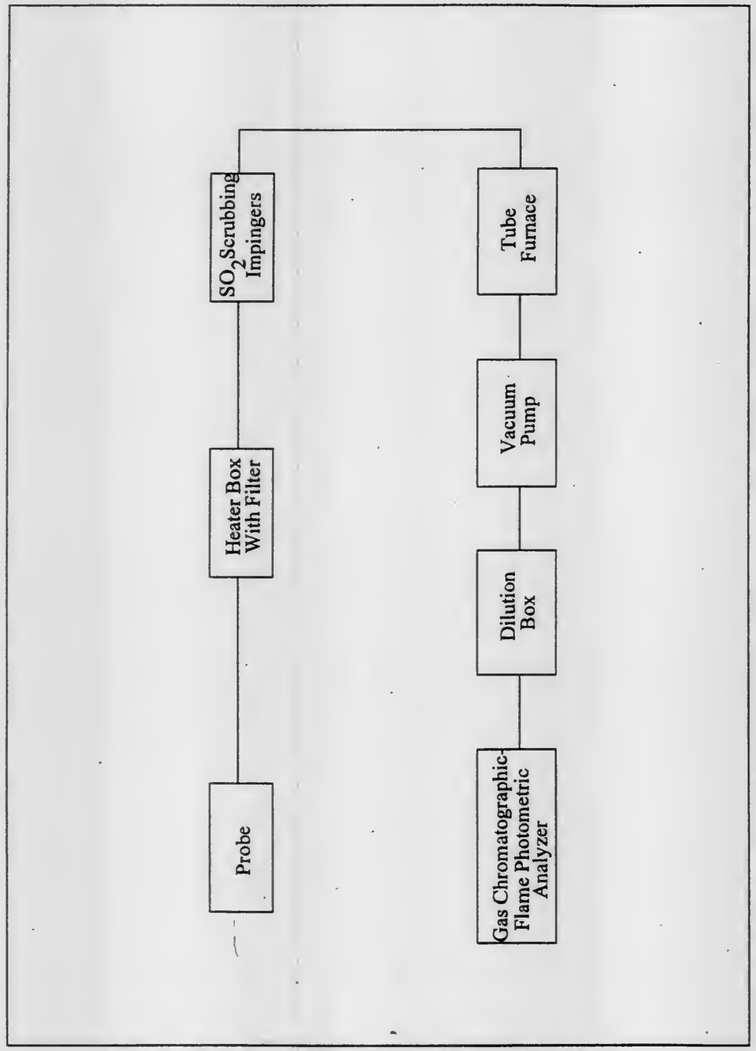



Figure 16B-1. Method 16B Sampling Train.

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**Method 17—Determination of Particulate Matter Emissions From Stationary Sources**

**Note:** This method does not include all of the specifications (*e.g.*, equipment and supplies) and procedures (*e.g.*, sampling and analytical) essential to its performance. Some material is incorporated by reference from other methods in this part. Therefore, to obtain reliable results, persons using this method should have a thorough knowledge of at least the following additional test methods: Method 1, Method 2, Method 3, Method 5.

*1.0 Scope and Application*

1.1 Analyte. Particulate matter (PM). No CAS number assigned.

**Note:** Particulate matter is not an absolute quantity. It is a function of temperature and pressure. Therefore, to prevent variability in PM emission regulations and/or associated test methods, the temperature and pressure at which PM is to be measured must be carefully defined. Of the two variables (*i.e.*, temperature and pressure), temperature has the greater effect upon the amount of PM in an effluent gas stream; in most stationary source categories, the effect of pressure appears to be negligible. In Method 5, 120 °C (248 °F) is established as a nominal reference temperature. Thus, where Method 5 is specified in an applicable subpart of the standard, PM is defined with respect to temperature. In order to maintain a collection temperature of 120 °C (248 °F), Method 5 employs a heated glass sample probe and a heated filter holder. This equipment is somewhat cumbersome and requires care in its operation. Therefore, where PM concentrations (over the normal range of temperature associated with a specified source category) are known to be independent of temperature, it is desirable to eliminate the glass probe and the heating systems, and to sample at stack temperature.

1.2 Applicability. This method is applicable for the determination of PM emissions, where PM concentrations are known to be independent of temperature over the normal range of temperatures characteristic of emissions from a specified source category. It is intended to be used only when specified by an applicable subpart of the standards, and only within the applicable temperature limits (if specified), or when otherwise approved by the Administrator. This method is not applicable to stacks that contain liquid droplets or are saturated with water vapor. In addition, this method shall not be used as written if the projected cross-sectional area of the probe extension-filter holder assembly covers more than 5 percent of the stack cross-sectional area (see Section 8.1.2).

1.3 Data Quality Objectives. Adherence to the requirements of this method will enhance the quality of the data obtained from air pollutant sampling methods.

*2.0 Summary of Method*

2.1 Particulate matter is withdrawn isokinetically from the source and collected on a glass fiber filter maintained at stack temperature. The PM mass is determined gravimetrically after the removal of uncombined water.

*3.0 Definitions*

Same as Method 5, Section 3.0.

*4.0 Interferences. [Reserved]*

*5.0 Safety*

5.1 Disclaimer. This method may involve hazardous materials, operations, and equipment. This test method may not address all of the safety problems associated with its use. It is the responsibility of the user of this test method to establish appropriate safety and health practices and determine the applicability of regulatory limitations prior to performing this test method.

*6.0 Equipment and Supplies*

6.1 Sampling Train. A schematic of the sampling train used in this method is shown in Figure 17–1. The sampling train components and operation and maintenance are very similar to Method 5, which should be consulted for details.

6.1.1 Probe Nozzle, Differential Pressure Gauge, Metering System, Barometer, Gas Density Determination Equipment. Same as in Method 5, Sections 6.1.1, 6.1.4, 6.1.8, 6.1.9, and 6.1.10, respectively.

6.1.2 Filter Holder. The in-stack filter holder shall be constructed of borosilicate or quartz glass, or stainless steel. If a gasket is used, it shall be made of silicone rubber, Teflon, or stainless steel. Other holder and gasket materials may be used, subject to the approval of the Administrator. The filter holder shall be designed to provide a positive seal against leakage from the outside or around the filter.

6.1.3 Probe Extension. Any suitable rigid probe extension may be used after the filter holder.

6.1.4 Pitot Tube. Same as in Method 5, Section 6.1.3.

6.1.4.1 It is recommended (1) that the pitot tube have a known baseline coefficient, determined as outlined in Section 10 of Method 2; and (2) that this known coefficient be preserved by placing the pitot tube in an interference-free arrangement with respect to the sampling nozzle, filter holder, and temperature sensor (see Figure 17–1). Note that the 1.9 cm (¾-in.) free-space between the nozzle and pitot tube shown in Figure 17–1, is based on a 1.3 cm (½-in.) ID nozzle. If the sampling train is designed for sampling at higher flow rates than that described in APTD-0581, thus necessitating the use of larger sized nozzles, the free-space shall be 1.9 cm (¾-in.) with the largest sized nozzle in place.

6.1.4.2 Source-sampling assemblies that do not meet the minimum spacing requirements of Figure 17–1 (or the equivalent of these requirements, *e.g.*, Figure 2–4 of Method 2) may be used; however, the pitot tube coefficients of such assemblies shall be determined by calibration, using methods subject to the approval of the Administrator.

6.1.5 Condenser. It is recommended that the impinger system or alternatives described in Method 5 be used to determine the moisture content of the stack gas. Flexible tubing may be used between the probe extension and condenser. Long tubing lengths may affect the moisture determination.

6.2 Sample Recovery. Probe-liner and probe-nozzle brushes, wash bottles, glass sample storage containers, petri dishes, graduated cylinder and/or balance, plastic storage containers, funnel and rubber policeman, funnel. Same as in Method 5, Sections 6.2.1 through 6.2.8, respectively.

6.3 Sample Analysis. Glass weighing dishes, desiccator, analytical balance, balance, beakers, hygrometer, temperature sensor. Same as in Method 5, Sections 6.3.1 through 6.3.7, respectively.

*7.0 Reagents and Standards*

7.1 Sampling. Filters, silica gel, water, crushed ice, stopcock grease. Same as in Method 5, Sections 7.1.1, 7.1.2, 7.1.3, 7.1.4, and 7.1.5, respectively. Thimble glass fiber filters may also be used.

7.2 Sample Recovery. Acetone (reagent grade). Same as in Method 5, Section 7.2.

7.3 Sample Analysis. Acetone and Desiccant. Same as in Method 5, Sections 7.3.1 and 7.3.2, respectively.

*8.0 Sample Collection, Preservation, Storage, and Transport*

8.1 Sampling.

8.1.1 Pretest Preparation. Same as in Method 5, Section 8.1.1.

8.1.2 Preliminary Determinations. Same as in Method 5, Section 8.1.2, except as follows: Make a projected-area model of the probe extension-filter holder assembly, with the pitot tube face openings positioned along the centerline of the stack, as shown in Figure 17–2. Calculate the estimated cross-section blockage, as shown in Figure 17–2. If the blockage exceeds 5 percent of the duct cross sectional area, the tester has the following options exist: (1) a suitable out-of-stack filtration

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method may be used instead of in-stack filtration; or (2) a special in-stack arrangement, in which the sampling and velocity measurement sites are separate, may be used; for details concerning this approach, consult with the Administrator (see also Reference 1 in Section 17.0). Select a probe extension length such that all traverse points can be sampled. For large stacks, consider sampling from opposite sides of the stack to reduce the length of probes.

8.1.3 Preparation of Sampling Train. Same as in Method 5, Section 8.1.3, except the following: Using a tweezer or clean disposable surgical gloves, place a labeled (identified) and weighed filter in the filter holder. Be sure that the filter is properly centered and the gasket properly placed so as not to allow the sample gas stream to circumvent the filter. Check filter for tears after assembly is completed. Mark the probe extension with heat resistant tape or by some other method to denote the proper distance into the stack or duct for each sampling point. Assemble the train as in Figure 17–1, using a very light coat of silicone grease on all ground glass joints and greasing only the outer portion (see APTD–0576) to avoid possibility of contamination by the silicone grease. Place crushed ice around the impingers.

8.1.4 Leak-Check Procedures. Same as in Method 5, Section 8.1.4, except that the filter holder is inserted into the stack during the sampling train leak-check. To do this, plug the inlet to the probe nozzle with a material that will be able to withstand the stack temperature. Insert the filter holder into the stack and wait approximately 5 minutes (or longer, if necessary) to allow the system to come to equilibrium with the temperature of the stack gas stream.

8.1.5 Sampling Train Operation. The operation is the same as in Method 5. Use a data sheet such as the one shown in Figure 5–3 of Method 5, except that the filter holder temperature is not recorded.

8.1.6 Calculation of Percent Isokinetic. Same as in Method 5, Section 12.11.

8.2 Sample Recovery.

8.2.1 Proper cleanup procedure begins as soon as the probe extension assembly is removed from the stack at the end of the sampling period. Allow the assembly to cool.

8.2.2 When the assembly can be safely handled, wipe off all external particulate matter near the tip of the probe nozzle and place a cap over it to prevent losing or gaining particulate matter. Do not cap off the probe tip tightly while the sampling train is cooling down as this would create a vacuum in the filter holder, forcing condenser water backward.

8.2.3 Before moving the sample train to the cleanup site, disconnect the filter holder-probe nozzle assembly from the probe extension; cap the open inlet of the probe extension. Be careful not to lose any condensate, if present. Remove the umbilical cord from the condenser outlet and cap the outlet. If a flexible line is used between the first impinger (or condenser) and the probe extension, disconnect the line at the probe extension and let any condensed water or liquid drain into the impingers or condenser. Disconnect the probe extension from the condenser; cap the probe extension outlet. After wiping off the silicone grease, cap off the condenser inlet. Ground glass stoppers, plastic caps, or serum caps (whichever are appropriate) may be used to close these openings.

8.2.4 Transfer both the filter holder-probe nozzle assembly and the condenser to the cleanup area. This area should be clean and protected from the wind so that the chances of contaminating or losing the sample will be minimized.

8.2.5 Save a portion of the acetone used for cleanup as a blank. Take 200 ml of this acetone from the wash bottle being used and place it in a glass sample container labeled "acetone blank." Inspect the train prior to and during disassembly and not any abnormal conditions. Treat the sample as discussed in Method 5, Section 8.2.

*9.0 Quality Control. [Reserved]*

*10.0 Calibration and Standardization*

The calibrations of the probe nozzle, pitot tube, metering system, temperature sensors, and barometer are the same as in Method 5, Sections 10.1 through 10.3, 10.5, and 10.6, respectively.

*11.0 Analytical Procedure*

Same as in Method 5, Section 11.0. Analytical data should be recorded on a form similar to that shown in Figure 5–6 of Method 5.

*12.0 Data Analysis and Calculations.*

Same as in Method 5, Section 12.0.

*13.0 Method Performance. [Reserved]*

*14.0 Pollution Prevention. [Reserved]*

*15.0 Waste Management. [Reserved]*

*16.0 Alternative Procedures*

Same as in Method 5, Section 16.0.

*17.0 References*

Same as in Method 5, Section 17.0, with the addition of the following:

1. Vollaro, R.F. Recommended Procedure for Sample Traverses in Ducts Smaller than 12 Inches in Diameter. U.S. Environmental Protection Agency, Emission Measurement Branch. Research Triangle Park, NC. November 1976.

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*18.0 Tables, Diagrams, Flowcharts, and Validation Data*

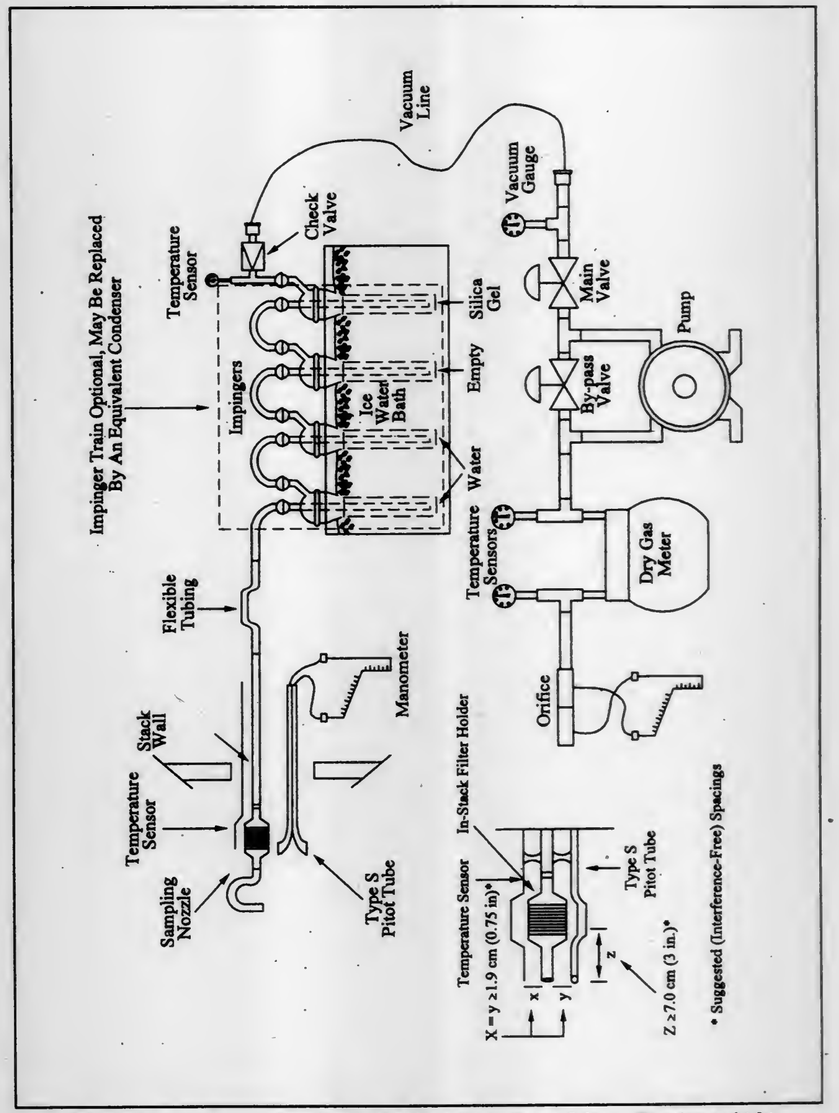



Figure 17-1. Particulate Matter Sampling Train with In-Stack Filter.

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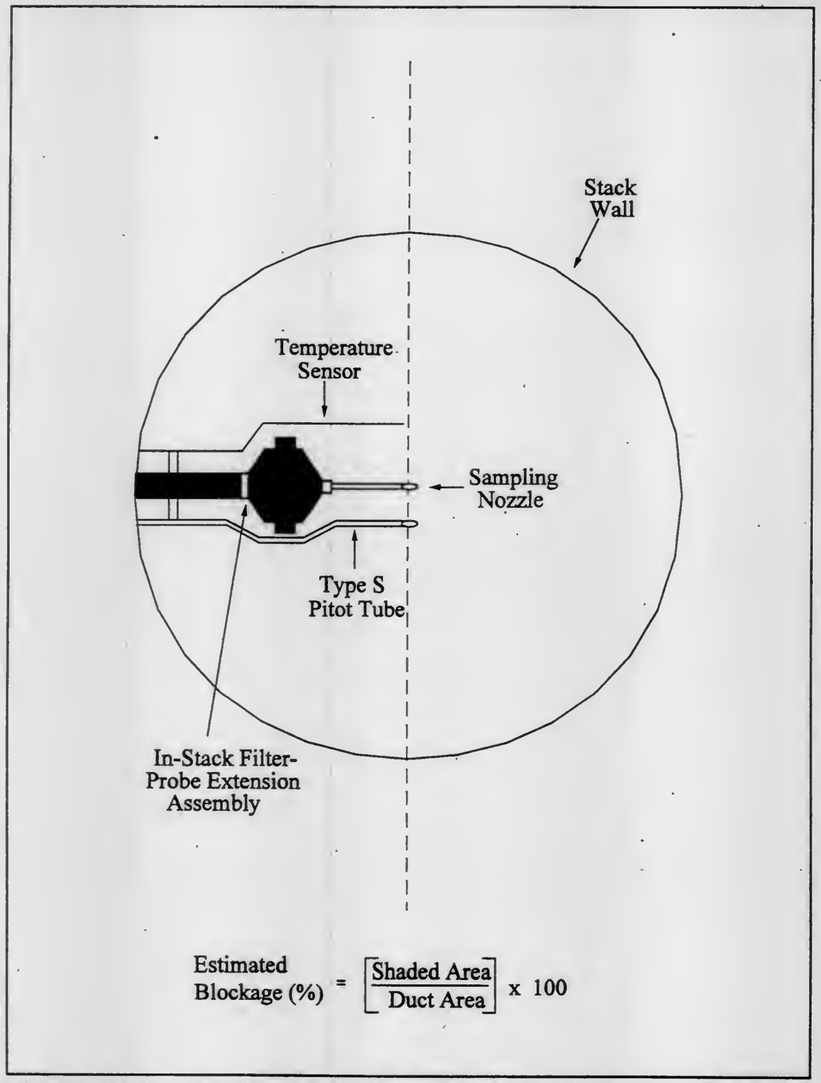



Figure 17-2. Projected-Area Model of Cross-Section Blockage (approximate average for a sample traverse) Caused by an In-Stack Filter Holder-Probe Extension Assembly.

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**Method 18—Measurement of Gaseous Organic Compound Emissions By Gas Chromatography**

**Note:** This method is not inclusive with respect to specifications (*e.g.*, equipment and supplies) and procedures (*e.g.*, sampling and analytical) essential to its performance. Some material is incorporated by reference from other methods in this part. Therefore, to obtain reliable results, persons using this method should have a thorough knowledge of at least the following additional test methods: Method 1, Method 2, Method 3.

**Note:** This method should not be attempted by persons unfamiliar with the performance characteristics of gas chromatography, nor by those persons who are unfamiliar with source sampling. Particular care should be exercised in the area of safety concerning choice of equipment and operation in potentially explosive atmospheres.

*1.0 Scope and Application*

1.1 Analyte. Total gaseous organic compounds.

1.2 Applicability.

1.2.1 This method is designed to measure gaseous organics emitted from an industrial source. While designed for ppm level sources, some detectors are quite capable of detecting compounds at ambient levels, *e.g.*, ECD, ELCD, and helium ionization detectors. Some other types of detectors are evolving such that the sensitivity and applicability may well be in the ppb range in only a few years.

1.2.2 This method will not determine compounds that (1) are polymeric (high molecular weight), (2) can polymerize before analysis, or (3) have very low vapor pressures at stack or instrument conditions.

1.3 Range. The lower range of this method is determined by the sampling system; adsorbents may be used to concentrate the sample, thus lowering the limit of detection below the 1 part per million (ppm) typically achievable with direct interface or bag sampling. The upper limit is governed by GC detector saturation or column overloading; the upper range can be extended by dilution of sample with an inert gas or by using smaller volume gas sampling loops. The upper limit can also be governed by condensation of higher boiling compounds.

1.4 Sensitivity. The sensitivity limit for a compound is defined as the minimum detectable concentration of that compound, or the concentration that produces a signal-to-noise ratio of three to one. The minimum detectable concentration is determined during the presurvey calibration for each compound.

*2.0 Summary of Method*

The major organic components of a gas mixture are separated by gas chromatography (GC) and individually quantified by flame ionization, photoionization, electron capture, or other appropriate detection principles. The retention times of each separated component are compared with those of known compounds under identical conditions. Therefore, the analyst confirms the identity and approximate concentrations of the organic emission components beforehand. With this information, the analyst then prepares or purchases commercially available standard mixtures to calibrate the GC under conditions identical to those of the samples. The analyst also determines the need for sample dilution to avoid detector saturation, gas stream filtration to eliminate particulate matter, and prevention of moisture condensation.

*3.0 Definitions. [Reserved]*

*4.0 Interferences*

4.1 Resolution interferences that may occur can be eliminated by appropriate GC column and detector choice or by shifting the retention times through changes in the column flow rate and the use of temperature programming.

4.2 The analytical system is demonstrated to be essentially free from contaminants by periodically analyzing blanks that consist of hydrocarbon-free air or nitrogen.

4.3 Sample cross-contamination that occurs when high-level and low-level samples or standards are analyzed alternately is best dealt with by thorough purging of the GC sample loop between samples.

4.4 To assure consistent detector response, calibration gases are contained in dry air. To adjust gaseous organic concentrations when water vapor is present in the sample, water vapor concentrations are determined for those samples, and a correction factor is applied.

4.5 The gas chromatograph run time must be sufficient to clear all eluting peaks from the column before proceeding to the next run (in order to prevent sample carryover).

*5.0 Safety*

5.1 Disclaimer. This method may involve hazardous materials, operations, and equipment. This test method may not address all of the safety problems associated with its use. It is the responsibility of the user of this test method to establish appropriate safety and health practices and determine the applicability of regulatory limitations prior to performing this test method. The analyzer users manual should be consulted for specific precautions to be taken with regard to the analytical procedure.

*6.0 Equipment and Supplies*

6.1 Equipment needed for the presurvey sampling procedure can be found in Section 16.1.1.

6.2 Equipment needed for the integrated bag sampling and analysis procedure can be found in Section 8.2.1.1.1.

6.3 Equipment needed for direct interface sampling and analysis can be found in Section 8.2.2.1.

6.4 Equipment needed for the dilution interface sampling and analysis can be found in Section 8.2.3.1.

6.5 Equipment needed for adsorbent tube sampling and analysis can be found in Section 8.2.4.1.

*7.0 Reagents and Standards*

7.1 Reagents needed for the presurvey sampling procedure can be found in Section 16.1.2.

7.2 Quality Assurance Audit Samples. When making compliance determinations, and upon availability, an audit sample may be obtained from the appropriate EPA Regional Office or from the responsible enforcement authority.

**Note:** The responsible enforcement autority should be notified at least 30 days prior to the test date to allow sufficient time for sample delivery.

*8.0 Sample Collection, Preservation, Storage, and Transport*

8.2 Final Sampling and Analysis Procedure. Considering safety (flame hazards) and the source conditions, select an appropriate sampling and analysis procedure (Section 8.2.1, 8.2.2, 8.2.3 or 8.2.4). In situations where a hydrogen flame is a hazard and no intrinsically safe GC is suitable, use the flexible bag collection technique or an adsorption technique.

8.2.1 Integrated Bag Sampling and Analysis.

8.2.1.1 Evacuated Container Sampling Procedure. In this procedure, the bags are filled by evacuating the rigid air-tight container holding the bags. Use a field sample data sheet as shown in Figure 18–10. Collect triplicate samples from each sample location.

8.2.1.1.1 Apparatus.

8.2.1.1.1.1 Probe. Stainless steel, Pyrex glass, or Teflon tubing probe, according to the duct temperature, with Teflon tubing of sufficient length to connect to the sample bag. Use stainless

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steel or Teflon unions to connect probe and sample line.

8.2.1.1.1.2 . Quick Connects. Male (2) and female (2) of stainless steel construction.

8.2.1.1.1.3 Needle Valve. To control gas flow.

8.2.1.1.1.4 Pump. Leakless Teflon-coated diaphragm-type pump or equivalent. To deliver at least 1 liter/min.

8.2.1.1.1.5 Charcoal Adsorption Tube. Tube filled with activated charcoal, with glass wool plugs at each end, to adsorb organic vapors.

8.2.1.1.1.6 Flowmeter. 0 to 500-ml flow range; with manufacturer's calibration curve.

8.2.1.1.2 Sampling Procedure. To obtain a sample, assemble the sample train as shown in Figure 18–9. Leak-check both the bag and the container. Connect the vacuum line from the needle valve to the Teflon sample line from the probe. Place the end of the probe at the centroid of the stack or at a point no closer to the walls than 1 m, and start the pump. Set the flow rate so that the final volume of the sample is approximately 80 percent of the bag capacity. After allowing sufficient time to purge the line several times, connect the vacuum line to the bag, and evacuate until the rotameter indicates no flow. Then position the sample and vacuum lines for sampling, and begin the actual sampling, keeping the rate proportional to the stack velocity. As a precaution, direct the gas exiting the rotameter away from sampling personnel. At the end of the sample period, shut off the pump, disconnect the sample line from the bag, and disconnect the vacuum line from the bag container. Record the source temperature, barometric pressure, ambient temperature, sampling flow rate, and initial and final sampling time on the data sheet shown in Figure 18–10. Protect the Tedlar bag and its container from sunlight. Record the time lapsed between sample collection and analysis, and then conduct the recovery procedure in Section 8.4.2.

8.2.1.2 Direct Pump Sampling Procedure. Follow 8.2.1.1, except place the pump and needle valve between the probe and the bag. Use a pump and needle valve constructed of inert material not affected by the stack gas. Leak-check the system, and then purge with stack gas before connecting to the previously evacuated bag.

8.2.1.3 Explosion Risk Area Bag Sampling Procedure. Follow 8.2.1.1 except replace the pump with another evacuated can (see Figure 18–9a). Use this method whenever there is a possibility of an explosion due to pumps, heated probes, or other flame producing equipment.

8.2.1.4 Other Modified Bag Sampling Procedures. In the event that condensation is observed in the bag while collecting the sample and a direct interface system cannot be used, heat the bag during collection, and maintain it at a suitably elevated temperature during all subsequent operations. (Note: Take care to leak-check the system prior to the dilutions so as not to create a potentially explosive atmosphere.) As an alternative, collect the sample gas, and simultaneously dilute it in the Tedlar bag.

8.2.1.4.1 First Alternative Procedure. Heat the box containing the sample bag to 120 °C (±5 °C). Then transport the bag as rapidly as possible to the analytical area while maintaining the heating, or cover the box with an insulating blanket. In the analytical area, keep the box heated to 120 °C (±5 °C) until analysis. Be sure that the method of heating the box and the control for the heating circuit are compatible with the safety restrictions required in each area.

8.2.1.4.2 Second Alternative Procedure. Prefill the Tedlar bag with a known quantity of inert gas. Meter the inert gas into the bag according to the procedure for the preparation of gas concentration standards of volatile liquid materials (Section 10.1.2.2), but eliminate the midget impinger section. Take the partly filled bag to the source, and meter the source gas into the bag through heated sampling lines and a heated flowmeter, or Teflon positive displacement pump. Verify the dilution factors before sampling each bag through dilution and analysis of gases of known concentration.

8.2.1.5 Analysis of Bag Samples.

8.2.1.5.1 Apparatus. Same as Section 8.1. A minimum of three gas standards are required.

8.2.1.5.2 Procedure.

8.2.1.5.2.1 Establish proper GC operating conditions as described in Section 10.2, and record all data listed in Figure 18–7. Prepare the GC so that gas can be drawn through the sample valve. Flush the sample loop with calibration gas mixture, and activate the valve (sample pressure at the inlet to the GC introduction valve should be similar during calibration as during actual sample analysis). Obtain at least three chromatograms for the mixture. The results are acceptable when the peak areas for the three injections agree to within 5 percent of their average. If they do not agree, run additional samples or correct the analytical techniques until this requirement is met. Then analyze the other two calibration mixtures in the same manner. Prepare a calibration curve as described in Section 10.2.

8.2.1.5.2.2 Analyze the two field audit samples as described in Section 9.2 by connecting each Tedlar bag containing an audit gas mixture to the sampling valve. Calculate the results; record and report the data to the audit supervisor.

8.2.1.5.2.3 Analyze the three source gas samples by connecting each bag to the sampling valve with a piece of Teflon tubing identified with that bag. Analyze each bag sample three times. Record the data in Figure 18–11. If certain items do not apply, use the notation "N.A." If the bag has been maintained at an elevated temperature as described in Section 8.2.1.4, determine the stack gas water content by Method 4. After all samples have been analyzed, repeat the analysis of the mid-level calibration gas for each compound. Compare the average response factor of the pre- and post-test analysis for each compound. If they differ by >5percent, analyze the other calibration gas levels for that compound, and prepare a calibration curve using all the pre- and post-test calibration gas mixture values. If the two response factor averages (pre- and post-test) differ by less than 5 percent from their mean value, the tester has the option of using only the pre-test calibration curve to generate the concentration values.

8.2.1.6 Determination of Bag Water Vapor Content. Measure the ambient temperature and barometric pressure near the bag. From a water saturation vapor pressure table, determine and record the water vapor content of the bag as a decimal figure. (Assume the relative humidity to be 100 percent unless a lesser value is known.) If the bag has been maintained at an elevated temperature as described in Section 8.2.1.4, determine the stack gas water content by Method 4.

8.2.1.7 Audit Gas Analysis. Immediately prior to the analysis of the stack gas samples, perform audit analyses as described in Section 9.2.

8.2.1.8 Emission Calculations. From the calibration curve described in Section 8.2.1.5, select the value of $C_s$ that corresponds to the peak area. Calculate the concentration $C_c$ in ppm, dry basis, of each organic in the sample using Equation 18–5 in Section 12.6.

8.2.2 Direct Interface Sampling and Analysis Procedure. The direct interface procedure can be used provided that the moisture content of the gas does not interfere with the analysis procedure, the physical requirements of the equipment can be met at the site, and the source gas concentration falls within the linear range of the detector. Adhere to all safety requirements with this method.



8.2.2.1 Apparatus.

8.2.2.1.1 Probe. Constructed of stainless steel, Pyrex glass, or Teflon tubing as dictated by duct temperature and reactivity of target compounds. A filter or glass wool plug may be needed if particulate is present in the stack gas. If necessary, heat the probe with heating tape or a special heating unit capable of maintaining a temperature greater than 110 °C.

8.2.2.1.2 Sample Lines. 6.4-mm OD (or other diameter as needed) Teflon lines, heat-traced to prevent condensation of material (greater than 110 °C).

8.2.2.1.3 Quick Connects. To connect sample line to gas sampling valve on GC instrument and to pump unit used to withdraw source gas. Use a quick connect or equivalent on the cylinder or bag containing calibration gas to allow connection of the calibration gas to the gas sampling valve.

8.2.2.1.4 Thermocouple Readout Device. Potentiometer or digital thermometer, to measure source temperature and probe temperature.

8.2.2.1.5 Heated Gas Sampling Valve. Of two-position, six-port design, to allow sample loop to be purged with source gas or to direct source gas into the GC instrument.

8.2.2.1.6 Needle Valve. To control gas sampling rate from the source.

8.2.2.1.7 Pump. Leakless Teflon-coated diaphragm-type pump or equivalent, capable of at least 1 liter/minute sampling rate.

8.2.2.1.8 Flowmeter. Of suitable range to measure sampling rate.

8.2.2.1.9 Charcoal Adsorber. To adsorb organic vapor vented from the source to prevent exposure of personnel to source gas.

8.2.2.1.10 Gas Cylinders. Carrier gas, oxygen and fuel as needed to run GC and detector.

8.2.2.1.11 Gas Chromatograph. Capable of being moved into the field, with detector, heated gas sampling valve, column required to complete separation of desired components, and option for temperature programming.

8.2.2.1.12 Recorder/Integrator. To record results.

8.2.2.2 Procedure. Calibrate the GC using the procedures in Section 8.2.1.5.2.1. To obtain a stack gas sample, assemble the sampling system as shown in Figure 18–12. Make sure all connections are tight. Turn on the probe and sample line heaters. As the temperature of the probe and heated line approaches the target temperature as indicated on the thermocouple readout device, control the heating to maintain a temperature greater than 110 °C. Conduct a 3-point calibration of the GC by analyzing each gas mixture in triplicate. Generate a calibration curve. Place the inlet of the probe at the centroid of the duct, or at a point no closer to the walls than 1 m, and draw source gas into the probe, heated line, and sample loop. After thorough flushing, analyze the stack gas sample using the same conditions as for the calibration gas mixture. For each run, sample, analyze, and record five consecutive samples. A test consists of three runs (five samples per run times three runs, for a total of fifteen samples). After all samples have been analyzed, repeat the analysis of the mid-level calibration gas for each compound. For each calibration standard, compare the pre- and post-test average response factors (RF) for each compound. If the two calibration RF values (pre- and post-analysis) differ by more than 5 percent from their mean value, then analyze the other calibration gas levels for that compound and determine the stack gas sample concentrations by comparison to both calibration curves (this is done by preparing a calibration curve using all the pre and post-test calibration gas mixture values). If the two calibration RF values differ by less than 5 percent from their mean value, the tester has the option of using only the pre-test calibration curve to generate the concentration values. Record this calibration data and the other required data on the data sheet shown in Figure 18–11, deleting the dilution gas information.

Note: Take care to draw all samples, calibration mixtures, and audits through the sample loop at the same pressure.

8.2.2.3 Determination of Stack Gas Moisture Content. Use Method 4 to measure the stack gas moisture content.

8.2.2.4 Quality Assurance. Same as Section 8.2.1.7. Introduce the audit gases in the sample line immediately following the probe.

8.2.2.5 Emission Calculations. Same as Section 8.2.1.8.

8.2.3 Dilution Interface Sampling and Analysis Procedure. Source samples that contain a high concentration of organic materials may require dilution prior to analysis to prevent saturating the GC detector. The apparatus required for this direct interface procedure is basically the same as that described in the Section 8.2.2, except a dilution system is added between the heated sample line and the gas sampling valve. The apparatus is arranged so that either a 10:1 or 100:1 dilution of the source gas can be directed to the chromatograph. A pump of larger capacity is also required, and this pump must be heated and placed in the system between the sample line and the dilution apparatus.

8.2.3.1 Apparatus. The equipment required in addition to that specified for the direct interface system is as follows:

8.2.3.1.1 Sample Pump. Leakless Teflon-coated diaphragm-type that can withstand being heated to 120°C and deliver 1.5 liters/minute.

8.2.3.1.2 Dilution Pumps. Two Model A–150 Komhyr Teflon positive displacement type delivering 150 cc/minute, or equivalent. As an option, calibrated flowmeters can be used in conjunction with Teflon-coated diaphragm pumps.

8.2.3.1.3 Valves. Two Teflon three-way valves, suitable for connecting to Teflon tubing.

8.2.3.1.4 Flowmeters. Two, for measurement of diluent gas.

8.2.3.1.5 Diluent Gas with Cylinders and Regulators. Gas can be nitrogen or clean dry air, depending on the nature of the source gases.

8.2.3.1.6 Heated Box. Suitable for being heated to 120 °C, to contain the three pumps, three-way valves, and associated connections. The box should be equipped with quick connect fittings to facilitate connection of: (1) the heated sample line from the probe, (2) the gas sampling valve, (3) the calibration gas mixtures, and (4) diluent gas lines. A schematic diagram of the components and connections is shown in Figure 18–13. The heated box shown in Figure 18–13 is designed to receive a heated line from the probe. An optional design is to build a probe unit that attaches directly to the heated box. In this way, the heated box contains the controls for the probe heaters, or, if the box is placed against the duct being sampled, it may be possible to eliminate the probe heaters. In either case, a heated Teflon line is used to connect the heated box to the gas sampling valve on the chromatograph.

Note: Care must be taken to leak-check the system prior to the dilutions so as not to create a potentially explosive atmosphere.

8.2.3.2 Procedure.

8.2.3.2.1 Assemble the apparatus by connecting the heated box, shown in Figure 18–13, between the heated sample line from the probe and the gas sampling valve on the chromatograph. Vent the source gas from the gas sampling valve directly to the charcoal filter, eliminating the pump and rotameter. Heat the sample probe, sample line, and heated box. Insert the probe and source thermocouple at the centroid of the duct, or to a point no closer to the walls than 1 m. Measure the source temperature, and adjust all

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heating units to a temperature 0 to 3°C above this temperature. If this temperature is above the safe operating temperature of the Teflon components, adjust the heating to maintain a temperature high enough to prevent condensation of water and organic compounds (greater than 110 °C). Calibrate the GC through the dilution system by following the procedures in Section 8.2.1.5.2.1. Determine the concentration of the diluted calibration gas using the dilution factor and the certified concentration of the calibration gas. Record the pertinent data on the data sheet shown in Figure 18–11.

8.2.3.2.2 Once the dilution system and GC operations are satisfactory, proceed with the analysis of source gas, maintaining the same dilution settings as used for the standards.

8.2.3.2.3 Analyze the audit samples using either the dilution system, or directly connect to the gas sampling valve as required. Record all data and report the results to the audit supervisor.

8.2.3.3 Determination of Stack Gas Moisture Content. Same as Section 8.2.2.3.

8.2.3.4 Quality Assurance. Same as Section 8.2.2.4.

8.2.3.5 Emission Calculations. Same as section 8.2.2.5, with the dilution factor applied.

8.2.4 Adsorption Tube Procedure. Any commercially available adsorbent is allowed for the purposes of this method, as long as the recovery study criteria in Section 8.4.3 are met. Help in choosing the adsorbent may be found by calling the distributor, or the tester may refer to National Institute for Occupational Safety and Health (NIOSH) methods for the particular organics to be sampled. For some adsorbents, the principal interferent will be water vapor. If water vapor is thought to be a problem, the tester may place a midget impinger in an ice bath before the adsorbent tubes. If this option is chosen, the water catch in the midget impinger shall be analyzed for the target compounds. Also, the spike for the recovery study (in Section 8.4.3) shall be conducted in both the midget impinger and the adsorbent tubes. The combined recovery (add the recovered amount in the impinger and the adsorbent tubes to calculate R) shall then meet the criteria in Section 8.4.3.

**Note:** Post-test leak-checks are not allowed for this technique since this can result in sample contamination.

8.2.4.1 Additional Apparatus. The following items (or equivalent) are suggested.

8.2.4.1.1 Probe. Borosilicate glass or stainless steel, approximately 6-mm ID, with a heating system if water condensation is a problem, and a filter (either in-stack or out-of-stack, heated to stack temperature) to remove particulate matter. In most instances, a plug of glass wool is a satisfactory filter.

8.2.4.1.2 Flexible Tubing. To connect probe to adsorption tubes. Use a material that exhibits minimal sample adsorption.

8.2.4.1.3 Leakless Sample Pump. Flow controlled, constant rate pump, with a set of limiting (sonic) orifices.

8.2.4.1.4 Bubble-Tube Flowmeter. Volume accuracy within 1 percent, to calibrate pump.

8.2.4.1.5 Stopwatch. To time sampling and pump rate calibration.

8.2.4.1.6 Adsorption Tubes. Precleaned adsorbent, with mass of adsorbent to be determined by calculating breakthrough volume and expected concentration in the stack.

8.2.4.1.7 Barometer. Accurate to 5 mm Hg, to measure atmospheric pressure during sampling and pump calibration.

8.2.4.1.8 Rotameter. O to 100 cc/min, to detect changes in flow rate during sampling.

8.2.4.2 Sampling and Analysis.

8.2.4.2.1 Calibrate the pump and limiting orifice flow rate through adsorption tubes with the bubble tube flowmeter before sampling. The sample system can be operated as a "recirculating loop" for this operation. Record the ambient temperature and barometric pressure. Then, during sampling, use the rotameter to verify that the pump and orifice sampling rate remains constant.

8.2.4.2.2 Use a sample probe, if required, to obtain the sample at the centroid of the duct, or at a point no closer to the walls than 1 m. Minimize the length of flexible tubing between the probe and adsorption tubes. Several adsorption tubes can be connected in series, if the extra adsorptive capacity is needed. Adsorption tubes should be maintained vertically during the test in order to prevent channeling. Provide the gas sample to the sample system at a pressure sufficient for the limiting orifice to function as a sonic orifice. Record the total time and sample flow rate (or the number of pump strokes), the barometric pressure, and ambient temperature. Obtain a total sample volume commensurate with the expected concentration(s) of the volatile organic(s) present, and recommended sample loading factors (weight sample per weight adsorption media). Laboratory tests prior to actual sampling may be necessary to predetermine this volume. If water vapor is present in the sample at concentrations above 2 to 3 percent, the adsorptive capacity may be severely reduced. Operate the gas chromatograph according to the manufacturer's instructions. After establishing optimum conditions, verify and document these conditions during all operations. Calibrate the instrument. Analyze the audit samples (see Section 16.1.4.3), then the emission samples.

8.2.4.3 Standards and Calibration. If using thermal desorption, obtain calibration gases using the procedures in Section 10.1. If using solvent extraction, prepare liquid standards in the desorption solvent. Use a minimum of three different standards; select the concentrations to bracket the expected average sample concentration. Perform the calibration before and after each day's sample analyses using the procedures in Section 8.2.1.5.2.1.

8.2.4.4 Quality Assurance.

8.2.4.4.1 Determine the recovery efficiency of the pollutants of interest according to Section 8.4.3.

8.2.4.4.2 Determination of Sample Collection Efficiency (Optional). If sample breakthrough is thought to be a problem, a routine procedure for determining breakthrough is to analyze the primary and backup portions of the adsorption tubes separately. If the backup portion exceeds 10 percent of the total amount (primary and back-up), it is usually a sign of sample breakthrough. For the purposes of this method, only the recovery efficiency value (Section 8.4.3) is used to determine the appropriateness of the sampling and analytical procedure.

8.2.4.4.3 Volume Flow Rate Checks. Perform this check immediately after sampling with all sampling train components in place. Use the bubble-tube flowmeter to measure the pump volume flow rate with the orifice used in the test sampling, and record the result. If it has changed by more than 5 but less than 20 percent, calculate an average flow rate for the test. If the flow rate has changed by more than 20 percent, recalibrate the pump and repeat the sampling.

8.2.4.4.4 Calculations. Correct all sample volumes to standard conditions. If a sample dilution system has been used, multiply the results by the appropriate dilution ratio. Correct all results according to the applicable procedure in Section 8.4.3. Report results as ppm by volume, dry basis.

8.3 Reporting of Results. At the completion of the field analysis portion of the study, ensure that the data sheets shown in Figure 18–11 have been completed. Summarize this data on the data sheets shown in Figure 18–15.

8.4 Recovery Study. After conducting the presurvey and identifying all of the pollutants of interest, conduct the appropriate recovery study during the test based on the sampling system chosen for the compounds of interest.

8.4.1 Recovery Study for Direct Interface or Dilution Interface Sampling. If the procedures in Section 8.2.2 or 8.2.3 are to be used to analyze the stack gas, conduct the calibration procedure as stated in Section 8.2.2.2 or 8.2.3.2, as appropriate. Upon successful completion of the appropriate calibration procedure, attach the mid-level calibration gas for at least one target compound to the inlet of the probe or as close as possible to the inlet of the probe, but before the filter. Repeat the calibration procedure by sampling and analyzing the mid-level calibration gas through the entire sampling and analytical system in triplicate. The mean of the calibration gas response sampled through the probe shall be within 10 percent of the analyzer response. If the difference in the two means is greater than 10 percent, check for leaks throughout the sampling system and repeat the analysis of the standard through the sampling system until this criterion is met.

8.4.2 Recovery Study for Bag Sampling.

8.4.2.1 Follow the procedures for the bag sampling and analysis in Section 8.2.1. After analyzing all three bag samples, choose one of the bag samples and tag this bag as the spiked bag. Spike the chosen bag sample with a known mixture (gaseous or liquid) of all of the target pollutants. The theoretical concentration, in ppm, of each spiked compound in the bag shall be 40 to 60 percent of the average concentration measured in the three bag samples. If a target compound was not detected in the bag samples, the concentration of that compound to be spiked shall be 5 times the limit of detection for that compound. Store the spiked bag for the same period of time as the bag samples collected in the field. After the appropriate storage time has passed, analyze the spiked bag three times. Calculate the average fraction recovered (R) of each spiked target compound with the equation in Section 12.7.

8.4.2.2 For the bag sampling technique to be considered valid for a compound, $0.70 \leq R \leq 1.30$. If the R value does not meet this criterion for a target compound, the sampling technique is not acceptable for that compound, and therefore another sampling technique shall be evaluated for acceptance (by repeating the recovery study with another sampling technique). Report the R value in the test report and correct all field measurements with the calculated R value for that compound by using the equation in Section 12.8.

8.4.3 Recovery Study for Adsorption Tube Sampling. If following the adsorption tube procedure in Section 8.2.4, conduct a recovery study of the compounds of interest during the actual field test. Set up two identical sampling trains. Collocate the two sampling probes in the stack. The probes shall be placed in the same horizontal plane, where the first probe tip is 2.5 cm from the outside edge of the other. One of the sampling trains shall be designated the spiked train and the other the unspiked train. Spike all of the compounds of interest (in gaseous or liquid form) onto the adsorbent tube(s) in the spiked train before sampling. The mass of each spiked compound shall be 40 to 60 percent of the mass expected to be collected with the unspiked train. Sample the stack gas into the two trains simultaneously. Analyze the adsorbents from the two trains utilizing identical analytical procedures and instrumentation. Determine the fraction of spiked compound recovered (R) using the equations in Section 12.9.

8.4.3.1 Repeat the procedure in Section 8.4.3 twice more, for a total of three runs. In order for the adsorbent tube sampling and analytical procedure to be acceptable for a compound, $0.70 \leq R \leq 1.30$ (R in this case is the average of three runs). If the average R value does not meet this criterion for a target compound, the sampling technique is not acceptable for that compound, and therefore another sampling technique shall be evaluated for acceptance (by repeating the recovery study with another sampling technique). Report the R value in the test report and correct all field measurements with the calculated R value for that compound by using the equation in Section 12.8.

*9.0 Quality Control*

9.1 Miscellaneous Quality Control Measures

| Section | Quality control measure | Effect |
|---|---|---|
| 8.4.1 | Recovery study for direct interface or dilution interface sampling. | Ensure that there are no significant leaks in the sampling system. |
| 8.4.2 | Recovery study for bag sampling | Demonstrate that proper sampling/analysis procedures were selected. |
| 8.4.3 | Recovery study for adsorption tube sampling | Demonstrate that proper sampling/analysis procedures were selected. |

9.2 Quality Assurance for Laboratory Procedures. Immediately after the preparation of the calibration curves, the analysis audit described in 40 CFR Part 61, Appendix C, Procedure 2: "Procedure for Field Auditing GC Analysis," should be performed if audit materials are available. The information required to document the analysis of the audit samples has been included on the example data sheets shown in Figures 18–3 and 18–7. The audit analyses should agree with the certified audit concentrations within 10 percent. Audit sample results shall be submitted according to directions provided with the audit samples.

*10.0 Calibration and Standardization.*

10.1 Calibration Standards. Obtain calibration gas standards for each target compound to be analyzed. Commercial cylinder gases certified by the manufacturer to be accurate to within 1 percent of the certified label value are preferable, although cylinder gases certified by the manufacturer to 2 percent accuracy are allowed. Another option allowed by this method is for the tester to obtain high concentration certified cylinder gases and then use a dilution system meeting the requirements of Test Method 205, 40 CFR Part 51, Appendix M to make multi-level calibration gas standards. Prepare or obtain enough calibration standards so that there are three different concentrations of each organic compound expected to be measured in the source sample. For each organic compound, select those concentrations that bracket the concentrations expected in the source samples. A calibration standard may contain more than one organic compound. If samples are collected in adsorbent tubes and extracted using solvent extraction, prepare or obtain standards in the same solvent used for the sample extraction procedure. Verify the stability of all

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standards for the time periods they are used.

10.2 Preparation of Calibration Curves.

10.2.1 Establish proper GC conditions, then flush the sampling loop for 30 seconds. Allow the sample loop pressure to equilibrate to atmospheric pressure, and activate the injection valve. Record the standard concentration, attenuator factor, injection time, chart speed, retention time, peak area, sample loop temperature, column temperature, and carrier gas flow rate. Analyze each standard in triplicate.

10.2.2 Repeat this procedure for each standard. Prepare a graphical plot of concentration ($C_s$) versus the calibration area values. Perform a regression analysis, and draw the least square line.

*11.0 Analytical Procedures*

11.1 Analysis Development

11.1.1 Selection of GC Parameters

11.1.1.1 Column Choice. Based on the initial contact with plant personnel concerning the plant process and the anticipated emissions, choose a column that provides good resolution and rapid analysis time. The choice of an appropriate column can be aided by a literature search, contact with manufacturers of GC columns, and discussion with personnel at the emission source.

**Note:** Most column manufacturers keep excellent records on their products. Their technical service departments may be able to recommend appropriate columns and detector type for separating the anticipated compounds, and they may be able to provide information on interferences, optimum operating conditions, and column limitations. Plants with analytical laboratories may be able to provide information on their analytical procedures.

11.1.1.2 Preliminary GC Adjustment. Using the standards and column obtained in Section 11.1.1.1, perform initial tests to determine appropriate GC conditions that provide good resolution and minimum analysis time for the compounds of interest.

11.1.1.3 Preparation of Presurvey Samples. If the samples were collected on an adsorbent, extract the sample as recommended by the manufacturer for removal of the compounds with a solvent suitable to the type of GC analysis. Prepare other samples in an appropriate manner.

11.1.1.4 Presurvey Sample Analysis.

11.1.1.4.1 Before analysis, heat the presurvey sample to the duct temperature to vaporize any condensed material. Analyze the samples by the GC procedure, and compare the retention times against those of the calibration samples that contain the components expected to be in the stream. If any compounds cannot be identified with certainty by this procedure, identify them by other means such as GC/mass spectroscopy (GC/MS) or GC/infrared techniques. A GC/MS system is recommended.

11.1.1.4.2 Use the GC conditions determined by the procedure of Section 11.1.1.2 for the first injection. Vary the GC parameters during subsequent injections to determine the optimum settings. Once the optimum settings have been determined, perform repeat injections of the sample to determine the retention time of each compound. To inject a sample, draw sample through the loop at a constant rate (100 ml/min for 30 seconds). Be careful not to pressurize the gas in the loop. Turn off the pump and allow the gas in the sample loop to come to ambient pressure. Activate the sample valve, and record injection time, loop temperature, column temperature, carrier flow rate, chart speed, and attenuator setting. Calculate the retention time of each peak using the distance from injection to the peak maximum divided by the chart speed. Retention times should be repeatable within 0.5 seconds.

11.1.1.4.3 If the concentrations are too high for appropriate detector response, a smaller sample loop or dilutions may be used for gas samples, and, for liquid samples, dilution with solvent is appropriate. Use the standard curves (Section 10.2) to obtain an estimate of the concentrations.

11.1.1.4.4 Identify all peaks by comparing the known retention times of compounds expected to be in the retention times of peaks in the sample. Identify any remaining unidentified peaks which have areas larger than 5 percent of the total using a GC/MS, or estimation of possible compounds by their retention times compared to known compounds, with confirmation by further GC analysis.

*12.0 Data Analysis and Calculations*

12.1 Nomenclature.

$B_{ws}$ = Water vapor content of the bag sample or stack gas, proportion by volume.

$C_s$ = Concentration of the organic from the calibration curve, ppm.

$G_v$ = Gas volume or organic compound injected, ml.

$L_v$ = Liquid volume of organic injected, µl.

M = Molecular weight of organic, g/g-mole.

$m_s$ = Total mass of compound measured on adsorbent with spiked train (µg).

$m_u$ = Total mass of compound measured on adsorbent with unspiked train (µg).

$m_v$ = Mass per volume of spiked compound measured (µg/L).

$P_i$ = Barometric or absolute sample loop pressure at time of sample analysis, mm Hg.

$P_m$ = Absolute pressure of dry gas meter, mm Hg.

$P_r$ = Reference pressure, the barometric pressure or absolute sample loop pressure recorded during calibration, mm Hg.

$P_s$ = Absolute pressure of syringe before injection, mm Hg.

$q_c$ = Flow rate of the calibration gas to be diluted.

$q_{c1}$ = Flow rate of the calibration gas to be diluted in stage 1.

$q_{c2}$ = Flow rate of the calibration gas to be diluted in stage 2.

$q_d$ = Diluent gas flow rate.

$q_{d1}$ = Flow rate of diluent gas in stage 1.

$q_{d2}$ = Flow rate of diluent gas in stage 2.

s = Theoretical concentration (ppm) of spiked target compound in the bag.

S = Theoretical mass of compound spiked onto adsorbent in spiked train (µg).

t = Measured average concentration (ppm) of target compound and source sample (analysis results subsequent to bag spiking)

$T_i$ = Sample loop temperature at the time of sample analysis, °K.

$T_m$ = Absolute temperature of dry gas meter, °K.

$T_s$ = Absolute temperature of syringe before injection, °K.

u = Source sample average concentration (ppm) of target compound in the bag (analysis results before bag spiking).

$V_m$ = Gas volume indicated by dry gas meter, liters.

$v_s$ = volume of stack gas sampled with spiked train (L).

$v_u$ = volume of stack gas sampled with unspiked train (L).

X = Mole or volume fraction of the organic in the calibration gas to be diluted.

Y = Dry gas meter calibration factor, dimensionless.

µl = Liquid organic density as determined, g/ml.

24.055 = Ideal gas molar volume at 293 °K and 760 mm Hg, liters/g-mole.

1000 = Conversion factor, ml/liter.

$10^6$ = Conversion to ppm.

12.2 Calculate the concentration, $C_s$, in ppm using the following equation:

$$C_s = \frac{10^6(\overline{X}q_c)}{q_c + q_d} \qquad \text{Eq. 18-1}$$



12.3 Calculate the concentration, $C_s$, in ppm of the organic in the final gas mixture using the following equation:

$$C_s = 10^6\overline{X}\left(\frac{q_{c1}}{q_{c1}+q_{d1}}\right)\left(\frac{q_{c2}}{q_{c2}+q_{d2}}\right) \qquad \text{Eq. 18-2}$$

12.4 Calculate each organic standard concentration, $C_s$, in ppm using the following equation:

$$C_s = \frac{G_v \times 10^6 \frac{293}{T_s}\frac{P_s}{760}}{V_m Y \frac{293}{T_m}\frac{P_m}{760}1000} \qquad \text{Eq. 18-3}$$

$$= \frac{G_v \times 10^3 \frac{P_s}{T_s}\frac{T_m}{P_m}}{V_m Y}$$

12.5 Calculate each organic standard concentration, $C_s$, in ppm using the following equation:

$$C_s = \frac{\frac{L_v}{M}\rho\left(24.055\times10^6\right)}{V_m Y \frac{293}{T_m}\frac{P_m}{760}1000} = 6.24\times10^4\frac{L_v\rho T_m}{MV_m Y P_m} \qquad \text{Eq. 18-4}$$

12.6 Calculate the concentration, $C_c$, in ppm, dry basis, of each organic is the sample using the following equation:

$$C_c = \frac{C_s P_r T_i F_r}{P_i T_r (1 - B_{ws})} \qquad \text{Eq. 18-5}$$

12.7 Calculate the average fraction recovered (R) of each spiked target compound using the following equation:

$$R = \frac{t-u}{s} \qquad \text{Eq. 18-6}$$

12.8 Correct all field measurements with the calculated R value for that compound using the following equation:

$$\text{Reported Result} = \frac{\text{Measured Concentration (ppm)}}{R} \qquad \text{Eq. 18-7}$$

12.9 Determine the mass per volume of spiked compound measured using the following equation:

$$m_v = \frac{m_s}{V_s} - \frac{m_u}{V_u} \qquad \text{Eq. 18-8}$$

12.10 Calculate the fraction of spiked compound recovered, R, using the following equation:

$$R = \frac{m_v \times v_s}{S} \qquad \text{Eq. 18-9}$$

*13.0 Method Performance*

13.1 Since a potential sample may contain a variety of compounds from various sources, a specific precision limit for the analysis of field samples is impractical. Precision in the range of 5 to 10 percent relative standard deviation (RSD) is typical for gas chromatographic techniques, but an experienced GC operator with a reliable instrument can readily achieve 5 percent RSD. For this method, the following combined GC/operator values are required.

(a) Precision. Triplicate analyses of calibration standards fall within 5 percent of their mean value.

(b) Accuracy. Analysis results of prepared audit samples are within 10 percent of preparation values.

(c) Recovery. After developing an appropriate sampling and analytical system for the pollutants of interest, conduct the procedure in Section 8.4. Conduct the appropriate recovery study in Section 8.4 at each sampling point where the method is being applied. Submit the data and results of the recovery procedure with the reporting of results under Section 8.3.

*14.0 Pollution Prevention. [Reserved]*

*15.0 Waste Management. [Reserved]*

*16.0 Alternative Procedures*

16.1 Optional Presurvey and Presurvey Sampling.

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Note: Presurvey screening is optional. Presurvey sampling should be conducted for sources where the target pollutants are not known from previous tests and/or process knowledge.

Perform a presurvey for each source to be tested. Refer to Figure 18–1. Some of the information can be collected from literature surveys and source personnel. Collect gas samples that can be analyzed to confirm the identities and approximate concentrations of the organic emissions.

16.1.1 Apparatus. This apparatus list also applies to Sections 8.2 and 11.

16.1.1.1 Teflon Tubing. (Mention of trade names or specific products does not constitute endorsement by the U.S. Environmental Protection Agency.) Diameter and length determined by connection requirements of cylinder regulators and the GC. Additional tubing is necessary to connect the GC sample loop to the sample.

16.1.1.2 Gas Chromatograph. GC with suitable detector, columns, temperature-controlled sample loop and valve assembly, and temperature programmable oven, if necessary. The GC shall achieve sensitivity requirements for the compounds under study.

16.1.1.3 Pump. Capable of pumping 100 ml/min. For flushing sample loop.

16.1.1.4 Flow Meter. To measure flow rates.

16.1.1.5 Regulators. Used on gas cylinders for GC and for cylinder standards.

16.1.1.6 Recorder. Recorder with linear strip chart is minimum acceptable. Integrator (optional) is recommended.

16.1.1.7 Syringes. 0.5-ml, 1.0- and 10-microliter size, calibrated, maximum accuracy (gas tight) for preparing calibration standards. Other appropriate sizes can be used.

16.1.1.8 Tubing Fittings. To plumb GC and gas cylinders.

16.1.1.9 Septa. For syringe injections.

16.1.1.10 Glass Jars. If necessary, clean, colored glass jars with Teflon-lined lids for condensate sample collection. Size depends on volume of condensate.

16.1.1.11 Soap Film Flowmeter. To determine flow rates.

16.1.1.12 Tedlar Bags. 10- and 50-liter capacity, for preparation of standards.

16.1.1.13 Dry Gas Meter with Temperature and Pressure Gauges. Accurate to ±2 percent, for preparation of gas standards.

16.1.1.14 Midget Impinger/Hot Plate Assembly. For preparation of gas standards.

16.1.1.15 Sample Flasks. For presurvey samples, must have gas-tight seals.

16.1.1.16 Adsorption Tubes. If necessary, blank tubes filled with necessary adsorbent (charcoal, Tenax, XAD–2, etc.) for presurvey samples.

16.1.1.17 Personnel Sampling Pump. Calibrated, for collecting adsorbent tube presurvey samples.

16.1.1.18 Dilution System. Calibrated, the dilution system is to be constructed following the specifications of an acceptable method.

16.1.1.19 Sample Probes. Pyrex or stainless steel, of sufficient length to reach centroid of stack, or a point no closer to the walls than 1 m.

16.1.1.20 Barometer. To measure barometric pressure.

16.1.2 Reagents.

16.1.2.1 Water. Deionized distilled.

16.1.2.2 Methylene chloride.

16.1.2.3 Calibration Gases. A series of standards prepared for every compound of interest.

16.1.2.4 Organic Compound Solutions. Pure (99.9 percent), or as pure as can reasonably be obtained, liquid samples of all the organic compounds needed to prepare calibration standards.

16.1.2.5 Extraction Solvents. For extraction of adsorbent tube samples in preparation for analysis.

16.1.2.6 Fuel. As recommended by the manufacturer for operation of the GC.

16.1.2.7 Carrier Gas. Hydrocarbon free, as recommended by the manufacturer for operation of the detector and compatibility with the column.

16.1.2.8 Zero Gas. Hydrocarbon free air or nitrogen, to be used for dilutions, blank preparation, and standard preparation.

16.1.3 Sampling.

16.1.3.1 Collection of Samples with Glass Sampling Flasks. Presurvey samples may be collected in precleaned 250-ml double-ended glass sampling flasks. Teflon stopcocks, without grease, are preferred. Flasks should be cleaned as follows: Remove the stopcocks from both ends of the flasks, and wipe the parts to remove any grease. Clean the stopcocks, barrels, and receivers with methylene chloride (or other non-target pollutant solvent, or heat and humidified air). Clean all glass ports with a soap solution, then rinse with tap and deionized distilled water. Place the flask in a cool glass annealing furnace, and apply heat up to 500 °C. Maintain at this temperature for 1 hour. After this time period, shut off and open the furnace to allow the flask to cool. Return the stopcocks to the flask receivers. Purge the assembly with high-purity nitrogen for 2 to 5 minutes. Close off the stopcocks after purging to maintain a slight positive nitrogen pressure. Secure the stopcocks with tape. Presurvey samples can be obtained either by drawing the gases into the previously evacuated flask or by drawing the gases into and purging the flask with a rubber suction bulb.

16.1.3.1.1 Evacuated Flask Procedure. Use a high-vacuum pump to evacuate the flask to the capacity of the pump; then close off the stopcock leading to the pump. Attach a 6-mm outside diameter (OD) glass tee to the flask inlet with a short piece of Teflon tubing. Select a 6-mm OD borosilicate sampling probe, enlarged at one end to a 12-mm OD and of sufficient length to reach the centroid of the duct to be sampled. Insert a glass wool plug in the enlarged end of the probe to remove particulate matter. Attach the other end of the probe to the tee with a short piece of Teflon tubing. Connect a rubber suction bulb to the third leg of the tee. Place the filter end of the probe at the centroid of the duct, and purge the probe with the rubber suction bulb. After the probe is completely purged and filled with duct gases, open the stopcock to the grab flask until the pressure in the flask reaches duct pressure. Close off the stopcock, and remove the probe from the duct. Remove the tee from the flask and tape the stopcocks to prevent leaks during shipment. Measure and record the duct temperature and pressure.

16.1.3.1.2 Purged Flask Procedure. Attach one end of the sampling flask to a rubber suction bulb. Attach the other end to a 6-mm OD glass probe as described in Section 8.3.3.1.1. Place the filter end of the probe at the centroid of the duct, or at a point no closer to the walls than 1 m, and apply suction with the bulb to completely purge the probe and flask. After the flask has been purged, close off the stopcock near the suction bulb, and then close off the stopcock near the probe. Remove the probe from the duct, and disconnect both the probe and suction bulb. Tape the stopcocks to prevent leakage during shipment. Measure and record the duct temperature and pressure.

16.1.3.2 Flexible Bag Procedure. Tedlar or aluminized Mylar bags can also be used to obtain the presurvey sample. Use new bags, and leak-check them before field use. In addition, check the bag before use for contamination by filling it with nitrogen or air, and analyzing the gas by GC at high sensitivity. Experience indicates that it is desirable to allow the inert gas to remain in the bag about 24 hours or longer to check for desorption of organics from the bag. Follow the leak-check and sample collection procedures given in Section 8.2.1.



16.1.3.3 Determination of Moisture Content. For combustion or water-controlled processes, obtain the moisture content from plant personnel or by measurement during the presurvey. If the source is below 59°C, measure the wet bulb and dry bulb temperatures, and calculate the moisture content using a psychrometric chart. At higher temperatures, use Method 4 to determine the moisture content.

16.1.4 Determination of Static Pressure. Obtain the static pressure from the plant personnel or measurement. If a type S pitot tube and an inclined manometer are used, take care to align the pitot tube 90° from the direction of the flow. Disconnect one of the tubes to the manometer, and read the static pressure; note whether the reading is positive or negative.

16.1.5 Collection of Presurvey Samples with Adsorption Tube. Follow Section 8.2.4 for presurvey sampling.

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*18.0 Tables, Diagrams, Flowcharts, and Validation Data*

I. Name of company _____
Date _____
Address _____
_____
Contracts _____
Phone _____
Process to be sampled _____
_____
_____
Duct or vent to be sampled _____
_____
II. Process description _____
_____
_____
_____
_____
Raw material _____
_____
_____
Products _____
_____
_____
Operating cycle
Check: Batch _____ Continuous _____ Cyclic _____
Timing of batch or cycle _____

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Best time to test _____
III. Sampling site _____
A. Description _____
Site decription _____
Duct shape and size _____
Material _____
Wall thickness _____ inches
Upstream distance _____ inches _____ diameter
Downstream distance _____ inches _____ diameter
Size of port _____
Size of access area _____
Hazards _____ Ambient temp. _____ °F

B. Properties of gas stream
Temperature _____ °C _____ °F, Data source _____
Velocity _____, Data source _____
Static pressure _____ inches $H_2O$, Data source _____
Moisture content _____%, Data source _____
Particulate content _____, Data source_____

Gaseous components
$N_2$ _____ % Hydrocarbons _____ ppm
$O_2$ _____% _____
CO _____ % _____ _____
$CO_2$ _____ % _____ _____
$SO_2$ _____ % _____ _____

Hydrocarbon components
_____ _____ ppm
_____ _____ ppm
_____ _____ ppm
_____ _____ ppm
_____ _____ ppm
_____ _____ ppm

C. Sampling considerations
Location to set up GC _____
Special hazards to be considered _____
Power available at duct _____
Power available for GC _____
Plant safety requirements _____
Vehicle traffic rules _____
Plant entry requirements _____
Security agreements _____
Potential problems _____

D. Site diagrams. (Attach additional sheets if required).

Figure 18–1. Preliminary Survey Data Sheet

*Components to be analyzed and Expected concentration*

Suggested chromatographic column _____
Column flow rate __ ml/min
Head pressure _____ mm Hg
Column temperature: Isothermal _____ °C, Programmed from _____ °C to _____ °C at _____ °C/min
Injection port/sample loop temperature _____ °C
Detector temperature _____ °C
Detector flow rates: Hydrogen _____ ml/min., head pressure _____ mm Hg, Air/Oxygen _____ ml/min., head pressure _____ mm Hg.
Chart speed _____ inches/minute



Compound data:
Compound and Retention time and Attenuation

Figure 18–2. Chromatographic Conditions Data Sheet

FIGURE 18–3. PREPARATION OF STANDARDS IN TEDLAR BAGS AND CALIBRATION CURVE

| | Standards | | |
|---|---|---|---|
| | Mixture #1 | Mixture #2 | Mixture #3 |
| Standards Preparation Data: | | | |
| Organic: | | | |
| Bag number or identification | | | |
| Dry gas meter calibration factor | | | |
| Final meter reading (liters) | | | |
| Initial meter reading (liters) | | | |
| Metered volume (liters) | | | |
| Average meter temperature (°K) | | | |
| Average meter pressure, gauge (mm Hg) | | | |
| Average atmospheric perssure (mm Hg) | | | |
| Average meter pressure, absolute (mm Hg) | | | |
| Syringe temperature (°K) (see Section 10.1.2.1) | | | |
| Syringe pressure, absolute (mm Hg) (see Section 10.1.2.1) | | | |
| Volume of gas in syringe (ml) (Section 10.1.2.1) | | | |
| Density of liquid organic (g/ml) (Section 10.1.2.1) | | | |
| Volume of liquid in syringe (ml) (Section 10.1.2.1) | | | |
| GC Operating Conditions: | | | |
| Sample loop volume (ml) | | | |
| Sample loop temperature (°C) | | | |
| Carrier gas flow rate (ml/min) | | | |
| Column temperature: | | | |
| Initial (°C) | | | |
| Rate change (°C/min) | | | |
| Final (°C) | | | |
| Organic Peak Identification and Calculated Concentrations: | | | |
| Injection time (24 hour clock) | | | |
| Distance to peak (cm) | | | |
| Chart speed (cm/min) | | | |
| Organic retention time (min) | | | |
| Attenuation factor | | | |
| Peak height (mm) | | | |
| Peak area ($mm_2$) | | | |
| Peak area * attenuation factor ($mm_2$) | | | |
| Calculated concentration (ppm) (Equation 18–3 or 18–4) | | | |

Plot peak area * attenuation factor against calculated concentration to obtain calibration curve.

Flowmeter number or identification _____
Flowmeter Type _____
Method: Bubble meter____ Spirometer____ Wet test meter ____
Readings at laboratory conditions:
Laboratory temperature ($T_{lab}$) ____ °K
Laboratory barometric pressure ($P_{lab}$)____ mm Hg
Flow data:

FLOWMETER

| Reading (as marked) | Temp. (°K) | Pressure (absolute) |
|---|---|---|
| | | |
| | | |
| | | |
| | | |
| | | |

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CALIBRATION DEVICE

| Time (min) | Gas volume [a] | Flow rate [b] |
|---|---|---|
| | | |
| | | |
| | | |
| | | |
| | | |

[a] Vol. of gas may be measured in milliliters, liters or cubic feet.

[b] Convert to standard conditions (20 °C and 760 mm Hg). Plot flowmeter reading against flow rate (standard conditions), and draw a smooth curve. If the flowmeter being calibrated is a rotameter or other flow device that is viscosity dependent, it may be necessary to generate a "family" of calibration curves that cover the operating pressure and temperature ranges of the flowmeter. While the following technique should be verified before application, it may be possible to calculate flow rate reading for rotameters at standard conditions $Q_{std}$ as follows:

$$Q_{std} = Q_{lab}\left(\frac{760 \times T_{lab}}{P_{lab} \times 293}\right)^{1/2}$$

| Flow rate (laboratory conditions) | Flow rate (STD conditions) |
|---|---|
| | |
| | |
| | |
| | |
| | |

Figure 18–4. Flowmeter Calibration

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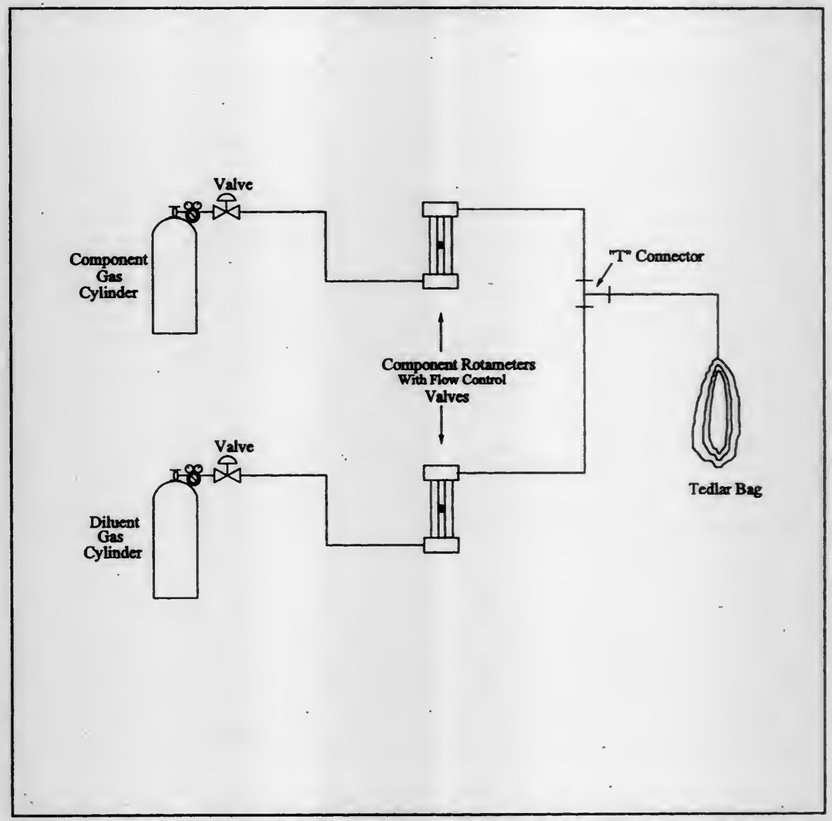



Figure 18-5. Single-Stage Calibration Gas Dilution System.

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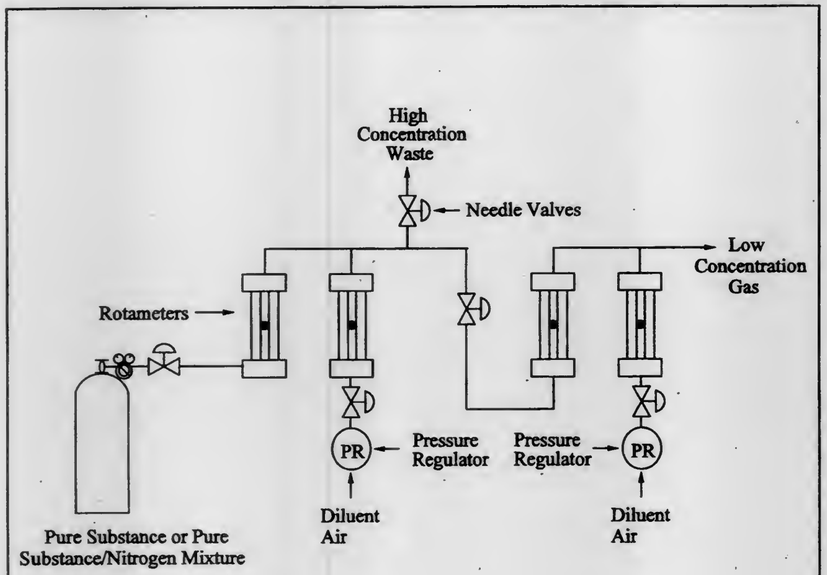



**Figure 18-6. Two-Stage Dilution Apparatus.**

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PREPARATION OF STANDARDS BY DILUTION OF CYLINDER STANDARD

[Cylinder Standard: Organic ——— Certified Concentration ——— ppm]

| Standards preparation data: | Date: | | |
|---|---|---|---|
| | Mixture 1 | Mixture 2 | Mixture 3 |
| Stage 1: | | | |
| Standard gas flowmeter reading. | | | |
| Diluent gas flowmeter reading | | | |
| Laboratory temperature (°K) | | | |
| Barometric pressure (mm Hg) | | | |
| Flowmeter gage pressure (mm Hg) | | | |
| Flow rate cylinder gas at standard conditions (ml/min) | | | |
| Flow rate diluent gas at standard conditions (ml/min) | | | |
| Calculated concentration (ppm) | | | |
| Stage 2 (if used): | | | |
| Standard gas flowmeter reading | | | |
| Diluent gas flowmeter reading | | | |
| Flow rate Stage 1 gas at standard conditions (ml/min) | | | |
| Flow rate diluent gas at standard conditions | | | |



PREPARATION OF STANDARDS BY DILUTION OF CYLINDER STANDARD—Continued

[Cylinder Standard: Organic ——— Certified Concentration ——— ppm]

| Standards preparation data: | Date: | | |
|---|---|---|---|
| | Mixture 1 | Mixture 2 | Mixture 3 |
| Calculated concentration (ppm) | | | |
| GC Operating Conditions: | | | |
| Sample loop volume (ml) | | | |
| Sample loop temperature (°C) | | | |
| Carrier gas flow rate (ml/min) | | | |
| Column temperature: | | | |
| Initial (°C) | | | |
| Program rate (°C/min) | | | |
| Final (°C) | | | |
| Organic Peak Identification and Calculated Concentrations: | | | |
| Injection time (24-hour clock) | | | |
| Distance to peak (cm) | | | |
| Chart speed (cm/min) | | | |
| Retention time (min) | | | |
| Attenuation factor | | | |
| Peak area ($mm^2$) | | | |
| Peak area *attenuation factor | | | |

Plot peak area *attenuation factor against calculated concentration to obtain calibration curve.

Figure 18–7. Standards Prepared by Dilution of Cylinder Standard

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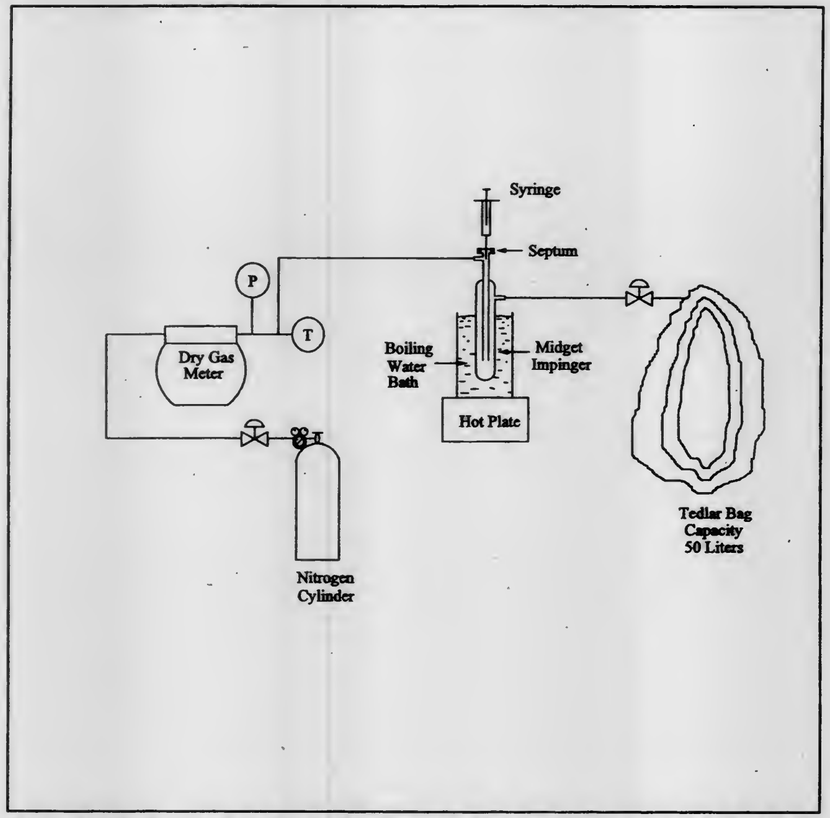



Figure 18-8. Apparatus for Preparation of Liquid Materials.



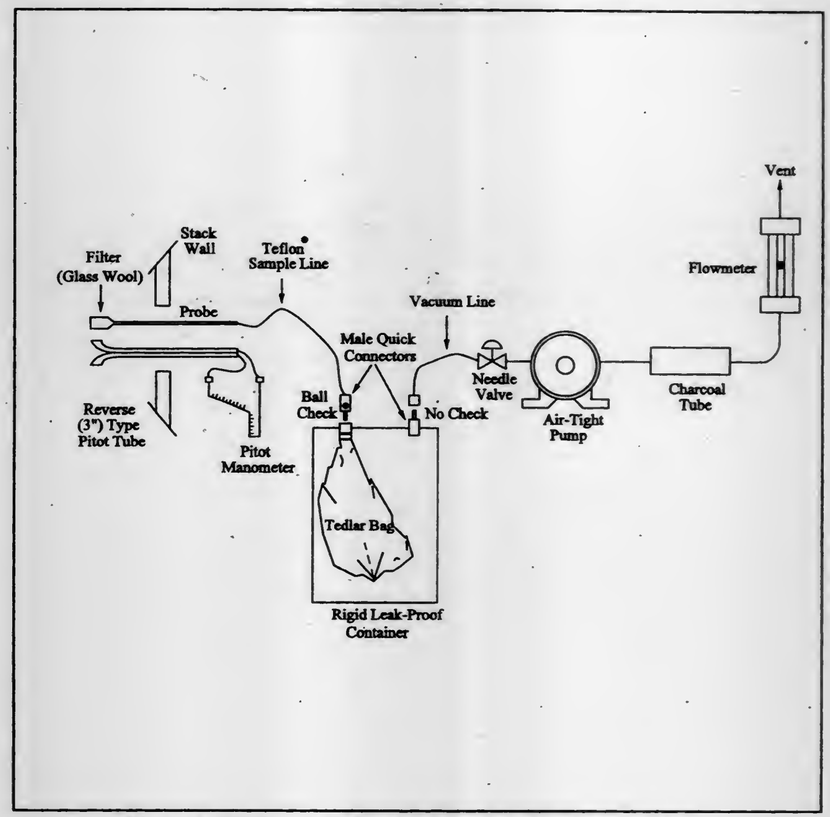



Figure 18-9. Integrated Bag Sampling Train.

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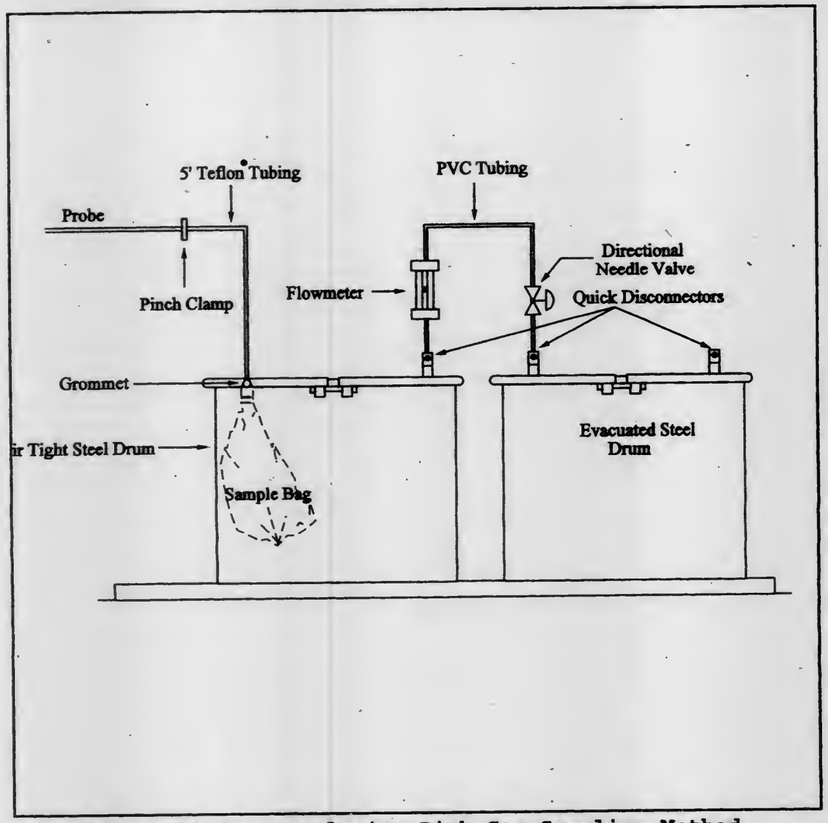



Figure 18-9a. Explosion Risk Gas Sampling Method.

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PLANT_____ DATE_____ SITE_____

| | Sample 1 | Sample 2 | Sample 3 |
|---|---|---|---|
| Source temperature (°C) | | | |
| Barometric pressure (mm Hg) | | | |
| Ambient temperature (°C) | | | |
| Sample flow rate (appr.) | | | |
| Bag number | | | |
| Start time | | | |
| Finish time | | | |

Figure 18–10. Field Sample Data Sheet—Tedlar Bag Collection Method

PLANT_____ DATE_____ LOCATION_____

1. General information:
   - Source temperature (°C) .....
   - Probe temperature (°C) .....
   - Ambient temperature (°C) .....
   - Atmospheric pressure (mm) .....



PLANT ——— DATE ——— LOCATION ———Continued

- Source pressure ("Hg) .....
- Absolute source pressure (mm) .....
- Sampling rate (liter/min) .....
- Sample loop volume (ml) .....
- Sample loop temperature (°C) .....
- Columnar temperature:
  - Initial (°C) time (min) .....
  - Program rate (°C/min) .....
  - Final (°C)/time (min) .....
- Carrier gas flow rate (ml/min) .....
- Detector temperature (°C) .....
- Injection time (24-hour basis) .....
- Chart Speed (mm/min) .....
- Dilution gas flow rate (ml/min) .....
- Dilution gas used (symbol) .....
- Dilution ratio .....

2. FIELD ANALYSIS DATA—CALIBRATION GAS

2. [Run No._____ Time_____]

| Components | Area | Attenuation | A x A Factor | Conc.__ (ppm) |
|---|---|---|---|---|
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
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Figure 18–11. Field Analysis Data Sheets

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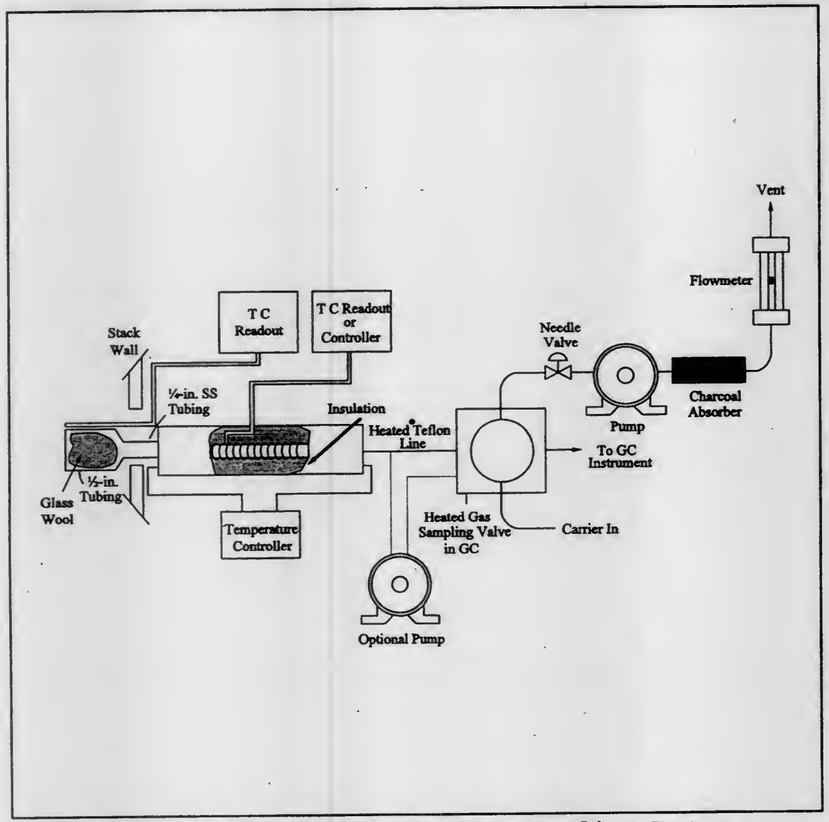



Figure 18-12. Direct Interface Sampling System.



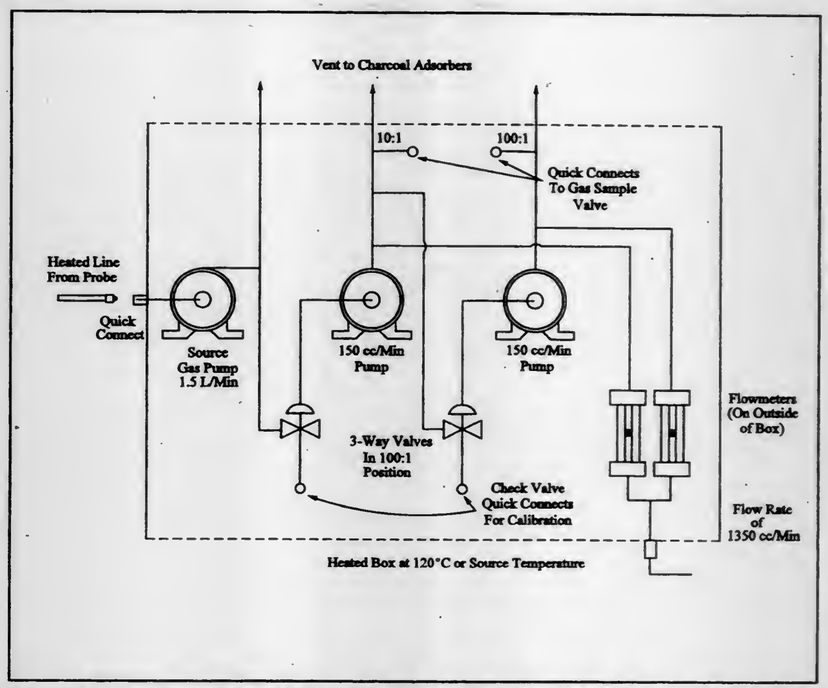



Figure 18-13. Schematic Diagram of the Heated Box Required for Dilution of Sample Gas.

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GASEOUS ORGANIC SAMPLING AND ANALYSIS CHECK LIST

[Respond with initials or number as appropriate]

| | | |
|---|---|---|
| 1. Presurvey data: | | |
| A. Grab sample collected | ☐ | ____ |
| B. Grab sample analyzed for composition | ☐ | ____ |
| Method GC | ☐ | ____ |
| GC/MS | ☐ | ____ |
| Other | ☐ | ____ |
| C. GC–FID analysis performed | ☐ | ____ |
| 2. Laboratory calibration data: | | |
| A. Calibration curves prepared | ☐ | ____ |
| Number of components | ☐ | ____ |
| Number of concentrations/component (3 required) | ☐ | ____ |
| B. Audit samples (optional): | | |
| Analysis completed | ☐ | ____ |
| Verified for concentration | ☐ | ____ |
| OK obtained for field work | ☐ | ____ |
| 3. Sampling procedures: | | |
| A. Method: | | |
| Bag sample | ☐ | ____ |
| Direct interface | ☐ | ____ |
| Dilution interface | ☐ | ____ |
| B. Number of samples collected | ☐ | ____ |
| 4. Field Analysis: | | |
| A. Total hydrocarbon analysis performed | ☐ | ____ |

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GASEOUS ORGANIC SAMPLING AND ANALYSIS CHECK LIST—Continued

[Respond with initials or number as appropriate]

| | | |
|---|---|---|
| B. Calibration curve prepared | ☐ | ____ |
| Number of components | ☐ | ____ |
| Number of concentrations per component (3 required) | ☐ | ____ |

Gaseous Organic Sampling and Analysis Data

Plant _____
Date _____
Location _____

| Source sample 1 | Source sample 2 | Source sample 3 |
|---|---|---|
| 1. General information: | | |
| Source temperature (°C) | | |
| Probe temperature (°C) | | |
| Ambient temperature (°C) | | |
| Atmospheric pressure (mm Hg) | | |
| Source pressure (mm Hg) | | |
| Sampling rate (ml/min) | | |
| Sample loop volume (ml) | | |
| Sample loop temperature (°C) | | |
| Sample collection time (24-hr basis) | | |
| Column temperature: | | |
| Initial (°C) | | |
| Program rate (°C/min) | | |
| Final (°C) | | |
| Carrier gas flow rate (ml/min) | | |
| Detector temperature (°C) | | |
| Chart speed (cm/min) | | |
| Dilution gas flow rate (ml/min) | | |
| Diluent gas used (symbol) | | |
| Dilution ratio | | |

Performed by: (signature):_____ Date:_____

Figure 18–14. Sampling and Analysis Sheet

## Method 19—Determination of Sulfur Dioxide Removal Efficiency and Particulate Matter, Sulfur Dioxide, and Nitrogen Oxide Emission Rates

### *1.0 Scope and Application*

1.1 Analytes. This method provides data reduction procedures relating to the following pollutants, but does not include any sample collection or analysis procedures.

| Analyte | CAS No. | Sensitivity |
|---|---|---|
| Nitrogen oxides ($NO_X$), including: | | |
| Nitric oxide (NO) | 10102–43–9 | N/A |
| Nitrogen dioxide ($NO_2$) | 10102–44–0. | |
| Particulate matter (PM) | None assigned | N/A |
| Sulfur dioxide ($SO_2$) | 7499–09–05 | N/A |

1.2 Applicability. Where specified by an applicable subpart of the regulations, this method is applicable for the determination of (a) PM, $SO_2$, and $NO_X$ emission rates; (b) sulfur removal efficiencies of fuel pretreatment and $SO_2$ control devices; and (c) overall reduction of potential $SO_2$ emissions.

### *2.0 Summary of Method*

2.1 Emission Rates. Oxygen ($O_2$) or carbon dioxide ($CO_2$) concentrations and appropriate F factors (ratios of combustion gas volumes to heat inputs) are used to calculate pollutant emission rates from pollutant concentrations.

2.2 Sulfur Reduction Efficiency and $SO_2$ Removal Efficiency. An overall $SO_2$ emission reduction efficiency is computed from the efficiency of fuel pretreatment systems, where applicable, and the efficiency of $SO_2$ control devices.

2.2.1 The sulfur removal efficiency of a fuel pretreatment system is determined by fuel sampling and analysis of the sulfur and heat contents of the fuel before and after the pretreatment system.

2.2.2 The $SO_2$ removal efficiency of a control device is determined by measuring the $SO_2$ rates before and after the control device.

2.2.2.1 The inlet rates to $SO_2$ control systems (or, when $SO_2$ control systems are not used, $SO_2$ emission rates to the atmosphere) are determined by fuel sampling and analysis.



*3.0 Definitions [Reserved]*

*4.0 Interferences [Reserved]*

*5.0 Safety [Reserved]*

*6.0 Equipment and Supplies [Reserved]*

*7.0 Reagents and Standards [Reserved]*

*8.0 Sample Collection, Preservation, Storage, and Transport [Reserved]*

*9.0 Quality Control [Reserved]*

*10.0 Calibration and Standardization [Reserved]*

*11.0 Analytical Procedures [Reserved]*

*12.0 Data Analysis and Calculations*

12.1 Nomenclature

$B_{wa}$ = Moisture fraction of ambient air, percent.

$B_{ws}$ = Moisture fraction of effluent gas, percent.

%C = Concentration of carbon from an ultimate analysis of fuel, weight percent.

$C_d$ = Pollutant concentration, dry basis, ng/scm (lb/scf)

$\%CO_{2d}$, $\%CO_{2w}$ = Concentration of carbon dioxide on a dry and wet basis, respectively, percent.

$C_w$ = Pollutant concentration, wet basis, ng/scm (lb/scf).

D = Number of sampling periods during the performance test period.

E = Pollutant emission rate, ng/J (lb/million Btu).

$E_a$ = Average pollutant rate for the specified performance test period, ng/J (lb/million Btu).

$E_{ao}$, $E_{ai}$ = Average pollutant rate of the control device, outlet and inlet, respectively, for the performance test period, ng/J (lb/million Btu).

$E_{bi}$ = Pollutant rate from the steam generating unit, ng/J (lb/million Btu)

$E_{bo}$ = Pollutant emission rate from the steam generating unit, ng/J (lb/million Btu).

$E_{ci}$ = Pollutant rate in combined effluent, ng/J (lb/million Btu).

$E_{co}$ = Pollutant emission rate in combined effluent, ng/J (lb/million Btu).

$E_d$ = Average pollutant rate for each sampling period (*e.g.*, 24-hr Method 6B sample or 24-hr fuel sample) or for each fuel lot (*e.g.*, amount of fuel bunkered), ng/J (lb/million Btu).

$E_{di}$ = Average inlet $SO_2$ rate for each sampling period d, ng/J (lb/million Btu)

$E_g$ = Pollutant rate from gas turbine, ng/J (lb/million Btu).

$E_{ga}$ = Daily geometric average pollutant rate, ng/J (lbs/million Btu) or ppm corrected to 7 percent $O_2$.

$E_{jo}$,$E_{ji}$ = Matched pair hourly arithmetic average pollutant rate, outlet and inlet, respectively, ng/J (lb/million Btu) or ppm corrected to 7 percent $O_2$.

$E_h$ = Hourly average pollutant, ng/J (lb/million Btu).

$E_{hj}$ = Hourly arithmetic average pollutant rate for hour "j," ng/J (lb/million Btu) or ppm corrected to 7 percent $O_2$.

EXP = Natural logarithmic base (2.718) raised to the value enclosed by brackets.

$F_d$, $F_w$, $F_c$ = Volumes of combustion components per unit of heat content, scm/J (scf/million Btu).

GCV = Gross calorific value of the fuel consistent with the ultimate analysis, kJ/kg (Btu/lb).

$GCV_p$, $GCV_r$ = Gross calorific value for the product and raw fuel lots, respectively, dry basis, kJ/kg (Btu/lb).

%H = Concentration of hydrogen from an ultimate analysis of fuel, weight percent.

H = Total number of operating hours for which pollutant rates are determined in the performance test period.

$H_b$ = Heat input rate to the steam generating unit from fuels fired in the steam generating unit, J/hr (million Btu/hr).

$H_g$ = Heat input rate to gas turbine from all fuels fired in the gas turbine, J/hr (million Btu/hr).

$\%H_2O$ = Concentration of water from an ultimate analysis of fuel, weight percent.

$H_r$ = Total numbers of hours in the performance test period (*e.g.*, 720 hours for 30-day performance test period).

K = Conversion factor, $10^{-5}$ (kJ/J)/(%) [$10^6$ Btu/million Btu].

$K_c$ = (9.57 scm/kg)/% [(1.53 scf/lb)/%].

$K_{cc}$ = (2.0 scm/kg)/% [(0.321 scf/lb)/%].

$K_{hd}$ = (22.7 scm/kg)/% [(3.64 scf/lb)/%].

$K_{hw}$ = (34.74 scm/kg)/% [(5.57 scf/lb)/%].

$K_n$ = (0.86 scm/kg)/% [(0.14 scf/lb)/%].

$K_o$ = (2.85 scm/kg)/% [(0.46 scf/lb)/%].

$K_s$ = (3.54 scm/kg)/% [(0.57 scf/lb)/%].

$K_w$ = (1.30 scm/kg)/% [(0.21 scf/lb)/%].

ln = Natural log of indicated value.

$L_p$,$L_r$ = Weight of the product and raw fuel lots, respectively, metric ton (ton).

%N = Concentration of nitrogen from an ultimate analysis of fuel, weight percent.

N = Number of fuel lots during the averaging period.

n = Number of fuels being burned in combination.

$n_d$ = Number of operating hours of the affected facility within the performance test period for each $E_d$ determined.

$n_t$ = Total number of hourly averages for which paired inlet and outlet pollutant rates are available within the 24-hr midnight to midnight daily period.

%O = Concentration of oxygen from an ultimate analysis of fuel, weight percent.

$\%O_{2d}$, $\%O_{2w}$ = Concentration of oxygen on a dry and wet basis, respectively, percent.

$P_s$ = Potential $SO_2$ emissions, percent.

$\%R_f$ = $SO_2$ removal efficiency from fuel pretreatment, percent.

$\%R_g$ = $SO_2$ removal efficiency of the control device, percent.

$\%R_{ga}$ = Daily geometric average percent reduction.

$\%R_o$ = Overall $SO_2$ reduction, percent.

%S = Sulfur content of as-fired fuel lot, dry basis, weight percent.

$S_e$ = Standard deviation of the hourly average pollutant rates for each performance test period, ng/J (lb/million Btu).

$\%S_f$ = Concentration of sulfur from an ultimate analysis of fuel, weight percent.

$S_i$ = Standard deviation of the hourly average inlet pollutant rates for each performance test period, ng/J (lb/million Btu).

$S_o$ = Standard deviation of the hourly average emission rates for each performance test period, ng/J (lb/million Btu).

$\%S_p$, $\%S_r$ = Sulfur content of the product and raw fuel lots respectively, dry basis, weight percent.

$t_{0.95}$ = Values shown in Table 19–3 for the indicated number of data points n.

$X_k$ = Fraction of total heat input from each type of fuel k.

12.2 Emission Rates of PM, $SO_2$, and $NO_x$. Select from the following sections the applicable procedure to compute the PM, $S_{O2}$, or $NO_x$ emission rate (E) in ng/J (lb/million Btu). The pollutant concentration must be in ng/scm (lb/scf) and the F factor must be in scm/J (scf/million Btu). If the pollutant concentration (C) is not in the appropriate units, use Table 19–1 in Section 17.0 to make the proper conversion. An F factor is the ratio of the gas volume of the products of combustion to the heat content of the fuel. The dry F factor ($F_d$) includes all components of combustion less water, the wet F factor ($F_w$) includes all components of combustion, and the carbon F factor ($F_c$) includes only carbon dioxide.

**Note:** Since $F_w$ factors include water resulting only from the combustion of

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hydrogen in the fuel, the procedures using $F_w$ factors are not applicable for computing E from steam generating units with wet scrubbers or with other processes that add water (*e.g.*, steam injection).

12.2.1 Oxygen-Based F Factor, Dry Basis. When measurements are on a dry basis for both O ($\%O_{2d}$) and pollutant ($C_d$) concentrations, use the following equation:

$$E = C_d F_d \frac{20.9}{(20.9 - \%O_{2d})} \quad \text{Eq. 19-1}$$

12.2.2 Oxygen-Based F Factor, Wet Basis. When measurements are on a wet basis for both $O_2$ ($\%O_{2w}$) and pollutant ($C_w$) concentrations, use either of the following:

12.2.2.1 If the moisture fraction of ambient air ($B_{wa}$) is measured:

$$E = C_w F_w \frac{20.9}{[20.9(1 - B_{wa}) - \%O_{2w}]} \quad \text{Eq. 19-2}$$

Instead of actual measurement, $B_{wa}$ may be estimated according to the procedure below.

**NOTE:** The estimates are selected to ensure that negative errors will not be larger than −1.5 percent. However, positive errors, or over-estimation of emissions by as much as 5 percent may be introduced depending upon the geographic location of the facility and the associated range of ambient moisture.

12.2.2.1.1 $B_{wa}$ = 0.027. This value may be used at any location at all times.

12.2.2.1.2 $B_{wa}$ = Highest monthly average of $B_{wa}$ that occurred within the previous calendar year at the nearest Weather Service Station. This value shall be determined annually and may be used as an estimate for the entire current calendar year.

12.2.2.1.3 $B_{wa}$ = Highest daily average of Bwa that occurred within a calendar month at the nearest Weather Service Station, calculated from the data from the past 3 years. This value shall be computed for each month and may be used as an estimate for the current respective calendar month.

12.2.2.2 If the moisture fraction ($B_{ws}$) of the effluent gas is measured:

$$E = C_w F_d \frac{20.9}{[20.9(1 - B_{ws}) - \%O_{2w}]} \quad \text{Eq. 19-3}$$

12.2.3 Oxygen-Based F Factor, Dry/Wet Basis.

12.2.3.1 When the pollutant concentration is measured on a wet basis ($C_w$) and $O_2$ concentration is measured on a dry basis ($\%O_{2d}$), use the following equation:

$$E = \frac{(C_w F_d)(20.9)}{(1 - B_{ws})(20.9 - \%O_{2d})} \quad \text{Eq. 19-4}$$

12.2.3.2 When the pollutant concentration is measured on a dry basis ($C_d$) and the $O_2$ concentration is measured on a wet basis ($\%O_{2w}$), use the following equation:

$$E = \frac{C_d F_d 20.9}{(20.9 - \%O_{2w})(1 - B_{ws})} \quad \text{Eq. 19-5}$$

12.2.4 Carbon Dioxide-Based F Factor, Dry Basis. When measurements are on a dry basis for both $CO_2$ ($\%CO_{2d}$) and pollutant ($C_d$) concentrations, use the following equation:

$$E = C_d F_c \frac{100}{\%CO_{2d}} \quad \text{Eq. 19-6}$$

12.2.5 Carbon Dioxide-Based F Factor, Wet Basis. When measurements are on a wet basis for both $CO_2$ ($\%CO_{2w}$) and pollutant ($C_w$) concentrations, use the following equation:

$$E = C_w F_c \frac{100}{\%CO_{2w}} \quad \text{Eq. 19-7}$$

12.2.6 Carbon Dioxide-Based F Factor, Dry/Wet Basis.

12.2.6.1 When the pollutant concentration is measured on a wet basis ($C_w$) and $CO_2$ concentration is measured on a dry basis ($\%CO_{2d}$), use the following equation:

$$E = \frac{C_w F_c}{(1 - B_{ws})} \frac{100}{\%CO_{2d}} \quad \text{Eq. 19-8}$$

12.2.6.2 When the pollutant concentration is measured on a dry basis ($C_d$) and $CO_2$ concentration is measured on a wet basis ($\%CO_{2w}$), use the following equation:

$$E = C_d F_c (1 - B_{ws}) \frac{100}{\%CO_{2w}} \quad \text{Eq. 19-9}$$

12.2.7 Direct-Fired Reheat Fuel Burning. The effect of direct-fired reheat fuel burning (for the purpose of raising the temperature of the exhaust effluent from wet scrubbers to above the moisture dew-point) on emission rates will be less than 1.0 percent and, therefore, may be ignored.

12.2.8 Combined Cycle-Gas Turbine Systems. For gas turbine-steam generator combined cycle systems, determine the emissions from the steam generating unit or the percent reduction in potential $SO_2$ emissions as follows:

12.2.8.1 Compute the emission rate from the steam generating unit using the following equation:

$$E_{bo} = E_{co} + \frac{H_g}{H_b}(E_{co} - E_g) \quad \text{Eq. 19-10}$$

12.2.8.1.1 Use the test methods and procedures section of 40 CFR Part 60, Subpart GG to obtain $E_{co}$ and $E_g$. Do not use $F_w$ factors for determining $E_g$ or $E_{co}$. If an $SO_2$ control device is used, measure $E_{co}$ after the control device.

12.2.8.1.2 Suitable methods shall be used to determine the heat input rates to the steam generating units ($H_b$) and the gas turbine ($H_g$).

12.2.8.2 If a control device is used, compute the percent of potential $SO_2$ emissions ($P_s$) using the following equations:

$$E_{bi} = E_{ci} - \frac{H_g}{H_b}(E_{ci} - E_g) \quad \text{Eq. 19-11}$$

$$P_s = 100\left(1 - \frac{E_{bo}}{E_{bi}}\right) \quad \text{Eq. 19-12}$$



**NOTE:** Use the test methods and procedures section of Subpart GG to obtain $E_{ci}$ and $E_g$. Do not use $F_w$ factors for determining $E_g$ or $E_{ci}$.

12.3 F Factors. Use an average F factor according to Section 12.3.1 or determine an applicable F factor according to Section 12.3.2. If combined fuels are fired, prorate the applicable F factors using the procedure in Section 12.3.3.

12.3.1 Average F Factors. Average F factors ($F_d$, $F_w$, or $F_c$) from Table 19–2 in Section 17.0 may be used.

12.3.2 Determined F Factors. If the fuel burned is not listed in Table 19–2 or if the owner or operator chooses to determine an F factor rather than use the values in Table 19–2, use the procedure below:

12.3.2.1 Equations. Use the equations below, as appropriate, to compute the F factors:

$$F_d = \frac{K(K_{hd}\%H + K_c\%C + K_s\%S + K_n\%N - K_o\%O)}{GCV} \quad \text{Eq. 19-13}$$

$$F_w = \frac{K[K_{hw}\%H + K_c\%C + K_s\%S + K_n\%N - K_o\%O + K_w\%H_2O]}{GCV_w} \quad \text{Eq. 19-14}$$

$$F_c = \frac{K(K_{cc}\%C)}{GCV} \quad \text{Eq. 19-15}$$

**Note:** Omit the $\%H_2O$ term in the equations for $F_w$ if %H and %O include the unavailable hydrogen and oxygen in the form of $H_2O$.)

12.3.2.2 Use applicable sampling procedures in Section 12.5.2.1 or 12.5.2.2 to obtain samples for analyses.

12.3.2.3 Use ASTM D 3176–74 or 89 (all cited ASTM standards are incorporated by reference—see § 60.17) for ultimate analysis of the fuel.

12.3.2.4 Use applicable methods in Section 12.5.2.1 or 12.5.2.2 to determine the heat content of solid or liquid fuels. For gaseous fuels, use ASTM D 1826–77 or 94 (incorporated by reference—see § 60.17) to determine the heat content.

12.3.3 F Factors for Combination of Fuels. If combinations of fuels are burned, use the following equations, as applicable unless otherwise specified in an applicable subpart:

$$F_d = \sum_{k=1}^{n}(X_k F_{dk}) \quad \text{Eq. 19-16}$$

$$F_w = \sum_{k=1}^{n}(X_k F_{wk}) \quad \text{Eq. 19-17}$$

$$F_c = \sum_{k=1}^{n}(X_k F_{ck}) \quad \text{Eq. 19-18}$$

12.4 Determination of Average Pollutant Rates.

12.4.1 Average Pollutant Rates from Hourly Values. When hourly average pollutant rates ($E_h$), inlet or outlet, are obtained (*e.g.*, CEMS values), compute the average pollutant rate ($E_a$) for the performance test period (*e.g.*, 30 days) specified in the applicable regulation using the following equation:

$$E_a = \frac{1}{H}\sum_{j=1}^{n} E_{hj} \quad \text{Eq. 19-19}$$

12.4.2 Average Pollutant Rates from Other than Hourly Averages. When pollutant rates are determined from measured values representing longer than 1-hour periods (*e.g.*, daily fuel sampling and analyses or Method 6B values), or when pollutant rates are determined from combinations of 1-hour and longer than 1-hour periods (*e.g.*, CEMS and Method 6B values), compute the average pollutant rate ($E_a$) for the performance test period (*e.g.*, 30 days) specified in the applicable regulation using the following equation:

$$E_a = \frac{\sum_{j=1}^{D}(n_d E_d)_j}{\sum_{j=1}^{D} n_{dj}} \quad \text{Eq. 19-20}$$

12.4.3 Daily Geometric Average Pollutant Rates from Hourly Values. The geometric average pollutant rate ($E_{ga}$) is computed using the following equation:

$$E_{ga} = \exp\left[\frac{1}{n_i}\sum_{j=1}^{n_i}\left[\ln(E_{hj})\right]\right] \quad \text{Eq. 19-21}$$

12.5 Determination of Overall Reduction in Potential Sulfur Dioxide Emission.

12.5.1 Overall Percent Reduction. Compute the overall percent $SO_2$ reduction ($\%R_o$) using the following equation:

$$\%R_o = 100\left[1.0 - \left(1.0 - \frac{\%R_f}{100}\right)\left(1.0 - \frac{\%R_g}{100}\right)\right] \quad \text{Eq. 19-22}$$

12.5.2 Pretreatment Removal Efficiency (Optional). Compute the $SO_2$ removal efficiency from fuel pretreatment ($\%R_f$) for the averaging period (*e.g.*, 90 days) as specified in the applicable regulation using the following equation:

$$\%R_f = 100\left[1.0 - \frac{\sum_{j=1}^{N}\left(\frac{\%S_{pj}}{GCV_{pj}}\right)L_{pj}}{\sum_{j=1}^{N}\left(\frac{\%S_{rj}}{GCV_{rj}}\right)L_{rj}}\right] \quad \text{Eq. 19-23}$$

**Note:** In calculating $\%R_f$, include %S and GCV values for all fuel lots that are not pretreated and are used during the averaging period.

12.5.2.1 Solid Fossil (Including Waste) Fuel/Sampling and Analysis.

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**Note:** For the purposes of this method, raw fuel (coal or oil) is the fuel delivered to the desulfurization (pretreatment) facility. For oil, the input oil to the oil desulfurization process (e.g., hydrotreatment) is considered to be the raw fuel.

12.5.2.1.1 Sample Increment Collection. Use ASTM D 2234–76, 96, 97a, or 98 (incorporated by reference—see § 60.17), Type I, Conditions A, B, or C, and systematic spacing. As used in this method, systematic spacing is intended to include evenly spaced increments in time or increments based on equal weights of coal passing the collection area. As a minimum, determine the number and weight of increments required per gross sample representing each coal lot according to Table 2 or Paragraph 7.1.5.2 of ASTM D 2234. Collect one gross sample for each lot of raw coal and one gross sample for each lot of product coal.

12.5.2.1.2 ASTM Lot Size. For the purpose of Section 12.5.2 (fuel pretreatment), the lot size of product coal is the weight of product coal from one type of raw coal. The lot size of raw coal is the weight of raw coal used to produce one lot of product coal. Typically, the lot size is the weight of coal processed in a 1-day (24-hour) period. If more than one type of coal is treated and produced in 1 day, then gross samples must be collected and analyzed for each type of coal. A coal lot size equaling the 90-day quarterly fuel quantity for a steam generating unit may be used if representative sampling can be conducted for each raw coal and product coal.

**Note:** Alternative definitions of lot sizes may be used, subject to prior approval of the Administrator.

12.5.2.1.3 Gross Sample Analysis. Use ASTM D 2013–72 or 86 to prepare the sample, ASTM D 3177–75 or 89 or ASTM D 4239–85, 94, or 97 to determine sulfur content (%S), ASTM D 3173–73 or 87 to determine moisture content, and ASTM D 2015–77 (Reapproved 1978) or 96, D 3286–85 or 96, or D 5865–98 to determine gross calorific value (GCV) (all standards cited are incorporated by reference—see § 60.17 for acceptable versions of the standards) on a dry basis for each gross sample.

12.5.2.2 Liquid Fossil Fuel-Sampling and Analysis. See Note under Section 12.5.2.1.

12.5.2.2.1 Sample Collection. Follow the procedures for continuous sampling in ASTM D 270 or D 4177–95 (incorporated by reference—see § 60.17) for each gross sample from each fuel lot.

12.5.2.2.2 Lot Size. For the purpose of Section 12.5.2 (fuel pretreatment), the lot size of a product oil is the weight of product oil from one pretreatment facility and intended as one shipment (ship load, barge load, etc.). The lot size of raw oil is the weight of each crude liquid fuel type used to produce a lot of product oil.

**Note:** Alternative definitions of lot sizes may be used, subject to prior approval of the Administrator.

12.5.2.2.3 Sample Analysis. Use ASTM D 129–64, 78, or 95, ASTM D 1552–83 or 95, or ASTM D 4057–81 or 95 to determine the sulfur content (%S) and ASTM D 240–76 or 92 (all standards cited are incorporated by reference—see § 60.17) to determine the GCV of each gross sample. These values may be assumed to be on a dry basis. The owner or operator of an affected facility may elect to determine the GCV by sampling the oil combusted on the first steam generating unit operating day of each calendar month and then using the lowest GCV value of the three GCV values per quarter for the GCV of all oil combusted in that calendar quarter.

12.5.2.3 Use appropriate procedures, subject to the approval of the Administrator, to determine the fraction of total mass input derived from each type of fuel.

12.5.3 Control Device Removal Efficiency. Compute the percent removal efficiency ($\%R_g$) of the control device using the following equation:

$$\%R_g = 100\left(1.0 - \frac{E_{ao}}{E_{ai}}\right) \qquad \text{Eq. 19-24}$$

12.5.3.1 Use continuous emission monitoring systems or test methods, as appropriate, to determine the outlet $SO_2$ rates and, if appropriate, the inlet $SO_2$ rates. The rates may be determined as hourly ($E_h$) or other sampling period averages ($E_d$). Then, compute the average pollutant rates for the performance test period ($E_{ao}$ and $E_{ai}$) using the procedures in Section 12.4.

12.5.3.2 As an alternative, as-fired fuel sampling and analysis may be used to determine inlet $SO_2$ rates as follows:

12.5.3.2.1 Compute the average inlet $SO_2$ rate ($E_{di}$) for each sampling period using the following equation:

$$E_{di} = K\frac{\%S}{GCV} \qquad \text{Eq. 19-25}$$

Where:

$$K = 2\times10^7\left(\frac{\text{ng } SO_2}{\%S}\right)\left(\frac{(\text{kJ})}{\text{J}}\right)\left(\frac{1}{\text{kg coal}}\right)\left[2\times10^4\left(\frac{\text{lb } SO_2}{\%S}\right)\left(\frac{\text{Btu}}{\text{million Btu}}\right)\left(\frac{1}{\text{lb coal}}\right)\right]$$

After calculating $E_{di}$, use the procedures in Section 12.4 to determine the average inlet $SO_2$ rate for the performance test period ($E_{ai}$).

12.5.3.2.2 Collect the fuel samples from a location in the fuel handling system that provides a sample representative of the fuel bunkered or consumed during a steam generating unit operating day. For the purpose of as-fired fuel sampling under Section 12.5.3.2 or Section 12.6, the lot size for coal is the weight of coal bunkered or consumed during each steam generating unit operating day. The lot size for oil is the weight of oil supplied to the "day" tank or consumed during each steam generating unit operating day. For reporting and calculation purposes, the gross sample shall be identified with the calendar day on which sampling began. For steam generating unit operating days when a coal-fired steam generating unit is operated without coal being added to the bunkers, the coal analysis from the previous "as bunkered" coal sample shall be used until coal is bunkered again. For steam generating unit operating days when an oil-fired steam generating unit is operated without oil being added to the oil "day" tank, the oil analysis from the previous day shall be used until the "day" tank is filled again. Alternative definitions of fuel lot size may be used, subject to prior approval of the Administrator.

12.5.3.2.3 Use ASTM procedures specified in Section 12.5.2.1 or 12.5.2.2 to determine %S and GCV.

12.5.4 Daily Geometric Average Percent Reduction from Hourly Values. The geometric average percent reduction ($\%R_{ga}$) is computed using the following equation:



$$\%R_{ga} = 100\left[1 - EXP\left(\frac{1}{n_t}\sum_{j=1}^{n_t}\ln\frac{E_{jo}}{E_{ji}}\right)\right] \qquad \text{Eq. 19-26}$$

**NOTE:** The calculation includes only paired data sets (hourly average) for the inlet and outlet pollutant measurements.

12.6 Sulfur Retention Credit for Compliance Fuel. If fuel sampling and analysis procedures in Section 12.5.2.1 are being used to determine average $SO_2$ emission rates ($E_{as}$) to the atmosphere from a coal-fired steam generating unit when there is no $SO_2$ control device, the following equation may be used to adjust the emission rate for sulfur retention credits (no credits are allowed for oil-fired systems) ($E_{di}$) for each sampling period using the following equation:

$$E_{di} = 0.97K\frac{\%S}{GDV} \qquad \text{Eq. 19-27}$$

Where:

$$K = 2\times10^7\left(\frac{\text{ng } SO_2}{\%S}\right)\left(\frac{\text{kJ}}{\text{J}}\right)\left(\frac{1}{\text{kg coal}}\right)\left[2\times10^4\left(\frac{\text{lb } SO_2}{\%S}\right)\left(\frac{\text{Btu}}{\text{million Btu}}\right)\left(\frac{1}{\text{lb coal}}\right)\right]$$

After calculating $E_{di}$, use the procedures in Section 12.4.2 to determine the average $SO_2$ emission rate to the atmosphere for the performance test period ($E_{ao}$).

12.7 Determination of Compliance When Minimum Data Requirement Is Not Met.

12.7.1 Adjusted Emission Rates and Control Device Removal Efficiency. When the minimum data requirement is not met, the Administrator may use the following adjusted emission rates or control device removal efficiencies to determine compliance with the applicable standards.

12.7.1.1 Emission Rate. Compliance with the emission rate standard may be determined by using the lower confidence limit of the emission rate ($E_{ao}^*$) as follows:

$$E_{ao}^* = E_{ao} - t_{0.95}S_o \qquad \text{Eq. 19-28}$$

12.7.1.2 Control Device Removal Efficiency. Compliance with the overall emission reduction ($\%R_o$) may be determined by using the lower confidence limit of the emission rate ($E_{ao}^*$) and the upper confidence limit of the inlet pollutant rate ($E_{ai}^*$) in calculating the control device removal efficiency ($\%R_g$) as follows:

$$\%R_g = 100\left(1.0 - \frac{E_{ao}^*}{E_{ai}^*}\right) \qquad \text{Eq. 19-29}$$

$$E_{ai}^* = E_{ai} + t_{0.95}S_i \qquad \text{Eq. 19-30}$$

12.7.2 Standard Deviation of Hourly Average Pollutant Rates. Compute the standard deviation ($S_e$) of the hourly average pollutant rates using the following equation:

$$S_e = \sqrt{\frac{1}{H} - \frac{1}{H_r}}\sqrt{\frac{\sum_{j=1}^{H}\left(E_{hj} - E_a\right)^2}{H-1}} \qquad \text{Eq. 19-31}$$

Equation 19–19 through 19–31 may be used to compute the standard deviation for both the outlet ($S_o$) and, if applicable, inlet ($S_i$) pollutant rates.

*13.0 Method Performance [Reserved]*

*14.0 Pollution Prevention [Reserved]*

*15.0 Waste Management [Reserved]*

*16.0 References [Reserved]*

*17.0 Tables, Diagrams, Flowcharts, and Validation Data*

TABLE 19–1.—CONVERSION FACTORS FOR CONCENTRATION

| From | To | Multiply by |
|---|---|---|
| g/scm | ng/scm | $10^9$ |
| mg/scm | ng/scm | $10^6$ |
| lb/scf | ng/scm | $1.602 \times 10^{13}$ |
| ppm $SO_2$ | ng/scm | $2.66 \times 10^6$ |
| ppm $NO_x$ | ng/scm | $1.912 \times 10^6$ |
| ppm $SO_2$ | lb/scf | $1.660 \times 10^{-7}$ |
| ppm $NO_x$ | lb/scf | $1.194 \times 10^{-7}$ |

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TABLE 19–2.—F FACTORS FOR VARIOUS FUELS[1]

| Fuel Type | $F_d$ | | $F_w$ | | $F_c$ | |
|---|---|---|---|---|---|---|
| | dscm/J | dscf/$10^6$ Btu | wscm/J | wscf/$10^6$ Btu | scm/J | scf/$10^6$ Btu |
| Coal: | | | | | | |
| Anthracite[2] | $2.71\times10^{-7}$ | 10,100 | $2.83\times10^{-7}$ | 10,540 | $0.530\times10^{-7}$ | 1,970 |
| Bituminus[2] | $2.63\times10^{-7}$ | 9,780 | $2.86\times10^{-7}$ | 10,640 | $0.484\times10^{-7}$ | 1,800 |
| Lignite | $2.65\times10^{-7}$ | 9,860 | $3.21\times10^{-7}$ | 11,950 | $0.513\times10^{-7}$ | 1,910 |
| Oil[3] | $2.47\times10^{-7}$ | 9,190 | $2.77\times10^{-7}$ | 10,320 | $0.383\times10^{-7}$ | 1,420 |
| Gas:. | | | | | | |
| Natural | $2.34\times10^{-7}$ | 8,710 | $2.85\times10^{-7}$ | 10,610 | $0.287\times10^{-7}$ | 1,040 |
| Propane | $2.34\times10^{-7}$ | 8,710 | $2.74\times10^{-7}$ | 10,200 | $0.321\times10^{-7}$ | 1,190 |
| Butane | $2.34\times10^{-7}$ | 8,710 | $2.79\times10^{-7}$ | 10,390 | $0.337\times10^{-7}$ | 1,250 |
| Wood | $2.48\times10^{-7}$ | 9,240 | | | $0.492\times10^{-7}$ | 1,830 |
| Wood Bark | $2.58\times10^{-7}$ | 9,600 | | | $0.516\times10^{-7}$ | 1,920 |
| Municipal | $2.57\times10^{-7}$ | 9,570 | | | $0.488\times10^{-7}$ | 1,820 |
| Solid Waste | | | | | | |

[1] Determined at standard conditions: 20 °C (68 °F) and 760 mm Hg (29.92 in Hg)
[2] As classified according to ASTM D 388.
[3] Crude, residual, or distillate.

TABLE 19–3.—VALUES FOR $T_{0.95*}$

| n[1] | $t_{0.95}$ | n[1] | $t_{0.95}$ | n[1] | $t_{0.95}$ |
|---|---|---|---|---|---|
| 2 | 6.31 | 8 | 1.89 | 22–26 | 1.71 |
| 3 | 2.42 | 9 | 1.86 | 27–31 | 1.70 |
| 4 | 2.35 | 10 | 1.83 | 32–51 | 1.68 |
| 5 | 2.13 | 11 | 1.81 | 52–91 | 1.67 |
| 6 | 2.02 | 12–16 | 1.77 | 92–151 | 1.66 |
| 7 | 1.94 | 17–21 | 1.73 | 152 or more | 1.65 |

[1] The values of this table are corrected for n-1 degrees of freedom. Use n equal to the number (H) of hourly average data points.

* * * * *

**Method 21—Determination of Volatile Organic Compound Leaks**

*1.0 Scope and Application*

1.1 Analytes.

| Analyte | CAS No. |
|---|---|
| Volatile Organic Compounds (VOC). | No CAS number assigned. |

1.2 Scope. This method is applicable for the determination of VOC leaks from process equipment. These sources include, but are not limited to, valves, flanges and other connections, pumps and compressors, pressure relief devices, process drains, open-ended valves, pump and compressor seal system degassing vents, accumulator vessel vents, agitator seals, and access door seals.

1.3 Data Quality Objectives. Adherence to the requirements of this method will enhance the quality of the data obtained from air pollutant sampling methods.

*2.0 Summary of Method*

2.1 A portable instrument is used to detect VOC leaks from individual sources. The instrument detector type is not specified, but it must meet the specifications and performance criteria contained in Section 6.0. A leak definition concentration based on a reference compound is specified in each applicable regulation. This method is intended to locate and classify leaks only, and is not to be used as a direct measure of mass emission rate from individual sources.

*3.0 Definitions*

3.1 *Calibration gas* means the VOC compound used to adjust the instrument meter reading to a known value. The calibration gas is usually the reference compound at a known concentration approximately equal to the leak definition concentration.

3.2 *Calibration precision* means the degree of agreement between measurements of the same known value, expressed as the relative percentage of the average difference between the meter readings and the known concentration to the known concentration.

3.3 *Leak definition concentration* means the local VOC concentration at the surface of a leak source that indicates that a VOC emission (leak) is present. The leak definition is an instrument meter reading based on a reference compound.

3.4 *No detectable emission* means a local VOC concentration at the surface of a leak source, adjusted for local VOC ambient concentration, that is less than 2.5 percent of the specified leak definition concentration. that indicates that a VOC emission (leak) is not present.

3.5 *Reference compound* means the VOC species selected as the instrument calibration basis for specification of the leak definition concentration. (For example, if a leak definition concentration is 10,000 ppm as methane, then any source emission that results in a local concentration that yields a meter reading of 10,000 on an instrument meter calibrated with methane would be classified as a leak. In this example, the leak definition concentration is 10,000 ppm and the reference compound is methane.)

3.6 *Response factor* means the ratio of the known concentration of a VOC compound to the observed meter reading when measured using an instrument calibrated with the reference compound specified in the applicable regulation.

3.7 *Response time* means the time interval from a step change in VOC concentration at the input of the sampling system to the time at which 90 percent of the corresponding final value is reached as displayed on the instrument readout meter.



*4.0 Interferences. [Reserved]*

*5.0 Safety*

5.1 Disclaimer. This method may involve hazardous materials, operations, and equipment. This test method may not address all of the safety problems associated with its use. It is the responsibility of the user of this test method to establish appropriate safety and health practices and determine the applicability of regulatory limitations prior to performing this test method.

5.2 Hazardous Pollutants. Several of the compounds, leaks of which may be determined by this method, may be irritating or corrosive to tissues (*e.g.*, heptane) or may be toxic (*e.g.*, benzene, methyl alcohol). Nearly all are fire hazards. Compounds in emissions should be determined through familiarity with the source. Appropriate precautions can be found in reference documents, such as reference No. 4 in Section 16.0.

*6.0 Equipment and Supplies*

A VOC monitoring instrument meeting the following specifications is required:

6.1 The VOC instrument detector shall respond to the compounds being processed. Detector types that may meet this requirement include, but are not limited to, catalytic oxidation, flame ionization, infrared absorption, and photoionization.

6.2 The instrument shall be capable of measuring the leak definition concentration specified in the regulation.

6.3 The scale of the instrument meter shall be readable to ±2.5 percent of the specified leak definition concentration.

6.4 The instrument shall be equipped with an electrically driven pump to ensure that a sample is provided to the detector at a constant flow rate. The nominal sample flow rate, as measured at the sample probe tip, shall be 0.10 to 3.0 l/min (0.004 to 0.1 $ft^3$/min) when the probe is fitted with a glass wool plug or filter that may be used to prevent plugging of the instrument.

6.5 The instrument shall be equipped with a probe or probe extension or sampling not to exceed 6.4 mm (¼ in) in outside diameter, with a single end opening for admission of sample.

6.6 The instrument shall be intrinsically safe for operation in explosive atmospheres as defined by the National Electrical Code by the National Fire Prevention Association or other applicable regulatory code for operation in any explosive atmospheres that may be encountered in its use. The instrument shall, at a minimum, be intrinsically safe for Class 1, Division 1 conditions, and/or Class 2, Division 1 conditions, as appropriate, as defined by the example code. The instrument shall not be operated with any safety device, such as an exhaust flame arrestor, removed.

*7.0 Reagents and Standards*

7.1 Two gas mixtures are required for instrument calibration and performance evaluation:

7.1.1 Zero Gas. Air, less than 10 parts per million by volume (ppmv) VOC.

7.1.2 Calibration Gas. For each organic species that is to be measured during individual source surveys, obtain or prepare a known standard in air at a concentration approximately equal to the applicable leak definition specified in the regulation.

7.2 Cylinder Gases. If cylinder calibration gas mixtures are used, they must be analyzed and certified by the manufacturer to be within 2 percent accuracy, and a shelf life must be specified. Cylinder standards must be either reanalyzed or replaced at the end of the specified shelf life.

7.3 Prepared Gases. Calibration gases may be prepared by the user according to any accepted gaseous preparation procedure that will yield a mixture accurate to within 2 percent. Prepared standards must be replaced each day of use unless it is demonstrated that degradation does not occur during storage.

7.4 Mixtures with non-Reference Compound Gases. Calibrations may be performed using a compound other than the reference compound. In this case, a conversion factor must be determined for the alternative compound such that the resulting meter readings during source surveys can be converted to reference compound results.

*8.0 Sample Collection, Preservation, Storage, and Transport*

8.1 Instrument Performance Evaluation. Assemble and start up the instrument according to the manufacturer's instructions for recommended warmup period and preliminary adjustments.

8.1.1 Response Factor. A response factor must be determined for each compound that is to be measured, either by testing or from reference sources. The response factor tests are required before placing the analyzer into service, but do not have to be repeated at subsequent intervals.

8.1.1.1 Calibrate the instrument with the reference compound as specified in the applicable regulation. Introduce the calibration gas mixture to the analyzer and record the observed meter reading. Introduce zero gas until a stable reading is obtained. Make a total of three measurements by alternating between the calibration gas and zero gas. Calculate the response factor for each repetition and the average response factor.

8.1.1.2 The instrument response factors for each of the individual VOC to be measured shall be less than 10 unless otherwise specified in the applicable regulation. When no instrument is available that meets this specification when calibrated with the reference VOC specified in the applicable regulation, the available instrument may be calibrated with one of the VOC to be measured, or any other VOC, so long as the instrument then has a response factor of less than 10 for each of the individual VOC to be measured.

8.1.1.3 Alternatively, if response factors have been published for the compounds of interest for the instrument or detector type, the response factor determination is not required, and existing results may be referenced. Examples of published response factors for flame ionization and catalytic oxidation detectors are included in References 1–3 of Section 17.0.

8.1.2 Calibration Precision. The calibration precision test must be completed prior to placing the analyzer into service and at subsequent 3-month intervals or at the next use, whichever is later.

8.1.2.1 Make a total of three measurements by alternately using zero gas and the specified calibration gas. Record the meter readings. Calculate the average algebraic difference between the meter readings and the known value. Divide this average difference by the known calibration value and multiply by 100 to express the resulting calibration precision as a percentage.

8.1.2.2 The calibration precision shall be equal to or less than 10 percent of the calibration gas value.

8.1.3 Response Time. The response time test is required before placing the instrument into service. If a modification to the sample pumping system or flow configuration is made that would change the response time, a new test is required before further use.

8.1.3.1 Introduce zero gas into the instrument sample probe. When the meter reading has stabilized, switch quickly to the specified calibration gas. After switching, measure the time required to attain 90 percent of the final stable reading. Perform this test sequence three times and record the

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results. Calculate the average response time.

8.1.3.2 The instrument response time shall be equal to or less than 30 seconds. The instrument pump, dilution probe (if any), sample probe, and probe filter that will be used during testing shall all be in place during the response time determination.

8.2 Instrument Calibration. Calibrate the VOC monitoring instrument according to Section 10.0.

8.3 Individual Source Surveys.

8.3.1 Type I—Leak Definition Based on Concentration. Place the probe inlet at the surface of the component interface where leakage could occur. Move the probe along the interface periphery while observing the instrument readout. If an increased meter reading is observed, slowly sample the interface where leakage is indicated until the maximum meter reading is obtained. Leave the probe inlet at this maximum reading location for approximately two times the instrument response time. If the maximum observed meter reading is greater than the leak definition in the applicable regulation, record and report the results as specified in the regulation reporting requirements. Examples of the application of this general technique to specific equipment types are:

8.3.1.1 Valves. The most common source of leaks from valves is the seal between the stem and housing. Place the probe at the interface where the stem exits the packing gland and sample the stem circumference. Also, place the probe at the interface of the packing gland take-up flange seat and sample the periphery. In addition, survey valve housings of multipart assembly at the surface of all interfaces where a leak could occur.

8.3.1.2 Flanges and Other Connections. For welded flanges, place the probe at the outer edge of the flange-gasket interface and sample the circumference of the flange. Sample other types of nonpermanent joints (such as threaded connections) with a similar traverse.

8.3.1.3 Pumps and Compressors. Conduct a circumferential traverse at the outer surface of the pump or compressor shaft and seal interface. If the source is a rotating shaft, position the probe inlet within 1 cm of the shaft-seal interface for the survey. If the housing configuration prevents a complete traverse of the shaft periphery, sample all accessible portions. Sample all other joints on the pump or compressor housing where leakage could occur.

8.3.1.4 Pressure Relief Devices. The configuration of most pressure relief devices prevents sampling at the sealing seat interface. For those devices equipped with an enclosed extension, or horn, place the probe inlet at approximately the center of the exhaust area to the atmosphere.

8.3.1.5 Process Drains. For open drains, place the probe inlet at approximately the center of the area open to the atmosphere. For covered drains, place the probe at the surface of the cover interface and conduct a peripheral traverse.

8.3.1.6 Open-ended Lines or Valves. Place the probe inlet at approximately the center of the opening to the atmosphere.

8.3.1.7 Seal System Degassing Vents and Accumulator Vents. Place the probe inlet at approximately the center of the opening to the atmosphere.

8.3.1.8 Access door seals. Place the probe inlet at the surface of the door seal interface and conduct a peripheral traverse.

8.3.2 Type II—"No Detectable Emission". Determine the local ambient VOC concentration around the source by moving the probe randomly upwind and downwind at a distance of one to two meters from the source. If an interference exists with this determination due to a nearby emission or leak, the local ambient concentration may be determined at distances closer to the source, but in no case shall the distance be less than 25 centimeters. Then move the probe inlet to the surface of the source and determine the concentration as outlined in Section 8.3.1. The difference between these concentrations determines whether there are no detectable emissions. Record and report the results as specified by the regulation. For those cases where the regulation requires a specific device installation, or that specified vents be ducted or piped to a control device, the existence of these conditions shall be visually confirmed. When the regulation also requires that no detectable emissions exist, visual observations and sampling surveys are required. Examples of this technique are:

8.3.2.1 Pump or Compressor Seals. If applicable, determine the type of shaft seal. Perform a survey of the local area ambient VOC concentration and determine if detectable emissions exist as described in Section 8.3.2.

8.3.2.2 Seal System Degassing Vents, Accumulator Vessel Vents, Pressure Relief Devices. If applicable, observe whether or not the applicable ducting or piping exists. Also, determine if any sources exist in the ducting or piping where emissions could occur upstream of the control device. If the required ducting or piping exists and there are no sources where the emissions could be vented to the atmosphere upstream of the control device, then it is presumed that no detectable emissions are present. If there are sources in the ducting or piping where emissions could be vented or sources where leaks could occur, the sampling surveys described in Section 8.3.2 shall be used to determine if detectable emissions exist.

8.3.3 Alternative Screening Procedure.

8.3.3.1 A screening procedure based on the formation of bubbles in a soap solution that is sprayed on a potential leak source may be used for those sources that do not have continuously moving parts, that do not have surface temperatures greater than the boiling point or less than the freezing point of the soap solution, that do not have open areas to the atmosphere that the soap solution cannot bridge, or that do not exhibit evidence of liquid leakage. Sources that have these conditions present must be surveyed using the instrument technique of Section 8.3.1 or 8.3.2.

8.3.3.2 Spray a soap solution over all potential leak sources. The soap solution may be a commercially available leak detection solution or may be prepared using concentrated detergent and water. A pressure sprayer or squeeze bottle may be used to dispense the solution. Observe the potential leak sites to determine if any bubbles are formed. If no bubbles are observed, the source is presumed to have no detectable emissions or leaks as applicable. If any bubbles are observed, the instrument techniques of Section 8.3.1 or 8.3.2 shall be used to determine if a leak exists, or if the source has detectable emissions, as applicable.

*9.0 Quality Control*

| Section | Quality control measure | Effect |
|---|---|---|
| 8.1.2 | Instrument calibration precision check | Ensure precision and accuracy, respectively, of instrument response to standard. |
| 10.0 | Instrument calibration. | |



*10.0 Calibration and Standardization*

10.1 Calibrate the VOC monitoring instrument as follows. After the appropriate warmup period and zero internal calibration procedure, introduce the calibration gas into the instrument sample probe. Adjust the instrument meter readout to correspond to the calibration gas value.

**Note:** If the meter readout cannot be adjusted to the proper value, a malfunction of the analyzer is indicated and corrective actions are necessary before use.

*11.0 Analytical Procedures. [Reserved]*

*12.0 Data Analyses and Calculations. [Reserved]*

*13.0 Method Performance. [Reserved]*

*14.0 Pollution Prevention. [Reserved]*

*15.0 Waste Management. [Reserved]*

*16.0 References*

1. Dubose, D.A., and G.E. Harris. Response Factors of VOC Analyzers at a Meter Reading of 10,000 ppmv for Selected Organic Compounds. U.S. Environmental Protection Agency, Research Triangle Park, NC. Publication No. EPA 600/2–81051. September 1981.

2. Brown, G.E., *et al.* Response Factors of VOC Analyzers Calibrated with Methane for Selected Organic Compounds. U.S. Environmental Protection Agency, Research Triangle Park, NC. Publication No. EPA 600/2–81–022. May 1981.

3. DuBose, D.A. *et al.* Response of Portable VOC Analyzers to Chemical Mixtures. U.S. Environmental Protection Agency, Research Triangle Park, NC. Publication No. EPA 600/2–81–110. September 1981.

4. Handbook of Hazardous Materials: Fire, Safety, Health. Alliance of American Insurers. Schaumberg, IL. 1983.

*17.0 Tables, Diagrams, Flowcharts, and Validation Data. [Reserved]*

## Method 22—Visual Determination of Fugitive Emissions From Material Sources and Smoke Emissions From Flares

**Note:** This method is not inclusive with respect to observer certification. Some material is incorporated by reference from Method 9.

*1.0 Scope and Application*

This method is applicable for the determination of the frequency of fugitive emissions from stationary sources, only as specified in an applicable subpart of the regulations. This method also is applicable for the determination of the frequency of visible smoke emissions from flares.

*2.0 Summary of Method*

2.1 Fugitive emissions produced during material processing, handling, and transfer operations or smoke emissions from flares are visually determined by an observer without the aid of instruments.

2.2 This method is used also to determine visible smoke emissions from flares used for combustion of waste process materials.

2.3 This method determines the amount of time that visible emissions occur during the observation period (*i.e.*, the accumulated emission time). This method does not require that the opacity of emissions be determined. Since this procedure requires only the determination of whether visible emissions occur and does not require the determination of opacity levels, observer certification according to the procedures of Method 9 is not required. However, it is necessary that the observer is knowledgeable with respect to the general procedures for determining the presence of visible emissions. At a minimum, the observer must be trained and knowledgeable regarding the effects of background contrast, ambient lighting, observer position relative to lighting, wind, and the presence of uncombined water (condensing water vapor) on the visibility of emissions. This training is to be obtained from written materials found in References 1 and 2 or from the lecture portion of the Method 9 certification course.

*3.0 Definitions*

3.1 *Emission frequency* means the percentage of time that emissions are visible during the observation period.

3.2 *Emission time* means the accumulated amount of time that emissions are visible during the observation period.

3.3 *Fugitive emissions* means emissions generated by an affected facility which is not collected by a capture system and is released to the atmosphere. This includes emissions that (1) escape capture by process equipment exhaust hoods; (2) are emitted during material transfer; (3) are emitted from buildings housing material processing or handling equipment; or (4) are emitted directly from process equipment.

3.4 *Observation period* means the accumulated time period during which observations are conducted, not to be less than the period specified in the applicable regulation.

3.5 *Smoke emissions* means a pollutant generated by combustion in a flare and occurring immediately downstream of the flame. Smoke occurring within the flame, but not downstream of the flame, is not considered a smoke emission.

*4.0 Interferences*

4.1 Occasionally, fugitive emissions from sources other than the affected facility (*e.g.*, road dust) may prevent a clear view of the affected facility. This may particularly be a problem during periods of high wind. If the view of the potential emission points is obscured to such a degree that the observer questions the validity of continuing observations, then the observations shall be terminated, and the observer shall clearly note this fact on the data form.

*5.0 Safety*

5.1 Disclaimer. This method may involve hazardous materials, operations, and equipment. This test method may not address all of the safety problems associated with its use. It is the responsibility of the user of this test method to establish appropriate safety and health practices and determine the applicability of regulatory limitations prior to performing this test method.

*6.0 Equipment*

6.1 Stopwatches (two). Accumulative type with unit divisions of at least 0.5 seconds.

6.2 Light Meter. Light meter capable of measuring illuminance in the 50 to 200 lux range, required for indoor observations only.

*7.0 Reagents and Supplies. [Reserved]*

*8.0 Sample Collection, Preservation, Storage, and Transfer. [Reserved]*

*9.0 Quality Control. [Reserved]*

*10.0 Calibration and Standardization. [Reserved]*

*11.0 Analytical Procedure*

11.1 Selection of Observation Location. Survey the affected facility, or the building or structure housing the process to be observed, and determine the locations of potential emissions. If the affected facility is located inside a building, determine an observation location that is consistent with the requirements of the applicable regulation (*i.e.*, outside observation of emissions escaping the building/structure or inside observation of emissions directly emitted from the affected facility process unit). Then select a position that enables a clear view of the potential emission point(s) of the affected facility or of the building or structure housing the affected facility, as appropriate for the applicable subpart. A position at least 4.6 m (15 feet), but not more than 400 m (0.25 miles), from the emission source is recommended. For outdoor locations, select a position where the sunlight is

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not shining directly in the observer's eyes.

11.2 Field Records.

11.2.1 Outdoor Location. Record the following information on the field data sheet (Figure 22–1): Company name, industry, process unit, observer's name, observer's affiliation, and date. Record also the estimated wind speed, wind direction, and sky condition. Sketch the process unit being observed, and note the observer location relative to the source and the sun. Indicate the potential and actual emission points on the sketch.

11.2.2 Indoor Location. Record the following information on the field data sheet (Figure 22–2): Company name, industry, process unit, observer's name, observer's affiliation, and date. Record as appropriate the type, location, and intensity of lighting on the data sheet. Sketch the process unit being observed, and note the observer location relative to the source. Indicate the potential and actual fugitive emission points on the sketch.

11.3 Indoor Lighting Requirements. For indoor locations, use a light meter to measure the level of illumination at a location as close to the emission source(s) as is feasible. An illumination of greater than 100 lux (10 foot candles) is considered necessary for proper application of this method.

11.4 Observations.

11.4.1 Procedure. Record the clock time when observations begin. Use one stopwatch to monitor the duration of the observation period. Start this stopwatch when the observation period begins. If the observation period is divided into two or more segments by process shutdowns or observer rest breaks (see Section 11.4.3), stop the stopwatch when a break begins and restart the stopwatch without resetting it when the break ends. Stop the stopwatch at the end of the observation period. The accumulated time indicated by this stopwatch is the duration of observation period. When the observation period is completed, record the clock time. During the observation period, continuously watch the emission source. Upon observing an emission (condensed water vapor is not considered an emission), start the second accumulative stopwatch; stop the watch when the emission stops. Continue this procedure for the entire observation period. The accumulated elapsed time on this stopwatch is the total time emissions were visible during the observation period (*i.e.*, the emission time.)

11.4.2 Observation Period. Choose an observation period of sufficient length to meet the requirements for determining compliance with the emission standard in the applicable subpart of the regulations. When the length of the observation period is specifically stated in the applicable subpart, it may not be necessary to observe the source for this entire period if the emission time required to indicate noncompliance (based on the specified observation period) is observed in a shorter time period. In other words, if the regulation prohibits emissions for more than 6 minutes in any hour, then observations may (optional) be stopped after an emission time of 6 minutes is exceeded. Similarly, when the regulation is expressed as an emission frequency and the regulation prohibits emissions for greater than 10 percent of the time in any hour, then observations may (optional) be terminated after 6 minutes of emission are observed since 6 minutes is 10 percent of an hour. In any case, the observation period shall not be less than 6 minutes in duration. In some cases, the process operation may be intermittent or cyclic. In such cases, it may be convenient for the observation period to coincide with the length of the process cycle.

11.4.3 Observer Rest Breaks. Do not observe emissions continuously for a period of more than 15 to 20 minutes without taking a rest break. For sources requiring observation periods of greater than 20 minutes, the observer shall take a break of not less than 5 minutes and not more than 10 minutes after every 15 to 20 minutes of observation. If continuous observations are desired for extended time periods, two observers can alternate between making observations and taking breaks.

11.5 Recording Observations. Record the accumulated time of the observation period on the data sheet as the observation period duration. Record the accumulated time emissions were observed on the data sheet as the emission time. Record the clock time the observation period began and ended, as well as the clock time any observer breaks began and ended.

*12.0 Data Analysis and Calculations*

If the applicable subpart requires that the emission rate be expressed as an emission frequency (in percent), determine this value as follows: Divide the accumulated emission time (in seconds) by the duration of the observation period (in seconds) or by any minimum observation period required in the applicable subpart, if the actual observation period is less than the required period, and multiply this quotient by 100.

*13.0 Method Performance. [Reserved]*

*14.0 Pollution Prevention. [Reserved]*

*15.0 Waste Management. [Reserved]*

*16.0 References*

1. Missan, R., and A. Stein. Guidelines for Evaluation of Visible Emissions Certification, Field Procedures, Legal Aspects, and Background Material. EPA Publication No. EPA–340/1–75–007. April 1975.

2. Wohlschlegel, P., and D.E. Wagoner. Guideline for Development of a Quality Assurance Program: Volume IX—Visual Determination of Opacity Emissions from Stationary Sources. EPA Publication No. EPA–650/4–74–005i. November 1975.

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*17.0 Tables, Diagrams, Flowcharts, and Validation Data*

FUGITIVE OR SMOKE EMISSION INSPECTION
OUTDOOR LOCATION

| | |
|---|---|
| Company<br>Location<br>Company Rep. | Observer<br>Affiliation<br>Date |
| Sky Conditions<br>Precipitation | Wind Direction<br>Wind Speed |
| Industry | Process Unit |

Sketch process unit: indicate observer position relative to source; indicate potential emission points and/or actual emission points.

| OBSERVATIONS | Clock Time | Observation period duration, min:sec | Accumulated emission time, min:sec |
|---|---|---|---|
| Begin Observation | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| End Observation | | | |

Figure 22-1

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| FUGITIVE OR SMOKE EMISSION INSPECTION<br>INDOOR LOCATION | |
|---|---|
| Company<br>Location<br>Company Rep. | Observer<br>Affiliation<br>Date |
| Industry | Process Unit |

Light type (fluorescent, incandescent, natural)
Light location (overhead, behind observer, etc.)
Illuminance (lux or footcandles)
Sketch process unit: indicate observer position relative to source; indicate potential emission points and/or actual emission points.

| OBSERVATIONS | Clock Time | Observation period duration, min:sec | Accumulated emission time, min:sec |
|---|---|---|---|
| Begin | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| End Observation | | | |

Figure 22-2

BILLING CODE 6560-50-C



* * * * *

**Method 24—Determination of Volatile Matter Content, Water Content, Density, Volume Solids, and Weight Solids of Surface Coatings**

*1.0 Scope and Application*

1.1 Analytes.

| Analyte | CAS No. |
|---|---|
| Volatile organic compounds Water. | No CAS Number assigned 7732–18–5 |

1.2 Applicability. This method is applicable for the determination of volatile matter content, water content, density, volume solids, and weight solids of paint, varnish, lacquer, or other related surface coatings.

1.3 Precision and Bias. Intra-and inter-laboratory analytical precision statements are presented in Section 13.1. No bias has been identified.

*2.0 Summary of Method*

2.1 Standard methods are used to determine the volatile matter content, water content, density, volume solids, and weight solids of paint, varnish, lacquer, or other related surface coatings.

*3.0 Definitions*

3.1 *Waterborne coating* means any coating which contains more than 5 percent water by weight in its volatile fraction.

3.2 *Multicomponent coatings* are coatings that are packaged in two or more parts, which are combined before application. Upon combination a coreactant from one part of the coating chemically reacts, at ambient conditions, with a coreactant from another part of the coating.

3.3 *Ultraviolet (UV) radiation-cured coatings* are coatings which contain unreacted monomers that are polymerized by exposure to ultraviolet light.

*4.0 Interferences. [Reserved]*

*5.0 Safety*

5.1 Disclaimer. This method may involve hazardous materials, operations, and equipment. This test method may not address all of the safety problems associated with its use. It is the responsibility of the user of this test method to establish appropriate safety and health practices and to determine the applicability of regulatory limitations prior to performing this test method.

5.2 Hazardous Components. Several of the compounds that may be contained in the coatings analyzed by this method may be irritating or corrosive to tissues (e.g., heptane) or may be toxic (e.g., benzene, methyl alcohol). Nearly all are fire hazards. Appropriate precautions can be found in reference documents, such as Reference 3 of Section 16.0.

*6.0 Equipment and Supplies*

The equipment and supplies specified in the ASTM methods listed in Sections 6.1 through 6.6 (incorporated by reference—see § 60.17 for acceptable versions of the methods) are required:

6.1 ASTM D 1475–60, 80, or 90, Standard Test Method for Density of Paint, Varnish, Lacquer, and Related Products.

6.2 ASTM D 2369–81, 87, 90, 92, 93, or 95, Standard Test Method for Volatile Content of Coatings.

6.3 ASTM D 3792–79 or 91, Standard Test Method for Water Content of Water Reducible Paints by Direct Injection into a Gas Chromatograph.

6.4 ASTM D 4017–81, 90, or 96a, Standard Test Method for Water in Paints and Paint Materials by the Karl Fischer Titration Method.

6.5 ASTM 4457–85 91, Standard Test Method for Determination of Dichloromethane and 1,1,1-Trichloroethane in Paints and Coatings by Direct Injection into a Gas Chromatograph.

6.6 ASTM D 5403–93, Standard Test Methods for Volatile Content of Radiation Curable Materials.

*7.0 Reagents and Standards*

7.1 The reagents and standards specified in the ASTM methods listed in Sections 6.1 through 6.6 are required.

*8.0 Sample Collection, Preservation, Storage, and Transport*

8.1 Follow the sample collection, preservation, storage, and transport procedures described in Reference 1 of Section 16.0.

*9.0 Quality Control*

9.1 Reproducibility

**Note:** Not applicable to UV radiation-cured coatings). The variety of coatings that may be subject to analysis makes it necessary to verify the ability of the analyst and the analytical procedures to obtain reproducible results for the coatings tested. Verification is accomplished by running duplicate analyses on each sample tested (Sections 11.2 through 11.4) and comparing the results with the intra-laboratory precision statements (Section 13.1) for each parameter.

9.2 Confidence Limits for Waterborne Coatings. Because of the inherent increased imprecision in the determination of the VOC content of waterborne coatings as the weight percent of water increases, measured parameters for waterborne coatings are replaced with appropriate confidence limits (Section 12.6). These confidence limits are based on measured parameters and inter-laboratory precision statements.

*10.0 Calibration and Standardization*

10.1 Perform the calibration and standardization procedures specified in the ASTM methods listed in Sections 6.1 through 6.6.

*11.0 Analytical Procedure*

Additional guidance can be found in Reference 2 of Section 16.0.

11.1 Non Thin-film Ultraviolet Radiation-cured (UV radiation-cured) Coatings.

11.1.1 Volatile Content. Use the procedure in ASTM D 5403 to determine the volatile matter content of the coating except the curing test described in NOTE 2 of ASTM D 5403 is required.

11.1.2 Water Content. To determine water content, follow Section 11.3.2.

11.1.3 Coating Density. To determine coating density, follow Section 11.3.3.

11.1.4 Solids Content. To determine solids content, follow Section 11.3.4.

11.1.5 To determine if a coating or ink can be classified as a thin-film UV cured coating or ink, use the equation in Section 12.2. If C is less than 0.2 g and A is greater than or equal to 225 $cm^2$ (35 $in^2$) then the coating or ink is considered a thin-film UV radiation-cured coating and ASTM D 5403 is not applicable.

**Note:** As noted in Section 1.4 of ASTM D 5403, this method may not be applicable to radiation curable materials wherein the volatile material is water.

11.2 Multi-component Coatings.

11.2.1 Sample Preparation.

11.2.1.1 Prepare about 100 ml of sample by mixing the components in a storage container, such as a glass jar with a screw top or a metal can with a cap. The storage container should be just large enough to hold the mixture. Combine the components (by weight or volume) in the ratio recommended by the manufacturer. Tightly close the container between additions and during mixing to prevent loss of volatile materials. However, most manufacturers mixing instructions are by volume. Because of possible error caused by expansion of the liquid when measuring the volume, it is recommended that the components be combined by weight. When weight is used to combine the components and the manufacturer's recommended ratio is by volume, the density must be determined by Section 11.3.3.

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11.2.1.2 Immediately after mixing, take aliquots from this 100 ml sample for determination of the total volatile content, water content, and density.

11.2.2 Volatile Content. To determine total volatile content, use the apparatus and reagents described in ASTM D2369 Sections 3 and 4 (incorporated by reference—see § 60.17 for the approved versions of the standard), respectively, and use the following procedures:

11.2.2.1 Weigh and record the weight of an aluminum foil weighing dish. Add 3 ± 1 ml of suitable solvent as specified in ASTM D2369 to the weighing dish. Using a syringe as specified in ASTM D2369, weigh to 1 mg, by difference, a sample of coating into the weighing dish. For coatings believed to have a volatile content less than 40 weight percent, a suitable size is 0.3 + 0.10 g, but for coatings believed to have a volatile content greater than 40 weight percent, a suitable size is 0.5 ± 0.1 g.

**Note:** If the volatile content determined pursuant to Section 12.4 is not in the range corresponding to the sample size chosen repeat the test with the appropriate sample size. Add the specimen dropwise, shaking (swirling) the dish to disperse the specimen completely in the solvent. If the material forms a lump that cannot be dispersed, discard the specimen and prepare a new one. Similarly, prepare a duplicate. The sample shall stand for a minimum of 1 hour, but no more than 24 hours prior to being oven cured at 110 ± 5°C (230 ± 9°F) for 1 hour.

11.2.2.2 Heat the aluminum foil dishes containing the dispersed specimens in the forced draft oven for 60 min at 110 ± 5°C (230 ± 9°F). Caution—provide adequate ventilation, consistent with accepted laboratory practice, to prevent solvent vapors from accumulating to a dangerous level.

11.2.2.3 Remove the dishes from the oven, place immediately in a desiccator, cool to ambient temperature, and weigh to within 1 mg.

11.2.2.4 Run analyses in pairs (duplicate sets) for each coating mixture until the criterion in Section 11.4 is met. Calculate $W_v$ following Equation 24–2 and record the arithmetic average.

11.2.3 Water Content. To determine water content, follow Section 11.3.2.

11.2.4 Coating Density. To determine coating density, follow Section 11.3.3.

11.2.5 Solids Content. To determine solids content, follow Section 11.3.4.

11.2.6 Exempt Solvent Content. To determine the exempt solvent content, follow Section 11.3.5.

**Note:** For all other coatings (*i.e.*, water-or solvent-borne coatings) not covered by multicomponent or UV radiation-cured coatings, analyze as shown below:

11.3 Water-or Solvent-borne coatings.

11.3.1 Volatile Content. Use the procedure in ASTM D 2369 to determine the volatile matter content (may include water) of the coating.

11.3.1.1 Record the following information:

$W_1$ = weight of dish and sample before heating, g

$W_2$ = weight of dish and sample after heating, g

$W_3$ = sample weight, g.

11.3.1.2 Calculate the weight fraction of the volatile matter ($W_v$) for each analysis as shown in Section 12.3.

11.3.1.3 Run duplicate analyses until the difference between the two values in a set is less than or equal to the intra-laboratory precision statement in Section 13.1.

11.3.1.4 Record the arithmetic average ($W_v$).

11.3.2 Water Content. For waterborne coatings only, determine the weight fraction of water ($W_w$) using either ASTM D 3792 or ASTM D 4017.

11.3.2.1 Run duplicate analyses until the difference between the two values in a set is less than or equal to the intra-laboratory precision statement in Section 13.1.

11.3.2.2 Record the arithmetic average ($w_w$).

11.3.3 Coating Density. Determine the density (Dc, kg/l) of the surface coating using the procedure in ASTM D 1475.

11.3.3.1 Run duplicate analyses until each value in a set deviates from the mean of the set by no more than the intra-laboratory precision statement in Section 13.1.

11.3.3.2 Record the arithmetic average ($D_c$).

11.3.4 Solids Content. Determine the volume fraction ($V_s$) solids of the coating by calculation using the manufacturer's formulation.

11.3.5 Exempt Solvent Content. Determine the weight fraction of exempt solvents ($W_E$) by using ASTM Method D4457. Run a duplicate set of determinations and record the arithmetic average ($W_E$).

11.4 Samplé Analysis Criteria. For $W_v$ and $W_w$, run duplicate analyses until the difference between the two values in a set is less than or equal to the intra-laboratory precision statement for that parameter. For $D_c$, run duplicate analyses until each value in a set deviates from the mean of the set by no more than the intra-laboratory precision statement. If, after several attempts, it is concluded that the ASTM procedures cannot be used for the specific coating with the established intra-laboratory precision (excluding UV radiation-cured coatings), the U.S. Environmental Protection Agency (EPA) will assume responsibility for providing the necessary procedures for revising the method or precision statements upon written request to: Director, Emissions, Monitoring, and Analysis Division, MD–14, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711.

*12.0 Calculations and Data Analysis*

12.1 Nomenclature.

A = Area of substrate, $cm^2$, ($in^2$).

C = Amount of coating or ink added to the substrate, g.

$D_c$ = Density of coating or ink, g/$cm^3$ (g/$in^3$).

F = Manufacturer's recommended film thickness, cm (in).

$W_o$ = Weight fraction of nonaqueous volatile matter, g/g.

$W_s$ = Weight fraction of solids, g/g.

$W_v$ = Weight fraction of the volatile matter, g/g.

$W_w$ = Weight fraction of the water, g/g.

12.2 To determine if a coating or ink can be classified as a thin-film UV cured coating or ink, use the following equation:

$$C = F A D_c \qquad \text{Eq. 24-1}$$

12.3 Calculate $W_v$ for each analysis as shown below:

$$W_v = \frac{W_1 - W_2}{W_3} \qquad \text{Eq. 24-2}$$

12.4 Nonaqueous Volatile Matter.

12.4.1 Solvent-borne Coatings.

$$W_o = W_v \qquad \text{Eq. 24-3}$$

12.4.2 Waterborne Coatings.

$$W_o = W_v - W_w \qquad \text{Eq. 24-4}$$

12.4.3 Coatings Containing Exempt Solvents.

$$W_o = W_v - W_E - W_w \qquad \text{Eq. 24-5}$$

12.5 Weight Fraction Solids.

$$W_s = 1 - W_v \qquad \text{Eq. 24-6}$$

12.6 Confidence Limit Calculations for Waterborne Coatings. To calculate the lower confidence limit, subtract the appropriate inter-laboratory precision value from the measured mean value for that parameter. To calculate the upper confidence limit, add the appropriate inter-laboratory precision value to the measured mean value for that parameter. For $W_v$ and $D_c$, use the lower confidence limits; for $W_w$, use the upper confidence limit. Because $W_s$ is calculated, there is no adjustment for this parameter.



*13.0 Method Performance*

13.1 Analytical Precision Statements. The intra-and inter-laboratory precision statements are given in Table 24–1 in Section 17.0.

*14.0 Pollution Prevention [Reserved]*

*15.0 Waste Management. [Reserved]*

*16.0 References*

Same as specified in Section 6.0, with the addition of the following:

1. Standard Procedure for Collection of Coating and Ink Samples for Analysis by Reference Methods 24 and 24A. EPA–340/1–91–010. U.S. Environmental Protection Agency, Stationary Source Compliance Division, Washington, D.C. September 1991.

2. Standard Operating Procedure for Analysis of Coating and Ink Samples by Reference Methods 24 and 24A. EPA–340/1–91–011. U.S. Environmental Protection Agency, Stationary Source Compliance Division, Washington, D.C. September 1991.

3. Handbook of Hazardous Materials: Fire, Safety, Health. Alliance of American Insurers. Schaumberg, IL. 1983.

*17.0 Tables, Diagrams, Flowcharts, and Validation Data*

TABLE 24–1.—ANALYTICAL PRECISION STATEMENTS

| | Intra-laboratory | Inter-laboratory |
|---|---|---|
| Volatile matter content, $W_v$ | ± 0.015 $W_v$ | ± 0.047 $W_v$ |
| Water content, $W_w$ | ± 0.029 $W_w$ | ± 0.075 $W_w$ |
| Density, $D_c$ | ± 0.001 kg/l | ± 0.002 kg/l |

**Method 24A—Determination of Volatile Matter Content and Density of Publication Rotogravure Inks and Related Publication Rotogravure Coatings**

*1.0 Scope and Application*

1.1 Analytes.

| Analyte | CAS No. |
|---|---|
| Volatile organic compounds (VOC). | No CAS number assigned. |

1.2 Applicability. This method is applicable for the determination of the VOC content and density of solvent-borne (solvent-reducible) publication rotogravure inks and related publication rotogravure coatings.

*2.0 Summary of Method*

2.1 Separate procedures are used to determine the VOC weight fraction and density of the ink or related coating and the density of the solvent in the ink or related coating. The VOC weight fraction is determined by measuring the weight loss of a known sample quantity which has been heated for a specified length of time at a specified temperature. The density of both the ink or related coating and solvent are measured by a standard procedure. From this information, the VOC volume fraction is calculated.

*3.0 Definitions [Reserved]*

*4.0 Interferences [Reserved]*

*5.0 Safety*

5.1 Disclaimer. This method may involve hazardous materials, operations, and equipment. This test method does not purport to address all of the safety problems associated with its use. It is the responsibility of the user of this test method to establish appropriate safety and health practices and to determine the applicability of regulatory limitations prior to performing this test method.

5.2 Hazardous Components. Some of the compounds that may be contained in the inks or related coatings analyzed by this method may be irritating or corrosive to tissues or may be toxic. Nearly all are fire hazards. Appropriate precautions can be found in reference documents, such as Reference 6 of Section 16.0.

*6.0 Equipment and Supplies*

The following equipment and supplies are required for sample analysis:

6.1 Weighing Dishes. Aluminum foil, 58 mm (2.3 in.) in diameter by 18 mm (0.7 in.) high, with a flat bottom. There must be at least three weighing dishes per sample.

6.2 Disposable Syringe. 5 ml.

6.3 Analytical Balance. To measure to within 0.1 mg.

6.4 Oven. Vacuum oven capable of maintaining a temperature of 120 ± 2 °C (248 ± 4 °F) and an absolute pressure of 510 ± 51 mm Hg (20 ± 2 in. Hg) for 4 hours. Alternatively, a forced draft oven capable of maintaining a temperature of 120 ± 2 °C (248 ± 4 °F) for 24 hours.

6.5 The equipment and supplies specified in ASTM D 1475–60, 80, or 90 (incorporated by reference—see § 60.17).

*7.0 Reagents and Standards*

7.1 The reagents and standards specified in ASTM D 1475–60, 80, or 90 are required.

*8.0 Sample Collection, Preservation, Storage, and Transport*

8.1 Follow the sample collection, preservation, storage, and transport procedures described in Reference 4 of Section 16.0.

*9.0 Quality Control [Reserved]*

*10.0 Calibration and Standardization [Reserved]*

*11.0 Analytical Procedure*

Additional guidance can be found in Reference 5 of Section 16.0.

11.1 VOC Weight Fraction. Shake or mix the ink or related coating sample thoroughly to assure that all the solids are completely suspended. Label and weigh to the nearest 0.1 mg a weighing dish and record this weight ($M_{x1}$). Using a 5 ml syringe, without a needle, extract an aliquot from the ink or related coating sample. Weigh the syringe and aliquot to the nearest 0.1 mg and record this weight ($M_{cy1}$). Transfer 1 to 3 g of the aliquot to the tared weighing dish. Reweigh the syringe and remaining aliquot to the nearest 0.1 mg and record this weight ($M_{cy2}$). Heat the weighing dish with the transferred aliquot in a vacuum oven at an absolute pressure of 510 ± 51 mm Hg (20 ± 2 in. Hg) and a temperature of 120 ± 2 °C (248 ± 4 °F) for 4 hours. Alternatively, heat the weighing dish with the transferred aliquot in a forced draft oven at a temperature of 120 ± 2 °C for 24 hours. After the weighing dish has cooled, reweigh it to the nearest 0.1 mg and record the weight ($M_{x2}$). Repeat this procedure two times for each ink or related coating sample, for a total of three samples.

11.2 Ink or Related Coating Density. Determine the density of the ink or related coating ($D_c$) according to the procedure outlined in ASTM D 1475. Make a total of three determinations for each ink or related coating sample. Report the ink or related coating density as the arithmetic average ($D_c$) of the three determinations.

11.3 Solvent Density. Determine the density of the solvent ($D_o$) according to

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the procedure outlined in ASTM D 1475. Make a total of three determinations for each ink or related coating sample. Report the solvent density as the arithmetic average ($D_o$) of the three determinations.

*12.0 Calculations and Data Analysis*

12.1 VOC Weight Fraction. For each determination, calculate the volatile organic content weight fraction ($W_o$) using the following equation:

$$W_o = \frac{M_{x1} + M_{cy1} - M_{cy2} - M_{x2}}{M_{cy1} - M_{cy2}} \quad \text{Eq. 24A-1}$$

Make a total of three determinations. Report the VOC weight fraction as the arithmetic average ($\overline{W}_o$) of the three determinations.

12.2 VOC Volume Fraction. Calculate the volume fraction volatile organic content ($V_o$) using the following equation:

$$V_o = \frac{\overline{W}_o \overline{D}_c}{\overline{D}_o} \quad \text{Eq. 24A-2}$$

*13.0 Method Performance [Reserved]*

*14.0 Pollution Prevention [Reserved]*

*15.0 Waste Management [Reserved]*

*16.0 References*

1. Standard Test Method for Density of Paint, Varnish, Lacquer, and Related Products. ASTM Designation D 1475.
2. Teleconversation. Wright, Chuck, Inmont Corporation with Reich, R., A., Radian Corporation. September 25, 1979, Gravure Ink Analysis.
3. Teleconversation. Oppenheimer, Robert, Gravure Research Institute with Burt, Rick, Radian Corporation, November 5, 1979, Gravure Ink Analysis.
4. Standard Procedure for Collection of Coating and Ink Samples for Analysis by Reference Methods 24 and 24A. EPA–340/1–91–010. U.S. Environmental Protection Agency, Stationary Source Compliance Division, Washington, D.C. September 1991.
5. Standard Operating Procedure for Analysis of Coating and Ink Samples by Reference Methods 24 and 24A. EPA–340/1–91–011. U.S. Environmental Protection Agency, Stationary Source Compliance Division, Washington, D.C. September 1991.
6. Handbook of Hazardous Materials: Fire, Safety, Health. Alliance of American Insurers. Schaumberg, IL. 1983.

*17.0 Tables, Diagrams, Flowcharts, and Validation Data. [Reserved]*

## Method 25—Determination of Total Gaseous Nonmethane Organic Emissions as Carbon

*1.0 Scope and Application*

1.1 Analytes.

| Analyte | CAS No. | Sensitivity |
|---|---|---|
| Total gaseous nonmethane organic compounds (TGNMO) ..... | N/A | Dependent upon analytical equipment. |

1.2 Applicability.

1.2.1 This method is applicable for the determination of volatile organic compounds (VOC) (measured as total gaseous nonmethane organics (TGNMO) and reported as carbon) in stationary source emissions. This method is not applicable for the determination of organic particulate matter.

1.2.2 This method is not the only method that applies to the measurement of VOC. Costs, logistics, and other practicalities of source testing may make other test methods more desirable for measuring VOC contents of certain effluent streams. Proper judgment is required in determining the most applicable VOC test method. For example, depending upon the molecular composition of the organics in the effluent stream, a totally automated semicontinuous nonmethane organics (NMO) analyzer interfaced directly to the source may yield accurate results. This approach has the advantage of providing emission data semicontinuously over an extended time period.

1.2.3 Direct measurement of an effluent with a flame ionization detector (FID) analyzer may be appropriate with prior characterization of the gas stream and knowledge that the detector responds predictably to the organic compounds in the stream. If present, methane ($CH_4$) will, of course, also be measured. The FID can be used under any of the following limited conditions: (1) Where only one compound is known to exist; (2) when the organic compounds consist of only hydrogen and carbon; (3) where the relative percentages of the compounds are known or can be determined, and the FID responses to the compounds are known; (4) where a consistent mixture of the compounds exists before and after emission control and only the relative concentrations are to be assessed; or (5) where the FID can be calibrated against mass standards of the compounds emitted (solvent emissions, for example).

1.2.4 Another example of the use of a direct FID is as a screening method. If there is enough information available to provide a rough estimate of the analyzer accuracy, the FID analyzer can be used to determine the VOC content of an uncharacterized gas stream. With a sufficient buffer to account for possible inaccuracies, the direct FID can be a useful tool to obtain the desired results without costly exact determination.

1.2.5 In situations where a qualitative/quantitative analysis of an effluent stream is desired or required, a gas chromatographic FID system may apply. However, for sources emitting numerous organics, the time and expense of this approach will be formidable.



*2.0 Summary of Method*

2.1 An emission sample is withdrawn from the stack at a constant rate through a heated filter and a chilled condensate trap by means of an evacuated sample tank. After sampling is completed, the TGNMO are determined by independently analyzing the condensate trap and sample tank fractions and combining the analytical results. The organic content of the condensate trap fraction is determined by oxidizing the NMO to carbon dioxide ($CO_2$) and quantitatively collecting in the effluent in an evacuated vessel; then a portion of the $CO_2$ is reduced to $CH_4$ and measured by an FID. The organic content of the sample tank fraction is measured by injecting a portion of the sample into a gas chromatographic column to separate the NMO from carbon monoxide (CO), $CO_2$, and $CH_4$; the NMO are oxidized to $CO_2$, reduced to $CH_4$, and measured by an FID. In this manner, the variable response of the FID associated with different types of organics is eliminated.

*3.0 Definitions [Reserved]*

*4.0 Interferences*

4.1 Carbon Dioxide and Water Vapor. When carbon dioxide ($CO_2$) and water vapor are present together in the stack, they can produce a positive bias in the sample. The magnitude of the bias depends on the concentrations of $CO_2$ and water vapor. As a guideline, multiply the $CO_2$ concentration, expressed as volume percent, times the water vapor concentration. If this product does not exceed 100, the bias can be considered insignificant. For example, the bias is not significant for a source having 10 percent $CO_2$ and 10 percent water vapor, but it might be significant for a source having 10 percent $CO_2$ and 20 percent water vapor.

4.2. Particulate Matter. Collection of organic particulate matter in the condensate trap would produce a positive bias. A filter is included in the sampling equipment to minimize this bias.

*5.0 Safety*

5.1 Disclaimer. This method may involve hazardous materials, operations, and equipment. This test method may not address all of the safety problems associated with its use. It is the responsibility of the user of this test method to establish appropriate safety and health practices and determine the applicability of regulatory limitations prior to performing this test method.

*6.0 Equipment and Supplies*

6.1 Sample Collection. The sampling system consists of a heated probe, heated filter, condensate trap, flow control system, and sample tank (see Figure 25–1). The TGNMO sampling equipment can be constructed from commercially available components and components fabricated in a machine shop. The following equipment is required:

6.1.1 Heated Probe. 6.4-mm (¼-in.) OD stainless steel tubing with a heating system capable of maintaining a gas temperature at the exit end of at least 129 °C (265 °F). The probe shall be equipped with a temperature sensor at the exit end to monitor the gas temperature. A suitable probe is shown in Figure 25–1. The nozzle is an elbow fitting attached to the front end of the probe while the temperature sensor is inserted in the side arm of a tee fitting attached to the rear of the probe. The probe is wrapped with a suitable length of high temperature heating tape, and then covered with two layers of glass cloth insulation and one layer of aluminum foil or an equivalent wrapping.

**Note:** If it is not possible to use a heating system for safety reasons, an unheated system with an in-stack filter is a suitable alternative.

6.1.2 Filter Holder. 25-mm (15/16-in.) ID Gelman filter holder with 303 stainless steel body and 316 stainless steel support screen with the Viton O-ring replaced by a Teflon O-ring.

6.1.3 Filter Heating System.

6.1.3.1 A metal box consisting of an inner and an outer shell separated by insulating material with a heating element in the inner shell capable of maintaining a gas temperature at the filter of 121 ± 3 °C (250 ± 5 °F). The heating box shall include temperature sensors to monitor the gas temperature immediately upstream and immediately downstream of the filter.

6.1.3.2 A suitable heating box is shown in Figure 25–2. The outer shell is a metal box that measures 102 mm x 280 mm x 292 mm (4 in. x 11 in. x 11½ in.), while the inner shell is a metal box measuring 76 mm x 229 mm x 241 mm (3 in. x 9 in. x 9½ in.). The inner box is supported by 13-mm (½-in.) phenolic rods. The void space between the boxes is filled with ceramic fiber insulation which is sealed in place by means of a silicon rubber bead around the upper sides of the box. A removable lid made in a similar manner, with a 25-mm (1-in.) gap between the parts is used to cover the heating chamber. The inner box is heated with a 250-watt cartridge heater, shielded by a stainless steel shroud. The heater is regulated by a thermostatic temperature controller which is set to maintain a gas temperature of 121 °C (250 °F) as measured by the temperature sensor upstream of the filter.

**Note:** If it is not possible to use a heating system for safety reasons, an unheated system with an in-stack filter is a suitable alternative.

6.1.4 Condensate Trap. 9.5-mm (⅜-in.) OD 316 stainless steel tubing bent into a U-shape. Exact dimensions are shown in Figure 25–3. The tubing shall be packed with coarse quartz wool, to a density of approximately 0.11 g/cm³ before bending. While the condensate trap is packed with dry ice in the Dewar, an ice bridge may form between the arms of the condensate trap making it difficult to remove the condensate trap. This problem can be prevented by attaching a steel plate between the arms of the condensate trap in the same plane as the arms to completely fill the intervening space.

6.1.5 Valve. Stainless steel control valve for starting and stopping sample flow.

6.1.6 Metering Valve. Stainless steel valve for regulating the sample flow rate through the sample train.

6.1.7 Rate Meter. Rotameter, or equivalent, capable of measuring sample flow in the range of 60 to 100 cm³/min (0.13 to 0.21 ft³/hr).

6.1.8 Sample Tank. Stainless steel or aluminum tank with a minimum volume of 4 liters (0.14 ft³).

**Note:** Sample volumes greater than 4 liters may be required for sources with low organic concentrations.

6.1.9 Mercury Manometer. U-tube manometer or absolute pressure gauge capable of measuring pressure to within 1 mm Hg in the range of 0 to 900 mm.

6.1.10 Vacuum Pump. Capable of evacuating to an absolute pressure of 10 mm Hg.

6.2 Condensate Recovery. The system for the recovery of the organics captured in the condensate trap consists of a heat source, an oxidation catalyst, a nondispersive infrared (NDIR) analyzer, and an intermediate collection vessel (ICV). Figure 25–4 is a schematic of a typical system. The system shall be capable of proper oxidation and recovery, as specified in Section 10.1.1. The following major components are required:

6.2.1 Heat Source. Sufficient to heat the condensate trap (including probe) to a temperature of 200 °C (390 °F). A system using both a heat gun and an electric tube furnace is recommended.

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6.2.2 Heat Tape. Sufficient to heat the connecting tubing between the water trap and the oxidation catalyst to 100 °C (212 °F).

6.2.3 Oxidation Catalyst. A suitable length of 9.5 mm (3/8-in.) OD Inconel 600 tubing packed with 15 cm (6 in.) of 3.2 mm (3/8-in.) diameter 19 percent chromia on alumina pellets. The catalyst material is packed in the center of the catalyst tube with quartz wool packed on either end to hold it in place.

6.2.4 Water Trap. Leak-proof, capable of removing moisture from the gas stream.

6.2.5 Syringe Port. A 6.4-mm (1/4-in.) OD stainless steel tee fitting with a rubber septum placed in the side arm.

6.2.6 NDIR Detector. Capable of indicating $CO_2$ concentration in the range of zero to 5 percent, to monitor the progress of combustion of the organic compounds from the condensate trap.

6.2.7 Flow-Control Valve. Stainless steel, to maintain the trap conditioning system near atmospheric pressure.

6.2.8 Intermediate Collection Vessel. Stainless steel or aluminum, equipped with a female quick connect. Tanks with nominal volumes of at least 6 liters (0.2 $ft^3$) are recommended.

6.2.9 Mercury Manometer. Same as described in Section 6.1.9.

6.2.10 Syringe. 10-ml gas-tight glass syringe equipped with an appropriate needle.

6.2.11 Syringes. 10-µl and 50-µl liquid injection syringes.

6.2.12 Liquid Sample Injection Unit. 316 Stainless steel U-tube fitted with an injection septum (see Figure 25–7).

6.3 Analysis.

6.3.1 NMO Analyzer. The NMO analyzer is a gas chromatograph (GC) with backflush capability for NMO analysis and is equipped with an oxidation catalyst, reduction catalyst, and FID. Figures 25–5 and 25–6 are schematics of a typical NMO analyzer. This semicontinuous GC/FID analyzer shall be capable of: (1) Separating CO, $CO_2$, and $CH_4$ from NMO, (2) reducing the $CO_2$ to $CH_4$ and quantifying as $CH_4$, and (3) oxidizing the NMO to $CO_2$, reducing the $CO_2$ to $CH_4$ and quantifying as $CH_4$, according to Section 10.1.2. The analyzer consists of the following major components:

6.3.1.1 Oxidation Catalyst. A suitable length of 9.5-mm (3/8-in.) OD Inconel 600 tubing packed with 5.1 cm (2 in.) of 19 percent chromia on 3.2-mm (1/8-in.) alumina pellets. The catalyst material is packed in the center of the tube supported on either side by quartz wool. The catalyst tube must be mounted vertically in a 650 °C (1200 °F) furnace. Longer catalysts mounted horizontally may be used, provided they can meet the specifications of Section 10.1.2.1.

6.3.1.2 Reduction Catalyst. A 7.6-cm (3-in.) length of 6.4-mm (1/4-in.) OD Inconel tubing fully packed with 100-mesh pure nickel powder. The catalyst tube must be mounted vertically in a 400 °C (750 °F) furnace.

6.3.1.3 Separation Column(s). A 30-cm (1-ft) length of 3.2-mm (1/8-in.) OD stainless steel tubing packed with 60/80 mesh Unibeads 1S followed by a 61-cm (2-ft) length of 3.2-mm (1/8-in.) OD stainless steel tubing packed with 60/80 mesh Carbosieve G. The Carbosieve and Unibeads columns must be baked separately at 200 °C (390 °F) with carrier gas flowing through them for 24 hours before initial use.

6.3.1.4 Sample Injection System. A single 10-port GC sample injection valve or a group of valves with sufficient ports fitted with a sample loop properly sized to interface with the NMO analyzer (1-cc loop recommended).

6.3.1.5 FID. An FID meeting the following specifications is required:

6.3.1.5.1 Linearity. A linear response (±5 percent) over the operating range as demonstrated by the procedures established in Section 10.1.2.3.

6.3.1.5.2 Range. A full scale range of 10 to 50,000 ppm $CH_4$. Signal attenuators shall be available to produce a minimum signal response of 10 percent of full scale.

6.3.1.6 Data Recording System. Analog strip chart recorder or digital integration system compatible with the FID for permanently recording the analytical results.

6.3.2 Barometer. Mercury, aneroid, or other barometer capable of measuring atmospheric pressure to within 1 mm Hg.

6.3.3 Temperature Sensor. Capable of measuring the laboratory temperature within 1 °C (2 °F).

6.3.4 Vacuum Pump. Capable of evacuating to an absolute pressure of 10 mm Hg.

*7.0 Reagents and Standards*

7.1 Sample Collection. The following reagents are required for sample collection:

7.1.1 Dry Ice. Solid CO2, crushed.

7.1.2 Coarse Quartz Wool. 8 to 15 um.

7.1.3 Filters. Glass fiber filters, without organic binder.

7.2 NMO Analysis. The following gases are required for NMO analysis:

7.2.1 Carrier Gases. Helium (He) and oxygen ($O_2$) containing less than 1 ppm $CO_2$ and less than 0.1 ppm hydrocarbon.

7.2.2 Fuel Gas. Hydrogen ($H_2$), at least 99.999 percent pure.

7.2.3 Combustion Gas. Either air (less than 0.1 ppm total hydrocarbon content) or $O_2$ (purity 99.99 percent or greater), as required by the detector.

7.3 Condensate Analysis. The following are required for condensate analysis:

7.3.1 Gases. Containing less than 1 ppm carbon.

7.3.1.1 Air.

7.3.1.2 Oxygen.

7.3.2 Liquids. To conform to the specifications established by the Committee on Analytical Reagents of the American Chemical Society.

7.3.2.1 Hexane.

7.3.2.2 Decane.

7.4 Calibration. For all calibration gases, the manufacturer must recommend a maximum shelf life for each cylinder (i.e., the length of time the gas concentration is not expected to change more than ±5 percent from its certified value). The date of gas cylinder preparation, certified organic concentration, and recommended maximum shelf life must be affixed to each cylinder before shipment from the gas manufacturer to the buyer. The following calibration gases are required:

7.4.1 Oxidation Catalyst Efficiency Check Calibration Gas. Gas mixture standard with nominal concentration of 1 percent methane in air.

7.4.2 FID Linearity and NMO Calibration Gases. Three gas mixture standards with nominal propane concentrations of 20 ppm, 200 ppm, and 3000 ppm, in air.

7.4.3 $CO_2$ Calibration Gases. Three gas mixture standards with nominal $CO_2$ concentrations of 50 ppm, 500 ppm, and 1 percent, in air.

**Note:** Total NMO less than 1 ppm required for 1 percent mixture.

7.4.4 NMO Analyzer System Check Calibration Gases. Four calibration gases are needed as follows:

7.4.4.1 Propane Mixture. Gas mixture standard containing (nominal) 50 ppm CO, 50 ppm $CH_4$, 1 percent $CO_2$, and 20 ppm $C_3H_8$, prepared in air.

7.4.4.2 Hexane. Gas mixture standard containing (nominal) 50 ppm hexane in air.

7.4.4.3 Toluene. Gas mixture standard containing (nominal) 20 ppm toluene in air.

7.4.4.4 Methanol. Gas mixture standard containing (nominal) 100 ppm methanol in air.

7.5 Quality Assurance Audit Samples.

7.5.1 It is recommended, but not required, that a performance audit sample be analyzed in conjunction with the field samples. The audit sample should be in a suitable sample matrix at a concentration similar to the actual field samples.

7.5.2 When making compliance determinations, and upon availability, audit samples may be obtained from the appropriate EPA Regional Office or from the responsible enforcement authority and analyzed in conjunction with the field samples.

**Note:** The responsible enforcement authority should be notified at least 30 days prior to the test date to allow sufficient time for sample delivery.

*8.0 Sample Collection, Preservation, Transport, and Storage*

8.1 Sampling Equipment Preparation.

8.1.1 Condensate Trap Cleaning. Before its initial use and after each use, a condensate trap should be thoroughly cleaned and checked to ensure that it is not contaminated. Both cleaning and checking can be accomplished by installing the trap in the condensate recovery system and treating it as if it were a sample. The trap should be heated as described in Section 11.1.3. A trap may be considered clean when the $CO_2$ concentration in its effluent gas drops below 10 ppm. This check is optional for traps that most recently have been used to collect samples which were then recovered according to the procedure in Section 11.1.3.

8.1.2 Sample Tank Evacuation and Leak-Check. Evacuate the sample tank to 10 mm Hg absolute pressure or less. Then close the sample tank valve, and allow the tank to sit for 60 minutes. The tank is acceptable if a change in tank vacuum of less than 1 mm Hg is noted. The evacuation and leak-check may be conducted either in the laboratory or the field.

8.1.3 Sampling Train Assembly. Just before assembly, measure the tank vacuum using a mercury manometer. Record this vacuum, the ambient temperature, and the barometric pressure at this time. Close the sample tank valve and assemble the sampling system as shown in Figure 25–1. Immerse the condensate trap body in dry ice at least 30 minutes before commencing sampling to improve collection efficiency. The point where the inlet tube joins the trap body should be 2.5 to 5 cm (1 to 2 in.) above the top of the dry ice..

8.1.4 Pretest Leak-Check. A pretest leak-check is required. Calculate or measure the approximate volume of the sampling train from the probe tip to the sample tank valve. After assembling the sampling train, plug the probe tip, and make certain that the sample tank valve is closed. Turn on the vacuum pump, and evacuate the sampling system from the probe tip to the sample tank valve to an absolute pressure of 10 mm Hg or less. Close the purge valve, turn off the pump, wait a minimum period of 10 minutes, and recheck the indicated vacuum. Calculate the maximum allowable pressure change based on a leak rate of 1 percent of the sampling rate using Equation 25–1, Section 12.2. If the measured pressure change exceeds the allowable, correct the problem and repeat the leak-check before beginning sampling.

8.2 Sample Collection.

8.2.1 Unplug the probe tip, and place the probe into the stack such that the probe is perpendicular to the duct or stack axis; locate the probe tip at a single preselected point of average velocity facing away from the direction of gas flow. For stacks having a negative static pressure, seal the sample port sufficiently to prevent air in-leakage around the probe. Set the probe temperature controller to 129 °C (265 °F) and the filter temperature controller to 121 °C (250 °F). Allow the probe and filter to heat for about 30 minutes before purging the sample train.

8.2.2 Close the sample valve, open the purge valve, and start the vacuum pump. Set the flow rate between 60 and 100 $cm^3$/min (0.13 and 0.21 $ft^3$/hr), and purge the train with stack gas for at least 10 minutes.

8.2.3 When the temperatures at the exit ends of the probe and filter are within the corresponding specified ranges, check the dry ice level around the condensate trap, and add dry ice if necessary. Record the clock time. To begin sampling, close the purge valve and stop the pump. Open the sample valve and the sample tank valve. Using the flow control valve, set the flow through the sample train to the proper rate. Adjust the flow rate as necessary to maintain a constant rate (±10 percent) throughout the duration of the sampling period. Record the sample tank vacuum and flowmeter setting at 5-minute intervals. (See Figure 25–8.) Select a total sample time greater than or equal to the minimum sampling time specified in the applicable subpart of the regulations; end the sampling when this time period is reached or when a constant flow rate can no longer be maintained because of reduced sample tank vacuum.

**Note:** If sampling had to be stopped before obtaining the minimum sampling time (specified in the applicable subpart) because a constant flow rate could not be maintained, proceed as follows: After closing the sample tank valve, remove the used sample tank from the sampling train (without disconnecting other portions of the sampling train). Take another evacuated and leak-checked sample tank, measure and record the tank vacuum, and attach the new tank to the sampling train. After the new tank is attached to the sample train, proceed with the sampling until the required minimum sampling time has been exceeded.

8.3 Sample Recovery. After sampling is completed, close the flow control valve, and record the final tank vacuum; then record the tank temperature and barometric pressure. Close the sample tank valve, and disconnect the sample tank from the sample system. Disconnect the condensate trap at the inlet to the rate meter, and tightly seal both ends of the condensate trap. Do not include the probe from the stack to the filter as part of the condensate sample.

8.4 Sample Storage and Transport. Keep the trap packed in dry ice until the samples are returned to the laboratory for analysis. Ensure that run numbers are identified on the condensate trap and the sample tank(s).

*9.0 Quality Control*

| Section | Quality control measure | Effect |
|---|---|---|
| 10.1.1 | Initial performance check of condensate recovery apparatus. | Ensure acceptable condensate recovery efficiency. |
| 10.1.2, 10.2 | NMO analyzer initial and daily performance checks. | Ensure precision of analytical results. |
| 11.3 | Audit Sample Analyses | Evaluate analytical technique and instrument calibration. |

*10.0 Calibration and Standardization*

**Note:** Maintain a record of performance of each item.

10.1 Initial Performance Checks.

10.1.1 Condensate Recovery Apparatus. Perform these tests before the system is first placed in operation, after any shutdown of 6 months or more, and after any major modification of the system, or at the frequency recommended by the manufacturer.

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10.1.1.1 Carrier Gas and Auxiliary $O_2$ Blank Check. Analyze each new tank of carrier gas or auxiliary $O_2$ with the NMO analyzer to check for contamination. Treat the gas cylinders as noncondensible gas samples, and analyze according to the procedure in Section 11.2.3. Add together any measured $CH_4$, CO, $CO_2$, or NMO. The total concentration must be less than 5 ppm.

10.1.1.2 Oxidation Catalyst Efficiency Check.

10.1.1.2.1 With a clean condensate trap installed in the recovery system or a ⅛" stainless steel connector tube, replace the carrier gas cylinder with the high level methane standard gas cylinder (Section 7.4.1). Set the four-port valve to the recovery position, and attach an ICV to the recovery system. With the sample recovery valve in vent position and the flow-control and ICV valves fully open, evacuate the manometer or gauge, the connecting tubing, and the ICV to 10 mm Hg absolute pressure. Close the flow-control and vacuum pump valves.

10.1.1.2.2 After the NDIR response has stabilized, switch the sample recovery valve from vent to collect. When the manometer or pressure gauge begins to register a slight positive pressure, open the flow-control valve. Keep the flow adjusted such that the pressure in the system is maintained within 10 percent of atmospheric pressure. Continue collecting the sample in a normal manner until the ICV is filled to a nominal gauge pressure of 300 mm Hg. Close the ICV valve, and remove the ICV from the system. Place the sample recovery valve in the vent position, and return the recovery system to its normal carrier gas and normal operating conditions. Analyze the ICV for $CO_2$ using the NMO analyzer; the catalyst efficiency is acceptable if the $CO_2$ concentration is within 2 percent of the methane standard concentration.

10.1.1.3 System Performance Check. Construct a liquid sample injection unit similar in design to the unit shown in Figure 25–7. Insert this unit into the condensate recovery and conditioning system in place of a condensate trap, and set the carrier gas and auxiliary $O_2$ flow rates to normal operating levels. Attach an evacuated ICV to the system, and switch from system vent to collect. With the carrier gas routed through the injection unit and the oxidation catalyst, inject a liquid sample (see Sections 10.1.1.3.1 to 10.1.1.3.4) into the injection port. Operate the trap recovery system as described in Section 11.1.3. Measure the final ICV pressure, and then analyze the vessel to determine the $CO_2$ concentration. For each injection, calculate the percent recovery according to Section 12.7. Calculate the relative standard deviation for each set of triplicate injections according to Section 12.8. The performance test is acceptable if the average percent recovery is 100 ± 5 percent and the relative standard deviation is less than 2 percent for each set of triplicate injections.

10.1.1.3.1 50 µl hexane.
10.1.1.3.2 10 µl hexane.
10.1.1.3.3 50 µl decane.
10.1.1.3.4 10 µl decane.

10.1.2 NMO Analyzer. Perform these tests before the system is first placed in operation, after any shutdown longer than 6 months, and after any major modification of the system.

10.1.2.1 Oxidation Catalyst Efficiency Check. Turn off or bypass the NMO analyzer reduction catalyst. Make triplicate injections of the high level methane standard (Section 7.4.1). The oxidation catalyst operation is acceptable if the FID response is less than 1 percent of the injected methane concentration.

10.1.2.2 Reduction Catalyst Efficiency Check. With the oxidation catalyst unheated or bypassed and the heated reduction catalyst bypassed, make triplicate injections of the high level methane standard (Section 7.4.1). Repeat this procedure with both catalysts operative. The reduction catalyst operation is acceptable if the responses under both conditions agree within 5 percent of their average.

10.1.2.3 NMO Analyzer Linearity Check Calibration. While operating both the oxidation and reduction catalysts, conduct a linearity check of the analyzer using the propane standards specified in Section 7.4.2. Make triplicate injections of each calibration gas. For each gas (*i.e.*, each set of triplicate injections), calculate the average response factor (area/ppm C) for each gas, as well as and the relative standard deviation (according to Section 12.8). Then calculate the overall mean of the response factor values. The instrument linearity is acceptable if the average response factor of each calibration gas is within 2.5 percent of the overall mean value and if the relative standard deviation gas is less than 2 percent of the overall mean value. Record the overall mean of the propane response factor values as the NMO calibration response factor ($RF_{NMO}$). Repeat the linearity check using the $CO_2$ standards specified in Section 7.4.3. Make triplicate injections of each gas, and then calculate the average response factor (area/ppm C) for each gas, as well as the overall mean of the response factor values. Record the overall mean of the response factor values as the $CO_2$ calibration response factor ($RF_{CO2}$). The $RF_{CO2}$ must be within 10 percent of the $RF_{NMO}$.

10.1.2.4 System Performance Check. Check the column separation and overall performance of the analyzer by making triplicate injections of the calibration gases listed in Section 7.4.4. The analyzer performance is acceptable if the measured NMO value for each gas (average of triplicate injections) is within 5 percent of the expected value.

10.2 NMO Analyzer Daily Calibration. The following calibration procedures shall be performed before and immediately after the analysis of each set of samples, or on a daily basis, whichever is more stringent:

10.2.1 $CO_2$ Response Factor. Inject triplicate samples of the high level $CO_2$ calibration gas (Section 7.4.3), and calculate the average response factor. The system operation is adequate if the calculated response factor is within 5 percent of the $RF_{CO2}$ calculated during the initial performance test (Section 10.1.2.3). Use the daily response factor ($DRF_{CO2}$) for analyzer calibration and the calculation of measured $CO_2$ concentrations in the ICV samples.

10.2.2 NMO Response Factors. Inject triplicate samples of the mixed propane calibration cylinder gas (Section 7.4.4.1), and calculate the average NMO response factor. The system operation is adequate if the calculated response factor is within 10 percent of the $RF_{NMO}$ calculated during the initial performance test (Section 10.1.2.4). Use the daily response factor ($DRF_{NMO}$) for analyzer calibration and calculation of NMO concentrations in the sample tanks.

10.3 Sample Tank and ICV Volume. The volume of the gas sampling tanks used must be determined. Determine the tank and ICV volumes by weighing them empty and then filled with deionized distilled water; weigh to the nearest 5 g, and record the results. Alternatively, measure the volume of water used to fill them to the nearest 5 ml.

*11.0 Analytical Procedure*

11.1 Condensate Recovery. See Figure 25–9. Set the carrier gas flow rate, and heat the catalyst to its operating temperature to condition the apparatus.

11.1.1 Daily Performance Checks. Each day before analyzing any samples, perform the following tests:

11.1.1.1 Leak-Check. With the carrier gas inlets and the sample recovery valve closed, install a clean condensate trap in the system, and evacuate the system to 10 mm Hg absolute pressure or less. Monitor the system pressure for 10 minutes. The system is acceptable if the pressure change is less than 2 mm Hg.



11.1.1.2 System Background Test. Adjust the carrier gas and auxiliary oxygen flow rate to their normal values of 100 cc/min and 150 cc/min, respectively, with the sample recovery valve in vent position. Using a 10-ml syringe, withdraw a sample from the system effluent through the syringe port. Inject this sample into the NMO analyzer, and measure the $CO_2$ content. The system background is acceptable if the $CO_2$ concentration is less than 10 ppm.

11.1.1.3 Oxidation Catalyst Efficiency Check. Conduct a catalyst efficiency test as specified in Section 10.1.1.2. If the criterion of this test cannot be met, make the necessary repairs to the system before proceeding.

11.1.2 Condensate Trap $CO_2$ Purge and Sample Tank Pressurization.

11.1.2.1 After sampling is completed, the condensate trap will contain condensed water and organics and a small volume of sampled gas. This gas from the stack may contain a significant amount of $CO_2$ which must be removed from the condensate trap before the sample is recovered. This is accomplished by purging the condensate trap with zero air and collecting the purged gas in the original sample tank.

11.1.2.2 Begin with the sample tank and condensate trap from the test run to be analyzed. Set the four-port valve of the condensate recovery system in the $CO_2$ purge position as shown in Figure 25–9. With the sample tank valve closed, attach the sample tank to the sample recovery system. With the sample recovery valve in the vent position and the flow control valve fully open, evacuate the manometer or pressure gauge to the vacuum of the sample tank. Next, close the vacuum pump valve, open the sample tank valve, and record the tank pressure.

11.1.2.3 Attach the dry ice-cooled condensate trap to the recovery system, and initiate the purge by switching the sample recovery valve from vent to collect position. Adjust the flow control valve to maintain atmospheric pressure in the recovery system. Continue the purge until the $CO_2$ concentration of the trap effluent is less than 5 ppm. $CO_2$ concentration in the trap effluent should be measured by extracting syringe samples from the recovery system and analyzing the samples with the NMO analyzer. This procedure should be used only after the NDIR response has reached a minimum level. Using a 10-ml syringe, extract a sample from the syringe port prior to the NDIR, and inject this sample into the NMO analyzer.

11.1.2.4 After the completion of the $CO_2$ purge, use the carrier gas bypass valve to pressurize the sample tank to approximately 1,060 mm Hg absolute pressure with zero air.

11.1.3 Recovery of the Condensate Trap Sample (See Figure 25–10).

11.1.3.1 Attach the ICV to the sample recovery system. With the sample recovery valve in a closed position, between vent and collect, and the flow control and ICV valves fully open, evacuate the manometer or gauge, the connecting tubing, and the ICV to 10 mm Hg absolute pressure. Close the flow-control and vacuum pump valves.

11.1.3.2 Begin auxiliary oxygen flow to the oxidation catalyst at a rate of 150 cc/min, then switch the four-way valve to the trap recovery position and the sample recovery valve to collect position. The system should now be set up to operate as indicated in Figure 25–10. After the manometer or pressure gauge begins to register a slight positive pressure, open the flow control valve. Adjust the flow-control valve to maintain atmospheric pressure in the system within 10 percent.

11.1.3.3 Remove the condensate trap from the dry ice, and allow it to warm to ambient temperature while monitoring the NDIR response. If, after 5 minutes, the $CO_2$ concentration of the catalyst effluent is below 10,000 ppm, discontinue the auxiliary oxygen flow to the oxidation catalyst. Begin heating the trap by placing it in a furnace preheated to 200 °C (390 °F). Once heating has begun, carefully monitor the NDIR response to ensure that the catalyst effluent concentration does not exceed 50,000 ppm. Whenever the $CO_2$ concentration exceeds 50,000 ppm, supply auxiliary oxygen to the catalyst at the rate of 150 cc/min. Begin heating the tubing that connected the heated sample box to the condensate trap only after the $CO_2$ concentration falls below 10,000 ppm. This tubing may be heated in the same oven as the condensate trap or with an auxiliary heat source such as a heat gun. Heating temperature must not exceed 200 °C (390 °F). If a heat gun is used, heat the tubing slowly along its entire length from the upstream end to the downstream end, and repeat the pattern for a total of three times. Continue the recovery until the $CO_2$ concentration drops to less than 10 ppm as determined by syringe injection as described under the condensate trap $CO_2$ purge procedure (Section 11.1.2).

11.1.3.4 After the sample recovery is completed, use the carrier gas bypass valve to pressurize the ICV to approximately 1060 mm Hg absolute pressure with zero air.

11.2 Analysis. Once the initial performance test of the NMO analyzer has been successfully completed (see Section 10.1.2) and the daily $CO_2$ and NMO response factors have been determined (see Section 10.2), proceed with sample analysis as follows:

11.2.1 Operating Conditions. The carrier gas flow rate is 29.5 cc/min He and 2.2 cc/min $O_2$. The column oven is heated to 85 °C (185 °F). The order of elution for the sample from the column is CO, $CH_4$, $CO_2$, and NMO.

11.2.2 Analysis of Recovered Condensate Sample. Purge the sample loop with sample, and then inject the sample. Under the specified operating conditions, the $CO_2$ in the sample will elute in approximately 100 seconds. As soon as the detector response returns to baseline following the $CO_2$ peak, switch the carrier gas flow to backflush, and raise the column oven temperature to 195 °C (380 °F) as rapidly as possible. A rate of 30 °C/min (90 °F) has been shown to be adequate. Record the value obtained for the condensible organic material ($C_{cm}$) measured as $CO_2$ and any measured NMO. Return the column oven temperature to 85 °C (185 °F) in preparation for the next analysis. Analyze each sample in triplicate, and report the average $C_{cm}$.

11.2.3 Analysis of Sample Tank. Perform the analysis as described in Section 11.2.2, but record only the value measured for NMO ($C_{nm}$).

11.3 Audit Sample Analysis.

11.3.1 When the method is used to analyze samples to demonstrate compliance with a source emission regulation, an audit sample, if available, must be analyzed.

11.3.2 Concurrently analyze the audit sample and the compliance samples in the same manner to evaluate the technique of the analyst and the standards preparation.

11.3.3 The same analyst, analytical reagents, and analytical system must be used for the compliance samples and the audit sample. If this condition is met, duplicate auditing of subsequent compliance analyses for the same enforcement agency within a 30-day period is waived. An audit sample set may not be used to validate different sets of compliance samples under the jurisdiction of separate enforcement agencies, unless prior arrangements have been made with both enforcement agencies.

11.4 Audit Sample Results.

11.4.1 Calculate the audit sample concentrations and submit results using the instructions provided with the audit samples.

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11.4.2 Report the results of the audit samples and the compliance determination samples along with their identification numbers, and the analyst's name to the responsible enforcement authority. Include this information with reports of any subsequent compliance analyses for the same enforcement authority during the 30-day period.

11.4.3 The concentrations of the audit samples obtained by the analyst must agree within 20 percent of the actual concentration. If the 20-percent specification is not met, reanalyze the compliance and audit samples, and include initial and reanalysis values in the test report.

11.4.4 Failure to meet the 20-percent specification may require retests until the audit problems are resolved. However, if the audit results do not affect the compliance or noncompliance status of the affected facility, the Administrator may waive the reanalysis requirement, further audits, or retests and accept the results of the compliance test. While steps are being taken to resolve audit analysis problems, the Administrator may also choose to use the data to determine the compliance or noncompliance status of the affected facility.

*12.0 Data Analysis and Calculations*

Carry out the calculations, retaining at least one extra significant figure beyond that of the acquired data. Round off figures after final calculations. All equations are written using absolute pressure; absolute pressures are determined by adding the measured barometric pressure to the measured gauge or manometer pressure.

12.1 Nomenclature.

$C$ = TGNMO concentration of the effluent, ppm C equivalent.
$C_c$ = Calculated condensible organic (condensate trap) concentration of the effluent, ppm C equivalent.
$C_{cm}$ = Measured concentration (NMO analyzer) for the condensate trap ICV, ppm $CO_2$.
$C_t$ = Calculated noncondensible organic concentration (sample tank) of the effluent, ppm C equivalent.
$C_{tm}$ = Measured concentration (NMO analyzer) for the sample tank, ppm NMO.
$F$ = Sampling flow rate, cc/min.
$L$ = Volume of liquid injected, µl.
$M$ = Molecular weight of the liquid injected, g/g-mole.
$M_c$ = TGNMO mass concentration of the effluent, mg C/dsm³.
$N$ = Carbon number of the liquid compound injected (N = 12 for decane, N = 6 for hexane).
$n$ = Number of data points.
$P_f$ = Final pressure of the intermediate collection vessel, mm Hg absolute.
$P_b$ = Barometric pressure, cm Hg.
$P_{ti}$ = Gas sample tank pressure before sampling, mm Hg absolute.
$P_t$ = Gas sample tank pressure after sampling, but before pressurizing, mm Hg absolute.
$P_{tf}$ = Final gas sample tank pressure after pressurizing, mm Hg absolute.
$q$ = Total number of analyzer injections of intermediate collection vessel during analysis (where k = injection number, 1 * * * q).
$r$ = Total number of analyzer injections of sample tank during analysis (where j = injection number, 1 * * * r).
$r$ = Density of liquid injected, g/cc.
$T_f$ = Final temperature of intermediate collection vessel, °K.
$T_{ti}$ = Sample tank temperature before sampling, °K.
$T_t$ = Sample tank temperature at completion of sampling, °K.
$T_{tf}$ = Sample tank temperature after pressurizing, °K.
$V$ = Sample tank volume, m³.
$V_t$ = Sample train volume, cc.
$V_v$ = Intermediate collection vessel volume, m³.
$V_s$ = Gas volume sampled, dsm³.
$x_i$ = Individual measurements.
$\bar{x}$ = Mean value.
$\Delta P$ = Allowable pressure change, cm Hg.
$\Theta$ = Leak-check period, min.

12.2 Allowable Pressure Change. For the pretest leak-check, calculate the allowable pressure change using Equation 25–1:

$$\Delta P = 0.01\,\frac{FP_b\Theta}{V_t} \qquad \text{Eq. 25-1}$$

12.3 Sample Volume. For each test run, calculate the gas volume sampled using Equation 25–2:

$$V_s = 0.3857\,V\left(\frac{P_t}{T_t} - \frac{P_{ti}}{T_{ti}}\right) \qquad \text{Eq. 25-2}$$

12.4 Noncondensible Organics. For each sample tank, determine the concentration of nonmethane organics (ppm C) using Equation 25–3:

$$C_t = \left(\frac{\frac{P_{tf}}{T_{tf}}}{\frac{P_t}{T_t} - \frac{P_{ti}}{T_{ti}}}\right)\left(\frac{1}{r}\sum_{j=1}^{r} C_{tm_j}\right) \qquad \text{Eq. 25-3}$$

12.5 Condensible Organics. For each condensate trap determine the concentration of organics (ppm C) using Equation 25–4:

$$C_c = 0.3857\,\frac{V_v P_f}{V_s T_f}\left(\frac{1}{q}\sum_{k=1}^{q} C_{cm_k}\right) \qquad \text{Eq. 25-4}$$

12.6 TGNMO Mass Concentration. Determine the TGNMO mass concentration as carbon for each test run, using Equation 25–5:

$$M_c = 0.4993\,(C_t + C_c) \qquad \text{Eq. 25-5}$$

12.7 Percent Recovery. Calculate the percent recovery for the liquid injections to the condensate recovery and conditioning system using Equation 25–6:

$$\text{Percent Recovery} = K\,\frac{M V_v P_t C_{cm}}{L P T_f N} \qquad \text{Eq. 25-6}$$

where K = 1.604 (°K)(g-mole)(%)/(mm Hg)(ml)(m³)(ppm).

12.8 Relative Standard Deviation. Use Equation 25–7 to calculate the relative standard deviation (RSD) of percent recovery and analyzer linearity.



$$RSD = \frac{100}{\bar{x}}\left[\frac{\sum_{i=1}^{n}(x_i - \bar{x})^2}{n-1}\right]^{\frac{1}{2}} \qquad \text{Eq. 25-7}$$

*13.0 Method Performance*

13.1 Range. The minimum detectable limit of the method has been determined to be 50 parts per million by volume (ppm). No upper limit has been established.

*14.0 Pollution Prevention [Reserved]*

*15.0 Waste Management [Reserved]*

*16.0 References*

1. Salo, A.E., S. Witz, and R.D. MacPhee. Determination of Solvent Vapor Concentrations by Total Combustion Analysis: A Comparison of Infrared with Flame Ionization Detectors. Paper No. 75–33.2. (Presented at the 68th Annual Meeting of the Air Pollution Control Association. Boston, MA. June 15–20, 1975.) 14 p.

2. Salo, A.E., W.L. Oaks, and R.D. MacPhee. Measuring the Organic Carbon Content of Source Emissions for Air Pollution Control. Paper No. 74–190. (Presented at the 67th Annual Meeting of the Air Pollution Control Association. Denver, CO. June 9–13, 1974.) 25 p.

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*17.0 Tables, Diagrams, Flowcharts, and Validation Data*

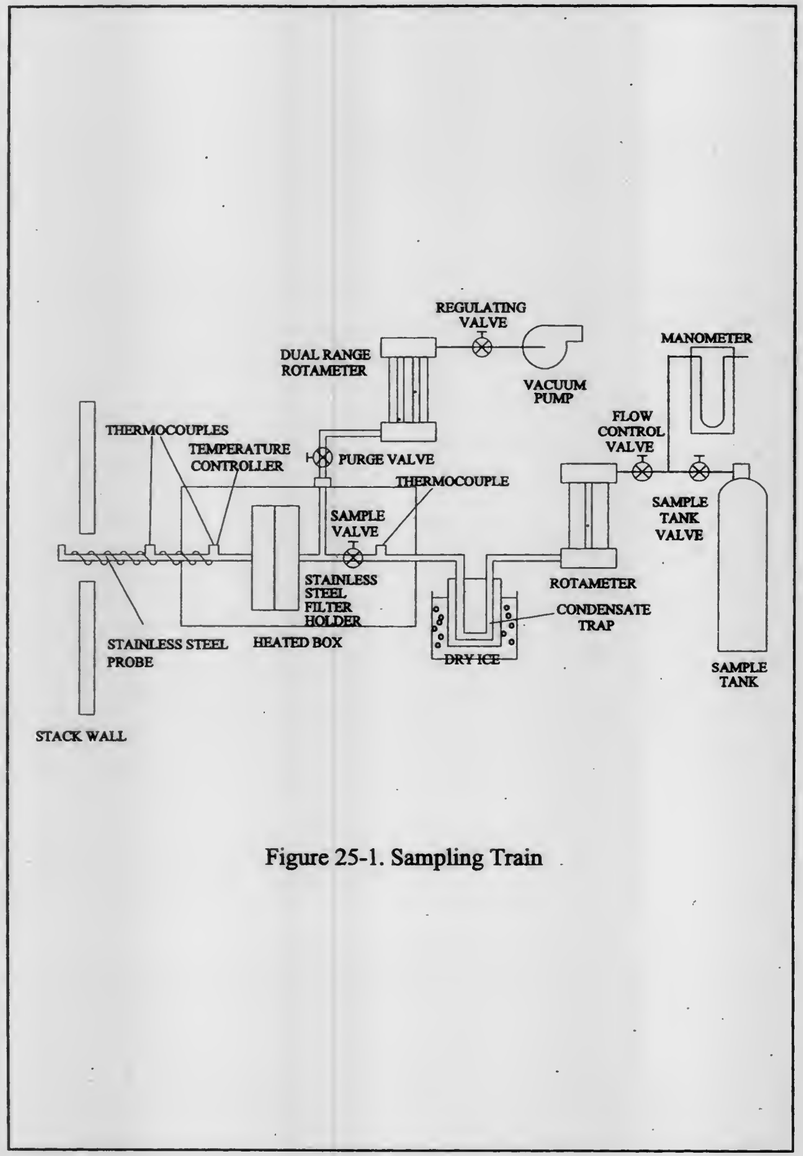



Figure 25-1. Sampling Train



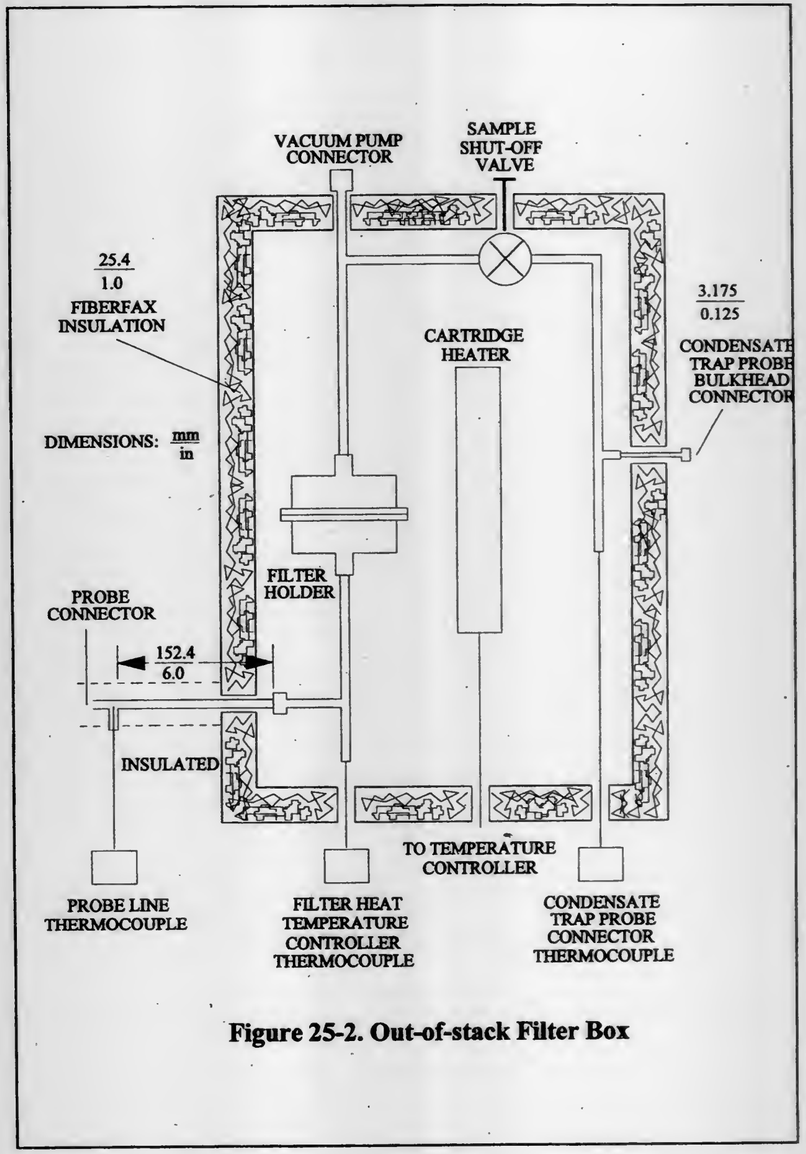



**Figure 25-2. Out-of-stack Filter Box**

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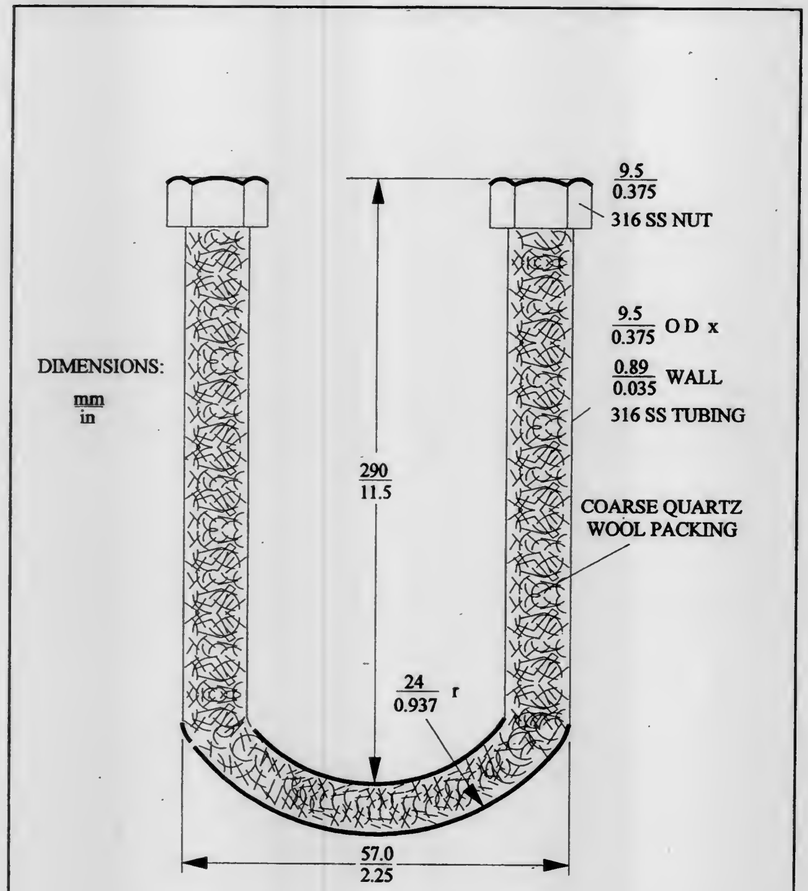



Figure 25-3. Condensate Trap



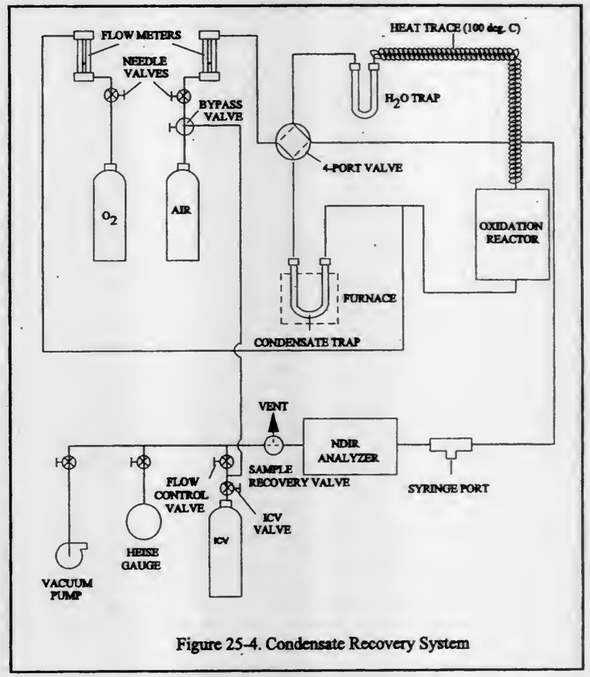



Figure 25-4. Condensate Recovery System

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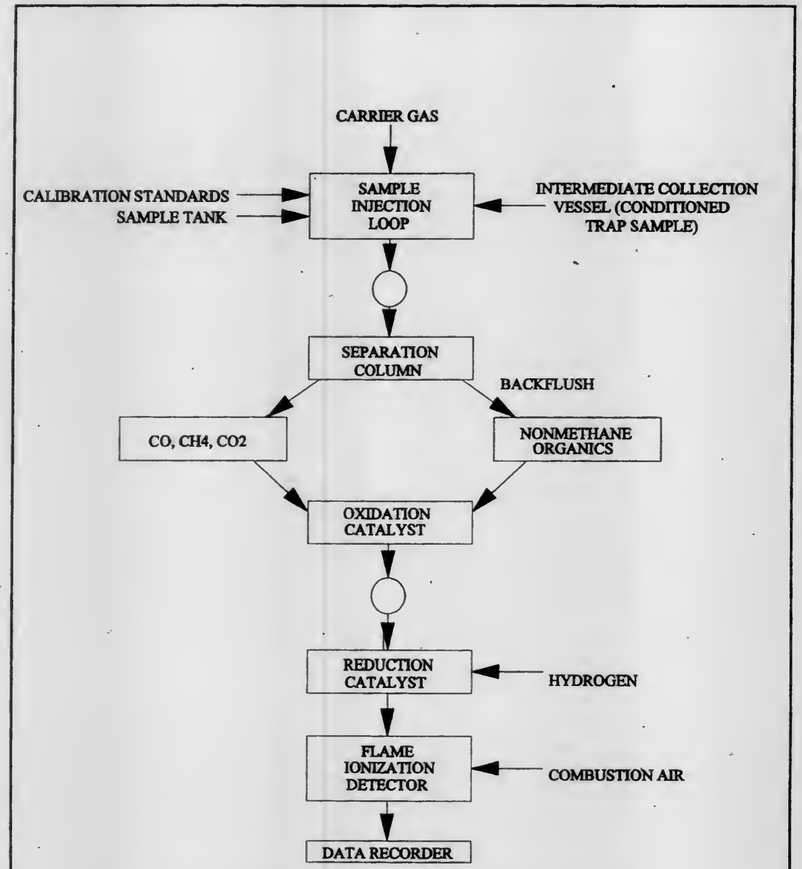



Figure 25-5. Simplified Schematic of Nonmethane Organic (NMO) Analyzer



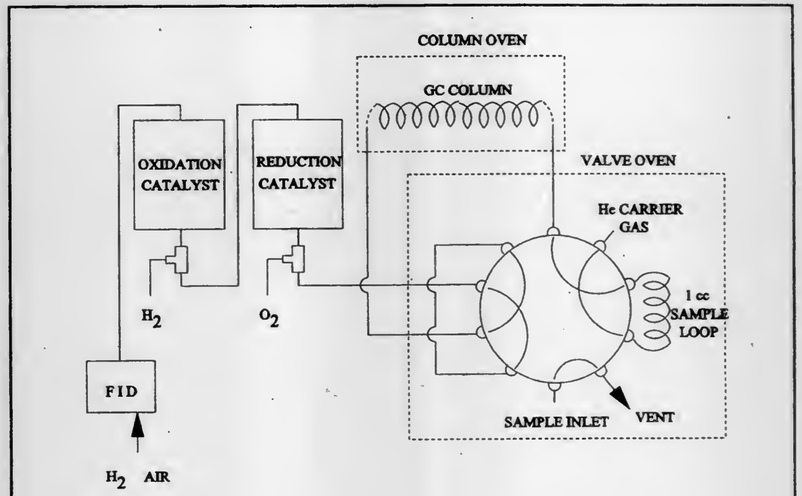



Figure 25-6. Nonmethane Organic Analyzer (NMO)

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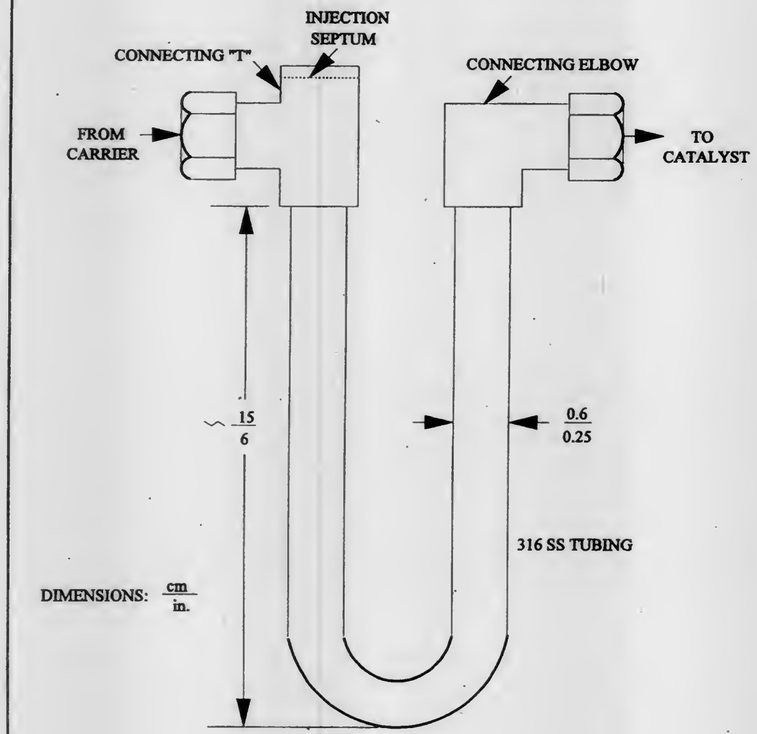



Figure 25-7. Liquid Sample Injection Unit



VOLATILE ORGANIC CARBON

FACILITY _____ SAMPLE LOCATION _____

LOCATION _____ OPERATOR _____

DATE _____ RUN NUMBER _____

TANK NUMBER _____ TRAP NUMBER _____ SAMPLE ID NUMBER _____

| TANK VACUUM mm HG | TANK VACUUM cm Hg | BAROMETRIC PRESSURE mm Hg | AMBIENT TEMPERATURE °C |
|---|---|---|---|
| PRETEST (MANOMETER) _____ | (GAUGE) _____ | | |
| POST-TEST (MANOMETER) _____ | (GAUGE) _____ | | |

LEAK RATE _____ cm Hg / 1.0 min

PRETEST _____

| TIME CLOCK/SAMPLE | VACUUM cm Hg | FLOWMETER SETTINGS | COMMENTS |
|---|---|---|---|
| | | | |
| | | | |
| | | | |

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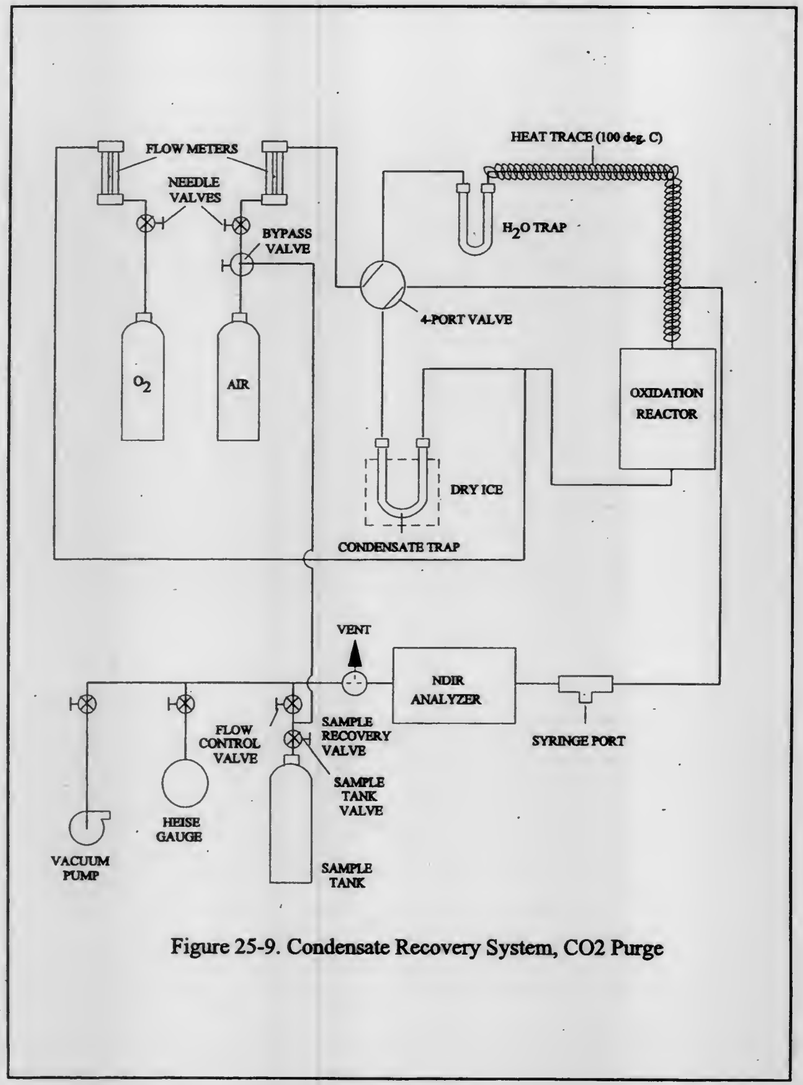



Figure 25-9. Condensate Recovery System, CO2 Purge



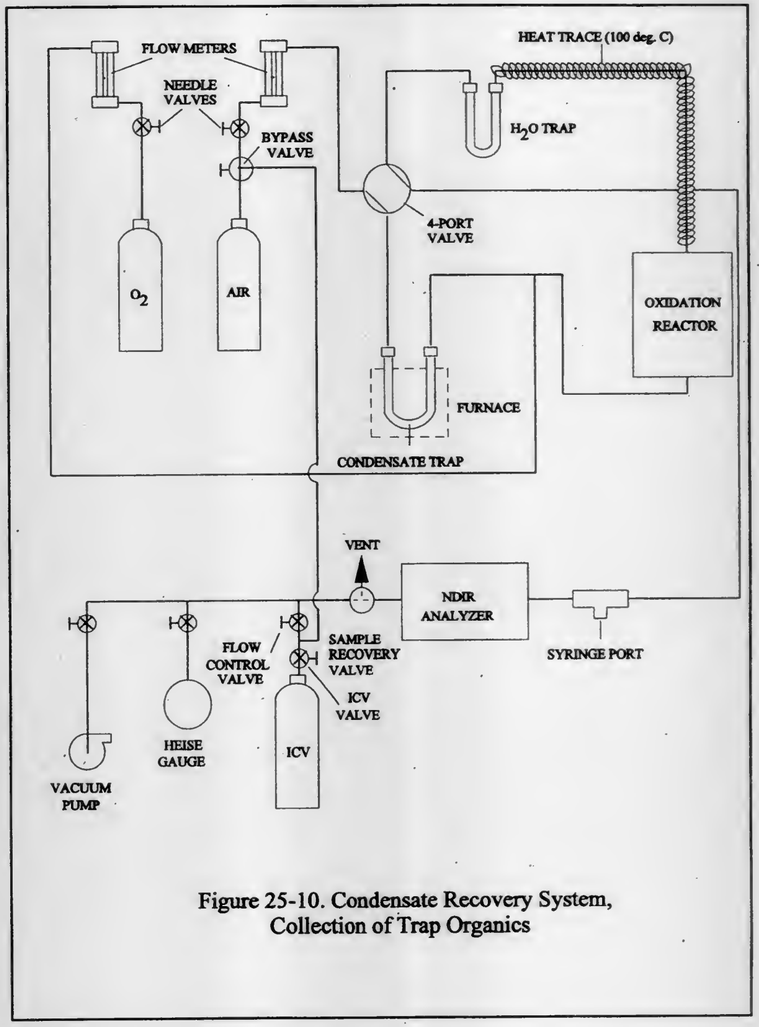



Figure 25-10. Condensate Recovery System, Collection of Trap Organics

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## Method 25A—Determination of Total Gaseous Organic Concentration Using a Flame Ionization Analyzer

*1.0 Scope and Application*

1.1 Analytes.

| Analyte | CAS No. | Sensitivity |
|---|---|---|
| Total Organic Compounds | N/A | < 2% of span. |

1.2 Applicability. This method is applicable for the determination of total gaseous organic concentration of vapors consisting primarily of alkanes, alkenes, and/or arenes (aromatic hydrocarbons). The concentration is expressed in terms of propane (or other appropriate organic calibration gas) or in terms of carbon.

1.3 Data Quality Objectives. Adherence to the requirements of this method will enhance the quality of the data obtained from air pollutant sampling methods.

*2.0 Summary of Method*

2.1 A gas sample is extracted from the source through a heated sample line and glass fiber filter to a flame ionization analyzer (FIA). Results are reported as volume concentration equivalents of the calibration gas or as carbon equivalents.

*3.0 Definitions*

3.1 *Calibration drift* means the difference in the measurement system response to a mid-level calibration gas before and after a stated period of operation during which no unscheduled maintenance, repair, or adjustment took place.

3.2 *Calibration error* means the difference between the gas concentration indicated by the measurement system and the know concentration of the calibration gas.

3.3 *Calibration gas* means a known concentration of a gas in an appropriate diluent gas.

3.4 *Measurement system* means the total equipment required for the determination of the gas concentration. The system consists of the following major subsystems:

3.4.1 *Sample interface* means that portion of a system used for one or more of the following: sample acquisition, sample transportation, sample conditioning, or protection of the analyzer(s) from the effects of the stack effluent.

3.4.2 *Organic analyzer* means that portion of the measurement system that senses the gas to be measured and generates an output proportional to its concentration.

3.5 *Response time* means the time interval from a step change in pollutant concentration at the inlet to the emission measurement system to the time at which 95 percent of the corresponding final value is reached as displayed on the recorder.

3.6 *Span Value* means the upper limit of a gas concentration measurement range that is specified for affected source categories in the applicable part of the regulations. The span value is established in the applicable regulation and is usually 1.5 to 2.5 times the applicable emission limit. If no span value is provided, use a span value equivalent to 1.5 to 2.5 times the expected concentration. For convenience, the span value should correspond to 100 percent of the recorder scale.

3.7 *Zero drift* means the difference in the measurement system response to a zero level calibration gas before or after a stated period of operation during which no unscheduled maintenance, repair, or adjustment took place.

*4.0 Interferences [Reserved]*

*5.0 Safety*

5.1 Disclaimer. This method may involve hazardous materials, operations, and equipment. This test method may not address all of the safety problems associated with its use. It is the responsibility of the user of this test method to establish appropriate safety and health practices and determine the applicability of regulatory limitations prior to performing this test method. The analyzer users manual should be consulted for specific precautions to be taken with regard to the analytical procedure.

5.2 Explosive Atmosphere. This method is often applied in highly explosive areas. Caution and care should be exercised in choice of equipment and installation.

*6.0 Equipment and Supplies*

6.1 Measurement System. Any measurement system for total organic concentration that meets the specifications of this method. A schematic of an acceptable measurement system is shown in Figure 25A–1. All sampling components leading to the analyzer shall be heated ≥ 110 °C (220 °F) throughout the sampling period, unless safety reasons are cited (Section 5.2) The essential components of the measurement system are described below:

6.1.1 Organic Concentration Analyzer. A flame ionization analyzer (FIA) capable of meeting or exceeding the specifications of this method. The flame ionization detector block shall be heated >120 °C (250 °F).

6.1.2 Sample Probe. Stainless steel, or equivalent, three-hole rake type. Sample holes shall be 4 mm (0.16-in.) in diameter or smaller and located at 16.7, 50, and 83.3 percent of the equivalent stack diameter. Alternatively, a single opening probe may be used so that a gas sample is collected from the centrally located 10 percent area of the stack cross-section.

6.1.3 Heated Sample Line. Stainless steel or Teflon" tubing to transport the sample gas to the analyzer. The sample line should be heated (≥110 °C) to prevent any condensation.

6.1.4 Calibration Valve Assembly. A three-way valve assembly to direct the zero and calibration gases to the analyzers is recommended. Other methods, such as quick-connect lines, to route calibration gas to the analyzers are applicable.

6.1.5 Particulate Filter. An in-stack or an out-of-stack glass fiber filter is recommended if exhaust gas particulate loading is significant. An out-of-stack filter should be heated to prevent any condensation.

6.1.6 Recorder. A strip-chart recorder, analog computer, or digital recorder for recording measurement data. The minimum data recording requirement is one measurement value per minute.

*7.0 Reagents and Standards*

7.1 Calibration Gases. The calibration gases for the gas analyzer shall be propane in air or propane in nitrogen. Alternatively, organic compounds other than propane can be used; the appropriate corrections for response factor must be made. Calibration gases shall be prepared in accordance with the procedure listed in Citation 2 of Section 16. Additionally, the manufacturer of the cylinder should provide a recommended shelf life for each calibration gas cylinder over which the concentration does not change more than ± 2 percent from the certified value. For calibration gas values not generally available (*i.e.*, organics between 1 and 10 percent by volume), alternative methods for preparing calibration gas mixtures, such as dilution systems (Test Method 205, 40 CFR Part 51, Appendix M), may be used with prior approval of the Administrator.



7.1.1 Fuel. A 40 percent $H_2$/60 percent $N_2$ gas mixture is recommended to avoid an oxygen synergism effect that reportedly occurs when oxygen concentration varies significantly from a mean value.

7.1.2 Zero Gas. High purity air with less than 0.1 part per million by volume (ppmv) of organic material (propane or carbon equivalent) or less than 0.1 percent of the span value, whichever is greater.

7.1.3 Low-level Calibration Gas. An organic calibration gas with a concentration equivalent to 25 to 35 percent of the applicable span value.

7.1.4 Mid-level Calibration Gas. An organic calibration gas with a concentration equivalent to 45 to 55 percent of the applicable span value.

7.1.5 High-level Calibration Gas. An organic calibration gas with a concentration equivalent to 80 to 90 percent of the applicable span value.

*8.0 Sample Collection, Preservation, Storage, and Transport*

8.1 Selection of Sampling Site. The location of the sampling site is generally specified by the applicable regulation or purpose of the test (*i.e.*, exhaust stack, inlet line, etc.). The sample port shall be located to meet the testing requirements of Method 1.

8.2 Location of Sample Probe. Install the sample probe so that the probe is centrally located in the stack, pipe, or duct and is sealed tightly at the stack port connection.

8.3 Measurement System Preparation. Prior to the emission test, assemble the measurement system by following the manufacturer's written instructions for preparing sample interface and the organic analyzer. Make the system operable (Section 10.1).

8.4 Calibration Error Test. Immediately prior to the test series (within 2 hours of the start of the test), introduce zero gas and high-level calibration gas at the calibration valve assembly. Adjust the analyzer output to the appropriate levels, if necessary. Calculate the predicted response for the low-level and mid-level gases based on a linear response line between the zero and high-level response. Then introduce low-level and mid-level calibration gases successively to the measurement system. Record the analyzer responses for low-level and mid-level calibration gases and determine the differences between the measurement system responses and the predicted responses. These differences must be less than 5 percent of the respective calibration gas value. If not, the measurement system is not acceptable and must be replaced or repaired prior to testing. No adjustments to the measurement system shall be conducted after the calibration and before the drift check (Section 8.6.2). If adjustments are necessary before the completion of the test series, perform the drift checks prior to the required adjustments and repeat the calibration following the adjustments. If multiple electronic ranges are to be used, each additional range must be checked with a mid-level calibration gas to verify the multiplication factor.

8.5 Response Time Test. Introduce zero gas into the measurement system at the calibration valve assembly. When the system output has stabilized, switch quickly to the high-level calibration gas. Record the time from the concentration change to the measurement system response equivalent to 95 percent of the step change. Repeat the test three times and average the results.

8.6 Emission Measurement Test Procedure.

8.6.1 Organic Measurement. Begin sampling at the start of the test period, recording time and any required process information as appropriate. In particulate, note on the recording chart, periods of process interruption or cyclic operation.

8.6.2 Drift Determination. Immediately following the completion of the test period and hourly during the test period, reintroduce the zero and mid-level calibration gases, one at a time, to the measurement system at the calibration valve assembly. (Make no adjustments to the measurement system until both the zero and calibration drift checks are made.) Record the analyzer response. If the drift values exceed the specified limits, invalidate the test results preceding the check and repeat the test following corrections to the measurement system. Alternatively, recalibrate the test measurement system as in Section 8.4 and report the results using both sets of calibration data (i.e., data determined prior to the test period and data determined following the test period).

**Note:** Note on the recording chart periods of process interruption or cyclic operation.

*9.0 Quality Control*

| Method section | Quality control measure | Effect |
|---|---|---|
| 8.4 | Zero and calibration drift tests | Ensures that bias introduced by drift in the measurement system output during the run is no greater than 3 percent of span. |

*10.0 Calibration and Standardization*

10.1 FIA equipment can be calibrated for almost any range of total organic concentrations. For high concentrations of organics (> 1.0 percent by volume as propane), modifications to most commonly available analyzers are necessary. One accepted method of equipment modification is to decrease the size of the sample to the analyzer through the use of a smaller diameter sample capillary. Direct and continuous measurement of organic concentration is a necessary consideration when determining any modification design.

*11.0 Analytical Procedure*

The sample collection and analysis are concurrent for this method (see Section 8.0).

*12.0 Calculations and Data Analysis*

12.1 Determine the average organic concentration in terms of ppmv as propane or other calibration gas. The average shall be determined by integration of the output recording over the period specified in the applicable regulation. If results are required in terms of ppmv as carbon, adjust measured concentrations using Equation 25A–1.

$$C_c = K C_{meas} \qquad \text{Eq. 25A-1}$$

Where:

$C_c$ = Organic concentration as carbon, ppmv.

$C_{meas}$ = Organic concentration as measured, ppmv.

K = Carbon equivalent correction factor.

= 2 for ethane.

= 3 for propane.

= 4 for butane.

= Appropriate response factor for other organic calibration gases.

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*13.0 Method Performance*

13.1 Measurement System Performance Specifications.

13.1.1 Zero Drift. Less than ±3 percent of the span value.

13.1.2 Calibration Drift. Less than ±3 percent of span value.

13.1.3 Calibration Error. Less than ±5 percent of the calibration gas value.

*14.0 Pollution Prevention [Reserved]*

*15.0 Waste Management [Reserved]*

*16.0 References*

1. Measurement of Volatile Organic Compounds—Guideline Series. U.S. Environmental Protection Agency. Research Triangle Park, NC. Publication No. EPA–450/2–78–041. June 1978. p. 46–54.

2. EPA Traceability Protocol for Assay and Certification of Gaseous Calibration Standards. U.S. Environmental Protection Agency, Quality Assurance and Technical Support Division. Research Triangle Park, N.C. September 1993.

3. Gasoline Vapor Emission Laboratory Evaluation—Part 2. U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards. Research Triangle Park, NC. EMB Report No. 75–GAS–6. August 1975.

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*17.0 Tables, Diagrams, Flowcharts, and Validation Data*

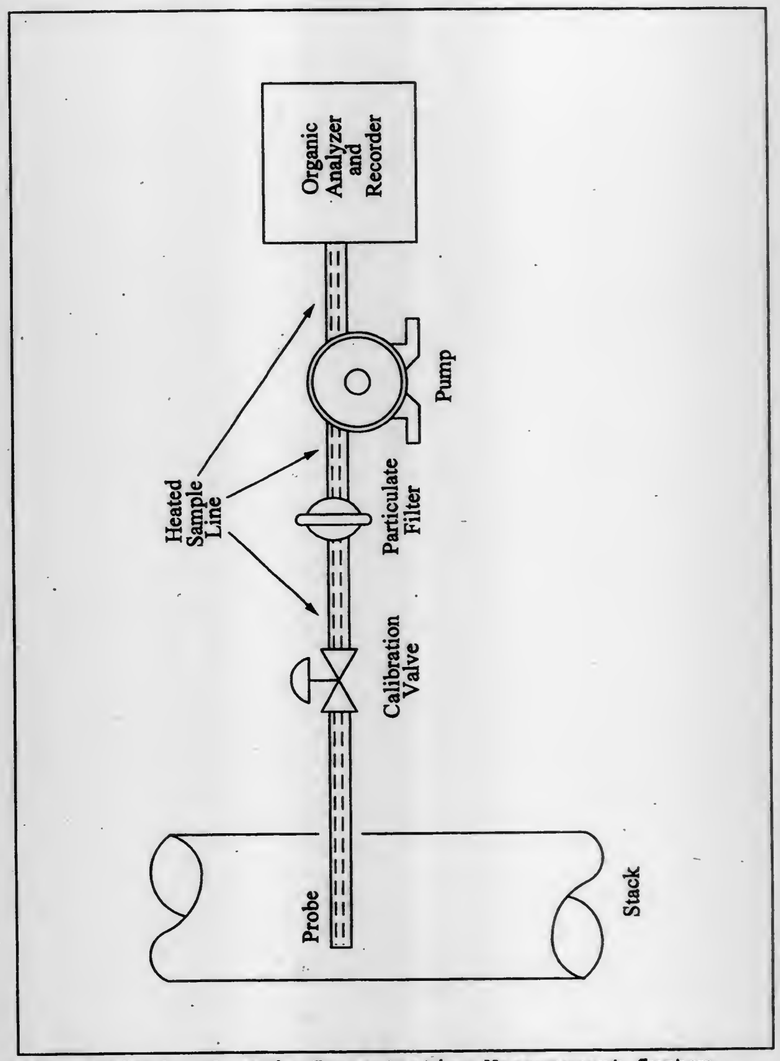



Figure 25A-1. Organic Concentration Measurement System.

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**Method 25B—Determination of Total Gaseous Organic Concentration Using a Nondispersive Infrared Analyzer**

**NOTE:** This method does not include all of the specifications (e.g., equipment and supplies) and procedures (e.g., sampling) essential to its performance. Some material is incorporated by reference from other methods in this part. Therefore, to obtain reliable results, persons using this method should have a thorough knowledge of at least the following additional test methods: Method 1, Method 6C, and Method 25A.

*1.0 Scope and Application*

1.1 Analytes.

| Analyte | CAS No. | Sensitivity |
|---|---|---|
| Total Organic Compounds | N/A | < 2% of span. |

1.2 Applicability. This method is applicable for the determination of total gaseous organic concentration of vapors consisting primarily of alkanes. Other organic materials may be measured using the general procedure in this method, the appropriate calibration gas, and an analyzer set to the appropriate absorption band.

1.3 Data Quality Objectives. Adherence to the requirements of this method will enhance the quality of the data obtained from air pollutant sampling methods.

*2.0 Summary of Method*

A gas sample is extracted from the source through a heated sample line, if necessary, and glass fiber filter to a nondispersive infrared analyzer (NDIR). Results are reported as volume concentration equivalents of the calibration gas or as carbon equivalents.

*3.0 Definitions*

Same as Method 25A, Section 3.0.

*4.0 Interferences [Reserved]*

*5.0 Safety*

5.1 Disclaimer. This method may involve hazardous materials, operations, and equipment. This test method may not address all of the safety problems associated with its use. It is the responsibility of the user of this test method to establish appropriate safety and health practices and determine the applicability of regulatory limitations prior to performing this test method. The analyzer users manual should be consulted for specific precautions to be taken with regard to the analytical procedure.

5.2 Explosive Atmosphere. This method is often applied in highly explosive areas. Caution and care should be exercised in choice of equipment and installation.

*6.0 Equipment and Supplies*

Same as Method 25A, Section 6.0, with the exception of the following:

6.1 Organic Concentration Analyzer. A nondispersive infrared analyzer designed to measure alkane organics and capable of meeting or exceeding the specifications in this method.

*7.0 Reagents and Standards*

Same as Method 25A, Section 7.1. No fuel gas is required for an NDIR.

*8.0 Sample Collection, Preservation, Storage, and Transport*

Same as Method 25A, Section 8.0.

*9.0 Quality Control*

Same as Method 25A, Section 9.0.

*10.0 Calibration and Standardization*

Same as Method 25A, Section 10.0.

*11.0 Analytical Procedure*

The sample collection and analysis are concurrent for this method (see Section 8.0).

*12.0 Calculations and Data Analysis*

Same as Method 25A, Section 12.0.

*13.0 Method Performance [Reserved]*

*14.0 Pollution Prevention [Reserved]*

*15.0 Waste Management [Reserved]*

*16.0 References*

Same as Method 25A, Section 16.0.

*17.0 Tables, Diagrams, Flowcharts, and Validation Data [Reserved]*

**Method 25C—Determination of Nonmethane Organic Compounds (NMOC) in Landfill Gases**

**Note:** This method does not include all of the specifications (e.g., equipment and supplies) and procedures (e.g., sampling and analytical) essential to its performance. Some material is incorporated by reference from other methods in this part. Therefore, to obtain reliable results, persons using this method should also have a thorough knowledge of EPA Method 25.

*1.0 Scope and Application*

1.1 Analytes.

| Analyte | CAS No. |
|---|---|
| Nonmethane organic compounds (NMOC). | No CAS number assigned. |

1.2 Applicability. This method is applicable to the sampling and measurement of NMOC as carbon in landfill gases (LFG).

1.3 Data Quality Objectives. Adherence to the requirements of this method will enhance the quality of the data obtained from air pollutant sampling methods.

*2.0 Summary of Method*

2.1 A sample probe that has been perforated at one end is driven or augured to a depth of 0.9 m (3 ft) below the bottom of the landfill cover. A sample of the landfill gas is extracted with an evacuated cylinder. The NMOC content of the gas is determined by injecting a portion of the gas into a gas chromatographic column to separate the NMOC from carbon monoxide (CO), carbon dioxide ($CO_2$), and methane ($CH_4$); the NMOC are oxidized to $CO_2$, reduced to $CH_4$, and measured by a flame ionization detector (FID). In this manner, the variable response of the FID associated with different types of organics is eliminated.

*3.0 Definitions. [Reserved]*

*4.0 Interferences. [Reserved]*

*5.0 Safety*

5.1 Since this method is complex, only experienced personnel should perform this test. LFG contains methane, therefore explosive mixtures may exist on or near the landfill. It is advisable to take appropriate safety precautions when testing landfills, such as refraining from smoking and installing explosion-proof equipment.

*6.0 Equipment and Supplies*

6.1 Sample Probe. Stainless steel, with the bottom third perforated. The sample probe must be capped at the bottom and must have a threaded cap with a sampling attachment at the top. The sample probe must be long enough to go through and extend no less than 0.9 m (3 ft) below the landfill cover. If the sample probe is to be driven into the landfill, the bottom cap should be designed to facilitate driving the probe into the landfill.

6.2 Sampling Train.

6.2.1 Rotameter with Flow Control Valve. Capable of measuring a sample flow rate of 100 ± 10 ml/min. The control valve must be made of stainless steel.

6.2.2 Sampling Valve. Stainless steel.

6.2.3 Pressure Gauge. U-tube mercury manometer, or equivalent, capable of measuring pressure to within 1 mm Hg (0.5 in $H_2O$) in the range of 0 to 1,100 mm Hg (0 to 590 in $H_2O$).

6.2.4 Sample Tank. Stainless steel or aluminum cylinder, equipped with a stainless steel sample tank valve.

6.3 Vacuum Pump. Capable of evacuating to an absolute pressure of 10 mm Hg (5.4 in $H_2O$).

6.4 Purging Pump. Portable, explosion proof, and suitable for sampling NMOC.

6.5 Pilot Probe Procedure. The following are needed only if the tester chooses to use the procedure described in Section 8.2.1.

6.5.1 Pilot Probe. Tubing of sufficient strength to withstand being driven into the landfill by a post driver and an outside diameter of at least 6 mm (0.25 in.) smaller than the sample probe. The pilot probe shall be capped on both ends and long enough to go through the landfill cover and extend no less than 0.9 m (3 ft) into the landfill.

6.5.2 Post Driver and Compressor. Capable of driving the pilot probe and the sampling probe into the landfill. The Kitty Hawk portable post driver has been found to be acceptable.

6.6 Auger Procedure. The following are needed only if the tester chooses to use the procedure described in Section 8.2.2.

6.6.1 Auger. Capable of drilling through the landfill cover and to a depth of no less than 0.9 m (3 ft) into the landfill.

6.6.2 Pea Gravel.

6.6.3 Bentonite.

6.7 NMOC Analyzer, Barometer, Thermometer, and Syringes. Same as in Sections 6.3.1, 6.3.2, 6.33, and 6.2.10, respectively, of Method 25.

*7.0 Reagents and Standards*

7.1 NMOC Analysis. Same as in Method 25, Section 7.2.

7.2 Calibration. Same as in Method 25, Section 7.4, except omit Section 7.4.3.

7.3 Quality Assurance Audit Samples.

7.3.1 It is recommended, but not required, that a performance audit sample be analyzed in conjunction with the field samples. The audit sample should be in a suitable sample matrix at a concentration similar to the actual field samples.

7.3.2 When making compliance determinations, and upon availability, audit samples may be obtained from the appropriate EPA Regional Office or from the responsible enforcement authority and analyzed in conjunction with the field samples.

**Note:** The responsible enforcement authority should be notified at least 30 days prior to the test date to allow sufficient time for sample delivery.

*8.0 Sample Collection, Preservation, Storage, and Transport*

8.1 Sample Tank Evacuation and Leak-Check. Conduct the sample tank evacuation and leak-check either in the laboratory or the field. Connect the pressure gauge and sampling valve to the sample tank. Evacuate the sample tank to 10 mm Hg (5.4 in $H_2O$) absolute pressure or less. Close the sampling valve, and allow the tank to sit for 30 minutes. The tank is acceptable if no change more than ± 2 mm is noted. Include the results of the leak-check in the test report.

8.2 Sample Probe Installation. The tester may use the procedure in Section 8.2.1 or 8.2.2.

8.2.1 Pilot Probe Procedure. Use the post driver to drive the pilot probe at least 0.9 m (3 ft) below the landfill cover. Alternative procedures to drive the probe into the landfill may be used subject to the approval of the Administrator's designated representative.

8.2.1.1 Remove the pilot probe and drive the sample probe into the hole left by the pilot probe. The sample probe shall extend at least 0.9 m (3 ft) below the landfill cover and shall protrude about 0.3 m (1 ft) above the landfill cover. Seal around the sampling probe with bentonite and cap the sampling probe with the sampling probe cap.

8.2.2 Auger Procedure. Use an auger to drill a hole to at least 0.9 m (3 ft) below the landfill cover. Place the sample probe in the hole and backfill with pea gravel to a level 0.6 m (2 ft) from the surface. The sample probe shall protrude at least 0.3 m (1 ft) above the landfill cover. Seal the remaining area around the probe with bentonite. Allow 24 hours for the landfill gases to equilibrate inside the augured probe before sampling.

8.3 Sample Train Assembly. Just before assembling the sample train, measure the sample tank vacuum using the pressure gauge. Record the vacuum, the ambient temperature, and the barometric pressure at this time. Assemble the sampling probe purging system as shown in Figure 25C–1.

8.4 Sampling Procedure. Open the sampling valve and use the purge pump and the flow control valve to evacuate at least two sample probe volumes from the system at a flow rate of 500 ml/min or less. Close the sampling valve and replace the purge pump with the sample tank apparatus as shown in Figure 25C–2. Open the sampling valve and the sample tank valve and, using the flow control valve, sample at a flow rate of 500 ml/min or less until either a constant flow rate can no longer be maintained because of reduced sample tank vacuum or the appropriate composite volume is attained. Disconnect the sampling tank apparatus and pressurize the sample cylinder to approximately 1,060 mm Hg (567 in. $H_2O$) absolute pressure with helium, and record the final pressure. Alternatively, the sample tank may be pressurized in the lab.

8.4.1 The following restrictions apply to compositing samples from different probe sites into a single cylinder: (1) Individual composite samples per cylinder must be of equal volume; this must be verified by recording the flow rate, sampling time, vacuum readings, or other appropriate volume measuring data, (2) individual composite samples must have a minimum volume of 1 liter unless data is provided showing smaller volumes can be accurately measured, and (3) composite samples must not be collected using the final cylinder vacuum as it diminishes to ambient pressure.

8.4.2 Use Method 3C to determine the percent $N_2$ in each cylinder. The presence of $N_2$ indicates either infiltration of ambient air into the landfill gas sample or an inappropriate testing site has been chosen where anaerobic decomposition has not begun. The landfill gas sample is acceptable if the concentration of $N_2$ is less than 20 percent. Alternatively, Method 3C may be used to determine the oxygen content of each cylinder as an air infiltration test. With this option, the oxygen content of each cylinder must be less than 5 percent.

*9.0 Quality Control*

9.1 Miscellaneous Quality Control Measures.

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| Section | Quality control measure | Effect |
|---|---|---|
| 8.4.1 | Verify that landfill gas sample contains less than 20 percent $N_2$ or 5 percent $O_2$. | Ensures that ambient air was not drawn into the landfill gas sample. |
| 10.1, 10.2 | NMOC analyzer initial and daily performance checks. | Ensures precision of analytical results. |
| 11.1.4 | Audit Sample Analyses | Evaluate analytical technique and instrument calibration. |

*10.0 Calibration and Standardization*

**Note:** Maintain a record of performance of each item.

10.1 Initial NMOC Analyzer Performance Test. Same as in Method 25, Section 10.1, except omit the linearity checks for $CO_2$ standards.

10.2 NMOC Analyzer Daily Calibration.

10.2.1 NMOC Response Factors. Same as in Method 25, Section 10.2.2.

10.3 Sample Tank Volume. The volume of the gas sampling tanks must be determined. Determine the tank volumes by weighing them empty and then filled with deionized water; weigh to the nearest 5 g, and record the results. Alternatively, measure the volume of water used to fill them to the nearest 5 ml.

*11.0 Analytical Procedures*

11.1 The oxidation, reduction, and measurement of NMOC's is similar to Method 25. Before putting the NMOC analyzer into routine operation, conduct an initial performance test. Start the analyzer, and perform all the necessary functions in order to put the analyzer into proper working order. Conduct the performance test according to the procedures established in Section 10.1. Once the performance test has been successfully completed and the NMOC calibration response factor has been determined, proceed with sample analysis as follows:

11.1.1 Daily Operations and Calibration Checks. Before and immediately after the analysis of each set of samples or on a daily basis (whichever occurs first), conduct a calibration test according to the procedures established in Section 10.2. If the criteria of the daily calibration test cannot be met, repeat the NMOC analyzer performance test (Section 10.1) before proceeding.

11.1.2 Operating Conditions. Same as in Method 25, Section 11.2.1.

11.1.3 Analysis of Sample Tank. Purge the sample loop with sample, and then inject the sample. Under the specified operating conditions, the $CO_2$ in the sample will elute in approximately 100 seconds. As soon as the detector response returns to baseline following the $CO_2$ peak, switch the carrier gas flow to backflush, and raise the column oven temperature to 195°C (383°F) as rapidly as possible. A rate of 30°C/min (54°F/min) has been shown to be adequate. Record the value obtained for any measured NMOC. Return the column oven temperature to 85°C (185°F) in preparation for the next analysis. Analyze each sample in triplicate, and report the average as $C_{tm}$.

11.2 Audit Sample Analysis. When the method is used to analyze samples to demonstrate compliance with a source emission regulation, an audit sample, if available, must be analyzed.

11.2.1 Concurrently analyze the audit sample and the compliance samples in the same manner to evaluate the technique of the analyst and the standards preparation.

11.2.2 The same analyst, analytical reagents, and analytical system must be used for the compliance samples and the audit sample. If this condition is met, duplicate auditing of subsequent compliance analyses for the same enforcement agency within a 30-day period is waived. An audit sample set may not be used to validate different sets of compliance samples under the jurisdiction of separate enforcement agencies, unless prior arrangements have been made with both enforcement agencies.

11.3 Audit Sample Results.

11.3.1 Calculate the audit sample concentrations and submit results using the instructions provided with the audit samples.

11.3.2 Report the results of the audit samples and the compliance determination samples along with their identification numbers, and the analyst's name to the responsible enforcement authority. Include this information with reports of any subsequent compliance analyses for the same enforcement authority during the 30-day period.

11.3.3 The concentrations of the audit samples obtained by the analyst must agree within 20 percent of the actual concentration. If the 20-percent specification is not met, reanalyze the compliance and audit samples, and include initial and reanalysis values in the test report.

11.3.4 Failure to meet the 20-percent specification may require retests until the audit problems are resolved. However, if the audit results do not affect the compliance or noncompliance status of the affected facility, the Administrator may waive the reanalysis requirement, further audits, or retests and accept the results of the compliance test. While steps are being taken to resolve audit analysis problems, the Administrator may also choose to use the data to determine the compliance or noncompliance status of the affected facility.

*12.0 Data Analysis and Calculations*

**Note:** All equations are written using absolute pressure; absolute pressures are determined by adding the measured barometric pressure to the measured gauge or manometer pressure.

12.1 Nomenclature.

$B_w$ = Moisture content in the sample, fraction.
$C_{N2}$ = Measured $N_2$ concentration, fraction.
$C_t$ = Calculated NMOC concentration, ppmv C equivalent.
$C_{tm}$ = Measured NMOC concentration, ppmv C equivalent.
$P_b$ = Barometric pressure, mm Hg.
$P_t$ = Gas sample tank pressure after sampling, but before pressurizing, mm Hg absolute.
$P_{tf}$ = Final gas sample tank pressure after pressurizing, mm Hg absolute.
$P_{ti}$ = Gas sample tank pressure after evacuation, mm Hg absolute.
$P_w$ = Vapor pressure of $H_2O$ (from Table 25C–1), mm Hg.
r = Total number of analyzer injections of sample tank during analysis (where j = injection number, 1 * * * r).
$T_t$ = Sample tank temperature at completion of sampling, °K.
$T_{ti}$ = Sample tank temperature before sampling, °K.
$T_{tf}$ = Sample tank temperature after pressurizing, °K.

12.2 Water Correction. Use Table 25C–1 (Section 17.0), the LFG temperature, and barometric pressure at the sampling site to calculate $B_w$.

$$B_w = \frac{P_w}{P_b} \qquad \text{Eq. 25C-1}$$

12.3 NMOC Concentration. Use the following equation to calculate the concentration of NMOC for each sample tank.



$$C_t = \frac{\frac{P_{tf}}{T_{tf}}}{\frac{P_t}{T_t} - \frac{P_{ti}}{T_{ti}}} \cdot \frac{1}{\left(1 - \frac{99}{78}C_{N_2}\right) - B_w} \sum_{j=1}^{r} C_{tm(j)} \qquad \text{Eq. 25C-2}$$

*13.0 Method Performance [Reserved]*

*14.0 Pollution Prevention [Reserved]*

*15.0 Waste Management [Reserved]*

*16.0 References*

1. Salo, Albert E., Samuel Witz, and Robert D. MacPhee. Determination of Solvent Vapor Concentrations by Total Combustion Analysis: A Comparison of Infrared with Flame Ionization Detectors. Paper No. 75–33.2. (Presented at the 68th Annual Meeting of the Air Pollution Control Association. Boston, Massachusetts. June 15–20, 1975.) 14 p.

2. Salo, Albert E., William L. Oaks, and Robert D. MacPhee. Measuring the Organic Carbon Content of Source Emissions for Air Pollution Control. Paper No. 74–190. (Presented at the 67th Annual Meeting of the Air Pollution Control Association. Denver, Colorado. June 9–13, 1974.) 25 p.

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*17.0 Tables, Diagrams, Flowcharts, and Validation Data*

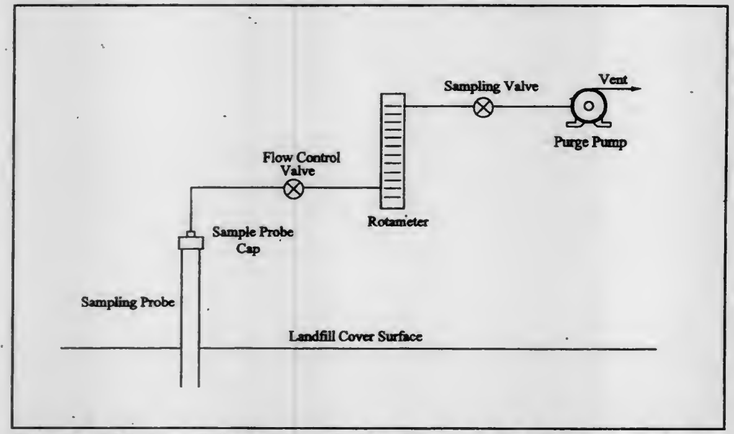



**Figure 25C-1. Schematic of Sampling Probe Purging System**

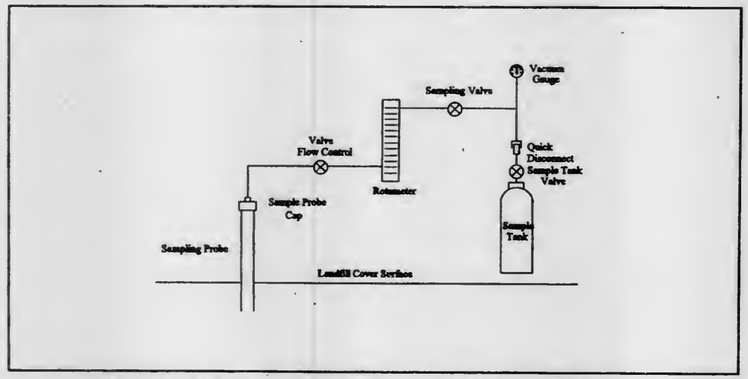



**Figure 25C-2. Schematic of Sampling Train.**

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TABLE 25C–1.—MOISTURE CORRECTION

| Temperature, °C | Vapor Pressure of $H_2O$, mm Hg | Temperature, °C | Vapor Pressure of $H_2O$, mm Hg |
|---|---|---|---|
| 4 | 6.1 | 18 | 15.5 |
| 6 | 7.0 | 20 | 17.5 |
| 8 | 8.0 | 22 | 19.8 |
| 10 | 9.2 | 24 | 22.4 |
| 12 | 10.5 | 26 | 25.2 |
| 14 | 12.0 | 28 | 28.3 |
| 16 | 13.6 | 30 | 31.8 |

**Method 25D—Determination of the Volatile Organic Concentration of Waste Samples**

**Note:** Performance of this method should not be attempted by persons unfamiliar with the operation of a flame ionization detector (FID) or an electrolytic conductivity detector (ELCD) because knowledge beyond the scope of this presentation is required.

*1.0 Scope and Application*

1.1 Analyte. Volatile Organic Compounds. No CAS No. assigned.

1.2 Applicability. This method is applicable for determining the volatile organic (VO) concentration of a waste sample.

*2.0 Summary of Method*

2.1 Principle. A sample of waste is obtained at a point which is most representative of the unexposed waste (where the waste has had minimum opportunity to volatilize to the atmosphere). The sample is suspended in an organic/aqueous matrix, then heated and purged with nitrogen for 30 min. in order to separate certain organic compounds. Part of the sample is analyzed for carbon concentration, as methane, with an FID, and part of the sample is analyzed for chlorine concentration, as chloride, with an ELCD. The VO concentration is the sum of the carbon and chlorine content of the sample.

*3.0 Definitions*

3.1 *Well-mixed* in the context of this method refers to turbulent flow which results in multiple-phase waste in effect behaving as single-phase waste due to good mixing.

*4.0 Interferences. [Reserved]*

*5.0 Safety*

5.1 Disclaimer. This method may involve hazardous materials, operations, and equipment. This test method may not address all of the safety problems associated with its use. It is the responsibility of the user of this test method to establish appropriate safety and health practices and to determine the applicability of regulatory limitations prior to performing this test method.

*6.0 Equipment and Supplies*

**Note:** Mention of trade names or specific products does not constitute endorsement by the Environmental Protection Agency.

6.1 Sampling. The following equipment is required:

6.1.1 Sampling Tube. Flexible Teflon, 0.25 in. ID (6.35 mm).

6.1.2 Sample Container. Borosilicate glass, 40-mL, and a Teflon-lined screw cap capable of forming an air tight seal.

6.1.3 Cooling Coil. Fabricated from 0.25 in (6.35 mm). ID 304 stainless steel tubing with a thermocouple at the coil outlet.

6.2 Analysis. The following equipment is required.

6.2.1 Purging Apparatus. For separating the VO from the waste sample. A schematic of the system is shown in Figure 25D–1. The purging apparatus consists of the following major components.

6.2.1.1 Purging Flask. A glass container to hold the sample while it is heated and purged with dry nitrogen. The cap of the purging flask is equipped with three fittings: one for a purging lance (fitting with the #7 Ace-thread), one for the Teflon exit tubing (side fitting, also a #7 Ace-thread), and a third (a 50-mm Ace-thread) to attach the base of the purging flask as shown in Figure 25D–2. The base of the purging flask is a 50-mm ID (2 in) cylindrical glass tube. One end of the tube is open while the other end is sealed. Exact dimensions are shown in Figure 25D–2.

6.2.1.2 Purging Lance. Glass tube, 6-mm OD (0.2 in) by 30 cm (12 in) long. The purging end of the tube is fitted with a four-arm bubbler with each tip drawn to an opening 1 mm (0.04 in) in diameter. Details and exact dimensions are shown in Figure 25D–2.

6.2.1.3 Coalescing Filter. Porous fritted disc incorporated into a container with the same dimensions as the purging flask. The details of the design are shown in Figure 25D–3.

6.2.1.4 Constant Temperature Chamber. A forced draft oven capable of maintaining a uniform temperature around the purging flask and coalescing filter of 75 ± 2°C (167 ± 3.6°F).

6.2.1.5 Three-way Valve. Manually operated, stainless steel. To introduce calibration gas into system.

6.2.1.6 Flow Controllers. Two, adjustable. One capable of maintaining a purge gas flow rate of 6 ± 0.06 L/min (0.2 ± 0.002 $ft^3$/min) The other capable of maintaining a calibration gas flow rate of 1–100 mL/min (0.00004–0.004 $ft^3$/min).

6.2.1.7 Rotameter. For monitoring the air flow through the purging system (0–10 L/min)(0–0.4 $ft^3$/min).

6.2.1.8 Sample Splitters. Two heated flow restrictors (placed inside oven or heated to 120 ± 10°C (248 ± 18 °F) ). At a purge rate of 6 L/min (0.2 $ft^3$/min), one will supply a constant flow to the first detector (the rest of the flow will be directed to the second sample splitter). The second splitter will split the analytical flow between the second detector and the flow restrictor. The approximate flow to the FID will be 40 mL/min (0.0014 $ft^3$/min) and to the ELCD will be 15 mL/min (0.0005 $ft^3$/min), but the exact flow must be adjusted to be compatible with the individual detector and to meet its linearity requirement. The two sample splitters will be connected to each other by 1/8″ OD (3.175 mm) stainless steel tubing.

6.2.1.9 Flow Restrictor. Stainless steel tubing, 1/8″ OD (3.175 mm), connecting the second sample splitter to the ice bath. Length is determined by the resulting pressure in the purging flask (as measured by the pressure gauge). The resulting pressure from the use of the flow restrictor shall be 6–7 psig.

6.2.1.10 Filter Flask. With one-hole stopper. Used to hold ice bath. Excess purge gas is vented through the flask to prevent condensation in the flowmeter and to trap volatile organic compounds.

6.2.1.11 Four-way Valve. Manually operated, stainless steel. Placed inside oven, used to bypass purging flask.

6.2.1.12 On/Off Valves. Two, stainless steel. One heat resistant up to 130 °C (266 °F) and placed between oven and ELCD. The other a toggle valve used to control purge gas flow.

6.2.1.13 Pressure Gauge. Range 0–40 psi. To monitor pressure in purging flask and coalescing filter.

6.2.1.14 Sample Lines. Teflon, 1/4″ OD (6.35 mm), used inside the oven to carry purge gas to and from purging chamber and to and from coalescing filter to four-way valve. Also used to carry sample from four-way valve to first sample splitter.

6.2.1.15 Detector Tubing. Stainless steel, 1/8″ OD (3.175 mm), heated to 120 ± 10°C (248 ± 18 °F) . Used to carry sample gas from each sample splitter to a detector. Each piece of tubing must be wrapped with heat tape and insulating tape in order to insure that no cold spots exist. The tubing leading to the ELCD will also contain a heat-resistant on-off valve (Section 6.2.1.12) which shall also be wrapped with heat-tape and insulation.

6.2.2 Volatile Organic Measurement System. Consisting of an FID to measure

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the carbon concentration of the sample and an ELCD to measure the chlorine concentration.

6.2.2.1 FID. A heated FID meeting the following specifications is required.

6.2.2.1.1 Linearity. A linear response (± 5 percent) over the operating range as demonstrated by the procedures established in Section 10.1.1.

6.2.2.1.2 Range. A full scale range of 50 pg carbon/sec to 50 µg carbon/sec. Signal attenuators shall be available to produce a minimum signal response of 10 percent of full scale.

6.2.2.1.3 Data Recording System. A digital integration system compatible with the FID for permanently recording the output of the detector. The recorder shall have the capability to start and stop integration at points selected by the operator or it shall be capable of the "integration by slices" technique (this technique involves breaking down the chromatogram into smaller increments, integrating the area under the curve for each portion, subtracting the background for each portion, and then adding all of the areas together for the final area count).

6.2.2.2 ELCD. An ELCD meeting the following specifications is required. 1-propanol must be used as the electrolyte. The electrolyte flow through the conductivity cell shall be 1 to 2 mL/min (0.00004 to 0.00007 $ft^3$/min).

**Note:** A ¼-in. ID (6.35 mm) quartz reactor tube is strongly recommended to reduce carbon buildup and the resulting detector maintenance.

6.2.2.2.1 Linearity. A linear response (± 10 percent) over the response range as demonstrated by the procedures in Section 10.1.2.

6.2.2.2.2 Range. A full scale range of 5.0 pg/sec to 500 ng/sec chloride. Signal attenuators shall be available to produce a minimum signal response of 10 percent of full scale.

6.2.2.2.3 Data Recording System. A digital integration system compatible with the output voltage range of the ELCD. The recorder must have the capability to start and stop integration at points selected by the operator or it shall be capable of performing the "integration by slices" technique.

*7.0 Reagents and Standards*

7.1 Sampling.

7.1.1 Polyethylene Glycol (PEG). Ninety-eight percent pure with an average molecular weight of 400. Before using the PEG, remove any organic compounds that might be detected as volatile organics by heating it to 120°C (248 °F) and purging it with nitrogen at a flow rate of 1 to 2 L/min (0.04 to 0.07 $ft^3$/min) for 2 hours. The cleaned PEG must be stored under a 1 to 2 L/min (0.04 to 0.07 $ft^3$/min) nitrogen purge until use. The purge apparatus is shown in Figure 25D–4.

7.2 Analysis.

7.2.1 Sample Separation. The following are required for the sample purging step.

7.2.1.1 PEG. Same as Section 7.1.1.

7.2.1.2 Purge Gas. Zero grade nitrogen ($N_2$), containing less than 1 ppm carbon.

7.2.2 Volatile Organics Measurement. The following are required for measuring the VO concentration.

7.2.2.1 Hydrogen ($H_2$). Zero grade $H_2$, 99.999 percent pure.

7.2.2.2 Combustion Gas. Zero grade air or oxygen as required by the FID.

7.2.2.3 Calibration Gas. Pressurized gas cylinder containing 10 percent propane and 1 percent 1,1-dichloroethylene by volume in nitrogen.

7.2.2.4 Water. Deionized distilled water that conforms to American Society for Testing and Materials Specification D 1193–74, Type 3, is required for analysis. At the option of the analyst, the $KMnO_4$ test for oxidizable organic matter may be omitted when high concentrations are not expected to be present.

7.2.2.5 1-Propanol. ACS grade or better. Electrolyte Solution. For use in the ELCD.

7.3 Quality Assurance Audit Samples.

7.3.1 It is recommended, but not required, that a performance audit sample be analyzed in conjunction with the field samples. The audit sample should be in a suitable sample matrix at a concentration similar to the actual field samples.

7.3.2 When making compliance determinations, and upon availability, audit samples may be obtained from the appropriate EPA regional Office or from the responsible enforcement authority and analyzed in conjunction with the field samples.

**Note:** The responsible enforcement authority should be notified at least 30 days prior to the test date to allow sufficient time for sample delivery.

*8.0 Sample Collection, Preservation, Storage, and Transport*

8.1 Sampling.

8.1.1 Sampling Plan Design and Development. Use the procedures in chapter nine of Reference 1 in Section 16 as guidance in developing a sampling plan.

8.1.2 Single Phase or Well-mixed Waste.

8.1.2.1 Install a sampling tap to obtain the sample at a point which is most representative of the unexposed waste (where the waste has had minimum opportunity to volatilize to the atmosphere). Assemble the sampling apparatus as shown in Figure 25D–5.

8.1.2.2 Prepare the sampling containers as follows: Pour 30 mL of clean PEG into the container. PEG will reduce but not eliminate the loss of organics during sample collection. Weigh the sample container with the screw cap, the PEG, and any labels to the nearest 0.01 g and record the weight ($m_{st}$). Store the containers in an ice bath until 1 hour before sampling (PEG will solidify at ice bath temperatures; allow the containers to reach room temperature before sampling).

8.1.2.3 Begin sampling by purging the sample lines and cooling coil with at least four volumes of waste. Collect the purged material in a separate container and dispose of it properly.

8.1.2.4 After purging, stop the sample flow and direct the sampling tube to a preweighed sample container, prepared as described in Section 8.1.2.2. Keep the tip of the tube below the surface of the PEG during sampling to minimize contact with the atmosphere. Sample at a flow rate such that the temperature of the waste is less than 10°C (50 °F). Fill the sample container and immediately cap it (within 5 seconds) so that a minimum headspace exists in the container. Store immediately in a cooler and cover with ice.

8.1.3 Multiple-phase Waste. Collect a 10 g sample of each phase of waste generated using the procedures described in Section 8.1.2 or 8.1.5. Each phase of the waste shall be analyzed as a separate sample. Calculate the weighted average VO concentration of the waste using Equation 25D–13 (Section 12.14).

8.1.4 Solid waste. Add approximately 10 g of the solid waste to a container prepared in the manner described in Section 8.1.2.2, minimizing headspace. Cap and chill immediately.

8.1.5 Alternative to Tap Installation. If tap installation is impractical or impossible, fill a large, clean, empty container by submerging the container into the waste below the surface of the waste. Immediately fill a container prepared in the manner described in Section 8.1.2.2 with approximately 10 g of the waste collected in the large container. Minimize headspace, cap and chill immediately.

8.1.6 Alternative sampling techniques may be used upon the approval of the Administrator.

8.2 Sample Recovery.

8.2.1 Assemble the purging apparatus as shown in Figures 25D–1 and 25D–2. The oven shall be heated to 75 ± 2°C (167 ± 3.6 °F). The sampling lines leading from the oven to the detectors shall be heated to 120 ± 10°C (248 ± 18 °F) with no cold spots. The flame ionization detector shall be operated with a heated block. Adjust the purging lance so that it reaches the bottom of the chamber.

8.2.2 Remove the sample container from the cooler, and wipe the exterior of the container to remove any extraneous ice, water, or other debris. Reweigh the sample container to the nearest 0.01 g, and record the weight ($m_{sf}$). Pour the contents of the sample container into the purging flask, rinse the sample container three times with a total of 20 mL of PEG (since the sample container originally held 30 mL of PEG, the total volume of PEG added to the purging flask will be 50 mL), transferring the rinsings to the purging flask after each rinse. Cap purging flask between rinses. The total volume of PEG in the purging flask shall be 50 mL. Add 50 mL of water to the purging flask.

*9.0 Quality Control*

9.1 Quality Control Samples. If audit samples are not available, prepare and analyze the two types of quality control samples (QCS) listed in Sections 9.4.1 and 9.4.2. Before placing the system in operation, after a shutdown of greater than six months, and after any major modifications, analyze each QCS in triplicate. For each detector, calculate the percent recovery by dividing measured concentration by theoretical concentration and multiplying by 100. Determine the mean percent recovery for each detector for each QCS triplicate analysis. The RSD for any triplicate analysis shall be ≤10 percent. For QCS 1 (methylene chloride), the percent recovery shall be ≥90 percent for carbon as methane, and ≥55 percent for chlorine as chloride. For QCS 2 (1,3-dichloro-2-propanol), the percent recovery shall be ≤15 percent for carbon as methane, and ≤6 percent for chlorine as chloride. If the analytical system does not meet the above-mentioned criteria for both detectors, check the system parameters (temperature, system pressure, purge rate, etc.), correct the problem, and repeat the triplicate analysis of each QCS.

9.1.1 QCS 1, Methylene Chloride. Prepare a stock solution by weighing, to the nearest 0.1 mg, 55 µL of HPLC grade methylene chloride in a tared 5 mL volumetric flask. Record the weight in milligrams, dilute to 5 mL with cleaned PEG, and inject 100 µL of the stock solution into a sample prepared as a water blank (50 mL of cleaned PEG and 60 mL of water in the purging flask). Analyze the QCS according to the procedures described in Sections 10.2 and 10.3, excluding Section 10.2.2. To calculate the theoretical carbon concentration (in mg) in QCS 1, multiply mg of methylene chloride in the stock solution by $3.777 \times 10^{-3}$. To calculate the theoretical chlorine concentration (in mg) in QCS 1, multiply mg of methylene chloride in the stock solution by $1.670 \times 10^{-2}$.

9.1.2 QCS 2, 1,3-dichloro-2-propanol. Prepare a stock solution by weighing, to the nearest 0.1 mg, 60 µL of high purity grade 1,3-dichloro-2-propanol in a tared 5 mL volumetric flask. Record the weight in milligrams, dilute to 5 mL with cleaned PEG, and inject 100 µL of the stock solution into a sample prepared as a water blank (50 mL of cleaned PEG and 60 mL of water in the purging flask). Analyze the QCS according to the procedures described in Sections 10.2 and 10.3, excluding Section 10.2.2. To calculate the theoretical carbon concentration (in mg) in QCS 2, multiply mg of 1,3-dichloro-2-propanol in the stock solution by $7.461 \times 10^{-3}$. To calculate the theoretical chlorine concentration (in mg) in QCS 2, multiply mg of 1,3-dichloro-2-propanol in the stock solution by $1.099 \times 10^{-2}$.

9.1.3 Routine QCS Analysis. For each set of compliance samples (in this context, set is per facility, per compliance test), analyze one QCS 1 and one QCS 2 sample. The percent recovery for each sample for each detector shall be ± 13 percent of the mean recovery established for the most recent set of QCS triplicate analysis (Section 9.4). If the sample does not meet this criteria, check the system components and analyze another QCS 1 and 2 until a single set of QCS meet the ± 13 percent criteria.

*10.0 Calibration and Standardization*

10.1 Initial Performance Check of Purging System. Before placing the system in operation, after a shutdown of greater than six months, after any major modifications, and at least once per month during continuous operation, conduct the linearity checks described in Sections 10.1.1 and 10.1.2. Install calibration gas at the three-way calibration gas valve. See Figure 25D–1.

10.1.1 Linearity Check Procedure. Using the calibration standard described in Section 7.2.2.3 and by varying the injection time, it is possible to calibrate at multiple concentration levels. Use Equation 25D–3 to calculate three sets of calibration gas flow rates and run times needed to introduce a total mass of carbon, as methane, ($m_c$) of 1, 5, and 10 mg into the system (low, medium and high FID calibration, respectively). Use Equation 25D–4 to calculate three sets of calibration gas flow rates and run times needed to introduce a total chloride mass ($m_{cb}$) of 1, 5, and 10 mg into the system (low, medium and high ELCD calibration, respectively). With the system operating in standby mode, allow the FID and the ELCD to establish a stable baseline. Set the secondary pressure regulator of the calibration gas cylinder to the same pressure as the purge gas cylinder and set the proper flow rate with the calibration flow controller (see Figure 25D–1). The calibration gas flow rate can be measured with a flowmeter attached to the vent position of the calibration gas valve. Set the four-way bypass valve to standby position so that the calibration gas flows through the coalescing filter only. Inject the calibration gas by turning the calibration gas valve from vent position to inject position. Continue the calibration gas flow for the appropriate period of time before switching the calibration valve to vent position. Continue recording the response of the FID and the ELCD for 5 min after switching off calibration gas flow. Make triplicate injections of all six levels of calibration.

10.1.2 Linearity Criteria. Calculate the average response factor (Equations 25D–5 and 25D–6) and the relative standard deviation (RSD) (Equation 25D–10) at each level of the calibration curve for both detectors. Calculate the overall mean of the three response factor averages for each detector. The FID linearity is acceptable if each response factor is within 5 percent of the overall mean and if the RSD for each set of triplicate injections is less than 5 percent. The ELCD linearity is acceptable if each response factor is within 10 percent of the overall mean and if the RSD for each set of triplicate injections is less than 10 percent. Record the overall mean value of the response factors for the FID and the ELCD. If the calibration for either the FID or the ELCD does not meet the criteria, correct the detector/system problem and repeat Sections 10.1.1 and 10.1.2.

10.2 Daily Calibrations.

10.2.1 Daily Linearity Check. Follow the procedures outlined in Section 10.1.1 to analyze the medium level calibration for both the FID and the ELCD in duplicate at the start of the day. Calculate the response factors and the RSDs for each detector. For the FID, the calibration is acceptable if the average response factor is within 5 percent of the overall mean response factor (Section 10.1.2) and if the RSD for the duplicate injection is less than 5 percent. For the ELCD, the calibration is acceptable if the average response factor

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is within 10 percent of the overall mean response factor (Section 10.1.2) and if the RSD for the duplicate injection is less than 10 percent. If the calibration for either the FID or the ELCD does not meet the criteria, correct the detector/system problem and repeat Sections 10.1.1 and 10.1.2.

10.2.2 Calibration Range Check.

10.2.2.1 If the waste concentration for either detector falls below the range of calibration for that detector, use the procedure outlined in Section 10.1.1 to choose two calibration points that bracket the new target concentration. Analyze each of these points in triplicate (as outlined in Section 10.1.1) and use the criteria in Section 10.1.2 to determine the linearity of the detector in this "mini-calibration" range.

10.2.2.2 After the initial linearity check of the mini-calibration curve, it is only necessary to test one of the points in duplicate for the daily calibration check (in addition to the points specified in Section 10.2.1). The average daily mini-calibration point should fit the linearity criteria specified in Section 10.2.1. If the calibration for either the FID or the ELCD does not meet the criteria, correct the detector/system problem and repeat the calibration procedure mentioned in the first paragraph of Section 10.2.2. A mini-calibration curve for waste concentrations above the calibration curve for either detector is optional.

10.3 Analytical Balance. Calibrate against standard weights.

*11.0 Analysis*

11.1 Sample Analysis.

11.1.1 Turn on the constant temperature chamber and allow the temperature to equilibrate at 75 ± 2°C (167 ± 3.6 °F). Turn the four-way valve so that the purge gas bypasses the purging flask, the purge gas flowing through the coalescing filter and to the detectors (standby mode). Turn on the purge gas. Allow both the FID and the ELCD to warm up until a stable baseline is achieved on each detector. Pack the filter flask with ice. Replace ice after each run and dispose of the waste water properly. When the temperature of the oven reaches 75 ± 2°C (167 ± 3.6 °F), start both integrators and record baseline. After 1 min, turn the four-way valve so that the purge gas flows through the purging flask, to the coalescing filter and to the sample splitters (purge mode). Continue recording the response of the FID and the ELCD. Monitor the readings of the pressure gauge and the rotameter. If the readings fall below established setpoints, stop the purging, determine the source of the leak, and resolve the problem before resuming. Leaks detected during a sampling period invalidate that sample.

11.1.2 As the purging continues, monitor the output of the detectors to make certain that the analysis is proceeding correctly and that the results are being properly recorded. Every 10 minutes read and record the purge flow rate, the pressure and the chamber temperature. Continue the purging for 30 minutes.

11.1.3 For each detector output, integrate over the entire area of the peak starting at 1 minute and continuing until the end of the run. Subtract the established baseline area from the peak area. Record the corrected area of the peak. See Figure 25D–6 for an example integration.

11.2 Water Blank. A water blank shall be analyzed for each batch of cleaned PEG prepared. Transfer about 60 mL of water into the purging flask. Add 50 mL of the cleaned PEG to the purging flask. Treat the blank as described in Sections 8.2 and 8.3, excluding Section 8.2.2. Calculate the concentration of carbon and chlorine in the blank sample (assume 10 g of waste as the mass). A VO concentration equivalent to ≤10 percent of the applicable standard may be subtracted from the measured VO concentration of the waste samples. Include all blank results and documentation in the test report.

11.3 Audit Sample Analysis.

11.3.1 When the method is used to analyze samples to demonstrate compliance with a source emission regulation, an audit sample, if available, must be analyzed.

11.3.2 Concurrently analyze the audit sample and the compliance samples in the same manner to evaluate the technique of the analyst and the standards preparation.

11.3.3 The same analyst, analytical reagents, and analytical system must be used for the compliance samples and the audit sample. If this condition is met, duplicate auditing of subsequent compliance analyses for the same enforcement agency within a 30-day period is waived. An audit sample may not be used to validate different sets of compliance samples under the jurisdiction of separate enforcement agencies, unless prior arrangements have been made with both enforcement agencies.

11.4 Audit Sample Results.

11.4.1 Calculate the audit sample concentrations and submit results using the instructions provided with the audit samples.

11.4.2 Report the results of the audit samples and the compliance determination samples along with their identification numbers, and the analyst's name to the responsible enforcement authority. Include this information with reports of any subsequent compliance analyses for the same enforcement authority during the 30-day period.

*12.0 Data Analysis and Calculations*

12.1 Nomenclature.

$A_b$ = Area under the water blank response curve, counts.
$A_c$ = Area under the calibration response curve, counts.
$A_s$ = Area under the sample response curve, counts.
C = Concentration of volatile organics in the sample, ppmw.
$C_c$ = Concentration of carbon, as methane, in the calibration gas, mg/L.
$C_{ch}$ = Concentration of chloride in the calibration gas, mg/L.
$C_j$ = VO concentration of phase j, ppmw.
$DR_t$ = Average daily response factor of the FID, mg $CH_4$/counts.
$Dr_{th}$ = Average daily response factor of the ELCD, mg $Cl^-$/counts.
$F_j$ = Weight fraction of phase j present in the waste.
$m_c$ = Mass of carbon, as methane, in a calibration run, mg.
$m_{ch}$ = Mass of chloride in a calibration run, mg.
$m_s$ = Mass of the waste sample, g.
$m_{sc}$ = Mass of carbon, as methane, in the sample, mg.
$m_{sf}$ = Mass of sample container and waste sample, g.
$m_{sh}$ = Mass of chloride in the sample, mg.
$m_{st}$ = Mass of sample container prior to sampling, g.
$m_{VO}$ = Mass of volatile organics in the sample, mg.
n = Total number of phases present in the waste.
$P_p$ = Percent propane in calibration gas (L/L).
$P_{vc}$ = Percent 1,1-dichloroethylene in calibration gas (L/L).
$Q_c$ = Flow rate of calibration gas, L/min.
$t_c$ = Length of time standard gas is delivered to the analyzer, min.
W = Weighted average VO concentration, ppmw.

12.2 Concentration of Carbon, as Methane, in the Calibration Gas.

$$C_c = (19.681 \times P_p) + (13.121 \times P_{vc}) \quad \text{Eq. 25D-1}$$

12.3 Concentration of Chloride in the Calibration Gas.

$$C_{ch} = 28.998 \times P_{vc} \quad \text{Eq. 25D-2}$$

12.4 Mass of Carbon, as Methane, in a Calibration Run.

$$M_c = C_c \times Q_c \times t_c \quad \text{Eq. 25D-3}$$

12.5 Mass of Chloride in a Calibration Run.

$$m_{ch} = C_{ch} \times Q_c \times t_c \quad \text{Eq. 25D-4}$$

12.6 FID Response Factor, mg/counts.

$$DR_t = \frac{m_c}{A_c} \quad \text{Eq. 25D-5}$$

12.7 ELCD Response Factor, mg/counts.

$$DR_{th} = \frac{m_{ch}}{A_c} \quad \text{Eq. 25D-6}$$

12.8 Mass of Carbon in the Sample.

$$m_{sc} = DR_t(A_s - A_b) \quad \text{Eq. 25D-7}$$

12.9 Mass of Chloride in the Sample.

$$m_{sh} = DR_{th}(A_s - A_b) \quad \text{Eq. 25D-8}$$

12.10 Mass of Volatile Organics in the Sample.

$$m_{vo} = m_{sc} + m_{sh} \quad \text{Eq. 25D-9}$$

12.11 Relative Standard Deviation.

$$RSD = \frac{100}{\bar{x}} \sqrt{\frac{\sum_{i=1}^{n} (x_i - \bar{x})^2}{n-1}} \quad \text{Eq. 25D-10}$$

12.12 Mass of Sample.

$$m_s = m_{sf} - m_{st} \quad \text{Eq. 25D-11}$$

12.13 Concentration of Volatile Organics in Waste.

$$C = \frac{(m_{vo} \times 1000)}{m_s} \quad \text{Eq. 25D-12}$$

12.14 Weighted Average VO Concentration of Multi-phase Waste.

$$W = \sum_{j=1}^{n} F_j \times \bar{C}_j \quad \text{Eq. 25D-13}$$

*13.0 Method Performance. [Reserved]*

*14.0 Pollution Prevention. [Reserved]*

*15.0 Waste Management. [Reserved]*

*16.0 References*

1. "Test Methods for Evaluating Solid Waste, Physical/Chemistry Methods", U.S. Environmental Protection Agency. Publication SW–846, 3rd Edition, November 1986 as amended by Update I, November 1990.

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*17.0 Tables, Diagrams, Flowcharts, and Validation Data*

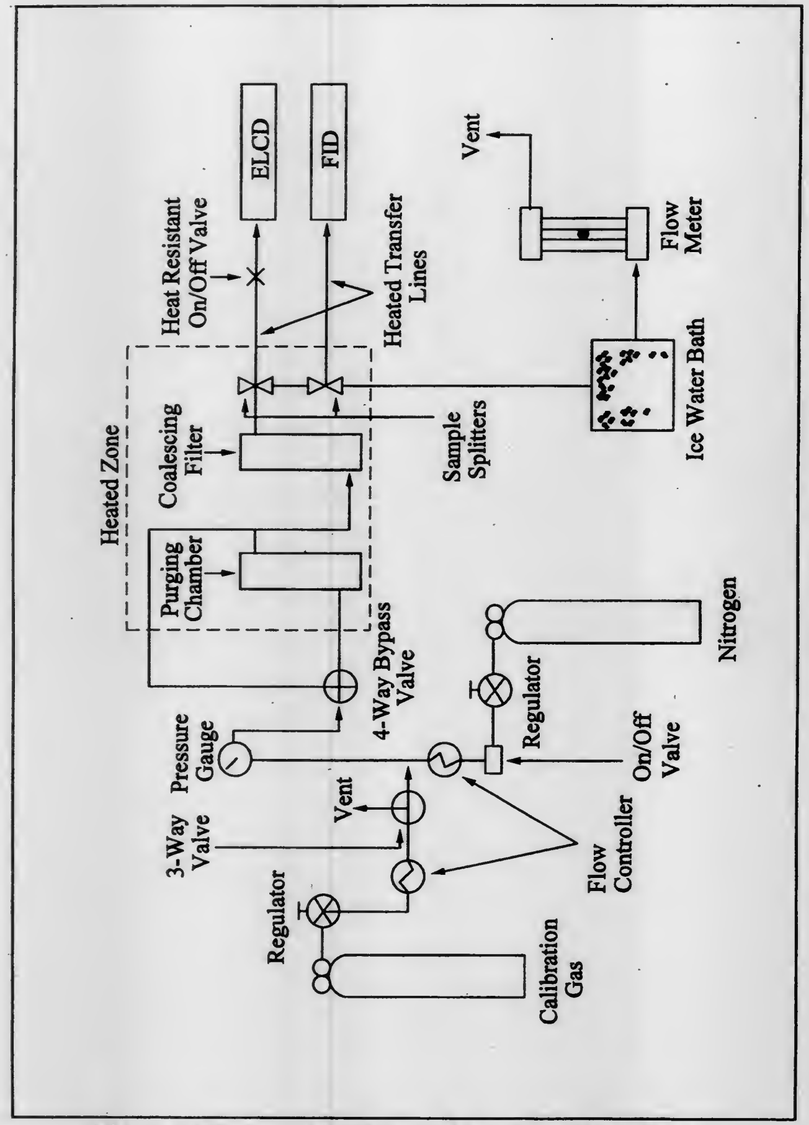



Figure 25D-1. Schematic of Purging Apparatus.



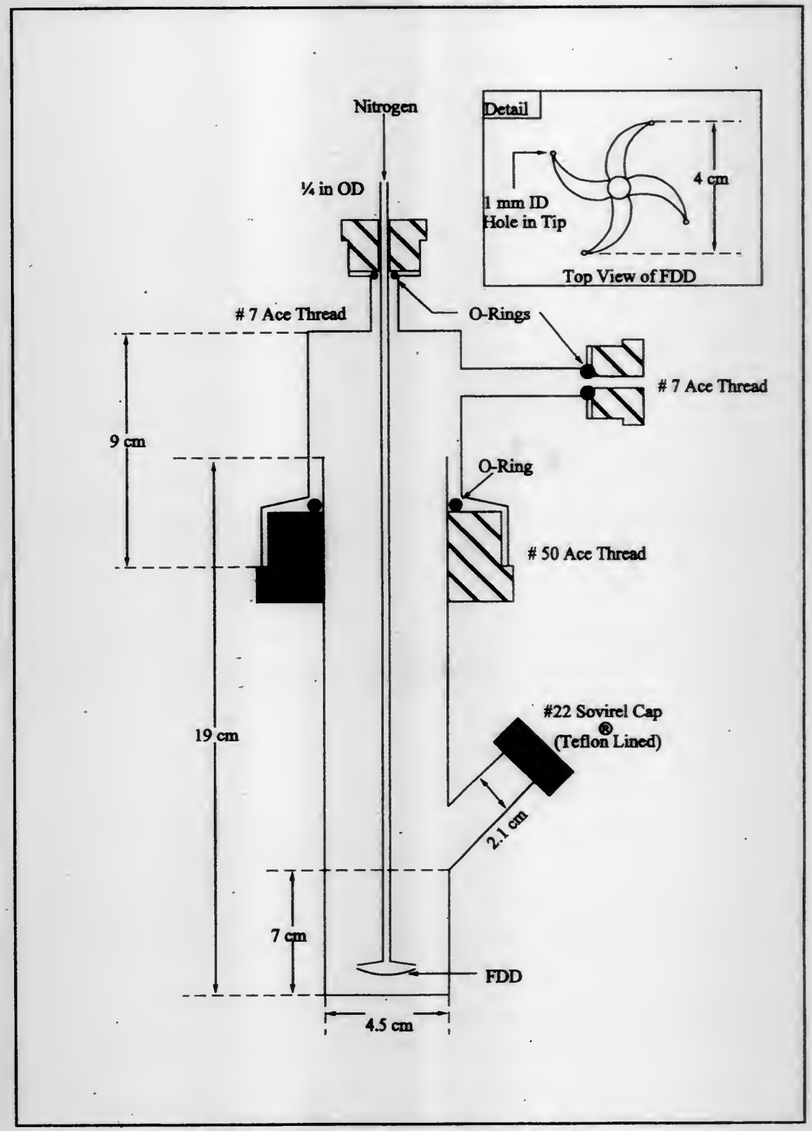



Figure 25D-2. Purging Lance.

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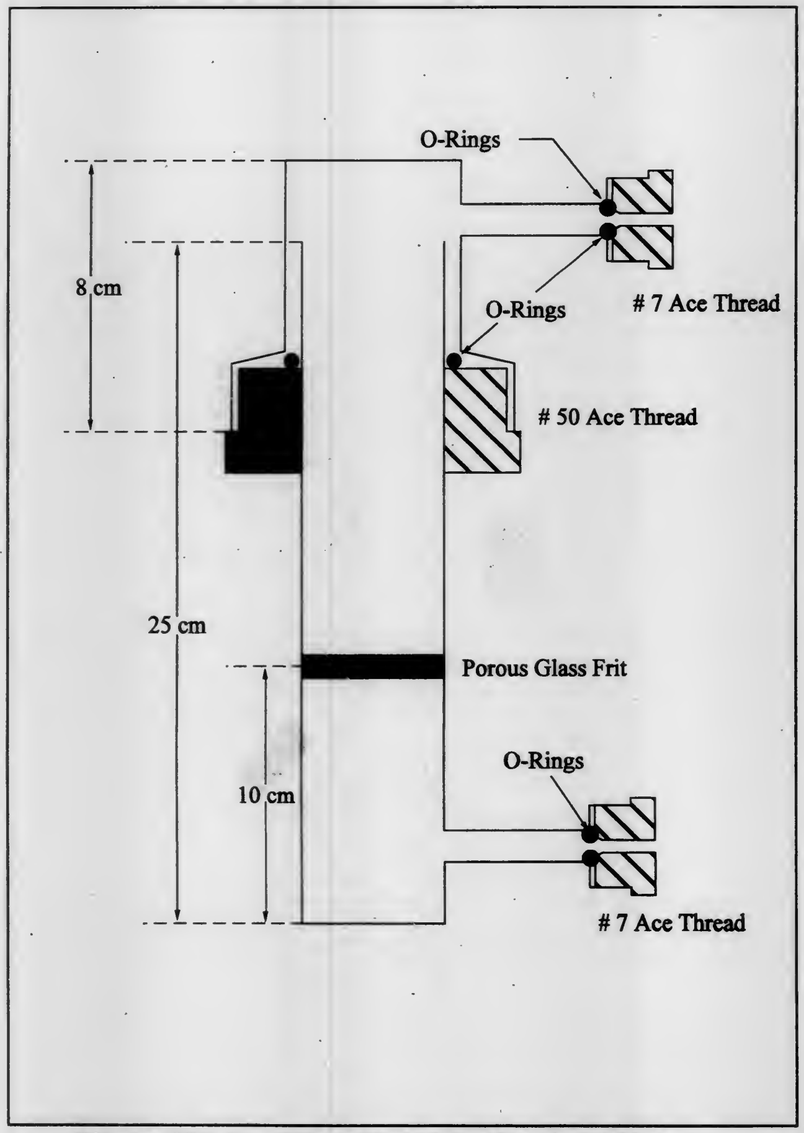



Figure 25D-3. Schematic of Coalescing Filter.



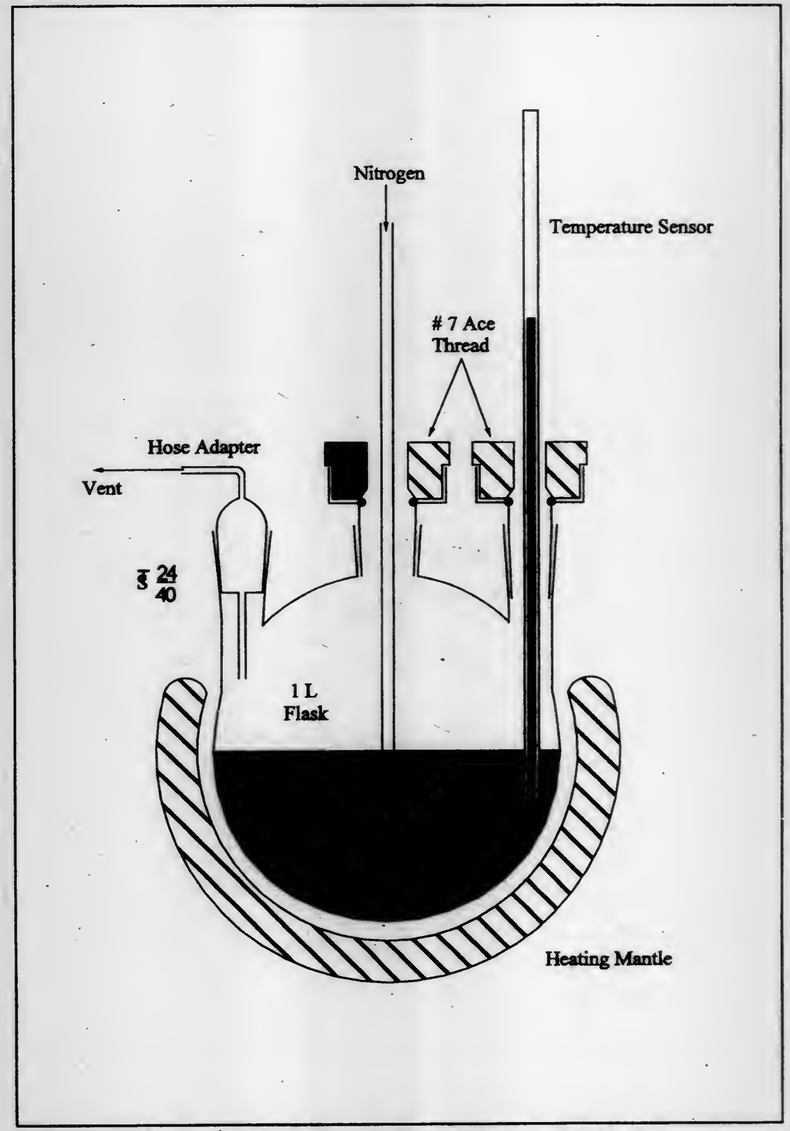



Figure 25D-4. Schematic of PEG Cleaning System.

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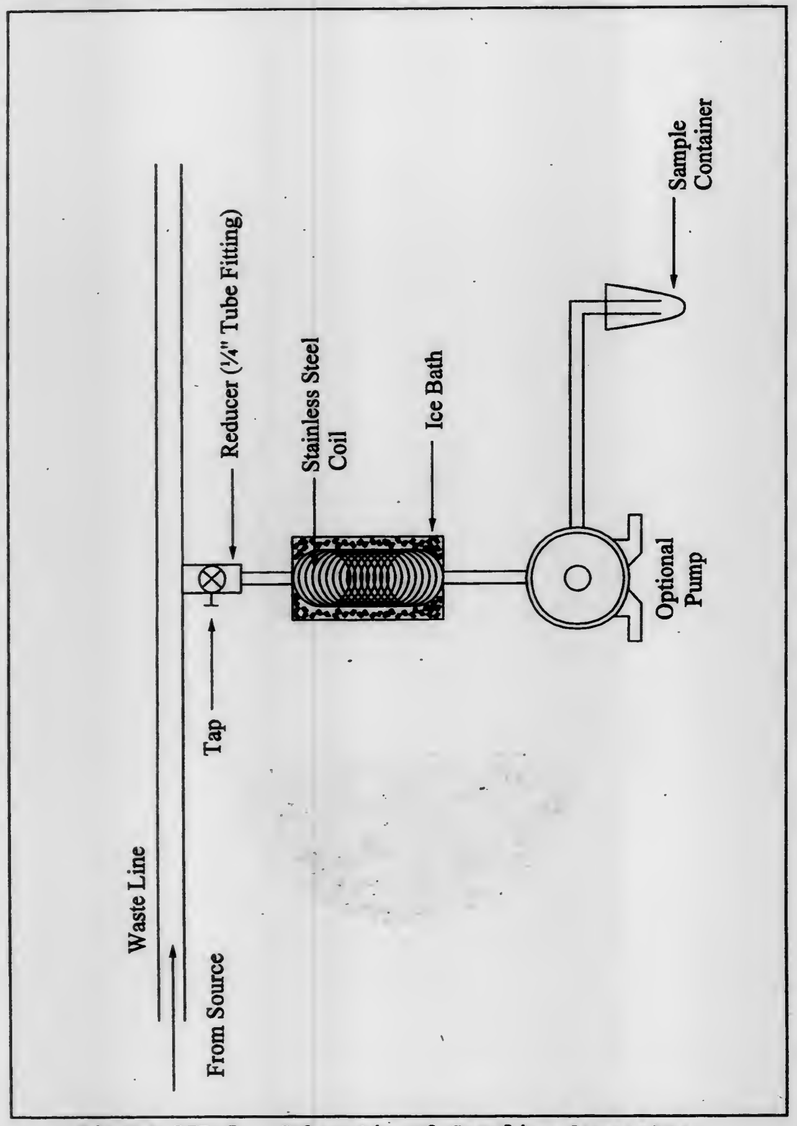



Figure 25D-5. Schematic of Sampling Apparatus.



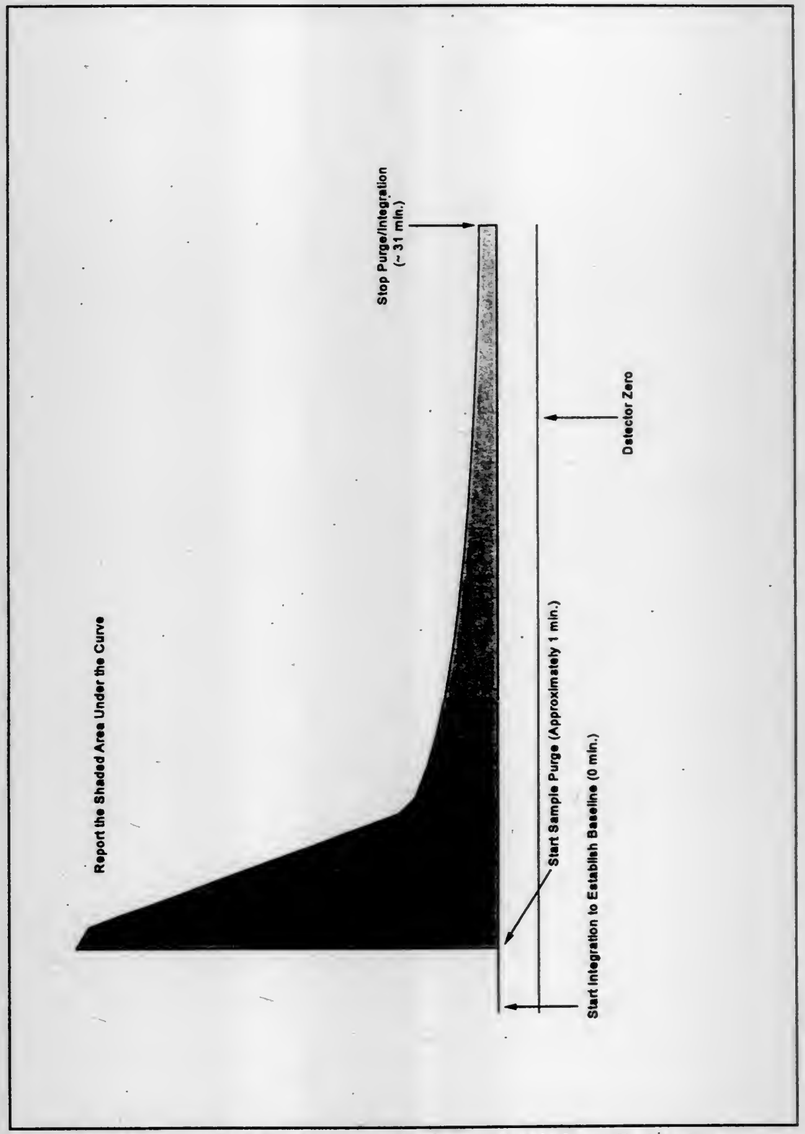



Figure 25D-6. Example Integration of Either Detector.

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**Method 25E—Determination of Vapor Phase Organic Concentration in Waste Samples**

**Note:** Performance of this method should not be attempted by persons unfamiliar with the operation of a flame ionization detector (FID) nor by those who are unfamiliar with source sampling because knowledge beyond the scope of this presentation is required. This method is not inclusive with respect to specifications (e.g., reagents and standards) and calibration procedures. Some material is incorporated by reference from other methods. Therefore, to obtain reliable results, persons using this method should have a thorough knowledge of at least the following additional test methods: Method 106, part 61, Appendix B, and Method 18, part 60, Appendix A.

*1.0 Scope and Application*

1.1 Applicability. This method is applicable for determining the vapor pressure of waste cited by an applicable regulation.

1.2 Data Quality Objectives. Adherence to the requirements of this method will enhance the quality of the data obtained from air pollutant sampling methods.

*2.0 Summary of Method*

2.1 The headspace vapor of the sample is analyzed for carbon content by a headspace analyzer, which uses an FID.

*3.0 Definitions. [Reserved]*

*4.0 Interferences*

4.1 The analyst shall select the operating parameters best suited to the requirements for a particular analysis. The analyst shall produce confirming data through an adequate supplemental analytical technique and have the data available for review by the Administrator.

*5.0 Safety. [Reserved]*

*6.0 Equipment and Supplies*

6.1 Sampling. The following equipment is required:

6.1.1 Sample Containers. Vials, glass, with butyl rubber septa, Perkin-Elmer Corporation Numbers 0105–0129 (glass vials), B001–0728 (gray butyl rubber septum, plug style), 0105–0131 (butyl rubber septa), or equivalent. The seal must be made from butyl rubber. Silicone rubber seals are not acceptable.

6.1.2 Vial Sealer. Perkin-Elmer Number 105–0106, or equivalent.

6.1.3 Gas-Tight Syringe. Perkin-Elmer Number 00230117, or equivalent.

6.1.4 The following equipment is required for sampling.

6.1.4.1 Tap.

6.1.4.2 Tubing, Teflon, 0.25-in. ID.

**Note:** Mention of trade names or specific products does not constitute endorsement by the Environmental Protection Agency.

6.1.4.3 Cooling Coil. Stainless steel (304), 0.25 in.-ID, equipped with a thermocouple at the coil outlet.

6.2 Analysis. The following equipment is required.

6.2.1 Balanced Pressure Headspace Sampler. Perkin-Elmer HS–6, HS–100, or equivalent, equipped with a glass bead column instead of a chromatographic column.

6.2.2 FID. An FID meeting the following specifications is required.

6.2.2.1 Linearity. A linear response (±5 percent) over the operating range as demonstrated by the procedures established in Section 10.2.

6.2.2.2 Range. A full scale range of 1 to 10,000 parts per million (ppm) propane ($C_3H_8$). Signal attenuators shall be available to produce a minimum signal response of 10 percent of full scale.

6.2.3 Data Recording System. Analog strip chart recorder or digital integration system compatible with the FID for permanently recording the output of the detector.

6.2.4 Temperature Sensor. Capable of reading temperatures in the range of 30 to 60°C (86 to 140°F) with an accuracy of ±0.1°C (±0.2°F).

*7.0 Reagents and Standards*

7.1 Analysis. The following items are required for analysis.

7.1.1 Hydrogen ($H_2$). Zero grade hydrogen, as required by the FID.

7.1.2 Carrier Gas. Zero grade nitrogen, containing less than 1 ppm carbon (C) and less than 1 ppm carbon dioxide.

7.1.3 Combustion Gas. Zero grade air or oxygen as required by the FID.

7.2 Calibration and Linearity Check.

7.2.1 Stock Cylinder Gas Standard. 100 percent propane. The manufacturer shall: (a) Certify the gas composition to be accurate to ±3 percent or better (see Section 7.2.1.1); (b) recommend a maximum shelf life over which the gas concentration does not change by greater than ±5 percent from the certified value; and (c) affix the date of gas cylinder preparation, certified propane concentration, and recommended maximum shelf life to the cylinder before shipment to the buyer.

7.2.1.1 Cylinder Standards Certification. The manufacturer shall certify the concentration of the calibration gas in the cylinder by (a) directly analyzing the cylinder and (b) calibrating his analytical procedure on the day of cylinder analysis. To calibrate his analytical procedure, the manufacturer shall use, as a minimum, a three-point calibration curve.

7.2.1.2 Verification of Manufacturer's Calibration Standards. Before using, the manufacturer shall verify each calibration standard by (a) comparing it to gas mixtures prepared in accordance with the procedure described in Section 7.1 of Method 106 of Part 61, Appendix B, or by (b) calibrating it against Standard Reference Materials (SRM's) prepared by the National Bureau of Standards, if such SRM's are available. The agreement between the initially determined concentration value and the verification concentration value must be within ±5 percent. The manufacturer must reverify all calibration standards on a time interval consistent with the shelf life of the cylinder standards sold.

*8.0 Sampling Collection, Preservation, Storage, and Transport*

8.1 Install a sampling tap to obtain a sample at a point which is most representative of the unexposed waste (where the waste has had minimum opportunity to volatilize to the atmosphere). Assemble the sampling apparatus as shown in Figure 25E–1.

8.2 Begin sampling by purging the sample lines and cooling coil with at least four volumes of waste. Collect the purged material in a separate container and dispose of it properly.

8.3 After purging, stop the sample flow and transfer the Teflon sampling tube to a sample container. Sample at a flow rate such that the temperature of the waste is <10°C (<50°F). Fill the sample container halfway (±5 percent) and cap it within 5 seconds. Store immediately in a cooler and cover with ice.

8.4 Alternative sampling techniques may be used upon the approval of the Administrator.

*9.0 Quality Control*

9.1 Miscellaneous Quality Control Measures.

| Section | Quality control measure | Effect |
|---|---|---|
| 10.2, 10.3 | FID calibration and response check | Ensure precision of analytical results. |



*10.0 Calibration and Standardization*

**Note:** Maintain a record of performance of each item.

10.1 Use the procedures in Sections 10.2 to calibrate the headspace analyzer and FID and check for linearity before the system is first placed in operation, after any shutdown longer than 6 months, and after any modification of the system.

10.2 Calibration and Linearity. Use the procedures in Section 10 of Method 18 of Part 60, Appendix A, to prepare the standards and calibrate the flowmeters, using propane as the standard gas. Fill the calibration standard vials halfway (±5 percent) with deionized water. Purge and fill the airspace with calibration standard. Prepare a minimum of three concentrations of calibration standards in triplicate at concentrations that will bracket the applicable cutoff. For a cutoff of 5.2 kPa (0.75 psi), prepare nominal concentrations of 30,000, 50,000, and 70,000 ppm as propane. For a cutoff of 27.6 kPa (4.0 psi), prepare nominal concentrations of 200,000, 300,000, and 400,000 ppm as propane.

10.2.1 Use the procedures in Section 11.3 to measure the FID response of each standard. Use a linear regression analysis to calculate the values for the slope (k) and the y-intercept (b). Use the procedures in Sections 12.3 and 12.2 to test the calibration and the linearity.

10.3 Daily FID Calibration Check. Check the calibration at the beginning and at the end of the daily runs by using the following procedures. Prepare 2 calibration standards at the nominal cutoff concentration using the procedures in Section 10.2. Place one at the beginning and one at the end of the daily run. Measure the FID response of the daily calibration standard and use the values for k and b from the most recent calibration to calculate the concentration of the daily standard. Use an equation similar to 25E–2 to calculate the percent difference between the daily standard and $C_s$. If the difference is within 5 percent, then the previous values for k and b can be used. Otherwise, use the procedures in Section 10.2 to recalibrate the FID.

*11.0 Analytical Procedures*

11.1 Allow one hour for the headspace vials to equilibrate at the temperature specified in the regulation. Allow the FID to warm up until a stable baseline is achieved on the detector.

11.2 Check the calibration of the FID daily using the procedures in Section 10.3.

11.3 Follow the manufacturer's recommended procedures for the normal operation of the headspace sampler and FID.

11.4 Use the procedures in Sections 12.4 and 12.5 to calculate the vapor phase organic vapor pressure in the samples.

11.5 Monitor the output of the detector to make certain that the results are being properly recorded.

*12.0 Data Analysis and Calculations*

12.1 Nomenclature.

A = Measurement of the area under the response curve, counts.

b = y-intercept of the linear regression line.

$C_a$ = Measured vapor phase organic concentration of sample, ppm as propane.

$C_{ma}$ = Average measured vapor phase organic concentration of standard, ppm as propane.

$C_m$ = Measured vapor phase organic concentration of standard, ppm as propane.

$C_s$ = Calculated standard concentration, ppm as propane.

k = Slope of the linear regression line.

$P_{bar}$ = Atmospheric pressure at analysis conditions, mm Hg (in. Hg).

$P^*$ = Organic vapor pressure in the sample, kPa (psi).

PD = Percent difference between the average measured vapor phase organic concentration ($C_m$) and the calculated standard concentration ($C_s$).

RSD = Relative standard deviation.

$\beta = 1.333 \times 10^{-7}$ kPa/[(mm Hg)(ppm)], $(4.91 \times 10^{-7}$ psi/[(in. Hg)(ppm)])

12.2 Linearity. Use the following equation to calculate the measured standard concentration for each standard vial.

$$C_m = kA + b \qquad \text{Eq. 25E-1}$$

12.2.1 Calculate the average measured standard concentration ($C_{ma}$) for each set of triplicate standards and use the following equation to calculate PD between $C_{ma}$ and $C_s$. The instrument linearity is acceptable if the PD is within five for each standard.

$$PD = \frac{C_s - C_{ma}}{C_s} \times 100 \qquad \text{Eq. 25E-2}$$

12.3. Relative Standard Deviation (RSD). Use the following equation to calculate the RSD for each triplicate set of standards.

$$RSD = \frac{100}{C_{ma}} \sqrt{\frac{\sum (C_m - C_{ma})^2}{2}} \qquad \text{Eq. 25E-3}$$

The calibration is acceptable if the RSD is within five for each standard concentration.

12.4 Concentration of organics in the headspace. Use the following equation to calculate the concentration of vapor phase organics in each sample.

$$C_a = kA + b \qquad \text{Eq. 25E-4}$$

12.5 Vapor Pressure of Organics in the Headspace Sample. Use the following equation to calculate the vapor pressure of organics in the sample.

$$P^* = \beta P_{bar} C_a \qquad \text{Eq. 25E-5}$$

*13.0 Method Performance. [Reserved]*

*14.0 Pollution Prevention. [Reserved]*

*15.0 Waste Management. [Reserved]*

*16.0 References*

1. Salo, Albert E., Samuel Witz, and Robert D. MacPhee. "Determination of Solvent Vapor Concentrations by Total Combustion Analysis: a Comparison of Infared with Flame Ionization Detectors. Paper No. 75–33.2. (Presented at the 68th Annual Meeting of the Air Pollution Control Association. Boston, Massachusetts.

2. Salo, Albert E., William L. Oaks, and Robert D. MacPhee. "Measuring the Organic Carbon Content of Source Emissions for Air Pollution Control. Paper No. 74–190. (Presented at the 67th Annual Meeting of the Air Pollution Control Association. Denver, Colorado. June 9–13, 1974.) p. 25.

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*17.0 Tables, Diagrams, Flowcharts, and Validation Data*

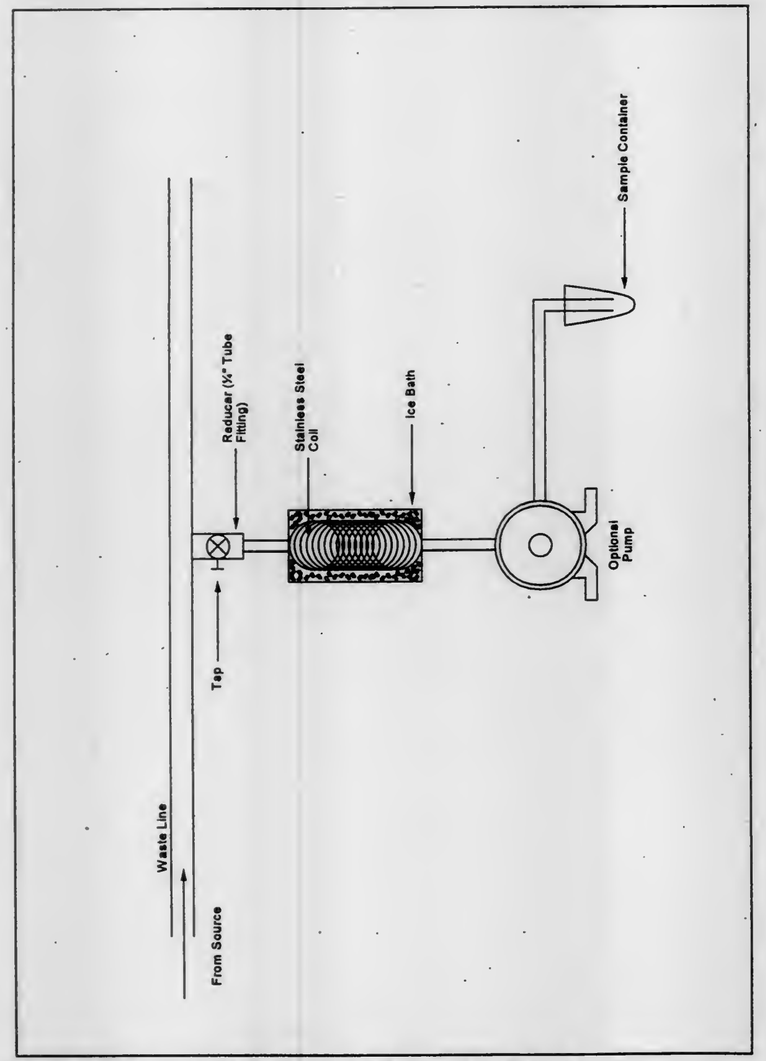



**Figure 25E-1. Schematic of Sampling Apparatus**

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**Method 26—Determination of Hydrogen Halide and Halogen Emissions From Stationary Sources Non-Isokinetic Method**

*1.0 Scope and Application*

1.1 Analytes.

| Analytes | CAS No. |
|---|---|
| Hydrogen Chloride (HCl) ..... | 7647–01–0 |
| Hydrogen Bromide (HBr) ..... | 10035–10–6 |
| Hydrogen Fluoride (HF) ..... | 7664–39–3 |
| Chlorine ($Cl_2$) ..... | 7882–50–5 |
| Bromine ($Br_2$) ..... | 7726–95–6 |

1.2 Applicability. This method is applicable for determining emissions of hydrogen halides (HX) (HCl, HBr, and HF) and halogens ($X_2$) ($Cl_2$ and $Br_2$) from stationary sources when specified by the applicable subpart. Sources, such as those controlled by wet scrubbers, that emit acid particulate matter must be sampled using Method 26A.

1.3 Data Quality Objectives. Adherence to the requirements of this method will enhance the quality of the data obtained from air pollutant sampling methods.

*2.0 Summary of Method*

2.1 An integrated sample is extracted from the source and passed through a prepurged heated probe and filter into dilute sulfuric acid and dilute sodium hydroxide solutions which collect the gaseous hydrogen halides and halogens, respectively. The filter collects particulate matter including halide salts but is not routinely recovered and analyzed. The hydrogen halides are solubilized in the acidic solution and form chloride ($Cl^-$), bromide ($Br^-$), and fluoride ($F^-$) ions. The halogens have a very low solubility in the acidic solution and pass through to the alkaline solution where they are hydrolyzed to form a proton ($H^+$), the halide ion, and the hypohalous acid (HClO or HBrO). Sodium thiosulfate is added in excess to the alkaline solution to assure reaction with the hypohalous acid to form a second halide ion such that 2 halide ions are formed for each molecule of halogen gas. The halide ions in the separate solutions are measured by ion chromatography (IC).

*3.0 Definitions [Reserved]*

*4.0 Interferences*

4.1 Volatile materials, such as chlorine dioxide ($ClO_2$) and ammonium chloride ($NH_4Cl$), which produce halide ions upon dissolution during sampling are potential interferents. Interferents for the halide measurements are the halogen gases which disproportionate to a hydrogen halide and a hydrohalous acid upon dissolution in water. However, the use of acidic rather than neutral or basic solutions for collection of the hydrogen halides greatly reduces the dissolution of any halogens passing through this solution.

4.2 The simultaneous presence of HBr and $CL_2$ may cause a positive bias in the HCL result with a corresponding negative bias in the $Cl_2$ result as well as affecting the $HBr/Br_2$ split.

4.3 High concentrations of nitrogen oxides ($NO_X$) may produce sufficient nitrate ($NO_3^-$ to interfere with measurements of very low $Br^-$ levels.

4.4 A glass wool plug should *not* be used to remove particulate matter since a negative bias in the data could result.

4.5 There is anecdotal evidence that HF may be outgassed from new teflon components. If HF is a target analyte, then preconditioning of new teflon components, by heating should be considered.

*5.0 Safety*

5.1 Disclaimer. This method may involve hazardous materials, operations, and equipment. This test method may not address all of the safety problems associated with its use. It is the responsibility of the user to establish appropriate safety and health practices and determine the applicability of regulatory limitations before performing this test method.

5.2 Corrosive Reagents. The following reagents are hazardous. Personal protective equipment and safe procedures are useful in preventing chemical splashes. If contact occurs, immediately flush with copious amounts of water for at least 15 minutes. Remove clothing under shower and decontaminate. Treat residual chemical burns as thermal burns.

5.2.1 Sodium Hydroxide (NaOH). Causes severe damage to eyes and skin. Inhalation causes irritation to nose, throat, and lungs. Reacts exothermically with limited amounts of water.

5.2.2 Sulfuric Acid ($H_2SO_4$). Rapidly destructive to body tissue. Will cause third degree burns. Eye damage may result in blindness. Inhalation may be fatal from spasm of the larynx, usually within 30 minutes. May cause lung tissue damage with edema. 1 mg/m$^3$ for 8 hours will cause lung damage or, in higher concentrations, death. Provide ventilation to limit inhalation. Reacts violently with metals and organics.

*6.0 Equipment and Supplies*

**Note:** Mention of trade names or specific products does not constitute endorsement by the Environmental Protection Agency.

6.1 Sampling. The sampling train is shown in Figure 26–1, and component parts are discussed below.

6.1.1 Probe. Borosilicate glass, approximately ⅜-in. (9-mm) I.D. with a heating system to prevent moisture condensation. A Teflon-glass filter in a mat configuration should be installed to remove particulate matter from the gas stream (see Section 6.1.6).

6.1.2 Three-way Stopcock. A borosilicate-glass three-way stopcock with a heating system to prevent moisture condensation. The heated stopcock should connect to the outlet of the heated filter and the inlet of the first impinger. The heating system should be capable of preventing condensation up to the inlet of the first impinger. Silicone grease may be used, if necessary, to prevent leakage.

6.1.3 Impingers. Four 30-ml midget impingers with leak-free glass connectors. Silicone grease may be used, if necessary, to prevent leakage. For sampling at high moisture sources or for sampling times greater than one hour, a midget impinger with a shortened stem (such that the gas sample does not bubble through the collected condensate) should be used in front of the first impinger.

6.1.4 Drying Tube or Impinger. Tube or impinger, of Mae West design, filled with 6- to 16-mesh indicating type silica gel, or equivalent, to dry the gas sample and to protect the dry gas meter and pump. If the silica gel has been used previously, dry at 175 °C (350 °F) for 2 hours. New silica gel may be used as received. Alternatively, other types of desiccants (equivalent or better) may be used.

6.1.5 Heating System. Any heating system capable of maintaining a temperature around the probe and filter holder greater than 120 °C (248 °F) during sampling, or such other temperature as specified by an applicable subpart of the standards or approved by the Administrator for a particular application.

6.1.6 Filter Holder and Support. The filter holder shall be made of Teflon or quartz. The filter support shall be made of Teflon. All Teflon filter holders and supports are available from Savillex Corp., 5325 Hwy 101, Minnetonka, MN 55345.

6.1.7 Sample Line. Leak-free, with compatible fittings to connect the last impinger to the needle valve.

6.1.8 Rate Meter. Rotameter, or equivalent, capable of measuring flow rate to within 2 percent of the selected flow rate of 2 liters/min (0.07 ft$^3$/min).

6.1.9 Purge Pump, Purge Line, Drying Tube, Needle Valve, and Rate Meter. Pump capable of purging the

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sampling probe at 2 liters/min, with drying tube, filled with silica gel or equivalent, to protect pump, and a rate meter capable of measuring 0 to 5 liters/min (0.2 $ft^3$/min).

6.1.10 Stopcock Grease, Valve, Pump, Volume Meter, Barometer, and Vacuum Gauge. Same as in Method 6, Sections 6.1.1.4, 6.1.1.7, 6.1.1.8, 6.1.1.10, 6.1.2, and 6.1.3.

6.1.11 Temperature Measuring Devices. Temperature sensors to monitor the temperature of the probe and to monitor the temperature of the sampling system from the outlet of the probe to the inlet of the first impinger.

6.1.12 Ice Water Bath. To minimize loss of absorbing solution.

6.2 Sample Recovery.

6.2.1 Wash Bottles. Polyethylene or glass, 500-ml or larger, two.

6.2.2 Storage Bottles. 100- or 250-ml, high-density polyethylene bottles with Teflon screw cap liners to store impinger samples.

6.3 Sample Preparation and Analysis. The materials required for volumetric dilution and chromatographic analysis of samples are described below.

6.3.1 Volumetric Flasks. Class A, 100-ml size.

6.3.2 Volumetric Pipets. Class A, assortment. To dilute samples to the calibration range of the ion chromatograph.

6.3.3 Ion Chromatograph (IC). Suppressed or non-suppressed, with a conductivity detector and electronic integrator operating in the peak area mode. Other detectors, strip chart recorders, and peak height measurements may be used.

*7.0 Reagents and Standards*

**Note:** Unless otherwise indicated, all reagents must conform to the specifications established by the Committee on Analytical Reagents of the American Chemical Society (ACS reagent grade). When such specifications are not available, the best available grade shall be used.

7.1 Sampling.

7.1.1 Filter. A 25-mm (1 in) (or other size) Teflon glass mat, Pallflex TX40HI75 (Pallflex Inc., 125 Kennedy Drive, Putnam, CT 06260). This filter is in a mat configuration to prevent fine particulate matter from entering the sampling train. Its composition is 75% Teflon/25% borosilicate glass. Other filters may be used, but they must be in a mat (as opposed to a laminate) configuration and contain at least 75% Teflon. For practical rather than scientific reasons, when the stack gas temperature exceeds 210 °C (410 °F) and the HCl concentration is greater than 20 ppm, a quartz-fiber filter may be used since Teflon becomes unstable above this temperature.

7.1.2 Water. Deionized, distilled water that conforms to American Society of Testing and Materials (ASTM) Specification D 1193–77 or 91, Type 3 (incorporated by reference—see § 60.17).

7.1.3 Acidic Absorbing Solution, 0.1 N Sulfuric Acid ($H_2SO_4$). To prepare 100 ml of the absorbing solution for the front impinger pair, slowly add 0.28 ml of concentrated $H_2SO_4$ to about 90 ml of water while stirring, and adjust the final volume to 100 ml using additional water. Shake well to mix the solution.

7.1.4 Silica Gel. Indicating type, 6 to 16 mesh. If previously used, dry at 180 °C (350 °F) for 2 hours. New silica gel may be used as received. Alternatively, other types of desiccants may be used, subject to the approval of the Administrator.

7.1.5 Alkaline Adsorbing Solution, 0.1 N Sodium Hydroxide (NaOH). To prepare 100 ml of the scrubber solution for the third and fourth impinger, dissolve 0.40 g of solid NaOH in about 90 ml of water, and adjust the final solution volume to 100 ml using additional water. Shake well to mix the solution.

7.1.6 Sodium Thiosulfate ($Na_2S_2O_3$ 5 $H_2O$)

7.2 Sample Preparation and Analysis.

7.2.1 Water. Same as in Section 7.1.2.

7.2.2 Absorbing Solution Blanks. A separate blank solution of each absorbing reagent should be prepared for analysis with the field samples. Dilute 30 ml of each absorbing solution to approximately the same final volume as the field samples using the blank sample of rinse water.

7.2.3 Halide Salt Stock Standard Solutions. Prepare concentrated stock solutions from reagent grade sodium chloride (NaCl), sodium bromide (NaBr), and sodium fluoride (NaF). Each must be dried at 110°C (230°F) for two or more hours and then cooled to room temperature in a desiccator immediately before weighing. Accurately weigh 1.6 to 1.7 g of the dried NaCl to within 0.1 mg, dissolve in water, and dilute to 1 liter. Calculate the exact $Cl^-$ concentration using Equation 26–1 in Section 12.2. In a similar manner, accurately weigh and solubilize 1.2 to 1.3 g of dried NaBr and 2.2 to 2.3 g of NaF to make 1-liter solutions. Use Equations 26–2 and 26–3 in Section 12.2, to calculate the $Br^-$ and $F^-$ concentrations. Alternately, solutions containing a nominal certified concentration of 1000 mg/l NaCl are commercially available as convenient stock solutions from which standards can be made by appropriate volumetric dilution. Refrigerate the stock standard solutions and store no longer than one month.

7.2.4 Chromatographic Eluent. Effective eluents for nonsuppressed IC using a resin-or silica-based weak ion exchange column are a 4 mM potassium hydrogen phthalate solution, adjusted to pH 4.0 using a saturated sodium borate solution, and a 4 mM 4-hydroxy benzoate solution, adjusted to pH 8.6 using 1 N NaOH. An effective eluent for suppressed ion chromatography is a solution containing 3 mM sodium bicarbonate and 2.4 mM sodium carbonate. Other dilute solutions buffered to a similar pH and containing no interfering ions may be used. When using suppressed ion chromatography, if the "water dip" resulting from sample injection interferes with the chloride peak, use a 2 mM NaOH/2.4 mM sodium bicarbonate eluent.

7.3 Quality Assurance Audit Samples. When making compliance determinations, and upon availability, audit samples may be obtained from the appropriate EPA regional Office or from the responsible enforcement authority.

**Note:** The responsible enforcement authority should be notified at least 30 days prior to the test date to allow sufficient time for sample delivery.

*8.0 Sample Collection, Preservation, Storage, and Transport*

**Note:** Because of the complexity of this method, testers and analyst should be trained and experienced with the procedure to ensure reliable results.

8.1 Sampling.

8.1.1 Preparation of Collection Train. Prepare the sampling train as follows: Pour 15 ml of the acidic absorbing solution into each one of the first pair of impingers, and 15 ml of the alkaline absorbing solution into each one of the second pair of impingers. Connect the impingers in series with the knockout impinger first, if used, followed by the two impingers containing the acidic absorbing solution and the two impingers containing the alkaline absorbing solution. Place a fresh charge of silica gel, or equivalent, in the drying tube or impinger at the end of the impinger train.

8.1.2 Adjust the probe temperature and the temperature of the filter and the stopcock, *i.e.*, the heated area in Figure 26–1 to a temperature sufficient to prevent water condensation. This temperature should be at least 20 °C (68 °F) above the source temperature, and greater than 120 °C (248 °F). The temperature should be monitored throughout a sampling run to ensure that the desired temperature is maintained. It is important to maintain a temperature around the probe and filter of greater than 120 °C (248 °F) since it is extremely difficult to purge acid gases off these components. (These components are not quantitatively recovered and hence any collection of acid gases on these components would result in potential undereporting of these emission. The applicable subparts may specify alternative higher temperatures.)



8.1.3 Leak-Check Procedure.

8.1.3.1 Sampling Train. A leak-check prior to the sampling run is optional; however, a leak-check after the sampling run is mandatory. The leak-check procedure is as follows: Temporarily attach a suitable [*e.g.*, 0–40 cc/min (0–2.4 $in^3$/min)] rotameter to the outlet of the dry gas meter and place a vacuum gauge at or near the probe inlet. Plug the probe inlet, pull a vacuum of at least 250 mm Hg (10 in. Hg), and note the flow rate as indicated by the rotameter. A leakage rate not in excess of 2 percent of the average sampling rate is acceptable.

**Note:** Carefully release the probe inlet plug before turning off the pump.

8.1.3.2 Pump. It is suggested (not mandatory) that the pump be leak-checked separately, either prior to or after the sampling run. If done prior to the sampling run, the pump leak-check shall precede the leak-check of the sampling train described immediately above; if done after the sampling run, the pump leak-check shall follow the train leak-check. To leak-check the pump, proceed as follows: Disconnect the drying tube from the probe-impinger assembly. Place a vacuum gauge at the inlet to either the drying tube or pump, pull a vacuum of 250 mm (10 in) Hg, plug or pinch off the outlet of the flow meter, and then turn off the pump. The vacuum should remain stable for at least 30 sec. Other leak-check procedures may be used, subject to the approval of the Administrator, U.S. Environmental Protection Agency.

8.1.4 Purge Procedure. Immediately before sampling, connect the purge line to the stopcock, and turn the stopcock to permit the purge pump to purge the probe (see Figure 1A of Figure 26–1). Turn on the purge pump, and adjust the purge rate to 2 liters/min (0.07 $ft^3$/min). Purge for at least 5 minutes before sampling.

8.1.5 Sample Collection. Turn on the sampling pump, pull a slight vacuum of approximately 25 mm Hg (1 in Hg) on the impinger train, and turn the stopcock to permit stack gas to be pulled through the impinger train (see Figure 1C of Figure 26–1). Adjust the sampling rate to 2 liters/min, as indicated by the rate meter, and maintain this rate to within 10 percent during the entire sampling run. Take readings of the dry gas meter volume and temperature, rate meter, and vacuum gauge at least once every five minutes during the run. A sampling time of one hour is recommended. Shorter sampling times may introduce a significant negative bias in the HCl concentration. At the conclusion of the sampling run, remove the train from the stack, cool, and perform a leak-check as described in Section 8.1.3.1.

8.2 Sample Recovery.

8.2.1 Disconnect the impingers after sampling. Quantitatively transfer the contents of the acid impingers and the knockout impinger, if used, to a leak-free storage bottle. Add the water rinses of each of these impingers and connecting glassware to the storage bottle.

8.2.2 Repeat this procedure for the alkaline impingers and connecting glassware using a separate storage bottle. Add 25 mg of sodium thiosulfate per the product of ppm of halogen anticipated to be in the stack gas times the volume (dscm) of stack gas sampled (0.7 mg per ppm-dscf).

**Note:** This amount of sodium thiosulfate includes a safety factor of approximately 5 to assure complete reaction with the hypohalous acid to form a second $Cl^-$ ion in the alkaline solution.

8.2.3 Save portions of the absorbing reagents (0.1 N $H_2SO_4$ and 0.1 N NaOH) equivalent to the amount used in the sampling train (these are the absorbing solution blanks described in Section 7.2.2); dilute to the approximate volume of the corresponding samples using rinse water directly from the wash bottle being used. Add the same amount of sodium thiosulfate solution to the 0.1 N NaOH absorbing solution blank. Also, save a portion of the rinse water used to rinse the sampling train. Place each in a separate, prelabeled storage bottle. The sample storage bottles should be sealed, shaken to mix, and labeled. Mark the fluid level.

8.3 Sample Preparation for Analysis. Note the liquid levels in the storage bottles and confirm on the analysis sheet whether or not leakage occurred during transport. If a noticeable leakage has occurred, either void the sample or use methods, subject to the approval of the Administrator, to correct the final results. Quantitatively transfer the sample solutions to 100-ml volumetric flasks, and dilute to 100 ml with water.

*9.0 Quality Control*

| Section | Quality control measure | Effect |
|---|---|---|
| 11.2 | Audit sample analysis | Evaluate analytical technique, preparation of standards. |

*10.0 Calibration and Standardization*

**Note:** Maintain a laboratory log of all calibrations.

10.1 Volume Metering System, Temperature Sensors, Rate Meter, and Barometer. Same as in Method 6, Sections 10.1, 10.2, 10.3, and 10.4.

10.2 Ion Chromatograph.

10.2.1 To prepare the calibration standards, dilute given amounts (1.0 ml or greater) of the stock standard solutions to convenient volumes, using 0.1 N $H_2SO_4$ or 0.1 N NaOH, as appropriate. Prepare at least four calibration standards for each absorbing reagent containing the appropriate stock solutions such that they are within the linear range of the field samples.

10.2.2 Using one of the standards in each series, ensure adequate baseline separation for the peaks of interest.

10.2.3 Inject the appropriate series of calibration standards, starting with the lowest concentration standard first both before and after injection of the quality control check sample, reagent blanks, and field samples. This allows compensation for any instrument drift occurring during sample analysis. The values from duplicate injections of these calibration samples should agree within 5 percent of their mean for the analysis to be valid.

10.2.4 Determine the peak areas, or heights, for the standards and plot individual values versus halide ion concentrations in µg/ml.

10.2.5 Draw a smooth curve through the points. Use linear regression to calculate a formula describing the resulting linear curve.

*11.0 Analytical Procedures*

11.1 Sample Analysis.

11.1.1 The IC conditions will depend upon analytical column type and whether suppressed or non-

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suppressed IC is used. An example chromatogram from a non-suppressed system using a 150-mm Hamilton PRP-X100 anion column, a 2 ml/min flow rate of a 4 mM 4-hydroxy benzoate solution adjusted to a pH of 8.6 using 1 N NaOH, a 50 µl sample loop, and a conductivity detector set on 1.0 µS full scale is shown in Figure 26–2.

11.1.2 Before sample analysis, establish a stable baseline. Next, inject a sample of water, and determine if any $Cl^-$, $Br^-$, or $F^-$ appears in the chromatogram. If any of these ions are present, repeat the load/injection procedure until they are no longer present. Analysis of the acid and alkaline absorbing solution samples requires separate standard calibration curves; prepare each according to Section 10.2. Ensure adequate baseline separation of the analyses.

11.1.3 Between injections of the appropriate series of calibration standards, inject in duplicate the reagent blanks, quality control sample, and the field samples. Measure the areas or heights of the $Cl^-$, $Br^-$, and $F^-$ peaks. Use the mean response of the duplicate injections to determine the concentrations of the field samples and reagent blanks using the linear calibration curve. The values from duplicate injections should agree within 5 percent of their mean for the analysis to be valid. If the values of duplicate injections are not within 5 percent of the mean, the duplicate injections shall be repeated and all four values used to determine the average response. Dilute any sample and the blank with equal volumes of water if the concentration exceeds that of the highest standard.

11.2 Audit Sample Analysis.

11.2.1 When the method is used to analyze samples to demonstrate compliance with a source emission regulation, a set of two EPA audit samples must be analyzed, subject to availability.

11.2.2 Concurrently analyze the audit samples and the compliance samples in the same manner to evaluate the technique of the analyst and the standards preparation.

11.2.3 The same analyst, analytical reagents, and analytical system shall be used for the compliance samples and the EPA audit samples. If this condition is met, duplicate auditing of subsequent compliance analyses for the same enforcement agency within a 30-day period is waived. An audit sample set may not be used to validate different sets of compliance samples under the jurisdiction of separate enforcement agencies, unless prior arrangements have been made with both enforcement agencies.

11.3 Audit Sample Results.

11.3.1 Calculate the concentrations in mg/L of audit sample and submit results following the instructions provided with the audit samples.

11.3.2 Report the results of the audit samples and the compliance determination samples along with their identification numbers, and the analyst's name to the responsible enforcement authority. Include this information with reports of any subsequent compliance analyses for the same enforcement authority during the 30-day period.

11.3.3 The concentrations of the audit samples obtained by the analyst shall agree within 10 percent of the actual concentrations. If the 10 percent specification is not met, reanalyze the compliance and audit samples, and include initial and reanalysis values in the test report.

11.3.4 Failure to meet the 10 percent specification may require retests until the audit problems are resolved. However, if the audit results do not affect the compliance or noncompliance status of the affected facility, the Administrator may waive the reanalysis requirement, further audits, or retests and accept the results of the compliance test. While steps are being taken to resolve audit analysis problems, the Administrator may also choose to use the data to determine the compliance or noncompliance status of the affected facility.

*12.0 Data Analysis and Calculations*

**Note:** Retain at least one extra decimal figure beyond those contained in the available data in intermediate calculations, and round off only the final answer appropriately.

12.1 Nomenclature.

$B_X^-$ = Mass concentration of applicable absorbing solution blank, µg halide ion ($Cl^-$, $Br^-$, $F^-$) /ml, not to exceed 1 µg/ml which is 10 times the published analytical detection limit of 0.1 µg/ml.

C = Concentration of hydrogen halide (HX) or halogen ($X_2$), dry basis, mg/dscm.

$K = 10^{-3}$ mg/µg.

$K_{HCl}$ = 1.028 (µg HCl/µg-mole)/(µg $Cl^-$/µg-mole).

$K_{HBr}$ = 1.013 (µg HBr/µg-mole)/(µg $Br^-$/µg-mole).

$K_{HF}$ = 1.053 (µg HF/µg-mole)/(µg $F^-$/µg-mole).

$m_{HX}$ = Mass of HCl, HBr, or HF in sample, µg.

$m_{X2}$ = Mass of $Cl_2$ or $Br_2$ in sample, µg.

$S_X^-$ = Analysis of sample, µg halide ion ($Cl^-$, $Br^-$, $F^-$)/ml.

$V_{m(std)}$ = Dry gas volume measured by the dry gas meter, corrected to standard conditions, dscm.

$V_s$ = Volume of filtered and diluted sample, ml.

12.2 Calculate the exact $Cl^-$, $Br^-$, and $F^-$ concentration in the halide salt stock standard solutions using the following equations.

$$\mu g\ Cl^-/ml = g\ of\ NaCl \times 10^3 \times 35.453/58.44 \qquad \text{Eq. 26-1}$$

$$\mu g\ Br^-/ml = g\ of\ NaBr \times 10^3 \times 79.904/102.90 \qquad \text{Eq. 26-2}$$

$$\mu g\ F^-/ml = g\ of\ NaF \times 10^3 \times 18.998/41.99 \qquad \text{Eq. 26-3}$$

12.3 Sample Volume, Dry Basis, Corrected to Standard Conditions. Calculate the sample volume using Eq. 6–1 of Method 6.

12.4 Total µg HCl, HBr, or HF Per Sample.

$$m_{HX} = K_{HCl,Hbr,HF} V_s \left(S_x^- - B_x^-\right) \qquad \text{Eq. 26-4}$$

12.5 Total µg $Cl_2$ or $Br_2$ Per Sample.

$$M_{x2} = V_s \left(S_X^- - B_X^-\right) \qquad \text{Eq. 26-5}$$



12.6 Concentration of Hydrogen Halide or Halogen in Flue Gas.

$$C = K m_{XH,X2} / V_{m(std)} \qquad \text{Eq. 26-6}$$

*13.0 Method Performance*

13.1 Precision and Bias. The within-laboratory relative standard deviations are 6.2 and 3.2 percent at HCl concentrations of 3.9 and 15.3 ppm, respectively. The method does not exhibit a bias to $Cl_2$ when sampling at concentrations less than 50 ppm.

13.2 Sample Stability. The collected $Cl^-$ samples can be stored for up to 4 weeks.

13.3 Detection Limit. A typical IC instrumental detection limit for $Cl^-$ is 0.2 µg/ml. Detection limits for the other analyses should be similar. Assuming 50 ml liquid recovered from both the acidified impingers, and the basic impingers, and 0.06 dscm of stack gas sampled, then the analytical detection limit in the stack gas would be about 0.1 ppm for HCl and $Cl_2$, respectively.

*14.0 Pollution Prevention [Reserved]*

*15.0 Waste Management [Reserved]*

*16.0 References*

1. Steinsberger, S. C. and J. H. Margeson, "Laboratory and Field Evaluation of a Methodology for Determination of Hydrogen Chloride Emissions from Municipal and Hazardous Waste Incinerators," U.S. Environmental Protection Agency, Office of Research and Development, Report No. 600/3–89/064, April 1989. Available from the National Technical Information Service, Springfield, VA 22161 as PB89220586/AS.

2. State of California, Air Resources Board, Method 421, "Determination of Hydrochloric Acid Emissions from Stationary Sources," March 18, 1987.

3. Cheney, J.L. and C.R. Fortune. Improvements in the Methodology for Measuring Hydrochloric Acid in Combustion Source Emissions. J. Environ. Sci. Health. *A19*(3): 337–350. 1984.

4. Stern, D. A., B. M. Myatt, J. F. Lachowski, and K. T. McGregor. Speciation of Halogen and Hydrogen Halide Compounds in Gaseous Emissions. In: Incineration and Treatment of Hazardous Waste: Proceedings of the 9th Annual Research Symposium, Cincinnati, Ohio, May 2–4, 1983. Publication No. 600/9–84–015. July 1984. Available from National Technical Information Service, Springfield, VA 22161 as PB84–234525.

5. Holm, R. D. and S. A. Barksdale. Analysis of Anions in Combustion Products. In: Ion Chromatographic Analysis of Environmental Pollutants. E. Sawicki, J. D. Mulik, and E. Wittgenstein (eds.). Ann Arbor, Michigan, Ann Arbor Science Publishers. 1978. pp. 99–110.

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*17.0 Tables, Diagrams, Flowcharts, and Validation Data*

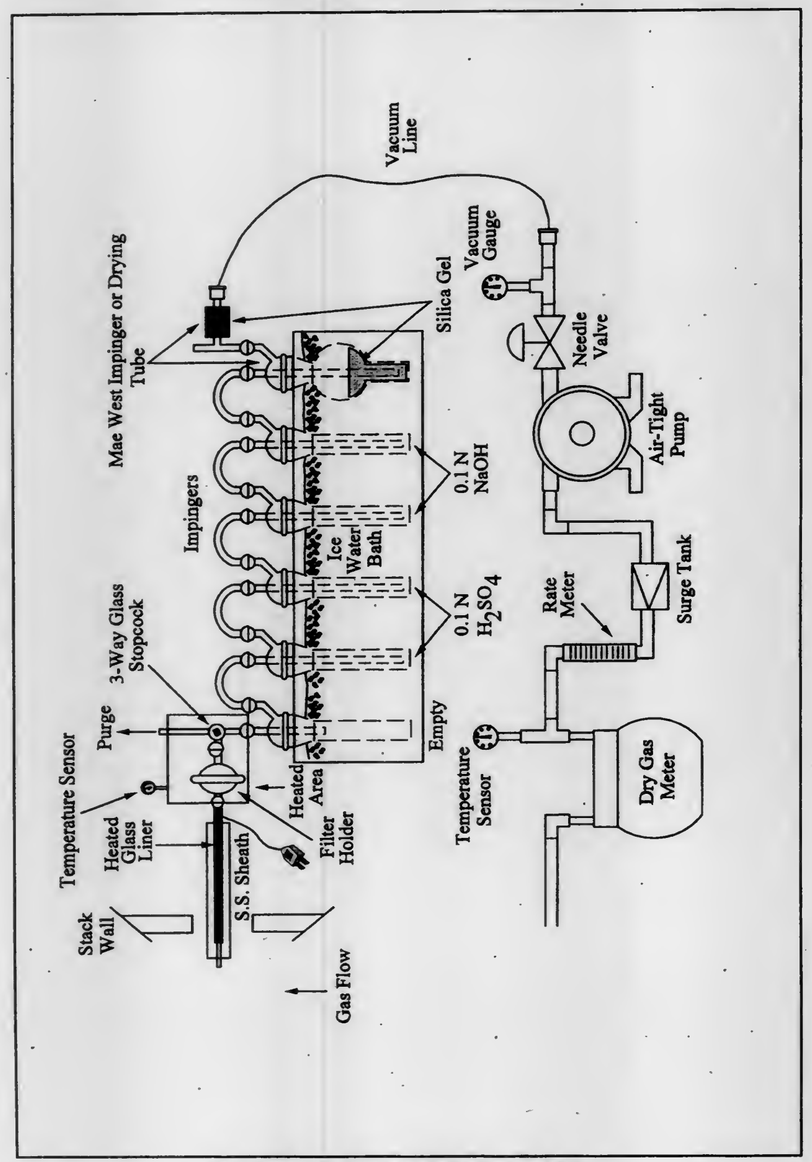



Figure 26-1. Sampling Train.



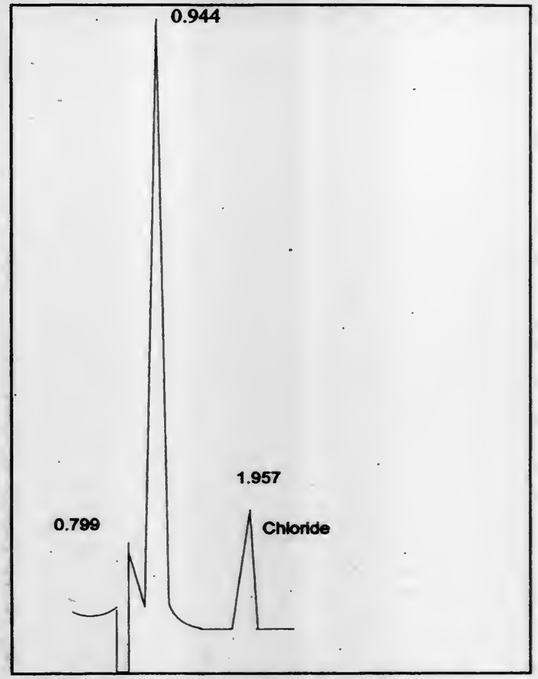



Figure 26-2. Example Chromatogram.

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**Method 26A—Determination of Hydrogen Halide and Halogen Emissions From Stationary Sources Isokinetic Method**

**Note:** This method does not include all of the specifications (*e.g.* equipment and supplies) and procedures (*e.g.* sampling and analytical) essential to its performance. Some material is incorporated by reference from other methods in this part. Therefore, to obtain reliable results, persons using this method should have a thorough knowledge of at least the following additional test methods: Method 2, Method 5, and Method 26.

*1.0 Scope and Application*

1.1 Analytes.

| Analytes | CAS No. |
|---|---|
| Hydrogen Chloride (HCl) ..... | 7647–01–0 |
| Hydrogen Bromide (HBr) ..... | 10035–10–6 |
| Hydrogen Fluoride (HF) ..... | 7664–39–3 |
| Chlorine ($Cl_2$) ..... | 7882–50–5 |
| Bromine ($Br_2$) ..... | 7726–95–6 |

1.2 This method is applicable for determining emissions of hydrogen halides (HX) [HCl, HBr, and HF] and halogens ($X_2$) [$Cl_2$ and $Br_2$] from stationary sources when specified by the applicable subpart. This method collects the emission sample isokinetically and is therefore particularly suited for sampling at sources, such as those controlled by wet scrubbers, emitting acid particulate matter (*e.g.*, hydrogen halides dissolved in water droplets).

1.3 Data Quality Objectives. Adherence to the requirements of this method will enhance the quality of the data obtained from air pollutant sampling methods.

*2.0 Summary of Method*

2.1 Principle. Gaseous and particulate pollutants are withdrawn isokinetically from the source and collected in an optional cyclone, on a filter, and in absorbing solutions. The cyclone collects any liquid droplets and is not necessary if the source emissions do not contain them; however, it is preferable to include the cyclone in the sampling train to protect the filter from any liquid present. The filter collects particulate matter including halide salts but is not routinely recovered or analyzed. Acidic and alkaline absorbing solutions collect the gaseous hydrogen halides and halogens, respectively. Following sampling of emissions containing liquid droplets, any halides/halogens dissolved in the liquid in the cyclone and on the filter are vaporized to gas and collected in the impingers by pulling conditioned ambient air through the sampling train. The hydrogen halides are solubilized in the acidic solution and form chloride ($Cl^-$), bromide ($Br^-$), and fluoride ($F^-$) ions. The halogens have a very low solubility in the acidic solution and pass through to the alkaline solution where they are hydrolyzed to form a proton ($H^+$), the halide ion, and the hypohalous acid (HClO or HBrO). Sodium thiosulfate is added to the alkaline solution to assure reaction with the hypohalous acid to form a second halide ion such that 2 halide ions are formed for each molecule of halogen gas. The halide ions in the separate solutions are measured by ion chromatography (IC). If desired, the particulate matter recovered

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from the filter and the probe is analyzed following the procedures in Method 5.

**Note:** If the tester intends to use this sampling arrangement to sample concurrently for particulate matter, the alternative Teflon probe liner, cyclone, and filter holder should not be used. The Teflon filter support must be used. The tester must also meet the probe and filter temperature requirements of both sampling trains.

*3.0 Definitions. [Reserved]*

*4.0 Interferences*

4.1 Volatile materials, such as chlorine dioxide ($ClO_2$) and ammonium chloride ($NH_4Cl$), which produce halide ions upon dissolution during sampling are potential interferents. Interferents for the halide measurements are the halogen gases which disproportionate to a hydrogen halide and an hypohalous acid upon dissolution in water. The use of acidic rather than neutral or basic solutions for collection of the hydrogen halides greatly reduces the dissolution of any halogens passing through this solution.

4.2 The simultaneous presence of both HBr and $Cl_2$ may cause a positive bias in the HCl result with a corresponding negative bias in the $Cl_2$ result as well as affecting the $HBr/Br_2$ split.

4.3 High concentrations of nitrogen oxides ($NO_X$) may produce sufficient nitrate ($NO_3^-$) to interfere with measurements of very low $Br^-$ levels.

4.4 There is anecdotal evidence that HF may be outgassed from new Teflon components. If HF is a target analyte then preconditioning of new Teflon components, by heating, should be considered.

*5.0 Safety*

5.1 Disclaimer. This method may involve hazardous materials, operations, and equipment. This test method may not address all of the safety problems associated with its use. It is the responsibility of the user to establish appropriate safety and health practices and determine the applicability of regulatory limitations before performing this test method.

5.2 Corrosive Reagents. The following reagents are hazardous. Personal protective equipment and safe procedures are useful in preventing chemical splashes. If contact occurs, immediately flush with copious amounts of water for at least 15 minutes. Remove clothing under shower and decontaminate. Treat residual chemical burns as thermal burns.

5.2.1 Sodium Hydroxide (NaOH). Causes severe damage to eyes and skin. Inhalation causes irritation to nose, throat, and lungs. Reacts exothermically with limited amounts of water.

5.2.2 Sulfuric Acid ($H_2SO_4$). Rapidly destructive to body tissue. Will cause third degree burns. Eye damage may result in blindness. Inhalation may be fatal from spasm of the larynx, usually within 30 minutes. May cause lung tissue damage with edema. 1 $mg/m^3$ for 8 hours will cause lung damage or, in higher concentrations, death. Provide ventilation to limit inhalation. Reacts violently with metals and organics.

*6.0. Equipment and Supplies*

**Note:** Mention of trade names or specific products does not constitute endorsement by the Environmental Protection Agency.

6.1 Sampling. The sampling train is shown in Figure 26A–1; the apparatus is similar to the Method 5 train where noted as follows:

6.1.1 Probe Nozzle. Borosilicate or quartz glass; constructed and calibrated according to Method 5, Sections 6.1.1.1 and 10.1, and coupled to the probe liner using a Teflon union; a stainless steel nut is recommended for this union. When the stack temperature exceeds 210 °C (410 °F), a one-piece glass nozzle/liner assembly must be used.

6.1.2 Probe Liner. Same as Method 5, Section 6.1.1.2, except metal liners shall not be used. Water-cooling of the stainless steel sheath is recommended at temperatures exceeding 500 °C (932 °F). Teflon may be used in limited applications where the minimum stack temperature exceeds 120 °C (250 °F) but never exceeds the temperature where Teflon is estimated to become unstable [approximately 210 °C (410 °F)].

6.1.3 Pitot Tube, Differential Pressure Gauge, Filter Heating System, Metering System, Barometer, Gas Density Determination Equipment. Same as Method 5, Sections 6.1.1.3, 6.1.1.4, 6.1.1.6, 6.1.1.9, 6.1.2, and 6.1.3.

6.1.4 Cyclone (Optional). Glass or Teflon. Use of the cyclone is required only when the sample gas stream is saturated with moisture; however, the cyclone is recommended to protect the filter from any liquid droplets present.

6.1.5 Filter Holder. Borosilicate or quartz glass, or Teflon filter holder, with a Teflon filter support and a sealing gasket. The sealing gasket shall be constructed of Teflon or equivalent materials. The holder design shall provide a positive seal against leakage at any point along the filter circumference. The holder shall be attached immediately to the outlet of the cyclone.

6.1.6 Impinger Train. The following system shall be used to determine the stack gas moisture content and to collect the hydrogen halides and halogens: five or six impingers connected in series with leak-free ground glass fittings or any similar leak-free noncontaminating fittings. The first impinger shown in Figure 26A–1 (knockout or condensate impinger) is optional and is recommended as a water knockout trap for use under high moisture conditions. If used, this impinger should be constructed as described below for the alkaline impingers, but with a shortened stem, and should contain 50 ml of 0.1 N $H_2SO_4$. The following two impingers (acid impingers which each contain 100 ml of 0.1 N $H_2SO_4$) shall be of the Greenburg-Smith design with the standard tip (Method 5, Section 6.1.1.8). The next two impingers (alkaline impingers which each contain 100 ml of 0.1 N NaOH) and the last impinger (containing silica gel) shall be of the modified Greenburg-Smith design (Method 5, Section 6.1.1.8). The condensate, acid, and alkaline impingers shall contain known quantities of the appropriate absorbing reagents. The last impinger shall contain a known weight of silica gel or equivalent desiccant. Teflon impingers are an acceptable alternative.

6.1.7 Heating System. Any heating system capable of maintaining a temperature around the probe and filter holder greater than 120 °C (248 °F) during sampling, or such other temperature as specified by an applicable subpart of the standards or approved by the Administrator for a particular application.

6.1.8 Ambient Air Conditioning Tube (Optional). Tube tightly packed with approximately 150 g of fresh 8 to 20 mesh sodium hydroxide-coated silica, or equivalent, (Ascarite II has been found suitable) to dry and remove acid gases from the ambient air used to remove moisture from the filter and cyclone, when the cyclone is used. The inlet and outlet ends of the tube should be packed with at least 1-cm thickness of glass wool or filter material suitable to prevent escape of fines. Fit one end with flexible tubing, etc. to allow connection to probe nozzle following the test run.

6.2 Sample Recovery.

6.2.1 Probe-Liner and Probe-Nozzle Brushes, Wash Bottles, Glass Sample Storage Containers, Petri Dishes, Graduated Cylinder and/or Balance, and Rubber Policeman. Same as Method 5, Sections 6.2.1, 6.2.2, 6.2.3, 6.2.4, 6.2.5, and 6.2.7.

6.2.2 Plastic Storage Containers. Screw-cap polypropylene or polyethylene containers to store silica gel. High-density polyethylene bottles with Teflon screw cap liners to store impinger reagents, 1-liter.



6.2.3 Funnels. Glass or high-density polyethylene, to aid in sample recovery.

6.3 Sample Preparation and Analysis.

6.3.1 Volumetric Flasks. Class A, various sizes.

6.3.2 Volumetric Pipettes. Class A, assortment. To dilute samples to calibration range of the ion chromatograph (IC).

6.3.3 Ion Chromatograph (IC). Suppressed or nonsuppressed, with a conductivity detector and electronic integrator operating in the peak area mode. Other detectors, a strip chart recorder, and peak heights may be used.

*7.0 Reagents and Standards*

**Note:** Unless otherwise indicated, all reagents must conform to the specifications established by the Committee on Analytical Reagents of the American Chemical Society (ACS reagent grade). When such specifications are not available, the best available grade shall be used.

7.1 Sampling.

7.1.1 Filter. Teflon mat (*e.g.*, Pallflex TX40HI45) filter. When the stack gas temperature exceeds 210°C (410°F) a quartz fiber filter may be used.

7.1.2 Water. Deionized, distilled water that conforms to American Society of Testing and Materials (ASTM) Specification D 1193–77 or 91, Type 3 (incorporated by reference—see § 60.17).

7.1.3 Acidic Absorbing Solution, 0.1 N Sulfuric Acid ($H_2SO_4$). To prepare 1 L, slowly add 2.80 ml of concentrated 17.9 M H2SO4 to about 900 ml of water while stirring, and adjust the final volume to 1 L using additional water. Shake well to mix the solution.

7.1.4 Silica Gel, Crushed Ice, and Stopcock Grease. Same as Method 5, Sections 7.1.2, 7.1.4, and 7.1.5, respectively.

7.1.5 Alkaline Absorbing Solution, 0.1 N Sodium Hydroxide (NaOH). To prepare 1 L, dissolve 4.00 g of solid NaOH in about 900 ml of water and adjust the final volume to 1 L using additional water. Shake well to mix the solution.

7.1.6 Sodium Thiosulfate, ($Na_2S_2O_3 \cdot 5\ H_2O$).

7.2 Sample Preparation and Analysis.

7.2.1 Water. Same as in Section 7.1.2.

7.2.2 Absorbing Solution Blanks. A separate blank solution of each absorbing reagent should be prepared for analysis with the field samples. Dilute 200 ml of each absorbing solution (250 ml of the acidic absorbing solution, if a condensate impinger is used) to the same final volume as the field samples using the blank sample of rinse water. If a particulate determination is conducted, collect a blank sample of acetone.

7.2.3 Halide Salt Stock Standard Solutions. Prepare concentrated stock solutions from reagent grade sodium chloride (NaCl), sodium bromide (NaBr), and sodium fluoride (NaF). Each must be dried at 110°C (230°F) for two or more hours and then cooled to room temperature in a desiccator immediately before weighing. Accurately weigh 1.6 to 1.7 g of the dried NaCl to within 0.1 mg, dissolve in water, and dilute to 1 liter. Calculate the exact $Cl^-$ concentration using Equation 26A–1 in Section 12.2. In a similar manner, accurately weigh and solubilize 1.2 to 1.3 g of dried NaBr and 2.2 to 2.3 g of NaF to make 1-liter solutions. Use Equations 26A–2 and 26A–3 in Section 12.2, to calculate the $Br^-$ and $F^-$ concentrations. Alternately, solutions containing a nominal certified concentration of 1000 mg/L NaCl are commercially available as convenient stock solutions from which standards can be made by appropriate volumetric dilution. Refrigerate the stock standard solutions and store no longer than one month.

7.2.4 Chromatographic Eluent. Same as Method 26, Section 7.2.4.

7.2.5 Water. Same as Section 7.1.1.

7.2.6 Acetone. Same as Method 5, Section 7.2.

7.3 Quality Assurance Audit Samples. When making compliance determinations, and upon availability, audit samples may be obtained from the appropriate EPA regional Office or from the responsible enforcement authority.

**Note:** The responsible enforcement authority should be notified at least 30 days prior to the test date to allow sufficient time for sample delivery.

*8.0 Sample Collection, Preservation, Storage, and Transport*

**Note:** Because of the complexity of this method, testers and analysts should be trained and experienced with the procedures to ensure reliable results.

8.1 Sampling.

8.1.1 Pretest Preparation. Follow the general procedure given in Method 5, Section 8.1, except the filter need only be desiccated and weighed if a particulate determination will be conducted.

8.1.2 Preliminary Determinations. Same as Method 5, Section 8.2.

8.1.3 Preparation of Sampling Train. Follow the general procedure given in Method 5, Section 8.1.3, except for the following variations: Add 50 ml of 0.1 N $H_2SO_4$ to the condensate impinger, if used. Place 100 ml of 0.1 N $H_2SO_4$ in each of the next two impingers. Place 100 ml of 0.1 N NaOH in each of the following two impingers. Finally, transfer approximately 200–300 g of preweighed silica gel from its container to the last impinger. Set up the train as in Figure 26A–1. When used, the optional cyclone is inserted between the probe liner and filter holder and located in the heated filter box.

8.1.4 Leak-Check Procedures. Follow the leak-check procedures given in Method 5, Sections 8.4.2 (Pretest Leak-Check), 8.4.3 (Leak-Checks During the Sample Run), and 8.4.4 (Post-Test Leak-Check).

8.1.5 Sampling Train Operation. Follow the general procedure given in Method 5, Section 8.5. It is important to maintain a temperature around the probe, filter (and cyclone, if used) of greater than 120°C (248 °F) since it is extremely difficult to purge acid gases off these components. (These components are not quantitatively recovered and hence any collection of acid gases on these components would result in potential undereporting these emissions. The applicable subparts may specify alternative higher temperatures.) For each run, record the data required on a data sheet such as the one shown in Method 5, Figure 5–3. If the condensate impinger becomes too full, it may be emptied, recharged with 50 ml of 0.1 N $H_2SO_4$, and replaced during the sample run. The condensate emptied must be saved and included in the measurement of the volume of moisture collected and included in the sample for analysis. The additional 50 ml of absorbing reagent must also be considered in calculating the moisture. Before the sampling train integrity is compromised by removing the impinger, conduct a leak-check as described in Method 5, Section 8.4.2.

8.1.6 Post-Test Moisture Removal (Optional). When the optional cyclone is included in the sampling train or when liquid is visible on the filter at the end of a sample run even in the absence of a cyclone, perform the following procedure. Upon completion of the test run, connect the ambient air conditioning tube at the probe inlet and operate the train with the filter heating system at least 120°C (248 °F) at a low flow rate (*e.g.*, $\Delta H$ = 1 in. $H_2O$) to vaporize any liquid and hydrogen halides in the cyclone or on the filter and pull them through the train into the impingers. After 30 minutes, turn off the flow, remove the conditioning tube, and examine the cyclone and filter for any visible liquid. If liquid is visible, repeat this step for 15 minutes and observe again. Keep repeating until the cyclone is dry.

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**Note:** It is critical that this is repeated until the cyclone is completely dry.

8.2 Sample Recovery. Allow the probe to cool. When the probe can be handled safely, wipe off all the external surfaces of the tip of the probe nozzle and place a cap loosely over the tip to prevent gaining or losing particulate matter. Do not cap the probe tip tightly while the sampling train is cooling down because this will create a vacuum in the filter holder, drawing water from the impingers into the holder. Before moving the sampling train to the cleanup site, remove the probe from the sample train, wipe off any silicone grease, and cap the open outlet of the impinger train, being careful not to lose any condensate that might be present. Wipe off any silicone grease and cap the filter or cyclone inlet. Remove the umbilical cord from the last impinger and cap the impinger. If a flexible line is used between the first impinger and the filter holder, disconnect it at the filter holder and let any condensed water drain into the first impinger. Wipe off any silicone grease and cap the filter holder outlet and the impinger inlet. Ground glass stoppers, plastic caps, serum caps, Teflon tape, Parafilm, or aluminum foil may be used to close these openings. Transfer the probe and filter/impinger assembly to the cleanup area. This area should be clean and protected from the weather to minimize sample contamination or loss. Inspect the train prior to and during disassembly and note any abnormal conditions. Treat samples as follows:

8.2.1 Container No. 1 (Optional; Filter Catch for Particulate Determination). Same as Method 5, Section 8.7.6.1, Container No. 1.

8.2.2 Container No. 2 (Optional; Front-Half Rinse for Particulate Determination). Same as Method 5, Section 8.7.6.2, Container No. 2.

8.2.3 Container No. 3 (Knockout and Acid Impinger Catch for Moisture and Hydrogen Halide Determination). Disconnect the impingers. Measure the liquid in the acid and knockout impingers to ±1 ml by using a graduated cylinder or by weighing it to ±0.5 g by using a balance. Record the volume or weight of liquid present. This information is required to calculate the moisture content of the effluent gas. Quantitatively transfer this liquid to a leak-free sample storage container. Rinse these impingers and connecting glassware including the back portion of the filter holder (and flexible tubing, if used) with water and add these rinses to the storage container. Seal the container, shake to mix, and label. The fluid level should be marked so that if any sample is lost during transport, a correction proportional to the lost volume can be applied. Retain rinse water and acidic absorbing solution blanks to be analyzed with the samples.

8.2.4 Container No. 4 (Alkaline Impinger Catch for Halogen and Moisture Determination). Measure and record the liquid in the alkaline impingers as described in Section 8.2.3. Quantitatively transfer.this liquid to a leak-free sample storage container. Rinse these two impingers and connecting glassware with water and add these rinses to the container. Add 25 mg of sodium thiosulfate per ppm halogen anticipated to be in the stack gas multiplied by the volume (dscm) of stack gas sampled (0.7 mg/ppm-dscf). Seal the container, shake to mix, and label; mark the fluid level. Retain alkaline absorbing solution blank to be analyzed with the samples.

**Note:** 25 mg per sodium thiosulfate per ppm halogen anticipated to be in the stack includes a safety factor of approximately 5 to assure complete reaction with the hypohalous acid to form a second $Cl^-$ ion in the alkaline solution.

8.2.5 Container No. 5 (Silica Gel for Moisture Determination). Same as Method 5, Section 8.7.6.3, Container No. 3.

8.2.6 Container Nos. 6 through 9 (Reagent Blanks). Save portions of the absorbing reagents (0.1 N $H_2SO_4$ and 0.1 N NaOH) equivalent to the amount used in the sampling train; dilute to the approximate volume of the corresponding samples using rinse water directly from the wash bottle being used. Add the same ratio of sodium thiosulfate solution used in container No. 4 to the 0.1 N NaOH absorbing reagent blank. Also, save a portion of the rinse water alone and a portion of the acetone equivalent to the amount used to rinse the front half of the sampling train. Place each in a separate, prelabeled sample container.

8.2.7 Prior to shipment, recheck all sample containers to ensure that the caps are well-secured. Seal the lids of all containers around the circumference with Teflon tape. Ship all liquid samples upright and all particulate filters with the particulate catch facing upward.

*9.0 Quality Control*

9.1 Miscellaneous Quality Control Measures.

| Section | Quality control measure | Effect |
|---|---|---|
| 8.1.4, 10.1 | Sampling equipment leak-check and calibration. | Ensure accurate measurement of stack gas flow rate, sample volume. |
| 11.5 | Audit sample analysis | Evaluate analyst's technique and standards preparation. |

9.1 Volume Metering System Checks. Same as Method 5, Section 9.2.

*10.0 Calibration and Standardization*

**Note:** Maintain a laboratory log of all calibrations.

10.1 Probe Nozzle, Pitot Tube Assembly, Dry Gas Metering System, Probe Heater, Temperature Sensors, Leak-Check of Metering System, and Barometer. Same as Method 5, Sections 10.1, 10.2, 10.3, 10.4, 10.5, 8.4.1, and 10.6, respectively.

10.2 Ion Chromatograph.

10.2.1 To prepare the calibration standards, dilute given amounts (1.0 ml or greater) of the stock standard solutions to convenient volumes, using 0.1 N $H_2SO_4$ or 0.1 N NaOH, as appropriate. Prepare at least four calibration standards for each absorbing reagent containing the three stock solutions such that they are within the linear range of the field samples.

10.2.2 Using one of the standards in each series, ensure adequate baseline separation for the peaks of interest.

10.2.3 Inject the appropriate series of calibration standards, starting with the lowest concentration standard first both before and after injection of the quality control check sample, reagent blanks, and field samples. This allows compensation for any instrument drift occurring during sample analysis. The values from duplicate injections of these calibration samples should agree within 5 percent of their mean for the analysis to be valid.

10.2.4 Determine the peak areas, or height, of the standards and plot individual values versus halide ion concentrations in µg/ml.

10.2.5 Draw a smooth curve through the points. Use linear regression to calculate a formula describing the resulting linear curve.

*11.0 Analytical Procedures*

**Note:** the liquid levels in the sample containers and confirm on the analysis sheet



whether or not leakage occurred during transport. If a noticeable leakage has occurred, either void the sample or use methods, subject to the approval of the Administrator, to correct the final results.

11.1 Sample Analysis.

11.1.1 The IC conditions will depend upon analytical column type and whether suppressed or non-suppressed IC is used. An example chromatogram from a non-suppressed system using a 150-mm Hamilton PRP-X100 anion column, a 2 ml/min flow rate of a 4 mM 4-hydroxy benzoate solution adjusted to a pH of 8.6 using 1 N NaOH, a 50 µl sample loop, and a conductivity detector set on 1.0 µS full scale is shown in Figure 26–2.

11.1.2 Before sample analysis, establish a stable baseline. Next, inject a sample of water, and determine if any $Cl^-$, $Br^-$, or $F^-$ appears in the chromatogram. If any of these ions are present, repeat the load/injection procedure until they are no longer present. Analysis of the acid and alkaline absorbing solution samples requires separate standard calibration curves; prepare each according to Section 10.2. Ensure adequate baseline separation of the analyses.

11.1.3 Between injections of the appropriate series of calibration standards, inject in duplicate the reagent blanks, quality control sample, and the field samples. Measure the areas or heights of the $Cl^-$, $Br^-$, and $F^-$ peaks. Use the mean response of the duplicate injections to determine the concentrations of the field samples and reagent blanks using the linear calibration curve. The values from duplicate injections should agree within 5 percent of their mean for the analysis to be valid. If the values of duplicate injections are not within 5 percent of the mean, the duplicator injections shall be repeated and all four values used to determine the average response. Dilute any sample and the blank with equal volumes of water if the concentration exceeds that of the highest standard.

11.2 Container Nos. 1 and 2 and Acetone Blank (Optional; Particulate Determination). Same as Method 5, Sections 11.2.1 and 11.2.2, respectively.

11.3 Container No. 5. Same as Method 5, Section 11.2.3 for silica gel.

11.4 Audit Sample Analysis.

11.4.1 When the method is used to analyze samples to demonstrate compliance with a source emission regulation, a set of two EPA audit samples must be analyzed, subject to availability.

11.4.2 Concurrently analyze the audit samples and the compliance samples in the same manner to evaluate the technique of the analyst and the standards preparation.

11.4.3 The same analyst, analytical reagents, and analytical system shall be used for the compliance samples and the EPA audit samples. If this condition is met, duplicate auditing of subsequent compliance analyses for the same enforcement agency within a 30-day period is waived. An audit sample set may not be used to validate different sets of compliance samples under the jurisdiction of separate enforcement agencies, unless prior arrangements have been made with both enforcement agencies.

11.5 Audit Sample Results.

11.5.1 Calculate the concentrations in mg/L of audit sample and submit results following the instructions provided with the audit samples.

11.5.2 Report the results of the audit samples and the compliance determination samples along with their identification numbers, and the analyst's name to the responsible enforcement authority. Include this information with reports of any subsequent compliance analyses for the same enforcement authority during the 30-day period.

11.5.3 The concentrations of the audit samples obtained by the analyst shall agree within 10 percent of the actual concentrations. If the 10 percent specification is not met, reanalyze the compliance and audit samples, and include initial and reanalysis values in the test report.

11.5.4 Failure to meet the 10 percent specification may require retests until the audit problems are resolved. However, if the audit results do not affect the compliance or noncompliance status of the affected facility, the Administrator may waive the reanalysis requirement, further audits, or retests and accept the results of the compliance test. While steps are being taken to resolve audit analysis problems, the Administrator may also choose to use the data to determine the compliance or noncompliance status of the affected facility.

*12.0 Data Analysis and Calculations*

**Note:** Retain at least one extra decimal figure beyond those contained in the available data in intermediate calculations, and round off only the final answer appropriately.

12.1 Nomenclature. Same as Method 5, Section 12.1. In addition:

$B_{X^-}$ = Mass concentration of applicable absorbing solution blank, µg halide ion ($Cl^-$, $Br^-$, $F^-$)/ml, not to exceed 1 µg/ml which is 10 times the published analytical detection limit of 0.1 µg/ml. (It is also approximately 5 percent of the mass concentration anticipated to result from a one hour sample at 10 ppmv HCl.)

C = Concentration of hydrogen halide (HX) or halogen ($X_2$), dry basis, mg/dscm.

$K = 10^{-3}$ mg/µg.

$K_{HCl}$ = 1.028 (µg HCl/µg-mole)/(µg $Cl^-$/µg-mole).

$K_{HBr}$ = 1.013 (µg HBr/µg-mole)/(µg $Br^-$/µg-mole).

$K_{HF}$ = 1.053 (µg HF/µg-mole)/(µg $F^-$/µg-mole).

$m_{HX}$ = Mass of HCl, HBr, or HF in sample, ug.

$m_{X2}$ = Mass of $Cl_2$ or $Br_2$ in sample, ug.

$S_{X^-}$ = Analysis of sample, ug halide ion ($Cl^-$, $Br^-$, $F^-$)/ml.

$V_s$ = Volume of filtered and diluted sample, ml.

12.2 Calculate the exact $Cl^-$, $Br^-$, and $F^-$ concentration in the halide salt stock standard solutions using the following equations.

$$\mu g\ Cl^-/ml = g\ of\ NaCl \times 10^3 \times 35.453/58.44 \quad \text{Eq. 26A-1}$$

$$\mu g\ Br^-/ml = g\ of\ NaBr \times 10^3 \times 79.904/102.90 \quad \text{Eq. 26A-2}$$

$$\mu g\ F^-/ml = g\ of\ NaF \times 10^3 \times 18.998/41.99 \quad \text{Eq. 26A-3}$$

12.3 Average Dry Gas Meter Temperature and Average Orifice Pressure Drop. See data sheet (Figure 5–3 of Method 5).

12.4 Dry Gas Volume. Calculate $V_{m(std)}$ and adjust for leakage, if necessary, using the equation in Section 12.3 of Method 5.

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12.5 Volume of Water Vapor and Moisture Content. Calculate the volume of water vapor $V_{w(std)}$ and moisture content $B_{ws}$ from the data obtained in this method (Figure 5–3 of Method 5); use Equations 5–2 and 5–3 of Method 5.

12.6 Isokinetic Variation and Acceptable Results. Use Method 5, Section 12.11.

12.7 Acetone Blank Concentration, Acetone Wash Blank Residue Weight, Particulate Weight, and Particulate Concentration. For particulate determination.

12.8 Total µg HCl, HBr, or HF Per Sample.

$$m_{HX} = K_{HCl,Hbr,HF} V_s \left(S_{X^-} - B_{X^-}\right) \quad \text{Eq. 26A-4}$$

12.9 Total µg $Cl_2$ or $Br_2$ Per Sample.

$$m_{X2} = V_s \left(S_{X^-} - B_{X^-}\right) \quad \text{Eq. 26A-5}$$

12.10 Concentration of Hydrogen Halide or Halogen in Flue Gas.

$$C = K m_{HX,X2} / V_{m(std)} \quad \text{Eq. 26A-6}$$

12.11 Stack Gas Velocity and Volumetric Flow Rate. Calculate the average stack gas velocity and volumetric flow rate, if needed, using data obtained in this method and the equations in Sections 12.3 and 12.4 of Method 2.

*3.0 Method Performance*

13.1 Precision and Bias. The method has a possible measurable negative bias below 20 ppm HCl perhaps due to reaction with small amounts of moisture in the probe and filter. Similar bias for the other hydrogen halides is possible.

13.2 Sample Stability. The collected Cl-samples can be stored for up to 4 weeks for analysis for HCl and Cl2.

13.3 Detection Limit. A typical analytical detection limit for HCl is 0.2 µg/ml. Detection limits for the other analyses should be similar. Assuming 300 ml of liquid recovered for the acidified impingers and a similar amounts recovered from the basic impingers, and 1 dscm of stack gas sampled, the analytical detection limits in the stack gas would be about 0.04 ppm for HCl and Cl2, respectively.

*14.0 Pollution Prevention, [Reserved]*

*15.0 Waste Management, [Reserved]*

*16.0 References*

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*17.0 Tables, Diagrams, Flowcharts, and Validation Data*

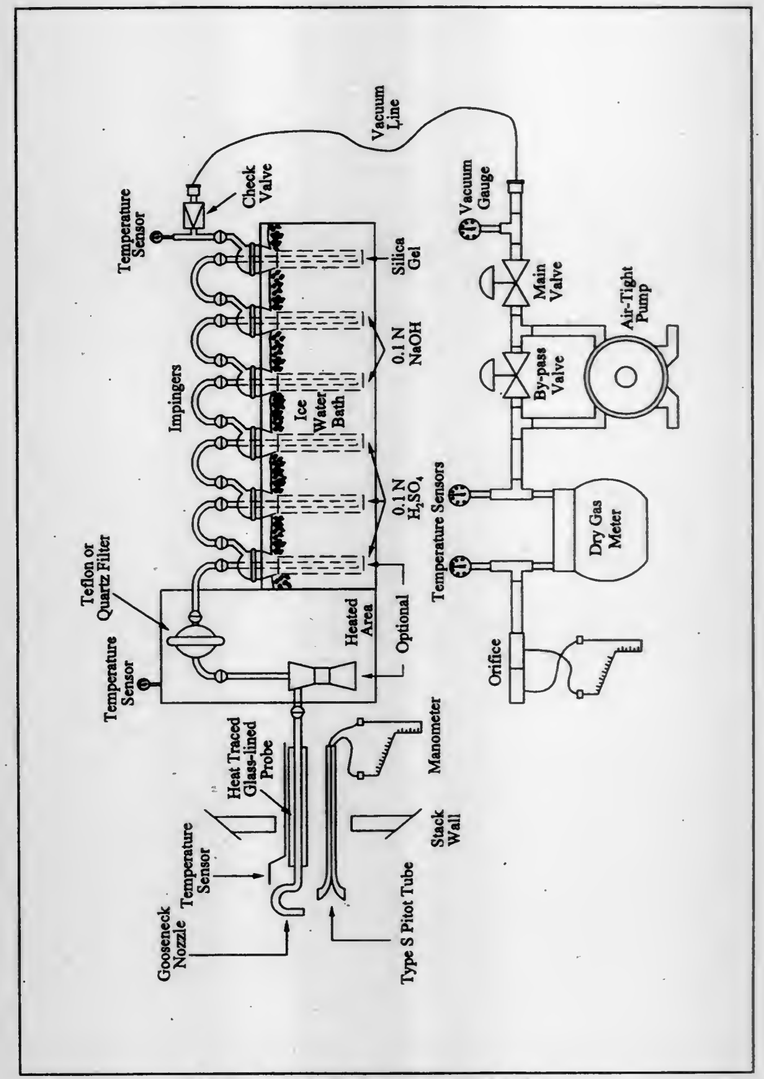



Figure 26A-1. Sampling Train

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**Method 27—Determination of Vapor Tightness of Gasoline Delivery Tank Using Pressure Vaccuum Test**

*1.0 Scope and Application*

1.1 Applicability. This method is applicable for the determination of vapor tightness of a gasoline delivery collection equipment.

*2.0 Summary of Method*

2.1 Pressure and vacuum are applied alternately to the compartments of a gasoline delivery tank and the change in pressure or vacuum is recorded after a specified period of time.

*3.0 Definitions*

3.1 *Allowable pressure change (Δp)* means the allowable amount of decrease in pressure during the static pressure test, within the time period t, as specified in the appropriate regulation, in mm $H_2O$.

3.2 *Allowable vacuum change (Δv)* means the allowable amount of decrease in vacuum during the static vacuum test, within the time period t, as specified in the appropriate regulation, in mm $H_2O$.

3.3 *Compartment* means a liquid-tight division of a delivery tank.

3.4 *Delivery tank* means a container, including associated pipes and fittings, that is attached to or forms a part of any truck, trailer, or railcar used for the transport of gasoline.

3.5 *Delivery tank vapor collection equipment* means any piping, hoses, and devices on the delivery tank used to collect and route gasoline vapors either from the tank to a bulk terminal vapor control system or from a bulk plant or service station into the tank.

3.6 *Gasoline* means a petroleum distillate or petroleum distillate/alcohol blend having a Reid vapor pressure of 27.6 kilopascals or greater which is used as a fuel for internal combustion engines.

3.7 *Initial pressure ($P_i$)* means the pressure applied to the delivery tank at the beginning of the static pressure test, as specified in the appropriate regulation, in mm $H_2O$.

3.8 *Initial vacuum ($V_i$)* means the vacuum applied to the delivery tank at the beginning of the static vacuum test, as specified in the appropriate regulation, in mm $H_3$.

3.9 *Time period of the pressure or vacuum test (t)* means the time period of the test, as specified in the appropriate regulation, during which the change in pressure or vacuum is monitored, in minutes.

*4.0 Interferences [Reserved]*

*5.0 Safety*

5.1 Gasoline contains several volatile organic compounds (*e.g.* benzene and hexane) which presents a potential for fire and/or explosions. It is advisable to take appropriate precautions when testing a gasoline vessel's vapor tightness, such as refraining from smoking and using explosion-proof equipment.

5.2 This method may involve hazardous materials, operations, and equipment. This test method may not address all of the safety problems associated with its use. It is the responsibility of the user of this test method to establish appropriate safety and health practices and determine the applicability of regulatory limitations prior to performing this test method

*6.0 Equipment and Supplies*

The following equipment and supplies are required for testing:

6.1 Pressure Source. Pump or compressed gas cylinder of air or inert gas sufficient to pressurize the delivery tank to 500 mm (20 in.) $H_2O$ above atmospheric pressure.

6.2 Regulator. Low pressure regulator for controlling pressurization of the delivery tank.

6.3 Vacuum Source. Vacuum pump capable of evacuating the delivery tank to 250 mm (10 in.) $H_2O$ below atmospheric pressure.

6.4 Pressure-Vacuum Supply Hose.

6.5 Manometer. Liquid manometer, or equivalent instrument, capable of measuring up to 500 mm (20 in.) $H_2O$ gauge pressure with ± 2.5 mm (0.1 in.) $H_2O$ precision.

6.6 Pressure-Vacuum Relief Valves. The test apparatus shall be equipped with an inline pressure-vacuum relief valve set to activate at 675 mm (26.6 in.) $H_2O$ above atmospheric pressure or 250 mm (10 in.) H2O below atmospheric pressure, with a capacity equal to the pressurizing or evacuating pumps.

6.7 Test Cap for Vapor Recovery Hose. This cap shall have a tap for manometer connection and a fitting with shut-off valve for connection to the pressure-vacuum supply hose.

6.8 Caps for Liquid Delivery Hoses.

*7.0 Reagents and Standards [Reserved]*

*8.0 Sample Collection, Preservation, Storage, and Transport*

8.1 Pretest Preparations.

8.1.1 Summary. Testing problems may occur due to the presence of volatile vapors and/or temperature fluctuations inside the delivery tank. Under these conditions, it is often difficult to obtain a stable initial pressure at the beginning of a test, and erroneous test results may occur. To help prevent this, it is recommended that prior to testing, volatile vapors be removed from the tank and the temperature inside the tank be allowed to stabilize. Because it is not always possible to completely attain these pretest conditions, a provision to ensure reproducible results is included. The difference in results for two consecutive runs must meet the criteria in Sections 8.2.2.5 and 8.2.3.5.

8.1.2 Emptying of Tank. The delivery tank shall be emptied of all liquid.

8.1.3 Purging of Vapor. As much as possible the delivery tank shall be purged of all volatile vapors by any safe, acceptable method. One method is to carry a load of non-volatile liquid fuel, such as diesel or heating oil, immediately prior to the test, thus flushing out all the volatile gasoline vapors. A second method is to remove the volatile vapors by blowing ambient air into each tank compartment for at least 20 minutes. This second method is usually not as effective and often causes stabilization problems, requiring a much longer time for stabilization during the testing.

8.1.4 Temperature Stabilization. As much as possible, the test shall be conducted under isothermal conditions. The temperature of the delivery tank should be allowed to equilibrate in the test environment. During the test, the tank should be protected from extreme environmental and temperature variability, such as direct sunlight.

8.2 Test Procedure.

8.2.1 Preparations.

8.2.1.1 Open and close each dome cover.

8.2.1.2 Connect static electrical ground connections to the tank. Attach the liquid delivery and vapor return hoses, remove the liquid delivery elbows, and plug the liquid delivery fittings.

**Note:** The purpose of testing the liquid delivery hoses is to detect tears or holes that would allow liquid leakage during a delivery. Liquid delivery hoses are not considered to be possible sources of vapor leakage, and thus, do not have to be attached for a vapor leakage test. Instead, a liquid delivery hose could be either visually inspected, or filled with water to detect any liquid leakage.

8.2.1.3 Attach the test cap to the end of the vapor recovery hose.

8.2.1.4 Connect the pressure-vacuum supply hose and the pressure-vacuum relief valve to the shut-off valve. Attach a manometer to the pressure tap.

8.2.1.5 Connect compartments of the tank internally to each other if possible. If not possible, each compartment must be tested separately, as if it were an individual delivery tank.

8.2.2 Pressure Test.

8.2.2.1 Connect the pressure source to the pressure-vacuum supply hose.

8.2.2.2 Open the shut-off valve in the vapor recovery hose cap. Apply air pressure slowly, pressurize the tank to $P_i$, the initial pressure specified in the regulation.

8.2.2.3 Close the shut-off and allow the pressure in the tank to stabilize, adjusting the pressure if necessary to maintain pressure of $P_i$. When the pressure stabilizes, record the time and initial pressure.

8.2.2.4 At the end of the time period (t) specified in the regulation, record the time and final pressure.

8.2.2.5 Repeat steps 8.2.2.2 through 8.2.2.4 until the change in pressure for two consecutive runs agrees within 12.5 mm (0.5 in.) $H_2O$. Calculate the arithmetic average of the two results.

8.2.2.6 Compare the average measured change in pressure to the allowable pressure change, Δp, specified in the regulation. If the delivery tank does not satisfy the vapor tightness criterion specified in the regulation, repair the sources of leakage, and repeat the pressure test until the criterion is met.

8.2.2.7 Disconnect the pressure source from the pressure-vacuum supply hose, and slowly open the shut-off valve to bring the tank to atmospheric pressure.

8.2.3 Vacuum Test.

8.2.3.1 Connect the vacuum source to the pressure-vacuum supply hose.

8.2.3.2 Open the shut-off valve in the vapor recovery hose cap. Slowly evacuate the tank to $V_i$, the initial vacuum specified in the regulation.

8.2.3.3 Close the shut-off valve and allow the pressure in the tank to stabilize, adjusting the pressure if necessary to maintain a vacuum of $V_i$. When the pressure stabilizes, record the time and initial vacuum.

8.2.3.4 At the end of the time period specified in the regulation (t), record the time and final vacuum.

8.2.3.5 Repeat steps 8.2.3.2 through 8.2.3.4 until the change in vacuum for two consecutive runs agrees within 12.5 mm (0.5 in.) $H_2O$. Calculate the arithmetic average of the two results.

8.2.3.6 Compare the average measured change in vacuum to the allowable vacuum change, Δv, as specified in the regulation. If the delivery tank does not satisfy the vapor tightness criterion specified in the regulation, repair the sources of leakage, and repeat the vacuum test until the criterion is met.

8.2.3.7 Disconnect the vacuum source from the pressure-vacuum supply hose, and slowly open the shut-off valve to bring the tank to atmospheric pressure.

8.2.4 Post-Test Clean-up. Disconnect all test equipment and return the delivery tank to its pretest condition.

*9.0 Quality Control*

| Section(s) | Quality control measure | Effect |
|---|---|---|
| 8.2.2.5, 8.3.3.5 ..... | Repeat test procedures until change in pressure or vacuum for two consecutive runs agrees within ± 12.5 mm (0.5 in.) $H_2O$. | Ensures data precision. |

*10.0 Calibration and Standardization [Reserved]*

*11.0 Analytical Procedures [Reserved]*

*12.0 Data Analysis and Calculations [Reserved]*

*13.0 Method Performance*

13.1 Precision. The vapor tightness of a gasoline delivery tank under positive or negative pressure, as measured by this method, is precise within 12.5 mm (0.5 in.) $H_2O$

13.2 Bias. No bias has been identified.

*14.0 Pollution Prevention [Reserved]*

*15.0 Waste Management [Reserved]*

*16.0 Alternative Procedures*

16.1 The pumping of water into the bottom of a delivery tank is an acceptable alternative to the pressure source described above. Likewise, the draining of water out of the bottom of a delivery tank may be substituted for the vacuum source. Note that some of the specific step-by-step procedures in the method must be altered slightly to accommodate these different pressure and vacuum sources.

16.2 Techniques other than specified above may be used for purging and pressurizing a delivery tank, if prior approval is obtained from the Administrator. Such approval will be based upon demonstrated equivalency with the above method.

*17.0 References [Reserved]*

*18.0 Tables, Diagrams, Flowcharts, and Validation Data [Reserved]*

**Method 28—Certification and Auditing of Wood Heaters**

**Note:** This method does not include all of the specifications (*e.g.*, equipment and supplies) and procedures (*e.g.*, sampling and analytical) essential to its performance. Some material is incorporated by reference from other methods in this part. Therefore, to obtain reliable results, persons using this method should have a thorough knowledge of at least the following additional test methods: Method 1, Method 2, Method 3, Method 4, Method 5, Method 5G, Method 5H, Method 6, Method 6C, and Method 16A.

*1.0 Scope and Application*

1.1 Analyte. Particulate matter (PM). No CAS number assigned.

1.2 Applicability. This method is applicable for the certification and auditing of wood heaters, including pellet burning wood heaters.

1.3 Data Quality Objectives. Adherence to the requirements of this method will enhance the quality of the data obtained from air pollutant sampling methods.

*2.0 Summary of Method*

2.1 Particulate matter emissions are measured from a wood heater burning a prepared test fuel crib in a test facility maintained at a set of prescribed conditions. Procedures for determining burn rates and particulate emission rates and for reducing data are provided.

*3.0 Definitions*

3.1 *2 × 4 or 4 × 4* means two inches by four inches or four inches by four inches (50 mm by 100 mm or 100 mm by 100 mm), as nominal dimensions for lumber.

3.2 *Burn rate* means the rate at which test fuel is consumed in a wood heater. Measured in kilograms or lbs of wood (dry basis) per hour (kg/hr or lb/hr).

3.3 *Certification or audit test* means a series of at least four test runs conducted for certification or audit purposes that meets the burn rate specifications in Section 8.4.

3.4 *Firebox* means the chamber in the wood heater in which the test fuel charge is placed and combusted.

3.5 *Height* means the vertical distance extending above the loading door, if fuel could reasonably occupy that space, but not more than 2 inches above the top (peak height) of the loading door, to the floor of the firebox

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(*i.e.*, below a permanent grate) if the grate allows a 1-inch diameter piece of wood to pass through the grate, or, if not, to the top of the grate. Firebox height is not necessarily uniform but must account for variations caused by internal baffles, air channels, or other permanent obstructions.

3.6 *Length* means the longest horizontal fire chamber dimension that is parallel to a wall of the chamber.

3.7 *Pellet burning wood heater* means a wood heater which meets the following criteria: (1) The manufacturer makes no reference to burning cord wood in advertising or other literature, (2) the unit is safety listed for pellet fuel only, (3) the unit operating and instruction manual must state that the use of cordwood is prohibited by law, and (4) the unit must be manufactured and sold including the hopper and auger combination as integral parts.

3.8 *Secondary air supply* means an air supply that introduces air to the wood heater such that the burn rate is not altered by more than 25 percent when the secondary air supply is adjusted during the test run. The wood heater manufacturer can document this through design drawings that show the secondary air is introduced only into a mixing chamber or secondary chamber outside the firebox.

3.9 *Test facility* means the area in which the wood heater is installed, operated, and sampled for emissions.

3.10 *Test fuel charge* means the collection of test fuel pieces placed in the wood heater at the start of the emission test run.

3.11 *Test fuel crib* means the arrangement of the test fuel charge with the proper spacing requirements between adjacent fuel pieces.

3.12 *Test fuel loading density* means the weight of the as-fired test fuel charge per unit volume of usable firebox.

3.13 *Test fuel piece* means the 2 × 4 or 4 × 4 wood piece cut to the length required for the test fuel charge and used to construct the test fuel crib.

3.14 *Test run* means an individual emission test which encompasses the time required to consume the mass of the test fuel charge.

3.15 *Usable firebox volume* means the volume of the firebox determined using its height, length, and width as defined in this section.

3.16 *Width* means the shortest horizontal fire chamber dimension that is parallel to a wall of the chamber.

3.17 *Wood heater* means an enclosed, woodburning appliance capable of and intended for space heating or domestic water heating, as defined in the applicable regulation.

*4.0 Interferences [Reserved]*

*5.0 Safety*

5.1 Disclaimer. This method may involve hazardous materials, operations, and equipment. This test method may not address all of the safety problems associated with its use. It is the responsibility of the user of this test method to establish appropriate safety and health practices and to determine the applicability of regulatory limitations prior to performing this test method.

*6.0 Equipment and Supplies*

Same as Section 6.0 of either Method 5G or Method 5H, with the addition of the following:

6.1 Insulated Solid Pack Chimney. For installation of wood heaters. Solid pack insulated chimneys shall have a minimum of 2.5 cm (1 in.) solid pack insulating material surrounding the entire flue and possess a label demonstrating conformance to U.L. 103 (incorporated by reference—see § 60.17).

6.2 Platform Scale and Monitor. For monitoring of fuel load weight change. The scale shall be capable of measuring weight to within 0.05 kg (0.1 lb) or 1 percent of the initial test fuel charge weight, whichever is greater.

6.3 Wood Heater Temperature Monitors. Seven, each capable of measuring temperature to within 1.5 percent of expected absolute temperatures.

6.4 Test Facility Temperature Monitor. A thermocouple located centrally in a vertically oriented 150 mm (6 in.) long, 50 mm (2 in.) diameter pipe shield that is open at both ends, capable of measuring temperature to within 1.5 percent of expected temperatures.

6.5 Balance (optional). Balance capable of weighing the test fuel charge to within 0.05 kg (0.1 lb).

6.6 Moisture Meter. Calibrated electrical resistance meter for measuring test fuel moisture to within 1 percent moisture content.

6.7 Anemometer. Device capable of detecting air velocities less than 0.10 m/sec (20 ft/min), for measuring air velocities near the test appliance.

6.8 Barometer. Mercury, aneroid or other barometer capable of measuring atmospheric pressure to within 2.5 mm Hg (0.1 in. Hg).

6.9 Draft Gauge. Electromanometer or other device for the determination of flue draft or static pressure readable to within 0.50 Pa (0.002 in. $H_2O$).

6.10 Humidity Gauge. Psychrometer or hygrometer for measuring room humidity.

6.11 Wood Heater Flue.

6.11.1 Steel flue pipe extending to 2.6 ± 0.15 m (8.5 ± 0.5 ft) above the top of the platform scale, and above this level, insulated solid pack type chimney extending to 4.6 ± 0.3 m (15 ± 1 ft) above the platform scale, and of the size specified by the wood heater manufacturer. This applies to both freestanding and insert type wood heaters.

6.11.2 Other chimney types (*e.g.*, solid pack insulated pipe) may be used in place of the steel flue pipe if the wood heater manufacturer's written appliance specifications require such chimney for home installation (*e.g.*, zero clearance wood heater inserts). Such alternative chimney or flue pipe must remain and be sealed with the wood heater following the certification test.

6.12 Test Facility. The test facility shall meet the following requirements during testing:

6.12:1 The test facility temperature shall be maintained between 18 and 32 °C (65 and 90 °F) during each test run.

6.12.2 Air velocities within 0.6 m (2 ft) of the test appliance and exhaust system shall be less than 0.25 m/sec (50 ft/min) without fire in the unit.

6.12.3 The flue shall discharge into the same space or into a space freely communicating with the test facility. Any hood or similar device used to vent combustion products shall not induce a draft greater than 1.25 Pa (0.005 in. $H_2O$) on the wood heater measured when the wood heater is not operating.

6.12.4 For test facilities with artificially induced barometric pressures (*e.g.*, pressurized chambers), the barometric pressure in the test facility shall not exceed 775 mm Hg (30.5 in. Hg) during any test run.

*7.0 Reagents and Standards*

Same as Section 6.0 of either Method 5G or Method 5H, with the addition of the following:

7.1 Test Fuel. The test fuel shall conform to the following requirements:

7.1.1 Fuel Species. Untreated, air-dried, Douglas fir lumber. Kiln-dried lumber is not permitted. The lumber shall be certified C grade (standard) or better Douglas fir by a lumber grader at the mill of origin as specified in the West Coast Lumber Inspection Bureau Standard No. 16 (incorporated by reference—see § 60.17).

7.1.2 Fuel Moisture. The test fuel shall have a moisture content range between 16 to 20 percent on a wet basis (19 to 25 percent dry basis). Addition of moisture to previously dried wood is not allowed. It is recommended that the test fuel be stored in a temperature and humidity-controlled room.



7.1.3 Fuel Temperature. The test fuel shall be at the test facility temperature of 18 to 32 °C (65 to 90 °F).

7.1.4 Fuel Dimensions. The dimensions of each test fuel piece shall conform to the nominal measurements of 2×4 and 4×4 lumber. Each piece of test fuel (not including spacers) shall be of equal length, except as necessary to meet requirements in Section 8.8, and shall closely approximate 5/6 the dimensions of the length of the usable firebox. The fuel piece dimensions shall be determined in relation to the appliance's firebox volume according to guidelines listed below:

7.1.4.1 If the usable firebox volume is less than or equal to 0.043 $m^3$ (1.5 $ft^3$), use 2×4 lumber.

7.1.4.2 If the usable firebox volume is greater than 0.043 $m^3$ (1.5 $ft^3$) and less than or equal to 0.085 $m^3$ (3.0 $ft^3$), use 2×4 and 4×4 lumber. About half the weight of the test fuel charge shall be 2×4 lumber, and the remainder shall be 4×4 lumber.

7.1.4.3 If the usable firebox volume is greater than 0.085 $m^3$ (3.0 $ft^3$), use 4×4 lumber.

7.2 Test Fuel Spacers. Air-dried, Douglas fir lumber meeting the requirements outlined in Sections 7.1.1 through 7.1.3. The spacers shall be 130×40×20 mm (5×1.5×0.75 in.).

*8.0 Sample Collection, Preservation, Storage, and Transport*

8.1 Test Run Requirements.

8.1.1 Burn Rate Categories. One emission test run is required in each of the following burn rate categories:

BURN RATE CATEGORIES

[Average kg/hr (lb/hr), dry basis]

| Category 1 | Category 2 | Category 3 | Category 4 |
|---|---|---|---|
| <0.80 (<1.76) | 0.80 to 1.25 (1.76 to 2.76) | 1.25 to 1.90 (2.76 to 4.19) | Maximum. burn rate. |

8.1.1.1 Maximum Burn Rate. For Category 4, the wood heater shall be operated with the primary air supply inlet controls fully open (or, if thermostatically controlled, the thermostat shall be set at maximum heat output) during the entire test run, or the maximum burn rate setting specified by the manufacturer's written instructions.

8.1.1.2 Other Burn Rate Categories. For burn rates in Categories 1 through 3, the wood heater shall be operated with the primary air supply inlet control, or other mechanical control device, set at a predetermined position necessary to obtain the average burn rate required for the category.

8.1.1.3 Alternative Burn Rates for Burn Rate Categories 1 and 2.

8.1.1.3.1 If a wood heater cannot be operated at a burn rate below 0.80 kg/hr (1.76 lb/hr), two test runs shall be conducted with burn rates within Category 2. If a wood heater cannot be operated at a burn rate below 1.25 kg/hr (2.76 lb/hr), the flue shall be dampered or the air supply otherwise controlled in order to achieve two test runs within Category 2.

8.1.1.3.2 Evidence that a wood heater cannot be operated at a burn rate less than 0.80 kg/hr shall include documentation of two or more attempts to operate the wood heater in burn rate Category 1 and fuel combustion has stopped, or results of two or more test runs demonstrating that the burn rates were greater than 0.80 kg/hr when the air supply controls were adjusted to the lowest possible position or settings. Stopped fuel combustion is evidenced when an elapsed time of 30 minutes or more has occurred without a measurable (< 0.05 kg (0.1 lb) or 1.0 percent, whichever is greater) weight change in the test fuel charge. See also Section 8.8.3. Report the evidence and the reasoning used to determine that a test in burn rate Category 1 cannot be achieved; for example, two unsuccessful attempts to operate at a burn rate of 0.4 kg/hr are not sufficient evidence that burn rate Category 1 cannot be achieved.

**Note:** After July 1, 1990, if a wood heater cannot be operated at a burn rate less than 0.80 kg/hr, at least one test run with an average burn rate of 1.00 kg/hr or less shall be conducted. Additionally, if flue dampering must be used to achieve burn rates below 1.25 kg/hr (or 1.0 kg/hr), results from a test run conducted at burn rates below 0.90 kg/hr need not be reported or included in the test run average provided that such results are replaced with results from a test run meeting the criteria above.

8.2 Catalytic Combustor and Wood Heater Aging. The catalyst-equipped wood heater or a wood heater of any type shall be aged before the certification test begins. The aging procedure shall be conducted and documented by a testing laboratory accredited according to procedures in § 60.535 of 40 CFR part 60.

8.2.1 Catalyst-equipped Wood Heater. Operate the catalyst-equipped wood heater using fuel meeting the specifications outlined in Sections 7.1.1 through 7.1.3, or cordwood with a moisture content between 15 and 25 percent on a wet basis. Operate the wood heater at a medium burn rate (Category 2 or 3) with a new catalytic combustor in place and in operation for at least 50 hours. Record and report hourly catalyst exit temperature data (Section 8.6.2) and the hours of operation.

8.2.2 Non-Catalyst Wood Heater. Operate the wood heater using the fuel described in Section 8.4.1 at a medium burn rate for at least 10 hours. Record and report the hours of operation.

8.3 Pretest Recordkeeping. Record the test fuel charge dimensions and weights, and wood heater and catalyst descriptions as shown in the example in Figure 28–1.

8.4 Wood Heater Installation. Assemble the wood heater appliance and parts in conformance with the manufacturer's written installation instructions. Place the wood heater centrally on the platform scale and connect the wood heater to the flue described in Section 6.11. Clean the flue with an appropriately sized, wire chimney brush before each certification test.

8.5 Wood Heater Temperature Monitors.

8.5.1 For catalyst-equipped wood heaters, locate a temperature monitor (optional) about 25 mm (1 in.) upstream of the catalyst at the centroid of the catalyst face area, and locate a temperature monitor (mandatory) that will indicate the catalyst exhaust temperature. This temperature monitor is centrally located within 25 mm (1 in.) downstream at the centroid of catalyst face area. Record these locations.

8.5.2 Locate wood heater surface temperature monitors at five locations on the wood heater firebox exterior surface. Position the temperature monitors centrally on the top surface, on two sidewall surfaces, and on the bottom and back surfaces. Position the monitor sensing tip on the firebox exterior surface inside of any heat shield, air circulation walls, or other

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wall or shield separated from the firebox exterior surface. Surface temperature locations for unusual design shapes (*e.g.*, spherical, etc.) shall be positioned so that there are four surface temperature monitors in both the vertical and horizontal planes passing at right angles through the centroid of the firebox, not including the fuel loading door (total of five temperature monitors).

8.6 Test Facility Conditions.

8.6.1 Locate the test facility temperature monitor on the horizontal plane that includes the primary air intake opening for the wood heater. Locate the temperature monitor 1 to 2 m (3 to 6 ft) from the front of the wood heater in the 90° sector in front of the wood heater.

8.6.2 Use an anemometer to measure the air velocity. Measure and record the room air velocity before the pretest ignition period (Section 8.7) and once immediately following the test run completion.

8.6.3 Measure and record the test facility's ambient relative humidity, barometric pressure, and temperature before and after each test run.

8.6.4 Measure and record the flue draft or static pressure in the flue at a location no greater than 0.3 m (1 ft) above the flue connector at the wood heater exhaust during the test run at the recording intervals (Section 8.8.2).

8.7 Wood Heater Firebox Volume.

8.7.1 Determine the firebox volume using the definitions for height, width, and length in Section 3. Volume adjustments due to presence of firebrick and other permanent fixtures may be necessary. Adjust width and length dimensions to extend to the metal wall of the wood heater above the firebrick or permanent obstruction if the firebrick or obstruction extending the length of the side(s) or back wall extends less than one-third of the usable firebox height. Use the width or length dimensions inside the firebrick if the firebrick extends more than one-third of the usable firebox height. If a log retainer or grate is a permanent fixture and the manufacturer recommends that no fuel be placed outside the retainer, the area outside of the retainer is excluded from the firebox volume calculations.

8.7.2 In general, exclude the area above the ash lip if that area is less than 10 percent of the usable firebox volume. Otherwise, take into account consumer loading practices. For instance, if fuel is to be loaded front-to-back, an ash lip may be considered usable firebox volume.

8.7.3 Include areas adjacent to and above a baffle (up to two inches above the fuel loading opening) if four inches or more horizontal space exist between the edge of the baffle and a vertical obstruction (*e.g.*, sidewalls or air channels).

8.8 Test Fuel Charge.

8.8.1 Prepare the test fuel pieces in accordance with the specifications outlined in Sections 7.1 and 7.2. Determine the test fuel moisture content with a calibrated electrical resistance meter or other equivalent performance meter. If necessary, convert fuel moisture content values from dry basis ($\%M_d$) to wet basis ($\%M_w$) in Section 12.2 using Equation 28–1. Determine fuel moisture for each fuel piece (not including spacers) by averaging at least three moisture meter readings, one from each of three sides, measured parallel to the wood grain. Average all the readings for all the fuel pieces in the test fuel charge. If an electrical resistance type meter is used, penetration of insulated electrodes shall be one-fourth the thickness of the test fuel piece or 19 mm (0.75 in.), whichever is greater. Measure the moisture content within a 4-hour period prior to the test run. Determine the fuel temperature by measuring the temperature of the room where the wood has been stored for at least 24 hours prior to the moisture determination.

8.8.2 Attach the spacers to the test fuel pieces with uncoated, ungalvanized nails or staples as illustrated in Figure 28–2. Attachment of spacers to the top of the test fuel piece(s) on top of the test fuel charge is optional.

8.8.3 To avoid stacking difficulties, or when a whole number of test fuel pieces does not result, all piece lengths shall be adjusted uniformly to remain within the specified loading density. The shape of the test fuel crib shall be geometrically similar to the shape of the firebox volume without resorting to special angular or round cuts on the individual fuel pieces.

8.8.4 The test fuel loading density shall be $112 \pm 11.2$ kg/m$^3$ ($7 \pm 0.7$ lb/ft$^3$) of usable firebox volume on a wet basis.

8.9 Sampling Equipment. Prepare the sampling equipment as defined by the selected method (*i.e.*, either Method 5G or Method 5H). Collect one particulate emission sample for each test run.

8.10 Secondary Air Adjustment Validation.

8.10.1 If design drawings do not show the introduction of secondary air into a chamber outside the firebox (see "secondary air supply" under Section 3.0, Definitions), conduct a separate test of the wood heater's secondary air supply. Operate the wood heater at a burn rate in Category 1 (Section 8.1.1) with the secondary air supply operated following the manufacturer's written instructions. Start the secondary air validation test run as described in Section 8.8.1, except no emission sampling is necessary and burn rate data shall be recorded at 5-minute intervals.

8.10.2 After the start of the test run, operate the wood heater with the secondary air supply set as per the manufacturer's instructions, but with no adjustments to this setting. After 25 percent of the test fuel has been consumed, adjust the secondary air supply controls to another setting, as per the manufacturer's instructions. Record the burn rate data (5-minute intervals) for 20 minutes following the air supply adjustment.

8.10.3 Adjust the air supply control(s) to the original position(s), operate at this condition for at least 20 minutes, and repeat the air supply adjustment procedure above. Repeat the procedure three times at equal intervals over the entire burn period as defined in Section 8.8. If the secondary air adjustment results in a burn rate change of more than an average of 25 percent between the 20-minute periods before and after the secondary adjustments, the secondary air supply shall be considered a primary air supply, and no adjustment to this air supply is allowed during the test run.

8.10.4 The example sequence below describes a typical secondary air adjustment validation check. The first cycle begins after at least 25 percent of the test fuel charge has been consumed.

Cycle 1
- Part 1, sec air adjusted to final position—20 min
- Part 2, sec air adjusted to final position—20 min
- Part 3, sec air adjusted to final position—20 min

Cycle 2
- Part 1, sec air adjusted to final position—20 min
- Part 2, sec air adjusted to final position—20 min
- Part 3, sec air adjusted to final position—20 min

Cycle 3
- Part 1, sec air adjusted to final position—20 min
- Part 2, sec air adjusted to final position—20 min
- Part 3, sec air adjusted to final position—20 min

Note that the cycles may overlap; that is, Part 3 of Cycle 1 may coincide in part or in total with Part 1 of Cycle 2. The calculation of the secondary air percent effect for this example is as follows:



$$\%BR_{sec} = \frac{|\overline{BR_{1,3}} - \overline{BR_2}|}{\overline{BR_{1,3}}} \times 100 \qquad \text{Eq. 28-1}$$

8.11 Pretest Ignition. Build a fire in the wood heater in accordance with the manufacturer's written instructions.

8.11.1 Pretest Fuel Charge. Crumpled newspaper loaded with kindling may be used to help ignite the pretest fuel. The pretest fuel, used to sustain the fire, shall meet the same fuel requirements prescribed in Section 7.1. The pretest fuel charge shall consist of whole 2×4's that are no less than ⅓ the length of the test fuel pieces. Pieces of 4×4 lumber in approximately the same weight ratio as for the test fuel charge may be added to the pretest fuel charge.

8.11.2 Wood Heater Operation and Adjustments. Set the air inlet supply controls at any position that will maintain combustion of the pretest fuel load. At least one hour before the start of the test run, set the air supply controls at the approximate positions necessary to achieve the burn rate desired for the test run. Adjustment of the air supply controls, fuel addition or subtractions, and coalbed raking shall be kept to a minimum but are allowed up to 15 minutes prior to the start of the test run. For the purposes of this method, coalbed raking is the use of a metal tool (poker) to stir coals, break burning fuel into smaller pieces, dislodge fuel pieces from positions of poor combustion, and check for the condition of uniform charcoalization. Record all adjustments made to the air supply controls, adjustments to and additions or subtractions of fuel, and any other changes to wood heater operations that occur during pretest ignition period. Record fuel weight data and wood heater temperature measurements at 10-minute intervals during the hour of the pretest ignition period preceding the start of the test run. During the 15-minute period prior to the start of the test run, the wood heater loading door shall not be open more than a total of 1 minute. Coalbed raking is the only adjustment allowed during this period.

**Note:** One purpose of the pretest ignition period is to achieve uniform charcoalization of the test fuel bed prior to loading the test fuel charge. Uniform charcoalization is a general condition of the test fuel bed evidenced by an absence of large pieces of burning wood in the coal bed and the remaining fuel pieces being brittle enough to be broken into smaller charcoal pieces with a metal poker. Manipulations to the fuel bed prior to the start of the test run should be done to achieve uniform charcoalization while maintaining the desired burn rate. In addition, some wood heaters (*e.g.*, high mass units) may require extended pretest burn time and fuel additions to reach an initial average surface temperature sufficient to meet the thermal equilibrium criteria in Section 8.3.

8.11.3 The weight of pretest fuel remaining at the start of the test run is determined as the difference between the weight of the wood heater with the remaining pretest fuel and the tare weight of the cleaned, dry wood heater with or without dry ash or sand added consistent with the manufacturer's instructions and the owner's manual. The tare weight of the wood heater must be determined with the wood heater (and ash, if added) in a dry condition.

8.12 Test Run. Complete a test run in each burn rate category, as follows:

8.12.1 Test Run Start.

8.12.1.1 When the kindling and pretest fuel have been consumed to leave a fuel weight between 20 and 25 percent of the weight of the test fuel charge, record the weight of the fuel remaining and start the test run. Record and report any other criteria, in addition to those specified in this section, used to determine the moment of the test run start (*e.g.*, firebox or catalyst temperature), whether such criteria are specified by the wood heater manufacturer or the testing laboratory. Record all wood heater individual surface temperatures, catalyst temperatures, any initial sampling method measurement values, and begin the particulate emission sampling. Within 1 minute following the start of the test run, open the wood heater door, load the test fuel charge, and record the test fuel charge weight. Recording of average, rather than individual, surface temperatures is acceptable for tests conducted in accordance with § 60.533(o)(3)(i) of 40 CFR part 60.

8.12.1.2 Position the fuel charge so that the spacers are parallel to the floor of the firebox, with the spacer edges abutting each other. If loading difficulties result, some fuel pieces may be placed on edge. If the usable firebox volume is between 0.043 and 0.085 m$^3$ (1.5 and 3.0 ft$^3$), alternate the piece sizes in vertical stacking layers to the extent possible. For example, place 2 × 4's on the bottom layer in direct contact with the coal bed and 4 × 4's on the next layer, etc. (See Figure 28–3). Position the fuel pieces parallel to each other and parallel to the longest wall of the firebox to the extent possible within the specifications in Section 8.8.

8.12.1.3 Load the test fuel in appliances having unusual or unconventional firebox design maintaining air space intervals between the test fuel pieces and in conformance with the manufacturer's written instructions. For any appliance that will not accommodate the loading arrangement specified in the paragraph above, the test facility personnel shall contact the Administrator for an alternative loading arrangement.

8.12.1.4 The wood heater door may remain open and the air supply controls adjusted up to five minutes after the start of the test run in order to make adjustments to the test fuel charge and to ensure ignition of the test fuel charge has occurred. Within the five minutes after the start of the test run, close the wood heater door and adjust the air supply controls to the position determined to produce the desired burn rate. No other adjustments to the air supply controls or the test fuel charge are allowed (except as specified in Sections 8.12.3 and 8.12.4) after the first five minutes of the test run. Record the length of time the wood heater door remains open, the adjustments to the air supply controls, and any other operational adjustments.

8.12.2 Data Recording. Record on a data sheet similar to that shown in Figure 28–4, at intervals no greater than 10 minutes, fuel weight data, wood heater individual surface and catalyst temperature measurements, other wood heater operational data (*e.g.*, draft), test facility temperature and sampling method data.

8.12.3 Test Fuel Charge Adjustment. The test fuel charge may be adjusted (*i.e.*, repositioned) once during a test run if more than 60 percent of the initial test fuel charge weight has been consumed and more than 10 minutes have elapsed without a measurable (<0.05 kg (0.1 lb) or 1.0 percent, whichever is greater) weight change. The time used to make this adjustment shall be less than 15 seconds.

8.12.4 Air Supply Adjustment. Secondary air supply controls may be adjusted once during the test run following the manufacturer's written instructions (see Section 8.10). No other air supply adjustments are allowed during the test run. Recording of wood heater flue draft during the test run is optional for tests conducted in

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accordance with § 60.533(o)(3)(i) of 40 CFR part 60.

8.12.5 Auxiliary Wood Heater Equipment Operation. Heat exchange blowers sold with the wood heater shall be operated during the test run following the manufacturer's written instructions. If no manufacturer's written instructions are available, operate the heat exchange blower in the "high" position. (Automatically operated blowers shall be operated as designed.) Shaker grates, by-pass controls, or other auxiliary equipment may be adjusted only one time during the test run following the manufacturer's written instructions.

Record all adjustments on a wood heater operational written record.

**Note:** If the wood heater is sold with a heat exchange blower as an option, test the wood heater with the heat exchange blower operating as described in Sections 8.1 through 8.12 and report the results. As an alternative to repeating all test runs without the heat exchange blower operating, one additional test run may be without the blower operating as described in Section 8.12.5 at a burn rate in Category 2 (Section 8.1.1). If the emission rate resulting from this test run without the blower operating is equal to or less than the emission rate plus 1.0 g/hr (0.0022 lb/hr) for the test run in burn rate Category 2 with the blower operating, the wood heater may be considered to have the same average emission rate with or without the blower operating. Additional test runs without the blower operating are unnecessary.

8.13 Test Run Completion. Continue emission sampling and wood heater operation for 2 hours. The test run is completed when the remaining weight of the test fuel charge is 0.00 kg (0.0 lb). End the test run when the scale has indicated a test fuel charge weight of 0.00 kg (0.0 lb) or less for 30 seconds. At the end of the test run, stop the particulate sampling, and record the final fuel weight, the run time, and all final measurement values.

8.14 Wood Heater Thermal Equilibrium. The average of the wood heater surface temperatures at the end of the test run shall agree with the average surface temperature at the start of the test run to within 70 °C (126 °F).

8.15 Consecutive Test Runs. Test runs on a wood heater may be conducted consecutively provided that a minimum one-hour interval occurs between test runs.

8.16 Additional Test Runs. The testing laboratory may conduct more than one test run in each of the burn rate categories specified in Section 8.1.1. If more than one test run is conducted at a specified burn rate, the results from at least two-thirds of the test runs in that burn rate category shall be used in calculating the weighted average emission rate (see Section 12.2). The measurement data and results of all test runs shall be reported regardless of which values are used in calculating the weighted average emission rate (see **Note** in Section 8.1).

*9.0 Quality Control*

Same as Section 9.0 of either Method 5G or Method 5H.

*10.0 Calibration and Standardizations*

Same as Section 10.0 of either Method 5G or Method 5H, with the addition of the following:

10.1 Platform Scale. Perform a multi-point calibration (at least five points spanning the operational range) of the platform scale before its initial use. The scale manufacturer's calibration results are sufficient for this purpose. Before each certification test, audit the scale with the wood heater in place by weighing at least one calibration weight (Class F) that corresponds to between 20 percent and 80 percent of the expected test fuel charge weight. If the scale cannot reproduce the value of the calibration weight within 0.05 kg (0.1 lb) or 1 percent of the expected test fuel charge weight, whichever is greater, recalibrate the scale before use with at least five calibration weights spanning the operational range of the scale.

10.2 Balance (optional). Calibrate as described in Section 10.1.

10.3 Temperature Monitor. Calibrate as in Method 2, Section 4.3, before the first certification test and semiannually thereafter.

10.4 Moisture Meter. Calibrate as per the manufacturer's instructions before each certification test.

10.5 Anemometer. Calibrate the anemometer as specified by the manufacturer's instructions before the first certification test and semiannually thereafter.

10.6 Barometer. Calibrate against a mercury barometer before the first certification test and semiannually thereafter.

10.7 Draft Gauge. Calibrate as per the manufacturer's instructions; a liquid manometer does not require calibration.

10.8 Humidity Gauge. Calibrate as per the manufacturer's instructions before the first certification test and semiannually thereafter.

*11.0 Analytical Procedures*

Same as Section 11.0 of either Method 5G or Method 5H.

*12.0 Data Analysis and Calculations*

Same as Section 12.0 of either Method 5G or Method 5H, with the addition of the following:

12.1 Nomenclature.

BR = Dry wood burn rate, kg/hr (lb/hr)
$E_i$ = Emission rate for test run, i, from Method 5G or 5H, g/hr (lb/hr)
$E_w$ = Weighted average emission rate, g/hr (lb/hr)
$k_i$ = Test run weighting factor = $P_{i+1} - P_{i-1}$
$\%M_d$ = Fuel moisture content, dry basis, percent.
$\%M_w$ = Average moisture in test fuel charge, wet basis, percent.
n = Total number of test runs.
$P_i$ = Probability for burn rate during test run, i, obtained from Table 28–1. Use linear interpolation to determine probability values for burn rates between those listed on the table.
$W_{wd}$ = Total mass of wood burned during the test run, kg (lb).

12.2 Wet Basis Fuel Moisture Content.

$$\%M_w = \frac{100(\%M_d)}{100 + \%M_d} \qquad \text{Eq. 28-2}$$

12.3 Weighted Average Emission Rate. Calculate the weighted average emission rate ($E_w$) using Equation 28–1:

$$E_w = \frac{\sum_{i=1}^{n}(K_i E_i)}{\sum_{i=1}^{n} K_i} \qquad \text{Eq. 28-3}$$

**Note:** $P_o$ always equals 0, $P_{(n+1)}$ always equals 1, $P_1$ corresponds to the probability of the lowest recorded burn rate, $P_2$ corresponds to the probability of the next lowest burn rate, etc. An example calculation is in Section 12.3.1.

12.3.1 Example Calculation of Weighted Average Emission Rate.

| Burn rate category | Test No. | Burn rate (Dry-kg/hr) | Emissions (g/hr) |
|---|---|---|---|
| 1 | 1 | 0.65 | 5.0 |
| 2[1] | 2 | 0.85 | 6.7 |
| 2 | 3 | 0.90 | 4.7 |



| Burn rate category | Test No. | Burn rate (Dry-kg/hr) | Emissions (g/hr) |
|---|---|---|---|
| 2 | 4 | 1.00 | 5.3 |
| 3 | 5 | 1.45 | 3.8 |
| 4 | 6 | 2.00 | 5.1 |

[1] As permitted in Section 6.6, this test run may be omitted from the calculation of the weighted average emission rate because three runs were conducted for this burn rate category.

| Test No. | Burn rate | $P_i$ | $E_i$ | $K_i$ |
|---|---|---|---|---|
| 0 | ..... | 0.000 | ..... | ..... |
| 1 | 0.65 | 0.121 | 5.0 | 0.300 |
| 2 | 0.90 | 0.300 | 4.7 | 0.259 |
| 3 | 1.00 | 0.380 | 5.3 | 0.422 |
| 4 | 1.45 | 0.722 | 3.8 | 0.532 |
| 5 | 2.00 | 0.912 | 5.1 | 0.278 |
| 6 | ..... | 1.000 | ..... | ..... |

$K_1 = P_2 - P_0 = 0.300 - 0 = 0.300$
$K_2 = P_3 - P_1 = 0.381 - 0.121 = 0.259$
$K_3 = P_4 - P_2 = 0.722 - 0.300 = 0.422$
$K_4 = P_5 - P_3 = 0.912 - 0.380 = 0.532$
$K_5 = P_6 - P_4 = 1.000 - 0.722 = 0.278$

Weighted Average Emission Rate, $E_w$, Calculation

$$E_w = \frac{\sum(K_i E_i)}{\sum K_i} = \frac{(0.3)(5.0)+(0.259)(4.7)+(0.422)(5.3)+(0.532)(3.8)+(0.278)(5.1)}{1.791} = 4.69\ \text{g/hr}$$

12.4 Average Wood Heater Surface Temperatures. Calculate the average of the wood heater surface temperatures for the start of the test run (Section 8.12.1) and for the test run completion (Section 8.13). If the two average temperatures do not agree within 70 °C (125 °F), report the test run results, but do not include the test run results in the test average. Replace such test run results with results from another test run in the same burn rate category.

12.5 Burn Rate. Calculate the burn rate (BR) using Equation 28–3:

$$BR = \frac{60 W_{wd}}{\theta} \times \frac{100 - \%M_w}{100} \qquad \text{Eq. 28-3}$$

12.6 Reporting Criteria. Submit both raw and reduced test data for wood heater tests.

12.6.1 Suggested Test Report Format.

12.6.1.1 Introduction.

12.6.1.1.1 Purpose of test-certification, audit, efficiency, research and development.

12.6.1.1.2 Wood heater identification-manufacturer, model number, catalytic/noncatalytic, options.

12.6.1.1.3 Laboratory-name, location (altitude), participants.

12.6.1.1.4 Test information-date wood heater received, date of tests, sampling methods used, number of test runs.

12.6.1.2 Summary and Discussion of Results

12.6.1.2.1 Table of results (in order of increasing burn rate)-test run number, burn rate, particulate emission rate, efficiency (if determined), averages (indicate which test runs are used).

12.6.1.2.2 Summary of other data-test facility conditions, surface temperature averages, catalyst temperature averages, pretest fuel weights, test fuel charge weights, run times.

12.6.1.2.3 Discussion-Burn rate categories achieved, test run result selection, specific test run problems and solutions.

12.6.1.3 Process Description.

12.6.1.3.1 Wood heater dimensions-volume, height, width, lengths (or other linear dimensions), weight, volume adjustments.

12.6.1.3.2 Firebox configuration-air supply locations and operation, air supply introduction location, refractory location and dimensions, catalyst location, baffle and by-pass location and operation (include line drawings or photographs).

12.6.1.3.3 Process operation during test-air supply settings and adjustments, fuel bed adjustments, draft.

12.6.1.3.4 Test fuel-test fuel properties (moisture and temperature), test fuel crib description (include line drawing or photograph), test fuel loading density.

12.6.1.4 Sampling Locations.

12.6.1.4.1 Describe sampling location relative to wood heater. Include drawing or photograph.

12.6.1.5 Sampling and Analytical Procedures

12.6.1.5.1 Sampling methods-brief reference to operational and sampling procedures and optional and alternative procedures used.

12.6.1.5.2 Analytical methods-brief description of sample recovery and analysis procedures.

12.6.1.6 Quality Control and Assurance Procedures and Results

12.6.1.6.1 Calibration procedures and results-certification procedures, sampling and analysis procedures.

12.6.1.6.2 Test method quality control procedures-leak-checks, volume

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meter checks, stratification (velocity) checks, proportionality results.

12.6.1.7 Appendices

12.6.1.7.1 Results and Example Calculations. Complete summary tables and accompanying examples of all calculations.

12.6.1.7.2 Raw Data. Copies of all uncorrected data sheets for sampling measurements, temperature records and sample recovery data. Copies of all pretest burn rate and wood heater temperature data.

12.6.1.7.3 Sampling and Analytical Procedures. Detailed description of procedures followed by laboratory personnel in conducting the certification test, emphasizing particular parts of the procedures differing from the methods (*e.g.*, approved alternatives).

12.6.1.7.4 Calibration Results. Summary of all calibrations, checks, and audits pertinent to certification test results with dates.

12.6.1.7.5 Participants. Test personnel, manufacturer representatives, and regulatory observers.

12.6.1.7.6 Sampling and Operation Records. Copies of uncorrected records of activities not included on raw data sheets (*e.g.*, wood heater door open times and durations).

12.6.1.7.7 Additional Information. Wood heater manufacturer's written instructions for operation during the certification test.

12.6.2.1 Wood Heater Identification. Report wood heater identification information. An example data form is shown in Figure 28–4.

12.6.2.2 Test Facility Information. Report test facility temperature, air velocity, and humidity information. An example data form is shown on Figure 28–4.

12.6.2.3 Test Equipment Calibration and Audit Information. Report calibration and audit results for the platform scale, test fuel balance, test fuel moisture meter, and sampling equipment including volume metering systems and gaseous analyzers.

12.6.2.4 Pretest Procedure Description. Report all pretest procedures including pretest fuel weight, burn rates, wood heater temperatures, and air supply settings. An example data form is shown on Figure 28–4.

12.6.2.5 Particulate Emission Data. Report a summary of test results for all test runs and the weighted average emission rate. Submit copies of all data sheets and other records collected during the testing. Submit examples of all calculations.

*13.0 Method Performance, [Reserved]*

*14.0 Pollution Prevention, [Reserved]*

*15.0 Waste Management, [Reserved]*

*16.0 Alternative Procedures*

16.1 Pellet Burning Heaters. Certification testing requirements and procedures for pellet burning wood heaters are identical to those for other wood heaters, with the following exceptions:

16.1.1 Test Fuel Properties. The test fuel shall be all wood pellets with a moisture content no greater than 20 percent on a wet basis (25 percent on a dry basis). Determine the wood moisture content with either ASTM D 2016–74 or 83, (Method A), ASTM D 4444–92, or ASTM D 4442–84 or 92 (all noted ASTM standards are incorporated by reference—see § 60.17).

16.1.2 Test Fuel Charge Specifications. The test fuel charge size shall be as per the manufacturer's written instructions for maintaining the desired burn rate.

16.1.3 Wood Heater Firebox Volume. The firebox volume need not be measured or determined for establishing the test fuel charge size. The firebox dimensions and other heater specifications needed to identify the heater for certification purposes shall be reported.

16.1.4 Heater Installation. Arrange the heater with the fuel supply hopper on the platform scale as described in Section 8.6.1.

16.1.5 Pretest Ignition. Start a fire in the heater as directed by the manufacturer's written instructions, and adjust the heater controls to achieve the desired burn rate. Operate the heater at the desired burn rate for at least 1 hour before the start of the test run.

16.1.6 Test Run. Complete a test run in each burn rate category as follows:

16.1.6.1 Test Run Start. When the wood heater has operated for at least 1 hour at the desired burn rate, add fuel to the supply hopper as necessary to complete the test run, record the weight of the fuel in the supply hopper (the wood heater weight), and start the test run. Add no additional fuel to the hopper during the test run.

Record all the wood heater surface temperatures, the initial sampling method measurement values, the time at the start of the test, and begin the emission sampling. Make no adjustments to the wood heater air supply or wood supply rate during the test run.

16.1.6.2 Data Recording. Record the fuel (wood heater) weight data, wood heater temperature and operational data, and emission sampling data as described in Section 8.12.2.

16.1.6.3 Test Run Completion. Continue emission sampling and wood heater operation for 2 hours. At the end of the test run, stop the particulate sampling, and record the final fuel weight, the run time, and all final measurement values, including all wood heater individual surface temperatures.

16.1.7 Calculations. Determine the burn rate using the difference between the initial and final fuel (wood heater) weights and the procedures described in Section 12.4. Complete the other calculations as described in Section 12.0.

*17.0 References*

Same as Method 5G, with the addition of the following:

1. Radian Corporation. OMNI Environmental Services, Inc., Cumulative Probability for a Given Burn Rate Based on Data Generated in the CONEG and BPA Studies. Package of materials submitted to the Fifth Session of the Regulatory Negotiation Committee, July 16–17, 1986.

*18.0 Tables, Diagrams, Flowcharts, and Validation Data*

TABLE 28–1.—BURN RATE WEIGHTED PROBABILITIES FOR CALCULATING WEIGHTED AVERAGE EMISSION RATES

| Burn rate (kg/hr-dry) | Cumulative probability (P) | Burn rate (kg/hr-dry) | Cumulative probability (P) | Burn rate (kg/hr-dry) | Cumulative probability (P) |
|---|---|---|---|---|---|
| 0.00 | 0.000 | 1.70 | 0.840 | 3.40 | 0.989 |
| 0.05 | 0.002 | 1.75 | 0.857 | 3.45 | 0.989 |
| 0.10 | 0.007 | 1.80 | 0.875 | 3.50 | 0.990 |
| 0.15 | 0.012 | 1.85 | 0.882 | 3.55 | 0.991 |
| 0.20 | 0.016 | 1.90 | 0.895 | 3.60 | 0.991 |
| 0.25 | 0.021 | 1.95 | 0.906 | 3.65 | 0.992 |
| 0.30 | 0.028 | 2.00 | 0.912 | 3.70 | 0.992 |
| 0.35 | 0.033 | 2.05 | 0.920 | 3.75 | 0.992 |



TABLE 28–1.—BURN RATE WEIGHTED PROBABILITIES FOR CALCULATING WEIGHTED AVERAGE EMISSION RATES—Continued

| Burn rate (kg/hr-dry) | Cumulative probability (P) | Burn rate (kg/hr-dry) | Cumulative probability (P) | Burn rate (kg/hr-dry) | Cumulative probability (P) |
|---|---|---|---|---|---|
| 0.40 | 0.041 | 2.10 | 0.925 | 3.80 | 0.993 |
| 0.45 | 0.054 | 2.15 | 0.932 | 3.85 | 0.994 |
| 0.50 | 0.065 | 2.20 | 0.936 | 3.90 | 0.994 |
| 0.55 | 0.086 | 2.25 | 0.940 | 3.95 | 0.994 |
| 0.60 | 0.100 | 2.30 | 0.945 | 4.00 | 0.994 |
| 0.65 | 0.121 | 2.35 | 0.951 | 4.05 | 0.995 |
| 0.70 | 0.150 | 2.40 | 0.956 | 4.10 | 0.995 |
| 0.75 | 0.185 | 2.45 | 0.959 | 4.15 | 0.995 |
| 0.80 | 0.220 | 2.50 | 0.964 | 4.20 | 0.995 |
| 0.85 | 0.254 | 2.55 | 0.968 | 4.25 | 0.995 |
| 0.90 | 0.300 | 2.60 | 0.972 | 4.30 | 0.996 |
| 0.95 | 0.328 | 2.65 | 0.975 | 4.35 | 0.996 |
| 1.00 | 0.380 | 2.70 | 0.977 | 4.40 | 0.996 |
| 1.05 | 0.407 | 2.75 | 0.979 | 4.45 | 0.996 |
| 1.10 | 0.460 | 2.80 | 0.980 | 4.50 | 0.996 |
| 1.15 | 0.490 | 2.85 | 0.981 | 4.55 | 0.996 |
| 1.20 | 0.550 | 2.90 | 0.982 | 4.60 | 0.996 |
| 1.25 | 0.572 | 2.95 | 0.984 | 4.65 | 0.996 |
| 1.30 | 0.620 | 3.00 | 0.984 | 4.70 | 0.996 |
| 1.35 | 0.654 | 3.05 | 0.985 | 4.75 | 0.997 |
| 1.40 | 0.695 | 3.10 | 0.986 | 4.80 | 0.997 |
| 1.45 | 0.722 | 3.15 | 0.987 | 4.85 | 0.997 |
| 1.50 | 0.750 | 3.20 | 0.987 | 4.90 | 0.997 |
| 1.55 | 0.779 | 3.25 | 0.988 | 4.95 | 0.997 |
| 1.60 | 0.800 | 3.30 | 0.988 | ≥5.00 | 1.000 |
| 1.65 | 0.825 | 3.35 | 0.989 | ..... | ..... |

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Appliance Identification

Appliance Manufacturer _____ Address _____

_____ Agent and phone number _____

_____ Name and Model number _____

_____ Weight _____

_____ Serial number _____

Design: Catalytic _____ Noncatalytic _____

Insert _____ Freestanding _____

Woodheater Description: (Attach figure showing air supplies and firebox configuration)

Materials of construction: _____

Air Introduction System: _____

Combustion Control Mechanisms: _____

Internal Baffles: _____

Other Features: _____

Catalyst Specifications

Manufacturer _____

Serial Number _____

Age _____(Hours)

Dimensions _____(in.)

Firebox Dimensions

Volume _____($ft^3$)

Length _____(in.)

Width _____(in.)

Height _____(in.)

Adjustments (Describe) _____(in.)

Test Fuel Information
(for each Test Run)

Weight of Test Change _____(lb)

Number of 2 × 4's _____

Number of 4 × 4's _____

Length of test pieces _____(in.)

Fuel Grade (Certification) _____Fuel

Moisture Content _____(%)

Diagram or Photograph of Test Fuel Crib

Figure 28-1. Wood Heater and Test Fuel Information.



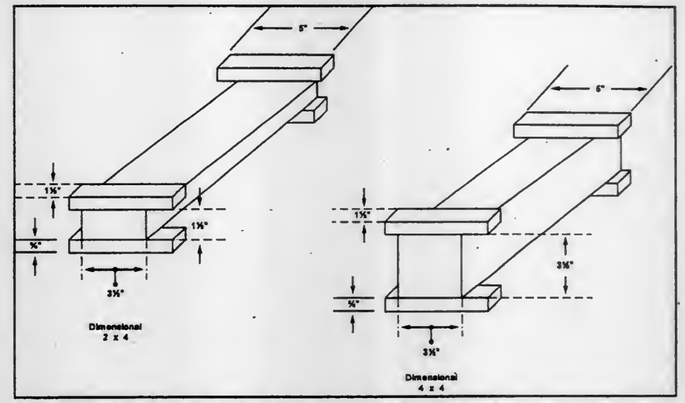



Figure 28-2. Test Fuel Spacer Dimensions.

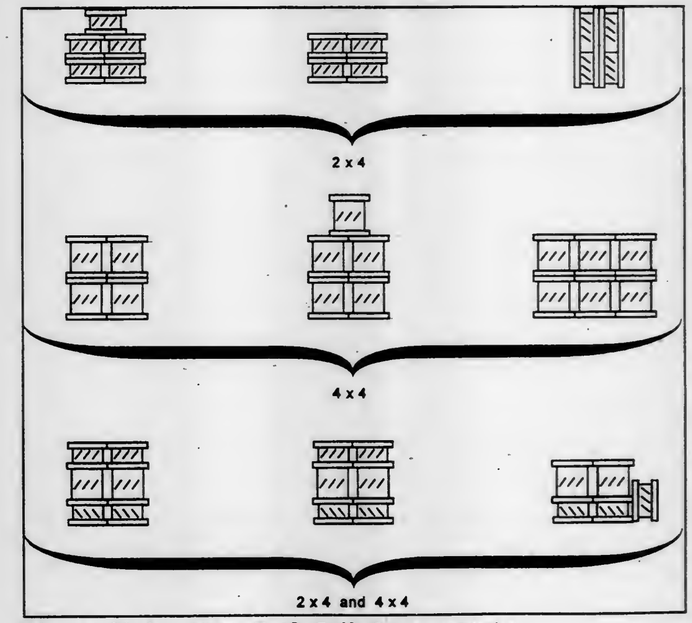



Figure 28-3. Test Fuel Crib Arrangements.

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Sheet _____ of _____

Date _____

Operator _____

Sampling Method _____

**Wood Heater Information**

Manufacturer _____

Model _____

Primary Air Setting _____

Secondary Air Setting _____

Thermostat Setting _____

Other Settings _____

**Test Run Information**

Test Run No. _____

Burn Rate _____

Room Temperature before/after ____/____

Barometric Pressure before/after ____/____

Relative Humidity before/after ____/____

Room Air Velocity before/after ____/____

Surface Temp Average Pretest _____ end _____

| Test Run Time (minutes) | Test Fuel Scale Reading (lb) | Surface Temperature | | | | | Catalyst Temperature | | Flue Draft (in. $H_2O$) |
|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | Inlet (°F) | Outlet (°F) | |
| (Pretest Period) | | | | | | | | | |
| | | | | | | | | | |
| | | | | | | | | | |
| (Test Run Start) | | | | | | | | | |
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Figure 28-4. Test Run Wood Heater Operation Data Sheet.

BILLING CODE 6560–50–C



**Method 28A—Measurement of Air- to-Fuel Ratio and Mimimum Achievable Burn Rates for Wood-Fired Appliances**

**Note:** This method does not include all or the specifications (*e.g.*, equipment and supplies) and procedures (*e.g.*, sampling and analytical) essential to its performance. Some material is incorporated by reference from other methods in this part. Therefore, to obtain reliable results, persons using this method should also have a thorough knowledge of at least the following additional test methods: Method 3, Method 3A, Method 5H, Method 6C, and Method 28.

*1.0 Scope and Application*

1.1 Analyte. Particulate matter (PM). No CAS number assigned.

1.2 Applicability. This method is applicable for the measurement of air-to-fuel ratios and minimum achievable burn rates, for determining whether a wood-fired appliance is an affected facility, as specified in 40 CFR 60.530.

1.3 Data Quality Objectives. Adherence to the requirements of this method will enhance the quality of the data obtained from air pollutant sampling methods.

*2.0 Summary of Method*

2.1 A gas sample is extracted from a location in the stack of a wood-fired appliance while the appliance is operating at a prescribed set of conditions. The gas sample is analyzed for carbon dioxide ($CO_2$), oxygen ($O_2$), and carbon monoxide (CO). These stack gas components are measured for determining the dry molecular weight of the exhaust gas. Total moles of exhaust gas are determined stoichiometrically. Air-to-fuel ratio is determined by relating the mass of dry combustion air to the mass of dry fuel consumed.

*3.0 Definitions*

Same as Method 28, Section 3.0, with the addition of the following:

3.1 Air-to-fuel ratio means the ratio of the mass of dry combustion air introduced into the firebox to the mass of dry fuel consumed (grams of dry air per gram of dry wood burned).

*4.0 Interferences [Reserved]*

*5.0 Safety*

5.1 Disclaimer. This method may involve hazardous materials, operations, and equipment. This test method may not address all of the safety problems associated with its use. It is the responsibility of the user of this test method to establish appropriate safety and health practices and to determine the applicability of regulatory limitations prior to performing this test method.

*6.0 Equipment and Supplies*

6.1 Test Facility. Insulated Solid Pack Chimney, Platform Scale and Monitor, Test Facility Temperature Monitor, Balance, Moisture Meter, Anemometer, Barometer, Draft Gauge, Humidity Gauge, Wood Heater Flue, and Test Facility. Same as Method 28, Sections 6.1, 6.2, and 6.4 to 6.12, respectively.

6.2 Sampling System. Probe, Condenser, Valve, Pump, Rate Meter, Flexible Bag, Pressure Gauge, and Vacuum Gauge. Same as Method 3, Sections 6.2.1 to 6.2.8, respectively. Alternatively, the sampling system described in Method 5H, Section 6.1 may be used.

6.3 Exhaust Gas Analysis. Use one or both of the following:

6.3.1 Orsat Analyzer. Same as Method 3, Section 6.1.3

6.3.2 Instrumental Analyzers. Same as Method 5H, Sections 6.1.3.4 and 6.1.3.5, for $CO_2$ and CO analyzers, except use a CO analyzer with a range of 0 to 5 percent and use a $CO_2$ analyzer with a range of 0 to 5 percent. Use an $O_2$ analyzer capable of providing a measure of $O_2$ in the range of 0 to 25 percent by volume at least once every 10 minutes.

*7.0 Reagents and Standards*

7.1 Test Fuel and Test Fuel Spacers. Same as Method 28, Sections 7.1 and 7.2, respectively.

7.2 Cylinder Gases. For each of the three analyzers, use the same concentration as specified in Sections 7.2.1, 7.2.2, and 7.2.3 of Method 6C.

*8.0 Sample Collection, Preservation, Storage, and Transport*

8.1 Wood Heater Air Supply Adjustments.

8.1.1 This section describes how dampers are to be set or adjusted and air inlet ports closed or sealed during Method 28A tests. The specifications in this section are intended to ensure that affected facility determinations are made on the facility configurations that could reasonably be expected to be employed by the user. They are also intended to prevent circumvention of the standard through the addition of an air port that would often be blocked off in actual use. These specifications are based on the assumption that consumers will remove such items as dampers or other closure mechanism stops if this can be done readily with household tools; that consumers will block air inlet passages not visible during normal operation of the appliance using aluminum tape or parts generally available at retail stores; and that consumers will cap off any threaded or flanged air inlets. They also assume that air leakage around glass doors, sheet metal joints or through inlet grilles visible during normal operation of the appliance would not be further blocked or taped off by a consumer.

8.1.2 It is not the intention of this section to cause an appliance that is clearly designed, intended, and, in most normal installations, used as a fireplace to be converted into a wood heater for purposes of applicability testing. Such a fireplace would be identifiable by such features as large or multiple glass doors or panels that are not gasketed, relatively unrestricted air inlets intended, in large part, to limit smoking and fogging of glass surfaces, and other aesthetic features not normally included in wood heaters.

8.1.3 Adjustable Air Supply Mechanisms. Any commercially available flue damper, other adjustment mechanism or other air inlet port that is designed, intended or otherwise reasonably expected to be adjusted or closed by consumers, installers, or dealers and which could restrict air into the firebox shall be set so as to achieve minimum air into the firebox (*i.e.*, closed off or set in the most closed position).

8.1.3.1 Flue dampers, mechanisms and air inlet ports which could reasonably be expected to be adjusted or closed would include:

8.1.3.1.1 All internal or externally adjustable mechanisms (including adjustments that affect the tightness of door fittings) that are accessible either before and/or after installation.

8.1.3.1.2 All mechanisms, other inlet ports, or inlet port stops that are identified in the owner's manual or in any dealer literature as being adjustable or alterable. For example, an inlet port that could be used to provide access to an outside air duct but which is identified as being closable through use of additional materials whether or not they are supplied with the facility.

8.1.3.1.3 Any combustion air inlet port or commercially available flue damper or mechanism stop, which would readily lend itself to closure by consumers who are handy with household tools by the removal of parts or the addition of parts generally available at retail stores (*e.g.*, addition of a pipe cap or plug, addition of a small metal plate to an inlet hole on a nondecorative sheet metal surface, or removal of riveted or screwed damper stops).

8.1.3.1.4 Any flue damper, other adjustment mechanisms or other air inlet ports that are found and documented in several (*e.g.*, a number

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sufficient to reasonably conclude that the practice is not unique or uncommon) actual installations as having been adjusted to a more closed position, or closed by consumers, installers, or dealers.

8.1.4 Air Supply Adjustments During Test. The test shall be performed with all air inlets identified under this section in the closed or most closed position or in the configuration which otherwise achieves the lowest air inlet (*i.e.*, greatest blockage).

**Note:** For the purposes of this section, air flow shall not be minimized beyond the point necessary to maintain combustion or beyond the point that forces smoke into the room.

8.1.5 Notwithstanding Section 8.1.1, any flue damper, adjustment mechanism, or air inlet port (whether or not equipped with flue dampers or adjusting mechanisms) that is visible during normal operation of the appliance and which could not reasonably be closed further or blocked except through means that would significantly degrade the aesthetics of the facility (*e.g.*, through use of duct tape) will not be closed further or blocked.

8.2 Sampling System.

8.2.1 Sampling Location. Same as Method 5H, Section 8.1.2.

8.2.2 Sampling System Set Up. Set up the sampling equipment as described in Method 3, Section 8.1.

8.3 Wood Heater Installation, Test Facility Conditions, Wood Heater Firebox Volume, and Test Fuel Charge. Same as Method 28, Sections 8.4 and 8.6 to 8.8, respectively.

8.4 Pretest Ignition. Same as Method 28, Section 8.11. Set the wood heater air supply settings to achieve a burn rate in Category 1 or the lowest achievable burn rate (see Section 8.1).

8.5 Test Run. Same as Method 28, Section 8.12. Begin sample collection at the start of the test run as defined in Method 28, Section 8.12.1.

8.5.1 Gas Analysis.

8.5.1.1 If Method 3 is used, collect a minimum of two bag samples simultaneously at a constant sampling rate for the duration of the test run. A minimum sample volume of 30 liters (1.1 $ft^3$) per bag is recommended.

8.5.1.2 If instrumental gas concentration measurement procedures are used, conduct the gas measurement system performance tests, analyzer calibration, and analyzer calibration error check outlined in Method 6C, Sections 8.2.3, 8.2.4, 8.5, and 10.0, respectively. Sample at a constant rate for the duration of the test run.

8.5.2 Data Recording. Record wood heater operational data, test facility temperature, sample train flow rate, and fuel weight data at intervals of no greater than 10 minutes.

8.5.3 Test Run Completion. Same as Method 28, Section 8.13.

*9.0 Quality Control*

9.1 Data Validation. The following quality control procedure is suggested to provide a check on the quality of the data.

9.1.1 Calculate a fuel factor, $F_o$, using Equation 28A–1 in Section 12.2.

9.1.2 If CO is present in quantities measurable by this method, adjust the $O_2$ and $CO_2$ values before performing the calculation for $F_o$ as shown in Section 12.3 and 12.4.

9.1.3 Compare the calculated $F_o$ factor with the expected $F_o$ range for wood (1.000—1.120). Calculated $F_o$ values beyond this acceptable range should be investigated before accepting the test results. For example, the strength of the solutions in the gas analyzer and the analyzing technique should be checked by sampling and analyzing a known concentration, such as air. If no detectable or correctable measurement error can be identified, the test should be repeated. Alternatively, determine a range of air-to-fuel ratio results that could include the correct value by using an $F_o$ value of 1.05 and calculating a potential range of $CO_2$ and $O_2$ values. Acceptance of such results will be based on whether the calculated range includes the exemption limit and the judgment of the Administrator.

9.2 Method 3 Analyses. Compare the results of the analyses of the two bag samples. If all the gas components ($O_2$, CO, and $CO_2$) values for the two analyses agree within 0.5 percent (*e.g.*, 6.0 percent $O_2$ for bag 1 and 6.5 percent $O_2$ for bag 2, agree within 0.5 percent), the results of the bag analyses may be averaged for the calculations in Section 12. If the analysis results do not agree within 0.5 percent for each component, calculate the air-to-fuel ratio using both sets of analyses and report the results.

*10.0 Calibration and Standardization, [Reserved]*

*11.0 Analytical Procedures*

11.1 Method 3 Integrated Bag Samples. Within 4 hours after the sample collection, analyze each bag sample for percent $CO_2$, $O_2$, and CO using an Orsat analyzer as described in Method 3, Section 11.0.

11.2 Instrumental Analyzers. Average the percent $CO_2$, CO, and $O_2$ values for the test run.

*12.0 Data Analyses and Calculations*

Carry out calculations, retaining at least one extra significant figure beyond that of the acquired data. Round off figure after the final calculation. Other forms of the equations may be used as long as they give equivalent results.

12.1 Nomenclature.

$M_d$ = Dry molecular weight, g/g-mole (lb/lb-mole).

$N_T$ = Total gram-moles of dry exhaust gas per kg of wood burned (lb-moles/lb).

$\%CO_2$ = Percent $CO_2$ by volume (dry basis).

%CO = Percent CO by volume (dry basis).

$\%N_2$ = Percent $N_2$ by volume (dry basis).

$\%O_2$ = Percent O2 by volume (dry basis).

$Y_{HC}$ = Assumed mole fraction of HC (dry as $CH_4$) = 0.0088 for catalytic wood heaters; = 0.0132 for noncatalytic wood heaters. = 0.0080 for pellet-fired wood heaters.

$Y_{CO}$ = Measured mole fraction of CO (*e.g.*, 1 percent CO = .01 mole fraction), g/g-mole (lb/lb-mole).

$Y_{CO2}$ = Measured mole fraction of $CO_{CO2}$ (*e.g.*, 10 percent $CO_2$ = .10 mole fraction), g/g-mole (lb/lb-mole).

0.280 = Molecular weight of $N_2$ or CO, divided by 100.

0.320 = Molecular weight of $O_2$ divided by 100.

0.440 = Molecular weight of $CO_2$ divided by 100.

20.9 = Percent $O_2$ by volume in ambient air.

42.5 = Gram-moles of carbon in 1 kg of dry wood assuming 51 percent carbon by weight dry basis (.0425 lb/lb-mole).

510 = Grams of carbon in exhaust gas per kg of wood burned.

1,000 = Grams in 1 kg.

12.2 Fuel Factor. Use Equation 28A–1 to calculate the fuel factor.

$$F_o = \frac{20.9 - \%O_2}{\%CO_2} \qquad \text{Eq. 28A-1}$$

12. 3 Adjusted $\%CO_2$. Use Equation 28A–2 to adjust $CO_2$ values if measurable CO is present.

$$\%CO_{2(adj)} = \%CO_2 + \%CO \qquad \text{Eq. 28A-2}$$



12.4 Adjusted $\%O_2$. Use Equation 28A–3 to adjust $O_2$ value if measurable CO is present.

$$\%O_{2(adj)} = \%O_2 - 0.5\%CO \qquad \text{Eq. 28A-3}$$

12.5 Dry Molecular Weight. Use Equation 28A–4 to calculate the dry molecular weight of the stack gas.

$$M_d = 0.440(\%CO_2) + 0.320(\%O_2) + 0.280(\%N_2 + \%CO) \qquad \text{Eq. 28A-4}$$

**Note:** The above equation does not consider argon in air (about 0.9 percent, molecular weight of 39.9). A negative error of about 0.4 percent is introduced. Argon may be included in the analysis using procedures subject to approval of the Administrator.

12.6 Dry Moles of Exhaust Gas. Use Equation 28A–5 to calculate the total moles of dry exhaust gas produced per kilogram of dry wood burned.

$$N_T = \frac{42.5}{\left(Y_{CO_2} Y_{CO} Y_{HC}\right)} \qquad \text{Eq. 28A-5}$$

12.7 Air-to-Fuel Ratio. Use Equation 28A–6 to calculate the air-to-fuel ratio on a dry mass basis.

$$A/F = \frac{(N_T \times M_d) - 510}{1{,}000} \qquad \text{Eq. 28A-6}$$

12.8 Burn Rate. Calculate the fuel burn rate as in Method 28, Section 12.4.

*13.0 Method Performance, [Reserved]*

*14.0 Pollution Prevention, [Reserved]*

*15.0 Waste Management, [Reserved]*

*16.0 References*

Same as Section 16.0 of Method 3 and Section 17 of Method 5G.

*17.0 Tables, Diagrams, Flowcharts, and Validation Data, [Reserved]*

**Method 29—Determination of Metals Emissions From Stationary Sources**

**Note:** This method does not include all of the specifications (*e.g.* equipment and supplies) and procedures (*e.g.*, sampling and analytical) essential to its performance. Some material is incorporated by reference from other methods in this part. Therefore, to obtain reliable results, persons using this method should have a thorough knowledge of at least the following additional test methods: Method 5 and Method 12.

*1.0 Scope and Application*

1.1 Analytes.

| Analyte | CAS No. |
|---|---|
| Antimony (Sb) | 7440–36–0 |
| Arsenic (As) | 7440–38–2 |
| Barium (Ba) | 7440–39–3 |
| Beryllium (Be) | 7440–41–7 |
| Cadmium (Cd) | 7440–43–9 |
| Chromium (Cr) | 7440–47–3 |
| Cobalt (Co) | 7440–48–4 |
| Copper (Cu) | 7440–50–8 |
| Lead (Pb) | 7439–92–1 |
| Manganese (Mn) | 7439–96–5 |
| Mercury (Hg) | 7439–97–6 |
| Nickel (Ni) | 7440–02–0 |
| Phosphorus (P) | 7723–14–0 |
| Selenium (Se) | 7782–49–2 |
| Silver (Ag) | 7440–22–4 |
| Thallium (Tl) | 7440–28–0 |
| Zinc (Zn) | 7440–66–6 |

1.2 Applicability. This method is applicable to the determination of metals emissions from stationary sources. This method may be used to determine particulate emissions in addition to the metals emissions if the prescribed procedures and precautions are followed.

1.2.1 Hg emissions can be measured, alternatively, using EPA Method 101A of Appendix B, 40 CFR Part 61. Method 101-A measures only Hg but it can be of special interest to sources which need to measure both Hg and Mn emissions.

*2.0 Summary of Method*

2.1 Principle. A stack sample is withdrawn isokinetically from the source, particulate emissions are collected in the probe and on a heated filter, and gaseous emissions are then collected in an aqueous acidic solution of hydrogen peroxide (analyzed for all metals including Hg) and an aqueous acidic solution of potassium permanganate (analyzed only for Hg). The recovered samples are digested, and appropriate fractions are analyzed for Hg by cold vapor atomic absorption spectroscopy (CVAAS) and for Sb, As, Ba, Be, Cd, Cr, Co, Cu, Pb, Mn, Ni, P, Se, Ag, Tl, and Zn by inductively coupled argon plasma emission spectroscopy (ICAP) or atomic absorption spectroscopy (AAS). Graphite furnace atomic absorption spectroscopy (GFAAS) is used for analysis of Sb, As, Cd, Co, Pb, Se, and Tl if these elements require greater analytical sensitivity than can be obtained by ICAP. If one so chooses, AAS may be used for analysis of all listed metals if the resulting in-stack method detection limits meet the goal of the testing program. Similarly, inductively coupled plasma-mass spectroscopy (ICP-MS) may be used for analysis of Sb, As, Ba, Be, Cd, Cr, Co, Cu, Pb, Mn, Ni, Ag, Tl and Zn.

*3.0 Definitions. [Reserved]*

*4.0 Interferences*

4.1 Iron (Fe) can be a spectral interference during the analysis of As, Cr, and Cd by ICAP. Aluminum (Al) can be a spectral interference during the analysis of As and Pb by ICAP. Generally, these interferences can be reduced by diluting the analytical sample, but such dilution raises the in-stack detection limits. Background and overlap corrections may be used to adjust for spectral interferences. Refer to Method 6010 of Reference 2 in Section 16.0 or the other analytical methods used for details on potential interferences to this method. For all GFAAS analyses, use matrix modifiers to limit interferences, and matrix match all standards.

*5.0 Safety*

5.1 Disclaimer. This method may involve hazardous materials, operations, and equipment. This test method may not address all of the safety problems associated with its use. It is the responsibility of the user of this test method to establish appropriate safety and health practices and to determine the applicability of regulatory limitations prior to performing this test method.

5.2 Corrosive Reagents. The following reagents are hazardous. Personal protective equipment and safe procedures are useful in preventing

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chemical splashes. If contact occurs, immediately flush with copious amounts of water at least 15 minutes. Remove clothing under shower and decontaminate. Treat residual chemical burn as thermal burn.

5.2.1 Nitric Acid ($HNO_3$). Highly corrosive to eyes, skin, nose, and lungs. Vapors cause bronchitis, pneumonia, or edema of lungs. Reaction to inhalation may be delayed as long as 30 hours and still be fatal. Provide ventilation to limit exposure. Strong oxidizer. Hazardous reaction may occur with organic materials such as solvents.

5.2.2 Sulfuric Acid ($H_2SO_4$). Rapidly destructive to body tissue. Will cause third degree burns. Eye damage may result in blindness. Inhalation may be fatal from spasm of the larynx, usually within 30 minutes. May cause lung tissue damage with edema. 1 $mg/m^3$ for 8 hours will cause lung damage or, in higher concentrations, death. Provide ventilation to limit inhalation. Reacts violently with metals and organics.

5.2.3 Hydrochloric Acid (HC1). Highly corrosive liquid with toxic vapors. Vapors are highly irritating to eyes, skin, nose, and lungs, causing severe damage. May cause bronchitis, pneumonia, or edema of lungs. Exposure to concentrations of 0.13 to 0.2 percent can be lethal to humans in a few minutes. Provide ventilation to limit exposure. Reacts with metals, producing hydrogen gas.

5.2.4 Hydrofluoric Acid (HF). Highly corrosive to eyes, skin, nose, throat, and lungs. Reaction to exposure may be delayed by 24 hours or more. Provide ventilation to limit exposure.

5.2.5 Hydrogen Peroxide ($H_2O_2$). Irritating to eyes, skin, nose, and lungs. 30% $H_2O_2$ is a strong oxidizing agent. Avoid contact with skin, eyes, and combustible material. Wear gloves when handling.

5.2.6 Potassium Permanganate ($KMnO_4$). Caustic, strong oxidizer. Avoid bodily contact with.

5.2.7 Potassium Persulfate. Strong oxidizer. Avoid bodily contact with. Keep containers well closed and in a cool place.

5.3 Reaction Pressure. Due to the potential reaction of the potassium permanganate with the acid, there could be pressure buildup in the acidic $KMnO_4$ absorbing solution storage bottle. Therefore these bottles shall not be fully filled and shall be vented to relieve excess pressure and prevent explosion potentials. Venting is required, but not in a manner that will allow contamination of the solution. A No. 70–72 hole drilled in the container cap and Teflon liner has been used.

*6.0 Equipment and Supplies*

6.1 Sampling. A schematic of the sampling train is shown in Figure 29–1. It has general similarities to the Method 5 train.

6.1.1 Probe Nozzle (Probe Tip) and Borosilicate or Quartz Glass Probe Liner. Same as Method 5, Sections 6.1.1.1 and 6.1.1.2, except that glass nozzles are required unless alternate tips are constructed of materials that are free from contamination and will not interfere with the sample. If a probe tip other than glass is used, no correction to the sample test results to compensate for the nozzle's effect on the sample is allowed. Probe fittings of plastic such as Teflon, polypropylene, etc. are recommended instead of metal fittings to prevent contamination. If one chooses to do so, a single glass piece consisting of a combined probe tip and probe liner may be used.

6.1.2 Pitot Tube and Differential Pressure Gauge. Same as Method 2, Sections 6.1 and 6.2, respectively.

6.1.3 Filter Holder. Glass, same as Method 5, Section 6.1.1.5, except use a Teflon filter support or other non-metallic, non-contaminating support in place of the glass frit.

6.1.4 Filter Heating System. Same as Method 5, Section 6.1.1.6.

6.1.5 Condenser. Use the following system for condensing and collecting gaseous metals and determining the moisture content of the stack gas. The condensing system shall consist of four to seven impingers connected in series with leak-free ground glass fittings or other leak-free, non-contaminating fittings. Use the first impinger as a moisture trap. The second impinger (which is the first $HNO_3/H_2O_2$ impinger) shall be identical to the first impinger in Method 5. The third impinger (which is the second $HNO_3/H_2O_2$ impinger) shall be a Greenburg Smith impinger with the standard tip as described for the second impinger in Method 5, Section 6.1.1.8. The fourth (empty) impinger and the fifth and sixth (both acidified $KMnO_4$) impingers are the same as the first impinger in Method 5. Place a temperature sensor capable of measuring to within 1 °C (2 °F) at the outlet of the last impinger. If no Hg analysis is planned, then the fourth, fifth, and sixth impingers are not used.

6.1.6 Metering System, Barometer, and Gas Density Determination Equipment. Same as Method 5, Sections 6.1.1.9, 6.1.2, and 6.1.3, respectively.

6.1.7 Teflon Tape. For capping openings and sealing connections, if necessary, on the sampling train.

6.2 Sample Recovery. Same as Method 5, Sections 6.2.1 through 6.2.8 (Probe-Liner and Probe-Nozzle Brushes or Swabs, Wash Bottles, Sample Storage Containers, Petri Dishes, Glass Graduated Cylinder, Plastic Storage Containers, Funnel and Rubber Policeman, and Glass Funnel), respectively, with the following exceptions and additions:

6.2.1 Non-metallic Probe-Liner and Probe-Nozzle Brushes or Swabs. Use non-metallic probe-liner and probe-nozzle brushes or swabs for quantitative recovery of materials collected in the front-half of the sampling train.

6.2.2 Sample Storage Containers. Use glass bottles (see Section 8.1 of this Method) with Teflon-lined caps that are non-reactive to the oxidizing solutions, with capacities of 1000- and 500-ml, for storage of acidified $KMnO_4$—containing samples and blanks. Glass or polyethylene bottles may be used for other sample types.

6.2.3 Graduated Cylinder. Glass or equivalent.

6.2.4 Funnel. Glass or equivalent.

6.2.5 Labels. For identifying samples.

6.2.6 Polypropylene Tweezers and/or Plastic Gloves. For recovery of the filter from the sampling train filter holder.

6.3 Sample Preparation and Analysis.

6.3.1 Volumetric Flasks, 100-ml, 250-ml, and 1000-ml. For preparation of standards and sample dilutions.

6.3.2 Graduated Cylinders. For preparation of reagents.

6.3.3 Parr Bombs or Microwave Pressure Relief Vessels with Capping Station (CEM Corporation model or equivalent). For sample digestion.

6.3.4 Beakers and Watch Glasses. 250-ml beakers, with watch glass covers, for sample digestion.

6.3.5 Ring Stands and Clamps. For securing equipment such as filtration apparatus.

6.3.6 Filter Funnels. For holding filter paper.

6.3.7 Disposable Pasteur Pipets and Bulbs.

6.3.8 Volumetric Pipets.

6.3.9 Analytical Balance. Accurate to within 0.1 mg.

6.3.10 Microwave or Conventional Oven. For heating samples at fixed power levels or temperatures, respectively.

6.3.11 Hot Plates.

6.3.12 Atomic Absorption Spectrometer (AAS). Equipped with a background corrector.

6.3.12.1 Graphite Furnace Attachment. With Sb, As, Cd, Co, Pb, Se, and Tl hollow cathode lamps (HCLs) or electrodeless discharge lamps (EDLs). Same as Reference 2 in Section 16.0.



Methods 7041 (Sb), 7060 (As), 7131 (Cd), 7201 (Co), 7421 (Pb), 7740 (Se), and 7841 (Tl).

6.3.12.2 Cold Vapor Mercury Attachment. With a mercury HCL or EDL, an air recirculation pump, a quartz cell, an aerator apparatus, and a heat lamp or desiccator tube. The heat lamp shall be capable of raising the temperature at the quartz cell by 10°C above ambient, so that no condensation forms on the wall of the quartz cell. Same as Method 7470 in Reference 2 in Section 16.0. See **Note 2:** Section 11.1.3 for other acceptable approaches for analysis of Hg in which analytical detection limits of 0.002 ng/ml were obtained.

6.3.13 Inductively Coupled Argon Plasma Spectrometer. With either a direct or sequential reader and an alumina torch. Same as EPA Method 6010 in Reference 2 in Section 16.0.

6.3.14 Inductively Coupled Plasma-Mass Spectrometer.

Same as EPA Method 6020 in Reference 2 in Section 16.0.

*7.0 Reagents and Standards*

7.1 Unless otherwise indicated, it is intended that all reagents conform to the specifications established by the Committee on Analytical Reagents of the American Chemical Society, where such specifications are available. Otherwise, use the best available grade.

7.2 Sampling Reagents.

7.2.1 Sample Filters. Without organic binders. The filters shall contain less than 1.3 $\mu g/in.^2$ of each of the metals to be measured. Analytical results provided by filter manufacturers stating metals content of the filters are acceptable. However, if no such results are available, analyze filter blanks for each target metal prior to emission testing. Quartz fiber filters meeting these requirements are recommended. However, if glass fiber filters become available which meet these requirements, they may be used. Filter efficiencies and unreactiveness to sulfur dioxide ($SO_2$) or sulfur trioxide ($SO_3$) shall be as described in Section 7.1.1 of Method 5.

7.2.2 Water. To conform to ASTM Specification D1193–77 or 91, Type II (incorporated by reference—see § 60.17). If necessary, analyze the water for all target metals prior to field use. All target metals should be less than 1 ng/ml.

7.2.3 $HNO_3$, Concentrated. Baker Instra-analyzed or equivalent.

7.2.4 HCl, Concentrated. Baker Instra-analyzed or equivalent.

7.2.5 $H_2O_2$, 30 Percent (V/V).

7.2.6 $KMnO_4$.

7.2.7 $H_2SO_4$, Concentrated.

7.2.8 Silica Gel and Crushed Ice. Same as Method 5, Sections 7.1.2 and 7.1.4, respectively.

7.3 Pretest Preparation of Sampling Reagents.

7.3.1 $HNO_3/H_2O_2$ Absorbing Solution, 5 Percent $HNO_3$/10 Percent $H_2O_2$. Add carefully with stirring 50 ml of concentrated $HNO_3$ to a 1000-ml volumetric flask containing approximately 500 ml of water, and then add carefully with stirring 333 ml of 30 percent $H_2O_2$. Dilute to volume with water. Mix well. This reagent shall contain less than 2 ng/ml of each target metal.

7.3.2 Acidic $KMnO_4$ Absorbing Solution, 4 Percent $KMnO_4$ (W/V), 10 Percent $H_2SO_4$ (V/V). Prepare fresh daily. Mix carefully, with stirring, 100 ml of concentrated $H_2SO_4$ into approximately 800 ml of water, and add water with stirring to make a volume of 1 liter: this solution is 10 percent $H_2SO_4$ (V/V). Dissolve, with stirring, 40 g of $KMnO_4$ into 10 percent $H_2SO_4$ (V/V) and add 10 percent $H_2SO_4$ (V/V) with stirring to make a volume of 1 liter. Prepare and store in glass bottles to prevent degradation. This reagent shall contain less than 2 ng/ml of Hg.

*Precaution:* To prevent autocatalytic decomposition of the permanganate solution, filter the solution through Whatman 541 filter paper.

7.3.3 $HNO_3$, 0.1 N. Add with stirring 6.3 ml of concentrated $HNO_3$ (70 percent) to a flask containing approximately 900 ml of water. Dilute to 1000 ml with water. Mix well. This reagent shall contain less than 2 ng/ml of each target metal.

7.3.4 HCl, 8 N. Carefully add with stirring 690 ml of concentrated HCl to a flask containing 250 ml of water. Dilute to 1000 ml with water. Mix well. This reagent shall contain less than 2 ng/ml of Hg.

7.4 Glassware Cleaning Reagents.

7.4.1 $HNO_3$, Concentrated. Fisher ACS grade or equivalent.

7.4.2 Water. To conform to ASTM Specifications D1193, Type II.

7.4.3 $HNO_3$, 10 Percent (V/V). Add with stirring 500 ml of concentrated $HNO_3$ to a flask containing approximately 4000 ml of water. Dilute to 5000 ml with water. Mix well. This reagent shall contain less than 2 ng/ml of each target metal.

7.5 Sample Digestion and Analysis Reagents. The metals standards, except Hg, may also be made from solid chemicals as described in Reference 3 in Section 16.0. Refer to References 1, 2, or 5 in Section 16.0 for additional information on Hg standards. The 1000 µg/ml Hg stock solution standard may be made according to Section 7.2.7 of Method 101A.

7.5.1 HCl, Concentrated.

7.5.2 HF, Concentrated.

7.5.3 $HNO_3$, Concentrated. Baker Instra-analyzed or equivalent.

7.5.4 $HNO_3$, 50 Percent (V/V). Add with stirring 125 ml of concentrated $HNO_3$ to 100 ml of water. Dilute to 250 ml with water. Mix well. This reagent shall contain less than 2 ng/ml of each target metal.

7.5.5 $HNO_3$, 5 Percent (V/V). Add with stirring 50 ml of concentrated $HNO_3$ to 800 ml of water. Dilute to 1000 ml with water. Mix well. This reagent shall contain less than 2 ng/ml of each target metal.

7.5.6 Water. To conform to ASTM Specifications D1193, Type II.

7.5.7 Hydroxylamine Hydrochloride and Sodium Chloride Solution. See Reference 2 In Section 16.0 for preparation.

7.5.8 Stannous Chloride. See Reference 2 in Section 16.0 for preparation.

7.5.9 $KMnO_4$, 5 Percent (W/V). See Reference 2 in Section 16.0 for preparation.

7.5.10 $H_2SO_4$, Concentrated.

7.5.11 Potassium Persulfate, 5 Percent (W/V). See Reference 2 in Section 16.0 for preparation.

7.5.12 Nickel Nitrate, $Ni(N0_3)_2 6H_20$.

7.5.13 Lanthanum Oxide, $La_20_3$.

7.5.14 Hg Standard (AAS Grade), 1000 µg/ml.

7.5.15 Pb Standard (AAS Grade), 1000 µg/ml.

7.5.16 As Standard (AAS Grade), 1000 µg/ml.

7.5.17 Cd Standard (AAS Grade), 1000 µg/ml.

7.5.18 Cr Standard (AAS Grade), 1000 µg/ml.

7.5.19 Sb Standard (AAS Grade), 1000 µg/ml.

7.5.20 Ba Standard (AAS Grade), 1000 µg/ml.

7.5.21 Be Standard (AAS Grade), 1000 µg/ml.

7.5.22 Co Standard (AAS Grade), 1000 µg/ml.

7.5.23 Cu Standard (AAS Grade), 1000 µg/ml.

7.5.24 Mn Standard (AAS Grade), 1000 µg/ml.

7.5.25 Ni Standard (AAS Grade), 1000 µg/ml.

7.5.26 P Standard (AAS Grade), 1000 µg/ml.

7.5.27 Se Standard (AAS Grade), 1000 µg/ml.

7.5.28 Ag Standard (AAS Grade), 1000 µg/ml.

7.5.29 Tl Standard (AAS Grade), 1000 µg/ml.

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7.5.30 Zn Standard (AAS Grade), 1000 µg/ml.

7.5.31 Al Standard (AAS Grade), 1000 µg/ml.

7.5.32 Fe Standard (AAS Grade), 1000 µg/ml.

7.5.33 Hg Standards and Quality Control Samples. Prepare fresh weekly a 10 µg/ml intermediate Hg standard by adding 5 ml of 1000 µg/ml Hg stock solution prepared according to Method 101A to a 500-ml volumetric flask; dilute with stirring to 500 ml by first carefully adding 20 ml of 15 percent $HNO_3$ and then adding water to the 500-ml volume. Mix well. Prepare a 200 ng/ml working Hg standard solution fresh daily: add 5 ml of the 10 µg/ml intermediate standard to a 250-ml volumetric flask, and dilute to 250 ml with 5 ml of 4 percent $KMnO_4$, 5 ml of 15 percent $HNO_3$, and then water. Mix well. Use at least five separate aliquots of the working Hg standard solution and a blank to prepare the standard curve. These aliquots and blank shall contain 0.0, 1.0, 2.0, 3.0, 4.0, and 5.0 ml of the working standard solution containing 0, 200, 400, 600, 800, and 1000 ng Hg, respectively. Prepare quality control samples by making a separate 10 µg/ml standard and diluting until in the calibration range.

7.5.34 ICAP Standards and Quality Control Samples. Calibration standards for ICAP analysis can be combined into four different mixed standard solutions as follows:

MIXED STANDARD SOLUTIONS FOR ICAP ANALYSIS

| Solution | Elements |
|---|---|
| I | As, Be, Cd, Mn, Pb, Se, Zn. |
| II | Ba, Co, Cu, Fe. |
| III | Al, Cr, Ni. |
| IV | Ag, P, Sb, Tl. |

Prepare these standards by combining and diluting the appropriate volumes of the 1000 µg/ml solutions with 5 percent $HNO_3$. A minimum of one standard and a blank can be used to form each calibration curve. However, prepare a separate quality control sample spiked with known amounts of the target metals in quantities in the mid-range of the calibration curve. Suggested standard levels are 25 µg/ml for Al, Cr and Pb, 15 µg/ml for Fe, and 10 µg/ml for the remaining elements. Prepare any standards containing less than 1 µg/ml of metal on a daily basis. Standards containing greater than 1 µg/ml of metal should be stable for a minimum of 1 to 2 weeks. For ICP–MS, follow Method 6020 in EPA Publication SW–846 Third Edition (November 1986) including updates I, II, IIA, IIB and III, as incorporated by reference in § 60.17(i).

7.5.35 GFAAS Standards. Sb, As, Cd, Co, Pb, Se, and Tl. Prepare a 10 µg/ml standard by adding 1 ml of 1000 µg/ml standard to a 100-ml volumetric flask. Dilute with stirring to 100 ml with 10 percent $HNO_3$. For GFAAS, matrix match the standards. Prepare a 100 ng/ml standard by adding 1 ml of the 10 µg/ml standard to a 100-ml volumetric flask, and dilute to 100 ml with the appropriate matrix solution. Prepare other standards by diluting the 100 ng/ml standards. Use at least five standards to make up the standard curve. Suggested levels are 0, 10, 50, 75, and 100 ng/ml. Prepare quality control samples by making a separate 10 µg/ml standard and diluting until it is in the range of the samples. Prepare any standards containing less than 1 µg/ml of metal on a daily basis. Standards containing greater than 1 µg/ml of metal should be stable for a minimum of 1 to 2 weeks.

7.5.36 Matrix Modifiers.

7.5.36.1 Nickel Nitrate, 1 Percent (V/V). Dissolve 4.956 g of $Ni(N0_3)_2{\cdot}6H_20$ or other nickel compound suitable for preparation of this matrix modifier in approximately 50 ml of water in a 100-ml volumetric flask. Dilute to 100 ml with water.

7.5.36.2 Nickel Nitrate, 0.1 Percent (V/V). Dilute 10 ml of 1 percent nickel nitrate solution to 100 ml with water. Inject an equal amount of sample and this modifier into the graphite furnace during GFAAS analysis for As.

7.5.36.3 Lanthanum. Carefully dissolve 0.5864 g of $La_20_3$ in 10 ml of concentrated $HN0_3$, and dilute the solution by adding it with stirring to approximately 50 ml of water. Dilute to 100 ml with water, and mix well. Inject an equal amount of sample and this modifier into the graphite furnace during GFAAS analysis for Pb.

7.5.37 Whatman 40 and 541 Filter Papers (or equivalent). For filtration of digested samples.

*8.0 Sample Collection, Preservation, Transport, and Storage*

8.1 Sampling. The complexity of this method is such that, to obtain reliable results, both testers and analysts must be trained and experienced with the test procedures, including source sampling; reagent preparation and handling; sample handling; safety equipment and procedures; analytical calculations; reporting; and the specific procedural descriptions throughout this method.

8.1.1 Pretest Preparation. Follow the same general procedure given in Method 5, Section 8.1, except that, unless particulate emissions are to be determined, the filter need not be desiccated or weighed. First, rinse all sampling train glassware with hot tap water and then wash in hot soapy water. Next, rinse glassware three times with tap water, followed by three additional rinses with water. Then soak all glassware in a 10 percent (V/V) nitric acid solution for a minimum of 4 hours, rinse three times with water, rinse a final time with acetone, and allow to air dry. Cover all glassware openings where contamination can occur until the sampling train is assembled for sampling.

8.1.2 Preliminary Determinations. Same as Method 5, Section 8.1.2.

8.1.3 Preparation of Sampling Train.

8.1.3.1 Set up the sampling train as shown in Figure 29–1. Follow the same general procedures given in Method 5, Section 8.3, except place 100 ml of the $HNO_3/H_2O_2$ solution (Section 7.3.1 of this method) in each of the second and third impingers as shown in Figure 29–1. Place 100 ml of the acidic $KMnO_4$ absorbing solution (Section 7.3.2 of this method) in each of the fifth and sixth impingers as shown in Figure 29–1, and transfer approximately 200 to 300 g of pre-weighed silica gel from its container to the last impinger. Alternatively, the silica gel may be weighed directly in the impinger just prior to final train assembly.

8.1.3.2 Based on the specific source sampling conditions, the use of an empty first impinger can be eliminated if the moisture to be collected in the impingers will be less than approximately 100 ml.

8.1.3.3 If Hg analysis will not be performed, the fourth, fifth, and sixth impingers as shown in Figure 29–1 are not required.

8.1.3.4 To insure leak-free sampling train connections and to prevent possible sample contamination problems, use Teflon tape or other non-contaminating material instead of silicone grease.

*Precaution:* Exercise extreme care to prevent contamination within the train. Prevent the acidic $KMnO_4$ from contacting any glassware that contains sample material to be analyzed for Mn. Prevent acidic $H_2O_2$ from mixing with the acidic $KMnO_4$.

8.1.4 Leak-Check Procedures. Follow the leak-check procedures given in Method 5, Section 8.4.2 (Pretest Leak-Check), Section 8.4.3 (Leak-Checks During the Sample Run), and Section 8.4.4 (Post-Test Leak-Checks).

8.1.5 Sampling Train Operation. Follow the procedures given in Method 5, Section 8.5. When sampling for Hg, use a procedure analogous to that



described in Section 8.1 of Method 101A, 40 CFR Part 61, Appendix B, if necessary to maintain the desired color in the last acidified permanganate impinger. For each run, record the data required on a data sheet such as the one shown in Figure 5–3 of Method 5.

8.1.6 Calculation of Percent Isokinetic. Same as Method 5, Section 12.11.

8.2 Sample Recovery.

8.2.1 Begin cleanup procedures as soon as the probe is removed from the stack at the end of a sampling period. The probe should be allowed to cool prior to sample recovery. When it can be safely handled, wipe off all external particulate matter near the tip of the probe nozzle and place a rinsed, non-contaminating cap over the probe nozzle to prevent losing or gaining particulate matter. Do not cap the probe tip tightly while the sampling train is cooling; a vacuum can form in the filter holder with the undesired result of drawing liquid from the impingers onto the filter.

8.2.2 Before moving the sampling train to the cleanup site, remove the probe from the sampling train and cap the open outlet. Be careful not to lose any condensate that might be present. Cap the filter inlet where the probe was fastened. Remove the umbilical cord from the last impinger and cap the impinger. Cap the filter holder outlet and impinger inlet. Use non-contaminating caps, whether ground-glass stoppers, plastic caps, serum caps, or Teflon® tape to close these openings.

8.2.3 Alternatively, the following procedure may be used to disassemble the train before the probe and filter holder/oven are completely cooled: Initially disconnect the filter holder outlet/impinger inlet and loosely cap the open ends. Then disconnect the probe from the filter holder or cyclone inlet and loosely cap the open ends. Cap the probe tip and remove the umbilical cord as previously described.

8.2.4 Transfer the probe and filter-impinger assembly to a cleanup area that is clean and protected from the wind and other potential causes of contamination or loss of sample. Inspect the train before and during disassembly and note any abnormal conditions. Take special precautions to assure that all the items necessary for recovery do not contaminate the samples. The sample is recovered and treated as follows (see schematic in Figures 29–2a and 29–2b):

8.2.5 Container No. 1 (Sample Filter). Carefully remove the filter from the filter holder and place it in its labeled petri dish container. To handle the filter, use either acid-washed polypropylene or Teflon coated tweezers or clean, disposable surgical gloves rinsed with water and dried. If it is necessary to fold the filter, make certain the particulate cake is inside the fold. Carefully transfer the filter and any particulate matter or filter fibers that adhere to the filter holder gasket to the petri dish by using a dry (acid-cleaned) nylon bristle brush. Do not use any metal-containing materials when recovering this train. Seal the labeled petri dish.

8.2.6 Container No. 2 (Acetone Rinse). Perform this procedure only if a determination of particulate emissions is to be made. Quantitatively recover particulate matter and any condensate from the probe nozzle, probe fitting, probe liner, and front half of the filter holder by washing these components with a total of 100 ml of acetone, while simultaneously taking great care to see that no dust on the outside of the probe or other surfaces gets in the sample. The use of exactly 100 ml is necessary for the subsequent blank correction procedures. Distilled water may be used instead of acetone when approved by the Administrator and shall be used when specified by the Administrator; in these cases, save a water blank and follow the Administrator's directions on analysis.

8.2.6.1 Carefully remove the probe nozzle, and clean the inside surface by rinsing with acetone from a wash bottle while brushing with a non-metallic brush. Brush until the acetone rinse shows no visible particles, then make a final rinse of the inside surface with acetone.

8.2.6.2 Brush and rinse the sample exposed inside parts of the probe fitting with acetone in a similar way until no visible particles remain. Rinse the probe liner with acetone by tilting and rotating the probe while squirting acetone into its upper end so that all inside surfaces will be wetted with acetone. Allow the acetone to drain from the lower end into the sample container. A funnel may be used to aid in transferring liquid washings to the container. Follow the acetone rinse with a non-metallic probe brush. Hold the probe in an inclined position, squirt acetone into the upper end as the probe brush is being pushed with a twisting action three times through the probe. Hold a sample container underneath the lower end of the probe, and catch any acetone and particulate matter which is brushed through the probe until no visible particulate matter is carried out with the acetone or until none remains in the probe liner on visual inspection. Rinse the brush with acetone, and quantitatively collect these washings in the sample container. After the brushing, make a final acetone rinse of the probe as described above.

8.2.6.3 It is recommended that two people clean the probe to minimize sample losses. Between sampling runs, keep brushes clean and protected from contamination. Clean the inside of the front-half of the filter holder by rubbing the surfaces with a non-metallic brush and rinsing with acetone. Rinse each surface three times or more if needed to remove visible particulate. Make a final rinse of the brush and filter holder. After all acetone washings and particulate matter have been collected in the sample container, tighten the lid so that acetone will not leak out when shipped to the laboratory. Mark the height of the fluid level to determine whether or not leakage occurred during transport. Clearly label the container to identify its contents.

8.2.7 Container No. 3 (Probe Rinse). Keep the probe assembly clean and free from contamination during the probe rinse. Rinse the probe nozzle and fitting, probe liner, and front-half of the filter holder thoroughly with a total of 100 ml of 0.1 N $HNO_3$, and place the wash into a sample storage container. Perform the rinses as applicable and generally as described in Method 12, Section 8.7.1. Record the volume of the rinses. Mark the height of the fluid level on the outside of the storage container and use this mark to determine if leakage occurs during transport. Seal the container, and clearly label the contents. Finally, rinse the nozzle, probe liner, and front-half of the filter holder with water followed by acetone, and discard these rinses.

**Note:** The use of a total of exactly 100 ml is necessary for the subsequent blank correction procedures.

8.2.8 Container No. 4 (Impingers 1 through 3, Moisture Knockout Impinger, when used, $HNO_3/H_2O_2$ Impingers Contents and Rinses). Due to the potentially large quantity of liquid involved, the tester may place the impinger solutions from impingers 1 through 3 in more than one container, if necessary. Measure the liquid in the first three impingers to within 0.5 ml using a graduated cylinder. Record the volume. This information is required to calculate the moisture content of the sampled flue gas. Clean each of the first three impingers, the filter support, the back half of the filter housing, and connecting glassware by thoroughly rinsing with 100 ml of 0.1 N $HNO_3$ using the procedure as applicable in Method 12, Section 8.7.3.

**Note:** The use of exactly 100 ml of 0.1 N $HNO_3$ rinse is necessary for the subsequent blank correction procedures. Combine the rinses and impinger solutions, measure and

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record the final total volume. Mark the height of the fluid level, seal the container, and clearly label the contents.

8.2.9 Container Nos. 5A (0.1 N $HNO_3$), 5B ($KMnO_4/H_2SO_4$ absorbing solution), and 5C (8 N HCl rinse and dilution).

8.2.9.1 When sampling for Hg, pour all the liquid from the impinger (normally impinger No. 4) that immediately preceded the two permanganate impingers into a graduated cylinder and measure the volume to within 0.5 ml. This information is required to calculate the moisture content of the sampled flue gas. Place the liquid in Container No. 5A. Rinse the impinger with exactly 100 ml of 0.1 N $HNO_3$ and place this rinse in Container No. 5A.

8.2.9.2 Pour all the liquid from the two permanganate impingers into a graduated cylinder and measure the volume to within 0.5 ml. This information is required to calculate the moisture content of the sampled flue gas. Place this acidic $KMnO_4$ solution into Container No. 5B. Using a total of exactly 100 ml of fresh acidified $KMnO_4$ solution for all rinses (approximately 33 ml per rinse), rinse the two permanganate impingers and connecting glassware a minimum of three times. Pour the rinses into Container No. 5B, carefully assuring transfer of all loose precipitated materials from the two impingers. Similarly, using 100 ml total of water, rinse the permanganate impingers and connecting glass a minimum of three times, and pour the rinses into Container 5B, carefully assuring transfer of any loose precipitated material. Mark the height of the fluid level, and clearly label the contents. Read the *Precaution:* in Section 7.3.2.

**Note:** Due to the potential reaction of $KMnO_4$ with acid, pressure huildup can occur in the sample storage bottles. Do not fill these bottles completely and take precautions to relieve excess pressure. A No. 70–72 hole drilled in the container cap and Teflon liner has been used successfully.

8.2.9.3 If no visible deposits remain after the water rinse, no further rinse is necessary. However, if deposits remain on the impinger surfaces, wash them with 25 ml of 8 N HCl, and place the wash in a separate sample container labeled No. 5C containing 200 ml of water. First, place 200 ml of water in the container. Then wash the impinger walls and stem with the HCl by turning the impinger on its side and rotating it so that the HCl contacts all inside surfaces. Use a total of only 25 ml of 8 N HCl for rinsing *both permanganate impingers combined.* Rinse the first impinger, then pour the actual rinse used for the first impinger into the second impinger for its rinse. Finally, pour the 25 ml of 8 N HCl rinse carefully into the container. Mark the height of the fluid level on the outside of the container to determine if leakage occurs during transport.

8.2.10 Container No. 6 (Silica Gel). Note the color of the indicating silica gel to determine whether it has been completely spent and make a notation of its condition. Transfer the silica gel from its impinger to its original container and seal it. The tester may use a funnel to pour the silica gel and a rubber policeman to remove the silica gel from the impinger. The small amount of particles that might adhere to the impinger wall need not be removed. Do not use water or other liquids to transfer the silica gel since weight gained in the silica gel impinger is used for moisture calculations. Alternatively, if a balance is available in the field, record the weight of the spent silica gel (or silica gel plus impinger) to the nearest 0.5 g.

8.2.11 Container No. 7 (Acetone Blank). If particulate emissions are to be determined, at least once during each field test, place a 100-ml portion of the acetone used in the sample recovery process into a container labeled No. 7. Seal the container.

8.2.12 Container No. 8A (0.1 N $HNO_3$ Blank). At least once during each field test, place 300 ml of the 0.1 N $HNO_3$ solution used in the sample recovery process into a container labeled No. 8A. Seal the container.

8.2.13 Container No. 8B (Water Blank). At least once during each field test, place 100 ml of the water used in the sample recovery process into a container labeled No. 8B. Seal the container.

8.2.14 Container No. 9 (5 Percent $HNO_3$/10 Percent $H_2O_2$ Blank). At least once during each field test, place 200 ml of the 5 Percent $HNO_3$/10 Percent $H_2O_2$ solution used as the nitric acid impinger reagent into a container labeled No. 9. Seal the container.

8.2.15 Container No. 10 (Acidified $KMnO_4$ Blank). At least once during each field test, place 100 ml of the acidified $KMnO_4$ solution used as the impinger solution and in the sample recovery process into a container labeled No. 10. Prepare the container as described in Section 8.2.9.2. Read the *Precaution:* in Section 7.3.2 and read the **NOTE** in Section 8.2.9.2.

8.2.16 Container No. 11 (8 N HCl Blank). At least once during each field test, place 200 ml of water into a sample container labeled No. 11. Then carefully add with stirring 25 ml of 8 N HCl. Mix well and seal the container.

8.2.17 Container No. 12 (Sample Filter Blank). Once during each field test, place into a petri dish labeled No. 12 three unused blank filters from the same lot as the sampling filters. Seal the petri dish.

8.3 Sample Preparation. Note the level of the liquid in each of the containers and determine if any sample was lost during shipment. If a noticeable amount of leakage has occurred, either void the sample or use methods, subject to the approval of the Administrator, to correct the final results. A diagram illustrating sample preparation and analysis procedures for each of the sample train components is shown in Figure 29–3.

8.3.1 Container No. 1 (Sample Filter).

8.3.1.1 If particulate emissions are being determined, first desiccate the filter and filter catch without added heat (do not heat the filters to speed the drying) and weigh to a constant weight as described in Section 11.2.1 of Method 5.

8.3.1.2 Following this procedure, or initially, if particulate emissions are not being determined in addition to metals analysis, divide the filter with its filter catch into portions containing approximately 0.5 g each. Place the pieces in the analyst's choice of either individual microwave pressure relief vessels or Parr Bombs. Add 6 ml of concentrated $HNO_3$ and 4 ml of concentrated HF to each vessel. For microwave heating, microwave the samples for approximately 12 to 15 minutes total heating time as follows: heat for 2 to 3 minutes, then turn off the microwave for 2 to 3 minutes, then heat for 2 to 3 minutes, etc., continue this alternation until the 12 to 15 minutes total heating time are completed (this procedure should comprise approximately 24 to 30 minutes at 600 watts). Microwave heating times are approximate and are dependent upon the number of samples being digested simultaneously. Sufficient heating is evidenced by sorbent reflux within the vessel. For conventional heating, heat the Parr Bombs at 140 °C (285 °F) for 6 hours. Then cool the samples to room temperature, and combine with the acid digested probe rinse as required in Section 8.3.3.

8.3.1.3 If the sampling train includes an optional glass cyclone in front of the filter, prepare and digest the cyclone catch by the procedures described in Section 8.3.1.2 and then combine the digestate with the digested filter sample.

8.3.2 Container No. 2 (Acetone Rinse). Note the level of liquid in the container and confirm on the analysis sheet whether or not leakage occurred during transport. If a noticeable amount of leakage has occurred, either void the sample or use methods, subject to the approval of the Administrator, to correct the final results. Measure the liquid in this container either volumetrically within 1 ml or gravimetrically within 0.5 g. Transfer the contents to an acid-cleaned, tared 250-ml beaker and evaporate to dryness at ambient temperature and pressure. If particulate emissions are being determined, desiccate for 24 hours without added heat, weigh to a constant weight according to the procedures described in Section 11.2.1 of Method 5, and report the results to the nearest 0.1 mg. Redissolve the residue with 10 ml of concentrated $HNO_3$. Quantitatively combine the resultant sample, including all liquid and any particulate matter, with Container No. 3 before beginning Section 8.3.3.



8.3.3 Container No. 3 (Probe Rinse). Verify that the pH of this sample is 2 or lower. If it is not, acidify the sample by careful addition with stirring of concentrated $HNO_3$ to pH 2. Use water to rinse the sample into a beaker, and cover the beaker with a ribbed watch glass. Reduce the sample volume to approximately 20 ml by heating on a hot plate at a temperature just below boiling. Digest the sample in microwave vessels or Parr Bombs by quantitatively transferring the sample to the vessel or bomb, carefully adding the 6 ml of concentrated $HNO_3$, 4 ml of concentrated HF, and then continuing to follow the procedures described in Section 8.3.1.2. Then combine the resultant sample directly with the acid digested portions of the filter prepared previously in Section 8.3.1.2. The resultant combined sample is referred to as *"Sample Fraction 1".* Filter the combined sample using Whatman 541 filter paper. Dilute to 300 ml (or the appropriate volume for the expected metals concentration) with water. This diluted sample is *"Analytical Fraction 1".* Measure and record the volume of Analytical Fraction 1 to within 0.1 ml. Quantitatively remove a 50-ml aliquot and label as *"Analytical Fraction 1B".* Label the remaining 250-ml portion as *"Analytical Fraction 1A".* Analytical Fraction 1A is used for ICAP or AAS analysis for all desired metals except Hg. Analytical Fraction 1B is used for the determination of front-half Hg.

8.3.4 Container No. 4 (Impingers 1–3). Measure and record the total volume of this sample to within 0.5 ml and label it *"Sample Fraction 2".* Remove a 75- to 100-ml aliquot for Hg analysis and label the aliquot *"Analytical Fraction 2B".* Label the remaining portion of Container No. 4 as *"Sample Fraction 2A".* Sample Fraction 2A defines the volume of Analytical Fraction 2A *prior* to digestion. All of Sample Fraction 2A is digested to produce *"Analytical Fraction 2A".* Analytical Fraction 2A defines the volume of Sample Fraction 2A *after* its digestion and the volume of Analytical Fraction 2A is normally 150 ml. Analytical Fraction 2A is analyzed for all metals except Hg. Verify that the pH of Sample Fraction 2A is 2 or lower. If necessary, use concentrated $HNO_3$ by careful addition and stirring to lower Sample Fraction 2A to pH 2. Use water to rinse Sample Fraction 2A into a beaker and then cover the beaker with a ribbed watchglass. Reduce Sample Fraction 2A to approximately 20 ml by heating on a hot plate at a temperature just below boiling. Then follow either of the digestion procedures described in Sections 8.3.4.1 or 8.3.4.2.

8.3.4.1 Conventional Digestion Procedure. Add 30 ml of 50 percent $HNO_3$, and heat for 30 minutes on a hot plate to just below boiling. Add 10 ml of 3 percent $H_2O_2$ and heat for 10 more minutes. Add 50 ml of hot water, and heat the sample for an additional 20 minutes. Cool, filter the sample, and dilute to 150 ml (or the appropriate volume for the expected metals concentrations) with water. This dilution produces Analytical Fraction 2A. Measure and record the volume to within 0.1 ml.

8.3.4.2 Microwave Digestion Procedure. Add 10 ml of 50 percent $HNO_3$ and heat for 6 minutes total *heating* time in alternations of 1 to 2 minutes at 600 Watts followed by 1 to 2 minutes with no power, etc., similar to the procedure described in Section 8.3.1. Allow the sample to cool. Add 10 ml of 3 percent $H_2O_2$ and heat for 2 more minutes. Add 50 ml of hot water, and heat for an additional 5 minutes. Cool, filter the sample, and dilute to 150 ml (or the appropriate volume for the expected metals concentrations) with water. This dilution produces Analytical Fraction 2A. Measure and record the volume to within 0.1 ml.

**Note:** All microwave heating times given are approximate and are dependent upon the number of samples being digested at a time. Heating times as given above have been found acceptable for simultaneous digestion of up to 12 individual samples. Sufficient heating is evidenced by solvent reflux within the vessel.

8.3.5 Container No. 5A (Impinger 4), Container Nos. 5B and 5C (Impingers 5 and 6). Keep the samples in Containers Nos. 5A, 5B, and 5C separate from each other. Measure and record the volume of 5A to within 0.5 ml. Label the contents of Container No. 5A to be Analytical Fraction 3A. To remove any brown $MnO_2$ precipitate from the contents of Container No. 5B, filter its contents through Whatman 40 filter paper into a 500 ml volumetric flask and dilute to volume with water. Save the filter for digestion of the brown $MnO_2$ precipitate. Label the 500 ml filtrate from Container No. 5B to be Analytical Fraction 3B. Analyze Analytical Fraction 3B for Hg within 48 hours of the filtration step. Place the saved filter, which was used to remove the brown $MnO_2$ precipitate, into an appropriately sized *vented* container, which will allow release of any gases including chlorine formed when the filter is digested. In a laboratory hood which will remove any gas produced by the digestion of the $MnO_2$, add 25 ml of 8 N HCl to the filter and allow to digest for a minimum of 24 hours at room temperature. Filter the contents of Container No. 5C through a Whatman 40 filter into a 500-ml volumetric flask. Then filter the result of the digestion of the brown $MnO_2$ from Container No. 5B through a Whatman 40 filter into the same 500-ml volumetric flask, and dilute and mix well to volume with water. Discard the Whatman 40 filter. Mark this combined 500-ml dilute HCl solution as Analytical Fraction 3C.

8.3.6 Container No. 6 (Silica Gel). Weigh the spent silica gel (or silica gel plus impinger) to the nearest 0.5 g using a balance.

*9.0 Quality Control*

9.1 Field Reagent Blanks, if analyzed. Perform the digestion and analysis of the blanks in Container Nos. 7 through 12 that were produced in Sections 8.2.11 through 8.2.17, respectively. For Hg field reagent blanks, use a 10 ml aliquot for digestion and analysis.

9.1.1 Digest and analyze one of the filters from Container No. 12 per Section 8.3.1, 100 ml from Container No. 7 per Section 8.3.2, and 100 ml from Container No. 8A per Section 8.3.3. This step produces blanks for Analytical Fractions 1A and 1B.

9.1.2 Combine 100 ml of Container No. 8A with 200 ml from Container No. 9, and digest and analyze the resultant volume per Section 8.3.4. This step produces blanks for Analytical Fractions 2A and 2B.

9.1.3 Digest and analyze a 100-ml portion of Container No. 8A to produce a blank for Analytical Fraction 3A.

9.1.4 Combine 100 ml from Container No. 10 with 33 ml from Container No. 8B to produce a blank for Analytical Fraction 3B. Filter the resultant 133 ml as described for

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Container No. 5B in Section 8.3.5, except do not dilute the 133 ml. Analyze this blank for Hg within 48 hr of the filtration step, and use 400 ml as the blank volume when calculating the blank mass value. Use the actual volumes of the other analytical blanks when calculating their mass values.

9.1.5 Digest the filter that was used to remove any brown $MnO_2$ precipitate from the blank for Analytical Fraction 3B by the same procedure as described in Section 8.3.5 for the similar sample filter. Filter the digestate and the contents of Container No. 11 through Whatman 40 paper into a 500-ml volumetric flask, and dilute to volume with water. These steps produce a blank for Analytical Fraction 3C.

9.1.6 Analyze the blanks for Analytical Fraction Blanks 1A and 2A per Section 11.1.1 and/or Section 11.1.2. Analyze the blanks for Analytical Fractions 1B, 2B, 3A, 3B, and 3C per Section 11.1.3. Analysis of the blank for Analytical Fraction 1A produces the front-half reagent blank correction values for the desired metals except for Hg; Analysis of the blank for Analytical Fraction 1B produces the front-half reagent blank correction value for Hg. Analysis of the blank for Analytical Fraction 2A produces the back-half reagent blank correction values for all of the desired metals except for Hg, while separate analyses of the blanks for Analytical Fractions 2B, 3A, 3B, and 3C produce the back-half reagent blank correction value for Hg.

9.2 Quality Control Samples. Analyze the following quality control samples.

9.2.1 ICAP and ICP–MS Analysis. Follow the respective quality control descriptions in Section 8 of Methods 6010 and 6020 in EPA Publication SW–846 Third Edition (November 1986) including updates I, II, IIA, IIB and III, as incorporated by reference in § 60.17(i). For the purposes of a source test that consists of three sample runs, modify those requirements to include the following: two instrument check standard runs, two calibration blank runs, one interference check sample at the beginning of the analysis (analyze by Method of Standard Additions unless within 25 percent), one quality control sample to check the accuracy of the calibration standards (required to be within 25 percent of calibration), and one duplicate analysis (required to be within 20 percent of average or repeat all analyses).

9.2.2 Direct Aspiration AAS and/or GFAAS Analysis for Sb, As, Ba, Be, Cd, Cu, Cr, Co, Pb, Ni, Mn, Hg, P, Se, Ag, Tl, and Zn. Analyze all samples in duplicate. Perform a matrix spike on at least one front-half sample and one back-half sample, or one combined sample. If recoveries of less than 75 percent or greater than 125 percent are obtained for the matrix spike, analyze each sample by the Method of Standard Additions. Analyze a quality control sample to check the accuracy of the calibration standards. If the results are not within 20 percent, repeat the calibration.

9.2.3 CVAAS Analysis for Hg. Analyze all samples in duplicate. Analyze a quality control sample to check the accuracy of the calibration standards (if not within 15 percent, repeat calibration). Perform a matrix spike on one sample (if not within 25 percent, analyze all samples by the Method of Standard Additions). Additional information on quality control can be obtained from Method 7470 in EPA Publication SW–846 Third Edition (November 1986) including updates I, II, IIA, IIB and III, as incorporated by reference in § 60.17(i), or in *Standard Methods for Water and Wastewater* Method 303F.

*10.0 Calibration and Standardization*

**Note:** Maintain a laboratory log of all calibrations.

10.1 Sampling Train Calibration. Calibrate the sampling train components according to the indicated sections of Method 5: Probe Nozzle (Section 10.1); Pitot Tube (Section 10.2); Metering System (Section 10.3); Probe Heater (Section 10.4); Temperature Sensors (Section 10.5); Leak-Check of the Metering System (Section 8.4.1); and Barometer (Section 10.6).

10.2 Inductively Coupled Argon Plasma Spectrometer Calibration. Prepare standards as outlined in Section 7.5. Profile and calibrate the instrument according to the manufacturer's recommended procedures using those standards. Check the calibration once per hour. If the instrument does not reproduce the standard concentrations within 10 percent, perform the complete calibration procedures. Perform ICP–MS analysis by following Method 6020 in EPA Publication SW–846 Third Edition (November 1986) including updates I, II, IIA, IIB and III, as incorporated by reference in § 60.17(i).

10.3 Atomic Absorption Spectrometer—Direct Aspiration AAS, GFAAS, and CVAAS analyses. Prepare the standards as outlined in Section 7.5 and use them to calibrate the spectrometer. Calibration procedures are also outlined in the EPA methods referred to in Table 29–2 and in Method 7470 in EPA Publication SW–846 Third Edition (November 1986) including updates I, II, IIA, IIB and III, as incorporated by reference in § 60.17(i), or in *Standard Methods for Water and Wastewater* Method 303F (for Hg). Run each standard curve in duplicate and use the mean values to calculate the calibration line. Recalibrate the instrument approximately once every 10 to 12 samples.

*11.0 Analytical Procedure*

11.1 Sample Analysis. For each sampling train sample run, seven individual analytical samples are generated; two for all desired metals except Hg, and five for Hg. A schematic identifying each sample container and the prescribed analytical preparation and analysis scheme is shown in Figure 29–3. The first two analytical samples, labeled Analytical Fractions 1A and 1B, consist of the digested samples from the front-half of the train. Analytical Fraction 1A is for ICAP, ICP–MS or AAS analysis as described in Sections 11.1.1 and 11.1.2, respectively. Analytical Fraction 1B is for front-half Hg analysis as described in Section 11.1.3. The contents of the back-half of the train are used to prepare the third through seventh analytical samples. The third and fourth analytical samples, labeled Analytical Fractions 2A and 2B, contain the samples from the moisture removal impinger No. 1, if used, and $HNO_3/H_2O_2$ impingers Nos. 2 and 3. Analytical Fraction 2A is for ICAP, ICP-MS or AAS analysis for target metals, except Hg. Analytical Fraction 2B is for analysis for Hg. The fifth through seventh analytical samples, labeled Analytical Fractions 3A, 3B, and 3C, consist of the impinger contents and rinses from the empty impinger No. 4 and the $H_2SO_4/KMnO_4$ Impingers Nos. 5 and 6. These analytical samples are for analysis for Hg as described in Section 11.1.3. The total back-half Hg catch is determined from the sum of Analytical Fractions 2B, 3A, 3B, and 3C. Analytical Fractions 1A and 2A can be combined proportionally prior to analysis.

11.1.1 ICAP and ICP-MS Analysis. Analyze Analytical Fractions 1A and 2A by ICAP using Method 6010 or Method 200.7 (40 CFR 136, Appendix C). Calibrate the ICAP, and set up an analysis program as described in Method 6010 or Method 200.7. Follow the quality control procedures described in Section 9.2.1. Recommended wavelengths for analysis are as shown in Table 29–2. These wavelengths represent the best combination of specificity and potential detection limit. Other wavelengths may be substituted if they can provide the needed specificity and detection limit, and are treated with the same corrective techniques for spectral interference. Initially, analyze all samples for the target metals (except Hg) plus Fe and Al. If Fe and Al are present, the sample might have to be diluted so that each of these elements is at a concentration of less than 50 ppm so as to reduce their spectral interferences on As, Cd, Cr, and Pb. Perform ICP-MS analysis by following Method 6020 in EPA Publication SW–846 Third Edition (November 1986) including updates I, II, IIA, IIB and III, as incorporated by reference in § 60.17(i).



**Note:** When analyzing samples in a HF matrix, an alumina torch should be used; since all front-half samples will contain HF, use an alumina torch.

11.1.2 AAS by Direct Aspiration and/or GFAAS. If analysis of metals in Analytical Fractions 1A and 2A by using GFAAS or direct aspiration AAS is needed, use Table 29–3 to determine which techniques and procedures to apply for each target metal. Use Table 29–3, if necessary, to determine techniques for minimization of interferences. Calibrate the instrument according to Section 10.3 and follow the quality control procedures specified in Section 9.2.2.

11.1.3 CVAAS Hg analysis. Analyze Analytical Fractions 1B, 2B, 3A, 3B, and 3C separately for Hg using CVAAS following the method outlined in Method 7470 in EPA Publication SW–846 Third Edition (November 1986) including updates I, II, IIA, IIB and III, as incorporated by reference in § 60.17(i), or in *Standard Methods for Water and Wastewater Analysis*, 15th Edition, Method 303F, or, optionally using **Note No. 2** at the end of this section. Set up the calibration curve (zero to 1000 ng) as described in Method 7470 or similar to Method 303F using 300-ml BOD bottles instead of Erlenmeyers. Perform the following for each Hg analysis. From each original sample, select and record an aliquot in the size range from 1 ml to 10 ml. If no prior knowledge of the expected amount of Hg in the sample exists, a 5 ml aliquot is suggested for the first dilution to 100 ml (see **Note No. 1** at end of this section). The total amount of Hg in the aliquot shall be less than 1 µg and within the range (zero to 1000 ng) of the calibration curve. Place the sample aliquot into a separate 300-ml BOD bottle, and add enough water to make a total volume of 100 ml. Next add to it sequentially the sample digestion solutions and perform the sample preparation described in the procedures of Method 7470 or Method 303F. (See **Note No. 2** at the end of this section). If the maximum readings are off-scale (because Hg in the aliquot exceeded the calibration range; including the situation where only a 1-ml aliquot of the original sample was digested), then dilute the original sample (or a portion of it) with 0.15 percent $HNO_3$ (1.5 ml concentrated $HNO_3$ per liter aqueous solution) so that when a 1- to 10-ml aliquot of the "0.15 $HNO_3$ percent dilution of the original sample" is digested and analyzed by the procedures described above, it will yield an analysis within the range of the calibration curve.

**Note No. 1:** When Hg levels in the sample fractions are below the in-stack detection limit given in Table 29–1, select a 10 ml aliquot for digestion and analysis as described.

**Note No. 2:** Optionally, Hg can be analyzed by using the CVAAS analytical procedures given by some instrument manufacturer's directions. These include calibration and quality control procedures for the Leeman Model PS200, the Perkin Elmer FIAS systems, and similar models, if available, of other instrument manufacturers. For digestion and analyses by these instruments, perform the following two steps: (1), Digest the sample aliquot through the addition of the aqueous hydroxylamine hydrochloride/sodium chloride solution the same as described in this section: (*The Leeman, Perkin Elmer, and similar instruments described in this note add automatically the necessary stannous chloride solution during the automated analysis of Hg.*); (2), Upon completion of the digestion described in (1), analyze the sample according to the instrument manufacturer's directions. This approach allows multiple (including duplicate) automated analyses of a digested sample aliquot.

*12.0 Data Analysis and Calculations*

12.1 Nomenclature.

A = Analytical detection limit, µg/ml.
B = Liquid volume of digested sample prior to aliquotting for analysis, ml.
C = Stack sample gas volume, $dsm^3$.
$C_{a1}$ = Concentration of metal in Analytical Fraction 1A as read from the standard curve, µg/ml.
$C_{a2}$ = Concentration of metal in Analytical Fraction 2A as read from the standard curve, (µg/ml).
$C_s$ = Concentration of a metal in the stack gas, mg/dscm.
D = In-stack detection limit, $\mu g/m^3$.
$F_a$ = Aliquot factor, volume of Sample Fraction 2 divided by volume of Sample Fraction 2A (see Section 8.3.4.)
$F_d$ = Dilution factor ($F_d$ = the inverse of the fractional portion of the concentrated sample in the solution actually used in the instrument to produce the reading $C_{a1}$. For example, if a 2 ml aliquot of Analytical Fraction 1A is diluted to 10 ml to place it in the calibration range, $F_d = 5$).
$Hg_{bh}$ = Total mass of Hg collected in the back-half of the sampling train, µg.
$Hg_{bh2}$ = Total mass of Hg collected in Sample Fraction 2, µg.
$Hg_{bh3(A,B,C)}$ = Total mass of Hg collected separately in Fraction 3A, 3B, or 3C, µg.
$Hg_{bhb}$ = Blank correction value for mass of Hg detected in back-half field reagent blanks, µg.
$Hg_{fh}$ = Total mass of Hg collected in the front-half of the sampling train (Sample Fraction 1), µg.
$Hg_{fhb}$ = Blank correction value for mass of Hg detected in front-half field reagent blank, µg.
$Hg_t$ = Total mass of Hg collected in the sampling train, µg.
$M_{bh}$ = Total mass of each metal (except Hg) collected in the back-half of the sampling train (Sample Fraction 2), µg.
$M_{bhb}$ = Blank correction value for mass of metal detected in back-half field reagent blank, µg.
$M_{fh}$ = Total mass of each metal (except Hg) collected in the front half of the sampling train (Sample Fraction 1), µg.
$M_{fhb}$ = Blank correction value for mass of metal detected in front-half field reagent blank, µg.
$M_t$ = Total mass of each metal (separately stated for each metal) collected in the sampling train, µg.
$M_t$ = Total mass of that metal collected in the sampling train, µg; (substitute Hg, for $M_t$ for the $Hg_g$ calculation).
$Q_{bh2}$ = Quantity of Hg, µg, TOTAL in the ALIQUOT of Analytical Fraction 2B selected for digestion and analysis . **NOTE:** For example, if a 10 ml aliquot of Analytical Fraction 2B is taken and digested and analyzed (according to Section 11.1.3 and its **NOTES** Nos. 1 and 2), then calculate and use the total amount of Hg in the 10 ml aliquot for $Q_{bh2}$.
$Q_{bh3(A,B,C)}$ = Quantity of Hg, µg, *TOTAL, separately, in the ALIQUOT of Analytical Fraction 3A, 3B, or 3C selected for digestion and analysis* (see **NOTES** in Sections 12.7.1 and 12.7.2 describing the quantity "Q" and calculate similarly).
$Q_{fh}$ = Quantity of Hg, µg, *TOTAL in the ALIQUOT of Analytical Fraction 1B selected for digestion and analysis.* **NOTE:** For example, if a 10 ml aliquot of Analytical Fraction 1B is taken and digested and analyzed (according to Section 11.1.3 and its **NOTES** Nos. 1 and 2), then calculate and use the total amount of Hg in the 10 ml aliquot for $Q_{fh}$.
$V_a$ = Total volume of digested sample solution (Analytical Fraction 2A),

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ml (see Section 8.3.4.1 or 8.3.4.2, as applicable).

$V_{f1B}$ = Volume of aliquot of Analytical Fraction 1B analyzed, ml. **NOTE:** For example, if a 1 ml aliquot of Analytical Fraction 1B was diluted to 50 ml with 0.15 percent $HNO_3$ as described in Section 11.1.3 to bring it into the proper analytical range, and then 1 ml of that 50-ml was digested according to Section 11.1.3 and analyzed, $V_{f1B}$ would be 0.02 ml.

$V_{f2B}$ = Volume of Analytical Fraction 2B analyzed, ml. **NOTE:** For example, if 1 ml of Analytical Fraction 2B was diluted to 10 ml with 0.15 percent $HNO_3$ as described in Section 11.1.3 to bring it into the proper analytical range, and then 5 ml of that 10 ml was analyzed, $V_{f2B}$ would be 0.5 ml.

$V_{f3(A,B,C)}$ = Volume, separately, of Analytical Fraction 3A, 3B, or 3C analyzed, ml (see previous notes in Sections 12.7.1 and 12.7.2, describing the quantity "V" and calculate similarly).

$V_{m(std)}$ = Volume of gas sample as measured by the dry gas meter, corrected to dry standard conditions, dscm.

$V_{soln,1}$ = Total volume of digested sample solution (Analytical Fraction 1), ml.

$V_{soln,1}$ = Total volume of Analytical Fraction 1, ml.

$V_{soln,2}$ = Total volume of Sample Fraction 2, ml.

$V_{soln,3(A,B,C)}$ = Total volume, separately, of Analytical Fraction 3A, 3B, or 3C, ml.

$K_4 = 10^{-3}$ mg/µg.

12.2 Dry Gas Volume. Using the data from this test, calculate $V_{m(std)}$, the dry gas sample volume at standard conditions as outlined in Section 12.3 of Method 5.

12.3 Volume of Water Vapor and Moisture Content. Using the total volume of condensate collected during the source sampling, calculate the volume of water vapor $V_{w(std)}$ and the moisture content $B_{ws}$ of the stack gas. Use Equations 5–2 and 5–3 of Method 5.

12.4 Stack Gas Velocity. Using the data from this test and Equation 2–9 of Method 2, calculate the average stack gas velocity.

12.5 In-Stack Detection Limits. Calculate the in-stack method detection limits shown in Table 29–4 using the conditions described in Section 13.3.1 as follows:

$$A \times \frac{B}{C} = D \qquad \text{Eq. 29-1}$$

12.6 Metals (Except Hg) in Source Sample.

12.6.1 Analytical Fraction 1A, Front-Half, Metals (except Hg). Calculate separately the amount of each metal collected in Sample Fraction 1 of the sampling train using the following equation:

$$M_{fh} = C_{al} F_d V_{soln,1} \qquad \text{Eq. 29-2}$$

**Note:** If Analytical Fractions 1A and 2A are combined, use proportional aliquots. Then make appropriate changes in Equations 29–2 through 29–4 to reflect this approach.

12.6.2 Analytical Fraction 2A, Back-Half, Metals (except Hg). Calculate separately the amount of each metal collected in Fraction 2 of the sampling train using the following equation:

$$M_{bh} = C_{a2} F_a V_a \qquad \text{Eq. 29-3}$$

12.6.3 Total Train, Metals (except Hg). Calculate the total amount of each of the quantified metals collected in the sampling train as follows:

$$M_t = (M_{fh} - M_{fhb}) + (M_{bh} - M_{bhb}) \qquad \text{Eq. 29-4}$$

**Note:** If the measured blank value for the front half ($M_{fhb}$) is in the range 0.0 to "A" µg (where "A" µg equals the value determined by multiplying 1.4 µg/in.$^2$ times the actual area in in.$^2$ of the sample filter), use $M_{fhb}$ to correct the emission sample value ($M_{fh}$); if $M_{fhb}$ exceeds "A" µg, use the greater of I or II:

I. "A" µg.

II. The lesser of (a) $M_{fhb}$, or (b) 5 percent of $M_{fh}$. If the measured blank value for the back-half ($M_{bhb}$) is in the range 0.0 to 1 µg, use $M_{bhb}$ to correct the emission sample value ($M_{bh}$); if $M_{bhb}$ exceeds 1 µg, use the greater of I or II:

I. 1 µg.

II. The lesser of (a) $M_{bhb}$, or (b) 5 percent of $M_{bh}$.

12.7 Hg in Source Sample.

12.7.1 Analytical Fraction 1B; Front-Half Hg. Calculate the amount offHg collected in the front-half, Sample Fraction 1, of the sampling train by using Equation 29–5:

$$Hg_{fh} = \frac{Q_{fh}}{V_{f1B}}\left(V_{soln,1}\right) \qquad \text{Eq. 29-5}$$

12.7.2 Analytical Fractions 2B, 3A, 3B, and 3C; Back Half Hg.

12.7.2.1 Calculate the amount of Hg collected in Sample Fraction 2 by using Equation 29–6:

$$Hg_{bh2} = \frac{Q_{bh2}}{V_{f2B}}\left(V_{soln,2}\right) \qquad \text{Eq. 29-6}$$

12.7.2.2 Calculate each of the back-half Hg values for Analytical Fractions 3A, 3B, and 3C by using Equation 29–7:

$$Hg_{bh3(A,B,C)} = \frac{Q_{bh3(A,B,C)}}{V_{f3(A,B,C)}}\left(V_{soln,3(A,B,C)}\right) \qquad \text{Eq. 29-7}$$

12.7.2.3 Calculate the total amount of Hg collected in the back-half of the sampling train by using Equation 29–8:

$$Hg_{bh} = Hg_{bh2} + Hg_{bh3A} + Hg_{bh3B} + Hg_{bh3C} \qquad \text{Eq. 29-8}$$

12.7.3 Total Train Hg Catch. Calculate the total amount of Hg collected in the sampling train by using Equation 29–9:



$$Hg_t = (Hg_{fh} - Hg_{fhb}) + (Hg_{bh} - Hg_{bhb}) \qquad \text{Eq. 29-9}$$

**Note:** If the total of the measured blank values ($Hg_{fhb} + Hg_{bhb}$) is in the range of 0.0 to 0.6 µg, then use the total to correct the sample value ($Hg_{fh} + Hg_{bh}$); if it exceeds 0.6 µg, use the greater of I. or II:

I. 0.6 µg.

II. The lesser of (a) ($Hg_{fhb} + Hg_{bhb}$), or (b) 5 percent of the sample value ($Hg_{fh} + Hg_{bh}$).

12.8 Individual Metal Concentrations in Stack Gas. Calculate the concentration of each metal in the stack gas (dry basis, adjusted to standard conditions) by using Equation 29–10:

$$C_s = \frac{K_4 M_t}{V_{m(std)}} \qquad \text{Eq. 29-10}$$

12.9 Isokinetic Variation and Acceptable Results. Same as Method 5, Sections 12.11 and 12.12, respectively.

*13.0 Method Performance*

13.1 Range. For the analysis described and for similar analyses, the ICAP response is linear over several orders of magnitude. Samples containing metal concentrations in the nanograms per ml (ng/ml) to micrograms per ml (µg/ml) range in the final analytical solution can be analyzed using this method. Samples containing greater than approximately 50 µg/ml As, Cr, or Pb should be diluted to that level or lower for final analysis. Samples containing greater than approximately 20 µg/ml of Cd should be diluted to that level before analysis.

13.2 Analytical Detection Limits.

**Note:** See Section 13.3 for the description of in-stack detection limits.

13.2.1 ICAP analytical detection limits for the sample solutions (based on *SW–846*, Method 6010) are approximately as follows: Sb (32 ng/ml), As (53 ng/ml), Ba (2 ng/ml), Be (0.3 ng/ml), Cd (4 ng/ml); Cr (7 ng/ml), Co (7 ng/ml), Cu (6 ng/ml), Pb (42 ng/ml), Mn (2 ng/ml), Ni (15 ng/ml), P (75 ng/ml), Se (75 ng/ml), Ag (7 ng/ml), Tl (40 ng/ml), and Zn (2 ng/ml). ICP-MS analytical detection limits (based on *SW–846*, Method 6020) are lower generally by a factor of ten or more. Be is lower by a factor of three. The actual sample analytical detection limits are sample dependent and may vary due to the sample matrix.

13.2.2 The analytical detection limits for analysis by direct aspiration AAS (based on *SW–846*, Method 7000 series) are approximately as follows: Sb (200 ng/ml), As (2 ng/ml), Ba (100 ng/ml), Be (5 ng/ml), Cd (5 ng/ml), Cr (50 ng/ml), Co (50 ng/ml), Cu (20 ng/ml), Pb (100 ng/ml), Mn (10 ng/ml), Ni (40 ng/ml), Se (2 ng/ml), Ag (10 ng/ml), Tl (100 ng/ml), and Zn (5 ng/ml).

13.2.3 The detection limit for Hg by CVAAS (on the resultant volume of the *digestion* of the aliquots taken for Hg analyses) can be approximately 0.02 to 0.2 ng/ml, depending upon the type of CVAAS analytical instrument used.

13.2.4 The use of GFAAS can enhance the detection limits compared to direct aspiration AAS as follows: Sb (3 ng/ml), As (1 ng/ml), Be (0.2 ng/ml), Cd (0.1 ng/ml), Cr (1 ng/ml), Co (1 ng/ml), Pb (1 ng/ml), Se (2 ng/ml), and Tl (1 ng/ml).

13.3 In-stack Detection Limits.

13.3.1 For test planning purposes in-stack detection limits can be developed by using the following information: (1) The procedures described in this method, (2) the analytical detection limits described in Section 13.2 and in *SW–846*,(3) the normal volumes of 300 ml (Analytical Fraction 1) for the front-half and 150 ml (Analytical Fraction 2A) for the back-half samples, and (4) a stack gas sample volume of 1.25 m$^3$. The resultant in-stack method detection limits for the above set of conditions are presented in Table 29–1 and were calculated by using Eq. 29–1 shown in Section 12.5.

13.3.2 To ensure optimum precision/resolution in the analyses, the target concentrations of metals in the analytical solutions should be at least ten times their respective analytical detection limits. Under certain conditions, and with greater care in the analytical procedure, these concentrations can be as low as approximately three times the respective analytical detection limits without seriously impairing the precision of the analyses. On at least one sample run in the source test, and for each metal analyzed, perform either repetitive analyses, Method of Standard Additions, serial dilution, or matrix spike addition, etc., to document the quality of the data.

13.3.3 Actual in-stack method detection limits are based on actual source sampling parameters and analytical results as described above. If required, the method in-stack detection limits can be improved over those shown in Table 29–1 for a specific test by either increasing the sampled stack gas volume, reducing the total volume of the digested samples, improving the analytical detection limits, or any combination of the three. For extremely low levels of *Hg only*, the aliquot size selected for digestion and analysis can be increased to as much as 10 ml, thus improving the in-stack detection limit by a factor of ten compared to a 1 ml aliquot size.

13.3.3.1 A nominal one hour sampling run will collect a stack gas sampling volume of about 1.25 m$^3$. If the sampling time is increased to four hours and 5 m$^3$ are collected, the in-stack method detection limits would be improved by a factor of four compared to the values shown in Table 29–1.

13.3.3.2 The in-stack detection limits assume that all of the sample is digested and the final liquid volumes for analysis are the normal values of 300 ml for Analytical Fraction 1, and 150 ml for Analytical Fraction 2A. If the volume of Analytical Fraction 1 is reduced from 300 to 30 ml, the in-stack detection limits for that fraction of the sample would be improved by a factor of ten. If the volume of Analytical Fraction 2A is reduced from 150 to 25 ml, the in-stack detection limits for that fraction of the sample would be improved by a factor of six. Matrix effect checks are necessary on sample analyses and typically are of much greater significance for samples that have been concentrated to less than the normal original sample volume. Reduction of Analytical Fractions 1 and 2A to volumes of less than 30 and 25 ml, respectively, could interfere with the redissolving of the residue and could increase interference by other compounds to an intolerable level.

13.3.3.3 When both of the modifications described in Sections 13.3.3.1 and 13.3.3.2 are used simultaneously on one sample, the resultant improvements are multiplicative. For example, an increase in stack gas volume by a factor of four and a reduction in the total liquid sample digested volume of both Analytical Fractions 1 and 2A by a factor of six would result in an improvement by a factor of twenty-four of the in-stack method detection limit.

13.4 Precision. The precision (relative standard deviation) for each metal detected in a method development test performed at a sewage sludge incinerator were found to be as follows:

Sb (12.7 percent), As (13.5 percent), Ba (20.6 percent), Cd (11.5 percent), Cr (11.2 percent), Cu (11.5 percent), Pb (11.6 percent), P (14.6 percent), Se (15.3 percent), Tl (12.3 percent), and Zn (11.8 percent). The precision for Ni was 7.7 percent for another test conducted at a source simulator. Be, Mn, and Ag were not detected in the tests. However,

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based on the analytical detection limits of the ICAP for these metals, their precisions could be similar to those for the other metals when detected at similar levels.

*14.0 Pollution Prevention [Reserved]*

*15.0 Waste Management [Reserved]*

*16.0 References*


1. Method 303F in *Standard Methods for the Examination of Water Wastewater*, 15th Edition, 1980. Available from the American Public Health Association, 1015 18th Street N.W., Washington, D.C. 20036.

2. EPA Methods 6010, 6020, 7000, 7041, 7060, 7131, 7421, 7470, 7740, and 7841, *Test Methods for Evaluating Solid Waste: Physical/Chemical Methods*. SW–846, Third Edition, November 1986, with updates I, II, IIA, IIB and III. Office of Solid Waste and Emergency Response, U. S. Environmental Protection Agency, Washington, D.C. 20460.

3. EPA Method 200.7, *Code of Federal Regulations*, Title 40, Part 136, Appendix C. July 1, 1987.

4. EPA Methods 1 through 5, *Code of Federal Regulations*, Title 40, Part 60, Appendix A, July 1, 1991.

5. EPA Method 101A, *Code of Federal Regulations*, Title 40, Part 61, Appendix B, July 1, 1991.


*17.0 Tables, Diagrams, Flowcharts, and Validation Data*

TABLE 29–1.—IN STACK METHOD DETECTION LIMITS (UG/M³) FOR THE FRONT-HALF, THE BACK HALF, AND THE TOTAL SAMPLING TRAIN USING ICAP, GFAAS, AND CVAAS

| Metal | Front-half: probe and filter | Back-half: impinters 1–3 | Back-half: impringers 4–6[a] | Total train |
|---|---|---|---|---|
| Antimony | [1]7.7 (0.7) | [1]3.8 (0.4) | ..... | [1]11.5 (1.1) |
| Arsenic | [1]12.7 (0.3) | [1]6.4 (0.1) | ..... | [1]19.1 (0.4) |
| Barium | 0.5 | 0.3 | ..... | 0.8 |
| Beryllium | [1]0.07 (0.05) | [1]0.04 (0.03) | ..... | [1]0.11 (0.08) |
| Cadmium | [1]1.0 (0.02) | [1]0.5 (0.01) | ..... | [1]1.5 (0.03) |
| Chromium | [1]1.7 (0.2) | [1]0.8 (0.1) | ..... | [1]2.5 (0.3) |
| Cobalt | [1]1.7 (0.2) | [1]0.8 (0.1) | ..... | [1]2.5 (0.3) |
| Copper | 1.4 | 0.7 | ..... | 2.1 |
| Lead | [1]10.1 (0.2) | [1]5.0 (0.1) | ..... | [1]15.1 (0.3) |
| Manganese | [1]0.5 (0.2) | [1]0.2 (0.1) | ..... | [1]0.7 (0.3) |
| Mercury | [2]0.06 | [2]0.3 | [2]0.2 | [2]0.56 |
| Nickel | 3.6 | 1.8 | ..... | 5.4 |
| Phosphorus | 18 | 9 | ..... | 27 |
| Selenium | [1]18 (0.5) | [1]9 (0.3) | ..... | [1]27 (0.8) |
| Silver | 1.7 | 0.9 (0.7) | ..... | 2.6 |
| Thallium | [1]9.6 (0.2) | [1]4.8 (0.1) | ..... | [1]14.4 (0.3) |
| Zinc | 0.5 | 0.3 | ..... | 0.8 |

[a] Mercury analysis only.
[1] Detection limit when analyzed by ICAP or GFAAS as shown in parentheses (see Section 11.1.2).
[2] Detection limit when anaylzed by CVAAS, estimated for Back-half and Total Train. See Sections 13.2 and 11.1.3. Note: Actual method in-stack detection limits may vary from these values, as described in Section 13.3.3.

TABLE 29–2.—RECOMMENDED WAVELENGTHS FOR ICAP ANALYSIS

| Analyte | Wavelength (nm) |
|---|---|
| Aluminum (Al) | 308.215 |
| Antimony (Sb) | 206.833 |
| Arsenic (As) | 193.696 |
| Barium (Ba) | 455.403 |
| Beryllium (Be) | 313.042 |
| Cadmium (Cd) | 226.502 |
| Chromium (Cr) | 267.716 |

TABLE 29–2.—RECOMMENDED WAVELENGTHS FOR ICAP ANALYSIS—Continued

| Analyte | Wavelength (nm) |
|---|---|
| Cobalt (Co) | 228.616 |
| Copper (Cu) | 328.754 |
| Iron (Fe) | 259.940 |
| Lead (Pb) | 220.353 |
| Manganese (Mn) | 257.610 |
| Nickel (Ni) | 231.604 |

TABLE 29–2.—RECOMMENDED WAVELENGTHS FOR ICAP ANALYSIS—Continued

| Analyte | Wavelength (nm) |
|---|---|
| Phosphorus (P) | 214.914 |
| Selenium (Se) | 196.026 |
| Silver (Ag) | 328.068 |
| Thallium ($T_1$) | 190,864 |
| Zinc (Zn) | 213,856 |

TABLE 29–3.—APPLICABLE TECHNIQUES, METHODS AND MINIMIZATION OF INTERFERENCES FOR AAS ANALYSIS

| Metal | Technique | SW–846[1] Methods No. | Wavelength (nm) | Interferences | |
|---|---|---|---|---|---|
| | | | | Cause | Minimization |
| Fe | Aspiration | 7380 | 248.3 | Contamination | Great care taken to avoid contamination. |
| Pb | Aspiration | 7420 | 283.3 | 217.0 nm alternate | Background correction required. |
| Pb | Furnace | 7421 | 283.3 | Poor recoveries | Matrix modifier, add 10 µl of phosphorus acid to 1 ml of prepared sample in sampler cup. |
| Mn | Aspiration | 7460 | 279.5 | 403.1 nm alternate | Background correction required. |
| Ni | Aspiration | 7520 | 232.0 | 352.4 nm alternate Fe, Co, and Cr. | Background correction required. Matrix matching or nitrous-oxide/acetylene flame |
| | | | | Nonlinear response | Sample dilution or use 352.3 nm line |



TABLE 29–3.—APPLICABLE TECHNIQUES, METHODS AND MINIMIZATION OF INTERFERENCES FOR AAS ANALYSIS—Continued

| Metal | Technique | SW–846[1] Methods No. | Wavelength (nm) | Interferences | |
|---|---|---|---|---|---|
| | | | | Cause | Minimization |
| Se | Furnace | 7740 | 196.0 | Volatility | Spike samples and reference materials and add nickel nitrate to minimize volatilization. |
| | | | | Adsorption & scatter | Background correction is required and Zeeman background correction can be useful. |
| Ag | Aspiration | 7760 | 328.1 | Adsorption & scatter AgCl insoluble. | Background correction is required. Avoid hydrochloric acid unless silver is in solution as a chloride complex. Sample and standards monitored for aspiration rate. |
| Tl | Aspiration | 7840 | 276.8 | | Background correction is required. Hydrochloric acid should not be used. |
| Tl | Furnace | 7841 | 276.8 | Hydrochloric acid or chloride | Background correction is required. Verify that losses are not occurring for volatilization by spiked samples or standard addition; Palladium is a suitable matrix modifier. 4 |
| Zn | Aspiration | 7950 | 213.9 | High Si, Cu, & P Contamination | Strontium removes Cu and phosphate. Great care taken to avoid contamination. |
| Sb | Aspiration | 7040 | 217.6 | 1000 mg/ml Pb, Ni, Cu, or acid | Use secondary wavelength of 231.1 nm; match sample & standards acid concentration or use nitrous oxide/acetylene flame. |
| Sb | Furnace | 7041 | 217.6 | High Pb | Secondary wavelength or Zeeman correction. |
| As | Furnace | 7060 | 193.7 | Arsenic Volatilization Aluminum | Spike samples and add nickel nitrate solution to digestates prior to analysis. Use Zeeman background correction. |
| Ba | Aspiration | 7080 | 553.6 | | |
| | | | | Calcium. | |
| | | | | Barium Ionization | High hollow cathode current and narrow band set. |
| | | | | | 2 ml of KCl per 100 m1 of sample. |
| Be | Aspiration | 7090 | 234.9 | 500 ppm Al. High Mg and Si | Add 0.1% fluoride. |
| Be | Furnace | 7091 | 234.9 | Be in optical path | Optimize parameters to minimize effects. |
| Cd | Aspiration | 7130 | 228.8 | Absorption and light scattering | Background correction is required. |
| Cd | Furnace | 7131 | 228.8 | As above | As above. |
| | | | | Excess Chloride | Ammonium phosphate used as a matrix modifier. |
| | | | | Pipet Tips | Use cadmium-free tips. |
| Cr | Aspiration | 7190 | 357.9 | Alkali metal | KCl ionization suppressant in samples and standards—Consult mfgs' literature. |
| Co | Furnace | 7201 | 240.7 | Excess chloride | Use Method of Standard Additions. |
| Cr | Furnace | 7191 | 357.9 | 200 mg/L Ca and P | All calcium nitrate for a know constant effect and to eliminate effect of phosphate. |
| Cu | Aspiration | 7210 | 324.7 | Absorption and Scatter | Consult manufacturer's manual. |

[1] Refer to EPA publication SW–846 (Reference 2 in Section 16.0).

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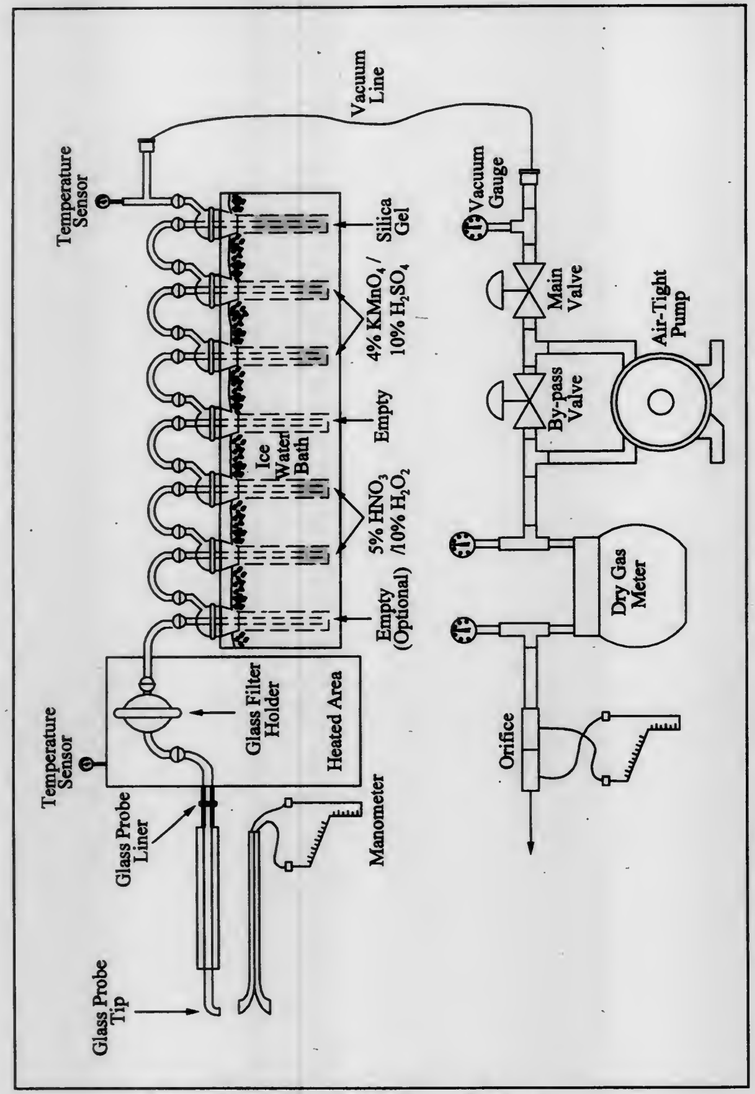



Figure 29-1. Sampling Train.



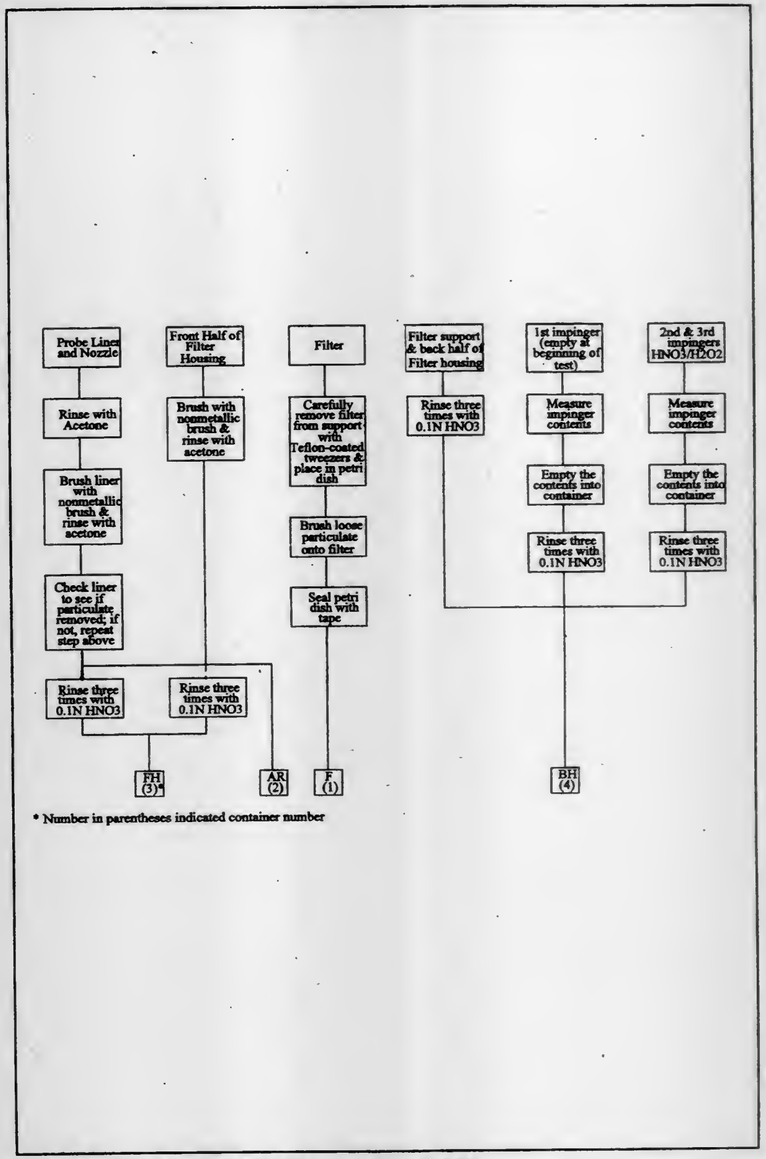



Figure 29-2a. Sample Recovery Scheme.

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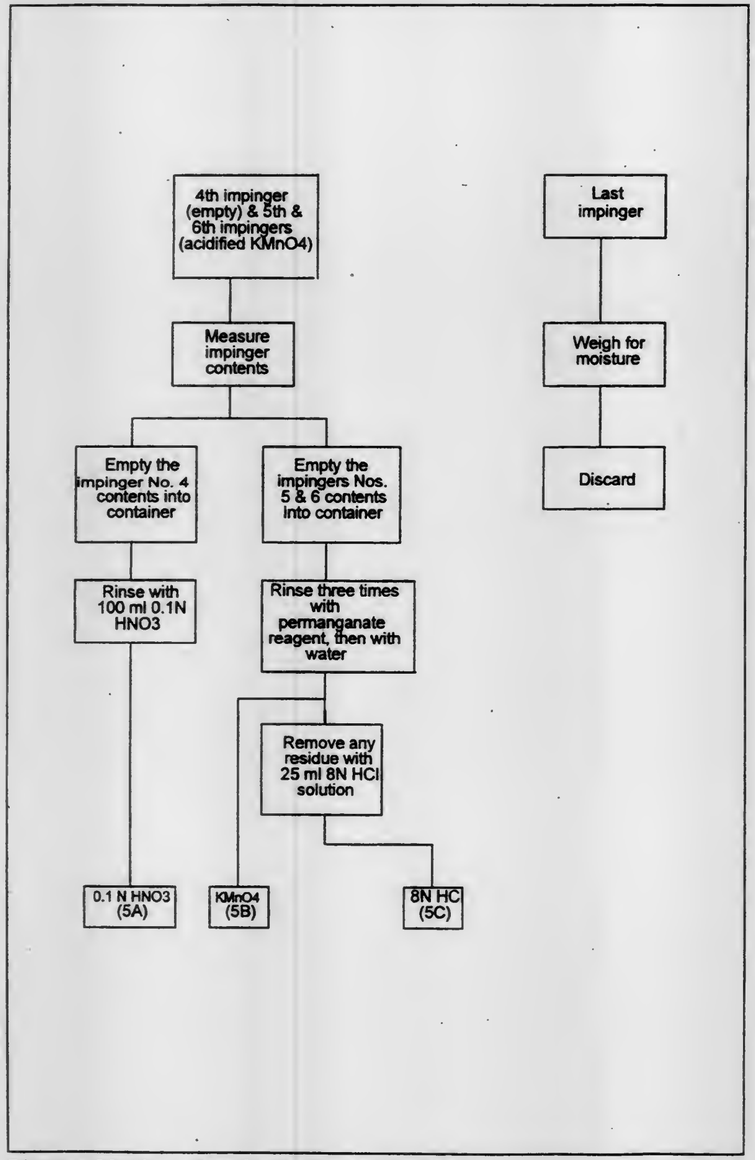



Figure 29-2b. Sample Recovery Scheme.



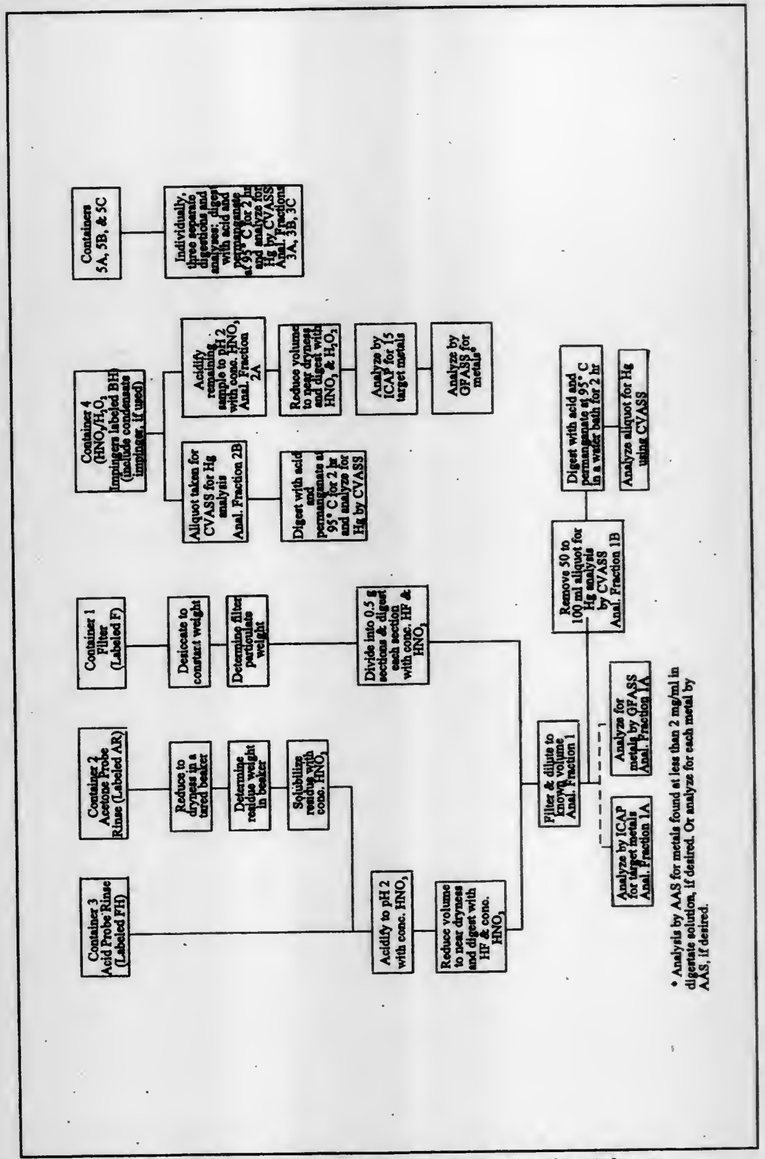



Figure 29-3. Sample Preparation and Analysis Scheme.

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217. In Part 60, Appendix B is amended by revising Performance Specifications 2, 3, 4, 4A, 5, 6, 7, 8, and 9 to read as follows:

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**Performance Specification 2—Specifications and Test Procedures for $SO_2$ and $NO_X$ Continuous Emission Monitoring Systems in Stationary Sources**

*1.0 Scope and Application*

1.1 Analytes

| Analyte | CAS Nos. |
|---|---|
| Sulfur Dioxide ($SO_2$) ..... | 7449–09–5 |
| Nitrogen Oxides ($NO_x$) ..... | 10102–44–0 ($NO_2$), 10024–97–2 (NO) |

1.2 Applicability.

1.2.1 This specification is for evaluating the acceptability of $SO_2$ and $NO_X$ continuous emission monitoring systems (CEMS) at the time of installation or soon after and whenever specified in the regulations. The CEMS may include, for certain stationary sources, a diluent ($O_2$ or $CO_2$) monitor.

1.2.2 This specification is not designed to evaluate the installed CEMS performance over an extended period of time nor does it identify specific calibration techniques and other auxiliary procedures to assess the CEMS performance. The source owner or operator is responsible to calibrate, maintain, and operate the CEMS properly. The Administrator may require, under Section 114 of the Act, the operator to conduct CEMS performance evaluations at other times besides the initial test to evaluate the CEMS performance. See 40 CFR Part 60, § 60.13(c).

*2.0 Summary of Performance Specification*

Procedures for measuring CEMS relative accuracy and calibration drift are outlined. CEMS installation and measurement location specifications, equipment specifications, performance specifications, and data reduction procedures are included. Conformance of the CEMS with the Performance Specification is determined.

*3.0 Definitions*

3.1 *Calibration Drift (CD)* means the difference in the CEMS output readings from the established reference value after a stated period of operation during which no unscheduled maintenance, repair, or adjustment took place.

3.2 *Centroidal Area* means a concentric area that is geometrically similar to the stack or duct cross section and is no greater than 1 percent of the stack or duct cross-sectional area.

3.3 *Continuous Emission Monitoring System* means the total equipment required for the determination of a gas concentration or emission rate. The sample interface, pollutant analyzer, diluent analyzer, and data recorder are the major subsystems of the CEMS.

3.4 *Data Recorder* means that portion of the CEMS that provides a permanent record of the analyzer output. The data recorder may include automatic data reduction capabilities.

3.5 *Diluent Analyzer* means that portion of the CEMS that senses the diluent gas (*i.e.*, $CO_2$ or $O_2$) and generates an output proportional to the gas concentration.

3.6 *Path CEMS* means a CEMS that measures the gas concentration along a path greater than 10 percent of the equivalent diameter of the stack or duct cross section.

3.7 *Point CEMS* means a CEMS that measures the gas concentration either at a single point or along a path equal to or less than 10 percent of the equivalent diameter of the stack or duct cross section.

3.8 *Pollutant Analyzer* means that portion of the CEMS that senses the pollutant gas and generates an output proportional to the gas concentration.

3.9 *Relative Accuracy (RA)* means the absolute mean difference between the gas concentration or emission rate determined by the CEMS and the value determined by the reference method (RM), plus the 2.5 percent error confidence coefficient of a series of tests, divided by the mean of the RM tests or the applicable emission limit.

3.10 *Sample Interface* means that portion of the CEMS used for one or more of the following: sample acquisition, sample delivery, sample conditioning, or protection of the monitor from the effects of the stack effluent.

3.11 *Span Value* means the concentration specified for the affected source category in an applicable subpart of the regulations that is used to set the calibration gas concentration and in determining calibration drift.

*4.0 Interferences. [Reserved]*

*5.0 Safety*

The procedures required under this performance specification may involve hazardous materials, operations, and equipment. This performance specification may not address all of the safety problems associated with these procedures. It is the responsibility of the user to establish appropriate safety and health practices and determine the applicable regulatory limitations prior to performing these procedures. The CEMS user's manual and materials recommended by the reference method should be consulted for specific precautions to be taken.

*6.0 Equipment and Supplies*

6.1 CEMS Equipment Specifications.

6.1.1 Data Recorder Scale. The CEMS data recorder output range must include zero and a high-level value. The high-level value is chosen by the source owner or operator and is defined as follows:

6.1.1.1 For a CEMS intended to measure an uncontrolled emission (*e.g.*, $SO_2$ measurements at the inlet of a flue gas desulfurization unit), the high-level value should be between 1.25 and 2 times the maximum potential emission level over the appropriate averaging time, unless otherwise specified in an applicable subpart of the regulations.

6.1.1.2 For a CEMS installed to measure controlled emissions or emissions that are in compliance with an applicable regulation, the high-level value between 1.5 times the pollutant concentration corresponding to the emission standard level and the span value given in the applicable regulations is adequate.

6.1.1.3 Alternative high-level values may be used, provided the source can measure emissions which exceed the full-scale limit in accordance with the requirements of applicable regulations.

6.1.1.4 If an analog data recorder is used, the data recorder output must be established so that the high-level value would read between 90 and 100 percent of the data recorder full scale. (This scale requirement may not be applicable to digital data recorders.) The zero and high level calibration gas, optical filter, or cell values should be used to establish the data recorder scale.

6.1.2 The CEMS design should also allow the determination of calibration drift at the zero and high-level values. If this is not possible or practical, the design must allow these determinations to be conducted at a low-level value (zero to 20 percent of the high-level value) and at a value between 50 and 100 percent of the high-level value. In special cases, the Administrator may approve a single-point calibration-drift determination.

6.2 Other equipment and supplies, as needed by the applicable reference method(s) (see Section 8.4.2 of this Performance Specification), may be required.

*7.0 Reagents and Standards*

7.1 Reference Gases, Gas Cells, or Optical Filters. As specified by the CEMS manufacturer for calibration of the CEMS (these need not be certified).

7.2 Reagents and Standards. May be required as needed by the applicable reference method(s) (see Section 8.4.2 of this Performance Specification).



8.0 Performance Specification Test Procedure

8.1 Installation and Measurement Location Specifications.

8.1.1 CEMS Installation. Install the CEMS at an accessible location where the pollutant concentration or emission rate measurements are directly representative or can be corrected so as to be representative of the total emissions from the affected facility or at the measurement location cross section. Then select representative measurement points or paths for monitoring in locations that the CEMS will pass the RA test (see Section 8.4). If the cause of failure to meet the RA test is determined to be the measurement location and a satisfactory correction technique cannot be established, the Administrator may require the CEMS to be relocated. Suggested measurement locations and points or paths that are most likely to provide data that will meet the RA requirements are listed below.

8.1.2 CEMS Measurement Location. It is suggested that the measurement location be (1) at least two equivalent diameters downstream from the nearest control device, the point of pollutant generation, or other point at which a change in the pollutant concentration or emission rate may occur and (2) at least a half equivalent diameter upstream from the effluent exhaust or control device.

8.1.2.1 Point CEMS. It is suggested that the measurement point be (1) no less than 1.0 meter (3.3 ft) from the stack or duct wall or (2) within or centrally located over the centroidal area of the stack or duct cross section.

8.1.2.2 Path CEMS. It is suggested that the effective measurement path (1) be totally within the inner area bounded by a line 1.0 meter (3.3 ft) from the stack or duct wall, or (2) have at least 70 percent of the path within the inner 50 percent of the stack or duct cross-sectional area, or (3) be centrally located over any part of the centroidal area.

8.1.3 Reference Method Measurement Location and Traverse Points.

8.1.3.1 Select, as appropriate, an accessible RM measurement point at least two equivalent diameters downstream from the nearest control device, the point of pollutant generation, or other point at which a change in the pollutant concentration or emission rate may occur, and at least a half equivalent diameter upstream from the effluent exhaust or control device. When pollutant concentration changes are due solely to diluent leakage (*e.g.*, air heater leakages) and pollutants and diluents are simultaneously measured at the same location, a half diameter may be used in lieu of two equivalent diameters. The CEMS and RM locations need not be the same.

8.1.3.2 Select traverse points that assure acquisition of representative samples over the stack or duct cross section. The minimum requirements are as follows: Establish a "measurement line" that passes through the centroidal area and in the direction of any expected stratification. If this line interferes with the CEMS measurements, displace the line up to 30 cm (12 in.) (or 5 percent of the equivalent diameter of the cross section, whichever is less) from the centroidal area. Locate three traverse points at 16.7, 50.0, and 83.3 percent of the measurement line. If the measurement line is longer than 2.4 meters (7.8 ft) and pollutant stratification is not expected, the three traverse points may be located on the line at 0.4, 1.2, and 2.0 meters from the stack or duct wall. This option must not be used after wet scrubbers or at points where two streams with different pollutant concentrations are combined. If stratification is suspected, the following procedure is suggested. For rectangular ducts, locate at least nine sample points in the cross section such that sample points are the centroids of similarly-shaped, equal area divisions of the cross section. Measure the pollutant concentration, and, if applicable, the diluent concentration at each point using appropriate reference methods or other appropriate instrument methods that give responses relative to pollutant concentrations. Then calculate the mean value for all sample points. For circular ducts, conduct a 12-point traverse (*i.e.*, six points on each of the two perpendicular diameters) locating the sample points as described in 40 CFR 60, Appendix A, Method 1. Perform the measurements and calculations as described above. Determine if the mean pollutant concentration is more than 10% different from any single point. If so, the cross section is considered to be stratified, and the tester may not use the alternative traverse point locations (...0.4, 1.2, and 2.0 meters from the stack or duct wall.) but must use the three traverse points at 16.7, 50.0, and 83.3 percent of the entire measurement line. Other traverse points may be selected, provided that they can be shown to the satisfaction of the Administrator to provide a representative sample over the stack or duct cross section. Conduct all necessary RM tests within 3 cm (1.2 in.) of the traverse points, but no closer than 3 cm (1.2 in.) to the stack or duct wall.

8.2 Pretest Preparation. Install the CEMS, prepare the RM test site according to the specifications in Section 8.1, and prepare the CEMS for operation according to the manufacturer's written instructions.

8.3 Calibration Drift Test Procedure.

8.3.1 CD Test Period. While the affected facility is operating at more than 50 percent of normal load, or as specified in an applicable subpart, determine the magnitude of the CD once each day (at 24-hour intervals) for 7 consecutive days according to the procedure given in Sections 8.3.2 through 8.3.4.

8.3.2 The purpose of the CD measurement is to verify the ability of the CEMS to conform to the established CEMS calibration used for determining the emission concentration or emission rate. Therefore, if periodic automatic or manual adjustments are made to the CEMS zero and calibration settings, conduct the CD test immediately before these adjustments, or conduct it in such a way that the CD can be determined.

8.3.3 Conduct the CD test at the two points specified in Section 6.1.2. Introduce to the CEMS the reference gases, gas cells, or optical filters (these need not be certified). Record the CEMS response and subtract this value from the reference value (see example data sheet in Figure 2–1).

8.4 Relative Accuracy Test Procedure.

8.4.1 RA Test Period. Conduct the RA test according to the procedure given in Sections 8.4.2 through 8.4.6 while the affected facility is operating at more than 50 percent of normal load, or as specified in an applicable subpart. The RA test may be conducted during the CD test period.

8.4.2 Reference Methods. Unless otherwise specified in an applicable subpart of the regulations, Methods 3B, 4, 6, and 7, or their approved alternatives, are the reference methods for diluent ($O_2$ and $CO_2$), moisture, $SO_2$, and $NO_x$, respectively.

8.4.3 Sampling Strategy for RM Tests. Conduct the RM tests in such a way that they will yield results representative of the emissions from the source and can be correlated to the CEMS data. It is preferable to conduct the diluent (if applicable), moisture (if needed), and pollutant measurements simultaneously. However, diluent and moisture measurements that are taken within an hour of the pollutant measurements may be used to calculate dry pollutant concentration and emission rates. In order to correlate the CEMS and RM data properly, note the beginning and end of each RM test period of each run (including the exact time of day) on the CEMS chart recordings or other permanent record of

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output. Use the following strategies for the RM tests:

8.4.3.1 For integrated samples (*e.g.*, Methods 6 and Method 4), make a sample traverse of at least 21 minutes, sampling for an equal time at each traverse point (see Section 8.1.3.2 for discussion of traverse points.

8.4.3.2 For grab samples (*e.g.*, Method 7), take one sample at each traverse point, scheduling the grab samples so that they are taken simultaneously (within a 3-minute period) or at an equal interval of time apart over the span of time the CEM pollutant is measured. A test run for grab samples must be made up of at least three separate measurements.

**Note:** At times, CEMS RA tests are conducted during new source performance standards performance tests. In these cases, RM results obtained during CEMS RA tests may be used to determine compliance as long as the source and test conditions are consistent with the applicable regulations.

8.4.4 Number of RM Tests. Conduct a minimum of nine sets of all necessary RM test runs.

**Note:** More than nine sets of RM tests may be performed. If this option is chosen, a maximum of three sets of the test results may be rejected so long as the total number of test results used to determine the RA is greater than or equal to nine. However, all data must be reported, including the rejected data.

8.4.5 Correlation of RM and CEMS Data. Correlate the CEMS and the RM test data as to the time and duration by first determining from the CEMS final output (the one used for reporting) the integrated average pollutant concentration or emission rate for each pollutant RM test period. Consider system response time, if important, and confirm that the pair of results are on a consistent moisture, temperature, and diluent concentration basis. Then, compare each integrated CEMS value against the corresponding average RM value. Use the following guidelines to make these comparisons.

8.4.5.1 If the RM has an integrated sampling technique, make a direct comparison of the RM results and CEMS integrated average value.

8.4.5.2 If the RM has a grab sampling technique, first average the results from all grab samples taken during the test run, and then compare this average value against the integrated value obtained from the CEMS chart recording or output during the run. If the pollutant concentration is varying with time over the run, the arithmetic average of the CEMS value recorded at the time of each grab sample may be used.

8.4.6 Calculate the mean difference between the RM and CEMS values in the units of the emission standard, the standard deviation, the confidence coefficient, and the relative accuracy according to the procedures in Section 12.0.

8.5 Reporting. At a minimum (check with the appropriate regional office, State, or Local agency for additional requirements, if any), summarize in tabular form the results of the CD tests and the RA tests or alternative RA procedure, as appropriate. Include all data sheets, calculations, charts (records of CEMS responses), cylinder gas concentration certifications, and calibration cell response certifications (if applicable) necessary to confirm that the performance of the CEMS met the performance specifications.

*9.0 Quality Control [Reserved]*

*10.0 Calibration and Standardization [Reserved]*

*11.0 Analytical Procedure*

Sample collection and analysis are concurrent for this Performance Specification (see Section 8.0). Refer to the RM for specific analytical procedures.

*12.0 Calculations and Data Analysis*

Summarize the results on a data sheet similar to that shown in Figure 2–2 (in Section 18.0).

12.1 All data from the RM and CEMS must be on a consistent dry basis and, as applicable, on a consistent diluent basis and in the units of the emission standard. Correct the RM and CEMS data for moisture and diluent as follows:

12.1.1 Moisture Correction (as applicable). Correct each wet RM run for moisture with the corresponding Method 4 data; correct each wet CEMS run using the corresponding CEMS moisture monitor date using Equation 2–1.

$$\text{Concentration}_{(dry)} = \frac{\text{Concentration}_{wet}}{(1 - B_{ws})} \qquad \text{Eq. 2-1}$$

12.1.2 Correction to Units of Standard (as applicable). Correct each dry RM run to the units of the emission standard with the corresponding Method 3B data; correct each dry CEMS run using the corresponding CEMS diluent monitor data as follows:

12.1.2.1 Correct to Diluent Basis. The following is an example of concentration (ppm) correction to 7% oxygen.

$$ppm_{(corr)} = ppm_{(uncorr)}\left[\frac{20.9 - 7.0}{20.9 - \%O_{2(dry)}}\right] \qquad \text{Eq. 2-2}$$

The following is an example of mass/gross calorific value (lbs/million Btu) correction.

$lbs/MMBtu = Conc_{(dry)}$ (F-factor) $(20.9/20.9\text{-}\%0_2)$

12.2 Arithmetic Mean. Calculate the arithmetic mean of the difference, d, of a data set as follows:

$$\bar{d} = \frac{1}{n}\sum_{i=1}^{n} d_i \qquad \text{Eq. 2-3}$$

Where:

n = Number of data points.

$\sum_{i=1}^{n} d_i$ = Algebraic summation of the individual differences $d_i$.



12.3 Standard Deviation. Calculate the standard deviation, $S_d$, as follows:

$$S_d = \left[\frac{\sum_{i=1}^{n} d_i^2 - \frac{\left[\sum_{i=1}^{n} d_i\right]^2}{n}}{n-1}\right]^{\frac{1}{2}} \qquad \text{Eq. 2-4}$$

12.4 Confidence Coefficient. Calculate the 2.5 percent error confidence coefficient (one-tailed), CC, as follows:

$$CC = t_{0.975}\frac{S_d}{\sqrt{n}} \qquad \text{Eq. 2-5}$$

Where:

$t_{0.975}$ = t-value (see Table 2–1).

12.5 Relative Accuracy. Calculate the RA of a set of data as follows:

$$RA = \frac{\left[|\bar{d}| + |CC|\right]}{\overline{RM}} \times 100 \qquad \text{Eq. 2-6}$$

Where:

$|\bar{d}|$ = Absolute value of the mean differences (from Equation 2–3).

$|CC|$ = Absolute value of the confidence coefficient (from Equation 2–3).

$\overline{RM}$ = Average RM value. In cases where the average emissions for the test are less than 50 percent of the applicable standard, substitute the emission standard value in the denominator of Eq. 2–6 in place of $\overline{RM}$. In all other cases, use $\overline{RM}$.

*13.0 Method Performance*

13.1 Calibration Drift Performance Specification. The CEMS calibration must not drift or deviate from the reference value of the gas cylinder, gas cell, or optical filter by more than 2.5 percent of the span value. If the CEMS includes pollutant and diluent monitors, the CD must be determined separately for each in terms of concentrations (See Performance Specification 3 for the diluent specifications), and none of the CDs may exceed the specification.

13.2 Relative Accuracy Performance Specification. The RA of the CEMS must be no greater than 20 percent when $\overline{RM}$ is used in the denominator of Eq. 2–6 (average emissions during test are greater than 50 percent of the emission standard) or 10 percent when the applicable emission standard is used in the denominator of Eq. 2–6 (average emissions during test are less than 50 percent of the emission standard).

13.3 For instruments that use common components to measure more than one effluent gas constituent, all channels must simultaneously pass the RA requirement, unless it can be demonstrated that any adjustments made to one channel did not affect the others.

*14.0 Pollution Prevention [Reserved]*

*15.0 Waste Management [Reserved]*

*16.0 Alternative Procedures*

Paragraphs 60.13(j)(1) and (2) of 40 CFR part 60 contain criteria for which the reference method procedure for determining relative accuracy (see Section 8.4 of this Performance Specification) may be waived and the following procedure substituted.

16.1 Conduct a complete CEMS status check following the manufacturer's written instructions. The check should include operation of the light source, signal receiver, timing mechanism functions, data acquisition and data reduction functions, data recorders, mechanically operated functions (mirror movements, zero pipe operation, calibration gas valve operations, etc.), sample filters, sample line heaters, moisture traps, and other related functions of the CEMS, as applicable. All parts of the CEMS shall be functioning properly before proceeding to the alternative RA procedure.

16.2 Alternative RA Procedure.

16.2.1 Challenge each monitor (both pollutant and diluent, if applicable) with cylinder gases of known concentrations or calibration cells that produce known responses at two measurement points within the ranges shown in Table 2–2 (Section 18).

16.2.2 Use a separate cylinder gas (for point CEMS only) or calibration cell (for path CEMS or where compressed gas cylinders can not be used) for measurement points 1 and 2. Challenge the CEMS and record the responses three times at each measurement point. The Administrator may allow dilution of cylinder gas using the performance criteria in Test Method 205, 40 CFR Part 51, Appendix M. Use the average of the three responses in determining relative accuracy.

16.2.3 Operate each monitor in its normal sampling mode as nearly as possible. When using cylinder gases, pass the cylinder gas through all filters, scrubbers, conditioners, and other monitor components used during normal sampling and as much of the sampling probe as practical. When using calibration cells, the CEMS components used in the normal sampling mode should not be by-passed during the RA determination. These include light sources, lenses, detectors, and reference cells. The CEMS should be challenged at each measurement point for a sufficient period of time to assure adsorption-desorption reactions on the CEMS surfaces have stabilized.

16.2.4 Use cylinder gases that have been certified by comparison to National Institute of Standards and Technology (NIST) gaseous standard reference material (SRM) or NIST/EPA approved gas manufacturer's certified reference material (CRM) (See Reference 2 in Section 17.0) following EPA Traceability Protocol Number 1 (See Reference 3 in Section 17.0). As an alternative to Protocol Number 1 gases, CRM's may be used directly as alternative RA cylinder gases. A list of gas manufacturers that have prepared approved CRM's is available from EPA at the address shown in Reference 2. Procedures for preparation of CRM's are described in Reference 2.

16.2.5 Use calibration cells certified by the manufacturer to produce a known response in the CEMS. The cell certification procedure shall include determination of CEMS response produced by the calibration cell in direct comparison with measurement of gases of known concentration. This can be accomplished using SRM or CRM gases in a laboratory source simulator or through extended tests using reference methods at the CEMS location in the exhaust stack. These procedures are discussed in Reference 4 in Section 17.0. The calibration cell certification procedure is subject to approval of the Administrator.

16.3 The differences between the known concentrations of the cylinder gases and the concentrations indicated by the CEMS are used to assess the accuracy of the CEMS. The calculations and limits of acceptable relative accuracy are as follows:

16.3.1 For pollutant CEMS:

$$RA = \left|\left(\frac{\bar{d}}{AC}\right)100\right| \leq 15 \text{ percent} \qquad \text{Eq. 2-7}$$

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Where:

$\bar{d}$ = Average difference between responses and the concentration/responses (see Section 16.2.2).

AC = The known concentration/response of the cylinder gas or calibration cell.

16.3.2 For diluent CEMS:

RA = $|\bar{d}| \leq$ O.7 percent $O_2$ or $CO_2$, as applicable.

**Note:** Waiver of the relative accuracy test in favor of the alternative RA procedure does not preclude the requirements to complete the CD tests nor any other requirements specified in an applicable subpart for reporting CEMS data and performing CEMS drift checks or audits.

### 17.0 References


1. Department of Commerce. Experimental Statistics. Handbook 91. Washington, D.C. p. 3–31, paragraphs 3–3.1.4.

2. "A Procedure for Establishing Traceability of Gas Mixtures to Certain National Bureau of Standards Standard Reference Materials." Joint publication by NBS and EPA. EPA 600/7–81–010. Available from U.S. Environmental Protection Agency, Quality Assurance Division (MD–77), Research Triangle Park, North Carolina 27711.

3. "Traceability Protocol for Establishing True Concentrations of Gases Used for Calibration and Audits of Continuous Source Emission Monitors. (Protocol Number 1)." June 1978. Protocol Number 1 is included in the Quality Assurance Handbook for Air Pollution Measurement Systems, Volume III, Stationary Source Specific Methods. EPA–600/4–77–027b. August 1977.

4. "Gaseous Continuous Emission Monitoring Systems—Performance Specification Guidelines for $SO_2$, $NO_X$, $CO_2$, $O_2$, and TRS." EPA–450/3–82–026. Available from the U.S. EPA, Emission Measurement Center, Emission Monitoring and Data Analysis Division (MD–19), Research Triangle Park, North Carolina 27711.


### *18.0 Tables, Diagrams, Flowcharts, and Validation Data*

TABLE 2–1.—T–VALUES

| n[a] | $t_{0.975}$ | n[a] | $t_{0.975}$ | n[a] | $t_{0.975}$ |
|---|---|---|---|---|---|
| 2 | 12.706 | 7 | 2.447 | 12 | 2.201 |
| 3 | 4.303 | 8 | 2.365 | 13 | 2.179 |
| 4 | 3.182 | 9 | 2.306 | 14 | 2.160 |
| 5 | 2.776 | 10 | 2.262 | 15 | 2.145 |
| 6 | 2.571 | 11 | 2.228 | 16 | 2.131 |

[a] The values in this table are already corrected for n-1 degrees of freedom. Use n equal to the number of individual values.

TABLE 2–2.—MEASUREMENT RANGE

| Measurement point | Pollutant monitor | Diluent monitor for | |
|---|---|---|---|
| | | $CO_2$ | $O_2$ |
| 1 | 20–30% of span value | 5–8% by volume | 4–6% by volume. |
| 2 | 50–60% of span value | 10–14% by volume | 8–12% by volume. |

| | Day | Date and time | Calibration value (C) | Monitor value (M) | Difference (C–M) | Percent of span value (C–M)/span value × 100 |
|---|---|---|---|---|---|---|
| Low-level | | | | | | |
| High-level | | | | | | |

Figure 2–1. Calibration Drift Determination



FIGURE 2–2. RELATIVE ACCURACY DETERMINATION.

| Run No. | Date and time | $SO_2$ ppm[c] | | | $SO_2$ mass/GCV | | | $CO_2$ or $O_2$ % | | $NO_X$ ppm[c] | | | $NO_X$ mass/GCV | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | RM | CEMS | Diff | RM | CEMS | Diff | RM | CEMS | RM | CEMS | Diff | RM | CEMS | Diff |
| 1. | | | | | | | | | | | | | | | |
| 2. | | | | | | | | | | | | | | | |
| 3. | | | | | | | | | | | | | | | |
| 4. | | | | | | | | | | | | | | | |
| 5. | | | | | | | | | | | | | | | |
| 6. | | | | | | | | | | | | | | | |
| 7. | | | | | | | | | | | | | | | |
| 8. | | | | | | | | | | | | | | | |
| 9. | | | | | | | | | | | | | | | |
| 10. | | | | | | | | | | | | | | | |
| 11. | | | | | | | | | | | | | | | |
| 12. | | | | | | | | | | | | | | | |
| Average | | | | | | | | | | | | | | | |
| Confidence Interval | | | | | | | | | | | | | | | |
| Accuracy | | | | | | | | | | | | | | | |

[a] For steam generators.
[b] Average of three samples.
[c] Make sure that RM and CEMS data are on a consistent basis, either wet or dry.

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**Performance Specification 3—Specifications and Test Procedures for $O_2$ and $CO_2$ Continuous Emission Monitoring Systems in Stationary Sources**

*1.0 Scope and Application*

1.1 Analytes.

| Analytes | CAS No. |
|---|---|
| Carbon Dioxide ($CO_2$) ..... | 124–38–9 |
| Oxygen ($O_2$) ..... | 7782–44–7 |

1.2 Applicability.

1.2.1 This specification is for evaluating acceptability of $O_2$ and $CO_2$ continuous emission monitoring systems (CEMS) at the time of installation or soon after and whenever specified in an applicable subpart of the regulations. This specification applies to $O_2$ or $CO_2$ monitors that are not included under Performance Specification 2 (PS 2).

1.2.2 This specification is not designed to evaluate the installed CEMS performance over an extended period of time, nor does it identify specific calibration techniques and other auxiliary procedures to assess the CEMS performance. The source owner or operator, is responsible to calibrate, maintain, and operate the CEMS properly. The Administrator may require, under Section 114 of the Act, the operator to conduct CEMS performance evaluations at other times besides the initial test to evaluate the CEMS performance. See 40 CFR part 60, Section 60.13(c).

1.2.3 The definitions, installation and measurement location specifications, calculations and data analysis, and references are the same as in PS 2, Sections 3, 8.1, 12, and 17, respectively, and also apply to $O_2$ and $CO_2$ CEMS under this specification. The performance and equipment specifications and the relative accuracy (RA) test procedures for $O_2$ and $CO_2$ CEMS do not differ from those for $SO_2$ and $NO_x$ CEMS (see PS 2), except as noted below.

*2.0 Summary of Performance Specification*

The RA and calibration drift (CD) tests are conducted to determine conformance of the CEMS to the specification.

*3.0 Definitions*

Same as in Section 3.0 of PS 2.

*4.0 Interferences [Reserved]*

*5.0 Safety*

This performance specification may involve hazardous materials, operations, and equipment. This performance specification may not address all of the safety problems associated with its use. It is the responsibility of the user to establish appropriate safety and health practices and determine the applicable regulatory limitations prior to performing this performance specification. The CEMS users manual should be consulted for specific precautions to be taken with regard to the analytical procedures.

*6.0 Equipment and Supplies*

Same as Section 6.0 of PS2.

*7.0 Reagents and Standards*

Same as Section 7.0 of PS2.

*8.0 Sample Collection, Preservation, Storage, and Transport*

8.1 Relative Accuracy Test Procedure. Sampling Strategy for reference method (RM) Tests, Correlation of RM and CEMS Data, and Number of RM Tests. Same as PS 2, Sections 8.4.3, 8.4.5, and 8.4.4, respectively.

8.2 Reference Method. Unless otherwise specified in an applicable subpart of the regulations, Method 3B or other approved alternative is the RM for $O_2$ or $CO_2$.

*9.0 Quality Control [Reserved]*

*10.0 Calibration and Standardization [Reserved]*

*11.0 Analytical Procedure*

Sample collection and analyses are concurrent for this performance specification (see Section 8). Refer to the RM for specific analytical procedures.

*12.0 Calculations and Data Analysis*

Summarize the results on a data sheet similar to that shown in Figure 2.2 of PS2. Calculate the arithmetic difference between the RM and the CEMS output for each run. The average difference of the nine (or more) data sets constitute the RA.

*13.0 Method Performance*

13.1 Calibration Drift Performance Specification. The CEMS calibration must not drift by more than 0.5 percent $O_2$ or $CO_2$ from the reference value of the gas, gas cell, or optical filter.

13.2 CEMS Relative Accuracy Performance Specification. The RA of the CEMS must be no greater than 1.0 percent $O_2$ or $CO_2$.

*14.0 Pollution Prevention [Reserved]*

*15.0 Waste Management [Reserved]*

*16.0 References*

Same as in Section 17.0 of PS 2.

*17.0 Tables, Diagrams, Flowcharts, and Validation Data [Reserved]*

**Performance Specification 4—Specifications and Test Procedures for Carbon Monoxide Continuous Emission Monitoring Systems in Stationary Sources**

*1.0 Scope and Application*

1.1 Analytes.

| Analyte | CAS No. |
|---|---|
| Carbon Monoxide (CO) ..... | 630–08–0 |

1.2 Applicability.

1.2.1 This specification is for evaluating the acceptability of carbon monoxide (CO) continuous emission monitoring systems (CEMS) at the time of installation or soon after and whenever specified in an applicable subpart of the regulations. This specification was developed primarily for CEMS having span values of 1,000 ppmv CO.

1.2.2 This specification is not designed to evaluate the installed CEMS performance over an extended period of time nor does it identify specific calibration techniques and other auxiliary procedures to assess CEMS performance. The source owner or operator, is responsible to calibrate, maintain, and operate the CEMS. The Administrator may require, under Section 114 of the Act, the source owner or operator to conduct CEMS performance evaluations at other times besides the initial test to evaluate the CEMS performance. See 40 CFR part 60, Section 60.13(c).

1.2.3 The definitions, performance specification test procedures, calculations, and data analysis procedures for determining calibration drift (CD) and relative accuracy (RA) of Performance Specification 2 (PS 2), Sections 3, 8.0, and 12, respectively, apply to this specification.

*2.0 Summary of Performance Specification*

The CD and RA tests are conducted to determine conformance of the CEMS to the specification.



*3.0 Definitions*

Same as in Section 3.0 of PS 2.

*4.0 Interferences [Reserved]*

*5.0 Safety*

This performance specification may involve hazardous materials, operations, and equipment. This performance specification may not address all of the safety problems associated with its use. It is the responsibility of the user to establish appropriate safety and health practices and determine the applicable regulatory limitations prior to performing this performance specification. The CEMS users manual should be consulted for specific precautions to be taken with regard to the analytical procedures.

*6.0 Equipment and Supplies*

Same as Section 6.0 of PS 2.

*7.0 Reagents and Standards*

Same as Section 7.0 of PS 2.

*8.0 Sample Collection, Preservation, Storage, and Transport*

8.1 Relative Accuracy Test Procedure. Sampling Strategy for reference method (RM) Tests, Number of RM Tests, and Correlation of RM and CEMS Data are the same as PS 2, Sections 8.4.3, 8.4.4, and 8.4.5, respectively.

8.2 Reference Methods. Unless otherwise specified in an applicable subpart of the regulation, Method 10, 10A, 10B or other approved alternative are the RM for this PS. When evaluating nondispersive infrared CEMS using Method 10 as the RM, the alternative interference trap specified in Section 16.0 of Method 10 shall be used.

*9.0 Quality Control [Reserved]*

*10.0 Calibration and Standardization [Reserved]*

*11.0 Analytical Procedure*

Sample collection and analysis are concurrent for this performance specification (see Section 8.0). Refer to the RM for specific analytical procedures.

*12.0 Calculations and Data Analysis*

Same as Section 12.0 of PS 2.

*13.0 Method Performance*

13.1 Calibration Drift. The CEMS calibration must not drift or deviate from the reference value of the calibration gas, gas cell, or optical filter by more than 5 percent of the established span value for 6 out of 7 test days (*e.g.*, the established span value is 1000 ppm for Subpart J affected facilities).

13.2 Relative Accuracy. The RA of the CEMS must be no greater than 10 percent when the average RM value is used to calculate RA or 5 percent when the applicable emission standard is used to calculate RA.

*14.0 Pollution Prevention [Reserved]*

*15.0 Waste Management [Reserved]*

*16.0 Alternative Procedures [Reserved]*

*17.0 References*

1. Ferguson, B.B., R.E. Lester, and W.J. Mitchell. Field Evaluation of Carbon Monoxide and Hydrogen Sulfide Continuous Emission Monitors at an Oil Refinery. U.S. Environmental Protection Agency. Research Triangle Park, N.C. Publication No. EPA–600/4–82–054. August 1982. 100 p.

2. "Gaseous Continuous Emission Monitoring Systems—Performance Specification Guidelines for $SO_2$, $NO_x$, $CO_2$, $O_2$, and TRS." EPA–450/3–82–026. U.S. Environmental Protection Agency, Technical Support Division (MD–19), Research Triangle Park, NC 27711.

3. Repp, M. Evaluation of Continuous Monitors for Carbon Monoxide in Stationary Sources. U.S. Environmental Protection Agency. Research Triangle Park, N.C. Publication No. EPA–600/2–77–063. March 1977. 155 p.

4. Smith, F., D.E. Wagoner, and R.P. Donovan. Guidelines for Development of a Quality Assurance Program: Volume VIII—Determination of CO Emissions from Stationary Sources by NDIR Spectrometry. U.S. Environmental Protection Agency. Research Triangle Park, N.C. Publication No. EPA–650/4–74–005–h. February 1975. 96 p.

*18.0 Tables, Diagrams, Flowcharts, and Validation Data*

Same as Section 18.0 of PS 2.

**Performance Specification 4A—Specifications and Test Procedures for Carbon Monoxide Continuous Emission Monitoring Systems in Stationary Sources**

*1.0 Scope and Application*

1.1 Analytes.

| Analyte | CAS No. |
|---|---|
| Carbon Monoxide (CO) ..... | 630–80–0 |

1.2 Applicability.

1.2.1 This specification is for evaluating the acceptability of carbon monoxide (CO) continuous emission monitoring systems (CEMS) at the time of installation or soon after and whenever specified in an applicable subpart of the regulations. This specification was developed primarily for CEMS that comply with low emission standards (less than 200 ppmv).

1.2.2 This specification is not designed to evaluate the installed CEMS performance over an extended period of time nor does it identify specific calibration techniques and other auxiliary procedures to assess CEMS performance. The source owner or operator is responsible to calibrate, maintain, and operate the CEMS. The Administrator may require, under Section 114 of the Act, the source owner or operator to conduct CEMS performance evaluations at other times besides the initial test to evaluate CEMS performance. See 40 CFR Part 60, Section 60.13(c).

1.2.3 The definitions, performance specification, test procedures, calculations and data analysis procedures for determining calibration drifts (CD) and relative accuracy (RA), of Performance Specification 2 (PS 2), Sections 3, 8.0, and 12, respectively, apply to this specification.

*2.0 Summary of Performance Specification*

The CD and RA tests are conducted to determine conformance of the CEMS to the specification.

*3.0 Definitions*

Same as in Section 3.0 of PS 2.

*4.0 Interferences. [Reserved]*

*5.0 Safety*

This performance specification may involve hazardous materials, operations, and equipment. This performance specification may not address all of the safety problems associated with its use. It is the responsibility of the user to establish appropriate safety and health practices and determine the applicable regulatory limitations prior to performing this performance specification. The CEMS users manual should be consulted for specific precautions to be taken with regard to the analytical procedures.

*6.0 Equipment and Supplies*

Same as Section 6.0 of PS 2 with the following additions.

6.1 Data Recorder Scale.

6.1.1 This specification is the same as Section 6.1 of PS 2. The CEMS shall be capable of measuring emission levels under normal conditions and under periods of short-duration peaks of high concentrations. This dual-range capability may be met using two separate analyzers (one for each range) or by using dual-range units which have the capability of measuring both levels with a single unit. In the latter case, when the reading goes above the full-scale measurement value of the lower range, the higher-range operation shall be started automatically. The CEMS recorder range must include zero and a

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high-level value. Under applications of consistent low emissions, a single-range analyzer is allowed provided normal and spike emissions can be quantified. In this case, set an appropriate high-level value to include all emissions.

6.1.2 For the low-range scale of dual-range units, the high-level value shall be between 1.5 times the pollutant concentration corresponding to the emission standard level and the span value. For the high-range scale, the high-level value shall be set at 2000 ppm, as a minimum, and the range shall include the level of the span value. There shall be no concentration gap between the low-and high-range scales.

*7.0 Reagents and Standards*

Same as Section 7.0 of PS 2.

*8.0 Sample Collection, Preservation, Storage, and Transport*

8.1 Relative Accuracy Test Procedure. Sampling Strategy for reference method (RM) Tests, Number of RM Tests, and Correlation of RM and CEMS Data are the same as PS 2, Sections 8.4.3, 8.4.4, and 8.4.5, respectively.

8.2 Reference Methods. Unless otherwise specified in an applicable subpart of the regulation, Methods 10, 10A, 10B, or other approved alternative is the RM for this PS. When evaluating nondispersive infrared CEMS using Method 10 as the RM, the alternative interference trap specified in Section 16.0 of Method 10 shall be used.

8.3 Response Time Test Procedure. The response time test applies to all types of CEMS, but will generally have significance only for extractive systems.

8.3.1 Introduce zero gas into the analyzer. When the system output has stabilized (no change greater than 1 percent of full scale for 30 sec), introduce an upscale calibration gas and wait for a stable value. Record the time (upscale response time) required to reach 95 percent of the final stable value. Next, reintroduce the zero gas and wait for a stable reading before recording the response time (downscale response time). Repeat the entire procedure three times and determine the mean upscale and downscale response times. The slower or longer of the two means is the system response time.

8.4 Interference Check. The CEMS must be shown to be free from the effects of any interferences.

*9.0 Quality Control. [Reserved]*

*10.0 Calibration and Standardization. [Reserved]*

*11.0 Analytical Procedure*

Sample collection and analysis are concurrent for this performance specification (see Section 8.0). Refer to the RM for specific analytical procedures.

*12.0 Calculations and Data Analysis. Same as Section 12.0 of PS 2*

*13.0 Method Performance*

13.1 Calibration Drift. The CEMS calibration must not drift or deviate from the reference value of the calibration gas, gas cell, or optical filter by more than 5 percent of the established span value for 6 out of 7 test days.

13.2 Relative Accuracy. The RA of the CEMS must be no greater than 10 percent when the average RM value is used to calculate RA, 5 percent when the applicable emission standard is used to calculate RA, or within 5 ppmv when the RA is calculated as the absolute average difference between the RM and CEMS plus the 2.5 percent confidence coefficient.

13.3 Response Time. The CEMS response time shall not exceed 1.5 min to achieve 95 percent of the final stable value.

*14.0 Pollution Prevention [Reserved]*

*15.0 Waste Management [Reserved]*

*16.0 Alternative Procedures*

16.1 Under conditions where the average CO emissions are less than 10 percent of the standard and this is verified by Method 10, a cylinder gas audit may be performed in place of the RA test to determine compliance with these limits. In this case, the cylinder gas shall contain CO in 12 percent carbon dioxide as an interference check. If this option is exercised, Method 10 must be used to verify that emission levels are less than 10 percent of the standard.

*17.0 References*

Same as Section 17 of PS 4.

*18.0 Tables, Diagrams, Flowcharts, and Validation Data*

Same as Section 18.0 of PS 2.

**Performance Specification 5—Specifications and Test Procedures for TRS Continuous Emission Monitoring Systems in Stationary Sources**

*1.0 Scope and Application*

1.1 Analytes.

| Analyte | CAS No. |
|---|---|
| Total Reduced Sulfur (TRS) | NA |

1.2 Applicability. This specification is for evaluating the applicability of TRS continuous emission monitoring systems (CEMS) at the time of installation or soon after and whenever specified in an applicable subpart of the regulations. The CEMS may include oxygen monitors which are subject to Performance Specification 3 (PS 3).

1.3 The definitions, performance specification, test procedures, calculations and data analysis procedures for determining calibration drifts (CD) and relative accuracy (RA) of PS 2, Sections 3.0, 8.0, and 12.0, respectively, apply to this specification.

*2.0 Summary of Performance Specification*

The CD and RA tests are conducted to determine conformance of the CEMS to the specification.

*3.0 Definitions*

Same as in Section 3.0 of PS 2.

*4.0 Interferences [Reserved]*

*5.0 Safety*

This performance specification may involve hazardous materials, operations, and equipment. This performance specification may not address all of the safety problems associated with its use. It is the responsibility of the user to establish appropriate safety and health practices and determine the applicable regulatory limitations prior to performing this performance specification. The CEMS users manual should be consulted for specific precautions to be taken with regard to the analytical procedures.

*6.0 Equipment and Supplies*

Same as Section 6.0 of PS 2.

*7.0 Reagents and Standards*

Same as Section 7.0 of PS 2.

*8.0 Sample Collection, Preservation, Storage, and Transport*

8.1 Relative Accuracy Test Procedure. Sampling Strategy for reference method (RM) Tests, Number of RM Tests, and Correlation of RM and CEMS Data are the same as PS 2, Sections 8.4.3, 8.4.4, and 8.4.5, respectively.

Note: For Method 16, a sample is made up of at least three separate injects equally space over time. For Method 16A, a sample is collected for at least 1 hour.

8.2 Reference Methods. Unless otherwise specified in the applicable subpart of the regulations, Method 16, Method 16A, 16B or other approved alternative is the RM for TRS.



*9.0 Quality Control [Reserved]*

*10.0 Calibration and Standardization [Reserved]*

*11.0 Analytical Procedure*

Sample collection and analysis are concurrent for this performance specification (see Section 8.0). Refer to the reference method for specific analytical procedures.

*12.0 Calculations and Data Analysis*

Same as Section 12.0 of PS 2.

*13.0 Method Performance*

13.1 Calibration Drift. The CEMS detector calibration must not drift or deviate from the reference value of the calibration gas by more than 5 percent of the established span value for 6 out of 7 test days. This corresponds to 1.5 ppm drift for Subpart BB sources where the span value is 30 ppm. If the CEMS includes pollutant and diluent monitors, the CD must be determined separately for each in terms of concentrations (see PS 3 for the diluent specifications).

13.2 Relative Accuracy. The RA of the CEMS must be no greater than 20 percent when the average RM value is used to calculate RA or 10 percent when the applicable emission standard is used to calculate RA.

*14.0 Pollution Prevention [Reserved]*

*15.0 Waste Management [Reserved]*

*16.0 Alternative Procedures [Reserved]*

*17.0 References*

1. Department of Commerce. Experimental Statistics, National Bureau of Standards, Handbook 91. 1963. Paragraphs 3–3.1.4, p. 3–31.

2. A Guide to the Design, Maintenance and Operation of TRS Monitoring Systems. National Council for Air and Stream Improvement Technical Bulletin No. 89. September 1977.

3. Observation of Field Performance of TRS Monitors on a Kraft Recovery Furnace. National Council for Air and Stream Improvement Technical Bulletin No. 91. January 1978.

*18.0 Tables, Diagrams, Flowcharts, and Validation Data*

Same as Section 18.0 of PS 2.

**Performance Specification 6—Specifications and Test Procedures for Continuous Emission Rate Monitoring Systems in Stationary Sources**

*1.0 Scope and Application*

1.1 Applicability. This specification is used for evaluating the acceptability of continuous emission rate monitoring systems (CERMSs).

1.2 The installation and measurement location specifications, performance specification test procedure, calculations, and data analysis procedures, of Performance Specifications (PS 2), Sections 8.0 and 12, respectively, apply to this specification.

*2.0 Summary of Performance Specification*

The calibration drift (CD) and relative accuracy (RA) tests are conducted to determine conformance of the CERMS to the specification.

*3.0 Definitions*

The definitions are the same as in Section 3 of PS 2, except this specification refers to the continuous emission rate monitoring system rather than the continuous emission monitoring system. The following definitions are added:

3.1 *Continuous Emission Rate Monitoring System (CERMS).* The total equipment required for the determining and recording the pollutant mass emission rate (in terms of mass per unit of time).

3.2 *Flow Rate Sensor.* That portion of the CERMS that senses the volumetric flow rate and generates an output proportional to that flow rate. The flow rate sensor shall have provisions to check the CD for each flow rate parameter that it measures individually (*e.g.*, velocity, pressure).

*4.0 Interferences [Reserved]*

*5.0 Safety*

This performance specification may involve hazardous materials, operations, and equipment. This performance specification may not address all of the safety problems associated with its use. It is the responsibility of the user to establish appropriate safety and health practices and determine the applicable regulatory limitations prior to performing this performance specification. The CERMS users manual should be consulted for specific precautions to be taken with regard to the analytical procedures.

*6.0 Equipment and Supplies*

Same as Section 6.0 of PS 2.

*7.0 Reagents and Standards*

Same as Section 7.0 of PS 2.

*8.0 Sample Collection, Preservation, Storage, and Transport*

8.1 Calibration Drift Test Procedure.

8.1.1 The CD measurements are to verify the ability of the CERMS to conform to the established CERMS calibrations used for determining the emission rate. Therefore, if periodic automatic or manual adjustments are made to the CERMS zero and calibration settings, conduct the CD tests immediately before these adjustments, or conduct them in such a way that CD can be determined.

8.1.2 Conduct the CD tests for pollutant concentration at the two values specified in Section 6.1.2 of PS 2. For other parameters that are selectively measured by the CERMS (*e.g.*, velocity, pressure, flow rate), use two analogous values (*e.g.*, Low: 0–20% of full scale, High: 50–100% of full scale). Introduce to the CERMS the reference signals (these need not be certified). Record the CERMS response to each and subtract this value from the respective reference value (see example data sheet in Figure 6–1).

8.2 Relative Accuracy Test Procedure.

8.2.1 Sampling Strategy for reference method (RM) Tests, Correlation of RM and CERMS Data, and Number of RM Tests are the same as PS 2, Sections 8.4.3, 8.4.5, and 8.4.4, respectively. Summarize the results on a data sheet. An example is shown in Figure 6–1. The RA test may be conducted during the CD test period.

8.2.2 Reference Methods. Unless otherwise specified in the applicable subpart of the regulations, the RM for the pollutant gas is the Appendix A method that is cited for compliance test purposes, or its approved alternatives. Methods 2, 2A, 2B, 2C, or 2D, as applicable, are the RMs for the determination of volumetric flow rate.

*9.0 Quality Control [Reserved]*

*10.0 Calibration and Standardization [Reserved]*

*11.0 Analytical Procedure*

Same as Section 11.0 of PS 2.

*12.0 Calculations and Data Analysis*

Same as Section 12.0 of PS 2.

*13.0 Method Performance*

13.1 Calibration Drift. Since the CERMS includes analyzers for several measurements, the CD shall be determined separately for each analyzer in terms of its specific measurement. The calibration for each analyzer associated with the measurement of flow rate shall not drift or deviate from each reference value of flow rate by more than 3 percent of the respective high-level value. The CD specification for each analyzer for which other PSs have been established (*e.g.*, PS 2 for $SO_2$

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and $NO_X$), shall be the same as in the applicable PS.

13.2 CERMS Relative Accuracy. The RA of the CERMS shall be no greater than 20 percent of the mean value of the RM's test data in terms of the units of the emission standard, or 10 percent of the applicable standard, whichever is greater.

*14.0 Pollution Prevention [Reserved]*

*15.0 Waste Management [Reserved]*

*16.0 Alternative Procedures*

Same as in Section 16.0 of PS 2.

*17.0 References*

1. Brooks, E.F., E.C. Beder, C.A. Flegal, D.J. Luciani, and R. Williams. Continuous Measurement of Total Gas Flow Rate from Stationary Sources. U.S. Environmental Protection Agency. Research Triangle Park, North Carolina. Publication No. EPA–650/2–75–020. February 1975. 248 p.

*18.0 Tables, Diagrams, Flowcharts, and Validation Data*

| Run No. | Date and time | Emission rate (kg/hr)[a] | | |
|---|---|---|---|---|
| | | CERMS | RMs | Difference (RMs-CERMS) |
| 1 | | | | |
| 2 | | | | |
| 3 | | | | |
| 4 | | | | |
| 5 | | | | |
| 6 | | | | |
| 7 | | | | |
| 8 | | | | |
| 9 | | | | |

[a] The RMs and CERMS data as corrected to a consistent basis (*i.e.*, moisture, temperature, and pressure conditions).

Figure 6–1.—Emission Rate Determinations

**Performance Specification 7—Specifications and Test Procedures for Hydrogen Sulfide Continuous Emission Monitoring Systems in Stationary Sources**

*1.0 Scope and Application*

1.1 Analytes.

| Analyte | CAS No. |
|---|---|
| Hydrogen Sulfide | 7783–06–4 |

1.2 Applicability.

1.2.1 This specification is to be used for evaluating the acceptability of hydrogen sulfide ($H_2S$) continuous emission monitoring systems (CEMS) at the time of or soon after installation and whenever specified in an applicable subpart of the regulations.

1.2.2 This specification is not designed to evaluate the installed CEMS performance over an extended period of time nor does it identify specific calibration techniques and other auxiliary procedures to assess CEMS performance. The source owner or operator, however, is responsible to calibrate, maintain, and operate the CEMS. To evaluate CEMS performance, the Administrator may require, under Section 114 of the Act, the source owner or operator to conduct CEMS performance evaluations at other times besides the initial test. See Section 60.13(c).

*2.0 Summary*

Calibration drift (CD) and relative accuracy (RA) tests are conducted to determine that the CEMS conforms to the specification.

*3.0 Definitions*

Same as Section 3.0 of PS 2.

*4.0 Interferences. [Reserved]*

*5.0 Safety*

The procedures required under this performance specification may involve hazardous materials, operations, and equipment. This performance specification may not address all of the safety problems associated with these procedures. It is the responsibility of the user to establish appropriate safety problems associated with these procedures. It is the responsibility of the user to establish appropriate safety and health practices and determine the application regulatory limitations prior to performing these procedures. The CEMS user's manual and materials recommended by the reference method should be consulted for specific precautions to be taken.

*6.0 Equipment and Supplies*

6.1 Instrument Zero and Span. This specification is the same as Section 6.1 of PS 2.

6.2 Calibration Drift. The CEMS calibration must not drift or deviate from the reference value of the calibration gas or reference source by more than 5 percent of the established span value for 6 out of 7 test days (e.g., the established span value is 300 ppm for Subpart J fuel gas combustion devices).

6.3 Relative Accuracy. The RA of the CEMS must be no greater than 20 percent when the average reference method (RM) value is used to calculate RA or 10 percent when the applicable emission standard is used to calculate RA.

*7.0 Reagents and Standards*

Same as Section 7.0 of PS 2.

*8.0 Sample Collection, Preservation, Storage, and Transport.*

8.1 Installation and Measurement Location Specification. Same as Section 8.1 of PS 2.

8.2 Pretest Preparation. Same as Section 8.2 of PS 2.

8.3 Calibration Drift Test Procedure. Same as Section 8.3 of PS 2.

8.4 Relative Accuracy Test Procedure.



8.4.1 Sampling Strategy for RM Tests, Correlation of RM and CEMS Data, and Number of RM Tests. These are the same as that in PS 2, Sections 8.4.3, 8.4.5, and 8.4.4, respectively.

8.4.2 Reference Methods. Unless otherwise specified in an applicable subpart of the regulation, Method 11 is the RM for this PS.

8.5 Reporting. Same as Section 8.5 of PS 2.

*9.0 Quality Control. [Reserved]*

*10.0 Calibration and Standardizations. [Reserved]*

*11.0 Analytical Procedures*

Sample Collection and analysis are concurrent for this PS (see Section 8.0). Refer to the RM for specific analytical procedures.

*12.0 Data Analysis and Calculations*

Same as Section 12.0 of PS 2.

*13.0 Method Performance. [Reserved]*

*14.0 Pollution Prevention. [Reserved]*

*15.0 Waste Management. [Reserved]*

*16.0 References*

1. U.S. Environmental Protection Agency. Standards of Performance for New Stationary Sources; Appendix B; Performance Specifications 2 and 3 for $SO_2$, $NO_X$, $CO_2$, and $O_2$ Continuous Emission Monitoring Systems; Final Rule. 48 CFR 23608. Washington, D.C. U.S. Government Printing Office. May 25, 1983.

2. U.S. Government Printing Office. Gaseous Continuous Emission Monitoring Systems—Performance Specification Guidelines for $SO_2$, $NO_X$, $CO_2$, $O_2$, and TRS. U.S. Environmental Protection Agency. Washington, D.C. EPA-450/3–82–026. October 1982. 26 p.

3. Maines, G.D., W.C. Kelly (Scott Environmental Technology, Inc.), and J.B. Homolya. Evaluation of Monitors for Measuring $H_2S$ in Refinery Gas. Prepared for the U.S. Environmental Protection Agency. Research Triangle Park, N.C. Contract No. 68–02–2707. 1978. 60 p.

4. Ferguson, B.B., R.E. Lester (Harmon Engineering and Testing), and W.J. Mitchell. Field Evaluation of Carbon Monoxide and Hydrogen Sulfide Continuous Emission Monitors at an Oil Refinery. Prepared for the U.S. Environmental Protection Agency. Research Triangle Park, N.C. Publication No. EPA–600/4–82–054. August 1982. 100 p.

*17.0 Tables, Diagrams, Flowcharts, and Validation Data*

Same as Section 18.0 of PS 2.

**Performance Specification 8 Performance Specifications for Volatile Organic Compound Continuous Emission Monitoring Systems in Stationary Sources**

*1.0 Scope and Application*

1.1 Analytes. Volatile Organic Compounds (VOCs).

1.2 Applicability.

1.2.1 This specification is to be used for evaluating a continuous emission monitoring system (CEMS) that measures a mixture of VOC's and generates a single combined response value. The VOC detection principle may be flame ionization (FI), photoionization (PI), non-dispersive infrared absorption (NDIR), or any other detection principle that is appropriate for the VOC species present in the emission gases and that meets this performance specification. The performance specification includes procedures to evaluate the acceptability of the CEMS at the time of or soon after its installation and whenever specified in emission regulations or permits. This specification is not designed to evaluate the installed CEMS performance over an extended period of time, nor does it identify specific calibration techniques and other auxiliary procedures to assess the CEMS performance. The source owner or operator, however, is responsible to calibrate, maintain, and operate the CEMS properly. To evaluate the CEMS performance, the Administrator may require, under Section 114 of the Act, the operator to conduct CEMS performance evaluations in addition to the initial test. See Section 60.13(c).

1.2.2 In most emission circumstances, most VOC monitors can provide only a relative measure of the total mass or volume concentration of a mixture of organic gases, rather than an accurate quantification. This problem is removed when an emission standard is based on a total VOC measurement as obtained with a particular detection principle. In those situations where a true mass or volume VOC concentration is needed, the problem can be mitigated by using the VOC CEMS as a relative indicator of total VOC concentration if statistical analysis indicates that a sufficient margin of compliance exists for this approach to be acceptable. Otherwise, consideration can be given to calibrating the CEMS with a mixture of the same VOC's in the same proportions as they actually occur in the measured source. In those circumstances where only one organic species is present in the source, or where equal incremental amounts of each of the organic species present generate equal CEMS responses, the latter choice can be more easily achieved.

*2.0 Summary of Performance Specification*

2.1 Calibration drift and relative accuracy tests are conducted to determine adherence of the CEMS with specifications given for those items. The performance specifications include criteria for installation and measurement location, equipment and performance, and procedures for testing and data reduction.

*3.0 Definitions.*

Same as Section 3.0 of PS 2.

*4.0 Interferences. [Reserved]*

*5.0 Safety*

The procedures required under this performance specification may involve hazardous materials, operations, and equipment. This performance specification may not address all of the safety problems associated with these procedures. It is the responsibility of the user to establish appropriate safety problems associated with these procedures. It is the responsibility of the user to establish appropriate safety and health practices and determine the application regulatory limitations prior to performing these procedures. The CEMS user's manual and materials recommended by the reference method should be consulted for specific precautions to be taken.

*6.0 Equipment and Supplies*

6.1 VOC CEMS Selection. When possible, select a VOC CEMS with the detection principle of the reference method specified in the regulation or permit (usually either FI, NDIR, or PI). Otherwise, use knowledge of the source process chemistry, previous emission studies, or gas chromatographic analysis of the source gas to select an appropriate VOC CEMS. Exercise extreme caution in choosing and installing any CEMS in an area with explosive hazard potential.

6.2 Data Recorder Scale. Same as Section 6.1 of PS 2.

*7.0 Reagents and Standards. [Reserved]*

*8.0 Sample Collection, Preservation, Storage, and Transport*

8.1 Installation and Measurement Location Specifications. Same as Section 8.1 of PS 2.

8.2 Pretest Preparation. Same as Section 8.2 of PS 2.

8.3 Reference Method (RM). Use the method specified in the applicable regulation or permit, or any approved alternative, as the RM.

8.4 Sampling Strategy for RM Tests, Correlation of RM and CEMS Data, and Number of RM Tests. Follow PS 2, Sections 8.4.3, 8.4.5, and 8.4.4, respectively.

8.5 Reporting. Same as Section 8.5 of PS 2.

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*9.0 Quality Control. [Reserved]*

*10.0 Calibration and Standardization. [Reserved]*

*11.0 Analytical Procedure*

Sample collection and analysis are concurrent for this PS (see Section 8.0). Refer to the RM for specific analytical procedures.

*12.0 Calculations and Data Analysis*

Same as Section 12.0 of PS 2.

*13.0 Method Performance*

13.1 Calibration Drift. The CEMS calibration must not drift by more than 2.5 percent of the span value.

13.2 CEMS Relative Accuracy. Unless stated otherwise in the regulation or permit, the RA of the CEMS must not be greater than 20 percent of the mean value of the RM test data in terms of the units of the emission standard, or 10 percent of the applicable standard, whichever is greater.

*14.0 Pollution Prevention. [Reserved]*

*15.0 Waste Management. [Reserved]*

*16.0 References*

Same as Section 17.0 of PS 2.

*17.0 Tables, Diagrams, Flowcharts, and Validation Data. [Reserved]*

**Performance Specification 9—Specifications and Test Procedures for Gas Chromatographic Continuous Emission Monitoring Systems in Stationary Sources**

*1.0 Scope and Application*

1.1 Applicability. These requirements apply to continuous emission monitoring systems (CEMSs) that use gas chromatography (GC) to measure gaseous organic compound emissions. The requirements include procedures intended to evaluate the acceptability of the CEMS at the time of its installation and whenever specified in regulations or permits. Quality assurance procedures for calibrating, maintaining, and operating the CEMS properly at all times are also given in this procedure.

*2.0 Summary of Performance Specification*

2.1 Calibration precision, calibration error, and performance audit tests are conducted to determine conformance of the CEMS with these specifications. Daily calibration and maintenance requirements are also specified.

*3.0 Definitions*

3.1 Gas Chromatograph (GC). That portion of the system that separates and detects organic analytes and generates an output proportional to the gas concentration. The GC must be temperature controlled.

**Note:** The term temperature controlled refers to the ability to maintain a certain temperature around the column. Temperature-programmable GC is not required for this performance specification, as long as all other requirements for precision, linearity and accuracy listed in this performance specification are met. It should be noted that temperature programming a GC will speed up peak elution, thus allowing increased sampling frequency.

3.1.1 Column. Analytical column capable of separating the analytes of interest.

3.1.2 Detector. A detection system capable of detecting and quantifying all analytes of interest.

3.1.3 Integrator. That portion of the system that quantifies the area under a particular sample peak generated by the GC.

3.1.4 Data Recorder. A strip chart recorder, computer, or digital recorder capable of recording all readings within the instrument's calibration range.

3.2 Calibration Precision. The error between triplicate injections of each calibration standard.

*4.0 Interferences [Reserved]*

*5.0 Safety*

The procedures required under this performance specification may involve hazardous materials, operations, and equipment. This performance specification does not purport to address all of the safety problems associated with these procedures. It is the responsibility of the user to establish appropriate safety problems associated with these procedures. It is the responsibility of the user to establish appropriate safety and health practices and determine the application regulatory limitations prior to performing these procedures. The CEMS user's manual and materials recommended by the reference method should be consulted for specific precautions to be taken.

*6.0 Equipment and Supplies*

6.1 Presurvey Sample Analysis and GC Selection. Determine the pollutants to be monitored from the applicable regulation or permit and determine the approximate concentration of each pollutant (this information can be based on past compliance test results). Select an appropriate GC configuration to measure the organic compounds. The GC components should include a heated sample injection loop (or other sample introduction systems), separatory column, temperature-controlled oven, and detector. If the source chooses dual column and/or dual detector configurations, each column/detector is considered a separate instrument for the purpose of this performance specification and thus the procedures in this performance specification shall be carried out on each system. If this method is applied in highly explosive areas, caution should be exercised in selecting the equipment and method of installation.

6.2 Sampling System. The sampling system shall be heat traced and maintained at a minimum of 120 °C with no cold spots. All system components shall be heated, including the probe, calibration valve, sample lines, sampling loop (or sample introduction system), GC oven, and the detector block (when appropriate for the type of detector being utilized, *e.g.*, flame ionization detector).

*7.0 Reagents and Standards*

7.1 Calibration Gases. Obtain three concentrations of calibration gases certified by the manufacturer to be accurate to within 2 percent of the value on the label. A gas dilution system may be used to prepare the calibration gases from a high concentration certified standard if the gas dilution system meets the requirements specified in Test Method 205, 40 CFR Part 51, Appendix M. The performance test specified in Test Method 205 shall be repeated quarterly, and the results of the Method 205 test shall be included in the report. The calibration gas concentration of each target analyte shall be as follows (measured concentration is based on the presurvey concentration determined in Section 6.1).

**Note:** If the low level calibration gas concentration falls at or below the limit of detection for the instrument for any target pollutant, a calibration gas with a concentration at 4 to 5 times the limit of detection for the instrument may be substituted for the low-level calibration gas listed in Section 7.1.1.

7.1.1 Low-level. 40–60 percent of measured concentration.

7.1.2 Mid-level. 90–110 percent of measured concentration.

7.1.3 High-level. 140–160 percent of measured concentration, or select highest expected concentration.

7.2 Performance Audit Gas. A certified EPA audit gas shall be used, when possible. A gas mixture containing all the target compounds within the calibration range and certified by EPA's Traceability Protocol for Assay and Certification of Gaseous Calibration Standards may be used when EPA performance audit materials



are not available. The instrument relative error shall be ≤ 10 percent of the certified value of the audit gas.

*8.0 Sample Collection, Preservation, Storage, and Transport*

8.1 Installation and Measurement Location Specifications. Install the CEMs in a location where the measurements are representative of the source emissions. Consider other factors, such as ease of access for calibration and maintenance purposes. The location should not be close to air in-leakages. The sampling location should be at least two equivalent duct diameters downstream from the nearest control device, point of pollutant generation, or other point at which a change in the pollutant concentration or emission rate occurs. The location should be at least 0.5 diameter upstream from the exhaust or control device. To calculate equivalent duct diameter, see Section 12.2 of Method 1 (40 CFR Part 60, Appendix A). Sampling locations not conforming to the requirements in this section may be used if necessary upon approval of the Administrator.

8.2 Pretest Preparation Period. Using the procedures described in Method 18 (40 CFR Part 60, Appendix A), perform initial tests to determine GC conditions that provide good resolution and minimum analysis time for compounds of interest. Resolution interferences that may occur can be eliminated by appropriate GC column and detector choice or by shifting the retention times through changes in the column flow rate and the use of temperature programming.

8.3 7-Day Calibration Error (CE) Test Period. At the beginning of each 24-hour period, set the initial instrument setpoints by conducting a multi-point calibration for each compound. The multi-point calibration shall meet the requirements in Section 13.3. Throughout the 24-hour period, sample and analyze the stack gas at the sampling intervals prescribed in the regulation or permit. At the end of the 24 hour period, inject the three calibration gases for each compound in triplicate and determine the average instrument response. Determine the CE for each pollutant at each level using the equation in Section 9–2.

Each CE shall be ≤ 10 percent. Repeat this procedure six more times for a total of 7 consecutive days.

8.4 Performance Audit Test Periods. Conduct the performance audit once during the initial 7-day CE test and quarterly thereafter. Sample and analyze the EPA audit gas(es) (or the gas mixture prepared by EPA's traceability protocol if an EPA audit gas is not available) three times. Calculate the average instrument response. Report the audit results as part of the reporting requirements in the appropriate regulation or permit (if using a gas mixture, report the certified cylinder concentration of each pollutant).

8.5 Reporting. Follow the reporting requirements of the applicable regulation or permit. If the reporting requirements include the results of this performance specification, summarize in tabular form the results of the CE tests. Include all data sheets, calculations, CEMS data records, performance audit results, and calibration gas concentrations and certifications.

*9.0 Quality Control [Reserved]*

*10.0 Calibration and Standardization*

10.1 Initial Multi-Point Calibration. After initial startup of the GC, after routine maintenance or repair, or at least once per month, conduct a multi-point calibration of the GC for each target analyte. The multi-point calibration for each analyte shall meet the requirements in Section 13.3.

10.2 Daily Calibration. Once every 24 hours, analyze the mid-level calibration standard for each analyte in triplicate. Calculate the average instrument response for each analyte. The average instrument response shall not vary more than 10 percent from the certified concentration value of the cylinder for each analyte. If the difference between the analyzer response and the cylinder concentration for any target compound is greater than 10 percent, immediately inspect the instrument making any necessary adjustments, and conduct an initial multi-point calibration as described in Section 10.1.

*11.0 Analytical Procedure. Sample Collection and Analysis Are Concurrent for This Performance Specification (See Section 8.0)*

*12.0 Calculations and Data Analysis*

12.1 Nomenclature.

$C_m$ = average instrument response, ppm.
$C_a$ = cylinder gas value, ppm.
F = Flow rate of stack gas through sampling system, in Liters/min.
n = Number of measurement points.
$r^2$ = Coefficient of determination.
V = Sample system volume, in Liters, which is the volume inside the sample probe and tubing leading from the stack to the sampling loop.
x = CEMS response.
y = Actual value of calibration standard.

12.2 Coefficient of Determination. Calculate $r^2$ using linear regression analysis and the average concentrations obtained at three calibration points as shown in Equation 9–1.

$$r^2 = \left( \frac{n\sum x_i y_i - \left(\sum x_i\right)\left(\sum y_i\right)}{\sqrt{\left(n\sum y_i^2 - \sum y_i \sum y_i\right)\left(n\sum x_i^2 - \sum x_i \sum x_i\right)}} \right)^2 \quad \text{Eq. 9-1}$$

12.3 Calibration Error Determination. Determine the percent calibration error (CE) at each concentration for each pollutant using the following equation.

$$CE = \frac{C_m - C_a}{C_a} \times 100 \quad \text{Eq. 9-2}$$

12.4 Sampling System Time Constant (T).

$$T = \frac{F}{V} \quad \text{Eq. 9-3}$$

*13.0 Method Performance*

13.1 Calibration Error (CE). The CEMS must allow the determination of CE at all three calibration levels. The average CEMS calibration response must not differ by more than 10 percent of calibration gas value at each level after each 24-hour period of the initial test.

13.2 Calibration Precision and Linearity. For each triplicate injection at each concentration level for each target analyte, any one injection shall not deviate more than 5 percent from the average concentration measured at that level. The linear regression curve for each organic compound at all three levels shall have an $r^2 \geq 0.995$ (using Equation 9–1).

13.3 Measurement Frequency. The sample to be analyzed shall flow continuously through the sampling system. The sampling system time

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constant shall be ≤5 minutes or the sampling frequency specified in the applicable regulation, whichever is less. Use Equation 9–3 to determine T. The analytical system shall be capable of measuring the effluent stream at the frequency specified in the appropriate regulation or permit.

*14.0 Pollution Prevention. [Reserved]*

*15.0 Waste Management. [Reserved]*

*16.0 References. [Reserved]*

*17.0 Tables, Diagrams, Flowcharts, and Validation Data [Reserved]*

218. In Part 60, Appendix B is amended by adding Performance Specification 15 as follows:

**Appendix B—Performance Specifications**

* * * * *

**Performance Specification 15—Performance Specification for Extractive FTIR Continuous Emissions Monitor Systems in Stationary Sources**

*1.0 Scope and Application*

1.1 Analytes. This performance specification is applicable for measuring all hazardous air pollutants (HAPs) which absorb in the infrared region and can be quantified using Fourier Transform Infrared Spectroscopy (FTIR), as long as the performance criteria of this performance specification are met. This specification is to be used for evaluating FTIR continuous emission monitoring systems for measuring HAPs regulated under Title III of the 1990 Clean Air Act Amendments. This specification also applies to the use of FTIR CEMs for measuring other volatile organic or inorganic species.

1.2 Applicability. A source which can demonstrate that the extractive FTIR system meets the criteria of this performance specification for each regulated pollutant may use the FTIR system to continuously monitor for the regulated pollutants.

*2.0 Summary of Performance Specification*

For compound-specific sampling requirements refer to FTIR sampling methods (*e.g.*, reference 1). For data reduction procedures and requirements refer to the EPA FTIR Protocol (reference 2), hereafter referred to as the "FTIR Protocol." This specification describes sampling and analytical procedures for quality assurance. The infrared spectrum of any absorbing compound provides a distinct signature. The infrared spectrum of a mixture contains the superimposed spectra of each mixture component. Thus, an FTIR CEM provides the capability to continuously measure multiple components in a sample using a single analyzer. The number of compounds that can be speciated in a single spectrum depends, in practice, on the specific compounds present and the test conditions.

*3.0 Definitions*

For a list of definitions related to FTIR spectroscopy refer to Appendix A of the FTIR Protocol. Unless otherwise specified, spectroscopic terms, symbols and equations in this performance specification are taken from the FTIR Protocol or from documents cited in the Protocol. Additional definitions are given below.

3.1 FTIR Continuous Emission Monitoring System (FTIR CEM).

3.1.1 *FTIR System.* Instrument to measure spectra in the mid-infrared spectral region (500 to 4000 $cm^{-1}$). It contains an infrared source, interferometer, sample gas containment cell, infrared detector, and computer. The interferometer consists of a beam splitter that divides the beam into two paths, one path a fixed distance and the other a variable distance. The computer is equipped with software to run the interferometer and store the raw digitized signal from the detector (interferogram). The software performs the mathematical conversion (the Fourier transform) of the interferogram into a spectrum showing the frequency dependent sample absorbance. All spectral data can be stored on computer media.

3.1.2 *Gas Cell.* A gas containment cell that can be evacuated. It contains the sample as the infrared beam passes from the interferometer, through the sample, and to the detector. The gas cell may have multi-pass mirrors depending on the required detection limit(s) for the application.

3.1.3 *Sampling System.* Equipment used to extract sample from the test location and transport the gas to the FTIR analyzer. Sampling system components include probe, heated line, heated non-reactive pump, gas distribution manifold and valves, flow measurement devices and any sample conditioning systems.

3.2 *Reference CEM.* An FTIR CEM, with sampling system, that can be used for comparison measurements.

3.3 *Infrared Band (also Absorbance Band or Band).* Collection of lines arising from rotational transitions superimposed on a vibrational transition. An infrared absorbance band is analyzed to determine the analyte concentration.

3.4 *Sample Analysis.* Interpreting infrared band shapes, frequencies, and intensities to obtain sample component concentrations. This is usually performed by a software routine using a classical least squares (cls), partial least squares (pls), or K- or P- matrix method.

3.5 *(Target) Analyte.* A compound whose measurement is required, usually to some established limit of detection and analytical uncertainty.

3.6 *Interferant.* A compound in the sample matrix whose infrared spectrum overlaps at least part of an analyte spectrum complicating the analyte measurement. The interferant may not prevent the analyte measurement, but could increase the analytical uncertainty in the measured concentration. Reference spectra of interferants are used to distinguish the interferant bands from the analyte bands. An interferant for one analyte may not be an interferant for other analytes.

3.7 *Reference Spectrum.* Infrared spectra of an analyte, or interferant, prepared under controlled, documented, and reproducible laboratory conditions (see Section 4.6 of the FTIR Protocol). A suitable library of reference spectra can be used to measure target analytes in gas samples.

3.8 *Calibration Spectrum.* Infrared spectrum of a compound suitable for characterizing the FTIR instrument configuration (Section 4.5 in the FTIR Protocol).

3.9 *One hundred percent line.* A double beam transmittance spectrum obtained by combining two successive background single beam spectra. Ideally, this line is equal to 100 percent transmittance (or zero absorbance) at every point in the spectrum. The zero absorbance line is used to measure the RMS noise of the system.

3.10 *Background Deviation.* Any deviation (from 100 percent) in the one hundred percent line (or from zero absorbance). Deviations greater than ± 5 percent in any analytical region are unacceptable. Such deviations indicate a change in the instrument throughput relative to the single-beam background.

3.11 *Batch Sampling.* A gas cell is alternately filled and evacuated. A Spectrum of each filled cell (one discreet sample) is collected and saved.

3.12 *Continuous Sampling.* Sample is continuously flowing through a gas cell. Spectra of the flowing sample are collected at regular intervals.

3.13 *Continuous Operation.* In continuous operation an FTIR CEM system, without user intervention, samples flue gas, records spectra of samples, saves the spectra to a disk, analyzes the spectra for the target analytes, and prints concentrations of target analytes to a computer file. User intervention is permitted for initial set-up of sampling system, initial calibrations, and periodic maintenance.



3.14 *Sampling Time.* In batch sampling—the time required to fill the cell with flue gas. In continuous sampling—the time required to collect the infrared spectrum of the sample gas.

3.15 PPM-Meters. Sample concentration expressed as the concentration-path length product, ppm (molar) concentration multiplied by the path length of the FTIR gas cell. Expressing concentration in these units provides a way to directly compare measurements made using systems with different optical configurations. Another useful expression is (ppm-meters)/K, where K is the absolute temperature of the sample in the gas cell.

3.16 *CEM Measurement Time Constant.* The Time Constant (TC, minutes for one cell volume to flow through the cell) determines the minimum interval for complete removal of an analyte from the FTIR cell. It depends on the sampling rate ($R_s$ in Lpm), the FTIR cell volume ($V_{cell}$ in L) and the chemical and physical properties of an analyte.

$$TC = \frac{V_{cell}}{R_s} \qquad \text{Eq. 1}$$

For example, if the sample flow rate (through the FTIR cell) is 5 Lpm and the cell volume is 7 liters, then TC is equal to 1.4 minutes (0.71 cell volumes per minute). This performance specification defines 5 * TC as the minimum interval between independent samples.

3.17 *Independent Measurement.* Two independent measurements are spectra of two independent samples. Two independent samples are separated by, at least 5 cell volumes. The interval between independent measurements depends on the cell volume and the sample flow rate (through the cell). There is no mixing of gas between two independent samples. Alternatively, estimate the analyte residence time empirically: (1) Fill cell to ambient pressure with a (known analyte concentration) gas standard, (2) measure the spectrum of the gas standard, (3) purge the cell with zero gas at the sampling rate and collect a spectrum every minute until the analyte standard is no longer detected spectroscopically. If the measured time corresponds to less than 5 cell volumes, use 5 * TC as the minimum interval between independent measurements. If the measured time is greater than 5 * TC, then use this time as the minimum interval between independent measurements.

3.18 *Test Condition.* A period of sampling where all process, and sampling conditions, and emissions remain constant and during which a single sampling technique and a single analytical program are used. One Run may include results for more than one test condition. Constant emissions means that the composition of the emissions remains approximately stable so that a single analytical program is suitable for analyzing all of the sample spectra. A greater than two-fold change in analyte or interferant concentrations or the appearance of additional compounds in the emissions, may constitute a new test condition and may require modification of the analytical program.

3.19 *Run.* A single Run consists of spectra (one spectrum each) of at least 10 independent samples over a minimum of one hour. The concentration results from the spectra can be averaged together to give a run average for each analyte measured in the test run.

*4.0 Interferences*

Several compounds, including water, carbon monoxide, and carbon dioxide, are known interferences in the infrared region in which the FTIR instrument operates. Follow the procedures in the FTIR protocol for subtracting or otherwise dealing with these and other interferences.

*5.0 Safety*

The procedures required under this performance specification may involve hazardous materials, operations, and equipment. This performance specification may not address all of the safety problems associated with these procedures. It is the responsibility of the user to establish appropriate safety and health practices and determine the applicable regulatory limitations prior to performing these procedures. The CEMS users manual and materials recommended by this performance specification should be consulted for specific precautions to be taken.

*6.0 Equipment and Supplies*

6.1 Installation of sampling equipment should follow requirements of FTIR test Methods such as references 1 and 3 and the EPA FTIR Protocol (reference 2). Select test points where the gas stream composition is representative of the process emissions. If comparing to a reference method, the probe tips for the FTIR CEM and the RM should be positioned close together using the same sample port if possible.

6.2 FTIR Specifications. The FTIR CEM must be equipped with reference spectra bracketing the range of path length-concentrations (absorbance intensities) to be measured for each analyte. The effective concentration range of the analyzer can be adjusted by changing the path length of the gas cell or by diluting the sample. The optical configuration of the FTIR system must be such that maximum absorbance of any target analyte is no greater than 1.0 and the minimum absorbance of any target analyte is at least 10 times the RMSD noise in the analytical region. For example, if the measured RMSD in an analytical region is equal to $10^{-3}$, then the peak analyte absorbance is required to be at least 0.01. Adequate measurement of all of the target analytes may require changing path lengths during a run, conducting separate runs for different analytes, diluting the sample, or using more than one gas cell.

6.3 Data Storage Requirements. The system must have sufficient capacity to store all data collected in one week of routine sampling. Data must be stored to a write-protected medium, such as write-once-read-many (WORM) optical storage medium or to a password protected remote storage location. A back-up copy of all data can be temporarily saved to the computer hard drive. The following items must be stored during testing.

- At least one sample interferogram per sampling Run or one interferogram per hour, whichever is greater. This assumes that no sampling or analytical conditions have changed during the run.
- All sample absorbance spectra (about 12 per hr, 288 per day).
- All background spectra and interferograms (variable, but about 5 per day).
- All CTS spectra and interferograms (at least 2 each 24 hour period).
- Documentation showing a record of resolution, path length, apodization, sampling time, sampling conditions, and test conditions for all sample, CTS, calibration, and background spectra.

Using a resolution of 0.5 $cm^{-1}$, with analytical range of 3500 $cm^{-1}$, assuming about 65 Kbytes per spectrum and 130 Kb per interferogram, the storage requirement is about 164 Mb for one week of continuous sampling. Lower spectral resolution requires less storage capacity. All of the above data must be stored for at least two weeks. After two weeks, storage requirements include: (1) all analytical results (calculated concentrations), (2) at least 1 sample spectrum with corresponding background and sample interferograms for each test condition, (3) CTS and calibration spectra with at least one interferogram for CTS and all interferograms for calibrations, (4) a

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record of analytical input used to produce results, and (5) all other documentation. These data must be stored according to the requirements of the applicable regulation.

*7.0 Reagents and Standards [Reserved]*

*8.0 Sample Collection, Preservation, Storage, and Transport [Reserved]*

*9.0 Quality Control*

These procedures shall be used for periodic quarterly or semiannual QA/QC checks on the operation of the FTIR CEM. Some procedures test only the analytical program and are not intended as a test of the sampling system.

9.1 Audit Sample. This can serve as a check on both the sampling system and the analytical program.

9.1.1 Sample Requirements. The audit sample can be a mixture or a single component. It must contain target analyte(s) at approximately the expected flue gas concentration(s). If possible, each mixture component concentration should be NIST traceable (± 2 percent accuracy). If a cylinder mixture standard(s) cannot be obtained, then, alternatively, a gas phase standard can be generated from a condensed phase analyte sample. Audit sample contents and concentrations are not revealed to the FTIR CEM operator until after successful completion of procedures in 5.3.2.

9.1.2 Test Procedure. An audit sample is obtained from the Administrator. Spike the audit sample using the analyte spike procedure in Section 11. The audit sample is measured directly by the FTIR system (undiluted) and then spiked into the effluent at a known dilution ratio. Measure a series of spiked and unspiked samples using the same procedures as those used to analyze the stack gas. Analyze the results using Sections 12.1 and 12.2. The measured concentration of each analyte must be within ± 5 percent of the expected concentration (plus the uncertainty), *i.e.*, the calculated correction factor must be within 0.93 and 1.07 for an audit with an analyte uncertainty of ± 2 percent.

9.2 Audit Spectra. Audit spectra can be used to test the analytical program of the FTIR CEM, but provide no test of the sampling system.

9.2.1 Definition and Requirements. Audit spectra are absorbance spectra that; (1) have been well characterized, and (2) contain absorbance bands of target analyte(s) and potential interferants at intensities equivalent to what is expected in the source effluent. Audit spectra are provided by the administrator without identifying information. Methods of preparing Audit spectra include; (1) mathematically adding sample spectra or adding reference and interferant spectra, (2) obtaining sample spectra of mixtures prepared in the laboratory, or (3) they may be sample spectra collected previously at a similar source. In the last case it must be demonstrated that the analytical results are correct and reproducible. A record associated with each Audit spectrum documents its method of preparation. The documentation must be sufficient to enable an independent analyst to reproduce the Audit spectra.

9.2.2 Test Procedure. Audit spectra concentrations are measured using the FTIR CEM analytical program. Analytical results must be within ± 5 percent of the certified audit concentration for each analyte (plus the uncertainty in the audit concentration). If the condition is not met, demonstrate how the audit spectra are unrepresentative of the sample spectra. If the audit spectra are representative, modify the FTIR CEM analytical program until the test requirement is met. Use the new analytical program in subsequent FTIR CEM analyses of effluent samples.

9.3 Submit Spectra For Independent Analysis. This procedure tests only the analytical program and not the FTIR CEM sampling system. The analyst can submit FTIR CEM spectra for independent analysis by EPA. Requirements for submission include; (1) three representative absorbance spectra (and stored interferograms) for each test period to be reviewed, (2) corresponding CTS spectra, (3) corresponding background spectra and interferograms, (4) spectra of associated spiked samples if applicable, and (5) analytical results for these sample spectra. The analyst will also submit documentation of process times and conditions, sampling conditions associated with each spectrum, file names and sampling times, method of analysis and reference spectra used, optical configuration of FTIR CEM including cell path length and temperature, spectral resolution and apodization used for every spectrum. Independent analysis can also be performed on site in conjunction with the FTIR CEM sampling and analysis. Sample spectra are stored on the independent analytical system as they are collected by the FTIR CEM system. The FTIR CEM and the independent analyses are then performed separately. The two analyses will agree to within ±120 percent for each analyte using the procedure in Section 12.3. This assumes both analytical routines have properly accounted for differences in optical path length, resolution, and temperature between the sample spectra and the reference spectra.

*10.0 Calibration and Standardization*

10.1 Calibration Transfer Standards. For CTS requirements see Section 4.5 of the FTIR Protocol. A well characterized absorbance band in the CTS gas is used to measure the path length and line resolution of the instrument. The CTS measurements made at the beginning of every 24 hour period must agree to within ± 5 percent after correction for differences in pressure.

Verify that the frequency response of the instrument and CTS absorbance intensity are correct by comparing to other CTS spectra or by referring to the literature.

10.2 Analyte Calibration. If EPA library reference spectra are not available, use calibration standards to prepare reference spectra according to Section 6 of the FTIR Protocol. A suitable set of analyte reference data includes spectra of at least 2 independent samples at each of at least 2 different concentrations. The concentrations bracket a range that includes the expected analyte absorbance intensities. The linear fit of the reference analyte band areas must have a fractional calibration uncertainty (FCU in Appendix F of the FTIR Protocol) of no greater than 10 percent. For requirements of analyte standards refer to Section 4.6 of the FTIR Protocol.

10.3 System Calibration. The calibration standard is introduced at a point on the sampling probe. The sampling system is purged with the calibration standard to verify that the absorbance measured in this way is equal to the absorbance in the analyte calibration. Note that the system calibration gives no indication of the ability of the sampling system to transport the target analyte(s) under the test conditions.

10.4 Analyte Spike. The target analyte(s) is spiked at the outlet of the sampling probe, upstream of the particulate filter, and combined with effluent at a ratio of about 1 part spike to 9 parts effluent. The measured absorbance of the spike is compared to the expected absorbance of the spike plus the analyte concentration already in the effluent. This measures sampling system bias, if any, as distinguished from analyzer bias. It is important that spiked sample pass through all of the sampling system components before analysis.

10.5 Signal-to-Noise Ratio (S/N). The measure of S/N in this performance specification is the root-mean-square (RMS) noise level as given in Appendix C of the FTIR Protocol. The RMS noise level of a contiguous segment of a spectrum is defined as the RMS difference (RMSD) between the n contiguous absorbance values ($A_i$) which form the segment and the mean value ($A_M$) of that segment.

$$RMSD = \sqrt{\left(\frac{1}{n}\right)\sum_{i=1}^{n}(A_i - A_m)^2} \quad \text{Eq. 2}$$

A decrease in the S/N may indicate a loss in optical throughput, or detector or interferometer malfunction.

10.6 Background Deviation. The 100 percent baseline must be between 95 and 105 percent transmittance (absorbance of 0.02 to −0.02) in every analytical region. When background deviation exceeds this range, a new background spectrum must be collected using nitrogen or other zero gas.

10.7 Detector Linearity. Measure the background and CTS at three instrument aperture settings; one at the aperture setting to be used in the testing, and one each at settings one half and twice the test aperture setting. Compare the three CTS spectra. CTS band areas should agree to within the uncertainty of the cylinder standard. If test aperture is the maximum aperture, collect CTS spectrum at maximum aperture, then close the aperture to reduce the IR through-put by half. Collect a second background and CTS at the smaller aperture setting and compare the spectra as above. Instead of changing the aperture neutral density filters can be used to attenuate the infrared beam. Set up the FTIR system as it will be used in the test measurements. Collect a CTS spectrum. Use a neutral density filter to attenuate the infrared beam (either immediately after the source or the interferometer) to approximately ½ its original intensity. Collect a second CTS spectrum. Use another filter to attenuate the infrared beam to approximately ¼ its original intensity. Collect a third background and CTS spectrum. Compare the CTS spectra as above. Another check on linearity is to observe the single beam background in frequency regions where the optical configuration is known to have a zero response. Verify that the detector response is "flat" and equal to zero in these regions. If detector response is not linear, decrease aperture, or attenuate the infrared beam. Repeat the linearity check until system passes the requirement.

*11.0 Analytical Procedure*

11.1 Initial Certification. First, perform the evaluation procedures in Section 6.0 of the FTIR Protocol. The performance of an FTIR CEM can be certified upon installation using EPA Method 301 type validation (40 CFR, Part 63, Appendix A), or by comparison to a reference Method if one exists for the target analyte(s). Details of each procedure are given below. Validation testing is used for initial certification upon installation of a new system. Subsequent performance checks can be performed with more limited analyte spiking. Performance of the analytical program is checked initially, and periodically as required by EPA, by analyzing audit spectra or audit gases.

11.1.1 Validation. Use EPA Method 301 type sampling (reference 4, Section 5.3 of Method 301) to validate the FTIR CEM for measuring the target analytes. The analyte spike procedure is as follows: (1) a known concentration of analyte is mixed with a known concentration of a non-reactive tracer gas, (2) the undiluted spike gas is sent directly to the FTIR cell and a spectrum of this sample is collected, (3) pre-heat the spiked gas to at least the sample line temperature, (4) introduce spike gas at the back of the sample probe upstream of the particulate filter, (5) spiked effluent is carried through all sampling components downstream of the probe, (6) spike at a ratio of roughly 1 part spike to 9 parts flue gas (or more dilute), (7) the spike-to-flue gas ratio is estimated by comparing the spike flow to the total sample flow, and (8) the spike ratio is verified by comparing the tracer concentration in spiked flue gas to the tracer concentration in undiluted spike gas. The analyte flue gas concentration is unimportant as long as the spiked component can be measured and the sample matrix (including interferences) is similar to its composition under test conditions. Validation can be performed using a single FTIR CEM analyzing sample spectra collected sequentially. Since flue gas analyte (unspiked) concentrations can vary, it is recommended that two separate sampling lines (and pumps) are used; one line to carry unspiked flue gas and the other line to carry spiked flue gas. Even with two sampling lines the variation in unspiked concentration may be fast compared to the interval between consecutive measurements. Alternatively, two FTIR CEMs can be operated side-by-side, one measuring spiked sample, the other unspiked sample. In this arrangement spiked and unspiked measurements can be synchronized to minimize the affect of temporal variation in the unspiked analyte concentration. In either sampling arrangement, the interval between measured concentrations used in the statistical analysis should be, at least, 5 cell volumes (5 * TC in equation 1). A validation run consists of, at least, 24 independent analytical results, 12 spiked and 12 unspiked samples. See Section 3.17 for definition of an "independent" analytical result. The results are analyzed using Sections 12.1 and 12.2 to determine if the measurements passed the validation requirements. Several analytes can be spiked and measured in the same sampling run, but a separate statistical analysis is performed for each analyte. In lieu of 24 independent measurements, averaged results can be used in the statistical analysis. In this procedure, a series of consecutive spiked measurements are combined over a sampling period to give a single average result. The related unspiked measurements are averaged in the same way. The minimum 12 spiked and 12 unspiked result averages are obtained by averaging measurements over subsequent sampling periods of equal duration. The averaged results are grouped together and statistically analyzed using Section 12.2.

11.1.1.1 Validation with a Single Analyzer and Sampling Line. If one sampling line is used, connect the sampling system components and purge the entire sampling system and cell with at least 10 cell volumes of sample gas. Begin sampling by collecting spectra of 2 independent unspiked samples. Introduce the spike gas into the back of the probe, upstream of the particulate filter. Allow 10 cell volumes of spiked flue gas to purge the cell and sampling system. Collect spectra of 2 independent spiked samples. Turn off the spike flow and allow 10 cell volumes of unspiked flue gas to purge the FTIR cell and sampling system. Repeat this procedure 6 times until the 24 samples are collected. Spiked and unspiked samples can also be measured in groups of 4 instead of in pairs. Analyze the results using Sections 12.1 and 12.2. If the statistical analysis passes the validation criteria, then the validation is completed. If the results do not pass the validation, the cause may be that temporal variations in the analyte sample gas concentration are fast relative to the interval between measurements. The difficulty may be avoided by: (1) Averaging the measurements over long sampling periods and using the averaged results in the statistical analysis, (2) modifying the sampling system to reduce TC by, for example, using a smaller volume cell or increasing the sample flow rate, (3) using two sample lines (4) use two analyzers to perform synchronized

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measurements. This performance specification permits modifications in the sampling system to minimize TC if the other requirements of the validation sampling procedure are met.

11.1.1.2 Validation With a Single Analyzer and Two Sampling Lines. An alternative sampling procedure uses two separate sample lines, one carrying spiked flue gas, the other carrying unspiked gas. A valve in the gas distribution manifold allows the operator to choose either sample. A short heated line connects the FTIR cell to the 3-way valve in the manifold. Both sampling lines are continuously purged. Each sample line has a rotameter and a bypass vent line after the rotameter, immediately upstream of the valve, so that the spike and unspiked sample flows can each be continuously monitored. Begin sampling by collecting spectra of 2 independent unspiked samples. Turn the sampling valve to close off the unspiked gas flow and allow the spiked flue gas to enter the FTIR cell. Isolate and evacuate the cell and fill with the spiked sample to ambient pressure. (While the evacuated cell is filling, prevent air leaks into the cell by making sure that the spike sample rotameter always indicates that a portion of the flow is directed out the by-pass vent.) Open the cell outlet valve to allow spiked sample to continuously flow through the cell. Measure spectra of 2 independent spiked samples. Repeat this procedure until at least 24 samples are collected.

11.1.1.3 Synchronized Measurements With Two Analyzers. Use two FTIR analyzers, each with its own cell, to perform synchronized spiked and unspiked measurements. If possible, use a similar optical configuration for both systems. The optical configurations are compared by measuring the same CTS gas with both analyzers. Each FTIR system uses its own sampling system including a separate sampling probe and sampling line. A common gas distribution manifold can be used if the samples are never mixed. One sampling system and analyzer measures spiked effluent. The other sampling system and analyzer measures unspiked flue gas. The two systems are synchronized so that each measures spectra at approximately the same times. The sample flow rates are also synchronized so that both sampling rates are approximately the same ($TC_1 - TC_2$ in equation 1). Start both systems at the same time. Collect spectra of at least 12 independent samples with each (spiked and unspiked) system to obtain the minimum 24 measurements. Analyze the analytical results using Sections 12.1 and 12.2. Run averages can be used in the statistical analysis instead of individual measurements.

11.1.1.4 Compare to a Reference Method (RM). Obtain EPA approval that the method qualifies as an RM for the analyte(s) and the source to be tested. Follow the published procedures for the RM in preparing and setting up equipment and sampling system, performing measurements, and reporting results. Since FTIR CEMS have multicomponent capability, it is possible to perform more than one RM simultaneously, one for each target analyte. Conduct at least 9 runs where the FTIR CEM and the RM are sampling simultaneously. Each Run is at least 30 minutes long and consists of spectra of at least 5 independent FTIR CEM samples and the corresponding RM measurements. If more than 9 runs are conducted, the analyst may eliminate up to 3 runs from the analysis if at least 9 runs are used.

11.1.1.4.1 RMs Using Integrated Sampling. Perform the RM and FTIR CEM sampling simultaneously. The FTIR CEM can measure spectra as frequently as the analyst chooses (and should obtain measurements as frequently as possible) provided that the measurements include spectra of at least 5 independent measurements every 30 minutes. Concentration results from all of the FTIR CEM spectra within a run may be averaged for use in the statistical comparison even if all of the measurements are not independent. When averaging the FTIR CEM concentrations within a run, it is permitted to exclude some measurements from the average provided the minimum of 5 independent measurements every 30 minutes are included: The Run average of the FTIR CEM measurements depends on both the sample flow rate and the measurement frequency (MF). The run average of the RM using the integrated sampling method depends primarily on its sampling rate. If the target analyte concentration fluctuates significantly, the contribution to the run average of a large fluctuation depends on the sampling rate and measurement frequency, and on the duration and magnitude of the fluctuation. It is, therefore, important to carefully select the sampling rate for both the FTIR CEM and the RM and the measurement frequency for the FTIR CEM. The minimum of 9 run averages can be compared according to the relative accuracy test procedure in Performance Specification 2 for $SO_2$ and $NO_x$ CEMs (40 CFR, Part 60, App. B).

11.1.1.4.2 RMs Using a Grab Sampling Technique. Synchronize the RM and FTIR CEM measurements as closely as possible. For a grab sampling RM record the volume collected and the exact sampling period for each sample. Synchronize the FTIR CEM so that the FTIR measures a spectrum of a similar cell volume at the same time as the RM grab sample was collected. Measure at least 5 independent samples with both the FTIR CEM and the RM for each of the minimum 9 Runs. Compare the Run concentration averages by using the relative accuracy analysis procedure in 40 CFR, Part 60, App. B.

11.1.1.4.3 Continuous Emission Monitors (CEMs) as RMs. If the RM is a CEM, synchronize the sampling flow rates of the RM and the FTIR CEM. Each run is at least 1-hour long and consists of at least 10 FTIR CEM measurements and the corresponding 10 RM measurements (or averages). For the statistical comparison use the relative accuracy analysis procedure in 40 CFR, Part 60, App. B. If the RM time constant is <½ the FTIR CEM time constant, brief fluctuations in analyte concentrations which are not adequately measured with the slower FTIR CEM time constant can be excluded from the run average along with the corresponding RM measurements. However, the FTIR CEM run average must still include at least 10 measurements over a 1-hr period.

*12.0 Calculations and Data Analysis*

12.1 Spike Dilution Ratio, Expected Concentration. The Method 301 bias is calculated as follows.

$$B = S_m - M_m - CS \qquad \text{Eq. 3}$$

Where:

B = Bias at the spike level

$S_m$ = Mean of the observed spiked sample concentrations

$M_m$ = Mean of the observed unspiked sample concentrations

CS = Expected value of the spiked concentration.

The CS is determined by comparing the $SF_6$ tracer concentration in undiluted spike gas to the $SF_6$ tracer concentrations in the spiked samples;

$$DF = \frac{[SF_6]_{direct}}{[SF_6]_{spiked}} \qquad \text{Eq. 4}$$

The expected concentration (CS) is the measured concentration of the analyte in undiluted spike gas divided by the dilution factor

$$CS = \frac{[anal]_{dir}}{DF} \qquad \text{Eq. 5}$$

Where:



$[anal]_{dir}$=The analyte concentration in undiluted spike gas measured directly by filling the FTIR cell with the spike gas.

If the bias is statistically significant (Section 12.2), Method 301 requires that a correction factor, CF, be multiplied by the analytical results, and that $0.7 \leq CF \leq 1.3$.

$$CF = \frac{1}{1 + \frac{B}{CS}} \qquad \text{Eq. 6}$$

12.2 Statistical Analysis of Validation Measurements. Arrange the independent measurements (or measurement averages) as in Table 1. More than 12 pairs of measurements can be analyzed. The statistical analysis follows EPA Method 301, Section 6.3. Section 12.1 of this performance specification shows the calculations for the bias, expected spike concentration, and correction factor. This Section shows the determination of the statistical significance of the bias. Determine the statistical significance of the bias at the 95 percent confidence level by calculating the t-value for the set of measurements. First, calculate the differences, $d_i$, for each pair of spiked and each pair of unspiked measurements. Then calculate the standard deviation of the spiked pairs of measurements.

$$SD_s = \sqrt{\frac{\sum d_i 2}{2n}} \qquad \text{Eq. 7}$$

Where:

$d_i$ = The differences between pairs of spiked measurements.

$SD_s$ = The standard deviation in the $d_i$ values.

n = The number of spiked pairs, 2n=12 for the minimum of 12 spiked and 12 unspiked measurements.

Calculate the relative standard deviation, RSD, using $SD_s$ and the mean of the spiked concentrations, $S_m$. The RSD must be ≤50%.

$$RSD = \left(\frac{SD}{S_m}\right) \qquad \text{Eq. 8}$$

Repeat the calculations in equations 7 and 8 to determine $SD_u$ and RSD, respectively, for the unspiked samples. Calculate the standard deviation of the mean using $SD_s$ and $SD_u$ from equation 7.

$$SD = \sqrt{SD_s 2 + SD_u 2} \qquad \text{Eq. 9}$$

The t-statistic is calculated as follows to test the bias for statistical significance;

$$t = \frac{|B|}{SDM} \qquad \text{Eq. 10}$$

where the bias, B, and the correction factor, CF, are given in Section 12.1. For 11 degrees of freedom, and a one-tailed distribution, Method 301 requires that t ≤2.201. If the t-statistic indicates the bias is statistically significant, then analytical measurements must be multiplied by the correction factor.

There is no limitation on the number of measurements, but there must be at least 12 independent spiked and 12 independent unspiked measurements. Refer to the t-distribution (Table 2) at the 95 percent confidence level and appropriate degrees of freedom for the critical t-value.

*16.0 References*

1. Method 318, 40 CFR, Part 63, Appendix A (Draft), "Measurement of Gaseous Formaldehyde, Phenol and Methanol Emissions by FTIR Spectroscopy," EPA Contract No. 68D20163, Work Assignment 2–18, February, 1995.

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2. "EPA Protocol for the Use of Extractive Fourier Transform Infrared (FTIR) Spectrometry in Analyses of Gaseous Emissions from Stationary Industrial Sources," February, 1995.

3. "Measurement of Gaseous Organic and Inorganic Emissions by Extractive FTIR Spectroscopy," EPA Contract No. 68–D2–0165, Work Assignment 3–08.

4. "Method 301—Field Validation of Pollutant Measurement Methods from Various Waste Media," 40 CFR 63, App A.

*17.0 Tables, Diagrams, Flowcharts, and Validation Data*

TABLE 1.—ARRANGEMENT OF VALIDATION MEASUREMENTS FOR STATISTICAL ANALYSIS

| Measurement (or average) | Time | Spiked (ppm) | $d_i$ spiked | Unspiked (ppm) | $d_i$ unspiked |
|---|---|---|---|---|---|
| 1 | | $S_1$ | | $U_1$ | |
| 2 | | $S_2$ | $S_2 - S_1$ | $U_2$ | $U_2 - U_1$ |
| 3 | | $S_3$ | | $U_3$ | |
| 4 | | $S_4$ | $S_4 - S_3$ | $U_4$ | $U_4 - U_3$ |
| 5 | | $S_5$ | | $U_5$ | |
| 6 | | $S_6$ | $S_6 - S_5$ | $U_6$ | $U_6 - U_5$ |
| 7 | | $S_7$ | | $U_7$ | |
| 8 | | $S_8$ | $S_8 - S_7$ | $U_8$ | $U_8 - U_7$ |
| 9 | | $S_9$ | | $U_9$ | |
| 10 | | $S_{10}$ | $S_{10} - S_9$ | $U_{10}$ | $U_{10} - U_9$ |
| 11 | | $S_{11}$ | | $U_{11}$ | |
| 12 | | $S_{12}$ | $S_{12} - S_{11}$ | $U_{12}$ | $U_{12} - U_{11}$ |
| Average –> | | $S_m$ | | $M_m$ | |

TABLE 2.—T=VALUES

| n – 1[a] | t – value | n – 1[a] | t – value | n – 1[a] | t – value | n – 1[a] | t – value |
|---|---|---|---|---|---|---|---|
| 11 | 2.201 | 17 | 2.110 | 23 | 2.069 | 29 | 2.045 |
| 12 | 2.179 | 18 | 2.101 | 24 | 2.064 | 30 | 2.042 |
| 13 | 2.160 | 19 | 2.093 | 25 | 2.060 | 40 | 2.021 |
| 14 | 2.145 | 20 | 2.086 | 26 | 2.056 | 60 | 2.000 |
| 15 | 2.131 | 21 | 2.080 | 27 | 2.052 | 120 | 1.980 |
| 16 | 2.120 | 22 | 2.074 | 28 | 2.048 | 8 | 1.960 |

[a]n is the number of independent pairs of measurements (a pair consists of one spiked and its corresponding unspiked measurement). Either discreet (independent) measurements in a single run, or run averages can be used.

* * * * *

## PART 61—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

1. The authority citation for Part 61 continues to read as follows: 42 U.S.C. 7401, 7412, 7413, 7414, 7416, 7601, and 7602.

2. In § 61.18, paragraph (a) is revised to read as follows:

**§ 61.18 Incorporation by reference.**

* * * * *

(a) The following materials are available for purchase from at least one of the following addresses: American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, PA 19103; or University Microfilms International, 300 North Zeeb Road, Ann Arbor, MI 48106.

(1) ASTM D737–75, Standard Test Method for Air Permeability of Textile Fabrics, incorporation by reference (IBR) approved January 27, 1983 for § 61.23(a).

(2) ASTM D835–85, Standard Specification for Refined Benzene-485, IBR approved September 14, 1989 for § 61.270(a).

(3) ASTM D836–84, Standard Specification for Industrial Grade Benzene, IBR approved September 14, 1989 for § 61.270(a).

(4) ASTM D1193–77, 91, Standard Specification for Reagent Water, IBR approved for Appendix B: Method 101, Section 7.1.1; Method 101A, Section 7.1.1; and Method 104, Section 7.1; Method 108, Section 7.1.3; Method 108A, Section 7.1.1; Method 108B, Section 7.1.1; Method 108C, Section 7.1.1; and Method 111, Section 7.3.

(5) ASTM D2267–68, 78, 88, Aromatics in Light Naphthas and Aviation Gasoline by Gas Chromatography, IBR approved September 30, 1986, for § 61.67(h)(1).

(6) ASTM D2359–85a, 93, Standard Specification for Refined Benzene-535, IBR approved September 14, 1989 for § 61.270(a).

(7) ASTM D2382–76, 88, Heat of Combustion of Hydrocarbon Fuels by Bomb Calorimeter (High-Precision Method), IBR approved June 6, 1984 for § 61.245(e)(3).

(8) ASTM D2504–67, 77, 88, 93, Noncondensable Gases in $C_3$ and Lighter Hydrocarbon Products by Gas Chromatography, IBR approved June 6, 1984 for § 61.245(e)(3).

(9) ASTM D2986–71, 78, 95a, Standard Method for Evaluation of Air, Assay Media by the Monodisperse DOP (Dioctyl Phthalate) Smoke Test, IBR approved for Appendix B: Method 103, Section 6.1.3.

(10) ASTM D4420–94, Standard Test Method for Determination of Aromatics in Finished Gasoline by Gas Chromatography, IBR approved for § 61.67(h)(1).

(11) ASTM D4734–87, 96, Standard Specification for Refined Benzene-545, IBR approved September 14, 1989 for § 61.270(a).

(12) ASTM D4809–95, Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter (Precision Method), IBR approved for § 61.245(e)(3).

(13) ASTM E50–82, 86, 90 (Reapproved 1995), Standard Practices for Apparatus Reagents, and Safety Precautions for Chemical Analysis of Metals, IBR approved for Appendix B: Method 108C, Section 6.1.4.

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**§ 61.20 [Amended]**

3. Amend § 61.20 as follows:

a. Paragraph (a) is amended by revising the words "100,000 tons" to read "90,720 megagrams (Mg) (100,000 tons)."

b. Paragraph (b) is amended by revising the words "10,000 tons" to read "9,072 Mg (10,000 tons)."

c. Paragraph (b) is amended by revising the words "100,000 tons" to read "90,720 Mg (100,000 tons)."

**61.21 [Amended]**

4. In § 61.21(b), the words "Effective dose equivalent means the sum of the products of absorbed dose and appropriate factors to account for differences in biological effectiveness due to the quality of radiation and its distribution in the body of reference man" are revised to read "Effective dose equivalent means the sum of the products of the absorbed dose and appropriate effectiveness factors. These factors account for differences in biological effectiveness due to the quality of radiation and its distribution in the body of reference man."

**§ 61.23 [Amended]**

5. Amend § 61.23 as follows:

a. In paragraph (a), the first sentence is amended by revising the abbreviation "EPA" to read "U.S. Environmental Protection Agency (EPA)."

b. In paragraph (a), the second sentence is amended by revising the word "Appendix" to read "appendix."

**§ 61.24 [Amended]**

6. Amend § 61.24 as follows:

a. In paragraph (a), the first sentence is amended by revising the words "used in making the calculation" to read "used in making the calculations."

b. In paragraph (a), the second sentence is amended by revising the words "Such report shall" to read "This report shall."

**§ 61.30 [Amended]**

7. In § 61.30, paragraph (a) is amended by revising the words "Extraction plans" to read "Extraction plants."

**§ 61.32 [Amended]**

8. Amend § 61.32 as follows:

a. Paragraph (a) is amended by revising the words "10 grams" to read "10 grams (0.022 lb)."

b. Paragraphs (b) and (b)(1)(i) are amended by revising the words "0.01 $\mu g/m^3$" to read "0.01 $\mu g/m^3$ ($4.37 \times 10^{-6}$ $gr/ft^3$)" wherever they occur.

**§ 61.42 [Amended]**

9. Amend § 61.42 as follows:

a. Paragraph (a) is amended by revising the words "75 microgram minutes per cubic meter of air" to read "75 microgram minutes per cubic meter ($\mu g\text{-}min/m^3$) (4.68 pound minutes per cubic foot ($lb\text{-}min/ft^3$)) of air."

b. Paragraph (b) is amended by revising the words "2 grams per hour" to read "2.0 g/hr (0.0044 lb/hr)."

c. Paragraph (b) is amended by revising the words "10 grams per day" to read "10 g/day (0.022 lb/day)."

**§ 61.52 [Amended]**

10. Amend § 61.52 as follows:

a. Paragraph (a) is amended by revising the words "2300 grams" to read "2.3 kg (5.1 lb)."

b. Paragraph (b) is amended by revising the words "3200 grams" to read "3.2 kg (7.1 lb)."

**§ 61.53 [Amended]**

11. In § 61.53, paragraph (c) is amended by revising the words "1,300 gms/day" to read "1.3 kg/day (2.9 lb/day)."

**§ 61.55 [Amended]**

12. Amend § 61.55 as follows:

a. In paragraph (a), the second sentence is amended by revising the words "1,600 g" to read "1.6 kg (3.5 lb)."

b. Paragraph (b)(1) is amended by revising the words "Reference Method" to read "Method" wherever they occur.

c. Paragraph (c)(4) is amended by revising the words "established in 2" to read "established in paragraph (c)(2) of this section."

**§ 61.61 [Amended]**

13. Amend § 61.61 as follows:

a. Paragraph (c) is amended by revising the words "polyvinyl chloride plant" to read "polyvinyl chloride (PVC) plant."

b. In paragraph (l), the first sentence is amended by revising the words "a least" to read "at least."

c. Paragraph (w)(3) is amended by revising the words "Test Method 21" to read "Method 21."

**§ 61.62 [Amended]**

14. In § 61.62, paragraph (b) is amended by revising the words "0.2 g/kg (0.0002 lb/lb)" to read "0.2 g/kg (0.4 lb/ton)."

**§ 61.64 [Amended]**

15. Amend § 61.64 as follows:

a. In paragraph (a)(2), the first sentence is amended by revising the words "0.02 g vinyl chloride/kg (0.00002 lb vinyl chloride/lb)" to read "0.02 g vinyl chloride/kg (0.04 lb vinyl chloride/ton)."

b. Paragraph (e)(2)(i) is amended by revising the words "2 g/kg (0.002 lb/lb)" to read "2 g/kg (4 lb/ton)."

c. Paragraph (e)(2)(ii) is amended by revising the words "0.4 g/kg (0.0004 lb/lb)" to read "0.4 g/kg (0.8 lb/ton)."

d. Paragraph (f)(2)(i) is amended by revising the words "2.02 g/kg (0.00202 lb/lb)" to read "2.02 g/kg (4.04 lb/ton)."

e. Paragraph (f)(2)(ii) is amended by revising the words "0.42 g/kg (0.00042 lb/lb)" to read "0.42 g/kg (0.84 lb/ton)."

**§ 61.65 [Amended]**

16. Amend § 61.65 as follows:

a. In paragraph (a), the first sentence is amended by revising the words *"Relief valve discharge"* to read *"Relief valve discharge (RVD)."*

b. Paragraph (b)(8)(i)(D)(*1*) is amended by revising the words "sections 5.2.1. and 5.2.2. of Test Method 106 and in accordance with section 7.1 of Test Method 106" to read "sections 7.2.1 and 7.2.2 of Method 106 and in accordance with section 10.1 of Method 106."

c. In paragraph (b)(8)(i)(D)(*2*), the fourth sentence is amended by revising the words "maximum self life" to read "maximum shelf life."

d. In paragraph (b)(8)(i)(D)(*2*), the fifth sentence is amended by revising the words "section 7.3 of Test Method 106. The requirements in section 5.2.3.1. and 5.2.3.2. of Test Method 106" to read "Sections 8.1 and 9.2 of Method 106. The requirements in Sections 7.2.3.1 and 7.2.3.2 of Method 106."

e. In paragraph (c), the second sentence is amended by revising the

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words "Test Method" to read "Method 106."

17. Amend § 61.67 by:

a. Revising § 61.67(g).

b. In paragraph (h)(1) by revising "ASTM Method D–2267" to read "ASTM D2267–68, 78, or 88 or D4420–94."

The revisions read as follows:

**§ 61.67 Emission tests.**

* * * * *

(g) Unless otherwise specified, the owner or operator shall use the test methods in Appendix B to this part for each test as required by paragraphs (g)(1), (g)(2), (g)(3), (g)(4), and (g)(5) of this section, unless an alternative method has been approved by the Administrator. If the Administrator finds reasonable grounds to dispute the results obtained by an alternative method, he may require the use of a reference method. If the results of the reference and alternative methods do not agree, the results obtained by the reference method prevail, and the Administrator may notify the owner or operator that approval of the method previously considered to be alternative is withdrawn. Whenever Method 107 is specified, and the conditions in Section 1.2, "Applicability" of Method 107A are met, Method 107A may be used.

(1) Method 106 is to be used to determine the vinyl chloride emissions from any source for which an emission limit is prescribed in § 61.62(a) or (b), § 61.63(a), or § 61.64(a)(1), (b), (c), or (d), or from any control system to which reactor emissions are required to be ducted in § 61.64(a)(2) or to which fugitive emissions are required to be ducted in § 61.65(b)(1)(ii), (b)(2), (b)(5), (b)(6)(ii), or (b)(9)(ii).

(i) For each run, one sample is to be collected. The sampling site is to be at least two stack or duct diameters downstream and one half diameter upstream from any flow disturbance such as a bend, expansion, contraction, or visible flame. For a rectangular cross section, an equivalent diameter is to be determined from the following equation:

Equivalent diameter = 2(length)(width)/(length + width)

The sampling point in the duct is to be at the centroid of the cross section. The sample is to be extracted at a rate proportional to the gas velocity at the sampling point. The sample is to contain a minimum volume of 50 liters (1.8 $ft^3$) corrected to standard conditions and is to be taken over a period as close to 1 hour as practicable.

(ii) Each emission test is to consist of three runs. For the purpose of determining emissions, the average of results of all runs is to apply. The average is to be computed on a time weighted basis.

(iii) For gas streams containing more that 10 percent oxygen, the concentration of vinyl chloride as determined by Method 106 is to be corrected to 10 percent oxygen (dry basis) for determination of emissions by using the following equation:

$$C_{b(corrected)} = C_b\,(10.9)/(20.9 - \text{percent } O_2)$$

Where:

$C_{b(corrected)}$ = The concentration of vinyl chloride in the exhaust gases, corrected to 10 percent oxygen.

$C_b$ = The concentration of vinyl chloride as measured by Method 106.

20.9 = Percent oxygen in the ambient air at standard conditions.

10.9 = Percent oxygen in the ambient air at standard conditions, minus the 10.0 percent oxygen to which the correction is being made.

Percent $O_2$ = Percent oxygen in the exhaust gas as measured by Method 3 of Appendix A of Part 60 of this chapter.

(iv) For those emission sources where the emission limit is prescribed in terms of mass rather than concentration, mass emissions are to be determined using the following equation:

$$C_{BX} = \frac{C_b D_{VC} Q K \left(10^{-6}\right)}{Z}$$

Where:

$C_{BX}$ = Vinyl chloride emissions, g/kg (lb/lb) product.

$C_b$ = Concentration of vinyl chloride as measured by Test Method 106, ppmv.

$D_{VC}$ = Density of vinyl chloride at standard conditions, 2.60 kg/$m^3$ (0.162 lb/$ft^3$).

Q = Volumetric flow rate as determined by Method 2 of Appendix A to Part 60 of this chapter, $m^3$/hr ($ft^3$/hr).

K = Unit conversion factor, 1,000 g/kg (1 lb/lb).

$10^{-6}$ = Conversion factor for ppm.

Z = Production rate, kg/hr (lb/hr).

(2) Method 107 or Method 601 (incorporated by reference as specified in § 61.18) is to be used to determine the concentration of vinyl chloride in each inprocess wastewater stream for which an emission limit is prescribed in § 61.65(b)(9)(i).

(3) When a stripping operation is used to attain the emission limits in § 61.64(e) and (f), emissions are to be determined using Method 107 as follows:

(i) The number of strippers (or reactors used as strippers) and samples and the types and grades of resin to be sampled are to be determined by the Administrator for each individual plant at the time of the test based on the plant's operation.

(ii) Each sample is to be taken immediately following the stripping operation.

(iii) The corresponding quantity of material processed by each stripper (or reactor used as a stripper) is to be determined on a dry solids basis and by a method submitted to and approved by the Administrator.

(iv) At the prior request of the Administrator, the owner or operator shall provide duplicates of the samples required in paragraph (g)(3)(i) of this section.

(4) Where control technology other than or in addition to a stripping operation is used to attain the emission limit in § 61.64(e), emissions are to be determined as follows:

(i) Method 106 is to be used to determine atmospheric emissions from all of the process equipment simultaneously. The requirements of paragraph (g)(1) of this section are to be met.

(ii) Method 107 is to be used to determine the concentration of vinyl chloride in each inprocess wastewater stream subject to the emission limit prescribed in § 61.64(e). Vinyl chloride mass emissions are to be determined using the following equation:

$$C_{BX} = \frac{C_{rvc} Q_{water} D_{water} Q K \left(10^{-6}\right)}{Z}$$

Where:

$C_{BX}$ = Vinyl chloride emissions, g/kg (lb/lb) product in each inprocess wastewater stream.

$C_{rvc}$ = Concentration of vinyl chloride in wastewater, as measured by Method 107, ppmw.

$D_{water}$ = Density of wastewater, 1.0 kg/$m^3$ (0.0624 lb/$ft^3$).

$Q_{water}$ = Wastewater flow rate, determined in accordance with a method which has been submitted to and approved by the Administrator, $m^3$/hr ($ft^3$/hr).

K = Unit conversion factor, 1,000 g/kg (1 lb/lb).

$10^{-6}$ = Conversion factor for ppm.

Z = Production rate, kg/hr (lb/hr), determined in accordance with a method which has been submitted to and approved by the Administrator.

(5) The reactor opening loss for which an emission limit is prescribed in § 61.64(a)(2) is to be determined. The number of reactors for which the determination is to be made is to be specified by the Administrator for each individual plant at the time of the determination based on the plant's operation.

(i) Except as provided in paragraph (g)(5)(ii) of this section, the reactor opening loss is to be determined using the following equation:

$$C_{BX} = C_b \frac{V_R D_{VC} Q K \left(10^{-6}\right)}{Z}$$

Where:

$C_{BX}$ = Vinyl chloride emissions, g/kg (lb/lb) product.

$C_b$ = Concentration of vinyl chloride, in ppmv, as determined by Method 106 or a portable hydrocarbon detector which measures hydrocarbons with a sensitivity of at least 10 ppmv.

$V_R$ = Capacity of the reactor, $m^3$ ($ft^3$).

$D_{VC}$ = Density of vinyl chloride at standard conditions, 2.60 kg/$m^3$ (0.162 lb/$ft^3$).

K = Unit conversion factor, 1,000 g/kg (1 lb/lb).

$10^{-6}$ = Conversion factor for ppm.

Z = Production rate, kg/hr (lb/hr).

(A) If Method 106 is used to determine the concentration of vinyl chloride ($C_b$), the sample is to be withdrawn at a constant rate with a probe of sufficient length to reach the vessel bottom from the manhole.



Samples are to be taken for 5 minutes within 6 inches of the vessel bottom, 5 minutes near the vessel center, and 5 minutes near the vessel top.

(B) If a portable hydrocarbon detector is used to determine the concentration of vinyl chloride ($C_b$), a probe of sufficient length to reach the vessel bottom from the manhole is to be used to make the measurements. One measurement will be made within 6 inches of the vessel bottom, one near the vessel center and one near the vessel top. Measurements are to be made at each location until the reading is stabilized. All hydrocarbons measured are to be assumed to be vinyl chloride.

(C) The production rate of polyvinyl chloride (Z), which is the product of the average batch weight and the number of batches produced since the reactor was last opened to the atmosphere, is to be determined by a method submitted to and approved by the Administrator.

(ii) A calculation based on the number of evacuations, the vacuum involved, and the volume of gas in the reactor is hereby approved by the Administrator as an alternative method for determining reactor opening loss for postpolymerization reactors in the manufacture of bulk resins. Calculation methods based on techniques other than repeated evacuation of the reactor may be approved by the Administrator for determining reactor opening loss for postpolymerization reactors in the manufacture of bulk resins.

(6) For a reactor that is used as a stripper, the emissions of vinyl chloride from reactor opening loss and all sources following the reactor used as a stripper for which an emission limit is prescribed in § 61.64(f) are to be determined. The number of reactors for which the determination is to be made is to be specified by the Administrator for each individual plant at the time of the determination based on the plant's operation.

(i) For each batch stripped in the reactor, the following measurements are to be made:

(A) The concentration of vinyl chloride in resin after stripping, measured according to paragraph (g)(3) of this section;

(B) The reactor vacuum at end of strip from plant instrument; and

(C) The reactor temperature at the end of strip from plant instrument.

(ii) For each batch stripped in the reactor, the following information is to be determined:

(A) The vapor pressure of water in the reactor at the end of strip from the following table:

METRIC UNITS

| Reactor vapor temperature (°C) | $H_2O$ vapor pressure (mm Hg) | Reactor vapor temperature (°C) | $H_2O$ vapor pressure (mm Hg) | Reactor vapor temperature (°C) | $H_2O$ vapor pressure (mm Hg) |
|---|---|---|---|---|---|
| 40 | 55.3 | 62 | 163.8 | 84 | 416.8 |
| 41 | 58.3 | 63 | 171.4 | 85 | 433.6 |
| 42 | 61.5 | 64 | 179.3 | 86 | 450.9 |
| 43 | 64.8 | 65 | 187.5 | 87 | 468.7 |
| 44 | 68.3 | 66 | 196.1 | 88 | 487.1 |
| 45 | 71.9 | 67 | 205.0 | 89 | 506.1 |
| 46 | 75.6 | 68 | 214.2 | 90 | 525.8 |
| 47 | 79.6 | 69 | 223.7 | 91 | 546.0 |
| 48 | 83.7 | 70 | 233.7 | 92 | 567.0 |
| 49 | 88.0 | 71 | 243.9 | 93 | 588.6 |
| 50 | 92.5 | 72 | 254.6 | 94 | 610.9 |
| 51 | 97.2 | 73 | 265.7 | 95 | 633.9 |
| 52 | 102.1 | 74 | 277.2 | 96 | 657.6 |
| 53 | 107.2 | 75 | 289.1 | 97 | 682.1 |
| 54 | 112.5 | 76 | 301.4 | 98 | 707.3 |
| 55 | 118.0 | 77 | 314.1 | 99 | 733.2 |
| 56 | 123.8 | 78 | 327.3 | 100 | 760.0 |
| 57 | 129.8 | 79 | 341.0 | | |
| 58 | 136.1 | 80 | 355.1 | | |
| 59 | 142.6 | 81 | 369.7 | | |
| 60 | 149.4 | 82 | 384.9 | | |
| 61 | 156.4 | 83 | 400.6 | | |

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ENGLISH UNITS

| Reactor vapor temperature (°F) | $H_2O$ vapor pressure (psia) | Reactor vapor temperature (°F) | $H_2O$ vapor pressure (psia) | Reactor vapor temperature (°F) | $H_2O$ vapor pressure (psia) |
|---|---|---|---|---|---|
| 104 | 1.07 | 144 | 3.167 | 183 | 8.060 |
| 106 | 1.13 | 145 | 3.314 | 185 | 8.384 |
| 108 | 1.19 | 147 | 3.467 | 187 | 8.719 |
| 109 | 1.25 | 149 | 3.626 | 189 | 9.063 |
| 111 | 1.32 | 151 | 3.792 | 190 | 9.419 |
| 113 | 1.39 | 153 | 3.964 | 192 | 9.786 |
| 115 | 1.46 | 154 | 4.142 | 194 | 10.17 |
| 117 | 1.54 | 156 | 4.326 | 196 | 10.56 |
| 118 | 1.62 | 158 | 4.519 | 198 | 10.96 |
| 120 | 1.70 | 160 | 4.716 | 199 | 11.38 |
| 122 | 1.79 | 162 | 4.923 | 201 | 11.81 |
| 124 | 1.88 | 163 | 5.138 | 203 | 12.26 |
| 126 | 1.974 | 165 | 5.360 | 205 | 12.72 |
| 127 | 2.073 | 167 | 5.590 | 207 | 13.19 |
| 129 | 2.175 | 169 | 5.828 | 208 | 13.68 |
| 131 | 2.282 | 170 | 6.074 | 210 | 14.18 |
| 133 | 2.394 | 172 | 6.329 | 212 | 14.70 |
| 135 | 2.510 | 174 | 6.594 | | |
| 136 | 2.632 | 176 | 6.866 | | |
| 138 | 2.757 | 178 | 7.149 | | |
| 140 | 2.889 | 180 | 7.443 | | |
| 142 | 3.024 | 181 | 7.746 | | |

(B) The partial pressure of vinyl chloride in reactor at end of strip from the following equation:

$$PP_{VC} = P_{ATM} - P_{RV} - P_W$$

Where:

$PP_{VC}$ = Partial pressure of vinyl chloride, mm Hg (psia)
$P_{ATM}$ = Atmospheric pressure at 0 °C (32 °F), 760 mm Hg (14.7 psia)
$P_{RV}$ = Absolute pressure of reactor vacuum, mm Hg (psia)
$P_W$ = Vapor pressure of water, mm Hg (psia)

(C) The reactor vapor space volume at the end of the strip from the following equation:

$$V_{RVS} = V_R - V_W - \frac{W_{PVC}}{D_{PVC}}$$

Where:

$V_{RVS}$ = Reactor vapor space volume, $m^3$ ($ft^3$)
$V_R$ = Reactor capacity, $m^3$ ($ft^3$)
$V_W$ = Volume of water in reactor from recipe, $m^3$ ($ft^3$)
$W_{PVC}$ = Dry weight of polyvinyl chloride in reactor from recipe, kg (lb)
$D_{PVC}$ = Typical density of polyvinyl chloride, 1,400 kg/$m^3$ (87.4 lb/$ft^3$)

(iii) For each batch stripped in the reactor, the combined reactor opening loss and emissions from all sources following the reactor used as a stripper is to be determined using the following equation:

$$C_{BX} = K_1 (PPM_{VC}) + \frac{(PP_{VC})(V_{RVS})(R_{VC})}{(M_{VC})(T_R + K_T)}$$

Where:

$C_{BX}$ = Vinyl chloride emissions, g/kg (lb/lb) product.
$PPM_{VC}$ = Concentration of vinyl chloride in resin after stripping, ppmw
$K_1$ = Conversion factor from ppmw to units of emission standard, 0.001 (metric units) = 0.002 (English units)
$PP_{VC}$ = Partial pressure of vinyl chloride determined according to paragraph (g)(6)(ii)(B) of this section, mm Hg (psia)
$V_{RVS}$ = Reactor vapor space volume determined according to paragraph (g)(6)(ii)(C) of this section, $m^3$ ($ft^3$)
$R_{VC}$ = Ideal gas constant for vinyl chloride, 1,002 g-°K/(mm Hg-$m^3$) [5.825 lb-°R/(psia-$ft^3$)]
$M_{PVC}$ = Dry weight of polyvinyl chloride in reactor from recipe, kg (lb)
$T_R$ = Reactor temperature, °C (°F)
$K_T$ = Temperature conversion factor for °C to °K, 273 (°F to °R, 460)

(h)(1) Each piece of equipment within a process unit that can reasonably contain equipment in vinyl chloride service is presumed to be in vinyl chloride service unless an owner or operator demonstrates that the piece of equipment is not in vinyl chloride service. For a piece of equipment to be considered not in vinyl chloride service, it must be determined that the percent vinyl chloride content can be reasonably expected not to exceed 10 percent by weight for liquid streams or contained liquid volumes and 10 percent by volume for gas streams or contained gas volumes, which also includes gas volumes above liquid streams or contained liquid volumes. For purposes of determining the percent vinyl chloride content of the process fluid that is contained in or contacts equipment, procedures that conform to the methods described in ASTM Method D–2267 (incorporated by reference as specified in § 61.18) shall be used.

(2)(i) An owner or operator may use engineering judgment rather than the procedures in paragraph (h)(1) of this section to demonstrate that the percent vinyl chloride content does not exceed 10 percent by weight for liquid streams and 10 percent by volume for gas streams, provided that the engineering judgment demonstrates that the vinyl chloride content clearly does not exceed 10 percent. When an owner or operator and the Administrator do not agree on whether a piece of equipment is not in vinyl chloride service, however, the procedures in paragraph (h)(1) of this section shall be used to resolve the disagreement.

(ii) If an owner or operator determines that a piece of equipment is in vinyl chloride service, the determination can be revised only after following the procedures in paragraph (h)(1) of this section.

(3) Samples used in determining the percent vinyl chloride content shall be representative of the process fluid that is contained in or contacts the equipment.

**§ 61.68 [Amended]**

18. Amend § 61.68 as follows:

a. Paragraph (c)(1) is amended by revising the words "sections 5.2.1. and 5.2.2. of Test Method 106 and in accordance with section 7.1 of Test Method 106" to read "Sections 7.2.1 and 7.2.2 of Method 106 and in accordance with Section 10.1 of Method 106."

b. In paragraph (c)(2), the fifth sentence is amended by revising the words "section 7.3 of Test Method 106. The requirements in section 5.2.3.1. and 5.2.3.2. of Test Method 106" to read "Sections 8.1 and 9.2 of Method 106. The requirements in Sections 7.2.3.1 and 7.2.3.2 of Method 106."

19. § 61.70(c) is revised as follows:





**§ 61.70 Reporting.**

* * * * *

(c) Unless otherwise specified, the owner or operator shall use the test methods in Appendix B to this part to conduct emission tests as required by paragraphs (c)(2) and (c)(3) of this section, unless an alternative method has been approved by the Administrator. If the Administrator finds reasonable grounds to dispute the results obtained by an alternative method, he may require the use of a reference method. If the results of the reference and alternative methods do not agree, the results obtained by the reference method prevail, and the Administrator may notify the owner or operator that approval of the method previously considered to be alternative is withdrawn.

(1) The owner or operator shall include in the report a record of the vinyl chloride content of emissions for each 3-hour period during which average emissions are in excess of the emission limits in § 61.62(a) or (b), § 61.63(a), or § 61.64(a)(1), (b), (c), or (d), or during which average emissions are in excess of the emission limits specified for any control system to which reactor emissions are required to be ducted in § 61.64(a)(2) or to which fugitive emissions are required to be ducted in § 61.65(b)(I)(ii), (b)(2), (b)(5), (b)(6)(ii), or (b)(9)(ii). The number of 3-hour periods for which average emissions were determined during the reporting period shall be reported. If emissions in excess of the emission limits are not detected, the report shall contain a statement that no excess emissions have been detected. The emissions are to be determined in accordance with § 61.68(e).

(2) In polyvinyl chloride plants for which a stripping operation is used to attain the emission level prescribed in § 61.64(e), the owner or operator shall include in the report a record of the vinyl chloride content in the polyvinyl chloride resin.

(i) If batch stripping is used, one representative sample of polyvinyl chloride resin is to be taken from each batch of each grade of resin immediately following the completion of the stripping operation, and identified by resin type and grade and the date and time the batch is completed. The corresponding quantity of material processed in each stripper batch is to be recorded and identified by resin type and grade and the date and time the batch is completed.

(ii) If continuous stripping is used, one representative sample of polyvinyl chloride resin is to be taken for each grade of resin processed or at intervals of 8 hours for each grade of resin which is being processed, whichever is more frequent. The sample is to be taken as the resin flows out of the stripper and identified by resin type and grade and the date and time the sample was taken. The corresponding quantity of material processed by each stripper over the time period represented by the sample during the 8-hour period, is to be recorded and identified by resin type and grade and the date and time it represents.

(iii) The vinyl chloride content in each sample is to be determined by Method 107 as prescribed in § 61.67(g)(3).

(iv) [Reserved]

(v) The report to the Administrator by the owner or operator is to include a record of any 24-hour average resin vinyl chloride concentration, as determined in this paragraph, in excess of the limits prescribed in § 61.64(e). The vinyl chloride content found in each sample required by paragraphs (c)(2)(i) and (c)(2)(ii) of this section shall be averaged separately for each type of resin, over each calendar day and weighted according to the quantity of each grade of resin processed by the stripper(s) that calendar day, according to the following equation:

$$A_T = \frac{\sum_{i=1}^{n} P_{Gi} M_{Gi}}{Q_T} = \frac{P_{G1}M_{G1} + P_{G2}M_{G2} + \ldots + P_{Gn}M_{Gn}}{Q_T}$$

Where:

$A_T$ = 24-hour average concentration of type T resin in ppm (dry weight basis).
$Q_T$ = Total production of type T resin over the 24-hour period, in kg (ton).
T = Type of resin.
$M_{Gi}$ = Concentration of vinyl chloride in one sample of grade $G_i$ resin in ppm.
$P_{Gi}$ = Production of grade $G_i$ resin represented by the sample, in kg (ton).
$G_i$ = Grade of resin: *e.g.*, $G_1$, $G_2$, $G_3$.
n = Total number of grades of resin produced during the 24-hour period.

The number of 24-hour average concentrations for each resin type determined during the reporting period shall be reported. If no 24-hour average resin vinyl chloride concentrations in excess of the limits prescribed in

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§ 61.64(e) are measured, the report shall state that no excess resin vinyl chloride concentrations were measured.

(vi) The owner or operator shall retain at the source and make available for inspection by the Administrator for a minimum of 3 years records of all data needed to furnish the information required by paragraph (c)(2)(v) of this section. The records are to contain the following information:

(A) The vinyl chloride content found in all the samples required in paragraphs (c)(2)(i) and (c)(2)(ii) of this section, identified by the resin type and grade and the time and date of the sample, and

(B) The corresponding quantity of polyvinyl chloride resin processed by the stripper(s), identified by the resin type and grade and the time and date it represents.

(3) The owner or operator shall include in the report a record of any emissions from each reactor opening in excess of the emission limits prescribed in § 61.64(a)(2). Emissions are to be determined in accordance with § 61.67(g)(5), except that emissions for each reactor are to be determined. The number of reactor openings during the reporting period shall be reported. If emissions in excess of the emission limits are not detected, the report shall include a statement that excess emissions have not been detected.

(4) In polyvinyl chloride plants for which stripping in the reactor is used to attain the emission level prescribed in § 61.64(f), the owner or operator shall include in the report a record of the vinyl chloride emissions from reactor opening loss and all sources following the reactor used as a stripper.

(i) One representative sample of polyvinyl chloride resin is to be taken from each batch of each grade of resin immediately following the completion of the stripping operation, and identified by resin type and grade and the date and time the batch is completed. The corresponding quantity of material processed in each stripper batch is to be recorded and identified by resin type and grade and the date and time the batch is completed.

(ii) The vinyl chloride content in each sample is to be determined by Method 107 as prescribed in § 61.67(g)(3).

(iii) The combined emissions from reactor opening loss and all sources following the reactor used as a stripper are to be determined for each batch stripped in a reactor according to the procedure prescribed in § 61.67(g)(6).

(iv) The report to the Administrator by the owner or operator is to include a record of any 24-hour average combined reactor opening loss and emissions from all sources following the reactor used as a stripper as determined in this paragraph, in excess of the limits prescribed in § 61.64(f). The combined reactor opening loss and emissions from all sources following the reactor used as a stripper associated with each batch are to be averaged separately for each type of resin, over each calendar day and weighted according to the quantity of each grade of resin stripped in reactors that calendar day as follows:

For each type of resin (suspension, dispersion, latex, bulk, other), the following calculation is to be performed:

$$A_T = \frac{\sum_{i=1}^{n} P_{Gi} C_{Gi}}{Q_T} = \frac{P_{G1}C_{G1} + P_{G2}C_{G2} + \ldots + P_{Gn}C_{Gn}}{Q_T}$$

Where:

$A_T$ = 24-hour average combined reactor opening loss and emissions from all sources following the reactor used as a stripper, in g vinyl chloride/kg (lb/ton) product (dry weight basis).

$Q_T$ = Total production of resin in batches for which stripping is completed during the 24-hour period, in kg (ton).

T = Type of resin.

$C_{Gi}$ = Average combined reactor opening loss and emissions from all sources following the reactor used as a stripper of all batches of grade $G_i$ resin for which stripping is completed during the 24-hour period, in g vinyl chloride/kg (lb/ton) product (dry weight basis) (determined according to procedure prescribed in § 61.67(g)(6)).

$P_{Gi}$ = Production of grade $G_i$ resin in the batches for which C is determined, in kg (ton).

$G_i$ = Grade of resin: e.g., $G_1$, $G_2$, $G_3$.

n = Total number of grades of resin in batches for which stripping is completed during the 24-hour period.

The number of 24-hour average emissions determined during the reporting period shall be reported. If no 24-hour average combined reactor opening loss and emissions from all sources following the reactor used as a stripper in excess of the limits prescribed in § 61.64(f) are determined, the report shall state that no excess vinyl chloride emissions were determined.

* * * * *

**§ 61.93 [Amended]**

20. In § 61.93, paragraphs (b)(1)(I), (b)(1)(ii), and (b)(2)(I) are amended by revising the words "Reference Method" to read "Method" wherever they occur.

**§ 61.107 [Amended]**

21. Amend § 61.107 as follows:

a. Paragraphs (b)(1)(I), (b)(1)(ii), and (b)(2)(I) are amended by revising the words "Reference Method" to read "Method" wherever they occur.

b. Paragraphs (b)(2)(iv) and (b)(5)(v) are amended by revising the words "method 114" to read "Method 114" wherever they occur.

c. Paragraph (b)(5)(iv) is amended by revising the words "table 2" to read "Table 2", wherever they occur.

**§ 61.110 [Amended]**

22. In § 61.110, paragraph (c)(2) is amended by revising the words "1,000 megagrams" to read "1,000 megagrams (1,102 tons)."

**§ 61.123 [Amended]**

23. Amend § 61.123 as follows:

a. Paragraph (d) is amended by revising the words "curies per metric ton" to read "curies per Mg or curies per ton" wherever they occur.

b. In paragraph (d), the fifth sentence is amended by revising the words "in metric tons" to read "in Mg (tons)."

**§ 61.125 [Amended]**

24. Amend § 61.125 as follows:

a. Paragraph (a)(1) is amended by revising the words "Test Method 1 of Appendix A" to read "Method 1 of Appendix A."

b. Paragraph (a)(2) is amended by revising the words "Test Method 2 of Appendix A" to read "Method 2 of Appendix A."

c. Paragraph (a)(3) is amended by revising the words "Test Method 3 of Appendix A" to read "Method 3 of Appendix A."

d. Paragraph (a)(4) is amended by revising the words "Test Method 5 of Appendix A" to read "Method 5 of Appendix A."

e. Paragraph (a)(5) is amended by revising the words "Test Method 111 of Appendix B" to read "Method 111 of Appendix B."



**§ 61.132 [Amended]**

25. In § 61.132, paragraphs (b) and (b)(1) are amended by revising the words "Reference Method" to read "Method" wherever they occur.

**§ 61.133 [Amended]**

26. In § 61.133, paragraphs (c) and (c)(1) are amended by revising the words "Reference Method" to read "Method" wherever they occur.

27. Amend § 61.139 as follows:

a. In paragraph (c)(1), the equation definitions for "$Q_{aj}$" and "$Q_{bi}$" are revised.

b. Paragraph (d)(2)(ii) is amended by revising the words "method 21" to read "Method 21" wherever they occur.

c. In paragraph (g)(1)(vi), the second sentence is amended by revising the words "Either follow section 7.1, "Integrated Bag Sampling and Analysis," or section 7.2, "Direct Interface Sampling and Analysis Procedure"" to read "Either the integrated bag sampling and analysis procedure or the direct interface procedure may be used."

d. Paragraph (g)(1)(vi)(A) is amended by revising the words "section 7.1" to read "the integrated bag sampling and analysis procedure."

e. In paragraph (g)(1)(vi)(B), the first sentence is amended by revising the words "section 7.2" to read "the direct interface sampling and analysis procedure."

f. Paragraphs (h)(3), (h)(3)(ii), and (h)(4)(ii) are amended by revising the words "method 18" to read "Method 18" wherever they occur.

The revisions read as follows:

**§ 61.139 Provisions for alternative means for process vessels, storage tanks, and tar-intercepting sumps.**

* * * * *

(c) * * *

(1) * * *

$Q_{aj}$ = volumetric flow rate in vents after the control device, standard cubic meters/minute (scm/min) [standard cubic feet/minute (scf/min)].

$Q_{bi}$ = volumetric flow rate in vents before the control device, scm/min (scf/min).

* * * * *

**§ 61.155 [Amended]**

28. In § 61.155, the section heading is amended by revising the words "asbesto-containing" to read "asbestos-containing."

**§ 61.162 [Amended]**

29. Amend § 61.162 as follows:

a. Paragraph (a)(1) is amended by revising the words "2.5 Mg per year" to read "2.5 Mg (2.7 ton) per year."

b. Paragraph (b)(1) is amended by revising the words "0.4 Mg per year" to read "0.4 Mg (0.44 ton) per year."

30. Amend § 61.164 as follows:

a. Paragraph (c) is amended by revising the words "8.0 Mg per year" to read "8.0 Mg (8.8 ton) per year."

b. Paragraph (c) is amended by revising the words "1.0 Mg per year" to read "1.0 Mg (1.1 ton) per year."

c. In paragraph (c)(1), the first sentence is amended by revising the words "grams of elemental arsenic per kilogram" to read "grams of elemental arsenic per kilogram (pounds per ton)."

d. Paragraphs (c)(1) and (d)(3) are revised; the equation and definitions in paragraphs (c)(2) and (d)(5) are revised; and the definitions of the terms "$R_a$" and "$T_i$" in paragraph (d)(4) are revised.

e. Paragraph (d) is amended by revising the words "8.0 Mg per year" to read "8.0 Mg (8.8 ton) per year."

f. Paragraph (d) is amended by revising the words "1.0 Mg per year" to read "1.0 Mg (1.1 ton) per year."

g. Paragraph (d)(2)(i) is amended by revising the words "emission rate (g/h)" to read "emission rate, g/hr (lb/hr)."

h. Paragraph (d)(2)(ii)(D) is amended by revising the words "Section 4 of Method 5D" to read "Section 8.0 of Method 5D."

i. Paragraph (e)(1)(ii)(D) is amended by revising the words "Section 4 of Method 5D" to read "Section 8.0 of Method 5D."

The revisions read as follows:

**§ 61.164 Test methods and procedures.**

* * * * *

(c) * * *

(1) Derive a theoretical uncontrolled arsenic emission factor (T), based on material balance calculations for each arsenic-containing glass type (i) produced during the 12-month period, as follows:

$$T_i = (A_{bi} \times W_{bi}) + (A_{ci} \times W_{ci}) - B_{gi}$$

Where:

$T_i$ = The theoretical uncontrolled arsenic emission factor for each glass type (i), g/kg (lb/ton).

$A_{bi}$ = Fraction by weight of elemental arsenic in the fresh batch for each glass type (I).

$W_{bi}$ = Weight of fresh batch melted per unit weight of glass produced for each glass type (i), g/kg (lb/ton).

$A_{ci}$ = Fraction by weight of elemental arsenic in cullet for each glass type (i).

$W_{ci}$ = Weight of cullet melted per unit weight of glass produced for each glass type (i), g/kg (lb/ton).

$B_{gi}$ = Weight of elemental arsenic per unit weight of glass produced for each glass type (i), g/kg (lb/ton).

(2) * * *

$$Y_i = \frac{T_i G_i}{K}$$

Where:

$Y_i$ = Theoretical uncontrolled arsenic emission estimate for the 12-month period for each glass type, Mg/year (ton/year).

$T_i$ = Theoretical uncontrolled arsenic emission factor for each type of glass (i) produced during the 12-month period as calculated in paragraph (c)(1) of this section, g/kg (lb/ton).

$G_i$ = Quantity of each arsenic-containing glass type (i) produced during the 12-month period, kg/yr (ton/yr).

K = conversion factor for unit consistency, $10^6$ g/Mg (2,000 lb/ton).

* * * * *

(d) * * *

(3) Determine the actual uncontrolled arsenic emission factor ($R_a$) as follows:

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$$R_a = E_a \div P$$

Where:

$R_a$ = Actual uncontrolled arsenic emission factor, g/kg (lb/ton).

$E_a$ = Actual uncontrolled arsenic emission rate from paragraph (d)(2) of this section, g/hr (lb/hr).

P = Rate of glass production, kg/hr (ton/hr), determined by dividing the weight of glass pulled from the furnace during the emission test by the number of hours taken to perform the test under paragraph (d)(2) of this section.

(4) * * *

$R_a$ = Actual uncontrolled arsenic emission factor, determined in paragraph (d)(3) of this section, g/kg (lb/ton).

$T_i$ = Theoretical uncontrolled arsenic emission factor, g/kg (lb/ton), determined in paragraph (c)(1) of this section for the same glass type for which $R_a$ was determined.

(5) * * *

$$U = \frac{\sum_{i=1}^{n}(T_i \times F \times G_i)}{K}$$

Where:

U = Uncontrolled arsenic emission rate for the 12-month period, Mg/yr (ton/yr).

$T_i$ = Theoretical uncontrolled arsenic emission factor for each type of glass (i) produced during the 12-month period as calculated in paragraph (c)(1) of this section, g/kg (lb/ton).

F = The correction factor calculated in paragraph (d)(4) of this section.

$G_i$ = Quantity of each arsenic-containing glass type (i) produced during the 12-month period, kg/yr (ton/yr).

n = Number of arsenic-containing glass types produced during the 12-month period.

K = Conversion factor for unit consistency, $10^6$ g/Mg (2,000 lb/ton).

* * * * *

**§ 61.165 [Amended]**

31. In § 61.165, paragraph (a)(7) is amended by revising the words "all records of maintenance" at the beginning of the sentence to read "All maintenance."

**§ 61.172 [Amended]**

32. Amend § 61.172 as follows:

a. Paragraph (a) is amended by revising the words "75 kg/h" to read "75 kg/hr (165 lb/hr)."

b. Paragraph (c) is amended by revising the words "11.6 milligrams per dry standard cubic meter" to read "11.6 mg/dscm (0.0051 gr/dscf)."

**§ 61.174 [Amended]**

33. In § 61.174, paragraph (f)(3)is amended by revising the equation definitions as follows:

**§ 61.174 Test methods and procedures.**

* * * * *

(f) * * *

(3) * * *

$R_c$ is the converter arsenic charging rate, kg/hr (lb/hr).

$A_c$ is the monthly average weight percent of arsenic in the copper matte charged during the month(%) as determined under paragraph (f)(2) of this section.

$A_l$ is the monthly average weight percent of arsenic in the lead matte charged during the month(%) as determined under paragraph (f)(2) of this section.

$W_{ci}$ is the total rate of copper matte charged to a copper converter during the month, kg (lb).

$W_{li}$ is the total rate of lead matte charged to a copper converter during the month, kg (lb).

$H_c$ is the total number of hours the copper converter department was in operation during the month (hr).

n is the number of copper converters in operation during the month.

* * * * *

**§ 61.192 [Amended]**

34. In § 61.192, the first sentence is amended by revising the words "20 pCi/-$m^2$-s" to read "20 picocuries per square meter per second (pCi/($m^2$-sec)) (1.9 pCi/($ft^2$-sec))."

**§ 61.202 [Amended]**

35. In § 61.202, the third sentence is amended by revising the words "20 pCi/$m^2$-s" to read "20 pCi/($m^2$-sec) (1.9 pCi/($ft^2$-sec))."

**§ 61.204 [Amended]**

36. In § 61.204, paragraph (b) is amended by revising the words "10 picocuries per gram (pCi/g)" to read "10 pCi/g (4500 pCi/lb)."

**§ 61.205 [Amended]**

37–38. In § 61.205, paragraph (b)(2) is amended by revising the words "7,000 pounds" to read "3182 kg (7,000 lb)" wherever they occur.

**§ 61.208 [Amended]**

39. Amend § 61.208 as follows:

a. Paragraph (a)(1)(iii) is amended by revising the words "quantity (in pounds) of phosphogypsum" are revised to read "quantity of phosphogypsum, in kilograms or pounds."

b. Paragraph (a)(1)(vi) is amended by revising the words "in pCi/g" to read "in pCi/g (pCi/lb)."

**§ 61.222 [Amended]**

40. In § 61.222, paragraph (a) is amended by revising the words "20 pCi/$m^2$-s" to read "20 pCi/($m^2$-sec) (1.9 pCi/($ft^2$-sec))."

**§ 61.241 [Amended]**

41. In § 61.241, the definition of the term "In vacuum service" is amended by revising the words "5 kilopascals (kPa) below" to read "5 kilopascals (kPa) (0.7 psia) below."

**§ 61.242–11 [Amended]**

42. In § 61.242–11, paragraph (c) is amended by revising the words "760 °C" to read "760 °C (1,400 °F)."

**§ 61.243–2 [Amended]**

43. Amend § 61.243–2 as follows:

a. Paragraph (b)(2) is amended by revising the words "skip 1 of the" to read "skip one of the."

b. Paragraph (b)(3) is amended by revising the words "After 5 consecutive" to read "After five consecutive."

c. Paragraph (b)(3) is amended by revising the words "skip 3 of the quartely" to read "skip three of the quarterly."

**§ 61.244 [Amended]**

44. Amend § 61.244 as follows:

a. In paragraph (b)(1) by revising the words "emission limitation.limitation to test data" to read "emission limitation to test data."

b. By redesignating paragraph (b)(3) as paragraph (b)(2).

**§ 61.245 [Amended]**

45–46. Amend § 61.245 as follows:

a. Paragraphs (b)(2), (b)(3), (b)(5), (c)(2), (c)(3), (e)(3), and (e)(4) are amended by revising the words "Reference Method" to read "Method" wherever they occur.

b. In paragraph (e)(3), the definitions of the terms "$H_T$", "K", "$C_i$", and "$H_i$" are revised; and the equation and definitions in (e)(5) are revised as follows:



**§ 61.245 Test methods and procedures.**

* * * * *

(e) * * *

(3) * * *

$H_T$ = Net heating value of the sample, MJ/scm (BTU/scf); where the net enthalpy per mole of offgas is based on combustion at 25 °C and 760 mm Hg (77 °F and 14.7 psi), but the standard temperature for determining the volume corresponding to one mole is 20 °C (68 °F).

K = conversion constant, $1.740 \times 10^7$ (g-mole) (MJ)/(ppm-scm-kcal) (metric units); or $4.674 \times 10^8$ ((g-mole) (Btu)/(ppm-scf-kcal)) (English units)

$C_i$ = Concentration of sample component "i" in ppm, as measured by Method 18 of Appendix A to 40 CFR Part 60 and ASTM D2504–67, 77, or 88 (Reapproved 1993) (incorporated by reference as specified in § 61.18).

$H_i$ = net heat of combustion of sample component "i" at 25 °C and 760 mm Hg (77 °F and 14.7 psi), kcal/g-mole. The heats of combustion may be determined using ASTM D2382–76 or 88 or D4809–95 (incorporated by reference as specified in § 61.18) if published values are not available or cannot be calculated.

* * * * *

(5) * * *

$$V_{max} = K_1 + K_2 H_T$$

Where:

$V_{max}$ = Maximum permitted velocity, m/sec (ft/sec).

$H_T$ = Net heating value of the gas being combusted, as determined in paragraph (e)(3) of this section, MJ/scm (Btu/scf).

$K_1$ = 8.706 m/sec (metric units) = 28.56 ft/sec (English units)

$K_2$ = 0.7084 $m^4$/(MJ-sec) (metric units) = 0.087 $ft^4$/(Btu-sec) (English units)

* * * * *

**§ 61.252 [Amended]**

47. In § 61.252, paragraph (a) is amended by revising the words "20 pCi/$m^2$-s" to read 20 pCi/($m^2$-sec) (1.9 pCi/($ft^2$-sec)).

**§ 61.270 [Amended]**

48. Amend § 61.270 as follows:

a. Paragraph (a) is revised.

b. Paragraph (e) is amended by revising the words "204.9 kPa" to read "204.9 kPa (29.72 psia)."

The revisions read as follows:

**§ 61.270 Applicability and designation of sources.**

(a) The source to which this subpart applies is each storage vessel that is storing benzene having a specific gravity within the range of specific gravities specified in ASTM D836–84 for Industrial Grade Benzene, ASTM D835–85 for Refined Benzene-485, ASTM D2359–85a or 93 for Refined Benzene-535, and ASTM D4734–87 or 96 for Refined Benzene-545. These specifications are incorporated by reference as specified in § 61.18. See § 61.18 for acceptable versions of these methods.

* * * * *

**§ 61.272 [Amended]**

49. Amend § 61.272 as follows:

a. In paragraph (c)(1)(i), the fourth sentence is amended by revising the words "816 °C" to read "816 °C (1,500 °F)."

b. Paragraph (d) is amended by revising the letter "O" in the words "40 CFR 6O.18(e)" to read "40 CFR 60.18(e)."

**§ 61.301 [Amended]**

50. Amend § 61.301 as follows:

a. The definitions of the terms "Leak" and "Vapor-tight marine vessel" are amended by revising the words "method 21" to read "Method 21" wherever they occur.

b. In the definition of the terms "Vapor-tight tank truck or vapor-tight railcar", the second sentence is amended by revising the words "method 27 of part 60, appendix A" to read "Method 27 of Appendix A to 40 CFR part 60."

**§ 61.302 [Amended]**

51. Amend § 61.302 as follows:

a. In paragraph (d)(1), the third sentence is amended by revising the words "method 27 of part 60, appendix A" to read "Method 27 of Appendix A to 40 CFR Part 60."

b. In paragraph (e)(2), the second sentence is amended by revising the words "method 21 of part 60, appendix A" to read "Method 21 of Appendix A to 40 CFR Part 60."

c. In paragraph (e)(2)(ii)(B), fourth sentence, the words "method 21" are revised to read "Method 21 of Appendix A to 40 CFR Part 60."

d. In paragraph (h), the first sentence is amended by revising the words "method 27 of part 60, appendix A" to read "Method 27 of Appendix A to 40 CFR Part 60."

**§ 61.303 [Amended]**

52. In § 61.303, paragraphs (c), (c)(1), and (c)(2) are amended by revising the words "44 MW" to read "44 MW (150 $\times 10^6$ BTU/hr)" wherever they occur.

**§ 61.304 [Amended]**

53. Amend § 61.304 as follows:

a. Paragraph (a)(4)(iii) is amended by revising the word "method" to read "Method."

b. In paragraph (a)(4)(iv), the first sentence is amended by revising the words "method 25A or method 25B" to read "Method 25A or Method 25B."

c. Paragraph (b) is amended by revising the words "a performance test according to method 22 of appendix A of this part, shall be performed to determine visible emissions. The observation period shall be at least 2 hours and shall be conducted according to method 22" to read "a performance test according to Method 22 of appendix A of 40 CFR part 60 shall be performed to determine visible emissions. The observation period shall be at least 2 hours."

54. Amend § 61.305 as follows:

a. Paragraphs (a), (b)(3), and (d) are amended by revising the words "44 MW" to read "44 MW (150 $\times 10^6$ BTU/hr)" wherever they occur.

b. Paragraph (a)(3)(ii) is revised.

c. Paragraphs (b)(1), (b)(2), and (b)(3) are amended by revising the words "28 °C" to read "28 °C (50 °F)" wherever they occur.

The revisions read as follows:

**§ 61.305 Reporting and recordkeeping.**

(a) * * *

(3) * * *

(ii) The average combustion temperature of the steam generating unit or process heater with a design heat input capacity of less than 44 MW (150 $\times 10^6$ BTU/hr), measured with the following frequency: at least every 2 minutes during a loading cycle if the total time period of the loading cycle is less than 3 hours, and every 15 minutes if the total time period of the loading cycle is equal to or greater than 3 hours. The measured temperature shall be averaged over the loading cycle.

* * * * *

**§ 61.342 [Amended]**

55. Amend § 61.342 as follows:

a. In paragraph (a), the first sentence, the words "10 megagrams per year (Mg/yr)" are revised to read "10 megagrams per year (Mg/yr) (11 ton/yr)."

b. Paragraphs (a)(3), (b), (c), (c)(3)(i), (d), and (e) are amended by revising the words "10 Mg/yr" to read "10 Mg/yr (11 ton/yr)."

c. Paragraph (c)(3)(i) is amended by revising the words "0.02 liters per minute" to read "0.02 liters per minute (0.005 gallons per minute)."

d. Paragraph (c)(3)(ii)(B) is amended by revising the words "2.0 Mg/yr" to read "2.0 Mg/yr (2.2 ton/yr)."

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e. Paragraph (d)(2)(1) is redesignated as paragraph (d)(2)(i).

f. In paragraph (d)(2)(i), the first sentence is amended by revising the words "1 Mg/yr" to read "1 Mg/yr (1.1 ton/yr)."

g. In paragraph (e)(2)(i), the first sentence is amended by revising the words "6.0 Mg/yr" to read "6.0 Mg/yr (6.6 ton/yr)."

**§ 61.348 [Amended]**

56. Amend § 61.348 as follows:

a. In paragraph (b)(2)(ii), the first sentence is amended by revising the words "1 Mg/yr" to read "1 Mg/yr (1.1 ton/yr)."

b. In paragraph (b)(2)(ii)(B), by revising the third sentence.

The revision reads as follows:

**§ 61.348 Standards: Treatment processes.**

(b) * * *

(2) * * *

(ii) * * *

(B) * * * An enhanced biodegradation unit typically operates at a food-to-microorganism ratio in the range of 0.05 to 1.0 kg of biological oxygen demand per kg of biomass per day, a mixed liquor suspended solids ratio in the range of 1 to 8 grams per liter (0.008 to 0.7 pounds per liter), and a residence time in the range of 3 to 36 hours.

* * * * *

**§ 61.349 [Amended]**

57. In § 61.349, paragraph (a)(2)(i)(C) is amended by revising the words "760 °C" to read "760 °C (1,400 °F)."

**§ 61.354 [Amended]**

58. In § 61.354, paragraph (c)(4) is amended by revising the words "44 megawatts (MW)" to read "44 MW ($150 \times 10^6$ BTU/hr)."

58a. In paragraph (c)(5), "44 MW" is revised to read "44 MW ($150 \times 10^6$ BTU/hr)."

**§ 61.355 [Amended]**

59. Amend § 61.355 as follows:

a. Paragraphs (a)(3), (a)(4), (a)(4)(ii) are amended by revising the words "10 Mg/yr" to read "10 Mg/yr (11 ton/yr)" wherever they occur.

b. Paragraphs (a)(4), (a)(5), and (a)(5)(ii) are amended by revising the words "1 Mg/yr" to read "1 Mg/yr (1.1 ton/yr)" wherever they occur.

c. Paragraphs (c)(3)(ii)(F) and (c)(3)(ii)(H) are amended by revising the words "10 °C" to read "10 °C (50 °F)" wherever they occur.

d. Paragraph (c)(3)(v) is amended by revising the words "kg/yr" to read "kg/yr (lb/yr)" wherever they occur.

e. Paragraphs (e)(3), (e)(4), (f)(3), (f)(4)(iv), (f)(5), (i)(3)(iv), and (i)(4) are amended by revising the definitions of the terms used in the equations; and (f)(4)(iii) and (i)(3)(iii) are amended by revising the equation and definitions of terms used in the equations.

f. Paragraphs (f)(4)(ii)(B), (f)(4)(ii)(C), (h)(1), (h)(2), (h)(3), (h)(5), (h)(6), (i)(2), (i)(3)(ii)(B), and (i)(3)(ii)(C) are amended by revising the word "method" to read "Method" wherever it occurs.

g. Paragraph (k)(7) is amended by revising the words "6.0 Mg/yr" to read "6.0 Mg/yr (6.6 ton/yr)."

The revisions read as follows:

**§ 61.355 Test methods, procedures, and compliance provisions.**

* * * * *

(e) * * *

(3) * * *

$E_b$ = Mass flow rate of benzene entering the treatment process, kg/hr (lb/hr).

K = Density of the waste stream, kg/$m^3$ (lb/$ft^3$).

$V_i$ = Average volume flow rate of waste entering the treatment process during each run i, $m^3$/hr ($ft^3$/hr).

$C_i$ = Average concentration of benzene in the waste stream entering the treatment process during each run i, ppmw.

n = Number of runs.

$10^6$ = Conversion factor for ppmw.

(4) * * *

$E_a$ = Mass flow rate of benzene exiting the treatment process, kg/hr (lb/hr).

K = Density of the waste stream, kg/$m^3$ (lb/$ft^3$).

$V_i$ = Average volume flow rate of waste exiting the treatment process during each run i, $m^3$/hr ($ft^3$/hr).

$C_i$ = Average concentration of benzene in the waste stream exiting the treatment process during each run i, ppmw.

n = Number of runs.

$10^6$ = Conversion factor for ppmw.

(f) * * *

(3) * * *

$E_b$ = Mass flow rate of benzene entering the combustion unit, kg/hr (lb/hr).

K = Density of the waste stream, kg/$m^3$ (lb/$ft^3$).

$V_i$ = Average volume flow rate of waste entering the combustion unit during each run i, $m^3$/hr ($ft^3$/hr).

$C_i$ = Average concentration of benzene in the waste stream entering the combustion unit during each run i, ppmw.

n = Number of runs.

$10^6$ = Conversion factor for ppmw.

(4) * * *

(iii) * * *

$$M_i = D_b V C \left(10^{-6}\right)$$

Where:

$M_i$ = Mass of benzene emitted during run i, kg (lb).

V = Volume of air-vapor mixture exhausted at standard conditions, $m^3$ ($ft^3$).

C = Concentration of benzene measured in the exhaust, ppmv.

$D_b$ = Density of benzene, 3.24 kg/$m^3$ (0.202 lb/$ft^3$).

$10^6$ = Conversion factor for ppmv.

(iv) * * *

$E_a$ = Mass flow rate of benzene emitted from the combustion unit, kg/hr (lb/hr).

$M_i$ = Mass of benzene emitted from the combustion unit during run i, kg (lb).

T = Total time of all runs, hr.

n = Number of runs.

(5) * * *

R = Benzene destruction efficiency for the combustion unit, percent.

$E_b$ = Mass flow rate of benzene entering the combustion unit, kg/hr (lb/hr).

$E_a$ = Mass flow rate of benzene emitted from the combustion unit, kg/hr (lb/hr).

* * * * *

(i) * * *

(3) * * *

(iii) * * *

$$M_{aj} = \frac{K_1 V_{aj}}{10^6}\left(\sum_{i=1}^{n} C_{ai} MW_i\right)$$

$$M_{bj} = \frac{K_1 V_{bj}}{10^6}\left(\sum_{i=1}^{n} C_{bi} MW_i\right)$$

$M_{aj}$ = Mass of organics or benzene in the vent stream entering the control device during run j, kg (lb).

$M_{bj}$ = Mass of organics or benzene in the vent stream exiting the control device during run j, kg (lb).

$V_{aj}$ = Volume of vent stream entering the control device during run j, at standard conditions, $m^3$ ($ft^3$).

$V_{bj}$ = Volume of vent stream exiting the control device during run j, at standard conditions, $m^3$ ($ft^3$).

$C_{ai}$ = Organic concentration of compound i or the benzene concentration measured in the vent stream entering the control device as determined by Method 18, ppm by volume on a dry basis.

$C_{bi}$ = Organic concentration of compound i or the benzene concentration measured in the vent stream exiting the control device as determined by Method 18, ppm by volume on a dry basis.

$MW_i$ = Molecular weight of organic compound i in the vent stream, or the molecular weight of benzene, kg/kg-mol (lb/lb-mole).



n = Number of organic compounds in the vent stream; if benzene reduction efficiency is being demonstrated, then n=1.

$K_1$ = Conversion factor for molar volume at standard conditions (293 K and 760 mm Hg (527 R and 14.7 psia)) = 0.0416 kg-mol/$m^3$ (0.00118 lb-mol/$ft^3$)

$10^{-6}$=Conversion factor for ppmv.

(iv) * * *

$E_a$ = Mass flow rate of organics or benzene entering the control device, kg/hr (lb/hr).

$E_b$ = Mass flow rate of organics or benzene exiting the control device, kg/hr (lb/hr).

$M_{aj}$ = Mass of organics or benzene in the vent stream entering the control device during run j, kg (lb).

$M_{bj}$ = Mass of organics or benzene in the vent stream exiting the control device during run j, kg (lb).

T = Total time of all runs, hr.

n = Number of runs.

(4) * * *

R = Total organic reduction of efficiency or benzene reduction efficiency for the control device, percent.

$E_b$ = Mass flow rate of organics or benzene entering the control device, kg/hr (lb/hr).

$E_a$ = Mass flow rate of organic or benzene emitted from the control device, kg/hr (lb/hr).

* * * * *

**§ 61.356 [Amended]**

60. Amend § 61.356 as follows:

a. Paragraph (b)(2)(i) is amended by revising the words "0.02 liters per minute" to read "0.02 liters (0.005 gallons) per minute."

b. Paragraph (b)(2)(i) is amended by revising the words "10 Mg/yr" to read "10 Mg/yr (11 ton/yr)."

c. Paragraph (b)(2)(ii) is amended by revising the words "2.0 Mg/yr" to read "2.0 Mg/yr (2.2 ton/yr)."

d. Paragraph (b)(4) is amended by revising the words "6.0 Mg/yr" to read "6.0 Mg/yr (6.6 ton/yr)."

e. Paragraphs (j)(4), (j)(5), and (j)(6) are amended by revising the words "28 °C" to read "28 °C (50 °F)" wherever they occur.

f. Paragraph (j)(6) is amended by revising the words "44 MW" to read "44 MW ($150 \times 106$ BTU/hr)" wherever they occur.

g. Paragraph (j)(8) is amended by revising the words "6 °C" to read "6 °C (11 °F)" wherever they occur.

**§ 61.357 [Amended]**

61. Amend § 61.357 as follows:

a. Paragraphs (b) and (c) are amended by revising the words "1 Mg/yr" to read "1 Mg/yr (1.1 ton/yr)" wherever they occur.

b. Paragraphs (c) and (d) are amended by revising the words "10 Mg/yr" to read "10 Mg/yr (11 ton/yr)" wherever they occur.

c. Paragraphs (d)(7)(iv)(A), (d)(7)(iv)(B), and (d)(7)(iv)(C) are amended by revising the words "28 °C" to read "28 °C (50 °F)" wherever they occur.

d. Paragraph (d)(7)(iv)(C) is amended by revising the words "44 MW" to read "44 MW ($150 \times 106$ BTU/hr)."

e. Paragraph (d)(7)(iv)(E) is amended by revising the words "6 °C" to read "6 °C (11 °F)."

62. In Part 61, Appendix B is amended by revising Methods 101, 101A, 102, 103, 104, 105, 106, 107, 107A, 108, 108A, 108B, 108C, and 111 to read as follows:

**Method 101—Determination of Particulate and Gaseous Mercury Emissions From Chlor-Alkali Plants (Air Streams)**

**Note:** This method does not include all of the specifications (e.g., equipment and supplies) and procedures (e.g., sampling and analytical) essential to its performance. Some material is incorporated by reference from methods in Appendix A to 40 CFR Part 60. Therefore, to obtain reliable results, persons using this method should have a thorough knowledge of at least the following additional test methods: Method 1, Method 2, Method 3, and Method 5.

*1.0 Scope and Application*

1.1 Analytes.

| Analyte | CAS No. | Sensitivity |
|---|---|---|
| Mercury (Hg) | 7439–97–6 | Dependent upon recorder and spectrophotometer. |

1.2 Applicability. This method is applicable for the determination of Hg emissions, including both particulate and gaseous Hg, from chlor-alkali plants and other sources (as specified in the regulations) where the carrier-gas stream in the duct or stack is principally air.

1.3 Data Quality Objectives. Adherence to the requirements of this method will enhance the quality of the data obtained from air pollutant sampling methods.

*2.0 Summary of Method*

Particulate and gaseous Hg emissions are withdrawn isokinetically from the source and collected in acidic iodine monochloride (ICl) solution. The Hg collected (in the mercuric form) is reduced to elemental Hg, which is then aerated from the solution into an optical cell and measured by atomic absorption spectrophotometry.

*3.0 Definitions [Reserved]*

*4.0 Interferences*

4.1 Sample Collection. Sulfur dioxide ($SO_2$) reduces ICl and causes premature depletion of the ICl solution.

4.2 Sample Analysis.

4.2.1 ICl concentrations greater than $10^{-4}$ molar inhibit the reduction of the Hg (II) ion in the aeration cell.

4.2.2 Condensation of water vapor on the optical cell windows causes a positive interference.

*5.0 Safety*

5.1 Disclaimer. This method may involve hazardous materials, operations, and equipment. This test method does not purport to address all of the safety problems associated with its use. It is the responsibility of the user of this test method to establish appropriate safety and health practices and determine the applicability of regulatory limitations prior to performing this test method.

5.2 Corrosive Reagents. The following reagents are hazardous. Personal protective equipment and safe procedures are useful in preventing chemical splashes. If contact occurs, immediately flush with copious amounts of water for at least 15 minutes. Remove clothing under shower and decontaminate. Treat residual chemical burn as thermal burn.

5.2.1 Hydrochloric Acid (HCl). Highly toxic and corrosive. Causes severe damage to tissues. Vapors are highly irritating to eyes, skin, nose, and lungs, causing severe damage. May cause bronchitis, pneumonia, or edema of lungs. Exposure to concentrations of 0.13 to 0.2 percent can be lethal to humans in a few minutes. Provide ventilation to limit exposure. Reacts with metals, producing hydrogen gas.

5.2.2 Nitric Acid ($HNO_3$). Highly corrosive to eyes, skin, nose, and lungs. Vapors cause bronchitis, pneumonia, or edema of lungs. Reaction to inhalation may be delayed as long as 30 hours and

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still be fatal. Provide ventilation to limit exposure. Strong oxidizer. Hazardous reaction may occur with organic materials such as solvents.

5.2.3 Sulfuric Acid ($H_2SO_4$). Rapidly destructive to body tissue. Will cause third degree burns. Eye damage may result in blindness. Inhalation may be fatal from spasm of the larynx, usually within 30 minutes. 3 mg/m³ will cause lung damage. 1 mg/m³ for 8 hours will cause lung damage or, in higher concentrations, death. Provide ventilation to limit inhalation. Reacts violently with metals and organics.

*6.0 Equipment and Supplies.*

6.1 Sample Collection. A schematic of the sampling train used in performing this method is shown in Figure 101–1; it is similar to the Method 5 sampling train. The following items are required for sample collection:

6.1.1 Probe Nozzle, Pitot Tube, Differential Pressure Gauge, Metering System, Barometer, and Gas Density Determination Equipment. Same as Method 5, Sections 6.1.1.1, 6.1.1.3, 6.1.1.4, 6.1.1.9, 6.1.2, and 6.1.3, respectively.

6.1.2 Probe Liner. Borosilicate or quartz glass tubing. A heating system capable of maintaining a gas temperature of 120 ± 14 °C (248 ± 25 °F) at the probe exit during sampling may be used to prevent water condensation.

**Note:** Do not use metal probe liners.

6.1.3 Impingers. Four Greenburg-Smith impingers connected in series with leak-free ground glass fittings or any similar leak-free noncontaminating fittings. For the first, third, and fourth impingers, impingers that are modified by replacing the tip with a 13-mm ID (0.5-in.) glass tube extending to 13 mm (0.5 in.) from the bottom of the flask may be used.

6.1.4 Acid Trap. Mine Safety Appliances air line filter, Catalog number 81857, with acid absorbing cartridge and suitable connections, or equivalent.

6.2 Sample Recovery. The following items are needed for sample recovery:

6.2.1 Glass Sample Bottles, Leakless, with Teflon-lined caps, 1000- and 100-ml.

6.2.2 Graduated Cylinder. 250-ml.

6.2.3 Funnel and Rubber Policeman. To aid in transfer of silica gel to container; not necessary if silica gel is weighed in the field.

6.2.4 Funnel. Glass, to aid in sample recovery.

6.3 Sample Preparation and Analysis. The following items are needed for sample preparation and analysis:

6.3.1 Atomic Absorption Spectrophotometer. Perkin-Elmer 303, or equivalent, containing a hollow-cathode mercury lamp and the optical cell described in Section 6.3.2.

6.3.2 Optical Cell. Cylindrical shape with quartz end windows and having the dimensions shown in Figure 101–2. Wind the cell with approximately 2 meters (6 ft) of 24-gauge Nichrome wire, or equivalent, and wrap with fiberglass insulation tape, or equivalent; do not let the wires touch each other.

6.3.3 Aeration Cell. Constructed according to the specifications in Figure 101–3. Do not use a glass frit as a substitute for the blown glass bubbler tip shown in Figure 101–3.

6.3.4 Recorder. Matched to output of the spectrophotometer described in Section 6.3.1.

6.3.5 Variable Transformer. To vary the voltage on the optical cell from 0 to 40 volts.

6.3.6 Hood. For venting optical cell exhaust.

6.3.7 Flow Metering Valve.

6.3.8 Rate Meter. Rotameter, or equivalent, capable of measuring to within 2 percent a gas flow of 1.5 liters/min (0.053 cfm).

6.3.9 Aeration Gas Cylinder. Nitrogen or dry, Hg-free air, equipped with a single-stage regulator.

6.3.10 Tubing. For making connections. Use glass tubing (ungreased ball and socket connections are recommended) for all tubing connections between the solution cell and the optical cell; do not use Tygon tubing, other types of flexible tubing, or metal tubing as substitutes. Teflon, steel, or copper tubing may be used between the nitrogen tank and flow metering valve (Section 6.3.7), and Tygon, gum, or rubber tubing between the flow metering valve and the aeration cell.

6.3.11 Flow Rate Calibration Equipment. Bubble flow meter or wet-test meter for measuring a gas flow rate of 1.5 ± 0.1 liters/min (0.053 ± 0.0035 cfm).

6.3.12 Volumetric Flasks. Class A with penny head standard taper stoppers; 100-, 250-, 500-, and 1000-ml.

6.3.13 Volumetric Pipets. Class A; 1-, 2-, 3-, 4-, and 5-ml.

6.3.14 Graduated Cylinder. 50-ml.

6.3.15 Magnetic Stirrer. General-purpose laboratory type.

6.3.16 Magnetic Stirring Bar. Teflon-coated.

6.3.17 Balance. Capable of weighing to ± 0.5 g.

6.3.18 Alternative Analytical Apparatus. Alternative systems are allowable as long as they meet the following criteria:

6.3.18.1 A linear calibration curve is generated and two consecutive samples of the same aliquot size and concentration agree within 3 percent of their average.

6.3.18.2 A minimum of 95 percent of the spike is recovered when an aliquot of a source sample is spiked with a known concentration of Hg (II) compound.

6.3.18.3 The reducing agent should be added after the aeration cell is closed.

6.3.18.4 The aeration bottle bubbler should not contain a frit.

6.3.18.5 Any Tygon tubing used should be as short as possible and conditioned prior to use until blanks and standards yield linear and reproducible results.

6.3.18.6 If manual stirring is done before aeration, it should be done with the aeration cell closed.

6.3.18.7 A drying tube should not be used unless it is conditioned as the Tygon tubing above.

*7.0 Reagents and Standards*

Unless otherwise indicated, all reagents must conform to the specifications established by the Committee on Analytical Reagents of the American Chemical Society; where such specifications are not available, use the best available grade.

7.1 Sample Collection. The following reagents are required for sample collection:

7.1.1 Water. Deionized distilled, to conform to ASTM D 1193–77 or 91 (incorporated by reference—see § 61.18), Type 1. If high concentrations of organic matter are not expected to be present, the analyst may eliminate the $KMnO_4$ test for oxidizable organic matter. Use this water in all dilutions and solution preparations.

7.1.2 Nitric Acid, 50 Percent (v/v). Mix equal volumes of concentrated $HNO_3$ and water, being careful to add the acid to the water slowly.

7.1.3 Silica Gel. Indicating type, 6- to 16-mesh. If previously used, dry at 175 °C (350 °F) for 2 hours. The tester may use new silica gel as received.

7.1.4 Potassium Iodide (KI) Solution, 25 Percent. Dissolve 250 g of KI in water, and dilute to 1 liter.

7.1.5 Iodine Monochloride Stock Solution, 1.0 M. To 800 ml of 25 percent KI solution, add 800 ml of concentrated HCl. Cool to room temperature. With vigorous stirring, slowly add 135 g of potassium iodate ($KIO_3$), and stir until all free iodine has dissolved. A clear orange-red solution occurs when all the $KIO_3$ has been added. Cool to room temperature, and dilute to 1800 ml with water. Keep the solution in amber glass bottles to prevent degradation.



7.1.6 Absorbing Solution, 0.1 M ICl. Dilute 100 ml of the 1.0 M ICl stock solution to 1 liter with water. Keep the solution in amber glass bottles and in darkness to prevent degradation. This reagent is stable for at least two months.

7.2 Sample Preparation and Analysis. The following reagents and standards are required for sample preparation and analysis:

7.2.1 Reagents.

7.2.1.1 Tin (II) Solution. Prepare fresh daily, and keep sealed when not being used. Completely dissolve 20 g of tin (II) chloride (or 25 g of tin (II) sulfate) crystals (Baker Analyzed reagent grade or any other brand that will give a clear solution) in 25 ml of concentrated HCl. Dilute to 250 ml with water. Do not substitute $HNO_3$, $H_2SO_4$, or other strong acids for the HCl.

7.2.1.2 Sulfuric Acid, 5 Percent (v/v). Dilute 25 ml of concentrated $H_2SO_4$ to 500 ml with water.

7.2.2 Standards

7.2.2.1 Hg Stock Solution, 1 mg Hg/ml. Prepare and store all Hg standard solutions in borosilicate glass containers. Completely dissolve 0.1354 g of Hg (II) chloride in 75 ml of water in a 100-ml glass volumetric flask. Add 10 ml of concentrated $HNO_3$, and adjust the volume to exactly 100 ml with water. Mix thoroughly. This solution is stable for at least one month.

7.2.2.2 Intermediate Hg Standard Solution, 10 µg Hg/ml. Prepare fresh weekly. Pipet 5.0 ml of the Hg stock solution (Section 7.2.2.1) into a 500-ml glass volumetric flask, and add 20 ml of the 5 percent $H_2SO_4$ solution. Dilute to exactly 500 ml with water. Thoroughly mix the solution.

7.2.2.3 Working Hg Standard Solution, 200 ng Hg/ml. Prepare fresh daily. Pipet 5.0 ml of the intermediate Hg standard solution (Section 7.2.2.2) into a 250-ml volumetric glass flask. Add 10 ml of the 5 percent $H_2SO_4$ and 2 ml of the 0.1 M ICl absorbing solution taken as a blank (Section 8.7.4.3), and dilute to 250 ml with water. Mix thoroughly.

*8.0 Sample Collection, Preservation, Transport, and Storage*

Because of the complexity of this method, testers should be trained and experienced with the test procedures to ensure reliable results. Since the amount of Hg that is collected generally is small, the method must be carefully applied to prevent contamination or loss of sample.

8.1 Pretest Preparation. Follow the general procedure outlined in Method 5, Section 8.1, except omit Sections 8.1.2 and 8.1.3.

8.2 Preliminary Determinations. Follow the general procedure outlined in Method 5, Section 8.2, with the exception of the following:

8.2.1 Select a nozzle size based on the range of velocity heads to assure that it is not necessary to change the nozzle size in order to maintain isokinetic sampling rates below 28 liters/min (1.0 cfm).

8.2.2 Perform test runs such that samples are obtained over a period or periods that accurately determine the maximum emissions that occur in a 24-hour period. In the case of cyclic operations, run sufficient tests for the accurate determination of the emissions that occur over the duration of the cycle. A minimum sample time of 2 hours is recommended. In some instances, high Hg or high $SO_2$ concentrations make it impossible to sample for the desired minimum time. This is indicated by reddening (liberation of free iodine) in the first impinger. In these cases, the sample run may be divided into two or more subruns to ensure that the absorbing solution is not depleted.

8.3 Preparation of Sampling Train.

8.3.1 Clean all glassware (probe, impingers, and connectors) by rinsing with 50 percent $HNO_3$, tap water, 0.1 M ICl, tap water, and finally deionized distilled water. Place 100 ml of 0.1 M ICl in each of the first three impingers. Take care to prevent the absorbing solution from contacting any greased surfaces. Place approximately 200 g of preweighed silica gel in the fourth impinger. More silica gel may be used, but care should be taken to ensure that it is not entrained and carried out from the impinger during sampling. Place the silica gel container in a clean place for later use in the sample recovery. Alternatively, determine and record the weight of the silica gel plus impinger to the nearest 0.5 g.

8.3.2 Install the selected nozzle using a Viton A O-ring when stack temperatures are less than 260 °C (500 °F). Use a fiberglass string gasket if temperatures are higher. See APTD–0576 (Reference 3 in Method 5) for details. Other connecting systems using either 316 stainless steel or Teflon ferrules may be used. Mark the probe with heat-resistant tape or by some other method to denote the proper distance into the stack or duct for each sampling point.

8.3.3 Assemble the train as shown in Figure 101–1, using (if necessary) a very light coat of silicone grease on all ground glass joints. Grease only the outer portion (see APTD–0576) to avoid the possibility of contamination by the silicone grease.

**Note:** An empty impinger may be inserted between the third impinger and the silica gel to remove excess moisture from the sample stream.

8.3.4 After the sampling train has been assembled, turn on and set the probe heating system, if applicable, at the desired operating temperature. Allow time for the temperatures to stabilize. Place crushed ice around the impingers.

8.4 Leak-Check Procedures. Follow the leak-check procedures outlined in Method 5, Section 8.4.

8.5 Sampling Train Operation. Follow the general procedure outlined in Method 5, Section 8.5. For each run, record the data required on a data sheet such as the one shown in Figure 101–4.

8.6 Calculation of Percent Isokinetic. Same as Method 5, Section 8.6.

8.7 Sample Recovery. Begin proper cleanup procedure as soon as the probe is removed from the stack at the end of the sampling period.

8.7.1 Allow the probe to cool. When it can be safely handled, wipe off any external particulate matter near the tip of the probe nozzle, and place a cap over it. Do not cap off the probe tip tightly while the sampling train is cooling. Capping would create a vacuum and draw liquid out from the impingers.

8.7.2 Before moving the sampling train to the cleanup site, remove the probe from the train, wipe off the silicone grease, and cap the open outlet of the probe. Be careful not to lose any condensate that might be present. Wipe off the silicone grease from the impinger. Use either ground-glass stoppers, plastic caps, or serum caps to close these openings.

8.7.3 Transfer the probe and impinger assembly to a cleanup area that is clean, protected from the wind, and free of Hg contamination. The ambient air in laboratories located in the immediate vicinity of Hg-using facilities is not normally free of Hg contamination.

8.7.4 Inspect the train before and during disassembly, and note any abnormal conditions. Treat the samples as follows.

8.7.4.1 Container No. 1 (Impingers and Probe).

8.7.4.1.1 Using a graduated cylinder, measure the liquid in the first three impingers to within 1 ml. Record the volume of liquid present (*e.g.*, see Figure 5–6 of Method 5). This information is needed to calculate the moisture content of the effluent gas.

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(Use only glass storage bottles and graduated cylinders that have been precleaned as in Section 8.3.1) Place the contents of the first three impingers into a 1000-ml glass sample bottle.

8.7.4.1.2 Taking care that dust on the outside of the probe or other exterior surfaces does not get into the sample, quantitatively recover the Hg (and any condensate) from the probe nozzle, probe fitting, and probe liner as follows: Rinse these components with two 50-ml portions of 0.1 M ICl. Next, rinse the probe nozzle, fitting and liner, and each piece of connecting glassware between the probe liner and the back half of the third impinger with a maximum of 400 ml of water. Add all washings to the 1000-ml glass sample bottle containing the liquid from the first three impingers.

8.7.4.1.3 After all washings have been collected in the sample container, tighten the lid on the container to prevent leakage during shipment to the laboratory. Mark the height of the liquid to determine later whether leakage occurred during transport. Label the container to identify clearly its contents.

8.7.4.2 Container No. 2 (Silica Gel). Same as Method 5, Section 8.7.6.3.

8.7.4.3 Container No. 3 (Absorbing Solution Blank). Place 50 ml of the 0.1 M ICl absorbing solution in a 100-ml sample bottle. Seal the container. Use this blank to prepare the working Hg standard solution (Section 7.2.2.3).

*9.0 Quality Control*

9.1 Miscellaneous Quality Control Measures.

| Section | Quality control measure | Effect |
|---|---|---|
| 8.4 10.2 | Sampling equipment leak-checks and calibration | Ensure accuracy and precision of sampling measurements. |
| 10.5, 10.6 | Spectrophotometer calibration | Ensure linearity of spectrophotometer response to standards. |
| 11.3.3 | Check for matrix effects | Eliminate matrix effects. |

9.2 Volume Metering System Checks. Same as Method 5, Section 9.2.

*10.0 Calibration and Standardizations*

**Note:** Maintain a laboratory log of all calibrations.

10.1 Before use, clean all glassware, both new and used, as follows: brush with soap and tap water, liberally rinse with tap water, soak for 1 hour in 50 percent $HNO_3$, and then rinse with deionized distilled water.

10.2 Sampling Equipment. Calibrate the sampling equipment according to the procedures outlined in the following sections of Method 5: Section 10.1 (Probe Nozzle), Section 10.2 (Pitot Tube Assembly), Section 10.3 (Metering System), Section 10.5 (Temperature Sensors), Section 10.6 (Barometer).

10.3 Aeration System Flow Rate Meter. Assemble the aeration system as shown in Figure 101–5. Set the outlet pressure on the aeration gas cylinder regulator to a minimum pressure of 500 mm Hg (10 psi), and use the flow metering valve and a bubble flowmeter or wet-test meter to obtain a flow rate of 1.5 ± 0.1 liters/min (0.053 ± 0.0035 cfm) through the aeration cell. After the calibration of the aeration system flow rate meter is complete, remove the bubble flowmeter from the system.

10.4 Optical Cell Heating System. Using a 50-ml graduated cylinder, add 50 ml of water to the bottle section of the aeration cell, and attach the bottle section to the bubbler section of the cell. Attach the aeration cell to the optical cell and while aerating at 1.5 ± 0.1 liters/min (0.053 ± 0.0035 cfm), determine the minimum variable transformer setting necessary to prevent condensation of moisture in the optical cell and in the connecting tubing. (This setting should not exceed 20 volts.)

10.5 Spectrophotometer and Recorder.

10.5.1 The Hg response may be measured by either peak height or peak area.

**Note:** The temperature of the solution affects the rate at which elemental Hg is released from a solution and, consequently, it affects the shape of the absorption curve (area) and the point of maximum absorbance (peak height). Therefore, to obtain reproducible results, bring all solutions to room temperature before use.

10.5.2 Set the spectrophotometer wavelength at 253.7 nm, and make certain the optical cell is at the minimum temperature that will prevent water condensation. Then set the recorder scale as follows: Using a 50-ml graduated cylinder, add 50 ml of water to the aeration cell bottle. Add three drops of Antifoam B to the bottle, and then pipet 5.0 ml of the working Hg standard solution into the aeration cell.

**Note:** Always add the Hg-containing solution to the aeration cell after the 50 ml of water.

10.5.3 Place a Teflon-coated stirring bar in the bottle. Before attaching the bottle section to the bubbler section of the aeration cell, make certain that (1) the aeration cell exit arm stopcock (Figure 101–3) is closed (so that Hg will not prematurely enter the optical cell when the reducing agent is being added) and (2) there is no flow through the bubbler. If conditions (1) and (2) are met, attach the bottle section to the bubbler section of the aeration cell. Pipet 5 ml of tin (II) reducing solution into the aeration cell through the side arm, and immediately stopper the side arm. Stir the solution for 15 seconds, turn on the recorder, open the aeration cell exit arm stopcock, and immediately initiate aeration with continued stirring. Determine the maximum absorbance of the standard, and set this value to read 90 percent of the recorder full scale.

10.6 Calibration Curve.

10.6.1 After setting the recorder scale, repeat the procedure in Section 10.5 using 0.0-, 1.0-, 2.0-, 3.0-, 4.0-, and 5.0-ml aliquots of the working standard solution (final amount of Hg in the aeration cell is 0, 200, 400, 600, 800, and 1000 ng, respectively). Repeat this procedure on each aliquot size until two consecutive peaks agree within 3 percent of their average value.

**Note:** To prevent Hg carryover from one sample to another, do not close the aeration cell from the optical cell until the recorder pen has returned to the baseline.)

10.6.2 It should not be necessary to disconnect the aeration gas inlet line from the aeration cell when changing samples. After separating the bottle and bubbler sections of the aeration cell, place the bubbler section into a 600-ml beaker containing approximately 400 ml of water. Rinse the bottle section of the aeration cell with a stream of water to remove all traces of the tin (II) reducing agent. Also, to prevent the loss of Hg before aeration, remove all traces of the reducing agent between samples by washing with water. It will be necessary, however, to wash the aeration cell parts with concentrated HCl if any of the following conditions occur: (1) A white film appears on any inside surface of the aeration cell, (2) the calibration curve changes suddenly, or (3) the replicate samples do not yield reproducible results.

10.6.3 Subtract the average peak height (or peak area) of the blank (0.0-ml aliquot)—which must be less than 2 percent of recorder full scale—from the averaged peak heights of the 1.0-, 2.0-, 3.0-, 4.0-, and 5.0-ml aliquot standards. If the blank absorbance is greater than 2 percent of full-scale, the probable



cause is Hg contamination of a reagent or carry-over of Hg from a previous sample. Prepare the calibration curve by plotting the corrected peak height of each standard solution versus the corresponding final total Hg weight in the aeration cell (in ng), and draw the best fit straight line. This line should either pass through the origin or pass through a point no further from the origin than ± 2 percent of the recorder full scale. If the line does not pass through or very near to the origin, check for nonlinearity of the curve and for incorrectly prepared standards.

*11.0 Analytical Procedure*

11.1 Sample Loss Check. Check the liquid level in each container to see whether liquid was lost during transport. If a noticeable amount of leakage occurred, either void the sample or use methods subject to the approval of the Administrator to account for the losses.

11.2 Sample Preparation. Treat each sample as follows:

11.2.1 Container No. 1 (Impingers and Probe). Carefully transfer the contents of Container No. 1 into a 1000-ml volumetric flask, and adjust the volume to exactly 1000 ml with water.

11.2.2 Dilutions. Pipet a 2-ml aliquot from the diluted sample from Section 11.2.1 into a 250-ml volumetric flask. Add 10 ml of 5 percent $H_2SO_4$, and adjust the volume to exactly 250 ml with water. This solution is stable for at least 72 hours.

**Note:** The dilution factor will be 250/2 for this solution.

11.3 Analysis. Calibrate the analytical equipment and develop a calibration curve as outlined in Sections 10.3 through 10.6.

11.3.1 Mercury Samples. Repeat the procedure used to establish the calibration curve with an appropriately sized aliquot (1 to 5 ml) of the diluted sample (from Section 11.2.2) until two consecutive peak heights agree within 3 percent of their average value. The peak maximum of an aliquot (except the 5-ml aliquot) must be greater than 10 percent of the recorder full scale. If the peak maximum of a 1.0-ml aliquot is off scale on the recorder, further dilute the original source sample to bring the Hg concentration into the calibration range of the spectrophotometer.

11.3.2 Run a blank and standard at least after every five samples to check the spectrophotometer calibration. The peak height of the blank must pass through a point no further from the origin than ±2 percent of the recorder full scale. The difference between the measured concentration of the standard (the product of the corrected peak height and the reciprocal of the least squares slope) and the actual concentration of the standard must be less than 7 percent, or recalibration of the analyzer is required.

11.3.3 Check for Matrix Effects (optional). Use the Method of Standard Additions as follows to check at least one sample from each source for matrix effects on the Hg results. The Method of Standard Additions procedures described on pages 9–4 and 9–5 of the section entitled "General Information" of the Perkin Elmer Corporation Atomic Absorption Spectrophotometry Manual, Number 303–0152 (Reference 16 in Section 16.0) are recommended. If the results of the Method of Standard Additions procedure used on the single source sample do not agree to within ±5 percent of the value obtained by the routine atomic absorption analysis, then reanalyze all samples from the source using the Method of Standard Additions procedure.

11.4 Container No. 2 (Silica Gel). Weigh the spent silica gel (or silica gel plus impinger) to the nearest 0.5 g using a balance. (This step may be conducted in the field.)

*12.0 Data Analysis and Calculations*

Carry out calculations, retaining at least one extra decimal significant figure beyond that of the acquired data. Round off figures only after the final calculation. Other forms of the equations may be used as long as they give equivalent results.

12.1 Average Dry Gas Meter Temperature and Average Orifice Pressure Drop, Dry Gas Volume, Volume of Water Vapor Condensed, Moisture Content, and Isokinetic Variation. Same as Method 5, Sections 12.2 through 12.5 and 12.11, respectively.

12.2 Stack Gas Velocity. Using the data from this test and Equation 2–9 of Method 2, calculate the average stack gas velocity $v_s$.

12.3 Total Mercury.

12.3.1 For each source sample, correct the average maximum absorbance of the two consecutive samples whose peak heights agree within 3 percent of their average for the contribution of the solution blank (see Section 10.6.3). Use the calibration curve and these corrected averages to determine the final total weight of Hg in ng in the aeration cell for each source sample.

12.3.2 Correct for any dilutions made to bring the sample into the working range of the spectrophotometer. Then calculate the Hg in the original solution, $m_{Hg}$, as follows:

$$m_{Hg} = \left[C_{Hg(AC)}(DF)(V_f)(10^{-3})\right]/S \qquad \text{Eq. 101-1}$$

Where:

$C_{Hg(AC)}$ = Total ng of Hg in aliquot analyzed (reagent blank subtracted).
DF = Dilution factor for the Hg-containing solution (before adding to the aeration cell; *e.g.*, DF = 250/2 if the source samples were diluted as described in Section 11.2.2).
$V_f$ = Solution volume of original sample, 1000 ml for samples diluted as described in Section 11.2.1.
$10^{-3}$ = Conversion factor, µg/ng.
S = Aliquot volume added to aeration cell, ml.

12.4 Mercury Emission Rate. Calculate the daily Hg emission rate, R, using Equation 101–2. For continuous operations, the operating time is equal to 86,400 seconds per day. For cyclic operations, use only the time per day each stack is in operation. The total Hg emission rate from a source will be the summation of results from all stacks.

$$R = \frac{K m_{Hg} V_s A_s \left(86{,}400 \times 10^{-6}\right)}{\left[V_{m(std)} + V_{w(std)}\right]\left(T_s / P_s\right)} \qquad \text{Eq. 101-2}$$

Where:

$K_1$ = 0.3858 °K/mm Hg for metric units.
$K_1$ = 17.64 °R/in. Hg for English units.

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$K_3 = 10^{-6}$ g/µg for metric units.
= 2.2046 " $\times 10^{-9}$ lb/µg for English units.
$P_s$ = Absolute stack gas pressure, mm Hg (in. Hg).
t = Daily operating time, sec/day.
$T_s$ = Absolute average stack gas temperature, °K (°R).
$V_{m(std)}$ = Dry gas sample volume at standard conditions, scm (scf).
$V_{w(std)}$ = Volume of water vapor at standard conditions, scm (scf).

12.5 Determination of Compliance. Each performance test consists of three repetitions of the applicable test method. For the purpose of determining compliance with an applicable national emission standard, use the average of the results of all repetitions.

*13.0 Method Performance*

The following estimates are based on collaborative tests, wherein 13 laboratories performed duplicate analyses on two Hg-containing samples from a chlor-alkali plant and on one laboratory-prepared sample of known Hg concentration. The sample concentrations ranged from 2 to 65 µg Hg/ml.

13.1 Precision. The estimated intra-laboratory and inter-laboratory standard deviations are 1.6 and 1.8 µg Hg/ml, respectively.

13.2 Accuracy. The participating laboratories that analyzed a 64.3 µg Hg/ml (in 0.1 M ICl) standard obtained a mean of 63.7 µg Hg/ml.

13.3 Analytical Range. After initial dilution, the range of this method is 0.5 to 120 µg Hg/ml. The upper limit can be extended by further dilution of the sample.

*14.0 Pollution Prevention. [Reserved]*

*15.0 Waste Management. [Reserved]*

*16.0 References*

Same as Method 5, Section 17.0, References 1–3, 5, and 6, with the addition of the following:

1. Determining Dust Concentration in a Gas Stream. ASME Performance Test Code No. 27. New York, NY. 1957.

2. DeVorkin, Howard, *et al.* Air Pollution Source Testing Manual. Air Pollution Control District. Los Angeles, CA. November 1963.

3. Hatch, W.R., and W.I. Ott. Determination of Sub-Microgram Quantities of Mercury by Atomic Absorption Spectrophotometry. Anal. Chem. 40:2085–87. 1968.

4. Mark, L.S. Mechanical Engineers' Handbook. McGraw-Hill Book Co., Inc. New York, NY. 1951.

5. Western Precipitation Division of Joy Manufacturing Co. Methods for Determination of Velocity, Volume, Dust and Mist Content of Gases. Bulletin WP–50. Los Angeles, CA. 1968.

6. Perry, J.H. Chemical Engineers' Handbook. McGraw-Hill Book Co., Inc. New York, NY. 1960.

7. Shigehara, R.T., W.F. Todd, and W.S. Smith. Significance of Errors in Stack Sampling Measurements. Stack Sampling News. *1*(3):6–18. September 1973.

8. Smith, W.S., R.T. Shigehara, and W.F. Todd. A Method of Interpreting Stack Sampling Data. Stack Sampling News. *1*(2):8–17. August 1973.

9. Standard Method for Sampling Stacks for Particulate Matter. In: 1971 Annual Book of ASTM Standards, Part 23. ASTM Designation D 2928–71. Philadelphia, PA 1971.

10. Vennard, J.K. Elementary Fluid Mechanics. John Wiley and Sons, Inc. New York. 1947.

11. Mitchell, W.J. and M.R. Midgett. Improved Procedure for Determining Mercury Emissions from Mercury Cell Chlor-Alkali Plants. J. APCA. *26*:674–677. July 1976.

12. Shigehara, R.T. Adjustments in the EPA Nomograph for Different Pitot Tube Coefficients and Dry Molecular Weights. Stack Sampling News. *2*:4–11. October 1974.

13. Vollaro, R.F. Recommended Procedure for Sample Traverses in Ducts Smaller than 12 Inches in Diameter. U.S. Environmental Protection Agency, Emission Measurement Branch. Research Triangle Park, NC. November 1976.

14. Klein, R. and C. Hach. Standard Additions: Uses and Limitation in Spectrophotometric Measurements. Amer. Lab. *9*:21. 1977.

15. Perkin Elmer Corporation. Analytical Methods for Atomic Absorption Spectrophotometry. Norwalk, Connecticut. September 1976.

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*17.0 Tables, Diagrams, Flowcharts, and Validation Data*

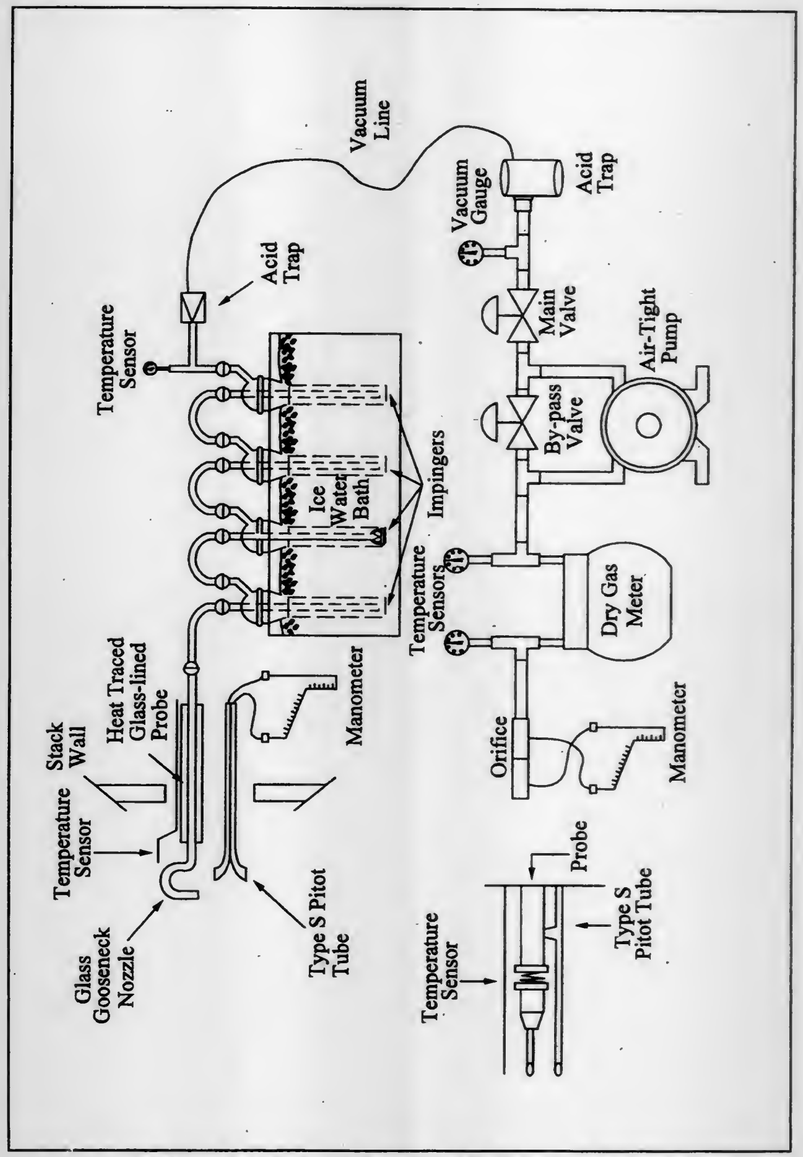



Figure 101-1. Mercury Sampling Train.

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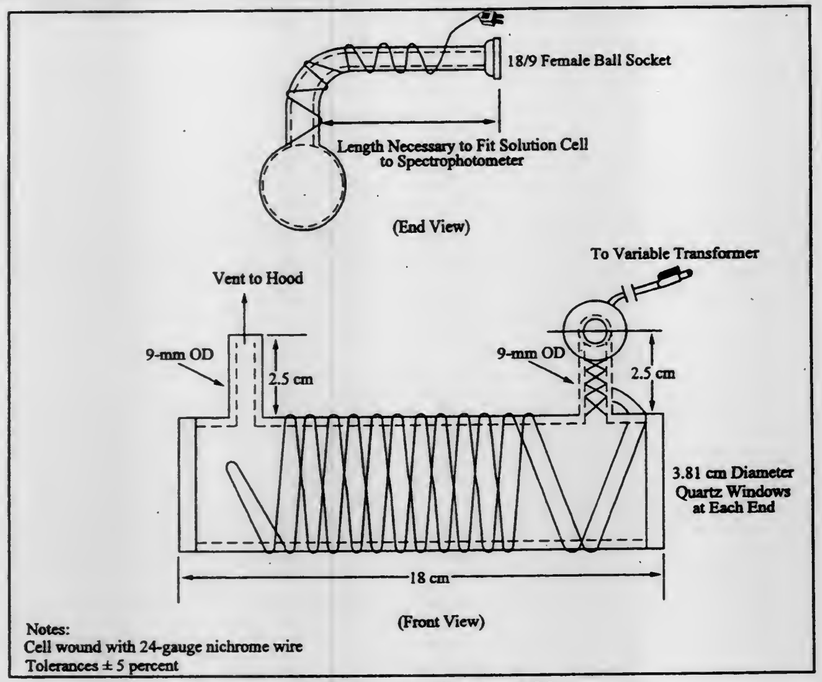



Figure 101-2. Optical Cell.



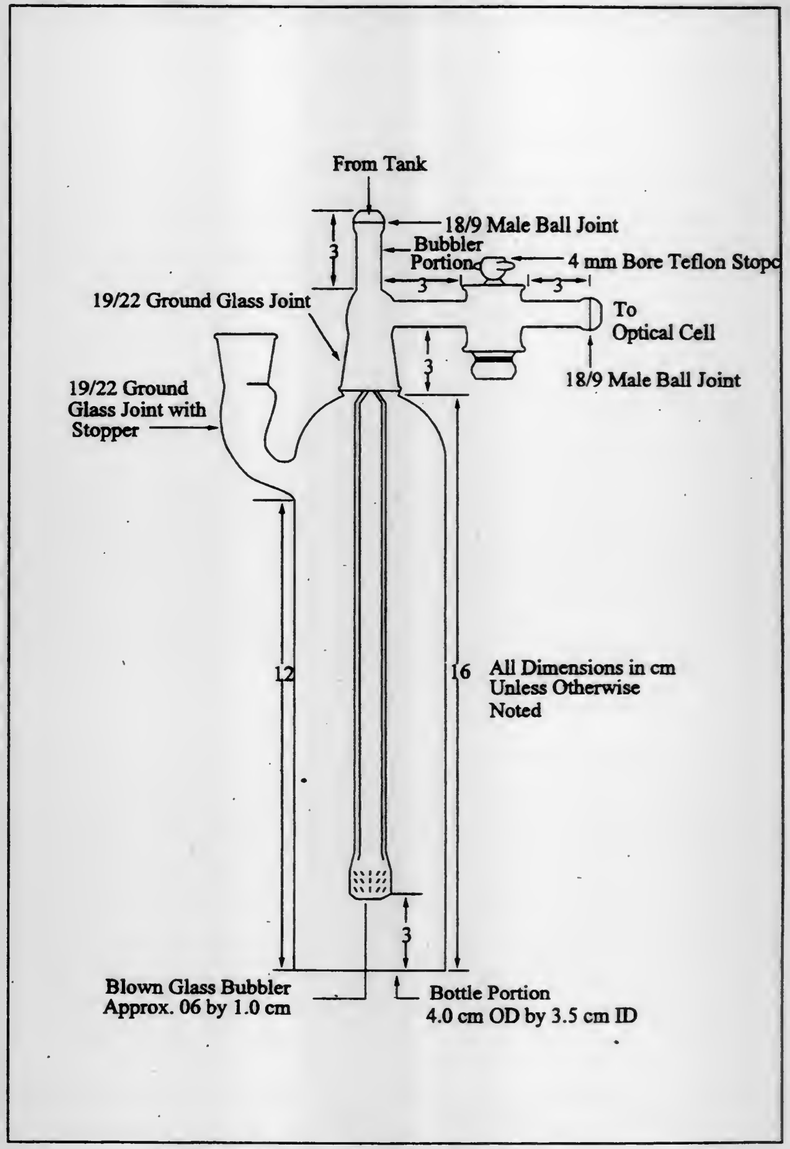



Figure 101-3. Aeration Cell.

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Ambient temperature _____
Barometric pressure _____
Assumed moisture, % _____
Probe length, (ft.) _____
Nozzle identification No. _____
Average calibrated nozzle diameter, (in.) _____
Probe heater setting _____
Leak rate, (cfm) _____
Probe liner material _____
Static pressure, (in. Hg) _____
Filter No. _____

SCHEMATIC OF STACK CROSS SECTION

Plant _____
Location _____
Operator _____
Date _____
Run No. _____
Sample box No. _____
Filter box No. _____
'Meter H@ _____
C factor _____
Pitot tube coefficient, C,

| Traverse point number | Sampling time (min.) | Vacuum (in.Hg) | Stack temperature ($T_s$) (°F) | Velocity head ($\Delta P_s$) (in $H_2O$) | Pressure differential across orifice meter (in. $H_2O$) | Gas meter reading (ft³) | Gas sample temperature at dry gas meter Inlet (°F) | Gas sample temperature at dry gas meter Outlet (°F) | Filter holder* temperature (°F) | Temperature of gas leaving condenser or last impinger (°F) |
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| Total | | | | | | | Avg. | Avg. | | |
| Average | | | | | | | Avg. | | | |

* If Applicable

Figure 101-4. Mercury Field Data.



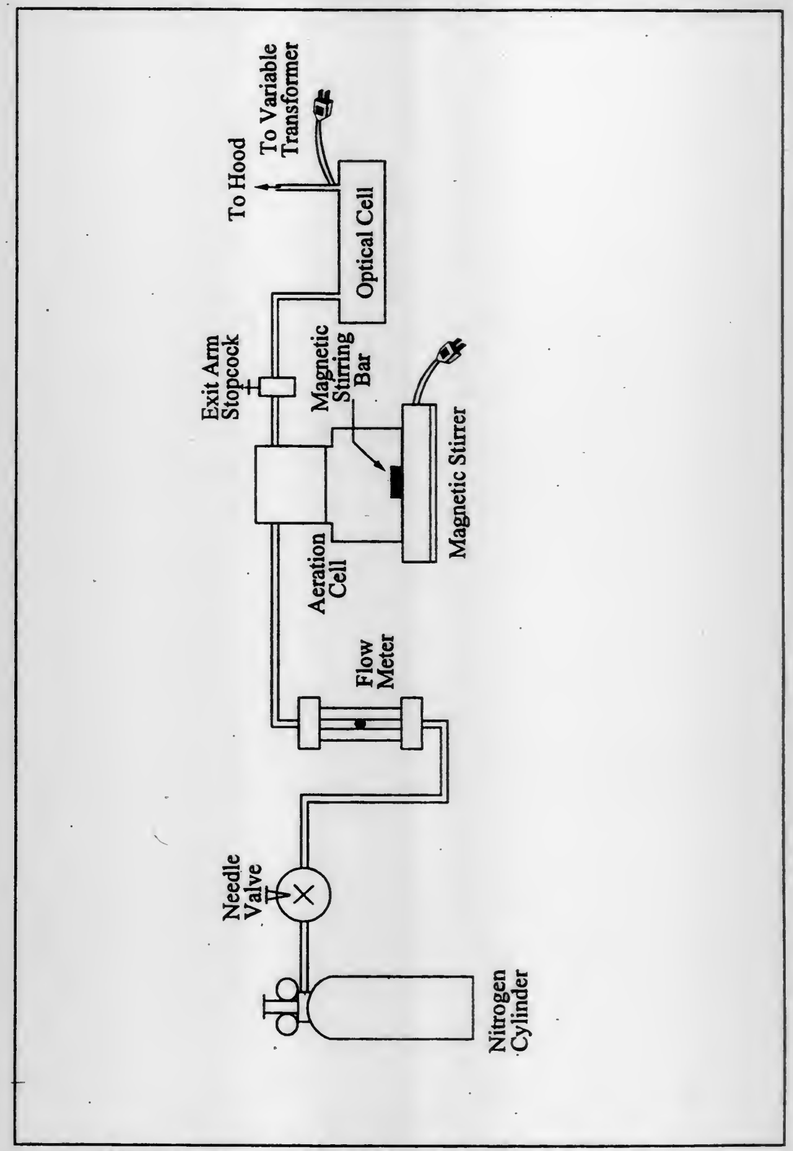



Figure 101-5. Schematic of Aeration System.

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**Method 101A—Determination of Particulate and Gaseous Mercury Emissions From Sewage Sludge Incinerators**

**Note:** This method does not include all of the specifications (e.g., equipment and supplies) and procedures (*e.g.*, sampling and analytical) essential to its performance. Some material is incorporated by reference from methods in Appendix A to 40 CFR Part 60 and in this part. Therefore, to obtain reliable results, persons using this method should also have a thorough knowledge of at least the following additional test methods: Methods 1, Method 2, Method 3, and Method 5 of Part 60 (Appendix A), and Method 101 Part 61 (Appendix B).

*1.0 Scope and Application*

1.1 Analytes.

| Analyte | CAS No. | Sensitivity |
|---|---|---|
| Mercury (Hg) | 7439–97–6 | Dependent upon spectrophotometer and recorder. |

1.2 Applicability. This method is applicable for the determination of Hg emissions from sewage sludge incinerators and other sources as specified in an applicable subpart of the regulations.

1.3 Data Quality Objectives. Adherence to the requirements of this method will enhance the quality of the data obtained from air pollutant sampling methods.

*2.0 Summary of Method*

2.1 Particulate and gaseous Hg emissions are withdrawn isokinetically from the source and are collected in acidic potassium permanganate ($KMnO_4$) solution. The Hg collected (in the mercuric form) is reduced to elemental Hg, which is then aerated from the solution into an optical cell and measured by atomic absorption spectrophotometry.

*3.0 Definitions. [Reserved]*

*4.0 Interferences*

4.1 Sample Collection. Excessive oxidizable organic matter in the stack gas prematurely depletes the $KMnO_4$ solution and thereby prevents further collection of Hg.

4.2 Analysis. Condensation of water vapor on the optical cell windows causes a positive interference.

*5.0 Safety*

5.1 Disclaimer. This method may involve hazardous materials, operations, and equipment. This test method may not address all of the safety problems associated with its use. It is the responsibility of the user of this test method to establish appropriate safety and health practices and determine the applicability of regulatory limitations prior to performing this test method.

5.2 Corrosive Reagents. The following reagents are hazardous. Personal protective equipment and safe procedures are useful in preventing chemical splashes. If contact occurs, immediately flush with copious amounts of water for at least 15 minutes. Remove clothing under shower and decontaminate. Treat residual chemical burns as thermal burns.

5.2.1 Hydrochloric Acid (HCl). Highly toxic. Vapors are highly irritating to eyes, skin, nose, and lungs, causing severe damage. May cause bronchitis, pneumonia, or edema of lungs. Exposure to concentrations of 0.13 to 0.2 percent can be lethal to humans in a few minutes. Provide ventilation to limit exposure. Reacts with metals, producing hydrogen gas.

5.2.2 Nitric Acid ($HNO_3$). Highly corrosive to eyes, skin, nose, and lungs. Vapors cause bronchitis, pneumonia, or edema of lungs. Reaction to inhalation may be delayed as long as 30 hours and still be fatal. Provide ventilation to limit exposure. Strong oxidizer. Hazardous reaction may occur with organic materials such as solvents.

5.2.3 Sulfuric acid ($H_2SO_4$). Rapidly destructive to body tissue. Will cause third degree burns. Eye damage may result in blindness. Inhalation may be fatal from spasm of the larynx, usually within 30 minutes. May cause lung tissue damage with edema. 3 mg/m$^3$ will cause lung damage in uninitiated. 1 mg/m$^3$ for 8 hours will cause lung damage or, in higher concentrations, death. Provide ventilation to limit inhalation. Reacts violently with metals and organics.

5.3 Chlorine Evolution. Hydrochloric acid reacts with $KMnO_4$ to liberate chlorine gas. Although this is a minimal concern when small quantities of HCl (5–10 ml) are used in the impinger rinse, a potential safety hazard may still exist. At sources that emit higher concentrations of oxidizable materials (*e.g.*, power plants), more HCl may be required to remove the larger amounts of brown deposit formed in the impingers. In such cases, the potential safety hazards due to sample container pressurization are greater, because of the larger volume of HCl rinse added to the recovered sample. These hazards are eliminated by storing and analyzing the HCl impinger wash separately from the permanganate impinger sample.

*6.0 Equipment and Supplies*

6.1 Sample Collection and Sample Recovery. Same as Method 101, Sections 6.1 and 6.2, respectively, with the following exceptions:

6.1.1 Probe Liner. Same as in Method 101, Section 6.1.2, except that if a filter is used ahead of the impingers, the probe heating system must be used to minimize the condensation of gaseous Hg.

6.1.2 Filter Holder (Optional). Borosilicate glass with a rigid stainless-steel wire-screen filter support (do not use glass frit supports) and a silicone rubber or Teflon gasket, designed to provide a positive seal against leakage from outside or around the filter. The filter holder must be equipped with a filter heating system capable of maintaining a temperature around the filter holder of 120 ± 14 °C (248 ± 25 °F) during sampling to minimize both water and gaseous Hg condensation. A filter may also be used in cases where the stream contains large quantities of particulate matter.

6.2 Sample Analysis. Same as Method 101, Section 6.3, with the following additions and exceptions:

6.2.1 Volumetric Pipets. Class A; 1-, 2-, 3-, 4-, 5-, 10-, and 20-ml.

6.2.2 Graduated Cylinder. 25-ml.

6.2.3 Steam Bath.

6.2.4 Atomic Absorption Spectrophotometer or Equivalent. Any atomic absorption unit with an open sample presentation area in which to mount the optical cell is suitable. Instrument settings recommended by the particular manufacturer should be followed. Instruments designed specifically for the measurement of mercury using the cold-vapor technique are commercially available and may be substituted for the atomic absorption spectrophotometer.

6.2.5 Optical Cell. Alternatively, a heat lamp mounted above the cell or a moisture trap installed upstream of the cell may be used.

6.2.6 Aeration Cell. Alternatively, aeration cells available with commercial cold vapor instrumentation may be used.

6.2.7 Aeration Gas Cylinder. Nitrogen, argon, or dry, Hg-free air, equipped with a single-stage regulator. Alternatively, aeration may be provided by a peristaltic metering pump. If a commercial cold vapor instrument is used, follow the manufacturer's recommendations.



*7.0 Reagents and Standards*

Unless otherwise indicated, it is intended that all reagents conform to the specifications established by the Committee on Analytical Reagents of the American Chemical Society, where such specifications are available; otherwise, use the best available grade.

7.1 Sample Collection and Recovery. The following reagents are required for sample collection and recovery:

7.1.1 Water. Deionized distilled, to conform to ASTM D 1193–77 or 91 Type 1. If high concentrations of organic matter are not expected to be present, the analyst may eliminate the $KMnO_4$ test for oxidizable organic matter. Use this water in all dilutions and solution preparations.

7.1.2 Nitric Acid, 50 Percent (V/V). Mix equal volumes of concentrated $HNO_3$ and water, being careful to add the acid to the water slowly.

7.1.3 Silica Gel. Indicating type, 6 to 16 mesh. If previously used, dry at 175 °C (350 °F) for 2 hours. New silica gel may be used as received.

7.1.4 Filter (Optional). Glass fiber filter, without organic binder, exhibiting at least 99.95 percent efficiency on 0.3-µm dioctyl phthalate smoke particles. The filter in cases where the gas stream contains large quantities of particulate matter, but blank filters should be analyzed for Hg content.

7.1.5 Sulfuric Acid, 10 Percent (V/V). Carefully add and mix 100 ml of concentrated $H_2SO_4$ to 900 ml of water.

7.1.6 Absorbing Solution, 4 Percent $KMnO_4$ (W/V). Prepare fresh daily. Dissolve 40 g of $KMnO_4$ in sufficient 10 percent $H_2SO_4$ to make 1 liter. Prepare and store in glass bottles to prevent degradation.

7.1.7 Hydrochloric Acid, 8 N. Carefully add and mix 67 ml of concentrated HCl to 33 ml of water.

7.2 Sample Analysis. The following reagents and standards are required for sample analysis:

7.2.1 Water. Same as in Section 7.1.1.

7.2.2 Tin (II) Solution. Prepare fresh daily, and keep sealed when not being used. Completely dissolve 20 g of tin (II) chloride (or 25 g of tin (II) sulfate) crystals (Baker Analyzed reagent grade or any other brand that will give a clear solution) in 25 ml of concentrated HCl. Dilute to 250 ml with water. Do not substitute $HNO_3$, $H2SO_4$, or other strong acids for the HCl.

7.2.3 Sodium Chloride-Hydroxylamine Solution. Dissolve 12 g of sodium chloride and 12 g of hydroxylamine sulfate (or 12 g of hydroxylamine hydrochloride) in water and dilute to 100 ml.

7.2.4 Hydrochloric Acid, 8 N. Same as Section 7.1.7.

7.2.5 Nitric Acid, 15 Percent (V/V). Carefully add 15 ml $HNO_3$ to 85 ml of water.

7.2.6 Antifoam B Silicon Emulsion. J.T. Baker Company (or equivalent).

7.2.7 Mercury Stock Solution, 1 mg Hg/ml. Prepare and store all Hg standard solutions in borosilicate glass containers. Completely dissolve 0.1354 g of Hg (II) chloride in 75 ml of water. Add 10 ml of concentrated $HNO_3$, and adjust the volume to exactly 100 ml with water. Mix thoroughly. This solution is stable for at least one month.

7.2.8 Intermediate Hg Standard Solution, 10 µg/ml. Prepare fresh weekly. Pipet 5.0 ml of the Hg stock solution (Section 7.2.7) into a 500 ml volumetric flask, and add 20 ml of 15 percent $HNO_3$ solution. Adjust the volume to exactly 500 ml with water. Thoroughly mix the solution.

7.2.9 Working Hg Standard Solution, 200 ng Hg/ml. Prepare fresh daily. Pipet 5.0 ml from the "Intermediate Hg Standard Solution" (Section 7.2.8) into a 250-ml volumetric flask. Add 5 ml of 4 percent $KMnO_4$ absorbing solution and 5 ml of 15 percent $HNO_3$. Adjust the volume to exactly 250 ml with water. Mix thoroughly.

7.2.10 Potassium Permanganate, 5 Percent (W/V). Dissolve 5 g of $KMnO_4$ in water and dilute to 100 ml.

7.2.11 Filter. Whatman No. 40, or equivalent.

*8.0 Sample Collection, Preservation, Transport, and Storage*

Same as Method 101, Section 8.0, with the exception of the following:

8.1 Preliminary Determinations. Same as Method 101, Section 8.2, except that the liberation of free iodine in the first impinger due to high Hg or sulfur dioxide concentrations is not applicable. In this method, high oxidizable organic content may make it impossible to sample for the desired minimum time. This problem is indicated by the complete bleaching of the purple color of the $KMnO_4$ solution. In cases where an excess of water condensation is encountered, collect two runs to make one sample, or add an extra impinger in front of the first impinger (also containing acidified $KMnO_4$ solution).

8.2 Preparation of Sampling Train. Same as Method 101, Section 8.3, with the exception of the following:

8.2.1 In this method, clean all the glass components by rinsing with 50 percent $HNO_3$, tap water, 8 N HCl, tap water, and finally with deionized distilled water. Then place 50 ml of absorbing solution in the first impinger and 100 ml in each of the second and third impingers.

8.2.2 If a filter is used, use a pair of tweezers to place the filter in the filter holder. Be sure to center the filter, and place the gasket in the proper position to prevent the sample gas stream from bypassing the filter. Check the filter for tears after assembly is completed. Be sure also to set the filter heating system at the desired operating temperature after the sampling train has been assembled.

8.3 Sampling Train Operation. In addition to the procedure outlined in Method 101, Section 8.5, maintain a temperature around the filter (if applicable) of 120 ± 14 °C (248 ± 25 °F).

8.4 Sample Recovery. Same as Method 101, Section 8.7, with the exception of the following:

8.4.1 Transfer the probe, impinger assembly, and (if applicable) filter assembly to the cleanup area.

8.4.2 Treat the sample as follows:

8.4.2.1 Container No. 1 (Impinger, Probe, and Filter Holder) and, if applicable, Container No. 1A (HCl rinse).

8.4.2.1.1 Using a graduated cylinder, measure the liquid in the first three impingers to within 1 ml. Record the volume of liquid present (*e.g.*, see Figure 5–6 of Method 5). This information is needed to calculate the moisture content of the effluent gas. (Use only graduated cylinder and glass storage bottles that have been precleaned as in Section 8.2.1.) Place the contents of the first three impingers (four if an extra impinger was added as described in Section 8.1) into a 1000-ml glass sample bottle labeled Container No. 1.

**Note:** If a filter is used, remove the filter from its holder as outlined under Section 8.4.3.

8.4.2.1.2 Taking care that dust on the outside of the probe or other exterior surfaces does not get into the sample, quantitatively recover the Hg (and any condensate) from the probe nozzle, probe fitting, probe liner, front half of the filter holder (if applicable), and impingers as follows: Rinse these components with a total of 400 ml (350 ml if an extra impinger was added as described in Section 8.1) of fresh absorbing solution, carefully assuring removal of all loose particulate matter from the impingers; add all washings to the 1000 ml glass sample bottle. To remove any residual brown deposits on the glassware following the

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permanganate rinse, rinse with approximately 100 ml of water, carefully assuring removal of all loose particulate matter from the impingers. Add this rinse to Container No. 1.

8.4.2.1.3 If no visible deposits remain after this water rinse, do not rinse with 8 N HCl. If deposits do remain on the glassware after the water rinse, wash impinger walls and stems with 25 ml of 8 N HCl, and place the wash in a separate container labeled Container No. 1A as follows: Place 200 ml of water in a sample container labeled Container No. 1A. Wash the impinger walls and stem with the HCl by turning the impinger on its side and rotating it so that the HCl contacts all inside surfaces. Pour the HCl wash carefully with stirring into Container No. 1A.

8.4.2.1.4 After all washings have been collected in the appropriate sample container(s), tighten the lid(s) on the container(s) to prevent leakage during shipment to the laboratory. Mark the height of the fluid level to allow subsequent determination of whether leakage has occurred during transport. Label each container to identify its contents clearly.

8.4.3 Container No. 2 (Silica Gel). Same as Method 5, Section 8.7.6.3.

8.4.4 Container No. 3 (Filter). If a filter was used, carefully remove it from the filter holder, place it in a 100-ml glass sample bottle, and add 20 to 40 ml of absorbing solution. If it is necessary to fold the filter, be sure that the particulate cake is inside the fold. Carefully transfer to the 100-ml sample bottle any particulate matter and filter fibers that adhere to the filter holder gasket by using a dry Nylon bristle brush and a sharp-edged blade. Seal the container. Label the container to identify its contents clearly. Mark the height of the fluid level to allow subsequent determination of whether leakage has occurred during transport.

8.4.5 Container No. 4 (Filter Blank). If a filter was used, treat an unused filter from the same filter lot as that used for sampling according to the procedures outlined in Section 8.4.4.

8.4.6 Container No. 5 (Absorbing Solution Blank). Place 650 ml of 4 percent $KMnO_4$ absorbing solution in a 1000-ml sample bottle. Seal the container.

8.4.7 Container No. 6 (HCl Rinse Blank). Place 200 ml of water in a 1000-ml sample bottle, and add 25 ml of 8 N HCl carefully with stirring. Seal the container. Only one blank sample per 3 runs is required.

*9.0 Quality Control*

9.1 Miscellaneous Quality Control Measures.

| Section | Quality control measure | Effect |
|---|---|---|
| 8.0, 10.0 | Sampling equipment leak-checks and calibration | Ensure accuracy and precision of sampling measurements. |
| 10.2 | Spectrophotometer calibration | Ensure linearity of spectrophotometer response to standards. |
| 11.3.3 | Check for matrix effects | Eliminate matrix effects. |

9.2 Volume Metering System Checks. Same as Method 5, Section 9.2.

*10.0 Calibration and Standardization*

Same as Method 101, Section 10.0, with the following exceptions:

10.1 Optical Cell Heating System Calibration. Same as in Method 101, Section 10.4, except use a-25 ml graduated cylinder to add 25 ml of water to the bottle section of the aeration cell.

10.2 Spectrophotometer and Recorder Calibration.

10.2.1 The Hg response may be measured by either peak height or peak area.

**Note:** The temperature of the solution affects the rate at which elemental Hg is released from a solution and, consequently, it affects the shape of the absorption curve (area) and the point of maximum absorbance (peak height). To obtain reproducible results, all solutions must be brought to room temperature before use.

10.2.2 Set the spectrophotometer wave length at 253.7 nm, and make certain the optical cell is at the minimum temperature that will prevent water condensation. Then set the recorder scale as follows: Using a 25-ml graduated cylinder, add 25 ml of water to the aeration cell bottle. Add three drops of Antifoam B to the bottle, and then pipet 5.0 ml of the working Hg standard solution into the aeration cell.

**Note:** Always add the Hg-containing solution to the aeration cell after the 25 ml of water.

10.2.3 Place a Teflon-coated stirring bar in the bottle. Add 5 ml of absorbing solution to the aeration bottle, and mix well. Before attaching the bottle section to the bubbler section of the aeration cell, make certain that (1) the aeration cell exit arm stopcock (Figure 101–3 of Method 101) is closed (so that Hg will not prematurely enter the optical cell when the reducing agent is being added) and (2) there is no flow through the bubbler. If conditions (1) and (2) are met, attach the bottle section to the bubbler section of the aeration cell. Add sodium chloride-hydroxylamine in 1 ml increments until the solution is colorless. Now add 5 ml of tin (II) solution to the aeration bottle through the side arm, and immediately stopper the side arm. Stir the solution for 15 seconds, turn on the recorder, open the aeration cell exit arm stopcock, and immediately initiate aeration with continued stirring. Determine the maximum absorbance of the standard, and set this value to read 90 percent of the recorder full scale.

*11.0 Analytical Procedure*

11.1 Sample Loss Check. Check the liquid level in each container to see if liquid was lost during transport. If a noticeable amount of leakage occurred, either void the sample or use methods subject to the approval of the Administrator to account for the losses.

11.2 Sample Preparation. Treat sample containers as follows:

11.2.1 Containers No. 3 and No. 4 (Filter and Filter Blank).

11.2.1.1 If a filter is used, place the contents, including the filter, of Containers No. 3 and No. 4 in separate 250-ml beakers, and heat the beakers on a steam bath until most of the liquid has evaporated. Do not heat to dryness. Add 20 ml of concentrated $HNO_3$ to the beakers, cover them with a watch glass, and heat on a hot plate at 70 °C (160 °F) for 2 hours. Remove from the hot plate.

11.2.1.2 Filter the solution from digestion of the Container No. 3 contents through Whatman No. 40 filter paper, and save the filtrate for addition to the Container No. 1 filtrate as described in Section 11.2.2. Discard the filter paper.

11.2.1.3 Filter the solution from digestion of the Container No. 4 contents through Whatman No. 40 filter paper, and save the filtrate for addition to Container No. 5 filtrate as described in Section 11.2.3 below. Discard the filter paper.

11.2.2 Container No. 1 (Impingers, Probe, and Filter Holder) and, if applicable, No. 1A (HCl rinse).

11.2.2.1 Filter the contents of Container No. 1 through Whatman No. 40 filter paper into a 1 liter volumetric flask to remove the brown manganese dioxide ($MnO_2$) precipitate. Save the filter for digestion of the brown $MnO_2$ precipitate. Add the sample filtrate from Container No. 3 to the 1-liter volumetric flask, and dilute to volume with water. If the combined filtrates are greater than 1000 ml, determine the volume to the nearest ml and make the appropriate corrections for blank subtractions. Mix thoroughly. Mark the filtrate as analysis Sample No. A.1 and analyze for Hg within 48 hr of the filtration step. Place the saved filter, which was used to remove the brown $MnO_2$ precipitate, into an appropriate sized container. In a laboratory hood, add 25 ml of 8 N HCl to the filter and allow to digest for a minimum of 24 hours at room temperature.

11.2.2.2 Filter the contents of Container 1A through Whatman No. 40 filter paper into a 500-ml volumetric flask. Then filter the digestate of the brown $MnO_2$ precipitate from Container No. 1 through Whatman No. 40 filter paper into the same 500-ml volumetric flask, and dilute to volume with water. Mark this combined 500 ml dilute solution as analysis Sample No. A.2. Discard the filters.

11.2.3 Container No. 5 (Absorbing Solution Blank) and No. 6 (HCl Rinse Blank).

11.2.3.1 Treat Container No. 5 as Container No. 1 (as described in Section 11.2.2), except substitute the filter blank filtrate from Container No. 4 for the sample filtrate from Container No. 3, and mark as Sample A.1 Blank.

11.2.3.2 Treat Container No. 6 as Container No. 1A, (as described in Section 11.2.2, except substitute the filtrate from the digested blank $MnO_2$ precipitate for the filtrate from the digested sample $MnO_2$ precipitate, and mark as Sample No. A.2 Blank.

**Note:** When analyzing samples A.1 Blank and HCl A.2 Blank, always begin with 10 ml aliquots. This applies specifically to blank samples.

11.3 Analysis. Calibrate the analytical equipment and develop a calibration curve as outlined in Section 10.0.



11.3.1 Mercury Samples. Then repeat the procedure used to establish the calibration curve with appropriately sized aliquots (1 to 10 ml) of the samples (from Sections 11.2.2 and 11.2.3) until two consecutive peak heights agree within 3 percent of their average value. If the 10 ml sample is below the detectable limit, use a larger aliquot (up to 20 ml), but decrease the volume of water added to the aeration cell accordingly to prevent the solution volume from exceeding the capacity of the aeration bottle. If the peak maximum of a 1.0 ml aliquot is off scale, further dilute the original sample to bring the Hg concentration into the calibration range of the spectrophotometer. If the Hg content of the absorbing solution and filter blank is below the working range of the analytical method, use zero for the blank.

11.3.2 Run a blank and standard at least after every five samples to check the spectrophotometer calibration; recalibrate as necessary.

11.3.3 Check for Matrix Effects (optional). Same as Method 101, Section 11.3.3.

*12.0 Data Analysis and Calculations*

**Note:** Carry out calculations, retaining at least one extra decimal significant figure beyond that of the acquired data. Round off figures only after the final calculation. Other forms of the equations may be used as long as they give equivalent results.

12.1 Nomenclature.

$C_{(flt r)Hg}$ = Total ng of Hg in aliquot of $KMnO_4$ filtrate and $HNO_3$ digestion of filter analyzed (aliquot of analysis Sample No. A.1).

$C_{(flt r\ blk)Hg}$ = Total ng of Hg in aliquot of $KMnO_4$ blank and $HNO_3$ digestion of blank filter analyzed (aliquot of analysis Sample No. A.1 blank).

$C_{(HCl\ blk)Hg}$ = Total ng of Hg analyzed in aliquot of the 500-ml analysis Sample No. HCl A.2 blank.

$C_{(HCl)Hg}$ = Total ng of Hg analyzed in the aliquot from the 500-ml analysis Sample No. HCl A.2.

DF = Dilution factor for the HCl-digested Hg-containing solution, Analysis Sample No. "HCl A.2."

$DF_{blk}$ = Dilution factor for the HCl-digested Hg containing solution, Analysis Sample No. "HCl A.2 blank." (Refer to sample No. "HCl A.2" dilution factor above.)

$m_{(flt r)Hg}$ = Total blank corrected µg of Hg in $KMnO_4$ filtrate and $HNO_3$ digestion of filter sample.

$m_{(HCl)Hg}$ = Total blank corrected µg of Hg in HCl rinse and HCl digestate of filter sample.

$m_{Hg}$ = Total blank corrected Hg content in each sample, µg.

S = Aliquot volume of sample added to aeration cell, ml.

$S_{blk}$ = Aliquot volume of blank added to aeration cell, ml.

$Vf_{(blk)}$ = Solution volume of blank sample, 1000 ml for samples diluted as described in Section 11.2.2.

$V_{f(flt r)}$ = Solution volume of original sample, normally 1000 ml for samples diluted as described in Section 11.2.2.

$V_{f(HCl)}$ = Solution volume of original sample, 500 ml for samples diluted as described in Section 11.2.1.

$10^{-3}$ = Conversion factor, µg/ng.

12.2 Average Dry Gas Meter Temperature and Average Orifice Pressure Drop, Dry Gas Volume, Volume of Water Vapor Condensed, Moisture Content, Isokinetic Variation, and Stack Gas Velocity and Volumetric Flow Rate. Same as Method 5, Sections 12.2 through 12.5, 12.11, and 12.12, respectively.

12.3 Total Mercury.

12.3.1 For each source sample, correct the average maximum absorbance of the two consecutive samples whose peak heights agree within 3 percent of their average for the contribution of the blank. Use the calibration curve and these corrected averages to determine the final total weight of Hg in ng in the aeration cell for each source sample.

12.3.2 Correct for any dilutions made to bring the sample into the working range of the spectrophotometer.

$$m_{(HCl)Hg} = \frac{\left[C_{(HCl)Hg}DF\right]}{S} - \frac{\left[C_{(HCl\,blk)Hg}DF_{blk}\right]}{S_{blk}} Vf_{(HCl)}\left(10^{-3}\right) \qquad \text{Eq. 101A-1}$$

**Note:** This dilution factor applies only to the intermediate dilution steps, since the original sample volume [$(V_f)_{HCL}$] of "HCl A.2" has been factored out in the equation along with the sample aliquot (S). In Eq. 101A–1, the sample aliquot, S, is introduced directly into the aeration cell for analysis according to the procedure outlined in Section 11.3.1. A dilution factor is required only if it is necessary to bring the sample into the analytical instrument's calibration range.

**Note:** The maximum allowable blank subtraction for the HCl is the lesser of the two following values: (1) the actual blank measured value (analysis Sample No. HCl A.2 blank), or (2) 5% of the Hg content in the combined HCl rinse and digested sample (analysis Sample No. HCl A.2).

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$$m_{(fltr)Hg} = \frac{\left[C_{(fltr)Hg} DF V_{f(fltr)}\right]}{S} - \frac{\left[C_{(fltr\ blk)Hg} DF_{blk} V_{f(blk)}\right]}{S_{blk}} \quad \text{Eq. 101A-2}$$

**Note:** The maximum allowable blank subtraction for the HCl is the lesser of the two following values: (1) the actual blank measured value (analysis Sample No. "A.1 blank"), or (2) 5% of the Hg content in the filtrate (analysis Sample No. "A.1").

$$m_{Hg} = m_{(HCl)Hg} + m_{(fltr)Hg} \quad \text{Eq. 101A-3}$$

12.3 Mercury Emission Rate. Same as Method 101, Section 12.3.

12.4 Determination of Compliance. Same as Method 101, Section 12.4.

*13.0 Method Performance*

13.1 Precision. Based on eight paired-train tests, the intra-laboratory standard deviation was estimated to be 4.8 µg/ml in the concentration range of 50 to 130 µg/m³.

13.2 Bias. [Reserved]

13.3 Range. After initial dilution, the range of this method is 20 to 800 ng Hg/ml. The upper limit can be extended by further dilution of the sample.

*14.0 Pollution Prevention [Reserved]*

*15.0 Waste Management [Reserved]*

*16.0 References*

Same as Section 16.0 of Method 101, with the addition of the following:

1. Mitchell, W.J., *et al.* Test Methods to Determine the Mercury Emissions from Sludge Incineration Plants. U.S. Environmental Protection Agency. Research Triangle Park, NC. Publication No. EPA–600/4–79–058. September 1979.

2. Wilshire, Frank W., *et al.* Reliability Study of the U.S. EPA's Method 101A—Determination of Particulate and Gaseous Mercury Emissions. U.S. Environmental Protection Agency. Research Triangle Park, NC. Report No. 600/D–31/219 AREAL 367, NTIS Acc No. PB91–233361.

3. Memorandum from William J. Mitchell to Roger T. Shigehara discussing the potential safety hazard in Section 7.2 of Method 101A. February 28, 1990.

*17.0 Tables, Diagrams, Flowcharts, And Validation Data [Reserved]*

## Method 102—Determination of Particulate and Gaseous Mercury Emissions From Chlor-Alkali Plants (Hydrogen Streams)

**Note:** This method does not include all of the specifications (*e.g.*, equipment and supplies) and procedures (*e.g.*, sampling and analytical) essential to its performance. Some material is incorporated by reference from other methods in this part and in Appendix A to 40 CFR Part 60. Therefore, to obtain reliable results, persons using this method should have a thorough knowledge of at least the following additional test methods: Method 1, Method 2, Method 3, Method 5, and Method 101.

*1.0 Scope and Application*

1.1 Analytes.

| Analyte | CAS No. | Sensitivity |
|---|---|---|
| Mercury (Hg) | 7439–97–6 | Dependent upon recorder and spectrophotometer. |

1.2 Applicability. This method is applicable for the determination of Hg emissions, including both particulate and gaseous Hg, from chlor-alkali plants and other sources (as specified in the regulations) where the carrier-gas stream in the duct or stack is principally hydrogen.

1.3 Data Quality Objectives. Adherence to the requirements of this method will enhance the quality of the data obtained from air pollutant sampling methods.

*2.0 Summary of Method*

2.1 Particulate and gaseous Hg emissions are withdrawn isokinetically from the source and collected in acidic iodine monochloride (ICl) solution. The Hg collected (in the mercuric form) is reduced to elemental Hg, which is then aerated from the solution into an optical cell and measured by atomic absorption spectrophotometry.

*3.0 Definitions [Reserved]*

*4.0 Interferences*

Same as Method 101, Section 4.2.

*5.0 Safety*

5.1 Disclaimer. This method may involve hazardous materials, operations, and equipment. This test method may not address all of the safety problems associated with its use. It is the responsibility of the user of this test method to establish appropriate safety and health practices and determine the applicability of regulatory limitations prior to performing this test method.

5.2 Corrosive Reagents. Same as Method 101, Section 5.2.

5.3 Explosive Mixtures. The sampler must conduct the source test under conditions of utmost safety because hydrogen and air mixtures are explosive. Since the sampling train essentially is leakless, attention to safe operation can be concentrated at the inlet and outlet. If a leak does occur, however, remove the meter box cover to avoid a possible explosive mixture. The following specific precautions are recommended:

5.3.1 Operate only the vacuum pump during the test. The other electrical equipment, *e.g.*, heaters, fans, and timers, normally are not essential to the success of a hydrogen stream test.

5.3.2 Seal the sample port to minimize leakage of hydrogen from the stack.

5.3.3 Vent sampled hydrogen at least 3 m (10 ft) away from the train. This can be accomplished by attaching a 13-mm (0.50-in.) ID Tygon tube to the exhaust from the orifice meter.

**Note:** A smaller ID tubing may cause the orifice meter calibration to be erroneous. Take care to ensure that the exhaust line is not bent or pinched.

*6.0 Equipment and Supplies*

Same as Method 101, Section 6.0, with the exception of the following:

6.1 Probe Heating System. Do not use, unless otherwise specified.

6.2 Glass Fiber Filter. Do not use, unless otherwise specified.

*7.0 Reagents and Standards*

Same as Method 101, Section 7.0.



*8.0 Sample Collection, Preservation, Transport, and Storage*

Same as Method 101, Section 8.0, with the exception of the following:

8.1 Setting of Isokinetic Rates.

8.1.1 If a nomograph is used, take special care in the calculation of the molecular weight of the stack gas and in the setting of the nomograph to maintain isokinetic conditions during sampling (Sections 8.1.1.1 through 8.1.1.3 below).

8.1.1.1 Calibrate the meter box orifice. Use the techniques described in APTD–0576 (see Reference 9 in Section 17.0 of Method 5). Calibration of the orifice meter at flow conditions that simulate the conditions at the source is suggested. Calibration should either be done with hydrogen or with some other gas having similar Reynolds Number so that there is similarity between the Reynolds Numbers during calibration and during sampling.

8.1.1.2 The nomograph described in APTD–0576 cannot be used to calculate the C factor because the nomograph is designed for use when the stack gas dry molecular weight is 29 ± 4. Instead, the following calculation should be made to determine the proper C factor:

$$C = 0.00154 \Delta H@ C_p^2 T_m \left(P_s / P_m\right) \frac{\left(1 - B_{ws}\right)^2}{\left(1 - B_{ws}\right) + 18 B_{ws}} \quad \text{Eq. 102-1}$$

Where:

$B_{ws}$ = Fraction by volume of water vapor in the stack gas.

$C_p$ = Pitot tube calibration coefficient, dimensionless.

$M_d$ = Dry molecular weight of stack gas, lb/lb-mole.

$P_s$ = Absolute pressure of stack gas, in. Hg.

$P_m$ = Absolute pressure of gas at the meter, in. Hg.

$T_m$ = Absolute temperature of gas at the orifice, °R.

$\Delta H@$ = Meter box calibration factor obtained in Section 8.1.1.1, in. $H_2O$.

0.00154 = (in. $H_2O$/°R).

**Note:** This calculation is left in English units, and is not converted to metric units because nomographs are based on English units.

8.1.1.3 Set the calculated C factor on the operating nomograph, and select the proper nozzle diameter and K factor as specified in APTD–0576. If the C factor obtained in Section 8.1.1.2 exceeds the values specified on the existing operating nomograph, expand the C scale logarithmically so that the values can be properly located.

8.1.2 If a calculator is used to set isokinetic rates, it is suggested that the isokinetic equation presented in Reference 13 in Section 17.0 of Method 101 be consulted.

8.2 Sampling in Small (<12-in. Diameter) Stacks. When the stack diameter (or equivalent diameter) is less than 12 inches, conventional pitot tube-probe assemblies should not be used. For sampling guidelines, see Reference 14 in Section 17.0 of Method 101.

*9.0 Quality Control*

Same as Method 101, Section 9.0.

*10.0 Calibration and Standardizations*

Same as Method 101, Section 10.0.

*11.0 Analytical Procedure*

Same as Method 101, Section 11.0.

*12.0 Data Analysis and Calculations*

Same as Method 101, Section 12.0.

*13.0 Method Performance*

Same as Method 101, Section 13.0.

13.1 Analytical Range. After initial dilution, the range of this method is 0.5 to 120 µg Hg/ml. The upper limit can be extended by further dilution of the sample.

*14.0 Pollution Prevention. [Reserved]*

*15.0 Waste Management. [Reserved]*

*16.0 References*

Same as Method 101, Section 16.0.

*17.0 Tables, Diagrams, Flowcharts, and Validation Data. [Reserved]*

## Method 103—Beryllium Screening Method

*1.0 Scope and Application*

1.1 Analytes.

| Analyte | CAS No. | Sensitivity |
|---|---|---|
| Beryllium (Be) | 7440–41–7 | Dependent upon analytical procedure used. |

1.2 Applicability. This procedure details guidelines and requirements for methods acceptable for use in determining Be emissions in ducts or stacks at stationary sources.

1.3 Data Quality Objectives. Adherence to the requirements of this method will enhance the quality of the data obtained from air pollutant sampling methods.

*2.0 Summary of Method*

2.1 Particulate Be emissions are withdrawn isokinetically from three points in a duct or stack and are collected on a filter. The collected sample is analyzed for Be using an appropriate technique.

*3.0 Definitions. [Reserved]*

*4.0 Interferences. [Reserved]*

*5.0 Safety*

5.1 Disclaimer. This method may involve hazardous materials, operations, and equipment. This test method may not address all of the safety problems associated with its use. It is the responsibility of the user of this test method to establish appropriate safety and health practices and determine the applicability of regulatory limitations prior to performing this test method.

5.2 Hydrochloric Acid (HCl). Highly corrosive and toxic. Vapors are highly irritating to eyes, skin, nose, and lungs, causing severe damage. May cause bronchitis, pneumonia, or edema of lungs. Exposure to concentrations of 0.13 to 0.2 percent can be lethal to humans in a few minutes. Provide ventilation to limit exposure. Reacts with metals, producing hydrogen gas. Personal protective equipment and safe procedures are useful in preventing chemical splashes. If contact occurs, immediately flush with copious amounts of water at least 15 minutes. Remove clothing under shower and decontaminate. Treat residual chemical burn as thermal burn.

*6.0 Equipment and Supplies*

6.1 Sample Collection. A schematic of the required sampling train configuration is shown in Figure 103–1 in Section 17.0. The essential components of the train are as follows:

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6.1.1 Nozzle. Stainless steel, or equivalent, with sharp, tapered leading edge.

6.1.2 Probe. Sheathed borosilicate or quartz glass tubing.

6.1.3 Filter. Millipore AA, or equivalent, with appropriate filter holder that provides a positive seal against leakage from outside or around the filter. It is suggested that a Whatman 41, or equivalent, be placed immediately against the back side of the Millipore filter as a guard against breakage of the Millipore. Include the backup filter in the analysis. To be equivalent, other filters shall exhibit at least 99.95 percent efficiency (0.05 percent penetration) on 0.3 micron dioctyl phthalate smoke particles, and be amenable to the Be analysis procedure. The filter efficiency tests shall be conducted in accordance with ASTM D 2986–71, 78, 95a (incorporated by reference—see § 61.18). Test data from the supplier's quality control program are sufficient for this purpose.

6.1.4 Meter-Pump System. Any system that will maintain isokinetic sampling rate, determine sample volume, and is capable of a sampling rate of greater than 14 lpm (0.5 cfm).

6.2 Measurement of Stack Conditions. The following equipment is used to measure stack conditions:

6.2.1 Pitot Tube. Type S, or equivalent, with a constant coefficient (±5 percent) over the working range.

6.2.2 Inclined Manometer, or Equivalent. To measure velocity head to ±10 percent of the minimum value.

6.2.3 Temperature Measuring Device. To measure stack temperature to ±1.5 percent of the minimum absolute stack temperature.

6.2.4 Pressure Measuring Device. To measure stack pressure to ±2.5 mm Hg (0.1 in. Hg).

6.2.5 Barometer. To measure atmospheric pressure to ±2.5 mm Hg (0.1 in. Hg).

6.2.6 Wet and Dry Bulb Thermometers, Drying Tubes, Condensers, or Equivalent. To determine stack gas moisture content to ±1 percent.

6.3 Sample Recovery.

6.3.1 Probe Cleaning Equipment. Probe brush or cleaning rod at least as long as probe, or equivalent. Clean cotton balls, or equivalent, should be used with the rod.

6.3.2 Leakless Glass Sample Bottles. To contain sample.

6.4 Analysis. All equipment necessary to perform an atomic absorption, spectrographic, fluorometric, chromatographic, or equivalent analysis.

*7.0 Reagents and Standards*

7.1 Sample Recovery.

7.1.1 Water. Deionized distilled, to conform to ASTM D 1193–77, 91 (incorporated by reference—see § 61.18), Type 3.

7.1.2 Acetone. Reagent grade.

7.1.3 Wash Acid, 50 Percent (V/V) Hydrochloric Acid (HCl). Mix equal volumes of concentrated HCl and water, being careful to add the acid slowly to the water.

7.2 Analysis. Reagents and standards as necessary for the selected analytical procedure.

*8.0 Sample Collection, Preservation, Transport, and Storage*

Guidelines for source testing are detailed in the following sections. These guidelines are generally applicable; however, most sample sites differ to some degree and temporary alterations such as stack extensions or expansions often are required to insure the best possible sample site. Further, since Be is hazardous, care should be taken to minimize exposure. Finally, since the total quantity of Be to be collected is quite small, the test must be carefully conducted to prevent contamination or loss of sample.

8.1 Selection of a Sampling Site and Number of Sample Runs. Select a suitable sample site that is as close as practicable to the point of atmospheric emission. If possible, stacks smaller than one foot in diameter should not be sampled.

8.1.1 Ideal Sampling Site. The ideal sampling site is at least eight stack or duct diameters downstream and two diameters upstream from any flow disturbance such as a bend, expansion or contraction. For rectangular cross sections, use Equation 103–1 in Section 12.2 to determine an equivalent diameter, $D_e$.

8.1.2 Alternate Sampling Site. Some sampling situations may render the above sampling site criteria impractical. In such cases, select an alternate site no less than two diameters downstream and one-half diameter upstream from any point of flow disturbance. Additional sample runs are recommended at any sample site not meeting the criteria of Section 8.1.1.

8.1.3 Number of Sample Runs Per Test. Three sample runs constitute a test. Conduct each run at one of three different points. Select three points that proportionately divide the diameter, or are located at 25, 50, and 75 percent of the diameter from the inside wall. For horizontal ducts, sample on a vertical line through the centroid. For rectangular ducts, sample on a line through the centroid and parallel to a side. If additional sample runs are performed per Section 8.1.2, proportionately divide the duct to accommodate the total number of runs.

8.2 Measurement of Stack Conditions. Using the equipment described in Section 6.2, measure the stack gas pressure, moisture, and temperature to determine the molecular weight of the stack gas. Sound engineering estimates may be made in lieu of direct measurements. Describe the basis for such estimates in the test report.

8.3 Preparation of Sampling Train.

8.3.1 Assemble the sampling train as shown in Figure 103–1. It is recommended that all glassware be precleaned by soaking in wash acid for two hours.

8.3.2 Leak check the sampling train at the sampling site. The leakage rate should not be in excess of 1 percent of the desired sample rate.

8.4 Sampling Train Operation.

8.4.1 For each run, measure the velocity at the selected sampling point. Determine the isokinetic sampling rate. Record the velocity head and the required sampling rate. Place the nozzle at the sampling point with the tip pointing directly into the gas stream. Immediately start the pump and adjust the flow to isokinetic conditions. At the conclusion of the test, record the sampling rate. Again measure the velocity head at the sampling point. The required isokinetic rate at the end of the period should not have deviated more than 20 percent from that originally calculated. Describe the reason for any deviation beyond 20 percent in the test report.

8.4.2 Sample at a minimum rate of 14 liters/min (0.5 cfm). Obtain samples over such a period or periods of time as are necessary to determine the maximum emissions which would occur in a 24-hour period. In the case of cyclic operations, perform sufficient sample runs so as to allow determination or calculation of the emissions that occur over the duration of the cycle. A minimum sampling time of two hours per run is recommended.

8.5 Sample Recovery.

8.5.1 It is recommended that all glassware be precleaned as in Section 8.3. Sample recovery should also be performed in an area free of possible Be contamination. When the sampling train is moved, exercise care to prevent breakage and contamination. Set aside a portion of the acetone used in the sample recovery as a blank for analysis. The total amount of acetone used should be measured for accurate blank correction. Blanks can be eliminated if prior analysis shows negligible amounts.

8.5.2 Remove the filter (and backup filter, if used) and any loose particulate matter from filter holder, and place in a container.

8.5.3 Clean the probe with acetone and a brush or long rod and cotton balls. Wash into the container with the filter. Wash out the filter holder with acetone, and add to the same container.

*9.0 Quality Control. [Reserved]*

*10.0 Calibration and Standardization*

10.1 Sampling Train. As a procedural check, compare the sampling rate regulation with a dry gas meter, spirometer, rotameter (calibrated for prevailing atmospheric conditions), or equivalent, attached to the nozzle inlet of the complete sampling train.

10.2 Analysis. Perform the analysis standardization as suggested by the manufacturer of the instrument, or the procedures for the analytical method in use.

*11.0 Analytical Procedure*

Make the necessary preparation of samples and analyze for Be. Any currently acceptable method (e.g., atomic absorption, spectrographic, fluorometric, chromatographic) may be used.

*12.0 Data Analysis and Calculations*

12.1 Nomenclature.

$A_s$(avg) = Stack area, $m^2$ ($ft^2$).
L = Length.
R = Be emission rate, g/day.
$V_s$(avg) = Average stack gas velocity, m/sec (ft/sec).
$V_{total}$ = Total volume of gas sampled, $m^3$ ($ft^3$).
W = Width.
$W_t$ = Total weight of Be collected, mg.
$10^{-6}$ = Conversion factor, g/µg.
86,400 = Conversion factor, sec/day.

12.2 Calculate the equivalent diameter, De, for a rectangular cross section as follows:

$$D_e = \frac{2 \cdot L \cdot W}{L + W} \qquad \text{Eq. 103-1}$$

12.3 Calculate the Be emission rate, R, in g/day for each stack using Equation 103–2. For cyclic operations, use only the time per day each stack is in operation. The total Be emission rate from a source is the summation of results from all stacks.

$$R = \frac{W_t V_{s(avg)} A_s (86{,}400)(10^{-6})}{V_{total}} \qquad \text{Eq. 103-2}$$

12.4 Test Report. Prepare a test report that includes as a minimum: A detailed description of the sampling train used, results of the procedural check described in Section 10.1 with all data and calculations made, all pertinent data taken during the test, the basis for any estimates made, isokinetic sampling calculations, and emission results. Include a description of the test site, with a block diagram and brief description of the process, location of the sample points in the stack cross section, and stack dimensions and distances from any point of disturbance.

*13.0 Method Performance. [Reserved]*

*14.0 Pollution Prevention. [Reserved]*

*15.0 Waste Management. [Reserved]*

*16.0 References. [Reserved]*

BILLING CODE 6560–50–P

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*17.0 Tables, Diagrams, Flow Charts, and Validation Data*

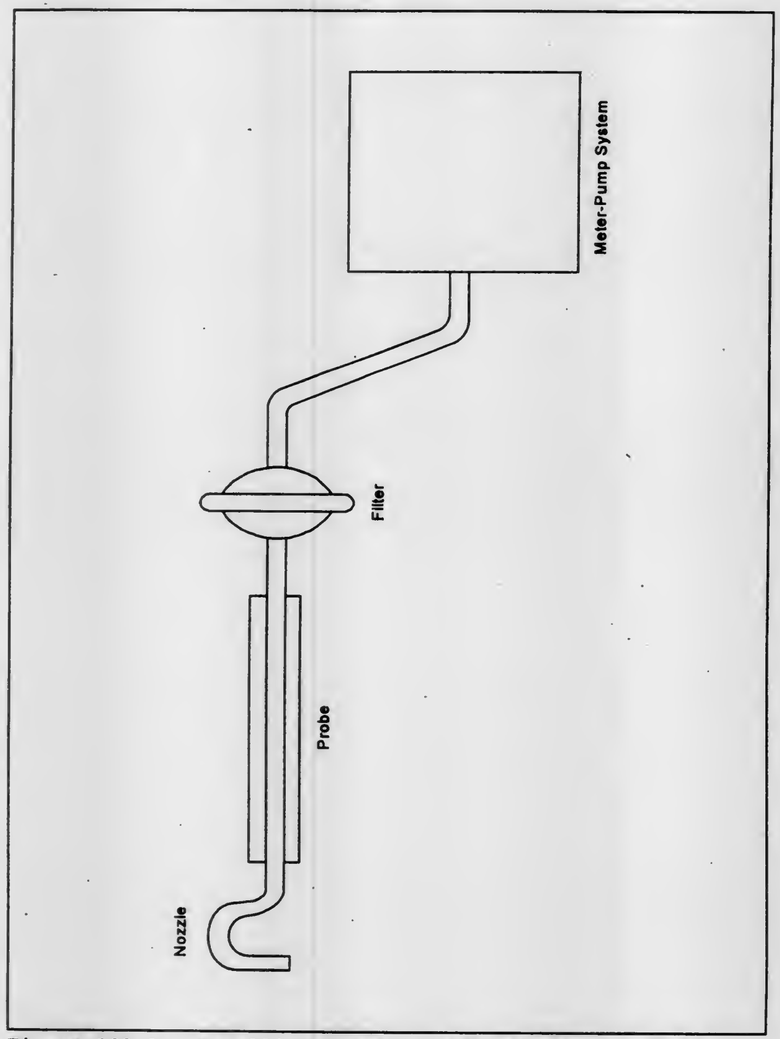



**Figure 103-1. Beryllium Screening Method Sampling Train Schematic.**

BILLING CODE 6560-50-C



**Method 104—Determination of Beryllium Emissions From Stationary Sources**

**Note:** This method does not include all of the specifications (*e.g.*, equipment and supplies) and procedures (*e.g.*, sampling and analytical) essential to its performance. Some material is incorporated by reference from methods in Appendix A to 40 CFR part 60. Therefore, to obtain reliable results, persons using this method should have a thorough knowledge of at least the following additional test methods: Method 1, Method 2, Method 3, and Method 5 in Appendix A, Part 60.

*1.0 Scope and Application*

1.1 Analytes.

| Analyte | CAS No. | Sensitivity |
|---|---|---|
| Beryllium (Be) | 7440–41–7 | Dependent upon recorder and spectrophotometer. |

1.2 Applicability. This method is applicable for the determination of Be emissions in ducts or stacks at stationary sources. Unless otherwise specified, this method is not intended to apply to gas streams other than those emitted directly to the atmosphere without further processing.

1.3 Data Quality Objectives. Adherences to the requirements of this method will enhance the quality of the data obtained from air pollutant sampling methods.

*2.0 Summary of Method*

2.1 Particulate and gaseous Be emissions are withdrawn isokinetically from the source and are collected on a glass fiber filter and in water. The collected sample is digested in an acid solution and is analyzed by atomic absorption spectrophotometry.

*3.0 Definitions [Reserved]*

*4.0 Interferences*

4.1 Matrix Effects. Analysis for Be by flame atomic absorption spectrophotometry is sensitive to the chemical composition and to the physical properties (*e.g.*, viscosity, pH) of the sample. Aluminum and silicon in particular are known to interfere when present in appreciable quantities. The analytical procedure includes (optionally) the use of the Method of Standard Additions to check for these matrix effects, and sample analysis using the Method of Standard Additions if significant matrix effects are found to be present (see Reference 2 in Section 16.0).

*5.0 Safety*

5.1 Disclaimer. This method may involve hazardous materials, operations, and equipment. This test method may not address all of the safety problems associated with its use. It is the responsibility of the user of this test method to establish appropriate safety and health practices and determine the applicability of regulatory limitations prior to performing this test method.

5.2 Corrosive reagents. The following reagents are hazardous. Personal protective equipment and safe procedures are useful in preventing chemical splashes. If contact occurs, immediately flush with copious amounts of water at least 15 minutes. Remove clothing under shower and decontaminate. Treat residual chemical burn as thermal burn.

5.2.1 Hydrochloric Acid ($HC_l$). Highly toxic. Vapors are highly irritating to eyes, skin, nose, and lungs, causing severe damage. May cause bronchitis, pneumonia, or edema of lungs. Exposure to concentrations of 0.13 to 0.2 percent can be lethal to humans in a few minutes. Provide ventilation to limit exposure. Reacts with metals, producing hydrogen gas.

5.2.2 Hydrogen Peroxide ($H_2O_2$). Irritating to eyes, skin, nose, and lungs.

5.2.3 Nitric Acid ($HNO_3$). Highly corrosive to eyes, skin, nose, and lungs. Vapors cause bronchitis, pneumonia, or edema of lungs. Reaction to inhalation may be delayed as long as 30 hours and still be fatal. Provide ventilation to limit exposure. Strong oxidizer. Hazardous reaction may occur with organic materials such as solvents.

5.2.4 Sodium Hydroxide (NaOH). Causes severe damage to eyes and skin. Inhalation causes irritation to nose, throat, and lungs. Reacts exothermically with limited amounts of water.

5.3 Beryllium is hazardous, and precautions should be taken to minimize exposure.

*6.0 Equipment and Supplies*

6.1 Sample Collection. Same as Method 5, Section 6.1, with the exception of the following:

6.1.1 Sampling Train. Same as Method 5, Section 6.1.1, with the exception of the following:

6.1.2 Probe Liner. Borosilicate or quartz glass tubing. A heating system capable of maintaining a gas temperature of 120 ± 14 °C (248 ± 25 °F) at the probe exit during sampling to prevent water condensation may be used.

**Note:** Do not use metal probe liners.

6.1.3 Filter Holder. Borosilicate glass, with a glass frit filter support and a silicone rubber gasket. Other materials of construction (*e.g.*, stainless steel, Teflon, Viton) may be used, subject to the approval of the Administrator. The holder design shall provide a positive seal against leakage from the outside or around the filter. The holder shall be attached immediately at the outlet of the probe. A heating system capable of maintaining the filter at a minimum temperature in the range of the stack temperature may be used to prevent condensation from occurring.

6.1.4 Impingers. Four Greenburg-Smith impingers connected in series with leak-free ground glass fittings or any similar leak-free noncontaminating fittings. For the first, third, and fourth impingers, use impingers that are modified by replacing the tip with a 13 mm-ID (0.5 in.) glass tube extending to 13 mm (0.5 in.) from the bottom of the flask may be used.

6.2 Sample Recovery. The following items are needed for sample recovery:

6.2.1 Probe Cleaning Rod. At least as long as probe.

6.2.2 Glass Sample Bottles. Leakless, with Teflon-lined caps, 1000 ml.

6.2.3 Petri Dishes. For filter samples, glass or polyethylene, unless otherwise specified by the Administrator.

6.2.4 Graduated Cylinder. 250 ml.

6.2.5 Funnel and Rubber Policeman. To aid in transfer of silica gel to container; not necessary if silica gel is weighed in the field.

6.2.6 Funnel. Glass, to aid in sample recovery.

6.2.7 Plastic Jar. Approximately 300 ml.

6.3 Analysis. The following items are needed for sample analysis:

6.3.1 Atomic Absorption Spectrophotometer. Perkin-Elmer 303, or equivalent, with nitrous oxide/acetylene burner.

6.3.2 Hot Plate.

6.3.3 Perchloric Acid Fume Hood.

*7.0 Reagents and Standards*

**Note:** Unless otherwise indicated, it is intended that all reagents conform to the specifications established by the Committee on Analytical Reagents of the American Chemical Society, where such specifications are available; otherwise, use the best-available grade.

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7.1 Sample Collection. Same as Method 5, Section 7.1, including deionized distilled water conforming to ASTM D 1193–77 or 91 (incorporated by reference—see § 61.18), Type 3. The Millipore AA filter is recommended.

7.2 Sample Recovery. Same as Method 5 in Appendix A, Part 60, Section 7.2, with the addition of the following:

7.2.1 Wash Acid, 50 Percent (V/V) Hydrochloric Acid (HCl). Mix equal volumes of concentrated HCl and water, being careful to add the acid slowly to the water.

7.3 Sample Preparation and Analysis. The following reagents and standards and standards are needed for sample preparation and analysis:

7.3.1 Water. Same as in Section 7.1.

7.3.2. Perchloric Acid ($HClO_4$). Concentrated (70 percent V/V).

7.3.3 Nitric Acid ($HNO_3$). Concentrated.

7.3.4 Beryllium Powder. Minimum purity 98 percent.

7.3.5 Sulfuric Acid ($H_2SO_4$) Solution, 12 N. Dilute 33 ml of concentrated $H_2SO_4$ to 1 liter with water.

7.3.6 Hydrochloric Acid Solution, 25 Percent HCl (V/V).

7.3.7 Stock Beryllium Standard Solution, 10 μg Be/ml. Dissolve 10.0 mg of Be in 80 ml of 12 N $H_2SO_4$ in a 1000-ml volumetric flask. Dilute to volume with water. This solution is stable for at least one month. Equivalent strength Be stock solutions may be prepared from Be salts such as $BeCl_2$ and $Be(NO_3)_2$ (98 percent minimum purity).

7.3.8 Working Beryllium Standard Solution, 1 μg Be/ml. Dilute a 10 ml aliquot of the stock beryllium standard solution to 100 ml with 25 percent HCl solution to give a concentration of 1 mg/ml. Prepare this dilute stock solution fresh daily.

*8.0 Sample Collection, Preservation, Transport, and Storage*

The amount of Be that is collected is generally small, therefore, it is necessary to exercise particular care to prevent contamination or loss of sample.

8.1 Pretest Preparation. Same as Method 5, Section 8.1, except omit Section 8.1.3.

8.2 Preliminary Determinations. Same as Method 5, Section 8.2, with the exception of the following:

8.2.1 Select a nozzle size based on the range of velocity heads to assure that it is not necessary to change the nozzle size in order to maintain isokinetic sampling rates below 28 liters/min (1.0 cfm).

8.2.2 Obtain samples over a period or periods of time that accurately determine the maximum emissions that occur in a 24-hour period. In the case of cyclic operations, perform sufficient sample runs for the accurate determination of the emissions that occur over the duration of the cycle. A minimum sample time of 2 hours per run is recommended.

8.3 Preparation of Sampling Train. Same as Method 5, Section 8.3, with the exception of the following:

8.3.1 Prior to assembly, clean all glassware (probe, impingers, and connectors) by first soaking in wash acid for 2 hours, followed by rinsing with water.

8.3.2 Save a portion of the water for a blank analysis.

8.3.3 Procedures relating to the use of metal probe liners are not applicable.

8.3.4 Probe and filter heating systems are needed only if water condensation is a problem. If this is the case, adjust the heaters to provide a temperature at or above the stack temperature. However, membrane filters such as the Millipore AA are limited to about 107 °C (225 °F). If the stack gas is in excess of about 93 °C (200 °F), consideration should be given to an alternate procedure such as moving the filter holder downstream of the first impinger to insure that the filter does not exceed its temperature limit. After the sampling train has been assembled, turn on and set the probe heating system, if applicable, at the desired operating temperature. Allow time for the temperatures to stabilize. Place crushed ice around the impingers.

**Note:** An empty impinger may be inserted between the third impinger and the silica gel to remove excess moisture from the sample stream.

8.4 Leak Check Procedures, Sampling Train Operation, and Calculation of Percent Isokinetic. Same as Method 5, Sections 8.4, 8.5, and 8.6, respectively.

8.5 Sample Recovery. Same as Method 5, Section 8.7, except treat the sample as follows: Transfer the probe and impinger assembly to a cleanup area that is clean, protected from the wind, and free of Be contamination. Inspect the train before and during this assembly, and note any abnormal conditions. Treat the sample as follows: Disconnect the probe from the impinger train.

8.5.1 Container No. 1. Same as Method 5, Section 8.7.6.1.

8.5.2 Container No. 2. Place the contents (measured to 1 ml) of the first three impingers into a glass sample bottle. Use the procedures outlined in Section 8.7.6.2 of Method 5, where applicable, to rinse the probe nozzle, probe fitting, probe liner, filter holder, and all glassware between the filter holder and the back half of the third impinger with water. Repeat this procedure with acetone. Place both water and acetone rinse solutions in the sample bottle with the contents of the impingers.

8.5.3 Container No. 3. Same as Method 5, Section 8.7.6.3.

8.6 Blanks.

8.6.1 Water Blank. Save a portion of the water as a blank. Take 200 ml directly from the wash bottle being used and place it in a plastic sample container labeled "$H_2O$ blank."

8.6.2 Filter. Save two filters from each lot of filters used in sampling. Place these filters in a container labeled "filter blank."

8.7 Post-test Glassware Rinsing. If an additional test is desired, the glassware can be carefully double rinsed with water and reassembled. However, if the glassware is out of use more than 2 days, repeat the initial acid wash procedure.

*9.0 Quality Control*

9.1 Miscellaneous Quality Control Measures.

| Section | Quality control measure | Effect |
|---|---|---|
| 8.4, 10.1 | Sampling equipment leak checks and calibration | Ensure accuracy and precision of sampling measurements. |
| 10.2 | Spectrophotometer calibration | Ensure linearity of spectrophotometer response to standards. |
| 11.5 | Check for matrix effects | Eliminate matrix effects. |
| 11.6 | Audit sample analysis | Evaluate analyst's technique and standards preparation. |



9.2 Volume Metering System Checks. Same as Method 5, Section 9.2.

*10.0 Calibration and Standardization*

**Note:** Maintain a laboratory log of all calibrations.

10.1 Sampling Equipment. Same as Method 5, Section 10.0.

10.2 Preparation of Standard Solutions. Pipet 1, 3, 5, 8, and 10 ml of the 1.0 μg Be/ml working standard solution into separate 100 ml volumetric flasks, and dilute to the mark with water. The total amounts of Be in these standards are 1, 3, 5, 8, and 10 μg, respectively.

10.3 Spectrophotometer and Recorder. The Be response may be measured by either peak height or peak area. Analyze an aliquot of the 10-μg standard at 234.8 nm using a nitrous oxide/acetylene flame. Determine the maximum absorbance of the standard, and set this value to read 90 percent of the recorder full scale.

10.4 Calibration Curve.

10.4.1 After setting the recorder scale, analyze an appropriately sized aliquot of each standard and the BLANK (see Section 11) until two consecutive peaks agree within 3 percent of their average value.

10.4.3 Subtract the average peak height (or peak area) of the blank—which must be less than 2 percent of recorder full scale—from the averaged peak heights of the standards. If the blank absorbance is greater than 2 percent of full-scale, the probable cause is Be contamination of a reagent or carry-over of Be from a previous sample. Prepare the calibration curve by plotting the corrected peak height of each standard solution versus the corresponding total Be weight in the standard (in μg).

10.5 Spectrophotometer Calibration Quality Control. Calculate the least squares slope of the calibration curve. The line must pass through the origin or through a point no further from the origin than ±2 percent of the recorder full scale. Multiply the corrected peak height by the reciprocal of the least squares slope to determine the distance each calibration point lies from the theoretical calibration line. The difference between the calculated concentration values and the actual concentrations (i.e., 1, 3, 5, 8, and 10 μg Be) must be less than 7 percent for all standards.

*11.0 Analytical Procedure*

11.1 Sample Loss Check. Prior to analysis, check the liquid level in Container No. 2. Note on the analytical data sheet whether leakage occurred during transport. If a noticeable amount of leakage occurred, either void the sample or take steps, subject to the approval of the Administrator, to adjust the final results.

11.2 Glassware Cleaning. Before use, clean all glassware according to the procedure of Section 8.3.1.

11.3 Sample Preparation. The digestion of Be samples is accomplished in part in concentrated $HClO_4$.

**Note:** The sample must be heated to light brown fumes after the initial HNO3 addition; otherwise, dangerous perchlorates may result from the subsequent $HClO_4$ digestion. $HClO_4$ should be used only under a hood.

11.3.1 Container No. 1. Transfer the filter and any loose particulate matter from Container No. 1 to a 150-ml beaker. Add 35 ml concentrated $HNO_3$. To oxidize all organic matter, heat on a hotplate until light brown fumes are evident. Cool to room temperature, and add 5 ml 12 N $H_2SO_4$ and 5 ml concentrated $HClO_4$.

11.3.2 Container No. 2. Place a portion of the water and acetone sample into a 150 ml beaker, and put on a hotplate. Add portions of the remainder as evaporation proceeds and evaporate to dryness. Cool the residue, and add 35 ml concentrated $HNO_3$. To oxidize all organic matter, heat on a hotplate until light brown fumes are evident. Cool to room temperature, and add 5 ml 12 N $H_2SO_4$ and 5 ml concentrated $HClO_4$. Then proceed with step 11.3.4.

11.3.3 Final Sample Preparation. Add the sample from Section 11.3.2 to the 150-ml beaker from Section 11.3.1. Replace on a hotplate, and evaporate to dryness in a $HClO_4$ hood. Cool the residue to room temperature, add 10.0 ml of 25 percent V/V HCl, and mix to dissolve the residue.

11.3.4 Filter and Water Blanks. Cut each filter into strips, and treat each filter individually as directed in Section 11.3.1. Treat the 200-ml water blank as directed in Section 11.3.2. Combine and treat these blanks as directed in Section 11.3.3.

11.4 Spectrophotometer Preparation. Turn on the power; set the wavelength, slit width, and lamp current; and adjust the background corrector as instructed by the manufacturer's manual for the particular atomic absorption spectrophotometer. Adjust the burner and flame characteristics as necessary.

11.5 Analysis. Calibrate the analytical equipment and develop a calibration curve as outlined in Sections 10.4 and 10.5.

11.5.1 Beryllium Samples. Repeat the procedure used to establish the calibration curve with an appropriately sized aliquot of each sample (from Section 11.3.3) until two consecutive peak heights agree within 3 percent of their average value. The peak height of each sample must be greater than 10 percent of the recorder full scale. If the peak height of the sample is off scale on the recorder, further dilute the original source sample to bring the Be concentration into the calibration range of the spectrophotometer.

11.5.2 Run a blank and standard at least after every five samples to check the spectrophotometer calibration. The peak height of the blank must pass through a point no further from the origin than ±2 percent of the recorder full scale. The difference between the measured concentration of the standard (the product of the corrected peak height and the reciprocal of the least squares slope) and the actual concentration of the standard must be less than 7 percent, or recalibration of the analyzer is required.

11.5.3 Check for Matrix Effects (optional). Use the Method of Standard Additions (see Reference 2 in Section 16.0) to check at least one sample from each source for matrix effects on the Be results. If the results of the Method of Standard Additions procedure used on the single source sample do not agree to within 5 percent of the value obtained by the routine atomic absorption analysis, then reanalyze all samples from the source using the Method of Standard Additions procedure.

11.6 Container No. 2 (Silica Gel). Weigh the spent silica gel (or silica gel plus impinger) to the nearest 0.5 g using a balance. (This step may be conducted in the field.)

*12.0 Data Analysis and Calculations*

Carry out calculations, retaining at least one extra decimal significant figure beyond that of the acquired data. Round off figures only after the final calculation. Other forms of the equations may be used as long as they give equivalent results.

12.1 Nomenclature.

$K_1$ = 0.3858 °K/mm Hg for metric units.
= 17.64 °R/in. Hg for English units.

$K_3 = 10^{-6}$ g/μg for metric units.
$= 2.2046 \times 10^{-9}$ lb/μg for English units.

$m_{Be}$ = Total weight of beryllium in the source sample.

$P_s$ = Absolute stack gas pressure, mm Hg (in. Hg).

t = Daily operating time, sec/day.

$T_s$ = Absolute average stack gas temperature, °K (°R).

$V_{m(std)}$ = Dry gas sample volume at standard conditions, scm (scf).

$V_{w(std)}$ = Volume of water vapor at standard conditions, scm (scf).

12.2 Average Dry Gas Meter Temperature and Average Orifice

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Pressure Drop, Dry Gas Volume, Volume of Water Vapor Condensed, Moisture Content, Isokinetic Variation, and Stack Gas Velocity and Volumetric Flow Rate. Same as Method 5, Sections 12.2 through 12.5, 12.11, and 12.12, respectively.

12.3 Total Beryllium. For each source sample, correct the average maximum absorbance of the two consecutive samples whose peak heights agree within 3 percent of their average for the contribution of the solution blank (see Sections 11.3.4 and 11.5.2). Correcting for any dilutions if necessary, use the calibration curve and these corrected averages to determine the total weight of Be in each source sample.

12.4 Beryllium Emission Rate. Calculate the daily Hg emission rate, R, using Equation 104–1. For continuous operations, the operating time is equal to 86,400 seconds per day. For cyclic operations, use only the time per day each stack is in operation. The total Hg emission rate from a source will be the summation of results from all stacks.

$$R = \frac{K_1 K_3 t m_{Be} P_s v_s A_s}{T_s \left( V_{m(std)} + V_{w(std)} \right)} \qquad \text{Eq. 104-1}$$

12.5 Determination of Compliance. Each performance test consists of three sample runs. For the purpose of determining compliance with an applicable national emission standard, use the average of the results of all sample runs.

*13.0 Method Performance. [Reserved]*

*14.0 Pollution Prevention. [Reserved]*

*15.0 Waste Management. [Reserved]*

*16.0 References*

Same as References 1, 2, and 4–11 of Section 16.0 of Method 101 with the addition of the following:

1. Amos, M.D., and J.B. Willis. Use of High-Temperature Pre-Mixed Flames in Atomic Absorption Spectroscopy. Spectrochim. Acta. 22:1325. 1966.

2. Fleet, B., K.V. Liberty, and T. S. West. A Study of Some Matrix Effects in the Determination of Beryllium by Atomic Absorption Spectroscopy in the Nitrous Oxide-Acetylene Flame. Talanta 17:203. 1970.

*17.0 Tables, Diagrams, Flowcharts, And Validation Data [Reserved]*

**Method 105—Determination of Mercury in Wastewater Treatment Plant Sewage Sludges**

**Note:** This method does not include all of the specifications (*e.g.*, equipment and supplies) and procedures (*e.g.*, sampling and analytical) essential to its performance. Some material is incorporated by reference from other methods in this part. Therefore, to obtain reliable results, persons using this method should also have a thorough knowledge of at least the following additional test methods: Method 101 and Method 101A.

| Analyte | CAS No. | Sensitivity |
|---|---|---|
| Mercury (Hg) | 7439–97–6 | Dependent upon spectrophotometer and recorder. |

*1.0 Scope and Application*

1.1 Analytes.

1.2 Applicability. This method is applicable for the determination of total organic and inorganic Hg content in sewage sludges.

1.3 Data Quality Objectives. Adherence to the requirements of this method will enhance the quality of the data obtained from air pollutant sampling methods.

*2.0 Summary of Method*

2.1 Time-composite sludge samples are withdrawn from the conveyor belt subsequent to dewatering and before incineration or drying. A weighed portion of the sludge is digested in aqua regia and is oxidized by potassium permanganate ($KMnO_4$). Mercury in the digested sample is then measured by the conventional spectrophotometric cold-vapor technique.

*3.0 Definitions [Reserved]*

*4.0 Interferences [Reserved]*

*5.0 Safety*

5.1 Disclaimer. This method may involve hazardous materials, operations, and equipment. This test method may not address all of the safety problems associated with its use. It is the responsibility of the user of this test method to establish appropriate safety and health practices and determine the applicability of regulatory limitations prior to performing this test method.

5.2 Corrosive Reagents. The following reagents are hazardous. Personal protective equipment and safe procedures are useful in preventing chemical splashes. If contact occurs, immediately flush with copious amounts of water at least 15 minutes. Remove clothing under shower and decontaminate. Treat residual chemical burn as thermal burn.

5.2.1 Hydrochloric Acid (HCl). Highly toxic. Vapors are highly irritating to eyes, skin, nose, and lungs, causing severe damage. May cause bronchitis, pneumonia, or edema of lungs. Exposure to concentrations of 0.13 to 0.2 percent can be lethal to humans in a few minutes. Provide ventilation to limit exposure. Reacts with metals, producing hydrogen gas.

5.2.2 Nitric Acid ($HNO_3$). Highly corrosive to eyes, skin, nose, and lungs. Vapors cause bronchitis, pneumonia, or edema of lungs. Reaction to inhalation may be delayed as long as 30 hours and still be fatal. Provide ventilation to limit exposure. Strong oxidizer. Hazardous reaction may occur with organic materials such as solvents.

*6.0 Equipment and Supplies*

6.1 Sample Collection and Mixing. The following items are required for collection and mixing of the sludge samples:

6.1.1 Container. Plastic, 50-liter.

6.1.2 Scoop. To remove 950-ml (1 quart.) sludge sample.

6.1.3 Mixer. Mortar mixer, wheelbarrow-type, 57-liter (or equivalent) with electricity-driven motor.

6.1.4 Blender. Waring-type, 2-liter.

6.1.5 Scoop. To remove 100-ml and 20-ml samples of blended sludge.

6.1.6 Erlenmeyer Flasks. Four, 125-ml.



6.1.7 Beakers. Glass beakers in the following sizes: 50 ml (1), 200 ml (1), 400 ml (2).

6.2 Sample Preparation and Analysis. Same as Method 101, Section 6.3, with the addition of the following:

6.2.1 Hot Plate.

6.2.2 Desiccator.

6.2.3 Filter Paper. S and S No. 588 (or equivalent).

6.2.4 Beakers. Glass beakers, 200 ml and 400 ml (2 each).

*7.0 Reagents and Standards*

**Note:** Unless otherwise indicated, it is intended that all reagents conform to the specifications established by the Committee on Analytical Reagents of the American Chemical Society, where such specifications are available; otherwise, use the best available grade.

7.1 Sample Analysis. Same as Method 101A, Section 7.2, with the following additions and exceptions:

7.1.1 Hydrochloric Acid. The concentrated HCl specified in Method 101A, Section 7.2.4, is not required.

7.1.2 Aqua Regia. Prepare immediately before use. Carefully add one volume of concentrated $HNO_3$ to three volumes of concentrated HCl.

*8.0 Sample Collection, Preservation, Storage, and Transport*

8.1 Sludge Sampling. Withdraw equal volume increments of sludge [for a total of at least 15 liters (16 quarts)] at intervals of 30 min over an 8-hr period, and combine in a rigid plastic container.

8.2 Sludge Mixing. Transfer the entire 15-liter sample to a mortar mixer. Mix the sample for a minimum of 30 min at 30 rpm. Take six 100-ml portions of sludge, and combine in a 2-liter blender. Blend sludge for 5 min; add water as necessary to give a fluid consistency. Immediately after stopping the blender, withdraw four 20-ml portions of blended sludge, and place them in separate, tared 125-ml Erlenmeyer flasks. Reweigh each flask to determine the exact amount of sludge added.

8.3 Sample Holding Time. Samples shall be analyzed within the time specified in the applicable subpart of the regulations.

*9.0 Quality Control*

| Section | Quality control measure | Effect |
|---|---|---|
| 10.0 | Spectrophotometer calibration | Ensure linearity of spectrophotometer response to standards. |
| 11.0 | Check for matrix effects | Eliminate matrix effects. |

*10.0 Calibration and Standardization*

Same as Method 101A, Section 10.2.

*11.0 Analytical Procedures*

11.1 Solids Content of Blended Sludge. Dry one of the 20-ml blended samples from Section 8.2 in an oven at 105 °C (221 °F) to constant weight. Cool in a desiccator, weigh and record the dry weight of the sample.

11.2 Aqua Regia Digestion of Blended Samples.

11.2.1 To each of the three remaining 20-ml samples from Section 8.2 add 25 ml of aqua regia, and digest the on a hot plate at low heat (do not boil) for 30 min, or until samples are a pale yellow-brown color and are void of the dark brown color characteristic of organic matter. Remove from hotplate and allow to cool.

11.2.2 Filter each digested sample separately through an S and S No. 588 filter or equivalent, and rinse the filter contents with 50 ml of water. Transfer the filtrate and filter washing to a 100-ml volumetric flask, and carefully dilute to volume with water.

11.3 Solids Content of the Sludge Before Blending. Remove two 100-ml portions of mixed sludge from the mortar mixer and place in separate, tared 400-ml beakers. Reweigh each beaker to determine the exact amount of sludge added. Dry in oven at 105 °C (221 °F) and cool in a desiccator to constant weight.

11.4 Analysis for Mercury. Analyze the three aqua regia-digested samples using the procedures outlined in Method 101A, Section 11.0.

*12.0 Data Analysis and Calculations*

12.1 Nomenclature.

$C_m$ = Concentration of Hg in the digested sample, µg/g.
$F_{sb}$ = Weight fraction of solids in the blended sludge.
$F_{sm}$ = Weight fraction of solids in the collected sludge after mixing.
M = Hg content of the sewage sludge (on a dry basis), µg/g.
m = Mass of Hg in the aliquot of digested sample analyzed, µg.
n = number of digested samples (specified in Section 11.2 as three).
$V_a$ = Volume of digested sample analyzed, ml.
$V_s$ = Volume of digested sample, ml.
$W_b$ = Weight of empty sample beaker, g.
$W_{bs}$ = Weight of sample beaker and sample, g.
$W_{bd}$ = Weight of sample beaker and sample after drying, g.
$W_f$ = Weight of empty sample flask, g.
$W_{fd}$ = Weight of sample flask and sample after drying, g.
$W_{fs}$ = Weight of sample flask and sample, g.

$$\overline{C}_m = \sum_{i=1}^{n} \left[ \frac{m V_s}{V_a \left( W_{fs} - W_f \right)} \right]_i \qquad \text{Eq. 105-1}$$

12.2 Mercury Content of Digested Sample (Wet Basis).

12.2.1 For each sample analyzed for Hg content, calculate the arithmetic mean maximum absorbance of the two consecutive samples whose peak heights agree ±3 percent of their average. Correct this average value for the contribution of the blank. Use the calibration curve and these corrected averages to determine the final Hg concentration in the solution cell for each sludge sample.

12.2.2 Calculate the average Hg concentration of the digested samples by correcting for any dilutions made to bring the sample into the working range of the spectrophotometer and for the weight of the sludge portion digested, using Equation 105–1.

12.3 Solids Content of Blended Sludge. Determine the solids content of the blended sludge using Equation 105–2.

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$$F_{sb} = 1 - \frac{W_{fs} - W_{fd}}{W_{fs} - W_f} \qquad \text{Eq. 105-2}$$

12.4 Solids Content of Bulk Sample (before blending but, after mixing in mortar mixer). Determine the solids content of each 100 ml aliquot (Section 11.3), and average the results.

$$F_{sm} = 1 - \frac{W_{bs} - W_{bd}}{W_{bs} - W_b} \qquad \text{Eq. 105-3}$$

12.5 Mercury Content of Bulk Sample (Dry Basis). Average the results from the three samples from each 8-hr composite sample, and calculate the Hg concentration of the composite sample on a dry basis.

$$M = \frac{\overline{C}_m}{F_{sb}} \qquad \text{Eq. 105-4}$$

*13.0 Method Performance*

13.1 Range. The range of this method is 0.2 to 5 micrograms per gram; it may be extended by increasing or decreasing sample size.

*14.0 Pollution Prevention. [Reserved]*

*15.0 Waste Management. [Reserved]*

*16.0 References*

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8. Mitchell, W.J., M.R. Midgett, J. Suggs, R.J. Velton, and D. Albrink. Sampling and Homogenizing Sewage for Analysis. Environmental Monitoring and Support Laboratory, Office of Research and Development, U.S. Environmental Protection Agency. Research Triangle Park, N.C. March 1979. p. 7.

*17.0 Tables, Diagrams, Flowcharts, and Validation Data. [Reserved]*

## Method 106—Determination of Vinyl Chloride Emissions From Stationary Sources

*1.0 Scope and Application*

1.1 Analytes.

| Analyte | CAS No. | Sensitivity |
|---|---|---|
| Vinyl Chloride ($CH_2$:CHCl) | 75–01–4 | Dependent upon analytical equipment. |

1.2 Applicability. This method is applicable for the determination of vinyl chloride emissions from ethylene dichloride, vinyl chloride, and polyvinyl chloride manufacturing processes. This method does not measure vinyl chloride contained in particulate matter.

1.3 Data Quality Objectives. Adherence to the requirements of this method will enhance the quality of the data obtained from air pollutant sampling methods.

*2.0 Summary of Method*

2.1 An integrated bag sample of stack gas containing vinyl chloride is subjected to GC analysis using a flame ionization detector (FID).

*3.0 Definitions. [Reserved]*

*4.0 Interferences*

4.1 Resolution interferences of vinyl chloride may be encountered on some sources. Therefore, the chromatograph operator should select the column and operating parameters best suited to the particular analysis requirements. The selection made is subject to approval of the Administrator. Approval is automatic, provided that confirming data are produced through an adequate supplemental analytical technique, and that the data are available for review by the Administrator. An example of this would be analysis with a different column or GC/mass spectroscopy.

*5.0 Safety*

5.1 Disclaimer. This method may involve hazardous materials, operations, and equipment. This test method may not address all of the safety problems associated with its use. It is the responsibility of the user of this test method to establish appropriate safety and health practices and determine the applicability of regulatory limitations prior to performing this test method.

5.2 Toxic Analyte. Care must be exercised to prevent exposure of sampling personnel to vinyl chloride, which is a carcinogen.

*6.0 Equipment and Supplies*

6.1 Sample Collection (see Figure 106–1). The sampling train consists of the following components:

6.1.1 Probe. Stainless steel, borosilicate glass, Teflon tubing (as stack temperature permits), or equivalent, equipped with a glass wool plug to remove particulate matter.



6.1.2 Sample Lines. Teflon, 6.4-mm outside diameter, of sufficient length to connect probe to bag. Use a new unused piece for each series of bag samples that constitutes an emission test, and discard upon completion of the test.

6.1.3 Quick Connects. Stainless steel, male (2) and female (2), with ball checks (one pair without), located as shown in Figure 106–1.

6.1.4 Tedlar Bags. 50- to 100-liter capacity, to contain sample. Aluminized Mylar bags may be used if the samples are analyzed within 24 hours of collection.

6.1.5 Bag Containers. Rigid leak-proof containers for sample bags, with covering to protect contents from sunlight.

6.1.6 Needle Valve. To adjust sample flow rates.

6.1.7 Pump. Leak-free, with minimum of 2-liter/min capacity.

6.1.8 Charcoal Tube. To prevent admission of vinyl chloride and other organics to the atmosphere in the vicinity of samplers.

6.1.9 Flowmeter. For observing sampling flow rate; capable of measuring a flow range from 0.10 to 1.00 liter/min.

6.1.10 Connecting Tubing. Teflon, 6.4-mm outside diameter, to assemble sampling train (Figure 106–1).

6.1.11 Tubing Fittings and Connectors. Teflon or stainless steel, to assemble sampling training.

6.2 Sample Recovery. Teflon tubing, 6.4-mm outside diameter, to connect bag to GC sample loop. Use a new unused piece for each series of bag samples that constitutes an emission test, and discard upon conclusion of analysis of those bags.

6.3 Analysis. The following equipment is required:

6.3.1 Gas Chromatograph. With FID potentiometric strip chart recorder and 1.0 to 5.0-ml heated sampling loop in automatic sample valve. The chromatographic system shall be capable of producing a response to 0.1-ppmv vinyl chloride that is at least as great as the average noise level. (Response is measured from the average value of the base line to the maximum of the wave form, while standard operating conditions are in use.)

6.3.2 Chromatographic Columns. Columns as listed below. Other columns may be used provided that the precision and accuracy of the analysis of vinyl chloride standards are not impaired and that information is available for review confirming that there is adequate resolution of vinyl chloride peak. (Adequate resolution is defined as an area overlap of not more than 10 percent of the vinyl chloride peak by an interferent peak. Calculation of area overlap is explained in Procedure 1 of appendix C to this part: "Determination of Adequate Chromatographic Peak Resolution.")

6.3.2.1 Column A. Stainless steel, 2.0 m by 3.2 mm, containing 80/100-mesh Chromasorb 102.

6.3.2.2 Column B. Stainless steel, 2.0 m by 3.2 mm, containing 20 percent GE SF–96 on 60/ip-mesh Chromasorb P AW; or stainless steel, 1.0 m by 3.2 mm containing 80/100-mesh Porapak T. Column B is required as a secondary column if acetaldehyde is present. If used, column B is placed after column A. The combined columns should be operated at 120 °C (250 °F).

6.3.3 Rate Meters (2). Rotameter , or equivalent, 100-ml/min capacity, with flow control valves.

6.3.4 Gas Regulators. For required gas cylinders.

6.3.5 Temperature Sensor. Accurate to ±1 °C (±2 °F), to measure temperature of heated sample loop at time of sample injection.

6.3.6 Barometer. Accurate to ±5 mm Hg, to measure atmospheric pressure around GC during sample analysis.

6.3.7 Pump. Leak-free, with minimum of 100-ml/min capacity.

6.3.8 Recorder. Strip chart type, optionally equipped with either disc or electronic integrator.

6.3.9 Planimeter. Optional, in place of disc or electronic integrator on recorder, to measure chromatograph peak areas.

6.4 Calibration and Standardization.

6.4.1 Tubing. Teflon, 6.4-mm outside diameter, separate pieces marked for each calibration concentration.

**Note:** The following items are required only if the optional standard gas preparation procedures (Section 10.1) are followed.

6.4.2 Tedlar Bags. Sixteen-inch-square size, with valve; separate bag marked for each calibration concentration.

6.4.3 Syringes. 0.5-ml and 50-µl, gas tight, individually calibrated to dispense gaseous vinyl chloride.

6.4.4 Dry Gas Meter with Temperature and Pressure Gauges. Singer Model DTM–115 with 802 index, or equivalent, to meter nitrogen in preparation of standard gas mixtures, calibrated at the flow rate used to prepare standards.

*7.0 Reagents and Standards*

7.1 Analysis. The following reagents are required for analysis.

7.1.1 Helium or Nitrogen. Purity 99.9995 percent or greater, for chromatographic carrier gas.

7.1.2 Hydrogen. Purity 99.9995 percent or greater.

7.1.3 Oxygen or Air. Either oxygen (purity 99.99 percent or greater) or air (less than 0.1 ppmv total hydrocarbon content), as required by detector.

7.2 Calibration. Use one of the following options: either Sections 7.2.1 and 7.2.2, or Section 7.2.3.

7.2.1 Vinyl Chloride. Pure vinyl chloride gas certified by the manufacturer to contain a minimum of 99.9 percent vinyl chloride. If the gas manufacturer maintains a bulk cylinder supply of 99.9+ percent vinyl chloride, the certification analysis may have been performed on this supply, rather than on each gas cylinder prepared from this bulk supply. The date of gas cylinder preparation and the certified analysis must have been affixed to the cylinder before shipment from the gas manufacturer to the buyer.

7.2.2 Nitrogen. Same as described in Section 7.1.1.

7.2.3 Cylinder Standards. Gas mixture standards (50-,10-, and 5 ppmv vinyl chloride) in nitrogen cylinders may be used to directly prepare a chromatograph calibration curve as described in Section 10.3 if the following conditions are met: (a) The manufacturer certifies the gas composition with an accuracy of ±3 percent or better. (b) The manufacturer recommends a maximum shelf life over which the gas concentration does not change by greater than ±5 percent from the certified value. (c) The manufacturer affixes the date of gas cylinder preparation, certified vinyl chloride concentration, and recommended maximum shelf to the cylinder before shipment to the buyer.

7.2.3.1 Cylinder Standards Certification. The manufacturer shall certify the concentration of vinyl chloride in nitrogen in each cylinder by (a) directly analyzing each cylinder and (b) calibrating his analytical procedure on the day of cylinder analysis. To calibrate his analytical procedure, the manufacturer shall use as a minimum, a three point calibration curve. It is recommended that the manufacturer maintain (1) a high concentration calibration standard (between 50 and 100 ppmv) to prepare his calibration curve by an appropriate dilution technique and (2) a low-concentration calibration standard (between 5 and 10 ppmv) to verify the dilution technique used. If the difference between the apparent concentration read from the calibration curve and the true concentration assigned to the low-concentration calibration standard exceeds 5 percent of the true concentration, the manufacturer shall

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determine the source of error and correct it, then repeat the three-point calibration.

7.2.3.2 Verification of Manufacturer's Calibration Standards. Before using a standard, the manufacturer shall verify each calibration standard (a) by comparing it to gas mixtures prepared (with 99 mole percent vinyl chloride) in accordance with the procedure described in Section 7.2.1 or (b) calibrating it against vinyl chloride cylinder Standard Reference Materials (SRM's) prepared by the National Institute of Standards and Technology, if such SRM's are available. The agreement between the initially determined concentration value and the verification concentration value must be ±5 percent. The manufacturer must reverify all calibration standards on a time interval consistent with the shelf life of the cylinder standards sold.

7.2.4 Audit Cylinder Standards.

7.2.4.1 Gas mixture standards with concentrations known only to the person supervising the analysis of samples. The concentrations of the audit cylinders should be: one low-concentration cylinder in the range of 5 to 20 ppmv vinyl chloride and one high-concentration cylinder in the range of 20 to 50 ppmv. When available, obtain audit samples from the appropriate EPA Regional Office or from the responsible enforcement authority.

**Note:** The responsible enforcement agency should be notified at least 30 days prior to the test date to allow sufficient time for sample delivery.

7.2.4.2 Alternatively, audit cylinders obtained from a commercial gas manufacturer may be used provided: (a) the gas meets the conditions described in Section 7.2.3, (b) the gas manufacturer certifies the audit cylinder as described in Section 7.2.3.1, and (c) the gas manufacturer obtains an independent analysis of the audit cylinders to verify this analysis. Independent analysis is defined here to mean analysis performed by an individual different than the individual who performs the gas manufacturer's analysis, while using calibration standards and analysis equipment different from those used for the gas manufacturer's analysis. Verification is complete and acceptable when the independent analysis concentration is within 5 percent of the gas manufacturer's concentration.

*8.0 Sample Collection, Preservation, Storage, and Transport*

**Note:** Performance of this method should not be attempted by persons unfamiliar with the operation of a gas chromatograph (GC) nor by those who are unfamiliar with source sampling, because knowledge beyond the scope of this presentation is required.

8.1 Bag Leak-Check. The following leak-check procedure is recommended, but not required, prior to sample collection. The post-test leak-check procedure is mandatory. Connect a water manometer and pressurize the bag to 5 to 10 cm $H_2O$ (2 to 4 in. $H_2O$). Allow to stand for 10 min. Any displacement in the water manometer indicates a leak. Also, check the rigid container for leaks in this manner.

**Note:** An alternative leak-check method is to pressurize the bag to 5 to 10 cm H2O and allow it to stand overnight. A deflated bag indicates a leak. For each sample bag in its rigid container, place a rotameter in line between the bag and the pump inlet. Evacuate the bag. Failure of the rotameter to register zero flow when the bag appears to be empty indicates a leak.

8.2 Sample Collection. Assemble the sample train as shown in Figure 106–1. Join the quick connects as illustrated, and determine that all connection between the bag and the probe are tight. Place the end of the probe at the centroid of the stack and start the pump with the needle valve adjusted to yield a flow that will fill over 50 percent of bag volume in the specific sample period. After allowing sufficient time to purge the line several times, change the vacuum line from the container to the bag and evacuate the bag until the rotameter indicates no flow. Then reposition the sample and vacuum lines and begin the actual sampling, keeping the rate proportional to the stack velocity. At all times, direct the gas exiting the rotameter away from sampling personnel. At the end of the sample period, shut off the pump, disconnect the sample line from the bag, and disconnect the vacuum line from the bag container. Protect the bag container from sunlight.

8.3 Sample Storage. Keep the sample bags out of direct sunlight. When at all possible, analysis is to be performed within 24 hours, but in no case in excess of 72 hours of sample collection. Aluminized Mylar bag samples must be analyzed within 24 hours.

8.4 Post-test Bag Leak-Check. Subsequent to recovery and analysis of the sample, leak-check the sample bag according to the procedure outlined in Section 8.1.

*9.0 Quality Control*

9.1 Miscellaneous Quality Control

| Section | Quality control measure | Effect |
|---|---|---|
| 10.3 | Chromatograph calibration | Ensure precision and accuracy of chromatograph. |
| 11.1 | Audit sample analysis | Evaluate analytical technique and standards preparation. |

9.2 Immediately after the preparation of the calibration curve and prior to the sample analyses, perform the analysis audit described in Appendix C, Procedure 2: "Procedure for Field Auditing GC Analysis."

*10.0 Calibration and Standardization*

**Note:** Maintain a laboratory log of all calibrations.

10.1 Preparation of Vinyl Chloride Standard Gas Mixtures. (Optional Procedure-delete if cylinder standards are used.) Evacuate a 16-inch square Tedlar bag that has passed a leak-check (described in Section 8.1) and meter in 5.0 liters of nitrogen. While the bag is filling, use the 0.5-ml syringe to inject 250 µl of 99.9+ percent vinyl chloride gas through the wall of the bag. Upon withdrawing the syringe, immediately cover the resulting hole with a piece of adhesive tape. The bag now contains a vinyl chloride concentration of 50 ppmv. In a like manner use the 50 µl syringe to prepare gas mixtures having 10-and 5-ppmv vinyl chloride concentrations. Place each bag on a smooth surface and alternately depress opposite sides of the bag 50 times to further mix the gases. These gas mixture standards may be used for 10 days from the date of preparation, after which time new gas mixtures must be prepared. (Caution: Contamination may be a problem when a bag is reused if the new gas mixture standard is a lower concentration than the previous gas mixture standard.)

10.2 Determination of Vinyl Chloride Retention Time. (This section can be performed simultaneously with Section 10.3.) Establish chromatograph conditions identical with those in Section 11.3. Determine proper attenuator position. Flush the sampling loop with helium or nitrogen and activate the sample valve. Record the injection time, sample loop temperature, column temperature, carrier gas flow rate, chart speed, and attenuator setting. Record peaks and detector responses that occur in the absence of vinyl chloride. Maintain conditions with the equipment plumbing arranged identically to Section 11.2, and flush the sample loop for 30 seconds at the rate of 100 ml/min with one of the vinyl chloride calibration mixtures. Then activate the sample valve. Record the injection time. Select the peak that corresponds to vinyl chloride. Measure the distance on the chart from the injection time to the time at which the peak maximum occurs. This quantity divided by the chart speed is defined as the retention time. Since other organics may be present in the sample, positive identification of the vinyl chloride peak must be made.

10.3 Preparation of Chromatograph Calibration Curve. Make a GC measurement of each gas mixture standard (described in Section 7.2.3 or 10.1) using conditions identical to those listed in Sections 11.2 and 11.3. Flush the sampling loop for 30 seconds at the rate of 100 ml/min with one of the standard mixtures, and activate the sample valve. Record the concentration of vinyl chloride injected ($C_c$), attenuator setting, chart speed, peak area, sample loop temperature, column temperature, carrier gas flow rate, and retention time. Record the barometric pressure. Calculate $A_c$, the peak area multiplied by the attenuator setting. Repeat until two consecutive injection areas are within 5 percent, then plot the average of those two values versus $C_c$. When the other standard gas mixtures have been similarly analyzed and plotted, draw a straight line through the points derived by the least squares method. Perform calibration daily, or before and after the analysis of each emission test set of bag samples, whichever is more frequent. For each group of sample analyses, use the average of the two calibration curves which bracket that group to determine the respective sample concentrations. If the two calibration curves differ by more than 5 percent from their mean value, then report the final results by both calibration curves.



*11.0 Analytical Procedure*

11.1 Audit Sample Analysis. Immediately after the preparation of the calibration curve and prior to the sample analyses, perform the analysis audit described in Procedure 2 of appendix C to this part: "Procedure for Field Auditing GC Analysis."

11.2 Sample Recovery. With a new piece of Teflon tubing identified for that bag, connect a bag inlet valve to the gas chromatograph sample valve. Switch the valve to receive gas from the bag through the sample loop. Arrange the equipment so the sample gas passes from the sample valve to 100-ml/min rotameter with flow control valve followed by a charcoal tube and a 1-in. $H_2O$ pressure gauge. Maintain the sample flow either by a vacuum pump or container pressurization if the collection bag remains in the rigid container. After sample loop purging is ceased, allow the pressure gauge to return to zero before activating the gas sampling valve.

11.3 Analysis.

11.3.1 Set the column temperature to 100 °C (210 °F) and the detector temperature to 150 °C (300 °F). When optimum hydrogen and oxygen (or air) flow rates have been determined, verify and maintain these flow rates during all chromatography operations. Using helium or nitrogen as the carrier gas, establish a flow rate in the range consistent with the manufacturer's requirements for satisfactory detector operation. A flow rate of approximately 40 ml/min should produce adequate separations. Observe the base line periodically and determine that the noise level has stabilized and that base line drift has ceased. Purge the sample loop for 30 seconds at the rate of 100 ml/min, shut off flow, allow the sample loop pressure to reach atmospheric pressure as indicated by the $H_2O$ manometer, then activate the sample valve. Record the injection time (the position of the pen on the chart at the time of sample injection), sample number, sample loop temperature, column temperature, carrier gas flow rate, chart speed, and attenuator setting. Record the barometric pressure. From the chart, note the peak having the retention time corresponding to vinyl chloride as determined in Section 10.2. Measure the vinyl chloride peak area, $A_m$, by use of a disc integrator, electronic integrator, or a planimeter. Measure and record the peak heights, $H_m$. Record $A_m$ and retention time. Repeat the injection at least two times or until two consecutive values for the total area of the vinyl chloride peak agree within 5 percent of their average. Use the average value for these two total areas to compute the bag concentration.

11.3.2 Compare the ratio of $H_m$ to $A_m$ for the vinyl chloride sample with the same ratio for the standard peak that is closest in height. If these ratios differ by more than 10 percent, the vinyl chloride peak may not be pure (possibly acetaldehyde is present) and the secondary column should be employed (see Section 6.3.2.2).

11.4 Determination of Bag Water Vapor Content. Measure the ambient temperature and barometric pressure near the bag. From a water saturation vapor pressure table, determine and record the water vapor content of the bag, $B_{wb}$, as a decimal figure. (Assume the relative humidity to be 100 percent unless a lesser value is known.)

*12.0 Calculations and Data Analysis*

12.1 Nomenclature.

$A_m$ = Measured peak area.
$A_f$ = Attenuation factor.
$B_{wb}$ = Water vapor content of the bag sample, as analyzed, volume fraction.
$C_b$ = Concentration of vinyl chloride in the bag, ppmv.
$C_c$ = Concentration of vinyl chloride in the standard sample, ppmv.
$P_i$ = Laboratory pressure at time of analysis, mm Hg.
$P_r$ = Reference pressure, the laboratory pressure recorded during calibration, mm Hg.
$T_i$ = Absolute sample loop temperature at the time of analysis, °K (°R).
$T_r$ = Reference temperature, the sample loop temperature recorded during calibration, °K (°R).

12.2 Sample Peak Area. Determine the sample peak area, $A_c$, as follows:

$$A_c = A_m A_f \qquad \text{Eq. 106-1}$$

12.3 Vinyl Chloride Concentration. From the calibration curves prepared in Section 10.3, determine the average concentration value of vinyl chloride, $C_c$, that corresponds to $A_c$, the sample peak area. Calculate the concentration of vinyl chloride in the bag, $C_b$, as follows:

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$$C_b = \frac{C_c P_r T_i}{P_i T_r (1 - B_{wb})} \qquad \text{Eq. 106-2}$$

*13.0 Method Performance*

13.1 Analytical Range. This method is designed for the 0.1 to 50 parts per million by volume (ppmv) range. However, common gas chromatograph (GC) instruments are capable of detecting 0.02 ppmv vinyl chloride. With proper calibration, the upper limit may be extended as needed.

*14.0 Pollution Prevention, [Reserved]*

*15.0 Waste Management, [Reserved]*

*16.0 References*

1. Brown D.W., E.W. Loy, and M.H. Stephenson. Vinyl Chloride Monitoring Near the B. F. Goodrich Chemical Company in Louisville, KY. Region IV, U.S. Environmental Protection Agency, Surveillance and Analysis Division, Athens, GA. June 24, 1974.

2. G.D. Clayton and Associates. Evaluation of a Collection and Analytical Procedure for Vinyl Chloride in Air. U.S. Environmental Protection Agency, Research Triangle Park, N.C. EPA Contract No. 68–02–1408, Task Order No. 2, EPA Report No. 75–VCL–1. December 13, 1974.

3. Midwest Research Institute. Standardization of Stationary Source Emission Method for Vinyl Chloride. U.S. Environmental Protection Agency, Research Triangle Park, N.C. Publication No. EPA–600/4–77–026. May 1977.

4. Scheil, G. and M.C. Sharp. Collaborative Testing of EPA Method 106 (Vinyl Chloride) that Will Provide for a Standardized Stationary Source Emission Measurement Method. U.S. Environmental Protection Agency, Research Triangle Park, N.C. Publication No. EPA 600/4–78–058. October 1978.

*17.0 Tables, Diagrams Flowcharts, and Validation Data.*

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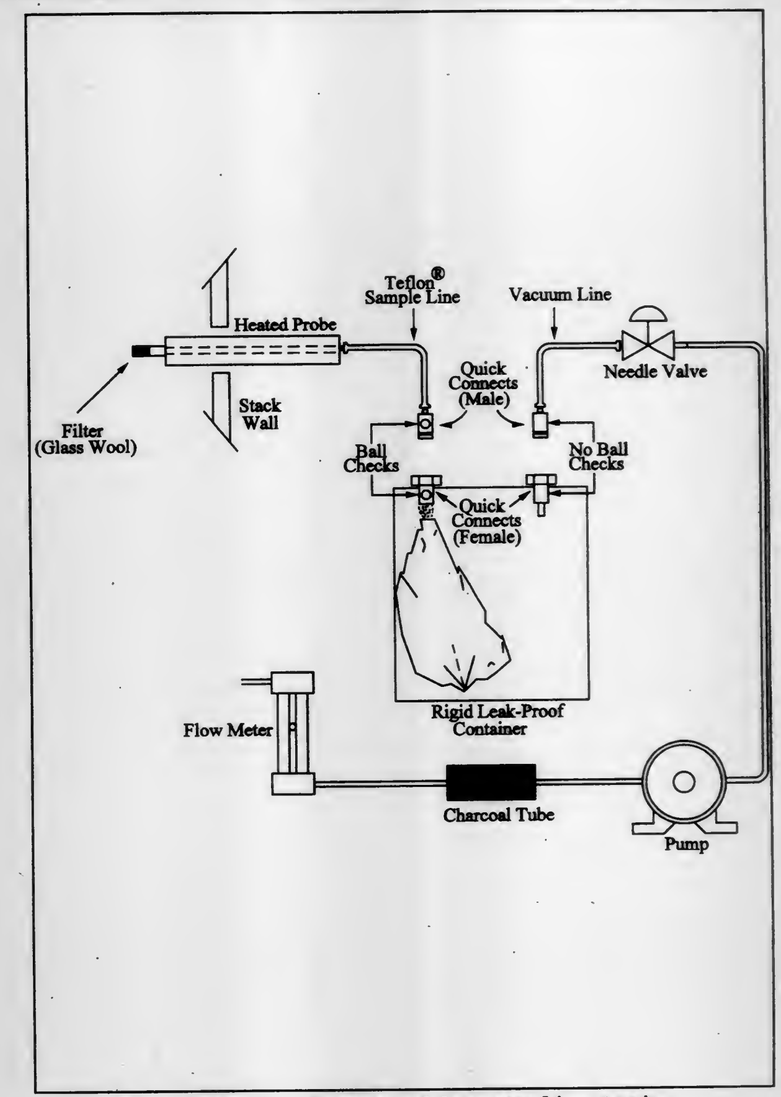



Figure 106-1. Integrated-bag sampling train.

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**Method 107—Determination of Vinyl Chloride Content of In-Process Wastewater Samples, and Vinyl Chloride Content of Polyvinyl Chloride Resin Slurry, Wet Cake, and Latex Samples**

**Note:** Performance of this method should not be attempted by persons unfamiliar with the operation of a gas chromatograph (GC) nor by those who are unfamiliar with source sampling, because knowledge beyond the scope of this presentation is required. This method does not include all of the specifications (*e.g.*, equipment and supplies) and procedures (*e.g.*, sampling and analytical) essential to its performance. Some material is incorporated by reference from other methods in this part. Therefore, to obtain reliable results, persons using this method should have a thorough knowledge of at least the following additional test methods: Method 106.

| Analyte | CAS No. | Sensitivity |
|---|---|---|
| Vinyl Chloride ($CH_2$:CHCl) | 75–01–4 | Dependent upon analytical equipment. |

*1.0 Scope and Application*

1.1 Analytes.

1.2 Applicability. This method is applicable for the determination of the vinyl chloride monomer (VCM) content of in-process wastewater samples, and the residual vinyl chloride monomer (RCVM) content of polyvinyl chloride (PVC) resins, wet, cake, slurry, and latex samples. It cannot be used for polymer in fused forms, such as sheet or cubes. This method is not acceptable where methods from section 304(h) of the Clean Water Act, 33 U.S.C. 1251 *et seq.* (the Federal Water Pollution Control Amendments of 1972 as amended by the Clean Water Act of 1977) are required.

1.3 Data Quality Objectives. Adherence to the requirements of this method will enhance the quality of the data obtained from air pollutant sampling methods.

*2.0 Summary of Method*

2.1 The basis for this method relates to the vapor equilibrium that is established at a constant known temperature in a closed system between RVCM, PVC resin, water, and air. The RVCM in a PVC resin will equilibrate rapidly in a closed vessel, provided that the temperature of the PVC resin is maintained above the glass transition temperature of that specific resin.

2.2 A sample of PVC or in-process wastewater is collected in a vial or bottle and is conditioned. The headspace in the vial or bottle is then analyzed for vinyl chloride using gas chromatography with a flame ionization detector.

*3.0 Definitions [Reserved]*

*4.0 Interferences*

4.1 The chromatograph columns and the corresponding operating parameters herein described normally provide an adequate resolution of vinyl chloride; however, resolution interferences may be encountered on some sources. Therefore, the chromatograph operator shall select the column and operating parameters best suited to his particular analysis requirements, subject to the approval of the Administrator. Approval is automatic provided that confirming data are produced through an adequate supplemental analytical technique, such as analysis with a different column or GC/mass spectroscopy, and that these data are made available for review by the Administrator.

*5.0 Safety*

5.1 Disclaimer. This method may involve hazardous materials, operations, and equipment. This test method may not address all of the safety problems associated with its use. It is the responsibility of the user of this test method to establish appropriate safety and health practices and determine the applicability of regulatory limitations prior to performing this test method.

5.2 Toxic Analyte. Care must be exercised to prevent exposure of sampling personnel to vinyl chloride, which is a carcinogen. Do not release vinyl chloride to the laboratory atmosphere during preparation of standards. Venting or purging with VCM/air mixtures must be held to a minimum. When they are required, the vapor must be routed to outside air. Vinyl chloride, even at low ppm levels, must never be vented inside the laboratory. After vials have been analyzed, the gas must be vented prior to removal of the vial from the instrument turntable. Vials must be vented through a hypodermic needle connected to an activated charcoal tube to prevent release of vinyl chloride into the laboratory atmosphere. The charcoal must be replaced prior to vinyl chloride breakthrough.

*6.0 Equipment and Supplies*

6.1 Sample Collection. The following equipment is required:

6.1.1 Glass bottles. 60-ml (2-oz) capacity, with wax-lined screw-on tops, for PVC samples.

6.1.2 Glass Vials. Headspace vials, with Teflon-faced butyl rubber sealing discs, for water samples.

6.1.3 Adhesive Tape. To prevent loosening of bottle tops.

6.2 Sample Recovery. The following equipment is required:

6.2.1 Glass Vials. Headspace vials, with butyl rubber septa and aluminum caps. Silicone rubber is not acceptable.

6.2.2 Analytical Balance. Capable of determining sample weight within an accuracy of ±1 percent.

6.2.3 Vial Sealer. To seal headspace vials.

6.2.4 Syringe. 100-ml capacity.

6.3 Analysis. The following equipment is required:

6.3.1 Headspace Sampler and Chromatograph. Capable of sampling and analyzing a constant amount of headspace gas from a sealed vial, while maintaining that vial at a temperature of 90 °C ± 0.5 °C (194 °F ± 0.9 °F). The chromatograph shall be equipped with a flame ionization detector (FID). Perkin-Elmer Corporation Models F–40, F–42, F–45, HS–6, and HS–100, and Hewlett-Packard Corporation Model 19395A have been found satisfactory. Chromatograph backflush capability may be required.

6.3.2 Chromatographic Columns. Stainless steel 1 m by 3.2 mm and 2 m by 3.2 mm, both containing 50/80-mesh Porapak Q. Other columns may be used provided that the precision and accuracy of the analysis of vinyl chloride standards are not impaired and information confirming that there is adequate resolution of the vinyl chloride peak are available for review. (Adequate resolution is defined as an area overlap of not more than 10 percent of the vinyl chloride peak by an interferant peak. Calculation of area overlap is explained in Procedure 1 of appendix C to this part: "Determination of Adequate Chromatographic Peak Resolution.") Two 1.83 m columns, each containing 1 percent Carbowax 1500 on Carbopak B, have been found satisfactory for samples containing acetaldehyde.

6.3.3 Temperature Sensor. Range 0 to 100 °C (32 to 212 °F) accurate to 0.1°C.

6.3.4 Integrator-Recorder. To record chromatograms.

6.3.5 Barometer. Accurate to 1 mm Hg.



6.3.6 Regulators. For required gas cylinders.

6.3.7 Headspace Vial Pre-Pressurizer. Nitrogen pressurized hypodermic needle inside protective shield.

*7.0 Reagents and Standards*

7.1 Analysis. Same as Method 106, Section 7.1, with the addition of the following:

7.1.1 Water. Interference-free.

7.2 Calibration. The following items are required for calibration:

7.2.1 Cylinder Standards (4). Gas mixture standards (50-, 500-, 2000- and 4000-ppm vinyl chloride in nitrogen cylinders). Cylinder standards may be used directly to prepare a chromatograph calibration curve as described in Section 10.3, if the following conditions are met: (a) The manufacturer certifies the gas composition with an accuracy of ±3 percent or better (see Section 7.2.1.1). (b) The manufacturer recommends a maximum shelf life over which the gas concentration does not change by greater than ±5 percent from the certified value. (c) The manufacturer affixes the date of gas cylinder preparation, certified vinyl chloride concentration, and recommended maximum shelf life to the cylinder before shipment to the buyer.

7.2.1.1 Cylinder Standards Certification. The manufacturer shall certify the concentration of vinyl chloride in nitrogen in each cylinder by (a) directly analyzing each cylinder and (b) calibrating the analytical procedure on the day of cylinder analysis. To calibrate the analytical procedure, the manufacturer shall use, as a minimum, a 3-point calibration curve. It is recommended that the manufacturer maintain (1) a high-concentration calibration standard (between 4000 and 8000 ppm) to prepare the calibration curve by an appropriate dilution technique and (2) a low-concentration calibration standard (between 50 and 500 ppm) to verify the dilution technique used. If the difference between the apparent concentration read from the calibration curve and the true concentration assigned to the low-concentration calibration standard exceeds 5 percent of the true concentration, the manufacturer shall determine the source of error and correct it, then repeat the 3-point calibration.

7.2.1.2 Verification of Manufacturer's Calibration Standards. Before using, the manufacturer shall verify each calibration standard by (a) comparing it to gas mixtures prepared (with 99 mole percent vinyl chloride) in accordance with the procedure described in Section 10.1 of Method 106 or by (b) calibrating it against vinyl chloride cylinder Standard Reference Materials (SRMs) prepared by the National Institute of Standards and Technology, if such SRMs are available. The agreement between the initially determined concentration value and the verification concentration value must be within 5 percent. The manufacturer must reverify all calibration standards on a time interval consistent with the shelf life of the cylinder standards sold.

*8.0 Sample Collection, Preservation, Storage, and Transport*

8.1 Sample Collection.

8.1.1 PVC Sampling. Allow the resin or slurry to flow from a tap on the tank or silo until the tap line has been well purged. Extend and fill a 60-ml sample bottle under the tap, and immediately tighten a cap on the bottle. Wrap adhesive tape around the cap and bottle to prevent the cap from loosening. Place an identifying label on each bottle, and record the date, time, and sample location both on the bottles and in a log book.

8.1.2 Water Sampling. At the sampling location fill the vials bubble-free to overflowing so that a convex meniscus forms at the top. The excess water is displaced as the sealing disc is carefully placed, with the Teflon side down, on the opening of the vial. Place the aluminum seal over the disc and the neck of the vial, and crimp into place. Affix an identifying label on the bottle, and record the date, time, and sample location both on the vials and in a log book.

8.2 Sample Storage. All samples must be analyzed within 24 hours of collection, and must be refrigerated during this period.

*9.0 Quality Control*

| Section | Quality control measure | Effect |
|---|---|---|
| 10.3 | Chromatograph calibration | Ensure precision and accuracy of chromatograph. |

*10.0 Calibration and Standardization*

**Note:** Maintain a laboratory log of all calibrations.

10.1 Preparation of Standards. Calibration standards are prepared as follows: Place 100 µl or about two equal drops of distilled water in the sample vial, then fill the vial with the VCM/nitrogen standard, rapidly seat the septum, and seal with the aluminum cap. Use a ⅛-in. stainless steel line from the cylinder to the vial. Do not use rubber or Tygon tubing. The sample line from the cylinder must be purged (into a properly vented hood) for several minutes prior to filling the vials. After purging, reduce the flow rate to between 500 and 1000 cc/min. Place end of tubing into vial (near bottom). Position a septum on top of the vial, pressing it against the ⅛-in. filling tube to minimize the size of the vent opening. This is necessary to minimize mixing air with the standard in the vial. Each vial is to be purged with standard for 90 seconds, during which time the filling tube is gradually slid to the top of the vial. After the 90 seconds, the tube is removed with the septum, simultaneously sealing the vial. Practice will be necessary to develop good technique. Rubber gloves should be worn during the above operations. The sealed vial must then be pressurized for 60 seconds using the vial prepressurizer. Test the vial for leakage by placing a drop of water on the septum at the needle hole. Prepressurization of standards is not required unless samples have been prepressurized.

10.2 Analyzer Calibration. Calibration is to be performed each 8-hour period the chromatograph is used. Alternatively, calibration with duplicate 50-, 500-, 2,000-, and 4,000-ppm standards (hereafter described as a four-point calibration) may be performed on a monthly basis, provided that a calibration confirmation test consisting of duplicate analyses of an appropriate standard is performed once per plant shift, or once per chromatograph carrousel operation (if the chromatograph operation is less frequent than once per shift). The criterion for acceptance of each calibration confirmation test is that both analyses of 500-ppm standards [2,000-ppm standards if dispersion resin (excluding latex resin) samples are being analyzed] must be within 5 percent of the most recent four-point calibration curve. If this criterion is not met, then a complete four-point calibration must be performed before sample analyses can proceed.

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10.3 Preparation of Chromatograph Calibration Curve. Prepare two vials each of 50-, 500-, 2,000-, and 4,000-ppm standards. Run the calibration samples in exactly the same manner as regular samples. Plot $A_s$, the integrator area counts for each standard sample, versus $C_c$, the concentration of vinyl chloride in each standard sample. Draw a straight line through the points derived by the least squares method.

*11.0 Analytical Procedure*

11.1 Preparation of Equipment. Install the chromatographic column and condition overnight at 160 °C (320 °F). In the first operation, Porapak columns must be purged for 1 hour at 230 °C (450 °F).

Do not connect the exit end of the column to the detector while conditioning. Hydrogen and air to the detector must be turned off while the column is disconnected.

11.2 Flow Rate Adjustments. Adjust flow rates as follows:

11.2.1. Nitrogen Carrier Gas. Set regulator on cylinder to read 50 psig. Set regulator on chromatograph to produce a flow rate of 30.0 cc/min. Accurately measure the flow rate at the exit end of the column using the soap film flowmeter and a stopwatch, with the oven and column at the analysis temperature. After the instrument program advances to the "B" (backflush) mode, adjust the nitrogen pressure regulator to exactly balance the nitrogen flow rate at the detector as was obtained in the "A" mode.

11.2.2. Vial Prepressurizer Nitrogen.

11.2.2.1 After the nitrogen carrier is set, solve the following equation and adjust the pressure on the vial prepressurizer accordingly.

$$P = \frac{T_1}{T_2}\left[P_1 - \frac{P_{w1} - P_{w2}}{7.50}\right] - 10\text{kPa} \qquad \text{Eq. 107-1}$$

Where:

$T_1$ = Ambient temperature, °K (°R).

$T_2$ = Conditioning bath temperature, °K (°R).

$P_1$ = Gas chromatograph absolute dosing pressure (analysis mode), k Pa.

$P_{w1}$ = Water vapor pressure 525.8 mm Hg @ 90 °C.

$P_{w2}$ = Water vapor pressure 19.8 mm Hg @ 22 °C.

7.50 = mm Hg per k Pa.

10 kPa = Factor to adjust the prepressurized pressure to slightly less than the dosing pressure.

11.2.2.2 Because of gauge errors, the apparatus may over-pressurize the vial. If the vial pressure is at or higher than the dosing pressure, an audible double injection will occur. If the vial pressure is too low, errors will occur on resin samples because of inadequate time for head-space gas equilibrium. This condition can be avoided by running several standard gas samples at various pressures around the calculated pressure, and then selecting the highest pressure that does not produce a double injection. All samples and standards must be pressurized for 60 seconds using the vial prepressurizer. The vial is then placed into the 90 °C conditioning bath and tested for leakage by placing a drop of water on the septum at the needle hole. A clean, burr-free needle is mandatory.

11.2.3. Burner Air Supply. Set regulator on cylinder to read 50 psig. Set regulator on chromatograph to supply air to burner at a rate between 250 and 300 cc/min. Check with bubble flowmeter.

11.2.4. Hydrogen Supply. Set regulator on cylinder to read 30 psig. Set regulator on chromatograph to supply approximately 35 ± 5 cc/min. Optimize hydrogen flow to yield the most sensitive detector response without extinguishing the flame. Check flow with bubble meter and record this flow.

11.3 Temperature Adjustments. Set temperatures as follows:

11.3.1. Oven (chromatograph column), 140 °C (280 °F).

11.3.2. Dosing Line, 150 °C (300 °F).

11.3.3. Injection Block, 170 °C (340 °F).

11.3.4. Sample Chamber, Water Temperature, 90 °C ± 1.0 °C (194 °F ± 1.8 °F).

11.4 Ignition of Flame Ionization Detector. Ignite the detector according to the manufacturer's instructions.

11.5 Amplifier Balance. Balance the amplifier according to the manufacturer's instructions.

11.6 Programming the Chromatograph. Program the chromatograph as follows:

11.6.1. I — Dosing or Injection Time. The normal setting is 2 seconds.

11.6.2. A — Analysis Time. The normal setting is approximately 70 percent of the VCM retention time. When this timer terminates, the programmer initiates backflushing of the first column.

11.6.3. B — Backflushing Time. The normal setting is double the analysis time.

11.6.4. W — Stabilization Time. The normal setting is 0.5 min to 1.0 min.

11.6.5. X — Number of Analyses Per Sample. The normal setting is one.

11.7. Sample Treatment. All samples must be recovered and analyzed within 24 hours after collection.

11.7.1 Resin Samples. The weight of the resin used must be between 0.1 and 4.5 grams. An exact weight must be obtained (within ±1 percent) for each sample. In the case of suspension resins, a volumetric cup can be prepared for holding the required amount of sample. When the cup is used, open the sample bottle, and add the cup volume of resin to the tared sample vial (tared, including septum and aluminum cap). Obtain the exact sample weight, add 100 ml or about two equal drops of water, and immediately seal the vial. Report this value on the data sheet; it is required for calculation of RVCM. In the case of dispersion resins, the cup cannot be used. Weigh the sample in an aluminum dish, transfer the sample to the tared vial, and accurately weigh it in the vial. After prepressurization of the samples, condition them for a minimum of 1 hour in the 90 °C (190 °F) bath. Do not exceed 5 hours. Prepressurization is not required if the sample weight, as analyzed, does not exceed 0.2 gram. It is also not required if solution of the prepressurization equation yields an absolute prepressurization value that is within 30 percent of the atmospheric pressure.

**Note:** Some aluminum vial caps have a center section that must be removed prior to placing into sample tray. If the cap is not removed, the injection needle will be damaged.

11.7.2 Suspension Resin Slurry and Wet Cake Samples. Decant the water from a wet cake sample, and turn the sample bottle upside down onto a paper towel. Wait for the water to drain, place approximately 0.2 to 4.0 grams of the wet cake sample in a tared vial (tared, including septum and aluminum cap) and seal immediately. Then determine the sample weight (1 percent). All samples weighing over 0.2 gram, must be prepressurized prior to conditioning for 1 hour at 90 °C (190 °F), except as noted in Section 11.7.1. A sample of wet cake is used to determine total solids (TS). This is required for calculating the RVCM.

11.7.3 Dispersion Resin Slurry and Geon Latex Samples. The materials should not be filtered. Sample must be thoroughly mixed. Using a tared vial (tared, including septum and aluminum cap) add approximately eight drops (0.25 to 0.35 g) of slurry or latex using a medicine dropper. This should be done immediately after mixing. Seal the vial as soon as possible. Determine sample weight (1 percent). Condition the vial for 1 hour at 90 °C (190 °F) in the analyzer bath. Determine the TS on the slurry sample (Section 11.10).

11.7.4 In-process Wastewater Samples. Using a tared vial (tared, including septum and aluminum cap) quickly add approximately 1 cc of water using a medicine dropper. Seal the vial as soon as possible. Determine sample weight (1 percent). Condition the vial for 1 hour at 90 °C (190 °F) in the analyzer bath.

11.8 Preparation of Sample Turntable.

11.8.1 Before placing any sample into turntable, be certain that the center section of the aluminum cap has been removed. The numbered sample vials should be placed in the corresponding numbered positions in the turntable. Insert samples in the following order:

11.8.1.1 Positions 1 and 2. Old 2000-ppm standards for conditioning. These are necessary only after the analyzer has not been used for 24 hours or longer.

11.8.1.2 Position 3. 50-ppm standard, freshly prepared.

11.8.1.3 Position 4. 500-ppm standard, freshly prepared.

11.8.1.4 Position 5. 2000-ppm standard, freshly prepared.

11.8.1.5 Position 6. 4000-ppm standard, freshly prepared.

11.8.1.6 Position 7. Sample No. 7 (This is the first sample of the day, but is given as 7 to be consistent with the turntable and the integrator printout.)

11.8.2 After all samples have been positioned, insert the second set of 50-, 500-, 2000-, and 4000-ppm standards. Samples, including standards, must be conditioned in the bath of 90 °C (190 °F) for a minimum of one hour and a maximum of five hours.

11.9 Start Chromatograph Program. When all samples, including standards, have been conditioned at 90 °C (190 °F) for at least one hour, start the analysis program according to the manufacturer's instructions. These instructions must be carefully followed when starting and stopping a program to prevent damage to the dosing assembly.

11.10 Determination of Total Solids. For wet cake, slurry, resin solution, and PVC latex samples, determine TS for each sample by accurately weighing approximately 3 to 4 grams of sample in an aluminum pan before and after placing in a draft oven (105 to 110 °C (221 to 230 °F)). Samples must be dried to constant weight. After first weighing, return the pan to the oven for a short period of time, and then reweigh to verify complete dryness. The TS are then calculated as the final sample weight divided by initial sample weight.

*12.0 Calculations and Data Analysis*

12.1 Nomenclature.

$A_s$ = Chromatogram area counts of vinyl chloride for the sample, area counts.

$A_s$ = Chromatogram area counts of vinyl chloride for the sample.

$C_c$ = Concentration of vinyl chloride in the standard sample, ppm.

$K_p$ = Henry's Law Constant for VCM in PVC 90 °C, $6.52 \times 10^{-6}$ g/g/mm Hg.

$K_w$ = Henry's Law Constant for VCM in water 90 °C, $7 \times 10^{-7}$ g/g/mm Hg.

$M_v$ = Molecular weight of VCM, 62.5 g/mole.

m = Sample weight, g.

$P_a$ = Ambient atmospheric pressure, mm Hg.

R = Gas constant, (62360 [3] ml) (mm Hg)/(mole)(°K).

$R_f$ = Response factor in area counts per ppm VCM.

$R_s$ = Response factor, area counts/ppm.

$T_1$ = Ambient laboratory temperature, °K.

TS = Total solids expressed as a decimal fraction.

$T_2$ = Equilibrium temperature, °K.

$V_g$ = Volume of vapor phase, ml.

$$= V_v - \frac{m(TS)}{1.36} - \frac{m(1-TS)}{0.9653}$$

$V_v$ = Vial volume,[3] ml.

1.36 = Density of PVC at 90 °C, g/[3] ml.

0.9653 = Density of water at 90 °C, g/[3] ml.

12.2 Response Factor. If the calibration curve described in Section 10.3 passes through zero, an average response factor, $R_f$, may be used to facilitate computation of vinyl chloride sample concentrations.

12.2.1 To compute $R_f$, first compute a response factor, $R_s$, for each sample as follows:

$$R_s = \frac{A_s}{C_c} \qquad \text{Eq. 107-2}$$

12.2.2 Sum the individual response factors, and calculate $R_f$. If the calibration curve does not pass through zero, use the calibration curve to determine each sample concentration.

12.3 Residual Vinyl Chloride Monomer Concentration, ($C_{rvc}$) or Vinyl Chloride Monomer Concentration. Calculate $C_{rvc}$ in ppm or mg/kg as follows:

$$C_{rvc} = \frac{A_s P_a}{R_f T_1}\left[\frac{M_v V_g}{Rm} + K_p(TS)T_2 K_w(1-TS)T_2\right] \qquad \text{Eq. 107-3}$$

**Note:** Results calculated using these equations represent concentration based on the total sample. To obtain results based on dry PVC content, divide by TS.

*13.0 Method Performance*

13.1 Range and Sensitivity. The lower limit of detection of vinyl chloride will vary according to the sampling and chromatographic system. The system should be capable of producing a measurement for a 50-ppm vinyl chloride standard that is at least

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10 times the standard deviation of the system background noise level.

13.2 An interlaboratory comparison between seven laboratories of three resin samples, each split into three parts, yielded a standard deviation of 2.63 percent for a sample with a mean of 2.09 ppm, 4.16 percent for a sample with a mean of 1.66 ppm, and 5.29 percent for a sample with a mean of 62.66 ppm.

*14.0 Pollution Prevention [Reserved]*

*15.0 Waste Management [Reserved]*

*16.0 References*

1. B.F. Goodrich, Residual Vinyl Chloride Monomer Content of Polyvinyl Chloride Resins, Latex, Wet Cake, Slurry and Water Samples. B.F. Goodrich Chemical Group Standard Test Procedure No. 1005-E. B.F. Goodrich Technical Center, Avon Lake, Ohio. October 8, 1979.

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4. Berens, A.R., *et. al.* Analysis for Vinyl Chloride in PVC Powders by Head-Space Gas Chromatography. Journal of Applied Polymer Science. 19:3169–3172. 1975.

5. Mansfield, R.A. The Evaluation of Henry's Law Constant (Kp) and Water Enhancement in the Perkin-Elmer Multifract F–40 Gas Chromatograph. B.F. Goodrich. Avon Lake, Ohio. February 10, 1978.

*17.0 Tables, Diagrams, Flowcharts, and Validation Data [Reserved]*

## Method 108—Determination of Particulate and Gaseous Arsenic Emissions

**Note:** This method does not include all of the specifications (*e.g.*, equipment and supplies) and procedures (*e.g.*, sampling and analytical) essential to its performance. Some material is incorporated by reference from other methods in Appendix A to 40 CFR Part 60. Therefore, to obtain reliable results, persons using this method should have a thorough knowledge of at least the following additional test methods: Method 1, Method 2, Method 3, Method 5, and Method 12.

*1.0 Scope and Application.*

1.1 Analytes.

| Analyte | CAS No. | Sensitivity |
|---|---|---|
| Arsenic compounds as arsenic (As) | 7440–38–2 | Lower limit 10 µg/ml or less. |

1.2 Applicability. This method is applicable for the determination of inorganic As emissions from stationary sources as specified in an applicable subpart of the regulations.

1.3 Data Quality Objectives. Adherence to the requirements of this method will enhance the quality of the data obtained from air pollutant sampling methods.

*2.0 Summary of Method*

Particulate and gaseous As emissions are withdrawn isokinetically from the source and are collected on a glass mat filter and in water. The collected arsenic is then analyzed by means of atomic absorption spectrophotometry (AAS).

*3.0 Definitions. [Reserved]*

*4.0 Interferences*

Analysis for As by flame AAS is sensitive to the chemical composition and to the physical properties (*e.g.*, viscosity, pH) of the sample. The analytical procedure includes a check for matrix effects (Section 11.5).

*5.0 Safety*

5.1 This method may involve hazardous materials, operations, and equipment. This test method may not address all of the safety problems associated with its use. It is the responsibility of the user to establish appropriate safety and health practices and determine the applicability of regulatory limitations prior to performing this test method.

5.2 Corrosive reagents. The following reagents are hazardous. Personal protective equipment and safe procedures that prevent chemical splashes are recommended. If contact occurs, immediately flush with copious amounts of water for at least 15 minutes. Remove clothing under shower and decontaminate. Treat residual chemical burns as thermal burns.

5.2.1 Hydrochloric Acid (HCl). Highly corrosive liquid with toxic vapors. Vapors are highly irritating to eyes, skin, nose, and lungs, causing severe damage. May cause bronchitis, pneumonia, or edema of lungs. Exposure to concentrations of 0.13 to 0.2 percent can be lethal to humans in a few minutes. Provide ventilation to limit exposure. Reacts with metals, producing hydrogen gas.

5.2.2 Hydrogen Peroxide ($H_2O_2$). Very harmful to eyes. 30% $H_2O_2$ can burn skin, nose, and lungs.

5.2.3 Nitric Acid ($HNO_3$). Highly corrosive to eyes, skin, nose, and lungs. Vapors are highly toxic and can cause bronchitis, pneumonia, or edema of lungs. Reaction to inhalation may be delayed as long as 30 hours and still be fatal. Provide ventilation to limit exposure. Strong oxidizer. Hazardous reaction may occur with organic materials such as solvents.

5.2.4 Sodium Hydroxide (NaOH). Causes severe damage to eyes and skin. Inhalation causes irritation to nose, throat, and lungs. Reacts exothermically with small amounts of water.

*6.0 Equipment and Supplies*

6.1 Sample Collection. A schematic of the sampling train used in performing this method is shown in Figure 108–1; it is similar to the Method 5 sampling train of 40 CFR Part 60, Appendix A. The following items are required for sample collection:

6.1.1 Probe Nozzle, Probe Liner, Pitot Tube, Differential Pressure Gauge, Filter Holder, Filter Heating System, Temperature Sensor, Metering System, Barometer, and Gas Density Determination Equipment. Same as Method 5, Sections 6.1.1.1 to 6.1.1.7, 6.1.1.9, 6.1.2, and 6.1.3, respectively.

6.1.2 Impingers. Four impingers connected in series with leak-free ground-glass fittings or any similar leak-free noncontaminating fittings. For the first, third, and fourth impingers, use the Greenburg-Smith design, modified by replacing the tip with a 1.3-cm ID (0.5-in.) glass tube extending to about 1.3 cm (0.5 in.) from the bottom of the flask. For the second impinger, use the Greenburg-Smith design with the standard tip. Modifications (*e.g.*, flexible connections between the impingers, materials other than glass, or flexible vacuum lines to connect the filter holder to the condenser) are subject to the approval of the Administrator.

6.1.3 Temperature Sensor. Place a temperature sensor, capable of measuring temperature to within 1 °C (2 °F), at the outlet of the fourth impinger for monitoring purposes.

6.2 Sample Recovery. The following items are required for sample recovery:

6.2.1 Probe-Liner and Probe-Nozzle Brushes, Petri Dishes, Graduated Cylinder and/or Balance, Plastic Storage Containers, and Funnel and Rubber Policeman. Same as Method 5, Sections 6.2.1 and 6.2.4 to 6.2.8, respectively.

6.2.2 Wash Bottles. Polyethylene (2).

6.2.3 Sample Storage Containers. Chemically resistant, polyethylene or polypropylene for glassware washes, 500- or 1000-ml.

6.3 Analysis. The following items are required for analysis:

6.3.1 Spectrophotometer. Equipped with an electrodeless discharge lamp and a background corrector to measure absorbance at 193.7 nanometers (nm). For measuring samples having less than 10 µg As/ml, use a vapor generator accessory or a graphite furnace.

6.3.2 Recorder. To match the output of the spectrophotometer.

6.3.3 Beakers. 150 ml.

6.3.4 Volumetric Flasks. Glass 50-, 100-, 200-, 500-, and 1000-ml; and polypropylene, 50-ml.

6.3.5 Balance. To measure within 0.5 g.

6.3.6 Volumetric Pipets. 1-, 2-, 3-, 5-, 8-, and 10-ml.

6.3.7 Oven.

6.3.8 Hot Plate.

*7.0 Reagents and Standards*

Unless otherwise indicated, it is intended that all reagents conform to the specifications established by the Committee on Analytical Reagents of the American Chemical Society, where such specifications are available; otherwise, use the best available grade.

7.1 The following reagents are required for sample collection:

7.1.1 Filters. Same as Method 5, Section 7.1.1, except that the filters need not be unreactive to $SO_2$.

7.1.2 Silica Gel, Crushed Ice, and Stopcock Grease. Same as Method 5, Sections 7.1.2, 7.1.4, and 7.1.5, respectively.

7.1.3 Water. Deionized distilled to meet ASTM D 1193–77 or 91 (incorporated by reference-see § 61.18), Type 3. When high concentrations of organic matter are not expected to be present, the $KMnO_4$ test for oxidizable organic matter may be omitted.

7.2 Sample Recovery.

7.2.1 0.1 N NaOH. Dissolve 4.00 g of NaOH in about 500 ml of water in a 1-liter volumetric flask. Then, dilute to exactly 1.0 liter with water.

7.3 Analysis. The following reagents and standards are required for analysis:

7.3.1 Water. Same as Section 7.1.3.

7.3.2 Sodium Hydroxide, 0.1 N. Same as in Section 7.2.1.

7.3.3 Sodium Borohydride ($NaBH_4$), 5 Percent Weight by Volume (W/V). Dissolve 50.0 g of $NaBH_4$ in about 500 ml of 0.1 N NaOH in a 1-liter volumetric flask. Then, dilute to exactly 1.0 liter with 0.1 N NaOH.

7.3.4 Hydrochloric Acid, Concentrated.

7.3.5 Potassium Iodide (KI), 30 Percent (W/V). Dissolve 300 g of KI in 500 ml of water in a 1 liter volumetric flask. Then, dilute to exactly 1.0 liter with water.

7.3.6 Nitric Acid, Concentrated.

7.3.7 Nitric Acid, 0.8 N. Dilute 52 ml of concentrated $HNO_3$ to exactly 1.0 liter with water.

7.3.8 Nitric Acid, 50 Percent by Volume (V/V). Add 50 ml concentrated $HNO_3$ to 50 ml water.

7.3.9 Stock Arsenic Standard, 1 mg As/ml. Dissolve 1.3203 g of primary standard grade $As_2O_3$ in 20 ml of 0.1 N NaOH in a 150 ml beaker. Slowly add 30 ml of concentrated $HNO_3$. Heat the resulting solution and evaporate just to dryness. Transfer the residue quantitatively to a 1-liter volumetric flask, and dilute to 1.0 liter with water.

7.3.10 Arsenic Working Solution, 1.0 µg As/ml. Pipet exactly 1.0 ml of stock arsenic standard into an acid-cleaned, appropriately labeled 1-liter volumetric flask containing about 500 ml of water and 5 ml of concentrated $HNO_3$. Dilute to exactly 1.0 liter with water.

7.3.11 Air. Suitable quality for AAS analysis.

7.3.12 Acetylene. Suitable quality for AAS analysis.

7.3.13 Nickel Nitrate, 5 Percent Ni (W/V). Dissolve 24.780 g of nickel nitrate hexahydrate $[Ni(NO_3)_2 6H_2O]$ in water in a 100-ml volumetric flask, and dilute to 100 ml with water.

7.3.14 Nickel Nitrate, 1 Percent Ni (W/V). Pipet 20 ml of 5 percent nickel nitrate solution into a 100-ml volumetric flask, and dilute to exactly 100 ml with water.

7.3.15 Hydrogen Peroxide, 3 Percent by Volume. Pipet 50 ml of 30 percent $H_2O_2$ into a 500-ml volumetric flask, and dilute to exactly 500 ml with water.

7.3.16 Quality Assurance Audit Samples. When making compliance determinations, and upon availability, audit samples may be obtained from the appropriate EPA regional Office or from the responsible enforcement authority.

**Note:** The responsible enforcement authority should be notified at least 30 days prior to the test date to allow sufficient time for sample delivery.

*8.0 Sample Collection, Preservation, Transport, and Storage*

8.1 Pretest Preparation. Follow the general procedure given in Method 5, Section 8.1, except the filter need not be weighed, and the 200 ml of 0.1N NaOH and Container 4 should be tared to within 0.5 g.

8.2 Preliminary Determinations. Follow the general procedure given in Method 5, Section 8.2, except select the nozzle size to maintain isokinetic sampling rates below 28 liters/min (1.0 cfm).

8.3 Preparation of Sampling Train. Follow the general procedure given in Method 5, Section 8.3.

8.4 Leak-Check Procedures. Same as Method 5, Section 8.4.

8.5 Sampling Train Operation. Follow the general procedure given in Method 5, Section 8.5, except maintain isokinetic sampling flow rates below 28 liters/min (1.0 cfm). For each run, record the data required on a data sheet similar to the one shown in Figure 108–2.

8.6 Calculation of Percent Isokinetic. Same as Method 5, Section 8.6.

8.7 Sample Recovery. Same as Method 5, Section 8.7, except that 0.1 N NaOH is used as the cleanup solvent instead of acetone and that the impinger water is treated as follows:

8.7.1 Container Number 4 (Impinger Water). Clean each of the first three impingers and connecting glassware in the following manner:

8.7.1.1 Wipe the impinger ball joints free of silicone grease, and cap the joints.

8.7.1.2 Rotate and agitate each of the first two impingers, using the impinger contents as a rinse solution.

8.7.1.3 Transfer the liquid from the first three impingers to Container Number 4. Remove the outlet ball-joint cap, and drain the contents through this opening. Do not separate the impinger parts (inner and outer tubes) while transferring their contents to the container.

8.7.1.4 Weigh the contents of Container No. 4 to within 0.5 g. Record in the log the weight of liquid along with a notation of any color or film observed in the impinger catch. The weight of liquid is needed along with the silica gel data to calculate the stack gas moisture content.

**Note:** Measure and record the total amount of 0.1 N NaOH used for rinsing under Sections 8.7.1.5 and 8.7.1.6.

8.7.1.5 Pour approximately 30 ml of 0.1 NaOH into each of the first two impingers, and agitate the impingers. Drain the 0.1 N NaOH through the outlet arm of each impinger into Container Number 4. Repeat this operation a second time; inspect the impingers for any abnormal conditions.

8.7.1.6 Wipe the ball joints of the glassware connecting the impingers and the back half of the filter holder free of silicone grease, and rinse each piece of glassware twice with 0.1 N NaOH; transfer this rinse into Container Number 4. (DO NOT RINSE or brush the glass-fritted filter support.) Mark the height of the fluid level to determine whether leakage occurs during transport. Label the container to identify clearly its contents.

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8.8 Blanks.

8.8.1 Sodium Hydroxide. Save a portion of the 0.1 N NaOH used for cleanup as a blank. Take 200 ml of this solution directly from the wash bottle being used and place it in a plastic sample container labeled "NaOH blank."

8.8.2 Water. Save a sample of the water, and place it in a container labeled "$H_2O$ blank."

8.8.3 Filter. Save two filters from each lot of filters used in sampling. Place these filters in a container labeled "filter blank."

*9.0 Quality Control*

9.1 Miscellaneous Quality Control Measures.

| Section | Quality control measure | Effect |
|---|---|---|
| 8.4, 10.1 | Sampling equipment leak-checks and calibration | Ensures accuracy and precision of sampling measurements. |
| 10.4 | Spectrophotometer calibration | Ensures linearity of spectrophotometer response to standards. |
| 11.5 | Check for matrix effects | Eliminates matrix effects. |
| 11.6 | Audit sample analysis | Evaluates analyst's technique and standards preparation. |

9.2 Volume Metering System Checks. Same as Method 5, Section 9.2.

*10.0 Calibration and Standardization*

**Note:** Maintain a laboratory log of all calibrations.

10.1 Sampling Equipment. Same as Method 5, Section 10.0.

10.2 Preparation of Standard Solutions.

10.2.1 For the high level procedure, pipet 1, 3, 5, 8, and 10 ml of the 1.0 mg As/ml stock solution into separate 100 ml volumetric flasks, each containing 5 ml of concentrated $HNO_3$. Dilute to the mark with water.

10.2.2 For the low level vapor generator procedure, pipet 1, 2, 3, and 5 ml of 1.0 µg As/ml standard solution into separate reaction tubes. Dilute to the mark with water.

10.2.3 For the low level graphite furnace procedure, pipet 1, 5, 10 and 15 ml of 1.0 µg As/ml standard solution into separate flasks along with 2 ml of the 5 percent nickel nitrate solution and 10 ml of the 3 percent $H_2O_2$ solution. Dilute to the mark with water.

10.3 Calibration Curve. Analyze a 0.8 N $HNO_3$ blank and each standard solution according to the procedures outlined in section 11.4.1. Repeat this procedure on each standard solution until two consecutive peaks agree within 3 percent of their average value. Subtract the average peak height (or peak area) of the blank—which must be less than 2 percent of recorder full scale—from the averaged peak height of each standard solution. If the blank absorbance is greater than 2 percent of full-scale, the probable cause is As contamination of a reagent or carry-over of As from a previous sample. Prepare the calibration curve by plotting the corrected peak height of each standard solution versus the corresponding final total As weight in the solution.

10.4 Spectrophotometer Calibration Quality Control. Calculate the least squares slope of the calibration curve. The line must pass through the origin or through a point no further from the origin than ±2 percent of the recorder full scale. Multiply the corrected peak height by the reciprocal of the least squares slope to determine the distance each calibration point lies from the theoretical calibration line. The difference between the calculated concentration values and the actual concentrations (*e.g.*, 1, 3, 5, 8, and 10 mg As for the high-level procedure) must be less than 7 percent for all standards.

**Note:** For instruments equipped with direct concentration readout devices, preparation of a standard curve will not be necessary. In all cases, follow calibration and operational procedures in the manufacturers' instruction manual.

*11.0 Analytical Procedure*

11.1 Sample Loss Check. Prior to analysis, check the liquid level in Containers Number 2 and Number 4. Note on the analytical data sheet whether leakage occurred during transport. If a noticeable amount of leakage occurred, either void the sample or take steps, subject to the approval of the Administrator, to adjust the final results.

11.2 Sample Preparation.

11.2.1 Container Number 1 (Filter). Place the filter and loose particulate matter in a 150 ml beaker. Also, add the filtered solid material from Container Number 2 (see Section 11.2.2). Add 50 ml of 0.1 N NaOH. Then stir and warm on a hot plate at low heat (do not boil) for about 15 minutes. Add 10 ml of concentrated $HNO_3$, bring to a boil, then simmer for about 15 minutes. Filter the solution through a glass fiber filter. Wash with hot water, and catch the filtrate in a clean 150 ml beaker. Boil the filtrate, and evaporate to dryness. Cool, add 5 ml of 50 percent $HNO_3$, and then warm and stir. Allow to cool. Transfer to a 50-ml volumetric flask, dilute to volume with water, and mix well.

11.2.2 Container Number 2 (Probe Wash).

11.2.2.1 Filter (using a glass fiber filter) the contents of Container Number 2 into a 200 ml volumetric flask. Combine the filtered (solid) material with the contents of Container Number 1 (Filter).

11.2.2.2 Dilute the filtrate to exactly 200 ml with water. Then pipet 50 ml into a 150 ml beaker. Add 10 ml of concentrated $HNO_3$, bring to a boil, and evaporate to dryness. Allow to cool, add 5 ml of 50 percent $HNO_3$, and then warm and stir. Allow the solution to cool, transfer to a 50-ml volumetric flask, dilute to volume with water, and mix well.

11.2.3 Container Number 4 (Impinger Solution). Transfer the contents of Container Number 4 to a 500 ml volumetric flask, and dilute to exactly 500-ml with water. Pipet 50 ml of the solution into a 150-ml beaker. Add 10 ml of concentrated $HNO_3$, bring to a boil, and evaporate to dryness. Allow to cool, add 5 ml of 50 percent $HNO_3$, and then warm and stir. Allow the solution to cool, transfer to a 50-ml volumetric flask, dilute to volume with water, and mix well.

11.2.4 Filter Blank. Cut each filter into strips, and treat each filter individually as directed in Section 11.2.1, beginning with the sentence, "Add 50 ml of 0.1 N NaOH."

11.2.5 Sodium Hydroxide and Water Blanks. Treat separately 50 ml of 0.1 N NaOH and 50 ml water, as directed under Section 11.2.3, beginning with the sentence, "Pipet 50 ml of the solution into a 150-ml beaker."

11.3 Spectrophotometer Preparation. Turn on the power; set the wavelength, slit width, and lamp current. Adjust the background corrector as instructed by the manufacturer's manual for the particular atomic absorption spectrophotometer. Adjust the burner and flame characteristics as necessary.

11.4 Analysis. Calibrate the analytical equipment and develop a calibration curve as outlined in Sections 10.2 through 10.4.

11.4.1 Arsenic Samples. Analyze an appropriately sized aliquot of each diluted sample (from Sections 11.2.1 through 11.2.3) until two consecutive peak heights agree within 3 percent of their average value. If applicable, follow the procedures outlined in Section 11.4.1.1. If the sample concentration falls outside the range of the calibration curve, make an appropriate dilution with 0.8 N $HNO_3$ so that the final concentration falls within the range of the curve. Using the calibration curve, determine the arsenic concentration in each sample fraction.

**Note:** Because instruments vary between manufacturers, no detailed operating instructions will be given here. Instead, the instrument manufacturer's detailed operating instructions should be followed.

11.4.1.1 Arsenic Determination at Low Concentration. The lower limit of flame AAS is 10 µg As/ml. If the arsenic concentration of any sample is at a lower level, use the graphite furnace or vapor generator which is available as an accessory component. Flame, graphite furnace, or vapor generators may be used for samples whose concentrations are between 10 and 30 µg/ml. Follow the manufacturer's instructions in the use of such equipment.

11.4.1.1.1 Vapor Generator Procedure. Place a sample containing between 0 and 5 µg of arsenic in the reaction tube, and dilute to 15 ml with water. Since there is some trial and error involved in this procedure, it may be necessary to screen the samples by conventional atomic absorption until an approximate concentration is determined. After determining the approximate concentration, adjust the volume of the sample accordingly. Pipet 15 ml of concentrated HCl into each tube. Add 1 ml of 30 percent KI solution. Place the reaction tube into a 50 °C (120 °F) water bath for 5 minutes. Cool to room temperature. Connect the reaction tube to the vapor generator assembly. When the instrument response has returned to baseline, inject 5.0 ml of 5 percent $NaBH_4$, and integrate the resulting spectrophotometer signal over a 30-second time period.

11.4.1.1.2 Graphite Furnace Procedure. Dilute the digested sample so that a 5 ml aliquot contains less than 1.5 µg of arsenic. Pipet 5 ml of this digested solution into a 10-ml volumetric flask. Add 1 ml of the 1 percent nickel nitrate solution, 0.5 ml of 50 percent $HNO_3$, and 1 ml of the 3 percent hydrogen peroxide and dilute to 10 ml with water. The sample is now ready for analysis.

11.4.1.2 Run a blank (0.8 N $HNO_3$) and standard at least after every five samples to check the spectrophotometer calibration. The peak height of the blank must pass through a point no further from the origin than ±2 percent of the recorder full scale. The difference between the measured concentration of the standard (the product of the corrected average peak height and the reciprocal of the least squares slope) and the actual concentration of the standard must be less than 7 percent, or recalibration of the analyzer is required.

11.4.1.3 Determine the arsenic concentration in the filter blank (i.e., the average of the two blank values from each lot).

11.4.2 Container Number 3 (Silica Gel). This step may be conducted in the field. Weigh the spent silica gel (or silica gel plus impinger) to the nearest 0.5 g; record this weight.

11.5 Check for matrix effects on the arsenic results. Same as Method 12, Section 11.5.

11.6 Audit Sample Analysis.

11.6.1 When the method is used to analyze samples to demonstrate compliance with a source emission regulation, a set of EPA audit samples must be analyzed, subject to availability.

11.6.2 Concurrently analyze the audit samples and the compliance samples in the same manner to evaluate the technique of the analyst and the standards preparation.

**Note:** It is recommended that known quality control samples be analyzed prior to the compliance and audit sample analyses to optimize the system accuracy and precision. These quality control samples may be obtained by contacting the appropriate EPA regional Office or the responsible enforcement authority.

11.6.3 The same analyst, analytical reagents, and analytical system shall be used for the compliance samples and the EPA audit samples. If this condition is met, duplicate auditing of subsequent compliance analyses for the same enforcement agency within a 30-day period is waived. An audit sample set may not be used to validate different sets of compliance samples under the jurisdiction of separate enforcement agencies, unless prior arrangements have been made with both enforcement agencies.

11.7 Audit Sample Results.

11.7.1 Calculate the audit sample concentrations in $g/m_3$ and submit results using the instructions provided with the audit samples.

11.7.2 Report the results of the audit samples and the compliance determination samples along with their identification numbers, and the analyst's name to the responsible enforcement authority. Include this information with reports of any subsequent compliance analyses for the same enforcement authority during the 30-day period.

11.7.3 The concentrations of the audit samples obtained by the analyst shall agree within 10 percent of the actual concentrations. If the 10 percent specification is not met, reanalyze the compliance and audit samples, and include initial and reanalysis values in the test report.

11.7.4 Failure to meet the 10 percent specification may require retests until the audit problems are resolved. However, if the audit results do not affect the compliance or noncompliance status of the affected facility, the Administrator may waive the reanalysis requirement, further audits, or retests and accept the results of the compliance test. While steps are being taken to resolve audit analysis problems, the Administrator may also choose to use the data to determine the compliance or noncompliance status of the affected facility.

*12.0 Data Analysis and Calculations*

12.1 Nomenclature.

$B_{ws}$ = Water in the gas stream, proportion by volume.
$C_a$ = Concentration of arsenic as read from the standard curve, µg/ml.
$C_c$ = Actual audit concentration, $g/m^3$.
$C_{d,}$ = Determined audit concentration, $g/m^3$.
$C_s$ = Arsenic concentration in stack gas, dry basis, converted to standard conditions, $g/dsm^3$ (gr/dscf).
$E_a$ = Arsenic mass emission rate, g/hr (lb/hr).
$F_d$ = Dilution factor (equals 1 if the sample has not been diluted).
I = Percent of isokinetic sampling.
$m_{bi}$ = Total mass of all four impingers and contents before sampling, g.
$m_{fi}$ = Total mass of all four impingers and contents after sampling, g.
$m_n$ = Total mass of arsenic collected in a specific part of the sampling train, µg.
$m_t$ = Total mass of arsenic collected in the sampling train, µg.
$T_m$ = Absolute average dry gas meter temperature (see Figure 108–2), °K (°R).
$V_m$ = Volume of gas sample as measured by the dry gas meter, dry basis, $m^3$ ($ft^3$).
$V_{m(std)}$ = Volume of gas sample as measured by the dry gas meter, corrected to standard conditions, $m^3$ ($ft^3$).
$V_n$ = Volume of solution in which the arsenic is contained, ml.
$V_{w(std)}$ = Volume of water vapor collected in the sampling train, corrected to standard conditions, $m^3$ ($ft^3$).
ΔH = Average pressure differential across the orifice meter (see Figure 108–2), mm $H_2O$ (in. $H_2O$).

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12.2 Average Dry Gas Meter Temperatures ($T_m$) and Average Orifice Pressure Drop ($\Delta H$). See data sheet (Figure 108–2).

12.3 Dry Gas Volume. Using data from this test, calculate $V_{m(std)}$ according to the procedures outlined in Method 5, Section 12.3.

12.4 Volume of Water Vapor.

$$V_{w(std)} = K_2(m_{fi} - m_{bi}) \qquad \text{Eq. 108-1}$$

Where:

$K_2 = 0.001334\ m^3/g$ for metric units.
$= 0.047012\ ft^3/g$ for English units.

12.5 Moisture Content.

$$B_{ws} = \frac{V_{w(std)}}{V_{m(std)} + V_{w(std)}} \qquad \text{Eq. 108-2}$$

12.6 Amount of Arsenic Collected.

12.6.1 Calculate the amount of arsenic collected in each part of the sampling train, as follows:

$$m_n = C_a F_d V_n \qquad \text{Eq. 108-3}$$

12.6.2 Calculate the total amount of arsenic collected in the sampling train as follows:

$$m_t = m_{(filters)} + m_{(probe)} + m_{(impingers)} \qquad \text{Eq. 108-4}$$
$$- m_{(filter\ blank)} - m_{(NaOH\ blank)} - m_{(water\ blank)}$$

12.7 Calculate the arsenic concentration in the stack gas (dry basis, adjusted to standard conditions) as follows:

$$C_s = K_3(m_t / V_{m(std)}) \qquad \text{Eq. 108-5}$$

Where:

$K_3 = 10^{-6}$ g/µg for metric units
$= 1.54 \times 10^{-5}$ gr/µg for English units

12.8 Stack Gas Velocity and Volumetric Flow Rate. Calculate the average stack gas velocity and volumetric flow rate using data obtained in this method and the equations in Sections 12.2 and 12.3 of Method 2.

12.9 Pollutant Mass Rate. Calculate the arsenic mass emission rate as follows:

$$E_a = C_s Q_{sd} \qquad \text{Eq. 108-6}$$

12.10 Isokinetic Variation. Same as Method 5, Section 12.11.

*13.0 Method Performance*

13.1 Sensitivity. The lower limit of flame AAS 10 µg As/ml. The analytical procedure includes provisions for the use of a graphite furnace or vapor generator for samples with a lower arsenic concentration.

*14.0 Pollution Prevention. [Reserved]*

*15.0 Waste Management. [Reserved]*

*16.0 References.*

Same as References 1 through 9 of Method 5, Section 17.0, with the addition of the following:

1. Perkin Elmer Corporation. Analytical Methods for Atomic Absorption Spectrophotometry. 303–0152. Norwalk, Connecticut. September 1976. pp. 5–6.

2. Standard Specification for Reagent Water. In: Annual Book of American Society for Testing and Materials Standards. Part 31: Water, Atmospheric Analysis. American Society for Testing and Materials. Philadelphia, PA. 1974. pp. 40–42.

3. Stack Sampling Safety Manual (Draft). U.S. Environmental Protection Agency, Office of Air Quality Planning and Standard, Research Triangle Park, NC. September 1978.



*17.0 Tables, Diagrams, Flowcharts, and Validation Data*

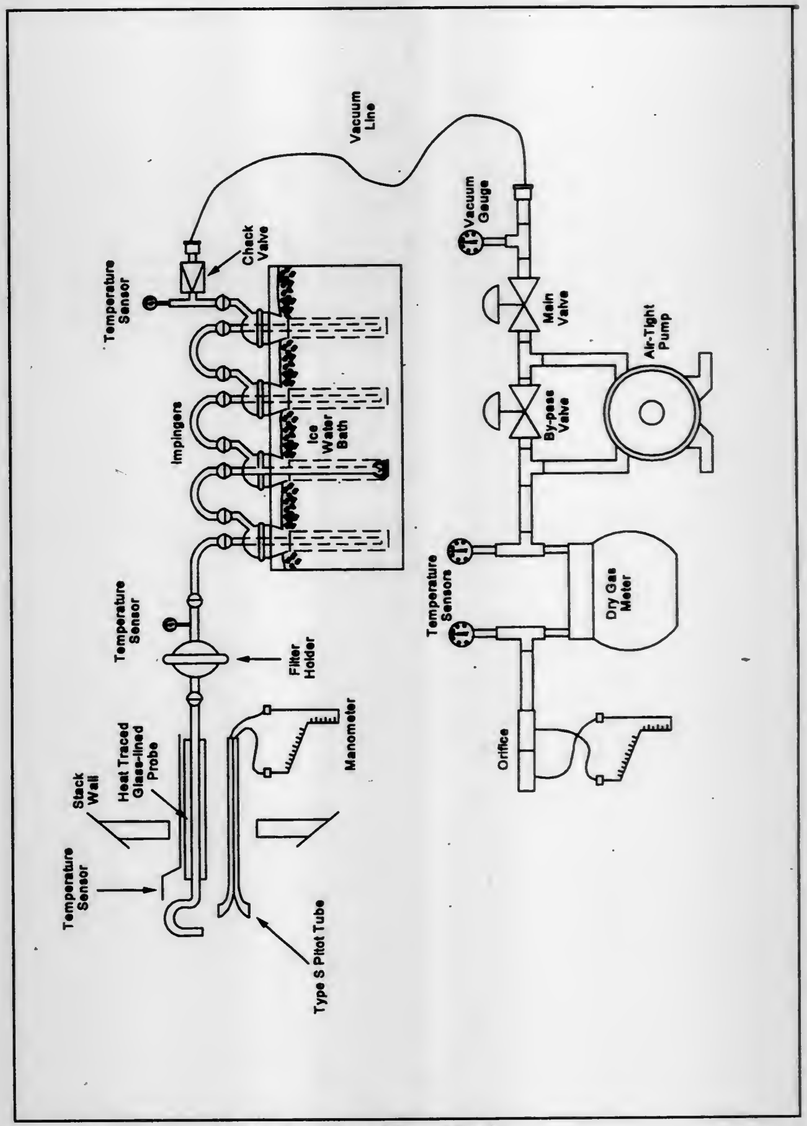



**Figure 108-1. Arsenic Sampling Train**

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Ambient temperature
Barometric pressure
Assumed moisture, %
Probe length, (ft.)
Nozzle identification No.
Average calibrated nozzle diameter, (in.)
Probe heater setting
Leak rate, (cfm)
Probe liner material

SCHEMATIC OF STACK CROSS SECTION

Plant
Location
Operator
Date
Run No.
Sample box No.
Meter box No.
Meter $\Delta H@$
C factor
Pilot tube coefficient, $C_p$

| Traverse point number | Sampling time (min.) | Vacuum (in.Hg) | Stack temperature ($T_s$) (°F) | Velocity head ($\Delta P_s$) (in. $H_2O$) | Pressure differential across orifice meter (in. $H_2O$) | Gas meter reading (ft³) | Gas sample temperature at dry gas meter: Inlet (°F) | Gas sample temperature at dry gas meter: Outlet (°F) | Filter temperature (°F) | Temperature of gas leaving condenser or last impinger (°F) |
|---|---|---|---|---|---|---|---|---|---|---|
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| | | | | | | | | | | |
| Total | | | | | | | Avg. | Avg. | | |
| Average | | | | | | | Avg. | | | |

Figure 108-2. Arsenic Field Data Sheet.

BILLING CODE 6560–50–C



**Method 108A—Determination of Arsenic Content in Ore Samples From Nonferrous Smelters**

**Note:** This method does not include all of the specifications (*e.g.*, equipment and supplies) and procedures (*e.g.*, sampling and analytical) essential to its performance. Some material is incorporated by reference from other methods in Appendix A to 40 CFR part 60. Therefore, to obtain reliable results, persons using this method should have a thorough knowledge of Method 12.

*1.0 Scope and Application*

1.1 Analytes.

| Analyte | CAS No. | Sensitivity |
|---|---|---|
| Arsenic compounds as arsenic (As). | 7440–38–2 | Lower limit 10 µg/ml or less. |

1.2 Applicability. This method applies to the determination of inorganic As content of process ore and reverberatory matte samples from nonferrous smelters and other sources as specified in an applicable subpart of the regulations.

1.3 Data Quality Objectives. Adherence to the requirements of this method will enhance the quality of the data obtained from air pollutant sampling methods.

*2.0 Summary of Method*

Arsenic bound in ore samples is liberated by acid digestion and analyzed by flame atomic absorption spectrophotometry (AAS).

*3.0 Definitions [Reserved]*

*4.0 Interferences*

Analysis for As by flame AAS is sensitive to the chemical composition and to the physical properties (*e.g.*, viscosity, pH) of the sample. The analytical procedure includes a check for matrix effects (section 11.5).

*5.0 Safety*

5.1 Disclaimer. This method may involve hazardous materials, operations, and equipment: This test method may not address all of the safety problems associated with its use. It is the responsibility of the user to establish appropriate safety and health practices and determine the applicability of regulatory limitations prior to performing this test method.

5.2 Corrosive Reagents. The following reagents are hazardous. Personal protective equipment and safe procedures that prevent chemical splashes are recommended. If contact occurs, immediately flush with copious amounts of water for at least 15 minutes. Remove clothing under shower and decontaminate. Treat residual chemical burns as thermal burns.

5.2.1 Hydrochloric Acid (HCl). Highly corrosive liquid with toxic vapors. Vapors are highly irritating to eyes, skin, nose, and lungs, causing severe damage. May cause bronchitis, pneumonia, or edema of lungs. Exposure to concentrations of 0.13 to 0.2 percent can be lethal to humans in a few minutes. Provide ventilation to limit exposure. Reacts with metals, producing hydrogen gas.

5.2.2 Hydrofluoric Acid (HF). Highly corrosive to eyes, skin, nose, throat, and lungs. Reaction to exposure may be delayed by 24 hours or more. Provide ventilation to limit exposure.

5.2.3 Hydrogen Peroxide ($H_2O_2$). Very harmful to eyes. 30% $H_2O_2$ can burn skin, nose, and lungs.

5.2.4 Nitric Acid ($HNO_3$). Highly corrosive to eyes, skin, nose, and lungs. Vapors are highly toxic and can cause bronchitis, pneumonia, or edema of lungs. Reaction to inhalation may be delayed as long as 30 hours and still be fatal. Provide ventilation to limit exposure. Strong oxidizer. Hazardous reaction may occur with organic materials such as solvents.

5.2.5 Sodium Hydroxide (NaOH). Causes severe damage to eyes and skin. Inhalation causes irritation to nose, throat, and lungs. Reacts exothermically with limited amounts of water.

*6.0 Equipment and Supplies*

6.1 Sample Collection and Preparation. The following items are required for sample collection and preparation:

6.1.1 Parr Acid Digestion Bomb. Stainless steel with vapor-tight Teflon cup and cover.

6.1.2 Volumetric Pipets. 2- and 5-ml sizes.

6.1.3 Volumetric Flask. 50-ml polypropylene with screw caps, (one needed per standard).

6.1.4 Funnel. Polyethylene or polypropylene.

6.1.5 Oven. Capable of maintaining a temperature of approximately 105 °C (221 °F).

6.1.6 Analytical Balance. To measure to within 0.1 mg.

6.2 Analysis. The following items are required for analysis:

6.2.1 Spectrophotometer and Recorder. Equipped with an electrodeless discharge lamp and a background corrector to measure absorbance at 193.7 nm. For measuring samples having less than 10 µg As/ml, use a graphite furnace or vapor generator accessory. The recorder shall match the output of the spectrophotometer.

6.2.2 Volumetric Flasks. Class A, 50-ml (one needed per sample and blank), 500-ml, and 1-liter.

6.2.3 Volumetric Pipets. Class A, 1-, 5-, 10-, and 25-ml sizes.

*7.0 Reagents and Standards.*

Unless otherwise indicated, it is intended that all reagents conform to the specifications established by the Committee on Analytical Reagents of the American Chemical Society, where such specifications are available; otherwise, use the best available grade.

7.1 Sample Collection and Preparation. The following reagents are required for sample collection and preparation:

7.1.1 Water. Deionized distilled to meet ASTM D 1193–77 or 91 Type 3 (incorporated by reference—See § 61.18). When high concentrations of organic matter are not expected to be present, the $KMnO_4$ test for oxidizable organic matter may be omitted. Use in all dilutions requiring water.

7.1.2 Nitric Acid Concentrated.

7.1.3 Nitric Acid, 0.5 N. In a 1-liter volumetric flask containing water, add 32 ml of concentrated $HNO_3$ and dilute to volume with water.

7.1.4 Hydrofluoric Acid, Concentrated.

7.1.5 Potassium Chloride (KCl) Solution, 10 percent weight by volume (W/V). Dissolve 10 g KCl in water, add 3 ml concentrated $HNO_3$, and dilute to 100 ml.

7.1.6 Filter. Teflon filters, 3-micron porosity, 47-mm size. (Available from Millipore Co., type FS, Catalog Number FSLW04700.)

7.1.7 Sodium Borohydride ($NaBH_4$), 5 Percent (W/V). Dissolve 50.0 g of $NaBH_4$ in about 500 ml of 0.1 N NaOH in a 1-liter volumetric flask. Then, dilute to exactly 1.0 liter with 0.1 N NaOH.

7.1.8 Nickel Nitrate, 5 Percent Ni (W/V). Dissolve 24.780 g of nickel nitrate hexahydrate [$Ni(NO_3)_2$ $6H_2O$] in water in a 100-ml volumetric flask, and dilute to 100 ml with water.

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7.1.9 Nickel Nitrate, 1 Percent Ni (W/V). Pipet 20 ml of 5 percent nickel nitrate solution into a 100-ml volumetric flask, and dilute to 100 ml with water.

7.2 Analysis. The following reagents and standards are required for analysis:

7.2.1 Water. Same as in Section 7.1.1.

7.2.2 Sodium Hydroxide, 0.1 N. Dissolve 2.00 g of NaOH in water in a 500-ml volumetric flask. Dilute to volume with water.

7.2.3 Nitric Acid, 0.5 N. Same as in Section 7.1.3.

7.2.4 Potassium Chloride Solution, 10 percent. Same as in Section 7.1.5.

7.2.5 Hydrochloric Acid, Concentrated.

7.2.6 Potassium Iodide (KI), 30 Percent (W/V). Dissolve 300 g of KI in about 500 ml of water in a 1-liter volumetric flask. Then, dilute to exactly 1.0 liter with water.

7.2.7 Hydrogen Peroxide, 3 Percent by Volume. Pipet 50 ml of 30 percent $H_2O_2$ into a 500-ml volumetric flask, and dilute to exactly 500 ml with water.

7.2.8 Stock Arsenic Standard, 1 mg As/ml. Dissolve 1.3203 g of primary grade $As_2O_3$ in 20 ml of 0.1 N NaOH. Slowly add 30 ml of concentrated $HNO_3$, and heat in an oven at 105 °C (221 °F) for 2 hours. Allow to cool, and dilute to 1 liter with deionized distilled water.

7.2.9 Nitrous Oxide. Suitable quality for AAS analysis.

7.2.10 Acetylene. Suitable quality for AAS analysis.

7.2.11 Quality Assurance Audit Samples. When making compliance determinations, and upon availability, audit samples may be obtained from the appropriate EPA regional Office or from the responsible enforcement authority.

**Note:** The responsible enforcement authority should be notified at least 30 days prior to the test date to allow sufficient time for sample delivery.

*8.0 Sample Collection, Preservation, Transport, and Storage*

8.1 Sample Collection. A sample that is representative of the ore lot to be tested must be taken prior to analysis. (A portion of the samples routinely collected for metals analysis may be used provided the sample is representative of the ore being tested.)

8.2 Sample Preparation. The sample must be ground into a finely pulverized state.

*9.0 Quality Control*

| Section | Quality control measure | Effect |
|---|---|---|
| 10.2 | Spectrophotometer calibration | Ensure linearity of spectrophotometer response to standards. |
| 11.5 | Check for matrix effects | Eliminate matrix effects |
| 11.6 | Audit sample analysis | Evaluate analyst's technique and standards preparation. |

*10.0 Calibration and Standardizations*

**Note:** Maintain a laboratory log of all calibrations.

10.1 Preparation of Standard Solutions. Pipet 1, 5, 10, and 25 ml of the stock As solution into separate 100-ml volumetric flasks. Add 10 ml KCl solution and dilute to the mark with 0.5 N $HNO_3$. This will give standard concentrations of 10, 50, 100, and 250 µg As/ml. For low-level arsenic samples that require the use of a graphite furnace or vapor generator, follow the procedures in Section 11.3:1. Dilute 10 ml of KCl solution to 100 ml with 0.5 N $HNO_3$ and use as a reagent blank.

10.2 Calibration Curve. Analyze the reagent blank and each standard solution according to the procedures outlined in Section 11.3. Repeat this procedure on each standard solution until two consecutive peaks agree within 3 percent of their average value. Subtract the average peak height (or peak area) of the blank—which must be less than 2 percent of recorder full scale—from the averaged peak heights of each standard solution. If the blank absorbance is greater than 2 percent of full-scale, the probable cause is Hg contamination of a reagent or carry-over of As from a previous sample. Prepare the calibration curve by plotting the corrected peak height of each standard solution versus the corresponding final total As weight in the solution.

10.3 Spectrophotometer Calibration Quality Control. Calculate the least squares slope of the calibration curve. The line must pass through the origin or through a point no further from the origin than ±2 percent of the recorder full scale. Multiply the corrected peak height by the reciprocal of the least squares slope to determine the distance each calibration point lies from the theoretical calibration line. The difference between the calculated concentration values and the actual concentrations must be less than 7 percent for all standards.

**Note:** For instruments equipped with direct concentration readout devices, preparation of a standard curve will not be necessary. In all cases, follow calibration and operational procedures in the manufacturer's instruction manual.

*11.0 Analytical Procedure*

11.1 Sample Preparation. Weigh 50 to 500 mg of finely pulverized sample to the nearest 0.1 mg. Transfer the sample into the Teflon cup of the digestion bomb, and add 2 ml each of concentrated $HNO_3$ and HF. Seal the bomb immediately to prevent the loss of any volatile arsenic compounds that may form. Heat in an oven at 105 °C (221 °F) for 2 hours. Remove the bomb from the oven and allow to cool. Using a Teflon filter, quantitatively filter the digested sample into a 50-ml polypropylene volumetric flask. Rinse the bomb three times with small portions of 0.5 N $HNO_3$, and filter the rinses into the flask. Add 5 ml of KCl solution to the flask, and dilute to 50 ml with 0.5 N $HNO_3$.

11.2 Spectrophotometer Preparation.

11.2.1 Turn on the power; set the wavelength, slit width, and lamp current. Adjust the background corrector as instructed by the manufacturer's manual for the particular atomic absorption spectrophotometer. Adjust the burner and flame characteristics as necessary.

11.2.2 Develop a spectrophotometer calibration curve as outlined in Sections 10.2 and 10.3.

11.3 Arsenic Determination. Analyze an appropriately sized aliquot of each diluted sample (from Section 11.1) until two consecutive peak heights agree within 3 percent of their average value. If applicable, follow the procedures outlined in Section 11.3.1. If the sample concentration falls outside the range of the calibration curve, make an appropriate dilution with 0.5 N $HNO_3$ so that the final concentration falls within the range of the curve. Using the calibration curve, determine the As concentration in each sample.

**Note:** Because instruments vary between manufacturers, no detailed operating instructions will be given here. Instead, the instrument manufacturer's detailed operating instructions should be followed.

11.3.1 Arsenic Determination at Low Concentration. The lower limit of flame AAS is 10 µg As/ml. If the arsenic concentration of any sample is at a lower level, use the vapor generator or graphite furnace which is available as an accessory component. Flame, graphite furnace, or vapor generators may be used for samples whose concentrations are between 10 and 30 µg/ml. Follow the manufacturer's instructions in the use of such equipment.



11.3.1.1 Vapor Generator Procedure. Place a sample containing between 0 and 5 µg of arsenic in the reaction tube, and dilute to 15 ml with water. Since there is some trial and error involved in this procedure, it may be necessary to screen the samples by conventional AAS until an approximate concentration is determined. After determining the approximate concentration, adjust the volume of the sample accordingly. Pipet 15 ml of concentrated HCl into each tube. Add 1 ml of 30 percent KI solution. Place the reaction tube into a 50 °C (120 °F) water bath for 5 minutes. Cool to room temperature. Connect the reaction tube to the vapor generator assembly. When the instrument response has returned to baseline, inject 5.0 ml of 5 percent $NaBH_4$ and integrate the resulting spectrophotometer signal over a 30-second time period.

11.3.1.2 Graphite Furnace Procedure. Pipet 5 ml of the digested solution into a 10-ml volumetric flask. Add 1 ml of the 1 percent nickel nitrate solution, 0.5 ml of 50 percent $HNO_3$, and 1 ml of the 3 percent $H_2O_2$, and dilute to 10 ml with water. The sample is now ready to inject in the furnace for analysis.

11.4 Run a blank and standard at least after every five samples to check the spectrophotometer calibration. The peak height of the blank must pass through a point no further from the origin than ±2 percent of the recorder full scale. The difference between the measured concentration of the standard (the product of the corrected average peak height and the reciprocal of the least squares slope) and the actual concentration of the standard must be less than 7 percent, or recalibration of the analyzer is required.

11.5 Mandatory Check for Matrix Effects on the Arsenic Results. Same as Method 12, Section 11.5.

11.6 Audit Sample Analysis.

11.6.1 When the method is used to analyze samples to demonstrate compliance with a source emission regulation, a set of EPA audit samples must be analyzed, subject to availability.

11.6.2 Concurrently analyze the audit samples and the compliance samples in the same manner to evaluate the technique of the analyst and the standards preparation.

**Note:** It is recommended that known quality control samples be analyzed prior to the compliance and audit sample analyses to optimize the system accuracy and precision. These quality control samples may be obtained by contacting the appropriate EPA regional Office or the responsible enforcement authority.

11.6.3 The same analyst, analytical reagents, and analytical system shall be used for the compliance samples and the EPA audit samples. If this condition is met, duplicate auditing of subsequent compliance analyses for the same enforcement agency within a 30-day period is waived. An audit sample set may not be used to validate different sets of compliance samples under the jurisdiction of separate enforcement agencies, unless prior arrangements have been made with both enforcement agencies.

11.7 Audit Sample Results.

11.7.1 Calculate the audit sample concentrations in $g/m^3$ and submit results using the instructions provided with the audit samples.

11.7.2 Report the results of the audit samples and the compliance determination samples along with their identification numbers, and the analyst's name to the responsible enforcement authority. Include this information with reports of any subsequent compliance analyses for the same enforcement authority during the 30-day period.

11.7.3 The concentrations of the audit samples obtained by the analyst shall agree within 10 percent of the actual concentrations. If the 10 percent specification is not met, reanalyze the compliance and audit samples, and include initial and reanalysis values in the test report.

11.7.4 Failure to meet the 10 percent specification may require retests until the audit problems are resolved. However, if the audit results do not affect the compliance or noncompliance status of the affected facility, the Administrator may waive the reanalysis requirement, further audits, or retests and accept the results of the compliance test. While steps are being taken to resolve audit analysis problems, the Administrator may also choose to use the data to determine the compliance or noncompliance status of the affected facility.

*12.0 Data Analysis and Calculations*

12.1 Calculate the percent arsenic in the ore sample as follows:

$$\% As = \frac{5 C_a F_d}{W} \qquad \text{Eq. 108A-1}$$

Where:

$C_a$ = Concentration of As as read from the standard curve, µg/ml.

$F_d$ = Dilution factor (equals to 1 if the sample has not been diluted).

W = Weight of ore sample analyzed, mg.

5 = (50 ml sample " 100)/($10^3$ µg/mg).

*13.0 Method Performance*

13.1 Sensitivity. The lower limit of flame AAS is 10 µg As/ml. The analytical procedure includes provisions for the use of a graphite furnace or vapor generator for samples with a lower arsenic concentration.

*14.0 Pollution Prevention. [Reserved]*

*15.0 Waste Management. [Reserved]*

*16.0 References*

Same as References 1 through 9 of Section 17.0 of Method 5, with the addition of the following:

1. Perkin Elmer Corporation. Analytical Methods of Atomic Absorption Spectrophotometry. 303–0152. Norwalk, Connecticut. September 1976. pp 5–6.

2. Ringwald, D. Arsenic Determination on Process Materials from ASARCO's Copper Smelter in Tacoma, Washington. Unpublished Report. Prepared for Emission Measurement Branch, Emission Standards and Engineering Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina. August 1980. 35 pp.

3. Stack Sampling Safety Manual (Draft). U.S. Environmental Protection Agency, Office of Air Quality Planning and Standard, Research Triangle Park, NC. September 1978.

*17.0 Tables, Diagrams, Flowcharts, and Validation Data. [Reserved]*

**Method 108B—Determination of Arsenic Content in Ore Samples From Nonferrous Smelters**

**Note:** This method does not include all of the specifications (e.g., equipment and supplies) and procedures (e.g., sampling and analytical) essential to its performance. Some material is incorporated by reference from other methods in this appendix and in Appendix A to 40 CFR Part 60. Therefore, to

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obtain reliable results, persons using this method should have a thorough knowledge of at least the following additional test methods: Method 12 and Method 108A.

| Analyte | CAS No. | Sensitivity |
|---|---|---|
| Arsenic compounds as arsenic (As). | 7440–38–2 | Lower limit 10 µg/ml. |

1.2 Applicability. This method applies to the determination of inorganic As content of process ore and reverberatory matte samples from nonferrous smelters and other sources as specified in an applicable subpart of the regulations. Samples resulting in an analytical concentration greater than 10 µg As/ml may be analyzed by this method. For lower level arsenic samples, Method 108C should be used.

1.3 Data Quality Objectives. Adherence to the requirements of this method will enhance the quality of the data obtained from air pollutant sampling methods.

*2.0 Summary of Method*

Arsenic bound in ore samples is liberated by acid digestion and analyzed by flame atomic absorption spectrophotometry (AAS).

*3.0 Definitions [Reserved]*

*4.0 Interferences*

Analysis for As by flame AAS is sensitive to the chemical composition and to the physical properties (*e.g.*, viscosity, pH) of the sample. The analytical procedure includes a check for matrix effects (Section 11.4).

*5.0 Safety*

5.1 Disclaimer. This method may involve hazardous materials, operations, and equipment. This test method may not address all of the safety problems associated with its use. It is the responsibility of the user to establish appropriate safety and health practices and determine the applicability of regulatory limiations prior to performing this test method.

5.2 Corrosive Reagents. The following reagents are hazardous. Personal protective equipment and safe procedures that prevent chemical splashes are recommended. If contact occurs, immediately flush with copious amounts of water for at least 15 minutes. Remove clothing under shower and decontaminate. Treat residual chemical burns as thermal burns.

5.2.1 Hydrochloric acid (HCl). Highly corrosive liquid with toxic vapors. Vapors are highly irritating to eyes, skin, nose, and lungs, causing severe damage. May cause bronchitis, pneumonia, or edema of lungs. Exposure to concentrations of 0.13 to 0.2 percent can be lethal to humans in a few minutes. Provide ventilation to limit exposure. Reacts with metals, producing hydrogen gas.

5.2.2 Hydrofluoric Acid (HF). Highly corrosive to eyes, skin, nose, throat, and lungs. Reaction to exposure may be delayed by 24 hours or more. Provide ventilation to limit exposure.

5.2.3 Nitric Acid ($HNO_3$). Highly corrosive to eyes, skin, nose, and lungs. Vapors are highly toxic and can cause bronchitis, pneumonia, or edema of lungs. Reaction to inhalation may be delayed as long as 30 hours and still be fatal. Provide ventilation to limit exposure. Strong oxidizer. Hazardous reaction may occur with organic materials such as solvents.

5.2.4 Perchloric Acid ($HClO_4$). Corrosive to eyes, skin, nose, and throat. Provide ventilation to limit exposure. Very strong oxidizer. Keep separate from water and oxidizable materials to prevent vigorous evolution of heat, spontaneous combustion, or explosion. Heat solutions containing $HClO_4$ only in hoods specifically designed for $HClO_4$.

*6.0 Equipment and Supplies*

6.1 Sample Preparation. The following items are required for sample preparation:

6.1.1 Teflon Beakers. 150-ml.
6.1.2 Graduated Pipets. 5-ml disposable.
6.1.3 Graduated Cylinder. 50-ml.
6.1.4 Volumetric Flask. 100-ml.
6.1.5 Analytical Balance. To measure within 0.1 mg.
6.1.6 Hot Plate.
6.1.7 Perchloric Acid Fume Hood.

6.2 Analysis. The following items are required for analysis:

6.2.1 Spectrophotometer. Equipped with an electrodeless discharge lamp and a background corrector to measure absorbance at 193.7 nm.
6.2.2 Beaker and Watch Glass. 400-ml.
6.2.3 Volumetric Flask. 1-liter.
6.2.4 Volumetric Pipets. 1-, 5-, 10-, and 25-ml.

*7.0 Reagents and Standards*

Unless otherwise indicated, it is intended that all reagents conform to the specifications established by the Committee on Analytical Reagents of the American Chemical Society, where such specifications are available; otherwise, use the best available grade.

7.1 Sample Preparation. The following reagents are required for sample preparation:

7.1.1 Water. Deionized distilled to meet ASTM D 1193–77 or 91 Type 3 (incorporated by reference—see § 61.18).
7.1.2 Nitric Acid, Concentrated.
7.1.3 Hydrofluoric Acid, Concentrated.
7.1.4 Perchloric Acid, 70 Percent.
7.1.5 Hydrochloric Acid, Concentrated.

7.2 Analysis. The following reagents and standards are required for analysis:

7.2.1 Water. Same as in Section 7.1.1.

7.2.2 Stock Arsenic Standard, 1.0 mg As/ml. Dissolve 1.3203 g of primary grade $As_2O_3$ [dried at 105 °C (221 °F)] in a 400-ml beaker with 10 ml of $HNO_3$ and 5 ml of HCl. Cover with a watch glass, and heat gently until dissolution is complete. Add 10 ml of $HNO_3$ and 25 ml of $HClO_4$, evaporate to strong fumes of $HClO_4$, and reduce to about 20 ml volume. Cool, add 100 ml of water and 100 ml of HCl, and transfer quantitatively to a 1-liter volumetric flask. Dilute to volume with water and mix.

7.2.3 Acetylene. Suitable quality for AAS analysis.

7.2.4 Air. Suitable quality for AAS analysis.

7.2.5 Quality Assurance Audit Samples. Same as in Method 108A, Section 7.2.11.

*8.0 Sample Collection, Preservation, Transport, and Storage*

Same as in Method 108A, Sections 8.1 and 8.2.

*9.0 Quality Control*

| Section | Quality control measure | Effect |
|---|---|---|
| 10.2 | Spectrophotometer calibration | Ensure linearity of spectrophotometer response to standards. |



| Section | Quality control measure | Effect |
|---|---|---|
| 11.4 | Check for matrix effects | Eliminate matrix effects. |
| 11.5 | Audit sample analysis | Evaluate analyst's technique and standards preparation. |

*10.0 Calibration and Standardization*

**Note:** Maintain a laboratory log of all calibrations.

10.1 Preparation of Standard Solutions. Pipet 1, 5, 10, and 25 ml of the stock As solution into separate 100-ml volumetric flasks. Add 2 ml of $HClO_4$, 10 ml of HCl, and dilute to the mark with water. This will provide standard concentrations of 10, 50, 100, and 250 µg As/ml.

10.2 Calibration Curve and Spectrophotometer Calibration Quality Control. Same as Method 108A, Sections 10.2 and 10.3

*11.0 Analytical Procedure*

11.1 Sample Preparation. Weigh 100 to 1000 mg of finely pulverized sample to the nearest 0.1 mg. Transfer the sample to a 150-ml Teflon beaker. Dissolve the sample by adding 15 ml of $HNO_3$, 10 ml of HCl, 10 ml of HF, and 10 ml of $HClO_4$ in the exact order as described, and let stand for 10 minutes. In a $HClO_4$ fume hood, heat on a hot plate until 2–3 ml of $HClO_4$ remain, then cool. Add 20 ml of water and 10 ml of HCl. Cover and warm until the soluble salts are in solution. Cool, and transfer quantitatively to a 100-ml volumetric flask. Dilute to the mark with water.

11.2 Spectrophotometer Preparation. Same as in Method 108A, Section 11.2.

11.3 Arsenic Determination. If the sample concentration falls outside the range of the calibration curve, make an appropriate dilution with 2 percent $HClO_4$/10 percent HCl (prepared by diluting 2 ml concentrated $HClO_4$ and 10 ml concentrated HCl to 100 ml with water) so that the final concentration falls within the range of the curve. Using the calibration curve, determine the As concentration in each sample.

**Note:** Because instruments vary between manufacturers, no detailed operating instructions will be given here. Instead, the instrument manufacturer's detailed operating instructions should be followed.

Run a blank and standard at least after every five samples to check the spectrophotometer calibration. The peak height of the blank must pass through a point no further from the origin than ±2 percent of the recorder full scale. The difference between the measured concentration of the standard (the product of the corrected average peak height and the reciprocal of the least squares slope) and the actual concentration of the standard must be less than 7 percent, or recalibration of the analyzer is required.

11.4 Mandatory Check for Matrix Effects on the Arsenic Results. Same as Method 12, Section 11.5.

11.5 Audit Sample Analysis. Same as in Method 108A, Section 11.6.

*12.0 Data Analysis and Calculations*

Same as in Method 108A, Section 12.0.

*13.0 Method Performance*

13.1 Sensitivity. The lower limit of flame AAS is 10 µg As/ml.

*14.0 Pollution Prevention [Reserved]*

*15.0 Waste Management [Reserved]*

*16.0 References*

Same as in Method 108A, Section 16.0.

*17.0 Tables, Diagrams, Flowcharts, and Validation Data [Reserved]*

**Method 108C—Determination of Arsenic Content in Ore Samples From Nonferrous Smelters (Molybdenum Blue Photometric Procedure)**

**Note:** This method does not include all of the specifications (*e.g.*, equipment and supplies) and procedures (*e.g.*, sampling and analytical) essential to its performance. Some material is incorporated by reference from other methods in this part. Therefore, to obtain reliable results, persons using this method should have a thorough knowledge of at least Method 108A.

*1.0 Scope and Application*

1.1 Analytes.

| Analyte | CAS No. | Sensitivity |
|---|---|---|
| Arsenic compounds as arsenic (As). | 7440–38–2 | Lower limit 0.0002 percent As by weight. |

1.2 Applicability. This method applies to the determination of inorganic As content of process ore and reverberatory matte samples from nonferrous smelters and other sources as specified in an applicable subpart of the regulations.

1.3 Data Quality Objectives. Adherence to the requirements of this method will enhance the quality of the data obtained from air pollutant sampling methods.

*2.0 Summary of Method*

Arsenic bound in ore samples is liberated by acid digestion and analyzed by the molybdenum blue photometric procedure.

*3.0 Definitions. [Reserved]*

*4.0 Interferences. [Reserved]*

*5.0 Safety*

5.1 Disclaimer. This method may involve hazardous materials, operations, and equipment. This test method may not address all of the safety problems associated with its use. It is the responsibility of the user to establish appropriate safety and health practices and determine the applicability of regulatory limitations prior to performing this test method.

5.2 Corrosive Reagents. The following reagents are hazardous. Personal protective equipment and safe procedures that prevent chemical splashes are recommended. If contact occurs, immediately flush with copious amounts of water for at least 15 minutes. Remove clothing under shower and decontaminate. Treat residual chemical burns as thermal burns.

5.2.1 Hydrochloric Acid (HCl). Highly corrosive liquid with toxic vapors. Vapors are highly irritating to eyes, skin, nose, and lungs, causing severe damage. May cause bronchitis, pneumonia, or edema of lungs. Exposure to concentrations of 0.13 to 0.2 percent can be lethal to humans in a few minutes. Provide ventilation to limit exposure. Reacts with metals, producing hydrogen gas.

5.2.2 Hydrofluoric Acid (HF). Highly corrosive to eyes, skin, nose, throat, and lungs. Reaction to exposure may be delayed by 24 hours or more. Provide ventilation to limit exposure.

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5.2.3 Nitric Acid ($HNO_4$). Highly corrosive to eyes, skin, nose, and lungs. Vapors are highly toxic and can cause bronchitis, pneumonia, or edema of lungs. Reaction to inhalation may be delayed as long as 30 hours and still be fatal. Provide ventilation to limit exposure. Strong oxidizer. Hazardous reaction may occur with organic materials such as solvents.

5.2.4 Perchloric Acid ($HClO_4$). Corrosive to eyes, skin, nose, and throat. Provide ventilation to limit exposure. Very strong oxidizer. Keep separate from water and oxidizable materials to prevent vigorous evolution of heat, spontaneous combustion, or explosion. Heat solutions containing $HClO_4$ only in hoods specifically designed for $HClO_4$.

5.2.5 Sulfuric acid ($H_2SO_4$). Rapidly destructive to body tissue. Will cause third degree burns. Eye damage may result in blindness. Inhalation may be fatal from spasm of the larynx, usually within 30 minutes. May cause lung tissue damage with edema. 3 mg/m³ will cause lung damage in uninitiated. 1 mg/m³ for 8 hours will cause lung damage or, in higher concentrations, death. Provide ventilation to limit inhalation. Reacts violently with metals and organics.

*6.0 Equipment and Supplies*

6.1 Sample Preparation. The following items are required for sample preparation:

6.1.1 Analytical Balance. To measure to within 0.1 mg.

6.1.2 Erlenmeyer Flask. 300-ml.

6.1.3 Hot Plate.

6.1.4 Distillation Apparatus. No. 6, in ASTM E 50–82, 86, or 90 (Reapproved 1995)(incorporated by reference—see § 61.18); detailed in Figure 108C–1.

6.1.5 Graduated Cylinder. 50-ml.

6.1.6 Perchloric Acid Fume Hood.

6.2 Analysis. The following items are required for analysis:

6.2.1 Spectrophotometer. Capable of measuring at 660 nm.

*6.2.2 Volumetric Flasks. 50- and 100-ml.*

*7.0 Reagents and Standards*

Unless otherwise indicated, it is intended that all reagents conform to the specifications established by the Committee on Analytical Reagents of the American Chemical Society, where such specifications are available; otherwise, use the best available grade.

7.1 Sample Preparation. The following reagents are required for sample preparation:

7.1.1 Water. Deionized distilled to meet ASTM D 1193–77 or 91 Type 3 (incorporated by reference—see § 61.18). When high concentrations of organic matter are not expected to be present, the $KMnO_4$ test for oxidizable organic matter may be omitted. Use in all dilutions requiring water.

7.1.2 Nitric Acid, Concentrated.

7.1.3 Hydrofluoric Acid, Concentrated.

7.1.4 Sulfuric Acid, Concentrated.

7.1.5 Perchloric Acid, 70 Percent.

7.1.6 Hydrochloric Acid, Concentrated.

7.1.7 Dilute Hydrochloric Acid. Add one part concentrated HCl to nine parts water.

7.1.8 Hydrazine Sulfate ($(NH_2)_2 \cdot H_2SO_4$).

7.1.9 Potassium Bromide (KBr).

7.1.10 Bromine Water, Saturated.

7.2 Analysis. The following reagents and standards are required for analysis:

7.2.1 Water. Same as in Section 7.1.1.

7.2.2 Methyl Orange Solution, 1 g/liter.

7.2.3 Ammonium Molybdate Solution, 5 g/liter. Dissolve 0.5 g $(NH_4)Mo_7O_{24} \cdot 4H_2O$ in water in a 100-ml volumetric flask, and dilute to the mark. This solution must be freshly prepared.

7.2.4 Standard Arsenic Solution, 10 µg As/ml. Dissolve 0.13203 g of $As_2O_3$ in 100 ml HCl in a 1-liter volumetric flask. Add 200 ml of water, cool, dilute to the mark with water, and mix. Transfer 100 ml of this solution to a 1-liter volumetric flask, add 40 ml HCl, cool, dilute to the mark, and mix.

7.2.5 Hydrazine Sulfate Solution, 1 g/liter. Dissolve 0.1 g of $[(NH_2)_2 \cdot H_2SO_4]$ in water, and dilute to 100 ml in a volumetric flask. This solution must be freshly prepared.

7.2.6 Potassium Bromate ($KBrO_3$) Solution, 0.03 Percent Weight by Volume (W/V). Dissolve 0.3 g $KBrO_3$ in water, and dilute to 1 liter with water.

7.2.7 Ammonium Hydroxide ($NH_4OH$), Concentrated.

7.2.8 Boiling Granules.

7.2.9 Hydrochloric Acid, 50 percent by volume. Dilute equal parts concentrated HCl with water.

7.2.10 Quality Assurance Audit Samples. Same as in Method 108A, Section 7.2.11.

*8.0 Sample Collection, Preservation, Transport, and Storage*

Same as in Method 108A, Sections 8.1 and 8.2.

*9.0 Quality Control*

| Section | Quality control measure | Effect |
|---|---|---|
| 10.2 | Calibration curve preparation | Ensure linearity of spectrophotometric analysis of standards. |
| 11.3 | Audit sample analysis | Evaluate analyst's technique and standards preparation. |

*10.0 Calibration and Standardizations*

**Note:** Maintain a laboratory log of all calibrations.

10.1 Preparation of Standard Solutions. Transfer 1.0, 2.0, 4.0, 8.0, 12.0, 16.0, and 20.0 ml of standard arsenic solution (10 µg/ml) to each of seven 50-ml volumetric flasks. Dilute to 20 ml with dilute HCl. Add one drop of methyl orange solution and neutralize to the yellow color with dropwise addition of $NH_4OH$. Just bring back to the red color by dropwise addition of dilute HCl, and add 10 ml in excess. Proceed with the color development as described in Section 11.2.

10.2 Calibration Curve. Plot the spectrophotometric readings of the calibration solutions against µg As per 50 ml of solution. Use this curve to determine the As concentration of each sample.

10.3 Spectrophotometer Calibration Quality Control. Calculate the least squares slope of the calibration curve. The line must pass through the origin or through a point no further from the origin than ±2 percent of the recorder full scale. Multiply the corrected peak height by the reciprocal of the least squares slope to determine the distance each calibration point lies from the theoretical calibration line. The difference between the calculated concentration values and the actual concentrations must be less than 7 percent for all standards.

*11.0 Analytical Procedure*

11.1 Sample Preparation.

11.1.1 Weigh 1.0 g of finely pulverized sample to the nearest 0.1 mg. Transfer the sample to a 300 ml Erlenmeyer flask and add 15 ml of $HNO_3$, 4 ml HCl, 2 ml HF, 3 ml $HClO_4$, and 15 ml $H_2SO_4$, in the order listed. In a $HClO_4$ fume hood, heat on a hot plate to decompose the sample. Then heat while swirling over an open flame until dense white fumes evolve. Cool, add 15 ml of water, swirl to hydrate the $H_2SO_4$ completely, and add several boiling granules. Cool to room temperature.



11.1.2 Add 1 g of KBr, 1 g hydrazine sulfate, and 50 ml HCl. Immediately attach the distillation head with thermometer and dip the side arm into a 50-ml graduated cylinder containing 25 ml of water and 2 ml of bromine water. Keep the graduated cylinder immersed in a beaker of cold water during distillation. Distill until the temperature of the vapor in the flask reaches 107 °C (225 °F). When distillation is complete, remove the flask from the hot plate, and simultaneously wash down the side arm with water as it is removed from the cylinder.

11.1.3 If the expected arsenic content is in the range of 0.0020 to 0.10 percent, dilute the distillate to the 50-ml mark of the cylinder with water, stopper, and mix. Transfer a 5.0-ml aliquot to a 50-ml volumetric flask. Add 10 ml of water and a boiling granule. Place the flask on a hot plate, and heat gently until the bromine is expelled and the color of methyl orange indicator persists upon the addition of 1 to 2 drops. Cool the flask to room temperature. Neutralize just to the yellow color of the indicator with dropwise additions of $NH_4OH$. Bring back to the red color by dropwise addition of dilute HCl, and add 10 ml excess. Proceed with the molybdenum blue color development as described in Section 11.2.

11.1.4 If the expected arsenic content is in the range of 0.0002 to 0.0010 percent As, transfer either the entire initial distillate or the measured remaining distillate from Section 11.1.2 to a 250-ml beaker. Wash the cylinder with two successive portions of concentrated $HNO_3$, adding each portion to the distillate in the beaker. Add 4 ml of concentrated $HClO_4$, a boiling granule, and cover with a flat watch glass placed slightly to one side. Boil gently on a hot plate until the volume is reduced to approximately 10 ml. Add 3 ml of $HNO_3$, and continue the evaporation until $HClO_4$ is refluxing on the beaker cover. Cool briefly, rinse the underside of the watch glass and the inside of the beaker with about 3–5 ml of water, cover, and continue the evaporation to expel all but 2 ml of the $HClO_4$.

**Note:** If the solution appears cloudy due to a small amount of antimony distilling over, add 4 ml of 50 percent HCl and 5 ml of water, cover, and warm gently until clear. If cloudiness persists, add 5 ml of $HNO_3$ and 2 ml $H_2SO_4$. Continue the evaporation of volatile acids to solubilize the antimony until dense white fumes of $H_2SO_4$ appear. Retain at least 1 ml of the $H_2SO_4$.

11.1.5 To the 2 ml of $HClO_4$ solution or 1 ml of $H_2SO_4$ solution, add 15 ml of water, boil gently for 2 minutes, and then cool. Proceed with the molybdenum blue color development by neutralizing the solution directly in the beaker just to the yellow indicator color by dropwise addition of $NH_4OH$. Obtain the red color by dropwise addition of dilute HCl. Transfer the solution to a 50-ml volumetric flask. Rinse the beaker successively with 10 ml of dilute HCl, followed by several small portions of water. At this point the volume of solution in the flask should be no more than 40 ml. Continue with the color development as described in Section 11.2.

11.2 Analysis.

11.2.1 Add 1 ml of $KBrO_3$ solution to the flask and heat on a low-temperature hot plate to about 50 °C (122 °F) to oxidize the arsenic and methyl orange. Add 5.0 ml of ammonium molybdate solution to the warm solution and mix. Add 2.0 ml of hydrazine sulfate solution, dilute until the solution comes within the neck of the flask, and mix. Place the flask in a 400 ml beaker, 80 percent full of boiling water, for 10 minutes. Enough heat must be supplied to prevent the water bath from cooling much below the boiling point upon inserting the volumetric flask. Remove the flask, cool to room temperature, dilute to the mark, and mix.

11.2.2 Transfer a suitable portion of the reference solution to an absorption cell, and adjust the spectrophotometer to the initial setting using a light band centered at 660 nm. While maintaining this spectrophotometer adjustment, take the readings of the calibration solutions followed by the samples.

11.3 Audit Sample Analysis. Same as in Method 108A, Section 11.6.

*12.0 Data Analysis and Calculations*

Same as in Method 108A, Section 12.0.

*13.0 Method Performance. [Reserved]*

*14.0 Pollution Prevention. [Reserved]*

*15.0 Waste Management. [Reserved]*

*16.0 References*

1. Ringwald, D. Arsenic Determination on Process Materials from ASARCO's Copper Smelter in Tacoma, Washington. Unpublished Report. Prepared for the Emission Measurement Branch, Technical Support Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina. August 1980. 35 pp.

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*17.0 Tables, Diagrams, Flowcharts, and Validation Data*

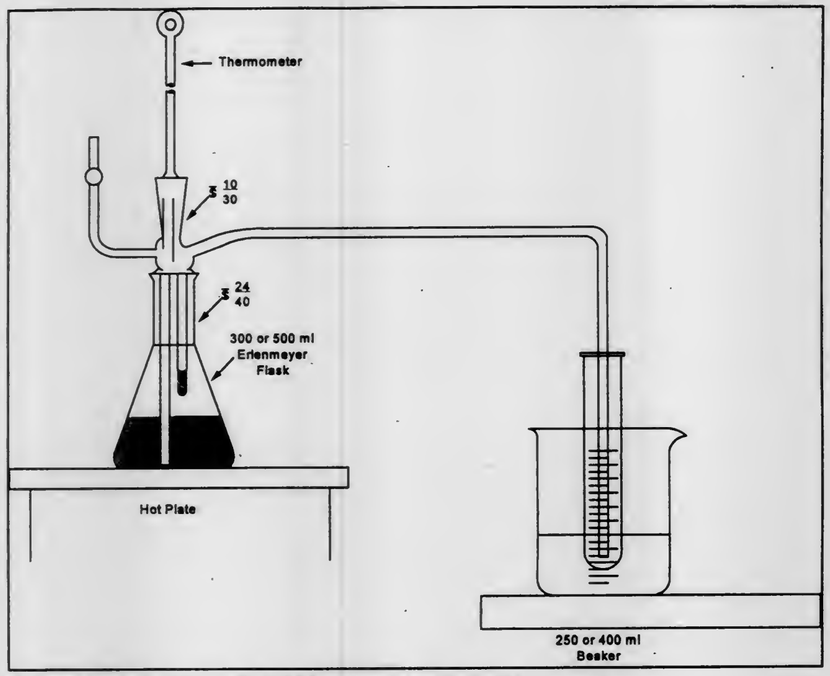



**Figure 108C-1. Distillation Apparatus.**

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## Method 111—Determination of Polonium–210 Emissions From Stationary Sources

**NOTE:** This method does not include all of the specifications (*e.g.*, equipment and supplies) and procedures (*e.g.*, sampling and analytical) essential to its performance. Some material is incorporated by reference from methods in appendix A to 40 CFR Part 60. Therefore, to obtain reliable results, persons using this method should have a thorough knowledge of at least the following additional test methods: Method 1, Method 2, Method 3, and Method 5.

*1.0 Scope and Application*

1.1 Analytes.

| Analyte | CAS No. | Sensitivity |
|---|---|---|
| Polonium | 7440–08–6 | Not specified. |

1.2 Applicability. This method is applicable for the determination of the polonium-210 content of particulate matter samples collected from stationary source exhaust stacks, and for the use of these data to calculate polonium-210 emissions from individual sources and from all affected sources at a facility.

1.3 Data Quality Objectives. Adherence to the requirements of this method will enhance the quality of the data obtained from air pollutant sampling methods.

*2.0 Summary of Method*

A particulate matter sample, collected according to Method 5, is analyzed for polonium-210 content: the polonium-210 in the sample is put in solution, deposited on a metal disc, and the radioactive disintegration rate measured. Polonium in acid solution spontaneously deposits on surfaces of metals that are more electropositive than polonium. This principle is routinely used in the radiochemical analysis of polonium-210. Data reduction procedures are provided, allowing the calculation of polonium-210 emissions from individual sources and from all affected sources at a facility, using data obtained from Methods 2 and 5 and from the analytical procedures herein.

*3.0 Definitions [Reserved]*

*4.0 Interferences [Reserved]*

*5.0 Safety*

5.1 Disclaimer. This method may involve hazardous materials, operations, and equipment. This test method may not address all of the safety problems associated with its use. It is the responsibility of the user of this test method to establish appropriate safety and health practices and determine the applicability of regulatory limitations prior to performing this test method.

5.2 Corrosive Reagents. The following reagents are hazardous. Personal protective equipment and safe procedures are useful in preventing chemical splashes. If contact occurs, immediately flush with copious amounts of water at least 15 minutes. Remove clothing under shower and decontaminate. Treat residual chemical burns as thermal burns.

5.2.1 Hydrochloric Acid (HCl). Highly corrosive liquid with toxic vapors. Vapors are highly irritating to eyes, skin, nose, and lungs, causing severe damage. May cause bronchitis, pneumonia, or edema of lungs. Exposure to concentrations of 0.13 to 0.2 percent can be lethal to humans in a few minutes. Provide ventilation to limit exposure. Reacts with metals, producing hydrogen gas.

5.2.2 Hydrofluoric Acid (HF). Highly corrosive to eyes, skin, nose, throat, and lungs. Reaction to exposure may be delayed by 24 hours or more. Provide ventilation to limit exposure.

5.2.3 Nitric Acid ($HNO_3$). Highly corrosive to eyes, skin, nose, and lungs. Vapors cause bronchitis, pneumonia, or edema of lungs. Reaction to inhalation may be delayed as long as 30 hours and still be fatal. Provide ventilation to limit exposure. Strong oxidizer. Hazardous reaction may occur with organic materials such as solvents.

5.2.4 Perchloric Acid ($HClO_4$). Corrosive to eyes, skin, nose, and throat. Provide ventilation to limit exposure. Keep separate from water and oxidizable materials to prevent vigorous evolution of heat, spontaneous combustion, or explosion. Heat solutions containing $HClO_4$ only in hoods specifically designed for $HClO_4$.

*6.0 Equipment and Supplies*

6.1 Alpha Spectrometry System. Consisting of a multichannel analyzer, biasing electronics, silicon surface barrier detector, vacuum pump and chamber.

6.2 Constant Temperature Bath at 85 °C (185 °F).

6.3 Polished Silver Discs. 3.8 cm diameter, 0.4 mm thick with a small hole near the edge.

6.4 Glass Beakers. 400 ml, 150 ml.

6.5 Hot Plate, Electric.

6.6 Fume Hood.

6.7 Teflon Beakers, 150 ml.

6.8 Magnetic Stirrer.

6.9 Stirring Bar.

6.10 Hooks. Plastic or glass, to suspend plating discs.

6.11 Internal Proportional Counter. For measuring alpha particles.

6.12 Nucleopore Filter Membranes. 25 mm diameter, 0.2 micrometer pore size or equivalent.

6.13 Planchets. Stainless steel, 32 mm diameter with 1.5 mm lip.

6.14 Transparent Plastic Tape. 2.5 cm wide with adhesive on both sides.

6.15 Epoxy Spray Enamel.

6.16 Suction Filter Apparatus. For 25 mm diameter filter.

6.17 Wash Bottles, 250 ml capacity.

6.18 Graduated Cylinder, plastic, 25 ml capacity.

6.19 Volumetric Flasks, 100 ml, 250 ml.

*7.0 Reagents and Standards*

Unless otherwise indicated, it is intended that all reagents conform to the specifications established by the Committee on Analytical Reagents of the American Chemical Society, where such specifications are available; otherwise, use the best available grade.

7.1 Ascorbic Acid.

7.2 Ammonium Hydroxide ($NH_4OH$), 15 M.

7.3 Water. Deionized distilled, to conform to ASTM D 1193–77 or 91 (incorporated by reference—see § 61.18), Type 3. Use in all dilutions requiring water.

7.4 Ethanol ($C_2H_5OH$), 95 percent.

7.5 Hydrochloric Acid, 12 M.

7.6 Hydrochloric Acid, 1 M. Dilute 83 ml of the 12 M HCl to 1 liter with distilled water.

7.7 Hydrofluoric Acid, 29 M.

7.8 Hydrofluoric Acid, 3 M. Dilute 52 ml of the 29 M HF to 500 ml with distilled water. Use a plastic graduated cylinder and storage bottle.

7.9 Lanthanum Carrier, 0.1 mg $La^{+3}$/ml. Dissolve 0.078 gram lanthanum nitrate, $La(NO_3)_3 \cdot 6H_2O$ in 250 ml of 1 M HCl.

7.10 Nitric Acid, 16 M.

7.11 Perchloric Acid, 12 M.

7.12 Polonium-209 Solution.

7.13 Silver Cleaner. Any mild abrasive commercial silver cleaner.

7.14 Degreaser.

7.15 Standard Solution. Standardized solution of an alpha-emitting actinide element, such as plutonium-239 or americium-241.

*8.0 Sample Collection, Preservation, Transport, and Storage. [Reserved]*

*9.0 Quality Control*

9.1 General Requirement.

9.1.1 All analysts using this method are required to demonstrate their ability to use the method and to define their respective accuracy and precision criteria.

9.2 Miscellaneous Quality Control Measures.

| Section | Quality control measure | Effect |
|---|---|---|
| 10.1 | Standardization of alpha spectrometry system | Ensure precision of sample analyses. |
| 10.3 | Standardization of internal proportional counter. | Ensure precise sizing of sample aliquot. |
| 11.1, 11.2 | Determination of procedure background and instrument background. | Minimize background effects. |
| 11.3 | Audit sample analysis | Evaluate analyst's technique. |

*10.0 Calibration and Standardization*

10.1 Standardization of Alpha Spectrometry System.

10.1.1 Add a quantity of the actinide standard solution to a 100 ml volumetric flask so that the final concentration when diluted to a volume of 100 ml will be approximately 1 pCi/ml.

10.1.2 Add 10 ml of 16 M $HNO_3$ and dilute to 100 ml with water.

10.1.3 Add 20 ml of 1 M HCl to each of six 150 ml beakers. Add 1.0 ml of lanthanum carrier, 0.1 mg lanthanum per ml, to the acid solution in each beaker.

10.1.4 Add 1.0 ml of the 1 pCi/ml working solution (from Section 10.1.1)

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to each beaker. Add 5.0 ml of 3 M HF to each beaker.

10.1.5 Cover beakers and allow solutions to stand for a minimum of 30 minutes. Filter the contents of each beaker through a separate filter membrane using the suction filter apparatus. After each filtration, wash the filter membrane with 10 ml of distilled water and 5 ml of ethanol, and allow the filter membrane to air dry on the filter apparatus.

10.1.6 Carefully remove the filter membrane and mount it, filtration side up, with double-side tape on the inner surface of a planchet. Place planchet in an alpha spectrometry system and count each planchet for 1000 minutes.

10.1.7 Calculate the counting efficiency of the detector for each aliquot of the 1 pCi/ml actinide working solution using Eq. 111–1 in Section 12.2.

10.1.8 Determine the average counting efficiency of the detector, $E_c$, by calculating the average of the six determinations.

10.2 Preparation of Standardized Solution of Polonium-209.

10.2.1 Add a quantity of the Po-209 solution to a 100 ml volumetric flask so that the final concentration when diluted to a 100 ml volume will be approximately 1 pCi/ml.

10.2.2 Follow the procedures outlined in Sections 10.1.2 through 10.1.6, except substitute 1.0 ml of polonium-209 tracer solution (Section 10.2.1) and 3.0 ml of 15 M ammonium hydroxide for the 1 pCi/ml actinide working solution and the 3 M HF, respectively.

10.2.3 Calculate the activity of each aliquot of the polonium-209 tracer solution using Eq. 111–2 in Section 12.3.

10.2.4 Determine the average activity of the polonium-209 tracer solution, F, by averaging the results of the six determinations.

10.3 Standardization of Internal Proportional Counter

10.3.1 Add a quantity of the actinide standard solution to a 100 ml volumetric flask so that the final concentration when diluted to a 100 ml volume will be approximately 100 pCi/ml.

10.3.2 Follow the procedures outlined in Sections 10.1.2 through 10.1.6, except substitute the 100 pCi/ml actinide working solution for the 1 pCi/ml solution, place the planchet in an internal proportional counter (instead of an alpha spectrometry system), and count for 100 minutes (instead of 1000 minutes).

10.3.3 Calculate the counting efficiency of the internal proportional counter for each aliquot of the 100 pCi/ml actinide working solution using Eq. 111–3 in 12.4.

10.3.4 Determine the average counting efficiency of the internal proportional counter, $E_I$, by averaging the results of the six determinations.

*11.0 Analytical Procedure*

**Note:** Perform duplicate analyses of all samples, including background counts, quality assurance audit samples, and Method 5 samples. Duplicate measurements are considered acceptable when the difference between them is less than two standard deviations as described in EPA 600/4–77–001 or subsequent revisions.

11.1 Determination of Procedure Background. Background counts used in all equations are determined by performing the specific analysis required using the analytical reagents only. All procedure background counts and sample counts for the internal proportional counter should utilize a counting time of 100 minutes; for the alpha spectrometry system, 1000 minutes. These background counts should be performed no less frequently than once per 10 sample analyses.

11.2 Determination of Instrument Background. Instrument backgrounds of the internal proportional counter and the alpha spectrometry system should be determined on a weekly basis. Instrument background should not exceed procedure background. If this occurs, it may be due to a malfunction or contamination, and should be corrected before use.

11.3 Quality Assurance Audit Samples. An externally prepared performance evaluation sample shall be analyzed no less frequently than once per 10 sample analyses, and the results reported with the test results.

11.4 Sample Preparation. Treat the Method 5 samples [*i.e.*, the glass fiber filter (Container No. 1) and the acetone rinse (Container No. 2)] as follows:

11.4.1 Container No. 1. Transfer the filter and any loose particulate matter from the sample container to a 150-ml Teflon beaker.

11.4.2 Container No. 2. Note the level of liquid in the container, and confirm on the analysis sheet whether leakage occurred during transport. If a noticeable amount of leakage has occurred, either void the sample or use methods, subject to the approval of the Administrator, to correct the final results. Transfer the contents to a 400-ml glass beaker. Add polonium-209 tracer solution to the glass beaker in an amount approximately equal to the amount of polonium-210 expected in the total particulate sample. Record the activity of the tracer solution added. Add 16 M nitric acid to the beaker to digest and loosen the residue.

11.4.3 Transfer the contents of the glass beaker to the Teflon beaker containing the glass fiber filter. Rinse the glass beaker with 16 M $HNO_3$. If necessary, reduce the volume in the beaker by evaporation until all of the nitric acid $HNO_3$ from the glass beaker has been transferred to the Teflon beaker.

11.4.4 Add 30 ml of 29 M HF to the Teflon beaker and evaporate to near dryness on a hot plate in a properly operating hood.

**Note:** Do not allow the residue to go to dryness and overheat; this will result in loss of polonium.

11.4.5 Repeat step 11.4.4 until the filter is dissolved.

11.4.6 Add 100 ml of 16 M $HNO_3$ to the residue in the Teflon beaker and evaporate to near dryness.

**Note:** Do not allow the residue to go to dryness.

11.4.7 Add 50 ml of 16 M $HNO_3$ and 10 ml of 12 M perchloric acid to the Teflon beaker and heat until dense fumes of perchloric acid are evolved.

11.4.8 Repeat steps 11.4.4 to 11.4.7 as necessary until sample is completely dissolved.

11.4.9 Add 10 ml of 12 M HCl to the Teflon beaker and evaporate to dryness. Repeat additions and evaporations several times.

11.4.10 Transfer the sample to a 250-ml volumetric flask and dilute to volume with 3 M HCl.

11.5 Sample Screening. To avoid contamination of the alpha spectrometry system, check each sample as follows:

11.5.1 Add 20 ml of 1 M HCl, 1 ml of the lanthanum carrier solution (0.1 mg La/ml), a 1 ml aliquot of the sample solution from Section 11.4.10, and 3 ml of 15 M ammonium hydroxide to a 250-ml beaker in the order listed. Allow this solution to stand for a minimum of 30 minutes.

11.5.2 Filter the solution through a filter membrane using the suction filter apparatus. Wash the filter membrane with 10 ml of water and 5 ml of ethanol, and allow the filter membrane to air dry on the filter apparatus.

11.5.3 Carefully remove the filter membrane and mount it, filtration side up, with double-side tape on the inner surface of a planchet. Place the planchet in an internal proportional counter, and count for 100 minutes.

11.5.4 Calculate the activity of the sample using Eq. 111–4 in Section 12.5.

11.5.5 Determine the aliquot volume of the sample solution from Section 11.4.10 to be analyzed for polonium-210, such that the aliquot contains an activity between 1 and 4 picocuries. Use Eq. 111–5 in Section 12.6.



11.6 Preparation of Silver Disc for Spontaneous Electrodeposition.

11.6.1 Clean both sides of the polished silver disc with silver cleaner and with degreaser.

11.6.2 Place disc on absorbent paper and spray one side with epoxy spray enamel. This should be carried out in a well-ventilated area, with the disc lying flat to keep paint on one side only. Allow paint to dry for 24 hours before using disc for deposition.

11.7 Sample Analysis.

11.7.1 Add the aliquot of sample solution from Section 11.4.10 to be analyzed for polonium-210, the volume of which was determined in Section 11.5.5, to a suitable 200-ml container to be placed in a constant temperature bath.

**Note:** Aliquot volume may require a larger container.

11.7.2 If necessary, bring the volume to 100 ml with 1 M HCl. If the aliquot volume exceeds 100 ml, use total aliquot.

11.7.3 Add 200 mg of ascorbic acid and heat solution to 85 °C (185 °F) in a constant temperature bath.

11.7.4 Suspend a silver disc in the heated solution using a glass or plastic rod with a hook inserted through the hole in the disc. The disc should be totally immersed in the solution, and the solution must be stirred constantly, at all times during the plating operation. Maintain the disc in solution for 3 hours.

11.7.5 Remove the silver disc, rinse with deionized distilled water, and allow to air dry at room temperature.

11.7.6 Place the disc, with deposition side (unpainted side) up, on a planchet and secure with double-side plastic tape. Place the planchet with disc in alpha spectrometry system and count for 1000 minutes.

*12.0 Data Analysis and Calculations.*

12.1 Nomenclature.

A = Picocuries of polonium-210 in the Method 5 sample (from Section 12.8).

$A_A$ = Picocuries of actinide added.

$A_L$ = Volume of sample aliquot used, in ml (specified in Section 11.5.1 as 1 ml).

$A_S$ = Aliquot to be analyzed, in ml.

$B_B$ = Procedure background counts measured in polonium-209 spectral region.

$B_T$ = Polonium-209 tracer counts in sample.

$C_T$ = Total counts in polonium-210 spectral region.

D = Decay correction for time "t" (in days) from sample collection to sample counting, given by: $D=e^{-0.005t}$

$E_C$ = Average counting efficiency of detector (from Section 10.1.8), as counts per disintegration.

$E_{Ci}$ = Counting efficiency of the detector for aliquot i of the actinide working solution, counts per disintegration.

$E_I$ = Average counting efficiency of the internal proportional counter, as determined in Section 10.3.4, counts per disintegration.

$E_{Ii}$ = Counting efficiency of the internal proportional counter for aliquot i of the 100 pCi/ml actinide working solution, counts per disintegration.

$$E_{Ci} = \frac{C_S - C_B}{2.22\ A_A T} \qquad \text{Eq. 111-1}$$

Where:

$C_B$ = Background counts in same peak area as $C_S$.

$C_S$ = Gross counts in actinide peak.

T = Counting time in minutes, specified in Section 10.1.6 as 1000 minutes.

$$F_i = \frac{C_S - C_B}{2.22\ E_{Ci} T} \qquad \text{Eq. 111-2}$$

Where:

$C_B$ = Background counts in the 4.88 MeV region of spectrum the in the counting time T.

$C_S$ = Gross counts of polonium-209 in the 4:88 MeV region of the spectrum in the counting time T.

T = Counting time, specified in Section 10.1:6 as 1000 minutes.

$E_Y$ = The fraction of polonium-209 recovered on the planchet (from Section 12.7).

F= Average activity of polonium-209 in sample (from Section 10.2.4), in pCi.

$F_i$ = activity of aliquot i of the polonium-209 tracer solution, in pCi.

L = Dilution factor (unitless). This is the volume of sample solution prepared (specified as 250 ml in Section 11.1.10) divided by the volume of the aliquot of sample solution analyzed for polonium-210 (from Section 11.7.1).

$M_i$ = Phosphorous rock processing rate of the source being tested, during run i, Mg/hr.

$M_k$ = Phosphate rock processed annually by source k, in Mg/yr.

n = Number of calciners at the elemental phosphorus plant.

P = Total activity of sample solution from Section 11.4.10, in pCi (see Eq. 111–4).

$Q_{sd}$ = Volumetric flow rate of effluent stream, as determined by Method 2, in dscm/hr.

S = Annual polonium-210 emissions from the entire facility, in curies/yr.

$V_{m(std)}$ = Volume of air sample, as determined by Method 5, in dscm.

$X_k$ = Emission rate from source k, from Section 12.10, in curies/Mg.

$10^{-12}$ = Curies per picocurie.

2.22 = Disintegrations per minute per picocurie.

250 = Volume of solution from Section 11.4.10, in ml.

12.2 Counting Efficiency. Calculate the counting efficiency of the detector for each aliquot of the 1 pCi/ml actinide working solution using Eq. 111–1.

12.3 Polonium-209 Tracer Solution Activity. Calculate the activity of each aliquot of the polonium-209 tracer solution using Eq. 111–2.

12.4 Control Efficiency of Internal Proportional Counter. Calculate the counting efficiency of the internal proportional counter for each aliquot of the 100 pCi/ml actinide working solution using Eq. 111–3.

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$$E_{1i} = \frac{C_S - C_B}{2.22\ A_A T} \qquad \text{Eq. 111-3}$$

Where:

$C_B$ = Gross counts of procedure background.

$C_S$ = Gross counts of standard.

T = Counting time in minutes, specified in Section 10.3.2 as 100 minutes.

12.5 Calculate the activity of the sample using Eq. 111–4.

$$P = \frac{250\ (C_S - C_B)}{2.22\ \overline{E_i} A_L T} \qquad \text{Eq. 111-4}$$

Where:

$C_B$ = Total counts of procedure background. (See Section 11.1).

$C_S$ = Total counts of screening sample.

T = Counting time for sample and background (which must be equal), in minutes (specified in Section 11.5.3 as 100 minutes).

12.6 Aliquot Volume. Determine the aliquot volume of the sample solution from Section 11.4.10 to be analyzed for polonium-210 , such that the aliquot contains an activity between 1 and 4 picocuries using Eq. 111–5.

$$A_s = \frac{250\ \text{(desired picocuries in aliquot)}}{P} \qquad \text{Eq. 111-5}$$

12.7 Polonium-209 Recovery. Calculate the fraction of polonium-209 recovered on the planchet, $E_Y$, using Eq. 111–6.

$$E_Y = \frac{B_T - B_B}{2.22\ \overline{F}\ \overline{E_C}\ T} \qquad \text{Eq. 111-6}$$

Where:

T = Counting time, specified in Section 11.1 as 1000 minutes.

12.8 Polonium-210 Activity. Calculate the activity of polonium-210 in the Method 5 sample (including glass fiber filter and acetone rinse) using Eq. 111–7.

$$A = \frac{(C_T - C_B)\ L}{2.22\ E_y\ \overline{E_C}\ T\ D} \qquad \text{Eq. 111-7}$$

Where:

$C_B$ = Procedure background counts in polonium-210 spectral region.

T = Counting time, specified in Section 11.1 as 1000 minutes for all alpha spectrometry sample and background counts.

12.9 Emission Rate from Each Stack.

12.9.1 For each test run, i, on a stack, calculate the measured polonium-210 emission rate, $R_{Si}$, using Eq. 111–8.

$$R_{Si} = \frac{(10^{-12})\ A\ Q_{sd}}{V_{m(std)} M_i} \qquad \text{Eq. 111-8}$$

12.9.2 Determine the average polonium-210 emission rate from the stack, $R_S$, by taking the sum of the measured emission rates for all runs, and dividing by the number of runs performed.

12.9.3 Repeat steps 12.9.1 and 12.9.2 for each stack of each calciner.

12.10 Emission Rate from Each Source. Determine the total polonium-210 emission rate, $X_k$, from each source, k, by taking the sum of the average emission rates from all stacks to which the source exhausts.

12.11 Annual Polonium-210 Emission Rate from Entire Facility. Determine the annual elemental phosphorus plant emissions of polonium-210, S, using Eq. 111–9.

$$S = \frac{\sum_{k=1}^{n} (X_k M_k)}{n} \qquad \text{Eq. 111-9}$$



*13.0 Method Performance. [Reserved]*

*14.0 Pollution Prevention. [Reserved]*

*15.0 Waste Management. [Reserved]*

*16.0 References*

1. Blanchard, R.L. "Rapid Determination of Lead-210 and Polonium-210 in Environmental Samples by Deposition on Nickel." Anal. Chem., *38*:189, pp. 189–192. February 1966.

*17.0 Tables, Diagrams, Flowcharts, and Validation Data [Reserved]*

* * * * *

## PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

1. The authority citation for Part 63 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

### § 63.7 [Amended]

2. Amend § 63.7 by revising paragraph (c)(4)(i) as follows:

**§ 63.7 Performance testing requirements.**

* * * * *

(c) * * *

(4)(i) Performance test method audit program. The owner or operator shall analyze performance audit (PA) samples during each performance test. The owner or operator shall request performance audit materials 45 days prior to the test date. Cylinder audit gases, if available, must be obtained from the appropriate EPA Regional Office or from the responsible enforcement authority and analyzed in conjunction with the field samples.

* * * * *

### § 63.11 [Amended]

3. Amend § 63.11 as follows:

a. The definition of "$C_i$" in paragraph (b)(6)(ii) is amended by revising "D1946–77" to read "D1946–77 or 90 (Reapproved 1994)."

b. The definition of "$H_i$" in paragraph (b)(6)(ii) is amended by revising "D2382–76" to read "D2382–76 or 88 or D4809–95."

### § 63.14 [Amended]

4. In § 63.14, by revising paragraph (b) to read as follows:

**§ 63.14 Incorporation by reference.**

* * * * *

(b) The following materials are available for purchase from at least one of the following addresses: American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, PA 19103; or University Microfilms International, 300 North Zeeb Road, Ann Arbor, MI 48106.

(1) ASTM D523–89, Standard Test Method for Specular Gloss, IBR approved for § 63.782.

(2) ASTM D1193–77, 91, Standard Specification for Reagent Water, IBR approved for Appendix A: Method 306, Sections 7.1.1 and 7.4.2.

(3) ASTM D1331–89, Standard Test Methods for Surface and Interfacial Tension of Solutions of Surface Active Agents, IBR approved for Appendix A: Method 306B, Sections 6.2, 11.1, and 12.2.2.

(4) ASTM D1475–90, Standard Test Method for Density of Paint, Varnish Lacquer, and Related Products, IBR approved for § 63.788, Appendix A.

(5) ASTM D1946–77, 90, 94, Standard Method for Analysis of Reformed Gas by Gas Chromatography, IBR approved for § 63.11(b)(6).

(6) ASTM D2369–93, 95, Standard Test Method for Volatile Content of Coatings, IBR approved for § 63.788, Appendix A.

(7) ASTM D2382–76, 88, Heat of Combustion of Hydrocarbon Fuels by Bomb Calorimeter (High-Precision Method), IBR approved for § 63.11(b)(6).

(8) ASTM D2879–83, 96, Test Method for Vapor Pressure-Temperature Relationship and Initial Decomposition Temperature of Liquids by Isoteniscope, IBR approved for § 63.111 of Subpart G.

(9) ASTM D3257–93, Standard Test Methods for Aromatics in Mineral Spirits by Gas Chromatography, IBR approved for § 63.786(b).

(10) ASTM 3695–88, Standard Test Method for Volatile Alcohols in Water by Direct Aqueous-Injection Gas Chromatography, IBR approved for § 63.365(e)(1) of Subpart O.

(11) ASTM D3792–91, Standard Method for Water Content of Water-Reducible Paints by Direct Injection into a Gas Chromatograph, IBR approved for § 63.788, Appendix A.

(12) ASTM D3912–80, Standard Test Method for Chemical Resistance of Coatings Used in Light-Water Nuclear Power Plants, IBR approved for § 63.782.

(13) ASTM D4017–90, 96a, Standard Test Method for Water in Paints and Paint Materials by the Karl Fischer Titration Method, IBR approved for § 63.788, Appendix A.

(14) ASTM D4082–89, Standard Test Method for Effects of Gamma Radiation on Coatings for Use in Light-Water Nuclear Power Plants, IBR approved for § 63.782.

(15) ASTM D4256–89, 94, Standard Test Method for Determination of the Decontaminability of Coatings Used in Light-Water Nuclear Power Plants, IBR approved for § 63.782.

(16) ASTM D4809–95, Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter (Precision Method), IBR approved for § 63.11(b)(6).

(17) ASTM E180–93, Standard Practice for Determining the Precision of ASTM Methods for Analysis and Testing of Industrial Chemicals, IBR approved for § 63.786(b).

(18) ASTM E260–91, 96, General Practice for Packed Column Gas Chromatography, IBR approved for §§ 63.750(b)(2) and 63.786(b)(5).

### § 63.111 [Amended]

5. In § 63.111, paragraph (3) of the definition of the term "Maximum true vapor pressure" is amended by revising "D2879–83" to read "D2879–83 or 96."

### § 63.301 [Amended]

6. Amend § 63.301 as follows:

a. The definition of the term "Foundry coke producer" is amended by revising the words "1.25 million megagrams per year" to read "1.25 million megagrams per year (1.38 million tons per year)."

b. The definitions of the terms "Short coke oven battery" and "Tall coke oven battery" are amended by revising the words "6 meters" to read "6 meters (20 feet)" wherever they occur.

### § 63.304 [Amended]

7. In § 63.304, paragraph (b)(6)(iii) is amended by revising the words "2.7 million Mg/yr" to read "2.7 million Mg/yr (3.0 million ton/yr)."

### § 63.750 [Amended]

8. In § 63.750, paragraph (b)(2) is amended by revising "ASTM E 260–91 (incorporated by reference as specified in § 63.14 of subpart A of this part)" to read "ASTM E 260–91 or 96 (incorporated by reference—see § 63.14 of Subpart A of this part)."

### § 63.782 [Amended]

9. Amend § 63.782 as follows:

a. The definition for "*High-gloss specialty coating*" is amended by revising "ASTM Method D523," to read "ASTM D523–89."

b. The definition for Nuclear specialty coating is amended by revising "ASTM D4256–89," to read "ASTM D4256–89 or 94."

### § 63.786 [Amended]

10. In § 63.786, paragraph (b)(5) is amended by revising "ASTM Method E260–91" to read "ASTM E260–91 or 96."

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**§ 63.788 [Amended]**

11. In § 63.788, the Appendix A to Subpart II of Part 63–VOC Data Sheet is amended by revising "ASTM Method D2369-93," and "ASTM D4017–90" to read "ASTM D2369–93 or 95" and "ASTM D4017–81, 90, or 96a" respectively.

**Appendix A—[Amended]**

12. Amend Method 310B in Appendix A as follows:

a. Section 1.0 is amended by revising "ethylidene norbornene (ENB)" to read "Applicable Termonomer."

b. Section 1.0 is amended by deleting "16219–75–3."

c. In Section 5.0, correcting the section numbering from "5.1, 5.2, 5.3, 5.3, 5.4, 5.5, 5.6, and 5.7" to "5.1, 5.2, 5.3, 5.4, 5.5, 5.6, 5.7, and 5.8."

d. Sections 5.3, 7.1, 7.2, 7.3, 7.5.6, 7.6, 7.6.1, 9.2, 10.1, 10.2.2, 10.2.5, 10.2.8, 12.3, and 12.6 are amended by revising "ENB" to read "termonomer" wherever it appears.

e. Sections 6.11, 7.5.1, 9.3.3, 11.1.2, and 12.5 are revised.

f. The first sentence in Section 7.1 is amended by revising to read "Reagent toluene, EM Science Omnisolv (or equivalent)."

g. Section 7.2 is amended by revising the first sentence to read "Reagent acetone, EM Science Omnisolv HR-GC (or equivalent)."

h. Section 7.3 is amended by revising the first sentence to read "Reagent heptane, Aldrich Chemical Gold Label, Cat #15,487–3 (or equivalent)."

i. Section 7.4.5 is amended by revising "Section 5.4.4" to read "7.4.4."

j. Section 9.3 is amended by revising the first sentence to read "Recovery efficiency must be determined for high ethylene concentration, low ethylene concentration, E-P terpolymer, or oil extended samples and whenever modifications are made to the method."

k. Section 13.1 is amended by revising the last sentence to read "Note: These values are examples; each sample type, as specified in Section 9.3, must be tested for sample recovery."

The revisions read as follows:

**Method 310B-Determination of Residual Hexane Through Gas Chromatography**

* * * * *

*6.0 Equipment and Supplies* * * *

6.11 Crimp-top sample vials and HP p/n 5181–1211 crimp caps, or screw-top autosampler vials and screw tops.

* * * * *

7.5.1 Preparation of Polymer Dissolving Solution. Fill a 4,000-ml volumetric flask about ¾ full with toluene.

* * * * *

9.3.3 The precipitated polymer from the steps described above shall be redissolved using toluene as the solvent. No heptane shall be added to the sample in the second dissolving step. The toluene solvent and acetone precipitant shall be determined to be free of interfering compounds.

* * * * *

11.1.2 Place crumb sample in bottle: RLA–3: 10 g (gives a dry wt. of ~5.5 g).

* * * * *

12.5 After obtaining the final dry weight of polymer used (Section 11.1.10 of this method), record that result in a "dry wt." column of the logbook (for oil extended polymer, the amount of oil extracted is added to the dry rubber weight).

* * * * *

13. Appendix A to Part 63 is amended by revising Methods 303, 303A, 304A, 304B, 305, 306, 306A, and 306B to read as follows:

**Method 303—Determination of Visible Emissions From By-Product Coke Oven Batteries**

**Note:** This method is not inclusive with respect to observer certification. Some material is incorporated by reference from other methods in appendix A to 40 CFR part 60. Therefore, to obtain reliable results, persons using this method should have a thorough knowledge of Method 9.

*1.0 Scope and Application*

1.1 Applicability. This method is applicable for the determination of visible emissions (VE) from the following by-product coke oven battery sources: charging systems during charging; doors, topside port lids, and offtake systems on operating coke ovens; and collecting mains. This method is also applicable for qualifying observers for visually determining the presence of VE.

*2.0 Summary of Method*

2.1 A certified observer visually determines the VE from coke oven battery sources. Certification procedures are presented. This method does not require that opacity of emissions be determined or that magnitude be differentiated.

*3.0 Definitions*

3.1 *Bench* means the platform structure in front of the oven doors.

3.2 *By-product Coke Oven Battery* means a source consisting of a group of ovens connected by common walls, where coal undergoes destructive distillation under positive pressure to produce coke and coke oven gas, from which by-products are recovered.

3.3 *Charge or charging period* means the period of time that commences when coal begins to flow into an oven through a topside port and ends when the last charging port is recapped.

3.4 *Charging system* means an apparatus used to charge coal to a coke oven (*e.g.*, a larry car for wet coal charging systems).

3.5 *Coke oven door* means each end enclosure on the push side and the coking side of an oven. The chuck, or leveler-bar, door is considered part of the push side door. The coke oven door area includes the entire area on the vertical face of a coke oven between the bench and the top of the battery between two adjacent buck stays.

3.6 *Coke side* means the side of a battery from which the coke is discharged from ovens at the end of the coking cycle.

3.7 *Collecting* main means any apparatus that is connected to one or more offtake systems and that provides a passage for conveying gases under positive pressure from the by-product coke oven battery to the by-product recovery system.

3.8 *Consecutive charges* means charges observed successively, excluding any charge during which the observer's view of the charging system or topside ports is obscured.

3.9 *Damper-off* means to close off the gas passage between the coke oven and the collecting main, with no flow of raw coke oven gas from the collecting main into the oven or into the oven's offtake system(s).

3.10 *Decarbonization period* means the period of time for combusting oven carbon that commences when the oven lids are removed from an empty oven or when standpipe caps of an oven are opened. The period ends with the initiation of the next charging period for that oven.

3.11 *Larry car* means an apparatus used to charge coal to a coke oven with a wet coal charging system.

3.12 *Log average* means logarithmic average as calculated in Section 12.4.

3.13 *Offtake system* means any individual oven apparatus that is stationary and provides a passage for gases from an oven to a coke oven battery collecting main or to another oven. Offtake system components include the standpipe and standpipe caps, goosenecks, stationary jumper pipes, mini-standpipes, and standpipe and gooseneck connections.

3.14 *Operating oven* means any oven not out of operation for rebuild or maintenance work extensive enough to require the oven to be skipped in the charging sequence.



3.15 *Oven* means a chamber in the coke oven battery in which coal undergoes destructive distillation to produce coke.

3.16 *Push side* means the side of the battery from which the coke is pushed from ovens at the end of the coking cycle.

3.17 *Run* means the observation of visible emissions from topside port lids, offtake systems, coke oven doors, or the charging of a single oven in accordance with this method.

3.18 *Shed* means an enclosure that covers the side of the coke oven battery, captures emissions from pushing operations and from leaking coke oven doors on the coke side or push side of the coke oven battery, and routes the emissions to a control device or system.

3.19 *Standpipe cap* means An apparatus used to cover the opening in the gooseneck of an offtake system.

3.20 *Topside port lid* means a cover, removed during charging or decarbonizing, that is placed over the opening through which coal can be charged into the oven of a by-product coke oven battery.

3.21 *Traverse time* means accumulated time for a traverse as measured by a stopwatch. Traverse time includes time to stop and write down oven numbers but excludes time waiting for obstructions of view to clear or for time to walk around obstacles.

3.22 *Visible Emissions or VE* means any emission seen by the unaided (except for corrective lenses) eye, excluding steam or condensing water.

*4.0 Interferences [Reserved]*

*5.0 Safety*

5.1 Disclaimer. This method may involve hazardous materials, operations, and equipment. This test method may not address all of the safety problems associated with its use. It is the responsibility of the user of this test method to establish appropriate safety and health practices and determine the applicability of regulatory limitations prior to performing this test method.

5.2 Safety Training. Because coke oven batteries have hazardous environments, the training materials and the field training (Section 10.0) shall cover the precautions required by the company to address health and safety hazards. Special emphasis shall be given to the Occupational Safety and Health Administration (OSHA) regulations pertaining to exposure of coke oven workers (see Reference 3 in Section 16.0). In general, the regulation requires that special fire-retardant clothing and respirators be worn in certain restricted areas of the coke oven battery. The OSHA regulation also prohibits certain activities, such as chewing gum, smoking, and eating in these areas.

*6.0 Equipment and Supplies [Reserved]*

*7.0 Reagents and Standards [Reserved]*

*8.0 Sample Collection, Preservation, Transport, and Storage [Reserved]*

*9.0 Quality Control [Reserved]*

*10.0 Calibration and Standardization*

Observer certification and training requirements are as follows:

10.1 Certification Procedures. This method requires only the determination of whether VE occur and does not require the determination of opacity levels; therefore, observer certification according to Method 9 in appendix A to part 60 of this chapter is not required to obtain certification under this method. However, in order to receive Method 303 observer certification, the first-time observer (trainee) shall have attended the lecture portion of the Method 9 certification course. In addition, the trainee shall successfully complete the Method 303 training course, satisfy the field observation requirement, and demonstrate adequate performance and sufficient knowledge of Method 303. The Method 303 training course shall be conducted by or under the sanction of the EPA and shall consist of classroom instruction and field observations, and a proficiency test.

10.1.1 The classroom instruction shall familiarize the trainees with Method 303 through lecture, written training materials, and a Method 303 demonstration video. A successful completion of the classroom portion of the Method 303 training course shall be demonstrated by a perfect score on a written test. If the trainee fails to answer all of the questions correctly, the trainee may review the appropriate portion of the training materials and retake the test.

10.1.2 The field observations shall be a minimum of 12 hours and shall be completed before attending the Method 303 certification course. Trainees shall observe the operation of a coke oven battery as it pertains to Method 303, including topside operations, and shall also practice conducting Method 303 or similar methods. During the field observations, trainees unfamiliar with coke battery operations shall receive instruction from an experienced coke oven observer familiar with Method 303 or similar methods and with the operation of coke batteries. The trainee must verify completion of at least 12 hours of field observation prior to attending the Method 303 certification course.

10.1.3 All trainees must demonstrate proficiency in the application of Method 303 to a panel of three certified Method 303 observers, including an ability to differentiate coke oven emissions from condensing water vapor and smoldering coal. Each panel member shall have at least 120 days experience in reading visible emissions from coke ovens. The visible emissions inspections that will satisfy the experience requirement must be inspections of coke oven battery fugitive emissions from the emission points subject to emission standards under subpart L of this part (*i.e.*, coke oven doors, topside port lids, offtake system(s), and charging operations), using either Method 303 or predecessor State or local test methods. A "day's experience" for a particular inspection is a day on which one complete inspection was performed for that emission point under Method 303 or a predecessor State or local method. A "day's experience" does not mean 8 or 10 hours performing inspections, or any particular time expressed in minutes or hours that may have been spent performing them. Thus, it would be possible for an individual to qualify as a Method 303 panel member for some emission points, but not others (*e.g.*, an individual might satisfy the experience requirement for coke oven doors, but not topside port lids). Until November 15, 1994, the EPA may waive the certification requirement (but not the experience requirement) for panel members. The composition of the panel shall be approved by the EPA. The panel shall observe the trainee in a series of training runs and a series of certification runs. There shall be a minimum of 1 training run for doors, topside port lids, and offtake systems, and a minimum of 5 training runs (*i.e.*, 5 charges) for charging. During training runs, the panel can advise the trainee on proper procedures. There shall be a minimum of 3 certification runs for doors, topside port lids, and offtake systems, and a minimum of 15 certification runs for charging (*i.e.*, 15 charges). The certifications runs shall be unassisted. Following the certification test runs, the panel shall approve or disapprove certification based on the trainee's performance during the certification runs. To obtain certification, the trainee shall demonstrate to the satisfaction of the panel a high degree of proficiency in performing Method 303. To aid in evaluating the trainee's performance, a

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checklist, provided by the EPA, will be used by the panel members.

10.2 Observer Certification/Recertification. The coke oven observer certification is valid for 1 year from date of issue. The observer shall recertify annually by viewing the training video and answering all of the questions on the certification test correctly. Every 3 years, an observer shall be required to pass the proficiency test in Section 10.1.3 in order to be certified.

10.3 The EPA (or applicable enforcement agency) shall maintain records reflecting a certified observer's successful completion of the proficiency test, which shall include the completed proficiency test checklists for the certification runs.

10.4 An owner or operator of a coke oven battery subject to subpart L of this part may observe a training and certification program under this section.

*11.0 Procedure*

11.1 Procedure for Determining VE from Charging Systems During Charging.

11.1.1 Number of Oven Charges. Refer to § 63.309(c)(1) of this part for the number of oven charges to observe. The observer shall observe consecutive charges. Charges that are nonconsecutive can only be observed when necessary to replace observations terminated prior to the completion of a charge because of visual interferences. (See Section 11.1.5).

11.1.2 Data Records. Record all the information requested at the top of the charging system inspection sheet (Figure 303–1). For each charge, record the identification number of the oven being charged, the approximate beginning time of the charge, and the identification of the larry car used for the charge.

11.1.3 Observer Position. Stand in an area or move to positions on the topside of the coke oven battery with an unobstructed view of the entire charging system. For wet coal charging systems or non-pipeline coal charging systems, the observer should have an unobstructed view of the emission points of the charging system, including larry car hoppers, drop sleeves, and the topside ports of the oven being charged. Some charging systems are configured so that all emission points can only be seen from a distance of five ovens. For other batteries, distances of 8 to 12 ovens are adequate.

11.1.4 Observation. The charging period begins when coal begins to flow into the oven and ends when the last charging port is recapped. During the charging period, observe all of the potential sources of VE from the entire charging system. For wet coal charging systems or non-pipeline coal charging systems, sources of VE typically include the larry car hoppers, drop sleeves, slide gates, and topside ports on the oven being charged. Any VE from an open standpipe cap on the oven being charged is included as charging VE.

11.1.4.1 Using an accumulative-type stopwatch with unit divisions of at least 0.5 seconds, determine the total time VE are observed as follows. Upon observing any VE emerging from any part of the charging system, start the stopwatch. Stop the watch when VE are no longer observed emerging, and restart the watch when VE reemerges.

11.1.4.2 When VE occur simultaneously from several points during a charge, consider the sources as one. Time overlapping VE as continuous VE. Time single puffs of VE only for the time it takes for the puff to emerge from the charging system. Continue to time VE in this manner for the entire charging period. Record the accumulated time to the nearest 0.5 second under "Visible emissions, seconds" on Figure 303–1.

11.1.5 Visual Interference. If fugitive VE from other sources at the coke oven battery site (*e.g.*, door leaks or condensing water vapor from the coke oven wharf) prevent a clear view of the charging system during a charge, stop the stopwatch and make an appropriate notation under "Comments" on Figure 303–1. Label the observation an observation of an incomplete charge, and observe another charge to fulfill the requirements of Section 11.1.1.

11.1.6 VE Exemptions. Do not time the following VE:

11.1.6.1 The VE from burning or smoldering coal spilled on top of the oven, topside port lid, or larry car surfaces;

**Note:** The VE from smoldering coal are generally white or gray. These VE generally have a plume of less than 1 meter long. If the observer cannot safely and with reasonable confidence determine that VE are from charging, do not count them as charging emissions.

11.1.6.2 The VE from the coke oven doors or from the leveler bar; or

11.1.6.3 The VE that drift from the top of a larry car hopper if the emissions had already been timed as VE from the drop sleeve.

**Note:** When the slide gate on a larry car hopper closes after the coal has been added to the oven, the seal may not be airtight. On occasions, a puff of smoke observed at the drop sleeves is forced past the slide gate up into the larry car hopper and may drift from the top; time these VE either at the drop sleeves or the hopper. If the larry car hopper does not have a slide gate or the slide gate is left open or partially closed, VE may quickly pass through the larry car hopper without being observed at the drop sleeves and will appear as a strong surge of smoke; time these as charging VE.

11.1.7 Total Time Record. Record the total time that VE were observed for each charging operation in the appropriate column on the charging system inspection sheet.

11.1.8 Determination of Validity of a Set of Observations. Five charging observations (runs) obtained in accordance with this method shall be considered a valid set of observations for that day. No observation of an incomplete charge shall be included in a daily set of observations that is lower than the lowest reading for a complete charge. If both complete and incomplete charges have been observed, the daily set of observations shall include the five highest values observed. Four or three charging observations (runs) obtained in accordance with this method shall be considered a valid set of charging observations only where it is not possible to obtain five charging observations, because visual interferences (see Section 11.1.5) or inclement weather prevent a clear view of the charging system during charging. However, observations from three or four charges that satisfy these requirements shall not be considered a valid set of charging observations if use of such set of observations in a calculation under Section 12.4 would cause the value of A to be less than 145.

11.1.9 Log Average. For each day on which a valid daily set of observations is obtained, calculate the daily 30-day rolling log average of seconds of visible emissions from the charging operation for each battery using these data and the 29 previous valid daily sets of observations, in accordance with Section 12.4.

11.2. Procedure for Determining VE from Coke Oven Door Areas. The intent of this procedure is to determine VE from coke oven door areas by carefully observing the door area from a standard distance while walking at a normal pace.

11.2.1 Number of Runs. Refer to § 63.309(c)(1) of this part for the appropriate number of runs.

11.2.2 Battery Traverse. To conduct a battery traverse, walk the length of the battery on the outside of the pusher machine and quench car tracks at a steady, normal walking pace, pausing to make appropriate entries on the door area inspection sheet (Figure 303–2). A single test run consists of two timed traverses, one for the coke side and one for the push side. The walking pace shall be such that the duration of the traverse does not exceed an average of 4 seconds per oven door, excluding time spent moving around stationary obstructions or waiting for other obstructions to move from positions blocking the view of a series of doors. Extra time is allowed for each leak (a maximum of 10 additional seconds for each leaking door) for the observer to make the proper notation. A walking pace of 3 seconds per oven door has been found to be typical. Record the actual traverse time with a stopwatch.

11.2.2.1 Include in the traverse time only the time spent observing the doors and recording door leaks. To measure actual traverse time, use an accumulative-type stopwatch with unit divisions of 0.5 seconds or less. Exclude interruptions to the traverse and time required for the observer to move to positions where the view of the battery is unobstructed, or for obstructions, such as the door machine, to move from positions blocking the view of a series of doors.

11.2.2.2 Various situations may arise that will prevent the observer from viewing a door or a series of doors. Prior to the door inspection, the owner or operator may elect to temporarily suspend charging operations for the duration of the inspection, so that all of the doors can be viewed by the observer. The observer has two options for dealing with obstructions to view: (a) Stop the stopwatch and wait for the equipment to move or the fugitive emissions to dissipate before completing the traverse; or (b) stop the stopwatch, skip the affected ovens, and move to an unobstructed position to continue the traverse. Restart the stopwatch and continue the traverse. After the completion of the traverse, if the equipment has moved or the fugitive emissions have dissipated, inspect the affected doors. If the equipment is still preventing the observer from viewing the doors, then the affected doors may be counted as not observed. If option (b) is used because of doors blocked by machines during charging operations, then, of the affected doors, exclude the door from the most recently charged oven from the inspection. Record the oven numbers and make an appropriate notation under "Comments" on the door area inspection sheet (Figure 303–2).

11.2.2.3 When batteries have sheds to control emissions, conduct the inspection from outside the shed unless the doors cannot be adequately viewed. In this case, conduct the inspection from the bench. Be aware of special safety considerations pertinent to walking on the bench and follow the instructions of company personnel on the required equipment and procedures. If possible, conduct the bench traverse whenever the bench is clear of the door machine and hot coke guide.

11.2.3 Observations. Record all the information requested at the top of the door area inspection sheet (Figure 303–2), including the number of non-operating ovens. Record the clock time at the start of the traverse on each side of the battery. Record which side is being inspected (*i.e.*, coke side or push side). Other information may be recorded at the discretion of the observer, such as the location of the leak (*e.g.*, top of the door, chuck door, etc.), the reason for any interruption of the traverse, or the position of the sun relative to the battery and sky conditions (*e.g.*, overcast, partly sunny, etc.).

11.2.3.1 Begin the test run by starting the stopwatch and traversing either the coke side or the push side of the battery. After completing one side, stop the watch. Complete this procedure on the other side. If inspecting more than one battery, the observer may view the push sides and the coke sides sequentially.

11.2.3.2 During the traverse, look around the entire perimeter of each oven door. The door is considered leaking if VE are detected in the coke oven door area. The coke oven door area includes the entire area on the vertical face of a coke oven between the bench and the top of the battery between two adjacent buck stays (*e.g.*, the oven door, chuck door, between the masonry brick, buck stay or jamb, or other sources). Record the oven number and make the appropriate notation on the door area inspection sheet (Figure 303–2).

**Note:** Multiple VE from the same door area (*e.g.*, VE from both the chuck door and the push side door) are counted as only one emitting door, not as multiple emitting doors.

11.2.3.3 Do not record the following sources as door area VE:

11.2.3.3.1 VE from ovens with doors removed. Record the oven number and make an appropriate notation under "Comments;"

11.2.3.3.2 VE from ovens taken out of service. The owner or operator shall notify the observer as to which ovens are out of service. Record the oven number and make an appropriate notation under "Comments;" or

11.2.3.3.3 VE from hot coke that has been spilled on the bench as a result of pushing.

11.2.4 Criteria for Acceptance. After completing the run, calculate the maximum time allowed to observe the ovens using the equation in Section 12.2. If the total traverse time exceeds T, void the run, and conduct another run to satisfy the requirements of § 63.309(c)(1) of this part.

11.2.5 Percent Leaking Doors. For each day on which a valid observation is obtained, calculate the daily 30-day rolling average for each battery using these data and the 29 previous valid daily observations, in accordance with Section 12.5.

11.3 Procedure for Determining VE from Topside Port Lids and Offtake Systems.

11.3.1 Number of Runs. Refer to § 63.309(c)(1) of this part for the number of runs to be conducted. Simultaneous runs or separate runs for the topside port lids and offtake systems may be conducted.

11.3.2 Battery Traverse. To conduct a topside traverse of the battery, walk the length of the battery at a steady, normal walking pace, pausing only to make appropriate entries on the topside inspection sheet (Figure 303–3). The walking pace shall not exceed an average rate of 4 seconds per oven, excluding time spent moving around stationary obstructions or waiting for other obstructions to move from positions blocking the view. Extra time is allowed for each leak for the observer to make the proper notation. A walking pace of 3 seconds per oven is typical. Record the actual traverse time with a stopwatch.

11.3.3 Topside Port Lid Observations. To observe lids of the ovens involved in the charging operation, the observer shall wait to view the lids until approximately 5 minutes after the completion of the charge. Record all the information requested on the topside inspection sheet (Figure 303–3). Record the clock time when traverses begin and end. If the observer's view is obstructed during the traverse (*e.g.*, steam from the coke wharf, larry car, etc.), follow the guidelines given in Section 11.2.2.2.

11.3.3.1 To perform a test run, conduct a single traverse on the topside of the battery. The observer shall walk near the center of the battery but may deviate from this path to avoid safety hazards (such as open or closed charging ports, luting buckets, lid removal bars, and topside port lids that have been removed) and any other obstacles. Upon noting VE from the topside port lid(s) of an oven, record the oven number and port number, then resume the traverse. If any oven is dampered-off from the collecting main for decarbonization, note this under "Comments" for that particular oven.

**Note:** Count the number of topside ports, not the number of points, exhibiting VE, *i.e.*, if a topside port has several points of VE, count this as one port exhibiting VE.

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11.3.3.2 Do not count the following as topside port lid VE:

11.3.3.2.1 VE from between the brickwork and oven lid casing or VE from cracks in the oven brickwork. Note these VE under "Comments;"

11.3.3.2.2 VE from topside ports involved in a charging operation. Record the oven number, and make an appropriate notation (*e.g.*, not observed because ports open for charging) under "Comments;"

11.3.3.2.3 Topside ports having maintenance work done. Record the oven number and make an appropriate notation under "Comments;" or

11.3.3.2.4 Condensing water from wet-sealing material. Ports with only visible condensing water from wet-sealing material are counted as observed but not as having VE.

11.3.3.2.5 Visible emissions from the flue inspection ports and caps.

11.3.4 Offtake Systems Observations. To perform a test run, traverse the battery as in Section 11.3.3.1. Look ahead and back two to four ovens to get a clear view of the entire offtake system for each oven. Consider visible emissions from the following points as offtake system VE: (a) the flange between the gooseneck and collecting main ("saddle"), (b) the junction point of the standpipe and oven ("standpipe base"), (c) the other parts of the offtake system (*e.g.*, the standpipe cap), and (d) the junction points with ovens and flanges of jumper pipes.

11.3.4.1 Do not stray from the traverse line in order to get a "closer look" at any part of the offtake system unless it is to distinguish leaks from interferences from other sources or to avoid obstacles.

11.3.4.2 If the centerline does not provide a clear view of the entire offtake system for each oven (*e.g.*, when standpipes are longer than 15 feet), the observer may conduct the traverse farther from (rather than closer to) the offtake systems.

11.3.4.3 Upon noting a leak from an offtake system during a traverse, record the oven number. Resume the traverse. If the oven is dampered-off from the collecting main for decarbonization and VE are observed, note this under "Comments" for that particular oven.

11.3.4.4 If any part or parts of an offtake system have VE, count it as one emitting offtake system. Each stationary jumper pipe is considered a single offtake system.

11.3.4.5 Do not count standpipe caps open for a decarbonization period or standpipes of an oven being charged as source of offtake system VE. Record the oven number and write "Not observed" and the reason (*i.e.*, decarb or charging) under "Comments."

**Note:** VE from open standpipes of an oven being charged count as charging emissions. All VE from closed standpipe caps count as offtake leaks.

11.3.5 Criteria for Acceptance. After completing the run (allow 2 traverses for batteries with double mains), calculate the maximum time allowed to observe the topside port lids and/or offtake systems using the equation in Section 12.3. If the total traverse time exceeds T, void the run and conduct another run to satisfy the requirements of § 63.309(c)(1) of this part.

11.3.6 In determining the percent leaking topside port lids and percent leaking offtake systems, do not include topside port lids or offtake systems with VE from the following ovens:

11.3.6.1 Empty ovens, including ovens undergoing maintenance, which are properly dampered off from the main.

11.3.6.2 Ovens being charged or being pushed.

11.3.6.3 Up to 3 full ovens that have been dampered off from the main prior to pushing.

11.3.6.4 Up to 3 additional full ovens in the pushing sequence that have been dampered off from the main for offtake system cleaning, for decarbonization, for safety reasons, or when a charging/pushing schedule involves widely separated ovens (e.g., a Marquard system); or that have been dampered off from the main for maintenance near the end of the coking cycle. Examples of reasons that ovens are dampered off for safety reasons are to avoid exposing workers in areas with insufficient clearance between standpipes and the larry car, or in areas where workers could be exposed to flames or hot gases from open standpipes, and to avoid the potential for removing a door on an oven that is not dampered off from the main.

11.3.7 Percent Leaking Topside Port Lids and Offtake Systems. For each day on which a valid observation is obtained, calculate the daily 30-day rolling average for each battery using these data and the 29 previous valid daily observations, in accordance with Sections 12.6 and 12.7.

11.4 Procedure for Determining VE from Collecting Mains.

11.4.1 Traverse. To perform a test run, traverse both the collecting main catwalk and the battery topside along the side closest to the collecting main. If the battery has a double main, conduct two sets of traverses for each run, i.e., one set for each main.

11.4.2 Data Recording. Upon noting VE from any portion of a collection main, identify the source and approximate location of the source of VE and record the time under "Collecting main" on Figure 303–3; then resume the traverse.

11.4.3 Collecting Main Pressure Check. After the completion of the door traverse, the topside port lids, and offtake systems, compare the collecting main pressure during the inspection to the collecting main pressure during the previous 8 to 24 hours. Record the following: (a) the pressure during inspection, (b) presence of pressure deviation from normal operations, and (c) the explanation for any pressure deviation from normal operations, if any, offered by the operators. The owner or operator of the coke battery shall maintain the pressure recording equipment and conduct the quality assurance/quality control (QA/QC) necessary to ensure reliable pressure readings and shall keep the QA/QC records for at least 6 months. The observer may periodically check the QA/QC records to determine their completeness. The owner or operator shall provide access to the records within 1 hour of an observer's request.

*12.0 Data Analysis and Calculations*

12.1 Nomenclature.

A = 150 or the number of valid observations (runs). The value of A shall not be less than 145, except for purposes of determinations under § 63.306(c) (work practice plan implementation) or § 63.306(d) (work practice plan revisions) of this part. No set of observations shall be considered valid for such a recalculation that otherwise would not be considered a valid set of observations for a calculation under this paragraph.

$D_i$ = Number of doors on non-operating ovens.

$D_{no}$ = Number of doors not observed.

$D_{ob}$ = Total number of doors observed on operating ovens.

$D_t$ = Total number of oven doors on the battery.

e = 2.72

J = Number of stationary jumper pipes.

L = Number of doors with VE.

$L_b$ = Yard-equivalent reading.

$L_s$ = Number of doors with VE observed from the bench under sheds.

$L_y$ = Number of doors with VE observed from the yard.

$L_y$ = Number of doors with VE observed from the yard on the push side.

ln = Natural logarithm.

N = Total number of ovens in the battery.

$N_i$ = Total number of inoperable ovens.

$P_{NO}$ = Number of ports not observed.

$P_{ovn}$ = Number of ports per oven.



$P_{VE}$ = Number of topside port lids with VE.

PLD = Percent leaking coke oven doors for the test run.

PLL = Percent leaking topside port lids for the run.

PLO = Percent leaking offtake systems.

T = Total time allowed for traverse, seconds.

$T_{ovn}$ = Number of offtake systems (excluding jumper pipes) per oven.

$T_{NO}$ = Number of offtake systems not observed.

$T_{VE}$ = Number of offtake systems with VE.

$X_i$ = Seconds of VE during the ith charge.

Z = Number of topside port lids or offtake systems with VE.

12.2 Criteria for Acceptance for VE Determinations from Coke Oven Door Areas. After completing the run, calculate the maximum time allowed to observe the ovens using the following equation:

$$T = (4 \times D_t) + (10 \times L) \quad \text{Eq. 303-1}$$

12.3 Criteria for Acceptance for VE Determinations from Topside Port Lids and Offtake Systems. After completing the run (allow 2 traverses for batteries with double mains), calculate the maximum time allowed to observe the topside port lids and/or offtake systems by the following equation:

$$T = (4 \times N) + (10 \times Z) \quad \text{Eq. 303-2}$$

12.4 Average Duration of VE from Charging Operations. Use Equation 303–3 to calculate the daily 30-day rolling log average of seconds of visible emissions from the charging operation for each battery using these current day's observations and the 29 previous valid daily sets of observations.

$$\text{logarithmic average} = e^y - 1 = \frac{\ln(X_1+1) + \ln(X_2+1) + \ldots \ln(X_A+1)}{A} \quad \text{Eq. 303-3}$$

12.5 Percent Leaking Doors (PLD). Determine the total number of doors for which observations were made on the coke oven battery as follows:

$$D_{ob} = (2 \times N) - (D_i + D_{no}) \quad \text{Eq. 303-4}$$

12.5.1 For each test run (one run includes both the coke side and the push side traverses), sum the number of doors with door area VE. For batteries subject to an approved alternative standard under § 63.305 of this part, calculate the push side and the coke side PLD separately.

12.5.2 Calculate percent leaking doors by using Equation 303–5:

$$PLD = \frac{L_y}{D_{ob}} \times 100 \quad \text{Eq. 303-5}$$

12.5.3 When traverses are conducted from the bench under sheds, calculate the coke side and the push side separately. Use Equation 303–6 to calculate a yard-equivalent reading:

$$L_b = L_s - (N \times 0.06) \quad \text{Eq. 303-6}$$

If $L_b$ is less than zero, use zero for $L_b$ in Equation 303–7 in the calculation of PLD.

12.5.3.1 Use Equation 303–7 to calculate PLD:

$$PLD = \frac{L_b + L_y}{D_{ob}} \times 100 \quad \text{Eq. 303-7}$$

Round off PLD to the nearest hundredth of 1 percent and record as the percent leaking coke oven doors for the run.

12.5.3.2 Average Percent Leaking Doors. Use Equation 303–8 to calculate the daily 30-day rolling average percent leaking doors for each battery using these current day's observations and the 29 previous valid daily sets of observations.

$$PLD_{(30\text{-day})} = \frac{(PLD_1 + PLD_2 + \ldots + PLD_{30})}{30} \quad \text{Eq. 303-8}$$

12.6 Topside Port Lids. Determine the percent leaking topside port lids for each run as follows:

$$PLL = \frac{P_{VE}}{P_{ovn}(N - N_i) - P_{NO}} \times 100 \quad \text{Eq. 303-9}$$

12.6.1 Round off this percentage to the nearest hundredth of 1 percent and record this percentage as the percent leaking topside port lids for the run.

12.6.2 Average Percent Leaking Topside Port Lids. Use Equation 303–10 to calculate the daily 30-day rolling average percent leaking topside port lids for each battery using these current day's observations and the 29 previous valid daily sets of observations.

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$$\text{PLL (30-day)} = \frac{(PLL_1 + PLL_2 + \ldots + PLL_{30})}{30} \qquad \text{Eq. 303-10}$$

12.7 Offtake Systems. Determine the percent leaking offtake systems for the run as follows:

$$PLO = \frac{T_{VE}}{T_{ovn}(N - N_i) + J - T_{NO}} \times 100 \qquad \text{Eq. 303-11}$$

12.7.1 Round off this percentage to the nearest hundredth of 1 percent and record this percentage as the percent leaking offtake systems for the run.

12.7.2 Average Percent Leaking Offtake Systems. Use Equation 303–12 to calculate the daily 30-day rolling average percent leaking offtake systems for each battery using these current day's observations and the 29 previous valid daily sets of observations.

$$\text{PLO (30-day)} = \frac{(PLO_1 + PLO_2 \ldots + PLO_{30})}{30} \qquad \text{Eq. 303-12}$$

*13.0 Method Performance. [Reserved]*

*14.0 Pollution Prevention. [Reserved]*

*15.0 Waste Management. [Reserved]*

*16.0 References.*

1. Missan, R., and A. Stein. Guidelines for Evaluation of Visible Emissions Certification, Field Procedures, Legal Aspects, and Background Material. U.S. Environmental Protection Agency. EPA Publication No. EPA–340/1–75–007. April 1975.

2. Wohlschlegel, P., and D. E. Wagoner. Guideline for Development of a Quality Assurance Program: Volume IX—Visual Determination of Opacity Emission from Stationary Sources. U.S. Environmental Protection Agency. EPA Publication No. EPA–650/4–74–005i. November 1975.

3. U.S. Occupational Safety and Health Administration. Code of Federal Regulations. Title 29, Chapter XVII, Section 1910.1029(g). Washington, D.C. Government Printing Office. July 1, 1990.

4. U.S. Environmental Protection Agency. National Emission Standards for Hazardous Air Pollutants; Coke Oven Emissions from Wet-Coal Charged By-Product Coke Oven Batteries; Proposed Rule and Notice of Public Hearing. Washington, D.C. **Federal Register**. Vol. 52, No. 78 (13586). April 23, 1987.

*17.0 Tables, Diagrams, Flowcharts, and Validation Data*

Company name: _____
Battery no.: _____ Date: _____ Run no.: _____
City, State: _____
Observer name: _____
Company representative(s): _____

| Charge No. | Oven No. | Clock time | Visible emissions, seconds | Comments |
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| Charge No. | Oven No. | Clock time | Visible emissions, seconds | Comments |
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Figure 303–1. Charging System Inspection

Company name: _____
Battery no.: _____
Date: _____
City, State: _____
Total no. of ovens in battery: _____
Observer name: _____
Certification expiration date: _____
Inoperable ovens: _____
Company representative(s): _____
Traverse time CS: _____
Traverse time PS: _____
Valid run (Y or N): _____

| Time traverse started/completed | PS/CS | Door No. | Comments (No. of blocked doors, interruptions to traverse, *etc.*) |
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Figure 303–2. Door Area Inspection.

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Company name: _____
Battery no.: _____
Date: _____
City, State: _____
Total no. of ovens in battery: _____
Observer name: _____
Certification expiration date: _____
Inoperable ovens: _____
Company representative(s): _____
Total no. of lids: _____
Total no. of offtakes: _____
Total no. of jumper pipes: _____
Ovens not observed: _____
Total traverse time: _____
Valid run (Y or N): _____

| Time traverse started/completed | Type of Inspection (lids, offtakes, collecting main) | Location of VE (Oven #/Port #) | Comments |
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Figure 303–3. Topside Inspection

**Method 303A—Determination of Visible Emissions From Nonrecovery Coke Oven Batteries**

**Note:** This method does not include all of the specifications pertaining to observer certification. Some material is incorporated by reference from other methods in this part and in appendix A to 40 CFR Part 60. Therefore, to obtain reliable results, persons using this method should have a thorough knowledge of Method 9 and Method 303.

*1.0 Scope and Application*

1.1 Applicability. This method is applicable for the determination of visible emissions (VE) from leaking doors at nonrecovery coke oven batteries.

*2.0 Summary of Method*

2.1 A certified observer visually determines the VE from coke oven battery sources while walking at a normal pace. This method does not require that opacity of emissions be determined or that magnitude be differentiated.

*3.0 Definitions*

3.1 *Bench* means the platform structure in front of the oven doors.



3.2 *Coke oven door* means each end enclosure on the push side and the coking side of an oven.

3.3 *Coke side* means the side of a battery from which the coke is discharged from ovens at the end of the coking cycle.

3.4 *Nonrecovery coke oven battery* means a source consisting of a group of ovens connected by common walls and operated as a unit, where coal undergoes destructive distillation under negative pressure to produce coke, and which is designed for the combustion of coke oven gas from which by-products are not recovered.

3.5 *Operating oven* means any oven not out of operation for rebuild or maintenance work extensive enough to require the oven to be skipped in the charging sequence.

3.6 *Oven* means a chamber in the coke oven battery in which coal undergoes destructive distillation to produce coke.

3.7 *Push side* means the side of the battery from which the coke is pushed from ovens at the end of the coking cycle.

3.8 *Run* means the observation of visible emissions from coke oven doors in accordance with this method.

3.9 *Shed* means an enclosure that covers the side of the coke oven battery, captures emissions from pushing operations and from leaking coke oven doors on the coke side or push side of the coke oven battery, and routes the emissions to a control device or system.

3.10 *Traverse time* means accumulated time for a traverse as measured by a stopwatch. Traverse time includes time to stop and write down oven numbers but excludes time waiting for obstructions of view to clear or for time to walk around obstacles.

3.11 *Visible Emissions or VE* means any emission seen by the unaided (except for corrective lenses) eye, excluding steam or condensing water.

*4.0 Interferences. [Reserved]*

*5.0 Safety*

5.1 Disclaimer. This method may involve hazardous materials, operations, and equipment. This test method may not address all of the safety problems associated with its use. It is the responsibility of the user of this test method to establish appropriate safety and health practices and determine the applicability of regulatory limitations prior to performing this test method.

5.2 Safety Training. Because coke oven batteries have hazardous environments, the training materials and the field training (Section 10.0) shall cover the precautions required by the company to address health and safety hazards. Special emphasis shall be given to the Occupational Safety and Health Administration (OSHA) regulations pertaining to exposure of coke oven workers (see Reference 3 in Section 16.0). In general, the regulation requires that special fire-retardant clothing and respirators be worn in certain restricted areas of the coke oven battery. The OSHA regulation also prohibits certain activities, such as chewing gum, smoking, and eating in these areas.

*6.0 Equipment and Supplies. [Reserved]*

*7.0 Reagents and Standards [Reserved]*

*8.0 Sample Collection, Preservation, Transport, and Storage. [Reserved]*

*9.0 Quality Control. [Reserved]*

*10.0 Calibration and Standardization.*

10.1 Training. This method requires only the determination of whether VE occur and does not require the determination of opacity levels; therefore, observer certification according to Method 9 in Appendix A to Part 60 is not required. However, the first-time observer (trainee) shall have attended the lecture portion of the Method 9 certification course. Furthermore, before conducting any VE observations, an observer shall become familiar with nonrecovery coke oven battery operations and with this test method by observing for a minimum of 4 hours the operation of a nonrecovery coke oven battery in the presence of personnel experienced in performing Method 303 assessments.

*11.0 Procedure*

The intent of this procedure is to determine VE from coke oven door areas by carefully observing the door area while walking at a normal pace.

11.1 Number of Runs. Refer to § 63.309(c)(1) of this part for the appropriate number of runs.

11.2 Battery Traverse. To conduct a battery traverse, walk the length of the battery on the outside of the pusher machine and quench car tracks at a steady, normal walking pace, pausing to make appropriate entries on the door area inspection sheet (Figure 303A–1). The walking pace shall be such that the duration of the traverse does not exceed an average of 4 seconds per oven door, excluding time spent moving around stationary obstructions or waiting for other obstructions to move from positions blocking the view of a series of doors. Extra time is allowed for each leak (a maximum of 10 additional seconds for each leaking door) for the observer to make the proper notation. A walking pace of 3 seconds per oven door has been found to be typical. Record the actual traverse time with a stopwatch. A single test run consists of two timed traverses, one for the coke side and one for the push side.

11.2.1 Various situations may arise that will prevent the observer from viewing a door or a series of doors. The observer has two options for dealing with obstructions to view: (a) Wait for the equipment to move or the fugitive emissions to dissipate before completing the traverse; or (b) skip the affected ovens and move to an unobstructed position to continue the traverse. Continue the traverse. After the completion of the traverse, if the equipment has moved or the fugitive emissions have dissipated, complete the traverse by inspecting the affected doors. Record the oven numbers and make an appropriate notation under "Comments" on the door area inspection sheet (Figure 303A–1).

**Note:** Extra time incurred for handling obstructions is not counted in the traverse time.

11.2.2 When batteries have sheds to control pushing emissions, conduct the inspection from outside the shed, if the shed allows such observations, or from the bench. Be aware of special safety considerations pertinent to walking on the bench and follow the instructions of company personnel on the required equipment and operations procedures. If possible, conduct the bench traverse whenever the bench is clear of the door machine and hot coke guide.

11.3 Observations. Record all the information requested at the top of the door area inspection sheet (Figure 303A–1), including the number of non-operating ovens. Record which side is being inspected, *i.e.*, coke side or push side. Other information may be recorded at the discretion of the observer, such as the location of the leak (*e.g.*, top of the door), the reason for any interruption of the traverse, or the position of the sun relative to the battery and sky conditions (*e.g.*, overcast, partly sunny, etc.).

11.3.1 Begin the test run by traversing either the coke side or the push side of the battery. After completing one side, traverse the other side.

11.3.2 During the traverse, look around the entire perimeter of each oven door. The door is considered leaking if VE are detected in the coke oven door area. The coke oven door area includes the entire area on the vertical face of a coke oven between the bench and the top of the battery and the

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adjacent doors on both sides. Record the oven number and make the appropriate notation on the door area inspection sheet (Figure 303A–1).

11.3.3 Do not record the following sources as door area VE:

11.3.3.1 VE from ovens with doors removed. Record the oven number and make an appropriate notation under "Comments";

11.3.3.2 VE from ovens where maintenance work is being conducted. Record the oven number and make an appropriate notation under "Comments"; or

11.3.3.3 VE from hot coke that has been spilled on the bench as a result of pushing.

*12.0 Data Analysis and Calculations*

Same as Method 303, Section 12.1, 12.2, 12.3, 12.4, and 12.5.

*13.0 Method Performance. [Reserved]*

*14.0 Pollution Prevention. [Reserved]*

*15.0 Waste Management. [Reserved]*

*16.0 References*

Same as Method 303, Section 16.0.

*17.0 Tables, Diagrams, Flowcharts, and Validation Data*

Company name: _____
Battery no.: _____
Date: _____
City, State: _____
Total no. of ovens in battery: _____
Observer name: _____
Certification expiration date: _____
Inoperable ovens: _____
Company representative(s): _____
Traverse time CS: _____
Traverse time PS: _____
Valid run (Y or N): _____

| Time traverse started/completed | PS/CS | Door No. | Comments (No. of blocked doors, interruptions to traverse, *etc.*) |
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Figure 303A–1. Door Area Inspection



**Method 304A: Determination of Biodegradation Rates of Organic Compounds (Vent Option)**

*1.0 Scope and Application*

1.1 Applicability. This method is applicable for the determination of biodegradation rates of organic compounds in an activated sludge process. The test method is designed to evaluate the ability of an aerobic biological reaction system to degrade or destroy specific components in waste streams. The method may also be used to determine the effects of changes in wastewater composition on operation. The biodegradation rates determined by utilizing this method are not representative of a full-scale system. The rates measured by this method shall be used in conjunction with the procedures listed in appendix C of this part to calculate the fraction emitted to the air versus the fraction biodegraded.

*2.0 Summary of Method*

2.1 A self-contained benchtop bioreactor system is assembled in the laboratory. A sample of mixed liquor is added and the waste stream is then fed continuously. The benchtop bioreactor is operated under conditions nearly identical to the target full-scale activated sludge process. Bioreactor temperature, dissolved oxygen concentration, average residence time in the reactor, waste composition, biomass concentration, and biomass composition of the full-scale process are the parameters which are duplicated in the benchtop bioreactor. Biomass shall be removed from the target full-scale activated sludge unit and held for no more than 4 hours prior to use in the benchtop bioreactor. If antifoaming agents are used in the full-scale system, they shall also be used in the benchtop bioreactor. The feed flowing into and the effluent exiting the benchtop bioreactor are analyzed to determine the biodegradation rates of the target compounds. The flow rate of the exit vent is used to calculate the concentration of target compounds (utilizing Henry's law) in the exit gas stream. If Henry's law constants for the compounds of interest are not known, this method cannot be used in the determination of the biodegradation rate and Method 304B is the suggested method. The choice of analytical methodology for measuring the compounds of interest at the inlet and outlet to the benchtop bioreactor are left to the discretion of the source, except where validated methods are available.

*3.0 Definitions. [Reserved]*

*4.0 Interferences. [Reserved]*

*5.0 Safety*

5.1 If explosive gases are produced as a byproduct of biodegradation and could realistically pose a hazard, closely monitor headspace concentration of these gases to ensure laboratory safety. Placement of the benchtop bioreactor system inside a laboratory hood is recommended regardless of byproducts produced.

*6.0. Equipment and Supplies*

**Note:** Figure 304A–1 illustrates a typical laboratory apparatus used to measure biodegradation rates. While the following description refers to Figure 304A–1, the EPA recognizes that alternative reactor configurations, such as alternative reactor shapes and locations of probes and the feed inlet, will also meet the intent of this method. Ensure that the benchtop bioreactor system is self-contained and isolated from the atmosphere (except for the exit vent stream) by leak-checking fittings, tubing, etc.

6.1 Benchtop Bioreactor. The biological reaction is conducted in a biological oxidation reactor of at least 6 liters capacity. The benchtop bioreactor is sealed and equipped with internal probes for controlling and monitoring dissolved oxygen and internal temperature. The top of the reactor is equipped for aerators, gas flow ports, and instrumentation (while ensuring that no leaks to the atmosphere exist around the fittings).

6.2 Aeration gas. Aeration gas is added to the benchtop bioreactor through three diffusers, which are glass tubes that extend to the bottom fifth of the reactor depth. A pure oxygen pressurized cylinder is recommended in order to maintain the specified oxygen concentration. Install a blower (*e.g.*, Diaphragm Type, 15 SCFH capacity) to blow the aeration gas into the reactor diffusers. Measure the aeration gas flow rate with a rotameter (*e.g.*, 0–15 SCFH recommended). The aeration gas will rise through the benchtop bioreactor, dissolving oxygen into the mixture in the process. The aeration gas must provide sufficient agitation to keep the solids in suspension. Provide an exit for the aeration gas from the top flange of the benchtop bioreactor through a water-cooled (*e.g.*, Allihn-type) vertical condenser. Install the condenser through a gas-tight fitting in the benchtop bioreactor closure. Install a splitter which directs a portion of the gas to an exit vent and the rest of the gas through an air recycle pump back to the benchtop bioreactor. Monitor and record the flow rate through the exit vent at least 3 times per day throughout the day.

6.3 Wastewater Feed. Supply the wastewater feed to the benchtop bioreactor in a collapsible low-density polyethylene container or collapsible liner in a container (*e.g.*, 20 L) equipped with a spigot cap (collapsible containers or liners of other material may be required due to the permeability of some volatile compounds through polyethylene). Obtain the wastewater feed by sampling the wastewater feed in the target process. A representative sample of wastewater shall be obtained from the piping leading to the aeration tank. This sample may be obtained from existing sampling valves at the discharge of the wastewater feed pump, or collected from a pipe discharging to the aeration tank, or by pumping from a well-mixed equalization tank upstream from the aeration tank. Alternatively, wastewater can be pumped continuously to the laboratory apparatus from a bleed stream taken from the equalization tank of the full-scale treatment system.

6.3.1 Refrigeration System. Keep the wastewater feed cool by ice or by refrigeration to 4°C. If using a bleed stream from the equalization tank, refrigeration is not required if the residence time in the bleed stream is less than five minutes.

6.3.2 Wastewater Feed Pump. The wastewater is pumped from the refrigerated container using a variable-speed peristaltic pump drive equipped with a peristaltic pump head. Add the feed solution to the benchtop bioreactor through a fitting on the top flange. Determine the rate of feed addition to provide a retention time in the benchtop bioreactor that is numerically equivalent to the retention time in the full-scale system. The wastewater shall be fed at a rate sufficient to achieve 90 to 100 percent of the full-scale system residence time.

6.3.3 Treated wastewater feed. The benchtop bioreactor effluent exits at the bottom of the reactor through a tube and proceeds to the clarifier.

6.4 Clarifier. The effluent flows to a separate closed clarifier that allows separation of biomass and effluent (*e.g.*, 2-liter pear-shaped glass separatory funnel, modified by removing the stopcock and adding a 25-mm OD glass tube at the bottom). Benchtop bioreactor effluent enters the clarifier through a tube inserted to a depth of 0.08 m (3 in.) through a stopper at the top of the

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clarifier. System effluent flows from a tube inserted through the stopper at the top of the clarifier to a drain (or sample bottle when sampling). The underflow from the clarifier leaves from the glass tube at the bottom of the clarifier. Flexible tubing connects this fitting to the sludge recycle pump. This pump is coupled to a variable speed pump drive. The discharge from this pump is returned through a tube inserted in a port on the side of the benchtop bioreactor. An additional port is provided near the bottom of the benchtop bioreactor for sampling the reactor contents. The mixed liquor from the benchtop bioreactor flows into the center of the clarifier. The clarified system effluent separates from the biomass and flows through an exit near the top of the clarifier. There shall be no headspace in the clarifier.

6.5 Temperature Control Apparatus. Capable of maintaining the system at a temperature equal to the temperature of the full-scale system. The average temperature should be maintained within ±2 °C of the set point.

6.5.1 Temperature Monitoring Device. A resistance type temperature probe or a thermocouple connected to a temperature readout with a resolution of 0.1 °C or better.

6.5.2 Benchtop Bioreactor Heater. The heater is connected to the temperature control device.

6.6 Oxygen Control System. Maintain the dissolved oxygen concentration at the levels present in the full-scale system. Target full-scale activated sludge systems with dissolved oxygen concentration below 2 mg/L are required to maintain the dissolved oxygen concentration in the benchtop ioreactor within 0.5 mg/L of the target dissolved oxygen level. Target full-scale activated sludge systems with dissolved oxygen concentration above 2 mg/L are required to maintain the dissolved oxygen concentration in the benchtop bioreactor within 1.5 mg/L of the target dissolved oxygen concentration; however, for target full-scale activated sludge systems with dissolved oxygen concentrations above 2 mg/L, the dissolved oxygen concentration in the benchtop bioreactor may not drop below 1.5 mg/L. If the benchtop bioreactor is outside the control range, the dissolved oxygen is noted and the reactor operation is adjusted.

6.6.1 Dissolved Oxygen Monitor. Dissolved oxygen is monitored with a polarographic probe (gas permeable membrane) connected to a dissolved oxygen meter (*e.g.*, 0 to 15 mg/L, 0 to 50 °C).

6.6.2 Benchtop Bioreactor Pressure Monitor. The benchtop bioreactor pressure is monitored through a port in the top flange of the reactor. This is connected to a gauge control with a span of 13-cm water vacuum to 13-cm water pressure or better. A relay is activated when the vacuum exceeds an adjustable setpoint which opens a solenoid valve (normally closed), admitting oxygen to the system. The vacuum setpoint controlling oxygen addition to the system shall be set at approximately 2.5 ± 0.5 cm water and maintained at this setting except during brief periods when the dissolved oxygen concentration is adjusted.

6.7 Connecting Tubing. All connecting tubing shall be Teflon or equivalent in impermeability. The only exception to this specification is the tubing directly inside the pump head of the wastewater feed pump, which may be Viton, Silicone or another type of flexible tubing.

**Note:** Mention of trade names or products does not constitute endorsement by the U.S. Environmental Protection Agency.

*7.0 Reagents and Standards*

7.1 Wastewater. Obtain a representative sample of wastewater at the inlet to the full-scale treatment plant if there is an existing full-scale treatment plant (see section 6.3). If there is no existing full-scale treatment plant, obtain the wastewater sample as close to the point of determination as possible. Collect the sample by pumping the wastewater into the 20-L collapsible container. The loss of volatiles shall be minimized from the wastewater by collapsing the container before filling, by minimizing the time of filling, and by avoiding a headspace in the container after filling. If the wastewater requires the addition of nutrients to support the biomass growth and maintain biomass characteristics, those nutrients are added and mixed with the container contents after the container is filled.

7.2 Biomass. Obtain the biomass or activated sludge used for rate constant determination in the bench-scale process from the existing full-scale process or from a representative biomass culture (*e.g.*, biomass that has been developed for a future full-scale process). This biomass is preferentially obtained from a thickened acclimated mixed liquor sample. Collect the sample either by bailing from the mixed liquor in the aeration tank with a weighted container, or by collecting aeration tank effluent at the effluent overflow weir. Transport the sample to the laboratory within no more than 4 hours of collection. Maintain the biomass concentration in the benchtop bioreactor at the level of the full-scale system +10 percent throughout the sampling period of the test method.

*8.0 Sample Collection, Preservation, Storage, and Transport*

8.1 Benchtop Bioreactor Operation. Charge the mixed liquor to the benchtop bioreactor, minimizing headspace over the liquid surface to minimize entrainment of mixed liquor in the circulating gas. Fasten the benchtop bioreactor headplate to the reactor over the liquid surface. Maintain the temperature of the contents of the benchtop bioreactor system at the temperature of the target full-scale system, ±2 °C, throughout the testing period. Monitor and record the temperature of the benchtop bioreactor contents at least to the nearest 0.1 °C.

8.1.1 Wastewater Storage. Collect the wastewater sample in the 20-L collapsible container. Store the container at 4 °C throughout the testing period. Connect the container to the benchtop bioreactor feed pump.

8.1.2 Wastewater Flow Rate.

8.1.2.1 The hydraulic residence time of the aeration tank is calculated as the ratio of the volume of the tank (L) to the flow rate (L/min). At the beginning of a test, the container shall be connected to the feed pump and solution shall be pumped to the benchtop bioreactor at the required flow rate to achieve the calculated hydraulic residence time of wastewater in the aeration tank.

$$Q_{test} = Q_{fs} \frac{L}{V_{fs}} \qquad \text{Eq. 304A-1}$$

Where:

$Q_{test}$ = wastewater flow rate (L/min)

$Q_{fs}$ = average flow rate of full-scale process (L/min)

$V_{fs}$ = volume of full-scale aeration tank (L)

8.1.2.2 The target flow rate in the test apparatus is the same as the flow rate in the target full-scale process multiplied by the ratio of benchtop bioreactor volume (e.g., 6 L) to the volume of the full-scale aeration tank. The hydraulic residence time shall be maintained at 90 to 100 percent of the residence time maintained in the full-scale unit. A nominal flow rate is set on the pump based on a pump calibration. Changes in the elasticity of the tubing in the pump head and the accumulation of material in the tubing affect this calibration. The nominal pumping rate shall be changed as necessary based on volumetric flow measurements. Discharge the benchtop bioreactor effluent to a wastewater storage, treatment, or disposal facility, except during sampling or flow measurement periods.



8.1.3 Sludge Recycle Rate. Set the sludge recycle rate at a rate sufficient to prevent accumulation in the bottom of the clarifier. Set the air circulation rate sufficient to maintain the biomass in suspension.

8.1.4 Benchtop Bioreactor Operation and Maintenance. Temperature, dissolved oxygen concentration, exit vent flow rate, benchtop bioreactor effluent flow rate, and air circulation rate shall be measured and recorded three times throughout each day of benchtop bioreactor operation. If other parameters (such as pH) are measured and maintained in the target full-scale unit, these parameters, where appropriate, shall be monitored and maintained to target full-scale specifications in the benchtop bioreactor. At the beginning of each sampling period (Section 8.2), sample the benchtop bioreactor contents for suspended solids analysis. Take this sample by loosening a clamp on a length of tubing attached to the lower side port. Determine the suspended solids gravimetrically by the Gooch crucible/glass fiber filter method for total suspended solids, in accordance with Standard Methods[3] or equivalent. When necessary, sludge shall be wasted from the lower side port of the benchtop bioreactor, and the volume that is wasted shall be replaced with an equal volume of the reactor effluent. Add thickened activated sludge mixed liquor as necessary to the benchtop bioreactor to increase the suspended solids concentration to the desired level. Pump this mixed liquor to the benchtop bioreactor through the upper side port (Item 24 in Figure 304A–1). Change the membrane on the dissolved oxygen probe before starting the test. Calibrate the oxygen probe immediately before the start of the test and each time the membrane is changed.

8.1.5 Inspection and Correction Procedures. If the feed line tubing becomes clogged, replace with new tubing. If the feed flow rate is not within 5 percent of target flow any time the flow rate is measured, reset pump or check the flow measuring device and measure flow rate again until target flow rate is achieved.

8.2 Test Sampling. At least two and one half hydraulic residence times after the system has reached the targeted specifications shall be permitted to elapse before the first sample is taken. Effluent samples of the clarifier discharge (Item 20 in Figure 304A–1) and the influent wastewater feed are collected in 40-mL septum vials to which two drops of 1:10 hydrochloric acid (HCl) in water have been added. Sample the clarifier discharge directly from the drain line. These samples will be composed of the entire flow from the system for a period of several minutes. Feed samples shall be taken from the feed pump suction line after temporarily stopping the benchtop bioreactor feed, removing a connector, and squeezing the collapsible feed container. Store both influent and effluent samples at 4 °C immediately after collection and analyze within 8 hours of collection.

8.2.1 Frequency of Sampling. During the test, sample and analyze the wastewater feed and the clarifier effluent at least six times. The sampling intervals shall be separated by at least 8 hours. During any individual sampling interval, sample the wastewater feed simultaneously with or immediately after the effluent sample. Calculate the relative standard deviation (RSD) of the amount removed (*i.e.*, effluent concentration—wastewater feed concentration). The RSD values shall be < 15 percent. If an RSD value is > 15 percent, continue sampling and analyzing influent and effluent sets of samples until the RSD values are within specifications.

8.2.2 Sampling After Exposure of System to Atmosphere. If, after starting sampling procedures, the benchtop bioreactor system is exposed to the atmosphere (due to leaks, maintenance, etc.), allow at least one hydraulic residence time to elapse before resuming sampling.

*9.0 Quality Control*

9.1 Dissolved Oxygen. Fluctuation in dissolved oxygen concentration may occur for numerous reasons, including undetected gas leaks, increases and decreases in mixed liquor suspended solids resulting from cell growth and solids loss in the effluent stream, changes in diffuser performance, cycling of effluent flow rate, and overcorrection due to faulty or sluggish dissolved oxygen probe response. Control the dissolved oxygen concentration in the benchtop bioreactor by changing the proportion of oxygen in the circulating aeration gas. Should the dissolved oxygen concentration drift below the designated experimental condition, bleed a small amount of aeration gas from the system on the pressure side (i.e., immediately upstream of one of the diffusers). This will create a vacuum in the system, triggering the pressure sensitive relay to open the solenoid valve and admit oxygen to the system. Should the dissolved oxygen concentration drift above the designated experimental condition, slow or stop the oxygen input to the system until the dissolved oxygen concentration approaches the correct level.

9.2 Sludge Wasting.

9.2.1 Determine the suspended solids concentration (section 8.1.4) at the beginning of a test, and once per day thereafter during the test. If the test is completed within a two day period, determine the suspended solids concentration after the final sample set is taken. If the suspended solids concentration exceeds the specified concentration, remove a fraction of the sludge from the benchtop bioreactor. The required volume of mixed liquor to remove is determined as follows:

$$V_w = V_r \left( \frac{S_m - S_s}{S_m} \right) \qquad \text{Eq. 304A-2}$$

Where:

$V_w$ is the wasted volume (Liters),

$V_r$ is the volume of the benchtop bioreactor (Liters),

$S_m$ is the measured solids (g/L), and

$S_s$ is the specified solids (g/L).

9.2.2 Remove the mixed liquor from the benchtop bioreactor by loosening a clamp on the mixed liquor sampling tube and allowing the required volume to drain to a graduated flask. Clamp the tube when the correct volume has been

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wasted. Replace the volume of the liquid wasted by pouring the same volume of effluent back into the benchtop bioreactor. Dispose of the waste sludge properly.

9.3 Sludge Makeup. In the event that the suspended solids concentration is lower than the specifications, add makeup sludge back into the benchtop bioreactor. Determine the amount of sludge added by the following equation:

$$V_w = V_r\left(\frac{S_s - S_m}{S_w}\right) \qquad \text{Eq. 304A-3}$$

Where:

$V_w$ is the volume of sludge to add (Liters),

$V_r$ is the volume of the benchtop bioreactor (Liters),

$S_w$ is the solids in the makeup sludge (g/L),

$S_m$ is the measured solids (g/L), and $S_s$ is the specified solids (g/L).

*10.0 Calibration and Standardization*

10.1 Wastewater Pump Calibration. Determine the wastewater flow rate by collecting the system effluent for a time period of at least one hour, and measuring the volume with a graduated cylinder. Record the collection time period and volume collected. Determine flow rate. Adjust the pump speed to deliver the specified flow rate.

10.2 Calibration Standards. Prepare calibration standards from pure certified standards in an aqueous medium. Prepare and analyze three concentrations of calibration standards for each target component (or for a mixture of components) in triplicate daily throughout the analyses of the test samples. At each concentration level, a single calibration shall be within 5 percent of the average of the three calibration results. The low and medium calibration standards shall bracket the expected concentration of the effluent (treated) wastewater. The medium and high standards shall bracket the expected influent concentration.

*11.0 Analytical Procedures*

11.1 Analysis. If the identity of the compounds of interest in the wastewater is not known, a representative sample of the wastewater shall be analyzed in order to identify all of the compounds of interest present. A gas chromatography/mass spectrometry screening method is recommended.

11.1.1 After identifying the compounds of interest in the wastewater, develop and/or use one or more analytical techniques capable of measuring each of those compounds (more than one analytical technique may be required, depending on the characteristics of the wastewater). Test Method 18, found in appendix A of 40 CFR 60, may be used as a guideline in developing the analytical technique. Purge and trap techniques may be used for analysis providing the target components are sufficiently volatile to make this technique appropriate. The limit of quantitation for each compound shall be determined (see reference 1). If the effluent concentration of any target compound is below the limit of quantitation determined for that compound, the operation of the Method 304 unit may be altered to attempt to increase the effluent concentration above the limit of quantitation. Modifications to the method shall be approved prior to the test. The request should be addressed to Method 304 contact, Emissions Measurement Center, Mail Drop 19, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711.

*12.0 Data Analysis and Calculations*

12.1 Nomenclature. The following symbols are used in the calculations.

$C_i$ = Average inlet feed concentration for a compound of interest, as analyzed (mg/L)

$C_o$ = Average outlet (effluent) concentration for a compound of interest, as analyzed (mg/L)

X = Biomass concentration, mixed liquor suspended solids (g/L)

t = Hydraulic residence time in the benchtop bioreactor (hours)

V = Volume of the benchtop bioreactor (L)

Q = Flow rate of wastewater into the benchtop bioreactor, average (L/hour)

12.2 Residence Time. The hydraulic residence time of the benchtop bioreactor is equal to the ratio of the volume of the benchtop bioreactor (L) to the flow rate (L/h):

$$t = \frac{V}{Q} \qquad \text{Eq. 304A-4}$$

12.3 Rate of Biodegradation. Calculate the rate of biodegradation for each component with the following equation:

$$\text{Rate}\left(\frac{mg}{L-h}\right) = \frac{C_i - C_o}{t} \qquad \text{Eq. 304A-5}$$

12.4 First-Order Biorate Constant. Calculate the first-order biorate constant (K1) for each component with the following equation:

$$K1\left(\frac{L}{g-h}\right) = \frac{C_i - C_o}{t\,C_o\,X} \qquad \text{Eq. 304A-6}$$

12.5 Relative Standard Deviation (RSD). Determine the standard deviation of both the influent and effluent sample concentrations (S) using the following equation:

$$RSD = \frac{100}{\bar{S}}\left(\sum_{i=1}^{n}\frac{\left(S_i - \bar{S}\right)^2}{(n-1)}\right)^{1/2} \qquad \text{Eq. 304A-7}$$



12.6 Determination of Percent Air Emissions and Percent Biodegraded. Use the results from this test method and follow the applicable procedures in appendix C of 40 CFR part 63, entitled, "Determination of the Fraction Biodegraded ($F_{bio}$) in a Biological Treatment Unit" to determine $F_{bio}$.

*13.0 Method Performance, [Reserved]*

*14.0 Pollution Prevention, [Reserved]*

*15.0 Waste Management, [Reserved]*

*16.0 References*

1. "Guidelines for data acquisition and data quality evaluation in Environmental Chemistry," Daniel MacDoughal, Analytical Chemistry, Volume 52, p. 2242, 1980.

2. Test Method 18, 40 CFR 60, appendix A.

3. Standard Methods for the Examination of Water and Wastewater, 16th Edition, Method 209C, Total Suspended Solids Dried at 103–105 °C, APHA, 1985.

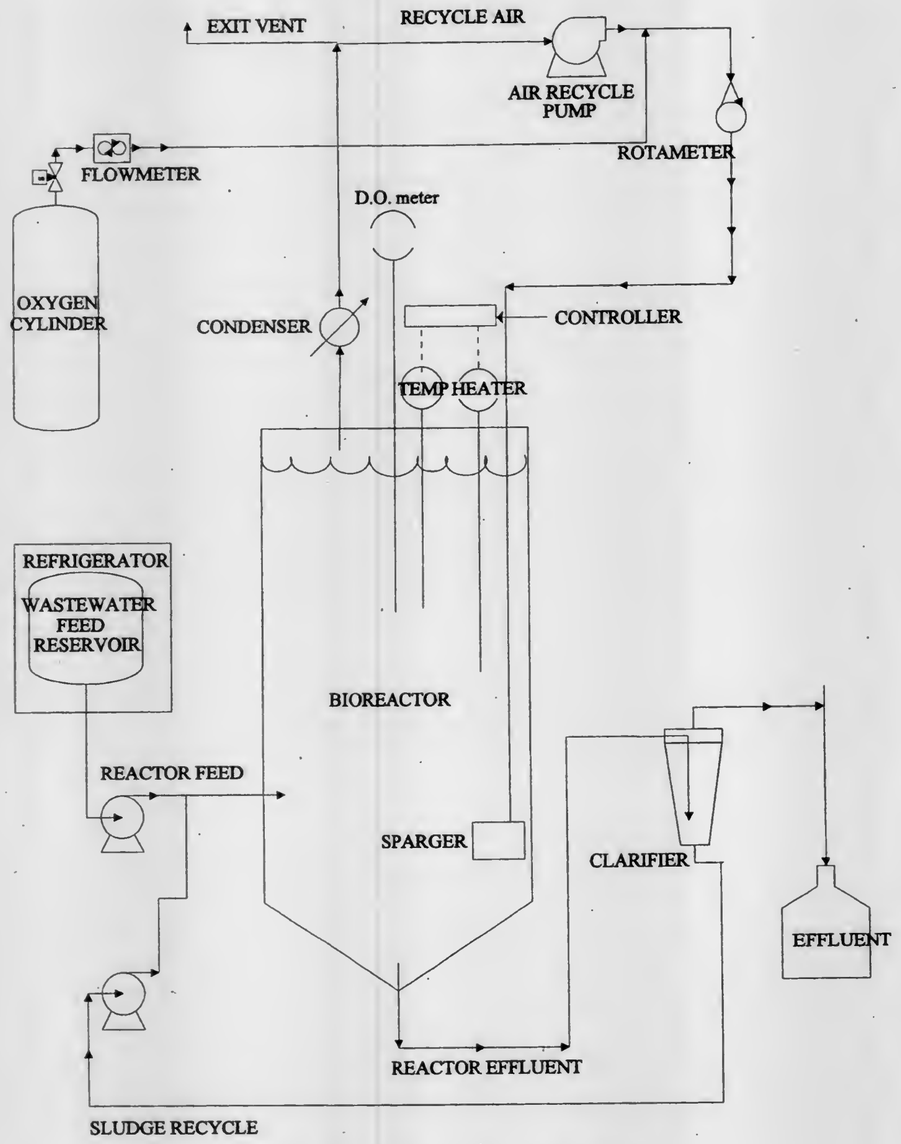
4. Water7, Hazardous Waste Treatment, Storage, and Disposal Facilities (TSDF)—Air Emission Models, U.S. Environmental Protection Agency, EPA–450/3–87–026, Review Draft, November 1989.

5. Chemdat7, Hazardous Waste Treatment, Storage, and Disposal Facilities (TSDF)—Air Emission Models, U.S. Environmental Protection Agency, EPA–450/3–87–026, Review Draft, November 1989.

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*17.0 Tables, Diagrams, Flowcharts, and Validation Data*




EPA METHOD 304A VENT BIOREACTOR SYSTEM



**Method 304B: Determination of Biodegradation Rates of Organic Compounds (Scrubber Option)**

*1.0 Scope and Application*

1.1 Applicability. This method is applicable for the determination of biodegradation rates of organic compounds in an activated sludge process. The test method is designed to evaluate the ability of an aerobic biological reaction system to degrade or destroy specific components in waste streams. The method may also be used to determine the effects of changes in wastewater composition on operation. The biodegradation rates determined by utilizing this method are not representative of a full-scale system. Full-scale systems embody biodegradation and air emissions in competing reactions. This method measures biodegradation in absence of air emissions. The rates measured by this method shall be used in conjunction with the procedures listed in appendix C of this part to calculate the fraction emitted to the air versus the fraction biodegraded.

*2.0 Summary of Method*

2.1 A self-contained benchtop bioreactor system is assembled in the laboratory. A sample of mixed liquor is added and the waste stream is then fed continuously. The benchtop bioreactor is operated under conditions nearly identical to the target full-scale activated sludge process, except that air emissions are not a factor. The benchtop bioreactor temperature, dissolved oxygen concentration, average residence time in the reactor, waste composition, biomass concentration, and biomass composition of the target full-scale process are the parameters which are duplicated in the laboratory system. Biomass shall be removed from the target full-scale activated sludge unit and held for no more than 4 hours prior to use in the benchtop bioreactor. If antifoaming agents are used in the full-scale system, they shall also be used in the benchtop bioreactor. The feed flowing into and the effluent exiting the benchtop bioreactor are analyzed to determine the biodegradation rates of the target compounds. The choice of analytical methodology for measuring the compounds of interest at the inlet and outlet to the benchtop bioreactor are left to the discretion of the source, except where validated methods are available.

*3.0 Definitions. [Reserved]*

*4.0 Interferences. [Reserved]*

*5.0 Safety*

5.1 If explosive gases are produced as a byproduct of biodegradation and could realistically pose a hazard, closely monitor headspace concentration of these gases to ensure laboratory safety. Placement of the benchtop bioreactor system inside a laboratory hood is recommended regardless of byproducts produced.

*6.0 Equipment and Supplies*

**Note:** Figure 304B–1 illustrates a typical laboratory apparatus used to measure biodegradation rates. While the following description refers to Figure 304B–1, the EPA recognizes that alternative reactor configurations, such as alternative reactor shapes and locations of probes and the feed inlet, will also meet the intent of this method. Ensure that the benchtop bioreactor system is self-contained and isolated from the atmosphere by leak-checking fittings, tubing, etc.

6.1 Benchtop Bioreactor. The biological reaction is conducted in a biological oxidation reactor of at least 6-liters capacity. The benchtop bioreactor is sealed and equipped with internal probes for controlling and monitoring dissolved oxygen and internal temperature. The top of the benchtop bioreactor is equipped for aerators, gas flow ports, and instrumentation (while ensuring that no leaks to the atmosphere exist around the fittings).

6.2 Aeration gas. Aeration gas is added to the benchtop bioreactor through three diffusers, which are glass tubes that extend to the bottom fifth of the reactor depth. A pure oxygen pressurized cylinder is recommended in order to maintain the specified oxygen concentration. Install a blower (*e.g.*, Diaphragm Type, 15 SCFH capacity) to blow the aeration gas into the benchtop bioreactor diffusers. Measure the aeration gas flow rate with a rotameter (*e.g.*, 0–15 SCFH recommended). The aeration gas will rise through the benchtop bioreactor, dissolving oxygen into the mixture in the process. The aeration gas must provide sufficient agitation to keep the solids in suspension. Provide an exit for the aeration gas from the top flange of the benchtop bioreactor through a water-cooled (*e.g.*, Allihn-type) vertical condenser. Install the condenser through a gas-tight fitting in the benchtop bioreactor closure. Design the system so that at least 10 percent of the gas flows through an alkaline scrubber containing 175 mL of 45 percent by weight solution of potassium hydroxide (KOH) and 5 drops of 0.2 percent alizarin yellow dye. Route the balance of the gas through an adjustable scrubber bypass. Route all of the gas through a 1-L knock-out flask to remove entrained moisture and then to the intake of the blower. The blower recirculates the gas to the benchtop bioreactor.

6.3 Wastewater Feed. Supply the wastewater feed to the benchtop bioreactor in a collapsible low-density polyethylene container or collapsible liner in a container (*e.g.*, 20 L) equipped with a spigot cap (collapsible containers or liners of other material may be required due to the permeability of some volatile compounds through polyethylene). Obtain the wastewater feed by sampling the wastewater feed in the target process. A representative sample of wastewater shall be obtained from the piping leading to the aeration tank. This sample may be obtained from existing sampling valves at the discharge of the wastewater feed pump, or collected from a pipe discharging to the aeration tank, or by pumping from a well-mixed equalization tank upstream from the aeration tank. Alternatively, wastewater can be pumped continuously to the laboratory apparatus from a bleed stream taken from the equalization tank of the full-scale treatment system.

6.3.1 Refrigeration System. Keep the wastewater feed cool by ice or by refrigeration to 4°C. If using a bleed stream from the equalization tank, refrigeration is not required if the residence time in the bleed stream is less than five minutes.

6.3.2 Wastewater Feed Pump. The wastewater is pumped from the refrigerated container using a variable-speed peristaltic pump drive equipped with a peristaltic pump head. Add the feed solution to the benchtop bioreactor through a fitting on the top flange. Determine the rate of feed addition to provide a retention time in the benchtop bioreactor that is numerically equivalent to the retention time in the target full-scale system. The wastewater shall be fed at a rate sufficient to achieve 90 to 100 percent of the target full-scale system residence time.

6.3.3 Treated wastewater feed. The benchtop bioreactor effluent exits at the bottom of the reactor through a tube and proceeds to the clarifier.

6.4 Clarifier. The effluent flows to a separate closed clarifier that allows separation of biomass and effluent (*e.g.*, 2-liter pear-shaped glass separatory funnel, modified by removing the stopcock and adding a 25-mm OD glass tube at the bottom). Benchtop bioreactor effluent enters the clarifier through a tube inserted to a depth of 0.08 m (3 in.)

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through a stopper at the top of the clarifier. System effluent flows from a tube inserted through the stopper at the top of the clarifier to a drain (or sample bottle when sampling). The underflow from the clarifier leaves from the glass tube at the bottom of the clarifier. Flexible tubing connects this fitting to the sludge recycle pump. This pump is coupled to a variable speed pump drive. The discharge from this pump is returned through a tube inserted in a port on the side of the benchtop bioreactor. An additional port is provided near the bottom of the benchtop bioreactor for sampling the reactor contents. The mixed liquor from the benchtop bioreactor flows into the center of the clarifier. The clarified system effluent separates from the biomass and flows through an exit near the top of the clarifier. There shall be no headspace in the clarifier.

6.5 Temperature Control Apparatus. Capable of maintaining the system at a temperature equal to the temperature of the full-scale system. The average temperature should be maintained within ±2 °C of the set point.

6.5.1 Temperature Monitoring Device. A resistance type temperature probe or a thermocouple connected to a temperature readout with a resolution of 0.1°C or better.

6.5.2 Benchtop Bioreactor Heater. The heater is connected to the temperature control device.

6.6 Oxygen Control System. Maintain the dissolved oxygen concentration at the levels present in the full-scale system. Target full-scale activated sludge systems with dissolved oxygen concentration below 2 mg/L are required to maintain the dissolved oxygen concentration in the benchtop bioreactor within 0.5 mg/L of the target dissolved oxygen level. Target full-scale activated sludge systems with dissolved oxygen concentration above 2 mg/L are required to maintain the dissolved oxygen concentration in the benchtop bioreactor within 1.5 mg/L of the target dissolved oxygen concentration; however, for target full-scale activated sludge systems with dissolved oxygen concentrations above 2 mg/L, the dissolved oxygen concentration in the benchtop bioreactor may not drop below 1.5 mg/L. If the benchtop bioreactor is outside the control range, the dissolved oxygen is noted and the reactor operation is adjusted.

6.6.1 Dissolved Oxygen Monitor. Dissolved oxygen is monitored with a polarographic probe (gas permeable membrane) connected to a dissolved oxygen meter (*e.g.*, 0 to 15 mg/L, 0 to 50°C).

6.6.2 Benchtop Bioreactor Pressure Monitor. The benchtop bioreactor pressure is monitored through a port in the top flange of the reactor. This is connected to a gauge control with a span of 13-cm water vacuum to 13-cm water pressure or better. A relay is activated when the vacuum exceeds an adjustable setpoint which opens a solenoid valve (normally closed), admitting oxygen to the system. The vacuum setpoint controlling oxygen addition to the system shall be set at approximately 2.5 ± 0.5 cm water and maintained at this setting except during brief periods when the dissolved oxygen concentration is adjusted.

6.7 Connecting Tubing. All connecting tubing shall be Teflon or equivalent in impermeability. The only exception to this specification is the tubing directly inside the pump head of the wastewater feed pump, which may be Viton, Silicone or another type of flexible tubing.

**Note:** Mention of trade names or products does not constitute endorsement by the U.S. Environmental Protection Agency.

*7.0. Reagents and Standards*

7.1 Wastewater. Obtain a representative sample of wastewater at the inlet to the full-scale treatment plant if there is an existing full-scale treatment plant (See Section 6.3). If there is no existing full-scale treatment plant, obtain the wastewater sample as close to the point of determination as possible. Collect the sample by pumping the wastewater into the 20-L collapsible container. The loss of volatiles shall be minimized from the wastewater by collapsing the container before filling, by minimizing the time of filling, and by avoiding a headspace in the container after filling. If the wastewater requires the addition of nutrients to support the biomass growth and maintain biomass characteristics, those nutrients are added and mixed with the container contents after the container is filled.

7.2 Biomass. Obtain the biomass or activated sludge used for rate constant determination in the bench-scale process from the existing full-scale process or from a representative biomass culture (*e.g.*, biomass that has been developed for a future full-scale process). This biomass is preferentially obtained from a thickened acclimated mixed liquor sample. Collect the sample either by bailing from the mixed liquor in the aeration tank with a weighted container, or by collecting aeration tank effluent at the effluent overflow weir. Transport the sample to the laboratory within no more than 4 hours of collection. Maintain the biomass concentration in the benchtop bioreactor at the level of the target full-scale system +10 percent throughout the sampling period of the test method.

*8.0 Sample Collection, Preservation, Storage, and Transport*

8.1 Benchtop Bioreactor Operation. Charge the mixed liquor to the benchtop bioreactor, minimizing headspace over the liquid surface to minimize entrainment of mixed liquor in the circulating gas. Fasten the benchtop bioreactor headplate to the reactor over the liquid surface. Maintain the temperature of the contents of the benchtop bioreactor system at the temperature of the target full-scale system, ±2 °C, throughout the testing period. Monitor and record the temperature of the reactor contents at least to the nearest 0.1°C.

8.1.1 Wastewater Storage. Collect the wastewater sample in the 20-L collapsible container. Store the container at 4 °C throughout the testing period. Connect the container to the benchtop bioreactor feed pump.

8.1.2 Wastewater Flow Rate.

8.1.2.1 The hydraulic residence time of the aeration tank is calculated as the ratio of the volume of the tank (L) to the flow rate (L/min). At the beginning of a test, the container shall be connected to the feed pump and solution shall be pumped to the benchtop bioreactor at the required flow rate to achieve the calculated hydraulic residence time of wastewater in the aeration tank.

$$Q_{test} = Q_{fs}\frac{L}{V_{fs}} \qquad \text{Eq. 304B-1}$$

Where:

$Q_{test}$ = wastewater flow rate (L/min)

$Q_{fs}$ = average flow rate of full-scale process (L/min)

$V_{fs}$ = volume of full-scale aeration tank (L)



8.1.2.2 The target flow rate in the test apparatus is the same as the flow rate in the target full-scale process multiplied by the ratio of benchtop bioreactor volume (*e.g.*, 6 L) to the volume of the full-scale aeration tank. The hydraulic residence time shall be maintained at 90 to 100 percent of the residence time maintained in the target full-scale unit. A nominal flow rate is set on the pump based on a pump calibration. Changes in the elasticity of the tubing in the pump head and the accumulation of material in the tubing affect this calibration. The nominal pumping rate shall be changed as necessary based on volumetric flow measurements. Discharge the benchtop bioreactor effluent to a wastewater storage, treatment, or disposal facility, except during sampling or flow measurement periods.

8.1.3 Sludge Recycle Rate. Set the sludge recycle rate at a rate sufficient to prevent accumulation in the bottom of the clarifier. Set the air circulation rate sufficient to maintain the biomass in suspension.

8.1.4 Benchtop Bioreactor Operation and Maintenance. Temperature, dissolved oxygen concentration, flow rate, and air circulation rate shall be measured and recorded three times throughout each day of testing. If other parameters (such as pH) are measured and maintained in the target full-scale unit, these parameters shall, where appropriate, be monitored and maintained to full-scale specifications in the benchtop bioreactor. At the beginning of each sampling period (section 8.2), sample the benchtop bioreactor contents for suspended solids analysis. Take this sample by loosening a clamp on a length of tubing attached to the lower side port. Determine the suspended solids gravimetrically by the Gooch crucible/glass fiber filter method for total suspended solids, in accordance with Standard Methods[3] or equivalent. When necessary, sludge shall be wasted from the lower side port of the benchtop bioreactor, and the volume that is wasted shall be replaced with an equal volume of the benchtop bioreactor effluent. Add thickened activated sludge mixed liquor as necessary to the benchtop bioreactor to increase the suspended solids concentration to the desired level. Pump this mixed liquor to the benchtop bioreactor through the upper side port (Item 24 in Figure 304B–1). Change the membrane on the dissolved oxygen probe before starting the test. Calibrate the oxygen probe immediately before the start of the test and each time the membrane is changed. The scrubber solution shall be replaced each weekday with 175 mL 45 percent W/W KOH solution to which five drops of 0.2 percent alizarin yellow indicator in water have been added. The potassium hydroxide solution in the alkaline scrubber shall be changed if the alizarin yellow dye color changes.

8.1.5 Inspection and Correction Procedures. If the feed line tubing becomes clogged, replace with new tubing. If the feed flow rate is not within 5 percent of target flow any time the flow rate is measured, reset pump or check the flow measuring device and measure flow rate again until target flow rate is achieved.

8.2 Test Sampling. At least two and one half hydraulic residence times after the system has reached the targeted specifications shall be permitted to elapse before the first sample is taken. Effluent samples of the clarifier discharge (Item 20 in Figure 304B–1) and the influent wastewater feed are collected in 40-mL septum vials to which two drops of 1:10 hydrochloric acid (HCl) in water have been added. Sample the clarifier discharge directly from the drain line. These samples will be composed of the entire flow from the system for a period of several minutes. Feed samples shall be taken from the feed pump suction line after temporarily stopping the benchtop bioreactor feed, removing a connector, and squeezing the collapsible feed container. Store both influent and effluent samples at 4°C immediately after collection and analyze within 8 hours of collection.

8.2.1 Frequency of Sampling. During the test, sample and analyze the wastewater feed and the clarifier effluent at least six times. The sampling intervals shall be separated by at least 8 hours. During any individual sampling interval, sample the wastewater feed simultaneously with or immediately after the effluent sample. Calculate the RSD of the amount removed (*i.e.*, effluent concentration—wastewater feed concentration). The RSD values shall be <15 percent. If an RSD value is >15 percent, continue sampling and analyzing influent and effluent sets of samples until the RSD values are within specifications.

8.2.2 Sampling After Exposure of System to Atmosphere. If, after starting sampling procedures, the benchtop bioreactor system is exposed to the atmosphere (due to leaks, maintenance, etc.), allow at least one hydraulic residence time to elapse before resuming sampling.

*9.0 Quality Control*

9.1 Dissolved Oxygen. Fluctuation in dissolved oxygen concentration may occur for numerous reasons, including undetected gas leaks, increases and decreases in mixed liquor suspended solids resulting from cell growth and solids loss in the effluent stream, changes in diffuser performance, cycling of effluent flow rate, and overcorrection due to faulty or sluggish dissolved oxygen probe response. Control the dissolved oxygen concentration in the benchtop bioreactor by changing the proportion of oxygen in the circulating aeration gas. Should the dissolved oxygen concentration drift below the designated experimental condition, bleed a small amount of aeration gas from the system on the pressure side (*i.e.*, immediately upstream of one of the diffusers). This will create a vacuum in the system, triggering the pressure sensitive relay to open the solenoid valve and admit oxygen to the system. Should the dissolved oxygen concentration drift above the designated experimental condition, slow or stop the oxygen input to the system until the dissolved oxygen concentration approaches the correct level.

9.2 Sludge Wasting.

9.2.1 Determine the suspended solids concentration (section 8.1.4) at the beginning of a test, and once per day thereafter during the test. If the test is completed within a two day period, determine the suspended solids concentration after the final sample set is taken. If the suspended solids concentration exceeds the specified concentration, remove a fraction of the sludge from the benchtop bioreactor. The required volume of mixed liquor to remove is determined as follows:

$$V_w = V_r\left(\frac{S_m - S_s}{S_m}\right) \qquad \text{Eq. 304B-2}$$

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Where:
$V_w$ is the wasted volume (Liters),
$V_r$ is the volume of the benchtop bioreactor (Liters),
$S_m$ is the measured solids (g/L), and
$S_s$ is the specified solids (g/L).

9.2.2 Remove the mixed liquor from the benchtop bioreactor by loosening a clamp on the mixed liquor sampling tube and allowing the required volume to drain to a graduated flask. Clamp the tube when the correct volume has been wasted. Replace the volume of the liquid wasted by pouring the same volume of effluent back into the benchtop bioreactor. Dispose of the waste sludge properly.

$$V_w = V_r\left(\frac{S_s - S_m}{S_w}\right) \quad \text{Eq. 304B-3}$$

9.3 Sludge Makeup. In the event that the suspended solids concentration is lower than the specifications, add makeup sludge back into the benchtop bioreactor. Determine the amount of sludge added by the following equation:

Where:
$V_w$ is the volume of sludge to add (Liters),
$V_r$ is the volume of the benchtop bioreactor (Liters),
$S_w$ is the solids in the makeup sludge (g/L),
$S_m$ is the measured solids (g/L), and
$S_s$ is the specified solids (g/L).

*10.0 Calibration and Standardizations.*

10.1 Wastewater Pump Calibration. Determine the wastewater flow rate by collecting the system effluent for a time period of at least one hour, and measuring the volume with a graduated cylinder. Record the collection time period and volume collected. Determine flow rate. Adjust the pump speed to deliver the specified flow rate.

10.2 Calibration Standards. Prepare calibration standards from pure certified standards in an aqueous medium. Prepare and analyze three concentrations of calibration standards for each target component (or for a mixture of components) in triplicate daily throughout the analyses of the test samples. At each concentration level, a single calibration shall be within 5 percent of the average of the three calibration results. The low and medium calibration standards shall bracket the expected concentration of the effluent (treated) wastewater. The medium and high standards shall bracket the expected influent concentration.

*11.0 Analytical Test Procedures*

11.1 Analysis. If the identity of the compounds of interest in the wastewater is not known, a representative sample of the wastewater shall be analyzed in order to identify all of the compounds of interest present. A gas chromatography/mass spectrometry screening method is recommended.

11.1.1 After identifying the compounds of interest in the wastewater, develop and/or use one or more analytical technique capable of measuring each of those compounds (more than one analytical technique may be required, depending on the characteristics of the wastewater). Method 18, found in appendix A of 40 CFR 60, may be used as a guideline in developing the analytical technique. Purge and trap techniques may be used for analysis providing the target components are sufficiently volatile to make this technique appropriate. The limit of quantitation for each compound shall be determined.[1] If the effluent concentration of any target compound is below the limit of quantitation determined for that compound, the operation of the Method 304 unit may be altered to attempt to increase the effluent concentration above the limit of quantitation. Modifications to the method shall be approved prior to the test. The request should be addressed to Method 304 contact, Emissions Measurement Center, Mail Drop 19, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711.

*12.0 Data Analysis and Calculations*

12.1 Nomenclature. The following symbols are used in the calculations.

$C_i$ = Average inlet feed concentration for a compound of interest, as analyzed (mg/L)
$C_o$ = Average outlet (effluent) concentration for a compound of interest, as analyzed (mg/L)
X = Biomass concentration, mixed liquor suspended solids (g/L)
t = Hydraulic residence time in the benchtop bioreactor (hours)
V = Volume of the benchtop bioreactor (L)
Q = Flow rate of wastewater into the benchtop bioreactor, average (L/hour)

12.2 Residence Time. The hydraulic residence time of the benchtop bioreactor is equal to the ratio of the volume of the benchtop bioreactor (L) to the flow rate (L/h)

$$t = \frac{V}{Q} \quad \text{Eq. 304B-4}$$

12.3 Rate of Biodegradation. Calculate the rate of biodegradation for each component with the following equation:

$$\text{Rate}\left(\frac{mg}{L-h}\right) = \frac{C_i - C_o}{t} \quad \text{Eq. 304B-5}$$

12.4 First-Order Biorate Constant. Calculate the first-order biorate constant (K1) for each component with the following equation:



$$K1\left(\frac{L}{g-h}\right) = \frac{C_i - C_o}{tC_oX} \quad \text{Eq. 304B-6}$$

12.5 Relative Standard Deviation (RSD). Determine the standard deviation of both the influent and effluent sample concentrations (S) using the following equation:

$$RSD = \frac{100}{\bar{S}}\left(\sum_{i=1}^{n}\frac{(S_i - \bar{S})^2}{(n-1)}\right)^{1/2} \quad \text{Eq. 304B-7}$$

12.6 Determination of Percent Air Emissions and Percent Biodegraded. Use the results from this test method and follow the applicable procedures in appendix C of 40 CFR Part 63, entitled, "Determination of the Fraction Biodegraded ($F_{bio}$) in a Biological Treatment Unit" to determine $F_{bio}$.

*13.0 Method Performance. [Reserved]*

*14.0 Pollution Prevention. [Reserved]*

*15.0 Waste Management. [Reserved]*

*16.0 References*

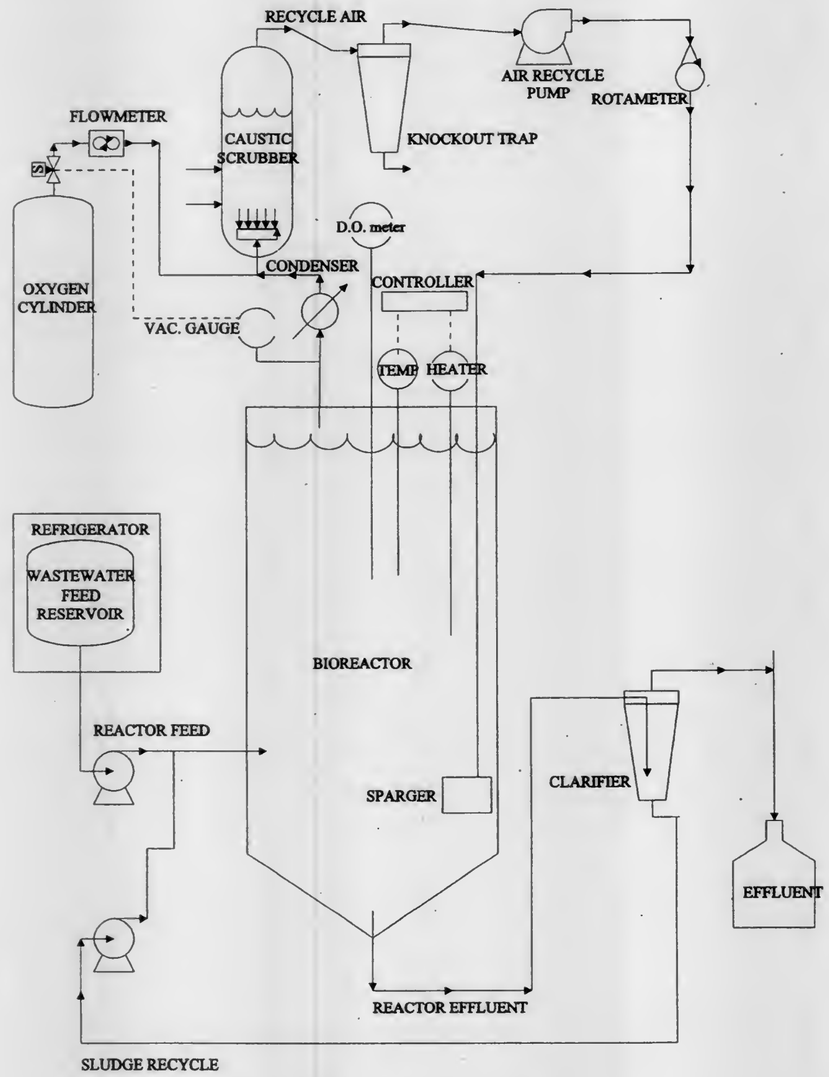
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3. Standard Methods for the Examination of Water and Wastewater, 16th Edition, Method 209C, Total Suspended Solids Dried at 103–105°C, APHA, 1985.
4. Water—7, Hazardous Waste Treatment, Storage, and Disposal Facilities (TSDF)—Air Emission Models, U.S. Environmental Protection Agency, EPA–450/3–87–026, Review Draft, November 1989.
5. Chemdat7, Hazardous Waste Treatment, Storage, and Disposal Facilities (TSDF)—Air Emission Models, U.S. Environmental Protection Agency, EPA–450/3–87–026, Review Draft, November 1989.

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*17.0 Tables, Diagrams, Flowcharts, and Validation Data*




EPA METHOD 304B BIOREACTOR SYSTEM

BILLING CODE 6560–50–C



**Method 305: Measurement of Emission Potential of Individual Volatile Organic Compounds in Waste**

**Note:** This method does not include all of the specifications (*e.g.*, equipment and supplies) and procedures (*e.g.*, sampling and analytical) essential to its performance. Some material is incorporated by reference from other methods in 40 CFR Part 60, Appendix A. Therefore, to obtain reliable results, persons using this method should have a thorough knowledge of at least Method 25D.

*1.0 Scope and Application*

1.1 Analyte. Volatile Organics. No CAS No. assigned.

1.2 Applicability. This procedure is used to determine the emission potential of individual volatile organics (VOs) in waste.

1.3 Data Quality Objectives. Adherence to the requirements of this method will enhance the quality of the data obtained from air pollutant sampling methods.

*2.0 Summary of Method*

2.1 The heated purge conditions established by Method 25D (40 CFR Part 60, Appendix A) are used to remove VOs from a 10 gram sample of waste suspended in a 50/50 solution of polyethylene glycol (PEG) and water. The purged VOs are quantified by using the sample collection and analytical techniques (*e.g.* gas chromatography) appropriate for the VOs present in the waste. The recovery efficiency of the sample collection and analytical technique is determined for each waste matrix. A correction factor is determined for each compound (if acceptable recovery criteria requirements are met of 70 to 130 percent recovery for every target compound), and the measured waste concentration is corrected with the correction factor for each compound. A minimum of three replicate waste samples shall be analyzed.

*3.0 Definitions [Reserved]*

*4.0 Interferences [Reserved]*

*5.0 Safety*

5.1 Disclaimer. This method may involve hazardous materials, operations, and equipment. This test method may not address all of the safety problems associated with its use. It is the responsibility of the user of this test method to establish appropriate safety and health practices and to determine the applicability of regulatory limitations prior to performing this test method.

*6.0 Equipment and Supplies*

6.1 Method 25D Purge Apparatus.

6.1.1 Purge Chamber. The purge chamber shall accommodate the 10 gram sample of waste suspended in a matrix of 50 mL of PEG and 50 mL of deionized, hydrocarbon-free water. Three fittings are used on the glass chamber top. Two #7 Ace-threads are used for the purge gas inlet and outlet connections. A #50 Ace-thread is used to connect the top of the chamber to the base (see Figure 305–1). The base of the chamber has a side-arm equipped with a #22 Sovirel fitting to allow for easy sample introductions into the chamber. The dimensions of the chamber are shown in Figure 305–1.

6.1.2 Flow Distribution Device (FDD). The FDD enhances the gas-to-liquid contact for improved purging efficiency. The FDD is a 6 mm OD (0.2 in) by 30 cm (12 in) long glass tube equipped with four arm bubblers as shown in Figure 305–1. Each arm shall have an opening of 1 mm (0.04 in) in diameter.

6.1.3 Coalescing Filter. The coalescing filter serves to discourage aerosol formation of sample gas once it leaves the purge chamber. The glass filter has a fritted disc mounted 10 cm (3.9 in) from the bottom. Two #7 Ace-threads are used for the inlet and outlet connections. The dimensions of the chamber are shown in Figure 305–2.

6.1.4 Oven. A forced convection airflow oven capable of maintaining the purge chamber and coalescing filter at 75 ± 2°C (167 ± 3.6°F).

6.1.5 Toggle Valve. An on/off valve constructed from brass or stainless steel rated to 100 psig. This valve is placed in line between the purge nitrogen source and the flow controller.

6.1.6 Flow Controller. High-quality stainless steel flow controller capable of restricting a flow of nitrogen to 6 ± 0.06 L/min (0.2 ± 0.002 $ft^3$/min) at 40 psig.

6.1.7 Polyethylene Glycol Cleaning System.

6.1.7.1 Round-Bottom Flask. One liter, three-neck glass round-bottom flask for cleaning PEG. Standard taper 24/40 joints are mounted on each neck.

6.1.7.2 Heating Mantle. Capable of heating contents of the 1-L flask to 120 °C (248 °F).

6.1.7.3 Nitrogen Bubbler. Teflon® or glass tube, 0.25 in OD (6.35 mm).

6.1.7.4 Temperature Sensor. Partial immersion glass thermometer.

6.1.7.5 Hose Adapter. Glass with 24/40 standard tapered joint.

6.2 Volatile Organic Recovery System.

6.2.1 Splitter Valve (Optional). Stainless steel cross-pattern valve capable of splitting nominal flow rates from the purge flow of 6 L/min (0.2 $ft^3$/min). The valve shall be maintained at 75 + 2°C (167 ± 3.6°F) in the heated zone and shall be placed downstream of the coalescing filter. It is recommended that 0.125 in OD (3.175 mm) tubing be used to direct the split vent flow from the heated zone. The back pressure caused by the 0.125 in OD (3.175 mm) tubing is critical for maintaining proper split valve operation.

**Note:** The splitter valve design is optional; it may be used in cases where the concentration of a pollutant would saturate the adsorbents.

6.2.2 Injection Port. Stainless steel 1/4 in OD (6.35 mm) compression fitting tee with a 6 mm (0.2 in) septum fixed on the top port. The injection port is the point of entry for the recovery study solution. If using a gaseous standard to determine recovery efficiency, connect the gaseous standard to the injection port of the tee.

6.2.3 Knockout Trap (Optional but Recommended). A 25 mL capacity glass reservoir body with a full-stem impinger (to avoid leaks, a modified midget glass impinger with a screw cap and ball/socket clamps on the inlet and outlet is recommended). The empty impinger is placed in an ice water bath between the injection port and the sorbent cartridge. Its purpose is to reduce the water content of the purge gas (saturated at 75 °C (167 °F)) before the sorbent cartridge.

6.2.4 Insulated Ice Bath. A 350 mL dewar or other type of insulated bath is used to maintain ice water around the knockout trap.

6.2.5 Sorbent Cartridges. Commercially available glass or stainless steel cartridge packed with one or more appropriate sorbents. The amount of adsorbent packed in the cartridge depends on the breakthrough volume of the test compounds but is limited by back pressure caused by the packing (not to exceed 7 psig). More than one sorbent cartridge placed in series may be necessary depending upon the mixture of the measured components.

6.2.6 Volumetric Glassware. Type A glass 10 mL volumetric flasks for measuring a final volume from the water catch in the knockout trap.

6.2.7 Thermal Desorption Unit. A clam-shell type oven, used for the desorption of direct thermal desorption sorbent tubes. The oven shall be capable of increasing the temperature of the desorption tubes rapidly to recommended desorption temperature.

6.2.8 Ultrasonic Bath. Small bath used to agitate sorbent material and desorption solvent. Ice water shall be used in the bath because of heat transfer caused by operation of the bath.

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6.2.9 Desorption Vials. Four-dram (15 mL) capacity borosilicate glass vials with Teflon-lined caps.

6.3 Analytical System. A gas chromatograph (GC) is commonly used to separate and quantify compounds from the sample collection and recovery procedure. Method 18 (40 CFR Part 60, Appendix A) may be used as a guideline for determining the appropriate GC column and GC detector based on the test compounds to be determined. Other types of analytical instrumentation may be used (HPLC) in lieu of GC systems as long as the recovery efficiency criteria of this method are met.

6.3.1 Gas Chromatograph (GC). The GC shall be equipped with a constant-temperature liquid injection port or a heated sampling loop/valve system, as appropriate. The GC oven shall be temperature-programmable over the useful range of the GC column. The choice of detectors is based on the test compounds to be determined.

6.3.2 GC Column. Select the appropriate GC column based on (1) literature review or previous experience, (2) polarity of the analytes, (3) capacity of the column, or (4) resolving power (*e.g.,* length, diameter, film thickness) required.

6.3.3 Data System. A programmable electronic integrator for recording, analyzing, and storing the signal generated by the detector.

*7.0 Reagents and Standards*

7.1 Method 25D Purge Apparatus.

7.1.1 Polyethylene Glycol (PEG). Ninety-eight percent pure organic polymer with an average molecular weight of 400 g/mol. Volatile organics are removed from the PEG prior to use by heating to 120 ± 5°C (248 ± 9°F) and purging with pure nitrogen at 1 L/min (0.04 $ft^3$/min) for 2 hours. After purging and heating, the PEG is maintained at room temperature under a nitrogen purge maintained at 1 L/min (0.04 $ft^3$/min) until used. A typical apparatus used to clean the PEG is shown in Figure 305–3.

7.1.2 Water. Organic-free deionized water is required.

7.1.3 Nitrogen. High-purity nitrogen (less than 0.5 ppm total hydrocarbons) is used to remove test compounds from the purge matrix. The source of nitrogen shall be regulated continuously to 40 psig before the on/off toggle valve.

7.2 Volatile Organic Recovery System.

7.2.1 Water. Organic-free deionized water is required.

7.2.2 Desorption Solvent (when used). Appropriate high-purity (99.99 percent) solvent for desorption shall be used. Analysis shall be performed (utilizing the same analytical technique as that used in the analysis of the waste samples) on each lot to determine purity.

7.3 Analytical System. The gases required for GC operation shall be of the highest obtainable purity (hydrocarbon free). Consult the operating manual for recommended settings.

*8.0 Sample Collection, Preservation, Storage, and Transport*

8.1 Assemble the glassware and associated fittings (see Figures 305–3 and 305–4, as appropriate) and leak-check the system (approximately 7 psig is the target pressure). After an initial leak check, mark the pressure gauge and use the initial checkpoint to monitor for leaks throughout subsequent analyses. If the pressure in the system drops below the target pressure at any time during analysis, that analysis shall be considered invalid.

8.2 Recovery Efficiency Determination. Determine the individual recovery efficiency (RE) for each of the target compounds in duplicate before the waste samples are analyzed. To determine the RE, generate a water blank (Section 11.1) and use the injection port to introduce a known volume of spike solution (or certified gaseous standard) containing all of the target compounds at the levels expected in the waste sample. Introduce the spike solution immediately after the nitrogen purge has been started (Section 8.3.2). Follow the procedures outlined in Section 8.3.3. Analyze the recovery efficiency samples using the techniques described in Section 11.2. Determine the recovery efficiency (Equation 305–1, Section 12.2) by comparing the amount of compound recovered to the theoretical amount spiked. Determine the RE twice for each compound; the relative standard deviation, (RSD) shall be ≤ 10 percent for each compound. If the RSD for any compound is not ≤ 10 percent, modify the sampling/analytical procedure and complete an RE study in duplicate, or continue determining RE until the RSD meets the acceptable criteria. The average RE shall be 0.70 ≤ RE ≤ 1.30 for each compound. If the average RE does not meet these criteria, an alternative sample collection and/or analysis technique shall be developed and the recovery efficiency determination shall be repeated for that compound until the criteria are met for every target compound. Example modifications of the sampling/analytical system include changing the adsorbent material, changing the desorption solvent, utilizing direct thermal desorption of test compounds from the sorbent tubes, utilizing another analytical technique.

8.3 Sample Collection and Recovery.

8.3.1 The sample collection procedure in Method 25D shall be used to collect (into a preweighed vial) 10 g of waste into PEG, cool, and ship to the laboratory. Remove the sample container from the cooler and wipe the exterior to remove any ice or water. Weigh the container and sample to the nearest 0.01 g and record the weight. Pour the sample from the container into the purge flask. Rinse the sample container three times with approximately 6 mL of PEG (or the volume needed to total 50 mL of PEG in the purge flask), transferring the rinses to the purge flask. Add 50 mL of organic-free deionized water to the purge flask. Cap the purge flask tightly in between each rinse and after adding all the components into the flask.

8.3.2 Allow the oven to equilibrate to 75 ± 2 °C (167 ± 3.6 °F). Begin the sample recovery process by turning the toggle valve on, thus allowing a 6 L/min flow of pure nitrogen through the purge chamber.

8.3.3 Stop the purge after 30 min. Immediately remove the sorbent tube(s) from the apparatus and cap both ends. Remove the knockout trap and transfer the water catch to a 10 mL volumetric flask. Rinse the trap with organic-free deionized water and transfer the rinse to the volumetric flask. Dilute to the 10 mL mark with water. Transfer the water sample to a sample vial and store at 4 °C (39.2 °F) with zero headspace. The analysis of the contents of the water knockout trap is optional for this method. If the target compounds are water soluble, analysis of the water is recommended; meeting the recovery efficiency criteria in these cases would be difficult without adding the amount captured in the knockout trap.

*9.0 Quality Control*

9.1 Miscellaneous Quality Control Measures.



| Section | Quality control measure | Effect |
|---|---|---|
| 8.1 | Sampling equipment leak-check | Ensures accurate measurement of sample volume. |
| 8.2 | Recovery efficiency (RE) determination for each measured compound.. | Ensures accurate sample collection and analysis. |
| 8.3 | Calibration of analytical instrument with at least 3 calibration standards.. | Ensures linear measurement of compounds over the instrument span. |

*10.0 Calibration and Standardization*

10.1 The analytical instrument shall be calibrated with a minimum of three levels of standards for each compound whose concentrations bracket the concentration of test compounds from the sorbent tubes. Liquid calibration standards shall be used for calibration in the analysis of the solvent extracts. The liquid calibration standards shall be prepared in the desorption solvent matrix. The calibration standards may be prepared and injected individually or as a mixture. If thermal desorption and focusing (onto another sorbent or cryogen focusing) are used, a certified gaseous mixture or a series of gaseous standards shall be used for calibration of the instrument. The gaseous standards shall be focused and analyzed in the same manner as the samples.

10.2 The analytical system shall be certified free from contaminants before a calibration is performed (see Section 11.1). The calibration standards are used to determine the linearity of the analytical system. Perform an initial calibration and linearity check by analyzing the three calibration standards for each target compound in triplicate starting with the lowest level and continuing to the highest level. If the triplicate analyses do not agree within 5 percent of their average, additional analyses will be needed until the 5 percent criteria is met. Calculate the response factor (Equation 305–3, Section 12.4) from the average area counts of the injections for each concentration level. Average the response factors of the standards for each compound. The linearity of the detector is acceptable if the response factor of each compound at a particular concentration is within 10 percent of the overall mean response factor for that compound. Analyze daily a mid-level calibration standard in duplicate and calculate a new response factor. Compare the daily response factor average to the average response factor calculated for the mid-level calibration during the initial linearity check; repeat the three-level calibration procedure if the daily average response factor differs from the initial linearity check mid-level response factor by more than 10 percent. Otherwise, proceed with the sample analysis.

*11.0 Analytical Procedure*

11.1 Water Blank Analysis. A water blank shall be analyzed daily to determine the cleanliness of the purge and recovery system. A water blank is generated by adding 60 mL of organic-free deionized water to 50 mL of PEG in the purge chamber. Treat the blank as described in Sections 8.3.2 and 8.3.3. The purpose of the water blank is to insure that no contaminants exist in the sampling and analytical apparatus which would interfere with the quantitation of the target compounds. If contaminants are present, locate the source of contamination, remove it, and repeat the water blank analysis.

11.2 Sample Analysis. Sample analysis in the context of this method refers to techniques to remove the target compounds from the sorbent tubes, separate them using a chromatography technique, and quantify them with an appropriate detector. Two types of sample extraction techniques typically used for sorbents include solvent desorption or direct thermal desorption of test compounds to a secondary-focusing unit (either sorbent or cryogen based). The test compounds are then typically transferred to a GC system for analysis. Other analytical systems may be used (e.g., HPLC) in lieu of GC systems as long as the recovery efficiency criteria of this method are met.

11.2.1 Recover the test compounds from the sorbent tubes that require solvent desorption by transferring the adsorbent material to a sample vial containing the desorption solvent. The desorption solvent shall be the same as the solvent used to prepare calibration standards. The volume of solvent depends on the amount of adsorbed material to be desorbed (1.0 mL per 100 mg of adsorbent material) and also on the amount of test compounds present. Final volume adjustment and or dilution can be made so that the concentration of test compounds in the desorption solvent is bracketed by the concentration of the calibration solutions. Ultrasonicate the desorption solvent for 15 min in an ice bath. Allow the sample to sit for a period of time so that the adsorbent material can settle to the bottom of the vial. Transfer the solvent with a pasteur pipet (minimizing the amount of adsorbent material taken) to another vial and store at 4 °C (39.2 °F).

11.2.2 Analyze the desorption solvent or direct thermal desorption tubes from each sample using the same analytical parameters used for the calibration standard. Calculate the total weight detected for each compound (Equation 305–4, Section 12.5). The slope (area/amount) and y-intercept are calculated from the line bracketed between the two closest calibration points. Correct the concentration of each waste sample with the appropriate recovery efficiency factor and the split flow ratio (if used). The final concentration of each individual test compound is calculated by dividing the corrected measured weight for that compound by the weight of the original sample determined in Section 8.3.1 (Equation 305–5, Section 12.6).

11.2.3 Repeat the analysis for the three samples collected in Section 8.3. Report the corrected concentration of each of the waste samples, average waste concentration, and relative standard deviation (Equation 305–6, Section 12.7).

*12.0 Data Analysis and Calculations.*

12.1 Nomenclature.

$A_S$ = Mean area counts of test compound in standard.

$A_U$ = Mean area counts of test compound in sample desorption solvent.

b = Y-intercept of the line formed between the two closest calibration standards that bracket the concentration of the sample.

$C_T$ = Amount of test compound (μg) in calibration standard.

$C_F$ = Correction for adjusting final amount of sample detected for losses during individual sample runs.

$F_P$ = Nitrogen flow through the purge chamber (6 L/min).

$F_S$ = Nitrogen split flow directed to the sample recovery system (use 6 L/min if split flow design was not used).

PPM = Final concentration of test compound in waste sample [μg/g (which is equivalent to parts per million by weight (ppmw))].

RE = Recovery efficiency for adjusting final amount of sample detected for losses due to inefficient trapping and desorption techniques.

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R.F. = Response factor for test compound, calculated from a calibration standard.
S = Slope of the line (area counts/$C_T$) formed between two closest calibration points that bracket the concentration of the sample.
$W_C$ = Weight of test compound expected to be recovered in spike solution based on theoretical amount (µg).
$W_E$ = Weight of vial and PEG (g).
$W_F$ = Weight of vial, PEG and waste sample (g).
$W_S$ = Weight of original waste sample (g).
$W_T$ = Corrected weight of test compound measured (µg) in sample.
$W_X$ = Weight of test compound measured during analysis of recovery efficiency spike samples (µg).

12.2 Recovery efficiency for determining trapping/desorption efficiency of individual test compounds in the spike solution, decimal value.

$$RE = \frac{W_X}{W_C} \qquad \text{Eq. 305-1}$$

12.3 Weight of waste sample (g).

$$W_S = W_F - W_E \qquad \text{Eq. 305-2}$$

12.4 Response factor for individual test compounds.

$$RF = \frac{C_T}{A_S} \qquad \text{Eq. 305-3}$$

12.5 Corrected weight of a test compound in the sample, in µg.

$$W_T = \frac{A_u - b}{S} \times \frac{1}{RE} \times \frac{F_p}{F_s} \qquad \text{Eq. 305-4}$$

12.6 Final concentration of a test compound in the sample in ppmw.

$$PPM = \frac{W_T}{W_S} \qquad \text{Eq. 305-5}$$

12.7 Relative standard deviation (RSD) calculation.

$$RSD = \frac{100}{\overline{PPM}} \sqrt{\frac{\sum_{i=1}^{n} \left(PPM_i - \overline{PPM}\right)^2}{n-1}} \qquad \text{Eq. 305-6}$$

*13.0 Method Performance. [Reserved]*
*14.0 Pollution Prevention. [Reserved]*
*15.0 Waste Management. [Reserved]*
*16.0 References. [Reserved]*



*17.0 Tables, Diagrams, Flowcharts, and Validation Data*

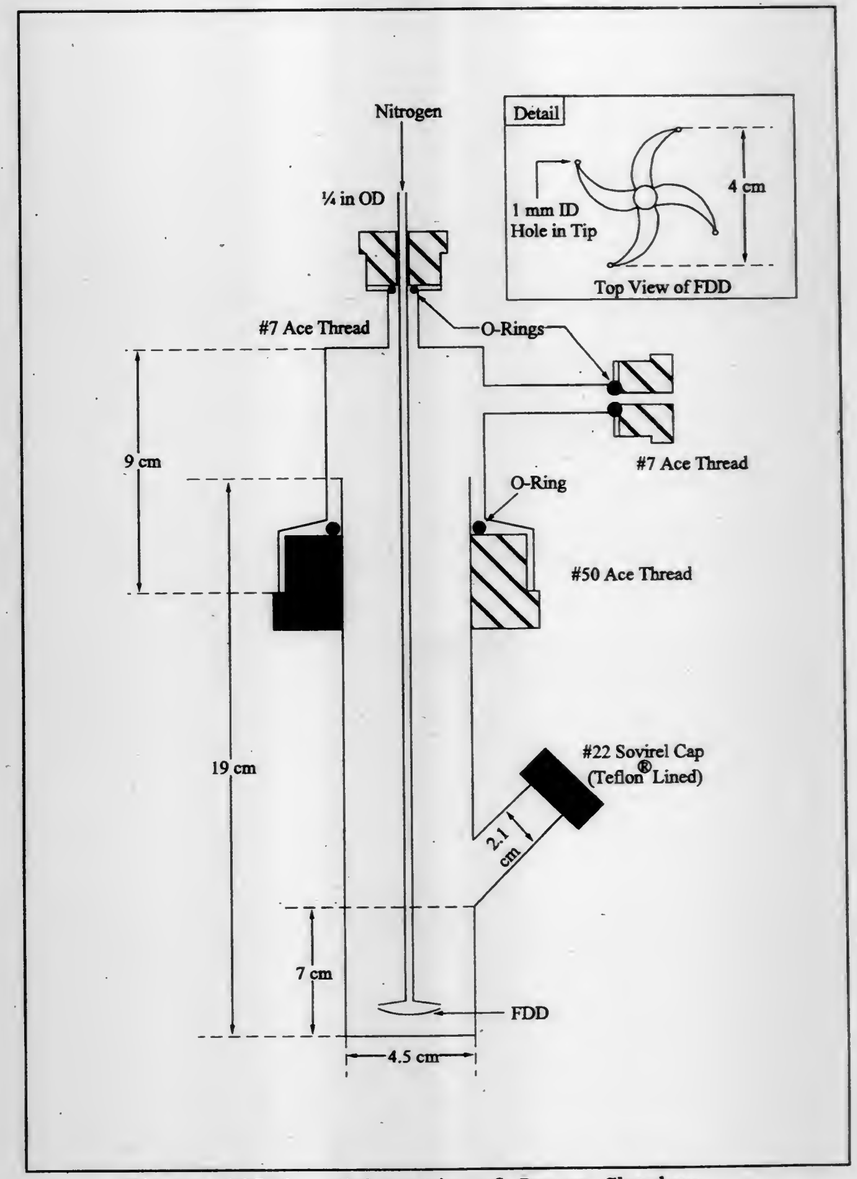



**Figure 305-1. Schematic of Purge Chamber.**

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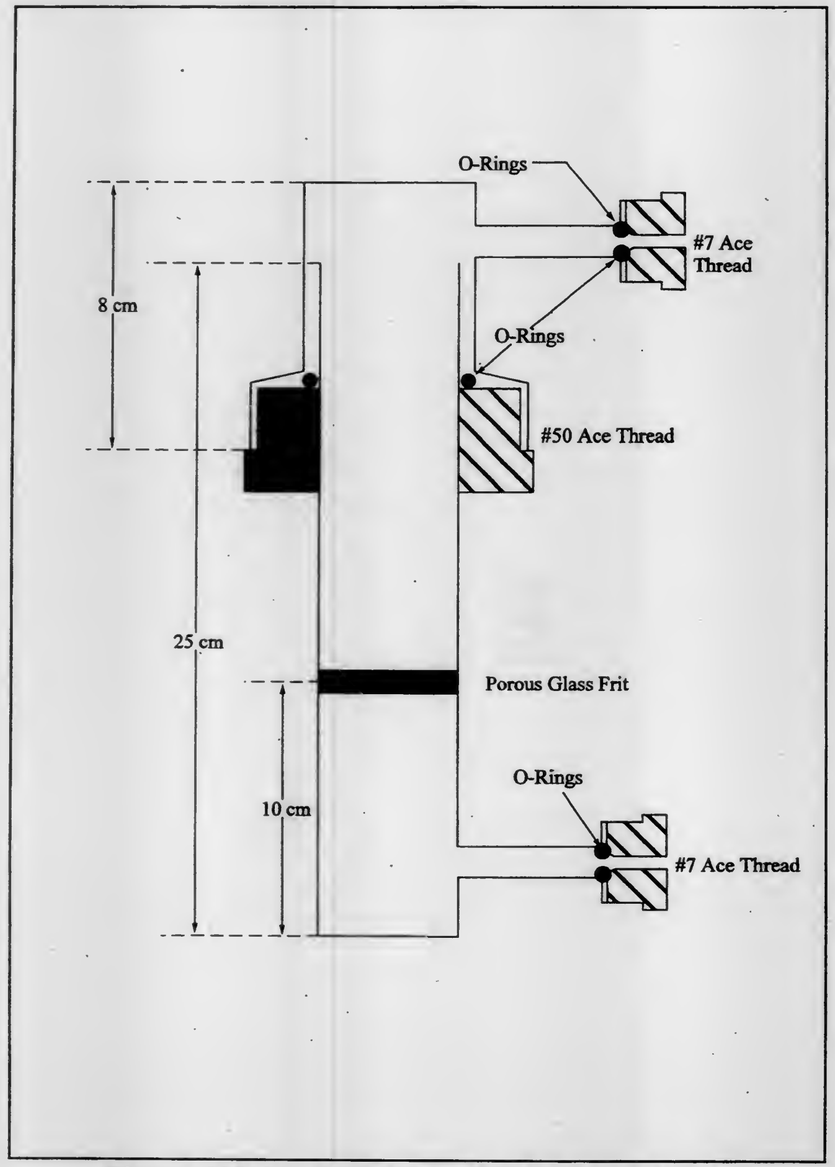



Figure 305-2. Schematic of Coalescing Filter.



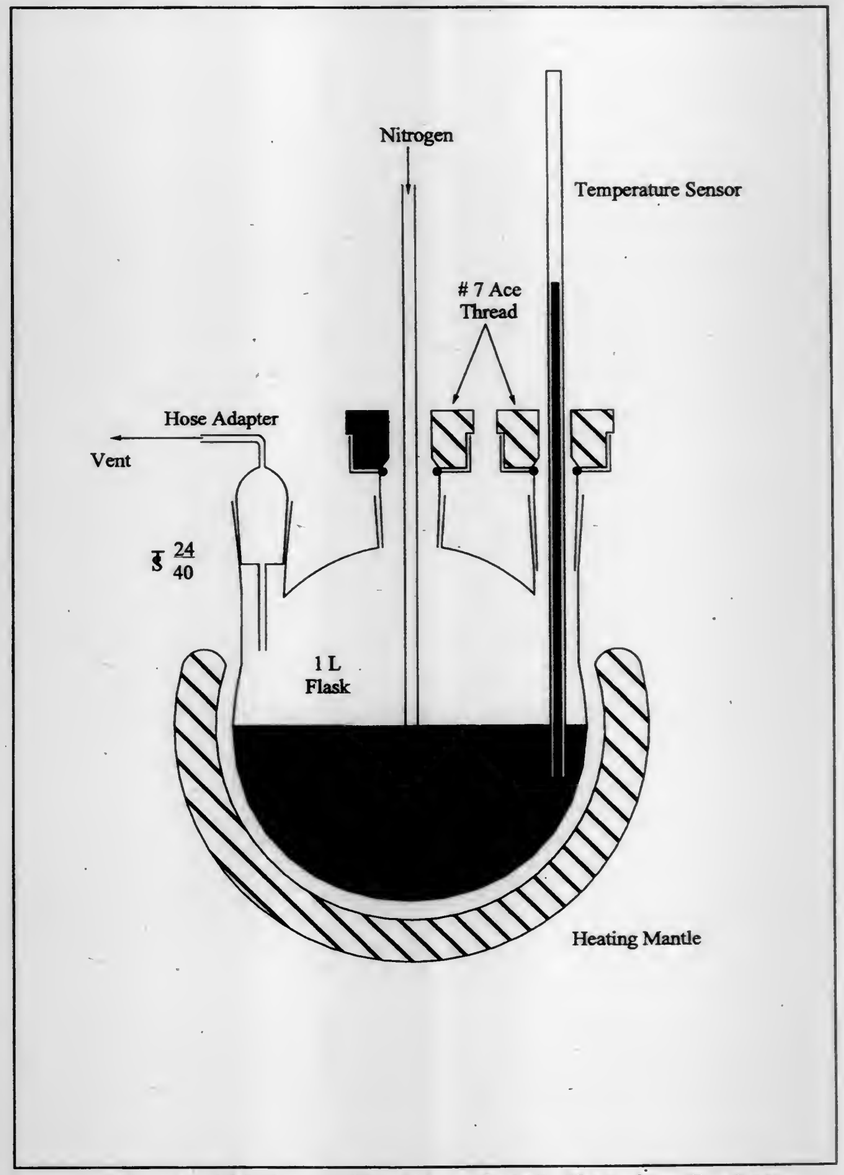



Figure 305-3. Schematic of PEG Cleaning System.

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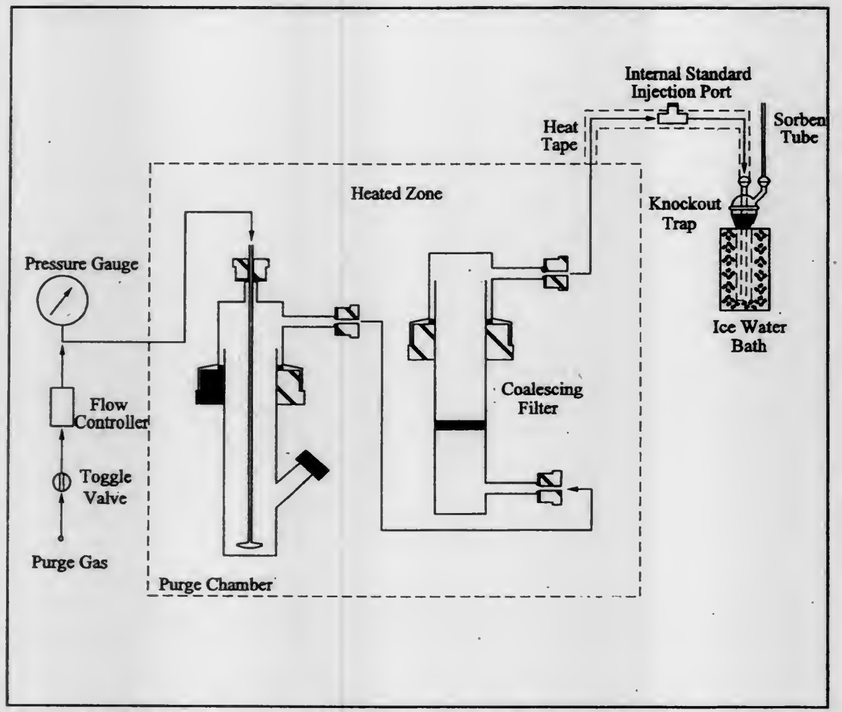



Figure 305-4. Schematic of Purge and Recovery Apparatus.

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**Method 306—Determination of Chromium Emissions From Decorative and Hard Chromium Electroplating and Chromium Anodizing Operations—Isokinetic Method**

**NOTE:** This method does not include all of the specifications (*e.g.*, equipment and supplies) and procedures (*e.g.*, sampling and analytical) essential to its performance. Some material is incorporated by reference from other methods in 40 CFR Part 60, Appendix A. Therefore, to obtain reliable results, persons using this method should have a thorough knowledge of at least Method 5.

*1.0 Scope and Application*

1.1 Analytes.

| Analyte | CAS No. | Sensitivity |
|---|---|---|
| Chromium | 7440–47–3 | See Sec. 13.2. |

1.2 Applicability. This method applies to the determination of chromium (Cr) in emissions from decorative and hard chrome electroplating facilities, chromium anodizing operations, and continuous chromium plating operations at iron and steel facilities.

1.3 Data Quality Objectives. [Reserved]

*2.0 Summary of Method*

2.1 Sampling. An emission sample is extracted isokinetically from the source using an unheated Method 5 sampling train (40 CFR Part 60, Appendix A), with a glass nozzle and probe liner, but with the filter omitted. The sample time shall be at least two hours. The Cr emissions are collected in an alkaline solution containing 0.1 N sodium hydroxide (NaOH) or 0.1 N sodium bicarbonate ($NaHCO_3$). The collected samples are recovered using an alkaline solution and are then transported to the laboratory for analysis.

2.2 Analysis.

2.2.1 Total chromium samples with high chromium concentrations (≥35 µg/L) may be analyzed using inductively coupled plasma emission spectrometry (ICP) at 267.72 nm.

**Note:** The ICP analysis is applicable for this method only when the solution analyzed has a Cr concentration greater than or equal to 35 µg/L or five times the method detection limit as determined according to Appendix B in 40 CFR Part 136.

2.2.2 Alternatively, when lower total chromium concentrations (<35 µg/L) are encountered, a portion of the alkaline sample solution may be digested with nitric acid and analyzed by graphite furnace atomic absorption spectroscopy (GFAAS) at 357.9 nm.

2.2.3 If it is desirable to determine hexavalent chromium ($Cr^{+6}$) emissions, the samples may be analyzed using an ion chromatograph equipped with a post-column reactor (IC/PCR) and a visible wavelength detector. To increase sensitivity for trace levels of $Cr^{+6}$, a preconcentration system may be used in conjunction with the IC/PCR.

*3.0 Definitions*

3.1 *Total Chromium*—measured chromium content that includes both major chromium oxidation states ($Cr^{+3}$, $Cr^{+3}$).

3.2 *May*—Implies an optional operation.

3.3 *Digestion*—The analytical operation involving the complete (or nearly complete) dissolution of the sample in order to ensure the complete solubilization of the element (analyte) to be measured.

3.4 *Interferences*—Physical, chemical, or spectral phenomena that may produce a high or low bias in the analytical result.

3.5 *Analytical System*—All components of the analytical process including the sample digestion and measurement apparatus.

3.6 *Sample Recovery*—The quantitative transfer of sample from the collection apparatus to the sample preparation (digestion, etc.) apparatus. This term should not be confused with analytical recovery.

3.7 *Matrix Modifier*—A chemical modification to the sample during GFAAS determinations to ensure that the analyte is not lost during the measurement process (prior to the atomization stage)

3.8 *Calibration Reference Standards*—Quality control standards used to check the accuracy of the instrument calibration curve prior to sample analysis.



3.9 *Continuing Check Standard*—Quality control standards used to verify that unacceptable drift in the measurement system has not occurred.

3.10 *Calibration Blank*—A blank used to verify that there has been no unacceptable shift in the baseline either immediately following calibration or during the course of the analytical measurement.

3.11 *Interference Check*—An analytical/measurement operation that ascertains whether a measurable interference in the sample exists.

3.12 *Interelement Correction Factors*—Factors used to correct for interfering elements that produce a false signal (high bias).

3.13 *Duplicate Sample Analysis*—Either the repeat measurement of a single solution or the measurement of duplicate preparations of the same sample. It is important to be aware of which approach is required for a particular type of measurement. For example, no digestion is required for the ICP determination and the duplicate instrument measurement is therefore adequate whereas duplicate digestion/instrument measurements are required for GFAAS.

3.14 *Matrix Spiking*—Analytical spikes that have been added to the actual sample matrix either before (Section 9.2.5.2) or after (Section 9.1.6). Spikes added to the sample *prior* to a preparation technique (*e.g.*, digestion) allow for the assessment of an overall method accuracy while those added *after* only provide for the *measurement* accuracy determination.

*4.0 Interferences*

4.1 ICP Interferences.

4.1.1 ICP Spectral Interferences. Spectral interferences are caused by: overlap of a spectral line from another element; unresolved overlap of molecular band spectra; background contribution from continuous or recombination phenomena; and, stray light from the line emission of high-concentrated elements. Spectral overlap may be compensated for by correcting the raw data with a computer and measuring the interfering element. At the 267.72 nm Cr analytical wavelength, iron, manganese, and uranium are potential interfering elements. Background and stray light interferences can usually be compensated for by a background correction adjacent to the analytical line. Unresolved overlap requires the selection of an alternative chromium wavelength. Consult the instrument manufacturer's operation manual for interference correction procedures.

4.1.2 ICP Physical Interferences. High levels of dissolved solids in the samples may cause significant inaccuracies due to salt buildup at the nebulizer and torch tips. This problem can be controlled by diluting the sample or by extending the rinse times between sample analyses. Standards shall be prepared in the same solution matrix as the samples (*i.e.*, 0.1 N NaOH or 0.1 N $NaHCO_3$).

4.1.3 ICP Chemical Interferences. These include molecular compound formation, ionization effects and solute vaporization effects, and are usually not significant in the ICP procedure, especially if the standards and samples are matrix matched.

4.2 GFAAS Interferences.

4.2.1 GFAAS Chemical Interferences. Low concentrations of calcium and/or phosphate may cause interferences; at concentrations above 200 µg/L, calcium's effect is constant and eliminates the effect of phosphate. Calcium nitrate is therefore added to the concentrated analyte to ensure a known constant effect. Other matrix modifiers recommended by the instrument manufacturer may also be considered.

4.2.2 GFAAS Cyanide Band Interferences. Nitrogen should not be used as the purge gas due to cyanide band interference.

4.2.3 GFAAS Spectral Interferences. Background correction may be required because of possible significant levels of nonspecific absorption and scattering at the 357.9 nm analytical wavelength.

4.2.4 GFAAS Background Interferences. Zeeman or Smith-Hieftje background correction is recommended for interferences resulting from high levels of dissolved solids in the alkaline impinger solutions.

4.3 IC/PCR Interferences.

4.3.1 IC/PCR Chemical Interferences. Components in the sample matrix may cause $Cr^{+6}$ to convert to trivalent chromium ($Cr^{+3}$) or cause $Cr^{+3}$ to convert to $Cr^{+6}$. The chromatographic separation of $Cr^{+6}$ using ion chromatography reduces the potential for other metals to interfere with the post column reaction. For the IC/PCR analysis, only compounds that coelute with $Cr^{+6}$ and affect the diphenylcarbazide reaction will cause interference.

4.3.2 IC/PCR Background Interferences. Periodic analyses of reagent water blanks are used to demonstrate that the analytical system is essentially free of contamination. Sample cross-contamination can occur when high-level and low-level samples or standards are analyzed alternately and can be eliminated by thorough purging of the sample loop. Purging of

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the sample can easily be achieved by increasing the injection volume to ten times the size of the sample loop.

*5.0 Safety*

5.1 Disclaimer. This method may involve hazardous materials, operations, and equipment. This test method may not address all of the safety problems associated with its use. It is the responsibility of the user to establish appropriate safety and health practices and to determine the applicability of regulatory limitations prior to performing this test method.

5.2 Hexavalent chromium compounds have been listed as carcinogens although chromium (III) compounds show little or no toxicity. Chromium can be a skin and respiratory irritant.

*6.0 Equipment and Supplies*

6.1 Sampling Train.

6.1.1 A schematic of the sampling train used in this method is shown in Figure 306–1. The train is the same as shown in Method 5, Section 6.0 (40 CFR Part 60, Appendix A) except that the probe liner is unheated, the particulate filter is omitted, and quartz or borosilicate glass must be used for the probe nozzle and liner in place of stainless steel.

6.1.2 Probe fittings of plastic such as Teflon, polypropylene, etc. are recommended over metal fittings to prevent contamination. If desired, a single combined probe nozzle and liner may be used, but such a single glass assembly is not a requirement of this methodology.

6.1.3 Use 0.1 N NaOH or 0.1 N $NaHCO_3$ in the impingers in place of water.

6.1.4 Operating and maintenance procedures for the sampling train are described in APTD–0576 of Method 5. Users should read the APTD–0576 document and adopt the outlined procedures.

6.1.5 Similar collection systems which have been approved by the Administrator may be used.

6.2 Sample Recovery. Same as Method 5, [40 CFR Part 60, Appendix A], with the following exceptions:

6.2.1 Probe-Liner and Probe-Nozzle Brushes. Brushes are not necessary for sample recovery. If a probe brush is used, it must be non-metallic.

6.2.2 Sample Recovery Solution. Use 0.1 N NaOH or 0.1 N $NaHCO_3$, whichever is used as the impinger absorbing solution, in place of acetone to recover the sample.

6.2.3 Sample Storage Containers. Polyethylene, with leak-free screw cap, 250 mL, 500 mL or 1,000 mL.

6.3 Analysis.

6.3.1 General. For analysis, the following equipment is needed.

6.3.1.1 Phillips Beakers. (Phillips beakers are preferred, but regular beakers may also be used.)

6.3.1.2 Hot Plate.

6.3.1.3 Volumetric Flasks. Class A, various sizes as appropriate.

6.3.1.4 Assorted Pipettes.

6.3.2 Analysis by ICP.

6.3.2.1 ICP Spectrometer. Computer-controlled emission spectrometer with background correction and radio frequency generator.

6.3.2.2 Argon Gas Supply. Welding grade or better.

6.3.3 Analysis by GFAAS.

6.3.3.1 Chromium Hollow Cathode Lamp or Electrodeless Discharge Lamp.

6.3.3.2 Graphite Furnace Atomic Absorption Spectrophotometer.

6.3.3.3 Furnace Autosampler.

6.3.4 Analysis by IC/PCR.

6.3.4.1 IC/PCR System. High performance liquid chromatograph pump, sample injection valve, post-column reagent delivery and mixing system, and a visible detector, capable of operating at 520 nm-540 nm, all with a non-metallic (or inert) flow path. An electronic peak area mode is recommended, but other recording devices and integration techniques are acceptable provided the repeatability criteria and the linearity criteria for the calibration curve described in Section 10.4 can be satisfied. A sample loading system is required if preconcentration is employed.

6.3.4.2 Analytical Column. A high performance ion chromatograph (HPIC) non-metallic column with anion separation characteristics and a high loading capacity designed for separation of metal chelating compounds to prevent metal interference. Resolution described in Section 11.6 must be obtained. A non-metallic guard column with the same ion-exchange material is recommended.

6.3.4.3 Preconcentration Column (for older instruments). An HPIC non-metallic column with acceptable anion retention characteristics and sample loading rates must be used as described in Section 11.6.

6.3.4.4 Filtration Apparatus for IC/PCR.

6.3.4.4.1 Teflon, or equivalent, filter holder to accommodate 0.45-µm acetate, or equivalent, filter, if needed to remove insoluble particulate matter.

6.3.4.4.2 0.45-µm Filter Cartridge. For the removal of insoluble material. To be used just prior to sample injection/analysis.

*7.0 Reagents and Standards*

**Note:** Unless otherwise indicated, all reagents should conform to the specifications established by the Committee on Analytical Reagents of the American Chemical Society (ACS reagent grade). Where such specifications are not available, use the best available grade. Reagents should be checked by the appropriate analysis prior to field use to assure that contamination is below the analytical detection limit for the ICP or GFAAS total chromium analysis; and that contamination is below the analytical detection limit for $Cr^{+6}$ using IC/PCR for direct injection or, if selected, preconcentration.

7.1 Sampling.

7.1.1 Water. Reagent water that conforms to ASTM Specification D1193–77 or 91 Type II (incorporated by reference see § 63.14). All references to water in the method refer to reagent water unless otherwise specified. It is recommended that water blanks be checked prior to preparing the sampling reagents to ensure that the Cr content is less than three (3) times the anticipated detection limit of the analytical method.

7.1.2 Sodium Hydroxide (NaOH) Absorbing Solution, 0.1 N. Dissolve 4.0 g of sodium hydroxide in 1 liter of water to obtain a pH of approximately 8.5.

7.1.3 Sodium Bicarbonate ($NaHCO_3$) Absorbing Solution, 0.1 N. Dissolve approximately 8.5 g of sodium bicarbonate in 1 liter of water to obtain a pH of approximately 8.3.

7.1.4 Chromium Contamination.

7.1.4.1 The absorbing solution shall not exceed the QC criteria noted in Section 7.1.1 (≤ 3 times the instrument detection limit).

7.1.4.2 When the $Cr^{+6}$ content in the field samples exceeds the blank concentration by at least a factor of ten (10), $Cr^{+6}$ blank concentrations ≥ 10 times the detection limit will be allowed.

**Note:** At sources with high concentrations of acids and/or $SO_2$, the concentration of NaOH or $NaHCO_3$ should be ≥ 0.5 N to insure that the pH of the solution remains at or above 8.5 for NaOH and 8.0 for $NaHCO_3$ during and after sampling.

7.1.5 Silica Gel. Same as in Method 5.

7.2 Sample Recovery.

7.2.1 0.1 N NaOH or 0.1 N $NaHCO_3$. Use the same solution for the sample recovery that is used for the impinger absorbing solution.

7.2.2 pH Indicator Strip, for IC/PCR. pH indicator capable of determining the pH of solutions between the pH range of 7 and 12, at 0.5 pH increments.

7.3 Sample Preparation and Analysis.

7.3.1 Nitric Acid ($HNO_3$), Concentrated, for GFAAS. Trace metals grade or better $HNO_3$ must be used for reagent preparation. The ACS reagent grade $HNO_3$ is acceptable for cleaning glassware.

7.3.2 $HNO_3$, 1.0% (v/v), for GFAAS. Prepare, by slowly stirring, 10 mL of concentrated $HNO_3$) into 800 mL of reagent water. Dilute to 1,000 mL with reagent water. The solution shall contain less than 0.001 mg Cr/L.

7.3.3 Calcium Nitrate $Ca(NO_3)_2$ Solution (10 µg Ca/mL) for GFAAS analysis. Prepare the solution by weighing 40.9 mg of $Ca(NO_3)_2$ into a 1 liter volumetric flask. Dilute with reagent water to 1 liter.

7.3.4 Matrix Modifier, for GFAAS. See instrument manufacturer's manual for suggested matrix modifier.

7.3.5 Chromatographic Eluent, for IC/PCR. The eluent used in the analytical system is ammonium sulfate based.

7.3.5.1 Prepare by adding 6.5 mL of 29 percent ammonium hydroxide ($NH_4OH$) and 33 g of ammonium sulfate ($(NH_4)_2SO_4$) to 500 mL of reagent water. Dilute to 1 liter with reagent water and mix well.

7.3.5.2 Other combinations of eluents and/or columns may be employed provided peak resolution, repeatability, linearity, and analytical sensitivity as described in Sections 9.3 and 11.6 are acceptable.

7.3.6 Post-Column Reagent, for IC/PCR. An effective post-column reagent for use with the chromatographic eluent described in Section 7.3.5 is a diphenylcarbazide (DPC)-based system. Dissolve 0.5 g of 1,5-diphenylcarbazide in 100 mL of ACS grade methanol. Add 500 mL of reagent water containing 50 mL of 96 percent spectrophotometric grade sulfuric acid. Dilute to 1 liter with reagent water.

7.3.7 Chromium Standard Stock Solution (1000 mg/L). Procure a certified aqueous standard or dissolve 2.829 g of potassium dichromate ($K_2Cr_2O_7$), in reagent water and dilute to 1 liter.

7.3.8 Calibration Standards for ICP or IC/PCR. Prepare calibration standards for ICP or IC/PCR by diluting the Cr standard stock solution (Section 7.3.7) with 0.1 N NaOH or 0.1 N $NaHCO_3$, whichever is used as the impinger absorbing solution, to achieve a matrix similar to the actual field samples. Suggested levels are 0, 50, 100, and 200 µg Cr/L for ICP, and 0, 1, 5, and 10 µg $Cr^{+6}$/L for IC/PCR.

7.3.9 Calibration Standards for GFAAS. Chromium solutions for GFAAS calibration shall contain 1.0 percent (v/v) $HNO_3$. The zero standard shall be 1.0 percent (v/v) $HNO_3$. Calibration standards should be prepared daily by diluting the Cr standard stock solution (Section 7.3.7) with 1.0 percent $HNO_3$. Use at least four standards to make the calibration curve. Suggested levels are 0, 10, 50, and 100 µg Cr/L.

7.4 Glassware Cleaning Reagents.

7.4.1 $HNO_3$, Concentrated. ACS reagent grade or equivalent.

7.4.2 Water. Reagent water that conforms to ASTM Specification D1193–77 or 91 Type II.

7.4.3 $HNO_3$, 10 percent (v/v). Add by stirring 500 mL of concentrated $HNO_3$ into a flask containing approximately 4,000 mL of reagent water. Dilute to 5,000 mL with reagent water. Mix well. The reagent shall contain less than 2 µg Cr/L.

7.5 Quality Assurance Audit Samples.

7.5.1 When making compliance determinations, and upon availability, audit samples shall be obtained from the appropriate EPA regional Office or from the responsible enforcement authority and analyzed in conjunction with the field samples.

7.5.2 If EPA or National Institute of Standards and Technology (NIST) reference audit sample are not available, a mid-range standard, prepared from an independent commercial source, may be used.

**Note:** To order audit samples, contact the responsible enforcement authority at least 30 days prior to the test date to allow sufficient time for the audit sample to be delivered.

*8.0 Sample Collection, Preservation, Holding Times, Storage, and Transport*

**Note:** Prior to sample collection, consideration should be given to the type of analysis ($Cr^{+6}$ or total Cr) that will be performed. Which analysis option(s) will be performed will determine which sample recovery and storage procedures will be required to process the sample (See Figures 306–3 and 306–4).

8.1 Sample Collection. Same as Method 5 (40 CFR Part 60, Appendix A), with the following exceptions.

8.1.1 Omit the particulate filter and filter holder from the sampling train. Use a glass nozzle and probe liner instead of stainless steel. Do not heat the probe. Place 100 mL of 0.1 N NaOH or 0.1 N $NaHCO_3$ in each of the first two impingers, and record the data for each run on a data sheet such as shown in Figure 306–2.

8.1.2 Clean all glassware prior to sampling in hot soapy water designed for laboratory cleaning of glassware. Next, rinse the glassware three times with tap water, followed by three additional rinses with reagent water. Then soak the glassware in 10% (v/v) $HNO_3$ solution for a minimum of 4 hours, rinse three times with reagent water, and allow to air dry. Cover all glassware openings where contamination can occur with Parafilm, or equivalent, until the sampling train is assembled for sampling.

8.1.3 Train Operation. Follow the basic procedures outlined in Method 5 in conjunction with the following instructions. Train sampling rate shall not exceed 0.030 $m^3$/min (1.0 cfm) during a run.

8.2 Sample Recovery. Follow the basic procedures of Method 5, with the exceptions noted.

8.2.1 A particulate filter is not recovered from this train.

8.2.2 Tester shall select either the total Cr or $Cr^{+6}$ sample recovery option.

8.2.3 Samples to be analyzed for both total Cr and $Cr^{+6}$, shall be recovered using the $Cr^{+6}$ sample option (Section 8.2.6).

8.2.4 A field reagent blank shall be collected for either of the Cr or the $Cr^{+6}$ analysis. If both analyses (Cr and $Cr^{+6}$) are to be conducted on the samples, collect separate reagent blanks for each analysis.

**Note:** Since particulate matter is not usually present at chromium electroplating and/or chromium anodizing operations, it is not necessary to filter the $Cr^{+6}$ samples unless there is observed sediment in the collected solutions. If it is necessary to filter the $Cr^{+6}$ solutions, please refer to Method 0061, Determination of Hexavalent Chromium Emissions From Stationary Sources, Section 7.4, Sample Preparation in SW–846 (see Reference 1).

8.2.5 Total Cr Sample Option.

8.2.5.1 Container No. 1. Measure the volume of the liquid in the first, second, and third impingers and quantitatively transfer into a labeled sample container.

8.2.5.2 Use approximately 200 to 300 mL of the 0.1 N NaOH or 0.1 N $NaHCO_3$ absorbing solution to rinse the probe nozzle, probe liner, three impingers, and connecting glassware; add this rinse to Container No. 1.

8.2.6 $Cr^{+6}$ Sample Option.

8.2.6.1 Container No. 1. Measure and record the pH of the absorbing solution contained in the *first* impinger at the end of the sampling run using a pH indicator strip. The pH of the solution must be ≥8.5 for NaOH and ≥8.0 for $NaHCO_3$. If it is not, discard the collected sample, increase the normality of the NaOH or $NaHCO_3$ impinger absorbing solution to 0.5 N or to a solution normality approved by the Administrator and collect another air emission sample.

8.2.6.2 After determining the pH of the first impinger solution, combine and measure the volume of the liquid in the first, second, and third impingers and

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quantitatively transfer into the labeled sample container. Use approximately 200 to 300 mL of the 0.1 N NaOH or 0.1 N $NaHCO_3$ absorbing solution to rinse the probe nozzle, probe liner, three impingers, and connecting glassware; add this rinse to Container No. 1.

8.2.7 Field Reagent Blank.

8.2.7.1 Container No. 2.

8.2.7.2 Place approximately 500 mL of the 0.1 N NaOH or 0.1 N $NaHCO_3$ absorbing solution into a labeled sample container.

8.3 Sample Preservation, Storage, and Transport.

8.3.1 Total Cr Sample Option. Samples to be analyzed for total Cr need not be refrigerated.

8.3.2 $Cr^{+6}$ Sample Option. Samples to be analyzed for $Cr^{+6}$ must be shipped and stored at 4°C. Allow $Cr^{+6}$ samples to return to ambient temperature prior to analysis.

8.4 Sample Holding Times.

8.4.1 Total Cr Sample Option. Samples to be analyzed for total Cr shall be analyzed within 60 days of collection.

8.4.2 $Cr^{+6}$ Sample Option. Samples to be analyzed for $Cr^{+6}$ shall be analyzed within 14 days of collection.

*9.0 Quality Control*

9.1 ICP Quality Control.

9.1.1 ICP Calibration Reference Standards. Prepare a calibration reference standard using the same alkaline matrix as the calibration standards; it should be at least 10 times the instrumental detection limit.

9.1.1.1 This reference standard must be prepared from a different Cr stock solution source than that used for preparation of the calibration curve standards.

9.1.1.2 Prior to sample analysis, analyze at least one reference standard.

9.1.1.3 The calibration reference standard must be measured within 10 percent of it's true value for the curve to be considered valid.

9.1.1.4 The curve must be validated before sample analyses are performed.

9.1.2 ICP Continuing Check Standard.

9.1.2.1 Perform analysis of the check standard with the field samples as described in Section 11.2 (at least after every 10 samples, and at the end of the analytical run).

9.1.2.2 The check standard can either be the mid-range calibration standard or the reference standard. The results of the check standard shall agree within 10 percent of the expected value; if not, terminate the analyses, correct the problem, recalibrate the instrument, and rerun all samples analyzed subsequent to the last acceptable check standard analysis.

9.1.3 ICP Calibration Blank.

9.1.3.1 Perform analysis of the calibration blank with the field samples as described in Section 11.2 (at least after every 10 samples, and at the end of the analytical run).

9.1.3.2 The results of the calibration blank shall agree within three standard deviations of the mean blank value. If not, analyze the calibration blank two more times and average the results. If the average is not within three standard deviations of the background mean, terminate the analyses, correct the problem, recalibrate, and reanalyze all samples analyzed subsequent to the last acceptable calibration blank analysis.

9.1.4 ICP Interference Check. Prepare an interference check solution that contains known concentrations of interfering elements that will provide an adequate test of the correction factors in the event of potential spectral interferences.

9.1.4.1 Two potential interferences, iron and manganese, may be prepared as 1000 µg/mL and 200 µg/mL solutions, respectively. The solutions should be prepared in dilute $HNO_3$ (1–5 percent). Particular care must be used to ensure that the solutions and/or salts used to prepare the solutions are of ICP grade purity (*i.e.*, that no measurable Cr contamination exists in the salts/solutions). Commercially prepared interfering element check standards are available.

9.1.4.2 Verify the interelement correction factors every three months by analyzing the interference check solution. The correction factors are calculated according to the instrument manufacturer's directions. If the interelement correction factors are used properly, no false Cr should be detected.

9.1.4.3 Negative results with an absolute value greater than three (3) times the detection limit are usually the results of the background correction position being set incorrectly. Scan the spectral region to ensure that the correction position has not been placed on an interfering peak.

9.1.5 ICP Duplicate Sample Analysis. Perform one duplicate sample analysis for each compliance sample batch (3 runs).

9.1.5.1 As there is no sample preparation required for the ICP analysis, a duplicate analysis is defined as a repeat analysis of one of the field samples. The selected sample shall be analyzed using the same procedures that were used to analyze the original sample.

9.1.5.2 Duplicate sample analyses shall agree within 10 percent of the original measurement value.

9.1.5.3 Report the original analysis value for the sample and report the duplicate analysis value as the QC check value. If agreement is not achieved, perform the duplicate analysis again. If agreement is not achieved the second time, perform corrective action to identify and correct the problem before analyzing the sample for a third time.

9.1.6 ICP Matrix Spiking. Spiked samples shall be prepared and analyzed daily to ensure that there are no matrix effects, that samples and standards have been matrix-matched, and that the laboratory equipment is operating properly.

9.1.6.1 Spiked sample recovery analyses should indicate a recovery for the Cr spike of between 75 and 125 percent.

9.1.6.2 Cr levels in the spiked sample should provide final solution concentrations that are within the linear portion of the calibration curve, as well as, at a concentration level at least: equal to that of the original sample; and, ten (10) times the detection limit.

9.1.6.3 If the spiked sample concentration meets the stated criteria but exceeds the linear calibration range, the spiked sample must be diluted with the field absorbing solution.

9.1.6.4 If the recoveries for the Cr spiked samples do not meet the specified criteria, perform corrective action to identify and correct the problem prior to reanalyzing the samples.

9.1.7 ICP Field Reagent Blank.

9.1.7.1 Analyze a minimum of one matrix-matched field reagent blank (Section 8.2.4) per sample batch to determine if contamination or memory effects are occurring.

9.1.7.2 If contamination or memory effects are observed, perform corrective action to identify and correct the problem before reanalyzing the samples.

9.1.8 Audit Sample Analysis.

9.1.8.1 When the method is used to analyze samples to demonstrate compliance with a source emission regulation, an audit sample must be analyzed, subject to availability.

9.1.8.2 Concurrently analyze the audit sample and the compliance samples in the same manner to evaluate the technique of the analyst and the standards preparation.

9.1.8.3 The same analyst, analytical reagents, and analytical system shall be used for the compliance samples and the audit sample. If this condition is met, duplicate auditing of subsequent compliance analyses for the same enforcement agency within a 30-day period is waived. An audit sample set may not be used to validate different sets of compliance samples under the jurisdiction of separate enforcement agencies, unless prior arrangements have been made with both enforcement agencies.

9.1.9 Audit Sample Results.

9.1.9.1 Calculate the audit sample concentrations and submit results using the instructions provided with the audit samples.

9.1.9.2 Report the results of the audit samples and the compliance determination samples along with their identification numbers, and the analyst's name to the responsible enforcement authority. Include this information with reports of any subsequent compliance analyses for the same enforcement authority during the 30-day period.

9.1.9.3 The concentrations of the audit samples obtained by the analyst shall agree within the values specified by the compliance auditor. If the specified range is not met, reanalyze the compliance and audit samples, and include initial and reanalysis values in the test report.

9.1.9.4 Failure to meet the specified range may require retests unless the audit problems are resolved. However, if the audit results do not affect the compliance or noncompliance status of the affected facility, the Administrator may waive the reanalysis requirement, further audits, or retests and accept the results of the compliance test. While steps are being taken to resolve audit analysis problems, the Administrator may also choose to use the data to determine the compliance or noncompliance status of the affected facility.

9.2 GFAAS Quality Control.

9.2.1 GFAAS Calibration Reference Standards. The calibration curve must be verified by using at least one calibration reference standard (made from a reference material or other independent standard material) at or near the mid-range of the calibration curve.

9.2.1.1 The calibration curve must be validated before sample analyses are performed.

9.2.1.2 The calibration reference standard must be measured within 10 percent of its true value for the curve to be considered valid.

9.2.2 GFAAS Continuing Check Standard.

9.2.2.1 Perform analysis of the check standard with the field samples as described in Section 11.4 (at least after every 10 samples, and at the end of the analytical run).

9.2.2.2 These standards are analyzed, in part, to monitor the life and performance of the graphite tube. Lack of reproducibility or a significant change in the signal for the check standard may indicate that the graphite tube should be replaced.

9.2.2.3 The check standard may be either the mid-range calibration standard or the reference standard.

9.2.2.4 The results of the check standard shall agree within 10 percent of the expected value.

9.2.2.5 If not, terminate the analyses, correct the problem, recalibrate the instrument, and reanalyze all samples analyzed subsequent to the last acceptable check standard analysis.

9.2.3 GFAAS Calibration Blank.

9.2.3.1 Perform analysis of the calibration blank with the field samples as described in Section 11.4 (at least after every 10 samples, and at the end of the analytical run).

9.2.3.2 The calibration blank is analyzed to monitor the life and performance of the graphite tube as well as the existence of any memory effects. Lack of reproducibility or a significant change in the signal, may indicate that the graphite tube should be replaced.

9.2.3.3 The results of the calibration blank shall agree within three standard deviations of the mean blank value.

9.2.3.4 If not, analyze the calibration blank two more times and average the results. If the average is not within three standard deviations of the background mean, terminate the analyses, correct the problem, recalibrate, and reanalyze all samples analyzed subsequent to the last acceptable calibration blank analysis.

9.2.4 GFAAS Duplicate Sample Analysis. Perform one duplicate sample analysis for each compliance sample batch (3 runs).

9.2.4.1 A digested aliquot of the selected sample is processed and analyzed using the identical procedures that were used for the whole sample preparation and analytical efforts.

9.2.4.2 Duplicate sample analyses results incorporating duplicate digestions shall agree within 20 percent for sample results exceeding ten (10) times the detection limit.

9.2.4.3 Report the original analysis value for the sample and report the duplicate analysis value as the QC check value.

9.2.4.4 If agreement is not achieved, perform the duplicate analysis again. If agreement is not achieved the second time, perform corrective action to identify and correct the problem before analyzing the sample for a third time.

9.2.5 GFAAS Matrix Spiking.

9.2.5.1 Spiked samples shall be prepared and analyzed daily to ensure that (1) correct procedures are being followed, (2) there are no matrix effects and (3) all equipment is operating properly.

9.2.5.2 Cr spikes are added prior to any sample preparation.

9.2.5.3 Cr levels in the spiked sample should provide final solution concentrations that are within the linear portion of the calibration curve, as well as, at a concentration level at least: equal to that of the original sample; and, ten (10) times the detection limit.

9.2.5.4 Spiked sample recovery analyses should indicate a recovery for the Cr spike of between 75 and 125 percent.

9.2.5.5 If the recoveries for the Cr spiked samples do not meet the specified criteria, perform corrective action to identify and correct the problem prior to reanalyzing the samples.

9.2.6 GFAAS Method of Standard Additions.

9.2.6.1 Method of Standard Additions. Perform procedures in Section 5.4 of Method 12 (40 CFR Part 60, Appendix A)

9.2.6.2 Whenever sample matrix problems are suspected and standard/sample matrix matching is not possible or whenever a new sample matrix is being analyzed, perform referenced procedures to determine if the method of standard additions is necessary.

9.2.7 GFAAS Field Reagent Blank.

9.2.7.1 Analyze a minimum of one matrix-matched field reagent blank (Section 8.2.4) per sample batch to determine if contamination or memory effects are occurring.

9.2.7.2 If contamination or memory effects are observed, perform corrective action to identify and correct the problem before reanalyzing the samples.

9.2.8 Audit Sample Analysis.

9.2.8.1 When the method is used to analyze samples to demonstrate compliance with a source emission regulation, an audit sample must be analyzed, subject to availability.

9.2.8.2 Concurrently analyze the audit sample and the compliance samples in the same manner to evaluate the technique of the analyst and the standards preparation.

9.2.8.3 The same analyst, analytical reagents, and analytical system shall be used for the compliance samples and the audit sample. If this condition is met, duplicate auditing of subsequent compliance analyses for the same enforcement agency within a 30-day period is waived. An audit sample set may not be used to validate different sets of compliance samples under the jurisdiction of separate enforcement agencies, unless prior arrangements have been made with both enforcement agencies.

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9.2.9 Audit Sample Results.

9.2.9.1 Calculate the audit sample concentrations and submit results using the instructions provided with the audit samples.

9.2.9.2 Report the results of the audit samples and the compliance determination samples along with their identification numbers, and the analyst's name to the responsible enforcement authority. Include this information with reports of any subsequent compliance analyses for the same enforcement authority during the 30-day period.

9.2.9.3 The concentrations of the audit samples obtained by the analyst shall agree within the values specified by the compliance auditor. If the specified range is not met, reanalyze the compliance and audit samples, and include initial and reanalysis values in the test report.

9.2.9.4 Failure to meet the specified range may require retests unless the audit problems are resolved. However, if the audit results do not affect the compliance or noncompliance status of the affected facility, the Administrator may waive the reanalysis requirement, further audits, or retests and accept the results of the compliance test. While steps are being taken to resolve audit analysis problems, the Administrator may also choose to use the data to determine the compliance or noncompliance status of the affected facility.

9.3 IC/PCR Quality Control.

9.3.1 IC/PCR Calibration Reference Standards.

9.3.1.1 Prepare a calibration reference standard at a concentration that is at or near the mid-point of the calibration curve using the same alkaline matrix as the calibration standards. This reference standard should be prepared from a different Cr stock solution than that used to prepare the calibration curve standards. The reference standard is used to verify the accuracy of the calibration curve.

9.3.1.2 The curve must be validated before sample analyses are performed. Prior to sample analysis, analyze at least one reference standard with an expected value within the calibration range.

9.3.1.3 The results of this reference standard analysis must be within 10 percent of the true value of the reference standard for the calibration curve to be considered valid.

9.3.2 IC/PCR Continuing Check Standard and Calibration Blank.

9.3.2.1 Perform analysis of the check standard and the calibration blank with the field samples as described in Section 11.6 (at least after every 10 samples, and at the end of the analytical run).

9.3.2.2 The result from the check standard must be within 10 percent of the expected value.

9.3.2.3 If the 10 percent criteria is exceeded, excessive drift and/or instrument degradation may have occurred, and must be corrected before further analyses can be performed.

9.3.2.4 The results of the calibration blank analyses must agree within three standard deviations of the mean blank value.

9.3.2.5 If not, analyze the calibration blank two more times and average the results.

9.3.2.6 If the average is not within three standard deviations of the background mean, terminate the analyses, correct the problem, recalibrate, and reanalyze all samples analyzed subsequent to the last acceptable calibration blank analysis.

9.3.3 IC/PCR Duplicate Sample Analysis.

9.3.3.1 Perform one duplicate sample analysis for each compliance sample batch (3 runs).

9.3.3.2 An aliquot of the selected sample is prepared and analyzed using procedures identical to those used for the emission samples (for example, filtration and/or, if necessary, preconcentration).

9.3.3.3 Duplicate sample injection results shall agree within 10 percent for sample results exceeding ten (10) times the detection limit.

9.3.3.4 Report the original analysis value for the sample and report the duplicate analysis value as the QC check value.

9.3.3.5 If agreement is not achieved, perform the duplicate analysis again.

9.3.3.6 If agreement is not achieved the second time, perform corrective action to identify and correct the problem prior to analyzing the sample for a third time.

9.3.4 ICP/PCR Matrix Spiking. Spiked samples shall be prepared and analyzed with each sample set to ensure that there are no matrix effects, that samples and standards have been matrix-matched, and that the equipment is operating properly.

9.3.4.1 Spiked sample recovery analysis should indicate a recovery of the $Cr^{+6}$ spike between 75 and 125 percent.

9.3.4.2 The spiked sample concentration should be within the linear portion of the calibration curve and should be equal to or greater than the concentration of the original sample. In addition, the spiked sample concentration should be at least ten (10) times the detection limit.

9.3.4.3 If the recoveries for the $Cr^{+6}$ spiked samples do not meet the specified criteria, perform corrective action to identify and correct the problem prior to reanalyzing the samples.

9.3.5 IC/PCR Field Reagent Blank.

9.3.5.1 Analyze a minimum of one matrix-matched field reagent blank (Section 8.2.4) per sample batch to determine if contamination or memory effects are occurring.

9.3.5.2 If contamination or memory effects are observed, perform corrective action to identify and correct the problem before reanalyzing the samples.

9.3.6 Audit Sample Analysis.

9.3.6.1 When the method is used to analyze samples to demonstrate compliance with source emission regulation, an audit sample must be analyzed, subject to availability.

9.3.6.2 Concurrently analyze the audit sample and the compliance samples in the same manner to evaluate the technique of the analyst and the standards preparation.

9.3.6.3 The same analyst, analytical reagents, and analytical system shall be used for the compliance samples and the audit sample. If this condition is met, duplicate auditing of subsequent compliance analyses for the same enforcement agency within a 30-day period is waived. An audit sample set may not be used to validate different sets of compliance samples under the jurisdiction of separate enforcement agencies, unless prior arrangements have been made with both enforcement agencies.

9.3.7 Audit Sample Results.

9.3.7.1 Calculate the audit sample concentrations and submit results using the instructions provided with the audit samples.

9.3.7.2 Report the results of the audit samples and the compliance determination samples along with their identification numbers, and the analyst's name to the responsible enforcement authority. Include this information with reports of any subsequent compliance analyses for the same enforcement authority during the 30-day period.

9.3.7.3 The concentrations of the audit samples obtained by the analyst shall agree within the values specified by the compliance auditor. If the specified range is not met, reanalyze the compliance and audit samples, and include initial and reanalysis values in the test report.

9.3.7.4 Failure to meet the specified range may require retests unless the audit problems are resolved. However, if the audit results do not affect the compliance or noncompliance status of the affected facility, the Administrator may waive the reanalysis requirement, further audits, or retests and accept the results of the compliance test. While steps are being taken to resolve audit analysis problems, the Administrator may also choose to use the data to determine the compliance or noncompliance status of the affected facility.



*10.0 Calibration and Standardization*

10.1 Sampling Train Calibration. Perform calibrations described in Method 5, (40 CFR Part 60, Appendix A). The alternate calibration procedures described in Method 5, may also be used.

10.2 ICP Calibration.

10.2.1 Calibrate the instrument according to the instrument manufacturer's recommended procedures, using a calibration blank and three standards for the initial calibration.

10.2.2 Calibration standards should be prepared fresh daily, as described in Section 7.3.8. Be sure that samples and calibration standards are matrix matched. Flush the system with the calibration blank between each standard.

10.2.3 Use the average intensity of multiple exposures (3 or more) for both standardization and sample analysis to reduce random error.

10.2.4 Employing linear regression, calculate the correlation coefficient .

10.2.5 The correlation coefficient must equal or exceed 0.995.

10.2.6 If linearity is not acceptable, prepare and rerun another set of calibration standards or reduce the range of the calibration standards, as necessary.

10.3 GFAAS Calibration.

10.3.1 For instruments that measure directly in concentration, set the instrument software to display the correct concentration, if applicable.

10.3.2 Curve must be linear in order to correctly perform the method of standard additions which is customarily performed automatically with most instrument computer-based data systems.

10.3.3 The calibration curve (direct calibration or standard additions) must be prepared daily with a minimum of a calibration blank and three standards that are prepared fresh daily.

10.3.4 The calibration curve acceptance criteria must equal or exceed 0.995.

10.3.5 If linearity is not acceptable, prepare and rerun another set of calibration standards or reduce the range of calibration standards, as necessary.

10.4 IC/PCR Calibration.

10.4.1 Prepare a calibration curve using the calibration blank and three calibration standards prepared fresh daily as described in Section 7.3.8.

10.4.2 The calibration curve acceptance criteria must equal or exceed 0.995.

10.4.3 If linearity is not acceptable, remake and/or rerun the calibration standards. If the calibration curve is still unacceptable, reduce the range of the curve.

10.4.4 Analyze the standards with the field samples as described in Section 11.6.

*11.0 Analytical Procedures*

**Note:** The method determines the chromium concentration in µg Cr/mL. It is important that the analyst measure the field sample volume prior to analyzing the sample. This will allow for conversion of µg Cr/mL to µg Cr/sample.

11.1 ICP Sample Preparation.

11.1.1 The ICP analysis is performed directly on the alkaline impinger solution; acid digestion is not necessary, provided the samples and standards are matrix matched.

11.1.2 The ICP analysis should only be employed when the solution analyzed has a Cr concentration greater than 35 µg/L or five times the method detection limit as determined according to Appendix B in 40 CFR Part 136 or by other commonly accepted analytical procedures.

11.2 ICP Sample Analysis.

11.2.1 The ICP analysis is applicable for the determination of total chromium only.

11.2.2 ICP Blanks. Two types of blanks are required for the ICP analysis.

11.2.2.1 Calibration Blank. The calibration blank is used in establishing the calibration curve. For the calibration blank, use either 0.1 N NaOH or 0.1 N $NaHCO_3$, whichever is used for the impinger absorbing solution. The calibration blank can be prepared fresh in the laboratory; it does not have to be prepared from the same batch of solution that was used in the field. A sufficient quantity should be prepared to flush the system between standards and samples.

11.2.2.2 Field Reagent Blank. The field reagent blank is collected in the field during the testing program. The field reagent blank (Section 8.2.4) is an aliquot of the absorbing solution prepared in Section 7.1.2. The reagent blank is used to assess possible contamination resulting from sample processing.

11.2.3 ICP Instrument Adjustment.

11.2.3.1 Adjust the ICP instrument for proper operating parameters including wavelength, background correction settings (if necessary), and interfering element correction settings (if necessary).

11.2.3.2 The instrument must be allowed to become thermally stable before beginning measurements (usually requiring at least 30 min of operation prior to calibration). During this warmup period, the optical calibration and torch position optimization may be performed (consult the operator's manual).

11.2.4 ICP Instrument Calibration.

11.2.4.1 Calibrate the instrument according to the instrument manufacturer's recommended procedures, and the procedures specified in Section 10.2.

11.2.4.2 Prior to analyzing the field samples, reanalyze the highest calibration standard as if it were a sample.

11.2.4.3 Concentration values obtained should not deviate from the actual values or from the established control limits by more than 5 percent, whichever is lower (see Sections 9.1 and 10.2).

11.2.4.4 If they do, follow the recommendations of the instrument manufacturer to correct the problem.

11.2.5 ICP Operational Quality Control Procedures.

11.2.5.1 Flush the system with the calibration blank solution for at least 1 min before the analysis of each sample or standard.

11.2.5.2 Analyze the continuing check standard and the calibration blank after each batch of 10 samples.

11.2.5.3 Use the average intensity of multiple exposures for both standardization and sample analysis to reduce random error.

11.2.6 ICP Sample Dilution.

11.2.6.1 Dilute and reanalyze samples that are more concentrated than the linear calibration limit or use an alternate, less sensitive Cr wavelength for which quality control data have already been established.

11.2.6.2 When dilutions are performed, the appropriate factors must be applied to sample measurement results.

11.2.7 Reporting Analytical Results. All analytical results should be reported in µg Cr/mL using three significant figures. Field sample volumes (mL) must be reported also.

11.3 GFAAS Sample Preparation.

11.3.1 GFAAS Acid Digestion. An acid digestion of the alkaline impinger solution is required for the GFAAS analysis.

11.3.1.1 In a beaker, add 10 mL of concentrated $HNO_3$ to a 100 mL sample aliquot that has been well mixed. Cover

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the beaker with a watch glass. Place the beaker on a hot plate and reflux the sample to near dryness. Add another 5 mL of concentrated $HNO_3$ to complete the digestion. Again, carefully reflux the sample volume to near dryness. Rinse the beaker walls and watch glass with reagent water.

11.3.1.2 The final concentration of $HNO_3$ in the solution should be 1 percent (v/v).

11.3.1.3 Transfer the digested sample to a 50-mL volumetric flask. Add 0.5 mL of concentrated $HNO_3$ and 1 mL of the 10 µg/mL of $Ca(NO_3)_2$. Dilute to 50 mL with reagent water.

11.3.2 $HNO_3$ Concentration. A different final volume may be used based on the expected Cr concentration, but the $HNO_3$ concentration must be maintained at 1 percent (v/v).

11.4 GFAAS Sample Analysis.

11.4.1 The GFAAS analysis is applicable for the determination of total chromium only.

11.4.2 GFAAS Blanks. Two types of blanks are required for the GFAAS analysis.

11.4.2.1 Calibration Blank. The 1.0 percent $HNO_3$ is the calibration blank which is used in establishing the calibration curve.

11.4.2.2 Field Reagent Blank. An aliquot of the 0.1 N NaOH solution or the 0.1 N $NaHCO_3$ prepared in Section 7.1.2 is collected for the field reagent blank. The field reagent blank is used to assess possible contamination resulting from processing the sample.

11.4.2.2.1 The reagent blank must be subjected to the entire series of sample preparation and analytical procedures, including the acid digestion.

11.4.2.2.2 The reagent blank's final solution must contain the same acid concentration as the sample solutions.

11.4.3 GFAAS Instrument Adjustment.

11.4.3.1 The 357.9 nm wavelength line shall be used.

11.4.3.2 Follow the manufacturer's instructions for all other spectrophotometer operating parameters.

11.4.4 Furnace Operational Parameters. Parameters suggested by the manufacturer should be employed as guidelines.

11.4.4.1 Temperature-sensing mechanisms and temperature controllers can vary between instruments and/or with time; the validity of the furnace operating parameters must be periodically confirmed by systematically altering the furnace parameters while analyzing a standard. In this manner, losses of analyte due to higher-than-necessary temperature settings or losses in sensitivity due to less than optimum settings can be minimized.

11.4.4.2 Similar verification of furnace operating parameters may be required for complex sample matrices (consult instrument manual for additional information). Calibrate the GFAAS system following the procedures specified in Section 10.3.

11.4.5 GFAAS Operational Quality Control Procedures.

11.4.5.1 Introduce a measured aliquot of digested sample into the furnace and atomize.

11.4.5.2 If the measured concentration exceeds the calibration range, the sample should be diluted with the calibration blank solution (1.0 percent $HNO_3$) and reanalyzed.

11.4.5.3 Consult the operator's manual for suggested injection volumes. The use of multiple injections can improve accuracy and assist in detecting furnace pipetting errors.

11.4.5.4 Analyze a minimum of one matrix-matched reagent blank per sample batch to determine if contamination or any memory effects are occurring.

11.4.5.5 Analyze a calibration blank and a continuing check standard after approximately every batch of 10 sample injections.

11.4.6 GFAAS Sample Dilution.

11.4.6.1 Dilute and reanalyze samples that are more concentrated than the instrument calibration range.

11.4.6.2 If dilutions are performed, the appropriate factors must be applied to sample measurement results.

11.4.7 Reporting Analytical Results.

11.4.7.1 Calculate the Cr concentrations by the method of standard additions (see operator's manual) or, from direct calibration. All dilution and/or concentration factors must be used when calculating the results.

11.4.7.2 Analytical results should be reported in µg Cr/mL using three significant figures. Field sample volumes (mL) must be reported also.

11.5 IC/PCR Sample Preparation.

11.5.1 Sample pH. Measure and record the sample pH prior to analysis.

11.5.2 Sample Filtration. Prior to preconcentration and/or analysis, filter all field samples through a 0.45-µm filter. The filtration step should be conducted just prior to sample injection/analysis.

11.5.2.1 Use a portion of the sample to rinse the syringe filtration unit and acetate filter and then collect the required volume of filtrate.

11.5.2.2 Retain the filter if total Cr is to be determined also.

11.5.3 Sample Preconcentration (older instruments).

11.5.3.1 For older instruments, a preconcentration system may be used in conjunction with the IC/PCR to increase sensitivity for trace levels of $Cr^{+6}$.

11.5.3.2 The preconcentration is accomplished by selectively retaining the analyte on a solid absorbent, followed by removal of the analyte from the absorbent (consult instrument manual).

11.5.3.3 For a manual system, position the injection valve so that the eluent displaces the concentrated $Cr^{+6}$ sample, transferring it from the preconcentration column and onto the IC anion separation column.

11.6 IC/PCR Sample Analyses.

11.6.1 The IC/PCR analysis is applicable for hexavalent chromium measurements only.

11.6.2 IC/PCR Blanks. Two types of blanks are required for the IC/PCR analysis.

11.6.2.1 Calibration Blank. The calibration blank is used in establishing the analytical curve. For the calibration blank, use either 0.1 N NaOH or 0.1 N $NaHCO_3$, whichever is used for the impinger solution. The calibration blank can be prepared fresh in the laboratory; it does not have to be prepared from the same batch of absorbing solution that is used in the field.

11.6.2.2 Field Reagent Blank. An aliquot of the 0.1 N NaOH solution or the 0.1 N $NaHCO_3$ solution prepared in Section 7.1.2 is collected for the field reagent blank. The field reagent blank is used to assess possible contamination resulting from processing the sample.

11.6.3 Stabilized Baseline. Prior to sample analysis, establish a stable baseline with the detector set at the required attenuation by setting the eluent and post-column reagent flow rates according to the manufacturers recommendations.

**Note:** As long as the ratio of eluent flow rate to PCR flow rate remains constant, the standard curve should remain linear. Inject a sample of reagent water to ensure that no $Cr^{+6}$ appears in the water blank.

11.6.4 Sample Injection Loop. Size of injection loop is based on standard/sample concentrations and the selected attenuator setting.

11.6.4.1 A 50-µL loop is normally sufficient for most higher concentrations.

11.6.4.2 The sample volume used to load the injection loop should be at least 10 times the loop size so that all tubing in contact with the sample is thoroughly flushed with the new sample to prevent cross contamination.

11.6.5 IC/PCR Instrument Calibration.

11.6.5.1 First, inject the calibration standards prepared, as described in Section 7.3.8 to correspond to the appropriate concentration range, starting with the lowest standard first.



11.6.5.2 Check the performance of the instrument and verify the calibration using data gathered from analyses of laboratory blanks, calibration standards, and a quality control sample.

11.6.5.3 Verify the calibration by analyzing a calibration reference standard. If the measured concentration exceeds the established value by more than 10 percent, perform a second analysis. If the measured concentration still exceeds the established value by more than 10 percent, terminate the analysis until the problem can be identified and corrected.

11.6.6 IC/PCR Instrument Operation.

11.6.6.1 Inject the calibration reference standard (as described in Section 9.3.1), followed by the field reagent blank (Section 8.2.4), and the field samples.

11.6.6.1.1 Standards (and QC standards) and samples are injected into the sample loop of the desired size (use a larger size loop for greater sensitivity). The $Cr^{+6}$ is collected on the resin bed of the column.

11.6.6.1.2 After separation from other sample components, the $Cr^{+6}$ forms a specific complex in the post-column reactor with the DPC reaction solution, and the complex is detected by visible absorbance at a maximum wavelength of 540 nm.

11.6.6.1.3 The amount of absorbance measured is proportional to the concentration of the $Cr^{+6}$ complex formed.

11.6.6.1.4 The IC retention time and the absorbance of the $Cr^{+6}$ complex with known $Cr^{+6}$ standards analyzed under identical conditions must be compared to provide both qualitative and quantitative analyses.

11.6.6.1.5 If a sample peak appears near the expected retention time of the $Cr^{+6}$ ion, spike the sample according to Section 9.3.4 to verify peak identity.

11.6.7 IC/PCR Operational Quality Control Procedures.

11.6.7.1 Samples should be at a pH ≥8.5 for NaOH and ≥8.0 if using $NaHCO_3$; document any discrepancies.

11.6.7.2 Refrigerated samples should be allowed to equilibrate to ambient temperature prior to preparation and analysis.

11.6.7.3 Repeat the injection of the calibration standards at the end of the analytical run to assess instrument drift. Measure areas or heights of the $Cr^{+6}$/DPC complex chromatogram peaks.

11.6.7.4 To ensure the precision of the sample injection (manual or autosampler), the response for the second set of injected standards must be within 10 percent of the average response.

11.6.7.5 If the 10 percent criteria duplicate injection cannot be achieved, identify the source of the problem and rerun the calibration standards.

11.6.7.6 Use peak areas or peak heights from the injections of calibration standards to generate a linear calibration curve. From the calibration curve, determine the concentrations of the field samples.

11.6.8 IC/PCR Sample Dilution.

11.6.8.1 Samples having concentrations higher than the established calibration range must be diluted into the calibration range and re-analyzed.

11.6.8.2 If dilutions are performed, the appropriate factors must be applied to sample measurement results.

11.6.9 Reporting Analytical Results. Results should be reported in µg $Cr^{+6}$/mL using three significant figures. Field sample volumes (mL) must be reported also.

*12.0 Data Analysis and Calculations*

12.1 Pretest Calculations.

12.1.1 Pretest Protocol (Site Test Plan).

12.1.1.1 The pretest protocol should define and address the test data quality objectives (DQOs), with all assumptions, that will be required by the end user (enforcement authority); what data are needed? why are the data needed? how will the data be used? what are method detection limits? and what are estimated target analyte levels for the following test parameters.

12.1.1.1.1 Estimated source concentration for total chromium and/or $Cr^{+6}$.

12.1.1.1.2 Estimated minimum sampling time and/or volume required to meet method detection limit requirements (Appendix B 40 CFR Part 136) for measurement of total chromium and/or $Cr^{+6}$.

12.1.1.1.3 Demonstrate that planned sampling parameters will meet DQOs. The protocol must demonstrate that the planned sampling parameters calculated by the tester will meet the needs of the source and the enforcement authority.

12.1.1.2 The pre-test protocol should include information on equipment, logistics, personnel, process operation, and other resources necessary for an efficient and coordinated test.

12.1.1.3 At a minimum, the pre-test protocol should identify and be approved by the source, the tester, the analytical laboratory, and the regulatory enforcement authority. The tester should not proceed with the compliance testing before obtaining approval from the enforcement authority.

12.1.2 Post Test Calculations.

12.1.2.1 Perform the calculations, retaining one extra decimal figure beyond that of the acquired data. Round off figures after final calculations.

12.1.2.2 Nomenclature.

$C_S$ = Concentration of Cr in sample solution, µg Cr/mL.

$C_{cr}$ = Concentration of Cr in stack gas, dry basis, corrected to standard conditions, mg/dscm.

D = Digestion factor, dimension less.

F = Dilution factor, dimension less.

$M_{Cr}$ = Total Cr in each sample, µg.

$V_{ad}$ = Volume of sample aliquot after digestion, mL.

$V_{af}$ = Volume of sample aliquot after dilution, mL.

$V_{bd}$ = Volume of sample aliquot submitted to digestion, mL.

$V_{bf}$ = Volume of sample aliquot before dilution, mL.

$V_{mL}$ = Volume of impinger contents plus rinses, mL.

$V_{m(std)}$ = Volume of gas sample measured by the dry gas meter, corrected to standard conditions, dscm.

12.1.2.3 Dilution Factor. The dilution factor is the ratio of the volume of sample aliquot after dilution to the volume before dilution. This ratio is given by the following equation:

$$F = \frac{V_{af}}{V_{bf}} \qquad \text{Eq. 306-1}$$

12.1.2.4 Digestion Factor. The digestion factor is the ratio of the volume of sample aliquot after digestion to the volume before digestion. This ratio is given by Equation 306–2.

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$$D = \frac{V_{ad}}{V_{bd}} \quad \text{Eq. 306-2}$$

12.1.2.5 Total Cr in Sample. Calculate MCr, the total µg Cr in each sample, using the following equation:

$$M_{cr} = V_{mL} \times C_S \times F \times D \quad \text{Eq. 306-3}$$

12.1.2.6 Average Dry Gas Meter Temperature and Average Orifice Pressure Drop. Same as Method 5.

12.1.2.7 Dry Gas Volume, Volume of Water Vapor, Moisture Content. Same as Method 5.

12.1.2.8 Cr Emission Concentration ($C_{Cr}$). Calculate $C_{Cr}$, the Cr concentration in the stack gas, in mg/dscm on a dry basis, corrected to standard conditions using the following equation:

$$C_{Cr} = \frac{M_{Cr}}{V_{m(std)}} \times 10^{-3} \frac{mg}{\mu g} \quad \text{Eq. 306-4}$$

12.1.2.9 Isokinetic Variation, Acceptable Results. Same as Method 5.

*13.0 Method Performance*

13.1 Range. The recommended working range for all of the three analytical techniques starts at five times the analytical detection limit (see also Section 13.2.2). The upper limit of all three techniques can be extended indefinitely by appropriate dilution.

13.2 Sensitivity.

13.2.1 Analytical Sensitivity. The estimated instrumental detection limits listed are provided as a guide for an instrumental limit. The actual method detection limits are sample and instrument dependent and may vary as the sample matrix varies.

13.2.1.2 ICP Analytical Sensitivity. The minimum estimated detection limits for ICP, as reported in Method 6010A and the recently revised Method 6010B of SW–846 (Reference 1), are 7.0 µg Cr/L and 4.7 µg Cr/L, respectively.

13.2.1.3 GFAAS Analytical Sensitivity. The minimum estimated detection limit for GFAAS, as reported in Methods 7000A and 7191 of SW–846 (Reference 1), is 1 µg Cr/L.

13.2.1.4 IC/PCR Analytical Sensitivity. The minimum detection limit for IC/PCR with a preconcentrator, as reported in Methods 0061 and 7199 of SW–846 (Reference 1), is 0.05 µg $Cr^{+6}$/L.

1.3.2.1.5 Determination of Detection Limits. The laboratory performing the $Cr^{+6}$ measurements must determine the method detection limit on a quarterly basis using a suitable procedure such as that found in 40 CFR, Part 136, Appendix B. The determination should be made on samples in the appropriate alkaline matrix. Normally this involves the preparation (if applicable) and consecutive measurement of seven (7) separate aliquots of a sample with a concentration <5 times the expected detection limit. The detection limit is 3.14 times the standard deviation of these results.

13.2.2 In-stack Sensitivity. The in-stack sensitivity depends upon the analytical detection limit, the volume of stack gas sampled, the total volume of the impinger absorbing solution plus the rinses, and, in some cases, dilution or concentration factors from sample preparation. Using the analytical detection limits given in Sections 13.2.1.1, 13.2.1.2, and 13.2.1.3; a stack gas sample volume of 1.7 dscm; a total liquid sample volume of 500 mL; and the digestion concentration factor of 1/2 for the GFAAS analysis; the corresponding in-stack detection limits are 0.0014 mg Cr/dscm to 0.0021 mg Cr/dscm for ICP, 0.00015 mg Cr/dscm for GFAAS, and 0.000015 mg $Cr^{+6}$/dscm for IC/PCR with preconcentration.

**Note:** It is recommended that the concentration of Cr in the analytical solutions be at least five times the analytical detection limit to optimize sensitivity in the analyses. Using this guideline and the same assumptions for impinger sample volume, stack gas sample volume, and the digestion concentration factor for the GFAAS analysis (500 mL,1.7 dscm, and 1/2, respectively), the recommended minimum stack concentrations for optimum sensitivity are 0.0068 mg Cr/dscm to 0.0103 mg Cr/dscm for ICP, 0.00074 mg Cr/dscm for GFAAS, and 0.000074 mg $Cr^{+6}$/dscm for IC/PCR with preconcentration. If required, the in-stack detection limits can be improved by either increasing the stack gas sample volume, further reducing the volume of the digested sample for GFAAS, improving the analytical detection limits, or any combination of the three.

13.3 Precision.

13.3.1 The following precision data have been reported for the three analytical methods. In each case, when the sampling precision is combined with the reported analytical precision, the resulting overall precision may decrease.

13.3.2 Bias data is also reported for GFAAS.

13.4 ICP Precision.

13.4.1 As reported in Method 6010B of SW–846 (Reference 1), in an EPA round-robin Phase 1 study, seven laboratories applied the ICP technique to acid/distilled water matrices that had been spiked with various metal concentrates. For true values of 10, 50, and 150 µg Cr/L; the mean reported values were 10, 50, and 149 µg Cr/L; and the mean percent relative standard deviations were 18, 3.3, and 3.8 percent, respectively.

13.4.2 In another multi laboratory study cited in Method 6010B, a mean relative standard of 8.2 percent was reported for an aqueous sample concentration of approximately 3750 µg Cr/L.

13.5 GFAAS Precision. As reported in Method 7191 of SW–846 (Reference 1), in a single laboratory (EMSL), using Cincinnati, Ohio tap water spiked at concentrations of 19, 48, and 77 µg Cr/L, the standard deviations were ±0.1, ±0.2, and ±0.8, respectively. Recoveries at these levels were 97 percent, 101 percent, and 102 percent, respectively.

13.6 IC/PCR Precision. As reported in Methods 0061 and 7199 of SW–846 (Reference 1), the precision of IC/PCR with sample preconcentration is 5 to 10 percent. The overall precision for



sewage sludge incinerators emitting 120 ng/dscm of $Cr^{+6}$ and 3.5 µg/dscm of total Cr was 25 percent and 9 percent, respectively; and for hazardous waste incinerators emitting 300 ng/dscm of $C^{+6}$ the precision was 20 percent.

*14.0 Pollution Prevention*

14.1 The only materials used in this method that could be considered pollutants are the chromium standards used for instrument calibration and acids used in the cleaning of the collection and measurement containers/labware, in the preparation of standards, and in the acid digestion of samples. Both reagents can be stored in the same waste container.

14.2 Cleaning solutions containing acids should be prepared in volumes consistent with use to minimize the disposal of excessive volumes of acid.

14.3 To the extent possible, the containers/vessels used to collect and prepare samples should be cleaned and reused to minimize the generation of solid waste.

*15.0 Waste Management*

15.1 It is the responsibility of the laboratory and the sampling team to comply with all federal, state, and local regulations governing waste management, particularly the discharge regulations, hazardous waste identification rules, and land disposal restrictions; and to protect the air, water, and land by minimizing and controlling all releases from field operations.

15.2 For further information on waste management, consult The Waste Management Manual for Laboratory Personnel and Less is Better—Laboratory Chemical Management for Waste Reduction, available from the American Chemical Society's Department of Government Relations and Science Policy, 1155 16th Street NW, Washington, DC 20036.

*16.0 References*

1. "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, SW–846, Third Edition," as amended by Updates I, II, IIA, IIB, and III. Document No. 955–001–000001. Available from Superintendent of Documents, U.S. Government Printing Office, Washington, DC, November 1986.

2. Cox, X.B., R.W. Linton, and F.E. Butler. Determination of Chromium Speciation in Environmental Particles—A Multi-technique Study of Ferrochrome Smelter Dust. Accepted for publication in Environmental Science and Technology.

3. Same as Section 17.0 of Method 5, References 2, 3, 4, 5, and 7.

4. California Air Resources Board, "Determination of Total Chromium and Hexavalent Chromium Emissions from Stationary Sources." Method 425, September 12, 1990.

5. *The Merck Index*. Eleventh Edition. Merck & Co., Inc., 1989.

6. Walpole, R.E., and R.H. Myers. "Probability and Statistics for Scientists and Engineering." 3rd Edition. MacMillan Publishing Co., NewYork, N.Y., 1985.

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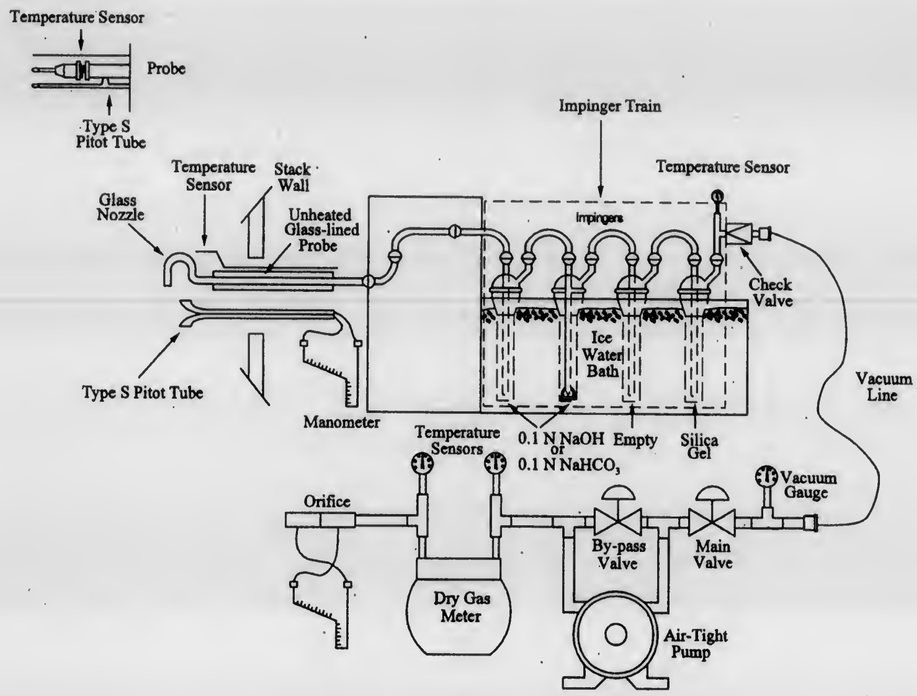



Figure 306-1. Chromium Sampling Train.



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Plant _____
Location _____
Operator _____
Date _____
Run No. _____
Sample box No. _____
Meter box No. _____
Meter $\Delta H@$ _____
C factor _____
Pitot tube coefficient, $C_p$ _____

SCHEMATIC OF STACK CROSS SECTION

Ambient temperature _____
Barometric pressure _____
Assumed moisture, % _____
Probe length, (ft.) _____
Nozzle identification No. _____
Average calibrated nozzle diameter, (in.) _____
Leak rate, (cfm) _____
Static pressure, (in. Hg) _____

| Traverse point number | Sampling time | Vacuum | Stack temperature | Velocity head | Pressure differential across orifice meter | Gas meter reading | Gas sample temperature at dry gas meter | | Temperature of gas leaving condenser or last impinger |
|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | Inlet | Outlet | |
| | min. | (in. Hg) | ($T_s$) (°F) | ($\Delta P_s$) (in. $H_2O$) | (in. $H_2O$) | ($ft^3$) | (°F) | (°F) | (°F) |
| | | | | | | | | | |
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| | | | | | | | | | |
| | | | | | | | | | |
| Total | | | | | | | Avg. | Avg. | |
| Average | | | | | | | Avg. | | |

Figure 306-2. Chromium Field Data Sheet.

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**Method 306A—Determination of Chromium Emissions From Decorative and Hard Chromium Electroplating and Chromium Anodizing Operations**

**Note:** This method does not include all of the specifications (*e.g.*, equipment and supplies) and procedures (*e.g.*, sampling and analytical) essential to its performance. Some material is incorporated by reference from other methods in 40 CFR Part 60, Appendix A and in this part. Therefore, to obtain reliable results, persons using this method should have a thorough knowledge of at least Methods 5 and 306.

*1.0 Scope and Application*

1.1 Analyte. Chromium. CAS Number (7440–47–3).

1.2 Applicability.

1.2.1 This method applies to the determination of chromium (Cr) in emissions from decorative and hard chromium electroplating facilities, chromium anodizing operations, and continuous chromium plating at iron and steel facilities. The method is less expensive and less complex to conduct than Method 306. Correctly applied, the precision and bias of the sample results should be comparable to those obtained with the isokinetic Method 306. This method is applicable for the determination of air emissions under nominal ambient moisture, temperature, and pressure conditions.

1.2.2 The method is also applicable to electroplating and anodizing sources controlled by wet scrubbers.

1.3 Data Quality Objectives.

1.3.1 Pretest Protocol.

1.3.1.1 The pretest protocol should define and address the test data quality objectives (DQOs), with all assumptions, that will be required by the end user (enforcement authority); what data are needed? why are the data needed? how will data be used? what are method detection limits? and what are estimated target analyte levels for the following test parameters.

1.3.1.1.1 Estimated source concentration for total chromium and/or $Cr^{+6}$.

1.3.1.1.2 Estimated minimum sampling time and/or volume required to meet method detection limit requirements (Appendix B 40 CFR Part 136) for measurement of total chromium and/or $Cr^{+6}$.

1.3.1.1.3 Demonstrate that planned sampling parameters will meet DQOs. The protocol must demonstrate that the planned sampling parameters calculated by the tester will meet the needs of the source and the enforcement authority.

1.3.1.2 The pre-test protocol should include information on equipment, logistics, personnel, process operation, and other resources necessary for an efficient and coordinated performance test.

1.3.1.3 At a minimum, the pre-test protocol should identify and be approved by the source, the tester, the analytical laboratory, and the regulatory enforcement authority. The tester should not proceed with the compliance testing before obtaining approval from the enforcement authority.

*2.0 Summary of Method*

2.1 Sampling.

2.1.1 An emission sample is extracted from the source at a constant sampling rate determined by a critical orifice and collected in a sampling train composed of a probe and impingers. The proportional sampling time at the cross sectional traverse points is varied according to the stack gas velocity at each point. The total sample time must be at least two hours.

2.1.2 The chromium emission concentration is determined by the same analytical procedures described in Method 306: inductively-coupled plasma emission spectrometry (ICP), graphite furnace atomic absorption spectrometry (GFAAS), or ion chromatography with a post-column reactor (IC/PCR).

2.1.2.1 Total chromium samples with high chromium concentrations (≥35 µg/L) may be analyzed using inductively coupled plasma emission spectrometry (ICP) at 267.72 nm.

**Note:** The ICP analysis is applicable for this method only when the solution analyzed has a Cr concentration greater than or equal to 35 µg/L or five times the method detection limit as determined according to Appendix B in 40 CFR Part 136.

2.1.2.2 Alternatively, when lower total chromium concentrations (<35 µg/L) are encountered, a portion of the alkaline sample solution may be digested with nitric acid and analyzed by graphite furnace atomic absorption spectroscopy (GFAAS) at 357.9 nm.

2.1.2.3 If it is desirable to determine hexavalent chromium ($Cr^{+6}$) emissions, the samples may be analyzed using an ion chromatograph equipped with a post-column reactor (IC/PCR) and a visible wavelength detector. To increase sensitivity for trace levels of $Cr^{+6}$, a preconcentration system may be used in conjunction with the IC/PCR.

*3.0 Definitions*

3.1 *Total Chromium*—measured chromium content that includes both major chromium oxidation states (Cr+3, Cr+6).

3.2 *May*—Implies an optional operation.

3.3 *Digestion*—The analytical operation involving the complete (or nearly complete) dissolution of the sample in order to ensure the complete solubilization of the element (analyte) to be measured.

3.4 *Interferences*—Physical, chemical, or spectral phenomena that may produce a high or low bias in the analytical result.

3.5 *Analytical System*—All components of the analytical process including the sample digestion and measurement apparatus.

3.6 *Sample Recovery*—The quantitative transfer of sample from the collection apparatus to the sample preparation (digestion, etc.) apparatus. This term should not be confused with analytical recovery.

*4.0 Interferences*

4.1 Same as in Method 306, Section 4.0.

*5.0 Safety*

5.1 Disclaimer. This method may involve hazardous materials, operations, and equipment. This test method does not purport to address all of the safety issues associated with its use. It is the responsibility of the user to establish appropriate safety and health practices and to determine the applicability of regulatory limitations prior to performing this test method.

5.2 Chromium and some chromium compounds have been listed as carcinogens although Chromium (III) compounds show little or no toxicity. Chromium is a skin and respiratory irritant.

*6.0 Equipment and Supplies*

**Note:** Mention of trade names or specific products does not constitute endorsement by the Environmental Protection Agency.

6.1 Sampling Train. A schematic of the sampling train is shown in Figure 306A–1. The individual components of the train are available commercially, however, some fabrication and assembly are required.

6.1.1 Probe Nozzle/Tubing and Sheath.

6.1.1.1 Use approximately 6.4-mm (¼-in.) inside diameter (ID) glass or rigid plastic tubing approximately 20 cm (8 in.) in length with a short 90 degree bend at one end to form the sampling nozzle. Grind a slight taper on the nozzle end before making the bend. Attach the nozzle to flexible tubing of sufficient length to enable collection of a sample from the stack.

6.1.1.2 Use a straight piece of larger diameter rigid tubing (such as metal conduit or plastic water pipe) to form a sheath that begins about 2.5 cm (1 in.) from the 90° bend on the nozzle and encases and supports the flexible tubing.



6.1.2 Type S Pitot Tube. Same as Method 2, Section 6.1 (40 CFR Part 60, Appendix A).

6.1.3 Temperature Sensor.

6.1.3.1 A thermocouple, liquid-filled bulb thermometer, bimetallic thermometer, mercury-in-glass thermometer, or other sensor capable of measuring temperature to within 1.5 percent of the minimum absolute stack temperature.

6.1.3.2 The temperature sensor shall either be positioned near the center of the stack, or be attached to the pitot tube as directed in Section 6.3 of Method 2.

6.1.4 Sample Train Connectors.

6.1.4.1 Use thick wall flexible plastic tubing (polyethylene, polypropylene, or polyvinyl chloride) ~ 6.4-mm (¼-in.) to 9.5-mm (⅜-in.) ID to connect the train components.

6.1.4.2 A combination of rigid plastic tubing and thin wall flexible tubing may be used as long as tubing walls do not collapse when leak-checking the train. Metal tubing cannot be used.

6.1.5 Impingers. Three, one-quart capacity, glass canning jars with vacuum seal lids, or three Greenburg-Smith (GS) design impingers connected in series, or equivalent, may be used.

6.1.5.1 One-quart glass canning jar. Three separate jar containers are required: (1) the first jar contains the absorbing solution; (2) the second is empty and is used to collect any reagent carried over from the first container; and (3) the third contains the desiccant drying agent.

6.1.5.2 Canning Jar Connectors. The jar containers are connected by leak-tight inlet and outlet tubes installed in the lids of each container for assembly with the train. The tubes may be made of ~ 6.4 mm (¼-in.) ID glass or rigid plastic tubing. For the inlet tube of the first impinger, heat the glass or plastic tubing and draw until the tubing separates. Fabricate the necked tip to form an orifice tip that is approximately 2.4 mm (3/32-in.) ID.

6.1.5.2.1 When assembling the first container, place the orifice tip end of the tube approximately 4.8 mm (3/16-in.) above the inside bottom of the jar.

6.1.5.2.2 For the second container, the inlet tube need not be drawn and sized, but the tip should be approximately 25 mm (1 in.) above the bottom of the jar.

6.1.5.2.3 The inlet tube of the third container should extend to approximately 12.7 mm (½-in.) above the bottom of the jar.

6.1.5.2.4 Extend the outlet tube for each container approximately 50 mm (2 in.) above the jar lid and downward through the lid, approximately 12.7 mm (½-in.) beneath the bottom of the lid.

6.1.5.3 Greenburg-Smith Impingers. Three separate impingers of the Greenburg-Smith (GS) design as described in Section 6.0 of Method 5 are required. The first GS impinger shall have a standard tip (orifice/plate), and the second and third GS impingers shall be modified by replacing the orifice/plate tube with a 13 mm (½-in.) ID glass tube, having an unrestricted opening located 13 mm (½-in.) from the bottom of the outer flask.

6.1.5.4 Greenburg-Smith Connectors. The GS impingers shall be connected by leak-free ground glass "U" tube connectors or by leak-free non-contaminating flexible tubing. The first impinger shall contain the absorbing solution, the second is empty and the third contains the desiccant drying agent.

6.1.6 Manometer. Inclined/vertical type, or equivalent device, as described in Section 6.2 of Method 2 (40 CFR Part 60, Appendix A).

6.1.7 Critical Orifice. The critical orifice is a small restriction in the sample line that is located upstream of the vacuum pump. The orifice produces a constant sampling flow rate that is approximately 0.021 cubic meters per minute ($m^3$/min) or 0.75 cubic feet per minute (cfm).

6.1.7.1 The critical orifice can be constructed by sealing a 2.4-mm (3/32-in.) ID brass tube approximately 14.3 mm (9/16-in.) in length inside a second brass tube that is approximately 8 mm (5/16-in.) ID and 14.3-mm (9/16-in.) in length .

6.1.7.2 Materials other than brass can be used to construct the critical orifice as long as the flow through the sampling train can be maintained at approximately 0.021 cubic meter per minute (0.75) cfm.

6.1.8 Connecting Hardware. Standard pipe and fittings, 9.5-mm (⅜-in.), 6.4-mm (¼-in.) or 3.2-mm (⅛-in.) ID, may be used to assemble the vacuum pump, dry gas meter and other sampling train components.

6.1.9 Vacuum Gauge. Capable of measuring approximately 760 mm $H_g$ (30 in. $H_g$) vacuum in 25.4 mm $H_G$ (1 in. $H_g$) increments. Locate vacuum gauge between the critical orifice and the vacuum pump.

6.1.10 Pump Oiler. A glass oil reservoir with a wick mounted at the vacuum pump inlet that lubricates the pump vanes. The oiler should be an in-line type and not vented to the atmosphere. See EMTIC Guideline Document No. GD-041.WPD for additional information.

6.1.11 Vacuum Pump. Gast Model 0522–V103–G18DX, or equivalent, capable of delivering at least 1.5 cfm at 15 in. $H_g$ vacuum.

6.1.12 Oil Trap/Muffler. An empty glass oil reservoir without wick mounted at the pump outlet to control the pump noise and prevent oil from reaching the dry gas meter.

6.1.13 By-pass Fine Adjust Valve (Optional). Needle valve assembly 6.4-mm (¼-in.), Whitey 1 RF 4–A, or equivalent, that allows for adjustment of the train vacuum.

6.1.13.1 A fine-adjustment valve is positioned in the optional pump by-pass system that allows the gas flow to recirculate through the pump. This by-pass system allows the tester to control/reduce the maximum leak-check vacuum pressure produced by the pump.

6.1.13.1.1 The tester must conduct the post test leak check at a vacuum equal to or greater than the maximum vacuum encountered during the sampling run.

6.1.13.1.2 The pump by-pass assembly is not required, but is recommended if the tester intends to leak-check the 306A train at the vacuum experienced during a run.

6.1.14 Dry Gas Meter. An Equimeter Model 110 test meter or, equivalent with temperature sensor(s) installed (inlet/outlet) to monitor the meter temperature. If only one temperature sensor is installed, locate the sensor at the outlet side of the meter. The dry gas meter must be capable of measuring the gaseous volume to within ±2% of the true volume.

**Note:** The Method 306 sampling train is also commercially available and may be used to perform the Method 306A tests. The sampling train may be assembled as specified in Method 306A with the sampling rate being operated at the delta $H_\Phi$ specified for the calibrated orifice located in the meter box. The Method 306 train is then operated as described in Method 306A.

6.2 Barometer. Mercury aneroid barometer, or other barometer equivalent, capable of measuring atmospheric pressure to within ±2.5 mm $H_g$ (0.1 in. $H_g$).

6.2.1 A preliminary check of the barometer shall be made against a mercury-in-glass reference barometer or its equivalent.

6.2.2 Tester may elect to obtain the absolute barometric pressure from a nearby National Weather Service station.

6.2.2.1 The station value (which is the absolute barometric pressure) must be adjusted for elevation differences between the weather station and the sampling location. Either subtract 2.5

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mm $H_g$ (0.1 in. $H_g$) from the station value per 30 m (100 ft) of elevation increase or add the same for an elevation decrease.

6.2.2.2 If the field barometer cannot be adjusted to agree within 0.1 in. $H_g$ of the reference barometric, repair or discard the unit. The barometer pressure measurement shall be recorded on the sampling data sheet.

6.3 Sample Recovery. Same as Method 5, Section 6.2 (40 CFR Part 60, Appendix A), with the following exceptions:

6.3.1 Probe-Liner and Probe-Nozzle Brushes. Brushes are not necessary for sample recovery. If a probe brush is used, it must be non-metallic.

6.3.2 Wash Bottles. Polyethylene wash bottle, for sample recovery absorbing solution.

6.3.3 Sample Recovery Solution. Use 0.1 N NaOH or 0.1 N $NaHCO_3$, whichever is used as the impinger absorbing solution, to replace the acetone.

6.3.4 Sample Storage Containers.

6.3.4.1 Glass Canning Jar. The first canning jar container of the sampling train may serve as the sample shipping container. A new lid and sealing plastic wrap shall be substituted for the container lid assembly.

6.3.4.2 Polyethylene or Glass Containers. Transfer the Greenburg-Smith impinger contents to precleaned polyethylene or glass containers. The samples shall be stored and shipped in 250-mL, 500-mL or 1000-mL polyethylene or glass containers with leak-free, non metal screw caps.

6.3.5 pH Indicator Strip, for $Cr^{+6}$ Samples. pH indicator strips, or equivalent, capable of determining the pH of solutions between the range of 7 and 12, at 0.5 pH increments.

6.3.6 Plastic Storage Containers. Air tight containers to store silica gel.

6.4 Analysis. Same as Method 306, Section 6.3.

*7.0 Reagents and Standards.*

**Note:** Unless otherwise indicated, all reagents shall conform to the specifications established by the Committee on Analytical Reagents of the American Chemical Society (ACS reagent grade). Where such specifications are not available, use the best available grade. It is recommended, but not required, that reagents be checked by the appropriate analysis prior to field use to assure that contamination is below the analytical detection limit for the ICP or GFAAS total chromium analysis; and that contamination is below the analytical detection limit for $Cr^{+6}$ using IC/PCR for direct injection or, if selected, preconcentration.

7.1 Sampling.

7.1.1 Water. Reagent water that conforms to ASTM Specification D1193 Type II (incorporated by reference see § 63.14). All references to water in the method refer to reagent water unless otherwise specified. It is recommended that water blanks be checked prior to preparing the sampling reagents to ensure that the Cr content is less than three (3) times the anticipated detection limit of the analytical method.

7.1.2 Sodium Hydroxide (NaOH) Absorbing Solution, 0.1 N. Dissolve 4.0 g of sodium hydroxide in 1 liter of water to obtain a pH of approximately 8.5.

7.1.3 Sodium Bicarbonate ($NaHCO_3$) Absorbing Solution, 0.1 N. Dissolve approximately 8.5 g of sodium bicarbonate in 1 liter of water to obtain a pH of approximately 8.3.

7.1.4 Chromium Contamination.

7.1.4.1 The absorbing solution shall not exceed the QC criteria noted in Method 306, Section 7.1.1 (≤3 times the instrument detection limit).

7.1.4.2 When the $Cr^{+6}$ content in the field samples exceeds the blank concentration by at least a factor of ten (10), $Cr^{+6}$ blank levels ≤10 times the detection limit will be allowed.

**Note:** At sources with high concentrations of acids and/or $SO_2$, the concentration of NaOH or $NaHCO_3$ should be ≥0.5 N to insure that the pH of the solution remains at or above 8.5 for NaOH and 8.0 for $NaHCO_3$ during and after sampling.

7.1.3 Desiccant. Silica Gel, 6–16 mesh, indicating type. Alternatively, other types of desiccants may be used, subject to the approval of the Administrator.

7.2 Sample Recovery. Same as Method 306, Section 7.2.

7.3 Sample Preparation and Analysis. Same as Method 306, Section 7.3.

7.4 Glassware Cleaning Reagents. Same as Method 306, Section 7.4.

7.5 Quality Assurance Audit Samples.

7.5.1 It is recommended, but not required, that a performance audit sample be analyzed in conjunction with the field samples. The audit sample should be in a suitable sample matrix at a concentration similar to the actual field samples.

7.5.2 When making compliance determinations, and upon availability, audit samples may be obtained from the appropriate EPA regional Office or from the responsible enforcement authority and analyzed in conjunction with the field samples.

**Note:** The responsible enforcement authority should be notified at least 30 days prior to the test date to allow sufficient time for the audit sample to be delivered.

*8.0 Sample Collection, Recovery, Preservation, Holding Times, Storage, and Transport*

**Note:** Prior to sample collection, consideration should be given as to the type of analysis ($Cr^{+6}$ or total Cr) that will be performed. Deciding which analysis will be performed will enable the tester to determine which appropriate sample recovery and storage procedures will be required to process the sample.

8.1 Sample Collection.

8.1.1 Pretest Preparation.

8.1.1.1 Selection of Measurement Site. Locate the sampling ports as specified in Section 11.0 of Method 1 (40 CFR Part 60, Appendix A).

8.1.1.2 Location of Traverse Points.

8.1.1.2.1 Locate the traverse points as specified in Section 11.0 of Method 1 (40 CFR Part 60, Appendix A). Use a total of 24 sampling points for round ducts and 24 or 25 points for rectangular ducts. Mark the pitot and sampling probe to identify the sample traversing points.

8.1.1.2.2 For round ducts less than 12 inches in diameter, use a total of 16 points.

8.1.1.3 Velocity Pressure Traverse. Perform an initial velocity traverse before obtaining samples. The Figure 306A–2 data sheet may be used to record velocity traverse data.

8.1.1.3.1 To demonstrate that the flow rate is constant over several days of testing, perform complete traverses at the beginning and end of each day's test effort, and calculate the deviation of the flow rate for each daily period. The beginning and end flow rates are considered constant if the deviation does not exceed 10 percent. If the flow rate exceeds the 10 percent criteria, either correct the inconsistent flow rate problem, or obtain the Administrator's approval for the test results.

8.1.1.3.2 Perform traverses as specified in Section 8.0 of Method 2, but record only the Δp (velocity pressure) values for each sampling point. If a mass emission rate is desired, stack velocity pressures shall be recorded before and after each test, and an average stack velocity pressure determined for the testing period.

8.1.1.4 Verification of Absence of Cyclonic Flow. Check for cyclonic flow during the initial traverse to verify that it does not exist. Perform the cyclonic flow check as specified in Section 11.4 of Method 1 (40 CFR Part 60, Appendix A).

8.1.1.4.1 If cyclonic flow is present, verify that the absolute average angle of the tangential flow does not exceed 20 degrees. If the average value exceeds 20 degrees at the sampling location, the flow condition in the stack is unacceptable for testing.

8.1.1.4.2 Alternative procedures, subject to approval of the Administrator, *e.g.*, installing straightening vanes to eliminate the cyclonic flow, must be implemented prior to conducting the testing.



8.1.1.5 Stack Gas Moisture Measurements. *Not required.* Measuring the moisture content is optional when a mass emission rate is to be calculated.

8.1.1.5.1 The tester may elect to either measure the actual stack gas moisture during the sampling run or utilize a nominal moisture value of 2 percent.

8.1.1.5.2 For additional information on determining sampling train moisture, please refer to Method 4 (40 CFR Part 60, Appendix A).

8.1.1.6 Stack Temperature Measurements. If a mass emission rate is to be calculated, a temperature sensor must be placed either near the center of the stack, or attached to the pitot tube as described in Section 8.3 of Method 2. Stack temperature measurements, shall be recorded before and after each test, and an average stack temperature determined for the testing period.

8.1.1.7 Point Sampling Times. Since the sampling rate of the train (0.75 cfm) is maintained constant by the critical orifice, it is necessary to calculate specific sampling times for each traverse point in order to obtain a proportional sample.

8.1.1.7.1 If the sampling period (3 runs) is to be completed in a single day, the point sampling times shall be calculated only once.

8.1.1.7.2 If the sampling period is to occur over several days, the sampling times must be calculated daily using the initial velocity pressure data recorded for that day. Determine the average of the Δp values obtained during the velocity traverse (Figure 306A–2).

8.1.1.7.3 If the stack diameter is less than 12 inches, use 7.5 minutes in place of 5 minutes in the equation and 16 sampling points instead of 24 or 25 points. Calculate the sampling times for each traverse point using the following equation:

$$\text{Minutes at point n} = \frac{\sqrt{\Delta p \text{ at Point n}}}{\left(\sqrt{\Delta p}\right)_{avg}} \times 5 \text{ min.} \qquad \text{Eq. 306A-1}$$

Where:
n = Sampling point number.
Δp = Average pressure differential across pitot tube, mm $H_2O$ (in. $H_2O$).
$\Delta P_{avg}$ = Average of Δp values, mm $H_2O$ (in. $H_2O$).

**Note:** Convert the decimal fractions for minutes to seconds.

8.1.1.8 Pretest Preparation. It is recommended, but not required, that all items which will be in contact with the sample be cleaned prior to performing the testing to avoid possible sample contamination (positive chromium bias). These items include, but are not limited to: Sampling probe, connecting tubing, impingers, and jar containers.

8.1.1.8.1 Sample train components should be: (1) Rinsed with hot tap water; (2) washed with hot soapy water; (3) rinsed with tap water; (4) rinsed with reagent water; (5) soaked in a 10 percent (v/v) nitric acid solution for at least four hours; and (6) rinsed throughly with reagent water before use.

8.1.1.8.2 At a minimum, the tester should, rinse the probe, connecting tubing, and first and second impingers twice with either 0.1 N sodium hydroxide (NaOH) or 0.1 N sodium bicarbonate ($NaHCO_3$) and discard the rinse solution.

8.1.1.8.3 If separate sample shipping containers are to be used, these also should be precleaned using the specified cleaning procedures.

8.1.1.9 Preparation of Sampling Train. Assemble the sampling train as shown in Figure 306A–1. Secure the nozzle-liner assembly to the outer sheath to prevent movement when sampling.

8.1.1.9.1 Place 250 mL of 0.1 N NaOH or 0.1 N $NaHCO_3$ absorbing solution into the first jar container or impinger. The second jar/impinger is to remain empty. Place 6 to 16 mesh indicating silica gel, or equivalent desiccant into the third jar/impinger until the container is half full (~ 300 to 400 g).

8.1.1.9.2 Place a small cotton ball in the outlet exit tube of the third jar to collect small silica gel particles that may dislodge and impair the pump and/or gas meter.

8.1.1.10 Pretest Leak-Check. A pretest leak-check is recommended, but not required. If the tester opts to conduct the pretest leak-check, the following procedures shall be performed: (1) Place the jar/impinger containers into an ice bath and wait 10 minutes for the ice to cool the containers before performing the leak check and/or start sampling; (2) to perform the leak check, seal the nozzle using a piece of clear plastic wrap placed over the end of a finger and switch on the pump; and (3) the train system leak rate should not exceed 0.02 cfm at a vacuum of 380 mm Hg (15 in. Hg) or greater. If the leak rate does exceed the 0.02 cfm requirement, identify and repair the leak area and perform the leak check again.

**Note:** Use caution when releasing the vacuum following the leak check. Always allow air to slowly flow through the nozzle end of the train system while the pump is still operating. Switching off the pump with vacuum on the system may result in the silica gel being pulled into the second jar container.

8.1.1.11 Leak-Checks During Sample Run. If, during the sampling run, a component (e.g., jar container) exchange becomes necessary, a leak-check shall be conducted *immediately before* the component exchange is made. The leak-check shall be performed according to the procedure outlined in Section 8.1.1.10 of this method. If the leakage rate is found to be ≤ 0.02 cfm at the maximum operating vacuum, the results are acceptable. If, however, a higher leak rate is obtained, either record the leakage rate and correct the sample volume as shown in Section 12.3 of Method 5 or void the sample and initiate a replacement run. Following the component change, leak-checks are optional, but are recommended as are the pretest leak-checks.

8.1.1.12 Post Test Leak Check. Remove the probe assembly and flexible tubing from the first jar/impinger container. Seal the inlet tube of the first container using clear plastic wrap and switch on the pump. The vacuum in the line between the pump and the critical orifice must be ≥15 in. Hg. Record the vacuum gauge measurement along with the leak rate observed on the train system.

8.1.1.12.1 If the leak rate does not exceed 0.02 cfm, the results are acceptable and no sample volume correction is necessary.

8.1.1.12.2 If, however, a higher leak rate is obtained (>0.02 cfm), the tester shall either record the leakage rate and correct the sample volume as shown in Section 12.3 of Method 5, or void the sampling run and initiate a replacement run. After completing the leak-check, slowly release the vacuum at the first

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container while the pump is still operating. Afterwards, switch-off the pump.

8.1.2 Sample Train Operation.

8.1.2.1 Data Recording. Record all pertinent process and sampling data on the data sheet (see Figure 306A–3). Ensure that the process operation is suitable for sample collection.

8.1.2.2 Starting the Test. Place the probe/nozzle into the duct at the first sampling point and switch on the pump. Start the sampling using the time interval calculated for the first point. When the first point sampling time has been completed, move to the second point and continue to sample for the time interval calculated for that point; sample each point on the traverse in this manner. Maintain ice around the sample containers during the run.

8.1.2.3 Critical Flow. The sample line between the critical orifice and the pump must operate at a vacuum of ≥ 380 mm Hg (≥15 in. Hg) in order for critical flow to be maintained. This vacuum must be monitored and documented using the vacuum gauge located between the critical orifice and the pump.

**Note:** Theoretically, critical flow for air occurs when the ratio of the orifice outlet absolute pressure to the orifice inlet absolute pressure is less than a factor of 0.53. This means that the system vacuum should be at least ≥ 356 mm Hg (≥ 14 in. Hg) at sea level and ~ 305 mm Hg (~ 12 in. Hg) at higher elevations.

8.1.2.4 Completion of Test.

8.1.2.4.1 Circular Stacks. Complete the first port traverse and switch off the pump. Testers may opt to perform a leak-check between the port changes to verify the leak rate however, this is not mandatory. Move the sampling train to the next sampling port and repeat the sequence. Be sure to record the final dry gas meter reading after completing the test run. After performing the post test leak check, disconnect the jar/impinger containers from the pump and meter assembly and transport the probe, connecting tubing, and containers to the sample recovery area.

8.1.2.4.2 Rectangle Stacks. Complete each port traverse as per the instructions provided in 8.1.2.4.1.

**Note:** If an approximate mass emission rate is to be calculated, measure and record the stack velocity pressure and temperature before and after the test run.

8.2 Sample Recovery. After the train has been transferred to the sample recovery area, disconnect the tubing that connects the jar/impingers. The tester shall select either the total Cr or $Cr^{+6}$ sample recovery option. Samples to be analyzed for both total Cr and $Cr^{+6}$ shall be recovered using the $Cr^{+6}$ sample option (Section 8.2.2).

**Note:** Collect a reagent blank sample for each of the total Cr or the $Cr^{+6}$ analytical options. If both analyses (Cr and $Cr^{+6}$) are to be conducted on the samples, collect separate reagent blanks for each analysis.

8.2.1 Total Cr Sample Option.

8.2.1.1 Shipping Container No. 1. The first jar container may either be used to store and transport the sample, or if GS impingers are used, samples may be stored and shipped in precleaned 250-mL, 500-mL or 1000-mL polyethylene or glass bottles with leak-free, non-metal screw caps.

8.2.1.1.1 Unscrew the lid from the first jar/impinger container.

8.2.1.1.2 Lift the inner tube assembly almost out of the container, and using the wash bottle containing fresh absorbing solution, rinse the outside of the tube that was immersed in the container solution; rinse the inside of the tube as well, by rinsing twice from the top of the tube down through the inner tube into the container.

8.2.1.2 Recover the contents of the second jar/impinger container by removing the lid and pouring any contents into the first shipping container.

8.2.1.2.1 Rinse twice, using fresh absorbing solution, the inner walls of the second container including the inside and outside of the inner tube.

8.2.1.2.2 Rinse the connecting tubing between the first and second sample containers with absorbing solution and place the rinses into the first container.

8.2.1.3 Position the nozzle, probe and connecting plastic tubing in a vertical position so that the tubing forms a "U".

8.2.1.3.1 Using the wash bottle, partially fill the tubing with fresh absorbing solution. Raise and lower the end of the plastic tubing several times to allow the solution to contact the internal surfaces. Do not allow the solution to overflow or part of the sample will be lost. Place the nozzle end of the probe over the mouth of the first container and elevate the plastic tubing so that the solution flows into the sample container.

8.2.1.3.2 Repeat the probe/tubing sample recovery procedure but allow the solution to flow out the opposite end of the plastic tubing into the sample container. Repeat the entire sample recovery procedure once again.

8.2.1.4 Use approximately 200 to 300 mL of the 0.1 N NaOH or 0.1 N $NaHCO_3$ absorbing solution during the rinsing of the probe nozzle, probe liner, sample containers, and connecting tubing.

8.2.1.5 Place a piece of clear plastic wrap over the mouth of the sample jar to seal the shipping container. Use a standard lid and band assembly to seal and secure the sample in the jar.

8.2.1.5.1 Label the jar clearly to identify its contents, sample number and date.

8.2.1.5.2 Mark the height of the liquid level on the container to identify any losses during shipping and handling.

8.2.1.5.3 Prepare a chain-of-custody sheet to accompany the sample to the laboratory.

8.2.2 $Cr^{+6}$ Sample Option.

8.2.2.1 Shipping Container No. 1. The first jar container may either be used to store and transport the sample, or if GS impingers are used, samples may be stored and shipped in precleaned 250-mL, 500-mL or 1000-mL polyethylene or glass bottles with leak-free non-metal screw caps.

8.2.2.1.1 Unscrew and remove the lid from the first jar container.

8.2.2.1.2 Measure and record the pH of the solution in the first container by using a pH indicator strip. The pH of the solution must be ≥8.5 for NaOH and ≥8.0 for $NaHCO_3$. If not, discard the collected sample, increase the concentration of the NaOH or NaHCO3 absorbing solution to 0.5 M and collect another air emission sample.

8.2.2.2 After measuring the pH of the first container, follow sample recovery procedures described in Sections 8.2.1.1 through 8.2.1.5.

**Note:** Since particulate matter is not usually present at chromium electroplating and/or chromium anodizing facilities, it is not necessary to filter the $Cr^{+6}$ samples unless there is observed sediment in the collected solutions. If it is necessary to filter the $Cr^{+6}$ solutions, please refer to the EPA Method 0061, Determination of Hexavalent Chromium Emissions from Stationary Sources, Section 7.4, Sample Preparation in SW–846 (see Reference 5) for procedure.

8.2.3 Silica Gel Container. Observe the color of the indicating silica gel to determine if it has been completely spent and make a notation of its condition/color on the field data sheet. Do not use water or other liquids to remove and transfer the silica gel.

8.2.4 Total Cr and/or $Cr^{+6}$ Reagent Blank.

8.2.4.1 Shipping Container No. 2. Place approximately 500 mL of the 0.1 N NaOH or 0.1 N $NaHCO_3$ absorbing solution in a precleaned, labeled sample container and include with the field samples for analysis.

8.3 Sample Preservation, Storage, and Transport.



8.3.1 Total Cr Option. Samples that are to be analyzed for total Cr need not be refrigerated.

8.3.2 $Cr^{+6}$ Option. Samples that are to be analyzed for $Cr^{+6}$ must be shipped and stored at 4°C (–40°F).

**Note:** Allow $Cr^{+6}$ samples to return to ambient temperature prior to analysis.

8.4 Sample Holding Times.

8.4.1 Total Cr Option. Samples that are to be analyzed for total chromium must be analyzed within 60 days of collection.

8.4.2 $Cr^{+6}$ Option. Samples that are to be analyzed for $Cr^{+6}$ must be analyzed within 14 days of collection.

*9.0 Quality Control*

9.1 Same as Method 306, Section 9.0.

*10.0 Calibration and Standardization*

**Note:** Tester shall maintain a performance log of all calibration results.

10.1 Pitot Tube. The Type S pitot tube assembly shall be calibrated according to the procedures outlined in Section 10.1 of Method 2.

10.2 Temperature Sensor. Use the procedure in Section 10.3 of Method 2 to calibrate the in-stack temperature sensor.

10.3 Metering System.

10.3.1 Sample Train Dry Gas Meter Calibration. Calibrations may be performed as described in Section 16.2 of Method 5 by either the manufacturer, a firm who provides calibration services, or the tester.

10.3.2 Dry Gas Meter Calibration Coefficient ($Y_m$). The meter calibration coefficient ($Y_m$) must be determined prior to the initial use of the meter, and following each field test program. If the dry gas meter is new, the manufacturer will have specified the $Y_m$ value for the meter. This $Y_m$ value can be used as the pretest value for the first test. For subsequent tests, the tester must use the $Y_m$ value established during the pretest calibration.

10.3.3 Calibration Orifice. The manufacturer may have included a calibration orifice and a summary spreadsheet with the meter that may be used for calibration purposes. The spreadsheet will provide data necessary to determine the calibration for the orifice and meter (standard cubic feet volume, sample time, *etc.*). These data were produced when the initial $Y_m$ value was determined for the meter.

$$Y_m = \frac{V_{m(std),mfg}}{V_m\left(\frac{T_{std}}{P_{std}}\right)\left(\frac{P_{bar}}{T_m}\right)}$$

$$Y_m = \frac{V_{m(std),mfg}\,T_m}{17.64\,V_m\,P_{bar}} \qquad \text{Eq. 306A - 2}$$

Where:

$P_{bar}$ = Barometric pressure at meter, mm Hg, (in. Hg).
$P_{std}$ = Standard absolute pressure,
Metric = 760 mm Hg.
English = 29.92 in. Hg.
$t_m$ = Average dry gas meter temperature, °C, (°F).
$T_m$ = Absolute average dry gas meter temperature,
Metric °K = 273 + tm (°C).
English °R = 460 + $t_m$(°F).
$T_{std}$ = Standard absolute temperature,
Metric = 293 °K.
English = 528 °R.
$V_m$ = Volume of gas sample as measured (actual) by dry gas meter, dcm,(dcf).
$V_{m(std),mfg}$ = Volume of gas sample measured by manufacture's calibrated orifice and dry gas meter, corrected to standard conditions (pressure/temperature) dscm (dscf).
$Y_m$ = Dry gas meter calibration factor, (dimensionless).

10.3.4 $Y_m$ Meter Value Verification or Meter Calibration.

10.3.4.1 The $Y_m$ meter value may be determined by replacing the sampling train critical orifice with the calibration orifice. Replace the critical orifice assembly by installing the calibration orifice in the same location. The inlet side of the calibration orifice is to be left open to the atmosphere and is *not* to be reconnected to the sample train during the calibration procedure.

10.3.4.2 If the vacuum pump is cold, switch on the pump and allow it to operate (become warm) for several minutes prior to starting the calibration. After stopping the pump, record the initial dry gas meter volume and meter temperature.

10.3.4.3 Perform the calibration for the number of minutes specified by the manufacturer's data sheet (usually 5 minutes). Stop the pump and record the final dry gas meter volume and temperature. Subtract the start volume from the stop volume to obtain the $V_m$ and average the meter temperatures ($t_m$).

10.3.5 $Y_m$ Value Calculation. $Y_m$ is the calculated value for the dry gas meter. Calculate $Y_m$ using the following equation:

10.3.6 $Y_m$ Comparison. Compare the $Y_m$ value provided by the manufacturer (Section 10.3.3) or the pretest $Y_m$ value to the post test $Y_m$ value using the following equation:

$$\frac{Y_m(\text{manufacturer's or pretest value})}{Y_m(\text{post-test value})} \qquad \text{Eq. 306A - 3}$$

10.3.6.1 If this ratio is between 0.95 and 1.05, the designated $Y_m$ value for the meter is acceptable for use in later calculations.

10.3.6.1.1 If the value is outside the specified range, the test series shall

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either be: 1) voided and the samples discarded; or 2) calculations for the test series shall be conducted using whichever meter coefficient value (i.e., manufacturers's/pretest $Y_m$ value or post test $Y_m$ value) produces the lowest sample volume.

10.3.6.1.2 If the post test dry gas meter $Y_m$ value differs by more than 5% as compared to the pretest value, either perform the calibration again to determine acceptability or return the meter to the manufacturer for recalibration.

10.3.6.1.3 The calibration may also be conducted as specified in Section 10.3 or Section 16.0 of Method 5 (40 CFR Part 60, Appendix A), except that it is only necessary to check the calibration at one flow rate of ~ 0.75 cfm.

10.3.6.1.4 The calibration of the dry gas meter must be verified after each field test program using the same procedures.

**Note:** The tester may elect to use the $Y_m$ post test value for the next pretest $Y_m$ value; e.g., Test 1 post test $Y_m$ value and Test 2 pretest $Y_m$ value would be the same.

10.4 Barometer. Calibrate against a mercury barometer that has been corrected for temperature and elevation.

10.5 ICP Spectrometer Calibration. Same as Method 306, Section 10.2.

10.6 GFAA Spectrometer Calibration. Same as Method 306, Section 10.3.

10.7 IC/PCR Calibration. Same as Method 306, Section 10.4.

*11.0 Analytical Procedures*

**Note:** The method determines the chromium concentration in µg Cr/mL. It is important that the analyst measure the volume of the field sample prior to analyzing the sample. This will allow for conversion of µg Cr/mL to µg Cr/sample.

11.1 Analysis. Refer to Method 306 for sample preparation and analysis procedures.

*12.0 Data Analysis and Calculations*

12.1 Calculations. Perform the calculations, retaining one extra decimal point beyond that of the acquired data. When reporting final results, round number of figures consistent with the original data.

12.2 Nomenclature.

A = Cross-sectional area of stack, $m_2$ ($ft_2$).
$B_{ws}$ = Water vapor in gas stream, proportion by volume, dimensionless (assume 2 percent moisture = 0.02).
$C_p$ = Pitot tube coefficient; "S" type pitot coefficient usually 0.840, dimensionless.
$C_S$ = Concentration of Cr in sample solution, µg Cr/mL.
$C_{Cr}$ = Concentration of Cr in stack gas, dry basis, corrected to standard conditions µg/dscm (gr/dscf).
d = Diameter of stack, m (ft).
D = Digestion factor, dimensionless.
ER = Approximate mass emission rate, mg/hr (lb/hr).
F = Dilution factor, dimensionless.
L = Length of a square or rectangular duct, m (ft).
$M_{Cr}$ = Total Cr in each sample, µg (gr).
$M_s$ = Molecular weight of wet stack gas, wet basis, g/g-mole, (lb/lb-mole); in a nominal gas stream at 2% moisture the value is 28.62.
$P_{bar}$ = Barometric pressure at sampling site, mm Hg (in. Hg).
$P_s$ = Absolute stack gas pressure; in this case, usually the same value as the barometric pressure, mm Hg (in. Hg).
$P_{std}$ = Standard absolute pressure: Metric = 760 mm Hg. English = 29.92 in, Hg.
$Q_{std}$ = Average stack gas volumetric flow, dry, corrected to standard conditions, dscm/hr (dscf/hr).
$t_m$ = Average dry gas meter temperature, °C (°F).
$T_m$ = Absolute average dry gas meter temperature: Metric °K = 273 + $t_m$ (°C). English °R = 460 + $t_m$(°F).
$t_s$ = Average stack temperature,°C (°F).
$T_s$ = Absolute average stack gas temperature: Metric °K = 273 + $t_s$ (°C). English °R = 460 + $t_s$(°F).
$T_{std}$ = Standard absolute temperature: Metric = 293 °K. English = 528 °R.
$V_{ad}$ = Volume of sample aliquot after digestion (mL).
$V_{af}$ = Volume of sample aliquot after dilution (mL).
$V_{bd}$ = Volume of sample aliquot submitted to digestion (mL).
$V_{bf}$ = Volume of sample aliquot before dilution (mL).
$V_m$ = Volume of gas sample as measured (actual, dry) by dry gas meter, dcm (dcf).
$V_{mL}$ = Volume of impinger contents plus rinses (mL).
$V_{m(std)}$ = Volume of gas sample measured by the dry gas meter, corrected to standard conditions (temperature/pressure), dscm (dscf).
$v_s$ = Stack gas average velocity, calculated by Method 2, Equation 2–9, m/sec (ft/sec).
W = Width of a square or rectangular duct, m (ft).
$Y_m$ = Dry gas meter calibration factor, (dimensionless).
Δp = Velocity head measured by the Type S pitot tube, cm $H_2O$ (in. $H_2O$).
$\Delta p_{avg}$ = Average of Δp values, mm $H_2O$ (in. $H_2O$).

12.3 Dilution Factor. The dilution factor is the ratio of the volume of sample aliquot after dilution to the volume before dilution. The dilution factor is usually calculated by the laboratory. This ratio is derived by the following equation:

$$F = \frac{V_{af}}{V_{bf}} \qquad \text{Eq. 306A-4}$$

12.4 Digestion Factor. The digestion factor is the ratio of the volume of sample aliquot after digestion to the volume before digestion. The digestion factor is usually calculated by the laboratory. This ratio is derived by the following equation.

$$D = \frac{V_{ad}}{V_{bd}} \qquad \text{Eq. 306A-5}$$



12.5 Total Cr in Sample. Calculate $M_{Cr}$, the total µg Cr in each sample, using the following equation:

$$M_{Cr} = V_{mL} \times C_S \times F \times D \qquad \text{Eq. 306A-6}$$

12.6 Dry Gas Volume. Correct the sample volume measured by the dry gas meter to standard conditions (20°C, 760 mm Hg or 68'F, 29.92 in. Hg) using the following equation:

$$V_{m(std)} = V_m Y_m \left(\frac{T_{std}}{T_m}\right)\left(\frac{P_{bar}}{P_{std}}\right) = K_1 V_m Y_m \left(\frac{P_{bar}}{T_m}\right) \qquad \text{Eq. 306A-7}$$

Where:
$K_1$ = Metric units—0.3855 °K/mm Hg.
English units—17.64 °R/in. Hg.

12.7 Cr Emission Concentration ($C_{Cr}$). Calculate $C_{Cr}$, the Cr concentration in the stack gas, in µg/dscm (µg/dscf) on a dry basis, corrected to standard conditions, using the following equation:

$$C_{Cr} = \frac{M_{Cr}}{V_{m(std)}} \qquad \text{Eq. 306A-8}$$

**NOTE:** To convert µg/dscm (µg/dscf) to mg/dscm (mg/dscf), divide by 1000.

12.8 Stack Gas Velocity.

12.8.1 $K_p$ = Velocity equation constant:

$$\text{Metric } K_p = 34.97 \frac{m}{sec}\left[\frac{(g/g\text{-mole})(mm\ Hg)}{(^\circ K)(mm\ H_2O)}\right]^{1/2}$$

$$\text{English } K_p = 85.49 \frac{ft}{sec}\left[\frac{(lb/lb\text{-mole})(in.\ Hg)}{(^\circ R)(in.\ H_2O)}\right]^{1/2}$$

12.8.2 Average Stack Gas Velocity.

$$v_s = K_p C_p \left(\sqrt{\Delta p}\right)_{avg} \sqrt{\frac{T_{s(avg)}}{P_s M_s}}$$

$$= 34.97\ C_p \left(\sqrt{\Delta p}\right)_{avg} \sqrt{\frac{T_{s(avg)}}{P_s M_s}} \qquad \text{Eq. 306A-9}$$

12.9 Cross sectional area of stack.

$$A = \frac{\Pi d^2}{4} \text{ or } A = LW \qquad \text{Eq. 306A-10}$$

12.10 Average Stack Gas Dry Volumetric Flow Rate.

**Note:** The emission rate may be based on a nominal stack moisture content of 2 percent (0.02). To calculate an emission rate, the tester may elect to use either the nominal stack gas moisture value or the actual stack gas moisture collected during the sampling run.

Volumetric Flow Rate Equation:

$$Q_{std} = 3600(1 - B_{ws}) v_s A \left(\frac{T_{std}}{T_{s(avg)}}\right)\left(\frac{P_s}{P_{std}}\right) \qquad \text{Eq. 306A-11}$$

Where:

3600 = Conversion factor, sec/hr.

$$Q_{std} = 62{,}234\ v_s A \left(\frac{P_s}{T_{s(avg)}}\right) \qquad \text{Eq. 306A-12}$$

**Note:** To convert $Q_{std}$ from dscm/hr (dscf/hr) to dscm/min (dscf/min), divide $Q_{std}$ by 60.

12.11 Mass emission rate, mg/hr (lb/hr):

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$$ER = C_{cr} \times Q_{std} \times 10^{-3}\ (mg/hr) \qquad \text{Eq. 306A-13}$$

$$ER = C_{cr} \times Q_{std} \times 1.43 \times 10^{-4}\ (lb/hr) \qquad \text{Eq. 306A-14}$$

*13.0 Method Performance*

13.1 Range. The recommended working range for all of the three analytical techniques starts at five times the analytical detection limit (see also Method 306, Section 13.2.2). The upper limit of all three techniques can be extended indefinitely by appropriate dilution.

13.2 Sensitivity.

13.2.1 Analytical Sensitivity. The estimated instrumental detection limits listed are provided as a guide for an instrumental limit. The actual method detection limits are sample and instrument dependent and may vary as the sample matrix varies.

13.2.1.1 ICP Analytical Sensitivity. The minimum estimated detection limits for ICP, as reported in Method 6010A and the recently revised Method 6010B of SW–846 (Reference 1), are 7.0 µg Cr/L and 4.7 µg Cr/L, respectively.

13.2.1.2 GFAAS Analytical Sensitivity. The minimum estimated detection limit for GFAAS, as reported in Methods 7000A and 7191 of SW–846 (Reference 1), is 1.0 µg Cr/L.

13.2.1.3 IC/PCR Analytical Sensitivity. The minimum detection limit for IC/PCR with a preconcentrator, as reported in Methods 0061 and 7199 of SW–846 (Reference 1), is 0.05 µg $Cr^{+6}$/L.

13.2.2 In-stack Sensitivity. The in-stack sensitivity depends upon the analytical detection limit, the volume of stack gas sampled, and the total volume of the impinger absorbing solution plus the rinses. Using the analytical detection limits given in Sections 13.2.1.1, 13.2.1.2, and 13.2.1.3; a stack gas sample volume of 1.7 dscm; and a total liquid sample volume of 500 mL; the corresponding in-stack detection limits are 0.0014 mg Cr/dscm to 0.0021 mg Cr/dscm for ICP, 0.00029 mg Cr/dscm for GFAAS, and 0.000015 mg $Cr^{+36}$/dscm for IC/PCR with preconcentration.

**Note:** It is recommended that the concentration of Cr in the analytical solutions be at least five times the analytical detection limit to optimize sensitivity in the analyses. Using this guideline and the same assumptions for impinger sample volume and stack gas sample volume (500 mL and 1.7 dscm, respectively), the recommended minimum stack concentrations for optimum sensitivity are 0.0068 mg Cr/dscm to 0.0103 mg Cr/dscm for ICP, 0.0015 mg Cr/dscm for GFAAS, and 0.000074 mg $Cr^{+6}$ dscm for IC/PCR with preconcentration. If required, the in-stack detection limits can be improved by either increasing the sampling time, the stack gas sample volume, reducing the volume of the digested sample for GFAAS, improving the analytical detection limits, or any combination of the three.

13.3 Precision.

13.3.1 The following precision data have been reported for the three analytical methods. In each case, when the sampling precision is combined with the reported analytical precision, the resulting overall precision may decrease.

13.3.2 Bias data is also reported for GFAAS.

13.4 ICP Precision.

13.4.1 As reported in Method 6010B of SW–846 (Reference 1), in an EPA round-robin Phase 1 study, seven laboratories applied the ICP technique to acid/distilled water matrices that had been spiked with various metal concentrates. For true values of 10, 50, and 150 µg Cr/L; the mean reported values were 10, 50, and 149 µg Cr/L; and the mean percent relative standard deviations were 18, 3.3, and 3.8 percent, respectively.

13.4.2 In another multilaboratory study cited in Method 6010B, a mean relative standard of 8.2 percent was reported for an aqueous sample concentration of approximately 3750 µg Cr/L.

13.5 GFAAS Precision. As reported in Method 7191 of SW–846 (Reference 1), in a single laboratory (EMSL), using Cincinnati, Ohio tap water spiked at concentrations of 19, 48, and 77 µg Cr/L, the standard deviations were ±0.1, ±0.2, and ±0.8, respectively. Recoveries at these levels were 97 percent, 101 percent, and 102 percent, respectively.

13.6 IC/PCR Precision. As reported in Methods 0061 and 7199 of SW–846 (Reference 1), the precision of IC/PCR with sample preconcentration is 5 to 10 percent; the overall precision for sewage sludge incinerators emitting 120 ng/dscm of $Cr^{+6}$ and 3.5 µg/dscm of total Cr is 25 percent and 9 percent, respectively; and for hazardous waste incinerators emitting 300 ng/dscm of $Cr^{+6}$ the precision is 20 percent.

*14.0 Pollution Prevention*

14.1 The only materials used in this method that could be considered pollutants are the chromium standards used for instrument calibration and acids used in the cleaning of the collection and measurement containers/labware, in the preparation of standards, and in the acid digestion of samples. Both reagents can be stored in the same waste container.

14.2 Cleaning solutions containing acids should be prepared in volumes consistent with use to minimize the disposal of excessive volumes of acid.

14.3 To the extent possible, the containers/vessels used to collect and prepare samples should be cleaned and reused to minimize the generation of solid waste.

*15.0 Waste Management*

15.1 It is the responsibility of the laboratory and the sampling team to comply with all federal, state, and local regulations governing waste management, particularly the discharge regulations, hazardous waste identification rules, and land disposal restrictions; and to protect the air, water, and land by minimizing and controlling all releases from field operations.

15.2 For further information on waste management, consult The Waste Management Manual for Laboratory Personnel and Less is Better-Laboratory Chemical Management for Waste Reduction, available from the American Chemical Society's Department of Government Relations and Science Policy, 1155 16th Street NW, Washington, DC 20036.

*16.0 References*

1. F.R. Clay, Memo, Impinger Collection Efficiency—Mason Jars vs. Greenburg-Smith Impingers, Dec. 1989.

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*17.0 Tables, Diagrams, Flowcharts, and Validation Data*

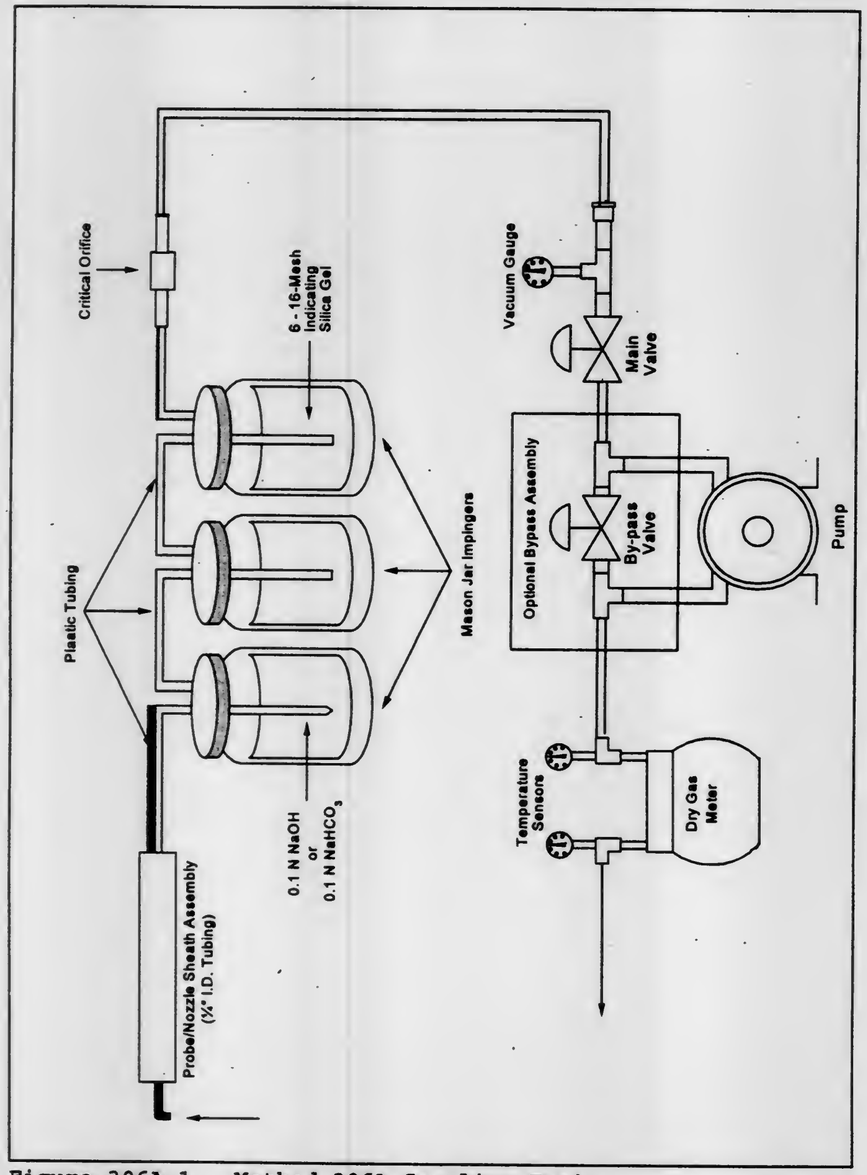



Figure 306A-1. Method 306A Sampling Train.



Plant _____

Date _____ Time _____

Location _____

Operator(s) _____

Begining stack temperature, °F _____

Ending stack temperature, °F _____

Average stack temperature, °F _____

Schematic of Points

Circle one:

Before Run 1 Before Run 2 Before Run 3 After Run No. ___

| Traverse Point Number | Cyclonic Flow Angle (Degrees) | $\Delta p$ | $\sqrt{\Delta p}$ | $\frac{\sqrt{\Delta p}}{\sqrt{\Delta p}_{avg}} \times 5$ min = Numerical Minutes | Decimal Part of Minute x 60 = Seconds | Whole Minutes + Seconds = Sample Time |
|---|---|---|---|---|---|---|
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| | | | | | | |
| | | | | | | |
| Total | | | Total | | | |
| Avg | | | Avg | | | |

Figure 306A-2. Velocity Traverse and Point Sample Time Calculation Sheet.

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Plant _____ Date _____ Run Number _____
Sampling Site _____ Operator _____
Total Cr catch, M, $\mu$g _____ Stack radius, r, in. _____
Avg dry gas meter temp, $T_m$, °F _____ Avg delta p, $\Delta$ p in., $H_2O$ _____
Meter correction factor, $Y_m$ _____ Stack temp, $T_s$, °F _____
Meter volume, $V_m$, $ft^3$ _____ Leak rate before run, cfm _____
Barometric press, $P_{bar}$, in. Hg _____ Leak rate after run, cfm _____
Start clock time _____ Stop meter volume, $ft^3$ _____
Stop clock time _____ Start meter volume, $ft^3$ _____

| POINT NO | SAMPLE (MIN/SEC) | GAS METER TEMP (F) | | CRITICAL ORIFICE VACUUM IN. HG |
|---|---|---|---|---|
| | | | | |
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| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| TOTAL | | | | |
| AVG | | | | |

| POINT NO | SAMPLE (MIN/SEC) | GAS METER TEMP (F) | | CRITICAL ORIFICE VACUUM IN. HG |
|---|---|---|---|---|
| | | | | |
| | | | | |
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| | | | | |
| | | | | |
| TOTAL | | | | |
| AVG | | | | |

REMARKS _____

Figure 306A-3. Chromium Constant Sampling Rate Field Data Sheet.

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**Method 306B—Surface Tension Measurement for Tanks Used at Decorative Chromium Electroplating and Chromium Anodizing Facilities**

**Note:** This method does not include all of the specifications (*e.g.*, equipment and supplies) and procedures (e.g., sampling and analytical) essential to its performance. Some material is incorporated by reference from other methods in 40 CFR Part 60, Appendix A and in this part. Therefore, to obtain reliable results, persons using this method should have a thorough knowledge of at least Methods 5 and 306.

*1.0 Scope and Application*

1.1 Analyte. Not applicable.

1.2 Applicability. This method is applicable to all decorative chromium plating and chromium anodizing operations, and continuous chromium plating at iron and steel facilities where a wetting agent is used in the tank as the primary mechanism for reducing emissions from the surface of the plating solution.

*2.0 Summary of Method*

2.1 During an electroplating or anodizing operation, gas bubbles generated during the process rise to the surface of the liquid and burst. Upon bursting, tiny droplets of chromic acid become entrained in ambient air. The addition of a wetting agent to the tank bath reduces the surface tension of the liquid and diminishes the formation of these droplets.

2.2 This method determines the surface tension of the bath using a stalagmometer or a tensiometer to confirm that there is sufficient wetting agent present.

*3.0 Definitions [Reserved]*

*4.0 Interferences [Reserved]*

*5.0 Safety*

5.1 Disclaimer. This method may involve hazardous materials, operations, and equipment. This test method may not address all of the safety problems associated with its use. It is the responsibility of the user to establish appropriate safety and health practices and to determine the applicability of regulatory limitations prior to performing this test method.

*6.0 Equipment and Supplies*

6.1 Stalagmometer. Any commercially available stalagmometer or equivalent surface tension measuring device may be used to measure the surface tension of the plating or anodizing tank liquid.

6.2 Tensiometer. A tensiometer may be used to measure the surface tension of the tank liquid provided the procedures specified in ASTM Method D 1331–89, Standard Test Methods for Surface and Interfacial Tension of Solutions of Surface Active Agents (incorporated by reference—see § 63.14) are followed.

*7.0 Reagents and Standards [Reserved]*

*8.0 Sample Collection, Sample Recovery, Sample Preservation, Sample Holding Times, Storage, and Transport [Reserved]*

*9.0 Quality Control [Reserved]*

*10.0 Calibration and Standardization [Reserved]*

*11.0 Analytical Procedure*

11.1 Procedure. The surface tension of the tank bath may be measured by using a tensiometer, a stalagmometer or any other equivalent surface tension measuring device approved by the Administrator for measuring surface tension in dynes per centimeter. If the tensiometer is used, the procedures specified in ASTM Method D 1331–89 must be followed. If a stalagmometer or other device is used to measure surface tension, the instructions provided with the measuring device must be followed.

11.2 Frequency of Measurements.

11.2.1 Measurements of the bath surface tension are performed using a progressive system which decreases the frequency of surface tension measurements required when the proper surface tension is maintained.

11.2.1.1 Initially, following the compliance date, surface tension measurements must be conducted once every 4 hours of tank operation for the first 40 hours of tank operation.

11.2.1.2 Once there are no exceedances during a period of 40 hours of tank operation, measurements may be conducted once every 8 hours of tank operation.

11.2.1.3 Once there are no exceedances during a second period of 40 consecutive hours of tank operation, measurements may be conducted once every 40 hours of tank operation on an on-going basis, until an exceedance occurs. The maximum time interval for measurements is once every 40 hours of tank operation.

11.2.2 If a measurement of the surface tension of the solution is above the 45 dynes per centimeter limit, or above an alternate surface tension limit established during the performance test, the time interval shall revert back to the original monitoring schedule of once every 4 hours. A subsequent decrease in frequency would then be allowed according to Section 11.2.1.

*12.0 Data Analysis and Calculations*

12.1 Log Book of Surface Tension Measurements and Fume Suppressant Additions.

12.1.1 The surface tension of the plating or anodizing tank bath must be measured as specified in Section 11.2.

12.1.2 The measurements must be recorded in the log book. In addition to the record of surface tension measurements, the frequency of fume suppressant maintenance additions and the amount of fume suppressant added during each maintenance addition must be recorded in the log book.

12.1.3 The log book will be readily available for inspection by regulatory personnel.

12.2 Instructions for Apparatus Used in Measuring Surface Tension.

12.2.1 Included with the log book must be a copy of the instructions for the apparatus used for measuring the surface tension of the plating or anodizing bath.

12.2.2 If a tensiometer is used, a copy of ASTM Method D 1331–89 must be included with the log book.

*13.0 Method Performance [Reserved]*

*14.0 Pollution Prevention [Reserved]*

*15.0 Waste Management [Reserved]*

*16.0 References [Reserved]*

*17.0 Tables, Diagrams, Flowcharts, and Validation Data [Reserved]*

[FR Doc. 00–19099 Filed 10–16–00; 8:45 am]
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**H.R. 4115/P.L. 106–292**

To authorize appropriations for the United States Holocaust Memorial Museum, and for other purposes. (Oct. 12, 2000; 114 Stat. 1030)

**H.R. 4931/P.L. 106–293**

Presidential Transition Act of 2000 (Oct. 12, 2000; 114 Stat. 1035)

**S. 704/P.L. 106–294**

Federal Prisoner Health Care Copayment Act of 2000 (Oct. 12, 2000; 114 Stat. 1038)

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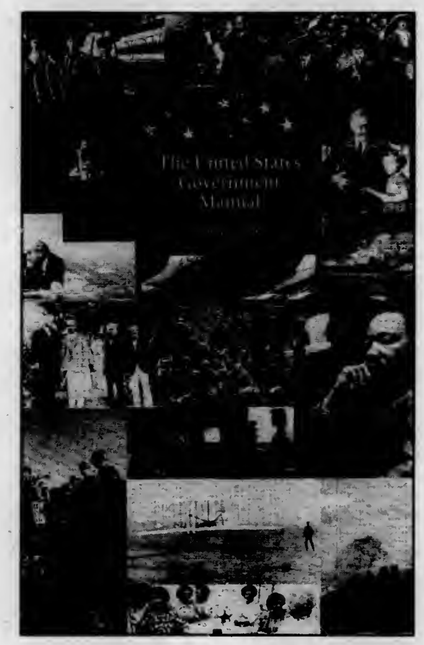
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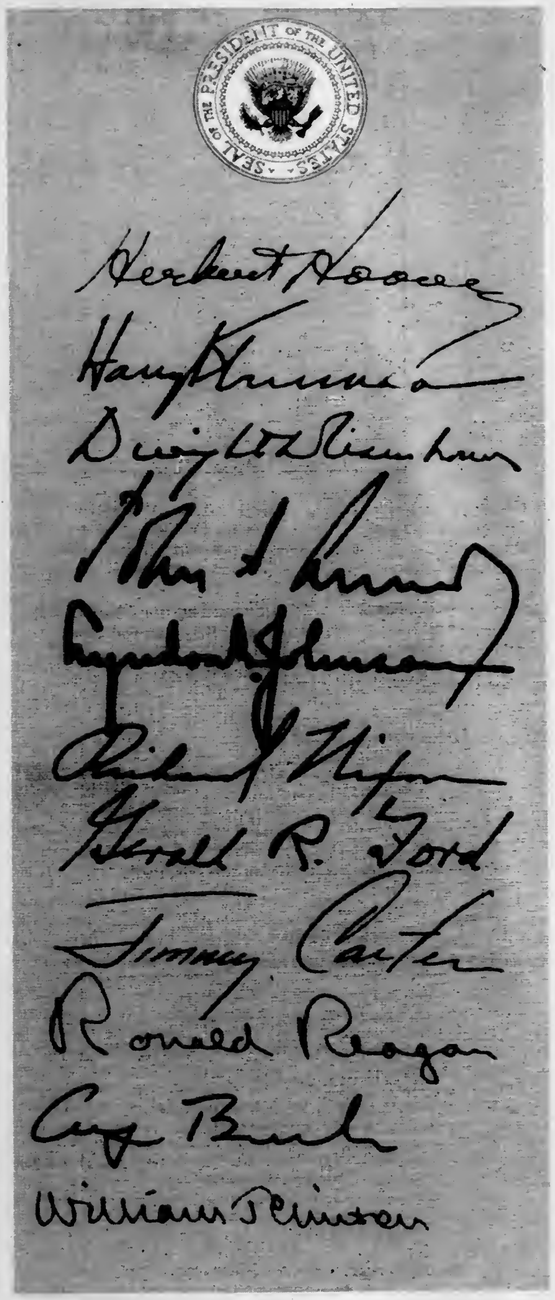
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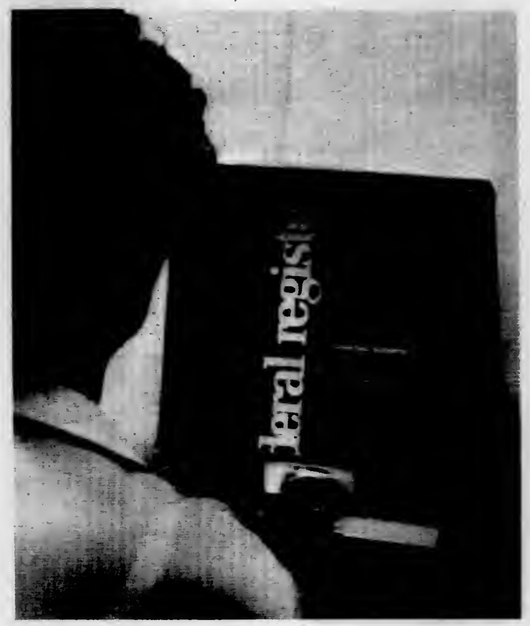
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2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

**WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

**WASHINGTON, DC**

**WHEN:** November 14, 2000, at 9:00 a.m.

**WHERE:** Office of the Federal Register
Conference Room
800 North Capitol Street, NW.
Washington, DC
(3 blocks north of Union Station Metro)

**RESERVATIONS:** 202–523–4538



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# Rules and Regulations

Federal Register
Vol. 65, No. 202
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2000–SW–24–AD; Amendment 39–11930; AD 2000–20–18]**

**RIN 2120–AA64**

## Airworthiness Directives; Bell Helicopter Textron Canada Model 407 Helicopters

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) for Bell Helicopter Textron Canada (BHTC) Model 407 helicopters. This AD requires inspecting the brackets that attach each horizontal stabilizer slat (slat) to the stabilizer for a crack and replacing the slat assembly if a crack is found. Installing airworthy segmented slat assemblies would be required prior to flight after December 31, 2000 and would constitute terminating action for the requirements of this AD. This amendment is prompted by an incident in which a slat separated from a helicopter. The actions specified by this AD are intended to prevent a slat from separating, impact with a main or tail rotor blade, and subsequent loss of control of the helicopter.

**DATES:** Effective November 22, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 22, 2000.

**ADDRESSES:** The service information referenced in this AD may be obtained from Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec JON1LO, telephone (450) 437–2862 or (800) 363–8023, fax (450) 433–0272. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Sharon Miles, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5122, fax (817) 222–5961.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) that applies to BHTC Model 407 helicopters was published in the **Federal Register** on July 20, 2000 (65 FR 44994). That action proposed to require visually inspecting certain brackets that attach slots to the horizontal stabilizer for a crack and replacing any slat assembly that has a cracked bracket. Also proposed was installing different part-numbered airworthy segmented slat assemblies on all affected models prior to flight after December 31, 2000.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 348 helicopters of U.S. registry will be affected by this AD, that it will take approximately 0.5 work hour per helicopter to perform the visual inspections, 1 work hour to replace a slat assembly, and that the average labor rate is $60 per work hour. Required parts will cost approximately $2,364 per segmented slat assembly. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,697,544, assuming 1 inspection per helicopter and replacement of the 2 slat assemblies on each helicopter.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

**2000–20–18 Bell Helicopter Textron Canada:** Amendment 39–11930. Docket No. 2000–SW–24–AD.

*Applicability:* Model 407 helicopters, serial numbers 53000 through 53347, certificated in any category.

**Note 1:** This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not

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been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent a horizontal stabilizer slat (slat) from separating, impact with a main or tail rotor blade, and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 50 hours time-in-service (TIS) and thereafter at intervals not to exceed 100 hours TIS, visually inspect the brackets, part number (P/N) 206–023–119–109 or –110 or P/N 407–023–801–127 or –128, that attach the slats, P/N 407–023–002–117, to the horizontal stabilizer for a crack.

(1) If any crack is found, replace the slat assembly, P/N 407–023–002–117, with an airworthy segmented slat assembly, P/N 407–023–001–101, before further flight. Replace the slat assembly in accordance with Part II of the Accomplishment Instructions in Bell Helicopter Textron Alert Service Bulletin No. ASB 407–99–32, dated December 7, 1999.

(2) If no crack is found, replace each slat assembly, P/N 407–023–002–117, with an airworthy segmented slat assembly, P/N 407–023–001–101, prior to flight after December 31, 2000.

(b) Installing airworthy segmented slat assemblies, P/N 407–023–001–101, constitutes terminating action for the requirements of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(e) The modification shall be done in accordance with Part II of the Accomplishment Instructions in Bell Helicopter Textron Alert Service Bulletin No. ASB 407–99–32, dated December 7, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec JON1LO, telephone (450) 437–2862 or (800) 363–8023, fax (450) 433–0272. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on November 22, 2000.

**Note 3:** The subject of this AD is addressed in Transport Canada (Canada) AD CF–2000–09, dated March 21, 2000.

Issued in Fort Worth, Texas, on September 29, 2000.

**Henry A. Armstrong,**

*Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 00–26236 Filed 10–17–00; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 99–NM–248–AD; Amendment 39–11932; AD 2000–20–20]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 747–400 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747–400 series airplanes, that requires removal of existing inertial reference units (IRU) and installation of modified IRU's. This amendment is prompted by a report of the failure of the left and center IRU's on a single flight. The actions specified by this AD are intended to prevent loss of multiple IRU's in flight, which could result in the loss of navigation data during flight. This could compromise the ability of the flight crew to maintain the safe flight and landing of the airplane.

**DATES:** Effective November 22, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 22, 2000.

**ADDRESSES:** The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Jay G. Yi, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1013; fax (425) 227–1181.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 747–400 series airplanes was published in the **Federal Register** on October 6, 1999 (64 FR 54229). That action proposed to require removal of existing inertial reference units (IRU) and installation of modified IRU's.

### Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

### Support for the Proposal

One commenter supports the proposed rule.

### Request To Extend Compliance Time

Three commenters request that the FAA extend the proposed compliance time for the installation of modified IRU's.

The first commenter states that sending all its units back to the parts manufacturer for modification will take at least two weeks per unit. Additionally, taking the unmodified units off all of its airplanes and shipping them will delay completion of the installation required by the proposed AD until receipt of the modified units. Therefore, the proposed installation would not be accomplished until February 2002. The commenter adds that the dual inertial reference system (IRS) failure that prompted this proposal, as stated in the preamble, was caused by a short circuit in the brake system control unit (BSCU). The airplane manufacturer later determined that the short circuit was due to moisture ingested into the BSCU, and released Boeing Service Bulletins 747–25–3080, Revision 2, dated February 29, 1996 (improves the integrity of the drip shields), and 747–53–2402, dated December 21, 1995 (installs protective panels over the drip shields to protect them from damage) to address this condition. The commenter has completed these modifications, and notes that these modifications significantly reduce the likelihood of water damage to the BSCU. The commenter states that, considering these airplane modifications and the realities of the modification stated above, a two-year compliance time would be more realistic.

The second commenter states that 12 months is an unrealistic and unnecessary compliance time, and submits the following factors for consideration:



• First, the IRU part numbers addressed by the proposal are used on Boeing Model 737–300/400/500, 757, and 767 series airplanes, in addition to Model 747–400 series airplanes. Many of the 747–400 operators also operate some of the other airplane types and have common spares. The operators will either have to maintain separate spares for the Model 747–400 series airplanes, or modify all of the spares. If the operators are forced into maintaining separate spares, this will increase the quantity of spare units required.

• Second, while there is a potential for this condition to develop, the probability of occurrence is lower than implied in the proposal. The availability of standby heading and attitude systems, plus the ability of the IRU to recover heading and attitude capability, also reduce the urgency to complete all updates within 12 months. Considering the above factors, the commenter recommends the compliance time be extended from 12 months to at least 24 months, with the expectation that an extension will likely be needed for full compliance.

The third commenter requests that the compliance time be changed from 12 months to 24 months, but does not give a reason for this request.

The FAA concurs with the commenters' requests to extend the compliance time for installation of modified IRU's; however, the FAA does not concur with the length of time requested by the commenters. Following careful consideration of the comments, the FAA considers that an extension of the compliance time specified in paragraph (a) of this AD from 12 months to 18 months will not compromise safety. Paragraph (a) of this final rule has been revised accordingly.

### Request To Revise Applicability

Three commenters request that the applicability of the proposed rule be revised.

The first commenter requests that the proposed applicability be revised to apply to all Model 747–400 series airplanes, not just specific line numbers as written in the applicability section. The commenter states that some of its recent deliveries of Model 747–400 series airplanes had the upgraded IRU's installed at delivery, and those line numbers are not included in the current applicability of the proposed rule. The commenter also notes that it is possible that one or more of the upgraded IRU units were replaced with an older IRU after the airplane went into service; therefore, it is the commenter's intent to accomplish the proposed requirements on all of its Model 747–400 series airplanes.

The second commenter requests that the statement "certain Boeing Model 747–400 series airplanes," in the preamble of the proposed rule be revised to read, "all Boeing Model 747–400 series airplanes equipped with Honeywell inertial reference systems." The commenter notes that explicitly stating this up front in the proposed AD provides clarification of the airplanes affected by the proposal. The commenter also recommends identifying a second grouping in the applicability section to make the spares requirement [paragraph (b)] applicable to all Model 747–400 series airplanes.

The third commenter states that some Model 747–400 series airplanes not specified in the proposal may have had replacement IRU's installed that should be modified.

The FAA does not concur with the commenters' request. In response to the first and second commenters, all new 747–400 series airplanes after line number 1187 were delivered with newly designed IRU's installed, and the FAA previously disseminated instructions to operators about replacement or exchange of the new IRU's with older-type IRU's. In response to the third commenter, the FAA has addressed the intent of the commenter's request in paragraph (b) of this AD.

### Request To Revise Spares Paragraph

One commenter suggests that since the problem referenced in the proposed rule is unique to Model 747–400 series airplanes, and other IRS-equipped fleets can continue using older part numbers, the text in the spares paragraph should be revised from "any airplane" to "any 747 airplane."

Two commenters recommend the wording in the spares paragraph be revised to read, "As of the required compliance date for this AD, no person shall install an IRU with a Boeing part number which precedes S242T101–113 on a Boeing 747–400 series airplane," or "Subsequent to the required compliance date of this AD, no person shall install a Honeywell IRU having a Boeing part number that precedes S242T101–113 on a Boeing Model 747–400 series airplane." The commenter states that this is to require the use of modified IRU's after the compliance date, thereby permitting the use of existing inventory during the interim period and to preclude the use of any IRU preceding part number S242T101–113 after the compliance date.

The FAA does not concur with the commenters' requests to change the words in the spares paragraph from "on any airplane" to "on any Boeing Model 747–400 airplane," or "with a Boeing part number that precedes S242T202–113 on a Boeing Model 747–400 series airplane." The applicability statement of all AD actions lists all models affected by that AD. All of the requirements stated in an AD are applicable only to the airplane models listed in the applicability, and based on information received from the parts manufacturer, only the IRU's having the part numbers listed in the spares paragraph are affected by the AD.

Additionally, the FAA does not concur with changing "As of the effective date * * * " to "As of the compliance date * * * " Removing an unsafe condition that already exists on an airplane necessarily involves performing maintenance on the airplane, and the FAA always provides some kind of "grace period" in order to minimize disruption of operations. On the other hand, prohibiting installation of spares that have been determined to create an unsafe condition does not require any additional maintenance activity; it simply requires use of one part rather than another. In general, once an unsafe condition has been determined to exist, it is the FAA's normal policy not to allow that condition to be introduced into the fleet. In developing the technical information on which every AD is based, one of the important considerations is the availability of parts that the AD will require to be installed. When it is determined that those (safe) parts are immediately available to operators, it is the FAA's policy to prohibit installation of the unsafe parts as of the effective date of the AD.

Therefore, the FAA finds that there is no justification for making the changes requested by the commenters. No change to the final rule is necessary in this regard.

### Request To Revise Statement of Unsafe Condition

One commenter requests that the unsafe condition as stated in the proposed rule be revised from " * * * compromise the ability of the flight crew to maintain the safe flight and landing of the airplane" to " * * * compromise the ability of the flight crew to subsequently cope with adverse operating conditions." The commenter states that the loss of primary data to both pilots, in addition to loss of other navigational information is improbable. The commenter adds that while loss of primary data could impact operations during adverse conditions, with standby data available, loss of primary data does not impact safe flight of the airplane.

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The FAA does not concur with the commenter's request. The FAA has determined that, should an airplane lose all three IRU's, which would result in operating with only one standby instrument, it would indeed impact safe flight of the airplane due to reduced controllability resulting from loss of the IRU's. No change to the final rule is necessary in this regard.

**Request To Revise Certain Sections in the Preamble**

One commenter describes revisions to various sections of the preamble of the proposed rule. In the "Summary" section, the commenter revises the wording to state that the proposed AD is applicable to 747–400 series airplanes equipped with the Honeywell IRS, and to present a logical sequence for the event and the consequences. The commenter also changes the statement of unsafe condition from " * * * maintain the safe flight and landing of the airplane" to " * * * subsequently cope with adverse operating conditions." In the "Discussion" and "Explanation of Relevant Service Information" sections, the commenter suggests revising the wording to ascribe the reported event specifically to a Model 747–400 series airplane equipped with the Honeywell IRS, to indicate the data loss, and to discuss attributed causes of the event. In the "Explanation of Requirements of Proposed Rule" section, the commenter revises the wording to clarify the intent of Boeing Alert Service Bulletin 747–34A2638, Revision 1, dated April 8, 1999, as applicable to multiple part numbers of Honeywell IRU's. In the "Differences Between Proposed Rule and Alert Service Bulletin" section, the commenter revises the wording to identify the time necessary to perform the required replacement as being consistent with the alert service bulletin estimate, and to identify compliance time based on initial estimates from Honeywell and operators' recommendations.

Another commenter states that actions specified in the proposal are intended to prevent loss of navigation during flight. The commenter discusses the various navigation systems and notes that it is rare that navigation data from the IRU's are used during the approach and landing phase of flight. The commenter further states that the event that prompted the NPRM included loss of primary heading and attitude data from the left and center IRU's, as well as loss of navigation data. The right IRU was still providing valid heading and attitude reference, and the standby systems were available. The commenter adds that when the voltage was removed, the faulted IRU's could have been reset to the "ATTITUDE" mode, which returns the primary heading and attitude functions.

The same commenter states that the proposal states that this condition is likely to exist on other products of the same type design. However, the commenter notes that to its knowledge, this is the only occurrence of this condition throughout the entire service life of the Model 747–400 series airplane. In addition, the commenter states that service information has been issued to address the broken or damaged drip shields, which allowed liquid to enter the BSCU and cause the electrical fault. The commenter recommends the wording in the "Explanation of Requirements of Proposed Rule" be changed to "may develop" or similar wording which better describes the low probability of occurrence for this condition.

The FAA concurs with the commenter's description of the intent of these sections; however, because only the "Summary" section is restated in the final rule, no change to the other sections, as stated above, is necessary. Additionally, the "Summary" section of this final rule only represents a brief synopsis of the AD, it is accurate as proposed, therefore, no change to the final rule is necessary.

**Request To Revise Cost Impact Information**

Three commenters request that the cost information in the proposed rule be revised.

The first commenter states that the cost to U.S. operators estimated in the proposal is approximately $3,000, and reasons that the true costs involved are significantly higher for the following reasons:

- First, the cost estimate in the proposal allowed for 1 hour per airplane; however, the actual time to remove, install, and functionally check all three IRU's will be longer.
- Second, the cost estimate did not include any of the operators' costs for internal processing, shipping, and handling.
- Third, the operators may have to purchase additional spare units to support rotation of IRU's through the modification program.
- Fourth, the estimate does not include the cost to modify or update the IRU's. In addition, the commenter notes that, although there is no cost specified in the proposal for the required parts, the parts manufacturer will charge for the modification of some parts. Therefore, the statement that the manufacturer will provide parts at no cost is inaccurate and should not be included in the proposal.

The second commenter states that the estimated work hours in the cost information section should be revised from 1 work hour to 2.25 work hours to identify cost impacts consistent with the estimated time to perform the proposed replacement.

The third commenter makes no specific request for a change to the proposed rule, but states that, if the 12-month compliance time is retained, it could be faced with purchasing additional shipsets of IRS units (assuming they are available in time) in order to expedite accomplishment of the fleet campaign. The commenter notes that a shipset costs about $450,000, and two additional shipsets might be needed.

The FAA agrees with the first commenter, in that the service bulletin does not specify that the required parts will be supplied by the parts manufacturer at no cost to the operators. The service bulletin merely states that the operator can supply the parts. Information received from the parts manufacturer states that it will supply the parts for the actions required by this AD; however, any other modifications will be paid for by the operators. No change to the final rule is necessary in this regard.

The FAA does not concur with revising the work hours necessary for accomplishment of the required replacement. The cost impact information describes only the "direct" costs of the specific actions required by this AD. The number of work hours necessary to accomplish the required actions, specified as 1 work hour in the cost impact information below, was provided to the FAA by the manufacturer based on the best data available to date. This number represents the time necessary to perform only the actions actually required by this AD. The FAA recognizes that, in accomplishing the requirements of any AD, operators may incur "incidental" costs in addition to the "direct" costs. The cost analysis in AD rulemaking actions, however, typically does not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. Because incidental costs may vary significantly from operator to operator, they are almost impossible to calculate. No change to the final rule is necessary in this regard.



**Conclusion**

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

**Cost Impact**

There are approximately 429 Model 747–400 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 50 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required replacement, and that the average labor rate is $60 per work hour. Required parts will be supplied by the parts manufacturer at no cost to the operators. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $3,000, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

**Regulatory Impact**

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**2000–20–20 Boeing:** Amendment 39–11932. Docket 99–NM–248–AD.

*Applicability:* Model 747–400 series airplanes, having line numbers 696 through 1187 inclusive, certificated in any category; equipped with Honeywell inertial reference units (IRU).

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent loss of multiple IRU's in flight, which could result in the loss of navigation data, and compromise the ability of the flight crew to maintain the safe flight and landing of the airplane, accomplish the following:

**Replacement**

(a) Within 18 months after the effective date of this AD, remove the left, center, and right IRU's, and install modified IRU's, in accordance with Boeing Alert Service Bulletin 747–34A2638, Revision 1, dated April 8, 1999.

**Note 2:** Removal of existing left, center, and right IRU's and replacement with modified IRU's in accordance with Boeing Alert Service Bulletin 747–34A2638, dated January 29, 1999, is considered acceptable for compliance with paragraph (a) of this AD.

**Spares**

(b) As of the effective date of this AD, no person shall install an IRU having Boeing part number S242T101–110, S242T101–111, or S242T101–112, on any airplane.

**Alternative Methods of Compliance**

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Avionics Inspector, who may add comments and then send it to the Manager, Seattle ACO.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

**Special Flight Permits**

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

**Incorporation by Reference**

(e) The replacement shall be done in accordance with Boeing Alert Service Bulletin 747–34A2638, Revision 1, dated April 8, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on November 22, 2000.

Issued in Renton, Washington, on October 6, 2000.

**Donald L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–26308 Filed 10–17–00; 8:45 am]

BILLING CODE 4910–13–P

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. 99–SW–35–AD; Amendment 39–11929; AD 2000–20–17]**

**RIN 2120–AA64**

## Airworthiness Directives; Eurocopter France Model AS332C, L, and L1 Helicopters

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) for Eurocopter France (ECF) Model AS332C, L, and L1 helicopters. This AD requires inspecting the horizontal stabilizer spar tube (spar tube) for corrosion, hardness, cracks, and scratches, and if necessary, replacing any unairworthy spar tube and bushing with an airworthy spar tube and bushing. This amendment is prompted by the loss of a horizontal stabilizer in flight due to a spar tube failure. The actions specified by this AD are intended to prevent failure of the spar tube, separation of the horizontal stabilizer and impact with the main or tail rotor, and subsequent loss of control of the helicopter.

**DATES:** Effective November 22, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 22, 2000.

**ADDRESSES:** The service information referenced in this AD may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Jim Grigg, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5490, fax (817) 222–5961.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) which applied to the ECF Model AS332C, L, and L1 helicopters was published in the **Federal Register** on July 14, 2000 (65 FR 43720). That action proposed to require inspecting any spar tube installed on certain horizontal stabilizers for corrosion, hardness, cracks, or scratches. Replacing the spar tube and bushing, as necessary, with an airworthy spar tube and bushing was also proposed.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 3 helicopters of U.S. registry will be affected by this AD, that it will take approximately 40 work hours per helicopter to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $1,000 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $10,200.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

**2000–20–17 Eurocopter France:** Amendment 39–11929. Docket No. 99–SW–35–AD.

*Applicability:* Model AS332C, L, and L1 helicopters with horizontal stabilizer spar tube (spar tube), part number (P/N) 330A13–2024–01, –02, –03, or –04, installed on horizontal stabilizer, P/N 332A13–1000–00, –01, –02, –03 or 332A13–1040–00, or –01, certificated in any category.

**Note 1:** This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent failure of the spar tube, separation of the horizontal stabilizer and impact with the main or tail rotor, and subsequent loss of control of the helicopter, accomplish the following:

(a) For helicopters on which the spar tube composite bushing (bushing), P/N 330A13–2024–31, has been replaced and since replacement has accumulated:

(1) Less than 1400 hours time-in-service (TIS) or less than 30 calendar months:

(i) Prior to accumulating 1600 hours TIS or 32 calendar months, whichever occurs first, and thereafter at intervals not to exceed (NTE) 3000 hours TIS or 72 calendar months, whichever occurs first, inspect the spar tube in accordance with (IAW) the Accomplishment Instructions, paragraph 2.B.1.1 and 2.B.2. of Eurocopter France Service Bulletin No. 01.00.57, Revision 1, dated November 24, 1999 (SB).

(A) If the spar tube passes the hardness inspection of paragraph 2.B.1.1 of the SB and the scratch, corrosion, and crack inspection of paragraph 2.B.2. of the SB, replace the bushing with a new bushing, before further flight.

(B) If the spar tube fails either the hardness inspection of paragraph 2.B.1.1 of the SB or the scratch, corrosion, or crack inspection of paragraph 2.B.2. of the SB, replace the spar tube with an airworthy spar tube before further flight.



(ii) Before installing any replacement spar tube that has previously been installed on any helicopter, inspect it IAW the Accomplishment Instructions, paragraphs 2.B.1.1 and 2.B.2. of the SB.

(2) 1400 or more hours TIS or 30 or more calendar months:

(i) Within 200 hours TIS or 2 calendar months, whichever occurs first, and thereafter at intervals NTE 3000 hours TIS or 72 calendar months, whichever occurs first, inspect the spar tube IAW the Accomplishment Instructions, paragraphs 2.B.1.1 and 2.B.2. of the SB.

(A) If the spar tube passes the hardness inspection of paragraph 2.B.1.1 of the SB and the scratch, corrosion, and crack inspection of paragraph 2.B.2 of the SB, replace the bushing with a new bushing before further flight.

(B) If the spar tube fails either the hardness inspection of paragraph 2.B.1.1 of the SB or the scratch, corrosion, or crack inspection of paragraph 2.B.2 of the SB, replace the spar tube with an airworthy spar tube before further flight.

(ii) Before installing any replacement spar tube that has previously been installed on any helicopter, inspect it IAW the Accomplishment Instructions, paragraphs 2.B.1.1 and 2.B.2. of the SB.

(b) For all spar tubes:

(1) With less than 7500 hours TIS or 144 calendar months since original installation:

(i) Prior to accumulating 7500 hours TIS or 144 calendar months, remove the spar tube and inspect IAW the Accomplishment Instructions, paragraphs 2.B.1.1 and 2.B.2. of the SB.

(ii) After accomplishing the requirements of paragraph (b)(1)(i) of this AD, install an airworthy spar tube before further flight. Before installing any replacement spar tube that has been previously installed in any helicopter, inspect it IAW the Accomplishment Instructions, paragraphs 2.B.1.1 and 2.B.2. of the SB.

(2) With 7500 or more hours TIS or 144 or more calendar months since original installation:

(i) Within 500 hours TIS or 12 calendar months, whichever occurs first, remove the spar tube and inspect IAW the Accomplishment Instructions, paragraphs 2.B.1.1 and 2.B.2. of the SB.

(ii) After accomplishing the requirements of paragraph (b)(2)(i) of this AD, install an airworthy spar tube before further flight. Before installing any replacement spar tube that has been previously installed in any helicopter, inspect it IAW the Accomplishment Instructions, paragraph 2.B.1.1 and 2.B.2. of the SB.

(3) After accomplishing the requirements of either paragraph (b)(1) or (b)(2) of this AD, as applicable, thereafter, at intervals NTE 7500 hours TIS or 144 calendar months, whichever occurs first, remove the spar tube and inspect IAW the Accomplishment Instructions, paragraphs 2.B.1.1 and 2.B.2. of the SB.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through a FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(e) The inspections shall be done in accordance with the Accomplishment Instructions, paragraphs 2.B.1.1 and 2.B.2., in Eurocopter France Service Bulletin No. 01.00.57, Revision 1, dated November 24, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on November 22, 2000.

**Note 3:** The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD 1999–039–073(A)R1, dated December 29, 1999.

Issued in Fort Worth, Texas, on September 29, 2000.

**Henry A. Armstrong,**

*Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 00–26235 Filed 10–17–00; 8:45 am]

**BILLING CODE 4910–13–P**

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. 99–NM–228–AD; Amendment 39–11756; AD 2000–11–08]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 747 and 767 Series Airplanes Powered by General Electric Model CF6–80C2 Series Engines; Correction

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; correction.

**SUMMARY:** This document corrects a typographical error that appeared in airworthiness directive (AD) 2000–11–08, amendment 39–11756, that was published in the **Federal Register** on June 1, 2000 (65 FR 34935). The typographical error resulted in a reference to an incorrect fuel specification. That AD is applicable to certain Boeing Model 747 and 767 series airplanes. That AD supersedes an earlier airworthiness directive to require revising the FAA-approved Airplane Flight Manual (AFM) to prohibit the use of certain fuels; and either replacing an existing placard with a new placard, or replacing all dribble flow fuel nozzles (DFFN) with standard fuel nozzles, which terminates the requirements for the new placard and AFM revision. That AD also includes identical requirements applicable to airplanes on which standard fuel nozzles are not installed.

**DATES:** Effective July 6, 2000.

**FOR FURTHER INFORMATION CONTACT:** Ed Hormel, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2681; fax (425) 227–1181.

**SUPPLEMENTARY INFORMATION:** Airworthiness Directive (AD) 2000–11–08, amendment 39–11756, applicable to certain Boeing Model 747 and 767 series airplanes, was published in the **Federal Register** on June 1, 2000 (65 FR 34935). That AD supersedes AD 98–08–23, amendment 39–10472 (63 FR 18817, April 16, 1998) to require revising the FAA-approved Airplane Flight Manual (AFM) to prohibit the use of certain fuels; and either replacing an existing placard with a new placard, or replacing all dribble flow fuel nozzles (DFFN) with standard fuel nozzles, which terminates the requirements for the new placard and AFM revision. That AD also includes identical requirements applicable to airplanes on which standard fuel nozzles are not installed.

As published, AD 2000–11–08 contains an erroneous fuel specification in paragraphs (a)(1)(i) and (c)(1) of that AD. Those paragraphs incorrectly reference MIL–T–83113, which is a specification that does not exist. The correct reference is MIL–T–83133.

Since no other part of the regulatory information has been changed, the final rule is not being republished.

Accordingly, in FR Doc. 00–13447 published June 1, 2000 (65 FR 34935), make the following corrections:

The effective date of this AD remains July 6, 2000.

**§ 39.13 [Corrected]**

1. On page 34937, in the second column, paragraph (a)(1)(i) of AD 2000–11–08 is corrected to read as follows:

AD 2000–11–08

* * * * *

(a) * * *

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(1) * * *

(i) Revise paragraph 1 of the Engine Fuel System section to read as follows: "The fuel designation is General Electric (GE) Specification D50TF2, as revised. Fuel conforming to commercial jet fuel specification ASTM–D–1655, Jet A, and Jet A–1 are authorized for unlimited use in this engine. Fuels conforming to MIL–T–5624 grade JP–5 and MIL–T–83133 grade JP–8 are acceptable alternatives. The engine will operate satisfactorily with any of the foregoing fuels or any mixture thereof." And,

* * * * *

2. On page 34937, in the third column, paragraph (c)(1) of AD 2000–11–08 is corrected to read as follows:

* * * * *

(c) * * *

(1) Revise paragraph 1 of the Engine Fuel System section to read as follows: "The fuel designation is General Electric (GE) Specification D50TF2, as revised. Fuel conforming to commercial jet fuel specification ASTM–D–1655, Jet A, and Jet A–1 are authorized for unlimited use in this engine. Fuels conforming to MIL–T–5624 grade JP–5 and MIL–T–83133 grade JP–8 are acceptable alternatives. The engine will operate satisfactorily with any of the foregoing fuels or any mixture thereof." And,

* * * * *

Issued in Renton, Washington, on October 5, 2000.

**Lirio Liu Nelson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–26237 Filed 10–17–00; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 801

[Docket No. 98N–0970]

## Medical Devices; Labeling for Menstrual Tampon for the "Ultra" Absorbency

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is issuing a final rule that amends its menstrual tampon labeling regulation to add the term "ultra" absorbency for tampons that absorb 15 to 18 grams (g) of fluid with the syngyna test. At present, FDA requires standardized terms to be used for the labeling of a menstrual tampon to indicate its particular absorbency. This rule enables consumers to compare the absorbency of one brand and style of tampon with the absorbency of other brands and styles. FDA is issuing this final rule under the Federal Food, Drug, and Cosmetic Act (the act) to ensure that labeling of menstrual tampons is not misleading. Elsewhere in this issue of the **Federal Register**, FDA is proposing to change the standardized menstrual tampon term "junior" to "light".

**DATES:** This rule is effective January 16, 2001.

**FOR FURTHER INFORMATION CONTACT:** Colin M. Pollard, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1180.

**SUPPLEMENTARY INFORMATION:**

### I. Background

In the **Federal Register** of October 26, 1989 (54 FR 43766), FDA published a final rule which, among other things, amended its menstrual tampon labeling regulation to standardize the existing absorbency terms ("junior", "regular", "super", and "super plus") to correspond with the following four absorbency ranges: Less than 6 g; 6 to 9 g; 9 to 12 g; and 12 to 15 g of fluid, as measured by the syngyna test. The 1989 final rule did not include terms for tampons with absorbency in the 15 to 18 g range. Tampon manufacturers have asserted that many women need tampons with this higher level of absorbency to manage their heavy menstrual flow. See 54 FR 43766 to 43769.

Tampons are currently classified into class II (special controls) at 21 CFR 884.5460 and 884.5470. Any person who is required to register under section 510 of the act (21 U.S.C. 360) and part 807 (21 CFR part 807) and who intends to begin the introduction or delivery for introduction into interstate commerce of a tampon for commercial distribution is required to submit a premarket notification to FDA at least 90 days before making such introduction or delivery in accordance with section 510(k) of the act and subpart E of part 807. Under § 807.87(e), a 510(k) premarket notification for a menstrual tampon must contain, among other thing, the proposed labeling for the tampon. Section 801.430 (21 CFR 801.430) spells out the specific labeling required for tampons with 15 g or less of absorbency, including standardized terms for absorbency as determined by testing with the specified syngyna methodology. Because the regulation currently provides no uniform labeling term for tampons that absorb 15 to 18 g of fluid with the syngyna test, the agency is requiring that such tampons be labeled as "ultra" absorbency. FDA has recently cleared a menstrual tampons product in this absorbency range, and they are available to women in the United States. FDA believes that designating a standard term for this absorbency range will improve consumer understanding of tampons across brands and allow for better adherence to advice in the tampon labeling about toxic shock syndrome (TSS).

### II. The Proposed Rule

In the **Federal Register** of January 21, 1999 (64 FR 3255 through 3257), FDA published a proposed rule to add the term "ultra" to describe tampons with a 15 to 18 g absorbency as measured by the syngyna test. The 90-day comment period closed on April 21, 1999.

The agency received nine comments from individuals, tampon manufacturers, one trade association, and one from a member of the U.S. Congress. Besides comments specific to use of the term "ultra", other comments addressed FDA's 1995 draft guidance document on the preparation of 510(k) premarket notifications for menstrual tampons (Ref. 1). Several comments recommended changing the currently used term for tampon absorbency less than 6 g, from "junior" to "light". A summary of the written comments and FDA's response to the comments is provided in section III of this document.

### III. Response to Comments

1. Two comments from manufacturers supported the term "ultra". They noted that the term "ultra" is defined in Webster's Dictionary (and others) as "going beyond what is usual or ordinary" and "going beyond others". These comments also noted that menstrual tampons with this absorbency are called "Ultra Plus" in Canada. Comments from two other manufacturers did not favor the term "ultra" for this tampon absorbency. They argued that "ultra" implies the product is more compact in size, more concentrated, more environmentally sound, or possibly superior. The comments noted that "ultra" is a proprietary term carrying one or more of these meanings for a variety of other household products, such as dishwashing detergents and sanitary napkins. These manufacturers proposed the terms "extra" or "extra plus".

FDA concludes that the term "Ultra" is suitable to identify the absorbency of tampons in the range of 15 to 18 g. FDA believes that the term "Ultra" fits more clearly within the current scheme of tampon absorbency terminology than the terms "extra" or "extra plus". The term "ultra" better conveys to the consumer absorbency abilities that are beyond "Super" and "Super Plus" and is less confusing to consumers than the terms "extra" or "extra plus".

Manufacturers must now define this absorbency in their labeling along with the other absorbency categories to help consumers understand the meaning of this new term. As before, labeling will continue to be required to inform consumers that they should use the lowest absorbency suitable for their needs, as well as alternating use of tampons with use of menstrual pads. FDA does not permit manufacturers to promote tampons for a wear time longer than 8 hours.

2. Five comments suggested changes in tampon labeling related to the wording of the consumer information on TSS. At present, under § 801.430(d)(2), the tampon labeling regulation requires that TSS incidence be reported in the package insert as 1 to 17 cases of TSS per 100,000 menstruating women and girls per year. These five comments requested that this labeling be revised to reflect more recent data that indicate the rate of TSS has declined. There were also various comments on FDA's draft guidance document on preparing 510(k) premarket notifications on menstrual tampons, dated May 25, 1995 (Ref. 1).

These comments were beyond the scope of the proposed rule. FDA recognizes that TSS incidence in the United States has dropped since this labeling regulation was issued in 1989. See response to comment number 6. FDA will consider these suggestions for revisions to the labeling regulation to update the TSS incidence information. Regarding the second set of comments, FDA is currently working to improve the 1995 510(k) guidance document, and the suggested changes will be considered during that process. FDA intends to issue a draft updated guidance document within a few months.

3. Five comments suggested changing the absorbency term "junior", used for tampons with the lowest absorbency (less than 6 g), to "light". They suggested that the term "junior" implied such tampons were only for young teenagers.

This comment also was beyond the scope of this rulemaking. However, FDA agrees that the term "light" is more appropriate than "junior" for tampons with absorbency less than 6 g. A proposed rule to change the term "junior" to "light" appears elsewhere in this issue of the **Federal Register**.

4. One comment asked why FDA did not propose a new term for tampon absorbency in the 15 to 18 g range when the other terms were issued in the regulation in 1989.

The intent of the 1989 regulation was to standardize terms currently in use so that consumers had clear information to make the best choices regardless of which brand they purchased. Although the absorbencies varied across brands, most manufacturers had no more than four different absorbencies of tampons on the market. Most companies chose to modify their products to match the standardized absorbency categories and keep the established terms. Immediately prior to issuance of the labeling regulation in 1989, only one marketed tampon was in the 15 to 18 g range. The manufacturer of this tampon chose to reduce its absorbency to 12 to 15 g and continue to use the term "super plus". In the preamble to the final regulation standardizing absorbency terms, FDA stated that anyone who wished to market a tampon that absorbs more than 15 g of fluid would be required to submit a 510(k). The agency would then determine whether the labeling submitted for the device was appropriate and whether the tampon required premarket approval under section 515 of the act (21 U.S.C. 360e). FDA did receive and clear a 510(k) for such a product earlier this year.

5. One comment asked how FDA would institute monitoring procedures for tracking the potential risk of increase in TSS cases.

FDA requires laboratory testing for all tampon products, as appropriate, depending on changes to materials or design. The agency already has in place Mandatory Device Reporting (MDR) requirements for manufacturers to identify and monitor reports of serious events related to device use, including menstrual TSS. In 510(k) premarket notifications, manufacturers of tampons with 15 to 18 g absorbency will provide FDA with their specific plans for monitoring trends in TSS complaints with use of their own tampon brands. The manufacturer of the product already cleared has such a plan in place. In the postmarket setting and as part of its regular MDR Program and User Facility Reporting Program, FDA will actively review any reports received on adverse events, as well as the Centers for Disease Control and Prevention (CDC) reports on menstrual-TSS.

CDC has tracked TSS reports in the United States for 20 years, and produces periodic morbidity/mortality reports. CDC recently has published a TSS surveillance update, reviewing reports from 1979 to 1996 (Ref. 2). These reports show a marked drop in TSS cases in the early 1980's with a relatively flat, extremely low number of TSS reports since approximately 1986. For instance, in 1996, there were five definite and four probable menstrual-related TSS cases reported to CDC.

The agency also notes that tampons with an absorbency as high as 18 g are currently marketed in other countries with very low TSS rates (Ref. 3). It appears that a number of factors may play a role in the etiology and risk of menstrual-related TSS, including tampon materials, continuous tampon use versus alternating use between tampons and menstrual pads, the presence of oxygen in the vaginal environment, and awareness of TSS symptoms and seeking early treatment. Standardized absorbency terms are intended to minimize the risk of menstrual-TSS with tampon use. This rule is consistent with purpose of the 1989 regulation, which is to ensure that standardized labeling gives women the information they need to make appropriate choices among all brands. FDA does not believe that this final rule will increase the risk of TSS for women who use tampons in accordance with the labeling.

6. One comment asked about the steps that might be taken to improve consumer decisionmaking about choosing the appropriate tampon absorbency.

FDA agrees that women should have a good understanding about tampon absorbency in order to make the best possible choice when purchasing tampons. In the United States, there are several public awareness initiatives in place. For nearly 20 years, FDA, CDC, and tampon manufacturers have all played a part in this process. Education programs at the local level have been contributing partners, as well. FDA believes that the current low TSS rates in the United States are a reflection of these highly effective public awareness initiatives. FDA expects that these programs, coupled with good tampon labeling, will ensure continued good choice patterns among tampon users in the United States.

### IV. Environmental Impact

The agency has determined under 21 CFR 25.30 (k) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

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**V. Analysis of Impacts**

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Pub. L. 104–121), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. There currently are no small entities marketing a tampon of this absorbency. Any small entity that decided to enter the market with this product would incur no additional costs because of this rule because the small entity would already be required to identify the absorbency ranges of its tampons.

The agency therefore certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement of anticipated costs and benefits before proposing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million in any one year (adjusted annually for inflation). The Unfunded Mandates Reform Act does not require FDA to prepare a statement of costs and benefits for the final rule, because the final rule is not expected to result in any 1-year expenditure that would exceed $100 million adjusted for inflation.

**VI. Federalism**

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the order and, consequently, a federalism summary impact statement is not required.

**VII. Paperwork Reduction Act of 1995**

This final rule does not contain information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). Although the agency submitted the proposed labeling for public comment as an information collection in the proposed rule, FDA now concludes that the labeling requirement is not subject to review by OMB because it does not constitute a "collection of information" under the PRA. Rather, the proposed labeling is a "public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public" (5 CFR 1320.3(c)(2)).

**VIII. References**

The following references have been placed on display in the Docket Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Guidance for the Content of Premarket Notifications for Menstrual Tampons (draft, May 25, 1995).

2. Hajjeh, R. A., A. Reingold, A. Weil, K. Shutt, A. Schuchat, and B. Perkins, "Toxic Shock Syndrome in the United States: Surveillance Update, 1979–1996," *Emerging Infectious Diseases*; vol. 5, no. 6, pp. 807–810, November/December 1999.

3. TSS rates in Canada, U.K., Germany—where 15 to 18 g tampons are already available, Medical Affairs and Regulatory Affairs at Personal Products Co. at Skillman, NJ.

**List of Subjects in 21 CFR Part 801**

Labeling, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drug, 21 CFR part 801 is amended as follows:

**PART 801—LABELING**

1. The authority citation for 21 CFR part 801 continues to read as follows:

**Authority:** 21 U.S.C. 321, 331, 351, 352, 360i, 360j, 371, 374.

2. Section 801.430 is amended in paragraph (e)(1) by revising the table to read as follows:

**§ 801.430 User labeling for menstrual tampons.**

* * * * *

(e) * * *

(1) * * *

| Ranges of absorbency in grams[1] | Corresponding term of absorbency |
|---|---|
| 6 and under | Junior absorbency. |
| 6 to 9 | Regular absorbency. |
| 9 to 12 | Super absorbency. |
| 12 to 15 | Super plus absorbency. |
| 15 to 18 | Ultra absorbency. |
| Above 18 | No term. |

[1] These ranges are defined, respectively, as follows: Less than or equal to 6 grams (g); greater than 6 g up to and including 9 g; greater than 9 g up to and including 12 g; greater than 12 g up to and including 15 g; greater than 15 g up to and including 18 g; and greater than 18 g.



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Dated: October 2, 2000.

**Margaret M. Dotzel,**

*Associate Commissioner for Policy.*

[FR Doc. 00–26248 Filed 10–17–00; 8:45 am]

BILLING CODE 4160–01–F

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**21 CFR Part 862**

**[Docket No. 00P–1280]**

## Medical Devices; Exemption From Premarket Notification; Class II Devices; Triiodothyronine Test System

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is publishing an order granting a petition requesting exemption from the premarket notification requirements for the triiodothyronine test system with certain limitations. This rule will exempt from premarket notification the triiodothyronine test system intended for measuring the hormone triiodothyronine in serum and plasma. FDA is publishing this order in accordance with procedures established by the Food and Drug Administration Modernization Action of 1997 (FDAMA).

**DATES:** This rule is effective October 18, 2000.

**FOR FURTHER INFORMATION CONTACT:** Heather S. Rosecrans, Center for Devices, and Radiological Health (HFZ–404), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1190.

**SUPPLEMENTARY INFORMATION:**

**I. Statutory Background**

Under section 513 of the Federal Food, and Drug, and Cosmetic Act (the act) (21 U.S.C. 360c), FDA must classify devices into one of three regulatory classes: Class I, class II, or class III. The FDA classification of a device is determined by the amount of regulation necessary to provide a reasonable assurance of safety and effectiveness. Under the Medical Device Amendments of 1976 (the 1976 amendments (Public Law 94–295)), as amended by the Safe Medical Devices Act of 1990 (the SMDA (Public Law 101–629)), devices are to be classified into class I (general controls) if there is information showing that the general controls of the act are sufficient to ensure safety and effectiveness; into class II (special controls), if general controls, by themselves, are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls to provide such assurance; and into class III (premarket approval), if there is insufficient information to support classifying a device into class I or class II and the device is a life-sustaining or life-supporting device or is for a use that is of substantial importance in preventing impairment of human health, or presents a potential unreasonable risk of illness or injury.

Most generic types of devices that were on the market before the date of the 1976 amendments (May 28, 1976) (generally referred to as preamendments devices) have been classified by FDA under the procedures set forth in section 513(c) and (d) of the act through the issuance of classification regulations into one of these three regulatory classes. Devices introduced into interstate commerce for the first time on or after May 28, 1976, (generally referred to as postamendments devices) are classified through the premarket notification process under section 510(k) of the act (21 U.S.C. 360(k)). Section 510(k) of the act and the implementing regulations, 21 CFR part 807, require persons who intend to market a new device to submit a premarket notification report (510(k)) containing information that allows FDA to determine whether the new device is substantially equivalent within the meaning of section 513(i) of the act to a legally marketed device that does not require premarket approval.

On November 21, 1997, the President signed into law FDAMA (Public Law 105–115). Section 206 of FDAMA, in part, added a new section 510(m) to the act. Section 510(m)(1) of the act requires FDA, within 60 days after enactment of FDAMA, to publish in the **Federal Register** a list of each type of class II device that does not require a report under section 510(k) of the act to provide reasonable assurance of safety and effectiveness. Section 510(m) of the act further provides that a 510(k) will no longer be required for these devices upon the date of publication of the list in the **Federal Register**. FDA published that list in the **Federal Register** of January 21, 1998 (63 FR 3142).

Section 510(m)(2) of the act provides that 1 day after date of publication of the list under section 510(m)(1), FDA may exempt a device on its own initiative or upon petition of an interested person, if FDA determines that a 510(k) is not necessary to provide reasonable assurance of the safety and effectiveness of the device. This section requires FDA to publish in the **Federal Register** a notice of intent to exempt a device, or of the petition, and to provide a 30-day comment period. Within 120 days of publication of this document, FDA must publish in the **Federal Register** its final determination regarding the exemption of the device that was the subject of the notice. If FDA fails to respond to a petition under this section within 180 days of receiving it, the petition shall be deemed granted.

**II. Criteria for Exemption**

There are a number of factors FDA may consider to determine whether a 510(k) is necessary to provide reasonable assurance of the safety and effectiveness of a class II device. These factors are discussed in the guidance the agency issued on February 19, 1998, entitled "Procedures for Class II Device Exemptions from Premarket Notification, Guidance for Industry and CDRH Staff." That guidance can be obtained through the Internet on the CDRH home page at http://www.fda.gov/cdrh or by facsimile through CDRH Facts-on-Demand at 1–800–899–0381 or 301–827–0111. Specify "159" when prompted for the document shelf number.

**III. Petition**

On April 26, 2000, FDA received a petition requesting an exemption from premarket notification for the triiodothyronine test system. The triiodothyronine test system is currently classified under 21 CFR 862.1710. In the **Federal Register** of July 11, 2000 (65 FR 42706), FDA published a notice announcing that this petition had been received and provided an opportunity for interested persons to submit comments on the petition by August 10, 2000. FDA received no comments. FDA has reviewed the petition and has determined that the triiodothyronine test system intended for measuring the hormone triiodothyronine in serum and plasma does meet the criteria for exemption from the notification requirements. This is the only type of triiodothyronine test system of which FDA presently has any knowledge. The exemption is limited to triiodothyronine test systems of the type described and is also subject to the general limitations on exemptions from premarket notification for clinical chemistry and clinical toxicology devices as described in 21 CFR 870.9. For example, the exemption will not apply to devices of this type that present new indications, novel designs, or alternative materials. The exemption also will not apply if the

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device is intended for over-the-counter use.

**IV. Environmental Impact**

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

**V. Analysis of Impacts**

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Public Law 104–121)), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because this rule will relieve a burden and simplify the marketing of these devices, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

**VI. Paperwork Reduction Act of 1995**

FDA concludes that this final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

**VII. Federalism**

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the order and, consequently, a federalism summary impact statement is not required.

**List of Subjects in 21 CFR Part 862**

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 862 is amended as follows:

## PART 862—CLINICAL CHEMISTRY AND CLINICAL TOXICOLOGY DEVICES

1. The authority citation for 21 CFR part 862 continues to read as follows:

**Authority:** 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

2. Section 862.1710 is amended by revising paragraph (b) to read as follows:

**§ 862.1710 Total triiodothyronine test system.**

* * * * *

(b) *Classification.* Class II. This device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 862.9.

Dated: October 12, 2000.

**Linda S. Kahan,**

*Deputy Director for Regulations Policy, Center for Devices and Radiological Health.*

[FR Doc. 00–26740 Filed 10–17–00; 8:45 am]

BILLING CODE 4160–01–F

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## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Parts 110 and 165

**[CGD05–00–048]**

**RIN 2115–AA98**

## Safety Zone and Anchorage Regulations; Delaware Bay and River

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Army Corps of Engineers will begin dredging parts of the Delaware River including the Marcus Hook Range Ship Channel. Because of the dredging operations, temporary additional requirements will be imposed in Marcus Hook Anchorage (Anchorage 7), the Deepwater Point Anchorage (Anchorage 6), and the Mantua Creek Anchorage (Anchorage 9). The Coast Guard is also establishing a temporary moving safety zone around the dredge vessel *Essex* that will be working in the Marcus Hook Range Ship Channel adjacent to Anchorage 7.

**DATES:** This rule is effective from October 3, 2000 until November 30, 2000.

**ADDRESSES:** Documents indicated in this preamble as being available are part of docket CGD05–00–048 and are available for inspection or copying at Coast Guard Marine Safety Office/Group Philadelphia, One Washington Avenue, Philadelphia, Pennsylvania 19147 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Junior Grade Wade Kirschner or Senior Chief Robert Ward, Coast Guard Marine Safety Office/Group Philadelphia, (215) 271–4889 or (215) 271–4888.

**SUPPLEMENTARY INFORMATION:**

**Regulatory Information**

A Notice of Proposed Rule Making (NPRM) was not published for this regulation. In keeping with 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. In keeping with the requirements of 5 U.S.C. 533(d)(3), the Coast Guard also finds good cause exists for making this regulation effective less than 30 days after publication in the **Federal Register**. U.S. Army Corps of Engineers, Philadelphia District, informed the Coast Guard on September 13, 2000 that dredging operations would commence on October 1, 2000. Publishing a NPRM and delaying its effective date would be contrary to the public interest, since immediate action is needed to protect mariners against potential hazards associated with the dredging operations in the Marcus Hook Range Ship Channel and to modify the anchorage regulations to facilitate vessel traffic.

**Background and Purpose**

The U.S. Army Corps of Engineers (ACOE) notified the Coast Guard that it needed to conduct dredging operations on the Delaware River, in the vicinity of the Marcus Hook Range Ship Channel. The dredging is needed to maintain the project depth of the channel. Similar dredging is conducted each year. This period of dredging begins October 1, 2000 and is anticipated to end on November 30, 2000.

To reduce the hazards associated with dredging the channel, vessel traffic that would normally transit through the Marcus Hook Range Ship Channel may divert through a portion of anchorage 7 to maintain a 150 foot radius around dredging operations. This necessitates additional requirements/restrictions on the use of Anchorage 7. For the protection of mariners transiting in the vicinity of dredging operations, the Coast Guard is also establishing a safety zone around the dredging vessel *Essex*. The safety zone will ensure mariners remain a safe distance from the potentially dangerous dredging equipment.



**Discussion of the Regulation**

33 CFR 110.157(b)(2) allows vessels to anchor for up to 48 hours in the anchorages listed in § 110.157(a), which includes Anchorage 7. However, because of the limited anchorage space available in Anchorage 7 during dredging operations, the Coast Guard is adding a temporary paragraph in 33 CFR 110.157(b)(11) to provide additional requirements and restrictions on vessels utilizing Anchorage 6, 7 and 9.

Vessels desiring to use the Marcus Hook Anchorage (Anchorage 7) must seek permission from the Captain of the Port at least 24 hours in advance. Only one vessel will be allowed to anchor in Anchorage 7 at one time, and the Captain of the Port will grant permission on a "first come, first serve basis." A vessel desiring to use anchorage 7 will be directed to a location within the anchorage, and no vessel may remain in the anchorage beyond twelve hours.

The Coast Guard expects that vessels normally permitted to anchor in Anchorage 7 will use Anchorage 6 off Deepwater Point or Anchorage 9 near the entrance to Mantua Creek, because they are the closest anchorages to Anchorage 7. To control access to Anchorages 6 and 9, the Coast Guard is requiring any vessel 700 feet or greater in length to obtain advance permission from the Captain of the Port before anchoring. The Coast Guard is also concerned that the holding ground in Anchorages 6 and 9 is not as good as in Anchorage 7. As larger vessels do not typically use these anchorages, any vessel 700 to 750 feet in length is required to have one tug standing alongside while at anchor, and any vessel of over 750 feet in length must have two tugs standing alongside. The tug(s) must have sufficient horsepower to prevent the vessel they're attending from swinging into the channel.

The Coast Guard is also establishing a safety zone within a 150-yard radius of the dredging operations being conducted in the Marcus Hook Range Ship Channel in the vicinity of Anchorage 7 by the dredge vessel *Essex*. The safety zone will protect mariners transiting the area from the potential hazards associated with dredging operations. Vessels transiting the Marcus Hook Range Ship Channel will have to divert from the main ship channel through Anchorage 7, and must operate at the minimum safe speed necessary to maintain steerage. No vessel may enter the safety zone unless it receives permission from the Captain of the Port.

**Regulatory Evaluation**

This temporary final rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has exempted it from review under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Although this regulation requires certain vessels to have one or two tugs alongside while at anchor, the requirement only applies to vessels 700 feet or greater in length, that choose to anchor in Anchorages 6 and 9. Alternate anchorages, such as Anchorage A (Breakwater) and Anchorage 1 (Big Stone) in Delaware Bay, are also reasonably close and generally available. Vessels anchoring in Anchorage A and 1 are not required to have tugs alongside, except when specifically directed to do so by the Captain of the Port because of a specific hazardous condition. Furthermore, few vessels 700 feet or greater are expected to enter the port during the effective-period. The majority of vessels expected are less than 700 feet and thus will not be required to have tugs alongside.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this temporary final rule will have a significant economic impact on a substantial number of small entities. "Small Entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. This regulation's greatest impact is on vessels greater than 700 feet in length which choose to anchor in Anchorages 6 and 9 and will have virtually no impact on any small entities. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this temporary final rule will not have a significant economic impact on a substantial number of small entities.

**Collection of Information**

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

**Federalism**

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

**Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule will not impose an unfunded mandate.

**Taking of Private Property**

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

**Civil Justice Reform**

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

**Protection of Children**

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

**Environment**

We considered the environmental impact of this rule and concluded that, under figure 2–1, paragraphs (34)(f) and (g), of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation.

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**List of Subjects**

*33 CFR Part 110*

Anchorage grounds.

*33 CFR Part 165*

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

**Regulation**

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 110 and 33 CFR part 165 as follows:

**PART 110—[AMENDED]**

1. The authority citation for part 110 continues to read as follows:

**Authority:** 33 U.S.C. 471, 1221 through 1236, 2030, 2035, and 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g). Section 110.1a and each section listed in 110.1a is also issued under 33 U.S.C. 1223 and 1231.

2. A new temporary § 110.157(b)(11) is added to read as follows:

**§ 110.157 Delaware Bay and River.**

* * * * *

(b) * * *

(11) *Additional requirements and restrictions for the anchorages defined in paragraphs (a)(7), (a)(8), and (a)(10) of this section.*

(i) Prior to anchoring in Anchorage 7 off Marcus Hook, as described in paragraph (a)(8) of this section, a vessel must first obtain permission from the Captain of the Port, Philadelphia, at least 24 hours in advance of arrival. Permission to anchor will be granted on a "first-come, first-serve" basis. The Captain of the Port will allow only one vessel at a time to be at anchor in Anchorage 7, and no vessel may remain within Anchorage 7 for more than 12 hours.

(ii) For Anchorage 6 as described in paragraph (a)(7) of this section, and Anchorage 9 as described in paragraph (a)(10) of this section.

(A) Any vessel 700 feet or greater in length requesting anchorage shall obtain permission from the Captain of the Port, Philadelphia, Pennsylvania, at least 24 hours in advance.

(B) Any vessel from 700 to 750 feet in length shall have one tug alongside at all times while the vessel is at anchor.

(C) Any vessel greater than 750 feet in length shall have two tugs alongside at all times while the vessel is at anchor.

(D) The master, owner or operator of a vessel at anchor shall ensure that any tug required by this section is of sufficient horsepower to assist with necessary maneuvers to keep the vessel clear of the navigation channel.

(iii) *Effective Dates.* This paragraph (b)(11) is effective from October 3, 2000 until November 30, 2000.

**PART 165—[AMENDED]**

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46. Section 165.100 is also issued under authority of Sec. 311, Pub. L. 105–383.

4. Add temporary § 165.T05–048 to read as follows:

**§ 165.T05–048 Safety Zone; Delaware Bay and River.**

(a) *Location.* The following area is a safety zone: All waters within the arc of a circle with a 150 yard radius having at its center dredging vessel *Essex* operating in or near the Marcus Hook Range Ship Channel in the vicinity of Anchorage 7.

(b) *Regulations.* (1) All persons are required to comply with the general regulations governing safety zones in § 165.23 of this part.

(2) No person or vessel may enter or navigate within this safety zone unless authorized to do so by the Captain of the Port. Any person or vessel authorized to enter the safety zone must operate in strict conformance with any directions given by the Captain of the Port and leave the safety zone immediately if the Captain of the Port so orders.

(3) Vessels may navigate in and through Anchorage 7 (Marcus Hook Anchorage) to the minimum extent necessary to stay clear of the safety zone. Vessels navigating in Anchorage 7 for this purpose shall do so at minimum speed to maintain steerage, unless otherwise directed by the Captain of the Port.

(4) The Coast Guard vessels enforcing this section can be contacted on VHF Marine Band Radio, channels 13 and 16. The Captain of the Port can be contacted at telephone number (215) 271–4940.

(5) The Captain of the Port will notify the public of any changes in the status of this safety zone by Marine Safety Radio Broadcast on VHF-FM marine band radio, channel 22 (157.1 MHz).

(c) *Definitions. Captain of the Port* means the Commanding Officer of the Coast Guard Marine Safety Office/Group Philadelphia or any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port to act on his behalf.

(d) *Effective dates:* This section is effective from October 3, 2000 to November 30, 2000.

Dated: October 3, 2000.

**T.C. Parr,**

*Captain, U.S. Coast Guard, Commander, Fifth U.S. Coast Guard District, Acting.*

[FR Doc. 00–26768 Filed 10–17–00; 8:45 am]

**BILLING CODE 4910–15–P**

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**DEPARTMENT OF TRANSPORTATION**

**Coast Guard**

**33 CFR Part 154**

**[USCG–1999–5149]**

**RIN 2115–AF79**

## Response Plans for Marine Transportation-Related Facilities Handling Non-Petroleum Oils; Clarification

**AGENCY:** Coast Guard, DOT.

**ACTION:** Clarification to final rule.

**SUMMARY:** This document clarifies a preamble discussion to a final rule published in the **Federal Register** of June 30, 2000. The rule amended Coast Guard regulations requiring response plans for marine transportation-related (MTR) facilities that handle, store, or transport animal fats or vegetable oils. Specifically, this document clarifies the explanation for higher volume ports.

**DATES:** This document becomes effective on October 18, 2000.

**FOR FURTHER INFORMATION CONTACT:** For questions on this clarification or the final rule, call Lieutenant Claudia Gelzer, Project Manager, Coast Guard, telephone 202–267–1983. For questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

**SUPPLEMENTARY INFORMATION:**

**Clarification of Preamble to Final Rule**

On June 30, 2000, we published in the **Federal Register** the final rule titled "Response Plans for Marine Transportation-Related Facilities Handling Non-Petroleum Oils" (USCG–1999–5149)[65 FR 40820]. In the preamble to that rule, on page 40822, we stated that higher volume port areas were designated based on the availability of response equipment on hand in those ports. After that publication, the Coast Guard received comments from the affected public requesting clarification of our high volume ports discussion.



We previously addressed this topic in an interim final rule, "Response Plans for Marine Transportation-Related Facilities" (58 FR 7330), that was published in the **Federal Register** on February 5, 1993. As stated in the interim rule, higher volume ports were actually designated based on the volume of all types of oil transported through those ports. Faster response times were established for those ports to encourage vessel and facility plan holders to concentrate larger quantities of response equipment as close as possible to locations having the highest probability of a significant spill incident. Over time, the industry has responded by stockpiling larger quantities of response equipment in those ports practicable for all plan holders regardless of the type of oil cargo carried.

Dated: October 12, 2000.

**Howard L. Hime,**

*Acting Director of Standards, Marine Safety and Environmental Protection.*

[FR Doc. 00–26766 Filed 10–17–00; 8:45 am]

**BILLING CODE 4910–15–P**

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**DEPARTMENT OF TRANSPORTATION**

**Coast Guard**

**33 CFR Part 165**

**[CGD01–00–224]**

**RIN 2115–AA97**

## Safety Zone: Thunderbird Air Show, Long Island Sound, Governor Alfred E. Smith/Sunken Meadow State Park, Kings Park, NY

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a safety zone for the Thunderbird Air Show Display to be held on Long Island Sound, Governor Alfred E. Smith/Sunken Meadow State Park, Kings Park, NY on October 28 & 29, 2000. This action is needed to protect persons, facilities, vessels and others in the maritime community from the safety hazards associated with this display. Entry into this safety zone is prohibited unless authorized by the Captain of the Port.

**DATES:** This rule is effective from 10:30 a.m. on October 28, 2000 until 4:30 p.m. on October 29, 2000.

**ADDRESSES:** Documents relating to this temporary final rule are available for inspection and copying at U.S. Coast Guard Group/Marine Safety Office Long Island Sound, 120 Woodward Avenue, New Haven, CT 06512. Normal office hours are between 7:30 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Chief Chris Stubblefield, Command Center, Group/Marine Safety Office Long Island Sound, New Haven, CT (203) 468–4428.

**SUPPLEMENTARY INFORMATION:**

**Regulatory Information**

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM. The sponsor of the event did not provide the Coast Guard with the final details for the event in sufficient time to publish a NPRM or a final rule 30 days in advance. The delay encountered if normal rulemaking procedures were followed would effectively cancel the event. Cancellation of this event is contrary to the public interest since the fireworks display is for the benefit of the public.

**Background and Purpose**

The New York State Office of Parks, Recreation and Historic Preservation is sponsoring an Air Show display on Long Island Sound, Governor Alfred E. Smith/Sunken Meadow State Park, Kings Park, NY. The Air Show display will occur on October 28 & 29, 2000. The safety zone covers all waters of the Long Island Sound within a 3,000 foot by 12,000 foot area which will be located in approximate position: Northeast corner; 40°–55.0.5′N, 073°–16.40′W, Northwest corner; 40°–55.0.5′N, 073°–14.40′W, Southeast corner; 40°–54.55′N, 073°–16.40′W, Southwest corner; 40°–54.55′N, 073°–14.40′W, (NAD 1983). This zone is required to protect the maritime community from the safety dangers associated with this display. Entry into or movement within this zone will be prohibited unless authorized by the Captain of the Port or his on-scene representative.

**Regulatory Evaluation**

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This safety zone involves only a portion of Long Island Sound and entry into this zone will be restricted for 6 hours on October 28 and 29, 2000. Although this regulation prevents traffic from transiting this section of Long Island Sound, the effect of this regulation will not be significant for several reasons: the duration of the event is limited; all vessel traffic may safely pass around this safety zone; and extensive, advance maritime advisories will be made.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses not-for-profit organizations that are independently owned and operated are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605 (b) that this rule will not have a significant impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of Long Island Sound from 10:30 a.m. until 4:30 p.m. on October 28 and 29, 2000. This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: The duration of the event is limited; all vessel traffic may safely pass around this safety zone; and extensive, advance maritime advisories will be made.

**Assistance for Small Entities**

Under subsection 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 [Pub. L. 104–121], the Coast Guard wants to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If your small business or organization would be affected by this rule and you have any questions concerning its provisions or options for compliance, please call Chief Chris Stubblefield at (203) 468–4428. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these

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actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

**Collection of Information**

This rule calls for no collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

**Federalism**

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

**Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

**Taking of Private Property**

This rule will not effect a taking of private property or otherwise have taking implications under E.O. 12630, Government Actions and Interference with Constitutionally Protected Property Rights.

**Civil Justice Reform**

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

**Protection of Children**

We have analyzed this proposed rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

**Environment**

The Coast Guard has considered the environmental impact of this rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction, M 16475.C, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under Addresses.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reports and recordkeeping requirements, Security measures, Waterways.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

**PART 165—[AMENDED]**

1. The authority citation for Part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46. Section 165.100 is also issued under authority of Sec. 311, Pub.L. 105–383.

2. Add temporary § 165.T01–CGD1–224 to read as follows:

**§ 165.T01–CGD1–224; Thunderbird Air Show, Governor Alfred E. Smith/Sunken Meadow State Park, Kings Park, NY.**

(a) *Location.* The safety zone includes all waters of Long Island Sound within a 3,000 foot by 12,000 foot area located on Long Island Sound, Governor Alfred E. Smith/Sunken Meadow State Park, Kings Park, NY in approximate position: Northeast corner; 40°–55.05′N, 073°–16.40′W, Northwest corner; 40°–55.0.5′N, 073°–14.40′W, Southeast corner; 40°–54.55′N, 073°–16.40′W, Southwest corner; 40°–54.55′N, 073°–14.40′W, (NAD 1983).

(b) *Effective date.* This rule is effective from 10:30 a.m. on October 28, 2000 until 4:30 p.m. October 29, 2000.

(c) (1) *Regulations.* The general regulations covering safety zones contained in § 165.23 of this part apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. U. S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard Vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(d) *Enforcement period.* This rule will be enforced from 10:30 a.m. until 4:30 p.m. on October 28 and 29, 2000 respectively.

Dated: October 5, 2000.

**David P. Pekoske,**

*Captain, U.S. Coast Guard, Captain of the Port, Long Island Sound.*

[FR Doc. 00–26769 Filed 10–17–00; 8:45 am]

BILLING CODE 4910–15–P

**DEPARTMENT OF TRANSPORTATION**

**Coast Guard**

**33 CFR Part 165**

**[CGD05–00–047]**

**RIN 2115–AA97**

**Safety Zone; Strategic Booming Exercise in the Cape May Harbor, Cape May, NJ**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing temporary regulations in the Cape May Harbor, Cape May, NJ during a New Jersey Department of Environmental Protection oil spill booming test in the north end of the Cape May Harbor. This action is necessary to provide for the safety of life and property on navigable waters during the booming test. This action will restrict vessel traffic as the north end of the Cape May Harbor will be closed to all vessel traffic.

**DATES:** This rule is effective from 7 a.m. to 1 p.m. on October 19, 2000.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket CGD05–00–047 and are available for inspection or copying at Coast Guard Marine Safety Office/Group Philadelphia, One Washington Avenue, Philadelphia, Pennsylvania 19147 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Junior Grade Wade Kirschner, Coast Guard Marine Safety Office/Group Philadelphia, (215) 271–4889.

**SUPPLEMENTARY INFORMATION:**

**Regulatory Information**

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. We were notified of the oil pollution booming test in the Cape May Harbor with insufficient time to publish an NPRM, allow for comments, and publish a final rule.

Under 5 U.S.C. 553 (d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. We were informed on September 7, 2000 that a strategic booming test would take place in the Cape May Harbor. Delaying the effective date of the rule would be contrary to the public interest, since immediate action is needed to protect mariners against potential hazards associated with the temporary placement of boom across the north end of the Cape May Harbor.



**Background and Purpose**

The strategic booming exercise is in response to a 1996 oil spill that fouled the New Jersey shoreline from Manasquan to Cape May. The New Jersey Department of Environmental Protection commissioned a project to develop potential protection strategies for each tidal inlet occurring along the Atlantic Coast of New Jersey.

The thirteen tidal inlets along New Jersey's coastline are actually channels that divide the barrier islands into segments. The inlets are subject to reversing tidal currents, and are conduits for the volume of water that flows in and out of the bay/estuarine system during a tidal cycle called the tidal prism. It is through these conduits that oil spilled on open ocean waters could reach the sensitive resources, such as salt marshes, that occur along the bay/estuarine shorelines. Coastal tidal inlets are therefore focal points for designing strategies to protect these vital resources from spilled oil.

**Regulatory Evaluation**

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

We expect the economic impact of this temporary final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

The primary impact of these regulations will be on vessels wishing to transit the affected waterways during the booming exercise on October 19, 2000. Although this regulation prevents traffic from transiting portions of the Cape May Harbor during the event, that restriction is limited in duration, affects only a limited area, and will be well publicized to allow mariners to make alternative plans for transiting the affected area. In addition, there is an alternate route out of the harbor through the Cape May Canal.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small business, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of fishing or recreational vessels intending to transit the north end of the Cape May Harbor.

The rule will not have a significant impact on a substantial number of small entities for the following reasons: the restrictions are limited in duration, affect only limited areas, and although the safety zone will apply to the entire width of the navigable channel, traffic will be able to exit the north end of the Cape May Harbor via the Cape May Canal. The oil spill prevention exercise has been well publicized by the New Jersey Department of Environmental Protection, which distributed flyers to the marinas and boaters located in the north end of the Cape May Harbor. In addition, before the effective period, the Coast Guard will issue maritime advisories to allow mariners to make alternative plans for transiting the affected areas.

**Assistance for Small Entities**

Under section 213 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we are willing to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsmen and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small businesses. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

**Collection of Information**

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

**Federalism**

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

**Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule will not impose an unfunded mandate.

**Taking of Private Property**

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

**Civil Justice Reform**

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

**Protection of Children**

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

**Environment**

We considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

**Regulation**

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

**PART 165—[AMENDED]**

1. The authority citation for Part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5;

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49 CFR 1.46. Section 165.100 is also issued under authority of Sec. 311, Pub. L. 105–383.

2. Add temporary § 165.T05–047 to read as follows:

**§ 165.T05–047 Safety Zone; Strategic Booming Exercise in the Cape May Harbor, Cape May, NJ.**

(a) Definitions. (1) *Captain of the Port* means the Commanding Officer of the Coast Guard Marine Safety Office/Group Philadelphia or any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port to act on his behalf.

(2) *Coast Guard Representative* is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commanding Officer, Coast Guard Marine Safety Office/Group Philadelphia.

(b) *Location.* This rule establishes a safety zone to include all waters 100 feet in any direction from all booming equipment and any vessels participating in the strategic booming exercise. One end of the boom will start from the Coast Guard Buoy Yard (approximate position 38° 56′ 90″ N, 074° 53′ 30″ W) on the south side of the entrance to the North end of the Cape May Harbor and will extend out near the green can buoy number "3". From the green can marker buoy "3", the boom will extend across the navigable channel and be attached to the red flashing (2+1) day marker "C". From the day marker, the boom will extend to the north side of the north entrance to the Cape May Harbor and end near Snow's Fish Processing Plant (approximate position 38° 57′ 20″ N, 74° 53′ 00″ W). All coordinates reference Datum NAD 1983.

(c) *Regulations.* (1) All persons are required to comply with the general regulations governing safety zones in § 165.23 of this part.

(2) No person or vessel may enter or navigate within this safety zone unless authorized to do so by the Coast Guard Representative. Any person or vessel authorized to enter the safety zone must operate in strict conformance with any directions given by the Coast Guard Representative and leave the safety zone immediately if the Coast Guard Representative so orders.

(3) The Coast Guard vessels enforcing this section can be contacted on VHF Marine Band Radio, channels 13 and 16. The Captain of the Port can be contacted at telephone number (215) 271–4940.

(4) The Coast Guard Representative will notify the public of any changes in the status of this safety zone by Marine Safety Radio Broadcast on VHF–FM marine band radio, channel 22 (157.1 MHz).

(d) *Effective dates.* These regulations are effective from 7 a.m. to 1 p.m. on October 19, 2000.

Dated: September 20, 2000.

**G.F. Adams,**

*Captain, U.S. Coast Guard, Captain of the Port Philadelphia.*

[FR Doc. 00–26772 Filed 10–17–00; 8:45 am]

BILLING CODE 4910–15–P

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**DEPARTMENT OF TRANSPORTATION**

**Coast Guard**

**33 CFR Part 165**

**[CGD11–00–007]**

**RIN 2115–AE84**

## Regulated Navigation Area; San Pedro Bay, California

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is revising the Regulated Navigation Area for San Pedro Bay, California. Due to port expansion projects in the Ports of Los Angeles and Long Beach, the Coast Guard conducted a Port Access Route Study (PARS) which recommended, among other things, changes to the San Pedro Bay Regulated Navigation Area (RNA). The Coast Guard is also making minor changes to some vessel operational procedures and requirements to reflect the necessary modifications with respect to traffic management due to the port construction and expansion projects.

**DATES:** This rule is effective as of October 18, 2000.

**ADDRESSES:** Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD11–00–007] and are available for inspection or copying at Commander (Pmc-3), USCG PACAREA/D11, Bldg 50–6, Coast Guard Island, Alameda, CA 94501–5100, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Patricia Springer, Chief Vessel Traffic Management Section, 11th Coast Guard District, telephone (510) 437–2951; e-mail pspringer@d11.uscg.mil.

**SUPPLEMENTARY INFORMATION:**

### Regulatory History

In 1999, the Coast Guard conducted a Port Access Route Study (PARS), which we announced in a document published in the **Federal Register** on March 11, 1999 (63 FR 12140). A PARS was needed to evaluate the effects of port improvement projects for the ports of Los Angeles and Long Beach on navigational safety and vessel traffic management efficiency, and to recommend any necessary changes to existing routing measures. The Coast Guard completed the study in July 1999 and announced the results of this study in a Notice published in the **Federal Register** on May 19, 2000 (65 FR 31856). Among other things, this study recommended modifications to the precautionary areas, existing TSS's, and aids to navigation.

On July 21, 2000, we published a notice of proposed rulemaking (NPRM) entitled Regulated Navigation Area; San Pedro Bay, California, in the **Federal Register** (65 FR 45328). The comment period ended September 5, 2000. We did not receive any comments on the proposed rule. No public hearing was requested, and none was held.

During the drafting of this Final Rule, a few minor changes were made to items discussed in the NPRM. The Coast Guard expects that these minor changes from the content of the NPRM will not impose a burden on the public.

1. In the Discussion of Regulation section of the NPRM, it correctly states that the length of the Long Beach Pilot area will be expanded approximately 1.7 nm to the south. Subsequently, in the same section, it states incorrectly that the Long Beach Pilot Area will be expanded to the south approximately 1.6 nm. This error in the NPRM is corrected in this final rule to reflect that the length of the Long Beach Pilot Area will be expanded approximately 1.7 nm to the south.

2. The second change corrects an error in the last paragraph of the Discussion of Regulation section of the NPRM. The sentence, "When a vessel drawing more than 50 feet * * *" is corrected to read, "When a vessel 50 feet and greater * * *"

3. The third change deals with the nomenclature used to designate the geographical coordinates of the RNA, Pilot Areas, Deep Water Routes, and the Middle Breakwater Area. The format used in the NPRM described the latitudes and longitudes in degrees, minutes and seconds. In contrast, the format used in the final rule describes latitudes and longitudes in degrees, minutes, and tenths of minutes. The format used in the final rule is easier to read and the NAD 1983 datum is accounted for throughout the regulation. Also, describing the coordinates for the RNA in this manner is consistent with the way the coordinates are published in the Los Angeles/Long Beach Traffic Separation Scheme. See 65 FR 53,911 (Sep. 6, 2000) (to be codified at 33 CFR pt. 167).

4. The fourth and final change deals with the terms of the Proposed Regulation at § 165.1109(e)(5). The NPRM published "No vessel may enter the waters between Commercial Anchorage G and the Middle Breakwater * * *" This Final Rule now refers to the specific vessels described in paragraph (d), General Regulations, which may not enter the waters between Commercial Anchorage G and the Middle Breakwater.



### Regulatory Information

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. On September 6, 2000 the Coast Guard amended the Los Angeles/Long Beach Traffic Separation Scheme (TSS) to route commercial vessels farther offshore for safety and environmental protection reasons in the San Pedro Bay area. *See* 65 FR 53911. One of the amendments to the TSS expanded the Precautionary Area to match the shifted coordinates of the western and southern traffic lanes. This new Precautionary Area also coincides with the expanded coordinates for the RNA.

The RNA and the Precautionary Area establish the manner in which vessels transit through San Pedro Bay. As explained in the NPRM, the RNA has specific vessel operation requirements which are necessary because of hazardous conditions in the area. In order to enforce such requirements within the RNA, which now must have the expanded boundaries to match the TSS amendments, we are making this rule effective on the date of publication so that the RNA is in place as close as possible to the effective date of the TSS.

Also, because of these changes to the TSS and the RNA, a complete update of several local charts is required. Chart publication cannot occur until the RNA rule becomes final. Since these charts are essential to safe navigation in San Pedro Bay and the approaches of the Ports of Los Angeles—Long Beach, there is good cause to implement this final rule upon publication in the **Federal Register**.

### Background and Purpose

The Commander, Eleventh Coast Guard District is modifying the San Pedro Bay RNA. As previously discussed, this change makes the RNA geographically the same as the precautionary area. A Precautionary Area is an internationally recognized routing measure comprising an area within defined limits where ships must navigate with particular caution. By itself, a precautionary area does not impose specific maneuvering requirements on vessels. A Regulated Navigation Area (RNA) is a regulatory measure that defines an area, in which the Coast Guard has imposed specific vessel operating requirements because of the existence of hazardous conditions. Due to the quantity of vessel traffic and diversity of types of vessels transiting the approach to Los Angeles and Long Beach harbors, the Coast Guard thinks that the general guidance of a Precautionary Area is insufficient to ensure safe transit of the area. Therefore, in addition to establishing the Precautionary Area, the Coast Guard is also establishing an RNA, which covers the same area of waters and includes specific vessel operating procedures.

The following is a summary of the specific changes to the RNA:

- The southern boundary of the RNA is moved to the south approximately 2.2 nm to align with the new western traffic separation scheme. The southeastern corner of the RNA is shifted to the west approximately 1.8 nm on a bearing on 220 degrees T from the easterly most point of the existing Precautionary Area, to align with the new southern traffic separation scheme.
- The Los Angeles Pilot Area is expanded approximately 0.4 nm to the south-southeast.
- The Long Beach Pilot Area is expanded approximately 1.7 nm to the south.
- A Deep Water Traffic Lane approximately 3.27 nm long is established in the Los Angeles approach channel.
- A Deep Water Traffic Lane approximately 1.9. nm long is established in the Long Beach approach channel.
- A Deep Water Pilot Area is established just south of the Los Angeles Deep Water Traffic Lane. It is centered on position 33°39.00N, 118°13.19W, approximately 0.5 nm south of the southern terminus of the Los Angeles Channel and will be 1.0 nm in diameter.

In addition, this rule codifies the amended RNA into Title 33 Part 165 of the Code of Federal Regulations.

### Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and did not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11040; February 26, 1979). The economic impact of this rule is so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of Department of Transportation was unnecessary.

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" may include small businesses and not-for-profit organizations that are not dominant in their respective fields, and governmental jurisdictions with populations less than 50,000. For the same reasons set forth in the above Regulatory Evaluation, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on any substantial number of entities, regardless of their size.

### Assistance for Small Entities

In accordance with § 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard offered to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rule making process. No concerns or questions from small businesses were brought to our attention on this rule.

### Collection of Information

This regulation contains no collection of information requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

### Federalism

The Coast Guard has analyzed this regulation under the principles and criteria contained in Executive Order 13132 and has determined that this regulation does not have federalism implications under that Order.

### Unfunded Mandates

Under the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), the Coast Guard considered whether this rule will result in an annual expenditure by state, local, and tribal governments, in the aggregate of $100 million (adjusted annually for inflation). If so, the Act requires that a reasonable number of regulatory alternatives be considered, and that from those alternatives, the least costly, most cost-effective, or least burdensome

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alternative that achieves the objective of the rule be selected. No state, local, or tribal government entities are affected by this rule, so it will not result in annual or aggregate costs of $100 million or more. Therefore, the Coast Guard is exempt from any further regulatory requirements under the Unfunded Mandates Act.

**Taking of Private Property**

This rule will not effect a taking of private property or otherwise have taking implications under this Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

**Civil Justice Reform**

This rule meets applicable standards in section 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

**Protection of Children**

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule does not concern an environmental risk to safety disproportionately affecting children.

**Environmental Assessment**

The Coast Guard has considered the environmental impact of this regulation and concluded that under Chapter 2.B.2. of Commandant Instruction M16475.1C, Figure 2–1, paragraph (34)(g), it has no significant environmental impact and it is categorically excluded from further environmental documentation.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for 33 CFR Part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. Revise § 165.1109 to read as follows:

**§ 165.1109 San Pedro Bay, California—Regulated Navigation Area.**

(a) *Applicability.* This section applies to all vessels unless otherwise specified. (Note: All geographic coordinates are defined using North American Datum 1983 (NAD 83)).

(b) *Deviations.* The Captain of the Port of Los Angeles-Long Beach or his or her designated representative may authorize a deviation from the requirements of this regulation when it is deemed necessary in the interests of safety.

(c) *Location.* (1) The San Pedro Bay Regulated Navigation Area (RNA) consists of the water area enclosed by the Los Angeles-Long Beach breakwater and a line connecting Point Fermin Light at 33°42.30′N, 118°17.60′W, with the following geographical positions:

| Latitude | Longitude |
|---|---|
| 33°35.50′ N | 118°17.60′ W |
| 33°35.50′ N | 118°09.00′ W |
| 33°37.70′ N | 118°06.50′ W |
| 33°43.40′ N | 118°10.80′ W |

(2) The San Pedro Bay RNA consists of the following named sub-areas, defined by lines connecting their respective geographic coordinates:

(i) *The Los Angeles Pilot Area:*

| Latitude | Longitude |
|---|---|
| 33°42.50′ N | 118°15.10′ W (Los Angeles Light) |
| 33°42.62′ N | 118°14.70′ W |
| 33°41.30′ N | 118°13.50′ W |
| 33°40.85′ N | 118°14.90′ W |
| 33°42.50′ N | 118°15.10′ W |

(ii) *The Long Beach Pilot Area:*

| Latitude | Longitude |
|---|---|
| 33°43.40′ N | 118°11.20′ W (Long Beach Light) |
| 33°43.40′ N | 118°10.80′ W |
| 33°41.50′ N | 118°10.22′ W |
| 33°40.52′ N | 118°10.22′ W |
| 33°40.52′ N | 118°11.82′ W |
| 33°41.50′ N | 118°11.82′ W |
| 33°43.40′ N | 118°11.20′ W |

(iii) *The Los Angeles Deep Water Traffic Lane:*

| Latitude | Longitude |
|---|---|
| 33°42.47′ N | 118°14.95′ W |
| 33°42.56′ N | 118°14.75′ W |
| 33°39.48′ N | 118°13.32′ W |
| 33°39.42′ N | 118°13.55′ W |
| 33°42.47′ N | 118°14.95′ W |

(iv) *The Long Beach Deep Water Traffic Lane:*

| Latitude | Longitude |
|---|---|
| 33°43.43′ N | 118°11.15′ W |
| 33°43.39′ N | 118°10.90′ W |
| 33°41.51′ N | 118°10.71′ W |
| 33°41.50′ N | 118°10.95′ W |
| 33°43.43′ N | 118°11.15′ W |

(v) *Los Angeles Deep Water Pilot Area:* A 0.5nm radius around 33°39.00′ N, 118°13.19′ W.

(d) *General Regulations.* The following regulations contained in paragraphs (d)(1) through (d)(3) of this section apply to power driven vessels of 1600 or more gross tons, a towing vessel of 8 meters (approximately 26 feet) or over in length engaged in towing, or vessels of 100 gross tons and upward carrying one or more passengers for hire.

(1) A vessel shall not exceed a speed of 12 knots through the water within the RNA.

(2) A vessel navigating within the RNA, shall have its engine(s) ready for immediate maneuver and shall operate its engine(s) in a control mode and on fuel that will allow for an immediate response to any engine order, ahead or astern, including stopping its engine(s) for an extended period of time.

(3) A vessel navigating within the RNA shall maintain a minimum separation from other vessels of at least 0.25 nm.

(e) *Specific Regulations*—(1) *Los Angeles Pilot Area.* (i) No vessel may enter the Los Angeles Pilot Area unless it is entering or departing Los Angeles Harbor entrance (Angels Gate).

(ii) Vessels entering the Los Angeles Pilot Area shall pass directly through without stopping or loitering except as necessary to embark or disembark a pilot.

(2) *Long Beach Pilot Area.* (i) No vessel may enter the Long Beach Pilot Area unless it is entering or departing Long Beach Harbor entrance (Queens Gate).

(ii) Vessels entering the Long Beach Pilot Area shall pass directly through without stopping or loitering except as necessary to embark or disembark a pilot.

(iii) Every vessel shall leave Long Beach Approach Lighted Whistle Buoy "LB" to port when entering and departing Long Beach Channel and departing vessels shall pass across the southern boundary of the Long Beach Pilot Area.

(3) *Los Angeles and Long Beach Deep Water Traffic Lanes.* When a vessel of 50 foot draft or greater is using the Los Angeles or Long Beach Deep Water Traffic Lane no other vessel shall enter the Deep Water Traffic Lane if it will result in a meeting, crossing or overtaking situation.

(4) *Los Angeles Deep Water Pilot Area.* When a vessel of 50 foot draft or greater is embarking or disembarking a pilot in the Los Angeles Deep Water Pilot Area no other vessel shall enter the Deep Water Pilot Area.



(5) Vessels described in paragraph (d) of this section may not enter the waters between Commercial Anchorage G and the Middle Breakwater as defined by an area enclosed by the line beginning at Los Angeles Main Channel Entrance Light 2 (33°42.70′ N, 118°14.70′ W), thence east along the Middle Breakwater to Long Beach Light (33°43.40′ N, 118°11.20′ W), thence south to (33°43.08′ N, 118°11.26′ W), thence westerly to (33°43.08′ N, 118°12.26′ W), thence southwesterly parallel to the breakwater to (33°42.43′ N, 118°14.30′ W), thence to the point of origin, unless such vessel is:

(i) In an emergency;

(ii) Proceeding to anchor in or departing Commercial Anchorage G;

(iii) Standing by with confirmed pilot boarding arrangements; or,

(iv) Engaged in towing vessels to or from Commercial Anchorage G, or to or from the waters between Commercial Anchorage G and the Middle Breakwater.

Dated: October 2, 2000.

**C.D. Wurster,**

*Captain, U.S. Coast Guard, Commander, Eleventh U.S. Coast Guard District, Acting.*

[FR Doc. 00–26773 Filed 10–17–00; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Parts 52 and 81**

**[MO 114–1114a; FRL–6885–6]**

## Approval and Promulgation of Implementation Plans; State of Missouri; Designation of Areas for Air Quality Planning Purposes, Dent Township

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is announcing the redesignation of the lead nonattainment area in western Iron County, Missouri, to attainment of the National Ambient Air Quality Standards (NAAQS). We are approving the maintenance plan for this area including a consent order which was submitted with the redesignation request, and we are also approving the revision to Missouri's Restriction of Emissions of Lead From Specific Lead Smelter-Refinery Installations rule which ensures the permanent and enforceable emission reductions by clarifying the emissions limits for the Doe Run Resource Recycling Facility, and removes the text which could have allowed this facility to resume operation as a primary smelter.

**DATES:** This rule is effective on December 18, 2000 without further notice, unless EPA receives adverse written comment by November 17, 2000. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Written comments must be submitted to Kim Johnson, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Copies of documents relative to this action are available for public inspection during normal business hours at the above listed Region 7 location. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

**FOR FURTHER INFORMATION CONTACT:** Kim Johnson at (913) 551–7975.

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever "we, us, or our" is used, we mean EPA. This section provides additional information by addressing the following questions:

What Is a State Implementation Plan (SIP)?
What is the Federal approval process for a SIP?
What does Federal approval of a state regulation mean to me?
What requirements must be followed for redesignations to attainment?
What is being addressed in this document?
Have the requirements for approval of a SIP revision and redesignation to attainment been met?
What action is EPA taking?

### What Is a State Implementation Plan (SIP)?

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to EPA for approval and incorporation into the Federally enforceable SIP.

Each Federally approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

### What Is the Federal Approval Process for a SIP?

In order for state regulations to be incorporated into the Federally enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at Title 40, part 52, entitled "Approval and Promulgation of Implementation Plans." The actual state regulations which are approved are not reproduced in their entirety in the CFR outright but are "incorporated by reference," which means that we have approved a given state regulation with a specific effective date.

### What does Federal approval of a state regulation mean to me?

Enforcement of the state regulation before and after it is incorporated into the Federally approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

### What requirements must be followed for redesignation to attainment?

Under section 307(d) of the CAA, we are required to promulgate designations of areas identifying their status with respect to attainment of the ambient standards described previously. We are required to determine whether each area is attaining the standard, not attaining the standard, or cannot be designated based on available information. Once an area is designated as nonattainment for a standard, it cannot be redesignated to attainment until the requirements of section 107(d)(3)(E) of the CAA are met. These requirements are discussed below, and include a revision to the SIP

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to show how the state, in which the area is located, plans to maintain the standards in the future in the area to be redesignated to attainment.

**What is being addressed in this document?**

We are redesignating the nonattainment area in western Iron County, Missouri, to attainment for lead and taking final action to approve the submission for the Doe Run Resource Recycling Facility near Bixby, Missouri, as an amendment to the SIP.

We are also taking final action to approve the revision to rule 10 CSR 10–6.120, Restriction of Emissions of Lead From Specific Lead Smelter-Refinery Installations, as an amendment to the SIP.

The basis for our approval of the rule is described in this notice, and in more detail in the technical support document (TSD) prepared for this action. The TSD is available at the address identified above.

The purpose of the submittal is to meet the criteria under section 107(d)(3) of the Clean Air Act Amendments (CAAA) for redesignation of the nonattainment area in western Iron County to attainment for the lead standard.

The area was designated as nonattainment for lead in November 1991, effective January 6, 1992. The boundaries of the nonattainment area follow the Dent Township in western Iron County, Missouri. The major source of lead emissions in this nonattainment area is the Doe Run Resource Recycling Facility, near Bixby, Missouri.

Primary smelting of lead began at this location in 1968, but the current facility ceased operation as a primary smelter in 1988 and has been operating as a secondary smelter and resource recovery operation since 1991.

Section 107(d)(3) of the CAAA establishes the five requirements to be met before we can designate an area from nonattainment area to attainment. These are:

A. The area has attained the NAAQS;

B. The area has a fully approved SIP under section 110(k) of the act;

C. We have determined that the improvement in air quality is due to permanent and enforceable emissions reductions;

D. We have determined that the maintenance plan for the area has met the requirements of section 175A of the Act and;

E. The state has met all requirements applicable to the area under section 110 and part D.

*Attainment of the NAAQS*

The state submittal provided ambient air monitor data showing that this area has consistently shown compliance with the NAAQS for lead since the second quarter of 1988. The NAAQS for lead is 1.5 micrograms per cubic meter (1.5 $\mu g/m^3$, maximum quarterly average. A quarterly average is considered a violation of the standard if it is at least 1.6 $\mu g/m^3$ when rounded to the tenths from the hundredths place when monitored.

Air dispersion modeling using the ISCST Version 3 dated June 24, 1999, was used to evaluate the concentration of lead resulting from operations at the Doe Run Resource Recycling Facility. The maximum concentration predicted by the model was a value of 0.73 $\mu g/m^3$ which is in compliance with the lead standard.

*Fully Approved SIP*

Missouri submitted part D nonattainment SIPs for the Doe Run Resource Recycling Facility and its predecessor in 1980 and in 1993 and 1994. The SIPs established emission, operational and work practice standards. These requirements included enforceable throughput and emission point limits, identified emission control projects that the facility would have to complete prior to processing lead concentration and producing primary lead, and established contingency measures to reduce fugitive emissions for the secondary process. The 1980 part D nonattainment SIP was approved on April 27, 1981, (46 FR 23412) and the 1993/1994 submission was fully approved under section 110(k) of the CAA, as a revision to the Missouri SIP on August 4, 1995 (60 FR 39851). A detailed discussion of the latter SIP revision can be found in the August 4, 1995, **Federal Register** notice.

*Permanent and Enforceable Emissions Reductions*

The permanent and enforceable emission reductions at the Doe Run Resource Recycling Facility include implementation of the part D nonattainment SIP, permanent closure of the primary lead smelting operation, controls on the secondary lead smelting operation, and the installation of reasonably available control technology and reasonably available control measures.

The revision to rule 10 CSR 10–6.120, Restriction of Emissions of Lead From Specific Lead Smelter-Refinery Installations, ensures the permanent and enforceable emission reductions by clarifying the emissions limits for the facility and removing the text which could have allowed this facility to resume operation as a primary smelter. Because no violations of the lead standard have occurred since the facility ceased operation as a primary smelter in 1988, we believe that this clarification will make enforceable the operating scenario which has led to air quality improvements and attainment of the standard.

*Fully Approved Maintenance Plan*

The maintenance plan submitted as part of the SIP revision provides for maintenance of the relevant NAAQS in the area for at least ten years after the approval of redesignation to attainment.

The maintenance plan for the Doe Run Resources Recycling Facility addresses the monitoring network, the emission inventory, the maintenance demonstration, and verification of continued attainment, as described in more detail in the TSD. The plan also includes contingency measures, which require additional paving and roadway sweeping, and improvements to baghouse controls, to be implemented if monitored violations occur in the future. The contingency measures are specified in the consent order which was approved by MDNR and Doe Run.

Eight years after the redesignation, the state has committed to submit a revised maintenance plan demonstrating attainment for ten years following the initial ten-year period.

*Part D and Section 110*

The state has met these requirements by submitting and implementing the nonattainment plan to bring the area back into attainment and subsequently by submitting an appropriate maintenance plan to keep the area in attainment, as described previously in this notice and in the TSD.

*Rule Revision*

The revision to rule 10 CSR 10–6.120, Restriction of Emissions of Lead From Specific Lead Smelter-Refinery Installations, is an important part of the redesignation process for this nonattainment area. The changes to the rule include revising the emissions limits for the Doe Run Resource Recycling Facility and removing all text which could have allowed this facility to resume operation as a primary smelter. Another significant change modifies the title of the rule, consistent with the changes in the body of the rule, so that the rule applies to "specific" lead smelters (including secondary smelters) rather than addressing only "primary" lead smelters.



**Have the requirements for approval of a SIP revision and redesignation to attainment been met?**

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in the TSD which is part of this document, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations. The state submittal also meets the criteria for redesignation to attainment in section 107(d)(3) of the CAA, as explained above and in the TSD.

**What action is EPA taking?**

We are taking final action to approve the submission for the Doe Run Resource Recycling Facility near Bixby, Missouri, as an amendment to the SIP and redesignate the nonattainment area in western Iron County, Missouri, to attainment for lead.

We are also taking final action to approve the revision to rule 10 CSR 10–6.120, Restriction of Emissions of Lead From Specific Lead Smelter-Refinery Installations, as an amendment to the SIP.

We are processing this action as a final action because the revisions make routine changes to the existing rules which are noncontroversial, and because the area has been attaining the lead standard since 1988 based on monitored data. Therefore, we do not anticipate any adverse comments.

**Administrative Requirements**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule approves preexisting requirements under state law. In addition, the redesignation is an action which affects the status of a geographic area but does not impose any new requirements on governmental entities or sources. Therefore, it does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, our role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), we have no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, we have taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the Executive Order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. We will submit a report containing this rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 18, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects**

*40 CFR Part 52*

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

*40 CFR Part 81*

Environmental protection, Air pollution control, Lead.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: September 27, 2000.

**Dennis Grams,**

*Regional Administrator, Region 7.*

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

**PART 52—[AMENDED]**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

**Subpart AA—Missouri**

2. Section 52.1320 is amended by:

a. In the table to paragraph (c), Chapter 6, revise the entry for 10–6.120.

The revision reads as follows:

**§ 52.1320 Identification of plan.**

* * * * *

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(c) * * *

EPA-APPROVED MISSOURI REGULATIONS

| Missouri citation | Title | State effective date | EPA approval date | Explanation |
|---|---|---|---|---|
| **Missouri Department of Natural Resources** | | | | |
| **Chapter 6—Air Quality Standards, Definitions, Sampling and Reference Methods, and Air Pollution Control Regulations for the State of Missouri** | | | | |
| 10–6.120 | Restriction of Emissions of Lead from Specific Lead Smelter-Refinery Installations. | October 30, 1998 | [insert FR cite] October 18, 2000. | |

b. In the table to paragraph (d), by adding entry "Doe Run Resource Recycling Facility near Buick, Missouri", immediately before the center heading "St. Louis City Incinerator Permits".

The addition reads as follows:

**§ 52.1320 Identification of plan.**

(d) * * *

EPA-APPROVED SOURCE SPECIFIC PERMITS AND ORDERS

| Name of source | Order/permit number | State effective date | EPA approval date | Explanation |
|---|---|---|---|---|
| Doe Run Resource Recycling Facility near Buick, MO. | Consent Order | May 11, 2000 | October 18, 2000. | |

c. In the table to paragraph (e), by adding entry for Doe Run Resource Recycling Facility at the end of the table. The addition reads as follows:

**§ 52.1320 Identification of plan.**

(e) * * *

EPA-APPROVED MISSOURI NONREGULATORY SIP PROVISIONS

| Name of nonregulatory SIP provision | Applicable geographic or nonattainment area | State submitted date | EPA approval date | Explanation |
|---|---|---|---|---|
| Doe Run Resource Recycling Facility near Buick, MO. | Dent Township in Iron County. | May 17, 2000 | October 18, 2000. | |

**PART 81—[AMENDED]**

1. The authority citation for part 81 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

**Subpart C—Section 107 Attainment Status Designations**

2. The table in § 81.326 entitled "Missouri Lead" is amended to revise the first entry for Iron County to read as follows:

**§ 81.326 Missouri.**

* * * * *

Missouri—Lead

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date | Type | Date | Type |
| Iron County (part) Within boundaries of Dent Township | October 18, 2000 | Attainment. | | |



[FR Doc. 00–26501 Filed 10–17–00; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[DA 00–2238; MM Docket No. 99–278; RM–9424]**

### Radio Broadcasting Services; Susquehanna, PA and Conklin, NY

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the joint request of Majac of Michigan, Inc., and Equinox Broadcasting Corporation, reallots Channel 223A from Susquehanna, Pennsylvania, to Conklin, New York, and modifies Station WKGB–FM's license accordingly. We also reallot Channel 263A from Conklin, New York, to Susquehanna, Pennsylvania, and modify Station WCDW(FM)'s license accordingly. *See* 64 FR 51284, September 22, 1999. Channel 223A can be reallotted to Conklin in compliance with the Commission's minimum distance separation requirements at Station WKGB–FM's requested site. The coordinates for Channel 223A at Conklin are 42–06–53 North Latitude and 75–51–16 West Longitude. Additionally, Channel 263A can be reallotted to Susquehanna in compliance with the Commission's minimum distance separation requirements at Station WCDW(FM)'s requested site. The coordinates for Channel 263A at Susquehanna are 42–02–30 North Latitude and 75–41–30 West Longitude.

**DATES:** Effective November 13, 2000.

**FOR FURTHER INFORMATION CONTACT:** Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 99–278, adopted September 20, 2000, and released September 29, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

**Part 73 [AMENDED]**

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 54, 303, 334, 336.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under New York, is amended by adding Channel 223A and removing Channel 263A at Conklin.

3. Section 73.202(b), the Table of FM Allotments under Pennsylvania, is amended by adding Channel 263A and removing Channel 223A at Susquehanna.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 00–26714 Filed 10–17–00; 8:45 am]

BILLING CODE 6712–01–P

## DEPARTMENT OF ENERGY

### 48 CFR Parts 931 and 970

**RIN 1991–AB36**

### Acquisition Regulations; Costs Associated With Whistleblower Actions

**AGENCY:** Department of Energy.

**ACTION:** Final rule.

**SUMMARY:** The Department of Energy (Department) is amending its acquisition regulations to address contractor defense, settlement and award costs associated with contractor employee whistleblower actions. This action implements a cost principle approach in the Department of Energy Acquisition Regulation (DEAR) which will apply to the Department's cost reimbursement contractors and subcontractors with a contract amount exceeding $5,000,000.

**EFFECTIVE DATE:** This final rule is effective November 17, 2000.

**FOR FURTHER INFORMATION CONTACT:** Terrence D. Sheppard, (202) 586–8193; e-mail terry.sheppard@hq.doe.gov.

**SUPPLEMENTARY INFORMATION:**

I. Background.
II. Disposition of Comments
III. Procedural Requirements.
A. Review Under Executive Order 12866.
B. Review Under Executive Order 12988.
C. Review Under the Regulatory Flexibility Act.
D. Review Under the Paperwork Reduction Act.
E. Review Under the National Environmental Policy Act.
F. Review Under Executive Order 13132.
G. Review Under the Unfunded Mandates Reform Act of 1995.
H. Congressional Notification.

**I. Background**

The purpose of this final rule is to establish the Department's policy on the reimbursement of contractor settlement, award and defense costs associated with contractor employee whistleblower actions. This policy will cover the Department's cost reimbursement contractors and subcontractors with a contract amount in excess of $5,000,000. Costs associated with whistleblower actions filed by an employee in Federal and state courts, and with Federal agencies under 29 CFR Part 24, 48 CFR Subpart 3.9, 10 CFR Part 708 or 42 U.S.C. 7239 will be subject to the reimbursement provisions of the new regulation.

This action grows out of rulemaking notices published on January 5, 1998 (63 FR 386) and March 24, 1999 (64 FR 14206). The first notice published for comment a proposed rule to create a whistleblower costs clause. The second notice reopened the comment period for an alternate proposal using a cost principle approach.

The alternate proposal was the result of a number of factors, including: (1) The Department's experience in a few high profile whistleblower actions; (2) further review of the practices of the rest of the Federal Government with this cost category; (3) a Department effort to reduce the number of cost clauses in DEAR Part 970 in favor of a cost principle approach (notice of proposed rule published June 14, 2000 (65 FR 37335)); and (4) the comments received in response to the initial proposed rule.

For the reasons stated below, the Department has now concluded that the cost principle approach, which provides contracting officers with greater flexibility in making determinations on a case-by-case basis, is the best approach for the circumstances facing the Department and its facility management contractors. However, the Department has modified its initial cost principle proposal in response to some of the comments received concerning that proposal.

**II. Disposition of Comments**

Two sets of comments were received in response to the January 5, 1998, notice of proposed rulemaking and five sets of comments were received in response to the March 24, 1999, notice to reopen the comment period. Except

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for one set of comments from another Federal agency, all comments were from the Department's contractors.

*Contract Cost Clause Approach*

Both sets of comments on the proposed cost clause pointed out that the result of the proposal to reimburse settlement costs, while excluding costs where an adverse determination is made, would provide a financial incentive for the Department's contractors to settle any employee claim of retaliation, no matter how lacking in merit, rather than risk an adverse determination and the disallowance of costs. The comments also asserted that such a liberal policy for settlement of questionable claims would encourage frivolous claims.

It was, in part, as a result of these comments that the Department proposed the alternate cost principle approach providing contracting officers with greater flexibility in making case-by-case determinations based on the facts of each case. In a case-by-case approach, costs resulting from unlawful or egregious contractor conduct would be disallowed, while costs resulting from the exercise of prudent business judgment by the contractor would be allowable.

*Cost Principle Approach*

Three of the contractors commented that the alternate proposal would create an administrative burden and unnecessary and unallowable expense, and they urged that the final regulation not be expanded to labor cases beyond whistleblower retaliation claims. All of the contractor comments argued that the existing contract clauses and cost principle regulations provided sufficient coverage for labor settlements and litigation costs.

The Department agrees that the regulation should not be expanded to cover all labor cases and the final regulation covers only employee whistleblower actions alleging a retaliatory act.

*Final Rule*

The final rule creates a cost principle regulation to be added to 48 CFR (DEAR) Part 931 and incorporated by reference in 48 CFR (DEAR) Subpart 970.31. Contractors and subcontractors covered by this regulation are those with contracts for an amount in excess of $5,000,000. The regulation requires contracting officers to determine allowability of defense, settlement and award costs on a case-by-case basis after considering the terms of the contract, relevant cost regulations, and relevant facts and circumstances, including federal law and policy prohibiting reprisal against whistleblowers, at the conclusion of the employee whistleblower claim. The cost principle addresses only the costs associated with whistleblower retaliation claims filed in Federal and state courts and with Federal agencies under 29 CFR Part 24, 48 CFR subpart 3.9, 10 CFR Part 708 or 42 U.S.C. 7239.

The Department recognizes that a potential disadvantage of a case-by-case approach is unwarranted variation in cost allowability determinations in cases involving similar circumstances. Therefore, in order to promote an evenhanded approach and to avoid unwarranted variation, the Department will name a member of the Office of General Counsel who will consult with representatives from the Office of Procurement and Assistance Management, the Office of Environment, Safety and Health, and other Headquarters program offices on whistleblower costs. The Department's contracting officers will be required to report their final allowability determinations, and the analysis or basis for their determinations, to the Office of Procurement and Assistance Management, which will collect that information to determine whether additional guidance to the field is necessary. The collected information will also be a resource for providing advice to contracting officers. Internal guidance is being issued to establish procedures and points of contact for consulting and reporting purposes.

This cost principle will be effective in contracts awarded or executed by the Department after the effective date of this regulation. Whistleblower costs clauses already contained in current contracts will continue to be effective unless a contract modification is executed deleting the clause in favor of cost principle coverage.

Since the Department published the January 5, 1998, notice and the March 24, 1999, notice, the National Defense Authorization Act for FY 2000 (Pub.L. 106–65) reorganized the Department. Consistent with that Act, the Department has amended the authority citation for 48 CFR (DEAR) Parts 931 and 970 to include the citation for that Act.

## III. Procedural Requirements

*A. Review Under Executive Order 12866*

Today's regulatory action has been determined not to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," (58 FR 51735, October 4, 1993). Accordingly, this final rule was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

*B. Review Under Executive Order 12988*

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this regulation meets the relevant standards of Executive Order 12988.

*C. Review Under the Regulatory Flexibility Act*

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment unless the agency certifies that the rule will not have a "significant economic impact on a substantial number of small entities." DOE is not required by the Administrative Procedure Act (5 U.S.C. 553) or any other law to propose this procurement rule for public comment. Accordingly, the Regulatory Flexibility Act requirements do not apply to this rulemaking, and no regulatory flexibility analysis has been prepared.



*D. Review Under the Paperwork Reduction Act*

No new information or record keeping requirements are imposed by this rulemaking. Accordingly, no OMB clearance is required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

*E. Review Under the National Environmental Policy Act*

DOE has concluded that promulgation of this rule falls into a class of actions which would not individually or cumulatively have significant impact on the human environment, as determined by DOE's regulations (10 CFR part 1021, subpart D) implementing the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, this rule is categorically excluded from NEPA review because the amendments to the DEAR would be strictly procedural (categorical exclusion A6). Therefore, this rule does not require an environmental impact statement or environmental assessment pursuant to NEPA.

*F. Review Under Executive Order 13132*

Executive Order 13132 (64 FR 43255, August 10, 1999) requires agencies to develop an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have "federalism implications." Policies that have federalism implications are defined in the Executive Order to include regulations that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. DOE has examined this rule and has determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

*G. Review Under the Unfunded Mandates Reform Act of 1995*

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) generally requires a Federal agency to perform a detailed assessment of costs and benefits of any rule imposing a Federal Mandate with costs to State, local or tribal governments, or to the private sector, of $100 million or more. This rulemaking, which provides guidance on the reimbursement of certain contractor legal defense costs, does not impact any state, local or tribal government.

*H. Congressional Notification*

As required by 5 U.S.C. 801, DOE will report to Congress promulgation of this final rule prior to its effective date. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 804(2).

**List of Subjects in 48 CFR Parts 931 and 970.**

Government procurement.

Issued in Washington, D.C. on October 2, 2000.

**T.J. Glauthier,**

*Deputy Secretary.*

For the reasons set out in the preamble, chapter 9 of Title 48 of the Code of Federal Regulations is amended as set forth below.

## PART 931—CONTRACT COST PRINCIPLES AND PROCEDURES

1. The authority citation for Part 931 continues to read as follows:

**Authority:** 42 U.S.C. 7101, *et seq.*; 40 U.S.C. 486(c); 50 U.S.C. 2401, *et seq.*; 42 U.S.C. 2201.

2. Section 931.205–47 is added to read as follows:

**931.205–47 Costs related to legal and other proceedings. (DOE coverage-paragraph (h)).**

(h) Costs Associated with Whistleblower Actions.

(1) Definitions for purposes of this paragraph (h):

*Covered contractors and subcontractors* means those contractors and subcontractors with contracts exceeding $5,000,000.

*Employee whistleblower action* means any action filed by an employee in Federal or state court for redress of a retaliatory act by a contractor and any administrative procedure initiated by an employee under 29 CFR Part 24, 48 CFR subpart 3.9, 10 CFR Part 708 or 42 U.S.C. 7239.

*Retaliatory act* means a discharge, demotion, reduction in pay, coercion, restraint, threat, intimidation or other similar negative action taken against an employee by a contractor as a result of an employee's activity protected as a whistleblower activity by a Federal or state statute or regulation.

*Settlement and award costs* means defense costs and costs arising from judicial orders, negotiated agreements, arbitration, or an order from a Federal agency or board and includes compensatory damages, underpayment for work performed, and reimbursement for a complainant employee's legal counsel.

(2) For costs associated with employee whistleblower actions where a retaliatory act is alleged against a covered contractor or subcontractor, the contracting officer:

(i) May authorize reimbursement of costs on a provisional basis, in appropriate cases;

(ii) Must consult with the Office of General Counsel whistleblower costs point of contact, who will consult with other Headquarters points of contact as appropriate, before making a final allowability determination; and

(iii) Must determine allowability of defense, settlement and award costs on a case-by-case basis after considering the terms of the contract, relevant cost regulations, and the relevant facts and circumstances, including federal law and policy prohibiting reprisal against whistleblowers, available at the conclusion of the employee whistleblower action.

(3) Covered contractors and subcontractors must segregate legal costs, including costs of in-house counsel, incurred in the defense of an employee whistleblower action so that the costs are separately identifiable.

(4) If a contracting officer provisionally disallows costs associated with an employee whistleblower action for a covered contractor or subcontractor, funds advanced by the Department may not be used to finance costs connected with the defense, settlement and award of an employee whistleblower action.

(5) Contractor defense, settlement and award costs incurred in connection with the defense of suits brought by employees under section 2 of the Major Fraud Act of 1988 are excluded from coverage of this section.

## PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

3. The authority citation for Part 970 continues to read as follows:

**Authority:** Atomic Energy Act of 1954 (42 U.S.C. 2201); Department of Energy Organization Act (42 U.S.C. 7101, *et seq.*); and National Nuclear Security Administration Act (50 U.S.C. 2401, *et seq.*)

4. Section 970.3102–20, Cost prohibitions related to legal and other proceedings, is amended by adding paragraph (c), Costs Associated with Whistleblower Actions, to read as follows:

**970.3102–20 Costs related to legal and other proceedings.**

* * * * *

(c) Costs Associated with Whistleblower Actions. Section

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931.205–47(h) of this chapter is applicable to management and operating contracts under this part and must be included in the contract's cost reimbursement subcontracts.

[FR Doc. 00–26333 Filed 10–17–00; 8:45 am]
BILLING CODE 6450–01–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 17

RIN 1018–AE87

# Endangered and Threatened Wildlife and Plants: Threatened Status for the Colorado Butterfly Plant (*Gaura neomexicana* ssp. *coloradensis*) From Southeastern Wyoming, Northcentral Colorado, and Extreme Western Nebraska

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** We, the Fish and Wildlife Service (Service), have determined threatened status under the Endangered Species Act of 1973, as amended, for *Gaura neomexicana* ssp. *coloradensis* (Colorado butterfly plant). A short-lived, perennial herb, *G. n.* ssp. *coloradensis* is endemic to moist soils in mesic or wet meadows of floodplain areas in north central Colorado, extreme western Nebraska, and southeastern Wyoming. This subspecies occurs primarily in habitats created and maintained by streams active within their floodplains, with vegetation that is relatively open and not overly dense or overgrown. The primary threats to *G. n.* ssp. *coloradensis* is the indiscriminate spraying of broadleaf herbicides and the disturbance of riparian areas that contain native grasses due to agricultural conversion, water diversions, channelization, and urban development.

**EFFECTIVE DATE:** November 17, 2000.

**ADDRESSES:** The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, 4000 Airport Parkway, Cheyenne, Wyoming 82001.

**FOR FURTHER INFORMATION CONTACT:** Mike Long, Field Supervisor, Wyoming Field Office (see **ADDRESSES** section), telephone 307/772/2374; facimile 307/772–2358.

**SUPPLEMENTARY INFORMATION**

## Background

*Gaura neomexicana* ssp. *coloradensis* was initially described as *G. coloradensis* by Rydberg (1904) based on material collected near Fort Collins, Colorado, in 1895. Munz (1938) transferred *G. coloradensis* to *G. neomexicana* and reduced it to variety coloradensis. This taxon is now recognized as *G. n.* ssp. *coloradensis* (Raven and Gregory 1972).

*Gaura neomexicana* ssp. *coloradensis* is a perennial herb that lives vegetatively for several years before bearing fruit once and then dying. It has one or a few reddish, hairy stems that are 50–80 centimeters (cm) (2–3 feet (ft)) tall. The lower leaves are lance-shaped with smooth or wavy-toothed margins and average 5–15 cm (2–6 inches (in.)) long, while those on the stem are smaller and reduced in number. Flowers are arranged in a branched, elongate pattern above the leaves. Only a few flowers are open at any one time and these are located below the rounded buds and above the mature fruits. Individual flowers are 5–14 millimeters (¼–½in.) long with four reddish sepals (modified leaves surrounding the flower) and four white petals that turn pink or red with age. The hard, nutlike fruits are 4-angled and have no stalk. Nonflowering plants consist of a stemless, basal rosette of oblong, hairless leaves 3–18 cm (1–7 in.) long (Marriott 1987; Fertig 1994; Fertig *et al.* 1994).

*Gaura neomexicana* ssp. *coloradensis* occurs on subirrigated, alluvial (stream deposited) soils on level or slightly sloping floodplains and drainage bottoms at elevations of 1,524–1,951 meters (5,000–6,400 ft). Colonies are often found in low depressions or along bends in wide, active, meandering stream channels a short distance upslope of the actual channel. The plant requires early-to mid-succession riparian (river bank) habitat. It commonly occurs in communities dominated by *Agrostis stolonifera* (redtop) and *Poa pratensis* (Kentucky bluegrass) on wetter sites, and *Glycyrrhiza lepidota* (wild licorice), *Cirsium flodmanii* (Flodman's thistle), *Grindelia squarrosa* (curlytop gumweed), and *Equisetum laevigatum* (smooth scouring rush) on drier sites. Both these habitat types are usually intermediate in moisture between wet, streamside communities dominated by sedges (*Carex* spp.), rushes (*Juncus* spp.), and cattails (*Typha* spp.), and dry, upland shortgrass prairie. Typical *G. n.* ssp. *coloradensis* habitat is open, without dense or overgrown vegetation. *Salix exigua* (coyote willow) and *Cirsium arvense* (Canada thistle) may become dominant in *G. n.* ssp. *coloradensis* habitat that are not periodically flooded or otherwise disturbed. The plant occurs on soils derived from conglomerates, sandstones, and tuffaceous mudstones and siltstones of the Tertiary White River, Arikaree, and Oglalla Formations (Love and Christiansen 1985). These soils are common in eastern Colorado and Wyoming.

*Gaura neomexicana* ssp. *coloradensis* is an early successional plant (although probably not a pioneer) adapted to use stream channel sites that are periodically disturbed. Historically, flooding was probably the main cause of disturbances in the plant's habitat, although wildfire and grazing by native herbivores also may have been important. Although flowering and fruiting stems may undergo increased mortality because of these events, vegetative rosettes appear to be little affected (Mountain West Environmental Services 1985). However, the survival rate of the vegetative rosettes appears to be very dependent on available soil moisture. In wet years, such as the past few years, a large number of rosettes have survived; however, in dry years or during extended droughts, fewer rosettes appear to survive to reach the size necessary for flowering and fruiting. Because the long-term viability of this taxa relies on successful flowering and fruiting, as well as the difficulty in identifying small rosettes, only the flowering plants are counted to estimate population size and trends. The establishment and survival of seedlings appears to be enhanced at sites where tall and dense vegetation has been removed by some form of disturbance. In the absence of occasional disturbance, the plant's habitat can become choked out by dense growth of willows (*Salix* spp.), grasses (including red top (*Agrostis stolinifera*)), baltic rush (*Juncus balticus*), and exotic plants (such as Canada thistle (*Cirsium arvense*) and leafy spurge (*Euphorbia esula*)), which prevents new seedlings from becoming established and replacing plants that have died (Floyd 1995a; Fertig 1996).

Little is known about the historical distribution of *Gaura neomexicana* ssp. *coloradensis*. Prior to 1984, no extensive documentation of the plant's range had been conducted. The plant was known from several historical (and presumably extirpated (Fertig 1994)) locations in southeastern Wyoming, and at least four historical (and presumably extirpated (Fertig 1994)) locations in northern Colorado; and from three extant populations in Laramie County, Wyoming, and Weld County, Colorado. In 1979, the total known population size was estimated in the low hundreds (Dorn 1979). Intensive range-wide surveys from 1984 to 1986 resulted in the discovery or confirmation of more than 20 populations in Wyoming, Colorado, and Nebraska, containing approximately 20,000 flowering individuals (Marriott 1987). Additional surveys since 1992 have resulted in the discovery of additional populations in Wyoming and Colorado (Fertig 1994; Floyd 1995b).



All currently known populations are within a small area (6,880 hectares (ha) or 17,000 acres (ac)) in southeastern Wyoming, western Nebraska, and north-central Colorado. Two of the populations occur on F.E. Warren Air Force Base in Cheyenne, Wyoming, and five small populations on State land (Chambers Preserve, CO; Oliver Reservoir State Recreation Area, NE; and state school trust land, WY). One population occurs on the Meadow Springs Ranch, northern Colorado (owned by City of Fort Collins). The remaining populations occur on private lands.

Extensive surveys were conducted during 1998 to document the status of previously known populations at 14 sites in Wyoming and Colorado (Fertig 1998b). All 14 sites still supported populations of *Gaura neomexicana* ssp. *coloradensis*. Repeated survey information led Fertig (1998b) to conclude that 10 of these populations were either relatively stable or increasing over the long term. Fertig (1998b) estimated the entire population of this taxon to contain between 47,000 and 50,000 reproductive plants. Twelve previously known populations were not surveyed in 1998, so their current status is unknown. Three of these populations were surveyed from 1989 until 1992 and were found to contain only 807 reproductive plants (Fertig 1998b). However, four populations in Colorado and five in Wyoming identified in previous surveys had not been relocated since 1986 and may be extirpated. Thus, of 26 previously and currently known populations, 9 may be extirpated; 3 are probably small, but have not been surveyed since 1992; 4 are still extant, but declining; and 10 are stable or increasing.

## Previous Federal Action

Federal action on these plants began as a result of section 12 of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct in the United States. This report (House Document No. 94–51) was presented to Congress on January 9, 1975, and included *Gaura neomexicana* spp. *coloradensis*. We published a notice in the July 1, 1975, **Federal Register** (40 FR 27823) of our acceptance of the Smithsonian Institution report as a petition within the context of section 4(c)(2) (petition provisions are now found in section 4(b)(3)) of the Act, and our intention to review the status of the reported plant species.

On June 16, 1976, we published a proposal in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species, including *Gaura neomexicana* ssp. *coloradensis*, to be endangered species under section 4 of the Act. General comments received in relation to the 1976 proposal were summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). The Act Amendments of 1978 required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to those proposals already more than 2 years old. In the December 10, 1979, **Federal Register** (44 FR 70796), we published a notice of withdrawal of the June 16, 1976, proposal, along with four other proposals that had expired.

We published an updated Notice of Review (NOR) for plants on December 15, 1980 (45 FR 82480), which included *Gaura neomexicana* ssp. *coloradensis* as a Category 1 candidate species. Category 1 candidates were formerly defined as species for which we had on file substantial information on biological vulnerability and threats to support preparation of listing proposals, but issuance of a proposed rule was precluded by other listing activities of higher priority. This subspecies was mistakenly left out of the NOR published November 28, 1983 (48 FR 53640), but its status was republished in subsequent NORs published in the **Federal Register** on September 27, 1985 (50 FR 39526), February 21, 1990 (55 FR 6184), and September 30, 1993 (58 FR 51144).

On February 28, 1996, we published a NOR in the **Federal Register** (61 FR 7596) that discontinued the designation of category 2 species as candidates. That notice included as candidates only those species meeting the former definition of category 1. *Gaura neomexicana* ssp. *coloradensis* was included as a candidate in this notice and has retained that status in the subsequent NOR, published in the **Federal Register** on September 19, 1997 (62 FR 49384).

As part of a settlement agreement in *Fund for Animals et al.* v. *Lujan et al.* (D.D.C. Civ. No. 92–800), the proposed rule to list this subspecies as threatened was published in the **Federal Register** on March 24, 1998 (63 FR 14060). The comment period on the proposed rule to list *Gaura neomexicana* ssp. *coloradensis* was reopened in the **Federal Register** on May 17, 2000 (65 FR 31298), to accommodate the public notice requirement of the Act to consider any new scientific information.

On January 18, 1982, we signed a Memorandum of Understanding with the Commander of the F.E. Warren Air Force Base to ensure continued survival of the two populations of *Gaura neomexicana* ssp. *coloradensis* that occur on the base. The agreement has been updated several times since 1982. In 1990 a Research Natural Area was established to include all the known naturally occurring populations on the base. The 1992 Memorandum of Understanding also included The Nature Conservancy, supported demographic studies of the *G. n.* ssp. *coloradensis* populations on the base, and provided for ongoing protective efforts. The most recent Memorandum of Agreement (signed March 31, 1999, and effective through December 31, 2003) supports continued protection of the plant populations on the base, development of a weed control plan, and research on reproduction, genetic variability, and other ecological and biological aspects of the plant.

We have updated this rule to reflect any changes in information concerning distribution, status, and threats since the publication of the proposed rule and to incorporate information obtained through the public comment periods. This additional information did not alter our decision to list the subspecies.

## Summary of Comments and Recommendations

In the March 24, 1998, proposed rule (63 FR 14060) and the May 17, 2000, reopening of the comment period (65 FR 31298), we requested interested parties to submit factual reports or information that might contribute to the development of a final rule. We sent announcements of the proposed rule to appropriate Federal and State agencies, county governments, scientific organizations, and other interested parties. We also published announcements of the proposed rule in three local newspapers (Fort Collins Coloradoan, the Wyoming Tribune Eagle, and the Western Nebraska Observer) on May 18 and 19, 2000, inviting public comment.

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We received a total of ten comments (four from private organizations, four from agricultural operations, one from State Government, and one from a private individual) that are discussed below. Of these comments, two were provided as supplements to comments already provided during the initial comment period.

*Issue 1:* Two commenters suggested we take an ecosystem approach and adopt a program that would conserve several species, including Preble's meadow jumping mouse (*Zapus hudsonius preblei*), even if development of such a program leads to delays in protection for the plant. The commenter also indicated the proposed rule ignores the efforts of the Laramie County Commissioners to amend the county use plan and develop a Habitat Conservation Plan which would include *Gaura neomexicana* ssp. *coloradensis*.

*Our Response:* We actively support ecosystem-level conservation efforts and encourage multi-species planning efforts to avoid or reduce the need for future listing actions and facilitate recovery of listed species within designated planning areas. Our 1994 policy regarding the ecosystem approach to the Act, published in the **Federal Register** on July 1, 1994 (59 FR 34273), directs us to make listing decisions for groups of species where possible and implement recovery plans for multiple listed and candidate species. However, we also are required to determine whether a species is endangered or threatened within specific time frames and based on the five factors listed under section 4(a)(1) of the Act. Based on these factors, the decision to propose listing this subspecies was made in 1998. Once a listing is proposed, we have a responsibility to either finalize the listing or withdraw the proposal. After reviewing the available data and the comments received, we determined that finalizing the listing proposal was the appropriate action to take.

Although the Laramie County Habitat Conservation Plan may address the majority of *Gaura neomexicana* ssp. *coloradensis* populations, the effort is still in the early planning process with no certainty of its completion, approval, or implementation. Therefore, we are not able to consider the effectiveness of this Habitat Conservation Plan in reducing or eliminating the threats to this subspecies in the future as part of our listing decision. We must evaluate the threats to *G. n.* ssp. *coloradensis* based upon existing land-use and regulatory mechanisms, which have not always proven adequate in the past to conserve the subspecies effectively.

*Issue 2:* One commenter stated the proposed rule did not provide compelling reasons for not designating critical habitat.

*Our Response:* After further review of the available data, we found that designating critical habitat is prudent for this subspecies, but we are deferring the designation to allow ourselves to concentrate our limited resources on higher priority critical habitat (including court ordered designations) and other listing actions, while establishing protections needed for the conservation of *Gaura neomexicana* ssp. *coloradensis* without further delay.

*Issue 3:* Two commenters stated *Gaura neomexicana* ssp. *coloradensis* should be listed as endangered and not threatened.

*Our Response:* As mentioned above, extensive surveys conducted during 1998 showed populations of *Gaura neomexicana* ssp. *coloradensis* still occurring at the 14 surveyed sites, with 10 of these populations either stable or increasing over the long term. The entire population of this taxon is estimated to contain between 47,000 and 50,000 reproductive plants. Although the majority of populations occur on private land, two populations, which are considered stable, occur on F.E. Warren Air Force Base, and are protected through the Research Natural Area designation and through the current Memorandum of Agreement. Additionally, a seed bank has been established at the Nebraska State Arboretum, and experimental populations have been established at the University of Colorado and the University of Wyoming. As a result, *G. n.* ssp. *coloradensis* does not meet the definition of an endangered species under the Act, because it is not in imminent danger of extinction in the foreseeable future (see "Summary of Factors Affecting the Species" below). Therefore, listing as threatened is appropriate.

*Issue 4:* Three commenters discussed the value of private land in plant conservation, saying that the plant's presence on private land is an indication that those lands are being managed consistently with the conservation of the subspecies. The commenters expressed concern over the hardship landowners may have to endure as a result of the listing, and one thought conservation efforts should be voluntary without fear of fines.

*Our Response:* We believe private lands will be of great importance in the conservation of *Gaura neomexicana* ssp. *coloradensis*. Most riparian habitat in the geographic range of the plant is in private ownership, so it is reasonable to expect to find most suitable habitat and most populations of the plant on private lands. We acknowledge that healthy populations of *G. n.* ssp. *coloradensis* with stable or increasing long-term trends probably reflect land management practices that are compatible with the needs of the plant. We encourage the continuation of such practices. Additionally, the prohibitions outlined in section 9 of the Act are much less restrictive for threatened plants on private lands than for animals (see "Available Conservation Measures" below). Few actions are actually restricted and, therefore, there is little likelihood of landowners suffering hardships because of the presence of a listed plant on their property.

*Issue 5:* Three commenters stated that many agricultural practices benefit *Gaura neomexicana* ssp. *coloradensis*.

*Our Response:* As described above, we recognize that certain agricultural practices and disturbances, particularly those that reduce competition from late-seral stage plants while allowing *Gaura neomexicana* ssp. *coloradensis* to set seed, are beneficial to the plant. However, some agricultural practices may be harmful to the plant's survival. For example, although the plant often does well in grazed areas, certain grazing regimes and stocking levels result in poor conditions for the plant. Mowing of hay may reduce competing vegetation, but if done at the wrong time or too frequently could prevent *G. n.* ssp. *coloradensis* plants from setting seed. Development of water supply and irrigation systems may result in creation of suitable habitat in some areas, while adversely affecting existing suitable habitat through direct habitat loss and changes in hydrology. Further coordination between the Service and the agriculture industry will improve our understanding of how agriculture affects the plant and its habitat.

*Issue 6:* Five commenters discussed noxious weed control. Two commenters pointed out that limited or timely spraying of noxious weeds may help *Gaura neomexicana* ssp. *coloradensis* by eliminating plants that aggressively compete for resources, while late haying may allow noxious weeds to flourish. Other commenters wanted the Service to identify alternatives to herbicides to control noxious weeds.

*Our Response:* We recognize the need to control noxious weeds and acknowledge that competition from these subspecies may have serious negative implications for *Gaura neomexicana* ssp. *coloradensis*. However, *G. n.* ssp. *coloradensis* is highly susceptible to commonly-used herbicides when they are applied non-selectively. Alternative means of herbicide application and the use of biological control agents should continue to be investigated. Further studies at F.E. Warren Air Force Base may help identify the best methods for noxious weed control in *G. n.* ssp. *coloradensis* habitat.



*Issue 7:* One commenter wanted the Service to disclose what percentage of suitable habitat within the historical habitat has been surveyed and either quantify the level of habitat impacts or quantify the remaining habitat available for recovery.

*Our Response: Gaura neomexicana* ssp. *coloradensis* has a restricted geographic range and high habitat specificity (Fertig 1998b), making habitat identification straightforward. The extensive effort associated with 1984–1986 surveys is outlined by Marriott (1987), who indicated that the majority of suitable habitat had been surveyed for the presence of this plant. However, no effort has been made to precisely quantify the percentage of suitable habitat that has been surveyed or the remaining habitat available for recovery. As access to private lands is occasionally restricted and funding for surveys is minimal, our ability to identify and survey all suitable habitat or monitor habitat for impact is limited. Moreover, disturbance regimes and plant succession continually change habitat characteristics, making quantification of habitat available for recovery of limited value. Therefore, we have based our listing determination on the best available information gained from known populations and accessible suitable habitat.

*Issue 8:* One commenter indicated few *Gaura neomexicana* ssp. *coloradensis* plants occur in Nebraska, although many occur elsewhere within the plant's range. We interpreted this comment to indicate the commenter believed the plant should not be listed in Nebraska.

*Our Response:* While it is true that few *Gaura neomexicana* ssp. *coloradensis* plants occur in Nebraska, the Act does not allow for the listing of distinct populations of plants. Therefore, any listing action would cover the entire range of the subspecies. Additionally, the Nebraska plants are facing the same threats occurring elsewhere in the range. The loss of these plants would negatively affect conservation of the subspecies.

*Issue 9:* One commenter expressed concern that listing *Gaura neomexicana* ssp. *coloradensis* would affect their ability to sell their land. We interpret this to be an economic concern.

*Our Response:* Under 16 U.S.C., paragraph 1533(b)(1)(A), 50 CFR 424.11(b), and section 4(b)(1)(A) of the Act, listing decisions are made solely on the basis of the best available scientific and commercial data. Economic impacts cannot be considered when determining whether to list a species under the Act. It also should be noted that plants listed under the Act receive only minimal protection on private lands.

*Issue 10:* Two commenters referenced more recent data available since the proposed rule was published. Both commenters cited higher population numbers than those used in the proposed rule (especially when considering vegetative rosettes), as well as new information regarding long-term trends.

*Our Response:* We have used the most current information available in preparation of this rule, including those documents and studies referenced by the commenters. This rule reflects new population estimates and trends in the "Background" section. Additionally, the Service has considered the apparently large number of vegetative rosettes. However, the survival rate of the vegetative rosettes is generally low and appears to be dependent on many factors, including soil moisture, with many small and medium rosettes produced in wet years and few during dryer years. The large numbers of vegetative rosettes recently documented may merely reflect the wet springs experienced recently, rather than a meaningful increase in population sizes. It appears few vegetative rosettes survive to reach the size necessary for flowering and fruiting. For this reason, as well as the difficulty in identifying small rosettes, flowering plants have always been counted to estimate population size and trends. Limited data are available to establish any trend in number of vegetative rosettes over the years or a strong correlation between the number of vegetative rosettes and flowering plant population size. Therefore, we believe the best indicator of population size for this plant is the number of flowering plants.

*Issue 11:* One commenter indicated residential and urban development cannot be considered a threat to the plant in Laramie County, Wyoming, because of existing land use plans.

*Our Response:* The Laramie County Comprehensive Land Use Plan contains a variety of policies that may protect habitat in unincorporated portions of the county, if the County Commissioners choose. However, none of the policies offer specific protection for the plant or its habitat. Rather, the policies require: (1) Developers include a discussion of wildlife resources in the area in an Environmental Impact Report, (2) new subdivisions demonstrate no threats to nearby irrigators, (3) open space and recreational uses be considered the preferred uses in floodplains areas, and (4) existing natural and manmade features which affect land use be considered and evaluated prior to the approval of new subdivisions and developments. Although this guidance certainly allows the County Commissioners to be able to make decisions that would assist in conservation of various resources, the Laramie County Comprehensive Land Use Plan does not mandate conservation of resources in general or *Gaura neomexicana* ssp. *coloradensis* in particular. In fact, by allowing recreational activities such as hiking trails, community gardens, and riding arenas in the floodplain, the Laramie County Comprehensive Land Use Plan could allow adverse impacts to populations of *G. n.* ssp. *coloradensis*.

*Issue 12:* One commenter opposed the listing of *Gaura neomexicana* ssp. *coloradensis*, stating that the Federal government lacks the authority under the Commerce Clause of the Constitution to regulate this subspecies.

*Our Response:* The Federal government has the authority under the Commerce Clause of the United States Constitution to protect this subspecies, for the reasons given in Judge Wald's opinion and Judge Henderson's concurring opinion in *National Association of Home Builders* v. *Babbitt*, 130 F.3d 1041 (D.C. Cir. 1997), cert. denied, 1185 S.Ct. 2340 (1998), making it clear in its application of the test used in the United States Supreme Court case, *United States* v. *Lopez*, 514 U.S. 549 (1995), that regulation of endangered species limited to one State under the Act is within Congress' Commerce Clause power. That case involved a challenge to application of the Act's prohibitions to protect the listed Delhi Sands flower-loving fly (*Rhaphiomidas terminatus abdominalis*). Judge Wald held that application of the Act's prohibition against taking of endangered species was a proper exercise of Commerce Clause power to regulate: (1) Use of channels of interstate commerce, and (2) activities substantially affecting interstate commerce, because applying the Act in that case prevented destructive interstate competition and loss of biodiversity. Judge Henderson upheld protection of the fly because doing so prevents harm to the ecosystem upon which interstate commerce depends and regulates commercial

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development that is part of interstate commerce.

The Federal government also has the authority under the Property Clause of the Constitution to protect *Gaura neomexicana* ssp. *coloradensis* which occurs on the F.E. Warren Air Force Base. If this subspecies were to become extinct or extripated, the diversity of plant life on the Air Force Base would be diminished. The courts have long recognized Federal authority under the Property Clause to protect Federal resources in such circumstances. See *e.g., Kleppe* v. *New Mexico,* 429 U.S. 873 (1976); *United States* v. *Alford,* 274 U.S. 264 (1927); *Camfield* v. *United States,* 167 U.S. 518 (1897); *United States* v. *Lindsey,* 595 F.2d 5 (9th Cir. 1979).

*Issue 13:* Two commenters expressed concern regarding the delays in publishing a final listing decision and questioned the need to reopen the comment period. Both commenters believe the Service reopened the comment period to appease political interests. Additionally, one of the commenters indicated there was no new information that would warrant reconsideration of the proposal.

*Our Response:* We acknowledge our tardiness in publishing the final rule. Because of an oversight during the initial comment period for the proposed rule, the legal notices required by the Act (section 4(b)(5)(D)) were not published in any local newspapers. In order to fully comply with the Act, we reopened the comment period and published legal notices in the "Fort Collins Coloradoan," the "Wyoming Tribune Eagle," and "Western Nebraska Observer." Six comment letters were received during the reopened comment period, two referencing new information regarding population sizes and trends. While our review of the new information did not ultimately change the proposed action, the Service believed the new information was significant enough to warrant consideration.

**Peer Review**

In accordance with interagency policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we solicited the expert opinions of three independent specialists regarding pertinent scientific or commercial data and assumptions relating to the taxonomy, population models, and supportive biological and ecological information for the taxon under consideration for listing. The purpose of this review is to ensure listing decisions are based on scientifically sound data, assumptions, and analyses, including input from appropriate experts and specialists. Two scientists responded to our request for peer review of this listing action and provided information which generally supported the biological and ecological data presented in the proposed rule.

One reviewer expressed concern regarding the timeliness of the listing. The reviewer indicated listing alone would result in only limited conservation on private lands, where most of the known populations occur. The reviewer wanted the Service to postpone the listing to allow time for a more significant effort to establish management agreements with willing land owners.

*Our Response:* As stated in response to Issue 1 above, we are required to determine whether a species is endangered or threatened within specific timeframes and based solely on the five factors listed under section 4(a)(1) of the Act. Therefore, the decision was made to list this subspecies at this time.

A second reviewer also felt voluntary conservation measures are more likely to protect this subspecies and its habitat than listing under the Act. The reviewer indicated that threats are clearly present, but many (such as herbicide use) can be mitigated. Additionally, the reviewer believed current management of privately-owned agricultural lands is largely compatible with the needs of the plant or could be made compatible through education. This reviewer believed listing of *Gaura neomexicana* ssp. *coloradensis* as threatened could undermine its conservation if landowners react negatively to its presence, and would do little to improve its management on Federal lands, such as F.E. Warren Air Force Base. The reviewer indicated that the section 9 protections discussed in the proposed rule were reasonable and consistent with the management needs of the subspecies.

*Our Response:* We have to make our listing decision based on conservation measures that are currently in place. Even if formal conservation agreements were in place, those agreements would need to be evaluated based upon the certainty of implementation and effectiveness. Many of the current threats could be minimized and mitigated through implementation of formal conservation agreements, including education programs. However, without those agreements there is not a high level of certainty that any conservation measures will be implemented. The potential for landowners to react negatively to the listing is not a factor that we can consider in making a listing decision. However, the Service will conduct outreach in association with this listing decision to try to minimize negative reactions by landowners and others. Additionally, listing the plant will give the Service additional oversight of potential adverse impacts resulting from Federal projects through section 7 consultation. This should enhance conservation of the species.

**Summary of Factors Affecting the Species**

Section 4 of the Act and regulations (50 CFR part 424) issued to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Gaura neomexicana* ssp. *coloradensis* are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range. Gaura neomexicana* ssp. *coloradensis* is restricted to approximately 6,880 ha (17,000 ac) running from Colorado Springs, Colorado, north to Cheyenne, Wyoming, and spreading into a small portion of southwest corner of Nebraska. Of the currently known populations of *G. n.* ssp. *coloradensis*, the vast majority occur on private lands managed primarily for agriculture. Only two populations occur on Federal land, both at F.E. Warren Air Force Base. Small populations are found in special management areas at Chambers Preserve, Colorado, and Oliver Reservoir State Recreation Area, Nebraska. At least three other populations in Wyoming are found partly or fully on state school trust lands managed mostly for agricultural uses. The Meadow Springs Ranch population in northern Colorado is owned by the City of Fort Collins and managed for municipal sewage treatment.

Haying and mowing at certain times of the year, water development, land conversion for cultivation, competition from exotic plants, non-selective use of herbicides, and loss of habitat to urban growth are the main threats to the plant on these lands (Marriott 1987; Fertig 1994). On some sites, including F.E. Warren Air Force Base, habitat degradation resulting from plant succession and noxious weed competition is the main threat to the long-term survival of populations. High recreational use by campers, motorists, and fishermen is a threat to populations on State park lands in Nebraska.



Conversion of moist, native grasslands to commercial croplands has been widespread throughout southeastern Wyoming and northeastern Colorado (Compton and Hugie 1993). Since much of the agricultural lands are irrigated hay fields, mowing of *Gaura neomexicana* ssp. *coloradensis* habitat for hay production has been suggested as a potential threat if conducted at an inappropriate time of year (Jennings *et al.* 1997). Although this threat can be significant if cutting occurs before the plant's fruits have ripened, if cutting is delayed until late in the growing season when a hard fruit wall is developed, the seeds are not damaged by cutting and may actually be dispersed in the process. Likewise, early season mowing (before the flower stalks have bolted) may provide some advantages to the plant by reducing the cover of competing vegetation (Fertig 1994).

Construction of stock ponds and reservoirs has inundated some *Gaura neomexicana* ssp. *coloradensis* habitat and made it unsuitable for the subspecies. The development of irrigation canals to move water to croplands may remove moisture from occupied or potentially suitable habitat leaving it in a drier, unsuitable condition. Additionally, the management of water resources for domestic and commercial uses, coupled with encroaching agricultural land use, has had a tendency to channelize and isolate water resources and fragment, realign, and reduce riparian and moist lowland habitat that could otherwise serve as potential *G. n.* ssp. *coloradensis* habitat (Compton and Hugie 1993).

Residential and urban development around the cities of Cheyenne and Fort Collins has converted areas of formerly suitable *Gaura neomexicana* ssp. *coloradensis* habitat. The high rate of development occurring from Colorado Springs, Colorado, to Cheyenne, Wyoming, has been cited as a continuing threat to remaining populations of the Preble's meadow jumping mouse, a threatened species that also occurs in riparian habitats and whose historic range overlaps much of that of *G. n.* ssp. *coloradensis* (62 FR 14093).

In nonagricultural, undeveloped areas, a significant threat to *Gaura neomexicana* ssp. *coloradensis* populations is habitat degradation resulting from succession of the plant community. Without periodic disturbance events, the semi-open habitats preferred by this subspecies can become choked by tall and dense growth of willows, grasses, and exotic weeds (Fertig 1994). Natural disturbances, such as flooding, fire, and native ungulate grazing, were sufficient in the past to create favorable habitat conditions for the plant. However, the natural flooding regime within the subspecies' floodplain habitat has been altered by construction of flood control structures and by irrigation and channelization practices. In the absence of such natural disturbances today, managed disturbance may be necessary to maintain and create areas of suitable habitat (Fertig 1994, 1996). However, many Federal programs, such as those administered by the USDA Natural Resources Conservation Service, focus on enhancing or protecting riparian areas by removing the types of disturbance the plant needs, increasing vegetative cover, and pushing the habitat into later successional stages.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Given the limited range and concentration of the subpopulations, overcollection could be a problem. However, currently, there does not appear to be any commercial demand for the subspecies, nor is it anticipated that there would be any substantial threat of overcollection due to scientific or educational demands.

C. *Disease or predation.* There are no known diseases affecting *Gaura neomexicana* ssp. *coloradensis* populations, although the subspecies is occasionally affected by insect galls. *G. n.* ssp. *coloradensis* is highly palatable to a variety of insect and mammalian herbivores (*e.g.*, cattle, horses, and pronghorn (*Antilocapra americana*)), but appears to compensate for herbivory by increasing branch and fruit production. Livestock grazing can be a threat at some sites if grazing pressures are high due to animals are not being rotated among pastures or concentrated use during the summer flowering period. Additionally, plants are occasionally uprooted or trampled by livestock and wildlife grazing in the vicinity. In at least one location where a population of *G. n.* ssp. *coloradensis* was divided by a fence, the heavily-grazed side of the fence had few or no *G. n.* ssp. *coloradensis* plants (J. Miller, U.S. Fish and Wildlife Service, *in litt.* 1987). The primary author of this rule also has observed a site adversely affected by higher-intensity grazing. However, in a similar situation, the more heavily-grazed side of the fence had numerous rosettes, but the side with no grazing had dense willow cover and no *G. n.* ssp. *coloradensis* (Walt Fertig, The Nature Conservancy, *in litt.* 1998). In addition to the intensity of grazing, the timing of grazing is key to *G. n.* ssp. *coloradensis* survival. Observations have shown that the plant can persist and thrive in habitats that are winter-grazed or managed on a short-term rotation cycle (Jennings *et al.* 1997). Light to medium grazing can provide additional benefits by reducing the competing vegetative cover and allowing *G. n.* ssp. *coloradensis* seedlings to become established.

D. *The inadequacy of existing regulatory mechanisms.* No Federal or State laws or regulations specifically protect *Gaura neomexicana* ssp. *coloradensis* or its habitat. The plant is listed as Sensitive by the U.S. Forest Service, although no populations are currently known from Forest Service lands (D. Hazlett, Plants and People Consulting, pers. comm, 1994). Fertig (1998b) considers the inadequacy of existing regulatory mechanisms to be the main impediment to long-term conservation of *G. n.* ssp. *coloradensis.* Although the Preble's meadow jumping mouse, a threatened species, inhabits riparian areas within the range of *G. n.* ssp. *coloradensis*, these two species prefer different stages of vegetational succession. Therefore, measures to protect habitat for the mouse may not protect *G. n.* ssp. *coloradensis.*

E. *Other natural or manmade factors affecting its continued existence.* The most serious threat on agricultural lands is non-selective use of broadleaf herbicides for the control of *Cirsium arvense* (Canada thistle), *Euphorbia esula* (leafy spurge), and other exotic plants (Marriott 1987). The noxious weed problem in Laramie County, Wyoming, is particularly evident on F.E. Warren Air Force Base. Although competition from these subspecies may have serious negative implications for populations of *Gaura neomexicana* ssp. *coloradensis*, the plant appears to be highly susceptible to commonly used herbicides when they are applied non-selectively. In 1983, nearly one-half of the mapped populations on F.E. Warren Air Force Base were inadvertently destroyed when sprayed with Tordon, a persistent herbicide. Additionally, herbicide use along road crossings in and adjacent to *G. n.* ssp. *coloradensis* populations also has been noted (J. Miller, U.S. Fish and Wildlife Service, *in litt.* 1987). Biological control agents have been used at F.E. Warren Air Force Base, but have not yet been fully effective in controlling Canada thistle or leafy spurge. Introduced gall-forming flies have slowly become established on the Base and have reduced the vigor, height, and reproductive ability of small patches of Canada thistle (Fertig 1997). The first evidence of successful establishment of flea beetles, a biocontrol agent for leafy spurge, was

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observed on the Base in 1997 (Fertig 1998a).

In order for a population to sustain itself, there must be enough reproducing individuals and sufficient habitat to ensure survival of the population. It is not known if the scattered populations of *Gaura neomexicana* ssp. *coloradensis* contain sufficient individuals and diversity to ensure their continued existence over the long term.

The most recent survey information for the known populations of *Gaura neomexicana* ssp. *coloradensis* shows that only 5 of the 14 surveyed populations are large (*i.e.*, with at least 3,000 or more flowering individuals). Only one of these occurs on Federal lands. Seven of the surveyed populations (one of them occurring on Federal lands) are moderately sized, containing between 500 and 2,500 flowering individuals each. The remaining 2 surveyed populations are smaller, with less than 200 reproductive individuals each. These small populations are threatened by a possible reduction in vigor and fecundity (often evidenced by reduced seed set), as random genetic changes occur and genetic variability is lost as a result of inbreeding which is inevitable in small populations (Ehrlich 1981; Ledig 1986). Because of the small, isolated nature of the populations and the few individuals present in many of them, *G. n.* ssp. *coloradensis* also is more susceptible to random events, such as fires, insect or disease outbreaks, or other events that can easily cause the extirpation of a small population.

Although the plant evolved with and even depended upon the disturbance associated with these types of events, they may now pose a threat to *Gaura neomexicana* ssp. *coloradensis*. Individual plants may not survive such events, and because of low numbers and the now highly restricted range of the subspecies, events such as fires and floods pose a threat. A flood in 1983 along Crow Creek on the F.E. Warren Air Force Base impacted several populations and experimental seed plots established in 1981 (U.S. Fish and Wildlife Service, *in litt.* 1984). However, these populations rebounded and have been censussed annually since 1986 (Walt Fertig, The Nature Conservancy, *in litt.* 1998).

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to *Gaura neomexicana* ssp. *coloradensis* in determining to issue this final rule. While not in immediate danger of extinction, *G. n.* ssp. *coloradensis* is likely to become an endangered species in the foreseeable future if the present threats and declines continue. Although some conservation efforts are being conducted on Federal and private lands, these efforts are currently not sufficient to provide adequate protection for the subspecies. Therefore, Federal listing under authority of the Act is the only mechanism we can presently identify that will help ensure protection for *G. n.* ssp. *coloradensis* throughout its limited range.

**Critical Habitat**

Critical habitat is defined in section 3, paragraph (5)(A) of the Act as the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and that may require special management considerations or protection; and specific areas outside the geographical area occupied by a species at the time it is listed in accordance with the provisions of section 4 of the Act, upon a determination by the Secretary that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Critical habitat designation directly affects only Federal agency actions through consultation under section 7(a)(2) of the Act. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or destroy or adversely modify its critical habitat.

Section 4(a)(3) of the Act, as amended, and our implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, we designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) the species is threatened by taking or other activity and the identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

In the proposed rule, we indicated that designation of critical habitat was not prudent for *Gaura neomexicana* ssp. *coloradensis* because of a concern that publication of precise maps and descriptions of critical habitat in the **Federal Register** could increase the vulnerability of this subspecies to incidents of collection and vandalism. We also indicated that designation of critical habitat was not prudent because we believed it would not provide any additional benefit beyond that provided through listing as threatened.

In the last few years, a series of court decisions have overturned Service determinations that designation of critical habitat for a variety of species would not be prudent (e.g., *Natural Resources Defense Council* v. *U.S. Department of the Interior* 113 F. 3d 1121 (9th Cir. 1997); *Conservation Council for Hawaii* v. *Babbitt*, 2 F. Supp. 2d 1280 (D. Hawaii 1998)). Based on the standards applied in those judicial opinions, we have reexamined the question of whether critical habitat for *Gaura neomexicana* ssp. *coloradensis* would be prudent.

As with other species we list, we have the concern that unrestricted collection, vandalism, or other disturbances could be exacerbated by the publication of critical habitat maps and further dissemination of locational information. However, we have examined the evidence available for *Gaura neomexicana* ssp. *coloradensis* and have not found specific evidence of taking, vandalism, collection, or trade of this species or any similarly situated species. Consequently, consistent with applicable regulations (50 CFR 424.12(a)(1)(i)) and recent case law, we do not expect that the identification of critical habitat will increase the degree of threat to this subspecies of taking or other human activity.

In the absence of a finding that critical habitat would increase threats to a subspecies, if any benefits would result from a critical habitat designation, then a prudent finding is warranted. In the case of this subspecies, designation of critical habitat may provide some benefits. The primary regulatory effect of critical habitat is the section 7 requirement that Federal agencies refrain from taking any action that destroys or adversely modifies critical habitat. While a critical habitat designation for habitat currently occupied by this subspecies would not be likely to change the section 7 consultation outcome because an action that destroys or adversely modifies such critical habitat also would be likely to result in jeopardy to the subspecies, in certain instances, section 7 consultation might be triggered only if critical habitat is designated. Examples could include some actions in unoccupied habitat or occupied habitat that may become unoccupied in the future. Designating



critical habitat may provide some educational or informational benefits. Therefore, we find that critical habitat is prudent for *Gaura neomexicana* ssp. *coloradensis*.

As explained in detail in the Final Listing Priority Guidance for Fiscal Year 2000 (64 FR 57114), our listing budget is currently insufficient to allow us to immediately complete all of the listing actions required by the Act. We focus our efforts on those listing actions that provide the most conservation benefit. Deferral of the critical habitat designation for this subspecies will allow us to concentrate our limited resources on higher priority critical habitat and other listing actions, without delaying the final listing decision for *Gaura neomexicana* ssp. *coloradensis*. We will develop a proposal to designate critical habitat for *G. n.* ssp. *coloradensis* as soon as feasible, considering our workload priorities and available funding. Unfortunately, for the immediate future, most of Region 6's listing budget must be directed to complying with numerous court orders and settlement agreements, as well as due and overdue final listing determinations.

**Available Conservation Measures**

The Nebraska State Arboretum currently maintains a seed bank of *Gaura neomexicana* ssp. *coloradensis* collected from sites along Lodgepole Creek in Nebraska (J. Locklear, Nebraska State Arboretum, pers. comm. April 15, 1997). Additional seed has been collected by the Natural Resources Conservation Service for deposit at the Bridger Plant Materials Center in Montana. Seed from other populations throughout the range of this subspecies is needed to ensure adequate genetic representation in cultivated stocks and seed banks. Additional testing is needed to determine the viability of seed after long periods of storage.

Habitat along Crow and Diamond Creeks on F.E. Warren Air Force Base has been designated as the Colorado Butterfly Plant Research Natural Area dedicated to the protection of the largest known population of *Gaura neomexicana* ssp. *coloradensis*, and a management plan has been developed (Marriott and Jones 1988). Two relatively large populations of *G. n.* ssp. coloradensis occur within the Colorado Butterfly Plant Research Natural Area. Under various memoranda of understanding and cooperative agreements with the Service and The Nature Conservancy, the Air Force has been conducting conservation activities for this subspecies since 1982. However, the current Memorandum of Agreement between the Service and the Air Force contains no implementation schedule, is subject to the availability of appropriated and non-appropriated funds and personnel, and can be terminated at any time (with 60 days notice). The Base is currently implementing a weed-control program with special restrictions on the spraying of pesticides in *G. n.* ssp. *coloradensis* habitat. Continued implementation of conservation actions on the Base will enhance the overall conservation of the subspecies.

In 1983 a population of *Gaura neomexicana* ssp. *coloradensis* was introduced on the Chambers Preserve near Boulder, Colorado. Although the reintroduction was initially successful, whether the population persists today is unknown. Several private landowners with natural populations of the plant have expressed interest in pursuing conservation projects; none are currently in place. Protection for these natural populations should be encouraged.

Additionally, as mentioned above, little is known of the genetic variability within or between populations. Genetic research to determine the degree of genetic variability within and between populations of the plant would enable the Service to focus conservation measures on maintaining the existing genetic diversity of *Gaura neomexicana* ssp. *coloradensis*, thus enhancing the subspecies' chances of long-term survival. The Air Force is currently funding a genetics study focused on populations of *G. n.* ssp. *coloradensis* at F.E. Warren Air Force Base.

Conservation measures provided to subspecies listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in public awareness and conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Funding may be available through section 6 of the Act for the States to conduct recovery activities. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation of the Act are codified at 50 CFR part 402. Section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the listed species or destroy or adversely modify its critical habitat, if designated. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with us, under to section 7(a)(2) of the Act.

Federal agency actions that may require consultation as described in the preceding paragraph include altering vegetation, particularly through the use of herbicides; implementing livestock grazing management that alters vegetation during the flowering season of *Gaura neomexicana* ssp. *coloradensis;* construction of roads or hiking/biking trails along or through riparian areas; channelization and other alteration of perennial streams and their hydrological regimes for flood control and other water management purposes; permanent and temporary damming of streams to create water storage reservoirs or to alter the stream's course; construction of residential, commercial, and industrial developments, including roads, bridges, public utilities and telephone lines, pipelines, and other structures in *G. n.* ssp. *coloradensis* habitat; and sand and gravel and other types of mining activities within or upstream of *G. n. coloradensis* habitat. In addition, sections 2(c)(1) and 7(a)(1) of the Act require Federal agencies to utilize their authorities in furtherance of the purposes of the Act to carry out conservation programs for endangered and threatened species.

Listing of this plant as threatened would provide for the development of a recovery plan, which would identify both State and Federal efforts for conservation of the plant and establish a framework for agencies to coordinate activities and cooperate with each other in conservation efforts. The plan would set recovery priorities and describe site-specific management actions necessary to provide for the conservation and or recovery of the plant. Additionally, pursuant to section 6 of the Act, we would be able to grant funds to affected States for management actions promoting the protection and recovery of this subspecies.

The Act and our implementing regulations set forth a series of general prohibitions and exceptions that apply to all threatened plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71, apply. These prohibitions, in part, make it

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illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove the species to possession from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits the malicious damage or destruction on areas under Federal jurisdiction and the removal, cutting, digging up, or damaging or destroying of such plants in knowing violation of any State law or regulation, including State criminal trespass law. Section 4(d) of the Act allows for the provision of such protection to threatened species through regulation. This protection may apply to this subspecies in the future if such regulations were to be issued. Seeds from cultivated specimens of threatened plants are exempt from these prohibitions provided that their containers are marked "Of Cultivated Origin." Certain exceptions to the prohibitions apply to agents of the Service and State conservation agencies.

The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened plants under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the subspecies. For threatened plants, permits also are available for botanical or horticultural exhibition, educational purposes, or special purposes consistent with the purposes of the Act. It is anticipated that few trade permits would ever be sought or issued because the subspecies is not in cultivation or common in the wild.

It is our policy, published in the **Federal Register** (59 FR 34272) on July 1, 1994, to identify to the maximum extent practicable those activities that would or would not be likely to constitute a violation of section 9 of the Act if a species is listed. The intent of this policy is to increase public awareness of the effect of the listing on proposed and ongoing activities within a species' range.

Collection of listed plants or activities that would damage or destroy listed plants on Federal lands are prohibited without a Federal endangered species permit. Such activities on non-Federal lands would constitute a violation of section 9 of the Act if they were conducted in knowing violation of State law or regulation, or in the course of violation of State criminal trespass law. Otherwise, such activities would not constitute a violation of the Act on non-Federal lands.

Questions regarding whether specific activities, such as changes in land use, will constitute a violation of section 9 should be directed to the Wyoming Field Supervisor (see **ADDRESSES** section). Requests for copies of the regulations regarding listed species and inquiries about prohibitions and permits may be addressed to: Regional Director, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225–0486.

**Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)**

This rule does not contain any information collection requirements that require Office of Management and Budget approval under the Paperwork Reduction Act.

**National Environmental Policy Act**

The Service has determined that an environmental assessment and environmental impact statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

**References Cited**

A complete list of all references cited herein, as well as others, is available upon request from the Wyoming Field Office (see **ADDRESSES** section).

Author: The primary author of this document is Mary Jennings of the Wyoming Field Office (see **ADDRESSES** section).

**List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

**Regulation Promulgation**

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

**PART 17—[AMENDED]**

1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under "FLOWERING PLANTS," to the List of Endangered and Threatened Plants to read as follows:

**§ 17.12 Endangered and threatened plants.**

* * * * *

(h) * * *

| Species | | Historic range | Family | Status | When listed | Critical habitat | Special rules |
|---|---|---|---|---|---|---|---|
| Scientific name | Common name | | | | | | |
| FLOWERING PLANTS | | | | | | | |
| • • • | • | • | • | • | • | • | • |
| *Gaura neomexicana* ssp. *coloradensis.* | Colorado butterfly plant ..... | U.S.A. (CO, NE, WY). | Onagraceae ..... | T | 704 | NA | NA |
| • • • | • | • | • | • | • | • | • |

Dated: September 27, 2000.

**Jamie Rappaport Clark,**

*Director, Fish and Wildlife Service.*

[FR Doc. 00–26544 Filed 10–17–00; 8:45 am]

BILLING CODE 4310–55–P



# Proposed Rules

Federal Register
Vol. 65, No. 202
Wednesday, October 18, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

### 7 CFR Part 457

### Common Crop Insurance Regulations; Sugarcane Crop Insurance Provisions

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) proposes to amend the Sugarcane Crop Insurance Provisions. The intended effect of this proposed action is to provide policy changes to better meet the needs of the insureds and to restrict the effect of the current Sugarcane Crop Insurance Regulations to the 2001 and prior crop years.

**DATES:** Written comments and opinions on this proposed rule will be accepted until close of business December 18, 2000 and will be considered when the rule is to be made final.

**ADDRESSES:** Interested persons are invited to submit written comments to the Director, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 6501 Beacon Drive, Kansas City, MO 64133. Comments may also be sent via the Internet to DIRECTORPDD@RM.FCIC.USDA.GOV. A copy of each response will be available for public inspection and copying from 7:00 a.m. to 4:30 p.m., CDT, Monday through Friday except holidays, at the above address.

**FOR FURTHER INFORMATION CONTACT:** Arden Routh, Insurance Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, at the Kansas City, MO, address listed above, telephone (816) 926–7730.

**SUPPLEMENTARY INFORMATION:**

**Executive Order 12866**

This rule has been determined to be exempt for the purpose of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

**Paperwork Reduction Act of 1995**

Under the provisions of the Paperwork Reduction Act of 1995 (44 chapter 35), the collections of information for this rule have been previously approved by OMB under control number 0563–0053 through April 30, 2001.

**Unfunded Mandates Reform Act of 1995**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to access the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

**Executive Order 13132**

The provisions contained in this rule do not have any substantial direct effect on states, the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

Therefore, no consultation with states is required.

**Regulatory Flexibility Act**

This regulation will not have a significant economic impact on a substantial number of small entities. New provisions included in this rule will not impact small entities to a greater extent than large entities. Under the current regulations, every producer is required to complete an application and acreage report. If the crop is damaged or destroyed, the producer is required to give notice of loss and provide the necessary information to complete a claim for indemnity. This regulation does not alter these requirements. The amount of work required of the insurance companies delivering and servicing these policies will not increase from the amount of work currently required. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

**Federal Assistance Program**

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

**Executive Order 12372**

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

**Executive Order 12988**

This proposed rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action against FCIC for judicial review may be brought.

**Environmental Evaluation**

This action is not expected to have a significant economic impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

**Background**

FCIC proposes to amend the Common Crop Insurance Regulations (7 CFR part 457) by amending 7 CFR 457.116 Sugarcane Crop Insurance Provisions effective for the 2002 and succeeding crop years. The proposed changes to provisions for insuring sugarcane are as follows:

1. Change the word "paragraph" to "section" throughout these provisions to be consistent with other crop provisions and make other minor editorial changes.

2. Section 1—Remove the definition of "local market price" because there is no local market price for raw sugar, and revise the definition of "sugarcane" for clarification.

3. Section 5—Add provision that makes uninsurable any sugarcane damaged the previous crop year to the extent the sugarcane is unable to

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produce the production guarantee. Add a provision that the sugarcane is not insurable if it exceeds the age limitations (by variety if applicable) at which sugarcane may be insured as specified in the Special Provisions. This change eliminates the need for inadequate stand appraisals unless the insured is seeking insurance by written agreement.

4. Section 7(a)—Removed provisions for plant cane that allow coverage at a later date by an agreement in writing, as this is an uncommon practice. Removed language that allows coverage to attach on the later of April 15 or 30 days following the harvest of stubble cane, since in practice coverage will attach only on the specified date. Clarify when insurance attaches for Louisiana and all other states. For stubble cane damaged the previous crop year, the calendar date when insurance attaches has been changed from April 15 to April 30 in Louisiana. Currently, acreage that does not have an adequate stand on April 15 is not insurable; however, this same acreage may have an adequate stand by April 30.

5. Section 9(a)—Add provisions that if the insured believes that the sugarcane will produce less than the approved yield, the insured must request that an appraisal be performed to determine the sugar potential. If an appraisal is not made, the production to count for such acreage will be the approved yield. Also, this section clarifies the requirement that if notice is not given prior to cutting for seed, the acreage will be considered as put to another use without consent and the approved yield will be assessed for such acreage.

6. Add an example of a claim for indemnity for clarity.

7. Section 10(c)(1)(iv)—Remove provisions that explained the process for making an inadequate stand appraisal. It has been determined that inadequate stand appraisals are not accurate. Current sections 10(c)(1)(v) and (vi) have been redesignated to 10(c)(1)(iv) and (v).

8. Section 10(d)—Delete the section because there is no local market price for raw sugar. The extent of any freeze damage to sugarcane is reflected in the pounds of raw sugar extracted from the damaged sugarcane. A producer with freeze damaged sugarcane is paid the same price per pound for raw sugar as a producer whose sugarcane is not damaged.

**List of Subjects in 7 CFR Part 457**

Crop insurance.

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation proposes to amend 7 CFR part 457 as follows:

## PART 457—COMMON CROP INSURANCE REGULATIONS

1. The authority citation for 7 CFR part 457 continues to read as follows:

**Authority:** 7 U.S.C. 1506(1), 1506(p).

2. Amend § 457.116 as follows:

a. Revise the introductory text.

b. In section 1 of the crop provisions, delete the definition for "local market price" and revise the definition for "sugarcane."

c. Revise sections 3, 5, 6, 7, the introductory language to 9(a), 9(a)(2), and 10(b)(4) of the crop provisions.

d. Remove the parenthetical phrase "(§ 457.8)" wherever it occurs in sections 2, 8, and 9(b) of the crop provisions. In addition, remove the parenthetical phrases "(Insurance Guarantees, Coverage Levels, and Price for Determining Indemnities)" in section 2(a); "(Causes of Loss)" in section 8 introductory text; and "(Duties in the Event of Damage or Loss)" in section 9(b).

e. Remove section 10(c)(1)(iv) of the crop provisions.

f. Redesignate section 10(c)(1)(v) and (c)(1)(vi) as section 10(c)(1)(iv) and (c)(1)(v), respectively, of the crop provisions and in newly redesignated 10(c)(1)(iv), remove the word "paragraph" and add "section", in its place.

The revised text reads as follows:

**§ 457.116 Sugarcane crop insurance provisions.**

The Sugarcane Crop Insurance Provisions for the 2002 and succeeding crop years are as follows:

* * * * *

1. Definitions.

* * * * *

*Sugarcane*—means plant cane and stubble cane.

* * * * *

3. Contract Changes.

In accordance with section 4 of the Basic Provisions, the contract change date is June 30 preceding the cancellation date.

* * * * *

5. Insured Crop.

(a) In accordance with section 8 of the Basic Provisions, the crop insured will be all the sugarcane in the county for which a premium rate is provided by the actuarial documents:

(1) In which you have a share;

(2) That is grown for processing for sugar or for seed; and

(3) That is not interplanted with another crop, unless allowed by a written agreement.

(b) In addition to the crop listed as not insured in section 8(b) of the Basic Provisions, we will not insure any sugarcane:

(1) That was damaged the previous crop year to the extent the sugarcane is unable to produce the production guarantee; or

(2) That exceeds the age limitations (by variety, if applicable) contained in the Special Provisions, unless we agree in writing to insure such acreage.

6. Insurable Acreage.

Section 9(a)(3) of the Basic Provisions is not applicable to the Sugarcane Crop Provisions.

7. Insurance Period.

(a) In addition to the provisions of section 11 of the Basic Provisions, insurance attaches:

(1) At the time of planting for plant cane;

(2) On the first day following harvest of the previous crop for stubble cane except as contained in sections 7(a)(3) and (4);

(3) On April 15 following harvest of the previous crop for stubble cane damaged during the previous crop year in all states (except Louisiana); and

(4) On April 30 following harvest of the previous crop for stubble cane damaged during the previous crop year in Louisiana.

(b) In accordance with the provisions of section 11 of the Basic Provisions, the calendar date for the end of the insurance period is:

(1) January 31 in Louisiana; and

(2) April 30 in all other states.

* * * * *

9. Duties in the Event of Damage or Loss or Cutting the Sugarcane for Seed.

(a) In addition to your duties under section 14 of the Basic Provisions, in the event of damage or loss:

* * * * *

(2) You must give us notice at least 15 days before you begin cutting any sugarcane for seed. Your notice must include the unit number and the number of acres you intend to harvest as seed. Failure to give us timely notice will cause the acreage cut for seed to be considered as put to another use without consent. The production to count for such acreage will be your approved yield.

(3) If you believe that your sugarcane will produce less than your approved yield, you must request an appraisal of the sugarcane to determine the sugar potential. If you do not request an appraisal, the production to count for such acreage will be your approved yield.

* * * * *

10. Settlement of Claim.

* * * * *



(b) * * *

(4) Multiplying this result by your share.

Example 1:

Assume you have a 100 percent share in a unit of 100 acres of sugarcane, with a guarantee of 4,000 pounds of raw sugar per acre and a price election of $0.12 per pound. You are only able to harvest 200,000 pounds because the unit was damaged by an insurable cause of loss. Your indemnity would be calculated as follows:

(1) 100 acres × 4,000 pounds = 400,000 pound guarantee;

(2) 400,000 pound guarantee − 200,000 pounds harvested production = 200,000 pound production loss;

(3) 200,000 pound production loss × $0.12 price election = $24,000 value of production loss; and

(4) $24,000 value of production loss × 100 percent share = $24,000 indemnity payment.

Example 2:

Assume you have a 100 percent share in a unit of 100 acres of sugarcane. Your approved yield is 6,000 pounds of raw sugar per acre. You have selected the 65 percent coverage level, which multiplied by your approved yield equals a guarantee of 3,900 pounds of raw sugar per acre, and a price election of $0.12 per pound. You cut 20 acres of this unit for seed without giving notice that you were cutting this acreage for seed. You are only able to harvest 200,000 pounds from the remaining 80 acres. Your indemnity would be calculated as follows:

(1) 100 acres × 3,900 pounds = 390,000 pound guarantee;

(2) 390,000 pound guarantee − 200,000 pounds harvested production − 120,000 pound production guarantee for putting acreage to another use without consent (20 acres × 6,000 approved yield per acre) = 70,000 production loss;

(3) 70,000 pound production loss × $0.12 price election = $8,400 value of production loss; and

(4) $8,400 value of production loss × 100 percent share = $8,400 indemnity payment.

* * * * *

Signed in Washington, DC, on October 3, 2000.

**Kenneth D. Ackerman,**

*Manager, Federal Crop Insurance Corporation.*

[FR Doc. 00–25987 Filed 10–17–00; 8:45 am]

BILLING CODE 3410–08–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 99–NM–380–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 737–300, –400, and –500 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 737–300, –400, and –500 series airplanes. This proposal would require repetitive inspections to detect cracking of certain areas of the forward pressure bulkhead, and repair, if necessary. This proposal also would require certain preventive modifications, which, when accomplished, would terminate the repetitive inspections for the affected areas. This action is necessary to prevent fatigue cracking on critical areas of the forward pressure bulkhead, which could result in rapid decompression of the airplane fuselage. This action is intended to address the identified unsafe condition.

**DATES:** Comments must be received by December 4, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–380–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 99–NM–380–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Nenita K. Odesa, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2557; fax (425) 227–1181.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–380–AD." The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–380–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

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**Discussion**

The FAA has received reports indicating that operators have found numerous fatigue cracks on the body station 178 forward pressure bulkhead on certain Boeing Model 737 series airplanes. The longest fatigue crack was approximately 25 inches in length. The fatigue cracks were found at three critical structural areas of the bulkhead, namely, at the side chord areas of the bulkhead, at certain vertical chords of the bulkhead; and on the bulkhead web itself between left and right buttock lines 17.0. Such fatigue cracking, if not corrected, could result in rapid decompression of the airplane fuselage.

**Related Rulemaking**

On March 10, 2000, the FAA issued AD 2000–05–29, amendment 39–11639 (65 FR 14834, March 20, 2000), applicable to certain Boeing Model 737–100, –200, –300, –400, and –500 series airplanes, that requires repetitive inspections to detect cracking of various areas of the forward pressure bulkhead, and repair, if necessary. That action also provides for certain optional preventive modifications, which, if accomplished, would terminate the repetitive inspections for the affected areas. That action was prompted by reports indicating that numerous fatigue cracks were found on critical areas of the forward pressure bulkhead. The requirements of that AD are intended to prevent such fatigue cracking, which could result in rapid decompression of the airplane fuselage.

In the preamble to AD 2000–05–29, the FAA specified that the actions required by that AD were considered interim action. The FAA indicated that it may consider further rulemaking action to mandate certain inspections and modifications to address fatigue cracking in the bulkhead of Model 737 series airplanes having line numbers 2738 through 3071, inclusive. The FAA has determined that further rulemaking action is indeed necessary; this proposed AD follows from that determination.

**Explanation of Relevant Service Information**

The FAA has reviewed and approved Boeing Alert Service Bulletin 737–53A1208, dated May 6, 1999, which describes procedures for repetitive inspections to detect cracking of the vertical and side chord areas on the body station 178 forward pressure bulkhead; and repair, if necessary. The service bulletin lists several types of inspections to be performed on the vertical and side chord areas of the forward pressure bulkhead. The inspections applicable to these areas consist of detailed visual/borescope inspections, eddy current inspections, and ultrasonic inspections.

The service bulletin also describes procedures for certain preventive modifications, which, if accomplished, would eliminate the need for the repetitive inspections. Specifically, these modifications consist of installing certain angles and straps to strengthen the vertical chord area at waterline 184, and the side chord area at waterline 207. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

**Explanation of Requirements of Proposed Rule**

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

**Differences Between Proposed Rule and Alert Service Bulletin**

Operators should note that the alert service bulletin refers to certain preventive modifications as optional. However, this proposed AD would make these preventive modifications mandatory, and would require accomplishment prior to the accumulation of 75,000 total flight cycles or within 12,000 flight cycles after the effective date of this AD, whichever occurs later. The proposed grace period of 12,000 flight cycles was developed to correspond with a typical operator's heavy maintenance check schedule in order to minimize disruption to scheduled operations. As with the compliance times proposed for the inspections, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the high number of airplanes that have already been found to be affected by the unsafe condition. These mandatory preventive modifications, when accomplished, would constitute terminating action for the repetitive inspection requirements of this proposed AD.

**Cost Impact**

There are approximately 330 Model 737 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 115 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 2 work hours per airplane to accomplish the proposed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $13,800, or $120 per airplane, per inspection cycle.

It would take approximately 38 work hours per airplane to accomplish the proposed modification of the vertical chords, at an average labor rate of $60 per work hour. Required parts would cost approximately $2,789 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $582,935, or $5,069 per airplane.

It would take approximately 274 work hours per airplane to accomplish the proposed modification of the side chord areas, at an average labor rate of $60 per work hour. Required parts would cost approximately $6,629 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $2,652,935, or $23,069 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

**Regulatory Impact**

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**



**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

**PART 39—AIRWORTHINESS DIRECTIVES**

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Boeing: Docket 99–NM–380–AD.**

*Applicability:* Model 737–300, –400, and –500 series airplanes, certificated in any category; as listed in Boeing Alert Service Bulletin 737–53A1208, dated May 6, 1999.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To detect fatigue cracking of the forward pressure bulkhead, which could result in rapid decompression of the airplane fuselage, accomplish the following:

**Initial and Repetitive Inspections**

(a) Before the accumulation of 20,000 total flight cycles, or within 3,000 flight cycles after the effective date of this AD, whichever occurs later: Perform the applicable inspections of the vertical and side chord areas of the forward pressure bulkhead to detect cracking, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1208, dated May 6, 1999. Thereafter, repeat the inspections at intervals not to exceed 6,000 flight cycles until the preventive modifications required by paragraph (c) of this AD have been accomplished.

**Repair**

(b) If any cracking is detected during any inspection required by paragraph (a) of this AD, before further flight, repair the area in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1208, dated May 6, 1999.

**Terminating Action**

(c) Before the accumulation of 75,000 total flight cycles, or within 12,000 flight cycles after the effective date of this AD, whichever occurs later: Accomplish preventive modifications of the vertical and side chord areas of the forward pressure bulkhead, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1208, dated May 6, 1999. Accomplishment of these modifications constitutes terminating action for the repetitive inspections required by paragraph (a) of this AD.

**Alternative Methods of Compliance**

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

**Special Flight Permit**

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on October 12, 2000.

**Donald L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–26711 Filed 10–17–00; 8:45 am]

BILLING CODE 4910–13–P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. 99–CE–63–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Raytheon Aircraft Company Beech Models 35–C33A, E33A, E33C, F33A, F33C, S35, V35, V35A, V35B, 36, and A36 Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes to adopt a new airworthiness directive (AD) that would apply to all Raytheon Aircraft Company (Raytheon) Beech Models 35–C33A, E33A, E33C, F33A, F33C, S35, V35, V35A, V35B, 36, and A36 airplanes that incorporate a certain Teledyne Continental engine configuration. The proposed AD would require you to repetitively replace the existing Aeroquip V-band exhaust clamp. The actions specified by the proposed AD are intended to prevent the exhaust stack from detaching from the turbocharger due to failure of the V-band exhaust clamp. Clamp failure could result in the release of high temperature gases inside the engine compartment with a consequent fire in the engine compartment.

**DATES:** The Federal Aviation Administration (FAA) must receive any comments on this rule on or before December 11, 2000.

**ADDRESSES:** Submit comments in triplicate to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–63–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

You may get the service information referenced in the proposed AD from Tornado Alley Turbo, Inc., 300 Airport Road, Ada, Oklahoma 74820; telephone: toll free 1–800–FLY–GAMI, or (580) 332–3510; facsimile: (580) 332–4577. You may examine this information at the Rules Docket at the address above.

**FOR FURTHER INFORMATION CONTACT:** Mr. Peter W. Hakala, Aerospace Engineer, FAA, Rotorcraft Directorate, Special Certification Office, 2601 Meacham Blvd., Fort Worth, Texas 76193–0190; telephone: (817) 222–5145; facsimile: (817) 222–5785.

**SUPPLEMENTARY INFORMATION:**

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**Comments Invited**

*How do I Comment on the Proposed AD?*

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments in triplicate to the address specified under the caption **ADDRESSES.** The FAA will consider all comments received on or before the closing date. We may amend the proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of the proposed AD action and determining whether we need to take additional rulemaking action.

*Are There any Specific Portions of the AD I Should pay Attention to?*

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of the proposed rule that might suggest a need to modify the rule. You may examine all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each FAA contact with the public that concerns the substantive parts of the proposed AD.

We are re-examining the writing style we currently use in regulatory documents, in response to the Presidential memorandum of June 1, 1998. That memorandum requires federal agencies to communicate more clearly with the public. We are interested in your comments on whether the style of this document is clearer, and any other suggestions you might have to improve the clarity of FAA communications that affect you. You can get more information about the Presidential memorandum and the plain language initiative at *http://www.plainlanguage.gov*.

*How can I be Sure FAA Receives my Comment?*

If you want us to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 99–CE–63–AD." We will date stamp and mail the postcard back to you.

**Discussion**

*What Events Have Caused This Proposed AD?*

The FAA has received reports of two instances where an Aeroquip V-band exhaust clamp (Aeroquip part number (P/N) 00624–4404C375–M) failed on Raytheon Models Beech A36 airplanes. This V-band exhaust clamp is part of the installation configuration of Tornado Alley Turbo, Inc. Supplemental Type Certificate (STC) SA5223NM and STC SE5222NM. The incorporation of these STC's installs a Teledyne Continental engine equipped with a turbonormalizing system on Raytheon Beech Models 35–C33A, E33A, E33C, F33A, F33C, S35, V35, V35A, V35B, 36, and A36 airplanes. The V-band exhaust clamp, P/N 00624–4404C375–M, attaches the exhaust stack to the turbocharger.

*What are the Consequences if the Condition is not Corrected?*

The exhaust stack detaching from the turbocharger could result in the release of high temperature gases inside the engine compartment with a consequent fire in the engine compartment.

**Relevant Service Information**

*Is There Service Information That Applies to this Subject?*

The STC holder, Tornado Alley Turbo, Inc., has issued Mandatory Service Bulletin Number TAT 98–1, dated November 21, 1998.

*What are the Provisions of This Service Bulletin?*

The service bulletin includes procedures for inspecting the Aeroquip V-band exhaust clamp (Aeroquip P/N 00624–4404C375–M) for cracks.

Replacement instructions are included in the Turbo-Flite™ 520/550 System Maintenance and Troubleshooting manual.

**The FAA's Determination and an Explanation of the Provisions of the Proposed AD**

*What has FAA Decided?*

After examining the circumstances and reviewing all available information related to the incidents described above, we have determined that:

—the unsafe condition referenced in this document exists or could develop on other Raytheon Beech Models 35–C33A, E33A, E33C, F33A, F33C, S35, V35, V35A, V35B, 36, and A36 airplanes of the same type design that incorporate STC SA5223NM and STC SE5222NM;

—the affected V-band exhaust clamp should be replaced at each 400 hours time-in-service (TIS) instead of relying on repetitive inspections to detect problems; and

—AD action should be taken in order to correct this unsafe condition.

*What Would this Proposed AD Require?*

This proposed AD requires you to repetitively replace the V-band exhaust clamp, Aeroquip P/N 00624–4404C375–M.

*Could the Affected V-band Clamp be Installed on Other Type Design Airplanes?*

Cessna 185 series airplanes could have the subject clamp installed through the incorporation of Tornado Alley Turbo, Inc. STC SE00214DE and STC SE002215DE. The FAA has determined that the cracks at the weld spots in these V-band clamps are occurring because of the specific configuration of the affected Raytheon airplanes. We have received no reports of service problems with the affected V-band clamps installed on Cessna 185 series airplanes.

**Cost Impact**

*How many airplanes would this proposed AD impact?*

We estimate that the proposed AD would affect 180 airplanes in the U.S. registry.

*What Would be the Cost Impact of Each Proposed Repetitive Replacement for the Affected Airplanes on the U.S. Register?*

We estimate that it would take approximately 2 workhours per airplane to accomplish each proposed repetitive replacement, at an average labor rate of $60 an hour. A replacement clamp costs $50. Based on the figures presented above, the total cost impact of each proposed repetitive replacement on U.S. operators is estimated to be $30,600, or $170 per airplane.

**Regulatory Impact**

*Would this Proposed AD Impact Various Entities?*

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

*Would this Proposed AD Involve a Significant Rule or Regulatory Action?*

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

**PART 39—AIRWORTHINESS DIRECTIVES**

1. The authority citation for part 39 continues to read as follows:



**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**PART 39—AIRWORTHINESS DIRECTIVES**

**§ 39.13 [Amended]**

2. FAA amends Section 39.13 by adding a new airworthiness directive (AD) to read as follows:

**Raytheon Aircraft Company** (The Beech Aircraft Corporation previously was the holder of Type Certificate 3A15): Docket No. 99–CE–63–AD.

(a) *What airplanes are affected by this AD?* Models Beech 35–C33A, E33A, E33C, F33A, F33C, S35, V35, V35A, V35B, 36, and A36 airplanes, all serial numbers, that:

(1) are certificated in any category;

(2) incorporate a Teledyne Continental engine equipped with a turbonormalizing system; and

(3) have Tornado Alley Turbo, Inc. Supplemental Type Certificate (STC) SA5223NM and STC SE5222NM incorporated.

**Note 1:** Cessna 185 series airplanes could have the subject clamp installed through the incorporation of Tornado Alley Turbo, Inc. STC SE00214DE and STC SE002215DE. The FAA has determined that the cracks at the weld spots in these V-band clamps are occurring because of the specific configuration of the Raytheon airplanes. We have received no reports of service problems with the affected V-band clamps installed on Cessna 185 series airplanes.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes referenced in paragraph (a) of this AD that are on the U.S. Register must comply with this AD.

(c) *What problem does this AD address?* The actions required by this AD are intended to prevent the exhaust stack from detaching from the turbocharger due to failure of the V-band exhaust clamp. This could result in the release of high temperature gases inside the engine compartment with a consequent fire in the engine compartment.

(d) *What must I do to address this problem? To* address this problem, you must accomplish the following actions:

| Actions | Compliance times | Procedures |
|---|---|---|
| Repetitively replace the V-band exhaust clamp, Aeroquip part number 00624–4404C375–M.. | Upon accumulating 400 hours time-in-service (TIS) after incorporating Tornado Alley Turbo, Inc. STC SA5223NM and STC SE5222NM on the airplane or within the next 25 hours TIS after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 400 hours TIS.. | Use the procedures in the Turbo-Flite™ 520/550 System Maintenance and Troubleshooting manual. |

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Rotorcraft Directorate, Special Certification Office, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Rotorcraft Directorate, Special Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0190.

**Note 2:** This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* You can contact Mr. Peter Hakala, Aerospace Engineer, FAA, Rotorcraft Directorate, Special Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0190;, telephone: (817) 222–5145; facsimile: (817) 222–5785.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(1) In order for this permit to be granted, the airplane must pass the push/pull test specified in Tornado Alley Turbo, Inc., Mandatory Service Bulletin Number TAT 98–1, dated November 21, 1998.

(2) Anyone who holds at least a private pilot certificate, as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), may accomplish the push/pull test referenced in paragraph (g)(1) of this. You must make an entry into the aircraft records that shows compliance with this portion of the AD, in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(h) *How do I get copies of the documents referenced in this AD?* You may obtain copies of the documents referenced in this AD from Tornado Alley Turbo, Inc., 300 Airport Road, Ada, Oklahoma 74820; or may examine this document at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on October 11, 2000.

**Marvin R. Nuss,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–26712 Filed 10–17–00; 8:45 am]

BILLING CODE 4910–13–P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**21 CFR Part 801**

**[Docket No. 00N–1520]**

## Medical Devices; Labeling for Menstrual Tampons; Ranges of Absorbency, Change From "Junior" to "Light"

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Proposed rule.

**SUMMARY:** The Food and Drug Administration (FDA) is proposing to amend its menstrual tampon labeling regulation to change the current term for tampons that absorb 6 grams (g) and under of fluid. A tampon with 6 g or less absorbency is currently required to

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be labeled as "junior". FDA is proposing to change the term to "light". The term "junior" implies that it is only for younger, teenage women, while in fact, women of any age with light menstrual flow may find this tampon useful. FDA wishes to encourage women to use the lowest absorbency tampon appropriate for their flow to help minimize the risk of toxic shock syndrome (TSS). At present, FDA requires standardized terms to be used for the labeling of a menstrual tampon to indicate its particular absorbency. This enables consumers to compare the absorbency of one brand and style of tampons with the absorbency of other brands and styles. FDA is issuing this proposed rule under the Federal Food, Drug, and Cosmetic Act (the act).

**DATES:** Submit written comments on the proposed rule by January 16, 2001. See section II of this document for the proposed effective date of a final rule based on this document.

**ADDRESSES:** Submit written comments on the proposed rule to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Colin M. Pollard, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1180.

**SUPPLEMENTARY INFORMATION:**

## I. Background

In the **Federal Register** of October 26, 1989 (54 FR 43766), FDA published a final rule which, among other things, amended its menstrual tampon labeling regulation to standardize the existing absorbency terms (junior, regular, super, and super plus) corresponding to the following four absorbency ranges: Less than 6, 6 to 9, 9 to 12, and 12 to 15 g of fluid. Recently, the agency proposed a term for 15 to 18 g absorbency tampons ("ultra"). FDA is finalizing that rule elsewhere in this issue of the **Federal Register**. When commenting on that proposed rule, several tampon manufacturers suggested changing the term for the 6 g and under tampon from "junior" to "light", because "junior" implies for teenagers only. These manufacturers argued that, in reality, the least absorbent tampon should be used by all women, commensurate with the amount of their menstrual flow. The age or size of a women should not be a deciding factor. The agency agrees that this term change would help woman decide which tampon they should use.

FDA is aware of literature suggesting that the lowest absorbency of tampon that is effective should be chosen, to minimize the risk of TSS. FDA believes that using the term "light" for low absorbency tampons (rather than "junior") will help women make the appropriate selection.

Tampons are currently classified into class II (special controls) (see 21 CFR 884.5460 and 884.5470). Any person who is required to register under section 510 of the act (21 U.S.C. 360) and part 807 of the regulations (21 CFR part 807) and who intends to begin the introduction or delivery for introduction into interstate commerce of a tampon for commercial distribution is required to submit a premarket notification to FDA at least 90 days before making such introduction or delivery in accordance with section 510(k) of the act (21 U.S.C. 360(k)) and subpart E of part 807. Under § 807.87(e), a premarket notification for a device is to contain, among other things, labeling for the device.

## II. Effective Date

FDA proposes that any final rule that may issue based on this proposal become effective 90 days after the date of publication of the final rule in the **Federal Register**.

## III. Environmental Impact

The agency has determined under 21 CFR 25.30(h) and (k) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

## IV. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Public Law 104–121), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Any small entity that decided to enter the market with this product would incur no additional costs because of this rule. That small entity would already be required to identify the absorbency ranges of its tampons. The agency, therefore, certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement of anticipated costs and benefits before proposing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million in any one year (adjusted annually for inflation). The Unfunded Mandates Reform Act does not require FDA to prepare a statement of costs and benefits for the proposed rule, because the proposed rule is not expected to result in any 1-year expenditure that would exceed $100 million adjusted for inflation.

## V. Request for Comments

Interested persons may submit to the Dockets Management Branch (address above) written comments regarding this proposal by January 16, 2001. Two copies of any comments are to be submitted except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

## VI. Paperwork Reduction Act of 1995

This proposed rule does not contain information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). This proposed rule requires public disclosure, on labeling, of information supplied by FDA to tampon manufacturers. Such information is not included in the definition of "collection of information" under the Paperwork Reduction Act regulation (5 CFR 1320.3(c)(3)).

## List of Subjects in 21 CFR Part 801

Labeling, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 801 be amended as follows:



## PART 801—LABELING

1. The authority citation for 21 CFR part 801 continues to read as follows:

**Authority:** 21 U.S.C. 321, 331, 351, 352, 360i, 360j, 371, 374.

2. Section 801.430 is amended by revising the table in paragraph (e)(1) to read as follows:

**§ 801.430 User labeling for menstrual tampons.**

* * * * *

(e) * * *

(1) * * *

| Ranges of absorbency in grams[1] | Corresponding term of absorbency |
|---|---|
| 6 and under | Light absorbency. |
| 6 to 9 | Regular absorbency. |
| 9 to 12 | Super absorbency. |
| 12 to 15 | Super plus absorbency. |
| 15 to 18 | Ultra absorbency. |
| Above 18 | No term. |

[1] These ranges are defined, respectively, as follows: Less than or equal to 6 grams (g); greater than 6 g up to and including 9 g; greater than 9 g up to and including 12 g; greater than 12 g up to and including 15 g; greater than 15 g up to and including 18 g; and greater than 18 g.

* * * * *

Dated: October 2, 2000.

**Margaret M. Dotzel,**

*Associate Commissioner for Policy.*

[FR Doc. 00–26249 Filed 10–17–00; 8:45 am]

BILLING CODE 4160–01–F

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

**[MO 114–1114; FRL–6885–7]**

### Approval and Promulgation of Implementation Plans; State of Missouri; Designation of Areas for Air Quality Planning Purposes; Dent Township

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to approve a State Implementation Plan (SIP) revision submitted by the state of Missouri and Missouri's request to redesignate the lead nonattainment area in western Iron County, Missouri, to attainment of the National Ambient Air Quality Standards (NAAQS). EPA proposes to approve the maintenance plan for this area including a consent order which was submitted with the redesignation request, and also proposes to approve the revision to Missouri's Restriction of Emissions of Lead From Specific Lead Smelter-Refinery Installations rule which ensures the permanent and enforceable emission reductions by clarifying the emissions limits for the Doe Run Resource Recycling Facility, and removes the text which could have allowed this facility to resume operation as a primary smelter.

In the final rules section of today's **Federal Register**, EPA is approving the state's SIP revision and redesignation request as a direct final rule without prior proposal because the Agency views this as a noncontroversial action and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

**DATES:** Comments on this proposed action must be received in writing by November 17, 2000.

**ADDRESSES:** Comments may be mailed to Kim Johnson, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

**FOR FURTHER INFORMATION CONTACT:** Kim Johnson at (913) 551–7975.

**SUPPLEMENTARY INFORMATION:** See the information provided in the direct final rule which is located in the rules section of today's **Federal Register**.

Dated: September 27, 2000.

**Dennis Grams,**

*Regional Administrator, Region 7.*

[FR Doc. 00–26502 Filed 10–17–00; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 721

**OPPTS–50639; FRL–6745–5**

**RIN 2070–AD43**

### Perfluorooctyl Sulfonates; Proposed Significant New Use Rule

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for the following chemical substances: Perfluorooctanesulfonic acid (PFOSA) and certain of its salts (PFOSS), perfluorooctanesulfonyl fluoride (PFOSF), certain higher and lower homologues of PFOSA and PFOSF, and certain other chemical substances, including polymers, that contain PFOSA and its homologues as substructures. All of these chemical substances are referred to collectively in this proposed rule as perfluorooctyl sulfonates, or PFOS. This proposed rule would require manufacturers and importers to notify EPA at least 90 days before commencing the manufacture or import of these chemical substances for the significant new uses described in this document. EPA believes that this action is necessary because the chemical substances included in this proposed rule may be hazardous to human health and the environment. The required notice would provide EPA with the opportunity to evaluate an intended new use and associated activities and, if necessary, to prohibit or limit that activity before it occurs.

**DATES:** Comments, identified by the docket number OPPTS–50639, are due November 17, 2000.

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**ADDRESSES:** Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–50639 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** *For general information contact*: Barbara Cunningham, Director, Office of Program Management and Evaluation, Office of Pollution Prevention and Toxics (7401), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

*For technical information contact*: Mary Dominiak, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 260–7768; fax number: (202) 260–1096; e-mail address: dominiak.mary@epa.gov.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this Notice Apply to Me?*

You may be affected by this action if you manufacture (defined by statute to include import) any of the chemical substances that are listed in Table 2 or Table 3 of this unit. Persons who intend to import any chemical substance governed by a final SNUR are subject to the TSCA section 13 (15 U.S.C. 2612) import certification requirements, and to the regulations codified at 19 CFR 12.118 through 12.127 and 12.728. Those persons must certify that they are in compliance with the SNUR requirements. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B. In addition, any persons who export or intend to export any of the chemical substances listed in Table 2 or Table 3 of this unit are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)), and must comply with the export notification requirements in 40 CFR 721.20 and 40 CFR part 707, subpart D. Entities potentially affected by the SNUR requirements in this proposed rule may include, but are not limited to:

TABLE 1.—ENTITIES POTENTIALLY AFFECTED BY THE SNUR REQUIREMENTS

| Categories | NAICS codes | Examples of potentially affected entities |
|---|---|---|
| Chemical manufacturers or importers | 325 | Persons who manufacture (defined by statute to include import) one or more of the subject chemical substances |
| Chemical exporters | 325 | Persons who export, or intend to export, one or more of the subject chemical substances |

This listing is not intended to be exhaustive. Instead, it provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in Table 1 of this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist in determinations of whether this action might apply to certain entities. To determine if you or your business is affected by this action, you should carefully examine the applicability provisions at 40 CFR 721.5 for SNUR-related obligations. Also, consult Unit III. Note that because this proposed rule would designate certain manufacturing and importing activities as significant new uses, persons that solely process the chemical substances that would be covered by this action would not be subject to the rule. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

TABLE 2.—CHEMICALS REQUIRING A SIGNIFICANT NEW USE NOTICE ON OR AFTER JANUARY 1, 2001

| CAS No./PMN | Ninth Collective Index chemical name |
|---|---|
| 383–07–3 | 2-Propenoic acid, 2-[butyl[(heptadecafluorooctyl)sulfonyl]amino]ethyl ester. |
| 423–82–5 | 2-Propenoic acid, 2-[ethyl[(heptadecafluorooctyl)sulfonyl]amino]ethyl ester. |
| 2250–98–8 | 1-Octanesulfonamide, N,N',N''-[phosphinylidynetris(oxy-2,1-ethanediyl)]tris[N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-. |
| 14650–24–9 | 2-Propenoic acid, 2-methyl-, 2-[[(heptadecafluorooctyl)sulfonyl]methylamino]ethyl ester. |
| 30381–98–7 | 1-Octanesulfonamide, N,N'-[phosphinicobis(oxy-2,1-ethanediyl)]bis[N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-, ammonium salt. |
| 55120–77–9 | 1-Hexanesulfonic acid, 1,1,2,2,3,3,4,4,5,5,6,6,6-tridecafluoro-, lithium salt. |
| 57589–85–2 | Benzoic acid, 2,3,4,5-tetrachloro-6-[[[3-[[(heptadecafluorooctyl)sulfonyl]oxy]phenyl]amino]carbonyl]-, monopotassium salt. |
| 61660–12–6 | 1-Octanesulfonamide, N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-N-[3-(trimethoxysilyl)propyl]-. |
| 67969–69–1 | 1-Octanesulfonamide, N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-N-[2-(phosphonooxy)ethyl]-, diammonium salt. |
| 68156–01–4 | Cyclohexanesulfonic acid, nonafluorobis(trifluoromethyl)-, potassium salt. |
| 68329–56–6 | 2-Propenoic acid, eicosyl ester, polymer with 2-[[(heptadecafluorooctyl)sulfonyl]methylamino]ethyl 2-propenoate, hexadecyl 2-propenoate, 2-[methyl[(nonafluorobutyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(pentadecafluoroheptyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(tridecafluorohexyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(undecafluoropentyl)sulfonyl]amino]ethyl 2-propenoate and octadecyl 2-propenoate. |
| 68555–91–9 | 2-Propenoic acid, 2-methyl-, 2-[ethyl[(heptadecafluorooctyl)sulfonyl]amino]ethyl ester, polymer with 2-[ethyl[(nonafluorobutyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 2-[ethyl[(pentadecafluoroheptyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 2-[ethyl[(tridecafluorohexyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 2-[ethyl[(undecafluoropentyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate and octadecyl 2-methyl-2-propenoate. |
| 68555–92–0 | 2-Propenoic acid, 2-methyl-, 2-[[(heptadecafluorooctyl)sulfonyl]methylamino]ethyl ester, polymer with 2-[methyl[(nonafluorobutyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 2-[methyl[(pentadecafluoroheptyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 2-[methyl[(tridecafluorohexyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 2-[methyl[(undecafluoropentyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate and octadecyl 2-methyl-2-propenoate. |



TABLE 2.—CHEMICALS REQUIRING A SIGNIFICANT NEW USE NOTICE ON OR AFTER JANUARY 1, 2001—Continued

| CAS No./PMN | Ninth Collective Index chemical name |
|---|---|
| 68608–14–0 | Sulfonamides, C4-8-alkane, perfluoro, N-ethyl-N-(hydroxyethyl), reaction products with 1,1'-methylenebis[4-isocyanatobenzene]. |
| 68909–15–9 | 2-Propenoic acid, eicosyl ester, polymers with branched octyl acrylate, 2-[[(heptadecafluorooctyl)sulfonyl]methylamino]ethyl acrylate, 2-[methyl[(nonafluorobutyl) sulfonyl]amino]ethyl acrylate, 2-[methyl[(pentadecafluoroheptyl)sulfonyl]amino]ethyl acrylate, 2-[methyl[(tridecafluorohexyl)sulfonyl]amino]ethyl acrylate, 2-[methyl[(undecafluoropentyl) sulfonyl]amino]ethyl acrylate, polyethylene glycol acrylate Me ether and stearyl acrylate. |
| 70776–36–2 | 2-Propenoic acid, 2-methyl-, octadecyl ester, polymer with 1,1-dichloroethene, 2-[[(heptadecafluorooctyl)sulfonyl]methylamino]ethyl 2-propenoate, N-(hydroxymethyl)-2-propenamide, 2-[methyl[(nonafluorobutyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(pentadecafluoroheptyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(tridecafluorohexyl)sulfonyl]amino]ethyl 2-propenoate and 2-[methyl[(undecafluoropentyl)sulfonyl]amino]ethyl 2-propenoate. |
| 73772–32–4 | 1-Propanesulfonic acid, 3-[[3-(dimethylamino)propyl][(tridecafluorohexyl)sulfonyl]amino]-2-hydroxy-, monosodium salt. |
| 81190–38–7 | 1-Propanaminium, N-(2-hydroxyethyl)-3-[(2-hydroxy-3-sulfopropyl) [(tridecafluorohexyl)sulfonyl]amino]-N,N-dimethyl-, hydroxide, monosodium salt. |
| 94133–90–1 | 1-Propanesulfonic acid, 3-[[3-(dimethylamino)propyl][(heptadecafluorooctyl)sulfonyl]amino]-2-hydroxy-, monosodium salt. |
| 117806–54–9 | 1-Heptanesulfonic acid, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,7-pentadecafluoro-, lithium salt. |
| 127133–66–8 | 2-Propenoic acid, 2-methyl-, polymers with Bu methacrylate, lauryl methacrylate and 2-[methyl[(perfluoro-C4-8-alkyl)sulfonyl]amino]ethyl methacrylate. |
| 129813–71–4 | Sulfonamides, C4-8-alkane, perfluoro, N-methyl-N-(oxiranylmethyl). |
| 148240–78–2 | Fatty acids, C18-unsatd., trimers, 2-[[(heptadecafluorooctyl)sulfonyl]methylamino]ethyl esters. |
| 148240–79–3 | Fatty acids, C18-unsatd., trimers, 2-[methyl[(nonafluorobutyl)sulfonyl]amino]ethyl esters. |
| 148240–80–6 | Fatty acids, C18-unsatd., trimers, 2-[methyl[(tridecafluorohexyl)sulfonyl]amino]ethyl esters. |
| 148240–81–7 | Fatty acids, C18-unsatd., trimers, 2-[methyl[(undecafluoropentyl)sulfonyl]amino]ethyl esters. |
| 148240–82–8 | Fatty acids, C18-unsatd., trimers, 2-[methyl[(pentadecafluoroheptyl)sulfonyl]amino]ethyl esters. |
| 148684–79–1 | Sulfonamides, C4-8-alkane, perfluoro, N-(hydroxyethyl)-N-methyl, reaction products with 1,6-diisocyanatohexane homopolymer and ethylene glycol. |
| 178535–22–3 | Sulfonamides, C4-8-alkane, perfluoro, N-ethyl-N-(hydroxyethyl)-, polymers with 1,1'-methylenebis[4-isocyanatobenzene] and polymethylenepolyphenylene isocyanate, 2-ethylhexyl esters, Me Et ketone oxime-blocked. |
| P-83–1102 | Fatty acids, linseed-oil, dimers, 2-[[(heptadecafluorooctyl)sulfonyl]methylamino]ethyl esters. |
| P-84–1163 | Propanoic acid, 3-hydroxy-2-(hydroxymethyl)-2-methyl-, polymer with 2-ethyl-2-(hydroxymethyl)-1,3-propanediol and N,N',2-tris(6-isocyanatohexyl)imidodicarbonic diamide, reaction products with N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-N-(2-hydroxyethyl)-1-octanesulfonamide and N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,7-pentadecafluoro-N-(2-hydroxyethyl)-1-heptanesulfonamide, compds. with triethylamine. |
| P-84–1171 | Propanoic acid, 3-hydroxy-2-(hydroxymethyl)-2-methyl-, polymer with 1,1'-methylenebis[4-isocyanatobenzene] and 1,2,3-propanetriol, reaction products with N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-N-(2-hydroxyethyl)-1-octanesulfonamide and N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,7-pentadecafluoro-N-(2-hydroxyethyl)-1-heptanesulfonamide, compds. with morpholine. |
| P-86–0301 | Sulfonamides, C4-8-alkane, perfluoro, N-(hydroxyethyl)-N-methyl, reaction products with 12-hydroxystearic acid and 2,4-TDI, ammonium salts. |
| P-89–0799 | Sulfonamides, C4-8-alkane, perfluoro, N-ethyl-N-(hydroxyethyl), reaction products with 2-ethyl-1-hexanol and polymethylenepolyphenylene isocyanate. |
| P-94–0545 | 1-Hexadecanaminium, N,N-dimethyl-N-[2-[(2-methyl-1-oxo-2-propenyl)oxy]ethyl]-, bromide, polymers with Bu acrylate, Bu methacrylate and 2-[methyl[(perfluoro-C4-8-alkyl)sulfonyl]amino]ethyl acrylate. |
| P-94–0927 | 2-Propenoic acid, 2-methyl-, 2-methylpropyl ester, polymer with 2,4-diisocyanato-1-methylbenzene, 2-ethyl-2-(hydroxymethyl)-1,3-propanediol and 2-propenoic acid, N-ethyl-N-(hydroxyethyl)perfluoro-C4-8-alkanesulfon amides-blocked. |
| P-94–2205 | Polymethylenepolyphenylene isocyanate and bis(4-NCO-phenyl)methane reaction products with 2-ethyl-1-hexanol, 2-butanone, oxime, N-ethyl-N-(2- hydroxyethyl)-1-C4-C8 perfluoroalkanesulfonamide. |
| P-94–2206 | Siloxanes and Silicones, di-Me, mono[3-[(2-methyl-1-oxo-2-propenyl)oxy]propylgroup]-terminated, polymers with 2-[methyl[(perfluoro-C4-8-alkyl)sulfonyl]amino]ethyl acrylate and stearyl methacrylate. |
| P-96–1645 | Fatty acids, C18-unsatd., dimers, 2-[methyl[(perfluoro-C4-8-alkyl)sulfonyl]amino]ethyl esters. |
| P-97–0790 | 1-Decanaminium, N-decyl-N,N-dimethyl-, salt with 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-1-octanesulfonic acid (1:1). |
| P-98–0251 | 2-Propenoic acid, butyl ester, polymers with acrylamide, 2-[methyl[(perfluoro-C4-8-alkyl)sulfonyl]amino]ethyl acrylate and vinylidene chloride. |
| P-98–1272 | 2-Propenoic acid, 2-methyl-, 3-(trimethoxysilyl)propyl ester, polymers with acrylic acid, 2-[methyl[(perfluoro-C4-8-alkyl)sulfonyl]amino]ethyl acrylate and propylene glycol monoacrylate, hydrolyzed, compds. with 2,2'-(methylimino)bis[ethanol]. |
| P-99–0188 | Hexane, 1,6-diisocyanato-, homopolymer, N-(hydroxyethyl)-N-methyl perfluoro C4-8-alkane sulfonamide- and stearyl alc.-blocked. |
| P-99–0319 | Poly(oxy-1,2-ethanediyl), .alpha.-[2-(methylamino)ethyl]-.omega.-[(1,1,3,3-tetramethylbutyl)phenoxy]-, N-[(perfluoro-C4-8-alkyl)sulfonyl] derivs.. |

TABLE 3.—CHEMICALS SUBJECT TO VOLUME CAP RESTRICTIONS ON OR AFTER JANUARY 1, 2001 AND REQUIRING A SIGNIFICANT NEW USE NOTICE ON OR AFTER JANUARY 1, 2003

| CAS No./PMN | Ninth Collective Index chemical name |
|---|---|
| 307–35–7 | 1-Octanesulfonyl fluoride, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro- |
| 307–51–7 | 1-Decanesulfonyl fluoride, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,10-heneicosafluoro- |
| 376–14–7 | 2-Propenoic acid, 2-methyl-, 2-[ethyl[(heptadecafluorooctyl)sulfonyl]amino]ethyl ester |

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TABLE 3.—CHEMICALS SUBJECT TO VOLUME CAP RESTRICTIONS ON OR AFTER JANUARY 1, 2001 AND REQUIRING A SIGNIFICANT NEW USE NOTICE ON OR AFTER JANUARY 1, 2003—Continued

| CAS No./PMN | Ninth Collective Index chemical name |
|---|---|
| 423–50–7 | 1-Hexanesulfonyl fluoride, 1,1,2,2,3,3,4,4,5,5,6,6,6-tridecafluoro- |
| 754–91–6 | 1-Octanesulfonamide, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro- |
| 1652–63–7 | 1-Propanaminium, 3-[[(heptadecafluorooctyl)sulfonyl]amino]-N,N,N-trimethyl-, iodide |
| 1691–99–2 | 1-Octanesulfonamide, N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-N-(2-hydroxyethyl)- |
| 1763–23–1 | 1-Octanesulfonic acid, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro- |
| 2795–39–3 | 1-Octanesulfonic acid, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-, potassium salt |
| 2991–51–7 | Glycine, N-ethyl-N-[(heptadecafluorooctyl)sulfonyl]-, potassium salt |
| 4151–50–2 | 1-Octanesulfonamide, N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro- |
| 17202–41–4 | 1-Nonanesulfonic acid, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,9,9,9-nonadecafluoro-, ammonium salt |
| 24448–09–7 | 1-Octanesulfonamide, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-N-(2-hydroxyethyl)-N-methyl- |
| 25268–77–3 | 2-Propenoic acid, 2-[[(heptadecafluorooctyl)sulfonyl]methylamino]ethyl ester |
| 29081–56–9 | 1-Octanesulfonic acid, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-, ammonium salt |
| 29117–08–6 | Poly(oxy-1,2-ethanediyl), .alpha.-[2-[ethyl[(heptadecafluorooctyl)sulfonyl]amino]ethyl]-.omega.-hydroxy- |
| 29457–72–5 | 1-Octanesulfonic acid, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-, lithium salt |
| 31506–32–8 | 1-Octanesulfonamide, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-N-methyl- |
| 38006–74–5 | 1-Propanaminium, 3-[[(heptadecafluorooctyl)sulfonyl]amino]-N,N,N-trimethyl-, chloride |
| 38850–58–7 | 1-Propanaminium, N-(2-hydroxyethyl)-N,N-dimethyl-3-[(3-sulfopropyl)[(tridecafluorohexyl)sulfonyl]amino]-, inner salt |
| 67584–42–3 | Cyclohexanesulfonic acid, decafluoro(pentafluoroethyl)-, potassium salt |
| 67906–42–7 | 1-Decanesulfonic acid, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,10-heneicosafluoro-, ammonium salt |
| 68298–62–4 | 2-Propenoic acid, 2-[butyl[(heptadecafluorooctyl)sulfonyl]amino]ethyl ester, telomer with 2-[butyl[(pentadecafluoroheptyl)sulfonyl]amino]ethyl 2-propenoate, methyloxirane polymer with oxirane di-2-propenoate, methyloxirane polymer with oxirane mono-2-propenoate and 1-octanethiol |
| 68541–80–0 | 2-Propenoic acid, polymer with 2-[ethyl[(heptadecafluorooctyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate and octadecyl 2-propenoate |
| 68555–90–8 | 2-Propenoic acid, butyl ester, polymer with 2-[[(heptadecafluorooctyl)sulfonyl] methylamino]ethyl 2-propenoate, 2-[methyl[(nonafluorobutyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(pentadecafluoroheptyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(tridecafluorohexyl)sulfonyl]amino]ethyl 2-propenoate and 2-[methyl[(undecafluoropentyl)sulfonyl]amino]ethyl 2-propenoate |
| 68586–14–1 | 2-Propenoic acid, 2-[[(heptadecafluorooctyl)sulfonyl]methylamino]ethyl ester, telomer with 2-[methyl[(nonafluorobutyl)sulfonyl]amino]ethyl 2-propenoate, .alpha.-(2-methyl-1-oxo-2-propenyl)-.omega.-hydroxypoly(oxy-1,2-ethanediyl), .alpha.-(2-methyl-1-oxo-2-propenyl)-.omega.-[(2-methyl-1-oxo-2-propenyl)oxy]poly(oxy-1,2-ethanediyl), 2-[methyl[(pentadecafluoroheptyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(tridecafluorohexyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(undecafluoropentyl)sulfonyl]amino]ethyl 2-propenoate and 1-octanethiol |
| 68649–26–3 | 1-Octanesulfonamide, N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-N-(2-hydroxyethyl)-, reaction products with N-ethyl-1,1,2,2,3,3,4,4,4-nonafluoro-N-(2-hydroxyethyl)-1-butanesulfonamide, N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,7-pentadecafluoro-N-(2-hydroxyethyl)-1-heptanesulfonamide, N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,6-tridecafluoro-N-(2-hydroxyethyl)-1-hexanesulfonamide, N-ethyl-1,1,2,2,3,3,4,4,5,5,5-undecafluoro-N-(2-hydroxyethyl)-1-pentanesulfonamide, polymethylenepolyphenylene isocyanate and stearyl alc. |
| 68867–60–7 | 2-Propenoic acid, 2-[[(heptadecafluorooctyl)sulfonyl]methylamino]ethyl ester, polymer with 2-[methyl[(nonafluorobutyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(pentadecafluoroheptyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(tridecafluorohexyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(undecafluoropentyl)sulfonyl]amino]ethyl 2-propenoate and .alpha.-(1-oxo-2-propenyl)-.omega.-methoxypoly(oxy-1,2-ethanediyl) |
| 68867–62–9 | 2-Propenoic acid, 2-methyl-, 2-[ethyl[(heptadecafluorooctyl)sulfonyl]amino]ethyl ester, telomer with 2-[ethyl[(nonafluorobutyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 2-[ethyl[(pentadecafluoroheptyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 2-[ethyl[(tridecafluorohexyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 2-[ethyl[(undecafluoropentyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 1-octanethiol and .alpha.-(1-oxo-2-propenyl)-.omega.-methoxypoly(oxy-1,2-ethanediyl) |
| 68891–96–3 | Chromium, diaquatetrachloro[.mu.-[N-ethyl-N-[(heptadecafluorooctyl)sulfonyl]glycinato-.kappa.O:.kappa.O']]-.mu.-hydroxybis(2-methylpropanol)di- |
| 68958–61–2 | Poly(oxy-1,2-ethanediyl), .alpha.-[2-[ethyl[(heptadecafluorooctyl)sulfonyl]amino]ethyl]-.omega.-methoxy- |
| 70225–14–8 | 1-Octanesulfonic acid, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-, compd. with 2,2'-iminobis[ethanol] (1:1) |
| 71487–20–2 | 2-Propenoic acid, 2-methyl-, methyl ester, polymer with ethenylbenzene, 2-[[(heptadecafluorooctyl)sulfonyl]methylamino]ethyl 2-propenoate, 2-[methyl[(nonafluorobutyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(pentadecafluoroheptyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(tridecafluorohexyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(undecafluoropentyl)sulfonyl]amino]ethyl 2-propenoate and 2-propenoic acid |
| 91081–99–1 | 1-Octanesulfonamide, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-N-(2-hydroxyethyl)-N-methyl-, polymer with(chloromethyl)oxirane, 1,1,2,2,3,3,4,4,4-nonafluoro-N-(2-hydroxyethyl)-N-methyl-1-butanesulfonamide, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,7-pentadecafluoro-N-(2-hydroxyethyl)-N-methyl-1-heptanesulfonamide, 1,1,2,2,3,3,4,4,5,5,6,6,6-tridecafluoro-N-(2-hydroxyethyl)-N-methyl-1-hexanesulfonamide and 1,1,2,2,3,3,4,4,5,5,5-undecafluoro-N-(2-hydroxyethyl)-N-methyl-1-pentanesulfonamide, hexanedioate (ester) |
| 98999–57–6 | Sulfonamides, C7-8-alkane, perfluoro, N-methyl-N-[2-[(1-oxo-2-propenyl) oxy]ethyl], polymers with 2-ethoxyethyl acrylate, glycidyl methacrylate and N,N,N-trimethyl-2-[(2-methyl-1-oxo-2-propenyl)oxy]ethanaminiumchloride |
| 182700–90–9 | 1-Octanesulfonamide, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-N-methyl-, reaction products with benzene-chlorine-sulfur chloride (S2Cl2) reaction products chlorides |
| L-92–0151 | 2-Propenoic acid, 2-methyl-, butyl ester, polymer with 2-methyl-, 2-[ethyl [(heptadecafluorooctyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 2-[ethyl[(nonafluorobutyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 2-[ethyl[(pentadecafluoroheptyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 2-[ethyl[(tridecafluorohexyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, and 2-propenoic acid |
| P-80–0183 | Sulfonamides, C4-8-alkane, perfluoro, N-[3-(dimethylamino)propyl], reaction products with acrylic acid |



TABLE 3.—CHEMICALS SUBJECT TO VOLUME CAP RESTRICTIONS ON OR AFTER JANUARY 1, 2001 AND REQUIRING A SIGNIFICANT NEW USE NOTICE ON OR AFTER JANUARY 1, 2003—Continued

| CAS No./PMN | Ninth Collective Index chemical name |
|---|---|
| P-86–0958 | 2-Propenoic acid, 2-methyl-, dodecyl ester, polymers with 2-[methyl[(perfluoro-C4-8-alkyl)sulfonyl]amino]ethyl acrylate and vinylidene chloride |
| P-90–0111 | Sulfonamides, C4-8-alkane, perfluoro, N-methyl-N-[(3-octadecyl-2-oxo-5-oxazolidinyl)methyl] |
| P-91–1419 | Poly(oxy-1,2-ethanediyl), .alpha.-hydro-.omega.-hydroxy-, polymer with 1,6-diisocyanatohexane, N-(2-hydroxyethyl)-N-methyl perfluoro C4-8-alkane sulfonamide-blocked |
| P-93–1444 | 2-Propenoic acid, 2-methyl-, dodecyl ester, polymers with N-(hydroxymethyl)-2-propenamide, 2-[methyl[(perfluoro-C4-8-alkyl)sulfonyl]amino]ethyl methacrylate, stearyl methacrylate and vinylidene chloride |
| P-95–0120 | Sulfonamides, C4-8-alkane, perfluoro, N,N'-[1,6-hexanediylbis[[2-oxo-3,5-oxazolidinediyl)methylene]]bis[N-methyl- |
| P-96–1262 | Sulfonic acids, C6-8-alkane, perfluoro, compds. with polyethylene-polypropylene glycol bis(2-aminopropyl) ether |
| P-96–1424 | 2-Propenoic acid, 2-methyl-, 2-(dimethylamino)ethyl ester, telomers with 2-[ethyl[(perfluoro-C4-8-alkylsulfonyl]amino]ethyl methacrylate and 1-octanethiol, N-oxides |
| P-96–1433 | Sulfonamides, C4-8-alkane, perfluoro, N-[3-(dimethyloxidoamino)propyl], potassium salts |

*B. How Can I get Additional Information, Including Copies of this Document or Other Related Documents?*

1. *Electronically.* You may obtain electronic copies of this document and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Law and Regulations," "Regulations and Proposed Rules," then look up the entry for this document under "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at http://www.epa.gov/opptsfrs/home/guidelin.htm. In addition, you may access other information about the Office of Prevention, Pesticides and Toxic Substances (OPPTS) and related programs at http://www.epa.gov/internet/oppts/.

2. *In person.* The Agency has established an official record for this action under docket control number OPPTS–50639. The official record consists of the documents referenced in this action, any public comments received during the comment period, and other information related to this rulemaking, including information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as all documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed paper versions of any electronic comments that may be submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, Room NE B–607, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

*C. How and to Whom Do I Submit Comments?*

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, your comments must identify docket control number OPPTS–50639 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: OPPT's Document Control Office (DCO), East Tower Room G–099, Waterside Mall, 401 M St., SW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 260–7093.

3. *Electronically.* You may submit your comments electronically by e-mail to: oppt.ncic@epa.gov, or mail or deliver your computer disk to the addresses identified in Unit I.C.1. or I.C.2. Do not submit any information electronically that you consider to be CBI. E-mailed comments must be submitted as an ASCII file, avoiding the use of special characters or any form of encryption. Comments will also be accepted on standard computer disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPPTS–50639. Electronic comments may also be filed online at many Federal Depository Libraries.

*D. How Should I Handle CBI Information that I Want to Submit to the Agency?*

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comments that include any information claimed as CBI, a sanitized copy of the comments which does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record by EPA without prior notice. If you have any questions about CBI or the procedures for claiming CBI, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

*E. What Should I Consider as I Prepare My Comments for EPA?*

We invite you to provide your views on the various options we propose, new approaches we have not considered, the potential impacts of the various options (including possible unintended consequences), and any data or information that you would like the Agency to consider during the development of the final SNUR. You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

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4. If you estimate potential burden or costs, explain how you arrived at the estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the proposed rule or data collection activity.

7. Make sure to submit your comments by the deadline specified in this document.

8. At the beginning of your comments, be sure to properly identify the document you are commenting on. To ensure proper receipt by EPA, your comments must identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the title, date, and **Federal Register** citation.

## II. Background

### *A. What Action is the Agency Taking?*

This proposal would require persons to notify EPA at least 90 days before commencing the manufacture or import of the chemical substances identified in Table 2 or Table 3 of Unit I.A., for the significant new uses described in this document. The chemical substances identified in Table 2 and Table 3 of Unit I.A. include PFOSA, PFOSS, PFOSF, certain higher and lower homologues of PFOSA and PFOSF, and certain other chemical substances, including polymers, that contain PFOSA and its homologues as substructures. These chemical substances are collectively referred to throughout this proposed rule as PFOS.

The significant new uses described by this notice are:

1. The manufacture or import for any use of any of the chemicals listed in Table 2 of Unit I.A. on or after January 1, 2001.

2. The manufacture or import for any use of any one or more of the chemicals listed in Table 3 of Unit I.A. in excess of an aggregate volume of 1,100,000 pounds per person per calendar year on or after January 1, 2001 and before January 1, 2003.

3. The manufacture or import for any use of any of the chemicals listed in Table 3 of Unit I.A. on or after January 1, 2003.

### *B. What is the Agency's Authority for Taking this Action?*

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." The Agency makes this determination by rule after considering all relevant factors, including those listed in TSCA section 5(a)(2). These factors include the volume of a chemical substance's production; the extent to which a use changes the type, form, magnitude, or duration of exposure to the substance; and the reasonably anticipated manner of producing or otherwise managing the substance. Once EPA makes this determination and promulgates a SNUR, TSCA section 5(a)(1)(B) requires persons to submit a significant new use notice (SNUN) to EPA at least 90 days before they manufacture, import, or process the chemical substance for that significant new use (15 U.S.C. 2604 (a)(1)(B)).

### *C. Which General Provisions Apply?*

General provisions for SNURs are published under 40 CFR part 721, subpart A. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the final rule. Note that because this proposed rule would designate certain manufacturing and importing activities as significant new uses, persons that solely process the chemical substances that would be covered by this action would not be subject to the rule. Provisions relating to user fees appear at 40 CFR part 700. Persons subject to this proposed SNUR would be required to comply with the same notice requirements and EPA regulatory procedures as submitters of Premanufacture Notices (PMNs) under TSCA section 5(a)(1)(A). In particular, these requirements include: the information submission requirements of TSCA section 5(b) and 5(d)(1); the exemptions authorized by TSCA section 5 (h)(1), (2), (3), and (5); the export notification provisions of TSCA section 12(b); and the export notification requirements in 40 CFR part 707, subpart D. Once EPA receives a SNUN, EPA may take regulatory action under TSCA sections 5(e), 5(f), 6, or 7, if appropriate, to control the activities on which it has received the SNUN. If EPA does not take action, EPA is required under TSCA section 5(g) to explain in the **Federal Register** its reasons for not taking action.

## III. Summary of this Proposed Rule

The chemical substances subject to this proposed SNUR are listed in Table 2 and Table 3 of Unit I.A. These chemical substances include PFOSA, PFOSS, PFOSF, certain higher and lower homologues of PFOSA and PFOSF, and certain other chemical substances, including polymers, that contain PFOSA and its homologues as substructures. All of these chemical substances are referred to collectively in this proposed rule as perfluorooctyl sulfonates, or PFOS. All of these chemical substances have the potential to degrade back to PFOSA in the environment, and PFOSA does not degrade further. PFOSA is highly persistent in the environment and has a strong tendency to bioaccumulate. Studies have found PFOS in very small quantities in the blood of the general human population as well as in wildlife, indicating that exposure to the chemicals is widespread, and recent tests have raised concerns about their potential developmental, reproductive, and systemic toxicity (Refs. 1, 2, and 3). These factors, taken together, raise concerns for long term potential adverse effects in people and wildlife over time if PFOS should continue to be produced, released, and built up in the environment.

EPA believes that the chemical substances listed in Tables 2 and 3 of Unit I.A. are manufactured and imported in the United States only by the Minnesota Mining and Manufacturing Company (3M) (Refs. 4 and 5). 3M has committed to phase out these chemicals voluntarily by discontinuing the manufacture of certain of these chemical substances on a global basis for their most widespread uses by the end of December 2000, by steadily reducing their production volume on the remaining chemicals through 2001 and 2002, and by entirely discontinuing the manufacture of all of these PFOS chemicals by December 31, 2002 (Ref. 6). The chemicals listed in Table 2 of Unit I.A. are those which 3M has committed to cease manufacturing by December 31, 2000. The chemicals listed in Table 3 of Unit I.A. are those which 3M has committed first to reduce, and then to cease manufacturing by December 31, 2002. EPA believes that any manufacture or import of these PFOS chemicals occurring after 3M's global phase-out dates would increase the magnitude and duration of exposure to these chemicals. Therefore, EPA is proposing to designate the following as significant new uses:

1. Any manufacture or import for any use of the chemicals listed in Table 2 of Unit I.A. on or after January 1, 2001.

2. Any manufacture or import for any use of the chemicals listed in Table 3 of Unit I.A. in excess of an aggregate annual manufacture and import volume cap for all of these chemicals of 1,100,000 pounds per person per calendar year on or after January 1, 2001 and before January 1, 2003.

3. Any manufacture or import for any use of any of the chemicals listed in Table 3 of Unit I.A. on or after January 1, 2003.



Given that no companies other than 3M are currently producing the chemicals listed on Table 3 of Unit I.A., and given the negative commercial and regulatory environment associated with these chemicals, EPA believes it is unlikely that companies would incur the costs associated with establishing new manufacturing capacity for these chemicals in order to enter this market.

This proposed rule, when finalized, would require persons who intend to manufacture or import the PFOS chemicals listed in this proposed rule to notify EPA, through the submission of a SNUN, at least 90 days before commencing the manufacture or importation of any of these chemicals for any use designated by this proposed SNUR as a significant new use. The required notice would provide EPA with the opportunity to evaluate the intended use, and, if necessary, to prohibit or limit that use before it occurs. These proposed requirements are summarized in the following Table 4:

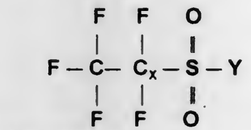
TABLE 4.—SUMMARY OF PROPOSED SNUR REQUIREMENTS

| You must file a significant new use notice (SNUN) if you: | | |
|---|---|---|
| Manufacture or import: | When? | How much? |
| Chemical substances listed in Table 2 of Unit I.A. | After December 31, 2000 | Any amount |
| Chemical substances listed in Table 3 of Unit I.A. | January 1, 2001 through December 31, 2002 | Aggregate amount exceeding 1,100,000 lbs per person per calendar year |
| Chemical substances listed in Table 3 of Unit I.A. | After December 31, 2002 | Any amount |

## IV. Chemical Compound History

### *A. Defining PFOS*

This proposed rule applies to a large group of fully fluorinated alkyl sulfonate-containing substances, none of which occur naturally. The Ninth Collective Index chemical names and CAS Registry Numbers (CAS No.) (when available) provided in Table 2 and Table 3 of Unit I.A. are for the specific chemical substances that are subject to the provisions contained in this proposed SNUR (for example, entry #8 on Table 3 of Unit I.A. lists CAS No.1763–23–1 for the compound named 1-octanesulfonic acid, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-, commonly referred to as PFOSA). All of the chemical substances listed in Table 2 and Table 3 of Unit I.A. have a common chemical structure consisting of a PFOS moiety, as illustrated here, somewhere in the molecule.



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The number of carbon atoms present in the moiety varies from 4 to 10 (x = 3–9) among the listed chemicals. In addition, there are many examples of different chemical functionality (free acids (Y = OH), metal salts (Y = $O^- M^+$), sulfonyl halides (Y = X), sulfonamides (Y= $NH^2$), and other derivatives). The listed chemical substances also include polymers.

The class of chemical substances including the perfluoroalkyl sulfonyl moiety described by the structure shown in this unit contains more chemical substances than are specified in the lists in Table 2 and Table 3 of Unit I.A. Only the listed chemical substances, which are manufactured or imported exclusively by 3M and which 3M has voluntarily committed to cease producing, are subject to this SNUR. EPA is evaluating further this overall structural class of chemical substances and may take additional regulatory action as appropriate.

### *B. Environmental Fate*

The basic building block of all of the PFOS chemicals is PFOSF, which is used as an intermediate in the production of the PFOS chemicals. PFOSA results from the chemical or enzymatic hydrolysis of PFOSF. Current information strongly supports that PFOSA is an extremely stable substance which resists breakdown by chemical or biological processes. Therefore PFOSA is the ultimate degradation product from PFOS chemicals and will persist in that form (Refs. 1 and 2).

EPA cannot currently conduct a definitive assessment of the environmental transport and partitioning of PFOS. The available data are limited and their accuracy uncertain. Also, the accuracy of the estimation models is limited by the quality of data input into them. Depending on what data are consulted and utilized, the environmental fate and transport of PFOS vary. Biological sampling recently discovered the presence of certain perfluoroalkyl compounds in fish and in fish-eating birds across the United States and in locations in Canada, Sweden, and the South Pacific (Ref. 1). The wide distribution of the chemicals in high trophic levels is strongly suggestive of the potential for bioaccumulation/bioconcentration. The widespread presence of PFOS suggests the possibility of transport in air as well as water, but the multimedia equilibrium criterion model (EQC) suggests otherwise (Ref. 7). Using data provided by 3M as inputs, the model indicates that PFOS would fall out of air and partition almost equally in water and soil. The Henry's Law values calculated utilizing the vapor pressure of 3.31 E-4 Pa@20 C and water solubility values of 370, 570, 5, and 25 milligram/Liter (mg/L) in fresh water, pure water, unfiltered seawater, and filtered seawater, respectively yielded Henry's Law values of 4.7 E-9 , 7.2 E-9, 6.4 E-11, and 3.2 E-10 atm.m3/mole (atmospheres per meter cubed per mole), respectively. The vapor pressure and water solubility values were obtained from Table 4, p.16 of the March 1, 2000, white paper by 3M, *Sulfonated Perfluorochemicals in the Environment: Sources, Dispersion, Fate and Effects* (Ref. 1). These Henry's Law values suggest that volatilization from water to air is not very likely. According to 3M, testing is planned and/or underway for the environmental properties, fate, and transport of PFOS (Ref. 1). With more complete data, EPA would be able to make more definitive assessments. With the present data, the Agency can only speculate on environmental transport and partitioning of PFOS, although current information suggests strongly that it is persistent and may bioaccumulate.

### *C. Health Effects*

The Agency's hazard analysis for PFOS is a review of health hazard and biomonitoring data (Ref. 8). Toxicology studies show that PFOS is well absorbed

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orally and distributes primarily in the serum and liver. PFOS can also be formed as a metabolite of other perfluorinated sulfonates. It does not appear to be further metabolized. Elimination from the body is slow and occurs via both urine and feces. Serum PFOS levels in three retired male 3M chemical workers have been followed for 5± years and suggest a mean elimination half-life (t ½) of 1,428 days (approximately 4 years). Based on the pharmacokinetic data obtained from a 28-day oral study in male and female monkeys, a volume of distribution (Vd) of 0.19 L/kilogram (kg) was reported; no sex differences in the pharmacokinetic parameters were noted.

PFOS has shown moderate acute toxicity by the oral route with a rat $LD_{50}$ of 251 mg/kg. A 1-hour $LC_{50}$ of 5.2 mg/L in rats has been reported. PFOS was found to be mildly irritating to the eyes and non-irritating to the skin of rabbits. PFOS was negative in mutagenicity studies in five strains of salmonella and did not induce micronuclei in an *in vivo* mouse bone marrow micronucleus assay.

Numerous repeat-dose oral toxicity studies on PFOS have been conducted in rats and primates. Adverse signs of toxicity observed in rat studies included increases in liver enzymes, hepatic vacuolization and hepatocellular hypertrophy, gastrointestinal effects, hematological abnormalities, weight loss, convulsions, and death. These effects were reported at doses of 2 mg/kg/day and above. Adverse signs of toxicity observed in Rhesus monkey studies included anorexia, emesis, diarrhea, hypoactivity, prostration, convulsions, atrophy of the salivary glands and the pancreas, marked decreases in serum cholesterol, and lipid depletion in the adrenals. The dose range for these effects was reported between 1.5–300 mg/kg/day. No monkeys survived beyond 3 weeks into treatment at 10 mg/kg/day, or beyond 7 weeks into treatment at doses as low as 4.5 mg/kg/day. At doses as low as 0.75 mg/kg/day, Cynomolgus monkeys exhibited low food consumption, excessive salivation, labored breathing, hypoactivity, ataxia, hepatic vacuolization and hepatocellular hypertrophy, significant reductions in serum cholesterol levels, and death.

Postnatal deaths and other developmental effects were reported at low doses in offspring in a 2-generation reproductive toxicity study in rats. At the two highest doses of 1.6 and 3.2 mg/kg/day, pup survival in the first generation was significantly decreased. All first generation offspring (F1 pups) at the highest dose died within a day after birth while close to 30% of the F1 pups in the 1.6 mg/kg/day dose group died within 4 days after birth. As a result of the pup mortality in the two top dose groups, only the two lowest dose groups, 0.1 and 0.4 mg/kg/day, were continued into the second generation. The no observed adverse effect level (NOAEL) and lowest observed adverse effect level (LOAEL) for the second generation offspring (F2 pups) were 0.1 mg/kg/day and 0.4 mg/kg/day, respectively, based on reductions in pup body weight. Reversible delays in reflex and physical development were also observed in this study, raising concerns about the potential for developmental neurotoxicity following exposure to PFOS.

Developmental effects were also reported in prenatal developmental toxicity studies in the rat and rabbit, although at slightly higher dose levels. Signs of developmental toxicity were evident at doses of 5 mg/kg/day and above in rats administered PFOS during gestation. Significant decreases in fetal body weight and significant increases in external and visceral anomalies, delayed ossification, and skeletal variations were observed. Abnormalities of the lens of the eye were also reported at doses as low as 1 mg/kg/day in one rat prenatal developmental study, but could not be repeated in a second study of similar design. At doses of 2.5 mg/kg/day and above, significant reductions in fetal-body weight and significant increases in delayed ossification were observed in rabbits administered PFOS during gestation.

In human blood samples, PFOS has been detected in the serum of occupational and general populations in the parts per million (ppm) to parts per billion (ppb) range. In the United States, recent blood serum levels of PFOS in manufacturing employees have been as high as 12.83 ppm, while in the general population, serum collected from blood banks and commercial sources have indicated mean PFOS levels of 30–44 ppb. Levels in a very small sample of children yielded even higher results, with a mean level of 54 ppb.

Sampling of several wildlife species from a variety of sites across the United States has shown widespread distribution of PFOS. In recent analyses, PFOS was detected in the ppb range in the plasma of several species of eagles, wild birds, and fish. Endogenous levels of PFOS have also been detected in the ppb range in the livers of unexposed rats used in toxicity studies, presumably through a dietary source (fishmeal).

Although the PFOS levels detected in the blood of the general population are low, this widespread presence, combined with the persistence, the bioaccumulative potential, and the reproductive and subchronic toxicity of the chemical, raises concerns for potential adverse effects on people and wildlife over time should the chemical substances continue to be produced, released, and accumulated in the environment.

*D. Exposure Data*

As indicated in Unit IV.C., PFOS has been detected at low levels in the blood of humans and wildlife throughout the United States, providing clear evidence of widespread exposure to the chemical. PFOS has been in commercial use since the 1950's, predominantly in soil and stain-resistant coating products on fabrics, carpets, and leather, and in grease and oil resistant coatings on paper products, including food contact papers. Other uses leading to environmental releases include fire fighting foams. The various surface treatment uses constitute the largest volume of PFOS production and are believed to present the greatest potential for widespread human and environmental exposure to PFOS. Studies are underway to determine the routes of exposure which have led to the detection of PFOS in human and animal blood. There are several potential pathways that may account for the widespread exposure to PFOS including: Dietary intake from the consumption of food wrapped in paper containing PFOS derivatives; inhalation from aerosol applications of PFOS-containing consumer products; and inhalation, dietary, or dermal exposures resulting from manufacturing, as well as industrial, commercial, and consumer use and disposal of PFOS-derived chemicals and products.

*E. Use Data*

PFOS and related sulfonyl-based fluorochemicals are used in a variety of products, which can be divided into three main categories of use: Surface treatments, paper protectors, and performance chemicals (Ref. 4). The various surface treatment and paper protection uses constitute the largest volume of PFOS production and are believed to present the greatest potential for widespread human and environmental exposure to PFOS.

PFOS chemicals produced for surface treatment applications provide soil, oil, and water resistance to personal apparel and home furnishings. Specific applications in this use category include protection of apparel and leather, fabric/upholstery, and carpet. These applications are undertaken in industrial settings by customers such as textile mills, leather tanneries, finishers, fiber producers, and carpet manufacturers. PFOS chemicals are also used in aftermarket treatment of apparel and leather, upholstery, carpet, and automobile interiors by the general public or professional applicators (Ref. 4). In 2000, the domestic production volume of PFOS chemicals for this use category is estimated to be approximately 2.4 million pounds (Ref. 6).

PFOS chemicals produced for paper protection applications provide grease, oil, and water resistance to paper and paperboard as part of a sizing agent formulation. Specific applications in this use category include food contact applications (plates, food containers, bags, and wraps) regulated by the Food and Drug Administration (FDA) under 21 CFR 176.170, as well as non-food contact applications (folding cartons, containers, carbonless forms, and masking papers). The application of sizing agents is undertaken mainly by paper mills and, to some extent, converters who manufacture bags, wraps, and other products from paper and paperboard (Ref. 4). In 2000, the domestic production volume of PFOS chemicals for this use category is estimated to be approximately 2.7 million pounds (Ref. 6).

PFOS chemicals in the performance chemicals category are used in a wide variety of specialized industrial, commercial, and consumer applications. Specific applications include fire fighting foams, mining and oil well surfactants, acid mist suppressants for metal plating and electronic etching baths, alkaline cleaners, floor polishes, photographic film, denture cleaners, shampoos, chemical intermediates, coating additives, carpet spot cleaners, and as an insecticide in bait stations for ants (Ref. 4). In 2000, the domestic production volume of PFOS chemicals for this use category is estimated to be approximately 1.5 million pounds (Ref. 6).

On May 16, 2000, following discussions with the Agency, 3M issued a press release announcing that it would discontinue the production of perfluorooctanyl chemicals used to produce some of its repellent and surfactant products. In its statement, 3M committed to "substantially phase out production" by the end of calendar year 2000 (Ref. 9). In subsequent correspondence with the Agency, 3M provided a schedule documenting its complete plan for discontinuing all manufacture of specific PFOS and related chemicals for most surface treatment and paper protection uses (including food contact uses regulated by the FDA) by the end of 2000, and discontinuing all manufacture for any uses by the end of 2002 (Ref. 6). This schedule, and 3M's anticipated production volumes, are summarized in Table 5.

TABLE 5.—ANTICIPATED ANNUAL U.S. PRODUCTION VOLUME (POUNDS) FOR PFOS USE CATEGORIES

| Use category | 2000 | 2001 | 2002 | 2003 |
|---|---|---|---|---|
| Surface treatment | 2,356,700 | 0 | 0 | 0 |
| Paper protection | 2,670,700 | 0 | 0 | 0 |
| Performance chemicals | 1,462,500 | 1,011,900 | 443,700 | 0 |
| Total | 6,489,900 | 1,011,900 | 443,700 | 0 |

According to the information currently available to EPA, 3M is the sole manufacturer of PFOS chemicals affected by this proposed SNUR (Ref. 5). 3M plans to discontinue the manufacture of the chemicals identified in Table 2 of Unit I.A. (in general, those associated with surface treatment and paper protection uses) by the end of 2000 and to discontinue the chemicals identified in Table 3 of Unit I.A. (in general, those associated with performance chemical applications) by the end of 2002.

**V. Objectives and Rationale for this Proposed Rule**

In determining what would constitute a significant new use for the chemical substances that are the subjects of this proposed SNUR, EPA considered relevant information on the toxicity of the substances, likely exposures associated with potential uses, information provided by industry sources, and the four factors listed in TSCA section 5(a)(2) and Unit II.B.

Based on these considerations, EPA wants to achieve the following objectives with regard to the significant new uses that are designated in this proposed rule. EPA wants to ensure that:

1. EPA would receive notice of any person's intent to manufacture or import PFOS chemicals for a designated significant new use before that activity begins.

2. EPA would have an opportunity to review and evaluate data submitted in a SNUN before the notice submitter begins manufacturing or importing the subject chemical substances for a significant new use.

3. EPA would be able to regulate prospective manufacturers and importers of the subject chemical substances before a significant new use occurs, provided such regulation is warranted pursuant to TSCA section 5(e) or (f).

EPA has concerns regarding the toxicity, persistence, and bioaccumulative potential of the chemical substances that are included in this proposed SNUR. 3M, the sole manufacturer of these chemicals in the United States, has chosen voluntarily to discontinue their manufacture and sale for all uses by December 31, 2002, and to substantially reduce their manufacture for their most widespread uses by December 31, 2000. With 3M's exit from the market, EPA believes that all manufacture of these chemicals likely will cease. However, EPA is concerned that manufacture could be reinitiated in the future, and wants the opportunity to evaluate and control, if appropriate, exposures associated with that activity. The notice that would be required by the SNUR would provide EPA with the opportunity to evaluate activities associated with a significant new use as proposed herein and an opportunity to protect against unreasonable risks, if any, from exposure to the substances which could result.

Given that no companies other than 3M are currently producing the chemicals listed on Table 3 of Unit I.A., and given the negative commercial and regulatory environment associated with these chemicals, EPA believes it is unlikely that companies would incur the costs associated with establishing new manufacturing capacity for these chemicals in order to enter this market. EPA will use information submitted pursuant to the Inventory Update Rule (40 CFR part 710) to track the production volumes of these chemicals. In the event that the phase-out of these chemicals does not progress as

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described in this proposed rule, EPA may pursue additional regulatory action as appropriate under TSCA sections 4, 6, and 8.

**VI. Alternatives**

Before proposing this SNUR, EPA considered the following alternative regulatory actions for the chemical substances listed in Tables 2 and 3 of Unit I.A. In addition, EPA determined that these chemical substances are currently not subject to Federal notification requirements.

1. Promulgate a chemical-specific TSCA section 8(a) reporting rule for the chemical substances listed in Tables 2 and 3 of Unit I.A. Under a TSCA section 8(a) rule, EPA could require any person to report information to the Agency when they intend to manufacture or import the substances listed in Tables 2 and 3 of Unit I.A. for the significant new uses listed in this proposed rule (15 U.S.C. 2607). However, the use of TSCA section 8(a) rather than SNUR authority would not provide the opportunity for EPA to review human and environmental hazards and exposures associated with the new uses of these substances and, if necessary, to take immediate regulatory action under TSCA section 5(e) or section 5(f) to prohibit or limit the activity before it begins. In addition, EPA may not receive important information from small businesses, because those firms generally are exempt from TSCA section 8(a) reporting requirements. In view of EPA's concerns about these chemical substances and its interest in having the opportunity to regulate these substances further as needed, pending the development of exposure and/or hazard information should a significant new use be initiated, the Agency believes that a TSCA section 8(a) rule for those chemical substances would not meet all of EPA's regulatory objectives.

2. Regulate the chemical substances listed in Tables 2 and 3 of Unit I.A. under TSCA section 6. EPA must regulate under TSCA section 6 if there is a reasonable basis to conclude that the manufacture, import, processing, distribution in commerce, use, or disposal of a chemical substance or mixture "presents or will present" an unreasonable risk of injury to human health or the environment. Given the decision by the sole manufacturer 3M to discontinue manufacturing these chemicals, and thus to remove the bulk of the existing potential risk which they present, EPA concluded that risk management action under TSCA section 6 is probably not necessary at this time. This proposed SNUR will allow the Agency to address the potential risks associated with any intended significant new use of these substances. If the phase-out of these chemicals does not occur as anticipated, EPA may reconsider this decision and pursue additional regulatory action as appropriate.

**VII. Applicability of Proposed Rule to Uses Occurring Before the Effective Date of the Final Rule**

EPA believes that the intent of TSCA section 5(a)(1)(B) is best served by designating a use as a significant new use as of the proposal date of the SNUR, rather than as of the effective date of the final rule. If uses begun after publication of the proposed SNUR were considered to be ongoing, rather than new, it would be difficult for EPA to establish SNUR notice requirements, because any person could defeat the SNUR by initiating the proposed significant new use before the rule became final, and then argue that the use was ongoing.

Persons who begin commercial manufacture or import of PFOS for the significant new uses listed in this proposed SNUR after the proposal has been published must stop that activity before the effective date of the final rule. Persons who ceased those activities will have to meet all SNUR notice requirements and wait until the end of the notice review period, including all extensions, before engaging in any activities designated as significant new uses. If, however, persons who begin commercial manufacture or import of these chemical substances between the proposal and the effective date of the SNUR meet the conditions of advance compliance as codified at 40 CFR 721.45(h), those persons will be considered to have met the final SNUR requirements for those activities.

**VIII. Test Data and Other Information**

EPA recognizes that under TSCA section 5, persons are not required to develop any particular test data before submitting a SNUN. Rather, persons are required only to submit test data in their possession or control and to describe any other data known to, or reasonably ascertainable by them (15 U.S.C. 2604(d); 40 CFR 721.25).

However, in view of the potential health and environmental risks posed by the significant new uses of the chemical substances listed in Table 2 and Table 3 of Unit I.A., EPA requests that potential SNUN submitters include data that would permit a reasoned evaluation of risks posed by these chemical substances when used for an intended significant new use. EPA currently believes that the known or reasonable ascertainable results of the following tests could help adequately characterize possible health effects of these chemical substances: Reproductive and developmental toxicity studies, mutagenicity, gene mutation, immunotoxicity, neurotoxicity, carcinogenicity, and acute, subchronic, and chronic toxicity studies, as well as pharmacokinetics and mechanistic studies. Because of the specific concerns that EPA has for the persistence and bioaccumulation potential of these chemicals, EPA also encourages SNUN submitters to provide information on environmental fate and transport, specifically including measured values for the octanol/water partition coefficient (log P), log of the soil/sediment adsorption coefficient (log Koc), bioconcentration factor (BCF), melting and/or boiling point, vapor pressure, Henry's Law constant, biodegradation, atmospheric oxidation and the fugacity-based multimedia equilibrium criterion level lll (EQC lll) model (Ref. 10). However, completion of those studies may not be the only means of identifying potential risks. For example, analyses of potential exposure may demonstrate that associated risks would be of low concern. A SNUN submitted without accompanying test data may increase the likelihood that EPA will take action under TSCA section 5(e).

EPA encourages persons to consult with the Agency before submitting a SNUN for any of the PFOS substances listed in Table 2 or Table 3 of Unit I.A. As part of this optional pre-notice consultation, EPA will discuss specific test data it believes are necessary to evaluate a significant new use of the chemical substances and advise the submitter on the selection of test protocols. The Agency requests that all test data be developed according to the TSCA Good Laboratory Practice Standards in 40 CFR part 792. Failure to do so may result in EPA's finding that submitted data are insufficient to reasonably evaluate the health effects and public health implications of these chemical substances.

EPA urges SNUN submitters to provide detailed information on human and environmental exposures that would result or could reasonably be anticipated to result from the significant new uses of the chemical substances listed in Table 2 and Table 3 of Unit I.A. and at § 721.9582 of the proposed regulation. In addition, EPA encourages persons to submit information on potential benefits of these chemical substances and information on risks posed by these chemical substances compared to risks posed by possible substitutes.



**IX. Economic Considerations**

EPA has evaluated the potential costs of establishing a SNUR for PFOS listed in Table 2 and Table 3 of Unit I.A. These potential costs are related to the submission of SNUNs, the export notification requirements of TSCA section 12(b), and the development of test data. EPA notes that, with the possible exception of the export notification requirements, these costs will not be incurred by any company unless that company decides to pursue a significant new use as defined in this SNUR.

*A. SNUNs*

Because of uncertainties related to predicting the number of SNUNs that will be submitted as a result of this SNUR, EPA is unable to calculate the total annual cost of compliance with the final rule. However, EPA estimates that the cost for preparation and submission of a SNUN ranges from approximately $8,500 to $9,800, which includes a $2,500 user fee (Ref. 11). EPA notes that small businesses with annual sales of less than $40 million are subject to a reduced user fee of $100.

Based on past experience with SNURs and the low number of SNUNs which are submitted on an annual basis, EPA believes that there would be few, if any, SNUNs submitted as a result of this SNUR. Furthermore, no company is required to submit a SNUN for the chemicals listed in this SNUR unless that company decides to begin manufacture or importation those chemicals. As a result, EPA expects that companies would be able to determine if the burden of submitting a SNUN would be likely to create significant adverse economics impacts for the company prior to incurring SNUN-related costs.

*B. Export Notification*

As noted in Unit II.A., persons who intend to export a chemical substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611 (b)). These provisions require that a company notify EPA of the first shipment to a particular country of an affected chemical. EPA believes that most companies comply with these provisions by compiling a list of products that are subject to TSCA section 12(b) reporting. Outgoing orders are checked to see if the chemical or product is on the list, and whether it is the first shipment to the importing country or the first shipment of the calendar year to that country. If so, a form letter is sent to EPA. In most cases, the entire process is computerized. The estimated cost of the TSCA section 12(b)(1) export notification, which would be required for the first export to a particular country of a chemical subject to the rule, is estimated to be $83.38 for the first time that an exporter must comply with TSCA section 12(b)(1) export notification requirements, and $19.08 for each subsequent export notification submitted by that exporter (Ref. 12).

EPA is unable to estimate the total number of TSCA section 12(b) notifications that will be received as a result of this SNUR, or the total number of companies that will file these notices. However, EPA expects that the total cost of complying with the export notification provisions of TSCA section 12(b) will be limited based on historical experience with TSCA section 12(b) notifications, the relatively few companies with fluorocarbon production capabilities, and the limited number of chemicals listed in this SNUR. If companies were to manufacture any of the chemicals covered by this SNUR for export only, these companies would incur costs associated with export notification even if these companies decided to forgo any domestic significant new use. EPA is not aware of any companies in this situation, and expects that any potential impact would be limited to the small burden of export notification.

*C. Testing*

In Unit VIII., EPA has identified certain tests that SNUN submitters may choose to conduct to assist EPA in evaluating the risks posed by these chemical substances when used for an intended significant new use. The estimated cost of these tests ranges from $1,450 for the acute oral toxicity test using the up-or-down method to $2.24 million for the 2-species carcinogenicity test by the inhalation route (Ref. 13).

As noted in Unit VIII., development of any particular test data would be at the discretion of the submitter of the SNUN. EPA is not able to predict which specific tests will be conducted for chemicals that are the subject of SNUNs. However, EPA notes that companies would be able to determine if the burden of developing test data would be likely to create significant adverse economic impacts for the company prior to incurring these testing costs.

**X. References**

These references have been placed in the official record that was established under docket control number OPPTS–50639 for this rulemaking as indicated in Unit I.B.2. Reference documents identified with an administrative record number (AR) are cross-indexed to non-regulatory, publicly accessible information files maintained in the TSCA Nonconfidential Information Center. Copies of these documents can be obtained as described in Unit I.B.2.

1. (AR226–0620) Sulfonated Perfluorochemicals in the Environment: Sources, Dispersion, Fate, and Effects. 3M. St. Paul, MN. March 1, 2000.

2. (AR226–0547) The Science of Organic Fluorochemistry. 3M. St. Paul, MN. February 5, 1999.

3. (AR226–0548) Perfluorooctane Sulfonate: Current Summary of Human Sera, Health and Toxicology Data. 3M. St. Paul, MN. January 21, 1999.

4. (AR226–0550) Fluorochemical Use, Distribution, and Release Overview. 3M. St. Paul, MN. May 26, 1999.

5. Rice, Cody. Domestic Manufacturers or Importers of PFOS Chemicals Other Than 3M. USEPA/OPPT/EETD. Washington, DC. August 31, 2000.

6. (AR226–0600) Weppner, William A. Phase-out Plan for POSF-Based Products. 3M. St. Paul, MN. July 7, 2000.

7. MacKay, D., DiGuardo, A., Paterson, S., and Cowan, C.E. Evaluating the Environmental Fate of a Variety of Types of Chemicals Using the EQC Model. Environmental Toxicology and Chemistry. SETAC Press. Houston, TX. 1996. Vol. 15, No. 9, pp.1627–1637.

8. Seed, Jennifer. Hazard Assessment and Biomonitoring Data on Perfluorooctane Sulfonate—PFOS. USEPA/EPA/RAD. Washington, DC. August 31, 2000.

9. 3M Phasing Out Some of its Specialty Materials. 3M News. 3M. St. Paul, MN. May 16, 2000.

10. Guidelines for the requested fate and transport data can be found in OPPTS Harmonized Test Guidelines, Series 835, Fate, Transport And Transformation Test Guidelines. These guidelines, both Public Drafts and Finals, are available electronically in PDF (portable document format) on the EPA World Wide Web site, see Unit I.B.1., or in paper by contacting the OPP Public Docket at (703) 305–5805 or by e-mail at: opp-docket@epa.gov. Final guidelines, only, are available from the U.S. Government Printing Office Bookstore, 810 North Capitol St., NW., Washington, DC or by calling (202) 512–1800 and ordering ASCII disks or paper copies. The EQC model is available for download from the Trent University web site at http://www.trentu.ca/envmodel.

11. (AR 204–001) TSCA Section 5(a)(2) Significant New Use Rules for

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Existing Chemicals. ICR #1188.06, OMB No. 2070–0038 (Undated).

12. (AR 205–001) TSCA Section 12(b) Notification of Chemical Exports. ICR #0795.10, OMB No. 2070–0030 (Undated).

13. Rice, Cody. Estimated Costs of Testing Recommended for PFOS SNUR. USEPA/OPPT/EETD. Washington, DC. July 25, 2000.

**XI. Regulatory Assessment Requirements**

Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), the Office of Management and Budget (OMB) has determined that SNURs are not a "significant regulatory action" subject to review by OMB, because SNURs do not meet the criteria in section 3(f) of the Executive Order.

Based on EPA's experience with past SNURs, State, local, and tribal governments have not been impacted by these rulemakings, and EPA does not have any reasons to believe that any State, local, or tribal government will be impacted by this rulemaking. As such, EPA has determined that this regulatory action does not impose any enforceable duty, contain any unfunded mandate, or otherwise have any affect on small governments subject to the requirements of sections 202, 203, 204, or 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

Similarly, this action is not subject to the requirement for prior consultation with Indian tribal governments as specified in Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19,1998). Nor will this action have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999).

In issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988, entitled *Civil Justice Reform* (61 FR 4729, February 7, 1996).

EPA has complied with Executive Order 12630, entitled *Governmental Actions and Interference with Constitutionally Protected Property Rights* (53 FR 8859, March 15, 1988), by examining the takings implications of this proposed rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the Executive Order.

This action does not involve special considerations of environmental justice related issues as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

This action is not subject to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866, and this action does not address environmental health or safety risks disproportionately affecting children.

In addition, since this action does not involve any technical standards, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), does not apply to this action.

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that promulgation of this SNUR will not have a significant adverse economic impact on a substantial number of small entities. A SNUR applies to any person (including small or large entities) who intends to engage in any activity described in the rule as a "significant new use." By definition of the word "new," and based on all information currently available to EPA, it appears that no small or large entities currently engage in such activity. Since a SNUR requires merely that any person who intends to engage in such activity in the future must first notify EPA (by submitting a SNUN), no economic impact will even occur until someone decides to engage in those activities. As a voluntary action, it is reasonable to presume that this decision would be based on a determination by the person submitting the SNUN that the potential benefits would outweigh the costs. Although some small entities may decide to conduct such activities in the future, EPA cannot presently determine how many, if any, there may be. EPA's experience to date is that, in response to the promulgation of over 530 SNURs, the Agency has received fewer than 15 SNUNs. Of those SNUNs submitted, none appear to be from small entities. In fact, EPA expects to receive few, if any, SNUNs from either large or small entities in response to any SNUR. Therefore, EPA believes that, the economic impact of complying with a SNUR is not expected to be significant or adversely impact a substantial number of small entities. This rationale has been provided to the Chief Counsel for Advocacy of the Small Business Administration.

According to the Paperwork Reduction Act (PRA), 44 USC 3501 *et seq.*, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial display in the **Federal Register** and in addition to its display on any related collection instrument, are listed in 40 CFR part 9.

The information collection requirements related to this action have already been approved by OMB pursuant to the PRA under OMB control number 2070–0038 (EPA ICR No. 1188.06). This action does not impose any burden requiring additional OMB approval. If an entity were to submit a SNUN to the Agency, the annual burden is estimated to average between 98.96 and 118.92 hours per response at an estimated reporting cost of between $5,957 and $7,192 per SNUN. This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review and submit the required significant new use notice, and maintain the required records. This burden estimate does not include 1 hour of technical time at $64.30 per hour estimated to be required for customer notification of SNUR requirements, or the $2,500 user fee for submission of a SNUN ($100 for businesses with less than $40 million in annual sales).

Send any comments about the accuracy of the burden estimate, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, as instructed in Unit I.C. or to the Director, Collection Strategies Division, Office of Environmental Information,. Environmental Protection Agency (2822), 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please remember to include the OMB control number in any correspondence, but do not submit any completed forms to this address.

**List of Subjects in 40 CFR Part 721**

Environmental Protection, Chemicals, Hazardous materials, Recordkeeping and reporting requirements.



Dated: October 12, 2000.

**William H. Sanders, III**

*Director, Office of Pollution Prevention and Toxics.*

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

**PART 721—[AMENDED]**

1. The authority citation for part 721 would continue to read as follows:

**Authority:** 15 U.S.C. 2604, 2607 and 2625(e).

2. By adding new § 721.9582 to subpart E to read as follows:

**§ 721.9582 Certain perfluorooctyl sulfonates.**

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substances listed in Tables 1 and 2 of this paragraph are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

TABLE 1.—CHEMICALS REQUIRING A SIGNIFICANT NEW USE NOTICE ON OR AFTER JANUARY 1, 2001

| CAS No./PMN | Ninth Collective Index chemical name |
|---|---|
| 383–07–3 | 2-Propenoic acid, 2-[butyl[(heptadecafluorooctyl)sulfonyl]amino]ethyl ester. |
| 423–82–5 | 2-Propenoic acid, 2-[ethyl[(heptadecafluorooctyl)sulfonyl]amino]ethyl ester. |
| 2250–98–8 | 1-Octanesulfonamide, N,N',N''-[phosphinylidynetris(oxy-2,1-ethanediyl)]tris[N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-. |
| 14650–24–9 | 2-Propenoic acid, 2-methyl-, 2-[[(heptadecafluorooctyl)sulfonyl]methylamino]ethyl ester. |
| 30381–98–7 | 1-Octanesulfonamide, N,N'-[phosphinicobis(oxy-2,1-ethanediyl)]bis[N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-, ammonium salt. |
| 55120–77–9 | 1-Hexanesulfonic acid, 1,1,2,2,3,3,4,4,5,5,6,6,6-tridecafluoro-, lithium salt. |
| 57589–85–2 | Benzoic acid, 2,3,4,5-tetrachloro-6-[[[3-[[(heptadecafluorooctyl)sulfonyl]oxy]phenyl]amino]carbonyl]-, monopotassium salt. |
| 61660–12–6 | 1-Octanesulfonamide, N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-N-[3-(trimethoxysilyl)propyl]-. |
| 67969–69–1 | 1-Octanesulfonamide, N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-N-[2-(phosphonooxy)ethyl]-, diammonium salt. |
| 68156–01–4 | Cyclohexanesulfonic acid, nonafluorobis(trifluoromethyl)-, potassium salt. |
| 68329–56–6 | 2-Propenoic acid, eicosyl ester, polymer with 2-[[(heptadecafluorooctyl)sulfonyl]methylamino]ethyl 2-propenoate, hexadecyl 2-propenoate, 2-[methyl[(nonafluorobutyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(pentadecafluoroheptyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(tridecafluorohexyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(undecafluoropentyl)sulfonyl]amino]ethyl 2-propenoate and octadecyl 2-propenoate. |
| 68555–91–9 | 2-Propenoic acid, 2-methyl-, 2-[ethyl[(heptadecafluorooctyl)sulfonyl]amino]ethyl ester, polymer with 2-[ethyl[(nonafluorobutyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 2-[ethyl[(pentadecafluoroheptyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 2-[ethyl[(tridecafluorohexyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 2-[ethyl[(undecafluoropentyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate and octadecyl 2-methyl-2-propenoate. |
| 68555–92–0 | 2-Propenoic acid, 2-methyl-, 2-[[(heptadecafluorooctyl)sulfonyl]methylamino]ethyl ester, polymer with 2-[methyl[(nonafluorobutyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 2-[methyl[(pentadecafluoroheptyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 2-[methyl[(tridecafluorohexyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 2-[methyl[(undecafluoropentyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate and octadecyl 2-methyl-2-propenoate. |
| 68608–14–0 | Sulfonamides, C4-8-alkane, perfluoro, N-ethyl-N-(hydroxyethyl), reaction products with 1,1'-methylenebis[4-isocyanatobenzene]. |
| 68909–15–9 | 2-Propenoic acid, eicosyl ester, polymers with branched octyl acrylate, 2-[[(heptadecafluorooctyl)sulfonyl]methylamino]ethyl acrylate, 2-[methyl[(nonafluorobutyl) sulfonyl]amino]ethyl acrylate, 2-[methyl[(pentadecafluoroheptyl)sulfonyl]amino]ethyl acrylate, 2-[methyl[(tridecafluorohexyl)sulfonyl]amino]ethyl acrylate, 2-[methyl[(undecafluoropentyl) sulfonyl]amino]ethyl acrylate, polyethylene glycol acrylate Me ether and stearyl acrylate. |
| 70776–36–2 | 2-Propenoic acid, 2-methyl-, octadecyl ester, polymer with 1,1-dichloroethene, 2-[[(heptadecafluorooctyl)sulfonyl]methylamino]ethyl 2-propenoate, N-(hydroxymethyl)-2-propenamide, 2-[methyl[(nonafluorobutyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(pentadecafluoroheptyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(tridecafluorohexyl)sulfonyl]amino]ethyl 2-propenoate and 2-[methyl[(undecafluoropentyl)sulfonyl]amino]ethyl 2-propenoate. |
| 73772–32–4 | 1-Propanesulfonic acid, 3-[[3-(dimethylamino)propyl][(tridecafluorohexyl)sulfonyl]amino]-2-hydroxy-, monosodium salt. |
| 81190–38–7 | 1-Propanaminium, N-(2-hydroxyethyl)-3-[(2-hydroxy-3-sulfopropyl) [(tridecafluorohexyl)sulfonyl]amino]-N,N-dimethyl-, hydroxide, monosodium salt. |
| 94133–90–1 | 1-Propanesulfonic acid, 3-[[3-(dimethylamino)propyl][(heptadecafluorooctyl)sulfonyl]amino]-2-hydroxy-, monosodium salt. |
| 117806–54–9 | 1-Heptanesulfonic acid, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,7-pentadecafluoro-, lithium salt. |
| 127133–66–8 | 2-Propenoic acid, 2-methyl-, polymers with Bu methacrylate, lauryl methacrylate and 2-[methyl[(perfluoro-C4-8-alkyl)sulfonyl]amino]ethyl methacrylate. |
| 129813–71–4 | Sulfonamides, C4-8-alkane, perfluoro, N-methyl-N-(oxiranylmethyl). |
| 148240–78–2 | Fatty acids, C18-unsatd., trimers, 2-[[(heptadecafluorooctyl)sulfonyl]methylamino]ethyl esters. |
| 148240–79–3 | Fatty acids, C18-unsatd., trimers, 2-[methyl[(nonafluorobutyl)sulfonyl]amino]ethyl esters. |
| 148240–80–6 | Fatty acids, C18-unsatd., trimers, 2-[methyl[(tridecafluorohexyl)sulfonyl]amino]ethyl esters. |
| 148240–81–7 | Fatty acids, C18-unsatd., trimers, 2-[methyl[(undecafluoropentyl)sulfonyl]amino]ethyl esters. |
| 148240–82–8 | Fatty acids, C18-unsatd., trimers, 2-[methyl[(pentadecafluoroheptyl)sulfonyl]amino]ethyl esters. |
| 148684–79–1 | Sulfonamides, C4-8-alkane, perfluoro, N-(hydroxyethyl)-N-methyl, reaction products with 1,6-diisocyanatohexane homopolymer and ethylene glycol. |
| 178535–22–3 | Sulfonamides, C4-8-alkane, perfluoro, N-ethyl-N-(hydroxyethyl)-, polymers with 1,1'-methylenebis[4-isocyanatobenzene] and polymethylenepolyphenylene isocyanate, 2-ethylhexyl esters, Me Et ketone oxime-blocked. |
| P-83–1102 | Fatty acids, linseed-oil, dimers, 2-[[(heptadecafluorooctyl)sulfonyl]methylamino]ethyl esters. |
| P-84–1163 | Propanoic acid, 3-hydroxy-2-(hydroxymethyl)-2-methyl-, polymer with 2-ethyl-2-(hydroxymethyl)-1,3-propanediol and N,N',2-tris(6-isocyanatohexyl)imidodicarbonic diamide, reaction products with N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-N-(2-hydroxyethyl)-1-octanesulfonamide and N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,7-pentadecafluoro-N-(2-hydroxyethyl)-1-heptanesulfonamide, compds. with triethylamine. |

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TABLE 1.—CHEMICALS REQUIRING A SIGNIFICANT NEW USE NOTICE ON OR AFTER JANUARY 1, 2001—Continued

| CAS No./PMN | Ninth Collective Index chemical name |
|---|---|
| P-84–1171 | Propanoic acid, 3-hydroxy-2-(hydroxymethyl)-2-methyl-, polymer with 1,1'-methylenebis[4-isocyanatobenzene] and 1,2,3-propanetriol, reaction products with N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-N-(2-hydroxyethyl)-1-octanesulfonamide and N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,7-pentadecafluoro-N-(2-hydroxyethyl)-1-heptanesulfonamide, compds. with morpholine. |
| P-86–0301 | Sulfonamides, C4-8-alkane, perfluoro, N-(hydroxyethyl)-N-methyl, reaction products with 12-hydroxystearic acid and 2,4-TDI, ammonium salts. |
| P-89–0799 | Sulfonamides, C4-8-alkane, perfluoro, N-ethyl-N-(hydroxyethyl), reaction products with 2-ethyl-1-hexanol and polymethylenepolyphenylene isocyanate. |
| P-94–0545 | 1-Hexadecanaminium, N,N-dimethyl-N-[2-[(2-methyl-1-oxo-2-propenyl)oxy]ethyl]-, bromide, polymers with Bu acrylate, Bu methacrylate and 2-[methyl[(perfluoro-C4-8-alkyl)sulfonyl]amino]ethyl acrylate. |
| P-94–0927 | 2-Propenoic acid, 2-methyl-, 2-methylpropyl ester, polymer with 2,4-diisocyanato-1-methylbenzene, 2-ethyl-2-(hydroxymethyl)-1,3-propanediol and 2-propenoic acid, N-ethyl-N-(hydroxyethyl)perfluoro-C4-8-alkanesulfon amides-blocked. |
| P-94–2205 | Polymethylenepolyphenylene isocyanate and bis(4-NCO-phenyl)methane reaction products with 2-ethyl-1-hexanol, 2-butanone, oxime, N-ethyl-N-(2- hydroxyethyl)-1-C4-C8 perfluoroalkanesulfonamide. |
| P-94–2206 | Siloxanes and Silicones, di-Me, mono[3-[(2-methyl-1-oxo-2-propenyl)oxy]propylgroup]-terminated, polymers with 2-[methyl[(perfluoro-C4-8-alkyl)sulfonyl]amino]ethyl acrylate and stearyl methacrylate. |
| P-96–1645 | Fatty acids, C18-unsatd., dimers, 2-[methyl[(perfluoro-C4-8-alkyl)sulfonyl]amino]ethyl esters. |
| P-97–0790 | 1-Decanaminium, N-decyl-N,N-dimethyl-, salt with 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-1-octanesulfonic acid (1:1). |
| P-98–0251 | 2-Propenoic acid, butyl ester, polymers with acrylamide, 2-[methyl[(perfluoro-C4-8-alkyl)sulfonyl]amino]ethyl acrylate and vinylidene chloride. |
| P-98–1272 | 2-Propenoic acid, 2-methyl-, 3-(trimethoxysilyl)propyl ester, polymers with acrylic acid, 2-[methyl[(perfluoro-C4-8-alkyl)sulfonyl]amino]ethyl acrylate and propylene glycol monoacrylate, hydrolyzed, compds. with 2,2'-(methylimino)bis[ethanol]. |
| P-99–0188 | Hexane, 1,6-diisocyanato-, homopolymer, N-(hydroxyethyl)-N-methyl perfluoro C4-8-alkane sulfonamide- and stearyl alc.-blocked. |
| P-99–0319 | Poly(oxy-1,2-ethanediyl), .alpha.-[2-(methylamino)ethyl]-.omega.-[(1,1,3,3-tetramethylbutyl)phenoxy]-, N-[(perfluoro-C4-8-alkyl)sulfonyl] derivs.. |

TABLE 2.—CHEMICALS SUBJECT TO VOLUME CAP RESTRICTIONS ON OR AFTER JANUARY 1, 2001 AND REQUIRING A SIGNIFICANT NEW USE NOTICE ON OR AFTER JANUARY 1, 2003

| CAS No./PMN | Ninth Collective Index chemical name |
|---|---|
| 307–35–7 | 1-Octanesulfonyl fluoride, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro- |
| 307–51–7 | 1-Decanesulfonyl fluoride, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,10-heneicosafluoro- |
| 376–14–7 | 2-Propenoic acid, 2-methyl-, 2-[ethyl[(heptadecafluorooctyl)sulfonyl]amino]ethyl ester |
| 423–50–7 | 1-Hexanesulfonyl fluoride, 1,1,2,2,3,3,4,4,5,5,6,6,6-tridecafluoro- |
| 754–91–6 | 1-Octanesulfonamide, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro- |
| 1652–63–7 | 1-Propanaminium, 3-[[(heptadecafluorooctyl)sulfonyl]amino]-N,N,N-trimethyl-, iodide |
| 1691–99–2 | 1-Octanesulfonamide, N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-N-(2-hydroxyethyl)- |
| 1763–23–1 | 1-Octanesulfonic acid, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro- |
| 2795–39–3 | 1-Octanesulfonic acid, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-, potassium salt |
| 2991–51–7 | Glycine, N-ethyl-N-[(heptadecafluorooctyl)sulfonyl]-, potassium salt |
| 4151–50–2 | 1-Octanesulfonamide, N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro- |
| 17202–41–4 | 1-Nonanesulfonic acid, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,9,9,9-nonadecafluoro-, ammonium salt |
| 24448–09–7 | 1-Octanesulfonamide, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-N-(2-hydroxyethyl)-N-methyl- |
| 25268–77–3 | 2-Propenoic acid, 2-[[(heptadecafluorooctyl)sulfonyl]methylamino]ethyl ester |
| 29081–56–9 | 1-Octanesulfonic acid, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-, ammonium salt |
| 29117–08–6 | Poly(oxy-1,2-ethanediyl), .alpha.-[2-[ethyl[(heptadecafluorooctyl)sulfonyl]amino]ethyl]-.omega.-hydroxy- |
| 29457–72–5 | 1-Octanesulfonic acid, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-, lithium salt |
| 31506–32–8 | 1-Octanesulfonamide, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-N-methyl- |
| 38006–74–5 | 1-Propanaminium, 3-[[(heptadecafluorooctyl)sulfonyl]amino]-N,N,N-trimethyl-, chloride |
| 38850–58–7 | 1-Propanaminium, N-(2-hydroxyethyl)-N,N-dimethyl-3-[(3-sulfopropyl)[(tridecafluorohexyl)sulfonyl]amino]-, inner salt |
| 67584–42–3 | Cyclohexanesulfonic acid, decafluoro(pentafluoroethyl)-, potassium salt |
| 67906–42–7 | 1-Decanesulfonic acid, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,10-heneicosafluoro-, ammonium salt |
| 68298–62–4 | 2-Propenoic acid, 2-[butyl[(heptadecafluorooctyl)sulfonyl]amino]ethyl ester, telomer with 2-[butyl[(pentadecafluoroheptyl)sulfonyl]amino]ethyl 2-propenoate, methyloxirane polymer with oxirane di-2-propenoate, methyloxirane polymer with oxirane mono-2-propenoate and 1-octanethiol |
| 68541–80–0 | 2-Propenoic acid, polymer with 2-[ethyl[(heptadecafluorooctyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate and octadecyl 2-propenoate |
| 68555–90–8 | 2-Propenoic acid, butyl ester, polymer with 2-[[(heptadecafluorooctyl)sulfonyl] methylamino]ethyl 2-propenoate, 2-[methyl[(nonafluorobutyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(pentadecafluoroheptyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(tridecafluorohexyl)sulfonyl]amino]ethyl 2-propenoate and 2-[methyl[(undecafluoropentyl)sulfonyl]amino]ethyl 2-propenoate |
| 68586–14–1 | 2-Propenoic acid, 2-[[(heptadecafluorooctyl)sulfonyl]methylamino]ethyl ester, telomer with 2-[methyl[(nonafluorobutyl)sulfonyl]amino]ethyl 2-propenoate, .alpha.-(2-methyl-1-oxo-2-propenyl)-.omega.-hydroxypoly(oxy-1,2-ethanediyl), .alpha.-(2-methyl-1-oxo-2-propenyl)-.omega.-[(2-methyl-1-oxo-2-propenyl)oxy]poly(oxy-1,2-ethanediyl), 2-[methyl[(pentadecafluoroheptyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(tridecafluorohexyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(undecafluoropentyl)sulfonyl]amino]ethyl 2-propenoate and 1-octanethiol |



TABLE 2.—CHEMICALS SUBJECT TO VOLUME CAP RESTRICTIONS ON OR AFTER JANUARY 1, 2001 AND REQUIRING A SIGNIFICANT NEW USE NOTICE ON OR AFTER JANUARY 1, 2003—Continued

| CAS No./PMN | Ninth Collective Index chemical name |
|---|---|
| 68649–26–3 | 1-Octanesulfonamide, N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-N-(2-hydroxyethyl)-, reaction products with N-ethyl-1,1,2,2,3,3,4,4,4-nonafluoro-N-(2-hydroxyethyl)-1-butanesulfonamide, N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,7,7,7-pentadecafluoro-N-(2-hydroxyethyl)-1-heptanesulfonamide, N-ethyl-1,1,2,2,3,3,4,4,5,5,6,6,6-tridecafluoro-N-(2-hydroxyethyl)-1-hexanesulfonamide, N-ethyl-1,1,2,2,3,3,4,4,5,5,5-undecafluoro-N-(2-hydroxyethyl)-1-pentanesulfonamide, polymethylenepolyphenylene isocyanate and stearyl alc. |
| 68867–60–7 | 2-Propenoic acid, 2-[[(heptadecafluorooctyl)sulfonyl]methylamino]ethyl ester, polymer with 2-[methyl[(nonafluorobutyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(pentadecafluoroheptyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(tridecafluorohexyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(undecafluoropentyl)sulfonyl]amino]ethyl 2-propenoate and .alpha.-(1-oxo-2-propenyl)-.omega.-methoxypoly(oxy-1,2-ethanediyl) |
| 68867–62–9 | 2-Propenoic acid, 2-methyl-, 2-[ethyl[(heptadecafluorooctyl)sulfonyl]amino]ethyl ester, telomer with 2-[ethyl[(nonafluorobutyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 2-[ethyl[(pentadecafluoroheptyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 2-[ethyl[(tridecafluorohexyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 2-[ethyl[(undecafluoropentyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 1-octanethiol and .alpha.-(1-oxo-2-propenyl)-.omega.-methoxypoly(oxy-1,2-ethanediyl) |
| 68891–96–3 | Chromium, diaquatetrachloro[.mu.-[N-ethyl-N-[(heptadecafluorooctyl)sulfonyl]glycinato-.kappa.O:.kappa.O']]-.mu.-hydroxybis(2-methylpropanol)di- |
| 68958–61–2 | Poly(oxy-1,2-ethanediyl), .alpha.-[2-[ethyl[(heptadecafluorooctyl)sulfonyl]amino]ethyl]-.omega.-methoxy- |
| 70225–14–8 | 1-Octanesulfonic acid, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-, compd. with 2,2'-iminobis[ethanol] (1:1) |
| 71487–20–2 | 2-Propenoic acid, 2-methyl-, methyl ester, polymer with ethenylbenzene, 2-[[(heptadecafluorooctyl)sulfonyl]methylamino]ethyl 2-propenoate, 2-[methyl[(nonafluorobutyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(pentadecafluoroheptyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(tridecafluorohexyl)sulfonyl]amino]ethyl 2-propenoate, 2-[methyl[(undecafluoropentyl)sulfonyl]amino]ethyl 2-propenoate and 2-propenoic acid |
| 91081–99–1 | 1-Octanesulfonamide, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-N-(2-hydroxyethyl)-N-methyl-, polymer with(chloromethyl)oxirane, 1,1,2,2,3,3,4,4,4-nonafluoro-N-(2-hydroxyethyl)-N-methyl-1-butanesulfonamide, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,7-pentadecafluoro-N-(2-hydroxyethyl)-N-methyl-1-heptanesulfonamide, 1,1,2,2,3,3,4,4,5,5,6,6,6-tridecafluoro-N-(2-hydroxyethyl)-N-methyl-1-hexanesulfonamide and 1,1,2,2,3,3,4,4,5,5,5-undecafluoro-N-(2-hydroxyethyl)-N-methyl-1-pentanesulfonamide, hexanedioate (ester) |
| 98999–57–6 | Sulfonamides, C7-8-alkane, perfluoro, N-methyl-N-[2-[(1-oxo-2-propenyl) oxy]ethyl], polymers with 2-ethoxyethyl acrylate, glycidyl methacrylate and N,N,N-trimethyl-2-[(2-methyl-1-oxo-2-propenyl)oxy]ethanaminiumchloride |
| 182700–90–9 | 1-Octanesulfonamide, 1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-heptadecafluoro-N-methyl-, reaction products with benzene-chlorine-sulfur chloride (S2Cl2) reaction products chlorides |
| L-92–0151 | 2-Propenoic acid, 2-methyl-, butyl ester, polymer with 2-methyl-, 2-[ethyl [(heptadecafluorooctyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 2-[ethyl[(nonafluorobutyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, 2-[ethyl[(pentadecafluoroheptyl)sulfonyl]amino]ethyl 2-methyl-2-propenoate, and 2-propenoic acid |
| P-80–0183 | Sulfonamides, C4-8-alkane, perfluoro, N-[3-(dimethylamino)propyl], reaction products with acrylic acid |
| P-86–0958 | 2-Propenoic acid, 2-methyl-, dodecyl ester, polymers with 2-[methyl[(perfluoro-C4-8-alkyl)sulfonyl]amino]ethyl acrylate and vinylidene chloride |
| P-90–0111 | Sulfonamides, C4-8-alkane, perfluoro, N-methyl-N-[(3-octadecyl-2-oxo-5-oxazolidinyl)methyl] |
| P-91–1419 | Poly(oxy-1,2-ethanediyl), .alpha.-hydro-.omega.-hydroxy-, polymer with 1,6-diisocyanatohexane, N-(2-hydroxyethyl)-N-methyl perfluoro C4-8-alkane sulfonamide-blocked |
| P-93–1444 | 2-Propenoic acid, 2-methyl-, dodecyl ester, polymers with N-(hydroxymethyl)-2-propenamide, 2-[methyl[(perfluoro-C4-8-alkyl)sulfonyl]amino]ethyl methacrylate, stearyl methacrylate and vinylidene chloride |
| P-95–0120 | Sulfonamides, C4-8-alkane, perfluoro, N,N'-[1,6-hexanediyltbis[[2-oxo-3,5-oxazolidinediyl)methylene]]bis[N-methyl- |
| P-96–1262 | Sulfonic acids, C6-8-alkane, perfluoro, compds. with polyethylene-polypropylene glycol bis(2-aminopropyl) ether |
| P-96–1424 | 2-Propenoic acid, 2-methyl-, 2-(dimethylamino)ethyl ester, telomers with 2-[ethyl[(perfluoro-C4-8-alkylsulfonyl]amino]ethyl methacrylate and 1-octanethiol, N-oxides |
| P-96–1433 | Sulfonamides, C4-8-alkane, perfluoro, N-[3-(dimethyloxidoamino)propyl], potassium salts |

(2) The significant new uses are:

(i) Any manufacture or import for any use of any chemical listed in Table 1 of paragraph (a)(1) of this section on or after January 1, 2001.

(ii) Any manufacture or import for any use of any one or more of the chemicals listed in Table 2 of paragraph (a)(1) of this section in excess of an aggregate volume for all of these chemicals of 1,100,000 pounds per person per calendar year on or after January 1, 2001 and before January 1, 2003.

(iii) Any manufacture or import for any use of any of the chemicals listed in Table 2 of paragraph (a)(1) of this section on or after January 1, 2003.

(b) [Reserved].

[FR Doc. 00–26751 Filed 10–17–00; 8:45 am]
BILLING CODE 6560–50–S

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# Notices

Federal Register
Vol. 65, No. 202
Wednesday, October 18, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

*Docket Number:* 00–029. *Applicant:* National Institute of Standards and Technology, U.S. Department of Commerce, 100 Bureau Drive, MS 8221, Gaithersburg, MD 20899–8221. *Instrument:* Vacuum Balance and Vacuum Chamber. *Manufacturer:* Metrotec Engineering ag, Switzerland. *Intended Use:* The instrument will be used for developing methods for ultra-precise vacuum mass measurement and for characterization of the stability of mass standards under vacuum. These new capabilities will play a crucial and indispensable role in the ongoing research to replace the artifact-based definition of the unit of mass with one based on fundamental constants. Application accepted by Commissioner of *Customs:* September 28, 2000.

*Docket Number:* 00–032 *Applicant:* The University of Michigan, Environmental Health Sciences Department, School of Public Health, 109 S. Observatory, Ann Arbor, MI 48109–2029. *Instrument:* Aerosol Generator. *Manufacturer:* Topas GmbH, Germany. *Intended Use:* The instrument is intended to be used for the generation of particulate aerosols in a small-scale wind tunnel. The aerosols, composed of dusts of different materials including glass beads, Arizona road dust, and fused alumina will be used for the study and development of personal aerosol samplers. Experiments will consist of testing the efficiency of polyurethane preselector foams and testing of personal aerosol samplers to determine aspiration efficiency. The objective of this research is to apply the knowledge gained in previous research to the development of new small-scale, user-friendly personal sampling systems for the inhalable and thoracic fractions of airborne particles. In addition, the instrument will be used for educational purposes in various environmental and industrial health courses involving laboratory research for students at various stages in the Ph.D. program. Application accepted by Commissioner of Customs: September 28, 2000.

**Frank W. Creel,**

*Director, Statutory Import Programs Staff.*

[FR Doc. 00–26764 Filed 10–17–00; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[C–489–502]**

### Certain Welded Carbon Steel Pipe and Tube and Welded Carbon Steel Line Pipe From Turkey: Amended Final Results of Countervailing Duty Administrative Reviews in Accordance With Decision Upon Remand

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Amendment to Final Results of Countervailing Duty Administrative Reviews in Accordance with Decision Upon Remand.

**SUMMARY:** On July 5, 2000, the United States Court of International Trade (CIT) affirmed the Department of Commerce's (the Department) *Final Results of Redetermination on Remand Pursuant to Mannesmann-Sumerbank Boru Endustrisi T.A.S.* v. *United States, Slip Op. 00–50 (CIT May 3, 2000),* (Slip Op. 00–74). These Final Results apply to the Department's countervailing duty administrative reviews of the countervailing duty orders on certain welded carbon steel pipe and tube and welded carbon steel line pipe from Turkey covering the period January 1, 1996 through December 31, 1996. In accordance with the CIT's instructions, the Department has recalculated the subsidy rates using a sales denominator inclusive of exchange rate gains and losses.

**EFFECTIVE DATE:** October 18, 2000.

**FOR FURTHER INFORMATION CONTACT:** Stephanie Moore or Michael Grossman, AD/CVD Enforcement Office VI, Group II, Import Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–2786.

**SUPPLEMENTARY INFORMATION:** On April 16, 1998, the Department published in the **Federal Register** (63 FR 18885) the final results and partial rescission of its administrative reviews of the countervailing duty orders on certain welded carbon steel pipe and tube and welded carbon steel line pipe from Turkey for the period January 1, 1996 through December 31, 1996. Subsequently, respondents challenged the Department's final results before the CIT regarding the Department's determination to calculate the benefits from the freight rebate program at the time of receipt, and the Department's methodology of excluding foreign exchange gains, "kur farki," from the denominator of the subsidy equation.

In the 1996 administrative reviews of the countervailing duty orders, the Department determined that benefits from the freight rebate program are bestowed at the time of receipt. The Department also determined that foreign exchange gains should be excluded from the sales denominators because foreign exchange gains are not income that is derived from sales, but income from fluctuations of the relative value of the dollar versus the Turkish Lira. Therefore, the Department excluded foreign exchange gains from the sales denominators.

On December 23, 1999, the CIT affirmed the Department's determination regarding the freight rebate program. However, the CIT remanded to the Department to either include foreign exchange gains in the denominator of the subsidy margin calculation or provide an adequate explanation of how this case differs from prior determinations, where the subsidy margin calculation was performed in this manner. The CIT also stated that if the Department took the latter course of action, it must also explain why Turkish generally accepted accounting principles (GAAP) and respondents' accounting methods are unreliable and distortive. *See Mannesmann-Sumerbank Boru Endustrisi T.A.S.* v. *United States*, 86 F. Supp. 2d 1266, 1275 (CIT 1999). In accordance with that remand order, on March 17, 2000, the Department submitted its first *Final Results of Redetermination on Remand*, which explained how the prior determinations cited by the court reflected a practice no longer ascribed to by the Department, and why Turkish GAAP and the respondents' accounting methods are irrelevant in regards to the issue at hand.

The CIT, in its May 3, 2000, decision found that the Department's explanation failed to substantiate its practice or its reasonableness, and remanded to the Department to recalculate the subsidy rates using a sales denominator inclusive of exchange rate gains and losses. (Slip Op. 00–50). On June 2, 2000, the Department recalculated the subsidy rates using a sales denominator inclusive of exchange rate gains and losses, as instructed by the CIT. On July 5, 2000, the CIT sustained the Department's second *Final Results of Redetermination on Remand.* (Slip Op. 00–74).

#### Results of Remand

In accordance with the court's second remand instructions, the Department has recalculated the benefits under each program, and the company-specific total *ad valorem* rates for the 1996 period. Therefore, we are amending the final results of administrative reviews.

The final countervailing duty rates for the 1996 period of review are as follows:

| Manufacturer/exporter of line pipe | Ad valorem rate |
|---|---|
| Mannesmann-Sumerbank | 3.75% |

| Manufacturer/exporter of pipe and tube | Ad valorem rate |
|---|---|
| Borusan Group | 2.85% |

The Department will instruct the Customs Service to assess countervailing duties on all appropriate entries. The Department will issue liquidation instructions directly to the Customs Service. The above rates will not affect the cash deposit requirements for pipe and tube currently in effect, which will continue to be based on the rates found to exist in the most recently completed review. The order on line pipe was revoked effective January 1, 2000, pursuant to section 751(c) of the Tariff Act, as amended. *See Notice of Final Results of Sunset Review and Revocation of Countervailing Duty Order: Welded Carbon Steel Line Pipe from Turkey*, 64 FR 30305 (June 7, 1999).

This amendment to the final results of countervailing duty administrative reviews notice is in accordance with section 751(a)(1) of the Tariff Act, as amended, (19 U.S.C. 1675 (a)(1)), 19 CFR 351.213, and 19 CFR 351.221(b)(5).

Dated: October 10, 2000.

**Troy H. Cribb,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 00–26763 Filed 10–17–00; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### TRICARE Formerly Known as the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Fiscal Year 2001 Mental Health Rate Updates

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Notice of updated mental health per diem rates.

**SUMMARY:** This notice provides for the updating of hospital-specific per diem rates for high volume providers and regional per diem rates for low volume providers; the updated cap per diem for high volume providers; the beneficiary per diem cost-share amount for low volume providers for FY 2001 under the TRICARE Mental Health Per Diem Payment System; and the updated per diem rates for both full-day and half-day TRICARE Partial Hospitalization Programs for fiscal year 2001.

**EFFECTIVE DATE:** The fiscal year 2001 rates contained in this notice are effective for services occurring on or after October 1, 2000.

**FOR FURTHER INFORMATION CONTACT:** Stan Regensberg, Office of Medical Benefits and Reimbursement Systems, TRICARE Management Activity, telephone (303) 676–3742.

**SUPPLEMENTARY INFORMATION:** The final rule published in the **Federal Register** on September 6, 1988, (53 FR 34285) set forth reimbursement changes that were effective for all inpatient hospital admissions in psychiatric hospitals and exempt psychiatric units occurring on or after January 1, 1989. The final rule published in the **Federal Register** on July 1, 1993, (58 FR 35–400) set forth maximum per diem rates for all partial hospitalization admissions on or after September 29, 1993. Included in these final rules were provisions for updating reimbursement rates for each federal fiscal year. As stated in the final rules, each per diem shall be updated by the Medicare update factor for hospitals and units exempt from the Medicare Prospective Payment System. For fiscal year 2001, Medicare has recommended a rate of increase of 3.4 percent for hospitals and units excluded from the prospective payment system. TRICARE will adopt this update factor for FY 2001 as the final update factor. Hospitals and units with hospital-specific rates (hospitals and units with high TRICARE volume) and regional specific rates for psychiatric hospitals and units with low TRICARE volume will have their TRICARE rates for FY 2000 updated by 3.4 percent for FY 2001. Partial hospitalization rates for full day and half day programs will also be updated by 3.4 percent for FY 2001. The cap amount for high volume hospitals and units will also be updated by the 3.4 percent for FY 2001. The beneficiary cost-share for low volume hospitals and units will also be updated by the 3.4 percent for FY 2001. Consistent with Medicare, the wage portion of the regional rate subject to the area wage adjustment will be updated to 71.553 percent for FY 2001. The following reflect an update of 3.4 percent.

REGIONAL SPECIFIC RATES FOR PSYCHIATRIC HOSPITALS AND UNITS WITH LOW TRICARE VOLUME

| United States census region | Rate@ |
|---|---|
| Northeast: | |
| New England | $560 |
| Mid-Atlantic | 537 |
| Midwest: | |
| East North Central | 464 |
| West North Central | 438 |
| South: | |
| South Atlantic | 554 |
| East South Central | 599 |
| West South Central | 505 |
| West: | |
| Mountain | 504 |
| Pacific | 594 |
| @Wage portion of the rate, subject to the area wage adjustment | 71.553 percent |

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Beneficiary Cost-Share: Beneficiary cost-share (other than dependents of active duty members) for care paid on the basis of a regional per diem rate is the lower of $149 per day or 25 percent of the hospital billed charges effective for services rendered on or after October 1, 2000.

Cap Amount: Updated cap amount for hospitals and units with high TRICARE volume is $702 per day for FY 2001.

The following reflect an update of 3.4 percent for FY 2001.

PARTIAL HOSPITALIZATION RATES FOR FULL-DAY AND HALF-DAY PROGRAMS FY 2001

| United States census region | Full-day rate (6 hours or more) | Half-day rate (3–5 hours) |
|---|---|---|
| Northeast: | | |
| New England (ME, NH, VT, MA, RI, CT) | $225 | $169 |
| Mid-Atlantic (NY, NJ, PA) | 242 | 182 |
| Midwest: | | |
| East North Central (OH, IN, IL, MI, WI) | 213 | 160 |
| West North Central (MN, IA, MO, ND, SD, NE, KS) | 213 | 160 |
| South: | | |
| South Atlantic (DE, MD, DC, VA, WV, NC, SC, GA, FL) | 231 | 173 |
| East South Central (KY, TN, AL, MS) | 249 | 187 |
| West South Central (AR, LA, TX, OK) | 249 | 187 |
| West: | | |
| Mountain (MT, ID, WY, CO, NM, AZ, UT, NV) | 252 | 189 |
| Pacific (WA, OR, CA, AK, HI) | 246 | 185 |

The above rates are effective for services rendered on or after October 1, 2000.

Dated: October 12, 2000.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense*

[FR Doc. 00–26677 Filed 10–17–00; 8:45 am]

**BILLING CODE 5001–10–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### DoD Dependent Schools; Eligibility Requirements

**AGENCY:** DoD, DoDDS.

**ACTION:** Notice.

On September 8, 2000, the Assistant Secretary of Defense for Force Management Policy (ASD(FMP)), signed a memorandum to the Interim Director, Department of Defense Education Activity (DoDEA), changing DoD Directive 1342.12 "Eligibility Requirements for Education of Minor Departments in Overseas Areas," dated July 8, 1982.

The change designates for enrollment on a space-available, tuition-free basis the class of dependents of NATO forces assigned to the NATO site at Larissa, Greece, excluding the host nation. This class waiver will be effective for school years 2000–2001 and 2001–2002, to the extent space is available, in order to allow sufficient time for the NATO command to explore other education options. This waiver will permit the enrollment of approximately 30 dependents of NATO forces. No Department of Defense (DoD) funds may be used to hire additional English as a Second Language instructors. Either the NATO forces or the NATO families must ensure the students are prepared for English language instruction.

**SUPPLEMENTARY INFORMATION:**

DoD Directive 1342.13, "Eligibility Requirements for Education of Minor Dependents in Overseas Areas," dated July 2, 1982, is published at 32 CFR Pt. 71, and copies are available at cost from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, or the DoDEA web site: www.odedodea.edu. Questions can be addressed to DoDEA Attention: Ms. Gail Terres, 4040 North Fairfax Drive, Arlington, VA 22203–1635.

Dated: October 12, 2000.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 00–26675 Filed 10–17–00; 8:45 am]

**BILLING CODE 5001–10–M**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### DoD Dependent Schools; Eligibility Requirements

**AGENCY:** DoD, DoDDS.

**ACTION:** Notice.

On August 17, 2000, the Assistant Secretary of Defense for Force Management Policy (ASD(FMP)), signed a memorandum to change Department of Defense (DoD) Directive 1342.13, "Eligibility Requirements for Education of Minor Dependents in Overseas Areas," dated July 8, 1982. The change provides financial assistance for the education of certain Defense dependents overseas in ares in which the Department of Defense Dependents Schools (DoDDS) does not operate a school. Sponsors must obtain approval for the allowance from the cognizant DoDDS approval authority prior to incurring any expense, with the amount of the educational allowance normally not to exceed the "at post" rate authorized by the Department of State Standardized Regulations (DSSR) (Government Civilians in Foreign Areas), Sections 031.1 and 277.1, for the overseas location to which the DoD sponsor is assigned. No allowance will be provided to defray the educational expenses of dependents of eligible sponsors stationed in overseas areas where local, tax-supported schools provide an educational program in the English language. In such instances, sponsors are expected either to send their dependents to local public schools or to be personally responsible for their private school tuition. The only exception to this policy will be for those dependents whose DoD sponsors are either assigned to a Department of State Activity or independently assigned as an exchange officer to a host nation program. In these cases, the DoD sponsor will be afforded the same educational allowance provided to Department of State employees, or to members of the host nation program to which the DoD sponsor is assigned or attached, up to the published DSSR rate.

**SUPPLEMENTARY INFORMATION:**



DoD Directive 1342.13, "Eligibility Requirements for Education of Minor Dependents in Overseas Areas," dated July 2, 1982, is published at 32 CFR part 71 and copies are available, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161, or the Department of Defense Education Activity (DoDEA) web site: www.odedodea.edu. Questions can be addressed to the Department of Defense Education Activity, Attention: Ms. Gail Terres, 4040 North Fairfax Drive, Arlington, VA 22203–1635.

Dated: October 12, 2000.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 00–26676 Filed 10–17–00; 8:45 am]

**BILLING CODE 5001–10–M**

## DEPARTMENT OF DEFENSE

### Department of the Air Force

### Proposed Collection, Comment Request

**AGENCY:** Department of the Air Force, DoD.

**ACTION:** Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Air Force Junior Reserve Officer Training Corps (AFJROTC), Operations Section, announces the proposed renewal of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by December 18, 2000.

**ADDRESSES:** Written comments and recommendations on the proposed information collection should be sent to AFROTC/DOJ, 551 East Maxwell Blvd, Maxwell AFB, AL 36112–6106.

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address or call AFROTC/DOJO at (334) 953–5116.

*Title, Associated Form, and OMB Number:* Application for Establishment of Air Force Junior ROTC Unit, AFOATS Form 59, OMB Number 0701–0114.

*Needs and Uses:* The information collection requirement is necessary to obtain information about schools which would like to host an Air Force Junior ROTC unit.

*Affected Public:* Schools which desire to establish an Air Force Junior ROTC unit.

*Annual Burden Hours:* 20.

*Number of Respondents:* 40.

*Average Burden Per Respondent:* 30 Minutes.

*Frequency:* One time.

**SUPPLEMENTARY INFORMATION:**

*Summary of Information Collection:* Respondents are high school officials who provide information about their school which is interested in hosting an Air Force JROTC unit. The completed form is used to determine the eligibility of the school to host an Air Force JROTC unit. If the form is not included in the file, a school cannot be offered the opportunity to host an AFJROTC unit.

**Janet A. Long,**

*Federal Register Air Force Liaison Officer.*

[FR Doc. 00–26753 Filed 10–17–00; 8:45 am]

**BILLING CODE 5001–05–U**

## DEPARTMENT OF ENERGY

### Notice of Solicitation for Financial Assistance Number DE–PS03–01SF22221 and Program Announcement LAB NE–2001–1 Under the Nuclear Energy Research Initiative (NERI)

**AGENCY:** Office of Nuclear Energy, Science and Technology, Oakland Operations Office, Department of Energy (DOE).

**SUMMARY:** The U. S. Department of Energy, Oakland Operations Office intends to issue a Solicitation and a Program Announcement on or about October 17, 2000, seeking applications/proposals for innovative scientific and engineering research and development in the field of nuclear energy as part of the Nuclear Energy Research Initiative (NERI). NERI is designed to support innovative research that can address the principal technical and scientific obstacles to future use of nuclear power in the U.S. NERI is also intended to reinvigorate the vital nuclear scientific and engineering infrastructure within U.S. universities, industry and DOE national laboratories.

The Solicitation will invite financial assistance applications from universities or other institutions of higher learning, industry, non-profit and R&D organizations and collaborations among organizations, including those in which DOE national laboratories are participating, but not as the lead organization. The Program Announcement will be issued simultaneously for applications in which a DOE national laboratory is the sole or lead performing organization.

The fields of research include: (1) Generation IV Nuclear Energy Systems; (2) Proliferation Resistant Reactors and Fuel Technology; (3) Advanced Nuclear Fuels and; (4) Fundamental Science.

Up to $6 million of Government Fiscal Year 2001 Federal funds are expected to be available for awards under the Solicitation and the complementary Program Announcement. Typical funding of individual awards is expected to be in the range of $200,000 to $400,000 per year. Collaborative research projects involving two or more organizations may receive larger awards, where merited. The period of performance for individual projects is expected to be one to three years.

**SUPPLEMENTARY INFORMATION:** Funds are not presently available for these financial assistance awards. Any financial assistance awarded as a result of the Solicitation shall be contingent upon the availability of appropriated funds. No legal liability on the part of the Government for the payment of any money shall arise unless and until appropriated funds are made available to the Contracting Officer for these awards. We anticipate the receipt of funding for the Solicitation and Program Announcement under the authority of the Energy and Water Development Appropriations Act of 2001.

The Catalog of Federal Domestic Assistance (CFDA) Number for this program is 81.121.

The Solicitation text and Program Announcement is expected to be posted on the Oakland Operations Web Site: http://www.oak.doe.gov/financial/sol_page.html on or about October 17, 2000.

**FOR FURTHER INFORMATION CONTACT:** Denise Berry, Contract Specialist; Financial Assistance Center, U.S. Department of Energy, Oakland Operations Office, 1301 Clay Street, 700N, Oakland, California 94612–5208; telephone (510) 637–1873.

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Issued in Oakland, California, on October 11, 2000.

**Salma El-Safwany,**

*Program Manager, Livermore Environmental Program Division.*

[FR Doc. 00–26731 Filed 10–17–00; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP98–43–013]**

### Anadarko Gathering Company; Notice of Refund Report

October 12, 2000.

Take notice that on May 18, 2000, Anadarko Gathering Company (AGC) tendered for filing its 1999 Kansas Ad Valorem Tax Annual Report in the above-referenced docket pursuant to the Commission's Order Denying Petitions for Adjustment and Establishing Procedures for the Payment of Refunds, issued September 10, 1997, in Docket No. RP97–369–000, *et. al.* (September 10, 1997 Order).

AGC states that the information provided in the May 1999 Annual Report has not changed in the past twelve months. Thus AGC incorporates by reference therein the May 1999 Annual Report and respectfully requests that the Commission accept its letter filing as being in compliance with the Ordering Paragraph (E) of the September 10, 1997 Order.

AGC states that copies of its filing have been provided to all parties and the Kansas Corporation Commission.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.W., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before October 23, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–26699 Filed 10–17–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP98–42–019]**

### ANR Pipeline Company; Notice of Refund Report

October 12, 2000.

Take notice that on May 18, 2000, ANR Pipeline Company (ANR) tendered for filing its refund report in the above-referenced docket pursuant to the Commission's Order Denying Petitions for Adjustment and Establishing Procedures for the Payment of Refunds, issued September 10, 1997, in Docket No. RP97–369–000; *et al.* (September 10, 1997 Order).

ANR states that the refund report shows the principal and interest amount that producers have paid ANR, as well as the amounts owned by producers, related to Kansas ad valorem tax overpayments. In addition, ANR has provided the current, of last known, mailing address of each First Seller that has not paid its refund in full. As to the flowthrough of refunds to ANR's customers, pursuant to Commission order dated October 1, 1998, the Commission, based on a previous Commission-approved settlement agreement, granted ANR's request for a waiver of the refund flowthrough requirement and the related requirement that ANR report refund flowthroughs. As a result of this order no amounts have been flowed through to customers.

ANR states that copies of its filing have been provided to all parties.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before October 23, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–26698 Filed 10–17–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP99–355–003]**

### Baltimore Gas and Electric Company; Notice for Extension of Waiver and Request for Expedited Consideration

October 12, 2000.

Take notice that on October 3, 2000, Baltimore Gas and Electric (BGE) tendered for filing a request to extend BGE's current "shipper must have title" policy waiver and a request for expedited consideration.

BGE requests an effective date of November 1, 2000, for the extended waiver.

BGE states that copies of the filing have been served on Columbia Gas Transmission Corporation and Dominion Transmission, Inc. (formerly CNG Transmission Corporation).

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before October 19, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–26680 Filed 10–17–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–500–001]**

### Chandeleur Pipe Line Company; Notice of Compliance Filing

October 12, 2000.

Take notice that on October 5, 2000, Chandeleur Pipe Line Company (Chandeleur) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet, to be effective October 1, 2000.

Second Revised Sheet No. 3A

Chandeleur asserts that the purpose of this filing is to comply with the Commission's Letter order issued September 25, 2000 in Docket No. RP00–500–000.

Chandeleur states that it is correcting a pagination error in Sheet No. 3A as directed by the Commission. No content changes have been made to the Sheet No. 3A other than the pagination change as requested.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–26683 Filed 10–17–00; 8:45 am]

BILLING CODE 6717–01–M



## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–562–000]**

### Clear Creek Storage Company, L.L.C.; Notice of Compliance Filing

October 12, 2000.

Take notice that on September 22, 2000, Clear Creek Storage Company, L.L.C. (Clear Creek) tendered for filing its explanation of why it is not feasible for Clear Creek to comply with Order No. 587–L.

Clear Creek states that since it does not impose of imbalance penalty provisions, implementation of Order No. 587–L is not necessary on its system.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–26684 Filed 10–17–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–325–000]**

### Colorado Interstate Gas Company; Notice of Technical Conference

October 12, 2000.

On June 15, 2000, Colorado Interstate Gas Company (CIG) filed in compliance with Order No. 637. A technical conference to discuss the various issues raised by CIG's filing was held on October 3, 2000.

Take notice that a second technical conference to discuss the issue of segmentation on CIG's system, and remaining issues raised by CIG's filing, will be held Thursday, October 26, 2000, at 9 am in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

All interested persons and Staff are permitted to attend.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–26681 Filed 10–17–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP00–470–000]**

### Columbia Gas Transmission Corporation; Notice of Application

October 12, 2000.

Take notice that on September 25, 2000, Columbia Gas Transmission Corporation (Columbia), 12801 Fair Lakes Parkway, Fairfax, Virginia 22030–0146, filed a request with the Commission in Docket No. CP00–470–000, pursuant to Section 7(c) of the Commission's Regulations of the Natural Gas Act and Part 157 of the Federal Energy Regulatory Commission's (Commission) regulations in which Columbia requests authorization to abandon certain natural gas storage facilities, by the reclassification of two active injection storage wells to observation well status, all as more fully set forth in the request on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Specifically, Columbia seeks authority to abandon by the reclassification of two existing wells, Well Nos. 7516 and 7526, in the Terra Alta South Storage Field in Preston County, West Virginia. The wells have excessive salt water production so they will be used for observation only in the south end of the field.

Any questions regarding the application may be directed to Sue Belcher, Certificates Division, Columbia Gas Transmission Corporation, Post Office Box 1273, Charleston, West Virginia 25325–1273, telephone number (304) 357–2926.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 20, 2000, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor statue will be placed on the service list maintained by the Commission and will receive copies of all documents filed by the Applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may

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submit two copies of comments to the Secretary of the Commission. Comments will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in, and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedures, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein and if the Commission, on its own review of the matter, finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Columbia to appear, or be represented, at the hearing.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–26692 Filed 10–17–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP–440–001]**

### Dominion Transmission, Inc.; Notice of Proposed Changes in FERC Gas Tariff

October 12, 2000.

Take notice that on October 5, 2000, Dominion Transmission, Inc. (Dominion), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets with a proposed effective date of September 23, 2000:

Substitute Original Sheet No. 1144
Substitute Original Sheet No. 1147
Substitute Original Sheet No. 1148
Substitute Original Sheet No. 1149
Substitute Original Sheet No. 1151
Substitute Original Sheet No. 1152
Substitute Original Sheet No. 1153

Dominion states that the purpose of this filing is to comply with the Commission's September 6, 2000 letter order, which required Dominion to refile Section 23.2.E. of its General Terms and Conditions to exempt prearranged releases for one year or more at the maximum rate from the posting and bidding requirements. Dominion also refiles certain tariff sheets to incorporate previously accepted tariff sheets regarding the elimination of the maximum rate ceiling for short-term capacity release transactions into its newly filed FERC Gas Tariff, Third Revised Volume No. 1.

Dominion states that copies of its filing have been served upon Dominion's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–26682 Filed 10–17–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP01–30–000]**

### Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

October 12, 2000.

Take notice that on October 5, 2000, Eastern Shore Natural Gas Company (ESNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, certain revised tariff sheets, bear a proposed effective date of November 1, 2000.

ESNG states that the purpose of this instant filing is to track rate changes attributable to storage services purchased from Columbia Gas Transmission Corporation (Columbia) under its Rate Schedule CFSS. The costs of the above referenced storage services comprise the rates and charges payable under ESNG's Rate Schedule CFSS. This tracking filing is being made pursuant to Section 3 of ESNG's Rate Schedule CFSS.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–26686 Filed 10–17–00; 8:45 am]

BILLING CODE 6717–01–M



## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. EL00–62–011]**

### ISO New England Inc.; Notice of Filing

October 12, 2000.

Take notice that on October 11, 2000, the New England Power Pool (NEPOOL) Participants Committee submitted additional information relating to its September 26, 2000 filing in the above captioned docket. This supplemental information updates the voting results set forth in NEPOOL's September 26, 2000 filing.

The NEPOOL Participants Committee states that copies of these materials were sent to all persons identified on the service lists in the above captioned docket, the NEPOOL Participants, non-Participant Transmission Customers and the six New England state governors and regulatory commissions.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before November 13, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–26745 Filed 10–17–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP99–324–003]**

### Koch Gateway Pipeline Company; Notice of Compliance Filing

October 12, 2000.

Take notice that on October 5, 2000, Koch Gateway Pipeline Company (Koch) filed additional information regarding its annual cash-out report in compliance with the Commission's August 3, 2000 letter order requiring Koch to provide additional information to support the activity in the Report.

Koch states that copies of the filing have been served upon each party designated on the official service list compiled by the Secretary in the above captioned proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before October 18, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of the filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–76700 Filed 10–17–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP01–35–000]**

### Norteño Pipeline Company; Notice of Tariff Compliance Filing

October 12, 2000.

Take notice that on Octobere 10, 2000, Norteño Pipeline Company (Norteño), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following *pro forma* tariff sheet:

Pro Forma Sheet No. 242

Norteño states that this *pro forma* tariff sheet reflects the changes to its tariff that are required to comply with the Commission's Order Nos. 637, 637–A and 637–B. Norteño has made changes to its General Terms and Conditions to provide for segmentation of capacity. As further explained in the filing, Norteño believes its current tariff provisions governing scheduling equality and flexible point rights comply with the requirements of Order No. 637. Norteño requests waiver of the requirements relating to alternate point allocations, operational flow orders, imbalance services and penalties on the grounds that they are either not operationally feasible for Norteño or are unnecessary in order to comply with Order No. 637.

Norteño states that copies of this filing have been served on Norteño's jurisdictional customers and public bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–26691 Filed 10–17–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP01–3–000]**

### Northern Natural Gas Company; Notice of Application

October 12, 2000.

Take notice that on October 4, 2000, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124, filed in Docket No. CP01–3–000 an abbreviated application pursuant to Section 7(b) of the Natural Gas Act and Part 157 of the Commission's Regulations thereunder (18 CFR 157.7 and 157.18), for permission and approval to abandon in-place one (1) 2,000 horsepower compressor unit at the Sunray Compressor Station, with appurtenances, located in Moore County, Texas, all as more fully set forth in the request which is on file with the Commission and open to public inspection. The application may be viewed on the web at www.ferc.fed.us. Call (202) 208–2222 for assistance.

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Northern states the compressor Unit #9 at its Sunray Compressor Station, proposed to be abandoned in this application, has not been in use for several years and is no longer needed because its system has undergone changes in its operating configuration since the unit was initially installed. Northern asserts that the abandonment of these facilities will not result in the abandonment of service to any of Northern's existing shippers, nor will the proposed abandonment adversely affect capacity since the compression is no longer needed to meet current firm service obligations. Northern also asserts minimal environmental impact.

Any questions regarding this application should be directed to Keith L. Petersen, Director, Certificates and Reporting for Northern, 1111 South 103rd Street, Omaha, Nebraska 68124, at (402) 398–7421, or Don Vignaroli, Regulatory Analyst, at (402) 398–7139.

Any person desiring to be heard or any person desiring to make any protest with reference to said application may, within 45 days after the issuance of the instant notice by the Commission, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedures, a hearing will be held without further notice before the Commission on this application if no protest or motion to intervene is filed within the time required herein. At that time, the Commission, on its own review of the matter, will determine whether the public convenience and necessity require granting the Abandonment. If a protest or motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Northern to appear or to be represented at the hearing.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–26695 Filed 10–17–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP01–34–000]**

### Overthrust Pipeline Company; Notice of Tariff Filing

October 12, 2000.

Take notice that on October 10, 2000, Overthrust Pipeline Company (Overthrust) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A, First Revised Sheet No. 67D, First Revised Sheet No. 67E, Original Sheet No. 67F and Original Sheet No. 67G, to be effective November, 1, 2000.

Overthrust states that the purpose of this filing is to comply with Order No. 587–L issued June 30, 2000, in Docket No. RM96–1–014, which established November 1, 2000, as the implementation date for interstate pipeline companies to include, in their FERC Gas Tariff, a provision to permit shippers to net and trade imbalances.

Overthrust states that a copy of this filing has been served upon its customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–26690 Filed 10–17–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP98–40–027]**

### Panhandle Eastern Pipe Line Company; Notice of Refund Report

October 12, 2000.

Take notice that on May 18, 2000, Panhandle Eastern Pipe Line Company (PEPL) tendered for filing its 1999 Kansas Ad Valorem Tax Annual Report in the above-referenced docket pursuant to the Commission's Order Denying Petitions for Adjustment and Establishing Procedures for the Payment of Refunds issued September 10, 1997, in Docket No. RP97–369–000, et al. (September 10, 1997 Order).

PEPL states that Appendix A to its filing contains the Kansas Ad Valorem tax refunds due from PEPL's May 18, 1999 refund report, and reflects the adjustments for additional Kansas Ad Valorem tax refunds that would result from the Commission's Order on Remand issued on April 12, 2000 in Docket No. RP97–369–013. In accordance with Ordering Paragraph (B) of the Commission's February 29, 2000 Order Accepting Refund Report in Docket No. RP98–40–22, PEPL has updated the carrying charges on the unpaid amounts in column (3) of Appendix A. The Kansas Ad Valorem Tax refund amounts due at March 31, 2000 are shown in column (4) of Appendix A. PEPL will be notifying the producer suppliers that have an adjusted refund amount resulting from the Commission's April 12, 2000 Order.

In its May 18, 1999 refund report, PEPL indicated that it has received refunds of Kansas Ad Valorem Taxes during the period April 1998 through April 1999 totaling $125,724.51. PEPL has received no additional Kansas Ad Valorem Tax refunds from its producer suppliers during the twelve-month period April 1999 through March 2000. Pursuant to the Commission's September 10, 1997 order, PEPL will continue to accrue interest on the amounts shown in Appendix B until they are distributed to its jurisdictional customers.

PEPL states that copies of its filing have been provided to all parties and



respective State Regulatory Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before October 23, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be reviewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–26697 Filed 10–17–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP01–33–000]**

### Questar Pipeline Company; Notice of Tariff Filing

October 12, 2000.

Take notice that on October 10, 2000, Questar Pipeline Company (Questar) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, Fifth Revised Sheet No. 79, Second Revised Sheet No. 80 and Fourth Revised Sheet No. 80A, to be effective November 1, 2000.

Questar states that the purpose of this filing is to comply with Order No. 587–L issued June 30, 2000, in Docket No. RM96–1–014, which established November 1, 2000, as the implementation date for interstate pipeline companies to include, in their FERC Gas Tariff, a provision to permit shippers to net and trade imbalances.

Questar states that a copy of this filing has been served upon its customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–26689 Filed 10–17–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP01–32–000]**

### TransColorado Gas Transmission Company; Notice of Tariff Filing

October 12, 2000.

Take notice that on October 10, 2000, TransColorado Gas Transmission Company (TransColorado) tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, Second Revised Sheet No. 246, Original Sheet No. 246A and Fifth Revised Sheet No. 247, to be effective November 1, 2000.

TransColorado states that the purpose of this filing is to comply with Order No. 587–L issued June 30, 2000, in Docket No. RM96–1–014, which established November 1, 2000, as the implementation date for interstate pipeline companies to include, in their FERC Gas Tariff, a provision to permit shippers to net and trade imbalances.

TransColorado states that a copy of this filing has been served upon TransColorado's customers, the New Mexico Public Utilities Commission and the Colorado Public Utilities Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 145.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–26688 Filed 10–17–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket Nos. RP00–634–000 and CP97–193–004]**

### Transcontinental Gas Pipe Line Corporation; Notice of Compliance Filing

October 12, 2000.

Take notice that on September 29, 2000, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, certain revised tariff sheets listed on Appendix A to the filing, with an effective date of November 1, 2000.

Trancso states that the filing is being filed to adjust the initial reservation rate surcharge authorized by the Commission's Preliminary Determination on Non-Environmental Issues" issued May 30, 1997 in Docket No. CP97–193–000. The May 30 Order and Exhibit P to the application required Transco to file to adjust the surcharge effective no later than three years from the date of the last adjustment, to reflect changes in the reserve for depreciation, deferred income taxes, associated state and federal income taxes, and firm transportation billing determinants under the firm transportation service agreements between Transco and Piedmont, if Transco has not placed into effect a general change in system rates pursuant to a rate proceeding under the NGA within any three-year period during the term of the surcharge. Therefore in order to comply with the approved reservation rate surcharge methodology, Transco states that it is including in the filing an adjustment to the surcharge, as discussed above, to be effective November 1, 2000.

Transco states that copies of the filing are being mailed to each of its

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SouthCoast customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–26685 Filed 10–17–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP01–31–000]**

### USG Pipeline Company; Notice of Compliance Filing

October 12, 2000.

Take notice that on October 6, 2000, USG Pipeline Company (USGPC) tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, First Revised Sheet No. 51, with an effective date of November 1, 2000.

USGPC states that the purpose of this filing is to comply with the Commission's Order No. 587–L issued June 30, 2000 in Docket No. RM96–1–014. USGPC requests waiver of the Commission's regulations to permit the tariff sheet to become effective November 1, 2000.

USGPC states that copies of this filing are being provided to its sole customer and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–26687 Filed 10–17–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket Nos. CP98–133–005, CP98–134–005, CP98–135–004]**

### Vector Pipeline, L.P.; Notice of Proposed Changes in FERC Gas Tariff

October 12, 2000.

Take notice that on September 29, 2000, Vector Pipeline L.P. (Vector), tendered for filing as its FERC Gas Tariff, Volume No. 1, to become effective November 1, 2000. Vector states that the purpose of this filing is to comply with the Commission's orders issued October 19, 1998 and May 27, 1999 in Docket Nos. CP98–133–000, et seq. and to include in its effective tariff certain new and/or modified provisions as a result of a reexamination of the 1997 pro forma tariff and discussions with its shippers. Vector requests any and all waivers of the Commission's regulations that may be required to place the proposed tariff into effect.

Vector states that its proposed tariff is in compliance with prior Commission orders, revised Commission policies, and the currently effective Commission regulations. With respect to compliance with the requirements of Order Nos. 637, et seq., Vector states that it has included in the filed tariff sheets those provisions which are permitted and/or dictated by Order Nos. 637, et seq. for immediate effect.

Vector states that the rates and charges for service under Rate Schedule FT–1 (firm transportation service) and Rate Schedule IT–1 (interruptible transportation service) are the same as those included in the certificate amendment filing made by Vector in Docket Nos. CP98–133–004 and CP98–134–003 on June 27, 2000. The explanation for the zone rates provided in the certificate amendment filing is incorporated herein by reference. Rates for firm and interruptible service are set by zone, with Zone 1 representing service from Milepost 0 to Milepost 43, and Zone 2 representing service from Milepost 0 to Milepost 333. Also, Vector has allocated $1 million of fixed costs to interruptible and system management services, and thus Vector plans to retain all revenues from these services.

Vector states that it proposes to recover fuel consumed in operations and lost and unaccounted for gas through contributions in-kind from the shippers, adjusted monthly for actuals, and charged on an 111-mile increment basis.

Vector states, that as mandated by Order No. 637, the price cap for short-term capacity release has been removed. In addition, Vector will issue a contract to a Replacement Shipper within one hour of awarding the capacity, however contract execution is not necessary for a Replacement Shipper to nominate volumes for transportation under its new capacity allocation.

Vector requests waiver of the requirements of Sections 284.286 and 284.287 to allow the incidental purchases and sales of gas without the need to file tariff sheets providing for such incidental purchases and sales.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before October 19, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–26694 Filed 10–17–00; 8:45 am]

BILLING CODE 6717–01–M



## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER00–3168–002, et al.]**

### Conectiv Delmarva Generation, Inc., et al.; Electric Rate and Corporate Regulation Filings

October 12, 2000.

Take notice that the following filings have been made with the Commission:

**1. Conectiv Delmarva Generation, Inc.**

[Docket No. ER00–3168–002]

Take notice that on October 6, 2000, Conectiv, on behalf on Conectiv Delmarva Generation, Inc., tendered for filing additional rate schedule pages in compliance with the Commission's letter order dated September 12, 2000 in *Conectiv Delmarva Generation, Inc.*, Docket Nos. ER00–3168–000 and ER00–3168–001.

Conectiv has served copies of this filing to persons on the official service list in Docket Nos. ER00–3168–000 and ER00–3168–001 and the parties to the agreements affected by this filing.

*Comment date:* October 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

**2. NEO Chester-Gen LLC, NEO Toledo-Gen LLC, NEO Freehold-Gen LLC**

[Docket No. ER01–59–000]

Take notice that on October 6, 2000, NEO Chester-Gen LLC, NEO Toledo-Gen LLC and NEO Freehold-Gen LLC tendered for filing under each company's market-based rate tariff a long-term service agreement with NRG Power Marketing, Inc.

*Comment date:* October 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

**3. Consumers Energy Company**

[Docket No. ER01–60–000]

Take notice that on October 6, 2000, Consumers Energy Company (Consumers), tendered for filing executed Firm and Non-Firm Point to Point Transmission Service Agreements with H.Q. Energy Services (U.S.) Inc. (Customer), pursuant to the Joint Open Access Transmission Service Tariff filed on December 31, 1996 by Consumers and The Detroit Edison Company (Detroit Edison).

The agreements have effective dates of October 4, 2000.

Copies of the filed agreement were served upon the Michigan Public Service Commission, Detroit Edison, and the Customer.

*Comment date:* October 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

**4. Entergy Services, Inc.**

[Docket No. ER01–61–000]

Take notice that on October 6, 2000, Entergy Services, Inc., on behalf of Entergy Mississippi, Inc., tendered for filing an Interconnection and Operating Agreement with Duke Energy Hinds, LLC (Duke-Hinds), and a Generator Imbalance Agreement with Duke-Hinds.

*Comment date:* October 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

**5. Entergy Services, Inc.**

[Docket No. ER01–62–000]

Take notice that on October 6, 2000, Entergy Services, Inc., on behalf of Entergy Mississippi, Inc., tendered for filing an Interconnection and Operating Agreement with LSP Pike Energy, LLC (LSP-Pike) for LSP-Pike's facility to be located near Holmesville, Mississippi, and a Generator Imbalance Agreement with LSP-Pike.

*Comment date:* October 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

**6. Entergy Services, Inc.**

[Docket No. ER01–63–000]

Take notice that on October 6, 2000, Entergy Services, Inc., on behalf of Entergy Mississippi, Inc., tendered for filing an Interconnection and Operating Agreement with Duke Energy Attala, LLC (Duke-Attala), and a Generator Imbalance Agreement with Duke-Attala.

*Comment date:* October 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

**7. Constellation Power Source, Inc.**

[Docket No. ER01–64–000]

Take notice that on October 6, 2000, Constellation Power Source, Inc. (CPS), 111 Market Street, Suite 500, Baltimore, Maryland 21202 tendered for filing revisions to its market-based rate schedule, FERC Rate Schedule No. 11, providing for the resale of firm transmission rights.

*Comment date:* October 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

**8. Deseret Generation and Transmission Co-operative, Inc.**

[Docket No. ER01–65–000]

Take notice that on October 6, 2000, Deseret Generation & Transmission Co-operative, Inc. (Deseret), tendered for filing an executed Confirmation Agreement for a firm power sale between Deseret and Utah Associated Municipal Power Systems (UAMPS). This Confirmation Agreement is filed pursuant to the Western Systems Power Pool Agreement regarding a long-term power purchase and sale transaction.

Deseret requests an effective date of October 1, 2000.

*Comment date:* October 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

**9. Pacific Gas and Electric Company**

[Docket No. ER01–66–000]

Take notice that on October 6, 2000, Pacific Gas and Electric Company (PG&E), tendered for filing proposed changes in its Transmission Owner Tariff (TO Tariff) and Cost Support for PG&E specific rates associated with the TO Tariff.

This filing proposes changes to PG&E's transmission access charges, which are calculated in accordance with the rate methodology set forth in PG&E's TO Tariff. PG&E provides cost support for PG&E's proposed transmission access charges. Copies of this filing have been served upon the CPUC and the California Independent System Operator Corporation.

PG&E requests that its filing be made effective upon the end of the 60-day prior notice period specified in Section 35.3 (18 CFR 35.3).

*Comment date:* October 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraphs**

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–26679 Filed 10–17–00; 8:45 am]

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. CP00–422–000]

### El Paso Gas Company; Notice of Intent To Prepare an Environmental Assessment for The Proposed Line No. 2000 Project and Request For Comments on Environmental Issues

October 12, 2000.

The staff of the Federal Energy Regulatory Commission (FERC) or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Line No. 2000 Project involving acquisition, construction and operation of facilities by El Paso Natural Gas Company (El Paso) extending from a point near Ehrenberg, Arizona to McCamey, Texas.[1] These facilities would consist of about 785 miles of an existing crude oil transmission pipeline to be acquired by El Paso and converted to a natural gas transmission pipeline as well as certain connecting pipelines and extensions to permit the line to be contiguous and integrated into El Paso's system. El Paso would also abandon in place existing mainline compression facilities at six compressor stations, totaling 119,750 horsepower. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" was attached to the project notice El Paso provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet website (www.ferc.fed.us).

#### Summary of the Proposed Project

El Paso proposes to improve the operating characteristics of its system by abandoning certain existing mainline compressor facilities on its South System and concurrently integrating into its system pipeline facilities to replace the abandoned compression. El Paso seeks authority to:

- Abandon in place five compressor stations (Deming in Luna County, New Mexico; San Simon and Benson in Cochise County, Arizona; Tucson in Pima County, Arizona; and Gila in Maricopa County, Arizona) which are presently in operation and the horsepower comprising the "A" and "B" Plants at the El Paso Compressor Station in El Paso County, Texas, all located on its South System;
- Acquire and clean approximately 785 miles of an existing crude oil transmission pipeline from its subsidiary EPNG Pipeline Company and convert it to a natural gas transmission pipeline;
- Construct a total of approximately 0.81 mile of new pipeline segments to bypass ten oil pump station sites;
- Construct new pipeline at two tie-in and four crossover locations;
- Construct a total of 2.78 miles of 30-inch-diameter pipeline to tie in Line No. 2000 to seven existing compressor stations (Guadalupe, Cornudas, Afton, Florida, Lordsburg, Casa Grande, and Wenden) on its South System and remove a total of approximately 0.68 mile of Line No. 2000 at these tie-ins;
- Replace four segments of Line No. 2000, totaling 8.16 miles, with 30-inch-diameter pipeline to meet U.S. Department of Transportation requirements;
- Install 38 new valves;
- Remove 29 plug vent valves;
- Remove seven check valve segments, fourteen gate valve segments, and a fee and gate valve and replace them with 30-inch-diameter pipeline;
- Install pigging facilities and flow measurement equipment (under section 2.55 of the Commission's regulations).

The general location of the project facilities is shown in appendix 1.[2]

#### Land Requirements for Construction

Construction of the proposed facilities would require about 320 acres of land. Following construction, about 3 acres would be maintained as new above-ground facility sites. The remaining 317 acres of land would be restored and allowed to revert to its former use, although some periodic vegetation maintenance may occur in some areas.

#### The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us[3] to discover and address concerns the public may have about proposals. We call this "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

#### Currently Identified Environmental Issues

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project. We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by El Paso. This preliminary list issues may be changed based on your comments and our analysis.

[1] El Paso's application was filed with the Commission on July 31, 2000, under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's website at the "RIMS" link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE., Washington, DC. 20426, or call (202) 208–1371. For instructions on connecting to RIMS refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[3] "Us", "we", and "our" refer to the environmental staff of the FERC's Office of Energy Projects.



- Threatened and endangered species;
- Residences within 50 feet of construction work areas; and
- Public safety.

#### Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations/routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send original and two copies of your letter to:

David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;

- Label one copy of the comments for the attention of Gas 1, PJ–11.1;
- Reference Docket No. CP00–422–000; and
- Mail your comments so that they will be received in Washington, DC on or before November 13, 2000.

If you do not want to send comments at this time but want to remain on our mailing list, please return the Information Request (appendix 3). If you do not return the Information Request, you will be taken off the mailing list.

#### Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an "intervenor". Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2). Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns maybe granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Additional information about the proposed project is available from the Commission's Office of External Affairs (202) 208–0004 or on the FERC website (www.ferc.fed.us) using the "RIMS" link to information in this docket number. Click on the "RIMS" link, select "Docket #" from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the "CIPS" link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notice, and rulemakings. From the FERC Internet website, click on the "CIPS" link, select "Docket #" from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

**David P. Boergers,**

*Secretary,*

[FR Doc. 00–26693 Filed 10–17–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Application Tendered For Filing With The Commission, Soliciting Additional Study Requests, and Establishing Procedures For Relicensing And A Deadline For Submission of Final Amendments

October 12, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Minor License.

b. *Project No.:* 3516–008.

c. *Date Filed:* October 3, 2000.

d. *Applicant:* City of Hart, Michigan.

e. *Name of Project:* Hart Hydroelectric Project.

f. *Location:* On the South Branch of the Pentwater River, in Oceana County, near Hart, Michigan. The project does not affect federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Scott Huebler, City Manager, City of Hart, 407 State Street, Hart, Michigan, 49420, (231) 873–2488.

i. *FERC Contact:* Steve Kartalia, (202) 219–2942 or *stephen.kartalia@FERC.fed.us.*

j. *Deadline for filing additional study requests:* December 2, 2000.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application is not ready for environmental analysis at this time.

l. *The existing Hart Hydroelectric project consists of:* (1) a 580-foot-long earthen dam; (2) a 40-foot-long concrete-lined spillway; (3) a 240-acre reservoir; (4) a powerhouse containing 2 S. Morgan Smith vertical shaft turbines and 2 generators, with a total hydraulic capacity of 135 cubic feet per second and an installed generating capacity of 320 kilowatts; (5) a 1-mile-long transmission line that connects the project with the Hart Diesel Plant; and (5) appurtenant facilities. The applicant estimates that the total average annual generation is between 350,000 and 400,000 kilowatthours. The project operates in a run-of-river mode and all generated power is distributed to customers of the City of Hart Electric Department via the City's transmission and distribution system.

m. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2–A, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

n. With this notice, we are initiating consultation with the *Michigan State Historic Preservation Officer (SHPO),* as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

o. *Procedural schedule and final amendments:* The application will be processed according to the following

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milestones, some of which may be combined to expedite processing:
Notice of application has been accepted for filing
Notice of NEPA Scoping (unless scoping has already occurred)
Notice of application is ready for environmental analysis
Notice of the availability of the draft NEPA document
Notice of the availability of the final NEPA document
Order issuing the Commission's decision on the application
Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–26696 Filed 10–17–00; 8:45 am]

BILLING CODE 6717–01–M

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6887–2]**

## Slotted Guidepoles at NSPS Subpart Ka/Kb Storage Vessels

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Supplemental notice concerning storage tank emission reduction partnership program.

**SUMMARY:** This notice supplements the Storage Tank Emission Reduction Partnership Program **Federal Register** notice that was published on April 13, 2000, 65 FR 19891, see also 65 FR 2391 (January 14, 2000), commends companies for their participation in this program and includes a list of these companies and their facilities. Under this program, EPA offered to enter into agreements with those companies that installed or will install controls to reduce emissions from slotted guidepoles at NSPS Subpart Ka and Kb tanks. EPA will waive penalties for participating companies who implement their agreements in a timely manner. To participate, companies were required to notify EPA of their intent to participate by June 12, 2000.

**FOR FURTHER INFORMATION CONTACT:** Mr. James K. Jackson, Air Enforcement Division (2242A), U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460, telephone (202) 564–2002.

**SUPPLEMENTARY INFORMATION:** As described in previous **Federal Register** notices, slotted guidepoles have holes, slots and gaps that provide a pathway for evaporative product losses and volatile organic compound (VOC) emissions which can exceed 25,000 pounds per year. EPA reaffirmed its position that uncontrolled slotted guidepoles do not comply with the "no visible gap" requirements of NSPS Subparts Ka and Kb, see 65 FR 2336 (January 14, 2000). The Storage Tank Emission Reduction Partnership Program, however, provided companies with an opportunity to resolve these issues by entering into agreements with EPA to control slotted guidepole emissions at their NSPS Subpart Ka/Kb tanks.

To participate in the Storage Tank Emission Reduction Partnership Program, companies were required to submit a notice of intent by June 12, 2000. Over 100 companies submitted notices covering over 1,000 facilities. EPA believes this level of participation reflects the obvious advantage to participating companies and to the environment of pursuing joint public-private partnerships such as this. EPA commends each of these companies for its willingness to step forward and participate in this process. Accordingly, EPA is publicizing their participation and identifying them and their facilities in this notice. APPENDIX I.

In announcing the final program, EPA encouraged interested companies to voluntarily install slotted guidepole controls on additional, non-NSPS Ka/Kb tanks. EPA believes that the cost of such controls is modest, the transaction cost is minimal and the opportunity for additional emission reductions is substantial. Several companies inquired whether these additional tanks and controls could be included in their participation agreement (due on or before December 11, 2000). The partnership agreement precludes the use of credits for emission reductions from tanks identified on its Annex A which, by its terms, applies only to NSPS Ka/Kb tanks. EPA recognizes that controls on these additional tanks may not be required and that emission credits and offsets would typically be available if such controls are installed. Accordingly and to avoid confusion while also providing an added incentive for installing controls on additional tanks, EPA encourages companies to identify non-NSPS Ka/Kb tanks and the controls that were or will be installed in a separate Annex B to their partnership agreement.

Annex B should be included with the partnership agreement when submitted to the Agency. It should list any non NSPS Ka/Kb tanks (e.g., tanks constructed before May 18, 1978) where controls are or will be installed on their slotted guidepoles. Experience to date suggests that credits and offsets will be generally available under these circumstances, but identifying these tanks and installing controls does not guarantee that emission credits and offsets are available. This is an issue that must be determined by applicable state and local authorities, consistent with the requirements of federally approved state implementation plans.

Dated: October 4, 2000.

**Eric V. Schaeffer,**

*Director, Office of Regulatory Enforcement, Office of Enforcement and Compliance Assurance.*

### Appendix I—Participants in the Storage Tank Emissions Reduction Partnership Program

1. AERA Energy LLC, Bakersfield, CA
   1. Belridge Field, McKittrick, CA; EPA ID No. CAD 000 628 057; Tanks T–486, T–485, T–484
   2. Beta Field, Long Beach, CA; EPA ID No. CAD 981 453 210; Tank T–1040
   3. Midway Sunset Field, Fellows, CA; EPA ID No. CAD 080 031 651, Tanks T–30ESD, T–100
2. Air Products and Chemical, Inc., Allentown, PA
3. Amerada Hess Corporation, Port Reading Refinery, Woodbridge, NJ
   1. Amerada Hess Corp.-Port Reading Refinery, EPA ID No. 15652/15034
4. American Samoa Government, Office of Petroleum Management, Pago Pago, American Samoa
   1. Utulei Bulk Petroleum Storage Tank Farm, Utulei Village; EPA ID No. ASD 981 993 306
5. Apex Oil Company, Inc., Granite City, IL
   1. Apex Oil Co, Greensboro, NC; Air Permit Facility No. 4100121
   2. Apex Oil Co., Wilmington, NC; Air Permit Facility No. 12900147
6. ARCO Products Company, West Coast Region, Richmond, CA
   1. Carson Crude Terminal, Carson, CA; EPA ID No. CAD 000 628 412
   2. Colton Terminal, Bloomington, CA; EPA ID No. CAD 000 632 406
   3. Hathaway Terminal, Long Beach, CA; EPA ID No. CAT 000 611 046
   4. Phoenix Terminal, Phoenix, AZ; EPA ID No. AZD 074 480 245
   5. Richmond Terminal, Richmond, CA; EPA ID No. CAD 000 632 521
   6. Sacramento Terminal, West Sacrament, CA; EPA ID No. CAD 062 949 938
   7. San Diego Terminal, San Diego, CA; EPA ID No. CAD 000 633 271
   8. T2 Terminal, Long Beach, CA; EPA ID No. CAD 075 332 882
   9. Vinvale Terminal, South Gate, CA; EPA ID No. CAD 081 782 583
7. ARCO Cherry Point Refinery, Blaine, WA 98231
   1. BP Amoco—Cherry Point Refinery; EPA ID No. WAD 069 548 154
8. Ashland Inc., Columbus, OH
   1. Ashland Specialty Chemical Co, Petrochemical Division, Methanol Plant, Plaquemine, LA; EPA ID No. LAD 081 419 418
9. BP Amoco, Carson, CA
   1. BP-Amoco—Carson Refinery, Carson, CA; EPA ID No. CAD 077 227 049
10. BP Amoco Chemicals, Texas City, TX
    1. Texas City Chemicals Plant; EPA ID No. TXD 005 942 438
11. BP Amoco, Mandan Refinery, Mandan, ND
    1. BP-Amoco—Mandan Refinery; EPA ID No. NDD 006 175 467
12. BP Amoco, Mid-Continent Region Marketing Terminals, Wood River, IL
    1. Bettendorf, IA; EPA ID No. IAD 000 688 523
    2. Boise, ID; EPA ID No. IDD 000 641 654
    3. Burley, ID; EPA ID No. IDD 000 641 662
    4. Cedar Rapids, IA; EPA ID No. IAD 000 688 515
    5. Chicago (Harlem Ave.), IL; EPA ID No. ILD 000 805 697
    6. Chicago (O'Hare), IL; EPA ID No. ILD 180 012 049
    7. Council Bluffs, IA; EPA ID No. IAD 000 688 507
    8. Des Moines, LA; EPA ID No. IAD 000 821 751
    9. Dubuque, IA; EPA ID No. IAD 000 688 556
    10. Green Bay, WI; EPA ID No. WID 000 808 246
    11. Jamestown, ND; NDD 089 776 355
    12. Milwaukee, WI; EPA ID No. WID 980 614 937
    13. Moorhead, MN; EPA ID No. MND 000 686 683
    14. Ottumwa, IA; EPA ID No. IAD 000 688 549
    15. Rochelle, IL; EPA ID No. ILD 000 717 868
    16. Roseville, MN; EPA ID No. MND 060 491 040
    17. Sauk Centre, MN; EPA ID No. MND 096 493 515
    18. Spring Valley, MN; EPA ID No. MND 000 686 691
    19. Sugar Creek, MO; EPA ID No. MOD 007 161 425
    20. Superior, WI; EPA ID No. WID 000 713 586
    21. Wood River, IL; EPA ID No. ILD 982 611 428
13. BP Exploration & Oil Inc.—Midwest Region Distribution Terminals, Cleveland, OH
    1. Canton, OH; EPA ID No. OHD 017 586 3 89
    2. Cheboygan, MI; MID 000 725 242
    3. Cincinnati, OH; OHD 074 723 099
    4. Cleveland, OH OHD 000 812 198
    5. Columbus, OH; OHD 000 812 206
    6. Coraopolis, PA; PAD 000 779 959
    7. Dayton, OH; OHD 095 194 684
    8. Dearborn, MI; MID 091 611 053
    9. Granger, IN; IND 000 810 853
    10. Greensburg, PA; PAD 074 979 857
    11. Indianapolis, IN; IND 072 075 294
    12. Jackson, MI; MID 099 658 288
    13. Knoxville, TN; TND 000 604 355
    14. Lafayette, IN; IND 000 717 843
    15. Lorain, OH; OHD 000 817 767
    16. Louisville, KY; KYD 062 986 336
    17. Nashville, TN; TND 000 604 363
    18. Niles, OH; OHD 000 720 748
    19. River Rouge, MI; MID 000 809 517
    20. Sciotoville, OH; OHD 000 720 789
    21. Tiffin, OH; OHD 000 723 031
    22. Toledo, OH; OHD 000 817 171
14. BP Amoco: Amoco Pipeline Company; and PB Oil Pipeline Co., Warrenville IL
15. BP Amoco, Salt Lake City Business Unit, Salt Lake City, UT
    1. Salt Lake City Refinery; UTD 000 826 362
16. BP Amoco Oil, U.S. Terminal & Distribution, Marietta, GA
    1. Carteret, NJ; NJD 000 631 895
    2. Brooklyn, NY; NYD 000 632 018
    3. Curtin Bay, MD; MDD 000 607 788
    4. Fairfax, VA; VAD 040 556 565
    5. Richmond, VA; VAD 000 607 879
    6. Roanoke, VA; VAD 000 621 045
    7. Selma, NC; NCD 075 559 526
    8. Sweetwater, SC; SCD 000 645 747
    9. Doraville I, GA; GAD 079 374 260
    10. Doraville II, GA; GAD 093 381 390
    11. Mobile, AL; ALD 099 842 098
    12. Jacksonville, FL; FLD 061 916 532
    13. Tampa, FL; FLD 084 184 209
    14. Port Everglades, FL; FLD 000 827 386
17. BP Amoco Oil, Texas City Refinery Business Unit, Texas City, TX
    1. Texas City Business Unit; TXD 006 080 533
18. BP Amoco—Toledo Refinery, Toledo, OH
    1. Toledo Refinery; OHD 005 057 542
19. BP Amoco Oil, Whiting, IN
    1. Whiting Business Unit; EPA ID No. 089–0003
20. BP Oil Company, Alliance Refinery, Belle Chasse, LA
    1. Alliance Refinery; LAD 056 024 391
21. Buckeye Pipe Line Company, Allentown, Pennsylvania
    1. Buckeye Pipe Line Co., Auburn; NYD 980 537 054
    2. Laurel Pipe Line Co., Booth; PAD 000 647 354
    3. Buckeye Pipe Line Co., Coraopolis; PAD 980 198 782
    4. Buckeye Pipe Line Co., East Chicago; IND 980 792 683
    5. Buckeye Pipe Line Co., Huntington; IND 980 269 344
    6. Buckeye Refining Co., Indianola Refinery; PAD 094 215 886
    7. Buckeye Pipe Line Co., Inglenook; PA0 000 144 113
    8. Buckeye Pipe Line Co., J.F.K. International Airport; NYR 000 040 297
    9. Buckeye Pipe Line Co., Lima; OHD 068 100 650
    10. Buckeye Pipe Line Co., Linden; NJD 982 189 397
    11. Buckeye Pipe Line Co., Long Island City; NYD 982 189 334
    12. Buckeye Pipe Line Co., Macungie; PAD 060 508 397
    13. Buckeye Pipe Line Co., Mantua; OHD 052 935 970
    14. Buckeye Pipe Line Co., Marcy, Marcy NY; no EPA ID No.
    15. Buckeye Pipe Line Co., Midland Breakout Facility; PAR 000 042 242
    16. Buckeye Pipe Line Co., Rochester; NYD 000 692 095
    17. Buckeye Pipe Line Co., Springfield, Springfield, MA; no EPA ID No.
    18. Buckeye Tank Terminals Co., Taylor Terminal; MIT 270 011 547
    19. Buckeye Pipe Line Co., Toledo; OHD 980 792 626
    20. Buckeye Pipe Line Co., Vestal, Vestal, NY; no EPA ID no.
22. Calcasieu Refining Co., Lake Charles, LA
    1. Calcasieu Refining Co.; LAD 099 393 225
23. Calnev Pipe Line Company, San Bernardino, CA
    1. Colton; CAD 007 907 322
    2. George; CAT 080 013 881
    3. Barstow; CAT 000 603 423
    4. Las Vegas; NVD 990 746 961
24. CENCO Refining Company, Santa Fe Springs, CA
    1. Cenco Refining Company; CAD 008 383 291
25. Central Florida Pipeline Corporation, subsidiary of GATX Terminals Corporation, Tampa, FL
    1. Central Florida Pipeline Co.; FLD 078 319 308
30. Chase Pipe Line Company, Wichita, Kansas
    1. Aurora Terminal; COD 076 459 601
    2. El Dorado Terminal; KST 210 010 203
31. Chevron Pipe Line Company, Houston, TX
    1. Alameda Station; TNRCC Account #FG0206F
    2. North Snyder Station; TNRCC Account #SG0004S
    3. Wink West Station; TNRCC Account #WM0040N
    4. Wortham Station; TNRCC Account #F10023Q
    5. Fouchon Terminal; LDEQ Permit #1560–00010–V2
    6. Empire Terminal; LDEQ Permit #2240–00048–04
    7. Boise Station; Idaho Permit #P–9506–075
    8. Sigma Station; California Permit #S–1394–53
    9. Kern Station; California Permit #S–1402–1–4
    10. Midland Station; Texas Account #ML0244C
    11. Colorado City Station; Texas Account #SG0033L
    12. Wortham Station; Texas Account #F10023Q
32. Chevron Products Company, San Ramon, CA
33. CITGO, Tulsa, OK
    1. West Shore Pipeline Co, Granville Station; WID 988 579 975
    2. West Shore Pipeline Co, Des Plaines Station; ILR 000 0066 184 [sic?]
    3. West Shore Pipeline Co, North Green Bay Station; WID 988 579 967
    4. West Shore Pipeline Co, Hammond Station; IND 984 877 225
    5. West Shore Pipeline Co, Des Plaines Terminal; ILD 025 043 506
    6. West Shore Pipeline Co, Harlem Terminal; ILD 984 910 638
    7. West Shore Pipeline Co, Madison Terminal; WID 988 603 825
    8. West Shore Pipeline Co, Rockford Station; ILD 984 899 880
    9. CITGO Pipeline Co, Arlington Station; TXO 000 936 633
    10. CITGO Products Pipeline Co—Fauna Station; TXR 000 008 938
    11. CITGO Products Pipeline Co, Luling Station; TXD 000 999 490
    12. CITGO Pipeline Company, Clifton Ridge/Pecan Grove; LAD 000 803 130

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13. CITGO Pipeline Company, Sour Lake Tank Farm, TXD 072 212 160
14. CITGO Albany Terminal; NYD 183 487 867
15. CITGO Baltimore Terminal; MDD 048 567 523
16. CITGO Bettendorf Terminal; IAD 000 670 455
17. CITGO Birmingham Terminal; ALD 000 609 693
18. CITGO Braintree Terminal; MAD 000 844 100
19. CITGO Brownsville Terminal; TXD 987 993 300
20. CITGO Bryan Terminal; TXT 490 011 251
21. CITGO Charlotte Terminal; MCO 006 097 19
22. CITGO Chattanooga Terminal; TND 000 609 743
23. CITGO Chesapeake Terminal; VAO 006 195 28
24. CITGO Columbus Terminal; OHT 400 010 724
25. CITGO Corpus Christi Terminal; TXD 051 161 990
26. CITGO Dayton Terminal; OHD 987 012 176
27. CITGO Des Plaines Terminal; ILD 06 609 84
28. CITGO Doraville Terminal; GAD 000 616 714
29. CITGO E. Chicago Terminal; IND 095 267 381
30. CITGO Fairfax Terminal; VAD 077 796 126
31. CITGO Ferrysburg Terminal; MID 000 718 197
32. CITGO Fort Worth Terminal; TXD 091 269 613
33. CITGO Green Bay Terminal; WID 000 713 222
34. CITGO Houston Terminal; TXD 087 611 927
35. CITGO Huntington Terminal; INT 190 014 506
36. CITGO Jackson Terminal; MID 000 718 205
37. CITGO Knoxville Terminal; TND 000 609 750
38. CITGO Lake Charles Terminal; LAD 008 080 350
39. CITGO Lemont Terminal; ILD 041 550 567
40. CITGO Linden Terminal; NJD 000 691 170
41. CITGO Louisville Terminal; KYD 043 774 975
42. CITGO Madison Terminal; WID 094 368 339
43. CITGO Meridian Terminal; MSD 000 609 701
44. CITGO Milwaukee Terminal; WID 988 592 382
45. CITGO Mt. Prospect Terminal; ILD 064 389 282
46. CITGO Nashville Terminal; TND 000 609 768
47. CITGO Niceville Terminal; FLD 032 591 521
48. CITGO Nile Terminal; MID 000 718 171
49. CITGO North Port Avenue Terminal; TXD 000 742 296
50. CITGO Panama City Terminal; FLD 984 176 073
51. CITGO Petty's Island Terminal; NJD 043 274 471
52. CITGO Port Everglades Terminal; FLD 077 266 385
53. CITGO Richmond Terminal; VAD 980 714 406
54. CITGO Rocky Hill Terminal; CTD 983 870 460
55. CITGO San Antonio Terminal; TXD 005 125 066
56. CITGO Selma Terminal; NCO 006 919 56
57. CITGO Spartanburg Terminal; SCD 000 792 671
58. CITGO Tallmadge Terminal; OHD 060 422 946
59. CITGO Tampa Terminal; FLD 069 660 561
60. CITGO Toledo Terminal; OHD 005 055 777
61. CITGO Vestal Terminal; NYD 088 658 968
62. CITGO Vicksburg Terminal; MSD 991 277 658
63. CITGO Victoria Terminal; TXD 003 899 440
64. CITGO Waco Terminal; TXD 089 318 190
65. CITGO Petroleum Corporation; LAD 008 080 350
66. CITGO Petroleum Corporation; ILD 041 550 567
67. CITGO Corpus Christi Refinery-East Plant; TXD 051 161 990
68. CITGO Corpus Christi Refinery-West Plant; TXD 981 153 711
69. CITGO Deep Sea Terminal; TXD 000 750 877

34. Coastal Eagle Point Oil Company, Westville, NJ
    1. Coastal Eagle Point Oil Company, Westville, NJ; No EPA ID No. provided
35. Coffeyville Refining, Cooperative Refining, LLC, Coffeyville, Kansas
    1. Coffeyville, KS Refinery; KSD 007 138 605
    2. Phillipsburg, KS Refinery; Source ID 1470001
    3. Associated Pipeline Assets Owned by Farmland Industries, Inc., and Operated by Cooperative Refining LLC
36. Cooperative Refining, LLC, McPherson, Kansas
    1. Cooperative Refining, LLC—McPherson; KSD 007 145 956
37. Cooperative Refining, LLC—Transportation Division, McPherson, Kansas
    1. Kane Station, Washington County, OK
    2. Spurlock Station, Chautauqua County, KS
    3. Shidler Station, Osage County, OK
    4. Waldschmidt Station, Cowley County, KS
    5. Clark Station, Butler County, KS
    6. Holtzinger Station, Trego County, KS
38. Countrymark Cooperative, Inc., Mt. Vernon, IN
    1. Countrymark Cooperative; IND 084 490 8663
43. Equilon Enterprises LLC, Bakersfield, CA
    1. Bakersfield Refining Company; CAD 099 457 087
44. Equilon Enterprises LLC, Transportation, Houston, TX
    1. Argo Terminal; ILD 000 608 992
    2. Bakersfield Terminal; CAL 000 032 796
    3. Brecksville Terminal; OHD 076 905 785
    4. Carson Terminal; CAD 066 676 123
    5. Cincinnati Terminal; OHD 000 609 131
    6. Clermont Terminal; IND 042 361 139
    7. Cleveland Terminal; OHD 000 609 149
    8. Colton Terminal; CAD 982 327 744
    9. Columbus East Terminal; OHD 057 806 614
    10. Columbus West Terminal; OHD 079 436 077
    11. Dayton Terminal; OHD 000 609 156
    12. Des Plaines Terminal ILD 068 588 664
    13. Detroit Metro Terminal; MID 000 609 115
    14. Detroit Terminal; MID 068 819 648
    15. East Chicago Terminal; IND 094 760 444
    16. Effingham Terminal; ILD 000 609 016
    17. Ferrysburg Terminal;
    18. Granville Terminal; WID 082 806 399
    19. Greenbay Terminal; WID 023 244 429
    20. Hammond Terminal; IND 053 221 537
    21. Harristown Terminal; ILD 000 609 032
    22. Hartford Terminal; ILR 000 076 042
    23. Hilo Terminal; HID 000 631 531
    24. Honolulu Terminal; HID 000 631 655
    25. Jackson Terminal; MID 000 609 107
    26. Kahului Terminal; HID 000 631 713
    27. Lima North Terminal; OHR 000 032 383
    28. Lima South Terminal; OHD 000 817 627
    29. Marshall Terminal; MIR 000 045 385
    30. Martinez Terminal; CAC 000 54 896
    31. Mission Valley Terminal; CAD 000 603 795
    32. Mitchell Field; no EPA ID No.
    33. Morman Island Terminal; CAT 000 617 480
    34. Mt. Vernon Terminal; IND 980 271 829
    35. Muncle Terminal; IND 000 609 073
    36. Nawiiwili Terminal; HID 000 631 770
    37. Niles Terminal; MID 00 609 123
    38. Odessa Terminal; No EPA ID No.
    39. Oklahoma City Terminal; OKD 000 728 790
    40. Pekin Terminal ILD 000 609 040
    41. Peoria Terminal; ILT 180 012 692
    42. Phoenix Terminal; AZD 068 411 651
    43. Portland Terminal ORD 000 641 639
    44. Rialto Terminal; CAD 000 626 044
    45. Rockford Terminal; ILD 000 670 901
    46. Sacramento Terminal; CAD 000 631 267
    47. St. Louis North Terminal; MOD 068 559 525
    48. St. Louis South Terminal; MOD 042 659 714
    49. San Diego Terminal; CAD 000 626 127
    50. San Francisco Terminal; CAD 000 631 440
    51. San Jose Terminal; CAD 000 631 382
    52. Seattle Terminal; WAD 001 684 588
    53. Signal Hill Terminal; CAD 028 430 999
    54. Sparks Terminal; NVD 000 631 549
    55. Stockton Terminal; CAD 000 631 507
    56. Taylor Terminal; MIR 000 045 393
    57. Toledo Terminal; OHD 000 608 901
    58. Tucson Terminal; AZT 000 617 548
    59. Tumwater Terminal; WAD 000 641 787
    60. Van Nuys Terminal; CAT 000 603 852
    61. Ventura Terminal; CAT 000 603 845
    62. Wilmington Terminal; CAR 000 015 180
    63. Zionsville Terminal; IND 000 609 065
    64. Adell Station, Decatur County, KS; No EPA ID No.



65. Aldine, Houston, TX; No EPA ID No.
66. Alzada Station (Butte), Alzada, MT; No EPA ID No.
67. Aneth Station (TMN), Montezuma, UT; No EPA ID No.
68. Avon, Concord, CA; No EPA ID No.
69. Baker Station (Butte), Baker, MT; No EPA ID No.
70. Bakersfield; CAD 981 435 506
71. Barnsely Sta (TNM), Crane, TX; No EPA ID No.
72. Baton Rouge PDX Station; LAD 000 728 881
73. Bayview Sta (TNM); No EPA ID No.
74. Beer Nose, Blackwells Corner, CA; No EPA ID No.
75. Bemis Station (KAW), Ellis County, KS; No EPA ID No.
76. Berland Station (KAW), Rooks County, KS; No EPA ID No.
77. Bistis Station (TNM), Farmington, NM; No EPA ID No.
78. Boyer Terminal; KSR 000 011 544
79. Brea; CAD 981 435 928
80. Burkett, Butler County, KS; No EPA ID No.
81. Burton, Burton, KS; No EPA ID No.
82. Carneras; CAC 001 275 448
83. Cibolo Station, TX; No EPA ID No.
84. Clay City, Clay City, IL; No EPA ID No.
85. Coalinga; CAD 000 631 176
86. Coalinga-Nose, Conlinga, CA; No EPA ID No.
87. Coates Station; No EPA ID No.
88. Cocodrie; LAD 985 221 464
89. Colex, Pasadena, TX; No EPA ID No.
90. Colorado City (Basin), Hermeligh, TX; No EPA ID No.
91. Cunningham, Cunningham, KS; No EPA ID No.
92. Cushing Terminal; OKD 980 812 721
93. Deer Park—Sinco, Deer Park, TX; No EPA ID No.
94. Delaware City, Delaware City, DE; No EPA ID No.
95. Dickinson, Butler County, KS; No EPA ID No.
96. Dopita Station (KAW), Rooks County, KS; No EPA ID No.
97. East Houston Station; TXP 490 294 484
98. El Cinco Station (TNM), McCarney, TX; No EPA ID No.
99. El Dorado Station; El Dorado, TX; No EPA ID No.
100. El Dorado Tank Farm, El Dorado, TX; No EPA ID No.
101. El Paso; TXD 043 150 317
102. El Vista (Clark), Port Arthur, TX; No EPA ID No.
103. Emido; CAD 000 631 291
104. Erath Station; LAD 985 212 471
105. Fellows, Fellows, CA; No EPA ID No.
106. Fillmore, Fillmore, CA; No EPA ID No.
107. Fishburn, Shepard, TX; No EPA ID No.
108. Flanagan, Denver City, TX; No EPA ID No.
109. Fleming Station, Harper County, KS: No EPA ID No.
110. Fredricksburg (TNM), Fredricksburg, TX; No EPA ID No.
111. Frost, Mertens, TX; No EPA ID No.
112. Fryberg Station (Ltl Mo Pl), Billings County, ND; No EPA ID No.
113. Ft. Laramie Station (Butte), Ft. Laramie, WY; No EPA ID No.
114. Garfield Station (Rancho); TXCESQ
115. Gaviota; CAD 983 670 340
116. Gibson Station; LAR 000 027 334
117. Glendive Station, Dawson County, MT; No EPA ID No.
118. Glenpool, Glenpool, OK; No EPA ID No.
119. Golden Meadow, Golden Meadow, LA; No EPA ID No.
120. Goldsmith Station (TNM), Goldsmith, TX; No EPA ID No.
121. Goodrich, Goodrich, TX; No EPA ID No.
122. Gustine; CAL 000 149 107
123. Hanston, Hodgeman Co, KS; No EPA ID No.
124. Haymark, Lake Charles, LA; No EPA ID No.
125. Hearne Products; TXCESQ
126. Hendrick, Kermit TX; No EPA ID No.
127. Hendrick (TNM), Kermit, TX; No EPA ID No.
128. Houma Station; LAD 000 983 758
129. Hudson, Hudson, KS; No EPD ID No.
130. Humble Station, Houston, TX; No EPA ID No.
131. JAL Station (Basin), Jal, NM; No EPA ID No.
132. Junction Station (TNM), Junction, TX; No EPA ID No.
133. Kalkaska, Kalkaska, MO; No EPA ID No.
134. Kelley, Mettler, CA; No EPA ID No.
135. Kettleman; CAL 000 005 401
136. Kilgore, TXD 000 825 687
137. Lake Arthur, Lake Arthur, TX; No EPA ID No.
138. Lewiston; MID 980 615 116
139. Liberty (CAPLINE), Liberty, MS; No EPA ID No.
140. Little Beaver (Butte), Fallon County, MT; No EPA ID No.
141. Lockport; ILD 000 111 000
142. Long Beach; CAL 000 015 696
143. Lyons, Lyons, KS; No EPA ID No.
144. Maistee, Manistee, MI; No EPA ID No.
145. Maricopa, Kern County, CA; No EPA ID No.
146. McCamey, McCamey, TX; No EPA ID NO.
147. McCamey TF (TNM), McCamey, TX; No EPA ID No.
148. Meridan, Meridan, MS; No EPA ID No.
149. Mesa (Rancho), McCareny, TX; No EPA ID No.
150. Mesa (TNM), Roswell, NM; No EPA ID No.
151. Mid; CAD 982 032 237
152. Midland TF (Basin); TXP 490 301 063
153. Midway, McKittrick, CA; No EPA ID No.
154. Mount Belview, Mt. Belview, TX; No EPA ID No.
155. N. El Cinco Station (TNM), McCarney, TX; No EPA ID No.
156. Nairn; LAR 000 029 254
157. New Hobbs, Hobbs, NM; No EPA ID No.
158. Newhall, Newhall, CA; No EPA ID No.
159. Norco; LAD 968 012 546
160. Olig, McKittrick, CA; No EPA ID No.
161. Osage Station (Butte), Osage, WY; No EPA ID No.
162. Paducah, Paducah, KY; No EPA ID No.
163. Panoche; CAL 000 149 108
164. Pasadena (Rancho), Pasadena, TX; No EPA ID No.
165. Patoka—West; IDL 000 452 134
166. Patoka (CAPLINE); ILD 059 997 122
167. Patterson, Patterson, LA; No EPA ID No.
168. Pennel Station (Butte), Fallon County, MT; No EPA ID No.
169. Penwell Station (TNM), Penwell, TX; No EPA ID No.
170. Peotone, Bourbonnais, IL; No EPA ID No.
171. Pilottown, Buras, LA; No EPA ID No.
172. Placitas Station (TNM), Placitas, NM; No EPA ID No.
173. Plantation, Baton Rouge, LA; No EPA ID No.
174. Poplar Station, Brockton, MT; No EPA ID No.
175. Port Arthur (UNOCAL CL), Port Arthur, TX; No EPA ID No.
176. Port Neches, Port Neches, TX; No EPA ID No.
177. Pratt Lease, Longview, TX; No EPA ID No.
178. Prentice Station, Denver City, TX; No EPA ID No.
179. Pwdr Rvr Sys-Hawk Pt, WY; No EPA ID No.
180. Pwdr Rvr Sys-Heldt Draw; No EPA ID No
181. Pwdr Rvr Sys-Reno, Johnson County, WY; No EPA ID NO.
182. Ray Station (KAW), Rooks County, KS; No EPA ID NO.
183. Richey Station, Dawson County MT; No EPA ID NO.
184. Rio Bravo; CAL 000 173 665
185. Roth Station (KAW); No EPA ID No.
186. S. El Cinco Station (TNM); No EPA ID No.
187. Salem; ILD 984 789 099
188. San Ardo, San Ardo, CA; No EPA ID No.
189. San Ardo Orradri, San Ardo, CA; No EPA ID No.
190. Slaughter Station, Sundown, TX; No EPA ID No.
191. Somis; CAD 981 435 860
192. Sour Lake Station, Sour Lake Station, TX; No EPA ID No.
193. Southwest Pass, Venice, CA; No EPA ID No.
194. St. James (CAPLINE); LAD 982 557 449
195. Station 36, Bakersfield, Ca; No EPA ID No.
196. Sugarland, Saint James, LA; No EPA ID No.
197. Sullivan Station (KAW), Russell County, KS; No EPA ID No.
198. Sulphur, Carlysis, LA; No EPA ID No.
199. Susank Station (KAW), Susank, KS; No EPA ID No.
200. Terminal Station (KAW), Chase, KS; No EPA ID No.
201. Tex Ex, Port Arthur, TX; No EPA ID No.
202. Tracy; CAL 000 149 106
203. Tye, Abilene, TX; No EPA ID No.
204. Valley Center, Valley Center, KS; No EPA ID No.
205. Ventura Station, Ventura, CA; No EPA ID No.
206. Ventura; CAL 000 015 695

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207. Walet, Loreauville, LA; No EPA ID No.
208. Wasco; CAL 000 005 093
209. Wasson Station; TXP 490 203 012
210. Wasson Station (Basin), Denver City, TX; No EPA ID No.
211. Weeks Island, Weeks Island, La; No EPA ID No.
212. West Columbia, West Columbia, TX; No EPA ID No.
213. West Odessa Station, Odessa, Tx; No EPA ID No.
214. Wheeler TF (TNM), Notrees Tx; No EPA ID No.
215. Wichita Falls; TXD 988 001 103
216. Willett, Ventura, CA; No EPA ID NO.
217. Wimberley Station (TNM), Wimberley, TX; No EPA ID No.
218. Wood River, Roxana, IL; No EPA ID No.
219. Worsham Station, Denver City, TX; No EPA ID No.

45. Equilon Enterprise LLC—Martinez Refining Company, Martinez, CA
1. Martinez Refining Company; CAD 009 164 021

46. Equilon Enterprises LLC—Los Angeles Refining Company, Wilmington, CA
1. Los Angeles Refining Company; CAD 041 520 644

47. Equilon Enterprises LLC—Puget Sound Refining Company, Anacortes, WA
1. Puget Sound Refining Company; WAD 009 276 197

48. ERGON, Inc., Jackson, MS
1. Ergon—St. James, Inc.; LAD 985 218 437
2. Ergon, Inc.; TND 093 800 084
3. Lion Oil Company; TND 073 528 684

49. ERGON West Virginia, Inc., Newell, WV
1. Ergon West Virginia, Inc.; WVR 000 010 058

50. Ergon Refining, Inc., Vicksburg, MS
1. Ergon Refining, Inc.; MSD 098 593 317

51. ExxonMobil Refining and Supply Company, Fairfax, VA
1. Baton Rouge Refinery; LAD 062 662 887
2. Baytown Refinery; TXD 000 782 698
3. Beaumont Refinery; TXD 990 797 714
4. Chalmette Refinery; LAD 008 179 707
5. Joliet Refinery; ILD 064 403 199
6. Torrance Refinery; CAD 008 354 052
7. Baytown Chemical Plant; TXD 980 809 909
8. Baton Rouge Chemical Plant; LAD 000 812 818
9. Baton Rouge Plastics Plant; LAD 000 778 381
10. Allentown; PAD 060 511 086
11. Buffalo; NYD 002 107 019
12. Cabras Island, Piti/Hagatna, Guam
13. Chesapeake; VAD 000 731 232
14. East Providence; RID 001 202 050
15. Linden NJD 000 767 954
16. Memphis; TND 000 825 497
17. New Syracuse Ted Park; NY0 000 622 449
18. Port Everglades; FLD 000 772 053
19. Roanoke; VAD 000 731 240
20. Rota Bulk Plant, Rota CNMI
21. St. Thomas; VIR 000 000 042
22. Saipan, Saipan, CNMI
23. Selma; NC0 001 994 516
24. South Houston; TXD 000 803 320
25. Tinian Bulk Plant, Tinian CNMI
26. Utica; NYD 000 708 008
27. Vernon; CAD 983 616 392

52. ExxonMobil Pipeline Company, Houston, Texas
1. ExxonMobil Pipeline Co., Webster DOW Tanks; TXR 000 015 616
2. ExxonMobil Pipeline Co., St. James, St. James, LA; No EPA ID No.
3. ExxonMobil Pipeline Co., Quintana; TXP 490 306 636
4. Mobil Pipe Line Co., Malvern; PAD 981 037 989
5. Mobil Pipe Line Co., Continental; CAT 000 623 306
6. Mobil Pipe Line Co., Emedio; CAT 000 623 256
7. Mobil Pipe Line Co., Lebec; CAT 000 623 314
8. Mobil Pipe Line Co., Midway; CAT 000 623 322

53. Flying J Inc., North Salt Lake, UT
1. North Salt Lake Flying J Refinery; UTD 045 267 127

54. Formosa Plastics Corporation, Texas, Point Comfort, TX
1. Formosa Plastics Corporation; TXT 490 011 293

55. Frontier El Dorado Refining Company, El Dorado, Kansas
1. Frontier El Dorado Refining Company; No EPA ID No.

56. Frontier Refining Inc., Cheyenne, Wyoming
1. Frontier Refining Inc.; No EPA ID No.

57. Fina Oil and Chemical Company, Texas
1. Big Springs Refinery; TXD 008 013 468

58. GATX Terminals Corporation—Philadelphia Terminal, Carteret, NJ
1. CATX Terminal Corporation—Philadelphia Terminal; PAD 987 279 726

59. GATX Tank Storage Terminals Corp., Carson, CA
1. Carson Facility; CAD 010 715 837
2. Los Angeles Harbor Terminal; CAD 000 630 053

60. GATX Terminals Corporation, Carteret, NJ
1. GATX Terminals Corporation; NJD 000 001 990

61. GATX Terminals Corporation Northwest Operations, Portland, OR
1. GATX Terminals Corporation; WAD 000 643 080
2. GATX Terminals Corporation; ORD 093 481 646
3. GATX Terminals Corporation; ORD 000 643 544

62. GATX Terminals Corporation, Galena Park, TX
1. GATX Terminals Corporation; TXR 000 001 206

63. GATX Terminals Corporation, Galena Park, TX
1. GATX Terminals Corporation; TXD 070 137 161

64. Formosa Plastics Corporation, Point Confort, TX
1. Formosa Plastics Corp; TXT 490 011 293

65. GATX Terminals Corporation, Philadelphia, PA
1. GATX Paulsboro Terminal; NJD 986 574 986

66. GATX Terminals Corporation, Galena Park, TX
1. GATX Terminals Corporation; TXD 026 481 523

67. GATX Terminals Corporation, Tampa, FL
1. GATX Terminals Corporation; FLD 073 216 863

68. GIANT Industries, Inc., Gallup, NM
1. Ciniza Refinery; NMD 000 333 211
2. Bloomfield Refinery; NMD 098 416 416
3. Albuquerque Products Terminal; NMD 045 271 053
4. Flagstaff Fuel Distribution Facility; AZ Air Quality Control Permit No. 1000838

69. Ciniza Pipe Line, GIANT Industries, Inc., Bloomfield, NM
1. Star Lake Station—N368 02 635′ W1078 36 852′
2. Bisti Station—N368 25.266′ W1088 7.815′
3. Apache Station—N368 21.132′ W1078 27.905′
4. Hospah Station—N358 43.958′ W1078 44.852′

70. Gulf Oil, Chelsea, MA
1. Gulf Oil; Altoona, PA; No EPA ID No.
2. Gulf Oil; Pittston Township, PA; No EPA ID No.
3. Gulf Oil; New Haven, CT; No EPA ID No.
4. Gulf Oil, Williamsport, PA; No EPA ID No.
5. Gulf Oil, Bangor, ME; No EPA ID No.
6. Gulf Oil Whitehall, PA; No EPA ID No.
7. Gulf Oil, Pittsburgh, PA; No EPA ID No.
8. Gulf Oil, Thorofare, NJ; No EPA ID No.
9. Gulf Oil, Chelsea, MA; No EPA ID No.
10. Gulf Oil, Linden, NJ; No EPA ID No.
11. Gulf Oil, Oceanside, NY; No EPA ID No.
12. Gulf Oil, Delmont, P; No EPA ID No.
13. Gulf Oil, Mechanicsburg, PA; No EPA ID No.
14. Gulf Oil, South Portland, ME; No EPA ID No.

71. Gulf Caribbean Petroleum Refining, San Juan, Puerto Rico
1. Carribean Petroleum Refining, L.P., Urb. Industrial Luchetti; PRD 981 487 2267

72. Gladieux Trading & Marketing Co., L.P., Fort Wayne, IN
1. Gladieux Trading & Marketing, Huntington, IN; No EPA ID No.

73. Hovensa L.L.C., Christiansted, Virgin Island
1. Hovensa, LLC; VID 980 536 080

74. Hartford Wood River Terminal, Inc., Hartford, IL
1. Hartford Wood River Terminal; #T–37–IL–3354

75. Intercontinental Terminals Company, Deer Park, TX
1. Achorage Terminal (ACT), Port Allen, LA; No EPA ID No.
2. Deer Park Terminal (ITC), Deer Park, TX; No EPA ID No.

76. Jayhawk Pipeline, L.L.C., McPherson, Kansas
1. Eubanks Station, Haskell County, KS; No EPA ID No.
2. Liberal Station, Seward County, KS; No EPA ID No.
3. McPherson Station, McPherson County, KS; No EPA ID No.
4. Valley Center Station, Sedgwick County, KS; No EPA ID No.

77. Kaneb Pipe Line Operating Partnership, L.P., Wichita, Kansas
1. Dupont Products Terminal; CO0 001995 497
2. El Dorado Station; KSD 091 433 417
3. Fountain Products Terminal; COD 048 745 657



4. McPherson Station; KSD 000 639 526
5. Mitchell Products Terminal; SDT 000 622 258
6. North Platte Products Terminal; 000 002 561 260
7. Rapid City Products Terminal; SDD 987 666 815

78. Koch Pipeline Group, L.P., Wichita, Kansas
1. Bethany, MO Terminal—Woodriver Crude PL; MOD 985 806 876
2. Caldwell Station, Burleson County, TX; No EPD ID No.
3. Cisco Y, TX, Near Breckenridge, TX; No EPD ID No.
4. Dilley Station, Dilley, TX; No EPA ID No.
5. Gerdes Station, Gerdes, TX; No EPA ID No.
6. Hartford, IL Terminal—Woodriver Crude Pl; ILD 984 849 976
7. Hearne Station, Hearne, Tx: No EPA ID No.
8. Heyser II Station, Bloomington, TX; No EPA ID No.
9. Ingleside Terminal; TXR 000 025 767
10. North Tilden Station; TXT 490 001 0428
11. Pettus No. 2 Station; TXD 000 725 515
12. Rosanky Station, Rosanky, TX
13. Rutherford Station, Tilden, TX
14. Schaft Station, Caldwell, TX
15. South Bend, TX, Near South Bend, TX
16. Three Rivers Station, Simmons City Road, TX
17. Tivoli Station; TXD 000 725 333

79. Koch Petroleum Group, LP, Wichita, KS
1. Austin Terminal; TXR 000 035 261
2. Corpus Christi East Refinery; TXD 066 447 376
3. Corpus Christi West Refinery; TXD 088 474 663
4. Cushing North, OK, Cushing, OK; No EPA ID No.
5. Fort Worth Terminal; TXD 988 040 382
6. Jacksonville, Fl; NO EPA ID No.
7. McFarland, WI Terminal—Wisconsin PL; WID 080 493 968
8. Milwaukee, WI Terminal—Wisconsin PL; WID 982 071 466
9. Pine Bend Refinery; MND 000 686 071
10. San Antonio Terminal; TXR 000 019 018
11. St. James, LA; LAD 981 900 541
12. Waco Terminal; TXR 000 035 311
13. Waupun, WI Terminal—Wisconsin PL; WID 982 605 552
14. Wilmington, NC; NCD 000 772 046

80. Kern Oil & Refining Co., Bakersfield, CA
1. Kern Oil & Refining Co. (Kern); No EPA ID No.

81. LBC PetroUnited Inc., Seabrook, TX
1. Bayport Terminal; TXD 096 602 941
2. Sunshine Terminal; LAD 096 040 712

82. Lion Oil Company—El Dorado Refinery, El Dorado, Arkansa
1. El Dorado Refinery; ARD 000 021 998

83. Lakehead Pipe Line Company, Inc., Duluth, MN
1. Superior Terminal; WID 981 092 133
2. Clearbrook Terminal; MND 980 276 067
3. Griffin Terminal; IND 074 393 422

84. Lyondell-CITGO Refining Company Ltd., Houston, TX
1. Lyondell-CITGO Refining Company Ltd.; TXD 082 688 979

85. Marathon Ashland Petroleum LLC—Catlettsburg Refining, LLC, Catlettsburg, Kentucky
1. Catlettsburg, Refining LLC; KYD 041 376 138
2. Tri-state Terminal; WVD 982 575 054

86. Marathon Ashland Petroleum LLC, Findlay, OH
1. Canton Refinery; 1576000301 (Ohio EPA)
2. Detroit Refinery; MID 005 506 357
3. Garyville Refinery; LAD 081 999 724
4. St. Paul Park Refinery; MND 006 162 820
5. Texas City Refinery; TXD 008 079 501
6. Robinson Refinery; ILD 005 476 882
7. Birmingham Al; ALD 000 737 296
8. Tampa, FL; FLD 981 014 525
9. Powder Springs, GA; GAD 000 735 910
10. Mt. Prospect, IL; ILD 059 430 298
11. Indianapolis, IN; IND 006 417 430
12. Muncie, IN; IND 000 714 964
13. Covington, KY; KYD 085 512 069
14. Lexington, KY; KYD 024 015 877
15. Louisville, KY; KYD 000 199 646
16. Louisville, KY; KYD 071 316 095
17. Garyville, LA; LAD 000 631 754
18. Flint, MI; MID 000 724 823
19. N. Muskegon, MI; MID 092 954 098
20. Lebanon, OH; OHD 000 723 635
21. Marietta, OH; OHD 063 767 024
22. Steubenville, OH; OHD 980 902 415
23. Youngstown, OH; OHD 064 105 943
24. Floreffe, PA; PAD 000 731 547
25. Floreffe, PA; PAD 000 797 555
26. Midland, PA; PAD 000 731 547
27. N. Charleston, SC; SCD 000 735 886
28. Bordeaux, TX; TND 095 668 687
29. Nashville, TN; TND 095 668 687 [sic?]
30. Green Bay, WI; WID 054 923 925
31. Milwaukee, WI; WID 000 821 702
32. Kenova, WV; WVS 982 575 054
33. Kenova, WV; WVD 982 575 054
34. Roanoke, VA; VAD 056 907 611

87. Marathon Ashland Pipe Line LLC, Findlay, OH
1. Section 23, T56N, R97W, Byron, WY 82412
2. 840 Heath Road, Heath, OH
3. 2510 Highway 20, South Worland, WY
4. 575 Buckeye Road, Lima, OH
5. West Highway 190, Iraan, TX
6. 431 N. Preston Road., Pasadena, TX
7. 9764 S. Preston Highway, Lebanon Junction, KY
8. S. 6th Street, Wood River, IL
9. 449 S. Fair Street, Powell, WY
10. 922 U.S. Highway 61
11. 1046 Pleasant Valley Road, Owensboro, KY 42302
12. Old Rt. 40 West, Martinsville, IL
13. 8930 Maplehurst Drive, East Sparta, OH
14. 13100 U.S. 23, Catlettsburg, KY
15. 1900 W. Avenue H, Griffith, IN

88. Motiva Enterprises LLC, Houston, TX
1. Atlanta South; GAD 069 176 261
2. Baltimore—East; MDD 044 148 856
3. Baltimore—West; MDD 000 013 474
4. Bridgeport; CTD 075 395 590
5. Brooklyn; NYD 000 632 141
6. East Hartford; CTD 046 232 633
7. Fairfax; VAD 093 952 935
8. Greensboro; NC1 234 567 890
9. Long Island; NYD 002 904 076
10. Nashville; TND 000 792 663
11. New Haven; CTD 064 827 942
12. Newark; NJD 065 808 875
13. Pittsburg; PAD 072 167 125
14. Providence; RID 059 741 520
15. Pt. Everglades East; FLD 000 608 182
16. Pt. Everglades South; FLD 984 173 534
17. Sewaren; NJD 002 195 220
18. South Portland; MED 086 875 382
19. Spartanburg; SCD 030 090 831
20. Springfield; VAD 000 607 986

89. Motiva Enterprises LLC, Port Arthur, TX
1. Port Arthur Refinery; TXD 008 097 529
2. Port Arthur Terminal; TXD 008 097 529
3. Port Neches Terminal; TXD 980 626 022

90. Motiva Enterprises LLC, Norco, LA
1. Norco Refinery; LAD 008 186 579

91. Murphy Oil USA, Inc., El Dorado, AR
1. Meraux Terminal (Louisiana)
2. Anniston Terminal (Alabama)
3. Sheffield Terminal (Alabama)
4. Tampa Terminal (Florida)
5. St. Marks Terminal (Florida)
6. Freeport Terminal (Florida)
7. Duluth Terminal (Esko Minnesota)
8. Meraux Refinery; LAD 008 058 471
9. Superior Refinery; WID 006 194 336

92. National Cooperative Refinery Association, McPherson, Kansas
1. Holtzinger Station, S35/Ti 4S/R21W, Trego County, KS; No EPA ID No.
2. Refinery Division; KSD 007 145 956

93. Navajo Refining Company, Artesia, NM
1. Artesia Refinery; NMD 048 918 817
2. El Paso Eastside/PD Terminal; TXR 000 010 900
3. Crouch Station; No EPA ID No.
4. Brushy Draw Station; No EPA ID No.
5. Abo Station; No EPA ID No.
6. Barnsdale Station; No EPA ID No.
7. Orla Station; No EPA ID No.
8. Moore Station; No EPA ID No.
9. Chalk Station; No EPA ID no.
10. Forsan Station; No EPA ID No.
11. Weems Station; TXD 095 214 497
12. Russell Station; TXT 490 010 923

94. Olympic Pipe Line Company, Renton, WA
1. Allen Station; WAD 000 641 746
2. Bayview; WAH 000 008 441
3. Portland; ORD 097 008 692
4. Renton; WAD 000 641 753
5. Sea-Tac; WAD 000 641 704
6. Seattle; WAD 000 641 738
7. Vancouver; WAD 000 641 761

95. Pennzoil-Quaker State Company—Shreveport Refinery, Shreveport, LA
1. Shreveport Refinery; LAD 008 052 334

96. Petroleum Fuel and Terminal Company, Granite City, IL
1. Petroleum Fuel and Terminal Company, Baltimore, MD; Air Permit No., Facility ID No. 24–01923
2. Petroleum Fuel and Terminal Company, Memphis, TN; Air Permit No., Source No. 0376
3. Petroleum Fuel and Terminal Company, Rensselaer, NY; DECID 438 140 0003

97. Phillips Pipe Line Company, Bartlesville, OK
1. Borger Crude Terminal; TXD 000 742 585
2. Kansas City Terminal; KSD 000 687 665
3. Amarillo Terminal; TXD 000 803 585
4. Albuquerque Terminal; NMD 000 792 986
5. Wichita Terminal; KSD 070 904 719
6. Paola Terminal; KSD 092 850 437
7. E. St. Louis Terminal; ILD 053 981 601

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8. Pasadena Terminal; TXD 074 157 637
9. Buckeye Station; Airs No. 35–025–0253
10. Whiteface Station; TNRCC Acct. No. CM–01223–A
11. University Station; TNRCC Acct. No. AB–0309–T
12. Palmer Station; TXD 000 742 601

98. Phillips Puerto Rico Core, Guayama, Puerto Rico
1. Phillips Puerto Rico CORE; No EPA ID No.

99. Phillips Petroleum Company, Bartlesville, OK
1. Woods Cross Refinery; UTD 009 090 580
2. Borger Refinery; TXD 980 626 774
3. Sweeny Refinery; TXD 048 210 645

100. The Premcor Refining Group, Inc., Hartford Refinery, Hartford, IL
1. Hartford Refinery; ILD 004 441 889 023

101. The Premcor Refining Group, Lima Refinery, Lima, OH
1. Lima Refinery; 030 202 0012

102. Plains Marketing, L.P., Cushing, OK
1. Cushing, Lincoln County, KS; No EPA ID NO.
2. Devils Garden, Broward, FL; No EPA ID No.
3. Floyd, Midland, TX; No EPA ID No.
4. Glasscock, Martin, TX; No EPA ID No.
5. Goodrich, Polk TX; No EPA ID No.
6. Grand Chenier, Cameron, LA; No EPA ID No.
7. Greensburg, St. Helana, LA; No EPA ID No.
8. Greenwood, Midland, TX; No EPA ID No.
9. Griffin, Gregg, TX; No EPA ID No.
10. Hainsville Sour, Wood, TX; No EPA ID No.
11. Hearne, Robertson, TX; No EPA ID No.
12. Kangerga, Rusk, TX; No EPA ID No.
13. Ken Cox, Martin, TX; No EPA ID No.
14. Lagrange, Fayette, TX; No EPA ID No.
15. Larose, La Fourche, LA; No EPA ID No.
16. Lockhart Crossing, Livingston, LA; No EPA ID No.
17. Mabee, Martin, TX; No EPA ID No.
18. Monterey, Concordia, LA; No EPA ID No.
19. Munro (Foreign C), Gregg, TX; No EPA ID No.
20. Patterson, Reagan, TX; No EPA ID No.
21. Porterville, Loving, TX; No EPA ID No.
22. Powell, Glasscock, TX; No EPA ID No.
23. Roseland, Concordia, LA; No EPA ID No.
24. Sabine Pass, Jefferson, TX; No EPA ID No.
25. Spraberry, Midland, TX; No EPA ID No.
26. St. Gabriel, Iberville, LA; No EPA ID No.
27. Stoneburg, Montague, TX; No EPA ID No.
28. Sulphur Draw, Martin, TX; No EPA ID No.
29. Abbeville, Vermilion, LA; No EPA ID No.
30. Arden Jct., Irion, TX; No EPA ID No.
31. Ball, Reagan, TX; No EPA ID No.
32. Barker, Gregg, TX; No EPA ID No.
33. Battleview, Burke, North Dakota; No EPA ID No.
34. Bee Brake, Concordia, LA; No EPA ID No.
35. Bradford, Midland, TX; No EPA ID No.
36. Brown, Martin, TX; No EPA ID No.
37. Charenton, St. Mary, LA; No EPA ID No.
38. Childress, Childress, TX; No EPA ID No.
39. Coates Ranch, Reagan, TX; No EPA ID No.
40. Conley, Hardeman, TX; No EPA ID No.
41. Cooks Point, Burleson, TX; No EPA ID No.
42. Crain Ranch, Cameron, OK; No EPA ID No.
43. Cushing, Lincoln, OK; No EPA ID No.
44. Tippett, Upton, TX; No EPA ID No.
45. Tuscola, Taylor, TX; No EPA ID No.
46. Uption (Shell), Upton, TX; No EPA ID No.
47. Wildsville, Concordia, LA; No EPA ID No.
48. Wink, Winkler, TX; No EPA ID No.

103. The Premcor Refining Group, Inc., Port Arthur Refinery, Port Arthur, TX
1. Port Arthur Refinery; 482 450 0004
2. Lucas Station; 000008954554

104. Paramount Petroleum, Paramount, CA
1. Paramount Petroleum Refinery; PPC ENV. File No. 2000–700.100

105. Environmental Resources Management, Woodbury, NY
1. RAD Energy, Oceanside, NY; 11572RDNRG7HAMP

106. Shell Chemical Company, Houston, TX
1. Shell Chemical Company—Deer Park Chemical Plant; 77536SHLLLHIGHW
2. Shell Chemical Company—Geismar Chemical Plant; LA0 039 131 83
3. Shell Chemical Company—Norco Chemical Plant; LAR 000 011 635

107. Shell Deer Park Refining Company, Deer Park, TX
1. Shell Deer Park Refining Company; TXD 067 285 973–1

108. Sinclair Oil Corporation, Salt Lake City, UT
1. Sinclair Tulsa Refinery; OKD 990 750 960

109. ST Services, Dallas, TX
1. Columbus, GA; GAD 991 298 860
2. Linden, NJ; NJD 980 647 242
3. Jacksonville, FL; FLD 121 967 152
4. Moundville, AL; ALD 000 772 251
5. Stockton, CA; CAT 000 617 514
6. Texas City, TX; TXD 096 036 561

110. SuNoco, Inc., Marcus Hook, PA
1. SuNoco, Inc.—Philadelphia Refinery, Philadelphia, PA; No EPA ID No.
2. SuNoco, Inc.—Marcus Hook Refinery, Marcus Hook, PA; No EPA ID No.
3. SuNoco, Inc.—Northumberland Terminal, Northumberland, PA; No EPA ID No.
4. Sun Pipe Line Co., St. Clair, MI; No EPA ID No.
5. Puerto Rico Sun Oil Company, Yabucoa, PR, No EPA ID No.
6. SoNoco, Inc. Kingston Terminal, Edwardsville, PA; No EPA ID No.
7. Sun Pipe Line Co.—Montello Pump Station, Sinking Springs, PA; No EPA ID No.
8. Mid Continent Pipe Line—Bristow Station, Bristow, OK, No EPA ID No.
9. Sun Pipe Line Co.—Breckenridge Station, Snyder, TX; No EPA ID No.
10. Sun Pipe Line Co.—Suggs Station, Snyder, TX; No EPA ID No.
11. Sun Pipe Line Co—Benjamin Station, Abilene, TX; No EPA ID No.
12. Sun Pipe Line Co.—Hearn Station, Abilene, TX; No EPA ID No.
13. Sun Pipe Line Co—Carlsbad Station, Abilene, TX; No EPA ID No.
14. SuNoco, Inc.—Toledo Refinery, Oregon, OH; No EPA ID No.
15. Mid Continent Pipe Line—Little Farm Station, Cushing, OH; No EPA ID No.
16. Sun Pipe Line Co.—Southbend Station, Snyder, TX; No EPA ID No.
17. Sun Pipe Line Co.—Nederland Marine Terminal, Nederland, TX; No EPA ID No.
18. Sun Pipe Line Co.—Hawley Station, Abilene, TX; No EPA ID No.
19. Sun Pipe Line Co.—Tye Station; Abilene, TX; No EPA ID No.
20. Sun Pipe Line Co.—Monroe Station, Abilene, TX; No EPA ID No.

21. Sunoco, Inc.—Tulsa Refinery, Tulsa, OK; No EPA ID No.

111. Tesoro Alaska Company, Kenai, AK
1. Kenai Refinery; 9323–11008
2. Anchorage Terminal No. 1; 9521–AA003
3. Kenai Pipeline Company; AKD 035 419 795
4. Nikiski Terminal; AKD 983 075 094
5. Anchorage Terminal No. 2; 9521–AA007

112. Tesoro Hawaii Corporation, Honolulu, HI
1. Tesoro Hawaii Corporation Refinery; HID 056 786 395
2. Tersor Hawaii Corporation Maui Terminal; HIO 000 146 365

113. Tesoro Northwest Company, Anacortes, WA
1. Tesoro Northwest Refinery, Anacortes, WA; No EPA ID No.

114. Tosco Corporation, Tempe, Arizona
1. Avon Refinery; CAD 000 072 751
2. Bayway Refinery; NJD 986 645 984
3. Spokane Terminal; WAD 000 641 549
4. Coalinga Pump Station; CAD 980 585 855
5. Torrance Tank Farm; CAT 000 625 301
6. Ferndale Refinery; WAD 009 250 366
7. Trainer Refinery; PAR 000 015 768
8. Colton East Terminal; CAD 000 628 917
9. Honolulu; HID 000 633 081
10. Manassas Terminal; VAR 000 015 883
11. Phoenix Terminal; AZD 070 259 767
12. Portland Terminal; ORD 087 458 196
13. Renton Terminal; WAS 000 641 530
14. Riverhead Terminal; NYD 072 367 980
15. Sacramento Terminal; CAD 009 590 118

115. United Refining Company, Warren, PA
1. United Refining Company Warren, PA Refinery; PAD 002 105 179

116. Unocal Beaumont Terminal, Unocal Corporation, Nederland, TX
1. Beaumont Terminal, Nederland, TX; TNRCC Acct. No. JE–0111–H

117. Valero Refining Company, San Antonio, TX
1. Corpus Christi Refinery; TXD 074 604 166
2. Texas City Refinery; TXD 000 792 937
3. Houston Refinery; TXD 053 624 193
4. Krotz Springs Refinery; LAD 081 407 850
5. Paulsboro Refinery; NJD 002 342 469 301
6. Benicia Refinery; CAD 063 001 770

118. Williams Alaska Petroleum, Inc., Tulsa, OK
1. Anchorage Terminal; AKD 000 641 852
2. North Pole Refinery; AKD 000 850 701



119. Williams Pipe Line Company, Tulsa, OK
1. Fort Smith; AR0 000 971 663
2. Des Moines; IAD 075 834 713
3. Dubuque; IAD 089 981 245
4. Fort Dodge; IAD 000 690 255
5. Iowa City; IAT 200 010 007
6. Mason City; IAD 000 690 289
7. Milford; IAD 000 690 263
8. Sioux City; IAD 000 690 271
9. Waterloo; IAD 000 690 248
10. Amboy; ILD 000 716 902
11. Chicago; ILD 000 673 053
12. Heyworth; ILD 984 811 083
13. Menard County; ILD 152 533 790
14. El Dorado; KST 210 010 021
15. Filter Press; KST 210 010 153
16. Independence; KSO 001 962 911
17. Kansas City; KSD 030 633 911
18. Olathe; KST 210 010 666
19. St. Joseph; KST 210 010 005
20. Topeka; KST 210 010 039
21. Wichita; KSO 002 207 157
22. Alexandria; MND 000 824 094
23. Mankato; MND 000 685 784
24. Marshall; MND 076 502 335
25. Minneapolis; MND 000 685 768
26. Rochester; MND 000 685 776
27. Rosemount; MNO 001 440 445
28. Carthage; NOD 084 096 130
29. Columbia; NOD 071 958 631
30. Mt. Vernon, MO; 7660044
31. Palmyra, MOD 000 767 103
32. Springfield; MOD 000 147 8619
33. Grand Forks, NDD 986 271 385
34. West Fargo; NDD 000 690 669
35. Doniphan; NED 000 690 305
36. Lincoln; NED 000 690 313
37. Nebraska City; NED 000 690 297
38. Omaha; NED 040 917 569
39. Allen; OKO 001 148 188
40. Barnsdall; 7496392
41. Drumright; OKO 002 315 141
42. Enid; OKD 987 083 102
43. Glen Pool; OKD 000 829 515
44. High Street; OKD 987 066 917
45. Ponco City; OKO 001 579 721
46. Reno; OKD 981 586 720
47. Sooner Road; OKD 000 763 391
48. Tulsa; OKD 000 821 330
49. Sioux Falls; SDD 000 823 559
50. Watertown; SDD 000 694 596
51. Bateman; WID 152 525 556
52. Wausau; WID 000 711 390

120. Williams Refining, L.L.C., Tulsa, OK
1. Williams Refining, LLC; TND 007 026 958
2. Williams Riverside Terminal; TND 000 615 641
3. Williams West Memphis Terminal; ARD 083 261 22
4. Williams Collierville Terminal; MSTMP0002012 (temporary number, expired 1998)

121. Williams Energy Ventures, Inc., Tulsa, OK
1. Mobile; ALD 000 826 933
2. Montgomery; ALD 000 826 941
3. Phoenix (Caljet); AZO 001 275 67
4. Phoenix (Seaport); AZD 983 473 174
5. Jacksonville; FLD 055 346 134
6. Albany; GAD 000 616 557
7. Doraville; GAD 000 649 137
8. Augusta; KSD 985 006 154
9. Marrero; LAO 002 205 599
10. St. Charles; MOD 000 767 11
11. Meridian; MSD 000 826 883
12. Greensboro (Sofac); NCD 000 616 581
13. Charlotte (Sofac); NCD 000 616 599
14. Selma; NCD 000 616 607
15. Charlotte (Amoco); NCD 000 826 909
16. Greensboro (Amoco); NCD 071 562 656
17. Aurora; OHD 000 723 957
18. North Augusta (Sofac); SCD 000 616 615
19. Spartanburg; SCD 086 364 841
20. North Augusta (Amoco); SCD 987 579 364
21. Nashville (Sofac); TND 000 616 649
22. Chattanooga; TND 000 825 182
23. Nashville (Amoco); TND 000 826 859
24. Nashville (Mar-Ash); TND 000 829 143
25. Knoxville; TND 074 904 053
26. Dallas; TXD 000 741 900
27. Galena Park; TXD 002 524 874
28. Corpus Christi; TXD 091 698 951
29. Montvale; VAD 000 776 203
30. Richmond; VAD 058 900 036

122. Wynnewood Refining Company, Wynnewood, OK
1. Wynnewood Refining Company; OKD 000 396 549

[FR Doc. 00–26749 Filed 10–17–00; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

[OPP–00685; FRL–6751–4]

## State FIFRA Issues Research and Evaluation Group (SFIREG) Working Committee on Pesticide Operations & Management; Notice of Public Meeting

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of public meeting.

**SUMMARY:** The State FIFRA Issues Research and Evaluation Group (SFIREG) Working Committee on Pesticide Operations & Management will hold a 2–day meeting, beginning on November 2, 2000, and ending on November 3, 2000. This notice announces the location and times for the meeting and sets forth the tentative agenda topics.

**DATES:** The meeting will be held on Thursday, November 2, 2000 from 8:30 a.m. to 5 p.m. to Friday, November 3, 2000, from 8:30 a.m. to 12:00 noon.

**ADDRESSES:** The meeting will be held at The Doubletree Hotel, 300 Army Navy Drive, Arlington - Crystal City, VA.

**FOR FURTHER INFORMATION CONTACT:** Philip H. Gray, SFIREG Executive Secretary, P.O. Box 1249, Hardwick, VT 05843–1249; telephone number: (802) 472–6956; fax: (802) 472–6957; e-mail address: aapco@plainfield.bypass.com or, Georgia A. McDuffie, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 605–0195; fax number: (703) 308–1850; e-mail address: McDuffie.Georgia@epa.gov.

**SUPPLEMENTARY INFORMATION:**

### I. Does this Action Apply to Me?

*This action is directed to the public in general.* This action may, however, be of interest to all parties interested in SFIREG's information exchange relationship with EPA regarding important issues related to human health, environmental exposure to pesticides, and insight into EPA's decision-making process are invited and encouraged to attend the meetings and participate as appropriate. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

### II. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* Philip H. Gray, SFIREG Executive Secretary, P.O. Box 1249, Hardwick, VT 05843–1239.

### III. Tentative Agenda:

Antimicrobial issues, including master label policy, permitted and unacceptable label.

Language, HVAC products, Efficacy testing program, and others.

eCommerce issues.

Phosphine risk mitigation/Improved labeling.

Inspector credentialing/Authorization procedures.

Worker protection standard update.

Field data plan workgroup/Update.

Herbicides used for seed production.

Mosquito control products; Labeling issues.

"Professional Use Only" Type label statements.

Supplemental labeling.

Endangered species protection issues.

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Updates from Office of Pesticide Programs and Office of Enforcement and Compliance Monitoring.

**List of Subjects**

Environmental protection.

Dated: October 11, 2000.

**Ken Garvey,**

*Acting Director, Field and External Affairs Division, Office of Pesticide Programs.*

[FR Doc. 00–26639 Filed 10–17–00; 8:45 am]

BILLING CODE 6560–50–S

## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–00682; FRL–6750–7]**

### Notice of Availability of Pesticide Data Submitters List

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the availability of an updatedversion of the Pesticide Data Submitters List which supersedes andreplaces all previous versions.

**FOR FURTHER INFORMATION CONTACT:** By mail: John Jamula, Office of Pesticide Programs (7502C), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460.Office location for commercial courier delivery, telephonenumber and e-mail address: Rm. 226, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–6426; e-mail: jamula.john@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this Action Apply to Me?*

This action is directed to the public in general. Althoughthis action may be of particular interest to persons who produce oruse pesticides, the Agency has not attempted to describe all thespecific entities that may be affected by this action. If you haveany questions regarding the information in this notice, consult theperson listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Get Additional Information, Including Copies of thisDocument and Other Related Documents?*

1. *By mail*: Microfiche copies of the document are available from the National Technical Information Service (NTIS) ATTN: orderDesk, 5285 Port Royal Road, Springfield, VA 22161. Telephone: 1–800–553–6847. When requesting a document from NTIS, please provide its name and NTIS Publication Number (PB). The NTIS Publicationfor this version of the Pesticide Data Submitters List is PB 2000–102113.

2. *Electronically*: The Pesticide Data Submitters List isavailable of EPA's worldwide web site on the Internet. TheInternet address of EPA's web site is www.epa.gov. The PesticideData Submitters list may be found by searching for the keywords"datasubmitterslist" from this page, or may be access directly onthe EPA web site, by going directly to the address listed below.Note that this address is case sensitive: http://www.epa.gov./oppmsd1/DataSubmittersList/index.html

**II. What Action is the Agency Taking?**

The Pesticide Data Submitters List is a compilation of namesand addresses of registrants who wish to be notified and offeredcompensation for use of their data. It was developed to assistpesticide applicants in fulfilling their obligation as required bysections 3(c)(1)(f) and 3(c)(2)(D) of the Federal Insecticide,Fungicide, and Rodenticide Act (FIFRA) and 40 CFR part 152 subpartE regarding ownership of data used to support registration. Thisnotice announces the availability of an updated version of thePesticide Data Submitters List which supersedes and replaces allprevious versions.

**List of Subjects**

Environmental protection, Administrative practice and procedure, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 10, 2000.

**Richard D. Schmitt,**

*Associate Director, Information Resources and Services Division,Office of Pesticide Programs.*

[FR Doc 00–26752 Filed 10–17–00; 8:45 a.m.]

BILLING CODE 6560–50–S

## FEDERAL MARITIME COMMISSION

### Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

*Agreement No.:* 000086–019.

*Title:* New York Shipping Association, Inc. and International Longshoremen's Association, AFL–ClO Assessment Agreement

*Parties:* New York Shipping Association, Inc. International Longshoremen's Association.

*Synopsis:* The agreement amendment amends pension base calculations and provides for the extension of the agreement through September 30, 2004.

*Agreement No.:* 010806–005.

*Title:* Portland SSA Terminal 2 Marine Terminal Agreement.

*Parties:* The Port of Portland, Stevedoring Services of America, Inc.

*Synopsis:* The agreement amendment sets a management fee and a minimum annual guarantee and extends the agreement through September 30, 2005.

*Agreement No.:* 011699–001.

*Title:* CMA CGM/Wan Hai Lines Ltd. Cooperation Agreement.

*Parties:* CMA CGM, S.A., Wan Hai Lines Ltd.

*Synopsis:* Under the proposed modification, some of the space CMA CGM provides Wan Hai lines in the transpacific trades will now come from the space that CMA CGM receives from Maersk Sealand under the Maersk Sealand/CMA CGM Pacific Slot Charter Agreement, FMC Agreement No. 011724. The parties request expedited review.

*Agreement No.:* 200063–020.

*Title:* New York Shipping Association, Inc. and International Longshoremen's Association, AFL–CIO Assessment Agreement.

*Parties:* New York Shipping Association, Inc., International Longshoremen's Association.

*Synopsis:* The agreement amendment amends pension base calculations and provides for the extension of the agreement through September 30, 2004.

Dated: October 13, 2000.

By Order of the Federal Maritime Commission.

**Bryant L. VanBrakle,**

*Secretary.*

[FR Doc. 00–26778 Filed 10–17–00; 8:45 am]

BILLING CODE 6730–01–P

## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License; Revocations

The Federal Maritime Commission hereby gives notice that the following ocean transportation intermediary licenses have been terminated pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding dates shown below:

*License Number:* 2696N.

*Name:* Burnham Service Company, Inc.

*Address:* P.O. Box 7966, Columbus, GA 31829

*Date Revoked:* September 22, 2000.

*Reason:* Failed to maintain a valid bond.

*License Number:* 0916F.

*Name:* J.D. Smith Co., Inc.

*Address:* Brooklyn Navy Yard, Building #3, 11th Floor, Brooklyn, NY 11205.

*Date Revoked:* September 18, 2000.

*Reason:* Failed to maintain a valid bond.

**Sandra L. Kusumoto,**

*Director, Bureau of Consumer Complaints and Licensing.*

[FR Doc. 00–26777 Filed 10–17–00; 8:45 am]

BILLING CODE 6730–01–P



## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License; Applicant

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for licenses as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

*Non-Vessel-Operating Common Carrier Ocean Transportation Intermediary Applicants:*

Worldwide Shipping Corporation, 1641 W. Main Street, Suite 420, Alhambra, CA 91801. Officer: Willie Y. Wu, President, (Qualifying Individual)

BGI Worldwide Logistics, Inc., 1850 Redondo Ave., #106, Long Beach, CA 90804. Officers: Gabriel Shweiri, President, (Qualifying Individual); Bruce Robertson, Vice President

Eternity International LLC, 704–4 Las Tunas Drive, Suite 113, San Gabriel, CA 91776–1162. Officer: Sheng Chiang, President, (Qualifying Individual)

Comax Worldwide Inc., 147–25 176th Street, Jamaica, NY 11434. Officers: Terence Tsang, President, (Qualifying Individual); Anthony Lo, Vice President

TOP Container Line Inc., 3605 Long Beach Blvd., Suite 321, Long Beach, CA 90807. Officers: Takayoshi Todoroki, Secretary, (Qualifying Individual); Hirofumi Nishimura, President

*Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants:*

Incopro Corporation, 12800 Aldine Westfield Road, Suite 210, Houston, TX 77039. Officers: Francisco Antonio Gruzman, Jr., (Qualifying Individual); Jerry De Foor, Secretary.

*Ocean Freight Forwarders—Ocean Transportation Intermediary Applicants:*

Asian Logistics, Inc., 2079 S. Atlantic Blvd., #D, Monterey Park, CA 91754. Officers: Teddy Li, Vice President, (Qualifying Individual) ; Yuen-Ping Li, President

Dated: October 13, 2000.

**Bryant L. VanBrakle,**

*Secretary.*

[FR Doc. 00–26779 Filed 10–17–00; 8:45 am]

BILLING CODE 6730–10–P

## FEDERAL RESERVE SYSTEM

### Change In Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 1, 2000.

A. *Federal Reserve Bank of Minneapolis* (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Thomas James Reynolds and Lois Jane Reynolds, Mankato, Minnesota; to acquire voting shares of Northern Star Financial, Inc., Mankato, Minnesota, and thereby indirectly acquire voting shares of Northern Star Bank, Mankato, Minnesota.

Board of Governors of the Federal Reserve System, October 12, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00–26673 Filed 10–17–00; 8:45 am]

BILLING CODE 6210–01–P

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 9, 2000.

A. **Federal Reserve Bank of Kansas City** (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. *NebraskaLand Financial Services, Inc.*, North Platte, Nebraska; to become a bank holding company by acquiring 100 percent of the voting shares of NebraskaLand National Bank, North Platte, Nebraska.

In connection with this application, First York BanCorp, York, Nebraska, has

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applied to acquire 60 percent of the voting shares of NebraskaLand Financial Services, Inc., North Platte, Nebraska.

2. *First Olathe Bancshares, Inc.*, Kansas City, Missouri; to control Bannister Bank & Trust Company, Kansas City, Missouri, through a management consulting agreement.

Board of Governors of the Federal Reserve System, October 12, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00–26672 Filed 10–17–00; 8:45 am]

BILLING CODE 6210–01–P

## GENERAL SERVICES ADMINISTRATION

### Great Lakes Region 5; Intent To Prepare an Environmental Impact Statement for the Disposal and Potential Reuse of Badger Army Ammunition Plant (BAAP) in Baraboo, Wisconsin

**AGENCY:** U.S. General Services Administration, Great Lakes Region 5.

**ACTION:** Notice of intent (NOI) to prepare an Environmental Impact Statement (EIS), and to conduct public scoping.

**SUMMARY:** The U.S. General Services (GSA) is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared to assess the potential effects of disposal and potential reuse alternatives of the Badger Army Ammunition Plant (BAAP) in Baraboo, Wisconsin. To ensure that all significant issues related to the proposed action are identified, the GSA will conduct a public scoping meeting.

**ADDRESSES:** Comments may be mailed or delivered to the GSA at the following address: Mr. William Costa, GSA Property Disposal Division, 10 Causeway Street, Boston, MA 02222–1077.

**FOR FURTHER INFORMATION CONTACT:** U.S. General Services Administration: Mr. William Costa, (617) 565–5696 or The Louis Berger Group, Inc.: Mr. Jess Commerford, (202) 331–7775.

**SUPPLEMENTARY INFORMATION:** The GSA will prepare an EIS on disposal of the Badger Army Ammunition Plant and potential reuse alternatives. BAAP covers approximately 7,354 acres in Sauk County, approximately 6 miles south of Baraboo and approximately 30 miles northwest of Madison, Wisconsin. The Sauk County Board of Supervisors has established the Badger Army Ammunition Plant Reuse Committee to develop proposed reuse scenarios for the property. The EIS will address reuse issues developed by the Reuse Committee, which will conclude its work in March 2001. The environmental review of the disposal and potential reuse alternatives will be conducted in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4371, *et seq.*), Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500–1508), U.S. General Services Administration regulations (PBS P 1095.4 B), and all applicable Federal, state, and local government laws, regulations, and policies.

**Public Scoping Meeting**

The GSA will solicit public comments for consideration and possible incorporation in the Draft EIS through public scoping, including a scoping meeting, on the proposed action. To ensure the full range of issues related to this proposed action are addressed and all significant issues are identified early in the process, comments and suggestions are invited from all interested and/or potentially affected parties. These individuals or groups are invited to attend the public scoping. The meeting location and time will be publicized in local newspapers and elsewhere. Written comments will be accepted throughout this process and can be forwarded to the address provided above.

Dated: October 11, 2000.

**William Costa,**

*Property Disposal Division, General Services Administration.*

[FR Doc. 00–26746 Filed 10–17–00; 8:45 am]

BILLING CODE 6820–61–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Meeting of the Advisory Committee on Blood Safety and Availability

**AGENCY:** Office of the Secretary.

**ACTION:** Notice of Meeting.

The Advisory Committee on Blood Safety and Availability will meet on Thursday, January 25, 2001 and Friday, January 26, 2001, from 8:00 a.m. to 5:00 p.m.. The meeting will take place at the Hyatt Regency Hotel on Capitol Hill, 400 New Jersey Ave., NW., Washington, DC 20001. The meeting will be entirely open to the public.

The Advisory Committee will consider how the government should respond to the current public debate over universal leukoreduction.

Public comment will be solicited at the meeting. Public comment will be limited to five minutes per speaker. Those who wish to have printed material distributed to Advisory Committee members should submit thirty (30) copies to the Executive Secretary prior to close of business January 11, 2001.

**FOR FURTHER INFORMATION CONTACT:** Stephen D. Nightingale, M.D., Executive Secretary, Advisory Committee on Blood Safety and Availability, Department of Health and Human Services, Office of Public Health and Science, 200 Independence Avenue, S.W., Rm 736E, Washington, D.C. 20201. Phone (202) 690–5560 FAX (202) 690–7560 e-mail StephenDNightingale@osophs.dhhs.gov.

Dated: October 6, 2000.

**Stephen D. Nightingale,**

*Executive Secretary, Advisory Committee on Blood Safety and Availability.*

[FR Doc. 00–26739 Filed 10–17–00; 8:45 am]

BILLING CODE 4160–17–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

### Administration on Aging

### Announcement of Fiscal Year 2000 Sole Source Awards

**AGENCY:** Administration on Aging, HHS.

**ACTION:** Announcement of sole source awards made by the Administration on Aging in fiscal year (FY) 2000 under the authority of Title IV of the Older Americans Act (42 U.S.C. 3001 *et seq.*).

**SUMMARY:** The Administration on Aging announces that it has made twenty-eight (28) new sole source awards in FY 2000 as follows: National Indian Council on Aging (NM), $130,000, March 1, 2000 to February 28, 2003; National Asian Pacific Center on Aging (WA), $260,000, March 1, 2000 to February 28, 2003; Asociacion National Pro Personas Mayores (CA), $150,000, September 1, 2000 to August 31, 2003; National Caucus and Center on Black Aged (DC), $150,000, September 1, 2000 to August 31, 2003; National Hispanic Council on Aging (DC), $150,000, September 1, 2000 to August 31, 2003; National Association of Home Builders Research Center, Inc. (MD), $553,285, April 1, 2000 to March 31, 2001; Christmas in April USA (DC), $322,756, June 1, 2000 to May 31, 2001; Albert Einstein Medical Center (PA), $920,000, September 30, 2000 to February 28, 2002; West Virginia University (WV), $460,000, May 1, 2000 to April 30, 2001; Community Programs of Long Island, Inc. (NY), $461,080, May 1, 2000 to July 31, 2001; Nevada Rural Counties RSVP Program (NV), $92,216, September 1, 2000 to August 31, 2001; University of Colorado Health Science Center (CO), $327,364, September 29, 2000 to September 28, 2003; University of North Dakota (ND), $327,365, September 1, 2000 to August 31, 2003; Metropolitan Family Services (IL), $250,000, September 30, 2000 to September 29, 2001; Santa Clara Indian Pueblo (NM), $461,000, September 1, 2000 to August 31, 2001; City of Norwalk (CA), $36,886, September 30, 2000 to September 29, 2001; Elderly Services Inc. (VT), $783,836, September 30, 2000 to March 30, 2002; VNA Home Health, Inc. (WI), $89,575, September 1, 2000 to August 31, 2001; City of Norwalk (CA), $36,886, September 30, 2000 to September 29, 2001; Pension Rights Center (DC), $187,500, April 1, 2000 to March 30, 2003; Legal Services for the Elderly (NY), $75,000, March 1, 2000 to February 28, 2003; California Advocates for Nursing Home Reform (CA), $75,000, March 1, 2000 to February 28, 2003; Older Womens League, Inc. (DC), $74,919, May 1, 2000 to April 30, 2003; Pima Council on Aging (AZ), $75,000, May 1, 2000 to April 30, 2003; Chicago Department on Aging (IL), $74,353, September 30, 2000 to September 29, 2003; University of Alabama (AL), $74,928, September 30, 2000 to September 29, 2003; Oregon Health Sciences University (OR), $922,160, August 1, 2000 to January 31, 2002; and Texas Tech University Health Sciences Center School of Medicine (TX), $1,857,786, August 1, 2000 to July 31, 2001.

All awards were made consistent with the terms of Senate Report 106–166 and House Report 106–370 which accompany the Consolidated Appropriations Act for FY 2000 (Pub. L. 106–113).

**FOR FURTHER INFORMATION CONTACT:** Edwin L. Walker, 202–619–1828.

Dated: October 10, 2000.

**Jeanette C. Takamura,**

*Assistant Secretary for Aging.*

[FR Doc. 00–26734 Filed 10–17–00; 8:45 am]

BILLING CODE 4154–01–U



## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 96M–0311]**

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Public Health Service (PHS) Guideline on Infectious Disease Issues in Xenotransplantation

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

**DATES:** Submit written comments on the collection of information by November 17, 2000.

**ADDRESSES:** Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Wendy Taylor, Desk Officer for FDA.

**FOR FURTHER INFORMATION CONTACT:** JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

**PHS Guideline on Infectious Disease Issues in Xenotransplantation**

The statutory authority to collect this information is provided under sections 351 and 361 of the PHS Act (42 U.S.C. 262 and 264) and the provisions of the Federal Food, Drug, and Cosmetic Act that apply to drugs (21 U.S.C. 301 *et seq.*). This PHS guideline is revised based on public comment to a previous document entitled "Draft Public Health Service (PHS) Guideline on Infectious Disease Issues in Xenotransplantation (August 1996)," which published in the **Federal Register** of September 23, 1996 (61 FR 49919). The PHS guideline recommends procedures to diminish the risk of transmission of infectious agents to the xenotransplantation product recipient and the general public. The PHS guideline is intended to address public health issues raised by xenotransplantation, through identification of general principles of prevention and control of infectious diseases associated with xenotransplantation that may pose a hazard to the public health. The collection of information described in this guideline is intended to provide general guidance to sponsors in: (1) The development of xenotransplantation clinical protocols, (2) the preparation of submissions to FDA, and (3) the conduct of xenotransplantation clinical trials. Also, the collection of information will help ensure that the sponsor maintains important information in a cross-referenced system that links the relevant records of the xenotransplantation product recipient, xenotransplantation product, source animal(s), animal procurement center, and significant nosocomial exposures. The PHS guideline describes an occupational health service program for the protection of health care workers involved in xenotransplantation procedures, caring for xenotransplantation product recipients, and performing associated laboratory testing. The PHS guideline also describes public health needs for: (1) A pilot national xenotransplant data base, which is currently under development by PHS; (2) a central PHS biologic specimen archive; and (3) the Secretary's Advisory Committee on Xenotransplantation, which is being developed and implemented by the Department of Health and Human Services. These public health programs and this PHS guideline are intended to protect the public health and help ensure the safety of using xenotransplantation products in humans by preventing the introduction, transmission, and spread of infectious diseases associated with xenotransplantation.

Respondents to this collection of information are the sponsors of clinical studies of investigational xenotransplantation products under investigational new drug applications (IND's) and xenotransplantation product procurement centers, referred to as source animal facilities. Currently, there are 11 respondents who are sponsors of IND's, which include protocols for xenotransplantation in humans. Other respondents for this collection of information are 18 source animal facilities which provide source xenotransplantation product material to sponsors for use in human xenotransplantation procedures. These 18 source animal facilities keep medical records of the herds/colonies as well as

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the medical records of the individual source animal(s).

The PHS guideline proposes that certain specimens and records be maintained for 50 years beyond the date of the xenotransplantation. These include: (1) Records linking each xenotransplantation product recipient with relevant health records of the source animal, herd or colony, and the specific organ, tissue, or cell type included in or used in the manufacture of the product (3.2.7.1); (2) aliquots of serum samples from randomly selected animal and specific disease investigations (3.4.3.1); (3) source animal biological specimens designated for PHS use (3.7.1); animal health records (3.7.2), including necropsy results (3.6.4); and (4) recipients' biological specimens (4.1.2).

The retention period is intended to assist health care practitioners and officials in surveillance and in tracking the source of an infection, disease, or illness that might emerge in the recipient, the source animal, or the animal herd or colony after a xenotransplantation. Although the draft PHS guideline discussed holding specimens and records indefinitely, comments described this recommendation as impractical and unfeasible.

The recommendation for maintaining records for 50 years is based on clinical experience with several human viruses that have presented problems in human-to-human transplantation and are therefore thought to share certain characteristics with viruses that may pose potential risks in xenotransplantation. These characteristics include long latency periods and the ability to establish persistent infections. Several also share the possibility of transmission among individuals through intimate contact with human body fluids. Human immunodeficiency virus (HIV) and Human T-lymphotropic virus (HTLV) are human retroviruses. They contain ribonucleic acid that is reverse-transcribed into deoxyribonucleic acid (DNA) using an enzyme provided by the virus and the cell machinery. That DNA can then be integrated into the cellular DNA. Both viruses establish persistent infections and have long latency periods before the onset of disease, 10 years and 40 to 60 years, respectively. The human hepatitis viruses are not retroviruses, but several share with HIV the characteristic that they can be transmitted through body fluids, can establish persistent infections, and have long latency periods (e.g., approximately 30 years for Hepatitis C).

In addition, the PHS guideline recommends that a record system be developed that allows easy, accurate, and rapid linkage of information among the specimen archive, the recipient's medical records, and the records of the source animal for 50 years. If record systems are maintained in a computer data base, electronic backups should be kept in a secure office facility and backup on hard copy should be routinely performed (4.1.2.2). The development of such a record system would be a one-time burden. Such a system is intended to cross-reference and locate relevant records or recipients, source animals and facilities, and specimens of both the recipient and the source animal. Based on agency experience in establishing new, small volume, recordkeeping and tracking systems, we estimate approximately 16 hours would be necessary for each sponsor to set up the records system.

The total annual reporting and recordkeeping burden is estimated to be approximately 343 hours. The burden estimates are based on FDA's records of xenotransplantation-related IND's and estimates of time required to create an appropriate record system and to complete the various reporting and recordkeeping tasks described in the PHS guideline. A total of 22 IND's have been submitted since 1994 resulting in an average of 4 IND submissions per year. A total of 87 patients have been treated over a 3-year period indicating there are on average 29 xenotransplantation product recipients per year. FDA does not expect the number of clinical studies using xenotransplantation to increase significantly in the next few years; therefore, the agency is using these historical figures in projecting burdens for the next 3 years.

In the **Federal Register** of May 26, 2000 (65 FR 34196), FDA, on behalf of PHS, published a 60-day notice for public comment on the proposed collection of information provisions in the PHS guideline on infectious disease issues in xenotransplantation. FDA received four letters of comment in response to the notice. One of the letters did not provide any comments on the information collection provisions. PHS is responding below to those comments which address information collection issues. Other comments, not related to the proposed information collection provisions, will be considered by PHS in future revisions of the guideline.

Two comments addressed the PHS guideline recommendation that records be retained for 50 years.

(Comment 1) One comment stated that although the need for record retention is very important, the retention of records for 50 years would be an undue burden on a sponsor.

(Comment 2) The other comment stated that, in view of rapidly changing technology that would require conversion of data whenever newer computer systems are acquired, the retention period would constitute an undue burden because of the difficulty of maintaining linked, computerized data throughout this period of time.

The 50-year retention period is intended to assist health care practitioners and public health officials in infectious disease surveillance and in tracking the source of an infection, disease, or illness that might emerge in the xenotransplantation product recipient, the source animal, or the animal herd or colony following xenotransplantation. The recommendation for maintaining records for 50 years is based on clinical experience with several human viruses that have presented problems in human-to-human transplantation and are thought to share certain characteristics with viruses that may pose potential risks in xenotransplantation. These characteristics include long latency periods and the ability to establish persistent infections. Several of these human viruses can also be transmitted among individuals through intimate contact with human body fluids. For example, HIV and HTLV are human retroviruses that establish persistent infections and have long latency periods before the onset of disease, 10 years and 40 to 60 years, respectively. The human hepatitis viruses are not retroviruses, but several share with HIV the characteristic that they can be transmitted through body fluids, can establish persistent infections, and have long latency periods (e.g., approximately 30 years for Hepatitis C).

As new computer data systems are developed, both software and hardware manufacturers typically provide for the transfer or conversion of existing data into a new system. With today's rapidly developing information technology, such transfers and conversions are usual and customary practice. It is the responsibility of the sponsor to ensure that all data are appropriately transferred to, and retrievable from, their new/updated computer systems. Because of the need for the long-term monitoring of the health of xenotransplantation product recipients and source animals, a sponsor should ensure that these data remain compatible with the computerized data systems that will be used during the 50-year retention period.



Two comments addressed the submission of information to a national xenotransplantation data base.

(Comment 3) One comment stated that it would be redundant to maintain records for 50 years and submit the same information to the National Xenotransplantation Database (NXD).

(Comment 4) The other comment stated that it would constitute an additional burden to submit information to the NXD for companies that already submit these data to FDA.

The NXD is not operational, but rather is in a pilot phase at this time. In developing this data base, PHS will make an effort, whenever possible, to avoid the imposition of any redundant or excess paperwork requirements. The public will be offered an opportunity to comment on any information collection burdens associated with the NXD prior to implementation. Sponsors should, however, recognize that they should maintain information that goes beyond what may be proposed for submission to the NXD. Such information includes, for example, personal identifiers that would enable PHS to contact specific individuals in case of a public health emergency, information on recipient contacts and health care workers, detailed information on the xenotransplantation procedure, and detailed information on husbandry of the source animal. Finally, because sponsors will need to monitor patient health over time, retention of records that are more complete than data submitted to the NXD will be necessary.

(Comment 5) One comment stated that under sections 3.4.1 and 3.4.3.2, all incidents that affect herd or colony health that are recorded by a source animal facility should also be reported to FDA.

PHS agrees that in some cases incidents affecting animal herd or colony health should be reported to FDA. For example, under § 312.32(c)(1)(i)(B) (21 CFR 312.32(c)(1)(i)(B)), a sponsor must notify FDA and all participating investigators of "[a]ny finding from laboratory animals that suggests a significant risk for human subjects * * *" Thus, if a health event in the source herd or colony suggests that recipients of xenotransplantation products from the source animals in that herd/colony may be at significant risk, the health event must be reported to FDA. However, as with any herd of animals, many health events may occur, such as injuries and minor illnesses. These events should be assessed, as appropriate, to determine whether there are any health implications for the xenotransplantation product recipients. Primary responsibility for designing and monitoring the conduct of xenotransplantation clinical trial rests with the sponsor (e.g., 21 CFR 312.23(a)(6)(iii)(*d*) and 312.50). As part of the sponsor's responsibility when filing an IND, procedures should be developed to identify incidents that negatively affect the health of the herd or colony. This information is relevant to the safety review of every xenotransplantation product application. Such information, as well as the procedures to collect the information, should be reported to FDA. PHS has revised the guideline in section 3 to note the requirements for developing such procedures and for submitting the procedures to FDA.

(Comment 6) One comment stated that under section 2.5.7, clinical investigators should report to FDA any serious or unexplained illnesses of xenotransplantation product recipients that are reported to them.

PHS agrees that serious or unexplained illnesses should be reported but they should be reported by the sponsor rather than by the clinical investigator. For example, under § 312.32(c)(1)(i)(A), a sponsor must notify FDA and all participating investigators of any adverse experience associated with the use of an investigational product that is both serious and unexpected. The sponsor is in the best position to evaluate such events and determine the implications of the event for the safety of the xenotransplantation product and any potential impact such product may have on the clinical study.

FDA is requesting OMB approval for the following reporting and recordkeeping recommendations in the PHS guideline, except as noted:

TABLE 1.—REPORTING RECOMMENDATIONS

| PHS Guideline Section | Description |
|---|---|
| 3.2.7.2 | Notify sponsor or FDA of new archive site when source animal facility or sponsor ceases operations. |
| 3.4 | Standard operating procedures (SOP's) of source animal facility should be available to review bodies. |
| 3.5.1 | Include increased infectious risk in informed consent if source animal quarantine period of 3 weeks is shortened. |
| 3.5.4 | Sponsor to make linked records described in section 3.2.7 available for review. |
| 3.5.5 | Source animal facility to notify clinical center when infectious agent is identified in source animal or herd after xenotransplantation product procurement. |

TABLE 2.—REPORTING RECOMMENDATIONS

| PHS Guideline Section | Description |
|---|---|
| 3.2.3[1] | Procedures to ensure the humane care of animals. |
| 3.2.4[2] | Incorporate procedures consistent with accreditation by the Association for Assessment and Accreditation of Laboratory Animal Care International (AAALAC International) and consistent with the National Research Council's (NRC's) Guide. |
| 3.2.6[3] | Animal facility SOP's should be described. |
| 3.2.7 and 4.3 | Establish records linking each xenotransplantation product recipient with relevant records, including SOP's of animal procurement, facility herd health surveillance, and lifelong health history of source animal. Maintain cross-referenced system that links all relevant records (recipient, product, source animal, animal procurement center, and significant nosocomial exposures). |
| 3.4.2 | Document results of monitoring program used to detect introduction of infectious agents which may not be apparent clinically. |
| 3.4.3.2 | Document full necropsy investigations including evaluation for infectious etiologies. |
| 3.5.1 | Document justification for shortening a source animal's quarantine period of 3 weeks prior to xenotransplantation product procurement. |
| 3.5.2 | Document absence of infectious agent in xenotransplantation product if its presence elsewhere in source animal does not preclude using it. |

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TABLE 2.—REPORTING RECOMMENDATIONS—Continued

| PHS Guideline Section | Description |
|---|---|
| 3.5.4 | Add summary of individual source animal record to permanent medical record of the xenotransplantation product recipient. |
| 3.6.4 | Document complete necropsy results on source animals (50-year record retention). |
| 3.7 | Link xenotransplantation product recipients to individual source animal records and archived biologic specimens. |
| 4.2.3.2 | Record baseline sera of xenotransplantation health care workers and specific nosocomial exposure. |
| 4.2.3.3 and 4.3.2 | Keep a log of health care workers' significant nosocomial exposure(s). |
| 4.3.1 | Document each xenotransplant procedure. |
| 5.2 | Document location and nature of archived PHS specimens in health care records of xenotransplantation product recipient and source animal. |

[1] These procedures are set forth in 9 CFR parts 1, 2, and 3 and the "Public Health Service Policy on Humane Care and Use of Laboratory Animals" (http://www.grants.nih.gov/grants/olaw/references/phspol.htm) and are considered usual and customary practice.
[2] These procedures are set forth in the AAALAC International Rules of Accreditation (http://www.aaalac.org) and the NRC's "Guide for the Care and Use of Laboratory Animals" (1996) and are considered usual and customary practice.
[3] These procedures are set forth in the "Public Health Service Policy on Humane Care and Use of Laboratory Animals" (http://www.grants.nih.gov/grants/olaw/references/phspol.htm) and are considered usual and customary practice.

FDA estimates the burden for this collection of information as follows:

TABLE 3.—ESTIMATED ANNUAL REPORTING BURDEN[1]

| PHS Guideline Section | No. of Respondents | Annual Frequency per Response | Total Annual Responses | Hours per Response | Total Hours |
|---|---|---|---|---|---|
| 3.2.7.2[2] | 18 | 0 | 0 | 0.5 | 0 |
| 3.2.7.2[2] | 11 | 0 | 0 | 0.5 | 0 |
| 3.4[3] | 11 | 0.4 | 4 | 0.08 | 0.3 |
| 3.5.1[4] | 11 | 0.09 | 1 | 0.25 | 0.25 |
| 3.5.4[5] | 11 | 2.6 | 29 | 0.5 | 14.5 |
| 3.5.5[4] | 18 | 0.06 | 1 | 0.2 | 0.2 |
| Total | | | | | 15.25 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] No animal facility or sponsor has ceased operations to date and none are expected to cease operation in the next several years.
[3] FDA's records indicate that an average of four IND's have been and are expected to be submitted per year.
[4] Has not occurred in the past 5 years and is expected to continue to be a rare occurrence.
[5] Based on 87 patients treated over the last 3 years, the average number of xenotransplantation product recipients per year is estimated to be 29.

TABLE 4.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

| PHS Guideline Section | No. of Recordkeepers | Annual Frequency per Recordkeeping | Total Annual Records | Hours per Recordkeeper | Total Hours |
|---|---|---|---|---|---|
| 3.2.7 and 4.3[2] | 11 | 1 | N/A | 16 | 172 |
| 3.4.2[3] | 11 | 15.1 | 166 | 3.77 | 41.5 |
| 3.4.3.2[4] | 18 | 4.0 | 72 | 1.32 | 23.8 |
| 3.5.1[5] | 11 | 0.09 | (0–1) 1 | 0.045 | 0.5 |
| 3.5.2[5] | 11 | 0.09 | (0–1) 1 | 0.023 | 0.25 |
| 3.5.4 | 11 | 2.6 | 29 | 0.45 | 4.9 |
| 3.6.4[6] | 11 | 5.3 | 58 | 1.32 | 14.5 |
| 3.7[6] | 18 | 3.2 | 58 | 0.26 | 4.6 |
| 4.2.3.2[7] | 11 | 27.3 | 300 | 4.64 | 51 |
| 4.2.3.2[5] | 11 | 0.09 | (0–1) 1 | 0.015 | 0.17 |
| 4.2.3.3 and 4.3.2[5] | 11 | 0.09 | (0–1) 1 | 0.015 | 0.17 |
| 4.3.1 | 11 | 2.6 | 29 | 0.66 | 7.25 |
| 5.2[8] | 11 | 7.9 | 87 | 0.63 | 6.96 |
| Total | | | | | 327.6 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] A one-time burden for setting up a recordkeeping system which rapidly links information regarding the specimen archive, the recipient's medical records, and source animals.
[3] Monitoring for sentinel animals (subset representative of herd) plus all source animals. There are approximately 6 sentinel animals per herd x 1 herd per facility x 18 facilities = 108 sentinel animals. There are approximately 58 source animals per year (see footnote 6 of this table); 108 + 58 = 166 monitoring records to document.
[4] Necropsy for animal deaths of unknown cause estimated to be approximately 4 per herd per year x 1 herd per facility x 18 facilities = 72.
[5] Has not occurred in the past 5 years and is expected to continue to be a rare occurrence.
[6] On average, 2 source animals are used for preparing xenotransplantation product material for one recipient. The average number of source animals is 2 source animals per recipient x 29 recipients annually = 58 source animals per year. (See footnote 5 of table 3 of this document.)



[7] FDA estimates there are approximately 12 clinical centers doing xenotransplantation procedures x approximately 25 health care workers involved per center = 300 health care workers.
[8] Fifty-eight source animal records + 29 recipient records = 87 total records.

Because xenotransplantation is a relatively new area of medical science, potential problems and adverse effects are not well known. Because of the potential risk for cross-species transmission of infectious agents from source animals to patients, their close contacts, and the general public and the latency period of known human pathogenic persistent virus, the guideline recommends that health records be retained for 50 years. Since these records are medical records, they are not considered "information" as that term is defined under the PRA (5 CFR 1320.3(h)(5)). Also, because of the limited number of clinical studies with small patient populations, the number of records is small and, therefore, the capital and operating costs are expected to be insignificant at this time.

Many of the information collections described in this guideline are not new and can be found under existing regulations and, therefore, are not included in the hour burden estimates in tables 1 through 4 of this document. These information collections are included under the regulations and approved under the OMB control numbers as follows: (1) "Current Good Manufacturing Practice for Finished Pharmaceuticals," 21 CFR 211.1 through 211.208, approved under OMB control number 0910–0139; (2) "Investigational New Drug Application," 21 CFR 312.1 through 312.160, approved under OMB control number 0910–0014; and (3) information included in a license application, 21 CFR 601.2, approved under OMB control number 0910–0427. (Although it is possible that a xenotransplantation product may not be regulated as a biological product (e.g., it may be regulated as a medical device), FDA expects, based on its knowledge and experience with xenotransplantation, that any xenotransplantation product subject to FDA regulation within the next 3 years will most likely be regulated as a biological product.)

TABLE 5.—COLLECTIONS OF INFORMATION UNDER CURRENT REGULATIONS

| PHS Guideline Section | Description of Collection of Information Activity | 21 CFR Section (unless otherwise stated) |
|---|---|---|
| 2.2.1 | Document offsite collaborations. | 312.52 |
| 2.5 | Sponsor ensure counseling patient + family + contacts. | 312.62(c) |
| 3.1.1 and 3.1.6 | Document well-characterized health history and lineage of source animals. | 312.23(a)(7)(iv)(*a*) and 211.84 |
| 3.1.8 | Registration with and import permit from the Centers for Disease Control and Prevention. | 42 CFR 71.53 |
| 3.2.2 | Document collaboration with accredited microbiology labs. | 312.52 |
| 3.2.5, 3.4, and 3.4.1 | Herd health maintenance and surveillance to be documented, available, and in accordance with documented procedures; record standard veterinary care. | 211.100 and 211.122 |
| 3.3.3 | Validate assay methods. | 211.160(a) |
| 3.6.1 | Procurement and processing of xenografts using documented aseptic conditions. | 211.100 and 211.122 |
| 3.6.2 | Develop, implement, and enforce SOP's for procurement and screening processes. | 211.84(d) and 211.122(c) |
| 3.6.4 | Communicate to FDA animal necropsy findings pertinent to health of recipient. | 312.32(c) |
| 3.7.1 | PHS specimens to be linked to health records; provide to FDA justification for types of tissues, cells, and plasma, and quantities of plasma and leukocytes collected. | 312.23(a)(6) |
| 4.1.1 | Surveillance of xenotransplant recipient; sponsor ensures documentation of surveillance program life-long (justify > 2 yrs.); investigator case histories (2 yrs. after investigation is discontinued). | 312.23(a)(6)(iii)(*f*) and (*g*), and 312.62(b) and (c) |
| 4.1.2 | Sponsor to justify amount and type of reserve samples. | 211.122 |
| 4.1.2.2 | System for prompt retrieval of PHS specimens and linkage to medical records (recipient and source animal). | 312.57(a) |
| 4.1.2.3 | Notify FDA of a clinical episode potentially representing a xenogeneic infection. | 312.32 |
| 4.2.2.1 | Document collaborations (transfer of obligation). | 312.52 |
| 4.2.3.1 | Develop educational materials (sponsor provides investigators with information needed to conduct investigation properly). | 312.50 |
| 4.3 | Sponsor to keep records of receipt, shipment, and disposition of investigative drug; investigator to keep records of case histories. | 312.57 and 312.62(b) |

Dated: October 10, 2000.

**Margaret M. Dotzel,**

*Associate Commissioner for Policy.*

[FR Doc. 00–26671 Filed 10–17–00; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Ophthalmic Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

*Name of Committee:* Ophthalmic Devices Panel of the Medical Devices Advisory Committee.

*General Function of the Committee:* To provide advice and recommendations to the agency on FDA's regulatory issues.

*Date and Time:* The meeting will be held on November 8, 2000, 8:30 a.m. to 5 p.m.

*Location:* Holiday Inn, Walker/Whetstone Rooms, Two Montgomery Village Ave., Gaithersburg, MD.

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*Contact Person:* Sara M. Thornton, Center for Devices and Radiological Health (HFZ 460), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2053, e-mail: SMT@CDRH.FDA.GOV, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12396. Please call the Information Line for up-to-date information on this meeting.

*Agenda:* The committee will discuss, make recommendations, and vote on a premarket approval application (PMA) for a collagen glaucoma drainage device for the reduction of intraocular pressure in patients with open-angle glaucoma uncontrolled on maximum tolerated medical therapy. The committee will also discuss issues related to the development of guidance for the postapproval study of extended wear contact lenses used beyond 7 days. Study design topics will include the type of study, definition of endpoints, and selection of participating study sites.

*Procedure:* Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by November 1, 2000. Oral presentations from the public will be scheduled between approximately 8:45 a.m. and 9:15 a.m. Near the end of the committee deliberations on the PMA, an additional 30-minute open public session will be conducted for interested persons to address issues specific to the submission before the committee. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before November 1, 2000, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: October 11, 2000.

**Linda A. Suydam,**

*Senior Associate Commissioner.*

[FR Doc. 00–26741 Filed 10–17–00; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 99D–4114]**

### "Guidance for Industry: Supplemental Guidance on Testing for Replication Competent Retrovirus in Retroviral Vector Based Gene Therapy Products and During Follow-up of Patients in Clinical Trials Using Retroviral Vectors;" Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a guidance document entitled "Guidance for Industry: Supplemental Guidance on Testing for Replication Competent Retrovirus in Retroviral Vector Based Gene Therapy Products and During Follow-up of Patients in Clinical Trials Using Retroviral Vectors" dated October 2000. The guidance document applies to the manufacture of gene therapy retroviral vector products intended for in vivo or ex vivo use and to followup monitoring of patients who have received retroviral vector products. The guidance document announced in this notice finalizes the draft guidance document entitled "Guidance for Industry: Supplemental Guidance on Testing for Replication Competent Retrovirus in Retroviral Vector Based Gene Therapy Products and During Follow-up of Patients in Clinical Trials Using Retroviral Vectors," announced in the **Federal Register** of November 3, 1999. The guidance document also supplements the guidance document entitled "Guidance for Industry: Guidance for Human Somatic Cell Therapy and Gene Therapy," dated March 1998; and a letter to sponsors of an investigational new drug using retroviral vectors, dated September 20, 1993.

**DATES:** Submit written comments at any time.

**ADDRESSES:** Submit written requests for single copies of the guidance document entitled "Guidance for Industry: Supplemental Guidance on Testing for Replication Competent Retrovirus in Retroviral Vector Based Gene Therapy Products and During Follow-up of Patients in Clinical Trials Using Retroviral Vectors," dated October 2000 to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist that office in processing your requests. The guidance document may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800, or by fax by calling the FAX Information System at 1–888–CBER–FAX or 301–827–3844. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit written comments on the guidance document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Valerie A. Butler, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

**SUPPLEMENTARY INFORMATION:**

### I. Background

FDA is announcing the availability of a guidance document entitled "Guidance for Industry: Supplemental Guidance on Testing for Replication Competent Retrovirus in Retroviral Vector Based Gene Therapy Products and During Follow-up of Patients in Clinical Trials Using Retroviral Vectors" dated October 2000. The guidance document applies to the manufacture of gene therapy retroviral vector products intended for in vivo or ex vivo use and to followup monitoring of patients who have received retroviral vector products. The document provides guidance for replication competent retrovirus (RCR) testing during manufacture, including timing, amount of material to be tested, and general testing methods. The document also provides guidance on monitoring patients for evidence of retroviral infection. The recommendations are based on data and analyses generated by CBER and members of the gene therapy community. The guidance document finalizes the draft document entitled "Guidance for Industry: Supplemental Guidance on Testing for Replication Competent Retrovirus in Retroviral Vector Based Gene Therapy Products and During Follow-up of Patients in Clinical Trials Using Retroviral Vectors," announced in the **Federal Register** of November 3, 1999 (64 FR 59783). The guidance document also supplements the guidance and recommendations pertaining to RCR testing given in the following documents: (1) "Guidance for Industry: Guidance for Human Somatic Cell Therapy and Gene Therapy" dated March 1998 (issued on the Internet); and (2) letter to sponsors of an investigational new drug using retroviral vectors, dated September 20, 1993.

The guidance document represents the agency's current thinking regarding testing for RCR in retroviral vector based gene therapy products. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both. As with other guidance documents, FDA does not intend this document to be all-inclusive and cautions that not all information may be applicable to all situations. The document is intended to provide information and does not set forth requirements.

### II. Comments

Interested persons may, at any time submit written comments to the Dockets Management Branch (address above) regarding this guidance document. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. A copy of the guidance document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

### III. Electronic Access

Persons with access to the Internet may obtain the guidance document at http://www.fda.gov/cber/guidelines.htm.

Dated: October 5, 2000.

**Margaret M. Dotzel,**

*Associate Commissioner for Policy.*

[FR Doc. 00–26670 Filed 10–17–00; 8:45 am]

BILLING CODE 4160–01–F



## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office at (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

*Proposed Project:* Grantee Reporting Requirements for the Ryan White Comprehensive AIDS Resources Emergency (CARE) Act of 1990—Title III (OMB 0915–0158)—Revision.

Section 2651 of the Public Health Service (PHS) Act (commonly known as Title III of the Ryan White Comprehensive AIDS Resource Emergency (CARE) Act of 1990), provides categorical funding to increase the capacity and capability of organizations that provide primary health care to HIV-related early intervention services to medically underserved persons who have, or are at high risk for, HIV infection. These services are provided as part of a continuum of HIV prevention and health care services.

The bulk of the information being collected describes the epidemiologic and demographic characteristics of the populations receiving early intervention services from grant recipients, and provides the basis for the annual report to the Secretary, which is legislatively mandated. It is also used to monitor the delivery of services, guide Federal policy, and assist in program development and evaluation.

The estimated response burden is as follows:

| Form name | No. of respondents | Responses per respondent | Total responses | Average time per response | Total burden hours |
|---|---|---|---|---|---|
| TIII PDR | 278 | 1 | 278 | 80 | 22,240 |

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: John Morrall, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: October 12, 2000.

**Jane M. Harrison,**

*Director, Division of Policy Review and Coordination.*

[FR Doc. 00–26742 Filed 10–17–00; 8:45 am]

BILLING CODE 4160–15–U

## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

### Invasive Species Advisory Committee

**AGENCY:** Office of the Secretary, Interior.

**ACTION:** Notice of meeting of the Invasive Species Advisory Committee.

**SUMMARY:** Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of meeting of the Invasive Species Advisory Committee. The purpose of the Advisory Committee is to provide advice to the Council, as authorized by Executive Order 13112, on a broad array of issues related to preventing the introduction of invasive species and providing for their control and minimizing the economic, ecological, and human health impacts that invasive species cause. The meeting on October 24 will be a joint meeting of the Advisory Committee and various Federal Agency Officials. The meeting on October 25 will consist of the Advisory Committee only. Both meetings will be open to the public. Attendance will be limited to space available.

**DATES:** Meeting of Invasive Species Advisory Committee and Federal Agencies: 8:00 a.m.–4:15 p.m., Tuesday October 24, 2000; Meeting of Advisory Committee only: 8:30 a.m.–3:00 p.m., Wednesday, October 25, 2000.

**ADDRESSES:** U.S. Fish and Wildlife Service, National Conservation Training Center, Shepherdstown, WV. The October 24th meeting will be held in the Auditorium. The October 25th meeting will be held in the Instructional West Building, Room 170.

**FOR FURTHER INFORMATION CONTACT:** Kelsey Passé, National Invasive Species Council Program Analyst; E-mail: kelsey_passe@ios.doi.gov; Phone: (202) 208–6336; Fax: (202) 208–1526.

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Dated: October 16, 2000.

**Lori Williams,**

*Executive Director, National Invasive Species Council.*

[FR Doc. 00–26927 Filed 10–17–00; 8:45 am]

BILLING CODE 4310–RK–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[CA–610–09–0777–42]**

### Meeting of the California Desert District Advisory Council October 21 Meeting

**SUMMARY:** Notice is hereby given, in accordance with Public Laws 92–463 and 94–579, that the location for the Bureau of Land Management California Desert District Advisory Council's Saturday, October 21 meeting has been changed. The Council will meet in formal session from 8:00 a.m. to 5:00 p.m. at the Barstow Community College, located at 2700 Barstow Road, Barstow, California.

The Council and interested members of the public will participate in a field tour of BLM-administered public lands on Friday, October 20, 2000. They will assemble for the field tour at the Holiday Inn parking lot at 7:45 a.m. and depart at 8:00 a.m. The hotel is located at 1511 East Main Street in Barstow. Tour stops will include sites along Route 66, Amboy Crater, Cadiz Land Company for a discussion on the proposed Cadiz Groundwater Storage and Dry-Year Supply Program, Camp Essex (Patton Camp), and the community of Goffs. Members of the public are welcome to participate in the tour, but should plan on providing their own transportation, drinks, and lunch.

The Council will meet in formal session on Saturday. Agenda items will include comments from BLM California State Director Mike Pool, and updates/briefings on the BLM National Off-Highway Vehicle Management Strategy, Route 66, the Draft California Desert District Recreation Fee Policy, and a California Desert District Non-Profit Association.

At 2:00 p.m. discussions will focus on the proposed Cadiz Groundwater Storage Project, which will include a panel discussion and overview of the proposed project. The Council meeting also will serve as a public meeting during which BLM will accept and record public comment regarding the proposed project. Members of the public must register with the Council Chairman to speak. The time allotted each speaker will be based upon the number of people who register to speak.

All Desert District Advisory Council meetings are open to the public. Time for public comment may be made available by the Council Chairman during the presentation of various agenda items, and is scheduled at the beginning of the meeting for topics not on the agenda.

Written comments may be filed in advance of the meeting for the California Desert District Advisory Council, c/o Bureau of Land Management, Public Affairs Office, 6221 Box Springs Boulevard, Riverside, California 92507–0714. Written comments also are accepted at the time of the meeting and, if copies are provided to the recorder, will be incorporated into the minutes.

**FOR FURTHER INFORMATION CONTACT:** Doran Sanchez at (909) 697–5220, BLM California Desert District External Affairs.

Dated: October 12, 2000.

**Douglas Romoli,**

*Acting District Manager.*

[FR Doc. 00–26705 Filed 10–17–00; 8:45 am]

BILLING CODE 1060–HG–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Reclamation

### Bay-Delta Advisory Council's Ecosystem Roundtable Meeting and Ecosystem Roundtable Amendments Subcommittee Meeting

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice of Meetings.

**SUMMARY:** The Bay-Delta Advisory Council's (BDAC) Ecosystem Roundtable will meet on November 2, 2000 to discuss an initial recommendation for funding under the 2001 Ecosystem Restoration Program project selection process. The Amendments Subcommittee will also meet on November 2, 2000 to discuss proposed contract modifications for several ongoing ecosystem restoration projects. These meetings are open to the public. Interested persons may make oral statements to the Ecosystem Roundtable an Amendments Subcommittee or may file written statements for consideration.

**DATES:** The BDAC's Ecosystem Roundtable meeting will be held from 9:30 a.m. to 3:00 p.m. on Thursday, November 2, 2000. The Ecosystem Roundtable Amendments Subcommittee meeting will be held from 3:00 p.m. to 4:00 p.m. on Thursday, November 2, 2000.

**ADDRESSES:** The Ecosystem Roundtable and Amendments Subcommittee will meet at the Convention Center, 1400 J Street, Room 204, Sacramento, CA 95814.

**FOR FURTHER INFORMATION CONTACT:** Rebecca Fawver, CALFED Bay-Delta Program, at (916) 657–2666. If reasonable accommodation is needed due to a disability, please contact the Equal Employment Opportunity Office at (916) 653–6952 or TDD (916) 653–6934 at least one week prior to the meeting.

**SUPPLEMENTARY INFORMATION:** The San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta system) is a critically important part of California's natural environment and economy. In recognition of the serious problems facing the region and the complex resource management decisions that must be made, the state of California and the Federal government are working together to stabilize, protect, restore, and enhance the Bay-Delta system. The State and Federal agencies with management and regulatory responsibilities in the Bay-Delta system are working together as CALFED to provide policy direction and oversight for the process.

One area of Bay-Delta management includes the establishment of a joint State-Federal process to develop long-term solutions to problems in the Bay-Delta system related to fish and wildlife, water supply reliability, natural disasters, and water quality. The intent is to develop a comprehensive and balanced plan that addresses all of the resource problems. This effort, the CALFED Bay-Delta Program (Program), is being carried out under the policy direction of CALFED. The Program is exploring and developing a long-term solution for a cooperative planning process that will determine the most appropriate strategy and actions necessary to improve water quality, restore health to the Bay-Delta ecosystem, provide for a variety of beneficial uses, and minimize Bay-Delta system vulnerability. A group of citizen advisors representing California's agricultural, environmental, urban, business, fishing, and other interests who have a stake in finding long-term solutions for the problems affecting the Bay-Delta system has been chartered under the Federal Advisory Committee Act (FACA). The BDAC provides advice to CALFED on the program mission, problems to be addressed, and objectives for the Program. BDAC provides a forum to help ensure public participation, and will review reports and other materials prepared by



CALFED staff. BDAC has established a subcommittee called the Ecosystem Roundtable to provide input on annual workplans to implement ecosystem restoration projects and programs.

Minutes of the meeting will be maintained by the Program, Suite 1155, 1416 Ninth Street, Sacramento, CA 95814, and will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting.

Dated: October 12, 2000

**Lester Snow,**

*Regional Director, Mid-Pacific Region.*

[FR Doc. 00–26702 Filed 10–17–00; 8:45 am]

BILLING CODE 4310–MN–M

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–334]**

### Certain Condensers, Parts Thereof and Products Containing Same, Including Air Conditioners for Automobiles; Notice of Rescission of Limited Exclusion Order

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has rescinded the limited exclusion order previously issued in the above-captioned investigation.

**FOR FURTHER INFORMATION CONTACT:** Donnette Rimmer, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–0663.

**SUPPLEMENTAL INFORMATION:** The authority for the Commission's action is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.76 of the Commission's rules of Practice and Procedure (19 CFR 210.76).

On August 20, 1997, the Commission issued a limited exclusion order in the investigation based upon a finding that respondents Showa Aluminum Corporation and Showa Aluminum Corporation of America (collectively "Showa") had violated section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), by importing certain condensers that infringed claims 9 and 10 of U.S. Letters Patent assigned to Modine.

On September 7, 2000, Showa and complainant Modine Manufacturing Company ("Modine") filed a joint petition to rescind the remedial order under Commission rule 210.76 on the basis of a settlement agreement they had reached. Showa and Modine asserted that their settlement agreement constituted "changed conditions of fact or law" sufficient to justify recission of the order under Commission rule 210.76(a), 19 CFR 210.76(a).

Having reviewed the parties' submissions, the Commission determined that the petition and settlement agreement satisfy the requirements of rule 210.76(a). The Commission therefore issued an order rescinding the limited exclusion order previously issued in the investigation.

Copies of the Commission's order and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) In the Office of the Secretary, U.S. International Trade Commission, 500 E. Street, SW., DC 20436, telephone (202) 205–2000. Public documents are available for downloading from the Commission's internet server (*http://www.usitc.gov*). Hearing impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at (202) 205–1810.

Issued: October 10, 2000.

By Order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 00–26747 Filed 10–17–00; 8:45 am]

BILLING CODE 7020–02–P

## INTERNATIONAL TRADE COMMISSION

**[Inv. No. 337–TA–439]**

### Certain HSP Modems, Software and Hardware Components Thereof, and Products Containing Same; Notice of Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Institution of investigation pursuant to 19 U.S.C. § 1337.

**SUMMARY:** Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on September 15, 2000, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, on behalf of PCTEL, Inc. of Milpitas, California. A supplement to the complaint was filed on October 3, 2000. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain HSP modems, software and hardware components thereof, and products containing same by reason of infringement of claims 1–2 of U.S. Letters Patent 5,787,305, claims 1–4, 7–8, and 11–15 of U.S. Letters Patent 5,931,950, claims 1, 2, 10, and 15–17 of U.S. Letters Patent 4,841,561, and claims 1, 6–7, 10–12, and 15–19 of U.S. Letters Patent 5,940,459. The complaint further alleges that there exists, or is in the process of being established, an industry in the United States as required by subsection (a)(2) of section 337.

The complainant request that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and permanent cease and desist orders.

**ADDRESSES:** The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may be obtained by accessing its internet server (http://www.usitc.gov).

**FOR FURTHER INFORMATION CONTACT:** Shival P. Virmani, Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2568.

**Authority:** The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2000).

### Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on October 10, 2000, *ordered* that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain HSP modems, software or hardware components thereof, or products containing same by

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reason of infringement of claims 1 or 2 of U.S. Letters Patent 5,787,305, claims 1–4, 7–8, or 11–15 of U.S. Letters Patent 5,931,950, claims 1, 2, 10, or 15–17 of U.S. Letters Patent 4,841,561, or claims 1, 6–7, 10–12, or 15–19 of U.S. Letters Patent 5,940,459, and whether there exists, or is in the process of being established, an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—PCTEL, Inc., 1331 California Circle, Milpitas, CA 95035.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

ESS Technology, Inc., 48401 Fremont Blvd., Fremont, CA 94538
Smart Link Ltd., 7 Giborei Israel St., Southern Industrial Zone, Netanya 42505, Israel
Smart Link Technologies, Inc., 44 Pleasant St., Watertown, MA 02172

(c) Shival P. Virmani, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, S.W., Room 401–J, Washington, D.C. 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Debra Morriss is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a) of the Commission's Rules, such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of the respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

Issued: October 11, 2000.

By order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 00–26748 Filed 10–17–00; 8:45 am]

BILLING CODE 7020–02–P

## DEPARTMENT OF JUSTICE

### National Institute of Corrections

### Advisory Board Meeting

*Time and Date:* 8:45 a.m. to 4:00 p.m. on Monday, November 13, 2000 & 8:00 a.m. to 12 noon on Tuesday, November 14, 2000.

*Place:* Holiday Inn Holidome & Conference Center, 5400 Holiday Drive, Frederick, Maryland 21703.

*Status:* Open.

*Matters to be Considered:* Tours/Presentations Related to the Maryland Community Criminal Justice Treatment Program in Frederick County; Updates on Mental Health Program Options and Interstate Compact Activities; Results of Advisory Board Hearings; and Reports by Program Divisions.

**CONTACT PERSON FOR MORE INFORMATION:** Larry Solomon, Deputy Director, 202–307–3108, ext. 155.

**Larry Solomon,**

*Deputy Director.*

[FR Doc. 00–26757 Filed 10–17–00; 8:45 am]

BILLING CODE 4410–36–M

## DEPARTMENT OF JUSTICE

### Federal Bureau of Prisons

### Notice of Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Development of a Medium-Security Federal Correctional Facility in Pollock (Grant Parish), Louisiana.

**AGENCY:** Bureau of Prisons, Department of Justice.

**ACTION:** Notice of intent to prepare a draft environmental impact statement (DEIS).

**SUMMARY:**

### Proposed Action

The United States Department of Justice, Federal Bureau of Prisons, has determined that an additional medium-security Federal Correctional Institution (FCI) is needed in its system. The Federal Bureau of Prisons (BOP) is facing unprecedented growth in its inmate population. As a result, medium-security correctional institutions will be impacted. The BOP currently controls a 464-acre parcel to the southeast of the Pollock Municipal Airport, located eight miles southwest of the Town of Pollock and 17 miles north of Alexandria, Louisiana. Construction is currently underway for a high-security U.S. Penitentiary, an adjacent minimum-security satellite Camp, and ancillary facilities that will serve the various components. The BOP proposes to construct and operate a medium-security FCI on a portion of the 464-acre parcel. The medium-security facility would provide habitation for approximately 1152 inmates. The site appears to be of sufficient size to provide space for housing, programs, administrative services and other support areas. However, the BOP will also analyze a 320-acre tract to the immediate west for the project and/or for future expansion. This Notice also initiates the BOP's responsibilities under the National Historic Preservation Act of 1966, as amended.

### The Process

In the process of evaluating the site, several aspects will receive detailed examination including: but not limited to utilities, traffic patterns, noise levels, visual intrusion, threatened and endangered species, and socioeconomic impacts. Possible archeological and cultural resources will be studied and documented pursuant to the National Historic Preservation Act of 1966, as amended.

### Alternatives

In developing the DEIS, the option of "no action" for the proposed facility will be fully and thoroughly examined.

### Scoping Process

During the preparation of the DEIS, there will be opportunities for public involvement in order to determine the issues to be examined. A Scoping Meeting will be held at the Pollock Elementary School on 4001 Highway 8 at 7:00 p.m. on November 15, 2000, in Pollock, Louisiana. The meeting will be well publicized and will be held at a time which will make it possible for the public and interested agencies or organizations to attend. In addition, other meetings and discussions will be held by BOP representatives, local officials and other interested community parties.



### DEIS Preparation

Public notice will be given concerning the availability of the DEIS for public review and comment.

### Address

Questions concerning the proposed action and the DEIS may be directed to: David J. Dorworth, Chief, Site Selection and Environmental Review Branch, Federal Bureau of Prisons, 320 First Street, NW., Washington, D.C. 20534, Attention: Issac J. Gaston, telephone (202) 514–6470, telefacsimile (202) 616–6024, E-mail: siteselection@bop.gov.

Dated: October 12, 2000.

**David J. Dorworth,**

*Chief, Site Selection and Environmental Review Branch.*

[FR Doc. 00–26765 Filed 10–17–00; 8:45 am]

BILLING CODE 4410–05–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–37,600 and NAFTA–03998]**

### Trinity Industries, Incorporated, Mt. Orab, OH; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of September 25, 2000 the petitioner requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance, applicable to petition numbers TA–W–37,600 and NAFTA 03998, respectively. The denial notices were signed on August 16, 2000 and published in the **Federal Register** on September 12, 2000 (65 FR 55049 and 55050, respectively).

The petitioner provided additional information about imports of coal cars which should have been considered by the Department in its survey of customers.

*Conclusion*

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC this 4th day of October 2000.

**Linda G. Poole,**

*Certifying Officer, Office of Trade Adjustment Assistance.*

[FR Doc. 00–26729 Filed 10–17–00; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–37,709]**

### The Boeing Company, St. Louis, Missouri; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at The Boeing Company, St. Louis, Missouri. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–37,709; The Boeing Company St. Louis, Missouri (October 10, 2000).

Signed at Washington, D.C. this 11th day of October, 2000.

**Linda G. Poole,**

*Acting Director, Division of Trade Adjustment Assistance.*

[FR Doc. 00–26720 Filed 10–17–00; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–37,839 and 839A]**

### Congoleum Corp., Trainer, PA and Mercerville, NJ; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on August 18, 2000, applicable to workers of Congoleum Corp., Trainer, Pennsylvania. The notice was published in the **Federal Register** on September 12, 2000 (65 FR 55050).

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. Information shows that worker separations occurred at the Plant #1, Mercerville, New Jersey location of Congoleum Corp. The workers are engaged in the production of vinyl flooring and examine, cut pack and ship flooring for all Congoleum's production facilities, including Trainer, Pennsylvania.

Accordingly, the Department is amending the certification to include workers of Congoleum Corp., Plant #1, Mercerville, New Jersey.

The intent of the Department's certification is to include all workers of Congoleum Corp. who are adversely affected by increased imports.

The amended notice applicable to TA–W–37,839 is hereby issued as follows:

"All workers of Congoleum Corp., Trainer, Pennsylvania (TA–W–37,839) and Plant #1, Mercerville, New Jersey (TA–W–37,839A) who became totally or partially separated from employment on or after June 15, 1999 through August 18, 2002 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, D.C. this 4th day of October, 2000.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 00–26725 Filed 10–17–00; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–38,100]**

### Farah/Savane Intl., El Paso, TX; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on September 18, 2000 in response to a petition filed on behalf of workers at Farah/Savane Intl., El Paso, Texas.

The petitioning group of workers is subject to an ongoing investigation for which a determination has not yet been issued (TA–W–37,999). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 25th day of September, 2000.

**Edward A. Tomchick,**

*Director, Division of Trade Adjustment Assistance.*

[FR Doc. 00–26730 Filed 10–17–00; 8:45 am]

BILLING CODE 4510–30–M

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## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA–W–37,607 and TA–W–37,607A]

### Henry I. Siegel Co., Inc., Now Known as Durango Apparel Manufacturing, Inc., Bruceton, TN and New York, NY; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 16, 2000, applicable to workers of Henry I. Siegel Co., Inc., Bruceton, Tennessee. The notice was published in the **Federal Register** on June 8, 2000 (65 FR 36469).

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of men's and women's jeans, slacks and shorts. Findings show that the Department incorrectly set the worker certification impact date at April 30, 2000 for the New York, New York location. The impact date should be June 30, 1999, one year prior to the date of the petition.

Accordingly, the Department is amending the certification to properly reflect this matter.

The amended notice applicable to TA–W–37,607 and TA–W–37,607A is hereby issued as follows:

"All workers of Henry I. Siegel Co., Inc., now known as Durango Apparel Manufacturing, Inc., Bruceton, Tennessee (TA–W–37,607) who became totally or partially separated from employment on or after April 30, 2000 through May 16, 2002 and "all workers of Henry I. Siegel Co., Inc. now known as Durango Apparel Manufacturing, Inc., New York, New York (TA–W–37,607A) who became totally or partially separated from employment on or after June 30, 1999 through May 16, 2002 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC this 4th day of October, 2000.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 00–26724 Filed 10–17–00; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA–W–38,087]

### Imaging Technologies, Inc., Cookeville, TN; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on September 18, 2000, in response to a petition filed on behalf of workers at Imaging Technologies Inc., Cookeville, Tennessee.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 26th day of September, 2000.

**Edward A. Tomchick,**

*Director, Division of Trade Adjustment Assistance.*

[FR Doc. 00–26726 Filed 10–17–00; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA–W–37,411 and 411A]

### The Monet Group, Incorporated, East Providence, RI and New York, NY; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 28, 2000, applicable to workers of the Monet Group, Incorporated East Providence, Rhode Island and New York, New York. The notice was published in the **Federal Register** on April 21, 2000 (65 FR 21473).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of fashion jewelry. New information received from the company shows that Liz Caliborne Incorporated, through a newly formed wholly owned subsidiary, Monet International, Incorporated, purchased the assets of The Monet Group, Incorporated as of July 26, 2000. Information also shows that workers separated after July 26, 2000 from employment at the subject firm, had their wages reported under two separate unemployment insurance (UI) tax account; Monet Group, Incorporated and Monet International, Incorporated.

Accordingly, the Department is amending the certification to properly reflect this matter.

The amended notice applicable to TA–W–37,411 is hereby issued as follows:

"All workers of Monet Group, Incorporated, now known as Monet International, Incorporated, a subsidiary of Liz Caliborne, Incorporated, East Providence, Rhode Island (TA–W–37,411) and New York, New York (TA–W–37,411A) who became totally or partially separated from employment on or after May 5, 2000 through March 28, 2002 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, D.C. This 4th day of October, 2000.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 00–26718 Filed 10–17–00; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitions or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address show below, not later than October 30, 2000.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than October 30, 2000.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW, Washington, DC 20210.

Signed at Washington, D.C. this 2nd day of October, 2000.

**Curtis Kooser,**

*Acting Director, Division of Trade Adjustment Assistance.*



APPENDIX

[Petitions Instituted On 10/02/2000]

| TA–W | Subject firm (petitioners) | Location | Date of petition | Product(s) |
|---|---|---|---|---|
| 38,136 .... | Fruit of The Loom (Wrks) | Harlinger, TX | 09/11/2000 | Sew Blue Jeans. |
| 38,137 .... | Vincenncis Manufacturing (Wrks) | Vincenncis, IN | 09/20/2000 | Automobile Seats. |
| 38,138 .... | Ratheon T.I. (Wkrs) | Lewisville TX | 09/15/2000 | Surface Mount Boards. |
| 38,139 .... | Lyall Alabama (Wrks) | Ardmore, AL | 09/06/2000 | Wire Harnesses. |
| 38,140 .... | Esquire Novelty (Comp) | Amsterdam, NY | 09/15/2000 | Westem Style Toys. |
| 38,141 .... | Lilly Industries (Wrks) | Paulsboro, NJ | 09/09/2000 | Industrial Paint Products. |
| 38,142 .... | Bush Brothers and Co. (Wrks) | Blytheville, AR | 09/13/2000 | Canned Foods, Tomato Paste, Spinach. |
| 38,143 .... | Copley Pharmaceutical (Comp) | Canton, MA | 09/13/2000 | Pharmaceutical Products. |
| 38,144 .... | Avoca Manufacturing (Wrks) | Avoca, PA | 09/15/2000 | Children's Clothing. |
| 38,145 .... | Ceragraphic, Inc. (Wkrs) | Hackensack, NJ | 09/12/2000 | Perfume Bottles, Cream Containers. |
| 38,146 .... | Rosboro Lumber (WCIW) | Springfield, OR | 09/16/2000 | Lumber, Plywood. |
| 38,147 .... | Potlatch Corp. (Wkrs) | Pierce, ID | 09/14/2000 | Plywood Products. |
| 38,148 .... | Telex Communications, Inc (Comp) | Newport, TN | 09/15/2000 | Industrial Audio Systems. |
| 38,149 .... | Plum Creek Timber (Comp.) | Pablo, MT | 09/18/2000 | Lumber Boards. |
| 38,150 .... | Key Circuit Co (Wrks) | Fountain Valley, CA | 09/18/2000 | Printed Circuit Boards. |
| 38,151 .... | Elliott Co. (USWA) | Jeannette, PA | 09/06/2000 | Turbines and Compressors. |
| 38,152 .... | Montgomery Hosiery Mill (Comp) | Star, NC | 09/18/2000 | Socks. |
| 38,153 .... | Agco Corp. (Wrks) | Coldwater, OH | 09/13/2000 | Farm Eqauipment. |
| 38,154 .... | Leather's Best (Wrks) | Johnstown, NY | 09/19/2000 | Full Grain Leather Goods. |
| 38,155 .... | Esco Corp. (Comp) | San Diego, CA | 09/15/2000 | Hydraulic Demolition Hammers. |
| 38,156 .... | Matsushita Home Appliance (Comp) | Danville, KY | 09/11/2000 | Microwave Ovens. |
| 38,157 .... | Ashland Chemical (UAW) | Ashtabula, OH | 09/11/2000 | Unsaturated Polyster Resins. |
| 38,158 .... | Cookson Semiconductor (Wrks) | Warwick, RI | 09/18/2000 | Conductive and Non-Conductive Films. |
| 38,159 .... | Excel USA, Inc. (Comp) | West Wareham, MA | 09/15/2000 | Surf Masts, Hockey, Sticks. |
| 38,160 .... | Jomac-Wells Lamont (Comp) | Brunswick, MO | 09/20/2000 | Industrial Work Gloves. |
| 38,161 .... | Liberty Precision Tool Co (Wrks) | Bessemer City, NC | 09/21/2000 | Machine Parts—Drill Fixtures. |
| 38,162 .... | Excel Finishing Inc. (Wkrs) | Old Fort, NC | 09/21/2000 | Textiles—Finishing Dyeing. |
| 38,163 .... | Omron Manufacturing (Comp) | St. Charles, IL | 09/3/2000 | Telecommunication Relays. |
| 38,164 .... | Nafta Textile Mills, LLC (Wrks) | Manville, RI | 09/20/2000 | Woven Cloth, Dyed and Finished. |
| 38,165 .... | L and L Manufacturing Co. (Wkrs) | Los Angeles, CA | 09/19/2000 | Sew Clothing. |
| 38,166 .... | Garan Manufacturing Corp (Wrks) | Rainsville, AL | 09/14/2000 | Apparel. |
| 38,167 .... | Ametek Aerospace (IUE) | Wilmington, MA | 09/18/2000 | Carles, Thermocouples, Machined Parts. |
| 38,168 .... | Anchor Dye and Finishing (Wkrs) | Philadelphia, PA | 09/19/2000 | Finished Camelhair, Cashmere, Angora. |
| 38,169 .... | Quality Veneer/Hanel (Wrks) | Odell, OR | 09/20/2000 | Dimensional Lumber. |
| 38,170 .... | Advance Transformer (Wrks) | Monroe, WI | 09/19/2000 | Ballasts—Lighting. |
| 38,171 .... | Lear Corp (UAW) | Traverse City, MI | 09/20/2000 | Terminal Block Assemblies. |
| 38,172 .... | Maxxim Medical (Wrks) | Los Gatos, CA | 09/15/2000 | Disposable Gloves. |
| 38,173 .... | Ethicon Endo-Surgery, Inc (Comp) | Cincinnati, OH | 09/20/2000 | Surgical Instruments. |
| 38,174 .... | Paper, Calmenson and Co (USWA) | Bucyrus, OH | 09/22/2000 | Grader Blades. |
| 38,175 .... | Caitac Manufacturing, Inc (Comp) | Bellingham, WA | 09/18/2000 | Men's Denim Jeans. |
| 38,176 .... | Tyco Electronics (Comp) | Romeoville, IL | 09/08/2000 | Battery Packs. |
| 38,177 .... | Potlatch Corp. (Wrks) | Lewiston, ID | 09/11/2000 | Pulp and Paper. |
| 38,178 .... | Flowserve Corp. (USWA) | Phillipsburg, NJ | 09/14/2000 | Enigne Pumps. |

[FR Doc. 00–26727 Filed 10–17–00; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

[NAFTA—04155]

### Alstom Power, Inc., Heat Recovery Steam Generators, Kings Mountain, NC; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Public Law 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 14, 2000 in response to a petition filed on behalf of workers at Alstom Power, Incorporated, Heat Recovery Steam Generators, Kings Mountain, North Carolina.

The petitioner requested that the petition for NAFTA–TAA be withdrawn. Consequently, further investigation in this case would serve no purposes, and the investigation has been terminated.

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Signed at Washington, DC, this 6th day of October, 2000.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 00–26723 Filed 10–17–00; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Investigations Regarding Certifications of Eligibility To Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement-Transitional Adjustment Assistance Implementation Act (P.L. 103–182), hereinafter called (NAFTA–TAA), have been filed with State Governors under Section 250(b)(1) of Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon notice from a Governor that a NAFTA–TAA petition has been received, the Director of the Division of Trade Adjustment Assistance (DTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes action pursuant to paragraphs (c) and (e) of Section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment on or after December 8, 1993 (date of enactment of P.L. 103–182) are eligible to apply for NAFTA–TAA under Subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Director of DTAA at the U.S. Department of Labor (DOL) in Washington, DC provided such request if filed in writing with the Director of DTAA not later than October 30, 2000.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Director of DTAA at the address shown below not later than October 30, 2000.

Petitions filed with the Governors are available for inspection at the Office of the Director, DTAA, ETA, DOL, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 11th day of October, 2000.

**Linda G. Poole,**

*Acting Director, Division of Trade Adjustment Assistance.*

APPENDIX

| Subject firm | Location | Date received at Governor's office | Petition No. | Articles produced |
|---|---|---|---|---|
| Asarco (Wkrs) | East Helena, MT | 08/30/2000 | NAFTA–4,122 | Metal products. |
| Eastman Kodak (Co.) | Rochester, NY | 08/30/2000 | NAFTA–4,123 | Molding for single use cameras. |
| Kirsch (UAW) | Sturgis, MI | 08/09/2000 | NAFTA–4,124 | Drapery hardware. |
| Allegheny Ludlum (USWA) | Washington, PA | 08/31/2000 | NAFTA–4,125 | Stainless steels. |
| Acer America (Co.) | San Jose, CA | 08/28/2000 | NAFTA–4,126 | Computers. |
| Paramount Headwear (Co.) | Dexter, MO | 08/28/2000 | NAFTA–4,127 | Straw headwear. |
| Fawn Industries (Co.) | Middlesex, NC | 09/05/2000 | NAFTA–4,128 | Injection molded plastic parts. |
| Imaging Technologies (Co.) | Cookeville, TN | 08/28/2000 | NAFTA–4,129 | Ink jet systems. |
| Brown Wooten Mills (Co.) | Mount Airy, NC | 08/14/2000 | NAFTA–4,130 | Socks. |
| Burlington Resources (Wkrs) | Sidney, MT | 09/06/2000 | NAFTA–4,131 | Oil and gas. |
| Nova Bus (Co.) | Roswell, NM | 09/01/2000 | NAFTA–4,132 | Transit buses. |
| Marino Technologies (Co.) | Opa Locka, FL | 09/08/2000 | NAFTA–4,133 | Bulk bags. |
| Lebanite Corporation (Wkrs) | Lebanon, OR | 09/07/2000 | NAFTA–4,134 | Hardboard. |
| United States Leather (Co.) | Conover, NC | 09/08/2000 | NAFTA–4,135 | Leather. |
| Banta Healthcare Group (Wkrs) | Eaton Park, FL | 09/08/2000 | NAFTA–4,136 | Sponges, dental and medical. |
| Quality Veneer & Lumber—Hanel Lumber (Wkrs). | Hood River, OR | 09/05/2000 | NAFTA–4,137 | Lumber. |
| Delco Remy International (UAW) | Anderson, IN | 09/07/2000 | NAFTA–4,138 | Starters and alternators. |
| Lear Corporation (UAW) | Detroit, MI | 08/07/2000 | NAFTA–4,139 | Form seat backs & cushions. |
| Ultima Trim (Wkrs) | Los Indios, TX | 09/06/2000 | NAFTA–4,140 | Leather seats. |
| Bru Mar (Wkrs) | Allentown, PA | 09/06/2000 | NAFTA–4,141 | Swimsuits. |
| Fawn Industrial (Co.) | Maryville, TN | 09/11/2000 | NAFTA–4,142 | Injection molded plastics parts. |
| Kezar Falls Woolen (Wkrs) | Kezar Falls, ME | 09/11/2000 | NAFTA–4,143 | Wool blend cloth. |
| Gaffney Manufacturing (Co.) | Spartanburg, SC | 09/08/2000 | NAFTA–4,144 | Ladies apparel. |
| Wolverine World Wide (Co.) | Rockford, MI | 08/21/2000 | NAFTA–4,145 | Shoes. |
| AirBoss Polymer Products (IBS) | South Haven, MI | 09/11/2000 | NAFTA–4,146 | Molded rubber products. |
| Paccar Kenworth (Wkrs) | Seattle, WA | 08/31/2000 | NAFTA–4,147 | Trucks. |
| Mead Products (PACE) | Kalamazoo, MI | 09/05/2000 | NAFTA–4,148 | Paper. |
| Qwik Tool (Wkrs) | Lexington, KY | 09/07/2000 | NAFTA–4,149 | Auto products. |
| Holcroft (Wkrs) | Livonia, MI | 08/17/2000 | NAFTA–4,150 | Heat treating furnaces. |
| Equitable Production (Wkrs) | Kingsport, TN | 09/15/2000 | NAFTA–4,151 | Natural gas & oil. |
| Tyco Electronics (Co.) | Boyne City, MI | 08/15/2000 | NAFTA–4,152 | Automative electrical terminals. |
| General Binding (Wkrs) | Aubun Hills, MI | 08/08/2000 | NAFTA–4,153 | Binders. |
| Renaissance Industries (USWA) | DuBois, PA | 09/13/2000 | NAFTA–4,154 | Pipe thread protectors. |
| Alstom Power (Co.) | Kings Mountain, NC | 09/14/2000 | NAFTA–4,155 | Heat recovery steam generators. |
| Archer Daniels Midland (Wkrs) | Helena, AR | 09/13/2000 | NAFTA–4,156 | Soybean. |
| Heinz Pet Products (Wkrs) | El Paso, TX | 09/11/2000 | NAFTA–4,157 | Jerky beef & hearty bone dog food. |
| Thaw Corporation (Co.) | Seattle, WA | 09/13/2000 | NAFTA–4,158 | Garments & requipment. |
| Fujitsu Computer Products of America, (Co.). | Hillsboro, OR | 09/14/2000 | NAFTA–4,159 | Repair of hard disk drives. |
| Quality Veneer and Lumber (IAM) | Seattle, WA | 09/19/2000 | NAFTA–4,160 | Lumber. |



APPENDIX—Continued

| Subject firm | Location | Date received at Governor's office | Petition No. | Articles produced |
|---|---|---|---|---|
| Evy of California (Wkrs) | Los Angeles, CA | 09/13/2000 | NAFTA–4,161 | Children's & infants wear. |
| Potlatch (Wkrs) | Pierce, ID | 09/18/2000 | NAFTA–4,162 | Wood products. |
| Lear Corporation (UAW) | Traverse City, MI | 09/26/2000 | NAFTA–4,163 | Terminal block. |
| Avalon Payroll Group (Wkrs) | New York, NY | 09/25/2000 | NAFTA–4,164 | Film, television & commercial production. |
| Sharp Manufacturing Co. of America (IBEW). | Memphis, TN | 09/22/2000 | NAFTA–4,165 | Television sets. |
| Flowserve (USWA) | Phillipsburg, NJ | 09/20/2000 | NAFTA–4,166 | Engineered pumps. |
| Rosboro Lumber (Wkrs) | Springfield, OR | 09/18/2000 | NAFTA–4,167 | Lumber plywood. |
| Tyco Electronics (Co.) | Romeoville, IL | 09/21/2000 | NAFTA–4,168 | Battery packs. |
| Hoh River Timber (WCIW) | Omak, WA | 09/21/2000 | NAFTA–4,169 | Wood panel products. |
| Tru Stitch Footwear (UFCW) | Malone, NY | 09/07/2000 | NAFTA–4,170 | Rubber soled slippers. |
| Fruit of the Loom (Wkrs) | Harlinger, TX | 09/21/2000 | NAFTA–4,171 | Blue jeans. |
| Ametek Aerospace (IUE) | Wilmington, MA | 09/19/2000 | NAFTA–4,172 | Aircraft. |
| Caitac Manufacturing (Co.) | Bellingham, WA | 09/25/2000 | NAFTA–4,173 | Denim jeans. |
| UFE (Wkrs) | El Paso, TX | 09/29/2000 | NAFTA–4,174 | Auto parts. |
| Jomac Wells Lamont Industry (Wkrs) | Brunswick, MO | 09/28/2000 | NAFTA–4,175 | Gloves. |
| Potlatch (Wkrs) | Lewiston, ID | 09/18/2000 | NAFTA–4,176 | Plywood products. |
| Derby Industries (Co.) | Lexington, KY | 09/06/2000 | NAFTA–4,177 | Laser printer. |
| Montgomery Hosiery Mill (Co.) | Star, NC | 09/26/2000 | NAFTA–4,178 | Hosiery. |
| GP Timber (Co.) | Central Point, OR | 09/25/2000 | NAFTA–4,179 | Sawlogs. |
| Plum Creek Timber (Co.) | Pablo, MT | 09/26/2000 | NAFTA–4,180 | Lumber. |
| Ametek US Guage (IAMAW) | Sellersville, PA | 09/28/2000 | NAFTA–4,181 | Hardware for guage. |
| Fleetwood Homes of Georgia (Wkrs) | Douglas, GA | 09/29/2000 | NAFTA–4,182 | Lumber. |
| Paper, Calmenson (USWA) | Bucyrus, OH | 09/26/2000 | NAFTA–4,183 | Grader blades. |
| Mountaineer Precision Tool & Mold (Wkrs) | Waynesville, NC | 09/27/2000 | NAFTA–4,184 | Injection molds. |
| Liberty Precision Tool (Co.) | Bassemer City, NC | 09/26/2000 | NAFTA–4,185 | Machine parts. |
| Excel Finishing (Wkrs) | Old Fort, NC | 09/27/2000 | NAFTA–4,186 | Dying & finishing cloth. |
| Metal Powder (Co.) | Logan, OH | 09/26/2000 | NAFTA–4,187 | Casting. |
| M. Fine and Sons (Wkrs) | Loretto, TN | 10/02/2000 | NAFTA–4,188 | Blue jeans. |
| Talon (Wkrs) | Commerce, CA | 09/29/2000 | NAFTA–4,189 | Metal zippers. |
| Chilton Toys (PACE) | Seymour, WI | 09/28/2000 | NAFTA–4,190 | Toys. |
| Cox Target Media Sales (Co.) | Washington, NC | 10/02/2000 | NAFTA–4,191 | Carton & overwrapped samples. |
| ADM Milling (IBT) | Milwaukee, WI | 09/28/2000 | NAFTA–4,192 | Milling. |
| MHPG (Co.) | Whitinsville, MA | 09/29/2000 | NAFTA–4,193 | Printed t-shirts. |
| Wabash Automotive (Wkrs) | Irving, TX | 09/29/2000 | NAFTA–4,194 | Slip ring. |
| Avery Dennison (Co.) | Crossville, TN | 10/05/2000 | NAFTA–4,195 | Writing instruments. |
| Swift Denim (Co.) | Erwin, NC | 10/05/2000 | NAFTA–4,196 | Denim fabric. |
| General Electric (Wkrs) | Erie, PR | 10/03/2000 | NAFTA–4,197 | DC motor. |
| PPG Industries (USWA) | Springdale, PA | 10/04/2000 | NAFTA–4,198 | Coating's and resin. |
| United States Sugar (IAM) | Clewiston, FK | 09/19/2000 | NAFTA–4,199 | Sugar. |
| Crater Lake Potato Distributros (Wkrs) | Kalmaths Falls, OR | 10/03/2000 | NAFTA–4,200 | Package potatoes. |
| Contract Apparel (Wkrs) | El Paso, TX | 10/09/2000 | NAFTA–4,201 | Pants, wool jackets, blouses. |
| Samsonite (IBT) | Tucson, AZ | 10/02/2000 | NAFTA–4,202 | Soft side luggage. |
| EPSG Pipay Services (Wkrs) | Burbank, CA | 10/02/2000 | NAFTA–4,203 | Film crew. |
| Supply One (Wkrs) | K-Falls, OR | 09/26/2000 | NAFTA–4,204 | Lumber. |
| North Powder Lumber (Wkrs) | North Powder, OR | 10/06/2000 | NAFTA–4,205 | Studs. |
| Williamette Industries (WCIW) | Albany, OR | 10/03/2000 | NAFTA–4,206 | Mouldings. |
| United States Leather (UFCW) | Omaha, NE | 09/11/2000 | NAFTA–4,207 | Leather for auto seathing. |
| Progress Lighting (Wkrs) | Cowpens, SC | 10/09/2000 | NAFTA–4,208 | Light fixtures. |
| Century II Staffing—Creighton, Inc. (Wkrs) | Reidsville, NC | 10/06/2000 | NAFTA–4,209 | Military uniforms. |
| Royal Oak Charcoal (Wkrs) | Paris, AR | 10/09/2000 | NAFTA–4,210 | Charcoal. |
| Tyco Electronics (Co.) | Clinton Township, MI | 10/04/2000 | NAFTA–4,211 | Auto wiring harness |
| Bay Club Sportwear (Wkrs) | Copiague, NY | 10/10/2000 | NAFTA–4,212 | Beachwear. |
| L and L Manufacturing (Wkrs) | Los Angeles, CA | 09/30/2000 | NAFTA–4,213 | Women's & girl's clothing. |
| Gadsden Machine and Roll (Wkrs) | Gadsden, LA | 10/10/2000 | NAFTA–4,214 | Steel production equipment. |

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[FR Doc. 00–26719 Filed 10–17–00; 8:45 am]
BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

[NAFTA–3983]

### Four Seasons of Georgetown, Georgetown, SC; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Public Law 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2331), an investigation was initiated on June 22, 2000, in response to a petition filed on the same date by a company official, on behalf of workers at Four Seasons of Georgetown, Georgetown, South Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 5th day of October, 2000.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 00–26728 Filed 10–17–00; 8:45 am]
BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

[NAFTA–02847]

### Sun Apparel of Texas, LTD Armour Plant Cutting Room and Laundry Facility El Paso, TX; Amended Certification Regarding Eligibility to Apply for NAFTA-Transitional Adjustment Assistance

In accordance with section 250(A), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974 (19 USC 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on March 22, 1999, applicable to workers of Sun Apparel of Texas, Ltd., Armour Plant Cutting Room, El Paso, Texas. The notice was published in the **Federal Register** on April 27, 1999 (64 FR 22649).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers were engaged in cutting fabric for the apparel industry. New information shows that worker separations occurred at the laundry facility of the subject firm and will continue until its closing in November, 2000. The workers provided laundry services supporting the cutting room operation which closed in 1999. The laundry facility workers were inadvertently omitted from the certification.

The intent of the Department's certification is to include all workers of Sun Apparel of Texas, Ltd., Armour Plant Cutting Room who were adversely affected by increased imports from Mexico.

Accordingly, the Department is amending the certification to include workers of Sun Apparel of Texas, Ltd., Armour Plant Cutting Room, and Laundry Facility, El Paso, Texas. The amended notice applicable to NAFTA–02847 is hereby issued as follows:

"All workers of Sun Apparel of Texas, Ltd., Armour Plant Cutting Room and Laundry Facility, El Paso, Texas who became totally or partially separated from employment on or after March 22, 1999 through March 22, 2001 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974."

Signed at Washington, DC this 10th day of October, 2000.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 00–26722 Filed 10–17–00; 8:45 am]
BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

[NAFTA–04003]

### Wallowa Forest Products, Wallowa, Oregon; Notice of Revised Determination on Reopening

On August 22, 2000, the Department issued a Negative Determination Regarding Worker Eligibility to apply for NAFTA Transitional Adjustment Assistance applicable to workers of Wallowa Forest Products, Wallowa, Oregon. The notice was published in the **Federal Register** on September 12, 2000 (65 FR 55050).

By letters of September 21 and October 5, 2000, the company requested administrative reconsideration regarding the Department's denial and provided information about customer purchases of imported stud lumber that the Department had not previously considered.

Workers at the subject firm were engaged in employment related to the production of stud lumber. The workers are not separately identifiable by product line.

Sales, production and employment at the Wallowa facility declined during the relevant time period; the facility closed in June 2000.

The initial investigation resulted in a negative determination because there was no shift in production to Mexico or Canada and the company did not purchase imported stud lumber from Mexico or Canada. In addition, the Department conducted a survey of major customers which revealed that customers of the subject firm were not increasing their purchases of imported stud lumber.

The customer information provided by the company in its request for administrative reconsideration, and verified by the Department, revels that a major customer increased purchases of imported stud lumber from Canada while reducing purchases from the subject firm.

### Conclusion

After careful review of the facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with stud lumber contributed importantly to the declines in sales or production and to the total or partial separation of workers of Wallowa Forest Products, Wallowa, Oregon. In accordance with the provisions of the Trade Act, I make the following certification:

"All workers of Wallowa Forest Products, Wallowa, Oregon who became totally or partially separated from employment on or after June 27, 1999 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974."

Signed in Washington, D.C. this 6th day of October 2000.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 00–26721 Filed 10–17–00; 8:45 am]
BILLING CODE 4510–30–M

## MORRIS K. UDALL SCHOLARSHIP AND EXCELLENCE IN NATIONAL ENVIRONMENT POLICY FOUNDATION

### Notice of Meeting

The Board of Trustees of the Morris K. Udall Scholarship & Excellence in National Environmental Policy Foundation will hold a meeting beginning at 8 a.m. on Thursday, November 2, 2000 at the offices of the U.S. Institute for Environmental Conflict Resolution, 110 South Church, Ste, 3350, Tucson, AZ 85701.

The matters to be considered will include (1) A report on the U.S. Institute of Environmental Conflict Resolution, and (2) A report from the Udall Center for Studies and Public Policy; (3) Program Reports, and (4) Approval of 2001 budget. The meeting is open to the public.

**CONTACT PERSON FOR MORE INFORMATION:** Christopher L. Helms, 110 South Church, Ste, 3350, Tucson, Arizona 85701. Telephone: (520) 670–5608.

Dated this 10th day of October, 2000.

**Christopher L. Helms,**

*Executive Director, Morris K. Udall Foundation Scholorship and Excellence in National Environmental Policy.*

[FR Doc. 00–26713 Filed 10–17–00; 8:45 am]
BILLING CODE 6320–FN–M



## NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

### National Endowment for the Arts; National Council on the Arts 141st Meeting

Pursuant to section 10 (a) (2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the National Council on the Arts will be held on November 15, 2000 from 9:00 a.m.–400 p.m. in Room M–09 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, D.C. 20506.

The meeting will be open to the public on a space available basis. Following opening remarks and announcements, there will be an update on agency appropriations and introduction of the meeting theme—The Arts &Livable Communities—and guest speaker Robert Putnam, author of Bowling Alone: The Collapse and Revival of American Community. Mr. Putnam's presentation will be followed by guest presentations from Indianapolis Mayor Bart Peterson and from representatives of the Mid Atlantic Arts Foundation: Alan Cooper, Abel Lopez, and Rebecca Klein. Congressional and Budget updates will follow. The meeting will also include presentations by Rick Lowe of Project Row Houses and Ken Burns on his public TV series Jazz. Other topics tentatively will include: Application Review for Creativity, Organizational Capacity, Literature Fellowships, and Leadership Initiatives; a briefing on the Artists in American Life Colloquia, including a report from participant David Henry Hwang; review of Guidelines for Grants to Organizations and Literature Fellowships; and general discussion.

If, in the course of discussion, it becomes necessary for the Council to discuss non-public commercial or financial information of intrinsic value, the Council will go into closed session pursuant to subsection (c)(4) of the Government in the Sunshine Act, 5 U.S.C. 552b. Additionally, discussion concerning purely personal information about individuals, submitted with grant applications, such as personal biographical and salary data or medical information, may be conducted by the Council in closed session in accordance with subsection (c) (6) of 5 U.S.C. 552b.

Any interested persons may attend, as observers, Council discussions and reviews that are open to the public. If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW, Washington, D.C. 20506, 202/682–5532, TTY–TDD 202/682–5429, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from the Office of Communications, National Endowment for the Arts, Washington, D.C. 20506, at 202/682–5570.

Dated: October 13, 2000.

**Kathy Plowitz-Worden,**

*Panel Coordinator, Office of Guidelines and Panel Operations.*

[FR Doc. 00–26756 Filed 10–17–00; 8:45 am]
BILLING CODE 7537–01–P

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### National Endowment for the Arts; Combined Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that two meetings of the Combined Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506 as follows:

*Folk & Traditional Arts section (B)* (Access, Education, and Heritage/ Preservation categories): October 30–31, 2000, Room 716. A portion of this meeting, from 1 p.m. to 2 p.m. on October 31st, will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 6:30 p.m. on October 30th and from 9 a.m. to 1 p.m. and 2 p.m. to 5:30 p.m. on October 31st, will be closed.

*Dance section* (Access, Education, and Heritage/Preservation categories): November 6–8, 2000, Room 730. A portion of this meting, from 4 p.m. to 5 p.m. on November 8th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 6 p.m. on November 6th and 7th, and from 9 a.m. to 4 p.m. on November 8th, will be closed.

The closed portions of these meetings are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 12, 2000, these sessions will be closed to the public pursuant to (c)(4)(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: October 13, 2000.

**Kathy Plowitz-Worden,**

*Panel Coordinator, Panel Operations, National Endowment for the Arts.*

[FR Doc. 00–26755 Filed 10–17–00; 8:45 am]
BILLING CODE 7537–01–M

## NUCLEAR REGULATORY COMMISSION

[Docket No. 50–368]

### In the Matter of Entergy Operations, Inc. (Arkansas Nuclear One, Unit 2); Exemption

I.

Entergy Operations, Inc. (Entergy, or the licensee) is the holder of Facility Operating License No. NPF–6, which authorizes operation of the Arkansas Nuclear One, Unit 2 (ANO–2). The license provides, among other things,

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that the licensee is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

II.

Title 10 of the Code of Federal Regulations (10 CFR) part 50, appendix J, Option B requires, in part, that licensees of all power reactors conduct integrated leakage rate tests (ILRT) under conditions representing design basis loss-of-coolant accident (DBLOCA) containment peak pressure. The regulation at 10 CFR 50.12 states, in part, that in order for the Commission to consider granting an exemption, special circumstances must be present.

By letter dated June 29, 2000, Entergy requested that the NRC exempt ANO–2 from the application of the specific requirements of 10 CFR part 50, appendix J, Option B. Specifically, appendix J, Option B requires that licensees of all power reactors conduct ILRTs under conditions representing DBLOCA containment peak pressure. The DBLOCA containment peak pressure at ANO–2 is 58 psig, however, Entergy would like an exemption in order to conduct the test at 68 psig. Entergy also addresses special circumstances in its June 29, 2000, application.

III.

The ANO–2 steam generators (SGs) are scheduled for replacement during the fall of 2000. The replacement SGs (RSGs) will require that an access opening be cut in the containment building structure. Upon closure of the structure, an ILRT will be required to test for primary containment leakage integrity.

The ANO–2 containment building was originally designed and tested for an internal pressure of 54 psig. The ANO–2 containment building has recently been reevaluated, to address the containment post-accident response resulting from the RSGs, for an increase in accident pressure to 58 psig with a design pressure of 59 psig, and shown to be acceptable as discussed in a letter to the NRC dated November 3, 1999, as revised by a letter dated June 29, 2000. As a result of this increase, a structural integrity test (SIT) will be performed to evaluate the ANO–2 containment building for the change in containment design pressure. The purpose of the SIT is to verify that the containment building structure can safely carry design loads and that the structural behavior is similar to that predicted by analysis. The post-RSG SIT will be performed at 68 psig (1.15 times the revised design pressure). The licensee desires to also perform the ILRT concurrently with the post-RSG SIT, at the SIT pressure of 68 psig, in order to recover approximately 30 hours of projected plant outage time. However, Appendix J, Option B requires that the ILRT be conducted at a pressure representing DBLOCA containment peak pressure, which is 58 psig.

Entergy cited special circumstances regarding achievement of the underlying purpose of the regulation as part of its basis for requesting this exemption [10 CFR 50.12(a)(2)(ii)]. Entergy noted in support of the 10 CFR 50.12(a)(2)(ii) criteria that the application of the current regulation is not necessary to achieve the underlying purpose of the rule. Entergy stated that the underlying purpose of 10 CFR part 50, appendix J, Option B is still achieved in that the ILRT will continue to measure the containment system's overall integrated leakage rate under conditions representing DBLOCA containment peak pressure and that leakage through the primary reactor containment will not exceed the allowable leakage rate values as specified in the Technical Specifications (TSs) or associated Bases. The 68-psig SIT pressure is performed at a pressure that is greater than the DBLOCA containment peak pressure of 58 psig. Therefore, performing the ILRT at 68 psig meets and exceeds the requirement for performing the ILRT at a pressure representing the DBLOCA containment peak pressure (58 psig). In addition, meeting the TS requirement for acceptable leakage at a higher test pressure is conservative and well within the intent of appendix J, Option B. Entergy concluded that the above information demonstrates that there is reasonable assurance that performing the post-RSG ILRT at the SIT test pressure of 68 psig will provide continued validation of the leak integrity of the containment structure.

Entergy also cited additional special circumstances as part of its basis for requesting this exemption, namely that compliance would result in undue costs [10 CFR 50.12(a)(2)(iii)]. Entergy stated that the proposed exemption meets the criteria for special circumstances in 10 CFR 50.12(a)(2)(iii) in that approximately 30 hours of plant outage time could be recovered, resulting in substantial savings. Entergy added that since performance of the ILRT at the SIT pressure is conservative, they believe that realizing this benefit is acceptable.

IV.

The NRC staff has reviewed the licensee's application. Regarding assurance of safe operation, the staff finds that since the use of the higher SIT pressure is conservative and since the licensee will be following the applicable regulations and guidance for performing the ILRT, the use of the SIT pressure for the ILRT is technically acceptable. Regarding compliance with 10 CFR 50.12(a)(2)(ii), the staff finds that since the licensee will still perform an ILRT, and it will be performed at a pressure which is conservative with respect to that required by 10 CFR part 50, Appendix J, Option B, the underlying purpose of the rule, to ensure an essentially leak tight containment, is satisfied and this special circumstance applies. Regarding compliance with 10 CFR 50.12(a)(2)(iii), the staff disagrees that this special circumstance applies. Since ANSI/ANS 56.8–1994 (section 5.4) recognizes the situation in which an ILRT is performed after an SIT, this situation cannot be considered as an undue hardship or a burden significantly in excess of that which might be incurred by other licensees in similar circumstances. The staff's detailed Safety Evaluation (and this exemption) are enclosures in the letter to the licensee dated

V.

The Commission has determined that, pursuant to 10 CFR 50.12, this exemption is authorized by law, will not present an undue risk to the public health and safety, is consistent with the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants Entergy Operations, Inc. a one-time exemption from the requirements of 10 CFR part 50, appendix J, Option B in order to provide a one-time allowance to conduct the containment ILRT at the same pressure that is used for the SIT.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant effect on the quality of the human environment (65 FR 59216, dated October 4, 2000).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 12th October, 2000.

For the Nuclear Regulatory Commission

**John A. Zwolinski,**

*Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 00–26761 Filed 10–17–00; 8:45 am]

BILLING CODE 7590–01–P



## NUCLEAR REGULATORY COMMISSION

### Office of Nuclear Material Safety and Safeguards; In the Matter of Department of Energy, (Savannah River High-Level Waste Tanks); Response to NRDC Petition

### I. Introduction

On July 28, 1998, the Natural Resources Defense Council (NRDC) submitted a petition to the U.S. Nuclear Regulatory Commission (NRC) requesting that NRC ". . . assume and exercise immediate licensing authority over all high-level radioactive waste (HLW) that is stored in the 51 underground tanks located on the Department of Energy's (DOE) Savannah River Site (SRS)." NRC published receipt of the petition in the **Federal Register** on September 4, 1998 (63 FR 47333). On September 30, 1998, DOE's General Counsel responded to NRDC's petition. On October 23, 1998, NRDC responded to DOE's reply.

On March 6, 2000, NRDC sent a letter to Chairman Richard A. Meserve asking for a public meeting to discuss the Savannah River tank closure program and to consider the points NRDC raised in its petition. The NRDC letter also stated that the NRC should initiate formal rulemaking if the Commission agreed with the NRC staff's position in SECY 99–284 (December 15, 1999).[1]

NRDC, in submitting this petition, expressly stated that it did not seek to have the petition addressed under the procedures of 10 CFR 2.206, "Requests for Action under This Subpart."[2] However, it requested the Commission to exercise its authority to take regulatory action. This petition was considered under the Commission's general authority to address issues associated with its jurisdiction.[3]

By letter dated August 27, 1998, the Director of the Office of Nuclear Material Safety and Safeguards (NMSS) informed the petitioner that immediate action was not warranted for a number of reasons, including: (1) NRC does not perceive any immediate threat to the public health and safety from DOE's management of the SRS tank farm; (2) DOE is actively monitoring the condition and safety of the tanks; and (3) DOE has agreed not to close any more tanks, pending the NRC staff's completion of its review of DOE's waste classification methodology. The Director, NMSS, informed NRDC that the NRC staff would not respond to the petition until it completed its review of DOE's classification methodology.[4]

### II. Discussion

*A. NRC's Jurisdiction*

NRC has limited licensing authority over DOE activities. With the dissolution of the Atomic Energy Commission in 1975, NRC was given licensing and related regulatory responsibilities for only four types of facilities within the Energy Research and Development Administration (ERDA) (now DOE). Two types of facilities are relevant to HLW issues. Specifically, Section 202(3) of the Energy Reorganization Act (ERA) addresses facilities used primarily for the receipt and storage of HLW resulting from activities licensed under the Atomic Energy Act. Section 202(4) addresses ". . . *facilities authorized for the express purpose of subsequent long term storage of high-level radioactive waste* generated by the Administration [now DOE], which are not used for, or part of, research and development activities." (Emphasis added.)

Section 202(3) is not relevant here because Savannah River does not possess wastes from licensed activities. Section 202(4) would be relevant if: (1) the DOE facility at Savannah River was for storing high-level waste for the long term; and (2) such facility was "authorized for the express purpose of subsequent storage of high-level radioactive waste." The HLW at Savannah River is from defense activities. DOE intends the tanks to be closed in place. It has no intent to recover the residual waste for future use, processing, or disposal. The burial of any residual material in the tanks on site is, in essence, disposal. However, for purposes of the ERA, the Commission has interpreted the term "storage" to include disposal.[5] Assuming the residual material is HLW, to resolve the question of NRC jurisdiction requires a determination as to whether the tanks have been expressly authorized for long-term storage of HLW.[6]

This issue was raised before the Commission in the late 1970s in a petition filed by NRDC. The NRDC petition requested that NRC license the tanks at Savannah River. The Commission, after reviewing the legislative history for Section 202(4)[7] and past authorization acts, could not find that these tanks were ". . . authorized for the express purpose of subsequent long term storage." The Commission concluded that it had no jurisdiction because the tanks, at the time, were intended for interim storage and had not been authorized for long-term storage. [*In the Matter of NRDC, "Request Concerning ERDA High-Level Waste Storage Facilities,"* CLI 77–9, 5 NRC 550 (1977).] Based on the legislative history, the Commission also concluded that Congress "had in mind" that Section 202(4) would apply to facilities not in existence in 1974 when the ERA was enacted.[8] However, the Commission opined that Section 202(4) could apply to facilities constructed before 1974, if they were subsequently

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[1] SECY 99–284, "Classification of Savannah River Residual Tank Waste," December 15, 1999, addressed NRC staff views on DOE's methodology for classifying incidental waste at SRS.

[2] NRDC stated: "This petition does *not* call for NRC to exercise an enforcement or other judicially un-reviewable discretionary action within the meaning of 10 CFR 2.206 or the holding in Hechler v. Chaney, 470 US 821 (1985)."

[3] In light of the specific request of the petitioner in the July 28, 1998 petition, this petition was not treated as a petition submitted under 10 CFR 2.206, notwithstanding the petitioner's March 6, 2000 letter referring to the petition as "its 2.206 petition."

[4] The staff has completed its review, and has transmitted the results to DOE. See letter from W.F. Kane/NRC to R. Schepens/DOE-SRS, dated June 30, 2000.

[5] The ERA does not define the term "storage." The ERA does not explicitly give NRC jurisdiction over the disposal of HLW. However, the Commission, in 1981, when it promulgated 10 CFR part 60, "Disposal of High-Level Wastes in Geologic Repositories," asserted that, "[T]he Commission interprets 'storage' as used in the Energy Reorganization Act to include disposal." "Disposal of High-Level Radioactive Wastes in Geologic Repositories: Licensing Procedures," 46 FR 13971, Footnote 1 (February 25, 1981). See also 10 CFR 60.102(b)(3). This is different from the Nuclear Waste Policy Act of 1982 (NWPA), Public Law 97–425, 96 Stat. 2201, 42 U.S.C. 10101, et seq., which, in Section 25, defines "storage" to mean retention of HLW with the intent to recover it for future use, processing, or disposal.

[6] See Footnote 2, "Denial of Rulemaking Petition," 58 FR 12346, where the Commission said that the contents of the waste in the Hanford tanks are not dispositive of the question of whether the storage of the treated wastes is subject to NRC licensing.

[7] The Senate Committee on Government Operations explained that Section 202(4) provides NRC ". . . with the authority and responsibility for licensing and related regulation of retrievable surface storage facilities and other facilities for high-level radioactive wastes which are or may be *authorized by the Congress*. . . for long-term storage. . . . It is not the intent of the Committee to require licensing of such storage facilities which are already in existence. . . ." Committee on Government Operations, Senate Report 93–980, at 59 (June 27,1974) (emphasis added). The Conference Report explained that it retained the Senate language for Section 202(4) and also noted that facilities for long-term storage were not in existence. [Conference Report HR 93–1445 (October 8, 1974).]

[8] There are 51 underground storage tanks at Savannah River. Eighteen of these tanks were constructed after the passage of the ERA. DOE maintains that none of these tanks was expressly authorized for long-term storage of HLW. Letter from Mary Anne Sullivan, General Counsel, DOE, to John Greeves, Director, Division of Waste Management, NRC. "NRDC Petition to Exercise Licensing Authority Over Savannah River Site High-Level Waste Tanks," September 30, 1998.

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expressly authorized for long-term storage.[*Id.* at 554.][9]

In seeking judicial review of the Commission's decision denying the NRDC's petition, the NRDC argued that the question of whether the tanks are expressly authorized for long-term storage turns on the likelihood that the tanks will be used for long-term storage rather than whether Congress or the ERDA actually authorized them. The Court rejected that view stating:

> Had Congress desired to base NRC licensing jurisdiction on a factual determination of the probability that particular ERDA waste storage facilities would for reasons of necessity or otherwise, be used for long-term storage, it would have enacted a statute significantly different from that before us. Instead, Congress chose to give NRC licensing jurisdiction when such facilities are "authorized for the express purpose of subsequent long-term storage." 42 U.S.C. 5842(4). Although the parties suggest that some ambiguity exists concerning who must give the required authorization, Congress or ERDA, neither authorized the . . . tanks for long-term storage. [*NRDC* v. *USNRC*, 606 F2d 1261,1267 (D.C. Cir.1979).]

In light of its finding that neither the ERDA nor the Congress had expressly authorized the tanks for long-term storage, the Court did not resolve this suggested ambiguity. The purpose of Section 202 of the ERA was to give NRC new authority over ERDA. However, this was limited authority as the new authority only extended to certain ERDA activities. Senate Report 93–980 is clear that Congress was to make the authorization. Given that it was the Senate language that was adopted in the final bill, its views are instructive. Moreover, there is no evidence in the legislative history to suggest that Congress intended the ERDA to have the discretion to decide for itself which facilities would be authorized for long-term storage and, therefore, licensed by NRC. It does not seem reasonable that Congress would have intended that result given the purpose of Section 202 to establish licensing requirements for certain ERDA facilities. Following the logic of the Court of Appeals, if Congress intended that the ERDA could have provided the authorization, significantly different language would have been used.

Thus, absent express Congressional authorization, NRC does not have jurisdiction over defense HLW stored at Savannah River. Since the enactment of the ERA, there has not been an express authorization for long-term storage of HLW at Savannah River. Congress has repeatedly authorized funds for interim storage at Savannah River and funds for removal of HLW from filled waste tanks. With one exception, there has not been a reference to long-term storage at Savannah River. The exception—Section 3141 of the National Defense Authorization Act for Fiscal Year 1997 [Public Law 104–201, 110 Stat. 2422 (1996)]—directed that the Secretary of Energy accelerate the schedule for isolation of HLW in glass containers if the Secretary found, among other things, that it ". . . could accelerate the removal and isolation of high-level waste from long-term storage tanks at the [Savannah River] site." Although this is a recognition that there is, and is likely to be, lengthy storage at Savannah River, this language is not an authorization for the ". . . express purpose of subsequent long-term storage." If anything, it is an indication from Congress that it does not desire long-term storage of HLW at Savannah River. In sum, although Congress is aware that DOE is in the process of removing HLW from the storage tanks at Savannah River, it has not expressly authorized the long-term storage of any residual HLW in those tanks.

Apart from the ERA, NRC has authority to license DOE's repositories for disposal of HLW arising out of defense activities. Section 8(b)(3) of the NWPA provides that any repository for the disposal of HLW resulting from atomic energy defense activities is to be licensed under Section 202 of the ERA and is to be subject to the Commission's requirements. Section 2(18) of the NWPA defines a "repository" to mean "permanent deep geologic disposal. . . ." Although the HLW at Savannah River is defense waste, it is not stored nor disposed of, nor intended to be stored or disposed of in a repository as that term is used in the NWPA.[10] Therefore, the NWPA is not a source for NRC jurisdiction over the Savannah River tanks.

*B. Incidental Waste*

As to the issue of incidental waste raised by NRDC, NRC has in the past recognized the concept of incidental waste. For example, in a response to a rulemaking petition involving Hanford, the Commission concluded that the reprocessed wastes would be "incidental waste" and not HLW, based on DOE's assurances that the wastes:

> (1) have been processed (or will be further processed) to remove key radionuclides to the maximum extent that is technically and economically practical;
>
> (2) will be incorporated in a solid physical form at a concentration that does not exceed the applicable concentration limits for Class C low-level waste as set out in 10 CFR Part 61; and
>
> (3) are to be managed, pursuant to the Atomic Energy Act, so that safety requirements comparable to the performance objectives set out in 10 CFR part 61, subpart C, are satisfied.[11]

NRC recognizes that the residual waste at Savannah River is different from the waste at Hanford. The residual waste at Savannah River generally consists of waste that is left on the bottom of the tanks and that is embedded in pits in the tank walls; at Hanford, the waste consists of the low-activity fraction resulting from pre-treatment. Importantly, the waste at Hanford was not greater than Class C. At Savannah River some of the residual waste, if subject to 10 CFR part 61, would be classified, in accordance with 10 CFR 61.55, as greater than Class C. The Commission's regulations at 10 CFR 61.58 reserve the discretion to allow material to be treated as not greater than Class C if the requirements of 10 CFR part 61, Subpart C, are met. However, in light of the lack of NRC jurisdiction over the SRS tanks, NRC has not adopted a position as to whether the residual waste DOE seeks to classify as "incidental waste" in these tanks is considered HLW.

NRC has provided technical assistance, from a safety perspective, on DOE's methodology for classifying waste as "incidental." In the June 30, 2000, letter, the NRC staff stated:

> Based on the information provided, the staff has concluded that the methodology for tank closure at SRS appears to reasonably analyze the relevant considerations for Criterion One and Criterion Three of the three incidental waste criteria. DOE would undertake cleanup to the maximum extent that is technically and economically practical, and would demonstrate it can meet performance objectives consistent with those required for disposal of low-level waste. These commitments, if satisfied, should serve to provide adequate protection of public health and safety. . . . The NRC staff, from a safety perspective, therefore does not disagree with DOE–SR's proposed methodology, contingent upon DOE reaching current goals for bulk waste removal, as well as water and chemical washing, such that the performance objectives stated in subpart C 10 CFR 61 are met. . . .

The staff's technical advice does not mean that NRC has decided that the material left in the tanks is incidental waste. The results of the NRC staff review were provided as input to the DOE decision. DOE is responsible for determining whether the residual tank waste can be classified as incidental.[12]

[9] As noted below, there have not been any subsequent Congressional authorizations.

[10] Neither the NWPA nor 10 CFR Part 60 requires HLW to be disposed of in a geologic repository. Should future reprocessing of commercial fuel occur, 10 CFR Part 50, Appendix F, would require the resulting HLW to be transferred to a Federal repository. See also, the 1987 advance notice of proposed rulemaking to define HLW, 52 FR 5992, 5993 (February 27, 1987).

[11] *Id.* at 12345.

[12] DOE has promulgated an order, DOE 435.1, "Radioactive Waste Management," (July 9, 1999), that addresses, among other things, the classification of waste as incidental and not HLW. NRDC has challenged DOE's use of incidental waste. [NRDC and Snake River v. DOE, No. 00–70015 (May 22, 2000).]

**III. Conclusion**

NRC has provided technical assistance, from a safety perspective, on DOE's methodology for classifying waste as "incidental." NRC staff has concluded that DOE's commitments to (1) clean up to the maximum extent technically and economically practical, and (2) meet performance objectives consistent with those required for disposal of low-level waste, if satisfied, should serve to provide adequate protection of public health and safety.

NRC does not have licensing and related regulatory authority over the HLW or residual wastes in the tanks at Savannah River. The authority and responsibility for classifying the waste at Savannah River reside in DOE, not NRC. Therefore, the issues underlying the petition should be directed to DOE.

Dated at Rockville, Maryland, this 2nd day of October, 2000.

For the Nuclear Regulatory Commission.

**William F. Kane,**

*Director, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 00–26762 Filed 10–17–00; 8:45 am]

**BILLING CODE 7590–01–P**



## NUCLEAR REGULATORY COMMISSION

### Reactor Oversight Process Initial Implementation Evaluation Panel Meeting Notice

Pursuant to the Federal Advisory Committee Act of October 6, 1972 (Pub. L., 94–463, Stat. 770–776) the U.S. Nuclear Regulatory Commission (NRC), on October 2, 2000, announced the establishment of the Reactor Oversight Process Initial Implementation Evaluation Panel (IIEP). The IIEP will function as a cross-disciplinary oversight group to independently monitor and evaluate the results of the first year of implementation of the Reactor Oversight Process (ROP). A Charter governing the IIEP functions as a Federal Advisory Committee is being filed on October 16, 2000, after consultation with the Committee Management Secretariat, General Services Administration. The IIEP will hold its first meeting on November 1–2, 2000, in Conference Room T–8A1, Nuclear Regulatory Commission, 11545 Rockville Pike, Rockville, Maryland.

*The IIEP meeting participants are listed below along with their affiliation:*

A. Randolph Blough—U.S. Nuclear Regulatory Commission
R. William Borchardt—U.S. Nuclear Regulatory Commission
Kenneth Brockman—U.S. Nuclear Regulatory Commission
Steve Floyd—Nuclear Energy Institute
David Garchow—PSEG Nuclear LLC
Richard Hill—Southern Nuclear Operating Company
Rod Krich—Commonwealth Edison Company
Robert Laurie—California Energy Commission
David Lochbaum—Union of Concerned Scientists
James Moorman, III—U.S. Nuclear Regulatory Commission
Loren Plisco—U.S. Nuclear Regulatory Commission
Steven Reynolds—U.S. Nuclear Regulatory Commission
A. Edward Scherer—Southern California Edison Company
James Setser—Georgia Department of Natural Resources
James Trapp—U.S. Nuclear Regulatory Commission

*A tentative agenda of the meeting is outlined as follows:*

November 1, 2000

1:00–1:20—Welcome & Opening Remarks —Introduction of Committee Members
1:20–1:40—Role of Independent Advisory Committees
1:40–2:00—Legal Requirements of FACA Committees
2:00–3:00—IIEP Charter —Discussion of Proposed Bylaws
3:00–3:15—Break
3:15–3:30—Administrative Support for FACA Committee
3:30–3:45—Lessons Learned and Best Practices from the Pilot Program Evaluation Panel
3:45–4:00—Current Status of the Reactor Oversight Process
4:00–5:00—Overview of Staff Performance Measures

Thursday, November 2, 2000

8:00–10:15—Detailed Discussion of Staff Performance Measures
10:15–10:30—Break
10:30–12:00—Detailed Discussion of Staff Performance Measures
12:00–12:45—Lunch
12:45–3:15—IIEP Discussion on Acceptability of Staff Performance Measures
3:15–3:30—Break
3:30–4:30—Agenda Planning

Meetings of the IIEP are open to the members of the public. Formal procedures for the conduct of the Panel meetings will be developed during the November 1–2, 2000 meeting. In the interim, at the November 1–2, 2000, meeting, oral or written views may be presented by the members of the public, including members of the nuclear industry. Persons desiring to make oral statements should notify Mr. Loren R. Plisco (Telephone 404/562–4501, e-mail LRP@nrc.gov) or Mr. John D. Monninger (Telephone 301/415–3495, e-mail JDM@nrc.gov) five days prior to the meeting date, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. Use of still, motion picture, and television cameras will be permitted during this meeting.

Further information regarding topics of discussion; whether the meeting has been canceled, rescheduled, or relocated; and the Panel Chairman's ruling regarding requests to present oral statements and time allotted, may be obtained by contacting Mr. Loren R. Plisco or Mr. John D. Monninger between 8:00 a.m. and 4:30 p.m. EDT.

IIEP meeting transcripts and meeting reports will be available from the Commission's Public Document Room. Transcripts will be placed on the agency's web page when a web site for the IIEP is established.

Dated: October 12, 2000.

**Andrew Bates,**

*Advisory Committee Management Officer.*

[FR Doc. 00–26760 Filed 10–17–00; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Reactor Safeguards

### Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on October 31, 2000, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows: *Tuesday, October 31, 2000—1:00 p.m. until the conclusion of business.*

The Subcommittee will discuss proposed ACRS activities and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the

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concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff person named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting the cognizant ACRS staff person, Dr. John T. Larkins (telephone: 301/415–7360) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: October 12, 2000.

**James E. Lyons,**

*Associate Director for Technical Support, ACRS/ACNW.*

[FR Doc. 00–26758 Filed 10–17–00; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Reactor Safeguards Meeting of the Subcommittee on Plant Systems; Notice of Meeting

The ACRS Subcommittee on Plant Systems will hold a meeting on October 31, 2000, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: *Tuesday, October 31, 2000—8:30 a.m. until 12:00 noon.*

The Subcommittee will discuss the safety evaluation reports on the topical reports for ABB/CE and Siemens Digital I&C Applications. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman and written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor, can be obtained by contacting the cognizant ACRS staff engineer, Mr. Amarjit Singh (telephone 301/415–6899) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: October 6, 2000.

**James E. Lyons,**

*Associate Director for Technical Support.*

[FR Doc. 00–26759 Filed 10–17–00; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

### Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

#### I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from September 25, 2000, through October 6, 2000. The last biweekly notice was published on October 4, 2000.

#### Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.



Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC through September 22, 2000. The NRC is relocating its Public Document Room to the NRC's headquarters building. Effective September 26, 2000, documents may be examined at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By November 17, 2000, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first Floor), Rockville, Maryland 20852. Publicly available records will be accessible and electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available records will be accessible and electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

*AmerGen Energy Company, LLC, Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1, Dauphin County, Pennsylvania*

*Date of amendment request:* August 9, 2000.

*Description of amendment request:* The proposed amendment revises Sections 6.5.3 and 6.5.4 of the Technical Specifications to eliminate reference to the Independent Onsite Safety Review

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Group (IOSRG) and to redefine the performance of the IOSRG function by the nuclear quality assurance organization.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability of occurrence or the consequences of an accident previously evaluated. The proposed changes do not affect assumptions contained in plant safety analyses, the physical design and/or operation of the plant, nor do they affect Technical Specifications that preserve safety analysis assumptions. None of the proposed changes involve a physical modification to the plant, a new mode of operation or a change to the UFSAR [Updated Final Safety Analysis Report] transient analyses. No Technical Specification Limiting Condition for Operation, Action Statement, or Surveillance Requirement is affected by any of the proposed changes. The proposed changes do not alter the design, function, or operation of any plant component. Therefore, the proposed amendment does not affect the probability of occurrence or consequences of an accident previously evaluated.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any previously evaluated. The proposed changes do not affect assumptions contained in the plant safety analyses, the physical design and/or modes of plant operation defined in the plant operating license, or Technical Specifications that preserve safety analysis assumptions. The proposed changes do not introduce a new mode of plant operation or surveillance requirement, nor involve a physical modification to the plant. The proposed changes do not alter the design, function, or operation of any plant components. Therefore, the proposed amendment does not affect the possibility of a new or different kind of accident from any accident previously evaluated.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety. None of the proposed changes involve a physical modification to the plant, a new mode of operation or a change to the UFSAR transient analyses. No Technical Specification Limiting Condition for Operation, Action Statement, or Surveillance Requirement is affected. Therefore, the proposed amendment does not reduce the margin of safety.

Based upon the analysis provided herein [the licensee's August 9, 2000 application], the proposed changes will not increase the probability or consequences of an accident previously evaluated, create the possibility of a new or different kind of accident from any accident previously evaluated, or involve a reduction in a margin of safety. The performance of safety assessment and the IOSRG functions by a single qualified organization will lead to efficiencies in the performance of both functions. The training and qualification of the personnel performing the IOSRG functions will be unchanged from the current requirements. Therefore, the proposed changes meet the requirements of 10 CFR 50.92(c) and involve no significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Edward J. Cullen, Jr., Esq., PECO Energy Company, 2301 Market Street, S23–1, Philadelphia, PA 19103.

*NRC Section Chief:* Marsha Gamberoni.

*AmerGen Energy Company, LLC, Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1, Dauphin County, Pennsylvania*

*Date of amendment request:* August 9, 2000.

*Description of amendment request:* The proposed amendment revises the Three Mile Island Nuclear Station, Unit 1 (TMI–1), Updated Final Safety Analysis Report (UFSAR), Section 14.1.2.10, "Steam Generator Tube Failure Analysis," to include the dose resulting from the postulated post-accident steam release through the main steam safety valves. The revised dose for the TMI–1 steam generator tube failure analysis would be increased above the values previously reviewed and approved by the NRC, but would continue to be below the limits in Title 10 of the Code of Federal Regulations (10 CFR) Part 100. The proposed change to the UFSAR modifies the existing analysis to account for release of radioactivity to the atmosphere for the postulated tube rupture analysis. The existing dose calculations do not account for this release. Editorial and grammatical corrections are also made.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability of occurrence or the consequences of an accident previously evaluated. This change has no effect on structures, systems or components prior to the postulated steam generator tube failure accident or any other accident. The proposed change corrects the existing UFSAR Steam Generator Tube Failure accident analysis to account for the release to atmosphere through the main steam safety valves (MSSVs). The resulting revised radiological consequences for the postulated Steam Generator Tube Failure accident remain well below the 10 CFR 100 limits.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any previously evaluated. This change has no impact on any plant structures systems or components. The only impact is the revised radiological consequences of the Steam Generator Tube Failure accident analysis to account for the release to atmosphere through the MSSVs. This change only corrects the existing TMI Unit 1 UFSAR.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety. No change to any plant structure, system or component is being made or proposed by this change. This change does not involve any change to safety system setpoints for operation. The revised radiological consequences of the Steam Generator Tube Failure accident analysis remain well below 10 CFR 100 limits.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Edward J. Cullen, Jr., Esq., PECO Energy Company, 2301 Market Street, S23–1, Philadelphia, PA 19103.

*NRC Section Chief:* Marsha Gamberoni.

*Calvert Cliffs Nuclear Power Plant, Inc., Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland*

*Date of amendments request:* September 14, 2000.

*Description of amendments request:* The proposed amendment revises the Unit 1 and Unit 2 heatup curves (Technical Specification Figures 3.4.3–1) and Unit 1 and Unit 2 cooldown curves (Technical Specification Figures 3.4.3–2) to increase the allowable heatup and cooldown rates. Use of stress intensity factor $K_{IC}$, permitted by American Society of Mechanical Engineers (ASME) Code Case N–640, made it possible to increase the heatup and cooldown rates without changing existing pressure-temperature (P–T) limits. The existing P–T limits were approved previously. Application of Code Case N–640 to generate P–T curves is not currently permitted by the regulations. Therefore, pursuant to 10 CFR 50.12, a separate request for an exemption to use Code Case N–640 was submitted in a letter dated September 14, 2000.



*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

In accordance with 10 CFR Part 50, Appendix G, the Calvert Cliffs pressure/temperature (P–T) limits for material fracture toughness requirements of the reactor coolant pressure boundary materials were developed using the methods of linear elastic fracture mechanics and the guidance found in the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code, Section III, Appendix G. The Calvert Cliffs P–T limits are based on fluence level. The fluence levels are determined in the same manner as the pressurized thermal shock (PTS) screening criteria defined in 10 CFR 50.61 for the critical elements. Methods described in the Nuclear Regulatory Commission Regulatory Guide 1.99, Revision 2, are used to predict the embrittlement effect of neutron irradiation on reactor vessel materials. Regulatory Guide 1.99 defines embrittlement effect in terms of adjusted reference temperatures, which depends on the material property of the PTS critical elements.

The proposed higher heatup and cooldown rates for the Technical Specification P–T limits were made possible by the ASME Code Case N–640 which permits use of reference stress intensity factor $K_{IC}$, in place of $K_{IA}$. Use of $K_{IC}$, for the maximum stress intensity factor that will not lead to failure, is the correct value to use. Although conservative in terms of developing P–T limits, use of $K_{IA}$ results in a very restrictive heatup and cooldown rate that challenges plant safety. To bound the existing LTOP [low-temperature overpressure protection] enable temperatures, while increasing the heatup and cooldown rates, the criteria described in ASME Section XI Code Case 514 is used. Code Case 514 is listed in Regulatory Guide 1.147 as acceptable to the Nuclear Regulatory Commission (NRC) for this application. With the new higher heatup and cooldown rates, the underlying intent of the 10 CFR Part 50, Appendix G, requirement for adequate margin to prevent brittle failure of the reactor coolant pressure boundary materials is maintained. Additionally, since the cooldown rates are not changed above 300° F, the safety analyses and dose consequences in the Updated Final Safety Analysis Report are not affected.

Therefore the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Would not create the possibility of a new or different [kind] of accident previously evaluated.

The implementation of the proposed revision has no significant effect on either the configuration of the plant, or the manner in which it is operated.

Therefore, this proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Would not involve a significant reduction in a margin of safety.

As discussed above, although conservative in terms of developing P–T limits, use of $K_{IA}$ results in a very restrictive heatup and cooldown rate that challenges plant safety. The insignificant margin reduction in P–T limits is more than compensated by the safety benefits that are realized in terms of plant component integrity as a result of the higher heatup and cooldown rates. With the proposed change, the underlying intent of the 10 CFR Part 50, Appendix G, requirement for adequate margin to prevent brittle failure of the reactor coolant pressure boundary materials is maintained, and there is a net gain in overall plant safety margin.

Therefore, this proposed change does not significantly reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

*Attorney for licensee:* Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

*NRC Section Chief:* Marsha Gamberoni.

*Calvert Cliffs Nuclear Power Plant, Inc., Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland*

*Date of amendments request:* September 14, 2000.

*Description of amendments request:* The proposed amendment adds two analytical methods to the list of approved core operating limits analytical methods in the Technical Specifications (TSs) for Calvert Cliffs, Unit Nos. 1 & 2. In a letter dated March 16, 2000, from Mr. S. A. Richards, NRC to Mr. I. C. Rickard, ABB Combustion Engineering, the Nuclear Regulatory Commission approved the Topical Report CENPD–387–P, "ABB Critical Heat Flux Correlations for [pressurized-water reactor] PWR Fuel" for referencing in licensing applications for Asea Brown Boveri, Inc. Combustion Engineering, Inc. (ABB–CE) plants.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change allows the use of the ABB–NV and ABB–TV CHF [critical heat flux] correlations in the thermal hydraulic analysis for Calvert Cliffs Nuclear Power Plant. The ABB–NV is used for a non-mixing vane fuel assembly and the ABB–TV correlations are used for Turbo mixing vane fuel assembly. The CHF correlations determine the departure from nucleate boiling ratio (DNBR). The specified acceptable fuel design limit for DNBR will change for ABB–NV and ABB–TV. The use of the ABB–NV and/or ABB–TV correlations with the appropriate DNBR limit provides additional operating margin for those analyses that presently use the CE–1 correlation.

The use of a different CHF correlation will not increase the probability of an accident because the plant systems will not be operated outside of design limits, the plant equipment will not be operated in a different manner, and system interfaces will not change.

As Turbo fuel is introduced to reactor, transition cores will exist in which Turbo mixing vane grid fuel assemblies are co-residents with non-mixing vane grid fuel assemblies. The grid hydraulic loss coefficient in the Turbo grids is greater than the grid hydraulic loss coefficient for the non-mixing grids. The flow diversion that will result does not increase the probability of an accident previously evaluated because assembly flow has no impact on accident initiators, and because plant systems will not be operated outside of design limits, plant equipment will not be operated in a different manner, and system interfaces will not change.

The change in the CHF correlation was the subject of Topical Report CENPD–387–P–A, which was reviewed and approved by the NRC. The use of a different CHF correlation will not increase the consequences of an accident because Limiting Conditions [for] Operation (LOCs) will continue to restrict operation to within the regions that provide acceptable results, and Reactor Protection System (RPS) trip setpoints will plant transients so that the consequences of accidents will be acceptable.

The transition cores that will exist as Turbo fuel is introduced to the reactor will not increase the consequences of an accident. The TORC code accurately predicts the flow conditions in adjacent fuel bundles that contain grids with different designs and coefficients. The flow diversion will be compensated for by DNBR margin gains. Operation within the LOCs and RPS setpoints will continue to restrict plant

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transients so that consequences of accidents will be acceptable.

Therefore, the proposed TS changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Would not create the possibility of a new or different [kind] of accident from any accident previously evaluated.

The proposed change does not add any new equipment, modify any interfaces with any existing equipment, alter the equipment's function or change the method of operating the equipment. The proposed change does not alter plant conditions in a manner that could affect other plant components. The proposed change does not cause any existing equipment to become an accident initiator. The Turbo grid design does not introduce features that could initiate an accident.

Therefore the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Would not involve a significant reduction in the margin of safety.

Safety Limits ensure that specified acceptable fuel design limits are not exceeded during steady state operation, normal operational transients, and anticipated operational occurrences. One of the safety limits that accomplishes this is the DNBR limit. The CHF correlations that have been approved for ABB–NV and ABB–TV result in a DNBR limit that provides a 95% probability, at a 95% confidence, that the hot fuel rod in the core will not experience departure from nucleate boiling. The RPS in combination with the LCOs, will continue to prevent any anticipated combination of transient conditions for reactor coolant system temperature, pressure and thermal power level that would result in a violation of the Safety Limits.

Therefore the margin of safety is not significantly reduced by this proposed change.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

*Attorney for licensee:* Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

*NRC Section Chief:* Marsha Gamberoni.

*Calvert Cliffs Nuclear Power Plant, Inc., Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland*

*Date of amendments request:* September 14, 2000.

*Description of amendments request:* Calvert Cliffs Nuclear Power Plant, Inc. (CCNPPI) proposed an amendment to incorporate changes described below into the Technical Specifications (TSs) for Calvert Cliffs Units 1 and 2.

On September 9, 1996, a final rule amending 10 CFR 50.55a was issued requiring owners to implement, by September 9, 2001, the requirements of the 1992 Edition through the 1992 Addenda of the American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code) Section XI, Subsections IWE and IWL, as modified and supplemented by 10 CFR 50.55a. CCNPPI has developed a program to effect the implementation of Subsections IWE and IWL. This submittal requests a license amendment in support of the program.

The TSs change replaces the reference to Regulatory Guide (RG) 1.35 with a reference to Section XI of the ASME Code, and deletes the applicability of Surveillance Requirement 3.0.2. Compliance with RG 1.35 is not sufficient to comply with 10 CFR 50.55a, as amended, and inspection frequencies will be in accordance with Subsection IWL of Section XI; therefore, Surveillance Requirement 3.0.2 will no longer apply.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The Containment Building is a passive safety structure that prevents the release of radioactive materials to the environment in post-accident conditions. The proposed Technical Specification change updates requirements of the Technical Specifications that have been made obsolete by the improvements of the Containment [B]uilding inspections required by the changes in the regulations. The improved inspections required by the American Society of Mechanical Engineers [Boiler and Pressure Vessel] Code serve to maintain containment response to accident conditions, by causing the identification and repair of defects in Containment Buildings.

Relocating existing requirements, eliminating requirements that duplicate regulations, and making administrative improvements provide Technical Specifications that are easier to use. Because existing requirements are controlled by regulation, there is no reduction in commitment and adequate control is still maintained. Therefore, the proposed change would not involve a significant increase in probability or consequences of an accident previously evaluated.

2. Would not create the possibility of a new or different [kind] of accident from any accident previously evaluated.

The Containment Building is a passive safety structure designed to contain radioactive materials released from the reactor coolant system. The performance of the Containment Building is not evaluated as the causal factor in any accident at Calvert Cliffs Nuclear Power Plant. The proposed Technical Specification change updates requirements of the Technical Specifications that were made obsolete by the improvements of the Containment [B]uilding inspections required by the changes in the regulations. Revising the Technical Specifications, to comply with current regulations and to eliminate duplication of requirements, does not create the possibility of a new or different [kind] of accident from any previously evaluated.

3. Would not involve a significant reduction in a margin of safety.

The safety function of the Containment Building is to provide a boundary to the release of radioactive material to the environment during post-accident conditions. The change to the Technical Specifications incorporate[s] improved inspection techniques and criteria to ensure optimum containment integrity and, therefore, optimum containment response in the event of an accident resulting in a release of radioactive material from the reactor coolant system. Optimizing containment integrity will result in maintaining the margin of safety allowed by the Containment Buildings. Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

*Attorney for licensee:* Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

*NRC Section Chief:* Marsha Gamberoni.

*Calvert Cliffs Nuclear Power Plant, Inc., Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland*

*Date of amendments request:* September 15, 2000.

*Description of amendments request:* The proposed amendment revises the Unit 1 and Unit 2 Technical Specification Surveillance Requirement (SR) 3.1.7.2 which verifies that each control element assembly (CEA) not fully inserted is capable of full insertion when tripped from at least the 50 percent withdrawn position. Specifically, the proposed amendment adds a note to SR 3.1.7.2, which allows the SR to not be performed during initial power escalation following a refueling outage if SR 3.1.4.6 (CEA drop time test) has been met. In addition, "once" was added to the SR frequency as an administrative change to clarify that the SR is only performed once and not on a periodic basis. This proposed license amendment is consistent with Technical Specification Task Force (TSTF)–134, Revision 1, which received Nuclear Regulatory Commission (NRC) approval on April 21, 1998.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

A risk assessment was performed to support a prior license amendment request submitted to change Surveillance Requirement (SR) 3.1.7.2 frequency from 24 hours to 7 days. Results of a study performed in support of the risk assessment indicated no change in the geometry of those components utilized in control element assembly (CEA) insertion over the 7-day period. The study also evaluated electronic/electrical failures that could cause a CEA to be stuck, concluding that the feature that controls the movement of the CEAs is not time-related. Since there have been no modifications performed on the components analyzed or changes in the manner in which they are operated, it is reasonable to assume that the conclusions remain valid.

The CEA drop time test SR 3.1.4.6 proves that any work done during the refueling outage does not prevent the rods from tripping. Revising SR 3.1.7.2, such that it could allow more than seven days from successfully performing the CEA drop time test does not change this. However, as with any component, there will eventually be some time-related degradation that may impact the ability of the CEAs to drop. Thus, when the seven days are exceeded, there is some negligible increase in the probability that a rod would fail to drop. This causes an insignificant increase in core damage frequency because it requires multiple rod failures to cause core damage in the event of an overcooling event [the most bounding accident for a stuck CEA during rod worth testing]. This additional risk is believed to be small since the degradation is the result of core changes, which occur slowly, and not the result of maintenance. Thus the risk increase due to this Technical Specification change is considered to be negligible. The probability of an overcooling event is not changed by the proposed change.

Therefore the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Would not create the possibility of a new or different [kind] of accident from any accident previously evaluated.

The proposed change to the surveillance requirement for CEA trippability does not result in any change to the facility or the manner in which it is operated.

Therefore, this proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Would not involve a significant reduction in a margin of safety.

Operation of the facility in accordance with this proposed amendment does not involve a significant reduction in a margin of safety. Control element assembly trippability is still demonstrated via performance of SR 3.1.4.6. The risk increase due to this change is considered to be negligible. Thus, appropriate equipment continues to be tested in a manner and at a frequency necessary to provide reasonable assurance that the equipment can perform its assumed safety function.

Furthermore, this change is consistent with Technical Specification Task Force (TSTF)–134, Revision 1, which has been approved by the Nuclear Regulatory Commission. Adopting testing practices consistent with those specified in TSTF–134, Revision 1 are acceptable based on similar design, like-component testing for the system application and the availability of other Technical Specification requirements which provide regular checks to ensure limits are met.

Therefore, this proposed modification does not significantly reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

*Attorney for licensee:* Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW, Washington, DC 20037.

*NRC Section Chief:* Marsha Gamberoni.

*Duke Energy Corporation, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina*

*Date of amendment request:* August 1, 2000.

*Description of amendment request:* The proposed amendments would provide revised spent fuel pool configurations, revised spent fuel pool storage criteria, and revised fuel enrichment and burnup requirements which take credit for soluble boron in maintaining acceptable margins of subcriticality in the spent fuel storage pools. Also, the proposed amendments would provide additional criteria for ensuring acceptable levels of subcriticality in the spent fuel storage pools.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will the change involve a significant increase in the probability or consequence of an accident previously evaluated?

No, based upon the following:

Dropped Fuel Assembly

There is no significant increase in the probability of a fuel assembly drop accident in the spent fuel pools when considering the degradation of the or Boraflex panels in the spent fuel pool racks coupled with the presence of soluble boron in the spent fuel pool water for criticality control. The handling of the fuel assemblies in the spent fuel pool has always been performed in borated water, and the quantity of Boraflex remaining in the racks has no affect on the probability of such a drop accident.

The criticality analysis showed that the consequences of a fuel assembly drop accident in the spent fuel pools are not affected when considering the degradation of the Boraflex in the spent fuel pool racks and the presence of soluble boron.

Fuel Misloading

There is no significant increase in the probability of the accidental misloading of spent fuel assemblies into the spent fuel pool racks when considering the degradation of the Boraflex in the spent fuel pool racks and the presence of soluble boron in the pool water for criticality control. Fuel assembly placement and storage will continue to be controlled pursuant to approved fuel handling procedures to ensure compliance with the Technical Specification requirements. These procedures will be revised as needed to comply with the revised requirements which would be imposed by the proposed Technical Specification changes. Note that the proposed amendment would increase the number of different storage limits in Technical Specification 3.7.15. However, these revised storage limits were developed with input from station personnel. Their awareness, in conjunction with any procedure changes as described above, will provide additional assurance that an accidental misloading of a spent fuel assembly will not occur.

There is no increase in the consequences of the accidental misloading of spent fuel assemblies into the spent fuel pool racks because criticality analyses demonstrate that the pool will remain subcritical following an accidental misloading if the pool contains an adequate soluble boron concentration. Current Technical Specification 3.7.14 will ensure that an adequate spent fuel pool boron concentration is maintained in the McGuire spent fuel storage pools. A McGuire Station UFSAR change will revise Chapter 16, "Selected Licensee Commitments", to provide for adequate monitoring of the remaining Boraflex in the spent fuel pool racks. If that monitoring identifies further reductions in the Boraflex panels which would not support the conclusions of the McGuire Criticality Analysis, then the McGuire TS's and design bases would be revised as needed to ensure that acceptable subcriticality are maintained in the McGuire spent fuel storage pools.

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Significant Change in Spent Fuel Pool Temperature

There is no significant increase in the probability of either the loss of normal cooling to the spent fuel pool water or a decrease in pool water temperature from a large emergency makeup when considering the degradation of the Boraflex in the spent fuel pool racks and the presence of soluble boron in the pool water for subcriticality control since a high concentration of soluble boron has always been maintained in the spent fuel pool water. Current Technical Specification 3.7.14 will ensure that an adequate spent fuel pool boron concentration is maintained in the McGuire spent fuel storage pools.

A loss of normal cooling to the spent fuel pool water causes an increase in the temperature of the water passing through the stored fuel assemblies. This causes a decrease in water density that would result in a decrease in reactivity when Boraflex neutron absorber panels are present in the racks. However, since a reduction in the amount of Boraflex present in the racks is considered, and the spent fuel pool water has a high concentration of boron, a density decrease causes a positive reactivity addition. However, the additional negative reactivity provided by the current boron concentration limit, above that provided by the concentration required to maintain $k_{eff}$ less than or equal to 0.95 (1470 ppm), will compensate for the increased reactivity which could result from a loss of spent fuel pool cooling event. Because adequate soluble boron will be maintained in the spent fuel pool water, the consequences of a loss of normal cooling to the spent fuel pool will not be increased. Current Technical Specification 3.7.14 will ensure that an adequate spent fuel pool boron concentration is maintained in the McGuire spent fuel storage pools.

A decrease in pool water temperature from a large emergency makeup causes an increase in water density that would result in an increase in reactivity when Boraflex neutron absorber panels are present in the racks. However, the additional negative reactivity provided by the current boron concentration limit, above that provided by the concentration required to maintain $k_{eff}$ less than or equal to 0.95 (1470 ppm), will compensate for the increased reactivity which could result from a decrease in spent fuel pool water temperature. Because adequate soluble boron will be maintained in the spent fuel pool water, the consequences of a decrease in pool water temperature will not be increased. Current Technical Specification 3.7.14 will ensure that an adequate spent fuel pool boron concentration is maintained in the McGuire spent fuel storage pools.

2. Will the change create the possibility of a new or different kind of accident from any previously evaluated?

No. Criticality accidents in the spent fuel pool are not new or different types of accidents. They have been analyzed in Section 9.1.2.3 of the Updated Final Safety Analysis Report and in Criticality Analysis reports associated with specific licensing amendments for fuel enrichments up to 4.75 weight percent U–235. Specific accidents considered and evaluated include fuel assembly drop, accidental misloading of spent fuel assemblies into the spent fuel pool racks, and significant changes in spent fuel pool water temperature. The accident analysis in the Updated Final Safety Analysis Report remains bounding.

The possibility for creating a new or different kind of accident is not credible. The amendment proposes to take credit for the soluble boron in the spent fuel pool water for reactivity control in the spent fuel pool while maintaining the necessary margin of safety. Because soluble boron has always been present in the spent fuel pool, a dilution of the spent fuel pool soluble boron has always been a possibility, however, a criticality accident resulting from a dilution accident was not considered credible. For the proposed amendment, the spent fuel pool dilution evaluation (Attachment 7) demonstrates that a dilution of the boron concentration in the spent fuel pool water which could increase the rack $k_{eff}$ to greater than 0.95 (constituting a reduction of the required margin to criticality) is not a credible event. The requirement to maintain boron concentration in the spent fuel pool water for reactivity control will have no effect on normal pool operations and maintenance. There are no changes in equipment design or in plant configuration. This new requirement will not result in the installation of any new equipment or modification of any existing equipment. Therefore, the proposed amendment will not result in the possibility of a new or different kind of accident.

3. Will the change involve a significant reduction in a margin of safety?

No. The proposed Technical Specification changes and the resulting spent fuel storage operating limits will provide adequate safety margin to ensure that the stored fuel assembly array will always remain subcritical. Those limits are based on a plant specific criticality analysis (Attachment 6) based on the "Westinghouse Spent Fuel Rack Criticality Analysis Methodology" described in Reference 1. The Westinghouse methodology for taking credit for soluble boron in the spent fuel pool has been reviewed and approved by the NRC (Reference 6). This methodology takes partial credit for soluble boron in the spent fuel pool and requires conformance with the following NRC Acceptance criteria for preventing criticality outside the reactor:

(1) $k_{eff}$ shall be less than 1.0 if fully flooded with unborated water which includes an allowance for uncertainties at a 95% probability, 95% confidence (95/95) level; and

( 2) $k_{eff}$ shall be less than or equal to 0.95 if fully flooded with borated water, which includes an allowance for uncertainties at a 95/95 level.

The criticality analysis utilized credit for soluble boron to ensure $k_{eff}$ will be less than or equal to 0.95 under normal circumstances, and storage configurations have been defined using a 95/95 $k_{eff}$ calculation to ensure that the spent fuel rack $k_{eff}$ will be less than 1.0 with no soluble boron. Soluble boron credit is used to provide safety margin by maintaining $k_{eff}$ less than or equal to 0.95 including uncertainties, tolerances and accident conditions in the presence of spent fuel pool soluble boron. The loss of substantial amounts of soluble boron from the spent fuel pool which could lead to exceeding a $k_{eff}$ of 0.95 has been evaluated (Attachment 7) and shown to be not credible. Accordingly, the required margin to criticality is not reduced.

The evaluations in Attachment 7, which show that the dilution of the spent fuel pool boron concentration from the conservative assumed initial boron concentration (2475 ppm) to the minimum boron concentration required to maintain $k_{eff} \leq 0.95$ (730 ppm) is not credible, combined with the 95/95 calculation which shows that the spent fuel rack $k_{eff}$ will remain less than 1.0 when flooded with unborated water, provide a level of safety comparable to the conservative criticality analysis methodology required by References 2, 3 and 4.

Therefore the proposed changes in this license amendment will not result in a significant reduction in the facility's margin of safety.

**The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.**

*Attorney for licensee:* Ms. Lisa F. Vaughn, Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina 28201–1006.

*NRC Section Chief:* Richard L. Emch, Jr.

*Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan*

*Date of amendment requests:* September 26, 2000.

*Description of amendment requests:* **The proposed amendments would revise the current licensing basis in the Updated Final Safety Analysis Report by requiring operator action to mitigate the effects of a loss of seal injection (LOSI) cooling to the reactor coolant pumps (RCPs).**

*Basis for proposed no significant hazards consideration determination:* **As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:**

1. Does the change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?

The proposed change to the licensing basis recognizes that if RCP Number 1 seal leak-off rates are low, continuous RCP operation following a sustained LOSI may no longer be permitted. Tripping the plant, securing the affected RCPs, and maintaining hot standby conditions following a sustained LOSI will permit adequate RCP seal cooling by readily achievable process controls. These actions ensure that the probability of developing excessive seal leakage equivalent to that of a previously evaluated loss of coolant accident (LOCA), has not been significantly increased. Plant and RCP tripping are anticipated transients that do not involve plant operation outside design limits.

The consequences of large- and small-break (SB) LOCAs have been evaluated and it has been shown that the radiological consequences of these events do not result in unacceptable exposures to members of the public. Therefore, even if stopping of the RCPs following a LOSI and control of process parameters as described above does not preclude RCP seal failures, the consequences of such failure are bounded by the current accident analysis.

Therefore, the probability of occurrence or the consequences of accidents previously evaluated are not significantly increased.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The leakage resulting from failed RCP seals may be large enough to be considered a SBLOCA and industry data on SBLOCA initiating frequencies includes the contribution from failed RCP seals. SBLOCAs are a previously evaluated class of accidents. There is no new or different kind of accident created as a result of this change.

Therefore, the change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The original design objective for the controlled leakage seal assemblies in the RCPs was to permit sufficient controlled leakage following a LOSI, such that cooling of the leakage provided by the thermal barrier heat exchanger would be sufficient to continue RCP operation unabated without challenging seal integrity. This is an implied margin of safety for seal integrity, even if not explicitly defined in the basis for any Technical Specification. It has been postulated that the reduced seal leak-off will no longer permit continuous RCP operation following a LOSI. The proposed change to the licensing basis recognizes this condition and requires pump tripping if seal injection cannot be restored prior to receiving high temperature alarms in the leak-off return lines. Pump tripping reduces the heat generated in the pump and permits readily achievable process controls to maintain adequate seal cooling and an adequate margin to seal failure.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

**The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.**



*Attorney for licensee:* David W. Jenkins, Esq., 500 Circle Drive, Buchanan, MI 49107.

*NRC Section Chief:* Claudia M. Craig.

*Indiana Michigan Power Company, Docket No. 50–316, Donald C. Cook Nuclear Plant, Unit 2, Berrien County, Michigan*

*Date of amendment request:* September 30, 2000.

*Description of amendment request:* **The proposed amendment would allow an extension of the steam generator tube inspection surveillance requirements of Technical Specification (T/S) Surveillance Requirement 4.4.5.3. The proposed amendment would prevent a mid-cycle shutdown to meet the required 40-calendar month inspection interval of SR 4.4.5.3 and would allow the steam generator tube inspection to be performed during the refueling outage following the current operating cycle.**

*Basis for proposed no significant hazards consideration determination:* **As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:**

1. Does the change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?

The accident considered applicable to the proposed change is a steam generator tube rupture (SGTR). The precursors/initiators of a SGTR (degraded, defective, or leaking tubes) are not known or expected to be present in the CNP [Cook Nuclear Plant] Unit 2 steam generators. These steam generators were newly installed in 1988, and include corrosion prevention design features not included in previous generations of steam generators.

There are no active degradation mechanisms present in the Unit 2 steam generators. Any tube imperfections that may be present or that may be initiated during the current operating cycle are not expected to progress to the point of tube failure before the next refueling outage.

Considering the condition of the steam generators and the operational time between inspections, the proposed change will not significantly increase the probability of occurrence of an accident.

The proposed change will not affect the scope, methodology, acceptance limit, or corrective measures of the existing steam generator examination program.

Unit 2 recently completed an extended shutdown that effectively limited the operational time that is the basis for the surveillance frequency. When the reactor is shut down and the reactor coolant system is at a reduced temperature, the steam generators are not subject to conditions that lead to significant tube degradation. Based on power operation time, the proposed extension will not increase the operating interval between surveillances beyond that currently allowed by [the] T/S.

The steam generator tube inspection interval is not used in the SGTR accident analysis. The proposed change will, therefore, not affect the accident analysis or methodology.

The severity of an analyzed tube rupture event is not related to the time interval between inspections. The proposed change does not affect allowable leakage rates or source terms, and does not change the duration of an SGTR or the response to the event. Because the severity of an accident is not increased by the proposed change, there is no impact on offsite dose considerations.

Therefore, the probability of occurrence or the consequences of accidents previously evaluated are not significantly increased.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change will not result in a change in plant configuration or operation. Plant systems and components will not be operated in a different manner because of this change. The proposed change does not affect or create new accident initiators or precursors.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The T/S limit of one gallon per minute total steam generator tube leakage ensures the offsite dose from tube leaks is limited to a small fraction of 10 CFR 100 limits. The T/S leakage limit of 500 gallons per day in one steam generator is based on ensuring tube integrity in the event of a steam line rupture or loss of coolant accident. Because the offsite dose considerations from steam generator tube failures are limited by the primary-to-secondary leak rate program and not the tube inspection program, the proposed change has no impact on offsite dose.

There are no tubes in service in any of the Unit 2 steam generators that were found to be degraded, and no active steam generator tube degradation is known to be occurring. Therefore, the available margin in tube wall thickness is not being significantly reduced. During the last inspection, 50% of the tubes were inspected (more than sixteen times the T/S requirement), and none were found to exceed the plugging limit, providing additional assurance that safety margins are not being reduced. The absence of tube degradation, along with the material and design features and chemistry controls, provide reasonable assurance that tube repair limits will not be approached during the current operating cycle.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

**The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the**

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amendment requests involve no significant hazards consideration.

*Attorney for licensee*: David W. Jenkins, Esq., 500 Circle Drive, Buchanan, MI 49107.

*NRC Section Chief*: Claudia M. Craig.

*Northeast Nuclear Energy Company, et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut*

*Date of amendment request*: June 30, 2000, as supplemented September 22, 2000.

*Description of amendment request*: The proposed changes would modify Sections 2.4.13.5, "Design Bases for Subsurface Hydrostatic Loading" 2.5.4.6.1, "Design Basis for Groundwater" 3.4.1.2, "Permanent Dewatering System" 3.8.1.6.4, "Waterproofing Membrane" 3.8.1.6.5, "Steel Liner and Penetrations" 9.3.3.1, "Reactor Plant Vent and Drain Systems, Design Bases" 9.3.3.2.4, "Reactor Plant Aerated Drains System" 9.3.3.2.4.1, "Safety-Related Containment Recirculation Cubicle Sump" 9.3.3.3, "Safety Evaluation" 9.3.3.4, "Tests and Inspections" and 12.3.1.3.2, "Post-Accident Access to Vital Areas" Tables 1.8–1, 3.2–1, 8.3–3, 12.3–3, and 12.3–4; and Figures 3.8–67 and 9.3–6 of the Final Safety Analysis Report (FSAR) to reflect the addition of the new subsystem and its impact on other safety-related systems. The new sump pump system creates the possibility of a malfunction of a different type than previously evaluated in the FSAR because of the system's dependence on electrical power; only one non-environmentally qualified, non-safety-related pump is provided; and portions of the Engineered Safety Feature Building structure are now credited with preventing Recirculation Spray System (RSS) cubicle flooding. Additionally, the proposed changes involve deviations from safety classification and "code & standards," Standard Review Plan 3.4.1 and Regulatory Guide (RG) 1.26.

*Basis for proposed no significant hazards consideration determination*: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

This license amendment request deals with changes in Millstone Unit No. 3 Final Safety Analysis Report (FSAR) due to the installation of a new sump pump system in the Engineered Safety Features Building (ESFB). The sump pump system which prevents inleakage through the containment basemat is not connected to and is fully independent of the reactor coolant system. Therefore, the proposed changes to this system will not increase the probability of occurrence of a Loss of Coolant Accident (LOCA). The new system is a support system for the Recirculation Spray System (RSS) and containment protective boundary which are mitigation design features. Therefore, the new system does not increase the probability of occurrence of accidents previously evaluated.

The proposed changes to the groundwater sump system separate the sump from the RSS pump cubicle. As such, the proposed changes would preclude flooding of the RSS cubicles and a potential malfunction of the RSS pumps. The RSS pumps function to provide containment and core cooling, as early as 11 minutes and 30 minutes, respectively, post LOCA. Operability of the RSS pumps is required long term. Since the changes do not affect the operation of the RSS pumps, they will not increase the consequences of a LOCA.

The new collection tank 3SRW–TK1 will be installed in the location of the existing abandoned in place Chemical Addition Tank (CAT) 3QSS*TK2, by the Refueling Water Storage Tank (RWST). The tank will be seismically supported utilizing similar struts and attachments to the RWST as the removed CAT. A calculation has confirmed that there is no impact on the seismic qualification of the RWST as a result of the new tank. The RWST provides water to the Emergency Core Cooling System (ECCS) and Containment Quench Spray (QSS) which are credited to mitigate the consequences of a LOCA. Therefore, the proposed changes do not increase the consequences of a LOCA.

In the proposed design, the installation of the new safety related collection sump and casing pipe will result in a change in the Supplemental Leak Collection and Release System (SLCRS) boundary within the ESFB. This modification will be performed to meet the SLCRS design requirements. Testing will be performed post modification and routinely to satisfy SLCRS Technical Specification 3/4.6.6 requirements. Per Technical Specification 3/4.6.6 basis, the SLCRS is credited post LOCA to limit the release of fission products from the containment. Since the proposed changes do not affect operability of SLCRS, it does not increase the consequences of a LOCA.

In the proposed changes, sumps 3DAS*SUMP7A/B inflow pathways will be restored such that it may become potentially contaminated. Emergency operating procedures shall contain operator actions to ensure that power to 3DAS*SUMP7A/B sump pumps 3DAS–P8A/B is isolated post LOCA. As such, the proposed changes will continue to ensure that potentially contaminated water is not discharged from 3DAS*SUMP7A/B. Therefore, the changes will not increase the consequences of a LOCA.

The design change, per NUREG–0737 Section II.B.2 requirement, has been evaluated by a calculation to ensure that the required operator actions post LOCA can be performed within a 5 rem whole body dose requirement, and has been found to be acceptable.

Therefore, these changes will not significantly increase the consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

This license amendment request is associated with the installation of a new sump pump system in the ESFB. The current and new sump pump systems are not accident initiators since neither system is connected to, and both are fully independent of any system that could cause an accident to occur. The new system, which collects groundwater from beneath the Containment Structure and ESFB, is a support system for the RSS and the containment protective boundary, which are design basis accident mitigation design features. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The Millstone Unit No. 3 FSAR changes reflect the installation of a new sump pump system in the ESFB. The proposed changes do not affect operation of the RWST, ECCS, QSS, RSS, SLCRS, Containment, EDG or any Class 1E component required for safety. The additional load on the Train A EDG and fuel oil consumption are within the calculated allowance. Therefore, these changes do not significantly reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee*: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, Connecticut.

*NRC Section Chief*: James W. Clifford.

*Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska*

*Date of amendment request*: July 28, 2000.

*Description of amendment request*: The proposed amendment would revise the Fort Calhoun Station Unit 1 Technical Specifications to allow installation of tube sleeves as an alternative to plugging to repair defective steam generator tubes.

*Basis for proposed no significant hazards consideration determination*: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The CE Leak Tight Sleeves are designed using the applicable American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code and, therefore, meet the design objectives of the original steam generator tubing. The applicable design criteria for the sleeves conform to the stress limits and margins of safety of Section III of the ASME code. Mechanical testing has shown that the structural strength of repair sleeves under normal, upset, and faulted conditions provides margin to the acceptance limits.

These acceptance limits bound the most limiting (three times normal operating pressure differential) burst margin recommended by Regulatory Guide 1.121. Burst testing of sleeved tubes has demonstrated that no unacceptable levels of primary-to-secondary leakage are expected during any plant condition.

Evaluation of the repaired steam generator tubes indicates no detrimental effects on the sleeve or sleeve-tube assembly from reactor coolant system flow, primary or secondary coolant chemistries, thermal conditions or transients, or pressure conditions as may be experienced at Fort Calhoun Station. Corrosion testing of sleeve-tube assemblies indicates no evidence of sleeve or tube corrosion considered detrimental under anticipated service conditions.

The installation of the proposed sleeves is controlled via the sleeving vendor's proprietary processes and equipment. The CE process has been in use since 1984 and has been implemented more than 24 times for the installation of over 4,200 sleeves. The FCS steam generator design was reviewed and found to be compatible with the installation processes and equipment.

The implementation of the proposed amendment has no significant effect on either the configuration of the plant or the manner in which it is operated. The consequences of a hypothetical failure of the sleeved tube is bounded by the current steam generator tube rupture analysis described in Fort Calhoun Station's USAR, Section 14.14. Due to the slight reduction in diameter caused by the sleeve wall thickness, primary coolant release rates would be slightly less than assumed for the steam generator tube rupture analysis, depending on the break location, and therefore, would result in lower total primary fluid mass release to the secondary system. A main steam line break or feed line break will not cause a SGTR since the sleeves are analyzed for a maximum accident differential pressure greater than that predicted in the Fort Calhoun Station safety analysis.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

As discussed above, the CE Leak Tight Sleeves are designed using the applicable ASME Code as guidance; therefore, they meet the objectives of the original steam generator tubing. As a result, the functions of the steam generators will not be significantly affected by the installation of the proposed sleeves. The proposed repair sleeves do not interact with any other plant systems. Any accident as a result of potential tube or sleeve degradation in the repaired portion of the tube is bounded by the existing tube rupture accident analysis. The continued integrity of the installed sleeve is periodically verified by the Technical Specification requirements.

The implementation of the proposed amendment has no significant effect on either the configuration of the plant or the manner in which it is operated. Therefore, Omaha Public Power District concludes that this proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The repair of degraded steam generator tubes with CE Leak Tight Sleeves restores the structural integrity of the degraded tube under normal operating and postulated accident conditions. The design safety factors utilized for the repair sleeves are consistent with the safety factors in the ASME Code used in the original steam generator design. The portions of the installed sleeve assembly that represents the reactor coolant pressure boundary can be monitored for the initiation and progression of sleeve/tube wall degradation. Use of the previously identified design criteria and design verification testing assures that the margin of safety is not significantly different from the original steam generator tubes. Therefore, OPPD concludes that the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Perry D. Robinson, Winston & Strawn, 1400 L Street, N.W., Washington, DC 20005–3502.

*NRC Section Chief:* Stephen Dembek.

*PECO Energy Company, Docket Nos. 50–352 and 50–353, Limerick Generating Station (LGS), Units 1 and 2, Montgomery County, Pennsylvania*

*Date of amendment request:* July 31, 2000.

*Description of amendment request:* The proposed changes will revise LGS Technical Specifications (TSs) to replace the existing Automatic Depressurization System (ADS) TS Surveillance Requirement (SR) 4.5.1.d.1, a 31-day channel functional test of the accumulator backup compressed gas system low pressure alarm system, with a 31-day verification of the ADS accumulator gas supply header pressure. The existing TS SR 4.5.1.d.1 and SR 4.5.1.d.2.c, a 24-month channel calibration of the accumulator backup compressed gas system low pressure alarm system, will be relocated to the Technical Requirements Manual (TRM).

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed TS changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS changes have no physical impact on plant equipment or the normal operation of plant systems. The ADS and the ADS accumulator backup compressed gas system affected by the proposed testing changes are normally in a standby mode and there are no existing credible system failures that are accident initiators. The ability of the ADS to depressurize the vessel following a small break Loss of Coolant Accident (LOCA) so that flow from low pressure Emergency Core Cooling Systems (ECCS) can enter the core in time to limit fuel cladding temperatures is maintained by the operability of the ADS accumulators and their inlet check valves. The ADS accumulator backup compressed gas low pressure alarm system has no impact on the ability of the ADS accumulators and associated check valves to maintain an adequate gas supply required to mitigate an accident. Therefore, the removal of the alarm system testing from the TS has no impact on the ability of the ADS to cope with the small break LOCA as previously evaluated. The replacement of the monthly alarm channel functional test with the monthly verification of the ADS accumulator gas supply header pressure will assure that the ADS accumulators are pressurized as required to support ADS operability and the ability of ADS to mitigate the accident as previously analyzed is maintained. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes have no physical impact on plant equipment or the normal operation of plant systems. The changes are limited to changes in administrative testing requirements for the existing ADS and ADS accumulator backup compressed gas low pressure alarm systems, and the long term gas supply to the ADS valves. The changes do not impact the methods of operation or manipulation of these systems or components. The impact of these changes has been evaluated to assure that the changes are in conformance with the required design and licensing basis, and that system performance is not degraded. The changes do not affect the operation of the ADS or the ADS accumulator backup gas system and do not create any new system failure modes or

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accident initiators not previously considered. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed TS changes do not involve a significant reduction in a margin of safety.

The proposed changes maintain the safety design basis of the ADS and the ADS accumulator backup gas systems. The ADS accumulator backup compressed gas low pressure alarm system does not support the operability of the ADS accumulators which are required to maintain an adequate gas supply for ADS vessel depressurization. Therefore, the Channel Functional Test and Channel Calibration of backup gas system alarms can be removed from the TS and have no impact on the ability of the ADS to depressurize the reactor and maintain current safety margins defined in the design basis for this TS. The availability of the ADS accumulator backup gas system to perform its long term cooling function after an accident or other event is not addressed in any TS or Bases. The proposed changes in testing also do not impact any of the Inservice Inspections or Tests currently performed on the ADS or ADS accumulator backup gas system components. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* J.W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, PECO Energy Company, 2301 Market Street, Philadelphia, PA 19101.

*NRC Section Chief:* James W. Clifford.

*PPL Susquehanna, LLC, Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania*

*Date of amendment request:* February 29, 2000.

*Description of amendment request:* The amendment would incorporate Supplement 3 to PL–NF–90–001, "Application of Reactor Analysis Methods for BWR Design and Analysis: Application Enhancements," into Technical Specification Section 5.6.5, Core Operating Limits Report. The supplement describes alternative methods for the analysis of the rotated bundle event, the control rod withdrawal error event, and the recirculation flow controller event.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

[The] proposed alternative analysis methods do not involve an increase in the probability or consequences of an accident previously evaluated. The alternative analysis methods affect the analysis methods used to perform the Rotated Bundle Analysis, the Rod Withdrawal Error Analysis, and the Recirculation Flow Controller Failure Analysis. These events are analyzed on a cycle specific basis to ensure that the operating limits contained in the COLR [Core Operating Limits Report] will provide acceptable consequences to the health and safety of the public consistent with NRC guidelines. No physical changes are being made to plant systems, structures or components. The alternative analysis methods ensure that the [offsite] dose consequences of the postulated events remain within the NRC guidelines.

Based on the above, it is concluded that the alternative analysis methods do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The alternative analysis methods do not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed alternative analysis methods affect the analysis methods for the Rotated Bundle, Rod Withdrawal Error and Recirculation Flow Controller Failure Events. Since these alternative analysis methods affect analytical methods and do not affect any plant systems, structures, or components, it is concluded that the proposed alternative analysis methods do not create the possibility for any new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in the margin of safety.

The alternative analysis methods do not involve a significant reduction in the margin of safety.

The Rotated Bundle Methodology is currently analyzed as a moderate frequency event. The alternative methods will instead analyze the Rotated Bundle Event as an Infrequent Event. Analysis of this event as an infrequent event is consistent with NRC guidance (provided in the Standard Review Plan) and the frequency classification of the event as described in the SSES [Susquehanna Steam Electric Station] FSAR [Final Safety Analysis Report]. The proposed analysis methodology limits the analytical [offsite] dose to a small fraction of 10 CFR 100 guidelines consistent with the NRC guidelines. Therefore, the proposed alternative analysis methods do not represent a significant reduction in the margin of safety.

The Rod Withdrawal Error Analysis currently does not credit the Rod Block Monitor System to limit the extent of the inadvertent rod withdrawal. The alternative proposed methods will allow credit in the analysis for the Rod Block Monitor to limit the extent of the inadvertent control rod withdrawal. Several plant and procedural improvements have been implemented that have improved the reliability of the Rod Block Monitor System. The analytical acceptance criteria for the event is not affected. Therefore, the proposed alternative analysis methods do not affect the margin of safety.

The Recirculation Flow Controller Failure analysis is currently analyzed using the RETRAN code. The proposed alternative analysis methods use [PPL Susquehanna, LLC's] approved steady state nodal simulation methodology instead of the RETRAN code. The [PPL Susquehanna, LLC,] steady state nodal simulation methodology produces final operating limits that are consistent with the RETRAN methodology. The analytical acceptance criteria is not affected by the alternative analysis methodology. Use of [PPL Susquehanna, LLC's] methodology does not affect the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Bryan A. Snapp, Esquire, Assoc. General Counsel, PPL Services Corporation, 2 North Ninth St., GENTW3, Allentown, PA 18101–1179.

*NRC Section Chief:* Marsha Gamberoni.

*PPL Susquehanna, LLC, Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania*

*Date of amendment request:* July 31, 2000.

*Description of amendment request:* The amendment would remove the phrase "maximum pathway" from Surveillance Requirement 3.6.1.3.12 in Technical Specification Section 3.6.1.3, "Primary Containment Isolation Valves."

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to eliminate the words "maximum pathway" does not affect any plant system or component. The change does not impact operator performance or procedures. The leak rate testing of the MSIVs [main steam isolation valves] will continue to be performed in accordance with



10 CFR 50 Appendix J. The change does not impact the design basis accident analyses presented in the FSAR [Final Safety Analysis Report]. The change only affects how the as-found leakage is used to evaluate operability and reportability. This change is consistent with the guidance on leak rate testing presented in NEI 94–01 [Nuclear Energy Institute Guideline for Implementing Performance-Based Option of 10 CFR Part 50, Appendix J] and the Standard Technical Specifications. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

As discussed above, the proposed change to the Technical Specifications does not affect any plant system or component and does not affect plant operation. The consequences of accidents will remain within the accident analysis described in the FSAR. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in the margin of safety.

The proposed change does not affect any plant system or component, and does not have any impact on plant operation. The proposed change does not involve a significant reduction in the margin of safety as currently defined in the bases of the applicable Technical Specification section. Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Bryan A. Snapp, Esquire, Assoc. General Counsel, PPL Services Corporation, 2 North Ninth St., GENTW3, Allentown, PA 18101–1179.

*NRC Section Chief:* Marsha Gamberoni.

*Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California*

*Date of amendment requests:* September 6, 2000 (PCN–274, Supplement 1). This application supersedes the licensee's application of November 24, 1999.

*Description of amendment requests:* The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Southern California Edison Company to withdraw its November 24, 1999, application for proposed amendments. The Commission had previously issued a Notice of Consideration of Issuance of Amendments published in the **Federal Register** on December 29, 1999 (64 FR 73098). However, by letter dated September 6, 2000, the licensee withdrew the proposed change. TAC Nos. MA7289 and MA7290 used for the review of the November 24, 1999, application have been closed.

As submitted by the licensee on September 6, 2000, the proposed amendments would modify the Technical Specifications (TSs) for the San Onofre Nuclear Generating Station, Units 2 and 3, to revise TS 3.3.11, "Post Accident Monitoring Instrumentation (PAMI)." Specifically, the proposed change would extend the PAMI channel calibration surveillance frequency from 18 months to 24 months to accommodate a 24-month fuel cycle for all PAMI instruments with the exception of the reactor coolant system (RCS) temperature instrumentation. Surveillance Requirement (SR) 3.3.11.4 relating to RCS temperature instrumentation channel calibration every 18 months will remain in place.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Do the proposed amendments:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No

The proposed license amendment to extend the calibration surveillance frequency of Post Accident Monitoring Instrumentation (PAMI) (excluding RCS temperature instrumentation) is being made to support plant operation with a 24-month fuel cycle. Increasing the calibration intervals for PAMI instrumentation to 30 months [24 months plus the 25 percent surveillance interval extension allowed by SR 3.0.2] (excluding RCS temperature instrumentation) does not affect the initiation or probability of any previously analyzed accident. Increasing the calibration interval will not affect the integrity of any of the principal barriers against radiation release (fuel cladding, reactor vessel, and containment building). The ability of the plant to mitigate the consequences of any previously analyzed accidents is not adversely affected.

PAMI instrumentation provides to the operators both qualitative and quantitative information used in accident mitigation and for the safe shutdown of the plant. Instrumentation which provides qualitative information is unaffected by a change in instrument accuracy induced by drift due to the increased surveillance interval because no explicit value is required by the Emergency Operating Instructions (EOIs). Instrumentation that provides quantitative information (i.e., decision points) in the EOIs have been evaluated. This evaluation resulted in no changes to any operating instructions. This evaluation of the proposed change to the surveillance interval demonstrates that licensing basis safety analyses acceptance criteria and San Onofre Nuclear Generating Station (SONGS) Units 2 and 3 EOI criteria will continue to be met.

The proposed new surveillance frequency for these instrument channels was evaluated using the guidance of Generic Letter 91–04 ["Changes in Technical Specification Surveillance Intervals To Accommodate a 24-Month Fuel Cycle"]. The basis for the change includes a quantitative evaluation of instrument drift for PAMI instrumentation (excluding RCS temperature instrumentation) providing quantitative information to the EOIs. Also, loop accuracy/setpoint calculations for these instruments were updated to accommodate the extended surveillance period. Analyses and evaluations completed to assess the proposed increase in the surveillance interval demonstrate that the effectiveness of these instruments in fulfilling their respective functions is maintained. Technical Specifications Channel Checks and Channel Functional Checks for the subject channels, will continue to be performed to provide assurance of instrument channel OPERABILITY.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of any previously analyzed accident.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No

The increased calibration surveillance interval for PAMI instrumentation (excluding RCS temperature instrumentation) is justified based on evaluation of past equipment performance and does not require any plant hardware changes or changes in normal system operation. Changing the calibration interval for this instrumentation has no means of creating the possibility of a new or different kind of accident. There are no new decision points or operator responses required to support existing accident mitigation strategies.

Therefore, there are no new failure modes introduced as a result of extending these surveillance intervals, and the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety?

Response: No

The proposed change to the calibration surveillance interval (excluding RCS temperature instrumentation) was evaluated using the criteria of 95% probability/95% confidence level for process sensor drift.

PAMI instrumentation are used to provide indication following certain hypothetical accident conditions and are used in EOIs for trending and to initiate operator action at certain decision points. Instrument uncertainty calculations have been updated for PAMI instrumentation used for EOI

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decision points as appropriate. Updated calculations show that the total loop uncertainty for PAMI evaluated either decreased or remained the same. These updated calculations demonstrate that applicable accuracy requirements for SONGS 2 and 3 are satisfied with the proposed new surveillance intervals.

Changing the calibration interval for these channels does not affect the margin of safety for previously analyzed accidents. Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

*Attorney for licensee:* Douglas K. Porter, Esquire, Southern California Edison Company, 2244 Walnut Grove Avenue, Rosemead, California 91770.

*NRC Section Chief: Stephen Dembek.*

*Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee*

*Date of application for amendments:* August 31, 2000 (TS 99–17).

*Brief description of amendments:* The proposed amendment would revise the Sequoyah Nuclear Plant (SQN) Technical Specifications (TSs). The revision would revise TS Section 5.6, "Fuel Storage," to allow credit for soluble boron in the fuel storage pools.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), Tennessee Valley Authority (TVA), the licensee, has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The presence of soluble boron in the spent fuel pool (SFP) water for criticality control does not increase the probability of a fuel assembly misplacement accident in the SFP. The handling of the fuel assemblies in the SFP has always been performed in borated water. The proposed change does allow greater flexibility for fuel storage configurations in the SFP. The increased flexibility does not introduce any greater complexity than the 3-zone configuration now in use. Fuel assembly placement will continue to be controlled pursuant to approved fuel handling procedures and will be in accordance with the TS limitations. There is no increase in the probability of a fuel placement accident.

The criticality analysis shows the consequences of the most serious fuel assembly misplacement accident in the SFP are not affected when considering the presence of soluble boron. Under normal conditions, the rack $k_{eff}$ [k effective] remains subcritical as required by 10 CFR 50.68 [Section 50.68 of Title 10 of the Code of Federal Regulations], and is less than 0.95 with only 300 ppm [parts per million] soluble boron concentration. In the event of a postulated fuel assembly misplacement, the presence of sufficient soluble boron in the SFP precludes criticality as a result of the misplacement. The criticality analysis demonstrates that the pool $k_{eff}$ will remain less than 0.95 following an accidental misplacement due to 2000 parts per million (ppm) boron concentration of the pool. In fact, concentration of only 700 ppm soluble boron is sufficient to maintain $k_{eff}$ less than 0.95 with 95% probability at 95% confidence level for the most serious fuel assembly misplacement. The proposed TS will ensure that an adequate SFP boron concentration is maintained. There is no significant increase in the consequences of the accidental misplacement of spent fuel assemblies in the SFP.

There is no increase in the probability of the loss of normal cooling to the SFP water when considering the presence of soluble boron in the pool water for subcriticality control since a high concentration of soluble boron has always been maintained in the SFP water.

Reactivity changes due to SFP temperature changes have been evaluated. The base case criticality analysis used a SFP temperature of 20°C. The SFP reactivity uncertainty due to temperature changes was considered for SFP temperatures ranging from 4°C to 120°C. The reactivity increment between 4°C and 20°C is taken into account as additional uncertainty in the analysis. In all spent fuel temperature cases, the temperature (and void) coefficients of reactivity are negative. Therefore there is no requirement for additional soluble boron above the base case level. Because the coefficients of reactivity are negative, the consequences of the loss of normal cooling to the SFP will not be increased.

Therefore, based on the conclusions of the above analysis, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

B. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Spent fuel handling accidents are not new or different types of accidents and have been evaluated in the criticality analysis, Reference 1.

The boron concentration in the SFP water is maintained at a minimum of 2000 ppm. The proposed changes to the TS do not change boron concentration requirements for the SFP water. A dilution of the SFP soluble boron has always been a possibility; however, it was shown in the SFP dilution evaluation (Reference 2) that there are no credible dilution events for which the SFP $k_{eff}$ could reach criticality. Therefore, the implementation of proposed changes to the TS will not result in the of a new kind of accident.

The proposed changes for re-rack storage management continue to specify requirements for the spent fuel rack configurations. Since the proposed SFP storage configuration limitations are comparable to those used in the past, the new limitations will not have any significant effect on normal SFP operations and maintenance and will not create any possibility of a new or different kind of accident. Verifications will continue to be performed to ensure that the SFP loading configuration meets specified requirements.

The misplacement of a fuel assembly in the revised storage configurations has been evaluated. In all cases, the rack $k_{eff}$ remains subcritical and less than 0.95 with 700 ppm boron in the water.

As discussed above, the proposed changes will not create the possibility of a new or different kind of accident. There is no significant change in plant configuration, equipment design, or equipment.

Under the proposed amendment, no changes are being made to the racks themselves, any other systems, or to the physical fuel handling structures in the Auxiliary Building itself. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

C. The proposed change does not involve a significant reduction in a margin of safety.

The TS changes proposed by this License Amendment Request and the resulting spent fuel storage configuration limitations will provide adequate safety margin to ensure that the storage fuel assembly array will always remain subcritical. Those limits are based on a plant specific criticality analysis (Reference 1) performed in accordance with accepted spent fuel rack criticality analysis methodology.

While the criticality analysis utilized partial credit for soluble boron, storage configurations have been defined to ensure that the spent fuel rack $k_{eff}$ will be less than 1.0 with no soluble boron. Soluble boron credit is used to provide subcritical margin such that the SFP $k_{eff}$ is maintained less than 0.95 under all credible conditions.

The loss of substantial amounts of soluble boron from the SFP, which could lead to $k_{eff}$ exceeding 0.95, has been evaluated (Reference 2) and shown to be not credible. This evaluation also shows that dilution of the SFP boron concentration from 2000 ppm to 800 ppm is not credible. Also, the spent fuel storage pool $k_{eff}$ remains less than 1.0 at a 95/95 probability/confidence level with the pool filled with unborated water. Therefore, the proposed change does not involve a significant reduction in the margin of safety.

Based on the above evaluation, TVA concludes that the proposed changes to the TSs does [sic] not result in a significant reduction in a margin of safety.

The NRC has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 10H, Knoxville, Tennessee 37902.

*NRC Section Chief:* Richard P. Correia.



*Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont*

*Date of amendment request:* September 14, 2000, as supplemented on September 22, 2000.

*Description of amendment request:* This proposed change revises the Technical Specification to clarify the valve isolation signal information in Table 4.7.2 and makes an administrative change to the table main steam isolation valves component identification to include all the valves.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The operation of the Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

No changes are being made to plant design, method of operation or method of testing. This change will not alter the basic operation of process variables, systems, or components as described in the safety analysis. No new equipment is introduced.

The proposed change does not affect the ability of the primary containment isolation system or ECCS [emergency core cooling system] systems to perform their required safety functions. The essential safety functions of providing primary containment integrity and providing water to cool the core in the event of an accident are maintained. There is no physical or operational change being made which would alter the sequence of events, plant response, or conclusions of existing safety analyses. This proposed change results in no impact on analyzed accident event precursors or effects.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve any physical alteration of plant equipment and does not change the method by which any safety-related system performs its function. As such, no new or different types of equipment will be installed, and the basic operation of installed equipment is unchanged. There is no change in plant operation that involves failure modes other than those previously evaluated. The methods governing plant operation and testing remain consistent with current safety analysis assumptions.

Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

No changes are being made to plant design, method of operation or method of testing. This change will not alter the basic operation of process variables, systems, or components as described in the safety analysis. No new equipment is introduced.

The proposed change does not affect the ability of the primary containment isolation system or ECCS systems to perform their required safety functions. The essential safety functions of providing primary containment integrity and providing water to cool the core in the event of an accident are maintained. There is no physical or operational change being made which would alter the sequence of events, plant response, or conclusions of existing safety analyses. This proposed change results in no impact on analyzed accident event precursors or effects.

This proposed change does not alter the physical design of the plant, methods or modes of operation, testing or analyses, thereby resulting in no impact on safety functions. Since the proposed change does not alter the means by which primary containment isolation is maintained and containment cooling valves are isolated in support of RHR [residual heat removal] LPCI [low pressure coolant injection] actuation, there is no significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Mr. David R. Lewis, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037–1128.

*NRC Section Chief:* James W. Clifford.

*Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont*

*Date of amendment request:* September 19, 2000.

*Description of amendment request:* This proposed change revises Technical Specification (TSs) 3.5.H.3 and 3.5.H.4 related to low pressure Emergency Core Cooling System (ECCS) injection/spray subsystem operability during cold shutdown and refueling conditions. Two circumstances are considered: (1) when no operations with the potential for draining the reactor vessel (OPDRV) are in progress (addressed in TS 3.5.H.3), and (2) when OPDRVs are in progress (addressed in TS 3.5.H.4). The proposed change provides completeness in the TS for the defined conditions and also provides for the operation of an alternative combination of low pressure ECCS injection/spray subsystems to ensure adequate coolant inventory and sufficient heat removal capability for the irradiated fuel during cold shutdown and refueling conditions when OPDRVs are in progress.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

No changes are being made to plant design or method of operation. This change only affects the plant in a cold shutdown or refueling condition and will not alter the basic operation of process variables, structures, systems, or components as described in the safety analyses. No new equipment is introduced.

The proposed change does not affect the ability of low pressure ECCS injection/spray systems to perform their required safety functions. The essential safety function of providing water to reflood the reactor vessel following an inadvertent vessel draindown is maintained. There is no physical or operational change being made which would alter the sequence of events, plant response, or conclusions of existing safety analyses.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve any physical alteration of plant equipment and does not change the method by which any safety-related system performs its intended safety function. As such, no new or different types of equipment will be installed, and the basic operation of installed equipment is unchanged. There is no change in plant operation that involves failure modes other than those previously evaluated. The methods governing plant operation and testing remain consistent with current safety analysis assumptions. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

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During refueling and cold shutdown conditions with operations having the potential for draining the reactor vessel (OPDRV) in progress, any one ECCS injection/spray subsystems is adequate to reflood the reactor vessel in the event of an inadvertent draindown. Since the proposed change provides an equivalent means for achieving this safety function, there is no reduction in reflood capability. The additional flexibility, to maintain a combination of one core spray subsystem and one LPCI [low pressure coolant injection] subsystem (provided by this change), is equivalent to the safety margin provided by the existing TS since a single active failure affecting one subsystem results in the same remaining capability of one ECCS subsystem.

Since the changed TS provides equivalent low pressure ECCS injection/spray capability and protection from loss of coolant inventory, the risk of an inadvertent draindown event is unchanged, thus preserving previously existing margins of safety.

For circumstances involving no OPDRVs during refueling and cold shutdown conditions, no ECCS or containment cooling equipment is required to meet safety objectives. Thus, the margins of safety for such situations are maintained.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Mr. David R. Lewis, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037–1128.

*NRC Section Chief:* James W. Clifford.

*Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont*

*Date of amendment request:* September 26, 2000.

*Description of amendment request:* This proposed change revises Technical Specification (TS) requirements regarding secondary containment systems, including the Standby Gas Treatment System (SBGTS). The affected TS sections are 1.0, Definitions; 3/4.7.B, Standby Gas Treatment System; and 3/4.7.C, Secondary Containment System. In addition, a new TS section, 3/4.7.E, Reactor Building Automatic Ventilation System Isolation Valves (RBAVSIVs), is proposed. Some of the proposed changes are administrative in nature and do not affect the technical aspects of the requirements. Associated changes to the TS Bases are also being made to conform to the changed TS. The proposed changes provide certain additional flexibility in operations when equipment is made or found to be inoperable, while also ensuring appropriate actions are taken to place the plant in a safe condition under such conditions.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

No changes are being made to the plant design, physical system configuration, or basic method of operation as a result of the proposed amendment. The Standby Gas Treatment System (SBGTS) and secondary containment are not assumed to be initiators of any analyzed event. The circumstances for which operability of SBGTS and secondary containment are required are unchanged, and would not occur at any greater frequency as a result of this change. Therefore, the probability of a design basis loss-of-coolant accident or fuel handling accident (the applicable accidents) previously evaluated is not increased.

The proposed change does not increase the consequences of an accident because system operability requirements are being maintained. In lieu of suspending refueling activities when one train of SBGTS is inoperable beyond seven days, placing the operable train of SBGTS in operation ensures that no failures that could prevent automatic actuation have occurred and that any other failure would be readily detected. Operation of one train of the SBGTS is sufficient to mitigate the consequences of any analyzed event. The secondary containment systems assumed to operate following a design basis accident continue to function as assumed in accident analyses to mitigate the consequences of postulated accidents.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve any physical alteration to the plant structures, systems, or components (SSCs), or the basic manner in which these SSCs are operated or maintained. The methods by which these systems perform their safety function are unchanged and remain consistent with current safety analysis assumptions. There is no change in plant operation that involves failure modes other than those previously evaluated. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

The proposed change does not result in a significant reduction in a margin of safety because restrictions placed on operations which have the potential for releasing radioactive material to the secondary containment continue to be in accordance with the assumptions and conditions of existing safety analyses. Operations with inoperable equipment have the proper restrictions to maintain existing margins or to place the plant in a safe condition such that inoperable equipment is not required to meet safety analysis assumptions. Ensuring operability of one train of SBGTS together with required secondary containment integrity is sufficient to mitigate the consequences of any analyzed event. Since current analyses are unaffected in this regard, margins of safety are maintained.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Mr. David R. Lewis, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037–1128.

*NRC Section Chief:* James W. Clifford.

**Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing**

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

*FirstEnergy Nuclear Operating Company, et al., Docket No. 50–412, Beaver Valley Power Station, Unit 2, Shippingport, Pennsylvania*

*Date of amendment request:* September 1, 2000.



*Description of amendment request:* The proposed amendment would revise certain 18-month surveillance requirements in the technical specifications by eliminating the condition that testing be conducted during shutdown, or during cold shutdown or refueling mode. The systems that would be affected are the emergency core cooling system, containment depressurization and cooling system, chemical addition system, and containment isolation valve system.

*Date of publication of individual notice in* **Federal Register:** September 12, 2000 (65 FR 55056).

*Expiration date of individual notice:* October 12, 2000.

*Power Authority of The State of New York, Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York*

*Date of application for amendment:* April 27, 2000.

*Brief description of amendment request:* The amendment seeks to extend the applicability of the current pressure-temperature and overpressure protection system limit curves from 13.3 effective full-power years (EFPY) to 16.2 EFPYS.

*Date of publication of individual notice in* ***Federal Register:*** August 29, 2000 (65 FR 52451).

*Expiration date of individual notice:* September 28, 2000.

*Power Authority of the State of New York, Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York*

*Date of amendment request:* August 29, 2000, as supplemented by letter dated September 8, 2000.

*Description of amendment request:* The amendment proposes to change Technical Specifications 3.0.D and 4.0.D to be equivalent to the Boiling-Water Reactor NUREG–1433 guidance for the Improved Technical Specifications limiting condition for operation 3.0.4, which is currently under review.

*Date of publication of individual notice in* **Federal Register:** September 14, 2000 (65 FR 55650).

*Expiration date of individual notice:* October 16, 2000.

*Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont*

*Date of amendment request:* September 14, 2000.

*Brief description of amendment request:* The amendment would clarify the valve isolation signal information in the Technical Specification Table 4.7.2 and make an administrative change to the table main steam isolation valves component identification.

*Date of publication of individual notice in* ***Federal Register:*** September 27, 2000 (65 FR 68111).

*Expiration date of individual notice:* October 27, 2000.

**Notice of Issuance of Amendments to Facility Operating Licenses**

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, http://www.nrc.gov (the Electronic Reading Room).

*AmerGen Energy Company, LLC, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois*

*Date of application for amendment:* June 19, 2000, as supplemented August 8, 2000.

*Brief description of amendment:* The amendment allows some emergency diesel generator Technical Specification surveillance requirements to be performed during plant operation instead of during plant shutdown.

*Date of issuance:* October 2, 2000.

*Effective date:* As of the date of issuance and shall be implemented within 30 days.

*Amendment No.:* 132.

*Facility Operating License No. NPF–62:* The amendment revised the Technical Specifications.

*Date of initial notice in* ***Federal Register:*** July 26, 2000 (65 FR 46006). The supplemental information did not change the application or affect the proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 2, 2000.

No significant hazards consideration comments received: No.

*AmerGen Energy Company, LLC, Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1, Dauphin County, Pennsylvania*

*Date of application for amendment:* April 1, 1999, as supplemented June 14, and July 27, 2000.

*Brief description of amendment:* The amendment revised the TMI–1 Technical Specifications (TSs) 1.4.2, 1.4.3, 1.4.4, 3.3.1.2.b, 3.3.1.3.b, and c, 3.3.2.1, Table 4.1–1 (Items 14, 25, 31, and 32), Table 4.1–3 (Items 4 and 6), Table 4.1–5, and TSs 4.1.5, 4.5.2.1.a and b, 4.5.2.3.a, and 4.5.3.1.b.1 and 2, to: add limiting condition for operation (LCO) action statements and make LCOs and surveillance requirements more consistent with the revised "Standard Technical Specifications for Babcock & Wilcox Plants," (NUREG–1430, Revision 1); correct conflicts or inconsistencies; and revise spent fuel pool sampling frequency from monthly and after adding chemicals, to weekly. TS 3.3.1.2.d is deleted as a result of the LCO additions described above. Also, a Bases statement for surveillance testing was added to Section 4.1 of the TSs and a revised Bases to Section 4.4.4 is included as well.

*Date of issuance:* September 25, 2000.

*Effective date:* As of the date of issuance and shall be implemented within 60 days.

*Amendment No.:* 225.

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*Facility Operating License No. DPR–50.* Amendment revised the Technical Specifications.

*Date of initial notice in* ***Federal Register:*** July 28, 1999 (64 FR 40906) and August 23, 2000 (65 FR 51349).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 25, 2000.

No significant hazards consideration comments received: No.

*Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units Nos. 1, 2, and 3, Maricopa County, Arizona*

*Date of application for amendments:* December 1, 1999 (102–04378).

*Brief description of amendments:* The amendments to the operating licenses delete or update outdated administrative information and delete license conditions that are no longer applicable or have been completed.

*Date of issuance:* September 29, 2000.

*Effective date:* September 29, 2000, to be implemented within 30 days of the date of issuance.

*Amendment Nos.:* Unit 1—128, Unit 2—128, Unit 3—128.

*Facility Operating License Nos. NPF–41, NPF–51, and NPF–74:* The amendments revised the Operating Licenses.

*Date of initial notice in* ***Federal Register:*** March 8, 2000 (65 FR 12288).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 29, 2000.

No significant hazards consideration comments received: No.

*Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units Nos. 1, 2, and 3, Maricopa County, Arizona*

*Date of application for amendments:* June 6, 2000, as supplemented June 29 and July 3, 2000.

*Brief description of amendments:* The amendments restrict the emergency diesel generator (DG) acceptance criteria for steady-state voltage and frequency in several surveillance requirements (SRs) involving DG starts in Technical Specification (TS) 3.8.1, "AC Sources—Operating," of the TSs for the three units. The amendments also add a note to each SR that states "The steady state voltage and frequency limits are analyzed values and have not been adjusted for instrument error." The restricted acceptance criterion is to ensure proper DG operation.

*Date of issuance:* October 4, 2000.

*Effective date:* October 4, 2000, to be implemented within 45 days of the date of issuance. For surveillance requirements associated with the revised steady-state voltage and frequency limits in Technical Specifications 3.8.1 and 3.8.2, the first performance is due at the end of the first surveillance interval that began on the date the surveillance was last performed prior to the date of implementation of the amendments.

*Amendment Nos.:* Unit 1–129, Unit 2–129, Unit 3—129.

*Facility Operating License Nos. NPF–41, NPF–51, and NPF–74:* The amendments revised the Technical Specifications.

*Date of initial notice in* ***Federal Register:*** July 12, 2000 (65 FR 43043).

The June 29 and July 3, 2000, supplements provided clarifying information that was within the scope of the application and the **Federal Register** notice, and did not change the staff's initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 4, 2000.

No significant hazards consideration comments received: No.

*Commonwealth Edison Company, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois*

*Date of application for amendments:* February 18, 2000.

*Brief description of amendments:* The amendments remove the anticipatory reactor scram signal for turbine electro-hydraulic control (EHC) low oil pressure trip from the reactor protection system (RPS) trip function.

*Date of issuance:* September 27, 2000.

*Effective date:* Immediately, to be implemented within 90 days.

*Amendment Nos.:* 181 and 176.

*Facility Operating License Nos. DPR–19 and DPR–25:* The amendments revised the Technical Specifications.

*Date of initial notice in* ***Federal Register:*** April 5, 2000 (65 FR 17910).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 27, 2000.

No significant hazards consideration comments received: No.

*Commonwealth Edison Company, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois*

*Date of application for amendments:* April 25, 2000.

*Brief description of amendments:* The amendments revised Technical Specification 3/4.9.5, "Communications" to allow the movement of a control rod in a fueled core cell in Operational Condition 5 to be exempt from the requirement that direct communication be maintained between the control room and the refueling platform personnel when the rod is moved with its normal drive system.

*Date of issuance:* October 5, 2000.

*Effective date:* Immediately, to be implemented within 30 days.

*Amendment Nos.:* 141 and 127.

*Facility Operating License Nos. NPF–11 and NPF–18:* The amendments revised the Technical Specifications.

*Date of initial notice in* ***Federal Register:*** June 14, 2000 (65 FR 37422).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 5, 2000.

No significant hazards consideration comments received: No.

*Consumers Energy Company, Docket No. 50–255, Palisades Plant, Van Buren County, Michigan*

*Date of application for amendment:* June 27, 2000, as supplemented August 18 and 30, 2000.

*Brief description of amendment:* The amendment changes Improved Technical Specification Sections 3.5.1, "Safety Injection Tanks (SITs)," and 3.5.2, "ECCS [Emergency Core Cooling System]—Operating," regarding completion times for restoring an inoperable SIT and for restoring a low-pressure safety injection train.

*Date of issuance:* October 2, 2000.

*Effective date:* As of the date of issuance and shall be implemented on or before December 31, 2000.

*Amendment No.:* 191.

*Facility Operating License No. DPR–20:* Amendment revised the Technical Specifications.

*Date of initial notice in* ***Federal Register:*** July 26, 2000 (65 FR 46007) (two notices).

The August 18 and 30, 2000, supplemental letters provided clarifying information that was within the scope of the original application and did not change the staff's initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 2, 2000.

No significant hazards consideration comments received: No.

*Duke Energy Corporation, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina*

*Date of application for amendments:* June 29, 2000, as supplemented by



letters dated July 27, and August 10, 2000.

*Brief description of amendments:* The amendments revised the Technical Specifications (TS) to reference the Westinghouse Best Estimate Large Break Loss-of-Coolant Accident analysis methodology described in WCAP–12945–P–A, March 1998. These amendments also address corresponding TS Bases changes.

*Date of issuance:* October 2, 2000.

*Effective date:* As of the date of issuance and shall be implemented within 30 days from the date of issuance.

*Amendment Nos.:* 188 and 181.

*Facility Operating License Nos. NPF–35 and NPF–52:* Amendments revised the Technical Specifications.

*Date of initial notice in* ***Federal Register:*** August 23, 2000 (65 FR 51350).

The letter dated August 10, 2000, provided additional information that did not change the scope of the application and the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 2, 2000.

No significant hazards consideration comments received: No.

*Duke Energy Corporation, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina*

*Date of application for amendments:* May 25, 2000, as supplemented by letters dated July 31, August 8, and August 17, 2000.

*Brief description of amendments:* The amendments temporarily revise TS 3.5.2, "Emergency Core Cooling System;" TS 3.6.6, "Containment Spray System;" TS 3.6.17, "Containment Valve Injection Water System;" TS 3.7.5, "Auxiliary Feedwater System;" TS 3.7.7, "Component Cooling Water System;" TS 3.7.8, "Nuclear Service Water System;" TS 3.7.10, "Control Room Area Ventilation System;" TS 3.7.12, "Auxiliary Building Filtered Ventilation Exhaust System;" and TS 3.8.1, "AC Sources".

*Date of issuance:* October 4, 2000.

*Effective date:* As of the date of issuance and shall be implemented within 30 days from the date of issuance.

*Amendment Nos.:* 189 and 182.

*Facility Operating License Nos. NPF–35 and NPF–52:* Amendments revised the Technical Specifications.

*Date of initial notice in* ***Federal Register:*** August 25, 2000 (65 FR 51860).

The supplements dated July 31, August 8, and August 17, 2000, provided clarifying information that did not change the scope of the May 25, 2000, application and the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 4, 2000.

No significant hazards consideration comments received: No.

*Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina*

*Date of application of amendments:* September 7, 2000.

*Brief description of amendments:* The amendments revise Surveillance Requirement 3.8.1.9.a by adding a note stating that the upper limits on frequency and voltage are not required to be met for the annual test of the Keowee Hydro Units until the NRC issues an amendment that removes the note in response to an amendment request to be submitted no later than April 5, 2001.

*Date of Issuance:* October 4, 2000.

*Effective date:* As of the date of issuance and shall be implemented within 30 days from the date of issuance.

*Amendment Nos.:* 316, 316, & 316.

*Facility Operating License Nos. DPR–38, DPR–47, and DPR–55:* Amendments revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: Yes (65 FR 56600 dated September 19, 2000). That notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice also provided for an opportunity to request a hearing by October 19, 2000, but indicated that if the Commission makes a final no significant hazards consideration.

The Commission's related evaluation of the amendment, finding of exigent circumstances, and a final no significant hazards consideration determination are contained in a Safety Evaluation dated October 4, 2000.

*Entergy Gulf States, Inc., and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana*

*Date of amendment request:* May 8, 2000, as supplemented by letter dated August 30, 2000.

*Brief description of amendment:* The amendment revises Technical Specifications to remove the fuel building (FB) and the FB ventilation system from the requirements associated with secondary containment during power operation (except during movement of recently irradiated fuel assemblies in the FB).

*Date of issuance:* September 22, 2000.

*Effective date:* As of the date of issuance and shall be implemented 30 days from the date of issuance.

*Amendment No.:* 113.

*Facility Operating License No. NPF–47:* The amendment revised the Technical Specifications.

*Date of initial notice in* ***Federal Register:*** June 14, 2000 (65 FR 37424).

The August 30, 2000, supplemental letter provided additional information to support staff review of the original application, and did not affect the initial finding of no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 22, 2000.

No significant hazards consideration comments received: No.

*Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit Nos. 1 and 2 (ANO–1 and ANO–2), Pope County, Arkansas*

*Date of application for amendments:* September 17, 1999, as supplemented by letters dated June 29, August 3, and September 15, 2000.

*Brief description of amendment:* The amendments change heavy load handling requirements and transportation provisions that would permit the movement of the original and replacement steam generators (SGs) through the ANO–2 containment construction opening during the SG replacement outage.

*Date of issuance:* September 25, 2000.

*Effective date:* As of the date of issuance to be implemented within 30 days from the date of issuance.

*Amendment Nos.:* 209 & 221.

*Facility Operating License Nos. DRP–51 and NPF–6:* The amendments revise the licenses.

*Date of initial notice in* ***Federal Register:*** February 23, 2000 (65 FR 9004).

The additional information provided in the June 29 and August 3, 2000, supplemental letters was noticed in the **Federal Register** on August 23, 2000 (65 FR 51352). The September 15, 2000, supplement provided clarifying information that was within the scope of the **Federal Register** notice published August 23, 2000, and did not change the staff's initial no significant hazards consideration determination.

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The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 25, 2000.

No significant hazards consideration comments received: No.

*Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas*

*Date of application for amendment:* November 29, 1999, as supplemented by letters dated January 26, May 17 (2 letters), May 31, and August 4, 2000.

*Brief description of amendment:* The amendment revised the License and Technical Specifications (TSs), and corresponding Bases have been changed to maintain consistency with the transient and accident analyses which evaluated the impact of the replacement steam generators (SGs) that are being used for Cycle 15 operation. The License was revised to incorporate a new methodology employed in calculating radiological doses for some non-loss-of-coolant accident events. TS changes were made to the Reactor Protection System (RPS) and Engineered Safety Features Actuation System (ESFAS) low pressurizer pressure setpoints, the RPS and ESFAS low SG pressure setpoints, the RPS and ESFAS low SG level setpoints, the reactor coolant flow rate limit, and the high linear power trip setpoints with inoperable main steam safety valves (MSSVs). The amendment also made changes to the TSs and corresponding Bases have been changed that are not directly related to the replacement SGs. These changes revised the allowed outage time of the MSSVs in Modes 1 and 2 to allow up to 12 hours to reduce the high linear power level-high trip setpoint when one or more MSSVs are inoperable, and revised the action statement in Mode 3 to maintain at least two MSSVs operable on each SG.

*Date of issuance:* September 29, 2000.

*Effective date:* As of the date of issuance to be implemented prior to startup from the 2R14 refueling outage.

*Amendment No.:* 222.

*Facility Operating License No. NPF–6:* Amendment revised the License and TSs.

Date of initial notice in ***Federal Register:*** February 9, 2000 (65 FR 6405).

The January 26, May 17 (2 letters), May 31, and August 4, 2000, supplemental letters provided clarifying information that was within the scope of the original **Federal Register** notice and did not change the staff's initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 29, 2000.

No significant hazards consideration comments received: No.

*Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana*

*Date of amendment request:* January 12, 2000, as supplemented by letters dated June 15, 2000, and September 7, 2000.

*Brief description of amendment:* The proposed changes modify Technical Specification (TS) 3.9.4, "Containment Building Penetrations," to allow the containment equipment door, airlocks, and other penetrations to remain open, but capable of being closed, during core alterations or movement of irradiated fuel in containment. Additionally, a note, Bases changes, and Surveillance Requirements changes provide further enhancements to clarify equipment door, airlock, and penetration closure capability.

*Date of issuance:* October 2, 2000.

*Effective date:* As of the date of issuance and shall be implemented within 60 days from the date of issuance.

*Amendment No.:* 169.

*Facility Operating License No. NPF–38:* The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** February 23, 2000 (65 FR 9008). The June 15, 2000, and September 7, 2000, supplemental letters provided clarifying information that did not expand the scope of the original **Federal Register** notice, or change the scope of the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 2, 2000.

No significant hazards consideration comments received: No.

*FirstEnergy Nuclear Operating Company, et al., Docket Nos. 50–334 and 50–412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania*

*Date of application for amendments:* September 20, 1999, as supplemented May 12, 2000.

*Brief description of amendments:* The amendments revised the standard to which the control room ventilation charcoal and Supplementary Leak Collection and Release System (SLCRS) charcoal must be laboratory tested as specified in: BVPS–1 Technical Specification (TS) 4.7.7.1.1.c.2 for the Control Room Emergency Habitability Systems; BVPS–1 TS 4.7.8.1.b.3 for the SLCRS; BVPS–2 TS 4.7.7.1.d for the Control Room Emergency Air Cleanup and Pressurization System; and BVPS–2 TS 4.7.8.1.b.3 for the SLCRS. Nuclear Regulatory Commission Generic Letter 99–02, "Laboratory Testing of Nuclear-Grade Activated Charcoal," dated June 3, 1999, requested licensees to revise their TS criteria associated with laboratory testing of ventilation charcoal to a valid test protocol, which included American Society for Testing and Materials (ASTM) D3803–1989. These license amendments revised the charcoal laboratory standard to follow ASTM D3803–1989 for each BVPS Unit. These license amendments also: (1) Revised the minimum amount of output in kilowatts needed for the control room emergency ventilation system heaters at each BVPS unit; (2) revised BVPS–1 SLCRS surveillance testing criteria to be consistent with American Nuclear Standards Institute/American Society of Mechanical Engineers N510–1980, the BVPS–1 control room ventilation testing, and BVPS–2 SLCRS/control room ventilation testing; and (3) made minor typographical corrections.

*Date of issuance:* September 29, 2000.

*Effective date:* As of date of issuance and shall be implemented within 60 days.

*Amendment Nos.:* 234 and 117.

*Facility Operating License Nos. DPR–66 and NPF–73:* Amendments revised the Technical Specifications.

*Date of initial notice in* ***Federal Register:*** August 29, 2000 (65 FR 52449).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 29, 2000.

No significant hazards consideration comments received: No.

*FirstEnergy Nuclear Operating Company, et al., Docket No. 50–412, Beaver Valley Power Station (BVPS–2), Unit 2, Shippingport, Pennsylvania*

*Date of application for amendment:* May 1, 2000, as supplemented July 21, 2000.

*Brief description of amendment:* The amendment: (1) Revised Technical Specification (TS) requirements regarding the minimum number of radiation monitoring instrumentation channels required to be operable during movement of fuel within the containment; (2) revised the Modes in which the surveillance specified by Table 4.3–3, "Radiation Monitoring Instrumentation Surveillance Requirements," Item 2.c.ii is required; (3) revised TS 3.9.4, "Containment Building Penetrations," to allow both personnel air lock (PAL) doors and other containment penetrations to be open during movement of fuel assemblies within containment, provided certain conditions are met; (4) revised applicability and action statement requirements of TS 3.9.4. to be for only during movement of fuel assemblies within containment; (5) revised periodicity and applicability of Surveillance Requirement (SR) 4.9.4.1; (6) revised SR 4.9.4.2 to verify flow rate of air to the supplemental leak collection and release system (SLCRS) rather than verifying the flow rate through the system; (7) added two new SRs, 4.9.4.3 and 4.9.4.4, for verification and demonstration of SLCRS operability; (8) modified TS 3/4.9.9 for the containment purge exhaust and isolation system to be applicable only during movement of fuel assemblies within containment; (9) revised associated TS Bases and made editorial and format changes; and, (10) revised the BVPS–2 Updated Final Safety Analysis Report (UFSAR) description of a fuel-handling accident (FHA) and its radiological consequences. The changes to the BVPS–2 UFSAR reflect a revised FHA analysis that the licensee performed to evaluate the potential consequences of having containment penetrations and/or the PAL open during movement of fuel assemblies within containment. These UFSAR revisions include potential exclusion area boundary, low population zone, and control room operator doses as a result of an FHA.



*Date of issuance:* September 28, 2000.

*Effective date:* As of date of issuance. Technical Specification changes shall be implemented within 60 days.

*Amendment No:* 116.

*≤Facility Operating License No. NPF–73.* Amendment revised the Technical Specifications.

*Date of initial notice in* ***Federal Register:*** August 23, 2000 (65 FR 51342).

The July 21, 2000, letter provided clarifying information that did not expand the scope of the amendment and did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 28, 2000.

No significant hazards consideration comments received: No

*Florida Power and Light Company, et al., Docket Nos. 50–335 and 50–389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida*

*Date of application for amendments:* February 16, 2000.

*Brief description of amendments:* (1) Accident monitoring instrumentation for both St. Lucie Units 1 and 2, (2) motor operated valve thermal overload protection bypass device TS for Unit 2, and (3) an administrative change to the Unit 2 Technical Specification (TS) Index.

*Date of Issuance:* October 4, 2000.

*Effective Date:* October 4, 2000.

*Amendment Nos.:* 165 and 109.

*Facility Operating License Nos. DPR–67 and NPF–16:* Amendments revised the TS.

*Date of initial notice in* ***Federal Register:*** April 5, 2000 (65 FR 17916).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 4, 2000.

No significant hazards consideration comments received: No.

*IES Utilities Inc., Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa*

*Date of application for amendment:* November 22, 1999, as supplemented August 14, 2000.

*Brief description of amendment:* The amendment would adopt selected NRC approved generic changes to the Improved Technical Specifications (ITS) NUREGs. The 16 changes come from the Technical Specification Task Force (TSTF) process developed by the Industry and the NRC. Three of these changes are Bases-only changes but are included for completeness relative to the TSTF process.

*Date of issuance:* October 3, 2000.

*Effective date:* As of the date of issuance and shall be implemented within 30 days.

*Amendment No.:* 234.

*Facility Operating License No. DPR–49:* The amendment revised the Technical Specifications.

*Date of initial notice in* ***Federal Register:*** January 12, 2000 (65 FR 1924).

The supplemental information contained clarifying information and did not change the initial no significant hazards consideration determination and did not expand the scope of the original **Federal Register** notice. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 3, 2000.

No significant hazards consideration comments received: No.

*Northeast Nuclear Energy Company, et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut*

*Date of application for amendment:* November 29, 1999, as supplemented by letter dated May 2, 2000.

*Brief description of amendment:* The amendment changes Technical Specification (TS) 3/4.6.6, "Supplementary Leak Collection and Release System"; TS 3/4.7.7, "Control Room Emergency Ventilation System"; TS 3/4.7.9, "Auxiliary Building Filter System"; and TS 3/4.9.12, "Fuel Building Exhaust System"; in response to Generic Letter 99–02, "Laboratory Testing of Nuclear-Grade Activated Charcoal."

*Date of issuance:* October 4, 2000.

*Effective date:* As of the date of issuance and shall be implemented within 90 days from the date of issuance.

*Amendment No.:* 184.

*Facility Operating License No. NPF–49:* Amendment revised the Technical Specifications.

*Date of initial notice in* ***Federal Register:*** January 26, 2000 (65 FR 4287).

The letter dated May 2, 2000, provided clarifying information and did not change the staff's initial proposed no significant hazards consideration determination or expand the scope of the application as published in the **Federal Register**.

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated October 4, 2000.

No significant hazards consideration comments received: No.

*Nuclear Management Company, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota*

*Date of application for amendment:* July 18, 2000.

*Brief description of amendment:* The amendment changes the Technical Specifications to add operability requirements for the No. 12 residual heat removal service water pump.

*Date of issuance:* October 2, 2000.

*Effective date:* As of the date of issuance and shall be implemented within 45 days.

*Amendment No.:* 113.

*Facility Operating License No. DPR–22:* Amendment revised the Technical Specifications.

*Date of initial notice in* ***Federal Register:*** August 23, 2000 (65 FR 51361).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 2, 2000.

No significant hazards consideration comments received: No.

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*PECO Energy Company, PSEG Nuclear LLC, Delmarva Power and Light Company, and Atlantic City Electric Company, Docket No. 50–277, Peach Bottom Atomic Power Station, Unit No. 2, York County, Pennsylvania*

*Date of application for amendment:* June 14, 2000, as supplemented August 9, 2000.

*Brief description of amendment:* This amendment revised the TSs for safety limit Minimum Critical Power Ratio from its current value of 1.10 to 1.09 for two recirculation-loop operation, and from 1.12 to 1.10 for single recirculation-loop operation.

*Date of issuance:* September 22, 2000.

*Effective date:* As of date of issuance, and shall be implemented prior to startup for Cycle 14 operations, scheduled for October 2000.

*Amendment No.:* 236.

*Facility Operating License No. DPR–44:* The amendment revised the Technical Specifications.

*Date of initial notice in* ***Federal Register:*** July 26, 2000 (65 FR 46012). The August 9, 2000, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination or expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 22, 2000.

No significant hazards consideration comments received: No.

*Power Authority of The State of New York, Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York*

*Date of application for amendment:* April 27, 2000.

*Brief description of amendment:* The amendment would extend the applicability of the current pressure-temperature limit curves and overpressure protective system setpoints from 13.3 to 16.2 effective full-power years.

*Date of issuance:* October 5, 2000.

*Effective date:* October 5, 2000.

*Amendment No.:* 202.

*Facility Operating License No. DPR–64:* Amendment revised the Technical Specifications.

*Date of initial notice in* ***Federal Register:*** August 29, 2000 (65 FR 52431).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 5, 2000.

No significant hazards consideration comments received: No.

*Power Authority of the State of New York, Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York*

*Date of application for amendment:* August 29, 2000, as supplemented September 8, 2000.

*Brief description of amendment:* The amendment adapts the provisions of the Boiling Water Reactor Standard Technical Specifications (STS) regarding applicability of Technical Specifications 3.0.D and 4.0.D in the event of plant shutdown.

*Date of issuance:* September 29, 2000.

*Effective date:* As of the date of issuance to be implemented within 30 days.

*Amendment No.:* 262.

*Facility Operating License No. DPR–59:* Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: Yes September 14, 2000 (65 FR 55650). That notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice also provided for an opportunity to request a hearing by October 16, 2000, but indicated that if the Commission makes a final no significant hazards consideration determination any such hearing would take place after issuance of the amendment.

The Commission's related evaluation of the amendment finding of exigent circumstances, state consultation, and final determination of no significant hazards consideration determination are considered in a Safety Evaluation dated September 29, 2000.

*Power Authority of the State of New York, Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York*

*Date of application for amendment:* April 27, 2000, as supplemented September 5, 2000.

*Brief description of amendment:* The amendment changes the Trip Level Settings for the Residual Heat Removal and Core Spray Start Timers as well as the Automatic Depressurization System Auto-Blowdown Timer.

*Date of issuance:* October 4, 2000.

*Effective date:* As of the date of issuance to be implemented within 30 days.

*Amendment No.:* 263.

*Facility Operating License No. DPR–59:* Amendment revised the Technical Specifications.

*Date of initial notice in* ***Federal Register:*** June 14, 2000 (65 FR 37428).

The September 5, 2000, supplement did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 4, 2000.

No significant hazards consideration comments received: No.

*PSEG Nuclear LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey*

*Date of application for amendments:* March 2, 2000.

*Brief description of amendments:* The amendments modify the requirements in Technical Specifications Section 3/4.6.3, "Containment Isolation Valves," by changing limiting conditions for operation (LCO) 3.6.3.1 and 3.6.3 for Unit Nos. 1 and 2, respectively. The changes delete the asterisk (*) modifying the word OPERABLE in LCO 3.6.3.1 (Unit 1) and LCO 3.6.3 (Unit 2), and relocate its associated footnote to the Action portion of the LCO.

*Date of issuance:* October 2, 2000.

*Effective date:* As of the date of issuance, and shall be implemented within 60 days of issuance.

*Amendment Nos.:* 235 and 216.

*Facility Operating License Nos. DPR–70 and DPR–75:* The amendments revised the Technical Specifications.

*Date of initial notice in* ***Federal Register:*** June 28, 2000 (65 FR 39959). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 2, 2000.

No significant hazards consideration comments received: No.

*PSEG Nuclear LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey*

*Date of application for amendments:* March 13, 2000

*Brief description of amendments:* The amendments revise TS Table 3.3–6, "Radiation Monitoring Instrumentation," by changing the Containment Gaseous Activity Monitor (R12A) alarm and trip setpoint for the containment purge and pressure relief system isolation for Mode 6 (Refueling) operations.

*Date of issuance:* October 2, 2000.

*Effective date:* As of the date of issuance, and shall be implemented within 60 days of issuance.

*Amendment Nos.:* 236 and 217.

*Facility Operating License Nos. DPR–70 and DPR–75:* The amendments revised the Technical Specifications.

*Date of initial notice in* ***Federal Register:*** July 26, 2000 (65 FR 46013).



The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 2, 2000.

No significant hazards consideration comments received: No.

*Southern California Edison Company et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California*

*Date of application for amendments:* May 3, 2000 (PCN–516), as supplemented August 25, 2000.

*Brief description of amendments:* The amendments consist of changes to the Technical Specifications that revise the pressure temperature (P–T) limits for 20 effective full power years and reduce the minimum boltup temperature from 86 °F to 65 °F. The P–T limits calculations are based on the 1989 American Society of Mechanical Engineers Appendix G methodology.

*Date of issuance:* September 28, 2000.

*Effective date:* September 28, 2000, to be implemented within 30 days of issuance.

*Amendment Nos.:* Unit 2—172; Unit 3—163.

*Facility Operating License Nos. NPF–10 and NPF–15:* The amendments revised the Technical Specifications.

*Date of initial notice in* ***Federal Register:*** May 31, 2000 (65 FR 34749). The supplemental letter dated August 25, 2000, provided clarifying information that was within the scope of the May 3, 2000, application and the original **Federal Register** notice and did not change the staff's initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 28, 2000.

No significant hazards consideration comments received: No.

*Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia*

*Date of application for amendments:* November 17, 1999, as supplemented by letter dated August 21, 2000.

*Brief description of amendments:* The amendments revise TS 5.5.7, "Ventilation Filter Testing Program" to include the requirements for laboratory testing of Engineered Safety Feature Ventilation System charcoal samples in accordance with American Society Testing and Materials D3803–1989 and the application of a safety factor of 2.0 to the charcoal filter efficiency assumed in the plant design-basis dose analyses. In addition, editorial revisions are being made to some portions of TS Section 5.0 to reference the correct sections of Regulatory Guide 1.52.

*Date of issuance:* October 3, 2000.

*Effective date:* As of the date of issuance and shall be implemented within 30 days from the date of issuance.

*Amendment Nos.:* 223 and 164.

*Facility Operating License Nos. DPR–57 and NPF–5:* Amendments revised the Technical Specifications.

*Date of initial notice in* ***Federal Register:*** December 15, 1999 (64 FR 70091). The supplemental letter dated August 21, 2000, provided clarifying information that did not change the scope of the November 17, 1999, application and the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 3, 2000.

No significant hazards consideration comments received: Yes. One comment was received, and is addressed in the above-referenced Safety Evaluation.

*STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas*

*Date of amendment request:* September 28, 1998, as supplemented on April 22, 1999, April 27, 2000, and August 15, 2000.

*Brief description of amendments:* The amendments revise the technical specifications (TSs) to eliminate the need to enter TS 3.0.3 when multiple trains of either the control room makeup and cleanup filtration system or the fuel handling building exhaust air system are inoperable by providing an allowed outage time of up to 12 hours to restore at least one train to an operable status.

*Date of issuance:* September 26, 2000.

*Effective date:* September 26, 2000, to be implemented within 60 days.

*Amendment Nos.:* Unit 1—125; Unit 2—113.

*Facility Operating License Nos. NPF–76 and NPF–80:* The amendments revised the Technical Specifications.

*Date of initial notice in* ***Federal Register:*** July 26, 2000 (65 FR 46016). The August 15, 2000, submittal provided clarifying information that was within the scope of the revised application and **Federal Register** notice and did not change the staff's revised proposed no significant hazards considerations determination issued on July 26, 2000. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 26, 2000.

No significant hazards consideration comments received: No.

*Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee*

*Date of application for amendments:* May 16, 2000.

*Brief description of amendments:* These amendments change the Technical Specifications (TSs) by replacing Surveillance Requirement (SR) 4.8.1.1.2.c, for evaluating fuel oil for the emergency diesel generators, with a Diesel Fuel Oil Program in Section 6. The revision also deletes the portion of the SRs that specifies the use of sodium hypochlorite solution in cleaning of the fuel oil storage tanks, deletes the SR to perform a pressure test on the diesel generator fuel oil system designed to American Society of Mechanical Engineers Section III requirements, and corrects various typographical errors in the TS and Bases. Two Bases pages are also added to each units TS. The applicable TS Bases are also revised.

*Date of issuance:* October 2, 2000.

*Effective date:* October 2, 2000.

*Amendment Nos.:* 261 and 252.

*Facility Operating License Nos. DPR–77 and DPR–79:* Amendments revise the TS.

*Date of initial notice in* ***Federal Register:*** August 9, 2000 (65 FR 48758). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 2, 2000.

No significant hazards consideration comments received: No.

*Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee*

*Date of application for amendments:* February 4, 2000.

*Brief description of amendments:* These amendments change the Technical Specifications (TS) to revise the cold leg accumulator volume and pressure limits based on instrumentation changes, instrument inaccuracies, and instrumentation tap locations. The applicable TS bases are also revised.

*Date of issuance:* October 6, 2000.

*Effective date:* October 6, 2000.

*Amendment Nos.:* 262 and 253.

*Facility Operating License Nos. DPR–77 and DPR–79:* Amendments revise the TS.

*Date of initial notice in* ***Federal Register:*** May 17, 2000 (65 FR 31360). The Commission's related evaluation of

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the amendment is contained in a Safety Evaluation dated October 6, 2000.

No significant hazards consideration comments received: No.

*Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri*

*Date of application for amendment:* May 25, 2000 (ULNRC–04258).

*Brief description of amendment:* The amendment expands (1) The range of acceptable lift settings for the pressurizer safety valves (PSVs), and (2) the tolerance (from ±1% to ±2%) of the as-found, measured lift settings of tested PSVs, to be operable. Following testing, however, the lift settings of the PSVs would remain nor more than the current ±1%. The amendment revises Technical Specifications (TS) 3.3.2, "Engineered Safety Features Actuation System (ESFAS) Instrumentation," 3.4.10, "Pressurizer Safety Valves," and 3.4.11, "Pressurizer Power Operated Relief Valves (PORVs)," of the Callaway TS. For TS 3.3.2, a new Action H for one or more trains inoperable is added, the note for surveillance requirement (SR) 3.3.2.14 is revised to identify another slave relay that the SR would be applicable to, and the automatic PORV actuation is added to Table 3.3.2–1, "Engineered Safety Features Actuation System Instrumentation." For TS 3.4.10, the range of allowable PSV lift settings in the limiting condition for operation (LCO) is expanded from ≥2460 and ≤2510 to ≥2411 and ≤2509, and SR 3.4.10.1 is revised to state that, following testing, the lift settings shall be "within 1% of 2460 psig" instead of simply "within 1%." The nominal PSV lift setting would be changed from 2485 psig to 2460 psig. For TS 3.4.11, Actions A and B is revised to be actions for inoperable PORVs either solely due to excessive PORV seat leakage (Action A) or for reasons other than excessive seat leakage (Action B), and Action E would remain an action for two inoperable PORVs, but would be only for reasons other than excessive seat leakage.

*Date of issuance:* September 25, 2000.

*Effective date:* September 25, 2000, to be implemented (including issuing the revised EOP E–O and training all the control room operator crews on the revised procedure) before the restart from refueling outage 11, the next refueling outage for Callaway Plant, Unit 1, scheduled to begin in Spring 2001.

*Amendment No.:* 137.

*Facility Operating License No. NPF–30:* The amendment revised the Technical Specifications.

*Date of initial notice in* ***Federal Register:*** June 28, 2000 (65 FR 29964).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 25, 2000.

No significant hazards consideration comments received: No.

*Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri*

*Date of application for amendment:* July 21, 2000 (ULNRC–04285), as supplemented August 16, 2000.

*Brief description of amendment:* The amendment revises Limiting Condition for Operation (LCO) 3.9.4, "Containment Penetrations," of the Callaway Technical Specifications (TS) to allow containment penetrations with direct access to the outside atmosphere to be open under administrative controls during refueling operations, by adding a note to the LCO that states "containment penetration flow path(s) providing direct access from the containment atmosphere to the outside atmosphere may be unisolated under administrative controls." In addition, there is a format and editorial correction to TS 3.8.3, "Diesel Fuel Oil, Lube Oil, and Start Air," to correct an error in the conversion to the improved TS issued May 28, 1999, in Amendment No. 133.

*Date of issuance:* September 26, 2000.

*Effective date:* September 26, 2000, to be implemented (including the completion of the administrative procedures that ensure that open containment penetrations, with direct acess to the outside atmosphere during refueling operations with core alterations and irradiated fuel movement inside containment, will be promptly closed in the event of a fuel handling accident inside containment) before refueling operations during refueling outage 11.

*Amendment No.:* 138.

*Facility Operating License No. NPF–30:* The amendment revised the Technical Specifications.

*Date of initial notice in* ***Federal Register:*** August 23, 2000 (65 FR 51364). The August 16, 2000, supplement provided additional clarifying information, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 26, 2000.

No significant hazards consideration comments received: No.

*Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri*

*Date of application for amendment:* September 8, 1999.

*Brief description of amendment:* The amendment authorizes revisions to the descriptions of the steam generator tube rupture and main steam line break accidents in the Callaway Plant, Unit 1 Final Safety Analysis Report (FSAR) to reflect increases in the radiological dose consequences calculated by the licensee for these accidents.

*Date of issuance:* September 27, 2000.

*Effective date:* September 27, 2000, to be implemented in the next periodic update to the FSAR in accordance with 10 CFR 50.71(e). Implementation of the amendment is the incorporation into the FSAR the changes to the description of the facility as described in the licensee's application dated September 8, 1999, and evaluated in the staff's Safety Evaluation attached to the amendment.

*Amendment No.:* 139.

*Facility Operating License No. NPF–30:* The amendment revised the Final Safety Analysis Report.

*Date of initial notice in* ***Federal Register:*** October 6, 1999 (64 FR 54383). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 27, 2000.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 11th day of October 2000.

For the Nuclear Regulatory Commission.

**John A. Zwolinski,**

*Director, Division of Licensing Project Management. Office of Nuclear Reactor Regulation.*

[FR Doc. 00–26645 Filed 10–17–00; 8:45 am]

BILLING CODE 7590–01–P

## PRESIDIO TRUST

### Presidio Theatre (Building 99), The Presidio of San Francisco, California, Notice of Termination of Environmental Impact Statement Process

**AGENCY:** The Presidio Trust.

**ACTION:** Notice of termination of Environmental Impact Statement (EIS) process for the rehabilitation and expansion of the Presidio Theatre (Building 99) within The Presidio of San Francisco, San Francisco, California (Presidio).

**RATIONALE:** The Presidio Trust (Trust) is terminating the EIS process for the Presidio Theatre in order to complete an update of the 1994 General Management Plan Amendment (GMPA) for Area B of the Presidio and associated EIS as noticed on June 30, 2000 (65 FR 40707–40708) and amended on October 11, 2000 (65 FR 60477–60478). It is expected that this plan update, known as the Presidio Trust Implementation Plan (PTIP) will provide a comprehensive planning framework within which future projects for the Presidio would proceed. Following the completion and adoption of the PTIP and associated EIS and if appropriate within the adopted comprehensive planning framework, the Trust expects to re-propose and reinitiate a project related to the Presidio Theatre, and will inform the public of its intent at that later date. As a result of this notice of termination, the Presidio Theatre project is no longer being treated as an assumption common to all alternatives (*i.e.*, as a "given") in the PTIP NEPA process.

**Background**

On April 14, 2000, the Trust announced in the **Federal Register** (65 FR 20218) its intention to prepare an Environmental Assessment (EA) for rehabilitating the existing 15,140-square-foot Presidio Theatre and adding up to 45,000 square feet of new construction for theater uses, a restaurant, retail museum and library store (project). On May 10, 2000, the Trust held a public scoping workshop to solicit public comment regarding the range of alternatives and the specific impacts to be evaluated in the EA. Following the workshop, the Trust determined based upon public comment that an EIS rather than an EA, as previously noticed, would better serve the agency's compliance with the NEPA's requirements. Therefore, on June 9, 2000, pursuant to 40 CFR 1508.22, the Trust published a notice of intent to prepare an EIS (65 FR 36746) and to extend the public scoping period to provide additional time for the public to make views known on the project. In response to public input at the May 10, 2000 scoping workshop, the Trust held a second public scoping workshop on June 19, 2000, at which time the public was able to tour Building 99 and neighboring Building 100 and to comment on revised project alternatives. Shortly after the end of the public comment period on July 24, 2000, the Trust had received 11 comment letters on NEPA issues and concerns regarding the project from seven agencies, two commenting organizations (one organization submitted two letters), and one individual. An additional 15 organizations and individuals also submitted letters expressing either their support or opposition to the project.

Termination of the Presidio Theatre project EIS at this time is with the mutual agreement of both the Trust and San Francisco Film Centre (project proponent). Independent of the Presidio Theatre EIS process, the Trust initiated the review and update of the GMPA. The PTIP and associated EIS will provide a comprehensive planning framework for Area B of the Presidio. Therefore, the Trust and the Presidio Theatre project proponent have determined to terminate the Presidio Theatre EIS process until completion of the PTIP and PTIP EIS process. A complete administrative record, including all public and agency comments received and all work completed or underway on the Presidio Theatre project, will be maintained by the Trust pending reinitiation, if appropriate, of a Presidio Theatre project following adoption of a governing comprehensive plan for Area B of the Presidio.

**FOR FURTHER INFORMATION CONTACT:** John Pelka, NEPA Compliance Coordinator, The Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, CA 94129–0052. Telephone: 415–561–5300.

Dated: October 12, 2000.

**Karen A. Cook,**

*General Counsel.*

[FR Doc. 00–26706 Filed 10–17–00; 8:45 am]

BILLING CODE 4310–4R–P

## SECURITIES AND EXCHANGE COMMISSION

### Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (DuraSwitch Industries, Inc., Common Stock, $.001 Par Value) File No. 1–15069

October 12, 2000.

DuraSwithch Industries, Inc., a Nevada corporation ("Comany"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities and Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $.001 par value ("Security"), from listing and registration on the American Stock Exchange LLC ("Amex").

The Company has effected a new listing for its Security on the National Market of the Nasdaq Stock Market, Inc. ("Nasdaq"). Trading in the Security on the Nasdaq commenced, and was concurrently suspended on the Amex, at the opening of business on October 11, 2000. The Company hopes to realize a broader institutional and retail investor base by transferring trading in its Security to the Nasdaq.

The Company has stated in its application that it has complied with the rules of the Amex governing the withdrawal of its Security and that its application relates solely to the withdrawal of the Security from listing and registration on the Amex and shall have no effect upon the Security's continued designation for quotation on the Nasdaq and registration under Section 12(g) of the Act.[3]

Any interested person may, on or before November 2, 2000, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 00–26743 Filed 10–17–00; 8:45 am]

BILLING CODE 8010–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. IC–24685; File No. 812–12138]**

### The Penn Mutual Life Insurance Company, *et al.*, Notice of Application

October 11, 2000.

**AGENCY:** Securities and Exchange Commission ("SEC" or "Commission").

**ACTION:** Notice of application for an order under section 6(c) of the Investment Company Act of 1940 (the "1940 Act" or "Act") granting exemptions from the provisions of sections 2(a)(32), 22(c), and 27(i)(2)(A) of the Act, and rule 22c–1 thereunder.

**SUMMARY OF APPLICATION:** Applicants seek an order to permit the recapture of certain credit enhancements (i) made by

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(g).

[4] 17 CFR 200.30–3(a)(1).

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The Penn Mutual Life Insurance Company ("Penn Mutual") under certain individual deferred variable annuity contracts ("Contracts") that Penn Mutual will issue and fund through Penn Mutual Variable Annuity Account III ("Variable Account III"); and (ii) made under contracts that are substantially similar in all material respects to the Contracts that Penn Mutual or The Penn Insurance and Annuity Company ("Penn Insurance") may issue and fund in the future ("Future Contracts") through Variable Account III or other current or future separate accounts established by Penn Mutual or Penn Insurance. Applicants also request that the order extend to any other National Association of Securities Dealers, Inc. member broker-dealer controlling, controlled by, or under common control with Penn Mutual that may serve as a principal underwriter of the Contracts or Future Contracts funded through Variable Account III or other separate accounts maintained by Penn Mutual or Penn Insurance.

**APPLICANTS:** The Penn Mutual Life Insurance Company, Penn Mutual Variable Annuity Account III, The Penn Insurance and Annuity Company, and Hornor, Townsend & Kent, Inc. ("HTK") (collectively "Applicants").

**FILING DATE:** The application was filed with the Commission on June 23, 2000, and amended on September 21, 2000.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the Application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m., on November 6, 2000, and should be accompanied by proof of service on Applicants, in the form of an affidavit or,.for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Applicants, c/o C. Ronald Rubley, Esq., Morgan, Lewis & Bockius LLP, 1701 Market Street, Philadelphia, PA 19103.

**FOR FURTHER INFORMATION CONTACT:** Paul G. Cellupica, Senior Special Counsel, or Keith E. Carpenter, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

**SUPPLEMENTARY INFORMATION:** The following is a summary of the Application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549–0102 (tel. (202) 942–8090)).

**Applicants' Representations**

1. Penn Mutual is a mutual life insurance company organized under the laws of the Commonwealth of Pennsylvania in 1847. It provides life insurance, annuity and investment products. The principal offices of Penn Mutual are located at 600 Dresher Road, Horsham, Pennsylvania 19044. Penn Mutual is authorized to conduct life insurance and annuity business in all states of the United States and in the District of Columbia.

2. Variable Account III is a separate account of Penn Mutual, and serves as a funding entity for variable annuity contracts issued by Penn Mutual. Investments held in Variable Account III are segregated from all other assets of Penn Mutual for the purpose of funding variable annuity contracts. Variable Account III was established under the laws of Pennsylvania in 1982 and is registered with the Commission under the 1940 Act as a unit investment trust (File No. 811–03457).

3. Penn Mutual has filed a registration statement on Form N–4 under the 1940 Act and the Securities Act of 1933, as amended, to register interests in Variable Account III created pursuant to the Contracts File No. 333–39804).

4. Penn Insurance is a stock life insurance company organized under the laws of the State of Delaware, and is a wholly-owned subsidiary of Penn Mutual. The principal offices of Penn Insurance are located at 600 Dresher Road, Horsham, Pennsylvania 19044. Penn Insurance is authorized to conduct life insurance and annuity business in most states of the United States and in the District of Columbia.

5. Hornor, Townsend & Kent, Inc. is a wholly-owned subsidiary of Penn Mutual and serves as principal underwriter of the Contracts and other variable annuity contracts issued by Penn Mutual and Penn Insurance. HTK is registered with the Commission as a broker-dealer under the Securities Exchange Act of 1934, and is a member of the National Association of Securities Dealers, Inc.

6. The Contracts provide, among other features, for the accumulation of assets and the payment of an annuity over time, on both a variable basis and a fixed basis. The Contracts provide for payment of a death benefit to a beneficiary if the owner of the contract or the annuitant named in the contract dies during the accumulation phase of the contract. The Contracts are designed to give the owner flexibility in planning for retirement and in meeting other financial goals. Benefits of the Contracts include the manner in which investment earnings are taxed, the availability of multiple investment options, and the provision for annuity and death benefit guarantees. The Contracts provide various annuity benefits and payout options, as well as transfer privileges among investment options.

7. Penn Mutual imposes charges against the value of the Contracts allocated to subaccounts of Variable Account III. For Contracts with a Variable Account Value of $100,000 or less, an annual administration charge is made that is the lesser of $40 or 2% of the Variable Account Value. Accumulation units are used to pay this charge. A daily administration charge is made against the net asset value of the subaccounts that will not exceed an effective annual rate of 0.15%. A daily mortality and expense risk charge is made against the net asset value of the subaccounts that will not exceed an effective annual rate of 1.25%. The mortality and expense risk charge compensates Penn Mutual for the mortality-related guarantees it makes under the Contracts (*i.e.*, the death benefit guarantee and the guarantee that the annuity factors will never be decreased if mortality experience is substantially different than that assumed in the Contracts), and for the risk that administration charges will be insufficient to cover administration expenses over the life of the Contracts issued by Penn Mutual. The mortality and expense risk charge is applied during both the accumulation phase and the annuity phase of the Contracts.

8. If a Contract Owner dies during the accumulation phase of the Contract, Penn Mutual will pay the designated beneficiary the value of the Contract. If the annuitant named in the Contract dies during the accumulation phase, Penn Mutual will pay the designated beneficiary the sum of the Contract's variable account death benefit and fixed account death benefit. The variable account death benefit is the greater of: (i) the value of the Contract invested in subaccounts of Variable Account III; or (ii) the amount of purchase payments made by the purchaser which were allocated to subaccounts and the amount of transfers made to subaccounts, less the amount of all withdrawals and transfers from the subaccounts. The Contract Owner may elect to purchase a guaranteed minimum rising floor death benefit as a rider to the Contract.

9. Full or partial withdrawals may be made at any time during the accumulation phase of the Contract. The amount available for withdrawal is based on the value of the Contract next determined after Penn Mutual receives the request for withdrawal.

10. No sales load is deducted from purchase payments before allocating them to subaccounts of Variable Account III. A sales charge may, however, be deducted from withdrawals under certain circumstances. If the Contract Owner makes a withdrawal and a purchase payment was made in any of the eight contract years prior to the date of the withdrawal, a sales charge may be deducted, subject to certain exceptions noted below. Amounts withdrawn are attributed in sequence to prior purchase payments starting with the first purchase payment. The table below shows the contingent deferred sales charge that may be deducted from withdrawals. The charge is made only against amounts equal to purchase payments made by the Contract Owner and is not made against any gains attributable to such purchase payments or against amounts attributable to any purchase payment credits made to the Contracts by Penn Mutual.

| Number of contract years since purchase payments | Contingent deferred sales charge (% of purchase payment) |
|---|---|
| 0–3 | 8 |
| 4 | 7 |
| 5 | 6 |
| 6 | 5 |
| 7 | 3 |
| 8 | 3 |
| 9 and later | 0 |

The Contract Owner may make certain withdrawals at any time without any sales charge being imposed. At the end of the first contract year and once in each contract year thereafter, the Contract Owner may withdraw up to 15% of total purchase payments (as of the date of the withdrawal request) without incurring a sales charge. The Contract Owner may elect to receive this free withdrawal in a lump sum or on a systematic basis as provided in the Contracts. Withdrawals of up to $500,000 may also be made for medical reasons and for disability reasons without incurring a sales charge, as provided in the Contracts and described in the Prospectus. A withdrawal that is not subject to a deferred sales charge is referred to as a "Free Withdrawal."



11. The Contracts contain a "free-look" provision as required under state law. Under the free-look provision, the purchaser may return the Contract within a certain number of days after purchase and receive the value of the Contract on the date it was returned plus any premium taxes deducted from the purchase payment or, in some states, the purchase payment that was made to Penn Mutual. The free-look period generally is ten days, but may be for a longer period under the laws of some states and under different factual circumstances.

12. The Contracts have a credit enhancement feature. Each time a purchaser makes a purchase payment under the Contract, Penn Mutual will credit an additional amount to the Contract from its general account assets ("Purchase Payment Enhancement"). Purchase Payment Enhancements will be allocated to subaccounts of the Variable Account III and to the fixed accounts in the same proportion as purchase payments are allocated under the Contract. Penn Mutual will determine the amount of the Purchase Payment Enhancement by multiplying the purchase payment by the applicable payment percentage set forth in the table below.

| Total purchase payments less total withdrawals made under the contract | Purchase payment enhancement percentage |
|---|---|
| Less than $100,000 | 3 |
| $100,000 to $500,000 | 4 |
| $500,000 to $2,000,000 | 5 |

In addition, if the initial purchase payment made under the Contract is $2,000,000 or more, Penn Mutual will credit a Purchase Payment Enhancement to the Contract in an amount equal to 6% of the initial purchase payment. If more than one purchase payment is made during the first year of the Contract, the Contract may receive an additional Purchase Payment Enhancement at the time of each additional purchase payment, based upon a Purchase Payment Enhancement percentage rate applicable to all purchase payments made during the year. Such additional Purchase Payment Enhancement will be determined as follows: When an additional purchase payment is made, Penn Mutual will determine the difference between: (i) The sum of all prior purchase payments made during the year times the purchase payment percentage applied to the current purchase payment; and (ii) the total Purchase Payment Enhancement previously credited to the Contract during the year. The difference, if any, will be credited to the Contract as an additional Purchase Payment Enhancement.

13. The Contract provides that if it is returned to Penn Mutual pursuant to the free-look provision, the Contract Owner will not receive a Purchase Payment Enhancement and will not receive any investment gain or be charged any expense that would have been attributable to such Purchase Payment Enhancement.

14. The Contract also provides that if the Contract Owner makes a withdrawal from the Contract within twelve months of the crediting of a Purchase Payment Enhancement, and if the withdrawal is subject to a deferred sales charge under the terms of the Contract, the Purchase Payment Enhancement will be recaptured by Penn Mutual and will not be paid to the Contract Owner.

15. Applicants seek exemption pursuant to Section 6(c) from Sections 2(a)(32), 22(c), and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder to the extent deemed necessary to permit Penn Mutual to issue the Contracts and to permit Penn Mutual and Penn Insurance to issue Future Contracts that provide for the recapture of certain Purchase Payment Enhancements when the Contract Owner makes a withdrawal from the Contract that is subject to a deferred sales charge within one year of the date a purchase payment and the related Purchase Payment Enhancement were credited to the Contract.

**Applicants' Legal Analysis**

1. Section 6(c) of the 1940 Act authorizes the Commission to exempt any person, security or transaction, or any class of persons, securities or transactions from the provisions of the Act and the rules promulgated thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. Applicants request that the Commission, pursuant to Section 6(c) of the Act, grant the exemptions requested below with respect to the Contracts and any Future Contracts. Applicants believe that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

3. Subsection (i) of Selection 27 of the Act provides that Section 27 does not apply to any registered separate account funding variable insurance contracts, or to the sponsoring insurance company

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and principal underwriter of such account, except as provided in paragraph (2) of the subsection. Paragraph (2) provides that it shall be unlawful for such a separate account or sponsoring insurance company to sell a contract funded by the registered separate account unless "such contract is a redeemable security."

4. Section 2(a)(32) of the Act defines "redeemable security" as any security, other than short-term paper, under the terms of which the holder, upon presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof.

5. Applicants submit that the recapture by Penn Mutual of a Purchase Payment Enhancement when a withdrawal is made from the Contract within one year of the crediting by Penn Mutual of a Purchase Payment Enhancement would not deprive the owner of his or her proportionate share of the assets of Variable Account III. The Contract Prospectus informs Contract Owners that any Purchase Payment Enhancement credited to the Contract within one year of the date of a full or partial withdrawal from the Contract that is subject to a deferred sales charge will be deducted from the value of the Contract. Applicants state that the Contract and the Prospectus make clear that any Purchase Payment Enhancement credited to the Contract in connection with a purchase payment made by the Contract Owners is conditioned on the purchase payment remaining in the Contract for a period of at least one year (unless the purchase payment may be withdrawn without payment of a deferred sales charge). Applicants assert that the Contract does not provide a vested right to a Purchase Payment Enhancement when the owner makes a withdrawal within one year of the credit unless the withdrawal is a Free Withdrawal. Because the Purchase Payment Enhancement is conditional and not vested, Applicants maintain that the recapture of the Purchase Payment Enhancement is simply the retrieval by Penn Mutual of its own assets.

6. Applicants state that the Contracts provide for the conditional crediting of Purchase Payment Enhancements during a one-year period to provide Penn Mutual with some measure of protection against purchasers making purchase payments with the intent of gaining a Purchase Payment Enhancement and then withdrawing purchase payments within a relatively short period of time. They state that the Contract is designed as a long-term investment vehicle and that it is intended to provide the owner with the opportunity for long term growth of assets and with income and assets for retirement. Applicants state that the Contracts are also intended to provide Penn Mutual, the issuer, with the opportunity to recover over the long term the cost it incurs in issuing and administering the Contracts. Applicants maintain that the conditional crediting of Purchase Payment Enhancements during a one-year period following a purchase payment is consistent with and a necessary part of the design of the Contracts. Further, the exemptions requested are limited in important respects. Recapture of a Purchase Payment Enhancement will be made only if a withdrawal is made within one year of the crediting of the Purchase Payment Enhancements. In addition, there will be no recapture if the withdrawal is not subject to a deferred sales charge.

7. Applicants submit that under the terms of the Contracts, as described in the Prospectus, the purchaser will receive his or her proportional share of Variable Account III in accordance with the purpose and intent of Sections 27(i)(2)(A) and 2(a)(32) of the Act.

8. Section 22(c) of the Act authorizes the Commission to make rules and regulations applicable to registered investment companies and to principal underwriters of, and dealers in, the redeemable securities of any registered investment company, to accomplish the same purposes as contemplated by Section 22(a). Rule 22c–1 under the Act prohibits a registered investment company issuing any redeemable security, a person designated in such issuer's prospectus as authorized to consummate transactions in any such security, and a principal underwriter of, or dealer in, such security, from selling, redeeming, or repurchasing any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security. Applicants submit that the recapture of the Purchase Payment Enhancement is not contrary to Section 22(c) and rule 22c–1.

9. Applicants state that the recapture of the Purchase Payment Enhancement described in the Application does not involve either of the harms that Rule 22c–1 was intended to address, namely: (i) The dilution of the value of outstanding redeemable securities of registered investment companies through their sale at a price below net asset value or their redemption or repurchase at a price above it, and (ii) other unfair results, including speculative trading practices. They state that these harms were the result of backward pricing, or the practice of basing the price of a mutual fund share on the net asset value per share determined as of the close of the market on the previous day. Applicants contend that the proposed recapture of the Purchase Payment Enhancement poses no such threat of dilution. They state that to effect a recapture of a Purchase Payment Enhancement, Penn Mutual will redeem interests in subaccounts of Variable Account III at a price determined on the basis of the current net asset value of Variable Account III. The amount recaptured will equal the amount of the Purchase Payment Enhancement that Penn Mutual paid out of its general account assets. Applicants state that although an owner will be entitled to retain any investment gain resulting from the Purchase Payment Enhancement, the owner will retain the gain based on current net asset value. Applicants submit that no dilution will occur upon the recapture of the Purchase.Payment Enhancement.

10. Applicants assert that the second harm that Rule 22c–1 was designed to address, namely, speculative trading practices calculated to take advantage of backward pricing, will not occur as a result of the recapture of the Purchase Payment Enhancement. They state that there is no possibility that the recapture of such Purchase Payment Enhancements will lead to speculative trading in interests created under the Contract.

11. Applicants submit that because neither of the harms that Rule 22c–1 was meant to address is found in the recapture of the Purchase Payment Enhancement, Section 22(c) of the Act and Rule 22c–1 thereunder should not be applied to the recapture of Purchase Payment Enhancements described in the Application.

12. Applicants represent that any Future Contracts will be substantially similar in all material respects to the Contracts. They submit that an order granting exemptive relief to Future Contracts would promote competitiveness in the variable annuity market by eliminating the need to file redundant exemptive applications, thereby reducing administrative expenses and maximizing the efficient use of Applicants' resources.

**Conclusion**

Applicants request an order pursuant to Section 6(c) of the Act for exemptions from Sections 2(a)(32), 22(c), and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder to the extent deemed necessary to permit Penn Mutual to issue the Contracts and to permit Penn Mutual and Penn Insurance to issue Future Contracts which allow them to recapture Purchase Payment Enhancements as described herein. For the reasons stated in this Application, Applicants submit that the requested exemptions meet the standards set out in Section 6(c), namely, that the exemptions are necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 00–26744 Filed 10–17–00; 8:45 am]

BILLING CODE 8010–01–M



## DEPARTMENT OF STATE

**[Public Notice No. 3438]**

### Advisory Committee on International Economic Policy; Open Meeting Notice

The Advisory Committee on International Economic Policy (ACIEP) will meet from 9:00 a.m. to 1:00 p.m. on Tuesday, October 31, 2000, in Room 1105, U.S. Department of State, 2201 C Street, NW, Washington, DC 20520. The meeting will be hosted by Committee Chairman R. Michael Gadbaw and Assistant Secretary of State for Economic and Business Affairs E. Anthony Wayne.

The ACIEP serves the U.S. Government in a solely advisory capacity concerning issues and problems in international economic policy. The objective of the ACIEP is to provide expertise and insight on these issues that are not available within the U.S. Government.

Topics for the October 31 meeting will be:

- Priority Democracies: Colombia and Nigeria
- Resources for Foreign Policy—What Americans Get for Their Tax Dollars
- Foreign Policy Implications of Rising Oil Prices
- Updates on:

—Biotechnology
—Global Information Economy
—Other Current Foreign Policy Issues

The public may attend these meetings as seating capacity allows. The media is welcome but discussions are off the record. Admittance to the Department of State building is by means of a pre-arranged clearance list. In order to be placed on this list, please provide your name, title, company or other affiliation if appropriate, social security number, date of birth, and citizenship to the ACIEP Executive Secretariat by fax (202) 647–5936 (Attention: Cecilia Walker) or email: (walkercr@state.gov) by October 27th. On the date of the meeting, persons who have registered should come to the 23rd Street entrance. One of the following valid means of identification will be required for admittance: a U.S. driver's license with photo, a passport, or a U.S. Government ID.

For further information about the meeting, contact Deborah Grout, ACIEP Secretariat, U.S. Department of State, Bureau of Economic and Business Affairs, Room 3526, Main State, Washington, DC 20520. Tel: 202–647–2534; or Carol Thompson, Email: thompsonce@state.gov.

Dated: October 12, 2000.

**Carol E. Thompson,**

*Executive Secretary.*

[FR Doc. 00–26776 Filed 10–17–00; 8:45 am]

BILLING CODE 4710–07–P

## DEPARTMENT OF STATE

**[Public Notice No. 3437]**

### Advisory Panel to the United States Section of the North Pacific Anadromous Fish Commission; Notice of a Closed Meeting

The Advisory Panel to the United States Section of the North Pacific Anadromous Fish Commission will meet on October 29, 2000, at the Imperial Hotel, 1–1–1, Uchisaiwaicho, Chiyoda-ky, Tokyo 100–8558, Japan. This session will involve discussion of the Eighth Annual Meeting of the North Pacific Anadromous Fish Commission, to be held on October 30—November 2, 2000. The discussion will begin at 7:00 p.m. and is closed to the public.

The members of the Advisory Panel will examine various options for the U.S. position at the Eighth Annual Meeting. These considerations must necessarily involve review of sensitive matters, the disclosure of which would frustrate U.S. participation at the Annual Meeting. Accordingly, the determination has been made to close the 7:00 p.m. meeting pursuant to Section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. Section 552b(c)(9).

Requests for further information on the meeting should be directed to Ms. Sally Cochran, International Relations Officer, Office of Marine Conservation (OES/OMC), Room 5806, U.S. Department of State, Washington, D.C. 20520–7818. Ms. Cochran can be reached by telephone on (202) 647–2883 or by FAX (202) 736–7350.

Dated: October 11, 2000.

**Mary Beth West,**

*Deputy Assistant Secretary for Oceans and Fisheries, Department of State.*

[FR Doc. 00–26775 Filed 10–17–00; 8:45 am]

BILLING CODE 4710–09–P

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

**[CGD17–00–015]**

### Application for Recertification of Cook Inlet Regional Citizen's Advisory Council

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of Availability; request for comments.

**SUMMARY:** The Coast Guard announces the availability of and seeks comments on the application for recertification submitted by the Cook Inlet Regional Citizen's Advisory Council (CIRCAC) for September 1, 2000 through August 31, 2001. Under the Oil Terminal and Oil Tanker Environmental Oversight and Monitoring Act of 1990, the Coast Guard may certify, on an annual basis, an alternative voluntary advisory group in lieu of a Regional Citizen's Advisory Council for Cook Inlet.

**DATES:** Comments must reach the Seventeenth Coast Guard District on or before November 17, 2000.

**ADDRESSES:** You may mail your comments to the Seventeenth Coast Guard District (mor), P.O. Box 25517, Juneau, AK, 99802–5517. You may also deliver them to the Juneau Federal Building, room 753, 709 W 9th St, Juneau, AK between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

The Seventeenth Coast Guard District maintains the public docket for this recertification process. Comments regarding recertification will become part of this docket and will be available for inspection or copying at the Juneau Federal Building, room 753, 709 W 9th St.

A copy of the application is also available for inspection at the Cook Inlet Regional Citizen's Advisory Council Offices at 910 Highland Avenue, Kenai, AK 99611–8033 between the hours of 8 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (907) 283–7222 in Kenai, Alaska.

**FOR FURTHER INFORMATION CONTACT:** For questions on viewing or submitting

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material to the docket contact LT Ryan Murphy, Seventeenth Coast Guard District (mor), (907) 463–2817.

**SUPPLEMENTARY INFORMATION:**

**Request for Comments**

The Coast Guard encourages interested persons to submit written data, views, or arguments. It solicits comments from interested groups including oil terminal facility owners and operators, owners and operators of crude oil tankers calling at terminal facilities, and fishing, aquacultural, recreational and environmental citizens groups, concerning the recertification application of CIRCAC. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD17–00–15) and the specific section of this document to which each comment applies, and give the reason for each comment. Please provide all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgement of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to Commander (m), Seventeenth Coast Guard District, P.O. Box 25517, Juneau, AK, 99802–5517. The request should include reasons why a hearing would be beneficial. If there is sufficient evidence to determine that oral presentations will aid this recertification process, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

**Background and Purpose**

The Coast Guard published guidelines on December 31, 1992 (57 FR 626000), to assist groups seeking recertification under the Oil Terminal and Oil Tanker Environmental Oversight and Monitoring Act of 1990 (33 U.S.C. 2732) (the Act). The Coast Guard issued a policy statement on July 7, 1993 (58 FR 36505), to clarify the factors that the Coast Guard would be considering in making its determination as to whether advisory groups should be certified in accordance with the Act; and the procedures which the Coast Guard would follow in meeting its certification responsibilities under the Act.

The Coast Guard has received an application for recertification of CIRCAC, the currently certified advisory group for the Cook Inlet region. In accordance with the review and certification process contained in the policy statement, the Coast Guard announces the availability of that application.

At the conclusion of the comment period, the Coast Guard will review all application materials and comments received and will take one of the following actions:

(a) Recertify the advisory group under 33 U.S.C. 2732(o).

(b) Issue a conditional recertification for a period of 90 days, with a statement of any discrepancies, which must be corrected to qualify for recertification for the remainder of the year.

(c) Deny recertification of the advisory group if the Coast Guard finds that the group is not broadly representative of the interests and communities in the area or is not adequately fostering the goals and purposes of 33 U.S.C. 2732.

The Coast Guard will notify CIRCAC by letter of the action taken on its application. A notice will be published in the **Federal Register** to advise the public of the Coast Guard's determination.

Dated: October 4, 2000.

**T.J. Barrett,**

*Rear Admiral, U.S. Coast Guard Commander, Seventeenth Coast Guard District.*

[FR Doc. 00–26774 Filed 10–17–00; 8:45 am]

**BILLING CODE 4910–15–P**

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

**[USCG 2000–8079]**

### Setting the Environmental Agenda of the Coast Guard for Oil Pollution—Prevention, Preparedness, and Response—in the 21st Century

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of public meeting and request for comments.

**SUMMARY:** The Coast Guard is holding at least one public meeting to help in setting its environmental agenda for oil pollution—prevention, preparedness, and response—in the 21st Century. A decade after the Oil Pollution Act of 1990, spills of cargo oil from tank vessels and other sources have declined; but spills continue to occur in marine transport and to pose new risks and challenges. The Coast Guard hopes to receive input from all stakeholders to identify likely threats to the environment, and to receive ideas on which it may base its prevention, preparedness, and response programs and needs in the future.

**DATES:** (1) The public meeting will take place on December 12, 2000, from 8:30 a.m. to 4 p.m., but will conclude before 4 p.m. if there are no more comments. (2) Comments and related material must reach the Docket Management Facility on or before December 30, 2000. (3) If the Coast Guard decides to hold a second public meeting, it will announce that meeting by a later notice in the **Federal Register**.

**ADDRESSES:** The public meeting will take place at Coast Guard Headquarters, 2100 2nd Street SW., Washington, DC 20593–0001, in room 4202. The meeting will also be video broadcast on the internet.

To make sure your comments and related materials enter the docket [USCG 2000–8079] once and only once, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov.*

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also access the public docket on the Internet at *http://dms.dot.gov.*

**FOR FURTHER INFORMATION CONTACT:** For questions on this public meeting, including those on how to access the meeting on the internet, contact Commander George H. Burns III, Office of Response (G–MOR–1), Coast Guard, telephone 202–267–0421, e-mail *Gburns@comdt.uscg.mil.* (In particular, we ask that those attending the meeting notify CDR Burns so he can ensure that adequate space is available.) For questions on viewing or submitting material to the docket, call Ms. Dorothy Beard, Chief of Dockets, Department of Transportation, telephone 202–366–9329.

**SUPPLEMENTARY INFORMATION:**



**Request for Comments**

We encourage you to participate in this meeting by attending it or by submitting comments and related material to the docket. If you do submit comments or related material, please include your name and address, identify this notice [USCG 2000–8079], and the reason for each comment. You may submit your comments and material by mail, delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. The Coast Guard will consider the comments received from this initial meeting, and those submitted to the docket, to evaluate the need for subsequent meetings, which may examine various factors in more detail. Please submit all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing to the Docket Management Facility at the address under **ADDRESSES**. If you want acknowledgement of receipt of your comments, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received whether submitted in writing to the docket or presented during the meeting.

**Background and Purpose**

Many factors determine the nature of spills into our nation's waterways and coastal areas. One such factor is future growth. Larger ships with greater fuel capacities may use our navigable waters. Increasing demand for petro-chemicals may exert pressures on the transport system. Offshore production of crude oil from remoter areas will grow as the price of oil rises. Transport of oil through aging pipelines near or under our waterways will pose increasing risk of spills into aquatic and marine environments. Further, with the phasing-in of double-hull requirements for tankships and tank barges over the next several years, the Coast Guard suspects that both the methods of waterborne transport of oil and the risks associated with these methods will change. All of this will affect the environmental services and leadership that the Coast Guard provides.

The Coast Guard, the public, and industry have engaged in numerous partnerships, and conducted many studies, over the past ten years; these certainly point the way toward a reasonable and coherent environmental agenda to fit the future. This meeting will examine ideas generated by these efforts, as well as explore emerging trends. It will be the first step in reconciling the expectations of both the public and industries engaged in marine transport. An agenda will be provided at the meeting based on the following questions.

*Questions:* Your responses to the following questions are solicited. Please submit your responses as noted above under **ADDRESSES**.

1. What source do you see as presenting the biggest risk of oil pollution?
2. How do you see that risk changing over the next ten years?
3. How do you see the waterborne transport of oil changing over the next ten or twenty years?
4. What best practices for prevention, if any, from what industry or company, should we urge for uniform application throughout the waterborne transport of oil?
5. Should the Coast Guard concentrate its efforts toward preventing oil pollution on vessels and management, or on measures external to the vessel, such as Vessel Traffic Services, port risk assessments, and the like?
6. Do you perceive the public as becoming less tolerant of the risks of oil pollution? If yes, how is that affecting shipping, mariners' practice, and efforts toward prevention?
7. How will mariners' roles change with respect to preventing oil pollution in the future?
8. Should the Coast Guard be equally prepared for spills from foreign sources and for those from domestic ones? If so, how should we advance preparedness for spills from foreign sources (perhaps through the International Maritime Organization or classification societies)?
9. Should response plans for other sources of spills mirror the response plans for vessels envisioned by OPA 90?
10. Should non-tank vessels have to contract resources for worst cases, as tank vessels must under OPA 90?
11. Should the scope of, frequency of, and criteria for spill response exercises align with those in the Preparedness for Exercise Program (PREP)?
12. Should Qualified Individuals for non-tank vessels meet the same standards as those required for tank vessels?
13. Should strategies for response to and mitigation of other sources of spills differ from those used for sources of spills identified under OPA 90? How?
14. What needs improvement in control of and assessment for response to spills? (These comprise modeling, remote sensing, direct-reading instruments, and field technologies.) How?
15. What needs improvement in cleanup methods and technologies? (These comprise in-situ burning, dispersants, mechanical recovery, shoreline cleanup, bioremediation, and other innovations.) How?
16. How does risk of oil pollution compare with risks from other forms of pollution in terms of effect on the environment? (These may comprise hazardous materials, airborne materials, aquatic nuisance species, or others.)
17. Should we consider specific sources of funding for further improvements? (These may comprise per-barrel taxes, port tariffs, users' fees, or others.) Should the Oil Spill Liability Trust Fund or a similar source be available for preventive measures?
18. What improvements would you make to the U.S. Marine Transportation System to minimize the risk of pollution?
19. Given that the costs of improving the infrastructure of the Marine Transportation System could be significant, what portion of these costs of improvement to reduce the risk of pollution should the public bear?

**Information on Services for People with Disabilities**

For information on facilities or services for people with disabilities, or to request special assistance at the meeting, please contact Commander George H. Burns III, Office of Response (G–MOR–1), Coast Guard, telephone 202–267–0421, e-mail *Gburns@comdt.uscg.mil* as soon as possible.

Dated: October 12, 2000.

**Howard L. Hime,**

*Acting Director of Standards, Marine Safety and Environmental Protection.*

[FR Doc. 00–26767 Filed 10–17–00; 8:45 am]

**BILLING CODE 4910–15–P**

## DEPARTMENT OF THE TREASURY

### Customs Service

### List of Foreign Entities Violating Textile Transshipment and Country of Origin Rules

**AGENCY:** U.S. Customs Service, Department of the Treasury.

**ACTION:** General notice.

**SUMMARY:** This document notifies the public of foreign entities which have been issued a penalty claim under section 592 of the Tariff Act of 1930, for certain violations of the customs laws. This list is authorized to be published by section 333 of the Uruguay Round Agreements Act.

**DATES:** This document notifies the public of the semiannual list for the 6-

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month period starting October 1, 2000, and ending March 30, 2001.

**FOR FURTHER INFORMATION CONTACT:** For information regarding any of the operational aspects, contact Mirta Gonzalez, Seizures and Penalties Division, Office of Field Operations, (202) 927–0410. For information regarding any of the legal aspects, contact Willem A. Daman, Office of Chief Counsel, (202) 927–6900.

**SUPPLEMENTARY INFORMATION:**

**Background**

Section 333 of the Uruguay Round Agreements Act (URAA) (Public Law 103–465, 108 Stat. 4809) (signed December 8, 1994), entitled Textile Transshipments, amended Part V of title IV of the Tariff Act of 1930 by creating a section 592A (19 U.S.C. 1592a), which authorizes the Secretary of the Treasury to publish in the **Federal Register**, on a semiannual basis, a list of the names of any producers, manufacturers, suppliers, sellers, exporters, or other persons located outside the Customs territory of the United States, when these entities and/or persons have been issued a penalty claim under section 592 of the Tariff Act, for certain violations of the customs laws, provided that certain conditions are satisfied.

The violations of the customs laws referred to above are the following: (1) Using documentation, or providing documentation subsequently used by the importer of record, which indicates a false or fraudulent country of origin or source of textile or apparel products; (2) Using counterfeit visas, licenses, permits, bills of lading, or similar documentation, or providing counterfeit visas, licenses, permits, bills of lading, or similar documentation that is subsequently used by the importer of record, with respect to the entry into the Customs territory of the United States of textile or apparel products; (3) Manufacturing, producing, supplying, or selling textile or apparel products which are falsely or fraudulently labeled as to country of origin or source; and (4) Engaging in practices which aid or abet the transshipment, through a country other than the country of origin, of textile or apparel products in a manner which conceals the true origin of the textile or apparel products or permits the evasion of quotas on, or voluntary restraint agreements with respect to, imports of textile or apparel products.

If a penalty claim has been issued with respect to any of the above violations, and no petition in response to the claim has been filed, the name of the party to whom the penalty claim was issued will appear on the list. If a petition or supplemental petition for relief from the penalty claim is submitted under 19 U.S.C. 1618, in accord with the time periods established by sections 171.2 and 171.61, Customs Regulations (19 CFR 171.2, 171.61) and the petition is subsequently denied or the penalty is mitigated, and no further petition, if allowed, is received within 60 days of the denial or allowance of mitigation, then the administrative action shall be deemed to be final and administrative remedies will be deemed to be exhausted. Consequently, the name of the party to whom the penalty claim was issued will appear on the list. However, provision is made for an appeal to the Secretary of the Treasury by the person named on the list, for the removal of its name from the list. If the Secretary finds that such person or entity has not committed any of the enumerated violations for a period of not less than 3 years after the date on which the person or entity's name was published, the name will be removed from the list as of the next publication of the list.

**Reasonable Care Required**

Section 592A also requires any importer of record entering, introducing, or attempting to introduce into the commerce of the United States textile or apparel products that were either directly or indirectly produced, manufactured, supplied, sold, exported, or transported by such named person to show, to the satisfaction of the Secretary, that such importer has exercised reasonable care to ensure that the textile or apparel products are accompanied by documentation, packaging, and labeling that are accurate as to its origin. Reliance solely upon information regarding the imported product from a person named on the list is clearly not the exercise of reasonable care. Thus, the textile and apparel importers who have some commercial relationship with one or more of the listed parties must exercise a degree of reasonable care in ensuring that the documentation covering the imported merchandise, as well as its packaging and labeling, is accurate as to the country of origin of the merchandise. This degree of reasonable care must involve reliance on more than information supplied by the named party.

In meeting the reasonable care standard when importing textile or apparel products and when dealing with a party named on the list published pursuant to section 592A of the Tariff Act of 1930, an importer should consider the following questions in attempting to ensure that the documentation, packaging, and labeling is accurate as to the country of origin of the imported merchandise. The list of questions is not exhaustive but is illustrative.

(1) Has the importer had a prior relationship with the named party?

(2) Has the importer had any detentions and/or seizures of textile or apparel products that were directly or indirectly produced, supplied, or transported by the named party?

(3) Has the importer visited the company's premises and ascertained that the company has the capacity to produce the merchandise?

(4) Where a claim of an origin conferring process is made in accordance with 19 CFR 102.21, has the importer ascertained that the named party actually performed the required process?

(5) Is the named party operating from the same country as is represented by that party on the documentation, packaging or labeling?

(6) Have quotas for the imported merchandise closed or are they nearing closing from the main producer countries for this commodity?

(7) What is the history of this country regarding this commodity?

(8) Have you asked questions of your supplier regarding the origin of the product?

(9) Where the importation is accompanied by a visa, permit, or license, has the importer verified with the supplier or manufacturer that the visa, permit, and/or license is both valid and accurate as to its origin? Has the importer scrutinized the visa, permit or license as to any irregularities that would call its authenticity into question?

The law authorizes a semiannual publication of the names of the foreign entities and/or persons. On March 30, 2000, Customs published a Notice in the **Federal Register** (65 FR 17003) which identified 25 (twenty-five) entities which fell within the purview of section 592A of the Tariff Act of 1930.

**592A List**

For the period ending September 30, 2000, Customs has identified 24 (twenty-four) foreign entities that fall within the purview of section 592A of the Tariff Act of 1930. This list reflects one new entity and two removals to the 25 entities named on the list published on March 30, 2000. The parties on the current list were assessed a penalty claim under 19 U.S.C. 1592, for one or more of the four above-described violations. The administrative penalty action was concluded against the parties by one of the actions noted above as having terminated the administrative process.



The names and addresses of the 24 foreign parties which have been assessed penalties by Customs for violations of section 592 are listed below pursuant to section 592A. This list supersedes any previously published list. The names and addresses of the 24 foreign parties are as follows (the parenthesis following the listing sets forth the month and year in which the name of the company was first published in the **Federal Register**):

Austin Pang Gloves & Garments Factory, Ltd., Jade Heights, 52 Tai Chung Kiu Road, Flat G, 19/F, Shatin, New Territories, Hong Kong. (10/99)

Beautiful Flower Glove Manufactory, Kar Wah Industrial Building, 8 Leung Yip Street, Room 10–16, 4/F, Yuen Long, New Territories, Hong Kong. (10/99)

BF Manufacturing Company, Kar Wah Industrial Building, Leung Yip Street, Flat 13, 4/F, Yeun Long, New Territories, Hong Kong. (10/99)

Ease Keep, Ltd., 750 Nathan Road, Room 115, Kowloon, Hong Kong. (10/99)

Excelsior Industrial Company, 311–313 Nathan Road, Room 1, 15th Floor, Kowloon, Hong Kong. (9/98)

Eun Sung Guatemala, S.A., 13 Calle 3–62 Zona Colonia Landivar, Guatemala City, Guatemala. (3/98)

Everlast Glove Factory, Goldfield Industrial Centre, 1 Sui Wo Road, Room 15, 15th Floor, Fo Tan, Shatin, New Territories, Hong Kong. (3/99)

Fabrica de Artigos de Vestuario E-Full, Lda. Rua Um doi Bairro da Concordia, Deificio Industrial Vang Tai, 8th Floor, A–D, Macau. (10/99)

Fabrica de Artigos de Vestuario Fan Wek Limitada, Av. Venceslau de Morais, S/N 14 B–C, Centro Ind. Keck Seng (Torre 1), Macau. (10/99)

Fabrica de Artigos de Vestuario Pou Chi, Avenida General Castelo Branco, 13, Andar, "C" Edificio Wang Kai, Macau. (10/99)

Glory Growth Trading Company, No. 6 Ping Street, Flat 7–10, Block A, 21st Floor, New Trade Plaza, Shatin, New Territories, Hong Kong. (9/98)

G.P. Wedding Service Centre, Lee Hing Industrial Building, 10 Cheung Yue Street 11th Floor, Cheung Sha Wan, Kowloon, Hong Kong. (10/00)

Great Southern International Limited, Flat A, 13th floor, Foo Cheong Building, 82–86 Wing Lok Street, Central, Hong Kong. (9/98)

G.T. Plus Ltd., Kowloon Centre, 29–43 Ashley Road, 4/Fl, Tsimshatsui, Kowloon, Hong Kong. (3/99)

Jiangxi Garments Import and Export Corp., Foreign Trade Building, 60 Zhangqian Road, Nanchang, China. (3/98)

Liable Trading Company, 1103 Kai Tak Commercial Building, 62–72 Stanley Street, Kowloon, Hong Kong. (9/98)

Lucky Mind Industrial Limited, Lincoln Centre, 20 Yip Fung Street, Flat 11, 5/F, Fan Ling, New Territories, Hong Kong. (10/99)

Mabco Limited, 6/F VIP Commercial Centre, 116–120 Canton Road, Kowloon, Hong Kong. (3/99)

McKowan Lowe & Company Limited, 1001–1012 Hope Sea Industrial Centre, 26 Lam Hing Street, Kowloon Bay, Kowloon, Hong Kong. (9/98)

Rex Industries Limited, VIP Commercial Center, 116–120 Canton Road, 11th Floor, Tsimshatsui, Kowloon, Hong Kong. (9/98)

Sannies Garment Factory, 35–41 Tai Lin Pai Road, Gold King Industrial Building, Flat A & B, 2nd Floor, Kwai Chung, New Territories, Hong Kong. (9/98)

Shing Fat Gloves & Rainwear, 2 Tai Lee Street, 1–2 Floor, Yuen Long, New Territories, Hong Kong. (9/98)

Sun Kong Glove Factory, 188 San Wan Road, Units 32–35, 3rd Floor, Block B, Sheung Shui, New Territories, Hong Kong. (9/98)

Takhi Corporation, Huvsgalchdyn Avenue, Ulaanbaatar 11, Mongolia. (3/98)

Any of the above parties may petition to have its name removed from the list. Such petitions, to include any documentation that the petitioner deems pertinent to the petition, should be forwarded to the Assistant Commissioner, Office of Field Operations, United States Customs Service, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

**Additional Foreign Entities**

In the March 30, 2000, **Federal Register** notice, Customs also solicited information regarding the whereabouts of 32 foreign entities, which were identified by name and known address, concerning alleged violations of section 592. Persons with knowledge of the whereabouts of those 32 entities were requested to contact the Assistant Commissioner, Office of Field Operations, United States Customs Service, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

In this document, a new list is being published which contains the names and last known addresses of 26 entities. This reflects the removal of six entities from the list of 32 entities published on March 30, 2000.

Customs is soliciting information regarding the whereabouts of the following 26 foreign entities concerning alleged violations of section 592. Their names and last known addresses are listed below (the parenthesis following the listing sets forth the month and year in which the name of the company was first published in the **Federal Register**):

Au Mi Wedding Dresses Company, Dragon Industry Building, 98, King Law Street, Unit F, 9/F, Lai Chi Kok, Kowloon, Hong Kong. (10/99)

Balmar Export Pte. Ltd., No. 7 Kampong Kayu Road, Singapore, 1543. (3/98)

Essence Garment Making Factory, Splendid Centre, 100 Larch Street, Flat D, 5th Floor, Taikoktsui, Kowloon, Hong Kong. (3/98)

Fabrica de Artigos de Vest. Dynasty, Lda., Avenida do Almirante Magalhaes Correia, Edificio Industrial Keck Seng, Block III, 4th Floor "UV", Macau. (3/98)

Fabrica de Artigos de Vestuario Lei Kou, No. 45 Estrada Marginal de Areia Preta, Edif.Ind.Centro Polytex, 6th Floor, D, Macau. (9/98)

Fabrica de Vestuario Wing Tai, 45 Estrada Marginal Da Areia Preta, Edif. Centro Poltex, 3/E, Macau. (3/98)

Galaxy Gloves Factory, Annking Industrial Building, Wang Yip East Street Room A, 2/F, Lot 357, Yuen Long Industrial Estate, Yuen Long, New Territories, Hong Kong. (3/98)

Golden Perfect Garment Factory, Wong's Industrial Building, 33 Hung To Road, 3rd Floor, Kwun Tong, Kowloon, Hong Kong. (9/98)

Golden Wheel Garment Factory, Flat A, 10/F, Tontex Industrial Building, 2–4 Sheung Hei Street, San Po Kong, Kowloon, Hong Kong. (10/99)

Grey Rose Maldives, Phoenix Villa, Majeedee Magu, Male, Republic of Maldives. (3/98)

K & J Enterprises, Witty Commercial Building, 1A–1L Tung Choi Street, Room 1912F, Mong Kok, Kowloon, Hong Kong. (9/98)

Konivon Development Corp., Shun Tak Center, 200 Connaught Road, No. 3204, Hong Kong. (3/98)

Kwuk Yuk Garment Factory, Kwong Industrial Building, 39–41 Beech St., Flat A, 11th Floor, Tai Kok Tsui, Kowloon, Hong Kong. (3/98)

Lai Cheong Gloves Factory, Kar Wah Industrial Building, 8 Leung Yip Street, Room 101, 1–F, Yuen Long, New Territories, Hong Kong. (3/00)

Leader Glove Factory, Tai Ping Industrial Centre, 57, Ting Kok Road, 25/F, Block 1, Flat A, Tai Po, New Territories, Hong Kong. (3/98)

Maxwell Garment Factory, Unit C, 21/F, 78–84, Wang Lung Street, Tseun Wan, New Territories, Hong Kong. (3/99)

New Leo Garment Factory Ltd, Galaxy Factory Building, 25–27 Luk Hop Street, Unit B, 18th Floor, San Po Kong, Kowloon, Hong Kong. (9/98)

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Penta-5 Holding (HK) Ltd., Metro Center II, 21 Lam Hing Street, Room 1907, Kowloon Bay, Kowloon, Hong Kong. (9/98)

Silver Pacific Enterprises Ltd., Shun Tak Center, 200 Connaught Road, No. 3204, Hong Kong. (3/98)

Tak Hing Textile Company Limited, Wo Fung Industrial Building, 3/F, block D, Lot No. 5180, IN D.D 51, On Lok Village, Fanling, New Territories, Hong Kong. (3/99)

Tat Hing Garment Factory, Tat Cheong Industrial Building, 3 Wing Ming Street, Block C, 13/F, Lai Chi Kok, Kowloon Hong Kong. (3/98)

Tientak Glove Factory Limited, 1 Ting Kok Road, Block A, 26/F, Tai Po, New Territories, Hong Kong. (3/98)

Wealthy Dart, Wing Ka Industrial Building, 87 Larch Street, 7th Floor, Kowloon, Hong Kong. (3/98)

Wilson Industrial Company, Yip Fat Factory Building, 77 Hoi Yuen Road, Room B, 3/F, Kwun Yong, Kowloon, Hong Kong. (3/98)

Wing Lung Manufactory, Hing Wah Industrial Building, Units 2, 5–8, 4th Floor YLTL 373, Yuen Long, New Territories, Hong Kong. (9/98)

Yogay Fashion Garment Factory Ltd, Lee Wan Industrial Building, 5 Luk Hop Street, San Po Kong, Kowloon, Hong Kong. (3/98)

If you have any information as to a correct mailing address for any of the above 26 firms, please send that information to the Assistant Commissioner, Office of Field Operations, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

Dated: October 12, 2000

**Bonni G. Tischler,**

*Assistant Commissioner, Office of Field Operations.*

[FR Doc. 00–26669 Filed 10–17–00; 8:45 am]

BILLING CODE 4820–02–P




Federal Register

**Wednesday,**
**October 18, 2000**

**Part II**

# Environmental Protection Agency

**40 CFR Part 63**

**National Emission Standards for Hazardous Air Pollutants: Rubber Tire Manufacturing; Proposed Rule**

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 63**

**[FRL–6874–9]**

**RIN 2060–AG29**

## National Emission Standards for Hazardous Air Pollutants: Rubber Tire Manufacturing

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** This action proposes national emission standards for hazardous air pollutants (NESHAP) for new and existing sources at rubber tire manufacturing facilities. The EPA has identified rubber tire manufacturing facilities as major sources of hazardous air pollutants (HAP) emissions. These proposed standards would implement section 112(d) of the Clean Air Act (CAA) by requiring all major sources to meet HAP emission standards that reflect the application of maximum achievable control technology (MACT). The primary HAP that would be controlled with this action include toluene and hexane. These HAP are associated with a variety of adverse health effects including chronic health disorders (*e.g.*, polyneuropathy, degenerative lesions of the nasal cavity) and acute health disorders (*e.g.*, respiratory irritation, headaches).

**DATES:** *Comments.* Submit comments on or before December 18, 2000.

*Public Hearing.* If anyone contacts EPA requesting to speak at a public hearing by November 7, 2000, a public hearing will be held on November 17, 2000.

**ADDRESSES:** *Comments.* Written comments should be submitted (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention: Docket No. A–97–14, Room M–1500, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. The EPA requests that a separate copy also be sent to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**).

*Public Hearing.* If a public hearing is held, it will be held at 10 a.m. in the EPA's Office of Administration's Auditorium in Research Triangle Park, North Carolina, or at an alternate site nearby.

*Docket.* Docket No. A–97–14 contains supporting information used in developing the standards. The docket is located at the U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460 in room M–1500, Waterside Mall (ground floor), and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** For information concerning the proposed standards, contact Mr. Anthony Wayne, Policy Planning and Standards Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5439, electronic mail address wayne.tony@epa.gov.

**SUPPLEMENTARY INFORMATION:**

*Comments.* Comments and data may be submitted by electronic mail (e-mail) to: *a-and-r-docket@epa.gov*. Electronic comments must be submitted as an ASCII file to avoid the use of special characters and encryption problems and will also be accepted on disks in WordPerfect® version 5.1, 6.1, or Corel® 8 file format. All comments and data submitted in electronic form must note the docket number (Docket No. A–97–14). No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Attention: OAQPS Document Control Officer, U.S. Environmental Protection Agency, 411 W. Chapel Hill Street, Room 740B, Durham, NC 27701. The EPA will disclose information identified as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by the EPA, the information may be made available to the public without further notice to the commenter.

*Public Hearing.* Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact Ms. Dorothy Apple, Policy Planning and Standards Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–4487 at least 2 days in advance of the public hearing. Persons interested in attending the public hearing must also call Ms. Apple to verify the time, date, and location of the hearing. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning these proposed emission standards.

*Docket.* The docket is an organized and complete file of all the information considered by the EPA in the development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the CAA.) The regulatory text and other materials related to this rulemaking are available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

*Worldwide Web (WWW).* In addition to being available in the docket, an electronic copy of this proposed rule is also available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules *http://www.epa.gov/ttn/oarpg*. The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

*Regulated Entities.* Categories and entities potentially regulated by this action include:

| Category | SIC [a]/NAICS [b] | Examples of regulated entities |
|---|---|---|
| Industry | 3011 or 7534/ | Owners or operators of rubber tire manufacturing facilities. |

[a] Standard Industrial Classification Code.



[b] North American Information Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in § 63.5981 of the proposed rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section. *Outline.* The information in this preamble is organized as follows.

I. Background
- A. What is the source of authority for developing NESHAP?
- B. What criteria are used in developing NESHAP?
- C. What is the history of the listing and schedule for regulation for the rubber tire manufacturing source category?
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II. Summary of Proposed Rule
- A. What sources are included in the category and subcategories regulated by this rule?
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- D. What are the emission limits, operating limits, and other standards?
- E. What are the testing and initial compliance requirements?
- F. What are the continuous compliance provisions?
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III. Rationale for Selecting the Proposed Standards
- A. How did we select the source category and subcategories?
- B. How did we select the affected sources?
- C. How did we determine the basis and level of the proposed standards for existing and new sources?
- D. How did we select the format of the standards?
- E. How did we select the compliance, monitoring, recordkeeping, and reporting requirements?
- F. What is the relationship of this subpart to new source performance standards (NSPS) for the rubber tire manufacturing industry?

IV. Summary of Environmental, Energy, and Economic Impacts
- A. What are the air quality impacts?
- B. What are the cost impacts?
- C. What are the economic impacts?
- D. What are the non-air health, environmental, and energy impacts?

V. Solicitation of Comments and Public Participation

VI. Administrative Requirements
- A. Executive Order 12866—Regulatory Planning and Review
- B. Executive Order 13045—Protection of Children from Environmental Health Risks and Safety Risks
- C. Executive Order 13084—Consultation and Coordination with Indian Tribal Governments
- D. Executive Order 13132—Federalism
- E. Unfunded Mandates Reform Act of 1995
- F. Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq*
- G. Paperwork Reduction Act
- H. National Technology Transfer and Advancement Act of 1995

## I. Background

### A. What Is the Source of Authority for Developing NESHAP?

Section 112 of the CAA requires us to list categories and subcategories of major sources and area sources of HAP and to establish NESHAP for the listed source categories and subcategories. Major sources of HAP are those stationary sources or groups of stationary sources that are located within a contiguous area and under common control that emit or have the potential to emit, considering controls, 10 ton/yr or more of any one HAP or 25 ton/yr or more of any combination of HAP.

### B. What Criteria Are Used in Developing NESHAP?

Section 112 of the CAA requires that we establish NESHAP for the control of HAP from both new and existing major sources. The CAA requires the NESHAP to reflect the maximum degree of reduction in emissions of HAP that is achievable. This level of control is commonly referred to as the MACT.

The "MACT floor" is the minimum control level allowed for NESHAP and is defined under section 112(d)(3) of the CAA. In essence, the MACT floor ensures that the standard is set at a level that assures that all major sources achieve the level of control at least as stringent as that already achieved by the better-controlled and lower-emitting sources in each source category or subcategory. For new sources, the MACT floor cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source. The MACT standards for existing sources can be less stringent than standards for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources in the category or subcategory (or the best-performing 5 sources for categories or subcategories with fewer than 30 sources).

In developing MACT, we also consider control requirements that are more stringent than the floor. We may establish standards more stringent than the floor based on the consideration of cost of achieving the emissions reductions, any non-air quality health and environmental impacts, and energy requirements.

### C. What Is the History of the Listing and Schedule for Regulation for the Rubber Tire Manufacturing Source Category?

#### 1. Establishing the Initial List and Schedule

Pursuant to the various specific listing requirements of section 112(c), we published a list of 174 categories of major and area sources referred to as the "initial list" that would be subject to emission standards. Following this listing, pursuant to requirements in section 112(e), on December 3, 1993 (58 FR 63941), we published a schedule for the promulgation of emission standards for each of the 174 listed source categories. The schedule for standards organized the source categories into groups of four separate timeframes with promulgation deadlines of November 15, 1992; November 15, 1994; November 15, 1997; or November 15, 2000.

"Tire Production" is one of the 174 categories of sources included on the initial list of source categories (63 FR 7155). The "Tire Production" category as defined in our report, "Documentation for Developing the Initial Source Category List," EPA–450/3–91–0310, July 1992, includes any facility that is a major source and is engaged in producing passenger car and light duty truck tires, heavy duty truck tires, off-the-road tires, aircraft tires, and miscellaneous other tires. The listed "tire production" source category name was changed to "rubber tire manufacturing" to better reflect the industry that would be regulated under section 112(d)(2) based on information obtained during the MACT standard development process.

#### 2. Listing of the Tire Manufacturing Source Category as a Section 112(c)(6) HAP Source

Section 112(c)(6) of the CAA requires that sources that account for 90 percent of the emissions of seven specified HAP, including hexachlorobenzene (HCB) and polycyclic organic matter (POM), be subject to standards under section 112(d)(2) or (d)(4).

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Based on previous information and testing, we estimated that tire production facilities emitted, in aggregate, approximately 395 kilograms (kg) (869 pounds (lbs)), or 29.5 percent, of the total national anthropogenic emissions of HCB per year. Tire production facilities were also estimated to emit, in aggregate, approximately 6,360 kg (14,000 lbs), or 0.03 percent, of the total national anthropogenic emissions of POM per year (63 FR 17838). On April 10, 1998 (63 FR 17838), we listed tire manufacturing as a source category for possible regulation to meet section 112(c)(6) requirements. Because tire manufacturing was already included on the initial major source category list developed to comply with section 112(c), the major source category list did not need to be modified to add it.

The Rubber Manufacturers Association (RMA) responded to the listing of tire manufacturing as a section 112(c)(6) emissions source for HCB by sending us a letter that argued that the tire manufacturing process does not have a chemical or physical mechanism to form HCB. The RMA explained that the analytical results that led us to list tire manufacturing as a source of HCB emissions were based on contaminated samples. In response to RMA's comment, we participated in the planning of, and were present at, tests that were conducted to evaluate RMA's claim. These tests were reconstructed based on the conditions of the original tests. Based on our participation and evaluation of these tests, we agree that the original HCB emission information was incorrect. Based on the limitations of the original tests, and the fact that no HCB was measured in the re-testing, we concluded that tire manufacturing is a highly unlikely source of HCB emissions. We are addressing the April 10, 1998 listing under section 112(c)(6) of tire manufacturing as an HCB emission source in a separate **Federal Register** action.

The POM emissions leading to tire manufacturing being listed as a section 112(c)(6) emission source are due to combustion associated with the use of steam boilers in the rubber tire manufacturing process. These boilers will be addressed under the Industrial, Commercial and Institutional Boiler and Process Heater NESHAP.

*D. What Are the Health Effects Associated With Rubber Tire Manufacturing?*

This proposed rule protects air quality and promotes the public health by reducing emissions of some of the HAP listed in section 112(b)(1) of the CAA. The sources of HAP emissions in the rubber tire manufacturing industry are: (1) Rubber processing; (2) the use of cements, solvents and associated mixtures in the tire production; (3) tire cord production; and (4) puncture sealant application. The primary HAP emitted from the rubber tire production process and puncture sealant operations are toluene and hexane. Tire cord operations also emit these HAP, but the more significant emissions from tire cord production are formaldehyde, styrene, and methanol. Exposure to these compounds has been demonstrated to cause adverse health effects.

The HAP that would be controlled with this proposed rule are associated with a variety of adverse health effects. These adverse health effects include chronic health disorders (*e.g.*, effects on the central nervous system and reproductive systems) and acute health disorders (*e.g.*, irritation of eyes, throat, and mucous membranes, headache, nausea, and blurred vision). One of the HAP has been classified as a probable human carcinogen, and another has been classified as a possible human carcinogen.

1. Toluene

Acute (short-term) inhalation exposure of humans to low or moderate levels of toluene has been associated with central nervous system (CNS) dysfunction and narcosis. Symptoms observed include fatigue, sleepiness, headaches, and nausea. Acute inhalation exposure to toluene has also been associated with cardiac arrhythmias (irregular heartbeats). Central nervous system depression and death have occurred at higher levels of exposure to toluene.

Chronic (long-term) inhalation exposure of humans to high levels of toluene has been associated with CNS depression. Symptoms observed include ataxia, tremors, cerebral atrophy, involuntary eye movements, and impaired speech, hearing, and vision. Chronic inhalation exposure of humans to toluene has also been associated with irritation of the upper respiratory tract, eye irritation, sore throat, nausea, skin conditions, dizziness, headaches, and difficulty with sleep. Chronic inhalation exposure to toluene has been associated with adverse effects on the liver, kidney, and lungs. Human studies of solvent vapor abusers indicate that there may be liver and kidney adverse effects resulting from chronic inhalation exposure to toluene, however, these studies are confounded by probable exposure to multiple solvents.

Children of pregnant women exposed to toluene or mixed solvent by inhalation have been observed to have CNS dysfunction, attention deficits, craniofacial and limb anomalies, and developmental and growth retardation.

2. Hexane

Acute (short-term) inhalation exposure of humans to hexane is associated with mild CNS depression and irritation of the mucous membranes. Central nervous system effects include dizziness, giddiness, slight nausea, and headache. Acute exposure to hexane vapors may also cause dermatitis and irritation of the eyes and throat in humans.

Chronic (long-term) exposure of humans to hexane is associated with polyneuropathy in humans, with numbness in the extremities, muscular weakness, blurred vision, headache, and fatigue. Studies of animals chronically exposed to hexane by inhalation indicate neurotoxic effects, and mild inflammatory, erosive, and degenerative lesions in the olfactory and respiratory epithelium of the nasal cavity.

3. Formaldehyde

Both acute (short-term) and chronic (long-term) exposure to formaldehyde irritates the eyes, nose, and throat, and may cause coughing, chest pains, and bronchitis. Reproductive effects, such as menstrual disorders and pregnancy problems, have been reported in female workers exposed to formaldehyde. Limited human studies have reported an association between formaldehyde exposure and lung and nasopharyngeal cancer. Animal inhalation studies have reported an increased incidence of nasal squamous cell cancer. We consider formaldehyde a probable human carcinogen (Group B2).

4. Methanol

Acute (short-term) or chronic (long-term) exposure of humans to methanol by inhalation or ingestion may result in blurred vision, headache, dizziness, and nausea. No information is available on the reproductive, developmental, or carcinogenic effects of methanol in humans. Birth defects have been observed in the offspring of rats and mice exposed to methanol by inhalation. A methanol inhalation study using rhesus monkeys reported a decrease in the length of pregnancy and limited evidence of impaired learning ability in offspring. We have not classified methanol with respect to carcinogenicity.



5. Styrene

Acute (short-term) exposure to styrene in humans results in mucous membrane and eye irritation and gastrointestinal effects. Chronic (long-term) exposure to styrene in humans may cause effects on the CNS such as headache, fatigue, weakness, depression, and hearing loss. There is limited evidence that occupational exposure to styrene is associated with an increased frequency of spontaneous abortions and decreased frequency of births and an increased risk of leukemia and lymphoma. We consider this evidence to be inconclusive. The International Agency for Research on Cancer (IARC) has classified styrene as a Group 2B, possible human carcinogen. We have not classified styrene with respect to carcinogenicity.

*E. Rubber Manufacturers Association Survey*

Based on surveys of its member and non-member companies, the RMA compiled and provided us two comprehensive data bases on HAP emissions and controls at rubber tire and/or tire component producers and tire cord producers.

In 1997, the RMA surveyed the 46 known tire production facilities in the U.S. Each facility received a questionnaire designed to gather information on the quantity of HAP emissions and controls within the industry. The questionnaire requested the following information for calendar year 1996:

- General facility information such as facility name, address, parent company;
- Manufacturing information such as number of employees, products made, production rates, whether HAP-containing cements and solvents were used, and facilitywide HAP emissions;
- Specific process information such as the individual processes used, the number of processes used, and general information on hooding, ducting and control devices;
- Detailed information on the HAP-containing material used and the processes where the material is used, the type of material, the density of the material, and the total HAP usage; and
- Information on air pollution control devices (APCD) including the process controlled, the type of APCD, exhaust flow rate, control efficiency, reason for installation of APCD, and economics associated with installation of APCD.

Of the 46 facilities receiving the questionnaire, 42 (91 percent) responded, including all the major tire production facilities and parent companies. The RMA estimated that 41 of these facilities produce more than 99 percent of the rubber tires produced in the U.S. Thirty-one of the 42 reporting facilities have indicated potential emissions which would qualify the facility as a major source pursuant to section 112 of the CAA. One of the 42 responding facilities does not manufacture rubber tires, but rather mixes rubber compound for distribution to noncontiguous manufacturing facilities. This facility is within the scope of the rubber tire manufacturing source category because it mixes rubber compound, which is a basic material for the manufacturing of specific components of rubber tires.

In 1998, the RMA surveyed the twelve known tire cord production facilities. Each of these facilities received a questionnaire designed to gather information on the quantity of HAP emissions and controls within the tire cord production industry. The questionnaire requested the following information for calendar year 1997:

- General facility information such as facility name, address, parent company, number of employees;
- Production information such as the quantity of fabric processed, whether the facility provides treated fabric to non-tire manufacturers, and whether the dip (coating solution) mixing equipment and/or storage tanks have HAP emission controls; and
- Specific process information including the individual processes used, the number of processes used, air pollution control equipment used and its efficiencies, ventilation rates, costs of air pollution control equipment, annual HAP emissions, and general chemical characteristics of coating solutions.

All twelve facilities responded. Eight of the facilities represent over 90 percent of the domestic tire cord produced in the U.S. At least four of these facilities appear to be major sources based on their reported potential emissions. The RMA survey responses include eleven facilities that reported they did not use or emit HAP associated with cements, solvents, or mixtures.

In order to standardize responses and minimize the collection burden, the RMA questionnaires provided guidance for respondents on how to report usage of HAP-containing compounds (*i.e.*, cements, solvents and associated mixtures used in the manufacture of rubber tires). In particular, to prevent respondents from having to estimate very small concentrations of HAP in their HAP-containing materials, the questionnaires focused on collecting information on the significant cements, solvents and associated mixtures (or sealants) used at each facility. The guidance used in these questionnaires was based on the Superfund Amendments and Reauthorization Act (SARA) de minimis reporting threshold limitations for HAP-containing compounds. Thus, facilities reported the use of only those solvents, cements or related mixtures having HAP concentrations greater than these de minimis levels.

The SARA de minimis thresholds for reporting for each component in a mixture are 0.1 percent by weight for some selected hazardous chemicals (see table 16 of this proposed rule for a list of these chemicals) and 1.0 percent by weight for all other hazardous chemicals (§ 370.28(b) of 40 CFR part 370-Hazardous Chemical Reporting: Community Right-To-Know). This means if the weight percent of a HAP in a cement, solvent or related mixture used was 0.1 percent or less for selected HAP or 1.0 percent or less for all other HAP, it did not have to be accounted for in the emissions information reported in the RMA questionnaire. Thus, if the information reported in the data base indicates that a rubber tire manufacturing facility has "none or zero potential or actual HAP emissions," the facility may still have actual HAP emissions below the accountable quantities in the guidance. Based on this information, a rubber tire manufacturing facility reporting "none or zero potential or actual HAP emissions" from cements, solvents and associated mixtures could be using cements, solvents or related mixtures containing up to 0.1 percent of a "selected" HAP or 1.0 percent of all other HAP by mass.

Using this de minimis cutoff for accounting of the HAP at a facility, the companies compiled their annual emissions of HAP on the basis of HAP use for 1996. In the cases where they reported they did have HAP, they accounted for the HAP used in the processes (liquids) and then equated the use to 100 percent emissions of HAP.

## II. Summary of Proposed Rule

*A. What Sources Are Included in the Category and Subcategories Regulated by This Rule?*

We have defined the rubber tire manufacturing source category to include: The construction of rubber tires and components integral to rubber tires, the production of tire cord, and the application of puncture sealant. Components of rubber tires include, but are not limited to, rubber compounds, sidewalls, tread, tire beads, and liners. Other components often associated with rubber tires but not integral to the tire,

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such as wheels, valve stems, and inner tubes, are not included in our definition of components of rubber tires and would not be subject to the requirements proposed with today's action. For purposes of regulation, we have subcategorized this source category as follows: (1) Rubber processing, (2) tire production, (3) tire cord production, and (4) puncture sealant application.

*B. What Are the Primary Sources of Emissions and What Are the Emissions?*

The primary sources of HAP emissions in the rubber tire production industry are: (1) Rubber processing; (2) the use of cements, solvents and associated mixtures for tire production; (3) tire cord production; and (4) puncture sealant application. Other HAP emission sources include storage vessels that contain cements, solvents and associated mixtures, wastewater, and research and development areas.

1. Rubber Processing

Rubber processing consists of the combination and mixing of various ingredients used to make mixed rubber compound, and the processing of the mixed rubber compound into components that make up a tire. The primary source of organic HAP emissions from rubber processing is the initial rubber compounding (*e.g.*, mixing, milling, and extrusion) prior to the application of solvents and cement. During the initial rubber compounding, process materials including natural rubber, synthetic rubber, plasticizers (*e.g.*, oils and waxes), curatives (*e.g.*, sulfur), antioxidants, and reinforcements (*e.g.*, silica, carbon black and resins) are mixed together in large mixers, called "banburys," to make a particular rubber compound. Little or no HAP are added as raw materials to make the rubber compound.

The physical breakdown of synthetic and natural rubber polymers during mixing results in HAP emissions such as styrene and butadiene emissions. Heat generated by the physical nature of compound mixing and added curing agents also causes HAP emissions (*e.g.*, carbon black and sulfur chemically combine to form carbon disulfide). Actual emissions from rubber compounding operations and other mechanical warming of the compounds (*e.g.*, milling) are approximately 829 megagrams per year (Mg/yr) (914 tons/yr). This is approximately 46 percent of the total annual tire production emissions in 1996.

Six generic rubber compounds are used to manufacture rubber tires. A seventh compound is manufactured for use as bladder material in the curing presses. Manufacturers modify these six compounds into proprietary rubber compounds to meet company-specified tire performance criteria and functions. We considered whether the use of different compounds, as well as differences in the sequence and nature of some of the intermediate processing steps, affects our overall analysis of the rubber processing operation. We concluded that, despite the use of these proprietary compounds, the overall steps taken to process the rubber and subsequently manufacture the tires are essentially the same across the industry.

2. Tire Production

Various cements, solvents and related mixtures are used in producing tires and tire components. Tire production processes where these cements and solvents may be used include extruding, tread stock cementing, side wall cementing, bead cementing, liner tack operations, tire building, curing press spray operations, and finishing paint operations. Cements and solvents are defined in § 63.6015 of the proposed rule as:

* * * the collection of all organic chemicals, mixtures of chemicals, and compounds used in the production of rubber tires, including cements, solvents, and mixtures thereof as process aides in storage tanks, wastewater, and research and development areas. Cements and solvents include, but are not limited to, tread end cements, undertread cements, bead cements, tire building cements and solvents, green tire spray, blemish repair paints, side wall protective paints, marking inks, general cleaning solvents, and slab dip mixtures. Cements and solvents do not include coatings used in tire cord production, puncture sealant application, or chemicals and compounds that are not used in the tire production process such as restroom cleaning compounds, office supplies (*e.g.*, dry-erase markers, correction fluid), architectural paint, or any substance to the extent it is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public.

We estimate that processes using cements and solvents account for 54 percent of the HAP emissions associated with the tire production industry, including emissions from storage vessels, wastewater, and research and development areas.

Cements and solvents are used for many purposes. For example, they may be used in "cement" application to generate a tacky surface for temporary binding of components prior to curing. In addition, they are often used for marking lines on rubber components for identification and component alignment at tire building. They may also be used as constituents in green tire lubricant spray, blemish paint used in tire finishing, and coatings used in white wall protection.

The RMA rubber tire manufacturing survey for the 1996 calendar year estimated potential HAP emissions from the usage of cements and solvents and sealants to be 1,280 Mg/yr (1,411 tons/yr). One operation, tread-end cementing, accounted for approximately 30 percent of these emissions, 383 Mg/yr (422 tons/yr). The 1996 estimated emissions of HAP associated with cements, solvents and associated mixtures for other operations are presented in table 1 as follows:

TABLE 1.—ESTIMATED EMISSIONS FROM CEMENTS AND SOLVENTS USAGE IN TIRE PRODUCTION

[1997 RMA tire production survey]

| Operation | 1996 estimated emissions, mg/yr (tons/yr) |
|---|---|
| Tread-end cementing | 383 (422) |
| Undertread cement | 187 (207) |
| Bead cementing | 40 (44) |
| Green tire spray | 191 (211) |
| Cement house | 34 (37) |
| Tanks | 5 (6) |
| Miscellaneous cement and solvent use. | 439 (484) |

3. Tire Cord Production

Tire cord is an integral sidewall component of rubber tires and is used primarily to provide resistance to sidewall flexing. In tire cord production, fibers or fabric are processed into a prepared fabric substrate which is subsequently used to prepare sidewall components. Tire cord production is a separate subcategory for purposes of this proposed rule because the process of tire cord production is significantly different from other tire component and tire manufacturing operations. The process of tire cord production also lends itself to separate and specific HAP controls.

Tire cord is produced by coating a continuous web of woven fabric by dipping it in an aqueous, latex-resin solution and then heating and drying the coated fabric. This is typically accomplished in a three-step production process. First, the fabric is dipped in the coating solution. Next, the coated fabric is typically heated and dried. Finally, the coated fabric is subjected to an elevated temperature to heat set the fabric and polymerize the coating solution. The coating of the fabric ensures that a strong bond is formed between the tire cord fabric and a subsequently applied rubber compound in calendaring.

Tire cord production is an integral part of tire manufacturing because tire cord is a major sub-component of the sidewall component of the tire manufacturing process. Tire cord production may be, but is not typically, located at a tire production facility. Tire cord is manufactured at twelve facilities in the U.S.

Organic HAP emissions from tire cord production result from the coating solutions used to prepare the fabric. The coating solution used is an aqueous, latex-resin adhesive that typically consists of a mixture of resorcinol, formaldehyde, and latex. Actual HAP emissions associated with the tire cord production are estimated to be about 91 Mg/yr (100 tons/yr). However, depending on the formula of the coating solution and the type of fabric, HAP emissions for individual products can be minimal or even zero. The coating solution formulations used at each tire cord production facility are proprietary and have been developed to meet a company's specific requirements for the tires in which the tire cord will be used. In addition to limiting the amount of HAP in coatings, sources may control organic HAP emissions from tire cord production by using various add-on pollution control devices (*e.g.*, thermal oxidizers, carbon adsorbers).

4. Puncture Sealant Application

Emissions from puncture sealant application occur from the application of a mixture containing solvent constituents, rubber, and process oil to the inner liner of a completely manufactured tire. The puncture sealant mixture contains organic HAP that volatilize during the application process.

The 1997 RMA survey included one puncture sealant application process. The survey estimated HAP emissions from this puncture sealant application process to be approximately 15 Mg/yr (17 tons/yr). The main HAP emitted is hexane.

The application of the solvent mixture at the one facility occurs in a spray booth which is reported to meet the requirements of our definition of a permanent total enclosure (PTE) (40 CFR part 52, appendix A, Method 204). Approximately 56 percent of the applied puncture sealant mixture volatile composition is volatilized in the application booth and captured and sent to the control device. The remaining 44 percent of the HAP and non-HAP volatile material remains in the tire. In order for the sealant to work properly over the life of the tire, nearly all of the volatile compound containing material remaining (89 percent or more of the remaining 44 percent) must be retained in the applied puncture sealant mixture. The sealant's purpose is to seal any future hole which might occur in the tread when an object penetrates the tire.

5. Storage, Transfer and Mixing Vessels Containing Cements and Solvents

Storage, transfer and mixing vessels containing cements and solvents and coatings are a potential source of HAP emissions at rubber tire manufacturing facilities. Separate facilities are used (except in bulk chemical storage) by each of the affected categories and subcategories. The majority of these emissions come from the cement house at tire production facilities (the principle distribution center within a facility), from mixing and storage areas within the tire cord production process areas, and at the point of use for tire production processes. Organic HAP emissions result from evaporative losses from cement and solvent storage and transfer and mixing operations.

6. Wastewater

Wastewater is another potential source of HAP emissions in the rubber tire manufacturing process. The HAP emissions from wastewater are generated during cooling and washing of various rubber tire manufacturing equipment and components.

7. Research and Development Areas

Most tire manufacturing facilities have research and development areas, including laboratories, for the purpose of testing new manufacturing protocols or developing new and improved tire technology. These research and development areas may or may not be at the manufacturing site and may have pilot plants sized to do laboratory scale research. Research and development facilities would be covered by the emission limits in the proposed standards. Research and development areas may use and emit HAP from cements and solvents.

Typically, research and development operations resemble laboratories where formulations of rubber compounds and cements and solvents are analyzed for future applications. The research facilities may also use existing plant equipment to test these newly developed formulations. Typically, several tires (as many as 100) may be produced to evaluate various desired qualities of the compound. The HAP emissions associated with research and development are a relatively small source in comparison to the HAP emissions from other sources at the facility. The majority of these emissions are produced during experimental tire building using the existing equipment normally used for production.

*C. What Are the Affected Sources?*

An affected source is a stationary source, group of stationary sources, or part of a stationary source regulated by the NESHAP. Within a source category or subcategory, we select the emission sources (emission points or groupings of emission points) that will make up the affected source. Each of these affected sources emits or has the potential to emit one or more of the HAP listed in section 112 of the CAA.

For purposes of this proposed rule, we have divided the rubber tire manufacturing source category into four source subcategories: (1) Rubber processing, (2) tire production, (3) tire cord production, and (4) puncture sealant application.

1. Rubber Processing

The rubber processing affected source is the collection of all primary rubber mixing processes (*e.g.*, banburys and associated drop mills) and mills that either mix compounds or warm rubber compound before the compound is processed into components of rubber tires. The mixed rubber compound itself is also included in the affected source.

2. Tire Production

The affected source for the tire production source subcategory is the collection of all processes that use cements and solvents located at any rubber tire manufacturing facility. The affected source would include, but is not limited to: Storage and mixing vessels and the transfer equipment containing cements and/or solvents; wastewater handling and treatment operations; research and development operations; tread end cement operations; tire painting operations; ink and finish operations; undertread cement operations; general plant cleanup operations; bead cementing operations; tire building operations; green tire spray operations; extruding to the extent cements and solvents are used; cement house operations; marking operations; calendar operations to the extent solvents are used; tire stripping operations; tire repair operations; slab dip operations; other tire building operations to the extent that cements and solvents are used; balance pad operations; component production and

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tire manufacturing machinery and plant cleaning; and other cement or solvent application operations in the tire manufacturing process. The tire production affected source does not include processes included in the rubber processing, the tire cord production, or the puncture sealant application source subcategories.

3. Tire Cord Production

The affected source for the tire cord production source subcategory is the collection of all processes engaged in the production of tire cord. The affected source includes, but is not limited to: dipping operations, drying ovens, heat-set ovens, bulk storage tanks, mixing facilities, general facility vents, air pollution control devices and warehouse storage vents.

4. Puncture Sealant Application

The affected source for the puncture sealant application source subcategory is the puncture sealant application booth operation used to apply puncture sealant to finished tires. For purposes of the proposed rule, we have defined puncture sealant to mean the mixture of solvent constituents, rubber, and process oil that is applied to the inner liner of a finished tire for the purpose of sealing a future hole in the tire.

*D. What Are the Emission Limits, Operating Limits, and Other Standards?*

1. Tire Production

For the tire production affected source, we are proposing to allow sources to choose one of two emission limitation options: (1) existing and new affected sources may choose to limit HAP emissions from the use of cements and solvents to no more than 1,000 grams per megagram of cement or solvent (2 pounds per ton) for each HAP listed in table 16 of the proposed rule, and 10,000 grams per megagram of cement or solvent (20 pounds per ton) for each HAP not listed in table 16; or, (2) existing and new affected sources may limit their total HAP emissions on a mass of total HAP per mass of rubber processed into tires. Specifically, if you own or operate an existing or new facility producing rubber tires, you must reduce the affected source emissions of HAP arising from cementing or solvent application to less than 0.024 grams per megagram (0.00005 pounds per ton) of rubber processed into tires.

The tire production standard options (options 1 and 2) are emission limitations. The emission limitation in option 1 is based on the emissions projected if sources used only cements and solvents containing 0.1 mass percent of selected HAP (see table 16 in the proposed rule) and 1.0 mass percent for all other HAP. The projected emissions assume 100 percent of these HAP are emitted. The proposed rule provides three alternatives for showing compliance with the limitations in option 1:

- Use only cements and solvents that as purchased contain no more HAP than allowed by the specified emission limitations;
- Use cements and solvents such that the monthly average HAP emissions meet the specified emission limitations; or
- Use control devices to reduce HAP emissions such that the monthly average HAP emissions meet the specified emission limitations.

Option 2 provides the emission limitation corresponding to the emissions of total pounds of HAP (mass emitted) on a mass of rubber processed into tires (tons) over a monthly period. In other words, the emission standard is a monthly emission factor limitation associated with the production of tires. For each monthly period under option 2, you would be required to meet an emission limitation of 0.024 grams per megagram (0.00005 pounds per ton) of rubber processed into tires. Whereas option 1 limits individual HAP content (and therefore emissions), option 2 would limit total HAP content.

There are two compliance alternatives for meeting option 2, listed as follows:

- Use cements and solvents such that the monthly average HAP emissions meet the specified emissions limitations; or
- Use control devices to reduce HAP emissions such that the monthly average HAP emissions meet the specified emission limitations.

2. Tire Cord Production

For the tire cord production source subcategory, we are proposing that existing major sources meet a 280 grams per megagram fabric processed (0.56 pounds per ton fabric processed) HAP emission limit. For new major sources, we are proposing a HAP emission limit of 220 grams per megagram fabric processed (0.43 pounds per ton fabric processed).

In order to meet the proposed emission limitations, we are proposing that you meet one of the following two compliance alternatives: (1) Use coating solutions such that the monthly average HAP emissions do not exceed the applicable emission limit; or (2) use a control device to reduce HAP emissions such that the monthly average HAP emissions do not exceed the applicable emission limitation.

3. Puncture Sealant Application

For existing sources in the puncture sealant application source subcategory, we are proposing that you reduce the total organic HAP emissions from all puncture sealant application booths by at least 86 percent by weight. For new sources, you would have to reduce emissions by 95 percent by weight. In addition, you would have to meet specified control and capture device operating limits to ensure the continued proper operation of the equipment.

You would have two compliance alternatives in meeting the proposed standards. The first is an overall control efficiency alternative. To comply with this alternative, you would use an emissions capture system and control device and demonstrate that the application booth emissions meet the specified emission limitations and operating limits. The second alternative is based on use of a permanent total enclosure. To comply with this alternative, you would use a permanent total enclosure that satisfies the Method 204 criteria in 40 CFR part 51 and demonstrate that the control device meets the specified operating limits and reduces at least 86 percent of emissions for existing sources and 95 percent of emissions for new sources.

Table 2 summarizes the emission limitations for the tire production, tire cord production, and puncture sealant application affected sources.

TABLE 2.—EMISSION LIMITATIONS FOR AFFECTED SOURCES

| Affected sources | Pollutant | Limit[a] |
|---|---|---|
| Existing, new or reconstructed tire production facility—Option 1. | Selected organic HAP (See Table 16 of proposed rule). | Emissions must not exceed 1,000 grams per megagram (2 pounds per ton) of the total cements and solvents. |



TABLE 2.—EMISSION LIMITATIONS FOR AFFECTED SOURCES—Continued

| Affected sources | Pollutant | Limit[a] |
|---|---|---|
| | All other organic HAP | Emissions must not exceed 10,000 grams per megagram (20 pounds per ton) of the total cements and solvents. |
| Existing, new or reconstructed tire production facility—Option 2. | Total organic HAP | Emissions must not exceed 0.024 grams per megagram (0.00005 pounds per ton) of rubber processed into tires. |
| Existing tire cord production facility | Organic HAP | Emissions must not exceed 280 grams per megagram (0.56 pounds per ton) of fabric processed. |
| New or reconstructed tire cord production | Organic HAP | Emissions must not exceed 220 grams per megagram (0.43 pounds per ton) of fabric processed. |
| New or reconstructed puncture sealant application booth. | Organic HAP | Reduce booth emissions by at least 95 percent. |
| Existing puncture sealant application booth | Organic HAP | Reduce booth emissions by at least 86 percent. |

[a] Emission limits are expressed as monthly average emission limits except for: (1) Tire production affected sources that comply by demonstrating that the cements and solvents that they use comply with the limit for every purchase; and (2) puncture sealant application affected sources must meet the emission reduction limit on a 3-hour average.

*E. What Are the Testing and Initial Compliance Requirements?*

Under the proposed standards, we require that you demonstrate initial compliance with each emission limitation standard that applies to you not later than 3 years after the date of publication of the final rule in the **Federal Register** for existing sources, and no later than 180 days from the date of initial startup of a new or reconstructed source. Existing area sources that subsequently become major sources have 3 years from the date they become a major source to come into compliance.

1. Tire Production

If you have not purchased any materials (cements, solvents, mixtures, etc.) containing individual HAP above the levels prescribed in the HAP constituent emission limitations for tire production, you would be required to demonstrate initial compliance by submitting a Notification of Compliance Status report with a statement certifying that all cements and solvents purchased for use in the production of rubber tires meet the composition requirements specified in the proposed rule. Although you are not required to submit records to substantiate your statement of compliance, you would be required to maintain records that demonstrate that you are in compliance with the composition requirements of the option 1 emission limitation.

Alternatively, if you have cements and solvents containing HAP above the levels prescribed in the emission limitations for tire production but meet the composition requirements specified in the proposed rule when you also consider cements and solvents used that do not contain HAP, you would be required to demonstrate compliance differently. You would be required to demonstrate initial compliance by submitting the Notification of Compliance Status report with a statement certifying that all cements and solvents as applied in the production of rubber tires meet the composition requirements specified in the proposed rule for the monthly (30-consecutive-day) period immediately preceding the compliance date of this proposed rule. This certification must include a list of all cements and solvents and mixtures thereof purchased for use for tire production, their quantities, and their individual HAP constituent compositions for the monthly period.

If you use materials containing HAP above the levels prescribed in the emission limitations for tire production, and you use one or more add-on control devices to comply with the proposed rule, you would be required to demonstrate initial compliance by submitting the Notification of Compliance Status report that includes the information outlined in the preceding paragraph, along with a statement certifying that your capture systems and control devices are being operated within the parameter values established during the required performance test(s) for demonstrating compliance with the proposed rule for the 30-consecutive-day period immediately preceding the compliance date. This certification would be required to be accompanied with the performance test report(s) and parameter values established during the performance test(s) for continuous compliance monitoring.

If you choose to comply with the emission limitation specified in option 2, you would be required to demonstrate initial compliance by submitting the Notification of Compliance Status report with a statement certifying that the mass of HAP used per mass of rubber processed into tires over the monthly (30-consecutive operating day) period preceding the compliance date did not exceed the limits specified. Your records to demonstrate this certification would, at a minimum, include a description of the measures taken (e.g., purchase of low-HAP-content solvents or cements), the total amount of cements and solvents used, the amount of HAP-containing solvents and cements used, and the operational status of any control equipment used in achieving some reduction in the HAP emissions.

Depending on the option and compliance alternative selected, you would be required to perform the following tests to support your demonstrations of compliance:

- Determine the HAP quantity and concentration of your cements and solvents or mixtures thereof using EPA Method 311 or other methods approved by the Administrator. If there is a disagreement between such information and Method 311 results, then the Method 311 results will take precedence.
- Perform a material balance on your cements and solvents used that accounts for all HAP emissions at the affected source. Determine the percent by weight of the individual constituents of the total cements and solvents used. Emission points that must be included in the material balance include, but are not be limited to, bulk storage tanks, mixing facilities, points of use in tire

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manufacturing, general facility vents, air pollution control devices, wastewater fugitive emissions, research and development area vents, and warehouse storage vents.

• If option 2 is used, determine the quantity of rubber processed into tires by accounting for the total mass of rubber that enters the tire component production processes.

• For option 2, calculate the material balance and emission factor for your HAP emissions (mass HAP emitted per mass rubber processed into tires) and your monthly HAP emissions average. When performing material balances to demonstrate compliance, if the storage of materials, exhaust, or the wastewater from more than one affected source are combined at the point where control systems are applied, any credit for emissions reductions needs to be prorated among the affected sources based on the ratio of their contribution to the uncontrolled emissions.

• Calculate your HAP emissions rate for the monthly operating period immediately preceding the compliance date.

2. Tire Cord Production

To demonstrate initial compliance with the proposed standards for tire cord production affected sources, you would be required to submit a Notification of Compliance Status report with a statement certifying that for the monthly (30-consecutive operating day) period immediately preceding the compliance date of this proposed rule, your affected sources met the emission limitations specified in the proposed rule. You would be required to perform the following tests to support your demonstration:

• Determine the HAP quantity and concentration of your coating mixture using EPA Method 311 or other methods approved by the Administrator. If there is a disagreement between such information and Method 311 results, then the Method 311 results will take precedence.

• Perform a material balance on your coating mixture use that accounts for all HAP emissions from all emission points located at your facility. Emission points that must be included in the material balance include, but are not be limited to, bulk storage tanks, mixing facilities, points of use, general facility vents, air pollution control devices, wastewater, research and development areas, and warehouse storage vents. When performing material balances to demonstrate compliance, if the storage of materials, exhaust, or the wastewater from more than one affected source are combined at the point where control systems are applied, any credit for emissions reductions needs to be prorated among the affected sources based on the ratio of their contribution to the uncontrolled emissions.

• Determine your quantity of fabric processed by accounting for the total mass of fabric that enters the fabric treating process.

• Calculate your HAP emissions (mass HAP emitted per mass fabric processed) and your monthly HAP emissions average.

• Calculate your average HAP emissions rate for the monthly period immediately preceding the compliance date.

3. Puncture Sealant Application

To demonstrate compliance with the puncture sealant application standard, you must demonstrate compliance in one of two ways. First, you may choose to demonstrate the overall control efficiency of your emissions reductions system. In this case, you would demonstrate that the emissions capture system efficiency multiplied by the control device efficiency meets the applicable emissions limitation for the application booth emissions, and that your equipment meets the specified operating limits. You would demonstrate these efficiencies by conducting a performance test of the capture system and control device to determine their individual efficiencies. You would also establish operating parameters that you would subsequently monitor to demonstrate continuous compliance with the operating limits.

Alternatively, you could use a permanent total enclosure that satisfies the Method 204 criteria in 40 CFR part 51. Use of a permanent total enclosure certifies 100 percent capture. Then, you would demonstrate that the control device reduces at least 86 percent of emissions for existing sources and 95 percent of emissions for new or reconstructed sources and meets the specified operating limits. As above, you would demonstrate the control device efficiency by conducting a performance test. You would also establish operating parameters that you would subsequently monitor to demonstrate compliance with the operating limits.

*F. What Are the Continuous Compliance Provisions?*

The proposed standards require that you demonstrate continuous compliance with each emission limitation that applies to you. For the tire production, tire cord production, and puncture sealant application source subcategories, you would be required to demonstrate continuous compliance by monitoring each of the following as applicable to the compliance plan of the affected source, in some instances, on a daily basis:

• Amounts of cements and solvents or coating mixtures used;

• HAP content of the cements and solvents or coating mixtures;

• Amount of fabric processed at tire cord production facilities;

• Amount of rubber processed into tires at tire production facilities; and

• Any add-on control equipment parameter values.

The monitoring data would be used to calculate the monthly average limits. In the proposed rule, we have provided the necessary algorithms for calculating the monthly averages.

*G. What Are the Notification, Recordkeeping, and Reporting Requirements?*

We have incorporated most of the requirements of the NESHAP General Provisions (40 CFR part 63, subpart A) into the proposed rule. Exceptions have been specified, as relevant.

You would be required to submit the following notifications and reports:

• An Initial Notification within 120 days after the effective date of the promulgated standards for existing sources and within 120 days after the date of initial startup for new and reconstructed sources.

• If you are required to conduct a performance test, you would be required to submit a Notification of Intent to conduct a performance test at least 60 calendar days before the performance test is scheduled to begin.

• If you have conducted a performance test to meet the requirements of this proposed rule, you would be required to submit a Notification of Compliance Status report that includes the performance test report. This report would be submitted before the close of business on the 60th calendar day following the completion of the performance test.

• A compliance report that either contains a statement that there were no deviations from the emission limitations and operating limits (if applicable) during the reporting period or that reports any deviations from the emission limitations. This report would be submitted semiannually except where a tire production affected facility has demonstrated compliance with the HAP-constituent emission limitation by purchasing and using only complying materials. In this case, the semiannual report will be replaced with an annual report.



• A periodic report is required every 6 months if a change occurs at the affected facility, or within the process that affects the compliance status, or that such change would have resulted in a report in the Initial Notification.

You would be required to maintain records for at least 5 years from the date of each record. You must retain the records onsite for at least the first 2 years but may retain the records offsite for the remaining 3 years. In addition to the general recordkeeping requirements of the General Provisions, you would be required to keep the following records:

• A copy of each notification and report that you submitted to comply with the proposed rule, including documentation supporting the Initial Notification or Notification of Compliance Status reports that you submitted.

• Records of performance tests and performance evaluations.

• For all processes that use cements and solvents in the manufacture of tires, you would be required to keep a daily record of the composition of all cements and solvents used and a monthly record of the quantity of cements and solvents used, as well as the mass weight of rubber processed into tires for tire production.

• For each air pollution control device (*e.g.*, thermal oxidizer) associated with a process or processes that use cements and solvents in the production of tires, you would be required to keep a daily record of the mass percent of HAP in cements and solvents used, and a daily record of parameter values that indicate proper operation of the control device as determined during the performance tests.

• For each process or facility that produces tire cord, you would be required to keep a daily record of the mass of HAP in all coating mixtures used, the mass of HAP in coating mixtures that are not emitted (*i.e.*, controlled by a control device), the mass of fabric processed, and a calculated emission factor that indicates your emissions on a monthly average.

• For each air pollution control device (*e.g.*, thermal oxidizer) associated with a process or facility that produces tire cord, you would be required to keep a daily record of the mass of HAP in all coating mixtures used, the mass of HAP in coating mixtures that are not emitted (*i.e.*, controlled by a control device), the mass of fabric processed, a daily record of any parameters, as determined during the performance tests, that indicate actual operation of the control device, and a calculated emission factor that indicates your emissions on a monthly average.

• For each air pollution control device (*e.g.*, carbon absorber) associated with a process or facility that applies puncture sealant to the interior of finished tires, you would be required to keep a daily record of the mass of HAP in all coating mixtures used and a daily record of any parameters, as determined during the performance tests, that indicate actual operation of the control device.

**III. Rationale for Selecting the Proposed Standards**

*A. How Did We Select the Source Category and Subcategories?*

We listed tire manufacturing as a category of major sources of HAP on the initial list of major source categories (63 FR 7155). The primary HAP emitted are hexane, toluene, formaldehyde, methanol, and styrene. In gathering and evaluating more extensive information on tire manufacturing, we determined that tire manufacturing actually includes several distinct processes that are sources of HAP, and that some operations are often not located at the same site. Specifically, rubber compound mixing is a distinct process; however, we found that a particular facility only mixed rubber for later distribution to its satellite tire manufacturing facilities. In addition, tire cord production is predominantly conducted at facilities not located with tire production facilities. On November 8, 1999 (64 FR 63025), we revised the source category list to change the name to "rubber tire manufacturing." The new name better describes the operations we propose to regulate in this source category which includes more than just "tire production."

The CAA allows us to define subcategories, or subsets of similar emission sources within a source category, if technical differences in emissions characteristics, processes, control device applicability, or opportunities for pollution prevention exist within the source category (57 FR 31567). Specific examples of these differences include the types of products, process equipment differences, the type and level of emission control, emission sources, and any other factors that would affect the MACT determination for a given source category.

We reviewed and analyzed available information on the rubber tire manufacturing industry to determine if subcategorization was warranted. We considered information similar to that used in other MACT standard subcategorization decisions including:

• Similarity of products produced at different facilities;

• Any variations in the process due to the tire type produced;

• Variability of raw or input materials used at different facilities;

• Type of equipment used in the process;

• Control device applicability and costs; and

• Pollution prevention opportunities.

Based on our review, we determined that there are fundamentally different processes with differing operations and emissions within the rubber tire manufacturing industry that warranted subcategorization. We identified four separate operations within the tire manufacturing source category that are significant sources of HAP emissions: (1) Rubber processing, (2) tire production, (3) tire cord production, and (4) puncture sealant application. Rubber processing includes mixing, milling, and extrusion rubber compounding operations prior to the application of solvents and cements. Tire production emission sources are associated with the use of cements and solvents (including emissions that result from storage, wastewater, and research and development). Tire cord production is infrequently located at a rubber tire production facility, and emission sources are associated with the coating solutions used to treat the fabric (including emissions that result from storage, wastewater, and research and development). Puncture sealant application is a separate operation where emissions are associated with the mixture that is applied to the inner liner of a newly finished tire for the purpose of sealing future punctures. The mixture contains solvent constituents, rubber, and process oils. We have prepared a memorandum supporting this subcategorization that you can obtain from the docket for this proposed rulemaking.

*B. How Did We Select the Affected Sources?*

The affected source comprises the emission points to which a standard applies for a source category or subcategory. As discussed in section II.C, an affected source is a stationary source, group of stationary sources, or part of a stationary source regulated by the NESHAP. When selecting the affected source for a source category or subcategory, we need to select the HAP emission sources that will make up the affected source. Our rationale for the selection of the affected sources within the tire production, tire cord production, and puncture sealant

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application source subcategories is presented in the following paragraphs.

1. Rubber Processing

As described in earlier sections, emissions from the rubber processing source subcategory occur from the operations where rubber is being mixed and prepared, before it is processed into components of rubber tires, and before cements and solvents are applied.

2. Tire Production

As noted above, emissions from the tire production source subcategory are generally associated with the operations following rubber processing that involve the use of cements and solvents to assemble the tire.

Emissions from cements and solvents use over the past 20 years in tire production operations have been significantly reduced. The EPA data base for 1996 HAP emissions estimates that 1,280 Mg/yr (1,411 tons/yr) of organic HAP are emitted from tire production operations due to the use of cements and solvents. Though no hard data have been gathered, the industry estimates that this amount may be half the 1970–1980 levels of emissions. Reductions in organic HAP emissions leading up to our 1996 data base have been gained by the industry through reducing or eliminating the amount of cements and solvents used, or by reformulating the cements and solvents to reduce or eliminate their volatile organic compounds (VOC), including HAP content.

For example, tread-end cementing is estimated to use approximately 383 Mg/yr (422 tons/yr) of cements and solvents or about 30 percent of the total cements and solvents used in the rubber tire production industry. An analysis of the information submitted by RMA, and the information collected during EPA site evaluations, indicated that several facilities use cements and mixtures containing no reportable quantity of HAP. In contrast, the use of add-on pollution control devices to control emissions from cements and solvents use is atypical. Of the 41 reporting facilities in RMA's survey, a total of seven used control devices directed toward HAP organic emissions from cementing and solvent operations. Therefore, based on current and historic emissions control practices at tire production sources, we concluded that, although emissions are controllable using add-on control devices, the prevalent means of emissions control is the use of air pollution prevention measures. In selecting the affected source, we considered this controllability of emissions as a key criterion.

We also considered the potential impact of reconstruction when selecting the affected source for tire production. We do not believe it is appropriate to require a facility to meet new source standards because it reconstructs one small process, such as replacing one tire building station, especially when such replacement in itself would not significantly affect emissions from the facility. Therefore, we selected the tire production affected source to be the collection of all processes that use cements and solvents located at a rubber tire manufacturing facility. This definition of affected source includes all operations within the facility where cements and solvents are used. As a result, reconstruction, which is defined in 40 CFR 63.2, will be determined by looking at the capital costs for replacing the entire affected source. Modifications to individual processes or operations should be less likely to trigger treatment as a reconstructed source.

3. Tire Cord Production

As described later in this preamble, emissions from tire cord production can be controlled by add-on control devices, pollution prevention measures, or a combination of these two. Although some add-on control devices are used and will continue to be used at tire cord production processes, emissions reductions can be achieved by reducing the VOC (including HAP) content in the coating solutions or eliminating the emissions of VOC (including HAP) through process changes and substitution of materials.

Tire cord production facilities may have several different production lines and may produce several different types of tire cord in one facility. Although the coating solutions differ depending on the types of cord being produced, they are basically the same solution, consisting of a mixture of resorcinol, formaldehyde, and latex, with some changes in the formulation that are considered proprietary among tire cord producers.

Process changes and material substitutions, though not as common as they are for operations using cements and solvents in tire production, are being pursued as a way of controlling HAP emissions from tire cord operations. Despite these efforts, however, we believe emissions from tire cord sources will continue to be controlled at least in part using add-on control devices. In selecting the affected source, we considered this choice of controllability of emissions as a key criterion. Therefore, the standard reflects the alternative to address emissions reductions through traditional add-on control or reformulation or elimination of HAP in the coating solutions used to treat tire cord fabric.

In selecting the affected source for the tire cord subcategory, we also considered the need for flexibility at the facility to modify operations without triggering treatment as a reconstructed source. As with the tire production affected source, we did not believe it was appropriate to cause a facility to have to meet new source standards because it reconstructs one small process, such as replacing one component of a particular tire cord production process. Therefore, we selected the affected source to be the collection of all processes located at any rubber tire manufacturing facility that are engaged in the production of tire cord.

4. Puncture Sealant Application

For the puncture sealant application source subcategory, HAP emissions are generated from the application of the puncture sealant mixture to the interior of the newly finished tire. The HAP emissions come from the solvent constituents used in the mixtures. The application takes place within an enclosed application booth. The captured air stream is passed through a control device such as a carbon adsorber. The puncture sealant operation is a distinct operation and accounts for approximately 15 Mg/yr (17 tons/yr) of actual HAP emissions.

Unlike our other subcategories, the puncture sealant subcategory is comprised of a physically definable, lone emission source which is the application booth. Therefore, we have designated the emission source as the affected source.

*C. How Did We Determine the Basis and Level of the Proposed Standards for Existing and New Sources?*

In establishing these proposed emission standards, we determined the MACT floor for each affected source. We evaluated add-on control technologies as well as work practices and pollution prevention techniques. We obtained data related to operating procedures and emissions for the rubber processing, tire production, tire cord production, and puncture sealant affected sources through a combination of site visits, the RMA surveys (see section I.D.) and discussions with the industry. Data from all these sources were considered in the selection of emission limits for individual emission points at rubber tire manufacturing facilities.



1. Rubber Processing

We determined that MACT for rubber processing is no control, and, therefore, there are no emission limitations or other requirements being proposed for the rubber processing affected source. In reaching the conclusion that MACT for rubber processing is no control, we first evaluated the floor and determined that the floor is no control. There are currently no organic emission add-on controls applied to these mixing and milling operations in the rubber tire industry. Based on the fact that some plants have lower emissions than others, we evaluated whether there is a MACT floor based on substitution of lower-HAP containing raw materials which could be used in the process. We learned that little or no HAP are added to the raw materials used to make the rubber compounds. The approximately 829 Mg/yr (914 tons/yr) of HAP emissions associated with rubber compound processing result from the physical breakdown of polymers during the mixing, and chemical reactions that occur when elevated temperatures in mixing and milling affect the individual rubber compounds. The rubber compounds used in tires must meet certain characteristic properties to ensure attainment of certain technical specifications such as high mileage and safety. There are no known substitutes for the basic ingredients used to make the individual rubber compounds that would result in lower HAP emissions. Thus, we concluded that there were no pollution prevention controls or procedures to form a basis for the MACT floor.

We also evaluated the possibility of going beyond the "no control" MACT floor in controlling the major emissions from the compounding and milling process. Specifically, we explored controlling the organic HAP emissions from rubber processing with add-on controls (*i.e.*, thermal oxidizers). We determined that, although feasible, such add-on controls were unreasonably expensive. Therefore, we concluded that the control of organic HAP beyond the floor would not be reasonable at this time.

2. Tire Production

Cements and solvents are widely used throughout the rubber tire manufacturing industry for many different purposes (see section II.B of this preamble for a description). The quantity of cements and solvents used annually varies significantly among facilities, from near zero at some facilities to nearly 300 tons at others. The emissions reported in the RMA survey that comprise our data base reflect the total amount of volatile HAP used for the year. In other words, we assume that all of the volatile HAP contained in the cements and solvents used were emitted.

Emissions from the use of cements and solvents are controlled primarily through pollution prevention measures. These pollution prevention measures include reformulation to reduce or eliminate the HAP content of cements and solvents, reduction in the quantity of cements and solvents used, and elimination of cements and solvents use altogether. Some facilities change their process operations, which is another form of pollution prevention, to reduce their cementing needs. Specifically, they arrange and choreograph their component production processes, or time the production of components so that the delivery of components to tire building stations occurs within a short enough timeframe to avoid film build up on the uncured rubber compound. In some cases, component pre-cutting has been changed to on-demand cutting at the tire building station, eliminating the need to address film build up on the component material. These process changes eliminate the need for cements or solvents by ensuring that the rubber compound remains tacky and will stick to the other components.

Add-on control devices are also installed at tire production sources to reduce organic emissions from the application of cements and solvents, but their installation is sporadic. Typically, a capture system at the cement or solvent application area captures the immediate evaporation of the volatile HAP and directs the HAP to a thermal oxidation unit.

Because of the varying types and quantities of cements and solvents used in tire production, and the fact that emissions generated during their use are controlled primarily through pollution prevention measures, we believe that a process-by-process MACT floor based on a specific control technology would not be reasonable or appropriate for this affected source. Therefore, we decided to determine the MACT floor broadly to encompass the entire tire production affected source.

This approach for setting the MACT floor allows rubber tire production facilities greater flexibility for complying with the tire production standards by allowing facilities to consider total emissions from cements and solvents within the affected source rather than on a process-by-process basis. It also provides the facility the flexibility to mix and match the use of pollution prevention methods and the use of add-on control devices to comply with the tire production standard.

Using a source-wide approach, we developed the MACT floor emission standards to reflect an individual HAP content emission limitation. We determined the MACT floor for tire production existing sources by calculating the average emission limitation achieved by the best performing 12 percent of the existing tire production sources for which we have data (41 facilities). Twelve percent of 41 is 4.92, so the MACT floor for the use of cements and solvents for the tire production affected source would be the average emission limitation of the best performing five sources.

In the 1997 RMA survey response, eleven rubber tire production facilities reported that they did not have reportable emissions or did not use HAP-containing cements and solvents or mixtures thereof in tire production. As a result, the average emission limitation of the top five facilities would initially appear to be zero HAP emissions. In the course of drafting this proposal, however, we discovered that the facilities reporting that they did not use HAP-containing cements and solvents were relying upon the de minimis reportable quantity thresholds for selected HAP (see section I.D. of preamble for discussion). We, therefore, interpret the facilities' reported "zero" HAP emissions from cements and solvents to mean that their cements and solvents may contain up to the reportable threshold quantities of HAP.

The MACT floor for new or reconstructed sources is set at the emissions achieved in practice by the best performing similar source. As discussed for the existing source MACT floor, several rubber tire production facilities reported that they did not have reportable HAP emissions from the use of cements and solvents. However, as explained above, we interpret the facilities' reported "zero" HAP emissions to mean that their cements and solvents may contain up to the de minimis reportable quantity levels. Thus, the MACT floor is the same for new and existing sources.

We also evaluated the possibility of going "beyond the MACT floor" for tire production sources. The floors for both existing and new sources, although not zero emissions, are very close to zero emissions. As a result, we evaluated the feasibility of eliminating all HAP emissions from tire production sources as an above-the-floor option for both existing and new sources. The estimated HAP emissions reductions associated with the tire production MACT floor is 949 Mg/yr (1,047 tons/yr). Total

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elimination of all HAP in cements and solvents is estimated to reduce emissions by 946 Mg/yr (1,063 tons/yr). We, however, cannot assess the achievability of eliminating HAP emissions altogether because we lack information on the availability of adequate cements and solvents that truly contain no HAP at any concentration. We are seeking supporting information regarding an elimination of HAP in tire production by soliciting, through this proposal, any information regarding the elimination of HAP in cements and solvents used in tire production.

Based on the analysis described above, the standards for both existing and new tire production affected sources are based on the floor level of control and are expressed in terms of individual HAP content emission limitations. This emission limitation is identified as "option 1" in table 2.

Table 2 also includes a second emission limitation for tire production labeled as "option 2." Option 2 represents a second form of emission limitation based on the mass of HAP emitted per mass of rubber processed into tires. We have calculated the emission limit in option 2 to be at least as stringent as the MACT floor represented by option 1. In developing option 2, we concluded that, based on information available to us from the industry, there is a range of HAP constituents that may be present in the cement and solvent formulations but the typical formulation contains three HAP components. Assuming three components are used, under option 1, the typical cement/solvent formulation would contain approximately 3 percent HAP by weight. Using this figure, we calculated an emission limitation that we believe would be equivalent to option 1 for the source in the RMA data base with the lowest reported ratio of cement and solvent HAP content to rubber processed. Specifically, the reported annual HAP content for this facility was adjusted assuming a three component formulation (e.g., 800 pounds of HAP used × 0.03). As in option 1, we assume all HAP contained in the cements and solvents will be emitted. The resulting HAP emissions were then divided by annual rubber processed into tires, in tons, to achieve the mass of HAP per mass of rubber processed limitation.

We consider option 2 to be at least as stringent as option 1. For facilities other than the one used in our calculation, option 2 is arguably more stringent than the floor, but these other facilities are not forced to meet this limitation since option 1 is available and represents the MACT floor. We are interested in comment on the reasonableness of this approach in establishing an option that is at least as stringent as the MACT floor and on alternative means of expressing option 2.

3. Tire Cord Production

The tire cord production process typically uses an aqueous solution containing a mixture of resorcinol, formaldehyde, and latex to coat a fabric, usually polyester or nylon. Heat is then used to set the fabric and polymerize the coating solution. The exact composition of the coating solutions are considered proprietary and vary between facilities. The composition of the coating solutions also varies with the type of fabric being coated.

Emissions from the tire cord production affected source are often controlled by using pollution prevention measures. These measures include replacing non-aqueous coating mixtures with aqueous coating mixtures and reducing the amount of HAP in the coating mixtures. Add-on control devices, though less common, are also used to reduce organic emissions. These control devices, however, are generally only used to control HAP emissions from select individual processes within the affected source. In fact, within the 12 tire cord production facilities there are: 19 dipping operations, only one of which uses an add-on control device to control HAP emissions; 18 heater-drying operations, only two of which use add-on control devices to control HAP emissions; and 19 heat set operations, only four of which use add-on control devices to control HAP emissions.

During our review and analysis of the tire cord production affected source, we discovered significant process and operation variations among tire cord production facilities. The variations we identified include the following:

- When add-on controls are used, organic emissions are controlled from different operations of the process, and different combinations of processes are controlled;
- HAP emissions reporting is not consistent among facilities (*i.e.*, some facilities believe HAP are emitted from one process while other facilities believe the HAP are emitted from a different process);
- Equipment is configured differently among facilities to produce the same product; and
- There are commonly several process lines within a tire cord production facility, each of which may be producing different types of tire cord using different coating solutions, and equipment dedication, as well as the product lines, vary through the year.

Because of the varying use of different types of coating solutions, the significant process and operation variations among tire cord production facilities, and the fact that emissions from tire cord production are controlled primarily by using pollution prevention measures, we do not believe a process-by-process MACT floor based on a specific control technology is reasonable for this industry. Therefore, we determined that the MACT floor should be based more broadly to encompass the entire tire cord production source subcategory affected source. Some of the other reasons we chose to determine the MACT floor broadly include the following: (1) It allows tire cord production facilities greater flexibility for complying with the standards by allowing facilities to consider total emissions from coating operations within the entire facility rather than on a process-by-process basis, and (2) it allows the facility flexibility to mix and match the use of pollution prevention methods and add-on control devices to comply with the standard.

We used HAP annual emissions data and the annual fabric production from the tire cord production facility RMA survey data base (see section I.D. of this preamble) to calculate an emission rate, in pounds HAP emitted per ton of fabric processed, for the entire tire cord affected source for each facility. Because there are fewer than 30 sources manufacturing tire cord, we determined the MACT floor based on the average emissions achieved by the best performing five sources. The average emission rate was calculated to be 280 grams HAP emitted per megagram fabric processed (0.56 pounds HAP emitted per ton fabric processed) for existing tire cord production facilities.

The MACT floor for new sources is based on the emissions reductions achieved in practice by the best performing similar source. The best performing tire cord production facility has an emission rate of 220 grams HAP emitted per megagram fabric processed (0.43 pounds HAP emitted per ton fabric processed), which equals the new source MACT floor for tire cord production.

We also evaluated going "beyond the floor" for the tire cord production source subcategory. We did not identify any tire cord production facility that has eliminated the use of HAP-bearing coatings in their production process. Greater emissions reductions would, therefore, likely require the use of add-on control devices. We estimated that the average facility cost of achieving the MACT for tire cord sources using add-on control devices (*e.g.*, regenerative oxidation) would be approximately $70,000 per ton of total HAP emissions reductions. The incremental cost effectiveness of using add-on control devices to go beyond the floor is expected to be higher. Because of these costs we are not proposing to adopt standards that require reductions beyond the MACT floor.



4. Puncture Sealant Application

During the development of this proposed rule, we identified one manufacturing plant where tires equipped with puncture sealant are manufactured. As discussed previously, the puncture sealant application process involves the application of a puncture sealant mixture containing solvent constituents, rubber and process oil to the inner liner of a tire. Since the puncture sealant application source subcategory consists of only one plant, the MACT floor for an existing source is the emissions control that is employed at that plant, which we believe is represented by an overall control efficiency of 86 percent.

The current overall control equipment efficiency at this facility, however, is not as efficient as what has been achievable for the type of equipment used in other similar capture and control systems for volatile organic emission sources. A new source puncture sealant application affected facility would have to meet a more stringent control equipment requirement reflecting a demonstrated and achievable capture and control system commonly applied in volatile organic emission control. The overall control efficiency for new sources is 95 percent based on the use of a permanent total enclosure and a properly sized and operated control device, such as a carbon adsorber.

We evaluated the feasibility of going "beyond the floor" to establish MACT for the existing facility but determined, based on a review of the data, site evaluations, and input from industry, that it would be unreasonable to go "beyond the floor" in establishing MACT. The puncture sealant mixture formulation serves a specific market niche for consumers who want a relatively low-cost tire that is resistant to road hazards. Reformulation of the mixtures would be an impractical above-the-floor option because no alternative formulations have been identified that can provide the desired sealant capability. Requiring add-on controls in addition to or in place of the use of the existing carbon adsorption system on the single application booth would result in an additional estimated annual reduction of 0.5 tons of HAP. Thermal oxidation (incineration) is a viable control for the one existing facility; however, the incremental costs of requiring the existing facility to remove the current carbon adsorber and replace it with a more efficient control system such as a thermal oxidation unit are unreasonable considering the incremental emissions reductions that would be achieved (approximately $28,500 per ton per year).

*D. How Did We Select the Format of the Standards?*

1. Tire Production

We are proposing mass emission limitations in the form of two options for the tire production source subcategory. Option 1 is expressed as a mass emission limit based on the HAP content of cements and solvents. This option limits the level of any individual HAP constituent in cements and solvents used in the tire production source. Option 2 is a total HAP mass emission limit based the tons of rubber processed. We believe that both of these options are appropriate for the following reasons.

First, these formats are consistent with the data base and approach used to derive them. They are also consistent with the approaches used by the industry to report emissions. In proposing these standards, we recognize that 11 individual facilities have eliminated or reformulated their cements and solvents to either eliminate HAP or significantly reduce their use in tire production. We further recognize that reformulation and elimination of cements and solvents have resulted in greater HAP emissions reductions than the use of add-on control devices. As a result, we believe that both the individual HAP constituent limitation, as well as the total mass HAP per mass rubber processed limitation, encourage further pollution prevention initiatives in the rubber tire production industry.

2. Tire Cord Production

For tire cord production facilities, the standard chosen is a production-based standard expressed in units of mass of HAP emitted per mass of fabric processed. Therefore, we chose a production-based format in order to ensure that all regulated sources, even those with variable processes, would meet uniform standards. A production-based format also enables control techniques based on pollution prevention. In this case, we know a production-based emission standard is workable for tire cord production because sources are already complying with the proposed emission standard and currently use mass balance methods to measure emissions.

3. Puncture Sealant Application

For puncture sealant application, the format of the standards proposed is expressed as percent reduction associated with the operation of a capture system and control device. Only one U.S.-based puncture sealant application affected source has been identified. Information and data supplied by the one affected source indicate that the puncture sealant operation is conducted within a puncture sealant application booth, and that emissions from the total enclosure are vented to a carbon adsorption control device. As explained in section III.B, information from the affected source indicates that other pollution prevention techniques such as reformulation of the puncture sealant mixture do not appear achievable. Therefore, a percent reduction standard was selected to reflect the operation of the source.

*E. How Did We Select the Compliance, Monitoring, Recordkeeping, and Reporting Requirements?*

We selected the compliance, monitoring, recordkeeping, and reporting requirements that would best demonstrate and document compliance with the proposed standards. The proposed procedures and methods have been used for similar sources and emission limit formats.

If you comply with the tire production emission limitation in option 1 by purchasing and using cements and solvents that comply with the limits, your recordkeeping and reporting are limited to using purchase records. You may also qualify for annual instead of semiannual compliance reports. You can choose this compliance alternative later even if you initially use one of the monthly averaging approaches to comply.

*F. What Is the Relationship of This Subpart to New Source Performance Standards (NSPS) for the Rubber Tire Manufacturing Industry?*

The NSPS (40 CFR part 60, subpart BBB) regulate the volatile organic emissions from new tire manufacturing sources constructed after January 20, 1983. For purposes of the NSPS, the term "tires" is defined as any agricultural, airplane, industrial, mobile home, light duty truck and/or passenger vehicle tire that has a bead diameter less than or equal to 0.5 meter (19.7 inches), a cross section dimension less than or

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equal to 0.325 meter (12.8 inches), and that is mass produced in an assembly line. The proposed subpart XXXX would encompass these tires as well as any other tire manufacturing operation that falls within the affected source definition. This proposed subpart would only supercede the compliance requirements of the NSPS where the MACT is more stringent than the applicable NSPS.

The NSPS limit monthly volatile organic emissions for specific processes within the affected facility. In general terms, the VOC emissions for undertread cementing, sidewall cementing, tread-end cementing, bead cementing, green tire spray and two specific Michelin® operations were established to limit the mass of VOC to the atmosphere on a process operation basis. To the extent the VOC emissions covered by the NSPS include volatile organic HAP, the proposed standards could be more restrictive than the NSPS. Tire manufacturing facilities will, therefore, need to consider the requirements of both today's proposed rule, once finalized, and the NSPS.

The NSPS compliance period (emission standard demonstration period) is a monthly time period. The proposed standard incorporates an emission cap as well as a mass of emission per tire, or average emission per tire, during the month. For the NSPS, compliance is determined by adding up the usage of VOC and determining the total evaporated to the atmosphere and/or the average mass emission of VOC on a per tire basis for each affected process specified in the NSPS. The proposed NESHAP compliance period has been established to minimize the restructuring of the monitoring and recordkeeping requirements for the NSPS compliance determination period. Specifically, the proposed standard averaging period is a monthly average on a facilitywide basis.

The add-on control monitoring provisions of the NSPS and the proposed subpart are not inconsistent. Where the NSPS call for certain parameters to be monitored for control equipment, the NESHAP and the General Provisions to 40 CFR part 63 also call for the establishment of these parameters to the extent that add-on controls are used in the compliance plan for the affected source.

## IV. Summary of Environmental, Energy, and Economic Impacts

### *A. What Are the Air Quality Impacts?*

We estimate that the proposed rule would eliminate approximately 983 Mg/yr (1,084 tons/yr) (52 percent) of the baseline annual HAP emissions from this industry.

For the tire production source subcategory, we have estimated that the proposed standards would reduce HAP emissions by approximately 949 Mg/yr (1,047 tons/yr). For the tire cord production source subcategory, we have estimated that the proposed standards would reduce HAP emissions by approximately 34 Mg/yr (37 tons/yr). We have also estimated that the proposed standards for tire cord production would reduce emissions of VOC by the same amount.

For the one existing puncture sealant application source, we are not requiring different emissions control than what is currently done. Therefore, the proposed standards would not reduce HAP or other emissions from baseline emissions.

### *B. What Are the Cost Impacts?*

Actual compliance costs will depend on each source's existing equipment and the modifications they make to comply with the proposed standards. Table 3 shows the total annual costs for affected sources to comply with the proposed standards. These costs include the estimated costs of reformulating cements, solvents, and coatings or installing of add-on control devices, as well as monitoring, reporting, and recordkeeping costs.

TABLE 3.—TOTAL COSTS OF THE RUBBER TIRE MANUFACTURING MACT FOR TIRE PRODUCTION, TIRE CORD PRODUCTION, AND PUNCTURE SEALANT APPLICATION

| Cost | Tire production | Tire cord | Puncture sealant application [a] |
|---|---|---|---|
| Total nationwide control costs | $21,359,000 | $2,477,000 | $0 |
| Total annual monitoring costs | 1,143,000 | 184,000 | 0 |
| Annual average recordkeeping and reporting costs | 579,000 | 102,000 | 0 |
| Nationwide annual costs | 23,081,000 | 2,763,000 | 0 |
| Total nationwide costs | ..... | ..... | 25,844,000 |

[a] Puncture sealant monitoring and reporting recordkeeping costs are included in the tire production costs.

### *C. What Are the Economic Impacts?*

The economic impact analysis (EIA) provides an estimate of the anticipated regulatory impacts of the NESHAP for Rubber Tire Manufacturing. The information collected for this proposed rule from rubber tire manufacturers indicates that there are 14 manufacturers with 43 facilities that are potentially affected. States with the largest concentration of facilities are Alabama, Illinois, North Carolina, South Carolina and Ohio. None of the facilities manufacturing rubber tires are owned by companies that are classified as small businesses.

In general, the economic impacts of this proposed rule are expected to be minimal. A market price increase of less than 1 percent, or $0.03 per tire, is predicted. Domestic producer operating profits are projected to decrease by $13.5 million. No rubber tire facility is expected to close as a result of this proposed rule. The EIA estimates that domestic tire output will decline by 144,000 tires (0.05 percent), while imports will increase by 22,000 tires (0.04 percent), resulting in a net decline of 122,000 tires, or 0.03 percent. For more information on the results of the EIA analysis, refer to the EIA in the docket.

### *D. What Are the Non-Air Health, Environmental, and Energy Impacts?*

The standards proposed for the tire manufacturing and tire cord production source subcategories encourage the adoption of pollution prevention measures. As a result, we believe that most manufacturers will adopt these measures and expect minimal, if any, increases in energy consumption, and reductions in water pollution and solid waste.

The standards proposed for the puncture sealant application source subcategory do not impose any requirements above baseline, therefore, there would be no non-air health, environmental, and energy impacts associated with the implementation of the proposed standards.



## V. Solicitation of Comments and Public Participation

We seek full public participation in arriving at our final decisions and encourage comments on all aspects of this proposal from all interested parties.

## VI. Administrative Requirements

### *A. Executive Order 12866—Regulatory Planning and Review*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is not a "significant regulatory action" because none of the listed criteria apply to this action. Consequently, this action was not submitted to OMB for review under Executive Order 12866.

### *B. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks*

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that the EPA determines is: (1) "Economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned rule is preferable to other potentially effective and reasonable alternatives that we considered.

This proposed rule is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined by Executive Order 12866. In addition, EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health and safety risks. This proposed rule is not subject to Executive Order 13045 because it is based on technology performance and not on health or safety risks.

### *C. Executive Order 13084—Consultation and Coordination With Indian Tribal Governments*

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, the EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's proposed rule is required by section 112(d) of the CAA and does not significantly or uniquely affect the communities of tribal governments. No tribal governments own or operate a rubber tire manufacturing facility. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

### *D. Executive Order 13132—Federalism*

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." Policies that have federalism implications is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of Government."

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of Government, as specified in Executive Order 13132. The standards apply only to rubber tire manufacturers and do not pre-exempt States from adopting more stringent standards. Thus, Executive Order 13132 does not apply to this proposed rule.

Although section 6 of Executive Order 13132 does not apply to this proposed rule, EPA did consult with State and local officials in developing this proposed rule. No concerns were raised by these officials during this consultation.

In the spirit of Executive Order 13132 and consistent with EPA policy to promote communications between EPA, State, and local governments, EPA specifically solicits comments on this proposed rule from State and local officials.

### *E. Unfunded Mandates Reform Act of 1995*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, we generally must prepare a written statement, including cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative with other than the

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least costly, most cost-effective, or least burdensome alternative if we publish with the final rule an explanation why that alternative was not adopted.

Before we establish any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, we must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of our regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

We have determined that this proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, or tribal governments, in the aggregate, or the private sector in any 1 year. Thus, today's proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, we have determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no regulatory requirements that apply to such governments or impose obligations upon them. Therefore, this proposed rule is not subject to the requirements of section 203 of the UMRA.

*F. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.*

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business that has fewer than 1,000 employees; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any requirements on small entities. We have determined that none of the 43 facilities expected to be subject to the proposed rule are small entities, and that this proposed rule would not have a significant impact on a substantial number of small entities.

*G. Paperwork Reduction Act*

The information collection requirements in this proposed rule have been submitted for approval to OMB under the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1982.01), and a copy may be obtained from Ms. Sandy Farmer by mail at the U.S. Environmental Protection Agency, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania Avenue, NW, Washington, DC 20460, by e-mail at farmer.sandy@epa.gov, or by calling (202) 260–2740. A copy may also be downloaded off the internet at http://www.epa.goc/icr. The information requirements are not effective until OMB approves them.

The proposed information requirements are based on notifications, records, and reports required by the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to national emission standards. These recordkeeping and reporting requirements are specifically authorized under section 114 of the CAA (42 U.S.C. 7414). All information submitted to the EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made will be safeguarded according to Agency policies in 40 CFR part 2, subpart B.

The annual public reporting and recordkeeping burden for this collection of information (averaged over the first 3 years after the effective date of the promulgated rule) is estimated to total 12,766 labor hours per year at a total annual cost of $680,927. This estimate includes notifications, a performance test and report for sources using control devices to comply with the regulation, semiannual compliance reports, annual compliance certifications, records of cements and solvents composition, records of cements and solvents use, records of HAP use, and records of any required parameter monitoring.

The total estimated annual and capital monitoring, inspection, reporting and recordkeeping (MIRR) costs for existing and new major sources to comply with the proposed standard when an affected source opts to comply via the use of add-on control equipment are determined based on the estimated capital costs of equipment required for MIRR activities. For the rubber tire manufacturing industry, the total estimated installed capital costs of this equipment is $2,983,912 for existing major sources and $569,558 for new major sources. Annualized capital MIRR costs for existing and new major sources to comply with the proposed standard through the use of add-on controls were estimated to be $1,137,025 and $189,853, respectively.

The total annual estimated operating and maintenance costs (O&M) were calculated based on (1) the estimated storage, filing, photocopying, and postage costs for the estimated total annual responses associated with the provisions of the rubber tire NESHAP and (2) the O&M costs for the equipment required for compliance with this standard. The total storage, filing, photocopying, and postage cost per response was $19.99, for an annual estimated average of $1,865.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information; process and maintain information and disclose and provide information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information; search existing data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Comments are requested on the EPA's need for this information, the accuracy of the burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, Collection Strategies Division (2822), U.S. Environmental Protection Agency (2136), 1200 Pennsylvania Avenue, NW, Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503, marked "Attention: Desk Office for EPA." Include the ICR number in any correspondence. Because OMB is required to make a decision concerning the ICR between 30 and 60 days after October 18, 2000, a comment to OMB is best assured of having its full effect if OMB receives it by November 17, 2000. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.



*H. National Technology Transfer and Advancement Act of 1995*

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Publication L. No. 104–113) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through annual reports to the Office of Management and Budget (OMB), with explanations when an agency does not use available and applicable voluntary consensus standards.

This proposed rulemaking involves technical standards. EPA proposes in this rule to use EPA Methods 1, 1a, 2, 2a, 2c, 2d, 2f, 2g, 3, 3a, 3b, 4, 25, 25a, 204, 204a–f, 311. Consistent with the NTTAA, the EPA conducted searches to identify voluntary consensus standards in addition to these EPA methods. No voluntary consensus standards were identified as applicable to this rule.

Five consensus standards: ASTM D4827–93, ASTM D4747–87, ASTM D1979–91, ASTM D3432–89 and ASTM PS9–94 are already incorporated by reference (IBR) in EPA Method 311. The search for emissions monitoring procedures identified 15 voluntary consensus standards. EPA determined that 11 of these 15 standards identified for measuring emissions of the HAPs or surrogates subject to emission standards in the proposed rule would not be practical due to lack of equivalency, detail, and/or quality assurance/quality control requirements. Therefore, we do not propose to use these voluntary consensus standards in this proposed rulemaking. These 11 standards are shown in Table X, along with the EPA review comments.

Four of the 15 remaining consensus standards identified are under development or under EPA review. Therefore, we do not propose to use these voluntary consensus standards in this proposed rulemaking. These four standards are shown in Table Y, along with the EPA review comments.

For EPA Methods 1a, 2a, 2d, 2f, 2g, 204, and 204a–f, no applicable voluntary consensus standards were found at this time. The search and review results have been documented and are placed in the docket for this proposed rule.

EPA takes comment on proposed compliance demonstration requirements in this rulemaking and specifically invites the public to identify potentially-applicable voluntary consensus standards. Commentors should also explain why this regulation should adopt these voluntary consensus standards in lieu of or in addition to EPA's standards. Emission test methods and performance specifications submitted for evaluation should be accompanied with a basis for the recommendation, including method validation data and the procedure used to validate the candidate method (if method other than Method 301, 40 CFR Part 63, Appendix A was used).

Section 63.5993 of the proposed standard list the EPA testing methods and performance standards included in the proposed regulations. Most of the standards have been used by States and industry for more than 10 years. Nevertheless, the proposal also allows any State or source to apply to EPA for permission to use an alternative method in place of any of the EPA testing method or performance standards specified in this proposed rule.

TABLE X.—LIST OF VOLUNTARY CONSENSUS STANDARDS NOT APPLICABLE TO THE RUBBER TIRE MACT

| Similar EPA standard reference method | Voluntary consensus standard | EPA'S comments on voluntary consensus standard |
|---|---|---|
| EPA Methods 1 and 2 | ISO 9096:1992 (in review 2000)—Determination of Concentration and Mass Flow Rate of Particulate Matter in Gas Carrying Ducts—Manual Gravimetric Method. | Some portions of this standard relate to EPA Methods 1 and 2. There is no EPA method to compare this to. EPA cannot approve this standard without supporting data. |
| EPA Methods 1, 2, 2c, 3, 3b, 4. | ASTM D3154–91 (1995)—Standard Method for Average Velocity in a Duct (Pitot Tube Method). | Appears to cover EPA's Part 60 Methods 1, 2, 2c, 3, 3b, and 4 but lacks in quality control and quality assurance requirements. |
| EPA Method 2 | ASTM D3464–96—Standard Test Method Average Velocity in a Duct Using a Thermal Anemometer. | There is no EPA method to compare this to. Applicability specifications are not clearly defined (example: range of gas composition, T limits). It appears to have the correct calibration procedures and specifications, but wtihout supporting data. Some of the variability issues were not adequately addressed. EPA cannot call this equivalent to EPA Method 2 without supporting data. |
| EPA Method 2 | ISO 10780:1994—Stationary Source Emissions—Measurement of Velocity and Volume Flowrate of Gas Streams in Ducts. | This standard recommends the use of L-shaped pitots, although it contains procedures for the use of S-shaped pitots, as in EPA Method 2. ISO 10780 has good detail, but has significant deficiences, *e.g.*, 1) the distance between each leg of the pitot to its face-opening plane can be up to 10 times the external tubing diameter vs. 1.5 times as specified in EPA Method 2; and 2) no direct calibration procedures are provided for an S-shaped pitot. |

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TABLE X.—LIST OF VOLUNTARY CONSENSUS STANDARDS NOT APPLICABLE TO THE RUBBER TIRE MACT—Continued

| Similar EPA standard reference method | Voluntary consensus standard | EPA'S comments on voluntary consensus standard |
|---|---|---|
| EPA Method 2 | ASTM D3796–90 (1998)—Standard Practice for Calibration of Type S Pitot Tubes. . | This is a very good detailed procedure for calibrating Type S pitot tubes, but it is not a complete method alternative to EPA Method 2. |
| EPA Method 3a | ASTM D5835–95—Standard Practice for Sampling Stationary Source Emissions for Automated Determination of Gas Concentration. | Similar to Methods 3a, 6c, 7e, 10, ALT 004, CTM 022. Lacks in detail and quality assurance/quality control requirements. Very similar to ISO 10396. |
| EPA Method 3a | CAN/CSA Z223.2–M86 (1986)—Method for the Continuous Measurement of Oxygen, Carbon Dioxide, Carbon Monoxide, Sulphur Dioxide, and Oxides of Nitrogen in Enclosed Combustion Flue Gas Streams. | Too general. This standard lacks in detail and quality assurance/quality control requirements. Appendices with valid quality control information are not a required part of this standard. |
| EPA Method 3a | ISO 10396:1993—Stationary Source Emissions: Sampling for the Automated Determination of Gas Concentrations. | Similar to EPA Methods 3a, 6c, 7e, 10, ALT 004, CTM 022. Similar to ASTM D5835. Lacks in detail and quality assurance/quality control requirements. |
| EPA Method 4 | ASTM E337–84 (Reapproved 1996)—Standard Test Method for Measuring Humidity with a Psychrometer (the Measurement of Wet- and Dry- Bulb Temperatures). | This will only cover a small portion of what is acceptable for EPA Method 4. |
| EPA Method 25a | EN 12619 (1999)—Stationary Source Emissions—Determination of the Mass Concentration of Total Gaseous Organic Carbon at Low Concentrations in Flue Gases—Continuous Flame Ionization Detector Method. | This standard is limited because it doesn't apply to solvent-using processes vapors or concentrations >40 ppm carbon. Specifications for probe temperature are only 20°C above flue gas as compared to EPA Method 25a which specifies greater than or equal to 110°C. |
| EPA Method 311 | ASTM D3271—87 (1993)—Standard Practice for Direct Injection of Solvent–Reducible Paints into a Gas Chromatograph for Solvent Analysis. | This standard is not an acceptable alternative to EPA Method 311. Section 1.2 under scope reads "This practice is not designed to be quantitative." The purpose of EPA Method 311 is to quantitatively measure HAP's in coatings. |

TABLE Y.—LIST OF VOLUNTARY CONSENSUS STANDARDS NOT FINAL AND/OR UNDER EPA REVIEW FOR THE RUBBER TIRE MACT

| Similar EPA standard reference method | Voluntary consensus standard | EPA's comments on voluntary consensus standard |
|---|---|---|
| EPA Method 2 | ASME/BSR MFC 12M—Flow in Closed Conduits Using Multiport Averaging Pitot Primary Flowmeters. | Standard likely in development at the time the search was completed. |
| EPA Method 2 (possibly 1) | ASME/BSR MFC 13M—Flow Measurement by Velocity Traverse. | Under development when search was completed. Possibly similar to EPA Methods 1 and 2. |
| EPA Method 3a | ISO/DIS 12039—Stationary Source Emissions—Determination of Carbon Monoxide, Carbon Dioxide, and Oxygen—Automated Methods. | Under development when search was completed. Possibly similar to EPA Method 3a and 10. |
| EPA Methods 25, 25a | ISO/FDIS 14965—Air Quality—Determination of Total Nonmethane Organic Compounds—Cryogenic Preconcentration and Direct Flame Ionization Method. | Under development when search was completed. Possible improvement of EPA Method 25a, but will not cover all aspects of EPA Method 25. EPA will review the standard when it is final. |

**List of Subjects in 40 CFR Part 63**

Environmental protection, Air pollution control, Hazardous air pollutants, Reporting and recordkeeping requirements, Rubber tire manufacturing, Tire cord production.

Dated: September 15, 2000.

**Carol M. Browner,**

*Administrator.*

For the reasons stated in the preamble, title 40, chapter I, part 63, of the Code of the Federal Regulations is proposed to be amended as follows:

**PART 63—[AMENDED]**

1. The authority citation for part 63 continues to read as follows:

**Authority:** 42 U.S.C. 7401, *et seq.*

2. Part 63 is amended by adding subpart XXXX to read as follows:

**Subpart XXXX—National Emission Standards for Hazardous Air Pollutants: Rubber Tire Manufacturing**

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## Subpart XXXX—National Emission Standards for Hazardous Air Pollutants: Rubber Tire Manufacturing

### What This Subpart Covers

**§ 63.5980 What is the purpose of this subpart?**

This subpart establishes national emission standards for hazardous air pollutants emitted from rubber tire manufacturing. This subpart also establishes requirements to demonstrate initial and continuous compliance with the emission limitations.

**§ 63.5981 Am I subject to this subpart?**

You are subject to this subpart if you own or operate a rubber tire manufacturing facility that is located at, or is a part of, a major source of hazardous air pollutant (HAP) emissions.

(a) Rubber tire manufacturing includes the production of rubber tires and/or the production of components integral to rubber tires, the production of tire cord, and the application of puncture sealant. Components of rubber tires include, but are not limited to, rubber compounds, sidewalls, tread, tire beads, tire cord and liners. Other components often associated with rubber tires but not integral to the tire such as wheels, inner tubes, and valve stems are not components of rubber tires or tire cord and are not subject to this subpart.

(b) A major source of HAP emissions is any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, considering controls, any single HAP at a rate of 9.07 megagrams (10 tons) or more per year or any combination of HAP at a rate of 22.68 megagrams (25 tons) or more per year.

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**§ 63.5982 What parts of my facility does this subpart cover?**

(a) This subpart applies to each existing, new, or reconstructed affected source at facilities engaged in the manufacture of rubber tires or their components.

(b) The affected sources are defined in this section in paragraph (b)(1), tire production; paragraph (b)(2) of this section, tire cord production; paragraph (b)(3) of this section, puncture sealant application; and paragraph (b)(4) of this section, rubber processing.

(1) The tire production affected source is the collection of all processes that use cements and solvents as defined in § 63.6015, located at any rubber tire manufacturing facility. It includes, but is not limited to: storage and mixing vessels and the transfer equipment containing cements and/or solvents; wastewater handling and treatment operations; research and development operations; tread end cement operations; tire painting operations; ink and finish operations; undertread cement operations; general plant cleanup operations; bead cementing operations; tire building operations; green tire spray operations; extruding to the extent cements and solvents are used; cement house operations; marking operations; calendar operations to the extent solvents are used; tire stripping operations; tire repair operations; slab dip operations; other tire building operations to the extent that cements and solvents are used; and balance pad operations.

(2) The tire cord production affected source is the collection of all processes engaged in the production of tire cord. It includes, but is not limited to, dipping operations, drying ovens, heat-set ovens, bulk storage tanks, mixing facilities, general facility vents, air pollution control devices, and warehouse storage vents.

(3) The puncture sealant application affected source is the puncture sealant application booth operation used to apply puncture sealant to finished tires.

(4) The rubber processing affected source is the collection of all primary rubber mixing processes (*e.g.*, banburys and associated drop mills) and mills that either mix compounds or warm rubber compound before the compound is processed into components of rubber tires. The mixed rubber compound itself is also included in the rubber processing affected source. There are no emission limitations or other requirements for the rubber processing affected source.

(c) An affected source is a new affected source if construction of the affected source commenced after October 18, 2000, and it met the applicability criteria of § 63.5981 at the time construction commenced.

(d) An affected source is reconstructed if it meets the criteria as defined in § 63.2 of subpart A of this part.

(e) An affected source is existing if it is not new or reconstructed.

**§ 63.5983 When do I have to comply with this subpart?**

(a) If you have a new or reconstructed affected source, except as provided in § 63.5982(b)(4), you must comply with this subpart according to the requirements in paragraphs (a)(1) and (2) of this section.

(1) If you start up your affected source before the effective date of this subpart, then you must comply with the emission limitations for new and reconstructed sources in this subpart no later than the effective date of this subpart.

(2) If you start up your affected source after the effective date of this subpart, then you must comply with the emission limitations for new and reconstructed sources in this subpart upon startup of your affected source.

(b) If you have an existing affected source, you must comply with the emission limitations for existing sources no later than 3 years after the effective date of this subpart.

(c) If you have an area source that increases its emissions or its potential to emit such that it becomes a major source of HAP, the affected source(s) must be in compliance with existing source emission limitations no later than 3 years after the date on which the area source became a major source.

(d) You must meet the notification requirements in § 63.6009 according to the schedule in § 63.6009 and in subpart A of this part. Some of the notifications must be submitted before the date you are required to comply with the emission limitations in this subpart.

## Emission Limitations for Tire Production Affected Sources

**§ 63.5984 What emission limitations must I meet for tire production affected sources?**

You must meet one of the two emission limitations in Table 1 of this subpart that applies to you.

**§ 63.5985 What are my alternatives for meeting the emission limitations for tire production affected sources?**

You must use one of the compliance alternatives in paragraphs (a) through (c) of this section to meet either of the emission limitations in § 63.5984.

(a) *Purchase alternative.* Use only cements and solvents that, as-purchased, contain no more HAP than allowed by the emission limitations in Table 1, option 1 (HAP constituent option 1 only), of this subpart.

(b) *Monthly average alternative, without using an add-on control device.* Use cements and solvents such that the monthly average HAP emissions do not exceed the emission limitations in Table 1 of this subpart, option 1 or option 2.

(c) *Monthly average alternative, using an add-on control device.* Use a control device to reduce HAP emissions such that the monthly average HAP emissions do not exceed the emission limitations in Table 1 of this subpart, option 1 or option 2.

## Emission Limitations for Tire Cord Production Affected Sources

**§ 63.5986 What emission limitations must I meet for tire cord production affected sources?**

You must meet each emission limitation in Table 2 of this subpart that applies to you.

**§ 63.5987 What are my alternatives for meeting the emission limitations for tire cord production affected sources?**

You must use one of the compliance alternatives in paragraph (a) or (b) of this section to meet the emission limitations in § 63.5986.

(a) *Monthly average alternative, without using an add-on control device.* Use coatings such that the monthly average HAP emissions do not exceed the emission limitations in Table 2 of this subpart.

(b) *Monthly average alternative, using an add-on control device.* Use a control device to reduce HAP emissions such that the monthly average HAP emissions do not exceed the emission limitations in Table 2 of this subpart.

## Emission Limitations for Puncture Sealant Application Affected Sources

**§ 63.5988 What emission limitations must I meet for puncture sealant application affected sources?**

(a) You must meet each emission limitation in Table 3 of this subpart that applies to you.

(b) If you use an add-on control device to meet the emission limitations in Table 3 of this subpart, you must also meet each operating limit in Table 4 of this subpart that applies to you.

**§ 63.5989 What are my alternatives for meeting the emission limitations for puncture sealant application affected sources?**

You must use one of the compliance alternatives in paragraph (a) or (b) of this section to meet the emission limitations in § 63.5988.

(a) *Overall control efficiency alternative.* Use an emissions capture system and control device and demonstrate that the application booth emissions meet the emission limitations in Table 3 of this subpart, and the control device and capture system meet the operating limits in Table 4 of this subpart.

(b) *Permanent total enclosure and control device efficiency alternative.* Use a permanent total enclosure that satisfies the Method 204 criteria in 40 CFR part 51. Demonstrate that the control device reduces at least 86 percent of emissions for existing sources and 95 percent of emissions for new or reconstructed sources. You must also show that the control device and capture system meet the operating limits in Table 4 of this subpart.

## General Compliance Requirements

**§ 63.5990 What are my general requirements for complying with this subpart?**

(a) You must be in compliance with the applicable emission limitations specified in Tables 1 through 3 of this subpart at all times, including periods of startup, shutdown, and malfunction.

(b) Except as provided in § 63.5982(b)(4), you must always operate and maintain your affected source, including air pollution control and monitoring equipment, according to the provisions in § 63.6(e)(1)(i).

(c) During the period between the compliance date specified for your source in § 63.5983 and the date upon which continuous compliance monitoring systems have been installed and validated and any applicable operating limits have been set, you must maintain a log detailing the operation and maintenance of the process and emission control equipment.

## General Testing and Initial Compliance Requirements

**§ 63.5991 By what date must I conduct an initial compliance demonstration or performance test?**

(a) If you have a new or reconstructed affected source, you must conduct each required initial compliance demonstration or performance test within 180 calendar days after the compliance date that is specified for your new or reconstructed affected source in § 63.5983(a). If you are required to conduct a performance test, you must do so according to the provisions of § 63.7(a)(2).

(b) If you have an existing affected source, you must conduct each required initial compliance demonstration or performance test no later than the compliance date that is specified for your existing affected source in § 63.5983(b). If you are required to conduct a performance test, you must do so according to the provisions of § 63.7(a)(2).

(c) If you commenced construction or reconstruction between October 18, 2000, and the effective date of this subpart, you must demonstrate initial compliance with either the proposed emission limitations or the promulgated emission limitations no later than 180 calendar days after the effective date of this subpart or within 180 calendar days after startup of the source, whichever is later, according to § 63.7(a)(2)(ix).

**§ 63.5992 When must I conduct subsequent performance tests?**

If you use a control system (add-on control device and capture system) to meet the emission limitations, you must also conduct a performance test at least once per year following your initial compliance demonstration to verify control system performance and reestablish operating parameters for control systems used to comply with the emissions limitations for tire production and tire cord production, and to verify control system performance and reestablish operating limits for control systems used to comply with the emissions limitations and operating limits for puncture sealant application.

**§ 63.5993 What performance tests and other procedures must I use?**

(a) If you use a control system to meet the emission limitations, you must conduct each performance test in Table 5 of this subpart that applies to you.

(b) Each performance test must be conducted according to the requirements in § 63.7(e)(1) and under the specific conditions specified in Table 5 of this subpart.

(c) You may not conduct performance tests during periods of startup, shutdown, or malfunction, as specified in § 63.7(e)(1).

(d) You must conduct three separate test runs for each performance test required in this section, as specified in § 63.7(e)(1), unless otherwise specified in the test method. Each test run must last at least 1 hour.

(e) If you are complying with the emission limitations using a control system, you must also conduct performance tests according to the requirements in paragraphs (e)(1) through (3) of this section as they apply to you.

(1) *Capture efficiency by permanent or temporary total enclosure.* Determine the capture efficiency (CE) of a capture system by using one of the procedures in Table 5 of this subpart.

(2) *Capture efficiency by an alternative method.* As an alternative to constructing a permanent or temporary total enclosure, you may determine the capture efficiency using any capture efficiency protocol and test methods if the data satisfy the criteria of either the Data Quality Objective or the Lower Confidence Limit approach in appendix A to subpart KK of this part.

(3) *Efficiency of an add-on control device.* Use Table 5 of this subpart to select the test methods for determining the efficiency of an add-on control device.

## Testing and Initial Compliance Requirements for Tire Production Affected Sources

**§ 63.5994 How do I conduct tests and procedures for tire production affected sources?**

(a) *Methods to determine the mass percent of each HAP in cements and solvents.* You must obtain the following information from the in-house collection of information or from manufacturers or suppliers, as appropriate. Use one of the methods specified in paragraph (a)(1) or (2) of this section.

(1) *Method 311 (appendix A of this part).* Use Method 311 to determine the mass percent organic HAP in cements and solvents.

(2) *Alternative test method.* Instead of using Method 311, you may use an alternative test method once we have approved it. See § 63.7(f) for the procedure you must follow to submit an alternative test method to us for approval.

(b) *Methods to demonstrate compliance with the HAP constituent emission limitations in Table 1 of this subpart (option 1).* Use the method in paragraph (b)(1) of this section to demonstrate initial and continuous compliance with the applicable emission limitations for tire production affected sources using the compliance alternative described in § 63.5985(a), purchase alternative. Use the equations in paragraphs (b)(2) through (4) of this section to demonstrate initial and continuous compliance with the emission limitations for tire production affected sources using the monthly average compliance alternatives described in § 63.5985(b) and (c).

(1) Determine the mass percent of each HAP in each cement and solvent according to the procedures in paragraph (a) of this section.

(2) Use Equation 1 of this section to calculate the daily HAP emission rate when complying by using cements and solvents without using an add-on control device such that the monthly average HAP emissions do not exceed

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the HAP constituent emission limits in Table 1 of this subpart (option 1).

$$E_{day} = \frac{\left(\sum_{i=1}^{n}(HAP_i)(TMASS_i)\right)(10{,}000)}{\sum_{i=1}^{n} TMASS_i} \quad \text{[Eq. 1]}$$

Where:

$E_{day}$ = mass of the specific HAP emitted per total mass cements and solvents from all cements and solvents used in tire production in the day, grams per megagram.

$HAP_i$ = mass percent of the specific HAP, as-purchased, in cement and solvent i, determined in accordance with paragraph (a) of this section.

$TMASS_i$ = total mass of cement and solvent i used in the day, grams.

n = number of cements and solvents used in the day.

(3) Use Equation 2 of this section to calculate the daily HAP emission rate when complying by using a control device to reduce HAP emissions such that the monthly average HAP emissions do not exceed the HAP constituent emission limits in Table 1 of this subpart (option 1).

$$E_{day} = \frac{\left\{\left(\sum_{i=1}^{n}(HAP_i)(TMASS_i)\right)+\left(\sum_{j=1}^{m}(HAP_j)(TMASS_j)\right)\left(1-\frac{EFF}{100}\right)+\sum_{k=1}^{p}(HAP_k)(TMASS_k)\right\}(10{,}000)}{\sum_{i=1}^{n} TMASS_i + \sum_{j=1}^{m} TMASS_j + \sum_{k=1}^{p} TMASS_k} \quad \text{[Eq. 2]}$$

Where:

$E_{day}$ = mass of the specific HAP emitted per total mass cements and solvents used in tire production in the day, grams per megagram.

$HAP_i$ = mass percent of the specific HAP in cement and solvent i, as purchased, determined in accordance with paragraph (a) of this section for cements and solvents used in the day in processes that are not routed to a control device.

$TMASS_i$ = total mass of cement and solvent i used in the day in processes that are not routed to a control device, gram.

n = number of cements and solvents used in the day in processes that are not routed to a control device.

$HAP_j$ = mass percent of the specific HAP, in cement and solvent j, as-purchased, determined in accordance with paragraph (a) of this section, for cements and solvents used in the day in processes that are routed to a control device during one or more hourly periods when the control system is operating within the operating range established during the performance test and when monitoring data are collected.

$TMASS_j$ = total mass of cement and solvent j used in the day in processes that are routed to a control device during all hourly periods when the control system is operating within the operating range established during the performance test and when monitoring data are collected, grams.

EFF = efficiency of the control system (capture system efficiency x control device efficiency), percent.

m = number of cements and solvents used in the day that are routed to a control device during hourly periods when the control device is operating within the operating range established during the performance test.

$HAP_k$ = mass percent of the specific HAP, as-purchased, in cement and solvent, as purchased, determined in accordance with paragraph (a) of this section, for cements and solvents used during the day in processes that are routed to a control device during one or more hourly periods when either the control system is not operating within the operating range established during the performance test or when monitoring data are not collected.

$TMASS_k$ = total mass of cement or solvent k used in the day in processes that are routed to a control device during all hourly periods when either the control system is not operating within the operating range established during the performance test or when monitoring data are not collected, grams.

p = number of cements and solvents used in the day that are routed to a control device during hourly periods when either the control system is not operating within the operating range established during the performance test or when monitoring data are not collected.

(4) Use Equation 3 of this section to calculate the monthly average.

$$E_{avg} = \frac{\sum_{i=1}^{n}(E_{day,i})(TMASS_{day,i})}{\sum_{i=1}^{n} TMASS_{day,i}} \quad \text{[Eq. 3]}$$



Where:

$E_{avg}$ = monthly average of the emission rate of the specific HAP, grams per megagram.

$E_{day,i}$ = emission rate of the specific HAP for day i, grams per megagram.

$TMASS_{day,i}$ = total mass of cements and solvents used in day i, megagrams.

n = number of operating days in the month.

(c) *Methods to demonstrate compliance with the production-based emission limitation in Table 1 of this subpart (option 2).* Use the methods and equations in paragraphs (c)(1) through (5) of this section to demonstrate initial and continuous compliance with the production-based emission limitations for tire production affected sources using the compliance alternatives described in § 63.5985(b) and (c).

(1) *Methods to determine the mass percent of each HAP in cements and solvents.* Determine the mass percent of each HAP in cements and solvents using the applicable methods specified in paragraph (a) of this section.

(2) *Quantity of rubber processed into tires.* Determine your quantity of rubber processed into tires (megagrams) by accounting for the total mass of rubber that enters all processes subsequent to the mixing process.

(3) *Compliance without use of an add-on control device.* If you do not use an add-on control device to meet the emission limitations, use Equation 1 of this section to calculate grams of HAP emitted per megagram of rubber processed into tires, using the quantity of rubber processed into tires per day (megagrams), RMASS, as determined in paragraph (c)(2) of this section in place of the TMASS variables in the denominator.

(4) *Compliance with use of an add-on control device.* If you use a control device to meet the emission limitations, use Equation 2 of this section to calculate grams of HAP emitted per megagram of rubber processed into tires, using the quantity of rubber processed into tires per day (megagrams), RMASS, as determined in paragraph (c)(2) of this section in place of the TMASS variables in the denominator.

(5) *Monthly average calculation.* Use Equation 3 of this section to calculate the monthly average grams of emissions per megagram of rubber processed into tires, except substitute the quantity of rubber process per day (megagrams), RMASS, for the TMASS variable in the denominator.

(d) *Specific performance test requirements for tire production affected sources.*

(1) Conduct any required performance tests according to the requirements in § 63.5993.

(2) If you are demonstrating compliance with the HAP constituent option in Table 1 of this subpart (option 1), conduct the performance tests using cements and solvents that are representative of cements and solvents typically used at your tire production affected source.

(3) Establish an operating range that corresponds to the control efficiency as described in Table 5 of this subpart.

(e) *How to take credit for HAP emissions reductions from add-on control devices.* If you want to take credit in Equation 2 of this section for HAP emissions reduced using a control system (EFF), you must meet the requirements in paragraphs (e)(1) and (2) of this section.

(1) Monitor the established operating parameters as appropriate.

(i) If you use a thermal oxidizer, monitor the firebox secondary chamber temperature.

(ii) If you use a carbon adsorber, monitor the total regeneration stream mass or volumetric flow for each regeneration cycle and the carbon bed temperature after each regeneration and within 15 minutes of completing any cooling cycle.

(iii) If you use a control device other than a thermal oxidizer or a regenerative carbon adsorber, install and operate a continuous parameter monitoring system according to your site-specific performance test plan submitted according to § 63.7(c)(2)(i).

(iv) If you use a permanent total enclosure, monitor the face velocity across the natural draft openings (NDOs) in the enclosure. Also, if you use an enclosure, monitor to ensure that the sizes of the NDOs have not changed, that there are no new NDOs, and that a HAP emission source has not been moved closer to an NDO since the last performance test was conducted.

(v) If you use other capture systems, monitor the parameters identified in your monitoring plan.

(2) Maintain the operating parameters within the operating range established during the performance test.

(f) *How to take credit for HAP emissions reductions when streams are combined.* When performing material balances to demonstrate compliance, if the storage of materials, exhaust, or the wastewater from more than one affected source are combined at the point where control systems are applied, any credit for emissions reductions needs to be prorated among the affected sources based on the a ratio of their contribution to the uncontrolled emissions.

**§ 63.5995 What are my monitoring installation, operation, and maintenance requirements?**

(a) For each operating parameter that you are required by § 63.5994(e)(1) to monitor, you must install, operate, and maintain a continuous parameter monitoring system (CPMS) according to the requirements in paragraphs (a)(1) through (5) of this section.

(1) The CPMS must complete a minimum of one cycle of operation for each successive 15-minute period.

(2) Determine the hourly average of all recorded readings.

(3) Determine the daily average of all recorded readings for each operating day.

(4) Determine the monthly average for each monthly period during the semiannual reporting period described in Table 15 of this subpart.

(5) You must record the results of each inspection, calibration, and validation check of the CPMS.

(b) For each temperature monitoring device, you must meet the requirements in paragraph (a) and in paragraphs (b)(1) through (8) of this section.

(1) Locate the temperature sensor in a position that provides a representative temperature.

(2) For a non-cryogenic temperature range, use a temperature sensor with a minimum tolerance of 2.2 degrees centigrade or 0.75 percent of the temperature value, whichever is larger.

(3) For a cryogenic temperature range, use a temperature sensor with a minimum tolerance of 2.2 degrees centigrade or 2 percent of the temperature value, whichever is larger.

(4) Shield the temperature sensor system from electromagnetic interference and chemical contaminants.

(5) If a chart recorder is used, it must have a sensitivity in the minor division of at least 20 degrees Fahrenheit.

(6) Perform an electronic calibration at least semiannually according to the procedures in the manufacturer's owners manual. Following the electronic calibration, you must conduct a temperature sensor validation check in which a second or redundant temperature sensor placed near the process temperature sensor must yield a reading within 16.7 degrees centigrade of the process temperature sensor's reading.

(7) Conduct calibration and validation checks any time the sensor exceeds the manufacturer's specified maximum operating temperature range or install a new temperature sensor.

(8) At least monthly, inspect all components for integrity and all electrical connections for continuity, oxidation, and galvanic corrosion.

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(c) For each integrating regeneration stream flow monitoring device associated with a carbon adsorber, you must meet the requirements in paragraph (a) and in paragraphs (c)(1) and (2) of this section.

(1) Use a device that has an accuracy of ±10 percent or better.

(2) Use a device that is capable of recording the total regeneration stream mass or volumetric flow for each regeneration cycle.

(d) For any other control device, or for other capture systems, ensure that the CPMS is operated according to a monitoring plan submitted to the Administrator with the compliance status report required by § 63.9(h). The monitoring plan must meet the requirements in paragraphs (a) and (d)(1) through (3) of this section. Conduct monitoring in accordance with the plan submitted to the Administrator unless comments received from the Administrator require an alternate monitoring scheme.

(1) Identify the operating parameter to be monitored to ensure that the control or capture efficiency measured during the initial compliance test is maintained.

(2) Discuss why this parameter is appropriate for demonstrating ongoing compliance.

(3) Identify the specific monitoring procedures.

(e) For each pressure differential monitoring device, you must meet the requirements in paragraph (a) and in paragraphs (e)(1) and (2) of this section.

(1) Conduct a quarterly Method 2 procedure on the applicable NDOs and use the results to calibrate the pressure monitor if the difference in results are greater than 10 percent.

(2) Inspect the NDOs monthly to ensure that their size has not changed, that there are no new NDOs, and that no HAP sources have been moved closer to the NDOs than when the last performance test was conducted.

**§ 63.5996 How do I demonstrate initial compliance with the emission limitations for tire production affected sources?**

(a) You must demonstrate initial compliance with each emission limitation that applies to you according to Table 6 of this subpart.

(b) You must submit the Notification of Compliance Status containing the results of the initial compliance demonstration according to the requirements in § 63.6009(e).

**Testing and Initial Compliance Requirements for Tire Cord Production Affected Sources**

**§ 63.5997 How do I conduct tests and procedures for tire cord production affected sources?**

(a) *Methods to determine the mass percent of each HAP in coatings.* You must obtain the following information from the in-house collection of information or from manufacturers or suppliers, as appropriate. Use the methods specified in paragraph (a)(1) or (2) of this section.

(1) *Method 311 (appendix A of the part).* Use Method 311 to determine the mass percent organic HAP in coatings.

(2) *Alternative test method.* Instead of using Method 311, you may use an alternative test method once we have approved it. See § 63.7(f) for the procedure you must follow to submit an alternative method to us for approval.

(b) *Methods to determine compliance with the emission limitations in Table 2 of this subpart.* Use the following equations to demonstrate initial and continuous compliance with the emission limitations for tire cord production sources using the compliance alternatives described in § 63.5987(a) and (b).

(1) Use Equation 1 of this section to calculate the daily HAP emission rate when complying by using coatings without using an add-on control device such that the monthly average HAP emissions do not exceed the emission limits in Table 2 of this subpart.

$$E_{day} = \frac{\sum_{i=1}^{n}(HAP_i)(TCOAT_i)}{TFAB} \quad \text{[Eq. 1]}$$

Where:

$E_{day}$ = mass of the specific HAP emitted per total mass of fabric processed in the day, grams per megagram.

$HAP_i$ = mass percent of the specific HAP, as-purchased, in the coating i, determined in accordance with paragraph (a) of this section.

$TCOAT_i$ = total mass of coating i used in the day, grams.

n = number of coatings used in the day.

TFAB = total mass of fabric processed in the day, megagrams.

(2) Use Equation 2 of this section to calculate the HAP emission rate when complying by using an add-on control device.

$$E_{day} = \frac{\left\{\sum_{i=1}^{n}(HAP_i)(TCOAT_i)+\left(\sum_{j=1}^{m}(HAP_j)(TCOAT_j)\right)\left(1-\frac{EFF}{100}\right)+\sum_{k=1}^{p}(HAP_k)(TCOAT_k)\right\}}{TFAB} \quad \text{[Eq. 2]}$$

Where:

$E_{day}$ = mass of the specific HAP emitted per total mass of fabric processed in the day, grams per megagram.

$HAP_i$ = mass percent of the specific HAP in coating i, as-purchased, determined in accordance with paragraph (a) of this section, for coatings used in the day in processes that are not routed to a control device.

$TCOAT_i$ = total mass of coating i used in the day in processes that are not routed to a control device, grams.

n = number of coatings used in the day in processes that are not routed to a control device.

$HAP_j$ = mass percent of the specific HAP in coating j, as-purchased, determined in accordance with paragraph (a) of this section, for coatings used in the day in processes that are routed to a control device during one or more hourly periods when the control system is operating within the operating range established during the performance test and when monitoring data are collected.

$TCOAT_j$ = total mass of coating j used in the day in processes that are routed to a control device during all hourly periods when the control system is operating within the operating range established during the performance test and when monitoring data are not collected, grams.

EFF = efficiency of the control system (capture system efficiency * control device efficiency), percent.

m = number of coatings used in the day that are routed to a control device during hourly periods when the control device is operating within the operating range established during the performance test.

$HAP_k$ = mass percent of the specific HAP in coating k, as-purchased, determined in accordance with paragraph (a) of this section, for coatings used in the day in processes that are routed to a control device during one or more hourly periods when either the control system is not operating within the operating range established during the performance test or when monitoring data are not collected.

$TCOAT_k$ = total mass of coating k used in the day in processes that are routed to a control device during all hourly periods when either the control system is not operating within the operating range established during the performance test or when monitoring data are collected, grams.

p = number of coatings used in the day that are routed to a control device during all hourly periods when either the control system is not operating within the operating range established during the performance test or when monitoring data are not collected.

TFAB = total mass of fabric processed in the day, megagrams.

(3) Use Equation 3 of this section to calculate the monthly average.

$$E_{avg} = \frac{\sum_{i=1}^{n}(E_{day,i})(TFAB_{day,i})}{\sum_{i=1}^{n}TFAB_{day,i}} \quad \text{[Eq. 3]}$$

Where:

$E_{avg}$ = monthly average of the emission rate of the specific HAP, grams per megagram.

$E_{day,i}$ = emission rate of the specific HAP for day i, grams per megagram.

$TFAB_{day,i}$ = total mass of fabric processed during day i, megagrams.

n = number of operating days in the month.

(c) *Specific performance test requirements for tire cord production affected sources.*

(1) Conduct any required performance tests according to the requirements in § 63.5993.

(2) Conduct the performance test using a coating from the list of coatings described in § 63.6011(c)(7), with average mass percent HAP that is representative of the coatings typically used at your tire cord production affected source.

(3) Establish an operating range that corresponds to the control efficiency as described in Table 5 of this subpart.

(d) *How to take credit for HAP emissions reductions from add-on control devices.* If you want to take credit in Equation 2 of this section for HAP emissions reduced using a control system (EFF), you must meet the requirements in paragraphs (d)(1) and (2) of this section.



(1) Monitor the established operating parameters as appropriate.

(i) If you use a thermal oxidizer, monitor continuously the firebox secondary chamber temperature.

(ii) If you use a carbon adsorber, monitor the total regeneration stream mass or volumetric flow for each regeneration cycle and the carbon bed temperature after each regeneration and within 15 minutes of completing any cooling cycle.

(iii) If you use a control device other than a thermal oxidizer or a regenerative carbon adsorber, install and operate a continuous parameter monitoring system according to your site-specific performance test plan submitted according to § 63.7(c)(2)(i).

(iv) If you use a permanent total enclosure, monitor the face velocity across the NDOs in the enclosure. Also, if you use an enclosure, monitor to ensure that the sizes of the NDOs have not changed, that there are no new NDOs, and that a HAP emission source has not been moved closer to an NDO since the last performance test was conducted.

(v) If you use other capture systems, monitor the parameters identified in your monitoring plan.

(2) Maintain the operating parameter within the operating range established during the performance test.

(e) *How to take credit for HAP emissions reductions when streams are combined.* When performing material balances to demonstrate compliance, if the storage of materials, exhaust, or the wastewater from more than one affected source are combined at the point where control systems are applied, any credit for emissions reductions needs to be prorated among the affected sources based on the a ratio of their contribution to the uncontrolled emissions.

**§ 63.5998 What are my monitoring installation, operation, and maintenance requirements?**

For each operating parameter that you are required by § 63.5997(d) to monitor, you must install, operate, and maintain a continuous parameter monitoring system according to the provisions in § 63.5995(a) through (e).

**§ 63.5999 How do I demonstrate initial compliance with the emission limitations for tire cord production affected sources?**

(a) You must demonstrate initial compliance with each emission limitation that applies to you according to Table 7 of this subpart.

(b) You must submit the Notification of Compliance Status containing the results of the initial compliance demonstration according to the requirements in § 63.6009(e).

**Testing and Initial Compliance Requirements for Puncture Sealant Application Affected Sources**

**§ 63.6000 How do I conduct tests and procedures for puncture sealant application affected sources?**

(a) Follow the test procedures described in § 63.5993 to determine the overall control efficiency of your system.

(b) You must also meet the requirements in paragraphs (b)(1) and (2) of this section.

(1) Conduct the performance test using a puncture sealant with an average mass percent HAP that is representative of the puncture sealants typically used at your puncture sealant application affected source.

(2) Establish all applicable operating limit ranges that correspond to the control system efficiency as described in Table 5 of this subpart.

(c) Use Equation 1 of this section to calculate the overall efficiency of the control system. If you have a permanent total enclosure that satisfies EPA Method 204 criteria, assume 100 percent capture efficiency for variable F.

$$R = \left(\frac{F}{100}\right)\left(1-\frac{E}{100}\right) \quad \text{[Eq. 1]}$$

Where:

R = overall control system efficiency.

F = capture efficiency of the capture system on add-on control device, percent.

E = control efficiency of add-on control device k, percent.

(d) Monitor the established operating limits as appropriate.

(1) If you use a thermal oxidizer, monitor the firebox secondary chamber temperature.

(2) If you use a carbon adsorber, monitor the total regeneration stream mass or volumetric flow for each regeneration cycle and the carbon bed temperature after each regeneration and within 15 minutes of completing any cooling cycle.

(3) For each control device used other than a thermal oxidizer or a regenerative carbon adsorber, install and operate a continuous parameter monitoring system according to your site-specific performance test plan submitted according to § 63.7(c)(2)(i).

(4) If you use a permanent total enclosure, monitor the face velocity across the NDOs in the enclosure. Also, if you use an enclosure, monitor to ensure that the sizes of the NDOs have not changed, that there are no new NDOs, and that a HAP emission source has not been moved closer to an NDO since the last performance test was conducted.

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(5) If you use other capture systems, monitor the parameters identified in your monitoring plan.

(e) Maintain the operating parameter within the operating range established during the performance test.

**§ 63.6001 What are my monitoring installation, operation, and maintenance requirements?**

(a) For each operating limit that you are required by § 63.6000(b)(2) to monitor, you must install, operate, and maintain a continuous parameter monitoring system according to the provisions in § 63.5995(a) through (e).

**§ 63.6002 How do I demonstrate initial compliance with the emission limitations for puncture sealant application affected sources?**

(a) You must demonstrate initial compliance with each emission limitation that applies to you according to Table 8 of this subpart.

(b) You must submit the Notification of Compliance Status containing the results of the initial compliance demonstration according to the requirements in § 63.6009(e).

**Continuous Compliance Requirements for Tire Production Affected Sources**

**§ 63.6003 How do I monitor and collect data to demonstrate continuous compliance with the emission limitations for tire production affected sources?**

(a) You must monitor and collect data as specified in Table 9 of this subpart.

(b) Except for periods of monitoring malfunctions, associated repairs, and required quality assurance or control activities (including, as applicable, calibration checks and required zero and span adjustments), you must monitor continuously (or collect data at all required intervals) while the affected source is operating.

(c) In data average calculations and calculations used to report emission or operating levels, you may not use data recorded during periods of monitoring malfunctions or associated repairs, or recorded during required quality assurance or control activities. Nor may such data be used in fulfilling any applicable minimum data availability requirement. You must use all the data collected during all other periods in assessing the operation of the control device and associated control system.

**§ 63.6004 How do I demonstrate continuous compliance with the emission limitations for tire production affected sources?**

(a) You must demonstrate continuous compliance with each applicable limitation in Table 1 of this subpart using the methods specified in Table 10 of this subpart.

(b) You must report each instance in which you did not meet an emission limitation in Table 1 of this subpart. You must also report each instance in which you did not meet the applicable requirements in Table 10 of this subpart. These instances are deviations from the emission limitations in this subpart. The deviations must be reported in accordance with the requirements in § 63.6010(e).

(c) You also must meet the following requirements if you are complying with the purchase alternative for tire production sources described in § 63.5984(a).

(1) If, after you submit the Notification of Compliance Status, you use a cement or solvent for which you have not previously verified percent HAP mass using the methods in § 63.5994(a), you must verify that each cement and solvent used in the affected source meets the emission limit, using any of the methods in § 63.5994(a).

(2) You must update the list of all the cements and solvents used at the affected source.

(3) With the compliance report for the reporting period during which you used the new cement or solvent, you must submit the updated list of all cements and solvents and a statement certifying that, as purchased, each cement and solvent used at the affected source during the reporting period met the emission limitations in Table 1 of this subpart.

**Continuous Compliance Requirements for Tire Cord Production Affected Sources**

**§ 63.6005 How do I monitor and collect data to demonstrate continuous compliance with the emission limitations for tire cord production affected sources?**

(a) You must monitor and collect data as specified in Table 11 of this subpart.

(b) You must monitor and collect data according to the requirements in § 63.6003(b) and (c).

**§ 63.6006 How do I demonstrate continuous compliance with the emission limitations for tire cord production affected sources?**

(a) You must demonstrate continuous compliance with each applicable emission limitation in Table 2 of this subpart using the methods specified in Table 12 of this subpart.

(b) You must report each instance in which you did not meet an applicable emission limitation in Table 2 of this subpart. You must also report each instance in which you did not meet the applicable requirements in Table 12 of this subpart. These instances are deviations from the emission limitations in this subpart. The deviations must be reported in accordance with the requirements in § 63.6010(e).

**Continuous Compliance Requirements for Puncture Sealant Application Affected Sources**

**§ 63.6007 How do I monitor and collect data to demonstrate continuous compliance with the emission limitations for puncture sealant application affected sources?**

(a) You must monitor and collect data as specified in Table 13 of this subpart.

(b) You must monitor and collect data according to the requirements in § 63.6003(b) and (c).

**§ 63.6008 How do I demonstrate continuous compliance with the emission limitations for puncture sealant application affected sources?**

(a) You must demonstrate continuous compliance with each applicable emission limitation in Tables 3 and 4 of this subpart using the methods specified in Table 14 of this subpart.

(b) You must report each instance in which you did not meet an applicable emission limitation in Table 3 of this subpart. You must also report each instance in which you did not meet the applicable requirements in Table 14 of this subpart. These instances are deviations from the emission limitations in this subpart. The deviations must be reported in accordance with the requirements in § 63.6010(e).

**Notifications, Reports, and Records**

**§ 63.6009 What notifications must I submit and when?**

(a) You must submit all of the notifications in §§ 63.7(b) and (c), 63.8(f)(4) and (6), and 63.9 (b) through (e) and (h) that apply to you by the dates specified.

(b) As specified in § 63.9(b)(2), if you startup your affected source before the effective date of this subpart, you must submit an Initial Notification not later than 120 calendar days after the effective date of this subpart.

(c) As specified in § 63.9(b)(3), if you startup your new or reconstructed affected source on or after the effective date, you must submit an Initial Notification not later than 120 calendar days after you become subject to this subpart.

(d) If you are required to conduct a performance test, you must submit a notification of intent to conduct a performance test at least 60 calendar days before the performance test is scheduled to begin as required in § 63.7(b)(1).



(e) If you are required to conduct a performance test, design evaluation, or other initial compliance demonstration as specified in Tables 5 through 8 of this subpart, you must submit a Notification of Compliance Status according to § 63.9(h)(2)(ii). The Notification must contain the information listed in Table 15 of this subpart for compliance reports.

(1) For each initial compliance demonstration required in Table 6 or 7 of this subpart that does not include a performance test, you must submit the Notification of Compliance Status before the close of business on the 30th calendar day following the completion of the initial compliance demonstration.

(2) For each initial compliance demonstration required in Tables 6 through 8 of this subpart that includes a performance test conducted according to the requirements in Table 5 of this subpart, you must submit the Notification of Compliance Status, including the performance test results, before the close of business on the 60th calendar day following the completion of the performance test according to § 63.10(d)(2).

(f) For each tire production affected source, the Notification of Compliance Status must also identify the emission limitation option in § 63.5984 and the compliance alternative in § 63.5985 that you have chosen to meet.

(g) For each tire production affected source complying with the purchase compliance alternative in § 63.5985(a), the Notification of Compliance Status must also include the information listed in paragraphs (g)(1) and (2) of this section.

(1) A list of each cement and solvent, as-purchased, that is used at the affected source and the manufacturer or supplier of each.

(2) The individual HAP content (percent by mass) of each cement and solvent as applied that is used.

(h) For each tire production or tire cord production affected source using a control device, the Notification of Compliance Status must also include the information in paragraphs (h)(1) and (2) of this section for each operating parameter in §§ 63.5994(e)(1) and 63.5997(d)(1) that applies to you.

(1) The operating parameter value averaged over the full period of the performance test (for example, average secondary chamber firebox temperature over the period of the performance test was 1,500 degrees Fahrenheit).

(2) The operating parameter range within which HAP emissions are reduced to the level corresponding to meeting the applicable emission limitations in Tables 1 and 2 of this subpart.

(i) For each puncture sealant application affected source, the Notification of Compliance Status must include the information listed in paragraphs (i)(1) and (2) of this section.

(1) For each applicable operating parameter in Table 4 of this subpart, the operating parameter value averaged over the full period of the performance test.

(2) For each applicable operating parameter in Table 4 of this subpart, the operating parameter range within which HAP emissions do not exceed the levels in Table 3 of this subpart.

**§ 63.6010 What reports must I submit and when?**

(a) You must submit each applicable report in Table 15 of this subpart.

(b) Unless the Administrator has approved a different schedule for submission of reports under § 63.10(a), you must submit each report by the date in Table 15 of this subpart and according to the requirements in paragraphs (b)(1) through (5) of this section.

(1) The first compliance report must cover the period beginning on the compliance date that is specified for your affected source in § 63.5983 and ending on June 30 or December 31, whichever date is the first date following the end of the first calendar half after the compliance date that is specified for your source in § 63.5983.

(2) The first compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date follows the end of the first calendar half after the compliance date that is specified for your affected source in § 63.5983.

(3) Each subsequent compliance report must cover the semiannual reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31.

(4) Each subsequent compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date is the first date following the end of the semiannual reporting period.

(5) For each affected source that is subject to permitting subparts pursuant to 40 CFR part 70 or 40 CFR part 71, and if the permitting authority has established dates for submitting semiannual reports pursuant to 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), you may submit the first and subsequent compliance reports according to the dates the permitting authority has established instead of according to the dates in paragraphs (b)(1) through (4) of this section.

(c) The compliance report must contain information specified in paragraphs (c)(1) through (7) of this section.

(1) Company name and address.

(2) Statement by a responsible official, with that official's name, title, and signature, certifying the accuracy of the content of the report.

(3) Date of report and beginning and ending dates of the reporting period.

(4) If there are no deviations from any emission limitations (emission limit or operating limit) that applies to you, a statement that there were no deviations from the emission limitations during the reporting period.

(5) If there were no periods during which the operating parameter monitoring systems were out-of-control as specified in § 63.8(c)(7), a statement that there were no periods during which the operating parameter monitoring systems or CPMS were out-of-control during the reporting period.

(6) For each tire production affected source, the emission limitation option in § 63.5984 and the compliance alternative in § 63.5985 that you have chosen to meet.

(7) For each tire production affected source complying with the purchase compliance alternative in § 63.5985(a), for each annual reporting period during which you use a cement and solvent that, as-purchased, was not included in the list submitted with the Notification of Compliance Status in § 63.6009(e)(1), an updated list of all cements and solvents used, as-purchased, at the affected source. You must also include a statement certifying that each cement and solvent, as-purchased, that was used at the affected source during the reporting period, met the HAP constituent limits (option 1) in Table 1 of this subpart.

(d) For each deviation from an emission limitation (emission limit or operating limit) that occurs at an affected source where you are not using a CPMS to comply with the emission limitations in this subpart, the compliance report must contain the information in paragraphs (c)(1) through (3) of this section and the information specified in paragraphs (d)(1) and (2) of this section.

(1) The total operating time of each affected source during the reporting period.

(2) Information on the number, duration, and cause of deviations (including unknown cause, if applicable) and the corrective action taken.

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(e) Each affected source that has obtained a title V operating permit pursuant to 40 CFR part 70 or 40 CFR part 71 must report all deviations as defined in this subpart in the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A). If an affected source submits a compliance report pursuant to Table 10 of this subpart along with, or as part of, the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), and the compliance report includes all required information concerning deviations from any emission limitation (including any operating limit), or work practice requirement in this subpart, submission of the compliance report shall be deemed to satisfy any obligation to report the same deviations in the semiannual monitoring report. However, submission of a compliance report shall not otherwise affect any obligation the affected source may have to report deviations from permit requirements to the permit authority.

(f) Upon notification to the Administrator that a tire production affected source has eliminated or reformulated cement and solvent such that the source can demonstrate compliance using the purchase alternative in § 63.5985(a), future compliance reports for this affected source may be submitted annually as specified in paragraph § 63.6010(c)(7).

**§ 63.6011 What records must I keep?**

(a) You must keep the records specified in paragraphs (a)(1) and (2) of this section.

(1) A copy of each notification and report that you submitted to comply with this subpart, including all documentation supporting any Initial Notification or Notification of Compliance Status that you submitted, according to the requirements in § 63.10(b)(2)(xiv).

(2) Records of performance tests as required in § 63.10(b)(2)(viii).

(b) For each tire production affected source, you must keep the records specified in Table 9 of this subpart to show continuous compliance with each emission limitation that applies to you.

(c) For each tire cord production affected source, you must keep the records specified in Table 11 of this subpart to show continuous compliance with each emission limitation that applies to you.

(d) For each puncture sealant application affected source, you must keep the records specified in Table 13 of this subpart to show continuous compliance with each emission limitation that applies to you.

**§ 63.6012 In what form and how long must I keep my records?**

(a) Your records must be in a form suitable and readily available for expeditious review, according to § 63.10(b)(1).

(b) As specified in § 63.10(b)(1), you must keep each record for 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record.

(c) You must keep each record on site for at least 2 years after the date of each occurrence, measurement, maintenance, corrective action, report, or record, according to § 63.10(b)(1). You can keep the records offsite for the remaining 3 years.

**Other Requirements and Information**

**§ 63.6013 What parts of the General Provisions apply to me?**

Table 17 of this subpart shows which parts of the General Provisions in §§ 63.1 through 63.13 apply to you.

**§ 63.6014 Who implements and enforces this subpart?**

(a) This subpart can be implemented and enforced by us, the U.S. EPA, or a delegated authority such as your State, local, or tribal agency. You should contact your U.S. EPA Regional Office to find out if this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of the U.S. EPA and are not transferred to the State, local, or tribal agency.

(c) The authorities that will not be delegated to State, local, or tribal agencies are listed in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the emissions standards in §§ 63.5984, 63.5986, and 63.5988 under 63.6(g).

(2) Approval of major alternatives to test methods under §§ 63.7(e)(2)(ii) and 63.7(f) and as defined in § 63.90.

(3) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

**§ 63.6015 What definitions apply to this subpart?**

Terms used in this subpart are defined in the Clean Air Act, in 40 CFR 63.2, the General Provisions, and in this section.

*As-purchased* means the condition of a cement and solvent as delivered to the user, prior to any mixing, blending, or dilution.

*Capture system* means a hood, enclosed room, or other means of collecting organic HAP emissions into a closed-vent system that conveys these emissions to a control device.

*Cements and solvents* means the collection of all organic chemicals, mixtures of chemicals, and compounds used in the production of rubber tires, including cements, solvents, and mixtures thereof as process aides in storage tanks, wastewater, and research and development areas. Cements and solvents include, but are not limited to, tread end cements, undertread cements, bead cements, tire building cements and solvents, green tire spray, blemish repair paints, side wall protective paints, marking inks, general cleaning solvents, and slab dip mixtures. Cements and solvents do not include coatings used in tire cord production, puncture sealant application, or chemicals and compounds that are not used in the tire production process such as restroom cleaning compounds, office supplies (*e.g.*, dry-erase markers, correction fluid), architectural paint, or any substance to the extent it is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution to and use by the general public.

*Coating* means a compound or mixture of compounds that is applied to a fabric substrate in the tire cord production operation that allows the fabric to be prepared (*e.g.*, by heating, setting, curing) for incorporation into a rubber tire.

*Components of rubber tires* means any piece or part used in the manufacture of rubber tires that becomes an integral portion of the rubber tire when manufacture is complete and includes rubber compounds, sidewalls, tread, tire beads, and liners. Other components often associated with rubber tires such as wheels, valve stems, and inner tubes are not considered components of rubber tires for the purposes of these standards. Tire cord and puncture sealant, although components of rubber tires, are considered as separate affected sources in these standards and are defined separately.

*Control device* means a combustion device, recovery device, recapture device, or any combination of these devices used for recovering or oxidizing organic hazardous air pollutant vapors. Such equipment includes, but is not limited to, absorbers, carbon adsorbers, condensers, incinerators (oxidizers), flares, boilers, and process heaters.

*Control system efficiency* means the product of the organic HAP emissions recovered or destroyed by a control device (in percent) and the total organic HAP emissions that are captured and conveyed to the control device (as a percent).

*Deviation* means any instance in which an affected source, subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart, including but not limited to any emission limitation (including any operating limit), or work practice standard;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emission limitation (including any operating limit) or work practice standard in this subpart during startup, shutdown, or malfunction, regardless or whether or not such failure is permitted by this subpart.

*Emission limitation* means any emission limit, opacity limit, operating limit, or visible emission limit.

*Mixed rubber compound* means the material, commonly referred to as rubber, from which rubber tires and components of rubber tires are manufactured. For the purposes of this definition, mixed rubber compound refers to the compound that leaves the primary rubber mixing process (for example, banburys) and is then processed into components from which rubber tires are manufactured.

*Operating day* means the period defined in the Notification of Compliance Status. It may be from midnight to midnight or a portion of a 24-hour period.

*Monthly operating period* means the period in the Notification of Compliance Status comprised of the number of operating days in the month.

*Primary rubber mixing* means the physical process of combining components to make mixed rubber compound. Internal process mixing may occur at a facility that produces rubber tires or components of rubber tires or at a stand-alone facility that then transfers the mixed rubber compound to a facility that produces rubber tires or components of rubber tires.

*Puncture sealant* means a mixture that may include solvent constituents, rubber, and process oil that is applied to the inner liner of a finished tire for the purpose of sealing any future hole which might occur in the tread when an object penetrates the tire.

*Responsible official* means responsible official as defined in 40 CFR 70.2.

*Rubber* means the compound of components (for example, natural rubber, synthetic rubber, carbon black, oils, sulfur) that are combined in specific formulations for the sole purpose of making rubber tires or components of rubber tires.

*Rubber processed* means the amount in pounds of rubber delivered to the tire component and tire processing operations in a tire manufacturing facility (*e.g.*, warm-up mills, extruders, calendars, or other tire component and tire manufacturing equipment).

*Rubber tire* means a continuous solid or pneumatic cushion typically encircling a wheel and usually consisting, when pneumatic, of an external rubber covering.

*Tire cord* means any fabric (for example, polyester, cotton, steel) that is treated with a coating mixture that allows the fabric to more readily accept impregnation with rubber to become an integral part of a rubber tire.

**Tables to Subpart XXXX of Part 63**

TABLE 1 TO SUBPART XXXX—EMISSION LIMITATIONS FOR TIRE PRODUCTION AFFECTED SOURCES

| Option* | Emission limitation |
|---|---|
| Option 1—HAP Constituent Option | 1. Emissions of each HAP in Table 16 of this subpart must not exceed 1,000 grams HAP per megagram (2 pounds per ton) of total cements and solvents used at the tire production affected source, and<br>2. Emissions of each HAP not in Table 16 of this subpart must not exceed 10,000 grams HAP per megagram (20 pounds per ton) of total cements and solvents used at the tire production affected source. |
| Option 2—Production-based Option | Emissions of HAP must not exceed 0.024 grams per megagram (0.00005 pounds per ton) of rubber processed into tires at the tire production affected source. |

*For each new, reconstructed, or existing tire production affected source, you must meet either the emission limitations in option 1 or the emission limitation in option 2.

You must comply with the emission limitations for tire cord production affected sources in the following table:

TABLE 2 TO SUBPART XXXX—EMISSION LIMITATIONS FOR TIRE CORD PRODUCTION AFFECTED SOURCES

| For each. . . | You must meet the following emission limitations |
|---|---|
| 1. Existing tire cord production affected source | Emissions must not exceed 280 grams HAP per megagram (0.56 pounds per ton) of fabric processed at the tire cord production affected source. |
| 2. New or reconstructed tire cord production affected source | Emissions must not exceed 220 grams HAP per megagram (0.43 pounds per ton) of fabric processed at the tire cord production affected source. |

You must comply with the emission limitations for puncture sealant application affected sources in the following table:

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TABLE 3 TO SUBPART XXXX—EMISSION LIMITATIONS FOR PUNCTURE SEALANT APPLICATION AFFECTED SOURCES

| For each. . . | You must meet the following emission limitation |
|---|---|
| 1. Existing puncture sealant application spray booth | Reduce spray booth emissions by at least 86 percent by weight. |
| 2. New or reconstructed puncture sealant application spray booth | Reduce spray booth emissions by at least 95 percent by weight. |

You must comply with the operating limits for puncture sealant application affected sources in the following table:

TABLE 4 TO SUBPART XXXX—OPERATING LIMITS FOR PUNCTURE SEALANT APPLICATION CONTROL DEVICES

| For each. . . | You must. . . |
|---|---|
| 1. Thermal oxidizer to which puncture sealant application spray booth emissions are ducted. | Maintain the daily average firebox secondary chamber temperature within the operating range established during the performance test. |
| 2. Carbon adsorber (regenerative) to which puncture sealant application spray booth emissions are ducted. | a. Maintain the total regeneration mass, volumetric flow, and carbon bed temperature at the operating range established during the performance test.<br>b. Reestablish the carbon bed temperature to the levels established during the performance test within 15 minutes of each cooling cycle. |
| 3. Other type of control device to which puncture sealant application spray booth emissions are ducted. | Maintain your operating parameter(s) within the range(s) established during the performance test. |
| 4. Permanent total enclosure capture system | a. Maintain the face velocity across any natural draft openings (NDOs) at least at the levels established during the performance test.<br>b. Maintain the size of NDOs, the number of NDOs, and their proximity to HAP emission sources consistent with the parameters established during the performance test. |
| 5. Other capture system | Maintain the operating parameters identified in the monitoring plan and established during the performance test. |

You must comply with the requirements for performance tests for existing, new, or reconstructed affected sources in the following table:

TABLE 5 TO SUBPART XXXX.—REQUIREMENTS FOR PERFORMANCE TESTS FOR EXISTING, NEW, OR RECONSTRUCTED AFFECTED SOURCES

| If you are using . . . | You must . . . | Using . . . | According to the following requirements . . . |
|---|---|---|---|
| 1. A thermal oxidizer | Measure total HAP emissions, determine destruction efficiency of the control device, and establish a site-specific firebox secondary chamber temperature limit at which the emission limit that applies to the affected source is achieved. | Method 25 or 25A performance test and data from the temperature monitoring system. | a. Measure total HAP emissions and determine the destruction efficiency of the control device using Method 25. You may use method 25A, if (i) an exhaust gas volatile organic matter concentration of 50 parts per million (ppmv) or less is required to comply with the standard, (ii) the volatile organic matter concentration at the inlet to the control system and the required level of control are such to result in exhaust volatile organic matter concentration of 50 ppmv or less, or (iii) because of the high efficiency of the control device exhaust is 50 ppmv or less, regardless of the inlet concentration.<br>b. Collect firebox secondary chamber temperature data every 15 minutes during the entire period of the initial 3-hour performance test, and determine the average firebox temperature over the 3-hour performance test by computing the average of all of the 15-minute readings. |



TABLE 5 TO SUBPART XXXX.—REQUIREMENTS FOR PERFORMANCE TESTS FOR EXISTING, NEW, OR RECONSTRUCTED AFFECTED SOURCES—Continued

| If you are using . . . | You must . . . | Using . . . | According to the following requirements . . . |
|---|---|---|---|
| 2. A carbon adsorber (regenerative). | Measure total organic HAP emissions, establish the total regeneration mass or volumetric flow, and establish the temperature of the carbon bed within 15 minutes of completing any cooling cycles. The total regeneration mass, volumetric flow, and carbon bed temperature must be those at which the emission limit that applies to the affected source is achieved. | Method 25 or Method 25A performance test and data from the carbon bed temperature monitoring device. | a. Measure total HAP emissions using Method 25. You may use Method 25A, if (i) an exhaust gas volatile organic matter concentration of 50 parts per million (ppmv) or less is required to comply with the standard, (ii) the volatile organic matter concentration at the inlet to the control system and the required level of control are such to result in exhaust volatile organic matter concentrations of 50 ppmv or less, or (iii) because of the high efficiency of the control device exhaust is 50 ppmv or less, regardless of the inlet concentration.<br>b. Collect carbon bed total regeneration mass or volumetric flow for each carbon bed regeneration cycle during the performance test.<br>c. Record the maximum carbon bed temperature data for each carbon bed regeneration cycle during the performance test.<br>d. Record the carbon bed temperature within 15 minutes of each cooling cycle during the performance test.<br>e. Determine the average total regeneration mass or the volumetric flow over the 3-hour performance test by computing the average of all of the readings.<br>f. Determine the average maximum carbon bed temperature over the 3-hour performance test by computing the average of all of the readings.<br>g. Determine the average carbon bed temperature within 15 minutes of the cooling cycle over the 3-hour performance test by computing the average of all of the readings. |
| 3. Any control device other than a thermal oxidizer or carbon adsorber. | Determine control device efficiency and establish operating parameter limits with which you will demonstrate continuous compliance with the emission limit that applies to the affect source. | EPA-approved methods and data from the continuous parameter monitoring system. | Conduct the performance test according to the site-specific plan submitted according to § 63.7(c)(2)(i). |
| 4. All control devices | a. Select sampling port's location and the number of traverse ports. | Method 1 or 1A of 40 CFR 60, appendix A. | Locate sampling sites at the inlet and outlet of the control device and prior to any releases to the atmosphere. |
| | b. Determine velocity and volumetric flow rate.<br>c. Conduct gas analysis | Method 2, 2A, 2C, 2D, 2F, or 2G of 40 CFR 60, appendix A.<br>Method 3, 3A, or 3B of 40 CFR 60, appendix A. | |
| | d. Measure Method 4 of moisture 40 CFR 60, appendix A. | | |
| 5. A permanent total enclosure (PTE). | Measure the face velocity across natural draft openings and document the design features of the enclosure. | Method 204, CFR part 51, Appendix M | Capture efficiency is assumed to be 100 percent if the criteria are met. |
| 6. Temporary total enclosure (TTE). | Construct a temporarily installed enclosure that allows you to determine the efficiency of your capture system and establish operating parameter limits. | Method 204 and the appropriate combination of Methods 204A–204F, 40 CFR part 51, Appendix M. | |

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You must show initial compliance with the emission limitations for tire production affected sources according to the following table:

TABLE 6 TO SUBPART XXXX.—INITIAL COMPLIANCE WITH THE EMISSION LIMITATIONS FOR TIRE PRODUCTION AFFECTED SOURCES

| For . . . | For the following emission limitation . . . | You have demonstrated initial compliance if . . . |
|---|---|---|
| 1. Sources complying with the purchase compliance alternative in § 63.5985(a). | The HAP constituent option in Table 1 of this subpart (option 1). | You demonstrate for each monthly period that no cements and solvents were purchased and used at the affected source containing HAP in amounts above the composition limits in Table 1 of this subpart, option 1, determined according to the procedures in § 63.5994(a) and (b)(1). |
| 2. Sources complying with the monthly average compliance alternative without using a control device in § 63.5985(b). | The HAP constituent option in Table 1 of this subpart (option 1). | You demonstrate that the monthly average HAP emissions for each monthly operating period do not exceed the emission limits in Table 1 of this subpart, option 1, determined according to the applicable procedures in § 63.5994(a), (b)(2) and (4). |
| 3. Sources complying with the monthly average compliance alternative using a control device in § 63.5985(c). | The HAP constituent option in Table 1 of this subpart (option 1). | You demonstrate that the monthly average HAP emissions for each monthly operating period do not exceed the emission limits in Table 1 of this subpart, option 1, determined according to the applicable procedures in § 63.5994(a), (b)(3) and (4), (d) and (e). |
| 4. Sources complying with the monthly average compliance alternative without use of a control device in § 63.5985(b). | The production-based option in Table 1 of this subpart (option 2). | You demonstrate that the monthly average HAP emissions for each monthly operating period do not exceed the emission limits in Table 1 of this subpart, option 2, determined according to the applicable procedures in § 63.5994(c)(1) through (3) and (5). |
| 5. Sources complying with the monthly average compliance alternative using a control device in § 63.5985(c). | The production-based option in Table 1 of this subpart (option 2). | You demonstrate that the monthly average HAP emissions for each monthly operating period do not exceed the emission limits in Table 1 of this subpart, option 2, determined according to the applicable procedures in § 63.5994(c)(1) and (2) through (5), (d), and (e). |

You must show initial compliance with the emission limitations for tire cord production affected sources according to the following table:

TABLE 7 TO SUBPART XXXX.—INITIAL COMPLIANCE WITH THE EMISSION LIMITATIONS FOR TIRE CORD PRODUCTION AFFECTED SOURCES

| For . . . | For the following emission limitation . . . | You have demonstrated initial compliance if . . . |
|---|---|---|
| 1. Sources complying with the monthly average alternative without using an add-on control device according to § 63.5987(a). | In Table 2 of this subpart | You demonstrate that the monthly average HAP emissions for each monthly operating period do not exceed the emission limits in Table 2 of this subpart, determined according to the procedures in § 63.5997(a), (b)(1) and (3). |
| 2. Sources complying with the monthly average alternative using an add-on control device according to § 63.5987(b). | In Table 2 of this subpart | You demonstrate that the monthly average HAP emissions for each monthly operating period do not exceed the emission limits in Table 2 of this subpart, determined according to the procedures in § 63.5997(a), (b)(2) and (3), (c) and (d). |

You must show initial compliance with the emission limitations for puncture sealant application affected sources according to the following table:



TABLE 8 TO SUBPART XXXX.—INITIAL COMPLIANCE WITH THE EMISSION LIMITATIONS FOR PUNCTURE SEALANT APPLICATION AFFECTED SOURCES

| For . . . | For the following emission limitation . . . | You have demonstrated initial compliance if . . . |
|---|---|---|
| 1. Sources complying with the overall control efficiency alternative in § 63.5989(a). | In Table 3 of this subpart | You demonstrate that you conducted the performance tests required by § 63.6000, determined the overall efficiency of your control system, demonstrated that the applicable limits have been achieved, and established the operating limits for your equipment. |
| 2. Sources complying with the permanent total enclosure and control device efficiency alternative in § 63.5989(b). | In Table 3 of this subpart | You demonstrate that you conducted the performance tests required by § 63.6000, determined the individual efficiencies of your capture and control systems, demonstrated that the applicable limits have been achieved, and established the operating limits for your equipment. |

You must maintain minimum data to show continuous compliance with the emission limitations for tire production affected sources according to the following table:

TABLE 9 TO SUBPART XXXX—MINIMUM DATA FOR CONTINUOUS COMPLIANCE WITH THE EMISSION LIMITATIONS FOR TIRE PRODUCTION AFFECTED SOURCES

| For . . . | You must maintain . . . |
|---|---|
| 1. Sources complying with purchase compliance alternative in § 63.5985(a) that are meeting the HAP constituent emission limitation (option 1) in Table 1 of this subpart. | a. A list of each cement and solvent as-purchased and the manufacturer or supplier of each.<br>b. A record of Method 311, or approved alternative method, test results indicating the mass percent of each HAP for each compliance cement and solvent as-purchased. |
| 2. Sources complying with the monthly average compliance alternative without using a control device in § 63.5985(b) that are meeting emission limitations in Table 1 of this subpart. | a. A record of the Method 311, or approved alternative method, test results, indicating the mass percent of each HAP for each cement and solvent, as-purchased.<br>b. The mass of each cement and solvent used each operating day.<br>c. The total mass of rubber processed into tires each operating day (if complying with the production-based emission limitation, option 2, in Table 1 of this subpart).<br>d. All data and calculations used to determine the monthly average mass percent for each HAP for each operating month.<br>e. Monthly averages of emissions in the appropriate emission limitation format. |
| 3. Sources complying with the monthly average compliance alternative using a control device in § 63.5985(c) that are meeting emission limitations in Table 1 of this subpart. | The same information as sources complying with the monthly average alternative that are not using a control device, except add records of operating parameter values for each monthly operating parameter that applies to you. |

You must show continuous compliance with the emission limitations for tire production affected sources according to the following table:

TABLE 10 TO SUBPART XXXX. —CONTINUOUS COMPLIANCE WITH THE EMISSION LIMITATIONS FOR TIRE PRODUCTION AFFECTED SOURCES

| For . . . | For the following emission limitation . . . | You must demonstrate continuous compliance by . . . |
|---|---|---|
| 1. Sources complying with purchase compliance alternative in § 63.5985(a). | The HAP constituent option in Table 1 of this subpart (option 1). | Demonstrating for each monthly period that no cements and solvents were purchased and used at the affected source containing HAP in amounts above the composition limits in Table 1 of this subpart, option 1, determined according to the procedures in § 63.5994(a) and (b)(1). |

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TABLE 10 TO SUBPART XXXX. —CONTINUOUS COMPLIANCE WITH THE EMISSION LIMITATIONS FOR TIRE PRODUCTION AFFECTED SOURCES—Continued

| For . . . | For the following emission limitation . . . | You must demonstrate continuous compliance by . . . |
|---|---|---|
| 2. Sources complying with the monthly average compliance alternative without using a control device in § 63.5985(b). | The HAP constituent option in Table 1 of this subpart (option 1). | Demonstrating that the monthly average HAP emissions for each monthly operating period do not exceed the emission limits in Table 1 of this subpart, option 1, determined according to the applicable procedures in § 63.5994(a), (b)(2) and (4). |
| 3. Sources complying with the monthly average compliance alternative using a control device in § 63,5985(c). | The HAP constituent option in Table 1 of this subpart (option 1). | Demonstrating that the monthly average HAP emissions for each monthly operating period do not exceed the emission limits in Table 1 of this subpart, option 1, determined according to the applicable procedures in § 63.5994(a), (b)(3) and (4), (d) and (e). |
| 4. Sources complying with the monthly average compliance alternative without using a control device in § 63.5985(b). | The production-based option in Table 1 of this subpart (option 2). | Demonstrating that the monthly average HAP emissions for each monthly operating period do not exceed the emission limits in Table 1 of this subpart, option 2, determined according to the applicable procedures in § 63.5994(c)(1) through (3) and (5). |
| 5. Sources complying with the monthly average compliance alternative using a control device in § 63.5985(c). | The production-based option in Table 1 of this subpart (option 2). | Demonstrating that the monthly average HAP emissions for each monthly operating period do not exceed the emission limits in Table 1 of this subpart, option 2, determined according to the applicable procedures in § 63.5994(c)(1) and (2) through (5), (d), and (e). |

You must maintain minimum data to show continuous compliance with the emission limitations for tire cord production affected sources according to the following table:

TABLE 11 TO SUBPART XXXX. —MINIMUM DATA FOR CONTINUOUS COMPLIANCE WITH THE EMISSION LIMITATIONS FOR TIRE CORD PRODUCTION AFFECTED SOURCES

| For . . . | You must maintain . . . |
|---|---|
| 1. Sources complying with the monthly average alternative without using an add-on control device according to § 63.5987(a) that are meeting emission limitations in Table 2 of this subpart. | a. A record of the Method 311, or approved alternative method, test results, indicating the mass percent of each HAP for coating used.<br>b. The mass of each coating used each operating day.<br>c. The total mass of fabric processed each operating day.<br>d. All data and calculations used to determine the monthly average mass percent for each HAP for each operating month.<br>e. Monthly averages of emissions in the appropriate emission limitation format. |
| 2. Sources complying with the monthly average alternative using an add-on control device according to § 63.5987(b) that are meeting emission limitations in Table 2 of this subpart. | The same information as sources complying with the monthly average alternative that are not using a control device, except add records of operating parameter values for each operating parameter that applies to you. |

You must show continuous compliance with the emission limitations for tire cord production affected sources according to the following table:

TABLE 12 TO SUBPART XXXX. —CONTINUOUS COMPLIANCE WITH THE EMISSION LIMITS FOR TIRE CORD PRODUCTION AFFECTED SOURCES

| For . . . | For the following emission limit . . . | You must demonstrate continuous compliance by . . . |
|---|---|---|
| 1. Sources complying with the monthly average compliance alternative without use of a control device in § 63.5987(a). | In Table 2 of this subpart ..... | Demonstrating that the monthly average HAP emissions for each monthly operating period do not exceed the emission limits in Table 2 of this subpart, determined according to the applicable procedures in § 63.5997(a), (b)(1) and (3). |



TABLE 12 TO SUBPART XXXX. —CONTINUOUS COMPLIANCE WITH THE EMISSION LIMITS FOR TIRE CORD PRODUCTION AFFECTED SOURCES—Continued

| For . . . | For the following emission limit . . . | You must demonstrate continuous compliance by . . . |
|---|---|---|
| 2. Sources complying with the monthly average compliance alternative using a control device in § 63.5987(b). | In Table 2 of this subpart ..... | Demonstrating that the monthly average HAP emissions for each monthly operating period do not exceed the emission limits in Table 1 of this subpart, option 2, determined according to the applicable procedures in § 63.5997(a), (b)(2) and (3), (c), and (d). |

You must maintain minimum data to show continuous compliance with the emission limitations for puncture sealant application affected sources according to the following table:

TABLE 13 TO SUBPART XXXX.—MINIMUM DATA FOR CONTINUOUS COMPLIANCE WITH THE EMISSION LIMITS FOR PUNCTURE SEALANT APPLICATION AFFECTED SOURCES

| For . . . | You must maintain . . . |
|---|---|
| 1. Each thermal oxidizer used to reduce HAP emissions so that they do not exceed the operating limits in Table 4 of this subpart. | Records of the secondary chamber firebox temperature for 100 percent of the hours during which the process was operated. |
| 2. Each carbon adsorber used to reduce HAP emissions so that they do not exceed the operating limits in Table 4 of this subpart. | Records of the total regeneration stream mass or volumetric flow for each regeneration cycle for 100 percent of the hours during which the process was operated, and a record of the carbon bed temperature after each regeneration, and within 15 minutes of completing any cooling cycle for 100 percent of the hours during which the process was operated. |
| 3. Other type of control device to which puncture sealant application spray booth HAP emissions are ducted so that they do not exceed the operating limits in Table 4 of this subpart. | Records of operating parameter values for each operating parameter that applies to you. |
| 4. Permanent total enclosure capture system used to capture HAP emissions so that they do not exceed the operating limits in Table 4 of this subpart. | Records of the face velocity across any natural draft openings (NDOs), the size of NDOs, the number of NDOs, and their proximity to HAP emission sources. |
| 5. Other capture system used to capture HAP emissions so that they do not exceed the operating limits in Table 4 of this subpart. | Records of operating parameter values for each operating parameter that applies to you. |

You must show continuous compliance with the emission limitations for puncture sealant application affected sources according to the following table:

TABLE 14 TO SUBPART XXXX.—CONTINUOUS COMPLIANCE WITH THE EMISSION LIMITS FOR PUNCTURE SEALANT APPLICATION AFFECTED SOURCES

| For . . . | You must demonstrate continuous compliance by . . . |
|---|---|
| 1. Each carbon adsorber used to comply with the emission limits in Table 3 of this subpart. | a. Monitoring and recording every 15 minutes the total regeneration stream mass OR volumetric flow, and the carbon bed temperature after each regeneration, and within 15 minutes of completing any cooling cycle, and<br>b. Maintaining the total regeneration stream mass OR the volumetric flow, and the carbon bed temperature after each regeneration, and within 15 minutes of completing any cooling cycle within the operating levels established during your performance test. |
| 2. Each thermal oxidizer used to comply with the emission limits in Table 3 of this subpart. | a. Continuously monitoring and recording the firebox temperature every 15 minutes, and<br>b. Maintaining the daily average firebox temperature within the operating level established during your performance test. |
| 3. Other "add-on" control or capture system hardware used to comply with the emission limits in Table 3 of this subpart. | Continuously monitoring and recording specified parameters identified through compliance testing and identified in the Notification of Compliance Status. |

You must submit a compliance report semiannually according to the requirements in § 63.6010(b), unless you meet the requirements for annual reporting in § 63.6010(c)(7). The report must also include the information in § 63.6010(c)(1) through (8). The report must include the following:

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TABLE 15 TO SUBPART XXXX.—REQUIREMENTS FOR REPORTS

| If . . . | Then you must submit a report or statement that: |
|---|---|
| 1. There are no deviations from any emission limitations that apply to you. | There were no deviations from the emission limitations during the reporting period. |
| 2. There were no periods during which the operating parameter monitoring systems were out-of-control as specified in § 63.8(c)(7). | There were no periods during the which the CPMS were out- of-control during the reporting period. |
| 3. There was a deviation from any emission limitation during the reporting period. | Contains the information in § 63.6010(c). |
| 4. There were periods during which the operating parameter monitoring systems were out-of-control, as specified in § 63.8(c)(7). | Contains the information in § 63.6010(e). |

You must use the information listed in the following table to determine which emission limitation in Table 1 of this subpart is applicable to you if own or operate a tire production affected source:

TABLE 16 TO SUBPART XXXX.—SELECTED HAZARDOUS AIR POLLUTANTS

| CAS No. | Selected hazardous air pollutants |
|---|---|
| 50000 | Formaldehyde. |
| 51796 | Ethyl carbamate (Urethane). |
| 53963 | 2-Acetylaminofluorene. |
| 56235 | Carbon tetrachloride. |
| 57147 | 1,1-Dimethyl hydrazine. |
| 57578 | beta-Propiolactone. |
| 58899 | Lindane (all isomers). |
| 59892 | N-Nitrosomorpholine. |
| 60117 | Dimethyl aminoazobenzene. |
| 62759 | N-Nitrosodimethylamine. |
| 64675 | Diethyl sulfate. |
| 67663 | Chloroform. |
| 67721 | Hexachloroethane. |
| 71432 | Benzene (including benzene from gasoline). |
| 75014 | Vinyl chloride. |
| 75070 | Acetaldehyde. |
| 75092 | Methylene chloride (Dichloromethane). |
| 75218 | Ethylene oxide. |
| 75558 | 1,2-Propylenimine (2-Methyl aziridine). |
| 75569 | Propylene oxide. |
| 77781 | Dimethyl sulfate. |
| 79061 | Acrylamide. |
| 79447 | Dimethyl carbamoyl chloride. |
| 79469 | 2-Nitropropane. |
| 88062 | 2,4,6-Trichlorophenol. |
| 91941 | 3,3-Dichlorobenzidene. |
| 92671 | 4-Aminobiphenyl. |
| 92875 | Benzidine. |
| 95534 | o-Toluidine. |
| 95807 | 2,4-Toluene diamine. |
| 96128 | 1,2-Dibromo-3-chloropropane. |
| 96457 | Ethylene thiourea. |
| 98077 | Benzotrichloride. |
| 101144 | 4,4-Methylene bis(2-chloroaniline). |
| 101779 | 4,4-Methylenedianiline. |
| 106467 | 1,4-Dichlorobenzene(p). |
| 106898 | Epichlorohydrin (1-Chloro-2,3-epoxypropane). |
| 106934 | Ethylene dibromide (Dibromoethane). |
| 106990 | 1,3-Butadiene. |
| 107062 | Ethylene dichloride (1,2-Dichloroethane). |
| 107131 | Acrylonitrile. |
| 107302 | Chloromethyl methyl ether. |
| 117817 | Bis(2-ethylhexyl)phthalate (DEHP). |
| 118741 | Hexachlorobenzene. |
| 119904 | 3,3-Dimethoxybenzidine. |
| 119937 | 3,3-Dimethyl benzidine. |
| 122667 | 1,2-Diphenylhydrazine. |
| 123911 | 1,4-Dioxane (1,4-Diethyleneoxide). |
| 127184 | Tetrachloroethylene (Perchloroethylene). |
| 140885 | Ethyl acrylate. |
| 302012 | Hydrazine. |
| 542756 | 1,3-Dichloropropene. |
| 542881 | Bis(chloromethyl)ether. |



TABLE 16 TO SUBPART XXXX.—SELECTED HAZARDOUS AIR POLLUTANTS—Continued

| CAS No. | Selected hazardous air pollutants |
|---|---|
| 680319 | Hexamethylphosphoramide. |
| 684935 | N-Nitroso-N-methylurea. |
| 1120714 | 1,3-Propane sultone. |
| 1332214 | Asbestos. |
| 1336363 | Polychlorinated biphenyls (Aroclors). |
| 1746016 | 2,3,7,8-Tetrachlorodibenzo-p-dioxin. |
| 8001352 | Toxaphene (chlorinated camphene). |
| | Arsenic Compounds. |
| | Chromium Compounds. |
| | Coke Oven Emissions. |

You must comply with the applicable General Provisions requirements according to the following table:

TABLE 17 TO SUBPART XXXX.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART XXXX

| Citation | Subject | Brief description of applicable sections | Applicable to Subpart XXXX? | |
|---|---|---|---|---|
| | | | Using a control device | Not using a control device |
| § 63.1 | Applicability | Initial applicability determination, applicability after standard established, permit requirements, extensions, notifications. | Yes | Yes. |
| § 63.2 | Definitions | Definitions for part 63 standards | Yes | Yes. |
| § 63.3 | Units and Abbreviations | Units and abbreviations for part 63 standards | Yes | Yes. |
| § 63.4 | Prohibited Activities | Prohibited activities, compliance date, circumvention, severability. | Yes | Yes. |
| § 63.5 | Construction/ Reconstruction | Applicability; applications; approvals | Yes | Yes. |
| § 63.6(a) | Applicability | GP apply unless compliance extension; GP apply to area sources that become major. | Yes | Yes. |
| § 63.6(b)(1)–(4) | Compliance Dates for New and Reconstructed Sources. | Standards apply at effective date; 3 years after effective date; upon startup; 10 years after construction or reconstruction commences for section 112(f). | Yes | Yes. |
| § 63.6(b)(5) | Notification | Must notify if commenced construction or reconstruction after proposal. | Yes | Yes. |
| § 63.6(b)(6) | [Reserved] | | Yes | Yes. |
| § 63.6(b)(7) | Compliance Dates for New and Reconstructed Area Sources that Become Major. | | No | No. |
| § 63.6(c)(1)–(2) | Compliance Dates for Existing Sources. | 1. Comply according to date in subpart, which must be no later than 3 years after effective date.<br>2. For section 112(f) standards, comply within 90 days of effective date unless compliance extension. | Yes<br>Yes | Yes.<br>Yes. |
| § 63.6(c)(3)–(4) | [Reserved] | | Yes | Yes. |
| § 63.6(c)(5) | Compliance Dates for Existing Area Sources that Become Major. | Area sources that become major must comply with major source standards by date indicated in subpart or by equivalent time period (for example, 3 years). | Yes | Yes. |
| § 63.6(d) | [Reserved] | | Yes | Yes. |
| § 63.6(e)(1)–(2) | Operation & Maintenance | 1. Operate to minimize emissions at all times<br>2. Correct malfunctions as soon as practicable<br>3. Operation and maintenance requirements independently enforceable; information Administrator will use to determine if operation and maintenance requirements were met. | Yes<br>Yes<br>Yes | Yes<br>Yes.<br>Yes. |

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TABLE 17 TO SUBPART XXXX.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART XXXX—Continued

| Citation | Subject | Brief description of applicable sections | Applicable to Subpart XXXX? | |
|---|---|---|---|---|
| | | | Using a control device | Not using a control device |
| §63.6(e)(3) | Startup, Shutdown, and Malfunction Plan (SSMP). | | No | No. |
| §63.6(f)(1) | Compliance Except During SSM | | No | No. |
| §63.6(f)(2)–(3) | Methods for Determining Compliance. | Compliance based on performance test, operation and maintenance plans, records, inspection. | Yes | Yes. |
| §63.6(g)(1)–(3) | Alternative Standard | Procedures for getting an alternative standard | Yes | Yes. |
| §63.6(h) | Opacity/Visible Emission (VE) Standards. | | No | No. |
| §63.6(i) | Compliance Extension | Procedures and criteria for Administrator to grant compliance extension. | Yes | Yes. |
| §63.6(j) | Presidential Compliance Exemption | President may exempt source category from requirement to comply with rule. | Yes | Yes. |
| §63.7(a)(1)–(2) | Performance Test Dates | | No | No. |
| §63.7(a)(3) | Section 114 Authority | Administrator may require a performance test under CAA section 114 at any time. | Yes | No. |
| §63.7(b)(1) | Notification of Performance Test | Must notify Administrator 60 days before the test | Yes | No. |
| §63.7(b)(2) | Notification of Rescheduling | If rescheduling a performance test is necessary, must notify Administrator 5 days before scheduled date of rescheduled date. | Yes | No. |
| §63.7(c) | Quality Assurance/Test Plan | Requirement to submit site-specific test plan 60 days before the test or on date Administrator agrees with:<br>1. Test plan approval procedures<br>2. Performance audit requirements<br>3. Internal and External quality assurance procedures for testing. | <br>Yes<br>Yes<br>Yes | <br>No.<br>No.<br>No. |
| §63.7(d) | Testing Facilities | Requirements for testing facilities | Yes | No. |
| §63.7(e)(1) | Conditions for Conducting Performance Tests. | 1. Performance tests must be conducted under representative conditions.<br>2. Cannot conduct performance tests during SSM<br>3. Not a violation to exceed standard during SSM | Yes<br>Yes<br>Yes | No.<br>No.<br>No. |
| §63.7(e)(2) | Conditions for Conducting Performance Tests. | Must conduct according to rule and EPA test methods unless Administrator approves alternative. | Yes | No. |
| §63.7(e)(3) | Test Run Duration | 1. Must have three test runs of at least 1 hour each<br>2. Compliance is based on arithmetic mean of three runs.<br>3. Conditions when data from an additional test run can be used. | Yes<br>Yes<br>Yes | No.<br>No.<br>No. |
| §63.7(f) | Alternative Test Method | Procedures by which Administrator can grant approval to use an alternative test method. | Yes | No. |
| §63.7(g) | Performance Test Data Analysis | 1. Must include raw data in performance test report<br>2. Must submit performance test data 60 days after end of test with the Notification of Compliance Status.<br>3. Keep data for 5 years | Yes<br>Yes<br>Yes | No.<br>No.<br>Yes. |
| §63.7(h) | Waiver of Tests | Procedures for Administrator to waive performance test. | Yes | No. |
| §63.8(a)(1) | Applicability of Monitoring Requirements. | Subject to all monitoring requirements in standard | Yes | Yes. |



TABLE 17 TO SUBPART XXXX.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART XXXX—Continued

| Citation | Subject | Brief description of applicable sections | Applicable to Subpart XXXX? | |
|---|---|---|---|---|
| | | | Using a control device | Not using a control device |
| §63.8(a)(2) | Performance Specifications | Performance Specifications in appendix B of part 60 apply. | Yes | No. |
| §63.8(a)(3) | [Reserved] | | Yes | Yes. |
| §63.8(a)(4) | Monitoring with Flares | | No | No. |
| §63.8(b)(1) | Monitoring | Must conduct monitoring according to standard unless Administrator approves alternative. | Yes | Yes. |
| §63.8(b)(2)–(3) | Multiple Effluents and Multiple Monitoring Systems. | 1. Specific requirements for installing monitoring systems.<br>2. Must install on each effluent before it is combined and before it is released to the atmosphere unless Administrator approves otherwise.<br>3. If more than one monitoring system on an emission point, must report all monitoring system results, unless one monitoring system is a backup. | Yes<br>Yes<br>Yes | Yes.<br>Yes.<br>Yes. |
| §63.8(c)(1) | Monitoring System Operation and Maintenance. | Maintain monitoring system in a manner consistent with good air pollution control practices. | Yes | No. |
| §63.8(c)(1)(i) | Routine and Predictable SSM | | No | No. |
| §63.8(c)(1)(ii) | SSM not in SSMP | | No | No. |
| §63.8(c)(1)(iii) | Compliance with Operation and Maintenance Requirements. | 1. How Administrator determines if source complying with operation and maintenance requirements.<br>2. Review of source operation and maintenance procedures, records, manufacturer's instructions, recommendations, and inspection of monitoring system. | Yes<br>Yes | Yes.<br>Yes. |
| §63.8(c)(2)–(3) | Monitoring System Installation | 1. Must install to get representative emission and parameter measurements.<br>2. Must verify operational status before or at performance test. | Yes<br>Yes | No.<br>No. |
| §63.8(c)(4) | Continuous Monitoring System (CMS) Requirements. | | No | No. |
| §63.8(c)(5) | Continuous Opacity Monitoring Systems (COMS) Minimum Procedures. | | No | No. |
| §63.8(c)(6) | CMS Requirements | | No | No. |
| §63.8(c)(7)–(8) | CMS Requirements | Out-of-control periods, including reporting:.<br>1. If you are a puncture sealant application affected source.<br>2. If you are a tire production or tire cord production affected source. | <br>Yes<br>No | <br>No.<br>No. |
| §63.8(d) | CMS Quality Control | | No | No. |
| §63.8(e) | CMS Performance Evaluation | | No | No. |
| §63.8(f)(1)–(5) | Alternative Monitoring Method | Procedures for Administrator to approve alternative monitoring. | Yes | Yes. |
| §63.8(f)(6) | Alternative to Relative Accuracy Test. | | No | No. |
| §63.8(g) | Data Reduction | | No | No |
| §63.9(a) | Notification Requirements | Applicability and state delegation | Yes | Yes. |
| §63.9(b)(1)–(5) | Initial Notifications | 1. Submit notification 120 days after effective date | Yes | Yes. |

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TABLE 17 TO SUBPART XXXX.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART XXXX—Continued

| Citation | Subject | Brief description of applicable sections | Applicable to Subpart XXXX? | |
|---|---|---|---|---|
| | | | Using a control device | Not using a control device |
| | | 2. Notification of intent to construct/reconstruct, notification of commencement of construct/reconstruct, notification of startup. | Yes | Yes. |
| | | 3. Contents of each | Yes | Yes. |
| § 63.9(c) | Request for Compliance Extension | Can request if cannot comply by date or if installed best available control technology or lowest achievable emission rate. | Yes | Yes. |
| § 63.9(d) | Notification of Special Compliance Requirements for New Source. | For sources that commence construction between proposal and promulgation and want for to comply 3 years after effective date. | Yes | Yes. |
| § 63.9(e) | Notification of Performance Test | Notify Administrator 60 days prior | Yes | No. |
| § 63.9(f) | Notification of VE/Opacity Test | | No | No. |
| § 63.9(g) | Additional Notifications When Using CMS. | | No | No. |
| § 63.9(h) | Notification of Compliance Status. | 1. Contents | Yes | Yes. |
| | | 2. Due 60 days after Status end of performance test or other compliance demonstration, except for opacity/VE, which are due 30 days after. | Yes | Yes. |
| | | 3. When to submit to Federal vs. Sate authority. | Yes | Yes. |
| § 63.9(i) | Adjustment of Submittal Deadlines | Procedures for Administrator to approve change in when notifications must be submitted. | Yes | Yes. |
| § 63.9(j) | Change in Previous Information | Must submit within 15 days after the change | Yes | Yes. |
| § 63.10(a) | Recordkeeping/Reporting | 1. Applies to all, unless compliance extension | Yes | Yes. |
| | | 2. When to submit to Federal vs. State authority | Yes | Yes |
| | | 3. Procedures for owners of more than 1 source | Yes | Yes |
| § 63.10(b)(1) | Recordkeeping/Reporting | 1. General Requirements | Yes | Yes |
| | | 2. Keep all records readily available | Yes | Yes |
| | | 3. Keep for 5 years | Yes | Yes |
| § 63.10(b)(2)(i)–(iv) | Records related to Startup, Shutdown, and Malfunction. | | No | No. |
| § 63.10(b)(2)(vi) and (x)–(xi). | CMS Records | 1. Malfunctions, inoperative, out-of-control: | | |
| | | a. If you are a puncture sealant application affected source. | Yes | No. |
| | | b. If you are a tire production or tire cord production affected source. | No | No. |
| | | 2. Calibration checks:. | | |
| | | a. If you are a puncture sealant application affected source. | Yes | No. |
| | | b. If you are a tire production or tire cord production affected source. | No | No. |
| | | 3. Adjustments, maintenance:. | | |
| | | a. If you are a puncture sealant application affected source. | Yes | No. |
| | | b. If you are a tire production or tire cord production affected source. | No | No. |
| § 63.10(b)(2)(vii)–(ix) | Records | 1. Measurements to demonstrate compliance with emission limitations. | Yes | Yes. |
| | | 2. Performance test, performance evaluation, and visible emission observation results. | Yes | Yes. |
| | | 3. Measurements to determine conditions of performance tests and performance evaluations. | Yes | Yes. |
| § 63.10(b)(2)(xii) | Records | Records when under waiver | Yes | Yes. |



TABLE 17 TO SUBPART XXXX.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART XXXX—Continued

| Citation | Subject | Brief description of applicable sections | Applicable to Subpart XXXX? | |
|---|---|---|---|---|
| | | | Using a control device | Not using a control device |
| § 63.10(b)(3) | Records | Applicability Determinations | Yes | Yes. |
| § 63.10(c) | Records | | No | No. |
| § 63.10(d)(1) | General Reporting Requirements | Requirement to report | Yes | Yes. |
| § 63.10(d)(2) | Report of Performance Test Results. | When to submit to Federal or State authority | Yes | No. |
| § 63.10(d)(3) | Reporting Opacity or VE Observations. | | No | No. |
| § 63.10(d)(4) | Progress Reports | Must submit progress reports on schedule if under compliance extension. | Yes | Yes. |
| § 63.10(d)(5) | Startup, Shutdown, and Malfunction Reports. | | No | No. |
| § 63.10(e) | Additional CMS Reports | | No | No. |
| § 63.10(f) | Waiver for Recordkeeping/Reporting. | Procedures for Administrator to waive | Yes | Yes. |
| § 63.11 | Flares | | No | No. |
| § 63.12 | Delegation | State authority to enforce standards | Yes | Yes. |
| § 63.13 | Addresses | Addresses where reports, notifications, and requests are sent. | Yes | Yes. |
| § 63.14 | Incorporation by Reference | Test methods incorporated by reference | Yes | Yes. |
| § 63.15 | Availability of Information | Public and confidential information | Yes | Yes. |

[FR Doc. 00–26224 Filed 10–17–00; 8:45 am]
BILLING CODE 6560–50–P

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Federal Register

Wednesday,
October 18, 2000

Part III

# Department of the Interior

**Fish and Wildlife Service**

**50 CFR Parts 25, 26 and 29**
**Final Compatibility Regulations Pursuant to the National Wildlife Refuge System Improvement Act of 1997; Final Rule**
**Final Compatibility Policy Pursuant to the National Wildlife Refuge System Improvement Act of 1997; Notice**

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR parts 25, 26 and 29

[1018–AE98]

# Final Compatibility Regulations Pursuant to the National Wildlife Refuge System Improvement Act of 1997

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** This rule contains the final changes to Parts 25, 26 and 29 of Title 50 of the Code of Federal Regulations (CFR) that describe the process for determining whether or not a use of a national wildlife refuge (refuge) is a compatible use. These changes are necessary to implement the compatibility provisions of the National Wildlife Refuge System Improvement Act of 1997 (NWRSIA–1997) that amends the National Wildlife Refuge System Administration Act of 1966 (NWRSAA–1966). Also, published concurrently in the notice section of this **Federal Register** is our final compatibility policy describing in more detail the process for determining whether or not a use of a refuge is a compatible use.

**DATES:** This rule is effective November 17, 2000.

**FOR FURTHER INFORMATION CONTACT:** To obtain copies of this final rule or for additional information, contact: J. Kenneth Edwards, Refuge Program Specialist, Division of Refuges, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 670, Arlington, Virginia 22203 (Telephone 703/358–1744, Fax 703/358–2248). You may also download a copy from: http://www.fws.gov/r9pdm/home/newfinalrule.html.

**SUPPLEMENTARY INFORMATION:** We published the Proposed Compatibility Regulations Pursuant to the National Wildlife Refuge System Improvement Act of 1997 in the **Federal Register** on September 9, 1999 (64 FR 49056). In addition, we published the Draft Compatibility Policy Pursuant to the National Wildlife Refuge System Improvement Act of 1997 in the **Federal Register** on September 9, 1999 (64 FR 49067). We invited the public to provide comments on the proposed rule and draft policy by November 8, 1999. During this 60-day comment period, we received several requests for an extension to the comment period. In order to ensure that the public had an adequate opportunity to review and comment on the proposed rule and draft policy, we extended the comment period until December 8, 1999 (64 FR 62163 and 62217 published November 16, 1999). Therefore, the proposed rule and draft policy were available for public review and comment for 90 days. We revised the proposed rule and draft policy based on comments we received.

## Background

The NWRSIA–1997 amends and builds upon the NWRSAA–1966 providing an "Organic Act" for the National Wildlife Refuge System. The NWRSIA–1997 clearly establishes that wildlife conservation is the singular National Wildlife Refuge System mission, provides guidance to the Secretary of the Interior (Secretary) for management of the National Wildlife Refuge System, provides a mechanism for refuge planning, and gives refuge managers uniform direction and procedures for making decisions regarding wildlife conservation and uses of the National Wildlife Refuge System.

The NWRSAA–1966 required the Secretary, before permitting uses, to ensure that those uses are compatible with the purposes of the refuge. We built this legal requirement into our policy and regulations. Since 1966, the compatibility standard for refuge uses has helped us manage refuge lands sensibly and in keeping with the general goal of putting wildlife conservation first. The NWRSIA–1997 maintains the compatibility standard as provided in the NWRSAA–1966, provides significantly more detail regarding the compatibility standard and compatibility determination process, and requires that we promulgate the compatibility process in regulations. These regulations will help ensure that compatibility becomes a more effective conservation standard, is more consistently applied across the entire National Wildlife Refuge System, and is more understandable and open to involvement by the public.

The House Report accompanying the NWRSIA–1997 states "Currently, the law does not include a mission or a definition of a "compatible use" for the Refuge System. Refuge managers are responsible for determining, on a case-by-case basis, whether activities on refuges are compatible. Management of the Refuge System has been the focus of numerous studies in the last two decades, including two General Accounting Office reports, two reports of advisory boards to the Interior Department, a report prepared by the USFWS, and several hearings by the former Committee on Merchant Marine and Fisheries, which then had jurisdiction over the Refuge System. These reports and hearings highlighted that refuges have not always been managed as a national system because of the lack of an overall mission for the System. These reports concluded that the lack of an overall mission and management procedures had allowed numerous incompatible uses to be tolerated on wildlife refuges." The House Report further states "H.R. 1420 establishes that the conservation of fish, wildlife, plants and their habitats is the mission of the National Wildlife Refuge System and sets forth the policy and procedures through which the System and individual refuges are to be managed in order to fulfill that mission for the long-term benefit of the American public. H.R. 1420 requires that public use of a refuge may be allowed only where the use is compatible with the mission of System and purpose of the individual refuge, and sets forth a standard by which the Secretary shall determine whether such uses are compatible." Lastly, the House Report states "The Committee expects that this legislation will diminish the likelihood of future litigation by providing a statutory compatibility standard, a process for making those determinations, a clear conservation mission for the System, and a planning process that will ensure greater public involvement in management decisions on refuges."

The NWRSIA–1997 includes a number of provisions that specifically address compatibility. The following is a summary of those provisions and how they apply to us.

We will not initiate or permit a new use of a national wildlife refuge or expand, renew, or extend an existing use of a national wildlife refuge, unless we have determined that the use is a compatible use and that the use is not inconsistent with public safety. We may make compatibility determinations for a national wildlife refuge concurrently with the development of a Comprehensive Conservation Plan.

On lands added to the National Wildlife Refuge System after March 25, 1996, we will identify, prior to acquisition, withdrawal, transfer, reclassification, or donation of any such lands, existing compatible wildlife-dependent recreational public uses (if any) that we will permit to continue on an interim basis pending completion of a Comprehensive Conservation Plan for the national wildlife refuge.

We may authorize wildlife-dependent recreational uses on a national wildlife refuge when we determine they are compatible uses and are not inconsistent with public safety. We are not required to make any other determinations or findings to comply with the NWRSAA–1966 or the Refuge Recreation Act of 1962 (RRA–1962) for wildlife-dependent recreational uses to occur except for consideration of consistency with State laws and regulations.

Compatibility determinations in existence on the date of enactment of the NWRSIA–1997, October 9, 1997, will remain in effect until and unless modified. In addition, we will make compatibility determinations prepared during the period between enactment of the NWRSIA–1997 and the effective date of these compatibility regulations under the existing compatibility process. After the effective date of these regulations, we will make compatibility determinations and re-evaluations of compatibility determinations under the compatibility process in these regulations.

We will issue final regulations establishing the process for determining whether or not a use of a national wildlife refuge is a compatible use. These regulations will:

1. Identify the refuge official responsible for making compatibility determinations;
2. Require an estimate of the time-frame, location, manner, and purpose of each use;
3. Require the identification of the effects of each use on national wildlife refuge resources and purposes of each national wildlife refuge;
4. Require that compatibility determinations be made in writing;
5. Provide for the expedited consideration of uses that will likely have no detrimental effect on the fulfillment of the affected national wildlife refuge's purposes or the National Wildlife Refuge System Mission;
6. Provide for the elimination or modification of any use as expeditiously as practicable after we make a determination that the use is not a compatible use;
7. Require, after an opportunity for public comment, reevaluation of each existing use, other than wildlife-dependent recreational uses, if conditions under which the use is permitted change significantly or if there is significant new information regarding the effects of the use, but not less frequently than once every 10 years, to ensure that the use remains a compatible use. In the case of any use authorized for a period longer than 10 years (such as an electric utility right-of-way), the reevaluation will examine compliance with the terms and conditions of the authorization, not examine the authorization itself;
8. Require, after an opportunity for public comment, reevaluation of each existing wildlife-dependent recreational use when conditions under which the use is permitted change significantly or if there is significant new information regarding the effects of the use, but not less frequently than in conjunction with each preparation or revision of a comprehensive conservation plan or at least every 15 years, whichever is earlier; and
9. Provide an opportunity for public review and comment on each evaluation of a use, unless we have already provided an opportunity during the development or revision of a Comprehensive Conservation Plan for the national wildlife refuge or have already provided an opportunity during routine, periodic determinations of compatibility for wildlife-dependent recreational uses.

## Purpose of This Final Rule

The purpose of this final rule is to establish in regulation the process for determining compatibility of proposed refuge uses and procedures for documentation and periodic review of existing uses, and to ensure that we administer proposed and existing uses according to the compatibility provisions of the NWRSIA–1997. Published concurrently in this **Federal Register** is our final compatibility policy, Part 603 Chapter 2 of the Fish and Wildlife Service Manual, which reflects this final rule and provides additional detail for each step in the compatibility determination process.

## Summary of Comments Received

We received 506 comment letters by mail, fax or email on our proposed rule and draft policy. They were from Federal, State and local governments, Members of U.S. Congress, Alaska Native Village Corporations, non-government organizations, research institutions and individuals.

Some comments addressed specific elements in the proposed rule and specific elements in the draft policy, while many comments addressed an issue that was common to both the proposed rule and draft policy. Since the comments on the proposed rule and draft policy were so intertwined and oftentimes a comment on an issue was directly related to both the proposed rule and draft policy, we chose to address the comments collectively by issue rather than by proposed rule and draft policy separately. Since we analyzed the comments collectively on the proposed rule and draft policy, we are including a full summary of the comments and our responses in the **SUPPLEMENTARY INFORMATION** section of this final rule only and not in the **SUPPLEMENTARY INFORMATION** section of the notice of our final policy.

We considered all of the information and recommendations for improvement included in the comments and made changes to the proposed rule and draft policy where appropriate. The number of issues addressed in each comment letter varied widely, ranging from one issue to several issues. We identified 28 groups of issues. Following are our responses to those groups of issues.

*Issue 1: Jurisdiction*

We received one comment suggesting that compatibility applies to Coordination Areas and National Fish Hatcheries under the Refuge Recreation Act of 1962 (RRA–1962). The NWRSIA–1997 states "* * * the Secretary shall not initiate or permit a new use of a refuge or expand, renew, or extend an existing use of a refuge, unless the Secretary has determined that the use is a compatible use * * *" The House Report accompanying the NWRSIA–1997 states "Coordination Areas have been well managed by the States under State laws and regulations, in many cases for decades. However, they are part of the Refuge System. They are specifically excluded from the definition of the term "refuge" in new Section 5(11) so as not to require every State management decision to be approved by the USFWS through the processes established by H.R. 1420." The NWRSIA–1997 and its legislative history make it clear that although Coordination Areas are in the National Wildlife Refuge System, they are not subject to compatibility requirements as are other areas. National Fish Hatcheries are dealt with in 50 CFR Chapter 70.

One commenter requested that we exempt only military overflights above a refuge from compatibility. The NWRSIA–1997 specifically exempts "overflights above a refuge" from determinations of compatibility. The law does not differentiate between military and non-military overflights. This exemption from compatibility applies to all overflights. The Service does not have the authority to change this exemption provided in law.

One commenter suggested adding a statement about communication between the Refuge Manager and personnel at local airports, pilot training schools, and private pilot groups regarding the Federal Aviation Administration's requested minimum altitudes over refuges as the most effective way to protect refuge resources

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when the Refuge Manager deals with non-military overflights. We agree that this additional information may help refuge managers deal with non-military overflights and we incorporated it into the policy.

We received comments concerning the effects this rule and policy might have on water rights. A commenter pointed out that the NWRSIA–1997 did not affect any existing water right nor did it create any new reserved water right. The NWRSIA–1997 addressed a number of issues concerning the National Wildlife Refuge System; however, these regulations and policy implement only those sections of the NWRSIA–1997 dealing with compatibility and they do not affect any existing water right nor do they create any new reserved water right.

*Issue 2: Closed Until Open*

Several organizations wrote in support of the proposed language in 50 CFR 25.21(a) which states clearly that except as otherwise provided, "all areas acquired or withdrawn for inclusion in the National Wildlife Refuge System are closed to public access until and unless we open the area for a use or uses in accordance with the NWRSAA–1966, the RRA–1962 and this subchapter C." This is not new and has been the legal standard for uses within the National Wildlife Refuge System for many years. Several other commenters pointed out, however, that there is a somewhat different standard for Alaska refuges. The compatibility standard is applicable to all refuges no matter where they are located. We are not changing the status of refuge uses in Alaska. See 50 CFR 36 for regulations governing Alaska refuges.

A few commenters also stated that all areas included in the National Wildlife Refuge System should be open for public wildlife-dependent recreational uses. We agree that we should offer these opportunities following the guidelines established by the NWRSIA–1997, but all such uses are still subject to a compatibility review, and we must find them to be compatible before allowing them.

*Issue 3: Definitions*

We received many comment letters that addressed 12 of the 23 definitions we provided in the proposed rule and draft policy. Several commenters spoke generally about the definitions section and were either supportive of or opposed to our definitions. One commenter felt that the proposed definition changes should not take place at all, and that the definitions provided in the NWRSIA–1997 are both sufficient and better than what we provide in the regulations and policy. One commenter wanted to make sure that the definitions in the regulations follow the intent of the NWRSIA–1997. We believe that the definitions we provide in these regulations and policy are consistent with the NWRSAA–1966, as amended by the NWRSIA–1997. In addition, we believe that these definitions are necessary to consistently apply the compatibility regulations and policy throughout the National Wildlife Refuge System. Lastly, we added one additional definition, Regional Chief, that was not included in the proposed rule and draft policy. Following are discussions of the comments we received on specific definitions.

Compatibility Determination

One commenter believes that the Refuge Manager should not have autonomy in making compatibility determinations. We address this concern in Issue 4: Decision Making Authority and Appeal Process.

Compatible Use

We received several comments on the definition of compatible use. The major concern centered around our proposal to delegate the decision making authority for compatibility determinations from the Director through the Regional Director to the Refuge Manager. We address this concern in Issue 4: Decision Making Authority and Appeal Process. We received comments that addressed the inclusion of "major" in the definition of compatible use. Although some expressed support, others requested we delete the word, asserting that the NWRSIA–1997 does not use this qualifier in the definition. They pointed out that it defines a compatible use as one which "does not materially interfere with or detract from the fulfillment of * * * the purposes of the refuge." We agree and have deleted the word "major" to conform to the provisions of the NWRSIA–1997. This will not result in changes to current practice, as we have not made such a distinction previously with regard to compatibility determinations.

Comprehensive Conservation Plan

One commenter recommended adding "maintain and, where necessary, restore the biological integrity, diversity, and environmental health of the Refuge System" to the definition. We incorporated this recommended change with a slight modification. We are using the term "ecological integrity" in lieu of the phrase "biological integrity, diversity, and environmental health."

Another commenter stated that "Preparation of the CCP should be carefully coordinated with the state fish and wildlife agency. To the maximum extent possible, issues dealing with hunting, trapping and fishing regulations should be consistent with state rules and regulations. In addition, issues dealing with management of fish and wildlife habitat should be consistent with state fish and wildlife conservation plans and policies." This recommended change is beyond the scope of these regulations and policy but this issue was addressed when we recently published our draft (64 FR 44368 published August 13, 1999) and final (65 FR 33892 published May 25, 2000) refuge planning policy in the **Federal Register**. We stated in our final refuge planning policy that "We will provide representatives from appropriate State and Tribal conservation agencies * * * the opportunity to serve on planning teams." We will provide a formal written request inviting States, Tribes, and other appropriate agencies to join the refuge planning effort at the beginning of the process. Adequate coordination with States, Tribes, other agencies, and the general public includes an invitation to participate, actual participation in our processes, regular and good communication, use of appropriate tools and materials to aid coordination, a sense of team work from all parties, and resulting successful partnerships beyond the planning phase. Our final refuge planning policy provides for all the processes and procedures for us to meet our responsibility for agency coordination. We encourage State and other agency involvement throughout the planning and management processes, including implementation and review. Furthermore, by being a member of the refuge planning team, State agencies will have a direct opportunity to assure that we accurately reflect or respond to their comments in the CCP document or in our analysis. While we recognize the need for input and feedback from others, we recognize the possibility of debate or alternative management direction, if guided solely by other influences. For this reason, while we encourage full input from the States and other entities in our plans, we retain management and decision-making authority for all units of the National Wildlife Refuge System, including approval of CCPs.

Conservation, and Management

Two commenters supported the current definition. One commenter recommended referring to the NWRSIA–1997 rather than the NWRSAA–1966. The commenter feels that this definition flows from the NWRSIA–1997 rather than the NWRSAA–1966. This definition quotes the definition provided by the NWRSIA–1997 except that it clarifies that "* * * this Act, * * *", referred to in the definition in the law, is the NWRSAA–1966. One commenter recommended adding, "including, but not limited to fishing, hunting and trapping" after the term "regulated taking." The definition includes "regulated taking" as one of several examples of methods and procedures associated with modern scientific resource programs. The examples provided in the definition are protection, research, census, law enforcement, habitat management, propagation, live trapping and transplantation, and regulated taking. These are broad categories of examples and they could all be further expanded upon similar to the recommendation for "regulated taking." However, we believe these examples are clear and it is not necessary to further expand upon any of these examples. One commenter recommends adding restoration to the definition. The definition includes the term "restore and enhance" and therefore we believe this recommendation is already incorporated. For these reasons we believe this definition is appropriate as written.



National Wildlife Refuge, and Refuge

Three commenters, the International Association of Fish and Wildlife Agencies and the States of Colorado and West Virginia, stated that the definition should be consistent with the NWRSIA–1997, and its legislative history, and it should not extend our authority beyond our property interest. Whereas The Friends of Oxbow National Wildlife Refuge said "Some areas, particularly former military bases, may be designed for transfer to the refuge system. The Service has a compelling interest in land and water use within such areas. Because this interest may be subtle or have longer-term implications, individuals or government agencies may overlook it." We understand and appreciate the rationale behind this comment, but as we understand the comment, this interpretation of interest refers to a likely future interest of the Service. The word "interest" in the definition refers to the extent of that interest, right, or privilege that we possess, not what we may eventually possess. We believe this definition is appropriate as is and consistent with the law.

National Wildlife Refuge System, and System

In the process of addressing comments we decided that we need to clarify the definition of the National Wildlife Refuge System. Essentially, the Service has historically interpreted the NWRSAA–1966 as including all areas administered by us for the protection and conservation of fish and wildlife. (See 50 CFR 25.12(a) National Wildlife Refuge System; 1999.) Because current regulations do not make it clear how those "areas" are identified, we are specifying that for those areas not specifically listed in the law or this regulation but that are nevertheless managed by the Service, the Director, only, will determine (in writing) if they are areas administered "for the protection and conservation of fish and wildlife." If so, such areas are included in the System. We are also making clear that if we are directed to manage an area for the protection and conservation of fish and wildlife by a Presidential or Secretarial order, it will be managed as part of the System. Finally, the House Report accompanying H.R. 1420, in discussing the fact that "coordination areas" managed by States are not refuges for compatibility determination purposes, they are still part of the System and we have, accordingly, added it to the specific list.

National Wildlife Refuge System Mission, and System Mission

We received comments from The Wildlife Management Institute, The Wildlife Society and The Conservation Force on the definition of National Wildlife Refuge System mission, and System mission. These commenters agreed with the definition that we took directly from the NWRSIA–1997. However, they are concerned that we refer to the National Wildlife Refuge System mission as "wildlife conservation is the singular" National Wildlife Refuge System mission. On occasion, although not in these **Federal Register** documents, we also use the term "wildlife first" to refer to the National Wildlife Refuge System mission. We agree that the National Wildlife Refuge System mission as stated in the NWRSIA–1997 is the National Wildlife Refuge System mission in its entirety, but we also believe our use of the terms "wildlife conservation" and "wildlife first" when referring to the National Wildlife Refuge System mission are consistent with the NWRSIA–1997 and supported by the House Report. The House Report states "* * * the fundamental mission of our Refuge System is wildlife conservation: wildlife and wildlife conservation must come first." We did not include the term "wildlife conservation is the singular" in either the regulations or policy, only in the preamble of the regulations and policy.

Purpose(s) of the Refuge

One commenter recommended deleting the term "or derived from" from the definition. The commenter is concerned that this language could lead to the creation of purposes not specified in the documents listed or not clearly intended by the documents listed. Two commenters recommended adding "major" before the word "purposes" in the title of this definition. One commenter recommended that we define "primary purposes" separately. The NWRSIA–1997 provides the definition of "purpose(s) of the refuge" and one adjustment we made was to use "national wildlife refuge" in place of "refuge." The term "or derived from" is in the law, and we believe it should stay in this definition. The NWRSIA–1997 does not use the word "major" in this definition, it is not an operative term in our regulations and policy, and we believe it should not be added. Lastly, we added a statement to this definition that states for refuges that encompass Congressionally designated wilderness, the purposes of the Wilderness Act are additional purposes of the refuge. We are taking this opportunity to add to our regulations and policy the Wilderness Act requirement that the purposes of that Act are "within and supplemental to the purposes" of refuges.

Refuge Management Activity

We received several comments on the definition of refuge management activity. One commenter recommended against including the definition in regulations. This commenter feels that a legislative power has been assumed, and that is reserved for Congress. We disagree with the comment regarding our authority and point out that we are authorized to adopt regulations necessary to carry out (implement) the NWRSAA–1966. Another commenter refers to the fact that refuge management activity does not include references to actions to facilitate priority public uses. This commenter feels that the term is too limiting, and could prevent hunting and fishing accommodations. We believe that actions to facilitate priority public uses are more appropriately included in the definition of refuge use rather than refuge management activity and therefore we did not include this change in the definition. A third commenter wishes that the definition would include various monitoring and

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studies. We provide several examples of a refuge management activity, like monitoring and studies, in the policy at 2.10 A and therefore we did not include this change in the definition. One commenter recommends the definition specifically include State management activities. We address and incorporate this recommendation in the policy at 2.10 A and therefore we did not include this change in the definition. See Issue 6: When is a compatibility determination required. Three commenters support the definition and agree that there is a difference between a refuge management activity and a refuge use. By defining these terms we are delineating for our refuge managers and the public what is or is not a use under the law.

Refuge Management Economic Activity

We received several comments on the definition of refuge management economic activity. Three commenters recommended eliminating trapping as an example of a refuge management economic activity. One commenter recommended the definition not include guide, outfitter, and trapping activities. We believe it is appropriate to include trapping as an example of a refuge management economic activity because it is an activity that results in generation of a commodity which is or can be sold. One of these three commenters stated that trapping should not be included within this definition because it is a priority public use as part of hunting. The NWRSIA–1997 specifically lists six types of uses as wildlife-dependent recreational uses. The law and House Report discuss these six types of uses in numerous locations and they also describe them as the six priority general public uses of the National Wildlife Refuge System. Trapping is not one of the six priority public uses and is not a part of hunting. Three commenters recommended that the definition be strengthened by including the exclusion of oil and gas leasing, exploration, or production. We believe this recommendation goes beyond the scope of these regulations and policy. One commenter questions our authority to develop a definition in regulations that is not provided by Congress. As we stated above in the response regarding refuge management activity, we are authorized to adopt regulations necessary to carry out (implement) the NWRSAA–1966. Another commenter questioned why we distinguish between refuge management economic activity and refuge management activity. Two commenters feel that, within the definition, the actions that meet refuge management purposes should not be included in this category and the generation of income does not preclude these activities from contributing to refuge purposes. For the reasons discussed in the preamble of the proposed rule, we believe it is important to specifically define refuge management economic activity and we will require compatibility determinations for all refuge management economic activities. By doing so, we are not saying that generation of income precludes them from contributing to management, we are saying we will do compatibility determinations on them. We believe this definition is appropriate as is and necessary to help describe when a compatibility determination is required.

Refuge Use, and Use of a Refuge

A few commenters recommended we clarify that State management activities on refuges are not refuge uses and, therefore, not subject to compatibility. We address this concern in Issue 16: State involvement.

Sound Professional Judgment

Two commenters were against the definition including a reference to the National Wildlife Refuge System Administration Act of 1966. That aspect of the definition currently states "* * * and adherence to the requirements of the National Wildlife Refuge System Administration Act of 1966 * * *" The argument for removing this statement from the proposed definition is that issues of compliance must not be confused with the exercise of mostly biological judgment. One commenter not only agrees with the definition adhering to the National Wildlife Refuge System Administration Act of 1966, but recommends adding "including the act's directive to maintain biological integrity, diversity, and environmental health" to the definition. Another commenter recommends adding to the definition "including consideration of biological integrity and diversity, as interpreted by the Agency policy, whether or not the proposed use is an appropriate use under agency policy." The law's definition of sound professional judgment specifically includes the term "and adherence to the requirements of this Act." The Act's mandate to "ensure that the biological integrity, diversity, and environmental health of the System are maintained * * *" is a significant legal requirement and is foundational for all refuge management decisions. It is not limited to compatibility determinations for refuge uses. We did not add this statement to this definition but we recognized its value with regard to analyzing whether a use is compatible with the mission of the System. Because of that we added this concept in the discussion of "materially interfere with or detract from" in section 2.11(B) of our policy and "anticipated impacts of the use" in section 2.12(A)(8) of our policy. We are now using the term "ecological integrity" in lieu of the phrase "biological integrity, diversity, and environmental health."

Wildlife-Dependent Recreational Use, and Wildlife-Dependent Recreation

One commenter recommended we add "trapping" to this definition. The NWRSIA–1997 provides this definition and it does not include "trapping." The law specifically lists six types of uses as wildlife-dependent recreational uses. The law and House Report discuss these six types of uses in numerous locations and they also describe them as the six priority general public uses of the National Wildlife Refuge System. Trapping is different from these priority public uses and the NWRSIA–1997 does not include it in this list of six. The Service does not have the authority to add trapping to this definition. We believe the definition is appropriate as is.

*Issue 4: Decision Making Authority and Appeal Process*

We received a number of comments both in support of and opposition to the Refuge Manager's authority to make compatibility determinations. Associated with this issue, we also received a number of comments requesting an appeal process for compatibility determinations. These comments include 222 individual comments with a common shared theme "please modify the draft to ensure that the public has an opportunity to appeal decisions that permit potentially harmful activities to occur on refuges."

The NWRSIA–1997 required, among other things, that we designate the refuge official responsible for making compatibility determinations. We have designated the Refuge Manager to be that person, because the Refuge Manager is in the best position to make an informed decision based on the site-specific nature of compatibility. We believe the House Report supports our decision to delegate the compatibility determination authority to the Refuge Manager. The House Report frequently refers to the Refuge Manager when discussing various elements of compatibility. As an example, the House Report states "In the exercise of sound professional judgment, the Refuge Manager considers * * *" We believe that designating the Refuge Manager as the refuge official responsible for making compatibility determinations is consistent with the intent of the law.

We also recognize the need for National Wildlife Refuge System-wide consistency when considering compatibility. As a number of commenters pointed out, there is a real need for refuge managers to make decisions based on a clear and full understanding of national resource management programs and policies, and the role the individual refuge plays in the larger universe of wildlife conservation. We agree that this is a real concern. To accommodate this concern, in the rule and policy we built in the requirement for refuge managers to receive concurrence from their Regional Chief on all compatibility determinations. We will follow the same compatibility process throughout the National Wildlife Refuge System; however, we will base each compatibility determination on a refuge-specific (refuge purposes) analysis in addition to a National Wildlife Refuge System (System mission) analysis. We have decided to change the required regional office consultation to a required regional office concurrence on all compatibility determinations. We believe this change addresses many of the concerns provided in a number of comments and will help ensure that we look at both large-scale (System mission) and local-scale (refuge purposes) issues when preparing compatibility determinations.

A number of commenters requested that we provide a procedure for administratively appealing compatibility determinations. Our proposed rule and draft policy did not include any changes to our existing appeal procedures. The draft policy simply referenced the locations of the procedures for appealing a permit denial. The NWRSIA–1997 and the House Report were silent on this particular issue. However, on a related issue, the NWRSIA–1997 requires that we provide an opportunity for public review and comment for all compatibility determinations. Although this is not an appeal process, it results in significantly more opportunity for the public to be involved in determinations of compatibility. This is a significant change from our existing compatibility policy and regulations, which do not require an opportunity for public review and comment. When making a compatibility determination, refuge managers will consider all information provided during the public review and comment period. In addition, anyone, at any time, may present relevant information on an existing, proposed, or denied use to the Refuge Manager, and this information may cause us to re-evaluate a use for compatibility. We recognize the fact that frequently we will have both support of and opposition to our decisions on compatibility. However, the law squarely placed the authority and responsibility for making compatibility determinations with the Service. We are providing no administrative mechanism to appeal a compatibility determination except for uses of ANCSA 22(g) lands as discussed in Issue 5: Alaska.

*Issue 5: Alaska*

We received over 240 letters that addressed issues affecting the proposed rule or draft policy as they relate to Alaska refuges. These included 17 letters from: the State of Alaska; eight Native corporations; five national and one regional conservation organization; the Alaska Professional Hunter's Association; an environmental consulting business; and 225 letters from individuals.

Comments from the 17 letters received from organizations included 159 general comments, not specific to Alaska. We addressed these elsewhere in this document. The 17 letters also had 74 comments specific to the issue of how the compatibility policy and regulations affect Native lands conveyed from refuges under the provisions of the Alaska Native Claims Settlement Act (ANCSA), and how Section 22(g) of ANCSA applies. Additionally, we received 61 comments in these letters that addressed other Alaska-specific issues, generally associated with how the proposed actions relate to various provisions of the Alaska National Interest Lands Conservation Act (ANILCA). Two hundred twenty-two personal letters all contained the same comment in support of the compatibility requirements being applied to ANCSA 22(g) lands, as well as four other comments not specifically related to Alaska. We are responding to the Alaska-related comments in two parts: ANCSA 22(g) Lands; and ANILCA.

ANCSA 22(g) Lands

Congress enacted ANCSA to settle aboriginal land claims of Alaska's Natives by providing land and money in exchange for extinguishment of their land claims. The issue of which lands were available to Natives to select was a hotly debated topic. Ultimately some Federal lands, such as National Park lands, were taken out of the selection process. National wildlife refuge lands were made available by compromise language in the legislation that took the form of Section 22(g) of ANCSA. Section 22(g) of ANCSA reads: "If a patent is issued to any Village Corporation for land in the National Wildlife Refuge System, the patent shall reserve to the United States the right of first refusal if the land is ever sold by the Village Corporation. Notwithstanding any other provision of this Act, every patent issued by the Secretary pursuant to this Act-which covers lands lying within the boundaries of a National Wildlife Refuge on the date of enactment of this Act [December 18, 1971], shall contain a provision that such lands remain subject to the laws and regulations governing use and development of such Refuge."

ANCSA had multiple purposes, primarily to settle the land claims issue, but also to provide Native Corporations opportunities for economic growth and prosperity. The balance that Congress struck specific to former refuge lands subject to Section 22(g) assured that by subjecting the lands to the laws and regulations of the refuge, future uses would not be allowed to occur if they materially impaired the values for which the refuge was originally established. Congressional intent is explained in a section by section analysis of ANCSA in Senate Report No. 92–405, at 34: "[T]his subsection provides that every patent issued by the Secretary pursuant to this section which covers lands lying within the boundaries of a Federal wildlife refuge on the date of enactment of this Act, shall contain a provision that such lands shall remain subject to the laws and regulations governing use and development of refuges as long as the lands continue within its boundaries. The purpose of this provision and limitation is to insure that the activities which take place within the refuges are compatible with the purposes for which the refuge was established. This section also assures continuing review by the appropriate Federal agencies."

The compatibility review requirement, established formally in law with the passage of the NWRSAA–1966, has been a requirement for the use of 22(g) lands since the time that they were conveyed; however, as with uses on publicly owned refuge lands, such determinations were not required by law to follow any particular process. While the NWRSAA–1966 required uses to be compatible with refuge purposes before they could be permitted, the NWRSIA–1997 (which amended the NWRSAA–1966) for the first time established a process for how compatibility determinations are to be made. The proposed regulations and draft policy will implement these legal requirements. We have noted comments

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that expressed concern that the NWRSIA–1997 created new rules that should not be applied to 22(g) lands, and we have provided significant clarifications on how the compatibility review process will be applied to 22(g) lands, and we have included nothing from the NWRSIA–1997 amendments that did not previously have legal foundation in the NWRSAA–1966. Additionally, while the plain reading of ANCSA requires all refuge laws and regulations to apply to 22(g) lands, we have historically maintained that the compatibility requirement is the most basic legal requirement to protect refuge lands against uses that materially interfere with refuges achieving their purposes. We have never proposed to apply any other legal standard to uses of 22(g) lands.

We received 222 personal letters that had a common theme of support for "clarifying that the compatibility test applies to certain lands in Alaska governed by the Alaska Native Claims Settlement Act." Additionally, The Wilderness Society, National Wildlife Refuge Association, Arctic Connections, National Audubon Society, and Defenders of Wildlife voiced support for including ANCSA 22(g) lands in the compatibility policy and regulations. We did this in the proposed rule and draft policy, but we have substantially modified these sections in the final rule and final policy to provide clarification as requested by public comment.

The National Audubon Society commented that, "[C]ompatibility applies as a minimum standard under the plain language of Section 22(g) (see *National Audubon Society* v. *Hodel*, 1984, where the Court held that Section 22(g) of ANCSA retains this compatibility test for lands selected and conveyed to natives within wildlife refuges in Alaska.) It could be argued that 22(g) actually means much more than conducting compatibility determinations, since the law states that all laws and regulations governing use and development of such Refuge apply." Audubon went on to say, however, that the Service may wish to clarify procedural differences that may be desirable for conducting compatibility determinations on 22(g) private inholdings versus refuge lands. We agree, and included clarifications suggested by Audubon and several Native organizations in the final rule.

The National Wildlife Refuge Association wrote: "[T]he draft policy and regulations state that the compatibility requirements apply to the Alaska Native Claims Settlement Act Section 22(g) lands within Alaskan Refuges. While this is true, Section 22(g) requires that all Refuge rules and regulations be applied. This plain reading of the law should not be ignored. Section 22(g) was an extreme compromise in which Native land claims entitlements were allowed to come from existing National Wildlife Refuges, subject to this very significant covenant. Many argued at the time that settlement lands should not come from Refuges at all. National Park lands were placed off limits, but Refuge lands were offered in the legislation as a compromise. The Section 22(g) restrictions were, however, included as significant protection to the long-term integrity of the Alaskan National Wildlife Refuges subjected to the conveyances. While many Native landowners may object to Refuge regulations being applied to a portion of their lands, the 22(g) covenant must not be further eroded. Language in the final rule should clarify that all rules and regulations apply to the 22(g) lands, in addition to the compatibility requirement." Arctic Connections voiced a similar opinion in stating that the proposed regulatory standards for 22(g) lands should be "at a minimum." We understand these concerns; however, after many years experience addressing this issue, we believe that we have met Congressional intent by applying the legal compatibility standard to 22(g) lands. The compatibility standard was the basic feature in refuge law (NWRSAA–1966) at the time ANCSA was enacted. We expect it to continue to provide adequate protection to refuges as adopted here.

Middleton & Timme, P.C., on behalf of Koniag, Inc. took strong exception to the proposed rule and stated that they believe that the proposed regulations, specifically their application of the standards and procedures contained in the NWRSIA–1997 as they were proposed to apply to Native Corporations, fundamentally alter the condition under which the Native Corporations received their land entitlements. They continue by stating that, "[C]ongress clearly did not intend the 1997, Act to have such an impact on Native Corporations' private property rights."

We have carefully reviewed these concerns and have clarified specifically how compatibility is to apply to 22(g) lands based on substantial comments from Koniag and others. In doing so, we have been careful to include only procedural elements for conducting compatibility determinations for uses on 22(g) lands that were acceptable under the original NWRSAA–1966 and as suggested by Native Corporations in this rulemaking process. These clarifications are substantial and, while recognizing that 22(g) lands are subject to compatibility review, acknowledge that 22(g) lands are also private lands that deserve special attention. We believe we have the authority to adopt regulations that address compatibility differently from those that deal with our own lands because we are, in effect, stating how we are going to implement and require compliance with a provision in a patent. We do this because the duty imposed by ANCSA is to include the provision in the patent. ANCSA itself does not impose the obligation of refuge laws and regulations. In other words, doing something which would not be allowed by the NWRSAA–1966 or regulations adopted thereunder is not a violation of the NWRSAA–1966, its regulations, or ANCSA. It is a violation of the provision in the patent. Our intent is to give meaning to the requirements of the provision and at the same time give meaning to the nature of the private lands selected per ANCSA.

Comments by Koniag relative to this issue are paraphrased below, with responses given following each issue.

*Comment:* 43 CFR 2650(4–6) requires that economic uses of 22(g) lands be permitted unless those uses materially impair the refuge.

*Response:* We believe these regulations are consistent with this provision.

*Comment:* The definition of compatible use is troubling in that it requires the use to be compatible not only with refuge purposes, but also with the mission of the National Wildlife Refuge System.

*Response:* The clarifying changes affecting compatibility determinations for 22(g) lands now include only the requirement to be compatible with refuge purposes since the requirement related to the National Wildlife Refuge System mission is a product of the NWRSIA–1997 that was not required at the time ANCSA was enacted. Again, while it may well be interpreted that the reference to refuge laws and regulations included in Section 22(g) meant all past, present, and future laws that Congress passed affecting national wildlife refuges, we have chosen to interpret the language as refuge laws and regulations that were in place at that time, since these were the conditions in which Native Corporations made their ANCSA selections. The sole exception to this is that refuge managers are to complete their compatibility determinations for 22(g) lands evaluating uses against both pre-ANILCA and post-ANILCA refuge purposes (if conflicts ever arise, the ANILCA purposes are to take precedence). The reason for this is that we believe that Congress passed ANILCA, in its entirety, with knowledge of how it would impact ANCSA. From a practical standpoint, in support of Native interests, this also provides that we prepare compatibility determinations keeping subsistence in mind since subsistence was a Congressionally mandated purpose added to 15 of the 16 Alaska refuges that had not been included prior to the passage of ANILCA.



*Comment:* The definition of compatible use is troubling because it is whatever the Refuge Manager determines it to be within his "sound professional judgment."

*Response:* A refuge manager does not have unfettered discretion as the comment implies. The law defines compatible use to be one that "will not materially interfere with or detract from." A refuge manager must base the determination on this standard and the procedures adopted in these regulations and policy will require that decision to be verbally and publically analyzed. Because of the desire of several commenters regarding this issue, we have included an appeal process in the final regulation that will allow 22(g) landowners to have their concerns reviewed by the Alaska Regional Director should a refuge manager find a proposed use to be not compatible. Also, refuge managers must receive concurrence from their Regional Chief on all compatibility determinations.

*Comment:* The 1997 Act gives the Refuge Manager the discretion to deny a use based on public safety even if he determines the use to be compatible.

*Response:* We have clarified the compatibility regulations as they apply to 22(g) lands and refuge managers will be reviewing only for the compatibility of proposed uses. Public safety is only an issue to the 22(g) landowner if they choose to allow public access to their lands. We do not have the authority to open 22(g) lands to public use and are not responsible for any public use that may occur, either by permission of the 22(g) landowner, or in trespass.

*Comment:* We do not believe that the 1997 Act applies to 22(g) lands. The Service has apparently taken the view that there is no inconsistency in the regulations and that the proposed regulation will not alter the practice of the Service regarding 22(g) lands. If this is true, the proposed regulations are in dire need of clarification.

*Response:* The NWRSIA–1997 amended the NWRSAA–1966. The NWRSAA–1966 clearly did apply to 22(g) lands, including the compatibility provisions. This has been so stated in correspondence, legal reviews, and policy discussions for many years. The proposed rule only would have formalized the compatibility determination process: it did not create the requirement to conduct the determination. We have, however, agreed that clarification is warranted in the final rule and 22(g) lands will be treated separately than public refuge lands.

*Comment:* There is a presumption of incompatibility in the event there is insufficient information to make a compatibility determination.

*Response:* Refuge managers must make their compatibility determinations on 22(g) lands based on available information and sound professional judgment. It is the responsibility of the applicant to provide information adequate to support the proposed use.

*Comment:* When a government-sponsored refuge use is competing with a 22(g) use, this situation will involve an inherent conflict for the Refuge Manager. Allowing such interested parties to determine the fate of a corporation's private property rights would violate the most fundamental notions of due process.

*Response:* Refuge managers have no authority to initiate or actually manage uses on 22(g) lands. They do, however, have responsibility for determining if such uses would have impacts that spill over onto adjacent refuge lands to the degree that they materially interfere with the refuge's ability to achieve its legally mandated purposes. This is the fundamental protection provided to the parent refuges from the effects of uses of 22(g) lands that Congress provided in Section 22(g) of ANCSA. Because of concerns expressed by comments; however, an avenue for appeal was added to the compatibility process for 22(g) lands so that 22(g) landowners have some recourse should a refuge manager determine a use to be not compatible.

Other Native Corporations questioned the applicability of the NWRSIA–1997 to 22(g) lands and expressed the need for significant clarifications on how the compatibility process was to be applied differently to 22(g) lands. Many of the points of clarification followed the concerns expressed by Koniag and are not specifically reiterated. Calista Corporation stated that, "[W]e believe that ANCSA Section 22(g) lands are a unique class of private lands within the National Wildlife Refuge System and should be treated by separate provision in the Compatibility Regulations." We agree. Calista, in addition to discussing the issues of determining compatibility by including the mission of the National Wildlife Refuge System, the need to stress that uses must be allowed unless they will materially interfere with refuge purposes, and concern over the ability to find a use not compatible if there is a lack of data, also raised two new issues. First, they believe that periodic reviews of the compatibility of uses of 22(g) land is unnecessary if these uses do not change substantially. Second, they state that village land use should not be subject to continual review and uncertainty regarding long-range plans and goals. We have clarified in the final rule that, for 22(g) land uses, the 10-or 15-year required review will not apply. We will prepare compatibility determinations only once for a proposed use on 22(g) lands and will revise them only if the use changes significantly, if substantially new information is made available that could affect the determination, or if requested by the landowner. Additionally, land use planning for 22(g) lands will not be subjected to refuge comprehensive conservation planning processes, and compatibility determinations affecting 22(g) lands will not be automatically reviewed when the refuge plans are updated.

Cook Inlet Region, Inc. (CIRI) questioned the applicability of the NWRSIA–1997 but provided nine suggestions for improving the final rule specific to how the Service does compatibility reviews for uses of 22(g) lands. We have already addressed six of these recommendations in response to other comments. CIRI commented that the use of compensatory mitigation should not be totally foreclosed on 22(g) lands. We believe that our policy of not allowing compensatory mitigation is appropriate and can be effectively administered on 22(g) lands. CIRI took exception to the definition of compatible use in its inclusion of the phrase "wildlife-dependent recreational use," stating that this is inappropriate for 22(g) lands, as well as for the rest of lands in Alaska. The concern is understood, but the definition comes from the NWRSIA–1997 and includes all other uses. Compatibility determinations are based on what the specific refuge purposes are. The concern should be lessened by recognizing that specific refuge purposes for Alaska refuges include (in 15 of the 16 refuges) a purpose for subsistence, meaning that in part, we will have to determine proposed uses to be compatible with the continuation of subsistence uses on those refuge lands. CIRI also commented that it should be made clear that compatibility determinations for uses of 22(g) lands

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should only be required to the degree that the proposed activity has spill over effects on the adjacent refuge lands, and that uses that do not have this spill over effect should not be subject to a compatibility determination. We agree that compatibility determinations for 22(g) lands are not to be treated as though they are still refuge lands, rather, the proposed uses are to be evaluated against how they would impact refuge lands, not how they would impact the 22(g) lands. We do not agree; however, that where this "spill over" effect does not occur, compatibility determinations are not required. The determinations will still be required, but such uses will be found compatible. Finally, CIRI states that its oil, gas, and coal interests in Kenai National Wildlife Refuge are not to be governed by the proposed compatibility determinations. We agree in part. The subsurface property interest conveyed to CIRI for oil, gas, and coal was conveyed under the provisions of ANCSA and, therefore, such property interest is subject to Section 22(g). In this case, however, the "Terms and Conditions" settlement referenced by CIRI amounts to a property interest that guarantees CIRI certain rights to explore for and develop petroleum resources. While we retain some ability to regulate surface use and procedures, we cannot deny CIRI reasonable access to their subsurface estate.

King Cove Corporation wrote in support of the conservation goals underlying the NWRSIA–1997 and the proposed regulations, but expressed concerns that the regulations be implemented in a manner that not impinge upon Native traditional uses and needs. Concern was expressed that inadequate instruction was provided to refuge managers on how to determine whether a use materially interfered with refuge purposes. Further, King Cove Corporation suggested that regulations provide that subsistence and other traditional uses made of the resource to foster and support Native culture and the health and welfare of Native peoples, be presumed to be compatible uses, absent a showing of extraordinary circumstances. Seven specific recommendations on improving the final rule were provided by the Corporation. These were similar to recommendations made by other Native Corporations and we addressed them in specific clarifying additions to the final rule. King Cove Corporation also recommended that analysis for compatibility include evaluation of the socioeconomic impacts on affected rural communities. The law does not allow this. Compatibility reviews can only look at effects of proposed uses relative to the legally established purposes of the refuge.

Kaktovik Inupiat Corporation (KIC), and the Alaska Federation of Natives, Inc. (AFN), provided similar comments which addressed approximately 15 issues relative to compatibility requirements for 22(g) lands. We addressed all but three of these issues in previous comments. These include recommendations relative to clarifying that 22(g) lands are different than other refuge lands, re-evaluations of compatibility, discretionary denial authority, appeals, evaluating uses against the National Wildlife Refuge System mission, jurisdictional concerns, and subsistence as a priority use. KIC and AFN raised additional issues related to issuing of refuge permits, compensation for uses of 22(g) lands, and using Sections 1307 and 1308 of ANILCA to implement the regulations. The commenters stated their desire that proposed uses of 22(g) lands not be subject to the Service's permitting system. We accept this. The final rule states that we will require no additional permits for uses of 22(g) lands beyond the completion of a compatibility determination by the Refuge Manager that finds the use to be compatible with refuge purposes. Any conditions necessary to ensure a proposed use is compatible may be included in the compatibility determination. Comments also stated the desire that compensation be granted for uses of 22(g) lands in the same manner as any other private landowner is compensated for the use of their lands. We do not believe this to be an issue in that we do not allow public uses of 22(g) lands and only work on these lands, for management reasons, with the permission of the landowner. This relationship does not prevent us and 22(g) landowners from entering into agreements on uses of the 22(g) lands. Such agreements could include payments, or non-monetary compensation for benefits we would obtain from the 22(g) landowner. The final comment recommending implementation of the regulations through Sections 1307 and 1308 of ANILCA is not acceptable to us. While we support these sections of law, the completion of refuge compatibility determinations is a responsibility imposed by law that can only be carried out by the Service. This is not an authority that we can or should delegate outside of the government. KIC and AFN also asked for clarity that if conflicts arise between the implementation of the NWRSIA–1997 and ANILCA that ANILCA take precedence. We address this concern in our discussion of issues pertaining to ANILCA.

Doyon, Limited wrote that the final policy and regulations should recognize that most lands conveyed to Native Corporations pursuant to ANCSA are not subject to the requirements of Section 22(g) . We agree that only a small percentage of land conveyed under the provisions of ANCSA is subject to the 22(g) restrictions. The compatibility policy and regulations is not applicable to Native land that is not subject to Section 22(g) of ANCSA.

In summary, we have not changed our position on the general applicability of the compatibility standard to ANCSA 22(g) lands, but we have made numerous changes to the final rule and policy based on public comment as indicated above. These changes allow us to conduct compatibility determinations substantially different on the 22(g) lands in recognition of the unique status of these lands and the fact that we are implementing a provision of a patent.

ANILCA

The remaining comments on the proposed rule relative to Alaska address concerns, or needs for clarification, on issues pertaining to ANILCA.

The State of Alaska, the Alaska Professional Hunters Association, The Wildlife Legislative Fund of America, and several Alaska Native organizations all expressed concerns that the legal guidance included in ANILCA on a number of issues was not well presented. It was suggested that the statement in the NWRSIA–1997 on resolving any conflicts that arise between implementation of the NWRSIA–1997 and ANILCA be included in regulations. In adopting these regulations we have been mindful of this provision and have written them to avoid any conflicts. In addition we are not amending any of the regulations applicable to the Alaska refuges contained in 50 CFR Part 36. Additional statements about specific issues such as cabins, snowmachine use, and access rights ensured under Title XI of ANILCA, etc., are not necessary, as they are provided for in those regulations.

The State of Alaska also expressed concern over possible impacts to State fish and wildlife research, rehabilitation, and enhancement programs, elimination of the option in 50 CFR 25.44 for using mitigation measures to make a right-of-way or easement use of a refuge compatible, and over an inadequate appeal process for not compatible findings where no permit is required (such as for general uses like fishing or boating). These are not Alaska-specific concerns and other State agencies included them in their comments as well. We addressed them collectively elsewhere in this document.



The State of Alaska, The Wildlife Legislative Fund of America, and the Alaska Professional Hunters Association all commented that Alaska refuges are different from lower 48 refuges in that Alaska refuges are considered open until closed. While there are notable differences for many activities on Alaska refuges compared to the lower 48, all uses of Alaska refuges must also be found to be compatible, unless specifically exempted by law. The policy and regulations describing the compatibility determination process apply equally well to all refuges within the National Wildlife Refuge System. These commenters also recommended that commercial guiding and transporting be allowed as economic uses, and that trapping be allowed as well. We generally allow such uses on Alaska refuges, and there is no proposal to change this; however, from a technical aspect, we must find these uses, as well as all other uses, to be compatible with refuge purposes and the National Wildlife Refuge System mission to allow them. With respect to all of the above comments, we are not changing the status of refuge uses in Alaska. See 50 CFR 36 for regulations governing Alaska refuges.

Doyon, Limited (Doyon) wrote that the proposed regulations fail to clarify that oil and gas recovery can be a compatible use within a refuge, and that activities undertaken pursuant to Section 1008 of ANILCA are subject to a different presumption of compatibility than other uses. All uses, including oil and gas related activities (and even including uses that Congress specifically determined to be "appropriate uses" such as hunting and fishing) must, by law, be determined to be compatible to be allowed. The assumption made by Doyon that oil and gas related activities on non-North Slope refuge lands may be undertaken unless and until a determination is issued which finds the activities not to be compatible, is incorrect. Only after completing a compatibility determination, and having found the proposed use to be compatible, could we proceed in permitting uses pursuant to Section 1008 of ANILCA. Doyon also commented that the draft compatibility policy improperly expands the authority of the Service to impose "additional procedural steps" on Alaska refuges. The additional steps that Doyon is referencing are any of the procedures, or special considerations, that may be specifically required by ANILCA. No other additional steps are included for conducting compatibility determinations for uses of Alaska refuges, except those that may be mandated by ANILCA, or those previously discussed as they specifically apply to ANCSA 22(g) lands. Additionally, Doyon commented that the proposed regulations could presumptively prohibit new uses for an undetermined amount of time (while completing a final comprehensive conservation plan). We have previously completed these plans, as required by ANILCA, for all Alaska refuges. While we will undertake periodic revisions of these plans, compatibility determinations for proposed new uses will not have to wait for completion of the revisions.

Finally, the Becharof Corporation wrote that unless subsistence use is included as a priority in the language of the policy and regulations, the mission statement will undermine the intent of ANILCA provisions by giving recreational hunting and fishing enhanced consideration. The NWRSIA–1997 did recognize hunting and fishing (including subsistence hunting and fishing) as priority public uses that we are to facilitate if we find them to be compatible with refuge purposes and the National Wildlife Refuge System mission. This did not elevate these uses to the status of refuge purposes for which subsistence use is for 15 of the 16 Alaska refuges. Compatibility determinations for these 15 refuges will, by law and regulation, be required to document that uses, including recreational hunting and fishing, do not materially interfere with the ability of the refuges to provide for traditional subsistence uses. This is strong protection for subsistence that the new policy and regulations does not lessen in any way.

In light of the comments related to ANILCA and as discussed in our responses we have made changes to the final rule and policy.

*Issue 6: When Is a Compatibility Determination Required*

We received many comment letters addressing various facets of when a compatibility determination is and is not required. The comments focused primarily on two aspects of the policy and regulations: not requiring compatibility determinations for refuge management activities, except for refuge management economic activities; and consider State wildlife management activities as refuge management activities, not refuge uses.

Two hundred and twenty-two individual commenters with a common shared theme "please modify the draft by requiring all of the Fish and Wildlife Service's management activities to pass the compatibility test," plus several additional commenters recommended that we require compatibility determinations for all refuge management activities. As a general matter, refuge management activities, defined as an "activity conducted by the Service or a Service-authorized agent to fulfill one or more purposes of the national wildlife refuge, or the National Wildlife Refuge System mission" have not historically been subject to compatibility determinations. We have not in the past and do not now consider refuge management activities to be refuge uses, rather refuge management activities are actions that we are obligated to or decide to take in order to help accomplish refuge purposes and/or the National Wildlife Refuge System mission. We have processes in place, including intra-agency section 7 consultation, refuge planning and associated NEPA compliance, to help ensure that we are conducting the appropriate refuge management activities. In addition, our refuge planning process provides an opportunity for public involvement in refuge management decisions. Compatibility is designed specifically for evaluating the anticipated impacts of refuge uses, not refuge management activities. As we discussed in the preamble of the proposed rule, we acknowledge the unique nature of one category of refuge management activities, that is refuge management economic activities, and for the reasons stated in that preamble we believe that compatibility determinations should be required for this category of refuge management activities. For all other refuge management activities, we are not saying that they are or are not compatible, rather we are simply saying that compatibility does not apply. We believe that this is consistent with the NWRSAA–1966.

The International Association of Fish and Wildlife Agencies (International) and several States addressed the importance of distinguishing between "refuge use" and "refuge management activity." Most of these comments requested that we clarify that State wildlife management activities on a refuge are not considered a refuge use and, therefore, not subject to a compatibility determination. The International stated that this is consistent with the NWRSIA–1997, and in addition asked that we make this clear in the policy. We agree in part. We added additional language in the policy

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stating that, we do not require compatibility determinations for State wildlife management activities on a national wildlife refuge pursuant to a cooperative agreement between the State and the Fish and Wildlife Service where the Service has issued a written determination that such activities support fulfilling the refuge purposes or the System mission. We consider proposals for State activities on refuges that are not pursuant to a cooperative agreement a proposal for a refuge use and we will require a compatibility determination. By law, we cannot allow these activities by the State or any other entity without ensuring that they are compatible. For refuges where the State is proposing a number of wildlife management activities that are not pursuant to a cooperative agreement, we will be able to prepare a single compatibility determination for all the State wildlife management activities.

A few commenters addressed our discussion of circumstances in 2.10 B Other exceptions under which the requirements of compatibility may not be applicable. Commenters suggested we delete portions of this section, add additional examples and add more guidance. We did not accept the recommendation to delete portions of the section because they are necessary to help explain when we should not prepare compatibility determinations. We did not accept the recommendation to add additional examples or to provide more guidance because we did not believe that any clarifying language was necessary.

A few commenters recommended that only military overflights, not all overflights, be exempted from compatibility determinations. The NWRSIA–1997 states "The provisions of this Act relating to determinations of the compatibility of a use shall not apply to—(A) overflights above a refuge; * * *" The law does not differentiate between military and non-military overflights. We believe the law exempts all overflights, military or otherwise, from compatibility determinations.

We received several comments regarding the emergency provision that allows us to temporarily allow or initiate any refuge use without making a compatibility determination if it is necessary to protect the health and safety of the public or any fish or wildlife population. We had stated that a temporary action should not exceed 12 months. The general concern was that 12 months was too long to be considered a temporary action. We agree. We have reduced the time frame for temporary actions to not exceed 30 days.

*Issue 7: Denying Uses*

We received several comments regarding denying a use without determining compatibility and not permitting a use found to be compatible. The majority of these commenters questioned our authority to take these two actions, *i.e.*, deny a proposed use without making a compatibility determination and not allow a use found to be compatible.

As a matter of law, the Secretary acting through the Service clearly has the authority to permit or not permit any use on a national wildlife refuge, the only legal requirement imposed by the NWRSAA–1966 being that those uses permitted must be shown to be compatible. The converse is not true. If an application for a use is denied, it need not be shown that the use is not compatible. In addition, when we determine that a use is compatible, we are not required to allow the use. This authority is not new. We believe this is consistent with the NWRSAA–1966 and is clearly stated in the NWRSIA–1997 House Report, "Pursuant to Section 4(d) of the NWRSAA, a determination of compatibility must be made by the USFWS prior to permitting an activity to occur, but a determination of compatibility does not require that a particular use be permitted. This legislation does not change that provision."

Several of the commenters also addressed the vagueness of the term "is inconsistent" that we use in our discussion of denying a proposed use without determining compatibility. We agree that this term is somewhat vague. We replaced the term "is inconsistent" with the word "conflicts."

*Issue 8: Sound Professional Judgment*

We received comments from several non-government organizations regarding our interpretation and discussion of the term "sound professional judgment." In addition, we received comments from several non-government organizations and one State agency regarding our definition of this term. We addressed the comments regarding the definition earlier in this document under Issue 3: Definitions. Following is a discussion of the comments specific to our interpretation and discussion of sound professional judgment.

One commenter suggests that a closer working relationship between the State fish and wildlife agency and the Refuge Manager would improve the application of sound professional judgment. Another commenter agrees with closer working relationships, and suggests that the Refuge Manager consult a much wider range of professional advice. We agree. When a refuge manager is exercising sound professional judgment, the Refuge Manager will use available information, which could include consulting with others both inside and outside the Service. We added language to that effect in the general discussion of sound professional judgment.

Several commenters said that refuge managers should not consider lack of adequate budgets when considering priority public uses. We do not agree. We believe that we must, by law, consider lack of adequate budgets for all uses, including priority public uses. The NWRSIA–1997 states that "no other determinations or findings are required to be made by the refuge official under this Act or the Refuge Recreation Act for wildlife-dependent recreation to occur." However, regarding this provision in law, the House Report states, "In the future, no such determination is required to be made for wildlife-dependent recreational uses. However, this does not mean that limited financial and personnel resources must be directed toward maintenance or enhancement of these activities. As noted previously, one element of "sound professional judgment" which must be exercised in making a compatibility determination is the availability of resources. This facet of sound professional judgment is intended to allow the manager to consider whether adequate financial, personnel, law enforcement, and infrastructure exists or can be provided in some manner by the USFWS or its partners to properly manage a public use." Regarding the definition of sound professional judgment, the House Report states, "Implicit within this definition is that financial resources, personnel and infrastructure be available to manage permitted activities." Therefore, we believe the available resources element of sound professional judgment is required by law to apply to all uses and must be included in these regulations and policy. Lastly, the NWRSIA–1997 goes on to say that if available resources are the only things preventing a priority public use from being compatible, the Refuge Manager must make reasonable efforts to secure resources that are lacking. We address this additional requirement for priority public uses in sections 2.11 A.(2) and 2.12 A.(7) of the policy.

The Wilderness Society, National Audubon Society and National Wildlife Refuge Association suggested we add additional language to the discussion of sound professional judgment regarding maintenance of biological integrity, diversity, and environmental health. Several additional commenters stated, although in a variety of ways, that we consider biological integrity, diversity, and environmental health when making compatibility determinations and we prohibit uses that are detrimental to any aspect of the ecological health of the refuge. We also received 222 individual letters with a common shared theme stating, "Please also require that activities do not degrade the biological integrity, diversity, and environmental health of the refuges." Since these comments are so closely related we are collectively addressing them as follows. The NWRSIA–1997 states that we must maintain the biological integrity, diversity, and environmental health of the National Wildlife Refuge System. This is an important and fundamental requirement of the law and establishes a baseline for all actions (including refuge management activities and public uses) taken on refuges. As we discussed earlier in Issue 3: Definitions we did not add this statement to this definition but we recognized its value with regard to analyzing whether a use is compatible with the mission of the System. Because of that we added this concept in the discussion of "materially interfere with or detract from" in section 2.11(B) of our policy and "anticipated impacts of the use" in section 2.12(A)(8) of our policy. We are now using the term "ecological integrity" in lieu of the phrase "biological integrity, diversity, and environmental health." One commenter also suggested adding "not negatively impacting conservation goals." We address this comment, in part, in Issue 17: Steps to prepare a compatibility determination where we state that we added to the policy that refuge managers should list all conservation objectives in approved refuge management plans that reasonably might be affected by the proposed use.



*Issue 9: Materially Interfere With or Detract From*

We received several comments addressing our discussion of "materially interfere with or detract from." Comments ranged from "the intent of this section, as well as the scope of activities to which it applies, is unclear" to "we find this straightforward and particularly endorse." Other comments stressed the importance of considering direct and indirect impacts of uses plus the cumulative impacts of all activities on the refuge and specifically endorsed other statements in our discussion of "materially interfere with or detract from." One commenter stated that the words "lingering or continued adverse" confuse more than clarify and should be deleted while another commenter stated that the words "tangible" and "lingering and continued adverse" seem to lower the compatibility standard. As we discuss in Issue 6: Sound professional judgment and Issue 17: Steps to prepare a compatibility determination we made changes that, in part, address some of the comments raised here. In addition, we revised portions of our discussion of "materially interfere with or detract from" to clarify this section. We stress that whether some impact is "tangible" or "lingering and continued adverse" is not necessarily the overriding concern. The primary aspect is how does the use and any impacts from it affect our ability to fulfill the purposes of the refuge and the mission of the System.

*Issue 10: Right-of-Ways and Replacement of Lost Habitat Values or Other Compensation*

We received many comment letters that addressed issues related to right-of-ways. These included several general comments, many comments specific to the issue of compensatory mitigation, and the transcript from a public meeting held in Aberdeen, South Dakota that addressed how the proposed regulations and draft policy may affect the Highway 12 project in their state. Twenty-three citizens gave testimony at this October 23, 1999 meeting and each raised concerns about impacts the proposed changes might cause.

The comments we received regarding right-of-ways primarily addressed our proposal to amend current regulations to no longer permit the use of compensatory mitigation in order to make a proposed use compatible. This proposed change was supported by 222 letters from individuals that had a shared common theme regarding this and four additional issues.

The Federal Highway Administration stated "The proposal in the rule and policy to disallow mitigation for uses of refuge land that have not been determined to be compatible may conflict with the laws for Federal land transfer for acquisition of right of way by the FHWA as codified in 23 U.S.C. Section 107(d), Acquisition of Rights-of-Way-Interstate System, and Section 317, Appropriation for Highway Purposes of Lands or in Lands Owned by the United States. These laws establish the process through which the FHWA acquires land on the behalf of State transportation departments from other Federal Agencies for highway improvements and construction." Section 107(d) states "(d) Whenever rights-of-way, including control of access, on the Interstate System are required over lands or interests in lands owned by the United States, the Secretary may make such arrangements with the agency having jurisdiction over such lands as may be necessary to give the State or other person constructing the projects on such lands adequate rights-of-way and control of access thereto from adjoining lands, and any such agency is directed to cooperate with the Secretary in this connection." Section 317(a) and (b) state "(a) If the Secretary determines that any part of the lands or interests in lands owned by the United States is reasonably necessary for the right-of-way of any highway, or as a source of materials for the construction or maintenance of any such highway adjacent to such lands or interests in lands, the Secretary shall file with the Secretary of the Department supervising the administration of such lands or interests in lands a map showing the portion of such lands or interests in lands which it is desired to appropriate. (b) If within a period of four months after such filing, the Secretary of such Department shall not have certified to the Secretary that the proposed appropriation of such land or material is contrary to the public interest or inconsistent with the purposes for which such land or materials have been reserved, or shall have agreed to the appropriation and transfer under conditions which he deems necessary for the adequate protection and utilization of the reserve, then such land and materials may be appropriated and transferred to the State highway department, or its nominee, for such purposes and subject to the conditions so specified." It has been the practice of the Service to comply with 23 U.S.C. 107(d) and 317(a) and (b). This rule will change the process by which we prepare compatibility determinations for highway right-of-ways but it will not interfere with our ability to continue to comply with 23 U.S.C. 107(d) and 317(a) and (b). By way of clarification, we are not precluding from the compatibility process all aspects of what is commonly thought of as mitigation. Certainly, any right-of-way applicant, including for roads or highways, could modify a proposed use through avoidance, minimization, and other steps (see discussion of mitigation below.) What we are limiting here is the use of that aspect that is referred to as compensatory mitigation. We still will cooperate by working with the Federal Highway Administration and States for redesign, etc. Another method that we can use to cooperate with the Federal Highway Administration, and, where appropriate, accommodate their request,

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is through exchanges for fee title or less than fee title interests in land as provided in our policy at Part 342 Chapter 5 Non-Purchase Acquisitions. The criteria for exchanges are, (1) that the exchange be of benefit to the United States, and (2) that the value of the lands or interests in lands be approximately equal or that values may be equalized by the payment of cash by the grantor or by the United States. Exchanges are a valuable method to acquire land or interests in land for Service programs and may be used to accommodate Federal Highway Administration projects. This rule does not change our policy on land or interests in land exchanges.

We proposed to add, in paragraph (b) of 50 CFR 26.41, language that states we will not allow making proposed refuge uses compatible through replacement of lost habitat values or other compensation (sometimes referred to as "mitigation" or as a component of mitigation). We also proposed to delete the current paragraph (d) of 50 CFR 25.44, which authorizes us to require "mitigation measures" within an easement area to "make the proposed use compatible" and to delete current paragraph (c) of 50 CFR 29.21–7, as it applies to the issuance of right-of-way permits, which authorizes us to require "mitigation measures" on-or off-site to "make the proposed use compatible."

We want to clarify what is "mitigation" and what portion of "mitigation" we do not allow. The President's Council on Environmental Quality defined the term "mitigation" in the National Environmental Policy Act regulations to include: "(a) Avoiding the impact altogether by not taking a certain action or parts of an action; (b) minimizing impacts by limiting the degree or magnitude of the action and its implementation; (c) rectifying the impact by repairing, rehabilitating, or restoring the affected environment; (d) reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action; and (e) compensating for the impact by replacing or providing substitute resources or environments." [40 CFR Part 1508.20(a–e)]. The Service supports this definition of mitigation and considers the specific elements to represent the desirable sequence of steps in the mitigation planning process. When we state in these regulations and policy that we will not allow compensatory mitigation to make a proposed refuge use compatible we are referring only to element (e) of mitigation as defined by the President's Council on Environmental Quality.

Comments were generally either strongly in favor of retaining the existing provisions to allow the continued use of compensatory mitigation, or strongly in favor of our proposal to eliminate those provisions. Support for retaining the existing provisions was largely dominated by three concerns: first, that the proposed changes were too inflexible and could result in many projects that may be considered to be in the general best interest of the American public being delayed, deemed too costly, or prohibited; second, that Congress did not intend for such a far reaching impact in enacting the NWRSIA–1997; and third, that such a policy shift would ultimately be bad for wildlife conservation by discouraging State, local government, and private landowner partners, especially in the establishment of new conservation easement areas. Support for the proposed changes generally voiced our view that a use is either compatible or not, and the fact that some "incompatible" impact might be compensated for by doing something to make up for the impacts cannot make a use compatible for purposes of the NWRSAA–1966. Some pointed out that it be made clear that compatibility "is not for sale" on national wildlife refuges.

We have spent considerable time reviewing this issue and, based on substantial public comment, believe that some changes in the final policy and regulations are warranted. We understand the Congressional intent regarding existing right-of-ways, which is stated in the House Report, "There are numerous existing rights-of-way on National Wildlife Refuge System lands for roads, oil and gas pipelines, electrical transmission, communication facilities, and other utilities. The Committee does not intend for this Act to in any way change, restrict, or eliminate these existing rights-of-way, whether established by easement or permit, or to grant the USFWS any authority that does not already exist to do so."

We have, therefore, amended and clarified our final policy and regulations to reflect the Committee's intent not to change, restrict, or eliminate existing right-of-ways. The policy and regulations also address the unique circumstance presented by existing public highway right-of-ways. In order to continue to serve the purpose for which a right-of-way was issued, public highways must, in certain circumstances, be expanded or realigned. We amended our policy and regulations to accommodate the reasonable need for the minor expansion or realignment of existing public highway right-of-ways. We note that while the Congressional intent is that the Act itself not change, restrict, or eliminate existing right-of-ways, it is also clear that Congress did not alter our authority to do so if warranted on compatibility or other grounds.

*Issue 11: Refuge-Specific Analysis*

We received several comment letters that generally supported our refuge-specific analysis language in the policy. One commenter recommended adding specific language from our proposed rule preamble to our policy discussion on refuge-specific analysis. They stated this would give added clear and appropriate policy direction to refuge managers. We agree. Therefore, we modified this section to state that we do not require refuge managers to independently generate data to make determinations, but rather to work with available information. The Refuge Manager may work at their discretion with the proponent(s) of the use or other interested parties to gather additional information before making the determination.

*Issue 12: Relationship to Management Plans*

We received several comment letters that addressed the relationship between compatibility determinations and refuge planning. These comments supported completing compatibility determinations as part of the comprehensive conservation planning process. They stated that this was one way to better address the impacts of the use and reduce unnecessary or duplicative paperwork. We agree that there are many advantages to preparing compatibility determinations concurrently with refuge planning documents, and in the policy we state that we will usually complete compatibility determinations as part of a planning process. In addition, our final refuge planning policy published in the **Federal Register** (65 FR 33892 published May 25, 2000) states we will, "Complete new compatibility determinations or re-evaluate existing compatibility determinations as part of the CCP process for all individual uses, specific use programs, or groups of related uses associated with the proposed action. Prepared concurrently with the CCP, incorporate the draft compatibility determinations into the draft CCP as an appendix. We require public review and comment for all compatibility determinations. We can achieve this concurrently through



public review and comment of the draft CCP and NEPA document."

Three State fish and wildlife agencies and the International Association of Fish and Wildlife Agencies, suggested adding to the rule Congressional intent that compatibility determinations be made, to the extent practicable, as part of the comprehensive conservation plan. We agree that this should be stated in the rule as well as in the policy. Therefore, we added language to the regulations that states we will usually complete compatibility determinations as part of the comprehensive conservation plan or step-down management plan process for individual uses, specific use programs, or groups of related uses described in the plan.

*Issue 13: Priority Uses*

We received several comments from non-government organizations and State agencies regarding priority uses, or special considerations when managing conflict between uses. The NWRSIA–1997 established that compatible wildlife-dependent recreational uses, defined as refuge uses involving hunting, fishing, wildlife observation and photography, and environmental education and interpretation, are to be recognized as the priority general public uses of the National Wildlife Refuge System through which the American public can develop an appreciation for fish and wildlife. The law further requires that opportunities are to be provided for compatible wildlife-dependent recreational uses within the National Wildlife Refuge System, that these uses receive priority consideration over other general public uses in planning and management within the National Wildlife Refuge System, and for increased opportunities for families to engage in such activities within the National Wildlife Refuge System. The law did not establish a hierarchy among the priority public uses, or establish any clear process for determining such a hierarchy. The law was clear, however, that we must determine the priority public uses to be compatible if we are to allow them, and if determined compatible, we should facilitate them whenever possible.

Some commenters expressed concern that the proposed policy would provide guidance to refuge managers that would allow them to find a priority public use not compatible based solely on insufficient information on the effects of the use. They suggested that Congressional intent directed that priority public uses should be determined compatible unless strong evidence demonstrated otherwise. We agree that Congressional intent provided that compatible priority public uses should be facilitated whenever possible, but it is clear that no different standard is to be applied to the actual determination of compatibility. Nonetheless, we acknowledge that there is rarely complete information available on the effects of a proposed use, and that the proposed terminology, "If available information to the Refuge Manager is insufficient to document that a proposed use is compatible, then the Refuge Manager would be unable to make an affirmative finding of compatibility and we must not authorize or permit the use" could be improved. Therefore, we have added to the final policy a discussion of how we deal with priority public uses when sufficient information is not available. We believe that this change clarifies this issue, provides adequate priority to the priority public uses, and addresses the comments.

Several commenters also expressed concern with the Justification step in policy and regulations, suggesting we eliminate the language, amend it to exempt priority public uses or amend it to ensure that only those uses which are determined to be compatible will materially enhance the refuge purposes and System mission. The language, as part of a justification for the compatibility finding, would require a description of how the proposed use is reasonably expected to affect fulfilling the refuge's purpose(s) and the National Wildlife Refuge System mission. Most of these comments correctly pointed out that the compatibility standard measures how the proposed use would materially interfere with or detract from the fulfillment of the refuge's purposes or the National Wildlife Refuge System mission. Therefore, we amended this step in regulations and policy to clarify this point.

A number of commenters asked for clarification on how we would determine which use, among priority public uses, would receive the higher priority should conflict between them arise.

Suggestions were also made by some on how such priority decisions should be made, such as the Humane Society of the United States suggesting that consumptive wildlife uses (such as hunting and fishing) be held to a higher standard than non-consumptive wildlife uses (such as wildlife viewing and photography), while the New Mexico Department of Game and Fish requested that we give priority to waterfowl hunting (specifically to manage increasing populations of white geese) over the optimization of waterfowl viewing opportunities. The NWRSIA–1997 did not establish a hierarchy among the priority public uses, and we are not proposing to do so as a matter of general policy. We will continue to try and facilitate all compatible priority public uses to the degree that we are able to do so. If conflicts arise, and restrictions or the elimination of uses are necessary, we will give priority to uses that most positively contribute to the achievement of refuge purposes, the National Wildlife Refuge System mission, and specific refuge management goals.

Two scientific organizations (American Institute of Biological Sciences and The Ornithological Council) suggested that scientific research should be presumed to be compatible unless otherwise determined that it is not, and such activities should be considered in the "top tier of uses." While our experience has been that scientific research and other scientific activities are most often compatible, the NWRSAA–1966 as amended by the NWRSIA–1997 does not give us any authority to treat research differently than other uses. Nonetheless, we encourage many types of natural resource-related research and believe that we can cover many such proposed uses under our expedited compatibility review process.

Many commenters voiced support for the priority public uses, either as a category, or individually. Some expressed concern that more was not stated in the draft documents that illustrated the preference that we must give to wildlife-dependent recreational uses under the provisions of the NWRSIA–1997. The State of Utah voiced support for our position on priority public uses but was concerned that regulations (specific to hunting) were not uniformly used on all refuges in their area. We understand this concern, and support consistency in general, but maintain that different regulations, or permit stipulations, are often necessary to ensure compatibility at different refuges because of different wildlife management issues, refuge purposes, size of the refuge, or other refuge-specific differences.

The Wilderness Society suggested that we prohibit non-priority recreational activities, and commercial uses of refuges unless they can be demonstrated to contribute to the achievement of the National Wildlife Refuge System mission and the refuge purposes, and that they are compatible. While we believe such a policy could ultimately benefit refuges, the suggestion goes beyond both what the NWRSIA–1997 mandates and the general scope of the policy and regulations establishing the

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process we will use to determine compatibility of uses.

Several comments suggested that hunting or fishing guides or commercial outfitters, and/or trapping, should be considered priority public uses under the provisions of the NWRSIA–1997. We do not agree. The definition for the priority public uses is clearly provided in the law, and although these are related uses, they are not specifically included in the legal definitions. The most obvious effect beyond these uses not receiving automatic preference over other refuge uses, is the requirement to review compatibility determinations for these uses every 10 years rather than every 15 years. Our interpretation of priority public use only includes the use itself and not uses that are related but separate from the actual use. Another example is that a permitted use that rents boats (that could be used in support of fishing, birdwatching, or waterfowl hunting) would not be considered a priority public use itself in our policy and regulations. We consider it a commercial use subject to the 10 year compatibility review requirement.

*Issue 14: Re-evaluation of Uses*

We received several comment letters regarding how and when we re-evaluate uses for compatibility. The majority of the commenters recommended we clarify our re-evaluation language. A few of the commenters recommended specific changes.

One commenter recommended reducing the 10- and 15-year maximum re-evaluation period to 5-years for recreational uses. Most of the re-evaluation language in the policy and regulations is taken directly from the NWRSIA–1997. These 10- and 15-year maximum time frames coupled with the other criteria for re-evaluations in our policy and regulations are consistent with the NWRSIA–1997, which provided clear direction on when we will re-evaluate uses for compatibility. We believe that the re-evaluation criteria are sufficient to keep pace with changes in resources and relevant information. The 10- and 15-year re-evaluation criteria is the maximum period of time we can go without a re-evaluation whereas the other criteria may trigger a re-evaluation much earlier. In addition, we note that a refuge manager may re-evaluate a use at any time and specifically state this in our policy.

One commenter recommended we re-evaluate a priority public use whenever it is proposed, even if it has been previously denied. We consider requests for refuge uses whenever we receive them. For priority public uses we aggressively look for ways to allow them. The House Report states we should facilitate priority public uses when they are determined to be compatible and also states that, "there will be occasions when, based on sound professional judgment, the manager will determine that such uses will be found to be incompatible and cannot be authorized." During fiscal year 1999 we welcomed over 33 million priority public use visits to the National Wildlife Refuge System. However, this does not mean that we should allow all priority public uses on all refuges. We agree that priority public uses is a category of uses that we must pay special attention to as directed by the NWRSIA–1997. We believe that we adequately address this special category of uses throughout the policy and do not need to make changes to the re-evaluation section. See Issue 13: Priority uses for more discussion on this topic.

Four commenters, including Edison Electric Institute, Transcontinental Gas Pipe Line Company, Southern Natural Gas Company and El Paso Energy Corporation, specifically addressed our re-evaluation procedures for right-of-ways. Generally, these commenters asked that we further clarify how re-evaluations will be conducted for right-of-ways. We are addressing existing right-of-ways very differently from other types of refuge uses. We have amended and clarified the final policy and regulations to reflect the Congressional intent as stated in the House Report that this law not in and of itself change, restrict, or eliminate existing right-of-ways. We discuss this issue earlier in this document under Issue 10: Right-of-ways and replacement of lost habitat values or other compensation. The commenters also asked us to clarify certain elements of a compatibility determination for re-authorizing an existing right-of-way. They recommended we consider the right-of-way re-authorization based on existing conditions rather than pre-right-of-way conditions. We agree and have amended the regulations and policy to clarify this point.

One commenter acknowledged that the NWRSIA–1997 directs that re-evaluations of uses specifically authorized for a period of longer than 10 years (such as right-of-ways), will examine compliance with the terms and conditions of the authorization, not the authorization itself. They went on to reference a colloquy held between Senator John Chafee, Chairman of the Environment and Public Works Committee, and Senator Bob Graham on September 10, 1997 during passage of the NWRSIA–1997 on the Senate floor. In that exchange, Senator Graham states that: "[I]n the case of unforseen changes in circumstances, it may occasionally be necessary to adjust a use to ensure that it remains compatible. My understanding is that utility companies have been willing and able to make minor adjustments to their facilities to ensure that they remain compatible. Mr. Chairman, am I correct to understand that this amendment will still allow the flexibility to make such adjustments to facilities that have been authorized for more than 10 years in order to ensure that they remain compatible?" At which point, Senator Chafee responds: "That is correct." (Catalogued in Congressional Record of September 11, 1997, Page: S9238). Based on this conversation the commenter recommended we modify our regulations and policy to allow the Service to seek modifications to the terms and conditions of permits with a duration exceeding 10 years, if necessary to ensure that the use remains compatible. We agree and have amended the regulations and policy to clarify this point.

One commenter was concerned that we might go beyond our authority when we examine compliance with the terms and conditions of a right-of-way authorization and when we make a new compatibility determination prior to re-authorizing a right-of-way. We have always limited these actions to the extent of our authority to regulate and control the right-of-way. These regulations and policy do not change that authority.

Several commenters suggested that we clarify certain aspects of the re-evaluation language. In particular, we were asked to clarify whether a compatibility re-evaluation is a full blown compatibility determination or something else. We have clarified this in both the policy and regulations. When we re-evaluate a use for compatibility, we will prepare a new compatibility determination following the procedure outlined in policy. For some uses, there may be no significant change in the conditions under which the use is permitted or no significant new information regarding the effects of the use; however, whenever a re-evaluation is triggered we will take a fresh look at the use and complete a new compatibility determination.

Two commenters suggested we clarify how we determine significant change in the conditions under which the use is permitted or significant new information regarding the effects of a use. They also asked that we clarify how new information may be made available to the Refuge Manager. We added language to the policy to clarify this point. The Refuge Manager will determine whether change in the conditions under which the use is permitted or new information regarding the effects of the use is significant or not. The Refuge Manager will make this decision by considering whether these new conditions or new information could reasonably be expected to change the outcome of the compatibility determination. Any person at any time may provide information regarding changes in conditions and new information to the Refuge Manager. However, the Refuge Manager maintains full authority to determine if this information is or is not sufficient to trigger a re-evaluation.

*Issue 15: Public Review and Comment*

We received many comment letters regarding the public review and comment portion of the compatibility determination process. Generally, these comments supported this section and requested changes to the following areas: length of the public review and comment period; mechanism by which we seek public review and comment; involvement of State fish and wildlife agencies; level of detail; and types of uses we consider under the expedited compatibility determination process. A few of the commenters complimented our commitment to "actively seeking to identify individuals and organizations that reasonably might be affected by, or interested in, a refuge use."

As we discussed in Issue 12: Relationship to management plans we will usually complete compatibility determinations as part of a planning process and we will achieve public review and comment on our compatibility determinations concurrently through public review and comment of the draft plans and NEPA documents. Our refuge planning policy provides a detailed discussion of how we will provide for substantial public involvement throughout the planning process from start to finish. We did not repeat those details in this policy. For compatibility determinations prepared separately from a plan we believe that we have adequately described the public review and comment process and that additional detail is not needed.

Several of the commenters were particularly concerned about the Refuge Manager's ability to reduce the comment period for uses other than minor, incidental, or one-time uses that will likely have no detrimental effect on refuge purposes or the System mission. In response to those comments, we deleted the following: "This period may be reduced by the Refuge Manager when there is not sufficient time to provide the full 14-days."

A few of the commenters suggested we consider specific categories of uses such as priority general public uses and electric utility right-of-ways, and minimal impact activities under the expedited compatibility determination process. We agree, in part, with the comments to include minimal impact activities under the expedited process and we adequately addressed this in the draft policy and further clarification is not needed. We did not accept the recommendations to include specific categories of uses, such as priority general public uses and electric utility right-of-ways, under the expedited process.

We addressed the concerns of the States to be more involved in compatibility determinations in Issue 16: State Involvement.

*Issue 16: State Involvement*

Thirteen States and one non-government organization addressed a State's need to be involved in compatibility determinations. Comments ranged from offering to assist refuge managers with compatibility determinations to requiring State consultation on all compatibility determinations. Although the range of the comments varied considerably, the topic that most frequently came up was the desire of the States to be involved in the compatibility determination process. The majority of these comments also made reference to the importance of completing compatibility determinations during the comprehensive conservation planning process.

The International Association of Fish and Wildlife Agencies, representing all 50 State fish and wildlife agencies, stated that we should reiterate Congressional intent in the NWRSIA–1997 that "compatibility determinations be made, to the extent practicable, as part of the CCP." We agree. We addressed this concern under Issue 12: Relationship to management plans. We believe the relationship between compatibility and comprehensive conservation planning accommodates the desire of the States to be involved in the compatibility determination process. The States will be invited to participate in the comprehensive conservation planning process. We will complete most compatibility determinations concurrently with a comprehensive conservation plan. Therefore, the States will be involved in compatibility determinations early in the process. Because of the close relationship between compatibility and comprehensive conservation planning, and the States' active role on the planning team, we do not need to add an additional step for State involvement in these regulations and policy.

*Issue 17: Steps To Prepare a Compatibility Determination*

We received many comments that addressed issues on the steps we propose to use in completing compatibility determinations. We have addressed comments on steps related to the determination of available resources (see Issue 8: Sound professional judgment), opportunity for public review and comment (see Issue 15: Public review and comment), preparing the justification for the finding (see Issue 13: Priority uses), and consultation by the Refuge Manager with their Regional Office Supervisor (see Issue 4: Decision making authority and appeal process), elsewhere in this document. Other comments related to the procedural steps we propose to take include: anticipated impacts of the use, description of the use, stipulations, finding of whether a use is compatible or not, and general comments about the proposed compatibility determination process.

Several commenters suggested that further guidance is needed in the policy to ensure that the assessment of anticipated impacts fully captures the extent to which a use detracts from refuge purposes or the National Wildlife Refuge System mission. The National Audubon Society suggested that the compatibility determination should list all relevant refuge conservation objectives. We agree, that where specific management objectives have been adopted through the public planning process, and those objectives clearly support the refuge's ability to fulfill its purposes, steps in the compatibility review process should acknowledge and evaluate how the proposed use would impact those specific refuge management objectives. Therefore, we have amended the policy to include this recommendation.

An individual wrote that refuge managers should have to take into account the impacts to wildlife in not continuing a use. We agree that this is inherent in the review process, that both positive and negative impacts to refuge resources must be evaluated in determining the net effect on the ability of the refuge to achieve its purposes. We did not believe that any clarifying language was necessary, however, on this issue. The Wildlife Legislative Fund of America stated that it was critical that the policy not invite or encourage refuge managers to speculate about possible or

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potential problems that could arise, and that they are opposed to management decisions based on conjecture and speculation. We agree in part, and have addressed this potential concern in the discussion of sound professional judgment. We have also made changes to the language affecting the decision process when insufficient information is available to make a decision regarding a priority public use. See Issue 13: Priority uses for more discussion on this topic. We did not change the policy relative to the recommendations received from the Animal Protection Institute that would add steps to the anticipated impacts section to address specifically what effects the use might have on threatened and endangered species or on "non-target" wildlife because we believe that the step already required analysis of impacts of the use to all species of wildlife. The National Wildlife Refuge Association requested we amend the section to include language that directs refuge managers to review all associated activities to the use (such as mode of transportation or special equipment that may be required for the intended use). We agree with the concept and believe that we have addressed this issue in the policy at section 2.9 When is a compatibility determination required?. In addition, we added language to section 2.12 What information do we include in a compatibility determination? to further clarify this point.

A suggestion to add steps for the description of use that would describe what time frame the use would be conducted, and what is the purpose of the use, were not incorporated in that we believe we already included these issues in the step, without adding the clarifying language. Similarly, we did not amend the policy, as suggested, to identify whether the use "and all associated uses are" compatible or not compatible because we believe that the additional language was not necessary to clarify that we are talking about the use in its entirety (including supporting uses and facilities) as described in detail earlier in the process. However, we added language referring to associated facilities, structures and improvements to the steps where we identify and describe the use. We had already stated in the policy that whenever practicable, the Refuge Manager, should concurrently consider related uses or uses that are likely to have similar effects in order to facilitate analysis of cumulative effects and to provide opportunity for effective public review and comment. The Refuge Manager will determine whether to consider a use individually, a specific use program, or in conjunction with a group of related uses.

The Edison Electric Institute, representing approximately 200 electric utility members, and other commenters, asked that we clarify the difference between the term "stipulations" under the proposed steps for making a compatibility determination, and the term "mitigation." Stipulations generally establish the controlling parameters of a use. For example: no right-of-way mowing during the period March 15 to July 15; restore disturbed area with native vegetation; within the areas marked by public use signs; by no more than 45 people at one time; at speeds not to exceed 15 mph. While these might "mitigate" the effects of a use they are more correctly stated as "stipulations" for the use to be compatible. Mitigation often gives rise to the thought that one could compensate for impacts rather than avoid. In addition, we have added the term "sufficient" to the policy as requested by the National Wildlife Refuge Association.

The Safari Club International expressed concern with the proposed changes to 50 CFR 26.41 which requires information "whether the use is compatible or not compatible * * *" They felt that this was not adequate and should also require the inclusion of an explanation of the reasoning used in reaching that determination. We agree that this is not enough alone; however, steps in the compatibility determination process also require the inclusion of the anticipated impacts of the use on the refuge's purposes and the National Wildlife Refuge System mission in regulations and a justification for the determination in policy. We believe that this will provide for adequate rationale for the decision being made.

The National Audubon Society requested that a step be added to determine if a use is an "appropriate use" and if it was determined not to be, that the use be denied without determining compatibility. We have listed seven reasons that we would deny a use without determining compatibility. While we did not define any of these steps as a determination of appropriateness, all seven steps serve that function, in part. We do, however, agree that we should give additional scrutiny to the question of what are appropriate uses of national wildlife refuges but that this issue goes beyond the question of compatibility covered in these regulations and policy. We will likely address this issue in future regulations and policy. The National Audubon Society also suggested changes that would have us add language addressing indirect impacts of the proposed use on the time, space, or funding available to implement conservation objectives, and would encourage refuge managers to work with any interested party to gather information, and should make an effort to balance data gathering among proponents and opponents of a proposed use. We agree that indirect impacts of a proposed use may include taking away or diverting resources from an activity that would support fulfilling the System mission or refuge purposes and therefore would be a factor in determining whether the proposed use is compatible or not. We added a statement to this effect although we did not use the exact wording provided by the National Audubon Society. Their recommendation to work with all interested parties is encouraged, and we believe that adequate guidance on this issue is included in the rule; however, we do not support the view that information must somehow be balanced among perceived opponents or proponents of a use. We will seek all pertinent information from all interested parties.

We have included a step to the compatibility determination process that would identify whether the use is a priority public use or not based upon a recommendation from the Wildlife Legislative Fund of America. Because of the clear focus on this issue in the NWRSIA–1997, we felt it was warranted to highlight such uses in our compatibility determination process.

*Issue 18: Existing Uses Determined To Be Not Compatible*

We received several comments regarding what we do with existing uses that are not compatible. The comments ranged from opposed to the provision to need for clarification to strongly supportive of the provision. The NWRSIA–1997 directs us to "provide for the elimination or modification of any use as expeditiously as practicable after a determination is made that the use is not a compatible use" in the regulations. In the proposed regulations and draft policy we stated that existing uses determined to be not compatible would be terminated or modified to make them compatible as expeditiously as practicable. In the final regulations and policy, we maintained what we had already proposed and added a statement that says, except with written authorization from the Director, the process for termination or modification will not exceed 6 months from the date that the compatibility determination is signed.



*Issue 19: Pre-acquisition Compatibility Determinations*

Several commenters addressed the type of uses for which we should prepare pre-acquisition compatibility determinations and one commenter addressed who should make the compatibility determination.

Three commenters recommended that we prepare pre-acquisition compatibility determinations for all existing uses. One commenter supported the language in our draft policy and regulations, and said we should clarify that existing wildlife-dependent recreational public uses do not include private uses. One commenter recommended clarifying what public means. With regard to pre-acquisition compatibility determinations, the NWRSIA–1997 states "on lands added to the System after March 25, 1996, the Secretary shall identify, prior to acquisition, withdrawal, transfer, reclassification, or donation of any such lands, existing compatible wildlife-dependent recreational uses * * *" It is clear that this provision of the law does not apply to uses other than wildlife-dependent recreational uses. In addition, the law specifically refers to "compatible wildlife-dependent recreational uses" as the "priority general public uses of the System." In the context of pre-acquisition compatibility determinations, we believe that Congress was referring to existing wildlife-dependent recreational public uses rather than existing wildlife-dependent recreational private uses. In order to make this distinction in policy and regulations, we used the word "public" in our discussion of pre-acquisition compatibility determinations. We do not believe that we need further clarification in the policy and regulations.

One commenter recommended that the planning team make pre-acquisition compatibility determinations. As discussed elsewhere in this document under Issue 4: Decision making authority and appeal process, we believe that the Refuge Manager is the most appropriate and qualified person to make all compatibility determinations, including pre-acquisition compatibility determinations.

*Issue 20: NEPA*

We received several comment letters regarding the National Environmental Policy Act (NEPA) and how it relates to compatibility. Generally, the comments addressed the need to follow the NEPA process when completing compatibility determinations.

NEPA requires us to examine the environmental impact of our actions, incorporate environmental information, and utilize public participation, as appropriate, in the planning and implementation of our actions. NEPA compliance is required whenever we take an action. It is the action that triggers NEPA. A compatibility determination is not an action under NEPA, rather it is only one of many factors that we take into account whenever we consider taking an action, *i.e.*, allowing a refuge use. Comprehensive conservation plans and step-down management plans include our decisions about allowing or not allowing refuge uses. These plans will have associated NEPA compliance documentation. As we discussed under Issue 12: Relationship to management plans, we will complete many compatibility determinations concurrently with a planning process. Compatibility determinations are an integral part of our decision about refuge uses; however, it is important to note that compatibility is only one of many factors that we take into account when we consider allowing or not allowing a refuge use. We revised the language to clarify the relationship between NEPA and compatibility.

*Issue 21: Policy and Regulations*

Two commenters discussed the need to provide more detail in the regulations. They were surprised that we decided to prepare separate regulations and policy documents to implement this provision of the law. They were concerned that a number of the important provisions in the policy document are missing entirely from the regulations. The NWRSIA–1997 requires that we issue final regulations establishing the compatibility determination process. We have accomplished that directive with these final regulations. In addition to regulations in the Code of Federal Regulations (CFR), we chose to concurrently develop more detailed guidance for preparing compatibility determinations in the Fish and Wildlife Service Manual. The compatibility chapter in the Service Manual contains a mix of rules that we must follow as well as general guidance. Publishing compatibility rules in the Service Manual does not diminish the requirements that they contain. Refuge Managers will be bound by those requirements that are mandatory whether or not we publish them in the CFR. In addition, because the compatibility chapter of the policy manual contains rules, we will have to use the same notice and comment procedure utilized to adopt this chapter if we decide to amend or change it. Publishing in the Service Manual rather than the CFR does not affect the strength of any rules that are in the chapter nor does it exempt us from procedural requirements.

*Issue 22: Wilderness*

One commenter was pleased that we discussed the importance of preserving wilderness and recommended we add "Unless specifically authorized under the Act establishing the wilderness area, the construction of roads or permanent structures, and the use of motorized equipment or mechanized vehicles is prohibited within wilderness areas unless necessary to preserve the area's wilderness characteristics." We state in the policy that for uses proposed for wilderness areas we must first analyze whether the use can be allowed under the terms of the Wilderness Act before we determine if the use is compatible. We also state that if the use can be allowed under the Wilderness Act we must then determine if the use is compatible. This compatibility determination will include the purposes of the Wilderness Act, which makes such purposes supplemental to those of the refuge. We believe the recommended additional language goes beyond the question of compatibility covered in these regulations and policy and will be more appropriate in our future wilderness policy.

*Issue 23: Economic Uses*

We received a few comments addressing economic uses of refuges. Comments ranged from encouraging economic uses to defining certain economic uses as allowed uses to not allowing economic uses unless they contribute towards achieving refuge purposes and the System mission and do not degrade the biological integrity, diversity and environmental health of the refuge. We already said in the proposed rule that we may allow economic uses when they may contribute to the "administration" of the refuge. "Administration" of the refuge was intended to mean achieving refuge purposes and the System mission. Therefore, to clarify what we mean we accept the recommendation to replace administration of the refuge with achievement of the refuge purposes and System mission. In the process of addressing comments we decided that section 29.3 refers to the term "nonprogram uses" which is a term no longer applicable to the way we currently manage the National Wildlife

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Refuge System. Section 29.3 provides no additional information beyond what we provide in section 25.21; therefore, we removed section 29.3.

*Issue 24: Allowing a Use*

We received a few comments addressing the relationship between compatibility and actually allowing a use. The commenters stated that "the relationship of compatibility and refuge special use permits is not clear," "compatibility determinations and permitting should be separate but linked processes' and "we have concerns that there is no specific connection between a "compatible" compatibility finding and the granting of an actual permit to conduct the activity." We state in the regulations that we may open an area by regulation, individual permit, or public notice, in accordance with 50 CFR 25.31 and we may open an area only after we determine that the use is a compatible use. We may open refuges by a number of methods. Depending on the type of allowed use, the Refuge Manager has several ways to open a specific refuge. For example, to open a refuge to hunting, we revise a list of refuges allowing hunting found at 50 CFR part 32, to open a refuge to wildlife observation we may do so by posting a sign at an appropriate location and to open a refuge for a specific research project we may do so by issuing a special use permit. This is not new. Compatibility determinations are an integral part of our decision about refuge uses; however, it is important to note that compatibility is only one of many factors that we take into account when we consider allowing or not allowing a refuge use. We do not believe that any additional language is necessary to clarify this issue.

*Issue 25: Public Safety*

One commenter recommended we add "and not inconsistent with public safety" in section 26.41 of the regulations and in section 2.3 of the policy. The commenter pointed out that this term was used in the NWRSIA–1997 and should be used in these regulations and policy. We recognize that the NWRSIA–1997 includes this directive, but have included it separate from compatibility. Deciding whether a proposed use is "not inconsistent with public safety" is an issue we take into consideration before we prepare a compatibility determination. In the policy at 2.10 D we list a number of situations, including "inconsistent with public safety," when a refuge manager would deny a proposed use without determining compatibility.

*Issue 26: Support Letters*

We received many comments that stated support for a specific organization's comments. They were: one Native Village Corporation supported the Alaska Federation of Natives comments; one non-government organization supported the Animal Protection Institute's comments; one non-government organization supported the National Audubon Society's comments; one individual supported the Wilderness Society's comments; eight non-government organizations supported the Conservation Force's comments; and 18 non-government organizations supported the National Wildlife Refuge Association's comments.

We considered these letters of endorsement at the same time we considered the information included in the organization's comments that they endorse. Since these letters of endorsement did not include new or additional information, we did not respond to them individually. For example, when we considered the issues included in the Conservation Force's comments, we took into account that eight conservation organizations endorsed their comments. Likewise, when we considered the issues included in the National Wildlife Refuge Association's comments, we took into account that 18 Friends Groups, who support local national wildlife refuges, formally endorsed their comments.

*Issue 27: Extend Public Comment Period*

We published the proposed rule (64 FR 49056) and draft policy (64 FR 49067) in the **Federal Register** on September 9, 1999. We invited the public to provide comments on the proposed rule and draft policy by November 8, 1999. During this 60-day comment period, we received 12 written requests for an extension to the comment period. In order to ensure that the public had an adequate opportunity to review and comment on the proposed rule and draft policy, we extended the comment period to December 8, 1999 (64 FR 62163 published November 16, 1999). Therefore, the proposed rule and draft policy were available for public review and comment for 90 days.

*Issue 28: Unrelated Comments*

We received many comment letters that did not include information relevant to the proposed rule and draft policy under review. Generally, these comments either voiced support for the Highway 12 project in South Dakota or voiced opinions about the appropriateness of hunting and trapping on national wildlife refuges. These comments did not contain information that we could use to improve the proposed rule and draft policy.

*Revisions to the Proposed Rule*

We considered all of the information and recommendations for improvement included in the comments we received during the 90-day public review and comment period. We made changes to the proposed rule and draft policy as discussed in the "Summary of Comments Received" section of this document. The following represents a summary of the significant revisions made to the proposed rule and draft policy.

(1) In the proposed regulations and draft policy we stated that lands subject to the patent restrictions imposed by Section 22(g) of ANCSA are subject to the compatibility standard. In the final regulations (25.21(b)) and final policy (2.8(C)) we have provided more detail on how this will be implemented. These changes allow us to conduct compatibility determinations differently with regard to the ANCSA 22(g) lands in recognition of the unique status of these lands.

(2) In the proposed regulations and draft policy we stated that we will not allow making proposed refuge uses compatible with replacement of lost habitat values or other compensation. In the final regulations (26.41(b) and (c)) and final policy (2.11(C) and (D)) we maintain this requirement with one exception. We will not allow making proposed refuge uses compatible with replacement of lost habitat values or other compensatory mitigation, except for maintenance of an existing right-of-way including minor expansions or minor realignments to meet safety standards. This change provides a workable mechanism for dealing with previously approved right-of-ways.

(3) In the proposed regulations and draft policy we stated that prior to approving each compatibility determination, the Refuge Manager will consult with the regional office supervisor. In the final regulations (26.41(a)(14)) and final policy (2.12(A)(14)) we changed the required regional office consultation to a required regional office concurrence on all compatibility determinations. This change will help ensure that we look at both large-scale (System mission) and local-scale (refuge purposes) issues when preparing compatibility determinations.

(4) In the proposed regulations and draft policy we stated that the Refuge Manager may temporarily suspend, allow, or initiate any use in a refuge if



necessary to immediately act in order to protect the health and safety of the public or any fish or wildlife population. We stated in the draft policy that these temporary actions should not exceed 12 months. In the final policy (2.10(C)) we reduced the time frame for these temporary actions to not exceed 30 days.

(5) In the proposed regulations and draft policy we stated that we would re-evaluate compatibility determinations for existing uses whenever any one of a number of criteria was met. In the final regulations (25.21(f), (g), (h) and (i)) and final policy (2.11(H)) we added significant detail to clarify certain aspects of how and when we would re-evaluate compatibility determinations. Among other clarifying language we added the following: Whenever a re-evaluation is triggered we will take a fresh look at the use and complete a new compatibility determination following the procedure outlined in the regulations and policy; whenever we prepare a compatibility determination for re-authorization of an existing right-of-way, we will base our analysis on the existing conditions with the use in place, not from a pre-use perspective; for uses in existence on the effective date of these regulations that were specifically authorized for a period longer than 10 years (such as right-of-ways), our compatibility re-evaluation will examine compliance with the terms and conditions of the authorization, not the authorization itself, however, the Service will request modifications to the terms and conditions of the permits from the permittee if the Service determines that such changes are necessary to ensure that the use remains compatible; and after the effective date of these regulations no uses will be permitted or re-authorized, for a period longer than 10 years, unless the terms and conditions for such long-term permits specifically allows for the modifications to the terms and conditions, if necessary to ensure compatibility.

**Required Determinations**

*Regulatory Planning and Review (E.O. 12866)*

The final rule was reviewed by the Office of Management and Budget under Executive Order 12866.

(1) This rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit analysis for a new approach is provided in (4) below. This rule is administrative, legal, technical, and procedural in nature. This rule establishes the process for determining the compatibility of proposed national wildlife refuge uses as well as the procedures for documentation and periodic review of existing uses. We have been making compatibility determinations since passage of the NWRSAA–1966 in 1966. The NWRSIA–1997, passed in 1997, does not greatly change the compatibility standards so we expect these procedures to cause only minor modifications to existing national wildlife refuge public use programs. We expect a small increase, up to 5 percent, in the amount of public use activities allowed on refuges as a result of this rule.

The appropriate measure of the economic effect of changes in recreational use is the change in the welfare of recreationists. We measure this in terms of willingness to pay for the recreational opportunity. We estimated total annual willingness to pay for all recreation at national wildlife refuges to be $372.5 million in Fiscal Year 1995 (Banking on Nature: The Economic Benefits to Local Communities of National Wildlife Refuge Visitation, DOI/FWS/Refuges, 1997). We expect the compatibility determination process implemented in this rule to cause at most a 5 percent increase in recreational use system-wide. This does not mean that every refuge will have the same increase in public use. Only refuges where increases in hunting, fishing, and non-consumptive visitation are compatible will we allow the increases. Across the entire National Wildlife Refuge System we expect an increase in hunting, fishing, and non-consumptive visitation to amount to no more than a 5 percent overall increase. If the full 5 percent increase in public use were to occur at national wildlife refuges, this would translate to a maximum additional willingness to pay of $21 million (1999 dollars) annually for the public. However, we expect the real benefit to be less than $21 million because we expect the final increase in public use to be smaller than 5 percent. Furthermore, if the public substitutes non-refuge recreation sites for refuges, then we would subtract the loss of benefit attributed to non-refuge sites from the $21 million estimate.

We measure the economic effect of commercial activity by the change in producer surplus. We can measure this as the opportunity cost of the change, *i.e.*, the cost of using the next best production option if we discontinue production using the national wildlife refuge. National wildlife refuges use grazing, haying, timber harvesting, and row crops to help fulfill the National Wildlife Refuge System mission and national wildlife refuge purposes. Congress authorizes us to allow economic activities of national wildlife refuges, and we do allow some. But, for all practical purposes, we invite (almost 100 percent) the economic activities to help achieve a national wildlife refuge purpose or National Wildlife Refuge System mission. For example, we do not allow farming per se, rather we invite a farmer to farm on the national wildlife refuge under a Cooperative Farming Agreement to achieve a national wildlife refuge purpose. Compatibility applies to these economic activities, and this rule likely will have minor changes in the amounts of these activities occurring on national wildlife refuges. Information on profits and production alternatives for most of these activities is proprietary, so a valid estimate of the total benefits of permitting these activities on national wildlife refuges is not available.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency since the rule pertains solely to management of national wildlife refuges by the Service.

(3) This rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. No grants or other Federal assistance programs are associated with public use of national wildlife refuges.

(4) This rule does not raise novel legal or policy issues; however, it does provide a new approach. This rule is significant because of this reason. This rule continues the practice of requiring public use of national wildlife refuges to be compatible. It adds the NWRSIA–1997 provisions that ensure that compatibility becomes a more effective conservation standard, more consistently applied across the entire National Wildlife Refuge System, and more understandable and open to involvement by the public. A benefit/cost assessment of the implementation of this rule follows.

Baseline for analysis—A "with" and "without" this rule format is used to determine the impact of implementing this rule on activities engaged in by the public on national wildlife refuge lands. The impact on the public of refuge visitation rates translated into public benefits for all wildlife-related and other activities that were determined compatible "without" this rule is the proper economic baseline. The Refuge Management Information System data on public visitation for the System for fiscal year 1999 was used to determine the level of baseline wildlife-related

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activities. Non-wildlife related activities on refuges such as research and crop production are not estimated in the baseline but their effect on compatibility planning cycles is included in the cost estimate of this rule.

Benefits from implementing this rule—As was estimated under (1) above, it is expected that a maximum of $21 million annually in additional consumer surplus will be attributable to this rulemaking. This is a System-wide estimate of the increase in consumer surplus and covers all public activities on System lands.

Costs of implementing this rule—There are two components of cost that are relevant to this rulemaking action. They are the changes in the allocation of refuge labor from preparing compatibility determinations that include more comprehensive determinations with additional data requirements and public review before implementation and the potential costs associated with increased refuge visitation. The provisions of the NWRSIA–1997 call for preparing new compatibility determinations at least every 15 years for wildlife-dependent recreational uses and at least every 10 years for non-wildlife-dependent recreational uses. This means that over the next 50 years the Service expects to make at least five compatibility determinations for non-wildlife-dependent recreational uses and at least three compatibility determinations for wildlife-dependent recreational uses on all refuges with these uses.

Reallocation of refuge labor—Compatibility determinations require sound professional judgement, experience and consultation time which are labor costs that are fixed costs in the refuge budget and will not change because of this rulemaking. The requirement of consistent, written, and public reviewed compatibility determinations done according to a specific format will help to guarantee the integrity of the wildlife resources on the more than 93 million acres of refuge lands and waters administered by the Service. The allocation of additional time spent preparing and documenting the compatibility determinations with this rule compared to the time spent without this rule is the portion of fixed cost attributable to this rulemaking. For the approximately 429 refuges in the System with public use, the amount of time for refuge managers to become trained and familiar with the new procedures and requirements is estimated to be an average of five working days. The incremental time spent preparing the compatibility determinations using the new format, including public review and comment, is estimated to be an average of five working days. The ten working days per compatibility determination only applies for the first determination. All succeeding determinations will only take an additional five days each. Using the average salary level for a refuge manager, the discounted present value of the labor costs associated with learning and preparing compatibility determinations using the new format amounts to a cost of $5.8 million. The $5.8 million includes, refuge manager training, three iterations of compatibility determinations for wildlife-dependent recreational uses, and five compatibility determinations for non-wildlife-dependent recreational uses. The present value calculation used a real interest rate of 3.6 percent (30 year Treasury Note real rate of interest, OMB circular A–94). The annualized total costs over the 50 years equate to slightly over $242 thousand per year. The analytical cycle for this rulemaking was fifty years, since discounting beyond that time reduced future costs to a negligible amount.

Increased public visitation—In addition to labor costs, the better maintenance of trust resources on refuge lands will likely lead to an increase in public visitation and use. This will require some infrastructure changes, i.e. additional nature trails, visitor center improvements, law enforcement, etc. Some of these costs will be a reallocation of refuge labor and the purchasing of additional supplies. For example, more brochures stating refuge hunting and fishing regulations, building new signs and kiosks for additional wildlife viewing trails. It is anticipated that a 5 percent increase in visitation would require some additional expenditures from existing refuge budgets but how much cannot be determined at this time. However, if each refuge with wildlife viewing and photography opportunities were to build a new one-mile trail for this purpose it would cost approximately $3 million in one time cost and nearly $400 thousand in annual maintenance. Hunting and fishing visits to refuges would increase the time refuge staff devoted to law enforcement activities which would mean a reallocation of time from other duties. This would lead to maintenance delays. There may be a small impact System-wide but it is impossible to attribute any of these effects to specific refuges at this time.

Comparison of total benefits and total costs—The total benefits of this rulemaking are estimated to be $21 million annually. The total annualized costs include slightly over $242 thousand for more comprehensive compatibility determinations and approximately $500 thousand if each refuge built and maintained an additional one-mile, marked nature trail. It is unknown exactly what kind of additional public use facilities would be required and at which refuge. Some refuges may be able to accommodate a small increase in public use without incurring additional cost and some refuges may face significant costs. These costs cannot be determined for sure until the Service has time to implement the new compatibility regulations and the public is given time to react to the new procedures.

However, the estimated public benefits (a more protected and maintained resource base on 93 million acres of Service refuge lands and waters and an increase in refuge visitation, valued at $21 million annually) of this rulemaking substantially outweigh the known ($242 thousand for more comprehensive compatibility determinations) and potential costs (potential facility enhancements and maintenance valued at approximately $500 thousand per year).

*Regulatory Flexibility Act*

We certify that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Congress created the National Wildlife Refuge System to conserve fish, wildlife, and plants and their habitats and facilitated this conservation mission by providing Americans opportunities to visit and participate in compatible wildlife-dependent recreation, including fishing, hunting, wildlife observation and photography, and environmental education and interpretation as priority general public uses on national wildlife refuges and to better appreciate the value of, and need for, wildlife conservation.

This rule is administrative, legal, technical, and procedural in nature and provides more detailed instructions for the compatibility determination process than have existed in the past. This rule does not change the compatibility standard, but implementation of the National Wildlife Refuge System Improvement Act of 1997 may result in more opportunities for wildlife-dependent recreation on national wildlife refuges. For example, more wildlife observation opportunities may occur at Florida Panther National Wildlife Refuge in Florida or more hunting opportunities at Pond Creek National Wildlife Refuge in Arkansas. Such changes in permitted use are likely to increase visitor activity near the national wildlife refuge. To the extent visitors spend time and money in the area that they would not have otherwise, they contribute new income to the regional economy and benefit local businesses.

National wildlife refuge visitation is a small component of the wildlife recreation industry as a whole. In 1996, 77 million U.S. residents over 15 years old spent 1.2 billion activity-days in wildlife-associated recreation activities. They spent about $30 billion on fishing, hunting, and wildlife watching trips (Tables 49, 54, 59, 63, 1996 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation, DOI/FWS/FA, 1997). National wildlife refuges recorded about 29 million visitor-days that year (RMIS, FY 1996 Public Use Summary). A study of 1995 national wildlife refuge visitors found their travel spending generated $401 million in sales and 10,000 jobs for local economies (Banking on Nature: The Economic Benefits to Local Communities of National Wildlife Refuge Visitation, DOI/FWS/Refuges, 1997). These spending figures include spending that would have occurred in the community anyway, and so they show the importance of the activity in the local economy rather than its incremental impact. Marginally greater recreational opportunities on national wildlife refuges will have little industry-wide effect.

Expenditures as a result of this rule are a transfer and not a benefit to many small businesses. We expect the incremental recreational opportunities to be marginal and scattered so we do not expect the rule to have a significant economic effect on a substantial number of small entities in any Region or nationally.

*Small Business Regulatory Enforcement Fairness Act (SBREFA)*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act as discussed in the Regulatory Planning and Review section above. This rule:

a. Will not have an annual effect on the economy of $100 million or more;

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; and

c. Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

*Unfunded Mandates Reform Act*

Since this rule applies to use of Federally-owned and managed national wildlife refuges, it does not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than $100 million per year. This rule does not have a significant or unique effect on State, local, Tribal governments, or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

*Takings (E.O. 12630)*

In accordance with Executive Order 12630, this rule does not have significant takings implications. Therefore, a takings implication assessment is not required. These regulations may result in increased visitation at refuges and provide for minor changes to the methods of public use permitted within the National Wildlife Refuge System.

*Federalism Assessment (E.O. 13132)*

As discussed in the Regulatory Planning and Review, and Unfunded Mandates Reform Act sections above, this rule will not have substantial direct effects on the States, in their relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, the Service has determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

*Civil Justice Reform (E.O. 12988)*

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

*Paperwork Reduction Act*

This regulation does not contain any information collection requirements other than that already approved by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501). See 50 CFR 25.23 for information concerning that approval.

*Section 7 Consultation*

The Service has determined that the regulations established by this final rule will not affect listed species or designated critical habitat and therefore, consultation under section 7 of the Endangered Species Act is not required. The basis for this conclusion is that this final rule establishes in regulations the process for determining whether or not a use of a national wildlife refuge is a compatible use. The compatibility determination process described in this final rule is only one step in the decision making process for deciding whether or not to permit a use of a national wildlife refuge. It is the ultimate decision to permit or otherwise implement a particular use that is causative with respect to affecting listed species or their critical habitat. The Service will conduct section 7 consultations when actions it authorizes, funds, or carries out may affect listed species or their critical habitat.

*National Environmental Policy Act*

We ensure compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(C)) when developing national wildlife refuge comprehensive conservation plans and step-down management plans, and we make determinations required by NEPA before the addition of national wildlife refuges to the lists of areas open to public uses. The revisions to regulations in this document resolve a variety of issues concerning compatibility of national wildlife refuge uses. In accordance with 516 DM 2, Appendix 1.10, we have determined that this rule is categorically excluded from the NEPA process because it is limited to policies, directives, regulations and guidelines of an administrative, financial, legal, technical or procedural nature; or the environmental effects of which are too broad, speculative or conjectural to lend themselves to meaningful analysis. Site-specific proposals, as indicated above, will be subject to the NEPA process.

**Available Information for Specific National Wildlife Refuges**

Individual national wildlife refuge headquarters retain information regarding public use programs and the conditions that apply to their specific programs, and maps of their respective areas.

You may also obtain information from the Regional Offices at the addresses listed below:

- Region 1—California, Hawaii, Idaho, Nevada, Oregon, and Washington. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, Eastside Federal Complex, Suite 1692, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181; Telephone (503) 231–6214; http://pacific.fws.gov.
- Region 2—Arizona, New Mexico, Oklahoma and Texas. Regional Chief, National Wildlife Refuge System, U.S.

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Fish and Wildlife Service, Box 1306, Albuquerque, New Mexico 87103; Telephone (505) 766–1829; http://southwest.fws.gov.

• Region 3—Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio and Wisconsin. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111; Telephone (612) 713–5300; http://midwest.fws.gov.

• Region 4—Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Puerto Rico and the Virgin Islands. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Room 324, Atlanta, Georgia 30345; Telephone (404) 679–7152; http://southeast.fws.gov.

• Region 5—Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia and West Virginia. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035–9589; Telephone (413) 253–8550; http://northeast.fws.gov.

• Region 6—Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, Box 25486, Denver Federal Center, Denver, Colorado 80225; Telephone (303) 236–8145; http://www.r6.fws.gov.

• Region 7—Alaska. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 1011 E. Tudor Rd., Anchorage, Alaska 99503; Telephone (907) 786–3357; http://alaska.fws.gov.

**Primary Author**

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**List of Subjects**

*50 CFR Part 25*

Administrative practice and procedure, Concessions, Reporting and recordkeeping requirements, Safety, Wildlife refuges.

*50 CFR Part 26*

Recreation and recreation areas, Wildlife refuges.

*50 CFR Part 29*

Public lands—mineral resources, Public lands—rights-of-way, Wildlife refuges.

For the reasons set forth in the preamble, we amend parts 25, 26, and 29 of Title 50, Chapter I, Subchapter C of the Code of Federal Regulations as follows:

**PART 25—[AMENDED]**

1. The authority citation for part 25 continues to read as follows:

**Authority:** 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd, and 715i, 3901 *et seq.*; and Pub. L. 102–402, 106 Stat. 1961.

2. Amend § 25.12 by revising the definitions of "Coordination area," "National wildlife refuge," "National Wildlife Refuge System," and "Service or we" and adding alphabetically definitions of "Compatibility determination," "Compatible use," "Comprehensive conservation plan," "Conservation, and Management," "Director," "Fish, Wildlife, and Fish and wildlife," "National Wildlife Refuge System mission, and System mission," "Plant," "Purpose(s) of the refuge," "Refuge management activity," "Refuge management economic activity," "Refuge Manager," "Regional Chief," "Refuge use, and Use of a refuge," "Regional Director," "Secretary," "Sound professional judgment," "State, and United States," "Wildlife-dependent recreational use, and Wildlife-dependent recreation," and "You" to read as follows:

**§ 25.12 What do these terms mean?**

(a) * * *

* * * * * *

*Compatibility determination* means a written determination signed and dated by the Refuge Manager and Regional Chief, signifying that a proposed or existing use of a national wildlife refuge is a compatible use or is not a compatible use. The Director makes this delegation through the Regional Director.

*Compatible use* means a proposed or existing wildlife-dependent recreational use or any other use of a national wildlife refuge that, based on sound professional judgment, will not materially interfere with or detract from the fulfillment of the National Wildlife Refuge System mission or the purpose(s) of the national wildlife refuge.

*Comprehensive conservation plan* means a document that describes the desired future conditions of a refuge or planning unit and provides long-range guidance and management direction to achieve the purposes of the refuge; helps fulfill the mission of the Refuge System; maintains and, where appropriate, restores the ecological integrity of each refuge and the Refuge System; helps achieve the goals of the National Wilderness Preservation System; and meets other mandates.

*Conservation*, and *Management* mean to sustain and, where appropriate, restore and enhance, healthy populations of fish, wildlife, and plants utilizing, in accordance with applicable Federal and State laws, methods and procedures associated with modern scientific resource programs. Such methods and procedures include, consistent with the provisions of the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee), protection, research, census, law enforcement, habitat management, propagation, live trapping and transplantation, and regulated taking.

*Coordination area* means a wildlife management area made available to a State by cooperative agreement between the U.S. Fish and Wildlife Service and a State agency having control over wildlife resources pursuant to section 4 of the Fish and Wildlife Coordination Act (16 U.S.C. 664 or by long-term leases or agreements pursuant to title III of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1010 *et seq.*). The States manage coordination areas but they are part of the National Wildlife Refuge System. The compatibility standard does not apply to coordination areas.

*Director* means the Director, U.S. Fish and Wildlife Service or the authorized representative of such official.

* * * * * *

*Fish, Wildlife*, and *Fish and wildlife* mean any member of the animal kingdom in a wild, unconfined state, whether alive or dead, including a part, product, egg, or offspring of the member.

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*National wildlife refuge*, and *Refuge* mean a designated area of land, water, or an interest in land or water located within the National Wildlife Refuge System but does not include coordination areas.

*National Wildlife Refuge System*, and *System* mean all lands, waters, and interests therein administered by the U.S. Fish and Wildlife Service as wildlife refuges, wildlife ranges, wildlife management areas, waterfowl production areas, coordination areas, and other areas for the protection and conservation of fish and wildlife including those that are threatened with extinction as determined in writing by the Director or so directed by Presidential or Secretarial order. The determination by the Director may not be delegated.

*National Wildlife Refuge System mission*, and *System mission* mean to administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans.

* * * * * *

*Plant* means any member of the plant kingdom in a wild, unconfined state, including any plant community, seed, root, or other part of a plant.

*Purpose(s) of the refuge* means the purposes specified in or derived from the law, proclamation, executive order, agreement, public land order, donation document, or administrative memorandum establishing, authorizing, or expanding a national wildlife refuge, national wildlife refuge unit, or national wildlife refuge subunit. For refuges that encompass Congressionally designated wilderness, the purposes of the Wilderness Act are additional purposes of the wilderness portion of the refuge.

*Refuge management activity* means an activity conducted by the Service or a Service-authorized agent to fulfill one or more purposes of the national wildlife refuge, or the National Wildlife Refuge System mission. Service-authorized agents include contractors, cooperating agencies, cooperating associations, refuge support groups, and volunteers.

*Refuge management economic activity* means a refuge management activity on a national wildlife refuge which results in generation of a commodity which is or can be sold for income or revenue or traded for goods or services. Examples include: Farming, grazing, haying, timber harvesting, and trapping.

*Refuge Manager* means the official directly in charge of a national wildlife refuge or the authorized representative of such official. In the case of a national wildlife refuge complex, this refers to the official directly in charge of the complex.

*Regional Chief* means the official in charge of the National Wildlife Refuge System within a Region of the U.S. Fish and Wildlife Service or the authorized representative of such official.

*Refuge use*, and *Use of a refuge* mean a recreational use (including refuge actions associated with a recreational use or other general public use), refuge management economic activity, or other use of a national wildlife refuge by the public or other non-National Wildlife Refuge System entity.

*Regional Director* means the official in charge of a Region of the U.S. Fish and Wildlife Service or the authorized representative of such official.

*Secretary* means the Secretary of the Interior or the authorized representative of such official.

*Service, We*, and *Us* mean the U.S. Fish and Wildlife Service, Department of the Interior.

*Sound professional judgment* means a finding, determination, or decision that is consistent with principles of sound fish and wildlife management and administration, available science and resources, and adherence to the requirements of the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee), and other applicable laws. Included in this finding, determination, or decision is a refuge manager's field experience and knowledge of the particular refuge's resources.

*State*, and *United States* mean one or more of the States of the United States, Puerto Rico, American Samoa, the Virgin Islands, Guam, and the territories and possessions of the United States.

* * * * * *

*Wildlife-dependent recreational use*, and *Wildlife-dependent recreation* mean a use of a national wildlife refuge involving hunting, fishing, wildlife observation and photography, or environmental education and interpretation. The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee), specifies that these are the six priority general public uses of the National Wildlife Refuge System.

* * * * * *

*You* means the public.

3. Revise § 25.21 to read as follows:

**§ 25.21 When and how do we open and close areas of the National Wildlife Refuge System to public access and use or continue a use?**

(a) Except as provided below, all areas included in the National Wildlife Refuge System are closed to public access until and unless we open the area for a use or uses in accordance with the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee), the Refuge Recreation Act of 1962 (16 U.S.C. 460k–460k–4) and this subchapter C. See 50 CFR 36 for details on use and access restrictions, and the public participation and closure process established for Alaska national wildlife refuges. We may open an area by regulation, individual permit, or public notice, in accordance with § 25.31 of this subchapter.

(b) We may open a national wildlife refuge for any refuge use, or expand, renew, or extend an existing refuge use only after the Refuge Manager determines that it is a compatible use and not inconsistent with any applicable law. Lands subject to the patent restrictions imposed by Section 22(g) of the Alaska Native Claims Settlement Act are subject to the compatibility requirements of Parts 25 and 26 of 50 CFR except as otherwise provided in paragraph (b)(1) of this section.

(1) We will complete compatibility determinations for uses of Alaska Native Claims Settlement Act 22(g) lands in compliance with the following requirements:

(i) Refuge managers will work with 22(g) landowners in implementation of these regulations. The landowners should contact the Refuge Manager in advance of initiating a use and request a compatibility determination. After a compatibility determination is requested, refuge managers have no longer than ninety (90) days to complete the compatibility determination and notify the landowner of the finding by providing a copy of the compatibility determination or to inform the landowner of the specific reasons for delay. If a refuge manager believes that a finding of not compatible is likely, the Refuge Manager will notify the landowner prior to rendering a decision to encourage dialog on how the proposed use might be modified to be compatible.

(ii) Refuge managers will allow all uses proposed by 22(g) landowners when the Refuge Manager determines the use to be compatible with refuge purposes.

(iii) Compatibility determinations will include only evaluations of how the proposed use would affect the ability of the refuge to meet its mandated purposes. The National Wildlife Refuge System mission will not be considered in the evaluation. Refuge purposes will include both pre-ANILCA purposes and those established by ANILCA, so long as they do not conflict. If conflicts arise, ANILCA purposes will take precedence.

(iv) A determination that a use is not compatible may be appealed by the landowner to the Regional Director. The appeal must be submitted in writing within forty-five (45) days of receipt of the determination. The appeals process provided for in 50 CFR 36.41(i) (3) through (5) will apply.

(v) Compatibility determinations for proposed uses of 22(g) lands will only evaluate the effects of the use on the adjacent refuge lands, and the ability of that refuge to achieve its purposes, not on the effects of the proposed use to the 22(g) lands.

(vi) Compatibility determinations for 22(g) lands that a use is compatible are not subject to re-evaluation unless the

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use changes significantly, significant new information is made available that could affect the compatibility determination, or if requested by the landowner.

(vii) Refuge comprehensive conservation plans will not include 22(g) lands, and compatibility determinations affecting such lands will not to be automatically re-evaluated when the plans are routinely updated.

(viii) Refuge special use permits will not be required for compatible uses of 22(g) lands. Special conditions necessary to ensure a proposed use is compatible may be included in the compatibility determination and must be complied with for the use to be considered compatible.

(c) The Refuge Manager may temporarily allow or initiate any refuge use without making a compatibility determination if necessary to protect the health and safety of the public or any fish or wildlife population.

(d) When we add lands to the National Wildlife Refuge System, the Refuge Manager will identify, prior to acquisition, withdrawal, transfer, reclassification, or donation of those lands, existing wildlife-dependent recreational public uses (if any) determined to be compatible that we will permit to continue on an interim basis, pending completion of the comprehensive conservation plan for the national wildlife refuge. We will make these compatibility determinations in accordance with procedures in § 26.41 of this subchapter.

(e) In the event of a threat or emergency endangering the health and safety of the public or property or to protect the resources of the area, the Refuge Manager may close or curtail refuge uses of all or any part of an opened area to public access and use in accordance with the provisions in § 25.31, without advance notice. See 50 CFR 36.42 for procedures on closing Alaska national wildlife refuges.

(f) We will re-evaluate compatibility determinations for existing wildlife-dependent recreational uses when conditions under which the use is permitted change significantly, or if there is significant new information regarding the effects of the use, or concurrently with the preparation or revision of a comprehensive conservation plan, or at least every 15 years, whichever is earlier. In addition, a refuge manager always may re-evaluate the compatibility of a use at any time.

(g) Except for uses specifically authorized for a period longer than 10 years (such as right-of-ways), we will re-evaluate compatibility determinations for all existing uses other than wildlife-dependent recreational uses when conditions under which the use is permitted change significantly, or if there is significant new information regarding the effects of the use, or at least every 10 years, whichever is earlier. In addition, a refuge manager always may re-evaluate the compatibility of a use at any time.

(h) For uses in existence on November 17, 2000 that were specifically authorized for a period longer than 10 years (such as right-of-ways), our compatibility re-evaluation will examine compliance with the terms and conditions of the authorization, not the authorization itself. We will frequently monitor and review the activity to ensure that the permittee carries out all permit terms and conditions. However, the Service will request modifications to the terms and conditions of these permits from the permittee if the Service determines that such changes are necessary to ensure that the use remains compatible. After November 17, 2000 no uses will be permitted or re-authorized, for a period longer than 10 years, unless the terms and conditions for such long-term permits specifically allows for modifications to the terms and conditions, if necessary to ensure compatibility. We will make a new compatibility determination prior to extending or renewing such long-term uses at the expiration of the authorization. When we prepare a compatibility determination for re-authorization of an existing right-of-way, we will base our analysis on the existing conditions with the use in place, not from a pre-use perspective.

(i) When we re-evaluate a use for compatibility, we will take a fresh look at the use and prepare a new compatibility determination following the procedure outlined in 50 CFR 26.41.

4. Amend § 25.44 by:

a. Revising the heading and paragraphs (b), and (c)(1);

b. Removing paragraph (d); and

c. Redesignating paragraph (e) as (d) to read as follows:

**§ 25.44 How do we grant permits for easement area uses?**

* * * * *

(b) We require permits for use of easement areas administered by us where proposed activities may affect the property interest acquired by the United States. Applications for permits will be submitted in writing to the Regional Director or a designee. We may grant special use permits to owners of servient estates, or to third parties with the owner's agreement, by the Regional Director or a designee, upon written determination that such permitted use is compatible. If we ultimately determine that the requested use will not affect the United States' interest, the Regional Director will issue a letter of non-objection.

* * * * *

(c) * * *

(1) The permitted use is compatible; and

* * * * *

## PART 26—[AMENDED]

5. The authority citation for part 26 continues to read as follows:

**Authority:** 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd, 715i; Pub. L. 96–315 (94 Stat. 958) and Pub. L. 98–146 (97 Stat. 955).

6. Add § 26.41 to read as follows:

**§ 26.41 What is the process for determining if a use of a national wildlife refuge is a compatible use?**

The Refuge Manager will not initiate or permit a new use of a national wildlife refuge or expand, renew, or extend an existing use of a national wildlife refuge, unless the Refuge Manager has determined that the use is a compatible use. This section provides guidelines for making compatibility determinations, and procedures for documenting compatibility determinations and for periodic review of compatibility determinations. We will usually complete compatibility determinations as part of the comprehensive conservation plan or step-down management plan process for individual uses, specific use programs, or groups of related uses described in the plan. We will make all compatibility determinations in writing.

(a) *What information do we include in a compatibility determination?* All compatibility determinations will include the following information:

(1) The proposed or existing use;

(2) The name of the national wildlife refuge;

(3) The authorities used to establish the national wildlife refuge;

(4) The purpose(s) of the national wildlife refuge;

(5) The National Wildlife Refuge System mission;

(6) The nature and extent of the use including the following:

(i) What is the use? Is the use a priority public use?;

(ii) Where would the use be conducted?;

(iii) When would the use be conducted?;

(iv) How would the use be conducted?; and

(v) Why is the use being proposed?.



(7) An analysis of costs for administering and managing each use;

(8) The anticipated impacts of the use on the national wildlife refuge's purposes and the National Wildlife Refuge System mission;

(9) The amount of opportunity for public review and comment provided;

(10) Whether the use is compatible or not compatible (does it or will it materially interfere with or detract from the fulfillment of the National Wildlife Refuge System mission or the purpose(s) of the national wildlife refuge);

(11) Stipulations necessary to ensure compatibility;

(12) A logical explanation describing how the proposed use would, or would not, materially interfere with or detract from the fulfillment of the National Wildlife Refuge System mission or the purpose(s) of the national wildlife refuge;

(13) The Refuge Manager's signature and date signed; and

(14) The Regional Chief's concurrence signature and date signed.

(15) The mandatory 10- or 15-year re-evaluation date.

(b) *Making a use compatible through replacement of lost habitat values or other compensatory mitigation.* We will not allow compensatory mitigation to make a proposed refuge use compatible, except by replacement of lost habitat values as provided in paragraph (c) of this section. If we cannot make the proposed use compatible with stipulations we cannot allow the use.

(c) *Existing right-of-ways.* We will not make a compatibility determination and will deny any request for maintenance of an existing right-of-way which will affect a unit of the National Wildlife Refuge System, unless: the design adopts appropriate measures to avoid resource impacts and includes provisions to ensure no net loss of habitat quantity and quality; restored or replacement areas identified in the design are afforded permanent protection as part of the national wildlife refuge or wetland management district affected by the maintenance; and all restoration work is completed by the applicant prior to any title transfer or recording of the easement, if applicable. Maintenance of an existing right-of-way includes minor expansion or minor realignment to meet safety standards.

(d) *Termination of uses that are not compatible.* When we determine an existing use is not compatible, we will expeditiously terminate or modify the use to make it compatible. Except with written authorization by the Director, this process of termination or modification will not exceed 6 months from the date that the compatibility determination is signed.

## PART 29—[AMENDED]

7. The authority citation for part 29 continues to read as follows:

**Authority:** Sec. 2, 33 Stat. 614, as amended, sec. 5, 43 Stat. 651, secs. 5, 10, 45 Stat. 449, 1224, secs. 4, 2, 48 Stat. 402, as amended, 1270, sec. 4, 76 Stat. 645; 5 U.S.C. 301, 16 U.S.C. 668dd, 685, 725, 690d, 715i, 664, 43 U.S.C. 315a, 16 U.S.C. 460k; 80 Stat. 926.

8. Revise § 29.1 to read as follows:

**§ 29.1 May we allow economic uses on national wildlife refuges?**

We may only authorize public or private economic use of the natural resources of any national wildlife refuge, in accordance with 16 U.S.C. 715s, where we determine that the use contributes to the achievement of the national wildlife refuge purposes or the National Wildlife Refuge System mission. We may authorize economic use by appropriate permit only when we have determined the use on a national wildlife refuge to be compatible. Persons exercising economic privileges on national wildlife refuges will be subject to the applicable provisions of this subchapter and of other applicable laws and regulations governing national wildlife refuges. Permits for economic use will contain such terms and conditions that we determine to be necessary for the proper administration of the resources. Economic use in this section includes but is not limited to grazing livestock, harvesting hay and stock feed, removing timber, firewood or other natural products of the soil, removing shell, sand or gravel, cultivating areas, or engaging in operations that facilitate approved programs on national wildlife refuges.

**§ 29.3 [Reserved]**

9. Remove and reserve § 29.3.

10. Amend § 29.21 by:

a. Revising the heading;

b. Removing the paragraph designations and placing the definitions in alphabetical order;

c. Removing the definitions of "Compatible," "Regional Director," "Secretary," and "Service;" and

d. Adding a definition of "Compatible use" to read as follows:

**§ 29.21 What do these terms mean?**

*Compatible use* means a proposed or existing wildlife-dependent recreational use or any other use of a national wildlife refuge that, based on sound professional judgment, will not materially interfere with or detract from the fulfillment of the National Wildlife Refuge System mission or the purposes of the national wildlife refuge. The term "inconsistent" in section 28(b)(1) of the Mineral Leasing Act of 1920 (30 U.S.C. 185) means a use that is not compatible.

* * * * *

11. Amend § 29.21–7 by removing paragraph (c) and revising the heading to read as follows:

**§ 29.21–7 What payment do we require for use and occupancy of national wildlife refuge lands?**

Dated: July 28, 2000.

**Stephen C. Saunders,**

*Assistant Secretary, Fish and Wildlife and Parks.*

[FR Doc. 00–26389 Filed 10–17–00; 8:45 am]

BILLING CODE 4310–55–P

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**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

## Final Compatibility Policy Pursuant to the National Wildlife Refuge System Improvement Act of 1997

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice contains our final policy that describes the process for determining whether or not a use of a national wildlife refuge is a compatible use. This final compatibility policy incorporates the compatibility provisions of the National Wildlife Refuge System Improvement Act of 1997 (NWRSIA–1997) that amends the National Wildlife Refuge System Administration Act of 1966 (NWRSAA–1966) into our policy as part 603 Chapter 2 of the Fish and Wildlife Service Manual. Also, published concurrently in the final rule section of this **Federal Register** are our final compatibility regulations describing the process for determining whether or not a use of a national wildlife refuge is a compatible use.

**DATES:** This policy is effective November 17, 2000.

**FOR FURTHER INFORMATION CONTACT:** To obtain copies of this final policy or for additional information, contact: J. Kenneth Edwards, Refuge Program Specialist, Division of Refuges, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 670, Arlington, Virginia 22203 (Telephone 703/358–1744, Fax 703/358–2248). You may also download a copy from: http://www.fws.gov/r9pdm/home/newfrnotice.html.

**SUPPLEMENTARY INFORMATION:** We published the Draft Compatibility Policy Pursuant to the National Wildlife Refuge System Improvement Act of 1997 in the **Federal Register** on September 9, 1999 (64 FR 49067). In addition, we published the Proposed Compatibility Regulations Pursuant to the National Wildlife Refuge System Improvement Act of 1997 in the **Federal Register** on September 9, 1999 (64 FR 49056). We invited the public to provide comments on the proposed rule and draft policy by November 8, 1999. During this 60-day comment period, we received several requests for an extension to the comment period. In order to ensure that the public had an adequate opportunity to review and comment on the proposed rule and draft policy, we extended the comment period until December 8, 1999 (64 FR 62163 and 62217 published November 16, 1999). Therefore, the proposed rule and draft policy were available for public review and comment for 90 days. We revised the proposed rule and draft policy based on comments we received.

### Background

The NWRSIA–1997 amends and builds upon the NWRSAA–1966 providing an "Organic Act" for the National Wildlife Refuge System. The NWRSIA–1997 clearly establishes that wildlife conservation is the singular National Wildlife Refuge System mission, provides guidance to the Secretary of the Interior (Secretary) for management of the National Wildlife Refuge System, provides a mechanism for refuge planning, and gives refuge managers uniform direction and procedures for making decisions regarding wildlife conservation and uses of the National Wildlife Refuge System.

The NWRSAA–1966 required the Secretary, before permitting uses, to ensure that those uses are compatible with the purposes of the refuge. We built this legal requirement into our policy and regulations. Since 1966, the compatibility standard for refuge uses has helped us manage refuge lands sensibly and in keeping with the general goal of putting wildlife conservation first. The NWRSIA–1997 maintains the compatibility standard as provided in the NWRSAA–1966, provides significantly more detail regarding the compatibility standard and compatibility determination process, and requires that we promulgate the compatibility process in regulations. This policy will help ensure that compatibility becomes a more effective conservation standard, is more consistently applied across the entire National Wildlife Refuge System, and is more understandable and open to involvement by the public.

The House Report accompanying the NWRSIA–1997 states "Currently, the law does not include a mission or a definition of a "compatible use" for the Refuge System. Refuge managers are responsible for determining, on a case-by-case basis, whether activities on refuges are compatible. Management of the Refuge System has been the focus of numerous studies in the last two decades, including two General Accounting Office reports, two reports of advisory boards to the Interior Department, a report prepared by the USFWS, and several hearings by the former Committee on Merchant Marine and Fisheries, which then had jurisdiction over the Refuge System. These reports and hearings highlighted that refuges have not always been managed as a national system because of the lack of an overall mission for the System. These reports concluded that the lack of an overall mission and management procedures had allowed numerous incompatible uses to be tolerated on wildlife refuges." The House Report further states "H.R. 1420 establishes that the conservation of fish, wildlife, plants and their habitats is the mission of the National Wildlife Refuge System and sets forth the policy and procedures through which the System and individual refuges are to be managed in order to fulfill that mission for the long-term benefit of the American public. H.R. 1420 requires that public use of a refuge may be allowed only where the use is compatible with the mission of System and purpose of the individual refuge, and sets forth a standard by which the Secretary shall determine whether such uses are compatible." Lastly, the House Report states "The Committee expects that this legislation will diminish the likelihood of future litigation by providing a statutory compatibility standard, a process for making those determinations, a clear conservation mission for the System, and a planning process that will ensure greater public involvement in management decisions on refuges."

The NWRSIA–1997 includes a number of provisions that specifically address compatibility. The following is a summary of those provisions and how they apply to us.

We will not initiate or permit a new use of a national wildlife refuge or expand, renew, or extend an existing use of a national wildlife refuge, unless we have determined that the use is a compatible use and that the use is not inconsistent with public safety. We may make compatibility determinations for a national wildlife refuge concurrently with the development of a Comprehensive Conservation Plan.

On lands added to the National Wildlife Refuge System after March 25, 1996, we will identify, prior to acquisition, withdrawal, transfer, reclassification, or donation of any such lands, existing compatible wildlife-dependent recreational public uses (if any) that we will permit to continue on an interim basis pending completion of a Comprehensive Conservation Plan for the national wildlife refuge.

We may authorize wildlife-dependent recreational uses on a national wildlife refuge when we determine they are compatible uses and are not inconsistent with public safety. We are not required to make any other determinations or findings to comply with the NWRSAA–1966 or the Refuge Recreation Act of 1962 (RRA–1962) for



wildlife-dependent recreational uses to occur except for consideration of consistency with State laws and regulations.

Compatibility determinations in existence on the date of enactment of the NWRSIA–1997, October 9, 1997, will remain in effect until and unless modified. In addition, we will make compatibility determinations prepared during the period between enactment of the NWRSIA–1997 and the effective date of the compatibility regulations published elsewhere in this issue of the **Federal Register** under the existing compatibility process. After the effective date of those regulations, we will make compatibility determinations and re-evaluations of compatibility determinations under the compatibility process in those regulations.

Those regulations, published elsewhere in this issue of the **Federal Register**, will comply with all the compatibility requirements in the NWRSIA–1997.

### Purpose of This Final Policy

The purpose of this final policy is to establish in policy the process for determining compatibility of proposed refuge uses and procedures for documentation and periodic review of existing uses, and to ensure that we administer proposed and existing uses according to the compatibility provisions of the NWRSIA–1997. Published concurrently in this **Federal Register** are our final compatibility regulations. This final compatibility policy reflects the final compatibility regulations and provides additional detail for each step in the compatibility determination process.

### Summary of Comments Received

We received 506 comment letters by mail, fax or email on our proposed rule and draft policy. They were from Federal, State and local governments, U.S. Congress, Alaska Native Village Corporations, non-government organizations, research institutions and individuals.

Some comments addressed specific elements in the proposed rule and specific elements in the draft policy, while many comments addressed an issue that was common to both the proposed rule and draft policy. Since the comments on the proposed rule and draft policy were so intertwined and oftentimes a comment on an issue was directly related to both the proposed rule and draft policy, we chose to address the comments collectively by issue rather than by proposed rule and draft policy separately. Since we analyzed the comments collectively on the proposed rule and draft policy, we are including a full summary of the comments and our responses in the **SUPPLEMENTARY INFORMATION** section of the final rule only and not in the **SUPPLEMENTARY INFORMATION** section of this notice of our final policy.

We considered all of the information and recommendations for improvement included in the comments and made changes to the proposed rule and draft policy where appropriate. The number of issues addressed in each comment letter varied widely, ranging from one issue to several issues. We identified 28 groups of issues. See the **SUPPLEMENTARY INFORMATION** section of our final rule for a full summary of the comments and our responses.

### Revisions to the Draft Policy

We considered all of the information and recommendations for improvement included in the comments we received during the 90-day public review and comment period. We made changes to the proposed rule and draft policy as discussed in the "Summary of Comments Received" section of the final rule published in today's issue of the **Federal Register**. The following represents a summary of the significant revisions made to the proposed rule and draft policy.

(1) In the proposed regulations and draft policy we stated that lands subject to the patent restrictions imposed by Section 22(g) of ANCSA are subject to the compatibility standard. In the final regulations (25.21(b)) and final policy (2.8(C)) we have provided more detail on how this will be implemented. These changes allow us to conduct compatibility determinations differently with regard to the ANCSA 22(g) lands in recognition of the unique status of these lands.

(2) In the proposed regulations and draft policy we stated that we will not allow making proposed refuge uses compatible with replacement of lost habitat values or other compensation. In the final regulations (26.41(b) and (c)) and final policy (2.11(C) and (D)) we maintain this requirement with one exception. We will not allow making proposed refuge uses compatible with replacement of lost habitat values or other compensatory mitigation, except for maintenance of an existing right-of-way including minor expansions or minor realignments to meet safety standards. This change provides a workable mechanism for dealing with previously approved right-of-ways.

(3) In the proposed regulations and draft policy we stated that prior to approving each compatibility determination, the Refuge Manager will consult with the regional office supervisor. In the final regulations (26.41(a)(14)) and final policy (2.12(A)(14)) we changed the required regional office consultation to a required regional office concurrence on all compatibility determinations. This change will help ensure that we look at both large-scale (System mission) and local-scale (refuge purposes) issues when preparing compatibility determinations.

(4) In the proposed regulations and draft policy we stated that the Refuge Manager may temporarily suspend, allow, or initiate any use in a refuge if necessary to immediately act in order to protect the health and safety of the public or any fish or wildlife population. We stated in the draft policy that these temporary actions should not exceed 12 months. In the final policy (2.10(C)) we reduced the time frame for these temporary actions to not exceed 30 days.

(5) In the proposed regulations and draft policy we stated that we would re-evaluate compatibility determinations for existing uses whenever any one of a number of criteria was met. In the final regulations (25.21(f), (g), (h) and (i)) and final policy (2.11(H)) we added significant detail to clarify certain aspects of how and when we would re-evaluate compatibility determinations. Among other clarifying language we added the following: whenever a re-evaluation is triggered we will take a fresh look at the use and complete a new compatibility determination following the procedure outlined in the regulations and policy; whenever we prepare a compatibility determination for re-authorization of an existing right-of-way, we will base our analysis on the existing conditions with the use in place, not from a pre-use perspective; for uses in existence on the effective date of these regulations that were specifically authorized for a period longer than 10 years (such as right-of-ways), our compatibility re-evaluation will examine compliance with the terms and conditions of the authorization, not the authorization itself, however, the Service will request modifications to the terms and conditions of the permits from the permittee if the Service determines that such changes are necessary to ensure that the use remains compatible; and after the effective date of these regulations no uses will be permitted or re-authorized, for a period longer than 10 years, unless the terms and conditions for such long-term permits specifically allows for the modifications to the terms and conditions, if necessary to ensure compatibility.

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**Required Determinations**

We have analyzed the impacts of this final policy in concert with the final rule published concurrently in today's issue of the **Federal Register**. For compliance with applicable laws and executive orders affecting the issuance of rules and policies, see the **SUPPLEMENTARY INFORMATION** section of the final rule.

**Primary Author**

J. Kenneth Edwards, Refuge Program Specialist, Division of Refuges, U.S. Fish and Wildlife Service, is the primary author of this notice.

**Final Compatibility Policy**

**Fish and Wildlife Service**

**National Wildlife Refuge System Uses**

Refuge Management: Part 603 National Wildlife Refuge System Uses

Chapter 2 Compatibility

*2.1 What is the Purpose of This Chapter?*

This chapter provides policy for determining compatibility of proposed and existing uses of national wildlife refuges.

*2.2 What Does This Policy Apply To?*

This policy applies to all proposed and existing uses of national wildlife refuges where we have jurisdiction over such uses.

*2.3 What is the Compatibility Policy?*

The Refuge Manager will not initiate or permit a new use of a national wildlife refuge or expand, renew, or extend an existing use of a national wildlife refuge unless the Refuge Manager has determined that the use is a compatible use.

*2.4 What Are the Objectives of This Chapter?*

*A.* To provide guidelines for determining compatibility of proposed national wildlife refuge uses and procedures for documentation and periodic review of existing national wildlife refuge uses; and

*B.* To ensure that we administer proposed and existing national wildlife refuge uses according to laws, regulations, and policies concerning compatibility.

*2.5 What Are Our Statutory Authorities for Requiring Uses of National Wildlife Refuges To Be Compatible?*

*A. National Wildlife Refuge System Administration Act of 1966 as amended by the National Wildlife Refuge System Improvement Act of 1997, 16 U.S.C. 668dd–668ee (Refuge Administration Act):* This law states that "The Secretary is authorized, under such regulations as he may prescribe, to—(A) permit the use of any area within the System for any purpose, including but not limited to hunting, fishing, public recreation and accommodations, and access whenever he determines that such uses are compatible" and that "* * * the Secretary shall not initiate or permit a new use of a refuge or expand, renew, or extend an existing use of a refuge, unless the Secretary has determined that the use is a compatible use and that the use is not inconsistent with public safety." The law also provides that, in administering the National Wildlife Refuge System, "* * * the Secretary is authorized to * * * Issue regulations to carry out this Act." A significant directive of the Refuge Administration Act is to ensure that we maintain the biological integrity, diversity, and environmental health of the National Wildlife Refuge System for present and future generations of Americans. We are now using the term "ecological integrity" in lieu of the phrase "biological integrity, diversity, and environmental health." Uses that we reasonably may anticipate to conflict with pursuing this directive to maintain the ecological integrity of the System are contrary to fulfilling the National Wildlife Refuge System mission and are therefore not compatible. Fragmentation of the National Wildlife Refuge System's wildlife habitats is a direct threat to the integrity of the National Wildlife Refuge System, both today and in the decades ahead. Uses that we reasonably may anticipate to reduce the quality or quantity or fragment habitats on a national wildlife refuge will not be compatible.

*B. Refuge Recreation Act of 1962, 16 U.S.C. 460k–460k–4 (Refuge Recreation Act):* This law requires that any recreational use of a national wildlife refuge must be compatible with the primary purposes for which the refuge was established.

*C. Alaska National Interest Lands Conservation Act of 1980, P.L. 96–487, 94 Stat. 23–71 (ANILCA):* Section 304 of ANILCA adopted the compatibility standard of the Refuge Administration Act for Alaska refuges.

*2.6 What Do These Terms Mean?*

*A. Compatibility determination:* A written determination signed and dated by the Refuge Manager and Regional Chief, signifying that a proposed or existing use of a national wildlife refuge is a compatible use or is not a compatible use. The Director makes this delegation through the Regional Director.

*B. Compatible use:* A proposed or existing wildlife-dependent recreational use or any other use of a national wildlife refuge that, based on sound professional judgment, will not materially interfere with or detract from the fulfillment of the National Wildlife Refuge System mission or the purposes of the national wildlife refuge.

*C. Comprehensive conservation plan:* A document that describes the desired future conditions of a refuge or planning unit and provides long-range guidance and management direction to achieve the purposes of the refuge; helps fulfill the mission of the Refuge System; maintains and, where appropriate, restores the ecological integrity of each refuge and the Refuge System; helps achieve the goals of the National Wilderness Preservation System; and meets other mandates.

*D. Conservation, and Management:* To sustain and, where appropriate, restore and enhance, healthy populations of fish, wildlife, and plants utilizing, in accordance with applicable Federal and State laws, methods and procedures associated with modern scientific resource programs. Such methods and procedures include, consistent with the provisions of the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee), protection, research, census, law enforcement, habitat management, propagation, live trapping and transplantation, and regulated taking.

*E. Coordination area:* A wildlife management area made available to a State: (1) by cooperative agreement between the U.S. Fish and Wildlife Service and a State agency having control over wildlife resources pursuant to section 4 of the Fish and Wildlife Coordination Act (16 U.S.C. 664); or, (2) by long-term leases or agreements pursuant to title III of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1010 *et seq.*). The States manage coordination areas but they are part of the National Wildlife Refuge System. The compatibility standard does not apply to coordination areas.

*F. Director:* The Director, U.S. Fish and Wildlife Service or the authorized representative of such official.

*G. Fish, Wildlife, and Fish and wildlife:* Any member of the animal kingdom in a wild, unconfined state, whether alive or dead, including a part, product, egg, or offspring of the member.

*H. National wildlife refuge, and Refuge:* A designated area of land, water, or an interest in land or water located within the National Wildlife Refuge System but does not include coordination areas.



*I. National Wildlife Refuge System, and System:* All lands, waters, and interests therein administered by the U.S. Fish and Wildlife Service as wildlife refuges, wildlife ranges, wildlife management areas, waterfowl production areas, coordination areas, and other areas for the protection and conservation of fish and wildlife including those that are threatened with extinction as determined in writing by the Director or so directed by Presidential or Secretarial order. The determination by the Director may not be delegated.

*J. National Wildlife Refuge System mission, and System mission:* To administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans.

*K. Plant:* Any member of the plant kingdom in a wild, unconfined state, including any plant community, seed, root, or other part of a plant.

*L. Purpose(s) of the refuge:* The purposes specified in or derived from the law, proclamation, executive order, agreement, public land order, donation document, or administrative memorandum establishing, authorizing, or expanding a national wildlife refuge, national wildlife refuge unit, or national wildlife refuge subunit. For refuges that encompass Congressionally designated wilderness, the purposes of the Wilderness Act are additional purposes of the wilderness portion of the refuge.

*M. Refuge management activity:* An activity conducted by the Service or a Service-authorized agent to fulfill one or more purposes of the national wildlife refuge, or the National Wildlife Refuge System mission. Service-authorized agents include contractors, cooperating agencies, cooperating associations, refuge support groups, and volunteers.

*N. Refuge management economic activity:* A refuge management activity on a national wildlife refuge which results in generation of a commodity which is or can be sold for income or revenue or traded for goods or services. Examples include: farming, grazing, haying, timber harvesting, and trapping.

*O. Refuge Manager:* The official directly in charge of a national wildlife refuge or the authorized representative of such official. In the case of a national wildlife refuge complex, this refers to the official directly in charge of the complex.

*P. Regional Chief:* The official in charge of the National Wildlife Refuge System within a Region of the U.S. Fish and Wildlife Service or the authorized representative of such official.

*Q. Refuge use, and Use of a refuge:* A recreational use (including refuge actions associated with a recreational use or other general public use), refuge management economic activity, or other use of a national wildlife refuge by the public or other non-National Wildlife Refuge System entity.

*R. Regional Director:* The official in charge of a Region of the U.S. Fish and Wildlife Service or the authorized representative of such official.

*S. Secretary:* The Secretary of the Interior or the authorized representative of such official.

*T. Service, We, and Us:* The U.S. Fish and Wildlife Service, Department of the Interior.

*U. Sound professional judgment:* A finding, determination, or decision that is consistent with principles of sound fish and wildlife management and administration, available science and resources, and adherence to the requirements of the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee), and other applicable laws. Included in this finding, determination, or decision is a refuge manager's field experience and knowledge of the particular refuge's resources.

*V. State, and United States:* One or more of the States of the United States, Puerto Rico, American Somoa, the Virgin Islands, Guam, and the territories and possessions of the United States.

*W. Wildlife-dependent recreational use, and Wildlife-dependent recreation:* A use of a national wildlife refuge involving hunting, fishing, wildlife observation and photography, or environmental education and interpretation. The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) specifies that these are the six priority general public uses of the National Wildlife Refuge System.

*2.7 What Are Our Responsibilities?*

A. Director

Provides national policy for making compatibility determinations to ensure that such determinations comply with all applicable authorities.

B. Regional Director

(1) Ensures that refuge managers follow laws, regulations, and policies when making compatibility determinations.

(2) Makes the final decision on compatibility determinations when the Regional Chief does not concur with the Refuge Manager.

(3) Notifies the Director regarding controversial or complex compatibility determinations.

C. Regional Chief

(1) Reviews all compatibility determinations for the purpose of deciding whether to concur.

(2) Refers a compatibility determination to the Regional Director if the Regional Chief does not concur with the Refuge Manager. Discusses non-concurrence with the Refuge Manager for possible resolution before referring to the Regional Director.

(3) Notifies the Regional Director regarding controversial or complex compatibility determinations.

D. Refuge Manager

(1) Determines if a proposed or existing use is subject to the compatibility standard.

(2) Determines whether a use is compatible or not compatible.

(3) Documents all compatibility determinations in writing.

(4) Ensures that we provide for public review and comment opportunities for all compatibility determinations, unless previously provided.

(5) Refers all compatibility determinations to the Regional Chief for concurrence.

*2.8 What is the Compatibility Standard for Alaska Refuges?*

A. The Refuge Administration Act establishes the same standard for compatibility for Alaska refuges as for other national wildlife refuges. The provisions of ANILCA are the primary guidance refuge managers should apply when examining issues regarding subsistence use. We may alter the compatibility process, in some cases, for Alaska refuges to include additional procedural steps, such as when reviewing applications for oil and gas leasing on non-North Slope lands (ANILCA Sec. 1008) and for applications for transportation and utility systems (ANILCA Sec. 1104).

B. Alaska refuges established before the passage of ANILCA have two sets of purposes. Purposes for pre-ANILCA refuges (in effect on the day before the enactment of ANILCA) remain in force and effect, except to the extent that they may be inconsistent with ANILCA or the Alaska Native Claims Settlement Act, in which case the provisions of those Acts control. However, the original purposes for pre-ANILCA refuges apply only to those portions of the refuge established by the prior executive order or public land order,

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and not to those portions of the refuge added by ANILCA.

C. Section 22(g) of the Alaska Native Claims Settlement Act provides that patents issued to Village Corporations for selected land within the boundaries of a refuge existing on December 18, 1971, the signing date of the Act, will contain provisions that these lands remain subject to laws and regulations governing the use and development of such refuges. This includes application of the compatibility standard for such use and development, excepting certain differences provided in regulation (50 CFR 25.21) that acknowledge the unique status of these lands.

*2.9 When is a Compatibility Determination Required?*

A. We require a compatibility determination for all refuge uses as defined by the term "refuge use" and must include in the analysis consideration of all associated facilities, structures, and improvements, including those constructed or installed by us or at our direction. This requirement will apply to all such facilities, structures, improvements, and refuge actions associated with uses that we approve on or after the effective date of this policy and to the replacement or major repair or alteration of facilities, structures, and improvements associated with already approved uses.

B. Facilities, structures, and improvements commonly associated with recreational public uses include: environmental education centers; boat/fishing docks; parking lots; boat ramps; roads; trails; viewing platforms/towers; and visitor centers.

C. Facilities, structures, and improvements commonly associated with refuge management economic activities include: loading/unloading areas; construction, operation, and maintenance buildings; parking lots; roads and trails; fences; stock ponds and other livestock watering facilities; and crop irrigation facilities.

D. We will make compatibility determinations for such facilities, structures, and improvements at the same time we make the compatibility determination for the use or activity in question.

*2.10 When is a Compatibility Determination Not Required?*

*A. Refuge management activity.* We do not require a compatibility determination for refuge management activities as defined by the term "refuge management activity" except for "refuge management economic activities." Examples of refuge management activities which do not require a compatibility determination include: prescribed burning; water level management; invasive species control; routine scientific monitoring, studies, surveys, and censuses; historic preservation activities; law enforcement activities; and maintenance of existing refuge facilities, structures, and improvements. In addition, we do not require compatibility determinations for State wildlife management activities on a national wildlife refuge pursuant to a cooperative agreement between the State and the Fish and Wildlife Service where the Refuge Manager has made a written determination that such activities support fulfilling the refuge purposes or the System mission.

*B. Other exceptions.* (1) There are other circumstances under which the compatibility requirements may not be applicable. The most common exceptions involve property rights that are not vested in the Federal Government, such as reserved rights to explore and develop minerals or oil and gas beneath a refuge. In some cases, these exceptions may include water rights, easements, or navigable waters. Exceptions may apply when there are rights or interests imparted by a treaty or other legally binding agreement, where primary jurisdiction of refuge lands falls to an agency other than us, or where legal mandates supersede those requiring compatibility. Where reserved rights or legal mandates provide that we must allow certain activities, we should not prepare a compatibility determination. In the case of reserved rights, the Refuge Manager should work with the owner of the property interest to develop stipulations in a special use permit or other agreement to alleviate or minimize adverse impacts to the refuge.

(2) Communication and cooperation between the Refuge Manager and the owner of reserved rights will help protect refuge resources without infringing upon privately-held rights. Refuge managers may find it helpful in these instances to secure legal advice from the Department of the Interior Office of the Solicitor.

(3) Compatibility provisions of the Refuge Administration Act do not apply to Department of Defense overflights or non-Department of Defense overflights above a refuge. However, other Federal laws (*e.g.*, Airborne Hunting Act, Endangered Species Act, Bald Eagle Protection Act) may govern overflights above a refuge. For Department of Defense overflights, active communication and cooperation between the Refuge Manager and the local base commander will be the most effective way to protect refuge resources. For non-Department of Defense overflights, active communication and cooperation between the Refuge Manager and personnel at local airports, pilot training schools, and private groups regarding the Federal Aviation Administration's requested minimum altitudes over national wildlife refuges will be the most effective way to protect refuge resources.

(4) Compatibility requirements apply to activities on bodies of water in or within any area of the National Wildlife Refuge System. Under 50 CFR 25.11, this is effectively to the extent of the ownership interest of the United States in lands or waters. Where activities on water bodies not within an area of the National Wildlife Refuge System are affecting refuge resources, the Refuge Manager should seek State cooperation in managing the activities. If necessary, the Refuge Manager should consider refuge-specific regulations that would address the problem or consult with the Office of the Solicitor regarding other legal remedies for injury to refuge resources.

(5) Compatibility provisions of the Refuge Administration Act do not apply to activities authorized, funded, or conducted by another Federal agency that has primary jurisdiction over the area where a refuge or a portion of a refuge has been established, if those activities are conducted in accordance with a memorandum of understanding between the Secretary or the Director and the head of the Federal agency with primary jurisdiction over the area.

*C. Emergencies.* The Refuge Administration Act states that the Secretary may temporarily suspend, allow, or initiate any use in a refuge if the Secretary determines it is necessary to immediately act in order to protect the health and safety of the public or any fish or wildlife population. Authority to make decisions under this emergency power is delegated to the Refuge Manager. Temporary actions should not exceed 30 days and will usually be of shorter duration. Such emergency actions are not subject to the compatibility determination process as outlined in this chapter. When using this authority, the Refuge Manager will notify the Regional Chief in advance of the action, or in cases where the nature of the emergency requires immediate response, as soon as possible afterwards, and typically no later than the start of business on the first normal workday following the emergency action. The Refuge Manager will create a written record (memorandum to the file) of the decision, the reasons supporting it, and why it was necessary to protect the health and safety of the public or any fish or wildlife population.



*D. Denying a proposed use without determining compatibility.* (1) The Refuge Manager should deny a proposed use without determining compatibility if any of the following situations exist:

(a) The proposed use conflicts with any applicable law or regulation (*e.g.*, Wilderness Act, Endangered Species Act, Marine Mammal Protection Act, Migratory Bird Treaty Act);

(b) The proposed use conflicts with any applicable executive order, or written Department of the Interior or Service policy;

(c) The proposed use conflicts with the goals or objectives in an approved refuge management plan (*e.g.*, comprehensive conservation plan, comprehensive management plan, master plan or step-down management plan);

(d) The proposed use has already been considered in an approved refuge management plan and was not accepted;

(e) The proposed use is inconsistent with public safety;

(f) The proposed use is a use other than a wildlife-dependent recreational use that is not manageable within the available budget and staff; or

(g) The proposed use conflicts with other resource or management objectives provided that the Refuge Manager specifies those objectives in denying the use.

(2) A compatibility determination should be prepared for a proposed use only after the Refuge Manager has determined that we have jurisdiction over the use and has considered items (a) through (g) above (see Exhibit 1).

*E. Existing compatibility determinations.* Compatibility determinations in existence prior to the effective date of this policy will remain in effect until and unless modified and will be subject to periodic re-evaluation as described in section 2.11 H. Any use specifically authorized for a period longer than 10 years (such as right-of-ways) is subject to a compatibility determination at the time of the initial application and when the term expires and we receive a request for renewal. We will use periodic re-evaluations for such long-term uses to review compliance with permit terms and conditions.

*2.11 What Are Considerations When Applying Compatibility?*

*A. Sound professional judgment.* (1) In determining what is a compatible use, the Refuge Administration Act relies on the "sound professional judgment" of the Director. The Director delegates authority to make compatibility determinations through the Regional Director to the Refuge Manager. Therefore, it is the Refuge Manager who is required and authorized to exercise sound professional judgment. Compatibility determinations are inherently complex and require the Refuge Manager to consider their field experiences and knowledge of a refuge's resources, particularly its biological resources, and make conclusions that are consistent with principles of sound fish and wildlife management and administration, available scientific information, and applicable laws. When a refuge manager is exercising sound professional judgment, the Refuge Manager will use available information which may include consulting with others both inside and outside the Service.

(2) The Refuge Manager must also consider the extent to which available resources (funding, personnel, and facilities) are adequate to develop, manage, and maintain the proposed use so as to ensure compatibility. The Refuge Manager must make reasonable efforts to ensure that the lack of resources is not an obstacle to permitting otherwise compatible wildlife-dependent recreational uses (hunting, fishing, wildlife observation and photography, and environmental education and interpretation). If reasonable efforts do not yield adequate resources to develop, manage, and maintain the wildlife-dependent recreational use, the use will not be compatible because the Service will lack the administrative means to ensure proper management of the public activity on the refuge.

(3) Refuge managers are reminded that, unless otherwise provided for in law or other legally binding directive, permitting uses of national wildlife refuges is a determination vested by law in the Service. Under no circumstances (except emergency provisions necessary to protect the health and safety of the public or any fish or wildlife population) may we authorize any use not determined to be compatible.

*B. Materially interfere with or detract from.* (1) When completing compatibility determinations, refuge managers use sound professional judgment to determine if a use will materially interfere with or detract from the fulfillment of the System mission or the purpose(s) of the refuge. Inherent in fulfilling the System mission is not degrading the ecological integrity of the refuge. Compatibility, therefore, is a threshold issue, and the proponent(s) of any use or combination of uses must demonstrate to the satisfaction of the Refuge Manager that the proposed use(s) pass this threshold test. The burden of proof is on the proponent to show that they pass; not on the Refuge Manager to show that they surpass. Some uses, like a proposed construction project on or across a refuge that affects the flow of water through a refuge, may exceed the threshold immediately, while other uses, such as boat fishing in a small lake with a colonial nesting bird rookery may be of little concern if it involves few boats, but of increasing concern with growing numbers of boats. Likewise, when considered separately, a use may not exceed the compatibility threshold, but when considered cumulatively in conjunction with other existing or planned uses, a use may exceed the compatibility threshold.

(2) While refuge managers should be looking for tangible impacts, the fact that a use will result in a tangible adverse effect, or a lingering or continuing adverse effect is not necessarily the overriding concern regarding "materially interfere with or detract from." These types of effects should be taken into consideration but the primary aspect is how does the use and any impacts from the use affect our ability to fulfill the System mission and the refuge purposes. For example, the removal of a number of individual animals from a refuge through regulated hunting, trapping or fishing would, in many instances, help the Refuge Manager manage to improve the health of wildlife populations. However, the take of even one individual of a threatened or endangered species could significantly impact the refuge's ability to manage for and perpetuate that species. Likewise, wildlife disturbance which is very limited in scope or duration may not result in interference with fulfilling the System mission or refuge purposes. However, even unintentional minor harassment or disturbance during critical biological times, in critical locations, or repeated over time may exceed the compatibility threshold.

(3) The Refuge Manager must consider not only the direct impacts of a use but also the indirect impacts associated with the use and the cumulative impacts of the use when conducted in conjunction with other existing or planned uses of the refuge, and uses of adjacent lands or waters that may exacerbate the effects of a refuge use.

*C. Making a use compatible through replacement of lost habitat values or other compensatory mitigation.* We will not allow compensatory mitigation to make a proposed refuge use compatible, except by replacement of lost habitat values as provided in (D) below. If the proposed use cannot be made

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compatible with stipulations we cannot allow the use.

*D. Existing Right-of-ways.* We will not make a compatibility determination and will deny any request for maintenance of an existing right-of-way which will affect a unit of the National Wildlife Refuge System, unless (1) the design adopts appropriate measures to avoid resource impacts and includes provisions to ensure no net loss of habitat quantity and quality; (2) restored or replacement areas identified in the design are afforded permanent protection as part of the national wildlife refuge or wetland management district affected by the maintenance; and (3) all restoration work is completed by the applicant prior to any title transfer or recording of the easement, if applicable. Maintenance of an existing right-of-way includes minor expansion or minor realignment to meet safety standards. Examples of minor expansion or minor realignment include: expand the width of a road shoulder to reduce the angle of the slope; expand the area for viewing on-coming traffic at an intersection; and realign a curved section of a road to reduce the amount of curve in the road.

*E. Refuge-specific analysis.* We must base compatibility determinations on a refuge-specific analysis of reasonably anticipated impacts of a particular use on refuge resources. We should base this refuge-specific analysis on information readily available to the Refuge Manager, including field experience and familiarity with refuge resources, or made available to the Refuge Manager by the State, Tribes, proponent(s) or opponent(s) of the use, or through the public review and comment period. Refuge-specific analysis need not rely on refuge-specific biological impact data, but may be based on information derived from other areas or species which are similarly situated and therefore relevant to the refuge-specific analysis. We do not require refuge managers to independently generate data to make determinations but rather to work with available information. The Refuge Manager may work at their discretion with the proponent(s) of the use or other interested parties to gather additional information before making the determination. If information available to the Refuge Manager is insufficient to document that a proposed use is compatible, then the Refuge Manager would be unable to make an affirmative finding of compatibility, and we must not authorize or permit the use. See 2.12 (A) (8) for additional information dealing with priority public uses.

*F. Relationship to management plans.* The Refuge Manager will usually complete compatibility determinations as part of the comprehensive conservation plan or step-down management plan process for individual uses, specific use programs, or groups of related uses described in the plan. The Refuge Manager will incorporate compatibility determinations prepared concurrently with a plan as an appendix to the plan. These compatibility determinations may summarize and incorporate by reference what the Refuge Manager addressed in detail in the comprehensive conservation plan, step-down management plan, or associated National Environmental Policy Act (NEPA) document.

*G. Managing conflicting uses.* The Refuge Manager may need to allocate uses in time and/or space to reduce or eliminate conflicts among users of the refuge. If this cannot be done, the Refuge Manager may need to terminate or disallow one or more of the uses. The Refuge Administration Act does not prioritize among the six wildlife-dependent recreational uses. Therefore, in the case of direct conflict between these priority public uses, the Refuge Manager should evaluate, among other things, which use most directly supports long-term attainment of refuge purposes and the System mission. This same analysis would support a decision involving conflict between two non-priority public uses. Where there are conflicts between priority and non-priority public uses, priority public uses take precedence.

*H. Re-evaluation of uses.* (1) We will re-evaluate compatibility determinations for existing wildlife-dependent recreational uses when conditions under which the use is permitted change significantly, or if there is significant new information regarding the effects of the use, or concurrently with the preparation or revision of a comprehensive conservation plan, or at least every 15 years, whichever is earlier. In addition, a refuge manager always may re-evaluate the compatibility of a use at any time.

(2) Except for uses specifically authorized for a period longer than 10 years (such as right-of-ways), we will re-evaluate compatibility determinations for all existing uses other than wildlife-dependent recreational uses when conditions under which the use is permitted change significantly, or if there is significant new information regarding the effects of the use, or at least every 10 years, whichever is earlier. Again, a refuge manager always may re-evaluate the compatibility of a use at any time.

(3) For uses in existence on November 17, 2000 that were specifically authorized for a period longer than 10 years (such as right-of-ways), our compatibility re-evaluation will examine compliance with the terms and conditions of the authorization, not the authorization itself. We will frequently monitor and review the activity to ensure that the permittee carries out all permit terms and conditions. However, the Service will request modifications to the terms and conditions of the permits from the permittee if the Service determines that such changes are necessary to ensure that the use remains compatible. After November 17, 2000 no uses will be permitted or re-authorized, for a period longer than 10 years, unless the terms and conditions for such long-term permits specifically allows for the modifications to the terms and conditions, if necessary to ensure compatibility. We will make a new compatibility determination prior to extending or renewing such long-term uses at the expiration of the authorization. When we prepare a compatibility determination for re-authorization of an existing right-of-way, we will base our analysis on the existing conditions with the use in place, not from a pre-use perspective.

(4) The Refuge Manager will determine whether change in the conditions under which the use is permitted or new information regarding the effects of the use is significant or not. The Refuge Manager will make this decision by considering whether these new conditions or new information could reasonably be expected to change the outcome of the compatibility determination. Any person at any time may provide information regarding changes in conditions and new information to the Refuge Manager. However, the Refuge Manager maintains full authority to determine if this information is or is not sufficient to trigger a re-evaluation.

(5) When we re-evaluate a use for compatibility, we will take a fresh look and prepare a new compatibility determination following the procedure outlined in section 2.12 A.

*I. Public review and comment.* An opportunity for public review and comment is required for all compatibility determinations. For compatibility determinations prepared concurrently with comprehensive conservation plans or step-down management plans, we can achieve public review and comment concurrently with the public review and comment of the draft plan and associated NEPA document. For compatibility determinations prepared separately from a plan, we will determine the appropriate level of opportunity for public review and comment through a tiered approach based on complexity, controversy, and level of impact to the refuge. See 2.12 A9 for details on public review and comment.



*2.12 What Information Do We Include in a Compatibility Determination?*

A. All compatibility determinations will include the following information. To maintain consistency, we will use the format provided in Exhibit 2 for documenting all compatibility determinations.

*(1) Use.* Identify the use. A use may be proposed or existing, and may be an individual use, a specific use program, or a group of related uses. The Refuge Manager will determine whether to consider a use individually, a specific use program, or in conjunction with a group of related uses. However, whenever practicable, the Refuge Manager should concurrently consider related uses or uses that are likely to have similar effects and associated facilities, structures and improvements, in order to facilitate analysis of cumulative effects and to provide opportunity for effective public review and comment.

*(2) Refuge name.* Identify the name of the refuge.

*(3) Establishing and acquisition authority(ies).* Identify the specific authority(ies) used to establish the refuge (*e.g.*, Executive Order, public land order, Secretarial Order, refuge-specific legislation, or general legislation).

*(4) Refuge purpose(s).* Identify the purpose(s) of the refuge from the documents identified in 2.12 A (3). For a use proposed for designated wilderness areas within the System, the Refuge Manager must first analyze whether the use can be allowed under the terms of the Wilderness Act (16 U.S.C. sections 1131–36). If so, the Refuge Manager must then determine whether the use is compatible. As a matter of policy, the Refuge Manager will also analyze whether the use is compatible with the purposes of the Wilderness Act, which makes such purposes supplemental to those of the national wildlife refuge.

*(5) National Wildlife Refuge System mission.* The mission of the National Wildlife Refuge System is "to administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans."

*(6) Description of use.* Describe the nature and extent of the use. The Refuge Manager may work with the proponent(s) of a use to gather information required in items (a) through (e) below to describe the proposed use. If the use is described in sufficient detail in a comprehensive conservation plan, step-down management plan, other plan, or associated NEPA document, the Refuge Manager may provide a summary of the use and reference the plan or NEPA document. At a minimum, the Refuge Manager must address and include the following in the compatibility determination:

(a) What is the use? Is the use a priority public use?

(b) Where would the use be conducted? Describe the specific areas of the refuge that will be used: habitat types and acres involved; key fish, wildlife, and plants that occur in or use that habitat; and the proportion of total refuge acreage and the specific habitat type involved. Include a description of other areas that may be affected incidental to the specific use, such as access to the destination area and storage of equipment. This information may be described in writing and on a map.

(c) When would the use be conducted? Describe the time of year and day, and duration of the use.

(d) How would the use be conducted? Describe the techniques to be used, types of equipment required, and number of people per given period. Include supporting uses and associated facilities, structures and improvements as appropriate, *e.g.*, boating and boat ramps to support fishing, camping and campsites to support hunting, etc.

(e) Why is this use being proposed? Describe the reason for the use and the need to conduct the use on the refuge. Describe the extent to which other areas in the vicinity provide similar opportunities.

*(7) Availability of resources.* (a) Complete an analysis of costs for administering and managing each use. Implicit within the definition of sound professional judgment is that adequate resources (including financial, personnel, facilities, and other infrastructure) exist or can be provided by the Service or a partner to properly develop, operate, and maintain the use in a way that will not materially interfere with or detract from fulfillment of the refuge purpose(s) and the System mission. If resources are lacking for establishment or continuation of wildlife-dependent recreational uses, the Refuge Manager will make reasonable efforts to obtain additional resources or outside assistance from States, other public agencies, local communities, and/or private and non-profit groups before determining that the use is not compatible. If adequate resources cannot be secured, the use will be found not compatible and cannot be allowed. Efforts to find additional funding must be documented on the compatibility determination form.

(b) For many refuges, analysis of available resources will have been made for general categories of uses when preparing comprehensive conservation plans, step-down management plans, other plans, or NEPA documents. If the required and available resources are described in sufficient detail in a comprehensive conservation plan, step-down management plan, other plan, or associated NEPA document, provide a summary of the required and available resources for the use and reference the plan or NEPA document. If not sufficiently covered in the planning document, the following should be documented in the compatibility determination:

(i) Resources involved in the administration and management of the use.

(ii) Special equipment, facilities or improvements necessary to support the use. Itemize expenses such as costs associated with special equipment, physical changes or improvements necessary on the refuge that would be required to comply with disabled access requirements.

(iii) Maintenance costs associated with the use (*e.g.*, trail maintenance and mowing, signing, garbage pickup or sanitation costs, parking areas, road repair or grading, building or structure repair, including blinds, boat ramps, kiosks, etc.).

(iv) Monitoring costs (*e.g.*, biological or visitor surveys, maintenance of control sites, etc.) to assess the impact of uses over time on natural resources and quality of the visitors' experience.

(c) This analysis of cost for administering and managing each use will only include the incremental increase above general operational costs that we can show as being directly caused by the proposed use.

(d) Offsetting revenues, such as entrance fees and user fees that are returned to the refuge, should be documented in determining the costs to administer individual or aggregated uses.

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*(8) Anticipated impacts of the use.* (a) Identify and describe the reasonably anticipated impacts of the use. In assessing the potential impacts of a proposed use on the refuge's purpose(s) and the System mission, refuge managers will use and cite available sources of information; as well as their best professional judgment, to substantiate their analysis. Sources may include planning documents, environmental assessments, environmental impact statements, annual narrative reports, information from previously-conducted or ongoing research, data from refuge inventories or studies, published literature on related biological studies, State conservation management plans, field management experience and consultation with wildlife research professionals, State wildlife resource managers and industry professionals, etc. Refuge managers are not required to independently generate data on which to base compatibility determinations. The Refuge Manager may work with the proponent(s) of the use and other interested parties to gather additional information before making the determination. If available information to the Refuge Manager is insufficient to document that a proposed use is compatible, then the Refuge Manager would be unable to make an affirmative finding of compatibility and we must not authorize or permit the use. If the use is a priority public use, and sufficient information is not available, the Refuge Manager should work with the proponent of the use to acquire the necessary information before finding the use not compatible based solely on insufficient available information. This does not mean that the burden of information collection is shifted to the Refuge Manager, but that the Refuge Manager should take steps to ensure that the additional information needs are clearly identified and that appropriate assistance is provided in facilitating the collection of that information.

(b) Refuge managers should distinguish between long-term and short-term impacts. A use may initially only be expected to cause minor impacts to the resource. However, the cumulative impacts over time may become quite substantial. Other uses may have impacts which are very short in duration but very significant while they are occurring, or are the converse: very long in duration but very insignificant in effect.

(c) Although direct impacts on refuge resources, such as wildlife disturbance or destruction of habitats, or degradation of ecological integrity may be easily predicted, the analysis of impacts must also address indirect and cumulative effects that may be reasonably associated with a specific use. Indirect impacts of a proposed use may include taking away or diverting resources from an activity that would support fulfilling the System mission or refuge's purposes and therefore would be a factor in determining whether the proposed use is compatible or not. A use with little potential for impact on its own may contribute to more substantive cumulative impacts on refuge resources when conducted in conjunction with or preceding or following other uses, and when considered in conjunction with proposed or existing uses of lands and waters adjacent to the refuge.

(d) If the anticipated impacts of the use are described in sufficient detail in a comprehensive conservation plan, step-down management plan, other plan, or associated NEPA document, refuge managers may provide a summary of the anticipated impacts of the use and reference the plan or NEPA document.

(e) Refuge managers should list all conservation objectives in approved refuge management plans (*e.g.*, comprehensive conservation plan, comprehensive management plan, master plan, or step-down management plan), that reasonably might be affected by the proposed use. To the extent possible, the determination of anticipated impacts should include an explanation of the impacts on these specific conservation objectives and how that affects fulfilling refuge purposes or the System mission.

*(9) Public review and comment.* (a) The Refuge Manager must provide an opportunity for public review and comment on the proposed refuge uses(s) before issuing a final compatibility determination. Public review and comment includes actively seeking to identify individuals and organizations that reasonably might be affected by, or interested in, a refuge use. Additionally, public review and comment will offer the public the opportunity to provide relevant information and express their views on whether or not a use is compatible. The extent and complexity of public review and comment that is necessary or appropriate will be determined by the Refuge Manager. For example, significantly modifying a popular hunting, fishing, or wildlife observation program would likely be controversial and would require considerable opportunity for public review and comment, whereas temporarily closing a small portion of a wildlife observation trail would likely require much less opportunity for public review and comment. For compatibility determinations prepared concurrently with comprehensive conservation plans or step-down management plans, public involvement can be achieved concurrently with the public review and comment of the draft plan and associated NEPA document. For compatibility determinations prepared separately from a plan, the level of public review and comment will be handled through the following tiered approach.

(i) For minor, incidental, or one-time uses which have been shown by past experience at this or other refuges in the System to result in no significant or cumulative impact to the refuge and would likely generate minimal public interest, the public review and comment requirement can be accomplished by posting a notice of the proposed determination at the refuge headquarters.

(ii) For all other uses, at a minimum, the Refuge Manager will solicit public comment by placing a public notice in a newspaper with wide local distribution. The notice must contain, at a minimum: a brief description of the compatibility determination process, a description of the use that is being evaluated, the types of information that may be used in completing the evaluation, how to provide comments, when comments are due, and how people may be informed of the decision the Refuge Manager will make regarding the use. The public will be given at least 14 calendar days to provide comments following the day the notice is published.

(iii) For evaluations of controversial or complex uses, the Refuge Manager should expand the public review and comment process to allow for additional opportunities for comment. This may include newspaper or radio announcements, notices or postings in public places, notices in the **Federal Register**, letters to potentially interested people such as adjacent landowners, holding public meetings, or extending the comment period.

(b) Public review and comment efforts must be documented on the compatibility determination form and relevant information retained with compatibility determinations as part of the administrative record. The documentation must include a description of the process used, a summary of comments received, and a description of any actions taken or not taken because of the comments received. All written public comments will be retained in the administrative record. If a comprehensive conservation plan or NEPA document is being prepared, this information would be included in these documents as part of the administrative record.

*(10) Use is compatible or not compatible.* Identify whether the use is compatible or not compatible. This is where the Refuge Manager indicates whether the use would, or would not, materially interfere with or detract from the fulfillment of the National Wildlife Refuge System mission or the purposes of the refuge.

*(11) Stipulations necessary to ensure compatibility.* (a) Describe any stipulations (terms or conditions) necessary to ensure compatibility. If a use is not compatible as initially proposed, it may be modified with stipulations that avoid or minimize potential adverse impacts, making the use compatible. It is not the responsibility of the Refuge Manager to develop a sufficient set of stipulations so as to make an otherwise not compatible proposed use, compatible. If the use cannot be modified with stipulations sufficient to ensure compatibility, the use cannot be allowed.

(b) Protective stipulations in the compatibility determination for a particular use should specify the manner in which that use must be carried out to ensure compatibility. Stipulations must be detailed and specific. They may identify such things as limitations on time (daily, seasonal, or annual) or space where a use could be safely conducted, the routes or forms of access to be used, and any restrictions on the types of equipment to be used or number of people to be involved. Monitoring of the use must be sufficient to evaluate compliance with stated conditions and swift action must be taken to correct or respond to any serious deviations.

*(12) Justification.* After completing the steps described above, the Refuge Manager will provide a written justification for the determination. The justification must provide a logical explanation describing how the proposed use would, or would not, materially interfere with or detract from the fulfillment of the National Wildlife Refuge System mission or the purposes of the refuge.

*(13) Signature.* The Refuge Manager will sign and date the compatibility determination and submit it to the Regional Chief for review and concurrence.

*(14) Concurrence.* The Regional Chief will sign and date the compatibility determination if in concurrence. If the Regional Chief does not concur the Regional Chief must discuss the determination with the Refuge Manager and attempt to resolve the differences. If they do not agree the Regional Chief must refer the compatibility determination to the Regional Director and the use may not be allowed unless, upon review, the Regional Director makes a written determination that the use is compatible.

*(15) Mandatory 10- or 15-year re-evaluation date.* At the time the compatibility determination is made, the Refuge Manager will insert the required maximum 10-year re-evaluation date for uses other than wildlife-dependent recreational uses or a 15-year maximum re-evaluation date for wildlife-dependent recreational uses.

### *2.13 How Do We Expedite the Compatibility Determination Process?*

The Refuge Administration Act provides for expedited consideration of uses that will likely have no detrimental effect on the fulfillment of the purpose(s) of the refuge or the System mission. The intent of this provision is to reduce the administrative burden on the Refuge Manager and speed the compatibility determination process for uses that are frequently found to be compatible. For minor, incidental, or one-time uses which have been shown to have no significant or cumulative impact to the refuge and would likely generate minimal public interest, the time period for an opportunity for public review and comment may be reduced to the time available.

### *2.14 What Do We Do With Existing Uses That are not Compatible?*

Existing uses determined to be not compatible will be expeditiously terminated or modified to make the use compatible. Except with written authorization by the Director, this process of termination or modification will not exceed 6 months from the date that the compatibility determination is signed.

### *2.15 May We Deny Uses That are Compatible?*

A determination that a use is compatible does not require the use to be allowed. Determinations on whether to allow otherwise compatible uses are based on compliance with other laws, the System mission, policy, refuge purposes, availability of resources to manage the use, possible conflicts with other uses, public safety, and other administrative factors. The Refuge Manager must clearly document and describe in writing the administrative reasons for not permitting a compatible use. Usually, a refuge manager will make this decision prior to making a compatibility determination and completing one will be unnecessary.

### *2.16 What are the Procedures for Appealing a Permit Denial?*

Procedures for appealing a permit denial are provided in 50 CFR 25.45 (special use permits), 50 CFR 29.22 (rights-of-way), 50 CFR 36.41 (i) (special use permits for refuges in Alaska), or 43 CFR 36.8 (rights-of-way for Alaska). We are providing no administrative mechanism to appeal a compatibility determination.

### *2.17 When Do We Prepare Pre-Acquisition Compatibility Determinations?*

A. When we add lands to the National Wildlife Refuge System, the Refuge Manager assigned management responsibility for the land to be acquired, will identify prior to acquisition, withdrawal, transfer, reclassification, or donation of those lands, existing wildlife-dependent recreational public uses (if any) determined to be compatible that we will permit to continue on an interim basis, pending completion of the comprehensive conservation plan. For this purpose, the Refuge Manager will make a pre-acquisition compatibility determination that will apply to existing wildlife-dependent recreational public uses that may be allowed, if determined to be compatible during the interim between acquisition and completion of the comprehensive conservation plan. The purpose of this policy is to inform the public, prior to acquisition, which pre-existing wildlife-dependent recreational public uses will be allowed to continue on newly acquired lands. Such decisions must be based on the compatibility standards and procedures outlined in this chapter. These pre-acquisition compatibility determinations for continuing existing wildlife-dependent recreational public uses will be made in writing, using the format in Exhibit 2.

B. Pre-acquisition compatibility determinations only apply to existing wildlife-dependent recreational public uses and are intended to be short-term in nature, bridging the gap between acquisition of refuge lands and completion of refuge comprehensive conservation plans. They should be made in conjunction with the preparation and release of appropriate pre-acquisition Realty documentation, prepared pursuant to NEPA. Pre-acquisition compatibility determinations should document the type, level, timing and location of wildlife-dependent recreational public

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uses that are presently occurring on lands proposed for acquisition.

*2.18 What Is the Relationship of Compatibility to NEPA?*

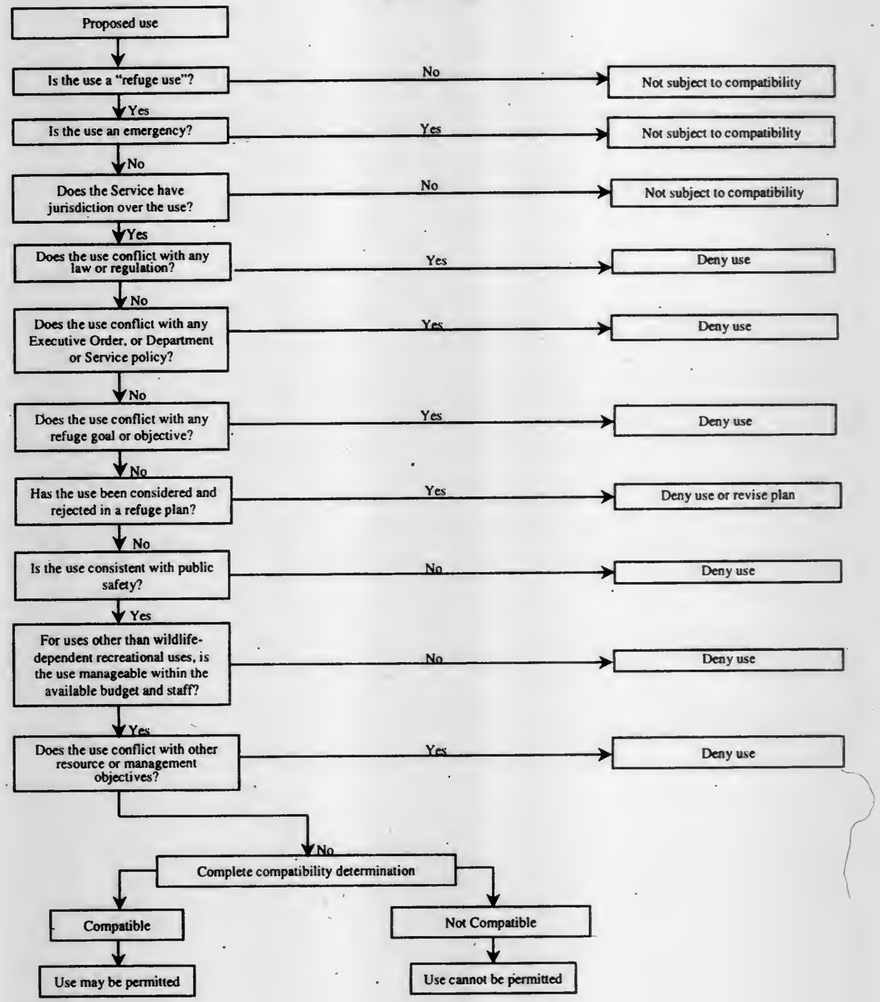
NEPA requires us to examine the environmental impact of our actions, incorporate environmental information, and utilize public participation, as appropriate, in the planning and implementation of our actions. NEPA compliance is required whenever we take an action. It is the action that triggers NEPA. A compatibility determination is not an action under NEPA, rather it is only one of many factors that we take into account whenever we consider taking an action, *i.e.*, allow a refuge use. Deciding whether to allow the use is the action, not the compatibility determination. Comprehensive conservation plans, step-down management plans, and the issuance of special use permits are actions about allowing or not allowing refuge uses. These actions require NEPA compliance. Many compatibility determinations will be completed concurrently with these processes. Compatibility determinations are an integral part of our decision about refuge uses; however, it is important to note that compatibility is only one of many factors that we take into account when we consider allowing or not allowing a refuge use.

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Exhibit 1

## Compatibility Determination Flowchart




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**Compatibility Determination**

Use:
Refuge Name:
Establishing and Acquisition Authority(ies):
Refuge Purpose(s):
National Wildlife Refuge System Mission:
Description of Use:
Availability of Resources:
Anticipated Impacts of the Use:
Public Review and Comment:

Determination (check one below):
____ Use is Not Compatible
____ Use is Compatible With Following Stipulations
Stipulations Necessary to Ensure Compatibility:
Justification:
Signature: _____ Refuge Manager: _____
(Signature and Date)
Concurrence: _____ Regional Chief: _____
(Signature and Date)
Mandatory 10- or 15-year Re-evaluation Date: _____

Dated: July 28, 2000.

**Jamie Rappaport Clark,**

*Director, U.S. Fish and Wildlife Service.*

[FR Doc. 00–26390 Filed 10–17–00; 8:45 am]
BILLING CODE 4310–55–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION 1985

Federal Register

Wednesday,
October 18, 2000

Part IV

# Architectural and Transportation Barriers Compliance Board

36 CFR Part 1191
Americans With Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities; Play Areas; Final Rule

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**ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD**

**36 CFR Part 1191**

**[Docket No. 98–2]**

**RIN 3014–AA21**

## Americans With Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities; Play Areas

**AGENCY:** Architectural and Transportation Barriers Compliance Board.

**ACTION:** Final rule.

**SUMMARY:** The Architectural and Transportation Barriers Compliance Board (Access Board) is issuing final accessibility guidelines to serve as the basis for standards to be adopted by the Department of Justice for new construction and alterations of play areas covered by the Americans with Disabilities Act (ADA). The guidelines include scoping and technical provisions for ground level and elevated play components, accessible routes, ramps and transfer systems, ground surfaces, and soft contained play structures. The guidelines will ensure that newly constructed and altered play areas meet the requirements of the ADA and are readily accessible to and usable by individuals with disabilities. The Department of Justice must adopt the guidelines as standards for them to be enforceable under the ADA.

**DATES:** The guidelines are effective November 17, 2000. The incorporation by reference of certain publications listed in the guidelines is approved by the Director of the Federal Register as of November 17, 2000.

**FOR FURTHER INFORMATION CONTACT:** Peggy Greenwell, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC 20004–1111. Telephone number (202) 272–5434 extension 134 (Voice); (202) 272–5449 (TTY). E-mail address: greenwell@access-board.gov.

**SUPPLEMENTARY INFORMATION:**

### Availability of Copies and Electronic Access

Single copies of this publication may be obtained at no cost by calling the Access Board's automated publications order line (202) 272–5434, by pressing 2 on the telephone keypad, then 1, and requesting publication S–39 (Play Areas Final Rule). Persons using a TTY should call (202) 272–5449. Please record a name, address, telephone number and request publication S–39. This document is available in alternate formats upon request. Persons who want a copy in an alternate format should specify the type of format (cassette tape, Braille, large print, or ASCII disk). This document is also available on the Board's Internet site (http://www.access-board.gov/play/finalrule.htm).

### Background

The Americans with Disabilities Act is a comprehensive civil rights law which prohibits discrimination on the basis of disability.[1] Titles II and III of the ADA require, among other things, that newly constructed and altered State and local government facilities, places of public accommodation, and commercial facilities be readily accessible to and usable by individuals with disabilities. Recreation facilities, including play areas, are among the types of facilities covered by titles II and III of the ADA.

The Architectural and Transportation Barriers Compliance Board (Access Board) is responsible for developing accessibility guidelines to ensure that new construction and alterations of facilities covered by titles II and III of the ADA are readily accessible to and usable by individuals with disabilities.[2] The Access Board initially issued the Americans with Disabilities Act Accessibility Guidelines (ADAAG) in 1991.[3] ADAAG contains general scoping and technical provisions (ADAAG 1 to 4) that apply to all types of facilities, and special application sections (ADAAG 5 to 12) that include additional scoping and technical provisions for certain types of facilities.[4] The technical provisions are generally based on adult dimensions and anthropometrics. In 1998, ADAAG was amended to include technical provisions based on children dimensions and anthropometrics for building elements designed specifically for children ages 12 and younger.[5]

The Department of Justice is responsible for issuing regulations to implement titles II and III of the ADA. The regulations issued by the Department of Justice must include accessibility standards for newly constructed and altered facilities covered by titles II and III of the ADA. The standards must be consistent with the accessibility guidelines issued by the Access Board. The Department of Justice has adopted ADAAG as the Standard for Accessible Design for title III of the ADA.[6]

This final rule amends ADAAG by adding a new special application section for play areas (ADAAG 15.6) that includes scoping and technical provisions for ground level and elevated play components, accessible routes, ramps and transfer systems, ground surfaces, and soft contained play structures.[7] The Access Board published a notice of proposed rulemaking (NPRM) on the play area guidelines in the **Federal Register** in April 1998.[8] The NPRM describes the full history of the rulemaking. The play area guidelines were developed through regulatory negotiation, a supplement to the traditional rulemaking process that allows face-to-face negotiations among representatives of affected interests in order to achieve consensus on the text of a proposed rule. The regulatory

[1] See 42 U.S.C. 12101 *et seq.* (http://www.usdoj.gov/crt/ada/pubs/ada.txt).

[2] The Access Board is an independent Federal agency established by section 502 of the Rehabilitation Act whose primary mission is to promote accessibility for individuals with disabilities. The Access Board consists of 25 members. Thirteen are appointed by the President from among the public, a majority of who are required to be individuals with disabilities. The other twelve are heads of the following Federal agencies or their designees whose positions are Executive Level IV or above: The departments of Health and Human Services, Education, Transportation, Housing and Urban Development, Labor, Interior, Defense, Justice, Veterans Affairs, and Commerce; General Services Administration; and United States Postal Service.

[3] See 36 CFR part 1191, Appendix A (http://www.access-board.gov/adaag/html/adaag.htm).

[4] The special application sections cover the following facilities: restaurants and cafeterias (ADAAG 5); medical care facilities (ADAAG 6); business, mercantile and civic (ADAAG 7); libraries (ADAAG 8); transient lodging (ADAAG 9); transportation facilities (ADAAG 10); judicial, legislative, and regulatory facilities (ADAAG 11); and detention and correctional facilities (ADAAG 12). ADAAG 13 is reserved for housing and ADAAG 14 is reserved for public rights-of-way.

[5] See 63 FR 2060 (January 13, 1998) (http://access-board.gov/adaag/kids/child/htm).

[6] See 28 CFR part 36, Appendix A (http://www.usdoj.gov/crt/ada/reg3a.html). The Department of Justice standards currently include ADAAG 1 to 10. State and local governments currently have the option of using ADAAG or an earlier standard, the Uniform Federal Accessibility Standards (UFAS), when constructing or altering facilities under the Department of Justice regulations for title II of the ADA. See 28 CFR 35.151(c) (http://www.usdoj.gov/crt/ada/reg2/html). The Department of Justice has issued a notice of proposed rulemaking to eliminate this option. 59 FR 31808 (June 20, 1994).

[7] In the NPRM, the play area guidelines were proposed to be a separate special application section numbered ADAAG 16. In the final rule, the play area guidelines are included in the special application section reserved for recreation facilities and are numbered ADAAG 15.6. ADAAG 15 eventually will include scoping and technical provisions for other recreation facilities, including amusement rides, boating and fishing facilities, golf, miniature golf, sports facilities, and swimming pools. The Access Board published a notice of proposed rulemaking (NPRM) on these recreation facility guidelines in the **Federal Register** in July 1999. See 64 FR 37326 (July 9, 1999) (http://www.access-board.gov/recreation/recnprm.htm).

[8] See 63 FR 24080 (April 30, 1998) (http://www.access-board.gov/play/nprm.htm).



negotiation committee represented a variety of interests, including play equipment manufacturers, landscape architects, parks and recreation facilities, city and county governments, schools, child care facilities, and people with disabilities.[9] The regulatory negotiation committee conducted meetings in various cities across the country and sought public participation throughout the process. The regulatory negotiation committee reached consensus on proposed guidelines for play areas and public comment was sought on the proposed guidelines through the NPRM. The Access Board held a public hearing in Denver, Colorado during the comment period. Approximately 100 comments were received on the NPRM.

The Department of Justice must adopt the play area guidelines as standards for them to be enforceable under the ADA.

### General Issues

General issues pertaining to the application of the play area guidelines are discussed below. The specific provisions of the guidelines are discussed under the Section-by-Section Analysis.

*Child Care Facilities*

*Comment.* The National Child Care Association (NCCA) questioned the estimated cost impact of the play area guidelines on child care facilities. NCCA claimed that the cost would be prohibitive for child care facilities. Child care providers who testified at the public hearing in Denver reiterated NCCA's concerns and noted that the guidelines would have the greatest impact on family child care providers. NCCA requested that carrying and lifting children on play areas be permitted as "alternative accessibility" or "equivalent facilitation," or that play areas in child care facilities for children ages 5 and under be exempted from the guidelines.

*Response.* NCCA was a member of the regulatory negotiation committee that reached consensus on the play area guidelines. The regulatory negotiation committee discussed various issues associated with play areas within child care facilities at great length. The regulatory negotiation committee limited application of the guidelines to play areas designed and constructed for children ages two and over. The regulatory negotiation committee also included provisions in the guidelines to address concerns related to smaller facilities, including child care facilities. For example, transfer systems are permitted instead of ramps to provide access to composite play structures with less than 20 elevated play components. Accessible routes at ground level are permitted to be 44 inches minimum wide, instead of 60 inches minimum wide, in play areas with less than 1,000 square feet. These provisions lessen the cost impact of the guidelines on smaller facilities.

For the NPRM, it was estimated that there would be no cost impact on child care facilities. This estimate was based on several assumptions. First, it was assumed that all child care facilities would have small play areas. The economic assessment for the NPRM used a model of a small play area to represent play areas typically found in child care facilities. The model included two separate play areas totaling 920 square feet: one for infants and toddlers under age two, which is not covered by the guidelines; and one for pre-school children ages two through five, which is covered by the guidelines.[10] The play area for the pre-school children included a composite play structure with 4 elevated play components on a single deck, 4 ground level play components, and a moveable play activity. The economic assessment assumed that, in the absence of the guidelines, if such a play area was designed and constructed in the future, it would have a transfer platform and steps that would make the composite play structure accessible.[11] Thus, the guidelines would not have any cost impact on the composite play structure. The economic assessment also assumed that, in the absence of the guidelines, the play area would have a ground surface of engineered wood fiber, or a combination of rubber and loose fill materials that would provide an adequate accessible route to the composite play structure and to a sufficient number of ground level play components. Thus, the guidelines would not have any cost impact on the ground surface.

NCCA claimed that play areas in child care facilities are much larger than the model used in the economic assessment because most States require child care facilities to provide more than 1,000 square feet of play space. The Access Board has reviewed each State's licensing requirements for child care facilities. About two-thirds of the States require that a minimum of 50 square feet to 75 square feet of play space be provided for each child.[12] However, the State requirements are expressed generally in terms of "play space," not "playgrounds." The Access Board contacted over 125 child care facilities around the country and found that most of their playgrounds have 4 to 7 play components (the average number of play components was 4.7 components). Furthermore, all the children enrolled in a child care facility do not use the playground at the same time, but rather the children use the playground in smaller groups. Play area equipment catalogues show designs similar to the model used in the economic assessment for pre-school children. This additional information supports the assumption made in the economic assessment regarding the size of play areas and number of play components in child care facilities.[13]

Based on comments from child care facilities, the assumption made in the economic assessment for the NPRM regarding the type of ground surface materials used for play areas in child care facilities has been changed. For the final rule, the economic assessment assumes that, in the absence of the guidelines, the ground surface material will be a loose fill such as sand or wood chips. The cost difference between using loose fill and engineered wood fiber is $300 to $950, and the cost difference between using loose fill and a combination of rubber and loose fill is $946 to $2,215. When maintenance costs for the various ground surface materials are factored in, the cost difference over a fifteen year life cycle

[9] The following organizations were represented on the regulatory negotiation committee: American Society of Landscape Architects, ASTM Public Playground Subcommittee F1S.29, ASTM Soft Contained Play Subcommittee F15.36, ASTM Playground Surfacing Systems Subcommittee F08.63, International Play Equipment Manufacturers Association, National Association of Counties, National Association of Elementary School Principals, National Child Care Association, National Council on Independent Living, National Easter Seal Society, National League of Cities, National Parent-Teacher Association, National Recreation and Park Association, Spinal Bifida Association of America, TASH, United Cerebral Palsy Associations, and U.S. Access Board.

[10] The U.S. Consumer Product Safety Commission recommends that for younger children, playgrounds have separate areas with appropriately sized equipment and materials to serve their developmental levels. See Handbook for Public Playground Safety p. 8 (http://cpsc.gov/cpscpub/pubs/325.pdf).

[11] The factors on which this assumption is based are discussed later in this preamble under Regulatory Process Matters, Executive Order 12866: Regulatory Planning and Review, Baseline.

[12] According to NCCA, the average licensed capacity for child care facilities is 70 children. At 50 square feet to 75 square feet minimum per child, the average child care facility would have a minimum of 3,500 square feet to 5,250 square feet of play space.

[13] For the final rule, the economic assessment estimates that there are 102,458 licensed child care facilities, and that 80 percent to 100 percent of these facilities have play areas. The economic assessment assumes the following size distribution of play areas among child care facilities: 60 percent small, 30 percent medium, and 10 percent large.

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range from a cost savings of $190 to a cost increase of $460 for engineered wood fiber, and from a cost savings of $260 to a cost increase of $1,000 for a combination of rubber and loose fill. These cost savings or cost increases are not prohibitive. Additionally, small businesses that have revenues of $1 million or less, or 30 or fewer full-time workers are entitled to a 50 percent tax credit for expenses to remove architectural barriers in their facilities, up to a maximum expenditure of $10,250; and a tax deduction of $15,000 a year is also available for architectural barrier removal, regardless of business size.[14] Child care facilities that remove architectural barriers in their existing play areas by replacing loose fill with accessible ground surfaces and by providing ramps and transfer systems to composite play structures may use the tax credit and tax deduction in combination. In addition, federal funds are available through the Community Development Block Grant Program to remove architectural barriers in existing facilities.[15] State and local governments may use these funds to remove architectural barriers in existing play areas in publicly operated and privately operated child care facilities.

It has been a long standing interpretation of civil rights laws for individuals with disabilities that carrying and lifting are ineffective and unacceptable methods for providing accessibility, and thus NCCA's request in this regard cannot be accepted.[16] Challenge and skill development are both a part of the play experience, and children with disabilities are capable of enjoying this experience.

An exception has been added to the final rule that exempts family child care facilities where the proprietor actually resides from the play area guidelines. These family child care facilities are located in private homes. State licensing requirements generally set a maximum capacity of 12 children for these home based child care facilities and they usually care for a smaller number of children. There are important differences, besides size, between home based child care facilities and center based child care facilities. Center based child care facilities typically purchase public playground equipment costing an average of $7,000, for which accessible products are available. Family child care facilities on the other hand typically purchase home playground equipment costing from $100 for a simple swing set to $1,000 for more elaborate systems, for which accessible products may not be readily available. Family child care facilities place the playground equipment in the front or back yards of their homes, which typically consist of grass or dirt and may not provide the types of ground surfaces used at public playgrounds. The cost of providing ground surfaces complying with the play area guidelines could far exceed the cost of purchasing home playground equipment and result in the home owner deciding not to provide any playground equipment or to purchase moveable playground equipment, which would not be covered by the guidelines.

Family child care facilities must still comply with all the other requirements of the ADA, including the general obligation to provide equal opportunity to individuals with disabilities to enjoy the services of their facilities and to remove architectural barriers in existing facilities where it is readily achievable (*i.e.*, easily accomplishable and able to be carried out without much difficulty or expense).[17]

*Amusement Attractions*

*Comment.* The International Association of Amusement Parks and Attractions (IAAPA) requested that amusement attractions and amusement rides be exempt from the play area guidelines.

*Response.* An exception has been added to the final rule that exempts amusement attractions located in amusement parks and theme parks from the play area guidelines, except the provisions for soft contained play structures. The exception is limited and applies to amusement attractions such as fun houses and barrels. If an amusement park or theme park has an eating place or picnic area that provides commonly used playground equipment, the playground equipment is not considered an amusement attraction and must comply with the play area guidelines.

Amusement attractions are not exempt from the other provisions of ADAAG. For example, assembly areas with fixed seats where entertainment is provided must provide wheelchair seating spaces complying with ADAAG 4.33 (Assembly Areas). Amusement attractions which have unique designs and features that are not adequately addressed by ADAAG must comply with ADAAG to the extent possible. Where ADAAG cannot be fully applied to amusement attractions, operators of amusement parks and theme parks are still subject to all the other requirements of the ADA, including the general obligation to provide individuals with disabilities an equal opportunity to enjoy the goods and services provided by their facilities.

The play area guidelines do not apply to amusement rides. The NPRM on recreation facilities proposed to add scoping and technical provisions to ADAAG for amusement rides.[18]

*Comment.* IAAPA also claimed that the play area guidelines conflict with a Department of Justice regulation for title III of the ADA, which provides that public accommodations are not required to alter their inventory to include accessible or special goods that are designed for individuals with disabilities, such as books in alternate formats (*e.g.*, Braille or audio tape), closed-captioned videotapes, specially sized or designed clothing, and special foods to meet particular dietary needs.[19]

*Response.* The Department of Justice regulation referenced by IAAPA applies to retail merchandise sold by public accommodations, and not to the design, construction, or alteration of facilities. Amusement rides are not retail merchandise. The regulation does not limit the other requirements of the ADA, including the requirement that new construction and alterations of facilities be readily accessible to and usable by individuals with disabilities.

*Water Play Components*

*Comment.* Commenters requested that the play area guidelines address water play components. Water play components incorporate water into the play experience. Water play components may be stand alone or part of a composite structure, and may be located in shallow water or pools.

*Response.* With regard to water play components located in shallow water or pools, the NPRM on recreation facilities requested additional information on those water play components.[20] Water play components located in shallow water or pools will be addressed in the final rule on recreation facilities.

With regard to water play components not located in shallow water or pools, the play area guidelines apply to these water play components. Where these water play components are located at the ground level, the provisions for ground level play components apply, including locating one of each type on an accessible route. Where these water play components are elevated, the provisions for elevated play components apply.

*Unique Play Areas*

*Comment.* Commenters requested clarification regarding application of the guidelines to play areas with unique designs and features. They provided examples of children's gardens, challenge courses, rock climbing walls, and tree houses. A manufacturer of interactive play systems claimed that the scoping and technical provisions were not appropriate for its play areas.

*Response.* A play area is a portion of a site containing play components designed and constructed for children. Play components are defined broadly to include elements intended to generate specific opportunities for play, socialization, or learning. Play components may be manufactured or natural. The scoping and technical provisions of the play area guidelines were developed to address commonly used playground equipment and structures. There will be play areas that have unique designs and features which are not adequately addressed by the guidelines. In those situations, the play area guidelines and the rest of ADAAG are to be applied to the extent possible. An accessible route must be provided to the play area. Where there are multiple play components, the scoping provisions for ground level and elevated play components are to be used to determine how many play components must be located on an accessible route. Where a play area has unique features for which there are no applicable scoping provisions, then a reasonable number, but at least one, of the features must be located on an accessible route. Where there are appropriate technical provisions, they must be applied to the elements that are covered by the scoping provisions. Where a play area has unique designs for which the technical provisions are not appropriate, the operators of those play areas are still subject to all the other requirements of the ADA, including the general obligation to provide individuals with disabilities an equal opportunity to enjoy the goods and services provided by their facilities.[21]

Interactive play systems include a wide variety of structures. Some are similar to commonly used playground equipment and soft contained play structures, and can comply with applicable provisions of the play area guidelines. Others include water play components located in shallow water or pools. As discussed above, water play components located in shallow water or pools will be addressed in the final rule on recreation facilities. Still others are multi-level indoor structures that are supervised. Platform lifts may provide an appropriate design solution to provide access to those structures.

*Alterations and Additions*

*Comment.* Commenters requested clarification regarding how the play area guidelines apply to alterations, especially where play components are replaced in existing play areas and the existing ground surface is not accessible.

*Response.* ADAAG 4.1.6 (Accessible Buildings: Alterations) contains general scoping provisions relating to alterations. ADAAG 4.1.6(1)(b) provides that when an existing element or space is altered, the altered element or space must comply with the applicable provisions for new construction. If it is technically infeasible for the altered element or space to fully comply with the applicable new construction provisions, ADAAG 4.1.6(j) requires that the alterations provide for accessibility to the maximum extent feasible.

ADAAG 4.1.6(1)(b) also provides that when the applicable provisions for new construction require that an element or space be located on an accessible route, the altered element or space is not required to be located on an accessible route, unless required by ADAAG 4.1.6(2) (Alterations to an Area Containing a Primary Function). ADAAG 4.1.6(2) provides that, when an area containing a primary function is altered, an accessible path of travel must be provided to the altered area unless the cost and scope of alterations to provide an accessible path of travel is disproportionate to the overall alterations as determined under criteria established by the Department of Justice. The Department of Justice regulations for title III of the ADA deem alterations to provide an accessible path of travel disproportionate when the cost exceeds 20 percent of the cost of the overall alterations.[22]

When play areas are altered, the provisions of ADAAG 4.1.6 apply. For example, the swings are replaced in an existing play area that has a sand ground surface. The sand does not have to be replaced with an accessible surface to provide an accessible path of travel to the swings if the cost of altering the ground surface exceeds 20 percent of the cost of replacing the swings. An exception has been added to the final rule to clarify the application of ADAAG 4.1.6 to this situation. The exception is limited to alterations where the play components are altered, but the ground surface is not altered. An accessible ground surface does not have to be provided, unless required by ADAAG 4.1.6(2) (*i.e.*, the ground surface does not have to be altered if the cost exceeds 20 percent of the cost of replacing the play components). The exception exempts operators from having to provide an accessible ground surface not only for accessible routes, but also for clear floor or ground spaces and maneuvering spaces adjacent to the altered play components since it would not be practical to provide discrete spaces of accessible ground surfacing without connecting the spaces with an accessible route.[23]

Normal maintenance activities performed on play areas such as replacing worn ropes or topping off ground surfaces are not considered alterations. However, if the entire ground surface is replaced, the ground surface must comply with the play areas guidelines and provide an accessible route to the required number and types of ground level play components and

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[14] See Tax Incentives Packet on the ADA (http://www.usdoj.gov/crt/ada/taxpack.htm).

[15] See 42 U.S.C. 5305(a)(5). The U.S. Department of Housing and Urban Development reports that local governments spent over $40 million of Community Development Block Grant funds on architectural barrier removal projects in fiscal year 1999.

[16] See Appendix A to 28 CFR 35.150(b)(1) (http://www.usdoj.gov/crt/ada/reg2.html). See also *Rameriez* v. *District of Columbia*, No. 99–803 (TFH) (D.D.C. March 27, 2000) where the court decided that assigning an aide to carry a child with cerebral palsy into an inaccessible restroom in a public school violates the ADA.

[17] See 28 CFR 36.201, 36.207 and 36.304 (http://www.usdoj.gov/crt/ada/reg3a.html). For additional guidance, see Commonly Asked Questions About Child Care Centers and the Americans with Disabilities Act (http://www.usdoj.gov/crt/ada/childq%26a.html).

[18] See note 7, *supra*.

[19] See 28 CFR 36.307 (http://www.usdoj.gov/crt/ada/reg3a/html).

[20] See note 7, *supra*.

[21] For additional guidance, see II–6.2100 of the Department of Justice ADA Title II Technical Assistance Manual Supplement (http://www.usdoj.gov/crt/ada/taman2up.html) and III–5.3000 of the Department of Justice ADA Title III Technical Assistance Manual (http://www.usdoj.gov/crt/ada/taman3.html)

[22] See 28 CFR 36.403(f)(1) (http://www.usdoj.gov/crt/ada/reg3a.html).

[23] State and local governments who operate play areas have a separate obligation under title II of the ADA to provide program accessibility which may require the removal of architectural barriers in existing facilities. See 28 CFR 35.150 (http://www.usdoj.gov/crt/ada/reg2.html).

Private entities who operate play areas have a separate obligation under title III of the ADA to remove architectural barriers in existing facilities where it is readily achievable (*i.e.*, easily accomplishable and able to be carried out without much difficulty or expense). See 28 CFR 36.304 (http://www.usdoj.gov/crt/ada/reg3a.html).

Tax credits and deductions are available to private entities for architectural barrier removal in existing facilities. See note 14, *supra*. Federal funds also are available through the Community Development Block Grant Program to remove architectural barriers in existing facilities. See note 15, *supra*. State and local governments may use Community Development Block Grant funds to remove architectural barriers in publicly and privately operated facilities.

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composite play structures. Replacing the entire ground surface would not require an additional number or types of ground level play components to be added, if there was not a sufficient number or types provided to comply with the guidelines prior to the alterations, nor would it require alterations to composite play structures that were not otherwise planned.

*Comment.* Commenters also requested clarification regarding how the guidelines apply to play areas designed and constructed in phases over several years.

*Response.* A provision has been added to the final rule to clarify that where play areas are designed and constructed in phases, the guidelines are to be applied so that when each successive addition is completed, the entire play area complies with all applicable provisions of the guidelines. For example, a play area is built in two phases. In the first phase, there are 10 elevated play components; and 10 elevated play components are added in the second phase for a total of 20 elevated play components. When the first phase is completed, at least 5 elevated play components must be located on an accessible route, and at least 3 ground level play components, including at least 3 different types, must be provided on an accessible route. When the second phase is completed, at least 10 elevated play components must be located on an accessible route, and at least 7 ground level play components, including 4 different types, must be provided on an accessible route. Ramps must be used to connect at least 5 of the elevated play components and transfer systems are permitted to be used to connect the rest of the elevated play components required to be located on an accessible route.

Where ground level play components are added in phases, the additional ground level play components do not have to be located on an accessible route if at least one of each type requirement is met and a sufficient number and types of ground level play components are provided on an accessible route based on the number of elevated play components. For example, a newly constructed play area has two spring rockers and one of the spring rockers is located on an accessible route. Two more spring rockers are later added to the play area. An accessible route is not required to connect to the additional spring rockers, provided that a sufficient number and types of ground level play components are provided on an accessible route based on the number of elevated play components.

**Section-by-Section Analysis**

The specific provisions of the play area guidelines and the comments received on each provision are discussed below.

*3.5 Definitions*

Definitions are added to ADAAG 3.5 (Definitions) for the following terms used in the play area guidelines: amusement attraction, elevated play component, ground level play component, play area, play component, soft contained play structure, and use zone. Several of the definitions are revised in the final rule for clarity.

*Comment.* Commenters questioned the reference to the ASTM F 1487–95 standard in the definition of "play area" in the NPRM. The ASTM standard is a voluntary safety standard for public playground equipment. Commenters questioned whether the play area guidelines would apply if a play area was not designed and constructed in accordance with the ASTM standard.

*Response.* The reference to the ASTM F 1487–95 standard has been removed from the definition of "play area" in the final rule.

*Comment.* Designers and operators requested clarification of the definition of "play component" and how to distinguish between ground level and elevated play components.

*Response.* The definition of "elevated play component" has been modified in the final rule to include the definition of a composite play structure. Appendix notes (A15.6.2 and A15.6.3) have been added to provide guidance on how to distinguish between ground level and elevated play components.

*15.6 Play Areas*

In the NPRM, the play area guidelines were proposed to be a separate special application section numbered ADAAG 16. In the final rule, the play area guidelines are included in the special application section reserved for recreation facilities and are numbered ADAAG 15.6.[24] The guidelines have been edited and reorganized for clarity. Appendix notes have been added to provide guidance on the guidelines. The appendix notes are advisory only.

*15.6.1 General*

The play area guidelines apply to play areas designed and constructed for children ages two and over. Where separate play areas are provided within a site for specified age groups (e.g., preschool (ages 2 to 5) and school age ( ages 5 to 12)), each play area must comply with the guidelines. Where play areas are designed or constructed in phases, the guidelines are to be applied so that when each successive addition is completed, the entire play area complies with all the applicable provisions of the guidelines.

*Comment.* Commenters requested clarification regarding how to apply the guidelines where separate play areas are provided within a site for different age groups.

*Response.* As noted above, the section has been revised in the final rule to clarify that each play area within a site provided for specified age groups must comply with the guidelines.

*Comment.* Commenters representing children with disabilities were concerned that the guidelines do not apply to play areas for children under age two.

*Response.* There is not sufficient information to develop guidelines for play areas for children under age two. Although there are no guidelines for play areas for children under age two, operators of those play areas are subject to all the other requirements of the ADA, including the obligation to provide individuals with disabilities an equal opportunity to enjoy the goods and services provided by their facilities.

*15.6.1 Exception 1*

Exception 1 is further discussed under General Issues. The exception exempts play areas located in family child care facilities where the proprietor actually resides from the play area guidelines. Family child care facilities must still comply with all the other requirements of the ADA, including the general obligation to provide equal opportunity to individuals with disabilities to enjoy the services of their facilities and to remove architectural barriers in existing facilities where it is readily achievable (i.e., easily accomplishable and able to be carried out without much difficulty or expense).[25]

*15.6.1 Exception 2*

Exception 2 permits operators to relocate play components in existing play areas for the purpose of creating safe use zones. Where the ground surface is not changed or extended for more than one use zone, the guidelines do not apply.

*Comment.* A commenter questioned whether this exception applies when more than one play component is moved. To create safe use zones, usually more than one play component must be moved.

[24] See note 7, *supra.*

[25] See note 21, *supra.*



*Response.* Exception 2 applies regardless of the number of play components moved, provided that the surface is not changed or extended for more than one use zone for each play component moved.

*15.6.1 Exception 3*

Exception 3 is further discussed under General Issues. The exception provides that where play components are altered and the ground surface is not altered, the ground surface is not required to comply with the guidelines, unless required by ADAAG 4.1.6(2) (Alterations to an Area Containing a Primary Function).

*15.6.1 Exception 4*

Exception 4 is further discussed under General Issues. The exception exempts amusement attractions in amusement parks and theme parks from the play area guidelines, except the provisions for soft contained play structures. The exception is limited and applies to amusement attractions such as fun houses and barrels. If an amusement park or theme park has an eating place or picnic area that provides commonly used playground equipment, the playground equipment is not considered an amusement attraction and must comply with 15.6. Amusement attractions are not exempt from the other provisions of ADAAG. Operators of amusement parks and theme parks are still subject to the other requirements of the ADA, including the general obligation to provide individuals with disabilities an equal opportunity to enjoy the goods and services provided by their facilities.

*15.6.1 Exception 5*

Exception 5 exempts play areas from complying with the provisions for protruding objects in ADAAG 4.4 (Protruding Objects). ADAAG 4.4 generally prohibits protrusions along circulation paths from projecting more than 4 inches, if the leading edge is above 27 inches and below 80 inches. ADAAG 4.4 also requires a minimum head clearance of 80 inches. No comments were received on this exception.

*15.6.1 Exception 6*

Exception 6 has been added to the final rule in response to comments from manufacturers who requested clarification regarding whether ADAAG 4.9 (Stairs) applies to composite play structures. The exception provides that stairs are not required to comply with ADAAG 4.9 since ramps and transfer systems are used to provide access to elevated play components. The exception also eliminates any potential conflicts between the technical provisions for stairs and transfer systems.

*15.6.2 Ground Level Play Components*

This section contains the scoping provisions for ground level play components. Ground level play components provided to comply with 15.6.2.1 are permitted to satisfy the number required by 15.6.2.2, if the minimum required types of play components are provided. Where more than one ground level play component is required by 15.6.2.1 and 15.6.2.2, the play components must be integrated in the play area.

*Comment.* A parent of a child with a hearing impairment who has a cochlear implant commented that some play equipment materials such as plastic slides generate static electricity when children move across the surfaces. The static electricity can damage cochlear implants and result in the need to replace them surgically. The commenter recommended that 50 percent of play components be metal.

*Response.* Consistent with the rest of ADAAG, the play area guidelines do not specify the materials to be used in play components. Designers and operators specify materials giving consideration to maintenance, climate, use, cost, and other factors. Manufacturers often add substances to plastics to reduce static electricity. The additives may lose their effectiveness over time in the outdoor environment or compromise the strength of the plastic. The type of clothing worn by a child and the humidity also may affect whether static electricity is generated by plastics. Some operators specify stainless steel slides to prevent or reduce vandalism. However, stainless steel slides are not widely used in warmer climates due to the potential for skin burns.

*Comment.* Commenters requested clarification regarding how to apply the provision that ground level play components required by 15.6.2.1 and 15.6.2.2 must be integrated. They provided examples where passive play components, such as activity panels, are separated from more active play components, such as swings, to ensure safety, and asked whether this type of separation would be considered integrated.

*Response.* The intent of this provision is to ensure that ground level play components which can be accessed by children with disabilities are integrated with other ground level play components. Grouping all ground level play components that can be accessed by children with disabilities in one part of the play area would not be considered integrated. Where certain types of ground level play components are separated for safe use, the integration provision can still be met. For example, if one part of the play area has activity panels and another part has swings, as long as an accessible route connects to both parts of the play area and at least one activity panel and at least one swing is located on the accessible route, the ground level play components would be integrated.

*15.6.2.1 General*

This section requires that at least one of each type of ground level play component provided must be located on an accessible route complying with 15.6.4 and must also comply with 15.6.6.

*Comment.* Designers and operators requested clarification regarding distinguishing between the types of ground level play components provided. For example, they asked whether a straight slide would be considered the same type of play component as a spiral slide. Commenters representing children with disabilities emphasized the need to ensure diversity or variety of play experiences for children with disabilities.

*Response.* An appendix note (A15.6.2) has been added to provide guidance on how to distinguish between the types of ground level play components provided. The general experience provided by the play component will distinguish between the types of play components provided. Examples of different types of experiences include rocking, swinging, climbing, spinning, and sliding. A spiral slide may provide a slightly different experience from a straight slide, but sliding is the general experience and therefore a spiral slide would not be considered a different type of play component than a straight slide.

*15.6.2.2 Additional Number and Types*

This section requires that, where elevated play components are provided, additional ground level play components must be provided. The additional ground level play components must be located on an accessible route complying with 15.6.4 and must also comply with 15.6.6.

*Comment.* The NPRM proposed that the additional number of ground level play components be equal to at least 50 percent of the total number of elevated play components. Commenters considered this number excessive.

*Response.* The regulatory negotiation committee proposed this provision in order to provide additional play opportunities for children with

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disabilities at the ground level since only a minimum of 50 percent of elevated play components would be connected by ramps or transfer systems. The regulatory negotiation committee also was concerned that some children with disabilities would be unable to or would choose not to use transfer systems to access elevated play components and wanted to provide additional play opportunities at the ground level for those children. The provision has a significant cost impact on play areas due to the cost of providing the additional ground level play components and, depending on the surface material used, the cost of providing an accessible route to the additional ground level play components.

The provision has been modified in the final rule. Table 15.6.2.2 has been added to the final rule which requires that ground level play components complying with the guidelines be provided in a number equal to at least approximately one-third of the total number of elevated play components. The table also requires that the additional ground level play components include different types of play experiences. The table reduces the cost impact on play areas and ensures that there will be a diversity or variety of play opportunities for children with disabilities at the ground level.

*15.6.2.2 Exception*

This exception has been modified in the final rule. The exception exempts play areas from having to provide the additional number and types of ground level play components required by 15.6.2.2 if at least 50 percent of the elevated play components are connected by a ramp and at least 3 of the elevated play components connected by the ramp are different types of play components.

*Comment.* The NPRM proposed to exempt play areas from having to provide additional ground level play components if all the elevated play components are connected by a ramp. Designers and operators commented that the proposed exception was too stringent.

*Response.* The exception has been modified in the final rule as discussed above. The exception is intended to encourage designers and operators to connect the number of elevated play components required by 15.6.3 with ramps instead of transfer systems because ramps are the preferred means of access for many children with disabilities.

*15.6.3 Elevated Play Components*

This section requires that at least 50 percent of elevated play components must be located on an accessible route complying with 15.6.4. Elevated play components connected by a ramp must comply with 15.6.6.

*Comment.* Commenters representing children with disabilities expressed concern that the guidelines do not require elevated play components located on an accessible route to be dispersed or located on different parts of a composite play structure.

*Response.* Dispersion is not specifically required because requiring at least 50 percent of elevated play components to be located on an accessible route should provide for an adequate level of dispersion.

*15.6.4 Accessible Routes*

This section requires that at least one accessible route complying with ADAAG 4.3 (Accessible Route), as modified by 15.6.4, be provided.

*Comment.* Designers expressed concern that the technical provisions for accessible routes would restrict creativity and innovation in the design of challenging play areas.

*Response.* The technical provisions for accessible routes provide minimum criteria for designers to make play areas accessible to children with disabilities. Consideration should be given to the general layout of the play area, and specifically to integrating elements and spaces that can be accessed by children with disabilities within the area. Designers are not prohibited from providing other circulation paths and spaces that do not conform to the guidelines, if an accessible route is provided. ADAAG 2.2 (Equivalent Facilitation) also allows for departure from specific technical provisions where designs may provide substantially equivalent or greater access.

*15.6.4 Exception 1*

Exception 1 permits a transfer system to connect elevated play components, except where 20 or more elevated play components are provided, no more than 25 percent of the elevated play components are permitted to be connected by a transfer system. The rest of the elevated play components required to be located on an accessible route must be connected by a ramp.

*Comment.* Some operators and manufacturers requested that the use of transfer systems not be limited based on the number of elevated play components provided. Some commenters representing children with disabilities requested that transfer systems not be permitted at all.

*Response.* The exception has not been modified in the final rule. The regulatory negotiation committee extensively discussed the issue of when ramps should be required to connect elevated play components. The regulatory negotiation committee considered the cost of ramps in relation to the size of composite play structures, and the potential that ramps might have a negative impact on play value or on the number of play components provided. Although ramps are preferred over transfer systems, transfer systems are usable by some children with disabilities.

*Comment.* Commenters requested clarification regarding how the number of elevated play components would be counted. They asked whether a double or triple slide that is part of a composite play structure would be counted as one elevated play component or more than one elevated play component.

*Response.* An appendix note (A15.6.3) has been added to clarify that a double or triple slide is considered one elevated play component.

*15.6.4 Exception 2*

Exception 2 permits an elevated play component to connect to another elevated play component in lieu of an accessible route where a transfer system is provided. No comments were received on this exception.

*15.6.4 Exception 3*

Exception 3 permits platform lifts complying with ADAAG 4.11 (Platform Lifts—Wheelchair Lifts) and applicable State or local codes to be used as part of an accessible route.

*Comment.* Operators considered platform lifts hazardous and difficult to maintain since they must be independently usable.

*Response.* The exception has been retained in the final rule. The exception allows operators the discretion to decide whether a platform lift is appropriate for a specific play area after giving due consideration to the location, level of supervision provided, and other relevant factors.

*15.6.4.1 Location*

This section provides that accessible routes must be located within the boundary of the play area and must connect ground level play components required by 15.6.2.1 and 15.6.2.2, and elevated play components required by 15.6.3, including their entry and exit points.

*Comment.* Commenters questioned why accessible routes must connect



stairs and exit points at stand alone slides. They maintained that accessible routes at these locations have limited utility because children with disabilities cannot often climb stairs or transfer independently from exit points of slides.

*Response.* This provision is intended to provide children with disabilities a circulation path to a variety of play components without affecting the challenge incorporated in play areas. Some children with disabilities, especially those who use mobility devices that assist in walking or standing, will benefit from an accessible route connecting play components, including stand alone slides. Others may not be able to use certain play components independently, but may enjoy the experience with assistance. An accessible route at exit points allows children with disabilities to negotiate through an accessible surface and to return to mobility devices with dignity.

*15.6.4.2 Protrusions*

This section prohibits objects from protruding into accessible routes at or below 80 inches above the surface. The provision has been revised in the final rule to apply only to ground level accessible routes in order to permit roofs on elevated play structures lower than 80 inches above the deck or platform.

*15.6.4.3 Clear Width*

This section specifies the dimensions for the clear width for accessible routes within play areas.

*Comment.* Commenters questioned why a 60 inch minimum clear width is required for ground level accessible routes when the final rule on children's elements did not modify the width of the accessible route for other types of facilities serving children.[26]

*Response.* The ground level accessible route in a play area is unique since the route may be the only area where accessible surfacing is provided. When the accessible route is the only accessible surface, it is likely that children with disabilities will be restricted to that small portion of the play area while other children are not so restricted. Furthermore, 60 inches is the minimum clear width necessary for turning.

*Comment.* Commenters noted that children who use wheelchairs leave their mobility devices when they use transfer systems and therefore the clear width of transfer systems does not need to be the same as the clear width of ramps on elevated accessible routes.

*Response.* An exception has been added to the final rule permitting the clear width of transfer systems connecting elevated play components to be 24 inches minimum.

*15.6.4.4 Ramp Slope and Rise*

This section specifies the slope and rise of ramps connecting ground level play components and ramps connecting elevated play components.

*Comment.* Commenters wanted more information about the technical provisions for ramps, including landings, handrails, and edge protection.

*Response.* The technical provisions for ramps are in ADAAG 4.8 (Ramps), including provisions for landings, handrails, and edge protection. Some of these provisions are modified by 15.6.4.4.

*Comment.* Designers requested clarification regarding the transition between accessible routes within a play area and accessible routes on a site. They asked if the transition is required to have a 1:16 maximum slope or a 1:12 maximum slope.

*Response.* Transitions at the boundary of play area accessible routes and site accessible routes must comply with ADAAG 4.5.2 (Changes in Level), which provides that changes in level greater than ½ inch must comply with ADAAG 4.8 (i.e., 1:12 maximum slope). Where a rubber surface is installed on top of asphalt to provide impact attenuation, the edges of the rubber surface may create a change in level between the adjoining ground surface. Where the change in level is greater than ½ inch, a sloped surface with a maximum slope of 1:12 must be provided. Products are commercially available that provide a 1:12 slope at transitions. An appendix note (A15.6.7) has been added to provide guidance on transitions.

*Comment.* A manufacturer preferred limiting the length of ramp runs to 12 feet, instead of limiting the rise of ramps to 12 inches.

*Response.* The regulatory negotiation committee wanted to limit the distance between the ramp and decks or platforms where children gather and interact, and also encourage designers to provide ramps with a lesser slope than the 1:12 maximum. Limiting the rise of ramps to 12 inches allows designers to use different combinations of ramp runs and ramp slopes to reach the same elevation. For example, to reach a 12 inch high deck or platform, a designer could use a 12 foot ramp with the maximum 1:12 slope, or a 14 foot ramp with a less steeper 1:14 slope. If the ramp run is limited to 12 feet, the designer could only use the maximum 1:12 slope.

*15.6.4.5 Handrails*

This section specifies dimensions for handrails on ramps provided within play areas. An exception has been revised in the final rule to clarify that handrails are not required at ramps located within ground level use zones and another exception has been added that does not require handrail extensions at the top and bottom of ramps to avoid any potential protrusion into circulation paths, especially on elevated decks or platforms.

*15.6.5 Transfer Systems*

This section contains technical provisions for transfer systems. The section clarifies that transfer platforms must be located where transfer is intended to be from a wheelchair or other mobility device, and that transfer steps must be located where movement is intended from a transfer platform to a level with elevated play components required to be located on an accessible route. The section also clarifies the orientation of the transfer space. The NPRM requested information regarding the effective placement of transfer supports. Commenters provided some examples of transfer supports designs. An appendix note (A15.6.5) has been added to provide guidance on transfer supports.

*15.6.6 Play Components*

This section contains technical provisions for ground level play components located on accessible routes and elevated play components connected by ramps. The provisions specify the dimensions for maneuvering space, clear floor or ground space, heights and clearances at play tables, the height of seats and entry points, and transfer supports.

*Comment.* Commenters requested clarification regarding the location of the clear floor or ground spaces and maneuvering spaces, and whether clear floor or ground spaces, maneuvering spaces, and accessible routes may overlap.

*Response.* A specific location has not been designated for the clear floor or ground spaces and maneuvering spaces, except for swings, because each play component may require that the space be placed in a unique location. The maneuvering space for swings must be located immediately adjacent to the swing (see figure 66). Clear floor or ground spaces, maneuvering spaces, and accessible routes may overlap within play areas.

[26] See not 5, *supra*.

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*Comment.* The NPRM proposed reach ranges for manipulative or interactive features of play components. Commenters noted that the reach ranges are not consistent with the ADAAG provisions for children's elements and the ASTM F 1487–98 standard. The International Playground Equipment Manufacturers Association recommended a reach range between 9 inches and 48 inches for a side reach, and 20 inches to 36 inches for a forward reach. Commenters questioned how the proposed reach ranges might apply to overhead play components and what provisions would apply to reaches over obstructions. They also questioned applying reach ranges designed to accommodate children who use wheelchairs to play components reached by transfer systems.

*Response.* The reach ranges have been moved to an appendix note (A15.6.6.6) and are advisory only. This is consistent with the action taken in the final rule on children's elements.[27] The regulatory negotiation committee proposed the reach ranges based on the NPRM on children's elements.[28] Comments on that rulemaking and this rulemaking have raised important issues that deserve further research.

*Comment.* Commenters noted that the proposed reach ranges were not adequate for play tables such as sand and water tables. These play components necessitate a reach over an obstruction and the NPRM did not include a provision for knee and toe clearance to facilitate this type of reach.

*Response.* A provision has been added to the final rule to address the concerns. Although the reach ranges are advisory only, knee and toe clearance for play tables have been included in the final rule. These clearances are consistent with the provisions in ADAAG for children's elements such as lavatories. An exception provides that play tables designed for children ages 5 and under are not required to provide knee and toe clearance if a parallel approach to the table is provided.

*15.6.7 Ground Surfaces*

This section provides that ground surfaces along accessible routes, clear floor or ground spaces, and maneuvering spaces within play areas must comply with ADAAG 4.5.1 (Ground or Floor Surfaces—General) and the ASTM F 1951–99 Standard Specification for Determination of Accessibility of Surface Systems Under and Around Playground Equipment. The ground surfaces must be inspected and maintained regularly and frequently to ensure continued compliance with the ASTM F 1951–99 standard. If located within use zones, the ground surfaces also must comply with the ASTM F 1292–99 Standard Specification for Impact Attenuation of Surface Systems Under and Around Playground Equipment. The NPRM referenced the ASTM PS 83 Provisional Standard Specification for Determination of Accessibility of Surface Systems Under and Around Playground Equipment. The ASTM PS 83 standard has been finalized as the ASTM F 1951–99 standard. Minor editorial changes were made between the provisional standard and the final standard.

*Comment.* Commenters requested more information about the ASTM PS 83 standard.

*Response.* The ASTM standards are copyrighted private consensus standards and are available from the American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959, telephone (610) 832–9585. The cost of the ASTM F 1951–99 standard is $30. The ASTM standards may be ordered online from ASTM (http://www.astm.org). An appendix note (A15.6.7) has been added to provide guidance on the ASTM F 1951–99 standard.

*Comment.* Some commenters were concerned that engineered wood fiber products would not provide an adequate accessible surface. Other commenters reported positive experiences with engineered wood fiber products in play areas used by children with disabilities. Commenters also requested that the Access Board publish a list of accessible ground surfaces.

*Response.* Some engineered wood fiber products have been tested and meet the ASTM F 1951–99 standard, and others have not. The fact that a specific product has been tested and meets that ASTM F 1951–99 standard does not necessarily mean that all other similar products will meet the standard. Engineered wood fiber surfaces will require frequent maintenance to comply with the ASTM F 1951–99 standard because of surface displacement due to user activity or looseness due to moisture. The settling of engineered wood fiber may also affect the distance between the ground surface and transfer platforms. The final rule requires ground surfaces to be inspected and maintained regularly and frequently to ensure continued compliance with the ASTM F 1951–99 standard. The Department of Justice regulations for titles II and III of the ADA also require public and private entities to maintain accessible features.[29]

Designers and operators are likely to choose materials that best serve the specific needs of each play area. The type of material selected will affect the frequency and cost of maintenance. The existence of the ASTM F 1951–99 standard should hasten the development of new materials and improvements in existing products. The Access Board plans to develop technical assistance materials on accessible ground surfaces. Based on concerns expressed by commenters and the fact that the ASTM F 1951–99 standard is new, the Access Board will closely monitor how well the standard provides for accessible surfaces.

*15.6.8 Soft Contained Play Structures*

This section requires an accessible route to serve entry points of soft contained play structures. Where three or fewer entry points are provided, at least one must be located on an accessible route. Where four or more entry points are provided, at least two must be located on an accessible route. Accessible routes must comply with ADAAG 4.3 (Accessible Route). An exception provides that transfer systems complying with 15.6.5 and platform lifts complying with ADAAG 4.11 (Platform Lifts—Wheelchair Lifts) and applicable State or local codes are permitted to be used as part of an accessible route. There were very few comments on this section and no changes have been made in the final rule.

**Regulatory Process Matters**

*Executive Order 12866: Regulatory Planning and Review*

This final rule is a significant regulatory action under Executive Order 12866 and has been reviewed by the Office of Management and Budget. An economic assessment of the potential costs and benefits of the final rule has been prepared and has been placed in the docket for public inspection. The economic assessment is also available on the Access Board's Internet site (http://www.access-board.gov/play/assess.htm). The economic assessment is summarized below.

Number and Size of Play Areas Affected

Ten major business and government categories are identified that are likely to own or operate play areas. They include eating places; hotels and motels; sporting and recreational camps; recreational vehicle parks and campsites; miscellaneous amusement and recreation facilities; public elementary and middle schools; private (nonsectarian) elementary and middle schools; child care facilities; civic, social and fraternal associations; and municipal and state parks. For each category, lower and upper bound estimates are made of the number of establishments that are likely to have commonly used playground equipment, and the annual number of playgrounds that are expected to be constructed or replaced. The estimates are further broken down by play area size (small, medium, and large). Table 1 shows the results of these estimates. The estimates do not include soft contained play structures because the guidelines are not expected to have a cost impact on those play areas.

[27] See note 5, *supra*.

[28] See 61 FR 37964 (July 22, 1996).

[29] See 28 CFR 35.133 (http://www.usdoj.gov/crt/ada/reg2.html) and 28 CFR 26.211 (http://www.usdoj.gov/crt/ada/reg3a.html).



TABLE 1.—NUMBER AND SIZE OF PLAY AREAS AFFECTED ANNUALLY BY GUIDELINES

| Play area size | Lower bound estimates | Upper bound estimates |
|---|---|---|
| Small | 7,800 | 10,400 |
| Medium | 6,400 | 8,300 |
| Large | 3,200 | 5,200 |
| Total Play Areas | 17,400 | 23,900 |

Baseline

To estimate the incremental costs of the guidelines, a baseline was established against which the cost of play areas designed and constructed in accordance with the guidelines can be compared. The baseline is a reasonable forecast of how play areas would be designed and constructed in the future in the absence of the guidelines. The following factors were considered in establishing the baseline: evolution of industry standards and practices; other civil rights laws and regulations guaranteeing the rights of individuals with disabilities (*i.e.*, Section 504 of the Rehabilitation Act, and Individuals with Disabilities Education Act); and the degree of compliance with those civil rights laws and regulations.

Beginning in 1990, the American Society of Testing and Materials (ASTM) established several subcommittees to develop voluntary standards for play areas. These standards include: ASTM F 1487–99 Standard Consumer Safety Performance Specification for Playground Equipment for Public Use (initially issued in 1993); ASTM PS 83–97 Provisional Standard Specification for Determination of Accessibility of Surface Systems Under and Around Playground Equipment (issued in 1997); ASTM F 1951–99 Standard Specification for Determination of Accessibility of Surface Systems Under and Around Playground Equipment (issued in 1999); and ASTM F 1918–98 Standard Safety Performance Specification for Soft Contained Play Equipment (issued in 1998). Although these ASTM standards are primarily concerned with safety, they also include technical provisions for accessible features such as accessible routes, transfer systems, ramps, and ground surfaces. The ASTM standards are voluntary, but most manufacturers follow them. It is common today for playground equipment manufacturers to incorporate as a standard feature on composite play structures a transfer system to at least one deck and to provide at least one activity panel and slide on that deck. Playground equipment manufacturers and ground surface material suppliers advertise and promote the accessibility of their products through their catalogues and web sites.

Public schools and parks have had an obligation since the 1970's under Section 504 of the Rehabilitation Act and the Individuals with Disabilities Education Act to provide for accessibility in new construction and alterations. Public schools and parks must have Section 504 coordinators who are responsible for ensuring among other things that these accessibility requirements are met. These other civil rights laws and regulations have been enforced to require public schools and parks to provide an accessible route through play areas to a range of play components.

With the increased availability of accessible playground equipment and accessible ground surfaces in the marketplace as a result of the ASTM standards and a long history of coverage by other civil rights laws and regulations, a high degree of compliance with respect to providing for accessibility is expected by public schools and parks when designing and constructing playground equipment. Private entities covered by title III of the ADA do not have as long a history of coverage by civil rights laws and regulations guaranteeing the rights of individuals with disabilities. However, larger private entities that operate play areas are more likely to know about developments in the marketplace and the availability of accessible playground equipment and accessible surface materials, and are more likely to purchase playground equipment and surface materials that provide for accessibility. Smaller private entities that operate play areas may not be as knowledgeable about these matters and have a lesser degree of compliance.

Three models representing a small, medium, and large play area were developed based on the above factors. For each model, equipment and ground surface costs are estimated for a baseline design and a design complying with the guidelines. The primary difference between baseline designs and the guidelines designs involves the number of ground level and elevated play components that are located on an accessible route, which in turn affects how much accessible ground surface is provided and the extent to which transfer systems and ramps are provided. Generally, the baseline design assumes that a smaller number of ground level play components are located on accessible routes than required by the guidelines and that a transfer system is provided only to one deck on a composite play structure, making fewer elevated play components accessible than required by the guidelines.

Different ground surface materials were used for each model. For the small play area, the baseline design used a loose fill surface such as sand or wood chips for the entire play area; and the guidelines design used two options: An engineered wood fiber surface for the entire play area (option 1), and a combination of rubber surface along accessible routes, clear floor or ground spaces, and maneuvering spaces and a loose fill surface for the rest of the play area (option 2).[30] This is a change from the assumption made in the economic assessment for the NPRM. A loose fill surface was used for the baseline design for the small play area in the economic assessment for the final rule based on comments from child care facilities, which have a large number of small play areas, stating that they would not use an engineered wood fiber surface, or a combination of rubber surface and loose fill surface in the absence of the guidelines. For the medium and large play areas, both the baseline designs and the guidelines designs used two options: An engineered wood fiber surface for the entire play area (option 1) and a combination of rubber surface along accessible routes, clear floor or ground spaces, and maneuvering spaces and a loose fill surface for the rest of the play area (option 2) because public schools and parks represent a large number of medium and large play areas and it is assumed that these facilities

[30] Rubber surface was used along accessible routes, clear floor or ground spaces, and maneuvering spaces. The rubber surface was designed to be as uninterrupted as possible to avoid potential tripping hazards.

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would use surfaces complying with the ASTM F 1951–99 standard in the absence of the guidelines based on the factors discussed above. This is the same assumption made in the economic assessment for the NPRM. The comments did not question this assumption. Some owners and operators, especially in urban areas, have chosen to use a rubber surface for the entire play area in the absence of the guidelines. The economic assessment overestimates the incremental surface costs for those play areas.

**Incremental Equipment and Ground Surface Costs**

Equipment and ground surface costs for the baseline designs and the guidelines designs are presented in Table 2. For equipment, installation is estimated at 20 percent to 40 percent of equipment cost. Ground surface costs reflect regional variations in labor and materials.

TABLE 2.—EQUIPMENT AND GROUND SURFACE COSTS

| Play area size | Baseline | | Guidelines | | Percent change |
|---|---|---|---|---|---|
| | Low | High | Low | High | |
| **Surface Option 1: Engineered Wood Fiber** | | | | | |
| Small | $11,828 | $15,345 | $12,128 | $16,295 | 2.5–6.2 |
| Medium | 18,740 | 27,362 | 20,636 | 30,032 | 9.8–10.1 |
| Large | 42.634 | 57,932 | 51,863 | 68,284 | 17.9–21.6 |
| **Surface Option 2: Rubber & Loose Fill** | | | | | |
| Small | $11,828 | $15,345 | $12,775 | $17,560 | 8.0–14.4 |
| Medium | 18,537 | 25,992 | 22,669 | 33,845 | 22.3–30.2 |
| Large | 43,511 | 57,688 | 54,969 | 74,109 | 26.3–28.5 |

The sources of the cost increases are discussed below.

Small Play Area

For the baseline design, the small play area has a loose fill surface; a composite play structure with 4 elevated play components on a single deck; a transfer platform and transfer steps to the deck; and 4 ground level play components. The guidelines do not result in any equipment changes. For the guidelines design the loose fill surface is replaced entirely with an engineered wood fiber surface (option 1) or a rubber surface (option 2) is installed along accessible routes, clear floor or ground spaces, and maneuvering spaces at certain ground level play components. The cost increase for the engineered wood fiber surface (option 1) is $300 to $950, and for the rubber surface (option 2) is $946 to $2,215.

Medium Play Area

For the baseline design, the medium play area has an engineered wood fiber surface (option 1) or a combination of rubber surface and loose fill surface (option 2); a composite play structure with 10 elevated play components on multiple decks at varying heights; a transfer platform and transfer steps that connect to a 36 inch high deck on which there are 3 elevated play components; and 3 ground level play components. For the guidelines design, the following are added: A 48 inch high deck (2 elevated play components are relocated from the 60 inch high deck to the 48 inch high deck); a transfer step to connect the 36 high and 48 inch high decks, and 1 ground level play component. The cost of these equipment changes is $1,680 to $1,960. The use zones are enlarged by 122 square feet as a result of the equipment changes. The cost for additional engineered wood fiber surface (option 1) for the expanded use zones is $216 to $710. The cost for additional rubber surface (option 2) for accessible routes, clear floor or ground spaces, and maneuvering spaces, and for loose fill for the expanded use zones is $2,452 to $5,893.

Large Play Area

For the baseline design, the large play area has an engineered wood fiber surface (option 1) or a combination rubber surface and loose fill surface (option 2); 20 elevated play components on multiple decks at varying heights; a transfer platform and transfer steps that connect to a 36 inch high deck on which there are 4 elevated play components (one of the elevated play components is a swinging bridge which connects to another 36 inch high deck with 2 more elevated play components); and 6 ground level play components. For the guidelines design, the following are added: An earthen berm and ramp to connect to another 36 inch high deck which is extended to connect to the ramp (this deck has 5 elevated play components); and 2 ground level play components. The cost of these equipment changes is $9,039 to $9,821. The use zones are enlarged by 94 square feet as a result of the equipment changes. The cost for additional engineered wood fiber surface (option 1) for the expanded use zones is $190 to $621. The cost for additional rubber surface (option 2) for accessible routes, clear floor or ground spaces, and maneuvering spaces, and for loose fill for the expanded use zones is $2,419 to $6,690.

Incremental Maintenance Costs (Savings)

Maintenance costs are estimated for the different ground surfaces in the baseline designs and guidelines designs for the model play areas. Maintenance activities include inspecting surfaces; raking and leveling surfaces; and topping off surfaces. Typical maintenance frequencies are presented in Table 3.

TABLE 3.—TYPICAL MAINTENANCE FREQUENCIES

| Maintenance activity | Loose fill | Engineered wood fiber | Rubber |
|---|---|---|---|
| Inspection | Daily to Weekly | Daily to Weekly | Weekly. |
| Rake & Level | Daily to Weekly | Weekly to as Required | Not Required. |
| Top Off | 1 to 3 years | 3 years | Not Required. |

Source: Henderson, Walter. Catching Kids When They Fall: Guidelines to Choosing a Playground Surface, *Parks & Recreation*, April 1997, pp. 84–92.



To aggregate routine maintenance costs with the one-time capital costs for equipment and ground surfaces, the maintenance costs are expressed as the present value of the annual maintenance costs for 15 years, discounted at a 7 percent rate of return. The incremental maintenance costs for the guidelines designs compared to the baseline designs for the model play areas are presented in Table 4.

TABLE 4.—INCREMENTAL MAINTENANCE COSTS (SAVINGS)

| Play area size | Surface option 1: Engineered wood fiber | Surface option 2: Rubber & loose fill |
|---|---|---|
| Small | ($490) | ($1,200) |
| Medium | 1,170 | (2,980) |
| Large | 900 | (4,810) |

For small play areas, using an engineered wood fiber surface (option 1) or a combination of rubber surface and loose fill surface (option 2) will result in a reduction in maintenance costs compared to an all loose fill surface over the life cycle of the play area. For medium and large play areas, using a combination of rubber surface and loose fill surface (option 2) will result in a reduction in maintenance costs over the life cycle of the play area.

Aggregate Incremental Costs for Equipment, Ground Surface, and Maintenance

Table 5 combines the incremental changes in equipment and ground surface costs from Table 2 and the incremental changes in maintenance costs from Table 4 to yield the aggregate incremental costs of the guidelines. The mid-point of the cost ranges in Table 2 are used to simplify the aggregation of the costs.

TABLE 5.—AGGREGATE INCREMENTAL COSTS (SAVINGS)

| Play area size | Low | High |
|---|---|---|
| **Surface Option 1: Engineered Wood Fiber** | | |
| Small | ($190) | $460 |
| Medium | 3,100 | 3,800 |
| Large | 10,100 | 11,300 |
| **Surface Option 2: Rubber & Loose Fill** | | |
| Small | (260) | 1,000 |
| Medium | 1,200 | 4,900 |
| Large | 6,600 | 11,600 |

Total Annual Costs of Guidelines

The total annual costs of the guidelines are the sum of the social costs and the direct costs. The lower and upper bound estimates of the total annual costs are presented in Table 6. Generally, as the cost of a product goes up, society consumes less of the product. Since the guidelines will increase the cost of designing and constructing play areas, it is assumed that the guidelines will result in fewer or smaller play areas built in the future. The loss of play opportunities resulting from fewer or smaller play areas built is the social costs of the guidelines. The social costs are estimated by making assumptions about society's elasticity of demand for play areas and using traditional economic analysis. The direct costs are the aggregate increase in the annual cost of play areas that are designed and constructed after the guidelines are adopted as standards by the Department of Justice.

TABLE 6.—TOTAL ANNUAL COSTS OF GUIDELINES

[$ in millions]

| All play areas | Surface option 1: Engineered wood fiber | Surface option 2: Rubber & loose fill |
|---|---|---|
| **Social Costs** | | |
| Low | $8 | $3 |
| High | 12 | 15 |
| **Direct Costs** | | |
| Low | $29 | $18 |
| High | 61 | 69 |
| **Total Annual Costs** | | |
| Low | $37 | $21 |
| High | 73 | 84 |

Benefits of Guidelines

The guidelines will make play areas accessible to 5.1 million children with disabilities, between the ages of 3 and 14.[31] Parents and other adults with disabilities who supervise children will be able to accompany the children when they visit play areas. Parents of children with disabilities will benefit from lower travel costs to take their children to accessible play areas. Businesses that provide play areas as part of their facilities may benefit from increased profits as families with individuals with disabilities are more likely to patronize their establishments. Children with disabilities will benefit from increased opportunities to play and to have social interaction with other children. Children without disabilities may also benefit from this diversity. It is not feasible to quantify these benefits and compare them to the costs of the guidelines.

Not all government policies are based on maximizing economic efficiency. Even when the market is operating efficiently, there may be groups or individuals who are subject to discriminatory practices and remain "under-served." The Americans with Disabilities Act is a civil rights law that was enacted by overwhelming bipartisan majorities in Congress and reflects the societal decision to eliminate the various forms of discrimination continually encountered by individuals with disabilities, including the discriminatory effects of architectural barriers. Traditional cost-benefit analysis is deficient when it comes to measuring civil rights benefits and making judgements about fairness or equity.

In the opinion of the Access Board, the civil rights benefits of the guidelines in ensuring that children with disabilities, and parents and other adults with disabilities who supervise children on play areas, have an equal opportunity to use and enjoy play areas justify the costs of the guidelines.

[31] Bureau of the Census, Americans with Disabilities: 1994–95—Table 2 (http://www.census.gov/hhes/www/disable/sipp/disab9495/ds94t2.html). The data provided does not allow for an exact measure of the 2 to 12 years age group.

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*Regulatory Flexibility Act*

The final regulatory flexibility analysis required by the Regulatory Flexibility Act has been performed in conjunction with the preparation of the preamble and economic assessment for the final rule. The analysis is summarized below.

Need for, and Objectives of, Guidelines

The Access Board is required to issue accessibility guidelines under the Americans with Disabilities (ADA) to ensure that new construction and alterations of facilities covered by titles II and III of the law are readily accessible to and usable by individuals with disabilities. Play areas are among the facilities covered by titles II and III of the ADA. Play areas have unique features that are not adequately addressed by the Americans with Disabilities Act Accessibility Guidelines (ADAAG). The play area guidelines will amend ADAAG to include scoping and technical provisions for ground level and elevated play components, accessible routes, ramps and transfer systems, ground surfaces, and soft contained play structures.

Significant Issues Raised by Public Comments

The following significant issues were raised by the comments.

Questioning of Statutory Requirement

Commenters questioned why each newly constructed play area must be accessible. As an alternative, they suggested that: One accessible play area per region be provided; play areas be modified for accessibility as needed; and subsidies be provided for making play areas accessible. The ADA is a civil rights law that ensures individuals with disabilities the basic right to use and enjoy goods and services made available to the public. The ADA specifically requires all newly constructed facilities to be accessible. It is more cost effective to incorporate accessible design into the construction of new facilities than to modify facilities afterwards to provide for accessibility. As discussed in the preamble to the final rule, tax credits and tax deductions are available to private entities to remove architectural barriers in existing facilities.[32] In addition, federal funds are available through the Community Development Block Grant Program for removing architectural barriers in existing facilities.[33]

Requests for Exemptions From Guidelines

Child care facilities claimed that the cost of the guidelines would be prohibitive, and requested that carrying or lifting be permitted as an alternative to accessibility or that play areas in child care facilities for children ages 5 and under be exempt from the guidelines. It has been a long standing interpretation of civil rights laws for individuals with disabilities that carrying and lifting are ineffective and unacceptable methods for providing accessibility.[34] The economic assessment shows that the incremental capital and maintenance costs of the guidelines over a 15 year life cycle for a small play area that may be typically found in a child care facility ranges from a cost savings of $190 to a cost increase of $460 for a play area with an engineered wood fiber surface, and from a cost savings of $260 to a cost increase of $1,000 for a play area with a combination rubber and loose fill surface. Tax credits and tax deductions are available to small businesses for architectural barrier removal.[35] Federal funds also are available through the Community Development Block Grant Program to remove architectural barriers in existing facilities. State and local governments may use these funds to remove architectural barriers in existing play areas in publicly operated and privately operated child care facilities.[36] An exception has been added to the final rule that exempts family child care facilities where the proprietor actually resides from the play area guidelines.

Amusement parks and theme parks requested that amusement attractions and amusement rides be exempt from the play area guidelines. An exception has been added to the final rule that exempts amusement attractions located in amusement parks and theme parks from the play area guidelines, except for soft contained play structures. The exception is limited and applies to amusement attractions such as fun houses and barrels. Amusement rides are the subject of a separate rulemaking.[37]

Several commenters expressed concerns regarding application of the guidelines to play areas with unique designs and features, and some suggested that exceptions be made for such play areas. The concerns are addressed in the preamble to the final rule under General Issues, Unique Play Areas.

Requests for Reduced Scoping

Commenters requested that the scoping provision, which requires additional numbers of ground level play components located on an accessible route based on the number of elevated play components provided, be reduced. The scoping was reduced in the final rule from 50 percent to approximately one-third. A minimum number of types of ground level play components was specified to ensure a diversity or variety of play opportunities for children with disabilities at the ground level.

Requests for Clarification of Application of the Guidelines to Alterations and Additions

Commenters requested clarification regarding how the play area guidelines apply to alterations and additions. Specific provisions have been added to the final rule in 15.6.1 and 15.6.1 Exception 3 in response to the comments that provide the requested clarification. The provisions are further discussed in the preamble under General Issues, Alterations and Additions.

Number of Small Entities Affected by Guidelines

A description of and estimate of the number of small entities that will be affected by the guidelines is addressed in chapter 3 of the economic assessment. Table 7 presents a summary of the information.

TABLE 7.—NUMBER OF SMALL ENTITIES AFFECTED BY GUIDELINES

| SIC | Category | Estimated establishments in 1999 | Estimated establishments with play areas | |
|---|---|---|---|---|
| | | | Low | High |
| 5812 | Eating Places | 420,000 | 8,400 | 21,000 |
| 7011 | Hotels & Motels | 47,000 | 940 | 2,300 |
| 7032 | Sporting & Recreational Camps | 3,600 | 360 | 900 |

[32] See note 14, *supra*.
[33] See note 15, *supra*.
[34] See note 16, *supra*.
[35] See note 14, *supra*.
[36] See note 15, *supra*.
[37] See note 7, *supra*.



TABLE 7.—NUMBER OF SMALL ENTITIES AFFECTED BY GUIDELINES—Continued

| SIC | Category | Estimated establishments in 1999 | Estimated establishments with play areas | |
|---|---|---|---|---|
| | | | Low | High |
| 7033 | Recreational Vehicle Parks & Campsites | 7,000 | 2,800 | 4,200 |
| 7999 | Miscellaneous Amusement & Recreation | 32,000 | 3,200 | 8,000 |
| n/a | Public Elementary & Middle Schools | 65,000 | 52,000 | 65,000 |
| n/a | Private Elementary & Middle Schools | 5,500 | 4,400 | 5,500 |
| 8351 | Child Day Care Services | 102,000 | 92,000 | 102,000 |
| 8641 | Civic, Social, & Fraternal Associations | 3,700 | 740 | 1,900 |
| n/a | Municipal & State Parks | 110,000 | 33,000 | 67,000 |

The number of public elementary and middle schools, and municipal and State parks also includes large entities.

Reporting and Recordkeeping Requirements

There are no reporting and recordkeeping requirements.

Steps Taken to Minimize Significant Economic Impact on Small Entities

In additional to the exceptions discussed above for family child care facilities and amusement attractions, and the reduced scoping for additional ground level play components, there are other provisions in the play area guidelines that minimize the significant economic impact on small entities. For small and medium size play areas with less than 20 elevated play components, transfer systems are permitted instead of ramps to provide an accessible route to at least 50 percent of the elevated play components. For small play areas with less than 1,000 square feet, a reduced clear width is permitted on accessible routes. The scoping and technical provisions in the play area guidelines are based on the consensus recommendations of a regulatory negotiation committee that represented the interests of all the parties affected by the guidelines. The guidelines will provide a minimum level of accessibility to play areas for individuals with disabilities and ensure that newly constructed and altered play areas meet the accessibility requirements of the ADA.

The only other significant alternative that would minimize the significant economic impact of the guidelines on small entities and was not accepted involved eliminating or further limiting the use of ramps to provide access to larger composite play structures with 20 or more elevated play components. Some children with disabilities will not be able to or will choose not to use transfer systems to access elevated play components. Ramps are preferred over transfer systems for providing access to play areas. Eliminating or further limiting the use of ramps to provide access to larger composite play structures would provide a lower level of access to children with disabilities and further limit their opportunities to interact and socialize with other children.

Technical Assistance

The Access Board will provide technical assistance materials to help small entities understand the scoping and technical provisions of the play area guidelines. The Access Board also has accessibility specialists who can answer questions about the guidelines. Information on how to contact the Access Board is provided at the beginning of this document.

*Executive Order 13132: Federalism*

The final rule is issued under the authority of the Americans with Disabilities Act. Ensuring the civil rights of groups who have experienced discrimination has long been recognized as a responsibility of the Federal government. The Americans with Disabilities Act was enacted "to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities."[38] The final rule adheres to fundamental federalism principles and policy making criteria set forth in Executive Order 13132. The Access Board has consulted with State and local governments throughout the rulemaking process, including convening an advisory committee, establishing a regulatory negotiation committee, and holding public hearings. The interests of State and local governments were represented in the rulemaking process by National Association of Counties, National Association of Elementary School Principals, National League of Cities, and National Recreation and Park Association, all of whom were members of the regulatory negotiation committee that developed the proposed rule. The Access Board has made changes to the proposed rule based on public comments which are discussed in the preamble to the final rule.

[38] 42 U.S.C. 12101(b)(2).

*Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act does not apply to proposed or final rules that enforce constitutional rights of individuals or enforce any statutory rights that prohibit discrimination on the basis of race, color, sex, national origin, age, handicap, or disability. Since the final rule is issued under the authority of the Americans with Disabilities Act, which establishes civil rights protections for individuals with disabilities, an assessment of the rule's effects on State, local, and tribal governments, and the private sector is not required by the Unfunded Mandates Reform Act.

**List of Subjects in 36 CFR Part 1191**

Buildings and facilities, Civil rights, Incorporation by reference, Individuals with disabilities, Transportation.

**Thurman M. Davis, Sr.,**
*Chair, Architectural and Transportation Barriers Compliance Board.*

For the reasons set forth in the preamble, part 1191 of Title 36 of the Code of Federal Regulations is amended as follows:

## PART 1191—AMERICANS WITH DISABILITIES ACT (ADA) ACCESSIBILITY GUIDELINES FOR BUILDINGS AND FACILITIES

1. The authority citation for 36 CFR part 1191 continues to read as follows:

**Authority:** 42 U.S.C. 12204.

2. Appendix A to Part 1191 is amended as follows:

a. By revising pages i, ii, 2, 3, 4, and 76 and by adding pages 1A, 4A, and 77 through 81 as set forth below.

b. In the appendix to Appendix A by adding pages A22 through A25 as set forth below.

The revisions and additions read as follows:

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**Appendix A to Part 1191—Americans with Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities**

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BILLING CODE 8150-01-P



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**2.3 Incorporation by Reference.**

**2.3.1 General.** The standards listed in 2.3.2 are incorporated by reference in this document. The Director of the Federal Register has approved these standards for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the referenced standards may be inspected at the Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., Suite 1000, Washington, DC; at the Department of Justice, Civil Rights Division, Disability Rights Section, 1425 New York Avenue, NW., Washington, DC; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

**2.3.2 Referenced Standards.** The specific edition of the standards listed below are referenced in this document. Where differences occur between this document and the referenced standards, this document applies.

**2.3.2.1 ASTM.** Copies of the referenced standards may be obtained from the American Society for Testing and Materials, 100 Bar Harbor Drive, West Conshohocken, Pennsylvania 19428 (http://www.astm.org).

ASTM F 1292-99 Standard Specification for Impact Attenuation of Surface Systems Under and Around Playground Equipment (see 15.6.7.2 Ground Surfaces, Use Zones).

ASTM F 1487-98 Standard Consumer Safety Performance Specification for Playground Equipment for Public Use (see 3.5 Definitions, Use Zone).

ASTM F 1951-99 Standard Specification for Determination of Accessibility of Surface Systems Under and Around Playground Equipment (see 15.6.7.1 Ground Surfaces, Accessibility).

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## 3. MISCELLANEOUS INSTRUCTIONS AND DEFINITIONS.

**3.1 Graphic Conventions.** Graphic conventions are shown in Table 1. Dimensions that are not marked minimum or maximum are absolute, unless otherwise indicated in the text or captions.

**3.2 Dimensional Tolerances.** All dimensions are subject to conventional building industry tolerances for field conditions.

**3.3 Notes.** The text of these guidelines does not contain notes or footnotes. Additional information, explanations, and advisory materials are located in the Appendix.

**3.4 General Terminology.**

comply with. Meet one or more specifications of *these guidelines*.

if, if ... then. Denotes a specification that applies only when the conditions described are present.

may. Denotes an option or alternative.

shall. Denotes a mandatory specification or requirement.

should. Denotes an advisory specification or recommendation.

**3.5 Definitions.**

**Access Aisle**. An accessible pedestrian space between elements, such as parking spaces, seating, and desks, that provides clearances appropriate for use of the elements.

**Accessible**. Describes a site, building, facility, or portion thereof that complies with *these guidelines*.

**Accessible Element**. An *element* specified by *these guidelines* (for example, telephone, controls, and the like).

**Accessible Route**. A continuous unobstructed path connecting all accessible elements and spaces of a building or facility. Interior accessible routes may include corridors, floors, ramps, elevators, lifts, and clear floor space at fixtures. Exterior accessible routes may include parking access aisles, curb ramps, *crosswalks at vehicular ways*, walks, ramps, and lifts.

**Accessible Space**. Space that complies with *these guidelines*.

**Adaptability**. The ability of certain building spaces and elements, such as kitchen counters, sinks, and grab bars, to be added or altered so as to accommodate the needs of *individuals with or without disabilities* or to accommodate the needs of persons with different types or degrees of disability.

**Addition**. *An expansion, extension, or increase in the gross floor area of a building or facility.*

**Administrative Authority**. A governmental agency that adopts or enforces regulations and *guidelines* for the design, construction, or *alteration* of buildings and facilities.

**Alteration**. *An alteration is a change to a building or facility that affects or could affect the usability of the building or facility or part thereof. Alterations include, but are not limited to, remodeling, renovation, rehabilitation, reconstruction, historic restoration, resurfacing of circulation paths or vehicular ways, changes or rearrangement of the structural parts or elements, and changes or rearrangement in the plan configuration of walls and full-height partitions. Normal maintenance, reroofing, painting or wallpapering, or changes to mechanical and electrical systems are not alterations unless they affect the usability of the building or facility.*

**Amusement Attraction**. *Any facility, or portion of a facility, located within an amusement park or theme park which provides amusement without the use of an amusement device. Examples include, but are not limited to, fun houses, barrels, and other attractions without seats.*







**Area of Rescue Assistance**. *An area, which has direct access to an exit, where people who are unable to use stairs may remain temporarily in safety to await further instructions or assistance during emergency evacuation.*

**Assembly Area**. A room or space accommodating a *group of* individuals for recreational, educational, political, social, civic, or amusement purposes, or for the consumption of food and drink.

**Automatic Door**. A door equipped with a power-operated mechanism and controls that open and close the door automatically upon receipt of a momentary actuating signal. The switch that begins the automatic cycle may be a photoelectric device, floor mat, or manual switch (see power-assisted door).

**Building**. Any structure used and intended for supporting or sheltering any use or occupancy.

**Circulation Path**. An exterior or interior way of passage from one place to another for pedestrians, including, but not limited to, walks, hallways, courtyards, stairways, and stair landings.

**Clear**. Unobstructed.

**Clear Floor Space**. *The minimum unobstructed floor or ground space required to accommodate a single, stationary wheelchair and occupant.*

**Closed Circuit Telephone**. *A telephone with dedicated line(s) such as a house phone, courtesy phone or phone that must be used to gain entrance to a facility.*

**Common Use**. Refers to those interior and exterior rooms, spaces, or elements that are made available for the use of a restricted group of people (for example, occupants of a homeless shelter, the occupants of an office building, or the guests of such occupants).

**Cross Slope**. The slope that is perpendicular to the direction of travel (see running slope).

**Curb Ramp**. A short ramp cutting through a curb or built up to it.

**Detectable Warning**. *A standardized surface feature built in or applied to walking surfaces or other elements to warn visually impaired people of hazards on a circulation path.*

**Egress, Means of**. *A continous and unobstructed way of exit travel from any point in a building or facility to a public way. A means of egress comprises vertical and horizontal travel and may include intervening room spaces, doorways, hallways, corridors, passageways, balconies, ramps, stairs, enclosures, lobbies, horizontal exits, courts and yards. An accessible means of egress is one that complies with these guidelines and does not include stairs, steps, or escalators. Areas of rescue assistance or evacuation elevators may be included as part of accessible means of egress.*

**Element**. *An architectural or mechanical component of a building, facility, space, or site, e.g., telephone, curb ramp, door, drinking fountain, seating, or water closet.*

**Elevated Play Component**. *A play component that is approached above or below grade and that is part of a composite play structure consisting of two or more play components attached or functionally linked to create an integrated unit providing more than one play activity.*

**Entrance**. *Any access point to a building or portion of a building or facility used for the purpose of entering. An entrance includes the approach walk, the vertical access leading to the entrance platform, the entrance platform itself, vestibules if provided, the entry door(s) or gate(s) and the hardware of the entry door(s) or gate(s).*

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**3.5 Definitions.**

**Facility**. *All or any portion of buildings, structures, site improvements, complexes, equipment, roads, walks, passageways, parking lots, or other real or personal property located on a site.*

**Ground Floor**. *Any occupiable floor less than one story above or below grade with direct access to grade. A building or facility always has at least one ground floor and may have more than one ground floor as where a split level entrance has been provided or where a building is built into a hillside.*

**Ground Level Play Component**. *A play component that is approached and exited at the ground level.*

**Mezzanine or Mezzanine Floor**. *That portion of a story which is an intermediate floor level placed within the story and having occupiable space above and below its floor.*

**Marked Crossing**. A crosswalk or other identified path intended for pedestrian use in crossing a vehicular way.

**Multifamily Dwelling**. Any building containing more than two dwelling units.

**Occupiable**. *A room or enclosed space designed for human occupancy in which individuals congregate for amusement, educational or similar purposes, or in which occupants are engaged at labor, and which is equipped with means of egress, light, and ventilation.*

**Operable Part**. A part of a piece of equipment or appliance used to insert or withdraw objects, or to activate, deactivate, or adjust the equipment or appliance (for example, coin slot, push button, handle).

**Path of Travel**. (Reserved).

**Play Area**. *A portion of a site containing play components designed and constructed for children.*

**Play Component**. *An element intended to generate specific opportunities for play, socialization, or learning. Play components may be manufactured or natural, and may be stand alone or part of a composite play structure.*

**Power-assisted Door**. A door used *for human passage* with a mechanism that helps to open the door, or relieves the opening resistance of a door, upon the activation of a switch or a continued force applied to the door itself.

**Private Facility**. *A place of public accommodation or a commercial facility subject to title III of the ADA and 28 CFR part 36 or a transportation facility subject to title III of the ADA and 49 CFR 37.45.*

**Public Facility**. *A facility or portion of a facility constructed by, on behalf of, or for the use of a public entity subject to title II of the ADA and 28 CFR part 35 or to title II of the ADA and 49 CFR 37.41 or 37.43.*

**Public Use**. Describes interior or exterior rooms or spaces that are made available to the general public. Public use may be provided at a building or facility that is privately or publicly owned.

**Ramp**. A walking surface which has a running slope greater than 1:20.

**Running Slope**. The slope that is parallel to the direction of travel (see cross slope).

**Service Entrance**. An entrance intended primarily for delivery of goods or services.

**Signage**. *Displayed* verbal, symbolic, *tactile*, and pictorial information.

**Site**. A parcel of land bounded by a property line or a designated portion of a public right-of-way.

**Site Improvement**. Landscaping, paving for pedestrian and vehicular ways, outdoor lighting, recreational facilities, and the like, added to a site.

**Sleeping Accommodations**. Rooms in which people sleep; for example, dormitory and hotel or motel guest rooms or suites.





**3.5 Definitions.**

**Soft Contained Play Structure**. *A play structure made up of one or more components where the user enters a fully enclosed play environment that utilizes pliable materials (e.g., plastic, netting, fabric).*

**Space**. *A definable area, e.g., room, toilet room, hall, assembly area, entrance, storage room, alcove, courtyard, or lobby.*

**Story**. *That portion of a building included between the upper surface of a floor and upper surface of the floor or roof next above. If such portion of a building does not include occupiable space, it is not considered a story for purposes of these guidelines. There may be more than one floor level within a story as in the case of a mezzanine or mezzanines.*

**Structural Frame**. The structural frame shall be considered to be the columns and the girders, beams, trusses and spandrels having direct connections to the columns and all other members which are essential to the stability of the building as a whole.

**TDD**. *(Telecommunication Devices for the Deaf). See text telephone.*

**TTY (Tele-Typewriter)**. *See text telephone.*

**Tactile**. Describes an object that can be perceived using the sense of touch.

**Technically Infeasible**. *See 4.1.6(1)(j) EXCEPTION.*

**Text Telephone (TTY)**. *Machinery or equipment that employs interactive text based communications through the transmission of coded signals accross the standard telephone network. Text telephones can include, for example, devices known as TDDs (telecommunication display devices or telecommunication devices for deaf persons) or computers with special modems. Text telephones are also called TTYs, an abbreviation for tele-typewriter.*

**Transient Lodging**.* *A building, facility, or portion thereof, excluding inpatient medical care facilities and residential facilities, that contains sleeping accommodations. Transient lodging may include, but is not limited to, resorts, group homes, hotels, motels, and dormitories.*

**Use Zone**. *The ground level area beneath and immediately adjacent to a play structure or equipment that is designated by ASTM F 1487 Standard Consumer Safety Performance Specification for Playground Equipment for Public Use (see 2.3.2) for unrestricted circulation around the equipment and on whose surface it is predicted that a user would land when falling from or exiting the equipment.*

**Vehicular Way**. A route intended for vehicular traffic, such as a street, driveway, or parking lot.

**Walk**. An exterior pathway with a prepared surface intended for pedestrian use, including general pedestrian areas such as plazas and courts.

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back support (e.g., attachment to wall). The structural strength of the bench attachments shall comply with 4.26.3.

(7) Storage. Fixed or built-in storage facilities, such as cabinets, shelves, closets, and drawers, shall contain storage space complying with 4.25.

(8) Controls. All controls intended for operation by inmates shall comply with 4.27.

(9) Accommodations for persons with hearing impairments required by 12.4.3 and complying with 12.6 shall be provided in accessible cells or rooms.

**12.6 Visible Alarms and Telephones.** Where audible emergency warning systems are provided to serve the occupants of holding or housing cells or rooms, visual alarms complying with 4.28.4 shall be provided. Where permanently installed telephones are provided within holding or housing cells or rooms, they shall have volume controls complying with 4.31.5.

EXCEPTION: Visual alarms are not required where inmates or detainees are not allowed independent means of egress.

## 13. RESIDENTIAL HOUSING. (Reserved).

## 14. PUBLIC RIGHTS-OF-WAY. (Reserved).

## 15. RECREATION FACILITIES.

**15.1 Amusement Rides. (Reserved).**

**15.2 Boating Facilities. (Reserved).**

**15.3 Fishing Piers and Platforms. (Reserved).**

**15.4 Golf. (Reserved).**

**15.5 Miniature Golf. (Reserved).**

**15.6 Play Areas.**

**15.6.1* General.** Newly designed and newly constructed play areas for children ages 2 and over and altered portions of existing play areas shall comply with the applicable provisions of section 4, except as modified or otherwise provided by this section. Where separate play areas are provided within a site for specified age groups, each play area shall comply with this section. Where play areas are designed or constructed in phases, this section shall be applied so that when each successive addition is completed, the entire play area complies with all the applicable provisions of this section.

EXCEPTION 1: Play areas located in family child care facilities where the proprietor actually resides shall not be required to comply with 15.6.

EXCEPTION 2: Where play components are relocated in existing play areas for the purpose of creating safe use zones, 15.6 shall not apply, provided that the ground surface is not changed or extended for more than one use zone.

EXCEPTION 3: Where play components are altered and the ground surface is not altered, the ground surface shall not be required to comply with 15.6.7, unless required by 4.1.6(2).

EXCEPTION 4: The provisions of 15.6.1 through 15.6.7 shall not apply to amusement attractions.

EXCEPTION 5: Compliance with 4.4 shall not be required within the boundary of the play area.

EXCEPTION 6: Stairs shall not be required to comply with 4.9.

**15.6.2* Ground Level Play Components.** Ground level play components shall be provided in the number and types required by 15.6.2.1 and 15.6.2.2. Ground level play components that are provided to comply with 15.6.2.1 shall be permitted to satisfy the number required by 15.6.2.2, provided that the minimum required types of play components are provided. Where more than one ground level play component required by 15.6.2.1 and 15.6.2.2 is provided, the play components shall be integrated in the play area.







**15.6.2.1 General.** Where ground level play components are provided, at least one of each type provided shall be located on an accessible route complying with 15.6.4 and shall comply with 15.6.6.

**15.6.2.2 Additional Number and Types.** Where elevated play components are provided, ground level play components shall be provided in accordance with Table 15.6.2.2. Ground level play components required by 15.6.2.2 shall be located on an accessible route complying with 15.6.4 and shall comply with 15.6.6.

EXCEPTION: If at least 50 percent of the elevated play components are connected by a ramp, and if at least 3 of the elevated play components connected by the ramp are different types of play components, 15.6.2.2 shall not apply.

**15.6.3* Elevated Play Components.** Where elevated play components are provided, at least 50 percent shall be located on an accessible route complying with 15.6.4. Elevated play components connected by a ramp shall comply with 15.6.6.

**15.6.4* Accessible Routes.** At least one accessible route complying with 4.3, as modified by 15.6.4, shall be provided.

EXCEPTION 1: Transfer systems complying with 15.6.5 shall be permitted to connect elevated play components, except where 20 or more elevated play components are provided, no more than 25 percent of the elevated play components shall be permitted to be connected by transfer systems.

**Table 15.6.2.2 Number and Types of Ground Level Play Components Required to be on Accessible Route**

| Number of Elevated Play Components Provided | Minimum Number of Ground Level Play Components Required to be on Accessible Route | Minimum Number of Different Types of Ground Level Play Components Required to be on Accessible Route |
|---|---|---|
| 1 | Not applicable | Not applicable |
| 2 to 4 | 1 | 1 |
| 5 to 7 | 2 | 2 |
| 8 to 10 | 3 | 3 |
| 11 to 13 | 4 | 3 |
| 14 to 16 | 5 | 3 |
| 17 to 19 | 6 | 3 |
| 20 to 22 | 7 | 4 |
| 23 to 25 | 8 | 4 |
| More than 25 | 8 plus 1 for each additional 3 over 25, or fraction thereof | 5 |

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EXCEPTION 2: Where transfer systems are provided, an elevated play component shall be permitted to connect to another elevated play component in lieu of an accessible route.

EXCEPTION 3: Platform lifts (wheelchair lifts) complying with 4.11 and applicable State or local codes shall be permitted to be used as part of an accessible route.

**15.6.4.1 Location.** Accessible routes shall be located within the boundary of the play area and shall connect ground level play components as required by 15.6.2.1 and 15.6.2.2 and elevated play components as required by 15.6.3, including entry and exit points of the play components.

**15.6.4.2 Protrusions.** Objects shall not protrude into ground level accessible routes at or below 80 in (2030 mm) above the ground or floor surface.

**15.6.4.3 Clear Width.** The clear width of accessible routes within play areas shall comply with 15.6.4.3.

**15.6.4.3.1 Ground Level.** The clear width of accessible routes at ground level shall be 60 in (1525 mm) minimum.

EXCEPTION 1: In play areas less than 1,000 square feet, the clear width of accessible routes shall be permitted to be 44 in (1120 mm) minimum, provided that at least one turning space complying with 4.2.3 is provided where the restricted accessible route exceeds 30 feet (9.14 m) in length.

EXCEPTION 2: The clear width of accessible routes shall be permitted to be 36 in (915 mm) minimum for a distance of 60 in (1525 mm) maximum, provided that multiple reduced width segments are separated by segments that are 60 in (1525 mm) minimum in width and 60 in (1525 mm) minimum in length.

**15.6.4.3.2 Elevated.** The clear width of accessible routes connecting elevated play components shall be 36 in (915 mm).

EXCEPTION 1: The clear width of accessible routes connecting elevated play components shall be permitted to be reduced to 32 in (815 mm) minimum for a distance of 24 in (610 mm) maximum provided that reduced width segments are separated by segments that are 48 in (1220 mm) minimum in length and 36 in (915 mm) minimum in width.

EXCEPTION 2: The clear width of transfer systems connecting elevated play components shall be permitted to be 24 in (610 mm) minimum.

**15.6.4.4 Ramp Slope and Rise.** Any part of an accessible route with a slope greater than 1:20 shall be considered a ramp and shall comply with 4.8, as modified by 15.6.4.4.

**15.6.4.4.1 Ground Level.** The maximum slope for ramps connecting ground level play components within the boundary of a play area shall be 1:16.

**15.6.4.4.2 Elevated.** Where a ramp connects elevated play components, the maximum rise of any ramp run shall be 12 in (305 mm).

**15.6.4.5 Handrails.** Where required on ramps, handrails shall comply with 4.8.5, as modified by 15.6.4.5.

EXCEPTION 1: Handrails shall not be required at ramps located within ground level use zones.

EXCEPTION 2: Handrail extensions shall not be required.

**15.6.4.5.1 Handrail Gripping Surface.** Handrails shall have a diameter or width of 0.95 in (24.1 mm) minimum to 1.55 in (39.4 mm) maximum, or the shape shall provide an equivalent gripping surface.

**15.6.4.5.2 Handrail Height.** The top of handrail gripping surfaces shall be 20 in (510 mm) minimum to 28 in (710 mm) maximum above the ramp surface.

**15.6.5* Transfer Systems.** Where transfer systems are provided to connect elevated play components, the transfer systems shall comply with 15.6.5.







**15.6.5.1 Transfer Platforms.** Transfer platforms complying with 15.6.5.1 shall be provided where transfer is intended to be from a wheelchair or other mobility device (see Fig. 64).

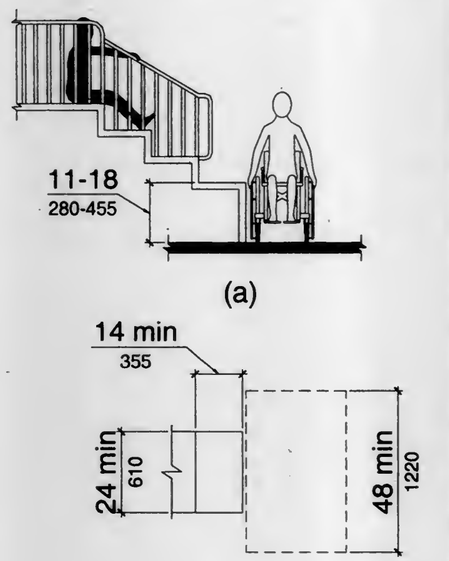



Fig. 64

**15.6.5.1.1 Size.** Platforms shall have a level surface 14 in (355 mm) minimum in depth and 24 in (610 mm) minimum in width.

**15.6.5.1.2 Height.** Platform surfaces shall be 11 in (280 mm) minimum to 18 in (455 mm) maximum above the ground or floor surface.

**15.6.5.1.3 Transfer Space.** A level space complying with 4.2.4 shall be centered on the 48 in (1220 mm) long dimension parallel to the 24 in (610 mm) minimum long unobstructed side of the transfer platform.

**15.6.5.1.4 Transfer Supports.** A means of support for transferring shall be provided.

**15.6.5.2 Transfer Steps.** Transfer steps complying with 15.6.5.2 shall be provided where movement is intended from a transfer platform to a level with elevated play components required to be located on an accessible route (see Fig. 65).

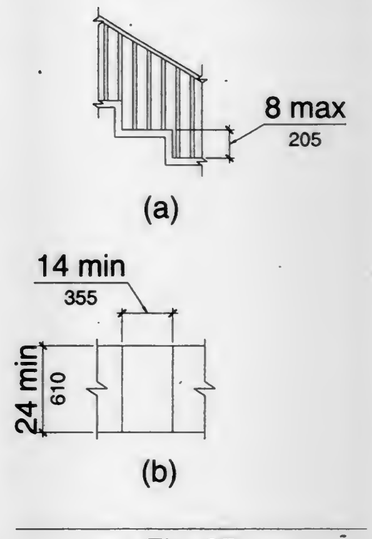



Fig. 65

**15.6.5.2.1 Size.** Transfer steps shall have a level surface 14 in (355 mm) minimum in depth and 24 in (610 mm) minimum in width.

**15.6.5.2.2 Height.** Each transfer step shall be 8 in (205 mm) maximum high.

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**15.6 Play Areas.**

**15.6.5.2.3 Transfer Supports.** A means of support for transferring shall be provided.

**15.6.6* Play Components.** Ground level play components located on accessible routes and elevated play components connected by ramps shall comply with 15.6.6.

**15.6.6.1 Maneuvering Space.** Maneuvering space complying with 4.2.3 shall be provided on the same level as the play components. Maneuvering space shall have a slope not steeper than 1:48 in all directions. The maneuvering space required for a swing shall be located immediately adjacent to the swing (see Fig. 66).

**15.6.6.2 Clear Floor or Ground Space.** Clear floor or ground space shall be provided at the play components and shall be 30 in (760 mm) by 48 in (1220 mm) minimum. Clear floor or ground space shall have a slope not steeper than 1:48 in all directions.

**15.6.6.3 Play Tables: Height and Clearances.** Where play tables are provided, knee clearance 24 in (610 mm) high minimum, 17 in deep (430 mm) minimum, and 30 in (760 mm) wide minimum shall be provided. The tops of rims, curbs, or other obstructions shall be 31 in (785 mm) high maximum.

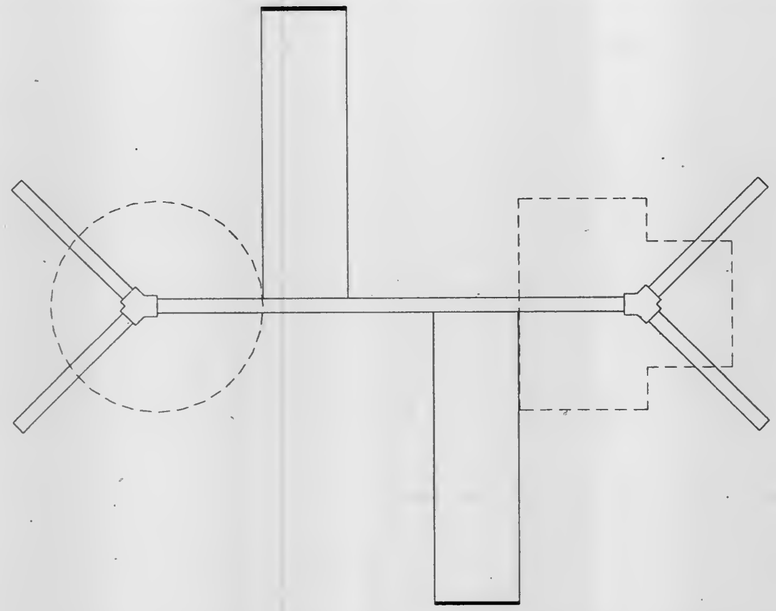


Fig. 66





**15.7 Sports Facilities. (Reserved).**

EXCEPTION: Play tables designed or constructed primarily for children ages 5 and under shall not be required to provide knee clearance if the clear floor or ground space required by 15.6.6.2 is arranged for a parallel approach and if the rim surface is 31 in (785 mm) high maximum.

**15.6.6.4 Entry Points and Seats: Height.** Where a play component requires transfer to the entry point or seat, the entry point or seat shall be 11 in (280 mm) minimum and 24 in (610 mm) maximum above the clear floor or ground space.

EXCEPTION: The entry point of a slide shall not be required to comply with 15.6.6.4.

**15.6.6.5 Transfer Supports.** Where a play component requires transfer to the entry point or seat, a means of support for transferring shall be provided.

**15.6.7* Ground Surfaces.** Ground surfaces along accessible routes, clear floor or ground spaces, and maneuvering spaces within play areas shall comply with 4.5.1 and 15.6.7.

**15.6.7.1 Accessibility.** Ground surfaces shall comply with ASTM F 1951 Standard Specification for Determination of Accessibility of Surface Systems Under and Around Playground Equipment (see 2.3.2). Ground surfaces shall be inspected and maintained regularly and frequently to ensure continued compliance with ASTM F 1951.

**15.6.7.2 Use Zones.** If located within use zones, ground surfaces shall comply with ASTM F 1292 Standard Specification for Impact Attenuation of Surface Systems Under and Around Playground Equipment (see 2.3.2).

**15.6.8 Soft Contained Play Structures.** Soft contained play structures shall comply with 15.6.8.

**15.6.8.1 Accessible Routes to Entry Points.** Where three or fewer entry points are provided, at least one entry point shall be located on an accessible route. Where four or more entry points are provided, at least two entry points shall be located on an accessible route. Accessible routes shall comply with 4.3.

EXCEPTION: Transfer systems complying with 15.6.5 or platform lifts (wheelchair lifts) complying with 4.11 and applicable State or local codes shall be permitted to be used as part of an accessible route.

**15.7 Sports Facilities. (Reserved).**

**15.8 Swimming Pools and Spas. (Reserved).**

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**A15.6.1 General.** This section is to be applied during the design, construction, and alteration of play areas for children ages 2 and over. Play areas are the portion of a site where play components are provided. This section does not apply to other portions of a site where elements such as sports fields, picnic areas, or other gathering areas are provided. Those areas are addressed by other sections of ADAAG. Play areas may be located on exterior sites or within a building. Where separate play areas are provided within a site for children in specified age groups (e.g., preschool (ages 2 to 5) and school age (ages 5 to 12)), each play area must comply with this section. Where play areas are provided for the same age group on a site but are geographically separated (e.g., one is located next to a picnic area and another is located next to a softball field), they are considered separate play areas and each play area must comply with this section.

**A15.6.2 Ground Level Play Components.** A ground level play component is a play component approached and exited at the ground level. Examples of ground level play components include spring rockers, swings, diggers, and stand alone slides. When distinguishing between the different types of ground level play components, consider the general experience provided by the play component. Examples of different types of experiences include, but are not limited to, rocking, swinging, climbing, spinning, and sliding. A spiral slide may provide a slightly different experience from a straight slide, but sliding is the general experience and therefore a spiral slide is not considered a different type of play component than a straight slide.

The number of ground level play components is not dependent on the number of children who can play on the play component. A large seesaw designed to accommodate ten children at once is considered one ground level play component.

Where a large play area includes two or more composite play structures designed for the same age group, the total number of elevated play components on all the composite play structures must be added to determine the additional number and types of ground level play components that must be provided on an accessible route, and the type of accessible route (e.g., ramps or transfer systems) that must be provided to the elevated play components.

Ground level play components accessed by children with disabilities must be integrated in the play area. Designers should consider the optimal layout of ground level play components accessed by children with disabilities to foster interaction and socialization among all children. Grouping all ground level play components accessed by children with disabilities in one location is not considered integrated.

**A15.6.3 Elevated Play Components.** Elevated play components are approached above or below grade and are part of a composite play structure. A double or triple slide that is part of a composite play structure is one elevated play component. For purposes of this section, ramps, transfer systems, steps, decks, and roofs are not considered elevated play components. These elements are generally used to link other elements on a composite play structure. Although socialization and pretend play can occur on these elements, they are not primarily intended for play.

Some play components may be considered ground level or elevated. For example, a stand alone climber is a ground level play component since it is approached and exited at the ground level. A climber that is attached to a composite play structure may be approached and exited at the ground level and considered a ground level play component, or it may be approached above grade from the composite play structure and considered an elevated component. Where a play component may be considered a ground level or an elevated play component, the designer or operator may choose which type of play component to consider it, but may not use the same play component to meet the requirements for both ground level and elevated play components. In the example of the climber attached to a composite play structure, if the designer or operator provides an accessible route to the base and the top of the climber and uses it to count toward meeting the requirement in 15.6.3 that at least 50 percent of elevated play components must be located on an accessible route, the designer or operator may not use the same climber to count toward the requirement in 15.6.2 regarding the number and type of ground level play components that must be located on an accessible route.







**A15.6.4 Accessible Routes.** Accessible routes within the boundary of the play area must comply with 15.6.4. Accessible routes connecting the play area to parking, drinking fountains, and other elements on a site must comply with 4.3. Accessible routes provide children who use wheelchairs or other mobility devices the opportunity to access play components. Accessible routes should coincide with the general circulation path used within the play area. Careful placement and consideration of the layout of accessible routes will enhance the ability of children with disabilities to socialize and interact with other children.

Where possible, designers and operators are encouraged to provide wider ground level accessible routes within the play area or consider designing the entire ground surface to be accessible. Providing more accessible spaces will enhance the integration of all children within the play area and provide access to more play components. A maximum slope of 1:16 is required for ground level ramps; however, a lesser slope will enhance access for those children who have difficulty negotiating the 1:16 maximum slope. Handrails are not required on ramps located within ground level use zones.

Where a stand alone slide is provided, an accessible route must connect the base of the stairs at the entry point, and the exit point of the slide. A ramp or transfer system to the top of the slide is not required. Where a sand box is provided, an accessible route must connect to the border of the sand box. Accessibility to the sand box would be enhanced by providing a transfer system into the sand or by providing a raised sand table with knee clearance complying with 15.6.6.3.

Elevated accessible routes must connect the entry and exit points of 50 percent of elevated play components. Ramps are preferred over transfer systems since not all children who use wheelchairs or other mobility devices may be able to use or may choose not to use transfer systems. Where ramps connect elevated play components, the maximum rise of any ramp run is limited to12 inches. Where possible, designers and operators are encouraged to provide ramps with a lesser slope than the 1:12 maximum. Berms or sculpted dirt may be used to provide elevation and may be part of an accessible route to composite play structures.

Platform lifts complying with 4.11 and applicable State and local codes are permitted as a part of an accessible route. Because lifts must be independently operable, operators should carefully consider the appropriateness of their use in unsupervised settings.

**A15.6.5 Transfer Systems.** Transfer systems are a means of accessing composite play structures. Transfer systems generally include a transfer platform and a series of transfer steps. Children who use wheelchairs or other mobility devices transfer from their wheelchair or mobility devices onto the transfer platform and lift themselves up or down the transfer steps and scoot along the decks or platforms to access elevated play components. Some children may be unable or may choose not to use transfer systems. Where transfer systems are provided, consideration should be given to the distance between the transfer system and the elevated play components. Moving between a transfer platform and a series of transfer steps requires extensive exertion for some children. Designers should minimize the distance between the points where a child transfers from a wheelchair or mobility device and where the elevated play components are located. Where elevated play components are used to connect to another elevated play component in lieu of an accessible route, careful consideration should be used in the selection of

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the play components used for this purpose. Transfer supports are required on transfer platforms and transfer steps to assist children when transferring. Some examples of supports include a rope loop, a loop type handle, a slot in the edge of a flat horizontal or vertical member, poles or bars, or D rings on the corner posts.

**A15.6.6 Play Components.** Clear floor or ground spaces, maneuvering spaces, and accessible routes may overlap within play areas. A specific location has not been designated for the clear floor or ground spaces or maneuvering spaces, except swings, because each play component may require that the spaces be placed in a unique location. Where play components include a seat or entry point, designs that provide for an unobstructed transfer from a wheelchair or other mobility device are recommended. This will enhance the ability of children with disabilities to independently use the play component.

When designing play components with manipulative or interactive features, consider appropriate reach ranges for children seated in wheelchairs. The following table provides guidance on reach ranges for children seated in wheelchairs. These dimensions apply to either forward or side reaches. The reach ranges are appropriate for use with those play components that children seated in wheelchairs may access and reach. Where transfer systems provide access to elevated play components, the reach ranges are not appropriate.

Where a climber is located on a ground level accessible route, some of the climbing rings should be within the reach ranges. A careful balance of providing access to play components but not eliminating the challenge and nature of the activity is encouraged.

**A15.6.7 Ground Surfaces.** Ground surfaces along clear floor or ground spaces, maneuvering spaces, and accessible routes must comply with the ASTM F 1951 Standard Specification for Determination of Accessibility to Surface Systems Under and Around Playground Equipment. The ASTM F 1951 standard is available from the American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959, telephone (610) 832-9585. The ASTM F 1951 standard may be ordered online from ASTM (http://www.astm.org). The ASTM 1951 standard determines the accessibility of a surface by measuring the work required to propel a wheelchair across the surface. The standard includes tests of effort for both straight ahead and turning movement, using a force wheel on a rehabilitation wheelchair as the measuring device. To meet the standard, the force required must be less than that required to propel the wheelchair up a ramp with a 1:14 slope. When evaluating ground surfaces, operators should request information about compliance with the ASTM F 1951 standard.

Ground surfaces must be inspected and maintained regularly and frequently to ensure continued compliance with the ASTM F 1951 standard. The type of surface material selected and play area use levels will determine the frequency of inspection and maintenance activities.

**Children's Reach Ranges**

| Forward or Side Reach | Ages 3 and 4 | Ages 5 through 8 | Ages 9 through 12 |
|---|---|---|---|
| High (maximum) | 36 in (915 mm) | 40 in (1015 mm) | 44 in (1120 mm) |
| Low (minimum) | 20 in (510 mm) | 18 in (455 mm) | 16 in (405 mm) |





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When using a combination of surface materials, careful design is necessary to provide appropriate transitions between the surfaces. Where a rubber surface is installed on top of asphalt to provide impact attenuation, the edges of the rubber surface may create a change in level between the adjoining ground surfaces. Where the change in level is greater than ½ inch, a sloped surface with a maximum slope of 1:12 must be provided. Products are commercially available that provide a 1:12 slope at transitions. Transitions are also necessary where the combination of surface materials include loose fill products. Where edging is used to prevent the loose surface from moving onto the firmer surface, the edging may create a tripping hazard. Where possible, the transition should be designed to allow for a smooth and gradual transition between the two surfaces.



[FR Doc. 00–26466 Filed 10–17–00; 8:45 am]
BILLING CODE 8150–01–C

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Federal Register

Wednesday,
October 18, 2000

Part V

Department of Defense
Department of Energy
Environmental Protection Agency
Nuclear Regulatory Commission

Multi-Agency Radiation Survey and Site Investigation Manual, Revision 1; Notice

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**DEPARTMENT OF DEFENSE**

**DEPARTMENT OF ENERGY**

**ENVIRONMENTAL PROTECTION AGENCY**

**NUCLEAR REGULATORY COMMISSION**

**[Docket No. A–96–44]**

## Multi-Agency Radiation Survey and Site Investigation Manual, Revision 1

**AGENCY:** U.S. Department of Defense, U.S. Department of Energy, U.S. Environmental Protection Agency, and the U.S. Nuclear Regulatory Commission.

**ACTION:** Notice of availability.

**SUMMARY:** The U.S. Department of Defense (DOD), U.S. Department of Energy (DOE), U.S. Environmental Protection Agency (EPA) and the U.S. Nuclear Regulatory Commission (NRC) are announcing the availability for use of the August 2000 Revision 1, of the December 1997 "Multi-Agency Radiation Survey and Site Investigation Manual" (MARSSIM). In response to comments received on the December 1997 MARSSIM, the MARSSIM has been updated to reflect resolution of these comments and to make minor editorial corrections. The changes are simple clarifications and corrections of errata, and they do not change the methods originally described. Therefore, the purpose of this new **Federal Register** Notice is to inform the public that the newly revised MARSSIM is available. The MARSSIM provides information on planning, conducting, evaluating, and documenting environmental radiological surveys of surface soils and building surfaces for demonstrating compliance with regulations.

**ADDRESSES:** Copies of the MARSSIM, Revision 1, and all public comments received may be examined or copied for a fee at the EPA Docket Room M1500, Docket No. A–96–44, First Floor Waterside Mall, 401 M Street, SW., Washington, DC 20460; and the NRC Public Document Room, 2120 L Street, NW., Washington, DC 20555–0001. The EPA docket may be inspected from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays in Room M1500 at the address above. NRC documents may be inspected from 7:45 a.m. to 4:15 p.m., Monday through Friday, excluding Federal holidays in the lower level of the building at the address above.

Copies of the MARSSIM, Revision 1, may be purchased by requests in writing to: The Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20402–9328. The NRC document number is NUREG–1575, Rev. 1, and the EPA document number is EPA 402–R–97–016, Rev. 1, and the DOE number is DOE/EH–0624, Rev. 1.

The manual, changed pages, and summary of comments received are also available through the Internet at: http://www.epa.gov/radiation/marssim or by linkage from the NRC home page at: http://www.nrc.gov; or the DOE home page at: http://www.doe/gov.

The author agencies continue to seek comments arising from use of the MARSSIM. Comments will be reviewed periodically by the author agencies, resolved as appropriate, and incorporated into revisions of the MARSSIM. Members of the public are invited to submit written comments to EITHER the U.S. Environmental Protection Agency, ATTN: Air and Radiation Docket, Mail Stop 6102, Air Docket No. A–96–44, Room M1500, First Floor Waterside Mall, 1200 Pennsylvania Avenue, NW., Washington, DC 20460 or the Chief, Rules and Directives Branch, Division of Administrative Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Copies of all comments received by one agency will be periodically copies and sent to the others.

**FOR FURTHER INFORMATION CONTACT:** Any of the following points of contact for each agency for technical information (see **ADDRESSES** section above for directions on obtaining a copy of the MARSSIM): DOE: Harold Peterson, Telephone: (202) 586–9640, U.S. Department of Energy (EH–412), 1000 Independence Avenue, SW., Washington, DC 20585, e-mail: peterson.harold@eh.doe.gov; EPA: Mark Doehnert; Telephone: (202) 564–9386, U.S. Environmental Protection Agency, Mail Stop 6608J, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, e-mail: doehnert.mark@epa.gov; NRC: Robert A. Meck, Telephone: (301) 415–6205, U.S. Nuclear Regulatory Commission, MS T–9C24, Washington, DC 20555–0001, e-mail: ram2@nrc.gov. Questions concerning the multi-agency document development project should be addressed to CDR Colleen Petullo, Telephone: (702) 798–2476, U.S. Public Health Service at U.S. Environmental Protection Agency, R&IE, P.O. Box 98517, Las Vegas, NV 89193–8517, e-mail: petullo.colleen@epa.gov.

**SUPPLEMENTARY INFORMATION:** The MARSSIM provides information on planning, conducting, evaluating, and documenting environmental radiological surveys of surface soil and building surfaces for demonstrating compliance with regulations. The MARSSIM, now as Revision 1, is a multi-agency consensus document. The MARSSIM was developed collaboratively over a four-year period by the technical staffs of four Federal agencies having authority for control of radioactive materials: DOD, DOE, EPA, and NRC. These staffs have continued to meet in order to discuss the future approaches to structural and environmental radiation surveys, future updates to the manual, using implementation tools such as training and software, and the schedule of future meetings. Members of the public and contractors to the Federal agencies have been present during the open meetings of the MARSSIM work group and have been provided opportunities for input.



The author agencies solicited comments arising from review and use of the final MARSSIM. In response to comments received to date, minor modifications were made to individual pages. Modifications to the manual correct errors, clarify guidance, and provide additional information. The methods originally described are not changed. The format of the MARSSIM has been changed to three-hole-punched pages for use in a binder. This format change will facilitate the insertion of the user's notes and future pages changes, if any. A complete list of comments and resolutions is available on the internet at the MARSSIM world wide website at: http://www.epa.gov/radiation/marssim.

Dated in Arlington, VA, this 15th day of September 2000.

For the Department of Defense.

**Sherri W. Goodman,**

*Deputy Under Secretary of Defense, (Environmental Security).*

Dated in Washington, DC, this 11th day of September 2000.

For the U.S. Department of Energy.

**David Michaels,**

*Assistant Secretary, Environment, Safety and Health.*

Dated in Washington, DC, this 16th day of August 2000.

For the U.S. Environmental Protection Agency.

**Frank Marcinowski,**

*Acting Director, Radiation Protection Division, Office of Radiation and Indoor Air.*

Dated in Rockville, Maryland, this 28th day of August 2000.

For the U.S. Nuclear Regulatory Commission.

**Ashok Thadani,**

*Director, Office of Nuclear Regulatory Research.*

[FR Doc. 00–26668 Filed 10–17–00; 8:45 am]

BILLING CODE 7590–01–M

VOL
65
ISS
202
OC
18
2000
UMI




Federal Register

Wednesday,
October 18, 2000

Part VI

# Department of Education

**Special Education: State Program Improvement Grants Program; Notice Inviting Applications for New Awards for Fiscal Years 2000 and 2001**

VOL 65 ISS 202 OC 18 2000 UMI



## DEPARTMENT OF EDUCATION

**[CFDA No.: 84.323A]**

### Special Education: State Program Improvement Grants Program; Notice Inviting Applications for New Awards for Fiscal Years (FYs) 2000 and 2001

**Note to Applicants:** This notice is a complete application package. Together with the statute authorizing the program and the applicable regulations governing this program, including the Education Department General Administrative Regulations (EDGAR), this notice contains all of the information, application forms, and instructions needed to apply for a grant under this program.

*Purpose of Program:* The purpose of this program, authorized under the Individuals with Disabilities Education Act (IDEA) Amendments of 1997, is to assist State educational agencies and their partners referred to in Section 652(b) of IDEA with reforming and improving their systems for providing educational, early intervention, and transitional services, including their systems for professional development, technical assistance, and dissemination of knowledge about best practices, to improve results for children with disabilities.

*Eligible Applicants:* A State educational agency of one of the 50 States, the District of Columbia, or the Commonwealth of Puerto Rico or an outlying area (United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands).

*General Requirements:* (a) Projects funded under this notice must make positive efforts to employ and advance in employment qualified individuals with disabilities in project activities (see Section 606 of IDEA);

(b) Applicants and grant recipients funded under this notice must involve individuals with disabilities or parents of individuals with disabilities in planning, implementing, and evaluating the projects (see Section 661(f)(1)(A) of IDEA); and

(c) Projects funded under these priorities must budget for a two-day Project Directors' meeting in Washington, D.C. during each year of the project.

*Deadline for Transmittal of Applications:* February 13, 2001.

*Deadline for Intergovernmental Review:* April 16, 2001.

*Available Funds:* $3.5 million of FY 2000 funds and an estimated $10.6 million of FY 2001 funds.

*Estimated Range of Awards:* Awards will be not less than $500,000, nor more than $2,000,000, in the case of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico; and not less than $80,000, in the case of an outlying area. Consistent with EDGAR 34 CFR 75.104(b), we will reject any application that proposes a project funding level for any year that exceeds the stated maximum award amount for that year.

We will set the amount of each grant after considering:

(1) The amount of funds available for making the grants;

(2) The relative population of the State or outlying area; and

(3) The types of activities proposed by the State or outlying area.

*Reasonable Accommodations:* We will consider, and may fund, requests for additional funding as an addendum to an application to reflect the costs of reasonable accommodations necessary to allow individuals with disabilities to be employed on the project as personnel on project activities.

*Estimated Average Size of Awards:* $1,000,000.

*Estimated Number of Awards:* 13. We expect to make approximately three awards using FY 2000 funds and ten awards using FY 2001 funds. Awards using FY 2001 funds will be made after July 1, 2001.

**Note:** The Department of Education is not bound by the estimated size and number of awards in this notice.

*Project Period:* Not less than one year and not more than five years.

*Page Limits:* Part III of each application submitted under a priority in this notice, the application narrative, is where an applicant addresses the selection criteria that are used by reviewers in evaluating the application. You must limit Part III to the equivalent of no more than the number of pages listed under each applicable priority, using the following standards:

- A "page" is 8.5″ × 11″ (on one side only) with one-inch margins (top, bottom, and sides).
- Double-space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, and captions, as well as all text in charts, tables, figures, and graphs.
- If using a proportional computer font, use no smaller than a 12-point font, and an average character density no greater than 18 characters per inch. If using a nonproportional font or a typewriter, do not use more than 12 characters per inch.

The page limit does not apply to Part I—the cover sheet; Part II—the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography or references, or the letters of support. However, you must include all of the application narrative in Part III.

We will reject without consideration or evaluation any application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The selection criteria for this program are drawn from EDGAR in 34 CFR 75.210.

**Note:** The regulations in 34 CFR part 86 apply to institutions of higher education only.

*Description of Program:* The statutory authorization for this program and the application requirements that apply to this competition are set out in section 651–655 of the IDEA.

*Findings and Purposes:* (a) States are responding with some success to multiple pressures to improve educational and transitional services and results for children with disabilities in response to growing demands imposed by ever-changing factors, such as demographics, social policies, and labor and economic markets.

(b) In order for States to address those demands and to facilitate lasting systemic change that is of benefit to all students, including children with disabilities, States must involve local educational agencies, parents, individuals with disabilities and their families, teachers and other service providers, and other interested individuals and organizations in carrying out comprehensive strategies to improve educational results for children with disabilities.

(c) Targeted Federal financial resources are needed to assist States, working in partnership with others, to identify and make needed changes to address the needs of children with disabilities into the next century.

(d) State educational agencies, in partnership with local educational agencies and other individuals and organizations, are in the best position to identify and design ways to meet emerging and expanding demands to improve education for children with disabilities and to address their special needs.

(e) Research, demonstration, and practice over the past 20 years in special education and related disciplines have built a foundation of knowledge on which State and local systemic-change activities can now be based.



(f) Research, demonstration, and practice in special education and related disciplines have demonstrated that an effective educational system now and in the future must—

(1) Maintain high academic standards and clear performance goals for children with disabilities, consistent with the standards and expectations for all students in the educational system, and provide for appropriate and effective strategies and methods to ensure that students who are children with disabilities have maximum opportunities to achieve those standards and goals;

(2) Create a system that fully addresses the needs of all students, including children with disabilities, by addressing the needs of children with disabilities in carrying out educational reform activities;

(3) Clearly define, in measurable terms, the school and post-school results that children with disabilities are expected to achieve;

(4) Promote service integration, and the coordination of State and local education, social, health, mental health, and other services, in addressing the full range of student needs, particularly the needs of children with disabilities who require significant levels of support to maximize their participation and learning in school and the community;

(5) Ensure that children with disabilities are provided assistance and support in making transitions as described in section 674(b)(3)(C) of the Act;

(6) Promote comprehensive programs of professional development to ensure that the persons responsible for the education or a transition of children with disabilities possess the skills and knowledge necessary to address the educational and related needs of those children;

(7) Disseminate to teachers and other personnel serving children with disabilities research-based knowledge about successful teaching practices and models and provide technical assistance to local educational agencies and schools on how to improve results for children with disabilities;

(8) Create school-based disciplinary strategies that will be used to reduce or eliminate the need to use suspension and expulsion as disciplinary options for children with disabilities;

(9) Establish placement-neutral funding formulas and cost-effective strategies for meeting the needs of children with disabilities; and

(10) Involve individuals with disabilities and parents of children with disabilities in planning, implementing, and evaluating systemic-change activities and educational reforms.

*Absolute Priority:* Under section 653 and 34 CFR 75.105(c)(3), we will give an absolute preference to applications that meet the following priority. We will fund under this competition only those applications that meet this absolute priority.

This priority supports projects that assist State educational agencies and their partners in reforming and improving their systems for providing educational, early intervention, and transitional services, including their systems for professional development, technical assistance, and dissemination of knowledge about best practices, to improve results for children with disabilities.

*State Improvement Plan.* Applicants must submit a State improvement plan that—

(a) Is integrated, to the maximum extent possible, with State plans under the Elementary and Secondary Education Act of 1965 and the Rehabilitation Act of 1973, if appropriate;

(b) Identifies those critical aspects of early intervention, general education, and special education programs (including professional development, based on an assessment of State and local needs) that must be improved to enable children with disabilities to meet the goals established by the State under section 612(a)(16) of the Act. Specifically, applicants must include:

(1) An analysis of all information, reasonably available to the State educational agency, on the performance of children with disabilities in the State, including—

(i) Their performance on State assessments and other performance indicators established for all children, including drop-out rates and graduation rates;

(ii) Their participation in postsecondary education and employment; and

(iii) How their performance on the assessments and indicators compares to that of non-disabled children;

(2) An analysis of State and local needs for professional development for personnel to serve children with disabilities that includes, at a minimum:

(i) The number of personnel providing special education and related services; and

(ii) Relevant information on current and anticipated personnel vacancies and shortages (including the number of individuals described in paragraph (b)(2)(i) with temporary certification), and on the extent of certification or retraining necessary to eliminate those shortages, that is based, to the maximum extent possible, on existing assessments of personnel needs;

(3) An analysis of the major findings of the Secretary's most recent reviews of State compliance, as they relate to improving results for children with disabilities; and

(4) An analysis of other information, reasonably available to the State, on the effectiveness of the State's systems of early intervention, special education, and general education in meeting the needs of children with disabilities;

(c) Describes a partnership agreement that—

(1) Specifies—

(i) The nature and extent of the partnership among the State educational agency, local educational agencies, and other State agencies involved in, or concerned with, the education of children with disabilities, and the respective roles of each member of the partnership; and

(ii) How those agencies will work in partnership with other persons and organizations involved in, and concerned with, the education of children with disabilities, including the respective roles of each of these persons and organizations; and

(2) Is in effect for the period of the grant;

(d) Describes how grant funds will be used in undertaking the systemic-change activities, and the amount and nature of funds from any other sources, including funds under part B of the Act retained for use at the State level under sections 611(f) and 619(d) of the Act, that will be committed to the systemic-change activities;

(e) Describes the strategies the State will use to address the needs identified under paragraph (b), including how it will—

(1) Change State policies and procedures to address systemic barriers to improving results for children with disabilities;

(2) Hold local educational agencies and schools accountable for educational progress of children with disabilities;

(3) Provide technical assistance to local educational agencies and schools to improve results for children with disabilities;

(4) Address the identified needs for in-service and pre-service preparation to ensure that all personnel who work with children with disabilities (including both professional and paraprofessional personnel who provide special education, general education, related services, or early intervention services) have the skills and knowledge necessary to meet the needs of children with

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disabilities, including a description of how it will—

(i) Prepare general and special education personnel with the content knowledge and collaborative skills needed to meet the needs of children with disabilities, including how the State will work with other States on common certification criteria;

(ii) Prepare professionals and paraprofessionals in the area of early intervention with the content knowledge and collaborative skills needed to meet the needs of infants and toddlers with disabilities;

(iii) Work with institutions of higher education and other entities that (on both a pre-service and an in-service basis) prepare personnel who work with children with disabilities to ensure that those institutions and entities develop the capacity to support quality professional development programs that meet State and local needs;

(iv) Work to develop collaborative agreements with other States for the joint support and development of programs to prepare personnel for which there is not sufficient demand within a single State to justify support or development of a program of preparation;

(v) Work in collaboration with other States, particularly neighboring States, to address the lack of uniformity and reciprocity in the credentialing of teachers and other personnel;

(vi) Enhance the ability of teachers and others to use strategies, like behavioral interventions, to address the conduct of children with disabilities that impedes the learning of children with disabilities and others;

(vii) Acquire and disseminate, to teachers, administrators, school board members, and related services personnel, significant knowledge derived from educational research and other sources, and how the State, if appropriate, will adopt promising practices, materials, and technology;

(viii) Recruit, prepare, and retain qualified personnel, including personnel with disabilities and personnel from groups that are underrepresented in the fields of regular education, special education, and related services;

(ix) Integrate its plan, to the maximum extent possible, with other professional development plans and activities, including plans and activities developed and carried out under other Federal and State laws that address personnel recruitment and training; and

(x) Provide for the joint training of parents and special education, related services, and general education personnel;

(5) Address systemic problems identified in Federal compliance reviews, including shortages of qualified personnel;

(6) Disseminate results of the local capacity-building and improvement projects funded under section 611(f)(4) of the Act;

(7) Address improving results for children with disabilities in the geographic areas of greatest need;

(8) Assess, on a regular basis, the extent to which the strategies implemented under this subpart have been effective; and

(9) Coordinate its improvement strategies with public and private sector resources.

*Required partners.* Applicants must:

(a) Establish a partnership with local educational agencies and other State agencies involved in, or concerned with, the education of children with disabilities; and

(b) Work in partnership with other persons and organizations involved in, and concerned with, the education of children with disabilities, including—

(1) The Governor;

(2) Parents of children with disabilities;

(3) Parents of nondisabled children;

(4) Individuals with disabilities;

(5) Organizations representing individuals with disabilities and their parents, such as the parent training and information centers;

(6) Community-based and other nonprofit organizations involved in the education and employment of individuals with disabilities;

(7) The lead State agency for part C of the Act;

(8) General and special education teachers, and early intervention personnel;

(9) The State advisory panel established under part B of the Act;

(10) The State interagency coordinating council established under part C of the Act; and

(11) Institutions of higher education within the State.

*Optional partners.* A partnership established by applicants may also include—

(a) Individuals knowledgeable about vocational education;

(b) The State agency for higher education;

(c) The State vocational rehabilitation agency;

(d) Public agencies with jurisdiction in the areas of health, mental health, social services, and juvenile justice; and

(e) Other individuals.

*Reporting procedures.* Each State educational agency that receives a grant must submit performance reports to the Secretary pursuant to a schedule to be determined by the Secretary, but not more frequently than annually. The reports must describe the progress of the State in meeting the performance goals established under Section 612(a)(16) of the Act, analyze the effectiveness of the State's strategies in meeting those goals, and identify any changes in the strategies needed to improve its performance. Grantees must also provide information required under EDGAR at 34 CFR 80.40.

*Use of funds.* Each State educational agency that receives a State Improvement Grant under this program—

(a) May use grant funds to carry out any activities that are described in the State's application and that are consistent with the purpose of this program;

(b) Shall, consistent with its partnership agreement established under the grant, award contracts or subgrants to local educational agencies, institutions of higher education, and parent training and information centers, as appropriate, to carry out its State improvement plan; and

(c) May award contracts and subgrants to other public and private entities, including the lead agency under part C of the Act, to carry out that plan;

(d)(1) Shall use not less than 75 percent of the funds it receives under the grant for any fiscal year—

(i) To ensure that there are sufficient regular education, special education, and related services personnel who have the skills and knowledge necessary to meet the needs of children with disabilities and developmental goals of young children; or

(ii) To work with other States on common certification criteria; or

(2) Shall use not less than 50 percent of those funds for these purposes, if the State demonstrates to the Secretary's satisfaction that it has the personnel described in paragraph (d)(1).

*Selection Criteria:* We will use the following selection criteria in 34 CFR 75.210 to evaluate applications for new grants under this competition. The maximum score for all of these criteria is 100 points. The maximum score for each criterion is indicated in parentheses.

(a) *Need for project.* (19 points). (1) The Secretary considers the need for the proposed project.

(2) In determining the need for the proposed project the Secretary considers the extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses.

(b) *Significance.* (19 points). (1) The Secretary considers the significance of the proposed project.

(2) In determining the significance of the proposed project, the Secretary considers the likelihood that the proposed project will result in system change or improvement.

(c) *Quality of the project design.* (19 points).

(1) The Secretary considers the quality of the design of the proposed project.

(2) In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(ii) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.

(iii) The extent to which the proposed activities constitute a coherent, sustained program of training in the field.

(iv) The extent to which the design of the proposed project reflects up-to-date knowledge from research and effective practice.

(v) The extent to which the proposed project will establish linkages with other appropriate agencies and organizations providing services to the target population.

(vi) The extent to which the proposed project is part of a comprehensive effort to improve teaching and learning and support rigorous academic standards for students.

(d) *Quality of project personnel.* (8 points).

(1) The Secretary considers the quality of the personnel who will carry out the proposed project.

(2) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factors:

(i) The qualifications, including relevant training and experience, of key project personnel.

(ii) The qualifications, including relevant training and experience, of project consultants or subcontractors.

(e) *Adequacy of resources.* (8 points). (1) The Secretary considers the adequacy of resources for the proposed project.

(2) In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(i) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization.

(ii) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project.

(iii) The extent to which the budget is adequate to support the proposed project.

(iv) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(v) The potential for continued support of the project after Federal funding ends, including, as appropriate, the demonstrated commitment of appropriate entities to this type of support.

(f) *Quality of the management plan.* (8 points). (1) The Secretary considers the quality of the management plan for the proposed project.

(2) In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(ii) How the applicant will ensure that a diversity of perspectives are brought to bear in the operation of the proposed project, including those of parents, teachers, the business community, a variety of disciplinary and professional fields, recipients or beneficiaries of services, or others, as appropriate.

(g) *Quality of the project evaluation.* (19 points). (1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(ii) The extent to which the methods of evaluation provide for examining the effectiveness of project implementation strategies.

(iii) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(iv) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

*Competitive Preference:* Within this absolute priority, we will give the following competitive preference under section 606 of IDEA and 34 CFR 75.105(c)(2)(i) to applications that are otherwise eligible for funding under this priority:

Up to ten (10) points based on the effectiveness of the applicant's strategies for employing and advancing in employment qualified individuals with disabilities as project employees in project activities as required under paragraph (a) of the "General Requirements" section of this notice. In determining the effectiveness of those strategies, we may consider the applicant's past success in pursuit of this goal.

For purposes of this competitive preference, applicants can be awarded up to a total of 10 points in addition to those awarded under the published selection criteria for this priority. That is, an applicant meeting these competitive preferences could earn a maximum total of 110 points.

**Intergovernmental Review**

This program is subject to Executive Order 12372 and the regulations in 34 CFR Part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive Order. The addresses of individual State Single Point of Contact are in the Appendix to this notice.

In States that have not established a process or chosen a program for review, State, areawide, regional, and local

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entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA# 84.323A, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, D.C. 20202–0124.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, D.C. time) on the date indicated in this notice.

Please note that the above address is not the same address as the one to which the applicant submits its completed application. Do not send applications to the above address.

*Instructions for Transmittal of Applications:* (a) If an applicant wants to apply for a grant, the applicant must—

(1) Mail the original and six copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA# 84.323A), Washington, D.C. 20202–4725; or

(2) Hand-deliver the original and six copies of the application by 4:30 p.m. (Washington, D.C. time) on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA# 84.323A), Room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, D.C.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

**Notes:** (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–9495.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number and suffix letter, if any, of the competition under which the application is being submitted.

*Application Instructions and Forms:* The appendix to this notice is divided into three parts, plus a statement regarding estimated public reporting burden, additional non-regulatory guidance, and various assurances, certifications, and required documentation. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

Part II: Budget Information—Non-Construction Programs (ED Form No. 524) and instructions. The budget section of the application form requires all applicants for multi-year projects to provide detailed budget information for the total grant period requested. The Department will establish, at the time of initial award, the funding levels for each year of the grant award. By requesting detailed budget information in the initial application for the total grant period, the need for a formal noncompeting continuation application in the remaining years has been eliminated. A performance report will be required annually to determine substantial progress, rather than a non-competing continuation application.

Part III: Application Narrative.

**Additional Materials**

The following forms and other items must be included in the application:

a. Estimated Public Reporting Burden.

b. Assurances—Non-Construction Programs (Standard Form 424B) and instructions.

c. Certifications Regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013).

d. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (ED 80–0014) and instructions.

**Note:** ED Form GCS–0014 is intended for the use of grantees and should not be transmitted to the Department.

e. Certification of Eligibility for Federal Assistance in Certain Programs (ED 80–0016.

f. Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions. The document has been marked to reflect statutory changes. See the notice published by the Office of Management and Budget in the **Federal Register** (61 FR 1413) on January 19, 1996.

g. Addresses of the individual State Single Point of Contact.

h. Table of Contents.

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. All applicants must submit one original signed application, including ink signatures on all forms and assurances, and three copies of the application. Please mark each application as "original" or "copy". No grant may be awarded unless a completed application has been received.

*For Applications and General Information Contact:* Requests for applications and general information should be addressed to the Grants and Contracts Services Team, 400 Maryland Avenue, S.W., room 3317, Switzer Building, Washington, D.C. 20202–2641. The preferred method for requesting information is to FAX your request to: (202) 205–8717. Telephone: (202) 260–9182. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 205–8953.

Individuals with disabilities may obtain a copy of this notice or the application packages referred to in this notice in an alternate format (e.g. Braille, large print, audiotape, or computer diskette) by contacting the Department as listed above. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

**Electronic Access to This Document**

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use PDF you must have Adobe Acrobat Reader, which is available free at either of the previous sites. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC., area at (202) 512–1530.

**Note:** The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO access at: http://www.access.gpo/nara/index.html.

**Program Authority:** 20 U.S.C. 1405, 1461, 1472, 1474, and 1487.

Dated: October 12, 2000.

**Judith E. Heumann,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

**Instructions for Estimated Public Reporting Burden**

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is OMB No. 1820–0620. The time required to complete this information collection is estimated to average between 50–130 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate or suggestions for improving this form, please write to: U.S. Department of Education, Washington, D.C. 20202–4651. If you have any comments or concerns regarding the status of your individual submission of this form, write directly to: Office of Special Education Programs, U.S. Department of Education, 400 Independence Avenue, SW., Washington, D.C. 20202–2641.

**Application Narrative**

The narrative should address fully all aspects of the selection criteria in the order listed and should give detailed information regarding each criterion. Do not simply paraphrase the criteria. Provide position descriptions, not resumes.

**Budget**

Budget line items must support the goals and objectives of the proposed project and be directly applicable to the program design and all other project components.

**Final Application Preparation**

Use the above checklist to verify that all items are addressed. Prepare one original with an original signature, and include three additional copies. Do not use elaborate bindings or covers. The application must be mailed to the Application Control Center (ACC) and postmarked by the deadline date of February 13, 2001.

*Questions and Answers*

Following is a series of questions and answers that will serve as guidance for State Educational Agency in completing the grant application for a State Improvement Grant (SIG) as authorized by the Individuals with Disabilities Education Act (IDEA). The questions were chosen to provide additional insight into the statutory requirements contained in the grant application. The questions were generated from a number of sources including parents of students with disabilities, Regional Resource Centers, the Federal Resource Center, State Directors of Special Education, State Education Agency staff and staff from the Office of Special Education Programs.

*Eligible Applicants*

1. Who may apply for a State Improvement Grant?

A State Educational Agency of one of the 50 States, the District of Columbia, or the Commonwealth of Puerto Rico or an outlying area (United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands).[1] (sections 602(18), 602(27), 652(a), and 655(a)(1)(2)).

2. Can two or more SEAs apply jointly for a SIG?

No. A State applying for a State Improvement Grant must submit an individual application. However, included in the application will be a description of how: (1) The State will work to develop collaborative agreements with other States for the joint support and development of programs to prepare personnel for which there is not sufficient demand within a single State to justify support or development of this type of program of preparation; and (2) the State will work in collaboration with other States, particularly neighboring States, to address the lack of uniformity and reciprocity in the credentialing of teachers and other personnel (section 653(c)(3)(D)(iv) and (v)).

*Partners*

3. With whom is the State supposed to form partnerships and how are the partnerships structured?

Part D Subpart 1—State Program Improvement Grants for Children with Disabilities, section 652(b) describes three types of State partners. In order to be considered for a State Improvement Grant, a State educational agency must establish a partnership with individuals and organizations considered "Required Partners." Required partners are made up of two subsets of partners—those called "Contractual partners" and those called "Other partners." The SEA's contractual partners are local educational agencies and other State agencies involved in, or concerned with, the education of children with disabilities. These partners are called contractual because they must be parties to a formal "partnership agreement" that is explained further below in question four.

The other partners are individuals and organizations involved in, and concerned with, the education of children with disabilities, with whom the SEA must work in partnership to implement the State improvement grant. Other partners may be, but the SEA is not required to make them, parties to the formal partnership agreement. Those "other partners" must include the Governor; parents of children with disabilities; parents of nondisabled children; individuals with disabilities; organizations representing individuals with disabilities and their parents, such as the parent training and information centers;[2] community-based and other nonprofit organizations involved in the education and employment of individuals with disabilities; the lead State agency for Part C; general and special education teachers, and early intervention personnel; the State advisory panel established under Part B; the State interagency coordinating council established under Part C; and institutions of higher education (IHEs) within the State. The State is encouraged to only partner with those IHEs that are currently implementing or, based on the partnership Agreement, will develop and implement, training programs that are consistent with the principles of IDEA Amendments of 1997 (*e.g.*, training that facilitates access to the general education curriculum; training that facilitates inclusionary practices; joint training of general educators, special educators and parents, where appropriate; training that targets pedagogical practices that focus on accommodating and modifying instruction to meet State standards). Based on the needs assessment, the State must focus at least 75% of the funds received under the State

[1] Unless otherwise noted, the term "State" refers to the 50 States, the District of Columbia, the Commonwealth of Puerto Rico and the outlying areas (United States Virgin Islands, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands).

[2] States in which Community Parent Resource Centers are located are encouraged to include these organizations as "other partners."

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Improvement Grant on the professional development and training of regular education, special education, or related services personnel (only 50% of the funds must be used on professional development if the State can demonstrate to the Department that it has sufficient personnel; see question 13 for additional clarification). In order to ensure that the perspectives of school based staff are represented in the grant activities, the State is encouraged to incorporate into its partnership agreement and partnership activities, professional organizations that negotiate for and may represent school-based staff.

In addition to required partners, the SEA, at its option, may include as partner's individuals and organizations called "Optional Partners". The SEA may include "optional partners" as parties to the formal partnership agreement or work in partnership with them, without them being parties to the partnership agreement. Those optional partners may include individuals knowledgeable about vocational education, the State agency for higher education, the State vocational rehabilitation agency, public agencies with jurisdiction in the areas of health, mental health, social services, and juvenile justice and other individuals.

4. What is the partnership agreement and what must it include?

Each State's application must include a description of the partnership agreement entered into by the SEA with its contractual partners and with any "other" and "optional" partners who will be parties to the partnership agreement. As specified in the grant application package, the partnership agreement must specify the nature and extent of the partnership among the SEA, the LEAs, and other State agencies involved in, or concerned with, the education of children with disabilities. It must specify the respective roles of each member of the partnership in the implementation of the proposed State improvement grant. The partnership agreement must also specify how the SEA, LEAs, and other State agencies identified above, will work in partnership with other persons and organizations involved in, and concerned with, the education of children with disabilities (these would be the "other partners" and any "optional partners"), and must specify the respective roles of each of these persons and organizations (section 653(c)(1)(B)).

The partnership agreement must indicate that it is in effect for the period of the grant. The terms of the partnership agreement will determine whether the SEA will award subgrants or contracts to any of the partners listed in section 654(a)(2)(A).

5. What is the connection between the partnership agreement and the SEA's use of funds?

The SEA must, as appropriate, award contracts or subgrants to LEAs, IHEs, and parent training and information centers identified in the partnership agreement to carry out the State improvement grant activities. To carry out the State improvement grant activities, the SEA may also award contracts and subgrants to other public and private entities, including the lead agency under Part C and other agencies that are partners, as well as public and private entities that are not partners. It is anticipated that an SEA will need and desire the resources of other individuals and organizations to develop and implement all of the systemic change, technical assistance, in-service and pre-service training, dissemination and assessment activities designated in the State improvement grant application. There is, however, no required amount of funds that must be used for contracts or subgrants (section 654(a)(2)).

*Funding Availability and Levels*

6. What are the grant amounts to States?

We must make a grant to each State educational agency whose application we selected for funding under this subpart in an amount for each fiscal year that is: (1) Not less than $500,000, nor more than $2,000,000, in the case of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico; and (2) not less than $80,000, in the case of an outlying area (United States Virgin Islands, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands (Section 655(a)). This means that the Department will reject and will not consider any application that proposes a budget that exceeds the maximum award amount or is less than the minimum award amount for any single budget period of 12 months. However, we will consider, and may fund, requests for additional funding as an addendum to an application to reflect the costs of reasonable accommodations necessary to allow individuals with disabilities to be employed on the project as personnel on project activities.

**Note:** As soon as the procedures for implementing reasonable accommodations are finalized, they will be posted on OSERS homepage at: www.ed.gov/offices/OSERS.

7. How will decisions be made regarding the amount of funds that States will receive if approved for a State Improvement Grant?

The Department will set the amount of each grant, within the limits outlined in the response to question 6, after considering: (1) The relative population of the State; (2) the types of activities proposed by the State; and (3) the amount of funds available for making the grants (section 655(c)). Using the same considerations, we funded successful applications for fiscal years 1998 and 1999 at the following levels:

| | |
|---|---|
| North Dakota | $500,000 |
| Vermont | 500,000 |
| Alaska | 550,000 |
| Montana | 550,000 |
| Nebraska | 575,816 |
| Utah | 578,551 |
| New Hampshire | 600,000 |
| Hawaii | 600,000 |
| Idaho | 625,000 |
| Oklahoma | 814,000 |
| Iowa | 875,526 |
| Kansas | 900,000 |
| Connecticut | 920,000 |
| Kentucky | 1,000,000 |
| Massachusetts | 1,009,000 |
| Minnesota | 1,015,000 |
| Alabama | 1,025,000 |
| Georgia | 1,060,000 |
| Maryland | 1,095,000 |
| Missouri | 1,145,000 |
| North Carolina | 1,210,000 |
| Virginia | 1,240,000 |
| Ohio | 1,320,000 |
| Pennsylvania | 1,320,000 |
| Michigan | 1,320,000 |
| Illinois | 1,400,000 |
| California | 1,840,000 |

8. How will the connection between grant amounts and "need" be determined?

As previously stated in the response to question 7, we must set the amount of each grant after considering: (1) The relative population of the State; (2) the types of activities proposed by the State or outlying area; and (3) the amount of funds available for making the grants. "Need" will be determined through the quality of the needs assessment performed under section 653(b) including: (i) an analysis of all information, reasonably available to the State educational agency, on the performance of children with disabilities in the State; (ii) an analysis of State and local needs for professional development for personnel to serve children with disabilities; (iii) an analysis of the major findings of the Department's most recent reviews of State compliance, as they relate to improving results for children with disabilities; and (iv) an analysis of other information, for example, findings made by the Department's Office for Civil Rights, reasonably available to the State, on the effectiveness of the State's systems of early intervention, special education, and general education in meeting the needs of children with disabilities.



9. What we will consider in making an award on a competitive basis?

Using the selection criteria identified elsewhere in this application package, we expect to select for funding applications from States that demonstrate a need for improvement and effective strategies to meet those State needs. The application should show how the State plans to fulfill the purpose of the State Improvement Grant, which is to assist State educational agencies and their partners in reforming and improving their systems for providing educational, early intervention, and transitional services, including their systems for professional development, technical assistance, and dissemination of knowledge about best practices, to improve results for children with disabilities. We will give priority to applications on the basis of need, as indicated by information from the findings of Federal compliance reviews (section 653(d)).

*Improvement Strategies and Use of Funds*

10. Can funds from the State Improvement Grants be distributed to LEAs on a competitive basis?

Yes. The statute does not provide a particular method for States to use when distributing State Improvement Grant funds to LEAs or other entities. When awarding and administering subgrants, under 34 CFR 80.37(a), the State must follow State law and procedures. As long as the SEA's proposal to contract or subgrant SIG funds is consistent with the partnership agreement and the funds are used to support the activities specified in the approved grant application, there is no statutory prohibition against the funds being distributed to LEAs on a competitive basis.

11. Can charter schools be involved as partners in the State Improvement Grant?

Yes. Charter schools are schools under contract—or charter—between a public agency and groups of parents, teachers, community leaders or others who want to create alternatives and choice within the public school system. Charter schools can be involved as partners in the State Improvement Grant, either as an LEA or as part of an existing LEA, consistent with the State charter schools law.

12. Does the "service obligation" apply to the use of State Improvement Grant funds if they are being used for scholarships?

No. The "service obligation" contained under the personnel preparation discretionary grant program provides that a recipient of a scholarship funded by the personnel preparation program under section 673(b), (c), (e), and to the extent appropriate (d), must subsequently perform work in the field in which they were trained or repay the cost of the financial assistance. The service obligation only applies to scholarships awarded under the personnel preparation program. However, consistent with State law, a SEA may impose its own service obligation.

13. Can funds be used to prepare early intervention personnel?

Yes, but only in limited circumstances. Under section 654(b)(1), a State educational agency that receives a grant must use not less than 75 percent of the funds it receives under the grant for any fiscal year to work with other States on common certification criteria or to ensure that there are sufficient regular education, special education, and related services personnel who have the skills and knowledge necessary to meet the needs of children with disabilities and developmental goals of young children. This section ensures that based on the needs assessment, the State focuses at least 75% of the funds received under the State Improvement Grant on the professional development and training of regular education, special education, or related services personnel. Only 50% of the funds must be used on professional development if the State can demonstrate to the Department that it has sufficient personnel. Training that prepares personnel to deliver early intervention services that could not also be considered regular education, special education, or related services would not be a permissible use of the 75%, or 50% as the case may be, of the funds. However, it would be permissible for early intervention personnel to participate in training in those areas of special education and related services that would be useful to them, even if the training is funded using the 75% of the funds. There is no limitation on the use of the remaining 25% of the funds received under the SIG; it can be used to train personnel to provide early intervention services or for any other activity in an approved SIG.

14. How does a State demonstrate that it meets the requirement to use at least 75% (or 50% if applicable) of the grant funds for professional development?

States should structure the presentation of their budget so that the Department can easily determine that the State has met the 75% or 50% requirement as the case may be.

15. What is the relationship of the SIG to the State set aside under Part B?

In order to carry out the activities proposed in the State's SIG application, a State may choose to supplement the State Improvement Grant award with funds from the IDEA Part B State set aside (*i.e.*, the portion of the IDEA, Part B grant awards retained for use by the SEA under sections 611(f) and 619(d) of the Act for discretionary purposes).

16. Can funds from sources other than the SIG be used to support the required activities for awards under this program?

Yes. In addition to the SIG award, funds from other sources (*e.g.*, other IDEA discretionary grants, Part B State set aside funds, preschool grants) may be used, so long as those activities are permissible under the funding statute and regulations to carry out any activities described in the State's SIG application. States may also use funds from private sources (*e.g.* foundations) to carry out activities described in the State's application. In its State Improvement Plan, the State must describe the amount and nature of funds from any other sources, including the Part B funds retained for use under sections 611(f) and 619(d) of the Act and Part D discretionary funds that will be committed to the SIG program.

17. Can SIG funds be used for direct services to children with disabilities?

Yes. The statute does not forbid the use of SIG funds for direct services to children with disabilities; however, funding for these services must come from the 25% or 50% of the grant award, as the case may be, not obligated by statute to fund professional development activities or to work with other States on common certification criteria. In addition, the need for direct services must be one of the critical aspects of early intervention, general education and special education identified in the State's need assessment. The direct services improvement strategy must be described in the States' application and be consistent with the purpose of the grant, which is to assist State educational agencies and their partners in reforming and improving their systems for providing educational, early intervention, and transitional services, including their systems for professional development, technical assistance, and dissemination of knowledge about best practices, to improve results for children with disabilities.

*Strategies Used To Address Identified Needs*

18. Is interstate personnel preparation mandatory?

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No. The State is required to describe how it will work to develop collaborative agreements with other States for the joint support and development of programs to prepare personnel for which there is not sufficient demand within the State to justify support or development of this type of program of preparation (section 653(c)(3)(D)(iv)). If the State demonstrates, through its needs assessment, that there is sufficient demand within the State to support its own personnel preparation programs, then interstate collaborative agreements are not required.

19. Is training of general education personnel required?

Yes. In its application, the State is required to include a description of how the State will prepare general as well as special education personnel with the content knowledge and collaborative skills needed to meet the needs of children with disabilities (section 653(c)(3)(D)(i)).

20. Is training of parents required?

Yes. In its application, the State is required to include a description of how the State will provide for the joint training of parents and special education, related services, and general education personnel (section 653(c)(3)(D)(x)).

*Role of Regional Resource Center/ Technical Assistance and Dissemination Projects*

21. What role can the Regional Resource Center (RRC) play in the development of the State improvement grant application?

The RRC is encouraged to provide general technical assistance to States in the development of their State improvement grant application. An RRC is funded to provide technical assistance and resources to all States within its region and must do so on an equitable basis across those States. Helping States improve their special education programs is the central mission of the RRCs and many State activities related to the State Improvement Grant program will be crucial in these improvement efforts. It would be inappropriate, however, for an RRC to help a State in drafting its grant application or even to provide technical assistance on strategies to improve the competitiveness of a State's application because it could be viewed as providing a competitive advantage to one potential applicant over another. On the other hand, helping States, for example, with data analyses, needs assessments, and facilitating meetings concerning planning the States' improvement activities could be, except as noted above, a part of the RRC's technical assistance activities to the States in their region. RRCs can also assist States in their implementation of a State Improvement Grant once those grants are awarded.

22. Can the State use SIG funds to subcontract or contract with the University or entity in which the RRC is located to carry out SIG activities?

Yes. The State can use SIG funds to subgrant or contract with the University or entity in which the RRC is located to carry out SIG activities. However, the University or other entity would need to ensure that personnel time and other resources covered by the RRC's cooperative agreement with the Department are not used to work on SIG activities performed under the subgrant or contract and that work done under the other subcontract or contract is not represented as being performed as part of the cooperative agreement with the Department of Education.

23. Can Technical Assistance and Dissemination (TA&D) projects funded by OSEP play a role in SIG activities?

Similarly to RRCs, TA&D projects funded by OSEP must ensure that the services they provide are fairly and evenhandedly available to their respective audience (under the terms of their OSEP funding agreement/grant/ contract) in all States, that the proposed SIG activity is permissible under the terms of the particular Project's funding agreement/ grant/contract/ with OSEP and that projects do not accept SIG funds under contract or grant with an SEA for activities they are currently receiving Federal funds to provide. In addition, TA&D projects, like the RRCs, should not engage in activities that could be seen as providing a competitive advantage to any one State over others in the SIG competition.

*Relationship Between State Improvement Grant and Other Federal Statutes and Requirements*

24. What is the link between the Comprehensive System of Personnel Development (CSPD) and the SIG? What are the similarities and differences?

The requirements for a CSPD as amended by IDEA Amendments of 1997 must be implemented by July 1, 1998 regardless of whether or not a State receives a SIG. Under section 612(a)(14) of IDEA, in order to be eligible for funding under Part B, a State must have in effect a comprehensive system of personnel development that is designed to ensure an adequate supply of qualified special education, regular education, related services, and early intervention personnel and that meets the requirements contained in the personnel development sections of the State Improvement Plan addressing needs assessment and improvement strategies. It is intended that the CSPD meet the SIG personnel development requirements so that it may serve as the framework for the State's personnel development part of a SIG grant application.

25. To what extent does the State improvement grant proposal have to be linked to the Elementary and Secondary Education Act of 1965 (ESEA) and the Rehabilitation Act of 1973?

To the "maximum extent possible" State improvement grant proposals must be linked to State plans under ESEA and the Rehabilitation Act of 1973. The IDEA Amendments of 1997 emphasize that children with disabilities have access to the general curriculum and general educational reforms. Although the legislation does not mention integration with any other State plans under any other Federal statute, because the State improvement grant proposal is focused on systems change for students with disabilities, integration with relevant State plans or projects would be beneficial (section 653(a)(2)(A)).

26. What is the relationship between the performance goals and indicators a State must have to be eligible for Part B and the State improvement grant proposal?

Under Part B (section 612(a)(16)), in order to be eligible to receive financial assistance under Part B, the State must have in place by July 1, 1998 performance goals for children with disabilities that must promote the purposes of the IDEA and be consistent, to the maximum extent appropriate, with other goals and standards developed for children established by the State and performance indicators to assess progress toward achieving those goals. A State must have developed those performance goals and indicators in order to apply for a State Improvement Grant because in conducting the needs assessment required as part of its application, the State must identify those critical aspects of early intervention, general education, and special education programs that must be improved to enable children with disabilities to meet the performance goals and indicators established by the State for the performance of children with disabilities under section 612(a)(16). In submitting the required SIG performance reports to the Department under section 653(f), the State must describe the progress of the State in meeting the performance goals established under section 612(a)(16), analyze the effectiveness of the State's strategies in meeting those goals, and identify any changes in the strategies needed to improve its performance.



*Monitoring and Corrective Action Plans*

27. How is the State Improvement Grant aligned with Federal compliance reviews?

There are three areas in which the State Improvement Grant aligns with Federal compliance reviews. First, the State improvement plan must include an analysis of the major findings of the Department's most recent reviews of State compliance, as they relate to improving results for children with disabilities (section 653(b)(2)(C). The second is that the State improvement plan must include a description of strategies that will address systemic problems identified in Federal compliance reviews, including shortages of qualified personnel (section 653(c)(3)(E)). The third area of alignment with monitoring is that in determining competitive awards we will give priority to applications on the basis of need, as indicated by information from the findings of Federal compliance reviews (section 653(d)(2)).

28. Can the State Improvement Grant funds be used to address deficiencies identified in Federal compliance reviews?

Yes, if the activities to address the deficiencies are consistent with the purposes of the grant and described in the State's application. If, for example, a Federal compliance review identified that a personnel shortage impacted on the provision of a free appropriate public education to students with disabilities, then it would be consistent with the purposes of the grant to use grant funds to address the personnel shortage.

*Applications, Length of Awards, and Reapplication*

29. Can the first grant be written as a planning grant?

No. The purpose of the SIG program is to assist State educational agencies, and their partners referred to in section 652(b), in reforming and improving their systems for providing educational, early intervention, and transitional services, including their systems for professional development, technical assistance, and dissemination of knowledge about best practices, to improve results for children with disabilities. In order to be funded a State must include in its application improvement strategies that were developed to address State and local needs identified in the State needs assessment. The purpose of the needs assessment is to provide the necessary information to facilitate the development of a State improvement plan that identifies those critical aspects of early intervention, general education, and special education programs that must be improved to enable children with disabilities to meet the goals established by the State under section 612(a)(16). In conjunction with the needs assessment, the improvement strategies (section 653(c)) subsumed in the State improvement grant proposal constitute the State's plan for the use of SIG funds.

30. What grant period can a State request in its initial application?

A State may request a grant of from one to five years. However, we may award a grant that is shorter than the State requests, but not less than one year, if the State's application does not sufficiently justify the full requested duration.

31. If a project is funded for less than five years, can it be extended later?

No, with the exception of relatively short "no-cost" extensions that are sometimes given to allow the completion of project activities. These extensions do not award new funds or approve new activities.

32. After a State completes one State improvement grant, can it apply for another? If so, will it compete against all applicants or only against other States that have received previous grants?

Yes, a State can apply for another SIG after it completes one. It will be in competition with all applicants, not just those with previous grants. We will give priority to applications on the basis of need (section 653(d)(2)).

33. If a State applies unsuccessfully in one year, will it be able to apply again?

Yes.

34. Will a project be approved and funded all at once or a year at a time?

At the time of the initial grant award, the project duration of one to five years will be determined and budgets for all years of the grant will be established. However, funds can only be awarded one-year at a time. States receiving multi-year grants will submit annual performance reports to demonstrate that their grants are making "substantial progress." Funding for project years after the first will be based, in part, on these reports. This is not part of the competitive process of awarding funds, and it is expected that funding will be continued each year for the duration of the project, provided that substantial progress is demonstrated and that Congress continues to fund the program.

35. Does funding have to be the same for all years of the project?

No, but it cannot exceed $2 million or be less than $500,000.

BILLING CODE 4000–01–P

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# Application for Federal Education Assistance

Note: If available, please provide application package on diskette and specify the file format.

U.S. Department of Education

Form Approved OMB No. 1875-0106 Exp. 06/30/2001

## Applicant Information

1. Name and Address
Legal Name:
Address:
City State County ZIP Code + 4
Organizational Unit

2. Applicant's D-U-N-S Number

3. Applicant's T-I-N

4. Catalog of Federal Domestic Assistance #: 8 4 → Title:

5. Project Director:
Address:
City State ZIP Code + 4
Tel. #: ( ) Fax #: ( )
E-Mail Address:

6. Is the applicant delinquent on any Federal debt? ☐ Yes ☐ No
*(If "Yes," attach an explanation.)*

7. Type of Applicant *(Enter appropriate letter in the box.)*

A State H Independent School District
B County I Public College or University
C Municipal J Private, Non-Profit College or University
D Township K Indian Tribe
E Interstate L Individual
F Intermunicipal M Private, Profit-Making Organization
G Special District N Other *(Specify)*:

8. Novice Applicant ☐ Yes ☐ No

## Application Information

9. Type of Submission:

| *—PreApplication* | *—Application* |
|---|---|
| ☐ Construction | ☐ Construction |
| ☐ Non-Construction | ☐ Non-Construction |

10. Is application subject to review by Executive Order 12372 process?
☐ Yes *(Date made available to the Executive Order 12372 process for review):* ___/___/___
☐ No *(If "No," check appropriate box below:)*
☐ Program is not covered by E.O. 12372.
☐ Program has not been selected by State for review.

11. Proposed Project Dates: Start Date: ___/___/___ End Date: ___/___/___

12. Are any research activities involving human subjects planned at any time during the proposed project period? ☐ Yes ☐ No
a. If "Yes," Exemption(s) #:
*OR*
b. Assurance of Compliance #:
c. IRB approval date: ___/___/___ ☐ Full IRB or ☐ Expedited Review

13. Descriptive Title of Applicant's Project:

## Estimated Funding

| | | |
|---|---|---|
| 14a. Federal | $ | .00 |
| b. Applicant | $ | .00 |
| c. State | $ | .00 |
| d. Local | $ | .00 |
| e. Other | $ | .00 |
| f. Program Income | $ | .00 |
| g. TOTAL | $ | .00 |

## Authorized Representative Information

15. To the best of my knowledge and belief, all data in this preapplication/application are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.

a. Typed Name of Authorized Representative
b. Title
c. Tel. #: ( ) Fax #: ( )
d. E-Mail Address:
e. Signature of Authorized Representative Date: ___/___/___

REV. 11/12/99

ED 424



## Instructions for ED 424

1. **Legal Name and Address.** Enter the legal name of applicant and the name of the primary organizational unit which will undertake the assistance activity.

2. **D-U-N-S Number.** Enter the applicant's D-U-N-S Number. If your organization does not have a D-U-N-S Number, you can obtain the number by calling 1-800-333-0505or by completing a D-U-N-S Number Request Form. The form can be obtained via the Internet at the following URL: **http://www.dnb.com/dbis/aboutdb/intlduns.htm.**

3. **Tax Identification Number.** Enter the tax identification number as assigned by the Internal Revenue Service.

4. **Catalog of Federal Domestic Assistance (CFDA) Number.** Enter the CFDA number and title of the program under which assistance is requested.

5. **Project Director.** Name, address, telephone and fax numbers, and e-mail address of the person to be contacted on matters involving this application.

6. **Federal Debt Delinquency.** Check **"Yes"** if the applicant's organization is delinquent on any Federal debt. (This question refers to the applicant's organization and not to the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.) Otherwise, check **"No."**

7. **Type of Applicant.** Enter the appropriate letter in the box provided.

8. **Novice Applicant.** Check **"Yes"** only if assistance is being requested under a program that gives special consideration to novice applicants and you meet the program requirements for novice applicants. By checking "Yes" the applicant certifies that it meets the novice applicant requirements specified by ED. Otherwise, check **"No."**

9. **Type of Submission.** Self-explanatory.

10. **Executive Order 12372.** Check **"Yes"** if the application is subject to review by Executive Order 12372. Also, please enter the month, date, and four (4) digit year (e.g., 12/12/2000). Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process. Otherwise, check **"No."**

11. **Proposed Project Dates.** Please enter the month, date, and four (4) digit year (e.g., 12/12/2000).

12. **Human Subjects.** Check "Yes" or "No". If research activities involving human subjects are **not** planned **at any time** during the proposed project period, check **"No." The remaining parts of Item 12 are then not applicable.**

If research activities involving human subjects, whether or not exempt from Federal regulations for the protection of human subjects, **are** planned **at any time** during the proposed project period, either at the applicant organization or at any other performance site or collaborating institution, check **"Yes."** If **all** the research activities are designated to be exempt under the regulations, enter, in item 12a, the exemption number(s) corresponding to one or more of the six exemption categories listed in **"Protection of Human Subjects in Research"** attached to this form. Provide sufficient information in the application to allow a determination that the designated exemptions in item 12a, are appropriate. **Provide this narrative information in an "Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page. Skip the remaining parts of Item 12.**

If **some or all** of the planned research activities involving human subjects are covered (nonexempt), skip item 12a and continue with the remaining parts of item 12, as noted below. In addition, follow the instructions in **"Protection of Human Subjects in Research"** attached to this form to prepare the six-point narrative about the nonexempt activities. **Provide this six-point narrative in an "Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

**If the applicant organization has an approved Multiple Project Assurance of Compliance** on file with the Grants Policy and Oversight Staff (GPOS), U.S. Department of Education, or with the Office for Protection from Research Risks (OPRR), National Institutes of Health, U.S. Department of Health and Human Services, that covers the specific activity, enter the Assurance number in item 12b and the date of approval by the Institutional Review Board (IRB) of the proposed activities in item 12c. This date must be no earlier than one year before the receipt date for which the application is submitted and must include the four (4) digit year (e.g., 2000). Check the type of IRB review in the appropriate box. An IRB may use the expedited review procedure if it complies with the requirements of 34 CFR 97.110. If the IRB review is delayed beyond the submission of the application, enter **"Pending"** in item 12c. If your application is recommended/selected for funding, a follow-up certification of IRB approval from an official signing for the applicant organization must be sent to and received by the designated ED official within 30 days after a specific formal request from the designated ED official. **If the applicant organization does not have** on file with GPOS or OPRR **an approved Assurance of Compliance** that covers the proposed research activity, enter **"None"** in item 12b and skip 12c. In this case, the applicant organization, by the signature on the application, is declaring that it will comply with 34 CFR 97 within 30 days after a specific formal request from the designated ED official for the Assurance(s) and IRB certifications.

13. **Project Title.** Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

14. **Estimated Funding.** Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate **only** the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 14.

15. **Certification.** To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office.

Be sure to enter the telephone and fax number and e-mail address of the authorized representative. Also, in item 15e, please enter the month, date, and four (4) digit year (e.g., 12/12/2000) in the date signed field.

### Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is **1875-0106**. The time required to complete this information collection is estimated to average between 15 and 45 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, D.C. 20202-4651. **If you have comments or concerns regarding the status of your individual submission of this form write directly to:** Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, S.W. ROB-3, Room 3633, Washington, D.C. 20202-4725.

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## PROTECTION OF HUMAN SUBJECTS IN RESEARCH
## (Attachment to ED 424)

### I. Instructions to Applicants about the Narrative Information that Must be Provided if Research Activities Involving Human Subjects are Planned

If you marked item 12 on the application "Yes" and designated exemptions in 12a, **(all research activities are exempt)**, provide sufficient information in the application to allow a determination that the designated exemptions are appropriate. Research involving human subjects that is exempt from the regulations is discussed under **II.B. "Exemptions,"** below. The Narrative must be succinct. **Provide this information in an "Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

If you marked "Yes" to item 12 on the face page, and designated no exemptions from the regulations **(some or all of the research activities are nonexempt)**, address the following six points for each nonexempt activity. In addition, if research involving human subjects will take place at collaborating site(s) or other performance site(s), provide this information before discussing the six points. Although no specific page limitation applies to this section of the application, be succinct. Provide the six-point narrative and discussion of other performance sites in an **"Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

(1) Provide a detailed description of the proposed involvement of human subjects. Describe the characteristics of the subject population, including their anticipated number, age range, and health status. Identify the criteria for inclusion or exclusion of any subpopulation. Explain the rationale for the involvement of special classes of subjects, such as children, children with disabilities, adults with disabilities, persons with mental disabilities, pregnant women, prisoners, institutionalized individuals, or others who are likely to be vulnerable.

(2) Identify the sources of research material obtained from individually identifiable living human subjects in the form of specimens, records, or data. Indicate whether the material or data will be obtained specifically for research purposes or whether use will be made of existing specimens, records, or data.

(3) Describe plans for the recruitment of subjects and the consent procedures to be followed. Include the circumstances under which consent will be sought and obtained, who will seek it, the nature of the information to be provided to prospective subjects, and the method of documenting consent. State if the Institutional Review Board (IRB) has authorized a modification or waiver of the elements of consent or the requirement for documentation of consent.

(4) Describe potential risks (physical, psychological, social, legal, or other) and assess their likelihood and seriousness. Where appropriate, describe alternative treatments and procedures that might be advantageous to the subjects.

(5) Describe the procedures for protecting against or minimizing potential risks, including risks to confidentiality, and assess their likely effectiveness. Where appropriate, discuss provisions for ensuring necessary medical or professional intervention in the event of adverse effects to the subjects. Also, where appropriate, describe the provisions for monitoring the data collected to ensure the safety of the subjects.

(6) Discuss why the risks to subjects are reasonable in relation to the anticipated benefits to subjects and in relation to the importance of the knowledge that may reasonably be expected to result.

### II. Information on Research Activities Involving Human Subjects

**A. Definitions.**

A research activity involves human subjects if the activity is research, as defined in the Department's regulations, and the research activity will involve use of human subjects, as defined in the regulations.

**—Is it a research activity?**

The ED Regulations for the Protection of Human Subjects, Title 34, Code of Federal Regulations, Part 97, define research as "a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge." *If an activity follows a deliberate plan whose purpose is to develop or contribute to generalizable knowledge, such as an exploratory study or the collection of data to test a hypothesis, it is research.* Activities which meet this definition constitute research whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities.



**—Is it a human subject?**

The regulations define human subject as "a living individual about whom an investigator (whether professional or student) conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information." *(1) If an activity involves obtaining information about a living person by manipulating that person or that person's environment, as might occur when a new instructional technique is tested, or by communicating or interacting with the individual, as occurs with surveys and interviews, the definition of human subject is met. (2) If an activity involves obtaining private information about a living person in such a way that the information can be linked to that individual (the identity of the subject is or may be readily determined by the investigator or associated with the information), the definition of human subject is met.* [Private information includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (for example, a school health record).]

**B. Exemptions.**

Research activities in which the only involvement of human subjects will be in one or more of the following six categories of ***exemptions*** are not covered by the regulations:

(1) Research conducted in established or commonly accepted educational settings, involving normal educational practices, such as (a) research on regular and special education instructional strategies, or (b) research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

(2) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless: (a) information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and (b) any disclosure of the human subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation. ***If the subjects are children, this exemption applies only to research involving educational tests or observations of public behavior when the investigator(s) do not participate in the activities being observed.*** [Children are defined as persons who have not attained the legal age for consent to treatments or procedures involved in the research, under the applicable law or jurisdiction in which the research will be conducted.]

(3) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior that is not exempt under section (2) above, if the human subjects are elected or appointed public officials or candidates for public office; or federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter.

(4) Research involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

(5) Research and demonstration projects which are conducted by or subject to the approval of department or agency heads, and which are designed to study, evaluate, or otherwise examine: (a) public benefit or service programs; (b) procedures for obtaining benefits or services under those programs; (c) possible changes in or alternatives to those programs or procedures; or (d) possible changes in methods or levels of payment for benefits or services under those programs.

(6) Taste and food quality evaluation and consumer acceptance studies, (a) if wholesome foods without additives are consumed or (b) if a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S Department of Agriculture.

***Copies of the Department of Education's Regulations for the Protection of Human Subjects, 34 CFR Part 97 and other pertinent materials on the protection of human subjects in research are available from the Grants Policy and Oversight Staff (GPOS) Office of the Chief Financial and Chief Information Officer, U.S. Department of Education, Washington, D.C., telephone: (202) 708-8263, and on the U.S. Department of Education's Protection of Human Subjects in Research Web Site at http://ocfo.ed.gov/humansub.htm.***

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**U.S. DEPARTMENT OF EDUCATION**

**BUDGET INFORMATION**

**NON-CONSTRUCTION PROGRAMS**

OMB Control Number: 1890-0004

Expiration Date: 02/28/2003

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

**SECTION A - BUDGET SUMMARY**
**U.S. DEPARTMENT OF EDUCATION FUNDS**

| Budget Categories | Project Year 1 (a) | Project Year 2 (b) | Project Year 3 (c) | Project Year 4 (d) | Project Year 5 (e) | Total (f) |
|---|---|---|---|---|---|---|
| 1. Personnel | | | | | | |
| 2. Fringe Benefits | | | | | | |
| 3. Travel | | | | | | |
| 4. Equipment | | | | | | |
| 5. Supplies | | | | | | |
| 6. Contractual | | | | | | |
| 7. Construction | | | | | | |
| 8. Other | | | | | | |
| 9. Total Direct Costs (lines 1-8) | | | | | | |
| 10. Indirect Costs | | | | | | |
| 11. Training Stipends | | | | | | |
| 12. Total Costs (lines 9-11) | | | | | | |

ED Form No. 524



Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

**SECTION B - BUDGET SUMMARY**
**NON-FEDERAL FUNDS**

| Budget Categories | Project Year 1 (a) | Project Year 2 (b) | Project Year 3 (c) | Project Year 4 (d) | Project Year 5 (e) | Total (f) |
|---|---|---|---|---|---|---|
| 1. Personnel | | | | | | |
| 2. Fringe Benefits | | | | | | |
| 3. Travel | | | | | | |
| 4. Equipment | | | | | | |
| 5. Supplies | | | | | | |
| 6. Contractual | | | | | | |
| 7. Construction | | | | | | |
| 8. Other | | | | | | |
| 9. Total Direct Costs (lines 1-8) | | | | | | |
| 10. Indirect Costs | | | | | | |
| 11. Training Stipends | | | | | | |
| 12. Total Costs (lines 9-11) | | | | | | |

**SECTION C - OTHER BUDGET INFORMATION** (see instructions)

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OMB Approval No. 0348-0040

**ASSURANCES - NON-CONSTRUCTION PROGRAMS**

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

**PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.**

**NOTE:** Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

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Prescribed by OMB Circular A-102



9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

| SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL | TITLE |
|---|---|
| APPLICANT ORGANIZATION | DATE SUBMITTED |

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**CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS**

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. **LOBBYING**

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. **DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS**

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110—

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. **DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)**

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;



(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants Policy and Oversight Staff, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address. city, county, state, zip code)

_____

_____

_____

Check [ ] if there are workplaces on file that are not identified here.

**DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)**

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants Policy and Oversight Staff, Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

| NAME OF APPLICANT | PR/AWARD NUMBER AND / OR PROJECT NAME |
|---|---|
| PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE | |
| SIGNATURE | DATE |

ED 80-0013 12/98

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## Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion — Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

**Instructions for Certification**

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," " person," "primary covered transaction," " principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

**Certification**

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

| NAME OF APPLICANT | PR/AWARD NUMBER AND/OR PROJECT NAME |
|---|---|
| PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE | |
| SIGNATURE | DATE |

ED 80-0014, 9/90 (Replaces GCS-009 (REV.12/88), which is obsolete)



## Certification of Eligibility for Federal Assistance in Certain Programs

I understand that 34 CFR 75.60, 75.61, and 75.62 require that I make specific certifications of eligibility to the U.S. Department of Education as a condition of applying for Federal funds in certain programs and that these requirements are in addition to any other eligibility requirements that the U.S. Department of Education imposes under program regulations. Under 34 CFR 75.60 – 75.62:

I. I certify that

A. I do not owe a debt, or I am current in repaying a debt, or I am not in default (as that term is used at 34 CFR Part 668) on a debt:

1. To the Federal Government under a nonprocurement transaction (e.g., a previous loan, scholarship, grant, or cooperative agreement); or

2. For a fellowship, scholarship, stipend, discretionary grant, or loan in any program of the U.S. Department of Education that is subject to 34 CFR 75.60, 75.61, and 75.62, including:

- Federal Pell Grant Program (20 U.S.C. 1070a, et seq.);
- Federal Supplemental Educational Opportunity Grant (SEOG) Program (20 U.S.C. 1070(b), et seq.):
- State Student Incentive Grant Program (SSIG) 20 U.S.C. 1070c, et seq.);
- Federal Perkins Loan Program (20 U.S.C. 1087aa, et seq.);
- Income Contingent Direct Loan Demonstration Project (20 U.S.C. 1087a, note);
- Federal Stafford Loan Program, Federal Supplemental Loans for Students [SLS], Federal PLUS, or Federal Consolidation Loan Program (20 U.S.C. 1071, et seq.);
- Cuban Student Loan Program (20 U.S.C. 2601, et seq.);
- Robert C. Byrd Honors Scholarship Program (20 U.S.C. 1070d-31, et seq.);
- Jacob K. Javits Fellows Program (20 U.S.C. 1134h-1134l);
- Patricia Roberts Harris Fellowship Program (20 U.S.C. 1134d-1134g);
- Christa McAuliffe Fellowship Program (20 U.S.C. 1105-1105i);
- Bilingual Education Fellowship Program (20 U.S.C. 3221-3262);
- Rehabilitation Long-Term Training Program (29 U.S.C. 774(b));
- Paul Douglas Teacher Scholarship Program (20 U.S.C. 1104, et seq.);
- Law Enforcement Education Program (42 U.S.C. 3775);
- Indian Fellowship Program (29 U.S.C. 774(b));

**OR**

B. I have made arrangements satisfactory to the U.S. Department of Education to repay a debt as described in A.1. or A.2. (above) on which I had not been current in repaying or on which I was in default (as that term is used in 34 CFR Part 668).

II. I certify also that I have not been declared by a judge, as a condition of sentencing under section 5301 of the Anti-Drug Abuse Act of 1988 (21 U.S.C. 862), ineligible to receive Federal assistance for the period of this requested funding.

I understand that providing a false certification to any of the statements above makes me liable for repayment to the U.S. Department of Education for funds received on the basis of this certification, for civil penalties, and for criminal prosecution under 18 U.S.C. 1001.

_____ (Signature)

_____ (Date)

_____ (Typed or Printed Name)

Name or number of the USDE program under which this certification is being made: _____

ED 80-0016 (9/92)

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OMB Control No. 1801-0004 (Exp. 8/31/2001)

## NOTICE TO ALL APPLICANTS

The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is Section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Pub. L. 103-382).

*To Whom Does This Provision Apply?*

Section 427 of GEPA affects applicants for new grant awards under this program. **ALL APPLICANTS FOR NEW AWARDS MUST INCLUDE INFORMATION IN THEIR APPLICATIONS TO ADDRESS THIS NEW PROVISION IN ORDER TO RECEIVE FUNDING UNDER THIS PROGRAM.**

(If this program is a State-formula grant program, a State needs to provide this description only for projects or activities that it carries out with funds reserved for State-level uses. In addition, local school districts or other eligible applicants that apply to the State for funding need to provide this description in their applications to the State for funding. The State would be responsible for ensuring that the school district or other local entity has submitted a sufficient section 427 statement as described below.)

*What Does This Provision Require?*

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its Federally-assisted program for students, teachers, and other program beneficiaries with special needs.

This provision allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation: gender, race, national origin, color, disability, or age. Based on local circumstances, you should determine whether these or other barriers may prevent your students, teachers, etc. from such access or participation in, the Federally-funded project or activity. The description in your application of steps to be taken to overcome these barriers need not be lengthy; you



may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

*What are Examples of How an Applicant Might Satisfy the Requirement of This Provision?*

The following examples may help illustrate how an applicant may comply with Section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it intends to conduct "outreach" efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

**Estimated Burden Statement for GEPA Requirements**

The time required to complete this information collection is estimated to vary from 1 to 3 hours per response, with an average of 1.5 hours, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to**: U.S. Department of Education, Washington, DC 20202-4651.

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## DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

| 1. Type of Federal Action: | 2. Status of Federal Action: | 3. Report Type: |
|---|---|---|
| ☐ a. contract<br>b. grant<br>c. cooperative agreement<br>d. loan<br>e. loan guarantee<br>f. loan insurance | ☐ a. bid/offer/application<br>b. initial award<br>c. post-award | ☐ a. initial filing<br>b. material change<br>**For Material Change Only:**<br>year _____ quarter _____<br>date of last report _____ |

| 4. Name and Address of Reporting Entity: | 5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime: |
|---|---|
| ☐ Prime ☐ Subawardee<br>Tier _____, *if known*:<br><br>**Congressional District**, *if known*: | <br><br><br>**Congressional District**, *if known*: |
| **6. Federal Department/Agency:** | **7. Federal Program Name/Description:**<br><br>CFDA Number, *if applicable*: _____ |
| **8. Federal Action Number**, *if known*: | **9. Award Amount**, *if known*:<br>$ |
| **10. a. Name and Address of Lobbying Registrant** (*if individual, last name, first name, MI*): | **b. Individuals Performing Services** (*including address if different from No. 10a*) (*last name, first name, MI*): |

**11.** Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less that $10,000 and not more than $100,000 for each such failure.

Signature: _____
Print Name: _____
Title: _____
Telephone No.: _____ Date: _____

**Federal Use Only:**

Authorized for Local Reproduction
Standard Form LLL (Rev. 7-97)



## INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

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## State Single Points of Contact (SPOCs)

In accordance with Executive Order 12372, Intergovernmental Review of Federal Programs, this listing represents the designated SPOCs. Because participation is voluntary, some States and Territories no longer participate in the process. These include: Alabama, Alaska, American Samoa, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, New York, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, and Washington. An applicant is still eligible to apply for a grant or grants even if its respective State, Territory, Commonwealth, etc. does not have a SPOC.

**ARIZONA**
Joni Saad
Arizona State Clearinghouse
3800 N. Central Avenue
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Phoenix, Arizona 85012
Telephone: (602) 280-1315
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**ARKANSAS**
Tracy L. Copeland
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Office of Intergovernmental Services
Department of Finance and Administration
1515 W. 7th St., Room 412
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tlcopeland@dfa.state.ar.us

**CALIFORNIA**
Grants Coordination
State Clearinghouse
Office of Planning and Research
P. O. Box 3044, Room 222
Sacramento, California 95812-3044
Telephone: (916) 445-0613
Fax: (916) 323-3018
state.clearinghouse@opr.ca.gov

**DELAWARE**
Charles H. Hopkins
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540 S. Dupont Highway, 3rd Floor
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**DISTRICT OF COLUMBIA**
Ron Seldon
Office of Grants Management and Development
717 14th Street, N.W. Suite 1200
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**MISSOURI**
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| **SOUTH CAROLINA**<br>Omeagia Burgess<br>Budget and Control Board<br>Office of State Budget<br>1122 Ladies Street - 12th Floor<br>Columbia, South Carolina 29201<br>Telephone: (803) 734-0494<br>Fax: (803) 734-0645<br>aburgess@budget.state.sc.us | **TEXAS**<br>Tom Adams<br>Governors Office<br>Director, Intergovernmental Coordination<br>P.O. Box 12428<br>Austin, Texas 78711<br>Telephone: (512) 463-1771<br>Fax: (512) 936-2681<br>tadams@governor.state.tx.us |
| **UTAH**<br>Carolyn Wright<br>Utah State Clearinghouse<br>Governor's Office of Planning and Budget<br>State Capitol - Room 114<br>Salt Lake City, Utah 84114<br>Telephone: (801) 538-1535<br>Fax: (801) 538-1547<br>cwright@gov.state.ut.us | **WEST VIRGINIA**<br>Fred Cutlip, Director<br>Community Development Division<br>West Virginia Development Office<br>Building #6, Room 553<br>Charleston, West Virginia 25305<br>Telephone: (304) 558-4010<br>Fax: (304) 558-3248<br>fcutlip@wvdo.org |
| **WISCONSIN**<br>Jeff Smith<br>Section Chief, Federal/State Relations<br>Wisconsin Department of Administration<br>101 East Wilson Street - 6th Floor<br>P.O. Box 7868<br>Madison, Wisconsin 53707<br>Telephone: (608) 266-0267<br>Fax: (608) 267-6931<br>jeffrey.smith@doa.state.wi.us | **WYOMING**<br>Sandy Ross<br>Department of Administration and Information<br>2001 Capitol Avenue, Room 214<br>Cheyenne, WY 82002<br>Telephone: (307) 777-5492<br>Fax: (307) 777-3696<br>sross1@missc.state.wy.us |
| **GUAM**<br>Director<br>Bureau of Budget and Management Research<br>Office of the Governor<br>P.O. Box 2950<br>Agana, Guam 96910<br>Telephone: 011-671-472-2285<br>Fax: 011-472-2825<br>jer@ns.gov.gu | **PUERTO RICO**<br>Norma Burgos / Jose E. Caro<br>Puerto Rico Planning Board<br>Federal Proposals Review Office<br>Minillas Government Center<br>P.O. Box 41119<br>San Juan, Puerto Rico 00940-1119<br>Telephone: (809) 727-4444<br>(809) 723-6190<br>Fax: (809) 724-3270 |
| **NORTH MARIANA ISLANDS**<br>Ms. Jacoba T. Seman<br>Fedeal Programs Coordinator<br>Office of Management and Budget<br>Office of the Governor<br>Saipan, MP 96950<br>Telephone: (670) 664-2289<br>Fax: (670) 664-2272<br>omb.jseman@saipan.com | **VIRGIN ISLANDS**<br>Ira Mills<br>Director, Office of Management and Budget<br>#41 Norregade Emancipation Garden<br>Station, Second Floor<br>Saint Thomas, Virgin Islands 00802<br>Irmills@usvi.org |

Changes to this list can be made only after OMB is notified by a State's officially designated representative. E-mail messages can be sent to grants@omb.eop.gov. If you prefer, you may send correspondence to the following postal address: Attn: Grants Management, Office of Management and Budget, New Executive Office Building, Suite 6025, 725 17th Street, NW, Washington, DC 20503.

[FR Doc. 00–26701 Filed 10–17–00; 8:45 am]
BILLING CODE 4000–01–C

Federal Register

Wednesday,
October 18, 2000

Part VII

Department of Agriculture

Department of Commerce
National Oceanic and Atmospheric Administration

Department of Defense

Department of Energy

Department of the Interior

Environmental Protection Agency

Tennessee Valley Authority

Army Corps of Engineers

Unified Federal Policy for a Watershed Approach to Federal Land and Resource Management; Notice

VOL
65
ISS
202
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18
2000
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DEPARTMENT OF AGRICULTURE

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ENVIRONMENTAL PROTECTION AGENCY

TENNESSEE VALLEY AUTHORITY

ARMY CORPS OF ENGINEERS

## Unified Federal Policy for a Watershed Approach to Federal Land and Resource Management

**AGENCIES:** Office of the Secretary, USDA; National Oceanic and Atmospheric Administration, Commerce; Office of the Secretary, DOD; Office of the Secretary, Energy; Office of the Secretary, Interior; Office of the Administrator, EPA; Resource Stewardship, TVA; Office of the Assistant Secretary of the Army for Civil Works, COE.

**ACTION:** Notice of final policy.

**SUMMARY:** The Departments of Agriculture, Commerce, Defense, Energy and the Interior, the Environmental Protection Agency, the Tennessee Valley Authority, and the Army Corps of Engineers are adopting a unified Federal policy on watershed management. This policy, which provides a framework for a watershed approach to Federal land and resource management activities, is one of the action items in the President's *Clean Water Action Plan: Restoring and Protecting America's Waters*. The final policy has been revised in response to public comments on the proposed policy published in the **Federal Register** on February 22, 2000 (65 FR 8834).

**DATES:** This policy is effective October 18, 2000.

**ADDRESSES:** Copies of the final policy are available electronically from the Internet/World Wide Web at *www.cleanwater.gov/ufp* or by contacting USDA-Forest Service, Content Analysis Enterprise Team, Attn: UFP, Building 2, Suite 295, 5500 Amelia Earhart Drive, Salt Lake City, UT 84116; (801) 517–1037. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339.

**FOR FURTHER INFORMATION CONTACT:** Eric Janes, Rangelands, Soil and Water Group, Bureau of Land Management, Department of the Interior, (202) 452–7752, or Karen Solari, Watershed and Air Management Staff, Forest Service, Department of Agriculture, (202) 205–0879. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:** The final unified Federal policy on watershed management set out at the end of this notice is intended to provide a framework to enhance watershed management for the protection of water quality and the health of aquatic ecosystems on Federal lands. This policy is one of the 111 action items in the President's February 1998 *Clean Water Action Plan: Restoring and Protecting America's Waters.*

### Background

More than 800 million acres of the Nation's land are managed by Federal agencies. These public lands contain significant physical and biological resources and are important to millions of Americans for multiple uses, such as drinking water, irrigation, transportation, recreation, and wildlife habitat. Federal land managers are responsible for protecting and restoring these resources.

The objective of the Federal Water Pollution Control Act of 1972, as amended, which is commonly referred to as the Clean Water Act, is to "restore and maintain the chemical, physical and biological integrity of the Nation's waters."

Although Federal agencies are working to implement the applicable requirements of the Clean Water Act, further progress is needed both to prevent degradation of high quality waters and sensitive aquatic ecosystems and to accelerate the restoration of degraded water resources. This policy provides a foundation to help ensure that Federal land and resource management activities meet these goals and that the Federal government serves as a model for water quality stewardship.

We believe that the unified watershed-based approach outlined in this policy provides a strong foundation for achieving these goals.

Though this policy is not intended to be a rule, the proposed policy was published for notice and public comment in the February 22, 2000, **Federal Register** (65 FR 8834). We also posted the policy on the World Wide Web at *www.cleanwater.gov/ufp* and mailed it to States, Tribes, environmental groups, and industry associations. We conducted eleven regional meetings; met with a number of organizations, such as the Western Governors' Association; and conducted meetings and conference calls with Tribal government representatives.

We received 248 responses from 126 organizations and 122 individuals on the proposed policy. Comments represented a diverse set of interests from across the country, including private citizens; State, Tribal and local governments; and industry and environmental groups. An interagency team reviewed and evaluated the comments and made changes to the policy based on these comments.

The majority of the commenters supported the overall goal of the policy to improve water quality on Federal lands through an emphasis on a watershed-based approach to land and resource management. Many commenters suggested language and content changes intended to improve the policy. The interagency review team identified six major questions or issue categories.

1. Do the participating agencies have the authority to develop and implement this policy?
2. How does the policy affect Tribal rights and interests?
3. What role will the States, Tribes, and local governments have in working with the Federal agencies to implement the policy?
4. What impacts will this policy have on the multiple uses of Federal lands?
5. How will the policy be implemented?
6. How will the public participate in implementing the policy?

The following section, Summary of Comments and Responses, includes a discussion of these issues and our response to the public comments. This section also describes all substantive changes made to the proposed policy based on the public comments and the Federal agencies' review of the policy. The text of the final policy is set out at the end of this notice.

### Summary of Comments and Responses

*1. Do the participating agencies have the authority to develop and implement this policy?*

*Comments:* Some respondents asserted that the Clean Water Action Plan (CWAP) and the Unified Federal Policy (UFP) violate Congressional



mandates regarding multiple use, sustained yield and planning procedures found in the Federal Land Policy and Management Act, 43 U.S.C. § 1701 *et seq.* (FLPMA), the Multiple Use and Sustained Yield Act, 16 U.S.C. § 531 *et seq.* (MUSYA), and the National Forest Management Act, 16 U.S.C. § 1600 *et seq.* (NFMA).

*Response:* As the agencies have explained in the CWAP itself, the CWAP is not a regulation and it does not establish a regulatory program. Rather, it is a call to action that "builds on the solid foundation of existing clean water programs" and seeks to "restore and protect water resources" within the framework of existing laws and regulations. Similarly, the UFP is intended to enhance the implementation of existing laws and improve coordination of Federal watershed management activities with States, Tribes, and interested stakeholders. In other words, nothing in the UFP (or the CWAP) directs agencies to violate any existing laws or regulations. For instance, the UFP calls upon agencies to enhance State, Tribal and public participation opportunities during the resource management decision-making process. However, any such enhancement must be fully consistent with resource management decision-making processes established by FLPMA and other applicable laws and their implementing regulations. As another example, the UFP asks agencies to employ collaborative decision-making processes that utilize scientific knowledge and understanding gained from watershed assessments to develop federal land management decisions. Again, any such collaboration would be structured and undertaken only in accordance with applicable laws such as FLPMA, MUSYA, and NFMA and their implementing regulations.

*Comments:* Some respondents commented that CWAP and, therefore, the UFP violate the Administrative Procedure Act (APA) and Intergovernmental Cooperation Act (ICA).

*Response:* Neither the CWAP nor the UFP is a regulation. Therefore, the formal requirements of APA applicable to the promulgation of government regulations do not apply. In contrast to a regulation, which would establish legally enforceable requirements, the UFP asserts goals and aspirations consistent with existing laws and regulations. The UFP does not identify or propose specific projects that would require consultation with local governments under the ICA. The Federal agencies have widely publicized the policy and encouraged public discussion and feedback in order to have the widest possible participation of the public, including States and Tribes, in energizing the agencies' efforts to restore America's waters. Thus, States and Tribes were invited to participate in the UFP's development by commenting on a "working draft" policy in June of 1999, eight months before publication of the proposed policy in February 22, 2000 **Federal Register** (65 FR 8334). Their comments were considered during the preparation of both the proposed and final policies.

*Comments:* Some respondents commented that the CWAP and, therefore, the UFP violate the National Environmental Policy Act (NEPA).

*Response:* The CWAP and the UFP provide a framework for energizing the agencies' efforts to restore the nation's waters pursuant to existing laws and regulations. As such, the CWAP and the UFP are broad policy statements that speak in general concepts and principles, do not establish or alter existing agency programs, and are not defined to the point that they can be meaningfully analyzed. The agencies will fully comply with NEPA and other applicable laws at the appropriate time, such as when the UFP's policies are used to develop proposals for specific policies, programs, or projects. In other words, the Federal agencies fully intend to comply with NEPA at the appropriate time for all actions that require such compliance.

*Comments:* Some respondents asserted that the CWAP and, therefore, the UFP violate the Fifth Amendment's prohibition on the taking of private property.

*Response:* Nothing in either the CWAP or the UFP deprives anyone of individual property rights or would deny any owner of property the economic use of that property. The CWAP and the UFP do not require, authorize, or even suggest the taking of private property by any governmental agency for any purpose. The UFP, by its terms, creates no enforceable rights. The UFP applies only to Federal land and resources, not to private property. The UFP does not prohibit or restrict any activity on private property.

*Comments:* Some respondents asserted that the CWAP and, therefore, the UFP violate the Regulatory Flexibility Act (RFA) because the effect of the CWAP for any significant impact on small entities and businesses was not analyzed.

*Response:* Because neither the CWAP nor the UFP is a regulation, the RFA does not apply to them. The RFA is triggered only "[w]henever an agency is required * * * to publish general notice of proposed rulemaking for any proposed rule * * *" 5 U.S.C. 603(a). The CWAP and the UFP are policies, not rules, and therefore are not subject to RFA.

*Comments:* Several respondents questioned whether the authority exists for some of the activities in the policy; specifically, the authority to conduct watershed assessments and to apply special designations.

*Response:* Federal agencies have a variety of authorities to conduct watershed assessments and apply special designations. For example, in Public Law 94–579 (October 21, 1976), the Federal Land Policy and Management Act of 1976, Title II—Land Use Planning, Inventory and Identification, Section 201(a), Congress directed that the Secretary of the Interior "shall prepare and maintain on a continuing basis an inventory of all public lands and their resource and other values." In Title II, Section 202(c)(3), Congress directed the Secretary of the Interior to "give priority to the designation and protection of areas of critical environmental concern." In the National Forest Management Act of 1976 (16 U.S.C. 1602), Section 5—Program Recommendations, Congress directed the Secretary of Agriculture to "recognize the fundamental need to protect and where appropriate, improve the quality of soil, water, and air resources." Each agency has additional authorities to inventory resource conditions and prepare management plans to prevent natural resource degradation and to restore degraded areas. In order to clarify our intent, the final policy has been amended to include the phrase "using existing legal authorities" in Section II.B.2, which addresses special designations.

*Comments:* Several respondents commented on the protection of existing water rights. The agencies adopting this policy acknowledge the authority granted to Tribes and States regarding water rights.

*Response:* In order to clarify our intent, the introduction section of the final policy has been amended to affirm our intent not to affect water rights with the addition of the following language: "The policy applies only to Federal lands and resources and does not affect water rights laws, procedures, or regulations." In the notice of the proposed policy published in the **Federal Register** on February 22, 2000 (65 FR 8834), we also stated our intent by publishing the following statement in the preamble: "* * * nothing in the proposed policy is intended to adjudicate, determine, or otherwise

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affect water rights. The proposed policy does not affect currently applicable laws, procedures, or regulations creating or determining water rights."

*2. How does the policy affect Tribal rights and interests?*

*Comments:* Several comments concerned tribal rights and interests.

*Response:* The final policy acknowledges the Federal policy of the government-to-government relationship between the United States and Tribes by expressly including Tribes as governmental partners in meeting the goals and objectives of this unified Federal policy on watershed management. The policy recognizes Tribal government authorities under the Clean Water Act and includes Tribes in all of the collaboration efforts addressed by the policy. The policy also has the flexibility to take into account indigenous knowledge when developing, selecting and implementing management actions.

*3. What role will States, Tribes, and local governments have in working with Federal agencies to implement the policy?*

*Comments:* A few respondents suggested we clarify the roles of the Federal agencies, States, and Tribes.

*Response:* In the preamble to the proposed policy, we recognized that Tribes and States have overall responsibility for managing waters under their jurisdiction. This recognition has been added to the introduction of the final policy. In addition, Section II.D.2 of the final policy states that we will develop formal agreements with States, Tribes, and local governments as appropriate to clarify responsibilities for watershed management.

*Comments:* Some respondents questioned the need for additional watershed assessments on Federally managed lands and requested clarification on the scope and scale of these assessments.

*Response:* The purpose of watershed assessment is to gain an understanding of the physical and biological processes that govern the flow, quality, and timing of water. It is our intent that watershed assessments will result in information that will become part of the basis for identifying management opportunities and priorities and for developing alternatives to protect or restore watersheds. We have included an outline in Section II.A.1.a of the final policy for the development of a consistent watershed assessment procedure. Although the agencies' field offices will have flexibility on the scale, watershed assessments generally will be at the 5th level Hydrologic Unit Code (HUC) (40,000 to 250,000 acres) or 6th level HUC (10,000 to 40,000 acres).

*Comments:* A few respondents questioned whether the watershed assessments on Federally managed lands duplicate actions that the Tribes and States are required to conduct under the Clean Water Act.

*Response:* The Federal watershed assessments will supplement the Tribal and State assessments. In general, the Federal assessments will be more detailed (for example, we will analyze the cause of watershed problems and the potential for recovery) and will be at a smaller scale. We will use the results of these assessments to work with the Tribes and States in efforts to protect or improve water quality in watersheds that include Federal lands.

*Comments:* Several respondents emphasized that Federal watershed protection and restoration efforts must be coordinated with Tribal, State, and local efforts.

*Response:* The policy is intended to provide a framework for enhanced collaboration among the Federal agencies, States, Tribes, private landowners, and stakeholders. While the policy applies only to Federally managed lands, we recognize that collaboration is essential to successful watershed protection and restoration. The Federal agencies within a watershed are committed to working together and with States, Tribes, local governments, interested stakeholders, and private landowners to assess, prioritize, and focus funding and personnel for protection and restoration action in priority watersheds. The policy is broad to allow field level offices the flexibility to consider local conditions and the good work already underway. Through close coordination outlined in the policy, we believe work on Federal lands will complement actions taken by States, Tribes, and local communities.

*4. What impacts will this policy have on the multiple uses of Federal lands?*

*Comments:* Some respondents expressed concern that the policy might interfere with current multiple use management activities, while other respondents suggested that the policy be strengthened to help ensure that Federal land management activities would not further degrade water quality.

*Response:* Federal laws governing Federal land management already strike a balance between local and national interests in meeting multiple use mandates, preventing natural resource degradation, and preserving resource viability. This policy is intended to provide a consistent approach to managing Federal lands and resources in accordance with applicable laws governing Federal land use management and water quality.

*5. How will the policy be implemented?*

*Comments:* Several respondents commented on the need for specific implementation information; in particular, when and how the actions are to be accomplished and how ongoing efforts by Tribes, States, and local communities will be impacted by the policy.

*Response:* With the adoption of the final policy, the agencies will work in close coordination with State, Tribal, and local government agencies; private landowners; and stakeholders to develop implementation plans that will incorporate the goals of the policy, build on current efforts, and will recognize work already being accomplished by Tribes, States, and local communities.

*Comments:* A few respondents questioned whether funding to implement the policy is available.

*Response:* We recognize that the implementation will vary among the agencies, based in part on existing budget allocations. We also anticipate that implementation of this policy will help to encourage Federal land and resource management agencies to pool funds to focus on priority efforts. Finally, we recognize that additional funding could accelerate implementation of this policy.

*6. How will the public participate in implementing the policy?*

*Comments:* Several respondents wanted to know how the public would be involved in policy implementation.

*Response:* One of the six guiding principles of the final policy (Section I.A–F) is to work closely with States, Tribes, local governments, private landowners, and stakeholders to implement this policy (Section I.D). The policy provides for two types of public participation: (1) Opportunities to review and comment throughout Federal planning processes, and (2) Opportunities to assist in on-the-ground work (Section II.D). In general, the agencies' field offices will be responsible for working with States, Tribes, local governments, private landowners, and stakeholders to provide opportunities for input, at a minimum, in the following areas:

- Assessing the effects of our current and past actions on the condition of watersheds with significant Federal lands and resources (Section II.A.2.a).
- Identifying specific watersheds with significant Federal lands and resources as priorities for protection, management, and improvement (Section II.B.1).
- Improving watershed conditions through restoration and adaptive management (Section II.B.4).

*Comments:* Two respondents expressed concern that private landowners were not mentioned until the end of the policy.

*Response:* We recognize that private landowners play a very important role in implementing a watershed approach. The term "stakeholder" is intended to include private landowners. In addition, the term "private landowners" was added in several sections of the final policy to clarify the intent of the policy to recognize their role and include them in many steps to achieve watershed management.

Dated: September 20, 2000.

For the Department of Agriculture.

**James R. Lyons,**

*Under Secretary, Natural Resources and Environment.*

Dated: October 2, 2000.

For the Department of Commerce, National Oceanic and Atmospheric Administration.

**D. James Baker,**

*Under Secretary for Oceans and Atmosphere.*

Dated: September 28, 2000.

For the Department of Defense.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

Dated: September 22, 2000.

For the Department of Energy.

**David Michaels,**

*Assistant Secretary, Environment, Safety and Health. 9*

Dated: September 7, 2000.

For the Department of the Interior.

**Sylvia V. Baca,**

*Assistant Secretary for Land and Minerals Management.*

August 29, 2999.

For the Environmental Protection Agency.

**J. Charles Fox,**

*Assistant Administrator for Water.*

Dated: September 1, 2000.

For the Tennessee Valley Authority.

**Ruben O. Hernandez,**

*Vice President, Resource Stewardship.*

Dated: September 14, 2000.

For the Army Corps of Engineers.

**Joseph W. Westphal,**

*Assistant Secretary of the Army (Civil Works).*



## Unified Federal Policy for a Watershed Approach to Federal Land and Resource Management

### Introduction

Federal agencies manage large amounts of public lands throughout the country. To protect water quality and aquatic ecosystems on these public lands, Federal agencies have developed the following policy to reduce water pollution from Federal activities and foster a unified, watershed-based approach to Federal land and resource management. This policy is intended to accelerate Federal progress towards achieving the goals of the Clean Water Act (Federal Water Pollution Control Act of 1972, 33 U.S.C. 1251 *et seq.*). This policy applies only to Federal lands and resources and does not affect water rights laws, procedures, or regulations. This policy does not supersede or otherwise affect existing State or Tribal authority under the Clean Water Act. The Federal agencies also acknowledge that, in international waters, the watershed approach is subject to the international treaties and agreements affecting those waters.

*I. Policy Goals*

We, the Federal agencies who have signed this policy, are committed to managing the Federal lands, resources, and facilities in our care as models of good stewardship and effective watershed management.

We recognize that State, Tribal, and local programs for watershed protection and improvement are currently underway and producing positive results. We also recognize the success of locally led, voluntary, watershed groups in planning and implementing water quality improvement actions. This policy seeks to build upon those existing efforts and expand cooperation among Federal, Tribal, State and local partners. This policy will enhance these programs by improving consistency among Federal agency watershed protection programs. We acknowledge that those Federal agencies without established programs will face an additional challenge to implement this policy and that the pace and level of implementation will vary by agency.

The following policy has two goals: (1) Use a watershed approach to prevent and reduce pollution of surface and ground waters resulting from Federal land and resource management activities; and (2) Accomplish this in a unified and cost-effective manner.

To develop a unified Federal policy that meets these two goals, we incorporated the following guiding principles:

A. Use a consistent and scientific approach to manage Federal lands and resources and to assess, protect, and restore watersheds.

B. Identify specific watersheds in which to focus our funding and personnel and accelerate improvements in water quality, aquatic habitat, and watershed conditions.

C. Use the results of watershed assessments to guide planning and management activities in accordance with applicable authorities and procedures.

D. Work closely with States, Tribes, local governments, private landowners, and stakeholders to implement this policy.

E. Meet our Clean Water Act responsibility to comply with applicable Federal, State, Tribal, interstate, and local water quality requirements to the same extent as non-governmental entities.

F. Take steps to help ensure that Federal land and resource management actions are consistent with applicable Federal, State, Tribal, and local government water quality management programs.

*II. Agency Objectives*

To accomplish these policy goals, we propose to use existing funding, personnel, and authorities to pursue the following objectives. All agencies will implement this policy as individual agency laws, missions, funding, and fiscal and budgetary authorities permit.

A. We will develop a science-based approach to watershed assessment for Federal lands. Watershed assessment information will become part of the basis for identifying management opportunities and priorities and for developing alternatives to protect or restore watersheds.

1. We will develop consistent procedures for delineating, assessing, and classifying watersheds.

a. We will work together to define and implement interagency guidelines for the delineation of watershed (5th level) hydrologic unit code boundaries.

b. Building on current efforts, we will develop and test watershed assessment procedures in watersheds that have been delineated using the interagency guidelines. The watershed assessment procedures will outline a process to:

(1) Focus on the analysis of factors that most directly influence changes in the condition of the specific watershed of interest (for example, meteorology, surface and ground water, soils, geology,

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vegetation, topography, channel geometry factors, and natural and human disturbances).

(2) Determine existing conditions and reference conditions.

(3) Identify the significance and the causes of the differences between existing and reference conditions for the watershed and the potential for recovery.

c. We will develop a framework for consistent classification of the condition of watersheds with significant Federal lands and resources. The framework will use the results of the watershed assessments.

2. We will conduct assessments of watersheds that have significant Federal lands and resources.

a. We will assess the affects of our current and past actions on the condition of watersheds with significant Federal lands and resources in cooperation with States, Tribes, local governments, private landowners, and interested stakeholders, using the procedures developed in Section II.A.1.b and recognizing current agreements.

b. We will develop schedules for assessments and identify necessary funding and personnel.

c. We will conduct assessments in priority watersheds on a 10-year cycle, or on a periodic cycle that better demonstrates changes in a particular watershed's condition over time. We will conduct assessments in other watersheds on a planned, periodic cycle.

d. We will use watershed assessments, where available, to improve management of Federal lands and resources. We will provide the results of assessments to States, Tribes, and local governments and use these assessments to assist States, Tribes, and local governments in protecting and restoring watersheds designated as priorities by State and Tribal Unified Watershed Assessments, Source Water Assessments or other assessments.

B. We will use a watershed management approach when protecting and restoring watersheds.

1. We will work collaboratively to identify priority watersheds.

a. We will work with States, Tribes, local governments, private landowners, and interested stakeholders to identify specific watersheds with significant Federal lands and resources as priorities for protection, management, and improvement.

b. We will identify priority watersheds based on factors that include:

(1) The percentage of the watershed under Federal management;

(2) Issues the Federal agencies identify, including possible adverse effects on surface and ground water quality;

(3) Magnitude of water quality impairment, impacts to aquatic resources, and/or changes to flow regime;

(4) State and Tribal Unified Watershed Assessments and Source Water Assessments;

(5) Vulnerability of the watershed to degradation; and

(6) Substantive public interest.

2. Using existing legal authorities, we will develop a process and guidelines for identifying and designating waters or watersheds on Federal lands that may have significant human health, public use, or aquatic ecosystem values and a need for special protection.

3. We will implement pollution prevention and controls, consistent with applicable legal authorities.

a. We will address nonpoint and point source pollution from Federal land management activities, protect or improve water quality, and meet applicable State and Tribal water quality requirements under the Clean Water Act.

b. We will work with States, Tribes, and local governments to address nonpoint sources of pollution by:

(1) Identifying best management practices (BMPs) and management strategies that meet applicable Federal, State, and Tribal water quality requirements;

(2) Adjusting BMPs when monitoring reveals that they do not adequately protect water quality; and

(3) Mitigating impacts when implementation of BMPs results in unexpected adverse water quality impacts.

4. We will improve watershed conditions through restoration and adaptive management. We will strive to work with States, Tribes, local governments, private landowners, and interested stakeholders to improve the condition of priority watersheds. Changes in management strategies and restoration efforts will focus on watersheds where Federal land and resource management activities can meaningfully influence surface and ground water quality and aquatic resources.

5. We will base watershed management on scientific principles and methods. We will use scientific information from research and management experience in designing and implementing watershed planning and management programs, and setting management goals (*e.g.*, desired conditions). To expand current knowledge, we will collaborate to identify research needs and contribute to or sponsor research, as appropriate.

6. We will identify and incorporate watershed management goals into our planning, programs, and actions. We will periodically review and amend, as appropriate, policies and management plans for Federal lands and resources to meet goals for watershed protection and improvement. We will incorporate adaptive management principles into our programs. Our watershed goals will seek to minimize adverse water quality impacts due to ongoing and future management programs, minimize impairment of current or future uses, and restore watersheds where applicable State and Tribal water quality requirements under the Clean Water Act are not achieved due to activities occurring on Federal lands.

7. We will help Tribes and States develop science-based total maximum daily loads (TMDLs). We will assist and support State and Tribal efforts to develop and implement TMDLs in watersheds with significant Federal land and resource management activities. We will provide technical assistance, tools, and expertise. We will use TMDL results in watershed planning and subsequent resource management activities to meet applicable State and Tribal water quality requirements under the Clean Water Act.

C. We will improve our compliance with water quality requirements under the Clean Water Act.

1. We will review agency policies to improve compliance with water quality requirements. We will identify and review our rules, policies, and procedures that affect water quality or watershed conditions for compliance under the Clean Water Act with applicable Federal, State, Tribal, interstate, and local requirements for preventing and controlling water pollution.

2. We will integrate water quality standards and watershed management goals. We will work collaboratively to clarify relationships under the Clean Water Act among BMPs, TMDLs, and State and Tribal water quality standards to achieve the following goals:

a. Better coordination of watershed goals and objectives;

b. Better sharing of scientific and technical data, equipment, and expertise;

c. Better support to the State/Tribal triennial reviews so that they reflect the importance of natural background loadings;

d. Better implementation mechanisms for meeting standards under the Clean Water Act, including practical interim measures where standards are not immediately achievable; and

e. Consistent treatment of Federal and non-Federal entities.

3. We will review our policies and processes that may affect land and water uses and water quality. In cooperation with Tribes and States, we will review our policies and processes for land and water uses that may affect water quality and watershed condition. We will consider revising these policies or processes, as appropriate, to ensure that they address watershed protection, improvement, monitoring, and water quality compliance.

D. We will enhance collaboration.

1. We will improve cooperation among Federal agencies. We will address water quality and aquatic ecosystem issues for watersheds at the national, regional, and field levels.

2. We will improve cooperation with States, Tribes, and local governments. We will develop formal agreements as appropriate with States, Tribes, and local governments to clarify responsibilities for watershed management. These agreements will seek a watershed-based approach for preventing or reducing pollution from point and nonpoint sources.

3. We will expand opportunities for participation by interested stakeholders. We will seek participation by interested stakeholders in watershed planning and management decisions using available mechanisms in existing planning processes. We will:

a. Identify specific opportunities for review and comment by interested stakeholders during Federal land and watershed planning efforts;

b. Provide opportunities for interested stakeholders to participate in monitoring and assessing watershed conditions and in implementing watershed restoration projects; and

c. Seek early feedback on key decisions affecting watershed management and carefully consider this feedback in agency decision-making.

4. We will expand opportunities for dialogue with private landowners. In priority watersheds with a mix of Federal and private lands, we will work with private sector landholders to involve them in the watershed management process. We will work closely to help ensure that Federally funded projects involving private cost-share partners fully consider watershed management objectives for both public and private lands.

5. We will coordinate monitoring. We will develop and implement a coordinated monitoring and evaluation approach and will monitor water quality trends and our management activities to determine whether progress is being made in protecting and improving water quality.

6. We will share training, information, and technical expertise. To promote collaboration and consistency in watershed management practices, we will continue, expand, develop, implement, and make available joint training programs; share information and technical expertise; transfer technologies for watershed management; and develop a consistent way to organize and present information and make it more accessible.

This policy does not create any right or benefit, or trust responsibility, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person. This policy does not alter or amend any requirement under statute, regulation, or Executive Order.

Dated: September 20, 2000.

For the Department of Agriculture.

**James R. Lyons,**

*Natural Resources and Environment.*

Dated: October 2, 2000.

For the Department of Commerce, National Oceanic and Atmospheric Administration.

**D. James Baker,**

*Under Secretary for Oceans and Atmosphere.*

Dated: September 28, 2000.

For the Department of Defense.

**Sherri W. Goodman,**

*Deputy Under Secretary of Defense (Environmental Security).*

Dated: September 22, 2000.

For the Department of Energy.

**David Michaels,**

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**Ruben O. Hernandez,**

*Vice President, Resource Stewardship.*

Dated: September 14, 2000.

For the Army Corps of Engineers.

**Joseph W. Westphal,**

*Assistant Secretary of the Army (Civil Works).*

## Glossary of Terms

These definitions are intended only to help you understand the policy better, and do not change the meanings of terms defined by law or regulation. If we define a term in the policy that is not defined elsewhere by law or regulation, you should not consider any such definition to have the effect of a law or regulation. Also, if we use a definition in this policy that is subsequently found to conflict with current laws or regulations, the current laws or regulations would apply. For example, "best management practices" and "total maximum daily load" are defined in the Environmental Protection Agency's regulations at 40 CFR 122.2 and 40 CFR 130.2(i), respectively.

*Adaptive management:* A type of natural resource management in which decisions are made as part of an ongoing science-based process. Adaptive management involves testing, monitoring, and evaluating applied strategies, and incorporating new knowledge into management approaches that are based on scientific findings and the needs of society. Results are used to modify management policy, strategies, and practices.

*Best management practices (BMPs):* Methods, measures, or practices to prevent or reduce water pollution, including, but not limited to:

1. Structural and nonstructural controls,

2. Operation and maintenance procedures, and

3. Other requirements and scheduling and distribution of activities.

Usually BMPs are applied as a system of practices rather than a single practice. BMPs are selected on the basis of site-specific conditions that reflect natural background conditions and political, social, economic, and technical feasibility.

*Consistent:* Conforming to the same principles or course of action.

*Hydrologic unit:* A national standard system of watersheds that are classified into four types of units: regions, sub-regions, accounting units, and cataloging units. The hydrologic units are arranged within each other, from the smallest (cataloging units or sub-basin) to the largest (regions). Each hydrologic unit is identified by a unique hydrologic unit code (HUC) consisting of two to eight digits based on the four levels of classification in the hydrologic unit system. A standardized fifth-level of classification or 10-digit hydrologic unit (watershed) has recently been developed. Locally, a non-standard sixth-level sub-watershed also may have been developed.

*Priority watersheds:* Watersheds selected for the focusing of Federal funds and personnel for the purpose of accelerating improvements in water quality and watershed condition.

*Reference condition:* The range of factors (for example, meteorology, surface and ground water, soils, geology, vegetation, topography, channel geometry factors, and natural and human disturbances) that is representative of the watershed's recent historical values prior to significant alteration of its environment. The reference could represent conditions found in a relic site or a site having had little significant disturbance. The reference condition does not necessarily represent conditions that are attainable. The purpose of references is to establish a basis for comparing what

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currently exists to what has existed in recent history. References can be obtained through actual data, such as paired watersheds or well-managed watersheds, or through extrapolated techniques, such as modeling.

*Resources:* The biological and physical characteristics for which Federal agencies have management and stewardship responsibility; for example, air, soil, water, fish, wildlife, vegetation, and minerals.

*Total maximum daily load:* An estimate of the total quantity of pollutants (from all sources—point, nonpoint, and natural) that may be allowed into waters without exceeding applicable water quality standards.

*Unified Watershed Assessment:* The *Clean Water Action Plan* asked Tribes and States to assess their watersheds and identify all watersheds as being in one of four categories:

1. Not meeting, or facing an imminent threat of not meeting, clean water or other natural resource goals;

2. Meeting goals but needing action to sustain water quality;

3. Having pristine/sensitive aquatic system conditions on Federal, State, or Tribal lands; or

4. Needing more information to assess watershed condition.

*Source Water Assessment:* A process, required by the Safe Drinking Water Act, whereby the State or designated Tribe or agency, identifies the areas that provide surface and ground water to public drinking water systems; inventories existing contaminants; and determines vulnerability of the system to contamination.

*Watershed:* A geographic area of land, water, and biota within the confines of a drainage divide. The total area above a given point of a water body that contributes flow to that point.

*Watershed approach:* A framework to guide watershed management that: (1) uses watershed assessments to determine existing and reference conditions; (2) incorporates assessment results into resource management planning; and (3) fosters collaboration with all landowners in the watershed. The framework considers both ground and surface water flow within a hydrologically defined geographical area.

*Watershed assessment:* An analysis and interpretation of the physical and landscape characteristics of a watershed using scientific principles to describe watershed conditions as they affect water quality and aquatic resources. Initial watershed assessments will be conducted using existing data, where available. Data gaps may suggest the collection of additional data.

*Watershed condition:* The state of the watershed based on physical and biogeochemical characteristics and processes (*e.g.*, hydrologic, geomorphic, landscape, topographic, vegetative cover, and aquatic habitat), water flow characteristics and processes (*e.g.*, volume and timing), and water quality characteristics and processes (*e.g.*, chemical, physical, and biological), as it affects water quality and water resources.

[FR Doc. 00–26566 Filed 10–17–00; 8:45 am]
BILLING CODE 3410–11–P

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Part VIII

## The President

Proclamation 7364—Amending Proclamation 7362, Display of the Flag at Half-Staff as a Mark of Respect for Those Who Died on the United States Ship *Cole*

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# Presidential Documents

Title 3—

The President

## Proclamation 7364 of October 16, 2000

## Amending Proclamation 7362, Display of the Flag at Half-Staff as a Mark of Respect for Those Who Died on the United States Ship *Cole*

**By the President of the United States of America**

**A Proclamation**

By the authority vested in me as President of the United States by the Constitution and the laws of the United States of America, and in order to extend the display of the flag at half-staff as a mark of respect for those who died on the United States Ship COLE, it is hereby ordered that Proclamation 7362 of October 12, 2000, is amended by deleting in the first sentence the words "Monday, October 16" and inserting in their place the words "Wednesday, October 18."

IN WITNESS WHEREOF, I have hereunto set my hand this sixteenth day of October, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fifth.

William J. Clinton

[FR Doc. 00–26987
Filed 10–17–00; 10:51 am]
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The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

**H.R. 1162/P.L. 106–295**
To designate the bridge on United States Route 231 that crosses the Ohio River between Maceo, Kentucky, and Rockport, Indiana, as the "William H. Natcher Bridge". (Oct. 13, 2000; 114 Stat. 1043)

**H.R. 1605/P.L. 106–296**
To designate the Federal building and United States courthouse located at 402 North Walnut Street in Harrison, Arkansas, as the "J. Smith Henley Federal Building and United States Courthouse". (Oct. 13, 2000; 114 Stat. 1044)

**H.R. 1800/P.L. 106–297**
Death in Custody Reporting Act of 2000 (Oct. 13, 2000; 114 Stat. 1045)

**H.R. 2752/P.L. 106–298**
Lincoln County Land Act of 2000 (Oct. 13, 2000; 114 Stat. 1046)

**H.R. 2773/P.L. 106–299**
Wekiva Wild and Scenic River Act of 2000 (Oct. 13, 2000; 114 Stat. 1050)

**H.R. 4318/P.L. 106–300**
Red River National Wildlife Refuge Act (Oct. 13, 2000; 114 Stat. 1055)

**H.R. 4579/P.L. 106–301**
Utah West Desert Land Exchange Act of 2000 (Oct. 13, 2000; 114 Stat. 1059)

**H.R. 4583/P.L. 106–302**
To extend the authorization for the Air Force Memorial Foundation to establish a memorial in the District of Columbia or its environs. (Oct. 13, 2000; 114 Stat. 1062)

**H.R. 4642/P.L. 106–303**
To make certain personnel flexibilities available with respect to the General Accounting Office, and for other purposes. (Oct. 13, 2000; 114 Stat. 1063)

**H.R. 4806/P.L. 106–304**
To designate the Federal building located at 1710 Alabama Avenue in Jasper, Alabama, as the "Carl Elliott Federal Building". (Oct. 13, 2000; 114 Stat. 1071)

**H.R. 5284/P.L. 106–305**
To designate the United States customhouse located at 101 East Main Street in Norfolk, Virginia, as the "Owen B. Pickett United States Customhouse". (Oct. 13, 2000; 114 Stat. 1072)

**H.J. Res. 111/P.L. 106–306**
Making further continuing appropriations for the fiscal year 2001, and for other purposes. (Oct. 13, 2000; 114 Stat. 1073)

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**S. 366/P.L. 106–307**
El Camino Real de Tierra Adentro National Historic Trail Act (Oct. 13, 2000; 114 Stat. 1074)

**S. 1794/P.L. 106–308**
To designate the Federal courthouse at 145 East Simpson Avenue in Jackson, Wyoming, as the "Clifford P. Hansen Federal Courthouse". (Oct. 13, 2000; 114 Stat. 1077)

**Last List October 17, 2000**

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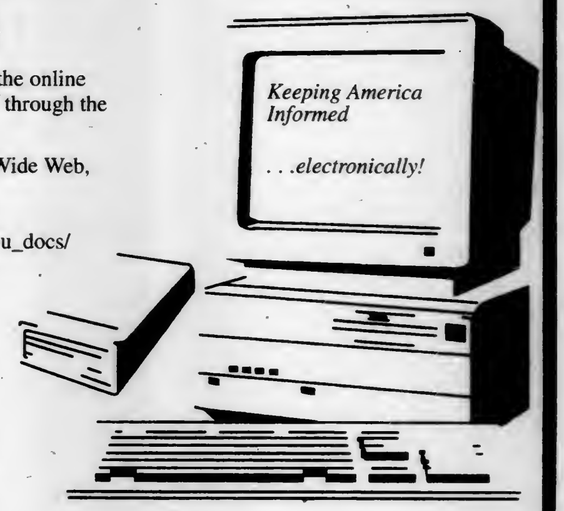
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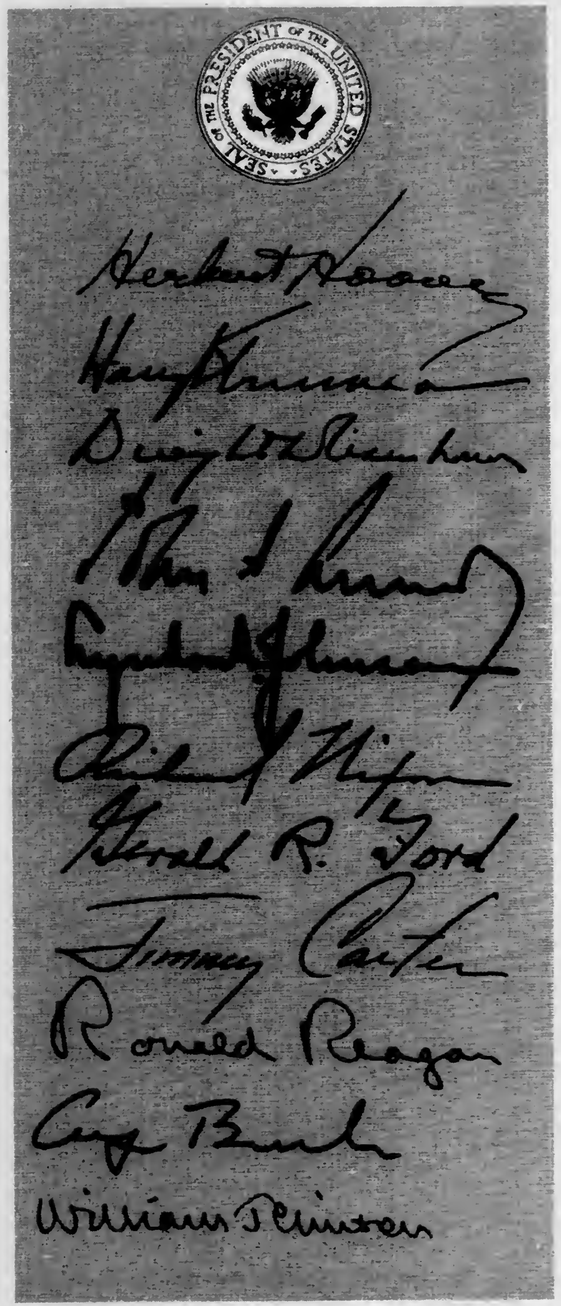
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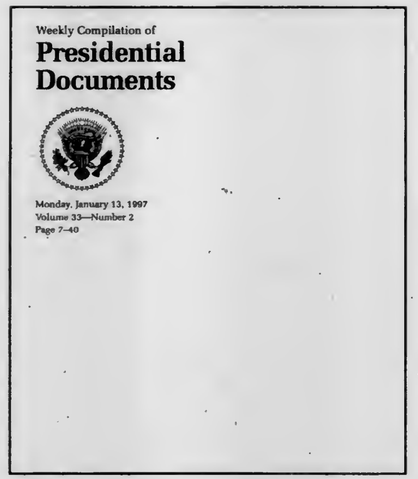
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